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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1940, 1944, 1951, 1956, and 2003

Rural Development Administration

7 CFR Part 4284

RIN 0570–AA00

Community Facility Loans and Grants

AGENCIES: Rural Development Administration and Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Development Administration (RDA) promulgates a new regulation for Community Facility Loans and Grants. The Farmers Home Administration (FmHA) amends its regulations that are utilized by RDA in administering Community Facility Loans and Grants. FmHA also amends its regulations to administer, on behalf of RDA, the direct grant program to individuals. This action is necessary to implement legislation that provides loans and grants for water and waste disposal facilities and services to rural communities whose residents face significant health risks. The health risks faced by these rural residents must be due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable, water or waste disposal systems. This loan and grant program will provide financial assistance to water and waste disposal systems to assist them in providing services to these communities. Individuals can also receive financial assistance that will allow them to utilize the water and/or waste disposal system.

EFFECTIVE DATE: August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

The program is listed in the Catalog of Federal Domestic Assistance under number 10.770, Water and Waste Disposal Loans and Grants (Section 306C) and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in section 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

The information collection requirements contained in 7 CFR part 4284, subpart E have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507), and have been assigned OMB control number 0570–0001. The revised information collection contained in 7 CFR 1944–J will be submitted for approval to OMB. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA–FmHA, Washington, DC 20250.

Cross References of Regulations

The Rural Development Administration is a result of a reorganization of programs administered by Farmers Home Administration as required by section 364 of the Consolidated Farm and Rural Development Act, as amended, (7 U.S.C. 2006f) and an order of the Secretary of Agriculture. Dual-references or cross-references to Farmers Home Administration regulations are provided for by section 364.

Background

Section 2327 of Public Law 101–624 authorized loans and grants to only communities whose residents face significant health risks because of no access to adequate affordable water supply systems or waste disposal facilities. The loans and grants provide financing of water and waste disposal projects in rural areas that primarily service residents of low income counties with a high unemployment rate. Water and/or waste disposal systems can obtain loans and grants to provide services to residents, including costs of connecting those residents to the system. The water and waste disposal systems can also obtain funds from RDA to make loans and grants available to individuals to pay the costs of improvements needed to facilitate the use of the system. Individuals can receive loans and/or grants to pay the cost of making improvements needed to use or connecting their residences to a community water and/or waste disposal system. The improvements or connection of individual residents will

facilitate the use of water supply and/or waste disposal systems. This action develops new regulations to implement the program authorized by Public Law 101–624 and set forth in section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c). Public Law 101–624 contains no geographic restrictions on the program, however, the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993" authorizes $25,000,000 in grant funding for this program to benefit the colonias along the U.S./Mexico border.

Comments on the Interim Final Rule

RDA and FmHA published an interim final rule in the Federal Register on January 22, 1993, (58 FR 5564) and asked for written comments on or before March 23, 1993. Seven comments were received from the public review process. All comments were considered when preparing the final rule; however, all comments have not been addressed separately since many could be addressed collectively. Responses to comments received are grouped according to subject matter.

Applicant Eligibility

Three respondents stated that individual residents of colonias may not have to file a federal income tax form and other methods of income documentation should be included. The Agencies agree with this suggestion and amended the interim final rule to authorize other means of documenting income.

One respondent commented that the eligibility criteria in § 4284.412 should be strengthened. The commenter was of the opinion that criteria like significant, adequate, and affordable was too subjective. RDA did not adopt this suggestion. The eligibility criteria in § 4284.412 is the same as the criteria in Public Law 101–624 and the Agency has no authority to change it.

One respondent stated that in many of the south Texas colonias there could be a second dwelling unit located on a lot in which a relative of the land owner might reside. The respondent wanted to know if only the owner of the property could receive a grant or if both families could receive assistance. RDA's and FmHA's position on this issue is that if the second home is occupied by a relative and they can show this is their official residence and is separate and apart from the owners residence, both families can receive a grant. No change was made to the rule because we believe current definitions were broad enough to accommodate the situation.

Cooperative Agreement

One respondent stated that the term "cooperative agreement" used in part 4284, subpart E should be changed to avoid possible confusion with terms currently used in the area of Federal assistance. RDA agrees with this suggestion and had changed the term to "Memorandum of Agreement."

Prompt Reimbursement

Three respondents stated that prompt reimbursement to contractors should be the rule. RDA agrees with these comments; however, the one year disbursement in § 4284.441 is for grants made to individuals, not payments to contractors. This section only applies to a water and/or sewer system that has elected to participate in providing grants to individuals to assist them in connecting and using the system. The purpose of the one year disbursement requirement is to give a water and/or sewer system one year after the service is in place to get all the individual residents connected to and using the system. RDA will be monitoring the water and sewer systems disbursement of the grant funds to individuals to assure that they are being promptly disbursed. RDA will promptly advance grant funds to water and/or sewer systems as funds are needed to pay project costs. RDA did not adopt these suggestions.

Timelines

Three respondents stated that there were no timelines established for the amount of time RDA and FmHA has to process an application. RDA and FmHA did not adopt these suggestions. RDA processes application for grants to water and sewer systems in accordance with subpart A of part 1942 and FmHA processes individual grants in accordance with subpart J of part 1944. Both of these subparts contain timelines to assure prompt consideration and processing of all applications.

Delinquent on Federal Debt

One respondent stated that a better definition of "delinquent" was needed. RDA did not adopt this suggestion. This is a requirement of OMB Circular A–128 and RDA cannot change this requirement.

Earmarks

One respondent stated that language in the rule should specifically state that the fiscal year 1993 funds are intended for colonias on the U.S./Mexico border. RDA agrees and provided further explanation in the background section of the Federal Register document.

Definition of Rural Area

One respondent stated that cities and towns populations over 10,000 inhabitants should be eligible to receive a RDA grant to serve a colonia. RDA did not adopt this suggestion. All of RDA's programs are directed to improving the quality of life in rural America. In the implementation of this program, the Agency elected to restrict eligibility to rural communities that provide service to rural areas. This is consistent with the funding for this and other RDA water and waste disposal programs, which are restricted to unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants.

Individual Applications

One respondent stated that it would be more cost effective to include individual hook-ups as a bid item in the construction of a water or sewer system rather than process individual applications. The rule allows individual hook-ups to be included as a separate bid item in the construction of a water or sewer system. Therefore, no change was made in the rule.

One respondent stated that the costs of removing or filling-in existing sewer systems or water wells should be allowed. RDA and FmHA agree with this suggestion and the rule has been revised to authorize these costs.

One respondent suggested that costs should be allowed for arriving at a cost estimate to pay charges or fees for connecting to a system. There would be no construction activity involved in paying charges or fees to connect to a water or sewer system. The charges or fees for connecting to a water and/or sewer system are established by the systems and all residential users would pay the same costs. However, for other activities that involve construction, the rule is broad enough to cover cost estimates and the development of construction specifications when needed. No change was made in the rule.

One respondent stated that clarification is needed relating to the word "construction". The word "construction" in the rule pertains to the addition of a bathroom if there is no space in the dwelling for the bathroom. The respondent also stated that the size to the bathroom be increased to 80 square feet. The rule authorizes a bathroom not to exceed 48 square feet which is large enough for a standard size bathroom. The Agency understands that there are some large families in the colonias, however, to provide assistance to the largest number of families,

reasonable limitations on size to the bathroom had to be made. No change was made in the rule.

List of Individual's Requesting Assistance

One respondent suggested that the application by water and/or sewer systems to provide individual grants only show the location address and estimated total costs rather than individual names and costs. The rule does not specify how the amount of funds needed by a system to implement its individual grant program will be determined. However, RDA needs the most accurate estimate of the costs associated with connecting individuals to the system before committing grant funds for this purpose. The need for these grant funds is expected to exceed the amount of funds available and the Agency does not wish to commit funds to a particular project in excess of the amount actually needed. No change was made in the rule.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Allocations, Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1944

Aged, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 2003

Organization and functions (government agencies).

7 CFR Part 4284

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal, Water supply.

Therefore, chapters XVIII and XLII, title 7, Code of Federal Regulations are amended by adopting the interim final rule published on January 22, 1993 (58 FR 5564), as a final rule with amendments as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart J—Section 504 Rural Housing Loans and Grants

2. Exhibit D to subpart J is amended by adding paragraph III(f) and by revising paragraphs V(b) and VI(b) to read as follows:

Exhibit D to Subpart J—Section 306C WWD Grants to Individuals

* * * * *

III. * * *

(f) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraph III(a) or III(b) of this exhibit and is required by local or State law.

* * * * *

V. * * *

(b) Have a total taxable income from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services. The latest Federal income tax form should be used to verify the household income. However, if the residents of a household did not file a Federal income tax form, income will be verified by third party or self-certification.

* * * * *

VI. * * *

(b) The applicant must furnish a copy of the most recent tax returns for all individuals residing in the household. For individuals residing in the household that were not required to file a Federal income tax form, they must furnish income verification from a third party or a self-certification. The self-certification is only acceptable when the use of third party verification is not practical because of income sources.

PART 4284—GRANTS

3. The authority citation for part 4284 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Section 306C WWD Loans and Grants

4. Section 4284.413 is amended by removing the words "and FmHA State and District office" in the first and second sentences of paragraph (b); by removing the words "and FmHA State and District office" in the introductory text of paragraph (d); and by removing in paragraph (d)(6) the words "and FmHA State and District office".

5. Section 4284.421 is amended by adding paragraph (b)(6) to read as follows:

§ 4284.421 Use of funds.

* * * * *

(b) * * *

(6) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs (b)(1) or (b)(2) of this section and is required by local or State law.

6. Section 4284.441 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 4284.441 Individual loans and grants.

* * * * *

(b) Exhibit A of this subpart is a Memorandum of Agreement which sets forth the procedures and regulations for making and servicing loans and grants made by applicants to individuals. The RDA Regional Director is authorized to enter into a Memorandum of Agreement with any applicant providing loans and/or grants to individuals. The Memorandum of Agreement can be amended to comply with State law and recommendations by the Office of General Counsel. It may also be amended to eliminate references to loans and/or grants if no loan and/or grant is involved. The RDA Regional Director is responsible for:

§ 4284.443 [Amended]

* * * * *

7. Section 4284.443 is amended by revising the words "(all available in any RDA office and FmHA State and District office)" to read "(Exhibits B and C of this subpart are available in any RDA office)".

8. Exhibit A to subpart E is amended by revising the heading to read "Memorandum of Agreement Between _____ and the Rural Development Administration (RDA)"; by revising in the first sentence of the introductory text the word "Cooperative" to read "Memorandum of"; by revising paragraphs A. 3. and B. 2.; and by adding paragraph D. 5. to read as follows:

Exhibit A to Subpart E—Memorandum of Agreement Between _____ and the Rural Development Administration (RDA)

* * * * *

A. * * *

3. Have a total taxable household income of not more than 125 percent of

the most recent poverty income guidelines established by Department of Health and Human Services. The household income will be based on the latest Federal income tax form or signed statement that their income is below the level required to file a Federal income tax form from all individuals residing in the household; and

* * * * *

B. * * *

2. Have a total taxable household income that is below the most recent poverty income guidelines established by Department of Health and Human Services. The household income will be based on the latest Federal income tax form or signed statement that their income is below the level required to file a Federal income tax form from all individuals residing in the household; and

* * * * *

D. * * *

5. Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs D.1 or D.2 of this exhibit and is required by local or State law.

* * * * *

Dated: June 21, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–19195 Filed 8–10–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Statement and order; temporary exceptions.

SUMMARY: Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA) authorizes the Federal financial institutions regulatory agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions. The exceptions are available for transactions that involve real property in major disaster areas when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness. Expiration dates for certain transactions are set out in the **SUPPLEMENTARY INFORMATION** section.

DATES: This order is effective on August 11, 1993, and expires for specific areas on the dates indicated in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency (OCC)

Thomas E. Watson, National Bank Examiner, (202) 874–5350, or William C. Kerr, National Bank Examiner, (202) 874–5170, Office of the Chief National Bank Examiner; or Horace G. Sneed, Senior Attorney, (202) 874–4460, Bank Operations and Assets Division, 250 E Street, SW., Washington, DC 20219.

Board of Governors of the Federal Reserve System (Board)

Roger T. Cole, Deputy Associate Director, (202) 452–2618, Rhoger H. Pugh, Assistant Director (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst, (202) 452–2629, Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Christopher J. Bellini, Attorney, (202) 452–3269, Legal Division. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

Federal Deposit Insurance Corporation (FDIC)

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898-6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division, 550 17th Street NW., Washington, DC 20429.

Office of Thrift Supervision (OTS)

Robert Fishman, Program Manager, Credit Risk, (202) 906–5672; Deirdre Kvartunas, Program Analyst, (202) 906–7933; Diana Garmus, Deputy Assistant Director, Corporate Activities, (202) 906–5683; Ellen J. Sazzman, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 907–7133; 1700 G Street, NW., Washington, DC 20552.

National Credit Union Administration (NCUA)

Michael J. McKenna, Office of General Counsel, (202) 682–9630, or Alonzo Swann, Office of Examination and Insurance, (202) 682–9640; 1776 G Street NW., Washington, DC 20456.

SUPPLEMENTARY INFORMATION:

Statement

Section 2 of DIDRA, 12 U.S.C. 3352, authorizes the agencies to make exceptions to statutory and regulatory appraisal requirements for transactions with respect to real property located in areas that the President has determined, pursuant to section 5170 of title 42, that a major disaster exists, provided that the exception would facilitate recovery from the major disaster and is consistent with safety and soundness.[1] Such exceptions

[1] The agencies must make the exception no later than 30 months after the date on which the

expire not later than three years after the date of the President's determination that a major disaster exists in the area.

During the summer of 1993, the President determined that major disasters existed in several Midwestern states because of the extensive flooding that had occurred and is continuing in those areas in April through July of 1993. The agencies believe that granting relief from the appraisal requirements for certain real estate transactions in all such areas affected by this summer's flooding is consistent with the provisions of the DIDRA.

The agencies have determined that the disruption of real estate markets in all such affected areas interferes with the ability of depository institutions to obtain appraisals that comply with statutory and regulatory requirements and, therefore, would impede institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected areas. Accordingly, the agencies have determined that recovery from the major disasters would be facilitated by excepting transactions involving real estate located in those areas directly affected by this summer's flooding from the real estate appraisal requirements of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and regulations promulgated thereto. This has the effect of excluding transactions to which the exceptions apply from the definition of "federally related transactions."

The agencies have also determined safety and soundness would not be adversely affected by such exceptions so long as the depository institution's records relating to any such excepted transaction clearly indicate either that the property involved was directly affected by the major disaster or that the transaction would facilitate recovery from the disaster and there is a binding commitment to fund the transaction within three years after the date the major disaster was declared. In addition, the transaction must continue to be subject to review by management and by the agencies in the course of examination of the institution under normal supervisory standards relating to safety and soundness, though the transactions need not comply with the specific requirements of title XI of FIRREA and the agencies' appraisal regulations.

President determines that a major disaster exists in the area.

Expiration Dates

Any exceptions provided under the order shall expire not later than 3 years after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, that a major disaster exists in the area. Accordingly, exceptions for the major disasters declared due to the flooding in Minnesota and Wisconsin counties expire on June 11, 1996 and July 2, 1996, respectively; in Missouri, Iowa, and Illinois counties on July 9, 1996; and in Nebraska and South Dakota counties on July 19, 1996. Exceptions for any other areas that have been declared major disasters by the President expire 3 years after the date of such declaration.

Order

In accordance with section 2 of DIDRA, relief is hereby granted from the provisions of title XI of FIRREA and the agencies' appraisal regulations for any real estate-related financial transaction that requires an appraiser under those provisions, provided that:

(1) The transaction involves real estate located in an area that the President has determined, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, is a major disaster area as a result of the extensive flooding in the Midwest and has been designated eligible for Federal assistance by the Federal Emergency Management Agency (FEMA);[2]

(2)(a) The real property involved was directly affected by the major disaster; or

(b) The real property involved was not directly affected by the major disaster but the institution's records explain how the transaction would facilitate recovery from the disaster;

(3) There is a binding commitment to fund a transaction that is made within three years after the date the major disaster was declared by the President; and

(4) The institution retains in its files, for examiner review, appropriate documentation supporting the property's valuation.

Appendix

Minnesota: Brown, Cottonwood, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood, Rock, Blue Earth, Nicollet, Renville, Sibley, Watonwan, Yellow Medicine, Carver, Chippewa, Faribault, Jackson, Le Sueur, Martin, McLeod, Scott, Goodhue, Washington, Dakota, Houston, Ramsey, Big Stone, Clay, Stevens, Swift, Traverse.

Wsiconsin: Calumet, Clark, Columbia, Dunn, Eau Claire, Fond du Lac, Green Lake, Jackson, Marquette, Outagamie, Portage, Saulk, Trempealeau, Waupaca, Waushara, Winnebago, Wood, Adams, Buffalo, Chippewa, Crawford, Dane, Green, Grant, Iowa, Juneau, LaCrosse, Lafayette, Lincoln, Marathon, Pepin, Pierce, Price, Rock, Rusk, St. Croix, Vernon.

Missouri: Lewis, Lincoln, Marion, Pike, St. Charles, Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Louis, St. Louis City, St. Genevieve, Stone, Warren, Worth.

Iowa: Clayton, Clinton, Des Moines, Dickinson, Humboldt, Jackson, Louisa, Muscaine, Scott, Wapello, Polk, Lyon, Osceola, Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Fayette, Chickasaw, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Wright, Franklin, Butler, Bremer, Dubuque, Delaware, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monora, Crawford, Carroll, Greene, Boone, Story, Marshall, Tama, Benton, Linn, Jones, Cedar, Iowa, Poweshiek, Jasper, Dallas, Guthrie, Audubon, Shelby, Harrison, Pottawattamie, Cass, Adair, Madison, Warren, Marion, Mahaska, Keokuk, Washington, Henry, Jefferson, Monroe, Lacas, Clarke, Union, Adams, Montgomery, Mills, Fremont, Page, Taylor, Ringgold, Decatur, Wayne, Appanoosa, Davis, Van Buren, Lee.

Illinois: Adams, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Mercer, Pike, Rock Island, Whiteside, Madison, Monroe, St. Clair, Boone, Lake, McHenry, Stephenson, Winnebago, Alexander, Jackson, Randolph, Union.

Nebraska: Buffalo, Cass, Lancaster, Sarpy, Seward, Washington, Adams, Hall, Kearney, Phelps.

South Dakota: Bon Homme, Brookings, Clay, Davison, Hanson, Hutchinson, Kinsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton.

Dated: July 27, 1993.

Office of the Comptroller of the Currency, Department of the Treasury.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: July 30, 1993.

[2] These areas include counties in Minnesota, Wisconsin, Missouri, Iowa, Illinois, Nebraska, and South Dakota which have been declared major disaster areas and are listed in the attached Appendix. The exception would also include any other such areas that the President declares are major disaster areas as a result of this summer's flooding in the Midwest.

Board of Governors of the Federal Reserve System.
William W. Wiles,
Secretary of the Board.
July 28, 1993.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
Dated: July 29, 1993.
Office of Thrift Supervision, Department of the Treasury.
Jonathan L. Fiechter,
Acting Director.
Dated: August 2, 1993.
National Credit Union Administration.
Becky Baker,
Secretary of the Board.
[FR Doc. 93-19227 Filed 8-10-93; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-06-AD; Amdt. 39-8631; AD 93-14-07]

Airworthiness Directives; Aerospatiale Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes, that requires an initial inspection of a floor beam and pressure plate to detect cracks, and repetitive inspections or modification or repair of the floor beam area, as necessary. This amendment also requires eventual repair or modification of the floor beam area; when accomplished, this repair or modification terminates the need for the repetitive inspections. This amendment is prompted by in-service and full-scale test reports of cracks in a floor beam and pressure plate. The actions specified by this AD are intended to prevent loss of structural strength of a floor beam and pressure plate, or loss of cabin pressurization.

DATES: Effective September 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes was published in the Federal Register on March 23, 1993 (58 FR 15441). That action proposed to require an initial inspection of a floor beam and pressure plate to detect cracks, and repetitive inspections or modification or repair of the floor beam area, as necessary. That action also proposed to require eventual repair or modification of the floor beam area; when accomplished, this repair or modification terminates the need for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,420, or $220 per airplane.

The FAA has been advised that 9 U.S.-registered airplanes have been modified previously in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $440.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-14-07 Aerospatiale: Amendment 39-8631. Docket 93-NM-06-AD.

Applicability: Model ATR72-100 and -200 series airplanes; on which either Modification 03616, as described in Aerospatiale Service Bulletin ATR72-53-1027, dated December 18, 1992, or Modification 03584 have not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of structural strength of the floor beam and pressure plate, or loss of

cabin pressurization, accomplish the following:

(a) Prior to the accumulation of 1,000 total flight cycles, or within the next 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks of the floor beam at frame 26 of the fuselage in the buttock line 0 area, in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993.

(1) If no crack is found, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 1,000 flight cycles, repeat the detailed visual inspection.

(ii) Within the next 1,000 flight cycles, install Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. No further action is required by this AD.

(2) If a single crack is found that is less than 65 millimeters (mm) in length, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Thereafter, at intervals not to exceed 750 flight cycles, repeat the detailed visual inspection.

(ii) Within the next 750 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(3) If a single crack is found that is equal to or greater than 65 mm but less than 80 mm in length: Within the next 250 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(4) If a single crack is found that is equal to or greater than 80 mm in length: Prior to further flight, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(5) If two or more cracks are found: Prior to further flight, repair the cracks in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(b) Prior to the accumulation of 1,000 total flight cycles, or within the next 30 days after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection of the pressure plate forward and aft of the floor beam at frame 26 of the fuselage at buttock line 0, in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993.

(1) If no crack is found, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 1,000 flight cycles, repeat the HFEC inspection.

(ii) Within the next 1,000 flight cycles, install Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. No further action is required by this AD.

(2) If a single crack is found that is less than 65 millimeters (mm) in length, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 500 flight cycles, repeat the HFEC inspection.

(ii) Within the next 500 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(3) If a single crack is found that is equal to or greater than 65 mm but less than 80 mm in length: Within the next 250 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(4) If a single crack is found that is equal to or greater than 80 mm in length: Prior to further flight, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(5) If two or more cracks are found: Prior to further flight, repair the cracks in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(c) Within 6 months after the effective date of this AD, if no crack is present, install Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992; or, if any crack is present, repair in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993.

(d) Installation of Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992, or repair in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993, constitutes terminating action for the repetitive detailed visual inspections of the floor beam and repetitive HFEC inspections of the pressure plate required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection shall be done in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993. The installation shall be done in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. The repair shall be done in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 10, 1993.

Issued in Renton, Washington, on July 14, 1993.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19205 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 91

[Docket No. 24456; Amendment No. 91–233]

Airpace Reclassification; Correction

AGENCY: Federal Aviation Administrative (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error to the Final Rule, on "Airspace Reclassification", which was published on Friday, July 30, 1993 (58 FR 40736).

FOR FURTHER INFORMATION CONTACT: Mr. Aaron I Boxer, Air Traffic Rules Branch (ATP–239), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: FR Doc. 93–18207, which was published on July 30, 1993, (58 FR 40736), in the Heading, Amendment 91–233, should read Amendment 91–232.

Debbie Swank,

Program Management Staff, Office of Chief Counsel.

[FR Doc. 93–19245 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule and final schedule of fees.

SUMMARY: The Commission is adopting a revision to its method of calculating annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association. After reviewing requests by some of the smaller commodity exchanges the Commission's formula for determining fees charged to exchanges has been changed from one based only on actual costs to one based on actual costs which also considers trading volume.

EFFECTIVE DATE: September 10, 1993. Fees are due to be received November 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission recently proposed a revision to its method of calculating annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association. (58 FR 28365, May 13, 1993.) The Futures Trading Act of 1982, (Pub. L. 97–444, 96 Stat. 2294, 2326, January 11, 1983) amended section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission.

> * * * [t]o promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided*, That the fees for any specific service or activity or function shall not exceed the actual cost thereof to the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2nd Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute be strictly limited to Commission activities directly related to "eight enumerated Commission functions including registered futures association and contract market rule enforcement reviews and financial reviews".

The formula for determining these fees was last amended on May 11, 1990 (55 FR 19725) when the formula changed from 85% to 100% of actual average three-year costs.

Under the new fee formula being adopted herein, the total amount collected by the Commission will continue be based upon the average costs incurred by the Commission in conducting rule enforcement and financial reviews during the previous three fiscal years. However, the fee will provide relief for low-volume exchanges as explained below. Under this revised formula, the Commission will continue to calculate actual costs and determine exchange volume as a percent of total volume across all exchanges each year. The Commission will continue to publish a list of the annual fees for each exchange. The computation of FY 1993 fees under this revised formula appears below.

In response to its May 13, 1993 proposed revisions, the Commission has received three comment letters from commodity exchanges on these proposed changes. All of the commenters supported the proposed revisions. The Commission has now determined to adopt the revisions as proposed.

Background Information

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of performing registered futures association and exchange rule enforcement and financial reviews the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1990—98%; FY 1991—94%; FY 1992—99%.

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1990, FY 1991 and FY 1992 are averaged. This results in a calculation of the average annual cost for each project over the three-year period. The average annual costs for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY1990–1992 average annual costs for review services
Chicago Board of Trade	$212,959.11
Chicago Mercantile Exchange	216,088.48
Commodity Exchange, Inc.	106,396.81
Coffee, Sugar and Cocoa Exchange	78,137.34
New York Mercantile Exchange	94,035.16
New York Cotton Exchange	129,969.30
Kansas City Board of Trade	52,919.18
New York Futures Exchange	149,498.63
Minneapolis Grain Exchange	69,220.55
Philadelphia Board of Trade	4,056.41
Amex Commodity Corporation	1,507.53
Total	1,114,788.51

The average annual cost for the national Futures Association is $319,438.13.

Under this formula, the Commission looks at volume for the three fiscal years to determine the actual volume for each exchange and its percentage of total trading volume across all exchanges during that same period.

Exchange	Three years average volume	Percentage of total volume across exchanges
Chicago Board of Trade	450,633,151	44.2899
Chicago Mercantile Exchange	334,384,010	32.8499
Commodity Exchange, Inc.	50,604,292	4.9714
Coffee, Sugar and Cocoa Exchange	31,198,484	3.0649
New York Mercantile Exchange	127,408,895	12.5167
New York Cotton Exchange	12,545,785	1.2325
Kansas City Board of Trade	4,316,023	.4240
New York Futures Exchange	4,788,844	.4705

Exchange	Three years average volume	Percentage of total volume across exchanges
Minneapolis Grain Exchange	1,766,214	.1735
Philadelphia Board of Trade	68,990	.0068
Amex Commodity Corporation	0	.0
Total	1,017,914,688	100.0000

The formula for calculating the fee is as follows:

0.5a+0.5vt

where:

a = actual cost

v = % of total volume

= total cost for all exchanges

If the calculated fee using this formula is higher than actual costs the exchange would pay only actual costs. If the calculated fee using the formula is less than actual costs then the exchange would pay the calculated fee. No exchange would pay more than actual costs. Also, if an exchange has no volume over the three year period they pay a flat 50% of actual costs. The National Futures Association will continue to be charged 100% of its actual costs.

For example:

The Minneapolis Grain Exchange had an actual cost of $69,220.55 (a), and its three-year volume was 0.1735% of the total three year volume. As a result, the exchange's fee for FY 1993 would be:

(.5) ($69,220.55)+(.5) (.001735) ($1,114,788.51)=or

34,610.27+967.09=35,577.36

Based upon this formula the fees for all of the exchanges and the NFA for FY 1993 are as follows:

Exchange/NFA	Fee
Chicago Board of Trade	$212,959
Chicago Mercantile Exchange	216,088
Commodity Exchange, Inc	80,909
Coffee, Sugar and Cocoa Exchange	56,152
New York Mercantile Exchange	94,035
New York Cotton Exchange	71,855
Kansas City Board of Trade	28,823
New York Futures Exchange	77,372
Minneapolis Grain Exchange	35,577
Philadelphia Board of Trade	2,066
Amex Commodity Corporation	754
National Futures Association	319,438
Total	1,196,028

As in the calculation of fees in previous years, the FY 1993 fee for the Chicago Board of Trade includes the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Contract markets, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act, the Commission amends part 1 of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, unless otherwise noted.

2. In appendix B, paragraph (b) is revised to read as follows:

Appendix B [Amended]

* * * * *

(b) The Commission determines fees changed fees charged to exchanges based upon a formula which considers both actual costs and trading volume.

* * * * *

Issued in Washington, DC on August 2, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19232 Filed 8–10–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, and 234

[Docket No. R–93–1557; FR–2867–F–02]

RIN 2502–AF07

Single Family Mortgage Insurance Program Mortgage Assumability and Release Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Section 203(r) of the National Housing Act (the Act) requires HUD to take certain actions under the single family mortgage insurance programs, including a requirement that only creditworthy persons may acquire ownership of property encumbered by FHA-insured mortgages, and a requirement for HUD advice to the original mortgagor about procedures for release from personal liability on a mortgage that is assumed. Section 203(g) of the Act generally restricts ownership of property encumbered by FHA-insured mortgages to a person occupying the property as his or her principal residence. This rule implements these provisions of sections 203 (g) and (r) of the National Act, and other related HUD policies currently stated in administrative issuances other than regulations on the subjects of restrictions on sale or transfer of mortgage property, assumability of insured single family mortgages and release of personal liability of selling mortgagors.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708–3046; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 21, 1991, the Department published a proposed rule (56 FR 8762) to amend 24 CFR parts 203, 213 and 234 to set forth a number of related requirements, based on existing policy, relating to two main subjects: (1) The policy permitting free assumability of insured mortgages under the single family mortgage insurance programs, and exceptions to this policy, and (2) release of a mortgagor's personal

liability on such a mortgage upon transfer of the property by the mortgagor. Most of the requirements were derived from sections 203(g) or 203(r) of the National Housing Act, or mortgagee letters, HUD handbooks, and various internal HUD memoranda implementing these sections or otherwise setting forth and describing current policy.

One action HUD must take under section 203(r) is to require that only creditworthy persons shall acquire ownership of property encumbered by an FHA-insured mortgage. The proposed rule contained a new § 203.512 to implement this requirement. That section would also have restricted acquisition of property so encumbered as a secondary residence or by an investor, pursuant to section 203(g).

The proposed new requirement represented an exception to HUD's traditional policy against restraints on alienability of mortgaged property which restrict the assumability of insured mortgages. The proposed rule would have placed that traditional policy in regulations for the first time in proposed new §§ 203.41 and 234.66. Other policy exceptions, notably regarding the permitted use of restrictions for affordable housing programs, would be addressed in detail in those sections.

Another action required under section 203(r) is HUD advice to the original mortgagor about procedures for release from personal liability on a mortgage which is assumed. The proposed rule contained a new § 203.510 to implement this requirement. Section 203(r) also provides for release of a selling mortgagor in certain circumstances when five years have elapsed from the date a purchaser assumed the mortgage. This provision would also have been implemented in the proposed new § 203.510.

The Department received five comments in response to the proposed rule. Four of the commenters were from Hawaii. The public comments are summarized by issue, with HUD's response following.

Comment: Assumptions should involve a more limited credit review than for mortgage originations. This is not required by § 203.512(b).

HUD Response: The Department previously considered this issue when it issued Mortgagee Letter 89–31. The policy which was adopted at that time applied the same credit review for assumptions as for originations, except that a few steps could be omitted if the loan-to-value ratio at the time of assumption was 75% or less. The Department considers the credit review requirement for assumptions to be an important reform and necessary to protect the insurance funds. The reform would be weakened by giving special treatment for assumptions beyond the provisions of Mortgagee Letter 89–31. However, HUD has recently provided more flexibility to mortgagees that are conducting creditworthiness reviews, both for originations and assumptions, through Mortgagee Letter 91–51, which authorizes alternatives to the traditional verification of employment (VOE) and verification of deposit (VOD) forms and procedures. That change is partially responsive to the commenter's concern over burdensome credit reviews. No change has been made in the final rule text of this point.

Comment: Sections 203.41(a)(1) and 234.66(d)(1) define low- or moderate-income housing in terms of affordability to households with incomes up to 115 percent of the median area income. For Hawaii, the limit should be 140 percent of the median area income.

HUD Response: The Department recognizes that Hawaii and a few other areas have such high housing costs that affordable housing programs need to be available to households with incomes higher than 115 percent of the median area income. The final rule permits the Department to approve higher limits, up to 140 percent, upon request. The Department will approve a 140 percent limit for Hawaii.

Comment: Sections 203.41(d)(1) and 234.66(d)(1) require that an affordable housing program permitted by the rule must enable the seller mortgagor to receive a reasonable share of any appreciation in home value. The rule preamble indicated that HUD intended to establish 50 percent as a minimum reasonable share. Two commenters argued against any requirement for sellers to share in appreciation and one commenter suggested a minimum seller share equal to 1 percent of the original sales price and cost of improvements.

HUD Response: The Department continues to believe that homeowners need to be able to receive some of the benefit of appreciation in the value of their homes. This is one of the basic differences between homeownership and renting. The Department understands that many affordable housing programs rely on sharing in appreciation as a means of continued funding. Thus, up to half of the appreciation can be available for reuse by the affordable housing program without HUD objection. However, at least half of the appreciation should normally be available to the selling mortgagor. The Department notes that there are special cases, such as the HOPE and HOME programs and a State program noted by the commenters, which operate under legal requirements which allow some smaller minimum appreciation for the selling mortgagor than the share appreciation requirement under this section.

Comment: Sections 203.41(d)(4) and 234.66(d)(4) also require a 50 percent share of appreciation for the selling mortgagor, but in the context of an option price to be paid by a party purchasing through exercise of an option. A commenter objected to this provision and suggested that the option price should only need to provide for the selling mortgagor to receive appreciation up to 1 percent of the original selling price plus the cost of improvements.

HUD Response: The policy with respect to sales through options must match the policy for other sales. Otherwise, parties permitted to retain options under the rule could circumvent the Department's policy and claim all or most of the appreciation by exercising the option whenever the mortgagor was ready to sell the home. As stated previously, the Department will consider special cases if the facts justify a smaller share of appreciation for the selling mortgagor.

Comment: The right to hold rights of first refusal or options triggered by a home sale should not be limited to governments or nonprofit organizations as under §§ 203.41(d)(3) and 234.66(d)(3) of the proposed rule, but should be available to others such as individuals or corporations. Any concern with windfall profits should be addressed by restricting the price at which the home could later be resold.

HUD Response: HUD generally does not want to grant mortgage insurance for a home that cannot be freely transferred by the mortgagor at its current market value. The proposed rule would have permitted governments and nonprofit organizations involved with affordable housing programs to hold options or first refusal rights but this was intended only as a small exception to permit the programs to keep homes affordable to low- and moderate-income people, since such programs are committed to reselling with this objective. An exception was also made for the HOME and HOPE programs. Other corporations and individuals would not ordinarily be purchasing homes with the specific objective of preserving the affordable nature of the homes. Even if the Department limited the resale price, that limitation would be difficult to police outside the context of established programs. Nevertheless, there may be

unusual situations in which others would be committed to maintaining the affordability of particular homes. For example, certain employers in areas with little or no affordable housing might assist employees with housing costs as long as the employer could control subsequent disposition of the home to ensure continued occupancy by another employee. Thus, the final rule permits rights of first refusal to be held by others in addition to governments and nonprofit organizations, but only with specific HUD approval. This provision is not intended to permit condominium associations to have rights of first refusal, and HUD approval should not be requested for rights held by a condominium association, or rights held by others if a condominium unit is not involved in an affordable housing program.

Comment: A commenter asked whether the holder of an option or right of first refusal on a home as permitted by the proposed rule could require the holder's approval for any encumbrances on the home.

HUD Response: The final rule will not prevent this arrangement. Otherwise, the value of the option or first refusal might be diminished.

HUD has also revised § 203.512(b) slightly to reflect recent developments. Language has been added in the final rule to specifically restrict the sale or transfer of beneficial interests in trust owning mortgage property so that the new beneficiary must be creditworthy. This reflects the current mortgage language that HUD announced in Mortgagee Letter 91–8 pursuant to the regulatory authority in § 203.17(a). Sections 203.512(b)(4) and (5) in the proposed rule have been deleted because they merely addressed past situations: By acknowledging that assumptions were not restricted for loans with applications before December 1, 1986, and that assumption restrictions did not exceed 24 months for any mortgages approved before December 15, 1989. Because the 24-month period for restricted assumability has now expired for these older mortgages, HUD is simplifying the rule language. In lieu of listing the specific assumption policies for older mortgages, the final rule simply notes that the credit review requirements in the rule apply to a sale or transfer if mortgage approval of the sale or transfer is required by the mortgage. Each insured mortgage should state the specific assumption restrictions applicable to that mortgage.

HUD has also added §§ 203.41(d)(8) and 234.66(d)(7) to clarify that the rule will not rescind HUD written approval of restrictions prior to the effective date of the rule as long as the restrictions are terminable as required by §§ 203.41(c)(2) and 234.66(c)(2). Section 234.66(a)(3)(ii) similarly recognizes that HUD has previously approved some existing condominiums for insurance although the condominium association held rights of first refusal; the rule does not rescind the approvals.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. each weekday in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section (b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule was listed as item number 1451 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24411) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.132 and 14.133.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The rule puts in regulatory form existing statutory and administrative policies. Moreover, the economic impact of this rule will be minimal and will affect small and large entities equally.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule continues existing practice regarding mortgage insurance for homes under State or local government affordable housing programs, and otherwise is limited in effect to private lenders and homeowners. No programmatic or policy changes result from its promulgation which would affect existing relationships between the Federal Government and State and local governments.

The General Counsel, as Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

There are no information collection requirements contained in this rule.

Lists of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 203, 213 and 234 are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, and 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. Paragraph (b) and the introductory language of paragraph (c) of § 203.32 are revised to read as follows:

§ 203.32 Mortgage lien.

* * * * *

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an entity designated

in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity for People Everywhere (HOPE) program, or an eligible nonprofit organization as defined in § 203.41(a)(5) of this part, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a mortgagee not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

* * * * *

3. Part 203, subpart A, is amended by adding a new § 203.41 to read as follows:

§ 203.41 Free assumability; exceptions.

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to mortgagor efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veteran's mortgage bonds as defined in section 143(b) of the Code.

(5) *Eligible nonprofit organization* means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

(i) Two years experience as a provider of low- or moderate-income housing;

(ii) A voluntary board; and

(iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of free assumability with no restrictions.* A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) *Exception for eligible governmental or nonprofit programs.* Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(d) *Exception for eligible governmental or nonprofit programs—specific policies.* For purposes of paragraph (c) of this section, restrictions of the following types are permitted for eligible governmental or nonprofit programs, provided that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgaged or for an increase in the interest rate, or for voiding a conveyance of the mortgagor's interest in the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment (at a reasonable rate of interest) of assistance provided to make the property affordable as low- or moderate-income housing:

(1) Except as otherwise provided in the HOME Investment Partnerships (HOME) and the Homeownership and Opportunity for People Everywhere (HOPE) programs, the mortgagor may be prohibited from selling the property at a price greater than the price permitted under the program, or the mortgagor may be required to pay a portion of the sales proceeds to a governmental body or an eligible nonprofit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 203.45 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, rights under an option to purchase, pre-emptive rights to purchase or rights of first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or organization approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only to the extent

necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) The mortgagor for a rehabilitation loan insured under § 203.50 of this part may hold title subject to a condition subsequent, provided that the holder of the right of entry for condition broken also executes the mortgage, and that the right is exercisable only for failure by the mortgagor to complete the rehabilitation or occupy the property as agreed by the mortgagor.

(8) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 203.17(a) of this part and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on certain Indian land or Hawaiian home lands under sections 247 and 248 of the National Housing Act and §§ 203.43h and 203.43i of this part, or on property in the Northern Mariana Islands or American Samoa, shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

4. Part 203, subpart C, would be amended by adding a new § 203.510 to read as follows:

§ 203.510 Release of personal liability.

(a) *Procedures.* The mortgagee shall release a selling mortgagor from any personal liability for payment of the mortgage debt, if release is permitted by § 203.258 of this part, in accordance with the following procedures:

(1) The mortgagee receives a request for a creditworthiness determination for a prospective purchaser of all or part of the mortgaged property;

(2) The mortgagee or servicer performs a creditworthiness determination under § 203.512(b)(1) of this part if the mortgagee or servicer is approved for participation in the Direct Endorsement program, or the mortgagee requests a creditworthiness determination by the Secretary;

(3) The prospective purchaser is determined to be creditworthy under the standards applicable when a release of the selling mortgagor is intended;

(4) The prospective purchaser assumes personal liability by agreeing to pay the mortgage debt; and

(5) The mortgagee provides the selling mortgagor with a release of personal liability on a form approved by the Secretary.

(b) *Release after 5 years.* (1) If a selling mortgagor is not released under the procedures described in paragraph (a) of this section, either because no request for a creditworthiness determination is submitted under paragraph (a)(1) of this section, or because there is no affirmative determination of creditworthiness under paragraph (a)(3) of this section, then the selling mortgagor is automatically released from any personal liability for payment of the mortgage debt because of section 203(r) of the National Housing Act if:

(i) The purchasing mortgagor has assumed personal liability by agreeing to pay the mortgage debt;

(ii) Five years have elapsed after the assumption; and

(iii) The purchasing mortgagor is not in default under the mortgage at the end of the five-year period.

(2) If the conditions of this paragraph (b) for a release are satisfied, the mortgagee shall provide a written release upon request to the selling mortgagor.

(3) This paragraph (b) only applies to a mortgage originated pursuant to an application by the mortgagor on or after December 1, 1986 on a form approved by the Secretary.

(c) *Mortgagee to provide notice.* A mortgagee shall inform mortgagors (including prospective mortgagors seeking information) about the procedures for release of personal liability by providing a notice approved by the Secretary when required by the Secretary.

5. Part 203, subpart C, would be amended by adding a new § 203.512 to read as follows:

§ 203.512 Free assumability; exceptions.

(a) *Policy of free assumability with no restrictions.* A mortgagee shall not impose, agree to or enforce legal restrictions on conveyance, as defined in § 203.41(a)(3) of this part, or restrictions on assumption of the insured mortgage, unless specifically permitted by this part or contained in a junior lien granted to the mortgagee after settlement on the insured mortgage.

(b) *Credit review.* If approval is required by the mortgage, the mortgagee shall not approve the sale or other transfer of all or part of the mortgaged property, or the sale or transfer of a trust owning all or part of the property, whether or not any person acquires personal liability under the mortgage in connection with the sale or other transfer, unless:

(1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by the Secretary;

(2) The selling mortgagor retains an ownership interest in the property; or

(3) The transfer is by devise or descent.

(c) *Investors and secondary residences.* The mortgagee shall not approve the sale or other transfer or mortgaged property to a person who cannot be approved as a substitute mortgagor as provided in § 203.258 of this part, because the property will not be a primary residence or a secondary residence permitted by that section.

(d) *Due-on-sale clause.* Each mortgage shall contain a due-on-sale clause permitting acceleration, in a form prescribed by the Secretary. If a sale or other transfer occurs without mortgagee approval and a prohibition in paragraphs (b) or (c) of this section applies, a mortgagee shall enforce this section by requesting approval from the Secretary to accelerate the mortgage, provided that acceleration is permitted by applicable law. The mortgagee shall accelerate if approval is granted. This paragraph applies only if the application by the mortgagor on a form approved by the Secretary is dated on or after December 1, 1986.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

6. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

7. Paragraph (b) of § 213.520 is revised to read as follows:

§ 213.520 Mortgage lien.

* * * * *

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an eligible nonprofit organization as defined in § 203.41(a)(5) of this chapter, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

8. Part 213, subpart C, is amended by adding a new § 213.527 to read as follows:

§ 213.527 Free assumability; exceptions.

A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, as defined in § 203.41(a) of this chapter, except to the extent permitted for mortgages insured under part 203 of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

9. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715y; 42 U.S.C. 3535(d).

10. Paragraph (b) and the introductory text of paragraph (c) of § 234.55 are revised to read as follows:

§ 234.55 Mortgage lien.

* * * * *

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an entity designated in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity for People Everywhere program (HOPE), or an eligible nonprofit organization as defined in § 234.66(f)(5) of this part, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a mortgagee not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

* * * * *

11. Part 234, subpart A, is amended by adding a new § 234.66 to read as follows:

§ 234.66 Free assumability; exceptions.

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, preemptive rights or options related to mortgagor efforts to convey (except for tights of first refusal held by a condominium association for a project approved by the Secretary under this subpart prior to September 10, 1993.

(iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property, if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue Code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing funded by veteran's mortgage bonds as defined in section 143(b) of the Code.

(5) *Eligible nonprofit organization* means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

(i) Two years experience as a provider of low- or moderate-income housing;

(ii) A voluntary board; and

(iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of free assumability with no restrictions.* A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) *Exception for eligible governmental or nonprofit programs.* Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(d) *Exception for eligible governmental or nonprofit programs—specific policies.* For purposes of paragraph (c) of this section, restrictions of the following types are permitted for eligible governmental or nonprofit programs, provided that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgage or for an increase in the interest rate, or for voiding a conveyance of the mortgagor's interest in the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment (at a reasonable rate of interest) of assistance provided to make the property affordable as low- or moderate-income housing:

(1) Except as otherwise provided in the HOME Investment Partnerships (HOME) and the Homeownership and Opportunity for People Everywhere (HOPE) programs, the mortgagor may be prohibited from selling the property at a price greater than the price permitted under the program, or the mortgagor

may be required to pay a portion of the sales proceeds to a governmental body or an eligible non profit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 234.75 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price, reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, pre-emptive rights to purchase or rights of first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or entity approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only the extent necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 234.25(a) of this part and shall contain no other provisions designed to enforce compliance with Federal and State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on property in the Northern Mariana Islands or American Samoa shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

Dated: August 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–19180 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, and 635

RIN 1840–AB68

Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training Projects

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Cooperative Education Program. These amendments are needed to implement changes made in Title VIII of the Higher Education Act of 1965 by the Higher Education Amendments of 1992 (1992 HEA Amendments).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John E. Bonas. Telephone: (202) 708–9407. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations amend the regulations governing the Cooperative Education Program (34 CFR parts 631–635). These amendments are necessary to implement Title VIII of the Higher Education Act of 1965 (HEA), as amended by the 1992 HEA Amendments (Pub. L. 102–325), enacted July 23, 1992.

The Cooperative Education Program provides grants to institutions of higher education to encourage institutions to offer their students work experiences that will aid these students in their future careers and support them financially while in school. The program is also designed to improve the quality of cooperative education through demonstration, research, and training projects.

The Cooperative Education Program addresses Goal 5 of the National Education Goals, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by enabling institutions to provide students paid work opportunities related to their academic or occupational objectives, thereby strengthening the connection between education and work.

On May 19, 1993, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (58 FR 29157). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Other substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Underrepresented Populations—(§ 631.5(b))

Comments: One commenter suggested that South Asians and Pacific Islanders be included in the definition of "underrepresented populations."

Discussion: The Secretary does not agree that the suggested change is necessary. The definition of "underrepresented populations" neither includes nor excludes South Asians or Pacific Islanders. The Secretary believes that South Asians and Pacific Islanders could be identified as "underrepresented populations" if authoritative demographic or socioeconomic statistical data indicate their participation in the nation's skilled, technical, or professional work force is less than their proportionate representation in the general population.

Changes: No change.

Definition of Comprehensive Cooperative Education Program—(§§ 631.5(b) and 635.4(b)(5)(ii))

Comments: Several commenters suggested that a liaison role with secondary schools should not be a mandatory component of the definition of a "comprehensive cooperative education program." These commenters suggested that this function is not necessary for a cooperative education program to be considered comprehensive.

Discussion: The Secretary does not agree with the change suggested by these commenters. The Secretary believes outreach to new populations is an important purpose of this program. One of the most important ways to fulfill this purpose is to advise secondary school students of the availability and advantages of cooperative education.

Changes: No change.

Unallowable Activities—(§ 631.31(a)(3))

Comments: Several commenters suggested revising the unallowable cost provision prohibiting the use of grant funds for admissions activities. Commenters suggested allowing the use of grant funds for admissions activities related to the recruitment of students to an institution's cooperative education program.

Discussion: The Secretary does not believe the change suggested by these commenters is necessary. Section 631.31(a)(3) of the regulations reflects the Department's traditional prohibition on the use of grant funds for admissions recruitment purposes by college personnel, except where authorized by statute. The Secretary notes that grant funds may be used under § 631.30(h) of the regulations for expenses related to developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary schools and undergraduate postsecondary schools. In addition, activities that are related to encouraging participation in cooperative education are allowable. Office of Management and Budget Circular A–21, which is made applicable to this program through 34 CFR 74.172, sets forth the criteria for determining whether a cost is allowable. One of these criteria is whether a particular activity is allocable (or related) to a program. Under this criterion, activities that encourage participation in cooperative education are allowable because they are allocable to cooperative education projects.

Changes: No change.

Funding the Project From Non-Federal Sources—(§ 632.10(d)(2))

Comments: Several commenters suggested revising the maintenance-of-effort requirement in § 632.10(d)(2) of the regulations to provide, after the project period, that the applicant will fund the project at a level that is not less than the total amount expended during the first year of Federal assistance. This change would make § 632.10(d)(2) consistent with § 632.21(b) of the regulations and section 803(b)(4) of the HEA. The change would also effectively delete the reference "from non-Federal sources," and thus, permit other Federal sources of funds to be used for cooperative education programs after the project period ends.

Discussion: The Secretary believes other Federal sources of funds can be used for cooperative education purposes after the end of the grant period, if allowed under the statutes and regulations of the other Federal programs which are the source of these funds.

Changes: The Secretary has revised § 632.10(d)(2) to provide that the applicant will fund the project, after the end of the project period, at a level that is not less than the total amount expended by the applicant during the first year of Federal assistance.

Hiring of Cooperative Education Students for Permanent Positions After Graduation—(§ 632.21(a)(3))

Comments: Several commenters objected to the language in one of the special consideration factors in § 632.21(a)(3) of the regulations that requires applicants to cite data on their graduates who are hired for permanent positions by employers following completion of the former students' cooperative education experiences. The commenters believe that this provision unfairly penalizes applicants who have not previously operated cooperative education programs, or who have programs that have not developed to the point that employers have hired more than a few, if any, graduates for permanent positions.

Discussion: The Secretary agrees that the provision imposes an undue burden on applicants that do not have established cooperative education programs with substantial employer support.

Changes: The Secretary has revised § 632.21(a)(3) to provide that IHEs need only report the number of employers who accept cooperative education students. The Secretary will delete the requirement that an IHE report the number of cooperative education students employers hire for permanent positions after graduation.

Limitations on the Amount of a Grant for a New Project—§ 632.22(b)

Comments: Several commenters requested that an institution that is currently receiving funds for a multi-year noncompeting continuation (NCC) award continue to be subject to the institutional matching requirements in its original grant, rather than be subject to the more stringent institutional matching requirements in section 803(c)(2) of the HEA. These commenters contend that it would be overly burdensome to subject NCCs to these new matching requirements and may force many institutions to forego continued participation in the program.

Discussion: The Secretary believes that NCCs are subject to the institutional matching requirements in section 803(c)(2) of the HEA. There is no provision in the HEA that exempts NCCs from the new institutional matching requirements enacted in the HEA.

Changes: No change.

Limitations on Amount of Grant for an Existing Project—(§ 632.23(b))

Comments: Several commenters suggested revising the formula for determining the grant amount an

institution will receive for performing an existing Administration project. The proposed regulations provide that the amount received by an institution from available funds in a fiscal year bears the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions applying for grants. Commenters contend that some institutions applying for grants will not be approved for an award because of their failure to satisfy certain restrictions on eligibility. Therefore, commenters believe the denominator of the award ratio should be revised to include only the number of unduplicated students placed in cooperative education jobs during the preceding fiscal year by all eligible institutions with approved applications.

Discussion: The Secretary concurs with the change suggested by these commenters.

Changes: The Secretary has revised the denominator of the award ratio to be the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions with approved applications.

Awarding of Academic Credit for Work Experience—(§ 632.30(c))

Comments: Several commenters objected to § 632.30(c) of the regulations which states that academic credit may be awarded at the discretion of the institution. The commenters contend that the statement is misplaced, creates confusion for applicants and field reviewers, and should be relocated under the proposed section on evaluation of student work experience.

Discussion: The Secretary agrees that the statement on academic credit is misplaced and may create confusion for applicants.

Changes: The Secretary has deleted § 632.30(c) and added a new § 632.31(b) to the regulations.

Determination of Grant Status and Funding Eligibility When Institutions Merge—(§ 632.51)

Comments: Several commenters suggested changing the requirement that the eligibility of a merged institution be based on the remaining eligibility of the formerly separate institution with the least number of years of remaining eligibility. These commenters proposed that the Secretary base the funding eligibility of a merged institution on the remaining eligibility of the formerly separate institution with the largest enrollment. This change would permit a smaller institution to extend its eligibility by merging with a larger institution where the larger institution has a greater number of years of eligibility remaining under the program.

Discussion: The Secretary does not agree with the change suggested by these commenters. The Secretary believes that the five-year limitation for both new and existing projects under section 803(c)(1)(A) and (B) of the HEA and § 632.50 of the regulations applies in all circumstances, including those cases where institutions merge. In the case of a merged institution, the five-year limitation is fulfilled by maintaining the requirement proposed in the NPRM.

Changes: No change.

Eligibility for Participation in a Demonstration Project—(§ 633.3)

Comments: Several commenters recommended that the requirement that an individual be a "student" to participate in a Demonstration project be deleted from the regulations. These commenters contend that not only students should be eligible to participate in Demonstration projects, but also administrators and faculty.

Discussion: Section 801(b) of the HEA defines cooperative education as education providing paid work experiences to students. Section 804(a)(1) of the HEA defines Demonstration projects as projects designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education. The Secretary believes that only students are eligible to participate in a Demonstration project since students—and not administrators or faculty—are the intended beneficiaries of cooperative education programs.

Changes: No change.

Eligibility for Training and Resource Center Grants—(§ 635.2)

Comment: One commenter proposed that combinations of public or private agencies or organizations be included among those eligible for Training and Resource Center project grants.

Discussion: The Secretary does not agree with the change suggested by this commenter. Section 804(b)(1)(B) of the HEA states that public or private nonprofit agencies or organizations are eligible for a grant. A combination of public or private nonprofit agencies or organizations is not listed as an eligible applicant. A public or private nonprofit agency or organization can work with another agency or organization on a project, but only one agency or organization is considered an eligible applicant.

Changes: No change.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR parts 631 Through 635

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 631 through 635 to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 What is the Cooperative Education Program?
631.2 Who is eligible for a grant?

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Sec.
631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
631.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

Subpart C—How Does the Secretary Make an Award?

631.20 How does the Secretary evaluate an application?

Subpart D—What Conditions Must Be Met After an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

Authority: 20 U.S.C. 1133–1133c, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides—

(a) Grants to encourage institutions to offer their students work experiences that will aid them in their future careers and support them financially while in school; and

(b) Grants and contracts to improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133–1133c)

§ 631.2 Who is eligible for a grant?

Eligibility for each of the four kinds of projects authorized under this program is as follows:

(a) Eligibility for a Cooperative Education Administration project grant is described in 34 CFR 632.3.

(b) Eligibility for a Cooperative Education Demonstration project grant is described in 34 CFR 633.2.

(c) Eligibility for a Cooperative Education Research project grant is described in 34 CFR 634.2.

(d) Eligibility for a Cooperative Education Training and Resource Center project grant is described in 34 CFR 635.2.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.3 What kind of projects may the Secretary fund?

Under the Cooperative Education Program, the Secretary awards—

(a) Cooperative Education Administration project grants, as described in 34 CFR 632.1;

(b) Cooperative Education Demonstration project grants, as described in 34 CFR 633.1;

(c) Cooperative Education Research project grants, as described in 34 CFR 634.1; and

(d) Cooperative Education Training and Resource Center project grants, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.4 What regulations apply?

The following regulations apply to the Cooperative Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(15) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(c) The regulations in this part.

(d) The regulations in the following parts, as applicable:

(1) 34 CFR part 632 (Cooperative Education Program—Administration Projects).

(2) 34 CFR part 633 (Cooperative Education Program—Demonstration Projects).

(3) 34 CFR part 634 (Cooperative Education Program—Research Projects).

(4) 34 CFR part 635 (Cooperative Education Program—Training and Resource Center Projects).

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Contract
ED
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR parts 631 through 635:

Alternating periods of study and employment means alternating academic terms of classroom study and periods of monitored and supervised paid public or private employment of a cooperative education student.

Approved application means an application from an institution for an Administration project grant for an existing project that—

(i) Satisfies the definition of an existing cooperative education program, as described in § 632.2(b); and

(ii) Achieves a minimum score based on the selection criteria in § 632.20.

(Authority: 20 U.S.C. 1133b)

Combination of institutions of higher education means two or more institutions of higher education that have joined together for the purpose of applying for a grant under the Cooperative Education Program.

Comprehensive cooperative education program means an established program of cooperative education in an institution of higher education that—

(i) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(ii) Enrolls in its cooperative education program all or nearly all of the institution's students who are eligible to participate and choose to participate in the cooperative education program;

(iii) Enables students to participate in work experiences with a variety of employers; and

(iv) Acts as a liaison between the institution and secondary schools to advise secondary school students of the availability and advantages of cooperative education.

Cooperative education means a method of education that includes—

(i) Alternating or parallel periods of study and employment;

(ii) Formal work experience agreements among the institution of higher education, the student, and the employer;

(iii) Work experiences that are of sufficient number and duration, as explained in § 632.30;

(iv) Work experiences that are related to the students' academic programs of study or career goals;

(v) Student work experiences that are monitored, supervised, and evaluated; and

(vi) Student employment that is compensated in conformity with Federal, State, and local laws.

Existing cooperative education program means a program of cooperative education in an institution of higher education that—

(i) Has operated a cooperative education program for three successive academic years immediately preceding the year for which the institution applies for Federal support under Parts 632–635; and

(ii) Has placed in paid public or private employment a minimum of 100 unduplicated students in the three years immediately preceding the year for which the institution applies for support.

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education (or institution) means an educational institution as defined in section 1201(a) of the HEA, but excludes an institution that does not meet the provisions of section 1201(a)(3) of the HEA.

Institutional matching funds means the amount of funds contributed by an institution of higher education from non-Federal funds for the purposes of a project.

Minorities means Alaskan Natives, American Indians, Asian-Americans, Blacks (African-Americans), Hispanic Americans, Native Hawaiians, Pacific Islanders, or other ethnic groups underrepresented in cooperative education, as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary.

Model cooperative education program means a comprehensive cooperative education program recognized regionally or nationally for its effective or exemplary practices as validated by demonstrated positive outcomes and for the fact that its practices may be replicated in other institutions in the nation.

National need means demonstrated national demand for people in certain occupations, as determined by the Secretary.

Nontraditional students means students other than traditional college-going persons of 18–24 years of age. Nontraditional students include, but are not limited to, older adults, displaced workers, and homemakers returning to the work force.

Parallel periods of study and employment means periods of both classroom study and public or private employment of a student in a cooperative education program in which the student carries at least a half-time academic course load and works at least 20 hours per week in a cooperative education job.

Special populations means women, individuals with disabilities, and African-American, Mexican-American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamanian (Chamorro), or Northern Marianian students.

Student means a person—

(i) Enrolled in an institution of higher education other than by correspondence;

(ii) Enrolled in—

(A) A graduate degree program;

(B) An undergraduate degree program of not less than two academic years; or

(C) An undergraduate certificate program of not less than one academic year if the program is provided by an institution of higher education that offers a two-year program that is acceptable for full credit toward a bachelor's degree; and

(iii) Carrying at least one half the academic workload normally required of persons who are full-time degree candidates.

Underrepresented populations means persons of ethnic or racial groups whose participation in the skilled, technical, or professional work force of the United States is less than their proportionate representation in the general population.

Unduplicated cooperative education student means a student who—

(i) Has been accepted into a cooperative education program;

(ii) Has been placed in a cooperative education job; and

(iii) Is counted only once for each year he or she is either enrolled in a cooperative education program or engaged in a cooperative education work experience.

(Authority: 20 U.S.C. 1133, 1133c)

Subpart B—How Does One Apply for an Award?

§ 631.10 What limitations apply to the number of applications that may be submitted?

For any single fiscal year, the Secretary accepts no more than one application from the same applicant under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 631.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the informational requirements for an Administration project application in § 632.10 and the selection criteria in §§ 632.20, 632.21, 633.20, 634.20, or 635.20, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under Administration Projects that address the special consideration factors in § 632.21.

(d) The Secretary funds an application from a public or private agency or organization under parts 633, 634, and 635 only if the application receives a score of 75 or more points.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b, 1133c)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Federal funds and institutional matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education project staff.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project-related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary school and undergraduate postsecondary students.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

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(k) Computer hardware, project-specific software, and other equipment related to project activities.

(l) Cooperative education training expenses for secondary school professional personnel.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.31 What costs are unallowable?

(a) A grantee shall not use Federal funds or institutional matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Admissions activities to invite prospective students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations directly related to cooperative education.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning the feasibility of establishing a cooperative education program.

(7) Indirect costs in excess of eight per cent of total direct costs.

(b) A grantee who is awarded a Demonstration, Research, or Training and Resource Center project grant shall use Federal funds only to supplement and, to the extent possible, increase the level of funds that otherwise would have been available from non-Federal sources to conduct the approved activities. The grantee may not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133b, 1133c)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.

632.1 What is an Administration project?
632.2 What distinguishes a new project from an existing project?
632.3 Who is eligible for a grant?
632.4 What students are eligible to participate?
632.5 What types of Administration projects are eligible for funding?
632.6 What regulations apply?

Subpart B—How Does One Apply for an Award?

632.10 What must be included in an application?

Subpart C—How Does the Secretary Make an Award?

632.20 What selection criteria does the Secretary use to evaluate an application?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the amount of a grant for a new project?
632.23 What limitations apply to the amount of a grant for an existing project?

Subpart D—What Conditions Must Be Met After An Award?

632.30 What are the minimum requirements for the frequency and duration of work experiences?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

632.50 What is the duration of an Administration project grant?
632.51 How are grant status and funding eligibility determined if institutions merge?

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

Subpart A—General

§ 632.1 What is an Administration project?

(a) An Administration project must be designed to provide students enrolled at institutions of higher education with opportunities to participate in cooperative education.

(b) Under this part, the Secretary awards two types of grants:

(1) Grants for new projects, as described in § 632.2(a).

(2) Grants for existing projects, as described in § 632.2(b).

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.2 What distinguishes a new project from an existing project?

(a) The Secretary awards a grant for a new project to an institution, or a combination of institutions, that has not received an Administration project grant in the 10-year period immediately preceding the date for which the institution or combination of institutions requests a grant under this part.

(b) The Secretary awards a grant for an existing project to an institution that is operating an existing cooperative education program.

(Authority: 20 U.S.C 1133a, 1133b)

§ 632.3 Who is eligible for a grant?

The following are eligible to apply for an Administration project grant:

(a) An institution of higher education, or a combination of institutions, is eligible to apply for a grant for a new project.

(b) An institution of higher education is eligible to apply for a grant for an existing project.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.4 What students are eligible to participate?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 632.5 What types of Administration projects are eligible for funding?

(a) The Secretary awards a grant for a new project to fund the following activities:

(1) Planning cooperative education programs.

(2) Establishing cooperative education programs.

(3) Expanding cooperative education programs.

(4) Carrying out cooperative education programs.

(b) The Secretary awards a grant for an existing project to fund the following activities:

(1) Improving the quality of and expanding the participation in a cooperative education program.

(2) Providing outreach in new curricular areas.

(3) Providing outreach to potential participants, including nontraditional students and students from underrepresented populations.

(Authority: 20 U.S.C. 1133b)

§ 632.6 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—How Does One Apply for an Award?

§ 632.10 What must be included in an application?

An application for a grant must—

(a) Describe the project for which a grant is requested.

(b) Identify and describe each portion of the project that will be performed by a nonprofit organization or institution other than the applicant and the compensation to be paid to each organization or institution.

(c) Contain assurances that the applicant will not spend less than the amount expended for cooperative education in any fiscal year than the applicant expended for cooperative education during the previous fiscal year.

(d) Describe the plans the applicant will use to ensure that—

(1) The project will continue beyond the 5-year period of Federal assistance described in § 632.50; and

(2) The applicant will fund the project, after the end of the project period, at a level that is not less than the total amount expended by the applicant during the first year of Federal assistance.

(e) Contain a formal statement of the commitment in paragraph (d) of this section.

(f) Provide that, in the case of an institution that provides a 2-year program which is acceptable for full credit toward a bachelor's degree, the program will be available to students who are certificate or associate degree candidates and who carry at least one-half the normal full-time workload.

(g) Provide that the applicant will—

(1) Develop reports to ensure that the applicant is complying with the requirements of this part, including reports for the second and each succeeding fiscal year for which the applicant receives a grant. These reports must include data describing the impact of the project in the preceding fiscal year, including the—

(i) Number of unduplicated student applicants in the project;

(ii) Number of unduplicated students placed in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students;

(iv) Income of students derived from working in cooperative education jobs; and

(v) Increase or decrease in the number of unduplicated students placed in cooperative education jobs in each fiscal year compared to the previous fiscal year; and

(2) Maintain reports that are essential to ensure that the applicant is complying with the requirements of this part, including the notation of cooperative education employment on the student's transcript.

(h) Describe the extent to which the applicant's project has had a favorable reception by public and private-sector employers.

(i) Describe the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit.

(j) Describe the plans the applicant will carry out to evaluate the applicant's project at the end of the project period.

(k) Provide fiscal control and fund accounting procedures that are necessary to assure the proper disbursement of, and accounting for, Federal funds received under this part.

(l) Demonstrate a commitment to serving special populations.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 632.20 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application for a grant under this part:

(a) *Institutional commitment.* (10 points). The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education as reflected, for example, by the inclusion of cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The support of the chief executive officer, other key administrators, faculty, and governing board for the project, including their involvement in planning and developing the project.

(b) *Plan of operation.* (60 points). The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable—

(i) The activities to be conducted by the applicant and employers and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedules to meet the needs of the students in the project;

(iv) Involvement and extent of participation of academic departments, divisions, or colleges within the institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (10 points) based on—

(i) The relevance of the work experiences to the students' academic programs of study or career objectives;

(ii) The work and study calendars for alternating or parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) Proposed procedures for administering the project, including fiscal control and fund accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points). The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce quantifiable data that demonstrate the impact of the project; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the notation of cooperative education employment on students' transcripts, and the—

(i) Enrollment and placement of unduplicated cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs on graduation;

(ii) Income earned by students engaged in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students enrolled in the project; and

(iv) Increase or decrease from year to year in the number of unduplicated students engaged in cooperative education work experiences as a result of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project and the number of students engaged in cooperative education jobs; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution that assists in the development or expansion of the project.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success on the basis of the following factors:

(a) The extent to which public and private-sector employers support the project and accept students for jobs that are related to the students' respective academic programs and career interests (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students.

(b) The applicant's specific plan for continuing cooperative education after the termination of Federal financial assistance, including a formal statement of institutional commitment that assures that the applicant will continue the cooperative education program beyond the period of Federal assistance at a level not less than the total amount expended for the project during the first year of Federal assistance, and that refers specifically to the sources of support, amount of funds, personnel, and other resources that will be committed to the project (5 points).

(c) The extent to which the applicant is committed to extending opportunities for participation in cooperative education for all eligible students who can benefit from this form of education (5 points).

(d) The institution's demonstrated commitment to serving special populations (5 points).

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133b)

§ 632.22 What limitations apply to the amount of a grant for a new project?

(a) In any fiscal year, a grant for a new project may not exceed $500,000.

(b) The Federal share for a grant for a new project may not exceed—

(1) 85 percent of the cost of carrying out the project in the first year the grantee receives the grant;

(2) 70 percent of the cost of the project in the second year the grantee receives the grant;

(3) 55 percent of the cost of the project in the third year the grantee receives the grant;

(4) 40 percent of the cost of the project in the fourth year the grantee receives the grant; and

(5) 25 percent of the cost of the project in the fifth year the grantee receives the grant.

(Authority: 20 U.S.C. 1133b)

§ 632.23 What limitations apply to the amount of a grant for an existing project?

(a) The Secretary awards a grant for an existing project to an eligible institution that has an approved application.

(b) In any fiscal year, an institution that satisfies the requirements of paragraph (a) of this section receives an amount of available funds in a fiscal year bearing the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution (excluding work experiences arranged under Demonstration Projects) bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions with approved applications.

(c) No eligible institution of higher education may receive a grant for an existing project in any fiscal year that exceeds 25 percent of that institution's personnel and operating budget devoted to cooperative education for the preceding year.

(d) The minimum annual grant for an existing project is $1,000.

(e) The maximum annual grant for an existing project is $75,000.

(Authority: 20 U.S.C. 1133b)

Subpart D—What Conditions Must Be Met After An Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) An Administration project must provide at least one work experience for participating graduate students and undergraduate certificate students and at least two work experiences for other participating undergraduate students.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration that is consistent with the grantee's academic calendar, but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(Authority: 20 U.S.C. 1133b, 1134, 1134a)

§ 632.31 How are student work experiences evaluated?

(a) During a student's work experiences, the grantee must assess the student's progress to ensure that the work experiences satisfy the student's and the Administration project's objectives.

(b) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133b)

§ 632.32 What are the fiscal requirements?

(a) A grantee may not expend less for cooperative education in a fiscal year than the amount the grantee expended from non-Federal funds for cooperative education during the previous fiscal year.

(b) If the Secretary determines that a grantee has failed to maintain the fiscal effort described in paragraph (a) of this section, the Secretary may elect not to make further grant payments to the recipient.

(Authority: 20 U.S.C. 1133b)

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

§ 632.50 What is the duration of an Administration project grant?

(a) The duration of a grant for a new project or an existing project is a maximum of five annual budget periods.

(b) The five-year limitation in paragraph (a) of this section applies to grants awarded after September 30, 1992.

(Authority: 20 U.S.C. 1133b)

§ 632.51 How are grant status and funding eligibility determined if institutions merge?

If two or more institutions of higher education merge to assume a new identity, the Secretary may review and renegotiate grants received under this part by any of the formerly separate institutions. The Secretary determines funding eligibility on the basis of the formerly separate institution whose grant has the least amount of annual budget periods remaining within the five-year limit.

(Authority: 20 U.S.C. 1133b)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.

633.1 What is a Demonstration project?
633.2 Who is eligible for a grant?
633.3 Who is eligible to participate in a Demonstration project?
633.4 What types of Demonstration projects does the Secretary fund?
633.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?
633.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Demonstration project?

A Demonstration project must be designed to demonstrate or determine the feasibility or value of innovative cooperative education projects, as well as to disseminate information relating to innovative cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 633.2 Who is eligible for a grant?

The following are eligible to apply for a Demonstration project grant:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 633.3 Who is eligible to participate in a Demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 633.4 What types of Demonstration projects does the Secretary fund?

The Secretary makes awards for projects that—

(a) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not been fully evaluated;

(b) Demonstrate or determine the feasibility of a proposed innovative method of cooperative education; or

(c) Disseminate information on effective innovative projects.

(Authority: 20 U.S.C. 1133c)

§ 633.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points). The Secretary reviews each application to evaluate the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not yet been fully evaluated;

(ii) Demonstrate or determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on effective innovative projects.

(3) Measurable objectives that relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points). The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) The schedule for implementing the project's activities and meeting its objectives that shows the use of resources in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points). The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used; and

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable, considering the project's objectives, design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 633.21 What priorities may the Secretary establish?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Model cooperative education projects in the fields of science and mathematics for women and minorities who are underrepresented in those fields.

(2) Model cooperative education projects specializing in developing technical and professional work force skills for nontraditional students and students from special or underrepresented populations.

(3) Model cooperative education projects that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions.

(b) The Secretary announces these priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1133c)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.
634.1 What is a Research project?
634.2 Who is eligible for a grant?
634.3 What types of Research projects does the Secretary fund?
634.4 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

634.20 What selection criteria does the Secretary use to evaluate Research project applications?
634.21 What priorities may the Secretary use?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

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Subpart A—General

§ 634.1 What is a Research project?

A Research project must conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133c)

§ 634.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 634.3 What types of Research projects does the Secretary fund?

(a) The Secretary makes awards under this part for Research projects that include, but are not limited to, the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach in assisting students to prepare for careers and to finance their educational pursuits.

(3) Developing better cooperation among secondary schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133c)

§ 634.4 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate Research project applications?

The Secretary uses the following selection criteria in evaluating applications under the Cooperative Education Research program:

(a) *Relevancy of research.* (20 points). The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points). The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods;

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points). The Secretary considers the quality and the effectiveness of—

(1) The management plan, including the extent to which the plan ensures proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points). The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(e) *Quality of key personnel.* (20 points). The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points). The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points). The Secretary reviews the budget to assure that it is reasonable considering the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 634.21 What priorities may the Secretary use?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(i) Initial job placement.

(ii) Job advancement.

(iii) Long-term earnings.

(2) Assessing the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(3) Assessing the impact of comprehensive cooperative education projects on—

(i) The institution;

(ii) Students at the institution;

(iii) Faculty;

(iv) Employment opportunities; and

(v) Factors influencing the successes and failures of comprehensive cooperative education projects.

(4) Identifying and assessing incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1133c)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.

635.1 What is a Training and Resource Center project?
635.2 Who is eligible for a grant?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?
635.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Training and Resource Center project?

A Training and Resource Center project must be designed to train and assist individuals who participate in, or are planning to participate in, planning, establishing, and administering cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 635.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, whenever a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in planning, establishing, or administering a cooperative education project are eligible to participate in training projects assisted under this part. These individuals may include—

(a) Presidents and administrators of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(c) Secondary school personnel responsible for career and academic guidance; and

(d) Employers or prospective employers of students who are involved in a cooperative education project.

(Authority: 20 U.S.C. 1133c)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards for projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A grantee must conduct *one or more* of the following activities:

(1) Training for project directors, coordinators, faculty members, employers, and other persons in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education programs in conjunction with other activities described in this section.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects that furnish education and training in occupations for which there is a national need.

(5) Supporting partnerships in which an existing comprehensive cooperative education program assists one or more institutions to—

(i) Improve their existing cooperative education program; or

(ii) Establish, expand, or improve a comprehensive cooperative education program.

(6) Encouraging model cooperative education programs in the fields of science or mathematics for women or minorities who are underrepresented in these fields.

(Authority: 20 U.S.C. 1133c)

§ 635.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points). The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, including, but not limited to, need for—

(1) Training, technical assistance, and materials in its geographical area or in the nation;

(2) Training partnerships to assist in developing cooperative education programs; or

(3) Developing model cooperative education programs.

(b) *Purpose and scope of training and functions of the resource center.* (15 points). The Secretary considers the extent to which the purpose of the project and the scope of the project activities to be provided will address the needs of the constituency selected to receive training and information. The Secretary makes this determination based on needs analysis data.

(c) *Plan of operation.* (36 points). The Secretary considers—

(1) The extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures to be used in conducting the project and the commitment of personnel to be involved in conducting the project;

(2) The extent to which the objectives and proposed outcomes of the project relate to the project's purpose and the results of the needs assessment;

(3) The quality of the actual design of the project, including plans for dealing with unexpected problems and evaluation results;

(4) The quality of the activities to be conducted and their relationship to the criteria in paragraph (c)(2) of this section;

(5) The quality of the methods and procedures to be used in conducting the project's training plan;

(6) The proposed schedule for conducting project activities and training sessions;

(7) The extent to which the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition;

(8) The quality of the plan for managing the project; and

(9) The extent to which the proposed project has promise of fulfilling the proposed objectives and current need for the project.

(d) *Quality of key personnel.* (9 points). The Secretary considers—

(1) The qualification and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (6 points). The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities;

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available and adequate for conducting the project's activities.

(f) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(g) *Budget.* (3 points). The Secretary considers the extent to which the budget is reasonable considering the scope of training and the plan of operation.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133c)

§ 635.21 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(b) The Secretary announces these priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1133c)

[FR Doc. 93-19266 Filed 8-10-93; 8:45 am]

BILLING CODE 4000-01-P

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34 CFR Part 636

RIN 1840-AB60

Urban Community Service Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary promulgates regulations for the Urban Community Service Program. The Urban Community Service Program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities.

These regulations are needed to implement the provisions of the recently enacted Higher Education Amendments of 1992 (1992 Amendments). The regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia W. Gore. Telephone: (202) 708-7389. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement the Urban Community Service Program, which is authorized by title XI, part A of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992.

The Urban Community Service Program plays an important role in helping to achieve National Education Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by affording students in urban academic institutions an opportunity to learn more about the problems in their communities and to participate in developing solutions to these problems.

On May 20, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 29373). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. An analysis of the comments follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Section 1108(2)(B)(ii) of the HEA and § 636.2(b)(2) of the regulations require that an institution of higher education or consortium of institutions draw a "substantial portion of its undergraduate students" from the urban area in which the institution is located, or from contiguous areas, to be eligible for a grant. The Secretary defined "substantial portion of its undergraduate students" in § 636.7(b) of the proposed regulations to mean 50 percent or more of the enrolled undergraduate student population. All four commenters believe that this proposed definition set too high a threshold for eligibility. Commenters contended that 50 percent is an inappropriate threshold since the statute did not require a "majority."

Discussion: The Secretary agrees that the definition should be changed. The Secretary has changed the definition of "substantial portion of its undergraduate students" to mean 40 percent or more of the enrolled undergraduate student population.

Changes: The definition in § 636.7(b) of "substantial portion of its undergraduate students" is changed to mean 40 percent or more of the enrolled undergraduate student population.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Sections 636.10, 636.11, and 636 21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 80 hours per response for 200 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 636

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.252—Urban Community Service Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 636 to read as follows:

PART 636—URBAN COMMUNITY SERVICE PROGRAM

Subpart A—General

Sec.

636.1 What is the Urban Community Service Program?
636.2 Who is eligible for a grant?
636.3 What activities may the Secretary support?
636.4 What is the duration of an Urban Community Service Program grant?
636.5 What are the matching contribution and planning consortium requirements?
636.6 What regulations apply?
636.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

636.10 What must an application include?
636.11 How does an applicant request a waiver of the planning consortium requirement?

Subpart C—How Does the Secretary Make an Award?

636.20 How does the Secretary evaluate an application?
636.21 What selection criteria does the Secretary use to evaluate an application?
636.22 What additional factors does the Secretary consider?
636.23 What priorities does the Secretary establish?

Subpart D—How Does the Secretary Designate Urban Grant Institutions and Establish an Urban Grant Institutions Network?

636.30 How does the Secretary designate urban grant institutions?
636.31 How does the Secretary establish a network of urban grant institutions?

Authority: 20 U.S.C. 1136–1136b, unless otherwise noted.

Subpart A—General

§ 636.1 What is the Urban Community Service Program?

The Urban Community Service Program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities.

(Authority: 20 U.S.C. 1136, 1136a)

§ 636.2 Who is eligible for a grant?

The following institutions are eligible for grants under the Urban Community Service Program:

(a) A nonprofit municipal university, established by the governing body of the city in which it is located and operating as of July 23, 1992.

(b) An institution of higher education or a consortium of institutions with at least one member that satisfies all of the following requirements:

(1) Is located in an urban area.

(2) Draws a substantial portion of its undergraduate students from the urban area in which it is located or from contiguous areas.

(3) Carries out programs to make postsecondary educational opportunities more accessible to residents of the urban area or contiguous areas.

(4) Has the present capacity to provide resources responsive to the needs and priorities of the urban area and contiguous areas.

(5) Offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of the institution to provide these resources.

(6) Has demonstrated and sustained a sense of responsibility to the urban area and contiguous areas and the people in those areas.

(Authority: 20 U.S.C. 1136g)

§ 636.3 What activities may the Secretary support?

(a) The Secretary awards grants under this program for the following activities:

(1) Planning.

(2) Applied research.

(3) Training.

(4) Resource exchanges or technology transfers.

(5) Delivery of services.

(6) Other activities to design and implement programs to assist urban communities to meet and address their pressing and severe problems.

(b) Examples of pressing and severe urban problems that applications may address include concerns such as the following:

(1) Work force preparation.

(2) Urban poverty and the alleviation of poverty.

(3) Health care, including delivery and access.

(4) Underperforming school systems and students.

(5) Problems faced by the elderly and individuals with disabilities in urban settings.

(6) Problems faced by families and children.

(7) Campus and community crime prevention, including enhanced security and safety awareness measures as well as coordinated programs addressing the root causes of crime.

(8) Urban housing.

(9) Urban infrastructure.

(10) Economic development.

(11) Urban environmental concerns.

(12) Other problem areas that participants of the planning consortium agree are of high priority in the urban area in which their institutions are located.

(13) Problems faced by individuals with disabilities regarding accessibility to institutions of higher education and other public and private community facilities.

(14) Lessening of existing attitudinal barriers that prevent full inclusion of individuals with disabilities within their community.

(Authority: 20 U.S.C. 1136c)

§ 636.4 What is the duration of an Urban Community Service Program grant?

The duration of an Urban Community Service Program grant is a maximum of five annual budget periods.

(Authority: 20 U.S.C. 1136d)

§ 636.5 What are the matching contribution and planning consortium requirements?

(a) The applicant and the local governments associated with its application shall contribute to the conduct of the project supported by the grant an amount, in cash or in-kind, from non-Federal funds equal to at least one-fourth of the amount of the grant.

(b) The applicant shall develop and include in its application a plan agreed to by the members of a planning consortium.

(Authority: 20 U.S.C. 1136b, 1136e)

§ 636.6 What regulations apply?

The following regulations apply to the Urban Community Service Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

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(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(6) 34 CFR part 82 (New Restrictions on Lobbying).
(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(8) 34 CFR part 86 (Drug-Free Schools and Campuses).
(b) The regulations in this part 636.

(Authority: 20 U.S.C. 1136, 1136a)

§ 636.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Grant
Project
Project period
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Contiguous areas means counties or independent cities sharing a part of a border with the metropolitan area within which an urban academic institution is located.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

HEA means the Higher Education Act of 1965, as amended.

Individuals with disabilities means individuals who—
(i) Have physical or mental impairments that substantially limits one or more of the major life activities;
(ii) Have a record of physical or mental impairments; or
(iii) Are regarded as having physical or mental impairments.

Institution of higher education means an institution of higher education as defined in section 1201(a) of the HEA.

Local government means a city, town, township, county, or other unit of general government organized under State laws and given delegated taxing or expenditure authority for providing governmental services to local communities.

Metropolitan area means a metropolitan area or a consolidated metropolitan area, as designated by the United States Office of Management and Budget.

Nonprofit municipal university means an institution of higher education that—
(i) Is chartered or otherwise established as a not-for-profit institution by the governing body of the city in which it is located; and
(ii) Is accredited by an agency or association recognized by the Secretary.

Planning consortium means the applicant institution and one or more of the following:
(i) A community college.
(ii) An urban school system.
(iii) A local government.
(iv) A business or other employer.
(v) A nonprofit institution.

Substantial portion of its undergraduate students means 40 percent or more of the enrolled undergraduate student population.

Urban area means—
(i) A metropolitan area having a population of not less than 350,000;
(ii) Two contiguous metropolitan areas having a combined total population of not less than 350,000;
(iii) In any State that does not have a metropolitan area having a population of not less than 350,000, the one urban area designated by the entity of the State having an agreement under the HEA to make a designation; or
(iv) If a State entity does not have an agreement under the HEA to make a designation, the one urban area designated by the Secretary.

Urban infrastructure means the underlying mechanical or technological networks for providing goods and services, such as transportation systems (including mass transit), water and sewage systems, and communication systems (including telecommunications).

(Authority: 20 U.S.C. 1136a-1136g)

Subpart B—How Does One Apply for an Award?

§ 636.10 What must an application include?

An application must include the following:
(a) A description of the activities for which the grant is sought.
(b) The plan agreed to by each of the members of the planning consortium.
(c) An assurance that the applicant and the local governments associated with the application will contribute to the conduct of the project supported by the grant an amount, in cash or in-kind, from non-Federal funds equal to at least one-fourth of the amount of the grant.

(Authority: 20 U.S.C. 1136b)

§ 636.11 How does an applicant request a waiver of the planning consortium requirement?

(a) An applicant may request that the Secretary waive the requirement for a planning consortium by submitting as part of the application a request that includes the following:
(1) The reasons why the applicant seeks the waiver.
(2) Detailed information evidencing the applicant's integrated and coordinated plan to work with private and civic organizations to meet the pressing and severe problems of the urban community.
(b) The Secretary may grant the request for a waiver if the Secretary finds that—
(1) The applicant has shown an integrated and coordinated plan to meet the purposes of the Urban Community Service Program; and
(2) A planning consortium would not substantially improve the applicant's proposed project.

(Authority: 20 U.S.C. 1136b)

Subpart C—How Does the Secretary Make an Award?

§ 636.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the selection criteria in § 636.21.
(b) The Secretary awards up to 100 points for these selection criteria.
(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1136b)

§ 636.21 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application under this part:

(a) *Determination of need for the project.* (10 points). The Secretary reviews each application to assess the effectiveness of the procedures used by the applicant in determining need for the project, including consideration of—
(1) The process used to ensure that the pressing and severe problems that are identified are in fact high priority problems for the urban area;
(2) The priority relationship of the problems addressed by the project to other pressing and severe problems identified for the urban area;

(3) The extent to which the problems addressed by the project represent pressing and severe problems in urban areas nationally;

(4) The process by which project participants review and comment on proposed project goals, objectives, and strategies; and

(5) The specific benefits to be gained by meeting the identified problems.

(b) *Quality of the applicant's organization for operation.* (20 points). The Secretary reviews each application to determine the quality of the organization for operation, including consideration of how the application describes the following:

(1) The cooperative arrangement between the applicant and any of the following that are appropriate for the conduct of the proposed project:

(i) Agencies of local government.

(ii) Public and private elementary and secondary schools.

(iii) Business organizations.

(iv) Labor organizations.

(v) Community service and advocacy organizations.

(vi) Community colleges.

(2)(i) Any previous working relationships between the applicant and the entities listed in paragraph (b)(1) of this section; and

(ii) The outcomes of those relationships.

(3) The agreement among project participants to commit their own resources in carrying out proposed project goals, objectives, and strategies.

(c) *Quality of project objectives.* (10 points). The Secretary reviews each application to determine the extent to which the objectives for each project component activity meet the purposes of the program, are realistic, and are defined in terms of measurable results.

(d) *Quality of implementation strategy.* (20 points). The Secretary reviews each application to determine the extent to which—

(1) The implementation strategy for each key project component activity is—

(i) Comprehensive;

(ii) Based on a sound rationale; and

(iii) Is a cost-effective approach for accomplishing project goals and objectives; and

(2) The described timetable for each project component and for the overall project is realistic.

(e) *Quality of evaluation plan.* (15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the objectives of the project;

(2) Describe both process and product evaluation measures for each project component activity and outcome;

(3) Describe data collection procedures, instruments, and schedules for effective data collection;

(4) Describe how the data will be analyzed and reported so that adjustments and improvements can be made on a regular basis while the project is in operation;

(5) Describe a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks; and

(6) Establish the potential for effectively disseminating project information that can be generalized, replicated, and applied throughout the Nation.

(f) *Quality of key personnel.* (10 points). The Secretary reviews each application to determine the qualifications of key personnel, including information that—

(1) The past work experience and training of key professional personnel are directly related to the stated activity purposes and objectives; and

(2) The time commitment of key personnel is realistic.

(g) *Budget.* (5 points). The Secretary reviews each application to determine whether the project has an adequate budget and is cost effective, including information that shows that—

(1) The budget for the project is adequate to support the project activities; and

(2) The costs are necessary and reasonable in relation to the project objectives and scope.

(h) *Institutional commitment.* (10 points). The Secretary reviews each application to determine the extent to which the application demonstrates a financial commitment on the part of the applicant and the local governments associated with its application, including the nature and amount of the matching contribution, and other institutional commitments from the applicant and other entities associated with the project, that are likely to assure the continuation of project activities for a significant time beyond the grant project period.

(Authority: 20 U.S.C. 1136b, 1136e)

§ 636.22 What additional factors does the Secretary consider?

(a) The Secretary awards grants in a manner that achieves an equitable geographic distribution of grants.

(b) No institution, individually or as a participant in a consortium of institutions, may receive an Urban Community Service Program grant for more than five years.

(Authority: 20 U.S.C. 1136e)

§ 636.23 What priorities does the Secretary establish?

In awarding grants, the Secretary gives an absolute preference to applicants that propose to conduct joint projects supported by other local, State, and Federal programs.

(Authority: 20 U.S.C. 1136b)

Subpart D—How Does the Secretary Designate Urban Grant Institutions and Establish an Urban Grant Institutions Network?

§ 636.30 How does the Secretary designate urban grant institutions?

(a) The Secretary identifies and designates the eligible institutions described in § 636.2 as urban grant institutions.

(b) The Secretary publishes a list of urban grant institutions in a notice published in the **Federal Register**

(Authority: 20 U.S.C. 1136f)

§ 636.31 How does the Secretary establish a network of urban grant institutions?

(a) The Secretary establishes a network of urban grant institutions consisting of the urban grant institutions designated in § 636.30.

(b) The Secretary invites institutions in the network of urban grant institutions to disseminate results and other information on individual projects that can be generalized, replicated, and applied throughout the Nation.

(Authority: 20 U.S.C. 1136f)

[FR Doc. 93–19267 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

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34 CFR Part 654

RIN 1840–AB77

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Robert C. Byrd Honors Scholarship Program. These amendments are needed to implement the Higher Education Amendments of 1992 and to clarify the existing regulations governing the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the

effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia Gore. Telephone: (202) 708–8849. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Robert C. Byrd Honors Scholarship Program (program) is authorized by sections 419A–419K of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992. Through this program, the Secretary provides grants to States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement. By promoting student excellence and achievement, the program supports National Education Goal 4, that U.S. students be first in the world in math and science, and Goal 5, that every adult American be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (58 FR 28538). The major issues addressed by the regulations are discussed in the preamble to the NPRM. There are no major differences between the NPRM and the final regulations.

Analysis of Comments and Changes

Six commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and requests for changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§ 654.3)

Comment: All of the commenters objected to the elimination of the administrative cost allowance. In particular, commenters were concerned about the failure to provide an administrative cost allowance in light of the increase in State administrative burdens under this program. Some commenters specifically requested that they be permitted to use unexpended funds to cover administrative expenses.

Discussion: In the 1992 Amendments to the HEA, Congress amended the statute governing this program to remove sections 419E(5) and 419D(a)(2) to eliminate the provision for administrative expenses. At the same time, Congress expanded the scholarship period under the program from one to four years. A four-year scholarship period is inherently more burdensome on States because States must monitor the continuing eligibility of scholars for three more years. Accordingly, although the Secretary acknowledges increased State administrative burdens, the Secretary does not have authority under the statute to permit States to use Federal funds under this program, including carry over and other unexpended funds, to cover State administrative expenses.

Changes: None.

Applicable Regulations (§ 654.4)

Comment: One commenter recommended that this section be revised to include 34 CFR part 668 on the list of regulations that apply to this program.

Discussion: 34 CFR Part 668 contains the Student Assistance General Provisions that establish general rules that apply to an institution that participates in a student financial assistance program authorized by Title IV of the HEA. The Secretary previously determined in § 668.1(c) those Title IV programs to which the provisions of part 668 apply. This program is not among the programs listed in § 668.1(c). Those specific sections of part 668 that do apply to this program are cross-referenced in the regulations for this program.

Changes: None.

Award Year (§ 654.5(b))

Comment: Several commenters requested clarification of the definition of "award year." In particular, some commenters wondered whether the period of an award year, July 1 of one year through June 30 of the following year, would preclude the use of funds for students attending summer school, and if not, which award year the funds should come from.

Discussion: The definition of "award year" is taken from section 481(d) of the HEA. The term "award year" refers to the period for which the Secretary awards the funds to the States. Thus, a State must obligate funds received for a particular award year by June 30 of that award year.

The Secretary does not believe it is necessary to clarify the definition of "award year." Rather, the Secretary believes the comments reflect confusion about the term "year of study," which is the period of time for which a State awards scholarship funds to a scholar. "Year of study" is defined in terms of an institution's definition of the period of time necessary to complete one year of coursework. Scholarships must be pro-rated based on that period of time. For example, if an institution defines the period of time necessary to complete one year of coursework as two semesters, and a summer session at that institution is considered the equivalent of one semester, a student who attends for the spring semester and the summer session would be entitled to the full scholarship for that year of study. All of the funds could come from one award year, as long as the funds were obligated by the institution by June 30.

Changes: None.

Administrative Responsibilities (§ 654.11(a))

Comment: One commenter asked whether administrative responsibilities for this program could be handled by the financial aid offices of the institutions that the scholars attend.

Discussion: Section 419E of the HEA requires the Secretary to enter into an agreement with each State that assures that the SEA will administer the program. The Secretary believes that an SEA could, consistent with the agreement, subcontract for assistance in the day-to-day implementation and operation of the program, as long as overall responsibility for the program remains with the SEA.

Changes: None.

Selection of Scholars (§§ 654.40(a) and 654.41(b)(4)(i))

Comment: One commenter asked for clarification of the regulations containing requirements related to the selection process. In particular the commenter wondered whether students who are legal residents of one State but attend secondary school in another State are permitted to nominate themselves for consideration for a scholarship under this program.

Discussion: The Secretary declines to require States to adopt specific selection procedures, such as self-nomination, for out-of-State students. However, the Secretary believes that any procedure that precluded a legal resident who was attending secondary school out-of-State from applying would be inconsistent with § 654.41(b)(4)(i) of the regulations, which requires SEAs to establish selection criteria and procedures to

ensure that they select scholars without regard to whether the secondary school the scholar attends is within or outside the State.

Changes: None.

Equitable Geographic Distribution (§ 654.41(b)(3))

Comment: Several commenters asked for clarification of the requirement that States select scholars in a manner that ensures an "equitable geographic distribution." Some commenters recommended that Federal congressional districts be used as a basis for ensuring equitable geographic distribution. Other commenters suggested that the regulations be modified to permit States to define their own criteria, subject to the approval of the Secretary.

Discussion: The equitable geographic distribution requirement in the regulations is taken from section 419G(b) of the statute, which was revised to replace the specific requirements relating to distribution among congressional districts. The Secretary believes that distribution by congressional districts may be one way to ensure that the scholarships are equitably distributed, but leaves States the flexibility to develop their own criteria to meet the standard, subject to the Secretary's approval. No change in the regulations is necessary.

Changes: None.

Four-year Scholarship Period (§ 654.50(a))

Comment: Several commenters objected to the requirement in the regulations that SEAs disburse scholarship funds each year for a maximum of four years to each scholar that continues to meet the eligibility requirements. Commenters expressed the view that the statute does not state that scholarships shall be for four years only, and they requested the flexibility to provide awards on a one year basis or to provide five years of funding to scholars in five year programs. One commenter asked whether scholars who complete their undergraduate study in three years could be funded for their first year of graduate study.

Discussion: Section 419C(b) of the HEA provides that the scholarships shall be awarded for a period of "not more than" four years for the first four years of study. The language of the statute does not leave any room for an interpretation that five years of funding may be provided to a scholar in a five-year program. Moreover, since the 1992 Amendments removed the one-academic-year limit on the scholarship period that was previously provided under this program, the Secretary does not believe it would be consistent with legislative intent to permit States to limit scholarships to one year. The Secretary interprets "not more than" to mean that a scholar may receive less than four years of funding only if the scholar does not meet the continuing eligibility requirements.

Scholars who complete their course of study and receive an undergraduate degree in three years are eligible to receive scholarship funds under this program only for those three years of undergraduate study. Congress provided separate scholarship programs for graduate study under Title IX of the HEA, and this program is limited to undergraduates. The Secretary does not believe that Congress intended to provide graduate assistance under this program when it expanded the scholarship period from one to four years. Rather, the Secretary believes that Congress expanded the scholarship period to four years because that is the normal time period required to obtain an undergraduate degree.

Changes: None.

Total Financial Assistance (§ 654.50(b))

Comment: Two commenters requested clarification regarding both the requirement that the SEA ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the cost of attendance and the requirement that loans be reduced prior to a scholarship under this program. In particular, the commenters wondered whether a Federal Pell grant can be reduced if a scholar receives a Federal Pell grant, a private donation, and a scholarship under this program. One commenter requested a definition of the term "cost of attendance."

Discussion: The requirement that the total amount of financial aid awarded to a scholar not exceed the total cost of attendance is taken from section 419H(a) of the HEA. The term "cost of attendance" is defined in section 472 of the HEA. The Secretary interprets the total amount of financial aid, for the purposes of section 419H, to mean the total amount of Federal financial assistance. Accordingly, a private donation should not be considered in determining the total amount of financial aid and should not be the basis for a reduction of a scholarship under this program.

On the other hand, a Federal Pell grant would be considered part of the total amount of financial aid. Since under 419J of the HEA a Federal Pell grant cannot be reduced on the basis of the receipt of a scholarship under this program, if the total amount of Federal financial assistance exceeds the cost of attendance, a scholarship under this program should be reduced prior to a Federal Pell grant.

The Secretary has determined that if a scholar under this program is due to receive a loan, however, the loan should be reduced prior to the scholarship under this program. This policy is not prohibited by the HEA and is consistent with the purpose of this program to provide scholarship assistance to students who demonstrate outstanding academic achievement. Moreover, the Secretary does not believe that students should be required to incur greater loan debt when they are eligible to receive grant funds that do not have to be repaid.

Changes: Paragraph (b) of § 654.5 has been revised to add a definition for "cost of attendance" that cross references the definition of that term in section 472 of the HEA.

Disbursement of Scholarship Funds (§ 654.50(c))

Comment: Several commenters asked for clarification regarding the requirement that scholars be selected and awards made prior to the end of each secondary school academic year. In particular, commenters wondered whether funds must actually be disbursed to scholars prior to the end of the secondary school academic year. A few commenters noted that the SEA may not receive the official award letter from the Department by that time.

Discussion: The requirement that scholars be selected and awards made prior to the end of the secondary school academic year is taken from section 419G(d) of the statute. The Secretary interprets this requirement to mean that scholars must be selected and notified in writing of their scholarship award prior to the end of the secondary school year. The Secretary does not believe that SEAs are required to actually disburse the scholarship funds to the scholars by that time.

Changes: None.

Continuing Eligibility Requirements (§§ 654.51 and 654.52)

Comment: A number of commenters objected to the eligibility requirements for scholars to continue to receive scholarship funds under this program. Several commenters objected to the requirement that scholars be enrolled full time, stating that it would put a strain on scholars who need to work or who are participating in co-op programs. A few commenters recommended removing references to pro-rating awards for part-time students.

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Several commenters recommended that the continuing eligibility criteria be limited to the following three requirements: attendance at an eligible institution, the absence of a default on a Federal student loan, and the maintenance of satisfactory academic progress. One commenter suggested that States have flexibility to award scholarship funds to continuing scholars prior to receipt of certifications from institutions that the scholars meet the continuing eligibility requirements. Several commenters expressed the view that this program is not a loan program and therefore should not include any requirements for the repayment of funds when they are awarded to scholars who fail to meet the continuing eligibility criteria.

Discussion: Continuing eligibility criteria are necessary for this program for the first time because the 1992 Amendments expanded the scholarship period from one to four years. The Secretary believes the continuing eligibility requirements in § 654.51 of the proposed regulations are appropriate, and does not believe there is any basis for limiting the continuing eligibility criteria to the three criteria proposed by some commenters. For example, the Secretary believes the requirements related to citizenship, national, or legal resident status are equally applicable to new and continuing scholars and should be included in the requirements for continuing eligibility.

Moreover, the Secretary believes the regulations strike a fair compromise on the full-time attendance requirement, leaving it up to the SEA to permit part-time attendance after the first year in "unusual circumstances," as defined by the SEA. The Secretary believes that full-time attendance requirement is consistent with the intent of Congress because it will enable most scholars to graduate by the end of the four-year scholarship period.

Requiring the repayment of funds improperly awarded and the pro-ration of funds awarded for less than full-time attendance is simply responsible fiscal management of Federal funds. These provisions do not make this program a loan program. There are no requirements in the regulations for repayment of funds that are properly awarded.

States are responsible for setting up their own procedures to ensure that funds are properly awarded. To the extent that States establish systems that provide scholarship funds prior to receiving certification to document that the scholar meets the continuing eligibility requirements, the States risk awarding funds improperly. States are responsible for repaying funds that are improperly awarded even if they fail to recover them from the students.

Changes: None.

Study Abroad (§ 654.51(a)(2))

Comment: One commenter asked for clarification of the circumstances under which a student could receive scholarship funds under this program for a period during which they were studying abroad.

Discussion: Section 419H(b) of the HEA provides that the SEA must assure that a scholar under this program pursues a course of study at an "institution of higher education." An "institution of higher education" is defined under section 481 of the statute in terms of an educational institution in a "State." Accordingly, a scholar may not continue to receive funds under this program to pursue a course of study at an institution in a foreign country, with one exception. A scholar who is studying abroad through an institution of higher education that meets the definition in section 481 is considered to be eligible to receive funds under this program as long as the scholar is enrolled at and receiving credit from that institution of higher education.

Changes: None.

Carryover of Unexpended Funds (§ 654.60(b))

Comment: Several commenters requested clarification concerning how unexpended scholarship funds, including returned or collected funds, could be used. One commenter asked what happens to scholarship funds if a scholar who is notified of his or her award turns it down.

Discussion: The Education Department General Administrative Regulations (EDGAR), at 34 CFR 76.705, provide that States may carry over to the following fiscal year any funds that are not obligated by the end of the fiscal year for which Congress appropriated the funds. In addition, § 654.60(b) of the regulations expressly permits States to retain for the following award year any funds that are awarded but are subsequently returned or collected. Those funds may be used only to award scholarships.

In order to address the potential problem of unexpended funds because a student notified of his or her selection turned down the scholarship award, at which time it would likely be too late to select a new scholar for that year, the Secretary suggests that States consider setting up a procedure to select alternate scholars. Alternate scholars should be notified of their selection, along with other scholars, by the end of the secondary school year. Alternate scholars would be eligible for funds that became available prior to the beginning of their first year of postsecondary study.

Changes: None.

Priority for Continuing Scholars

Comment: Several commenters asked whether continuing scholars should be funded each year prior to new scholars.

Discussion: Funds for continuing scholars who meet the continuing eligibility requirements should be committed first, with the remaining funds used to award new scholarships. The Secretary believes that this is consistent with the intent of Congress to provide scholarships to students who show promise of continued academic achievement.

Changes: None.

Paperwork Burden (§§ 654.40, 654.11, 654.41, and 654.60)

Comment: One commenter expressed the view that the paperwork burden on States will exceed the estimated average of two hours since all States will be required to submit new applications this year. The commenter recommended increasing the estimate to six hours.

Discussion: The Secretary agrees with the commenter that the average paperwork burden this year is likely to exceed two hours because all States are required to submit new participation agreements.

Changes: The estimated average paperwork burden has been increased from two to six hours.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 654

Education, Grant programs—education, State-administered education, Student aid.

(Catalog of Federal Domestic Assistance Number 84.185—Robert C. Byrd Honors Scholarship Program.)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 654 to read as follows:

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?
654.2 Who is eligible for an award?
654.3 What kind of activity may be assisted?
654.4 What regulations apply?
654.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to apply for a grant?
654.11 What is the content of a participation agreement?

Subpart C—How Does the Secretary Make a Grant to a State?

654.20 How does the Secretary approve a participation agreement?
654.21 How does the Secretary determine the amount of the grant to each participating State?

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

654.30 How does a student apply to an SEA for a scholarship?

Subpart E—How Does an SEA Select an Eligible Student to Be Scholar?

654.40 Who is an eligible student?
654.41 What are the selection criteria and procedures?

Subpart F—How Does a Scholar Receive Scholarship Payments?

654.50 How does an SEA disburse scholarship funds?
654.51 What are the continuing eligibility criteria?
654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

Subpart G—What Post-Award Conditions Must an SEA Meet?

654.60 What requirements must an SEA meet in the administration of this program?

Authority: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

(Authority: 20 U.S.C. 1070d–31, 1070d–33)

§ 654.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in §§ 654.40 and 654.51 are eligible for scholarships under this program.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.3 What kind of activity may be assisted?

A State may use its funds under this program, including funds collected from scholars under § 654.60(a)(3), only to make scholarship payments to scholars.

(Authority: 20 U.S.C. 1070d–35, 1070d–38)

§ 654.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 654.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Private
Public
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to this part:

Award year means the period of time from July 1 of one year through June 30 of the following year.

Cost of attendance has the meaning given that term in section 472 of the HEA.

Full-time student means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

HEA means the Higher Education Act of 1965, as amended.

High school graduate means an individual who has—

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

Institution of higher education means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

Participating State means a State that has submitted a participation agreement that has been approved by the Secretary.

Scholar means an individual who is selected as a Byrd Scholar.

Scholarship means an award made to a scholar under this part.

Secondary school year means the period of time during which a secondary school is in session, as determined by State law.

Year of study means the period of time during which a full-time student at

an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

(Authority: 20 U.S.C. 1070d–31 *et seq.*, 20 U.S.C. 1088)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the Federal Register.

(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program in subsequent years, except that any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35)

§ 654.11 What is the content of a participation agreement?

A State's participation agreement must include the following:

(a) A description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to—

(1) Publicize the availability of Byrd scholarships to students in the State, with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;

(2) Select eligible students;

(3) Notify scholars of their selections and scholarship awards;

(4) Monitor the continuing eligibility of scholars;

(5) Disburse scholarship funds in accordance with the requirements of § 654.50; and

(6) Collect scholarship funds improperly disbursed.

(b) Assurances that the SEA will—

(1) Comply with the criteria and procedures in its approved participation agreement;

(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and

(3) Expend the payments it receives under this program only as provided in § 654.3.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35 to 1070d–38)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 654.20 How does the Secretary approve a participation agreement?

The Secretary approves a participation agreement if it contains all of the information and assurances required in § 654.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.21 How does the Secretary determine the amount of the grant to each participating State?

(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to $1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.

(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that—

(1) Not fewer than 10 scholarships are allotted to any participating State; and

(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.

(Authority: 20 U.S.C. 1070d–34, 1070d–37)

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

§ 654.30 How does a student apply to an SEA for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

(Authority: 20 U.S.C. 1070d–37)

Subpart E—How Does an SEA Select an Eligible Student To Be a Scholar?

§ 654.40 Who is an eligible student?

A student is eligible to be selected as a scholar if he or she—

(a) Is a legal resident of the State to which he or she is applying for a scholarship;

(b)(1) Is a U.S. citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(c) Becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application;

(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;

(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and

(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.

(Authority: 20 U.S.C. 1070d–36, 50 U.S.C. App. 462, 20 U.S.C. 1091)

§ 654.41 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars—

(1) Who are eligible students under the criteria provided in § 654.40;

(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(3) In a manner that ensures an equitable geographic distribution of awards within the State; and

(4) Without regard to—

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend

is public or private or is within or outside the scholar's State of legal residence;

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35 to 1070d–37)

Subpart F—How Does a Scholar Receive Scholarship Payments?

§ 654.50 How does an SEA disburse scholarship funds?

(a) Except as provided in paragraph (b) of this section, the SEA shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who—

(1) Is selected in accordance with the criteria established under § 654.41; and

(2) Meets the requirements for continuing eligibility under § 654.51.

(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.

(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.

(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

(Authority: 20 U.S.C. 1070d–38)

§ 654.51 What are the continuing eligibility criteria?

(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to—

(1) Meet the eligibility requirements in § 654.40(b), (e), and (f);

(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and

(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.

(b) In order to be eligible for scholarship funds, a scholar must be enrolled full time for the first year of study. If after the first year of study, the SEA determines that unusual circumstances justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.

(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.

(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of § 654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.

(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.

(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.

(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in § 654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.

(Authority: 20 U.S.C. 1070d–35, 1070d–36 to 1070d–38)

Subpart G—What Post-Award Conditions Must an SEA Meet?

§ 654.60 What requirements must an SEA meet in the administration of this program?

(a) To receive and continue to receive payments under this part, an SEA shall—

(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;

(2) Disburse the scholarship funds in accordance with § 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;

(3) Collect any scholarship funds improperly disbursed under § 654.50;

(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and

(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.

(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an SEA may retain any funds that are subsequently returned or collected for scholarship awards in the following award period.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35)

[FR Doc. 93–19265 Filed 8–10–93; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4691–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revision for Lawrence County, Ohio.

SUMMARY: USEPA hereby gives notice that it has: Formally notified the

Governor of the State of Ohio, by letter dated May 24, 1993 (SIP Call Letter), that the Ohio State Implementation Plan is substantially inadequate under the Clean Air Act (CAA) to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone in Lawrence County, Ohio; and called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: USEPA has requested that the State of Ohio submit, by July 27, 1993 (60 days from receipt of SIP Call letter), an action plan with a schedule setting forth dates and increments of progress for correcting the Lawrence County SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Lawrence County ozone plan to the USEPA by November 28, 1993 (18 months from receipt of SIP Call letter).

ADDRESSES: Copies of the documents associated with this information notice are available for inspection during normal business hours at the following address: (It is recommended that you telephone Richard Schleyer at (312) 353–5089, before visiting the Region 5 Office): U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

A copy of today's information notice is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (ANR–443), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604–3590, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the CAA, 42 U.S.C. 7410, requires each State to adopt plans which provide for the attainment and maintenance of the NAAQS. In response to these requirements, Ohio submitted a SIP for ozone. This SIP was approved by USEPA on October 31, 1980 (45 FR 72120). Section 110 also requires that States revise the plan under certain conditions. More specifically, section 110(k)(5) provides that whenever USEPA finds that a SIP for an area is "substantially inadequate to attain or maintain" the relevant NAAQS, USEPA shall require the State to revise the plan as necessary to correct such inadequacies.

Information available to USEPA indicates that the NAAQS for ozone was violated in Lawrence County, Ohio. An ozone monitor, located in Ironton, Ohio (Lawrence County), has collected quality-assured monitoring data that indicate one exceedance of the ozone NAAQS occurred during 1990, and three exceedances occurred during 1991. This is a violation of the ozone NAAQS.

A letter dated May 24, 1993, was sent to George V. Voinovich, Governor of Ohio, from Valdas V. Adamkus, USEPA, Region 5, Regional Administrator, notifying the State that USEPA finds the Ohio SIP substantially inadequate to attain or maintain the NAAQS for ozone in Lawrence County, which is currently designated as an ozone attainment area (56 FR 56694). USEPA made this finding pursuant to sections 110(a)(2)(H)(ii) and 110(k)(5) of the CAA, based on a violation of the ozone NAAQS in Lawrence County. USEPA calls for the State of Ohio to revise the SIP for Lawrence County, as necessary, to assure attainment and maintenance of the NAAQS for ozone.

USEPA has requested that, within 60 days following receipt of the May 24, 1993, SIP Call letter, Ohio submit an action plan to USEPA with a schedule for identifying and adopting control strategies as part of the Ohio SIP to reduce ozone emissions in Lawrence County to attain and maintain the ozone NAAQS. The control strategies that will be adopted and implemented as part of the Ohio SIP must be submitted to USEPA within 18 months from receipt of the SIP Call letter, and must provide for attainment and maintenance of the ozone NAAQS within 5 years of receipt of the SIP Call letter. See e.g., Section 110(n)(2) of the CAA.

The finding of inadequacy and call for a SIP revision as set out in the May 24, 1993, letter represent a preliminary step in an ongoing administrative process. A final USEPA judgment regarding the appropriateness of the State's response to USEPA's action will be reached when USEPA makes a binding determination regarding the State's response. See e.g., CAA sections 110(k) and 307(b)(1); See also CAA sections 110(m) and 179.

USEPA encourages Ohio to work with the States of Kentucky and West Virginia, which are presently performing photochemical grid modeling, in order to support an interstate ozone attainment demonstration in the Huntington (West Virginia)—Ashland (Kentucky) area. This attainment demonstration and associated ozone SIP revisions for the Huntington-Ashland area are required to be submitted to the USEPA by November 15, 1994.

This information notice has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 15, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–19251 Filed 8–10–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 180

[PP 9F3706/R2007; FRL–4636–1]

RIN 2070–AB78

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole and its Metabolites Determined as 2,4-Dichlorobenzoic Acid and Expressed as Parent Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends existing tolerances (with an expiration date of January 31, 1994) for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound (also known as propiconazole), in or on the raw agricultural commodities grass forage, hay (straw), and seed screenings and kidney and liver of cattle, goats, hogs, horses, and sheep by extending the expiration date and raising several of the tolerance levels. This rule to establish the maximum permissible levels for residues of propiconazole in or on the commodities listed above was requested in petitions submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective July 30, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3706/R2007], may be submitted to: Hearing Clerk (A-110),

Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Clarence O. Lewis, III, Acting Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1993 (58 FR 32620), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 9F3706) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)), propose to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the kidney and liver of cattle, goats, hogs, horses, and sheep at 2.0 parts per million (ppm) and grass forage at 0.5 ppm, grass hay (straw) at 40 ppm, and grass seed screenings at 60 ppm with an expiration date of 01/31/94 for all of these commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.434 is amended in the table therein by revising the entries for cattle kidney and liver; goat kidney and liver; grass forage, hay, and seed screenings; hog kidney and liver; horse kidney and liver; and sheep kidney and liver, to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophyenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
* * * * *		
Cattle, kidney	2.0	01/31/94
Cattle, liver	2.0	01/31/94
* * * * *		
Goats, kidney	2.0	01/31/94
Goats, liver	2.0	01/31/94
* * * * *		
Grass, forage	0.5	01/31/94
Grass, hay (straw)	40.0	01/31/94
Grass, seed screenings	60.0	01/31/94
* * * * *		
Hogs, kidney	2.0	01/31/94
Hogs, liver	2.0	01/31/94
* * * * *		
Horses, kidney ..	2.0	01/31/94
Horses, liver	2.0	01/31/94
* * * * *		
Sheep, kidney ...	2.0	01/31/94
Sheep, liver	2.0	01/31/94
* * * * *		

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[FR Doc. 93–18966 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Parts 180 and 186

[PP 7F3516 and 6F3417/R2005; FRL–4630–4]

RIN 2070–AB78

Pesticide Tolerances for Thiodicarb; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends tolerances for the residues of the insecticide thiodicarb in or on certain raw agricultural commodities. This regulation to extend the effective date for tolerances for maximum permissible levels of residues of thiodicarb in or on these commodities was requested by Rhone Poulenc Ag Co.

EFFECTIVE DATE: Effective August 11, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 7F3516 and 6F3417/R2005], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: Pursuant to petitions from Rhone Poulenc Ag Co., EPA issued final rules establishing tolerances for residues of the insecticide thiodcarb in or on (1) leafy vegetables at 35 ppm; and (2) broccoli, cabbage, and cauliflower at 7 ppm (see the Federal Register of January 15, 1992 (57 FR 1648) and February 14, 1992 (57 FR 5389), respectively).

To be consistent with conditional registrations for thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower, which are due to expire July 15, 1993 and August 12, 1993, respectively, the Agency established these tolerances with expiration date of July 15, 1994, and August 15, 1994, to cover residues expected to be present from use during the period of conditional registration.

The conditional registrations required the following information to be submitted:

1. A metabolism study (with the parent chemical) in an appropriate species (primate), and information on whether there is a species-specific metabolic conversion of thiodicarb to acetamide.

2. Substantiation of the isomeric form of the registered product.

3. Studies designed to identify and measure (as the glucuronide or other conjugate) the *N*-hydroxy acetamide metabolite.

These studies were required because the data base for acetamide is incomplete to fully address its carcinogenic potential and to determine whether there may be a species-related difference in conversion of syn-methomyl to anti-methomyl and resultant excretion as acetonitrile to metabolic hydroysis to acetamide. Acetamide was identified as a potential metabolite of thiodicarb in an animal metabolism study. The toxicology data base for thiodicarb includes two valid oncogenicity studies that were negative for oncogenic effects.

On February 17, 1993, and December 21, 1992, Rhone Poulenc provided the Agency with the required studies. These studies are currently undergoing review. However, final review is not expected to be completed for some time. On the basis of the Registrant's compliance with the requirements of the conditional registrations, the Agency is extending the conditional registrations for the use of thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower. The extension for these uses will expire on August 15, 1994. On June 18, 1993, EPA published a petition in the Federal Register from Rhone Poulenc requesting an extension of the tolerances for thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower until August 15, 1994 (58 FR 33631). No comments were received in response to this notice of filing.

Based on a 2-year rat feeding study with a NOEL of 3.0 mg/kg/day and using an uncertainty factor of 100, the reference dose (RfD) for humans is 0.03 mg/kg/body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 1.833 percent of the RfD. The tolerances represent a theoretical maximum residue contribution of 0.013094 mg/kg/body weight/day and represent 43.6% of the ADI. This results in a total contribution of 0.013644 mg/kg/body weight/day, and a total utilization of 45.5% of the ADI.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological data considered in support of these tolerances are discussed in detail in related documents, published in the Federal Register of January 15, 1992 (57 FR 1648), and February 14, 1992 (57 FR 5389).

There are no regulatory actions pending against the registration of thiodicarb. The metabolism of thiodicarb in plants and animals is adequately understood. Adequate analytical methods involving gas chromatography with a flame photometric detector selective for sulfur-containing compounds and gas chromatography/mass spectrometry are available for enforcement purposes. The methodology has been published in the Food and Drug Administration's Pesticide Analytical Manual (PAM), Vol. II.

On the basis of the available studies on acetamide and the chronic carcinogenicity studies for thiodicarb, the Agency has concluded that the human risk posed by the use of thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower does not raise significant concerns. The Agency has determined that extending the tolerances will protect the human health. Therefore, as set forth below, the tolerances are extended to August 15, 1995, to cover residues existing from the continued conditional registration of thiodicarb. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the Federal Register.

Residues remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 26, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.407 *Thiodicarb; tolerances for residues* by amending paragraph (b) introductory text by changing "July 15, 1994" to read "August 15, 1995" and by amending paragraph (c) introductory text by changing "August 15, 1994" to read "August 15, 1995."

[FR Doc. 93–19125 Filed 8–10–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 716

[OPPTS–84014D; FRL–4179–6]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for 92 chemical substances by amending the sunset dates on the list of substances, mixtures, and categories in the Toxic Substances Control Act (TSCA) section 8(d) model Health and Safety Data Reporting rule. Pursuant to 40 CFR 716.65, EPA has reviewed all of the substances listed in § 716.120 and determined that at this time the Agency no longer needs continuing health and safety data reporting on these 92 chemical substances. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period. Persons who believe that EPA should not terminate the reporting requirements for these substances on the section 8(d) model rule may notify EPA and provide their reasons.

DATES: This rule becomes effective on November 9, 1993. Written comments should be received by EPA by September 10, 1993.

ADDRESSES: All comments should include the docket control number OPPTS–84014D and should be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., Rm. E–G99, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking.

By adding a substance to part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance up to 10 years from the effective date of the rule. The only reporting requirement unaffected by the sunset provision found at § 716.65(a) applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date (§ 716.65(c)). It should be noted that on October 4, 1992, 304 chemicals listed in § 716.120 reached their sunset date, on January 3, 1993, 5 chemicals listed in § 716.120 reached their sunset date, and on April 29, 1993, 39 chemicals listed in § 716.120 reached their sunset date. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period.

In addition to the 10–year sunset provision to prevent unnecessary reporting burdens, EPA has instituted a biennial review process to identify and terminate the reporting periods for those substances for which the Agency does not currently need continued health and safety data reporting (40 CFR 716.65(b)). Pursuant to this process, the EPA Office of Pollution Prevention and Toxics requested from other EPA offices and certain other Federal agencies all reasonable justifications for retaining each substance or mixture from the list at § 716.120. As a result, EPA has determined that the Agency's health and safety data needs no longer justify continued health and safety data reporting for 92 chemical substances presently listed in the section 8(d) model rule. Amending the reporting sunset date for a substance listed in § 716.120(a) and (d) to reflect the effective date of this rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal from the 8(d) list must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date (§ 716.65(c)). For the foregoing reason, EPA is amending the reporting sunset dates for the substances rather than removing all reference to the substances.

Authority for this action is stated in § 716.65 of the section 8(d) model rule. This section directs the EPA Office of Pollution Prevention and Toxics to conduct a biennial review of all the chemical substances and mixtures listed in § 716.120, and to request from other EPA offices and certain Federal agencies all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from, the § 716.120 list. EPA is issuing this action without prior proposal in accordance with 40 CFR 716.65(b). This final rule terminates the reporting periods for 92 substances on the § 716.120 list 90 days following publication of this rule in the Federal Register. Persons are invited to comment on the determinations presented in this document. If a reasonable justification is received for requiring continued health and safety data reporting for any of these 92 substances on the section 8(d) model rule, EPA will, by notice published in the Federal Register, withdraw the sunset date amendment for the substance from the final rule prior to the final rule's effective date.

II. Amendments to 40 CFR 716.120

In order to affect the termination of health and safety data reporting on the chemical substances and categories for

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which there exists no justification for continuing reporting, § 716.120 will be amended. Sunset dates for 92 chemical substances will be amended to reflect the effective date of this rule. As previously stated, once a sunset date is reached, the reporting period for the chemical substance is terminated except as provided in § 716.65(c). Fifty-four of the substances subject to sunset date amendment are listed in § 716.120(a). These include the following chemical substances:

CAS No.	Substance
75-88-7	Ethane, 2-chloro- 1,1,1-trifluoro
84-65-1	Anthraquinone--9,10-Anthracenedione
90-42-6	[1,1'-Bicyclohexyl]-2-one
96-37-7	Methylcyclopentane--Cyclopentane, methyl-
98-83-9	Benzene, (1-methylethenyl)-
100-40-3	4-Vinylcyclohexene
100-70-9	2-Pyridinecarbonitrile
104-49-4	Benzene, 1,4-diisocyanato-
115-96-8	Ethanol, 2-chloro-, phosphate (3:1)
123-61-5	Benzene, 1,3-diisocyanato-
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-
128-66-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9,10-dioxo-
139-25-3	Benzene, 1,1 1-methylenebis[4-isocyanato-3-methyl-
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro
328-84-7	3,4-Dichlorobenzotrifluoride--Benzene, 1,2-dichloro- 4-(trifluoromethyl)-
354-33-6	Ethane, pentafluoro
526-73-8	1,2,3-Trimethylbenzene--Benzene, 1,2,3-trimethyl-
580-51-8	[1,1'-Biphenyl]-3-ol
685-91-6	Acetamide, *N,N*-diethyl-
811-97-2	Ethane, 1,1,2-tetrafluoro-
939-97-9	*p-tert*-Butylbenzaldehyde--Benzaldehyde, 4-(1,1-dimethylethyl)-
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-
1321-38-6	Benzene, diisocyanatomethyl-(unspecified isomer)
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-
2556-36-7	Cyclohexane, 1,4-diisocyanato
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-
2873-89-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-
3618-72-2	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2- [(2-bromo-4,6-dinitrophenyl)azo]-4- methoxyphenyl]-
3618-73-3	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]- 2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]-amino]-2- [(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl
5873-54-1	Benzene, 1-isocyanato-2-[4-isocyanatophenyl)methyl]-
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)
6247-34-3	2-Anthracenesulfonic acid, 4-[[4-(acetylamino) phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-
12217-79-7	9,10-Anthracenedione, 1,5-diamino-chloro-4,8-dihydroxy-
13414-54-5	Methallyl 2-nitrophenyl ether--Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-
21429-43-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl] amino]-2-[(2-chloro- 4,6-dinitrophenyl)azo]-4-methoxyphenyl]-
25168-06-3	Isopropyl phenol--Phenol, (1-methylethyl)-
25640-78-2	Isopropyl biphenyl--1,1'-Biphenyl, (1-methylethyl)-
32062-51-0	Isocyanic acid, trimethylcyclohexyl ester
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)
68389-89-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)methylammonio]ethyl]-ω-hydroxy-, *N,N*-dicoco acyl derivatives, methyl sulfates (salts)
68389-88-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivatives, methyl sulfates (salts)
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis (2-aminoethyl)methylammonio] methylethyl]-ω-hydroxy-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)
68554-06-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl) methylammonio]-2-hydroxy-propyl]-ω-hydroxy-, *N*-coco acyl derivatives, methyl sulfates (salts)
68611-64-3	Urea, reaction products with formaldehyde
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanato-phenyl)methyl]-1-methyl-
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanato-phenyl)thio]-

Thirty-eight substances subject to sunset date amendment are listed in § 716.120(d). These substances are identified as,"listed members of categories" and are listed as follows:

Alkyl phosphates:	
126-71-6	Phosphoric acid, tris(2-methylpropyl) ester
812-00-0	Phosphoric acid, monomethyl ester
1070-03-7	Phosphoric acid, mono(2-ethylhexyl)ester
1498-51-7	Phosphorodichloridic acid, ethyl ester
1623-15-0	Phosphoric acid, monobutyl ester
1623-24-1	Phosphoric acid, mono(1-methylethyl)ester
2958-09-0	Phosphoric acid, monooctadecyl ester
3900-04-7	Phosphoric acid, monohexyl ester
3991-73-9	Phosphoric acid, monooctyl ester
7057-92-3	Phosphoric acid, didodecyl ester
7332-48-5	Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)
12645-31-7	Phosphoric acid, 2-ethylhexyl ester
12751-23-4	Phosphoric acid, dodecyl ester
27215-10-7	Phosphoric acid, dioctyl ester
Brominated flame retardants:	
25327-89-3	Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo-4-(2-propenyloxy)-
88497-56-7	Benzene, ethenyl-, homopolymer, brominated
Isocyanates:	
100-28-7	Benzene, 1-isocyanato-4-nitro-
110-78-1	Propane, 1-isocyanato-
112-96-9	Octadecane, 1-isocyanato-
614-68-6	Benzene, 1-isocyanato-2-methyl-
622-58-2	Benzene, 1-isocyanato-4-methyl-
1476-23-9	1-Propene, 3-isocyanato-
2422-91-5	Benzene, 1,1',1"-methylidynetris(4-isocyanato-
2493-02-9	Benzene, 1-bromo-4-isocyanato-
2909-38-8	Benzene, 1-chloro-3-isocyanato-
2949-22-6	Acetic acid, isocyanato-, ethyl ester
3173-53-3	Cyclohexane, isocyanato-
4035-89-6	Imidodicarbonic diamine, N,N'-2-tris(6-isocyanato- hexyl)-
4151-51-3	Phenyl, 4-isocyanato-, phosphorothioate (3:1) (ester)
10031-75-1	Benzene, 1,1'-(diisocyanatomethylene)bis-
25854-16-4	Benzene, bis(isocyanatomethyl)-
26603-40-7	1,3,5,-Triazine-2,4,6(1H.3H.5H.trione, 1,3,5-tris(3- isocyanatomethylphenyl)-
26747-90-0	1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-
28178-42-9	Benzene, 2-isocyanato- 1,3-bis(1-methylethyl)-
28556-81-2	Benzene, 2-isocyanato- 1,3-dimethyl-, ester
34893-92-0	Benzene, 1,3-dichloro-5-isocyanato-
68239-06-5	Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1- pentyl-
73597-26-9	2-Propenoic acid, 2-methyl-2-(((((5-isocyanato-1,3,3- trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester

III. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPPTS–84030). This record includes basic information considered by the Agency in developing this rule. EPA will supplement the rulemaking record with additional information as it is received. The record now includes the following:

1. Section 8(d) model Health and Safety Rule Data Reporting Rule (51 FR 32720).

2. EPA memoranda to program offices requesting comments on substances listed in 40 CFR 716.120.

3. Comments from program offices.

This rulemaking record is available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E-G102, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) as required under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant economic impact on a substantial number of small businesses. This determination is based upon this rule's elimination of some prospective reporting burdens.

C. Paperwork Reduction Act

This rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and Controlling Paperwork Burdens on the Public, 5 CFR part 1320. This rule terminates some existing reporting requirements previously approved by OMB under OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: July 30, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 716 is amended to read as follows:

PART 716—[AMENDED]

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. Section 716.120 is amended by revising 54 entries in paragraph (a) and revising entries under the alkyl phosphates, brominated flame retardants, and isocyanates categories in paragraph (d) to read as folllows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
75-88-7	Ethane, 2-chloro- 1,1,1-trifluoro		10/15/90	11/9/93
84-65-1	Anthraquinone--9,10-Anthracenedione		12/28/84	11/9/93
90-42-6	[1,1'-Bicyclohexyl]-2-one		6/1/87	11/9/93
96-37-7	Methylcyclopentane--Cyclopentane, methyl-		6/20/85	11/9/93
98-83-9	Benzene, (1-methylethenyl)-		6/1/87	11/9/93
100-40-3	4-Vinylcyclohexene		1/11/90	11/9/93
100-70-9	2-Pyridinecarbonitrile		6/1/87	11/9/93
104-49-4	Benzene, 1,4-diisocyanato-		6/1/87	11/9/93
115-96-8	Ethanol, 2-chloro-, phosphate (3:1)		12/16/88	11/9/93
123-61-5	Benzene, 1,3-diisocyanato-		6/1/87	11/9/93
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-		12/19/85	11/9/93
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9,10-dioxo-		12/21/87	11/9/93
139-25-3	Benzene, 1,1 1-methylenebis[4-isocyanato-3-methyl-		6/1/87	11/9/93
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro		10/15/90	11/9/93
328-84-7	3,4-Dichlorobenzotrifluoride--Benzene, 1,2-dichloro- 4-(trifluoromethyl)-		5/8/85	11/9/93
354-33-6	Ethane, pentafluoro		10/15/90	11/9/93
526-73-8	1,2,3-Trimethylbenzene--Benzene, 1,2,3-trimethyl-		2/13/84	11/9/93
580-51-8	[1,1'-Biphenyl]-3-ol		6/1/87	11/9/93
685-91-6	Acetamide, N,N-diethyl-		6/1/87	11/9/93
811-97-2	Ethane, 1,1,2-tetrafluoro-		10/15/90	11/9/93
939-97-9	*p*-*tert*-Butylbenzaldehyde--Benzaldehyde, 4-(1,1-dimethylethyl)-		6/25/86	11/9/93

CAS No.	Substance	Special exemptions	Effective date	Sunset date
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-		6/1/87	11/9/93
1321-38-6	Benzene, diisocyanatomethyl-(unspecified isomer)		6/1/87	11/9/93
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro		6/1/87	11/9/93
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-		10/15/90	11/9/93
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-		6/1/87	11/9/93
2556-36-7	Cyclohexane, 1,4-diisocyanato		6/1/87	11/9/93
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-		6/1/87	11/9/93
2873-89-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-		10/15/90	11/9/93
3618-72-2	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-dinitrophenyl)azo]-4- methoxyphenyl]-	[(2-bromo-4,6-	6/19/87	11/9/93
3618-73-3	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-dinitrophenyl)azo]-4-methoxyphenyl]-	2-[(2-chloro-4,6-	6/19/87	11/9/93
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]-amino]-2-dinitrophenyl)azo]-4-ethoxyphenyl	[(2-bromo-4,6-	12/15/86	11/9/93
5873-54-1	Benzene, 1-isocyanato-2-[4-isocyanatophenyl)methyl]-		6/1/87	11/9/93
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)		12/16/88	11/9/93
6247-34-3	2-Anthracenesulfonic acid, 4-[[4-(acetylamino) phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-		12/21/87	11/9/93
12217-79-7	9,10-Anthracenedione, 1,5-diamino-chloro-4,8-dihydroxy-		12/21/87	11/9/93
13414-54-5	Methallyl 2-nitrophenyl ether--Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-		2/13/84	11/9/93
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)		12/16/88	11/9/93
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-		6/1/87	11/9/93
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-		6/1/87	11/9/93
21429-43-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl] amino]-2-[(2-chloro- 4,6-dinitrophenyl)azo]-4-methoxyphenyl]-		6/19/87	11/9/93
25168-06-3	Isopropyl phenol--Phenol, (1-methylethyl)-		4/13/89	11/9/93
25640-78-2	Isopropyl biphenyl--1,1'-Biphenyl, (1-methylethyl)-		6/20/84	11/9/93
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester		6/1/87	11/9/93

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CAS No.	Substance	Special exemptions	Effective date	Sunset date
•	•	•	•	•
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester		12/16/88	11/9/93
•	•	•	•	•
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-		6/1/87	11/9/93
•	•	•	•	•
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl-*N*-(2-hydroxyethyl)- *N*-methyl-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
•	•	•	•	•
68389-88-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-, *N,N*-dicoco acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
68389-89-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivatives, methyl sulfates (salts)		6/20/88	11/9/93
•	•	•	•	•
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis (2-aminoethyl)methylammonio] methylethyl]-ω-hydroxy-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
•	•	•	•	•
68554-06-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl) methylammonio]-2-hydroxypropyl]-ω-hydroxy-, *N*-coco acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
•	•	•	•	•
68611-64-3	Urea, reaction products with formaldehyde		6/3/85	11/9/93
•	•	•	•	•
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanato-phenyl)methyl]-1-methyl-		6/1/87	11/9/93
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanato-phenyl)thio]-		6/1/87	11/9/93

• • • • •

(d) • • •

Category	CAS No.	Special exemptions	Effective date	Sunset date
•	•	•	•	•
Alkyl Phosphates:				
•	•	•	•	•
Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	7332-46-9		10/29/90	11/9/93
•	•	•	•	•
Phosphoric acid, didodecyl ester	7057-92-3		10/29/90	11/9/93
Phosphoric acid, diisooctyl ester	27215-10-7		10/29/90	11/9/93
Phosphoric acid, dodecyl ester	12751-23-4		10/29/90	11/9/93
Phosphoric acid, 2-ethylhexyl ester	12645-31-7		10/29/90	11/9/93
Phosphoric acid, monobutyl ester	1623-15-0		10/29/90	11/9/93
Phosphoric acid, mono(2-ethylhexyl)ester	1070-03-7		10/29/90	11/9/93
Phosphoric acid, monohexyl ester	3900-04-7		10/29/90	11/9/93
Phosphoric acid, monomethyl ester	812-00-0		10/29/90	11/9/93
Phosphoric acid, mono(1-methylethyl)ester	1623-24-1		10/29/90	11/9/93
Phosphoric acid, monooctyl ester	3991-73-9		10/29/90	11/9/93
Phosphoric acid, monooctadecyl ester	2958-09-0		10/29/90	11/9/93
•	•	•	•	•
Phosphoric acid, tris(2-methylpropyl) ester	126-71-6		10/29/90	11/9/93
Phosphorodichloridic acid, ethyl ester	1498-51-7		10/29/90	11/9/93
Brominated flame retardants:				

Category	CAS No.	Special exemptions	Effective date	Sunset date
• • • •	•	•		•
Benzene, ethenyl-, homopolymer, brominated	88497-56-7		10/29/90	11/9/93
Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo- 4-(2-propenyloxy)-	25327-89-3		10/29/90	11/9/93
• • • •	•	•		•
Isocyanates:			10/29/90	11/9/93
Acetic acid, isocyanato-, ethyl ester	2949-22-6		10/29/90	11/9/93
Benzene, bis(isocyanatomethyl)-	25854-16-4		10/29/90	11/9/93
Benzene, 1-bromo-4-isocyanato-	2493-02-9		10/29/90	11/9/93
Benzene, 1-chloro-3-isocyanato-	2909-38-8		10/29/90	11/9/93
• • • •	•	•		•
Benzene, 1,3-dichloro-5-isocyanato-	34893-92-0		10/29/90	11/9/93
Benzene, 1,1'-(diisocyanatomethylene)bis-	10031-75-1		10/29/90	11/9/93
• • • •	•	•		•
Benzene, 2-isocyanato- 1,3-bis(1-methylethyl)-	28178-42-9		10/29/90	11/9/93
Benzene, 2-isocyanato- 1,3-dimethyl-, ester	28556-81-2		10/29/90	11/9/93
Benzene, 1-isocyanato-2-methyl-	614-68-6		10/29/90	11/9/93
Benzene, 1-isocyanato-4-methyl-	622-58-2		10/29/90	11/9/93
Benzene, 1-isocyanato-4-nitro-	100-28-7		10/29/90	11/9/93
Benzene, 1,1',1''-methylidynetris(4-isocyanato-	2422-91-5		10/29/90	11/9/93
• • • •	•	•		•
Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1-pentyl-	58239-06-5		10/29/90	11/9/93
Cyclohexane, isocyanato-	3173-53-3		10/29/90	11/9/93
1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-	26747-90-0		10/29/90	11/9/93
• • • •	•	•		•
Imidodicarbonic diamide, N,N'-2-tris(6-isocyanato-hexyl)-	4035-89-6		10/29/90	11/9/93
• • • •	•	•		•
Octadecane, 1-isocyanato-	112-96-9		10/29/90	11/9/93
Phenyl, 4-isocyanato-, phosphorothioate (3:1) (ester)	4151-51-3		10/29/90	11/9/93
Propane, 1-isocyanato-	110-78-1		10/29/90	11/9/93
1-Propene, 3-isocyanato-	1476-23-9		10/29/90	11/9/93
• • • •	•	•		•
2-Propenoic acid, 2-methyl-2-(((((5-isocyanato-1,3,3-trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester.	73597-26-9		10/29/90	11/9/93
1,3,5,-Triazine-2,4,6(1H.3H.5H.trione, 1,3,5-tris(3-isocyanatomethyl phenyl)-.	26603-40-7		10/29/90	11/9/93
• • • •	•	•		•

[FR Doc. 93–19253 Filed 8–10–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 99

[GEN Docket No. 90–314 and ET Docket No. 92–100; FCC 93–329]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This First Report and Order (R&O) allocates spectrum and adopts rules authorizing new, narrowband personal communications services (PCS) that include advanced voice paging, two-way acknowledgement paging, data messaging, electronic mail, and facsimile transmissions. The Commission finds that authorizing these services would permit provision to consumers of new mobile and portable communications services, which are expected to increase the productivity of businesses, enhance the public's communications, and assist American industry to maintain its leadership position in the global telecommunications marketplace. Issues regarding licensee selection procedures and the regulatory status of the service are the subject of legislation actively being considered by the Congress and will be addressed by the Commission in a further action. The Commission also grants a pioneer's preference to Mobile Telecommunication Technologies Corporation (Mtel) and denies 18 other pioneer's preference requests.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's R&O in GEN Docket No. 90–314 and ET Docket No. 92–100, adopted June 24, 1993, and released July 23, 1993.

The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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Synopsis of R&O

1. By this action, the Commission allocates the 901–902, 930–931, and 940–941 MHz bands to narrowband PCS, adopts a regulatory structure that includes technical and operational rules, makes a final decision on 19 related pioneer's preference requests, and defers action on the method of selecting licensees and the regulatory status of licensees. A summary of the Notice of Proposed Rule Making initiating this proceeding may be found at 57 FR 40672 (September 4, 1992).

2. *Service definition.* PCS is broadly defined as radio services that encompass a wide array of mobile and ancillary fixed communications services that could provide services to individuals and businesses, and be integrated with a variety of competing networks. The spectrum allocated to PCS will not be used for broadcasting, and the only fixed services permitted are ancillary ones used in support of mobile PCS. Narrowband PCS is defined as PCS operating in the 901–902, 930–931, and 940–941 MHz bands.

3. We decline to limit narrowband PCS to advanced paging and messaging in order not to foreclose other potential narrowband services. Further, we decline to allocate spectrum specifically for an advanced cordless telephone service, inasmuch as we already have permitted cordless telephones to operate in a number of frequency bands, including 902–928 MHz, and have under consideration a petition for additional frequencies in a different band (RM–8094, filed by Telecommunications Industry Association on August 20, 1992). Additionally, no set-aside for non-commercial use by traditional private land mobile radio eligibles is made because spectrum currently allocated for such services is adequate and the applications suggested by potential providers appear to be within the definition of narrowband PCS and permissible in this spectrum under the adopted rules. As there is no petition for rule making before us requesting that spectrum sharing in the 930–960 MHz band be permitted, we decline to adopt the proposal that spectrum be reserved for control channels in the narrowband PCS spectrum.

4. *Spectrum allocation/ channelization plan.* We are allocating the 901–902, 930–931, and 940–941 MHz bands to narrowband PCS. The 901–902 MHz band is limited to low power transmissions. At this time we will channelize and license only two of the three megahertz of spectrum. The channelization plan provides nine 50 kHz channels paired with nine 50 kHz channels, twelve 50 kHz channels paired with twelve 12.5 kHz channels, five 50 kHz unpaired channels, and eight 12.5 kHz unpaired channels.

5. The channelization plan for narrowband PCS provides a flexible framework that will foster our goals of universality, speed of deployment, diversity of services and competitive delivery. Potential PCS providers propose a diverse range of services with varying channel bandwidth requirements. A mix of paired and unpaired 12.5 and 50 kHz bandwidths will meet most of their stated needs. Most commenters propose low-power return path response capability, and the 901–902 MHz band is particularly desirable for use by low-power operations because the 930–931 and 940–941 MHz bands are adjacent to high power operations that would make low power operation difficult. Asymmetrical channel bandwidth pairings will promote spectrum efficiency because the communications requirements of response operations are substantially less than those of base-to-mobile operations. Also, providing response channels for use by existing licensees will permit existing paging operations to be upgraded to provide some acknowledgement and messaging capability.

6. *Service areas.* Narrowband PCS will be licensed on a nationwide, regional, and local basis. Regional service areas are based on 47 major trading areas (MTAs). Local service areas are based on 487 basic trading areas (BTAs). MTAs and BTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide.

7. Large regional and nationwide licensed service areas provide economies of scale, alleviate some of the problems licensees have experienced when they tried to aggregate smaller licensed service areas, provide for flexibility in the design and implementation of narrowband PCS, and further our goals of fostering the swift implementation and deployment of narrowband PCS systems. Accordingly, we are setting aside the majority of spectrum and channels for nationwide and large regional licensed service area use. MTAs provide reasonable and homogeneous markets for the provision of PCS. If larger areas are required for certain applications, aggregation of MTA licensed service areas is permitted and nationwide PCS channels also are available.

8. While the majority of channels will be designated for nationwide and MTA use, there are a variety of narrowband services that could be offered at the local level. By providing channels at this level, we will foster broader participation in narrowband PCS, allow entry by smaller firms and businesses, increase competition, and promote diversity in the provision of narrowband PCS services. Therefore, we designate two channels for narrowband PCS use in the BTAs. In addition, we are using BTAs as the basis for licensing eight unpaired acknowledgement channels being provided for use by existing licensees. This approach is appropriate, given the limited number of channels and the fact that most existing paging is now licensed on a local basis.

9. *Eligibility.* Cellular systems and local exchange carriers (LECs) are permitted to be licensed without restriction. The channeling and licensed service area plans ensure substantial competition among providers of narrowband PCS services. In addition, narrowband PCS will be sufficiently different from the services provided by cellular systems and LECs so any ability that cellular systems and LECs might have to exert undue market power or restrain trade will be negligible.

10. *Limits on holding multiple licenses.* A single licensee is permitted to hold licenses for up to three 50 kHz channels, paired or unpaired (*i.e.*, no more than 150 kHz paired with 150 kHz). This limit is appropriate to ensure that narrowband PCS is offered on a competitive basis, while providing opportunities for licensees to aggregate or combine channels to provide multiple offerings or wider bandwidth services.

11. *License term.* A ten-year license term for narrowband PCS is specified. Renewal issues will be addressed later when the method of selecting licensees is addressed.

12. *Construction requirements.* Licensees of nationwide service areas must construct at least 250 base stations within five years and 500 base stations within ten years. MTA licensees must provide coverage to approximately 25% of the geographic area of their MTA within five years and 50% of the area within ten years; or, alternatively, must construct at least 25 base stations within five years and 50 base stations within ten years. Licensees of BTA service areas must construct at least one base station and begin providing service in their area within one year of being licensed. These minimum requirements for operation and service will ensure that spectrum is being effectively utilized. Failure by any licensee to meet the requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

13. *Small business.* Our actions will result in significant opportunities for small business participation through licensing at a local level and potential market opportunities with national and regional licensees. We expect to address small business concerns further when we take up the details of the licensee selection process.

14. *Technical standards.* The power for narrowband PCS base stations is limited to 3.5 kilowatts effective radiated power per authorized bandwidth and all base stations will be unlimited in antenna height except for those MTA and BTA base stations located close to an MTA or BTA border. These rules will allow all carriers to more quickly and economically cover their licensed service areas and generally will provide service comparable to existing paging operations.

15. The antenna height and transmitter power of regional and local base stations that are located between 200 and 80 kilometers from their service area borders are limited in accordance with the table in § 99.407(d). Regional and local base stations located less than 80 kilometers from their service area borders must limit their effective radiated power in accordance with the formula in § 99.407(e). The formula extends the table in order to allow operators to provide service in areas close to their licensed service area borders.

16. Waivers to the power and antenna height limit rules will be considered on a case-by-case basis for licensees claiming special circumstances. Further, in order to provide the flexibility needed to address particular operating circumstances, all PCS licensees are permitted to negotiate alternative operating limits and agreements with co-channel licensees in adjoining service areas.

17. Mobile and portable stations are limited to seven watts effective radiated power and are not required to use automatic power control because it would be extremely costly to implement and would have limited ability to decrease interference.

18. The maximum authorized bandwidth will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. In addition, if a licensee aggregates adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width will be permitted. On any frequency outside the authorized bandwidth, the signal level must be attenuated in accordance with the provisions of § 99.411. By adopting this out-of-band protection scheme, the same adjacent channel interference protection will be provided to all narrowband PCS operations, independent of bandwidth.

19. Interoperability and inter-system roaming capability are not required. Nationwide and regional licensing will permit wide area services.

20. *RF radiation limits.* PCS equipment manufacturers and licensees are required to comply with the IEEE C95.1–1991 guidelines pending completion of ET Docket No. 93–62. For the purpose of type acceptance of narrowband PCS equipment, all handheld PCS devices must comply with the IEEE specifications for "uncontrolled" environments. This action is taken in consideration of possible health issues raised by narrowband PCS, the fact that no general manufacture of equipment has begun, and to provide for the expeditious initiation of service.

21. *Pioneer's preferences.* We are awarding Mtel a pioneer's preference for a nationwide license of a 50 kHz unpaired channel. Mtel developed and tested "multicarrier modulation" technology capable of transmitting a 24 kilobit per second simulcast signal in a single 50 kHz channel and designed a system capable of providing a variety of new two-way services in a single 50 kHz channel. We are denying 18 other pioneer's preference requests that addressed services in the 900 MHz range because the requesters failed to demonstrate that they had met our criteria for receiving a perference, see 47 CFR 1.402.

Final Regulatory Flexibility Analysis

22. Pursuant to 5 U.S.C. section 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making and Tentative Decision in combined ET Docket No. 92–100 and GEN Docket No. 90–314. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. *Need for and objective of rules:* Our objective is to provide spectrum in the 900 MHz range suitable for PCS services that utilize relatively narrow channels for advanced paging and related data PCS services. The flexibility of the Rules adopted enable a diversity of services, including enhanced paging and messaging services.

B. *Issues raised by the public in response to the initial analysis:* No party suggested modifications specifically in response to the initial regulatory flexibility analysis.

C. *Any significant alternative minimizing impact on small entities and consistent with stated objectives:* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities. The Secretary will send a copy of this *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

23. Accordingly, it is ordered, that part 2 of the Commission's rules is amended and that a new part 99 is added to the Commission's rules as specified below, effective September 10, 1993. This action is taken pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

24. It is further ordered that the request for pioneer's preference filed by Mobile Telecommunication Technologies Corporation is granted. It is further ordered that the requests for pioneer's preference filed by Advanced Cordless Technologies, Inc.; Advanced Wireless Communications, Inc.; Dial Page, L.P. (PP–11 and PP–35); Echo Group L.P.; Ericsson Business Communications, Inc.; Freeman Engineering Associates, Inc.; Global Enhanced Messaging Venture; Metriplex, Inc.; Mobile Communications Corporation of America; Montauk Telecommunications Company; NAC, Inc.; PacTel Paging (PP–38 and PP–39); PageMart, Inc.; Paging Network, Inc.; Skycell Corporation; and Radio Telecom and Technology, Inc. are denied.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 99

Personal communications service, Radio.

William F. Caton,
Acting Secretary.

Amendatory Text

Parts 2 and 99 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended,

47 U.S.C. sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

Column (1) in the 790–942 MHz bands; column (2) in the 806–942 MHz bands; column (3) in the 890–942 MHz band; column (4) in the 806–902 and 935–941 MHz bands; and columns (5) and (6) in the 901–902, 929–932, and 940–941 MHz bands are revised to read as follows:

§2.106 Table of frequency allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1-allocation	Region 2-allocation	Region 3-allocation	Government	Non-Government	Rule part(s)	Special-use frequencies
MHz (1)	MHz (2)	MHz (3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
*	*	*	*	*	*	*
790–862 FIXED. BROADCASTING.						
	806–890 FIXED. MOBILE. BROADCASTING.		806–902			
694 695 695A 696 697 700B 702						
862–890 FIXED. MOBILE except aeronautical mobile. BROADCASTING 703.						
700B 704	692A 700 700A					
890–942 FIXED. MOBILE except aeronautical mobile. BROADCASTING 703. Radiolocation.	890–902 FIXED. MOBILE except aeronautical mobile. Radiolocation.	890–942 FIXED. MOBILE. BROADCASTING. Radiolocation.				
				901–902 FIXED. MOBILE.		PERSONAL COMMUNICATIONS SERVICES (99).
	700A 704A 705		US116 US268 G2	US116 US268 US330		
	902–928 FIXED. Amateur. Mobile except aeronautical mobile. Radiolocation. 705 707 707A					
	928–942 FIXED. MOBILE except aeronautical mobile. Radiolocation.		928–932			
				929–930 LAND MOBILE.	DOMESTIC PUBLIC LAND MOBILE (22). PRIVATE LAND MOBILE (90).	
				US116 US215 US268		
				930–931 FIXED. MOBILE. US116 US215 US268 US330	PERSONAL COMMUNICATIONS SERVICES (99).	

International table			United States table		FCC use designators	
Region 1-allocation	Region 2-allocation	Region 3-allocation	Government	Non-Government	Rule part(s)	Special-use frequencies
MHz (1)	MHz (2)	MHz (3)	*COM001*Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
				931–932 LAND MOBILE.	DOMESTIC PUBLIC LAND MOBILE (22). PRIVATE LAND MOBILE (90).	
			US116 US215 US268 G2	US116 US215 US268		
			935–941			
				940–941 FIXED. MOBILE.	PERSONAL COMMUNICATIONS SERVICES (99).	
			US116 US215 US268 G2	US116 US268 US330		
704	705	706				

Add new 700A and 700B to the international footnotes and new US330 to the United States footnotes to read as follows:

* * * * *

International Footnotes

* * * * *

700A *Additional allocation:* in Canada, the United States and Mexico, the bands 849–851 MHz and 894–896 MHz are also allocated to the aeronautical mobile service on a primary basis, for public correspondence with aircraft. The use of the band 849–851 MHz is limited to transmissions from aeronautical stations and the use of the band 894–896 MHz is limited to transmissions from aircraft stations.

700B *Additional allocation:* in Belarus, the Russian Federation and Ukraine, the bands 806–840 MHz (Earth-to-space) and 856–890 MHz (space-to-Earth) are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R) service. The use of these bands by this service shall not cause harmful interference to, or claim protection from, services in other countries operating in accordance with the Table of Frequency Allocations and is subject to special agreements between the administrations concerned.

* * * * *

United States (US) Footnotes

* * * * *

US330 In the frequency bands 901–902 MHz, 930–931 MHz, and 940–941 MHz, the only fixed services permitted are ancillary services used in support of mobile personal communications services.

* * * * *

3. A new part 99 is added to read as follows:

PART 99—PERSONAL COMMUNICATIONS SERVICES

Subpart A—General Information

Sec.
99.1 Basis and purpose.
99.3 Permissible communications.
99.5 Terms and definitions.

Subpart B—Applications and Licenses

99.11 Scope.
99.12 Licensed service areas.
99.13 Eligibility.
99.14 [Reserved]
99.15 License term.
99.17 Construction requirements.

Subpart C—Technical and Operating Requirements

99.401 Scope.
99.403 Equipment authorization.
99.405 Frequencies.
99.406 Authorized bandwidth.
99.407 Power/antenna height limits.
99.409 RF hazards.
99.411 Emission limits for the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.
99.417 Co-channel separation criteria in the 901–902, 930–931, and 940–941 MHz bands.
99.419 Frequency stability requirements for the 901–902, 930–931, and 940–941 MHz bands.

Authority: Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

Subpart A—General Information

§ 99.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the personal communications services (PCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations. The rules in this part are in accordance with applicable statutes, international treaties and agreements to which the United States is a party.

(b) *Purpose.* This part states the conditions under which stations may be licensed and used to provide PCS in the frequency bands specified in subpart C of this part.

§ 99.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided only on an ancillary basis to mobile operations. Broadcasting as defined in the Communications Act is prohibited.

§ 99.5 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3.2 and 16 kilometers from the antenna site.

Base station. A land station in the land mobile service.

Basic Trading Area (BTA). One of the geographic areas by which narrowband PCS is licensed. The 487 BTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, pp. 36–39. Additionally,

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American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands are licensed separately and are treated as if BTAs for licensing purposes.

Effective radiated power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Fixed service. A radiocommunication service between specified fixed points.

Fixed station. A station in the fixed service.

Height Above Average Terrain (HAAT). Height of the center of the radiating element of the antenna above the average terrain. See § 90.309(a)(4) for calculation method.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Major Trading Area (MTA). One of the geographic areas by which narrowband PCS is licensed. MTAs are defined in the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pages 36–39. For licensing purposes Alaska is a separate area from the Seattle MTA. Guam and the Northern Mariana Islands are treated as a single MTA. Puerto Rico and United States Virgin Islands are treated as a single MTA. American Samoa is treated as a single MTA.

Mobile service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Narrowband PCS. PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

Personal Communications Services (PCS). Very broadly defined and flexible radio services that encompass a wide array of mobile and ancillary fixed communication services, which could provide services to individuals and business, and be integrated with a variety of competing networks.

Subpart B—Applications and Licenses

§ 99.11 Scope.

This subpart contains procedures and requirements for filing applications for licenses to operate radio facilities in the Personal Communications Services. Part 1 of the Commission's rules contain additional applicable rules governing forms (§ 1.922 of this chapter), fees (§ 1.1102 of this chapter), processing procedures (§ 1.953 of this chapter), special temporary authority (§ 1.925 of this chapter), assignment or transfer of control (§ 1.924 of this chapter), and environmental impact (§ 1.1301 of this chapter). Part 17 contains applicable rules regarding tower lighting (§§ 17.7 through 17.17 of this chapter).

§ 99.12 Licensed service areas.

(a) Narrowband PCS nationwide licensed service area: 50 states, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands.

(b) Narrowband PCS regional licensed service areas: 47 Major Trading Areas as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, except that Alaska is separated from the Seattle MTA and is licensed separately. Guam and the Northern Mariana Islands are treated as a single MTA. Puerto Rico and United States Virgin Islands are treated as a single MTA. American Samoa is treated as a single MTA.

(c) Narrowband PCS local licensed service areas: 487 Basic Trading Areas as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide. American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands each are licensed separately.

§ 99.13 Eligibility.

Any person or entity not excluded by 47 U.S.C. 310 is eligible to hold a license under this part.

§ 99.14 [Reserved]

§ 99.15 License term.

Licenses for service areas will be issued for a term of ten years from the date of original issuance or renewal.

§ 99.17 Construction requirements.

For narrowband PCS systems:

(a) Licensees of nationwide service area channels must construct at least 250 base stations within five years of being licensed and at least 500 base stations within ten years of being licensed and notify the Commission when each benchmark is met.

(b) MTA licensees must construct base stations to provide coverage to approximately 25% of the geographic area of their licensed service area within five years of being licensed and 50% of the geographic area of their licensed service area within ten years of being licensed. Alternatively, licensees of MTA service area channels must construct at least 25 base stations within five years of being licensed and 50 base stations within ten years of being licensed. In either case, the MTA licensee must notify the Commission when each benchmark is met.

(c) Licensees of BTA service area channels must construct at least one base station and begin providing service in their licensed service area within one year of being licensed and notify the Commission when the benchmark is met.

(d) In evaluating compliance with the above construction requirements, each base station will be considered to serve a geographic area of 3000 square kilometers. In the case where a licensee constructs low power base stations, compliance with the construction requirements will be determined by aggregating the actual service areas of the low power stations divided by 3000 square kilometers to determine an equivalent number of base stations.

(e) Failure by any licensee to meet the above construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

Subpart C—Technical and Operating Requirements

§ 99.104 Scope.

This subpart sets forth the technical requirements for use of the spectrum and equipment in the radio services governed by this part. Such requirements include frequency channelizations and standards for equipment authorization, transmitter power, antenna height, and signal strength. Included in this subpart are interference criteria for co-channel operations.

§ 99.403 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of part 2 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure for use under this part.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, DC., and at each of its field offices.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an

individual transmitter may be requested by an applicant for a station authorization by following the procedure set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must submit a statement confirming that the equipment complies with IEEE C95.1–1991 (also designated as ANSI/IEEE C95.1–1992), "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3–1991 (also designated ANSI/IEEE C95.3–1992). "IEEE Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Field—RF and Microwave." Copies of these standards can be ordered from the Institute of Electrical and Electronic Engineers, Inc. (IEEE), Attn: Publications Sales, 445 Hoes Lane, PO Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE; or can be ordered from the American National Standards Institute (ANSI), 1–212–642–4900. The applicant for type acceptance is required to maintain a record showing the basis for the statement of compliance with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992).

§ 99.405 Frequencies.

(a) Licensed personal communications radio services will be authorized in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands. Licenses under this part will be issued based on the following frequency blocks, which are listed by center frequency. Unless otherwise specified, the frequencies are paired.

Nationwide Blocks (MHz)

Base	*Mobile*
50 kHz	*50 kHz*
940.025	901.025
940.075	901.075
940.125	901.125
940.175	901.175
940.225	901.225
50 kHz	*12.5 kHz*
930.425	901.75625
930.475	901.76875
930.525	901.78125

50 kHz Unpaired

940.775
940.825
940.875

MTA Blocks (MHz)

Base	*Mobile*
50 kHz	*50 kHz*
940.275	901.275
940.325	901.325
940.375	901.375
940.425	901.425
50 kHz	*12.5 kHz*
930.575	901.79375
930.625	901.80625
930.675	901.81875
930.725	901.83125
930.775	901.84375
930.825	901.85625
930.875	901.86875

50 kHz Unpaired

940.925
940.975

BTA Blocks (MHz)

Base	*Mobile*
50 kHz	*12.5 kHz*
930.925	901.88125
930.975	901.89375

12.5 kHz Unpaired [1]

901.90625
901.91875
901.93125
901.94375
901.95625
901.96875
901.98125
901.99375

(b) A single licensee is permitted to hold licenses for up to three 50 kHz channels, paired or unpaired. This limit is based on the total spectrum in the licensee's nationwide, regional, and local licenses at any geographic point.

§ 99.406 Authorized bandwidth.

The maximum authorized bandwidth of narrowband PCS channels will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. For aggregated adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width is permitted.

§ 99.407 Power/antenna height limits.

(a) Stations transmitting in the 901–902 MHz band are limited to 7 watts e.r.p.

(b) Mobile stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 7 watts e.r.p.

(c) Base stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 3500 watts e.r.p. per authorized channel and are unlimited in antenna height except as provided for in paragraph (d) of this section.

[1] These mobile station frequencies are restricted to entities licensed under parts 22 and 90 of this chapter.

(d) MTA and BTA base stations located between 200 kilometers (124 miles) and 80 kilometers (50 miles) from their licensed service area border are limited to the power levels in following table:

Antenna height above average terrain in meters (feet)	Effective radiated power (e.r.p.) (watts)
183 (600) and below	3500
183 (600) to 208 (682)	3500–2584
208 (682) to 236 (775)	2584–1883
236 (775) to 268 (880)	1883–1372
268 (880) to 305 (1000)	1372–1000
305 (1000) to 346 (1137)	1000–729
346 (1137) to 394 (1292)	729–531
394 (1292) to 447 (1468)	531–387
447 (1468) to 508 (1668)	387–282
508 (1668) to 578 (1895)	282–206
578 (1895) to 656 (2154)	206–150
656 (2154) to 746 (2447)	150–109
746 (2447) to 848 (2781)	109–80
848 (2781) to 963 (3160)	80–58
963 (3160) to 1094 (3590)	58–42
1094 (3590) to 1244 (4080)	42–31
1244 (4080) to 1413 (4636)	31–22
Above 1413 (4636)	16

For heights between the values listed above, linear interpolation shall be used to determine maximum e.r.p.

(e) Regional and local base stations located less than 80 kilometers (50 miles) from the licensed service area border must limit their effective radiated power in accordance with the following formula:

$P_w = 0.0175 \times d_{km}^{3.6666} \times h_m^{-3.1997}$

P_w is effective radiated power in watts
d_{km} is distance in kilometers
h_m is antenna height above average terrain in meters.

(f) All power levels specified above are expressed in terms of the maximum power, averaged over 100 millisecond interval, when measured with instrumentation calibrated in terms of an rms-equivalent voltage with a resolution bandwidth equal to or greater than the authorized bandwidth.

(g) Additionally, PCS stations will be subject to any power limits imposed by international agreements.

§ 99.409 RF hazards.

Manufacturers are required to comply with IEEE C95.1–1991. For the purposes of determining compliance with this standard, all equipment shall be considered to operate in an "uncontrolled" environment.

§ 99.411 Emission limits for the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

(a) The power of any emission shall be attenuated below the transmitter power (P) in accordance with the following schedule:

(1) For transmitters authorized a bandwidth (B) greater than 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 40 kHz: at least 116 Log_{10} ((f_d + 10)/6.1) decibels or 50 plus 10 Log_{10} (P) decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 40 kHz: at least 43 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

(2) For transmitters authorized a bandwidth (B) of 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 20 kHz: at least 116 Log_{10} ((f_d + 5)/3.05) decibels or 50 plus 10 Log_{10} (P) decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 20 kHz: at least 43 plus 10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

(b) The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the transmitter power.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

(d) The following minimum spectrum analyzer resolution bandwidth settings will be used: 300 Hz when showing compliance with paragraphs (a)(1)(i) and (a)(2)(i) of this section; and 30 kHz when showing compliance with paragraphs (a)(1)(ii) and (a)(2)(ii) of this section.

§ 99.417 Co-channel separation criteria in the 901–902, 930–931, and 940–941 MHz bands.

The minimum co-channel separation distance between base stations in different service areas is 113 kilometers (70 miles). A co-channel separation distance is not required for the base stations of the same licensee or when the affected parties have agreed to other co-channel separation distances.

§ 99.419 Frequency stability requirements for the 901–902, 930–931, and 940–941 MHz bands.

(a) The frequency stability of the transmitter shall be maintained within ±0.0001% (± 1 ppm) of the center frequency over a temperature variation of −30 degrees to +50 degrees C at normal supply voltage, and over a variation in the primary supply voltage of 85% to 115% of the rated supply voltage at a temperature of 20 degrees C.

(b) For battery operated equipment, the equipment tests shall be performed using a new battery without any further requirement to vary supply voltage.

(c) It is acceptable for a transmitter to exceed this frequency stability requirement over a narrower temperature range provided the transmitter ceases to function before it exceeds these frequency stability limits.

[FR Doc. 93–19178 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–49; RM–8193; RM–8344]

Radio Broadcasting Services; Los Lunas, Espanola and Pojoaque, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Elliott McDowell, substitutes Channel 273C for Channel 273C2 at Los Lunas, New Mexico, modifies Station KOYT's license to specify the higher class channel, substitutes Channel 225C3 for Channel 272C3 at Espanola, New Mexico, and modifies Station KIOT's license to specify the alternate Class C3 channel. See 58 FR 16518, March 29, 1993. At the request of Cheryl S. Potter, her counterproposal to allot Channel 225C3 to Pojoaque, New Mexico, is dismissed. Channel 273C can be allotted to Los Lunas with a site restriction of 51.8 kilometers (32.2 miles) northeast, at coordinates North Latitude 35–12–42 and West Longitude 106–26–57, to accommodate petitioner's desired transmitter site. Channel 225C3 can be allotted to Espanola with a site restriction of 16.2 kilometers (10.1 miles) northeast, at coordinates 36–04–41; 105–56–16, to avoid short-spacings to Stations KRWN, Channel 225C1, Farmington, and KRST, Channel 222C, and KKOB–FM, Channel 227C, Albuquerque, New Mexico, and to accommodate petitioners's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–49, adopted July 21, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 272C3 and adding Channel 225C3 at Espanola, and by removing Channel 273C2 and adding Channel 273C at Los Lunas.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–19174 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 925 and 952

Acquisition Regulation; Acquisition of Nuclear Hot Cell Services

AGENCY: Department of Energy.

ACTION: Interim final rule; discussion of comments.

SUMMARY: The Department of Energy (DOE) today publishes a notice to provide its disposition of public comments received in response to an invitation to comment on an interim final rule which amends the Department of Energy Acquisition Regulation (DEAR) to implement section 2305 of the Energy Policy Act of 1992. The Act requires selection for contract award of nuclear hot cell services in a way that affords United States companies and foreign companies an equal competition for contracts. The interim final rule provided that it would automatically

become final on June 18, 1993, unless DOE took additional action in response to public comments. On the basis of the public comments received, DOE has determined not to amend the interim final rule and it became final on June 18, 1993.

FOR FURTHER INFORMATION CONTACT:
P. Devers Weaver, Procurement Policy Division (PR–121), U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585; telephone 202–586–8250.

SUPPLEMENTARY INFORMATION:

I. General

DOE published an interim final rule in the **Federal Register** (58 FR 8909) on February 18, 1993, that amended the DEAR to implement section 2305 of the Energy Policy Act of 1992 (Pub. L. 102–486). The Act requires selection for contract award of nuclear hot cell services in a way that affords United States companies and foreign companies an equal competition for contracts.

The interim final rule amended the DEAR by adding new subpart 925.70 and providing a contract clause at new section 952.225–70. The latter requires prime contractors to select first tier subcontracts for nuclear hot cell services in a similar manner. The interim final rule was an interpretative rule and provided that the rule would automatically become final on June 18, 1993, unless further action in response to any public comment was deemed appropriate.

In the interim final rule, DOE provided a 30-day period for public comment. Interested persons were invited to participate in the rulemaking process through the submission of views or arguments pertaining to the interim final rule. One business firm submitted 2 comments. These were carefully assessed to determine their effect on the interim final rule, and on DOE's decision to allow the interim final rule to become final on June 18, 1993, without change.

II. DOE Response to Public Comments

One comment states that the interim final rule should specify how decommissioning and waste management costs are to be shown in offers for nuclear hot cell services.

DOE Response: DOE agrees that in order to make adjustments to offers to make evaluations for selection for award of contracts for nuclear hot cell services in a way which affords United States and foreign companies an equal competition, it will be necessary to obtain cost data of some sort. However, in many cases (e.g., United States companies are not competing with foreign companies or an unsubsidized foreign firm is subject to regulations comparable to those applicable to United States companies), it will not be necessary to make evaluations on an adjusted basis and the cost data are not needed. Further, the nature of the data needed will vary from case to case. In some cases, cost data may be obtained from a United States company to make a deduction adjustment for costs related to the decommissioning of nuclear facilities and storage and disposal of nuclear waste. In other cases, cost data may be obtained from a foreign firm to make an additive adjustment to the offer of a foreign company. The preparation of cost data can be burdensome and costly for the offeror. Therefore, solicitations should not require the submission of certain cost data which may well never be used or needed.

DEAR 925.7003 requires the selection official in evaluating competitive offers for selection to make the specified adjustment under the stated circumstances. In most cases, the amount of the adjustment will be determined based on cost data that is requested after proposals are received. This will avoid placing unnecessary burden on many of the offerors.

We know of no instance in which the DOE has acquired nuclear hot cell services using the sealed bid method. However, in the unlikely event that this should occur, the invitation for bids would reserve for the Government the right to require the submission of cost data after the bid opening. This data would be used for determining the reasonableness of costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste.

The comment offered does not persuade us that it is desirable to universally require offers to include a detailed cost breakdown of the specified cost elements. Rather, the interim final rule provides flexibility in determining the timing for obtaining the cost data and selectivity in obtaining the data only from those from whom it is needed.

One comment states that the interim rule is inconsistent with the statute, at section 2305(a)(2), in that the requirements of the rule do not flow down beyond first-tier subcontracts.

DOE Response: Paragraph (a)(1) of section 2305 provides that the cost requirements described below are to be applied by the Secretary in the award of prime contracts for nuclear hot cell services. In particular, costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste are to be excluded from consideration, if (1) one or more of the parties bidding to perform such services is a United States company subject to such costs and (2) one or more of the parties is a foreign company that is not subject to comparable costs. In addition, paragraph (a)(2) of section 2305 provides that firms to whom prime contracts are awarded are subject to the same cost requirements when evaluating the bids of potential subcontractors. Thus, when addressing the issue of the applicability of these requirements to subcontractors, the Congress, rather than employing more inclusive language, specifically provided that the cost requirements were to extend to the evaluation of first tier subcontractors. In addition, nothing in the legislative history of this provision indicates that broader applicability was intended. Therefore, while it is clear that Department of Energy (DOE) prime contractors are subject to the cost requirements described above, it does not appear that the Congress intended that these requirements also apply to lower tier subcontractors.

However, even if one were to assume that the DOE has the discretion to extend these requirements to lower tier subcontractors, there are sound policy reasons not to pursue this course of action. Section 2305 imposes a significant and unique burden on the cost evaluations that DOE and prime contractors must conduct when undertaking procurement of nuclear hot cell services. In addition to normal cost evaluation considerations, evaluators would be required to determine whether costs related to complying with applicable laws governing the decommissioning of nuclear facilities or the storage and disposal of nuclear waste are comparable for competing United States and foreign companies. In the event that it appears that they are not comparable, evaluators would be required either to subtract such costs from the offer of the United States firm or add additional costs to the offer submitted by the foreign firm.

The analysis required to assess whether, or the degree to which, the requirements of United States law and regulation related to decommissioning and storage and disposal of nuclear waste are similar to those of foreign countries, and thus might result in comparable costs, will be a complex and time-consuming undertaking. In addition, it is unlikely that the private companies that would be required to perform this analysis would, in the normal course of business, have established the expertise necessary to evaluate the nature and potential effect

of the relevant foreign laws and regulations and to determine the costs associated with complying with such laws. Requiring contractors at lower tiers to undertake such an analysis is likely to increase further both the cost of, and time required to conduct, these procurements. The costs associated with complying with these requirements also may limit the number of firms that would compete in these procurements and particularly may discourage smaller firms with more limited resources. We believe the potential costs, delay, and effect on competition associated with complying with these cost requirements militate against extending these requirements to lower tier subcontractors.

III. Effect of Public Comments on the Final Rule

After careful assessment and full consideration of the comments received concerning the interim final rule, DOE determines that no changes to the interim final rule are needed, and that the interim final rule became final on June 18, 1993, as contemplated in the interim final rule, and that republication of the interim final rule in final form is unnecessary.

Issued in Washington, DC on August 4, 1993.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 93-19156 Filed 8-10-93; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket No. 93-A]

RIN 2132-AA49

Temporary Local Match Waiver for Sections 9 and 18

AGENCY: Federal Transit Administration, DOT.

ACTION: Interim final rule.

SUMMARY: The Dire Emergency Supplemental Appropriations Act, 1992, and the Department of Transportation and Related Agencies Appropriations Act, 1993 (the Acts), authorize the Federal Transit Administration (FTA) to increase temporarily the proportion of Federal funding available to a section 9 or 18 capital assistance project if a recipient cannot pay, in whole or in part, the local share required under the Federal Transit Act, as amended (FT Act). This interim final rule establishes the requirements and procedures for those recipients applying for such an increased Federal share.

DATES: *Effective date:* September 10, 1993.

Comment due date: October 12, 1993.

ADDRESSES: Comments should be sent, in duplicate, to Docket No. 93-A, Docket Clerk, room 9316, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street, SW., Washington DC 20590. Those wishing the agency to acknowledge receipt of their comments should include a stamped, self-addressed postcard with their comments. All comments will be available for review by the public at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Douglas Kerr, 400 7th Street SW., room 9315, Washington DC 20590, (202) 366-2440 (telephone), (202) 366-7951 (fax). For legal issues: Nancy M. Zaczek, Office of the Chief Counsel, Federal Transit Administration, same address, room 9316, (202) 366-4011 (telephone), (202) 366-3809 (fax).

SUPPLEMENTARY INFORMATION:

I. Background of Temporary Waiver

Under section 9 of the FT Act, funds are made available to urbanized areas on the basis of a statutory formula. Under section 18 of the FT Act, funds are made available to the States for rural mass transportation purposes. Both sections 9 and 18 fund capital and operating costs. Under the capital portion of the programs, the FTA and a recipient of its funds share the costs of financing local mass transit capital projects. Specifically, FTA pays eighty percent of a capital project's eligible costs (the Federal share), and a recipient pays the remaining twenty percent (the local match or local share). To ensure the sufficiency of local financing for a project, section 9 requires a recipient to certify that it can pay its share of the project's cost. A similar requirement applies to section 18 grants.

Recently, however, an alternative approach to these Federal and local share requirements has become available. The Dire Emergency Supplemental Appropriations Act, 1992, and the Department of Transportation Appropriations Act, 1993 (the Acts), permit FTA to waive, in fiscal years 1992 and 1993, part or all of the local share required for capital projects under sections 9 and 18 of the FT Act, thereby increasing the proportion of Federal money used to pay for a project. In short, in fiscal years 1992 and 1993 a recipient may pay for a project's cost using only Federal money. A July 10, 1992, **Federal Register** document described the section 9 waiver program.

The Acts do not specifically provide how the FTA should administer this new program. Rather, they require the agency to institute the program "* * * in the same manner as specified in section 1054 of Public Law 102-240," which is the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 1054 of the ISTEA was designed specifically for the programs of the Federal Highway Administration (FHWA), not those of the FTA.

FTA Deferred Local Share Policy

In addition to the procedures described in this interim final rule, the FTA also permits a recipient of its funds to defer its local share until later in a project, thereby "front loading" the Federal share. Unlike the temporary waiver of local share procedure described in this interim final rule, the deferred local share policy remains in effect after September 30, 1993. See the FTA's July 10, 1992, **Federal Register** document in this regard at 57 FR 30880.

II. Section 1054 of ISTEA

Under section 1054, FHWA is authorized to waive the local share required for a qualifying highway construction project for which funds were obligated after September 30, 1991, and before October 1, 1993, if the Governor certifies that the State cannot finance its local share of the project. Once FHWA waives the local share requirement, the State may use Federal funds to finance one hundred percent of the project's costs. The waiver, however, is temporary: The amount waived must be repaid before March 31, 1994. If a State fails to repay the funds by that date, FHWA will reduce the State's apportionment accordingly; fifty percent of the amount waived would be deducted in fiscal year 1995, and fifty percent in fiscal year 1996.

Section 1054 further requires that FHWA issue regulations establishing the requirements and procedures for those States seeking a waiver. In response, FHWA published a Final Rule in this regard in the **Federal Register** on February 2, 1993, at 58 FR 6713.

FHWA's Final Rule

FHWA's final rule applies to a qualifying highway project, which FHWA defines as a "* * * project approved after December 18, 1991 or a project for which the United States becomes obligated to pay after

December 18, 1991, under 23 U.S.C. 117 or 23 U.S.C. 133(e) for which the Governor has submitted a certification described in § 140.307."

FHWA provides financial assistance only to States, and thus only States may apply for a temporary waiver. To apply, a Governor must certify that the State cannot afford to finance its local share.

The rule describes how FHWA determines the amount of funds the agency will waive under the program for qualified highway projects. Under FHWA's programs, FHWA essentially obligates all of its funds each year to the States, which then make expenditures over time. Because of this, FHWA determined that the amount of costs incurred by the State and reimbursed by FHWA would be waived, not the total amount obligated each year. Thus, the FHWA waiver applies only to funds obligated and reimbursed by the FHWA before October 1, 1993.

Regarding repayment of the local share waived, the rule provides two options to a State: To repay the amount waived before March 31, 1994, or not to repay but have its apportionment reduced in fiscal years 1995 and 1996. If the State chooses the latter alternative, FHWA will deduct from the State's fiscal year 1995 apportionment fifty percent of the amount waived and deduct the remaining fifty percent in fiscal year 1996.

III. FTA's Implementation of Section 1054

FTA's interim final rule on this program differs somewhat from FHWA's because of the different way in which their grant programs are administered.

First, under FHWA's program States receive Federal funding and essentially administer the highway programs, while under the FTA's program both States and urbanized areas receive Federal funding. A State receives Federal funding under section 18, and sometimes under section 9, while recipients in urbanized areas receive section 9 funding directly from FTA. Thus, while section 1054 requires a Governor to certify that the State cannot finance its local share, under this interim final rule a Governor will so certify when the State seeks a waiver, but a recipient in an urbanized area will make the certification as necessary.

Second, FHWA generally funds highway construction costs. In contrast, the FTA not only funds construction costs but also funds the purchase of other capital items such as buses and rail cars. We therefore interpret the phrase "construction costs" consistent with its longstanding meaning under our section 9 and 18 programs, where it applies to all eligible capital costs, including planning projects. (On the other hand, operating assistance projects clearly are not subject to this interim final rule.) In this interim final rule we thus use "capital projects" or "capital assistance projects" instead of "construction projects," and these terms apply to any project eligible for assistance at the eighty percent Federal share level under the section 9 or 18 programs.

Third, under section 1054 FHWA may waive the local share only for "qualifying projects". We do not use that phrase because the Acts specify that FTA may waive the local share for section 9 and 18 capital projects. In short, any capital assistance project under section 9 or 18 is eligible for a waiver under this interim final rule.

Fourth, section 1054 requires a State to repay the amount of the Federal share waived or the FHWA will reduce that State's 1995 and 1996 apportionment accordingly. In contrast, the FTA funds both States and urbanized areas. Thus, if a State fails to repay the amount waived, we will reduce that State's apportionment; if a recipient in an urbanized area fails to repay the amount waived, we will reduce that urbanized area's apportionment accordingly in fiscal years 1995 and 1996.

Finally, we noted above how the FHWA will waive only costs obligated and reimbursed before October 1, 1993. We have adopted this approach except for a few previously approved waivers. Consistent with the FHWA rule, for those who apply for and receive FTA approval of a waiver after March 31, 1993, we will waive the local match only for those funds that are obligated and reimbursed before October 1, 1993. We follow FHWA's lead in this regard because the Acts provide that we should waive the local match for section 9 and 18 capital programs "* * * in the same manner as specified in section 1054 * * *", FHWA's specific statutory authority.

Nonetheless, because we had approved six waivers before or during the period the FHWA rule became final, we believe that we should provide an exception for those six entities because the FTA's **Federal Register** document on this procedure did not address the issue of when funds had to be expended. Accordingly, for those recipients who applied for and received FTA approval of a waiver before March 31, 1993, the end of the quarter in which FHWA published its final rule, we will waive the local match for funds obligated before October 1, 1993, and drawn down by the recipient before March 31, 1994.

Funds Transferred From Title 23 to the Transit Program

One of ISTEA's key provisions permits certain title 23 highway funds to be used for transit projects, or section 9 funds to be used for highway projects. In either case, the funds take on the characteristics of the program they are transferred to. If, after title 23 funds are transferred to the transit program, a recipient is granted a temporary waiver of local share requirements by the FTA, under section 1054 and this interim final rule the recipient must repay those waived funds before March 31, 1994. If a recipient fails to repay that amount by March 31, 1994, however, repayment will not come from the transit program. Rather, FTA and FHWA have agreed that, in this situation, FHWA will reduce the highway apportionment from which the funds originated. Similarly, if section 9 funds are transferred to the highway program, and the Federal share is advanced in accordance with section 1054, and the recipient fails to repay the funds, repayment would come from the original transit apportionment, not from the highway program to which the transit funds were transferred.

IV. Overview of the Interim Final Rule

This interim final rule applies to recipients of section 9 or 18 capital assistance funds, including funds transferred from the Surface Transportation Program (STP) or Congestion Mitigation and Air Quality (CMAQ) Program.

In general, this interim final rule allows a recipient to ask FTA temporarily to fund part or all of the local share of a project. FTA will grant such a request if the recipient certifies that it cannot finance its share of a project cost and if FTA obligates funds for the project after September 30, 1991, and before October 1, 1993, and such funds are drawn down before October 1, 1993 (except in certain cases). Since the recipient must certify that it cannot finance its share of a project's costs, we believe that in practice this interim final rule would not apply to grant applications already approved by the FTA because under FTA application procedures a recipient must certify that it has sufficient resources to finance the local share. Nonetheless, the FTA will consider any such requests if the recipient can demonstrate a change in conditions justifying a certification that it now cannot finance the local share amounts still to be paid.

A section 9 or 18 recipient applies for a waiver as part of its Federal grant application. In its request, the recipient must specify the amount of Federal

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dollars it is requesting. It must then calculate the percent of Federal dollars it will use to pay for the project. Lastly, it must specify the amount of Federal dollars that the recipient could ask for under section 9 or 18 of the FT Act.

In addition, a section 9 recipient must show that the Transportation Improvement Program for its area includes the project, and submit a written endorsement from the Metropolitan Planning Organization approving the project and the request for a waiver.

A recipient must repay the amount waived before March 31, 1994. If a recipient fails to repay that amount, FTA will reduce the apportionment for the recipient's urbanized area for fiscal years 1995 and 1996. FTA will deduct fifty percent of the amount waived in 1995 and fifty percent in 1996.

A recipient of STP or CMAQ funds transferred from title 23 must also repay the amount waived before March 31, 1994. If, however, a recipient does not repay the funds, FHWA will reduce the originating highway apportionments for fiscal years 1995 and 1996. In 1995, FHWA will deduct fifty percent of the amount waived, and in 1996 FHWA will deduct the remaining fifty percent.

V. Section-by-Section Analysis

Subpart A—General Provisions

A. Purpose. (§ 671.1)

This interim final rule helps a section 9 or 18 recipient temporarily pay for transit projects when it cannot finance the local match required under the FT Act. Three statutes—the ISTEA, the Dire Emergency Supplemental Appropriations Act, 1992, and the Department of Transportation's (DOT) Fiscal Year 1993 Appropriations Act—authorize FTA to waive the local match required under certain transit programs. This interim final rule, therefore, establishes the requirements and procedures for seeking a waiver under those statutes.

B. Scope. (§ 671.3)

This interim final rule applies to a recipient of section 9 or 18 capital funds that is unable to finance all or part of the local share required under the FT Act. Operating assistance projects are not covered by this interim final rule.

The interim final rule applies to funds obligated by FTA after September 30, 1991, but before October 1, 1993. We use these dates because section 1054 of ISTEA so provides, notwithstanding that Congress only authorized the FTA in June 1992 to waive the section 9 local share, and in October 1992 to waive the section 18 local match, six months and a year, respectively, after section 1054 was enacted. An earlier Federal Register document published on July 10, 1992, at 57 FR 30880, described the section 9 waiver program.

Although the interim final rule applies retroactively to October 1, 1991, in practice it is unlikely that a recipient who has already applied to FTA for a grant and assured us of its local funding would now be able to certify that it has insufficient funds to finance its local share. Nonetheless, we will consider any such requests on a case-by-case basis. (Such a recipient may wish to defer its local share under a policy published by FTA in the Federal Register on July 10, 1992, at 57 FR 30880.) Under this interim final rule the recipient must certify that it cannot finance all or part of its local share.

Finally, the waiver of local share applies to funds obligated by the FTA before October 1, 1993, and drawn down before March 31, 1994, for those recipients who applied and received approval from the FTA before March 31, 1993. For all other applicants, the waiver would apply only to funds obligated and drawn down before October 1, 1993.

C. Definitions. (§ 671.5)

1. *Administrator.* Administrator means the Administrator of the Federal Transit Administration.

2. *Capital grant.* Capital grant means a grant authorized at the eighty percent Federal share level by section 9 or 18 of the FT Act. This interim final rule applies only to capital grants, including planning grants.

3. *Federal share.* Since this program lasts for only a short period of time, we ask that the recipient advise the FTA how much the recipient would receive under section 9 or 18 of the FT Act as if this part did not apply. The Federal share therefore means the usual Federal share under the grant.

4. *Federal participating ratio.* This means the percent of the eligible costs to be funded by FTA as requested by the recipient. A recipient asking for an increased Federal share would be asking for a grant to fund more than eighty percent of the eligible costs of a project.

5. *Fiscal year.* Fiscal year means the Federal fiscal year, which begins on October 1 and ends on September 30.

6. *Increased Federal share.* The amount of Federal dollars requested above the amount the recipient would receive under the FT Act. The increased Federal share equals the amount waived.

7. *Local match or local share.* The local match or local share refers to the requirement that the recipient finance a portion of the project.

8. *Obligation.* Obligation means a formal commitment of the Federal government to pay the Federal share, and the increased Federal share, of the project's eligible costs. The Federal government obligates funds when FTA approves the project.

9. *Project.* Project means a capital project or projects as defined in section 9 or 18 of the FT Act. A recipient may wish to apply for a waiver for more than one project. A recipient may apply for a waiver for multiple projects so long as the recipient meets the requirements of this part.

10. *Recipient.* Since this interim final rule applies to both section 9 or 18 recipients, a recipient means a State or an urbanized area recipient of such funds from the FTA.

Subpart B—Requirements and Procedures for Recipients

This subpart establishes the conditions under which recipients may participate in this program and describes the procedures that the recipients must follow to apply for a waiver.

A. Requirement for an Increased Federal Share. (§ 671.21)

This section specifies that a recipient, to qualify for a local share waiver, must certify that it cannot finance all or part of the local share required under section 9 or 18 of the FT Act.

B. Procedures for Applying for an Increased Federal Share. (§ 671.23)

This section specifies the procedures that a recipient must follow to apply for a waiver. The first subsection of this section applies to both recipients of sections 9 and 18 funding. A section 9 or 18 recipient must apply to the appropriate FTA Regional Office for an increased Federal share. In its application the recipient must specify the percentage of the Federal participation requested, the dollar amount of the normal Federal share (i.e., eighty percent) as calculated under sections 9 and 18, and the amount of Federal dollars over the usual Federal share that it seeks. Lastly, a section 9 or 18 recipient must certify that it cannot finance all or part of its share.

A section 9 recipient must also show that the Metropolitan Planning Organization endorses the project and the recipient's request for an increased Federal share. A section 9 recipient must further show that the Transportation Improvement Program contains the project

C. Time Limit on Expending the Increased Federal Share. (§ 671.25)

In this section, we have established two categories of recipients, those who applied for and received approval from the FTA before March 31, 1993, to waive the local match and those who apply and receive approval after that date. As we explained above, the FTA had approved six requests for a waiver before or during the quarter in which FHWA published its final rule. Because the Acts direct us to parallel FHWA's program, this interim final rule adopts FHWA's interpretation of section 1054 concerning the obligation and expenditure of the increased Federal share. Nonetheless, we are creating an exception for the six projects already approved, which may continue to use the increased Federal share until March 31, 1994, when repayment is to be made.

Subpart C—Repayment of the Increased Federal Share

A. Repaying the Increased Federal Share. (§ 671.31)

This section specifies that a recipient must repay the increased Federal share before March 31, 1994. If a recipient fails to repay the amount of the increased Federal share by that date, FTA will reduce the recipient's apportionment accordingly, half in fiscal year 1995, and half in fiscal year 1996. In the case of funds transferred from STP or CMAQ apportionments, FHWA will reduce the originating highway apportionments pursuant to its rule if a recipient fails to repay the amount waived before March 31, 1994.

VI. Regulatory Process Matters

A. Executive Order 12291

The FTA has evaluated the costs and benefits to sections 9 and 18 grantees and we have determined that this interim final rule is not a major rule under Executive order 12291 because neither the costs nor the benefits exceed $100 million in any one year.

B. Departmental Significance

This interim final rule is a significant rule under the Department's guidelines because it involves a change in an important Departmental policy. Specifically, the Department usually requires that grantees be able to fund their share of a capital project. Under this interim final rule, we are temporarily changing that policy and we will waive the local share requirement for a short period of time.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, FTA certifies that this interim final rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

This interim final rule requires a recipient to do some minor additional calculations, which are submitted with its normal grant application. Furthermore, this interim final rule does require that a section 9 recipient receive the endorsement of its Metropolitan Planning Organization. This requirement is consistent with the FT Act. The MPO plays a crucial role not only in planning projects but also for the expenditure of Federal funding.

E. Executive Order 12612

The Department reviewed this interim final rule under Executive order 12612 and concluded that although this interim final rule does affect States, it does not warrant a Federalism assessment. In response to a statutory mandate, this interim final rule benefits certain States by allowing them to proceed with projects they would not, under normal conditions, be able to fund. This interim final rule does not involve any additional costs to the States and, in fact, benefits them.

F. National Environmental Policy Act

This interim final rule does not have environmental implications. It merely allows recipients to fund approved projects they otherwise would not be able to.

G. Energy Impact Implications

This interim final rule does not adversely affect the use of energy.

H. Interim Final Rule—Administrative Procedure Act

Consistent with section 553(b)(3)(B) of the Administrative Procedure Act, the Department is publishing an interim final rule in lieu of a Notice of Proposed Rulemaking. An NPRM is impractical, unnecessary, and contrary to the public interest for the following reasons. First, our authority to waive the local share for the section 9 and 18 capital grant programs lasts only until October 1, 1993. Hence, we have only a short period of time to implement this rulemaking. Second, this interim final rule does not regulate behavior; it merely announces the availability of a program and establishes the procedures for applying for that program. Finally, only six grantees have used the program to date and we thus do not anticipate receiving many comments concerning this rulemaking from our section 9 and 18 recipients.

List of Subjects in 49 CFR Part 671

Local match, Waiver, grant programs—transportation, Mass transportation.

For the reasons cited above, the agency amends title 49 by adding a new part 671, to read as follows:

PART 671—TEMPORARY LOCAL MATCH WAIVER FOR SECTION 9 AND 18

Subpart A—General Provisions

Sec.
671.1 Purpose.
671.3 Scope.
671.5 Definitions.

Subpart B—Requirements and Procedures for Recipients

671.21 Requirement for an increased Federal share.
671.23 Procedures for applying for an increased Federal share.
671.25 Time limit on expending the increased Federal share.

Subpart C—Repayment of the Increased Federal Share

671.31 Repaying the increased Federal share.

Authority: Pub. L. 102–302, 106 Stat. 252; Sec. 338, Pub. L. 102–388, 106 Stat. 1553; Sec. 1054, Pub. L. 102–240, 105 Stat. 2001–2002 23 U.S.C. 120 note.

Subpart A—General Provisions

§ 671.1 Purpose.

Under section 1054 of the Intermodal Surface Transportation Efficiency Act (ISTEA); the Dire Emergency Supplemental Appropriations Act, 1992; and the Department of Transportation and Related Agencies Appropriations Act, 1993, the Federal Transit Administration (FTA) may, for fiscal years 1992 and 1993, temporarily increase the proportion of Federal funding available for a capital project if a recipient certifies that it cannot finance all or a part of its share as required under section 9 or 18 of the Federal Transit Act, as amended (FT Act). This part establishes the requirements and procedures for those recipients who would like to apply for such an increased Federal share.

§ 671.3 Scope.

This part applies to a recipient that cannot finance part or all of its local share for capital grants under sections 9 and 18 of the FT Act obligated by FTA after September 30, 1991, and before October 1, 1993, and applies as well to

funds transferred from the highway program to section 9 or 18.

§ 671.5 Definitions.

As used in this part:

Administrator means the Administrator of the Federal Transit Administration.

Capital grant means a grant under section 9 or 18 of the FT Act other than a grant for operating assistance.

Federal Share means the dollar amount of Federal funding for a project as calculated under section 9 or 18 of the FT Act. For both section 9 and 18 capital grants, the Federal share is eighty percent of a project's eligible costs.

Federal participating ratio means the Federal percentage of the eligible costs of a project as requested by the recipient under this part.

Fiscal Year means the year beginning on October 1 and ending on September 30.

Increased Federal share means the dollar amount of Federal funds in excess of the Federal share. It equals the amount of the local share waived by the FTA.

Local Match or local share means the dollar amount of funding provided by a State or an urbanized area to finance its portion of the project's eligible costs as required by the FT Act.

Obligation means a formal commitment of the Federal Government to pay the Federal share, or an increased Federal share of a project's eligible costs. The Federal Government obligates funds when the FTA approves a project.

Project means a capital project or projects as defined in section 9 or 18 of the FT Act.

Recipient means a State or a transit system in an urbanized area that receives section 9 or 18 funds from the FT Act.

Subpart B—Requirements and Procedures for Recipients

§ 671.21 Requirement for an increased Federal share.

To request an increased Federal share under this part, a recipient must certify to the FTA that it cannot finance all or part of its portion of the project's eligible costs as required under section 9 or 18 of the FT Act.

§ 671.23 Procedures for applying for an increased Federal share.

(a) To receive an increased Federal share, a recipient of section 9 or 18 funds must submit its request with its grant application to the appropriate FTA Regional Office, and—

(1) specify the requested Federal participating ratio;

(2) specify the amount of the Federal share, and the increased Federal share; and

(3) certify that it cannot finance its portion of the project.

(b) In addition, a recipient of section 9 capital assistance must include in its application evidence that—

(1) a Transportation Improvement Program contains the project; and

(2) the Metropolitan Planning Organization (MPO) formally approves the project and the recipient's request for an increased Federal share.

§ 671.25 Time limit on drawing down the increased Federal share.

(a) Except as provided in paragraph (b) of this section, the waiver shall apply only to funds obligated by FTA and drawn down by the recipient before October 1, 1993.

(b) If FTA approved an application for such a waiver before March 31, 1993, the waiver applies to funds obligated before October 1, 1993, and drawn down by the recipient before March 31, 1994.

Subpart C—Repayment of the Increased Federal Share

§ 671.31 Repaying the increased Federal share.

(a) A recipient must repay the amount of the increased Federal share before March 31, 1994.

(b) If a recipient of section 9 capital assistance does not repay the increased Federal share before March 31, 1994, in fiscal year 1995 the Administrator will deduct fifty percent of the amount waived from the amount apportioned to the urbanized area in which the recipient operates under section 9 of the FT Act, and will deduct the remaining fifty percent in fiscal year 1996 from the same apportionment.

(c) If a recipient of section 18 capital assistance does not repay the increased Federal share before March 31, 1994, in fiscal year 1995 the Administrator will deduct fifty percent of the amount waived from the State's section 18 apportionment, and in fiscal year 1996 will deduct the remaining fifty percent from the State's apportionment.

(d) If funds are transferred from the Surface Transportation Program or CMAQ program to the section 9 or 18 program, and the recipient of those funds receives an increased Federal share, and does not repay those funds, the FHWA will deduct fifty percent of the amount waived from the originating apportionment under the appropriate highway program and in fiscal year 1996 will deduct the remaining amount.

Issued: August 2, 1993.

Grece Crunican,

Deputy Administrator.

[FR Doc. 93-19210 Filed 8-10-93; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 080693A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 10, 1993, until 12 noon, A.l.t., October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 62 is 3,937 metric tons (mt), determined in accordance with § 672.20(c)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 third quarterly allowance of pollock TAC in Statistical Area 62 will soon be reached. The Regional Director established a directed fishing allowance of 3,543 mt, and has set aside the remaining 394 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is

prohibited from 12 noon, A.l.t., August 10, 1993, until 12 noon, A.l.t., October 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19400 Filed 8–9–93; 2:12 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 921185–3021; I.D. 080993A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for aggregate species in the rock sole/"other flatfish" fishery category by operators of vessels using trawl gear in Bycatch Limitation Zone 2 (Zone 2) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the 1993 prohibited species bycatch allowance of *Chionoecetes bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2 of the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1993 prohibited species bycatch allowance of *C. bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2 of the BSAI, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established as 199,333 crabs by the final 1993 initial specifications (58 FR 8703, February 17, 1993).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(ii), that the prohibited species bycatch allowance of *C. bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2 has been reached. Therefore, NMFS is prohibiting directed fishing for aggregate species in the rock sole/"other flatfish" fishery category by operators of vessels using trawl gear in Zone 2 of the BSAI from 12 noon, A.l.t., August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19399 Filed 8–9–93; 2:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. AO–150–A6; FV92–945–2]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Hearing on Proposed Amendment of Marketing Agreement and Order No. 945, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 945, hereinafter referred to as the "order". The order regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order.

The proposed amendments would broaden the scope of the order to cover shipments of potatoes within the counties covered under the order as well as those outside those counties, change representation and quorum procedures of the Idaho-Eastern Oregon Potato Committee (committee), and provide the committee with authority to recommend container marking requirements and changes in committee size and composition. In addition, proposals are included regarding the committee's fiscal operations, and to add confidentiality and verification provisions. These proposals were submitted by the committee and the Fruit and Vegetable Division, Agricultural Marketing Service (AMS) to improve the administration, operation, and functioning of the order.

DATES: The hearing will begin at 9 a.m. in Idaho Falls, Idaho, on September 8, 1993, and if necessary, will continue the next day.

ADDRESSES: The hearing will be held at the Bonneville County Courthouse, 605 North Capital Avenue, room 101, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Dennis West, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or FAX (503) 326–7440; or Valerie L. Emmer or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, DC 20090–6456; telephone (202) 205–2829 for the former or (202) 720–2170 for the latter, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

The Regulatory Flexibility Act [5 U.S.C. 601 *et. seq.*] seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders [7 CFR part 900].

The committee submitted proposals to broaden the scope of the order to regulate intrastate shipments of potatoes in the same manner as interstate shipments and to add authority for it to recommend container marking requirements. In addition, committee proposals are included to: (1) Provide seed producers with representation on the committee and to change committee quorum procedures; (2) add authority for the committee to recommend to the Secretary changes in committee size and composition; (3) remove an outdated assessment limitation of $1 per carload; (4) allow the committee to impose late payment or interest fees, or both, on late assessment payments, accept advance assessment payments from handlers, and borrow monies in emergencies for program administration; and (5) provide confidentiality requirements for reports submitted to the committee.

The committee works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

The Fruit and Vegetable Division of the Agricultural Marketing Service (AMS) proposed adding verification provisions to the order and authority to make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate

modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the General Counsel assigned to represent the committee in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

1. The authority citation for 7 CFR part 945 continues to read as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OR

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

Proposals submitted by the Idaho-Eastern Oregon Potato Committee:

Proposal No. 1

Revise § 945.9 to read as follows:

§ 945.9 Ship or handle.

Ship is synonymous with *handle* and means to pack, sell, transport or in any way to place potatoes grown in the production area, or cause such potatoes to be placed in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided,* That the definition of *ship* or *handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

Proposal No. 2

Section 945.20 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall be producers of potatoes for the fresh market for at least three of the last five years, one shall be a producer predominately of potatoes for seed, and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

* * * * *

(d) At least every six years, the number of producer and handler members and alternates on the committee or the composition of the committee between producers and handlers may be changed as provided in § 945.23.

Proposal No. 3

Revise § 945.22 to read as follows:

§ 945.22 Districts.

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided,* That these districts may be changed as provided in § 945.23.

(a) *District No. 1:* The counties of Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

(b) *District No. 2:* The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3:* Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

Proposal No. 4

Revise § 945.23 to read as follows:

§ 945.23 Redistricting and reapportionment.

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between grower and handler members, including their alternates. In recommending any such changes, the committee shall give consideration to:

(1) Shifts in potato acreage within districts and within the production area during recent years;

(2) The importance of new potato production in its relation to existing districts;

(3) The equitable relationship between committee membership and districts;

(4) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation:

(1) Three producer members, including one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;

(2) one producer member and one handler member, with their respective alternates, from District No. 2; and

(3) one producer member and one handler member, with their respective alternates, from District No. 3; or such other representation as recommended by the committee and approved by the Secretary.

Proposal No. 5

In § 945.30, revise paragraph (a) to read as follows:

§ 945.30 Procedure.

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action. At any assembled meeting, all votes shall be cast in person.

* * * * *

Proposal No. 6

In § 945.42, revise paragraphs (b), and add paragraphs (d), and (e) to read as follows:

§ 945.42 Assessments.

* * * * *

(b) Assessments shall be levied upon handlers at a rate per hundredweight or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

(c) * * *

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against the handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short time basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

Proposal No. 7

In § 945.52, revise paragraph (a)(3) to read as follows:

§ 945.52 Issuance of regulations.

(a) * * *

(1) * * *

(2) * * *

(3) Fix the size, capacity, weight, dimensions, pack or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

* * * * *

The Fruit and Vegetable Division, Agricultural Marketing Service, submitted Proposal No. 9 and paragraphs (c) and (d) of Proposal No. 8, and the committee submitted paragraph (b) as follows:

Proposal No. 8

Amend § 945.80 by designating the existing paragraph as paragraph (a) and adding new paragraphs (b) through (d) to read as follows:

§ 945.80 Reports.

(a) * * *

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least 2 succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

Proposal No. 9

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: August 3, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93-19334 Filed 8-10-93; 8:45 am]

BILLING CODE 3410-02-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of comment period.

SUMMARY: On July 15, 1993, the NCUA issued a proposed interpretive ruling and policy statement (IRPS) updating NCUA's field of membership and chartering policy. The proposed IRPS was published in the **Federal Register** on July 28, 1993 (see 58 FR 40470). The NCUA Board requested that comments be received by October 26, 1993. Due to a request made, the Board has decided to extend the comment period for an additional 3 months, to January 26, 1994.

DATES: The comment period is being extended from October 26, 1993, to January 26, 1994. Comments must be postmarked by January 26, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board. Comments mailed prior to September 1, 1993, are to be sent to 1776 G Street, NW., Washington, DC 20456; comments mailed after that date are to be sent to 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, Region III (Atlanta) 7000 Central Parkway, suite 1600, Atlanta, GA 30328, telephone (404) 396-4042, or Mike McKenna, Staff Attorney, Office of General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone (202) 682-9630.

Authority: The authority for this action is the general rulemaking authority of the NCUA Board, 12 U.S.C. 1766(a).

By the National Credit Union Administration Board on August 4, 1993.

Becky Baker,

Secretary of the Board.

[FR Doc. 93-19240 Filed 8-10-93; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-93-13]

Petition for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received October 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27334, 800 Independence Avenue, SW.,

Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on August 3, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27334.

Petitioner: Mr. Paul H. Poberezny.

Regulations Affected: 14 CFR 91.409 (a) and (b).

Description of Rulechange Sought: To extend the annual inspection interval to two years or 200 hours, whichever comes first, for aircraft that are not operated for carrying passengers for hire or for giving flight instructions for hire.

Petitioner's Reason for the Request: The petitioner feels that the aviation industry has made great progress in the reliability of general aviation powerplants, aircraft design and reliability, and to tear an airplane apart every 365 days (most of which have flown less than 100 hours) seems to be a waste. The proposed rule change would help stimulate the general aviation's regrowth by relieving the undue burden of an annual inspection.

[FR Doc. 93–19235 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–NM–65–AD]

Airworthiness Directives; British Aerospace (Commercial Aircraft), Limited, Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model ATP airplanes, that currently requires de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). This action would require installation of a terminating modification and revision of the AFM to include an associated temporary revision. This proposal is prompted by the availability of an improved contactor assembly for the TRU power supply changeover system. The actions specified by the proposed AD are intended to prevent the loss of all primary electric power sources during automatic switching to alternative three-phase power for the TRU's.

DATES: Comments must be received by October 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., Librarian for Service Bulletins, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 12, 1991, the FAA issued AD 92–01–01, Amendment 39–8124 (57 FR 784, January 9, 1992), to require de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). That action was prompted by an incident in which both AC generators failed at the same time. The requirements of that AD are intended to prevent loss of all primary electric power sources.

Since the issuance of that AD, the manufacturer has developed an improved contactor assembly for the TRU power supply changeover system. Replacing the currently installed contactor assembly with this improved assembly will prevent internal failures of the contactor assembly. Internal failures of the contactor assembly could result in the loss of all primary electric power sources during automatic switching to alternative three-phase power for the TRU's.

British Aerospace has issued Service Bulletin ATP–24–49–10247A, Revision 1, dated October 23, 1992, that describes procedures for accomplishing Modification 10247A. This modification entails replacing the currently installed Cutler Hammer contactor type SM15–CK–A6 or SM15–CK–A8 with Leach contactor type HA1F. The Civil Aviation

Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–01–01 to require replacing the currently installed contactor in the TRU power supply changeover system with an improved contactor. This action would also require revising the AFM to include an associated temporary revision. Once the improved contactor assembly has been installed and the AFM has been revised to include the associated temporary revision, the automatic alternative three-phase power supply system for each TRU is re-activated. The replacement would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 9 British Aerospace Model ATP airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 67 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $3,030 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $60,435, or $6,715 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8124 (57 FR 784, January 9, 1992), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 93–NM–65–AD. Supersedes AD 92–01–01, Amendment 39–8124.

Applicability: Model ATP airplanes; serial numbers 2001 through 2053 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of all primary electric power sources, accomplish the following:

(a) Within 30 hours time-in-service after January 24, 1992, (the effective date of AD 92–01–01, Amendment 39–8124), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Trip and lock out the alternative three-phase circuit breaker to each transformer rectifier unit (TRU), and perform an operational test to ensure that the auto-changeover system is inoperative, in accordance with British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991.

(2) Revise the Emergency Procedures and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991.

(3) Amend the AFM, Section 0.25.0, in accordance with paragraph 2.(6) of British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991.

(b) Within 6 months after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the currently-installed Cutler Hammer contactor type SM15–CK-A6 or SM15–CK-A8 with Leach contactor type HA1F, in accordance with British Aerospace Service Bulletin ATP–24–49–10247A, Revision 1, dated October 23, 1992.

(2) Revise the Emergency Procedures and Abnormal Procedures Sections of the AFM (Document No. ATP–004) to include Temporary Revision No. 26 (T/26)., Issue 1, dated May 22, 1992.

(c) Accomplishment of the contactor replacement and the AFM revision required by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. The AFM revisions required by paragraphs (a)(2) and (a)(3) of this AD are revised as necessary by incorporation of AFM Temporary Revision No. 26 (T/26)., Issue 1, dated May 22, 1992, and the automatic alternative three-phase power supply to each TRU is re-activated.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19218 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–245–AD]

Airworthiness Directives; Corporate Jets Limited (Formerly British Aerospace) Model DH/BH/HS/BAe 125 Series Airplanes (Excluding Model BAe 125–1000A Series Airplanes), Equipped With Garrett Model TFE 731–3 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Corporate Jets Limited Model DH/BH/HS/BAe 125 series airplanes, that would have required modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. That proposal was prompted by a report of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. This action revises the proposed rule by revising the modification requirements and extending the compliance time for the modification. The actions specified by this proposed AD are intended to prevent overheating of the battery contactors and emergency contactors, and a potential fire in the rear equipment bay.

DATES: Comments must be received by September 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–245–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Corporate Jets Limited Model DH/BH/HS/BAe 125 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 2, 1993 (58 FR 12002). That NPRM, which referenced Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C, & D, dated October 1, 1992, would have required modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. That NPRM was prompted by a report of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. That condition, if not corrected, could result in overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay.

Since issuance of that NPRM, Corporate Jets Limited has issued Revision 1 of Service Bulletin SB.24–293–3501A,B,C,D, & E, dated February 4, 1993, that describes detail changes in the parts and procedures for installation of new insulating components, hardware, and electrical component markings for Model HS 125–700A series airplanes, and all earlier Model 125 series airplanes retrofitted with TFE 731–3 engines. These detail changes will provide insulation of the battery and emergency contactors from the electrical panel on which they are mounted. (This revised version of the service bulletin totally supersedes the original version issued on October 1, 1992.)

Since issuance of that NRPM, Corporate Jets Limited has also issued Revision 2 of Service Bulletin SB.24–293–3501A,B,C,D,E,F & G, dated March 31, 1993, which is similar to Revision 1, described above, but also describes procedures for installation of new electrical panel flexible covers for Model BAe 125–800A series airplanes.

The Civil Aviation Authority classified these revised service bulletins as mandatory.

The FAA has determined that, in order to adequately address the unsafe condition identified as overheating of the battery contactors and emergency contactors, and a potential fire in the rear equipment bay, the proposed rule must be revised to require the modifications as described in the revised service bulletins. The FAA also finds that the compliance time for the modification should be extended from 4 months to 6 months. The extended compliance time will ensure that operators of certain Model 125 series airplanes that have incorporated the modification described in the original issue of the service bulletin will be able to obtain new modification kits and accomplish additional work described in the revised service bulletin. The proposed rule is also revised to cite Revisions 1 and 2 of the service bulletin, as the appropriate sources of service information.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

One commenter to the NPRM requests that the words, "or subsequent revision," be included wherever the service bulletin is referenced throughout the proposed AD. The FAA does not concur. Where a service bulletin is referenced in an AD (or incorporated by reference), the use of the term "or later FAA-approved revisions," violates Federal Register regulations and is not acceptable, since revisions often include new repairs or inspection requirements. This practice may add new requirements to the AD, or may be relaxatory in nature, and, thus, constitutes "rulemaking" action without prior notice and opportunity for public comment. However, affected operators

may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (c) of the supplemental NPRM.

The applicability statement of the proposed rule is revised to specify those airplanes listed in Revision 2 of the service bulletin. (The effectivity listing of this revised service bulletin is identical to the original issue, which was cited in the applicability statement of the NPRM.)

The FAA estimates that 350 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $325,500, or $930 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

There would be no additional costs incurred as a result of the revisions to this proposed AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Corporate Jets Limited (Formerly British Aerospace): Docket 92–NM–245–AD.

Applicability: Model DH/BH/HS/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; equipped with Garrett Model TFE 731–3 series engines; as listed in Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C,D,E,F, & G, Revision 2, dated March 31, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay, accomplish the following:

(a) For Model BAe 125–800A series airplanes: Within 6 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501, Parts A, B, F, & G, as appropriate; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C,D,E,F, & G, Revision 2, dated March 31, 1993.

(b) For all other airplanes: Within 6 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501, Parts C, D, & E, as appropriate; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C,D, & E, Revision 1, dated February 4, 1993; or SB.24–293–3501A,B,C,D,E,F, & G, Revision 2, dated March 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19219 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–CE–17–AD]

Airworthiness Directives: Piper Aircraft Corporation PA34 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA34 series airplanes. The proposed action would require repetitively replacing the bolt that connects the upper drag link to the nose gear trunnion. Several incidents where the nose landing gear collapsed on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent the nose landing gear from collapsing because of failure of this bolt, which could lead to airplane damage.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–17–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–17–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Recently, the nose landing gear collapsed on a Piper Model PA34–200 airplane, causing substantial damage to the airplane. Investigation of this incident revealed that the bolt connecting the upper drag link to the nose gear trunnion failed because of fatigue.

FAA service difficulty and accident/incident databases show other references to this same condition, in particular 10 instances of sheared bolts and 4 instances of nose landing gear collapse because of bolt fatigue. The service manual for this airplane specifies inspecting this bolt every 100 hours time-in-service (TIS), but does not specify removing the bolt for inspection. Nonremoval of this bolt during inspection could result in not replacing sheared or fatigued bolts until they have failed. Fatigued or sheared bolts, if not replaced, could lead to nose landing gear collapse and subsequent airplane damage.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) since these bolts will fatigue or shear regardless of whether they are inspected at 100-hour TIS intervals, these bolts should be periodically replaced; and (2) AD action should be taken to prevent the nose landing gear from collapsing because of failure of this bolt, which could lead to airplane damage.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA34 series airplanes of the same type design, the proposed AD would require repetitively replacing the bolt that connects the upper drag link to the nose gear trunnion.

The FAA estimates that 1,893 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $3 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $109,794.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 93–CE–17–AD.

Applicability: PA34 Series airplanes (all models and serial numbers), certificated in any category.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 400 hours TIS prior to the effective date of this AD, and thereafter at intervals not to exceed 500 hours TIS.

To prevent the nose landing gear from collapsing because of failure of the bolt that connects the upper drag link to the nose gear trunnion, which could lead to airplane damage, accomplish the following:

(a) Replace the bolt and stack up that connects the upper drag link to the nose gear trunnion with new parts of the following in accordance with Figure 1 of this AD:

(1) Piper part number (P/N) 400 274 (AN7–35) bolt.

(2) Piper P/N 407 581 (AN960–716L) washer, as applicable.

(3) Piper P/N 407 568 (AN960–716) washer, as applicable.

(4) Piper P/N 404 396 (AN320–7) nut; and

(5) Piper P/N 424 065 cotter pin.

BILLING CODE 4910–13–U

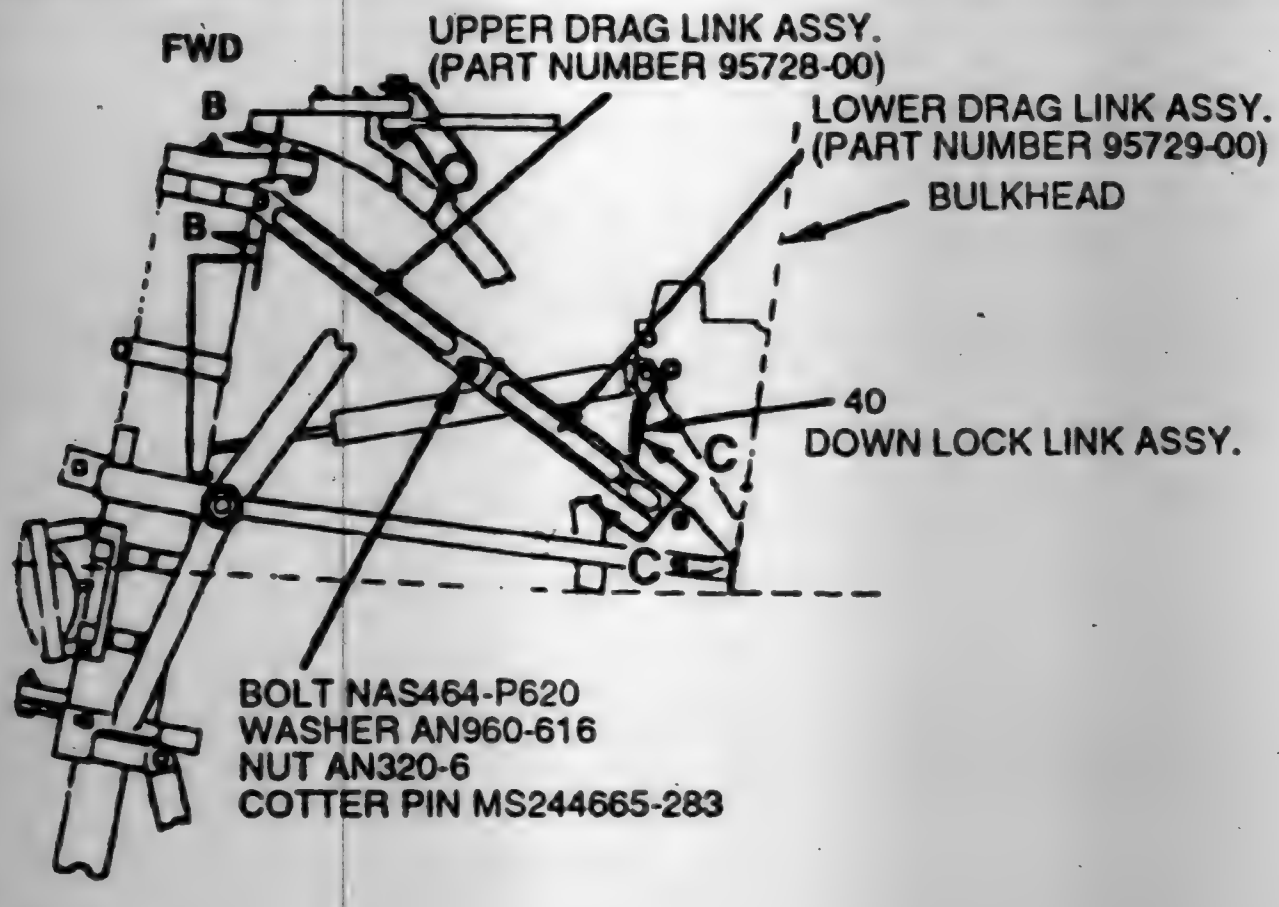

Figure 1

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(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 5, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-19220 Filed 8-10-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92-CE-60-AD]

Airworthiness Directives: Rockwell International/Collins Air Transport Division DME-700 Distance Measuring Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD), which would have required modifying Rockwell International/Collins Air Transport Division (Collins) DME-700 distance measuring equipment (DME) installed on certain aircraft. Several reports of the affected DME units failing to process and update distance outputs, and reports of these units establishing a continuous restart mode upon power application prompted the proposed action. Based on comments received on this previous proposal and examination of all available information, the Federal Aviation Administration (FAA) has determined that the document should be revised to propose an additional modification to these DME units. The proposed actions are intended to prevent improper operation of this equipment, which could result in navigational errors.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-60-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE.; Cedar Rapids, Iowa 52498. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4134; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-60-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-60-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Collins DME-700 distance measurement equipment installed on aircraft was published in the Federal Register on January 25, 1993 (58 FR 5949). The action proposed to require modifying these DME units to ensure that they are functioning properly. The proposed modifications would be accomplished in accordance with the following Collins service bulletins (SB) (1) SB 20, revision 1, DME-700-34-20, dated August 30, 1991, which when incorporated prevents a condition known as "sleeping DME's"; and (2) Collins SB 24, DME-700-34-24, dated May 15, 1992; Collins SB 25, DME-700-34-25, dated November 11, 1992; and Collins SB 26, DME-700-34-26, dated October 21, 1992, as applicable, which when incorporated prevent a condition known as "deaf DME's".

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the conditions described and the actions specified by the proposed AD.

Four commenters request that the proposed AD specify in more detail the service bulletins for the applicable part numbers necessary for compliance. The FAA concurs that more detail could be provided and has included a table to more fully display this information.

Collins states that the estimated units affected should be updated to reflect 518 units sold to U.S. customers and 1,281 sold to international customers. The FAA concurs that the estimate of units affected should be updated. However, for purposes of the proposed AD, only those figures for those units sold to U.S. customers are utilized since the proposed AD is written against DME units installed in aircraft certificated for operation in the United States. The cost estimate paragraph in the preamble of the proposed AD has been changed to reflect this correction.

One commenter states that certain Airbus Industry airplane models should

be added to the applicability statement of the proposed AD, in particular Models A300, A310, A340, and A300–600. The FAA concurs and has included these airplane models in the Applicability section of the proposed AD. In addition, Collins has provided the FAA with an up-to-date listing of the airplane models the affected DME units may be installed on. The FAA has revised the Applicability section of the proposed AD accordingly.

Two commenters request an extension of the proposed compliance time from 18 months to 24 months in order to complete the proposed actions without inadvertently grounding airplanes. The FAA does not concur, and has determined that the initial estimate received from Collins of 12 calendar months is reasonable from the standpoint of parts availability while maintaining the desired level of aviation safety. The proposed AD remains unchanged as a result of this comment.

One commenter states that the reference to Collins SB 24 in the proposed AD is not needed because by referencing Collins SB 25, the intent is already covered. After re-examining all service information, the FAA concurs with the comment and has deleted all mandatory accomplishment reference of Collins SB 24 from the proposed AD.

Three commenters request that the proposed AD incorporate the modification to correct the condition known as "distance jumping" DME's, as well as the "deaf" and "sleeping" conditions already proposed. Collins SB 26 corrects this "distance jumping" condition and the "deaf" condition for the -12x units, and Collins SB 25 corrects these conditions for the -02x units. The FAA has recently become aware of several reports of this "distance jumping" condition. In this situation, the flight management computer may display a distance of 4.25 miles to 5.45 miles less than that tracked. This parameter may be displayed for up to 14 seconds. After 14 seconds, normal operation is restored; however, during the 14-second time navigational errors could occur. The FAA has determined that the proposed AD should also include the modification to prevent the "distance jumping" condition.

Since the addition of the "distance jumping" modification goes beyond the scope of that which was originally proposed, the FAA has (1) revised the document to add this modification and incorporate the other above-referenced comments; and (2) reopened the comment period to provide additional time for public comment.

Since an unsafe condition has been identified that is likely to exist or develop in other Collins DME–700 distance measuring equipment of the same type design installed in aircraft, the proposed AD would require modifying these DME units to ensure that they are functioning properly. The proposed actions would be accomplished in accordance with the following, as applicable:

Collins SB/condition	Date	Part numbers applicable (622–4540–XXX)
SB 20/Sleeping	Aug. 30, 1991	All applicable DME–700 Units, –020, –120, with serial number 1 through 4247.
SB 25/Deaf and Distance Jumping.	Nov. 11, 1992	All applicable DME–700 Units, converts –020, –021, or –022 to –023. SB 20 must be installed prior to or in conjunction with SB 25. SB 24 is incorporated by SB 25.
SB 26/Deaf and Distance Jumping.	Oct. 21, 1992	All applicable DME–700 Units, converts –120 or –121 to –122. SB 20 must be installed prior to or in conjunction with SB 26. SB 26 eliminates the need for SB 21.

These DME units are installed on, but not limited to, the following airplanes:

Manufacturer	Models
Boeing	B737, B747–400, B757, and B767.
McDonnell Douglas.	MD 80, MD 11.
Airbus	A300, A310, A300–600, A320, A330, and A340.
Fokker	F–100.

The condition specified by this proposed AD concerning the Collins DME–700 distance measuring equipment is not caused by actual hours time-in-service (TIS) of the airplane that the equipment is installed in. There is no correlation between improper operation of the equipment and the age or number of times the equipment is utilized. Based on this, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 518 DME–700 units installed on airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per unit to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $199,430.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

Section 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

Rockwell International/Collins Air Transport Division: Docket No. 92–CE–60–AD.

Applicability: DME–700 distance measuring equipment (all serial numbers) (part numbers 622–4540–020, 622–4540–021, 622–4540–22, 622–4540–120, and 622–4540–121), that are installed on, but not limited to, the following model airplanes (all serial numbers), certificated in any category:

Manufacturer	Models
Boeing	B737, B747–400, B757, and B767
McDonnell Douglas	MD 80, MD 11
Airbus	A300, A310, A300–600, A320, A330, and A340
Fokker	F–100.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent improper operation of these DME units, which could result in navigational errors, accomplish the following:

(a) Ensure that Aeronautical Radio, Inc. (ARINC) 429 distance outputs are processed and updated by modifying the distance measuring equipment in accordance with the applicable service information presented in the chart in paragraph (c) of this AD.

(b) Ensure proper initialization and correct DME distance indication by modifying the distance measuring equipment in accordance with the applicable service information presented in the chart in paragraph (c) of this AD.

(c) Paragraphs (a) and (b) shall be accomplished in accordance with the Accomplishment Instructions section of the applicable service bulletins (SB) presented in the following chart:

Collins SB/condition	Date	Part numbers applicable (622–4540–XXX)
SB 20/Sleeping	Aug. 30, 1991	All applicable DME–700 Units, –022, –120, with serial number 1 through 4247.
SB 25/Deaf and Distance Jumping.	Nov. 11, 1992	All applicable DME–700 Units, converts –022, –021, or –022 to –023. SB 20 must be installed prior to or in conjunction with SB 25. SB 24 is incorporated by SB 25.
SB 26/Deaf and Distance Jumping.	Oct. 21, 1992	All applicable DME–700 Units, converts –120 or –121 to –122. SB 20 must be installed prior to or in conjunction with SB 26. SB 26 eliminates the need for SB 21.

Note 1: The sleeping DME modification referenced in SB 20 was incorporated at manufacture beginning with serial number 4248.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Rockwell International/Collins Air Transport Division, 400 Collins Road, NE., Cedar Rapids, Iowa 52498; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 5, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19213 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 291

[Docket No. R–93–1672; FR–3399–P–01]

RIN 2502–AF96

Single Family Property Disposition; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department's regulations governing the Single Family Property Disposition program for the lease and sale of HUD-acquired properties for the homeless. The amendment would implement section 1407 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), with regard to notifying eligible applicants of available properties in their areas.

DATES: Comment due date: October 12, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. Comments transmitted by facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Single Family Property Disposition, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–0740; (TDD number for the hearing- and speech-impaired (202) 708–4594). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The Single Family Property Disposition program (24 CFR part 291), which disposes of one-to-four family properties acquired by HUD or otherwise held by HUD, includes an initiative by the Department for the lease and sale of properties to governmental entities, tribes, and private nonprofit organizations for use by homeless persons (subpart E of part 291).

Under the current regulations, applicants that have been preapproved by HUD are notified of the availability of properties for a 10-day consideration and inspection period before the properties are offered for sale to the general public. (See 24 CFR 291.410(d).) Properties are leased or sold to

applicants on a first come-first served basis. No more than 10 percent of the total inventory, as of October 1, may be leased under the program; there is no limitation on the sale of properties.

Applicants may purchase properties, at a discount, either through a direct sale or by submitting a competitive bid. Applicants that choose to lease properties may lease them with an option to purchase at any time during the leasehold. Leases are for a one-year term, renewable for up to four additional one-year terms, for $1 a year. Lessees are responsible for all utilities, taxes, and other costs associated with operating the property. Under 24 CFR 291.415(d), lessees are required to establish an escrow account, with HUD as a co-signer, and make monthly deposits to the account in amount sufficient to reimburse HUD for any taxes on the property.

II. Amendments by the Housing and Community Development Act of 1992

Section 1407 of the housing and Community Development Act of 1992 (Pub. L. 102–550, approved Oct. 28, 1992) (1992 Act) directs the Secretary to make several amendments to this discretionary program. Subsection 1407(a) provides that the Secretary, in carrying our the program for disposition of single family properties for use by homeless persons, may not make property available for lease under the program that has not first been listed and made generally available for sale for a period of at least 30 days.

Subsection 1407(b) provides an exception to subsection 1407(a) with respect to any area for which the Secretary determines that there will not be a sufficient quantity of decent, safe, and sanitary affordable housing available for use under the program if properties located in the area are first made generally available to the public. In such cases, the Secretary must reserve not more than 10 percent of the total number of properties located in the area and not market those properties first to the general public. The Secretary is also directed to consult with the unit of general local government for the area in determining which properties should be reserved.

The 1992 Act, in subsection 1407(c), also directs the Secretary to identify and describe, upon request by an applicant or lessee, any exemptions or reductions related to the payment of property taxes under State or local laws that may be applicable to lessees or to the leased properties. Subsection 1407(c) further provides that the Secretary may not require the lessee to make deposits for the payment of taxes into an escrow account, where such an exemption or reduction is provided.

III. Proposed Rule

30-day Marketing Period and Exception

As discussed in section I of this preamble, the existing rule provides that, upon request, HUD Field Offices will notify applicants, before properties are listed for sale to the general public, when eligible properties become available in the area designated by the applicant. In accordance with subsection 1407(a), the proposed rule would amend 24 CFR 291.400(c) to indicate that property that will be made available for lease under the program must have been listed for sale for at least 30 days. In addition, the property must be vacant, and not under contract or committed to another program. Conforming changes would be added to § 291.410(d) regarding notification to applicants of available properties. After the public sale period, the HUD Field Office would notify applicants of eligible properties available in the ZIP Code areas previously designated by them. Specific properties selected by an applicant would be held off the market for a 10-day consideration and inspection period, which would begin to run upon notification by the applicant to the Field Office. Only those properties in which an applicant has expressed an interest would be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office would resume offering the properties for sale to the public.

The proposed rule would provide an exception to the 30-day listing for the general sale in Field Offices having 200, or fewer, total properties in inventory as of October 1 of each year. These offices were selected on the basis of the number of properties existing in these offices as of October 1, 1992, the number of properties the Department anticipated acquiring over the ensuing 12-month period and the speed with which properties were selling. HUD has determined that these offices are less likely to have properties available for applicants after 30 days on the market. In those Field Offices, if applicants have requested to lease properties, properties would be offered to applicants for a 10-day consideration and inspection period before the properties are listed for sale to the general public. Field Offices subject to this exception would notify applicants of properties in designated ZIP Code areas prior to public listing until such time as 10 percent of their total inventory, as of October 1, has been leased.

The rule would also provide that, in those Field Offices subject to the exception, HUD would consult with units of general local government in the area to identify areas where there is a need for units for homeless persons and would make this information available to applicants. While the language in section 1407(b) provides for consultation on "which properties should be reserved," HUD believes that Congress intended that the Department seek input from local governments on the specific geographic areas in these communities where the homeless population could best be served rather than seeking input on a property-by-property basis. Such a process would be administratively burdensome for both HUD and the unit of local government. HUD intends to make every effort to work with local governments and applicants; however, the decision on which properties are available is ultimately determined by the location of properties coming into inventory. HUD will also continue, under § 291.400(f), to avoid excessive concentration in a single neighborhood of properties leased or sold under the program. Local governments will not be allowed to exercise veto-power over where properties for the homeless may be located.

Some changes are proposed to the rule in the way properties are made available to applicants who have expressed an intention to purchase properties by direct sale. Notification of available properties will be according to the applicant's designated ZIP Code areas in which properties may be purchased by direct sales under 24 CFR 291.110(a) to State and local governments, public agencies, and private nonprofit organizations for use in HUD and local housing programs. When notification of interest is received within 5 days of receiving a list of available properties, HUD will hold those specific properties off market for a 10-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. Further, the rule would be amended to provide that the discount offered for sales would be in an amount determined by HUD as appropriate, but in no event lower than 10 percent of the list price. This reflects a change being proposed in another rule amending certain provisions in the main property disposition program.

Exemption From or Reduction of State and Local Property Taxes

The proposed rule would also amend 24 CFR 291.415(d) to describe HUD's duty under subsection 1407(c) of the 1992 Act to provide information to applicants or lessees regarding any exemption from or reduction of property taxes under State and local laws. The amendment would include a provision that, where State or local law grants such an exemption or reduction, the applicant would not be required to establish an escrow account for that portion of the payment of property taxes.

While the amendment necessitated by subsection 1407(c) is included in the proposed rule, the Department has determined that this provision is effective as of October 28, 1992, the date of enactment of the 1992 Act. HUD Field Offices have been instructed to provide this information upon the request of an applicant or lessee.

Miscellaneous Changes

The rule would also be amended to reflect changes to the Department's Supportive Housing program. The 1992 Act terminated the Supportive Housing Demonstration (formerly implemented in 24 CFR parts 577 and 578), and replaced it with a new Supportive Housing program. An interim rule for that program was published on March 15, 1993 (58 FR 13870), which will be codified at 24 CFR part 583.

IV. Other Matters

The amendments that would be made to 24 CFR part 291 by this proposed rule would not add any additional information collection burden than that already approved by the Office of Management and Burden under the Paperwork Reduction Act and assigned OMB approval numbers 2502–0412 and 2502–0306.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, at the time the final rule for this program was published on September 10, 1991. The Department has determined that nothing in this proposed rule would affect that Finding. The Finding is available for public inspection between 7:30 a.m. and 5.30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the Single Family Property Disposition Homeless Initiative, generally, has a positive and beneficial impact on the formation, maintenance, and general well-being of homeless families, and the amendments made by this rule would not significantly change the overall impact of the rule on families. Therefore, the rule is not subject to review under that Order.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of the Executive Order 12612, Federalism, that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under that Order.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. Specifically, the rule would govern the procedures under which HUD would make properties available for lease to governmental entities and private nonprofit organizations for use by homeless persons.

This rule was listed as Sequence No. 1439 in the Department's Semiannual Agenda of Regulations published at 58 FR 24382, 24408 on April 26, 1993, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, part 291, subpart E, of title 24 of the Code of Federal Regulations is amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 would be revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441 and 1441a; 42 U.S.C. 3535(d).

2. In § 291.400, paragraph (b) would be amended by removing the word "Demonstration"; and paragraphs (c), (d), and (e) would be revised to read as follows:

§ 291.400 Purpose and scope.

* * * * *

(c) *Property available for lease with option to purchase.* (1) HUD will make available up to 10 percent of its total inventory of properties as of October 1, 1989. Thereafter, on October 1 of each year, the 10 percent figure will be adjusted upward or downward to reflect increases or decreases in the total inventory. Property will be available for lease under the terms and conditions described in § 291.415, in accordance with the following criteria:

(i) The property has been listed for sale for at least 30 days, except as provided in paragraph (c)(2) of this section;

(ii) The property is vacant; and

(iii) A sales contract has not been accepted for the property, and the property has not been committed to another program.

(2) Where a Field Office has 200, or fewer, total properties in inventory on October 1 of each year, and where applicants have requested to lease properties in certain designated areas, such properties will be offered first to applicants for lease before being listed for sale to the general public until 10 percent of the total inventory of the Field Office has been leased. HUD will consult, on an annual basis, with units of general local government in the area on areas where there is a need for housing for homeless persons.

(d) *Property available under a McKinney Act Supportive Housing program lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement, under the terms and conditions described in § 291.420, to Supportive Housing program applicants for acquisition grants under 24 CFR part 583.

(e) *Properties available for sale.* Eligible properties will be available for

competitive sale or direct sale for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent, under the terms and conditions described in § 291.425.

§ 291.405 [Amended]

3. In § 291.405, the definition of "Applicant" is amended by removing the word "Demonstration", and by removing the references "24 CFR 577.5 or 578.5" and replacing them with "24 CFR part 583" in the last sentence; the definition of "Eligible properties" is amended by adding the word "vacant" before "single family properties"; and the definition of "Supportive Housing Demonstration" is removed.

4. Section 291.410 would be amended by revising paragraph (d) and by adding paragraph (e), to read as follows:

§ 291.410 Applicant preapproval; notification of eligible properties.

* * * * *

(d) *Notification of eligible properties available for lease.* (1) Applicants, preapproved by HUD as described in paragraph (a) of this section, must designate geographical areas of interest by ZIP Code to appropriate HUD Field Offices, and must indicate their intention to lease properties.

(2)(i) Upon request, and after properties have been listed for sale to the general public for at least 30 days, except as provided in paragraph (d)(2)(ii) of this section, Field Offices will notify applicants, in writing, of available eligible properties in the ZIP Code areas previously designated by the applicant. Specific properties selected by the applicant will be held off the market for a 10-day consideration and inspection period beginning to run upon notification by the applicant to the Field Office. Only those properties in which the applicant has expressed an interest will be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale.

(ii) Where properties are made available to applicants before being listed for sale to the public, as described in § 291.400(c)(2), upon request, Field Offices will notify applicants, in writing, when eligible properties become available in the ZIP Code areas previously designated by the applicant. Those properties will remain available for a 10-day consideration and inspection period before being listed for sale to the public. The 10-day period will begin to run upon notification of the applicant by the Field Office. Applicants must submit a written expression of interest to the Field Office by the end of the 10-day period. (Where notification is by mail, the consideration period will begin to run five days after mailing.) If no communication from the applicant is received by the end of the 10-day period, and no other applicant has expressed an interest in the property, the Field Office will offer the properties for sale to the general public. After the initial 10-day consideration and inspection period, a property will not be available to applicants for lease again until it has been offered to the public for 45 days. If an applicant expresses and interest in leasing a property during or after the 45-day public sale period, the Field Office will offer the property to the applicant for 10 days after the public sale period, provided the property is unsold, no offer from the public has been received, and the property is not in a public bid-offering period or committed to another purpose or program.

(iii) In providing applicants notification of available properties, Field Offices will coordinate the dissemination of the information to ensure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be leased or sold to applicants on a first come-first served basis.

(iv) HUD may limit the number of properties held off the market for an applicant at any one time, based upon the applicant's financial capacity and past performance as determined by HUD from information provided in the preapproval process and observations made during monitoring a program in progress.

(e) *Notification of eligible properties available for direct sale.* Upon request, and in accordance with procedures under § 291.110(a) for the direct sale of properties to State and local governments, public agencies, and private nonprofit organizations for use in HUD or local government housing programs, Field Offices will notify, in writing, applicants who have expressed an intention to purchase properties of the availability of eligible properties in the ZIP Code areas designated by the applicant before properties are listed for sale. Within 5 days of receipt of a property list, the prospective buyer must inform HUD which properties it may be interested in purchasing. Those properties will be held off market and all other properties on the list will continue to be processed for sale using standard procedures. The prospective buyer then has an additional 10 calendar days to initiate a purchase on properties that it initially designated as potential purchases. A prospective buyer will be deemed to have initiated a purchase if HUD receives a written notice, by the date specified, of good faith intent to purchase a property. If more than one applicant expresses an interest in the same property, HUD will accept the offer of the first applicant to offer a signed sales contract.

5. Section 291.415 is amended by redesignating paragraph (d)(1) as paragraph (d)(1)(i), and by adding paragraph (d)(1)(ii), to read as follows:

§ 291.415 Lease with option to purchase properties for use by the homeless.

* * * * *

(d) *Property operating costs and insurance.* (1)(i) * * *

(ii) Upon request by an applicant or lessee, HUD will identify and describe any exemptions or reductions relating to payment of property taxes under State or local laws, for the jurisdiction requested by the applicant or lessee, that may be applicable to lessees or to properties leased under this subpart. If a lessee of a property under this subpart is provided an exemption from any requirement to pay State or local property taxes, or a reduction in the amount of any such taxes, the lessee will be required to establish an escrow account to cover only the amount of taxes owed.

* * * * *

§ 291.420 [Amended]

6. In § 291.420, the section heading would be amended by removing the word "Demonstration"; paragraph (a) would be amended by removing the word "Demonstration" from the heading and from the first sentence, and the references "parts 577 or 578" would be removed and the reference "parts 583" would be added in their place; and paragraph (b) would be amended by removing the word "Demonstration" in the first sentence.

7. Section 291.425 would be amended by revising paragraphs (b) and (c) to read as follows:

§ 291.425 Sale of properties for use by the homeless.

* * * * *

(b) *Direct sales.* For direct sales, the purchase price for the property will be at the fair market value established for the property in the approved disposition program, less a discount determined appropriate by the Secretary but not less than 10 percent.

(c) *Competitive sales.* As an alternative to direct sales, an applicant,

whether or not preapproved, may submit a competitive bid on any property listed for sale to the general public, as described in § 291.105. If the HUD Field Office accepts the bid, the net amount due HUD will be reduced by discount determined appropriate by the Secretary but not less than 10 percent.

* * * * *

Dated: August 4, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93-19182 Filed 8-10-93; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FR-4690-5]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on August 30, 1993 from 9:30 a.m. to 6 p.m., and on August 31, 1993 from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel (O'Hare) at 6501 North Mannheim, Rosemont, Illinois 60018 (1-800-548-4193).

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Sarah Davis at EPA's Office of Solid Waste at (202) 260-8104.

SUPPLEMENTARY INFORMATION: The Agency has selected sixteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
Jon Jewett (Solite Corp.)
Robert Wescott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Melinda Taylor (Consultant)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be Jeffery Denit, Acting Director of the Office of Solid Waste, and Mike Sanderson from EPA Region VII. In addition, any interested member of the public may attend the meeting.

Dated: August 6, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93-19250 Filed 8-10-93; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 152

[OPP-250091; FRL-4629-1]

Pesticides; Exemption From Federal Insecticide, Fungicide and Rodenticide Act Requirements for Natural Cedar Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This proposed rule would exempt from regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), natural cedar pesticides labelled, or for which claims are made, only to repel arthropods other than ticks, or to retard mildew growth. The risks posed by these naturally occurring pesticides in these uses are negligible. Exemption would reduce the regulatory burden for producers of natural cedar pesticides.

DATES: Comments must be received on or before September 10, 1993.

ADDRESSES: Comments, in triplicate, should bear the document control number OPP-250091 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Room 1128, CM#2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Room 1128 at the Virginia address given above from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-5446.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

This rule is being proposed pursuant to the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. EPA regulates pesticides under FIFRA through a registration system. Under FIFRA section 3, all pesticides must be registered by EPA prior to distribution or sale. As defined by FIFRA section 2(u), a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Natural cedar products are considered to be pesticides if they are intended to repel a pest, such as moths or fleas, or to prevent or mitigate a pest, such as mildew. EPA registers pesticides on the basis of data adequate to show that the pesticide, when used in accordance with widespread and commonly recognized practice, will not pose unreasonable adverse effects on the environment. The term "unreasonable adverse effects on the environment" means any unreasonable effect to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

FIFRA section 25(b) authorizes the Administrator to exempt, by regulation, from the requirements of FIFRA, any pesticide which he/she determines to be of a character which is unnecessary to be subject to the Act in order to carry out the purposes of FIFRA. EPA has exempted certain pesticides from

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regulation, under section 25(b), based on a finding that these pesticides pose negligible risks to human health or the environment, and thus, are not necessary to be subject to FIFRA. Similarly, this proposal would exempt from regulation under section 25(b) cedar pesticides, labelled to repel arthropods (except ticks) or to retard mildew growth, based on a finding that these pesticide uses pose negligible risks to human health or the environment. EPA believes that the regulatory burden imposed by registration of these cedar pesticides for these uses is not justified by the negligible risk posed by them. Thus, EPA believes that these pesticides are not of a character necessary to be subject to FIFRA to carry out the purposes of FIFRA. This action is being taken at EPA's initiative.

II. Agency Determination

Cedar products, both pesticidal and nonpesticidal, have been used widely for many years. These products include blocks, chests, drawer liners, chips, needles or other forms of the natural wood or plant. Natural cedar is an aromatic wood, popular for making furniture and other common wood products, including children's toys. The cedarwood oil in the wood or other plant parts is considered to have moth or flea repellency potential in enclosed areas. Moreover, cedar may absorb moisture, retarding mildew growth under some circumstances. Pesticidal activity results from volatile oils being released from the wood or other plant parts and acting as an arthropod repellent. These natural oils are present in the wood or plant at low levels and the amount that volatilizes into the air is even lower.

EPA believes that natural cedar pesticides(cedarwood, cedar needles or other natural cedar plant parts excluding extracted cedarwood oil) not treated, combined or impregnated with any additional substance(s), and labelled for use only as arthropod repellents or mildew control agents, are unnecessary to be subject to FIFRA because they pose little or no risk to human health or the environment. EPA is unaware of any evidence of injury to human health or the environment due to the use of any of these cedar products. Human or environmental exposure to pesticidal cedar products is no greater than to nonpesticidal cedar products. In fact, exposure to nonpesticidal products, such as children's toys, may actually be greater than to pesticidal products, which are typically left in drawers or closets.

Human or environmental exposure to the cedarwood oil (i.e., the substance in the wood or plant that repels arthropods) that naturally exists in cedar products is likely to be low. Cedarwood oil is naturally contained in the wood or other cedar parts; it cannot easily be separated from the wood or plant products. Consumers using cedar pesticide products are unlikely to be exposed to significant amounts of dust or oil either by inhalation or through the dermal route.

Moreover, EPA believes that cedarwood oil, when used as it naturally occurs in blocks, chips or other plant parts, is not expected to result in any significant environmental exposure. Environmental exposure from natural sources (e.g., cedarwood trees) and nonpesticidal uses (e.g., boats and house shingles) would far exceed any pesticide related exposure. Cedarwood oil is not known to persist or bioaccumulate in the environment. Moreover, because these pesticide products involve principally indoor use in confined areas, the opportunity for any environmental exposure is further reduced.

EPA does not foresee any increase in risk from the potential misuse or disposal of these products, given the benign nature of natural cedar and the existing widespread use of nonpesticidal cedar products in the environment. EPA is not aware of any incidents or reports of adverse environmental effects associated with cedar, or any cedar products, pesticidal or otherwise.

Finally, the cost and effort expended both by the registration applicant and by EPA in regulating cedar pesticides is not justified by the low risk concerns associated with these products. This exemption will allow EPA to apply resources to other efforts, including other risk reduction measures, and will relieve the industry, which is composed primarily of small businesses, of the costs and resources expended in obtaining a FIFRA registration.

This proposal would not, however, exempt from regulation cedarwood oil that is extracted from the wood or other cedar plant parts and sold for use as a pesticide. At this time, EPA has not assessed information sufficient to support a finding that cedar oil or cedar oil mixed with other substances and used for pesticidal purposes will not cause unreasonable effects on the environment. As discussed above, the cedarwood oil in natural cedar is present in the wood and other plant parts at low levels and the amount that volatilizes out is even lower. In contrast, cedarwood oil that is extracted from wood or other plant parts is much more concentrated and its use may result in significantly higher human and environmental exposures. EPA has not determined whether oil extracted from cedarwood or other cedar plant parts, meets the statutory standard for exemption at this time.

The Agency is proposing to exclude from the exemption cedar products claimed to repel (or otherwise mitigate) ticks . Ticks are carriers of disease organisms of public health significance. If such products do not work as claimed, risks to human health may actually inrease. Natural cedar products claimed to repel ticks, therefore, would continue to be subject to regulation (registration) under FIFRA. Comments are invited on other uses of natural cedar that might be of public health significance.

EPA recognizes that there may be other low-risk pesticides that would also be appropriate for exemption under section 25(b). EPA is currently in the process of evaluating existing pesticide registrations and applications to identify other potential candidates for exemption or reduced regulation. EPA will consider publication of a proposed exemption for other pesticides that are determined to pose negligible risks in the future.

III. Request for Comments

EPA seeks comments on the proposed exemption from regulation of cedar pesticides labelled for use to repel arthropods or to retard mildew. Interested persons are invited to submit written comments on the proposed exemption at the address listed in the ADDRESSES section. As discussed above, EPA also is inviting comment on other uses of cedar that might be of public health significance, and thus, should not be excluded from regulation. In addition to seeking comments on this proposed exemption, EPA is also inviting suggestions on other low-risk pesticides that may be appropriate for exemption in a future rulemaking.

EPA has issued several registrations for natural cedar pesticides and believes a significant number of similar products are in commerce. The Agency invites requests for voluntary cancellation of affected product registrations after publication of a final rule. The Agency does not intend to process further applications to register cedar products subject to exemption after publishing a final rule.

IV. Other Regulatory Requirements

A. Executive Order 12291

This rule has been reviewed under the requirements of Section 3 of Executive Order 12291 (46 FR 13193, February 19, 1981). EPA has determined that this rule is not a "major rule" within the meaning of that term as defined in Section 1 of Executive Order 12291. Cedar products as pesticides are primarily utilized for the protection of clothing from moths. EPA has determined that this rule will have little or no impact on the U.S. economy.

Furthermore, this rule will reduce the economic burden on manufacturers of cedar products in connection with Agency registration under FIFRA. Manufacturers of such products will no longer be required to register (or reregister) their products and undertake the costs associated with Agency regulation. Costs that would be eliminated or reduced would be paperwork preparation costs, testing costs, associated legal costs and fees imposed by EPA with respect to registrations. As a result, this rule will provide economic relief to manufacturers of cedar products.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.). EPA has determined that this rule will not have an economic impact on small businesses, small governments or small organizations given the impacts forecasted pursuant to the analysis conducted under Section 3 of Executive Order 12291 as set forth above.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requests. Therefore, the Paperwork Reduction Act of 1980 is not applicable.

D. Submission to Secretary of Agriculture

In accordance with FIFRA section 25, a draft of this proposal was submitted to the FIFRA Science Advisory Panel (SAP) and to the U.S. Department of Agriculture (USDA). The SAP and USDA have waived review of the proposed rule. The USDA has requested that they be furnished a copy of the final rule before publication. Copies of the proposed rule were also forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

List of Subjects in 40 CFR Part 152

Administrative practice and procedure, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I, part 152 be amended as follows:

PART 152—[AMENDED]

1. The authority citation continues to read as follows:

Authority 7 U.S.C. 136–136y.

2. By adding a new paragraph (f) to read as follows:

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

* * * * *

(f) *Natural cedar.* Products of natural cedar (e.g., blocks, chips, balls, chests, drawer liners, needles); (1) consisting totally of cedar wood or cedar products; (2) not treated, combined or impregnated with any additional substance(s); (3) labelled or for which claims are made only to repel arthropods other than ticks and/or to retard mildew. This exemption does not apply to cedar oil, formulated products which contain cedar oil, other cedar extracts, or ground cedar chips as part of a mixture. The exemption does not apply to natural cedar products claimed to repel ticks.

[FR Doc. 93–19124 Filed 8–10–93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–223, RM–8249]

Radio Broadcasting Services; Indian River Shores, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by deHaro Communications, Inc., seeking the allotment of Channel 246A to Indian River Shores, Florida, as that community's first local aural transmission service. Channel 246A can be allotted to Indian River Shores in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 246A at Indian River Shores are North Latitude 27–41–10 and West Longitude 8–22–10.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Meyer, Faller, Weisman and Rosenberg, P.C., 4400 Jenifer Street, NW., suite 380, Washington, DC 20015 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–223, adopted July 22, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–19172 Filed 8–10–93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-228, RM-8295]

Radio Broadcasting Services; Tawas City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ives Broadcasting, Inc., proposing the substitution of Channel 291A for Channel 297A at Tawas City, Michigan, and modification of the license of Station WDBI-FM to indicate operation on Channel 291A. Canadian concurrence will be requested for this allotment at coordinates 44-16-27 and 83-39-42.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-228 adopted July 22, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-19176 Filed 8-10-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-222, RM-8297]

Radio Broadcasting Services; Moberly, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KWIX Inc. proposing the allotment of Channel 247C3 to Moberly, Missouri, as that community's third FM broadcast service. The coordinates for Channel 247C3 are 39-26-22 and 92-15-28. There is a site restriction 15.2 kilometers (9.5 miles) east of the community.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John E. Fiorini III, James K. Edmundson, Gardner, Carton & Douglas, 1301 K Street, NW., suite 900, East Tower, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-222, adopted July 21, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-19173 Filed 8-10-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-230, RM-8292]

Radio Broadcasting Services; Madison, South Dakota and Slayton, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wallace Christensen requesting the substitution of Channel 276C2 for channel 276A at Slayton, Minnesota, and modification of the construction permit for Channel 276A to specify operation on the higher class channel. The coordinates for Channel 276C2 are 43-55-16 and 95-57-57. To accommodate the upgrade at Slayton, we shall propose to modify the license for Station KJAM-FM, Madison, South Dakota, to specify operation on Channel 288A in lieu of Channel 276A. The coordinates for Channel 288A at Madison are 43-59-08 and 97-07-42. We shall propose to modify the construction permit for Channel 276A, in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis F. Begley, Reddy, Begley & Martin, 1001

22nd Street, NW., suite 350, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–230 adopted July 23, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–19175 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–227, RM–8292]

Radio Broadcasting Services; Marathon and Stevens Point, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Eagle of Wisconsin, Inc., proposing the substitution of Channel 285A for Channel 285C3 at Marathon, Wisconsin, and reallotment of Channel 285A to Stevens Point, Wisconsin. Petitioner also requests modification of its authorization for Station WMGU (FM) to specify operation on Channel 285A at Stevens Point, Wisconsin. The coordinates for Channel 285A are 44–35–25 and 89–37–31. We shall propose to modify the authorization for Station WMGU (FM) in accordance with § 1.420(i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–227, adopted July 22, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–19177 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 515 and 552

[GSAR Notice 5–379]

General Services Administration Acquisition Regulation; Disclosure and Use of Proprietary Information

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would authorize the release of proprietary information to non-government employees in certain circumstances; prescribe a new contract clause entitled "Restrictions on Disclosure of Information" for use in service contracts when the contractor will be authorized access to or use of proprietary information in the performance of a contract; establish agency procedures for releasing proposals outside the Government for evaluation, and provide the text of the Restriction on Disclosure of Information clause.

DATES: Comments are due in writing on or before September 10, 1993.

ADDRESSES: Comments should be submitted to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., room 4006, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward McAndrew, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility (5 U.S.C. 601 *et seq.*.) because it establishes Federal Acquisition Regulation (FAR) 15.413–2 agency procedures for releasing proposals outside the Government for evaluation. The proposed rule also provides procedures for the release of information outside the Government when necessary for the performance of a contract for studies or reports

prepared on behalf of the Government. Therefore, an initial regulatory flexibility analysis has not been performed. Comments from small entities concerning the affected GSAR sections will be considered in accordance with 5 U.S.C. 610, however.

C. Paperwork Reduction Act

This proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 503, 515 and 552

Government procurement.

It is proposed that 48 CFR Parts 503, 515, and 552 be amended to read as follows:

1. The authority citation for 48 CFR parts 503, 515 and 552 continues to read as follows:

Authority: 40 U.SC. 486(c)

PART 503—[AMENDED]

2. Section 503.104–5 is amended by revising paragraph (c)(3) to read as follows:

503.104–5 Disclosure, protection, and marking of proprietary and source selection information

* * * * *

(c) * * *

(3) The contracting officer may authorize Government employees access to proprietary or source selection information when such access is necessary to the conduct of the procurement or to the performance of the employee's official duties and to the extent that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities. Proprietary information may also be released to non-Government personnel for evaluation purposes in accordance with FAR 15.413–2 and 515.413–2 or when necessary for the performance of a contract (e.g., contracts for preparation of studies or reports). (See 503.104–10(d)).

* * * * *

3. Section 503.104–10 is amended by adding paragraph (d) to read as follows:

503.104–10 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.203–74, Restrictions on Disclosure of Information, in all solicitations and contracts for service contracts (including architect-engineer contracts) when the contractor will be authorized access to or will use proprietary information or other information which requires restrictions on access or release of the information in the performance of the contract.

PART 515—[AMENDED]

4. Sections 515.413 and 515.413–2 are added to read as follows:

515.413 Disclosure and use of information before award.

515.413–2 Alternate II.

(a) The contracting officer may release proposals to evaluators outside the Government for evaluation purposes with the approval of the HCA or designee. The contracting officer must prepare, and submit for approval, a justification for release. The justification must describe the special needs or circumstances requiring the use of outside evaluators. Any proposals to release information outside the Government must take into consideration the requirement for avoiding organizational or other conflicts of interest under FAR subpart 9.5 and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective evaluator.

(b) When proposals received in response to a solicitation are to be released to non-Government evaluators, the solicitation shall contain a notice which reads substantially as follows:

Notice Regarding Release of Proposals

Offerors are advised that the Government intends to disclose proposals received in response to this solicitation to non-Government evaluators for evaluation purposes. Before any information in a proposal is released, however, the outside evaluator will be required to sign a written agreement requiring that (1) the information be used by the evaluator for evaluation purposes only and not be further disclosed, (2) any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the Government also be reflected in any reproduction or abstracted information made by the evaluator; and (3) upon completion of the evaluation, all copies of the proposal, as well as any abstracts thereof, be returned by the evaluator to the Government office which initially furnished them for evaluation.

(c) The Contracting Officer shall obtain the following written certification and agreement from the non-Government evaluator before releasing any proposal to the evaluator. The evaluator entity shall obtain identical commitments from its employees and subcontractors who will perform the evaluation in order to effect the purposes of these conditions.

Certification and Agreement for the Use and Disclosure of Proposals

With respect to proposals submitted in response to GSA solicitation number _____, The undersigned hereby certifies and/or agrees that:

1. To the best of the undersigned's knowledge and belief, no conflict of interest exists that may diminish his/her/its capacity to perform an impartial and objective review of the proposals submitted, or may otherwise result in a biased opinion or an unfair advantage. In making this certification, the undersigned has considered all of his/her/its stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and to the extent known by the undersigned, all financial interests and employment arrangements of his/her spouse, minor children, and other members of his/her immediate household, but might place the undersigned in a position of conflict, real or apparent, with the evaluation proceedings.

2. The undersigned has a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. In the event that the undersigned becomes aware of any such conflict of interest, he/she/it agree(s) to immediately report this fact to the GSA Contracting Officer and to take no further action to perform any duties related to the evaluation of proposals pending receipt of instruction on the matter.

3. The undersigned will use proposal information only for evaluation purposes, and understands that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. The undersigned agrees to use his/her/its best efforts to safeguard such information physically, and not to disclose the contents of, nor release any information relating to the proposal(s) to anyone outside of the Source Selection Evaluation Board or other panel assembled for the evaluation of proposals submitted in response to the solicitation identified above, or to other individuals designated by the Contracting Officer.

4. The undersigned agrees to return to the Government all copies, as well as any abstracts, upon completion of the evaluation.

(Name of evaluator and organization, if applicable)

(Date of execution)

(d) The requirement for the above certification and agreement is in addition to the requirement in FAR 15.413–2(f)(6) that the Contracting Officer obtain the Optional Form 333, Procurement Integrity Certification for Procurement Officials, from the outside evaluator(s).

(e) The release of a proposal outside the Government for evaluation does not

constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(f) The contracting officer shall attach a cover page bearing the GOVERNMENT NOTICE FOR HANDLING PROPOSALS, as stated in FAR 15.413–2(e), to each proposal upon receipt. The last sentence of the notice shall cite 48 CFR 515.413–2 as the implementing regulation.

PART 552—[AMENDED]

5. Section 552.203–74 is added to read as follows:

552.203–74 Restriction on Disclosure of Information.

As prescribed in 503.104–10(d), insert the following clause:

Restriction on Disclosure of Information (XXX 1993)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify, in writing, the Contracting Officer named herein in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(c) Any unauthorized disclosure of information may result in termination of this contract for default

(End of Clause)

Dated: March 19, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–19192 Filed 8–10–93; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 1-Year Petition Finding on the Western Pond Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a finding on a petition to list the western pond turtle *(Clemmys marmorata)* under the Endangered Species Act of 1973, as amended (Act). Historically, the western pond turtle occurred in a wide variety of wetland habitats west of the crest of the Sierra Nevada or Cascades mountain ranges from northern Baja California, Mexico, to the Puget Sound in Washington. The western pond turtle remains in the vast majority of its historical range, although populations may be adversely affected by a number of anthropogenic factors (e.g., various water projects, grazing, vehicle related mortality, indiscriminate vandalism). The Service finds that the western pond turtle does not meet either the definition of an endangered or a threatened species at the present time.

DATES: The finding announced in this document was made on August 4, 1993. Comments from all interested parties will be accepted until further notice.

ADDRESSES: Comments and materials concerning this finding should be sent the U.S. Fish and Wildlife Service, Field Supervisor, Sacramento Field Office, 2800 Cottage Way Room E–1803, Sacramento, California 95825; or Field Supervisor, Portland Field Office, 2600 SE. 98th Avenue, suite 100, Portland, Oregon 97266; or Field Supervisor, Olympia Field Office, 3704 Griffin Lane SE., suite 102, Olympia, Washington 98501–2192.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Chief, Division of Listing, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the Federal Register.

In a petition dated January 15, 1992, and received by the Service on January 29, 1992, the Service was requested by Mr. Dan Holland and Drs. Mark Jennings and Marc Hayes to list the western pond turtle *(Clemmys marmorata)* as an endangered or threatened species. The petition specified endangered or threatened status in portions of its range. The petition cited numerous threats to this taxa, including: (1) Loss and degradation of wetland and terrestrial habitat, (2) predation by introduced species, (3) overexploitation, (4) habitat fragmentation, (5) drought, and (6) various other factors. The Service made an administrative 90-day finding on August 12, 1992, that concluded that the petition contained substantial information indicating that the requested action may be warranted. An announcement of this finding was published in the Federal Register on October 5, 1992 (57 FR 45761).

The western pond turtle inhabits fresh or brackish, permanent and intermittent water bodies from sea level to about 6,000 feet (Bury 1970, Holland 1991b, Holland 1992, Stebbins 1966); the majority of individuals occur below 3,500 feet, with the upper elevational limits lowering as the species progresses northward in its range. The pond turtle uses adjacent uplands for nesting. Hatchlings and juveniles require more specialized habitats (i.e., shallow water with abundant emergent vegetation). The western pond turtle feeds primarily on small aquatic invertebrates, but is omnivorous in its overall food habits (Holland 1991b).

The western pond turtle includes two described subspecies (Seeliger 1945): The northwestern pond turtle *(Clemmys marmorata marmorata)*, which occurs from the Sacramento Valley and coastal drainages of California northward from the San Francisco Bay area to the Puget Sound area of Washington; and the southwestern pond turtle *(Clemmys m. pallida)*, which is found from the Monterey Bay area south in the coastal region to northwestern Baja California Norte, Mexico, including the Mojave River. The south San Francisco Bay area and the San Joaquin Valley is described by Seeliger (1945) as a zone of intergradation between the two subspecies.

Holland (1992), however, asserted in his dissertation that *Clemmys*

marmorata (sensu lato) is in actuality a three species complex consisting of *C. marmorata* (sensu stricto), which has a range that approximates that of *C. marmorata marmorata* as delimited by Seeliger (1945); *Clemmys pallida*, which has a range that approximates that of *C. marmorata pallida* as delimited by Seeliger (1945); and *Clemmys* sp. nov., a new species restricted to the Columbia River. Though Holland (1992) noted that his taxonomic conclusions correspond well to that developed by Seeliger 48 years ago "using largely subjective evaluations," some ambiguity seems to remain regarding the appropriate assignment of a few populations in central California. Moreover, Bury and Holland (in press) referred to Holland's "species" as "evolution groups" or "forms." Regardless, the Service continues to recognize two subspecies because Holland's dissertation is unpublished.

The western pond turtle occurs throughout roughly 90 percent of its historical geographic range (Holland 1991b, 1993), west of the crest of the Sierra Nevada or Cascade mountain ranges from Baja California, Mexico to the Puget Sound in Washington. It has been extirpated from a number of areas, or reduced to low numbers in some localities, including the type locality in Puget Sound, many sites in southern California, and the southern San Joaquin Valley in central California.

Several factors may negatively impact western pond turtle populations in various degrees in certain portions of their range. Most of the information available to the Service on these threats is anecdotal, and generally the Service lacks consistent information on the long-term effects of these activities to pond turtles on a rangewide basis. For example, wetland habitats have been and continue to be altered; however, western pond turtles occur in altered habitats such as sewage treatment ponds, irrigation canals, reservoirs, and stockponds. Disease substantially reduced one population in Washington, but has not been reported in other populations. Predation affects most populations to some degree; however, the Service lacks information on whether predation is a threat sufficient to warrant listing as an endangered or threatened species. Other factors such as contaminant spills, grazing, off-road vehicle use are also highly localized and do not threaten the species throughout a significant portion of its range. The recent drought has reduced some turtle populations; however, on a long-term basis this reduction likely is not significant. The petitioner seemed especially concerned about a lack of recruitment into many populations; however, that conclusion has been challenged by other experts in the field (e.g., Bury 1993).

The species remains throughout 90 percent of its historical range; only low to moderate threats can be identified for about 60 percent of the species' range, and moderate to high threats have been identified for the remaining 40 percent of the species' range (Holland 1991b). Holland identified moderate threats for about 50 percent of the range of the southwestern pond turtle. As such, the overall extent of impacts on the western pond turtle has not been adequately demonstrated to represent significant threats to the continued existence of the species.

In addition, at least a few "viable" populations containing 30 or more individuals have been found throughout most of the range of the turtle (Holland 1991b, *in litt.* 1993). For example, south of the Santa Clara River, over 50 sites remain, and 8 contain viable populations with 30 to 500 individuals. In Ventura and Santa Barbara Counties, 25 or 30 viable populations remain (Sweet *in litt.* as cited by Holland *in litt.* 1993). Approximately 13 viable populations remain along the central coast of California. In the Central Valley of California, at least 2 sites with more than 30 individuals remain. In the north coast region of California, little information is available; however, turtles remain widespread. In the Klamath drainage, 3,000 turtles remain at 1 site. Another site along the Trinity River contains 1,000 turtles.

Wolfer (as cited by Holland 1992) reported a population that contained at least 52 turtles along the Rogue River drainage of Oregon. At least 2 sites in the Umpqua drainage contained more than 30 turtles (Holland 1993). In Oregon, Holland (Holland 1992) generally found low numbers of turtles. For example, turtles were seen at 5 of 54 sites along the Rogue River drainage, and the maximum number of turtles at any site was 7 (Holland 1992). However, the survey effort did not seem to have been as extensive for this effort as was completed for other portions of the turtle's range. In addition, Holland (1992) does not indicate if a site represents a discreet population, or a point along a drainage (that is contiguous with other populations) for the Rogue, Umpqua, or Willamette drainages. In Washington, the pond turtle occurs along the Columbia Gorge and in low numbers in the Puget Sound. These numbers suggest that viable populations remain throughout most of the range of the pond turtle, and that, absent evidence of threats to these populations, the pond turtle is not in danger of extinction or likely to become so in the near future.

On the basis of the best available scientific and commercial information, the Service finds that listing the western pond turtle is not warranted at the present time because the taxon presently is not in danger of extinction or likely to become so in the foreseeable future. The Service will reclassify or maintain the two recognized subspecies of the western pond turtle as category 2 candidates for listing, and will continue to seek information on the status of the pond turtle. Category 2 candidates are those for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. If information becomes available indicating that listing as endangered or threatened is appropriate, the Service would propose to list the western pond turtle. Furthermore, the Service retains the option of proposing a subspecies or vertebrate population segment should information become available indicating that such an action is appropriate and warranted.

References

A complete list of references used in the preparation of this finding is available upon request from the Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: August 4, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19279 Filed 8–10–93; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCTIC RESEARCH COMMISSION

Meeting

August 6, 1993.

Notice is hereby given that the Arctic Research Commission will hold its 32nd Meeting in Kotzebue, AK, on September 8–9, 1993. On Wednesday, September 8, an Executive Session will convene at 10:30 a.m., followed by Business Session open to the public 1 p.m. in the NANA Board Room. Agenda items include: (1) Chairman's Report and (2) a public session with residents and organizations participating. On Thursday, September 9, the Business Session will reconvene at 8:30 a.m. Agenda items for this session include (1) Comments from agencies and organizations; (3) Arctic logistics status; (4) Russian training and trade; (5) Arctic contaminants assessment; (6) Status of Commission Tasks; and (7) Other Business.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 202–357–9867.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 93–19241 Filed 8–10–93; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Keisuke Katsuta

Order Denying Permission To Apply for or Use Export Licenses

On March 3, 1993, Keisuke Katsuta (hereinafter referred to as Katsuta) was convicted in the U.S. District Court for the Western District of North Carolina of, among other crimes, two counts of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Public Law No. 103–10, March 27, 1993)) (EAA). The conviction followed Katsuta's plea of guilty to six counts of a 14-count indictment charging him with, among other things, knowingly exporting a laser trimmer to Hungary without obtaining a validated license from the U.S. Department of Commerce. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Katsuta's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Katsuta permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on March 3, 2003. I have also decided to revoke all export licenses issued pursuant to the EAA in which Katsuta had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. All outstanding individual validated licenses in which Katsuta appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Katsuta's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until March 3, 2003, Keisuke Katsuta, 1–25–4 Minami-Azabu, Minatoku, Japan, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Katsuta by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until March 3, 2003.

VI. A copy of this Order shall be delivered to Katsuta. This Order shall be published in the **Federal Register**.

Dated: August 2, 1993.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93–19194 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications: Little Rock MBDC Project I.D. No. 06–10–94004–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as *$165,000* in Federal funds. An audit fee of *$4,125* has been added to the Federal amount (applicable only for non-CPA firms. CPA firms are audited by the Office of Inspector General). The total funding breakdown is as follows: *$169,125* Federal and *$29,846* non-Federal for a total of *$198,971*. The period of performance will be from *December 1, 1993* to *November 30, 1994*. The MBDC will operate in the *Little Rock, Arkansas* MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.,

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A-129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DoC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law Name checks are intended to reveal if any key individuals associated with the

applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management's honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is *September 13, 1993.* Applications must be postmarked on or before *September 13, 1993.*

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Attn: Demetrice Jenkins, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on August 26, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 4, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–19201 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I. D. 080293F]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA; Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Committees will meet August 17–19, 1993, at the Guest Quarters, Baltimore-Washington International Airport, 1300 Concourse Drive, Linthicum, MD; telephone: 410–850–0747.

On August 17 at 10 a.m., the Squid, Mackerel and Butterfish Committee will meet, followed by meetings of the Coastal Migratory Committee and the Comprehensive Management Committee. The Surf Clam and Ocean Quahog Committee and the Executive Committee may meet on either August 17 or August 18.

On August 18, the Council will begin its regular session at 8 a.m. and will adjourn at approximately 2 p.m. on August 19. In addition to hearing Committee reports, the Council will consider the selection of an Executive Director, may consider the 1994 commercial bluefish quota, may discuss Amendment 9 to the Surf Clam and Ocean Quahog Fishery Management Plan, and take up other fishery management matters as deemed necessary. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may also have closed sessions (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 5, 1993.

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19207 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–10–F

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit No. 705 (P77#38).

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the regulations Governing the Taking and Importing or Marine Mammals (50 CFR part 216), Scientific Research Permit No. 705 (P77#38) issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on May 10, 1990 (55 FR 20292), has been modified to extend the effective date through December 31, 1995. This modification becomes effective upon publication in the **Federal Register.**

ADDRESSES: Documents pertaining to this modification and permit are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 (301/980–4016).

Dated: August 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–19211 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Civilian Marksmanship Program Enrollment; DA FORMS 1271–R, 1721–1–R, 1272–2–R,

1271–3–R, 1272–R, 1272–R, OMB No. 0702–0043

Type of Request: Reinstatment.
Number of Respondents: 100.
Responses per Respondent: 1.
Average Burden Per Response: 65 minutes.
Annual Burden Hours: 108
Needs and Uses: Based upon membership and Club activities, affiliated marksmanship clubs are issued government-owned material in support of the Army program. Statistics are collected in order to supply information to the Director of Civilian Marksmanship for Congressional and Budgeting actions.
Affected Public: Non-profit institutions.
Frequency: Annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 6, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19225 Filed 8–10–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and Applicable Form: Department of Defense Job Fair Questionnaire, DD Form X–237
Type of Request: Expedited Submission—Approval date requested: Not later than 30 days following publication in the **Federal Register**
Number of Respondents: 700
Responses per Respondent: 1
Annual Responses: 700
Average Burden Per Response: 10 minutes
Annual Burden Hours: 112
Needs and Uses: The information collected will be used to evaluate a job fair recruitment activity that is conducted in accordance with Equal Employment Opportunity Management Directive 7–13, and in support of DoD affirmative action goals and objectives with regard to the employment of people with targeted disabilities. This information will be collected only from job fair attendees.
Affected Public: Individuals or households
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Officer Building, Washington, DC 20503
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated August 6, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–4–C

VOL 58 ISS 153 AG 11 1993 UMI

DEPARTMENT OF DEFENSE
DISABILITY JOB FAIR QUESTIONNAIRE

Form Approved
OMB No. xxxx-xxxx
Expires

Public reporting burden for this collection of information is estimated to average xx minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (xxxx-xxxx), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES ABOVE.
RETURN COMPLETED FORM TO:

IN COOPERATION WITH THE UNIVERSITY OF THE DISTRICT OF COLUMBIA
(Please provide the following information for statistical purposes only)

SECTION I - PERSONAL INFORMATION

1. AGE

	a. 17 - 30		b. 31 - 45		c. 45 or older

2. EDUCATION

	a. HIGH SCHOOL		b. COLLEGE		c. OTHER

SECTION II - GENERAL INFORMATION

3. REASON FOR ATTENDING

	a. JOB HUNTER		a. NEWSPAPER
			b. SCHOOL
	b. EMPLOYER		c. DIRECT MAIL
			d. OTHER

4. HOW DID YOU LEARN OF THE JOB FAIR?

5. INDICATE YOUR JOB INTEREST

	a. CLERICAL	(1) GRADES 2 -4
		(2) GRADES 5 AND UP
	b. TECHNICAL/ ADMINISTRATION	(1) GRADES 5 -8
		(2) GRADES 9 - 11
	c. PROFESSIONAL	(1) GRADES 9 - 11
		(2) GRADES 12 - 15

6. DID YOU ATTEND THE 1991 DISABILITY JOB FAIR? ☐ a. YES ☐ b. NO

c. SERVICE EVALUATION ☐ (1) EXCELLENT ☐ (2) FAIR ☐ (3) POOR

d. SUGGESTIONS *(Optional)*

SECTION III - OPTIONAL INFORMATION *(The following are targeted disabilities that have special noncompetitive appointment authorities. Please check if any are appropriate for you).*

7. HEARING IMPAIRMENTS

	a. TOTAL DEAFNESS IN BOTH EARS, WITH UNDERSTANDABLE SPEECH
	b. TOTAL DEAFNESS IN BOTH EARS, AND UNABLE TO SPEAK CLEARLY

8. VISION IMPAIRMENTS

	a. INABILITY TO READ ORDINARY SIZE PRINT, NOT CORRECTABLE BY GLASSES *(Can read oversized print or use assisting devices such as glass or projector modifier*
	b. BLIND IN ONE EYE
	c. BLIND IN BOTH EYES *(No usable vision, but may have some light perception)*

DD Form X237, 930805 Draft

9. MISSING EXTREMITIES	10. PARTIAL PARALYSIS	11. COMPLETE PARALYSIS
a. ONE ARM	a. BOTH HANDS	a. BOTH HANDS
b. ONE FOOT	b. BOTH LEGS, ANY PART	b. ONE ARM
c. ONE LEG	c. BOTH ARMS, ANY PART	c. BOTH ARMS
d. BOTH HANDS AND ARMS	d. ONE SIDE OF BODY, INCLUDING ONE ARM AND ONE LEG	d. ONE LEG
e. BOTH FEET OR LEGS	e. THREE OR MORE MAJOR PARTS OF THE BODY (ARMS AND LEGS)	e. BOTH LEGS
f. ONE HAND OR ARM AND ONE FOOT OR LEG		f. LOWER HALF OF BODY, INCLUDING LEGS
g. ONE HAND OR ARM AND BOTH FEET OR LEGS		g. ONE SIDE OF BODY, INCLUDING ONE ARM AND ONE LEG
h. BOTH HANDS OR ARMS AND ONE FOOT OR LEG		h. THREE OR MORE MAJOR PARTS OF THEBODY (ARMS AND LEGS)
i. BOTH HANDS OR ARMS AND BOTH FEET OR LEGS		

12. OTHER IMPAIRMENTS

a. CONVULSIVE DISORDER; *e.g., epilepsy*

b. MENTAL RETARDATION *(Chronic and lifelong condition involving a limited ability to learn, to be educated, and to be trained for useful productive employment as certified by a State Vocational Rehab agency under section 213.3102 (t) of Schedule A)*

c. MENTAL OR EMOTIONAL ILLNESS *(A history of treatment for mental or emotional problems)*

d. SEVERE DISTORTION OF LIMBS AND/OR SPINE; *e.g., dwarfism, kyphosis (severe distortion of back)*

13. COMMENTS

DD Form X237, 930805 Draft

[FR Doc. 93–19305 Filed 8–10–93; 8:45 am]

BILLING CODE 5000–04–C

Department of the Navy

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, Defense.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Request for copies of patents must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,215,464: Aggressor Shoot-Back Simulation; filed 5 November 1991; patented 1 June 1993.

Dated: July 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19008 Filed 8–10–93; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Grant Exclusive Patent License; MarketPath Corporation

AGENCY: Department of the Navy.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to MarketPath Corporation a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/988,605 entitled Method and Apparatus for Enhancing Computer-User Selection of Computer-Displayed Objects Through Dynamic Selection Area and Constant Visual Feedback, invented by Glenn A. Osga.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19007 Filed 8–10–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[PL93–3–000]

Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities; of Extension of Time for Comments

August 5, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992; extension of time for comments.

SUMMARY: On July 14, 1993, the Commission issued a policy statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211(a) and 213(a) of the Federal Power Act, as amended and added by the Energy Policy Act of 1992. The date for filing comments on this policy statement is being extended at the request of various interested parties.

DATES: The date for filing comments is extended to and including September 20, 1993.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–0400.

[Docket No. PL93–3–000]

Notice of Extension of Time

August 5, 1993.

On July 23, 1993 and July 27, 1993, the Utility Working Group (UWG) [1] and the Pennsylvania-New Jersey-Maryland Interconnection Association (PJM) [2] filed respective motions for an extension of time to file comments in response to the Commission's Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmission Utilities under sections 211(a) and 213(a) of the Federal Power Act, As Amended and Added by the Energy Policy Act of 1992, issued July 14, 1993 in the above-docketed proceeding. On July 30, 1993, Houston Lighting and Power Company filed an answer supporting UWG's motions for additional time. The deadline for filing comments is being extended at the request of these various parties.

Upon consideration, notice is hereby given that an extension of time for filing comments is granted to and including September 20, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19197 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

[1] UWG consists of the following utilities: Arizona Public Service Company, Baltimore Gas and Electric Company, Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Entergy Corporation, General Public Utilities Corporation, Louisville Gas and Electric Company, New England Electric System, Niagara Mohawk Power Corporation, Northern States Power Company, Orange and Rockland Utilities, Inc., Pacific Gas & Electric Company, Portland General Electric Company, PSI Energy, Inc., Public Service Company of New Mexico, Public Service Electric and Gas Company and Wisconsin Electric Power Company.

[2] The member companies of PJM are: Public Service Electric and Gas Company, Philadelphia Electric Company, Baltimore Gas and Electric Company, Pennsylvania Power & Light Company, Metropolitan Edison, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company.

[Docket No. EG93–62–000]

Lakewood Cogeneration, L.P.; Application for Commission Determination of Exempt Wholesale Generator Status

August 4, 1993.

Lakewood Cogeneration, L.P. ("Lakewood") (c/o Michael J. Zimmer, Esq., Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on July 30, 1993 for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Lakewood is a New Jersey limited partnership formed to own an electric and steam generating facility to be located in Lakewood Township, New Jersey. Lakewood states in its application that the facility will be a natural gas-fired topping cycle cogeneration facility with a net power production capacity of 238 MW. Lakewood states that the facility will also consist of various interconnection components that are necessary to deliver electric energy from the facility's generator terminals, step-up transformer

and metering station to Jersey Central Power & Light Company's substation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19243 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

[RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Extension of Time for Comments

August 5, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Inquiry concerning the Commission's pricing policy for transmission services provided by public utilities under the Federal Power Act; extension of time for comments.

SUMMARY: On June 30, 1993, the Commission issued an inquiry concerning its pricing policy for transmission services provided public utilities under the federal power act (58 FR 36400, July 7, 1993). The date for filing initial comments and reply comments is being extended at the request of various interested parties.

DATES: The date for filing initial comments is extended to and including November 8, 1993. Reply comments shall be filed on or before December 8, 1993.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–040.

SUPPLEMENTARY INFORMATION: On July 23, 1993 and July 27, 1993 the Utility Working Group (UMG),[1] and Edison Electric Institute (EEI) filed motions for an extension of time to file comments in response to the Commission's Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act issued June 30, 1903, in the above-docketed proceeding. On July 28, 1993, the Pennsylvania-New Jersey-Maryland Interconnection Association (PJM),[2] and the American Forest and Paper Institute, the American Iron and Steel Institute, American Public Power Association, Chemical Manufacturer's Association, the Council of Industrial Boiler Owners, Electricity Consumers Resource Council, Electric Generation Association, Environmental Action, National Association of Regulatory Utility Commissioners, National Independent Energy Producers and the National Rural Electric Cooperative Association filed similar motions for an extension of time to file comments in this docket. On July 30, 1993, Houston Lighting and Power Company filed an answer supporting UWG's motion for an extension of time. The date for filing comments is being extended at the request of these parties.

Upon consideration, notice is hereby given that an extension of time for filing initial comments is granted to and including November 8, 1993. Reply comments shall be filed on or before December 8, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19198 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] UWG consists of the following utilities: Arizona Public Service Company, Baltimore Gas and Electric Company, Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Energy Corporation, General Public Utilities Corporation, Louisville Gas and Electric Company, New England Electric System, Niagara Mohawk Power Corporation, Northern States Power Company, Orange and Rockland Utilities, Inc. Pacific Gas & Electric Company, Portland General Electric Company, PSI Energy, Inc., Public Service Company of New Mexico, Public Service Electric and Gas Company and Wisconsin Electric Power Company.

[2] The member companies of PJM are: Public Service Electric and Gas Company, Philadelphia Electric Company, Baltimore Gas and Electric Company, Pennsylvania Power & Light Company, Metropolitan Edison, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4689–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 10, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Premanufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances. (EPA ICR No: 0574.06; OMB No: 2070–0012) This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Under section 5(a) of the Toxic Substances Control Act (TSCA), manufacturers and importers of chemical substances must submit to EPA, and keep a record of, a notice of intent to manufacture, process or import a new chemical substance. This notice must be submitted to the Agency at least ninety days in advance of the planned activity. The same respondents are required to submit to EPA, and keep a record of, a notice of intent when seeking to manufacture, process or import a chemical for a use which the Agency considers a "significant new use". This notice must also be submitted at least ninety days in advance of the planned activity.

Respondents must submit the following information by completing form EPA No.7710.25:

1. The trade name, chemical identity, and molecular structure of the chemical substance;

2. Its categories of use or proposed use;

3. The total amount manufactured or processed in general and for each category of use, or reasonable estimates of these amounts;

4. A description of the byproducts resulting from the manufacture, process, use, or disposal;

5. The number of individuals exposed in their places of employment, or a reasonable estimate of this number, and the duration of exposure;

6. The manner of disposal; and

7. Any test data available to the submitter that are related to health or environmental effects and a description of any other relevant data.

The Agency uses the information to evaluate whether more data is required to ascertain the safety of the substance; whether no action should be taken, in which case the respondents may proceed with their planned activities; or whether to take regulatory actions in compliance with the Act.

Burden Statement: The burden for this collection of information is estimated to average 127.12 hours per response per respondent and 17.50 hours per recordkeeper annually. This estimate includes the time needed to review instructions, complete the form and review the collection of information.

Respondents: Manufacturers, processors and importers of chemical substances.

Estimated No. of Respondents: 432.

Estimated No. of Responses per Respondent: 5.3.

Estimated Total Annual Burden on Respondents: 298,550 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 4, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19252 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180998; FRL–4634–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 10 States as listed below, and one crisis exemption was initiated by the California Environmental Protection Agency. These exemptions, issued during the months of February, March, and April 1993, except for the one in August 1992, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Alabama Department of Agriculture and Industries and the South Carolina Department of Fertilizer and Pesticide Control, Clemson University. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of bifenthrin on melons to control the sweet potato whitefly; February 19, 1993, to May 14, 1993. Arizona had initiated a crisis exemption for this use. (Andrea Beard)

2. California Environmental Protection Agency for the use of bifenthrin on cucurbits to control the sweet potato whitefly, blackbean aphid, and the cotton aphid; March 26, 1993, to March 26, 1994. (Andrea Beard)

3. California Environmental Protection Agency for the use of cyfluthrin on navel oranges to control citrus thrips; April 12, 1993, to June 30, 1993. (Libby Pemberton)

4. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of triadimefon on artichokes to control powdery mildew; April 8, 1993, to December 31, 1993. (Susan Stanton)

5. Florida Department of Consumer Services for the use of fenpropathrin on tomatoes to control the sweet potato whitefly; April 5, 1993, to April 5, 1994. A notice published in the **Federal Register** of March 3, 1993 (58 FR 12237). The Applicant proposed the first food use. The situation was determined to be an emergency. This was for a new strain of whiteflies upon which the currently registered pesticides are not effective. If left uncontrolled, Florida tomato growers are likely to suffer significant economic losses. (Andrea Beard)

6. Georgia Department of Agriculture for the use of chlorothalonil on collards, mustard greens, and turnip greens to control the fungal leafspot complex of diseases; April 15, 1993, to June 30, 1993. Georgia had initiated a crisis exemption for this use. (Susan Stanton)

7. Idaho Department of Agriculture for the use of sethoxydim on rapeseed/canola to control volunteer grains and grasses; April 5, 1993, to November 30, 1993. (Susan Stanton)

8. New Hampshire Department of Agriculture for the use of clomazone on winter squash to control broadleaf weeds; April 7, 1993, to July 31, 1993. (Libby Pemberton)

9. New Jersey Environmental Protection and Energy for the use of chlorothalonil on blueberries to control anthracnose; April 7, 1993, to December 31, 1993. (Susan Stanton)

10. South Carolina Department of Fertilizer and Pesticide Control for the use of iprodione on tobacco transplants to control target spot; April 5, 1993, to May 15, 1993. (Susan Stanton)

11. Texas Department of Agriculture for the use of propazine on sorghum to control broadleaf weeds; April 19, 1993, to August 1, 1993. (Andrea Beard)

12. Texas Department of Agriculture for the use of bifenthrin on curcurbits to control the sweet potato whitefly; February 19, 1993, to February 19, 1994. (Andrea Beard)

13. Texas Department of Agriculture for the use of esfenvalerate on kale, kohlrabi, and mustard greens to control cabbage loopers; April 1, 1993, to November 30, 1993. (Libby Pemberton)

14. Washington Department of Agriculture for the use of chlorpyrifos on grapes to control the grape mealybug and cutworms; April 7, 1993, to August 15, 1993. (Andrea Beard)

A crisis exemption was initiated by the California Environmental Protection Agency on August 28, 1992, for the use of hexakis on watermelons to control spider mites. This program has ended. The Agency was not able to act on the specific exemption application in time for the use season, and the request was subsequently withdrawn. (Andrea Beard)

EPA has administratively withdrawn specific requests from the Alabama Department of Agriculture and Industries and the Texas Department of Agriculture for the use of hydrogen cyanamide on peaches to promote uniform bud-break under conditions of inadequate winter chilling, effective

April 20, 1993. The applications proposed the use of a new unregistered chemical and were withdrawn because the season had passed. A notice published in the **Federal Register** of December 30, 1992 (57 FR 62339) for Texas only. (Andrea Beard)

EPA has denied specific exemption requests from the Alabama Department of Agriculture and Industries and the South Carolina Department of Fertilizer and Pesticide Control, Clemson University, for the use of tebuconazole on peanuts to control Southern stem rot and *Rhizoctonia* limb rot. A notice of Solicitation of public comment published in the **Federal Register** of April 7, 1993 (58 FR 18095) and April 28, 1993 (58 FR 25833) respectively. These exemptions were denied because an emergency condition does not exist, since Southern stem rot and *Rhizoctonia* limb rot are routine pests of peanuts in Alabama and South Carolina. Yield losses due to these diseases this year are not expected to differ substantially from historical losses if the currently available pesticides and alternative practices are used. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: July 30, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–18965 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–580; FRL–4637–5]

NOR-AM Chemical Co.; Request for Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from NOR-AM Chemical Co. a request to extend for 1-year temporary tolerances in 40 CFR 180.446 for the insecticide clofentezine in or on peaches, nectarines, almonds, walnuts, apricots, and cherries.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-580], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Edwards Jr., Product Manager (PM 19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 201, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA has received from NOR-AM Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, a request to extend for 1-year temporary tolerances under 40 CFR 180.446 that expire on September 30, 1994, for residues of clofentezine (3,6-*bis*(2-chlorophenyl)-1,2,4,5-tetrazine in or on peaches, nectarines, walnuts, almonds, apricots, and cherries. NOR-AM Chemical Co. originally submitted petitions for the commodities in pesticide petition (PP) 9F3793 appearing in the **Federal Register** of November 1, 1989 (54 FR 46119) and PP 9F3799 appearing in the **Federal Register** of May 9, 1990 (55 FR 19320).

Authority: 21 U.S.C. 346a and 371.

Dated: July 29, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–18967; Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Agriculture Loan Loss Deferral Program.

Form Number: None.

OMB Number: 3064–0091.

Expiration Date of OMB Clearance: October 31, 1993.

Frequency of Response: Recordkeeping, on occasion.

Respondents: Insured State nonmember banks in the agricultural loan loss deferral program.

Number of Recordkeepers: 13.

Annual Hours per Recordkeeper: 2.

Total Annual Burden Hours: 26.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0091), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before October 12, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Institutions in the agricultural loan loss deferral program must maintain appropriate records, as required by 12 CFR Part 324.

Dated: August 5, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19200 Filed 8–10–93; 8:45 am]

BILLING CODE 6714–01–M

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured

depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Kenneth N. Blincow, John H. Fisher, Deborah J. Hall and Wade Massey.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of, execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC, sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: August 5, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19199 Filed 8–10–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010027–037.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Maritima Netumar.

Synopsis: The proposed amendment creates a special 100 percent carrying rate, thus suspending indefinitely the pooling of revenue under the Agreement.

Agreement No.: 207–010168–007.

Title: Carol Lines Joint Service Agreement.

Parties: Charente Steamship Col. Ltd., CGM Sud, Hapag-Lloyd Aktiengesellschaft, Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would restructure the Agreement from a joint service to a conference agreement. It also changes the name of the Agreement to New Caribbean Service Rate Agreement. In addition, Flota Mercante Grancolombiana S.A. and Laser Lines Ltd. AB will become members of the new conference.

Agreement No.: 212–010320–028.

Title: Brazil/U.S. Gulf Ports Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment creates a special 100 percent carrying deduction, thus suspending indefinitely

the pooling of revenue under the Agreement.

Dated: August 5, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19206 Filed 8–10–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P49–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing

In the matter of Petition No. P49–93, Petition of Distribution-Publications, Inc.; Petition No. P50–93, Tradeair Ocean Express; Petition No. P51–93, Great White Fleet, Ltd.

Notice is hereby given of the filing of petitions by the above-named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 16, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P49–93—Mr. John W. Sullivan, President, Distribution-Publications, Inc., 7996 Capwell Drive, Oakland, CA 94621

P50–93—Mr. Tim O'Sullvian, President, Tradeair Ocean Express, 155 Armstrong Road, Des Plaines, IL 60018

P51–93—Wade S. Hooker, Jr., Esq., Burlingham, Underwood & Lord, One Battery Park Plaza, New York, NY 10004–1484

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 North Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19237 Filed 8–10–93; 8:45 am]

BILLING CODE 6730–01–M

[Fact Finding Investigation No. 16]

Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigation

By Order issued April 9, 1987 (52 FR 12064, April 14, 1987), the Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing or allowing other persons to obtain transportation of property at less, or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988), the term of this investigation was extended to April 14, 1989. By Order issued May 1, 1989 (54 FR 19436, May 5, 1989), the term of this investigation was extended to April 14, 1990. The term of this investigation was further extended to April 14, 1991 by Order issued April 5, 1990 (55 FR 13664, April 11, 1990), to April 14, 1992 by Order issued June 5, 1991 (56 FR 26820, June 11, 1991) and to July 1, 1993 by Order issued July 1, 1992 (57 FR 30493). The Investigative Officer has now advised that in order to continue fact finding activities it is necessary to extend this investigation for an additional period of time.

Therefore, *it is ordered*, That the Investigative Officer shall issue a report of activities, findings and recommendations to the Commission on or before July 1, 1994, and at least yearly thereafter; such reports to remain confidential unless and until the Commission rules otherwise. This investigation is to remain open until such time as a final report is prepared by the Investigative Officer and accepted by the Commission.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19244 Filed 8–10–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fidelity Southern Corporation; Application to Engage de novo in Underwriting and Dealing in Certain Bank-Ineligible Securities on a Limited Basis, and Other Securities-Related Activities

Fidelity Southern Corporation, Decatur, Georgia (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage *de novo* through its subsidiary, Fidelity National Capital Investors, Inc., Decatur, Georgia (Company), in various securities and securities-related activities described below.

Applicant proposes to engage *de novo* in the following activities previously authorized by the Board:

(1) Providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of Regulation Y;

(2) arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of Regulation Y.

Applicant proposes to buy and sell in secondary market trading all types of securities on the order of investors as a "riskless principal." Applicant also proposes to engage *de novo* in activities which previously have been determined by the Board by Order to be closely related to banking. Applicant proposes to underwrite and deal in municipal revenue bonds, residential mortgage related securities, consumer receivable-related securities, and commercial paper. In addition, Applicant also proposes to underwrite and deal, on a limited basis, in municipal revenue bonds that have not been rated by a nationally recognized rating agency.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board has previously authorized riskless principal activities, subject to certain prudential limitations which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). The Board also has previously authorized bank holding companies to underwrite and deal in municipal revenue bonds, residential

mortgage related securities, consumer receivable-related securities, and commercial paper provided that the underwriting subsidiary derives no more than 10 percent of its total gross revenue from underwriting and dealing in the approved securities over any two-year period. *See Citicorp*, 73 Federal Reserve Bulletin 473 (1987) *aff'd sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988), *modified by Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989).

In conducting these activities, Applicant will comply with the commitments and prudential limitations established by the Board in previous Orders, except that Applicant proposes to underwrite and deal in municipal revenue bonds that have not been rated by a nationally recognized rating agency if the total amount of the bond issue is under $5,000,000, and, therefore, not of sufficient size to be considered by a national rating agency. Applicant has committed to underwrite and deal in only those small issue, unrated municipal revenue bonds which exhibit a credit quality that would otherwise qualify as investment grade-debt if submitted for rating by a rating agency. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant states that the expected benefits to the public include increased efficiency and greater customer convenience resulting from an internal reorganization of Applicant's existing services, as well as increased competition because of a stronger and more unified system for marketing and delivering services.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 31, 1993. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19228 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

First State Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First State Bancorp, Inc., Caruthersville, Missouri; to engage *de novo* through its subsidiary, First State Bancorp Community Development Corporation, Caruthersville, Missouri, in purchasing, rehabilitating and selling affordable owner-occupied housing for low- and moderate-income persons pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Pemiscot County, Missouri.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Union Bancshares, Inc., Wichita, Kansas; to engage *de novo* through its subsidiary, UBI Financial Services, Inc., Wichita, Kansas, in making community development investments pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19229 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

Mellon Bank Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 3, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to acquire AFCO Credit Corporation, New York, New York, and thereby indirectly acquire AFCO Acceptance Corporation, and AFCO Service, Inc., and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., St. Louis, Missouri; to acquire Carboro, Ltd., Murphysboro, Illinois, through the acquisition of City Bancorp, Inc., Murphysboro, Illinois, and thereby engage in carrying on the business of insurance and reinsurance companies; acting as agent and broker for insurance companies and syndicates; and accepting risks, settling claims, soliciting business and all other matters incident thereto; all of which shall be directly related to extensions of credit by Applicant or its subsidiaries and shall be limited to assuring the repayment of the outstanding balance due on such extensions of credit in the event of death, disability, or involuntary unemployment of the respective debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19230 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

Queens County Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 3, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Queens County Bancorp, Inc., Flushing, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Queens County Savings Bank, Flushing, New York.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancook Corporation, Cook, Nebraska; to acquire 100 percent of the voting shares of DeWitt State Bank, DeWitt, Nebraska.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19231 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[G–93–3]

Delegation of Authority to the Secretary of Transportation

Pursuant to the authority vested in the Administrator of General Services by section 3726 of title 31, United States Code, and redelegated to the Director, Office of Transportation Audits, Federal Supply Service, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of Transportation; specifically, to the U.S. Customs Service, to conduct prepayment audits of domestic and foreign household goods, motor, air and rail freight, air passenger, and water freight, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101–41, and amendments thereto. These prepayment audits will be conducted by a General Services Administration's (GSA's) contractor, at the contractor's site for the U.S. Coast Guard Supply Center, Brooklyn, New York.

The Secretary of Transportation may redelegate this authority to any officer, official, or employee of the Department of Transportation.

The Secretary of Transportation shall notify GSA in writing of these additional delegations. This delegation is effective upon publication in the **Federal Register**.

Dated: August 3, 1993.

R. W. Piasecki,

Director, Office of Transportation Audits.

[FR Doc. 93–19191 Filed 8–10–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–73]

Public Health Advisory Procedures

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised procedures ATSDR will use in preparing a public health advisory. The public health advisory is a statement by ATSDR containing a finding that a release of a hazardous substance or a physical condition poses a significant risk to human health and recommending measures to be taken to reduce exposure and eliminate or substantially mitigate the significant risk to human health. The proposed procedures were published in the **Federal Register** on December 10, 1992 [57 FR 58504], and the public was invited to comment on the procedures. The public comments received were considered and the procedures were revised based on the comments accepted.

EFFECTIVE DATE: The revised procedures are effective immediately.

ADDRESSES: Requests for the revised procedures ATSDR will use in preparing a public health advisory, as well as the public comments and ATSDR responses, should bear the docket control number ATSDR–73, and should be submitted to: C. Harold Emmett, P.E., Chief, Emergency Response and Consultation Branch, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–57, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: C. Harold Emmett, ATSDR, telephone (404) 639–6360.

Dated: August 5, 1993.

Walter R. Dowdle,

Deputy Administrator Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–19214 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

[CDC–351]

Announcement of Cooperative Agreement to the Association of Maternal and Child Health Programs

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a sole source cooperative agreement with the Association of Maternal and Child Health Programs (AMCHP), an affiliate of the Association of State and Territorial Health Officials (ASTHO). Approximately $250,000 is available in FY 1993 to fund this program. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of up to 3 years. This funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this program is to assist AMCHP in disseminating information and resources in prenatal smoking cessation to maternal and child health providers, to promote the integration of prenatal smoking cessation counseling as a routine part of prenatal care, and to facilitate the exchange of ideas and information related to prenatal smoking cessation among state Maternal and Child Health (MCH) programs and State Primary Care Associations.

The CDC will: collaborate in the development of a dissemination plan to assist state MCH programs in sharing and applying knowledge and expertise of tobacco prevention and cessation to needs assessment; planning, policy and program development; and population-based and personal health services delivery; collaborate in the development of a forum that focuses on prenatal smoking cessation ideas and other public health information that relates to smoking and pregnancy among MCH populations; and participate in defining the scope of prenatal smoking cessation and other prevention needs relevant to MCH populations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of tobacco. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under section 301(a), (42 U.S.C. 241(a)) and section 317, (42 U.S.C. 247b) of the Public Health Service Act, as amended.

Eligible Applicant

Assistance will be provided only to AMCHP. No other applications are solicited. The Program Announcement and application kit have been sent to AMCHP.

Eligibility is limited to AMCHP because of its unique role to state maternal and child health (MCH) programs. AMCHP is a national nonprofit organization that brings together state public health programs that address the needs of women in their reproductive years, children, youths and families. It is the national association that represents and serves state health department programs in maternal and child health. Its members consist entirely of state MCH program directors and their staff. All states are members. As such, it is uniquely capable and charged to serve as a convener of state MCH programs. The mission of AMCHP is to provide state and national leadership to assure the health of all mothers, children, and families. It has served as a policy development and capacity-building organization in public health matters since 1944 and has as one of its major objectives the sharing of information within and between state health departments.

In collaboration with other national organizations, AMCHP works to accomplish its mission by disseminating information on MCH needs and services, and recommending and advocating improved policies and programs. AMCHP also fosters the exchange of ideas and assists state programs in assuring statewide systems of coordinated, community-based care for families, especially for children in low-income families with special health care needs because of chronic or disabling conditions, and for families with limited access to care. All of these activities are accomplished through cooperation and collaboration with national, state, and local partners in the public and private sectors.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement as cited in PHS Circular 93.01.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement number 351 and contact Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, (404) 842–6803.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Summary may be obtained through the Superintendent of

Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 5, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19216 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–18–P–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for authority to continue use of a previously approved information collection for the Office of Financial Management of the Administration for Children and Families (ACF). This information collection was formerly approved under OMB Control Number 0970–0095.

ADDRESSES: Copies of the information collection request may be obtained from Steve R. Smith, (ACF) by calling (202) 401–6984.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503; (202) 395–7316.

Information on Document

Title: Title IV–F, Job Opportunities and Basic Skills Training Program Financial Report (Form ACF–331)

OMB No.: 0970–0095

Description: Section 403 of the Social Security Act, as amended by section 201(c) of Public Law 100–485, provides funding for States in order to implement the Job Opportunities and Basic Skills Training Program (JOBS). Section 403 requires Federal reimbursement to States in support of activities authorized by Title IV–F and establishes varying matching rates which are unique to the program. Collection of data is necessary to properly monitor and evaluate the allowability of claims for reimbursement, to formulate budget submissions to Congress and apportionment requests to OMB, and process grant awards for JOBS on a quarterly basis. State agencies with approved state plans for implementation of the JOBS program report the data on a quarterly basis and semi-annual basis (Part 2). The form provides specific data on matching rates at which reimbursement is claimed and provides a mechanism for States to request grant awards and certify the availability of State matching funds as required under Section 403(b) of the Social Security Act. Part 2 data will be used to update projections of JOBS expenditures and estimate outlays. This information will also be used to prepare the ACF budget submissions to Congress.

Annual Number of Respondents: 55

Annual Frequency: 6

Average Burden Hours Per Response: 1.5

Total Burden Hours: 495

Dated: August 3, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–19188 Filed 8–10–93; 8:45 am]

BILLING CODE 4184–01–M

Department of Health and Human Services; Appeal

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of appeal.

SUMMARY: By designation of the Administration for Children and Families, a member of the Departmental Appeals Board will be presiding officer for an appeal pursuant to 45 CFR part 213 concerning the Administration for Children and Families' disapproval of two State plan amendments submitted by the State of Ohio.

The State of Ohio and the Administration for Children and Families have agreed that there are no disputed issues of fact, and that an in-person evidentiary hearing is unnecessary. The presiding officer therefore proposes to consider the appeal based on written briefs without convening an in-person evidentiary hearing.

REQUESTS TO PARTICIPATE: Requests to participate as a party or as an *amicus curiae* must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 within fifteen days after this publication.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Sacks, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, room 635–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Telephone Number: (202) 690–8011.

SUPPLEMENTARY INFORMATION: Notice of appeal is hereby given as set forth in the following letter, which has been sent to the State of Ohio.

Washington, DC, July 27, 1993.

Alan F. Schwepe, Assistant Attorney General, Health, Education and Human Services Section, 30 E. Broad Street, 15th Floor, Columbus, Ohio 43266–0410, and

Ted Yasuda, Assistant Regional Counsel, DHHS—Region V, 105 W. Adams, 19th Floor, Chicago, Illinois 60603.

Counsel

This letter is in response to the State of Ohio Department of Human Services' (State) requests for reconsideration, dated September 14, 1990 and June 18, 1991, of the Administration for Children and Families' (ACF, formerly the Family Support Administration or FSA) disapproval of the State's proposed amendments to its plan for implementing title IV–A of the Social Security Act (Aid to Families with Dependent Children, or AFDC) submitted as Transmittal Nos. 90–9 and 91–01, respectively (the plan amendments). With its request for reconsideration of plan amendment 90–9 the State filed a motion for stay of proceedings. When the State subsequently filed its request for reconsideration of plan amendment 91–01, it moved for consolidation of the proceedings for both proposed plan amendments.

Section 407 of the Social Security Act (42 U.S.C. 607) provides for payment of AFDC for dependent children of unemployed parents (AFDC–UP), when the parent who is the principal wage earner has 6 or more quarters of work in any 13-quarter-calendar period ending within one year prior to the application of aid. Prior to amendment by the Family Support Act of 1988, Public Law 101–485, section 407(d)(1) of the Social Security Act defined "quarter of work" as a calendar quarter in which the parent participated in a community work experience program (CWEP) under section 409 of the Social Security Act, or the work incentive program (WIN) established under part C of title IV of the Social Security Act.

In plan amendment 90–9, the State proposed to allow participation in the same activities as a Community Work Experience Participation (CWEP) program by recipients of state-funded General Assistance (GA), who are not recipients of AFDC to satisfy the work history requirement of the AFDC–UP program.

Section 407(d) of the Social Security Act was amended effective October 1, 1990 by the Family Support Act to permit participation in a job

opportunities and basic skills training (JOBS) program to meet the AFDC–UP quarter-of-work requirement. Section 407(d) of the Social Security Act was also amended to provide that the quarter-of-work requirement could also be met be participation in a CWEP program under section 409, as in effect prior to amendments made by the Family Support Act.

The State subsequently proposed, in plan amendment 91–9, to allow participation by GA and Food Stamp recipients in the same activities as JOBS (or in a CWEP or WIN program prior to October, 1990) to satisfy the AFDC–UP work history requirement. As the two proposed amendments would effect substantially similar changes to the state plan and involve common issues, ACF assented to the notion for consolidation and the reconsideration of both proposed plan amendments shall be heard as one proceeding.

The principal issue to be considered in the appeal is whether participation by GA or Food Stamp recipients, who are not recipients of AFDC, in the same activities as in JOBS (or in CWEP or WIN program prior to October, 1990) may be counted as quarters of work for the purpose of meeting the AFDC–UP work history requirements.

I have designated Donald F. Garrett, a Departmental Appeals Board Member, as the presiding officer pursuant to 45 CFR 213.21. ACF and the State are now parties in this matter. 45 CFR 213.15(a). ACF and the State have agreed that there are no disputed issues of fact, and that an in-person evidentiary hearing is not necessary to resolve Ohio's requests for reconsideration. Accordingly, the parties have requested that the appeal be decided based on their written submissions.

A copy of this letter will appear as a Notice in the **Federal Register** and any person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state petitioner's interest in the proceeding, who will represent the petitioner, and the issues on which petitioner wishes to participate. 45 CFR 213.15(b)(2). Additionally, if the petitioner believes that there are disputed issues of fact which require an in-person evidentiary hearing, the petitioner should concisely specify the disputed issues of fact in the petition, and also state whether petitioner intends to present witnesses. Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as *amicus curiae* may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c)(2). The petition should be filed within 15 days after this notice, in time to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Mr. Garrett at the Departmental Appeals Board, room 637–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience please refer to the Board Docket Nos. 91–114 (reconsideration of the disapproval) of proposed plan amendment 91–1) and 91–125 (reconsideration of the disapproval of proposed plan amendment 90–9).

Dated: August 4, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

[FR Doc. 93–19239 Filed 8–10–93; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Studies of Adverse Effects of Marketed Drugs; Availability of Grants (Cooperative Agreements); Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing the anticipated availability of $1.7 million in Fiscal Year 1994 funds for cooperative agreements to study reported adverse effects of marketed drugs. This amount is consistent with the level of funding in the President's budget. FDA expects to make five to six awards in the $300,000 to $400,000 range. Funds are not currently available. The Government's obligation is contingent upon the availability of appropriated funds from which the cooperative agreements will be funded.

The purpose of these cooperative agreements is to support pharmacoepidemiological research and to provide a mechanism for collaborative research to test hypotheses, particularly those arising from adverse events reported to FDA, and to enable FDA to have rapid access to and response from multiple data sources when necessary. FDA seeks to fund a variety of data bases which represent diverse patient populations and/or types of patient care settings. The data bases maintained through these agreements must be able to support the completion of one to two major studies per year of multiple drugs/multiple outcomes which are designed in collaboration with FDA to identify drug induced disease that occurs infrequently. FDA seeks to fund nonduplicative existing data bases that are not already available to FDA.

The adverse events of most concern to FDA are those that are serious and are not currently found in a drug's official labeling. FDA is also interested in those adverse events that occur in patient populations not generally included in premarketing clinical trials. Populations of particular interest are: Children, pregnant women, the elderly, and acquired immunodeficiency syndrome (AIDS) patients.

DATES: Applications must be received by 5 p.m. (eastern daylight time) on September 27, 1993. The earliest possible date for award is February 1, 1994.

ADDRESSES: Application kits are available from, and completed applications should be submitted to: Stephanie Seligman, Grants and Assistance Agreements Section (HFA–522), Food and Drug Administration, Park Bldg., rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Note: Applications hand-carried or commercially delivered should be addressed to the Park Bldg., rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857. Do not send applications to the Division of Research Grants, National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT: *Regarding the programmatic aspects of this notice:* Laurie B. Burke, Center for Drug Evaluation and Research (HFD–733), Food and Drug Administration, 5600 Fishers Lane, rm. 15B–18, Rockville, MD 20857, 301–443–2306.

Regarding the business or financial aspects of this notice: Stephanie Seligman (address above).

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set

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out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. Applications submitted under this program are not subject to the requirements of Executive Order 12372 and are exempted from regulation 45 CFR part 46—Protection of Human Subjects. This program is not subject to the Public Health System Reporting Requirements.

I. Background

New drugs are required to undergo extensive testing before marketing. With the submission of adequate data on a drug's safety and effectiveness, FDA approves a new drug application which permits a manufacturer to market its drug product in the United States. Although the information provided before marketing is sufficient for approval, it is not adequate to anticipate all effects of a drug once it comes into general use.

This request for applications (RFA) is intended to encourage research projects in the area of drug-induced illness and to provide a mechanism for collaborative research designed to test hypotheses based on indications of possible problems, particularly those originating from reports of adverse drug events (ADE's) received by FDA.

II. Research Goals and Objectives

The goal for these cooperative agreements is to assess suspected associations between specific drug exposures and specific diagnoses and to investigate and quantitate such risk. The specific objectives are to provide immediate access to existing data sources with the capability of providing feasibility assessments for the study of particular drug safety questions within 2 to 4 weeks and the additional capability of providing a substantive response to those questions deemed feasible within 6 to 8 months.

Data base capabilities should include:

1. Estimation of adverse event rates or relative risks for specific drugs;

2. Estimations of the contribution of various risk factors to adverse event rates (e.g., age, sex, dose, coexisting disease, concomitant medication, etc.); and

3. Determination of adverse event rates for generic entities as well as for classes of drugs.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated above to specifically defined populations including but not limited to children, pregnant women, the elderly, and AIDS patients.

The ideal data source would capture all drug exposure linked longitudinally to each patient regardless of health care delivery setting. Because the outcomes of interest could be either acute or chronic effects, all health provider encounters, i.e., medical records, would be captured whether in the ambulatory, emergency, chronic care or acute care setting. The ideal data source would have the power to identify rare ADE's in the population of interest, and it would have the capability to determine person-time at risk of the outcome in question. The ideal data base would also be completely automated with an inherent system available for the linkage by patient of all relevant medical care data with all drug exposure data and linkage to data bases of vital records, cancer registries, and birth defect registries.

Submitted applications must include an indepth description of the data base and provide descriptive and quantitative information on diagnoses and drug exposures in the population. The quality and validity of the data should be described in detail.

III. Reporting Requirements

Program Progress Reports will be required quarterly. These reports must be submitted within 30 days after the last day of each quarter based on the budget period of the cooperative agreement. Financial Status Reports (FSR's) will be required annually. These reports must be submitted within 90 days of the budget expiration date. A Final Program Progress Report and an FSR must be submitted within 90 days after the expiration of the project period of the cooperative agreement.

Up to two representatives from each cooperative agreement may be required, if requested by the project officer, to travel to FDA up to twice a year for no more than 2 days at a time. These meetings will include, but not be limited to, presentations on study findings and discussions with the FDA staff involved in the collaborative research. At least one FDA employee may visit the cooperative agreement site at least once a year for collaboration and information exchange.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of: 42 CFR part 52, 45 CFR parts 74 and 92, and PHS grants policy statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State, local, and foreign units of government) and any for-profit organization. For-profit organizations must exclude fees or profit from their request for support

C. Length of Support

The length of support will depend upon the nature of the study and may extend beyond 1 year but may not exceed 3 years. For those studies with an expected duration of more than 1 year, a second year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of cooperative agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the projects.

Federal funds for this program are limited. Therefore, should FDA approve two or more applications which propose duplicative or very similar data resources, FDA will support only the source with the best score. Furthermore, should FDA approve two or more applications which propose smaller data resources capturing the aforementioned special populations of interest, FDA will support only the source with the best score.

V. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in cooperative agreement awards. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. The FDA appointed project officer will select and approve the drug exposures and medical events to be studied. The project officer represents the grantee before the extramural program review group, the group that monitors the progress and performance of the cooperative agreements.

2. FDA scientists will collaborate with awardees in study design and data analysis. Collaboration will also include interpretation of findings, review of manuscripts, and, where appropriate, coauthorship of publications.

3. When the same study is instituted with two or more of the grantees within this cooperative agreement program simultaneously, for purposes of study power enhancement, data pooling will be authorized and coordinated by FDA.

VI. Publication Requirements

Those publications arising from such collaborative projects shall have the FDA referenced as a source of support; whereas, those publications arising from projects not developed and/or completed in such collaboration with FDA shall not reference FDA as a source of support for that study.

The grantee shall secure written prior approval from the Grants Management Office before any attribution is referenced in a publication.

VII. Review Procedure and Criteria

A. Review Procedure

All applications submitted must be responsive to the RFA. Those applications found to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant.

Responsive applications will undergo dual peer review. An external review panel of experts in the fields of epidemiology, statistics, and data base management will review and evaluate each application based on its scientific merit. Responsive applications will also be subject to a second level review by the National Advisory Environmental Health Science Council.

B. Review Criteria

Applications should describe the type of pharmacoepidemiologic study that the data base is capable of producing; it should state the estimated number of such comparable studies to be completed in 1 year under the cooperative agreement. In order to avoid duplication of support, FDA requires that before the beginning of any such study under this cooperative agreement, the grantee will inform FDA of any studies on the same drug that the grantee is performing. Unless approved in writing by FDA, studies chosen for collaboration with FDA will be funded solely by FDA. Applications will be reviewed according to the following criteria:

1. Size and Characteristics of the Data Base.

a. A large population size of individuals for whom both drug exposure and medical outcome data are available. Full points will be awarded to data bases with a population of at least 2,000,000 individuals. No points will be awarded for data bases with a population size of less than 250,000. Data bases comprised of only one of the special populations for which data are desired, i.e., children, pregnant women, AIDS patients, and the elderly, may be awarded full points for smaller population sizes (up to 15 points);

b. Ability to assemble and follow (retrospectively or prospectively) well defined cohorts based on drug exposure with the intent to perform case-control and cohort studies (up to 8 points);

c. Ability to access and to link to the patient all health provider encounter and drug exposure information regardless of patient care setting. Full points will be awarded to data bases that capture linked drug exposure and patient outcome data from hospital, ambulatory care and long-term care settings (up to 12 points);

d. Ability to detect rare ADE's in one or more specific target populations of interest (i.e., children, pregnant women, the elderly and/or AIDS patients) (up to 5 points);

e. Ability to ascertain patient enrollment and disenrollment dates as demonstrated by descriptions of the entry and drop-out rates and the average length of enrollment (up to 5 points);

f. Ability to study all drug products. A description of the formulary restrictions as well as the pharmacy reimbursement plan should be included. A tabulation of the number of exposures to those new molecular entities (NME's) approved by FDA in 1991 (with "important" or "modest" therapeutic gain) is requested. These NME's are as follows: alglucerase (Ceredase®), azithromycin (Zithromax®), clarithromycin (Biaxin®), didanosine (Videx®), etodolac (Lodine®), fludarabine (Fludara®), flumazenil (Mazicon®), foscarnet (Foscavir®), gallium nitrate (Ganite®), histrelin (Supprelin®), ondansetron (Zofran®), pamidronate (Aredia®), pentostatin (Nipent®), succimer (Chemet®), and ticlopidine (Ticlid®) (up to 5 points);

g. An acceptable set of drug and disease classification systems. A tabulation is requested of the top 50 diagnoses and drug exposures (by molecular entity) in the study population with definitions of the classification systems used (up to 3 points);

h. A long calendar time period for which data are available and longitudinally linkable. No points will be awarded to data bases with less than 2 years of history (up to 3 points);

i. A short lag time between patient events and data availability (up to 3 points); and

j. Ability to successfully retrieve a high proportion of medical records in a timely fashion. Documentation of proportion of medical records retrieved in a specified time period should be included (up to 6 points).

2. Information Systems and Software Capabilities.

a. A well defined and acceptable description of computer resources, extent of automation and software capabilities (up to 3 points);

b. Availability of computerized data elements (e.g., inpatient drugs and diagnoses, outpatient drugs and diagnoses, procedures, medical record notes) or progress toward automation of those data elements not yet available (up to 3 points);

c. Existing software to calculate person-time at risk (up to 3 points);

d. Ability to complete routine searches of the data base within a short time period (2 to 4 weeks) (up to 3 points); and

e. Ability to generate customized SAS or ASCII data sets to facilitate data transfer and research collaboration (up to 3 points).

3. Personnel.

a. Extensive research experience, training, and competence with a demonstrated ability to draw on consultative expertise in the areas of post-marketing surveillance and epidemiology (up to 5 points);

b. Information systems expertise with previous experience in the organization and manipulation of large data sets (up to 5 points); and

c. Investigators who demonstrate a willingness to collaborate with FDA scientists as well as with other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for mechanisms of data pooling and for transfer of data sets between investigators within and outside of Government (up to 5 points).

4. Budget.

Reasonableness and cost effectiveness of the proposed budget (up to 5 points).

VIII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 9/91) or the original and two copies of Form PHS 5161 (Rev. 7/92) for State and local governments, with sufficient copies of the appendix for each application, should be delivered to Stephanie Seligman (address above). No supplemental material will be accepted after the closing date. The outside of the mailing package and item 2 of the application face page should be labeled "Response to RFA–FDA–CDER–94–1."

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IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before September 27, 1993. Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless they arrive too late for orderly processing. Private, metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/91). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, NIH. This information collection is approved under OMB No. 0925–0001. Applications from State and local governments should be submitted on Form PHS 5161 (Rev. 7/92). The face page of the application must reflect the request for applications number RFA–FDA–CDER–94–1. This information collection is approved under OMB No. 0937–0189.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of an application that have been specifically identified by page number, paragraph, etc., by the applicant as containing confidential commercial information or other information that is exempt from public disclosure will not be used or disclosed except for evaluation purposes.

Dated: June 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19270 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–01–F

Indian Health Service

Tribal Management Grant Program for American Indians/Alaska Natives: Technical Assistance Workshop Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of technical assistance workshops for prospective IHS grantees.

SUMMARY: The Indian Health Service (IHS) announces that technical assistance workshops for the Tribal Management Grant Program to include grant proposal writing will be conducted for American Indian/Alaska Native Tribal organizations as defined by Public Law 93–638, as amended.

DATES: Technical assistance workshops are scheduled for October 13–15, 1993, in Anchorage, Alaska; October 26–28, 1993, in Minneapolis, Minnesota; November 16–18, 1993, in Oklahoma City, Oklahoma; and November 30–December 02, 1993, in Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Beulah Bowman, Director, Division of Community Services, Office of Tribal Activities, room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6840; M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Suite 300, 12300 Twinbrook Parkway, Twinbrook Building, Rockville, Maryland 20852, (301) 443–5204. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Office of Tribal Activities, Division of Community Services; and Division of Acquisition and Grants Operations, Grants Management Branch will provide potential applicants an opportunity to receive technical assistance for Tribal Management including participation in grant writing workshops to assist applicants in developing and submitting competitive proposals. The purpose is to: (a) Establish communication between the IHS and the applicants, (b) determine the applicants eligibility, and (c) to provide technical assistance to increase the ability of an applicant to successfully compete. Applicants will prepare preapplications for constructive review and feedback during the workshop.

Dated: August 4, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 93–19202 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: The Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Health is announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATES: Date, Time and Place: September 9, 9 a.m.; and September 10, at 8:30 a.m.; Hubert H. Humphrey Building, room 703A, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, room 13A–56, Rockville, Maryland 20857, (301) 443–6264.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before September 1, 1993, and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names, addresses, and telephone numbers of the proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion There will be updates on the National Vaccine Program, the National Vaccine Compensation Program, and President Clinton's Childhood Immunization Initiative. There will be reports and discussions on the two working subcommittees: Adult Immunization, and State and local Impediments to Immunization Services. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: July 30, 1993.

Chester Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 93–19186 Filed 8–10–93; 8:45 am]

BILLING CODE 4180–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–93–3617; FR–3444–N–03]

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants; Extension of Deadline

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of funding availability; extension of deadline.

SUMMARY: This notice extends the deadline to September 15, 1993, for applications for Category I grants in the NOFA document that was published in the **Federal Register** on June 4, 1993 (58 FR 31848).

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone 1–800–RID–LEAD (1–800–743–5323). TDD numbers for the hearing-impaired are: (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 4, 1993, the Department published a Notice of Funding Availability for this program (58 FR 31848). A notice correcting a date applicable to Category II grants was published on June 14, 1993 (58 FR 32958).

This notice is for the purpose of extending the deadline for applications for Category I grants until September 15, 1993. The Department has decided to extend the deadline for all Category I applicants because certain States and local governments in the Midwest affected by recent flooding may have difficulty in meeting the original deadline. These jurisdictions have had to concentrate their personnel resources on relief efforts and, therefore, may not have been able to complete timely applications for the assistance available under this program. In order to recognize the difficulties faced by these jurisdictions, the Department has decided to extend the application period for Category I grants to September 15, 1993. The new deadline will apply to all potential applicants. In addition to this notice in the **Federal Register**, the Department is sending direct notification of the deadline change to all parties that have requested an application.

Accordingly, FR Doc. 93–13101, NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants, published in the **Federal Register** on June 4, 1993 (58 FR 31848), is amended by revising the Category I deadline dates, as follows:

(1) On page 31848, in column 1, under the section "DATES", the Category I text is revised to read as follows:

DATES: * * *

Category I: No later than 3 p.m. (Eastern Time) on Wednesday, September 15, 1993.

* * * * * *

(2) On page 31854, in column 2, under "*4.1 Submitting Applications for Category I Grants*", the first paragraph is revised to read as follows:

4.1 Submitting Applications for Category I Grants

To be considered for funding under a Category I Grant, an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3 p.m. (Eastern Time) on Wednesday, September 15, 1993. Electronic (FAX or equivalent transmittal) application is not an acceptable transmittal mode.

* * * * * *

Authority: 42 U.S.C. 3535(d) and 4821–4846.

Dated: August 5, 1993.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 93–19248 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. N–93–3622; FR 3416–N–02]

Deadline Extension for FY 1993 Notice of Funding Availability for the Public and Indian Housing Resident Management Program Technical Assistance Grant

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending the application deadline for Technical Assistance Grants under the Public and Indian Housing Resident Management Program for those applicants who were adversely affected in their application preparation as a result of flood conditions in the Mid-West.

DATES: For qualified applicants, the application deadline is being extended from August 9, 1993 to August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3611.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On June 8, 1993, HUD published a Notice of Funding Availability (NOFA) announcing the availability of FY 1993 funds for Public Housing Resident Management Program Technical Assistance (see 58 FR 32254).

In this Notice, HUD is extending the application deadline for technical assistance grants under the Public Housing Resident Management Program for those applicants who were adversely affected in their preparation of applications as a result of flood conditions in the Mid-West. For those applicants who qualify, the application deadline is being extended from August 9, 1993 to close of business at the appropriate HUD Field Office on August 16, 1993.

An applicant may qualify for an extension of the application deadline for Technical Assistance Grants under the Public Housing Resident Management Program if:

(A) The applicant submits documentation with its application describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the documentation adequately demonstrates that the applicant's ability to prepare or

submit the Technical Assistance Grant application was substantially impaired as a result of the flood. If HUD makes this determination, the application will be accepted for review.

A qualified application may submit an application, or may revise and resubmit a previously submitted application, as long as the application is received by the appropriate HUD Field Office by close of business on August 16, 1993. A list of Field Offices was included as the Appendix to the June 8, 1993 NOFA. All submission requirements other than the date by which such applications must be received remain unaffected by this Notice.

Dated: August 6, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 93-19341 Filed 8-10-93; 8:45 am]

BILLING CODE 4210-33-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3654; FR 3551-N-01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1993, is 6 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1993, is 7 percent.

FOR FURTHER INFORMATION CONTACT: Fred E. McLaughlin, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, suite 3120, Washington, DC 20024. Telephone (202) 755-7450 or TDD number (202) 708-4594 for hearing or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1993, is 7 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7 percent for the six-month period beginning July 1, 1993. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1993.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993.	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1993, is 6 percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1994.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 27, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93-19179 Filed 8-10-93; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Agency Draft Recovery Plan for Cooley's Meadowrue for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for Cooley's meadowrue (*Thalictrum cooleyi*). This perennial herb historically occurred from North Carolina to Florida. Presently, Cooley's meadowrue is known from 11 locations in the coastal plain of North Carolina and 1 location in the Florida panhandle. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before (October 12, 1993.) to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy of contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans described actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Cooley's meadowrue (*Thalictrum cooleyi*). The areas of emphasis for recovery actions are the coastal plain of North Carolina and the panhandle of Florida. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 29, 1993.

Brian P. Cole,

Field Supervisor.

[FR Doc. 93–19103 Filed 8–10–93; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Wildlife and Plants: Environmental Impact Statement for the Reintroduction of Gray Wolves in Yellowstone National Park and Central Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service announces its intention to conduct public hearings in the States of Idaho, Montana, and Wyoming and in several major cities nationwide (Seattle, Denver, Salt Lake City, and Washington, DC) to solicit comments on the draft Environmental Impact Statement for the reintroduction of gray wolves in Yellowstone National Park and central Idaho.

DATES: Public hearings will be held in the following cities and States: Bozeman, Missoula, and Dillon, Montana, on August 25; Coeur d'Alene, Lewiston, and Idaho Falls, Idaho, on August 31, 1993; Jackson Hole, Riverton, and Cody, Wyoming, on September 1.

Additional public hearings will be held nationwide: Cheyenne, Wyoming; Boise, Idaho; and Helena, Montana, on September 27; Salt Lake City, Utah; Seattle, Washington; and Denver, Colorado, on September 28; and Washington, DC, on September 30. The times and locations of the hearings will be announced in the local media and in mailings to the interested public.

ADDRESSES: Questions and comments concerning these public meetings should be sent to Ed Bangs, Project Leader, Yellowstone National Park and Central Idaho Gray Wolf Environmental Impact Statement, U.S. Fish and Wildlife Service, P.O. Box 8017, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Project Leader (see addresses above), at telephone (406) 449–5202.

SUPPLEMENTARY INFORMATION: Under the provisions of the National Environmental Policy Act, the U.S. Fish and Wildlife Service (Service) is preparing an Environmental Impact Statement (Statement) for the reintroduction of wolves into Yellowstone National Park and central Idaho.

On March 9, 1978, the gray wolf was listed as an endangered species throughout the 48 conterminous States, except for Minnesota where the species was listed as threatened. The Northern Rocky Mountain Wolf Recovery Plan (originally approved on May 28, 1980, and revised on August 3, 1987) identified the need for reintroduction of the gray wolf into Yellowstone National Park and central Idaho.

In November 1991, Congress directed the Service, in consultation with the National Park Service and the Forest Service, to prepare a Statement concerning recovery of wolves in Yellowstone National Park and central Idaho and to have a draft completed by May 13, 1993.

In 1992, a series of public open houses and hearings were held to identify issues and alternatives to be considered in the Statement. Eighteen issues were addressed as part of one or more wolf management alternatives. Six issues were analyzed in detail in the draft Statement because they are potentially impacted by wolves or wolf recovery strategies: Big game, hunting harvest, domestic animal depredation, land-use restrictions, visitor use, and local economies. The final five

alternatives in the draft Statement are: (1) Reintroduction of experimental populations, (2) natural recovery, (3) no wolf, (4) wolf management committee alternative (congressionally designated experimental population with State management), and (5) reintroduction of nonexperimental wolves.

People who previously requested wolf recovery information will receive copies of the summary draft Statement. Other interested people can obtain copies by writing to Ed Bangs, Project Leader (see ADDRESSES above).

Dated: August 5, 1993.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 93-19212 Filed 8-10-93; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV-030-02-4333-04]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Carson City, Lyon and Douglas Counties on and adjacent to two Off Highway Vehicle race courses: September 5, 1993, Valley Off-Road Racing Association, Yerington 250—Permit Number NV-03516-93-10 and October 2, 1993—High Sierra Motorcycle Club, Carson Valley Qualifier—Permit Number NV-03516-93-05.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources during the official running of the Yerington 250 Off Road Race and the Carson Valley Qualifier Motorcycle Race.

EFFECTIVE DATES: September 4 and 5, 1993; October 1 and 2, 1993.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885-6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Specific information on each event follows:

Spectators shall remain in safe locations as directed by event officials and BLM personnel during the conduct of both events.

1. Valley Off-Road Racing Association Yerington 250 Off-Road Race, Permit Number NV-03516-93-10. This event is located on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T12N R24E; T13N R24E; T14N R24E T13N R25E.

Bureau Lands to be closed include existing roads and washes identified on the ground as the 1993 Yerington 250 Off-Road Race and Bureau Lands within 100 yards of either side except at designated pit, check point and spectator areas. The closure will be in effect from 6 p.m. September 4 until midnight on September 5, 1993.

Spectator locations will be at the Start/Finish area and near route crossings on Delphi Road, Mason Pass Road and Gallagher Pass Road.

2. High Sierra Motorcycle club Carson Valley Qualifier, Permit Number NV-03516-93-05. This event is located on roads and trails in the Pine Nut Mountains near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson City and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1993 Carson Valley Qualifier and Bureau Lands within 100 yards of either side except at designated pit and spectator areas. Brunswick Canyon Road will be closed to through traffic, Sunrise Pass Road will have traffic regulated. This closure will be effective from 6 p.m. October 1 to 6 p.m. October 2, 1993. Spectators are welcome at the Start/Finish area at Minden, Nevada.

The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the event.

Authority: 43 CFR 8341; 43 CFR 8364 and 43 CFR 8372. Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: July 28, 1993.

James W. Elliott,

District Manager.

[FR Doc. 93-19187 Filed 8-10-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-060-4191-03-7122-8651]

Availability of the Cortez Gold Mines Expansion Final Environmental Impact Statement and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Final EIS, ROD and comment period.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of Interior, has prepared, by a third party contractor, a final environmental impact statement (FEIS) on the Cortez Gold Mines Expansion in Northern Nevada, and has made copies of the document available for public review. Also available is the FEIS's associated Record of Decision (ROD) approving the findings of the EIS and Cortez's Plan of Operations.

DATES: The thirty day comment period begins Friday, August 13, 1993. Comments on the FEIS and its ROD must be postmarked by September 13, 1993.

ADDRESSES: Please address written comments to: District Manager, P.O. Box 1420, Battle Mountain, NV 89820; ATTN: Cortez Project Team Leader.

FOR FURTHER INFORMATION CONTACT: Dave Davis, Cortez Team Leader at the above address, or telephone (702) 635-4000.

SUPPLEMENTARY INFORMATION: Copies of the Cortez Gold Mines Expansion FEIS and its associated ROD approving the findings of the EIS and Cortez's Plan of Operations are available for public review and comment.

Any interested public may obtain a copy of these documents by writing the above address or calling the telephone number above and requesting a copy.

Copies of the FEIS and ROD are available for review at the following locations: Nevada State Office BLM, 850 Harvard Way, Reno, Nevada 89520; the Eureka County Library, Monroe Street, Eureka, Nevada 89316; the Elko County Library, 720 Court Street, Elko, Nevada 89801; and the Lander County Library, Highway 8 A, Battle Mountain, Nevada 89820.

As provided in CEQ regulation 40 CFR 1506.10(b)(2), the BLM has requested from the Secretary of Interior's Office of Environmental Affairs (SOI-OEA) an exception to the required thirty day delay between the release of the FEIS and its associated ROD. The SOI-OEA has approved this exception. The ROD is part of the FEIS. The ROD approves the findings of the EIS and approves Cortez's Plan of Operations.

Dated: July 28, 1993.

Michael C. Mitchell,

Associate District Manager.

[FR Doc. 93-19280 Filed 8-10-93; 8:45 am]

BILLING CODE 4310-HC-M

[NM-940-4110-03; TXNM 60097]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease TXNM 60097, Shelby County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre or fraction thereof and 16⅔ percent, respectively. Payment of a $500 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Martha A. Rivera,

Chief, Oil and Gas Leasing Unit.

[FR Doc. 93–19203 Filed 8–10–93; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Office of Management and Budget; Paperwork Reduction Project (1010–0039); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Well Potential Test Report and Request for Maximum Production Rate (MPR), Form MMS–126

OMB approval number: 1010–0039

Abstract: Respondents submit Form MMS–126 to the Minerals Management Service's (MMS) Regional Supervisors for the purposes of establishing well maximum production rates (MPR). This information is used to establish the maximum daily rate at which oil and gas may be produced from a specific well completion.

Bureau form number: Form MMS–126

Frequency: On occasion

Description of respondents: Outer Continental Shelf oil and gas lessees

Estimated completion time: 1 hour

Annual responses: 3,727

Anual burden hours: 3,727

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239

Dated: June 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–19189 Filed 8–10–93; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–342, Metallurgical Coke: Baseline Analysis of the U.S. Industry and Imports, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: Two

(2) Title of form: Metallurgical Coke: Baseline Analysis of the U.S. Industry and Imports-Questionnaires for U.S. Producers and Purchasers

(3) Type of request: New

(4) Frequency of use: Producer and Purchaser questionnaire, single data gathering, scheduled for 1993.

(5) Description of respondents: U.S. firms which produce metallurgical coke products or purchase blast furnace coke.

(6) Estimated number of respondents: 36 (Producer questionnaire) 24 (Purchaser questionnaire)

(7) Estimated total number of hours to complete the forms: 2,280

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Mark Paulson (USITC, telephone no. (202) 205–3429). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

Issued: August 6, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19277 Filed 8–10–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation 337–TA–345]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the matter of certain anisotropically etched one megabit and greater drams, components thereof, and products containing such drams.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: GoldStar Electron Co., Ltd. and GoldStar Electron America, Inc.

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SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 4, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: August 4, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19274 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–344]

Change of Commission Investigative Attorney

In the matter of certain cutting tools for flexible plastic conduit and components thereof.

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Alesia M. Woodworth, Esq. and Gabrielle Siman, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: August 2, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–19272 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–348]

Change of Commission Investigative Attorney

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof.

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Alesia M. Woodworth, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: August 2, 1993.

[FR Doc. 93–19273 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–651 (Preliminary)]

Silicon Carbide From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the People's Republic of China of silicon carbide,[2] provided for in subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). Four Commissioners determined there is a reasonable indication of threat of material injury by reason of alleged LTFV imports[3] and two Commissioners determined there is a reasonable indication of material injury by reason of alleged LTFV imports.[4]

Background

On June 21, 1993, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Silicon Carbide Coalition, Washington, DC, alleging that an industry in the United States is materially injured and threatened with continued material injury by reason of LTFV imports of silicon carbide from the People's Republic of China. Accordingly, effective June 21, 1993, the Commission instituted antidumping investigation No. 731–TA–651 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 30, 1993 (58 FR 35044). The conference was held in Washington, DC, on July 12, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 5, 1993. The views of the Commission are contained in USITC Publication 2668 (August 1993), entitled "Silicon Carbide from the People's Republic of China: Investigation No. 731–TA–651 (Preliminary."

Issued: August 5, 1993.

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[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported merchandise covered by this investigation is silicon carbide, regardless of grade or form, containing by weight from 30 to 98 percent, inclusive, silicon carbide and with a grain size coarser than 325 F (as set by the American National Standards Institute), and inclusive of split sizes.

[3] Chairman Newquist, Vice Chairman Watson, Commissioner Rohr, and Commissioner Nuzum determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China of silicon carbide that are alleged to be sold at LTFV.

[4] Commissioners Brunsdale and Crawford determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of crude silicon carbide and that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of refined silicon carbide that are alleged to be sold at LTFV.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-19275 Filed 8-10-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332-341]

Proposed Reorganization of U.S. International Trade Relief Laws

AGENCY: International Trade Commission.

ACTION: Request for comments from other Federal agencies and interested members of the public.

SUMMARY: The Commission has prepared a draft of reorganized trade laws for possible inclusion in the United States Code. The draft consists of existing trade relief laws, reorganized and consolidated into a single title, prepared pursuant to a request from the U.S. House of Representatives, Committee on Ways and Means.

DATES: Comments on the draft trade relief laws title will be considered if received on or before October 12, 1993.

ADDRESSES: Copies of the draft trade relief laws title may be obtained by contacting the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-205-2000. A signed original and 14 copies of each set of comments on the draft trade relief laws title should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: The draft trade relief laws title is divided into ten subtitles, as indicated below. Questions concerning subtitles I-VI should be directed to William Gearhart at 202-205-3091. Questions concerning subtitles VII and VIII should be directed to Anjali Singh at 202-205-3117. Questions concerning subtitles IX and X should be directed to P.N. Smithey at 202-205-3061. Hearing-impaired individuals can obtain information by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION: The subject investigation is being conducted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to develop legislative proposals for consolidating and simplifying the organization of U.S. international trade relief laws under which tariffs or quantitative or other import restrictions may be imposed (other than the Harmonized Tariff Schedule of the United States). The investigation was instituted at the request of the U.S. House of Representatives, Committee on Ways and Means (the Committee). See 58 FR 12253 (Mar. 3, 1993).

The report that the Commission will forward to the Committee at the conclusion of this investigation will contain (1) a Commission proposal for reorganizing trade relief laws into a proposed trade relief laws title for possible inclusion in the United States Code, (2) the text of the proposed trade relief laws title, and (3) a section-by-section analysis of the text.

The Commission has prepared a draft of the proposed trade relief laws title for comment by interested members of the public and by other Federal agencies and departments. The Committee gave the Commission discretion to determine which statutes to cover in the report and the proposed trade relief laws title. Set forth below is a list of the statutes that are incorporated, in whole or part, into each subtitle of the draft trade relief laws title.

Subtitle I—*Positive Adjustment By Industries Injured By Imports*
- Chapter I of Title II (sections 201-204) of the Trade Act of 1974, as amended (19 U.S.C. 2251-2254)
- Section 330(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1330(d))
- Section 302(b) of the U.S.-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note)
- Sections 403 and 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note)
- Section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703)
- Section 204 of the Andean Trade Preference Act (19 U.S.C. 3203)

Subtitle II—*Bilateral Actions*
- Section 302(a) of the U.S.-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note)

Subtitle III—*Relief From Imports From Communist Countries*
- Section 406 of the Trade Act of 1974, as amended (19 U.S.C. 2436)

Subtitle IV—*National Security Import Restrictions*
- Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862, 1864)

Subtitle V—*Provisions Concerning Agricultural and Textile Products*
- Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854)
- Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624)

Subtitle VI—*Trade Preferences for Developing Countries*
- Title V (sections 501-506) of the Trade Act of 1974, as amended (19 U.S.C. 2461-2466)
- Sections 211-216 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701-2706)
- Sections 202-208 of the Andean Trade Preference Act (19 U.S.C. 3201-3206)

Subtitle VII—*Antidumping and Countervailing Duties*
- Section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303)
- Subtitle A of Title VII (sections 701-709) of the Tariff Act of 1930, as amended (19 U.S.C. 1671 et seq.)
- Subtitle B of Title VII (sections 731-739) of the Tariff Act of 1930, as amended (19 U.S.C. 1673 et seq.)
- Subtitle C of Title VII (sections 751, 761 and 762) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 et seq.)
- Subtitle D of Title VII (sections 771-781) of the Tariff Act of 1930, as amended (19 U.S.C. 1677 et seq.)
- Section 1317 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 1677k)
- Section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a)

Subtitle VIII—*Antidumping Act of 1916*
- Antidumping Act of 1916 (15 U.S.C. 71 et seq.)

Subtitle IX—*Relief From Unfair Practices in Import Trade*
- Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337)
- Section 603 of the Trade Act of 1974 (19 U.S.C. 2482)

Subtitle X—*Enforcement of United States Rights Under Trade Agreements, Response to Certain Foreign Trade Practices, and Other Matters*
- Section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241)
- Title III, Chapter 1 (sections 301-310) of the Trade Act of 1974, as amended (19 U.S.C. 2411-2420)
- Section 307(b) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114d)
- Section 182 of the Trade Act of 1974 (19 U.S.C. 2242)
- Sections 1373-1382 of the Omnibus Trade and Competitiveness Act of 1988 (provisions of the Telecommunications Trade Act of 1988) (19 U.S.C. 3102-3111)
- Section 305(d)-(k) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(d)-(k))
- 41 U.S.C.A. 10b—Historical and Statutory Notes, Public Law 101-514, title V, 511, Nov. 5, 1990, 104 Stat. 2098 and Public Law 101-516, Title III, 340 Nov. 5, 1990, 104 stat. 2187

The Committee instructed the Commission to seek to achieve the

following objectives in the proposed reorganization of the subject trade relief laws: (1) logical and accessible arrangement of the law; (2) the elimination of duplicative provisions; and (3) the elimination or simplification of anomalous or illogical provisions, but only to the extent that this is possible without substantive or procedural changes to the existing provisions of law.

Each subtitle of the draft trade relief laws title accordingly reflects some or or all of the following: (1) rearrangement of existing statutory provisions by subject matter; (2) the deletion of references to obsolete laws; (3) the addition of short descriptive headings or subheadings to various sections or subsections; (4) the insertion of brief parenthetical descriptions behind cross-references to various provisions; (5) the renumbering of each section; (6) the deletion of excess verbiage and duplicative provisions; (7) the updating of terminology to conform to current laws; and (8) the revision of cross-references to particular statutes to correspond to the reorganization and renumbering of those statutes in the draft trade relief laws title. The Commission endeavored to make no substantive or procedural changes in existing statutory provisions that were reorganized in that manner.

Issued: August 5, 1993.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-19276 Filed 8-10-93; 8:45 am]

BILLING CODE 7035-01-P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6212.

Comments on the following assessment are due 15 days after the date of availability.

AB-55 (Sub-No. 466X), CSX Transportation, Inc. Abandonment in Fannin County, Georgia. EA available 8/6/93.

Comments on the following assessment are due 30 days after the date of availability.

AB-55 (Sub-No. 469), CSX Transportation, Inc.—Abandonment Between South Hardeeville and North Savannah in Jasper County, SC and Chatham County, GA. EA available 8/3/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-19254 Filed 8-10-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 471X)]

CSX Transportation, Inc.—Abandonment Exemption—Lucas County, OH

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its approximately 1.58-mile line of railroad between milepost CO-12.73 and CO-14.31 near Gould, in Lucas County, OH.[1]

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 10, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 23, 1993.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 31, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) by August 16, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 3, 1993.

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[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of September 7, 1993. Because the verified notice was not filed until July 22, 1993, consummation should not have been proposed to take place prior to September 10, 1993. Applicant's representative has confirmed that the correct consummation date is on or after September 10, 1993.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19255 Filed 8–10–93; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL JOINT COMMISSION

Public Hearing

In the matter of a request from the governments of the United States and Canada that the International Joint Commission examine into and report upon appropriate methods of alleviating the adverse consequences of fluctuating water levels in the Great Lakes-St. Lawrence River Basin.

Notice is hereby given that the International Joint Commission will conduct a public hearing on the report of the Levels Reference Study Board on methods to alleviate the adverse consequences of fluctuating water levels in the Great Lakes-St. Lawrence River Basin. In 1986 the Commission was requested to update earlier studies of Great Lakes levels, propose emergency measures that could be taken during periods of extreme water levels, examine a wide variety of structural and nonstructural approaches to alleviating the adverse consequences of fluctuating water levels and propose appropriate methods to achieve this goal. The report of the Levels Reference Study Board is a major source of information available to the Commission in carrying out this assignment.

The hearing will be held on September 11, 1993 at the Ramada Inn, 480 Riverside Drive, Windsor, Ontario, beginning at 10 a.m.

This hearing will allow all interested parties to make presentations to the Commission, although the time allowed for presentations may be limited in order to allow parties an opportunity to speak. Written submissions are encouraged. They may submitted at the hearing or sent, by September 15, 1993 to:

Secretary, United States Section, International Joint Commission, 1250 23rd Street, NW, Washington, DC 20440. (202) 736–9000

Secretary, Canadian Section, International Joint Commission, 100 Metcalf Street, Ottawa, Ontario K1P 5M1. (613) 995–2984

Dated: August 5, 1993.

David A. LaRoche,

Secretary, United States Section.

[FR Doc. 93–19281 Filed 8–10–93; 8:45 am]

BILLING CODE 4710–14–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Florida Tile Industries, Inc.

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Florida Tile Industries, Inc.*, Civ No. 92–346–CIV–T–99–A, was lodged with the United States District Court for the Middle District of Florida on July 26, 1993. This Consent Decree resolves a judicial enforcement action brought by the United States against Florida Tile Industries, Inc., ("Florida Tile") pursuant to sections 309 (b) and (d) of the Federal Water Pollution Control Act, ("Clean Water Act") 33 U.S.C. 1319 (b) and (d), for injunctive relief and civil penalties for alleged violations of the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342. The alleged violations relate to the discharge of storm water from Florida Tile's facility into Lake Wire.

The Consent Decree requires Florida Tile to pay a civil penalty of $493,070. Florida Tile is also required to perform remedial measures which will eliminate further stormwater discharge into Lake Wire. The Consent Decree also requires the completion of two supplemental environmental projects (SEPs).

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Florida Tile Industries, Inc.*, D.O.J. Ref. No. 90–5–1–1–3688.

This proposed Consent Decree may be examined at the offices of the United States Attorney, Middle District of Florida, Robert Timberlake Building, suite 400, 500 Zack Street Tampa, Florida 33602; at the Office of Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–19242 Filed 8–10–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 2, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows.

1. Applicant

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

Activity for Which Permit Requested

Taking. Museum displays to aid scientific research and education. Antarctic Support Associates needs an ACA permit to display salvaged skua specimens found dead in the McMurdo region during the 1992 and 1993 summer seasons. The skuas will be displayed the library/conference area in the Crary Science and Engineering Center (CSEC) where they will contribute to the scientific resources of the CSEC.

Location

McMurdo Station, Antarctica.

Dates

11/01/93–5/1/95.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–19278 Filed 8–10–93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Second Meeting of the CONTAIN Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The CONTAIN Peer Review Committee will meet to review the technical adequacy of the CONTAIN code.

DATES: August 23–26, 1993.

TIME: 8:30 am each day.

ADDRESSES: Sandia National Laboratories, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: A. Notafrancesco, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone (301) 492–3537.

SUPPLEMENTARY INFORMATION: The objective of this effort is to organize and conduct a peer review of the CONTAIN code, light water reactor version. The peer review is to provide an independent assessment of the modeling capabilities and limitations, and adequacy of the CONTAIN code. The results of the peer review are to be documented in a summary report that describes the results of the independent assessment by the peer review participants and the technical acceptability of the code.

A peer review committee has been organized using recognized experts from the national laboratories, universities, CONTAIN user community and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various CONTAIN phenomenological models. The meeting scheduled for August 23–26, 1993, is the second meeting of the CONTAIN Peer Review Committee. The Committee will (1) present preliminary review findings, (2) review the code design objectives and targeted applications, (3) select a process for conducting the review, (4) identify and select a standard for determining technical adequacy, and (5) receive briefings from the code development staff about the integrated code and the detailed models in the code.

Dated at Rockville, Maryland, this 4th day of August, 1993.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila, Chief,

Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 93–19226 Filed 8–10–93; 8:45 am]

BILLING CODE 7590-01-M

Westinghouse Owners Group Plans To Re-Evaluate Fluence Values for Surveillance Capsules

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and members of the Westinghouse Owners Group (WOG) to discuss WOG plans for updating fluence values for WOG-member surveillance capsules.

DATES: Thursday, August 12, 1993.

TIME: 1 p.m.–5 p.m.

ADDRESSES: 11555 Rockville Pike, Room: 16B11, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Allen L. Hiser, Jr., Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3988.

SUPPLEMENTARY INFORMATION: The Westinghouse Owners Group (WOG) is proposing to re-evaluate fluence values for WOG-member surveillance capsules to reflect current methods for calculating fluence values and uncertainties. This proposal follows a public meeting held in February by the NRC to discuss the impact of fluence evaluation methodology improvements on reactor pressure vessel (RPV) embrittlement estimates. These re-evaluated fluence values would be incorporated into an NRC program addressing the development of improved correlations for estimating irradiation embrittlement.

At this meeting, the WOG will discuss their plan for performing this reevaluation. Additionally, the topic of incorporating the re-evaluated values into irradiation embrittlement correlations will be discussed.

Dated at Rockville, Maryland, this 6th day of August, 1993, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–19223 Filed 8–10–93; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 29 of Regulatory Guide 1.84, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Revision 29 of Regulatory Guide 1.85, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 10 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1", lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the

Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 21st day of July 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–19224 Filed 8–10–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act Amendments of 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Turco (telephone: 202/395–6911), Office of Federal Financial Management.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 1993 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget is required to publish annually under the Inspector General Act Amendments of 1988 (Pub. L. 100–504).

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The 33 Designated Federal Entities are as listed in the Inspector General Act Amendments of 1988. Hence, the 1993 list of them is unchanged from the 1992 list.

Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations. Federal Entities are defined as "any Government controlled corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There are eleven additions and eleven deletions in the 1993 list from the 1992 list.

The List was prepared in consultation with the U.S. General Accounting Office.

John B. Arthur,

Assistant Director for Administration.

Herein follows the text of the 1993 List of Designated Federal Entities and Federal Entities.

1993 List of Designated Federal Entities and Federal Entities

Public Law 100–504. The Inspector General Act Amendments of 1988 require the Office of Management and Budget to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually, by October 31st, to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. ACTION—Director
2. Amtrak—Chairperson
3. Appalachian Regional Commission—Federal Co-Chairperson
4. The Board of Governors, Federal Reserve System—Chairperson
5. Board for International Broadcasting—Chairperson
6. Commodity Futures Trading Commission—Chairperson
7. Consumer Product Safety Commission—Chairperson
8. Corporation for Public Broadcasting—Board of Directors
9. Equal Employment Opportunity Commission—Chairperson
10. Farm Credit Administration—Chairperson
11. Federal Communications Commission—Chairperson
12. Federal Deposit Insurance Corporation—Chairperson
13. Federal Election Commission—Chairperson
14. Federal Housing Finance Board—Chairperson
15. Federal Labor Relations Authority—Chairperson
16. Federal Maritime Commission—Chairperson
17. Federal Trade Commission—Chairperson
18. Interstate Commerce Commission—Chairperson
19. Legal Services Corporation—Board of Directors
20. National Archives and Records Administration—Archivist of the United States
21. National Credit Union Administration—Board of Directors
22. National Endowment for the Arts—Chairperson
23. National Endowment for the Humanities—Chairperson
24. National Labor Relations Board—Chairperson
25. National Science Foundation—National Science Board
26. Panama Canal Commission—Chairperson
27. Peace Corps—Director
28. Pension Benefit Guaranty Corporation—Chairperson
29. Securities and Exchange Commission—Chairperson
30. Smithsonian Institution—Secretary
31. Tennessee Valley Authority—Board of Directors
32. United States International Trade Commission—Chairperson
33. United States Postal Service—Postmaster General

FEDERAL ENTITIES AND ENTITY HEADS

1. Administrative Conference of the United States—Chairperson
2. Advisory Commission on Intergovernmental Relations—Chairperson
3. Advisory Council on Historic Preservation—Chairperson
4. African Development Foundation—Chairperson
5. American Battle Monuments Commission—Chairperson
6. Architectural and Transportation Barriers Compliance Board—Chairperson
7. Armed Forces Retirement Home—Board of Directors
8. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
9. Chemical Safety and Hazard Investigation Board—Chairperson
10. Christopher Columbus Quincentenary Jubilee Commission—Chairperson
11. Christopher Columbus Fellowship Foundation—Chairperson
12. Citizens Commission on Public Services and Compensation—Chairperson
13. Commission for the Preservation of America's Heritage Abroad—Chairperson
14. Commission of Fine Arts—Chairperson
15. Commission on Civil Rights—Chairperson
16. Commission on National and Community Service—Chairperson

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17. Committee for Purchase from the Blind and other Severely Handicapped—Chairperson
18. Competitiveness Policy Council—Chairperson
19. Defense Nuclear Facilities Safety Board—Chairperson
20. Delaware River Basin Commission—U. S. Commissioner
21. Export-Import Bank—President and Chairperson
22. Farm Credit System Financial Assistance Corporation—Chairperson
23. Farm Credit System Insurance Corporation—Board of Directors
24. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
25. Federal Mediation and Conciliation Service—Director
26. Federal Mine Safety and Health Review Commission—Chairperson
27. Federal Retirement Thrift Investment Board—Chairperson
28. Franklin Delano Roosevelt Memorial Commission—Chairperson
29. Harry S. Truman Scholarship Foundation—Chairperson
30. Illinois and Michigan Canal National Heritage Corridor Commission—Chairperson
31. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
32. Institute of Museum Services—Board of Directors
33. Inter-American Foundation—Chairperson
34. Interagency Council on the Homeless—Chairperson
35. Interstate Commission on the Potomac River Basin—Chairperson
36. James Madison Memorial Fellowship Foundation—Chairperson
37. Japan-U.S. Friendship Commission—Chairperson
38. Joint Federal State Commission on Policies and Programs Affecting Alaska Natives—Co-Chairs
39. Marine Mammal Commission—Chairperson
40. Martin Luther King, Jr. Federal Holiday Commission—Chairperson
41. Merit Systems Protection Board—Chairperson
42. National Capital Planning Commission—Chairperson
43. National Commission on American Indian, Alaska Native, and Native Hawaiian Housing—Chairperson
44. National Commission on Cost of Higher Education—Chairperson
45. National Commission on Financial Institutions Reform, Recovery and Enforcement—Chairperson
46. National Commission on Independent Higher Education—Chairperson
47. National Commission on Libraries and Information Science—Chairperson
48. National Council on Disability—Chairperson
49. National Endowment for Democracy—Chairperson
50. National Gallery of Art—Board of Trustees
51. National Mediation Board—Chairperson
52. National Transportation Safety Board—Chairperson
53. Neighborhood Reinvestment Corporation—Chairperson
54. Nuclear Waste Technical Review Board—Chairperson
55. Occupational Safety and Health Review Commission—Chairperson
56. Office of Government Ethics—Director
57. Office of Navajo and Hopi Indian Relocation—Chairperson
58. Office of Special Counsel—Special Counsel
59. Office of the Nuclear Waste Negotiator—Negotiator
60. Offices of Independent Counsels—Independent Counsels
61. Overseas Private Investment Corporation—Board of Directors
62. Pennsylvania Avenue Development Corporation—Chairperson
63. Postal Rate Commission—Chairperson
64. Selective Service System—Director
65. State Justice Institute—Director
66. Susquehanna River Basin Commission—U.S. Commissioner
67. Thrift Depositor Protection Oversight Board—Chairperson
68. U.S. Enrichment Corporation—Chairperson
69. U.S. Holocaust Memorial Council—Chairperson
70. U.S. Institute of Peace—Chairperson
71. Woodrow Wilson International Center for Scholars—Board of Trustees

[FR Doc. 93–19183 Filed 8–10–93; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Medically Underserved Areas for 1994

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1994.

SUMMARY: The Office of Personnel Management has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1994. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 1994, OPM has determined that the following States are Medically Underserved Areas under the FEHB Program: Alabama, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. This list is the same as that for 1993, with the exception of the removal of Idaho.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–19185 Filed 8–10–93; 8:45 am]
BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Blackstone Open Space Parcel, Contra Costa County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the Blackstone Open Space Parcel, located in Danville, Contra Costa County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 9, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Blvd., Third Floor, East Tower, Newport Beach, CA 92660–2516. (714) 263–4648; Fax (714) 852–7770.

SUPPLEMENTARY INFORMATION: The Blackstone Open Space Parcel is located

approximately 100 yards southeast of the intersection of Crow Canyon Road and Tassajara Ranch Drive in Danville, California. The property has recreational value and is adjacent to Alamo Creek and Diablo Vista Park which is a community park owned and managed by the Town of Danville. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Blackstone Open Space Parcel consists of approximately 57.1 acres of undeveloped grassy hillside and contains a landslide area. This property has recreational value and is adjacent to nearby housing subdivisions and the Diablo Vista Park.

Property size: Approximately 57.1 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 9, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 9, 1993 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Blackstone Open Space Parcel
Federal Register Publication Date:
August 11, 1993

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: August 5, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–19238 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and Hold a Scoping Meeting for Santa Barbara Municipal Airport, Santa Barbara, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for development recommended by the Draft Master Plan Update for Santa Barbara Municipal Airport, Santa Barbara, California. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Regional Airport Planner, AWP–611.2, Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/297–1534.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), in cooperation with the city of Santa Barbara, California will prepare an Environmental Impact Statement for development recommended by the Draft Master Plan Update for Santa Barbara Municipal Airport. Since the airport is located in the immediate vicinity of the Goleta Slough and the area around the airport contains non-compatible land uses in terms of aircraft noise; and the proposal is likely to be controversial, a decision has been made to prepare an Environmental Impact Statement (EIS). The city of Santa Barbara, pursuant to the California Environmental Quality Act (CEQA) will also prepare an Environmental Impact Report (EIR) for the proposed development. In an effort to eliminate unnecessary duplication and reduce delay, the document to be prepared, will be a joint EIR/EIS in accordance with the President's Council on Environmental Quality Regulations described in title 40 Code of Federal Regulations, § 1500.5.

The Joint Lead Agencies for the preparation of the EIR/EIS will be the Federal Aviation Administration and the city of Santa Barbara, California. Due to the proximity of the Goleta Slough and other water courses on the airport, the U.S. Army Corps of Engineers has been requested to participate as a cooperating agency in the preparation of the document.

The development recommended by the Draft Master Plan Update to be evaluated in the EIR/EIS includes:

1. Extend Runway 7/25, 400 feet to the west.
2. Construction of a 1,000-foot extended Runway Safety Area for each end of Runway 7/25.
3. Extend and widen runway 15R/33L, 600 feet to the north and 217 feet to the south and provide a Runway Safety area off the south end of the runway.
4. Terminal Building Expansion and associated terminal area improvements.

Alternatives

The alternatives to the proposed development that will be examined equally in the EIR/EIS include the following:

1. Provide a 1,000 foot safety area at each end of Runway 7/25 by using the existing runway and safety area length, thereby reducing the total available runway length.
2. Extend Runway 7/25 1,080 feet to the east and use the west end of the runway for the runway safety area.
3. Extend and widen runway 15R/33L only to the north.
4. Change the size and configuration of the Terminal Building .
5. Relocate the Terminal building to another site on the Airport.
6. No Action for each of the above projects and alternatives.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA informational contact listed above.

Public Scoping Meeting

To facilitate receipt of comments, the public scoping meeting will be held during the regular Environmental Review Committee meeting on Friday, September 17, 1993, City Council Chambers, Santa Barbara City Hall, 735 Anacapa Street, Santa Barbara, California. The Environmental Review

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Committee meeting will begin at 9 a.m., Pacific Daylight time. The specific time during the Committee meeting when the public scoping meeting will begin is dependent upon the number of items on the committee agenda. Public comments on the scope of the EIR/EIS will be accepted through Friday, October 1, 1993.

Issued in Hawthorne, California on Monday, August 2, 1993.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600.

[FR Doc. 93–19233 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–37]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 31, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 3, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26592
Petitioner: Philadelphia Jet Service
Sections of the FAR Affected: 14 CFR 135.165
Description of Relief Sought: To extend Exemption No. 5341 to allow petitioner to continue to operate its HS125–700A equipped with one high frequency communication system in extended over water operations.

Docket No.: 27200
Petitioner: Corporate Aviation Services
Sections of the FAR Affected: 14 CFR 135.143
Description of Relief Sought: To allow petitioner to conduct passenger carrying operations in aircraft equipped with two Mode C transponders rather than a single Mode S transponder.

Docket No.: 27240
Petitioner: Mr. Bruce C. Kennedy
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27355
Petitioner: PZL Swidnik Co.
Sections of the FAR Affected: 14 CFR 135.152 and appendix C; and 91.609 and appendix D
Description of Relief Sought: To allow U.S. certificate holders to operate W–3A helicopters built in Poland that do not have flight data recorders that meet U.S. standards.

Docket No.: 27361
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR part 121, appendix A
Description of Relief Sought: To allow Air Transport Association member airlines and other similarly situated operators an exemption from the requirement to carry burn ointment as a required item in first aid kits.

Docket No.: 27364
Petitioner: Mr. Jerry P. Nusloch
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No: 27384
Petitioner: The Boeing Company
Sections of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought: To allow Boeing to test the hydraulic system of the Model 777–200 airplane by a combination of a test of the complete hydraulic system at its design operating pressure, and component testing at 1.5 times design operating pressure, in lieu of the static test of the complete hydraulic system at 1.5 times the design operating pressure

Docket No.: 19651
Petitioner: Learjet, Inc.
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought/ Disposition: To extend Exemption No. 4593 to make Learjet, Inc. aircraft eligible for issuance of special flight permits for ferrying aircraft between Wichita, Kansas and Tucson, Arizona, for the purpose of completion, subject to certain conditions and limitations.
Grant, July 28, 1993, Exemption No. 4593E

Docket No.: 20044
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 61.63(b) and 121.437 (c)
Description of Relief Sought/ Disposition: To extend Exemption No. 2965 to permit petitioner's member airlines' pilot employees to be issued a category and class rating by presenting proof of compliance with the training requirements of subpart O of part 121 and the proficiency check requirements of § 121.441 after July 1, 1980; and by allowing an air crew program designee (APD) to act on behalf of the Flight Standards District Office (FSDO) for the purposes of complying with condition and Limitation No. 4 of the Exemption, which requires a pilot to present proof of compliance with the other conditions of the exemption to a FSDO for the purpose of issuing a new category and class rating to the pilot's airman certificate.
Grant, July 29, 1993, Exemption No. 2965H

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To extend Exemption No 3784 to permit individuals authorized

by the petitioner to give instruction in powered ultra-light vehicles that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.
Grant, July 26, 1993, Exemption No. 3784F

Docket No.: 25168
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought/ Disposition: To extend Exemption No. 4856 to continue to permit petitioner to transport employees/dependents on its DC–8–60 cargo flights.
Grant, July 27, 1993, Exemption No. 4856C

Docket No.: 26996
Petitioner: Trans-Florida Airlines
Sections of the FAR Affected: 14 CFR 121.356(a)
Description of Relief Sought/ Disposition: To allow the petitioner to extend from FAR requirements for the installation of a Traffic Alert and Collision Avoidance System on its Convair CV–240, 44 passenger aircraft.
Denial, July 2, 1993, Exemption No. 5673

Docket No.: 27108
Petitioner: American Airlines
Sections of the FAR Affected: 14 CFR 121.570 (a) and (b)
Description of Relief Sought/ Disposition: To permit aircraft movement on the surface without each automatically deployable emergency evacuation assisting means, installed pursuant to § 121.310(a), being armed; and to permit the petitioner to operate without ensuring that, at all times passengers are on board prior to aircraft movement on the surface, at least one floor-level exit provides for the egress of passengers through normal or emergency means.
Denial, July 29, 1993, Exemption No. 5703

Docket No.: 27136
Petitioner: Kenai Air Alaska, Inc
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5699

Docket No.: 27139
Petitioner: Helicopter Adventures, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5698

Docket No.: 27141
Petitioner: Zebra Air Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without to TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5700

Docket No.: 27153
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5701

Docket No.: 27197
Petitioner: SuWest Airways
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5697

Docket No.: 27143
Petitioner: Columbia Helicopters Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5696

Docket No.: 27257
Petitioner: Great Northern Airlines Inc. D/B/A Great Northern Air Guides
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow properly trained pilots, employed by the petitioner, to convert the cabins of certain of its aircraft operted under part 135 from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are spcifically designed for that purpose.
Grant, July 22, 1993, Exemption No. 5702

Docket No.: 27375
Petitioner: Vasi Air Charter
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Modes S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5695

[FR Doc. 93-19234 Filed 8-10-93; 8:45 am]
BILLING CODE 4910-13-M

RTCA, Inc.; 42nd Meeting of Special Committee 147, Traffic Alert and Collision Avoidance System (TCAS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 147 meeting to be held September 15–16, 1993, in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows:

(1) Chairman's Introductory Remarks;
(2) Review of meeting agenda;
(3) Approval of the minutes of the 42nd meeting held on June 10–11;
(4) Report of Working Group Activities: (a) Operations Working Group (OWG)—this discussion will include future plans to continue the activity of this group (b) Separation Assurance Task Force (C) Requirements Working Group (d) TCAS I Working Group (e) Lincoln Labs Update on Investigation of Mode S/TCAS II Enhancement Proposals;
(5) Report on FAA TCAS Symposium (a) TCAS I (b) TCAS II (c) TCAS III;
(6) Review of EUROCAE Working Group Activities;
(7) Change 6.04 and 6.04A proposed NPRM;
(8) Review and update of verification and validation process;
(9) Discussion of new committee terms of reference and committee plans for new working group activity;
(10) Review of action items from last meeting;
(11) Other business;
(12) Date and place of next meeting.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 5, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–19236 Filed 8–10–93; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Revised Voluntary Tanker Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) is advising the public concerning the status of the Revised Voluntary Tanker Agreement (Agreement).

FOR FURTHER INFORMATION CONTACT: Bruce Hendrickson, Office of National Security Plans, room P1–1303, U.S. Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366–5900.

SUPPLEMENTARY INFORMATION: Under the authority of section 708 of the Defense Production Act of 1950 (DPA) as amended (50 U.S.C. App. 2158), MARAD is the sponsor of the Agreement whereby tanker owners and charterers agree with MARAD to make available tankers and tanker space when needed for the national defense. The text of the agreement was published in the **Federal Register** on August 25, 1983 (48 CFR 38716). All voluntary agreements must be reviewed and approved by the Attorney General every two years. On July 27, 1993, the Attorney General, after consultation with the Chairman of the Federal Trade Commission, made the statutory findings and authorized the renewal of the Agreement for two years.

By order of the Maritime Administration, Department of Transportation.

Dated: August 5, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93–19171 Filed 8–10–93; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

August 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: The Department of the Treasury is requesting that the Office of Management and Budget review and approve the information collection listed below by September 17, 1993. All comments must be received by close of business September 10, 1993.

Departmental Offices/Office of the Assistant Secretary for Economic Policy/Office of Foreign Investment Studies

OMB Number: New.
Form Number: TD F 90.04.1, TD F 90–04.2, TD F 90–04.3, TD F 90–04.4, and TD F 90–04.5.
Type of Review: New collection.
Title: Outbound Portfolio Investment Survey: 1994 Benchmark Survey of U.S. Ownership of Foreign Long-Term Securities.
Description: The purpose of the survey is to obtain a current benchmark of the magnitude, aggregate market value, and character of foreign long-term securities owned by U.S. investors for portfolio investment purposes. The last comparable benchmark survey was conducted in May 1943. The data will be used to improve the accuracy of official balance of payments statistics and the international investment position of the U.S. and to aid in formulating international financial and monetary policies. Respondents will include depository institutions, securities firms, and institutional investors.
Respondents: Businesses or other for-profit, Federal agencies or employees, Non-profit institutions.
Estimated Number of Respondents/Recordkeepers: 2,500.
Estimated Burden Hours Per Response/Recordkeeper: 59 hours, 30 minutes.
Frequency of Response: Other (on as needed basis).
Estimated Total Reporting/Recordkeeping Burden: 151,250 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–19196 Filed 8–10–93; 8:45 am]

BILLING CODE 4810-25-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "From Elizabeth I to Elizabeth II: Master Drawings from the National Portrait Gallery, London," (see list) [1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Philbrook Museum of Art, Tulsa, Oklahoma from on or about September 12, 1993, to on or about November 7, 1993; at the Center for Fine Arts, Miami, Florida from on or about December 11, 1993, to on or about February 6, 1994; and the National Portrait Gallery from on or about February 25, 1994, to on or about April 24, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 5, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–19208 Filed 8–10–93; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Privacy Act of 1974; Addition of a New System of Records

AGENCY: United States Information Agency.

ACTION: Publication of a new system of records.

SUMMARY: This is a new system that is being added to the present USIA Systems of Records, as required by the Privacy Act of 1974.

DATES: Persons wishing to comment may do so by September 10, 1993.

EFFECTIVE DATE: This notice shall become final September 10, 1993.

ADDRESSES: 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, FOIA/PA Officer, Office of the General Counsel, USIA, 301 4th St., SW., rm. M–10, Washington, DC 20547, (202) 619–5499.

SUPPLEMENTARY INFORMATION: Agencies must comply with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a, Public Law 93–579, 88 Stat. 1896)), and OMB Guidelines (54 FR 25828, June 19, 1989) on implementation of the requirements of the Act.

USIA–59

SYSTEM NAME:

Historical Collection Biographical Files—E/CLR.

SYSTEM LOCATION:

Bureau of Educational and Cultural Affairs, United States Information Agency (USIA), 330 C Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Agency Directors and Deputy Directors, VOA Directors and other prominent USIA officials and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Presd releases, newspaper clippings, memos, reports and studies prepared by subject.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Biographical files created as part of Agency's permanent historical record. Files created 1942 to date and on-going.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference information for USIA staff and outside researchers. Files are reviewed before being provided.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders arranged alphabetically.

RETRIEVABILITY:

Filed alphabetically by individual name.

SAFEGUARDS:

Maintained in file cabinets in supervised area.

RETENTION AND DISPOSAL:

Most files are kept permanently as part of the Agency's historical collection.

SYSTEM MANAGER AND ADDRESS:

Administrative Librarian, Historical Collection, USIA, 330 C Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Users of Historical Collection may request bio files to review in Collection's reading room but all material is reviewed first. Requests by letter or by phone are treated as FOIA requests. FOIA requests should be addressed to FOIA/Privacy Act Unit, Office of General Counsel, USIA, 301 4th Street, SW., Washington, DC 20547.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Press Reports, Press Releases. Selected material prepared by individual covered by system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Not applicable.

Dated: August 2, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–19043 Filed 8–10–93; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

1993 Cycle of Solicited Grant Competition

ACTION: Notice; call for applications.

SUMMARY: The United States Institute of Peace announces the 1993 cycle of its annual Solicited Grant Competition from the Grants Program. This year's topics are: Solicitation A: Early Warning and Preventive Diplomacy; Solicitation B: Peace and Security in East and Southeast Asia; Solicitation C: Public Library Reading and Discussion Programs. The Institute encourages applications from nonprofit organizations, official public institutions, and individuals. Detailed information and application materials are available upon request.

DATES: Applications are due by January 2, 1994 in order to be considered in the current cycle. Announcements of awards will be made in April.

ADDRESSES: United States Institute of Peace; 1550 M Street NW., suite 700; Washington, DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Solicited Grant Projects; 202/429–3844.

Dated: August 5, 1993.

Bernice Carney,

Director of Administration.

[FR Doc. 93–19204 Filed 8–10–93; 8:45 am]

BILLING CODE 3155–01–M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matte at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523–3826.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications

and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent Opinion 1–93

Question presented: Are the proceeds of a life insurance policy that is surrendered by its owner for cash considered income for the purpose of determining entitlement to improved pension?

Held: Proceeds of a life insurance policy that is surrendered for cash should not be considered income for purposes of determining entitlement to improved pension under title 38, United States Code, to the extent that such proceeds consist of return of sums paid as part of the insurance premiums. Interest on the policy holder's monetary contribution should be considered income.

Effective date: January 8, 1993.

O.G.C. Precedent Opinion 2–93

Questions presented:

a. Is nicotine dependence, per se, a disease or injury for which VA compensation benefits are payable?

b. Is disability or death resulting from identifiable residuals of injury or disease due to tobacco use while on active duty service connected?

c. Does tobacco use, per se, or based upon the level of consumption, constitute willful misconduct or abuse of a drug for purposes of line-of-duty determinations?

Held:

a. Determination of whether nicotine dependence, per se, may be considered a disease or injury for disability compensation purposes is essentially an adjudicative matter to be resolved by adjudicative personnel based on accepted medical principles relating to that condition.

b. Direct service connection of disability or death may be established if the evidence establishes that injury or disease resulted from tobacco use in line of duty in the active military, naval, or air service.

c. A determination of whether tobacco use constitutes willful misconduct for purposes of determining whether disability or death may be considered to have resulted from injury or disease incurred in line of duty depends upon whether the evidence in the particular case establishes that the veteran engaged in deliberate or intentional wrongdoing and either knew or intended the consequences of tobacco use or used tobacco with a wanton and reckless disregard of its probable consequences. However, tobacco use does not constitute drug abuse within the meaning of statues providing that injury or disease will not be considered incurred in line of duty where it results from abuse of drugs.

Effective date: January 13, 1993.

O.G.C. Precedent Opinion 3–93

Question presented: If a third party reimburses the Government for the reasonable cost of a veteran's hospitalization at a Department of Veterans Affairs (VA) medical facility for a nonservice-connected disability, is increased improved pension for aid and attendance payable to the veteran throughout the period of hospitalization?

Held: Regardless of whether a third party reimburses the Government under 38 U.S.C. 1729(a) for the reasonable cost of a veteran's hospitalization at a Department of Veterans Affairs (VA) medical facility for a nonservice-connected disability, the veteran may be considered hospitalized at VA expense for purposes of 38 CFR 3.552(b)(1), which requires discontinuance of increased improved pension for aid and attendance effective the last day of the first calendar month following the month of a veteran's admission for hospitalization at VA expense.

Effective date: January 27, 1993.

O.G.C Precedent 4–93

Questions presented:

A. Must the holdings of O.G.C. Prec. 12–89 concerning the countability of dividend distributions from Alaskan Native Corporations in income and net-worth determinations for improved-pension purposes be modified in light of amendments to the Alaskan Native Claims Settlement Act (ANCSA)?

B. Do the conclusions of O.G.C. Prec. 12–89 concerning the countability of dividend distributions from Alaskan Native Corporations in income and net-worth determinations for improved-pension purposes apply in the same manner to other VA income-related benefits?

Held:

A. There has been no amendment to the Alaskan Native Claims Settlement Act which changes the conclusions stated in O.G.C. Prec. 12–89 concerning the countability of dividend distributions from Alaskan Native Corporations in income and net-worth determinations for improved-pension purposes.

B. Dividends from Alaskan Native Corporations representing distributions from the Alaskan Native Fund are excluded from income determinations for the purposes of section-306 pension (pension payable under Public Law 86–211, as amended), old-law pension (pension payable under laws in effect on June 30, 1960), and parents' dependency and indemnity compensation; however, taxable dividend distributions derived from earnings of such corporations are not excluded from income determinations under those programs. Dividends from Alaskan Native Corporations, whether taxable or not, to the extent they do not exceed $2000, are excluded from net-worth determinations for purposes of section-306 pension. Net worth is not a factor in determination of eligibility for old-law pension and parents' DIC.

Effective date: March 18, 1993.

By Direction of the Secretary

Mary Lou Keener,

General Counsel.

[FR Doc. 93–19282 Filed 8–10–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 Noon, Monday, August 16, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 6, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93-19335 Filed 08-9-93; 9:06 am]
BILLING CODE 6210-01-P

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Corrections

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 072393A]

Groundfish of the Gulf of Alaska

Correction

In rule document 93-18037 appearing on page 40601 in the issue of Thursday, July 29, 1993, in the second column, in the **SUMMARY**, in the sixth line, remove the comma after "(SRRE)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 930232-3166; I.D. 120492C]

RIN 0648-AD39

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-17607 beginning on page 39680 in the issue of Monday, July 26, 1993, make the following corrections:

1. On page 39680, in the third column, in the **SUMMARY**, in the seventh line, "non-pelagic" should read ""nonpelagic".

2. On page 39681, in the second column, in the first full paragraph, in the third line, after the three stars, insert close quotation marks.

3. On page 39682, in the third column, in the fourth line from the top, "ground" should read "groundfish".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072093A]

Groundfish of the Gulf of Alaska

Correction

In notice document 93-17606 beginning on page 39794 in the issue of Monday, July 26, 1993, make the following correction:

On page 39794, in the third column, in the first full paragraph, in the seventh line, "for" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-5410-10-EO21; MTM 82294; MT-930-5410-10-EO22; MTM 82295; MT-930-5410-10-EO23; MTM 82296]

Applications for Conveyance of Mineral Interests; Montana

Correction

In notice document 93-16191 appearing on page 36991 in the issue of Friday, July 9, 1993, in the first column, in the **SUMMARY**, in the second line, "section 290b" should read "section 209b".

BILLING CODE 1505-01-D

Federal Register

Wednesday
August 11, 1993

Part II

Environmental Protection Agency

40 CFR Parts 60, 61 and 63
National Emission Standards for Hazardous Air Pollutants for Source Categories; General Provisions; Proposed Rule

VOL 58 ISS 153 AG 11 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL-4629-3]

RIN 2060-AC98

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and opportunity for public hearing.

SUMMARY: This action proposes general provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act (Act) as amended November 15, 1990. The general provisions, located in subpart A of part 63 of title 40 of the Code of Federal Regulations, codify procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 substances listed as hazardous air pollutants (HAP) in section 112(b) of the Act. The general provisions eliminate the need to repeat general information and requirements within these standards. This action also proposes amendments to subpart A of parts 60 and 61 of title 40 of the Code of Federal Regulations to bring them up to date with the amended Act and, where appropriate, to make them consistent with requirements in subpart A of part 63.

DATES: *Comments.* Comments must be received on or before October 12, 1993.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 25, 1993, a public hearing will be held on September 14, 1993 beginning at 10 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket Number A-91-09, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If a public hearing is held, it will take place at the EPA's Office of Administration auditorium, EPA Administration Building, 79 T. W. Alexander Drive, Research Triangle Park, North Carolina 27711. Persons interested in attending a hearing or wishing to present oral testimony should notify Ms. Julia Stevens (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578. Persons interested in attending the hearing should call Ms. Stevens to verify that a hearing will be held.

Docket. Docket No. A-91-09, containing supporting information used in developing the proposed general provisions and background information on the existing general provisions in parts 60 and 61, is available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at the EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Documents. The background information document may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "General Provisions for 40 CFR Part 63, Background Information for Proposed Regulation" (EPA-450/3-91-019).

FOR FURTHER INFORMATION CONTACT: Ms. Michele Dubow, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-3803.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Action, Rationale, and Impacts
- A. Action
- B. Rationale
- C. Impacts

II. Background and Purpose
- A. Purpose of General Provisions
- B. Reasons for New General Provisions
- C. Approach to Developing New General Provisions
- D. Use of Existing General Provisions
- E. New Technical and Legal Requirements of the Act

III. Proposed General Provisions Based on New Requirements of the Clean Air Act Amendments of 1990
- A. Introduction
- B. Definition of "Source" and "Major Source"
- C. Permit Program Requirements under Title V
- D. List of Hazardous Air Pollutants
- E. Compliance with Standards
- F. Compliance Certification Requirements under Title VII
- G. Deletion of Source Categories from the Source Category List

IV. Proposed General Provisions Based on Revisions to the Existing General Provisions
- A. Introduction
- B. Suggestions by Affected Industries
- C. Suggestions by State and Local Air Pollution Control Agencies
- D. Quality Assurance and Quality Control Requirements

V. Administrative Requirements
- A. Docket
- B. Public Hearing
- C. Paperwork Reduction Act
- D. Office of Management and Budget Review
- E. Regulatory Flexibility Act

I. Summary of Action, Rationale, and Impacts

A. Action

The EPA is proposing general provisions for part 63 of title 40 of the Code of Federal Regulations (CFR). Part 63 has been set aside to codify national emission standards for hazardous air pollutants (NESHAP) for source categories covered under section 112 of the Act as amended November 15, 1990. The general provisions codify procedures and criteria needed to implement any NESHAP; they eliminate the need to repeat general information and requirements within each standard. General information includes definitions, scientific units and abbreviations, addresses of EPA Regional Offices and State air pollution control agencies to which implementation and enforcement authority has been delegated, and incorporation by reference of technical materials. The general requirements contained in these provisions include administrative procedures and compliance-related activities. Administrative procedures include steps taken by the EPA to determine the applicability of standards, to respond to other requests for determinations, to grant extensions of compliance, and to provide permission to use an alternative means of compliance from that specified in a standard. Compliance-related sections spell out the responsibilities of an owner or operator to comply with relevant emission standards and other requirements. These provisions include compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for emission (performance) testing and monitoring, and recordkeeping and reporting requirements. These sections also specify when and how an owner or operator may request an extension of compliance with specific requirements.

In addition, the EPA is proposing amendments to the general provisions for parts 60 and 61 of title 40 of the CFR to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the proposed general provisions for part 63.

B. Rationale

As discussed in more detail under the "Background and Purpose" section of

this preamble, the EPA decided to continue its use of general provisions as developed during the implementation of parts 60 and 61 of title 40 of the CFR. Parts 60 and 61 contain national standards required under sections 111 and 112 of the Act before it was amended in 1990. The EPA made the decision to continue this practice based on its experience with implementation of these national standards, in particular new source performance standards (NSPS) set under section 111 of the Act. The EPA's experience with the existing general provisions under parts 60 and 61 confirms that such provisions eliminate repetition within individual standards. They also improve consistency and understanding of the basic requirements for affected sources among the regulated community and compliance personnel.

In drafting the proposed general provisions for part 63, the EPA relied upon the existing general provisions in parts 60 and 61. The general provisions in parts 60 and 61 were based on many factors that are relevant to development of general provisions for part 63. While much of the language and style from parts 60 and 61 was adopted, the EPA reorganized the layout of the general provisions to make them more user-friendly to small businesses. In addition, the EPA reconsidered the appropriateness of the general recordkeeping and reporting requirements and carefully reviewed the requirements of new section 112 of the Act. Appropriate additional provisions are being proposed to ensure that new statutory requirements are addressed.

C. Impacts

There are no specific impacts associated with this action. The general provisions for part 63 do not require any activities beyond those required for all sources affected by the Act such as activities associated with permit program implementation under title V of the Act. For sources affected by section 112 only (and not, for example, other sections in title I of the Act), the general provisions mainly require activities after source category-specific standards have been proposed and promulgated. When the EPA develops standards under amended section 112, it will estimate the impacts associated with these general provisions.

The proposed amendments to the general provisions for parts 60 and 61 that address the new Federal operating permit program under title V of the Act merely inform owners and operators of requirements that will be codified elsewhere in the CFR; no additional activities that are unique to parts 60 and 61 are required. Furthermore, the flexibility that the EPA is proposing to add to reporting requirements in these parts will reduce the impact on affected sources and enforcement agencies.

II. Background and Purpose

A. Purpose of General Provisions

Section 301 of title III of the Clean Air Act Amendments of 1990, Pub. L. 101–549, enacted on November 15, 1990, substantially amended section 112 of the Act regarding promulgation of NESHAP. These NESHAP are to be established for categories of stationary sources that emit one or more of the 189 hazardous air pollutants (HAP) listed in section 112(b). Each standard established for a source category will be codified in a subpart (or multiple subparts) of 40 CFR part 63. In order to eliminate the repetition of general information and requirements within these subparts, general provisions that are applicable to all sources regulated by subsequent standards in part 63 are being proposed in subpart A of part 63.

The general provisions codify procedures and criteria that will be used to implement all NESHAP promulgated under the Act as amended November 15, 1990. The general provisions consist of three general classes of information: (1) "Generic" topics, (2) administrative sections, and (3) provisions that implement the technical and legal aspects of the Act. "Generic" topics concern basic information that does not require any action on the part of the regulated community or the EPA; they include definitions of terms, units and abbreviations, addresses of EPA Regional Offices and State air pollution control agencies to which implementation and enforcement authority has been delegated, and incorporation by reference of technical materials. Administrative sections concern EPA actions such as determining the applicability of standards, responding to requests for specific compliance-related determinations, evaluating and acting on requests for extensions of compliance requirements, evaluating and acting on requests to use an alternative means of compliance from that specified by a standard, enforcing the regulations (or delegating authority to States to do so), and making information available to the public under section 114 of the Act. Finally, the heart of the general provisions is the third class of information: Those sections that spell out the responsibilities of an owner or operator to comply with a relevant emission standard or other requirement. These provisions include compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for emission (performance) testing and monitoring, recordkeeping, reporting and notification requirements, procedures and criteria for obtaining approval to construct a new source or reconstruct an existing source, procedures and criteria for obtaining approval to use an alternative standard, and prohibited activities. These sections also specify when and how a source may request or be granted a waiver or extension of compliance with particular requirements. The general provisions have the legal force and effect of standards, and they may be enforced independently of relevant standards, if appropriate.

The general provisions supplement requirements for specific source categories that will be promulgated in other subparts of part 63. Owners or operators who are subject to a subpart promulgated for a specific source category are also subject to the requirements of the general provisions.

In the development of a part 63 subpart applicable to a specific source category, the EPA may determine that it is appropriate that the subpart contain provisions that override one or more requirements of the general provisions. When this occurs, the EPA will attempt to include explicit language in the subpart pointing to the requirements of the general provisions that are being overridden. If there is a conflict between requirements in the general provisions and the requirements of another subpart in part 63, the requirements of the other subpart will govern.

B. Reasons for New General Provisions

In the early 1970's, the EPA established general provisions in subpart A of parts 60 and 61 of title 40 of the CFR. Part 60 incorporates the requirements of section 111 of the Act; these requirements implement new source performance standards that reflect the "best demonstrated technology." Part 61 incorporates the requirements of section 112 of the Act before it was amended in 1990; these requirements implement NESHAP that were developed to reflect protection of public health with "an ample margin of safety." (The general provisions for parts 60 and 61 were amended numerous times. Background on the existing general provisions in parts 60 and 61, including a review of their content and the history of their development, may be obtained from the "General Provisions for 40 CFR Part 63, Background Information for Proposed

Regulation" (see ADDRESSES section of this preamble).)

The general provisions being proposed here are similar to those contained in 40 CFR parts 60 and 61. The general provisions in parts 60 and 61 serve the same purpose as the general provisions for part 63 but they were developed to address different sets of statutory directives. Because amended section 112 of the Act is somewhat different from former section 112, new general provisions are appropriate for effective implementation of the NESHAP that will be developed in accordance with the statutory requirements of new section 112.

Furthermore, new section 112(q) adds a "Savings Provision" that preserves the legality of existing NESHAP in part 61 until they are amended. Section 112(q) says that "any standard under [section 112] promulgated before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments." Existing NESHAP in part 61 must be reviewed and, if appropriate, revised to comply with the standard-setting requirements of new section 112 within 10 years of the date of enactment. If a standard, promulgated and subsequently judicially challenged before November 15, 1990, is remanded to the EPA, the Agency has the discretion to apply either the requirements of new section 112 or former section 112, as they were spelled out in the Act and in part 61. The consequence of section 112(q) is that the existing general provisions in part 61 are still relevant, even though the enabling portion of the Act has been revoked and replaced with new statutory language. Thus, the existing general provisions in part 61 are valid in the future for sources that are affected by existing NESHAP and must remain intact for the standards established under part 61.

For these reasons, a new part in the CFR, part 63, has been created to incorporate the new NESHAP established under amended section 112 of the Act and general provisions developed to implement them.

C. Approach to Developing New General Provisions

In developing the proposed general provisions for part 63, the EPA relied on many of the technical and policy approaches used in developing and implementing the existing general provisions under parts 60 and 61. In doing so, the EPA reconsidered and improved several elements of these approaches. In addition, the EPA reviewed the statutory requirements of amended section 112 and developed new general provisions where existing approaches were inadequate. Through a process of selective merging, deleting, and reorganizing, the EPA combined elements from the existing general provisions to form a template from which the new general provisions were further developed.

The existing provisions were further revised as needed to meet the new technical and legal requirements of the Act, to enhance their ability to promote compliance and enforcement (including correcting any obvious problems that have been encountered in their implementation), and to make them easier to use.

The approach used by the EPA to develop the new general provisions is explained in more detail in the next several paragraphs.

D. Use of Existing General Provisions

The key to the EPA's approach to developing the proposed general provisions for part 63 was to reuse as much as possible the technical and policy approaches associated with the existing general provisions in parts 60 and 61. This approach maintains consistency with the EPA's past regulatory perspectives developed for other national standards required by section 111 and former section 112 of the Act. The EPA believes this approach is reasonable because the implementation aspects of setting standards under new section 112 combine elements from the standard-setting criteria from both section 111 and former section 112. In addition to carrying forward precedents wherever possible, this approach takes advantage of the familiarity that the regulated community and compliance personnel have with the existing general provisions. Consequently, implementation of the new general provisions would occur with the least burden on the user communities.

Before section 112 was amended in 1990, it required the Administrator to determine which HAP warranted regulation and then prescribe health-based standards for those substances at a level to protect the public health with an "ample margin of safety." The general provisions in part 61 were drafted to implement these health-based standards. In addition, these standards required compliance by both new and existing sources within a relatively short period of time after the standards were promulgated. New section 112(f) of the Act is similar to former section 112 in that it provides for promulgation of health-based standards, although the EPA must consider all HAP being emitted from the sources being reviewed.

Section 111 directs the Administrator to promulgate technology-based performance standards (considering costs and other impacts) for new stationary sources that contribute significantly to air pollution. The pollutants that have been regulated under section 111 are generally either criteria pollutants or non-criteria, non-hazardous air pollutants. The general provisions for part 60 were drafted to implement national standards based on the use of the best demonstrated control technologies considering costs and other relevant impacts. In several ways the implementation of part 60 standards is similar to the implementation requirements of section 112(d) of the amended Act.

Initially, new section 112 is to be implemented through promulgation of technology-based emission standards (essentially equivalent to performance standards) for the source categories that emit the hazardous air pollutants of concern. This is analogous to the basis for part 60 regulations. The standards will be based on the use of "maximum achievable control technologies" (MACT) and, in certain cases, "generally available control technologies" (GACT) for sources of HAP. As in the development of section 111 standards, the EPA may consider costs and other impacts in the selection of these technology-based standards, except that in the case of MACT-based emission standards, new section 112 defines a minimum level of control, or "floor." The EPA considers cost and other impacts in evaluating options more stringent than the floor defined by the statute.

Eight years after promulgation of MACT-based emission standards for a category of sources, the EPA must assess the residual risk remaining after the application of MACT and, if necessary, revise the relevant standard on a health basis in accordance with the standard-setting criteria in effect before section 112 was amended.

The EPA has developed and implemented more than 70 national technology-based standards under part 60 and more than a dozen emission standards under part 61. The source categories affected under part 60 (and existing regulations under part 61) represent a significant cross-section of the source categories that may be regulated under amended section 112. Consequently, much of the potential regulated community and essentially all

of the compliance personnel have developed an understanding of and the skills needed to implement general provisions similar to those in parts 60 and 61.

The EPA views the past regulatory perspectives associated with the general provisions in parts 60 and 61 as a creditable starting point from which to develop new general provisions for national technology-based standards under amended section 112. These perspectives have been developed over many years of implementing such standards. In addition, the EPA considers the user communities' familiarity with the existing general provisions an important factor in developing general provisions under new section 112.

As discussed below, the EPA is aware that improvements to the existing general provisions are possible and that amended section 112 requires revisions to the approaches taken in the past (e.g., compliance dates differ). Accordingly, the EPA decided to combine elements from the existing general provisions and then revise these elements in order to:

(1) Meet the new technical and legal requirements of the Act;

(2) Enhance their ability to promote compliance and enforcement (including correcting any obvious problems that have been encountered in their implementation); and

(3) Make them easier to use.

E. New Technical and Legal Requirements of the Act

In considering how to use the existing general provisions as the basis for the general provisions for part 63, the EPA reviewed the amendments to section 112 and other amendments to the Act. With respect to changes within section 112, the EPA found only a few revisions that affect how the general provisions would be drafted.

A significant revision in section 112 that affects how the general provisions are drafted is the modification provisions. The modification provisions associated with section 112(g) are much more complicated than the provisions associated with section 112 before it was amended. Accordingly, the EPA has separated this effort into an individual rulemaking that will be proposed separately. In that rulemaking, the EPA will consider and propose how to implement the substantive requirements of section 112(g). Within today's rulemaking, the EPA has reserved space for provisions relating to section 112(g) that would be added to part 63 later.

Second, the compliance dates contained in section 112(i) are different from the compliance dates contained in previous section 112. For example, under section 112(i)(3), existing sources may have up to three years to come into compliance based on compliance dates established by the EPA, and some sources may be allowed an extra year to comply in certain circumstances. In addition, section 112(i)(5) provides for compliance extensions for sources that make "early reductions" of hazardous air pollutants, and section 112(i)(7) adds a special extension for certain new sources affected by standards under sections 112(d) and 112(f). (A final rulemaking on "early reductions" has been published by the EPA (see 57 FR 61970, December 29, 1992) and will be codified in subpart D of part 63.) Essentially, the compliance provisions of the Act differ from the provisions of section 112 before it was amended. Accordingly, the EPA is proposing appropriately different general provisions with respect to compliance dates.

Third, the style and requirements associated with coordination with other titles in the Act are an important change from the previous section 112. An important element of the EPA's approach to developing general provisions for part 63 is the coordination of the general provisions with new requirements under title V of the Clean Air Act Amendments of 1990. Title V introduces a Federal operating permit program similar to the National Pollutant Discharge Elimination System created by the Clean Water Act. The purpose of the new permit program is to ensure compliance with all applicable requirements of the Act and enhance the EPA's ability to enforce the Act. The program will clarify and make more enforceable a source's air pollution control requirements by consolidating all the source's obligations with respect to the Clean Air Act in one permit document. Sources will then file periodic reports identifying the extent to which they have complied with those obligations. Both of these features will greatly enhance the ability of Federal and State agencies (and the public) to evaluate a source's compliance status with regard to air quality regulations.

On July 21, 1992, the EPA promulgated in 40 CFR part 70 regulations requiring States to develop programs for issuing title V operating permits to stationary sources, including sources of HAP affected by part 63. Part 71 of title 40 of the CFR, to be proposed in the future, will contain regulations governing the operation of a federally-implemented permit program, should any State fail to have its program approved by the EPA. The permitting authority will be the State in the case of part 70 permits, and, in the case of permits issued under part 71, the permitting authority will be the Administrator. (The term "State" usually means the State air pollution control agency, but it may include reference to a local air pollution control agency.)

In developing the general provisions for part 63, the EPA's goal has been to reduce any unnecessary administrative burden on sources and implementing agencies that might arise from duplicative or conflicting requirements in parts 63, 70, and 71. In particular, the EPA is concerned about provisions that relate to the frequency and content of records and reports. While the general provisions implement section 112 standards when permit programs are not yet operable (except in the cases of sections 112(g) and 112(j), which can only be implemented after title V permit programs are effective) or when sources are exempt or deferred from the requirement to obtain a permit (see 57 FR 32250, July 21, 1992, Operating Permit Program: Final Rule, for an explanation of exempt and deferred sources), in cases when a source is required to obtain a title V operating permit, the general provisions will be implemented through the permit program. (See also the discussion under section III. C.(1) Relationship of the Permit Program Requirements to the General Provisions later in this preamble.) The EPA has decided not to incorporate relevant portions of parts 70 and 71 into the general provisions; rather, the general provisions are used to trigger owners or operators to apply for permits, when appropriate. Ultimately, owners or operators and their permitting authorities have the responsibility to coordinate all requirements applicable to a source under the Clean Air Act and prescribe the legal operating conditions for that source in its permit.

The EPA also recognizes that coordination will be needed between the requirements in titles III and I of the recent Clean Air Act Amendments, especially when volatile organic compounds (VOC) regulated under title I are hazardous air pollutants as listed under title III. This coordination will be handled during the development and implementation of individual NESHAP and State Implementation Plans, or in special circumstances, such as under the early reductions program, rather than through the general provisions for part 63.

Finally, in developing the new general provisions, the EPA decided to codify the HAP list, procedures for obtaining an extension of compliance

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for "early reductions" (under section 112(i)(5)), and other associated regulations in separate subparts of part 63 instead of in the general provisions. This approach will make the general provisions easier to use for both the regulated community and compliance personnel. The "early reductions" regulations and the list of HAP to be regulated are part of separate rulemakings and their review by the public is not related to the general provisions proposed here. Where necessary, the general provisions reference appropriate sections in these other subparts so owners and operators of stationary sources may determine whether regulations in part 63 might apply to them. (In essence, these other subparts are also "general provisions.")

Furthermore, the EPA decided not to codify in subpart A statutory requirements dealing with construction, reconstruction, and modification of HAP-emitting sources under section 112(g) of the Act since the requirements specifically related to section 112(g) are being developed in a separate rulemaking. In contrast, the EPA decided to codify in subpart A statutory requirements dealing with construction and reconstruction of HAP-emitting sources under section 112(i). Historically, provisions governing new construction, reconstruction, and modification of stationary sources subject to NSPS or NESHAP have appeared in the general provisions in subpart A of parts 60 and 61. These provisions are integrally and substantively related to the general provisions as a whole. The requirements in today's proposal relate to section 112(i)(1) and allow the Administrator to implement and enforce emission standards by keeping track of new source construction and physical or operational changes to existing sources after applicable NESHAP are promulgated.

The EPA continues to believe that the interests of both the public and the EPA are best served by incorporating provisions for construction and reconstruction in the body of the general provisions; however, to reduce confusion, the EPA plans to issue the guidance required by section 112(g) in a separate subpart, subpart B of part 63. Regulations for subpart B of part 63 will be proposed by the EPA in the future. The guidance required by section 112(j), if codified through a rulemaking, would be proposed either in subpart A or in another subpart of part 63. In today's rulemaking, the EPA reserved space for these possible future rulemakings to insert appropriate language into subpart A. Subpart A would tie together the various statutory provisions dealing with construction, reconstruction, and modification by containing basic statutory requirements under sections 112(g), 112(i), and 112(j) and by referencing the guidance for sections 112(g) and 112(j), thus informing owners and operators where to look in the CFR to access relevant information.

III. Proposed General Provisions Based on New Requirements of the Clean Air Act Amendments of 1990

A. Introduction

A key element in the EPA's approach to developing general provisions for part 63 is to make them consistent with the technical and legal requirements introduced by the Clean Air Act Amendments of 1990. The statutory directives in the new Act are the basis for most of the changes that have been made to the existing general provisions in adapting them for use in part 63. Following are the major changes enacted by the recent Clean Air Act Amendments that affect the general provisions.

B. Definition of "Source" and "Major Source"

The definition of the term "stationary source" (sometimes referred to only as "source") plays an important part in the implementation of the Act. For the purposes of section 112, stationary source has the same meaning as defined under section 111(a) of the Act (see section 112(a)(3)). The term "stationary source" means "any building, structure, facility, or installation which emits or may emit any air pollutant" (see section 111(a)(3)).

The definition of "source" influences the implementation of section 112 in several ways. First, in selecting standards under sections 112(d) and 112(f), the EPA must define the source to which the standards apply. For example, in negotiating a draft rule for equipment leaks (44 FR 9315), the negotiating committee focused on the "process unit" to which these standards would apply. The "process unit" in this context is a collection of equipment used to produce one or more chemicals. The collection of equipment is identified for the purposes of demonstrating that the appropriate control technologies have been installed and are operating properly and that required work practices and other procedures are being followed by the owner or operator. Focusing on the process unit allows the owner or operator and the EPA to know which pieces of equipment are affected by the standards and what each piece of equipment must do to comply with the standards.

For the purposes of air toxics regulations established under new section 112 of the Act, stationary sources are divided into two types: "Major sources" and "area sources." "Major source" is defined as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit * * * 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants" (see section 112(a)(1)). The difference between major sources and area sources is the quantity of HAP they emit, or have the potential to emit, considering controls. By definition, area sources are all sources of HAP that are not major sources. The Administrator may establish lesser quantity cutoffs for certain HAP based on health considerations. In these cases, a source will be regulated as a major source even though it emits less than 10 (or 25) tons per year if it emits (or has the potential to emit) at least the lesser quantity of a pollutant for which a lesser quantity cutoff has been established. The distinction between major and area sources is significant for the general provisions because it determines how and when a source comes under the regulatory umbrella of part 63 (title III air toxics standards) and parts 70 and 71 (title V Federal operating permit program).

Second, in developing extensions of compliance under sections 112(i)(5) and 112(i)(6), in particular, the EPA must define the source to which these extensions apply. Under section 112(i)(5), an owner or operator may obtain an extension of compliance under certain circumstances. (See 57 FR 61970, December 29, 1992 for more details on this regulatory action.) Because these provisions must be effective before the date of proposal for standards under section 112(d), the EPA established a definition of the term "source" for the purpose of determining which pieces of equipment are affected by an extension. With respect to section 112(i)(6), an owner or operator may obtain an extension of compliance under certain conditions for existing sources that have installed best available control technology or technology required to meet a lowest achievable emission rate. For both of these provisions, the EPA must determine how the term "source" is to be used to implement these specific aspects of the Act, mainly to determine which pieces of equipment are affected

and what they must do to demonstrate compliance.

For the purpose of developing general provisions, the EPA decided to focus on the use of the term "source" as it relates to the implementation of standards under section 112(d). The EPA made this decision because the general provisions primarily are used in the implementation of these standards. In addition, other aspects of section 112, in particular the early reductions program under section 112(i)(5), must be considered on a case-by-case basis because these provisions are implemented before applicable NESHAP are promulgated.

In considering how to define the term "source" within the general provisions, the EPA considered three options. The first option was based on the approach used under part 60. This option—the NSPS approach—is based on how the EPA implemented the term "source" for the purpose of new source performance standards under section 111 of the Act. This is an obvious starting point because the Act instructs the EPA to use the definition of "source" given in section 111(a). The second option was based on considerations developed during the proposal and promulgation of the early reductions regulations. This option—the early reductions approach—is based on how the EPA implemented the term "source" for the purpose of section 112(i)(5). During development of the early reductions program, the EPA considered for the first time how to implement the term "source" under amended section 112; those considerations may be relevant to this rulemaking. The third option is based on considerations developed during the proposal and promulgation of the title V permit regulation. This option—the title V approach—is based on the EPA's interpretation of source in the context of the permit program. This title V option may shed light on the definition of source under this rulemaking. These three options are explained below.

(1) Option 1—NSPS Approach

The choice of the affected facility or source for standards under section 111 has been based on the EPA's interpretation of section 111 and on the judicial construction of its meaning (see *ASARCO Inc.* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978)). Under section 111, standards of performance for new stationary sources must apply to "new sources"; "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (section 111(a)(3)). Most industrial plants, however, may consist of numerous facilities—equipment or groups of equipment—that emit air pollutants and that, consequently, may be viewed as "sources." The EPA uses the term "affected facility" to designate the equipment or groups of equipment, within a particular kind of plant, chosen as the "source" affected by given standards.

In choosing the affected facility, the EPA must decide which equipment, or groups of equipment, is the appropriate unit for separate standards of performance in the relevant industrial context. The EPA has done this by examining the situation in light of the terms and purpose of section 111 of the Clean Air Act. One major consideration has been the scope of the definition of source. The scope of a particular definition focuses on how quickly replacement equipment is brought under the standards of performance. If, for example, an entire plant is designated as the affected facility, no part of the plant would be covered by the standards unless the plant as a whole is "modified" (see 40 CFR 60.14) or "reconstructed" (see 40 CFR 60.15). There would be no "new" plant in such situations. The plant as a whole would be considered modified only if the replacement resulted in an increase in the aggregate emissions from the entire plant. The plant as a whole would be considered reconstructed only if the cost of the replacement exceeded 50 percent of the cost of an entire new plant. If, on the other hand, each piece of equipment is designated as an affected facility, then as each piece is replaced, the replacement piece will be a new source subject to the standards, regardless of the cost of the replacement or whether the replacement caused emissions from the plant as a whole to increase.

Since the purpose of section 111 is to minimize emissions by application of the best demonstrated system of emission reduction at all new and modified sources (considering cost, non-air quality health and environmental impacts, and energy requirements), there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the EPA concludes either that: (1) A broader designation of the affected facility would result in greater emission reductions; or (2) consideration of the other relevant statutory factors (technical feasibility, costs, non-air quality health and environmental impacts, and energy requirements) leads to the conclusion that a broader designation is appropriate.

As the term "major source" was not part of section 112 before its amendment in 1990, the general provisions under part 61 did not address how to define "major source." Therefore, the existing general provisions do not provide guidance concerning interpretation of that term.

(2) Option 2—Early Reductions Approach

New section 112(i)(5)(A) of the Act specifies that the Administrator or a State with an approved permit program "* * * shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants (95 percent in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under section 112(d) for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed."

The language of section 112(i)(5)(A) proceeds from the assumption that one can identify the "source" to which "the otherwise applicable standard" would apply. However, with one exception noted below, the EPA has not defined specific sources for purposes of establishing MACT standards under section 112(d) prior to their proposal. Therefore, prior to the time of proposal of a section 112(d) standard, the EPA can not define precisely an "existing source" to which an otherwise applicable standard might apply for any particular source category; the definition is established within the proposal. Nevertheless, the EPA had to define source for purposes of implementing the early reductions program.

The EPA recognizes that, depending on the considerations discussed under option 1, "source" may be defined narrowly or broadly, from an individual emission point up to and including an entire plant. The EPA's definition of "source" promulgated under the early reductions program is consistent with the broad flexibility encompassed under section 111(a)(3) and is designed to further the underlying purposes of the early reductions program. The definition represents the EPA's best efforts to balance the statutory policy to encourage maximum participation in

the program with the statutory constraints imposed by the requirements that 90 percent reduction must be achieved from an existing "source."

As set forth in the early reductions final rulemaking, the EPA established a multi-part definition of "source" for the purposes of that program. The final rulemaking defined source as follows:

(1) A building, structure, facility or installation identified as a source in appendix B of 40 CFR part 63 (only equipment leaks from synthetic organic chemical manufacturing is on this list (see 57 FR 62608, December 31, 1992));

(2) The entire contiguous facility;

(3) Any unit consisting of one or more emission points that can be characterized as a building, structure, facility, or installation; or

(4) Any combination of points, provided that emission reductions from such points constitute a significant reduction of hazardous air pollutant emissions from the entire contiguous facility. For the purposes of definition (4), emission reductions from a source are considered significant if they are made from a hazardous air pollutant baseline of not less than:

(i) A total of 10 tons per year, where the total base year emissions of hazardous air pollutants from the entire contiguous facility is greater than 25 tons per year; or

(ii) A total of 5 tons per year, where the total base year emissions of hazardous air pollutants from the entire contiguous facility are 25 tons or less per year.

In the preamble to the proposed early reductions rulemaking, the EPA offered several examples of the definition of source to illustrate the types of groupings that may reasonably fall within that proposed definition. Obviously, each plant is configured differently and it is impossible to contemplate all the combinations of emission points or units that may be unique to a particular contiguous facility. However, because the EPA has not developed a generic interpretation of "source" for the purposes of establishing MACT standards, the test for the definition of source under the early reductions program must be whether the application includes identifiable "sources" as that term is defined in the early reductions rule. The EPA's definition is an attempt to recognize the breadth of that flexibility.

The early reductions rule does not discuss the definition of "major source" because that term is not used in section 112(i)(5) of the Act as amended. Accordingly, the early reductions rule does not provide guidance concerning interpretation of that term.

(3) Option 3—Title V Approach

On July 21, 1992 (57 FR 32250), the EPA promulgated a regulation to implement title V of the Act; this regulation will be codified in 40 CFR part 70. In developing that rulemaking, the EPA clarified how the definitions of "stationary source" and "major source" would be applied under the operating permit program and explained how these concepts relate to the definitions of stationary source currently in effect in other programs under the Act. The EPA patterned its definition of "stationary source" for the permit program on the definition for "stationary source" contained in title I. The EPA determined that "stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant. This is the same definition provided in section 111(a)(3). Section 501(2) of the Act provides, in relevant part, that "the term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that would be a major source under sections 112 or 302, or part D, of title I of the Act." As discussed below, the EPA decided that "stationary sources" are to be grouped to determine if a major source exists on the basis of the same industrial grouping, or "major group," in the Standard Industrial Classification Manual (SIC code). Accordingly, the EPA will require all commonly owned or controlled pollutant emitting activities on contiguous or adjacent properties to obtain an operating permit if they are within the same SIC major group, assuming the aggregated activities emit enough pollutants to trigger the applicable emissions thresholds provided in the Act. In addition, any equipment used to support the main activity at a site would also be considered part of the same major source regardless of the 2-digit SIC code for that equipment. For example, an automobile manufacturing plant may consist of a foundry (SIC group 33), a power plant (SIC group 49), and an assembly plant (SIC group 37). Assume that the equipment is situated at the same site, is under common ownership, and the foundry and power plant are used solely to supply the assembly plant. In this example, all three activities would be considered part of one major source. However, if less than 50 percent of the output of the foundry was dedicated to the mentioned auto assembly plant, it would be considered a separate source. If the power plant supported both the foundry and the assembly plant, it would be considered part of the source that consumes the largest percentage of the power generated.

(4) Conclusions

In reviewing the three options for defining "source," the EPA found that all three options contain elements of flexibility, consistency with the basic intent of the statutory provisions, and the need to identify clearly the entity to which the requirements apply. Under options 1 and 2, the EPA specifically addressed sources on a similar basis to the one the EPA must consider for the general provisions for part 63. In both cases, the EPA developed a flexible definition of the term source. Also, in both cases, the EPA limited its definition of source to the intent of the statutory provisions. For example, under part 60, the EPA clearly lays out that the definition of the term source should be construed so as to minimize emissions. Conversely, the EPA recognizes that exceptions to the "narrow" approach to defining source are appropriate; therefore, in part 60, no single definition can be used in the general provisions to prescribe specifically what the source must be for each standard. Thus, part 60 uses a definition of the term source that is essentially the statutory definition and then the EPA determines during each rulemaking what source means for that standard. The EPA is proposing to adopt this approach for the general provisions under part 63.

In considering how to define "major source" under part 63, the EPA found no support under options 1 and 2. Thus, the EPA considered the implications of adopting the approach taken under option 3. After doing so, the EPA selected an interpretation of major source that is based mainly on the statutory definition given in section 112(a)(1) and the approach taken in the regulation implementing title V of the Act. In doing so, however, the EPA recognized that most NESHAP will address groups of sources within a 2-digit SIC code and, therefore, the 2-digit SIC code limitation has not been proposed. Accordingly, major sources emit (or have the potential to emit) 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP (unless lesser quantity cutoffs are established for specific pollutants) and are commonly owned or controlled pollutant-emitting activities on contiguous or adjacent properties. This does not conflict with the definition of source for the early reductions program

and will allow flexible development of rules for each source category.

The EPA believes Congress intended the term "contiguous area," as it is used to define major source in section 112, to have the same meaning as the term "contiguous or adjacent property," as it is used to define major source in section § 70.2 of the promulgated part 70 permit program regulation. The permit program regulation defines major source to include certain sources "on contiguous or adjacent property" in order to be consistent with language used in analogous provisions in previous Agency regulations (e.g., those dealing with the Prevention of Significant Deterioration and Nonattainment New Source Review permitting programs developed pursuant to parts C and D of title I of the Act (see 40 CFR 51.165(a)(1)(ii), 51.166(b)(4), and appendix S II. A. 2.; 40 CFR 52.21(b)(6)). Although "contiguous" is clear in its meaning of actually touching, "adjacent" is subject to broader interpretation, including that of being nearby but "not touching." What is "adjacent" depends not only on physical distance, but on related issues arising from the type of nexus existing between facilities. In ambiguous situations, the EPA prefers to make determinations of whether various industrial operations are part of the same source on a case-by-case basis based on implementation experience and common sense. For these reasons, the EPA has chosen not to include a single, inflexible definition of "contiguous or adjacent property" (or "contiguous area") in its regulations, including these general provisions for part 63.

(5) Miscellaneous Topics

After selecting the basis for defining "source" and "major source" for the purposes of part 63, the EPA considered how to draft the language in part 63 to implement these decisions. The EPA decided to use the term "affected source" to indicate those sources of HAP that are subject to the requirements of part 63. A separate term is needed to distinguish sources that are affected (or are being considered to determine if they are affected) by part 63 from sources that are not affected by part 63.

As with the term "affected facility" that is used in NSPS promulgated in part 60, the term "affected source" will be defined explicitly in each subpart in part 63 applicable to a specific source category. The definition established for a source category will determine which processes, equipment, or groups of equipment are subject to the part 63 standard for that category. If the standard is applicable, then each affected source must meet the requirements of the subpart, as well as those of the general provisions. If equipment subsequently is added to the source, and the added equipment falls within the definition of the affected source, that equipment also would be subject to the standard and the general provisions.

The EPA is soliciting comments on the usefulness of the term "affected source" for this purpose. Specifically, is this term confusing? If so, what other terms are tenable and how are they superior to "affected source?"

In addition, the EPA decided to use the term "major source" to define those stationary sources that emit (or have the potential to emit) 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP (or lesser quantities, if lesser quantity cutoffs are established for particular pollutants) and are commonly owned or controlled pollutant-emitting activities on contiguous or adjacent properties.

The determination that an affected source has the potential to emit a certain quantity of HAP includes a consideration of controls (including controls already applied to reduce emissions) and must be made consistent with the permit program requirements of parts 70 and 71 and the regulatory requirements of part 63. For example, under the proposed requirements of subpart A, a determination must be made for existing sources soon after the effective date of an applicable subpart; however, it may be made earlier (see § 63.5(c) Review of Plans). The EPA believes it would be appropriate planning for owners and operators of sources that may be subject to part 63 emission standards to evaluate whether their sources are major soon after the EPA has proposed a part 63 standard to ensure that the sources can comply with the part 63 regulations. (At the time of proposal of a part 63 NESHAP, background information developed to support the standard should help owners and operators evaluate whether their sources are major.) It may be possible that a determination of whether a source is major could be made at any time through the source's federally enforceable part 70 or part 71 operating permit. Before a part 63 standard is promulgated that affects a particular category of sources, sources in that category that may be subject to section 112(g) of the Act may determine their applicability status through the part 70 or part 71 permit program.

For the purposes of part 63, the EPA is proposing to be consistent with the requirements of parts 51, 52, and 70 in considering which controls that have already been applied to reduce emissions could count toward limiting a source's potential to emit. Thus, "potential to emit" is defined in the proposed general provisions as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design," and "[a]ny physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable." (For more information about the EPA's policies regarding Federal enforceability, see 54 FR 27274, June 28, 1989, Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules.)

Sources may use any federally enforceable mechanism at their disposal to establish the Federal enforceability of physical or operational limitations on their capacity to emit a hazardous air pollutant, including restrictions or conditions included in: (1) State operating or preconstruction permits that are federally enforceable; (2) title V individual or general permits; or (3) State Implementation Plans (SIP's) or Federal Implementation Plans (FIP's) through the SIP or FIP revision processes. In effect, the EPA believes these mechanisms may incorporate restrictions on a source's operating capacity that could limit the source's potential to emit for the purposes of section 112. Further, existing limits incorporated into a SIP or FIP, and NSPS and NESHAP limits that are applicable at the time the source has to make the applicability determination, are federally enforceable even if they are not included in a federally enforceable permit.

Future EPA rulemakings may supplement the general provisions for section 112 standards and programs by further clarifying how and when sources may limit their potential to emit toxic pollutants below major source threshold levels. These rulemakings also would supplement the title V permit program with regard to making applicability determinations for sources of hazardous air pollutants.

Each source within a regulated category of sources must determine whether it is a major or area source and maintain a record of this determination. The proposed general provisions include requirements (in § 63.9) such

that owners or operators of affected sources subject to an emission standard (or certain other requirements) would submit an initial notification to the EPA or the delegated enforcement agency that would identify the source as subject to the specific part 63 standard (or other requirement) and supply specified information about the source.

Owners or operators of the following three categories of sources would have to submit initial notifications: (1) Affected sources that have an initial startup date before the effective date of a relevant standard; (2) sources that are area sources on the effective date of a part 63 standard but that subsequently become affected sources that are subject to that standard; and (3) new and reconstructed affected sources. The timing of the required initial notification is determined by the effective date of the relevant standard, and which of the three categories described above that the source is in. (See proposed § 63.9(b) for more details on the timing of initial notifications.)

Given the importance of a source's determination of whether it is a major source or an area source (e.g., because some part 63 emission standards will apply only to major sources within the category of sources regulated by that standard), the EPA considered proposing a requirement that all sources (including both affected and unaffected sources) within a category of sources for which a part 63 standard is promulgated must submit an initial notification. This would provide the EPA and delegated enforcement agencies with information on all potentially affected sources, and it would provide the greatest opportunity for the EPA and delegated agencies to review and confirm each source's major or area source determination. However, balanced against these benefits is the greater reporting burden that would fall on area sources, many of which are small businesses. On this basis, the EPA chose to propose a requirement that would require initial notification only by sources that determine they are affected sources (although all sources are responsible for maintaining a record of their determination of whether they are major or area sources).

Comments are requested on the proposed requirements for initial notification, specifically on whether the proposed requirements offer sufficient opportunity for the EPA or delegated agencies to identify sources that may be subject to a part 63 standard, or other requirement, and to review and confirm a source's determination of its applicability status with regard to that standard or requirement. In addition, comments are requested on the burden that would be associated with a requirement that all affected sources submit an initial notification. Based on the comments received, the EPA may promulgate a requirement in the general provisions that would require initial notification by all sources within a category of sources, including both affected and unaffected sources.

C. Permit Program Requirements Under Title V

Title V of the 1990 amendments to the Act instructs the EPA to establish the minimum elements of a national air pollution control operating permit program to be implemented by State or local agencies, if they qualify. Regulations in 40 CFR part 70 require States to develop and have approved by EPA programs for issuing Federal operating permits to stationary sources of air pollutants. (For a detailed discussion of the operating permit program, see 57 FR 32250, July 21, 1992, Operating Permit Program: Final Rule.)

After the effective date of a permit program approved or promulgated under title V, it is unlawful for any person to violate any requirement of a permit issued to him or her, or to operate a source subject to the requirement to obtain a permit except in compliance with a title V permit. Owners or operators are required to obtain a permit when a State's permit program becomes effective. In addition, when their source becomes subject to regulation (because of the nature and magnitude of the pollutants it emits), this regulation must then be incorporated into the permit for that source.

Sources must submit an application for a permit to the permitting authority no later than 12 months after the date on which the source becomes subject to a permit program (or by an earlier date established by the permitting authority).

Sources must submit with their permit application a compliance plan that includes a compliance schedule and schedule for submitting progress reports. Each permit must include enforceable emission limitations and standards, a schedule of compliance, inspection, entry, monitoring, compliance certification, and reporting requirements, and such other conditions as are necessary to ensure compliance with the applicable requirements of the Act. Permittees must certify at least annually that they are in compliance with permit requirements, and they must report deviations promptly.

Many of the requirements of the part 70 permit program regulations have implications for sources that will be regulated under new section 112. One of the purposes of the operating permit program is to provide a ready vehicle for the States to take over administration of significant parts of the Federal air toxics program. There are two aspects of the relationship between new section 112 and the permit program under title V that are relevant to this rulemaking. These aspects concern:

(1) The relationship between the applicability of permit program requirements to sources regulated (or scheduled to be regulated) by part 63 standards; and

(2) The effect of new permit-related requirements under section 112 on the permit programs under title V.

(1) Relationship of the Permit Program Requirements to the General Provisions

The regulations establishing approvable permit programs contain in 40 CFR 70.6 elements that are required as standard permit provisions. These elements include requirements for compliance with emission standards and limitations, testing and monitoring, recordkeeping and reporting, notifications, and entry and inspection. Many of these requirements also have been typically contained in general provisions. In general, however, § 70.6 does not specify the details of such conditions for any particular source or source category; it merely outlines the types of conditions to be included in the permit. Exceptions to this include a requirement for the permittee to retain records of all monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application and a requirement that any report of monitoring results be submitted no less often than every 6 months. The requirements specified in permits for activities such as compliance, monitoring, and reporting will be drawn directly from the requirements in Federal regulations such as NESHAP. Thus, the general provisions in part 63 will form the basis for specific permit conditions.

Because of the non-specific way in which the permit program regulations are written, the general provisions, as a rule, do not need to include specific requirements as set forth in title V or in part 70. It is sufficient for the general provisions to set forth those requirements that the EPA deems appropriate and adequate for the implementation and enforcement of part 63 standards in the absence of title V operating permit programs. In developing the general provisions for part 63, however, the EPA has made an effort to be consistent with part 70,

particularly with regard to definitions and the requirement to retain records of all monitoring data, test results, and support information for a period of at least 5 years.

(2) Permit-Related Requirements Under Section 112

There are five situations in which a source of hazardous air pollutants may be required to obtain an operating permit. Each situation (with the exception of an "early reduction" alternative emission limitation) arises only after the effective date of an approved permit program in the State in which an affected source is located.

Accordingly, the EPA is proposing to include language in the general provisions that triggers the requirement that a source obtain a permit if it becomes subject to one of these situations.

The first situation arises from the applicability structure of title V, which requires that all sources that are "major" as defined in section 112 must obtain a title V permit. This is the case whether or not a relevant NESHAP has been promulgated for the particular category of sources to which that major source belongs. After a relevant NESHAP is promulgated, the permit would be revised later to incorporate the requirements of that standard, including the general provisions in subpart A of part 63.

The second situation occurs when a source becomes subject to a NESHAP under part 63. After the EPA promulgates a relevant NESHAP under section 112, any affected source that has not already been issued a title V permit must obtain its operating permit, and existing major sources must revise their permits to incorporate the requirements of the NESHAP. Existing sources are sources for which construction commenced before proposal of the NESHAP. Emission limitations and other requirements prescribed by a NESHAP would be incorporated into the part 70 or part 71 operating permit issued to the source.

As in the first situation described above, even if there is no relevant NESHAP, a part 70 or part 71 permit may still be required. This is true for the remaining three situations. The third situation occurs when a source desires to obtain an extension of compliance under subpart D of this part. Regulations governing compliance extensions for early reductions of HAP under section 112(i) will be codified in 40 CFR part 63, subpart D. (See the discussion in 57 FR 61970, December 29, 1992.) Under subpart D, owners or operators of existing sources can receive an extension of compliance with an applicable promulgated section 112(d) emission standard if they reduce their source's hazardous air pollutant emissions before the date the standard is first proposed. The extension occurs for a period not to exceed 6 years from the compliance date for the otherwise relevant standard. "Alternative emission limitations" are used to specify compliance requirements until the promulgated emission standard becomes effective for these sources. Sources that cannot achieve the required reductions by the date the standard is proposed but can achieve them by January 1, 1994 also may qualify for an alternative emission limitation if they make an enforceable commitment to achieve such reductions prior to proposal of the otherwise applicable section 112(d) standard. Each source that qualifies for and is granted an alternative emission limitation under subpart D must be issued an operating permit that reflects the alternative as an enforceable limitation.

The fourth and fifth situations arise under sections 112(g) and 112(j) of the Act. As in the first situation described above, major sources of HAP must obtain a title V permit whether or not a relevant NESHAP has been promulgated for the particular category of sources to which that major source belongs. However, under certain circumstances, sections 112(g) and 112(j) require the permit for a new major source to incorporate, and the permit for an existing major source to be revised to incorporate, requirements that would be established on a case-by-case basis for the source by the Administrator (or the relevant State permitting authority) in the absence of a promulgated part 63 standard. These requirements would reflect an emission standard that the Administrator (or the State with an approved permit program) determines on a case-by-case basis to be equivalent to the standard that would apply to the source, if such a standard had been promulgated by the Administrator under part 63 pursuant to section 112(d) or section 112(h) of the Act.

Specifically, in the fourth situation, as required under section 112(g) of the Act, after the effective date of a title V permit program in a State, a major source of HAP may not be constructed, reconstructed, or modified (without obtaining offsetting emissions) unless the Administrator (or the State) determines that the new or changed major source will not cause emissions in violation of the case-by-case requirements established for that source. The Administrator (or the State) must determine the MACT "equivalent emission limitation" on a case-by-case basis and then, at the appropriate time, add conditions to the source's Federal operating permit.

The fifth situation arises under section 112(j) of the Act. The requirements of section 112(j), the "permit hammer," become effective in each State when the State's permit program becomes effective, but not sooner than May 15, 1994. Under this section, if the EPA fails to promulgate a NESHAP for a source category according to the published regulation promulgation schedule, the owner or operator of a major source that would have been affected by that NESHAP must file an application for a permit (or an application to modify an existing permit) according to the procedures established in the title V permit program. The permit must contain an "equivalent emission limitation" (or, if appropriate, an "alternative emission limitation" pursuant to section 112(i)(5)) that is determined for the source (or category of sources) on a case-by-case basis. If the EPA then promulgates the relevant standard, the emission limitation in the permit must reflect the promulgated standard either immediately or upon the permit's renewal, depending on whether the standard is promulgated before or after the permit is issued.

D. List of Hazardous Air Pollutants

Section 112(b) of the Clean Air Act, as amended November 15, 1990, contains a list of hazardous air pollutants (HAP) and requires the EPA to amend that list under specific circumstances. Before the amendments in 1990, the Administrator listed individual air pollutants as hazardous under section 112 and codified the list in 40 CFR part 61. The basis for the listing was the potential of each pollutant to cause serious irreversible or incapacitating, reversible health effects, including cancer. Listing of HAP in part 61 removed public uncertainty regarding the status of a particular pollutant between listing and promulgation of its emission standard. The Administrator was required to review and revise the list "from time to time" by section 112(b)(1)(A) of the Act before the 1990 amendments.

In section 112 of the amended Act, a different approach was taken. Rather than requiring that emission standards be set for individual pollutants, section 112(b)(1) lists 189 chemicals and chemical categories that are to be controlled as HAP by standards established for categories of sources that emit, or have the potential to emit, one or more of these substances. While the Administrator still must review the list

periodically and, if necessary, revise it by rule to add other pollutants that present a threat of adverse health or environmental consequences, the amended Act introduces a provision to give the public the opportunity to seek amendment of the HAP list by petition. After the list is codified, any person may petition the Administrator to modify the list of HAP by adding or deleting a substance. The EPA believes that codifying the section 112(b) HAP list in the CFR will facilitate subsequent modifications of the list. Therefore, the list of hazardous air pollutants will be codified in subpart C of part 63. This list will be used in the proposed general provisions as the basis for determining if a source may be affected by rules contained in part 63. If a source does not emit one or more of the HAP on this list, then it is not affected by rules in part 63. In addition, procedures governing the petition process will be published and codified in subpart C. The rulemakings to establish these provisions are best handled separately from the general provisions and, therefore, will be codified in a separate subpart.

E. Compliance With Standards

In the existing general provisions for parts 60 and 61, compliance requirements exist for: (1) Dates by which compliance with standards must be achieved; (2) operation and maintenance of air pollution control equipment and monitoring systems; (3) methods for determining and demonstrating compliance, including specifications for emission/performance tests and monitoring systems; (4) notification of dates on which significant events occur (or are anticipated to occur) such as startup of the source and demonstration of monitoring system performance; (5) maintenance of records at the source; and (6) reporting on the status of compliance. Some of the requirements in parts 60 and 61, such as the compliance dates and permission for the Administrator to grant an existing source an extension of compliance (under part 61), followed directly from language in the statute. Most of the compliance requirements, however, were developed by the EPA over time under broader authority granted by the Act to take whatever reasonable actions are necessary to implement the statute. For the most part, the general provisions for part 63 carry over these precedents from the existing general provisions. Nevertheless, the proposed general provisions for part 63 have been updated to meet the compliance requirements of the amended Act since the statutory requirements of amended section 112 are more complicated than previously. The following discussion highlights the most significant compliance changes introduced by the new section 112.

Under former section 112, the determination of a compliance date for a source was straightforward: After the effective date of a relevant standard (i.e., the date of promulgation), no person could operate a new stationary source subject to that standard in violation of the standard. Also, existing sources subject to a part 61 NESHAP had to comply with the standard within 90 days of the effective date, unless the source was operating under a "waiver" of compliance granted by the Administrator or under a Presidential exemption. A "waiver" of compliance could be granted for up to 2 years, provided that steps would be taken during the waiver period to ensure that the health of persons would be protected from imminent endangerment, and provided that such a period was necessary for the installation of controls.

Under new section 112, emission standards are still effective upon promulgation, but determining compliance dates for both new and existing sources is more complicated. For example, after the effective date of a relevant standard established for new sources under any subsection of the new section 112, those sources must comply with the standard upon startup, but a facility for which construction or reconstruction is commenced between the proposal and promulgation dates of a relevant standard has 3 years after the date of promulgation to comply with the promulgated standard if the level of control in the promulgated standard is more stringent than that in the proposed standard and the source complies with the proposed standard during the 3-year period immediately after promulgation. A facility for which construction or reconstruction is commenced between the proposal dates of a relevant technology-based standard under new section 112(d) and a relevant health-based (residual risk) standard under new section 112(f) need not comply with the health-based standard until 10 years after the date construction or reconstruction is commenced (but not before the standard under section 112(f) is promulgated). Instead of the statutorily-defined compliance date of 90 days after the effective date, the compliance date for a category of existing sources now must be determined by the Administrator when the technology-based standard for that category is set under part 63; under no circumstances, however, may the promulgated compliance date be longer than 3 years after the effective date of the standard. Existing sources subject to a health-based standard established pursuant to new section 112(f) have the same compliance date as did existing sources under former section 112: 90 days after the effective date (with the possibility of an extension of compliance of up to 2 years).

Furthermore, compliance requirements under amended section 112 have been made considerably more complicated by the availability of a greater variety of compliance extension opportunities. For example, one new compliance extension is the 6-year extension for demonstration of early reduction of HAP in accordance with the provisions in subpart D of part 63 (pursuant to section 112(i)(5)).

Under amended section 112(i)(3)(B), existing sources that are unable to comply with an emission standard promulgated pursuant to section 112(d) may request that the Administrator, or a State with an approved title V permit program, grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. The EPA interprets section 112(i)(3)(B) to mean that Congress intended the provision for granting compliance extensions to existing sources unable to comply with section 112(d) standards to be implemented through the forthcoming title V operating permit program. This interpretation is consistent with the EPA's interpretation of similar language that deals with compliance extensions to be granted under section 112(i)(5) for early reductions of HAP. However, for source categories that will be regulated by emission standards in the near future (such as the synthetic organic chemical manufacturing industry to be regulated by the Hazardous Organic NESHAP (HON)), title V permit programs may not be approved in some States in time for State permitting authorities to implement the compliance extension provision of section 112(i)(3)(B). If this situation arises, sources should submit their requests for compliance extensions directly to the Administrator (through the appropriate EPA Regional Office). Additionally, sources affected by the HON should read the preamble and § 63.151 of the proposed HON regulation (57 FR 62608, December 31, 1992) for information about how compliance extensions may be handled for the purposes of that standard. The EPA is interested in receiving comments on how to interpret and implement the provisions of section 112(i)(3)(B).

F. Compliance Certification Requirements under Title VII

Section 702(b) of title VII of the Clean Air Act Amendments of 1990 amends section 114(a) of the Act to require the periodic submission of compliance certifications from owners or operators of major stationary sources and, at the discretion of the Administrator, other sources as well. This section of title VII also requires monitoring by a source to certify compliance with relevant emission standards or limitations. The EPA is developing regulations under 40 CFR part 64 that will specify the enhanced monitoring requirements for all existing rules that affect stationary sources of air pollutants. For new rules, such as those developed under part 63, the EPA will specify the enhanced monitoring requirements in the individual rule. This approach is being adopted because the EPA believes it is not possible at this time to define generic enhanced monitoring requirements for each future part 63 emission standard. Enhanced monitoring requirements developed in the part 63 rules will be directly enforceable under the requirements of section 114(a). As the individual part 63 standards are developed, the enhanced monitoring requirements for the standards will utilize the part 63 general provisions to the maximum extent possible. At some future date, as experience is gained with the enhanced monitoring program, generic requirements for enhanced monitoring may be added to the part 63 general provisions.

G. Deletion of Source Categories from the Source Category List

On July 16, 1992, the EPA published an initial list of categories of major and area sources of HAP, as required under amended section 112(c)(1), that would allow the Agency to promulgate emission standards for each listed category of major sources and area sources. (See 57 FR 31576, July 16, 1992, "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990"). The July 16, 1992 notice does not constitute completion of the listing requirements under sections 112(c)(3) or 112(c)(6), nor does it contain guidance or procedures for filing petitions to delete listed categories of sources as allowed under section 112(c)(9)(B). Moreover, because of uncertainties in the available data bases concerning sources and emissions of HAP, all categories of major and area sources meeting the listing criteria in section 112(c)(1) may not be included in the notice. Furthermore, all categories of sources may not be disaggregated to the extent necessary for the eventual establishment of emission standards.

The Agency considers the listing of categories of sources under section 112(c)(1) to be an ongoing process. Under section 112(c)(1), the Agency is obligated to revise the list if appropriate, in response to public comment or new information, from "time to time, but no less often than every 8 years." The Agency intends to maintain the list as part of the regulatory development process of establishing emission standards. One way the list may be revised is on the basis of deletion determinations as part of the source category deletion process allowed for in section 112(c)(9)(B).

Section 112(c)(9)(B) of the amended CAA allows the Administrator to delete from the list of categories of sources to be regulated, either by petition from any person or at the Administrator's discretion, any category of sources that meets the risk criteria specified in that subsection. Specifically, section 112(c)(9)(B) states:

> The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:
>
> (1) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources);
>
> (2) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

In adopting this provision, Congress provided an exemption from the requirements of section 112 for source categories meeting the risk criteria in section 112(c)(9)(B). While the investigation of source categories for the purposes of "delisting" is a discretionary activity for the EPA, the Agency recognizes the potential value of removing categories that do not exceed the statutorily-defined risk levels from the list in order to direct the sections 112(d) and 112(f) regulatory efforts for sources affected by those sections. Implementing section 112(c)(9)(B) would assure that the EPA's resources—as well as society's—are directed toward those source categories exceeding the risk criteria identified by Congress in that subsection.

The EPA currently is developing guidance to establish the procedures for source owners or operators, or other members of the public, to file petitions to delete listed categories of sources as allowed under section 112(c)(9)(B). The Agency intends to publish the "delisting" guidance in the **Federal Register** as expeditiously as possible. Toward that end, the Agency intends to consider recommendations about improving current risk assessment methodologies that will be developed pursuant to various studies required by Congress in the CAA. Because of uncertainties in the risk assessment process as it has been used to regulate HAP emissions under section 112 in the past, the EPA and the National Academy of Sciences (NAS) are each charged with studying the EPA's risk assessment methodology and making recommendations to Congress about revising such methodology. The following paragraphs provide a short history of how risk assessment has been used under section 112 in the past and describe some of the CAA's new requirements for evaluating existing risk assessment methodologies.

Prior to being amended in 1990, section 112 of the CAA required the EPA to regulate HAP individually on a health basis. Before establishing emission standards, the EPA listed individual air pollutants as hazardous and codified the list in 40 CFR part 61. The basis for the listing was the potential of each pollutant to "[cause or contribute to] air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." After listing HAP, the EPA established emission standards to regulate the emissions of the listed HAP. The standard of protection required under former section 112 was to protect the public health with an "ample margin of safety." This involved a two-step process. First, a "safe" level had to be determined (without considering the economic costs); then, in a second step, considering cost, the standard was set at a level providing an "ample margin of safety." The process of setting emission standards under section 112 often involved conducting a detailed risk assessment to determine that the emission standard met the

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statutory requirement to protect the public health with an ample margin of safety. Relatively few standards were set under section 112 because disagreements over risk assessment methodologies and depths of analyses led to long delays in the standard-setting process.

In 1990, Congress amended section 112 in part to circumvent the lengthy and controversial risk assessment process for each HAP and each emission standard. To facilitate the rapid regulation of the 189 HAP listed by Congress in section 112(b)(1), amended section 112 requires the EPA first to establish standards for categories of sources that emit these HAP based on "achievable technology" rather than on an assessment of health risk. Section 112 includes statutorily mandated deadlines for when these standards must be established. All the listed source categories are to be controlled according to a schedule that ensures that all technology-based control standards will be established within 10 years of enactment of the 1990 CAAA. On September 24, 1992, the EPA published a draft schedule for the promulgation of emission standards under amended section 112. (See 57 FR 44147, September 24, 1992, "National Emission Standards for Hazardous Air Pollutants; Availability: Draft Schedule for the Promulgation of Emission Standards.") In establishing this schedule, as required under section 112(e), one of the factors the EPA considered in prioritizing promulgation dates for emission standards was the potential of sources in each category to cause adverse effects on public health and the environment. (The September 24, 1992 notice explains how the Source Category Ranking System addresses health effects and exposure data.)

While section 112 requires emission standards initially to be technology-based, Congress maintained a role for the use of risk assessment to control HAP emissions. Eight years after promulgation of MACT standards pursuant to section 112(d) for each category of major sources, the EPA must examine the health risk levels posed by such regulated major sources and determine whether additional controls are necessary to reduce unacceptable "residual risk" from exposure to emissions from these facilities. Under section 112(f), the EPA is required to establish "residual risk" standards for such categories of major sources to provide an "ample margin of safety to protect public health" in accordance with the health-based standard-setting criteria of section 112 as in effect before November 15, 1990, unless the EPA determines that a more stringent standard is necessary to prevent (taking into consideration costs, energy, safety, and other relevant factors) an adverse environmental effect.

Specifically, the health-based criterion that would trigger standard setting under section 112(f) is whether any source in a category of major sources regulated under section 112(d) emits a pollutant (or pollutants) classified as a known, probable, or possible human carcinogen such that the individual most exposed to emissions from the source has a lifetime excess cancer risk of greater than one in one million. If such a condition exists, and if Congress does not act on recommendations from the EPA regarding the need for or the practicality of setting residual risk standards, the EPA must promulgate a residual risk standard for that source category.

In the interim, before residual risk standards are set under section 112(f), the EPA and the NAS are each charged with studying the EPA's risk assessment methodology and making recommendations to Congress about revising such methodology for the explicit purpose of preparing to develop health-based standards under section 112(f). Section 112(o) requires the NAS to conduct a review of: (1) The risk assessment methodology used by the EPA to determine the carcinogenic risk associated with exposure to HAP from source categories subject to regulation under section 112; (2) improvements in such methodology; and (3) to the extent practical, the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist. Section 112(f) requires the EPA to investigate and report on: (1) Methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under section 112 after the application of MACT standards; (2) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks; (3) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of HAP, any uncertainties in the risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and (4) recommendations as to legislation regarding such remaining risk.

As mentioned earlier, the EPA currently is developing procedures for source owners or operators, or other members of the public, to file petitions to delete listed categories of sources as allowed under section 112(c)(9)(B). After the various risk assessment studies are completed, the EPA will consider what to do regarding having the Administrator initiate the delisting process. While the EPA could rely solely on petitions from the public as a way of implementing section 112(c)(9)(B), the Agency recognizes the benefits of having the Administrator initiate the delisting process, where the Agency deems it appropriate to avoid setting unnecessary standards. Such a process would enable the Agency to focus its resources—as well as societal resources—on those sources posing risks intended to be regulated under section 112. For many source categories, the Agency already has, or is in the process of obtaining, the source-specific data needed to make such a determination. Further, the process envisioned by the Agency may require less data to make its determination because it could be structured on a positive finding that at least one source within the category exceeds these risk thresholds. The data collection costs may be lower for Agency-initiated deletions than they would be if the Agency relied solely on petitions from the public, especially when there are few sources in the category and the Agency has sufficient data to perform this determination.

The Agency will consider initiating the delisting process if, during the development of a MACT standard, the Agency determines that a particular source category may meet the decision criteria. The Agency will address this issue in the forthcoming Federal Register notice to establish the petitioning procedures and guidelines. Today the Agency is soliciting comments on all aspects of this issue.

IV. Proposed General Provisions Based on Revisions to the Existing General Provisions

A. Introduction

The majority of the proposed general provisions have been developed directly from the existing general provisions in parts 60 and 61. However, in response to requests made during the development of this rulemaking by representatives of affected industries and State and local agencies, the EPA is proposing to clarify a few aspects of the compliance and reporting procedures in the general provisions. The EPA's responses to these requests are

discussed below. In addition, the EPA restructured the organization of the existing general provisions in drafting the proposed requirements in an attempt to make them easier to use.

The most significant aspects of the existing general provisions that have been carried over to the proposed general provisions concern the compliance responsibilities of owners or operators and the EPA's (or the delegated State's) responsibilities for ensuring compliance with the regulations. Moreover, the proposed general provisions would continue to provide opportunities for owners or operators to request permission to use alternative means of compliance with an applicable standard (e.g., alternative means of emission limitation, and alternative testing or monitoring methods) and to request extensions or waivers of particular requirements, when appropriate. The basic schemes in the existing provisions for notifications, recordkeeping, reporting, and administrative review and approval of construction and reconstruction projects would remain the same in the proposed general provisions for part 63.

Owners or operators would be required to comply with all the requirements in the general provisions except those specifically excluded or overridden in an applicable NESHAP or test method (and as otherwise allowed for in the general provisions). The EPA plans to reference the general provisions in each NESHAP to ensure that owners or operators know about the general provisions. Furthermore, if appropriate, each standard will include language that makes it explicit when the general provisions have been overridden.

Under the proposed general provisions (and if required by an applicable standard), owners or operators of affected sources would be required to monitor process and control device equipment; conduct tests of emission control equipment and monitoring systems; provide facilities to conduct tests; analyze and report data resulting from monitoring, testing, or malfunctioning equipment; and keep records of all significant events, periods of operation, downtime, or malfunctions, measurements, maintenance, corrective action, and reports. (A provision has been added to allow records to be maintained on microfilm, on computers, or on computer floppy disks where owners or operators are using modern recordkeeping techniques.) The proposed general provisions would continue to require all owners or operators to properly operate and maintain process and control equipment at all times including during startups, shutdowns, and malfunctions of this equipment. In addition, the proposed general provisions would provide detailed information on the compliance requirements for standards (including operation and maintenance requirements) and requirements for emission tests (including specification of acceptable test methods, monitoring systems, and procedures for analyzing and reporting data). The proposed general provisions also reference various appendices in relevant parts of the CFR where further information about required test methods and performance specifications may be found.

The EPA believes that the proposed general provisions for part 63 will be easier to use than the existing general provisions in parts 60 and 61. In drafting the new provisions, the EPA: (1) Reorganized the order of the sections in the existing regulations; (2) regrouped material among sections; (3) rearranged material within sections; (4) made extensive use of paragraphs and titles for paragraphs; (5) added explicit provisions dealing with applicability and compliance dates; (6) made the regulatory language more precise; (7) clarified procedures and timelines for the submittal and review of information; and (8) used cross-referencing to tie together the various sections (and other relevant regulations in parts 63, 70, and 71). The EPA believes these changes will enable users of the general provisions to locate and understand applicable requirements more quickly and easily; the changes are especially important since, in many cases, the requirements of the amended Act are more numerous and complicated and because there will be many new users of the general provisions for part 63, including small business owners or operators, who may be unfamiliar with similar Federal regulations.

In order to tie together the requirements of titles III and V of the amendments to the Act that affect (or potentially affect) stationary sources to be regulated under new section 112, the proposed general provisions for part 63 include numerous cross-references to other, related regulations. By the time of this proposal, however, some of these regulations will not have been proposed, and some will have been proposed but will have yet to be promulgated. Because the Office of Federal Register prohibits the inclusion of references to non-promulgated portions of the CFR when final rules are published in the **Federal Register**, the EPA will have to delete many of the cross-references that appear in the proposed general provisions when this rulemaking is promulgated. Then, as the related regulations are promulgated, the EPA will amend subpart A of part 63 to restore the deleted cross-references and their accompanying regulatory language. Thus, in its early stages, the final version of this rulemaking undoubtedly will be missing some information that the EPA intends to be present; for this reason, the EPA urges readers to keep a copy of this proposal even after the general provisions rulemaking is promulgated.

B. Suggestions by Affected Industries

Representatives of industries that will be affected by the general provisions after specific standards are established discussed several suggestions that would improve the proposed general provisions. The EPA found these suggestions appropriate and adopted them in the proposed general provisions; however, the EPA is soliciting public comments on changes made to the general provisions in response to these suggestions. Additional suggestions made by representatives of affected industries will be considered by the EPA during the development of individual standards.

Representatives of affected industries suggested that the EPA base the frequency of reporting on the performance of the affected source. After considering this suggestion, the following proposal resulted. If an affected source complies with an applicable part 63 standard (or other applicable standard established pursuant to new section 112 of the Act) for at least one year, then quarterly (or more frequent) reporting could be reduced to semiannual reporting. Semiannual reporting is the lowest allowable reporting frequency because this frequency is the minimum set forth in the statutory provisions of title V. To obtain this adjustment to the required reporting frequency, an owner or operator would request the adjustment while demonstrating the required compliance finding over the previous 1-year period. The EPA (or delegated State) would approve the request unless it is determined that, for specific reasons, the adjustment would impede the implementing agency's service to the public. Frequency reductions would not similarly be available for recordkeeping because the EPA views the records required by the general provisions to be the minimum needed to determine compliance with the requirements of part 63. Based on required monitoring and recordkeeping, an owner or operator would resume

reporting on a quarterly (or more frequent) basis, as specified in the applicable standard, if compliance with the standard is not maintained. Similar provisions have been added to the reporting requirements in subpart A of part 60 to apply to sources affected by periodic reporting requirements in NSPS established pursuant to section 111 of the Act.

The EPA would like to emphasize several points with regard to the proposed provisions that would allow an affected source to reduce the frequency of excess emissions and monitoring system performance (and summary) reports. First, the flexibility that has been added to parts 60 and 63 to allow reduced frequency of reporting for sources with a record of compliance applies to standards individually; that is, if the Administrator allows an owner or operator affected by a standard under one part, e.g., part 63, to submit reports less frequently, that allowance does not automatically apply to the same owner or operator who is affected by a standard under the other part, in this case, part 60. In this situation, the owner or operator would have to demonstrate separately on-going compliance with the applicable part 60 standard to be allowed to reduce the frequency of reporting for standards under both part 60 and part 63. Second, the Administrator would have latitude in deciding whether to disallow an owner or operator's intention to reduce the frequency of reporting for a particular standard. Although the proposed regulation specifies that the affected source must have a history of on-going compliance with the applicable standard for at least 1 year to become eligible to reduce its frequency of reporting, the Administrator would have latitude to review the source's entire previous performance history (during the 5-year recordkeeping period prior to the intended change) in deciding whether to approve the change. The Administrator could use information concerning a source's compliance history prior to the specified 1-year period (including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements) to make a judgment about the source's potential for noncompliance in the future. Furthermore, other requirements, such as those in a source's part 70 or part 71 operating permit, may limit the availability of this flexibility to a particular source; the role of the permitting authority is to review the range of reporting requirements under all applicable air-related Federal regulatory programs and decide if such flexibility is appropriate. Third, the proposed general provisions are drafted with the presumption that a legitimate request to reduce the frequency of reporting would be approved unless the reviewing agency (i.e., the EPA or the State or local agency with delegated authority) explicitly denies the request. The EPA is particularly interested in receiving comments on whether such requests should not be approved unless the reviewing agency determines that a higher frequency of reporting is not necessary to accurately assess the compliance status of the source, or whether such requests should be approved unless the reviewing agency determines that, for specific reasons, the adjustment would impede the agency's service to the public. The EPA will decide which position to take on this issue after evaluating public comments received in response to this proposal.

Next, representatives of affected industries requested that the EPA provide flexibility in the calendar schedules for submitting periodic reports to enforcement agencies. With respect to schedules for the submission of periodic reports, the EPA is proposing to allow owners or operators to adjust schedules required by the general provisions by mutual agreement between an owner or operator and the EPA (or the State permitting authority). This provision would enable owners or operators to submit reports on a schedule that is consistent with pre-established State reporting time-lines. It also would allow owners or operators to synchronize their periodic reporting for standards under parts 60, 61, and/or 63 in situations where the owner or operator supervises one or more stationary sources affected by multiple standards. "Mutual agreement" between an owner or operator and the EPA (or the State permitting authority) would be established when an owner or operator proposes in writing a change in reporting schedule to the reviewing agency and the agency approves that change in writing. Until there is mutual agreement, the owner or operator must comply strictly with the schedule(s) specified in the general provisions for any and all applicable standards. The EPA believes that owners or operators could arrange to change the dates for the submittal of periodic reports without conflicting with the reporting requirements of the sources' title V permits if permits are created, in advance, that are flexible enough to accommodate such a change.

In addition, in response to requests by industry representatives, the EPA is proposing to allow adjustments to other submittal and administrative review deadlines specified in the general provisions by mutual agreement between an owner or operator and the Administrator. This provision would be available both to an owner or operator seeking an adjustment to a time period or postmark deadline specified for a required activity and to the Administrator (or delegated enforcement agency) seeking an adjustment to the time period specified for the review of information submitted by the owner or operator. Although this provision is being handled like the flexibility added for periodic reporting, it has limited usefulness given that the EPA cannot allow delays for compliance beyond those provided in standards or the statute. Furthermore, in individual rulemakings, as appropriate, the EPA may decide to limit the applicability of this provision so that changes to specific deadline requirements would not be allowed. The EPA is soliciting comments on this overall approach to providing flexibility in the general provisions.

On a related topic, representatives of affected industries requested that the EPA clarify what reporting schedule should be used for sources that construct between proposal and promulgation of a standard. For such sources, the EPA is proposing in the general provisions that the date of promulgation be used to trigger the schedule for initial notifications, compliance tests, and other reporting provisions.

Industry representatives noted that required time periods specified in the general provisions for an owner or operator to submit an initial notification that his or her source is subject to a standard, submit a notification of the date of a required performance test, and conduct the performance test, should be reasonable and achievable, especially for new sources. These representatives questioned the reasonableness of the number of days specified in the proposed general provisions for these activities. The EPA agrees that such deadlines should be reasonable, yet at the same time provide for expeditious demonstrations of compliance with standards. The EPA plans to scrutinize all the deadlines and time periods specified in the general provisions between proposal and promulgation of this rulemaking and adjust them, where feasible, to make them more reasonable. The EPA added the proposed requirement that notifications of performance tests be submitted 75 calendar days before the performance test is scheduled to begin to allow

adequate time for the review and approval of site-specific testing and monitoring plans before performance tests are conducted (including the resubmittal of plans when they are initially disapproved) and adequate time (i.e., at least 30 days) for the owner or operator to plan for the performance test in accordance with the site-specific plan agreed upon by the owner or operator and the enforcement agency. The 10- or 20-day notification period suggested by industry representatives (i.e., a notice similar to that in the asbestos NESHAP in part 61) would be insufficient for these purposes. (For a discussion of site-specific testing and monitoring plans, see section IV. D. of this preamble, below.)

In addition, the EPA believes the general provisions provide ample opportunities for owners and operators to request adjustments to required deadlines, either through formal application procedures or by mutual agreement (in writing) between an owner or operator and the enforcement agency. The EPA is seeking comments on the reasonableness of time periods and due dates specified in the general provisions and suggestions for alternatives to help the Agency develop reasonable schedules for compliance activities associated with these provisions.

With regard to compliance extensions, the EPA has been asked to clarify which part of the proposed definition of compliance schedule applies when an existing source has requested a compliance extension under the general provisions. For the purposes of granting an extension of compliance under § 63.6(i) of the proposed general provisions, part (2) of the definition of compliance schedule would apply. A stationary source that is required to comply with an emission standard promulgated in part 63 and that has been granted an extension of compliance under the general provisions would not be considered out of compliance with the applicable emission standard during the period of the compliance extension if the source is making suitable progress toward compliance by meeting all terms and conditions established in the source's compliance schedule.

Industry representatives questioned the proposed requirement that a copy of each notification (or other required communication) be sent to the appropriate EPA Regional Office (in addition to sending a copy to the State) in the case where the State is the permitting authority under title V. The EPA is seeking comments on the appropriateness of this provision as well as its opposite: whether notifications submitted to EPA Regional Offices should also be submitted to all appropriate delegated authorities.

Representatives of affected industries requested that the EPA establish a 2-tier approach to excess emission reports. One tier would be associated with relatively minor excess emission events. The other tier would be associated with other more significant events. For minor events, excess emissions would be reported quarterly, whereas for other events, excess emissions would be reported expeditiously, for example, within 24 hours. The EPA finds this suggestion valuable and will consider how to implement it on a rule-by-rule basis. It is impractical, however, to develop this request for these general provisions. The EPA would appreciate suggestions on how to distinguish between minor and more significant events, especially in the context of technology-based standards.

Representatives of affected industries also made several suggestions to reduce the volume of records that sources must maintain to comply with standards and the general provisions. First, industry sources informed the EPA that some existing computer-controlled processes have monitoring systems that only store data that is outside some predetermined range of acceptable values. For example, these systems could be set to record and store all monitored values outside a range such as ±1 percent. If a monitored value did not exceed the specified range, no value would be stored. When the value exceeds the range, a value would be stored. It is then deemed that all data in between the stored values are the same as the last recorded value. This system could also be used to record those periods when a monitored parameter may be outside the parameter ranges established by the source to represent proper operation of a control device. Keeping only these records would dramatically reduce the data storage requirements.

Industry representatives also informed the EPA that many existing process control computer systems obtain monitoring data much more frequently than every 15 minutes, but are not designed to maintain a record of such data for 5 years. Such systems use this extensive monitoring data to calculate average parameter values for the compliance period for the emission source (e.g., 3-hour average). The individual data points could be kept in an accessible record for a period of several days so that the averaging procedure could be verified, and then could be "written over" to conserve computer time and memory storage space. The average for the 3-hour compliance period would be retained in an accessible record for 5 years.

At this time, the EPA does not have a sufficient understanding of these systems to ensure that they provide sufficient support data to accurately and reliably reflect the source's continued compliance. Therefore, the EPA has not included them as a recordkeeping option in the proposed general provisions. Instead, the EPA is seeking comment on whether and how these systems should be allowed for compliance with the recordkeeping requirements in the general provisions and part 63 standards. Specifically, the EPA is interested in: What criteria are used to determine the values that are stored by these existing monitoring systems; how the validity of the data is verified; the frequency of calibration for this type of system; how operators ensure the accuracy of the results from these existing systems; and what types of processes or controls are currently being monitored with these systems. In addition, the EPA is seeking comment on how the requirements allowing the use of these systems to comply with part 63 standards might be structured. Finally, the EPA is seeking comment on the concept of determining compliance based on data that do not include values to represent the entire compliance period (i.e., absence of data indicating a violation would constitute evidence of compliance).

Representatives of affected industries also raised concerns about the on-site storage capabilities at certain facilities and suggested that the burden of recordkeeping could be reduced if the EPA reduced the volume of on-site records that sources must maintain to comply with applicable standards and the general provisions. In this context, industry representatives asked the EPA to clarify what is meant by the terms "readily available" and "expeditious review" in the proposed general provisions requirement that "(t)he owner or operator * * * shall maintain files of all information (including all reports and notifications) required by this part recorded in a permanent form suitable and readily available for inspection and expeditious review * * * for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record." The issues in question concern the purported difficulty of: Storing data at some kinds of sites (such as unmanned facilities); storing 5-years' worth of data at a regulated site (particularly when a company has a centralized data storage system or when the data are recorded by a process

control system that records much more information than is required by applicable requirements); and retrieving data in a timely way for the purposes of inspection or review by an enforcement agency.

As mentioned earlier in this preamble, the EPA is proposing to adopt a 5-year recordkeeping requirement for part 63 to be consistent with the recordkeeping requirements of the title V permit program. However, consistent with the 2-year recordkeeping period for part 60 and part 61 standards, the EPA believes that keeping 2 years of records on site is not overly burdensome. Since the requirement for record retention is 5 years, the balance of the 3 years of records could be stored at an off-site location. By "readily available" for "expeditious review," the EPA means that records must be available immediately for records retained on site and within 2 days for records archived off site.

The EPA's primary interest in proposing the recordkeeping requirements described above is to allow an inspector to review all relevant records during a site visit. For planned site visits, when the owner or operator is notified of the inspection sufficiently in advance to retrieve archived records, having some records stored off site may not be a problem. For unannounced site visits, however, when information must be retrieved in a matter of minutes or hours, the EPA believes that at least 2 years of records should be available on site to accommodate the Agency's need to review records on short notice.

One way to accommodate the interests of both the EPA and regulated industries may be through the use of electronic data retrieval systems that can access relevant data during a site visit, even though the data are "stored" elsewhere. All data required must be immediately electronically transferable to the on-site location and hard copies must be made available if requested. The Agency prefers to deal with the special needs of unmanned sites during the development of emission standards for source categories that contain such facilities. If special requirements are appropriate for unmanned sites, then these can be addressed in individual standards that override the general provisions with regard to data storage requirements.

The Agency also would like to receive comments on the appropriateness of adopting the proposed 5-year recordkeeping requirement for part 63. Under 5 CFR 1320.6, the Office of Management and Budget (OMB) may approve a record retention period (that would apply to an affected source, or category of sources) of up to 3 years, unless the Agency is able to demonstrate that a longer record retention period is necessary to satisfy statutory requirements or other substantial need. For example, the rule establishing the part 70 permit program requires retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application because permit terms will last for 5 years. (See 57 FR 32304, July 21, 1992, § 70.6(a)(3)(ii)(B).)

Under § 70.6(a)(3)(ii)(B), support information includes calibration and maintenance records, strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit and records of other types of information. Support information also includes emission or performance test data that would be required to demonstrate compliance under part 63, because the "monitoring" requirements of § 70.6(a)(3)(i) cover a broad range of compliance-"monitoring" activities. These activities include "all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act," and any recordkeeping that is designed to serve as monitoring. The requirements in part 63 emission standards are "applicable requirements" that would satisfy these criteria.

A recordkeeping period of 5 years is being proposed for part 63 so that sources affected by both part 63 and part 70 would be subject to consistent requirements for recordkeeping. The Agency believes that, as a practical matter, sources affected by part 63 and part 70 would prefer that the required retention period for records in these parts be consistent to minimize confusion in the development and implementation of recordkeeping systems. Comments are requested on the need to make the record retention period under part 63 consistent with that under part 70. Comments are also requested on possible alternatives to the proposed 5-year record retention period for part 63 that would satisfy sources' need for simplified recordkeeping systems, the Agency's need for an appropriate amount of records to support determinations of compliance and enforcement actions, and OMB's guidelines for approving recordkeeping requirements. One possible alternative is that sources affected by both part 63 and part 70 could be required to keep records under part 63 for as long as they are required to keep records under part 70, while sources that are affected by part 63 but that are not required to obtain part 70 permits could be required to keep records under part 63 for a period of 3 years.

Finally, affected industries asked the EPA to clarify the intended scope of the preconstruction review and approval process developed to implement section 112(i)(1) of the amended Act. Section 112(i)(1) authorizes the Administrator (or a State with a permit program approved under title V) to review plans for construction of a new major source or reconstruction of a major source after the effective date of an applicable part 63 emission standard to determine that the new or reconstructed source, if properly built and operated, will comply with the standard.

The scope of the preconstruction review under the proposed part 63 general provisions requirements would be similar to existing requirements in the general provisions to 40 CFR part 61. Preconstruction reviews under part 63 would involve all items specified in the preconstruction review requirements in the general provisions. It is the responsibility of the owner or operator to submit information that is sufficient to allow the Administrator to determine if the source will be in compliance with applicable requirements when it begins operation. Interested parties may further their understanding of the nature and scope of preconstruction reviews under the part 63 general provisions by discussing the topic with implementing personnel at the EPA's Regional Offices.

The proposed review process would require the owner or operator to submit an application for approval of construction or reconstruction at least 180 days before construction or reconstruction is planned to commence (but it need not be submitted sooner than 45 days after the effective date of the relevant standard). Within 30 days of receipt of the initial application, the EPA or the delegated State agency would notify the owner or operator if his or her application were complete. Additional information may be requested if the initial application does not contain sufficient information to make the determination. Within 60 days after receipt of sufficient information, the EPA or the delegated agency would notify the owner or operator of the determination on the application for approval of construction or reconstruction.

The EPA believes that the steps proposed for the process for approval of construction or reconstruction, and the time limits proposed for each step,

would ensure that the EPA or the delegated agency has an adequate time to review information submitted and also that sources would be notified of the determination in a timely manner. The Agency is seeking comments on alternatives for the process for approval of construction or reconstruction that may be more effective in accomplishing the same objectives.

The EPA also would like to clarify what activities the source could pursue while waiting for the Administrator's decision to approve or disapprove the construction or reconstruction project. Consistent with policy that has been developed to implement the preconstruction review provisions of the Nonattainment New Source Review and the Prevention of Significant Deterioration programs under 40 CFR 52.21, 51.165, and 51.166, certain limited activities would be allowed, such as planning, ordering of equipment and materials, site clearing, grading, and on-site storage of equipment and materials. Under all circumstances, all on-site activities of a permanent nature (including, but not limited to, installation of building supports and foundations, paving, laying of underground pipe work, construction of large permanent storage structures, and activities of a similar nature) are prohibited until approval is granted by the Administrator. Any activities undertaken prior to construction/reconstruction approval would be at the risk of the owner or operator.

C. Suggestions by State and Local Air Pollution Control Agencies

In developing the proposed general provisions, the EPA discussed the experiences of agencies responsible for determining compliance with the existing section 111 and section 112 standards and the general provisions in parts 60 and 61. Representatives of these agencies made two suggestions to help improve the implementation of standards in part 63.

First, the existing standards in parts 60 and 61 generally use continuous monitoring systems as tools in determining the effectiveness of an operator's operation and maintenance practices. On the other hand, State and local agencies often establish permit conditions based on these systems. These conditions are then directly enforceable, without further evaluation of the operator's operation and maintenance practices. Representatives of these agencies requested that the EPA make these conditions directly enforceable through the general provisions in part 63.

The EPA has developed a few emission and performance standards that use continuous monitoring systems directly in enforcing the standards. Generally, however, the data needed to establish specific limits associated with such systems for the purposes of developing national standards have not been available (although data have been available to establish specific limits on a case-by-case basis for particular sources). Consequently, the EPA has relied upon monitoring systems as tools in determining the quality of an operator's operation and maintenance practices. With the use of these systems by State and local agencies for enforcement purposes, the EPA believes that standards developed in the future are more likely to require these systems for direct enforcement of the standards.

For standards where continuous monitoring systems are not used to directly set enforceable limits, the EPA encourages State and local agencies to continue the practice of establishing such limits on a permit basis. In fact, title VII of the Clean Air Act Amendments of 1990 directs the EPA to develop regulations to ensure appropriate compliance certifications by operators. For these regulations, the EPA will consider adopting the approach used by State and local agencies in developing measures of continuous compliance.

Another topic raised by representatives of State and local agencies is a misinterpretation of the general provisions relating to startups, shutdowns, and malfunctions. These representatives requested that the EPA follow the provisions of part 61 where exceedances of emission limits or enforceable monitoring parameters in standards are not allowed during startups, shutdowns, and malfunctions. Under part 61, compliance with numerical emissions limits is required at all times unless specifically addressed in an applicable NESHAP. Under part 60, however, compliance with the numerical emission limits is not determined during startups, shutdowns, and malfunctions, unless otherwise specified in the applicable standard. In contrast to the interpretation of many State and local agencies, some operators have interpreted these provisions to allow controls to be inappropriately operated and, in some cases, not operated at all during startups, shutdowns, or malfunctions. This interpretation was not intended by the EPA. Owners and operators should operate sources and their controls consistent with good air pollution control practices for minimizing emissions at all times, including during startups, shutdowns, and malfunctions.

In developing the proposed general provisions for part 63, the EPA began by considering the requirements in part 61 as they relate to startups, shutdowns, and malfunctions; however, in recognition of the difficulty of determining compliance during these periods, the EPA has adopted the provisions from part 60 that clarify that performance tests are not generally appropriate during startups, shutdowns, and malfunctions. In addition, since the EPA believes it is appropriate to require compliance on a continual basis for sources that emit hazardous air pollutants, the EPA has added recordkeeping requirements to allow operators to develop a plan for how process and control systems would be operated during startups, shutdowns, and malfunctions and how malfunctioning process and control systems would be repaired. If process and control systems are operated in a manner consistent with the plan during these events, and if malfunctions are corrected consistent with the plan, then no additional records of these activities are required beyond the records necessary to demonstrate conformance with the plan for each event. (To demonstrate conformance with the plan, the owner or operator could use a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events.) Records are required of all periods of startup, shutdown, and malfunction of process and control equipment and all measurements taken during these periods. This approach carries forward the requirement that control systems be operated at all times, but it allows special situations to occur, such as unpredicted and reasonably unavoidable failures of air pollution control systems, when it is technically impossible to properly operate these systems.

In clarifying the startup, shutdown, and malfunction provisions in the general provisions for part 63, the EPA has:

(1) Redefined the term "malfunction" so that it excludes "failures that are caused in part by poor maintenance or careless operation;"

(2) Added language that clarifies that operation and maintenance requirements are independently enforceable from other requirements, such as emission limits, in applicable NESHAP; and

(3) Added a requirement that owners and operators develop, implement, and document a startup, shutdown, and

malfunction plan for each affected source.

D. Quality Assurance and Quality Control Requirements

The EPA and State and local air pollution control agencies use, among other information, results of performance tests of a source's air pollution control systems to determine whether the source is in compliance with emission limits specified in applicable standards. Owners or operators must conduct performance tests soon after the affected source begins operating and when requested to do so by the EPA or a State air pollution control program. The results of the tests are compared to the limits in the standards to determine if the source complies with these limits. In the case of NSPS and NESHAP established under sections 111 and 112 of the Act, if the source has not achieved the appropriate air pollution control limits, then the source has not achieved the intended goals of the enabling legislation and may be found in violation of the Act. Given the importance of confirming the goals of the Act, it is important that performance tests be conducted in a high-quality manner; this helps to ensure that the resulting data are true indicators of a source's compliance status.

Monitoring data are used by the EPA and State agencies to indicate excess emissions or improper operation and maintenance practices at an affected source and, in some instances, to measure continuous performance. The purpose of including requirements for good operation and maintenance practices in the general provisions is to ensure that the appropriate equipment is used properly on an ongoing basis, thus achieving the required emissions reductions continually. Generally, continuous emission monitoring system measurements are used to determine whether good operation and maintenance practices are being followed; however, they are sometimes used to determine compliance with a mass emission standard. As was true for performance test results, the quality of monitoring data is crucial for the effective implementation of national air emission standards.

For this reason, in drafting new general provisions for part 63, the EPA improved the existing general provisions by adding quality assurance (QA) and quality control (QC) requirements for performance tests and continuous monitoring systems. The proposed QA/QC additions address planning for compliance demonstrations, data quality objectives for performance testing and monitoring, and maintenance and operation of continuous monitoring systems. The proposed QA/QC additions consist of requirements for:

(1) The review and approval by the implementing agency of a site-specific test plan prepared by the source for any performance test it is required to conduct to demonstrate compliance with a relevant NESHAP (or for a required performance evaluation of a continuous monitoring system);

(2) A test method performance audit performed during any performance test required for compliance purposes (when audit materials are available from the EPA for a required test method); and

(3) Development of written procedures and records for maintenance and operation of continuous monitoring systems, corrective action, if required, and reporting of monitoring system malfunctions.

The EPA historically has developed source-specific test methods to define the procedures to be used in obtaining compliance-related data to ensure the uniformity and quality of this data. Performance tests must be conducted by following specified methods that are typically codified in appendices associated with NSPS and NESHAP. These methods include requirements for the equipment needed for an apparatus (e.g., how to assemble and check the apparatus); requirements concerning reagents; requirements concerning the test procedures (such as operation of the apparatus); and requirements concerning calibration, calculations, and quality control. In the late 1980's, the EPA began including performance audit requirements in test methods for the measurement of gaseous pollutants (e.g., the EPA added Procedure 2: "Procedure for Field Auditing GC Analysis" to appendix C of part 61).

A performance test audit is a procedure to analyze blind samples, the content of which is known by the EPA, simultaneously with the analysis of performance test samples. The purpose of a performance test audit is to check bias in the measurement of compounds in the performance test sample, that is, to check whether the tester is measuring the right compound with an acceptable degree of accuracy. Performance test audits check data quality at the time of the test or analysis and they are specific to the equipment and personnel involved with the test.

The EPA is continuing its performance test audit program to ensure the quality of data from performance tests. This program has been established by the EPA's Office of Air Quality Planning and Standards and the Atmospheric Research and Exposure Assessment Laboratory. It can be used by Federal, State, or local air pollution control agencies to request performance test audits. Because it is important to obtain performance data of high quality and because the EPA has developed a functioning performance test audit program, the EPA is proposing a requirement that includes the analysis of performance test audits as proof of acceptable sample preparation and analysis. In considering the quality of a performance test and its results, the results of a performance test audit would be used at the discretion of the enforcement agency to demonstrate the acceptability of the data.

Many State agencies, industries, and contractors already follow the proposed QA/QC practices. In most cases the proposed requirements represent standard industrial and State agency practices. In some cases, such as the performance test audit, these practices stem from requirements in test methods or technical guidance prepared by the EPA. The EPA recognizes that the addition to the general provisions of the requirement for performance test audits during compliance tests is a restatement of a requirement already included in test methods codified in appendices to parts 60 and 61. (Test methods also will be codified in appendices to part 63.) The EPA believes, however, that placing these requirements in the general provisions lends emphasis to the need to plan for performance tests and evaluations; it also informs owners or operators of applicable requirements specified elsewhere in the CFR. Thus, adding QA/QC requirements to the general provisions would formalize what is now carried out informally, make these requirements explicit in the regulations, and clarify the EPA's expectations for everyone.

Adding QA/QC requirements to the general provisions also would help to correct existing compliance problems by making implementing agencies aware before a performance test of a source's compliance requirements. This would give agencies an opportunity to correct errors in sources' plans for conducting performance tests before those tests (including making sources aware up front of certain test method requirements that are not now regularly carried out) and the chance to ensure the quality of data that will result from performance testing and self-monitoring.

By shifting oversight of testing procedures and data quality from after testing has been completed to before testing is performed, QA/QC requirements would incur benefits on

regulated sources, implementing agencies, and the public. These benefits would include confidence in the quality of reported data, time and cost savings for sources and agencies from fewer repeated performance tests, improvement in compliance and enforcement determinations, and improvement in public health and environmental quality from decreased emissions of hazardous air pollutants. Furthermore, owners or operators and implementing agencies would be able to come to agreement in advance on the specific goals and requirements of a compliance test; during the test plan review process the site-specific details of testing and monitoring would be determined, and owners or operators would have the opportunity to request permission to use alternative means of compliance from those specified in applicable requirements. The EPA encourages States to expedite sources' requests to use alternatives insofar as the EPA allows alternatives through the general provisions. A guidance document supporting test plan development (including a sample test plan format) is available from the EPA through the Emission Measurement Technical Information Center (EMTIC), MD–19, Research Triangle Park, North Carolina 27711 and on the Technology Transfer Network (TTN) (telephone (919) 541–5742).

The EPA considered several options for inclusion of QA/QC requirements in part 63 during development of this rulemaking. These options include: (1) Adding QA/QC requirements to the general provisions to apply to all sources covered by part 63; (2) adding QA/QC requirements to the general provisions, letting individual standards incorporate requirements as appropriate for the regulated source categories; (3) adding QA/QC requirements to the general provisions to apply to major sources only; (4) adding QA/QC requirements to the general provisions, leaving their application to the discretion of enforcement agencies; and (5) adding QA/QC requirements to individual standards on a source category-specific basis. For the purpose of soliciting comments on all the options, the EPA has chosen to follow the first option for this proposal. Comments on this approach would be useful to help the EPA decide how to proceed with this aspect of the general provisions.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–91–09. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (307(d)(7)(A)). The docket is available for public inspection at the EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

B. Public Hearing

One public hearing will be held to discuss the proposed regulation if any person is interested in presenting oral testimony. Persons wishing to make oral presentations at a public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with the EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the public hearing, written statements, and a summary of the public meetings will be available for public inspection and copying during normal working hours at the EPA's Air Docket in Washington, DC (see **ADDRESSES** section of this preamble.)

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under PRA. Approval of an information collection request is not required for this proposed rulemaking since for sources affected by section 112 only, the general provisions do not require any activities until source category-specific standards have been proposed and promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the general provisions for each source category covered by part 63 will be estimated when a standard applicable to such category is promulgated.

D. Office of Management and Budget Review

Under Executive Order 12291 (E.O. 12291), the EPA must judge whether a regulation is "major" or "non-major" for purposes of review by the OMB. According to E.O. 12291, major rules are likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

Because the general provisions do not take effect until relevant standards are promulgated under part 63 (or until title V permit programs are approved in States), there are no environmental, economic, or energy impacts associated with the proposed rulemaking. Because there are no costs or other adverse effects associated with the general provisions, this rulemaking is not considered major for the purposes of E.O. 12291. The EPA will estimate the impacts associated with the general provisions when it develops standards under section 112.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." Small entities are small businesses, organizations, and governmental jurisdictions. This analysis is not necessary for this rulemaking, however, since it is unknown at this time which requirements from the general provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the general provisions will be assessed when emission standards affecting those sources are developed.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 61

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting

and recordkeeping requirements, Incorporation by reference.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by adding paragraph (c) to read as follows:

§ 60.1 Applicability.

* * * * *

(c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act as amended November 15, 1990. For more information about obtaining an operating permit see parts 70 and 71 [1] of this chapter.

3. Section 60.2 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Part 71 permit," "Permit program," "Permitting authority," "State," and "Stationary source" to read as follows:

§ 60.2 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established under part 71 of this chapter.

* * * * *

Issuance of a part 70 permit occurs, if the State is the permitting authority, when a final permit completes all administrative concurrence and review procedures at the State and Federal levels. This term applies to permit modifications and renewals, as well as to the original permit. Issuance of a part 71 permit occurs immediately after the EPA takes final action on a final permit if the EPA is the permitting authority.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Part 71 permit means any permit issued, renewed, or revised pursuant to part 71 of this chapter.

* * * * *

Permit program means a comprehensive State or Federal operating permit system established pursuant to regulations codified in part 70 of this chapter and applicable State regulations, or in part 71 of this chapter.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under part 71 of this chapter.

* * * * *

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

* * * * *

4. In § 60.7, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h), respectively, and new paragraph (e) is added to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(i) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and

(iii) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.

(2) The frequency of reporting of excess emissions and monitoring systems performance reports (and summary reports) may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 30 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based.

(3) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (e)(1) and (e)(2) of this section.

5. Section 60.19 is added to subpart A to read as follows:

§ 60.19 General notification and reporting requirements.

(a) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the

[1] Part 71 regulations will be proposed by the EPA in the future.

word "calendar" is absent, unless otherwise specified in an applicable requirement.

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(d) If an owner or operator of an affected facility in a State with an approved permit program is required to submit periodic reports under this part to the State permitting authority, and if the State has an established time-line for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State permitting authority. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. If the Administrator wishes to change a specified time period for the review of information submitted by an owner or operator, the Administrator will request in writing, as soon as practicable before the subject activity is required to take place, the owner or operator's permission to make such an adjustment. The Administrator will include in the request whatever information he or she considers useful to convince the owner or operator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 7 calendar days of receiving sufficient information to evaluate the request.

(4) An owner or operator responding to a request from the Administrator to change a specified time period for the review of information submitted by the owner or operator shall respond in writing within 7 calendar days of receiving the request.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.01 is amended by adding paragraph (d) to read as follows:

§ 61.01 List of pollutants and applicability of part 61.

* * * * *

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act as amended November 15, 1990. For more information about obtaining an operating permit see parts 70 and 71[2] of this chapter.

* * * * *

8. Section 61.02 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Part 71 permit," "Permit program," "Permitting authority," and "State" to read as follows:

§ 61.02 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established under part 71 of this chapter.

* * * * *

Issuance of a part 70 permit occurs, if the State is the permitting authority, when a final permit completes all administrative concurrence and review procedures at the State and Federal levels. This term applies to permit modifications and renewals, as well as to the original permit. Issuance of a part 71 permit occurs immediately after EPA

[2] Part 71 regulations will be proposed by the EPA in the future.

takes final action on a final permit if the EPA is the permitting authority.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Part 71 permit means any permit issued, renewed, or revised pursuant to part 71 of this chapter.

* * * * *

Permit program means a comprehensive State or Federal operating permit system established pursuant to regulations codified in part 70 of this chapter and applicable State regulations, or in part 71 of this chapter.

* * * * *

Permitting authority means: (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or (2) the Administrator, in the case of EPA-implemented permit programs under part 71 of this chapter.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

* * * * *

9. Section 61.10 is amended by adding paragraphs (e) through (j) to read as follows:

§ 61.10 Source reporting and waiver request.

* * * * *

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with an approved permit program is required to submit reports under this part to the State permitting authority, and if the State has an established time line for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State permitting authority. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. If the Administrator wishes to change a specified time period for the review of information submitted by an owner or operator, the Administrator will request in writing, as soon as practicable before the subject activity is required to take place, the owner or operator's permission to make such an adjustment. The Administrator will include in the request whatever information he or she considers useful to convince the owner or operator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 7 calendar days of receiving sufficient information to evaluate the request.

(4) An owner or operator responding to a request from the Administrator to change a specified time period for the review of information submitted by the owner or operator shall respond in writing within 7 calendar days of receiving the request.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

10. The authority citation for part 63 is revised to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Pub.

L. 101–549 (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

11. Part 63 is amended by adding subpart A to read as follows:

Subpart A—General Provisions

Sec.
63.1 Applicability.
63.2 Definitions.
63.3 Units and abbreviations.
63.4 Prohibited activities and circumvention.
63.5 Construction and reconstruction.
63.6 Compliance with standards and maintenance requirements.
63.7 Performance testing requirements.
63.8 Monitoring requirements.
63.9 Notification requirements.
63.10 Recordkeeping and reporting requirements.
63.11 Control device requirements.
63.12 State authority and delegations.
63.13 Addresses of State air pollution control agencies and the EPA Regional Offices.
63.14 Incorporations by reference.
63.15 Availability of information and confidentiality.

Subpart A—General Provisions

§ 63.1 Applicability.

(a) *General.* (1) Terms used throughout part 63 are defined in § 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) This subpart (i.e., subpart A of this part) contains procedures and criteria that apply to all subsequent subparts of part 63, except when otherwise specified in a particular subpart. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by part 63. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) Subpart C[3] of this part contains the list of hazardous air pollutants and petition processes for adding or deleting pollutants from the list of hazardous air pollutants (pursuant to section 112(b)(2) of the Act). To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E[4] of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this subpart. Individual subparts will specify which provisions of subpart A are superseded.

(14) For the purposes of implementing section 112 of the Act, any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part shall have the force and effect of standards, limitations, prohibitions, or other federally enforceable requirements promulgated in this part 63. Such requirements also shall be subject to the requirements of this subpart, except when explicitly specified otherwise.

(b) *Initial applicability determination for this part 63.* (1) The provisions of this part apply to the owner or operator of any stationary source that—

(i) Is included in any category of sources listed in the most up-to-date source category list published in the **Federal Register** (that may be obtained by contacting the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711); and

(ii) Emits or has the potential to emit any hazardous air pollutant listed in subpart C of this part.

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an

[3] The EPA plans to propose regulations for subpart C in the future.

[4] The EPA proposed regulations for subpart E on May 19, 1993 at 58 FR 29296.

authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act. For more information about obtaining an operating permit see parts 70 and 71 [5] of this chapter.

(c) *Applicability of this part 63 after a relevant standard has been set under this part.* (1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart and that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a part 70 or part 71 permit from the permitting authority in the State in which the source is located. Emission standards established in this part 63 for area sources will specify whether the owner or operator of an affected source is not required to obtain a part 70 or part 71 permit. If the owner or operator is required to obtain a part 70 or part 71 permit, he/she shall apply for and obtain such permit in accordance with the regulations contained in part 70 or part 71 of this chapter, whichever is applicable, and in applicable State regulations.

(3) [Reserved]

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart that are specifically addressed in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard, such source shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) *Applicability of permit program before a relevant standard has been set under this part.* After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a part 70 or part 71 permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a part 70 or part 71 permit, he/she shall apply for and obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or part 71 of this chapter, whichever is applicable.

[5] The EPA plans to propose regulations for part 71 in the future.

§ 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source, for the purposes of this part, means a stationary source, a group of stationary sources, or a portion of a stationary source to which any requirement established pursuant to section 112 of the Act is applicable.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by a State with an approved permit program or by the Administrator.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established under part 71 of this chapter.

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Capital expenditure means an expenditure for a physical or operational change to an affected source that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the 1981 edition of the Internal Revenue Service (IRS) Publication 534 and the affected source's basis, as defined by section 1012 of the Internal Revenue Code, or as specified in an applicable subpart of this part. However, the total expenditure for a physical or operational change to an affected source must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes. In addition, "annual asset guideline repair allowance" may be used, even though it is excluded for tax purposes in IRS Publication 534.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows:

(i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means: (1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis, and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

Construction means the fabrication (on-site), erection, or installation of a stationary source, group of stationary sources, or portion of a stationary source that is or may be subject to a standard, limitation, prohibition, or other federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous monitoring system (CMS) means either a continuous emission monitoring system or a continuous parameter monitoring system.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a permanent record of process or control system parameters.

Effective date means: (1) With regard to an emission standard established under this part, the date of promulgation in the **Federal Register** of such standard; or (2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program under part 70 or part 71 of this chapter is determined according to the provisions of those parts.

Emission standard means a national standard, limitation, prohibition, or other regulation proposed or promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emission debits from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source or a reconstructed source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

(1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;

(2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;

(3) Any limitations and conditions that limit a source's potential to emit under section 112 of the Act that are established pursuant to the provisions of this part;

(4) All terms and conditions in a part 70 or part 71 permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;

(5) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

(6) A Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;

(7) Operating permits approved by the EPA as part of a SIP as meeting EPA-defined minimum criteria for Federal enforceability; and

(8) Individual consent agreements or contracts that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive emissions do not include equipment leaks regulated under this chapter or equipment leaks that could reasonably be corrected by proper maintenance practices.

Hazardous air pollutant means any air pollutant listed in section 112(b) of the Act and codified in subpart C of this part. When there is a discrepancy between the hazardous air pollutant list in section 112(b) and the list in subpart

C, the list in subpart C shall supersede the list in section 112(b).

Issuance of a part 70 permit occurs, if the State is the permitting authority, when a final permit completes all administrative concurrence and review procedures at the State and Federal levels. This term applies to permit modifications and renewals, as well as to the original permit. Issuance of a part 71 permit occurs immediately after the EPA takes final action on a final permit if the EPA is the permitting authority.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any continuous 60-minute period.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Part 71 permit means any permit issued, renewed, or revised pursuant to part 71 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Permit modification means a change to a part 70 or part 71 permit as defined in those parts.

Permit program means a comprehensive State or Federal operating permit system established pursuant to regulations codified in part 70 of this chapter and applicable State regulations, or in part 71 of this chapter.

Permit revision means any permit modification or administrative permit amendment to a part 70 or part 71 permit as defined in those parts.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under part 71 of this chapter.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction, for the purposes of this subpart, means the replacement of components of an affected source to such an extent that; (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and (2) It is technologically and economically feasible for the reconstructed source to meet the promulgated emission standard(s) established by the Administrator pursuant to section 112 of the Act. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the **Federal Register**.

Relevant standard means; (1) An emission standard; (2) An alternative emission standard; (3) An alternative emission limitation; or (4) An equivalent emission limitation that applies to a stationary source, a group of stationary sources, or a portion of a stationary source regulated by such standard or limitation. A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State with an approved permit program) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of parts 51, 60, 61, and 63 of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part):

(i) The designated representative shall be the responsible official insofar as actions, standards, requirements, or prohibitions under section 112 of the Act or the regulations established thereunder are concerned;

(ii) The designated representative may also be the responsible official for any other purposes under section 112.

(5) For affected sources (as defined in this part) applying for or subject to a part 70 or part 71 permit: *Responsible official* shall have the same meaning as

defined in part 70 or part 71 of this chapter, whichever is applicable.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 K (68° F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part and/or (2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant. For the purposes of this part, stationary sources of hazardous air pollutants are listed in categories pursuant to section 112(c) of the Act and published in the **Federal Register**.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of appendix A of this part.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§ 63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) *System International (SI) units of measure:*

A=ampere
g=gram
Hz=hertz
J=joule
°K=degree Kelvin
kg=kilogram
l=liter
m=meter
m^3=cubic meter
mg=milligram=10^{-3} gram
ml=milliliter=10^{-3} liter
mm=millimeter=10^{-3} meter
Mg=megagram=10^6 gram=metric ton
MJ=megajoule
mol=mole
N=newton
ng=nanogram=10^{-9} gram
nm=nanometer=10^{-9} meter
Pa=pascal
s=second
V=volt
W=watt
Ω=ohm
µg=microgram=10^{-6} gram
µl=microliter=10^{-6} liter

(b) *Other units of measure:*

Btu=British thermal unit
°C=degree Celsius (contigrade)
cal=calorie
cfm=cubic feet per minute
cc=cubic centimeter
cu ft=cubic feet
d=day
dcf=dry cubic feet
dcm=dry cubic meter
dscf=dry cubic feet at standard conditions
dscm=dry cubic meter at standard conditions
eq=equivalent
°F=degree Fahrenheit
ft=feet
ft^2=square feet
ft^3=cubic feet
gal=gallon
gr=grain
g-eq=gram equivalent
g-mole=gram mole
hr=hour
in.=inch
in. H_2O=inches of water
K=1,000
kcal=kilocalorie
lb=pound
lpm=liter per minute
meq=milliequivalent
min=minute
MW=molecular weight
oz=ounces
ppb=parts per billion
ppbw=parts per billion by weight
ppbv=parts per billion by volume
ppm=parts per million
ppmw=parts per million by weight
ppmv=parts per million by volume
psia=pounds per square inch absolute
psig=pounds per square inch gauge
°R=degree Rankine
scf=cubic feet at standard conditions
scfh=cubic feet at standard conditions per hour
scm=cubic meter at standard conditions
sec=second
sq ft=square feet
std=at standard conditions
v/v=volume per volume
yd^2=square yards
yr=year

(c) *Miscellaneous:*

act=actual
avg=average
I.D.=inside diameter
M=molar
N=normal
O.D.=outside diameter
%=percent

§ 63.4 Prohibited activities and circumvention.

(a) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part except under—

(i) An extension of compliance granted by the Administrator under this part; or

(ii) An extension of compliance granted under this part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) No owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

(3) After the effective date of an approved permit program in a State, no owner or operator of an affected source in that State who is required under this part to obtain a part 70 or part 71 permit shall operate such source except in compliance with the provisions of this part and part 70 or part 71 of this chapter.

(4) [Reserved]

(5) An owner or operator of an affected source who is subject to an emission standard promulgated under this part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) of this part (including this subpart) regardless of whether—

(i) A part 70 or part 71 permit has been issued to that source; or

(ii) If a part 70 or part 71 permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(b) *Circumvention.* No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to—

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere;

(2) The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions; and

(3) The fragmentation of an operation such that the operation avoids regulation by a relevant standard that applies only to operations larger than a specified size.

(c) *Severability.* Notwithstanding any requirement incorporated into a part 70

or part 71 permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 63.5 Construction and reconstruction.

(a) *Applicability.* (1)(i) This section implements the preconstruction review requirements of section 112(i)(1) for sources subject to a relevant emission standard that has been promulgated in this part. This section does not implement the modification requirements of sections 112(g)(1), 112(g)(2)(A), and 112(g)(3), nor does it implement the requirements in section 112(g)(2)(B) for sources that are constructed or reconstructed before an applicable emission standard has been promulgated in this part.

(ii) After the effective date of a relevant standard promulgated under this part, the requirements in this section apply to owners or operators who construct a new source or reconstruct a source after the proposal date of that standard. New or reconstructed sources that start up before the standard's effective date are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(2) After the effective date of an approved permit program in the State in which an affected source is located, an owner or operator subject to the requirements of this section shall obtain a part 70 or part 71 permit (or revise an existing part 70 or part 71 permit) in accordance with the provisions of this part and part 70 or part 71 of this chapter (whichever is applicable) and shall comply with all other applicable requirements of this subpart, unless the affected source is an area source that is exempt from the requirement to obtain a permit.

(3) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Requirements for existing, newly constructed, and reconstructed sources.* (1) Upon construction an affected source is subject to relevant standards for new sources, including compliance dates. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major source or reconstruct a major source subject to such standard without obtaining written approval, in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new source or reconstruct a source subject to such standard without notifying the Administrator of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in § 63.9(b) of this subpart and shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (d) of this section.

(5) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, no person may operate such source without complying with the provisions of this subpart and the relevant standard.

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. This paragraph is not intended to implement the modification provisions of section 112(g) of the Act.

(7)–(8) [Reserved]

(c) *Review of plans.* (1) When requested to do so by an owner or operator, the Administrator will review complete written plans for construction or reconstruction for the purpose of——

(i) Advising whether actions to be taken by the owner or operator would constitute construction or reconstruction, or the commencement of one of these actions; or

(ii) Providing general technical advice to the owner or operator on proposed constructions or reconstructions.

(2) The review in paragraph (c)(1) of this section is available to the owner or operator of a stationary source that commences construction or reconstruction after the proposal date of a relevant standard.

(3) A separate request shall be submitted in writing for each construction or reconstruction. Each request shall identify—

(i) The location (i.e., the physical address) of the construction or reconstruction;

(ii) Technical information describing the proposed nature, size, design, method of operation, and operating capacity of each affected source involved in the construction or reconstruction;

(iii) Information on any equipment or methods to be used for the control of emissions; and

(iv) Any additional information that is relevant to the Administrator providing advice on the nature of the proposed construction or reconstruction.

(4) The Administrator will respond to the owner or operator's request for a review of plans under this paragraph within 60 calendar days after receipt of sufficient information to evaluate the plans. The 60-day period will begin after the owner or operator has been notified that his/her submittal is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her submittal, that is, whether sufficient information to make a determination has been received, within 30 calendar days after receipt of the original plans and within 30 calendar days after receipt of any supplementary information that is submitted.

(5) Neither a request for review of plans nor advice furnished by the Administrator in response to such a request shall—

(i) Relieve the owner or operator of legal responsibility for compliance with any provision of this part or of any applicable State or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing any provision of this part or taking any other action authorized by the Act.

(d) *Application for approval of construction or reconstruction.* The provisions of this paragraph implement section 112(i)(1) of the Act.

(1) *General application requirements.* (i) Before the effective date of an approved permit program in the State in which a major source subject to the requirement of paragraph (b)(3) of this section is (or would be) located, the owner or operator of such source shall submit to the Administrator an application for approval of the

construction of a new source or the reconstruction of an affected source. After the effective date of an approved permit program in the State in which such source is (or would be) located, the owner or operator shall submit the application to the permitting authority in that State. The application shall be postmarked at least 180 days before the construction or reconstruction is planned to commence (but it need not be sooner than 45 days after the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard established under this part, or within 45 days after the effective date of a relevant standard established under this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

(A) The applicant's name and address;

(B) A notification of intention to construct a new major source or make any physical or operational change to a major source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2;

(C) The address (i.e., physical location) or proposed address of the source;

(D) An identification of the relevant standard that is the basis of the application;

(E) The expected commencement date of the construction or reconstruction;

(F) The expected completion date of the construction or reconstruction;

(G) The anticipated date of (initial) startup of the source;

(H) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants emitted by the source reported in units and averaging times specified in the relevant standard;

(I) An analysis demonstrating whether the reconstructed or new source is or is expected to be a major source or an area source (using the emissions data or estimates generated for this application); and

(J) Other information as specified in paragraphs (d)(2) and (d)(3) of this section.

(iii) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(1)(ii)(I) of this section shall submit the actual, measured emissions data and other correct information with the notification of compliance status required in § 63.9(h) (see § 63.9(h)(5)).

(2) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(3) *Application for approval of reconstruction.* Each application for approval of reconstruction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section—

(i) A brief description of the affected source and the components that are to be replaced;

(ii) A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

(iii) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

(iv) The estimated life of the affected source after the replacements; and

(v) A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements.

(4) *Additional information.* The Administrator may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

(e) *Approval of construction or reconstruction.* (1)(i) If the Administrator determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under paragraph (d) of this section was submitted will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements, the Administrator will approve the construction or reconstruction.

(ii) In addition, in the case of reconstruction, the Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

(B) The estimated life of the source after the replacements compared to the life of a comparable entirely new source;

(C) The extent to which the components being replaced cause or contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

(2)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under paragraph (d) of this section. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of

opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(3) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(4) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

(5) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall—

(i) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

§ 63.6 Compliance with standards and maintenance requirements.

(a) *Applicability.* (1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 112 of the Act unless—

(i) The Administrator (or a State with an approved permit program) has granted an extension of compliance consistent with paragraph (i) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard established pursuant to section 112(i)(4) of the Act (see paragraph (j) of this section).

(2) If an area source that otherwise would be subject to an emission standard established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard.

(3) Special provisions established under this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Compliance dates for new and reconstructed sources.* (1) The owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(h), or 112(f) of the Act shall comply with such standard not later than the standard's effective date.

(2) The owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(h), or 112(f) of the Act shall comply with such standard upon startup of the source.

(3) Notwithstanding the requirement in § 63.5(b)(3), the owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under this part pursuant to sections 112(d) or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date 3 years after the effective date if—

(i) The promulgated standard (that is, the relevant standard) requires a more stringent level of control than would have been required by the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1), (b)(2), and (c)(2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this section shall notify the Administrator in accordance with § 63.9(d).

(6) [Reserved]

(c) *Compliance dates for existing sources.* (1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart, unless the existing source is a coke oven battery, in which case the compliance requirements of section 112(i)(8) of the Act, as codified in an applicable subpart of this part, shall apply. Except for coke oven batteries, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

(2) After the effective date of a relevant standard established under this part pursuant to section 112(f) of the Act, the owner or operator of an existing source shall comply with such standard not later than 90 days after the standard's effective date.

(3)–(4) [Reserved]

(d) [Reserved]

(e) *Operation and maintenance requirements.* (1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(2) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and

maintenance records, and inspection of the source.

(3) *Startup, Shutdown, and Malfunction Plan.* (i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, step-by-step procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment. The purpose of the startup, shutdown, and malfunction plan is to——

(A) Ensure that, at all times, owners or operators operate and maintain affected sources, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are completely consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event that demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping, that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in § 63.10(b) (and elsewhere in this part), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in § 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not completely consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall record the actions taken for that event and shall report such actions within 24 hours after the event commences, followed by a letter within 7 days after the event commences, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the appropriate permitting authority in that State (see § 63.10(d)(5)(ii))).

(v) The owner or operator shall keep the written startup, shutdown, and malfunction plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of this part. In addition, if the startup, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the startup, shutdown, and malfunction plan on record, to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, provided the SOP manual meets all the requirements of this section and is made available for inspection when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(2) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(A) Does not address a startup, shutdown, or malfunction event that has occurred;

(B) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions; or

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(viii) If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan soon after that event to include step-by-step procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment.

(f) *Compliance with non-opacity emission standards*—(1) *Applicability.* The non-opacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) Compliance with non-opacity emission standards in this part will be determined by the Administrator based on the results of performance tests conducted according to the procedures in § 63.7, unless otherwise specified in an applicable subpart of this part.

(ii) Compliance with non-opacity emission standards in this part also will be determined by the Administrator by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in paragraph (e) of this section and applicable subparts of this part.

(iii) If an affected source undergoes performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in paragraph (e) of this section; and

(D) The performance test was appropriately quality-assured, as specified in paragraph (c) of this section.

(iv) Compliance with design, equipment, work practice, or operational emission standards in this part will be determined by the Administrator by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) Compliance with design, equipment, work practice, or operational emission standards in this part also will be determined by the Administrator by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a non-opacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) *Use of an alternative non-opacity emission standard.* (1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. The Administrator will not permit, without making an appropriate finding under section 112(h), the use of an alternative emission standard as allowed under this paragraph when the relevant promulgated standard is a numerical emission limitation established under this part pursuant to sections 112(d) or 112(f) of the Act. Any **Federal Register** notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

(2) An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit a proposed test plan or the results of testing and monitoring in accordance with § 63.7 and § 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative non-opacity emission standard must be appropriately quality assured and quality controlled, as specified in § 63.7 and § 63.8.

(3) The Administrator may establish general procedures in an applicable subpart that accomplish the requirements of paragraphs (g)(1) and (g)(2) of this section.

(h) *Compliance with opacity and visible emission standards*—(1) *Applicability.* The opacity and visible emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) Compliance with opacity and visible emission standards in this part will be determined by the Administrator based on the results of the test method specified in an applicable subpart. Whenever a continuous opacity monitoring system (COMS) is required to be installed to determine compliance with numerical opacity emission standards in this part, compliance with opacity emission standards in this part shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards in this part shall be determined by conducting observations in accordance with Test Method 9 in appendix A of part 60 of this chapter or the method specified in paragraph (h)(7)(ii) of this section. Whenever a visible emission test method is not specified, compliance with visible emission standards in this part shall be determined by conducting observations in accordance with Test Method 22 in appendix A of part 60 of this chapter.

(ii) Compliance with opacity and visible emission standards in this part also will be determined by the Administrator by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(iii) If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

(B) The opacity or visible emission test was conducted under representative operating conditions for the source;

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in paragraph (e) of this section; and

(D) The opacity or visible emission test was appropriately quality assured, as specified in paragraph (c) of this section.

(3) [Reserved]

(4) *Notification of opacity or visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible emission observations in accordance with § 63.9(f), if such observations are required for the source by a relevant standard.

(5) *Conduct of opacity or visible emission observations.* When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(i) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial

performance test required in § 63.7 unless one of the following conditions apply:

(A) If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(B) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, or within the time period specified in paragraph (h)(5)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 63.7. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in appendix A of part 60 of this chapter.

(ii) For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be 3 hours (30 6-minute averages) for the performance test or other required set of observations (e.g., for fugitive-type emission sources subject only to an opacity emission standard).

(iii) The owner or operator of an affected source to which an opacity or visible emission standard in this part applies shall conduct opacity or visible emission observations in accordance with the provisions of this section, record the results of the evaluation of emissions, and report to the Administrator the opacity or visible emission results in accordance with the provisions of § 63.10(d).

(iv) The inability of the owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity or visible emission observations concurrent with the initial performance test.

(v) Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(6) *Availability of records.* The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(7) *Use of a continuous opacity monitoring system.* (i) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of § 63.10(e)(4).

(ii) Whenever an opacity emission test method has not been specified in an applicable subpart, or an owner or operator of an affected source is required to conduct Test Method 9 observations (see appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under § 63.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator of that decision, in writing, simultaneously with the notification under § 63.7(b) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under § 63.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under § 63.7(b) of the date the subsequent performance test is scheduled to begin.

(iii) For the purposes of determining compliance with the opacity emission standard during a performance test required under § 63.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(iv) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of § 63.8(e), that the COMS has been properly maintained, operated, and data quality assured, as specified in § 63.8(c) and § 63.8(d), and that the resulting data have not been altered in any way.

(v) Except as provided in paragraph (h)(7)(ii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in § 63.8(c), and met Performance Specification 1 in appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(8) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required by § 63.7, the results of Test Method 9 or another required opacity or visible emission test method, the observer certification required by paragraph (h)(6) of this section, and the continuous opacity monitoring system results, whichever is/are applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(9) *Adjustment to an opacity emission standard.* (i) If the Administrator finds under paragraph (h)(8) of this section that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under § 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

(ii) The Administrator may grant such a petition upon a demonstration by the owner or operator that—

(A) The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

(B) The performance tests were performed under the conditions established by the Administrator; and

(C) The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

(iii) The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the Federal Register.

(iv) After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

(i) *Extension of compliance with emission standards.* (1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) *Extension of compliance for early reduction.* If the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(3) *Request for extension of compliance.* Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part (except requests for an extension of compliance under paragraph (i)(2) of this section will be handled through procedures specified in subpart D of this part).

(4) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State with an approved part 70 permit program) issue a permit that grants an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. After the effective date of an approved part 70 permit program in a State, the owner or operator shall submit the request for an extension of compliance to the State permitting authority.

(5) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment.

(6) Any request for an extension of compliance with a relevant standard under paragraph (i)(4) of this section shall be submitted in writing to the Administrator (or the State with an approved permit program) not later than the date 12 months before the affected source's compliance date (as specified in paragraphs (b) and (c) of this section) for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date (as specified in paragraphs (b) and (c) of this section) for sources that are including emission points in an emissions average. Any request for an extension of compliance with a relevant standard under paragraph (i)(5) of this section shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard. Emission standards established under this part 63 may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date. The request for a compliance extension shall include the following information:

(i) A description of the controls to be installed to comply with the standard;

(ii) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(A) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(B) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(C) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed;

(D) The date by which final compliance is to be achieved; and

(iii) A description of interim emission control steps that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section, if such additional period is necessary for the installation of controls.

(10) The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken; and

(iv) Specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of

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the health of persons during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they must be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 7 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 15 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(5) of this section. The 15-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 7 calendar days after receipt of the original application and within 7 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 7 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 7 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 15 calendar days after presentation of additional information or argument (if the application is complete), or within 15 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (i)(10)(iii) or (i)(10)(iv) of this section is not met.

(15) The owner or operator of an affected source who wishes to obtain an extension of compliance under paragraph (i)(4) of this section shall obtain a part 70 or part 71 permit or apply to have the source's part 70 or part 71 permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted pursuant to a request under paragraph (i)(4) will be incorporated into the affected source's part 70 or part 71 permit according to the provisions of part 70 or part 71 of this chapter, whichever is applicable.

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(j) *Exemption from compliance with emission standards.* The President may exempt any stationary source from compliance with any relevant standard established pursuant to section 112 of the Act for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years.

§ 63.7 Performance testing requirements.

(a) *Applicability and performance test dates.* (1) Unless otherwise specified, this section applies to the owner or operator of an affected source required to do performance testing, or another form of compliance demonstration, under a relevant standard.

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source shall perform such tests as follows—

(i) Within 120 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date; or

(ii) Within 120 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 120 days after the compliance date specified in an

applicable subpart of this part for an existing source subject to an emission standard established pursuant to section 112(d) of the Act; or

(iv) Within 120 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 120 days after the termination date of the source's extension of compliance for an existing source that obtains an extension of compliance under § 63.6(i); or

(vi) Within 120 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) (see § 63.6(b)(4)); or

(vii) [Reserved]; or

(viii) [Reserved]; or

(ix) When an emission standard promulgated under this part is more stringent than the standard proposed (see § 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements as follows:

(A) For a new or reconstructed source that has a startup date before the effective date of the relevant standard, performance tests shall be conducted as required in the proposed standard within 120 days after the effective date, and within 3 years and 120 days after the effective date, performance tests shall be conducted as required in the promulgated standard;

(B) For a new or reconstructed source that has a startup date after the effective date of the relevant standard, performance tests shall be conducted as required in the proposed standard within 120 days after startup of the source, and within 3 years and 120 days after startup, performance tests shall be conducted as required in the promulgated standard.

(3) The Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.

(4) Special provisions set forth or established under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 75 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test.

(c) *Quality assurance program.* (1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)(i) *Submission of site-specific test plan.* Before conducting a required performance test, the owner or operator of an affected source shall develop and submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator at least 75 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) *Approval of site-specific test plan.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan within 15 calendar days after receipt of the original plan and within 15 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 15 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan. Consistent with the requirement in the preceding sentence, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 30 calendar days after the Administrator approves the site-specific test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with

any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4)(i) *Performance test method audit program.* The owner or operator shall analyze performance audit (PA) samples during each performance test when audit materials are available from the Administrator for the required test method(s). Information concerning the availability of audit materials for a specific performance test may be obtained by contacting the Emission Measurement Technical Information Center (EMTIC), U.S. EPA (MD–19), Research Triangle Park, North Carolina 27711. If the Administrator has prior knowledge that an audit material is available, the Administrator may contact the Atmospheric Research and Exposure Assessment Laboratory (AREAL) directly. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711.

(ii) The Administrator shall have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that performance test. Waiver under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source shall provide performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such source. This includes:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Conduct of performance tests.* (1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator—

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run in the event that—

(i) A sample is accidentally lost after the testing team leaves the site; or

(ii) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(iii) Extreme meteorological conditions occur; or

(iv) Other circumstances occur that are beyond the owner or operator's control.

(4) Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

(f) *Use of an alternative test method.*—(1) *General.* Until permission to use an alternative test method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator—

(i) Notifies the Administrator of his or her intention to use an alternative test method not later than with the submission of the site-specific test plan required under paragraph (c) of this section;

(ii) Uses Method 301 in appendix A of this part to validate the alternative test method; and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the site-specific test plan to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the site-specific test plan required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a

test method specified in a relevant standard.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative test method for the purposes of demonstrating compliance with a relevant standard, the Administrator may require the use of a test method specified in a relevant standard.

(5) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source.

(6) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) *Data analysis, recordkeeping, and reporting.* (1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, samples shall be analyzed and emissions determined within 45 days after each performance test has been completed. A performance test is "completed" when field sample collection is terminated.

(2) Before a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) by a registered letter sent before the close of business on the 45th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator (see § 63.9(i)). The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h). The Administrator (or the State with an approved permit program) may request that the owner or operator submit the raw data from a performance test in the report of the performance test results.

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) *Waiver of performance tests.* (1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.* (i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall accompany the submission of the site-specific test plan under paragraph (c) of this section.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report (such as those required under § 63.6(i), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's part 70 or part 71 permit), but it shall not be submitted later than with the site-specific test plan required under paragraph (c) of this section.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Approves or disapproves a site-specific test plan; or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.8 Monitoring requirements.

(a) *Applicability.* (1)(i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for source(s) regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and requests to use alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems under a relevant standard.

(2) For the purposes of this part, all continuous monitoring systems (CMS) required under relevant standards shall be subject to the provisions of this section upon promulgation of performance specifications for CMS in appendix B of part 60 of this chapter and, if the CMS are used to demonstrate compliance with emission limits on a continuous basis, appendix F of part 60, unless otherwise specified in a relevant standard or by the Administrator.

(3) [Reserved]

(4) Additional monitoring requirements for control devices used to comply with provisions in relevant standards of this part are specified in § 63.11.

(5) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator—

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(2)(i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable continuous monitoring system on each effluent.

(ii) If the relevant standard is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable continuous monitoring system at each emission point unless the installation of fewer systems is—

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

(3) When more than one continuous monitoring system is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each continuous monitoring system. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS that was used to meet the monitoring requirements of this part. If both such CMS were used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the period during which it was used for compliance purposes.

(c) *Operation and maintenance of continuous monitoring systems.* (1) The owner or operator of an affected source shall maintain and operate each continuous monitoring system as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices. Any unavoidable breakdown or malfunction of the continuous monitoring system shall be repaired or adjusted as soon as practicable but not later than 7 days after its occurrence. The Administrator's determination of whether acceptable operation and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturing recommendations and specifications, and inspection of the continuous monitoring system.

(2) All continuous monitoring systems shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. In addition, continuous emission monitoring systems shall be located according to procedures contained in the applicable performance specification(s) in appendix B of part 60 of this chapter.

(3) All continuous monitoring systems (CMS) shall be installed, operational, and certified (i.e., they shall successfully pass the applicable performance specifications in appendix B of part 60 of this chapter) prior to conducting performance tests under § 63.7 of this subpart. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs, calibration checks, and zero (low-level) and high-level calibration drift adjustments required under paragraphs (c)(6) and (c)(7) of this section, all continuous monitoring systems (CMS), including continuous opacity monitoring systems (COMS), shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(i) All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(ii) All CMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, minimum procedures for continuous opacity monitoring systems shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

(6) The owner or operator of a continuous monitoring system (CMS) installed in accordance with the provisions of this part and appendix B of part 60 of this chapter shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (e)(3)(ii) of this section. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specifications in appendix B of part 60 of this chapter. The system must allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity.

(7)(i) A continuous monitoring system (CMS) is out of control if—

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in appendix B of part 60 of this chapter or an applicable subpart; or

(B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

(C) The COMS CD exceeds two times the applicable specification in appendix B of part 60 of this chapter, or the system is found to exceed the other specifications in appendix B of part 60 of this chapter.

(ii) When the CMS or COMS is out of control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests, or portions thereof, which indicate that the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS or COMS is

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out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

(8) The owner or operator of a continuous monitoring system that is out of control as defined in paragraph (c)(7) of this section shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.10(e)(3).

(d) *Quality control program.* (1) The results of the quality control program required in this paragraph will be considered by the Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to use a continuous monitoring system (CMS) and is subject to the monitoring requirements of this section and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Administrator for approval a site-specific performance evaluation test plan for the CMS performance evaluation required in paragraph (e)(3)(i) of this section, according to the procedures specified in paragraph (e) of this section. In addition, each quality control program shall include, at a minimum, a written protocol that describes, in detail, step-by-step procedures for each of the following operations:

(i) Initial and any subsequent calibration of the CMS;

(ii) Determination and adjustment of the calibration drift of the CMS;

(iii) Preventive maintenance of the CMS, including spare parts inventory;

(iv) Data recording, calculations, and reporting;

(v) Accuracy audit procedures, including sampling and analysis methods; and

(vi) Program of corrective action for a malfunctioning CMS.

(3) The owner or operator shall keep these written procedures on record for the life of the affected source, or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

(e) *Performance evaluation of continuous monitoring systems*—(1) *General.* When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the continuous monitoring system. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) *Notification of performance evaluation.* The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b), the submission of the site-specific test plan required under § 63.7(c), and the submission of the site-specific performance evaluation test plan required under paragraph (e)(3)(i) of this section. If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation at least 75 calendar days before the evaluation is scheduled to begin, simultaneously with the submission of the site-specific performance evaluation test plan, to allow the Administrator to review and approve the site-specific performance evaluation test plan in advance of the performance evaluation.

(3)(i) *Submission of site-specific performance evaluation test plan.* Before conducting a required continuous monitoring system (CMS) performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) When a performance test is required, the owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator with the site-specific test plan required under § 63.7(c), and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan. When a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall submit the performance evaluation test plan to the Administrator not later than 75 days before the performance evaluation is scheduled to begin, and review and approval of the performance evaluation test plan by the Administrator will occur as in § 63.7(c)(3).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. Consistent with the requirement in the preceding sentence, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 30 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the

specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator' failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) *Conduct of performance evaluation and performance evaluation dates.* The owner or operator of an affected source shall conduct a performance evaluation of a required continuous monitoring system during any performance test required under § 63.7 in accordance with the applicable performance specification in appendix B of part 60 of this chapter. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit continuous opacity monitoring system (COMS) data for compliance with a relevant opacity emission standard as provided under § 63.6(h)(7), he/she shall conduct a performance evaluation of the COMS as specified in Performance Specification 1, appendix B of part 60 of this chapter, before the performance test required under § 63.7 is conducted in time to submit the results of the performance evaluation as specified in paragraph (e)(5)(ii) of this section. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 120 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(5) *Reporting performance evaluation results.* (i) The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

(ii) The owner or operator of an affected source using a continuous opacity monitoring system (COMS) to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two, or upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 15 calendar days before the performance test required under § 63.7 is conducted.

(f) *Use of an alternative monitoring method.*—(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a continuous monitoring system specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases; or

(ii) Alternative monitoring requirements when the affected source is infrequently operated; or

(iii) Alternative monitoring requirements to accommodate continuous emission monitoring systems that require additional measurements to correct for stack moisture conditions; or

(iv) Alternative locations for installing continuous monitoring systems when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements; or

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard; or

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells; or

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard; or

(viii) Alternative continuous emission monitoring systems that do not meet the design or performance requirements in Performance Specification 1, appendix B of part 60 of this chapter, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard and a performance test is required, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c). Alternatively, if the alternative monitoring method is to be used for a compliance demonstration and no performance test is required, the application shall be submitted either with the initial notification required in § 63.9(b)(2) for a new source that has an initial startup before the effective date of a relevant standard, or with the initial notification required in § 63.9(b)(3) or the notification of startup required in § 63.9(b)(4) for a new source that has an initial startup after the effective date of a relevant standard, or no later than 45 days after the compliance date for an existing source (i.e., when the site-specific test plan would have been submitted had a performance test been required).

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility,

or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) of this section to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until the Administrator notifies the owner or operator to the contrary.

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for continuous emission monitoring systems (CEMS) specified in Performance Specification 2 in appendix B of 40 CFR part 60 may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the continuous emission monitoring system data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the continuous emission monitoring system (CEMS) relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(g) *Reduction of monitoring data.* (1) The owner or operator of each continuous monitoring system shall reduce the monitoring data as specified in this paragraph. In addition, each relevant standard may contain additional requirements for reducing monitoring data. When additional requirements are specified in a relevant standard, the standard will identify any unnecessary or duplicated requirements in this paragraph that the owner or operator need not comply with.

(2) The owner or operator of each continuous opacity monitoring system shall reduce all data to 6-minute averages calculated from 36 or more data points equally spaced over each 6-minute period. Data from continuous emission monitoring systems (CEMS) for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to 1-hour averages computed from four or more data points equally spaced over each 1-hour period. Alternatively, an arithmetic or integrated 1-hour average of CEMS data may be used. Time periods for averaging are defined in § 63.2.

(3) The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O2 or ng/J of pollutant).

(4) All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable continuous monitoring system breakdowns, out-of-

control periods, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part.

§ 63.9 Notification requirements.

(a) *Applicability and general information.* (1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4)(i) Before the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to the notification requirements in this part shall submit notifications to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13) and to all appropriate delegated authorities.

(ii) After the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to notification requirements in this part shall submit notifications to the permitting authority. In addition, if the permitting authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section.

(5) For the purposes of this section, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(6) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(7) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (i) of this section.

(8) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Initial notifications.* (1)(i) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(ii) If an area source that otherwise would be subject to an emission standard established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard, such source shall be subject to the notification requirements of this section.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 45 calendar days after the effective date of the relevant standard (or within 45 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source;

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant;

(v) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants emitted by the source reported in units and averaging times specified in the relevant standard;

(vi) An analysis demonstrating whether the affected source is a major source or an area source (using the emissions data or estimates generated for this notification);

(vii) A description of the existing or the planned air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the estimated control efficiency (percent) for each control device (or method) or;

(viii) A statement by the owner or operator of an affected new or reconstructed source as to whether the source has complied with the relevant standard, or other requirements, by the source's compliance date;

(ix) A statement by the owner or operator of an affected existing source as to whether the owner or operator expects the source to comply with the relevant standard, or other requirements, by the source's compliance date, if such information is known by the owner or operator at the time of this notification.

(3) The owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under § 63.5(d) shall notify the Administrator in writing that the source is subject to the relevant standard. The notification shall provide all the information required in paragraphs (b)(2)(i) through (b)(2)(viii) of this section, postmarked with the notification required in paragraph (b)(5) of this section that the owner or operator intends to construct a new source or reconstruct an affected source.

(4) The owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under § 63.5(d) shall provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major source or reconstruct a major source with the application for approval of construction or reconstruction;

(ii) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of the relevant standard;

(iii) A notification of the date when construction or reconstruction was commenced, postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of the relevant standard;

(iv) A notification of the anticipated date of startup of the source, postmarked not more than 60 days nor less than 30 days before such date; and

(v) A notification of the actual date of startup of the source, postmarked within 15 calendar days after that date.

(5) After the effective date of any relevant standard established by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator who intends to construct a new source or reconstruct an affected source subject to such standard shall notify the Administrator, in writing, of the intended construction or reconstruction. After the effective date of an approved permit program in the State in which such source is (or would be) located, the owner or operator shall submit the notification to the permitting authority in that State. The notification shall be postmarked at least 180 days before the construction or reconstruction is planned to commence (but it need not be sooner than 45 days after the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard established under this part. The notification shall be postmarked within 45 days after the effective date of a relevant standard established under this part if the construction or reconstruction had commenced and initial startup had not occurred before the effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(6) An owner or operator who submits estimates or preliminary information in place of the actual emissions data, descriptions, or identifications required in paragraphs (b)(2)(iv) through (b)(2)(vii) and paragraph (b)(3) of this section shall submit the actual, measured emissions data and other correct information with the notification of compliance status required in paragraph (h) of this section (see § 63.9(h)(4)).

(c) *Request for extension of compliance.* If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4) through § 63.6(i)(6). If a request for an extension of compliance is submitted under this paragraph, it shall be submitted not later than the dates specified in § 63.6(i)(6).

(d) *Notification that source is subject to special compliance requirements.* An owner or operator of a new source that is subject to special compliance requirements as specified in § 63.6(b)(3) and § 63.6(b)(4) shall notify the Administrator of his/her compliance obligations not later than the notification dates established in paragraph (b) of this section for new sources that are not subject to the special provisions.

(e) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 75 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c) and to have an observer present during the test.

(f) *Notification of opacity and visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in § 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (e) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, the owner or operator shall postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

(g) *Additional notification requirements for sources with continuous monitoring systems.* The owner or operator of an affected source required to use a continuous monitoring system (CMS) by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CMS performance evaluation under § 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test date required under § 63.7(b) and the submission of the site-specific test plan and site-specific performance evaluation test plan required under § 63.7(c) and § 63.8(e). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation at least 75 calendar days before the evaluation is scheduled to begin;

(2) A notification that continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity emission standard during a performance test required by § 63.7 in lieu of Method 9 or other opacity emissions test method data, as allowed by § 63.6(h)(7)(ii), if compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted with the notification required under paragraph (e) of this section of the date the performance test is scheduled to begin; and

(3) A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided by § 63.8(f)(6), has been exceeded. The notification shall be postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(h) *Notification of compliance status.* (1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard.

(2)(i) Before a part 70 or part 71 permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the

source has complied with the relevant standard. The notification shall list—

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system performance evaluations, and/or other monitoring procedures or methods that were conducted; and

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods.

(ii) The notification shall be sent by registered letter before the close of business on the 45th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in a relevant standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be postmarked). For example, the notification shall be sent before close of business on the 45th (or other required) day following completion of the initial performance test and again before the close of business on the 45th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations.

(3) After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's part 70 or part 71 permit, including reports required under this part. After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority.

(4) If an owner or operator of an affected source submits estimates or preliminary information in the initial notification required in paragraphs (b)(2) and (b)(3) of this section in place of the actual emissions data, descriptions, or identifications required in paragraphs (b)(2)(iv) through (b)(2)(vii) of this section, the owner or operator shall submit the actual emissions data and other correct information (as specified in paragraphs (b)(2)(iv) through (b)(2)(vii) of this section) with the initial notification of compliance status required in this section.

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in § 63.5(d) in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(1)(ii)(I) of § 63.5, the owner or operator shall submit the actual emissions data and other correct information with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(i) *Adjustment to time periods or postmark deadlines for submittal and review of required communications.*

(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. If the Administrator wishes to change a specified time period for the review of information submitted by an owner or operator, the Administrator will request in writing, as soon as practicable before the subject activity is required to take place, the owner or operator's permission to make such an adjustment. The Administrator will include in the request whatever information he or she considers useful to convince the owner or operator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 7 calendar days of receiving sufficient information to evaluate the request.

(4) An owner or operator responding to a request from the Administrator to change a specified time period for the review of information submitted by the owner or operator shall respond in writing within 7 calendar days of receiving the request.

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

§ 63.10 Recordkeeping and reporting requirements.

(a) *Applicability and general information.* (1)The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(4)(i) Before the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to recordkeeping and reporting requirements in this part shall submit reports to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13 of this subpart) and to all appropriate delegated authorities.

(ii) After the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to recordkeeping and reporting requirements in this part shall submit reports to the permitting authority. In addition, if the permitting

authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section.

(5) If an owner or operator of an affected source in a State with an approved permit program is required to submit periodic reports under this part to the State permitting authority, and if the State has an established time-line for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State permitting authority. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

(8) For the purposes of this section, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(9) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(10) Notwithstanding time periods or postmark deadlines specified in this section for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(11) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *General recordkeeping requirements.* (1) The owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a permanent form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. Such files may be maintained on microfilm, on a computer, or on computer floppy disks. For each file maintained on a computer or floppy disk, a backup copy shall be generated on a floppy disk and retained for at least 5 years following the date of each item recorded.

(2) The owner or operator of an affected source subject to the provisions of this part shall maintain records for such source of—

(i) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air pollution control equipment;

(iii) All maintenance performed on the air pollution control equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3);

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are completely consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

(vi) Each period during which a continuous monitoring system is malfunctioning or inoperative (including out-of-control periods);

(vii) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15 minute averages of continuous monitoring system data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(viii) All results of performance tests, continuous monitoring system performance evaluations, and opacity and visible emission observations;

(ix) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(x) All continuous monitoring system calibration checks;

(xi) All adjustments and maintenance performed on continuous monitoring systems;

(xii) Any information demonstrating whether a source is meeting the

requirements for a waiver of recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xiii) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under § 63.8(f)(6); and

(xiv) All documentation supporting initial notifications and notifications of compliance status under § 63.9.

(c) *Additional recordkeeping requirements for sources with continuous monitoring systems.* In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a continuous monitoring system (CMS) by a relevant standard shall maintain records for such source of—

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)–(4) [Reserved]

(5) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

(6) The date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7).

(7) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during startups, shutdowns, and malfunctions of the affected source;

(8) The specific identification of (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occur during periods other than startups, shutdowns, and malfunctions of the affected source;

(9) The magnitude of excess emissions computed in accordance with the provisions of § 63.8(g) and any conversion factor(s) used;

(10) The nature and cause of any malfunction (if known);

(11) The corrective action taken or preventive measures adopted;

(12) The nature of the repairs or adjustments to the CMS that was inoperative or out of control;

(13) The total process operating time during the reporting period; and

(14) All procedures that are part of a quality control program developed and implemented for CMS under § 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(10) through (c)(12) of this section and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in § 63.6(e), provided that such plan and records adequately address the requirements of paragraphs (c)(10) through (c)(12).

(d) *General reporting requirements.* (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

(2) *Reporting results of performance tests.* Before a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under § 63.7 to the Administrator. After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) by a registered letter sent before the close of business on the 45th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h).

(3) *Reporting results of opacity or visible emission observations.* The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Test Method 9 or Test Method 22, or an alternative to these test methods) along with the results of the performance test required under § 63.7. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under § 63.7, the owner or operator shall report the opacity or visible emission results by registered letter sent before the close of business on the 30th day following the completion of the opacity or visible emission observations.

(4) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are completely consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)), the owner or operator shall state such information in a startup, shutdown, and malfunction report. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's part 70 or part 71 permit). The startup, shutdown, and malfunction report shall be postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of

reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not completely consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 24 hours after the event commences followed by a letter within 7 days after the event commences. The immediate report required under this paragraph shall consist of a telephone call (or facsimile [FAX] transmission) to the Administrator within 24 hours after the event commences, and it shall be followed by a letter, postmarked within 7 days after the event commences and containing the name, title, and signature of the responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.9(i).

(e) *Additional reporting requirements for sources with continuous monitoring systems*—(1) *General.* When more than one continuous emission monitoring system (CEMS) is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(2) *Reporting results of continuous monitoring system performance evaluations.* (i) The owner or operator of an affected source required to install a continuous monitoring system (CMS) by a relevant standard shall furnish the Administrator a copy of a written report of the results of the CMS performance evaluation, as required under § 63.8(e), simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a continuous opacity monitoring system (COMS) to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two, or upon request, three copies of a written report of the results of the COMS performance evaluation conducted under § 63.8(e). The copies shall be furnished at least 15 calendar days before the performance test required under § 63.7 is conducted.

(3) *Excess emissions and continuous monitoring system performance report and summary report.* (i) Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a continuous monitoring system by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually, except when—

(A) More frequent reporting is specifically required by a relevant standard; or

(B) The continuous monitoring system data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or

(C) The Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source.

(ii) *Request to reduce frequency of excess emissions and continuous monitoring system performance reports.* Notwithstanding the frequency of reporting requirements specified in paragraph (e)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (e)(3)(iii) of this section.

(iii) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 30 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based.

(iv) As soon as continuous monitoring system data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard, as provided for in paragraphs (e)(3)(ii) and (e)(3)(iii) of this section.

(v) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required, shall be postmarked by the 30th day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in paragraphs (c)(5) through (c)(13) of this section, in § 63.8(c)(7) and § 63.8(c)(8), and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who

is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a continuous monitoring system has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.

(vi) *Summary report.* As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report—Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

(A) The company name and address of the affected source;

(B) An identification of each hazardous air pollutant monitored at the affected source;

(C) The beginning and ending dates of the reporting period;

(D) A brief description of the process units;

(E) The emission and operating parameter limitations specified in the relevant standard(s);

(F) The monitoring equipment manufacturer(s) and model number(s);

(G) The date of the latest continuous monitoring system certification or audit;

(H) The total operating time of the affected source during the reporting period;

(I) An emission data summary, including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;

(J) A continuous monitoring system (CMS) performance summary, including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;

(K) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period;

(L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

(M) The date of the report.

(vii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, and continuous monitoring system downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Administrator.

(viii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total continuous monitoring system downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted.

(4) *Reporting continuous opacity monitoring system data produced during a performance test.* The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in paragraph (d)(2) of this section.

(f) *Waiver of recordkeeping or reporting requirements.* (1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under § 63.6(i), any required compliance progress report or compliance status report required under this part (such as under § 63.6(i) and § 63.9(h) of this subpart) or in the source's part 70 or part 71[3] permit, or an excess emissions and continuous monitoring system performance report required under paragraph (e) of this section, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.11 Control device requirements.

(a) *Applicability.* This section contains requirements for control devices used to comply with provisions in relevant standards. These requirements apply only to affected sources covered by relevant standards referring directly or indirectly to this section.

(b) *Flares.* (1) Owners or operators using flares to comply with the provisions of this part shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable subparts will provide

provisions stating how owners or operators using flares shall monitor these control devices.

(2) Flares shall be steam-assisted, air-assisted, or non-assisted.

(3) Flares shall be operated at all times when emissions may be vented to them.

(4) Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. Test Method 22 in appendix A of part 60 of this chapter shall be used to determine the compliance of flares with the visible emission provisions of this part. The observation period is 2 hours and shall be used according to Method 22.

(5) Flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(6) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant=

$$1.740\times10^{-7}\left(\frac{1}{\text{ppm}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppm on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

(7)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section. The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of emission standard temperature and pressure), as determined by Test Methods 2, 2A, 2C, or 2D in appendix A to 40 CFR part 60 of this chapter, as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec), are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, less than the velocity V_{max}, as determined by the method specified in this paragraph, but less than 122 m/sec (400 ft/sec) are allowed. The maximum permitted velocity, V_{max}, for flares complying with this paragraph shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

Where:

V_{max}=Maximum permitted velocity, m/sec.

28.8=Constant.

31.7=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}, as determined by the method specified in paragraph (b)(7)(iii) of this section. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084(H_T)$$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.706=Constant.

0.7084=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

§ 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part; or

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

(b)(1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part

also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency. The appropriate mailing addresses for those States whose delegation requests have been approved can be found in § 63.13.

§ 63.13 Addresses of State air pollution control agencies and the EPA Regional Offices.

(a)–(b) [Reserved]

(c) If any State requires a submittal that contains all the information required in an application, notification, request, report, statement, or other communication required in this part, an owner or operator may send the appropriate Regional Office of the EPA a copy of that submittal to satisfy the requirements of this part for that communication.

§ 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC 20408 and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina 27711.

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved *[Insert effective date of approval by the Director of the Federal Register] for § 63.11(b)(6).*

(2) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved [Insert effective date of approval by the Director of the *Federal Register] for § 63.11(b)(6).*

§ 63.15 Availability of information and confidentiality.

(a) *Availability of information.* (1) With the exception of trade secrets protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and part 70 or part 71[3] permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter. (Information submitted voluntarily to the Administrator for the purposes of § 63.5(c) is governed by § 2.201 through § 2.213 of this chapter and not by § 2.301 of this chapter.)

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a part 70 or part 71 permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a part 70 or part 71 permit may be entitled to protection from disclosure.

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Federal Aviation Administration

14 CFR Part 170

Establishment and Discontinuance Criteria for LORAN–C; Nonprecision Approach Procedures; Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 170

[Docket No. 25758; Amendment 170–1]

RIN 2120–AD68

Establishment and Discontinuance Criteria for LORAN–C; Nonprecision Approach Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule prescribes benefit-cost based criteria for the establishment and discontinuance of LORAN–C nonprecision approach procedures at airports. Under the criteria, the FAA will consider traffic density, passengers served, and aircraft operation efficiencies along with the cost of establishing and maintaining an approach. The criteria provide a guide to FAA management to assure the cost-effective placement of LORAN–C approaches. This regulation implements the requirements of Public Law (Pub. L.) 100–223, which requires the publication of criteria for navigational aids and airport traffic control towers.

EFFECTIVE DATE(S): September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Emerson, Office of Aviation Policy and Plans (APO–220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3298.

SUPPLEMENTARY INFORMATION:

Background

The FAA has the responsibility to establish or discontinue LORAN–C nonprecision approach procedures when activity levels merit such action.

The FAA, and its predecessor agency, have been developing, approving, and publishing criteria for approach procedures since 1951. Currently, establishment and discontinuance criteria for certain navigational facilities and control towers are published in an internal FAA document: Airway Planning Standard Number One—Terminal Air Navigation Facilities and Air Traffic Control Services (FAA Order No. 7031.2C, issued November 15, 1984). The existing document does not include the criteria for establishing LORAN–C nonprecision approaches to runways. The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, section 308 (49 U.S.C. 1348), mandates that certain criteria be promulgated through Federal regulations.

A LORAN–C nonprecision approach procedure is established under FAA Handbook 8260.3B, United States Standard for Terminal Instrument Procedures (TERPS), as amended, which provides guidance for preparation, approval, and promulgation of terminal instrument approach procedures. LORAN–C operates through the low-frequency transmission of timed signals with controlled coded pulses that furnish nonprecision guidance to pilots with appropriately equipped aircraft. The LORAN–C signal is transmitted by groups of three to six stations, called chains; each chain includes a designated master station and several secondary stations.

In a separate rulemaking, the FAA published a new part 170 to the Federal Aviation Regulations (14 CFR part 170) to list the criteria on which it will base its decision to establish or discontinue certain navigation facilities and procedures. On January 3, 1991, the FAA published The Establishment and Discontinuance Criteria for Airport Traffic Control Tower Facilities (56 FR 336). It is anticipated that, in the future, part 170 will include criteria for other kinds of navigation facilities and services. The LORAN–C criteria will be set forth in subpart C of the new part.

The Criteria

New benefit-cost criteria for LORAN–C nonprecision approaches are established by this regulation. The criteria are explained in detail in FAA report number FAA–APO–90–5, Establishment Criteria for LORAN–C Approach Procedures. The criteria for LORAN–C approaches require that, to be eligible for establishment, a candidate runway must meet all FAA standards for nonprecision approaches and must have life-cycle benefits that exceed life-cycle costs. Discontinuance criteria state that a LORAN–C approach is subject to discontinuance when the present value of its remaining life-cycle benefits falls below the level of the cost of its continued maintenance.

The economic benefit of a LORAN–C approach is improved efficiency associated with a lower approach minimum which permits the runway to remain open at times when weather conditions would otherwise have closed the airport, thereby reducing flight disruptions. A safety benefit for LORAN–C was not included in the benefit-cost analysis because the procedure only enables approaches to be made that weather conditions might otherwise preclude. LORAN–C provides a nonprecision approach signal that guides a pilot to a specific heading that is in line with a runway. Upon descending to a specified altitude, it is then necessary for a pilot to complete the approach and landing visually or to execute a missed approach if the runway is not in sight. Because the final descent to the runway must be made visually, the level of safety is considered the same as landing during visual flight rules conditions, and therefore unaffected by the existence of a LORAN–C approach. Furthermore, the establishment of a LORAN–C approach is meant to enhance operational efficiencies; the FAA does not deem this rule to have safety-enhancement as a primary objective. The costs of initiating a LORAN–C approach relate to investment and maintenance. Investment costs include the initial costs associated with the development, publication, and flight testing of a LORAN–C approach. Maintenance costs consist of annual flight inspection and annual updating of procedures. For discontinuance of an approach, the Agency need only consider maintenance costs. There are no unique added costs to implement the discontinuance decision.

Explicit dollar values assigned to passenger time and aircraft operating costs provide a basis for comparing benefits to costs. LORAN–C economic benefits are based on future aviation activity projected in FAA's annual Terminal Area Forecast which contains airport-specific forecasts. Benefits and costs are based on a 15-year life cycle and are discounted to their present value using a 7 percent discount rate as directed by the Office of Management and Budget. The 15-year life cycle is the same as that used for most other FAA navigational facilities criteria.

How the Criteria Are Applied

FAA will use the benefit-cost criteria to determine the eligibility of runways for LORAN–C nonprecision approach procedures. A runway is considered to be eligible for establishment of a LORAN–C approach procedure when the ratio of the benefits to the costs of establishment equals or exceeds 1.0 and all other requirements of the criteria are met. A LORAN–C approach procedure may be discontinued if the benefits expected to be realized over the remainder of its life cycle fall below its recurring maintenance costs.

Meeting the economic criteria is usually a necessary condition to include a site in the FAA budget; however, it is not a guarantee that a site will be funded.

Criteria Results

Runways at 4,078 airports from the Terminal Area Forecast were examined to determine their current benefit-cost (B/C) ratios. Of this universe, at least 1,880, or 46 percent, have one or more runways with a B/C ratio of 1.0 or greater with the remainder falling below the criteria standard. The results show that about three quarters of the airports not qualifying have a B/C ratio below 0.3.

Need for the Regulation

This final rule is issued in compliance with the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (49 U.S.C. 1348), which requires the promulgation of regulations to establish criteria for the installation of airport control towers and other navigational aids. Its fundamental purpose is to improve the efficiency of FAA resource allocation. Also, the final rule will assist in the establishment of airport and funding priorities.

Discussion of Comments

Six comments were received in response to the Notice of Proposed Rulemaking (NPRM) Notice No. 92–1 (57 FR 3830, January 31, 1992). Most commenters express support for the development of LORAN–C approaches, stating they will be of particular benefit to rural America and airports without an existing approach.

Use of Benefit-Cost Analysis for Establishing LORAN–C Approaches

Comments: Several commenters disagree with the application of benefit-cost criteria that prevent development of approaches into small, rural communities. One commenter recommends that all airports and heliports meeting the requirements of United States Standard for Terminal Instrument Procedures (TERPS) and part 77 criteria be equally considered. Additionally, if a benefit-cost analysis must be conducted, the commenter advises that a relationship be established that weighs the value of an instrument approach into an airport without an existing approach.

A second commenter claims that the NPRM fails to acknowledge the premise behind efforts devoted to the establishment of LORAN–C approaches. The commenter asserts that the application of strict establishment criteria arbitrarily reduces the number of eligible airports and, therefore, may negate the usefulness of LORAN–C for business and general aviation. Moreover, the commenter alleges that discussion of establishment for LORAN approaches has never been based on the type of consideration listed in Airport Planning Standard Number One. In this regard, a third commenter questions the inclusion of "traffic density" and "number of passengers served" as considerations in these deliberations.

FAA Response: With limited resources available to establish LORAN–C (as well as other) airport approach procedures, the most likely impact of applying establishment criteria, at least over the next several years, may be to influence the order in which LORAN–C approaches are established, rather than on the number of such approaches established. Over the longer term, strict application of the criteria could limit the establishment of LORAN–C approaches at airports that have low levels of traffic.

The establishment of LORAN–C approaches is evaluated for airports both with and without established approaches. The application of the criteria involves assigning greater benefits to the establishment of approaches that are expected to result in greater increases in activity. Thus, other factors being held constant, an airport that already has an established approach would be expected to have lower incremental benefits from establishing a LORAN–C approach than would an otherwise-identical airport without an established approach.

The FAA expects relatively little variation among sites in the cost of establishing LORAN–C approaches. Thus, the greatest net benefit (total benefits minus total costs) to the aviation community should be derived by first establishing approaches at those airports having the highest benefit-cost ratios, then proceeding to establish approaches at airports where these ratios are lower. The use of benefit-cost criteria that consider all benefits (including avoided flight delays and benefits to passengers, where applicable) provides a systematic basis for recommending priorities among airports that are candidates for the establishment of LORAN–C approaches.

In view of the current backlog of sites designated for LORAN–C approaches under a cooperative arrangement between FAA and the National Association of State Aviation Officials, the application of establishment criteria is unlikely to either cause or prevent a LORAN–C approach from being installed at an airport in the near term. In addition, as noted in § 170.23(c) of the rule, "the criteria do not cover all situations that may arise and are not used as a sole determinant in denying or granting the establishment of a nonprecision LORAN–C approach for which there is a demonstrated operational or air traffic control requirement."

Application of Establishment Criteria for LORAN–C Approaches

Comments: Some commenters indicate that LORAN–C is a "navigational aid," but not in the sense that it is located on or in the vicinity of the airport/heliport being served, as would be the case for a nondirectional beacon (NDB) or very high frequency omnidirectional range station (VOR). Accordingly, they claim it is unclear from Public Law 100–223 whether "procedure development criteria" fall within this context so that LORAN–C should not be considered in the same category as airport-based facilities. Such classification, in their opinion, makes LORAN–C subject to a "planning standard" which may be a misapplication of Public Law 100–223.

FAA Response: Although LORAN–C installations typically serve wide areas rather than a particular airport, establishment of a LORAN–C approach at a particular airport is conceptually similar to establishment of any other approach. An incremental expenditure is made in order to reap an incremental benefit. For LORAN–C, incremental expenditures consist of the airport-specific costs of establishing and operating the approach. Incremental benefits consist of the airport-specific benefits—over and above those already provided by other aids or by the availability of LORAN–C for en route naviation—that the LORAN–C approach makes possible. The criteria are designed to ensure that the incremental airport-specific benefits exceed or equal incremental costs. Thus, the use of establishment criteria for LORAN–C approaches that are similar to those for other types of nonprecision approaches is appropriate.

Evaluation of LORAN–C

Comments: Three commenters raise issues pertaining to the evaluation of LORAN–C approaches. One commenter asks whether credit for en route guidance was included in the evaluation of LORAN–C approaches. A second commenter questions the validity of projections contained in the FAA's Terminal Area Forecasts (TAF) publication, alleging that restricting LORAN–C approach evaluations to airports included in FAA Terminal Area Forecasts artificially limits the number of airports considered. Another commenter states that the aviation community considers LORAN–C to be a "valuable navigational [aid]", and disagrees with it being labeled non-precision. The commenter further states

that LORAN–C users are kept in an ellipsoid sphere of airspace wherever coverage exists, and that LORAN–C's accuracy is not downgraded or improved based on distance; it stays the same throughout the entire flight from takeoff to landing.

FAA Response: Like VORs and many radar installations, LORAN–C installations provide benefits to aircraft operators both en route and on approach to an airport. However, the final rule and evaluation criteria are based solely on estimated incremental benefits and costs associated with establishing approaches, rather than with en route benefits. Airports in the FAA's TAF were used in the sample evaluation that was performed prior to publishing the NPRM as a matter of convenience. Nothing in the final rule limits future evaluations solely to airports presently in the TAF. In addition, TAF forecasts are routinely reviewed and updated. Finally, LORAN–C is referred to as "non-precision" because, like an NDB or VOR, it does not provide information on altitude for use in glide slope guidance, as is the case for a precision approach based on an Instrument Landing System or Microwave Landing System.

LORAN–C Safety Benefit

Comments: Several commenters mention the NPRM's statement that a safety benefit for LORAN–C was not included in the benefit-cost study. Two commenters believe a safety benefit should be included in any benefit-cost study. In addition, one commenter claims that using an approach enhances overall safety even in visual flying rules (VFR) conditions.

FAA Response: A safety benefit for LORAN–C was not included in the benefit-cost analysis. The existence of a LORAN–C approach permits aircraft to make approaches under instrument meteorological conditions with a level of safety equivalent to that under visual conditions. The LORAN–C approach provides a nonprecision approach signal that guides a pilot to a specific heading that is in line with a runway. Upon descending to a specified altitude, it is then necessary for a pilot to complete the approach and landing visually or to execute a missed approach if the runway is not in sight. Because the descent to the runway must be made visually, the level of safety is considered the same as landing during visual flight rules conditions. Similarly, the level of safety of a LORAN–C approach is considered the same as that of a visual approach in visual meteorological conditions. LORAN–C merely enables an instrument approach to be made that otherwise could not be made at all, rather than make such an approach safer. The intent of this rule is to set guidelines for establishing LORAN–C approaches for operational efficiency. The FAA does not disagree that the existence of an instrument approach may in some cases or situations contribute an element of added safety The FAA does not deem that contribution to rise to a sufficient level, however, to be included as a quantifiable benefit for the purposes of this rule.

Effects of Lower Costs for Developing and Maintaining Approaches

Comments: Several commenters claim the FAA appears to have not considered the reduced costs for developing approaches using automated technology rather than the current laborious hand method. These commenters suggest that, with ground-based monitors in place to continuously check signal guidance accuracy, the frequency for flight checks could be reduced, resulting in cost savings. Moreover, the current flight inspection criteria for annual inspections may not be necessary; therefore, the possibility of eliminating annual flight check evaluations could be considered. As a result, because of the low cost, many more airports should be eligible.

FAA response: The criteria is based on a comparison of benefits with costs. Should new technologies lower costs, these newer, lower costs will be used in the benefit-cost evaluations. The result of lower costs, other factors being held constant, will be increased numbers of runways for which the establishment of a LORAN–C approach will have benefits that equal or exceed costs.

Combine LORAN–C and Global Positioning System (GPS)

Comment: Some commenters indicate that the FAA should investigate the possibility that a GPS non-precision approach could overlay a LORAN–C approach, or at least make use of some of the work done in preparing a LORAN–C approach, and that consideration, therefore, should be given to the potential combination of GPS and LORAN–C approaches. Commenters indicate that both GPS and LORAN–C approaches will benefit from an automated approach procedure development capability and from obstacle clearance evaluation. In addition, they argue that once a LORAN–C approach is developed, it also can be used as a GPS approach once the system is operational. In this regard, credit should be taken for cost savings because future costs for establishing GPS approaches will be lowered once LORAN–C approaches are in place.

FAA Response: The possibility of overlaying GPS approaches on LORAN–C approaches is acknowledged and may be considered in future rulemakings on GPS approaches. To the extent that LORAN–C approaches may be used for GPS approaches, thereby resulting in cost savings, the net benefits of approaches that eventually may be designated as LORAN–C/GPS approaches may be raised. However, in the absence of a developed standard for GPS approaches, designating and accounting for benefits of GPS approaches would be premature. When and if appropriate, GPS approach establishment criteria will be pursued.

The inclusion of potential GPS benefits would likely result in higher benefit-cost ratios for candidate approach sites examined, rather than in significant shifts in the relative benefit-cost ratios for candidate approach sites examined. It should be noted that exclusion from consideration of potential GPS benefits of LORAN–C approaches is not expected to have any near-term effect on the priority in which approaches are developed for various airports.

Capital Costs

Comments: One commenter questions whether it is appropriate to use life cycle costs evaluated over a 15-year period. Similarly, a second commenter asserts that the actual cost of equipment maintenance at the airport/heliport is zero since there is no navigational equipment located there.

FAA Response: The use of 15-year life cycle costs parallels the methodology used for analyzing most other FAA investments subject to establishment/discontinuance criteria, including alternative airport instrument approach aids. FAA utilizes the 15-year life cycle in recognition of both equipment useful life and the potential for technological obsolescence. The FAA recognizes that, where capital investment is involved, it is appropriate to use the expected useful lifetime of the investment as the relevant period for life-cycle cost analysis. In this instance, however, since LORAN–C approaches are relatively new, the FAA does not have sufficient experience-based data to estimate lifetimes for the investments in approaches, but has determined that 15 years represents a reasonable assumption in the absence of such data.

The FAA agrees with the commenter's statement that the actual cost of equipment maintenance at the airport/heliport is zero. Indeed, the Agency's

proposed methodology reflects this fact by including only those costs associated with establishing and inspecting the approaches, versus including costs pertaining to airport installed equipment.

Weather Information

Comment: One commenter questions the necessity and usefulness of requiring the availability of weather information and air-to-ground communications.

FAA Response: The weather information and air-to-ground communications requirements for a LORAN–C approach at an airport conform with longstanding requirements for instrument approaches. Weather forecasts are necessary when planning a trip under instrument flight rules (IFR) for determining whether a pilot is required to specify an alternate to the airport of intended landing. To be listed as an alternate, weather information about an airport must also be available. Barometric readings at an airport (or nearby airport) must be available in order for a pilot to set the altimeter to determine when the minimum descent altitude during a non-precision approach to an airport has been reached. This is particularly crucial in view of the fact that a LORAN–C approach minimum descent altitude can be as low as 250 feet.

Federalism Implications

Comment: One commenter believes that the NPRM's Federalism Implications statement is inappropriate because it ignores a long-standing partnership between the FAA and State aviation agencies and their representatives.

FAA Response: The FAA is well aware of past and current cooperation with the State aviation agencies and their representatives. This cooperation has been undertaken to accelerate work on the establishment of LORAN–C approaches. The final rule is not intended to interfere with the arrangement to proceed with work on the approaches for airports that have been nominated through the National Association of State Aviation Officials.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with this final rule.

Regulatory Evaluation Summary

Introduction

The issuance of this final rule is expected to have no direct cost impact on the public. There is only a minimal administrative cost to the FAA of applying the criteria. The FAA uses an automated benefit-cost calculation procedure that provides results at minimal cost. This procedure is embodied in the Aviation Data Analysis (ADA) system maintained by the Office of Aviation Policy and Plans. ADA uses a 15-year forecast of aviation activity, as well as economic and other values, to estimate life-cycle B/C ratios. This final rule merely formalizes this application of criteria as part of normal agency procedures. The benefit of the rule is to inform the public of the benefit-cost criteria the FAA uses to allocate resources for establishment of LORAN–C nonprecision approach procedures, and further, to assure adequate consideration of the efficiency effects of potential LORAN–C approaches. Since this action is expected to have no cost impact to the public and have a positive, although unquantifiable, benefit, further regulatory evaluation is unnecessary.

International Trade Impact Analysis

This rule has no effect on the sale of foreign aviation products or services in the United States or on the sale of American products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

This final rule provides a guide for internal FAA management in the establishment and discontinuance of LORAN–C nonprecision approaches. It is not expected to have cost impact; therefore, FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations herein are not expected to have substantial direct effects on the States, in the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Conclusion

Since the regulation contained in this FAA document is expected to impose only a minimal administrative cost of the FAA, the estimated benefits are expected to exceed the estimated costs of their implementation. For the reasons discussed above, this regulation is not expected to have significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the rule is not "major" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 11034; February 26, 1997).

List of Subjects in 14 CFR Part 170

Air traffic control, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 170 of the Federal Aviation Regulations (14 CFR part 170) as follows:

PART 170—ESTABLISHMENT AND DISCONTINUANCE CRITERIA FOR AIR TRAFFIC CONTROL SERVICES AND NAVIGATIONAL FACILITIES

1. The authority citation for part 170 is revised to read as follows:

Authority: 49 U.S.C. app. 1343, 1346, 1348, 1354(a), 1355, 1401, 1421, 1422 through 1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g).

2. Part 170 is amended by adding subpart C consisting of §§ 170.21, 170.23, and 170.25 to read as follows:

Sec.
170.21 Scope.
170.23 LORAN–C establishment criteria.
179.25 LORAN–C discontinuance criteria.

Subpart C—LORAN–C

§ 170.21 Scope.

This subpart sets forth establishment and discontinuance criteria for LORAN–C.

§ 170.23 LORAN–C establishment criteria.

(a) The criteria in paragraphs (a)(1) through (a)(6) of this section, along with general facility and navigational aid establishment requirements, must be met before a runway can be eligible for LORAN–C approach.

(1) A runway must have landing surfaces judged adequate by the FAA to accommodate aircraft expected to use the approach and meet all FAA-required airport design criteria for nonprecision runways.

(2) A runway must be found acceptable for instrument flight rules

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operations as a result of an airport airspace analysis conducted in accordance with the current FAA regulations and provisions.

(3) The LORAN–C signal must be of sufficient quality and accuracy to pass an FAA flight inspection.

(4) It must be possible to remove, mark, or light all approach obstacles in accordance with FAA marking and lighting provisions.

(5) Appropriate weather information must be available.

(6) Air-to-ground communications must be available at the initial approach fix minimum altitude and at the missed approach altitude.

(b) A runway meets the establishment criteria for a LORAN–C approach when it satisfies paragraphs (a)(1) through (a)(6) of this section and the estimated value of benefits associated with the LORAN–C approach equals or exceeds the estimated costs (benefit-cost ratio equals or exceeds one). As defined in § 170.3 of this part, the benefit-cost ratio is the ratio of the present value of the LORAN–C life-cycle benefits (PVB) to the present value of LORAN–C life-cycle costs (PVC):

$$PVB/PVC \geq 1.0$$

(c) The criteria do not cover all situations that may arise and are not used as a sole determinant in denying or granting the establishment of non-precision LORAN–C approach for which there is a demonstrated operational or air traffic control requirement.

§ 170.25 LORAN–C discontinuance criteria.

A LORAN–C nonprecision approach may be subject to discontinuance when the present value of the continued maintenance costs (PVCM) of the LORAN–C approach exceed the present value of its remaining life-cycle benefits (PVB):

$$PVB/PVCM < 1.0$$

Issued in Washington, DC on August 4, 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–19257 Filed 8–10–93; 8:45 am]

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federal register

Wednesday
August 11, 1993

Part IV

Department of Education

Centers for Independent Living; Final Priority for Fiscal Year 1993; Notice

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DEPARTMENT OF EDUCATION

Centers for Independent Living; Final Priority for Fiscal Year 1993

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year (FY) 1993.

SUMMARY: The Secretary announces a final priority for FY 1993 to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living and to provide transition assistance to assist centers to achieve compliance with the standards and assurances in section 725(b) and (c) of the Rehabilitation Act of 1973, as amended (the Act).

This priority establishes a national project to provide training, technical assistance, and transition assistance to centers for independent living.

EFFECTIVE DATE: This priority takes effect either September 27, 1993 or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9362. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9362.

SUPPLEMENTARY INFORMATION: Title VII, chapter 1, part C, section 721(e)(1)(B) of the Act authorizes grants to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living and to provide transition assistance to assist centers to achieve compliance with the standards and assurances in section 725 of the Act. To be eligible to apply for funds under this priority, an entity must demonstrate in its application that it has experience in the operation of centers for independent living. Experience of an applicant in the operation of a center for independent living is determined by whether or not the applicant's management and staff have engaged in the planning, development, conduct, administration, and evaluation of centers for independent living. A center for independent living is defined in section 702(1) of the Act as a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

This program supports moving the Nation toward achieving the National Education Goals by enhancing programs that develop the skills of individuals with severe disabilities to exercise the rights and responsibilities of citizenship.

On April 22, 1993 the Secretary published a notice of proposed priority for this competition in the **Federal Register** (58 FR 21630).

Note: This notice of final priority does not solicit applications. On June 29, 1993 a notice inviting applications under this competition was published in a separate notice in the **Federal Register** (58 FR 34788).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 13 parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Four commenters recommended funding one or two national projects as opposed to three multi-regional projects. The commenters thought a national project would be more effective because it would reduce redundant organizational and materials development efforts without significantly increasing travel costs. The commenters also thought funding one or two national projects would be more likely to promote greater consistency in policy, training, and technical assistance across the country. One commenter appeared to recommend funding a project that would serve only one State, and another commenter recommended dividing geographic area 1 (Department of Education regions I-IV) into two areas and funding a total of four geographic areas.

Discussion: The Secretary agrees that funding one national project will lessen the possibility of duplicating efforts in development of materials and inconsistencies in information provided. The Secretary also agrees that the most effective method of providing training and technical assistance to centers for independent living in all States is to fund a project that will be national in scope and serve centers in all States. It is important that training curricula address issues affecting centers for independent living nationally, as well as addressing specific regional and local issues.

Changes: The language of the priority has been modified to fund one national training and technical assistance project.

Comments: Two commenters recommended specific curriculum areas for training and technical assistance.

Discussion: The Secretary agrees that it is appropriate to include the recommended curriculum areas for training and technical assistance.

Changes: The language of the final priority has been changed to include the recommended curriculum areas for training and technical assistance.

Comments: Two commenters expressed concern about whether, given the statutory requirements on eligibility, the Regional Rehabilitation Continuing Education programs would qualify for this competition.

Discussion: The eligibility requirements for funding under this priority are mandated by section 721(e)(1)(B) of the Act.

Accordingly, the Secretary has not imposed any additional requirements for eligibility on applicants, including Regional Rehabilitation Continuing Education programs, to participate in this program.

Changes: None.

Comments: Three commenters recommended providing multiple-year funding for the project.

Discussion: The Secretary agrees that multi-year funding is appropriate for this program and intends to award grants for multi-year projects under this priority.

Changes: None.

Priority: National Training, Technical Assistance, and Transition Assistance Center

Under section 721(e)(1)(B) of the Act and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

One national project must provide coordinated and comprehensive training and technical assistance in planning, developing, conducting, administering, and evaluating centers for independent living. The national project must serve centers for independent living in all States, address regional and State differences, and use innovative and cost-effective approaches in providing technical assistance and training, e.g., satellite training, video taped presentations, and interactive computer-based training.

The project also must provide transition assistance to help centers to achieve compliance with the standards

and assurances in section 725(b) and (c) of the Act, provide training and technical assistance in the areas of resource development techniques, independent living philosophy, governing board development, forming effective collaborative relationships, and innovative techniques for providing independent living services and program evaluation.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Number 84.132B, Centers for Independent Living)

Program Authority: 29 U.S.C. 721(b) and (e) and 796(e).

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–19262 Filed 8–10–93; 8:45 am]

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Part V

Department of Education

34 CFR Part 653
Paul Douglas Teacher Scholarship Program; Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 653

RIN 1840–AB76

Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Paul Douglas Teacher Scholarship Program, which is authorized by title V, part C (formerly part D), subpart 1 of the Higher Education Act of 1965, as amended (HEA). These final regulations are needed to implement changes made by the Higher Education Amendments of 1992 (Pub. L. 102–325) (1992 Amendments), enacted July 23, 1992, and to make other changes to improve administration and management of the program. The regulations establish eligibility criteria, selection criteria, and other terms and conditions for making grants to States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

EFFECTIVE DATE: These regulations take effect either September 27, 1993, or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Valerie Hurry. Telephone: (202) 708–9453. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Paul Douglas Teacher Scholarship Program supports the National Education Goals. By encouraging and enabling outstanding students to become teachers, the program will improve the quality of education, thereby furthering Goal 3, which calls for American students to leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, and Goal 4, which calls for U.S. students to be first in the world in science and mathematics achievement. In addition, by encouraging and enabling students to pursue postsecondary education, the program furthers Goal 5, which calls for every adult American to be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 28530). The major issues addressed by the NPRM are discussed in the preamble to the NPRM. The major differences between the NPRM and the final regulations are discussed below in the Analysis of Comments and Changes.

Analysis of Comments and Changes

Seven commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and other changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§ 653.3)

Comment: Several commenters requested that the regulations be revised to permit States to use Federal funds received under this program to cover administrative expenses incurred in operating the program.

Discussion: The statute does not authorize the Secretary to provide for administrative expenses, and administrative expenses have not been covered under this program in the past. The Secretary does not believe it is appropriate to reduce the funds available for scholarships in order to cover State administrative expenses.

Changes: None.

Students Who Are From Disadvantaged Backgrounds (§ 653.5)

Comment: One commenter recommended that the definition of this term be revised to remove the reference to students from low-income backgrounds because that group is not specifically identified as disadvantaged by the statute and because income information is not currently collected on the application for a scholarship under this program. The commenter further recommended that the definition be revised to include any student who identifies herself or himself as disadvantaged on the scholarship application.

Discussion: Students from low-income backgrounds are identified by section 523(b)(9) of the statute as a group that the State agency must make particular efforts to attract to this program. Accordingly, the Secretary believes it is consistent with legislative intent to include those students in the definition of students who are disadvantaged for the purposes of receiving special consideration in the selection criteria. The Secretary does not believe it is appropriate to give special consideration to any student who self-identifies as disadvantaged on the basis of no particular criteria or definition.

Changes: None.

Teach on a Full-time Basis (§ 653.5)

Comment: Two commenters suggested modifying the definition of this term to eliminate the one academic term minimum so that part-time teachers could be given pro-rated credit.

Discussion: The Secretary believes the proposed definition of this term made a reasonable accommodation to the realities of the teaching job market by providing pro-rated credit to teachers who teach full time for a minimum of one academic term. The Secretary declines to modify the definition as suggested because awarding pro-rated credit for any time period of part-time teaching, no matter how small, would require extensive tracking and administration in order to implement the repayment and interest requirements under this program. The Secretary believes this would impose too great an administrative burden on States, particularly since States are not reimbursed for administrative expenses under this program.

Changes: None.

Course of Study Leading to Teacher Certification (§§ 653.5 and 653.50(a)(1))

Comment: One commenter recommended adding a definition of this term to clarify that it includes any four-year collegiate academic program as long as students certify that they will pursue teacher certification immediately following graduation.

Discussion: The Secretary agrees that the term, as used in the eligibility requirements in § 653.50(a)(1), could include any four-year collegiate academic program that met a State's teacher certification requirements. The Secretary believes the scholarship agreement provisions in § 653.50 of the regulations are clear and does not believe a definition of the term is necessary.

Changes: None.

Teacher Shortage Areas (§ 653.11(b)(2)(iii)(A))

Comment: Several commenters requested that the regulations be revised

to limit the requirement that States notify scholars of their present and projected teacher shortage and surplus areas to require notification only to the extent that those areas are "known" by the State agency. The commenters stated that the information is not readily available to the agency that administers this program in all States.

Discussion: The requirement that States describe in their applications how they will inform recipients of present and projected teacher shortage and surplus areas within the State is taken from section 523(b)(4) of the statute. The Secretary does not believe it would be consistent with the statute or legislative intent to limit this requirement by adding the qualification "if known." Moreover, the Secretary believes it is important for scholarship recipients to have all of this information in order to make informed choices about their course of study.

Changes: None.

Selection Panel Representation Requirement (§ 653.11(d))

Comment: Some commenters recommended that the requirement in the regulations that selection panels be representative of school administrators, teachers, including preschool and special education teachers, and parents be limited to 7-member statewide panels and not be imposed on existing grant agencies or panels that are designated to select scholars under this program. Commenters pointed out that the representation requirement in the statute refers only to the statewide panels. One commenter stated that one panel member should be permitted to satisfy more than one of the representation requirements.

Discussion: The Secretary recognizes that the express language of section 525(a) of the statute requires representation in reference to "statewide panels." However, the Secretary continues to interpret this requirement to apply to all selection panels, whether they are newly appointed 7-member statewide panels or existing agencies or panels. Moreover, section 525(a) of the statute also requires that existing agencies and panels be approved by the Secretary, and the Secretary believes as a matter of policy that all selection panels should meet the representation requirements.

The Secretary agrees with the commenter that one panel member may meet more than one of the representation requirements. In addition, the Secretary believes that former teachers and school administrators can meet the representation requirements. For example, a school administrator who is a former special education teacher could meet both the requirement for representation of special education teachers and the requirement for representation of administrators.

Changes: None.

Evaluation Requirements (§ 653.11(d)(2)(vi) and (vii))

Comment: One commenter expressed the view that requiring a State agency to assure in its application that it will cooperate with the Secretary in "any" evaluation of its project and provide "any" information or reports required by the Secretary might lead to unreasonable demands. The commenter recommended modifying these provisions by removing the word "any" and instead requiring cooperation in "an" evaluation and the provision of "program information or reports required by the Secretary."

Discussion: The evaluation requirements under this program are consistent with the requirement in the Education Department General Administrative Regulations (EDGAR) that a grantee cooperate in "any" evaluation of a program by the Secretary (34 CFR 76.591). In light of the extensive evaluation requirements in the statute, the Secretary declines to modify the evaluation requirements for applicants under this program.

Changes: None.

Eligibility Requirements: Scheduled to Graduate Within Three Months (§ 653.41(b)(2))

Comment: One commenter stated that the requirement limiting the eligibility of secondary school students to those scheduled to graduate from secondary school within three months of the date of the award is overly restrictive and would preclude early notification. The commenter recommended revising the provision to require that the applicant be scheduled to graduate by the end of the present school term or within five months of the date of the award.

Discussion: The Secretary agrees with the commenter that the three-month period provided in the proposed regulations is unnecessarily restrictive.

Changes: Paragraph (b)(2) of § 653.41 has been revised to provide that in order to be eligible a secondary school student must be scheduled to graduate by the end of the secondary school year in which the award is made.

Eligibility: Top Ten Percent Requirements (§ 653.41(c)(1))

Comment: Several commenters objected to the provision that limits eligibility to students who graduate in the top ten percent of their class or receive equivalent GED test scores. In particular, commenters were concerned that the ten percent requirements would eliminate from eligibility some adult candidates who are returning to college after taking time off and who were not in the top ten percent of their class during high school but would make excellent teachers for other reasons. Some commenters were also concerned that this requirement would have a discriminatory impact on minority students.

Discussion: The top ten percent requirement is taken from section 525(b) of the statute, and the Secretary does not have the authority to change the requirement in the regulations. The Secretary notes that section 523(d)(6) of the statute also requires States to target racial and ethnic minorities for special consideration for scholarships under this program, which will counter any potentially discriminatory impact of the ten percent requirement on minority students.

Changes: None.

Selection Criteria: Responsibility for Developing (§ 653.42)

Comment: Several commenters objected to the provisions in the regulations that require the State educational agency (SEA) to develop the selection criteria. The commenters recommended that these provisions be modified to require the State agency to develop the selection criteria because the SEA is not the agency responsible for administering this program.

Discussion: The requirement in paragraph (a) of § 653.42 of the regulations that the SEA develop the selection criteria in consultation with the State higher education agency is taken directly from section 523(c) of the statute. The Secretary does not have the authority to modify this requirement in the regulations. However, paragraph (b) of § 653.42, which requires the SEA to solicit views of other parties in the development of the selection criteria, goes beyond the express statutory requirement that the State solicit those views. The Secretary interpreted the statutory requirement to mean the SEA because the SEA is the agency of the State that is responsible for developing the selection criteria. However, the Secretary agrees that under the statute, the State could solicit those views through other channels.

Changes: Paragraphs (b)(1) and (b)(2) of § 653.42 have been revised to replace references to "SEA" with "State."

Special Consideration Requirements (§ 653.42(c))

Comment: A number of commenters were concerned about the special consideration requirements. A few commenters objected to the 75 percent requirement as too high. Many of the commenters wondered what happens if there are not enough eligible applicants who meet the special consideration criteria to satisfy the 75 percent requirement. Several commenters recommended that States be permitted to carry over funds that they cannot award because they do not have enough special consideration applicants.

Some commenters requested that the regulations be revised to clarify procedures for implementing the special consideration provisions. For example, one commenter recommended that the regulations require student certifications as a basis for special consideration, and another commenter requested that the regulations clarify that the 75 percent requirement applies only to new awards each year. One commenter objected to the reference in the regulations to a "two-part" selection process as overly restrictive, and recommended removing it. Another commenter wrote in favor of the two-part selection process.

Discussion: Section 525(c) of the statute authorizes the Secretary to waive the special consideration requirements for not more than 25 percent of the individuals receiving scholarships under this part. The Secretary believes the criteria for special consideration are sufficiently numerous and broad that if properly publicized, explained, and incorporated into the scholarship application, States should not have trouble attracting applicants who meet at least one of them. However, under the Education Department General Administrative Regulations (EDGAR), States may carry over funds not awarded in one award year to the following award year (34 CFR 76.705).

The Secretary does not believe it is necessary to revise the regulations to set out additional procedures for implementing the special consideration criteria. Section 653.42(c) of the regulations is clear that 75 percent of the scholars selected each year must meet the special consideration criteria. Continuing scholars do not need to be re-selected each year. The Secretary believes the certification procedure recommended by one commenter is an appropriate method for implementing the special consideration requirements, but leaves it to each State to establish its own procedures.

The Secretary agrees with the commenter that objected to the reference in the regulations to a "two-part" selection process. Although the Secretary believes a two-part selection process would be an effective method for implementing the special consideration criteria, the Secretary does not believe it is necessary to require that States establish a "two-part" process.

Changes: The term "two-part" has been removed from paragraph (c)(4) of § 653.42 of the regulations.

Priority for Scholars Who Intend to Attend In-State Institutions or Teach In-State (§ 653.42)

Comment: A few commenters suggested that States be permitted to develop selection criteria that give priority to students who express an intent to attend an in-State institution or to teach in the State where the award is made. The commenters expressed the view that an in-State priority would be consistent with the emphasis in the statute and the regulations on addressing the present and projected teacher shortage areas of the States.

Discussion: Although an in-State priority may be a useful mechanism for reducing teacher shortage areas in a State, the Secretary believes that restricting the options of scholars, both in terms of the institution they attend and the State in which they will live and teach after they graduate, would be counter-productive to the primary purpose of the program, which is to attract outstanding secondary school graduates into teaching careers.

Changes: None.

Scholarship Agreement: Teaching Obligation Period (§ 653.50(a)(3))

Comment: One commenter recommended that the ten-year period for scholars to meet their teaching obligation be adjusted down for scholars who receive less than four years of scholarship funds.

Discussion: The Secretary does not believe it is necessary to revise the regulations because they already contain provisions to make adjustments based on whether a scholar fulfills his or her obligations under the scholarship agreement. For example, a scholar who receives less than four years of scholarship funds because the scholar did not continue to pursue a course of study leading to teacher certification would enter repayment status six months after the scholar was no longer enrolled in such a course of study, unless the scholar filed for and received a deferment under § 653.62(g). Scholars in repayment are required to pay no less than $1,200 annually, unless the State grants them a waiver under § 653.62(b)(2)(ii). Accordingly, a scholar who did not continue a course of study leading to teacher certification would have less time to pay back the scholarship funds. On the other hand, scholars who do not receive four years of scholarship funds because they do not meet the other continuing eligibility criteria, such as satisfactory progress or full-time enrollment, would not be required to enter repayment status early, as long as they continued to pursue a course of study leading to teacher certification. However, if those students never teach, they will be required to pay more interest on their loan because interest will accrue from the date of the first scholarship payment under § 653.62(c)(1)(ii).

Changes: None.

Maintaining Satisfactory Progress (§ 653.51)

Comment: Several commenters recommended that the continuing eligibility criteria requiring scholars to maintain satisfactory progress be strengthened to require scholars to maintain a 3.0 grade point average. Commenters pointed out that scholars are selected based on outstanding academic performance and that students who maintain only minimum requirements for satisfactory progress may have difficulty finding teaching positions.

Discussion: The Secretary understands the commenters concerns, but declines to incorporate a 3.0 standard into the regulations. A 3.0 grade point average may be more difficult to maintain at one institution than another. The Secretary believes satisfactory progress is best determined by each institution.

Changes: None.

Other Federal Student Financial Assistance (§ 653.51(b))

Comment: Several commenters asked for clarification of whether receipt of an award under this program can result in the reduction of a Federal Pell grant.

Discussion: Under section 524(b) of the statute, funds awarded under this program must be considered in determining eligibility for student financial assistance under Title IV of the HEA, including a Federal Pell grant. Moreover, section 524(c) requires that a scholarship under this program not be reduced on the basis of a student's receipt of other Federal financial assistance. Taken together, these provisions call for the reduction of other forms of Federal assistance under title IV, including a Federal Pell grant, before a scholarship under this program.

Changes: None.

Teacher Shortage Areas (§ 653.61)

Comment: Some commenters expressed the view that it is unfair to disallow a scholar the benefit of a reduced teaching obligation if the scholar pursues certification in an area that was publicized as a teacher shortage area at the time the scholar first received the scholarship, but was removed from the list before the scholar started teaching. The commenters recommended expanding the reduction benefit to include teaching in an area that was a teacher shortage area when a scholar first began seeking a teaching degree.

A few commenters also objected to the provision in the regulations that requires scholars to obtain a certification that they are teaching in a teacher shortage area from the principal in the school in which they are teaching. Those commenters suggested that the determination should be made by the State agency in reference to the federally approved list. One commenter stated that the superintendent, rather than the principal, should be the official responsible for the certification.

Discussion: Section 523(b)(5)(A) of the statute provides for a reduction in the teaching benefit for individuals who "teach" in a shortage area established by the Secretary. The Secretary does not interpret the statutory provision to include individuals who pursue certification in a teacher shortage area that is removed from the list before they ever teach. In contrast, the Secretary believes it is consistent with statutory intent to provide for continuation of the reduction benefit for individuals who teach in areas that are approved teacher shortage areas when they start teaching and are subsequently removed from the list because those individuals did "teach" in shortage areas, and they should not be penalized for their contribution to the elimination of those shortage areas.

The Secretary does not agree that the principal certification requirement should be removed from this section of the regulations because the State agency is not in a position to certify that a scholar is teaching in a particular area. The Secretary believes that the definition of principal is sufficiently broad to cover variations of responsibilities and authority in particular districts.

Changes: None.

Deferment of Repayment Status (§ 653.62(g))

Comment: Several commenters recommended that the deferment provisions be expanded to include deferments for Peace Corps and VISTA service so that scholars are not discouraged from serving in Federal public service programs.

Discussion: The Secretary agrees that deferment of repayment status would be appropriate during periods when individuals are participating in Federal public service programs.

Changes: Paragraph (g)(2) of § 653.62 has been revised to add deferments for scholars who are serving as members of the Peace Corps or VISTA for a period not in excess of three years.

Paperwork Burden (§§ 653.11 and 653.42)

Comment: Two commenters expressed the view that the paperwork burden on States exceeds the estimated average of five hours. One commenter stated that the State application preparation takes 24 hours. The other commenter stated that it averages 2 to 3 days, noting that many offices are not computerized. One commenter recommended that a survey of respondents be done to ascertain the average.

Discussion: The Secretary agrees that the average paperwork burden is likely to exceed five hours.

Changes: The estimated average paperwork burden has been increased from five to twelve hours.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 653

Education, Grant programs-education, State administered education, Student aid.

(Catalog of Federal Domestic Assistance Number 84.176—Paul Douglas Teacher Scholarship Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 653 to read as follows:

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Subpart A—General

Sec.
653.1 What is the Paul Douglas Teacher Scholarship Program?
653.2 Who is eligible for an award?
653.3 What kind of activity may be assisted?
653.4 What regulations apply?
653.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

653.10 What must a State do to apply for a grant?
653.11 What is the content of a grant application?

Subpart C—How Does the Secretary Make a Grant to a State?

653.20 How does the Secretary approve a grant application?
653.21 How does the Secretary determine the amount of a grant to a State?

Subpart D—How Does a Student Apply for a Scholarship?

653.30 What must a student do to apply for a scholarship?
653.31 Where does a student obtain an application?

Subpart E—How Does a State Select Scholars?

653.40 How does the selection panel select scholars?
653.41 Who is eligible to be selected as a scholar?
653.42 What are the selection criteria and procedures?

Subpart F—What Are the Scholarship Conditions?

653.50 What agreement must a scholar have with the State Agency?
653.51 What are the requirements for a scholar to receive scholarship payments?

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Subpart G—What Post-Award Conditions Must Be Met by State Agencies and Scholars?

653.60 What requirements must a State Agency meet in the administration of this program?
653.61 How does a scholar fulfill the teaching obligation under this program?
653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

Authority: 20 U.S.C. 1104–1104k, unless otherwise noted.

Subpart A—General

§ 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes grants to the States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104)

§ 653.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in § 653.41 are eligible to be selected for scholarships under this program.

(Authority: 20 U.S.C. 1104 and 1104b)

§ 653.3 What kind of activity may be assisted?

A State may use its funds under this program, including principal and interest payments it receives from scholars under § 653.62, only for making scholarship payments to scholars.

(Authority: 20 U.S.C. 1104)

§ 653.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 653.

(Authority: 20 U.S.C. 1104 *et seq.*)

§ 653.5 What definitions apply?

(a) *Definitions in the HEA.*

(1) The following term used in this part is defined in section 472 of the HEA:

Cost of attendance

(2) The following term used in this part is defined in section 1201(a) of the HEA:

Institution of higher education

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Local educational agency (LEA)
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part:

Academic year means a period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one of the following:

(i) Two semesters.
(ii) Two trimesters.
(iii) Three quarters.

Award year means the period of time from July 1 of one year through June 30 of the following year.

Federally approved teacher shortage areas means areas that are—

(i)(A) Geographic regions in a State in which there are shortages of elementary or secondary school teachers; or

(B) Specific grade levels or academic, instructional, subject matter, or discipline classifications in which there are statewide shortages of elementary or secondary school teachers; and

(ii) Designated by the Secretary in accordance with 34 CFR 682.210(j) (6) or (7), except that the Secretary gives special consideration to areas—

(A) In which emergency certification of individuals is being used to correct teacher shortages; and

(B) In States that have retirement laws permitting early retirement.

Full-time student means a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

Geographically isolated area means an area that lacks close economic and social relationships with an urbanized area, as defined by the Bureau of the Census, that is not easily accessible by public transportation.

Group historically underrepresented in teaching means a group of individuals whose representation among teachers in the State is proportionately less than its representation among the general population in the State, as determined by the State, over a significant period of time.

HEA means the Higher Education Act of 1965, as amended.

Inner city means the central or most densely populated region within an incorporated city that has a population of 50,000 or more.

Limited English proficient students means students—

(i)(A) Who were not born in the United States;

(B) Whose parents normally use a language other than English;

(C) Who come from environments in which a language other than English is dominant; or

(D) Who are American Indian and Alaskan Natives and come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(ii) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these students the opportunity to learn successfully in classrooms in which English is the language of instruction, or to participate fully in society.

Participating State means a State that has submitted a grant application that has been approved by the Secretary under this program.

Preschool-age children means children who are younger than the age at which their State of residence provides elementary education.

Present and projected teacher shortage and surplus areas means present and projected teacher shortage and surplus areas in a State, as determined by the State on the basis of the demand for and supply of qualified early childhood, elementary, and secondary teachers in the State and the demand for and supply of teachers with

training in specific academic disciplines.

Principal means a school principal or the principal's designee.

Related services has the meaning given that term in section 602(a)(17) of the Individuals with Disabilities Education Act.

Rural means any area that is outside an urbanized area, as defined by the Bureau of the Census, and outside any place, incorporated or Bureau of the Census designated, having a population of 2,500 or more.

Scholar means an individual who is selected as a Paul Douglas Teacher Scholar.

Scholarship means an award made to a scholar under this part.

School-age population means the population ages 5 to 17.

Students from low-income backgrounds means students from families whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census of the U.S. Department of Commerce.

Students with disabilities has the meaning given the term "children with disabilities" in section 602(a)(1) of the Individuals with Disabilities Education Act.

Students who are from disadvantaged backgrounds means students—

(i) From low-income backgrounds;

(ii) Who are ethnic or racial minorities; or

(iii) With disabilities.

Teach on a full-time basis means teach the same number of hours required of teachers who have full-time contracts, as determined by the institution or agency in which an individual is teaching, for a minimum of one academic term, as defined by the institution or agency in which an individual is teaching.

(Authority: 20 U.S.C. 1104 *et seq.*, 1141)

Subpart B—How Does a State Apply for a Grant?

§ 653.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit an application to the Secretary—for review and approval—by the deadline announced annually by the Secretary in the Federal Register.

(b) On the Secretary's approval of its initial grant application for fiscal year 1993 or thereafter, a State need not submit new applications to be considered for funding under this program in subsequent years, except that any changes in the State's program must be incorporated in a revised application which must be submitted to the Secretary for approval.

(Authority: 20 U.S.C. 1104b)

§ 653.11 What is the content of a grant application?

A State's grant application must—

(a) Identify—

(1) The State agency responsible for administering this program (SA), which must be—

(i) The State agency that administers the State Student Incentive Grants Program under title IV, part A, subpart 4 of the HEA;

(ii) The State agency that administers the Federal Family Education Loan Program and with which the Secretary has an agreement under section 428(b) of the HEA; or

(iii) Any other appropriate State agency approved by the Secretary; and

(2) The composition of the selection panel responsible for selecting scholars under this program, which must be—

(i)(A) A seven-member statewide panel appointed by the chief State elected official acting in consultation with the State educational agency (SEA); or

(B) An existing grant agency or panel designated by the chief State elected official and approved by the Secretary; and

(ii) Representative of school administrators, teachers, including preschool and special education teachers, and parents;

(b) Describe a program of activities for carrying out the purposes of this program in accordance with the requirements of this part, including—

(1) The criteria and procedures the selection panel plans to use to select eligible scholars, including an explanation of how the criteria and procedures meet the requirements of § 653.42; and

(2) The criteria and procedures the SA plans to use to—

(i) Publicize the availability of scholarships to secondary school students in the State;

(ii) Notify scholars of their selection; and

(iii) Inform scholars annually, on disbursement of the scholarship funds, of—

(A) The State's present and projected teacher shortage and surplus areas; and

(B) The federally approved teacher shortage areas within the State;

(iv) Monitor the continuing eligibility of scholars;

(v) Disburse scholarship funds;

(vi) Collect funds improperly disbursed;

(vii) Monitor scholars' compliance with the teaching obligation requirements; and

(viii) Administer the repayment provisions under § 653.62;

(c) Provide a copy of—

(1) The scholarship application form, which must disclose the terms and conditions of the scholarship agreement; and

(2) The scholarship agreement form, containing the terms and conditions provided in § 653.50; and

(d) Provide assurances that—

(1) The selection panel—

(i) Is representative of administrators, teachers (including preschool and special education teachers), and parents, as required by paragraph (a)(2)(ii) of this section; and

(ii) Will select scholars who are eligible under § 653.41; and

(2) The SA will—

(i) Comply with the criteria and procedures described in the State's approved grant application;

(ii) Submit for the Secretary's prior written approval any changes in the criteria and procedures described in its approved grant application;

(iii) Make particular efforts to attract students from low-income backgrounds, ethnic and racial minority students, students with disabilities, students from groups historically underrepresented in teaching, students who express a willingness or desire to teach in rural schools, urban schools, or schools having less than average academic results or serving large numbers of economically disadvantaged students, or women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields;

(iv) Disburse no scholarship funds to scholars who do not meet the requirements of § 653.51;

(v) Expend the funds it receives under this program only as provided in § 653.3;

(vi) Cooperate with the Secretary in any evaluation of its project; and

(vii) Provide the Secretary with any program information or reports required by the Secretary.

(Authority: 20 U.S.C. 1104b, 1104d, 1104i)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 653.20 How does the Secretary approve a grant application?

The Secretary approves a grant application if it contains all of the information and assurances required in § 653.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1104b)

§ 653.21 How does the Secretary determine the amount of a grant to a State?

From the funds appropriated for this program, the Secretary determines the amount of the grant to each participating State on the basis of the ratio of the school-age population in that State compared to the school-age population in all participating States. The Secretary determines the number of persons in a State on the basis of the most recently available data from the Bureau of the Census.

(Authority: 20 U.S.C. 1104a)

Subpart D—How Does a Student Apply for a Scholarship?

§ 653.30 What must a student do to apply for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SA in the student's State of legal residence.

(Authority: 20 U.S.C. 1104d)

§ 653.31 Where does a student obtain an application?

The SEA shall make applications available to high schools in the State and in other locations convenient to students, parents, and other interested parties.

(Authority: 20 U.S.C. 1104d)

Subpart E—How Does a State Select Scholars?

§ 653.40 How does the selection panel select scholars?

The selection panel identified by a State in its grant application, as provided in § 653.11(a)(2), shall select scholars from among students who meet the eligibility criteria in § 653.41 on the basis of selection criteria and procedures developed in accordance with § 653.42.

(Authority: 20 U.S.C. 1104d)

§ 653.41 Who is eligible to be selected as a scholar?

A student is eligible to be selected as a scholar under this program only if he or she—

(a)(1) Is a United States citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(b)(1) Has graduated from secondary school;

(2) Is scheduled to graduate from secondary school by the end of the school term in which the award is made; or

(3) Has received a certificate of high school equivalency for successfully completing the General Educational Development (GED) test;

(c)(1) Ranks in the top 10 percent of his or her graduating class; or

(2) Has received GED test scores that the State recognizes as equivalent to ranking in the top 10 percent of the secondary school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made;

(d) Is not ineligible to receive assistance as a result of default on a Federal student loan or otherwise, as provided under 34 CFR 75.60–75.62; and

(e) Intends to pursue a teaching career at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104, 1104d)

§ 653.42 What are the selection criteria and procedures?

(a) The SEA shall develop the selection criteria and procedures in cooperation with the State higher education agency and in consideration of the views of local educational agencies (LEAs), private educational institutions, and other interested parties.

(b)(1) The State shall solicit the views of LEAs, private educational institutions, and other interested parties by—

(i) Written comments; and

(ii) Publication of proposed selection criteria and procedures prior to implementation.

(2) The State may also solicit views by—

(i) Public hearings on the teaching needs of elementary and secondary schools in the State (including the number of new teachers needed, the expected supply of new teachers, and the shortages in the State of teachers with specific preparation); or

(ii) Other methods, provided that the SEA documents these methods and the views obtained through these methods.

(c) The selection criteria and procedures developed in accordance with paragraphs (a) and (b) of this section must be designed to—

(1) Ensure that scholars meet the eligibility requirements in § 653.41;

(2) Address the present and projected teacher shortage areas of the State;

(3) Select scholars without regard to whether they plan to attend publicly or privately controlled institutions; and

(4)(i) Select at least 75 percent of the scholars on the basis of selection criteria that include criteria to give special consideration to students who—

(A) Intend to teach or provide related services to students with disabilities;

(B) Intend to teach limited English proficient students;

(C) Intend to teach preschool-age children;

(D) Intend to teach in schools serving inner city, rural, or geographically isolated areas;

(E) Intend to teach in curricular areas or geographic areas that are present teacher shortage areas; or

(F) Are from disadvantaged backgrounds and from groups historically underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach; and

(ii) Select the remaining scholars on the basis of the same selection criteria used to select scholars under paragraph (c)(4)(i) of this section, except that the special consideration criteria may be excluded.

(Authority: 20 U.S.C. 1104b, 1104d)

Subpart F—What Are the Scholarship Conditions?

§ 653.50 What agreement must a scholar have with the State Agency?

(a) To receive scholarship funds, a scholar must enter into an agreement with the SA under which he or she agrees to—

(1) Pursue a course of study leading to certification as a teacher at the preschool, elementary, or secondary level;

(2) Teach on a full-time basis for a period of not less than—

(i) Two years for each year for which scholarship assistance is received in a public or private nonprofit preschool, elementary school, or secondary school in any State, including a private nonprofit school that serves students with disabilities or limited English proficient students; or

(ii) One year for each year for which scholarship assistance is received in a federally approved teacher shortage area;

(3) Fulfill the teaching obligation described in paragraph (a)(2) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(4) Provide the SA with the evidence of compliance with paragraph (a)(2) of this section that is required under

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§ 653.61, and with evidence of compliance with paragraphs (a)(1) and (3) of this section and § 653.51(a) as required by the SA;

(5) Repay all or part of the scholarship plus interest and reasonable collection fees, if applicable, as specified in § 653.62, if the SA determines that the conditions of paragraph (a) (1), (2), or (3) of this section are not met; and

(6) Provide scholarship information, as requested by the Secretary, for an evaluation of this program.

(b) The agreement must include a description of the procedures under which—

(1) The provisions of § 653.62 (g) through (k) will be implemented; and

(2) A scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1104b)

§ 653.51 What are the requirements for a scholar to receive scholarship payments?

(a) Except as provided in paragraph (b) of this section, the SA shall disburse $5,000 per academic year for a maximum of four academic years to each scholar who—

(1) Is selected in accordance with the criteria established under § 653.42;

(2) Signs a scholarship agreement in accordance with § 653.50;

(3) Is enrolled as a full-time student in an institution of higher education;

(4) Is pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the SA, but not including graduate study that is not required for initial teacher certification; and

(5) Is maintaining satisfactory progress toward a degree, or, if the student already has a degree, toward teacher certification, as determined by the institution of higher education the student is attending.

(b)(1) In no case may a student receive a scholarship under this program that exceeds the cost of attendance at the institution in which the scholar is enrolled.

(2) A scholarship awarded under this part may not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but must be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(Authority: 20 U.S.C. 1104c, 1104e)

Subpart G—What Post-Award Conditions Must Be Met by State Agencies and Scholars?

§ 653.60 What requirements must a State Agency meet in the administration of this program?

(a) To receive payments under this program, an SA must—

(1) Comply with the criteria, procedures, and assurances in the State's approved grant application;

(2) Disburse scholarship funds in accordance with § 653.51;

(3) Collect any scholarship funds improperly disbursed;

(4) Comply with all requests from the Secretary for reports or information necessary to carry out the Secretary's functions under this part;

(5) Establish and implement policies and procedures that are necessary to administer the repayment provisions of § 653.62 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(6) Except as provided in paragraph (b) of this section, expend in each award year all—

(i) Scholarship funds received from the Secretary for that award year; and

(ii) Funds received prior to that award year for principal and interest payments collected under the provisions of § 653.62.

(b) After awarding all scholarships for payment during an award year, as required by paragraph (a)(6) of this section, an SA may reserve for expenditure in the following award year any remaining amount of funds that is less than the amount required for a scholarship, as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1104b, 1104f, 1104i)

§ 653.61 How does a scholar fulfill the teaching obligation under this program?

(a) To fulfill the teaching obligation required under § 653.50(a)(2), a scholar must provide to the SA in the State from which he or she received scholarship funds a statement from the principal of the public or nonprofit private preschool, elementary, or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher.

(b) To qualify for a reduction in the teaching obligation for teaching in a federally approved shortage area, as provided under § 653.50(a)(2)(ii)—

(1) A scholar who is teaching in the same State from which he or she received scholarship funds must provide to the SA in that State a statement certifying that the scholar is teaching in a federally approved teacher shortage area, as determined by the SA; and

(2) A scholar who is teaching in a State other than the one from which he or she received scholarship funds must do one of the following:

(i) If the scholar is teaching in a State in which the chief State school officer has complied with paragraph (c) of this section and provides an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's principal.

(ii) If a scholar is teaching in a State in which the chief State school officer has not complied with paragraph (c) of this section or does not provide an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar must obtain certification that he or she is teaching in a teacher shortage area from the chief State school officer for the State in which the scholar is teaching.

(c) For a scholar to obtain a certification under paragraph (b)(2)(i) of this section, the State's chief state school officer must previously have notified the Secretary, by means of a one-time written assurance, that he or she provides annually a listing of the federally approved teacher shortage areas to the principals in the State whose schools are affected.

(d) If a scholar who receives a reduction in his or her teaching obligation continues to teach in the same area in which he or she was teaching when the teaching obligation was originally reduced, the scholar continues to qualify for the reduction in the teaching obligation even if the area ceases to be designated a teacher shortage area on the federally approved list, provided that the scholar provides the SA with a statement from the principal of the school in which he or she is teaching, certifying that the scholar continues to be employed as a full-time teacher in the same area in which he or she was teaching when the teaching obligation was originally reduced.

(Authority: 20 U.S.C. 1104b, 1104j)

§ 653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

(a) A scholar found by an SA to be in noncompliance with the agreement entered into under § 653.50 shall—

(1) Repay the amount of scholarship funds received, prorated according to the fraction of the teaching obligation not completed, as determined by the SA in accordance with paragraph (b) of this section;

(2) Pay a simple, per annum interest charge on the outstanding principal, as determined by the SA in accordance with paragraph (c) of this section; and

(3) Pay all reasonable collection costs as determined by the SA, in accordance with 34 CFR part 682.

(b) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed since the scholar was enrolled full-time in a course of study;

(ii) The date the scholar informs the SA that he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the SA; and

(2) Make monthly or quarterly payments to the SA that—

(i) Cover principal, interest, and collection costs according to a schedule established by the SA that calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (b)(2)(ii) of this section; and

(ii) Amount annually to no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the SA's satisfaction.

(c) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the SA has determined that the scholar—

(i) Is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(ii) Completed a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but never taught; or

(2) The day after the last day of the scholarship period for which the teaching obligation has been fulfilled.

(d)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year and is set at a rate that is the greater of the following rates established pursuant to section 427A of the HEA for the same twelve-month period:

(i) The rate charged to new borrowers under the Robert T. Stafford Federal Student Loan Program (title IV, part B of the HEA).

(ii) The rate charged to new borrowers under the Federal Supplemental Loans for Students and Federal PLUS Programs (sections 428A and 428B of the HEA, respectively) as published annually in the **Federal Register**.

(2) For a scholar required to repay his or her scholarship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (c) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (b) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (d)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (d)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(e) The SA may not require a scholar to make repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (b)(2) of this section.

(f) The SA shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (b) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States, or serving as a member of VISTA or the Peace Corps, for a period not in excess of three years;

(3) Temporarily totally disabled, as established by the sworn affidavit of a qualified physician, for a period not in excess of three years;

(4) Unable to secure employment by reason of the care required by a disabled child, spouse, or parent for a period not in excess of twelve months;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the SA under paragraph (b)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar must notify the SA of his or her claim to the exception and provide supporting documentation as required by the SA.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments required by paragraph (b) of this section and interest does not accrue.

(j) The SA shall extend the ten-year scholarship repayment period established under paragraph (b) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the SA's satisfaction.

(k) The SA shall cancel a scholar's repayment obligation if it determines that——

(1) The scholar is unable to teach on a full-time basis because he or she is permanently totally disabled, on the basis of a sworn affidavit of a qualified physician; or

(2) The scholar has died, on the basis of a death certificate or other evidence conclusive under State law.

(Authority: 20 U.S.C. 1104f, 1104g)

[FR Doc. 93–19264 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
August 11, 1993

Part VI

Department of Education

Paul Douglas Teacher Scholarship Program; Notice

[CFDA No: 84.176A]

Paul Douglas Teacher Scholarship Program; Inviting Applications for New Grants for Fiscal Year (FY) 1993

Purpose of Program: To provide, through grants to States, scholarships to individuals who are outstanding secondary school graduates and who demonstrate an interest in teaching, in order to enable and encourage those individuals to pursue teaching careers in education at the preschool, elementary and secondary level.

Eligible Applicants: The 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Trust Territory of the Pacific Islands (Palau), and the Virgin Islands are eligible to apply for grants under this program.

Deadline for Transmittal of Applications: 9/10/93.

Deadline for Intergovernmental Review: 9/15/93.

Available Funds: $14,658,200.

Estimated Range of Awards: $1,247 to $1,724,709.

Estimated Average size of Awards: $293,124.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Budget Period: 12 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 653, as published in this issue of the **Federal Register**; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60–75.62, 76, 77, 79, 80, 82, 85, and 86.

For Applications or Further Information Contact: Ms. Valerie A. Hurry, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3022, Washington, DC 20202–5251. Telephone: (202) 708–9453. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1104 to 1104k.

Dated: August 5, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–19263 Filed 8–10–93; 8:45 am]

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Wednesday
August 11, 1993

Part VII

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880–AA57

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). These amendments are needed to implement a provision of the Higher Education Amendments of 1992, which excludes from the definition of "education records," and thereby from the restrictions of FERPA, records that are maintained by a law enforcement unit of an educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, Family Policy Compliance Office, Office of Human Resources and Administration, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4605.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, (202) 732–1807. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This new provision was created by section 1555 of the Higher Education Amendments of 1992, Pub. L. 102–325, codified at 20 U.S.C. 1232g(a)(4)(B)(ii), which amended FERPA. Under previous law, as reflected in the current FERPA regulations, in order for the records of a law enforcement unit to be excluded from the definition of "education records," certain conditions had to be met. Primarily, the conditions were that officials of an agency or institution's law enforcement unit could not have access to that agency or institution's education records; that the records of the law enforcement unit had to be maintained separately from the education records of the agency or institution and for the sole purpose of law enforcement; and the records of the law enforcement unit could only be disclosed to law enforcement officials of the same jurisdiction. Although the phrase "law enforcement officials of the same jurisdiction" was not defined in the regulations, the Secretary has generally interpreted it to mean other law enforcement officials, in a similar locale, with a need to know.

However, over time it has become increasingly apparent that schools and their respective law enforcement units could not meet these restrictions and still effectively perform their responsibilities relating to ensuring campus safety. For instance, an institution's law enforcement unit would routinely share its records with other school officials involved in enforcement of campus rules and regulations, while also providing local police with crime incident reports and other records. Once the school's law enforcement unit released its records to other school officials, they became "education records" subject to FERPA. Subsequent release of these records to the local police, without first obtaining written consent from the student, as is required for disclosure of education records under FERPA, in effect violated the law.

Additionally, since the time the restrictions regarding law enforcement unit records were adopted, many States have adopted open records laws, several of which potentially conflict with FERPA by requiring disclosure of records maintained by campus law enforcement units at State institutions. As a result, many educational institutions have found themselves in perplexing situations, because of the privacy restrictions of FERPA, when requests for law enforcement unit records were submitted under the State open records law. Moreover, increasing crime and the public's desire to know more about campus crime intensified this conflict for educational agencies and institutions nationwide.

Because of public pressure and growing interest in safety on our Nation's school campuses, Congress amended FERPA to remove these conditions and to exempt from FERPA records that are maintained by a law enforcement unit of an educational agency or institution and were created by that law enforcement unit for the purpose of law enforcement. With this change in the law, educational agencies and institutions can now share education records with their law enforcement units without subjecting the law enforcement unit records to the requirements of FERPA. They may also disclose information about campus crime contained in law enforcement unit records to parents, students, the news media, and a variety of law enforcement authorities not directly associated with the agency or institution.

Specifically, this new provision excludes law enforcement unit records of an educational agency or institution from the above delineated privacy restrictions and other provisions of FERPA by removing the previous conditions imposed on the release of such records. Because law enforcement unit records are now not subject to FERPA's privacy restrictions, they may be disclosed by an educational agency or institution without the prior consent of the eligible students or parents. Educational agencies and institutions can now follow their own policies or applicable State laws regarding the disclosure of law enforcement unit records that are created and maintained by law enforcement units for the purpose of law enforcement.

The proposed regulations provide a definition of "law enforcement unit" and "records of a law enforcement unit." A definition of "disciplinary action or proceeding" has also been added under § 99.3 to provide guidance to an institution in distinguishing law enforcement unit records from disciplinary records, which have always been considered "education records" and not "records of a law enforcement unit" under FERPA. The term "disciplinary proceeding" is currently used in § 99.31(a)(13), which provides that prior consent is not required to disclose to an alleged victim of a crime of violence the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime. Otherwise, all other types of records of disciplinary proceedings are subject to FERPA's prior written consent requirement.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies and institutions of postsecondary education. However, these regulations will not have any significant economic impact on the entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been

found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

The Secretary particularly requests comments on whether the new regulatory definitions of "law enforcement unit" and "records of a law enforcement unit" under § 99.3 are sufficiently clear and provide adequate guidance in interpreting and applying the statutory amendment. The Secretary also requests comments on the definition of "disciplinary action or proceeding" under § 99.3, which is provided to distinguish the types of records that are not "records of a law enforcement unit" and thus are not excluded from the definition of "education records" subject to FERPA. These proposed regulations, under the added provisions of § 99.8(c) (1) and (2), also provide guidance on permissible communications and disclosures between an educational agency or institution and its own law enforcement unit under FERPA. The Secretary requests comments on whether these provisions provide adequate guidance.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Family Policy Compliance Office, 490 L'Enfant Plaza SW, 2100 Corridor, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: May 4, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to revise part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.3 is amended by revising the definition of "Education records" and by adding a new definition of "Disciplinary action or proceeding" in alphabetical order to read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

* * * * *

Education records.

* * * * *

(b) The term does not include—

* * * * *

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

* * * * *

3. A new § 99.8 is added to read as follows:

§ 99.8 What provisions apply to records of a law enforcement unit?

(a) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution that is authorized or designated by that agency or institution to enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law. A component of an educational agency or institution does not lose its status as a "law enforcement unit" if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that might lead to disciplinary action or proceedings against a student.

(b)(1) *Records of a law enforcement unit* means only those records, files, documents, and other materials that are—

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) "Records of a law enforcement unit" does not mean—

(i) Records relating to law enforcement that are maintained by a component of the educational agency or institution other than the law enforcement unit; and

(ii) Records relating to a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g)

[FR Doc. 93-19261 Filed 8-10-93; 8:45 am]

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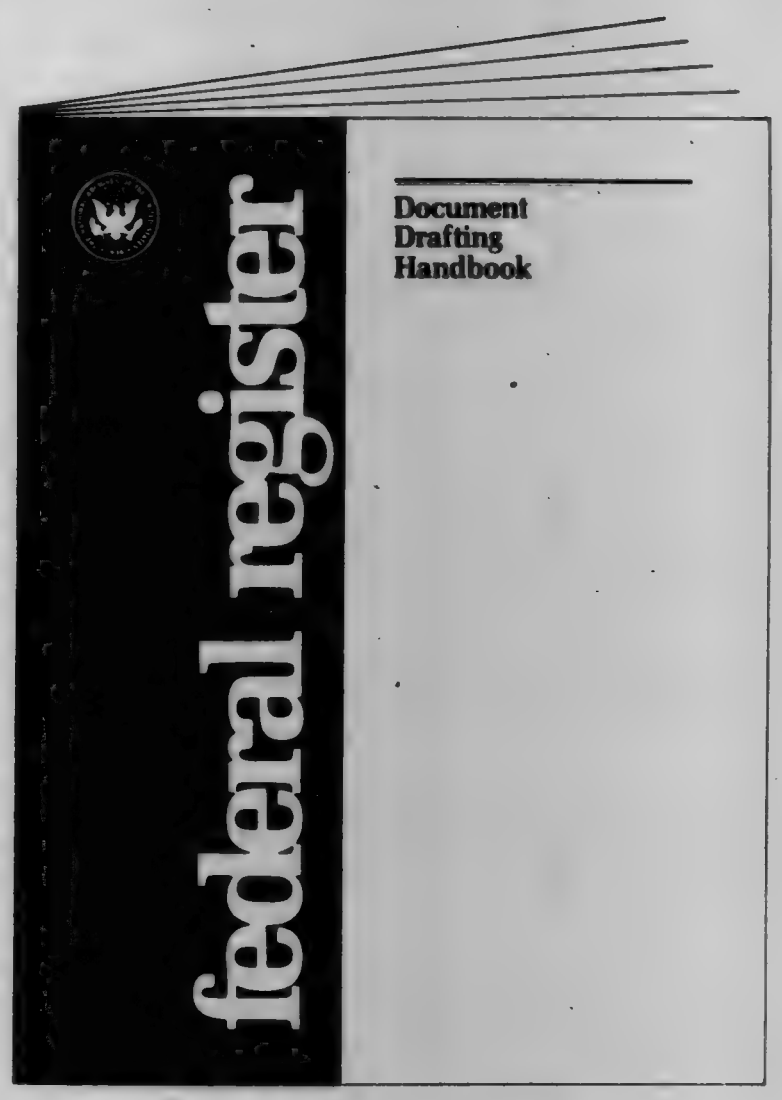

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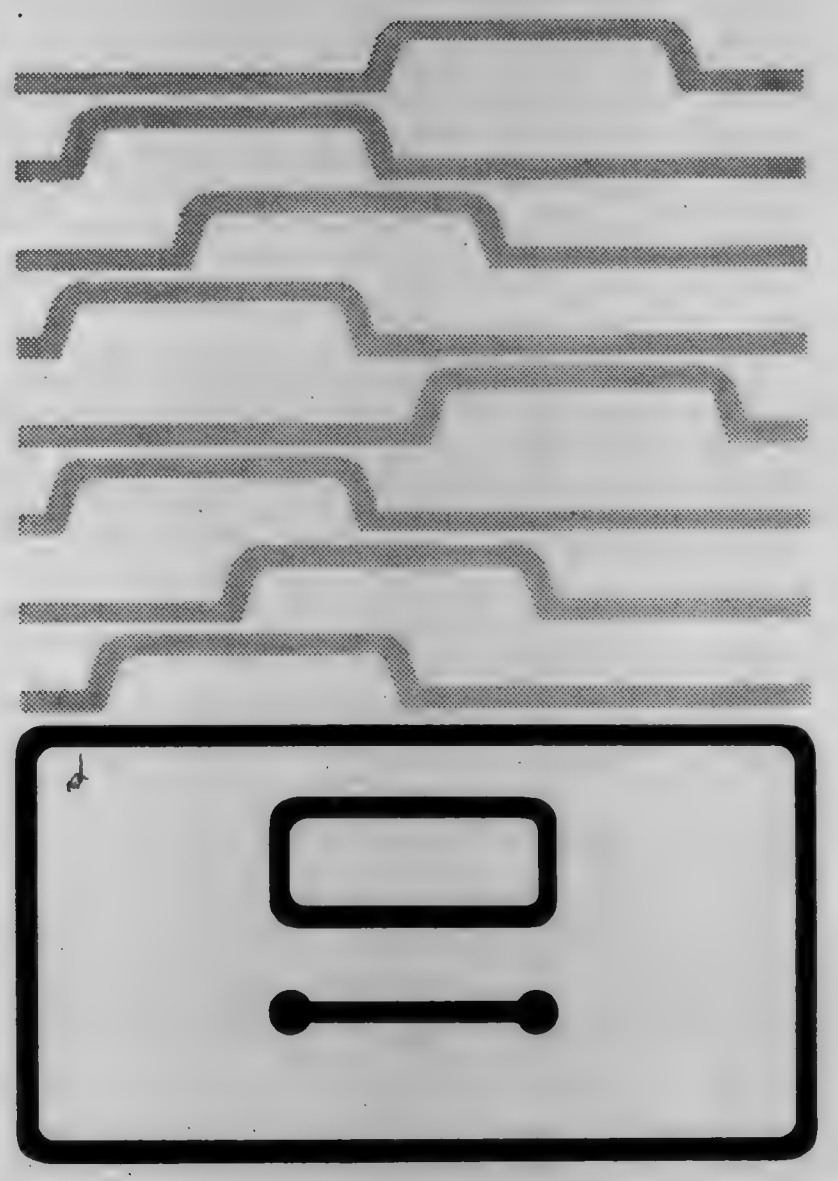

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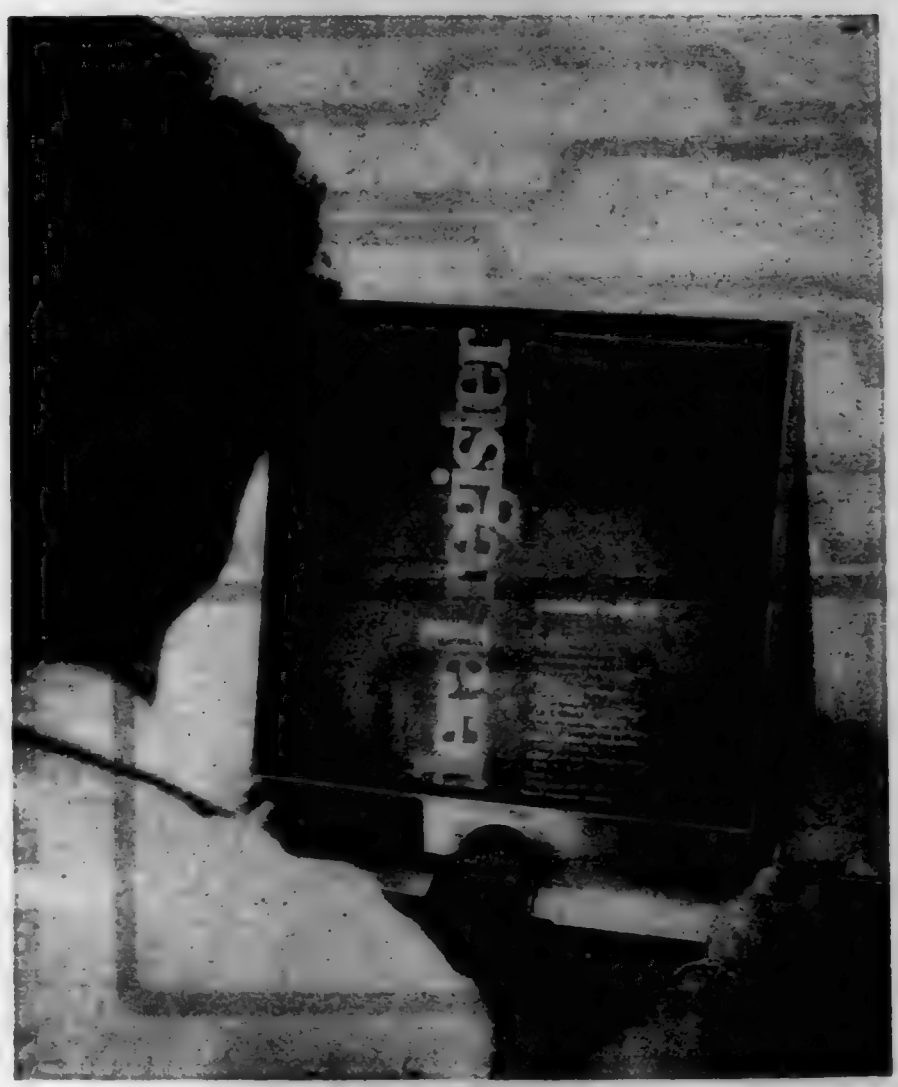

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Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

POSTAL RATE COMMISSION

5 CFR Chapter XLVI

RIN 3209–AA04, 3209–AA15 and 3211–AA00

Supplemental Standards of Ethical Conduct for Employees of the Postal Rate Commission

AGENCY: Postal Rate Commission.

ACTION: Interim rule, with request for comments.

SUMMARY: The Postal Rate Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Postal Rate Commission (Commission) that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The interim rule is a necessary supplement because it addresses ethical issues specific to the Commission. The supplemental rule requires Commission employees to obtain prior approval to engage in outside employment, requires them to report certain employment contacts, and prohibits them from having financial interests in or being employed by persons with certain interests in postal matters.

DATES: Interim rule effective August 12, 1993. Comments are invited and must be received on or before September 27, 1993.

ADDRESSES: Send comments to the Postal Rate Commission, Washington, D.C. 20268–0001, Attn: David L. Ruderman.

FOR FURTHER INFORMATION CONTACT: David L. Ruderman, Postal Rate Commission, Telephone (202) 789–6835, FAX (202) 789–6861.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See FR 35006–35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 53583 (November 4, 1992). The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel. With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement an agency's ethics program. The Commission, with OGE's concurrence, has determined that the following supplemental rules are necessary to the success of its ethics program.

II. Analysis of the Regulations

The following regulations will appear in new 5 CFR chapter XLVI.

Section 5601.101 General

(a) *Purpose.* Section 5601.101(a) explains that the regulations contained in the interim rule apply to all Postal Rate Commission employees, including Commissioners, and are supplemental to the executive branch-wide Standards.

(b) *Definition of Affected Persons.* For purposes of interpreting the prohibitions on financial interests in § 5601.102 and the restrictions on outside employment in § 5601.104(a), § 5601.101(b) sets forth a definition of the phrase "a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the United States Postal Service." The definition reflects the Postal Rate Commission's long-standing interpretation of this phrase as used in the context of similar prohibitions and restrictions contained in its agency standards of conduct regulations in 39 CFR part 3000, which are being repealed and modified, in pertinent part, by the Commission in a separate rulemaking document in which a cross-reference to these new regulations is being included.

Section 5601.102 Prohibited Financial Interests

Under 5 CFR 2635.403(a) an agency may, by supplemental regulation, prohibit or restrict the holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality and objectivity with which its programs are administered. The Postal Rate Commission is a small agency with fewer than 100 employees whose principal functions relate to establishing postage rates and classifications. Every two to four years it conducts an omnibus rate proceeding that affects all persons significantly interested in rates and classification. In the intervening years it conducts a number of proceedings having an impact on many of these same persons In order to avoid the significant staffing problems that would be caused by disqualifying employees with affected financial interests and to ensure public confidence that rate and classification proceedings are being handled by an impartial Commission and staff, the Commission has determined that it is necessary to prohibit all of its employees from holding financial interest in companies or persons significantly affected by rates and classification, or the operations of the United States Postal Service (Postal Service). The prohibition is § 5601.102 continues in effect the prohibition that has been contained in its old agency standards of conduct regulations at 39 CFR 3000.735–302.

Section 5601.103 Notice of Disqualification While Seeking Employment

Under 5 CFR 2635.604, it is the employee's obligation to disqualify himself from participation in a particular matter that affects the financial interests of a prospective employer with whom he is seeking employment. Disqualification can be effected, in many cases, simply by not participating in the matter, although § 2635.604(c) provides that the disqualified employee should notify the person responsible for his assignment. The Commission's omnibus rate proceeding and many of its other proceedings have such a broad impact on those whose financial interests are affected by rate and classification matters that it would be difficult for any Commission employee to effectively disqualify himself from matters affecting a prospective employer without actually giving notice of his disqualification. When a Commission employee determines, in accordance with 5 CFR 2635.606, that he will not participate in a matter to which he has been assigned,

§ 5601.103 requires the employee to provide his supervisor with notice of the disqualification.

Section 5601.104 Outside Employment

(a) *Prohibited Outside Employment.* 5 CFR 2635.802 provides that an employee shall not engage in outside employment if it is prohibited by an agency supplemental regulation. To much the same effect, 5 CFR 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. Under the Commission's previous standards of conduct regulations at 39 CFR 3000.735–307(c), Commission employees have been prohibited from engaging in outside employment, with or without compensation, with or for any person whose interests are significantly affected by postal rates, fees or classifications, or who is substantially dependent on providing property, a product, or service to the Postal Service. Section 5601.104(a) has the effect of continuing a substantially similar prohibition based on the Commission's determination that outside employment with persons in essentially those same categories would cause a reasonable person to question the impartiality with which the Commission's proceedings are conducted. As compared to old 39 CFR 3000.735–307(c), the new standard for prohibiting employment with Postal Service contractors has been reworded by virtue of the definition in § 5601.101(b) to eliminate small contractors and others whose Postal Service contracts account for a small portion of gross income.

(b) *Prior Approval for Outside Employment.* When it has determined that such a requirement is necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 provides that an agency may, by supplemental regulations, require its employees to obtain prior approval before engaging in outside employment. The Commission's old regulations at 39 CFR 3000.735–307(g) imposed a requirement for prior approval of outside employment. This requirement, which has been an integral part of the Commission's ethics program, is continued by the substantially identical requirement of § 5601.104(b).

(c) *Definition of Employment.* Section 5601.104(c) sets forth a definition of employment for purposes of applying the prohibitions on outside employment and the requirement for prior approval set forth respectively in paragraphs (a) and (b) of the section.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Commission has found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that it is important to the smooth transition from the Commission's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to Postal Rate Commission organization, procedure, and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Postal Rate Commission will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small business entities because it affects only Federal employees.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

E.O. 12291, Federal Regulation

The Commission has determined that this is not a major rule as defined in section 1 (a) and (b) of Executive Order 12291.

List of Subjects in 5 CFR Part 5601

Conflict of interests, Government employees.

Dated: August 3, 1993.

By direction of the Commission.

Charles L. Clapp,

Secretary.

Approved: August 5, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Postal Rate Commission, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding at new chapter XLVI, consisting of part 5601, to read as follows:

CHAPTER XLVI—POSTAL RATE COMMISSION

PART 5601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE POSTAL RATE COMMISSION

Sec.

5601.101 General.
5601.102 Prohibited financial interests.
5601.103 Notice of disqualification when seeking employment.
5601.104 Outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 3603; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 5601.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees, including Commissioners, of the Postal Rate Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definition of affected persons.* For purposes of this part, a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of the United States Postal Service (Postal Service):

(1) Includes a company or other person:

(i) Who is or, in the past 4 years, has been a party to a proceeding before the Postal Rate Commission;

(ii) Whose primary business involves entering publications as second-class mail;

(iii) Who is in the business of selling merchandise, and a substantial portion of whose orders are solicited, received, or delivered through the mails;

(iv) Who is primarily engaged in the business of advertising through the mails;

(v) Who is primarily engaged in the business of delivering merchandise or written communications, i.e., a person whose primary business is in competition with the Postal Service; or

(vi) Who provides services or products to the Postal Service that can be expected to produce income that exceeds $100,000 and equals or exceeds 5 percent of its gross income for the current fiscal year; and

(2) Does not include a company or other person whose use of the mails is merely an incidental or a minor factor in the general conduct of its business.

§ 5601.102 Prohibited financial interests.

Any employee shall not, directly or indirectly, have any financial interest in a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service.

§ 5601.103 Notice of disqualification when seeking employment.

An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

§ 5601.104 Outside employment.

(a) *Prohibited outside employment.* An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service.

(b) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the designated agency ethics official. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the designated agency ethics official to give approval based on a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this section and 5 CFR part 2635.

(c) *Definition of employment.* For purposes of this section employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organizations unless such activities involve the practice of a profession within the meaning of 5 CFR 2636.305(b)(1), including the giving of professional advice, or are for compensation other than reimbursement of expenses.

[FR Doc. 93–19331 Filed 8–11–93; 8:45 am]
BILLING CODE 7710–FW–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 93–009F]

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Food Safety and Inspection Service, the authority to administer and conduct a research program on matters affecting food safety and the authority to enter into contracts, grants, and cooperative agreements to further agricultural research activities.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ralph Stafko, Director, Policy Office, Food Safety and Inspection Service, USDA, room 3812, South Building, Washington, DC 20250, (202) 720–8168.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12778. Finally, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from its provisions.

List of Subjects in 7 CFR Part 2

Authority Delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding new paragraphs (g)(3) and (g)(4) to read as follows:

§ 2.17 Assistant Secretary for Marketing and Inspection Services.

* * * * *

(g) * * *

(3) Administer and conduct a food safety research program (7 U.S.C. 427).

(4) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.55 is amended by revising the section heading and paragraph (a)(5) and adding (a)(6) to read as follows:

§ 2.55 Administrator, Food Safety and Inspection Service.

(a) * * *

(5) Administer and conduct a food safety research program (7 U.S.C. 427).

(6) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

* * * * *

Done at Washington, DC, on: August 5, 1993.

For Subpart C:

Mike Espy,

Secretary of Agriculture.

For Subpart F: August 5, 1993.

Eugene Branstool,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 93–19271 Filed 8–11–93; 8:45 am]
BILLING CODE 3410–01–M

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD29

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations to: Revise the formula for determining liquidated damages when shipment of cotton on an original export contract or on a replacement contract is not completed, or when a replacement contract is not designated by the exporter within an established timeframe; revise the procedure for establishing the payment rate for U.S. upland cotton shipped under an optional origin contract; and further outline documentation requirements to support relief requests for export contract cancellations, contract amendments, or any failure to export deemed beyond the control of the exporter. These actions are authorized by section 103B of the Agricultural Act of 1949, as amended (1949 Act).

DATES: Effective August 12, 1993, comments must be received on or before September 13, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FRAD, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, State, or local governments or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of the interim rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in the current regulations at 7 CFR 1427.100 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 through July 31, 1995, and assigned OMB No. 0560–0136. The amendments to 7 CFR part 1427.100 set forth in this interim rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35. The information collection package has been submitted to OMB for review.

Background

When the user marketing certificate program was first established, safeguards were introduced to prevent the shifting of export sales from weeks with low payment rates to weeks with higher payment rates. It has come to the attention of CCC that, despite these safeguards, some high-rate contracts have been retained while lower-rate contracts have been canceled. Shortcomings in the current regulations have been identified with regard to liquidated damages for non-shipment, payment rates for cotton shipped under optional origin contracts, and documentation required to support relief requests for export contract cancellations, contract amendments, or any failure to export deemed beyond the exporter's control. In mid-April, an amendment to the agreement and amended instructions were sent to domestic users and exporters who currently participate in the user marketing certificate program. The amended agreements and instructions became effective on April 22 and reflect the changes contained in this interim rule.

Discussion of Changes

Sections 1427.107(d) and 1427.109(c) are amended to revise the formula used to determine liquidated damages if shipment of cotton is not completed or a replacement contract is not designated by the exporter by December 31. Under current rules, liquidated damages are determined by multiplying the quantity of cotton not shipped by the amount that the highest payment rate paid to the exporter between the date of the original contract and December 31 exceeds the original contract rate or, for replacement contracts, the payment rate in effect on the date of the replacement contract. This inadvertently results in zero liquidated damages for non-shipment of cotton under contracts made at the highest payment rate for the period.

The revised rules eliminate a situation whereby liquidated damages are zero. Liquidated damages will be determined by multiplying the quantity of cotton not shipped by the higher of: (1) The difference between the highest payment rate paid to, or earned by, the exporter—regardless of whether the highest payment rate is a current or forward-crop payment rate—between the date of the original contract and December 31 of the year in which the original contract shipment period ends and the original contract payment rate; or (2) 50 percent of the original contract payment rate. Similarly, liquidated damages for replacement contracts are based on the quantity of cotton not shipped multiplied by the higher of: (1) The difference between the highest payment rate paid to, or earned by, the exporter and the replacement contract payment rate; or (2) 50 percent of the original contract payment rate.

Section 1427.107(e) is added to change the determination of payment rates applicable for U.S. cotton shipped under optional origin contracts. Under current rules, exporters are eligible to receive payments on optional origin contracts if U.S. cotton is shipped. Payments are based on the payment rate

in effect on the date of the original optional origin contract. Although exporters who ship foreign cotton on an optional origin contract do not receive payments on that cotton, their obligation to ship under the user marketing certificate program is thereby fulfilled, and a replacement contract is not required.

This policy allows exporters to lock in a payment rate on an optional origin contract and, if a higher payment rate occurs later, to ship foreign cotton on the lower rate and U.S. cotton on the higher rate. Since only exporters who trade in both foreign and U.S. cotton make optional origin contracts, the current rules give them an advantage over exporters who ship only U.S. cotton. The revised rule would establish the payment rate for optional origin contracts at the lower of: (1) the payment rate in effect when the original optional origin contract was made; or (2) the payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped is of U.S. origin.

Revisions to penalty provisions for non-shipment of cotton will improve exporter accountability without compromising the objectives of the user marketing certificate program. Changing the way in which payment rates are determined for U.S. cotton shipped on an optional origin contract will eliminate any advantage to exporters who trade in both foreign and U.S. cotton vis-a-vis exporters who ship only U.S. cotton. These changes should result in a more accurate indication of the potential level of U.S. cotton exports and the competitiveness of U.S. upland cotton in world markets.

Section 1427.109(e) is amended to require that documentation be submitted to CCC as evidence that an export contract cancellation, amendment or failure to export is beyond the control of the exporter. Requests for relief from making a replacement contract will be examined by CCC on a case-by-case basis. Further clarification of documentation required to support relief requests will improve the efficiency of CCC operations.

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 13, 1993, in order to be assured of consideration.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.107 is amended by:

A. Revising paragraph (d)(3),

B. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g) respectively, and

C. Adding a new paragraph (e) to read as follows:

§ 1427.107 Payment rate.

* * * * *

(d) * * *

(3) If shipment is not completed by December 31 of such year, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the original contract payment rate or, if a replacement contract has been made, the replacement contract payment rate, or

(ii) 50 percent of the original contract payment rate.

(e) For U.S. cotton sold by the exporter under an optional origin contract, the payment rate shall not be established until the exporter notifies CCC in writing that the cotton shipped or to be shipped was or will be of United States origin. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of:

(1) The payment rate in effect when the optional origin contract was made, or

(2) The payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be, of United States origin.

* * * * *

3. Section 1427.109 is amended by:

A. Revising paragraph (c)(3), and

B. Revising paragraph (e) to read as follows:

§ 1427.109 Contract cancellations.

* * * * *

(c) * * *

(3) Not completed, or a replacement contract is not designated by the exporter by December 31, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the payment rate determined in accordance with paragraph (b) of this section, or

(ii) 50 percent of the original contract payment rate.

* * * * *

(e) The provisions of paragraphs (a) through (d) of this section will not apply if CCC determines, based upon written evidence provided by the exporter, that a contract cancellation, amendment, or failure to export is due to reasons beyond the control of the exporter. If, as determined by CCC, the cancellation is beyond the control of the exporter, replacement contracts are not required, and the assessment of liquidated damages by CCC is waived. Documentation to support that contract cancellations are beyond the control of the exporter must be submitted to CCC. Requests for relief from naming a replacement contract will be examined by CCC on a case-by-case basis to determine if relief is warranted.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–19428 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 101, 103, 204, 205, and 245

[INS No. 1424–92]

RIN 1115–AC48

Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 153 of the Immigration Act of 1990 (IMMACT 90) by providing a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court in the United States. This rule also implements section 302(d)(2) of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 (Technical Amendments) by providing for the adjustment of status to that of lawful permanent resident for aliens classified as special immigrants who have been declared dependent on a juvenile court in the United States. In addition, the rule implements section 702 of IMMACT 90, which became effective November 29, 1990, by finalizing procedures for appeals of denials of adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e)(3) of the Immigration and Nationality Act (the Act), as amended. This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified aliens with the opportunity to apply for special immigrant classification and lawful permanent resident status, with possibility of becoming citizens of the United States in the future. It also ensures that persons whose applications for adjustment of status were denied because of failure to establish eligibility for the bona fide marriage exemption are able to exercise the appeal rights provided by law.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Although many dependent alien juveniles were eligible for the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA), those benefits were only available for a limited period of time to certain aliens who had been in the United States since before 1982. No method existed for most court-dependent juvenile aliens to regularize their immigration status and become lawful permanent residents of this country, even though a United States juvenile court had found them dependent upon the court and eligible for long-term foster care, and it had been determined that it was not in the children's best interests to be returned to their home countries or the home countries of their parents. Section 153 of IMMACT 90 provides that certain aliens who have been declared dependent on juvenile courts located in the United States may be eligible for special immigrant classification. Aliens who are classifiable as special immigrants may apply for immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident within the United States. After adjustment of status or admission with an immigrant visa, they may live and work in the United States indefinitely and may apply to become United States citizens in the future.

Section 153 of IMMACT 90, as originally enacted, did not relieve special immigrant juvenile court dependents from compliance with any of the statutory requirements for immigrant visa issuance abroad or adjustment of status within the United States, even though it exempted them from deportation under several provisions of section 241 of the Act. A significant number of aliens eligible for classification as special immigrant juvenile court dependents were ineligible to become lawful permanent residents because they could not meet the statutory requirements for immigrant visa issuance or for adjustment of status.

Persons seeking immigrant visa issuance abroad are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States or who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient United States workers in the alien's field at the intended job location. Many juvenile court dependents could not meet these requirements and were, therefore, unable to obtain an immigrant visa even though they were eligible for classification as special immigrant juveniles.

Persons applying for adjustment of status within the United States must also show that they are not excludable under section 212(a) of the Act. In addition, they must meet the adjustment of status requirements of section 245 of the Act. Section 245(a) of the Act requires that adjustment of status applicants show that they entered the United States only after having been inspected and admitted or paroled by an immigration officer. Many juvenile court dependents were unable to satisfy this requirement. Those who had been inspected and admitted or paroled were frequently ineligible for adjustment because they fell within the provisions of section 245(c) of the Act. This section prohibits the adjustment of status of preference immigrants who have been employed without authorization, are not in lawful nonimmigrant status at the time the application for adjustment is filed, or have failed to continuously maintain lawful nonimmigrant status in the past.

Although a person who cannot meet the special adjustment of status requirements of section 245 of the Act may still be eligible for immigrant visa issuance abroad, travel outside the United States presents unique problems for a large number of juvenile court dependents. Financial and documentary difficulties, and certain legal complications which may result from travel outside the area of the court's jurisdiction or outside the United States, combine to form and almost insurmountable barrier to travel abroad for many of these juveniles.

The Technical Amendments, enacted December 12, 1991, reduced or eliminated the obstacles facing most special immigrant juvenile court dependents wishing to become lawful permanent residents. Section 302(d)(2) of that law provides that special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act are not subject to exclusion provisions restricting the admission of aliens who are likely to become public charges, aliens without labor certifications, and aliens who entered the United States without proper documents. It also allows waivers of most other exclusion provisions to be approved on an individual basis for humanitarian purposes, family unity, or when the approval of a waiver is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents will not be a factor in a discretionary waiver determination. The exclusion provision concerning simple possession of 30 grams or less of marijuana may be waived. However, other controlled substance violations, criminal exclusion grounds under sections 212(a)(2) (A), (B), and (C) of the Act, and certain exclusion provisions involving security and related issues under 212(a)(3) (A), (B), (C), and (E) of the Act may not be waived.

Section 302(d)(2) of the Technical Amendments also modifies section 245

of the Act by adding a new subsection 245(h). This new subsection permits most special immigrant juveniles to become lawful permanent residents regardless of the method of original entry into the United States, unauthorized employment, or failure to maintain lawful nonimmigrant status. It provides that all special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act shall be deemed, for the purposes of section 245(a) of the Act, to have been paroled into the United States and exempts them from compliance with any of the requirements of section 245(c) of the Act.

Section 302(d)(2) of the Technical Amendments also seeks to minimize abuse of these generous benefits by restricting the admission of aliens arriving in the United States for the purpose of taking advantage of this means of gaining lawful permanent resident status. It provides that neither section 101(a)(27)(J) of the Act nor section 245(h) of the Act shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status under section 101(a)(27)(J) of the Act.

The Immigration Marriage Fraud Amendments of 1986 (IMFA), enacted November 10, 1986, made several changes to the Act which were designed to reduce the incentive for an alien to enter into a marriage with a United States citizen or lawful permanent resident for the sole purpose of obtaining immigration benefits. Section 5(a)(2) of IMFA provided that an adjustment of status application could not be approved when the adjustment was based upon a marriage that had been entered into on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, unless the alien had resided outside the United States for two or more years following the marriage. Section 702 of IMMACT 90 amends this requirement to provide that an applicant who can show, by clear and convincing evidence, that the marriage was bona fide may be exempted from compliance with this requirement. It also provides a single level of administrative appellate review for denials of requests for the exemption.

On May 21, 1991, at 56 FR 23207–23209, the Immigration and Naturalization Service (the Service) published an interim rule with request for comments in the **Federal Register**. The rule established a procedure for classification of certain juvenile court dependents as special immigrants under section 101(a)(27)(J) of the Act. The interim rule also described appeal rights in adjustment of status cases where the denial was based upon failure to qualify for the bona fide marriage exemption contained in section 245(e) of the Act. The interim rule became effective on May 21, 1991. Interested persons were invited to submit written comments on or before June 20, 1991. The Service received 38 comments relating to the rule.

Interim Rule

The interim rule implemented section 153 of IMMACT 90 by establishing a procedure for classification of certain aliens who have been declared dependent on a juvenile court in the United States as special immigrants. The rule also implemented section 702 of IMMACT 90 by providing a method through which the applicant could appeal the denial of an application for adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act.

Comments

The discussion that follows summarizes the issues which have been raised relating to the interim rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule. The discussion also summarizes technical changes mandated by section 302(d)(2) of the Technical Amendments, which statutorily exempt qualified special immigrant juveniles from meeting certain admissibility and adjustment of status requirements.

Redesignation of 8 CFR 101.6 as 8 CFR 204.11.

Section 162 of IMMACT 90 mandates the filing of petitions for all principal special immigrants. Regulations governing the filing of petitions for immediate relative, family sponsored, and employment-based immigrant classifications are found in 8 CFR part 204. The Service has determined that both the general public and Service employees will find the regulations easier to access if regulations concerning all types of petitions for immigrant classification are included in 8 CFR part 204. The Service has therefore determined that the regulations implementing the provisions of section 153 of IMMACT 90 should be removed from 8 CFR 101.6 and added to 8 CFR 204.11. This redesignation also mandates a technical modification to 8 CFR 103.1(f)(2)(xxxv), which provides for appellate review of denials of petitions for special immigrant juveniles. The technical change is necessary because petitions for special immigrant juveniles will now be approved under 8 CFR part 204 rather than 8 CFR part 101. The petitioner's right to appeal a denial of a petition for a special immigrant juvenile to the Associate Commissioner, Examinations has not been changed.

Appeals of Denials of Adjustment of Status Applications Based Upon Marriage Entered Into During Deportation or Exclusion Proceedings

Two commenters stated that they felt the appeal provision was unnecessary. These commenters further stated that they felt that the issue of whether a marriage was bona fide should not be reviewed during adjustment of status proceedings.

Adjustment of status applications based upon marriages subject to the two-year foreign residence requirement of section 245(e) of the Act require the filing of a visa petition. Before action is taken upon the visa petition, the Service officer adjudicating the case is required to determine whether clear and convincing evidence of a bona fide marriage has been provided. Therefore, this issue will normally be resolved in visa petition proceedings. However, the Service is not precluded from reviewing the issue of whether the marriage is bona fide during adjustment of status proceedings, despite the existence of an approved visa petition. Section 702 of IMMACT 90 provides that there shall be only one level of administrative appellate review for denials of adjustment of status applications pursuant to section 245(e) of the Act. Since no administrative review of denials of applications for adjustment of status previously existed (such denials were not appealable, although the applicant had the option of renewing the request in deportation proceedings before an immigration judge), the rule established this statutorily directed administrative review process. Accordingly, the rule has not been changed.

Definition of Long-term Foster Care

Twenty-five commenters urged the Service to amend the definition of long-term foster care to encompass situations in which adoption or guardianship is deemed to be in the juvenile's best interest. Twenty commenters recommended that the Service adopt the definition of long-term foster care contained in the Social Security Act. Some commenters also suggested that the Service modify the rule to recognize administrative determinations regarding eligibility for long-term foster care.

The final rule removes the regulatory definition of "long-term foster care" and substitutes a definition of "eligible for long-term foster care." The new definition adopts commenters' recommendations that eligibility for long-term foster care be established when a juvenile court determines that reunification with the natural parent(s) or the prior adoptive parent(s) is no longer a viable option for the child. The new definition also allows juveniles to qualify for special immigrant status when guardianship or adoption is deemed to be in the juvenile's best interest after the alien is found to be dependent upon the juvenile court. Section 153 of IMMACT 90 states that the decision regarding eligibility for long-term foster care must have been made in judicial proceedings. Therefore, this rule continues to recognize only judicial decisions concerning eligibility for long-term foster care.

Form I-360

Several commenters stated that they were pleased that the rule allows any person to file the petition on behalf of the juvenile.

Many also applauded the Service's decision to clearly state that the petitioner need not be a citizen or a lawful permanent resident of the United States. No commenters opposed these provisions. One commenter stated that he found the I-360 form somewhat confusing to use for a dependent juvenile, but that he understood the form was being revised. No commenters objected to the use of this form.

The Service has developed a revised Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The revised form is now available for use by the public and contains specific instructions for persons seeking to establish eligibility for special immigrant juvenile status. The revised form will be amended as soon as possible to reflect changes made by this rule. Questions concerning completion of the form may be directed to local immigration offices.

Fee Waivers

One commenter asked that fees be waived for certain applicants.

8 CFR 103.7(c) contains a fee waiver provision applicable to fees for applications, petitions, appeals, motions, or requests. Requests for fee waivers must be made and considered on a case-by-case basis.

Eligibility—Alien Required To Be Juvenile Under State Law

Twenty-six commenters recommended that the requirement that the beneficiary be a juvenile under state law be modified or eliminated. Several commenters pointed out that definitions of the terms "juvenile," "minor," and "child" vary from state to state. They also noted that different definitions may be used in various proceedings within one state and that some states have no legal definition of some or all of these terms, making compliance with the interim rule's eligibility requirements problematic. Some felt that the differences between the laws of various states would cause confusion. Some expressed concerns about the possibility that an alien in one state would be eligible for the benefit, while an alien in substantially identical circumstances living in another state would not be eligible. Others felt that the requirement was unnecessary, since the juvenile court would be required to determine eligibility for juvenile status prior to finding an individual dependent upon the court. Some also observed that section 153 of IMMACT 90 does not explicitly restrict special immigrant status to juveniles. Many also cited state laws allowing a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but require continued court protection. These commenters suggested the regulation be amended to include these dependent young adults.

Despite commenters' concerns about confusion caused by differences between the laws of the various states, the Service believes that certain inequities caused by variations in state law are unavoidable in determining eligibility for the benefits of section 153 of IMMACT 90. Juvenile court issues are under the jurisdiction of the states and therefore dependent upon state statutes. However, in order to minimize confusion caused by dissimilar state laws, the Service has removed the requirement that the beneficiary be a juvenile under state law and replaced it with a requirement that the beneficiary be under twenty-one years of age. The new requirement establishes a consistent countrywide definition of the age at which an alien will no longer be eligible for special immigrant juvenile status. Although the language of the statute does not expressly restrict benefits to juveniles, the Service notes it does not specifically include aliens of any age who at some point in the past, regardless of how distant, had been declared dependent upon a juvenile court in the United States and found eligible for long-term foster care. The revised standard allows students and other young persons who continue to be dependent upon the juvenile court after reaching the age of eighteen to qualify for special immigrant juvenile status. This requirement also conforms with the definition of "child" contained in section 101(b)(1) of the Act. This rule does, however, allow exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Eligibility—Alien Required To Be Unmarried

Twenty-three commenters encouraged the Service to delete the requirement that the alien be unmarried. Most stated they felt this requirement should be eliminated because the beneficiary's marital status is not addressed by section 153 of IMMACT 90. Some commenters objected to this requirement because prospective beneficiaries had not received prior notice that marriage could make them ineligible for special immigrant juvenile status. Some also indicated that they felt the decision as to whether a married individual could be dependent upon the juvenile court should be made only by the juvenile court. One commenter pointed out that this requirement would disproportionately affect female juveniles, because they are more frequently coerced into marriages by unscrupulous adults or social pressures.

As indicated in the supplementary information to the interim rule, the Service believes that marriage alters the dependent relationship with the juvenile court. No commenters indicated that they believed that the marriage of a dependent juvenile would not affect the juvenile's dependency upon the court. Section 153 of IMMACT 90, in contrast to most other immigrant and special immigrant provisions, extends no benefits to spouses, indicating that Congress did not envision married persons as dependent juveniles. This requirement also conforms with the definition of child contained in section 101(b)(1) of the Act, which requires that children be unmarried. The term "unmarried" is defined in section 101(a)(39) of the Act. That section defines an unmarried person as a person who is not currently married, whether or not previously married. Therefore, a person who had been coerced or who had improvidently entered into a marriage would not be permanently ineligible for special immigrant juvenile status. After legal termination of a marriage by annulment, divorce, or through the death of the spouse, an individual is regarded by the

Service as "unmarried" and could be eligible to seek special immigrant juvenile status, provided he or she meets the other statutory and regulatory requirements for the classification. The rule has, however, been modified to allow an alien who can establish that he or she met the eligibility criteria on November 29, 1990, to apply for this benefit, provided that a petition for classification as a special immigrant juvenile is filed no later than June 1, 1994.

Best Interest of the Child

The Service received two written comments and several telephonic inquiries indicating that some confusion existed regarding the type of administrative proceeding in which this determination may be made. Two commenters expressed concern about the Service's ability to make this determination in deportation proceedings or other administrative immigration hearings. Another commenter urged the Service to reduce possible abuse of this benefit by narrowly defining the elements which could be considered in determining the best interest of the alien child. This commenter recommended that the Service rewrite the eligibility criteria to exclude children who were brought or sent to the United States to take advantage of the special immigrant juvenile provision. This commenter also recommended that juvenile courts be required to request and obtain a report from the Service prior to declaring an alien child dependent upon the court.

The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court. Such administrative proceedings would most commonly be conducted by state or local social service agency officials. The Service does not intend to make determinations in the course of deportation proceedings regarding the "best interest" of a child for the purpose of establishing eligibility for special immigrant juvenile classification. The rule does not contain any restrictions on factors which may be considered in determining the best interest of the child. The Service believes that it would be both impractical and inappropriate for the Service to routinely readjudicate judicial or social service agency administrative determinations as to the juvenile's best interest. Abuse of this provision is of concern both to Congress, as shown by the statutory restriction on the grant of future immigration benefits for the juvenile's parent(s) based upon the relationship, and to the Service. However, the Service believes that a child in need of the care and protection of the juvenile court should not be precluded from obtaining special immigrant status because of the actions of an irresponsible parent or other adult. The Service also believes it would be impractical and inappropriate to impose consultation requirements upon the juvenile courts or the social service system, especially requirements which could possibly delay action urgently needed to ensure proper care for dependent children.

Eligibility—"Grandfather" Provision

Twenty-nine commenters urged the Service to establish a regulatory provision which would allow aliens who were eligible for special immigrant juvenile classification on November 29, 1990, the date of enactment of IMMACT 90, but who could not become lawful permanent residents at that time, to remain eligible for this classification until Congress took action to amend the adjustment of status provisions of the Act. One commenter cited the "grandfather" provision of section 702 of IMMACT 90 as an example the Service should follow in implementing section 153.

As originally enacted, IMMACT 90 did not exempt special immigrant juvenile aliens from the normal statutory requirements for adjustment of status. The Service did not, however, wish to unnecessarily preclude otherwise qualified special immigrant juvenile aliens from becoming lawful permanent residents. On November 29, 1990, the date of enactment of IMMACT 90, the Service directed its local offices to accept and hold in abeyance applications for adjustment of status filed by persons who appeared to meet the statutory requirements for the special immigrant juvenile classification of section 153 of IMMACT 90. Further guidance was issued on August 16, 1991, directing local offices to accept applications for adjustment of status filed by special immigrant juveniles despite statutory ineligibility for adjustment of status because of the provisions of sections 245 (a) or (c) of the Act. The local offices were again instructed not to take action to deny these adjustment of status applications solely because the special immigrant juvenile was statutorily ineligible for adjustment of status. On December 12, 1991, section 302(d)(2) of the Technical Amendments amended the adjustment of status provisions of the Act to exempt special immigrant juveniles from many of the statutory requirements for adjustment of status. In furtherance of Service policy of using administrative discretionary authority to ensure that special immigrant juveniles are not precluded from obtaining lawful permanent residence because of the passage of time while the Service was awaiting Congressional action to amend the adjustment of status provisions, this rule allows exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Documentary Requirements

Twenty-one commenters stated that they felt the documentary requirements were either confusing or excessive. Some stated that they felt it should not be necessary to submit a total of four documents to establish eligibility. Several stated that the juvenile court could declare an individual eligible for long-term foster care only after finding the person dependent upon the court and only after alternatives to a long-term placement were considered. These commenters stated that they felt that evidence of a declaration of eligibility for long-term foster care should satisfy not only that requirement, but also the evidentiary requirements relating to dependency and the determination regarding the "best interest" of the child.

The rule has been revised to clearly require documentary evidence of the beneficiary's age. The evidence may be in the form of a birth certificate, passport, or official foreign identity card such as a Cedula or Cartilla. This rule also provides that the director may, in his or her discretion, accept other documents which reasonably establish the beneficiary's age. The final rule has also been revised to state that, in addition to evidence of the beneficiary's age, one or more documents must be submitted showing dependency, eligibility for long-term foster care, and the "best interest" determination. The Service has left in place, however, the requirement that the document(s) must show that all three statutory criteria have been met. In view of diverse state laws governing juvenile court proceedings and the possibility that state laws could change in the future, the Service does not believe that any of the section 153 statutory requirements can be ignored. The Service also notes that consideration of alternatives to long-term foster care does not, in itself, show that a determination was made that it is in the juvenile's best interest not to be returned to his or her country of nationality or habitual residence of

his or her parents. The court's finding that long-term foster care is the best alternative available to the child within the United States does not necessarily establish that long-term foster care in another country would not be available or would not be in the child's best interest.

Revocation of Approval

Twenty-four commenters asked the Service to revise or eliminate provisions of the interim rule which automatically revoke the approval of a petition for a special immigrant juvenile under certain circumstances. Most commenters cited state laws which allow a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but continue to require court protection. They suggested amending the rule to eliminate the automatic revocation of petitions for these young people. Many commenters also expressed concern that the rule would allow the automatic revocation of a petition when the juvenile is placed in a guardianship situation or has been adopted. Some stated they felt that approval should not be revoked simply because a beneficiary's circumstances change while the Service is reviewing an application for adjustment of status. One commenter felt that the rule should indicate that any subsequent decision regarding the best interest of the child should be made only by the juvenile court which made the initial ruling.

This rule removes the provision automatically revoking approval of a petition for special immigrant juvenile status when the alien ceases to be a juvenile under state law, and substitutes a provision establishing automatic revocation of an earlier approval when the beneficiary reaches the age of twenty-one. The rule has also been revised to state that changes in circumstances resulting from adoption or placement in a guardianship situation will not result in revocation of approval. In response to comments that the Service should not revoke approval of the petition simply because the beneficiary's circumstances change during the application process, the Service notes that other applicants for permanent residency are required to continue to maintain eligibility for their visa classification until admission with an immigrant visa or adjustment of status. The Service does not believe that there is good reason to exempt special immigrant juveniles from this requirement. The final rule also clearly states that the decision regarding the beneficiary's best interest must be made by a juvenile court of competent jurisdiction or in administrative proceedings recognized by the juvenile court having jurisdiction over the beneficiary. As indicated earlier, the Service believes that the decision regarding the best interest of the beneficiary should be made by the juvenile court or the social service agency officials recognized by the juvenile court, not by the immigration judge or other immigration officials. The final rule does not, however, require the decision to be made by the court which made the initial determination, since the Service believes this would be an unnecessary infringement upon the juvenile court system's ability to make determinations regarding its own jurisdictional issues.

Regulations governing the revocation of approval of petitions for immigrant classification are found in 8 CFR part 205. The Service has determined that both the public and Service employees will find the regulations easier to access if regulations concerning the revocation of all types of petitions for immigrant classification are included in 8 CFR part 205. The Service has, therefore, removed procedures relating to the automatic revocation of approval of petitions for classification as a special immigrant juvenile from 8 CFR 101.6(f) and placed them in 8 CFR 205.1.

This rule also changes several references to sections of the Act in 8 CFR part 205. The reference changes are necessary because IMMACT 90 redesignated many sections of the Act.

This rule also removes 8 CFR 205.1(a)(10). That paragraph provided that the approval of a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under deportation or exclusion proceedings would be automatically revoked unless the beneficiary had resided outside the United States for at least two years in accordance with former section 204(h) (currently 204(g)) of the Act. Section 702 of IMMACT provides an exemption from the two-year foreign residence requirement if the petitioner can establish, by clear and convincing evidence, that the marriage is bona fide. Therefore, the automatic revocation provision is no longer appropriate and is removed. The Service's authority to revoke the approval of any petition under section 204 of the Act after notice to the petitioner, which is contained in 8 CFR 205.2, has not been changed and continues to be applicable to spousal immigrant visa petitions.

This rule also removes 8 CFR 205.1(c)(4), which provided for automatic revocation of a sixth preference petition when the petitioner filed a written notice of withdrawal. The preceding paragraph, which formerly referred only to third preference petitions, has been revised to encompass all instances in which the petitioner in an employment-based case files a written notice of withdrawal with any officer of the Service who is authorized to grant or deny petitions. There is, therefore, no need to repeat the provision in the following paragraph.

In 8 CFR 205.2(a) the reference to "§ 204.1" is changed to "§ 205.1" to correct a typographical error.

Adjustment of Status

Twenty-eight commenters expressed concern about the method through which a special immigrant juvenile could become a lawful permanent resident. One commenter asked whether a special immigrant juvenile would automatically be granted permanent resident status or would be required to comply for adjustment of status. Several commenters indicated that, since Congressional intent was to allow special immigrant juveniles to become permanent residents, the Service should revise the rule to allow adjustment regardless of whether the applicants were ineligible for adjustment under existing statutes.

The Act generally requires a person intending to live permanently in the United States to enter the country with an immigrant visa, which may be issued only by a United States embassy or consulate abroad. Section 245 of the Act allows certain aliens in the United States to adjust status to that of a lawful permanent resident, without departing the United States or obtaining an immigrant visa from a consultate or embassy. Neither IMMACT 90 nor the Technical Amendments contain any indication that Congress envisioned a unique application process for special immigrant juveniles wishing to become lawful permanent residents of the United States. Therefore, special immigrant juveniles will continue to be required to apply for either immigrant visa issuance abroad or adjustment of status in the United States.

Although the Service is responsible for interpreting the Act and implementing provisions of the Act through regulation, the Service cannot implement rules which are contradictory to statutory requirements imposed by Congress. As indicated in the supplementary information to the interim rule, the original language of IMMACT 90 did not waive any of the adjustment of status eligibility requirements for special immigrant juveniles. The Service, therefore, initially lacked authority to accede to

commenters' requests to waive certain adjustment of status requirements. However, on December 12, 1991, the Technical Amendments became effective. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with several of the usual statutory requirements for adjustment of status.

Section 245(a) of the Act generally requires that applicants for adjustment of status establish that they have been inspected and admitted or paroled into the United States. Section 302(d)(2) of the Technical Amendments provides that, for the purpose of applying for adjustment of status as a special immigrant juvenille under section 101(a)(27)(J) of the Act only, these juveniles will be treated as if they had been paroled into the United States.

Section 245(c) of the Act generally prohibits the Service from adjusting the status of an alien who is not in lawful nonimmigrant status, who has failed to maintain lawful nonimmigrant status in the past, or who has been employed without authorization in the United States. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with these provisions of section 245(c) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status. These revisions ensure that the regulations reflect the statutory exemptions provided for special immigrant juveniles by section 302(d)(2) of the Technical Amendments.

Exclusion Grounds

Two commenters took exception to the statement contained in the supplementary information to the interim rule concerning the possibility that special immigrant juveniles who seek an immigrant visa or adjustment of status could have difficulty establishing that they are not likely to become public charges.

All applicants for immigrant visa issuance or adjustment of status under section 245 of the Act must establish that they are not excludable from the United States, unless the grounds of excludability have been waived. Persons seeking immigrant visa issuance abroad or adjustment of status in the United States are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States, who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient workers in the alien's field at the intended job location, or who entered the United States without proper documentation. Therefore, the Service initially lacked the authority to grant lawful permanent resident status to special immigrant juveniles who were likely to become public charges or were otherwise excludable from the United States.

Section 302(d)(2) of the Technical Amendments provides that the exclusion provisions under sections 212(a)(4), (5)(A), and (7)(A) of the Act will not apply to a qualified special immigrant under section 101(a)(27)(J) of the Act, thus automatically waiving excludability because of likelihood of becoming a public charge, failure to obtain a labor certification, and entry without proper documents. No application or fee is required for an automatic waiver.

Section 302(d)(2) also allows most other exclusion provisions to be waived for individual special immigrant juveniles for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination. A waiver application must be filed and the appropriate fee paid for an individual waiver. The only exclusion provisions which may not be waived are those involving certain criminal and related grounds, and certain security and related grounds. The grounds which may not be waived are set forth in sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status to ensure that these regulations reflect the statutory exemptions provided by section 302(d)(2) of the Technical Amendments, including the automatic exemptions.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 101

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation (Government agencies), Fees, Forms.

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 101 and 103, which was published in the **Federal Register** at 56 FR 23207–23209 on May 21, 1991, is adopted as a final rule with the following changes:

PART 101—PRESUMPTION OF UNLAWFUL ADMISSION

1. The authority citation for part 101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

§ 101.6 [Redesignated as § 204.11.]

2. Section 101.6 is redesignated as § 204.11.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

4. In § 103.1, paragraph (f)(2)(xxxv) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxv) Petitions for special immigrant juveniles under part 204 of this chapter;

* * * * *

PART 204—IMMIGRANT PETITIONS

5. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

6. Newly redesignated § 204.11 is revised to read as follows:

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) *Definitions.*

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) *Who may file.* The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

(c) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I–360 before June 1, 1994.

(d) *Initial documents which must be submitted in support of the petition.* (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

7. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

§ 205.1 [Amended]

8. In § 205.1, the introductory text is amended by adding the term "before October 1, 1991, or section 203(g) of the Act on or after October 1, 1991," immediately after the term "section 203(e) of the Act".

§ 205.1 [Amended]

9. In § 205.1, paragraphs (a)(5), (a)(6), (a)(7), (b)(5), and (b)(6) are amended by revising the reference to "section 203(a)(4)" to "section 203(a)(3)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

10. In § 205.1, paragraph (a)(10) is removed.

§ 205.1 [Amended]

11. In § 205.1, paragraphs (b)(5) and (b)(6) are amended by revising the reference the "section 204(g)" to "section 204(f)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

12. Section 205.1 is amended by:

a. Revising the reference in the heading in paragraph (c) to *"section 203(a)(3) or (6)."* to read *"section 203(b).";*

b. Revising the reference in paragraph (c)(3) to "third preference" to read "employment-based preference";

c. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

d. Revising the reference in the newly redesignated paragraph (c)(4) to "a sixth preference case." to read "an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.".

13. In § 205.1, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 205.1 Automatic revocation.

* * * * *

(d) *Special immigrant juvenile petitions.* Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990,

and the petition for classification as a special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:

(1) Upon the beneficiary reaching the age of twenty-one;

(2) Upon the marriage of the beneficiary;

(3) Upon the termination of the beneficiary's dependency upon the juvenile court;

(4) Upon the termination of the beneficiary's eligibility for long-term foster care; or

(5) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

* * * * *

§ 205.2 [Amended]

14. In § 205.2, paragraph (a) is amended by revising the reference to "§ 204.1" to "§ 205.1".

§ 205.2 [Amended]

15. In § 205.2, paragraph (b) is amended in the fourth sentence by revising the reference to "section 204(g)" to "section 204(f)". Paragraph (b) is further amended in the fourth sentence by revising the reference to "section 203(a)(1), (2), (4), or (5)" to "section 203(a)(1), (2), (3), or (4)".

§ 205.2 [Amended]

16. In § 205.2, paragraph (b) is amended in the fifth sentence by revising the reference to "section 203(a)(3) or (6)" to "section 203(b)".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

17. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

§ 245.1 [Amended]

18. In § 245.1, paragraph (a) is amended by adding at the end a new sentence to read as follows: "A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States."

§ 245.1 [Amended]

19. Section 245.1 is amended by:

a. Revising the reference in paragraph (b)(4)(ii) to "section 101(a)(27)(H)" to "section 101(a)(27)(H) or (J)";

b. Revising the reference in paragraph (b)(5) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

c. Revising the reference in paragraph (b)(6) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

§ 245.1 [Amended]

20. In § 245.1, a new paragraph (d)(3) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(d) * * *

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) nor the exclusion provisions of sections 212(a)(4), (5)(A), or (7)(A) of the Act shall apply to a qualified special immigrant under section 101(a)(27)(J) of the Act. The exclusion provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other exclusion provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination.

* * * * *

Dated: June 22, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-19350 Filed 8-11-93; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR PART 140

RIN 3150-AE75

Adjustment of the Maximum Standard Deferred Premium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum standard deferred premium, presently established at $63 million per reactor per accident (but not to exceed $10 million in any one year), to $75.5 million per reactor per accident (but not to exceed $10 million in any one year), in accordance with the aggregate percentage change of 19.9 percent in the Consumer Price Index (CPI) from August 1988 through March 1993.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone (301) 504-1289.

SUPPLEMENTARY INFORMATION: Section 15 of Public Law 100-408, the Price-Anderson Amendments Act of 1988 ("the Act") enacted on August 20, 1988, requires the Commission to adjust the maximum standard deferred premium (presently $63 million) for inflation. Section 15 added a new Section 170t. to the Atomic Energy Act of 1954, as amended ("AEAct"). Section 170t. provides as follows:

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b.(1) [Section 170b.(1) of the AEAct] not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988 in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection. (2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

The inflation adjustment required by Section 170t.(1)(A) of the AEAct must be in accordance with the aggregate percentage change (since August 1988) in the Consumer Price Index (CPI) for all urban consumers published by the Secretary of Labor. The aggregate percentage increase in the CPI from August 1988 through March 1993 is 19.9 percent. This number is derived by dividing the September 1988 CPI index by the March 1993 CPI index. The new maximum standard deferred premium, computed by multiplying $63 million by 0.199 and adding the product to $63 million, will be $75.5 million. Therefore, as of August 20, 1993, 10 CFR 140.11(a)(4) will require that large nuclear power plant licensees maintain, in addition to $200 million in primary financial protection, a new maximum standard deferred premium of $75.5 million per reactor per accident (but not to exceed $10 million in any one year).

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 1998, and will be based on the incremental change in the CPI since March 1993.

Because this inflation adjustment by the Commission is essentially ministerial in nature (e.g., multiplying $63 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to $63 million), the Commission finds that there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as unnecessary. In view of the impending statutory deadline for implementing this change to its regulations, the Commission finds that there exists good cause for making the rule effective on August 20, 1993 (less than 30 days after publication of the final rule in the Federal Register).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0039.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 116 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administration (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) because it is statutorily required. Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (as amended), and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 140:

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

2. Section 140.11(a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by § 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $75,500,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

Dated at Rockville, Maryland this 2nd day of August, 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 93–19222 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Praziquantel Tablets and Injectable Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Miles, Inc., Agriculture Division, Animal Health Products. The supplements provide for the use of 34 milligram (mg) DRONCIT® (Praziquantel) Canine Cestocide Tablet and 5.68 percent Injectable Cestocide for dogs and cats for removal and control of *Echinococcus multilocularis* in dogs.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8614.

SUPPLEMENTARY INFORMATION: Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, filed two supplemental NADA's, NADA 111–607 provides for veterinary prescription use of Droncit® (Praziquantel) 5.68 percent Injectable Cestocide for dogs and cats. NADA 111–798 provides for veterinary prescription use of 34 mg Droncit® (Praziquantel) Canine Cestocide Tablet. The supplements provide for the removal and control of *Echinococcus multilocularis* in addition to use for removal of *Dipylidium caninum*, *Taenia pisiformis*, and *Echinococcus granulosus* in dogs. The supplemental NADA's are approved as of July 16, 1993. The regulations are amended in §§ 520.1870(c)(1)(i) and 522.1870(c)(1)(ii) to reflect the approvals. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of

safety and effectiveness data and information submitted to support these approvals may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals qualify for 3 years of marketing exclusivity for removal and control of *E. multilocularis* in dogs beginning July 16, 1993, because the supplements contain reports of new clinical or field investigations (other than bioequivalence studies) essential to the approvals and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (see above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1870 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 520.1870 Praziquantel tablets.

* * * * *

(c) * * *

(1) * * *

(i) *Indications for use.* For removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis*. If labeled for use by or on the order of a licensed veterinarian, for removal of the canine cestode *Echinococcus granulosus*, and for removal and control of the canine cestode *Echinococcus multilocularis*.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. Section 522.1870 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 522.1870 Praziquantel injectable solution.

* * * * *

(c) * * *

(1) * * *

(ii) *Indications for use.* For removal of canine cestodes *Dipylidium caninum*, *Taenia pisiformis*, and *Echinococcus granulosus*, and removal and control of canine cestode *Echinococcus multilocularis*.

* * * * *

Dated: August 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–19300 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Terramycin® (Oxytetracycline Hydrochloride) Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc., that provide for the safe and effective use of oxytetracycline hydrochloride (OTC HCl) soluble powder in the drinking water of chickens, turkeys, swine, cattle, and sheep, and in food for honey bees for the control and treatment of specific diseases caused by bacteria susceptible to oxytetracycline. One supplement reflects compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group's evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation. The other supplement provides for the establishment of a tolerance for residues of OTC in edible sheep tissues.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to its approved NADA 8–622 which covers several Terramycin® Soluble Powder products to provide for use as follows: (1) 10 milligrams (mg) of OTC HCl per pound of body weight daily (up to 14 days) in swine, cattle, and sheep for the control and treatment of specific bacterial diseases; (2) various concentrations in the drinking water of chickens and turkeys depending on the particular bacterial disease; and (3) 200 mg per colony in food for honey bee for control and treatment of American and European foul brood caused by *Bacillus larvae* in accordance with 21 CFR 520.1660d as amended.

The application was originally approved September 17, 1952. The drug was the subject of an NAS/NRC Drug Efficacy Study Implementation (DESI) evaluation of effectiveness (DESI 8622V) and the findings were published in the **Federal Register** of May 5, 1970 (35 FR 7089). NAS/NRC evaluated the drug as effective for use in the treatment of hexamitiasis. It evaluated the drug as "probably effective" when used for the control and treatment of specific diseases of livestock and poultry and concluded that use may result in faster gains and improved feed efficiency under appropriate conditions.

NAS/NRC concluded that:

1. Labels and package inserts require extensive revision. There is inadequate documentation of claims, excessive claims are made, and bold conclusions are reached in the absence of sufficient controlled experimental evidence.

2. Claims for growth promotion or stimulation are not allowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions."

3. Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)" and if the disease cannot be so qualified the claim must be dropped.

4. The label claims "for prevention of" or, "to prevent" should be replaced with "as an aid in the control of" or, "to aid in the control of."

5. The label claim pertaining to egg production and hatchability should be modified to read, "May aid in maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic organisms."

6. The labels should carry a warning that treated animals under the conditions that prevail must actually consume sufficient medicated water, or medicated feed, to constitute a therapeutic dose. As a precaution the labels should state what the desired oral dose is in terms of animal weight per day for each species to serve as a guide to effective use of the preparations in drinking water or feed.

7. The labels should declare the dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

FDA concurred with the NAS/NRC findings and in addition concluded:

1. The claims for hecamitiasis should be included under the susceptible host.

2. Appropriate claims regarding faster weight gains and improved feed efficiency should be stated as "For increased rate of weight gain and improved feed efficiency for (under appropriate conditions of use)."

3. The phrase "* * * cannot be so qualified * * *" in NAS/NRC's third conclusion is interpreted to mean "is not supported by adequate data."

FDA then proceeded to review all available data relating to the effectiveness of products subject to NADA 8–622 to determine which label claims were supported by the requisite proof of effectiveness. That review resulted in FDA issuing a letter dated February 19, 1982, to Pfizer in which the agency stated that it had concluded the data supported effectiveness for the control and treatment of one or more bacterial diseases susceptible to OTC HCl in poultry, cattle, swine, sheep, and honey bees.

Subsequently, Pfizer complied with the NAS/NRC/DESI evaluation and FDA's conclusions by submitting a supplemental application which revised its labeling as follows:

1. The appropriate oral dose of 10 mg per pound of body weight daily in each species (swine, cattle, and sheep) has been incorporated in the labeling.

2. Claims for growth promotion or feed efficiency are not included.

3. Each disease claim on the label has been properly qualified with the appropriate genus and species name susceptible to OTC HCl. Disease claims which were not so qualified have been deleted.

4. Claims made for prevention have been revised to read "Control of * * *" where appropriate.

5. Claims for egg production and hatchability are not included.

6. The manufacturer's label carries the warning statement that treated animals must have the medicated water adjusted to compensate for variation in age and the weight of the animal, the nature and severity of disease signs, and environmental temperature and humidity, each of which affects water consumption.

7. The labels carry the appropriate dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

The NAS/NRC evaluation of the drug was concerned only with effectiveness and safety of the drug for the treated animal and does not take into account the safety of food derived from drug-treated animals. FDA's approval of the supplemental application did not involve a reevaluation or reaffirmation of the human food safety data in the parent application.

Therefore, the regulations are amended in 21 CFR 520.1660d by adding new paragraphs (e)(1)(iii) through (e)(1)(v) and (e)(2) to reflect approval of the supplemental NADA. Section 520.1660d is also amended by revising paragraph (a) to state the concentration of OTC HCl in the drug product in terms of the weight of soluble powder that contains one gram of OTC HCl. Currently, two packets are listed so that the concentration of OTC HCl is stated based on the net contents, but Pfizer has packets with six net contents and their addition would make the list of products in paragraph (a) too long. The section is further amended by revising paragraph (b) to link the listed drug sponsors with their drug packets or pails containing various concentrations of OTC HCl. Finally, the regulations are amended in 21 CFR 556.500 to reflect approval of the supplemental NADA providing for establishment of a tolerance for residues of OTC in edible sheep tissues. The supplements are approved as of July 9, 1993.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockyille, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant were not required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1660d is amended by revising paragraphs (a) and (b) and by adding new paragraphs (e)(1)(iii) through (e)(1)(v) and (e)(2) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) *Specifications.* The drug is a soluble powder distributed in packets or pails having several concentrations of oxytetracycline hydrochloride (independent of the various net weights) as follows:

(1) Each 18.14 grams of powder contains 1 gram of oxytetracycline hydrochloride (OTC HCl) (packets: 4, 6.4, and 16 oz.);

(2) Each 4.43 grams of powder contains 1 gram of OTC HCl (packets: 4 and 16 oz.);

(3) Each 1.32 grams of powder contains 1 gram of OTC HCl (packets: 2.39, 4.78, and 9.55 oz.);

(4) Each 2.73 grams of powder contains 1 gram of OTC HCl (packets: 2.46 and 9.87 oz).

(b) *Sponsor.* See sponsor numbers in § 510.600(c) of this chapter as follows:

(1) No. 000069 for use of OTC HCl concentrations in paragraphs (a)(1), (a)(2), and (a)(3) of this section in

chickens, turkeys, swine, cattle, sheep, and honey bees.

(2) No. 017144 for use of OTC HCl concentration in paragraph (a)(4) of this section in chickens and turkeys.

(3) No. 054273 for use of OTC HCl in turkeys.

* * * * *

(e) * * *

(1) * * *

(iii) *Swine*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline. For breeding swine: Control and treatment of leptospirosis (reducing the incidence of abortions and shedding of leptospira) caused by *Leptospira pomona* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more that 14 consecutive days. Use as a sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(iv) *Calves, beef cattle, and nonlactating dairy cattle*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(v) *Sheep*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(2) It is used in the food of honey bees as follows:

(i) *Amount.* 200 milligrams per colony, administered via either a 1:1 sugar syrup (equal parts of sugar and water weight to weight) or dusting with a powdered sugar mixture.

(ii) *Indications for use.* Control and treatment of American and European foul brood caused by *Bacillus larvae* susceptible to oxytetracycline.

(iii) *Limitations.* The drug is administered in 3 applications of sugar syrup or 3 dustings at 4- to 5-day intervals. The drug should be fed early in the spring or fall and consumed by the bees before main honey flow begins to avoid contamination of production honey. Remove at least 6 weeks prior to main honey flow.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.500 is amended by adding new paragraph (e) to read as follows:

§ 556.500 Oxytetracycline.

* * * * *

(e) 0.1 part per million in uncooked edible tissues of sheep.

Dated: August 2, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–19301 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 156

[DoD Directive 5200.2]

Department of Defense Personnel Security Program (DoDPSP)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part revises 32 CFR part 156 to update policies regarding standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the Directive since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Nelson, telephone (703) 697–3969 or DSN 227–3969.

SUPPLEMENTARY INFORMATION: The Department of Defense published the proposed rule of this part on June 10, 1991 (56 FR 26634). It has been certified that the rule is not subject to Executive Order 12291, "Federal; Regulation", because the rule does not:

(1) Have an annual effect of the economy of $100 million or more.

(2) Cause a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

It has been certified that the rule is not subject to Public Law 96–354, "Regulatory Flexibility Act", because the rule promulgates standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the part since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development. It has been certified that the rule is not subject to Public Law 96–511, "Paperwork Reduction Act", because the rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 156

Government employees, security measures.

Accordingly, 32 CFR Part 156 is revised to read as follows:

PART 156—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM (DoDPSP)

Sec.

156.1 Purpose.
156.2 Applicability and scope.
156.3 Policy
156.4 Responsibilities.

Authority: 50 U.S.C. 781.

§ 156.1 Purpose.

This part:

(a) Updates the policy and responsibilities for the DoDPSP under Pub. L. 81–832; E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12333, 46 FR 59941,

3 CFR, 1981 Comp., p.200; and E.O. 12356, 47 FR 14874 and 15557, 3 CFR 1982 Comp., p. 166.

(b) Continues to authorize the publication of DoD 5200.2–R[1] in accordance with DoD 5025.1–M.[2]

§ 154.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies, except as provided for the National Security Agency (NSA) in paragraph (b) of this section (hereafter referred to collectively as "the DoD Components").

(b) The NSA is exempt from the provisions of this Directive. The personnel security program for the NSA is implemented pursuant to DoD Directive 5210.45,[3] and internal regulations of the NSA.

(c) DoD military and civilian personnel, consultants to the Department of Defense, contractors cleared under the Defense Industrial Security Program (DISP) Regulations DoD 5220.22[4] and others affiliated with the Department of Defense.

§ 156.3 Policy.

It is DoD policy that:

(a) No person shall be appointed as a civilian employee of the Department of Defense, accepted for entrance into the Armed Forces of the United States, authorized access to classified information, or assigned to duties that are subject to investigation under this part unless such appointment, acceptance, clearance, or assignment is clearly consistent with the interests of national security.

(b) A personnel security clearance shall be granted and assignment to sensitive duties shall be authorized only to U.S. citizens. As an exception, a non-U.S. citizen may, by an authorized official (as specified in 32 CFR part 154) be assigned to sensitive duties or granted a Limited Access Authorization for access to classified information if there is a need for access in support of a specific DoD program, project, or contract.

(c) The personnel security standard that shall be applied in determining a person's eligibility for a security clearance or assignment to sensitive duties is whether, based on all available information, the person's allegiance, trustworthiness, reliability, and judgment are such that the person can reasonably to expected to comply with Government policy and procedures for safeguarding classified information and performing sensitive duties.

(d) 32 CFR part 154 shall identify those positions and duties that require a personnel security investigation (PSI). A PSI is required for:

(1) Appointment to a sensitive civilian position.

(2) Entry into military service.

(3) The granting of a security clearance or approval for access to classified information.

(4) Assignment to other duties that require a personnel security or trustworthiness determination.

(5) Continuing eligibility for retention of a security clearance and approval for access to classified information or for assignment to other sensitive duties.

(e) 32 CFR part 154 shall contain personnel security criteria and adjudicative guidance to assist in determining whether an individual meets the clearance and sensitive position standards referred to in paragraphs (a) and (c) of this section.

(f) No unfavorable personnel security determination shall be made except in accordance with procedures set forth in 32 CFR part 154 or 32 CFR part 155 or as otherwise authorized by law.

§ 156.4 Responsibilities.

(a) The *Assistant Secretary of Defense for Command, Control, Communications, and Intelligence* shall:

(1) Be responsible for overall policy, guidance, and control of the DoDPSP.

(2) Develop and implement plans, policies, and procedures for the DoDPSP.

(3) Issue and maintain DoD 5200.2–R consistent with DoD 5025.1–M.

(4) Conduct an active oversight program to ensure compliance with DoDPSP requirements.

(5) Ensure that research is conducted to assess and improve the effectiveness of the DoDPSP (DoD Directive 5210.79[5]).

(6) Ensure that the Defense Investigative Service is operated pursuant to 32 CFR part 361.

(7) Ensure that the DoD Security Institute provides the education, training, and awareness support to the DoDPSP under DoD Directive 5200.32.[6]

(8) Be authorized to make exceptions to the requirements of this part on a case-by-case basis when it is determined that doing so furthers the mission of the Department of Defense and is consistent with the protection of classified information from unauthorized disclosure.

(b) The *General Counsel of the Department of Defense* shall:

(1) Be responsible for providing advice and guidance as to the legal sufficiency of procedures and standards implementing the DoDPSP and the DISP.

(2) Exercise oversight of PSP appeals procedures to verify that the rights of individuals are being protected consistent with the constitution, laws of the United States, Executive Orders, Directives, or Regulations that implement the DoDPSP and DISP, and with the interests of national security.

(c) The *Heads of the DoD Components* shall:

(1) Designate a senior official who shall be responsible for implementing the DoDPSP within their components.

(2) Ensure that the DoDPSP is properly administered under this Directive within their components.

(3) Ensure that information and recommendations are provided to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence on any aspect of the program.

Dated: August 6, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19304 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

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[1] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA. 22161.

[2] See footnote 1 to 156.1(b).

[3] See footnote 1 to 156.1(b).

[4] See footnote 1 to 156.1(b).

[5] See footnote 1 to 156.1(b).

[6] See footnote 1 to 156.1(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD09–93–031]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard hereby provides notice that the City of Chicago has been granted permission to temporarily deviate from regulations governing the opening of certain drawbridges over the Chicago River, from August 1 through September 29, 1993, for the purpose of further evaluating the reasonableness of possible changes to the permanent regulations. This deviation reduces the periods during which the City must

open the draws for recreational vessels, requires the vessels to give advance notice, and allows vessels transiting to and from the boatyards for necessary repairs and service to pass through the draws of the bridges during designated days and times and to pass without regard to a maximum or minimum number of vessels for each trip. The City has requested this deviation to reduce the frequency with which it must open its drawbridges. This deviation is experimental in nature and is intended to provide the Coast Guard with evaluation periods from which to test the reasonableness of the current regulatory structure.

EFFECTIVE DATE: The period of deviation begins on Sunday, August 1, 1993, and continues through Wednesday, September 29, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to Room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name and address, this docket number (CGD09–93–031), the basis for each comment, and the specific provisions of the deviation to which each comment applies. If acknowledgement of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a Notice of Proposed Rulemaking which will again request comments. A public hearing might also be held.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert W. Bloom, Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Background and Purpose

The bridges owned and operated by the City of Chicago are presently governed in accordance with 33 CFR 117.39, which states that most bridges will open on signal, with the exception of certain bridges that need not open unless advance notice is given of a vessel's time of intended passage. Additionally, the current regulation authorizes the City to not open the draws during peak vehicle traffic periods, i.e. morning and afternoon rush hours.

There are two vessel traffic periods, breakout and return, when there are as many as five to twenty-five boats on given days, leaving boatyards through the Chicago River system in the spring and then returning in the fall. During the summer period, the boat traffic in the Chicago area consists only of recreational vessels, and vessels in need of repair which are returning to the yards on a temporary basis.

Thus, including the winter period, there appear to be four distinct periods in the Chicago River area, during which the need for bridge openings changes substantially. Therefore, it might be appropriate for the bridge regulations to vary by these four seasons.

The City requested that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there were a special event on these days, during which time a bridge would not be required to open at all for vessel traffic to pass. In addition, the City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System.

A series of deviations has been granted to the City in order to evaluate the reasonableness of possible changes to the permanent regulations. The Coast Guard previously granted two temporary deviations to the regulations for bridges owned and operated by the City of Chicago.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the **Federal Register**, FR 27933 and 27934, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of vessels consisting of no less than five and not more than twenty-five boats; on Tuesdays and Thursdays the draws were required to open for the passage of vessels consisting of no less than five and not more than twenty-five boats, from 6:30 p.m. until all organized trips had safely completed passage.

On Wednesday, June 16, 1993, the Coast Guard published a second temporary deviation in the **Federal Register**, FR 33191 and FR 33192, which changed the starting times for scheduled trips on Tuesdays and Thursdays to start one half-hour earlier, from 6:30 p.m. to 6 p.m., and added a Wednesday trip to the regulated periods when vessels would be allowed to pass through the draws of the bridges. Thus, bridge openings for scheduled trips started at 6 p.m. on Tuesdays, Wednesdays, and Thursdays.

This is the third temporary period of deviation being granted to the City of Chicago. The Tuesday and Thursday starting time of 6 p.m. for passage of inbound and outbound vessels requiring the bridges to open has not been changed.

Comments received as a result of the first two temporary deviations published in the **Federal Register**, Docket Number (CGD9–93–08) and (CGD9–93–20), indicated concern with vessels navigating on Lake Michigan at night and the danger of large numbers of vessels navigating the rivers at the same time. Therefore, the starting time for the passage of vessels on Wednesdays has been changed. The Wednesday openings will begin at 11 a.m. instead of 6 p.m. The new starting time of 11 a.m. on Wednesdays will provide recreational vessels with more daylight hours to navigate the river.

The previous deviation required the accumulation of not less than five and no more than twenty-five vessels in order to begin trips up or down the river and in order for the bridges to open. Traditionally, the Coast Guard has avoided enacting regulations which specify the type and number of vessels entitled to demand an opening. Moreover, there are only a small number of vessels transiting to and from the boatyards during the summer navigation season. Therefore, the previous deviation requirement that a particular number of vessels accumulate before bridges will open is eliminated. Nor is there a minimum number of vessels which must accumulate before a Saturday or Sunday opening. The times for the Saturday and Sunday transits have not been changed.

This deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of recreational vessels transiting the Chicago River System. A fourth deviation is anticipated for the return season. The entire series of deviations will provide the Coast Guard with evaluation periods from which to test the reasonableness of the city's cited needs and the current regulatory structure.

Deviation: Notice is hereby given that:

(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation from the operating requirements at 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main Branch
Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch
Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch
Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, section 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago need not open for the passage of recreational vessels unless the City of Chicago receives a twenty-four hour advance notice for passage, and need not open for recreational vessels except during the following periods, subject to the conditions indicated:

(a) From 6 a.m. on Saturdays through 7 p.m. on Sundays, the draws shall open for the passage of incoming and outgoing vessels with no restrictions to the minimum and maximum number of vessels to be passed.

(b) On Tuesdays and Thursdays the draws shall open on signal for the passage of incoming and outgoing vessels from 6 p.m. until all vessels have safely completed passage. There shall be no restrictions as to the minimum or maximum number of vessels to be passed.

(c) On Wednesdays, the draws shall open on signal for the passage of incoming and outgoing vessels from 11 a.m. until all vessels have safely completed passage. There shall be no restrictions as to the minimum or maximum number of vessels to be passed.

(3) Notwithstanding this deviation, the City of Chicago, after receiving a minimum of twenty-four hours advance notice of the intended passage of vessels through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in good condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(4) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(5) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, Government vessels of the United States, State and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(6) This period of deviation is effective from Sunday, August 1, 1993, and continues through Wednesday, September 29, 1993.

Dated: July 28, 1993.

W. R. Wilkins,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 93–19427 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD01–93–009]

Drawbridge Operation Regulations, Hutchinson River (Eastchester Creek), NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Westchester County Department of Public Works, the Coast Guard is changing the regulations governing the South Fulton Avenue Bridge over the Hutchinson River (Eastchester Creek), at mile 2.9, between the City of Mount Vernon and the Town of Pelham, Westchester County, New York. These regulations provide that the draw open on signal from three hours before to three hours after high tide. This change is being made because of the decrease in requests to open the draw before and after low tide. At all other times, at least four hour advance notice for an opening is required. This action will relieve the bridge owner of having a person constantly available to open the draw during periods of low tide while still providing for the needs of marine traffic.

EFFECTIVE DATE: This rule becomes effective on September 13, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Waverly W. Gregory, Jr., Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

Regulatory History

On May 10, 1993, the Coast Guard published proposed rules (58 FR 27504). concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1–804 dated May 7, 1993. Interested persons were given until June 24, 1993 to submit comments. The Coast Guard received one letter commenting on the proposal. The Coast Guard determined there was no need for a public hearing and none was held.

Background and Purpose

The final rule permits Westchester County to limit its drawtenders normal presence to six hours twice a day, coinciding with the high tide. For these purposes, predicted high tide is based on four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration. At all other times, Westchester County will provide openings if at least four hours advance notice is given. The four hours notice would not apply if a request for an opening within six hours after predicted high water is given to the bridge tender on station before he or she is scheduled to depart. As noted in the Notice of Proposed Rulemaking, the change includes provisions for clearance gauges on all bridges on this waterway to minimize openings and permit vessel operators to comply with § 117.11. The regulations would also define the maximum time delays for openings of railroad bridges as required by § 117.9. The regulations also update appendix A to part 117 to reflect the most current information regarding radiotelephone equipped bridges on this waterway, their call signs and frequency. These

changes are being made because of the decrease in requests for opening the draw around low tide. This action relieves the bridge owner of the having a person constantly available to open the draw during periods of low tide while still providing for the reasonable needs of navigation.

Discussion of Comments

One comment was received to Public Notice 1–804 from the Department of Planning City of New York concluding that the change in the regulations will have minimum impact on pedestrian and vehicular traffic.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 on Federal Regulation, and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that due to the shallow depth of the river, requests for openings of the bridge for commercial vessels are generally limited to periods around the high tide. Additionally, all the movable bridges on this waterway presently maintain clearance gauges, and the minor cost of providing and maintaining same would be offset by timely and reduced requests for openings and enhanced safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection and copying at Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, 33 CFR part 117 is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.793 is revised to read as follows:

§ 117.793 Hutchinson River (Eastchester Creek).

(a) The following requirements apply to all bridges across Hutchinson River (Eastchester Creek):

(1) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provision of § 118.160 of this chapter.

(2) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed ten minutes except as provided in § 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) Except as provided in paragraphs (b) and (c) of this section each draw shall open on signal.

(b) The draws of the Hutchinson River Parkway Bridge, mile 0.9, and the New England Thruway (I–95) Bridge, mile 2.2, both at New York City, shall open on signal if at least six hours notice is given.

(c) The draw of the South Fulton Avenue Bridge, mile 2.9, shall open on signal from three hours before to three hours after the predicted high tide. For the purposes of this section, predicted high tide occurs four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration (NOAA).

(1) At all other times, the bridge shall open on signal if at least four hours advance notice is given to the Westchester County Road Maintenance Division during normal work hours or to the County's Parkway Police at all other times.

(2) The bridge tender shall honor requests for opening within six hours after predicated high water if such request is given to the bridge tender while he or she is on station (three hours before to three hours after predicted high tide).

3. Appendix A to part 117 is amended to revise Hutchinson River entries under the State of New York to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•	•	•
New York:						
•	•	•	•	•	•	•
Hutchinson River.	0.4	New York City	Pelham Pkwy., New York City	KU 9758	13	13
	0.5	New York City	Pelham Bay, AMTRAK	KU 6095	13	13
	2.2	Eastchester	I–95, New England Thruway	KXS 298	13	13

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APPENDIX A TO PART 117.—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES—Continued

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	2.9	Eastchester	So. Fulton Ave, Westchester Co	KU 6089	13	13

Dated: July 29, 1993.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 93-19425 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 649

RIN 1840-AB67

Patricia Roberts Harris Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Patricia Roberts Harris Fellowship Program. These final regulations are needed to implement changes made by the Higher Education Amendments of 1992 (Pub. L. 102-325) enacted July 23, 1992. The regulations establish eligibility criteria, selection criteria, and other terms and conditions for awarding grants to institutions of higher education to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented in these programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles Miller. Telephone: (202) 708-8935. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Patricia Roberts Harris Fellowship Program supports National Education Goal Five, which calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This program furthers Goal Five objectives by enabling institutions of higher education to make available the benefits of master's level, professional, and doctoral education to women and individuals from minority groups underrepresented in these programs.

On March 1, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 11928). In addition, on March 24, 1993, the Secretary published a notice in the **Federal Register** (58 FR 15824) to correct an error in the NPRM by restoring language inadvertently omitted from the definition of "Minority" in § 649.6(b) of the proposed regulations. The major issues addressed by the NPRM are discussed in the preamble to the NPRM.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the NPRM, 86 parties submitted comments. An analysis of the comments and changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not always addressed.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 649

Colleges and universities, Education, Energy, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: August 6, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.094—Patricia Roberts Harris Fellowship Program.)

The Secretary amends title 34 of the Code of Federal Regulations by revising part 649 to read as follows:

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIP PROGRAM

Subpart A—General

Sec.

649.1 What is the Patricia Roberts Harris Fellowship Program?
649.2 Who is eligible for a grant?
649.3 What activities may the Secretary fund?
649.4 What funding reservations does the Secretary make for grants?
649.5 What regulations apply?
649.6 What definitions apply?

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

649.10 How does an institution of higher education apply for a grant?

Subpart C—How Does the Secretary Make a Grant for Master's Level and Professional Study Fellowships?

649.20 How does the Secretary evaluate an application?
649.21 What selection criteria does the Secretary use?
649.22 How does the Secretary establish priorities?

Subpart D—How Does the Secretary Make a Grant for Doctoral Study Fellowships?

649.30 How does the Secretary evaluate an application?
649.31 What selection criteria does the Secretary use?
649.32 How does the Secretary establish priorities?

Subpart E—How Are Fellows Selected?

649.40 How does an institution of higher education select fellows?
649.41 How does an individual apply for a fellowship?

Subpart F—What Are the Conditions and Components of a Fellowship?

649.50 What are the conditions and components of a fellowship for master's level or professional degree study?
649.51 What are the conditions and components of a fellowship for doctoral study?
649.52 What fellowship conditions apply?

Subpart G—What Are the Administrative Responsibilities of the Institution?

649.60 What is the amount of a stipend?
649.61 How does the Secretary make an institutional payment?
649.62 What are the Secretary's payment procedures?
649.63 How does the institution disburse and return funds?
649.64 What records and reports are required from the institution?
Appendix to Part 649—Academic Areas

Authority: 20 U.S.C. 1134, 1134d–1134g, unless otherwise noted.

Subpart A—General

§ 649.1 What is the Patricia Roberts Harris Fellowship Program?

(a) The Patricia Roberts Harris Fellowship Program provides, through institutions of higher education, grants to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented.

(b) Each individual recipient of a fellowship under this program is to be known as a Patricia Roberts Harris Graduate Fellow.

(Authority: 20 U.S.C. 1134d)

§ 649.2 Who is eligible for a grant?

Institutions of higher education, offering a program of post-baccalaureate study leading to a master's level, professional, or doctoral degree, other than schools or departments of divinity, are eligible to receive grants under this program.

(Authority: 20 U.S.C. 1134, 1134e)

§ 649.3 What activities may the Secretary fund?

(a) The Secretary makes grants to institutions of higher education to enable the institutions to provide fellowships in master's level, professional, and doctoral education programs.

(b)(1) In awarding fellowships for master's level and professional study, the institution must give priority to one or more of the following groups—

(i) Women who are pursuing master's level or professional study in academic fields in which they are underrepresented;

(ii) Individuals from minority groups who are pursuing master's level or professional study in academic fields in which they are underrepresented;

(iii) Women who are pursuing master's level study leading to careers that serve the public interest; or

(iv) Individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

(2) In awarding fellowships for doctoral study, the institution must give priority to one or more of the following groups—

(i) Women undertaking doctoral study; or

(ii) Individuals from traditionally underrepresented groups undertaking doctoral study.

(Authority: 20 U.S.C. 1134e)

§ 649.4 What funding reservations does the Secretary make for grants?

The Secretary reserves—

(a) Fifty percent of the funds appropriated for this program to make grants for projects that provide fellowships for master's level or professional study; and

(b) Fifty percent of the funds appropriated for this program to make grants for projects that provide fellowships for doctoral study.

(Authority: 20 U.S.C. 1134e)

§ 649.5 What regulations apply?

The following regulations apply to the Patricia Roberts Harris Fellowship Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 649.

(Authority 20 U.S.C. 1134, 1134d–g)

§ 649.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Grant
Nonprofit
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Academic field means an area of study in a professional school, academic department, or similar organizational unit within an institution of higher education.

Academic year means the 12-month period beginning with the fall instructional term of the institution.

Careers that serve the public interest means careers in government or in nonprofit community service organizations at the local, State, national, or international level.

Department means any department, program, unit or any other administrative subdivision of an institution of higher education that—

(i) Directly administers or supervises postbaccalaureate instruction in a specific discipline; and

(ii) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Doctoral study means a postbaccalaureate program of study leading to a degree in any academic field of graduate study that requires a dissertation.

Fellow means a recipient of a fellowship under this part.

Fellowship means an award made by an institution of higher education to an individual for master's level, professional, or doctoral study under this part.

Financial need means the fellow's financial need, as determined under

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part F of title IV of the HEA, for the period of the fellow's enrollment.

HEA means the Higher Education Act of 1965, as amended.

Institution means an institution of higher education.

Institution of higher education means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Institutional payment means the amount paid by the Secretary to the institution of higher education in which the fellow is enrolled to be applied against the tuition and fees required of the fellow by the institution in support of the fellow's instructional program.

Inter-discipline means a course of study that involves academic fields in two or more disciplines.

Master's level study means a postbaccalaureate program of study leading to a master's degree in any academic field of graduate study.

Minority means Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, Pacific Islander, or other ethnic group underrepresented in master's level, professional, or doctoral study as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary.

Professional study means—

(i) A postbaccalaureate program of study leading to a degree required for admission to practice a profession; or

(ii) Any post-master's or doctoral degree that does not require a dissertation.

Project means the activities necessary to assist, whether from grant funds or institutional resources, the fellows in the successful completion of their designated educational programs.

Satisfactory progress means that the fellow meets or exceeds the institution's criteria and standards established for all graduate students' continued status as applicants for the graduate degree and in the academic field for which the fellowship was awarded.

School or department of divinity means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation, or to prepare them to teach theological subjects.

Stipend means the amount paid by the institution to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

Traditionally underrepresented groups means minorities and other groups that historically have been underrepresented in doctoral study.

Underrepresented means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population—

(i) As indicated by—

(A) The most current edition of the Department's *Digest of Educational Statistics;*

(B) The National Research Council's *Doctorate Recipients from United States Universities;* or

(C) Other standard statistical references, as announced annually in the **Federal Register** notice inviting applications for new awards under this program; or

(ii) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

U.S. National means—

(i) A citizen of the United States; or

(ii) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 20 U.S.C. 1134, 1134d–g)

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

§ 649.10 How does an institution of higher education apply for a grant?

(a) To apply for a grant under this part, an institution of higher education must submit an application that responds to the appropriate selection criteria in §§ 649.21 and 649.31.

(b) An institution of higher education's application must describe how the institution will select eligible individuals to receive fellowships. This description must include procedures that ensure that—

(1) The selected individuals will have the capability to achieve the academic goals of the fellowship; and

(2) The institution will give priority to members of one or more of the groups to which priority must be given under § 649.3(b)(1).

(c) An institution of higher education may apply for a grant under this part for the following types of fellowships:

(1) Master's Level and Professional Study Fellowships.

(2) Doctoral Study Fellowships.

(d) An institution of higher education may submit no more than one application for new awards for Master's Level and Professional Study Fellowships and no more than one application for new awards for Doctoral Study Fellowships in a given application period.

(Approved by the Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134e)

Subpart C—How Does the Secretary Make a Grant for Master's Level and Professional Study Fellowships?

§ 649.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for master's level and professional study fellowships on the basis of the criteria in § 649.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1134e)

§ 649.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institution-wide criteria.*—(1) *Institutional commitment.* (15 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of the students who are members of the group or groups to which the institution proposes to give priority in accordance with § 649.3(b)(1), including consideration of—

(i) Evidence that the institution's social and academic environment is supportive of the academic success of students who are members of the priority group or groups;

(ii) The availability of other sources of financial aid and support for students who are members of the priority group or groups; and

(iii) The employment of women or individuals from minority groups or both, depending on the group or groups to which the institution proposes to give priority, among the administrators and faculty in the institution.

(2) *Recruitment plan.* (10 points)

(i) The Secretary reviews each application for information that describes the applicant's recruitment plan.

(ii) The Secretary looks for information that shows—

(A) The applicant's active and aggressive efforts, previous and current, to identify and attract students who are members of the group or groups to which the applicant proposes to give priority.

(B) The applicant's previous and current efforts in successfully preparing

students from the group or groups to which the applicant proposes to give priority for careers in which members of those groups are underrepresented; and

(C) The applicant's success in providing students with access to careers in which women and minority groups are underrepresented.

(3) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the general institutional resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(4) *Grant management.* (5 points) The Secretary reviews each application to determine the applicant's ability to provide overall administration of the grant award, including providing assistance to and oversight of the project director.

(5) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's evaluation methods—

(i) Relate to the specific goals and measurable objectives of the project;

(ii) Include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; and

(iii) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis.

(b) *Academic field criteria.*—(1) *Meeting the purpose of the authorizing statute.* (8 points) The Secretary reviews each application to determine how well each academic field within the project will meet the purpose of the authorizing statute, including the extent to which—

(i) The applicant describes the general and specific objectives of the project with respect to each academic field that are realistic and measurable; and

(ii) The objectives of the project with respect to each academic field further the purposes of the authorizing statute by assisting in making available the benefits of master's level and professional education programs to one or more of the groups listed in § 649.3(b)(1) of this part.

(2) *Extent of need for the project within each academic field.* (10 points) The Secretary reviews each application to determine the extent to which the project, within each academic field, will meet the specific graduate preparation and career-access needs of the group or groups to which the applicant proposes to give priority, including consideration of—

(i) The needs of the applicant within each academic field that are addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project within each academic field; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (10 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, with respect to each academic field, including—

(i) The quality of the design of the project with respect to each academic field;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project within each academic field;

(iii) How well the objectives of the project within each academic field relate to the purpose of the program;

(iv) How well the project activities of each academic field within the project are described and the potential of those activities to achieve project objectives in a cost-effective manner;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except as necessary to implement the priority or priorities established in accordance with the requirements of § 649.3(b)(1).

(4) *Quality of the academic program.* (15 points) The Secretary reviews each application to determine the quality of the current academic program for each academic field within the project, including—

(i) The course offerings and academic requirements for the academic program; and

(ii) The focus on, and capability for, research or teaching.

(5) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (2 points);

(B) The qualifications of the key faculty to be used for the project in each academic field (6 points);

(C) The time that each person referred to in paragraphs (b)(5)(i) (A) and (B) of this section will commit to the project (2 points); and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan (2 points).

(ii) To determine personnel qualifications under paragraphs (b)(5)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in areas related to the objectives of the project or the relevant academic field within the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, with respect to each academic field, including facilities, equipment, and supplies.

(Approved by Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134e)

§ 649.22 How does the Secretary establish priorities?

(a)(1) The Secretary gives an absolute preference to applicants proposing to provide fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level or professional study and are underrepresented in the academic field for which the grant award is made.

(2) The Secretary announces the absolute preference annually in the **Federal Register** notice inviting applications for new awards under this program.

(b)(1) The Secretary gives a competitive preference of one point to applicants proposing to provide fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level study leading to careers that serve the public interest.

(2) This point is in addition to any points the applicant earns under the selection criteria for the program.

(c)(1) The Secretary gives an absolute preference to applicants proposing to provide fellowships in academic career fields of high national priority as established by the Secretary from among one or more of the academic areas listed in the appendix to this part or the resulting subdisciplinary or interdisciplinary academic areas.

(2) The Secretary announces the absolute preference annually in the **Federal Register** notice inviting applications for new awards under this program.

(Authority: 20 U.S.C. 1134d, 1134e)

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Subpart D—How Does the Secretary Make a Grant for Doctoral Study Fellowships?

§ 649.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for doctoral study fellowships on the basis of the criteria in § 649.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1134e)

§ 649.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institution-wide criteria.*—(1) *Institutional commitment.* (15 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of the students who are members of the group or groups to which the institution proposes to give priority in accordance with the requirements of § 649.3(b)(2), including consideration of—

(i) Evidence that the institution's social and academic environment is supportive of the academic success of students who are members of the priority group or groups;

(ii) The availability of other sources of financial aid and support for students who are members of the priority group or groups; and

(iii) The employment of women or individuals who are from minority groups or both, depending on the group or groups to which the institution proposes to give priority, among the administrators and faculty in the institution.

(2) *Recruitment plan.* (10 points)

(i) The Secretary reviews each application for information that describes the applicant's recruitment plan.

(ii) The Secretary looks for information that shows—

(A) The applicant's active and aggressive efforts, previous and current, to identify and attract qualified students who are members of the group or groups to which the applicant proposes to give priority;

(B) The applicant's previous and current efforts in successfully preparing students who are members of the group or groups to which the applicant proposes to give priority for careers in which members of the group or groups are underrepresented; and

(C) The applicant's success in providing students with access to careers in which women and minority groups are underrepresented.

(3) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the general institutional resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(4) *Grant management.* (5 points) The Secretary reviews each application to determine the applicant's ability to provide overall administration of the grant, including providing assistance to and oversight of the project director.

(5) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the applicant's evaluation methods—

(i) Relate to the specific goals and measurable objectives of the project;

(ii) Include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; and

(iii) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis.

(b) *Academic field criteria.*—(1) *Meeting the purpose of the authorizing statute.* (8 points) The Secretary reviews each application to determine how well the project will meet the purpose of the authorizing statute, with respect to each academic field, including the extent to which—

(i) The applicant describes the general and specific objectives of the project with respect to each academic field that are realistic and measurable; and

(ii) The objectives of the project, with respect to each academic field, further the purposes of the authorizing statute by assisting in making available the benefits of doctoral education programs to member of the group or groups to which the applicant proposes to give priority.

(2) *Extent of need for the project within each academic field.* (5 points) The Secretary reviews each application to determine the extent to which the project, within each academic field, will meet the specific graduate preparation and career-access needs of the group or groups to which the applicant proposes to give priority, including consideration of—

(i) The needs of the applicant addressed by the project within each academic field;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project within each academic field; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (5 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, with respect to each academic field, including—

(i) The quality of the design of the project, with respect to each academic field;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project within each academic field;

(iii) How well the objectives of the project within each academic field relate to the purpose of the program;

(iv) How well the project activities within each academic field are described and the potential of those activities to achieve project objectives in a cost-effective manner;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except as necessary to implement the priority or priorities established in accordance with the requirements of § 649.3(b)(2).

(4) *Quality of the academic program.* (15 points) The Secretary reviews each application to determine the quality of the current academic program for each academic field within the project, including—

(i) The course offerings and academic requirements for the academic program; and

(ii) The focus on, and capacity for, research or teaching.

(5) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (2 points);

(B) The qualifications of each of the key faculty to be used on the project in each academic field (6 points);

(C) The time that each person referred to in paragraphs (b)(5)(i) (A) and (B) of this section will commit to the project (2 points); and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan (2 points).

(ii) To determine personnel qualifications under paragraphs (b)(5)(i)

(A) and (B) of this section, the Secretary considers—

(A) Experience and training in areas related to the objectives of the project or the relevant academic field within the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Institutional support.* (10 points)

(i) The Secretary reviews each application to determine the adequacy of the applicant's plans to provide two years of support for each fellow, immediately following the second year of fellowship support, including at least one year of supervised teaching.

(ii) In reviewing the applicant's plan of support for the fellows, the Secretary considers—

(A) The applicant's financial support for each fellow; and

(B) The applicant's plan for the supervision of each fellow's teaching assignment.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, with respect to each academic field, including facilities, equipment, and supplies.

(Approved by Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134e, 1134f)

§ 649.32 How does the Secretary establish priorities?

(a) The Secretary gives an absolute preference to applicants proposing to provide fellowships in the award of which priority is given to members of one or more of the groups identified in § 649.3(b)(2).

(b) The Secretary gives an absolute preference to applicants proposing to provide fellowships in academic career fields of high national priority as established by the Secretary from among one or more of the academic areas listed in the appendix to this part or the resulting subdisciplinary or interdisciplinary academic areas.

(c) The Secretary announces the absolute preferences annually in the **Federal Register** notice inviting applications for new awards under this program.

(Authority: 20 U.S.C. 1134d, 1134e)

Subpart E—How Are Fellows Selected?

§ 649.40 How does an institution of higher education select fellows?

(a) In selecting individuals to receive master's level and professional study fellowships, the institution of higher education shall—

(1) Give priority to members of one or more of the groups identified for priority in § 649.3(b)(1); and

(2) Select only individuals who –

(i) Have been accepted for or are enrolled in a program of study leading to a master's level or professional degree in the academic field for which the institution received a grant;

(ii) Plan to pursue an academic or professional career in the academic field of study for which the institution received the grant;

(iii)(A) Are nationals of the United States;

(B) Are in the United States for other than a temporary purpose and intend to become permanent residents; or

(C) Are permanent residents of the Trust Territory of the Pacific Islands; and

(iv) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(b) In selecting individuals to receive doctoral study fellowships, the institution of higher education shall—

(1) Give priority to members of one or more of the groups identified for priority in § 649.3(b)(2); and

(2) For doctoral study fellowships other than doctoral study leading to an academic career, select only individuals who—

(i) Have been accepted for or are enrolled in a program of study leading to a doctoral degree in the academic field for which the institution received a grant;

(ii) Plan to pursue a professional career in the academic field of study for which the institution received the grant;

(iii)(A) Are nationals of the United States;

(B) Are in the United States for other than a temporary purpose and intend to become permanent residents; or

(C) Are permanent residents of the Trust Territory of the Pacific Islands; and

(iv) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337); and

(3) For fellowships for doctoral study leading to an academic career, select only individuals who—

(i) Have been accepted for or are enrolled in a program of study leading to a doctoral degree in the academic field for which the institution received a grant;

(ii) Plan to pursue an academic career in the academic field of study for which the institution received the grant;

(iii) Are citizens of the United States; and

(iv) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(Authority: 20 U.S.C. 1134, 1134e, 1134f)

§ 649.41 How does an individual apply for a fellowship?

An individual must apply directly to an institution of higher education that has received a grant.

(Authority: 20 U.S.C. 1134e)

Subpart F—What Are the Conditions and Components of a Fellowship?

§ 649.50 What are the conditions and components of a fellowship for master's level or professional degree study?

(a) An award for a fellowship for a master's level or professional degree program of study is for the normal period of time for completing the program or a total of three years, whichever is less.

(b) A fellow may apply to the Secretary for an additional period of fellowship support of up to 12 months. The fellow's application must include—

(1) The specific facts detailing the reasons why the additional period of support is necessary;

(2) A certification by the institution that it is aware of the fellow's application and that the fellow has attained satisfactory progress in the fellow's academic studies; and

(3) A recommendation from the institution that the additional period of fellowship support of up to 12 months is necessary.

(c) The institution shall request approval for the additional support in its third-year noncompeting continuation application, as required under 34 CFR 75.253 for multiyear project periods.

(Approved by the Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134f)

§ 649.51 What are the conditions and components of a fellowship for doctoral study?

(a) An award for a fellowship for doctoral study is for a total of three years, consisting of not more than two years of fellowship support for study or research, and not more than one year of support for dissertation work, provided that the fellow has attained satisfactory progress prior to the dissertation stage.

(b) Following the two years of fellowship support for study or research, the institution of higher education shall provide—

(1) Financial support in the amount of the fellow's financial need, as defined in § 649.6(b), or in an amount equal to the stipend awarded in the last year of fellowship support, whichever is less, for two years;

(2) A waiver of tuition and fees or an allowance on behalf of the fellow as full

payment of tuition and fees required of the fellow by the institution as part of the fellow's instructional program for two years; and

(3)(i) Teaching requirements for the fellow that equal those required of other graduate teaching assistants at that institution; and

(ii) Supervision of the fellow's teaching for one year.

(c) Following two years of institutional support, the institution must include in its application for the third year of fellowship support for the fellow's dissertation work a certification that—

(1) The institution has provided two years of institutional support;

(2) The fellow satisfactorily completed one year of supervised teaching; and

(3) The fellow satisfactorily completed all pre-dissertation requirements.

(Approved by the Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134f)

§ 649.52 What fellowship conditions apply?

To continue to receive payments under a fellowship, a fellow must—

(a) Maintain satisfactory progress;

(b) Devote essentially full time to study or research (including acting as a teaching or research assistant, as required as a condition for award of the degree) in the academic field for which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar types of activities approved by the Secretary.

(Authority: 20 U.S.C. 1134f)

Subpart G—What Are the Administrative Responsibilities of the Institution?

§ 649.60 What is the amount of a stipend?

(a) The institution shall calculate the amount of a fellow's financial need annually, in accordance with Part F of Title IV of the HEA.

(b) For a fellowship initially awarded for an academic year prior to the academic year 1993–1994, the institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded for the academic year 1993–1994 or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need.

(Authority: 20 U.S.C. 1134f)

§ 649.61 How does the Secretary make an institutional payment?

(a) With respect to awards made for the academic year 1993–1994, the Secretary makes a payment of $9,000 to the institution of higher education for each individual awarded a fellowship at the institution. The Secretary adjusts the institutional payment annually thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

(b) An institution shall treat the institutional payment made by the Secretary on behalf of a fellow as full payment of tuition and fees required of the fellow by the institution as part of the fellow's instructional program.

(Authority: 20 U.S.C. 1134e)

§ 649.62 What are the Secretary's payment procedures?

(a) The Secretary pays to the institution of higher education the fellowship stipend and institutional payment for each individual enrolled in that institution that is awarded a fellowship under this program.

(b) If an institution of higher education is unable to use all of the amounts available under this program, the Secretary—on such dates each fiscal year as the Secretary determines—reallots the amounts not used to other institutions of higher education that can use the grants authorized under this program in the academic year following the reallotment.

(c) The Secretary does not award a fellowship under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134, 1134e)

§ 649.63 How does the institution disburse and return funds?

(a) If a fellow withdraws from an institution before completion of an academic term, the institution shall refund to the Secretary a pro-rated portion of the institutional payment that it received for that fellow. The institution shall return the funds to the Secretary at a time and in a manner as the Secretary requires.

(b) An institution shall disburse a stipend to a fellow in accordance with its regular payment schedule for graduate assistants, but shall not make less than one payment per academic term. If the fellowship is vacated or discontinued, the institution shall return unexpended funds to the Secretary at a time and in a manner as the Secretary requires.

(c) A fellow who withdraws from an institution before completion of an academic term for which he or she received a stipend installment shall return a pro-rated portion of the stipend installment to the institution at a time and in a manner as the Secretary requires.

(d) If a fellow first enrolls at an institution in the spring term, the institution shall disburse a pro-rated stipend to the fellow and use a pro-rated portion of the institutional payment for that fellow and shall carry over for disbursement the following academic year the remaining portion of the stipend and the institutional payment for that fellow.

(Authority: 20 U.S.C. 1134e, 1134f)

§ 649.64 What records and reports are required from the institution?

(a) An institution of higher education that receives a grant shall provide to the Secretary, prior to receipt of funds for disbursement to a fellow after the fellow's first academic term, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting essentially full time to study in the academic field for which the grant was made.

(b) An institution of higher education that receives a grant shall keep records as are necessary to establish the time and amount of all stipend disbursements.

(Approved by Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134e, 1134f)

Appendix to Part 649—Academic Areas

The Secretary may give an absolute preference to applicants proposing to provide fellowships in academic areas listed below, or the resulting subdisciplinary or interdisciplinary academic areas.

The list was derived from the *Classification of Instructional Programs* (CIP) developed by the Office of Educational Research and Improvement of the U.S. Department of Education. The code number to the left of each discipline and subdiscipline is the Department's identification code for that particular type of instructional program.

01. Agricultural Business and Production
- 01.01 Agricultural Business and Management
- 01.02 Agricultural Mechanization
- 01.03 Agricultural Production Workers and Managers
- 01.04 Agricultural and Food Products Processing
- 01.05 Agricultural Supplies and Related Services
- 01.06 Horticultural Services Operations and Management
- 01.07 International Agriculture

02. Agricultural Sciences

02.01 Agriculture/Agricultural Sciences
02.02 Animal Sciences
02.03 Food Sciences and Technology
02.04 Plant Sciences
02.05 Soil Sciences
03. Conservation and Renewable Natural Resources
03.01 Natural Resources Conservation
03.02 Natural Resources Management and Protective Services
03.03 Fishing and Fisheries Sciences and Management
03.04 Forest Production and Processing
03.05 Forestry and Related Sciences
03.06 Wildlife and Wildlands Management
04. Architecture and Related Programs
04.02 Architecture
04.03 City/Urban, Community, and Regional Planning
04.04 Architectural Environmental Design
04.05 Interior Architecture
04.06 Landscape Architecture
04.07 Architectural Urban Design and Planning
05. Area, Ethnic, and Cultural Studies
05.01 Area Studies
05.02 Ethnic and Cultural Studies
08. Marketing Operations/Marketing and Distribution
08.01 Apparel and Accessories Marketing Operations
08.02 Business and Personal Services Marketing Operations
08.03 Entrepreneurship
08.04 Financial Services Marketing Operation
08.05 Floristry Marketing Operations
08.06 Food Products Retailing and Wholesaling Operations
08.07 General Retailing and Wholesaling Operations and Skills
08.08 Home and Office Products Marketing Operations
08.09 Hospitality and Recreation Marketing Operations
08.10 Insurance Marketing Operations
08.11 Tourism and Travel Services Marketing Operations
08.12 Vehicle and Petroleum Products Marketing Operations
08.13 Health Products and Services Marketing Operations
09. Communications
09.01 Communications, General
09.04 Journalism and Mass Communications
09.05 Public Relations and Organizational Communications
09.07 Radio and Television Broadcasting
11. Computer and Information Sciences
11.01 Computer and Information Sciences, General
11.02 Computer Programming
11.04 Information Sciences and Systems
11.05 Computer Systems Analysis
11.07 Computer Science
13. Education
13.01 Education, General
13.02 Bilingual/Bicultural Education
13.03 Curriculum and Instruction
13.04 Education Administration and Supervision
13.05 Educational/Instructional Media Design
13.06 Educational Evaluation, Research, and Statistics
13.07 International and Comparative Education
13.08 Educational Psychology
13.09 Social and Philosophical Foundations of Education
13.10 Special Education
13.11 Student Counseling and Personnel Services
13.12 General Teacher Education
13.13 Teacher Education, Specific Academic, and Vocational Programs
13.14 Teaching English as a Second Language/Foreign Language
13.15 Teacher Assistant/Aide
14. Engineering
14.01 Engineering, General
14.02 Aerospace, Aeronautical, and Astronautical Engineering
14.03 Agricultural Engineering
14.04 Architectural Engineering
14.05 Bioengineering and Biomedical Engineering
14.06 Ceramic Sciences and Engineering
14.07 Chemical Engineering
14.08 Civil Engineering
14.09 Computer Engineering
14.10 Electrical, Electronic, and Communications Engineering
14.11 Engineering Mechanics
14.12 Engineering Physics
14.13 Engineering Science
14.14 Environmental/Environmental Health Engineering
14.15 Geological Engineering
14.16 Geophysical Engineering
14.17 Industrial/Manufacturing Engineering
14.18 Materials Engineering
14.19 Mechanical Engineering
14.20 Metallurgical Engineering
14.21 Mining and Mineral Engineering
14.22 Naval Architecture and Marine Engineering
14.23 Nuclear Engineering
14.24 Ocean Engineering
14.25 Petroleum Engineering
14.27 Systems Engineering
14.28 Textile Sciences and Engineering
14.29 Engineering Design
14.30 Engineering/Industrial Management
14.31 Materials Science
14.32 Polymer/Plastics Engineering
16. Foreign Languages
16.01 Foreign Languages and Literatures
16.03 East and Southeast Asian Languages and Literatures
16.04 East European Languages and Literatures
16.05 Germanic Languages and Literatures
16.06 Greek Languages and Literatures
16.07 South Asian Languages and Literatures
16.09 Romance Languages and Literatures
16.11 Middle Eastern Languages and Literatures
16.12 Classical and Ancient Near Eastern Languages and Literatures
19. Home Economics
19.01 Home Economics, General
19.02 Home Economics Business Services
19.03 Family and Community Studies
19.04 Family/Consumer Resource Management
19.05 Foods and Nutrition Studies
19.06 Housing Studies
19.07 Individual and Family Development Studies
19.09 Clothing/Apparel and Textile Studies
20. Vocational Home Economics
20.02 Child Care and Guidance Workers and Managers
20.03 Clothing, Apparel, and Textile Workers and Managers
20.04 Institutional Food Workers and Administrators
20.05 Home Furnishings and Equipment Installers and Consultants
20.06 Custodial, Housekeeping, and Home Services Workers and Managers
22. Law and Legal Studies
22.01 Law and Legal Studies
23. English Language and Literature/Letters
23.01 English Language and Literature, General
23.03 Comparative Literature
23.04 English Composition
23.05 English Creative Writing
23.07 American Literature (United States)
23.08 English Literature (British and Commonwealth)
23.10 Speech and Rhetorical Studies
23.11 English Technical and Business Writing
24. Liberal Arts and Sciences, General Studies and Humanities
24.01 Liberal Arts and Sciences, General Studies and Humanities
25. Library Science
25.01 Library Science/Librarianship
25.03 Library Assistant
26. Biological Sciences/Life Sciences
26.01 Biology, General
26.02 Biochemistry and Biophysics
26.03 Botany
26.04 Cell and Molecular Biology
26.05 Microbiology/Bacteriology
26.06 Miscellaneous Biological Specializations
26.07 Zoology
27. Mathematics
27.01 Mathematics
27.03 Applied Mathematics
27.05 Mathematic Statistics
31. Parks, Recreation, Leisure and Fitness Studies
31.01 Parks, Recreation, and Leisure Studies
31.03 Parks, Recreation, and Leisure Facilities Management
31.05 Health and Physical Education/Fitness
38. Philosophy and Religion
38.01 Philosophy
38.02 Religion/Religious Studies
39. Theological Studies
39.01 Biblical and Other Theological Languages and Literatures
39.02 Bible/Biblical Studies
39.03 Missions/Missionary Studies and Misology
39.04 Religious Education
39.05 Religious/Sacred Music
40. Physical Sciences
40.01 Physical Sciences, General
40.02 Astronomy
40.03 Astrophysics
40.04 Atmospheric Sciences and Meteorology

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40.05 Chemistry
40.06 Geological and Related Sciences
40.07 Miscellaneous Physical Sciences
40.08 Physics
42. Psychology
42.01 Psychology
42.02 Clinical Psychology
42.03 Cognitive Psychology and Psycholinguistics
42.04 Community Psychology
42.06 Counseling Psychology
42.07 Developmental and Child Psychology
42.08 Experimental Psychology
42.09 Industrial and Organizational Psychology
42.11 Physiological Psychology/Psychobiology
42.16 Social Psychology
42.17 School Psychology
43. Protective Services
43.01 Criminal Justice and Corrections
43.02 Fire Protection
44. Public Administration and Services
44.02 Community Organizations, Resources, and Services
44.04 Public Administration
44.05 Public Policy Analysis
44.07 Social Work
45. Social Sciences and History
45.01 Social Sciences, General
45.02 Anthropology
45.03 Archeology
45.04 Criminology
45.05 Demography/Population Studies
45.06 Economics
45.07 Geography
45.08 History
45.09 International Relations and Affairs
45.10 Political Science and Government
45.11 Sociology
45.12 Urban Affairs/Studies
50. Visual and Performing Arts
50.01 Visual and Performing Arts
50.02 Crafts, Folk Art, and Artisanry
50.03 Dance
50.04 Design and Applied Arts
50.05 Dramatic/Theater Arts and Stagecraft
50.06 Film/Video and Photographic Arts
50.07 Fine Arts and Art Studies
50.09 Music
51. Health Professions and Related Sciences
51.01 Chiropractic (D.C., D.C.M.)
51.02 Communication Disorders Sciences and Services
51.03 Community Health Services
51.04 Dentistry (D.D.S., D.M.D.)
51.05 Dental Clinical Sciences/Graduate Dentistry (M.S., Ph.D.)
51.06 Dental Services
51.07 Health and Medical Administrative Services
51.08 Health and Medical Assistants
51.09 Health and Medical Diagnostic and Treatment Services
51.10 Health and Medical Laboratory Technologies/Technicians
51.11 Health and Medical Preparatory Programs
51.12 Medicine (M.D.)
51.13 Medical Basic Science
51.14 Medical Clinical Services (M.S., Ph.D)
51.15 Mental Health Services
51.16 Nursing
51.17 Optometry (O.D.)
51.18 Ophthalmic/Optometric Services
51.19 Osteopathic Medicine (D.O.)
51.20 Pharmacy
51.21 Podiatry (D.P.M., D.P., Pod.D.)
51.22 Public Health
51.23 Rehabilitation/Therapeutic Services
51.24 Veterinary Medicine (D.V.M.)
51.25 Veterinary Clinical Services
51.26 Miscellaneous Health Aides
51.27 Miscellaneous Health Professions
52. Business Management and Administrative Services
52.01 Business
52.02 Business Administration and Management
52.03 Accounting
52.04 Administrative and Secretarial Services
52.05 Business Communications
52.06 Business/Managerial Economics
52.07 Enterprise Management and Operations
52.08 Financial Management and Services
52.09 Hospitality Services Management
52.10 Human Resources Management
52.11 International Business
52.12 Business Information and Data Processing Services
52.13 Business Quantitative Methods and Management Science
52.14 Marketing Management and Research
52.15 Real Estate
52.16 Taxation

Appendix to Part 649

Analysis of Comments and Changes

Note: This appendix will not be codified in the Code of Federal Regulations.

Eligibility and Priority

Comment: Two commenters objected to the extension of eligibility for fellowships under the program to women because they believe it will dilute the original intention of the program to increase the representation of ethnic minorities in higher education. One commenter questioned whether in order to receive a grant under the program an institution would be required to demonstrate shortages of both women and individuals who are minorities.

Discussion: Women have always been eligible for fellowships under this program and continue to be eligible under the statute and regulations. An institution is not required to demonstrate underrepresentation of both women and minorities to be eligible for a grant under this program. An institution must give priority to members of one or more of the groups targeted by the program and must demonstrate underrepresentation of the group or groups to which it proposes to give priority if underrepresentation is a characteristic of the priority group or groups.

The Secretary recognizes that the proposed regulations were confusing regarding the groups of students to which an institution may give priority under each type of fellowship program. The regulations have been revised to clarify that an institution may apply for and will be given priority for a grant for a fellowship program that is designed to serve one or more of the groups targeted by the statute and to clarify that applicants generally are required to provide information in their application related only to the groups they are proposing to serve.

Changes: Sections 649.3(b), 649.10, and 649.40 have been revised to clarify that in selecting fellows under the master's level and professional study program, an institution must give priority to one or more of the following groups:

(1) Women who are pursuing master's level or professional study in an academic field in which they are underrepresented.

(2) Individuals from minority groups who are pursuing master's level or professional study in an academic field in which they are underrepresented.

(3) Women who are pursuing master's level study leading to careers that serve the public interest.

(4) Individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

These sections have further been revised to clarify that in selecting fellows under the doctoral study program, an institution must give priority to one or more of the following groups:

(1) Women who are undertaking doctoral study.

(2) Individuals from traditionally underrepresented groups undertaking doctoral study.

Sections 649.22(a) and 649.22(b) have been revised to clarify that the Secretary will give priority to projects that give priority to women "or" individuals from minority groups, and § 649.32(a) has been revised to clarify that the Secretary will give priority to projects that propose to give priority to women "or" individuals from traditionally underrepresented groups.

The selection criteria in paragraphs (a)(1) and (a)(2) of §§ 649.21 and 649.31 have been revised to clarify that applicants are generally required to provide institutional commitment and recruitment plan information that is related only to the group or groups to which the applicant is proposing to give priority. Similarly, paragraphs (b)(1) and (b)(2) of § 649.21 have been revised to clarify that applicants are generally required to provide information for these requirements that is related only to the group or groups to which the applicant is proposing to give priority. However, paragraph (a)(2)(ii)(C) of §§ 649.21 and 649.31, which requires applicants to provide information to show their success in providing students with access to careers in which women and minority groups are underrepresented, has been retained because the Secretary is required by statute to consider this information.

Funding Reservations (§ 649.4)

Comment: Several commenters expressed concern about splitting the funds under this program fifty-fifty between the master's level and professional study program and the doctoral program. Commenters requested that institutions be given flexibility to recruit fellows for either program or that the funds be divided differently. One commenter expressed support for the fifty-fifty split.

Discussion: Section 922(a) of the Higher Education Act of 1965, as amended (HEA),

requires the Secretary to reserve fifty percent of the funds to award grants under the master's level and professional study program and fifty percent of the funds to award grants under the doctoral study program (20 U.S.C. 1134(a)(2)). The Secretary is not authorized to change these funding reservations. However, the funding reservations do not require individual institutions to award fifty percent doctoral fellowships and fifty percent master's level and professional study fellowships. They are overall criteria that the Secretary considers in awarding grants. An institution may apply for any number of master's level and professional study fellowships and for any number of doctoral study fellowships in two separate applications for the two levels. Institutions must award fellowships in accordance with the terms of their approved grant(s).

Changes: None.

Academic Year (§§ 649.6 and 649.63)

Comment: Several commenters requested clarification regarding the definition of "academic year". In particular, one commenter asked how the definition would affect a fellow who first enrolled for the spring term.

Discussion: The Secretary does not intend the definition of "academic year" to restrict flexibility regarding the starting dates of fellows. The Secretary intends to allow an institution to use a pro-rated portion of the institutional allowance for the tuition and expenses of a fellow who starts in the spring and pay that fellow a pro-rated stipend and carry over the remaining funds to the following academic year. In the end, a fellow who starts in the spring should receive the same total fellowship funds as a fellow who started in the same program in the fall.

Changes: Sections 649.31(b)(6), 649.50, and 649.51 have been revised to replace the terms "academic year" and "academic years" with the words "year" and "years." Paragraph (b) of § 649.61 has been removed. Section 649.63 has been revised to add a new paragraph (d) that provides that if a fellow starts in the spring, an institution shall disburse only a pro-rated stipend and use only a pro-rated portion of the institutional payment and shall carry over the remainder of the stipend and institutional payment for the next academic year.

Careers That Serve the Public Interest (§§ 649.6, 649.10(c)(1)(ii), 649.22(b)(1))

Comment: A number of commenters requested a more precise definition of this term. Some commenters requested a list of programs that fall under the priority. One commenter asked whether a career at a public institution of higher education that is a department of the State government would be a career serving the public interest. Some commenters stated that all careers serve the public interest. Some commenters suggested that the priority be deleted.

Many commenters commented on the three-to-five point competitive preference proposed to implement the statutory priority for women and students from minority groups pursuing master's level study leading to careers that serve the public interest. A number of the commenters were concerned that three-to-five points would result in all awards for the master's level program going to this category of fellowships since the point spread among applicants is generally less than three. Commenters suggested reducing the number of points awarded under the competitive preference, making the priority a tie-breaker, or reserving a portion of the master's level and professional study funds for projects that implement the priority.

One commenter asked whether a fellow would have to repay the funds received under this program if he or she did not pursue a career in the public interest.

Discussion: The Secretary believes that it is unnecessary to modify or elaborate on the definition of this term. The Secretary expects institutions to explain in their grant applications how the academic areas they are proposing for this fellowship program will lead to careers that meet the definition of careers that serve the public interest. For example, the Secretary believes a career teaching at a nonprofit public or private institution of higher education meets the definition because it would promote National Education Goal 5, which calls for every adult American to possess the knowledge and skills necessary to compete in the global economy and exercise the rights and responsibilities of citizenship.

Section 922(e) of the HEA requires the Secretary to assure that priority is given to women and individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest (20 U.S.C. 1134e(e)). The Secretary does not have the authority to remove the priority from the program. However, the Secretary agrees with the commenters that the number of points proposed for the competitive preference should be reduced because the point spread among applicants that fall in the funding range is generally less than three.

A student who receives a fellowship under this competition but does not pursue a career in the public interest would not be required to repay the fellowship funds.

Changes: Paragraph (b)(1) of § 649.22 has been revised to replace the three-to-five point competitive preference with a one-point competitive preference for applications that give priority to women or individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

Doctoral Study (§ 649.6)

Comment: Some commenters expressed concern that including the teaching requirement in the definition of "doctoral study" is inconsistent with existing doctoral programs at many institutions and therefore would preclude some doctoral programs from participating. Commenters also pointed out that since the teaching requirement had been incorporated into the regulations as a condition of a doctoral fellowship, including the requirement in the definition of doctoral study is redundant and unnecessary. Commenters recommended that the teaching requirement be removed from the definition.

Discussion: The Secretary does not intend to exclude certain doctoral programs from eligibility and agrees with the commenters that it is unnecessary to include the teaching requirement in the definition since it is a condition of a doctoral fellowship.

Changes: The definition of "doctoral study" in § 649.6 has been revised to remove the requirement for one year of supervised teaching experience. A corresponding change has been made to remove the reference to "supervised teaching" in the definition of "Professional study."

Project (§§ 649.6, 649.21, 649.31)

Comment: Several commenters requested clarification regarding the definition and use of the term "project." In particular, a few commenters were confused about the use of the term in both the institution-wide and the academic field selection criteria, and its implications regarding the respective project responsibilities of an institution and an academic department. One commenter recommended using the term "program" rather than "project" when referring to the specific academic area in which students will be enrolled. One commenter recommended that if the term "project" is intended to initiate minority access and support programs, it should be done in a low key way, and suggested that using the term to refer to project participants may stigmatize them by advertising to their peers that they are in a special program of supportive services for women and minorities.

Discussion: The Secretary agrees with the commenters that the use of the term "project" in the academic field criteria in the NPRM is confusing because a project is institution-wide and may include more than one academic area. The regulations have been revised to clarify that the academic field criteria must be addressed with respect to each academic field within a project.

As set forth in the preamble of the NPRM, the term "project" was used and defined broadly to reflect an expectation that support services for fellows will be provided with grant and institutional resources. The Secretary does not intend the use of the term "project" to stigmatize fellows. On the contrary, the Secretary emphasizes that fellows under this program are selected based on merit, as well as need, and therefore should be accorded a distinguished status. Section 921(b) of the statute specifically gives students who participate in this program the title "PRH graduate fellows." 20 U.S.C. 1134d(b). The regulations continue to refer to fellowship recipients as "fellows." The Secretary expects and encourages institutions to continue to refer to students who receive awards under this program as "fellows" and to accord those fellows a distinguished status.

Changes: Paragraphs (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5)(i)(B) of §§ 649.21 and 649.31 have been revised to clarify that those criteria must be addressed with respect to each academic field within a project.

Traditionally Underrepresented (§§ 649.6, 649.10(c)(2))

Comment: Some commenters requested clarification of the meaning of the term "traditionally underrepresented groups" and asked whether a non-minority male could

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qualify for this priority. Some commenters requested clarification of the difference between traditionally underrepresented groups and minority groups. Some commenters wondered why fellowships are available for traditionally underrepresented groups under the doctoral program, but not under the master's level and professional study program.

Discussion: The priority for traditionally underrepresented groups in doctoral study is taken from section 922(e) of the statute. 20 U.S.C. 1134e(e). The proposed regulations did not propose a priority for traditionally underrepresented groups for the master's level and professional study program because there is no statutory basis for such a priority.

The definition of "Traditionally underrepresented groups" in the regulations is different than the definition of "Minority" because it is not limited to specifically identified minority groups or "other ethnic groups" that are underrepresented. The term "traditionally underrepresented groups" includes any group for which there is evidence of historical underrepresentation.

Changes: None.

Grant Applications (§ 649.10(d))

Comment: One commenter objected to conducting two separate competitions for the master's level and professional study program and the doctoral study program, and another commenter was in favor of having separate competitions. One commenter objected to the limit of one application per institution for each competition, stating that it would adversely impact small departments at large institutions because they would have to compete internally with other departments to be included on the application. In contrast, another commenter suggested further restricting applications from a single institution by capping the number of academic departments that could be included in an institution's application. That commenter believed this restriction would help to prevent the fellowships from being concentrated at a few elite institutions and would provide an extra quality assurance by forcing institutions to select among their own programs.

One commenter asked for clarification regarding the definition of "institution." In particular, the commenter wondered whether separate campuses of a large institution would be considered part of one institution and thus be required to submit a single application.

Discussion: The Secretary believes that requiring each institution to submit a single application for each competition will help to ensure that the academic fields included in the project are those that the institution supports. There is no restriction on the number of academic fields that may be included in a single application.

The Secretary believes that a geographically separate campus with an independent administration and its own accreditation is a separate institution for the purposes of this regulation.

Changes: None.

Institutional Commitment (§§ 649.21(a) and 649.31(a))

Comment: One commenter objected to the institutional commitment criterion that evaluates social environment on the grounds that an institution may not have control over its social environment. Other commenters requested clarification of the criterion regarding other sources of aid for female and minority students, noting that it is unclear whether an institution that demonstrates the existence of other aid for these students would be penalized on that basis, would receive points because it demonstrates commitment to the students, or would receive points because it is evidence of the ability to provide support during those periods when no Federal funds will be provided. One commenter noted that the points allocated to the "Institutional commitment" criterion seemed high relevant to other selection criteria.

Discussion: The Secretary believes that an institution's social environment is related to student retention, and therefore an institution's efforts to ensure that the social environment is receptive to members of the group or groups to which an institution proposes to give priority is an appropriate and important measure of institutional commitment to these groups. Similarly, the Secretary believes that the existence of other sources of aid is a useful criterion and an appropriate basis for awarding points to an institution because it demonstrates prior commitment to students who are members of the group or groups to which the institution proposes to give priority. The Secretary agrees that the proposed 20 points allocated to the "Institutional commitment" criterion was too high.

Changes: Paragraph (a) of §§ 649.21 and 649.31 has been revised to reduce the points allocated to the "Institutional commitment" criterion from 20 to 15 points. The extra 5 points have been added to the points allocated to the "Quality of academic program" criterion.

Recruitment Plan: Access to Careers (§§ 649.21(a)(2)(ii)(C) and 649.31(a)(2)(ii)(C))

Comment: A few commenters requested clarification concerning how the criterion regarding access to careers in which minorities and women are underrepresented would be measured. Several commenters indicated that the use of placement data would be an inappropriate and unfair measure because it would reflect not only the academic preparation provided by the institution, but also graduate selection and employer hiring practices.

Discussion: Placement data has been used in previous years to evaluate an institution's success at providing students with immediate career opportunities, and the Secretary believes such data is relevant to evaluating access to careers under these regulations. However, the Secretary does not believe that placement data is the only relevant data for evaluating this criterion. The Secretary believes that a broad range of data and information regarding an institution's placement program would be relevant, such as the number of on-campus interviews scheduled, the provision of seminars regarding interview skills, and the existence of partnerships with businesses.

Changes: None.

Faculty Criterion (§§ 649.21(b); 649.31(b))

Comment: Several commenters requested that the quality of key faculty be emphasized more strongly in the selection criteria. Specifically, commenters suggested that faculty be expressly mentioned under the "Quality of the academic program" criterion, that the quality of departmental faculty be mentioned under the "Quality of key personnel" criterion, and that more points be given to the faculty criteria.

Discussion: The Secretary agrees that the quality of key faculty should be considered under the "Quality of key personnel" criterion for both the master's level and professional study program and the doctoral study program. However, the Secretary believes that the "Quality of the academic program" is a distinct criterion and declines to incorporate faculty into that criterion.

Changes: Paragraph (b)(5)(i)(B) of sections 649.21 and 649.31 has been revised to evaluate the qualifications of "key faculty" rather than "other key personnel." In addition, the points allocated the "Quality of key personnel" criterion have been increased from 10 to 12 points, with 6 of those points assigned to the quality of other key faculty in subsection (B) of paragraph (b)(5)(i) and 2 points each assigned to subsections (A), (C), and (D) of the paragraph.

Discrimination Prohibition (§§ 649.21(b)(3)(vi), 649.31(b)(3)(vi))

Comment: Several commenters suggested that this provision, which requires applicants to ensure that otherwise eligible participants are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, seems inconsistent with the purposes of the program. One commenter asked whether this provision would prohibit awarding a fellowship to one of two equally eligible students based on the fact that one student was a member of a group that was more underrepresented than the group of which the other student was a member.

Discussion: The Secretary agrees with the commenters that this provision is confusing because it could be interpreted to be in conflict with the priority requirements under the program. Institutions will need to consider race and gender in selecting among otherwise eligible applicants in order to implement the priorities that are established under this program. Moreover, the Secretary believes that an institution could consider the degree of underrepresentation in selecting among eligible applicants, to the extent that underrepresentation was a criterion under the priority or priorities established by that institution. For example, an institution operating a fellowship program that gives priority to minority students who are underrepresented in a particular academic field could select an eligible student who was a member of a minority group that was more underrepresented in that field over an eligible student who was a member of a minority group that was less underrepresented in that field.

Changes: Paragraph (b)(3)(vi) of §§ 649.21 and 649.31 has been revised to clarify that

applicants may not consider the prohibited factors, except as necessary to implement the priority or priorities established in accordance with the requirements of this program.

Evaluation Plan (§§ 649.21(b)(7) and 649.31(b)(8))

Comment: Several commenters objected to the evaluation plan requirements, calling them excessive, cumbersome, and unnecessary. Some commenters suggested that evaluations should be conducted centrally, rather than at the academic department level. Commenters recommended that the evaluation plan be included as an institution-wide criterion, instead of an academic field criterion. One commenter noted that the type of information requested should be, and in some cases is, included in annual reports. One commenter suggested that the evaluation should monitor only the number of degrees awarded and the number of fellows successfully launched into careers in which they are underrepresented.

Discussion: The Secretary agrees with the commenters that the evaluation plan requirements are unnecessarily burdensome for a graduate fellowship program. The Secretary also agrees that evaluations should be conducted centrally. The Secretary anticipates that the project director would oversee an institution-wide evaluation that addresses each academic field.

Changes: The evaluation plan requirements have been simplified by removing the requirements in paragraphs (b)(7) (iii), (iv), and (vi) of § 649.21 and the corresponding requirements in paragraphs (b)(8) (iii), (iv), and (vi) of § 649.31. In addition, paragraph (b)(7)(ii) of § 649.21 and paragraph (b)(8)(ii) of § 649.31 have been revised to provide that the Secretary reviews each application to determine the extent to which the applicant's evaluation methods include both process and product evaluation measures that are objective and designed to produce data that are quantifiable. The revised evaluation plan requirements have been removed from the academic field criteria in §§ 649.21(b)(7) and 649.31(b)(8) and added to the institution-wide criteria in new §§ 649.21(a)(5) and 649.31(a)(5). The number of points allocated to the new "Evaluation plan" criterion has been reduced from 10 to 5. Two of the extra 5 points have been added to the "Quality of key personnel" criterion, as discussed above. The other 3 points have been added to the "Quality of academic program" criterion to increase its weight to a total of 15 points.

Priority Fields (§ 649.22(c)(1)/Appendix)

Comment: Several commenters objected to the broad array of academic areas listed in the appendix as academic area priorities. One commenter urged prioritization of the academic areas in the appendix, suggesting that not all of the areas in the appendix could be considered of equal priority. Some commenters noted that the list of academic areas in the appendix includes areas that do not require graduate study. Other commenters favored guidelines, rather than a restrictive list so that emerging areas might be given priority in the future.

Discussion: Some of the comments reflect a misunderstanding of the process the Secretary uses for giving an absolute preference. The academic areas listed in the appendix have not been given preferences as fields of high national priority. The Secretary establishes the academic career fields of high national priority that will be given a preference each year by selecting fields from among the academic areas listed in the appendix and announcing the absolute preference for the selected fields in the **Federal Register** notice inviting applications for new awards. For this reason, the Secretary does not believe the list of academic areas is too broad. Similarly, the Secretary does not believe it is problematic to include on the list academic areas for which graduate study is not currently required in order to pursue a career in the field. Nor does the Secretary believe the list is too restrictive because the Secretary also may give an absolute preference to an academic field that is a resulting subdisciplinary or interdisciplinary academic area. However, the Secretary does believe that the title of the appendix and the language in § 649.22(c)(1) of the proposed regulations were confusing in this regard, and they have been revised to clarify that not all of the areas listed in the appendix are areas of high national priority.

Changes: The title of the appendix has been changed from "Academic Area Priorities" to "Academic Areas." Paragraph (c)(1) of § 649.22 has been revised to provide that the fields of high national priority are established by the Secretary from among one or more of the "academic areas listed in the appendix to this part or the resulting subdisciplinary or interdisciplinary academic areas."

National and Citizenship Requirements (§§ 649.40 (b)(3), (c)(3), and (d)(3))

Comment: A number of commenters requested clarification regarding why the citizenship requirement applies only to doctoral fellows pursuing academic careers and not to any other fellows. A few commenters requested flexibility to provide doctoral fellowships to students seeking permanent residency or pursuing citizenship. Commenters also requested a definition of the term "national".

Discussion: The citizenship requirement for doctoral fellows pursuing academic careers is taken from the HEA, which as a result of the 1992 Amendments states expressly that one of the purposes of the title IX graduate programs is to "provide incentives and support for *United States citizens* to complete doctoral degree programs leading to academic careers" (20 U.S.C. 1134(a)(2) (emphasis added)). The Secretary believes that limiting eligibility for doctoral programs leading to academic careers to U.S. citizens reflects legislative intent. Since the statute did not specifically target U.S. citizens for any of the other types of fellowships, the Secretary did not restrict eligibility for any of the other fellowships. The Secretary agrees with the commenters that a definition of the term "U.S. national" would help to clarify the eligibility provisions. A definition has been added to the regulations that is drawn from the Immigration and Nationality Act definition and is consistent with the definition of "U.S. citizen or national" that is used in other higher education grant program regulations.

Changes: A definition of the term "U.S. National" has been added to § 649.6 that provides that a U.S. national means a citizen of the United States or a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

Award Period for Master's Level or Professional Study (§ 649.50(a))

Comment: A few commenters requested clarification regarding the award period for master's level and professional study fellowship awards. One commenter suggested adding language that the Secretary regards the normal length of study for a master's degree program to be two years and that applicants would be required to demonstrate any exception that would result in a three-year grant. Commenters objected to the fact that a twelve-month extension period is provided for master's level and professional study fellows, but is not available to doctoral fellows pursuing academic careers.

Discussion: The Secretary does not regard the normal length of study for a fellow under the master's level and professional study program to be two years because some professional degrees normally take three years. The Secretary believes that the twelve-month extension is available in addition to the normal length of the program, whether that is two or three years. Thus, the extension would extend a master's level and professional study fellowship to three years if the normal length of the fellow's program is two years or to four years if the normal length of the fellow's program is three years. The Secretary believes that § 649.50(a)(1) of the regulations is clear on this point.

Section 923(b)(1) of the HEA specifically authorizes the Secretary to provide a twelve-month extension for master's level and professional study fellowships (20 U.S.C. 1134f(b)(1)). In contrast, section 923(b)(2) of the HEA specifically limits the period of federal support for doctoral fellows to *not more than two years* for study or research and *not more than one year* for dissertation work (20 U.S.C. 1134f(b)(2)). Accordingly, the Secretary is not authorized to provide an extension to doctoral fellows.

Changes: None.

Doctoral Fellowship Funding Sequence (§ 649.51)

Comment: Many commenters objected to the sequence for funding doctoral fellows. Commenters noted that the "five-year" sequence is inconsistent with the actual timing of many doctoral programs and doctoral students. Some commenters were concerned that delaying the provision of dissertation funding until the fifth year would remove any incentive for earlier completion of a doctoral program. Some commenters suggested that institutions may choose to compete only for the master's level and professional study program because it provides up to four continuous years of fellowship funding and does not require institutional support. One commenter

suggested that the funding sequence may encourage some institutions to design two-year doctoral programs to avoid having to provide institutional support. Another commenter recommended that the sequence be replaced by a flexible five-year funding plan that requires institutions to guarantee a match of two years of institutional funding to three years of Federal funding, with the institution having the discretion to fund any two years in the five-year cycle.

In particular, many commenters objected to the discontinuance of third-year fellowship support for current doctoral fellows. Commenters pointed out that the current fellows were recruited for a fellowship program that provided three continuous years of funding and were encouraged to complete their degrees in those three years. Some commenters emphasized that it will be very difficult for institutions to find alternative support for these students on such short notice. Accordingly, commenters requested that a grandfather clause be added to the law or that the regulations be changed to provide third-year funding for existing fellows or both.

Discussion: Preliminarily, the Secretary notes that the references of some commenters to a "five-year" funding sequence suggest a misunderstanding of the sequence provisions. The doctoral fellowship funding sequence is taken from section 923(b) of the HEA, which requires institutions to provide two years of support following the two years of Federal pre-dissertation support and authorizes a third year of Federal funds for dissertation support following the two years of institutional support (20 U.S.C. 1134f(b)(2)). The Secretary interprets the statute to mean that one year of Federal dissertation funding may be provided at any time following the two years of support provided by an institution, which could be the fifth year or thereafter.

Although the fellowships awarded to current fellows under this program were three-year fellowships, technically the second and third years are each continuation awards that are subject to the law in effect at the time the continuation award is made. Therefore the provisions in the new statute apply to the continuation awards for current fellows unless a specific exception is written into the law. As many commenters noted, the statute does not include a grandfather clause that would except current fellows from the new funding sequence to award a third year of continuous fellowship funding. Accordingly, the Secretary does not have the authority to provide for the third year of funding in the regulations.

Changes: None.

Doctoral Fellowship Teaching Requirement (§ 649.51(b)(3))

Comment: Many commenters requested flexibility regarding the timing of the teaching requirement. One commenter noted that students at that institution are not permitted to teach their own class until they have passed their preliminary exams and are at the dissertation writing stage. Another commenter wondered whether it would be permissible to fulfill the teaching requirement during the first or second year of study. Several commenters expressed concern with the teaching requirement in light of collective bargaining agreements that severely restrict teaching by graduate students.

Some commenters requested clarification regarding the provision that requires the teaching requirement for the fellow to be equal to that of a half-time teaching assistant since that may vary among institutions. One commenter requested that the half-time teaching assistant provision be removed because it focuses on the quantity, rather than the quality of the teaching requirement.

Discussion: Section 923 of the HEA requires at least one year of supervised teaching following the two years of Federal pre-dissertation support (20 U.S.C. 1134f(b)(2)). The Secretary does not have the authority to change the provisions in the regulations regarding the timing of the teaching requirement. However, the Secretary agrees that the half-time requirement in the proposed regulations was confusing. The Secretary intends the teaching requirements for fellows under this program to be the same as for other graduate teaching assistants, and the regulations have been changed to clarify this point.

Changes: Paragraph (b)(3)(ii) of § 649.51 has been revised to require the teaching requirements for fellows under this program to equal those required of other graduate teaching assistants at that institution.

Institutional Support (§ 649.51(b))

Comment: Many commenters objected to the regulatory provisions that require institutions to pay stipends of up to $14,000, based on financial need. A number of commenters were concerned about the possibility of a $14,000 stipend because it is much higher than the current graduate stipend levels in most departments. Many commenters were concerned about the potential issues of inequity both among fellows under this program and between PRH fellows and other graduate fellows. Commenters noted that since most graduate stipends are tied to graduate teaching positions, varying the level of the stipend based on demonstrated financial need in accordance with title IV–F would conflict with the institution's policies of providing equal pay for equal work. Some commenters noted that the regulatory requirements relating to institutional support go beyond the statutory requirements and recommended that the provisions relating to the level of support provided by institutions be removed altogether or replaced by a provision that takes into account the level of support provided to other students in the academic department receiving graduate stipends.

Discussion: Although the statute does not require any particular level of institutional support, the Secretary believes that the regulatory requirements are appropriate to ensure that the fellows continue to receive the support they need during the years when no federal funds are provided. The Secretary does not anticipate that institutions would pay fellows under this program for graduate teaching positions at a higher rate than other graduate teaching assistants. However, fellows under this program are entitled to a stipend up to their level of need. Therefore, if the rate paid to a graduate teaching assistant is lower than the fellow's need, the institution must provide additional stipend funds to make up the difference.

Changes: None.

Financial Need (§ 649.60(a))

Comment: Many commenters objected to the use of the test in part F of title IV of the HEA for determining the amount of financial need, and some commenters objected to basing stipends on demonstrated financial need altogether. Some commenters stated that merit is more important than need at the graduate level and should be the primary criterion for selecting fellows. Other commenters stated that the IV–F test is not required by the statute and is too stringent. Some commenters do not believe the IV–F test is appropriate for graduate students. In particular, several commenters were concerned that the needs test will hurt recruitment and retention of minority students, either because those students may have needs that are not adequately addressed by the IV–F test or because those students are extremely sought after and will choose a program for which they are not required to demonstrate need at all. Some commenters recommended that financial need be determined by each institution according to procedures established by the institution and approved by the Secretary.

Discussion: Section 923(a) of the HEA requires that a stipend awarded under this program not exceed a fellow's demonstrated financial need (20 U.S.C. 1134f(a)). The Secretary does not have the authority to remove this requirement from the regulations. However, the Secretary notes that neither the statute nor the proposed regulations require that fellows under this program be selected on the basis of financial need, rather than on the basis of merit. Financial need is not required to receive the tuition support provided under the fellowship.

The Secretary has determined that it is appropriate to determine a fellow's financial need for a stipend under this program based on title IV–F of the HEA because it contains separate provisions for graduate students that reflect Congress' assessment of factors relevant to the financial need of those students. Moreover, the Secretary believes it is reasonable to require graduate students who apply for fellowships under this program to demonstrate need based on the same standards as graduate students for all other programs funded by the Department.

The Secretary does not believe the title IV–F needs test will hurt the recruitment or retention of individuals who are minorities. Rather, the Secretary expects the needs test to improve the recruitment and retention of individuals who are minorities who have the greatest financial need by ensuring that those fellows receive the largest stipends.

Changes: None.

Stipends for Current Fellows (§ 649.60 (b) and (c))

Comment: A number of commenters stated that the ineligibility of current fellows for the increased stipend levels available to new

fellows is discriminatory and objected to the inequity of the dual stipend levels.

Discussion: Section 923(a) of the HEA only provides the increased stipend level for individuals receiving their first stipend in 1993–94 or thereafter (20 U.S.C. 1134f(a)). The statute does not provide for an increase in the stipend level of current fellows. The Secretary notes that the inequity about which commenters are concerned may be minimized by the fact that only those new fellows who demonstrate sufficient financial need will actually receive a stipend of $14,000.

Changes: None.

Institutional Payment (§§ 649.61, 649.63)

Comment: Commenters supported the increase in the institutional payment, but were concerned that it may result in a reduction in the number of awards under the graduate fellowship programs. One commenter recommended that institutions be allowed to carry over unexpended funds, and suggested that those funds may help institutions to pay stipends to students during the institutional support years. One commenter requested clarification regarding the flexibility an institution has in using any excess from the institutional payment beyond a fellow's tuition and fees. Several commenters suggested that the regulations provide procedures for institutions to select new alternate fellows when fellowships become vacant. Several commenters objected to the pro-ration of the institutional payment based on the period of a fellow's enrollment, noting that most of the costs covered by the institutional payment are up-front expenses that are not recoverable by the institution if a fellow is unable to complete an academic year.

Discussion: The increase in the institutional payment is provided by section 922(f) of the HEA (20 U.S.C. 1134e(f)). The Secretary does not have the authority to change the amount of the institutional payment.

Section 922(b)(2) of the HEA requires the Secretary each year to reallot any funds that an institution cannot use (20 U.S.C. 1134e(b)(2)). Therefore, to the extent the institutional payment received by the institution is not used to cover tuition, fees, or other activities necessary to assist fellows in the successful completion of their programs, the Secretary considers the unused portion to be excess and will reallot those funds. Excess institutional funds may not be carried over to pay stipends in a subsequent year. The option of substituting an alternate fellow during the first year has been removed from the regulations in order to permit better oversight of Federal funds. Finally, the Secretary does not believe the pro-ration requirements are too burdensome for institutions because the program has previously required grantees to return institutional payments on a pro-rated basis whenever a fellow did not complete an academic year (the option of substituting an alternate fellow was not available after the first year).

The Secretary believes that the definition of "project" clarifies that any excess funds from the institutional payment may be used for activities necessary to assist fellows in the successful completion of their educational programs.

Changes: None.

Disbursement Requirements (§ 649.64(a))

Comment: One commenter noted that institutions will not be able to satisfy the requirement that institutions certify that fellows are making satisfactory academic progress prior to the fellow's receipt of the stipend.

Discussion: The Secretary agrees with the commenter that no certification would be possible prior to a fellow's initial receipt of a stipend, and the regulations have been revised to clarify this point.

Changes: Paragraph (a) of this section has been revised to clarify that the certification requirement does not apply until after the fellow's first academic term.

Geographical Distribution

Comment: One commenter noted that the regulations do not incorporate the statutory requirement that the Secretary take into account the geographic distribution of grants under this program.

Discussion: The Secretary intends to consider the geographic distribution of grants as a tie-breaker in selecting grantees, but does not believe it is necessary to include this provision in the regulations.

Changes: None.

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POSTAL RATE COMMISSION

39 CFR Part 3000

[Docket No. RM93–4, Order No. 906]

Standards of Conduct

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: Effective February 3, 1993, 5 CFR part 2635 as promulgated by the Office of Government Ethics superseded substantially all of the Postal Rate Commission's Standards of Conduct at 39 CFR part 3000. The Postal Rate Commission's rules relating to financial disclosure are also superseded by amendments to 5 CFR part 2634. The revised standards of conduct adopted herein retain those portions of the current standards of conduct not superseded by the Office of Government Ethics' amendments to 5 CFR and incorporate provisions of the Supplemental Standards of Ethical Conduct for Employees of the Postal Rate Commission issued in 5 CFR part 5601 with the concurrence of the Office of Government Ethics. The latter prohibit financial interests in entities significantly affected by postal rates, require written approval before engaging in outside employment and provide that a Commission employee who negotiates for employment with an entity substantially affected by postal rates shall provide notice of disqualification to his supervisor.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: David Ruderman, Attorney, Postal Rate Commission, suite 300, 1333 H Street NW., Washington, DC 20268–0001; telephone (202) 789–6835.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Office of Government Ethics promulgated Standards of Ethical Conduct for Employees of the Executive Branch, which became effective on February 3, 1993. (57 FR 35006, August 7, 1992.) Unless otherwise preserved by supplemental regulation, the Office of Government Ethics' standards of ethical conduct supersede the standards of conduct presently applicable to employees of the Postal Rate Commission (Commission). On April 7, 1992, the Office of Government Ethics promulgated an interim rule which supersedes the Commission's rules relating to financial disclosure. The interim rule concerning financial disclosure suggests that agencies review their existing regulations relating to financial disclosure to determine whether revocation or modification is required.

The Commission has reviewed its standards of conduct and has found that most of the existing rules contained in 39 CFR part 3000 have been superseded. There are a few provisions in former Part 3000, that the Commission has decided to retain.

The Commission is including in subpart A, general provisions, a statement acknowledging that the uniform standards of ethical conduct promulgated by the Office of Government Ethics apply to the Commission. Also Subpart A notes that the Designated Agency Ethics Official (DAEO) is appointed by the Chairman. The DAEO is responsible for the Commission's ethics program.

Subpart B retains the existing rules relating to employee responsibilities concerning ex parte communications. Other than redesignating the provisions concerning ex parte communications as subpart B, there are no changes in the ex parte rules.

Rules supplementing the uniform standards of conduct promulgated by the Office of Government Ethics (OGE) are set forth in 5 CFR Chapter XLVI and restated, in part, herein for ease of reference. The Commission is republishing in § 3000.735–103(a), the supplemental provision at 5 CFR 5601.102 prohibiting financial interests

in entities significantly affected by postage rates or classifications or by the operations of the Postal Service. Notwithstanding minor differences in wording this provision is intended to be consistent with 5 CFR 5601.103, and with 5 CFR 5601.101 which contains a definition of a person whose interests are significantly affected by rates for postage, fees for postal services, the classification of mail or the operation of the Postal Service.

The Commission's rules of conduct had a provision that allows the Chairman of the Commission to determine a maximum amount of financial interest an employee may have in any one entity. This provision was originally placed in the Commission's standards of conduct because many companies suitable for investment are impacted by postal rates and classifications. This provision is retained at § 3000.735–103(b) pursuant to the saving provision in 5 CFR 2635.402(d)(1).

The Commission is republishing in § 3000.735.104 the supplemental provisions at 5 CFR 5601.104 which prohibit employees from engaging in employment with certain persons and require advance approval for outside employment from the designated agency official. In § 3000.735.104(c) the Commission is also republishing the supplemental provision at 5 CFR 5601.103 which requires an employee who negotiates for future employment with an entity substantially affected by postage rates to give notice to his supervisor that he or she will not participate in assignments affecting the prospective employer. Notwithstanding any minor variations in wording § 3000.735.104 is intended to be consistent with the underlying provisions in 5 CFR 5601.103 and 5601.104.

As the amendments herein involve matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply. These rule changes apply only to the Commission's Standards of Conduct. Thus, they do not constitute a "major rule" under Executive Order 12291. For the same reason, the rule changes will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

List of Subjects in 39 CFR Part 3000

Standards of conduct.

Therefore, pursuant to 39 U.S.C. 3603, the Postal Rate Commission is amending title 39, chapter III, subchapter A of the code of Federal Regulations part 3000 as follows:

PART 3000—STANDARDS OF CONDUCT

1. The authority citation for part 3000 of title 39 is revised to read as follows:

Authority: 39 U.S.C. 3603; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR parts 2634 and 2635.

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

3000.735–101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
3000.735–102 Counseling and advisory services.
3000.735–103 Financial interests.
3000.735–104 Outside employment.

Subpart A—General Provisions

§ 3000.735–101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Postal Rate Commission (Commission) are subject and should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Commission regulation at 5 CFR part 5601 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

§ 3000.735–102 Counseling and advisory services.

(a) The Chairman of the Commission shall appoint the Designated Agency Ethics Official (DAEO) for the Commission. The DAEO may appoint deputy ethics officials to assist in carrying out the responsibilities of the designated agency ethics official. The DAEO shall advise employees as to the applicability and interpretation of laws and regulations involving the standards of conduct for employees of the Commission. The DAEO shall furnish advice to employees for the purpose of aiding employees in avoiding conflicts of interest, situations, actions or conduct that may reflect adversely on the Commission.

(b) The DAEO shall develop and execute an ethics agency training plan providing for an initial orientation for new employees and annual ethics training.

§ 3000.735–103 Financial interests.

(a) An employee shall not, either directly or indirectly, have any financial interest (whether by ownership of any stock, bond, security, or otherwise) in any entity or person whose interests may be significantly affected by rates of postage, fees for postal services, the classification of mail, or the operation of the Postal Service. This paragraph does not proscribe interests in an entity or person whose use of the mail is merely an incidental or a minor factor in the general conduct of its business.

(b) The Chairman from time to time determines the appropriate maximum limit for an interest in stocks, bonds or other forms of securities in any one entity or person. If an employee has an interest above the maximum limit, the DAEO will so advise the Chairman. If the Chairman finds the interest so substantial as to be deemed likely to affect the integrity of the service which the Government may expect of him or her, the Chairman may direct, in writing, the employee to divest a portion of the financial interest to bring the investment below the maximum limit.

§ 3000.735–104 Outside employment.

(a) An employee shall not engage in outside employment or professional practice, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of Postal Service.

(b) An employee who wishes to engage in outside employment either on a paid or unpaid basis shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to make an informed determination that the outside employment is not prohibited by law or regulation, including 5 CFR part 2635 or 5 CFR part 5601.

(c) An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

3. Subparts B, C and D removed and subpart E is redesignated as subpart B.

Issued by the Commission on August 6, 1993.

Charles L. Clapp,

Secretary.

[FR Doc. 93–19330 Filed 8–11–93; 8:45 am]

BILLING CODE 7710-FW-P

DEPARTMENT OF JUSTICE

Justice Management Division; Seismic Safety Program

41 CFR Part 128–1

AGENCY: Justice Management Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule establishes the Department of Justice (DOJ or Department) Seismic Safety Program and brings the Department into compliance with the provisions of Executive Order (E.O.) 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," which implements the building safety provisions of the Earthquake Hazards Reduction Act of 1977, as amended. The Executive Order requires each affected Federal agency to develop and implement its own mission-appropriate and cost-effective regulations governing seismic safety for new buildings that the agency constructs or leases, and for buildings constructed with assistance from the agency, or constructed under regulations provided by the agency. The Order and this rule have as their purposes, the reduction of risks to the lives of building occupants and others who would be affected by the failure of Federal buildings in an earthquake, the improvement of the capabilities of essential buildings to function during or after an earthquake, and the reduction of earthquake losses of public buildings and investments.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin F. Burrell, Director, Facilities and Administrative Services Staff, United States Department of Justice, Ariel Rios Federal Building, room 3204, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: To coordinate earthquake research and to improve earthquake preparedness, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Act) (Pub. L. 95–124, 42 U.S.C. 7701 *et seq.*) as amended (Pub. L. 101–614), which directed the establishment and maintenance of an effective earthquake hazard reduction program. In the Act, actions, to improve the safety of building structures focused on the development of design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model buildings codes. The Act applied to both the private and public sectors.

Federal agencies joined forces via the Interagency Committee on Seismic Safety in Construction (ICSSC) to develop earthquake hazards reduction measures for the large number of Federal buildings: the Federal government owns or leases more than 400,000 buildings. For more than 10 years, the ICSSC has been developing seismic design guidelines for new and existing Federal buildings and facilities. In 1987, the ICSSC published "Seismic Design Guidelines for Federal Buildings" (ICSSC RP–1) which were intended primarily for new buildings. In March 1989, it issued "Guidelines for Identification and Mitigation of Seismically Hazardous Existing Federal Buildings" (ICSSC RP–3).

On January 5, 1990, President Bush signed Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, which requires all Federal agencies to ensure that any new building which is Federally owned, leased, assisted or regulated is designed and constructed in accordance with appropriate seismic design and construction standards. Appropriate and cost-effective seismic design and construction standards and practices were identified by the ICSSC, pursuant to the authority granted to the ICSSC in the Executive Order. Specifically, the ICSSC found that several model building codes provide the levels of seismic safety required by the Executive Order.

This rule implements Executive Order 12699 in the Department of Justice by creating a seismic safety program that applies to buildings designed and constructed under the responsibility of the Department.

On April 9, 1993, the Department published a notice of proposed rulemaking on seismic safety, 58 FR 18360, which included a request that comments be submitted by May 10, 1993. The Department received two sets of comments, one from a component within the Department and one from a private business that specializes in building technology. A summary of the comments and the responses follow:

In § 128–1.8006(c) the rule directs that documentation verifying compliance with the appropriate building code seismic standards be retained by the Department contracting officer responsible for the design or construction services contract. With this section, the Department intended to create one repository within each Department component for all construction related authorizations. A Department commenter pointed out that the Department, on occasion, builds some projects itself without contracting out for design or construction services and, therefore, without the involvement of a contracting officer. The Department amended this section of the rule to provide that seismic compliance documentation be retained by either the contracting officer or, when the Department has not contracted for either design or construction services, by an individual designated by the Component Head.

Section 128–1.8005(b), as proposed, required that the seismic design and construction of a building conform to the model building code applicable in the locality having jurisdiction over the building. A commenter observed that state and local governments do not exercise jurisdiction over federal buildings. The Department intended, and still intends, to construct its buildings in the manner and pursuant to the standards effective in the geographic area where the building will be located, and the Department has amended the text of this section to achieve that end. The same commenter interpreted the proposal as requiring compliance with model building codes at the planning stage only, and not in the construction stage of a building project. In fact, § 128–1.8005(b) requires that the seismic "design and construction of a covered building shall conform to the [appropriate] model code." The Department expects that, and will ensure that, buildings it constructs will meet the appropriate seismic safety standards. Therefore, no change in the proposed text was necessary.

These regulations have been coordinated with the Office of Management and Budget.

Executive Order 12291

This rule conforms with Executive Order 12291, which, in pertinent part, requires the preparation of a Regulatory Impact Analysis for "major" rules. The Department of Justice finds that this rule is not "major" within the meaning of that term in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials.

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Executive Order 12612

The Department analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation, and determined that this proposed rule has minimal federalism implications, if any at all. Therefore, preparation of a Federalism Assessment is not warranted.

Executive Order 12778

The Department reviewed the rule pursuant to Executive Order 12778, Civil Justice Reform. This rule will not: (1) preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) have any retroactive effect; and (3) require administrative proceedings before parties may file suit challenging the provisions of this rule.

Collection of Information and Recordkeeping Requirements

This rule contains no collection of information requirements pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Department must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632). Because the Department expects that this rule will have no impact on small businesses, the Department certifies, under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 41 CFR Part 128–1

Acquisition of real property, Seismic Safety, Seized personal property, Utilization, donation, or disposal of abandoned and forfeited personal property.

For the reasons set out in the preamble, title 41, Chapter 128 of the Code of Federal Regulations is amended by adding subpart 128–1.8 to read as follows:

Subpart 128–1.8—Seismic Safety Program

Sec.
128.8000 Scope
128.8001 Background
128.8002 Definitions of Terms
128.8003 Objective
128.8004 Seismic Safety Coordinators
128.8005 Seismic Safety Standards
128.8006 Seismic Safety Program Requirements
128.8007 Reporting
128.8008 Exemptions
128.8009 Review of Seismic Safety Program
128.8010 Judicial Review

Authority: 42 U.S.C. 7701 *et seq.*, E.O. 12699 (3 CFR, 1990 Comp., p. 269).

§ 128–1.8000 Scope.

This subpart establishes a Seismic Safety Program for the Department of Justice and sets forth the policies and procedures for obtaining compliance with Executive Order 12699 (Executive Order), "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction."

§ 128–1.8001 Background.

The Earthquake Hazards Reduction Act of 1977 (Act), 42 U.S.C. 7701, *et seq.*, as amended, directs the Federal government to establish and maintain an effective earthquake hazards reduction program to reduce the risks to life and property from future earthquakes. Executive Order 12699 implements certain provisions of the Act by requiring Federal agencies responsible for the design and construction of new buildings to develop and implement a seismic safety program. The regulations in this subpart implement the Executive Order, and apply to buildings designed and constructed under the responsibility of the Department of Justice. These regulations do not apply to buildings used by the Department and obtained, through purchase or lease, by the General Services Administration or other Federal agencies.

§ 128–1.8002 Definitions of terms.

(a) *Construction documents*—Detailed plans and specifications for the construction of a building.

(b) *Building*—Any structure, fully or partially enclosed, used or intended for sheltering persons or property.

(c) *New building*—A building, or an addition to an existing building, for which development of construction documents was initiated after January 5, 1990.

(d) *Leased building*—A new building constructed expressly for lease by the Department of Justice, and for which the Department contracted with the lessor or owner to develop construction documents to meet the specifications of the Department.

(e) *Purchased building*—A new building constructed expressly for purchase by the Department, and for which the Department contracted with the owner/developer to develop construction documents meeting the specifications of the Department.

(f) *Assisted or regulated building*—A new building designed and constructed with funding assistance from the Department through Federal grants or loans, or guarantees of financing, through loan or mortgage insurance programs.

(g) *Covered building*—a new building owned, leased, purchased, or assisted or regulated by the Department of Justice.

§ 128–1.8003 Objective.

The Department shall comply with Executive Order 12699 for the purpose of reducing the risks to lives of occupants of new buildings owned by the Department, leased for Department uses, or purchased and constructed with assistance from the Department, and to other persons who would be affected by the failure of such buildings in earthquakes; improving the capability of essential new Department buildings to function during or after an earthquake; and protecting public investments in all covered buildings; all in a cost-effective manner.

§ 128–1.8004 Seismic Safety Coordinators.

(a) The Justice Management Division shall designate an individual with technical training, engineering experience and a seismic background as the Department of Justice Seismic Safety Coordinator who shall provide overall guidance for the implementation of the Seismic Safety Program for the Department. The Department Seismic Safety Coordinator shall, at a minimum:

(1) Monitor the execution and results of the efforts of the Department to upgrade the seismic safety of the Department's new construction activities;

(2) Implement seismic safety program changes, as required;

(3) Act as a point-of-contact for the Department in maintaining necessary records, and consolidate data pertaining to the seismic safety activities in the Department;

(4) Monitor and record the cost, construction and other consequences attributable to compliance with the Executive Order;

(5) Notify each Component Seismic Coordinator about what information he must maintain under the Seismic Safety Program and what reports he must prepare;

(6) Prepare and forward for submission all reports, as required by law and regulation;

(7) Manage the Seismic Safety Program for all components of the Department, with the exception of the

components listed in paragraph (b) of this section.

(b) The Component Head for the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service, shall designate a Component Seismic Safety Coordinator for his/her respective component. Each of these Component Seismic Safety Coordinators shall manage and implement the seismic safety policies and activities within the component. The Component Seismic Safety Coordinators shall, at a minimum:

(1) Provide guidance to component employees who undertake building activity;

(2) Maintain and provide data about the Seismic Safety Program, as requested by the Department Seismic Safety Coordinator;

(3) Monitor and record the cost, construction and other consequences attributable to compliance with the Executive Order; and

(4) Submit an annual Seismic Safety Program status report as directed by the Department Seismic Safety Coordinator.

§ 128–1.8005 Seismic Safety standards.

(a) To meet the building and construction requirements of this subpart, the Department, except as noted, adopts as its seismic safety standards the seismic safety levels set forth in the model building codes that the Interagency Committee on Seismic Safety in Construction (ICSSC) recognizes and recommends as appropriate for implementing the Executive Order. The ICSSC, as of the date of this rule, recognizes and recommends:

(1) The 1991 International Conference of Building Officials (ICBO) Uniform Building Code (UBC);

(2) The 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code (NBC); and

(3) The 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code (SBC).

(b) The seismic design and construction of a covered building shall conform to the model code applicable in the locality where the building is constructed, unless:

(1) The building code for the locality provides a higher level of seismic safety than provided by the appropriate model code, in which case the local code shall be utilized as the standard; or

(2) The locality does not have seismic safety building requirements, in which case the ICSSC model building code appropriate for that geographic area shall be utilized as the standard.

§ 128–1.8006 Seismic Safety Program requirements.

The Department Seismic Safety Coordinator and each Component Seismic Safety Coordinator shall ensure that an individual familiar with seismic design provisions of the Seismic Safety Standards (appropriate standards), or a professional, licensed engineer shall conduct the reviews required under this section, as appropriate.

(a) *New building projects*—Construction documents initiated after August 12, 1993, and which apply to new construction projects, shall comply with the appropriate standards and shall be reviewed for compliance. Once the reviewer determines that the documents comply, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the appropriate standards.

(b) *Existing building projects.*—For new buildings with construction documents that were initiated prior to August 12, 1993, the documents shall be reviewed to determine whether they comply with the appropriate standards. If the reviewer determines that the documents comply with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the appropriate standards. If the reviewer determines that seismic deficiencies exist, the appropriate Component Head shall ensure completion of one of the following:

(1) For a new building project for which a contract for construction has not been awarded, the construction documents shall be revised to incorporate the appropriate standards. The revised construction documents shall then be reviewed for compliance. Once the reviewer determines that the documents comply with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the Department standards.

(2) For a new building under construction, or for which construction has been completed, a corrective action plan shall be devised to bring the building into compliance with the appropriate standards. The plan shall then be reviewed for compliance. Once the reviewer determines that the plan complies with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the Department standards. The Component Head shall ensure implementation of the approved plan.

(3) For an addition to an existing building, the review shall account for, in addition to the requirements provided in paragraphs (b) (1) or (2) of this section, as appropriate, any effect the addition will have on the seismic resistance of the existing portion of the structure. If the reviewer determines that the addition will decrease the level of seismic resistance of the existing building, the appropriate Component Head shall develop a plan of corrective action to restore the seismic integrity of the existing structure. Once the plan of corrective action has been accomplished, the reviewer shall verify that the current level of seismic resistance of the existing building at least equals the seismic resistance level of the building before the addition.

(c) The Department Seismic Safety Coordinator and each Component Seismic Safety Coordinator shall ensure that statements verifying compliance made under this subpart have been completed and retained by the appropriate contracting officer when the Department contracted for design or design review services, or by an individual designated by the Component Head where the Department has not contracted for either design or design review.

§ 128–1.8007 Reporting.

The Department shall file reports on the execution of the Executive Order as required under the Order, and as required by the Federal Emergency Management Agency.

§ 128–1.8008 Exemptions.

The Executive Order exempts from the regulations in this subpart only those categories of buildings exempted by the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings." The Department Seismic Safety Coordinator shall maintain the latest version of this document.

§ 128–1.8009 Review of Seismic Safety Program

The Department shall review and, as necessary, revise the Seismic Safety Program once every three years from August 12, 1993.

§ 128–1.8010 Judicial review

Nothing in this subpart is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Justice.

its Seismic Safety Coordinators, its officers, or any employee of the Department.

Dated: August 3, 1993.

Stephen E. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 93-19435 Filed 8-11-93; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-134; RM-8226]

Television Broadcasting Services; Ishpeming, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots VHF Television Channel 10- to Ishpeming, Michigan, as that community's first local television transmission service in response to a petition filed by Thomas Scanlan. See 58 FR 31184, June 1, 1993. The coordinates for Channel 10- are 46-31-23 and 88-00-52. There is a site restriction 27.3 kilometers (16.9 miles) west of the community and a minus offset. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93-134, adopted July 26, 1993, and released August 6, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73.

Television broadcasting.

Part 73—[Amended]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Michigan, is amended by adding Ishpeming, Channel 10

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-19310 Filed 8-11-93; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1819

RIN 2900-AI75

Final Changes to NASA FAR Supplement Subcontracting With Small Business and Small Disadvantaged Business Concerns

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement to include historically black colleges and universities and minority educational institutions to the list of organizations which are eligible for total set-aside subcontracts as identified in a NASA prime contractor's subcontracting plan. NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total set-asides in awarding subcontracts so long as such set-asides are competitive and awards are made at reasonable prices.

DATES: This final rule is effective August 12, 1993.

ADDRESSES: Comments should be addressed to Ms. Deborah O'Neill, NASA Headquarters, Office of Procurement Policy (HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, telephone (202) 358-0428.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101-144, with clarifying language in Public Law 101-507, states that the NASA Administrator shall ensure that at least eight percent of NASA funding for prime and subcontracts be made available to business concerns or other organizations owned or operated by socially and economically disadvantaged individuals. These concerns or individuals include small businesses, small disadvantaged businesses, women-owned businesses, historically black colleges and universities, and minority educational institutions. The NASA FAR Supplement previously had not included historically black colleges and universities and minority educational institutions in the list of organizations which are eligible for total set-aside subcontracts as identified in a NASA prime contractor's subcontracting plan. To be consistent with Public Laws 101-144 and 101-507, the NASA FAR Supplement is amended to include historically black colleges and universities and minority educational institutions to the list of organizations which are eligible for total set-aside subcontracts as identified in a NASA prime contractor's subcontracting plan.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1819

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR part 1819 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

§ 1819.705-4 [Amended]

2. In section 1819.705-4, paragraph (b) is revised to read as follows:

§ 1819.705-4 Reviewing the subcontracting plan.

* * * * *

(b) NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total small business, small disadvantaged business, women-owned business, historically black college and university, or minority educational institution set-asides in awarding subcontracts so long as such set-asides are competitive and awards are made at reasonable prices. Use of this procedure will be viewed as a good indication of an aggressive subcontracting plan. Set-asides may be encouraged but may not be required when negotiating subcontracting plans.

[FR Doc. 93–19373 Filed 8–11–93; 8:45 am]
BILLING CODE 7501–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AA71

Refuge-Specific Hunting and Fishing Regulations; Sabine National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule will rescind a final rule signed by the Secretary of the Interior which closed certain inholdings to the hunting of migratory game birds within the external boundaries of the Sabine National Wildlife Refuge. The closed area includes a 3,120-acre inholding owned by the J.G. Gray Estate and 4,193.7 acres of other lands adjacent to the J.G. Gray Estate. The area was initially closed on September 18, 1962, by agreement with the tenants because no migratory game bird hunting was then allowed on the Sabine National Wildlife Refuge. The refuge has now opened to hunting of migratory game birds and there is no longer any reason to have a hunting restriction on the private inholding at issue.

EFFECTIVE DATE: The effective date of this rule is September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–1786.

SUPPLEMENTARY INFORMATION: The Sabine National Wildlife Refuge (NWR) was acquired in 1937. There were eight inholdings, three of which were owned by the Gray family. The Gray family entered into leases with the refuge for wildlife protection only. The agreements read in part "* * * and for the right to administer and protect the area as part of the Sabine National Wildlife Refuge * * *" The Gray family reserved the right "* * * to use these lands for grazing purposes; to construct roads, to construct and maintain any fences considered necessary; to improve the range in any manner desired; for the production of agricultural crops; the exclusive right to trap fur-bearing animals; and to prospect for, mine, produce and remove oil, gas, and minerals * * *" These agreements continued until 1962 at which time the lease expired. During the interim period between the execution of new lease agreements, the Secretary signed a final rule closing lands owned by the Gray family and other lands adjacent to such lands, upon appropriate notification and public comment, as he felt that waterfowl and other migratory species using the area needed to be protected from hunting—especially the Canada geese. Subsequently, new lease agreements were entered into in 1963 and the area has been used for grazing a small herd of cattle and several horses. No new lease agreements have been entered into since 1983 nor have any lease agreements been initiated by the heirs to the Gray estate. Currently, portions of Sabine NWR are open for waterfowl hunting, and Canada geese have increased to the point that an experimental Canada goose season has been opened in this part of Louisiana since 1989.

The heirs of the Gray estate have requested that the U.S. Fish and Wildlife Service review and rescind the final rule which originally closed their lands and allow waterfowl hunting on all these lands which would provide the heirs and landowners, respectively, with additional surface income from hunting leases. The heirs and landowners have indicated that some of the generated income would be used for habitat enhancement.

Accordingly, after consideration of all relevant facts, a rulemaking proposing that the original rule closing 3,120 acres of the J.G. Gray Estate lands and 1,493.7 acres of other adjacent lands, be rescinded and deleted from the areas closed to hunting found in 50 CFR 32.8, was published in the **Federal Register** on December 30, 1992 at 57 FR 62289. The proposed rule received no comments and, therefore, it is the decision of the Director, under authority from the Secretary, to rescind said original closure by final rule.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effect on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The rescinding of the final rule originally closing inholdings on the Sabine NWR will have little or no effect on the economy and would, therefore, generate less than $100 million in revenues.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. Aside from the immediate economic benefit to the heirs and landowners in their efforts to open their lands to hunting leases, the opening of the area will provide recreational opportunities and generate economic benefits to the local community, albeit small, through hunting-related sales. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes of which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions,

gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this final opening of an inholding within refuge boundaries. Based upon the Environmental Assessment and an independent Section 7 consultation, the Service issued a Finding of No Significant Impact with respect to the opening.

Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, Washington, DC, is the primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting and fishing, Report and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of title 50 of the CFR is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.8 is amended in the table by removing the entry dated "September 26, 1962", under the State of Louisiana.

Dated: May 12, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19286 Filed 8–11–93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140; I.D. 070193A]

Atlantic Swordfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Swordfish Drift Gillnet Closure; correction.

SUMMARY: This document corrects the second semi-annual swordfish drift gillnet quota closure published Monday, July 12, 1993, (58 FR 37443). The notice intended to establish that during the closure, the swordfish bycatch allowance for gillnetters is no more than 2 fish per vessel. The ambiguous wording of the notice could lead to an erroneous interpretation that more than 2 fish per vessel are allowed as a bycatch by drift gillnet boats after the closure of the season. This correction clarifies that closure notice.

EFFECTIVE DATE: This correction is effective 1200 hours local time July 16, 1993, through 2359 hours local time December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Rodney Dalton, 813–893–3721 or Richard B. Stone/Aaron King, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

On page 37443, in the third column, the first full paragraph is revised to read as follows:

"During a closure of the drift gillnet fishery, aboard a vessel using or having aboard a drift gillnet—(1) A person may not fish for swordfish from the North Atlantic swordfish stock; and (2) no more than two swordfish per trip may be possessed onboard such a vessel in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed by such a vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state."

Authority: 16 U.S.C. 971 and 1801 *et seq.*

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 6, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19383 Filed 8–11–93; 8:45 am]

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7 CFR P

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AGENCY:
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Proposed Rules

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[DA-93-19]

Milk in the Middle Atlantic Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Middle Atlantic Federal milk marketing order for the months of September 1993 through February 1994. For those months, the proposal would relax the limit on the amount of milk that may be diverted to nonpool plants by handlers other than cooperative associations from 40 percent to 50 percent of the milk for which the proprietary plant operator is the handler. The suspension was requested by a large proprietary handler who receives milk from a substantial number of producers who are not cooperative members. Proponents contend that the action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

DATES: Comments are due no later than August 27, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), suspension of the following provisions of the order regulating the handling of milk in the Middle Atlantic marketing area is being considered for the months of September 1993 through February 1994:

1. In § 1004.12(d)(2), the words "or (ii)".

2. In § 1004.12(d)(2)(i), the words "of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk", and the words "of all members of such cooperative association or federation".

3. § 1004.12(d)(2)(ii).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 15th day after publication of this notice in the Federal Register. The filing period is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend certain portions of the producer milk diversion provisions of the Middle Atlantic order (Order 4) for the period September 1, 1993, through February 28, 1994. The suspension would relax the limit on the percentage of a proprietary handler's supply of milk from producers who are not members of a cooperative association that may be diverted to nonpool plants from 40 percent to 50 percent.

The action was requested by Johanna Dairies, Inc. (Johanna), and its affiliates. Johanna and its affiliates receive milk from a substantial number of independent producers who are not cooperative members. Johanna states that its reasons for requesting a suspension of the order's producer milk diversion limits are the same as those given by Pennmarva, a federation of cooperative associations representing about 90 percent of the market's producer milk, in requesting a suspension of the requirement that pool

distributing plants dispose of at least 40 percent of their receipts as Class I use.

According to the earlier Pennmarva request, a decrease in the percentage of the Middle Atlantic market's producer milk used in Class I has made it difficult to maintain the pool status of the milk of producers who historically have been associated with the market. For example, in February 1990, 52 percent of producer milk was used in Class I compared with only 45 percent for the same month in 1993.

In addition, according to the Pennmarva request, two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order. Apparently Johanna and its affiliates are experiencing the same difficulty as Pennmarva in associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic order without affecting the pool status of the milk.

Johanna states that suspension of the requested diversion limit provisions would have the effect of reducing uneconomic movements of milk solely for the purpose of meeting pooling qualifications, and would reflect current utilization circumstances without causing the milk of producers long associated with the market to become depooled.

Thus, it may be appropriate to suspend the 40 percent diversion limit on the volume of a proprietary handler's producer milk supply to the higher level applicable to the milk of cooperative association members under the Middle Atlantic order for the months of September 1993 through February 1994.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 3, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–19333 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1446

RIN: 0560–AC69

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: A proposed rule was published in the **Federal Register** on January 11, 1993 (58 FR 3514), which proposed to exclude any peanut poundage quota transferred to a farm under the "fall transfer" provision from the poundage quota available to that farm to effect a transfer under the "disaster transfer" provision. After considering the comments received in response to the proposal, CCC has determined that the proposal will not be implemented. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0156.

SUPPLEMENTARY INFORMATION: The proposed rule provided a 30-day comment period which ended on February 10, 1993. Comments received through March 1 were considered in making this determination. A total of 153 comments were received, representing: 146 producers, 2 grower organizations, 1 farm entity, 1 chamber of commerce, 2 congressmen, and 1 handler. Two respondents supported the proposed rule and the remaining 151 were opposed.

Signed at Washington, DC, on August 6, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–19402 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-licensed Facilities; Generic Environmental Impact Statement (GEIS) for Rulemaking, Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Generic Environmental Impact Statement: Extension of comment period.

SUMMARY: On June 18, 1993 (58 FR 33570), the NRC published a notice of intent to prepare a generic environmental impact statement (GEIS) to conduct a scoping process for the GEIS, and to conduct scoping meetings. In that Notice the Commission solicited written public comments on developing the scope of the GEIS. The comment period for these written comments was to have expired on August 15, 1993. The Commission received several requests for an extension of the comment period. After considering the requests, the Commission has decided to extend the comment period on the scoping process for the GEIS for approximately thirty days. The comment period now expires on September 20, 1993.

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: Mail written comments on the GEIS scoping process to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert Meck, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3737, or Frank Cardile, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3774.

Dated at Rockville, Maryland the 6th day of August 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–19292 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, and 240

[Release No. 33–7009; 34–32723; File No. S7–23–93]

RIN 3235–AF92

Executive Compensation Disclosure; Securityholder List and Mailing Requests

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: Based on an extensive review by the Division of Corporation Finance ("Division") of filings during the initial proxy season after the adoption of new executive officer and director compensation rules, the Securities and Exchange Commission ("Commission") is issuing this release to report on the first year's experience with the new

executive compensation rules and the newly amended shareholder list rule, in order to improve overall compliance with those requirements. The Commission has concluded that several refinements should be made to the executive compensation disclosure requirements and is publishing for comment proposed amendments to the rules. The principal amendments proposed would broaden the persons covered by the executive compensation rules to include chief executive officers ("CEOs") and top paid executive officers who left the company during the latest completed fiscal year; require disclosure in all cases of year-end restricted stock holdings of the named executive officers ("NEOs"); require registrants to set forth material assumptions and adjustments used in any grant-date valuation of options; and change the point in time at which the market capitalization of a peer group index or market capitalization index is calculated from the end of the period for which a return is indicated to the beginning of such period. The Commission is also proposing certain technical amendments to the executive compensation disclosure rules.

DATES: Comments should be received on or before October 15, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–23–93. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gregg W. Corso, Paula Dubberly, Brian L. Henry or Thomas D. Twedt, (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is reporting on the first year's experience with the disclosures newly required by Item 402 of Regulations S–K [1] and S–B [2] relating to executive officer and director compensation and the issuer's obligations with respect to shareholder lists and mailing of shareholder soliciting material under recently revised Rule 14a–7.[3] As a result of its experience, the Commission is proposing amendments to Item 402 of Regulation S–K relating to the executive officer and director compensation disclosure requirements applicable to proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"),[4] and to registration statements under the Securities Act of 1933 ("Securities Act").[5] The Commission is also proposing technical amendments to Item 402 of Regulation S–K and to Schedule 14A [6] under the Exchange Act.

I. Background

In October 1992, the Commission adopted extensive revisions to its rules governing disclosure of executive compensation in proxy and information statements as well as other Commission filings.[7] These revisions were designed to furnish shareholders with a more understandable presentation of the nature and extent of executive compensation by consolidating the requisite disclosure in a series of tables setting forth each compensatory element for a particular fiscal year, requiring a report by the compensation committee of the board of directors articulating the bases for their compensation decisions including the relationship to corporate performance, and requiring a line graph comparing total shareholder returns of the company against those of a broad market index and a peer group.

Through May, more than 5,000 registrants filed their annual meeting proxy statements containing the new compensation disclosure. The improved pay disclosure was generally well received by shareholders, registrants and the marketplace.[8] They generally praised the increased clarity of the disclosure and the added insights provided by the compensation committee report and related performance graph.

During this period, approximately 1,000 proxy statements were reviewed.[9] Both preliminary and definitive proxy material were examined, with most registrants permitted to address staff comments pertaining to the compensation committee report in next year's filings. Overall, the registrants' disclosures under the new rules were quite good. However, the quality of the compensation committee reports varied considerably.

A significant number of the comments issued by the staff were concentrated in a few areas. This release identifies common mistakes made by registrants in complying with the rules, discusses several more general questions of application that arose, and discusses shortcomings and strengths in compensation committee reports reviewed. As a result of the Commission's experience under the newly adopted compensation rules, it is proposing several refinements of and technical amendments to the rules.

In the event the Commission determines to adopt any or all of the proposed rule changes, it would plan to make such changes effective for all filings made on or after January 1, 1994 except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1993, would be required to comply with the rules whenever filed.

II. Observations From the Prior Proxy Season [10]

A. Persons Covered

Seventy-nine registrants reported fewer than five NEOs. Of those, 32 provided disclosure for four NEOs, 25 for three NEOs, 10 for two NEOs, and 12 reported only as to the CEO.

B. Summary Compensation Table

Two hundred and twelve registrants described no other annual compensation in the form of perquisites or other personal benefits.

Registrants did not report any restricted stock awards for the last completed fiscal year in 757 cases, and 615 registrants reported no awards for any of the years covered by the Summary Compensation Table. Of the 369 registrants reporting restricted stock

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[1] 17 CFR 229.402.

[2] 17 CFR 228.402. Throughout this release, whenever the current or proposed requirements of Regulation S–K are addressed, the discussion also is applicable to any analogous Item of Regulation S–B.

[3] 17 CFR 240.14a–7.

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 77a *et seq.*

[6] 17 CFR 240.14a–101.

[7] Release No. 33–6962 (October 16, 1992) [57 FR 48126], *as corrected* in, Release No. 33–6966 (November 9, 1992) [57 FR 53985] (collectively "Adopting Release").

[8] See, e.g., Serwer, "Pay Day! Pay Day!," Fortune (June 14, 1993) at 102; Bryne & Hawkins, "Executive Pay: The Party Ain't Over Yet," Business Week (April 26, 1993) at 56; Jones, "SEC Rules Demystify Proxy Reports, USA Today (March 2, 1993) at B1; New Disclosure Rules Could Effect Widespread Company Policy Changes, 20 Pension Rptr. (BNA) 504 (March 1993); Gottschlaln, "Revolutionary Proxies: Read Them and Reap," Wall St. J. (Jan. 29, 1993) at C1; Johnson, "Q&A: Cary Hayden," L.A. Times (Jan. 4, 1993) at D4, col. 1; Balkcom, "Coming Clean on Compensation," N.Y. Times (Nov. 1, 1992) at sec. 3, p. 11, col. 2; Hilzenrath, "Shareholder Rights Expand," Wash. Post (Oct. 16, 1992) at A1.

[9] During the course of the project, the Division reviewed the executive compensation disclosure in proxy statements of 984 registrants (634 were reviewed in definitive form and 350 were reviewed in preliminary form).

[10] All data is based on the approximately 1,000 proxy statements reviewed.

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awards in one or more of the years covered, 162 disclosed awards vesting less than three years after the date of grant.

In 38 proxy statements, registrants added columns to the Summary Compensation Table. One of the more frequently added columns was "Total Annual Compensation." Another registrant added columns to include detail required in the footnotes in the table.

C. Option Grants

Of the 710 proxy statements that included disclosure of option grants, 32 reported options with an exercise or base price discounted from the market price of the underlying security on the date of grant, while 19 registrants reported option grants having an exercise price exceeding the market price at grant. In the required footnote disclosure of material terms of reported grants, 18 featured an adjustable exercise price, 39 disclosed a reload feature, and 21 described performance-based conditions to exercise. Repriced options were reported in 8 cases.

Of those registrants reporting option grants, 480 (68%) disclosed the potential value of those options assuming 5% and 10% annualized rates of appreciation in the underlying stock, 230 (32%) valued the options using an option pricing model, and 6 presented both potential values and grant-date present values. One registrant disclosed a grant-date present value using a valuation methodology other than the Black-Scholes model in addition to the 5% and 10% annualized rates. Of the registrants using Black-Scholes, 10 disclosed underlying assumptions and adjustments to the model.

Registrants added columns to the Option Grants Table in 245 cases, including: 110 reflecting 0% appreciation in the underlying stock where the exercise price was equal to or greater than market price at grant; two showing the historic rate of appreciation of the registrant's stock over a period equivalent to the term of the options; and two to show the effect of the premium exercise price. In 153 filings, a row was added to reflect total appreciation to all shareholders if the assumed 5% and 10% annual rates of stock price appreciation are realized, and several other registrants added a row to show option gain as a percentage of total shareholder gain.

D. Compensation Committee Interlocks and Insider Participation

Many proxy statements included required disclosure of relationships or transactions involving compensation committee members or of insider participation in compensation decisions. Of these, 113 reported one or more officers or employees serving as members of the compensation committee, and 123 had a former officer on the committee. Fifteen of those registrants reported both a current officer or employee and a former officer on the committee. Of the registrants describing interlock relationships: 17 reported an executive officer serving as a member of the compensation committee of another entity, one of whose executive officers served on the registrant's compensation committee, while four additional registrants reported employee directors serving as employee director members of the compensation committee of affiliated entities; 39 had an executive officer serving on the board of directors of another entity, one of whose executive officers served on the registrant's compensation committee; and 23 reported an executive officer serving on the compensation committee of another entity, one of whose executive officers served as a director of the registrant.

E. Performance Graph

In the graph comparing the total return on an investment in the registrant's stock to the same investment in stock of companies in a broad-based index and in an index composed of peer companies or companies with similar market capitalization, 295 registrants (30%) used a self-constructed peer group, and 7 (1%) used an index of issuers with similar market capitalizations. Thirteen registrants chose to graph a period longer than the five year measurement period in the required performance graph. Registrants used plot points showing more frequent than annual cumulative values of the respective investments in 75 cases (nine semi-annual; 43 quarterly; 23 monthly). Registrants in 48 proxy statements also presented additional performance charts: Showing performance based on shareholder returns using a base measurement point earlier than that mandated in 21 cases; shareholder returns using a later than mandated base measurement point in 15 cases; returns on equity in three cases; returns on assets in two cases; earnings comparisons in three cases; one comparing total returns for the period in which a new management team had been in place; one comparing total returns for the tenure of the CEO; and two comparing total return to that of the peer index without weighting for market capitalization.

III. Common Mistakes

A. Non-Compliance With Mandated Format

To promote inter-company comparability and comprehensible disclosure, the rules require, with few exceptions, strict adherence to the specified tabular formats. In numerous cases registrants impermissibly altered column captions, omitted columns, or presented disaggregated compensation in lieu of required aggregate amounts. Other registrants combined tables. These variations to the prescribed format hinder comparative analysis and tend to obfuscate the data presented, and are not permitted by the rules.

B. Exclusion of Third Party Compensatory Options

Another recurring issue concerned the proper reporting of options or other rights to purchase securities of the parent or a subsidiary of the registrant.[11] A number of registrants improperly omitted those grants from the appropriate columns of the Summary Compensation, Option Grants and Option Exercises and Value Tables. Such options should be reported in the same manner as compensatory options to purchase registrant securities.

C. Non-reporting of Consulting Contracts Under Director Compensation

In the past, disclosure regarding consulting contracts and other compensatory arrangements with directors has often appeared in the section providing the directors' business experience[12] or in the section disclosing related party transactions and payments.[13] The Commission revised the rules specifically to require that the description of any consulting agreements or other arrangements with a director be part of the disclosure regarding director compensation.[14] Many registrants failed to comply with the revised requirement.

D. Incomplete Restricted Stock Holdings Disclosure

In a number of filings, required footnote disclosure of restricted stock holdings information was omitted or improperly presented on an aggregated basis for the NEOs as a group. The footnote should separately quantify the number and the value of restricted

[11] See Items 402 (a)(2) and (a)(5) of Regulation S-K [17 CFR 229.402 (a)(2) and (a)(5)].

[12] See Item 401(e) of Regulation S-K [17 CFR 229.401(e)].

[13] See Item 404 of Regulation S-K [17 CFR 229.404].

[14] See Instruction to Item 402(g)(2) of Regulation S-K [17 CFR 229.402(g)(2)].

shares held by each NEO at year end.[15] In addition, performance-based restricted stock treated as Long Term Incentive Plan ("LTIP") compensation should be included in the aggregate restricted stock holdings for each NEO.

E. Failure to Identify Components of all Other Compensation

Numerous filings failed to identify and quantify each item reported as All Other Compensation in the Summary Compensation Table.[16] Such information is required to be provided in a footnote for each NEO with respect to amounts reported for the last completed fiscal year.

F. Omission of Year-End Option/SAR Holdings

A number of registrants whose NEOs did not exercise options during the last completed fiscal year improperly omitted the entire Option Exercises and Value Table, including the columns relating to year-end option/SAR holdings.[17] If any of the NEOs hold unexercised options, then the total number of options held at year end and the value of those in-the-money must be provided in the prescribed tabular format.[18]

G. Incomplete Reporting of Supplemental Executive Retirement Plan Benefits

Estimated post-retirement benefits under pension and other defined benefit or actuarial plans in which one or more NEOs participate are reported separately from the Summary Compensation Table.[19] In many of the filings reviewed, registrants provided general information about excess benefit, supplemental executive retirement plans (or SERPs) or other plans providing post-retirement benefits in addition to those generally available to all employees, but failed to disclose the benefits payable to named executives under such plans.

All prospective benefits to each of the NEOs under all defined benefit plans, including those applicable only to one, or a small class, of the registrant's executives,[20] are required either to be (i) included in the Pension Plan Table for the principal retirement plan, or in a separate table for the supplemental and excess benefit plans (if benefits are determined by final compensation and years of service), or (ii) described in narrative format (if benefits are determined by some other method). The disclosure should be presented in a manner so that all benefits to which the NEOs will be entitled upon retirement under actuarial and defined benefit plans (funded and unfunded) can be determined.

H. Failure to Disclose Related Transactions Under the Caption "Compensation Committee Interlocks and Insider Participation"

To address shareholder concerns about the independence of compensation decision making by the board, the rules require disclosure of certain relationships of members of the registrant's board who participate in executive compensation deliberations in one place under a mandated caption.[21] A number of registrants identifying compensation committee members having reportable relationships or transactions dispersed disclosure of such relationships throughout the proxy statement, in some cases with a cross-reference under the mandated caption to the description of those relationships or transactions elsewhere in the proxy or registration statement. Such an approach is not permitted by the rule. The disclosure is required to appear in full under the caption "Compensation Committee Interlocks and Insider Participation." The caption may not be modified.

I. Buried Performance Graphs

The performance graph was adopted by the Commission "to complement the discussion by the compensation committee * * * of the relationship of executive compensation to corporate performance in a given fiscal year * * *" [22] That purpose is defeated where the performance graph is "buried" in the proxy statement. In some cases, registrants' performance graphs appeared in a section of the proxy statement unrelated to the executive compensation disclosure. In one filing, the graph was even presented as an appendix to the proxy statement.

J. Under-reporting of Compensation in Summary Table

Registrants are required to include all compensation to an NEO for *any* services to the company or its subsidiaries, whether paid by the registrant, its affiliates or a third party.[23] In reviewing proxy statements, the staff found items such as director fees and payments from subsidiaries that were not included in the Summary Compensation Table.

K. Reload and Repriced Options Not Reported as New Grants.

Several registrants narratively described lowering the exercise price on outstanding options and the issuance of "reload" options, but failed to report these options as new grants. Each repriced or reload option issued constitutes a new grant that should be reported as such in both the Summary Compensation Table and the Option Grants Table.[24]

IV. Questions of General Application

Most of the questions raised with the staff under the new rules during the past proxy season involved application of the rules to specific compensation arrangements. A few, however, were questions of more general application.

A. Long-Term Incentive Plan Compensation

Questions arose about whether compensation earned under a particular plan should be considered annual or long-term compensation. An LTIP, as defined for purposes of Item 402, provides compensation "intended to serve as incentive for performance to occur over a period longer than one fiscal year." [25] Awards under plans in which the requisite performance is to occur in less than one year are not properly reported as LTIP compensation, even if the maturation or payout of the award is contingent upon lapse of time or continued service with the registrant of more than one year. For example, awards based on one year's financial performance should be reported as annual, rather than LTIP, compensation even if they are not earned and payable until the end of two years.

Under some plans, awards are determined annually over a performance period but are properly treated as LTIP compensation because awards credited in one year are offset by negative accruals in other periods. In one such plan, for example, annual accruals were determined by the difference between the registrant's value

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[15] See Instruction 2.a of Item 402(b)(2)(iv) of Regulation S–K [17 CFR 229.402(b)(2)(iv)].

[16] Item 402(b)(2)(v) of Regulation S-K [17 CFR 229.402(b)(2)(v)].

[17] Item 402(d)(1) of Regulation S-K [17 CFR 229.402(d)(1)].

[18] See id. at columns (d) and (e).

[19] See Instruction 2 to Item 402(b)(2)(v) of Regulation S-K [17 CFR 229.402(b)(2)(v)].

[20] See Items 402(f)(1)(i) and 402(a)(7)(ii) of Regulation S-K [17 CFR 229.402(f)(1)(i) and 17 CFR 229.402(a)(7)(ii)].

[21] See Item 402(j) of Regulation S-K [17 CFR 229.402(j)].

[22] Release No. 33–6940 (June 23, 1992) [57 FR 29582] ("Proposing Release") at II.A.6.

[23] Item 402(a)(2) of Regulation S-K [17 CFR 229.402(a)(2)].

[24] See Instruction 3 to Item 402(b)(2)(iv) of Regulation S-K [17 CFR 229.402(b)(2)(iv)] and letter re American Society of Corporate Secretaries (January 6, 1993).

[25] Item 402(a)(7)(iii) of Regulation S–K [17 CFR 229.402(a)(7)(iii)].

(based on a yearly appraisal) and a pre-set target value. At the end of a multi-year performance cycle, those annual accruals (positive and negative) were offset to determine the payout. Since the positive annual accruals were subject to reduction by the amount of negative annual accruals, and thus remained entirely at risk during the multi-year period based on corporate performance, LTIP treatment was proper.

Some plans reviewed were hybrids, having elements both of LTIP and of annual compensation. The conditions to maturation or payout of awards under an LTIP must be based upon achievement of specified long-term performance factors or criteria.[26] Where plans provide for awards in tranches with different vesting or payout criteria, only the portions of the awards tied to achievement of performance objectives measured over a period longer than one year are properly reported as LTIP compensation. For example, one plan had a three-year performance cycle with specified awards for target and above target performance, coupled with a guaranteed payment at the end of the cycle that was subject only to continued employment. The amount of the guaranteed award should be reported as annual bonus for the year of the initial award.

Where payment is certain but the timing of the payout is conditioned upon performance, the plan should not be treated as an LTIP. Therefore, performance accelerated restricted stock, where vesting will eventually occur regardless of performance, does not qualify for LTIP treatment. Similarly, compensation contingent only upon continued employment does not qualify for LTIP treatment.

Finally, the form of the payout has no impact on the award's status as LTIP compensation. For example, an award payable upon achieving specified goals over a three-year period is LTIP compensation regardless of the form of the payout.

B. Performance Graph

1. Changes in Peer Group

When the registrant changes a self constructed index from that used in the prior year's proxy statement, the reasons for the change must be explained and the registrant's total return must be compared with that of both the newly constructed index and the prior year's index.[27] While this requirement was not at issue this first proxy season under the new rules, the staff received a number of questions concerning its prospective application.

Any change in the entities comprising a self-constructed index constitutes a change in the index used that requires presentation of both the old and new indices and a description of the basis for the change. Presentation on the old basis will not be required if an entity in a peer index is omitted solely because it is no longer in the line of business or industry for which it was initially included.[28] However a specific description of, and the basis for, the change must be disclosed, including the names of the companies deleted from the index.

Where the registrant determines component entities on the basis of objective criteria (such as the top 15 public bank holding companies determined by net assets at year end), changes in the composition of the peer group resulting from application of the criteria would not require presentation of the old index. As above, a specific description of, and the basis for, the change must be disclosed, including the names of the companies deleted from the new index.

2. Published Industry or Line-of-Business Index

Questions have arisen concerning the use in the performance graph of comparative indices prepared by affiliates and of composite indices prepared by registrants engaged in multiple lines of business. If a registrant chooses not to use "a published industry or line-of-business index,"[29] the registrant must identify the component issuers represented in the index and weight the returns of the component issuers according to their market capitalizations.[30]

An index prepared by a trade group is considered an index prepared by an affiliate of the registrant. Under the rule, an index prepared by an affiliate of the registrant may be treated as a published index only if it is "widely recognized and used," even if the index is made "accessible to the registrant's security holders." In most cases reviewed by the staff, trade group indices did not satisfy this requirement and, accordingly, constituent companies were required to be identified.

Registrants in more than one industry or line of business may construct a composite index composed of more than one published index. If all of the component indices are within the definition of "published industry or line-of-business index," the registrant need not treat the index as a self-constructed peer index. In such a case, however, the indices used and the method used to weigh the indices should be described.

C. Options Granted Prior to Establishment of Trading Market

For options granted by a registrant prior to the establishment of a trading market in the underlying security, questions arose as to the appropriate method to report those options. In the Option Grants Table, the security underlying an option must be valued as of the date of each individual grant to determine either the potential realizable value or the grant date present value. Also, additional disclosure is required for any grants with an exercise price less than the grant date fair market value of the underlying security.

Registrants may use the initial offering price in lieu of the fair market value at grant date in making the calculations for such disclosure if there was no public trading market at the relevant date. Similarly, in determining values realized upon any option exercises and the value of in-the-money unexercised options in the Option Exercises and Value Table, the initial public offering price may be used in lieu of fair market value as of the dates of any exercises of options and at the last day of the previous year if there was no public trading market at the relevant dates. In all cases, where the value assigned is not based on trading of the security in an established public market,[31] the method used to value the security should be disclosed in a footnote.

In the case of options granted prior to the initial public offering, the fair market value used for option grant disclosure purposes (if determined other than by the initial public offering price) should be the same as the value used by the registrant for accounting purposes to determine if any compensation expense related to option grants is reportable.[32]

D. Subsidiary Executive Officers as NEOs of the Parent

Registrants are reminded that in determining who their executive officers

[26] See Instruction 2 to Item 402(e) of Regulation S–K [17 CFR 229.402(e)].

[27] See Item 402(l)(4) of Regulation S–K.

[28] See letter re American Society of Corporate Secretaries (January 6, 1993).

[29] Item 402(*l*)(3) of Regulation S–K [17 CFR 229.402(*l*)(3)].

[30] See Items 402(*l*)(1)(ii) (A) and (B), 402(*l*)(3) and Instruction 5 to Item 402(*l*).

[31] See Item 201(a)(1)(i) of Regulation S–K (definition of "established public trading market") [17 CFR 229.201(a)(1)(i)].

[32] Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees. See also Staff Accounting Bulletin No. 83 (July 1989), applying this requirement to stock issued to employees prior to an initial public offering at a price significantly below the offering price.

are, they need to consider those executive officers of subsidiaries who perform a policy making function for the registrant.[33]

E. Loans to Executive Officers

Interest free loans made to executives or loans with a below market interest rate are considered compensatory to the extent of the difference between the market rate and the actual interest rate. Likewise, any loan amounts forgiven are compensation. Information about the terms of the loan, the transaction in which it was incurred and certain other information also are required to be disclosed,[34] including any noncompliance with the loan terms.

V. Compensation Committee Report

Central to the Commission's overhaul of the executive compensation disclosure rules is the new requirement that registrants include in their annual meeting proxy statements a report by the Compensation Committee of the Board of Directors (or another committee, or the entire board of directors, if it performs equivalent functions).[35] The report is to set out the Committee's policies governing last year's compensation to executive officers, including those in the Summary Compensation Table, and the specific relationship of corporate performance to that compensation. In addition, the report must discuss specifically the Compensation Committee's bases for the compensation reported for the CEO in the past year. The discussion of CEO compensation must include the criteria upon which the CEO's compensation was based, as well as a specific discussion of the relationship of the registrant's performance to the CEO's compensation, with a description of each measure of the registrant's performance, qualitative or quantitative, on which the CEO's compensation is based.[36]

The simplicity of the provisions requiring the report is intended to allow each Compensation Committee to tell its particular story in its own way. The generality of the requirement is intended to accommodate the variety of compensation policies and practices and measures of company performance used by reporting companies.

Overall, the Compensation Committee reports provided in this first proxy season were a good first time effort. There were some Committees that met the letter and spirit of the requirement, and took advantage of the report to explain fully to shareholders their policies and to provide a clear, concise discussion of how these policies related to recent corporate performance and resulted in the executive compensation reported for the prior year. There were also, on the other hand, reports that could only be characterized as perfunctory. Most reports were somewhere in between those two poles.

Many registrants received staff comments aimed at achieving greater specificity in the discussion of policies, particularly identification of the performance criteria or other bases for compensation used, as well as more precision in the discussion of how the size of various components of the compensation package were determined. Clearly, if the compensation policies and practices of the Compensation Committee are general and subjective, in toto, or with respect to certain elements of the compensation package, the report cannot include specificity and objectiveness that is not in fact practiced by the Committee. In such case, the report should state clearly that the policy or practice in question is subjective, not subject to specific criteria. In many instances, it was not possible to assess whether the generality of the report accurately reflected a Compensation Committee's subjective policies and practices, or simply a failure of the disclosure to provide the requisite degree of specificity. The quality of the disclosure linking pay and performance varied, with some registrants providing merely a statement that pay should be or was performance-linked.

The following discusses some of the recurring areas of comment on the reports. Examples cited come from actual reports.[37] Use of a specific passage drawn from a report does not reflect on the entire report. It was not uncommon for a report to vary in quality with respect to the items of compensation or recipient being discussed.

A. Format

The form and presentation of the Committee Report is left to the discretion of the Committee subject to two basic requirements. First, the report must be separately captioned to identify it clearly as a report on executive compensation.

Second, the report must be published over the names of the Committee. This requires individual listing of the names of each member of the Committee following the text of the report. Typically, companies complied by presenting the names in a blocked format immediately following the text of the report. However, a number of registrants failed to comply with this requirement and simply provided the information within or in text introducing or following the report.

Questions arose as to the appropriate presentation where different components of the compensation package were determined by different board committees. In such cases, companies may present a joint report indicating the separate committee responsibilities over the names of the members of each committee responsible, separately listed by committee. Alternatively, separate reports may be presented for each committee. Registrants used both presentations; the joint report mechanism appeared more common.

None of the compensation committee reports reviewed were subject to a dissent of a Committee member. In the event of such a dissent, a report need not be made over the name of the dissenting member. However, the report should disclose the dissent, identifying the dissenting director and summarizing the reasons, if any, provided to the Committee for the dissent.

While some reports reviewed were Board rather than Committee reports, Board preparation reflected either the absence of a compensation or comparable committee, or the initial setting of certain executive compensation by the Board of Directors. None of the proxy statements reviewed indicated Board modification or rejection of a Compensation Committee Report.

B. Specificity

As expected, the reports reflected a wide spectrum of compensation practices, ranging from the very subjective to the highly formalized, formula based process. For example:

Company A

The Corporation's program regarding compensation of its executive officers is different from most public corporations' programs. The CEO informs the Board of Directors as to the amount of his proposed remuneration and that of the Corporation's other executive officers * * *. Factors

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[33] See Instruction 2 to Item 402(a)(3) of Regulation S–K [17 CFR 229.402(a)(3)]. The definition of executive officer in Rule 3b–7 under the Exchange Act governs [17 CFR 240.3b–7].

[34] Item 404(c) of Regulation S–K [17 CFR 229.404(c)].

[35] See Item 402(k) of Regulation S–K [17 CFR 229.402(k)].

[36] See Item 402(k)(2) of Regulation S–K [17 CFR 229.402(k)(2)].

[37] The examples are provided for purposes of illustration only. Of course, the appropriateness or adequacy of particular compensation committee disclosure depends upon the facts and circumstances of the registrant's specific compensation policies and practices.

considered by the CEO are typically subjective, such as his perception of the individual's performance and any planned change in functional responsibility. Neither the profitability of the Corporation nor the market value of its stock are considered in setting executive officer base compensation.

Company B

The Committee uses the long-term stock incentive plan to compensate executives based on the Corporation's long-term growth in earnings per share and earnings * * * Awards are based on attainment by the Corporation of goals in growth in earnings per share and earnings over a five-year award cycle. For the award cycles ending prior to 1993 the targeted earning-per-share growth rate at which a participant receives 100% of his or her target incentive award has been set at 125% of the greater of 5% or the average compound annual growth rate in earnings per share over the award cycle of the companies comprising the Standard & Poor's 400 Index. For the award cycles ending in 1993 and thereafter the targeted earnings growth rate at which a participant receives 100% of his or her target incentive award is equal to twice the rate of change over the award cycle of United States gross domestic product plus the rate of change of inflation (as measured by the United States gross domestic product deflator) * * *. For those included in the table * * *, targeted performance results in an award equal to 50% of average base salary, with a maximum award of 100% of average base salary if targeted performance is doubled, and no award if performance is less than 50% of target * * *. Awards * * * paid in 1992 * * * were 64% of the target incentive award based on the Corporation's earnings per share growth equalling 4.4% (* * * exceed[ing] the 2.7% earnings per share growth of the Standard & Poor's 400 Index over the same period).

There was a wide variety of approaches to the report. Some committees chose to include general philosophy and a detailed description of procedures followed in addition to discussing the specific policies applicable to, performance related to, and bases for compensation reported. Others were quite succinct, and focused on specific policies, identifying specific factors and criteria, their relation to corporate performance, and actual performance in the prior year and its effect on compensation decisions. Reports varied in length from one paragraph to five pages. The length of the report was not a measure of its informativeness.

As noted above, the principal recurring problem was a lack of specificity. For example:

Mr. John Doe, President of the Corporation * * * has had the same salary since February 1989. Currently, there is no formal incentive plan for Mr. Doe. On January 14, 1993, the Board of Directors of the Corporation approved a bonus equivalent to 25% of salary for Mr. Doe, after having considered its evaluation of the Corporation's performance for 1992 and improved financial results.

Many committees did provide shareholders with a more informative discussion. Their reports reflected a range of operational, financial and strategic factors considered by the Committee. Examples include:

Company A

The Company uses the Plan to compensate executives based on the Corporation's return on shareholders' equity. The Plan provides for annual incentive awards to selected key executives (150 in 1992) * * *. [T]hese awards are based on the return on average shareholders' equity with the target performance of 15%, maximum award when return is 18%, and with no incentive payment if the return is less than 10%. Mr. Smith would receive an incentive payment of 80% of base salary at target performance and an incentive payment of 120% of base if the Corporation's return [reached the maximum]. For 1992, the Corporation's return on average shareholders' equity equaled 13%.

Company B

Under the employment agreement, Mr. Brown is eligible for an annual bonus in an amount to be determined by the Compensation Committee based upon such factors as the Compensation Committee deems appropriate. In 1992, the Company successfully implemented its turnaround strategy, including a return to profitability, a significant increase in cash flow from operations and a substantial decrease in total debt. This was accomplished during a period of difficult industry and global economic conditions and led to a substantial increase in stockholder value. Based on these results, the Compensation Committee awarded Mr. Brown a bonus in the amount of $1,080,000 for 1992.

Company C

The Company's 1992 performance consistently exceeded aggressive targets. Despite the sluggish economy, the Company beat 1991's operating and financial results before the 1991 special charge. In addition, the Company out-performed both the S&P 500 and its peer group index (defined with the performance graph) in dividend and shareholder value growth. The Company earned $728 million in 1992, compared to $64 million in 1991 * * *. Earnings at all operating subsidiaries were up even without the special charge, with earnings per share * * * up 13% over 1991. The Company had a return on equity of 16.5% in 1992, compared to 14.2% last year * * *. During 1992 the Company's stock price grew 13% while the average stock price of its peers rose 10% and the S&P stock index increased 4.5%.

The 1992 performance continues a series of strong years. Since 1989, the Company's earnings per share have grown from $2.81 to $3.57, an average annualized increase of 8%, while the S&P 500's earnings * * * declined 5% per year. The Company lowered its debt-to-capitalization ratio from 40.3% to 36.9% * * *. Over the same time period, the company's stock price has grown an average of 16% per year, while the S&P and peer group stock indices increased only 12%. The Company has also increased its dividends at a rate comparable to that of its earnings growth over the past five years.

In addition to leading the Company to outstanding financial achievements, Mr. Roe has established a strong record in the areas of customer service, technology use and innovation, quality, governmental relations and management efficiency, and has built a strong management team and aggressively pursued new areas for growth.

The lack of specificity was a particular problem with respect to CEO compensation for which more individualized disclosure is required by the rule. A number of reports did not address the CEO's compensation at all, perhaps in some cases due to reliance on the transition provisions allowing companies to forego the more detailed discussion of CEO compensation fixed before the effective date of the amended requirements.

C. Size of Pay Packages

In discussing the level of compensation paid or awarded, either for the total compensation package or with respect to individual components of the pay package, many Committees reported that the amount of compensation was based on assessments of competitive rates. In such cases, the report should clearly indicate, for each item said to be based on competitive rates, both the nature of the group with which the Committee is comparing itself and at what level in the group the company places itself. Examples of such disclosure included:

Base salary is targeted at the competitive median for competitors in diversified financial services. For the purpose of establishing these levels, the Company compares itself to a self-selected group of diversified financial companies that compete in the Company's primary lines of business, *i.e.*, annuities, insurance, asset management, and retail brokerage services. There are currently 21 companies in this comparison group, which is subject to occasional change as the Company or its competitors change their focus, merge or are acquired, or as new competitors emerge.

Where different competitive standards are used for different components of the pay package, that should be made clear. For example,

Fixed compensation is to fall at or near the 50th percentile of a comparative group, * * * while opportunities for variable "at risk" compensation should be at or near the 70th percentile of such group. Actual incentive compensation will reach this goal only in years in which the Company is successful in meeting its performance targets, which are set above the average return on equity for the comparative * * * group.

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Likewise, the report should make clear whether the competitive group includes the companies used by the registrant in any self-constructed peer group performance index. For example:

The Compensation Committee believes that the Company's most direct competitors for executive talent are not necessarily all of the companies that would be included in a peer group established to compare shareholder returns. Thus, the compensation Peer Group is not the same as the peer group index in the Comparison of Five Year Cumulative Total Return graph included in this Proxy Statement.

In discussing long-term incentive compensation, a number of reports focused on the philosophy of the incentive plan and the eligibility criteria, but failed to address how the size of the award was determined. For example, some reports, in describing options or restricted stock awarded in the prior year, said no more than:

Stock options are the principal vehicle for payment of long-term compensation. This component of compensation is intended to retain and motivate executives to improve stock market performance. Stock options are granted from time to time to members of management based primarily on the individual's potential contribution. They are granted at the prevailing markets value and will have value only if the Corporation's stock price increases. The Committee's policy is that the exercise price of stock options should not be amended after grant.

Other reports were more specific and showed a variety of approaches to determining size and recipients of awards.

Company A

The Committee has established stock option target awards for each participating level of responsibility within the Company based on a survey * * * of about 30 large industrial companies with the objective of providing competitive long-term compensation opportunity when compared with other major industrial companies.

Stock options are typically granted annually. Individual grants may range from one-half to one-and-one-half of the target for each level of job responsibility to reflect individual performance and potential.

Company B

Options are granted annually, usually in respect of approximately the same number of shares. In selecting recipients and the size of grants in 1992, while various factors such as the potential of the recipient and prior grants and Company performance are considered, the Committee believes option grants should be made annually on a generally consistent basis.

Company C

The number of shares for each executive officer is determined by taking a percentage of salary and dividing that amount by the fair market value per share on the date of grant. The percentage, which falls within a pre-set range, is set annually by the Committee for the CEO, and by the CEO (subject to the approval of the Committee) for the other executive officers, depending in each case on a subjective evaluation of the performance of the officer under consideration.

There were reports that suggested that the Committee viewed options less as compensation and more as a different incentive mechanism. For example,

The corporation has provided forms of equity participation as a key part of its total program for motivating and rewarding executives and managers for many years. Grants of stock options and restricted stock have provided an important part of the equity link to shareholders. Through these vehicles, the corporation has encouraged its executives to obtain and hold the corporation's stock.

In such cases, registrants were asked to disclose whether in determining whether and how many options or shares should be granted or awarded, the Committee considered the amount and terms of options and restricted stock already held by the executive officer.

D. Criteria for Awards

In explaining compensation awards based on performance or other non-competitive factors, the Committee report must clearly identify the factors upon which the award was based. In some cases, particularly in the case of performance-based formula plans, these criteria can be quite objective. For example:

[T]he annual incentive compensation plan is funded from a pre-set portion of the Company's net income which exceeds a threshold return on equity. The percentage and threshold are established at the beginning of the fiscal year. Individual awards for senior management are based upon pre-determined percentages of the total pool based on the individual's position and the Committee's assessment of such individual's contribution in such position. In 1992 the threshold return on equity was increased from 11% to 12% while the total management incentive pool was held at 8.5% of net income earned in excess of the level required to meet the threshold return on equity * * *. At the same time, because of increased earnings and a higher return on equity, the total award to the CEO increased 40%. In 1993, the Company has again increased the return on equity threshold * * * to 13% * * *.

In other cases, compensation awards reflect progress on strategic or other non-numerical goals. For example:

In evaluating the performance and setting the incentive compensation of the Chief Executive Officer and the Corporation's other senior management, the committee has taken particular note of management's success in restructuring the corporation's businesses to adjust for the decline in its existing business and in effectively directing the corporation's operations under the difficult economic conditions in the Corporation's served markets over the last two fiscal years * * *. [I]n the past five years the Corporation has divested businesses that contributed nearly $2 billion of sales over that period as part of management's continuing effort to focus on those businesses that have leadership positions in served markets and meet the Corporation's criteria for potential sustained leadership and growth. The Committee has taken into account management's performance in increasing or maintaining market shares of its ongoing U.S. commercial [and] international * * * businesses, which accounted for 69% of sales in 1992 as compared to 45% in 1986.

A problem in many reports was the failure to identify the specific criteria or factors used. The rules allow registrants, in discussing specific quantitative or qualitative performance related factors, to omit specific target levels and any factor or criteria involving confidential commercial or business information disclosure of which would adversely affect the registrant.[38] Reports varied as to the disclosure of target levels; a number of reports indicated the actual performance level and simply stated that it met or exceeded the target. Some identified the target. Others did not report either target levels or actual performance.

The instruction that permits reports to omit identifying those factors or criteria involving confidential commercial or business information does not excuse general non-disclosure of the factors or criteria on which compensation was based, citing only unspecified performance or strategic goals. Such reports were uninformative. In the future, where a report fails to disclose the criteria and factors (as distinguished from target levels) used, registrants will be asked to justify the non-disclosure, and to include in the report disclosure that the Committee believes identifying the factors or criteria would adversely affect the company. Where an award is made under a performance-based plan notwithstanding failure to meet the relevant performance criteria, the report should disclose the waiver or adjustment of the relevant performance targets and the bases for the determination nonetheless to award such compensation.

Several reports have attempted to satisfy the requirement to disclose the bases for compensation and its relation to corporate performance with a long laundry list of items considered by the Committee without any discussion of the specific factors. If the laundry list

[38] See Instruction 2 to Item 402(k) of Regulation S-K [17 CFR 229.402(k)].

simply represents a practice of subjective, informal compensation policies and practices, the report should clearly so state. The report should discuss the relative importance of each of the factors, and how the individual factors relate to the compensation decisions ultimately made. For example:

> Annual incentive awards for the named executives are determined in accordance with the Company's Executive Incentive Compensation Plan. The goal areas and measures under the Plan for 1992 were: Financial Success (earnings per share (EPS))—35%; Customer Service (customer surveys, plant availability, system reliability, employee safety results and rate performance)—30%; and Individual Performance (PM&R)—35% * * *. The Plan has a minimum threshold, target and maximum financial (EPS) levels. The Company EPS for 1992 was below the minimum threshold which resulted in no incentive award payout.

Registrants are free to include in their proxy statements performance comparisons in addition to that required for the five year shareholder returns. Where the registrant elects to do so, the Compensation Committee report must include a discussion that addresses the link between that performance measure and the executive compensation reported for the latest fiscal year.[39] One example included:

> The key performance measure the Committee used in determining Mr. Smith's 1992 compensation was its assessment of his ability and dedication to enhance the long-term value of the company by continuing to provide the leadership and vision that he has provided throughout his tenure as CEO, during which the market value of the Company has increased by approximately $50 billion. This performance is further highlighted on the Eleven Year Performance Graph * * *, which covers Mr. Smith's tenure as CEO and compares the company's stock performance with the stock performance of other companies as measured by broad indices.

E. Effect on Report of Proposed Changes to Persons Included in the Summary Compensation Table

Policies and bases for compensation, including severance compensation, reported for those executive officers that may be added to the named executive officers pursuant to the proposed revisions of Item 402,[40] must be addressed in the Compensation Committee Report. The discussion with respect to the compensation of a former CEO required to be included in the disclosure because of service as CEO during the latest completed fiscal year would be subject to the same requirements as for the current CEO.

VI. Proposed Rule Changes

Based on its experience in the first proxy season under the new rules, the Commission is proposing four refinements to the rules and certain technical changes.

A. Persons Covered

The rule currently requires that disclosure be provided for the CEO and each of the four most highly paid executive officers (whose compensation exceeds $100,000) employed at fiscal year end. There were instances this past proxy season where, as a result of the departure of an executive officer prior to fiscal year end, the required disclosure presented an incomplete picture of the registrant's compensation practice. Therefore, the Commission proposes to amend the rules to include as NEOs persons who would have been included in the Summary Compensation Table except for their departure before year end. Specifically, as proposed, the rules would require disclosure with respect to any person who served as CEO any time during the registrant's preceding fiscal year,[41] and any other executive officers who departed during the last fiscal year but whose salary and bonus compensation during the fiscal year would have placed them among the four most highly compensated.[42] The rule as proposed, however, would limit the number of departed executive officers (other than former CEOs) for whom disclosure would be required to two.

Comment is invited on the necessity or appropriateness of requiring compensation information on departed CEOs and other executive officers. Commenters are also requested to discuss whether more or fewer additional executives are appropriate and specifically whether the additional disclosure should apply only to former CEOs.

B. Restricted Stock Portfolio Information

Under the current rule, registrants are only required to provide disclosure of NEOs' year-end restricted stock holdings when they disclose the award of restricted stock in the Summary Compensation Table for any NEO.[43] Based on disclosures made, restricted stock holdings appear important in assessing overall compensation practices, whether or not recent grants have been made. Therefore, the rule is proposed to be revised to require disclosure of year-end restricted stock holdings in all cases.[44]

C. Grant-Date Present Value

The rules require that registrants choosing to value option grants with a grant-date methodology, other than a variation of the Black-Scholes model, must include a footnote to the Option Grants Table describing the valuation method used and any material assumptions.[45] Registrants using Black-Scholes or binomial pricing model are permitted to limit their disclosure to a simple declaration of the use of that pricing model. Some registrants using a Black-Scholes model voluntarily chose to disclose material assumptions used in calculating such values.

Based on the utility of such disclosure and the ability of registrants to provide such disclosure in a clear, concise fashion, the rules are proposed to be revised to require disclosure of certain assumptions and adjustments. Such disclosure would enable shareholders and the market better to assess the values reported, particularly given that slight changes in assumptions or the use of conservative adjustments can cause a significant variation in the value reported. Under the proposed revisions, registrants would be required to describe the assumptions regarding the expected volatility, risk-free rate of return, dividend yield and time to exercise. In addition, any adjustments for non-transferability or risk of forfeiture also would have to be disclosed.[46]

Commenters are asked to address the appropriateness or necessity of this

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[39] See Instruction 4 to Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)].

[40] See Section VI.A., *infra*.

[41] See proposed revision to Item 402(a)(3)(i) of Regulation S–K.

[42] See proposed revision to Item 402(a)(3)(iii) of Regulation S–K.

[43] Instruction 2 to Item 402(b)(2)(iv) of Regulation S–K [17 CFR 229.402(b)(2)(iv)] and Item 402(a)(6) of Regulation S–K [17 CFR 229.402(a)(6)].

[44] See proposed revision to Instruction 2 to Item 402(b)(2)(iv) of Regulation S–K.

[45] Instruction 9 to Item 402(c) of Regulation S–K [17 CFR 229.402(c)].

[46] See proposed revision to Instruction 9 to Item 402(c) of Regulation S–K. An example of such disclosure, provided by one registrant, follows:

> The model assumes:
>
> (a) An option term of 8.18 years, which represents the weighted average (by number of options) over the past ten years of the length of time between grant date of options under the Company's plans and their exercise date for the named executive officers;
>
> (b) An interest rate that represents the interest rate on a U.S. Treasury Bond with a maturity date corresponding to that of the adjusted options term;
>
> (c) Volatility calculated using weekly stock prices for the five years (260 weeks) prior to the grant date; and
>
> (d) Dividends at the rate of $1.75 per share, the total amount of dividends paid with respect to a share of stock in 1992.
>
> Another company disclosed the following adjustment: The Company also deducted 10% to reflect the probability of forfeiture prior to vesting, based on the Company's actual experience over the prior 5 years.

requirement. Comment is also requested as to the need to mandate disclosure of any other specific assumptions or adjustments, or the appropriateness of deleting one or more of the specified items. Should the rule simply require disclosure of all material assumptions or adjustments?

D. Performance Graph: Weighting of Self-Constructed Indices

When registrants use a self-constructed peer group index or a market capitalization index in the performance graph, the returns of each component company must be weighted according to their respective stock market capitalization.[47] In calculating the value of a given index, the returns of the component entities are weighted according to their market capitalization as of the end of each period for which a return is indicated.[48]

Throughout the review period, some commenters expressed a preference for either an equal weighted or median percentile approach rather than market capitalization weighting. Others urged a change in timing from the end to the beginning of the period.

Market weighting is consistent with the approach used in published indices. Since greater weight is given to larger capitalized companies, weighting each company's return by market capitalization is consistent with the objective that the graph provide an accurate comparison of companies in a given industry. Comparing the registrant with the average dollar invested in the industry as a whole requires giving greater weight to larger capitalized companies since they receive a proportionately greater share of the capital invested. In contrast, use of an equal-weighted or median percentile approach in constructing the performance graph would produce a bias towards small companies that represent a relatively small fraction of the total investment in the industry.

However, the Commission is persuaded that it may be appropriate to change the timing of the weighting, from the end to the beginning of each period for which a return is indicated.[49] Such a change would appear to more accurately reflect the performance over the period by eliminating the appreciation during the period from the calculation of market weight.

Comments are invited on the appropriateness of the proposed changes. Are the benefits of the change sufficient to outweigh the costs of its implementation?

E. Technical Amendments

The Commission is also proposing technical amendments to clarify the application of Item 402 and to correct certain inconsistencies in the rules. Comment is requested on whether these amendments are appropriate.

1. Item 402(b)(2)(iv)—Summary Compensation Table/Restricted Stock Portfolio

Revision of the rules would clarify that the calculation of aggregate value of a NEO's restricted stock holdings uses the stock value at year end.

2. Item 402(c)—Option Grants Table

The caption to column (b) of the Option Grants Table is proposed to be revised to read "Number of Securities Underlying Options/SARs Granted," in order to clarify that the amount reported represents the total number of securities subject to the award.

3. Item 402(e)—LTIPs

Item 402(e) of Regulation S–K,[50] pertaining to LTIPs, would be revised to make it clear that estimated future payment disclosure for non-stock price-based plans may be made either in dollars or in shares.

4. Item 402(f)—Defined Benefit Plans

Item 402(f) of Regulation S–K,[51] the disclosure relating to defined benefit plans, was intended to require disclosure of the relationship of the covered compensation to the compensation in the Summary Compensation Table. However, since option grants are not disclosed in dollars, such a comparison is not always possible. The proposed amendment rectifies that situation by clarifying that the relationship disclosure should be limited to annual compensation (*i.e.*, salary, bonus and other annual compensation). [52]

5. Item 402(l)—Performance Graph

Current instruction 2 to Item 402(l) would be revised to clarify that registrants are to assume a fixed investment, stated in dollars (*e.g.*, $100) in the stocks and indices plotted when constructing the lines of the performance graph. The promulgating release contains an illustration of the application of this requirement.[53]

6. Item 10 of Schedule 14A—Compensation Plans

Instruction 3 to Item 10 of Schedule 14A,[54] concerning the time of filing plan documents, would be revised to correct the reference to Rule 14a–6 paragraphs (a) (preliminary material) or (b) (definitive material) for the appropriate time to file.

VII. Shareholder Lists and Mailings

As part of the October 1992 proxy rule changes, the Commission adopted amendments to the shareholder lists and mailing rule, Rule 14a–7.[55] The rule is triggered "regardless of whether the request references [the] section," [56] but does require the requesting shareholder to provide certain information regarding its ownership of the issuer's securities and to provide a certification that the shareholder will not use a securityholder list for improper purposes. Questions have arisen regarding the issuer's obligations under Rule 14a–7 where the requestor appears to be relying upon a state law right for access to the list and where the request does not provide all the information called for by the rule.

Rule 14a–7 was revised to provide shareholders a meaningful means to exercise their rights to communicate with other shareholders through access to a list of shareholders or through a mailing by the issuer. This right is not intended to be conditioned on the requesting shareholder being aware of the distinctions between federal and state access rights or the particular requirements of Rule 14a–7. The rule creates obligations on the part of the issuer to respond within five business days of the receipt of a comprehensible request for a list of shareholders or for a mailing, regardless of the request's format or content—and in particular, even if the request specifically references state law and does not mention the federal proxy rules.[57] Unless the request expressly disclaims reliance on Rule 14a–7, any request for a list or mailing triggers the issuer's obligations under the rule.

The staff has become aware of a number of instances where the issuer has summarily denied a list request as not in conformity with Rule 14a–7, without further elaboration. In defense, the issuer frequently pointed to the

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[47] See Instruction 5 to Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)].

[48] See Letter re American Society of Corporate Secretaries (January 6, 1993).

[49] See proposed revision to Instruction 5 to Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)].

[50] 17 CFR 229.402(e).

[51] 17 CFR 229.402(f).

[52] Items 402(b)(1) (columns (c), (d) and (e)) and 402(b)(2)(iii) [17 CFR 229.402(b)(1) and 17 CFR 229.402(b)(2)(iii)].

[53] See Section II.I. of the Adopting Release.

[54] 17 CFR 240.14a–101 (Schedule 14A, Item 10).

[55] 17 CFR 240.14a–7. See Exchange Act Release No. 31326 (October 22, 1992) [57 FR 48276].

[56] Rule 14a–7(a).

[57] See id.

requestor's failure to provide information concerning beneficial ownership or the certifications regarding proper use of the list that was not required by the rule. For example, the information relating to the requestor's beneficial ownership is called for only if the requestor is not a recordholder. A shareholder is not required to provide the attestation regarding proper use of the securityholder list, where the issuer intends to exercise its right to mail instead of providing the requested list. Since the rule does not provide an exception from the issuer's obligation based upon a deficient request by the shareholders, a failure to meet the requirement for a timely response to a Rule 14a–7 request is excusable only if the issuer informs the holder within the five business day period of any deficiencies in the request and what additional information is required to perfect a request.

Questions have also arisen regarding the threshold requirement of Rule 14a-7, which makes the rights provided by the rule available to a shareholder only if the registrant intends to engage in a proxy solicitation. Registrants have resisted compliance with the rule on the ground that the request was made too far in advance of the meeting to determine whether the registrant will solicit in opposition or before it was clear that the proposal that is the subject of the request would be presented at the meeting. A registrant may not deny a request on these grounds if it wishes to preserve the right to solicit in opposition to the subject matter of the request. The issuer will be able to determine whether it intends to solicit at the time of the request, since Rule 14a-7(c) requires the requesting securityholder to identify the subject matter of the planned solicitation or communication. The timing of that request with respect to the next meeting of shareholders is not relevant to the application of the rule.

With respect to shareholder proposals, questions have arisen whether the issuer must respond to a list demand prior to the time the staff has responded to an issuer request to omit from the proxy statement the proposal that is the subject of the list demand. Since the shareholder often will solicit proxies independently and raise the matter at the meeting regardless of the resolution of the Rule 14a-8 issue, the staff's response to a shareholder proposal no-action request should not be determinative of the issuer's obligations under Rule 14a-7. The issuer may not deny the list request relating to the proposal if the issuer intends to vote any proxies with respect to the matter. The solicitation of proxies in connection with a meeting that confers discretionary authority to vote against a matter excluded from the issuer's proxy materials under the shareholder proposal rule would constitute a solicitation by the issuer that would trigger the provisions of Rule 14a-7.

VIII. General Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments to Item 402 of Regulation S-K and related rules and regulations, including any of the technical amendments, as well as on other matters that might have an impact on the proposals set out in this release, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–23–93. Comment is requested as to the potential impact of the proposals on such matters as tax planning and regulatory burdens from the viewpoint of the public, as well as the entities or person making filings with the Commission. These comments will be considered by the Commission in complying with its responsibilities under section 19(a) of the Securities Act.[58] The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[59] All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

IX. Cost Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views of and other supporting information from the public. It appears to the Commission that the benefit to be gained by amending the executive compensation disclosure rules to require registrants to provide the enhanced information to shareholders as well as to clarify the disclosure requirements outweighs the costs associated with implementing these proposals.

[58] 15 U.S.C. 77s(a).
[59] 15 U.S.C. 78w(a).

X. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance 5 U.S.C. 603 regarding the proposed revisions. A copy of the Analysis may be obtained from Thomas D. Twedt, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Reference is made to the Summary and Background sections of the foregoing release for a discussion of the reasons for and objectives of the proposed action.

As discussed more fully in the Analysis, the proposed changes would affect small business issuers, as defined in the Commission's rules. It is expected, however, that the recordkeeping and compliance burdens that would result from the changes will be minimal.

Written comments are encouraged with respect to any aspect of the Analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted.

XI. Statutory Basis

The amendments contained herein are being proposed pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.402 by revising paragraph (a)(2); Instruction 2 to Instructions to Item 402(b)(2)(iv); the table following paragraph (c)(1); paragraph (c)(2)(ii) and paragraph (e)(2)(iv) to read as follows:

§ 228.402 (Item 402) Executive compensation.

(a) * * *

(2) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level;

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

* * * * *

Instructions to Item 402(b)(2)(iv)

1. * * *

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

* * * * *

(c) * * *

(1) * * *

OPTION/SAR GRANTS IN LAST FISCAL YEAR

	Individual grants			
(a) Name	(b) Number of securities underlying options/SARs granted (#)	(c) % of Total options/ SARs granted to employees in fiscal year	(d) Exercise or base price ($/Sh)	(e) Expiration date
CEO				
A				
B				
C				
D				

(2) * * *

(ii) number of securities underlying option/SARs granted.

* * * * *

(e) * * *

(2) * * *

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By amending § 229.402 by revising paragraph (a)(3); Instruction 2 to Instructions to Item 402(b)(2)(iv); the table following paragraph (c)(1) and paragraph (c)(2)(ii); Instruction 9 to Instructions to Item 402(c); paragraph (e)(2)(iv); paragraph (f)(1)(ii)(A); and Instruction 2 and Instruction 5 to Instructions to Item 402(l) to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) * * *

(3) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level;

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

* * * * *

Instructions to Item 402(b)(2)(iv)

1. * * *

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

* * * * *

(c) * * *

(1) * * *

OPTION/SAR GRANTS IN LAST FISCAL YEAR

	Individual grants				Potential realizable value at assumed annual rates of stock price appreciation for option term		Alternative to (f) and (g): grant date value
(a) Name	(b) Number of securities underlying options/ SARs granted (#)	(c) % of total options/SARs granted to employees in fiscal year	(d) Exercise or base price ($/Sh)	(e) Expiration date	(f) 5% ($)	(g) 10% ($)	(f) Grant date present value $
CEO							
A							
B							
C							
D							

(2) * * *

(ii) number of securities underlying option/SARs granted.

* * * * *

Instructions to Item 402(c)

* * * * *

9. Where the registrant chooses to use the grant-date valuation alternative specified in paragraph (c)(2)(vi)(B) of this item, the valuation shall be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes option pricing model, the description shall identify the use of such pricing model and describe the assumptions used relating to the expected volatility, risk-free rate of return, dividend yield and time of exercise. Any adjustments for non-transferability or risk of forfeiture also should be disclosed. In the event another valuation method is used, the registrant is required to describe the methodology as well as any material assumptions.

* * * * *

(e) * * *

(2) * * *

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

* * * * *

(f) *Defined Benefit or Actuarial Plan Disclosure*

(1) * * *

(ii) * * *

(A) The compensation covered by the plan(s), including the relationship of such covered compensation to the annual compensation reported in the Summary Compensation Table required by paragraph (b)(2)(iii) of this item, and state the current compensation covered by the plan for any named executive officer whose covered compensation differs substantially (by more than 10%) from that set forth in the annual compensation columns of the Summary Compensation Table:

* * * * *

(l) * * *

Instructions to Item 402(l)

* * * * *

2. In constructing the graph:

(a) The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by a given index), with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

(b) Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

* * * * *

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise note.

* * * * *

6. By amending § 240.14a.101 by revising Instruction 3 to Item 10 of Schedule 14A to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 10. Compensation Plans

* * * * *

Instructions

* * * * *

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are first filed pursuant to paragraph (a) or (b) of § 240.14a-6.

* * * * *

Dated: August 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-19328 Filed 8-11-93; 8:45 am]

BILLING CODE 8010-01-R

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

Information for Exports of Precursor and Essential Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations implementing the Chemical Diversion and Trafficking Act to require regulated persons to submit information on customers for specific chemicals shipped to certain countries along with the DEA Form 486 (O.M.B. Approval Number 1117-0023). This additional information is being required because of the extremely high risk of diversion of such chemicals within those countries where large quantities of illicit drugs are processed or manufactured.

DATES: Comments and objections must be submitted by September 13, 1993.

ADDRESSES: Comments and objections should be submitted in quintuplicate to Director, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Attention: **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION CONTACT:

Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion

Control, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act (CDTA) of 1988 and the implementing regulations establish a system of recordkeeping and reporting requirements that provide DEA with a mechanism to track domestic and international movement of listed chemicals and tableting and encapsulating machines. Section 1018(a) of the CDTA (21 U.S.C. 971) provides that each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place. An exception is allowed by this Section when the transaction is between a "regulated person" and a "regular customer." The CDTA is structured to provide DEA and foreign officers the opportunity to determine that the customer is legitimate and that the chemical will not be diverted to the illicit manufacture of drugs.

Exporters are required to view every order with vigilance and sound judgment. In cases where shipments are being made to an established customer, the quantity and the intended use must be consistent with previously established experience with that customer. If no previous exports of listed chemicals have been made, the U.S. exporter must make an effort to determine if the quantity and intended use is consistent with the nature and size of the customer's business.

The controls of the CDTA permit normal commercial activity to continue unimpeded following initial review of the legitimacy of the trading partners. Companies have not been required to disclose any additional information about their customers beyond the basic identifying characteristics. Because of this, an exporter may follow the minimum requirements of the CDTA, yet, for credit or sales projection type purposes, possess additional information which would help law enforcement determine the legitimacy of the customer. That situation underscores a basic premise of the CDTA—that members of the chemical industry must "know their customers." This proposal seeks to require that such information be provided to DEA for certain chemicals and countries.

This proposed change also recognizes that DEA has certain limited capabilities to conduct an investigation of foreign customers of U.S. chemical firms. DEA is present in foreign countries at the invitation of the host government. DEA must respect the laws of a host nation and work through designated officials of the host government. Any request for a review of the legitimacy of a chemical customer of a U.S. firm is subject to the priorities of the officials of the foreign host government. Thus, reviews of foreign customers have been hampered, delayed, or in some instances not completed. Because of this situation, some U.S. exports have been delivered to foreign importers which have subsequently been determined to be of questionable legitimacy.

In addition, DEA has determined that the quantities of certain chemicals being imported from U.S. and European sources by drug producing countries greatly exceed their legitimate need for those chemicals and that drug traffickers continue to be able to obtain the chemicals which they need to process illegal drugs such as cocaine and heroin. DEA is taking this additional step to insure that U.S. exports are being imported solely for legitimate purposes and are not being diverted. The information required is of a type that can readily be supplied by a legitimate customer. On the other hand, the absence of such information, or unwillingness on the part of a customer to supply it, raises a serious suspicion of diversion in those countries where a large volume of controlled chemicals are diverted into the illicit drug traffic.

There are also two corrections being made to the first sentence of § 1313.21(a). The first is to correct a typographical error, the word "of" is changed to "or". The second will provide consistency within the paragraph, the word "Administrator" is changed to "Administration".

The Director, Office of Diversion Control certifies that this action will have no significant impact upon small businesses or other entities whose interest must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action which requires regulated persons to obtain information on customers and submit it with the DEA Form 486 (O.M.B. Approval Number 1117–0023) is limited to specific chemicals and foreign countries. Most exports of this nature are handled by major chemical manufacturers who are not small entities as defined in 5 U.S.C. 601(6).

The Director, Office of Diversion Control has determined that this is not a major rule, as that term is used in Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1313

Importation, Exportation, Transshipment and in-transit shipment of precursors and essential chemicals.

For reasons set out above, 21 CFR part 1313 is proposed to be amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.21 is proposed to be amended by revising paragraphs (a) through (c) and adding new paragraphs (e) and (f) as follows:

§ 1313.21 Requirement of authorization to export.

(a) No person shall export or cause to be exported from the United States any chemical listed in § 1310.02 of this chapter, which meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter until such time as the Administration has been notified. Notification must be made not later than 15 days before the transaction is to take place. In order to facilitate the export of listed chemicals and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance of the 15 days as possible.

(b) A completed DEA Form 486 (O.M.B. Approval Number 1117–0023) must be received at the following address not later than 15 days prior to the exportation:

Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038. A copy of the completed DEA Form 486 (O.M.B. Approval Number 1117–0023) may be transmitted directly to the Drug Enforcement Administration, Chemical Operations Section, through electronic facsimile media not later than 15 days prior to the exportation.

(c) Except as provided in paragraph (e) of this section, the 15 day advance notification requirement for listed chemical exports may be waived for any regulated person who has satisfied the requirements of § 1313.24 for reporting to the Administration an established business relationship with a foreign

customer as defined in § 1313.02(j). A DEA Form 486 (O.M.B. Approval Number 1117–0023) Import/Export Declaration must be received by the Drug Enforcement Administration, Chemical Operations Section, on or before the date of exportation through use of the mailing address listed in § 1313.21(b) or transmitted directly through use of electronic facsimile media.

(d) * * *

(e) (1) No person shall export or cause to be exported a listed chemical to any country which has been identified in paragraph (f) of this section as presenting a potential threat that the chemical may be diverted to illicit commerce until the requirements set forth in paragraph (e)(2) of this section are satisfied. The 15 day advance notification requirement will not be waived for exports of specific chemicals to the listed countries as specified in paragraph (e)(2) of this section.

(2) For exports of chemicals to countries identified pursuant to paragraph (f) of this section, the regulated person shall submit information with the DEA Form 486 (O.M.B. Approval Number 1117–0023) in addition to the requirements set forth in § 1310.07 to establish proof of identity as follows:

(i) The specific purpose for which the chemicals will be used by the party receiving the listed chemical, or

(ii) In circumstances in which the customers may redistribute the chemicals other than in retail quantities, rather than consume them in production, a list of the third party customers and their intended use of the chemicals will be required.

(iii) Such facts and representations which have been or will be used to substantiate the legitimacy of the customer, or if a distributor, of its' customers.

(3) Regulated persons shall provide the information specified in § 1313.21(e)(2) for the first export after a chemical is listed in paragraph (f) of this section. The information shall be updated on an annual basis or, upon receipt of information which could change the customer status.

(f) the chemicals and countries subject to the requirements set forth in paragraph (e) of this section are as follows:

Name of chemical	Country
Acetone	Colombia, Peru, Venezuela, Ecuador.
Methyl ethyl ketone	Colombia, Peru, Venezuela, Ecuador.
Potassium Permanganate.	Colombia, Peru, Venezuela, Ecuador.
Ephedrine	Mexico.
Hydriodic Acid	Mexico.

Dated: June 4, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–19384 Filed 8–11–93; 8:45 am]

BILLING CODE 4410-09-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 200]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Agency proposes new regulations governing its implementation of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut Agreement of 1948). A recent decision by the United States Court of Appeals (9th Circuit) and Congressional enactment of legislation effecting the Agency's implementation of the Beirut Agreement indicate that new regulations be advanced.

DATES: Public comments will be accepted on or before September 13, 1993.

ADDRESSES: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Since its establishment in 1946, the United Nations Educational, Cultural, and Scientific Organization (UNESCO) has endeavored to promote the free flow and exchange of scientific and educational material between nations through the elimination of important and customs duties on such material. The Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (Third General Session of UNESCO; Beirut, Lebanon; 1948; 17 U.S.T. 1578) hereinafter, the "Agreement," is the first fruit borne of this international collaborative effort. The Agreement provides an exemption from all customs duties and quantitative restrictions for certain types of audio-visual material.

Adopted by UNESCO in 1948, the Agreement entered into force and effect August 12, 1954. Although an original signatory to the Agreement, United States ratification was delayed until May 26, 1960. Formal U.S. implementation of the Agreement was, in turn, delayed until passage of Public Law 89–634 on October 8, 1966. Pursuant to E.O. 11311, responsibility for implementation of the Agreement was delegated to the Agency. Twenty-nine nations are signatory to the Agreement and an additional twenty-eight countries participate under the terms of the Agreement on an informal basis.

The Agency implements and administers the Agreement in the case of exports through the issuance of a Certificate of International Educational Character. Material for which this Certificate has been issued is ordinarily afforded duty-free entry into countries participating in the Agreement. The Agency facilitates the duty-free entry of qualified audio-visual material into the United States through the authentication of a Certificate issued by a participating foreign government.

Simply put, the Agreement covers educational, scientific, and cultural audio-visual material which is generally used for educational or instructional purposes. Pursuant to Article I of the Agreement, visual and auditory material shall be deemed to be of an educational, scientific, and cultural character:

(a) When their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(b) When the materials are representative, authentic, and accurate; and

(c) When the technical quality is such that it does not interfere with the use made of the material.

Under the Agreement, favorable import treatment has not been extended to material which has as its primary purpose or effect to amuse or entertain, to inform concerning timely current events, *i.e.* spot news, to stimulate the

use of a special process or product, advertise, or to raise funds.

The Agreement specifically provides for the favorable import treatment of (i) films, filmstrips and microfilm in either negative form, exposed and developed, or positive form, printed and developed; (ii) sound recordings of all types and forms; (iii) glass slides; models, static and moving; wall charts, maps, and posters. These materials are afforded favorable import treatment only upon a determination that they are educational, scientific, and cultural in character.

A Judicial Challenge

On December 5, 1985, a group of independent filmmakers, producers, distributors, and a membership association filed suit against the Agency in United States District Court for the Central district of California. Plaintiffs alleged that the Agency-promulgated regulations governing administration of the Agreement violated their Constitutional right of free speech. The district court agreed with Plaintiffs and found that the regulations were unconstitutional on their face. See *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court was upheld on appeal. See *Bullfrog Films, Inc.* v. *Wick*, 847 F.2d 502 (9th Cir. 1988).

The Courts determined that the regulations, as promulgated, were unconstitutionally vague and permitted the Agency to engage in impermissible content analysis. In response to the district court decision, Bullfrog I, the Agency published revised regulations on November 16, 1987. See 52 FR 43,753 (1987). Plaintiffs immediately sought district court review and were again successful when the court found, pursuant to unpublished decision filed May 13, 1988, that the revised regulations were facially unconstitutional. On September 9, 1988, the district court ordered the Agency to promulgate new regulations consistent with the Constitution.

The Agency sought appellate review and was granted a stay of the district court's order. During the pendency of this second appeal the Agency continued to administer the Agreement pursuant to the revised regulations published on November 16, 1987. A second appellate decision, Bullfrog II, was rendered March 12, 1992. See *Bullfrog Films, Inc.* v. *Wick*, 959 F.2d 782 (9th Cir. 1992).

In the Bullfrog II decision the circuit court found three of the four grounds upon which the Agency had sought appellate review to be moot due to newly enacted Congressional legislation. This legislation, discussed more fully *infra*, directs the Agency to refrain from the content analysis that the courts had found objectionable. The circuit court remanded a fourth ground of appeal on the basis that the court below had not ruled on the matter. In its opinion, the Bullfrog II court determined that the Agency should be afforded an opportunity to administer the Agreement in light of the new legislation and promulgate revised regulations consistent with both the decisions of the courts and the legislative directives.

A Legislative Initiative

While the issues surrounding Agency administration of the Agreement continued to wend their way through the courts, Congressional interest in this matter was piqued. Pursuant to Section 207 of the Foreign Relations authorization Act, Fiscal Years 1992 and 1993, Public Law 101–138, 105 Stat. 647 (1991), Congress enacted legislation which addresses Agency administration of the Agreement. In administering the Agreement, the Agency may not consider visual or auditory material to fail to qualify as being of international educational character:

(1) Because it advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) Because it might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) Because it is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) Because it does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) Because in the opinion of the agency the material is propaganda.

This legislation is intended to cure the Constitutional infirmities under which the previously promulgated regulations allegedly labored. The legislation is intended to also eliminate the vagueness surrounding what material the Agency will certify or authenticate and to limit the permissible scope of content analysis which the Agency may undertake in its determination of whether to certify or authenticate submitted material. The House Conference Report illustrates the legislative intent underlying the passage of this provision. The Conferees state adoption of section 207 is necessary:

> • • • to ensure that the United States implements the Beirut Agreement in conformity with its purpose and with the First Amendment to the Constitution of the United States. The provision is intended to ensure that government regulations do not frustrate the purpose of the Agreement by empowering U.S. government officials to make subjective judgments about the political content or message of documentary films, and thereby impede their circulation abroad by denial of educational certification. Adoption of the provision is also designed to ensure that determinations by the U.S. Government of the educational character of documentary films are viewpoint neutral.

H.R. Conf. Rep. No. 238, 102d Cong., 1st Sess. 126 (1991), *reprinted in* 1991 U.S.C.C.A.N. 384, 468.

Pursuant to this Rulemaking the Agency seeks to reconcile the terms of the Agreement with the language of section 207 and the decisions rendered in Bullfrog I and Bullfrog II.

Executive Response

Section 207 directs continued Agency implementation and administration of the Agreement. The terms of the Agreement require that the Agency ascertain that material submitted for certification or authentication is of an international educational, scientific, and cultural character. Some degree of content analysis is required and the courts have recognized this fact. The Agency henceforth will exercise only that level of analysis necessary to determine whether the material meets the threshold requirement of educational, scientific, and cultural character.

Integral to this minimal content analysis is the requirement that submitted material instruct or inform. This requirement is met, pursuant to the proposed definition set forth at § 502.2, through the submission of material which is intended to teach, train or impart knowledge through a reasoned development of a subject which aids the viewer or listener in a learning process. Submitted material must be free of widespread and gross misstatements of fact.

The criteria which the Agency proposes to utilize in its certification and authentication review process are set forth at § 502.3. In adopting this criteria the Agency has examined the opinions rendered in *Big Mama Rag, Inc.* v. *United States*, 631 F.2d 1030 (D.C. Cir. 1980), and *National Alliance* v. *United States*, 710 F.2d 868 (D.C. Cir. 1983). The Agency is of the opinion that the proposed regulations will,

consistent with the opinion rendered in *National Alliance*, focus the required analysis upon the method of presentation rather than the content of expression. Material which instructs or informs (an Agreement requirement) and is free of widespread and gross misstatements of fact (a Section 207 directive) will be certificated or authenticated regardless of viewpoint.

Public Comment

The Agency is soliciting public comment on these proposed regulations notwithstanding that it is under no legal requirement to do so. Agency administration and implementation of the Beirut Agreement, an international treaty, is a foreign affairs function of the United States. The Administrative Procedure Act, 5 U.S.C. 553 (a)(1)(1989), specifically exempts from application of the Act foreign affairs functions of the United States. A thirty day period for comment is hereby extended. This action may not be deemed a waiver of the foreign affairs exemption extended the Agency under the terms of the Administrative Procedure Act.

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The reporting and regulatory requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 502

Education, Imports, Exports, Trade Agreements, Audiovisual material.

Accordingly, the Agency proposes to revise 22 CFR part 502 as follows:

PART 502—WORLD-WIDE FLOW OF AUDIO-VISUAL MATERIALS

502.1—Purpose.
502.2—Definitions.
502.3—Certification and Authentication Criteria.
502.4—Certification Procedures—Exports.
502.5—Authentication Procedures—Imports.
502.6—Consultation with Subject Matter Specialists.
502.7—Review and Appeals Procedures.
502.8—Coordination with U.S. Customs Service.
502.9—General Information.

Authority: 5 U.S.C. 301; 19 U.S.C. 2051, 2052; 22 U.S.C. 1431 *et seq.*; Pub. L. 101–138; E.O. 11311, 3 C.F.R. 1966–1900 comp., page 593.

§ 502.1

Purpose.

The United States Information Agency administers the "Beirut Agreement of 1948", a multinational treaty formally known as the *Agreement for Facilitating the International Circulation of Visual and Auditory Material of an Educational, Scientific and Cultural Character*. This Agreement facilitates the free flow of educational, scientific and cultural audio-visual materials between nations by providing favorable import treatment through the elimination or reduction of import duties, licenses, taxes or restrictions. The United States and other participating governments facilitate this favorable import treatment through the issuance or authentication of a certificate that the audio-visual material for which favorable treatment is sought conforms with criteria set forth in the Agreement.

§ 502.2 Definitions.

Agency—means the United States Information Agency.

Applicant—means (1) The United States holder of the "basic rights" in the material submitted for export certification; or (2) The holder of a foreign certificate seeking import authentication.

Application Form—means the Application for Certificate of International Educational Character (Form IAP–17) which is required for requesting Agency certification of United States produced audio-visual materials under the provisions of the Beirut Agreement.

Attestation Officer—means the Chief Attestation Officer of the United States and any member of his or her staff with authority to issue Certificates or Importation Documents.

Audio-visual materials—means: (1) Films, filmstrips and microfilm in exposed and developed negative form, or in positive form, *viz.*, masters or prints, teletranscriptions, kinescopes, videotape, or prints therefrom;

(2) Electronic sound recordings and sound/picture recordings of all types and forms or pressings and transfers therefrom;

(3) Slides, photographs, and transparencies;

(4) Moving and static models, charts, globes, maps and posters.

Authentication—means the process through which an applicant obtains a United States Importation Document for Audio-visual Materials (Form IA–862).

Basic Rights—means the world-wide non-restrictive ownership rights in audio-visual materials from which the assignment of subsidiary rights (such as language versions, television, limited distribution, reproduction, etc.) are derived.

Beirut Agreement—means the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character."

Certificate—means a document attesting that the named material complies with the standards set forth in Article I of the Beirut Agreement issued by (1) The appropriate government agency of the State wherein the material to which the certificate relates originated, or (2) by the United Nations Educational, Scientific and Cultural Organization.

Certification—means the process of obtaining a certificate attesting that audio-visual materials of United States origin being exported from the United States comply with the standards set forth in Article I of the Beirut Agreement.

Collateral Instructional Material—means a teacher's manual, study guide, or similar instructional material prepared or reviewed by a bona fide subject matter specialist. Such material must delineate the information or instructional objectives of the audio-visual material and illustrate or explain how to utilize such material to attain the stated objectives.

Committee on Attestation—means the committee which advises the Attestation Officer on matters of policy and the evaluation of specific materials.

Director—means the Director of the United States Information Agency.

Exports—means educational, scientific, and cultural audio-visual material of United States origin, being sent from the United States.

Importation Document—means the United States Importation Document for Audio-visual Materials (Form IA–862) issued by the Chief Attestation officer of the United States which attests that materials of foreign origin entering the United States comply with the standards set forth in Article I of the Beirut Agreement and is therefore entitled to duty-free entry into the United States pursuant to the provisions of United States Customs Bureau Harmonized Tariff system Item No. 9817.00.4000.

Imports—means educational, scientific, and cultural audio-visual material of foreign origin being brought into the United States.

Instruct or inform—means to teach, train or impart knowledge through a

reasoned development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The instructional or informational character or audio-visual material may be evidenced by the presence of collateral instructional material.

Knowledge—means a body of facts and principles acquired by instruction, study, research, or experience.

Review Board—means the panel appointed by the Director to review appeals filed by applicants from decisions rendered by an Attestation Officer.

Subject Matter Specialist—means an individual who has acquired special skill in or knowledge of a particular subject through professional training or practical experience.

§ 502.3 Certification and authentication criteria.

(a) The Agency shall certify or authenticate audio-visual materials submitted for review as educational, scientific and cultural in character and in compliance with the standards set forth in Article I of the Beirut Agreement when:

(1) Their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(2) The materials are representative, authentic, and accurate; and

(3) The technical quality is such that it does not interfere with the use made of the material.

(b) The Agency will not certify or authenticate any audio-visual material submitted for review which:

(1) Does not primarily instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge.

(2) Contains widespread and gross misstatements of fact.

(3) Is not technically sound.

(4) Has as its primary purpose or effect to amuse or entertain.

(5) Has as its primary purpose or effect to inform concerning timely current events (newsreels, newscasts, or other forms of "spot" news).

(6) Stimulates the use of a special process or product, advertises a particular organization or individual, raises funds, or makes unsubstantiated claims or exclusivity.

(c) In its administration of the criteria set forth in paragraphs (a) and (b) of this section, the Agency shall not fail to qualify audio-visual material because:

(1) It advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) It might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) It is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) It does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or an aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) In the opinion of the agency the material is propaganda.

§ 502.4 Certification procedures—Exports.

(a) Applicants seeking certification of U.S. produced audio-visual materials shall submit to the Agency a completed Application Form for each subject or series for which certification is sought. Collateral instructional material, if any, and a copy or example of the material must accompany the Application Form.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, a Certificate shall be issued. A copy of such Certificate must accompany each export shipment of the certified material.

§ 502.5 Authentication procedures—Imports.

(a) Applicants seeking Agency authentication of foreign produced audio-visual materials shall submit to the Agency a *bona fide* foreign certificate, a copy or example of the material for which authentication is sought, and related collateral instructional material, if any.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, an Importation Document shall be issued. A copy of such Importation Document must be presented to United States Customs at the port of entry.

§ 502.6 Consultation with subject matter specialists.

(a) The Agency may, in its discretion, solicit the opinion of subject matter specialists for the purpose of assisting the Agency in its determination of whether materials for which export certification or import authentication is sought contain widespread and gross misstatements of fact.

(b) As necessary, the Agency may determine eligibility of material for certification or authentication based in part on the opinions obtained from subject matter specialists and the Committee on Attestation.

§ 502.7 Review and appeal procedures.

(a) An applicant may request a formal review of any adverse ruling rendered by the Attestation Officer. Such request for review must be made in writing and received no more than 30 days from the date of the Attestation Officer's decision.

(b) The request for review must set forth all arguments which the applicant wishes to advance in support of his or her position and any data upon which such argument is based. A copy of the material for which certification or authentication has been denied must accompany the request for review. The request for review should be addressed as follows: Attestation Program Review Board, U.S. Information Agency, Room 5118, Patrick Henry Building, 601 D Street, NW., Washington, DC 20547.

(c) The Review Board shall render the applicant a written decision, reversing or affirming the ruling of the Attestation Officer, within 30 days from receipt of the request for review. Such decision shall constitute final administrative action.

§ 502.8 Coordination with United States Customs Service.

(a) Nothing in the regulations in this part shall preclude examination of imported materials pursuant to the Customs laws and regulations of the United States as codified at 19 U.S.C. 1305 and 19 CFR 10.121, or the application of the laws and regulations governing the importation or prohibition against importation of certain materials including seditious or salacious materials as set forth at 19 U.S.C. 1305.

(b) Agency authentications of a foreign certificate for entry under HTS Item No. 9817.00.4000 will be reflected by the issuance of an Importation Document. A copy of each Importation Document issued by the Agency will be simultaneously furnished the United States Customs Service.

(c) *Customs User Fee:* Articles delivered by mail, which are eligible for duty-free entry under the regulations in this part are, additionally, not subjected to the standard Customs User Fee normally imposed by the United States Customs Service, provided there has

been a timely filing with the appropriate United States Customs Service office of the documentation required by the regulations in this part.

§ 502.9 General information.

(a) General information and application forms may be obtained by writing to the Attestation Office as follows: Chief Attestation Officer of the United States, United States Information Agency, room 5118, Patrick Henry Building, 601 D Street, NW., Washington, DC 20547; or calling (202) 501–7775/7203.

(b) Completed applications should be sent to the address in paragraph (a) of this section. Direct Mail Deliveries (UPS, Express Mail, etc.) should be sent to: Chief Attestation Officer of the United States, United States Information Agency, room 5118, Patrick Henry Building, 601 D Street NW., Washington, DC 20547.

Dated: August 4, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–19095 Filed 8–11–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for Oklahoma's proposed amendment pertain to the liability period for revegetation success; management of reference areas; bond release requirements for topsoil and subsoil replacement, impoundments, bare areas, vegetative cover for previously mined areas, revegetation success standards, and vegetation sampling techniques; the definitions for "erosion control" and "augmentation"; and approval of the repair of rills and gullies as a normal husbandry practice. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal standards and to improve operational efficiency.

This document sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t. August 27, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548, telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 North Lincoln, suite 107, Oklahoma City, Oklahoma 73105, telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Submission of Proposed Amendment

On February 6, 1992, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–937). Oklahoma submitted the proposed amendment in part in response to required program amendments at 30 CFR 936.16(d) and in part at its own initiative. Oklahoma proposed to amend its program by adding (1) the revegetation success standards and statistically valid sampling techniques referenced at §§ 816.116(a) and 817.116(a)(1) of the Oklahoma rules and (2) guidelines for phase I, II, and III bond release. Oklahoma intended that the bond release guidelines be in accordance with parts 800, 816, 817, and 823 of the Oklahoma rules.

OSM published a notice in the April 13, 1992, **Federal Register** (57 FR 12784) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. OK–947). The public comment period ended May 13, 1992.

During its review of the amendment, OSM identified concerns relating to the start of the liability period for revegetation success; management of reference areas; bond release requirements for topsoil replacement, impoundments, bare areas, vegetative cover for previously mined areas, revegetation success standards and vegetation sampling techniques; the definitions for "erosion control" and "augmentation"; and approval of the repair of rills and gullies as a normal husbandry practice. OSM notified Oklahoma of the concerns by letter dated June 2, 1992 (Administrative Record No. OK–942), and by supplemental letters dated June 24, 1992 (Administrative Record No. OK–948), and March 24 and April 28, 1993 (Administrative Record Nos. OK–950 and OK–949).

Oklahoma responded in a letter dated July 8, 1993, by submitting additional explanatory information and a revised amendment to address the concerns identified above (Administrative Record No. OK–944).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 372.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the date and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–19352 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions to Texas' proposed regulations pertain to identification of interests and compliance information, review of permit applications, review of outstanding permits, and cessation orders. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t. August 27, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548, telephone: (918) 581–6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated February 8, 1993 (administrative record No. TX–542), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment with the intent of satisfying required program amendments at 30 CFR 943.16 (b), (c), (d) (1), (2), and (3), (e), (f), (g), (h) (1) and (2), (i) (1) and (2), and (j) (1), (2), and (3), (57 FR 21600; May 21, 1992). The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposed to amend

were TCMR 778.116 (l) and (m), identification of interests and compliance information; TCMR 786.215 (e) (1) and (2), (f), and (g), review of permit applications; and TCMR 788.225 (f), (f)(1)(A), (g) and (g)(3), Texas Railroad Commission (Commission) review of outstanding permits.

OSM published a notice in the March 30, 1993, **Federal Register** (58 FR 16634) announcing receipt of the amendment and inviting public comment on its adequacy (administrative record No. TX–550). The public comment period ended April 29, 1993.

During its review of the amendment, OSM identified concerns relating to the provisions of TCMR 778.116(m), identification of interests and compliance information: violation information; TCMR 786.215(e)(1), review of permit applications: review of violations; TCMR 786.215(f), review of permit applications: Pattern of willful violations; TCMR 786.215(g), review of permit applications: final compliance review; TCMR 788.225(e), Commission review of outstanding permits: improvidently issued permits; TCMR 788.225(f), Commission review of outstanding permits: review criteria; and TCMR 788.225(g), Commission review of outstanding permits: remedial measures. OSM also noted that the proposed amendment did not contain revisions to the Texas program adopting procedural requirements no less effective than the Federal regulation at 30 CFR 843.11(g), which requires that, within 60 days of the issuance of a cessation order, the regulatory authority must notify all owners and controllers identified as owning or controlling the permittee.

OSM notified Texas of these concerns by letter dated June 8, 1993 (administrative record No. TX–565). Texas responded in a letter dated July 7, 1993, by submitting additional explanatory information and a revised amendment (administrative record No. TX–562). The TCMR provisions that Texas proposed to amend are discussed below.

1. Identification of Interests and Compliance Information: Violation Information

At TCMR 778.116(m), Texas proposes to require that an application for a permit to conduct surface coal mining and reclamation operations include information on (1) violations received pursuant to the Act or Federal Act and (2) air or water environmental protection violations received pursuant to any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule, or regulation. Texas also provides rationale for why proposed TCMR 778.116(m) in conjunction with section 21(c) of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) is no less effective than the corresponding Federal requirements.

2. Review of Permit Applications

(a) *Review of violations.* At TCMR 786.215(e)(1), Texas proposes to (1) correct a referenced citation and (2) require the Commission to deny a permit if the applicant or anyone who owns or controls the applicant is determined to have incurred, in connection with any surface coal mining operation, any of the violations, bond forfeitures, or delinquent penalties or fees listed in subparagraph (e)(1) that remain unabated. Texas also explains that the term "State," when capitalized, refers to Texas and when not capitalized refers to all states with the United States of America.

(b) *Pattern of willful violations.* At TCMR 786.215(f), Texas proposes that no permit shall be issued before a final determination that no pattern of willful violations exists. Language has been proposed to clarify that the Commission also considers violations of Federal and State laws as used in 30 CFR 773.15(b) in determining if a willful pattern of violations exists.

(c) *Final compliance review.* At TCMR 786.215(g), Texas proposes to correct a referenced citation and to require the Commission to deny a permit if, after an application is approved but before the permit is issued, (1) the applicant fails or refuses to respond as required by the Commission to provide new compliance information pursuant to sections 778.116 (i) and (n) or (2) the new compliance information shows that a violation exists.

3. Commission Review of Outstanding Permits

(a) *Improvidently issued permits.* Texas proposes to delete TCMR 788.225(e) and recodify the remainder of the section accordingly.

(b) *Review criteria.* At TCMR 788.225(f) (paragraph (e) as recodified), Texas proposes to require the Commission to review a permit under authority of section 22(c) of TSCMRA when it has reason to believe a permit was improvidently issued, and after notice and opportunity for a hearing find that the permit was improvidently issued if certain conditions are met. Texas also provides rationale for including the phrase "under the authority of Section 22(c) of the Act." In addition, Texas proposed at TCMR 788.225(f)(1)(A) to delete language that exempts from consideration certain unabated violations or delinquent penalties or fees.

(c) *Remedial measures.* At TCMR 788.225 (g) and (g)(3) (paragraphs (f) and (f)(3) as recodified), Texas proposes to base implementation of specified remedial measures on a finding that a permit was improvidently issued and to provide decisions on suspensions and rescissions of improvidently issued permits within specified time periods. Texas also provides explanations for (1) why Texas believes that provisions of the Administrative Procedures and Texas Register Act (APTRA) and TSCMRA prevent Texas from utilizing a process of automatic rescission of improvidently issued permits like that provided for in the Federal regulations, and (2) why proposed TCMR 788.225 (g) and (g)(3) in conjunction with APTRA and TSCMRA are no less effective than the corresponding Federal regulations.

4. Cessation Orders

At TCMR 843.680(c), Texas proposes to require that within 60 days of the issuance of a cessation order, the Commission must notify all owners and controllers of the permittee that a cessation order has been issued and that the person has been identified as an owner or controller.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted

OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–19353 Filed 8–11–93; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

West Virginia Permanent Regulatory Program, Statutory and Regulatory Modifications

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments contain revisions to the West Virginia Surface Coal Mining and Reclamation Act and the West Virginia Surface Mining Reclamation Regulations (Administrative Record Nos. WV 888, WV 889 and WV 893). The amendments are intended to make the West Virginia program consistent with SMCRA and the corresponding Federal regulations.

This document sets forth the times and locations that the West Virginia program and the proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 13, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 6, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 27, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendments, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSM Charleston Field Office and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requester may receive one free copy of the proposed amendments by contacting the OSM Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, telephone: (304) 759–0515.

In addition, copies of the proposed amendments are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, telephone: (304) 291–4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, suite 3, Beckley, West Virginia 25801, telephone: (304) 255–5265.

Office of Surface Mining Reclamation and Enforcement, Logan Area Office, 313 Hudgins Street, 2nd Floor, P.O. Box 506, Logan, West Virginia 25601, telephone: (304) 752–2851.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of the approval of the West Virginia

program can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated June 28, 1993, the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. The amendment contains revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*).

An informal review of the amendment by OSM identified additional changes to the State's approved regulations that were not identified in the amendment by strike throughs or underscoring. On July 30, 1993, the WVDEP submitted additional modifications to its proposed regulations (Administrative Record No. WV 893). Most of these revisions reflect changes by the State that are intended to satisfy various required amendments at 30 CFR 948.16 and were included but not identified in the initial submission.

The last time the State statute was significantly revised was on May 20, 1985. The Director of OSM partially approved the revisions in the July 11, 1985, **Federal Register** (50 FR 28316–28345). As set forth in 30 CFR 948.12 and 948.13, the Director disapproved and set aside certain provisions of the WVSCMRA. In addition, as set forth in 30 CFR 948.16(c), the Director required the State to make certain revisions to its statute. The amendment being announced today contains statutory revisions that are intended to resolve these deficiencies and make the WVSCMRA consistent with SMCRA.

The West Virginia Division of Energy (WVDOE) was abolished on October 16, 1991, with the creation of the WVDEP. Enrolled Committee Substitute for House Bill 217 created the WVDEP. At the request of the Governor of West Virginia, on December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the WVDOE to the WVDEP (Administrative Record No. WV 884).

Statutory Modifications

The following describes the substantive statutory revisions that the WVDEP submitted to OSM for approval on June 28, 1993 (Administrative Record WV 888). In addition, the State made other minor modifications concerning punctuation, numbering, etc. that are not discussed.

1. WVSCMRA Section 22A–3–3—Definitions

The State proposes to redefine "commissioner", "operator" and "surface mining operation" at paragraphs (i), (q) and (w), respectively, to be consistent with SMCRA and to reflect reorganizational changes. The State has revised its definition of "surface mining operation" to satisfy the requirements of 30 CFR 948.12(c), 948.13(a) and 948.16(c)(2).

2. WVSCMRA Section 22A–3–5—Surface Mining Inspectors and Supervisors

West Virginia proposes to change the probationary status for surface mining supervisors and inspectors from one year to six months.

3. WVSCMRA Section 22A–3–7—Notice of Intent To Prospect

The State proposes to revise paragraph (f) to allow for the promulgation of regulations, the development of application forms and to require an application fee of $2,000 for prospecting operations intending to remove more than 250 tons of coal.

4. WVSCMRA Section 22A–3–8—Surface Mining Reclamation Permit

The State proposes to revise paragraph (c) of this section to allow for the continued operation of a mine by the transferee pending approval of the transfer application. West Virginia proposes to increase the surface mining permit fee from $500 to $1,000 at paragraph (f). Also, as provided in paragraph (h), the State proposes to make compliance with the Workers' Compensation Program a requirement of permit approval.

5. WVSCMRA Section 22A–3–9—Permit Application Requirements

West Virginia proposes to revise the eligibility requirements for its Small Operator Assistance Program at paragraph (b) of this section by increasing the total annual production rate from 100,000 to 300,000 tons of coal.

6. WVSCMRA Section 22A–3–9a—Permit To Mine Two Acres or Less

The State proposes to delete this section. It contained special regulatory provisions governing surface mining operations of two acres or smaller in size. This revision is intended to comply with the requirements at 30 CFR 948.12(d), § 948.13(b) and § 948.16(c)(3), (4), (5) and (6).

7. WVSCMRA Section 22A–3–11—Performance Bonds

The State proposes to revise the provisions of its alternative bonding system (Special Reclamation Fund) in this section to allow for the development of a long-range planning process for the selection and prioritization of sites to be reclaimed under the system, limit the amount of money that can be used for water treatment systems to 25 percent of the annual amount of fees collected, limit administrative expenses to 10 percent of the total annual assets of the fund, require that moneys in the fund be used solely for bond forfeiture reclamation, increase the special reclamation tax from one cent to three cents and require the tax to be collected whenever liabilities exceed assets of the fund, and require that moneys in the fund be placed by the Treasurer in an interest bearing account with interest being returned on an annual basis.

8. WVSCMRA Section 22A–3–11a—Site Specific Bonding

West Virginia proposes to develop and implement a site specific bonding system pursuant to this section. Under the system, the amount of the performance bond can not be less than $1,000 nor more than $5,000, and the bond must reflect the potential cost of reclamation associated with the activities to be permitted. Factors to consider include types of mining, mining techniques, mining methods, equipment, support facilities, topography, geology, effect on water quality, type of application, environmental enhancement, mining experience of applicant and compliance history of applicant.

9. WVSCMRA Section 22A–3–12—Performance Standards

The State proposes to amend subparagraph (10) of paragraph (b) to require that operators avoid acid or toxic-mine drainage by preventing or removing water from contact with toxic producing deposits, treating drainage, and casing, sealing or managing boreholes, shafts and wells to keep acid drainage from entering ground and surface waters. West Virginia proposes to revise subparagraph (15) to require the mailing of the proposed blasting schedule to every resident within one-half mile of the blasting site, and to provide any resident or owner of a dwelling within one-half mile of any portion of the permit area the right to a preblast survey. The State proposes to

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revise subparagraph (16) of paragraph (b) to provide that variances for underground mining permits shall terminate if operations have not commenced within three years of the date of permit issuance. The State also proposes to revise subparagraph (22) of paragraph (b) to require that rock to be used in durable rock fills not slake in water and not degrade to soil material. Finally, West Virginia proposes to revise paragraph (e) to allow the Director to promulgate rules that permit variances from approximate original contour.

10. WVSCMRA Section 22A–3–15—Inspections

West Virginia proposes to revise paragraph (b) to require that monitoring equipment be installed, maintained and used consistent with section nine. The State also proposes to delete the provision in paragraph (g) which provides that permittees, employees and inspectors are not to be held civilly liable for any injury sustained by a person accompanying an inspector on an inspection. In addition, any such person is responsible for supplying their own safety equipment. This revision is intended to satisfy the requirements of 30 CFR 948.12(a) and 948.13(e).

11. WVSCMRA Section 22A–3–17—Notice of Violation

West Virginia proposes to revise paragraph (a) of this section to require the issuance of a notice of violation whenever any provision of WVSCMRA, the regulations promulgated pursuant thereto or a permit condition has not been complied with. In addition, the time set for initial abatement of a notice of violation has been changed from 15 to 30 days. The State also proposes to delete the provision that exempts cessation orders that are released or expire within 24 hours after issuance from mandatory civil penalty assessment. The State proposes to revise paragraph (b) to allow for the suspension of a permit and the promulgation of regulations for permit revocation and bond forfeiture. Finally, West Virginia proposes to revise paragraphs (e) and (f) to provide for formal appeal and temporary relief procedures. These revisions are intended to satisfy the requirements at 30 CFR 948.16(c) (8) and (9).

12. WVSCMRA Section 22A–3–18—Permit Approval

The State proposes to revise paragraph (a) of this section to require the submission of a complete permit application before a decision is rendered. The applicant has the burden of establishing that the application is in compliance with the program requirements. West Virginia also proposes to revise paragraph (c) to require that permit applications contain violation information on any surface mining operation owned or controlled by the applicant. This revision is intended to satisfy the requirements of 30 CFR 948.12(g) and 948.13(f). Also, the State proposes to allow an operator to be reinstated if the violations which resulted in the revocation or forfeiture have not caused irreparable damage to the environment.

13. WVSCMRA Section 22A–3–19—Permit Renewal and Revision Requirements

The State proposes to revise paragraph (a) of this section to require that (1) if a renewal application proposes to extend the operation beyond the original boundaries, that portion of the renewal application involving the new area is subject to the full permitting requirements, (2) a permit renewal application include a filing fee of $2,000, and (3) if a permittee intends to add new area to a permit, the original permit may be amended to include the new area, provided it is subject to all the permitting requirements.

14. WVSCMRA Section 22A–3–22—Designation of Areas Unsuitable for Mining

West Virginia proposes to revise paragraph (b) of this section by deleting the word commissioner. The revised provision gives any person having an interest which is or may be adversely affected the right to petition the Director to have the area designated as unsuitable for mining or to have such designation terminated.

15. WVSCMRA Section 22A–3–26—Surface Mining Operations Not Subject to the Act

The State proposes to delete paragraph (b) of this section which provided an exemption for the extraction of coal by a landowner engaged in construction. The exemption for government financed construction at paragraph (c) is being revised to provide that coal extraction incidental to federal, state, county, municipal, or other local government financed highway or other construction is exempt from the requirements of the Act. The State also proposes to delete paragraph (d) which provided an exemption for the extraction of coal which affects two acres or less. In addition, the State is deleting the reference to its incidental coal mining requirements at section 22A–3–9a. This revision is intended to satisfy the requirement at 30 CFR 948.16(c)(7).

16. WVSCMRA Section 22A–3–28—Special Permits for Abandoned Coal Waste Piles

West Virginia proposes to revise paragraph (d) of this section by deleting the word "reprocessing" and adding the word "removal". The special permit is solely for removal of abandoned coal waste piles and does not include the reprocessing of such piles.

17. WVSCMRA Section 22A–3–40—National Pollutant Discharge Elimination System

The State proposes to revise this section to require that the filing fee for an NPDES permit application be $500 and the filing fee for a renewal application be $1,000.

Regulatory Modifications

Pursuant to § 732.17(d), on March 6, 1990, OSM notified the State that certain areas of its program were determined to be less effective than the Federal requirements as a result of revisions made to the Federal regulations between June 8, 1988, and August 30, 1989 (Administrative Record No. WV 834). This letter is commonly referred to as the Regulatory Reform III part 732 notification. Some of the proposed regulatory revisions submitted by the State today are in response to that letter, particularly Part E—Haulroads and Support Facilities.

West Virginia's Surface Mining Reclamation Regulations were partially approved by the Secretary of the Interior on May 23, 1990 (55 FR 21304–21340). As discussed in 30 CFR 948.15(k) and § 948.16, the decision resulted in the disapproval of 11 regulatory requirements and 36 provisions were found to be less effective than the Federal regulations. The State was required to amend these provisions by June 29, 1990, or April 30, 1991.

As discussed in Findings 5.3 and 14.14(c) of the May 23, 1990, Federal Register notice, concerns were raised regarding the State's design requirements for sediment control structures and the construction of valley fills with rock core chimney drains. As a result, the Secretary directed OSM to conduct studies to determine if changes were needed in the State program. The studies were to evaluate the State's design standard of 0.125 acre-feet of storage per disturbed acre for sediment control structures, the use of rock core chimney drains in valley fills that exceed 250,000 cubic yards and the construction of rock core chimney drains without filter systems. On March

16, 1992, OSM's Eastern Support Center completed its study on the nine sediment control structures in the State (Administrative Record WV 890). The results of that study will be discussed in more detail in the final rule. Copies of the study are available for public review and comment. Interested persons should contact the OSM Charleston Field Office listed above under "ADDRESSES" for a copy of the study. OSM has not completed its valley fill study at this time. The results of that study may also be discussed later in the final rule.

On October 4 and November 19, 1991, OSM approved with certain exceptions additional revisions to the State's regulations (56 FR 50256–50270 and 58306–58311). The revisions related to definitions, sediment control structures, reclamation plans, multiple-seam mining, excess spoil fills, underdrains, coal refuse disposal and civil penalty assessments. These approvals resulted in the removal of certain required amendments and the addition of other exceptions and required amendments at 30 CFR 948.15 (l) and (m) and § 948.16.

The amendments submitted on June 28, 1993, and July 30, 1993, contain revisions to West Virginia's Surface Mining Reclamation Regulations (Administrative Record Nos. WV 889 and WV 893). The regulatory revisions are intended to satisfy the disapprovals at 30 CFR 948.15 (k), (l)(2) and (m)(2) and the remaining required amendments set forth at § 948.16 (f) through (iii). The substantive changes to the regulations are discussed below. The State also made other minor changes in wording, numbering, punctuation, etc. that are not discussed herein.

1. CSR Section 38–2–1.2—Applicability

West Virginia proposes to delete former paragraph (b) of this subsection which provides that for applications for new operations which received an SMA number prior to June 1, 1990, the applicant shall acknowledge the applicability of the regulations to his proposed operation, in writing, to the Commissioner prior to issuance of the permit. Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in the regulations and shall become part of the permit. This revision is intended to satisfy the requirement at 30 CFR 948.12(h).

West Virginia proposes to revise paragraphs (c) and (d) by providing for the termination and reassertion of jurisdiction over a completed surface mining and reclamation operation. This revision is intended to comply with OSM's Regulatory Reform III letter and satisfy the requirements of 30 CFR 700.11(d).

2. CSR Section 38–2–2—Definitions

The State proposes to revise its definition of "impoundment", "operator", "prospecting" and "sediment control structure" at subsections 2.65, 2.80, 2.94 and 2.107. These revisions are intended to satisfy the requirements at 30 CFR 948.15(l)(2) and § 948.16 (f), (n) and (nn).

3. CSR Section 38–2–3.4—Maps

The State proposes to revise paragraph (d), subparagraphs (18), (22), (23), and (24) to require that the permit application identify each topsoil and noncoal waste storage area, each explosive storage and handling facility and the area of land to be affected within the proposed permit area according to the sequence of mining and reclamation. This revision is intended to satisfy the requirements of 30 CFR 948.16(t).

4. CSR Section 38–2–3.6—Operation Plan

West Virginia proposes to revise paragraph (k) of this subsection to require the submission of a fugitive dust control plan. This revision is intended to satisfy the requirements of 30 CFR 948.16(s).

5. CSR Section 38–2–3.7—Excess Spoil

The State proposes to delete the provision in paragraph (a) which gives the Director authority to approve alternative design requirements for excess spoil fills. This revision is intended to satisfy the requirements at 30 CFR 948.15(k)(3) and § 948.16(i).

6. CSR Section 38–2–3.12—Subsidence Control Plan

The State proposes to revise paragraph (a), subparagraph (5) to require that measures be taken to mitigate or remedy material damage to structures due to subsidence. The State also proposes to delete the phrase in paragraph (d), subparagraph (2) which does not require an identification of measures to be taken to protect structures when the applicant demonstrates the right to subside without liability. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(11).

7. CSR Section 38–2–3.14—Removal of Abandoned Coal Waste Piles

The State proposes to revise paragraph (a) of this subsection to only allow the removal of material that meets the definition of coal as set forth in ASTM standard D 388–77. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(4).

8. CSR Section 38–2–3.15—Approved Person

West Virginia proposes to revise its approved person requirements in this subsection. The State is proposing to allow approved persons to certify associated facilities. It also proposes to require the submission of a registration or license in addition to a resume.

9. CSR Section 38–2–3.16—Fish and Wildlife Resources

The State proposes to revise paragraph (a) of this subsection by deleting the word "approval". Under the revised provision, the Director will only have to review permit applications pursuant to the Fish and Wildlife Coordination Act.

10. CSR Section 38–2–3.23—Geology

The State proposes to revise paragraph (f) of this subsection to clarify that the waiver requirements for test borings or core samples are set forth in paragraph (f).

11. CSR Section 38–2–3.25—Transfer, Assignment or Sale of Permit Rights

The State proposes to revise paragraph (a), subparagraph (4) of this subsection to provide that the approval of a transfer application may be granted in advance of the close of the public comment period, provided that the Director can immediately withdraw approval if information is made available as a result of public comment that would preclude approval.

The State also proposes to revise this subsection by adding paragraphs (c), (d) and (e). These requirements provide that permit assignments (operator reassignments) be advertised, contain the ownership and control information required by subsection 3.1 and subcontractors be subject to the eligibility requirements of subsection 3.32. This revision is intended to satisfy the requirements of 30 CFR 948.16(v).

12. CSR Section 38–2–3.27—Permit Revisions

The State proposes to revise paragraph (b) in this subsection to require that each application for a permit revision be reviewed by the Director to determine if an updated probable hydrologic consequences determination (PHC) or cumulative hydrologic impact assessment is needed. This revision is intended to satisfy the requirements of 30 CFR 948.16(w).

The State also proposes to revise paragraph (c) to give the Director the

authority to require reasonable revision of a permit at any time and to delete the provision which only required a revision to assure adequate protection of the environment or public health and safety. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(5) and § 948.16 (j) and (w).

13. CSR Section 38–2–3.28—Incidental Boundary Revisions

West Virginia proposes to revise its incidental boundary revision (IBR) requirements in this subsection. The revisions in paragraph (a) provide that IBRs will be limited to minor shifts or extensions into non-coal areas or areas where coal extraction is incidental to or of only secondary consideration of the intended purpose of the IBR. IBRs will not be granted to abate a violation for encroachment beyond the original permit boundaries, unless an equal amount of area is deleted from the permitted area. Paragraph (b) is revised to allow IBRs for underground mines to be larger than 50 acres when an applicant demonstrates the need for a larger IBR. Also, applications for an IBR must be accompanied by an adequate bond, a map showing the IBR area and a reclamation plan for the area of the IBR. The State proposes to delete subparagraph (6) which provides that all provisions of the IBR which differ from the original permit meet the requirements of the Act and regulations, except as provided in this subsection. Finally, the State proposes to add paragraph (e) which gives the Director the authority to require the publication of an advertisement that provides for a ten-day public comment period for an IBR application.

14. CSR Section 38–2–29—Variances

The State proposes to revise its variance requirements at paragraphs (b), (c), (d) and (e) of this subsection. These paragraphs set forth requirements for granting variances from contemporaneous reclamation. These revisions are intended to satisfy the requirements at 30 CFR 948.16(x).

15. CSR Section 38–2–3.31—Permit Findings

The State proposes to delete the provision in this subsection which requires the WVDEP to use and update ownership and control information from surrounding States in the issuance of permits.

16. CSR Section 38–2–3.33—Improvidently Issued Permits

West Virginia proposes to amend paragraph (f) of this subsection to change the cross reference from subsection (f) to subsection (e), section 17 of WVSCMRA.

17. CSR Section 38–2–4—Haulageways or Access Roads

West Virginia proposes to revise all of its haulroad regulations at section 4. The new haulroad and access road requirements provide for a road classification system, plans and specifications, stream crossings, standards for infrequently used roads, construction standards, drainage design standards, performance standards, maintenance standards, reclamation standards, primary road standards and certification. In addition, section 4 contains design, construction, maintenance and abandonment requirements for other transportation facilities. These revisions were made in response to the OSM Regulatory Reform III letter discussed above.

18. CSR Section 38–2–5.2—Intermittent or Perennial Streams.

The State proposes to revise this subsection to provide that before the Director can approve any mining within 100 feet of an intermittent or perennial stream, he must find that such activities will not cause or contribute to the violation of applicable State or Federal water quality standards. This revision is intended to satisfy the requirements of 40 CFR 948.16(aa).

19. CSR Section 38–2–5.4—Sediment Control

West Virginia proposes to revive paragraph (a) of this subsection to make its sediment control requirements applicable to other water retention structures, and it is deleting all references to on-bench sediment control systems. The State has also deleted the reference to the design, construction and maintenance criteria in the Technical Handbook. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(6) and 30 CFR 948.16(n).

The State proposes to revise paragraph (b) to make its design and construction requirements applicable to sediment control or other water retention structures used in association with the mining operation. The State has deleted references to on-bench sediment control structures. West Virginia proposes to revise subparagraph (12) of paragraph (b) to require that foundation investigations and any necessary laboratory testing be performed to determine foundation stability design for impoundments meeting the size or other criteria of 30 CFR 77.216(a). This revision is intended to satisfy the requirement at 30 CFR 948.16(pp). The State also proposes to revise subparagraph (13) of paragraph (b) to require that all sediment control and other water retention structures be certified in accordance with the design requirements of the Act and regulations and other design criteria established by the Director.

West Virginia proposes to revise paragraph (c) to make the requirements of that paragraph applicable to all embankment type sediment control or other water retention structures. This revision is intended to satisfy the requirement at 30 CFR 948.16(qq). The State proposes to revise subparagraph (3) of paragraph (c) to require the installation of cutoff trenches during embankment construction to ensure stability. This revision is intended to satisfy the requirement at 30 CFR 948.16(rr). West Virginia proposes to revise subparagraph (4) of paragraph (c) to require prompt notification of the State if any examination or inspection of an impoundment discloses that a hazard exists. This revision is intended to satisfy the requirement at 30 CFR 948.16(ss). The State also proposes to revise paragraph (6) of paragraph (c) to require that the design plan for an impoundment which meets the size criteria of 30 CFR 77.216(a) include a stability analysis which includes but is not limited to strength parameters, pore pressures, and long-term seepage conditions. This revision is intended to satisfy a portion of the requirements at 30 CFR 948.16(ccc).

West Virginia proposes to revise paragraph (d) to require that where sediment control or other water retention structures are constructed in sequence with the advance of the mining to allow for on-bench construction, such systems shall be constructed and certified in sections of 1,000 linear feet or less as measured from the active pit. This revision is intended to satisfy in part the requirement at 30 CFR 948.16(tt).

The State proposes to revise paragraph (e) to require the inspection of sediment control or other water retention structures. The State also proposes to require that the professional engineer, licensed land surveyor, or other specialist involved in the inspection of impoundments be experienced in the construction of impoundments. This revision is intended to satisfy the requirement at 30 CFR 948.16(uu).

West Virginia proposes to revise paragraph (h) to make its abandonment requirements applicable to sediment control and other water retention structures.

20. CSR Section 38–2–5.5—Permanent Impoundments

The State proposes to revise this subsection to make these requirements applicable to sediment control or other water retention structures. The State also proposes to require that a request to leave a permanent impoundment be submitted as a permit revision. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(l)(2) and 948.16(vv).

21. CSR Section 38–2–6—Blasting

West Virginia proposes to revise paragraph (b) of subsection 6.3 to require that all local governments and residents or owners of dwellings or structures located within one-half mile of the blast site be notified of surface blasting activities incident to an underground mine. The State also proposes to require that the blasting notification be announced weekly, but in no case less than 24 hours before the blasting will occur.

The State proposes to revise subsection 6.6 to require that all non-protected structures in the vicinity of the blasting area be protected from damage by the establishment of a maximum allowable limit on ground vibration specified by the operator in the blasting plan and approved by the Director. This revision is intended to satisfy the requirement at 30 CFR 948.16(cc).

The State also proposes to delete the provision at paragraph (a) of subsection 6.8 which excludes certain portions of the permit area when determining the applicability of preblast survey notification requirements. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(7) and 948.16(l).

22. CSR Section 38–2–8—Fish and Wildlife

West Virginia proposes to add an exception to paragraph (e) of subsection 8.1 to require the use of the best technology currently available to protect raptors and large mammals, except where the Director determines that such requirements are unnecessary.

23. CSR Section 38–2–9—Revegetation

The State proposes to revise paragraphs (g) and (h) of subsection 9.3 to require that, in determining success on areas to be developed for forestland and wildlife resources or commercial woodlands, the trees and shrubs counted be healthy and in place for not less than two growing seasons. This revision is intended to satisfy OSM's Regulatory Reform III letter of March 6, 1990.

24. CSR Section 38–2–11.1—Insurance

The State proposes to revise paragraph (a) of this subsection to clarify that liability insurance must be maintained throughout the life of the permit or any renewal thereof. The State also proposes to revise this paragraph to provide that there are no exclusions for blasting from the property damage coverage.

25. CSR Section 38–2–11.2—Performance Bonds

West Virginia proposes to delete paragraph (c) of this subsection which requires the Director to notify a permittee who is without bond coverage and require the cessation of mining until bond replacement.

The State proposes to revise paragraph (d) to require the Director to issue a notice of violation against any operator who is without bond coverage. The notice of violation must provide that bond coverage be replaced within 15 days. Mining can not resume until an acceptable form of bond has been posted. The State also proposes to add paragraph (e) to require a showing that the bond is sufficient or the assignee has the capability or financial resources to assume the liability for bonds and permits which are transferred, assigned or sold and which have significant long-term environmental liability.

26. CSR Section 38–2–11.3—Bond Instruments

The State proposes to revise and reinstate its surety bonding, collateral bonding, escrow bonding, self-bonding, and combined surety/escrow bonding requirements in this subsection.

27. CSR Section 38–2–11.4—Incremental Bonding

West Virginia proposes to revise its incremental bonding provisions in this subsection to require that a performance bond in the appropriate amount be filed for the initial increment and each succeeding increment of land to be mined within the permit area prior to any land disturbance. Once an operator has chosen to bond either the entire permit area or in increments, the manner of bonding must continue during the term of the permit with the minimum amount of bond being $10,000. The State proposes to delete the provision in subparagraph (3) that requires the amount, duration, form, conditions and terms of the performance bond conform with subsections 11.2 through 11.7.

28. CSR Section 38–2–11.5—Open-Acre Limit Bonding

West Virginia proposes to add new requirements in this subsection allowing for open-acre limit bonding. Under these requirements, an operator must post a general bond in the amount of $750 per acre for the entire permit area. This bond is to ensure successful revegetation. In addition, the operator must post an open-acre limit bond in accordance with the site-specific bonding requirements of subsection 11.6, and an ancillary facility bond for haulroads, sediment control systems and other ancillary facilities at a rate of $1,000 per acre for the total proposed disturbed acreage of such facilities. The general and ancillary facility bonds are to remain in place throughout the life of the operation, but the open-acre limit bond can be reapplied to an undisturbed portion of the permit area after the initial open-acre is reclaimed. This subsection also contains permit application requirements for open-acre limit bonding, and transfer and final release requirements for an open-acre limit bond.

29. CSR Section 38–2–11.6—Site Specific Bonding

West Virginia proposes to add new requirements in this subsection providing for site specific bonding. The four major categories of mining permits subject to these provisions are surface mines, underground mines, coal refuse disposal sites and coal preparation plants. Under these requirements, the bonds can not be less than $1,000 nor more than $5,000 per acre or fraction thereof and they are to reflect the potential cost of reclamation. The factors to be considered in establishing the bond amounts for surface mines include: the number and types of excess spoil fills, the type of operation, the number of seams to be mined, augering, overburden analysis, steepness of slopes, overburden type, mining and reclamation sequence, permit acreage, type of equipment, operator performance and environmental enhancement, which includes remining unreclaimed sites, past reclamation awards and wetland development. The factors to be considered in establishing bond amounts for underground mines include: availability of backfill material, overburden analysis, steepness of slopes, type of overburden, permit acreage, life of mine, ancillary facilities, including coal preparation plant and coal refuse disposal site, operator performance and environmental enhancement. The criteria to be considered in setting bonds for coal

preparation plants include: capacity of plant, silo capacity, stockpile acreage, size end type of refuse disposal site, permit acreage, plant life, operator performance and environmental enhancement. Finally, the factors to be considered in establishing bonding amounts for coal refuse disposal sites include: size and type of coal refuse disposal site, steepness of slopes, availability of topsoil for reclamation, projected life of operation, operator performance and environmental enhancement.

30. CSR Section 38–2–11.7—Environmental Security Account

The State proposes to add subsection 11.7. This subsection requires the WVDEP to study the feasibility of developing an environmental security account for water quality. The study is to include a screening process for determining which sites have the potential for producing acid mine drainage, a process for predicting the rate and duration of acid mine drainage, a method for estimating water treatment costs, a system to ensure that sufficient monies will be placed in an escrow account that will provide sufficient financial assurance that treatment will be accomplished, and procedures that will ensure the expenditure of funds from the escrow account in the event of default to provide water treatment. Nothing in this subsection can authorize the issuance of a permit that will violate applicable effluent limitations or water quality standards without treatment.

31. CSR Section 38–2–12.2—Bond Release

West Virginia proposes to review paragraph (c) of this subsection to provide for the release of all or part of the bond for the permit area or increment thereof. The State also proposes to revise this paragraph to require that the terms and conditions of the NPDES permit be met to delete the provision relating to chemical treatment of water at Phase II bond release. The amount of the remaining bond must be sufficient to reestablish vegetation and maintain drainage control structures.

The State proposes to add paragraph (d) to prohibit the release of any portion of the open-acre limit bond until all coal extraction operations are completed and the entire disturbed area has been completely backfilled and regraded.

The State to add paragraph (e) in this subsection to provide that no bond release or reduction be granted if, at the time water discharged from or affected by the operation requires chemical treatment in order to comply with applicable effluent limitations or water quality standards.

32. CSR Section 38–2–12.3—Bond Adjustments

West Virginia proposes to revise this subsection to provide for bond adjustments. The proposed rules provide that where a permittee demonstrates on the basis of a sworn statement and a progress map that portion of the permit area will remain undisturbed or has been overbonded, the Director may adjust the amount of the bond corresponding to the number of undisturbed or overbonded acres, provided that 2 minimum $10,000 bond remains for the disturbed portion of the permit. Within 30 days, the Director must make a decision on the request. If the request is denied, the Director must provide the permittee with an opportunity for an informal conference on the decision.

33. CSR Section 38–2–12.4—Bond Forfeiture

The State proposes to revise paragraph (a) in this subsection to provide that, when required, the Director must forfeit all of the bond. The State proposes to delete the provision in this paragraph which requires that the amount of the bond to be forfeited be based on the estimated total cost of achieving the reclamation plan requirements. The State also proposes to revise this paragraph to provide that when a surety completes the reclamation, no liability will be released until successful completion of all reclamation under the terms of the permit and in accordance with the Act and these regulations to include the revegetation liability period. West Virginia proposes to revise paragraph (b) to require that in the event of forfeiture, the Director shall proceed and collect the bond in accordance with Section 22A–3–17(b) of the WVSCMRA. The proceeds must be used to accomplish completion of reclamation in accordance with Section 22A–3–23 of the WVSCMRA, this subsection and subsection 12.5 governing water quality. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(1)(2).

The State proposes to revise subsection (c) of this subsection to provide that, after the notice of forfeiture has been served, the Director shall in a timely manner, but not later than 180 days after such notice, initiate reclamation operations to reclaim the site, including action to remediate any acid mine drainage from the site. The Director must also take the most effective actions possible to remediate acid mine drainage, including chemical treatment where appropriate with the resources available.

The State proposes to revise paragraph (d) to provide that where the proceeds of bond forfeiture are less than the actual cost of reclamation, the Director "shall" (emphasis added) make expenditure from the Special Reclamation Fund to complete reclamation, including chemical treatment where appropriate. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(8) and § 948.16(ww).

The State also proposes to revise paragraph (e) of this subsection to provide that the operator, permittee, or other responsible party be liable for all costs in excess of the amount forfeited. The Director may commence civil, criminal or other appropriate action to collect such costs.

34. CSR Section 38–2–12.5—Water Quality Enhancement

West Virginia proposes to add a subsection to its rules regarding water quality enhancement. Paragraph (a) requires the Director to establish an inventory of all sites where bonds have been forfeited. The inventory is to include data relating to the quality and quantity of water being discharged from the forfeited sites.

Paragraph (b) requires the Director to establish a priority listing of such sites based upon the severity of the discharges, the quality of the receiving stream, effects on downstream water users, and other factors determined to affect the priority ranking.

Paragraph (c) provides that until the Legislature supplements or adjusts the Special Reclamation Fund, the Director can selectively choose sites from the inventory to receive water quality enhancement projects.

Paragraph (d) of this subsection provides that, in selecting sites for water improvement projects, the Director must consider relative benefits and costs of the projects. Expenditures from the Special Reclamation Fund for such projects can not exceed 25 percent of the Fund's gross annual revenue.

Paragraph (e) requires the Director to provide the Legislature by December 31, 1993, a detailed report and inventory of acid mine drainage bond forfeiture sites in the State. The report and inventory must contain cost estimates of the long-term chemical treatment of drainage from each site to meet various standards, including effluent limitations and applicable water quality standards. The report and inventory must contain proposals for supplementing and adjusting the Special Reclamation Fund

to assure that the Fund is adequate to pay for the long-term treatment of acid mine drainage from all acid mine drainage bond forfeiture sites so that the discharges from these sites meet the effluent limitations set forth in 40 CFR part 434 and the applicable water quality standards. The report must contain a recommendation from the Director on which proposal he believes will best ensure that the acid mine drainage from bond forfeiture sites is effectively addressed.

35. CSR Section 38–2–13—Notice of Intent to Prospect

West Virginia proposes to add subsection 13.1 to this section. Under this subsection, where prospecting operations are proposed without surface disturbance and without appreciable impacts on land, air, water, or other environmental resources, the Director may waive the requirements of this section and the bonding requirements of section 22A–3–7 of the WVSCMRA. To qualify, at least 15 days prior to commencement of any prospecting activities, the operator must file with the Director a written notice of intent to prospect. The notice must include a description of the activities to be conducted and a USGS topographic map showing the area to be prospected. The Director may approve the notice of intent subject to the findings required by paragraph (b) of subsection 13.4. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(l)(2).

The State also proposes to revise subsection 13.10 to provide that, notwithstanding any other provision of this section, any person who proposes to conduct prospecting operations on lands which have been designated as unsuitable for surface mining pursuant to section 22A–3–22 of the WVSCMRA shall file a notice of intent in accordance with subsection 13.3. Approval of the notice of intent shall be in accordance with subsection 13.4.

36. CSR Section 38–2–14.5—Hydrologic Balance

West Virginia proposes to revise paragraph (b) of this subsection to require that monitoring frequency and effluent limitations be governed by the standards set forth in an NPDES permit issued pursuant to section 20–5A–1 *et seq.* of the West Virginia Code, the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 *et seq.* and the rules and regulations promulgated thereunder.

The State proposes to revise paragraph (c) to require that any water discharged from a permit area and treated complies with the requirements of paragraph (b) of this subsection.

The State also proposes to revise paragraph (h) to provide that a waiver of water supply replacement rights granted by a landowner can apply only to underground mining, provided that it does not exempt any operator from the responsibility of maintaining water quality. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(9) and § 948.16(q).

37. CSR Section 38–2–14.8—Steep Slope Mining

The State proposes to revise subparagraph (1) of paragraph (a) of this subsection to provide that casting of spoil from a higher seam to a lower seam in multiple seam operations may only occur where the highwall of the lower seam intersects the outcrop of the upper seam; the lowest seam is mined first or in advance of the upper seams; and minimum bench widths based on slopes are established on the lower bench sufficient to accommodate both spoil placement from the upper seam and bench drainage structures. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(l)(2). It is also intended to satisfy the requirements at 30 CFR 948.16 (xx), (yy) and (zz).

The State also proposes to revise subparagraph (4) of paragraph (a) to prohibit placement of woody materials in the backfill unless the Director first determines that the method of placement of woody material will not deteriorate the future stability of the backfilled area. This revision is intended to satisfy the requirement at 30 CFR 948.16(hh).

38. CSR Section 38–2–14.11—Inactive Status

West Virginia proposes to revise paragraph (b) of this subsection to provide that the Director may grant inactive status for a period not to exceed one-half the permit term if it is determined that the application contains sufficient information to meet all requirements of paragraph (a): *Provided,* That where the applicant documents in the application that the operations will become inactive for more than 30 days, but will be reactivated on an intermittent and/or irregular basis during the approval period, such operations are not required to reapply for inactive status except at the termination date of the initial term of approval: *Provided, however,* That the Director may review the approval of inactive status during its term and require updated information pursuant to paragraph (a) and, based upon this or other information, may modify or rescind the approval prior to its initial termination date.

39. CSR Section 38–2–14.12—Variance From Approximate Original Contour

West Virginia proposes to revise paragraph (a) to provide that the Director may grant a variance from the requirements for restoring the mined land in steep slope areas to approximate original contour if the watershed of the permit and adjacent area will be improved by reducing pollutants, environmental impacts, or flood hazards; provided that, the watershed will be deemed improved only if changes in seasonal flow volumes from the proposed permit area will not adversely affect surface water ecology or any existing or planned use of the surface or ground water. This change is intended to satisfy the requirement at 30 CFR 948.16(ii).

40. CSR Section 38–2–14.14—Excess Spoil Disposal

West Virginia proposes to revise paragraph (b) of this subsection to require that certification forms for durable rock fills be accompanied by a statement attesting that the fill contains no more than 20 percent non-durable material; a statement attesting that foundation preparation is proceeding in accordance with the design plans; a statement that prohibited materials are not being placed, deposited, or disposed of into the fill area; and a statement that sediment control measures are constructed and being maintained in accordance with the approved design plans and the terms and conditions of the permit.

The State proposes to revise paragraph (e) of this subsection to require that the fill, not just the foundation, be designed to assure a long-term static safety factor of 1.5 or greater. This revision is intended to satisfy the requirement at 30 CFR 948.16(jj). The State also proposes to revise this paragraph to require that during and after construction, grading may drain surface water away from the outslope of the fill and toward the rock core.

West Virginia proposes to revise paragraph (g) to define soil material to mean material of which at least 50 percent is finer than 0.074 mm, which exhibits plasticity, and which meets the criteria for group symbol ML, CL, OL, MH, CH, or OH, as determined by the Unified Soil Classification System (ASTM D–2487). The State proposes to require that runoff from areas above and adjacent to a durable rock fill be diverted into stabilized diversion

channels, designed and constructed to safely pass the peak runoff from a 100-year, 24-hour precipitation event around and through the fill. The State also proposes to require additional storage capacity or sediment control measures if sediment removal performance of the structures are found to be deficient during the operation and construction of the durable rock fill. Finally, the State has revised this paragraph to prohibit the placement of certain materials in durable rock fills.

41. CSR Section 38–2–14.15—Contemporaneous Reclamation Standards

West Virginia has completely revised this subsection to require that the mining and reclamation plan for each operation describe how the mining and reclamation operations will be coordinated to minimize total land disturbance and to keep reclamation operations as contemporaneous as possible with the advance of mining operations. The revised provisions specify time, distance and acreage limits for single seam contour mining, single seam contour mining and augering operations, area mining, augering, multiple seam mining, and mountaintop removal operations. The proposed rules set deadlines for existing and new operations to comply with these requirements, and they allow the Director to grant variances to specific standards with proper justification.

42. CSR Section 38–2–14.17—Control of Fugitive Dust

West Virginia proposes to revise this subsection to require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion. This revision is intended to satisfy the requirement at 30 CFR 948.16(s).

43. CSR Section 38–2–15.2—Backfill and Regrading Underground Mines

The State proposes to revise paragraph (b) of this subsection to require that reclamation activities of an underground mine be initiated within 30 days and final backfilling and regrading be initiated within 180 days of completion of underground operations.

44. CSR Section 38–2–16—Subsidence Control

West Virginia proposes to revise paragraph (c) of this subsection by deleting the phrase, "To the extent required under applicable provisions of State law." This revision is intended to satisfy the requirement at 30 CFR 948.15(k)(11).

45. CSR Section 38–2–17—Small Operator Assistance Program

The State proposes to amend its small operator assistance requirements to require that all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management be attributed to the applicant. This revision is intended to satisfy the requirement at 30 CFR 948.16(kk).

46. CSR Section 38–2–18—Citizen Actions

West Virginia proposes to revise paragraph (b) of subsection 18.3 to provide that any person who is or may be adversely affected by the decision of the Director may appeal such decision to the Reclamation Board of Review pursuant to section 22–4–2 of the Code of West Virginia.

47. CSR Section 38–2–20.1—Inspection Frequencies

The State proposes to revise paragraph (a) of this subsection to provide that prospecting operations be inspected "as necessary" to assure compliance with the Act and these regulations. The approved regulations provide that inspections be conducted on a quarterly basis.

48. CSR Section 38–2–20.2—Notices of Violations

The State proposes to revise paragraph (a) of this subsection to provide that when the Director determines that a surface mining and reclamation operation or prospecting operation is in violation of any of the requirements of the Act, these regulations or the terms and conditions of the permit or prospecting approval, a notice of violation shall be issued. Such notice of violation shall comply with all the requirements and provisions of this subsection. In the past, pursuant to its Code of Violations, the State issued enforcement actions for certain violations. This proposal will only allow the issuance of a notice of violation.

49. CSR Section 38–2–20.4—Show Cause Orders

West Virginia proposes to revise paragraph (b) of this subsection by adding the phrase, "where violations were cited." The proposal provides that the Director may determine a pattern of violations exists or has existed where violations were cited on two or more inspections of the permit area within any 12-month period.

50. CSR Section 38–2–20.5—Civil Penalty Determinations

The State proposes to revise paragraph (b) to provide that the Director shall, for "any" cessation order, assess a civil penalty in accordance with section 22A–3–17(a) of the WVSCMRA for each day of continuing violation, except that such penalty shall not be assessed for more than 30 days. This revision is intended to satisfy the requirement at 30 CFR 948.16(fff).

In addition, the State proposes to revise this paragraph by deleting the provision that each imminent harm cessation order have an initial assessment in accordance with subsection 20.7. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(m)(2). It is also intended to satisfy the requirement at 30 CFR 948.16(ddd).

The State also proposes to revise this paragraph to provide that if the cessation order has not been abated or modified within the 30-day period, the Director shall initiate action pursuant to section 22A–3–17 (b), (g), (h) and (j) of the WVSCMRA as appropriate. This revision is intended to satisfy the requirement at 30 CFR 948.16(eee).

51. CSR Section 38–2–20.6—Procedures for Assessing Civil Penalties

The State proposes to revise paragraph (d) of this subsection to remove the restrictions on public participation at assessment conferences. The proposed rule provides that any person may submit in writing at the time of the assessment conference a request to present evidence concerning the violation(s) being conferenced. Such request must be granted by the assessment officer. These changes are intended to satisfy the requirements of 30 CFR 948.15(m)(2) and § 948.16(ggg).

52. CSR Section 38–2–20.7—Assessment Rates

West Virginia proposes to revise paragraphs (a), (b) and (c) of this subsection to clarify that the monetary denomination used in the assessment of civil penalties is dollars. This revision is intended to satisfy the requirement at 30 CFR 948.16(hhh).

The State also proposes to revise paragraph (d) of this subsection to ensure that an operator is awarded good faith only where abatement is achieved before the time set for abatement. These revisions are intended to satisfy the requirements of 30 CFR 948.15(m)(2) and § 948.16(iii).

53. CSR Section 38–2–22—Coal Refuse

The State proposes to revise subsection 22.2 to require that coal

refuse disposal facilities be designed to attain a minimum long-term static safety factor of 1.5 and a seismic factor of safety of 1.2. The State also proposes to revise paragraph (a) of subsection 22.5 to require that all coal refuse sites be constructed and maintained to attain a minimum long-term safety factor of 1.5 and impounding structures also attain a seismic safety factor of 1.2. These revisions are intended to satisfy the requirement of 30 CFR 948.16(aaa).

The State proposes to revise paragraph (p) of subsection 22.3 by deleting the provision that allows coal refuse piles to be constructed with slopes exceeding two (2) horizontal to one (1) vertical. This revision is intended to satisfy the requirements of 30 CFR 948.15(m) and § 948.16(bbb).

The State proposes to revise paragraph (f) of subsection 22.4 to provide that Class A coal refuse impoundments to designed for a minimum P 100+0.12 (PMP – P 100) inches of rainfall in 6 hours and Class B coal refuse impoundments be designed for a minimum P 100+0.40 (PMP – P 100) inches of rainfall in 6 hours. These revisions are intended to satisfy in part OSM's Regulatory Reform III notification.

West Virginia proposes to revise paragraphs (g) and (h) of subsection 22.4 to allow the use of single open channel or open channel spillways if they are on non-erodible materials and designed to carry sustained flows or earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected. These revisions are intended to satisfy the requirement at 30 CFR 948.16(mm).

The State also proposes to revise paragraphs (a), (c) and (d) of subsection 22.7 to require that inspections of impounding refuse piles be made regularly, but not less than quarterly during construction; non-MSHA size impoundments be examined at least quarterly; and a copy of each inspection or examination report be retained at or near the mine site.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revisions to the State's statute that were submitted on June 28, 1993 (Administrative Record No. WV 888) and the modifications to the State's regulations that were initially submitted on June 28, 1993, and revised on July 30, 1993 (Administrative Record Nos. WV 889 and WV 893). Comments should address whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on August 27, 1993. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held, and the results of the meeting included in the Administrative Record.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Charleston Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such hearings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(c).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93-19351 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 93-024]

RIN 2115-AE50

Alternating One Way Traffic Zone Restrictions in the Blue Water Bridge Area of St. Clair River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard is proposing to amend the rule affecting the class of vessels to which navigation restrictions are applicable in the Blue Water Bridge area of the St. Clair River. The amendment would lift these navigation restrictions from power driven vessels less than 55 meters in length, without a tow. Further, the amendment would impose these navigation restrictions on all vessels engaged in towing another vessel astern, alongside, or by pushing ahead, regardless of the size of the towing vessel. These changes will decrease transit time through this area while generally improving vessel navigation safety.

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 93-024), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman, Project Manager, Vessel Traffic Services Division. The telephone number is 202-267-6277.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93-024) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**". The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Irene Hoffman, Project Manager, Vessel Traffic Services Division and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

All entities involved consider the present one way traffic zone regulations in the Blue Water Bridge area to be too restrictive on vessel traffic. This proposed regulation incorporates suggestions expressed by the Lake Carrier's Association, the Canadian Shipowner's Association, the Canadian Coast Guard's Central Region Marine Advisory Council, the Ninth U.S. Coast Guard District, and the Detroit St. Clair River Working Group.

The Canadian Coast Guard operates a Vessel Traffic Service (VTS) at Sarnia, Ontario, Canada (call sign "Sarnia Traffic"). Due to this VTS, the proximity of the subject area with Canada and shared waterways, this regulatory project amounts to a cooperative international effort. The Canadian Government is amending its corresponding regulation and expects it to be effective for the 1994 navigation season.

Discussion of Proposed Amendments

The Coast Guard intends to amend the regulations to alleviate transit delays and improve safety in this area by changing the class of vessels to which these traffic restrictions apply. At present, 33 CFR 162.134(c)(2) imposes an alternating one way traffic zone in the Blue Water Bridge area of the St. Clair River. Under this restriction, vessels of 20 meters or more in length and vessels 8 meters or more in length engaged in towing (33 CFR 162.130(b)(3)) may not overtake, come about, or meet within this traffic zone. This proposal would lift these restrictions from power driven vessels less than 55 meters in length, without a tow. These regulations would still apply to dredges, floating plants, sailing vessels of 20 meters or more in length, and power driven vessels of 55 meters or more in length.

The Coast Guard has determined that allowing power driven vessels less than 55 meters in length, without a tow, to navigate freely in this area would facilitate shipping schedules that have historically been delayed because of these navigation restrictions. It would not increase the risk of collision.

This proposal also would impose these navigation restrictions on all vessels engaged in towing another vessel astern, alongside, or pushing ahead, rather than only commercial vessels greater than 8 meters engaged in towing. This change is proposed because the act of towing is the more important navigational safety issue, not the length of the towing vessel. Towing reduces the maneuverability of vessels and increases the risk of collision. This provision would also be more closely aligned with the corresponding Canadian regulations.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary. The proposed change reduces the overall number of individuals or entities affected. The expected cost to comply with the proposed requirements should not be significantly greater than the cost of complying with the existing regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the economic impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a further Federalism Assessment. This proposal establishes certain navigation rules for a waterway along an international border. The authority to regulate concerning the navigable waterways of the United States is committed to the Coast Guard by statute. If this rule becomes final, the Coast Guard intends it to preempt state action addressing the same matter, although no such action is expected.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2(1) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as a procedural regulation which clearly does not have any environmental impacts. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES".

List of Subjects in 33 CFR Part 162

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 162.130 the introductory text of paragraph (b)(3) is revised and paragraph (b)(4) is added to read as follows:

§ 162.130 Connecting waters from Lake Huron to Lake Erie; general rules.

(a) * * *

(b) * * *

(3) The communication rules in § 162.132, the traffic rules in § 162.134, except for § 162.134(c)(2), and the anchorage rules in § 162.136 apply to the following vessels:

* * * * *

(4) The traffic rules contained in § 162.134(c)(2) apply to the following vessels:

(i) Sailing vessels of 20 meters or more in length;

(ii) Power driven vessels or 55 meters or more in length;

(iii) Vessels engaged in towing another vessel astern, alongside or by pushing ahead; and

(iv) Each dredge and floating plant.

* * * * *

Dated: August 6, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–19428 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 27–1–5947; A–1–FRL–4691–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania—Reasonably Available Control Technology Requirements for Knoll Group, a Wood Furniture Surface Coater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the Knoll Group (Knoll) located in Montgomery County, Pennsylvania which is part of the Philadelphia ozone nonattainment area. The intended effect of this action is to propose approval of reasonably available control technology (RACT) requirements for this wood furniture surface coater which is a major emitting source of volatile organic compound (VOC) emissions. This source-specific RACT determination would allow Knoll to meet certain coating emission standards by averaging its emissions across twenty-six wood furniture coating lines on a production-weighted daily basis. This action is being taken in accordance with the Clean Air Act.

DATES: Comments must be received on or before September 13, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On March 29, 1993, Pennsylvania Department of

Environmental Resources (PA DER) submitted a proposed revision to its State Implementation Plan (SIP) for Knoll. The proposed revision consists of a plan approval (46–326–0001A) and operating permit for Knoll (46–326–0001A) which specifies the coating standards and operating conditions for Knoll's twenty-six (26) wood furniture surface coating lines. Under this plan approval and operating permit, Knoll would be allowed to perform a production-weighted daily average of its emissions at all 26 coating lines to meet the wood furniture coating standards which are also contained in the plan approval and operating permit.

Under Part D of the Clean Air Act, Pennsylvania is required to submit RACT regulations for all major sources of VOC in the Pennsylvania portion of the Philadelphia ozone nonattainment area which consists of Philadelphia, Delaware, Chester, Montgomery and Bucks Counties in Pennsylvania. A major VOC source is defined as a source which emits or has the potential to emit 100 tons of VOC or more per year. Wood furniture surface coating was a category identified by Pennsylvania in accordance with its 1982 ozone SIP as containing major sources for which there needed to be RACT requirements (50 FR 7777). EPA issued guidance documents called Control Technique Guidelines (CTGs) which covers many source categories. Non-CTG sources are those where EPA has not issued a CTG. EPA has not issued a CTG for wood furniture surface coating. On May 26, 1988, EPA made a SIP call to Pennsylvania notifying the Commonwealth that its SIP was inadequate to assure attainment and maintenance of the primary National Ambient Air Quality Standard (NAAQS) for ozone. See 53 FR 34500 (September 7, 1988). A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the NAAQS. In a June 14, 1988 follow-up letter, EPA notified Pennsylvania of deficiencies in its VOC regulations as well as identified required regulations which were still missing. A non-CTG RACT regulation for wood furniture surface coaters was listed as missing.

Pennsylvania determined that the only major source for wood furniture surface coating in the Pennsylvania portion of the Philadelphia nonattainment area was Knoll, located in Montgomery County. The plan approval and operating permit submitted by Pennsylvania represents Pennsylvania's response to the 1988 SIP call pertaining to the missing wood furniture non-CTG RACT regulation.

Background

The current Pennsylvania regulations require all surface coating sources to comply with the applicable coating standards on a coating-by-coating basis. While the wood furniture coating standards contained in the Pennsylvania regulations are state enforceable, they have not been approved by EPA. This proposed rulemaking does not address those wood furniture regulations. This proposed rulemaking only addresses the plan approval and operating permit for Knoll submitted by DER on March 29, 1993.

The plan approval and operating permit, both dated March 24, 1993, requires Knoll to meet the following coating standards, on a production-weighted daily average with an additional 20% emission reduction.

Description of coating	Lbs. VOC/gallon of coating less water	Lbs. VOC/gal. solids applied[1]
Clear topcoat	5.9	29.74
Wash coat	6.5	55.63
Final repair coat	6.0	32.47
Semitransparent wiping and glazing stains	6.4	49.07
Semitransparent spray stains and toners	6.8	89.37
Opaque ground coats and enamels	5.5	21.76
All other coatings	7.0	143.11
Clear sealers	6.2	39.34

[1] lbs VOC/gallon solids applied calculated using 7.36 lb/gal as the standard solvent density.

The calculation of actual daily emissions for each coating at each coating line must be performed using the actual solvent density of the coating in use and actual usage of that coating for the day in question. Allowable daily emissions are calculated using 7.36 pounds per gallon (lbs/gal) as the standard solvent density and the actual usage of the coating for the day in question. Once the allowable daily emissions for each coating is calculated, these values are summed for all the coatings used on the 26 wood coating lines. From this sum, calculated on a solids basis for the 26 wood coating lines for a particular day, an additional 20% reduction is subtracted to obtain Knoll's final allowable emissions for a particular day.

In addition to meeting the level of daily allowable emissions as described above, Knoll is required to minimize air emissions by avoiding the use of air atomized spray equipment unless the volume of the coating being applied with the air atomized equipment is used less than 5% by volume of the total coating at the facility or to apply final repair coatings. The permission to use air atomized equipment does not permit Knoll to exceed its 80% daily allowable emissions calculated on a production weighted basis. Knoll is required to randomly sample and test 10% of all the coatings it uses each year and to report those results to PA DER on a quarterly basis. Other reporting and recordkeeping requirements include coating composition and characteristics data, daily usage data, and the usage and density of any diluents used. Records are required to be kept for a period of two years and available to PA DER on request. There is also a contingency provision such that if, at any time, PA DER determines that Knoll is not meeting its required emissions limitations, Knoll is required to take immediate steps to reduce its emissions to below permitted levels which could mean the installation of add-on control devices. Details on the calculation method, formulas, and other conditions of this proposed RACT determination for this source can be found in the accompanying technical support document.

EPA's review of this material indicates that the coating standards and operating conditions as described in the plan approval (46–326–001A) and operating permit (46–326–001A) for Knoll represent RACT for this source. EPA is proposing to approve the Pennsylvania SIP revision for Knoll Group, which was submitted on March 29, 1993. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve the wood furniture coating standards together with the conditions, as described above, as RACT for Knoll Group, located in the Philadelphia ozone nonattainment area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic.

and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action pertaining to the proposed approval of RACT for Knoll Group, a wood furniture surface coater, has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401—7671q.

Dated: August 2, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–19387 Filed 8–11–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 300

[FRL–4660–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Aidex Corporation Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Aidex Corporation Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. This action is being taken because EPA and the Iowa Department of Natural Resources (IDNR) have determined that no further remedial action is appropriate at this site, and that actions taken to date are protective of public health, welfare and the environment.

DATES: Comments concerning this site may be submitted on or before September 13, 1993.

ADDRESSES: Comments may be mailed to: Steve Sanders, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Additional Information. Comprehensive information on this site is available for public review at the EPA Region VII Waste Management Division Records Center located at the above address and at the Glenwood, Iowa, City Hall, City of Glenwood, 107 S. Locust Street, Glenwood, Iowa 51534.

To obtain copies of documents in the public docket contact: Barry Thierer, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7515.

FOR FURTHER INFORMATION CONTACT: Steve Sanders, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7578.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region VII, announces its intent to delete the Aidex Corporation Site, Mills County, Iowa, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, as amended, and requests comments on this proposed deletion. Pursuant to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA) and the NCP, the EPA collects data and evaluates releases of hazardous substances, pollutants or contaminants to identify sites that present a threat to public health, welfare or the environment. The NPL is a list of priority releases for long-term remedial evaluation and response. Sites included on the NPL may be the subject of remedial actions financed by the Hazardous Substances Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on the proposed deletion of the Aidex site from the NPL for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deletingsites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Aidex Corporation Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP sets forth the criteria that EPA uses to delete sites from the NPL. Sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required: or

(ii) All appropriate Fund-financed response under CERCLA has been implemented and no further response

action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment; and, therefore, taking of remedial measures is not appropriate.

For all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and unrestricted access, section 121(c) of CERCLA requires EPA to review the remedial action at least every five years to ensure that the remedy remains protective of human health and the environment. Since the contaminant atrazine still remains in the groundwater, EPA recently completed the five-year review process in June 1993. On May 27, 1992, an inspection of the site was done by EPA and the IDNR. The inspection was done concurrently with the annual groundwater monitoring activities conducted by IDNR. The goal of the inspection was to assure continued protectiveness of the remedy. The results of the inspection and the five-year review indicate that the remedy is still protective of human health and the environment.

III. Deletion Procedures

The EPA Region VII will accept and evaluate public comments on its proposal to delete the site from the NPL before making a final decision. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are often the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region VII has recommended deletion and has prepared the relevant documents.

2. The State of Iowa has concurred with the proposed deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in a major local newspaper of general circulation at or near the site and has been distributed to appropriate Federal, state and local officials and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts August 4, 1993 and will conclude on September 3, 1993.

4. The Region has made all information supporting the proposed deletion available for public inspection and copying in the EPA Regional Office and a local site information repository (Glenwood, Iowa, City Hall).

5. EPA will respond to each significant comment and any significant new data submitted during the comment period and will include this response document (Responsiveness Summary) in the final deletion package.

6. A deletion occurs after the EPA Regional Administrator places a final notice of deletion in the Federal Register. Thefinal deletion package will be placed in the local information repository once the notice of final deletion has been published in the Federal Register. The NPL will reflect any deletions in the next final update.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Aidex Corporation site, Mills County, Iowa, from the NPL.

The Aidex Corporation site, which covers approximately 20 acres, is located in a rural area of Mills County, Iowa, about 7 miles south-southeast of Council Bluffs, Iowa, and lies near the Missouri River floodplain. Land use adjacent to the site is mostly agricultural with a few individual residences.

The plant formulated various organochlorine, organophosphate, and triazine pesticide compounds from 1974 to 1981. Spills of technical grade pesticides during transfer of the material from tank cars to formulation equipment and the procedures used by Aidex for handling, storage and disposal of process wastes resulted in the release of at least sixteen pesticide compounds into the environment. Liquid process wastes were stored in a leaking underground storage tank. Dry solid pesticide wastes were stored onsite in stacks of open and/or badly deteriorated drums and were buried in two unlined trenches onsite. Technical grade pesticides stored in the liquid formulation building at the site and pesticide wastes were spread by the water used to extinguish a fire in the liquid formulation building in 1976. Following owner bankruptcy in 1981, pesticide wastes were also dumped or spilled on the facility grounds during salvage operations.

The site was placed on the Interim National Priorities List on October 23, 1981. During December of 1981, the site was fenced off using removal authority. The site was then placed on the proposed National Priorities List (NPL) on December 30, 1982 (47 FR 58481). On September 8, 1983, the NPL designation became final (48 FR 40670). The principal threats posed by the site were direct contact (ingestion, inhalation and dermal) with pesticide contaminated soil and wastes located at the site by humans and wildlife. The pesticide contaminated solids, liquids, and sludges were also a source for continued groundwater contamination.

A Remedial Investigation/Feasibility Study (RI/FS) was performed by EPA between 1982 and 1984. During the RI/FS an initial remedial measure (IRM) was conducted to remove some immediate hazards associated with the pesticide contamination. The IRM consisted of on-site collection, bulking, and temporary staging of pesticide contaminated solids, liquids, and sludges; construction of an interceptor drainage ditch around a portion of the site; decontamination of the basement remains of a formulation building destroyed by fire and an underground tank; and off-site transport and disposal of bulk liquid wastes and staged waste materials. The IRM was completed in 1983.

In a Record of Decision signed September 30, 1984, the EPA approved the selection of a remedial alternative for final cleanup of the Aidex site. The remedial action was initiated in 1986 and consisted of excavation and offsite disposal of contaminated soils exceeding 10 parts per million (ppm) total pesticides and backfilling with clean fill, cleanup of the four onsite buildings and a batching pit, construction of three groundwater monitoring wells, and groundwater monitoring. The remedial action was completed in May 1987. Over 20,000 cubic yards of contaminated soil were excavated and disposed at a RCRA permitted offsite landfill. The buildings and a batching pit were cleaned and three additional groundwater monitoring wells were installed. The excavated areas were backfilled with clean fill, graded, and seeded.

Based on sampling of the onsite building interiors in 1987 and 1988, an engineering evaluation/cost analysis (EE/CA) was proposed in November 1990 to assess alternatives for additional cleanup of the building interiors. Air sampling of the building interiors was performed in August 1991 in order to determine if residual contamination in the buildings posed significant risks to human health and the environment. The results of the air sampling demonstrated that there were no significant risks posed by the residual contamination in the buildings. Therefore, no further response actions were needed on the buildings at the Aidex site.

In May 1990, the IDNR prepared a report on the assessment of the groundwater at the Aidex site. The report suggested modifications to the groundwater monitoring plan. EPA reviewed and approved the report and the modified groundwater monitoring

plan proposed by the IDNR was approved. Twelve (12) groundwater monitoring wells are being sampled on an annual basis with two additional wells being sampled every three years. IDNR is conducting the annual sampling.

In September 1991, an Explanation of Significant Differences (ESD) was prepared by EPA explaining the decision to take no further action with respect to the groundwater contamination at the Aidex site. The ESD explained that the levels of contamination in the groundwater do not currently pose any significant risks. Only one contaminant (atrazine) is being detected in the groundwater and only in onsite wells. No contamination is being detected offsite, in any downgradient monitoring wells. Since the concentration of atrazine detected in the groundwater is above the current Maximum Contaminant Level (MCL) of 3 parts per billion, monitoring of the groundwater will continue until the atrazine concentrations fall below the MCL.

Operation and maintenance (O&M) of the remedy for the Aidex site will be performed by the IDNR. The O&M activities will include continued monitoring of the groundwater until the MCL for atrazine is no longer exceeded. EPA and IDNR will review the groundwater monitoring as part of each five-year review. IDNR will maintain the good condition of the groundwater monitoring wells at the site.

Community relations activities have included the periodic issuance of fact sheets and public meetings at various phases of the project in order to keep the public informed of ongoing activities. A public availability session was held in July 1991 to discuss the ESD regarding the no action alternative selected for the groundwater.

The EPA, with concurrence of the State of Iowa, has determined that the Aidex Corporation site poses no significant threat to public health and the environment and, therefore, taking of further remedial measures is not appropriate.

Dated: July 27, 1993.

Martha R. Steincamp,

Acting, Regional Administrator, USEPA Region VII.

[FR Doc. 93-19131 Filed 8-11-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

RIN: 1090-AA41

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is in response to section 319 of Pub. L. 102-381. This provision requires that no funds appropriated or transferred pursuant to the Act can be expended by an entity unless the entity agrees that in expending the assistance they will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). This provision does not apply to the Bureau of Reclamation.

DATES: Comments must be in writing and must be received by September 13, 1993.

ADDRESSES: Comments should be mailed to Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 1849 C St., NW., Mail Stop 5512, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb (Chief, Acquisition and Assistance Division), (202) 208-6431.

SUPPLEMENTARY INFORMATION: On October 5, 1992, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 ("the Act") was signed into law. Section 319 of the Act was entitled "Buy American Requirements." The section applied to funds appropriated or transferred pursuant to the Act for the purchase of any equipment or product that may be authorized to be purchased with financial assistance. The provision expressed the "sense of the Congress" that entities receiving the assistance, purchase only American-made equipment and products.

Section 319(b)(2) required that in providing the financial assistance under the Act, the Secretary shall provide to each recipient of the assistance a notice describing the requirement. No other specific guidance was given regarding the implementation of this requirement.

The Department is revising 43 CFR part 12, by adding subpart E to implement these requirements. No specific guidance was provided by Congress, so the Department has decided to base its implementation upon similar rules in the Federal Acquisition Regulation (FAR).

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in this preamble.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities since it is anticipated that no additional costs will be imposed on a substantial number of small entities as a result of the rule. This proposed rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this proposed rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that title 43 of the Code of Federal Regulations be amended as set forth below.

Dated: June 8, 1993.

B.R. Cohen,

Assistant Secretary-Policy, Management and Budget.

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: Sec. 5151-560 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98-502; and sec. 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Pub. L. 102-381).

2. Part 12 is amended by adding subpart E to read as set forth below.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

Sec.
12.700 Scope.
12.705 Definitions.
12.710 Policy.
12.715 Evaluating offers.
12.720 Excepted articles, materials, and supplies.
12.725 Solicitation provisions and contract clause.
12.730 Buy American Act—Supplies.

Buy American Act—Construction Materials

12.800 Scope.
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12.830 Buy American Act—Construction materials.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

§ 12.700 Scope.

(a) This subpart implements section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Pub. L. 102–381). This section requires that no funds appropriated or transferred pursuant to the Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933, (41 U.S.C. 10a–10c, popularly known as the "Buy American Act"). It applies to procurement contracts under grants and cooperative agreements which provide for the purchase of equipment and products. It does not apply to awards made by the Bureau of Reclamation.

§ 12.705 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States; or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.710(c) (3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

Domestic offer, as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

End product, as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the grant, cooperative agreement, or procurement contract awarded under the grant or cooperative agreement.

Foreign end product, as used in this subpart, means an end product other than a domestic end product.

Foreign offer, as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

Instrumentality, as used in this subpart, does not include an agency or division of the government of a country.

United States, as used in this subpart, means the United States, its possessions, Puerto Rico, and any other places subject to its jurisdiction.

§ 12.110 Policy.

(a) In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under Pub. L. 102–381, it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) In awarding financial assistance under Pub. L. 102–381, bureaus and offices shall provide to each recipient of the assistance a notice providing the statement in the following format:

Notice

Pursuant to sec. 319 of the Department of the Interior and Related Agencies Appropriations Act, 1993, Pub. L. 102–381, please be advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance under this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(c) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with § 12.715;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest; or

(4) That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see § 12.720).

(d) If the procurement contract awarded under the grant or cooperative agreement is estimated to exceed $1 million, the agency head, or a designee at a level no lower than the head of the awarding office, must approve determinations made under paragraph (a)(4) of this section. Officials making these determinations shall consider the feasibility of foregoing the purchase or of purchasing a domestic substitute.

§ 12.715 Evaluating offers.

(a) Unless the agency head determines otherwise, the offer price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see § 12.705), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the agency head shall decide whether award to the domestic concern would involve unreasonable cost.

§ 12.720 Excepted articles, materials, and supplies.

(a) As indicated in the FAR, one or more agencies have determined that the articles, materials, and supplies listed in paragraph (b) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This list in paragraph (b) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the agency concerned has made a

determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b)(1) The excepted articles, materials, and supplies are as follows:

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite, chrysotile, and crocidolite.
Bananas.
Bauxite.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynapthoate.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanimide.
Capers.
Cashew nuts.
Castor beans and castor oil
Chalk, English.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emitine, bulk.
Ergot, crude.
Erythrityl tetranitrate.
Fair linen altar.
Fibers of the following types: Abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat and kidskins.
Graphite, natural, crystalline, crucible grade.
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kaurigum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Microprocessor chips (brought onto a Government or recipient construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green) pitted or unpitted, or stuffed, in bulk.
Opium, crude.
Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in paragraph (b)(2) of this section.
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Rabbit fur felt.
Radium salts, source and special nuclear materials.
Rosettes.
Rubber, crude and latex.
Rutile.
Santonin, crude.
Secretin.
Shellac.
Silk, raw and unmanufactured.
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
Spices and herbs, in bulk.
Sugars, raw.
Swords and scabbards.
Talc, block, steatite.
Tantalum.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Thyme oil.
Tin in bars, blocks, and pigs.
Triprolidine hydrochloride.
Tungsten.
Vanilla beans.
Venom, cobra.
Wax, carnauba.
Woods: logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Yarn, 50 Denier rayon.

(2) As used in paragraph (b)(1) of this section, petroleum terms are defined as follows:

(i) *Crude Oil*—means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

(ii) *Finished products*—means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(A) *Asphalt*—a solid or semi-solid cementitious material that (*1*) gradually liquefies when heated, (*2*) has bitumens as its predominating constituents, and (*3*) is obtained in refining crude oil.

(B) *Fuel oil*—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) *Gasoline*—a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(D) *Jet fuel*—a refined petroleum distillate used to fuel jet propulsion engines.

(E) *Liquefied gases*—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) *Lubricating oil*—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) *Naphtha*—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.

(H) *Natural gas products*—liquids (under atmospheric conditions), including natural gasoline that—

(*1*) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures or hydrocarbons that existed in a vaporous phase in a reservoir, and

(*2*) When recovered and without processing in a refinery, definitions or products contained in paragraph (b)(2)(ii) (B), (C), (D), and (G) of this section.

(I) *Residual fuel oil*—a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil–F–859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

(iii) *Unfinished oils* means one or more of the petroleum oils listed in paragraph (b)(2)(ii) of this section, of a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

§ 12.725 Solicitation provisions and contract clause.

(a) When quotations are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see § 12.720), shall be acceptable, unless the price for an

offered domestic end product is unreasonable (see § 12.715).

(b) The awarding officer shall insert the clause at § 12.730, Buy American Act—Supplies, solicitations for procurement contracts awarded under the grant or cooperative agreement for the purchase of supplies, or for services involving the furnishing of supplies, for use within the United States.

§ 12.730 Buy American Act—Supplies

As prescribed in § 12.725, insert the following clause:

Buy American Act—Supplies

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On purchases above $25,000 in value, components of Canadian origin are treated as domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see § 12.715).

(End of clause)

Buy American Act—Construction Materials

§ 12.800 Scope.

(a) This subpart implements the Buy American Act (41 U.S.C. 10). It applies to procurement contracts awarded under a grant or cooperative agreement for the construction, alteration, or repair of any public building or public work in the United States.

§ 12.805 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

Construction, as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

Construction materials, as used in this subpart, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

Domestic construction material, as used in this section, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.810(a)(3) are treated as domestic.

Foreign construction material, as used in this section, means a construction material other than a domestic construction material.

United States (see § 12.705).

§ 12.810 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with § 12.815;

(2) The agency head determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the contracting activity or designee determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see § 12.120).

(b) When it is determined for any reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the agreement. Findings justifying the exception shall be available for public inspection.

§ 12.815 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the concerned agency determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the agency head for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

§ 12.820 Violations.

(a) If the agency head finds that in the performance of a procurement construction contract under a grant or cooperative agreement there has been a failure to comply with the clause at § 12.830, Buy American Act—Construction Materials, those findings (including the name of the recipient obligated under the agreement) shall be made public. No other grant, cooperative agreement, or procurement contract under the grant or cooperative agreement shall be awarded to that recipient, its subrecipients, or suppliers with which that recipient is associated or affiliated, within a period of 3 years after the findings are made public. (For debarment procedures, see subpart D of this part).

§ 12.825 Solicitation provision and contract clause.

The awarding official shall insert the clause at 12.830, Buy American Act—Construction Materials, in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States.

§ 12.830 Buy American Act—Construction materials.

As prescribed in § 12.825, insert the following clause in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States:

Buy American Act—Construction Materials

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete

systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to § 12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic.

(b) The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement.

(End of clause)

[FR Doc. 93–19190 Filed 8–11–93; 8:45 am]

BILLING CODE 4310-RF-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 93–157, FCC 93–291]

Reports of Communications Common Carriers and Certain Affiliates; Filing Requirements for International Circuit Status Reports

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to: Codify in the Commission's Rules, requirements for the filing of international circuit status reports; reduce the frequency of filing such reports from monthly to annually; require all facilities-based international common carriers to file such reports; provide for a filing manual with reporting instructions; specify a format for the filing of those reports; and require the filing of such reports on computer diskettes. This action is necessary to reduce the filing frequency for international circuit status reports from monthly to annually, to require all facilities-based international common carriers to file such reports and to enable the information in the reports to be easily collated by computer. The purpose of this action is to reduce the burden on those facilities-based international common carriers now filing circuit status reports and to assure that the Commission has industry-wide international circuit use data available to it.

DATES: Comments must be submitted on or before September 1, 1993. Reply comments must be submitted on or before October 1, 1993.

ADDRESSES: All comments and reply comments concerning these proposals should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse, Attorney, Common Carrier Bureau, (202) 632–7834.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making adopted on June 2, 1993 and released July 2, 1993. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington DC. The complete text of this Notice also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Paperwork Reduction Act

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, (202) 395–4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Rules For the Filing of International Circuit Status Reports.
OMB Number: None
Action: Proposed New Collection.
Respondents: Facilities-based international common carriers.
Frequency of Response: Once per year.
Estimated Annual Burden: 50 responses; 20 hours per response; 1000 hours total.
Needs and Uses: The Notice of Proposed Rule Making solicits public comment on whether to: (1) Codify in the Commission's Rules, requirements for the filing of international circuit status reports; (2) reduce the frequency of filing such reports from monthly to annually; (3) require all facilities-based international common carriers to file such reports; (4) provide for a filing manual with reporting instructions; (5) specify a format for the filing of those reports; and (6) require the filing of such reports on computer diskettes. The information filed will be used to determine use of existing international submarine cable and satellite transmission facilities as a part of the assessment of the need for new cable and satellite facilities when considering applications for such facilities. The circuit status reports will also be used to determine whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, the FCC's initial analysis is as follows:

Need and purpose of this Notice: This rule making proceeding is initiated to obtain comments regarding codifying the requirements for the filing of international circuit status reports, reducing the frequency of those reports from monthly to annually, requiring all facilities-based international common carriers to file those reports, specifying a format for the filing of those reports and requiring the filing of those reports on computer diskettes. The Commission seeks to evaluate the filing of circuit status reports by facilities-based international common carriers in light of the reductions and streamlining of regulatory requirements which have occurred since such reports were instituted.

Legal Basis: The proposed action is authorized under section 4, 214, 219, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 214, 219, 303(r) and 403.

Reporting, Recordkeeping and Other Compliance Requirements: The actions proposed in this Notice of Proposed Rule Making will affect both large and small international facilities-based

common carriers. The burden will be significantly reduced for carriers presently filing circuit status reports because of the reduction of the frequency of those reports from monthly to annually. However, some entities not now filing circuits status reports would be required to file such reports by the proposed action. Approximately 50 additional facilities-based international common carriers would be required to file annual circuit status reports. It is not estimated that the filing of annual circuit status reports will be a significant economic burden on facilities-based international common carriers.

Federal Rules That Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: The proposals discussed in this Notice of Proposed Rule Making primarily will reduce regulatory requirements on facilities-based international common carriers by reducing the frequency of filing circuit status reports from twelve per year to one per year. Some facilities-based international carriers not now filing circuit status reports will be required to file such reports.

Any Significant Alternatives Minimizing the Impact of Small Entities Consistent With the Stated Objectives

The Notice of Proposed Rule Making solicits comments on a variety of alternatives to achieve Commission objectives.

Summary of Notice of Proposed Rule Making

The Notice of Proposed Rule Making proposes to: (1) Codify in the Commission's Rules, requirements for the filing of international circuit status reports; (2) reduce the frequency of filing such reports from monthly to annually; (3) require all facilities-based international common carriers to file such reports; (4) provide for a filing manual with reporting instructions; (5) specify a format for the filing of those reports; and (6) require the filing of such reports on computer diskettes. This Notice was adopted on the Commission's own motion.

Monthly circuit status reports have been filed by certain United States international facilities-based common carriers since the early 1970's. When the reports were first filed, all United States international facilities-based carriers filed them. However, over the years, new entities which became United States international facilities-based carriers were not requested to file such reports. Consequently, at present, only some of the United States international facilities-based common carriers file monthly circuit status reports. The reports are filed in a variety of formats and are filed on paper only.

The Commission has significantly reduced regulation of international common carrier facilities and services since the early 1970's when the monthly circuit status reports were first filed. Consequently, while the Commission still finds the information provided by the reports useful in discharging its obligation to authorize the construction and use of international common carrier transmission facilities, it finds that it no longer requires that this information be filed monthly. Therefore, it proposes to require the filing of circuit status reports on an annual rather than a monthly basis. The Commission proposes that the circuit status reports be filed on or before March 31 of each year and provide circuit status information as of December 31 of the previous year.

The Commission also proposes to require all international facilities-based common carriers to file circuit status reports. The Commission believes that the information provided by those reports will be more useful if those reports provide industry-wide data on international facilities use.

The Commission further proposes to specify a format for the international circuit status reports and to require those reports to be filed on computer diskettes. It believes that these changes will permit the information provided by the reports to be used more efficiently.

The Commission leaves to the Chief, Common Carrier Bureau the task of specifying the format for the circuit status reports and the specifics of the information to be provided. The Commission indicates that it anticipates that the circuit status reports will continue to provide, at a minimum, information, on a country-by-country basis, indicating the number of circuits in each transmission facility an international facilities-based carrier has activated and the number of idle circuits. The Commission requests comments on all of these proposals as well as alternative proposals.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-19312 Filed 8-11-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-229, RM-8296]

Radio Broadcasting Services; Panacea, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by EME Communications seeking the allotment of Channel 263A to Panacea, Florida, as that community's first local aural transmission service. Channel 263A can be allotted to Panacea in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.6 kilometers (9.1 miles) southeast, in order to avoid short-spacings to the licensed site of Station WHKX (FM), Channel 260C2, Lafayette, Florida, to a construction permit for Station WTPS (FM), Channel 264A, Quincy, Florida, and to the licensed site of Station WGWD, Channel 264A, Gretna, Florida. The coordinates for Channel 263A at Panacea are North Latitude 29-54-33 and West Longitude 84-21-01.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clyde Scott, Jr., Rt. 3, Box 485-C, Moultrie, Georgia 31768 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-229, adopted July 23, 1993, and released August 6, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-19311 Filed 8-11-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-57; Notice 1]

RIN 2127-AF00

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of request for comments.

SUMMARY: In implementation of the grant of a petition for rulemaking from Robert Bosch GmbH, this notice requests comments for information relevant to a decision on whether to proceed with rulemaking to amend Standard No. 108 to allow the lens to be replaceable on a replaceable bulb headlamp equipped with an on-vehicle aiming device.

DATES: Comments are due on the notice September 27, 1993.

ADDRESSES: Comments should refer to Docket 93-57; Notice 1, and be submitted to: Administrator, Docket Section, room 5109, Nassif Building, 4090 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: Section S4 of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, defines a "replaceable bulb headlamp" as "a headlamp comprising a bonded lens and reflector assembly and one or two replaceable light sources." Robert Bosch GmbH, a manufacturer of headlamps, has petitioned to delete the word "bonded" from the definition as it relates to replaceable bulb headlamps which use on-vehicle aiming devices. This would permit the lens to be replaced on such headlamps without the necessity of simultaneously replacing the reflector. Bosch ascribed the following benefits were its request to be implemented:

1. The possibility of recycling lenses and reflectors or housings without any additional expensive process for the separation of both parts.

2. Cost savings to the consumer resulting from the ability to replace a lens instead of the entire lens-reflector assembly.

3. A new lens for an old headlamp provides better photometrics than a lens that is scratched or cracked.

4. With on-board aiming, the repeatability of headlamp aim performance will not be influenced by the lens.

5. When a lens is replaced, the reflecting surfaces of the reflector may be cleansed of dirt and other contaminants.

When NHTSA amended Standard No. 108 in 1983 to allow replaceable bulb headlamps, it thoroughly examined the issue of whether the lens should be bonded to the reflector assembly, and concluded that the lens and reflector must be an integral unit. This was intended to reduce the likelihood that a replacement headlighting system would fail to conform to Standard No. 108. A further intent was to preserve the original performance of headlamps in service by minimizing the number of components that could be detached for repair. Before the 1983 final rule permitting replaceable bulb headlamps, whenever a sealed beam light source failed, the entire headlamp had to be replaced. The replacement headlamp and its original equipment counterpart had to meet the same requirements of Standard No. 108. That established a level of identical safety for replacement headlighting equipment. Standard No. 108 maintained this level for replaceable bulb headlamps by requiring that replaceable light sources be designed to meet the same requirements as original equipment light sources.

As a consequence, the safety of motor vehicles today is influenced by the fact that replacement headlamps must meet the same photometric requirements and overall level of performance as headlamps on new motor vehicles. Thus, when headlamps are replaced because of damage (burnout or lens damage on sealed beams, or lens damage on replaceable bulb types), the performance of the replacement lamp is equivalent to that of the original. This occurs because NHTSA does not allow replacement of either the lens or reflector as a separate component to minimize the possibility of noncompliant photometric, aiming and environmental performance. On the other hand, new complying replacement bulbs may be used to replace failed bulbs in replaceable bulb headlamps without the need for installing a new lens/reflector assembly. The rulemaking did not address the condition of the lens of reflector at the time of bulb replacement. In allowing such replacements NHTSA expected that the lens and reflector would be in sufficiently good condition that replacement of the bulb could be expected to result in performance similar to that of a new lamp. NHTSA also believed that state laws would continue to regulate the performance of headlamps on vehicles in use.

Because the petition from Bosch seeks to change this longstanding position, this notice seeks information on whether permitting lens replacement on replaceable bulb headlamps equipped with on-board aiming devices would result in any change, either positive or negative, to the safety of vehicles in use. As in the case with replacement headlamp bulbs, the ability to replace a broken lens, without having to replace the entire headlamp assembly, as Bosch argues, might result in substantial cost savings to consumers, more frequent replacement of broken lenses, and the ability to clean the interior surfaces of the lens and reflector surface in the hope of improving headlamp performance. On the other hand, the agency is concerned that unregulated lens replacement might adversely affect the photometric, aim, and environmental performance of a headlamp, and thus adversely affect a vehicle's ability to avoid accidents.

Additionally, NHTSA is concerned about the process of lens replacement and the ability of the lens installer to make the repair in such a manner as would return a headlamp to at least the level of performance it exhibited just before its lens was damaged, if not to that of a new replacement headlamp. Thus, the agency seeks information about the suitability of lamps for lens replacement, the replacement process including disassembly, cleaning, assembly, and quality assurance procedures for determining the photometric and environmental viability of the relensed lamp, and the

safety effects, positive or negative, that may occur should Standard No. 108 be amended to allow lens replacement.

While the Bosch petition has caused the agency to reexamine its assumptions of a decade ago, NHTSA (which has granted the petition) will not adopt a final rule that may have the effect of derogating from the existing level of safety. For this reason, NHTSA has decided to seek the views of the public with respect to each of petitioner's five arguments, stated above.

NHTSA has also formulated a series of questions to which it seeks public response. Accordingly, in addition to Bosch's five arguments, NHTSA invites comments on the following matters:

1. In previous denials of petitions to allow removable headlamp lenses, NHTSA argued that mechanical aiming of lamps with lens-mounted aiming pads could be affected by any change of the alignment relationship established between lenses and reflectors at the time of manufacture. Thus, alteration of the original alignment during lens replacement could misaim the beam. Given that Bosch's request for removable lenses covers only replaceable bulb headlamps with on-vehicle aiming devices, there may be no need for concern about misaim of headlamps that are aimed mechanically, certainly if the headlamp lens does not participate in the formation of the beam pattern, photometric compliance, and the beam pattern's relationship to beam aim. This also assumes that the correct lens is used. While this tentative conclusion may be true if the lens exhibits absolutely no fluting (i.e., no discernible prescription), NHTSA seeks comments on whether this tentative conclusion is also true for lenses that have a prescription. Comments should discuss the extent to which fluting (the prescription) or its identicality with the original lens would have to be limited or prescribed to assure proper photometry if the lens were replaced, and how this should this be specified as a requirement if it needs to be limited. Comments should also recommend how such a regulation might be implemented, whether within Standard No. 108 or in a public information docket similar to that established for new types of replaceable headlamp bulbs, i.e., Part 564 *Replaceable Headlamp Light Source Information*. (Under this regulatory scheme, part 564 establishes a docket that is a public repository for headlamp replaceable light source information. Standard No. 108, in turn, requires that replaceable light sources manufactured for headlamps covered by Standard No. 108 comply with the appropriate dimensional and performance information filed pursuant to part 564. A similar process could be established for replacement headlamp lenses, except that the information filed would be about the necessary dimensions, prescriptions, processes, and performances necessary for the interchangeability of the lenses.)

2. NHTSA is also concerned about the ability of a headlamp with a replacement lens to achieve the same immediate and long-term performance as it would have had if the lens had not been broken, and, alternatively, as is the case today, the headlamp itself were replaced with a complying one. Because Standard No. 108 requires that replacement equipment meet the same requirements as original equipment, a level of safety performance of vehicles in use has been established. Any change to Standard No. 108 that affects the performance of headlamp replacement will have an effect on safety. If a commenter believes that performance and life of new replacement headlamps and headlamps that have lenses replaced in the field by (a) consumers, and (b) typical repair facilities, are comparable, it should provide supporting data. It should also describe all the circumstances that should be regulated or limited in the relensing process that would be necessary for the used headlamps with new lenses to achieve a level of performance comparable to that which existed immediately before the lens was damaged. NHTSA would also like to know whether there are certain types of headlamps that, if relensed, would not or could not be expected to have the same level of performance as new replacement headlamps. If there are any such types, the agency requests the commenter to discuss those features of the headlamps such as lens-to-reflector shims or special vents or seals that would hinder that performance and to describe the means to regulate those features.

3. NHTSA would also like to know whether any manufacturer has studied sales of headlamp lens replacements as an alternative to sales of replacement headlamps, and, if so, the premises and conclusions of those studies.

4. Bosch provided photometric data from a laboratory on new reflector and new lens interchangeability performance as a demonstration of the suitability of field replacement of lenses. NHTSA requests comments on whether the Bosch data represent a realistic and appropriate demonstration, and whether a headlamp with its lens replaced by (a) consumers and (b) typical repair facilities would be able to demonstrate similar performance.

5. Some headlamps that are mechanically aimable have shims between the lens and reflector. NHTSA asks whether any headlamps intended for use with on-vehicle aiming devices have been manufactured with such alignment shims, whether any are being designed that would use such shims, and whether lens replacement should be prohibited on headlamps using shims, or, alternatively, whether the replacement process can be designed to accommodate their use.

6. If lenses were allowed to be replaceable, NHTSA is interested in knowing the information that would or should be available regarding whether a damaged headlamp can be relensed, how the relensing would occur, and, if undertaken, a description of the quality assurance aspects that would ensure a return of performance to some expected level.

7. Commenters should indicate how acceptable and unacceptable replacement work would be verified, and whether state periodic motor vehicle inspections are capable of performing this verification. This comment should also include a discussion of the federal or state controls that should be implemented for states that do not have periodic motor vehicle inspection.

8. NHTSA is interested in any data that would indicate that U.S. consumers might be more likely to replace/repair the lenses on poorly performing headlamps if replacement lenses were permitted than to continue to use the poorly performing lamp. Similarly, NHTSA is interested in any data that U.S. consumers would choose headlamp replacement over continuing use of a poorly performing lamp.

9. (For vehicle manufacturers) Provide the percentages of your Model Year 1993 and/or 1994 vehicle/replaceable bulb headlamp production that will have glass lenses and plastic lenses. For both groups of vehicles, please indicate the percentage of each type that will have on-vehicle aiming devices. Finally, please indicate the anticipated long-term apportionment between glass and plastic headlamp lenses for future model vehicles.

10. (For vehicle manufacturers) Provide the anticipated volume of replacement for 1992 and/or 1993 model glass-lensed headlamps as a percentage of new vehicle headlamp sales, and the same figure for plastic-lensed lamps.

11. (For vehicle manufacturers) Please provide the data requested below on the

cost of headlamps, lenses, repairs and replacements:

A. The retail prices for your replacement Model Year 1993 (a) glass-lensed and (b) plastic-lensed replaceable bulb headlamps.

B. Your estimate of the retail cost of replacement lenses for the headlamps in A., above.

C. The time and cost allowances for replacing the lamps in A.

D. Your estimate of the time and cost to replace the lens in the headlamps in A., above.

E. The instances discussed in A. through D., above, where you would be likely to choose not to provide a replacement lens, and an explanation why in each case.

12. List the benefits (including safety) and costs that would be expected to accrue to vehicle owners, OEM lamp manufacturers, vehicle manufacturers, and non-OEM lamp parts manufacturers, respectively, as a result of replaceable headlamp lenses.

13. Discuss the requirements that should be placed on the process of headlamp lens replacement to verify that a repaired headlamp meets some particular level of performance. Discuss the level that should be reached if it is not to the same performance as now required of replacement headlamps, and why it should be different? What are the test procedures and equipment necessary to achieve this? What are the costs associated with this process? Who would likely be the regulated parties? What compliance problems are envisioned with such a strategy?

14. In some other countries, headlamp lens replacement is allowed. Discuss the safeguards that may exist in those countries to prevent installation of the wrong lens, and to restore performance and correct beam aim after lens replacement. Discuss any governmental regulatory compliance programs that may exist for replacement lenses and other lamp parts. Are non-OEM lenses prohibited in these countries? Commenters are asked to list the countries, and categorize them, if the answers are different among them. Comments are also requested on whether there are any reported problems with this approach to lens replacement.

15. Ford Motor Company suggested years ago that plastic headlamp lenses would help to make headlamps last the life of the vehicle since they were 20 times more resistant to impact damage than glass lenses. In view of the ever increasing use of impact resistant plastic for headlamp lenses, NHTSA asks whether it would be more pertinent to drop the lens replacement issue and develop a performance requirement that would reduce or eliminate the incidence of lens breakage, thus preventing any safety or cost disbenefit from broken lenses.

Comments

Interested persons are invited to submit comments on the notice. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered in the agency's deliberations whether to proceed with rulemaking. Comments on the notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 5, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–19291 Filed 8–11–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AB93

Importation of Exotic Wild Birds to the United States; Proposed Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On October 23, 1992, the Wild Bird Conservation Act of 1992 (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This proposed rule proposes regulations implementing the prohibitions stipulated in the WBCA and provides permit requirements and procedures for some allowed exemptions. This notice also proposes to replace the feather importation quota regulations.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by September 13, 1993 in formulating a final rule.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Dr., room 420C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: This rule proposes regulations implementing some aspects of the WBCA, which was signed into law on October 23, 1992. The WBCA limits or prohibits imports of exotic bird species to ensure that their populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by both ensuring that all trade in such species involving the United States is biologically sustainable and to the benefit of the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of origin. The effects of the WBCA, which this rule proposes regulations to implement, are as follows:

The WBCA covers the importation of all bird species not indigenous to the 50 United States and the District of Columbia, while exempting the following bird families from its provisions: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae, based on "Reference List of the Birds of the World" by Morony, Bock, and Farrand. 1975.

An immediate moratorium, effective October 23, 1992, was established on the importation of ten species of wild birds of particular concern that are listed in Appendix II of the Convention on International Trade in Endangered Species (CITES), two of which were moved to Appendix I at the March 1992 CITES meeting. The prohibition on importation of those species was announced in the Federal Register of December 4, 1992 (57 FR 57510).

During the one-year delay period from October 23, 1992, to October 22, 1993, there has been a maximum number of individuals of any CITES-listed bird species that can be imported. That quota, equal to the number imported during the last year for which the Service had complete data (1991), was announced in the Federal Register of December 4, 1992 (57 FR 57510). A notice published on March 30, 1993 (58 FR 16644) solicited public comments and announced a public meeting, held April 15–16, 1993, to receive input from the public in the development of regulations to implement some of the provisions of the WBCA. Useful input was received from a broad cross-section of interested members of the public who participated in the meeting and submitted comments in writing; that input has been utilized in developing this proposed rule. A notice published on April 16, 1993, (58 FR 19840) announced species for which the quota had been met and no further individual birds could be imported.

Effective October 22, 1993, imports of all CITES-listed birds are prohibited, except for species included in an approved list, or for which an import permit has been issued. The approved list will include species (by country) and/or specific captive-breeding facilities. The Service will publish a proposed rulemaking establishing the criteria for adopting the approved list in the near future. The Service also has the emergency authority to suspend imports of any CITES-listed bird species at any time based on a series of criteria.

In a future notice of proposed rulemaking, the Service will propose regulations called for in the WBCA that will accomplish the following: For wild-caught CITES-listed birds to be on an approved list, the Service must determine that: CITES is being effectively implemented for the species for each country of origin from which imports will be allowed; CITES-recommended measures are implemented; there is a scientifically based management plan for the species that provides for the conservation of the species and its habitat, includes incentives for conservation, ensures that the use of the species is biologically sustainable and maintained throughout its range at a level consistent with its role in its ecosystem, addresses factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health, including humane treatment.

For captive-bred birds to be imported from other countries, in order to be listed in an approved list, the Service is required to determine either that the species is regularly bred in captivity and no wild-caught birds of the species are in trade, or that the species is bred in a qualifying facility.

The Service is required to review trade in all non-CITES species, and establish a moratorium on any species, by country of origin, if any of a series of findings cannot be made. If a country of origin does not have a management program for exotic birds that ensures conservation and humane treatment during capture, transport, and maintenance, the Service is authorized to establish a moratorium on importation from that country, or of that species from any country of re-export. In order to make these assessments, the Service is required to call for information on the wild bird management plans of all countries exporting their birds.

The WBCA authorizes the Service to issue permits for the importation of individual birds from otherwise prohibited species for the following purposes (after a finding that it is not detrimental to the survival of the species): (1) Scientific research; (2) personally owned pets of individuals returning to the United States after being out of the country for at least a year; (3) zoological breeding or display programs; and (4) cooperative breeding programs designed to promote the conservation of the species and maintain the species in the wild, as long as such programs are developed and administered by organizations meeting certain standards. This proposed rule promulgates that process.

Regulatory Schedule

This proposed rule proposes the replacement of CFR part 15 so that it relates only to implementation of the Wild Bird Conservation Act. Thus, actual text is proposed for the following subparts: Subpart A (Introduction and General Provisions), subpart B (Prohibitions and Requirements), and subpart C (Permits and Approval of Cooperative Breeding Programs). It is the Service's intent to propose actual text for subparts D (Approved list of species) and E (Qualifying foreign breeding facilities) in the near future, and to propose actual text for subpart F (Prohibited non-CITES species) not long thereafter.

Feather Import Quotas: Elimination of Rule

This proposed rule would eliminate regulations currently in 50 CFR part 15, which implement feather import quotas contained in the Tariff Classification Act of 1962 (19 U.S.C. 1202). The current regulations in 50 CFR part 15 contain three subparts regulating the importation of skins bearing feathers of the mandarin duck, a jungle fowl, and six species of pheasants, under the authority of the Tariff Classification Act of 1962; these regulations were last amended in January, 1974 (39 FR 1168). The Service believes that the current feather import quota regulations are unnecessary and wasteful of government and private resources, with no benefit to wildlife species. The Service notes there are a number of other laws and regulations that protect species of birds for which there is cause for concern and for which importation of skins bearing feathers could be of concern. These laws include the Lacey Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, the Endangered Species Act, and CITES. The Service notes that the regulations in 50 CFR part 15, and the Tariff Classification Act, were passed prior to the signing and implementation by the United States of the CITES treaty. The current feather import regulations (50 CFR part 15) prohibit the importation of feathers of those two species that are listed in the CITES Appendices; *Gallus sonnerati* and *Crossoptilon mantchuricum* were listed in CITES Appendix II and I, respectively, in 1975. The Service believes that if there were any conservation concern regarding trade in feathers of the other species listed in 50 CFR part 15, the government authorities responsible could have proposed their listing in the CITES Appendices.

There are currently only nine companies that participate in the feather import quota program. The experience of the Service in implementing the quotas in 50 CFR part 15 has shown that importers rarely, if ever, import their full allocation. The Service will communicate with the governments of those countries in which the pheasant and duck species listed in 50 CFR part 15 are found in the wild (through the Department of State or the CITES Secretariat), to determine if any of the species should be listed in CITES Appendix II or III. The Service is interested in the comments of any interested individuals with information on the status in the wild of the species of ducks and pheasants listed in 50 CFR part 15, and on the possible impact of elimination of these regulations.

Section-by-Section Analysis

Renumbering of 50 CFR Part 15

The Service proposes to include the regulations implementing the WBCA in 50 CFR part 15. Currently, 50 CFR part 15 contains three subparts regulating the importation of skins bearing feathers of the mandarin duck, a jungle fowl, and six species of pheasants, which the Service is proposing to eliminate. The Service proposes to include the regulations implementing the WBCA in 50 CFR part 15 subparts A–G.

Subpart A—Wild Bird Conservation Act: Introduction and General Provisions

Section 15.1 Purpose of Regulations

This section outlines the general purpose of the regulations in part 15, which apply to all species of exotic birds as defined in this subpart.

Section 15.2 Scope of Regulations

This section clarifies that all of the requirements of part 15 are in addition to the existing requirements in parts 13 and 14, part 17 (species listed as endangered or threatened under the Endangered Species Act (ESA)), part 21 (Migratory Bird Treaty Act) and part 23 (species listed in the Appendices to the Convention on International Trade in Endangered Species). Thus, for example, in addition to the requirements of part 15 relating to the Wild Bird Conservation Act (WBCA), importation of a species of bird listed in CITES Appendix I would still require a CITES Appendix I import permit and be required to comply with the requirements of 50 CFR part 23. It is the Service's intent that one application will suffice for both sets of requirements, and one permit will be issued covering CITES, ESA, and Wild Bird Conservation Act requirements, as is now done for imports requiring both CITES and ESA permits.

Section 15.3 Definitions

This section defines a number of terms used in part 15. The definitions in part 10 and 23 of 50 CFR, unless defined herein, also apply. The definitions of exotic bird, person, species, and United States are taken directly out of the text of the WBCA. Import, although defined in the WBCA, is not included here, as the term import is defined in 50 CFR part 10. Based on the definition of exotic bird, bird species indigenous to the 50 States or the District of Columbia are exempt from these regulations, as are bird species in any of ten families of birds. The definition of species clarifies that hybrids of any species or subspecies are also covered by these regulations. In order to be consistent with CITES requirements, hybrids will be treated according to the more restrictive Appendix or category in which either parental species is listed. For example: a hybrid between a species prohibited from import under these regulations and one approved for import would be prohibited from import; a hybrid between two species listed in the CITES Appendices is treated according to the more restrictive CITES Appendix; a hybrid between a CITES Appendix II species, and an unlisted species is treated as an Appendix II species.

Subpart B—Prohibitions and Requirements

Section 15.11 Prohibitions

This section describes the prohibitions under the Act, which relate to the importation of birds into the United States. It is unlawful to import any exotic bird listed under CITES if it is not listed either in the approved list of species, based on a country of export's sustainable-use management plan, or because the species is exclusively captive-bred (subpart D), or in the approved list of qualifying foreign captive-breeding facilities (subpart E). It is unlawful to import any bird from an approved breeding facility if the bird was not bred at that facility. It is unlawful to import any non-CITES bird if it is listed under subpart F as a prohibited species, or if it was exported from a prohibited country, also under subpart F. It is also unlawful to possess any bird imported in violation of this part, or to engage in any activity in violation of a specified condition of a permit issued that authorizes the import of an exotic bird under this part 15. If a species is re-exported from a country, whether or not it can be imported into the United States is dependent on the country of origin (the country of export) of the bird. For example, if a CITES-listed bird species is re-exported from country A, but originated in country B, that species must be listed as an approved species from country B. This section clarifies that Appendix III species are considered CITES-listed species for the purposes of these regulations only if they originate in the country that listed them in Appendix III.

These regulations can be illustrated through an example; these examples are not meant to imply approval or disapproval of any species or country but are just for the sake of giving an example: *Example 1:* If exports of *Amazona aestiva* are approved from Argentina but not from any other country, then *A. aestiva* could not be imported into the United States with an export permit from Venezuela or Peru; a re-export from Belgium could only be imported with a valid CITES permit indicating the original country of export as Argentina, and giving the valid Argentina CITES Permit number. *Example 2:* If Species X is listed as a captive-bred species under subpart D, it can be imported from any country with a valid CITES permit; no additional permits are required. *Example 3:* If Smith's Breeding Farm in England is listed under subpart E as approved for *Amazona aestiva* and *Amazona albifrons*, then those two species can be imported from Smith's Breeding Farm with a valid CITES permit; no additional import permit is required from the Service; they must have been bred at Smith's. If Smith's is the only approved facility for the species, imports from any other facility or country are only allowed with a valid import permit issued by the Service, pursuant to subpart C.

Section 15.12 Requirements

This section establishes that no exotic bird can be imported into the United States except in accordance with the provisions of subparts D–F, or under the terms of a valid import permit issued pursuant to subpart C. Thus, even if a species is prohibited from import, or originates in a prohibited country, individuals are eligible to apply for a permit under subpart C if the purpose for which they desire to import a bird qualifies for one of the four types of permits.

Subpart C—Permits and Approval of Cooperative Breeding Programs

This subpart establishes procedures, application requirements, and issuance criteria for four types of permits authorized under the WBCA.

Section 15.21 General Application Procedures

All applications should be submitted to the Service's Office of Management Authority. In all cases, any additional requirements in 50 CFR parts 13, 14, 17, 21, and 23 must also be met. For each of the four types of permits, each section (§§ 15.22–15.25) is organized in the following manner: (1) Application requirements, which contains the information the applicant must provide to the Service; (2) Issuance criteria, which includes the findings the Service must make before a permit can be issued; (3) Permit conditions: All permits are subject to the general conditions set forth in 50 CFR part 13, as well as any special conditions; and (4) Publication in the **Federal Register**. A notice of permit applications for scientific research and zoological breeding and display will be published in the **Federal Register** for public comment. Approval of cooperative breeding programs, § 15.26, is organized in the following manner: (1) Application requirements, which contains the information the applicant must provide to the Service; (2) Approval criteria, which includes the findings the Service must make before approval can be granted; (3) Approval conditions: All approvals are subject to the general conditions set forth in 50 CFR part 13. In addition, the cooperative breeding program is required to maintain records of birds imported and their progeny, and their disposition, which shall be made available to the Service on request; and (4) Publication in the **Federal Register**. Requests for approval will be published in the **Federal Register** for public comment.

Section 15.22 Permits for Scientific Research

Persons desiring to import otherwise prohibited species of exotic birds for scientific research must provide information to the Service as prescribed in this section, including: Information on the exotic birds to be imported, including whether they are still in the wild, have been removed from the wild, or were bred in captivity; information on the bird's removal from the wild, if applicable; or if the exotic bird was bred in captivity, information on its breeding history; a description of the scientific research to be conducted on the exotic bird including a research protocol and the relationship of such research to the conservation of the species; qualifications of the principal investigator and other scientific personnel to conduct the proposed research; a description of the proposed care and maintenance of the exotic bird; and a description of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport. The Service will consider the following questions in evaluating the merits of scientific research: Are the research hypothesis and objectives clearly stated? Is the research question valid? Are the techniques and sampling design appropriate, adequate, and humane? Is the sample size appropriate? Is the research feasible? How does the research relate to previous work; is it duplicative? How will the research benefit the species? Did previously conducted research under previously issued permits accomplish the stated objectives? Have the results of previous research been adequately disseminated? All of the information required is necessary in order to allow the Service to determine whether the research would benefit the conservation of the species, and the research objectives could be accomplished successfully, including but not limited to the scientific and husbandry expertise of the applicant. Permit applications will be published in the **Federal Register** for public comment, and import permits will be valid for up to one year.

Section 15.23 Permits for Zoological Breeding or Display

Persons desiring to import otherwise prohibited species of exotic birds for zoological breeding or display must provide information to the Service as prescribed in this section, including: Information on the exotic birds to be imported, including whether they are still in the wild, have been removed from the wild, or were bred in captivity; information on the bird's removal from the wild; if applicable; or if the exotic bird was bred in captivity, information on its breeding history; a description of the breeding or display program and protocol; information about the facility and expertise of individuals responsible for the birds; and information as to how the program will benefit the conservation of the species. All of the information required is necessary in order to allow the Service to determine whether the zoological breeding or display program would enhance the conservation of the species, and the objectives could be accomplished successfully, including but not limited to the expertise of the applicant. Permit applications will be published in the **Federal Register** for public comment, and import permits will be valid for up to one year.

Section 15.24 Permits for Cooperative Breeding

Persons desiring to import otherwise prohibited species of exotic birds for cooperative breeding programs must first be affiliated with a cooperative breeding program approved under the provisions of § 15.26. If a person is affiliated with an approved program, to apply for a permit they must provide information to the Service as prescribed in this section, including: Information on the exotic birds to be imported, including whether they are still in the wild, have been removed from the wild, or were bred in captivity; information on the bird's removal from the wild, if applicable; or if the exotic bird was bred in captivity, information on its breeding history; information on their breeding protocol, and their relationship with the approved program; and information about their facility and their qualifications. All of the information required is necessary in order to allow the Service to determine whether the breeding program and this particular import would enhance the conservation of the species, and the objectives could be accomplished successfully, including but not limited to the expertise of the applicant. Permit applications may be published in the **Federal Register**, but will only be done so at the discretion of the Service and will not be required by regulation. Import permits will be valid for up to one year.

Section 15.25 Permits for Personal Pets

Persons desiring to import otherwise prohibited species of exotic birds that are their personal pets may do so if they have resided outside of the United States for at least a year, and they are returning to the United States; such import permits are limited to two birds per household per year. In addition, any person that has legally exported a pet bird from the United States on an export permit or re-export certificate issued by the Service may apply for a permit to re-import the bird, without any time restriction on the period outside of the United States. Applicants must provide information to the Service as prescribed in this section, including information on the history of their ownership of the bird. All of the information required is necessary in order to allow the Service to determine whether the import will not be detrimental to the species in the wild, and if the individual has indeed been outside of the United States for at least a year. Permit applications will not be published in the **Federal Register**.

Section 15.26 Approval of Cooperative Breeding Programs

Cooperative breeding programs that wish to import otherwise prohibited species of exotic birds must be approved under this section before persons can apply for import permits under § 15.24. In applying for approval, a cooperative breeding program must provide information to the Service as prescribed in this section, including information on their breeding protocol, including a genetic management plan and breeding methods, plans for developing a self-sustaining population in captivity, relationship of the program to enhancement of the species in the wild, the source of the birds requested, and information about participants' qualifications. All of the information required is necessary in order to allow the Service to determine whether the breeding program would enhance the conservation of the species, and the objectives could be accomplished successfully. Applications will be published in the **Federal Register** for public comment, and the Service will periodically publish a notice as appropriate with a list of all approved programs. Approvals will be valid for up to two years, and are eligible for renewal. All approvals are subject to the general conditions set forth in 50 CFR part 13.

Subpart D—Approved List of Species Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

This subpart is established in this proposed rule; actual text will be proposed in a future proposed rulemaking. The subpart is proposed to be organized as follows:

15.31 Criteria for including species in the approved list.
(a) Captive-bred species
(b) Non-captive-bred species
15.32 Species included in the approved list.
(a) Captive-bred species
(b) Non-captive-bred species

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

This subpart is established in this proposed rule; actual text will be proposed in a future proposed rulemaking. The subpart is proposed to be organized as follows:

Section 15.41 Criteria for including facilities as qualifying for imports.
Section 15.42 List of foreign qualifying breeding facilities.

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

This subpart is established in this proposed rule; actual text will be proposed in a future proposed rulemaking. The subpart is proposed to be organized as follows:

Section 15.51 Criteria for including species and countries in the prohibited list.
Section 15.52 Species included in the prohibited list.
Section 15.53 Countries of export included in the prohibited list.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of this proposal are hereby solicited.

Effects of the Rule

The Service has determined that this proposed rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). The proposed regulations are procedural in nature, and the environmental effects are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. The permits authorized under the WBCA and regulations may be subject to NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12291, 12612, and 12630 and the Regulatory Flexibility Act

It has been determined that these revisions to 50 CFR part 15 do not constitute a "major" rule under the criteria established by Executive Order 12291. This action is not expected to have significant taking implications for U.S. citizens, as per Executive Order no. 12630. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the rule applies to importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction

The information collection requirement(s) contained in this section has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Author

The primary author of this final rule is Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/358–2093).

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to revise part 15 of chapter I of title 50 of the Code of Federal Regulations to read as follows:

PART 15— WILD BIRD CONSERVATION ACT

Subpart A—Introduction and General Provisions

Sec.
15.1 Purpose of regulations.
15.2 Scope of regulations.
15.3 Definitions.

Subpart B—Prohibitions and Requirements

15.11 Prohibitions.
15.12 Requirements.

Subpart C—Permits and Approval of Cooperative Breeding Programs

15.21 General application procedures.
15.22 Permits for scientific research.
15.23 Permits for zoological breeding or display programs.
15.24 Permits for cooperative breeding.
15.25 Permits for personal pets.
15.26 Approval of cooperative breeding programs.

Subpart D—Approved List of Species Listed in the Appendices to the Convention

15.31 Criteria for including species in the approved list.
15.32 Species included in the approved list.

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

15.41 Criteria for including facilities as qualifying for imports. [Reserved]
15.42 List of foreign qualifying breeding facilities. [Reserved]

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention

15.51 Criteria for including species and countries in the prohibited list. [Reserved]
15.52 Species included in the prohibited list. [Reserved]
15.53 Countries of export included in the prohibited list. [Reserved]

Authority: Pub. L. 102–440; 16 U.S.C. 4901–4916

Subpart A—Introduction and General Provisions

§ 15.1 Purpose of regulations.

The regulations in this part implement the Wild Bird Conservation Act of 1992, Pub. L. 102–440; 16 U.S.C. 4901–4916..

§ 15.2 Scope of regulations.

(a) The regulations in this part apply to all species of exotic birds, as defined in section 15.3 of this part.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the import, export, re-export, and transportation of wildlife.

§ 15.3 Definitions.

In addition to the definitions contained in parts 10 and 23 of this subchapter B, and unless the context requires otherwise, in this subpart:

Exotic bird means any live or dead member of the Class Aves that is not indigenous to the 50 States or the District of Columbia, including any egg or offspring thereof, but does not include domestic poultry, dead sport-hunted birds, dead museum specimens, dead scientific specimens, products manufactured from such birds, or birds in any of the following families: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae.

Indigenous means a species that is naturally occurring, not introduced as a result of human activity, and that currently regularly inhabits or breeds in the 50 States or the District of Columbia.

Person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

Species means any species, any subspecies, or any distinct population segment of a species or subspecies, and includes hybrids of any species or subspecies. Hybrids will be treated according to the more restrictive Appendix or category in which either parental species is listed.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subpart B—Prohibitions and Requirements

§ 15.11 Prohibitions.

(a) Except as provided under a permit issued pursuant to subpart C of this part, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any exotic bird.

(b) It is unlawful to import into the United States any exotic bird species listed in the Appendices to the Convention which is not included in the approved list of species, pursuant to subpart D of this part, except that

(1) This paragraph (b) does not apply to any exotic bird that was bred in a foreign breeding facility listed as qualifying pursuant to subpart E of this part, and

(2) This paragraph (b) does not apply to an exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III.

(c) It is unlawful to import into the United States any exotic bird species not listed in the Appendices to the Convention which is listed in the prohibited species list, pursuant to subpart F of this part. In addition to all other exotic bird species, this paragraph also applies to exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III.

(d) It is unlawful to import into the United States any exotic bird species from any country included in the prohibited country list, pursuant to subpart F of this part.

(e) It is unlawful to import into the United States any exotic bird species from a qualifying facility breeding exotic birds in captivity, listed pursuant to subpart E of this part, if the exotic bird was not captive-bred at the listed facility.

(f) It is unlawful for any person subject to the jurisdiction of the United States to either possess any exotic bird imported into the United States contrary to any of the provisions or requirements of this part 15, or to engage in any activity with an exotic bird imported under a permit issued pursuant to this part that violates a condition of said permit.

§ 15.12 Requirements.

No person shall import into the United States any exotic bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of subpart C and 50 CFR part 13, or in accordance with the provisions of subparts D through F of this part 15.

Subpart C—Permits and Approval of Cooperative Breeding Programs

§ 15.21 General application procedures.

(a) The Director may issue a permit authorizing the importation of exotic birds otherwise prohibited by § 15.11, in accordance with the issuance criteria of this subpart, for the following purposes only: scientific research; zoological breeding or display programs; cooperative breeding programs designed to promote the conservation and maintenance of the species in the wild; or personally owned pets accompanying persons returning to the United States after being out of the country for more than 1 year.

(b) Additional requirements as indicated in parts 13, 14, 17, 21, and 23 of this subchapter must also be met.

(c) Applications for permits under this subpart and approval of cooperative breeding programs under this subpart shall be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, Virginia 22203 by the person wishing to engage in the activity. Each application must be submitted on an official application (Form 3–200) provided by the Service and must contain all of the information specified in the applicable section, § 15.22 through 15.26. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part.

§ 15.22 Permits for scientific research.

(a) Application requirements for permits for scientific research. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age, and sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild within the last year, include:

(i) The country and specific location where the removal occurred;

(ii) A description of the manner of taking of each bird;

(iii) The names and qualifications of persons who will capture or captured the bird;

(iv) A description of the status of the species in the area of capture; and

(v) A copy of any foreign collecting permit or authorizing letter;

(3) If the exotic bird has been held in captivity for more than 1 year, include:

(i) the country and specific location where removal occurred;

(ii) The date and purpose of removal; and

(iii) Any other information in paragraph (a)(2) of this seciton that may be applicable;

(4) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, identifying the parental birds, hatch date, and the name and address of the breeder; and

(ii) If the applicant is not the breeder, copies of breeders records, invoices, or other documentation showing the bird was acquired from the breeder and a history of multiple transactions;

(5) A statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the scientific research to be conducted on the exotic bird requested, including:

(i) Formal research protocol with timetable and details on the funding of the research;

(ii) The relationship of such research to promoting the conservation of the species in the wild;

(iii) A discussion of possible alternatives and efforts to obtain birds from other sources; and

(iv) Planned disposition of the exotic birds and any progeny upon completion of the research project;

(6) Qualifications of the principal investigator and other scientific personnel to conduct the proposed research, including:

(i) Applicable educational experience;

(ii) Description of relevant past research conducted and any published or unpublished results of the research;

(iii) Evidence of professional affiliation with an accredited research institution; and

(iv) Three letters from other scientists as to the adequacy of the proposed research. If the research requires the removal of the exotic bird from the wild, one of these letters shall be from the Convention Scientific Authority in the country from which the exotic bird is going to be or was removed from the wild;

(7) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards, including:

(i) The name and address, as well as photographs or diagrams, of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each;

(iii) Husbandry practices; and

(iv) Qualifications and experience of the personnel who will be responsible for the care of the exotic bird; and

(8) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the purpose of the scientific research is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the research for which the permit is required has scientific merit, is not unnecessarily duplicative, and would be likely to promote the conservation of the exotic bird species in the wild;

(5) The opinions or views of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application;

(6) Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the research objectives stated in the application;

(7) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. This public comment period may be waived by the Director in an emergency situation where the life or health of an exotic bird is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

(e) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.23 Permits for zoological breeding or display programs.

(a) Application requirements for permits for zoological breeding or display programs. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including: (i) The common and scientific names of the species, number, age, and sex; and (ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild within the last year, include:

(i) The country and specific location where the removal occurred;

(ii) A description of the manner of taking of each bird;

(iii) The names and qualifications of persons who will capture or captured the bird(s);

(iv) A description of the status of the species in the area of capture; and

(v) A copy of any foreign collecting permit or authorizing letter;

(3) If the exotic bird has been held in captivity for more than 1 year, include:

(i) the country and specific location where removal occurred;

(ii) The date and purpose of removal; and

(iii) Any other information in paragraph (a)(2) of this section that may be applicable;

(4) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, identifying the parental birds, hatch

date, and name and address of the breeder; and

(ii) If the applicant is not the breeder, copies of breeders records, invoices, or other documentation showing the bird was acquired from the breeder and a history of multiple transactions;

(5) A statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the breeding or display program to be conducted with the exotic bird requested, including:

(i) A breeding or education protocol that provides information on conservation educational materials provided to the general public;

(ii) Plans, if any, for developing or maintaining a self-sustaining population of the exotic bird species in captivity;

(iii) A statement on efforts to obtain birds from alternative sources or sources within the United States;

(iv) Details on recordkeeping and veterinary care;

(v) The relationship of such a breeding or display program to promoting the conservation of the species in the wild; and

(vi) Planned disposition of the exotic birds and any progeny.

(6) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards of the public display community, including:

(i) The name and address, as well as photographs or diagrams, of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each;

(iii) Husbandry practices; and

(iv) Qualifications and experience of the personnel who will be responsible for the care of the exotic bird;

(7) A history of the zoological facility's breeding programs with the same or similar species, including:

(i) participation in any cooperative breeding programs;

(ii) breeding and inventory records for the last two years, including hatching, survival and mortality records;

(iii) causes of any mortalities and efforts made to correct any problems; and

(iv) a qualification statement for the principal investigator who will be involved in the breeding program;

(8) A qualification statement for each individual and/or principal investigator who will be overseeing the breeding or display program. This statement should include information on the personnel's husbandry experience with the same or similar bird species;

(9) Three letters of endorsement are required for the breeding or display program on the exotic bird. If the breeding or display requires the removal of the exotic bird from the wild, one of these letters shall be from the Convention Scientific Authority in the country from which the exotic bird is or will be removed from the wild; and

(10) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport;

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the zoological breeding or display program is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the breeding program for which the permit is required would be likely to enhance or promote the conservation of the exotic bird species in the wild or whether the display program for which the permit is required would be likely to promote conservation through education efforts for the exotic bird species or the habitat in which it lives;

(5) The opinions or views of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application;

(6) Whether the expertise, facilities or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the zoological breeding or display objectives stated in the application; and

(7) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. This public comment period may be waived by the Director in an emergency situation where the life or health of an exotic bird is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

(e) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.24 Permits for cooperative breeding.

(a) Application requirements for permits for cooperative breeding. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age, and sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild within the last year, include:

(i) The country and specific location where the removal occurred;

(ii) A description of the manner of taking of each bird;

(iii) The names and qualifications of persons who will capture or captured the bird(s);

(iv) A description of the status of the species in the area of capture; and

(v) A copy of any foreign collecting permit or authorizing letter;

(3) If the exotic bird has been held in captivity for more than 1 year, include:

(i) the country and specific location where removal occurred;

(ii) The date and purpose of removal; and

(iii) Any other information in paragraph (a)(2) of this section that may be applicable;

(4) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, identifying the parental birds, hatch date, and name and address of the breeder; and

(ii) If the applicant is not the breeder, copies of breeders records, invoices, or other documentation showing the bird was acquired from the breeder and a history of multiple transactions;

(5) A statement of the reasons the applicant is justified in obtaining a permit, and a statement detailing the applicant's participation in a cooperative breeding program approved under section § 15.26 of this chapter, including:

(i) copies of any signed agreements or protocols with the monitoring avicultural, conservation, or zoological organization overseeing the program; and

(ii) applicable records of the cooperative breeding program of any other birds imported, their progeny, and their disposition;

(6) A complete description of the relationship of the exotic bird to the approved cooperative breeding program, including:

(i) A statement of the role of the exotic bird in a breeding protocol;

(ii) A plan for maintaining a self-sustaining captive population of the exotic bird species;

(iii) Details on recordkeeping and veterinary care; and

(iv) Planned disposition of the exotic birds and any progeny produced during the course of this program.

(7) A statement outlining the applicant's attempts to obtain the exotic bird in a manner that would not cause its removal from the wild, and attempts to obtain the specimens of the exotic bird species from stock available in the United States;

(8) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards, including:

(i) The name and address, as well as photographs or diagrams, of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each; and

(iii) Husbandry practices;

(9) A history of the applicant's past participation in cooperative breeding programs, including:

(i) breeding and inventory records for at least the last two years;

(ii) hatching, survival and mortality records;

(iii) causes of any mortalities and efforts made to correct any problems;

(10) A qualification statement for each individual who will be handling or responsible for the care of the exotic bird. This statement should include information on the individuals' husbandry experience with the same or similar bird species; and

(11) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport;

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the cooperative breeding program is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the breeding program for which the permit is required would be likely to enhance or promote the conservation of the exotic bird species in the wild or result in a self-sustaining population of the exotic bird species in captivity;

(5) Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the cooperative breeding objectives stated in the application; and

(6) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.25 Permits for personal pets.

(a) Application requirements for personal pets not intended for sale. No household may import more than two exotic birds as pets in any year. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird to be imported, including:

(i) The common and scientific names, number, age, and sex (if known);

(ii) A band number, house name, or any other unique identifying feature; and

(iii) A statement as to whether the exotic bird was bred in captivity or taken from the wild;

(2) A statement of the reasons the applicant is justified in obtaining a permit;

(3) Documentation showing that the applicant has continually resided outside of the United States for a minimum of one year;

(4) A statement of the number of exotic birds imported during the previous 12 months as personal pets by the applicant and other members of the applicant's household;

(5) Information on the origin of the exotic bird, including:

(i) Country of origin; and

(ii) A description and documentation of how the exotic bird was acquired, including a copy of any Convention permit under which the bird was re-exported or exported. If there is no such permit, a sales receipt or signed statement from seller with name and address of seller, date of sale, species, and other identifying information on the bird or signed breeders certificate or statement with name and address of breeder, date of sale or transfer, species and hatch date; and

(6) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild;

(2) Whether the exotic bird to be imported is a personal pet owned by the applicant who has continuously resided outside the United States for a minimum of one year, or whether the exotic bird was previously exported or re-exported from the United States as a personal pet under a permit issued by the Service;

(3) Whether the number of exotic birds imported in the previous 12 months by the applicant and other members of the applicants's household does not exceed two; and

(4) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions that no household may import more than two exotic birds as personal pets in any year, the exotic birds cannot be imported with the intention to sell, and any other conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit.

§ 15.26 Approval of cooperative breeding programs.

Upon receipt of a complete application, the Director may approve cooperative breeding programs which will allow individuals to import exotic birds otherwise prohibited by § 15.11, with permits under § 15.24. Such approval for cooperative breeding programs shall be granted in accordance with the issuance criteria of this section.

(a) Application requirements for approval of cooperative breeding programs. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including the common and scientific names of the species, number, age, and sex ratio (if applicable);

(2) A statement of the reasons the applicant is justified in obtaining this approval, and a description of the cooperative breeding program requested for the exotic bird species, including:

(i) A breeding protocol, including a genetic management plan and breeding methods;

(ii) A statement on the plans for developing and maintaining a self-sustaining population in captivity of the exotic bird species;

(iii) Details on the system of recordkeeping and tracking of birds and their progeny;

(iv) A statement on the relationship of such a breeding program to the conservation of the exotic bird species in the wild;

(v) Details on the funding of this program;

(vi) Planned disposition of the exotic birds and any progeny;

(3) A qualification statement for each individual who will be overseeing the cooperative breeding program. This statement should include information on the individual's prior experience with the same or similar bird species. Individuals overseeing the program will be required to demonstrate a professional affiliation with the avicultural, conservation or zoological organization;

(4) Three letters of endorsement are required for the cooperative breeding program. If the cooperative breeding program requires the removal of any exotic birds from the wild, at least one of these letters shall be from the Convention Scientific Authority in the country from which the exotic birds are to be removed from the wild;

(5) A statement of the oversight of the program by the avicultural, zoological, or conservation organization, including their monitoring of participation in the program, criteria for acceptance of individuals into the program, and the relationship of the cooperative breeding program to enhancing the propagation and survival of the species; and

(6) A history of the cooperative breeding program, including an annual report for the last 3 years, mortality records, breeding records, and a studbook if one has been developed for the species.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a cooperative breeding program should be approved. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the cooperative breeding program for which the approval is requested is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the granting of this approval would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic birds were bred in captivity or will be taken from the wild;

(3) Whether the granting of this approval would conflict with any known program intended to enhance the survival of the population from which the exotic bird species was or would be removed;

(4) Whether the cooperative breeding program would be likely to enhance or assist the conservation of the exotic bird species in the wild, enhance the propagation and survival of the species, and result in self-sustaining populations of the exotic bird species in captivity; and

(5) Whether the expertise or other resources available to the program appear adequate to successfully accomplish the objectives stated in the application.

(c) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. The Director shall publish periodically a notice as appropriate in the **Federal Register** of the list of approved cooperative breeding programs.

(d) Approval conditions. In addition to the general conditions set forth in part 13 of this subchapter, every approval issued under this paragraph shall be subject to the special condition that the cooperative breeding program shall maintain records of all birds imported under permits issued under this subpart and their progeny, including their sale or transfer, death, or escape, and breeding success. These records shall be made available to the Service on request and when renewing an approval.

(e) Duration of approval. Cooperative breeding programs shall be approved for two years, at which time applicants may apply to the Service for renewal of a program's approval. Applications for renewal of approval shall comply with the general conditions set forth in part 13 of this subchapter.

Subpart D—Approved List of Species Listed in the Appendices to the Convention

§ 15.31 Criteria for including species in the approved list.

(a) Captive-bred species.

(b) Non-captive-bred species.

§ 15.32 Species included in the approved list.

(a) Captive-bred species.

(b) Non-captive-bred species.

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

§ 15.41 Criteria for including facilities as qualifying for imports. [Reserved]

§ 15.42 List of foreign qualifying breeding facilities. [Reserved]

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention

§ 15.51 Criteria for including species and countries in the prohibited list. [Reserved]

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§ 15.52 Species included in the prohibited list. [Reserved]

§ 15.53 Countries of export included in the prohibited list. [Reserved]

Dated: June 30, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93–19285 Filed 8–11–93; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 6, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service. Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR, part 110). Recordkeeping; On occasion. State or local governments; Farms; Federal agencies or employees, 184,800,000 responses; 1,615,600 hours. Bonnie Poli (703) 330–7826.

Reinstatement

- Farmers Home Administration, 7 CFR 1951–M, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Single Family Housing, On occasion Individuals or households; Non-profit institutions; 2,400 responses; 2,229 hours, Jack Holston (202) 720–9736.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 93–19429 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

Food Stamp Program: Recipient Claims Collection; Expansion of Test of Offsetting Federal Income Tax Refunds

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department hereby gives notice that it intends to expand the test of the feasibility and effectiveness of offsetting Federal income tax refunds to collect claims against households for overissued food stamp benefits. The offsets are made from Federal income tax refunds payable to individuals liable for those claims. This notice identifies additional States where this procedure will be tested.

DATES: This notice will be effective September 13, 1993. Implementation of the expansion of this test will begin September 13, 1993.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302, telephone (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Secretary's Memorandum 1512–1

This proposed action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The action will affect the economy by less than $100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the notice as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This Notice has been reviewed under Executive Order 12778, Civil Justice Reform. This notice is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This notice is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this Notice or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers wholesalers—7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Ellen Hass, Assistant Secretary for Food and Consumer Services, has certified that this notice does not have a significant economic impact on a substantial number of small entities. This notice will affect the State and local agencies which administer the Food Stamp Program, and individuals who have received excess food stamp benefits.

Paperwork Reduction Act

As discussed below, this General Notice announces the expansion of the Federal income tax offset program from nine to 21 State agencies. In accordance with 44 U.S.C. 3507, the public burden for the reporting and recordkeeping provisions of the tax offset program have been submitted to the Office of Management and Budget (OMB) and will not be effective until OMB has approved them. That burden is estimated at 58,555 hours.

The reporting and recordkeeping provisions were specified in a General Notice (August 20, 1991, 56 FR 41325–31) which gave notice that the Department intended to test the offset of Federal income tax refunds as a means of collecting Food Stamp Program recipient claims for overissued benefits. The Notice described the tax offset procedures, including due process notices to individuals, appeal rights and related requirements for State agencies. Substantially all the public burden for tax offset is associated with due process notices and appeals.

Background

In section (a) of the above cited General Notice, the Department advised that the initial test of the offset procedures would be conducted in States of Alabama and California and might be expanded to other States and extended for subsequent years. The Notice also advised that if other test States were added, appropriate Notice would be published. Accordingly, prior to expanding the tax offset procedures for 1993, the Department published a second General Notice (August 28, 1992, 57 FR 39176–77) which added the following States to the test: Arkansas, Colorado, Kentucky, Louisiana, Maine, Oregon, and Tennessee. This second notice also clarified the scope of the tax offset procedure and summarized comments received on the earlier General Notice.

The Department plans to add 12 States to the tax offset program for 1994. Those States are: Florida, Georgia, Illinois, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Utah, West Virginia and Wisconsin. The offset program will continue to be conducted according to the terms of the August 20, 1991 General Notice.

The August 28, 1992 General Notice stated that if the second year of the test proved successful, the Department intended to incorporate the offset procedures into Food Stamp Program regulations by proposing appropriate regulations. The Department is continuing to obtain and evaluate the results from the second year of the test. Based on the results to date, the Department believes it is necessary to evaluate how the procedure will work on a broader scale in States with more varying geographic and demographic characteristics. Should this broad-based test prove successful, the Department is prepared to propose regulations which will add Federal income tax refund offset to the Food Stamp Program regulations on a permanent basis beginning in 1995.

Dated: August 5, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 93–19374 Filed 8–11–93; 8:45 am]

BILLING CODE 3410-30-U

Forest Service

Establishment of Bayou Beouf Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Bayou Beouf Purchase Unit.

SUMMARY: On July 23, 1993, the Assistant Secretary, Natural Resources and Environment created the Bayou Beouf Purchase Unit. This purchase unit comprises 2,264 acres, more or less, within Rapides Parish, Louisiana. A copy of the establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was July 23, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated: August 4, 1993.

James C. Overbay,

Acting Chief.

Establishment of Bayou Beouf Purchase Unit, Rapides Parish, LA

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949) the Bayou Beouf Purchase Unit is being established and is described as follows:

Lands lying in Townships 3 and 4 North, Range 2 West, Rapides Parish, Louisiana more particularly described as:

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Section 10: That part lying west of Bayou Beouf.
Section 11: That part lying west of Bayou Beouf.
Section 14: That part of the Northwest Quarter (NW ¼) lying west of Bayou Beouf.
Section 15: That part of the North half (N ½) lying east of Section 38 and west of Lost Bayou.
Section 38: All.
Section 41: All.
Section 42: All.
Section 43: All.

T4N R2W

Section 84: All.

The area described contains 2,264 acres, more or less, and the lands are adjacent to the Kisatchie National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 23, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93–19297 Filed 8–11–93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–585–829]

Notice of Postponement of Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value; Defrost Timers From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Raphiel Hampton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–0176.

POSTPONEMENT: Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.15(b), regarding the investigation of defrost timers from Japan, the Department of Commerce (the Department) determines that this case is "extraordinarily complicated", because of the complexity of the issues surrounding the date of sale in the United States based on long-term contracts. Additionally, the respondent is cooperating in this investigation.

Therefore, we are postponing the date of the preliminary determination in this investigation until not later than August 17, 1993. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: June 4, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19423 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DS–M

Texas A&M Research Foundation, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–035. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843. *Instrument:* Submersible Fluorimeter, Model 6000 AQUATRACKA MkIII. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 27266, May 7, 1993. *Reasons:* The foreign instrument provides (1) a single 4-decade logarithmic range for measuring widely varying chlorophyll densities and (2) deployment to a depth of 6000 m. *Advice Received From:* National Oceanic and Atmospheric Administration and a private research institute, May 7, 1992 (comparable case).

Docket Number: 93–008. *Applicant:* University of California, Los Angeles, Los Angeles, CA 90024-1547. *Instrument:* Backward Wave Type Millimeter Wave Spectrometer. *Manufacturer:* International Center for Scientific Culture World Laboratory, CIS. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides a wavelength range of 1.16 to 0.8 mm with quasioptical transmission measuring for sub-millimeter spectroscopy. *Advice Received From:* National Institute of Standards and Technology, June 10, 1993.

The National Oceanic and Atmospheric Administration, private research institute and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–19421 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DS–F

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Acting Under Secretary for the International Trade, Timothy J. Hauser, of the Performance Review Board. This is a revised list of membership which includes previous members as listed in the July 20, 1992 **Federal Register** Announcement (57 FR 32001) with additional members added for a two-year term. The purpose of the International Trade Administration's PRB is to review and make recommendations to the appointing authority on performance and other issues concerning members of the Senior Executive Service (SES). The members are:

Marjory Searing, Deputy Assistant Secretary for Japan, International Economic Policy.

Richard Moreland, Director, Office of Antidumping Investigations, Import Administration.

Roland MacDonald, Director, Office of Antidumping Compliance, Import Administration.

Ann Hughes, Deputy Assistant Secretary for the Western Hemisphere, International Economic Policy.

Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, Trade Development.

Rita K. Hayes, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods, Trade Development.

Eleanor Roberts Lewis, Chief Counsel for International Trade Administration (non-ITA member).

Dated: August 6, 1993.

James T. King, Jr.,

Personnel Officer, ITA.

[FR Doc. 93–19413 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–25–F

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: By a decision dated July 27, 1993, the Binational Panel reviewing the final affirmative material injury determination made by the U.S. International Trade Commission respecting certain softwood lumber products from Canada (Secretariat File No. USA–92–1904–02) remanded that determination to the Commission for further action. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal

Register on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the Federal Register on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

BACKGROUND: On July 15, 1992, the U.S. International Trade Commission ("Commission") published its final affirmative injury determination finding that an industry in the United States was being materially injured by reason of imports from Canada of softwood lumber products determined by the Department of Commerce to be subsidized.

The Commission, in its final determination, found that the like product consisted of all softwood lumber, and that there was one domestic industry producing the like product—mill operators. It noted that the domestic industry is comprised of almost 6000 producers, most of whom are small, and that the production of softwood lumber is concentrated in the West and South.

The Commission determined that "Canadian imports were significant in terms of both absolute volume and market share throughout the period of investigation. It further noted that in light of the highly substitutable nature of, and inelastic demand for, softwood lumber, the volume of Canadian imports had a significant impact on U.S. lumber prices and sales. The Commission also found that "the ability of the industry to raise prices, commensurate with rapidly increasing costs [due to the reduced supply of timber resulting from environmental restrictions], demonstrated significant price suppression.

Binational Panel Review was requested on a timely basis by the Government of Canada, a number of Canadian provincial governments, and several other Canadian interested persons.

PANEL DECISION: On July 27, 1993, the Binational Panel remanded the final injury determination and directed the Commission to make a determination about causation of material injury by reason of imports of subsidized softwood lumber from Canada not inconsistent with their opinion. The Panel instructed the Commission that if price suppression is the basis of a new affirmative determination by the Commission, the Commission should indicate the actual price suppressing effect of the subject products. The Commission should also address the "to a significant degree" requirement of 19 U.S.C. Sec. 1677(7)(C)(ii).

The Panel further found that should the Commission on remand decide to rely on a cross-sectoral comparison, it must explain the statutory and other basis permitting the Commission to conduct such a comparison in this case. It must also establish, define, and apply an appropriate methodology as discussed in the Opinion.

Finally, the Commission was instructed to provide an adequate explanation of the basis for its finding that imports of softwood lumber from Quebec are not entitled to a separate injury determination.

The Binational Panel instructed the Commission to provide its determination on remand within 90 days of the panel decision (by October 25, 1993).

Dated: August 5, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-19424 Filed 8-11-93; 8:45 am]

BILLING CODE 3510-GT-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93-075. *Applicant:* Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, SEFSC, Charleston Laboratory, 217 Fort Johnson Road, Charleston, SC 29412. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used for studies of marine biotoxins that are synthesized by microscopic marine plants (phytoplankton). Toxins of unknown structure will be extracted from the phytoplankton that biosynthesize them and from fish and shellfish that have ingested the toxins. These extracts will be purified and injected at atmospheric pressure into the mass spectrometer to gain information on the molecular weights and structures of the toxins. *Application Received by Commissioner of Customs:* June 29, 1993.

Docket Number: 93-076. *Applicant:* United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. *Instrument:* Fuel Cell Subsystem. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* The instrument will be used as a power source in a research program to develop a phosphoric acid fuel cell/battery hybrid electric bus with methanol as the fuel as a countermeasure of the air pollution brought about by combustion engine, especially diesel engine. *Application Received by Commissioner of Customs:* July 2, 1993.

Docket Number: 93-077. *Applicant:* University of Nebraska, Department of Chemistry, Room 404 Hamilton Hall, Lincoln, NE 68588. *Instrument:* Helium Cryostat Attachment for Single Crystal X-Ray Diffractometer. *Manufacturer:* Oxford Cryosystems, United Kingdom. *Intended Use:* The instrument will be used to cool single crystals to temperature between 200 and 20K to support measurements of X-ray diffraction data from cooled crystals. These crystals will be of materials being studied in connection with solid state chemical reactions and/or materials science applications. *Application Received by Commissioner of Customs:* July 7, 1993.

Docket Number: 93-078. *Applicant:* Yale University School of Medicine, Department of Molecular Biophysics and Biochemistry, P.O. Box 6666, New Haven, CT 06511. *Instrument:* NMR Spectrometer/Imager, Model BIOSPEC 760/2.3. *Manufacturer:* Oxford Research Systems, United Kingdom. *Intended Use:* The instrument will be used to obtain 13C, 31P and 1H nuclear magnetic resonance signals from low molecular weight metabolites present in various tissues of the human body and the bodies of large animals. Normal and impaired metabolism will be studied in humans and in large animals by analyzing these signals. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93-079. *Applicant:* Florida State University, Department of Oceanography, B-169, Tallahassee, FL 32306. *Instrument:* Mass Spectrometer with GC Combustion System and Interface, Model Delta S. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* The instrument will be used to

study the ratio of 13C/12, 15N/14N and H/D content from samples from the natural environment. These ratios will be used to study biogeochemical and biological processes as they occur in nature. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–080. *Applicant:* Dartmouth College, Dartmouth Medical School, 7055 Vail Building, Hanover, NH 03755. *Instrument:* Imaging and In-Vivo Spectroscopy System, Model 7T/200. *Manufacturer:* Surrey Medical Imaging Systems, United Kingdom. *Intended Use:* The instrument will be used for studies of metabolic and ionic regulation in living tissues, including tumors, brain, skeletal muscle and cardiac muscle in order to obtain an understanding of the potential for NMR as a clinical tool for tumor therapy. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–081. *Applicant:* Brandeis University, 415 South Street, Waltham, MA 02254-9110. *Instrument:* Microvolume Stopped Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used in research that is directed towards (1) the elucidation of the folding pathway of Bacteriorhodopsin (BR) as it attains its final conformation in the membrane, and (2) the conformation of the sequences of BR which are not embedded in the membrane. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–082. *Applicant:* East Carolina University, Materials Management, Whichard Building, Greenville, NC 27834. *Instrument:* Spectrometer Workstation, Model A5000. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the change in binding constant of ATP and ATPγS to myosin-actin-tropomyosin-troponin with changes in calcium concentration to study the regulation of muscle contraction and the mechanism by which muscle produces force. In addition, the instrument will be used for educational purposes in the courses Introduction to Research, Dissertation Research and Physical Biochemistry. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–083. *Applicant:* University of California, San Francisco, Department of Ophthalmology, 10 Kirkham Street, Room K-301, San Francisco, CA 94143-0730. *Instrument:* Electrode Micromanipulators (2), Model SM-11-S and SM-15-S. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* The instrument will be used to hold and position microscopic glass pipettes with the brains of living animals to recording electrical signals within single cells in order to learn more about how the brain processes visual information. *Application Received by Commissioner of Customs:* July 9, 1993.

Docket Number: 93–084. *Applicant:* University of California, Santa Barbara, Marine Science Institute, Santa Barbara, CA 93106. *Instrument:* Thermistor Chain, Mooring Assembly, and Meteorology Tower. *Manufacturer:* Coastal & Hydraulic Engineering Laboratory, Australia. *Intended Use:* The instrument will be used to identify qualitatively and quantitatively the physical processes which occur in the hypersaline water body, Mono Lake, CA, in studies of various one-dimensional vertical mixing mechanisms, internal wave field dynamics, and seasonal and diurnal heating and cooling dynamics. *Application Received by Commissioner of Customs:* July 9, 1993.

Docket Number: 92–186R. *Applicant:* University of Arkansas, Department of Chemistry, Fayetteville, AR 72701. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX.1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Original notice of this resubmitted application was published in the* **Federal Register** *of* February 8, 1993.

Docket Number: 93–086. *Applicant:* University of Massachusetts at Amherst, Polymer Science & Engineering, LGRT, Amherst, MA 01003. *Instrument:* Laser Light Scattering Goniometer System, Model ALV/DLS-5000. *Manufacturer:* ALV-Laser Vertriebsgesellschaft, m.b.H., Germany. *Intended Use:* The instrument will be used to study the fundamental properties of polymer molecules and colloids in solution and in gels measuring the molecular weight (mass), the radius of gyration (size), the second virial coefficient (degree of interaction), the diffusion coefficient (rate of movement through the solution), and the distributions of all these characteristics. In addition, the instrument will be used for educational purposes by Ph.D. level students in various polymer science courses. *Application Received by Commissioner of Customs:* July 15, 1993.

Docket Number: 93–087. *Applicant:* Southern Illinois University at Edwardsville, Supporting Services Building, L.D. #2, Campus Box 1012, Edwardsville, IL 62026-1012. *Instrument:* Rotating Fatigue Machine, HSM.19. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used by students for educational purposes in the course ME482L, Strength of Materials Laboratory, Assessment of Material Characteristics. *Application Received by Commissioner of Customs:* July 15, 1993.

Docket Number: 93–088. *Applicant:* University of Minnesota Medical School, Department of Therapeutic Radiology, Radiation Biology Section, 425 E. River Road, Room K119 Diehl, Minneapolis, MN 55455. *Instrument:* pO2 Histograph, Model 6650. *Manufacturer:* Eppendorf-Netheler-Hinz, GmbH, Germany. *Intended Use:* The instrument will be used to measure the pO_2 in experimental tumors of mice and rats in a study to determine the tumor pO_2 before and during the treatment of experimental tumors with the ultimate goal of finding means to increase the oxygenation in human tumors with radiotherapy or certain chemotherapeutic drugs. *Application Received by Commissioner of Customs:* July 15, 1993.

Docket Number: 93–089. *Applicant:* Illinois Institute of Technology, Metallurgical and Materials Engineering Department, 10 W. 33rd Street, Chicago, IL 60616. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study the structure of metals, ceramics, semiconductors, glasses, polymers and composite materials. In addition, the instrument will be used for graduate M. Sc. and Ph.D. courses and dissertation research, and will be demonstrated to students in undergraduate metallurgy and materials science courses. *Application Received by Commissioner of Customs:* July 15, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–19422 Filed 8–11–93; 8:45 am]

BILLING CODE 3510-DS-F

Minority Business Development Agency

Business Development Center Applications: Louisville, KY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to

operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is *$169,125* in Federal funds and a minimum of *$29,846* in non-Federal (cost-sharing) contributions. This federal amount includes *$4,125* for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from *January 1, 1994* to *December 31, 1994*. The MBDC will operate in the *Louisville, Kentucky* geographic service area.

The award number for this MBDC will be *04–10–94001–01*.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDA program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Awards under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of DOC to cover pre-award costs.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendex B.

Lower Tier Centifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by an tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for submitting an application is *September 17, 1993.* Applications must be postmarked on or before *September 17, 1993.* Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on *September 1, 1993,* 9:00 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Sunny L. Guider, Acting Regional Director* of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

11.800—Minority Business Development (Catalog of Federal Domestic Assistance)

Sunny L. Guider,

Acting Regional Director, Atlanta, Regional Office.

[FR Doc. 93–19441 Filed 8–11–93; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Jackson, MS

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is *$169.125* in Federal funds and a minimum of *$29,846* in non-Federal (cost-sharing) contributions. This federal amount includes *$4,125* for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from *January 1, 1994* to *December 31, 1994.* The MBDC will operate in the *Jackson, Mississippi* geographic service area.

The award number for this MBDC will be *04–10–94002–01.*

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (technologies and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross rates of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

MBDCs performing satisfactorily may continue to operate after the initial competitive year of up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the local discretion of DOC.

Awards under this program shall be subject to all Federal laws and Federal and Department regulations, policies, and procedures applicable to Federal assistance awards. If applicants incur

any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of DOC to cover pre-award costs.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Example of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 part 28, appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for submitting an application is *September 17, 1993*. Applications must be postmarked on or before *September 17, 1993*. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on *September 1, 1993*, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Sunny L. Guider, Acting Regional Director* of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

11.800—Minority Business Development (Catalog of Federal Domestic Assistance).

Sunny L. Guider,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 93–19442 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Greensboro-Winston Salem-High Point, NC

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is *$169,125* in Federal funds and a minimum of *$29,846* in non-Federal (cost-sharing) contributions. This federal amount includes *$4,125* for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from *January 1, 1994* to *December 31, 1994*. The MBDC will operate in the *Greensboro-Winston Salem-High Point, North Carolina* geographic service area.

The award number for this MBDC will be *04–10–94003–01*.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical

assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Awards under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of DOC to cover pre-award costs.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for submitting an application is *September 17, 1993*. Applications must be postmarked on or before *September 17, 1993*. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street,

NW., Suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on *September 1, 1993*, 9:00 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Sunny L. Guider, Acting Regional Director* of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1715, Atlanta, Georgia 30308–3516.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Sunny L. Guider,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 93–19443 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 080593E]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team (Team) will hold a public meeting on August 17–19, 1993, at the Pacific Fishery Management Council, 2000 SW First Avenue, Portland, OR. The meeting will begin on August 17 at 8 a.m. and continue through noon on August 19.

The Team will review:

(1) Stock assessments for important groundfish species and recommend preliminary acceptable biological catch (ABC) levels, where appropriate.

(2) Current rates of landing of various species and recommend any necessary adjustments;

(3) Management of the open access fishery in 1994;

(4) A draft analysis of proposed individual transferrable quotas;

(5) At-sea processing of groundfish other than Pacific whiting; and

(6) A draft analysis of the whiting allocation proposal.

Immediately following the meeting on August 19, the Team will hold a public workshop on the new groundfish stock assessment and preliminary ABC recommendations.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 6, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19323 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 080593C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Pelagics Advisory Panel (Panel) on August 16, 1993, at the Hawaii Maritime Center, Pier 7, Honolulu Harbor, HI. The meeting will begin at 8 a.m.

The Panel will discuss and possibly make recommendations to the Council regarding:

(1) Council program planning for 1994–1996;

(2) The 1992 annual reports for the pelagics and bottomfish fishery management plans;

(3) The status of the Pacific Pelagic Fisheries Research Program;

(4) The need for comprehensive data collection in all fisheries;

(6) Proposed Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program); and

(7) Other business.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: August 6, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19324 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 080593D]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Scientific and Statistical Committee (SSC) on August 24–27, 1993, beginning at 8:30 a.m. on each day.

On August 25–26, the full SSC will meet in the conference room of the National Marine Fisheries Service (NMFS), Honolulu Laboratory, 2570 Dole St., Honolulu, HI. A location for the concluding SSC session on August 27 has not been determined; further information will be available from the contact listed below.

The SSC will discuss, and possibly make recommendations to the Council regarding:

(1) Council program planning for 1994–1996;

(2) The 1992 annual reports for the pelagics and bottomfish fishery management plans;

(3) The status of the Pacific Pelagic Fisheries Research Program;

(4) The need for comprehensive data collection in all fisheries;

(5) A review of the NMFS Biological Opinion regarding longline-turtle interactions;

(6) Proposed Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program);

(7) An economic review of the Northwestern Hawaiian Islands bottomfish fishery;

(8) An evaluation of the need to maintain the precious corals fishery management plan; and

(9) Other business.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: August 6, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19325 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit No. 723 (P77#45).

SUMMARY: Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 723 (P77#45) issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on March 22, 1991 (56 FR 13128), has been modified to extend the effective date through December 31, 1995. This modification becomes effective upon publication in the **Federal Register.**

ADDRESSES: Documents pertaining to this modification and permit are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 (310/980–4016).

Dated: August 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–19339 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for public display permit, Chaffee Zoological Gardens (P95A).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Chaffee Zoological Gardens, 894 Belmont Avenue, Fresno, California 93782.

2. *Type of Permit:* Public display.

3. *Number and Name of Animals:* Two California sea lions (*Zalophus californianus*) from captive stock. One harbor seal (*Phoca vitulina*) from captive stock.

The applicant requests authorization to obtain permanent custody of two female California sea lions currently in the custody of Point Defiance Zoo and Aquarium, Tacoma, WA; and one female harbor seal currently in the custody of the Hogle Zoological Garden, Salt Lake City, Utah.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (310/980–4016); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/525–6150).

Dated: August 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–19338 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of scientific research permit (P551).

SUMMARY: Notice is hereby given that on August 5, 1993 Ms. Daniela M. Feinholz, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039 and Dennis L. Kelly, Ph.D., Coastal Dolphin Research Project, Orange Coast College, Costa Mesa, CA 92628, were issued a scientific research permit to approach and inadvertently harass bottlenose dolphins (*Tursiops truncatus*) during the course of observation/photo-identification studies in California coastal waters over a 4-year period, subject to special conditions set forth therein.

ADDRESSES: The permit and associated documents are available for review upon written request or by appointment, in the following offices: Office of Protected Resources, NMFS NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and Director, Southwest Region, NMFS, NOAA, 501 S. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: On April 20, 1993, notice was published in the **Federal Register** (58 FR 21285) that a request for a scientific research permit to take bottlenose dolphins (*Tursiops truncatus*) had been submitted by the above-named Permit Holders. The requested permit was approved and issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–19337 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 011393A]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an experimental fishing permit.

SUMMARY: NMFS announces the issuance of an experimental fishing permit (EFP) to Terra Marine Research and Education, Inc. (Terra Marine), and 21 vessels and shoreside processors. These vessels, operators, shoreside processors, and Terra Marine are authorized under the EFP to retain Pacific salmon caught as bycatch that would otherwise be required to be discarded at sea as prohibited species. The EFP is designed to test the feasibility of processing and distributing Pacific salmon caught as bycatch to economically disadvantaged individuals through food banks.

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) are available by writing to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Biologist, Fisheries Management Division, Alaska Region, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: Issuance of EFPs is authorized by the Fishery Management Plan (FMP) for the

Groundfish Fishery of the Bearing Sea Aleutian Islands management area (BSAI) and its implementing regulations at 50 CFR part 675. The FMP for the Groundfish Fishery of the BSAI and its implementing regulations at 50 CFR part 675 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited. The procedures for issuing EFPs are contained in the regulations at § 675.6.

NMFS announced the receipt of an application for an EFP from Terra Marine in the **Federal Register** on January 22, 1993 (58 FR 5716). The application requested authorization to retain Pacific salmon and Pacific halibut caught as bycatch in directed BSAI groundfish fisheries that would be processed and distributed to economically disadvantaged individuals, free of charge, via food banks. The North Pacific Fishery Management Council (Council) reviewed the EFP application at its December 8–13, 1992, meeting and recommended to the Director of the Alaska Region, NMFS (Regional Director), that the EFP be approved. The International Pacific Halibut Commission also reviewed the EFP application and declined to approve the retention of halibut with trawl gear and recommended that the Regional Director deny the portion of the EFP application that requested authority to retain incidentally caught Pacific halibut.

The Regional Director has partially approved the EFP application and has issued an EFP to Terra Marine and the participating vessels and shoreside processors. The EFP authorizes these vessels, shoreside processors, and Terra Marine to retain Pacific salmon caught as bycatch during: (1) The 1993 BSAI directed pollock non-roe (or "B") season fishery; (2) the 1994 BSAI directed pollock roe (or "A") season fishery; and (3) the 1994 BSAI directed Pacific cod fishery, for the purpose of producing salmon products to be distributed to economically disadvantaged individuals via food banks. In addition, biological sampling of Pacific salmon with clipped adipose fins will occur under this EFP. The objective of this EFP is to provide a framework to reduce the waste of bycatch species that are currently required to be discarded at sea, to provide an economic incentive to reduce Pacific salmon bycatch by requiring the participants to incur the costs of processing and distributing salmon bycatch, and to test the feasibility of distributing the resulting salmon products to economically disadvantaged individuals.

Based on the EA prepared for this EFP, the Assistant Administrator for Fisheries, NOAA, determined that no significant impact on the quality of the human environment will result from this EFP. The Regional Director determined that this experiment will not affect species listed as threatened or endangered under the Endangered Species Act in a way that was not already considered in previous formal and informal section 7 consultations. Additional information, including gear restrictions, scientific sampling procedures, project design, and disposition of harvested fish, is contained in the EFP.

Authority: 16 U.S.C. 1801 et seq.

Dated: August 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19401 Filed 8–11–93; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 930781–3181]

Request for Information To Aid in the Implementation of the Recordation Requirements of Section 8 of the Fastener Quality Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; request for information.

SUMMARY: The Patent and Trademark Office (PTO) is seeking information concerning alphanumeric designations currently in use by manufacturers or distributors of industrial fasteners. These alphanumeric designations may be used to signify the physical characteristics, strength, chemical content, size or other information about the fastener upon which they appear or they may be used as common law trademarks to identify and distinguish the manufacturer or distributor of such fasteners. The PTO needs information concerning these alphanumeric designations in order to administer the proposed fastener recordal system published on August 17, 1992, at 57 FR 37060, 37061 to implement the requirements of section 8 of the Fastener Quality Act, Public Law 101–592. Therefore, the PTO is requesting from fastener industry associations, standards bodies, or individual manufacturers or distributors, any general or specific information available concerning alphanumeric designations currently in use within the industry, whether as unregistered trademarks, as marks required by a standard, or for any other purpose.

DATES: Comments should be submitted on or before September 27, 1993. Comments received after this date will be considered if possible.

ADDRESSES: All comments concerning alphanumeric designations should be addressed to Lynne G. Beresford, Trademark Legal Administrator, Commissioner of Patents and Trademarks, Washington, DC 20231, telephone number (703) 305–9464.

FOR FURTHER INFORMATION CONTACT: Lynne G. Beresford, Trademark Legal Administrator, (703) 305–9464.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted the Fastener Quality Act, Public Law 101–592 (the Act) to protect public safety, deter introduction of non-conforming fasteners into commerce, improve the tracing of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. The Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act.

Section 8 of the Act prohibits offering fasteners for sale that are required by an applicable standard or specification to bear a raised or depressed insignia identifying the manufacturer or private label distributor unless such manufacturer or distributor has complied with the requirements of a program of the Secretary of Commerce for the recordation of such insignia in order to ensure that the fasteners can be traced to the manufacturer or distributor.

The program for recordation of fastener insignias, established by the Secretary of Commerce and administered by the Patent and Trademark Office, will allow the owner of a mark, which is the subject of a duly filed trademark application or registration, to apply for recordal of that mark as its fastener insignia. However, if the manufacturer or private label distributor does not wish to use a trademark as its fastener insignia, it will be permitted to apply for a unique alphanumeric designation for that purpose.

The PTO wants to ensure that it does not inadvertently issue an alphanumeric designation that is either already in use by a manufacturer or distributor as its identifying insignia, or a designation already in use by the industry to signify the physical characteristics, strength,

chemical content, size or other information about the fastener. For that reason, the PTO is requesting from fastener industry associations, standards bodies, or individual manufacturers or distributors, any general or specific information available concerning alphanumeric designations currently in use within the industry, whether as unregistered trademarks, as marks required by a standard, or for any other purpose. The PTO does not need information concerning specific registered alphanumeric trademarks, as that information is readily available from the PTO's database.

(Authority: 15 U.S.C. 5407)

Dated: July 15, 1993.

Michael K. Kirk,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93–19184 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60175, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on August 16, 1993, you are directed to amend further the directive dated December 11, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
237	270,375 dozen.
335	167,208 dozen.
336/636	265,449 dozen.
338/339	938,087 dozen.
340/640	1,839,135 dozen.
341	1,853,884 dozen.
342/642	190,613 dozen.
347/348	1,581,054 dozen.
638/639	1,212,383 dozen.
641	482,289 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19416 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 359–V is being increased by application of swing, reducing the limit for Category 607 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products,

produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 6, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
359–V [2]	815,066 kilograms.
607	1,559,889 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19418 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding dated July 22, 1993 between the Governments of the United States and Guatemala, establishes, among other things, a Designated Consultation Level for cotton and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period beginning on May 28, 1993 and extending through September 30, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992; and 58 FR 32521, published on June 10, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 16, 1993, you are directed to amend the December 9, 1992 directive to establish a limit for cotton and man-made fiber textile products in Categories 351/651 for the period beginning on May 28, 1993 and extending through September 30, 1993 at a level of 138,096 dozen [1], as provided under the terms of a Memorandum of Understanding dated July 22, 1993 between the Governments of the United States and Guatemala.

Textile products in Categories 351/651 which have been exported to the United States prior to May 28, 1993 shall not be subject to the limit established in this directive.

You are directed to retain the monitoring data for Categories 351/651 (see directive dated June 4, 1993). These import charges shall be applied to the limit established in this directive. Additional charges will be provided as data become available.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19414 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after May 27, 1993.

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Hungary

August 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53883, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 13, 1993, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Hungary:

Category	Adjusted twelve-month limit [1]
410	754,150 square meters.
433	18,480 dozen.
435	25,525 dozen.
443	184,730 numbers.
444	59,590 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19417 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

August 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 49074, published on October 29, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 13, 1993, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
Group I 200–239, 300–369, 600–670 and 800–899, as a group.	92,868,484 square meters equivalent.
Sublevels in Group I 333/334/335/833/834/835.	204,655 dozen of which not more than 104,584 dozen shall be in Categories 333/335/833/835.
338	267,644 dozen.
339	1,133,354 dozen.
340	252,032 dozen.
341	166,953 dozen.
345	46,183 dozen.
347/348/847	636,025 dozen.
633/634/635	449,859 dozen.
638/639/838	1,400,873 dozen.
640	99,603 dozen.
641/840	171,191 dozen.
642/842	99,738 dozen.
647/648	470,999 dozen.
Group II 400–469, as a group	1,449,685 square meters equivalent.
Sublevel in Group II 445/446	81,157 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19419 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of El Salvador on Certain Cotton and Man-Made Fiber Textile Products

August 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 29, 1993, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on December 9, 1992,

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the Government of the United States requested consultations with the Government of El Salvador with respect to cotton and man-made fiber coats in Categories 335/635, produced or manufactured in El Salvador.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of El Salvador, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 335/635, produced or manufactured in El Salvador and exported during the twelve-month period which began on July 29, 1993 and extends through July 28, 1994, at a level of not less than 101,508 dozen.

A summary market statement concerning Categories 335/635 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 335/635, or to comment on domestic production or availability of products included in Categories 335/635, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of El Salvador.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 335/635. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—El Salvador

Category 335/635—Women's and Girls' Cotton and Man-made Fiber Coats

July 1993

Import Situation and Conclusion

U.S. imports of women's and girls' cotton and man-made fiber coats, Category 335/635, from El Salvador reached 113,464 dozen for the year ending May 1993, an increase of 54 percent over the 73,628 dozen imported a year earlier. In the first five months of 1993 El Salvador shipped 57,512 dozen, two and a half times their January-May 1992 level.

The sharp and substantial increase in Category 335/635 imports from El Salvador is disrupting the U.S. market for women's and girls' cotton and man-made fiber coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' cotton and man-made fiber coats, Category 335/635, declined from 6,724,000 dozens in 1987 to 4,173,000 dozen in 1992, a decline of 38 percent. By contrast, U.S. imports of women's and girls' cotton and man-made fiber coats, Category 335/635, increased from 6,923,000 dozen in 1987 to 9,516,000 dozen in 1992, an increase of 37 percent. Imports continue to increase in 1993, up 11 percent in the first five months of 1993 over the January-May 1992 level.

The ratio of imports to domestic production more than doubled, increasing from 103 percent in 1987 to 228 percent in 1992. The share of this market held by domestic manufacturers fell from 49 percent in 1987 to 30 percent in 1992, a decline of 19 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 69 percent of Category 335/635 imports from El Salvador during the year ending May 1993 entered under HTSUSA numbers 6202.12.2060—girls' cotton overcoats, carcoats, and similar coats, other than those of corduroy fabric; 6202.93.4500—women's and girls' man-made fiber water resistant anoraks, windbreakers and similar articles; and 6204.39.3010—women's artificial fiber suit-type jackets and blazers that are less than 36% wool. These coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable coats.

[FR Doc. 93–19420 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of the United Arab Emirates on Cotton Twill Fabric

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 28, 1993, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the United Arab Emirates with respect to cotton twill fabric in Category 317, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton twill fabric in Category 317, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on July 28, 1993 and extends through July 27, 1994, at a level of not less than 23,303,171 square meters.

A summary market statement concerning Category 317 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 317, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the

Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the United Arab Emirates.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 317. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—United Arab Emirates

Category 317—Cotton Twill Fabric

July 1993

Import Situation and Conclusion

U.S. imports of cotton twill fabric, Category 317, from the United Arab Emirates reached 23,485,933 square meters in the year ending May 1993, double the 11,549,253 square meters imported a year earlier. In the first five months of 1993, the United Arab Emirates shipped 11,408,774 square meters, 54 percent above their January-May 1992 level. The United Arab Emirates became the second largest supplier of cotton twill fabrics to the U.S., accounting for 11 percent of total Category 317 imports during the year ending May 1993 period. In the year ending May 1992, the United Arab Emirates was ranked eighth among the major suppliers, accounting for six percent of total Category 317 imports.

The sharp and substantial increase of Category 317 imports from the United Arab Emirates is disrupting the U.S. market for cotton twill fabrics.

U.S. Production, Import Penetration and Market Share

During 1991 and 1992 U.S. cotton twill producers retained market share as imports and domestic production increased. However, during the first quarter of 1993, U.S. production remained virtually flat compared to January-March 1992 while imports increased 15 percent. In the first five months of 1993, imports are up 22 percent over the January-May 1992 level.

As a result of the increase in imports in 1993 the domestic producers' share of the cotton twill market dropped three percentage points, falling from 69 percent during January-March 1992 to 66 percent during January-March 1993. During this same time period the ratio of imports to domestic production increased from 45 percent to 52 percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 95 percent of Category 317 imports from the United Arab Emirates during 1993 entered the U.S. under HTSUSA number 5209.12.0020—unbleached 3 or 4-thread twill fabric containing more than 85 percent by weight cotton, not napped, and weighing more than 200 grams per square meter. These fabrics entered the U.S. at landed duty paid values below U.S. producers' prices for comparable fabrics.

[FR Doc. 93–19415 Filed 8–11–93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental Assessment: Theater Missile Defense Lethality Program

AGENCY: Ballistic Missile Defense Organization (BMDO); DoD.

ACTION: Notice.

Summary

The U.S. Army Space and Strategic Defense Command (USASSDC), at the request of the Ballistic Missile Defense Organization (BMDO), has conducted an assessment of the potential environmental consequences of the TMD Lethality program.

The objective of this program is to develop validated lethality criteria for a high-confidence kill against all theater threat warheads. The TMD Lethality program activities would include stimulant development, electromagnetic irradiation, impact, shock, penetration, and aerobreakup tests of biological, chemical, or nuclear/conventional stimulants within laboratory or other indoor test facilities and at outdoor test facilities. Testing involves use of simulated environmental conditions or test parameters to determine how each material would react to stresses expected from a typical theater missile defense engagement.

Test activities would be conducted at the following facilities: Battelle facilities in Columbia and West Jefferson, Ohio; Southern Research Institute, Birmingham, Alabama; Illinois Institute of Technology Research Institute, Chicago, Illinois; U.S. Army Research Laboratory, Aberdeen, Maryland; Arnold Engineering Development Center, Arnold Air Force Base (AFB), Tennessee; Dyna East Corporation, Falling Waters, West Virginia; High Speed Test Track, Holloman AFB, New Mexico; Kaman Sciences Corporation, Colorado Springs, Colorado; Lawrence Livermore National Laboratory facilities in Washington, DC, and the Chesapeake Bay Detachment, Maryland; New Mexico Institute of Mining and Technology, Socorro, New Mexico; University of Alabama in Huntsville, Huntsville, Alabama; Yuma Proving Ground, Yuma, Arizona; and Hurricane Mesa Test Track Facility, Hurricane, Utah. All of the proposed locations were selected based on their ongoing work for similar programs.

Alternative Considered

The only alternative to the proposed TMD Lethality program activities is the no-action alternative. The no-action alternative would be not to proceed with any TMD Lethality program testing.

The environmental impact of the testing at the locations and activities required in the TMD Lethality program were evaluated in the TMD Lethality Programmatic Environmental Assessment.

Anticipated Environmental Impacts:

TMD Lethality program activities are considered to be routine for all proposed test locations and would use mostly existing personnel. Although potential cumulative health and safety impacts are possible, these are easily mitigated to a not significant level by using established safety procedures. In particular, hazardous materials will be handled and disposed of according to existing compliant procedures.

Employees will follow standard, established procedures for handling and neutralizing hazardous materials during TMD testing.

Factors Considered in the Determination of No Significant Impact

To assess the significance of potential environmental impacts, a list of site-specific activities necessary to accomplish the proposed action was developed. The areas of environmental consideration were air quality, biological resources, cultural resources, hazardous materials/waste, health and safety, infrastructure, land use, noise, physical resources, socioeconomics, and water quality. If a proposed activity was determined to present a potential for environmental impact, then the activity was evaluated by considering the intensity, extent, and context in which the impact would occur. As a result of the evaluation, impacts were assigned to one of three categories: Not significant, potentially significant but mitigable, or potentially significant.

Conclusion

Evaluation of the areas of environmental considerations has shown that no significant impacts would occur from activities evaluated associated with the TMD Lethality program.

Point of Contact

Ms. Linda Ninh, CSSD–EN–V, U.S. Army Space and Strategic Defense Command, Post Office Box 1500, Huntsville, Alabama 35807–3801, or by calling (205) 955–1154.

Dated: August 9, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19364 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

DoD–DOE System Safety Red Team Advisory Committee

ACTION: Notice of advisory committee meeting.

SUMMARY: The DoD–DOE System Safety Red Team Advisory Committee (Red Team) will meet in closed session on September 9–10, 1993, at Alexandria, Virginia.

The mission of the Red Team is to perform technical evaluations of the safety of nuclear weapons in development and in the stockpile. At this meeting, the Red Team will finalize its report assessing the safety of the W–80 warhead and weapon systems (Air Launched Cruise Missile, Advanced Cruise Missile and TOMAHAWK). Upon completion of this meeting, the report will enter a required review process prior to its submission to the Secretary of Defense and the Secretary of Energy.

In accordance with section 10(d) of the Federal Advisory Committee Act PL 92–463, as amended, (5 U.S.C. App. II, (1988)), it has been determined that this Red Team meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

August 8, 1993.

Linda M. Bynum,

Alternate OSC Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19298 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Partnerships for Global Competitiveness

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Department is making available and publishing in this notice a strategic plan entitled "Partnerships for Global Competitiveness." [1] Through its partnerships with industry, the Department has pioneered innovative arrangements with integrated industrial sectors, broad industry associations, and State governments. These market-driven collaborations are causing a fundamental redefinition of the term technology transfer. To help meet these strategies and to contribute to the accelerated change necessary for the Department's technology partnerships, the Secretary will implement a package of initiatives detailed in this report.

DATES: Any comments should be received by September 27, 1993.

ADDRESSES: To receive a copy of the Strategic Plan write to the Department of Energy, Office of Technology Utilization, ST–40, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be mailed to this address.

FOR FURTHER INFORMATION CONTACT: For general information on the Strategic Plan call Laura Thomas, 202–586–4479 or Ora Cooke, 202–586–5388. Requests may also be sent by fax machine to 202–586–8854.

[1] This notice reflects the text of the Secretary's remarks before the House Committee on Science, Space, and Technology on July 29, 1993.

SUPPLEMENTARY INFORMATION:

Partnerships for Global Competitiveness

Draft Technology Partnership Strategic Plan

New challenges and new national needs have made the 1990s a fundamentally different decade for the Department of Energy. The economic imperative facing the nation requires the Department to reorient programs and redirect resources—particularly at its laboratories—toward partnerships that contribute to American industrial competitiveness while maintaining a strong science and technology base. Although change at the Department already is well underway, the pace of change must accelerate. Our challenge and our cause is to become part of the quality revolution that is transforming American enterprise.

The Department of Energy has a long record of partnerships with the private sector, particularly through its applied research programs. These partnerships take many forms, from relatively simple technical assistance arrangements with small businesses to complex cost-shared agreements with industrial alliances. Until recently, the Department's technology transfer program was characterized predominantly by a technology-push approach to assisting the private sector, with involvement from the private companies generally occurring late in the research and development process.

During the past few years, however, the Department has entered into an unprecedented number of agreements involving collaborative technology development, with the industrial partner playing a central role in defining the research agenda.

These market-driven collaborations are causing a fundamental redefinition of the term technology transfer. More appropriate for today's environment is the concept of technology partnerships—which recognizes the mutuality of interest essential for success.

Through its partnerships with industry, the Department has pioneered innovative arrangements with integrated industrial sectors, broad industry associations, and State governments. By all indicators (i.e., number of partnerships, annual industrial visitors, partnership proposals), industry interest in the Department of Energy laboratories is at an all-time high. The science and technology base of the laboratories offers valuable and often-unique expertise in areas such as advanced materials and manufacturing, high-

performance computing, microelectronics, and environmental technologies. The Department's scientific user facilities permit industry to conduct research that generally cannot be done anywhere else.

Many of the partnerships developed during the past few years have been highly successful; others have failed to meet the expectations of either the Department or its partners. Through these experiences, however, we have learned many lessons which can help increase our successes in the future. This approach of aggressive experimentation, with a focus on continuous improvement, is necessary and must continue as the nation moves into the unchartered terrain of the 1990s and beyond.

Technology partnerships must become integral to the way we do our business—all our business. From the earliest stages of program planning to the final steps in meeting our mission responsibilities, we must fully consider opportunities for establishing partnerships which leverage departmental resources to maximize their contributions to society.

Our goal must be to get the maximum value for the American public out of the budget made available to the Department. This means that every dollar spent toward meeting the Department's missions—whether for basic research, nuclear weapons stewardship, environmental cleanup, or energy production and conservation—must be examined for its potential to be leveraged toward a mutual benefit with industry, academia, or other agencies. The benefits from these partnerships are truly mutual—with the Department meeting its missions and sustaining its science and technology base more effectively, while also helping to meet the goals of our partners.

To accelerate the change already underway, we must be customer-focused and user-friendly. We must listen to our customers, understand their requirements, develop plans for helping to meet those requirements, assign responsibilities for implementing those plans, and measure success—with these measurements driving the continuous improvement process.

President Clinton's technology policies create both an opportunity and an obligation for all federal agencies to sharpen their strategic focus on American industrial competitiveness and job creation. For the Department of Energy, this sharpened focus creates an enhanced framework for our technology partnership efforts. Specifically, this framework will increase our focus on achieving dual-use benefits from our mission-oriented work—where dual-use means accomplishing goals that serve both the public missions of the Department and commercialization interests of the private sector. In addition, this framework will make us a better partner and help us achieve the full potential of our partnership opportunities, while demonstrating real results for the American taxpayers.

Technology Partnership Vision

With both the Administration's technology policies and the Department's new core values in mind, we have developed a vision statement for the Department's technology partnership activities. That vision is for the Department to be a recognized leader and partner with industry in developing and transferring science and technology to enhance economic performance and to serve public needs.

Realizing the Vision

Five critical strategies, each with a set of high priority goals, will help the Department realize this vision. These strategies are:

(1) *The Department must change its culture.* This will require integration of technology partnerships into every mission of the Department, continual reinforcement of customer focus as a core value of the Department, and continual measurement of performance.

(2) *We must optimize our technology partnership processes.* This will require streamlining of existing technology partnership mechanisms and the creation of new mechanisms that are responsive, reliable, and consistent.

(3) *We must make it easier for industry to access Departmental technology, resources and facilities.* This will require consistent policies and procedures across the Department and its facilities, and will depend on improved strategies for helping industry learn about the specific resources of the Department.

(4) *We must ensure that our technology transfer process and technology development programs are guided by market-pull.* This will require the Department to actively seek industry involvement to provide market context at all stages of Departmental programs—including at the conceptual stages of new initiatives.

(5) *We must develop, with industry and others, integrated program plans.* This will require increased collaboration within the Department of Energy, among the Department and other Federal agencies—including the Office of Science and Technology Policy—and between the Government as a whole and key industrial sectors, universities, and State and local governments.

Department of Energy Core Values

We are Customer Oriented.
We value Creativity and Innovation.
We are Committed to Excellence.
We are a Team, and DOE is a Team Player.
We respect the Environment.
People are Our Most Important Resource.
Leadership, Empowerment, and Accountability are Essential.
We are Technically and Ethically Respected.

Department of Energy Technology Transfer Mechanisms

Data and information exchanges.
Cooperative agreements.
Cost-shared procurements.
Licensing agreements.
Personnel exchanges.
Technical assistance agreements.
User facilities agreements.
Work-for-others agreements.
Cooperative Research and Development Agreements.

Key Initiatives

To help meet these strategies and to contribute to the accelerated change necessary for the Department's technology partnerships, the Secretary will implement a package of initiatives, detailed in this report, which fall into three categories:

Streamlining the Process. One of the most important strategies for the Department is to streamline our partnership mechanisms. To help achieve this strategy:

(1) The Secretary has established a goal of reducing the processing time for cooperative research and development agreements, from initial negotiations until the start of work, by 50 percent within one year;

(2) By October 31, 1993, the Secretary will delegate authority to the Directors of the Departmental laboratories to directly execute cooperative research and development agreements involving $500,000 per year or less in Federal funds and which conform to certain guidelines;

(3) Within 60 days, the Department will release a plan for providing block cooperative research and development agreement funding during fiscal year 1994 to select laboratories on a trial basis, to facilitate quick responses to industry;

(4) Within 60 days, the Department will issue a "modular" cooperative research and development agreement, comprised of specific pre-approved terms and conditions;

(5) By December 31, 1993, the Department will establish a streamlined approach for private sector entities interested in accessing Departmental resources on a reimbursable basis.

Planning For Success. Developing integrated program plans with industry, other government agencies, and—perhaps most importantly—internally within the Department will be essential for achieving our vision. To plan for success:

(1) Within six months, and annually thereafter, the Department will develop an integrated technology partnership plan, which will be carefully coordinated with other Federal agencies and the Office of Science and Technology Policy, to provide a multi-year framework for partnership activities;

(2) By September 30, 1993, a new high-level team will be established immediately within the Department for achieving consistent policies and expedited problem-solving;

(3) Within 60 days, senior executives from the private sector will be appointed to the Secretary of Energy Advisory Board to provide independent reviews of the Department's partnership activities.

(4) By December 31, 1993, the Department, with its customers, will jointly develop and implement a system for measuring success in our partnership programs.

Reaching Small Business. One of our high priority goals as a Department is to work with existing public and private business networks for reaching small businesses, which create 80 percent of the new jobs in the United States. The following actions will help the Department reach small business:

(1) During fiscal year 1994, the Department will build on a highly successful pilot program that has helped create jobs for small businesses through the provision of technical assistance by laboratory scientists and engineers;

(2) The Department will take immediate steps to make its integrated laboratories and facilities available as a technical resource for and integral component of the manufacturing outreach and extension system being developed by the Department of Commerce;

(3) By December 31, 1993, the Department will streamline all existing mechanisms, and will issue a dramatically simplified cooperative research and development agreement, for increased ease of use by small businesses.

Issued in Washington, DC on August 6, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93–19408 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 93–4 of the Defense Nuclear Facilities Safety Board; DOE's Management and Direction of Environmental Restoration Management Contracts

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–4 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 24, 1993 (58 FR 34247) concerning DOE's management and direction of environmental restoration management contracts.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before September 13, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on July 22, 1993.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

August 6, 1993.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board; 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Chairman: Your letter of June 16, 1993, forwarded Defense Nuclear Facilities Safety Board Recommendation 93–4 concerning health and safety factors associated with the Fernald Environmental Management Project and the management and oversight of environmental restoration management contracts.

The Department accepts Recommendation 93–4 and will develop and implement a technical management plan for Fernald and future environmental restoration management contracts; ensure that all elements of the Technical Management Plan recommended for environmental restoration management contracts are addressed in the plan; include insights gained as a result of addressing Recommendations 1 and 2 in our planned review of contracting mechanisms and practices; conduct an independent Headquarters review of the corrective actions taken subsequent to the recent incidents at Fernald and communicate "lessons learned" to other DOE facilities, as appropriate; formalize a clear process for restart of the uranyl nitrate hexahydrate stabilization project; and accelerate ongoing efforts to fully implement the facility representative program at Fernald in accordance with the action plan for Recommendation 92–2.

Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, will develop an Implementation Plan for this recommendation by November 5, 1993. The Implementation Plan will provide specific milestones and dates for accomplishing the commitments described in the preceding paragraph.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93–19403 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of

respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 13, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–583
3. 1902–0136
4. Annual Kilowatt Generating Report (Annual Charges)
5. Revision
6. Annually
7. Mandatory
8. State or local governments; Businesses or other for-profit; and Small businesses or organizations.
9. 640 respondents
10. 1 response
11. 2 hours per response
12. 1,280 hours
13. The legislative requirements of section 10(e) of the Federal Power Act directs the Commission to collect annual charges from hydropower licensees for the cost of administering part I of the Federal Power Act. This information will be used to determine the charges to assess against such licensees for such use.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, August 6, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–19404 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. SBE–001]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Small Business Exemption From the January 1, 1993, Standard for Single Package Air Conditioning Systems to Consolidated Technology Corp.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. SBE–001) granting a Small Business Exemption to Consolidated Technology Corporation (Consolidated) from the January 1, 1993, Seasonal Energy Efficiency Ratio of 9.7 and Heating Seasonal Performance Factor of 6.6 for single package air conditioning systems for a period of 10 months, from January 1, 1993, through October 31, 1993.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock Jr., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–5778

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.56(b), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Consolidated has been granted a Small Business Exemption from the January 1, 1993, Seasonal Energy Efficiency Ratio of 9.7 and Heating Seasonal Performance Factor of 6.6 for its Insider Heat Pump for a period of 10 months, from January 1, 1993, through October 31, 1993.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: Consolidated Technology Corporation. (Case No. SBE–001.)

Background

The Energy Conservation Program for Consumer Products (other than automobiles), which was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat, 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct–92), Public Law 102–486,[1] prescribes energy conservation standards for certain consumer products, including central air conditioners and heat pumps, and requires DOE to administer an energy conservation program for these products. For each of the covered products, the act prescribes initial Federal energy conservation standards, section 325 (b)–(h).

On February 7, 1989, DOE amended the prescribed procedures by adding 10 CFR part 430, subpart E, creating the small business exemption process, 54 FR 6080.

The small business exemption process allows the Assistant Secretary for Energy Efficiency and Renewable Energy to grant manufacturers of covered consumer products with annual gross revenues that do not exceed $8 million, exemption from all or part of the applicable energy conservation standards.

The exemption terminates according to its terms, but not later than twenty-four months after the effective date of the rule for which the exemption is allowed.

On June 23, 1992, Consolidated submitted an application for a two-year exemption from the DOE, January 1, 1993, standard for single package air conditioning systems. The firm manufactures a line of single package air conditioner heat pumps which are designed for use in manufactured/modular homes. The entire product line was designed to use a high efficiency

[1] Part B of title III of EPCA, as amended by NECPA, NAECA, NAECA 1988 and EPAct–92, is referred to in this notice as the Act.

scroll compressor. In its application, Consolidated claimed that the manufacturer of the scroll compressor had oversold its product, and therefore, the manufacturer was unable to supply the firm with these compressors. Efforts to obtain a comparable compressor from other sources also failed.

Consolidated redesigned the product line to use a reciprocating compressor. Because reciprocating compressors are less efficient than scroll compressors, and configuration and size constraints imposed by the manufactured/modular home industry limit other design changes, the units with reciprocating compressors are less efficient than the same size units with scroll compressors.

DOE published notice of Consolidated's Application for Small Business Exemption in the **Federal Register** on December 18, 1992, 57 FR 60196, and requested the written views of the Attorney General on January 7, 1993.

Comments concerning the Application for Small Business Exemption were received from the California Energy Commission and from the Nordyne Company. The Commission took no position on the merits of the application; however, it requested that, if the application is granted, "the precise extent of the exemption" be published in the **Federal Register**. Nordyne commented that there are 15 companies that manufacture single package air conditioner heat pumps, most of which could be used in manufactured/modular homes providing the same function of heating and cooling the air in the home. Nordyne further stated that it understood that there is no longer a shortage of scroll compressors. For these reasons, Nordyne opposes granting Consolidated's application.

The Attorney General responded (see Attachment A) that the courts consistently have held that Congress designed the Federal antitrust laws to protect market competition rather than individual competitors. He further stated that it could be assumed that Congress had a similar intent when it employed the concept of "a lessening of competition" in section 325(q)(2) of the Energy Policy Conservation Act, 42 U.S.C. 6295(q)(2). Consolidated currently possesses a market share in the 2–3 percent range, assuming that the relevant market consists of unitary systems, split systems and "insider" systems. Nevertheless, because Consolidated is a recent market entrant and offers a product different from that of its rivals, its current market share may understate its ability currently to constrain the pricing discretion of its rivals, as well as its future competitive significance. In these circumstances, the Attorney General believes the Secretary of Energy could find that denial of the company's application would likely result in the lessening of competition.

DOE also consulted with the Federal Trade Commission by telephone on March 9, 1993, concerning the Application for a Small Business Exemption. The Trade Commission did not have any objection to the issuance of a Small Business Exemption to Consolidated. The Commission did suggest that the Decision and Order state, "Today's action does not affect the company's obligation to test and label its equipment in compliance with the FTC labeling requirements."

Assertions and Determinations

Consolidated's Application seeks a Small Business Exemption from DOE's January 1, 1993, standards for single package air conditioning systems. The Application requests a Small Business Exemption for a period of 24 months beginning January 1, 1993, through December 31, 1994, by which time the company expects to be supplied with scroll compressors which will enable the product to meet the standard.

The Department has examined the information and data provided by Consolidated and finds that the company meets the conditions of 10 CFR 430.52 to qualify for a Small Business Exemption: (1) Annual gross revenues do not exceed $8 million; (2) Consolidated neither controls, nor is controlled by, nor is under common control with, another manufacturer.

DOE concurs with the written views of the Attorney General that while the firm currently possesses only a small market share, it is a recent market entrant and offers a product different from that of its rivals. Therefore, its current market share may understate its ability to constrain the pricing discretion of its rivals, as well as its future competitive significance.

In its comments, Nordyne stated that there are 15 companies that manufacture single package air conditioner heat pumps, most of which could be used in manufactured/modular homes, providing the same function of heating and cooling the air in the home. DOE agrees with Nordyne that there are a large number of systems which functionally are the same as the Consolidated system. However, DOE believes Consolidated's system possesses some unique design features which enable it to be used in applications where most of these other systems could not be used. In these applications, the only alternative is a system which uses resistance electric heat which, while functionally the same, uses considerably more energy. Therefore, DOE believes that there are only two other companies which manufacture a similar product.

Concerning Nordyne's statement that there is no shortage of scroll compressors, in a letter dated March 8, 1993, Consolidated notified DOE that it had received a verbal commitment from Copeland Corporation to supply the scroll compressors it needs. Based on this commitment, Consolidated stated that it now only requires a Small Business Exemption for a period of ten months. This period of time is required to meet its prior commitments to its suppliers and customers and to permit conversion to the scroll compressor.

Therefore, DOE is granting Consolidated's request for a Small Business Exemption from the 1993 standard for single package air conditioning systems for a period of ten months from January 1, 1993, through October 31, 1993.

In its comments, the company requested that, if the application is granted, the precise extent of the exemption also be published. This Small Business Exemption applies only to the requirement to meet the 1993 standard (Seasonal Energy Efficiency Ratio of 9.7 and Heating Seasonal Performance Factor of 6.6) for single package air conditioning systems.

It is therefore ordered that:

(1) The Application for Small Business Exemption filed by Consolidated Technology Corporation (Case No. SBE–001) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) The Consolidated Technology Corporation Insider Heat Pumps manufactured during the period from January 1, 1993, through October 31, 1993, are not required to meet the January 1, 1993, DOE standards for single package air conditioning systems of 9.7 Seasonal Energy Efficiency Ratio and 6.6 Heating Seasonal Performance Factor.

(3) Today's action does not affect Consolidated Technology Corporation's obligation to test and label its equipment in compliance with Federal Trade Commission labeling requirements.

(4) This Small Business Exemption, granting Consolidated Technology Corporation an Exemption for its Insider Heat Pumps from the requirement to meet the January 1, 1993, standards for single package air conditioning systems shall remain in effect from January 1, 1993, until October 31, 1993.

(5) This Small Business Exemption is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Small Business Exemption may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–19405 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. CAS–RM–79–112–A]

Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Withdrawal

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Withdrawal of Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Request for Comments on DOE Proposals for Voluntary Building Codes; Request for Comments on Content of Energy Standards for Federal Residential Buildings.

SUMMARY: On August 31, 1992, the Department published draft interim energy conservation voluntary performance standards for new non-Federal residential buildings (57 FR 39424) as required by the Energy Conservation and Production Act. However, on October 24, 1992, the Energy Conservation and Production Act was revised by the Energy Policy Act of 1992 (Pub. L. 102–486) that, among other things, deleted the requirement that DOE develop energy conservation voluntary performance standards for new non-Federal residential buildings and, instead, required DOE to support the upgrading of voluntary building energy codes. Therefore, DOE is withdrawing the draft interim standards for new non-Federal residential buildings.

Under the Energy Policy Act, DOE is also charged with recommending amendments to the various voluntary building energy codes developed by consensus standards organizations for new private sector residential buildings. The amendments, to be based on a review of the technical and economic bases of those codes, must be technologically feasible and economically justified. The Department has proposed several such amendments to the Model Energy Code of the Council of American Building Officials during 1993. The Department is requesting comments on those proposals for use in preparing revised proposals for resubmission to the Council of American Building Officials.

Pursuant to Section 305 of the Energy Conservation and Production Act, as modified by the Energy Policy Act, the Department must establish building energy efficiency standards for new Federal residential and commercial buildings by October 24, 1994. DOE anticipates that it will propose such standards by that date through notices in the **Federal Register**. The Federal building energy efficiency standards must satisfy several criteria set forth in the Energy Policy Act. The Department is requesting input from both public and private sector organizations on approaches to best satisfy these criteria.

ADDRESSES: Additional written comments on any of the above topics may be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–432, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Turchen, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–432, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6262.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9526.

SUPPLEMENTARY INFORMATION:

Draft Interim Energy Conservation Voluntary Performance Standards

Title III of the Energy Conservation and Production Act of 1976 (Pub. L. 94–385), as amended by the Housing and Community Development Act of 1980 (Pub. L. 96–399) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), required the Department of Energy (DOE or Department) to administer an energy conservation program for new buildings. Among other things, the Housing and Community Development Act and Omnibus Budget Reconciliation Act amendments required DOE to establish interim voluntary energy performance standards for the construction of new non-Federal residential buildings. On August 31, 1992, DOE published a **Federal Register** Notice requesting public comment on a draft version of interim standards for new non-Federal residential buildings at 57 FR 39424. Public hearings were held on October 23, 1992, and October 27, 1992. To date, the Department has received approximately 50 comments on the draft standards.

Section 101 of the Energy Policy Act of 1992 amended the Energy Conservation and Production Act by striking sections 304, 306, and 308 through 311 deleting the Department's authority for prescribing voluntary energy performance standards for non-Federal residential buildings. Furthermore, the Energy Policy Act of 1992 added new sections 304, 305, 306, 307, and 308. These new sections direct the Department to administer a three-part program supporting improved energy efficiency for new buildings throughout the United States, including residential buildings. Under the new program, DOE is to 1) support the upgrading by consensus standards groups of "voluntary building energy codes"; 2) adopt mandatory "Federal building energy standards" for new Federal buildings; and 3) support State adoption of "voluntary building energy codes" by providing technical assistance and appropriate incentive funding. A "voluntary building energy code," as defined by the Energy Policy Act of 1992, principally refers to the latest model building energy code for new residential buildings adopted by the Council of American Building Officials, or the latest energy efficiency standard for new commercial buildings adopted by the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

Included in the August 31, 1992, **Federal Register** Notice was an Automated Residential Energy Standard computer program that the Department developed to analyze the life-cycle cost-effectiveness of residential building thermal envelope levels and heating, ventilating and air-conditioning equipment efficiencies. Many of the comments on the August 31, 1992, notice discussed the Automated Residential Energy Standard methodology and the appropriateness of the recommended input values.

The Department invites additional comments and data that may help to improve the Automated Residential Energy Standard program or any other aspect of that program discussed in the August 31, 1992, Notice. If the Automated Residential Energy Standard is revised in response to persuasive public comment, the results will be improved analytic methods and objective guidelines for evaluating the cost-effectiveness of energy efficiency measures.

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The Department will evaluate all comments received on the August 31, 1992, Notice and all comments submitted in response to this Notice. If the Department makes any significant revisions to the Automated Residential Energy Standard as a result of these or other comments received, it intends to publish a technical report describing these changes and explaining their basis. Notice of the availability of any such technical report will be provided to all persons who had filed comments on the August 31, 1992, Notice or on this Notice.

Copies of all comments received on the non-Federal residential standards and a copy of any DOE technical report describing subsequent change made to the Automated Residential Energy Standard or standards program will continue to be available for inspection and viewing by interested persons at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20505, (202) 586–6020, 9 a.m.–4 p.m., Monday–Friday.

1992 Model Energy Code Change Proposals

Section 307 of the Energy Conservation and Production Act, as amended by the Energy Policy Act of 1992, directs DOE generally to support the upgrading of voluntary building energy codes for new buildings by providing technical evaluation and analysis. The Department is also directed periodically to review the technical and economic basis of voluntary building energy codes and, based upon ongoing research, recommend amendments to such codes and seek the adoption of all technologically feasible, economically justified energy efficiency measures.

The Department has already used the Automated Residential Energy Standard to evaluate several portions of the 1992 edition of the Model Energy Code of the Council of American Building Officials and to develop recommended modifications. Providing change proposals to the 1992 Model Energy Code is a critical portion of DOE responsibility to support the upgrading of voluntary building energy codes as authorized by the Energy Policy Act of 1992 (Energy Conservation and Production Act Sections 307 (b) (1) and (2)).

The 1992 Model Energy Code includes requirements for the maximum permissible "U_o" for walls, floors, and ceilings. The U_o value is the heat transfer rate through the building component, expressed in BTUs per hour per square foot of component area per degree Fahrenheit of temperature difference across the component. In the 1992 Model Energy Code, the U_o requirement is a function of the annual heating degree-days for the geographic location in which the 1992 Model Energy Code will be applied.

The Department used the Automated Residential Energy Standard to determine, on a nationwide average basis, the optimum U_o values for walls, floors, and ceilings of low-rise single family and multi-family residences that minimize life-cycle energy costs to new home buyers. The results were then expressed in the familiar U_o versus heating degree-day format of the 1992 Model Energy Code. The outcome of the Automated Residential Energy Standard analysis demonstrates that in most U.S. climate regions, it is cost-effective to increase insulation levels in walls, ceilings below attic spaces, and floors over unheated spaces, as compared to the 1992 Model Energy Code requirements. For ceilings without attics, i.e., flat roofs or cathedral ceilings, insulation levels can be cost-effectively reduced from the existing 1992 Model Energy Code levels.

In January 1993, DOE submitted 10 Model Energy Code change proposals to the Council of American Building Officials for consideration during the 1993 review cycle. These proposals covered several topics; three proposals addressed the recommended revisions to the U_o requirements. At a public hearing on March 31, 1993, in St. Louis, Missouri, a committee of the Council of American Building Officials disapproved five of the Department's proposals, including the proposals to modify the U_o requirements. At this time, DOE is planning to file a formal request with the Council of American Building Officials to have the denied proposals reconsidered at a second public hearing in Little Rock, Arkansas, on October 21, 1993.

The public is encouraged to comment to DOE on the Department's change proposals and to otherwise participate in the Model Energy Code review process. Copies of the proposals and an accompanying technical support document are available by direct request to the Department of Energy. Copies of the proposals are also available by contacting the Staff Secretariat for the Council of American Building Officials Codes at the Southern Building Codes Congress International, 900 Montclair Road, Birmingham, Alabama 35212–1206, (205) 591–1853. The Southern Building Codes Congress can also provide information on the mechanics of the code change review process, including specifics on the public hearings that the Council of American Building Officials holds to review all change proposals.

The Department will also meet with those persons or groups that have factual data or other information to contribute on voluntary building energy codes or the 1992 Model Energy Code change proposals. Such data or information should be non-proprietary, non-confidential, and help to improve the technical basis of DOE analysis of building codes. Especially useful to the Department is information that improves the methodologies, databases, and inputs contained in the Automated Residential Energy Standard and information that addresses the costs and technical feasibility of residential construction techniques that relate to energy conservation.

Federal Building Energy Efficiency Standards

The Energy Policy Act of 1992 requires DOE to establish "Federal building energy standards" (also referred to as Federal building energy efficiency standards) for new Federal residential and commercial buildings by October 24, 1994. The term "Federal building energy standards" includes "energy consumption objectives to be met without specification of the methods, materials, or equipment to be employed in achieving those objectives, but including statements of the requirements, criteria, and evaluation methods to be used ***." (42 U.S.C. 6832(13).) Four of the statutory criteria on these standards are very similar to the work DOE has already performed in the non-Federal (voluntary) building energy codes area:

— the standards shall be technologically feasible;
— they shall be economically justified;
— they shall use the "format" of the Council of American Building Officials 1992 Model Energy Code to the extent practicable; and
— they shall meet or exceed the energy saving specifications of the Council of American Building Officials 1992 Model Energy Code.

The Energy Policy Act of 1992 continued in effect the interim energy performance standards for Federal residential buildings (53 FR 32536) until the Federal building energy standards required are effective. The Department welcomes any comments from public and private organizations and individuals on the format and content of a Federal residential standard that would best satisfy the above constraints.

Many of the comments already received on the August 31, 1992, Notice

on non-Federal residential buildings are also relevant to a building energy standard for Federal residences because the comments address issues of feasibility and cost-effectiveness. These and any future comments on the non-Federal residential standards will be given serious consideration for potential applicability to the Federal residential standard development required by the Energy Policy Act of 1992.

Issued in Washington, DC August 5, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–19409 Filed 8–11–93; 8:45 am]

BILLING CODE 6540–01–P

Federal Energy Regulatory Commission

[Docket No. JD93–13529T New Mexico–48]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 6, 1993.

Take notice that on July 30, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group underlying certain lands in the Blanco Mesaverde Area of the Blanco Mesaverde Pool in San Juan and Rio Arriba Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 480,076 acres, more or less, and consists of 78.68% Federal, 0.33% Navajo Allotted, 12.08% State and 8.91% Fee Lands. The recommended area is described on the attached appendix.

The notice of determination also contains BLM's and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Mesaverde Group meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix

TOWNSHIP 27 NORTH, RANGE 7 WEST
Sections 1–12: All
Section 15: W/2
Sections 16–21: All
Section 22: W/2
Section 27: NW/4
Section 28: N/2
Sections 29–30: All
TOWNSHIP 27 NORTH, RANGE 8 WEST
Sections 1–36: All
TOWNSHIP 28 NORTH, RANGE 7 WEST
TOWNSHIP 28 NORTH, RANGE 8 WEST
TOWNSHIP 28 NORTH, RANGE 9 WEST
TOWNSHIP 28 NORTH, RANGE 10 WEST
Sections 7–36: All (Irregular Township)
TOWNSHIP 29 NORTH, RANGE 7 WEST
TOWNSHIP 29 NORTH, RANGE 8 WEST
TOWNSHIP 29 NORTH, RANGE 9 WEST
TOWNSHIP 29 NORTH, RANGE 10 WEST
TOWNSHIP 29 NORTH, RANGE 11 WEST
TOWNSHIP 30 NORTH, RANGE 7 WEST
TOWNSHIP 30 NORTH, RANGE 8 WEST
TOWNSHIP 30 NORTH, RANGE 9 WEST
TOWNSHIP 30 NORTH, RANGE 10 WEST
TOWNSHIP 30 NORTH, RANGE 11 WEST
Sections 1–36: All
TOWNSHIP 31 NORTH, RANGE 6 WEST
Sections 6–7: All
Sections 18–19: All
Section 30: All
TOWNSHIP 31 NORTH, RANGE 7 WEST
TOWNSHIP 31 NORTH, RANGE 8 WEST
TOWNSHIP 31 NORTH, RANGE 9 WEST
TOWNSHIP 31 NORTH, RANGE 10 WEST
TOWNSHIP 31 NORTH, RANGE 11 WEST
Sections 1–36: All
TOWNSHIP 32 NORTH, RANGE 10 WEST
TOWNSHIP 32 NORTH, RANGE 11 WEST
Sections 7–36: All (Irregular Township)

[FR Doc. 93–19327 Filed 8–11–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–137–009]

Williston Basin Interstate Pipeline Co.; Report of Refunds

August 6, 1993.

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin) on June 18, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's "Order on Remand, Rehearing and Compliance Filing" issued May 6, 1993, in Docket Nos. RP90–137–005, –006, and –007.

Williston Basin states that on June 3, 1993, refund schedules applicable to Rate Schedule X–3 and reflecting the elimination of the take-or-pay throughput surcharge from July 1990 through March 1993 with interest through June 3, 1993 were mailed to KN Energy, Inc. Williston Basin states that the refund amount of $1,197,480.81, including interest of $103,692.02, due KN Energy, Inc. was offset against the outstanding Rate Schedule X–3 transportation invoices owed Williston Basin. The net result of offsetting the refund against the amount owed Williston Basin was to reduce the outstanding balance due Williston Basin to $286,512.60.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before August 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19326 Filed 8–11–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–74–NG]

Natural Gas Clearinghouse; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada, and To Import Liquefied Natural Gas From Any Foreign Country

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Natural Gas Clearinghouse (NGC) blanket authorization to import and export natural gas from and to Canada and to import liquefied natural gas (LNG) from any foreign country. The authorization allows NGC to import a combined total of up to 400 Bcf of gas and LNG and to export up to 130 Bcf of gas over a two-year term beginning on the date of the first delivery of either imports or exports after October 31, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is

open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–19407 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–80–NG]

Utility—2000 Energy Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Utility—2000 Energy Corp. blanket authorization to import and export up to a combined total of 60 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–19406 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4692–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 13, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Beverage Can Surface Coating (Subpart WW)–Information Requirements–(EPA ICR No. 0663.05; OMB No. 2060–0001). This is a request for renewal of a currently approved information collection.

Abstract: The provisions of this subpart apply to the following affected facilities in beverage can surface coating lines: (1) Each exterior base coating operation; (2) each over-varnish coating operation; and (3) each inside spray coating operation. The owner or operator of an affected facility must provide EPA, or the delegated State regulatory authority, with one-time notifications and initial compliance reports, and must keep records, as required of all facilities subject to the general NSPS requirements.

In addition, owners or operators of affected facilities that apply only coatings with VOC content less than that specified in the regulations must provide a list of the coatings and the VOC content of each coating used. Where one or more coatings do have VOC content higher than that specified in the regulations, owners or operators must install measuring and recording devices and report on specified operating characteristics of their equipment based upon how compliance is achieved.

(1) If compliance is achieved through the use of thermal incineration the owner or operator must install equipment to measure and report on the temperature of the combustion gases upstream and downstream of the incinerator combustion chamber.

(2) If compliance is achieved through use of catalytic incineration, the owner or operator must install equipment to measure and report on the upstream and downstream temperatures of the catalytic bed.

(3) If compliance is achieved through the use of a solvent recovery system, the owner or operator must install equipment to measure and report the amount of solvent recovered by the system for each affected facility.

The owner or operator of an affected facility must also notify EPA or the State regulatory authority of the date upon which demonstration performance commences. Owners or operators must report all periods of emissions in excess of the standard, and must report on monitoring system performance quarterly. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 6.7 hours per response for reporting and 103.2 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of beverage can surface coating lines.

Estimated No. of Respondents: 21.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,729 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 6, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19390 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4691–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 13, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating (Subpart RR)–Information Requirements (EPA ICR No. 0658.05; OMB No. 2060–0004). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of coating production lines used in the manufacture of pressure sensitive tape and label materials must provide EPA, or the delegated State regulatory authority, with one-time notification and reports on performance, and must keep records, as required of all facilities subject to the general NSPS requirements. Owners or operators of the subject facilities must also notify EPA or the State regulatory authority of the date when the demonstration of performance starts. In addition, the owner or operator of the subject facilities must maintain a calendar month record of all coatings used, and must monitor and report on the operating characteristics of the devices selected to control emissions:

(1) If emissions are controlled by a solvent recovery device, the owner or operator must install and operate a monitoring device for showing the cumulative amount of solvent recovered over a calendar month period;

(2) If emissions are controlled by a thermal incineration solvent destruction device, the owner or operator must install and operate a monitoring device that shows and records the temperature of the solvent destruction device's exhaust gases;

(3) If emissions are controlled by a catalytic incineration solvent destruction device, the owner or operator must install and operate a monitoring device that shows and records the gas temperature both upstream and downstream of the catalyst bed; and

(4) If emissions are controlled by a solvent destruction device which uses a hood or enclosure to capture fugitive VOC emissions, the owner or operator must install and operate a monitoring device that shows that the hood or enclosure is operating continuously.

Owners or operators must report all periods of excess emissions quarterly. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 6.3 hours per response for reporting, and 74.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of production lines used in the manufacture of pressure sensitive tape and label materials.

Estimated No. of Respondents: 549.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 54,921.

Frequency of Collection: One-time notifications and demonstration reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 6, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19389 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4692–5]

Mississippi; Adequacy Determination of State Municipal Solid Waste Permit Program.

AGENCY: Environmental Protection Agency (Region 4).

ACTION: Notice of tentative determination to fully approve the adequacy of the State of Mississippi's municipal solid waste permitting program, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Mississippi applied for a determination of adequacy under section 4005 of RCRA. Mississippi's final application contains proposed regulations which are expected to be adopted in September, 1993. EPA has reviewed Mississippi's final MSWLF application and has made a tentative determination that the State's MSWLF permit program meets the requirements necessary for full program approval and ensures compliance with the revised MSWLF Criteria. Full approval of the Mississippi MSWLF permit program is based in part upon the State's adoption of its proposed regulations. Prior to the final determination on Mississippi's program, EPA will review any changes in the State's regulations to ensure the regulations remain technically comparable to the Federal program at 40 CFR part 258. Mississippi's application for program adequacy determination is

available from EPA Region IV for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a significant number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on Mississippi's application for a determination of adequacy must be received by the close of business on September 13, 1993. If significant public interest is expressed in holding a hearing, the hearing will be held on September 29, 1993, at 7 p.m., in Jackson Mississippi. The location of the hearing, if held, can be obtained by contacting the appropriate person(s) listed below in the "Contacts Section". The State will participate in the public hearing if held.

ADDRESSES: Copies of Mississippi's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying:

Mississippi Department of Environmental Quality, 2380 Highway 80 West, Jackson, Mississippi 39204, Attn: Mr. Billy Warden, telephone 601–961–5047.

U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347–4216.

Written comments should be submitted to: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Region IV will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Mississippi

On May 6, 1993, Mississippi submitted a final application for adequacy determination. EPA reviewed the final application and submitted comments to Mississippi. Mississippi addressed EPA's comments and submitted a revised final application for adequacy determination on August 2, 1993. Region IV has reviewed Mississippi's revised final application and has tentatively determined that all portions of Mississippi's Subtitle D program meet all of the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria. The public may submit written comments on EPA's tentative determination until September 13, 1993 or until the close of the public hearing, if a hearing is held. Copies of Mississippi's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

Mississippi does not have the statutory authority to enforce the MSWLF permit program on Indian Lands. MSWLFs located on Indian Lands are subject to the Federal Criteria.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing if held. Issues raised by those comments may be the basis for a determination of inadequacy for Mississippi's program. EPA will make a final decision on whether or not to approve Mississippi's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 5, 1993.

Donald Guinyard,

Acting Regional Administrator.

[FR Doc. 93–19385 Filed 8–11–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4692-5]

Utah; Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of tentative determination on partial program application of Utah for partial program adequacy determination, public comment period, and public hearing.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will allow both States and Tribes to apply for and receive approval of a partial permit program. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal Criteria will apply to all permitted and unpermitted MSWLFs.

Utah applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Utah's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal Criteria and gain full program approval. Utah's application for partial program adequacy determination is available for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing, by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "**DATES**" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "**CONTACTS**" section below.

DATES: All comments on Utah's application for a partial determination of adequacy must be received by the close of business on September 27, 1993. The public hearing is tentatively scheduled for 11 a.m. to 2 p.m., September 27, 1993, at the Cannon Health Building, room 101, 288 North 1460 West, Salt Lake City, Utah, 84116. Should a public hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing by close of business on September 27, 1993. The hearing may adjourn earlier than 2 p.m. if all of the speakers deliver their comments before that hour. The State of Utah will participate in this public hearing held by EPA.

ADDRESSES: Copies of Utah's application for partial adequacy determination are available from 8 a.m. to 5 p.m. during normal working days, at the following addresses for inspection and copying: Department of Environmental Quality, Division of Solid and Hazardous Waste, Cannon Health Building, 4th Floor, 288 North 1460 West, Salt Lake City, Utah, 84116, Attn: Ralph Bohn ; and from 8 a.m. to 4 p.m. at U.S. EPA Region VIII Library, 999 18th Street, suite 500, Denver, Colorado 80202-2466, phone 303/293-1444. All written comments should be sent to U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, Attn: Brian Rimar, mail code (8HWM-WM).

FOR FURTHER INFORMATION CONTACT: Brian Rimar (8HWM-WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, Phone 303/293-1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that will come into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary

changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the revised Federal Criteria, EPA's national Subtitle D standards will take effect on October 9, 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by that date would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

B. State of Utah

On July 20, 1993, Utah submitted an application for partial program adequacy determination. EPA has reviewed Utah's application and has tentatively determined that all parts, with the exception listed below, of the State's Subtitle D program will ensure compliance with the Federal Criteria.

1. Financial assurance requirements (State of Utah Solid Waste Permitting and Management Rules, R315–309.) do not meet the Federal Minimum criteria found in 40 CFR part 258, subpart G.

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

To ensure compliance with all the Federal Criteria, Utah needs to revise the following aspects of its permit program.

1. All requirements of Solid Waste Permitting and Management Rules, R315–309 Financial Assurance, must be applicable to all permitted MSWLF units, as required by 40 CFR part 258, subpart G.

On May 7, 1993, the U.S. court of Appeals for the District of Columbia Circuit vacated the small landfill exemption for ground-water monitoring. Following this decision, and pending EPA regulatory changes, the Federal Minimum criteria for ground-water monitoring will apply to all MSWLF units, including small and rural landfills. At the July 14, 1993 meeting of the Utah Solid and Hazardous Waste Control Board two proposed rule changes were released for public comment. First, the board has proposed to remove the small landfill ground-water monitoring exemption found in the State of Utah Solid Waste Permitting and Management Rules, R315–303–4(3)(f). Secondly, the board has proposed to add the requirement for the owner/operator to provide the name, address, and telephone number of the person to contact about the facility during the post-closure period, as required by 40 CFR 258.61(c)(2). At the September 9, 1993 meeting the board will adopt the rule changes as proposed. The rule changes will be effective September 10, 1993. If the State of Utah takes the necessary actions to bring their ground-water monitoring and post-closure care requirements into full Federal compliance, EPA is proposing approval in both of these areas. If the state does not take the above actions, EPA will not approve their ground-water monitoring and post-closure care requirements.

In order for this approval to extend to "existing or former" Indian reservation lands in the State of Utah (Goshute, Navajo, Northwestern Shoshoni, Paiute, Skull Valley, and Uintah and Ouray Indian Reservations), the State Attorney General's demonstration of authority needed to include a demonstration under Federal Indian law that the State courts have jurisdiction to enforce State law against MSWLF owner/operators whose activities take place in "Indian Country," as defined in 18 U.S.C. 1151. Such a demonstration should include an analysis of the State's jurisdiction to enforce against owner/operators, located on reservations, and should specify what areas, if any, the State believes to have been removed from reservation status and may not qualify as "Indian Country." The agency believes that such a demonstration has not yet been made by the State of Utah.

EPA's future decision with regard to approval of the Utah program for "Indian Country," to include Indian reservation lands, will be governed by the Agency's judgement as to whether the State has demonstrated adequate enforcement authority to justify approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Until EPA approves a State or Tribal MSWLF permitting program for any part of "Indian Country," in Utah, as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Utah's program. EPA will make a final decision on whether or not to approve Utah's program by October 8, 1993, and will give notice of it in the **Federal Register**. The notice

will include a summary of the reasons for the final determination and a response to all major comments.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing, by writing the Region or calling the contact within 30 days of the publication of this notice, the Region will hold a hearing on September 27, 1993, from 11 a.m. to 2 p.m., at the Cannon Health Building, room 101, 288 North 1460 West, Salt Lake City, Utah, 84116.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 28, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–19386 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4692–7]

Wyoming; Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of tentative determination on partial program application of Wyoming for partial program adequacy determination, public comment period, and public hearing (if necessary).

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will allow both States and Tribes to apply for and receive approval of a partial permit program. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal Criteria will apply to all permitted and unpermitted MSWLFs.

Wyoming applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Wyoming's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal Criteria and gain full program approval. Wyoming's application for partial program adequacy determination is available for public review and comment.

If sufficient public interest is expressed during the comment period, a public hearing will be held to solicit comments and public opinion on Wyoming's partial program application for a determination of adequacy.

DATES: All comments on Wyoming's application for a partial determination of adequacy must be received by EPA Region VIII by the close of business on September 27, 1993. The public hearing is tentatively scheduled for 10 a.m. to 12 p.m. on September 27, 1993, at the Wyoming Department of Environmental Quality, Herschler Building, 1st Floor Conference Room (#1299), 122 West 25th Street, Cheyenne, Wyoming 82002. Should a public hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commentors. Commentors presenting oral testimony must also submit their comments in writing by close of business on September 27, 1993. The hearing may adjourn earlier than 12 Noon if all of the speakers deliver their comments before that hour. Wyoming will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of Wyoming's application for partial adequacy determination are available from 8 a.m. to 4:30 p.m. during normal working days at the following addresses for inspection and copying: Wyoming Department of Environmental Quality, Attn: Carl Anderson, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002; and U.S. EPA Region VIII Library, 999 18th Street, 2nd Floor, Denver, Colorado 80202–2466, phone 303/293–1444. All written comments should be sent to U.S. EPA Region VIII, Attn: Gerald Allen (8HWM-WM), 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Gerald Allen (8HWM-WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, phone 303/293–1496.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State

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municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that will come into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the revised Federal Criteria, EPA's national Subtitle D standards will take effect on October 9, 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by that date would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in STIR.

B. State of Wyoming

On November 6, 1992, Wyoming submitted an application to EPA for a partial program adequacy determination. A State/Tribal permit program is eligible for a partial program adequacy determination if the program meets the minimum requirements of enforcement, public participation, and compliance monitoring, and the program largely meets the requirements for ensuring compliance with part 258. EPA reviewed the Wyoming application and determined that the Wyoming program does meet the minimum requirements of enforcement, public participation, and compliance monitoring. However, EPA determined that the Wyoming program did not largely meet the technical Federal Criteria.

To rectify this EPA determination, the Wyoming Department of Environmental Quality has petitioned the Wyoming Environmental Quality Commission to approve emergency rules needed to demonstrate compliance with substantial portions of the Federal Criteria. Once approved, these emergency rules will be effective for 120 days and could be renewed.

Wyoming sent an Attorney General certification letter to EPA dated July 28, 1993, to further support its November 6, 1992, application for a partial program adequacy determination. The letter stated that, assuming emergency rule making proceeds according to schedule, the emergency rules to implement specified portions of the part 258 Federal Criteria will be adopted and have an effective date of October 9, 1993. The emergency rules would be effective for 120 days beginning on October 9, 1993, and would be replaced by permanent rules prior to expiration.

EPA has reviewed Wyoming's revised application (including existing permanent rules and proposed emergency rules), and EPA has tentatively determined that the following portions of the State's program will assure compliance with the part 258 Federal Criteria:

1. Location restrictions for airports, flood plains, wetlands, fault areas, seismic impact zones, and unstable areas (40 CFR 258.10 through 258.15).

2. Operating criteria for the exclusion of hazardous waste, cover materials, disease vector control, explosive gases, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and record keeping requirements (40 CFR 258.20 through 258.29).

3. Design criteria requirements (40 CFR 258.40).

4. Closure and post-closure requirements (40 CFR 258.60 through 258.61).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

If Wyoming takes the necessary rule making action and adopts emergency rules as specified in the Attorney General certification letter dated July 28, 1993, EPA proposes a partial program

adequacy determination for those portions of the State's program identified above. Wyoming has already begun to revise its permanent rules and expects to have the rule changes necessary for full program approval complete by early 1994.

To assure compliance with all of the part 258 Federal Criteria and receive full program approval from EPA, Wyoming needs to revise the following aspects of its permit program.

1. Wyoming will revise its regulations to incorporate the Federal ground-water monitoring and corrective action requirements in 40 CFR 258.50, 258.51, and 258.53 through 258.58.

2. Wyoming will develop new regulations to incorporate the financial assurance requirements in 40 CFR 258.70 through 258.72 and 258.74. Wyoming will revise its regulations to incorporate the financial assurance requirements in 40 CFR 258.73.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribal MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within thirty (30) days of the publication of this notice, the Region will hold a public hearing on September 27, 1993, at the Wyoming of Department of Quality, Herschler Building, 1st Floor Conference Room (#1299), 122 West 25th Street, Cheyenne, Wyoming 82002.

Wyoming has not asserted jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian reservations in Wyoming. Until EPA approves a State or Tribal MSWLF permitting program in Wyoming for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLF's located in any part of "Indian country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Wyoming's program. EPA will make a final decision on whether or not to approve Wyoming's program by October 9, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 4, 1993.

Kerrigan G. Klough,

Acting Regional Administrator.

[FR Doc. 93–19388 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL-4692-1]

Proposed Administrative Settlement Under Section 122(h) ofthe Comprehensive Environmental Response, Compensation, and Liability Act; International Depository, Inc., North Kingston, RI

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of 56 potentially responsible parties ("PRPs") for unrecovered costs incurred by EPA in conducting response actions at or in connection with the International Depository, Inc. Superfund Site in North Kingston, Rhode Island through and including January 31, 1993.

The potentially responsible parties who are settling their liability under this agreement are: Accent Plating; American Chemical Works, Co.; Atlas Industries; Astra Corp., Inc.; Blount Marine Corp.; C.M. Laboratories; Cametoid Technologies, Inc.; City of Lynn; City of Stamford; Cherry Semiconductor Corp.; Cranston Public Schools; Culbro Tobacco Division; Cumberland Farms, Inc., DIP; Cummins-Conn, Inc.; ECC Corp.; EG&G, Inc.; Esco Realty; F.O. Inc.; Gerber Systems Corp.; Gessay & Ludwig; Giner, Inc.; Gordon Realty, Corp.; Hy-Len Realty Co.; Hy-Sil Manufacturing; Jeffrey Chemical Co.; K.R. Rezendes, Inc.; Keeney Mfg.; Lincoln School Dept.; M&V Electroplating; MA Highway Dept.; MA Mutual; Middletown, CT; Olektron Corp.; Priority Finishing Corp.; RISWMC Co.; RI Air National Guard; RI Analytical Labs, Inc.; RI College; RI Hospital; RI Hospital Trust; Rockville High School; Rocky Point Park; ST. George's School; Siebe North; Skinner & Sherman; State Laboratory Institute; Taco, Inc.; Technical Components, Inc.; Town of Bloomfield, CT; Town of Glastonbury; Town of Windsor; TRI-S, Inc.; ULTRA Scientific; UNC Incorporated; United Oil Recovery, Inc.; University of RI; Warwick Public Schools.

DATES: Comments must be provided on or before September 13, 1993.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of International Depository, Inc. Superfund Site, North Kingston, Rhode Island, U.S. EPA Docket No. I–92–1102.

FOR FURTHER INFORMATION CONTACT: Kathleen Woodward, U.S. Environmental Protection Agency, Office of Regional Counsel, RCV, JFK Federal Building, Boston, Massachusetts 02203, (617) 565–3687.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental

Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the International Depository, Inc. Superfund Site in North Kingston, RI. The settlement was approved by EPA Region I on August 2, 1993, subject to review by the public pursuant to this notice. The 56 settling PRPs, the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $1.1 million to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on July 21, 1993.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from the Docket Clerk, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCG, Boston, Massachusetts 02203, (617) 565–3351.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203 (U.S. EPA Docket No. I–92–1082).

Dated: August 2, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–19391 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Application for Federal Deposit Insurance.

Form Number: FDIC 6200/05.

OMB Number: 3064–0001.

Expiration Date of OMB Clearance: October 31, 1993.

Frequency of Response: On occasion.

Respondents: Depository institutions engaged in the business of receiving deposits other than trust funds wishing to obtain Federal deposit insurance.

Number of Respondents: 85.

Number of Responses Per Respondent: 1.

Total Annual Responses: 85.

Average Number of Hours Per Response: 250.

Total Annual Burden Hours: 21,250.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0001), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before October 12, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Under section 5 of the Federal Deposit Insurance Act, depository institutions engaged in the business of receiving deposits other than trust funds wishing to obtain Federal deposit insurance must submit an application to the FDIC. The application must contain information relating to the factors enumerated in section 6 of the Federal Deposit Insurance Act, which the FDIC must consider before acting on the application.

Dated: August 6, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19322 Filed 8–11–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determination.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to be April 13, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19376 Filed 8–11–93; 8:45 am]

BILLING CODE 5718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of July 22, 1993:

Atchison, Brown, Clay, Cloud, Jackson, Nemaha, Jewell, and Republic Counties for Individual Assistance and Public Assistance.

Marshall, Ottowa, and Wyandotte Counties for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19378 Filed 8–11–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency [FEMA].

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993: McPherson and Morris Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19380 Filed 8–11–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to be June 10, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19377 Filed 8–11–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is June 23, 1993, through and including August 5, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19379 Filed 8–11–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota, dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993: The counties of Cavalier and Eddy for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19375 Filed 8–11–93; 8:45 am]

BILLING CODE 6718–02–M

GENERAL SERVICES ADMINISTRATION

Record of Decision; Atlanta Federal Center, Atlanta, GA

AGENCY: GSA.

ACTION: This is the Record of Decision to lease 1.4 million occupiable square feet of office space and a parking deck for 2200 vehicles in a building to be constructed at the former site of the Downtown Atlanta Rich's Department Store. Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), General Services Administration (GSA) Order PBS P 1095.4B, the decision is hereby announced, to lease from the City of Atlanta, Downtown Development Authority, the aforementioned buildings to be constructed and known as the Atlanta Federal Center, for a period of 27 years. This action was identified as the "preferred alternative" in the Draft Environmental Impact Statement made available to the public on March 29, 1993.

GSA has identified the need to provide replacement housing for agencies currently housed in six major blocks of leased space providing approximately 1,022,000 square feet of space in downtown Atlanta. These lease terms will expire over the next five years and the existing leased buildings will require extensive upgrading in order to meet GSA specifications for new leases. Even if this space were renovated, it would continue to have the

same functional obsolescence found on older buildings such as poor column spacing, insufficient electrical capacity to accommodate automated data processing (ADP) needs, insufficient handicapped accessibility, and the lack of modern construction technology that provides an energy efficient building.

Scoping and public participation for this proposed Federal action was accomplished by the following: The publication of several Public Notices in the Atlanta Journal/Constitution most recently on October 10, 11, 12, 1992; publication in the **Federal Register** of a Notice of Intent to prepare an Environmental Impact Statement (EIS) on October 16, 1992; Notice of Availability of the Draft EIS published in the **Federal Register** on March 26, 1993; a public hearing held on May 5, 1993 in Atlanta during the comment period for the Draft EIS; Notice of Availability of the Final EIS in the **Federal Register** on May 28, 1993, and numerous scoping letters to public and private parties potentially interested in this project, soliciting their input and comments prior to and during the preparation of the EIS.

Federal, state and local agencies were provided copies of the AFC Draft EIS and copies were supplied to the general public upon request and to Atlanta City and Fulton County libraries. The project was widely reported in the newspapers with local and regional distribution. Twelve written comments received throughout the public involvement process were included and addressed in the Final EIS.

Comments received expressed concerns about the potential adverse impacts to the historical and cultural resources associated with the Rich's Department Store buildings. Other minor concerns expressed were associated with the building itself including concerns about air quality, hazardous wastes, prevention of pollution from the building, solid waste, and recycling programs associated with the proposed use. Other comments centered on the buildings potential impacts on traffic, parking, and the MARTA rapid transit system. All of these issues were addressed in the FEIS. Mitigation measures to be undertaken by the Government and by the Downtown Development Authority are discussed in the Environmental Consequences and Mitigation.

In exploring potential housing strategies for satisfying the identified long range housing needs of Federal Agencies in Atlanta, GSA's primary objective was to consolidate Federal agencies into Class "A" office space to one location. This would provide modern, state of the art facilities for agencies and eliminate the current duplication of services including security, building management and maintenance, and child care and fitness centers, all of which are currently duplicated in dispersed locations. Class "A" space would provide for efficient space layouts, energy efficient buildings, and better utilization of modern office automation systems. Consolidation would provide for more efficient housing and space configuration, allow for planned expansions within the consolidated space saving moving and relocation costs.

GSA centered its search for options in the downtown Central Business District (CBS) for several reasons. The Federal government currently owns several significant buildings in the CBD including the Richard Russell Building, the Martin Luther King Federal Building, and the U.S. Court of Appeals. A location with proximity to these buildings would complement efficient housing and consolidation. Two of these structures are listed on the National Register of Historic Places and a nearby location for Federal consolidation would enhance their usefulness and thereby protect their economic and historic values. The following five alternatives were considered viable and selected for further analysis and examination to determine their potential environmental impacts.

Alternatives Considered

1. *No-Action.* Under this alternative, agencies slated for relocation would remain in their current locations and additional space requirements would be satisfied by leasing action. This alternative assumes that the Rich's facility would continue to remain vacant since there is no indication that any other tenants have expressed interest in the building. Federal client agencies would continue to be housed in a dispersed pattern in Class B office space that does not meet current GSA standards.

2. *Lease existing office space.* This alternative involves GSA leasing existing Class "A" office space to consolidate Federal agencies in the CBD or Midtown areas of Atlanta to satisfy long-range space needs for Federal agencies.

3. *Acquisition and Renovation of Rich's Facility.* Under this alternative, GSA would acquire the Rich's buildings, and through adaptive reuse, convert the existing structures for use as office space for Federal agencies. This would involve reconstructing both the east and west buildings retaining only the structural steel and foundations as well as any historically/architecturally significant facades or components. The existing parking deck would be demolished and replaced with a new structure which would be incorporated into the west building to form a single structure.

4. *Acquisition of Rich's Property and Construction of a Federal Center.* With this alternative, GSA would purchase the Rich's property, demolish the existing structures and construct a new 1,376,000 occupiable square foot Federal Center and a parking deck for 2,200 vehicles. The historically/architecturally significant facades along two sides of the east building would be integrated into the design of the new building and retained.

5. *Lease Construction on Rich's Department Store Site.* Under this alternative, GSA would enter into an operating agreement to lease 1,376,000 occupiable square feet of office space from the City of Atlanta, Downtown Development Authority, with the buildings to be constructed on the site of the former Rich's Department Shore. The existing buildings would be demolished with the exception of the original store building, and the City of Atlanta would construct new buildings to be leased to GSA for a period of 27 years. This is the GSA preferred alternative.

Environmental Consequences and Mitigation

While the "No Action" alternative would have no impact on the natural, socioeconomic, or human environment, it would result in the continued inefficient housing of Federal agencies and would have long term impacts as agencies outgrow their current space. Continuing to lease current Class "B" space would not allow for proper client utilization of state of the art ADP systems, would not provide for future projected Federal space needs, and would not allow for improved operational efficiency of Federal agencies housed in dispersed locations that require duplication of services. Under the "No Action" alternative, the continued decline of the neighborhood surrounding the Rich's site would continue as future development of the site is unlikely in the foreseeable future.

The "No Action" alternative (#1) will have minimal or no environmental impacts. However, this alternative fails to meet GSA's objective of efficiently providing for the projected housing need of Federal agencies in Atlanta and was therefore excluded from further consideration.

The impacts of all alternatives (#3, #4, #5) at the Rich's site will be similar when considering the following: Geology and soils, hazardous waste; vegetation; wildlife; wetlands; ambient air quality; commercial activity; the commercial office space market; traffic and transportation; parking; public transit; pedestrian and bicycle traffic; land use and zoning; visual quality; community facilities; cultural and historic resources; utilities; public services; housing; crime; and natural hazards. The impacts of these build alternatives at the Rich's site will be considered collectively. Impacts and any mitigation will therefore be the same for each of the aforementioned three alternatives.

The lease of existing office space alternative (#2) will have similar impacts to the construction alternatives at the Rich's site depending on the site selected. Since this lease alternative is not site specific, analysis impacts for the following categories would require specific site(s) to be identified: Commercial activity; traffic and transportation; parking; public transit; pedestrian and bicycle traffic; visual quality; and cultural and historic resources. The impacts and mitigation therefore are potentially different for this lease alternative (#2), depending on the sites selected. The commercial office space market for Class "B" space would not be adversely affected if Federal agencies were relocated to other Class "B" space. However, if Federal agencies were relocated into Class "A" office space, the market for Class "B" space would be impacted adversely and the Class "A" market would be impacted positively with a decrease in the vacancy rate and a shortened absorption time for Class "A" vacant space.

The impacts of the three construction alternatives at the Rich's site are discussed below:

Geology and Soils: Construction of the proposed project should not adversely affect the subsurface conditions or soils. During construction, mitigation may be necessary to control erosion and storm water runoff. Best management practices will be implemented to mitigrate this short term impact.

Hazardous Waste: Mitigative measures recommended in the Phase I Site Investigation report conducted by Law Engineering will be necessary. Beyond these corrective measures, there will be no impact from the proposed project.

Traffic and Transportation: The roadway network in Downtown Atlanta is not expected to change dramatically from its present configuration. The Department of Public Works currently plans improvements to the roadway networks in preparation for the Olympic Games in 1996 including the rebuilding of the Spring Street Viaduct. The total impact of traffic generated by the project would result in increased congestion levels along the southbound approach of Forsyth Street at MLK with the remaining locations operating at LOS C or better. Mitigation of these traffic impacts could be accomplished by adjusting the timing of traffic signals. Mitigation measures to minimize traffic disruptions during construction consist primarily of reducing construction during peak-hour periods.

Parking: The proposed project will provide 2,200 new parking spaces. It is anticipated that future parking demand in the area will continue to be met with private sector lots which are readily available in the area. These factors will mitigate any impacts.

Public Transit: The proposed project would generate about 2,700 transit trips daily. The current MARTA rail and bus system would have existing capacity to meet the anticipated demand. No negative impacts or necessary mitigation is anticipated. The proposed project will have a positive impact on the MARTA rapid transit system and this will mitigate some of the traffic impacts by attracting more commuters to public transportation.

Air Quality: Mitigation techniques to limit particulate emissions during demolition and construction activities will be undertaken in accordance with all state and federal statutes. It is recommended that signalization of turning movements be implemented at intersections experiencing high traffic volumes to lessen vehicle emission impacts due to idling vehicles. It is not anticipated that the proposed project will cause or contribute to the exceeding of National Ambient Air Quality Standards (NAAQS) for carbon monoxide for the year 1997.

Atlanta Office Space Market: The proposed action would have no significant impact on the Atlanta office market as a whole, although the class "A and B submarkets" could be affected differently depending on general economic conditions.

Federal personnel currently occupying 1,022,010 square feet of leased class "B" space will be vacated to 1,376,102 square feet of newly-constructed class "A" space also to be leased by the Federal government. The moves will occur over a period of four years: 1996 to 2000. Under a "strong economic growth" scenario for the Atlanta area, occupancy of a new, prestigious downtown building is expected to have a positive but not quantified impact on the class "A" market by keeping a significant number of jobs downtown, perhaps encouraging other development. In a "stagnant economy" scenario, the proposed action is expected to have a minor positive impact by statistically reducing the class "A" vacancy rate by .33 percent as fewer class "A" facilities will be constructed in a down economy.

In a stagnant economy scenario, the proposed action is expected to have an adverse impact on the class "B" market as backfill tenants normally generated by increasing commercial activity are less likely to materialize. Thus, as economic activity decreases, vacant class "B" space previously leased by Federal agencies is likely to increase from 1996 through 2000 as existing leases expire. Under a strong economic growth scenario, the impact to the class "B" market is expected to be minimal. In a strong economy, the Atlanta class "B" market has tended to be strong and flexible: Absorption of an additional one million square feet of class "B" space over the 1996–2000 period should cause minimal impacts to the class "B" submarket.

Cultural Resources: The Rich's downtown Atlanta department store complex (Rich's) and the Terminus Historic District have been identified and evaluated as eligible for listing in the National Register of Historic Places. GSA has been in consultation with the Advisory Council on Historic Preservation, Georgia State Historic Preservation Officer, City of Atlanta, local preservation organizations, and persons concerned with African-American and social humanitarian history. A key goal of the design planning process is preservation of significant architectural elements of the Rich's building. Construction of the proposed project requires substantial demolition of the Rich's building and will therefore be an adverse effect. The Memorandum of Agreement (MOA) and case report currently being prepared will document alternatives considered to minimize harm to historic properties. Mitigation measures will include the documentation of Rich's, a design review process, site interpretation, and the preservation of the 1924 Rich's store building. Ratification of the MOA is anticipated to occur in late summer 1993. By following the terms of the MOA, GSA will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act and the Council's regulations.

Vegetation, Wildlife, Wetlands: No impact.

Pedestrian and Bicycle Traffic: No impact.

Land use and Zoning: No impact.
Community Facilities, Utilities, Police Services, Fire Protection, Health and Emergency Services: No impact.
Natural Hazards: No impact.

Rationale for Decision

In terms of programmatic feasibility, there are no meaningful environmental distinctions to be drawn among the three construction alternatives at the Rich's site and the leasing alternative choosing another location. Having considered all reasonably foreseeable major impacts to the environment, and determined practicable means to avoid or minimize environmental harm, while meeting the GSA objective of consolidating Federal agencies into a downtown location into Class "A" office space that will meet GSA and PBS standards, GSA has decided to lease a 1.4 million occupiable square foot building and a parking deck for 2200 vehicles from the City of Atlanta at the site of the former Rich's Department store for a period of 27 years.

Dated: August 2, 1993.

Paul L. Allison,

Acting Regional Administrator.

[FR Doc. 93-19315 Filed 8-11-93; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulation—HHSAR Part 332 Contract Financing—0990-0134—Extension—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractors. Respondents: State or local governments, small businesses or organizations. Burden Information for the Cost Sharing Clause—Number of Respondents: 24; Annual Number of Responses: 10; Average Annual Burden per Respondent: 1 hours; Estimated Burden: 240 hours—Burden Information for the Letter of Credit Clause—Number of Respondents: 268; Annual Number of Responses: 4; Average Annual Burden per Respondent: 1 hours; Estimated Burden: 1,172 hours—Total Burden: 1,412 hours.

2. HHS Acquisition Regulation—HHSAR Part 333 Disputes and Appeals—0990-0133—Extension—The Litigation and Claims Clause is needed to inform Government personnel of actions filed against Government contracts. Respondents: State or local governments, businesses or other for-profit institution, non-profit institutions, small businesses or organizations; Number of Respondents: 100; Annual Number of Responses: 1; Average Annual Burden per Respondent: .5 hours; Estimated Burden: 50 hours.

3. HHS Acquisition Regulation—HHSAR Part 324 Protection of Privacy and Freedom of Information—0990-0136—Extension—The Confidentiality of Information requirements are needed to prevent improper disclosure of confidential data. Respondents: State or local governments, businesses or other for-profit institution, non-profit institutions, small businesses or organizations; Number of Respondents: 449; Annual Number of Responses: 1; Average Annual Burden per Respondent: 8 hours; Estimated Burden: 3592 hours.

4. HHS Acquisition Regulation—HHSAR Part 316 Types of Contracts—0990-0138—Extension—The Negotiated Overhead Rate—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). Respondents: non-profit institutions; Number of Respondents: 376; Annual Number of Responses: 1; Average Annual Burden per Respondent: 10 hours; Estimated Burden: 3,760 hours.

5. HHS Acquisition Regulation—HHSAR Part 342 Contract Administration—0990-0131—Extension—The requirement for Notification of Cost Overrun is necessary better administer HHS contracts. Respondents: State or local governments, businesses or other for-profit institution, non-profit institutions, small businesses or organizations; Number of Respondents: 14; Annual Number of Responses: 1; Average Annual Burden per Respondent: 20 hours; Estimated Burden: 900 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 30, 1993.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93-19340 Filed 8-11-93; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84N-0154]

Revised Draft of "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing the availability of a revised draft of a points to consider (PTC) document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993)." The revised draft PTC document is concerned with the characterization of cell lines used to produce biological products which are subject to licensure under the U.S. Public Health Service Act and also with the identification of possible adventitious infectious agents from the cell lines which may contaminate the final product.

ADDRESSES: Submit written requests for single copies of the revised draft PTC document to the Congressional and Consumer Affairs Branch (HFM-12), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the revised draft PTC document to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The revised draft PTC document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics

Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a revised draft PTC document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993)". This document supersedes the "Points to Consider (PTC) in the Characterization of Cell Lines Used to Produce Biologicals (1987)" announced in the **Federal Register** of April 4, 1988 (53 FR 10948). The revised draft PTC reflects a number of recommendations emanating from several international workshops held since the issuance of the previous PTC. A number of tests previously recommended have been revised or eliminated.

The revised draft PTC provides information regarding the characterization of cell lines used to produce biological products which are subject to licensure under the U.S. Public Health Service Act and also with the identification of possible adventitious infectious agents from the cell lines which might contaminate the final product. FDA's regulation governing biological products contain requirements regarding final product uniformity, consistency from lot-to-lot and freedom from adventitious infectious agents. Topics addressed in the revised draft PTC document include: (1) History and general characteristics of the cell line; (2) the cell bank system; (3) production cultures and product testing; (4) quality control testing; and (5) validation of viral elimination.

Advances in biotechnology are occurring rapidly. Each new product should be evaluated in light of its own particular characteristics and the cell line and manufacturing process being used. Therefore, information in the revised draft PTC is subject to change as new and significant findings become available. Accordingly, discussion in the revised draft PTC should be interpreted as raising scientific issues that manufacturers who produce biological products from cell lines should consider, both during product development under investigational new drug applications (IND's) and before submitting product license applications (PLA's).

As with other PTC documents, FDA does not intend this draft PTC document to be all-inclusive. Alternative approaches may well be suitable in specific situations, and certain aspects may not be applicable to all situations. Furthermore, the scientific basis for determining the appropriateness of the points specified for consideration here is developing rapidly and more appropriate approaches may be developed in the future. Therefore, the Center for Biologics Evaluation and Research will review the adequacy of testing of any cell line on a case-by-case basis. This PTC document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any private person, but is intended merely for guidance.

Interested persons may submit written comments on the revised draft PTC document to the Dockets Management Branch (address above). Such comments received will be considered in determining whether further revision of the revised draft PTC document is warranted.

Dated: August 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19299 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0166]

M. & G. Ricerche S.p.A.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that M. & G. Ricerche S.p.A., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pyromellitic dianhydride as a modifier in the manufacture of polyethylene terephthalate copolymers intended for food-contact applications.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW.,Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4375) has been filed by M. & G. Ricerche S.p.A., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The petition proposes that the food additive regulation, § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630), be amended to provide for the safe use of pyromellitic dianhydride as a modifier, at a level not to exceed 0.5 weight percent, in the manufacture of polyethylene terephthalate copolymers intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19303 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93C–0248]

BASF Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp., has filed a petition proposing that the color additive

regulations be amended to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721), (21 U.S.C. 379e), notice is given that a color additive petition (CAP 3C0240) has been filed by BASF Corp., 100 Cherry Hill Rd., Parsippany, NJ 07054. The petition proposes to amend the color additive regulations to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19368 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0247]

Exxon Chemical Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204,202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4379) has been filed by Exxon Chemical Co., P.O. Box 1607, Baton Rouge, LA 70821–1607. The petition proposes that the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19367 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

International Workshop on Harmonisation of Reporting of Adverse Events Following Vaccination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) is announcing an international workshop entitled "International Workshop on Harmonisation of Reporting of Adverse Events Following Vaccination." The objective of this workshop is to encourage international harmonization of surveillance programs by communicating experiences, exchanging information, developing standards for reporting, information management, and monitoring. This workshop will help CBER in preparing guidance consistent with international programs.

DATES: The workshop will be held on Monday, September 27, 1993, and Tuesday, September 28, 1993, from 8 a.m. to 6 p.m., and Wednesday, September 29, 1993, from 8 a.m. to 12 m.

ADDRESSES: The workshop will be held at the Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT:

To receive a brochure containing information on the agenda, registration, hotel, and travel: Pamela S. Milan, KRA Corp., 1010 Wayne Ave., suite 950, Silver Spring, MD 20910, 301–495–1591; facsimile 301–495–2919.

Regarding this notice: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: The workshop entitled "International Workshop on Harmonisation of Reporting of Adverse Events Following Vaccination" is cosponsored by CBER; the National Vaccine Program Office; the National Institute of Allergy and Infectious Diseases; the Centers for Disease Control and Prevention; the Health Resources and Services Administration; and the World Health Organization. The purpose of the workshop is to encourage international harmonization of surveillance of adverse experience reporting programs for vaccines through an exchange of information. The objectives of the workshop are to foster the development of definitions and basic requirements for the use of adverse event terminology and to encourage the standardization of data specific fields for use in reporting and evaluating adverse event case reports. Various national vaccine reporting and surveillance systems will be presented at the workshop to promote the harmonization of international surveillance programs.

Speakers from representative national regulatory agencies, national disease prevention agencies, pharmaceutical manufacturers, and academia will address the following topics:

(1) The systems used by various national regulators, other public health agencies, and manufacturers to process and monitor vaccine adverse event reports;

(2) The development of definitions and basic requirements for the use of surveillance data bases and their use in evaluating case reports; and

(3) Discussions of how internationally standardized data specific fields can promote the worldwide dissemination of information via computerized data bases.

Dated: August 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19370 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0269]

Lonza, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lonza, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of didecyldimethylammonium chloride as a preservative on wooden articles intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4387) has been filed on behalf of Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Suite 1000, Bethesda, MD 20814. The petition proposes that the food additive regulations in § 178.3800 *Preservatives for wood* (21 CFR 178.3800) be amended to provide for the safe use of didecyldimethylammonium chloride as a preservative on wooden articles intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19369 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0244]

National Starch and Chemical Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that National Starch and Chemical Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of starch, modified by treatment with diethylaminoethylchloride, hydrochloride salt and 2-chloro-*N*-(2, 2-dimethoxyethyl)-*N*-methylacetamide, as an internal sizing for paper and paperboard intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4385) has been filed by National Starch and Chemical Co., Finderne Ave., Bridgewater, NJ 08807. The petition proposes to amend the food additive regulations in § 178.3520

Industrial starch-modified (21 CFR 178.3520) to provide for the safe use of starch, modified by treatment with diethylaminoethylchloride, hydrochloride salt (CAS Reg. No. 869–24–9) and 2-chloro-*N*-(2,2-dimethoxyethyl)-*N*-methylacetamide (CAS Reg. No. 69184–36–7), as an internal sizing for paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19371 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 94–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 20 and 21, 1993, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland.

This meeting will be open to the public on September 20, 1993, from 8:30 a.m. to 11:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 94–463, the meeting will be closed to the public on September 20 at 11:30 a.m. to recess and on September 21, 1993, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 605, Bethesda, Maryland 20892 (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19359 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 13–14, 1993, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 13 from 9 a.m. to approximately 5 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 14, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, room B1C02, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Herrell in advance of the meeting.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19360 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–10–M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, September 29–30, 1993, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Wednesday, September 29, from 8 a.m. to 12 noon for a status report by the Director, NIA, a report on the Biology of Aging Program, and a report on the Working Group on Program.

The meeting will be open again on Thursday, September 30 from 8:30 a.m. until adjournment for a report on the Epidemiology, Demography and Biometry Program; and for brief reports and discussions of ongoing projects, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on September 29 from 1 p.m. to recess for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19358 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of the Meeting of National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 9 and 10, 1993, in Building 31C, Conference room 8, National Institutes of Health, Bethesda, MD.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3 p.m. on Thursday, September 9, 1993. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public from approximately 3 p.m. on Thursday, September 9 until adjournment on Friday, September 10 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, suite 350, 6120 Executive Boulevard, Rockville, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19361 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 2–3, 1993, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 2 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., sec. 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on September 2 and from 8:30 a.m. to adjournment on September 3 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31 Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7454, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19362 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Meeting: National Advisory Council for Nursing Research and its Subcommittes

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Institute of Nursing Research; and its Subcommittees, August 30–September 1, 1993, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on August 31, from 8:30 a.m. to 4 p.m. and on September 1, from

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approximately 11 a.m. to adjournment. Agenda items will include: the NINR Director's Report, Division of Intramural Research Programs, AHCPR Outcomes and General Health Services Research Programs, Support of Research for Pre and Post Docs, NACNR Subcommittee Issues, Policy Issues Relevant to Grant Review, Policy Issues Pertaining to Grant Review, and Revision of *Indicators of Quality in Doctoral Programs in Nursing.*

The Planning Subcommittee will meet in open session August 30, in Building 31C, Conference Room 6, from 10 a.m. to 12 p.m. to discuss long-term and strategic planning and policy issues.

The Biennial Report Subcommittee will meet in open session August 30, in Building 31, NINR Conference Room (5B–03), from 1 p.m. to 3 p.m. to discuss the activities and program policies of the Institute.

The Nursing Resources and Health Policy Subcommittee will meet in open session August 30, in Building 31, NINR Conference Room, (5B–03), from 3 p.m. to 5 p.m. to discuss nursing resources and health policy as they relate to nursing science and the achievement of quality and effective outcomes in patient care.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee will be closed to the public on August 30, from 1 p.m. to 3 p.m., and the meeting of the full Council will be closed on September 1, from 9 a.m. to approximately 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to intend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Teresa Radebaugh 301–594–7590 in advance of the meeting.

Dr. Teresa Radebaugh, Director, Division of Extramural Programs, National Institute of Nursing Research, National Institutes of Health, Building 31, Room 5B25, Bethesda, Maryland 20892, (301) 594–7590, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19363 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the DHHS Advisory Panel on Alzheimer's Disease

Pursuant to Public Law 92–463, notice is hereby given of the DHHS Advisory Panel on Alzheimer's Disease meeting, National Institute on Aging, to be held at the National Institutes of Health, Building 31, Conference Room 2C15, Bethesda, Maryland, from 9 a.m. to 5 p.m. on September 28 and again on September 29 from 9 a.m. to 1 p.m.

The meeting will be open to the public for discussion of draft material for the Panel's fifth annual report and other business before the Panel. Attendance by the public will be limited to space available.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19354 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the National Cancer Advisory Board, Subcommittee on Activities and Agenda

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, Subcommittee on Activities and Agenda (Working Group), September 1, 1993 in the Cardinal Room at the Skybird Meeting Center, O'Hare Airport, Chicago, Illinois.

The entire meeting will be open to the public from 10 a.m. to 2 p.m. Attendance by the public will be limited to space available. Discussions will address the Board's format, agenda items and activities of the National Cancer Advisory Board.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and a roster of the Subcommittee members upon request.

Dr. Paulette S. Gray, Executive Secretary, Subcommittee on Activities and Agenda (Working Group), National Cancer Advisory Board, National Cancer Institute, Executive Plaza North, room 622, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7173) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Paulette Gray on (301/496–7173) in advance of the meeting.

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19357 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 26–27, 1993. On Sunday, the Research and Health Care Issues subcommittees will meet from 7 p.m.–9 p.m. On Monday, September 27, the full Board will meet at approximately 8:30 a.m. and adjourn at 11 a.m. and reconvene at approximately 1 p.m. to discuss its future activities and the 1994 Annual Report, adjourning by 5 p.m. The Board will meet at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will be open to the public, but limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801

Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, at least two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19355 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on September 20–21, 1993. The Board will meet on Monday, September 20 and Tuesday, September 21, from 8:30 a.m. to approximately 5 p.m. Discussions on Monday will be devoted to diabetes and the lower extremities. On Tuesday, the Board will discuss diabetes translation and the 1994 Annual Report. The meeting will be held at the Washington Dulles Airport Marriott, 333 West Service Road, Chantilly, Virginia, 22021. Although the entire meeting will be open to the public, attendance will be limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19356 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–4340–01]

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes, Coordinating Committee Meeting.

DATES: Thursday, September 16, 1993, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include presentation by the Planning Group of a draft investigation/remediation plan for the Playa Lakes area of southeast New Mexico. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Planning Group recommendations will be presented at 9:30 a.m. to the Southeast New Mexico Playa Lakes Coordinating Committee. Final decisions on recommendations of the Planning Group are expected to be made by the Committee. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: August 5, 1993.

Timothy R. Kreager,

Acting District Manager.

[FR Doc. 93–19444 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–FB–M

[CA–028–93–4333–05]

Notice of Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Emergency Road Closure.

SUMMARY: Notice is hereby given that effective immediately the High Rock Canyon vehicle road is temporarily closed to all vehicle use and access at a point 4.5 miles from the south gate into the High Rock Canyon Area of Critical Environmental Concern (ACEC), and 9 miles from the north gate into the ACEC. These locations are found in sections 27 and 17 respectively of T.40N.,R23E., Washoe County, Nevada. The purpose of this closure is to protect public safety and prevent significant resource damage to the riparian area and creek bed. The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until the adverse effects are eliminated by completion of a new vehicle crossing.

For further information, contact: Tony Danna, Area Manager, at (916) 279–6101.

John Bosworth,

Assistant District Manager.

[FR Doc. 93–19445 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–40–M

[OR 44130; OR–020–03–3110–10–H003: G3–338]

Realty Action: Land Exchange; Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by land exchange under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716:

T. 26 S., R. 33 E.
- Sec. 11, W½SW¼;
- Sec. 14, SW¼NE¼, N½NW¼, NW¼SE¼, S½SE¼;
- Sec. 15, S½S½;
- Sec. 16, S½S½;
- Sec. 17, Lots 1, 2, 5, 6, SE¼SE¼;
- Sec. 20, Lots 1 through 5, SW¼NE¼;
- Sec. 21, Lots 4, 5, NE¼, N½NW¼, SE¼NW¼;
- Sec. 22, Lots 1 through 13, SE¼NE¼, N½NW¼, SW¼NW¼, SE¼SW¼;
- Sec. 23, E½NE¼;
- Sec. 24, SW¼NW¼, W½SW¼;
- Sec. 25, W½, W½NE¼NE¼SE¼, W½NE¼SE¼, SE¼NE¼SE¼, W½SE¼, N½SE¼SE¼, SW¼SE¼SE¼, W½SE¼SE¼SE¼;
- Sec. 26, E½, E½NW¼;
- Sec. 27, NW¼;
- Sec. 28, N½;
- Sec. 29, NE¼NE¼.

The area described above aggregates approximately 3,310 acres.

In exchange for these lands, the Federal Government will acquire the following described private land from Nevin Thompson and Shirley Thompson:

T. 32 S., R. 32¾ E.
- Sec. 15, NW¼SW¼, S½SW¼, SW¼SE¼;
- Sec. 21, N½NE¼;
- Sec. 22, N½, E½SE¼.

The area described above aggregates approximately 640 acres.

The purpose of this exchange is to acquire important riparian and big game habitat and to consolidate public land in

a heavily used recreation area on Steens Mountain.

The value of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to Nevin and Shirley Thompson of funds not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of an exclusive road right-of-way, as described in BLM Case OR–49780.

3. Valid, existing rights including, but not limited to, any right-of-way, easement or lease of record and to any existing easements for public roads and highways, not shown of record.

4. A reservation to the United States for all oil and gas resources.

5. A restriction which constitutes a covenant running with the land, that the portion of the land lying within the 100-year floodplain may be used only for agricultural purposes or for park and nonintensive open space recreation purposes, but not for dwellings or buildings.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Burns District Manager.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action may become the final determination of the Department of the Interior.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Detailed information including an environmental assessment prepared for this action is available from Glenn T. Patterson, Area Manager or Barbara Kehrberg, Realty Specialist, Andrews Resource Area, Bureau of Land Management, HC 74–12533 Highway 20 West, Hines, Oregon 97738, (503), 573–5241.

Dated: August 5, 1993.

Jerome A. Petzold,

Assistant District Manager for Operations.

[FR Doc. 93–19394 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–33–M

[MT–060–4320–01–241A]

Notice of Meeting for the Lewistown District Grazing Advisory Board

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of meeting for the Lewistown District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Lewistown District Grazing Advisory Board will meet September 9, 1993. The meeting will begin at 10:00 a.m. at the First State Bank, 1 South and 1 East, Malta, Montana. The agenda includes a discussion on fiscal year 1994 range improvements and allotment management plans, implementation of the Section 8 process, the Milk River Memorandum of Understanding, black-footed ferret reintroduction, and grazing administration issues.

DATES: September 9, 1993.

ADDRESSES: First State Bank, 1 South and 1 East, Malta, Montana.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District, Bureau of Land Management, P.O. Box 1160, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The public may make oral statements before the board or file written statements for their consideration.

The board is organized and operates under the Federal Advisory Committee Act 43 CFR 1784.

Dated: August 5, 1993.

Owen Billingsley,

Acting District Manager.

[FR Doc. 93–19440 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–DN–M

[CA–016–02–7122–02–5746; CA 31588]

Realty Action; Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian

T .11 N., R. 24 W.,
Sec. 8 SE¼NE¼, E½SE¼;
Sec. 9 S½NW¼, SW¼, W½SE¼.
Containing 440 acres in Kern County, CA.

The surface estate and all mineral rights, except for the oil and gas rights, on the above public land will be exchanged. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from The Nature Conservancy in the Carrizo Plain Natural Area. The legal descriptions of the Carrizo Plain lands were published in **Federal Register** on March 26, 1993, Vol. 58, No. 57, pp. 16413 and 16414.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire some of the private inholdings within the BLM lands in the Carrizo Plain Natural Area (in Kern and S.L.O. Counties), mainly for endangered species protection. The public interest will be well served by completing the exchange. Publication of this notice in the **Federal Register** segregates the above public lands from settlement, location, and entry under the public land laws, right-of-way laws, permit laws, and mining laws, but not exchange under sec. 206 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent of two years from the date of publication in the **Federal Register**, whichever occurs first. The exchange will be on an equal value basis, not an acre-for-acre basis. An independent appraisal will establish the fair market value of the public and private lands. On the above public land, the Bureau will reserve to the United States the oil and gas rights with the right of surface entry, and a right-of-way reservation for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Also, in the conveyance document, the above public land will be subject to the following:

CA 32005; powerline right-of-way.
CA 31666; phone line right-of-way
CA 30435 & CA 31829; oil & gas leases

Interested parties may submit comments to the BLM Area Manager at the following address until September 27, 1993. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

Dated: July 14, 1993.

James Wesley Abbott,

Area Manager.

[FR Doc. 93–17393 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–05; N–57242]

Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Classification modification.

SUMMARY: The following described public land in Laughlin, Clark County, Nevada, by notice published in the **Federal Register** (FR Doc. 92–6316) (March 19, 1992) was classified for disposal pursuant to section 203 and section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719). It is now intended to modify the classification to allow for lease/purchase of the lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.). The American Legion Post #60 intends to construct a post facility with meeting rooms and recreational facilities to include ball fields.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,
Sec. 15: SW¼SW¼SW¼.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 30.00 feet in width along the north boundary, 30.00 feet in width along the east boundary, 50.00 feet in width along the south boundary, 50.00 feet in width along the west boundary, and includes a 25.00 foot spandrel on the northwest corner, a 54.00 foot spandrel on the southwest corner, a 25.00 foot spandrel on the southeast corner, and a 15.00 foot spandrel on the northeast corner, in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for a water line and related appurtenances purposes which have been granted to Big Bend Water District by Permit No. N–53356 under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Publication of this notice in the **Federal Register,** will modify sale classification N–55292 to allow for lease/purchase under the Recreation and Public Purposes Act.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the modification of the classification will become effective 60 days from the date of publication in the **Federal Register.** The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: August 2, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–19293 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–HC–M

[WY–060–4210–05; WYW106593]

Amended Realty Action; Direct Sale of Public Lands, and Modified Competitive Sale of Public Lands; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended Notice of Realty Action, Direct Sale of Public Lands, and Modified Competitive Sale of Public Lands in Campbell County.

SUMMARY: The Notice of Realty Action, WYW106593, was published in the **Federal Register** on July 14, 1993, *58 FR 37962*. This Notice is amended by rescheduling the sale date of August 25, 1993 to September 22, 1993. This will also extend the reoffered sale date of September 22, 1993 to October 27, 1993, for any parcels that failed to sell in the initial sale. All other sale procedures in the original Notice remain in effect.

FOR FURTHER INFORMATION CONTACT: Dave Pomerinke, Area Manager, Buffalo Resource Area, BLM, 189 Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: The sale date has been extended in order to allow sufficient time for all interested parties to submit comments on the sale action.

Dated: August 2, 1993.

Mike Karbs,

District Manager.

[FR Doc. 93–19296 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–22–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., August 4, 1993.

The plat, in 2 sheets, representing the dependent resurvey of portions of the east and north boundaries, subdivisional lines, certain Homestead Entry Surveys, and meanders of the Snake River, and the subdivision of certain sections, Township 1 North, Range 43 East, Boise Meridian, Idaho. Group No. 776, was accepted July 28, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

August 4, 1993.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–19439 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., August 3, 1993.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and 1910 meanders of the left bank of the Salmon River, and the subdivision of sections 7, 8, and 9, and a metes-and-bounds survey in section 8, Township 18 North, Range 21 East, Boise Meridian, Idaho. Group No. 805, was accepted July 26, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: August 3, 1993.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-19320 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-GG-M

[OR-942-00-4730-02; GP3-326]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 12 S., R. 1 E., accepted July 12, 1993
T. 13 S., R. 2 E., accepted July 12, 1993
T. 10 S., R. 4 E., accepted July 6, 1993
T. 23 S., R. 26 E., accepted July 12, 1993
T. 6 N., R. 38 E., accepted June 25, 1993
T. 4 N., R. 42 E., accepted June 4, 1993
T. 5 N., R. 42 E., accepted June 4, 1993
T. 10 S., R. 1 W., accepted July 12, 1993
T. 34 S., R. 3 W., accepted July 6, 1993
T. 37 S., R. 4 W., accepted June 1, 1993
T. 21 S., R. 6 W., accepted June 1, 1993
T. 18 S., R. 8 W., accepted July 15, 1993
T. 7 S., R. 9 W., accepted July 15, 1993

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 2, 1993.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-19317 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-697819

Applicant: U.S. Fish and Wildlife Service—Region 4, Atlanta, GA.

Applicant requests amendment to their current permit to include take of various fish, mussels, invertebrates, and plants for purposes of scientific research and enhancement of propagation and survival for the species as prescribed in Service recovery documents.

PRT-781576

Applicant: Henry Doorly Zoo, Omaha, NE.

Applicant requests a permit to import tissue samples of the Asian elephant (*Elephas maximus*) from Malaysia for purposes of scientific research. Applicant proposes to collect tissues to examine the genetic effects of habitat alteration on the large mammal populations of Peninsular Malaysia.

PRT-781377

Applicant: San Marino Environmental Associates, San Marino, CA.

Applicant requests a permit to take Unarmored Three spine Stickleback fish (*Gasterosteus aculeatus williamsoni*) in Santa Clara River & Ventura Counties, CA to survey for the presence or absence of the species, and to monitor its populations using nets to temporarily exclude or rescue individuals from areas of human disturbance.

PRT-781573

Applicant: Steve Martin, Lakeville, MN.

Applicant requests a permit to purchase in interstate commerce a pair of Andean condors (*Vulture gryphus*) from the Buffalo Zoo, NY., for conservation education programs.

PRT-776123

Applicant: Institute for Marine Life Science, Galveston, TX.

Applicant requests a permit to take (capture, tag, release, track, recapture) and collect blood, stomach, and fecal samples of the Kemp's Ridley (*Lepidochelys kempi*), Hawksbill (*Eretmochelys imbricata*), Green (*Chelonia mydas*), and Loggerhead turtles (*Caretta caretta*) from the Gulf of Mexico & throughout the West Central Atlantic area using entanglement nets of different mesh sizes and depths for scientific research.

PRT-780661

Applicant: World Bird Sanctuary, St. Louis, MO.

The applicant requests a permit to import one blue-throated guan (*Aburria* (=*Pipile*) *pipile pipile*) from the Grenada Society of the Prevention of Cruelty to Animals, Grenada, for rescue, rehabilitation and breeding purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: August 6, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-19336 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Cooperative Research and Development Agreement; Snow Gulch and Galena Creek Quadrangles, NV

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey is interested in pursuing a Cooperative Research and Development Agreement (CRADA) directed at research on geologic

mapping of the Snow Gulch and Galena Creek 7½-minute quadrangles, Nevada. The purpose of the mapping is to study in detail features associated with the Elder Creek Copper Porphyry System. As a classic example of the type deposit, the system is little studied scientifically, and detailed study will lead to a better scientific understanding to improve predictive models for this type of deposit.

DATES: This notice is effective immediately.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U S. Geological Survey, Branch of Western Mineral Resources, 345 Middlefield Road, MS 942, Menlo Park, California 94025–3591.

FOR FURTHER INFORMATION CONTACT: Dr. Ted Theodore of the U.S. Geological Survey, Branch of Western Mineral Resources, at the address given above, telephone (415) 329–5365, no later than 30 days from the publication of this notice.

SUPPLEMENTARY INFORMATION: The U.S. Geological Survey is interested in one party, or preferably a group of parties, from the mineral exploration industry to participate in this cooperative research program. The party, or parties, should be able to provide logistic, scientific, and/or financial support for the detailed study to be undertaken. Selection of a party, or group of parties, for this CRADA will be based on the capabilities available from the industry party, or parties; the degree of scientific cooperation to be provided; and total resources to be made available that will contribute directly to advancing the copper deposit modeling program of the U.S. Geological Survey.

B.A. Morgan,

Chief Geologist.

[FR Doc. 93–19319 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Gulf Islands National Seashore

AGENCY: National Park Service.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 1:30 p.m. to 4 p.m., at the following location and date.

DATES: September 17, 1993.

LOCATION: Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561.

FOR FURTHER INFORMATION CONTACT: Jerry A. Eubanks, Superintendent.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 91–660, January 8, 1971. The purpose of the Gulf Islands National Seashore Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore, and on matters relating to zoning within the Seashore.

The matters to be discussed at this meeting will include:

(1) Superintendent's Annual Report.
(2) Status of Natural Resource Management Projects.
(3) Status of Cultural Resource Management Projects.
(4) Other business.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, an it is expected that not more than 20 persons will be able to attend the meeting in addition to the commission members. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent. Minutes of the meeting will be available at the Park headquarters for public inspection approximately 4 weeks after the meeting.

Dated: July 30, 1993.

James W. Coleman,

Regional Director, Southeast Region.

[FR Doc. 93–19398 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32265]

Conrail Inc.—Control—Consolidated Rail Corp.; Notice of Exemption

Conrail Inc. and Consolidated Rail Corporation (CR) have filed a notice of exemption under 49 CFR 1180.2(d)(3) [1] from the prior approval requirements of 49 U.S.C. 11343 for the formation of Conrail Inc. as a noncarrier holding company to control CR and its corporate family.[2] In this corporate family transaction, all outstanding and treasury shares of common and preferred stock of CR will be converted into an equal number of shares of common stock and preferred stock of Conrail Inc., the noncarrier holding company. As a result of this transaction, the shareholders of CR on the consummation date of the transaction will become shareholders of Conrail Inc., and CR will become a wholly-owned subsidiary of Conrail Inc. After the consummation date, both CR and Conrail Inc. will have the same directors, and the officers of Conrail Inc. will be senior officers of CR. The parties anticipated that this transaction would be consummated on July 1, 1993.

The proposed transaction is a corporate family restructuring. This transaction is within a corporate family and is exempt from prior Commission review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The purpose of the transaction is to create a holding company structure for CR like that utilized by the other major publicly-held Class I railroads, with accompanying benefits stemming from such a structure.

As a condition to the use of this exemption, any employee adversely affected by the transaction will be protected by the conditions set forth in the *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on:

[1] These parties also filed a "Petition to Dismiss for lack of Jurisdiction," requesting a Commission determination that the Commission does not have jurisdiction over the involved transaction and that there will be no acquisition of control within the meaning of 49 U.S.C. 11343. In a decision served July 9, 1993, the Commission required these parties to submit additional evidence on whether CR and its subsidiaries and affiliates constitute a single system before acting on the petition. By letter filed July 19, 1993, Conrail Inc. and CR requested to withdraw that petition. Their request to withdraw the petition is granted.

[2] For the purpose of this proceeding, CR states that its corporate family includes CRR Industries Inc., CRC Properties, Inc., Indiana Harbor Belt Railroad Company, Calumet Western Railway Company, Merchants Despatch Transportation Corporation, The Monongahela Railway Company, St. Lawrence & Adirondack Railway Company, Belt Railway Company of Chicago, Penn Central Communications Company, Akron & Barberton Belt Railroad Company, Albany Port Railroad Corporation, Lakefront Dock & Railroad Terminal Company, Nicholas, Fayette & Greenbrier Railroad Company, Peoria & Pekin Union Railway Company, Pittsburgh Chartiers & Youghiogheny Railway Company, Railroad Association Insurance, Ltd., Transportation Data Xchange, Inc., TTX Company, and each of these companies' subsidiaries and affiliates.

Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Washington, DC 20036, and Timothy T. O'Toole, Esq., Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

Decided: August 4, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–19392 Filed 8–11–93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32328]

Jackson, Gordonville and Delta Railroad Company—Acquisition and Operation Exemption—Line in Cape Girardeau County, MO; Notice of Exemption

Jackson, Gordonville and Delta Railroad Company (JGD), a noncarrier, has filed a notice of exemption to acquire from the Jackson Industrial Development Company and to operate 18.4 miles of rail line running from milepost 149.5 near Delta, MO, to its termination near milepost 163.5 in Jackson, MO, in Cape Girardeau County, MO. The line will be operated by JGD under the name Jackson and Southern Railroad. The exemption became effective July 19, 1993.

Any comments must be filed with the Commission and served on George E. Peo, 1714 Huntington, Cape Girardeau, MO. 63701.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19393 Filed 8–11–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Amelia Associates and Joey's Excavating, Inc.*, Civil Action No. 91–4177 (JFG) (D.N.J.) was lodged on July 29, 1993, with the United States District Court for the District of New Jersey. The Decree provides for defendant Amelia Associates to pay a civil penalty of $125,000 (interest included in this figure) pursuant to the provisions of section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b). Also, the Decree provides for defendant Joey's Excavating, Inc. to agree to list a civil penalty of $2,500 as an unsecured, but undisputed, debt in its ongoing chapter 11 bankruptcy proceedings. The civil penalties are for violations occurring in July and August 1990 of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to Sections 112 and 114 of the Clean Air Act, 42 U.S.C. §§ 7412 and 7414. The Decree also requires future compliance with the asbestos NESHAP regulations and, as to defendant Amelia, provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Amelia Associates and Joey's Excavating, Inc.*, DOJ Ref. # 90–5–2–1–1596.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 970 Broad Street, room 502, Newark, New Jersey, at the Environmental Protection Agency, Region II, 26 Federal Plaza, room 400, New York, New York, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 93–19436 Filed 8–11–93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Resource Conservation and Recovery Act

Consistent with 42 U.S.C. 9622(d), notice is hereby given that on July 16, 1993, a proposed consent decree in *United States of America* v. *Ford Motor Company, et al.*, Civil Action No. 91–4281, was lodged with the United States District Court for the District of New Jersey. The United States' complaint sought recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against the Ford Motor Company, Ford International Services and the Borough of Ringwood which are responsible for hazardous substances found at the Ringwood Mines Landfill Superfund Site in the Borough of Ringwood, New Jersey, a National Priorities List facility. The consent decree provides that the defendants will pay $580,300.00 in past response costs to the United States in connection with the Ringwood Mines Landfill Superfund Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ford Motor Company, et al.*, D.J. Ref. 90–11–3–830.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., room 502, Newark, NJ 07102 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–19316 Filed 8–11–93; 8:45 am]

BILLING CODE 4410-01-M

BEST COPY AVAILABLE

Lodging of Stipulation and Settlement Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Monitor Sugar Company*, Civil Action No. 85–CV–10309, was lodged on August 2, 1993 with the United States District Court for the Eastern District of Michigan. The stipulation settles an action brought to enforce a 1987 Consent Decree among the United States, the State of Michigan, and Monitor Sugar Company of Bay City, Michigan. The 1987 Consent Decree settled a joint state and federal enforcement action brought against Monitor under the Clean Air Act to enforce the requirements of Michigan's State Implementation Plan. The stipulation settles the governments' joint claims for stipulated penalties owed by Monitor for violations of the 1987 consent decree relating to operation of pulp dryers and boilers at its Bay City facility. Under the stipulation, Monitor agrees to pay $1,064,000 in stipulated penalties, to be divided evenly between the United States and the State of Michigan.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation and settlement order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Monitor Sugar Company*, DOJ Ref. #90–5–2–1–823B.

The proposed stipulation and settlement order may be examined at the office of the United States Attorney, 1000 Washington Street, 203 Federal Building, Bay City, Michigan 48707; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–19437 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 1993, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 3,4-Methylenedioxy-N-ethylamphetamine (7404).

Radian Corporation plans to bulk manufacture small quantities of this material in order to make exempt deuterated and non-deuterated drug reference standards. These reference standards will be sold to analytical and forensic laboratories for use in drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 13, 1993.

Dated: August 3, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–19306 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

License Renewal Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Atomic Energy Act of 1954 limits the duration of most operating licenses for nuclear power plants to a maximum of 40 years, but also permits the operating licenses to be renewed to allow operation beyond the term of the original operating license. The Commission's regulations in § 50.51 of title 10 of the Code of Federal Regulations (10 CFR) implement this authority by permitting renewal. This rule, however, does not contain specific procedures, criteria, and standards that must be satisfied in order to renew a license. In 1989, the Commission published an advanced notice of proposed rulemaking for license renewal and, in mid-1990, published the proposed rule that established the procedures, criteria, and standards governing nuclear power plant license renewal. The final license renewal rule, 10 CFR part 54, included some changes from the proposed version and was published in December 1991. The rule became effective in January 1992.

Since publishing the final rule, the staff of the U.S. Nuclear Regulatory Commission (NRC) has been conducting various activities related to implementing the license renewal rule. These actions have included developing a regulatory guide and a standard review plan for license renewal, interacting with lead plant licensees, and reviewing generic industry technical reports sponsored by the Nuclear Management and Resources Council.

In late 1992, and partly in response to the identification of several license renewal implementation issues by the nuclear industry, the staff conducted a senior management review and interacted in several public meetings with the Commission, industry groups, and individual licensees to discuss key license renewal issues. The staff discussed its recommendations regarding these key license renewal issues in two recent Commission policy papers (SECY–93–049, "Implementation of 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'" and SECY–93–113, "Additional Implementation Information for 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants'").

In its staff requirements memorandum of June 28, 1993, the Commission indicated that it is essential that there be a predictable and stable regulatory process that defines the Commission's expectations in a clear and unequivocal way, so that licensees can make decisions about license renewal without those decisions being influenced as a result of a regulatory process that is perceived to be uncertain, unstable, or not clearly defined. The Commission directed the staff to convene a public workshop to evaluate alternative approaches for license renewal that best take advantage of existing licensee activities and programs as a basis for concluding that aging will be addressed in an acceptable manner during the extended period of operation. In

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particular, the Commission directed the staff to examine the extent to which greater reliance can be placed on the maintenance rule (10 CFR 50.65) as a basis for concluding that the effects of aging will be effectively managed during the license renewal term.

As directed by the Commission, the staff is holding a public workshop to receive comments on how best to take advantage of existing programs as a basis for concluding that the effects of aging will be managed in an acceptable manner during the extended period of operation. As directed by the Commission, the workshop will not be limited to a discussion of approaches that could only be pursued under the language of the current license renewal rule and may include discussions concerning the potential need for additional rulemaking on 10 CFR part 54. Subsequent to the workshop, the NRC staff will submit a summary of workshop results and recommendations for further licensee renewal activities, possibly including rulemaking, to the Commission for its consideration. Written comments on the issues to be covered in the workshop, as described in the questions and the alternative license renewal approaches presented later in this notice, will be accepted before, during, and after the workshop. Advance comments, which could serve to enhance the effectiveness of the workshop, are particularly solicited. Advance notification of the desire to make statements during the workshop is requested.

DATES: September 15, 1993—Notification of intent to attend the workshop, desire to comment or make a presentation during the workshop, or both, should be received by the NRC. Participants are encouraged to submit written comments, presentation summaries, or both to the staff by this date.

September 30, 1993—The workshop will be held at the Holiday Inn, Bethesda, Maryland, from 8 a.m. to 5 p.m.

October 12, 1993—All written comments on matters covered by the workshop received by this date will be considered by the staff. Written comments received after October 12, 1993, will be considered to the extent practical.

ADDRESSES: The workshop will be held in the Versailles Ballrooms 3 and 4 at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Notification of intent to attend, desire to make a statement or presentation should be sent to Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop OWFN 11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Written comments may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch.

Hand-deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received and relevant reference documents may be examined at the NRC Public Document Room at 2120 L Street N.W., (lower level), Washington, DC, between the hours of 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop OWFN 11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 504–1105.

SUPPLEMENTARY INFORMATION:

Introduction

The workshop has been arranged for the purpose of eliciting information and views on how best to take advantage of existing licensee programs as a basis for concluding that the effects of aging will be managed in an acceptable manner during the extended period of operation. Specifically, the workshop will include discussion on the extent to which greater reliance can be placed on the maintenance rule as a bases for concluding that the effects of aging will be effectively managed during the license renewal term.

The following information includes a discussion of the availability of the reference documents, a tentative workshop agenda, a discussion of how the workshop will be organized and conducted, and a discussion of four potential alternative approaches for incorporating existing licensee programs into the license renewal process.

Availability of Documents

In order to help ensure the workshop's focus, as discussed above, the following documents are specifically identified:

(1) SECY–93–049, "Implementation of 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'" dated March 1, 1993.

(2) SECY–93–113, "Additional Implementation Information for 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'" dated April 30, 1993.

(3) COMSECY–93–029, "Draft Rulemaking Package on License Renewal," dated May 14, 1993.

(4) Memorandum from James M. Taylor, Executive Director for Operations, to the Commission dated May 14, 1993, on license renewal.

(5) Commissioner Curtiss' comments attached to his May 28, 1993, vote sheet on COMSECY–93–029.

Additional information relevant to renewal and the workshop include:

(1) Statement of Considerations for the Final Rule and Final Rule for Nuclear Power Plant License Renewal, **Federal Register**, Volume 56, Number 240, December 13, 1991, pages 64943 through 64979.

(2) Staff Requirements Memorandum from Samuel J. Chilk to James M. Taylor and William C. Parler dated June 28, 1993, on COMSECY–93–029, SECY–93–049, and SECY–93–113.

(3) Memorandum from J. Sniežek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to Dr. T. Murley, Director, Office of Nuclear Reactor Regulation dated July 9, 1993.

Copies of all documents cited in this section are available for inspection and/or for reproduction for a fee in the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC 20037. A limited number of copies of these documents will be available at the workshop.

Tentative Agenda

September 30, 1993

7:30 a.m. Registration
8:30 a.m. Introduction
8:45 a.m. License Renewal Overview
9:30 a.m. Discussion of Alternative Approaches
11:45 a.m. Lunch
1:00 p.m. Participant Presentations and Comments
3:00 p.m. Break
3:15 p.m. Participant Presentations and Comments (continued)
5:00 p.m. Summary and Conclusions
5:30 p.m. Adjourn

Workshop Content and Structure

The workshop is structured to include NRC staff presentations during the morning and to allow interested parties to make presentations during the afternoon. An opportunity for questions and comments following all presentations is planned. During the morning, the staff will include a license renewal rulemaking overview presentation. The overview is intended to give participants a historical perspective of license renewal activities, focusing on the development of the license renewal rule.

The staff will discuss each of the four approaches which are briefly described in this notice, highlighting key license renewal issues, and noting areas where the approaches deviate from previous staff implementation proposals and where potential conflicts with the current wording of the license renewal rule exist. These approaches represent a range of alternatives for taking advantage of existing licensee programs in a license renewal process and are intended to facilitate workshop discussion. Comments will be solicited and should critically assess the potential strengths and weaknesses of each approach. The review of each approach should help the staff and the participants focus their discussions on (1) the extent to which greater reliance can be placed on the maintenance rule and existing licensee programs and (2) the essential elements that must be incorporated into the final license renewal process.

In the afternoon session, participants will be provided time to make presentations and ask questions. Participants who will be making presentations of alternative approaches will be scheduled first and in the order in which they notified the staff of their intention to make a presentation. These discussions should not be limited to options that could only be pursued under the language of the existing license renewal rule. When potential revisions to the current license renewal rule are proposed, the participant should provide specific language for the proposed revision and the rationale for this proposed wording. To foster meaningful discussions during this session and to aid participants in preparing their presentations and comments on proposed alternative license renewal approaches, participants should consider the following set of questions:

- Will the approach be consistent with the principles of license renewal as discussed in the Statement of Considerations for the final license renewal rule? Will the approach preserve a logical distinction between those age-related degradation issues suitable for license renewal review and other safety issues considered to be adequately addressed by the normal regulatory oversite process for operating reactors?
- Will the proposed license renewal approach maintain the current licensing basis (CLB)?
- Is the concept of age-related degradation unique to license renewal, as discussed in the Statement of Considerations for the final license renewal rule, a useful regulatory concept? Should it be eliminated?
- For any proposed approach, what standard (e.g., 10 CFR 54.29) do you propose the NRC apply for issuing a renewed license?
- How does the proposed approach consider existing licensee programs that help assure acceptable performance or condition of systems, structures and components?
- How is the maintenance rule relied on in the proposed approach? Does the scope of the license renewal rule need to be the same as that of the maintenance rule?
- How does the proposed approach reduce uncertainty and promote stability? If areas of uncertainty or instability remain, how should they be addressed?
- Would the proposed approach alter other aspects of the final license renewal rule, such as content or description of an effective program, contents of a license renewal application, or continuing reporting requirements?
- Is the concept of "fundamental safety importance" as discussed in SECY–93–113 appropriate? Will the proposed approach result in the imposition of regulatory requirements for plant structures or components that are not of "fundamental safety importance?"
- Does the proposed approach incorporate consideration of "like-kind" replacement? If so, should the term "like-kind" be interpreted with respect to structures and components which are replaced such that they will not experience a service life a greater than 40 years during the renewal term?
- How does the proposed approach consider refurbishment? What is a definition of refurbishment? How should guidelines be established to ensure that the concept of "refurbishment" is consistently applied in the implementation of the proposed approach to license renewal?

Comments will be taken from parties in the order in which they notified the staff of their intent to comment. The order of comment will be

(1) Parties who notified the staff by September 15, 1993

(2) Parties registering to comment before 8:30 a.m. the day of the workshop

(3) Parties who have not given prior notice

The workshop will be transcribed and the transcript should be available in the NRC Public Document Room by October 5, 1993.

Discussion of Alternative Approaches

The staff has outlined four possible alternatives for considering ways to best take advantage of existing programs in the license renewal process. The four alternative approaches to license renewal include (1) the staff's proposed approach as discussed in SECY–93–049 and SECY–93–113, (2) an approach that requires relatively minor rulemaking to clarify and modify the current license renewal rule, (3) an approach that includes the current principles but requires a more substantive rulemaking to resolve the implementation issues, and (4) an approach that relies to a great extent on the current regulatory process, particularly the maintenance rule, and would require a substantive rulemaking.

Approach 1: Staff-Proposed Approach in SECY–93–049 and SECY–93–113

This approach represents the least departure from the elements of license renewal as discussed in the Statement of Considerations for the final rule. This approach focuses on effective programs that manage the effects of age-related degradation unique to license renewal (ARDUTLR) rather than the identification of the aging mechanisms. This approach builds on judgments that performance and condition monitoring of plant systems, structures, and components (SSCs) can be relied on to demonstrate that age-related degradation effects, including potential effects during the renewal period are being managed effectively.

Under this approach, the maintenance rule could be used as an "effective program" by defining certain conditions that must be satisfied by such programs. This would also permit the elimination of components as not subject to ARDUTLR if the component is incorporated into a program that employs periodic inspection and like-kind replacement during the first 40 years. SSCs inservice beyond the original operating term would not necessarily be subject to ARDUTLR if an applicant could show (e.g., by analysis and/or inspection) that the continued degradation, if unmitigated, would not result in the plant operating outside its CLB during the extended period of operation.

Technical issues that might raise questions regarding the adequacy of the CLB would be evaluated for potential safety concerns within the current regulatory process and not as a license renewal issue. In order to address the time-dependent elements of a facility's CLB, some additional analyses or actions, or both, would be needed to demonstrate that CLB requirements

continue to be satisfied in the renewal term.

Approach 2: Rule Revisions Proposed by Commissioner Curtiss

Former Commissioner James R. Curtiss, in his vote sheet on COMSECY–93–029, proposed an approach for taking advantage of existing licensee programs in the renewal process. This approach, which, in general, endorses the staff proposals contained in SECY–93–049 and SECY–93–113, would, however, result in rulemaking to ensure that language in the rule and in the Statement of Considerations is consistent. This approach includes language changes in the current license renewal rule to codify the staff proposals contained in SECY–93–049 and SECY–93–113.

Most importantly, this approach would supplement the definition of ARDUTLR. Specifically, the proposal would permit existing programs that involve "like-kind" replacement before 40 years or existing programs that involve replacement or refurbishment based on established time or performance criteria to be the basis for determining that SSCs would not be subject to ARDUTLR.

Approach 3: Rule Revision to Replace Definition of ARDUTLR

This approach builds on Approach 2 with the existing license renewal rule remaining largely intact. Significant differences between this approach and Approach 2 are the increased emphasis on the use of existing licensee programs, including maintenance rule programs, as a basis for determining that structures or components are not subject to ARDUTLR. Revisions to the rule would replace the existing definition of ARDUTLR in 10 CFR 54.3 to specify that structures or components would be considered subject to ARDUTLR only if (1) they are not included in existing documented programs that either specify replacement intervals or monitor performance or condition such that corrective action will be taken to maintain the CLB during the renewal term, and (2) it cannot be demonstrated that the CLB will be maintained in the renewal term absent any action.

Approach 4: Reliance on the Maintenance Rule and Current Regulatory Process

This approach would rely on the current regulatory process to assure an adequate level of safety, including the management of the effects of age-related degradation during the current license term, and assumes that the current regulatory process will continue to provide an adequate level of safety throughout the renewal period. Existing licensee programs and the regulatory process, enhanced by the requirements of the maintenance rule, would assure that the performance or condition of important SSCs would not degrade below an acceptable safety level at any time during plant operation, including any renewal term operations. The license renewal process would only focus on time-dependent analyses (those analyses which were specifically evaluated for the 40 year license term) incorporated into the CLB or used as a basis for any CLB safety determination. These time-dependent analyses would be specifically evaluated for the renewal term. The term ARDUTLR would be modified to reflect the need to consider only pertinent time-dependent analyses or the term ARDUTLR would be eliminated altogether.

This approach would fully integrate the licensee's implementation of the maintenance rule into the license renewal process and any conclusions about license renewal.

Dated in Rockville, Maryland, this 6th day of August 1993.

For the Nuclear Regulatory Commission

Scott F. Newberry,

Acting Deputy Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 93–19365 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–2259]

Pathfinder Mines Corp.; Intent To Amend Source Material License

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA–672 for the Lucky Mc uranium mill to approve tailings reclamation and mill decommissioning plans for Pathfinder Mines Corporation's Lucky Mc uranium mill.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA–672 to incorporate tailings disposal area reclamation and mill decommissioning plans for the Lucky Mc Mill located near Riverton, Wyoming. The accepted plan will reclaim the disposal area in place and the dismantled mill structure and equipment will be buried in the disposal area, with the foundations buried in place. The proposed actions are supported by a Finding of No Significant Impact (FONSI) as concluded in the Environmental Assessment prepared by the Commission.

DATES: The comment period expires September 12, 1993.

ADDRESSES: Copies of the license amendment request and the staff evaluations which are the bases for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Lakewood, Colorado, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules Review and Directives Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado 80225.

Comments may be hand-delivered to room P–223, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m., on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans for nonoperational tailings impoundments such that the radon emissions will not exceed a flux of 20 pCi/m^2sec as soon as practicable, but in any event not later than September of 1992.

In accordance with 10 CFR part 40, appendix A, the licensee, Pathfinder Mines Corporation, submitted a reclamation plan by letter dated June 28, 1985. Review of the proposed plan resulted in requests for additional information, reevaluation, and redesign. As a result, Pathfinder submitted a revised reclamation plan by letter dated July 31, 1992. Review of this document resulted in a request for additional information dated May 5, 1993. Revisions to the July 31, 1992, reclamation plan were submitted by letters dated June 4, June 11, and June 21, 1993.

The tailings disposal area for the Lucky Mc Mill consists of six ponds formed by six dams constructed across a natural draw. All of the solid tailings

generated at the mill are contained in three of the ponds while the other three contain overflow and decant tailings solutions. The three tailings ponds, which contain approximately 10.6 million tons of tailings, will be reclaimed in place. Contaminated materials from the three solution ponds will be removed and disposed of in the solid tailings ponds.

Based on a review and independent analyses of the reclamation plan for the Lucky Mc Mill disposal area, it is concluded that the design of the radon attenuation barrier cover meets the 20 pCi/m²sec design criterion specified in the MOU and is therefore consistent with applicable portions of 10 CFR part 40, appendix A. It is also concluded that the erosion protection design is not acceptable and will remain an open item pending reevaluation and redesign by the licensee. The bases for these conclusions are provided in a Memorandum for Docket File No. 40–2259 dated August 3, 1993.

On March 30, 1992, Pathfinder submitted a proposed plan for decommissioning the Lucky Mc Mill. Additional information concerning the plan was submitted on December 23, 1992, and on July 20, and July 23, 1993. The proposed plan calls for dismantling the mill structure and equipment and disposing of the debris in the southeastern portion of Tailings Pond 2A. The building foundations will be buried in place. The staff review of the proposed decommissioning plan is documented in a Memorandum for Docket File No. 40–2259 dated August 2, 1993.

On November 20, 1992, Pathfinder submitted an Environmental Report Supplement in support of the proposed reclamation plan for the disposal area. This document was submitted as a supplement to environmental reports previously prepared and submitted in support of license renewal applications in 1982 and 1989. The supplement described the expected impacts associated with mill decommissioning and tailings reclamation, and evaluated alternatives for performing the decommissioning and reclamation.

The Environmental Assessment was prepared by the Commission to evaluate the proposed licensing action. It was concluded that the reclamation of the tailings and decommissioning of the mill in accordance with the proposed plans will not have a significant impact on the environment. Short-term impacts to the environment will be minimal, while long-term impacts will be reduced to levels determined to be acceptable by promulgation of appendix A to 10 CFR Part 40. The bases for the finding of no significant impact (FONSI) are provided in an Environmental Assessment dated July 23, 1993.

Dated at Denver, Colorado, this 5th day of August, 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–19366 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

Amendment to Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following amendment to application for an export license. The original export license application was published in the May 26, 1993 **Federal Register**. Copies of the amendment are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment follows.

Name of applicant, date of amendment, date received, application number	Description of material			End use	Country of destination
	Material type	Total element	Total isotope		
Transnuclear, Inc., on behalf of COGEMA, Inc., 07/16/93, 07/19/93, XSNM02748.	93.15% Enriched Uranium Unirradiated fuel fabricated for the Fort St. Vrain high temperature gas reactor and scrap and excess material resulting from production of such fuel. Currently owned by Nuclear Fuel Services in Erwin, TN.	280.0 kgs (unchanged).	260.9 (unchanged).	For defabrication at COGEMA's facility at Pierrelatte France. The recovered uranium will be blended down to less than 20 percent U–235 for ultimate use as fuel for research and test reactors.	France.

Dated this 2 day of August 1993 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Corporation, Office of International Programs.

[FR Doc. 93–19294 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for review and are available for public review and comment. A copy of the information collection may be obtained from Ms. Robin Dean, Office of Minority Recruitment, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Robin Dean may be called at 202–606–9322. Comments on these forms should be addressed to Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

INFORMATION COLLECTION ABSTRACT:

Title: Application for the Peace Corps Preparatory Grant Program.

Need for and Use of the Information: The Peace Corps needs this information in order to award fifty (50) $1,000 grants to students enrolled in campus Preparatory Programs. This information will be used to determine the qualifications and eligibility of potential grant recipients.

Respondents: Individuals who apply for the Peace Corps Preparatory Program Grant.

Burden on the public:

a. Annual reporting burden: 25 hours
b. Annual record keeping burden: 0 hours
c. Estimated average burden per response: 30 minutes
d. Frequency of response: Biennially
e. Estimated number of likely respondents: 50.

This notice is issued in Washington, DC, on August 3, 1993.

Joan Ambre,

Acting Associate Director for Management.

[FR Doc. 93–19382 Filed 8–11–93; 8:45 am]

BILLING CODE 6051–01–M

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Laurie James, Office of World Wise Schools, Peace Corps of the United States, 1990 K Street, NW., Washington, DC 20526. Ms. James may be called at 202–606–3294. Comments on this information collection should be addressed to Mr. Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: World Wise Schools Questionnaire for Educators

Need for and use of the information: Peace Corps will send this questionnaire annually to teachers enrolled in the World Wise Schools Program. The responses received will enable World Wise Schools to modify its educational materials and program procedures to be more economical, efficient and useful to the educator.

Repondents: Teachers

Burden on the Public:

a. Annual reporting burden: 467 hours
b. Annual recordkeeping burden: 100 hours
c. Estimated average burden per response: 8 mins
d. Frequency of response: annually
e. Estimated number of likely respondents: 3,500.

This notice is issued in Washington, DC on August 3, 1993.

Joan Ambre,

Acting Associate Director for Management.

[FR Doc. 93–19381 Filed 8–11–93; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272–5407.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

Revision

Rule 17a–4—File No. 270–198

Extension

Rule 15c2–5—File No. 270–195
Rule 15Ba2–5—File No. 270–91
Rule 17a–10—File No. 270–154
Rule 17a–19 and Form X–17A–19—File No. 270–148

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for approval of an amendment and extensions of currently approved rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*).

Rule 17a–4 requires exchange members, brokers, and dealers to preserve for prescribed periods of time, certain records required to be made by rule 17a–3. The proposed amendment would permit brokers and dealers to employ optical storage technology as an alternative medium for maintaining records subject to the retention requirement, but would not change the substantive requirements of the rule. It is estimated that approximately 8,300 broker-dealers incur an average burden of 250.25 hours per year to comply with this rule, as amended.

Rule 15c2–5 prohibits a broker or dealer from arranging a loan for a customer to whom a security is sold unless, before the transaction is entered into, the broker or dealer reasonably determines that the transaction is suitable for the customer. A total of 50 respondents incur a cumulative total of 600 annual burden hours to comply with the rule.

Rule 15Ba2–5 permits a court-appointed or other fiduciary who succeeds to the business of a municipal securities dealer to assume immediate responsibility for the operation of the municipal securities dealer's business if the fiduciary files a statement with the Commission within 30 days of the date on which the fiduciary assumes its duties. An average of one respondent incurs a total of four annual burden hours to comply with the rule.

Rule 17a–10 enables the Commission to obtain economic and statistical data from broker-dealers that is necessary for ongoing analysis of the securities industry. An average of 7,000 respondents incur a total of 7,000 annual burden hours to comply with the rule.

Rule 17a–19 and Form X–17A–19 require self-regulatory organizations (SRO) to report to the Commission within five business days whenever a member of that SRO is initiated, suspended, or terminated. Eight respondents incur a total of 900 annual burden hours to comply with the rule and form.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Nos. 3235–0279, 3235–0198, 3235–0088, 3235–0122, and 3235–0133), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19410 Filed 8–11–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32722; File No. SR–GSCC–93–01]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Concerning the Establishment of New Categories of Membership in the Netting System

August 5, 1993.

On February 24, 1993, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to new membership categories in GSCC's netting system. The Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change establishes new categories of membership in GSCC's netting system for dealer and interdealer brokers, issuers of government securities, insurance companies, registered clearing agencies, and registered investment companies, and amends the criteria for continued participation in GSCC's comparison and netting systems. The specific elements of the proposed rule change are summarized below.

A. Establishment of a Second Category of Dealer Netting Member

The second category ("Category 2") of dealer netting member combines a lower net worth threshold[3] with more stringent margin requirements than for current ("Category 1") dealer netting members. Category 2 dealer netting members will have a $25 million net worth requirement and a $10 million excess net/liquid capital requirement (as compared with a $50 million net worth and $10 million excess net/liquid capital requirement for Category 1 dealers). The clearing fund required deposit for Category 2 dealer netting members will be calculated without taking into account offsets (required clearing fund deposits for Category 1 dealers will take into account offsets). Margin factors applicable to positions held by Category 2 dealer netting members will be set at the short-term 99% confidence level (Category 1 dealers will use the current schedule to compute margin factors), and the forward mark allocation for such members will be calculated based on the entire debit mark amount (Category 1 dealers will continue to pay a fraction of their debit mark amount, based on the ratio of the debit marks of the five largest dealers to the debit mark for all dealers in that CUSIP). All other membership requirements (e.g., operational sufficiency apply equally to Category 1 and Category 2 dealer netting members.

B. Establishment of a Second Category of Interdealer Broker Netting Member

1. Scope of Business.

The proposal also establishes a second category of interdealer broker ("IDB") netting member. Category 2 IDBs will be required to act exclusively as a broker as defined in the Act (as will Category 1 IDBs).[4] Category 2 IDBs will be permitted to engage in limited activity with nonmembers, up to 10% of such IDB's trading activity in eligible securities (at least 90% of a Category 2 IDB's business, based on the IDB's overall dollar volume of next-day and forward settling activity in eligible securities, must be with netting members). To enable GSCC to monitor compliance with this requirement, each Category 2 IDB netting member will be required to submit daily to GSCC all of its next-day and forward settling transactions in eligible securities, indicating the buy and sell side of each transaction. If a Category 2 IDB's trades with nonmembers exceeds 10% of its total trading in eligible securities, it may be treated by GSCC as a Category 2 dealer.

For a temporary period established by GSCC's Board of Directors ("Board"), GSCC will grandfather certain nonmember dealers that currently have IDB screen access. GSCC temporarily will allow Category 2 IDBs to trade with nonmember dealers that historically have had access to the IDB's screens.[5] Category 1 IDBs also may continue to act for the grandfathered nonmember dealers for whom it currently acts.[6] Every IDB will be obligated to provide in writing to GSCC a list of all of the legal entities on behalf of whom that IDB acts and to promptly inform GSCC of any change to such list.

2. Financial Requirements

A Category 2 IDB, because it brings net settlement positions into GSCC, would have enhanced minimum financial admission standards. A Category 2 IDB will have minimum financial admission standards of $25 million in net worth (Category 1 IDBs have no minimum requirement) and $10 million in excess net or liquid capital (Category 1 IDBs have a $4.2 million net or liquid capital requirement). However, Category 2 IDBs will not have a base net/liquid capital requirement. These enhanced minimum financial admission standards would mirror those for a Category 2 dealer (i.e., $25 million in net worth and $10 million in excess net or liquid capital), which will make enforcement of the scope-of-business requirements for a Category 2 IDB more feasible.[7] That is because if a Category 2 IDB fails to meet the applicable scope-of-business requirements (i.e., no more than 10 percent of its business with nonmembers), it can be treated as a Category 2 dealer.

3. *Clearing Fund and Margin Requirements*

The clearing fund required deposit for Category 2 IDBs will be calculated the same way it is calculated for Category 1 dealer netting members, by taking into account all of its net settlement positions. The $1.6 million minimum margin requirement that applies to Category 1 IDBs will not apply to Category 2 IDBs. Each Category 2 IDB will have the same obligation to pay transaction adjustment payments ("TAP"), fail mark amounts, forward mark allocation amounts on its forward net settlement positions, and to receive credit amounts as if it were a Category 1 dealer netting member. A Category 2 IDB's liability for loss allocation for trades with members will continue to be capped at $1.6 million per calendar year and will be mutualized among all the IDB netting members. Its liability for trades with nonmembers will be the same as the liability of a dealer netting member in addition to the liability the IDB will have on a mutualized basis for 10% of such losses. Finally, a Category 2 IDB will pay financing and clearance charges as if it were a dealer netting member.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32208 (April 26, 1993), 58 FR 26367.

[3] As discussed infra, this proposed rule change, however, does not lower the minimum excess net or liquid capital standard for Category 2 dealers below that for current Category 1 dealers.

[4] 15 U.S.C. 3(a)(4) (1988).

[5] An IDB's trading activity with grandfathered dealers will not be included for purposes of determining when an IDB meets the 10% scope of business limitation.

[6] With the establishment of this second category of IDB netting member, GSCC will restrict Category 1 IDBs to trading only with other netting members, with the exception of the grandfathered nonmember dealers for whom they currently act.

[7] Both Category 1 and Category 2 dealer netting members will have margin, mark, and loss allocation requirements. IDBs traditionally have not had such requirements.

C. Establishment of New Netting Member Categories for Issuers of "Government Securities," Insurance Companies, Registered Clearing Agencies, and Registered Investment Companies

The proposal establishes a category of netting system membership for various international organizations and types of governmental entities that issue government securities.[8]

There will be no automatic approval of any entity that falls within this new category. Applicants will be judged on a case-by-case basis. A key factor that will be considered in determining whether an applicant that falls within this new category should be approved for membership in the netting system is whether its debt securities are rated and whether those ratings are favorable.

The proposed rule change also provides netting system membership for registered clearing agencies, registered investment companies, and insurance companies.[9] GSCC will not develop specific minimum capital or net worth requirements for these classes of entities unless and until a registered clearing agency, a registered investment company, or an insurance company joins the comparison system and expresses an interest in applying for membership in the netting system.

D. Key Procedures To Take Effect When a Netting Member Falls Below an Applicable Requirement

For the protection of itself and its members, GSCC proposes to provide that if GSCC has reason to believe that a member soon may fail to comply with any of its membership requirements, GSCC may require the member to provide it with assurances in writing that the member will not, in fact, violate such requirements. If a member fails to maintain the relevant requirements of any of GSCC's rule, GSCC may either cease to act for the member or terminate its membership in the comparison system, the netting system, or both the comparison and netting systems. If the member requests that such action not be taken GSCC may, depending upon the specific circumstances and the record of the member, instead establish for such member a time period during which the member must resume compliance with all GSCC requirements. In the event that the member is unable to satisfy such requirements within the set time period, GSCC will either cease to act for the member or terminate its membership in the comparison system, the netting system, or both the comparison and netting systems. Moreover, if GSCC determines at any time that a netting member's financial condition has deteriorated significantly, it immediately either may cease to act for the member or terminate its membership in the comparison system, the netting system, or both.

There are specific penalties that will apply, based on type of membership, to netting members that are not in compliance with an applicable membership standard. For example, if a bank falls below the $250 million equity capital level or a Category 1 dealer falls below the $50 million net worth level, it will, until ninety calendar days after the date on which it complies with such standard, be treated by GSCC for margin purposes as if it were a Category 2 dealer. Also, if a dealer falls below either the $25 million net worth level or the $10 million excess liquid or excess net capital level, as applicable, it will, until the ninetieth calendar day after the date on which it returns to compliance with such standard, have a clearing fund deposit requirement equal to 150% of the normal clearing fund calculation for Category 2 dealers.

With regard to IDBs, if a Category 1 IDB falls below the $4.2 million liquid capital or net capital level, as applicable, it will, until the ninetieth calendar day after the date on which it complies with the standard, be marked and margined as if it were a Category 1 dealer. If a Category 1 IDB no longer meets its scope of business requirements, it will either be treated as a Category 2 IDB (if it qualifies as such) or its membership in the netting system will be terminated. In addition, if a Category 2 IDB falls below an applicable financial standard and does not qualify to be a Category 1 IDB, it will have, until the ninetieth calendar day after the date on which it returns to compliance with such standard, a clearing fund deposit requirement equal to 150% of the normal calculation for such member. Finally, if a Category 2 IDB no longer meets its scope of business requirements, it essentially will be considered to be a Category 2 dealer.

II. Discussion

The Commission believes GSCC's proposal is consistent with the Act and particularly with sections 17A(b)(3) (A) and (F) of the Act.[10] Those sections require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. Section 17A(b)(3)(F) further requires the rules of a clearing agency to be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. As discussed below, the Commission believes the proposed rule change is consistent with these provisions.

In the *Joint Report on the Government Securities Market* ("Joint Report"),[11] the Commission, Treasury, and the Federal Reserve Board noted that certain enhancements could be made to GSCC's system that likely would improve the processing of government securities.[12] Those enhancements included expansion of GSCC's membership base to include more government securities brokers and dealers.[13] Specifically, the Joint Report recommended that GSCC change its membership standards to enable a second tier of market participants, in addition to the primary dealers, aspiring primary dealers, and interdealer brokers which then constituted a significant percentage of GSCC's membership, to participate in GSCC. The likely potential members identified were a small group of arbitrage firms and registered government securities brokers and dealers, the latter of which were expected to meet the government securities needs of their retail equity

[8] Section 3(a)(42) of the Act defines "government securities" to include (A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; (B) securities which are issued or guaranteed by corporations in which the United States has direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; or (C) securities issued or guaranteed as to principal or interest by a corporation, the securities of which are designated by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission.

[9] To date, GSCC has established admission standards for registered brokers, dealers, and banks. To comply with the Act, GSCC's rules must allow for the admission to membership in the netting system of each type of statutorily enumerated entity. GSCC, as a registered clearing agency, is subject to section 17A of the Act which, among other things, requires that a registered clearing agency's rules provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, or (v) insurance company may become a participant in such clearing agency.

[10] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[11] Department of the Treasury ("Treasury"), the Commission, and the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), Joint Report on the Government Securities Market (January 1992).

[12] Id. at 31.

[13] Id. Other recommendations included processing of repurchase agreements, including more trades in the netting system, and developing a centralized comparison system to include nondealer, institutional customers.

customers. This proposal implements the increased membership enhancement recommended in the Joint Report.

In its registration application, GSCC requested an exemption from sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act.[14] At that time, GSCC's rules did not enumerate all of the statutory categories of Membership. In addition, GSCC's rules did not include applicant and membership financial standards as contemplated by section 17A(b)(4)(B) of the Act.[15] In its temporary registration order,[16] the Commission stated that in developing member financial and operational standards, GSCC should ensure that the standards would allow GSCC to allocate losses resulting from member defaults in order to support GSCC's netting system. The Commission believes that GSCC's experience in operating a clearing and settlement facility for government securities transactions has provided the necessary guidance to develop applicant and continuing membership standards that are both fair and adequate to protect GSCC and its participants from unreasonable risk. The Commission, therefore, believes that the proposal promotes the safeguarding of securities and funds in GSCC's custody or under its control.

The Commission is aware that because of the proposed rule change allows IDBs to expand their business base, a potential risk is created to the extent that the expansion of the IDB's business causes it to have net settlement positions that are not fully collateralized. Therefore, by temporarily allowing Category 2 IDBs to engage in limited activity with nonmember dealers up to 10% of such IDB's trading activity in eligible securities, the proposal limits the risks posed by the activity of IDBs. The Commission believes also that the net capital and clearing fund requirements for IDBs will help to mitigate any risk to GSCC resulting from trading activity of Category 2 IDBs. GSCC's proposal recognizes that IDBs historically have a business base of primary and aspiring primary dealers and their affiliates. In this regard, the proposal avoids potential disruption to the marketplace while allowing for a transition period during which GSCC will work to bring all grandfathered dealers into the netting system. The Commission believes that by providing a mechanism for incorporating more government securities transactions into a centralized clearing facility, the proposal will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and increase protection to investors.

Although the Treasury and the Commission have established minimum capital requirements for government securities brokers and dealers, the Commission recognizes that those requirements may need to be modified to address the anticipated credit risks associated with clearing agency membership.[17] The Commission believes GSCC's admission standards concerning creditworthiness can be applied in a neutral manner to all market participants.

Finally, by bolstering its rules for dealing with a member that may fall or already has fallen below an applicable financial or other requirement, GSCC has acted prudently and established procedures that will make enforcement of its new membership standards more effective.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19329 Filed 8–11–93; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78q–1(b)(3)(B) and 78q–1(b)(4)(B) (1988).

[15] The Commission has published the Division of Market Regulation's ("Division") clearing agency registration standards ("Standards") which illustrate specific objectives that a clearing agency's rules, procedures, or systems should achieve to be granted full registration. The Standards provide additional information concerning the Division's interpretation of subparagraphs (A) through (I) of section 17A(b)(3) of the Act. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[16] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639. The Commission extended GSCC's temporary registration as a clearing agency until May 31, 1995. See Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; and 32385 (June 3, 1993), 58 FR 32405.

[17] However, the Commission does not believe that GSCC's membership criteria should substitute for broker and dealer members' own determinations of which market participants are acceptable counterparties.

[18] 17 CFR 200.30–3(a)(12) (1990).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Labor, Office of Job Corps

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of participating agencies

The Selective Service System and the Department of Labor, Office of Job Corps

2. Purpose of the Match

The purpose of this matching program is to ensure that the requirements of section 604 of the Job Training Partnership Act (29 U.S.C. 1504) are met.

3. Authority for Conducting the Matching Program

Authority for the Job Corps program is Title IV IV–B of the Job Training Partnership Act, as amended (29 U.S.C. 1691 *et seq.*). Section 604 of the Job Training Partnership Act (29 U.S.C. 1504) requires the Secretary of Labor to insure that each individual participating in any program established under the Act has not violated section 3 of the Military Selective Service Act (MSSA), as amended (50 App. U.S.C. 453). Section 3 requires all men to present and submit themselves for registration as required pursuant to that section.

Benefits under Title IV–B of the Job Training Partnership Act will be denied to any man who fails to present and submit himself to registration as required under section 3 of the MSSA. In addition, 20 CFR 638.403 requires any male required to present himself and submit to registration under section 3 of the MSSA to present evidence that he is in compliance with the MSSA. The Department of Labor has republished its system of records maintained under the Privacy Act of 1974 (55 FR 7084, 7138, February 28, 1990). Job Corps students' records are maintained in System of Records DOL/ETA–14, "Job Corpsmember Records." Routine Use (14) of those records is "to disclose to the Selective Service System name, social security number, date of birth, and address of student, to insure registration compliance for eigible

enrollees applying for Job Corps training benefits."

4. Categories of Records and Individuals Covered

Records of all male Job Corps students 17 and 10 months of age and above.

5. Inclusive Dates of the Matching Program

Commence on October 1, 1993, or 30 days after copies of the matching agreement are transmitted simultaneously to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier termination or modified by agreement of the parties.

6. Address for Receipt of Public Comments or Inquiries

Mr. Richard S. Flahaven, Associate Director for Operations, The Selective Service System, Washington, DC 20535.

Dated: August 4, 1993.

Robert W. Gambino,

Director.

[FR Doc. 93-19283 Filed 8-11-93; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2668; Amendment #2]

Kansas; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated July 30 and 31 and August 1, 1993 to include Ellsworth, Jefferson, Lincoln, Marshall, Rush, and Russell Counties, and the Townships of Dover, Menoken, Rossville, Silver Lake, Soldier, and Tecumseh in Shawnee County, in the State of Kansas, as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Barton, Ness, Pawnee, and Rice in the State of Kansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 3, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-19347 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2663; Amendment #2]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated August 1, 1993 to include Audrain, Cass, Clinton, Dekalb, Grundy, Hickory, Jasper, Knox, Linn, Mercer, Morgan, and Randolph Counties and the City of Kansas City in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Barton, Dade, and Polk Counties in Missouri; and Crawford County in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 7, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury numbers are 793300 for Missouri; and 793500 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 5, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-19342 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2670; Amendment #1]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 30, 1993 to include Benson, Grand Forks, Griggs, McLean, Mercer, Nelson, Oliver, Ramsey, Sheridan, Stark, Steele, Traill, Walsh, and Wells Counties in the State of North Dakota as a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specific date at the previously designated location: Billings, Cavalier, Dunn, Eddy, McHenry, Mountrail, Pembina, Pierce, Towner, and Ward Counties in North Dakota; and Kittson, Marshall, and Polk Counties in Minnesota.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 27, 1993 and for economic injury the deadline is April 26, 1994.

The economic injury numbers are 795500 for North Dakota and 793000 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 5, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-19344 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2660; Amendment 3]

Wisconsin; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated August 2, 1993 to include Richland County in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is

September 1, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Program Nos. 59002 and 59008)

Dated: August 5, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disease Assistance.

[FR Doc. 93–19343 Filed 8–11–93; 8:45 am]

BILLING CODE 8025–01–M

Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting at 9:30 a.m. on Thursday, September 2, 1993, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2314, Honolulu, Hawaii 96850, (808) 541–2965.

Dated: August 4, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–19346 Filed 8–11–93; 8:45 am]

BILLING CODE 8025–01–M

Chicago District Advisory Council; Public Meeting

The U.S. Small Business Administration Chicago District Advisory Council will hold a public meeting from 10 a.m. to 1 p.m. on Wednesday, September 8, 1993 at the Small Business Administration, Chicago District Office, 500 W. Madison Street, suite 1250, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Smith, District Director, U.S. Small Business Administration, 500 W. Madison Street, suite 1250, Chicago, Illinois 60661–2511, (312) 353–4508.

Dated: August 4, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–19345 Filed 8–11–93; 8:45 am]

BILLING CODE 8025–01–M

[License Number 03/03–0195]

CIP/QED Capital L.P.; Application for a Small Business Investment Company To Restructure and Convert From a Corporation to a Limited Partnership

An application for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, *et seq.*) has been filed by CIP/QED Capital L. P. (Applicant), 300 Chester Field Parkway, suite 200, Malvern, Pennsylvania 19355, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1992).

It is proposed that the current holder of the SBIC license, CIP Capital, Inc. (CIP) will be restructured. CIP Trust (Trust) will be formed, whereby, CIP and Trust will be merged, with Trust becoming the surviving entity. CIP will transfer substantially all of its assets, including the SBIC license, and liabilities to Trust. After the merger, Trust will transfer all of its assets, including CIP's SBIC license, to Applicant to exchange for a limited partnership interest in Applicant. Simultaneously, a new investor, Boehringer Mannheim America, Ltd. (Boehringer) will be admitted as the other limited partner in Applicant. The partners and their respective partnership interest in the Applicant are as follows:

Name and address	Title	Partnership interest (percent)
Boehringer Mannheim America, Ltd., 22 Church Street, P. O. Box H7 2026, Hamilton H7HX, Bermuda.	Limited Partner	73.22
CIP Trust, 300 Chester Field Parkway, Suite 200, Malvern, PA 19355.	Limited Partner	22.56
CIP Capital Management, Inc., 300 Chester Field Parkway, Suite 200, Malvern, PA 19355.	Corporate General Partner & Investment Manager	4.22

It is further proposed that the existing officers, directors and owner of CIP will be the officers, directors and owner of Trust and the corporate general partner, CIP Capital Management, Inc. Proposed officers, directors and owner of Trust and of the corporate general partner are as follows:

Name and address	Position	Percentage of ownership
Winston J. Churchill, Bean Tree Farm, Hollow Road, Birchrunville, PA 19421.	Chairman of the Board and Chief Executive Officer	100
Joseph M. Corr, 63 Charter Oak Drive, Newtown Square, PA 19073.	President and Director	0
Wayne B. Weisman, 220 Locust Street, 16A, Philadelphia, 19106.	Vice President and Director	0
Joseph L. Jackson, 470 Hickory Lane, Berwyn, PA 19312	Secretary, Treasurer and Director	0

Applicant proposes to have operations with initial capitalization of $3,755,184. An additional $9,000,000 in capital has been committed by one of Applicant's proposed limited partners, Boehringer. Applicant will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business operations primarily in the general area from the State of Massachusetts to the State of North Carolina.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations to the Applicant under their management, including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Malvern, Pennsylvania.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 3, 1993.

Charles Shepperson,

Deputy Associate Administrator for Investment.

[FR Doc. 93-19349 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0193]

Legacy Fund Limited Partnership; Application for a Change in Ownership in a Small Business Investment Company

An application for a change in ownership has been filed by Legacy Fund Limited Partnership (Applicant), License No. 03/03-0193. Applicant, located at 1225 19th Street, NW., Washington, DC 20036, was issued a license to operate as a Small Business Investment Company on April 16, 1992.

It is proposed that Applicant's current sole limited partner, Jonathan Ledecky, will sell his $3,000,000 limited partnership interest to Steelcase, Inc. (Steelcase). In addition, Steelcase will purchase additional limited partnership interests for $9,000,000, thereby increasing Applicant's private capital to $12,000,000.

Applicant's investment advisor and general partner will remain unchanged. The proposed partners and managers of Applicant are as follows:

Name and address	Title	Partnership interest (percent)
Steelcase, Inc., 901-44th Street SE., Grand Rapids, Michigan 49508.	Limited Partner.	99
The Legacy Fund, Inc., 1225 19th Street NW., Washington, DC 20036.	Investment Advisor.	0
Legacy Fund Partners, Inc., 1225 19th Street NW., Washington, DC 20036.	Corporate General Partner.	1

Applicant's Investment Advisor and Corporate General Partner are 100% owned by Jonathan Ledecky.

Applicant proposes to be a source of debt and equity capital and long-term loan funds for qualified small business concerns for growth expansion and modernization. Specifically, it will target family-owned, independent dealers of office furniture. Applicant will continue its business operation in the Mid-Atlantic region of the United States.

Notice is hereby given that any person may submit, no later than 30 days from the date of publication of this Notice, written comments on the proposed change in ownership. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Washington, DC area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 3, 1993.

Charles Shepperson,

Deputy Association Administrator for Investment.

[FR Doc. 93-19348 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice No. 1845]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 10 a.m., on Wednesday, September 8, 1993, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The primary purpose of this meeting is to prepare for the 69th Session of the International Maritime Organization (IMO) Legal Committee, to be held September 27 through October 1, 1993, in London.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The second subject, which will be considered at approximately 11:30 a.m., will be a discussion on possible revisions to the 1976 International Convention on Limitation of Liability for Maritime Claims ('76 LLMC).

By way of background, the draft HNS Convention would impose strict liability upon the shipowner for damages arising from hazardous substances up to a yet-to-be-determined limit of liability with a second-tier international fund available to provide compensation for catastrophic damages or when the shipowner, for one reason or another, could not pay. The second-tier international fund, modeled after the International Oil Pollution Compensation Fund, may be financed by levies imposed upon hazardous cargo shipments or by postincident collections.

The draft convention would provide compensation for environmental damage as well as personal injury and property damage. Compensation for damage caused by a broad range of substances including oils (those not covered under the oil regimes), bulk liquid cargo, bulk solid cargo, bulk gases, packaged cargo, and flammable residues are all within the scope of the draft convention as presently written.

Important questions remain to be decided which include: (1) Whether the second-tier international fund can be implemented with an acceptable balance between equity and practicality; (2) which substances would be included within the scope of the convention's coverage for purposes of both

compensating damage as well as for contributing to the financing of the second-tier fund; (3) how the levy amounts imposed upon cargo would be determined and collected; (4) whether postincident funding of the second-tier fund is appropriate in some cases; and (5) whether the second-tier fund should be separated into multiple accounts for different sectors of the industry (see, for example, document LEG 68/4/4 proposing four separate accounts and postincident funding).

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested. In addition to the issues raised above, comment is specifically requested regarding the definition of "carriage by sea" (defining when the convention would be applicable in Article 1(9)).

As for the '76 LLMC, the Legal Committee at its 68th Session in March decided to put work on revisions to the '76 LLMC on a priority basis equal with the draft HNS Convention. Several delegations at the session pushed strongly for urgent, extensive revisions to the '76 LLMC, while others were reluctant to address anything other than the actual limits of liability and a streamlined tacit amendment procedure.

The '76 LLMC has been in force since December 1, 1986, and has been ratified by 22 nations. The United States has not ratified, and U.S. law on maritime limitation of liability is different in several respects. Nevertheless, interests within the United States—such as owners of foreign flag vessels and passengers on foreign flag vessels—may be affected by changes to this convention. The views of the public are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Lee A. Handford, U.S. Coast Guard (G–LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: July 27, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–19314 Filed 8–11–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 93–8–10; Docket 48759]

Application of Sun Jet International, Inc. for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Sun Jet International, Inc. fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than August 23, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48759 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: August 6, 1993.

Joseph F. Canny,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–19372 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on August 24, 1993, at 9:30 a.m.

ADDRESS: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Boxer, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held on August 24, 1993, at the Air Transport Association of America, 1301 Pennsylvania Ave., Washington, DC. The agenda for this meeting will include:

- Status report on the advisory circular on the operation of unmanned airspace vehicles;
- Status report on the advisory circular on pilot procedures at non-towered airports;
- Status of the Mode S ground sensor evaluation study; and

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC., on August 6, 1993.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–19397 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on September 2, 1993, at 9 a.m.

ADDRESSES: The meeting will be held at FAA Headquarters in Room 804, 800 Independence Avenue SW., Washington, DC.

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FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 2, 1993, at the FAA Headquarters Building, room 804, 800 Independence Avenue SW., Washington, DC. The agenda for this meeting will include progress reports from the Air Carrier Working Group and the Cabin Safety Working Group. Each working group Chair will report on the progress of the working group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on August 5, 1993.

Jan DeMuth,

Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–19396 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In July 1993, there were 10 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: City of Redmond, Redmond, Oregon.

Application Number: 93–01–C–00–RDM.

Application Type: Impose and use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $1,191,552.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: March 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Air Taxis and Small Air Charters as defined by the city of Redmond's resolution 92–03.

Determination: Approved. Based on information submitted in the city of Redmond's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at the airport.

Brief Description of Projects Approved to Impose and Use PFC Revenue:

Install Airfield Signage.
Renovation and Expansion of the Air Carrier Terminal.
Reconstruct Runway 4/22.
Reconstruct Runway 10/28.
Pavement Study.
Acquire Aircraft Rescue and Firefighting (ARFF) Vehicle.

Brief Description of Projects Approved-in-Part to Impose and Use PFC Revenue: Resurface and expansion of the air carrier ramp.

Determination: Approved in part. The ramp rehabilitation portion of this project is approved. However, the city of Redmond did not provide sufficient justification for the ramp expansion in this application and that portion of the project is disapproved.

Decision Date: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (206) 227–2654.

Public Agency: City of Lubbock, Lubbock, Texas.

Application Number: 93–01–C–00–LBB.

Application Type: Impose and use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $10,699,749.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: February 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Part 135 Operators Who Operate with a seating capacity of less than 10 passengers.

Determination: Based on information submitted in the city of Lubbock's application, the FAA has determined that the proposed class accounts for less than 1 percent of the annual enplanements at Lubbock International Airport.

Brief Description of Projects Approved To Impose and Use PFC Revenue:

Airport Master Plan Update.
Purchase Snow Removal Equipment.
Security/Access Control and Fencing.
Airport Land Acquisition.
Airfield Guidance Signs and Emergency Generator, ARFF Clothing and Equipment, and Phase 1 Paved Runway and Taxiway.
PFC Application.
Emergency Access Road and Terminal Apron Access Road.
Phase 2 Paved Runway and Taxiway Shoulders.
Acquire Airfield Operations Equipment—Ramp Snow Sweeper.
Phase 3 Paved Runway and Taxiway Shoulders.

Brief Description of Projects Approved Only to Impose PFC Revenue:

Runway 17 Runway Protection Zone Land Acquisition.
Airport Land Acquisition.
Conduct Part 150 Study.
Commercial Apron and Taxiway.
Construct Taxiway W1.
Aircraft Deicing Apron and Connection Taxiway.
Acquire Airfield Operations Equipment.

Brief Description of Projects Disapproved: ARFF Training Burn Area.

Determination: Disapproved. The ARFF training burn area has been reviewed under AIP criteria which permits projects to be reviewed on a case-by-case basis. The FAA is currently implementing a policy of funding only regional ARFF training facilities. A regional ARFF facility at the Dallas/Fort Worth International Airport, previously designated by the FAA's Southwest Region, is intended to serve the training needs of Lubbock International Airport.

Acquire Airfield Operations Equipment—Backhoe and Dump Truck

Determination: Disapproved. This project does not meet the requirements of section 158.15(b); therefore, it is not PFC eligible.

Strengthen Taxiway H.

Determination: Disapproved. The city of Lubbock failed to demonstrate that the project will provide capacity enhancement. Therefore, the FAA has determined that this project does not meet the requirements of § 158.15(a) at this time.

Acquire Airfield Operations Equipment—Emergency Mobile Command Post and Mowers/Tractors

Determination: This project does not meet the requirements of § 158.15(b); therefore it is not PFC eligible. The equipment requested in this project is not required by part 107, part 139, or for snow removal operations as required for AIP eligibility.

Decision Date: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.

Public Agency: Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 93–01–I–00–BDL.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $12,030,000.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: On-Demand Air Taxi Commercial Operators.

Determination: Approved. Based on information submitted in the bureau's application, the FAA has determined that the proposed class accounts for less than 1 percent of Bradley International Airport's total annual enplanements.

Brief Description of Projects Approved Only to Impose PFC Revenue:

New Aircraft Ramp.
Terminal B Roadway System.
Construction of Taxiway "J" Between Taxiway "R" and Runway 15/33 on the Westerly Side of Runway 6/24 and Miscellaneous Items.
Sanitary Sewer Renovations.
Peak Mountain Lights.
Design of Glycol Collection System.
Airport Security Roadways.
Security Fencing Project.
Remote Ramp Lights.

Decision Date: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, New England Region Airports Division, (617) 273–7054.

Public Agency: Cities of Fort Collins and Loveland, Loveland, Colorado.

Application Number: 93–01–C–00–FNL.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $207,857.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date June 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved To Impose and Use PFC Revenue:

Expand Aircraft Parking Apron.
Modify Taxiway Guidance Signs.
Terminal Building Expansion.
Construct ARFF Building.
Groove Runway 15/33.
Update Airport Master Plan.
Rehabilitate Aircraft Parking Apron.

Decision Date: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 286–5525.

Public Agency: Hillsborough County Aviation Authority, Tampa, Florida.

Application Number: 93–01–C–00–TPA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $87,102,000.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use PFC Revenue:

Construct Airside Terminal A With Shuttle System.
Constuct Commuter Airline Terminal Facilities.
Replace Shuttle System for Airsides C and D.
Formulate Land Acquisition Program.

Brief Description of Project Approved to Impose: Acquire Drew Park Land.

Decision Date: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: C. Ed Howard, Orlando Airports District Office, (407) 648–6582.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application Number: 93–02–I–00–CMH.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $16,270,256.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: September 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: Air Taxi/Commercial Operators.

Determination: Based on information submitted in the application, the FAA has determined that the proposed class accounts for less than 1 percent of the annual enplanements at Port Columbus International Airport.

Brief Description of Projects Approved to Impose PFC Revenue:

Electronic Monitoring/Airfield Lighting (Construction).
Sawyer Road Rehabilitation (Engineering/Construction—East).
Airfield Guidance Signs.
Relocate Taxiway D, Construct Runway 28L Runup Apron.
Master Plan/Part 150 Amendments.
Ramp Sweeper.
Airfield Fencing Phase II.
Emergency Preparedness Equipment/Communications.
Relocate Control Room.
Land Acquisition/Relocation—West Side Properties.
Land Acquisition/Relocation—Englewood Heights.
Residential Soundproofing—Phase I.
North Concourse Expansion.
Terminal Building Modification.
Terminal Curb Front Improvements—Planning Study.
Gate 17 Ramp Expansion.

Decision Date: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Laredo, Texas.

Application Number: 93–01–I–00–LRD.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $11,983,000.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved Only To Impose PFC Revenue:

PFC Reimbursable Projects.
Construct New Passenger Terminal Building and Related Improvements.
Overlay Runway 17L/35R.
Construct Parallel Taxiway.
Airfield Signage Improvements.
Airfield Electrical Improvements.
Bond Financing and Related Costs.

Decision Date: July 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.

Public Agency: Capital Region Airport Authority, Lansing, Michigan.

Application Number: 93–01–C–00–LAN.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.
Total Approved PFC Revenue: $7,355,483.
Earliest Permissible Charge Effective Date: October 1, 1993.
Estimated Expiration Date: March 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: Part 135 Air Taxi/Commercial Operators Filing FAA Form 1800–3.
Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Projects Approved To Impose and Use PFC Revenue at Capital City Airport (LAN):
Taxiway B Lighting Replacement.
Southeast General Aviation Ramp Reconstruction.
Security Fencing Terminal Area.
Land Acquisition.
Building Demolition and Removal.
Security Access Control.
Freight Ramp.
Snow Removal Equipment Replacement.
Airport Maintenance Building.
Reconstruction of Main Access Road.
Acquire Runway Protection Zone Properties.
Master Plan Update.
Airfield Signage.
Rehabilitate Terminal Apron.
Replace Snow Removal Equipment.
Security Access Control—Phase II.
Brief Description of Project Approved to Impose PFC at Lan and Use PFC Revenue at Mason Jewett Field:
Reconstruct Taxi Streets.
Brief Description of Projects Approved to Only Impose PFC Revenue at Lan:
ARFF Access Road Construction.
Paved Tie Downs.
Rehabilitate Access Roads.
Obstruction Removal.
Freight Ramp Construction.
Construction of Taxiway.
Rehabilitate and Widen Runway 6/24.
Extend Runway 6/24 and Extend Taxiway C.
Navigational Aids, Runway 6/24.
Brief Description of Projects Disapproved: Master Plan Update.
Determination: Disapproved. A notice to proceed occurred prior to November 5, 1990; therefore, the project is not PFC eligible under § 158.3.
Connector Taxiways
Determination: Disapproved. This project is based on a recommendation for future development contained in the master plan. However, the taxiway locations are not defined to the point where justification can be established. Therefore, this project does not meet the requirements of § 158.15(b) and so is not PFC eligible.
Decision Date: July 23, 1993.
FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487–7300.
Public Agency: Montrose County Airport Authority, Montrose, Colorado.
Application Number: 93–01–C–00–MTJ.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved PFC Revenue: $1,461,745.
Earliest Permissible Charge Effective Date: November 1, 1993.
Estimated Charge Expiration Date: February 1, 2009.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved to Impose and Use PFC Revenue:
Site Preparation and Grading of Runway 17/35 and Taxiway A.
Pave Runway 17/35 and Install Taxiway Guidance signs on Runway 12/30 and Taxiway B.
Overlay Runway 17/35, Taxiways A–1 and A–2, and Relocate the Terminal Very High Frequency OMNI Directional Radio Range.
Construct and Pave Taxiways A–7, A–8, and D; Install Runway and Taxiway Lights, Taxiway Guidance Signs; and Construct a New Electrical Vault.
Acquire an ARFF Vehicle and Instrument Landing System.
Decision Date: July 29, 1993.
FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 286–5525.
Public Agency: Cheyenne Airport Board, Cheyenne, Wyoming.
Application Number: 93–01–C–00–CYS.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved PFC Revenue: $742,261.
Earliest Permissible Charge Effective Date: November 1, 1993.
Estimated Charge Expiration Date: August 1, 2000.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved to Impose and Use PFC Revenue:
Acquire Snow Removal Equipment.
Rehabilitate Snow Removal Equipment Storage Building.
Rehabilitate Taxiway "B", Phase I.
Prepare Environmental Assessment.
Acquire Land.
Rehabilitate Electrical Vault.
Decision Date: July 30, 1993.
FOR FURTHER INFORMATION CONTACT: Phillip Braden, Denver Airports District Office, (303) 286–5530.

Issued in Washington, DC, on August 5, 1993.

Lowell H. Johnson,
Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	06/01/1993	07/01/1998
Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
Ontario International, Ontario	03/26/1993	3	49,000,000	06/01/1993	07/01/1998
Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
San Jose International, San Jose	02/22/1993	3	29,228,826	5/01/1993	08/01/1995
San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
Lake Tahoe, South Lake Tahoe	06/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
Colorado Springs Municipal, Colorado Springs	12/11/1992	3	5,622,000	03/01/1993	02/01/1996
Denver International (new), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Florida:					
Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
Southwest Florida International, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
Southwest Florida International, Fort Myers	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon,	12/17/1992	3	153,556	03/01/1993	06/01/1995
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
Georgia:					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
Iowa:					
Dubuque Regional, Dubuque	10/06/1992	3	105,500	01/01/1993	05/01/1994
Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Louisiana:					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
Minneapolis-St Paul, International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
Lambert-St Louis International, St Louis	09/30/1992	3	84,607,850	12/01/1992	03/01//1995
Montana:					
Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Great Falls International, Great Falls	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Nevada:					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire:					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1993
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
Pennsylvania:					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
Philadelphia International, Philadelphia	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
Tennessee:					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virginia:					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,558	09/01/1992	11/01/1993
Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
Washington:					
Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	07/01/1994
William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
Wyoming:					
Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,260,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

Federal Highway Administration

Environmental Impact Statement; Allegheny and Washington Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project, known locally as the Southern Beltway, in Allegheny and Washington Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P. O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411; Daryl L. Kerns, Turnpike Liaison Engineer, Pennsylvania Department of Transportation, 1113 Transportation & Safety Building, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–0185; or James B. Wilson, Chief Engineer, Pennsylvania Turnpike Commission, P. O. Box 8531, Harrisburg, Pennsylvania 17105, Telephone: (717) 939–9551.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission will prepare an environmental impact statement (EIS) on a proposal to improve circumferential transportation in Allegheny and Washington Counties, South and West of Pittsburgh, Pennsylvania. The proposed improvement would extend from the recently completed State Route 60 west of the Pittsburgh International Airport (15 miles west of Pittsburgh), southeasterly to the vicinity of State Route 51, State Route 837, and the proposed Mon/Fayette Transportation Project, 13 miles south of Pittsburgh. The improvement corridor is about 35 miles long.

The proposed improvement is considered necessary to improve circumferential movement of people and goods in the area south and west of Pittsburgh and to provide access from the Mon Valley to the Greater Pittsburgh International Airport area. Alternatives under consideration include: (1) Taking no action; (2) Transportation System Management Activities; (3) upgrading existing roadways; (4) mass transit improvements (new facilities and/or upgrade existing facilities); (5) a new tolled expressway; and (6) combinations of alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Allegheny and Washington Counties. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A scoping meeting will be held on August 18 and 19, 1993, in Washington, Pennsylvania. State and Federal agencies have been invited.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 5, 1993.

George L. Hannon,

Assistant Division Administrator, Pennsylvania Division, FHWA.

[FR Doc. 93–19430 Filed 8–11–93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: West Virginia Counties of Grant, Hardy Randolph, and Tucker, and the Virginia Counties of Frederick and Shenandoah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an alignment supplemental draft environmental impact statement will be prepared for proposed Appalachian Corridor H in the West Virginia Counties of Grant, Hardy, Randolph, and Tucker, and the Virginia Counties of Frederick and Shenandoah.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, suite 300, Charleston, West Virginia 25301, telephone: (304) 347–5329 or Mr. Ben L. Hark, Environmental Section, Roadway Design Division, Department of Transportation, Division of Highways, Charleston, West Virginia 25305, telephone: (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in Cooperation with the West Virginia Department of Transportation and the Virginia Department of Transportation, will prepare an alignment supplemental draft environmental impact statement (EIS) on a proposal to construct an approximately 115 mile highway; completing Corridor H of the Appalachian Development Highway System in northeastern West Virginia to Interstate 81 in Virginia. The Corridor Selection EIS for the proposed project (FHWA–WV–EIS–92–01–SD) was approved on October 21, 1992. The Corridor Decision Document was prepared in March of 1993, specifically detailing the information upon which the WVDOT's corridor selection was based. The document contained a review of comments received on the 1992 Corridor Selection SDEIS, as well as a summary of the results of the 1992 Corridor Selection SDEIS Location Public Meetings and Public Hearings. Draft copies of the document were presented to the cooperating agencies for their input. The final Corridor Selection Decision Document is available to the public. The EIS for the proposed project is an Alignment SDEIS, providing detailed evaluations of prudent and feasible alignments developed within the selected corridor, Scheme Option D5.

The proposed Corridor H facility provides a divided, four-lane highway with partial control of access on new and existing location between the Towns of Elkins, West Virginia and I–81 in Strasburg, Virginia. As prescribed by the 1965 Appalachian Regional Development Act, the corridor system is intended to open up the Appalachian Highlands Region for development potential where commerce and communications have been inhibited by lack of adequate access. Alternatives under consideration include, (1) the No-Build Alternative which consists of taking no action; (2) the Improved Roadway Alternative, which consists of improving major roadway deficiencies along the existing route between Elkins and I–81 at Strasburg; and (3) the Build Alternative, which consists of one primary Build Alternate and several avoidance Alternatives.

Detailed engineering, social, economic, and environmental studies will be conducted for the Alternatives under consideration.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local

agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this project. After approval of the Draft EIS, public meetings will be held in the study area prior to public hearings. A formal scoping meeting will be scheduled later.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: August 5, 1993.

Dave Leighow,

Environment/Right-of-way Specialist.

[FR Doc. 93-19438 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Harris County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Harris County Texas.

FOR FURTHER INFORMATION CONTACT: Mr. G.E. Olvera, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701. Telephone: (512) 482-5516. Mr. Kenneth C. Bohuslav, P.E., Texas Department of Transportation, Division of Highway Design, 125 East 11th Street, Austin, Texas, 78701. Telephone: (512) 416-2606.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the Grand Parkway Association, is considering an upgrade to the existing road network in Harris County. Under this proposed action, a limited access freeway (State Highway 99) will be constructed between IH 10 and US 290, a distance of approximately 14.7 miles. Ultimate construction will produce a six-lane facility with overpasses at major thoroughfares and direct connection ramps at US 290. The highway will be constructed on primarily donated right-of-way. The majority of this corridor crosses relatively undeveloped properties in western Harris County. Cities in the region include Katy and Houston.

The FHWA is considering funding participation for the proposed State Highway 99 to provide improved transportation characteristics in the region, including additional northbound capacity for hurricane evacuation. Reasonable alternative routes for Segment E of State Highway 99 will be evaluated in the draft EIS, including the no action alternative. Impacts caused by the construction and operation of State Highway 99 will vary according to the alternative alignment utilized.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest or are reasonably expected to be interested in this proposal. A public scoping meeting will be held to explain the proposal and to offer an opportunity for the public and agencies to identify significant issues that should be focussed upon in the EIS. A public hearing will be held after the draft EIS is completed. Public notice will be given of the time and place of the scoping meeting and the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To insure that the full range of issues related to this proposed action are addressed and significant issues identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: August 3, 1993.

G.E. Olvera,

District Engineer, Austin, Texas.

[FR Doc. 93-19433 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement, New River Parkway Extension, Hinton to I-77, or to US 460, Mercer and Summers Counties, WV

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project extending from Hinton to either I-77 (West Virginia Turnpike) or to US 460 in Mercer County and Summers County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, suite 300, Charleston, West Virginia 25301, Telephone (304) 347-5329, or Mr. Ben L. Hark, West Virginia Department of Transportation, Division of Highways, Building 5, room A830, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305-0430, Telephone (304) 558-3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposed new highway known as the New River Parkway Extension. Most of the highway will likely be on new right of way, but existing roadways will also be utilized. The New River Parkway Extension (Parkway Extension) is a planned touring Scenic Parkway designed to link the rich and diverse historical, cultural, recreational, scenic, and natural resources of the middle New River basin.

The intent of the Parkway Extension is to provide for a pleasant and leisurely driving experience along the New River, Bluestone Lake, and the surrounding Appalachian highlands, through scenic and essentially undisturbed examples of historic West Virginia community lifestyle. Access to nearby recreation facilities is a primary consideration. Pursuant to these objectives, functional, operational and physical deficiencies of existing WV 20, in combination with the narrow local roadways that now lead to most resources, compel this action.

Project alternatives will involve the No-Action Alternative, and a combination of Corridor Alternatives.

The EIS will assess the corridors and their environmental effects through detailed studies of socioeconomic, natural, visual, and cultural resources; air quality; noise impacts; secondary and cumulative effects; energy utilization; hazardous wastes; utilities; and permitting. Joint development prospects, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action will be determined.

A Plan of Study describing the proposed action and studies, and soliciting comments will be forwarded to appropriate Federal, State, and local agencies. Agencies will be invited to attend a scoping meeting where aspects of the proposed action will be

discussed. When completed, the draft EIS will be provided for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or West Virginia Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program).

Issued on: August 4, 1993.

Dave Leighow,

Environment/Right-of-way Specialist.

[FR Doc. 93–19284 Filed 8–11–93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Okaloosa County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Okaloosa County, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Melisa Ridenour, District Engineer, Federal Highway Administration, 227 N. Bronough Street, room 2015, Tallahassee, Florida 32302, telephone: (904) 681–7239.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to construct the Niceville/Ft. Walton Beach Bypass in Okaloosa County, Florida. The proposed bypass will be a limited access multi-lane facility divided by a wide grassed median. This will consist mainly of a new roadway on a new alignment. However, there are some areas where the route may follow existing streets, and in some areas of the project, there is the potential for creation of a urban roadway typical section with associated frontage roads for access management. The route will reach from U.S. 98 west of Ft. Walton Beach to S.R. 20 east of Niceville, a distance of 25 miles. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand in the area.

Alternatives under consideration include (1) taking no action; (2) construction of a multi-lane limited access facility; (3) widening of existing streets to provide a multi-lane facility with frontage roads; (4) alternate corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Public meetings will be held in Ft. Walton Beach and Niceville, Okaloosa County, between January and March 1994. In addition, a public hearing will be held in January of 1995. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during mid-1993.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 2, 1993.

Melisa Ridenour,

District Engineer, Tallahassee, FL.

[FR Doc. 93–19318 Filed 8–11–93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 93–37; Notice 2]

Panoz Auto Development Co.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Panoz Auto Development Company of Braselton, Georgia, petitioned for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition was that compliance will cause it substantial economic hardship.

Notice of receipt of the petition was published on June 8, 1993, and an opportunity afforded for comment (58 FR 32168).

Petitioner sought an exemption until January 25, 1995, of its Panoz Roadster from paragraph S4.1.4 of Motor Vehicle Safety Standard No. 208. The basis for the petition was that immediate compliance with the automatic restraint requirements of Standard No. 208 will cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). Petitioner has not yet produced any motor vehicles, and the company's income statement reflects a net loss of $277,011 in calendar year 1992. Its cumulative net losses from incorporation on January 25, 1989, through 1992 total $1,265,176.

The Panoz is a two-seat convertible sports car. It features a front engine—rear drive configuration, with a body/chassis described as "triangulated stainless steel space frame, vacuum-formed aluminum body panels attached with 3M aerospace bonding process." During 1990, Panoz began to study the installation of restraint systems when prototyping began. To date, it has expended 750 man hours and $15,000 on the project, and has concluded that an automatic belt system would require design changes that would substantially affect the character of the vehicle "as a true convertible sportscar in the tradition of the classic older models." For this reason, Panoz has decided to engineer a driver side airbag to meet the Federal requirements. It has determined that "a Ford airbag system" would be best "since the majority of components (power train, primary mechanical, and electrical) are produced by Ford or based on Ford systems." The modifications required to adapt the Ford system into the Panoz require expenditures that total $325,000. The company intends to engineer a passenger-side airbag concurrently, which will require an additional expenditure estimated as $147,000, for a total cost of $472,000. An exemption would permit the company to spread its development costs, and to sell vehicles to help fund the compliance program. Without an exemption, the company "will most likely have to discontinue the Panoz Roadster development project." The company estimates that it will achieve full compliance with Standard No. 208 by April 5, 1995.

According to the petitioner, a temporary exemption would be in the public interest because the car is produced in the United States "utilizing 100% U.S. components." It currently has 8 full time employees, and estimates that 200 employees from 80 different companies are involved in the project. The car will be marketed nationally which will provide "jobs through marketing, advertising, and service

activities." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act as the car fully complies with the remaining Federal Motor Vehicle Safety Standards including the 1997 side impact requirements. During the exemption period, the Panoz will be equipped with three-point belt systems.

Finally, the company points out that its product will be "the only vehicle to utilize molded aluminum body panels for the entire car." The new technology is said to reduce vehicle weight, and improve body strength and fuel efficiency.

No comments were received on the petition.

The financial data submitted by the petitioner showing that its cumulative net loss exceeds $1,000,000, together with the estimated cost of $472,000 for immediate conformance, is a convincing hardship argument. In addition, the compliance studies conducted by Panoz together with its estimated date of full compliance with the automatic restraint requirements indicate that the company is making a good faith effort to comply with Standard No. 208. This American-made vehicle is represented as meeting all remaining standards, and will afford its occupants with the protection inherent in all applicable standards other than Standard No. 208, and will comply with new side intrusion requirements in advance of its effective date. An exemption is merited. NHTSA is providing one of approximately 2-years duration, affording a few months leeway in the event that Panoz cannot achieve full compliance by April 5, 1995.

Accordingly, the Administrator finds that compliance with the automatic protection requirements of Standard No. 208 would cause the petitioner substantial economic hardship, that the petitioner has made a good faith effort to meet the automatic protection requirements, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Panoz Auto Development Company is hereby granted NHTSA Temporary Exemption 93–5, expiring August 1, 1995, from S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50).

Issued on: August 5, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–19289 Filed 8–11–93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93–38; Notice 2]

The Goodyear Tire and Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

The Goodyear Tire and Rubber Company (Goodyear) of Akron, Ohio, determined that some of its tires fail to comply with 49 CFR 571.119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," (Federal Motor Vehicle Safety Standard (FMVSS) No. 119), and filed an appropriate report pursuant to 49 CFR Part 573, Defect and Noncompliance Reports. Goodyear also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on June 7, 1993, and an opportunity afforded for comment (58 FR 31999). This notice grants that petition.

In March 1993, Goodyear manufactured 1,246 Marathon Trailer Tires that bore incorrect maximum load ratings on the serial sidewalls. The subject tires were marked "Max load 1620 lbs at 50 psi cold" on the serial side. The tire marking should read "Max load 1820 lbs at psi cold." The non-serial side is marked correctly.

This is a noncompliance with paragraph S6.5(d) of Standard No. 119 which specifies that each tire be labeled with the maximum load rating and corresponding inflation pressure.

Goodyear supported its petition for inconsequential noncompliance with the following:

> The Goodyear Tire and Rubber Company believes that this noncompliance is inconsequential to motor vehicle safety. All other labeling requirements as specified by 571.119, paragraph S6.5 (a) thru (j) are correct and comply [with] the standard. The correct maximum load is shown on the non-serial sidewall and even if the incorrect maximum load on the serial sidewall was followed, it is 200 pounds less than the prescribed maximum load and would therefore not cause an unsafe condition.

No comments were received on the petition.

The reported labelling noncompliance is a simple one, an understatement of maximum load on the serial side of the tire. The correct load is stated on the non-serial side. Further, reference to the incorrect load given on the serial side will not create a safety problem since loading to that poundage is substantially less than the maximum recommended.

Accordingly, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 5, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–19290 Filed 8–11–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–33: OTS No. 0391]

First Federal Savings and Loan Association of Independence, Independence, Kansas; Approval of Conversion Application

Notice is hereby given that on August 3, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Independence, Kansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 6, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19309 Filed 8–11–93; 8:45 am]

BILLING CODE 6720-01-M

[AC–31: OTS No. 5826]

New Jersey Savings and Loan Association, Atco, New Jersey; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on June 15, 1993, the Deputy Director for Washington Operations approved the application of New Jersey Savings and Loan Association, Atco, New Jersey, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a transfer of assets application. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW.,

Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18 Floor, Jersey City, New Jersey 07302.

Dated: August 6, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19307 Filed 8–11–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–32: OTS No. 3321]

Suburban Federal Savings Bank, Cincinnati, Ohio; Approval of Conversion Application

Notice is hereby given that on August 2, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Suburban Federal Savings Bank, Cincinnati, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: August 6, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19308 Filed 8–11–93; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Hubert H. Humphrey Fellowship Program: Cooperative Agreement for Administrative Services

ACTION: Notice—Request for proposals.

SUMMARY: The United States Information Agency (USIA) seeks applications from non-profit organizations with at least four years of experience in successfully administering international exchange programs to provide administrative and program services for the FY 95 Hubert H. Humphrey Fellowship Program.

Each year the Humphrey Program brings approximately 185–190 accomplished professionals from developing countries, East and Central Europe, and the former Soviet Union to the U.S. at a mid-point in their careers. The Program involves a year of non-degree graduate level study and related professional experiences. Fellows are nominated by U.S. embassies or Fulbright commissions based on their professional background, academic qualifications and potential for national leadership. By providing these future leaders with exposure to U.S. society and culture, and to current U.S. approaches to the fields in which they work, the Program provides a basis for establishing lasting ties among U.S. citizens and their professional counterparts in other countries.

Fellowships are granted competitively to public and private-sector candidates with a commitment to public service in the fields of natural resources and environmental management, public policy analysis and public administration, economic development, agricultural development/agricultural economics, finance and banking, human resource management/personnel, urban and regional planning, public health policy and management, technology policy and management, educational planning, and communications/journalism. The typical Fellow ranges in age from 35–45 years old, holds a masters degree from an institution in his/her own country, may be the director of an office in a Ministry, provincial headquarters, or central bank, or the director of a hospital, and has probably represented his/her office at a major international conference. The Program is also attracting an increasing number of applicants from the private sector, including consultants attorneys, journalists, and directors of local or international non-governmental organizations (NGOs).

Fifteen universities are currently serving as Humphrey host institutions, selected through a competitive process. Fellows are placed at one of these fifteen Humphrey host institutions in groupings by profession of ten to fifteen Fellows, e.g., thirteen Fellows in public health policy and management from thirteen different countries are placed at the same host institution.

The FY 94 administrative agreement will be amended to cover monitoring the FY 94 Fellows (academic year 1994–1995) until their department at the end of June, 1995. The FY 95 administrative agreement, which this announcement covers, will be a transition year during which the successful organization will have responsibility for selection and placement of Fellows for academic year 1995–1996.

Activities in chronological order for FY 95 (October 1, 1994–September 30, 1995), the first year of the agreement, will include: Receive, log, and review applications (approximately 450 applications from more than one hundred participating countries); coordinate candidate review panel meetings; prepare candidate list for the Agency to submit to the J. William Fulbright Foreign Scholarships Board for final review; in close consultation with the Agency, evaluate the quality and appropriateness of all Humphrey host institutions and coordinators; prepare and send letters of award and program guidelines to Fellows; open and maintain an up-to-date file on each Fellow; place Fellows in short-term, pre-academic English language programs, as needed; place Fellows at appropriate Humphrey host institutions; enroll Fellows in an Agency medical insurance plan; submit final placement reports to Agency; plan and implement a workshop in Washington, DC, for coordinators and assistant coordinators at Humphrey host institutions; issue maintenance, book allowance, and other support to Fellows; disburse fall semester tuition payments; assume overall responsibility for complying with all applicable tax treaties and federal, state and local laws on tax withholding and reporting for Fellows; begin monitoring Fellows; maintain contact with approximately 1900 alumni and 34 alumni associations worldwide and provide support for alumni activities in consultation with the Agency.

In addition to all activities above, activities for the FY 96 (October 1, 1995–September 30, 1996) renewal agreement will include: Assume overall responsibility for monitoring all Fellows; arrange Fellows' professional development activities as an integral part of the Program; arrange professional enhancement workshops in joint consultation with Agency; make round trip travel arrangements for Fellows to attend the Washington Workshop, a one-week orientation and introduction to the nation's capital attended by all Fellows; continue to issue maintenance, book allowance, and other support to Fellows during the academic year; disburse spring semester tuition payments; assist Fellows with health insurance claims; respond to all visa extension requests in consultation with the Agency; make travel arrangements for Fellows to attend the Minnesota Workshop, the final program workshop during which Fellows discuss papers they have written in their on-campus professional groups and participate in program graduation ceremonies; arrange return travel to Fellows' home countries; assume responsibility for complying with all federal, state and local laws on tax withholding and reporting for Fellows; coordinate competition for Humphrey host institutions, as necessary; provide

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appropriate training for Humphrey host institutions and coordinators; produce and distribute Program guidelines, information packets, application forms, selection guidelines, program brochures, and newsletters.

Subject to USIA review and availability of funds, the cooperative agreement will be renewed annually for five years.

DATES: Deadline for proposals: All copies must be received by 5 p.m. Washington, DC time on November 8, 1993. Faxed documents will not be accepted, nor will documents postmarked on November 8 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. The cooperative agreement should begin October 1, 1994.

ADDRESSES: The original and ten copies of the completed application, including required forms, must be submitted by the deadline to: U.S. Information Agency, REF: Humphrey Fellowship Program, Administrative Services, Grant Management Division, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested United States organizations/institutions should contact Aleta Wenger or Leigh Rieder at the U.S. Information Agency, Humphrey Fellowship Program (E/ASU), room 349, 301 4th Street, SW., Washington, DC 20547, telephone, (202) 619–5289, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview: Authority for the Hubert H. Humphrey Fellowship Program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the U.S. and people of other countries.

Guidelines

The cooperating organization will perform administrative and program functions for the Humphrey Fellowship Program. The cooperating organization will have the responsibility for:

A. Observing and complying with the policies of the United States Information Agency (USIA) and the J. William Fulbright Foreign Scholarship Board (BFS) in the administration of this cooperative agreement;

B. Providing data, as requested by USIA, concerning the Humphrey Fellowship Program;

C. Submitting quarterly budget and program reports and an annual program report with recommendations for project improvements.

Eligibility

Non-profit organizations with key program staff based in the Washington, DC metropolitan area and available for frequent meetings with Agency staff or organizations willing to establish a Washington, DC office are invited to submit proposals for a cooperative agreement award from the Agency. Organizations must also have expertise and creditable experience in management of professional exchanges and/or academic exchanges.

Proposed Budget

A comprehensive line item administrative budget must be submitted with the proposal by the deadline. It is anticipated that the total Humphrey Fellowship Program budget for FY 95 will be approximately $8 million with a caseload of about 185 Fellows and 450 applications. A program budget which provides maintenance, tuition, book allowance, professional allowance, domestic and international return travel, university fee, the coordinator's workshop, and other support for the Fellows, will be developed in consultation with the Agency in February–March, 1995. Specific guidelines for budget preparation are available in the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. In addition, all eligible proposals will be reviewed by the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of programs approach: Proposals should exhibit originally, substance, innovation, and creativity.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Proposals should clearly demonstrate how the organization will meet the Program's goals and objectives.

4. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the Program's goals. Applicant should demonstrate that proposed staff will be sensitive to the multicultural nature of the Program and the professional status of participants.

5. Institution's track record/ability: Applicant should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Applicant should also demonstrate ability to perform the services that are outlined in the application packet. The Agency will consider the past performance of past grantees and the demonstrated potential of new applicants.

6. Evaluation plan: Proposals should provide a plan for program evaluation.

7. Cost effectiveness: The overhead and administrative components of the cooperative agreement, as well as salaries, should be kept as low as possible to attain the highest possible number of fellowships. All expenditures should be necessary and appropriate.

8. Cost-sharing: Proposals should maximize cost-sharing wherever possible.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 31, 1994. The awarded cooperative agreement will be subject to periodic reporting and evaluation requirements.

Dated: August 5, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–19221 Filed 8–11–93; 8:45 a.m.]

BILLING CODE 8230–01–M

International Educational and Cultural Activities Human Rights Project for Indonesia

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the U.S. Information Agency proposes the development of a 14-day exchange program on constitutionalism and human rights for government officials, private individuals, academics, and journalists from Indonesia. The participants will be introduced to the American experience of protecting human rights through constitutional provision and governmental action, and will also observe the important role of non-governmental organizations (NGOs) active in the field of human rights including institutions that monitor foreign governments' compliance with international human rights charters and conventions. A review of human rights in the context of U.S. foreign policy will also be covered during the program. The project will be planned and implemented by a U.S. not-for-profit institution will experience in Southeast Asian affairs and with some legal background. Several months following conclusion of the U.S. portion of the program, two or three U.S. human rights specialists will make a reciprocal visit to Indonesia for follow-on consultations.

ANNOUNCEMENT NUMBER: All communications concerning this announcement should refer to the Human Rights Project for Indonesia. The announcement number is E/P–94–3. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on October 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on October 15, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 15, 1993, for projects whose activities will begin between January 1, 1994, and December 31, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: EP–94–3, Human Rights Project for Indonesia, Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

PROGRAM GOALS: The program will engender among participants an understanding and appreciation of American laws and institutions that protect individuals rights; increase participants' understanding of the important role NGOs have in monitoring foreign governments' compliance with international human rights charters and conventions; promote an examination of appropriate strategies to protect human rights in Indonesia; foster communication among Indonesian participants from diverse walks of life who ordinarily do not have an opportunity to discuss human rights issues among themselves; and provide a basis on which to build future cooperation between American and Indonesian specialists in human rights issues.

PARTICIPANTS: Participants will include up to 8 mid- and deputy-level officials or mid-career professionals who have demonstrated leadership qualities and are likely to be able to influence public opinion and policy. They will be individuals from NGOs, government, academia, and the press. English fluency will not be required. Interpretation for foreign participants will be provided by the Department of State's Language Services Division. Indonesian participants will be nominated by U.S. Information Service officers in Indonesia and confirmed by the Office of Citizen Exchanges in consultation with the Office of East Asian and Pacific Affairs and the award recipient.

PROGRAM SUGGESTIONS: The American program might include an overview session to discuss the U.S. approach to human rights protections; division of the participants into two or three groups that will focus on separate human rights issues; a review of American documents that form the legal basis of citizen rights in the U.S. and a discussion of how they have been translated into institutional structures; and an examination of United Nations documents that establish the global context and standards for human rights.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5326, to request a detailed concept paper and an application packet, which includes award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

FUNDING: Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to successful conclusion; and cost effectiveness such as in-kind contributions and the ability to keep overhead costs at a minimum. USIA can devote up to $125,000 for this project, though organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submission should correspond to this limitation.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the

program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. (Note: the 20 percent limitation on "administrative costs" included in previous announcements does not apply to the RFP.)

APPLICATION REQUIREMENTS: Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

REVIEW PROCESS: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the USIA's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design development cost associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

REVIEW CRITERIA: USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by USIA's Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability To Achieve Program Objectives:* Objectives should be realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet the program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology to use to link outcomes to original project objectives. Applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

NOTICE: The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

NOTIFICATION: All applicants will be notified of the results of the review process on or about December 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 6, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–19412 Filed 8–11–93; 8:45 am]

BILLING CODE 8230-01-M

International Educational and Cultural Activities Alternative Dispute Resolution

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the U.S. Information Agency proposes the development of a multi-week, two-way exchange program for Indonesian and American participants devoted to non-litigious resolution of industrial disputes. Up to six Indonesian citizens from the private sector, labor unions, and non-governmental organizations (NGOs) involved in labor issues will visit the U.S. for approximately four weeks to observe practices and discuss issues relevant to the program's theme. At the conclusion of the U.S. program, Indonesian and American participants will assess their accomplishments and develop plans for a follow-on visit to Indonesia by American specialists.

The Indonesian component will be a two- to three-week, multi-site visit for a delegation of up to three Americans, who will work with the original Indonesian participants to demonstrate dispute resolution techniques at industrial enterprises in and outside Jakarta.

This project will be implemented by a U.S. not-for-profit institution that, through its proposal, demonstrates extensive experience and success in coordinating international exchange programs for mid-level foreign visitors. Institutions that have substantive working relationships with potential cosponsoring Indonesian institutions are strongly encouraged to apply.

Announcement Number: All communications concerning this announcement should refer to the Alternative Dispute Resolution Project. The announcement number is E/P–94–4. Please refer to title and number in all correspondence or telephone calls to USIA.

Dates: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on October 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on October 15, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 15, 1993, for projects whose activities will begin between January 1, 1994, and December 31, 1994.

Addresses: The original and *14* copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: EP–94–4; Alternative Dispute Resolution, Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC. 20547.

Program Goals: The program will acquaint Indonesian participants with theories and techniques of alternative dispute resolution; develop among Indonesian participants an understanding of how programs and institutions are developed to resolve disputes in a non-litigious manner; develop an appreciation for the role of democratic trade unions in the national economy; increase American understanding of the problems encountered by Indonesia's transition to an industrialized society; and provide a basis on which to build future cooperation between American and Indonesian specialists in dispute resolution.

Participants: Indonesian participants will include up to six industrial practitioners, drawn from labor and management in the private sector, labor unions, and NGOs involved with labor issues. English fluency will not be required. Interpretation for foreign participants will be provided by the Department of State's Language Services Division. Indonesian participants will be nominated by U.S. Information Service officers in Indonesia and confirmed by the Office of Citizen Exchanges in consultation with the Office of East Asian and Pacific Affairs and the award recipient. Three Americans on a return visit to Indonesia might include a labor expert in dispute settlement, a management representative, and a practicing mediator or arbitrator.

Program Suggestions: The American program might include visits to trade unions and other organizations that promote negotiated resolution of disputes; visits to training centers or institutions that offer instruction in dispute resolution techniques; discussions with educators, government officials, and private sector representatives; and analysis of culturally based methods and techniques of dispute resolution that might find application in the multi-ethnic fabric of Indonesian life.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5326, to request a detailed concept paper and an application packet, which includes award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

Funding: Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to successful conclusion; and cost effectiveness such as in-kind contributions and the ability to keep overhead costs at a minimum. USIA can devote up to $125,000 for this project, though organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submission should correspond to this limitation.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. *Per Diem*. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. *Interpreters:* If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. *Book and cultural allowance:* Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a book allowance of $50. U.S. staff does not get these benefits.

5. *Consultants*. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective

grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials, for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. (Note: the 20 percent limitation on "administrative costs" included in previous announcements does not apply to this RFP.)

Application Requirements: Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate georgraphic area office, and the budget and contract offices. Proposals may also be reviewed by the USIA's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to the availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. *USIA will not award funds for activities conducted prior to the actual grant award.*

Review Criteria: USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by USIA's Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project Personnel:* Personnel's professional and logisitcal expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet the program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional ties.

9. *Cost-Effectiveness:* Overhead and administrative costs should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology to use to link outcomes to original project objectives. Applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice: The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review process on or about December 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 6, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–19411 Filed 8–11–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on August 4, 1993, from 10:08 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

Closed Session*

A. New Business

1. A Request To Issue Preferred Stock.

Dated: August 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

[FR Doc. 93–19500 Filed 8–10–93; 10:17 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 12, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Disclosure to Shareholders—Association Annual Meeting Information Statement (Proposed)

Closed Session*

A. Reports

1. Office of Secondary Market Oversight Quarterly Report.

Dated: August 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–19501 Filed 8–10–93; 10:20 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held at the offices of the Farm Credit Administration in McLean, Virginia, immediately following its 10:00 a.m. regular meeting on August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

Closed Session*

A. New Business

1. FCA Board Approval of the Independent Accountant.

Dated: August 10, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–19553 Filed 8–10–93; 2:15 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–18197.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, August 3, 1993, 10:00 a.m., Meeting Open to the Public.

This meeting was canceled.

DATE AND TIME: Tuesday, August 17, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–15: L. Anthony Sutin on behalf of The Tsongas Committee, Inc.
Routine Administrative Matters.

DATE AND TIME: Tuesday, August 17, 1993 (To Convene After the Open Meeting).

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–19569 Filed 8–10–93; 3:39 pm]

BILLING CODE 6715–01–M

* Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(4).

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Corrections

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

Correction

In notice document 93-17885 beginning on page 40111 in the issue of Tuesday, July 27, 1993, make the following correction:

On page 40112, in the second column, in the second full paragraph, in the fifth line, after "rate" insert "for purposes of this review will be 12.66 percent, the "new shipper" rate".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Endangered Karst Invertebrates in Travis and Williamson Counties, TX for Review and Comment

Correction

In notice document 93-17251 beginning on page 39031 in the issue of Wednesday, July 21, 1993, make the following correction:

On page 39032, in the third column, under the heading **Public Comments Solicited**, the third through eighth lines should read: "All comments received by the date specified above will be considered prior to approval of the plan."

BILLING CODE 1505-01-D

federal register

Thursday
August 12, 1993

Part II

Department of Education

34 CFR Part 381
Protection and Advocacy of Individual Rights; Rule

VOL 58 ISS 154 AG 12 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 381

RIN 1820-AB17

Protection and Advocacy of Individual Rights

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes regulations governing the Protection and Advocacy of Individual Rights (PAIR) program to implement requirements added to the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments), Pub. L. 102-569. The 1992 Amendments moved the PAIR program from title VII, part D, of the Act to title V by adding a new section 509 of the Act. Section 509 establishes the purpose of the PAIR program, eligibility for services, funding requirements, application procedures and assurances, eligibility for assistance, and reporting requirements for new awards for the PAIR program. The final regulations implement the requirements in section 509 and establish application requirements for the PAIR program. The final regulations also include selection criteria to be used in making new awards under the PAIR program.

EFFECTIVE DATE: These regulations take effect either September 27, 1993 or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deborah Havens, U.S. Department of Education, 400 Maryland Avenue SW., room 3220, Switzer Building, Washington, DC 20202-2741. Telephone: (202) 205-8733. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The PAIR program is now authorized by new section 509 of the Act (29 U.S.C. 794e). Previously, the PAIR program was authorized by section 731 of the Act. No program regulations existed for the previous PAIR program. The newly authorized PAIR program differs substantially from the previous program. All further references to the PAIR program are to the newly authorized PAIR program.

The PAIR program is an important part of the National Education Goals. The PAIR program addresses Goal 5, that every adult American—including individuals with disabilities—will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The PAIR program provides support to eligible systems within States to protect the legal and human rights of (a) individuals with disabilities who are ineligible for (1) client assistance programs (CAP) under section 112 of the Act; (2) protection and advocacy programs under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041-6043; and (3) protection and advocacy programs under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801-10851; or (b) individuals with disabilities who need protection and advocacy services other than the services authorized under CAP.

On May 5, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 26890). In general, the commenters agreed with the NPRM. Thus, there are no major differences between the NPRM and the final regulations.

These final regulations implement section 509 of the Act, as recently added by the 1992 Amendments, and incorporate certain provisions of the Education Department General Administrative Regulations (EDGAR). Any differences between the NPRM and the final regulations are noted in the following analysis of comments and changes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 13 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. The comments are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes are not addressed.

Eligibility of Territories (§ 381.2(b))

Comments: One commenter requested that territories be allowed to compete for $50,000 grants even if the appropriation for the PAIR program is less than $5,500,000. Although the commenter did not disagree that § 381.2(b), which prohibits the territories from applying for grants under the PAIR program, is consistent with section 509(b)(2) of the Act, the commenter was hopeful that Congress will change section 509(b)(2) through technical amendments to the Act.

Discussion: The Secretary understands the concern that territories should be eligible for grants under the PAIR program even if the amount appropriated for the PAIR program is less than $5,500,000. However, the language of section 509(b)(1) and (2) of the Act is clear that territories are not eligible for grants under the PAIR program if the amount appropriated for the PAIR program is less than $5,500,000. Nothing in the written legislative history of the 1992 Amendments indicates that Congress intended the territories to be eligible for discretionary grants under the PAIR program if the amount appropriated for the PAIR program is less than $5,500,000. If Congress amends section 509(b) of the Act to allow territories to compete for discretionary grants when the amount appropriated for the PAIR program is less than $5,500,000, the Secretary will amend the regulations to implement any change.

Changes: None.

Allotment (§ 381.2(c))

Comments: Three commenters suggested that the word "may" in § 381.2(c) be changed to "shall" to be consistent with section 509(c)(2) of the Act.

Discussion: Even if the PAIR program is administered as a formula grant program, an eligible system still must submit an application for assistance under the PAIR program to the Secretary. If an eligible system does not submit an application for funds under this program or if an eligible system's application does not comply fully with all statutory and regulatory requirements, the eligible system may not receive the PAIR funds allotted to the State in which the eligible system plans to carry out the PAIR program. Therefore, the Secretary believes it is more appropriate to say that, even if the PAIR program is administered as a formula grant program, the eligible system "may" receive the amount allotted to the State.

Changes: None.

Written Plan for Achieving Objectives and Priorities (§§ 381.3(a)(5) and 381.10(a)(5))

Comments: One commenter suggested that the requirement for a written plan in §§ 381.3(a)(5) and 381.10(e), which has been redesignated § 381.10(a)(5), for achieving the eligible system's objectives and priorities be deleted

because a plan would be redundant, create unnecessary paperwork, and would serve no purpose. This commenter pointed out that well-developed objectives and priorities, which are required by section 509 of the Act and § 381.3(a)(5), are, in essence, a plan.

Discussion: The Secretary believes that there is an important difference between developing objectives and priorities and having a specific plan to achieve the objectives and priorities. A written plan describing how and when an eligible system will achieve the objectives and priorities it has established pursuant to section 509 of the Act and §§ 381.3(a)(5) and 381.10(a)(5) of this part will provide more information on which the Secretary can make a decision concerning an eligible system's ability to carry out the PAIR program. In addition, when the PAIR program is a discretionary program, this information will assist the Secretary in making a decision among competing applications. The more information the Secretary has on which to make a decision among competing applicants, the more likely the best applicant will be selected.

Changes: None.

Definition of "Eligible Individual With a Disability" (§ 381.5(b))

Comments: One commenter suggested that paragraph (2) of the definition of "Eligible individual with a disability" in § 381.5(b) be deleted because section 509 of the Act specifies that individuals who are eligible for PAIR services must be ineligible for CAP services. This commenter added that CAP is now able to provide all services needed by an individual with a disability. Another commenter expressed his agreement with the proposed definition.

Discussion: The purposes of the eligibility requirements for the PAIR program are (1) to avoid duplicating the services available under the CAP and the protection and advocacy programs under part C of the DDA and under the PAIMI; and (2) to provide protection and advocacy services not otherwise authorized under the CAP and other protection and advocacy programs. An individual with a disability may be eligible for services under the CAP but may be seeking services that a CAP may not have authority to provide. An example is an individual with a disability who is receiving services under the Act and who has a complaint of discrimination on the basis of disability against her landlord. In this example, the individual's housing is not related in any way to any services the individual is receiving under the Act. Although the individual is eligible for services under the CAP to address any complaints she may have with the provider of the services she is receiving under the Act, the CAP does not have the authority to assist the individual with the housing discrimination complaint. Therefore, the individual is eligible to receive assistance under the PAIR program related to the housing complaint. The Secretary believes that the definition of eligible individual with a disability accurately reflects the intent of Congress. However, the Secretary does recognize that a slight revision may clarify who is eligible.

Changes: A minor change has been made to the definition of "Eligible individual with a disability" in § 381.5(b) to clarify that individuals with disabilities who need protection and advocacy services other than the services authorized under the CAP are eligible for services under the PAIR program.

Comments: One commenter suggested that clients and client applicants under the vocational rehabilitation and independent living services programs should not be informed about the PAIR program. The commenter reasoned that these clients and client applicants are currently "baffled" by the CAP and that their understanding of CAP would be further confused if they were to be informed about the PAIR program.

Discussion: The Secretary believes that it is important to inform the public, particularly individuals with disabilities, about all of the services and benefits available under the PAIR program. The Secretary also believes that clients and client applicants under the vocational rehabilitation and independent living services programs are fully capable of understanding what services are available to them under the CAP and PAIR programs.

Changes: None.

Information and Referral (§ 381.10(a)(4))

Comments: One commenter suggested deleting the phrase "including individuals who are exiting from public school programs" from § 381.10(d), which has been redesignated § 381.10(a)(4). This commenter questioned the appropriateness of targeting this particular group of individuals, which gives the appearance of establishing a priority for these individuals for information and referral services over other groups of individuals. This commenter also stated that this language ignores the needs of persons with specific types of disabilities.

Discussion: The Secretary did not intend the language in § 381.10(a)(4) to target or give priority to individuals who are exiting from public school programs. The Secretary intended simply to ensure that the information and referral services that are available to everyone in the State also are made available to these individuals. The Secretary agrees that revision of § 381.10(d) may clear up this confusion.

Changes: The words "but not limited to" have been added after the word "including" in § 381.10(d).

Mediation (§ 381.10(a)(9))

Comments: Three commenters suggested altering or deleting the requirement in § 381.10(i), which has been redesignated § 381.10(a)(9), that mediation and other alternative dispute resolution methods should be used to the maximum extent possible. The commenters pointed out that this requirement is not in the statute and that the decision to use mediation or an alternative dispute resolution method should be made by the individual with a disability or his or her advocate. One of the commenters added that, if the use of mediation or alternative dispute resolution methods is required, the issue of whether the eligible system should be neutral or act as the advocate or representative of the PAIR client in mediation will arise, as it has under CAP.

Discussion: The Secretary does not believe that requiring eligible systems to use mediation or alternative dispute resolution methods to the maximum extent possible is either burdensome, contrary to public policy, or inconsistent with the law. In addition, section 2(a)(2) of Executive Order (E.O.) on Civil Justice Reform (No. 12778), which became effective on January 21, 1991, requires that agency regulations be written to minimize needless litigation to help reduce the costs and delays associated with litigation. Whether mediation or an alternative dispute resolution method is possible in a particular case depends on the circumstances surrounding the issues raised by that case and the applicable administrative requirements. The requirement to use mediation or alternative dispute resolution methods to the maximum extent possible does not mean that mediation or alternative dispute resolution methods must be used in all cases. Finally, the Secretary believes that when an eligible system represents an individual with disabilities in mediation or alternative dispute resolution, the eligible system remains the advocate or representative of the client and is not to assume the neutral role of the mediator. To ensure that no question arises concerning the

role that an eligible system is to assume during mediation or the use of an alternative dispute resolution method, the Secretary agrees that the definition of mediation should be clarified.

Changes: A change has been made to the definition of "mediation" to clarify the role of the eligible system if mediation is used.

Selection Criteria (§§ 381.21(a) and 381.21(g)(2))

Comments: One commenter suggested that the number of points for the selection criterion on "extent of need for the project" in § 381.21(a) be reduced and that a selection criterion on "previous experience implementing a PAIR system" be added. This commenter believes that the statement of findings in section 2 of the Act appears to provide evidence of congressional intent that would justify the need for the PAIR program. This commenter also believes that the intent to make PAIR a formula grant program when the appropriations are equal to or greater than $5.5 million, demonstrates that Congress evidently felt that the need for the PAIR program has already been established.

Discussion: The selection criteria for the PAIR program apply only when the appropriations are less than $5,500,000 and discretionary grants are awarded under the PAIR program on a competitive basis. The fact that the PAIR program will become a formula grant program when appropriations are greater than or equal to $5,500,000 is not evidence that a particular PAIR project is needed in a particular State in fiscal years in which Congress has appropriated less than this level. Whether an applicant for funds under a discretionary grant program can demonstrate a greater need for its proposed project than another applicant is critical for determining which applicant should be selected for funding. The Secretary also believes that the selection criteria related to "plan of operation," "quality of personnel," "service comprehensiveness," and "coordination with other programs and systems" already provide an applicant with an adequate opportunity to capitalize on its previous experience in operating a PAIR program. Therefore, the Secretary does not believe that it is necessary to add a selection criterion on previous experience.

Changes: None.

Comments: One commenter wanted to know if the language in § 381.21(g)(2) regarding individuals with disabilities who may have limited knowledge about the PAIR program was intended to be a priority or preference for PAIR services for these individuals. Another commenter objected to what he perceived as the "targeting" of these individuals for protection and advocacy services.

Discussion: The Secretary did not intend to establish a priority or preference for PAIR services for individuals with disabilities who may have limited knowledge about the PAIR program by including these individuals in the selection criterion in § 381.21(g)(2). However, if the PAIR program is to be useful, individuals with disabilities must know about its existence. To avoid confusion, the Secretary will relocate and clarify this provision.

Changes: The Secretary will remove this reference from the selection criterion in § 381.21(g)(2) and place revised language in the selection criterion in § 381.21(b)(2)(v). The new language in § 381.21(b)(2)(v) of the selection criteria will award points to an applicant that includes in its plan of operation specific activities designed to provide information about the PAIR program to individuals with disabilities, including individuals who may have limited knowledge about the PAIR program, without regard to race, color, national origin, gender, age, or disabling condition. Individuals who may have limited knowledge about the PAIR program may include persons with mental retardation, persons with sensory or communications impairments, persons in isolated rural areas, or persons who are new to the vocational rehabilitation system.

Direct Payment (§ 381.10(b) and § 381.22(b))

Comments: One commenter asked what part of the Education Department General Administrative Regulations would be applicable for States that have a statute requiring Federal funds to pass through a State agency before going to a nonprofit organization.

Discussion: Section 509(g)(1) of the Act states that payments under the PAIR shall go directly to the eligible system "unless the State provides otherwise." Section 509(g)(1) of the Act is implemented by § 381.22(b) of the regulations. If a State's laws, regulations, or policies prevent the direct payment of Federal funds to a private entity in the State, the Secretary will not make a direct payment to that eligible system. The Secretary agrees that a change is necessary to ensure that an eligible system does not receive a direct payment in violation of State law, regulation, or policy.

Changes: A new paragraph (b) has been added to § 381.10 that will require an eligible system to provide an assurance with its application for assistance under this part that direct payment to the eligible system is not prohibited or inconsistent with the laws, regulations, or policies of the State in which the eligible system plans to carry out the PAIR program. Failure to provide this assurance with its application will prohibit the eligible system from receiving a direct payment of PAIR funds.

Contracts With Third Parties (§ 381.30(b)-(d))

Comments: Seven commenters suggested that § 381.30(b) should be deleted or revised to permit an eligible system to enter into contracts with other entities or individuals to carry out part or all of the PAIR program. Several of these commenters pointed out that section 509 of the Act does not specifically prohibit an eligible system from entering into contracts with other entities or individuals to carry out part or all of the PAIR program. Two of these commenters also suggested that eligible systems should be able to award grants or subgrants to third parties to carry out the PAIR program.

Discussion: The Secretary agrees that section 509 of the Act does not prohibit an eligible system from entering into contracts with other entities or individuals to carry out part or all of the PAIR program and will revise § 381.30(b) accordingly. However, the Secretary believes that an eligible system that receives funds under the PAIR program must not violate the independence requirement under part C of the DDA, 42 U.S.C. 6042(a)(2)(A). Therefore, an eligible system must not contract to carry out the PAIR program, in whole or in part, with any entity or individual that provides services under the Act.

In addition, both 34 CFR 75.708 and 76.50 prohibit a grantee under any program administered by the U.S. Department of Education (ED) from awarding a grant or subgrant to an entity or individual to carry out part or all of a program unless grants or subgrants are specifically authorized by the program statute. Nowhere in section 509 of the Act are eligible systems given the specific authority to award grants or subgrants. Therefore, eligible systems under this program do not have authority to award grants or subgrants to other entities or individuals to carry out part or all of the PAIR program. (Section 75.708 applies when the appropriations for the PAIR program are less than $5,500,000 and the PAIR program is a discretionary program. Section 76.50 applies when the appropriations for the

PAIR program are equal to or more than $5,500,000 and the PAIR program is a formula grant program.)

Changes: Section 381.30(b) has been revised to refer only to grants and subgrants. A new § 381.30(c) has been added to specify that an eligible system may contract with another entity or individual to provide PAIR services, in whole or in part. However, the authority to contract for PAIR services may be exercised only with an entity or individual that is independent of, and not connected financially or through a board of directors to, any entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities. A new § 381.30(d) also has been added to specify that, for purposes of § 381.30(c), "services under the Act" and "treatment, services, or habilitation" will not include client assistance services under the CAP authorized under section 112 of the Act, protection and advocacy services authorized under the protection and advocacy programs under part C of the DDA and the PAIMI, or any other protection and advocacy services.

Comments: One commenter suggested adding language that a recipient of funds may not be associated with an organization that provides services that might be the subject of an appeal by an individual with a disability.

Discussion: The Secretary agrees that eligible systems should be independent of any service provider, as required under part C of the DDA, 42 U.S.C. 6042(a)(2)(A).

Changes: The change to § 381.30(b) in response to a previous comment on the contracting authority of eligible systems addresses this commenter's concern.

Protection, Use, and Release of Personal Information (§ 381.31(b))

Comments: One commenter expressed concern about the provision in § 381.31(b) requiring consent from the agency providing personal information about a client for disclosure of personal information to the eligible system. The commenter stated that no apparent justification exists for limiting an individual's control over his or her own personal information by allowing the agency providing the information to the eligible system to prevent disclosure.

Discussion: The Secretary agrees that the consent of the agency, entity, or individual with personal information about an individual who is a client of the eligible system or who applies for services from the eligible system should not be required before disclosure of that information to the eligible system. Only the consent of the individual, his guardian, parent, or other authorized representative or advocate (including the individual's advocate from the eligible system), should be required for disclosure of personal information from another agency to the eligible system.

Changes: The language in § 381.31(b) that requires the consent of another agency to release to the eligible system personal information about an individual has been deleted. In addition, § 381.31(d) has been revised slightly to conform more closely with section 509(h) of the Act and its legislative history.

Reporting (§ 381.32 (a) and (b))

Comments: One commenter suggested that eligible systems be strongly encouraged to record results and outcomes for all three types of advocacy—individual, self, and systems.

Discussion: The Secretary agrees that eligible systems should maintain records of cases in which the eligible system seeks remedies for individuals (individual advocacy) and for classes or groups of individuals (systems or systemic advocacy), and assists individuals with disabilities to advocate for themselves (self advocacy). The Secretary also agrees that eligible systems should maintain records of the outcomes of these efforts.

However, the Secretary does not believe that eligible systems should be required to maintain and submit records with this information. Therefore, the Secretary will provide non-regulatory guidance and data collection forms that will encourage, but not require, eligible systems to include this information with the information required under § 381.32(a) and that is part of the annual report required by § 381.32. In reviewing paragraph (b) of this section, the Secretary also decided to revise the type of information required on the total number of individuals requesting services and actually served. This additional information will enable the Secretary to provide the type of information required by sections 13 and 509(l) of the Act.

Changes: No change has been made to § 381.32(a). A change has been made to § 381.32(b) to require that an eligible system include information on the race, color, national origin, gender, age, and disabling condition of individuals who requested or received services from the eligible system.

Administrative Costs (§ 381.33(b))

Comments: Two commenters suggested that the five percent limitation in § 381.33(b) on administrative costs that an eligible system may charge to the PAIR program be changed to apply only to the States. One of these commenters also suggested that, if a change is not made, the last phrase in § 381.33(b) needs to be clarified. A third commenter suggested that the phrase "cost of administration" be defined more realistically because it is illogical to assume that the costs of administering the PAIR program can be covered by no more than five percent of the allotment.

Discussion: The Secretary understands the concern that the five percent limitation on administrative costs should apply only if an eligible system is conducted or administered by a State agency. However, the language of section 509(j) of the Act is clear that an eligible system may use only five percent of the State's allotment under the PAIR program on administrative costs. Nothing in the written legislative history indicates that this limitation was to apply only to a State and not to the eligible system within the State. If Congress amends section 509(j) to remove this limitation on administrative costs, the Secretary will amend the regulations to implement any change. In addition, the Secretary believes that the definition of administrative costs in § 381.33(b) is appropriate given current law. However, the Secretary agrees that clarification of the last phrase in the definition of "administrative costs" is needed.

Changes: A change has been made in § 381.33(b) to clarify the last phrase in the definition of "administrative costs."

Case File Management

Comments: One commenter asked whether the regulations will include specific guidelines for effective case file management or whether case file management will be left up to the individual PAIR programs.

Discussion: The Secretary believes that eligible systems should be given discretion to decide how best to manage their case files.

Changes: None.

Multi-year Funding

Comments: One commenter expressed concern with the Department's funding of PAIR grants for only one year and the disruption that results if a grantee is not successful in obtaining a grant for a second year.

Discussion: One-year awards were made in the first year of the PAIR program, which has been funded only since FY 1991, because of the uncertainty that funds would continue to be appropriated for this program. In FY 1992, awards were made for two years. The Secretary believes that

appropriations for this program will be more certain in the future. In FY 1993 and in subsequent years, the Secretary intends to make awards under this program for a three-year period.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 381

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: August 6, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.240 Protection and Advocacy of Individual Rights)

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 381 to read as follows:

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.

381.1 What is the Protection and Advocacy of Individual Rights program?
381.2 Who is eligible for an award?
381.3 What activities may the Secretary fund?
381.4 What regulations apply?
381.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?
381.21 What selection criteria does the Secretary use?
381.22 How does the Secretary allocate funds under this program?

Subpart D—What Conditions Must Be Met After an Award?

381.30 How are services to be administered?
381.31 What are the requirements pertaining to the protection, use, and release of personal information?
381.32 What are the reporting requirements?
381.33 What are the requirements related to the use of funds provided under this part?

Authority: 29 U.S.C. 794e, unless otherwise noted.

Subpart A—General

§ 381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Sec. 509(a) of the Act; 29 U.S.C. 794e(a))

§ 381.2 Who is eligible for an award?

(a) A State protection and advocacy system that is established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 is eligible to receive a grant award under this program.

(b) In any fiscal year in which the amount appropriated to carry out this section is less than $5,500,000, protection and advocacy systems from Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau may not apply for grants under the Protection and Advocacy of Individual Rights (PAIR) program.

(c) In any fiscal year in which the amount appropriated to carry out this section is equal to or greater than $5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may receive the amount allotted pursuant to section 509(c)-(e) of the Act, except that the Republic of Palau may receive an allotment under section 509 of the Act only until the Compact of Free Association with Palau takes effect.

(Authority: Sec. 509(b)-(e) of the Act; 29 U.S.C. 794e(b)-(e))

§ 381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs.

(4) Coordinating the programs provided through an eligible system with the advocacy programs of the Client Assistance Program (CAP) under section 112 of the Act, the State long-term care ombudsman program under the Older Americans Act of 1965, part C of the DDA, and the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801–10851.

(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in § 381.10(f).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f)).

§ 381.4 What regulations apply?

The following regulations apply to the PAIR program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), if the eligible system is not a State or local government agency or Indian tribal organization.

(2) 34 CFR Part 75 (Direct Grant Programs), if the appropriation for the PAIR program is less than $5,500,000.

(3) 34 CFR Part 76 (State-Administered Programs), if the appropriation for the PAIR program is

equal to or greater than $5,500,000 and the eligible system is a State or local government agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(4) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), if the eligible system is a State or local government agency.

(7) 34 CFR Part 81 (General Education Provisions Act— Enforcement).

(8) 34 CFR Part 82 (New Restrictions on Lobbying).

(9) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 381.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48 relating to certain conditions that must be met by grantees.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

§ 381.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities, organizations or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is *individual advocacy*;

(2) More than one individual or a group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy*; or

(3) Oneself, in which case it is *self advocacy. Eligible individual with a disability* means an individual—

(1) Who is ineligible for—

(i) The CAP under section 112 of the Act;

(ii) Protection and advocacy programs under part C of the DDA; and

(iii) Protection and advocacy programs under the PAIMI; or

(2) Who needs protection and advocacy services that are other than the services authorized under CAP.

Eligible system means a protection and advocacy system that is established under part C of the DDA, 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 of this part.

Mediation means the act or process of using a third party to act as sa mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the allotments under sections 509(b)–(e) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

Subpart B—How Does One Apply for an Award?

§ 381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

(1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;

(2) Have the same general authorities, including access to records and program income, as in part C of the DDA;

(3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of programs provided through eligible systems with the advocacy programs of the CAP under section 112, the State long-term care ombudsman program established under the Older Americans Act of 1965, part C of the DDA, and the PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

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(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f))

Subpart C—How Does the Secretary Make an Award?

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000—

(a) The Secretary evaluates each application on the basis of the criteria in § 381.21;

(b) The Secretary awards up to 100 points for these criteria; and

(c) The maximum possible score for each criterion is indicated in parentheses after each criterion.

(Authority: Secs. 12 and 509 (b) and (f) of the Act; 29 U.S.C. 711(c) and 794e (b) and (f))

§ 381.21 What selection criteria does the Secretary use?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the PAIR program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine the extent that the need for protection and advocacy services for eligible individuals with disabilities is justified in terms of complementing or expanding, but not duplicating, existing protection and advocacy or client assistance services.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the PAIR program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable;

(iv) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes; and

(v) Will ensure that the eligible system will provide information about the PAIR program to individuals with disabilities in the State, including individuals who may have limited knowledge about the PAIR program, without regard to race, color, national origin, gender, age, or disabling condition;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The extent to which the project involves individuals with disabilities in the development of the objectives and priorities of the project and will continue to involve individuals with disabilities in the implementation of the project;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(6) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable. (Cross-reference: 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.

(g) *Service comprehensiveness.* (20 points) The Secretary reviews each application for information that shows—

(1) The comprehensiveness of the protection and advocacy services to be provided by the eligible system, including evidence that the eligible system will use all available authority and alternatives (including the right to pursue legal, administrative, and other available remedies) to provide for the protection and advocacy of the rights of eligible individuals with disabilities within the State; and

(2) Evidence that the eligible system will provide protection and advocacy services to individuals with a broad range of disabilities without regard to race, color, national origin, gender, age, or disabling condition.

(h) *Coordination with other programs and systems.* (10 points)

(1) The Secretary reviews each application to determine that the agency designated to operate the PAIR program has demonstrated knowledge of the eligibility requirements and the range of

services provided by the following programs and will coordinate, as appropriate, with the advocacy programs of the—

(i) CAP under section 112 of the Act;

(ii) State long-term care ombudsman program established under the Older Americans Act of 1965;

(iii) DDA; and

(iv) PAIMI.

(2) The Secretary reviews each application to determine the extent of planned cooperative activities with relevant public and private agencies and organizations in the community, including local educational agencies, to address barriers that prevent eligible individuals with disabilities, including eligible individuals with disabilities from diverse populations, from obtaining services from those public and private agencies and organizations in the community.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12 and 509 (b) and (f) of the Act; 29 U.S.C. 711(c) and 794e (b) and (f))

§ 381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide training and technical assistance to eligible systems established under this program.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)-(e) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(Authority: Sec. 509(c)-(e) of the Act; 29 U.S.C. 794e(c)-(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or subgrant to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program, in whole or in part, but only if—

(1) The agency, entity, or individual does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, "services under the Act" and "treatment, services, or habilitation" does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under Part C of the DDA and the PAIMI, or any other protection and advocacy services.

(Authority: Secs. 12 and 509(i) of the Act; 29 U.S.C. 711(c) and 794e(i))

§ 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the principles of common law as interpreted by the courts of the United States.

(Authority: Secs. 12 and 509(h) of the Act; 29 U.S.C. 711(c) and 794e(h))

§ 381.32 What are the reporting requirements?

Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:

(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to § 381.10(e).

(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.

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(c) The types of disabilities represented by individuals served by the eligible system.

(d) The types of issues being addressed on behalf of individuals served by the eligible system.

(e) Any other information that the Secretary may require. (Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12(c), 13, and 509(l) of the Act; 29 U.S.C. 711(c), 712, and 794e(l))

§ 381.33 What are the requirements related to the use of funds provided under this part?

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) The eligible system may not use more than five percent of any allotment for the costs of administration of the system supported under this part. For purposes of this paragraph, "costs of administration" include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation or use allowances, the cost of operating and maintaining facilities, equipment, and grounds (e.g., rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that would be incurred by the eligible system to carry out programs other than the PAIR program.

(c) Funds paid to a State or an eligible system within a State for a fiscal year to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the State or an eligible system within a State for obligation during the succeeding fiscal year in accordance with 34 CFR 76.705–76.707.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than $5,500,000, § 75.707 applies. If the appropriation for the PAIR program is equal to or greater than $5,500,000, § 76.707 applies. An eligible system is considered a State for purposes of § 76.707. For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 76.707 applies to this program.

(Authority: Secs. 12 and 509(f),(g), and (j) of the Act; 29 U.S.C. 711(c) and 794e(f), (g), and (j))

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4628-6]

National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Chromium compounds are among the 189 hazardous air pollutants listed for regulation under section 112 of the Clean Air Act as amended. Industrial process cooling towers (IPCT's) that use chromium-based water treatment programs have been identified by EPA as significant emitters of chromium compounds to the atmosphere. The IPCT source category is among the group of major source categories scheduled by statute for final rules by November 1994. The purpose of the proposed rule is to eliminate chromium compound emissions from IPCT's. The proposed standard implements a pollution prevention option, the elimination of chromium-based chemicals in new and existing industrial process cooling towers (IPCT's).

DATES: *Comments.* Comments must be received on or before October 12, 1993.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by September 1, 1993, a public hearing will be held on September 13, 1993, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Mary Hinson at (919) 541–5601 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 1, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (A–131), Attention: Docket No. A–91–65, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Mary Hinson, Industrial Studies Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5601.

Background Information Document. The Background Information Document (BID) for the proposed standard may be obtained from the docket or from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Chromium Emissions from Industrial Process Cooling Towers—Background Information for Proposed Standards" (EPA–450/R–93–022).

Docket. Docket No. A–91–65, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. Phil Mulrine at (919) 541–5289, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows.

I. Initial List of Categories of Major and Area Sources
II. Background
III. NESHAP Decision Process
IV. Summary of Proposed Standard
V. Summary of Environmental, Energy, and Economic Impacts
VI. Rationale
VII. Administrative Requirements

I. Initial List of Categories of Major and Area Sources

Section 112 of the CAA, as amended November 1990, requires that EPA evaluate and control emissions of HAPs. The control of HAPs is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice standards under section 112(h) for categories of sources that emit HAPs. On July 16, 1992 (57 FR 31576), EPA published an initial list of major and area source categories to be regulated.

The source category for which standards are proposed today is the IPCT source category, which is in the proposed 4-year group of categories of major sources for promulgation of regulations (57 FR 44147). The IPCT source category consists of cooling towers that are used for cooling industrial or chemical processes alone or in combination with heating, ventilating, and air conditioning (HVAC) systems. Subcategorization of IPCT's by industry, size, process temperature, and makeup water quality was studied. However, this study revealed no justification for subcategorization of the IPCT source category for purposes of regulation.

The EPA's findings indicate that no individual IPCT emits 9.1 megagrams per year (Mg/yr) [10 tons per year (tons/yr)] of chromium compounds, and, therefore, no individual IPCT's are known to be major sources. However, the majority of IPCT's that are operated on chromium-based water treatment programs and emit chromium are integral parts of facilities that are major sources as defined in section 112(a)(1). Today's proposed standards would apply only to those IPCT's located at facilities that would qualify as major sources as defined in section 112(a)(1). The few IPCT's that would not be covered by these proposed standards will be considered for regulation as part of the area source strategy authorized under section 112(k). Of course, if any IPCT qualifies as a major source by itself, the standards proposed today would apply to that IPCT. Procedures by which owners or operators of sources can determine if the source is a major source are provided in section 2 of the General Provisions to part 63.

II. Background

A. Description of Cooling Tower Systems

Industrial process cooling towers typically are part of a system that uses recirculating water to cool process fluids that have become hot through contact with or participation in a manufacturing process. (A detailed description of IPCT design and operation can be found in the BID; see the **ADDRESSES** section of this preamble.) The role of the IPCT is to cool the water that is used in the system. In the IPCT system, the hot process fluids pass through one or more heat exchangers, which allow heat to be transferred from the process fluids to the water. The most common type of heat exchanger used in IPCT systems is the shell-and-tube heat exchanger constructed of carbon steel. In this type of heat exchanger, bundles of carbon steel tubes are placed inside a jacket or shell. The cooled water coming from the IPCT flows through the tubes, and the hot process fluids flow through the shell, outside the tubes.

Cooling towers cool the warm water by contacting it with ambient air. Major cooling tower components include the fans, fill material, water distribution

deck, drift eliminator, structural frame, and cold water basin. The warm water is pumped to the top of the IPCT and is distributed across the distribution deck where it flows through a series of nozzles onto the top of the fill material. Fill material is used in cooling towers to create as much water surface as possible and, thereby, to enhance evaporation and heat transfer. Fill material creates either a large number of water droplets (splash fill) or many thin vertical sheets of water (film fill). As the water flows down the fill material, it contacts air that is drawn or forced across the fill material by one or more fans at the top of the tower. A small percentage of the water evaporates, and the air is also heated. The warm, moist air then passes through the drift eliminator and exits the tower through the fan stack(s). The cooled water falls into a cold water basin, which typically is at the base of the IPCT. From there, the water in the cold water basin is pumped back to the heat exchangers served by the tower. In this manner, the cooling water is continuously recirculated through the system. The water flowrate through the system is referred to as the recirculation rate.

As evaporation occurs during cooling, the chemical constituents of the water become concentrated. A percentage of the recirculating water is intentionally discharged (blowdown) to limit the concentrations of suspended and dissolved solids to acceptable levels. Fresh water (makeup) is added to replace water lost due to evaporation, blowdown, and drift.

Water droplets that are carried by the airstream through the cooling tower and emitted into the air are referred to as "drift." Drift eliminators are installed between the outlet side of the fill sections and the fan stack to reduce the amount of drift from the tower. The efficiency of a drift eliminator is a function of its design. Standard-efficiency drift eliminators generally are designed for two air flow directional changes. High-efficiency drift eliminators (HEDE's) generally are designed for three airflow directional changes. In addition, HEDE's are designed so that the water that impacts the drift eliminator drains to the side of the drift eliminator and is less likely to become reentrained in the moving air. High-efficiency drift eliminators are estimated to achieve a 60 to 70 percent reduction in drift over standard-efficiency drift eliminators.

B. Cooling Water Treatment

High recirculating water temperatures, high concentrations of chemical constituents, and process leaks all contribute to maintenance problems in cooling tower systems. These problems include corrosion, scaling and fouling, and microbiological growth. The primary maintenance concern in most systems is corrosion of heat exchangers, piping, and other metal components.

Corrosion is the oxidation of a metal and occurs when anodic (positively charged) and cathodic (negatively charged) areas develop in the metal as a result of differences in electrical potential. Corrosion can be classified as either general corrosion or localized corrosion. General corrosion results when anodic and cathodic areas continuously change locations and the metal dissolves uniformly. Localized corrosion, or pitting, occurs when anodic sites in the metal remain stationary, and corrosion proceeds rapidly at localized points.

Scaling occurs when dissolved solids and gases precipitate out onto piping and heat exchanger surfaces. In most cooling tower systems, scaling increases with increasing temperature and pH. Fouling occurs when deposits of contaminants and insoluble compounds agglomerate in heat exchangers. Scaling and fouling reduce the water flow and heat transfer rate in cooling systems. In addition, scaling and fouling can lead to pitting by preventing corrosion inhibitors from contacting metal surfaces.

Microorganisms, including bacteria, fungi, and algae, commonly thrive in cooling tower systems. In addition to attacking wooden components of cooling towers, these microorganisms can lead to the formation of slime and debris in the cooling system, thereby reducing the efficiency of heat transfer and promoting localized corrosion.

Chemicals are added to the recirculating cooling water to inhibit the corrosive effects of the water, to control the rate of scaling and fouling, and to control the growth of microorganisms in both the cooling tower and the heat exchangers. Typical water treatment programs include corrosion inhibitors to retard corrosion, antiscalants or stabilizing polymers to control scaling, dispersants to control fouling, biocides to control microbial growth, and acid or caustic soda for pH control. The quality of the cooling tower water supply directly affects the type and quantity of chemicals required to maintain a satisfactory chemical treatment program.

Historically, chromium has been the most commonly used corrosion inhibitor in IPCT systems. Not only is chromium very effective in controlling corrosion, but the base cost of chromium chemicals alone is less expensive and requires less control of recirculating water parameters than do other types of corrosion inhibitors. Because chromium is so effective as a corrosion inhibitor, cooling tower systems using chromium can be operated at lower pH levels, which reduces the likelihood of scale formation. Also, chromium is very forgiving of short-term excursions in inhibitor concentration and water quality parameters because the chromium film protects heat exchanger surfaces for a longer period than do other corrosion inhibitors. Currently available formulations typically contain from 10 to 30 parts per million (ppm) as chromium.

Other types of commonly used corrosion inhibitors include organic and inorganic phosphate, zinc, and molybdate. These collectively are referred to as nonchromium corrosion inhibitors. Nonchromium-based water treatment programs generally include both cathodic and anodic inhibitors in addition to stabilizing polymers and other additives to control fouling, microbial growth, and pH. None of these compounds are listed as HAPs under section 112(b) of the CAA.

Because most nonchromium-based water treatment programs rely on the formation of an insoluble precipitate to protect metal surfaces, systems using nonchromium chemicals generally are operated at higher pH levels, which are more conducive to scaling, than are systems on chromium-based programs. In addition, nonchromium-based water treatment programs generally require tighter control of recirculating water quality parameters than do chromium-based programs. This control is achieved by closer monitoring of water quality parameters and the use of automated chemical feed equipment.

As part of recent information-gathering efforts on the IPCT source category, EPA investigated the feasibility of switching IPCT's on chromium-based water treatment programs to programs based on nonchromium chemicals. In almost all cases, the switch is a simple matter of allowing the concentration of chromium in the recirculating water to decline for a period of up to 2 to 3 days by stopping the addition of chromium chemicals to the cooling water and then adding the nonchromium chemicals to the cooling water. In IPCT's with wooden components, a residual chromium concentration can be detected in the cooling water for a period of up to several months following termination of the chromium water treatment program

as chromium leaches out of the wooden components.

C. Factors Affecting Cooling Tower Emissions

The rate of emissions, or drift rate, from a cooling tower is primarily a function of the air velocity through the fill material, the water recirculation rate, and the type of fill material and drift eliminator used. Emission rates increase with increasing air velocity and recirculation rate. Emission rates from towers equipped with splash fill generally are higher than emission rates from towers with film fill; emission rates from towers equipped with high-efficiency drift eliminators are 60 to 70 percent lower than emission rates from towers equipped with standard-efficiency drift eliminators. In addition, because the chemical composition of drift is generally the same as the chemical composition of the recirculating water, the emission rate of any constituent of the drift, such as chromium, is a function of the concentration of that constituent in the recirculating water.

D. Regulatory History

In the early 1980's, EPA initiated a review to examine the potential risks to public health from exposure to chromium in the ambient air because of the potential adverse health effects associated with hexavalent chromium (Cr^{+6}) exposure. As part of this review a comprehensive "Health Assessment Document for Chromium" (HAD) was prepared that summarizes the scientific literature on health effects of chromium and emphasizes the inhalation route of exposure. The HAD was reviewed at a public meeting of the Environmental Health Committee of EPA's Science Advisory Board (SAB) on November 1, 1983. The SAB concurred with the major findings of the HAD including the finding that there is sufficient evidence from the combined human and animal data to consider Cr^{+6} compounds to be carcinogenic (lung cancer) in humans. A final HAD was published in August 1984.

The HAD also included an estimate of the potency of Cr^{+6} compounds of 1.2×10^{-2}. This means that if a person were continuously exposed to 1 microgram of Cr^{+6} per cubic meter of air for 70 years, the probability of developing cancer is not likely to exceed 1.2 in 100. Under guidelines adopted by EPA in 1986 (51 FR 33992) for carcinogenic risk assessment, Cr^{+6} compounds are classified as Group A, meaning that they are classified as known human carcinogens because there is sufficient evidance to support a causal association between exposure to the agents and cancer. Currently, EPA has classified only four other HAPs with potencies higher than that for Cr^{+6} compounds, and only two of those are also classified as Group A.

On June 10, 1985, EPA published a notice of intent to list either total chromium or Cr^{+6} as a HAP under Section 112 of the CAA as amended 1977 (50 FR 24317). Following publication of this notice in the **Federal Register**, EPA conducted in-depth studies of the quantity of Cr^{+6} and total chromium being emitted, possible control techniques, and the possible cancer risk reduction those control techniques could achieve for various source categories. The findings of the studies indicated that cooling towers emitted Cr^{+6} in sufficient quantities to justify the need for developing a national emission standard.

After further investigations of different types of cooling towers, EPA determined that, for the purpose of developing emission standards, cooling towers should be classified into two source categories: Comfort cooling towers (CCT's) and IPCT's. The CCT source category includes cooling towers that exclusively serve and are an integral part of HVAC or refrigeration systems. Major users of CCT's include hospitals, educational facilities, office buildings, and retail shopping malls. In 1988, there were an estimated 250,000 CCT's nationwide, of which 37,000 were estimated to be using Cr^{+6}-based water treatment chemicals. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. Extensive data gathering between 1985 and 1987 indicated that at that time eight industries were significant users of chromium chemicals to control corrosion in IPCT systems. Nationwide, these industries represented about 8,600 IPCT's, of which approximately 2,800 were using Cr^{+6}-based water treatment chemicals at that time. Chromium-based water treatment programs currently are used in approximately 800 IPCT's.

Industrial process cooling tower systems differ from CCT systems in size, operating parameters such as cooling range and inlet water temperature, and heat exchanger construction materials. The higher temperatures in industrial processes promote more corrosion, and the most common IPCT heat exchanger material, carbon steel, is less resistant to corrosion than the copper used in heat exchangers in CCT systems. Thus, the Agency determined that it was appropriate to treat CCT's and IPCT's as separate source categories and develop separate standards.

In January 1990, a rule that prohibited Cr^{+6} compounds from use and sale as CCT water treatment chemicals was promulgated under section 6 of the Toxic Substances Control Act (TSCA) (55 FR 222). Comfort cooling towers were regulated under TSCA to simplify enforcement by targeting primarily water treatment chemical distributors, which numbered fewer than 200, instead of possible users, which numbered about 250,000. The CCT rule is based on the Administrator's determination that use of Cr^{+6} chemicals in CCT's presents an unreasonable risk of injury to human health and that substitute water treatment programs based on nonchromium chemicals are available and demonstrated.

Concurrent with the standards development under TSCA for CCT's, EPA conducted an intensive information-gathering effort specific to IPCT design and operation. In addition, an extensive testing program was conducted to characterize baseline and controlled emissions from IPCT's. The effectiveness and applicability of alternatives to chromium use in IPCT's under various process and operating parameters were also investigated. This data-gathering effort was guided by the CAA as amended in 1977, which authorized EPA to develop national emission standards for hazardous air pollutants (NESHAP) through a risk-based decision-making process. The 1990 CAA Amendments significantly changed the NESHAP decision-making process under section 112. For source categories that emit HAPs, section 112, as amended, requires EPA to develop technology-based standards that require the maximum degree of reduction in HAP emissions.

Unlike the CCT rule, which was promulgated under TSCA, the standard for IPCT's is being proposed under the CAA. In contrast to CCT's, IPCT's are located at industrial and manufacturing facilities, the vast majority of which qualify as major sources under the CAA. As a result, these facilities will be subject to permitting under title V of the CAA regardless of the authority used to establish regulations for IPCT's.

The current NESHAP decision process is described in detail in section III below.

III. NESHAP Decision Process

A. Source of Authority for NESHAP Development

Title III of the CAA Amendments of 1990 was enacted to help reduce the

increasing amount of nationwide air toxics emissions. Under title III, section 112 was amended to require EPA to establish national standards to reduce air toxics emissions from all major and some area sources that emit one or more HAPs. Section 112(b) contains a list of HAPs, which are the specific air toxics to be regulated by NESHAP. Section 112(c) directs EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known categories and subcategories of "major sources" (defined below) which emit one or more of the listed HAPs. Area source categories selected by EPA for NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in aggregate, pose a "threat of adverse effects to health or the environment," warranting regulation under section 112. The initial list of source categories was published on July 16, 1992 (57 FR 31576).

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112, as amended. The statute requires the standard to reflect the maximum degree of reduction in emissions of HAPs that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, and any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors (described below under paragraph C). The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures which:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or
5. Are a combination of the above (section 112(d)(2)).

To develop a NESHAP, EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

If sources in the source category are major sources [emitting or having the potential to emit, considering controls, 9.1 Mg/yr (10 tons/yr) or greater of any one HAP or 22.7 Mg/yr (25 tons/yr) or greater of total HAPs], then a MACT standard is required. If emissions are not sufficient to qualify the source as "major," regulation is discretionary. However, under section 112(k) of the CAA, regulation of sources that do not qualify as major will be considered under the area source strategy. The level of control corresponding to the MACT floor needs to be determined as a starting point for developing the regulatory alternatives.

C. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors"

The Act directs the Administrator to list categories and subcategories of major sources and area sources which emit one or more of the HAPs listed in section 112(b) (CAA section 112(c)). The Administrator shall list all major sources which emit HAPs. The Administrator shall list those area source categories and subcategories which he finds present a threat of adverse effects to human health or the environment warranting regulation under section 112. Once EPA has identified the specific source categories or subcategories of major sources and area sources that it intends to regulate under section 112, it must set MACT standards for each and must set such standards at a level at least as stringent as the "floor," unless it regulates area sources under section 112(d)(5) as described below. Congress provides certain very specific directives to guide EPA in the process of determining the regulatory floor.

Congress specified that EPA shall establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *" (CAA section 112(d)(2)). In addition, Congress limited the Agency's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (CAA section 112(d)(3)). Congress provided that existing source standards could be less stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources (CAA section 112(d)(3)).

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by *all* sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (CAA section 112(d)(1)). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent, respectively, as the MACT floor for that class of sources.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative, the Agency considers the achievable reduction in emissions of HAPs (and possibly other pollutants that are co-controlled), the cost and economic impacts, energy impacts, and other health and environmental impacts. The objective is to achieve the maximum degree of emission reduction

without unreasonable economic or other impacts.

IV. Summary of Proposed Standard

A. Sources to be Regulated

The proposed standard would regulate emissions of chromium compounds from new and existing IPCT's. Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with HVAC systems. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (CCT's) were promulgated on January 3, 1990, under section 6 of TSCA (55 FR 222).

B. Format of Proposed Standard

As authorized under section 112(h) of the CAA as amended, today's proposed standard is a work practice standard rather than an emission standard. There are no reference methods by which chromium emissions from IPCT's can be measured, and the methods commonly used to measure IPCT emissions are expensive and lack the precision necessary to quantify adequately emissions for compliance purposes. Owners and operators of IPCT's located at major sources (as defined in section 112(a), as amended) would be prohibited from operating IPCT's with chromium-based water treatment chemicals.

C. Demonstration of Compliance

Two reports required by the General Provisions to part 63 would be used to demonstrate compliance with the proposed standard. First, the initial notification required by § 63.9(b) requires a statement by the owner or operator concerning whether the source can or has complied with the standard. The initial notification is required within 45 days after the effective date of the standard for existing sources and within 15 days after the actual startup date for new or reconstructed sources. This initial notification will enable enforcement personnel to identify the population of IPCT's subject to the standard and, more specifically, to identify those IPCT's that are already in compliance.

Second, the owner or operator is required by § 63.9(h) to submit a notification of compliance status within 30 days after the compliance date. This notification must be signed by a responsible company official who certifies its accuracy and that the source has complied with the relevant standards. For the IPCT standard, the notification of compliance status would comprise a statement by the company official that no chromium water treatment chemicals had been purchased for use in IPCT's or used in any affected IPCT since the compliance date. Also, a statement regarding the mechanism by which continuing compliance would be assured (for example, the use of a nonchromium water treatment program) is required as part of the notification of compliance status.

The only recordkeeping and reporting requirements for the proposed standards would be those required under the General Provisions to part 63. The General Provisions require that all documentation supporting initial notifications and notification of compliance status be retained for at least 5 years. This requirement would cover invoices for water treatment chemical purchases made by owners or operators to demonstrate initial and continuing compliance with the proposed standard. These invoices would be required to be retained in a manner that enables enforcement personnel to easily identify which water treatment chemicals have been and are being used in a given IPCT. For those IPCT's that do not use water treatment chemicals (for example, an IPCT system constructed of a corrosion-resistant specialty metal), the owner or operator would be required to permanently retain a copy of the initial notification regarding the mechanism by which continuing compliance would be assured.

Owners and operators of existing IPCT's would be required to achieve compliance by 6 months after the promulgation date. Industrial process cooling towers, the construction or reconstruction of which commences after August 12, 1993, are considered new sources under section 112. Owners or operators of new IPCT's that have an initial startup before the date of promulgation are required to comply with the proposed standard not later than the promulgation date. Owners or operators of new IPCT's that have an initial startup after the date of promulgation are required to comply with the proposed standard upon startup of the IPCT's.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Facilities Affected by This NESHAP

Chromium-based water treatment programs currently are used by seven industries in approximately 800 IPCT's nationwide. Over 90 percent of these IPCT's are found in the petroleum refining, chemical manufacturing, and primary metals industries. Other industries that use chromium-based programs include tire and rubber production, tobacco production, textile finishing, and glass production. Based on projected growth rates, 870 new IPCT's in these industries are expected to go into operation by 1998 (the fifth year of the standard). This estimate assumes that all existing IPCT's are at capacity so that any growth in cooling capacity must be accommodated by newly constructed IPCT's.

In estimating the impacts of the proposed standard, it is assumed that in the absence of emission standards on IPCT's, chromium use in both existing and new IPCT's would continue at current levels. Based on this assumption, all existing IPCT's that use chromium-based water treatment programs and 10 percent (87) of the new IPCT's would be operated on chromium-based water treatment programs in the fifth year of the proposed standard.

B. Environmental Impacts

Air. The proposed standard prohibits the use of chromium-based water treatment programs in IPCT's. The total baseline Cr^{+6} emissions from all existing IPCT's are estimated to be 23 Mg/yr (25 tons/yr). The proposed standard would achieve a 100 percent reduction of Cr^{+6} emissions nationwide by eliminating all Cr^{+6} emissions from existing IPCT's. None of the nonchromium chemicals that are used as substitutes for chromium chemicals in cooling water are listed as HAPs under section 112(b) of the CAA.

The proposed standard would also prevent emission of 1.6 Mg/yr (1.8 tons/yr) of Cr^{+6} from the new IPCT's projected by 1998 (the fifth year of the standards). This estimate is based on the assumption that, in the absence of a standard, chromium use would remain at current levels [i.e., 10 percent (87) of new IPCT's would be placed on chromium-based programs].

In 1988, the EPA performed a risk assessment on the IPCT source category. Based on estimates of chromium emissions available at that time, the annual incidence of cancer cases attributed to this source category was estimated to be no more than 6 cases per year. Based on changes in chromium

use since 1988, this estimate has been revised to between 1 to 2 cases per year. This rule will result in reduced exposures to chromium emissions from IPCT's and consequently anticipated reductions in cancer incidence attributable to IPCT's. Assuming that reduction in cancer risk is directly proportional to emissions reduction, this rule would reduce annual cancer incidence by as much as 2 cases per year at an annual cost of approximately $14 million.

Substitute nonchromium-based treatment programs typically require higher levels of phosphates and polymeric dispersants than do chromium-based treatment programs. Nonchromium treatment programs may also contain molybdates. Thus, secondary emissions of these compounds would increase under the proposed standard. Total baseline emissions of phosphates for all existing IPCT's are estimated to be 104 Mg/yr (114 tons/yr). Under the proposed standard, phosphate emissions from existing IPCT's would increase by 46 Mg/yr (50 tons/yr) to approximately 150 Mg/yr (165 tons/yr).

Zinc, which is not a listed HAP, is a common corrosion inhibitor present in many cooling water treatment programs. Almost all current chromium programs contain zinc because the two metals act synergistically to inhibit corrosion. Nonchromium treatment programs may also contain zinc at levels similar to those in the chromium/zinc programs that they replace. As chromium/zinc treatments are replaced by nonchromium treatment programs, zinc emissions are not expected to change significantly.

Molybdate-based programs currently have a very small share (less than 1 percent) of the water treatment market. Although the market for molybdate programs is expected to grow modestly under the proposed standard, molybdate usage is expected to remain limited because these programs are more expensive than other treatment programs. Consequently, molybdate emissions are not expected to increase significantly.

Under the proposed standard, particulate matter (PM) emissions from existing IPCT's would not change from baseline levels of approximately 10,900 Mg/yr (11,000 tons/yr).

In the absence of the proposed standard, phosphate emissions from new sources in 1998 would be approximately 4 Mg/yr (4.4 tons/yr). Under the proposed standard, phosphate emissions from new IPCT's in the fifth year would increase to 5.8 Mg/yr (6.4 tons/yr), and total nationwide phosphate emissions for new and existing IPCT's in the fifth year of the standard would be 156 Mg/yr (172 tons/yr). There are no significant impacts associated with these increased phosphate emissions.

In the absence of the proposed standard, PM emissions from new sources in 1998 would be approximately 450 Mg/yr (500 tons/yr). Under the proposed standard, PM emissions would not be affected and PM emissions for new and existing IPCT's in the fifth year of the standard would be 10,450 Mg/yr (11,500 tons/yr).

Water

Blowdown from existing IPCT's is pretreated to remove Cr^{+6} before discharge. Any Cr^{+6} in IPCT blowdown that is treated would be handled as solid waste. The proposed standard would eliminate any accidental water discharges of Cr^{+6} from IPCT blowdown pretreatment.

Under the proposed standard, nationwide phosphate discharges from existing IPCT's would increase by as much as 830 Mg/yr (910 tons/yr), and new sources that would go into operation by 1998 would discharge an additional 610 Mg/yr (670 tons/yr). As a result, total phosphate discharges would increase from the baseline level of 7,700 Mg/yr (8,470 tons/yr) to 9,140 Mg/yr (10,050 tons/yr). In the absence of the proposed standard, new sources that would go into operation by 1998 would increase nationwide phosphate water discharges by 550 Mg/yr (610 tons/yr). As a result, total phosphate discharges would increase from the baseline of 7,700 Mg/yr (8,470 tons/yr) to 8,250 Mg/yr (9,075 tons/yr). These increases in phosphate discharges are extremely small in comparison to phosphate discharges from cropland and pastureland runoff. Consequently, there are no significant impacts associated with these increased phosphate discharges.

Nonchromium treatment programs contain levels of zinc similar to those in baseline chromium programs. Therefore, zinc discharges are not expected to increase under the proposed standard. Although data are limited, increases in the amount of molybdate discharged under the proposed standard are expected to be negligible.

Solid Waste

The only impacts of the proposed standard on solid waste would result from eliminating all Cr^{+6} in the solid waste from IPCT blowdown treatment processes. Disposal of all other forms of solid waste removed from IPCT blowdown would remain at current levels.

Blowdown from cooling towers may be treated to reduce the concentration of corrosion inhibitors (e.g., chromium, zinc, phosphates, and molybdenum). The concentration of these elements in the resulting sludge is likely to be higher than the concentration in the blowdown before treatment. Chromium-containing solid waste (i.e., the treatment sludge) is sometimes identified as a hazardous waste, EPA hazardous waste No. D007, under Resource Conservation and Recovery Act (RCRA) part 261 Subpart C—Characteristics of Hazardous Waste; it is considered a hazardous waste if its leachate by the Toxicity Characteristic Leaching Procedure contains greater than 5 milligrams per liter (mg/L) total chromium. Chromium-containing waste is also subject to the Land Disposal Restrictions in RCRA part 268, which allows land disposal only if the hazardous waste is treated in accordance with Subpart D—Treatment Standards. A concentration in the waste of 5 mg/L total chromium may not be exceeded to allow land disposal. Hazardous wastes also must be handled and stored according to specific RCRA procedures.

Baseline blowdown discharges are estimated to contain a maximum of 400 Mg/yr (440 tons/yr) of Cr^{+6}. Consequently, the proposed standard would eliminate solid waste disposal of a maximum of 400 Mg/yr (440 tons/yr) of Cr^{+6} by eliminating all Cr^{+6} from IPCT's. Zinc-, molybdenum-, and phosphate-containing wastes are not identified as hazardous wastes and, therefore, do not have the same solid waste disposal requirements as chromium-containing wastes. Under the proposed standard, the solid waste impacts due to zinc-, molybdenum-, and phosphate-containing wastes would be negligible.

C. Energy Impacts

The only energy impacts for the proposed standard over baseline would result from the energy required to operate the additional chemical feed and regulation equipment that is required for nonchromium-based water treatment programs. The nationwide energy impacts associated with the proposed standard are small.

Nonchromium-based water treatment programs typically require tighter control of chemical feed and recirculating water quality parameters. The components required for a basic chemical feed and regulation system include a pH controller, conductivity

controller, and metering chemical feed pumps.

For existing sources, a nationwide increase of up to 3,500 megawatt-hours per year (MWh/yr) (12,000 million British thermal units per year [Btu/yr]) would result from the use of additional automated instrumentation/controller equipment under the proposed standard. This represents an increase of approximately 0.01 percent of the energy required to operate these IPCT's. For new sources, a nationwide increase of up to 370 MWh/yr (1,300 million Btu/yr) would result under the proposed standard.

Typical baseline automated instrumentation/controllers for an IPCT consume approximately 1.5 MWh/yr (50 million Btu/yr). Energy consumption for instrumentation/controllers for a typical IPCT currently on a chromium-based water treatment program would increase to 4.4 MWh/yr (150 million Btu/yr) under the proposed standard.

D. Cost Impacts

Cost components of the nonchromium control measure include the increased cost of nonchromium chemicals over the cost for chromium chemicals and the cost to install, operate, and maintain automated chemical feed and regulation equipment. When properly controlled, nonchromium-based water treatment programs perform comparably to chromium-based programs. Therefore, it is assumed that corrosion rates, heat exchanger lifetimes, cleaning frequencies and costs, and other maintenance requirements are similar for both types of water treatment programs.

Nationwide annualized incremental cost for the proposed standard is $14 million. This corresponds to a projected increase of about 6 percent over the annualized costs to operate all IPCT's nationwide. Total annualized baseline costs for model towers range from $5,100 to $485,000, respectively, for model towers with recirculation rates of 1,000 gallons per minute (gal/min) to 105,000 gal/min. These costs include annualized capital costs for the cooling tower and baseline instrumentation/ controller equipment and annual operating costs for the instrumentation/ controller equipment and chromium-based water treatment chemicals.

To comply with the proposed standard, the total incremental annualized costs above baseline for model towers range from $4,270 to $144,000 for model towers with recirculation rates of 1,000 gal/min to 105,000 gal/min, respectively. These costs include the incremental annualized capital costs for additional instrumentation/ controller equipment and the incremental annual operating costs for the additional equipment and the nonchromium-based water treatment chemicals. The total nationwide increase in annual chemical costs to switch existing IPCT's on chromium-based treatment programs to nonchromium-based programs is $12.5 million. This corresponds to an increase of only 2.5 percent above the total nationwide annual cost of water treatment programs for all IPCT's and CCT's, which is about $500 million.

Under the proposed standard, the estimated nationwide annualized cost in 1998 of prohibiting new sources from using chromium treatment chemicals is $1.2 million. This corresponds to a projected increase of about 0.5 percent over the nationwide annualized costs in the absence of regulation.

E. Economic Impacts

Economic impacts were assessed by examining the effect of the elimination of chromium-based water treatment programs on the final end product prices for each affected industry. The results of this assessment indicate that there are no significant economic impacts on the industries to be affected by this regulation.

Typical price increases range from 0.001 percent to 0.04 percent for the affected industries. The industries that have the highest percentage of IPCT's using chromium corrosion inhibitors will bear higher control costs and experience greater economic impacts than relatively minor users of chromium chemical programs. The chemical manufacturing industry, a relatively major user of chromium, will bear the highest compliance cost and, therefore, is the industry that will experience the greatest economic impact with a typical price increase of 0.011 percent and a projected worst case scenario price increase of 0.33 percent. All other affected industries would experience maximum price increases less than those predicted for the chemical manufacturing industry.

The following criteria are used to determine what constitutes a significant adverse economic impact for small businesses:

(1) Annualized compliance costs increase total cost of production by more than 5 percent;

(2) Capital costs of compliance represent a significant portion of capital available to small entities,

(3) Requirements of the regulation are likely to result in closures of small entities; and

(4) Compliance costs as a percentage of sales for small plants are at least 10 percent higher than for large plants.

The proposed standard will not have any significant impacts on a substantial number of small entities since none of the above criteria are triggered by this regulation.

VI. Rationale

This section describes the decisions made by the Administrator to select the proposed standard.

A. Selection of Pollutant and Source Category To Be Regulated

In the early 1980's, EPA initiated a review to examine the potential risks to public health from exposure to chromium in the ambient air because of the potential adverse health effects associated with Cr^{+6} exposure. As part of this review a comprehensive HAD for chromium was prepared that summarizes the scientific literature on health effects of chromium and emphasizes the inhalation route of exposure. The HAD was reviewed at a public meeting of the Environmental Health Committee of EPA's SAB on November 1, 1983. The SAB concurred with the major findings of the HAD including the finding that there is sufficient evidence from the combined human and animal data to consider Cr^{+6} compounds to be carcinogenic (lung cancer) in humans, and the final HAD was published in August 1984.

On June 10, 1985, EPA published a notice of intent to list either total chromium or Cr^{+6} as a hazardous air pollutant under section 112 of the CAA (50 FR 24317). This notice presented a summary of the HAD findings and described the preliminary estimated risks from exposure to chromium air emissions. The notice indicated that EPA would decide whether to add either total chromium or Cr^{+6} to the list of hazardous air pollutants (HAPs) only after studying possible techniques that might be used to control emissions of chromium compounds and after assessing the public health risks to determine if Federal standards are warranted.

Title III of the 1990 Amendments modifies section 112 by listing 189 HAPs. Chromium compounds are included on the list of HAPs established in section 112(b) of the CAA as amended. Section 112(c)(1) requires the Administrator to publish a list of all categories and subcategories of major sources of the HAPs and such area sources as the Administrator determines warrant regulation. For the categories and subcategories the Administrator

lists, emission standards are to be established under section 112(d).

An initial list of source categories to be regulated was published on July 16, 1992. Industrial process cooling towers were included on that list.

Section 112(a) of the CAA Amendments defines a major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tons/yr) or more of any HAP or 22.7 Mg/yr (25 tons/yr) or more of any combination of HAPs. Based on EPA's findings, there are few, if any, IPCT's that qualify as stand-alone major sources. However, the majority of IPCT's that are operated on chromium-based water treatment programs are integral parts of facilities that are classified as major sources. Congress made clear in the legislative history of the 1990 CAA Amendments that all portions of a major source are subject to MACT even if, standing alone, individual portions of that source would not qualify as major [Senator Durenburger. Cong. Rec. S. 16927 (October 27, 1990)]. Only those IPCT's that are located at facilities classified as major sources (or are stand-alone major sources) would be regulated under the proposed standards.

Section 112(a) of the CAA as amended defines an area source as any stationary source of HAPs that is not a major source. Under section 112(c), EPA is required to list all categories and subcategories of area sources that, based on the threat of adverse effects to human health or the environment, warrant regulation under section 112. Industrial process cooling towers that are not integral parts of major sources will be considered for regulation as area sources under section 112(c) and would not be affected by the proposed standards.

B. Selection of Bases and Level for the Proposed Standard

The CAA requires EPA to set national emission standards for new and existing major sources based on MACT. For existing sources, the MACT "floor" is defined as the average level of emission control achieved by the best-performing 12 percent of sources in the category or subcategory excluding sources that achieve the lowest achievable emission rate (LAER). For categories or subcategories containing less than 30 sources, the floor shall be based on the average emission limitation achieved by the best performing five sources. Standards for existing sources must be at least as stringent as the MACT "floor" for the source category being regulated.

The most effective method for controlling chromium emissions from IPCT's is to substitute nonchromium-based water treatment chemicals for chromium-based water treatment chemicals or to otherwise eliminate the use of chromium chemicals in cooling water. By eliminating the use of chromium-based chemicals in cooling water, a 100 percent reduction in emissions of chromium from IPCT's can be achieved. The nonchromium chemicals that are used as substitutes for chromium chemicals in IPCT's are the same chemicals that are used in CCT's. None of these nonchromium chemicals are listed as HAPs under section 112(b) of the CAA, and the Administrator has determined that the health risk is less (and, in most cases, much less) from exposure to these nonchromium chemicals than to Cr^{+6}.

A number of nonchromium-based cooling water treatment programs are available for use in IPCT's, and among the industries that use chromium chemicals in IPCT's, nonchromium-based water treatment programs are used in at least 80 percent of the IPCT's. Furthermore, it is EPA's finding that nonchromium-based water treatment programs perform as effectively as chromium-based programs in controlling corrosion in IPCT systems. In addition, the environmental, energy, cost, and economic impacts of eliminating the use of chromium-based water treatment programs are not unreasonable.

Other alternatives that have been investigated for controlling chromium emissions from IPCT's include the use of low-chromium cooling water treatment programs, retrofitting IPCT's with HEDE's, and a combination of these measures. However, none of these control alternatives would completely eliminate chromium emissions from IPCT's, as would the elimination of chromium water treatment chemicals. In addition, use of these control alternatives is very limited and their use does not approach 12 percent of existing IPCT's. Therefore, the MACT "floor" for existing IPCT's has been determined to be the use of nonchromium cooling water treatment chemicals.

For new sources, the "floor" for MACT is defined as the average level of emission control achieved in practice by the best-controlled similar source. Because the use of nonchromium cooling water treatment chemicals allows for the total elimination of all emissions of chromium compounds from IPCT's, MACT for new IPCT's also has been determined to be the use of nonchromium cooling water treatment chemicals, where chemical use is practiced.

In establishing MACT standards, section 112(d) of the CAA Amendments of 1990 allows the Administrator to distinguish among classes, types, and sizes of sources within a category or subcategory. A number of possible subcategories of IPCT's have been investigated for the purpose of determining the need to establish alternate standards for IPCT's. The potential IPCT subcategories investigated include design, size, type of industry, operating temperatures, and quality of makeup water. However, EPA has determined that no such subcategorization of the IPCT source category is warranted.

Cooling tower designs can differ with respect to the source of air movement through the tower, fan location, direction of air flow across the fill material, type of fill material, type of drift eliminator, and stack configuration. However, there is no relationship between cooling tower design and the type, concentration, effectiveness, or cost of water treatment chemicals used in the cooling tower. Nonchromium water treatment programs work equally well in all designs of IPCT's. Therefore, design differences are not a basis for subcategorizing IPCT's.

Nonchromium-based water treatment programs are widely used in all sizes of IPCT's. Among the industries that use only IPCT's that are classified as small—those IPCT's with recirculation rates less than 19,000 liters per minute (L/min) [5,000 gallons per minute (gal/min)]—nonchromium-based programs are used in at least 90 percent of the facilities. Among industries that use medium to large IPCT's [greater than 19,000 L/min (5,000 gal/min)], nonchromium-based water treatment programs are used in at least 80 percent of the facilities. There is no indication that IPCT size limits the types of cooling water treatment program used or that the performance of the water treatment programs is affected by IPCT size. Therefore, subcategorization on the basis of IPCT size is not warranted.

Seven industries have been identified that use chromium-based water treatment programs. Nonchromium-based water treatment programs are used in at least 80 percent of all facilities in each of the seven industries. Therefore, there is no reason to subcategorize the IPCT source category based on type of industry.

Problems related to the type of cooling water treatment used are more likely to occur in IPCT systems that serve high-temperature processes, in systems in which poor quality makeup

water is used, or in systems that operate under both of these conditions. The potential for scaling of heat exchangers increases with increasing operating temperature, and a number of adverse effects are associated with the use of poor-quality makeup water. Using makeup water with high concentrations of suspended solids can lead to increased fouling, which restricts cooling water flow through heat exchangers and piping and promotes pitting of heat exchangers; high levels of hardness can result in increased scaling; and increased pitting of heat exchangers can result from high chloride concentrations.

In order to investigate the limitations of nonchromium-based water treatment programs under conditions of high operating temperatures and poor quality makeup water, EPA surveyed water treatment vendors, petroleum refineries, and chemical manufacturing plants. Petroleum refineries were surveyed because these facilities generally have greater diversity in IPCT size and in heat exchanger design, materials of construction, and operating conditions than do most facilities. The chemical manufacturers targeted for the survey included only facilities that produce chemicals, such as ethylene, propylene, ammonia, and others that require high process temperatures. In addition, many of the chemical plants and refineries surveyed use makeup water with relatively high concentrations of chloride, suspended solids, and hardness. The results of this investigation indicate that nonchromium-based water treatment programs are comparable to chromium-based programs in overall water program performance under all conditions. In addition, at least 80 percent of petroleum refineries and manufacturers of high-process-temperature chemicals currently use nonchromium-based cooling water treatment programs. On the basis of this investigation, there is no justification for subcategorizing the IPCT source category by operating temperature or makeup water quality.

C. Selection of Format of Proposed Standard

Section 112(d) of the CAA, as amended, requires the Administrator to promulgate emission standards for each category or subcategory of listed major and area sources. If, in the judgment of the Administrator, it is not feasible to prescribe or enforce emission standards, the Administrator may instead promulgate design, equipment, work practice, or operational standards, or a combination thereof. Section 112(h) defines two conditions under which it is not feasible to prescribe or to enforce emission standards:

(1) If the HAP cannot be emitted through a conveyance designed and constructed to emit or capture the HAP; or

(2) If the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

In developing the standard being proposed today, EPA conducted an extensive test program to attempt to quantify drift rates and chromium emissions from IPCT's. As a result of this effort, the Administrator has concluded that it is impractical to apply measurement methodology to IPCT's. There are no reference methods by which chromium emissions from IPCT's can be measured, and the methods commonly used to measure IPCT emissions are expensive and lack the precision necessary to adequately quantify emissions for compliance purposes.

The selected standard, therefore, consists of a proposed work standard which prohibits the use of chromium-based water treatment chemicals, in conjunction with recordkeeping requirements for purchases of water treatment chemicals.

D. Selection of Monitoring Requirements

The proposed standard consists of a work practice prohibiting the use of chromium-based water treatment chemicals. The EPA evaluated the utility of requiring periodic water sampling for the presence of chromium. However, this approach would be quite expensive, especially on a continuing basis. Although a relatively simple and inexpensive titrametric method can be used for measuring chromium concentration in water samples, this method is not accurate for samples in which the chromium concentration is less than 10 ppm. Because some chromium-based water treatment programs operate at chromium concentrations as low as 4 to 6 ppm, the titrametric method would not be sufficiently accurate for enforcement purposes. The only analysis technique available that would detect Cr^{+6} at a concentration low enough to be useful to enforcement personnel would be expensive. This technique, diphenyl carbazide derivatization, would require most sources to send water samples to a contract laboratory for analysis. According to representatives from a contract laboratory, current costs for these tests are approximately $350 per sample for a series of seven to eight samples, and only a few laboratories nationwide perform the necessary procedure. The cost per sample will probably be higher if the number of samples submitted from each source is less than seven to eight, if the overall number of samples submitted for testing to a laboratory increases, and if the number of available laboratories does not increase.

In addition, a residual chromium concentration can be detected in the cooling water of IPCT's with wooden components (the majority of IPCT's) for a period of up to several months following termination of a chromium-based water treatment program as the chromium leaches out of the wooden components. Thus, a water sample analysis that yielded a residual chromium concentration would not necessarily be indicative of continued use of chromium water treatment chemicals. For these reasons, EPA has decided that requiring routine water sample analysis for IPCT's is unnecessary and would not significantly enhance the ability of enforcement personnel to evaluate a source's compliance status. As described below in section VI.E, records of water treatment program purchases would be required of all affected sources. Enforcement personnel could, however, require water sample analysis on a case-by-case basis if they believe a source may be out of compliance.

E. Selection of Recordkeeping and Reporting Requirements

The only recordkeeping and reporting requirements for the proposed standard would be those required under the General Provisions to part 63.

Two reports required by the General Provisions to part 63 would be used to demonstrate compliance with the proposed standard. The first report, the initial notification required by § 63.9(b) would require a statement by the owner or operator concerning whether the source can or has complied with the standards. The initial notification is required within 45 days after the effective date of the standard for existing sources and within 15 days after the actual startup date for new sources. This initial notification will enable enforcement personnel to identify the population of IPCT's subject to the standard and, more specifically, to identify those IPCT's that are already in compliance through the use of nonchromium water treatment programs.

For the second report, the owner or operator is required by § 63.9(h) to submit a notification of compliance status within 30 days after the compliance date. This notification must

be signed by a responsible company official who certifies its accuracy and certifies that the source has complied with the relevant standard. For the IPCT standard, the notification of compliance status would comprise a statement by the company official that no chromium-based water treatment programs had been purchased or used in any affected IPCT since the compliance date.

Owners/operators of the source would be required to continue to maintain records of water treatment program purchases in order to demonstrate continuing compliance. A statement regarding the mechanism by which continuing compliance would be assured is required as part of the notification of compliance status. Recordkeeping of purchase invoices is probably already routine at many facilities with IPCT's; however, any additional burden associated with this recordkeeping would not be significant.

The General Provisions require that all documentation supporting initial notifications and notification of compliance status be retained for at least 5 years. This requirement would cover the water treatment program invoices owners or operators must retain to demonstrate initial and continuing compliance with the proposed standard. These invoices would be required to be retained in a manner that enables enforcement personnel to easily identify which water treatment programs have been and are being used in a given IPCT.

F. Operating Permit Program

Under title V of the CAA, all HAP-emitting major sources will be required to obtain an operating permit. Often times, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the final rule for the operating permit program published on July 21, 1992 (57 FR 32250), this new permit program would include in a single document all of the requirements that pertain to a single source. Once a State's permit program has been approved, each facility within that State must apply for and obtain an operating permit. If the State wherein the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application under the proposed General Provisions of 40 CFR part 63.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentation on the proposed standards for IPCT's should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–91–65.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

C. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The criteria set forth in Section 1 of the Order for determining whether a regulation is a major rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more;

(2) Is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or

(3) Is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is not major because it would result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be $85 million less than the $100 million established as the first criterion in the Order for a major regulation. The price increase associated with the proposed standards in any one industry is estimated to be 0.33 percent or less. These price increases would not be considered a "major increase in costs or prices" as specified in the second criterion of the Order. Finally, with respect to the third criterion of the Order, the economic analysis of the proposed standards effect on the affected industries did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of United States-based firms to compete with foreign-based firms.

The proposed regulation presented in this notice was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1625.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 13 hours per response in the first year and 2 hours per response in subsequent years. This includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–

223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines define an economic impact as significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) Regulatory requirements are likely to result in closures of small entities. The results of an economic assessment indicated that compliance costs as a percentage of production costs or as a percentage of sales are both less than 5 percent. Also, capital availability will not be constrained because total control costs are relatively small and would not require extensive financing. Because capital availability is not a constraint, the standard is not likely to result in closure of small entities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small business entities that would be affected is not significant.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues.

This proposed regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

It is proposed that 40 CFR part 63 be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. By adding a new subpart Q to read as follows:

Subpart Q—National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers

Sec.

63.400 Applicability.
63.401 Definitions.
63.402 Standard.
63.403 Compliance Date.
63.404 Monitoring requirements.
63.405 Recordkeeping requirements.
63.406 Reporting requirements.

Subpart Q—National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers

§ 63.400 Applicability.

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are either major sources or are integral parts of facilities that are major sources as defined in section 112(a)(1) of the Clean Air Act, as amended November 15, 1990.

§ 63.401 Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this section as follows:

Chromium-based water treatment chemicals means any combination of chemical substances containing chromium used to treat water.

Comfort cooling tower means cooling towers that are dedicated exclusively to and are an integral part of heating, ventilation, and air conditioning or refrigeration systems.

Cooling tower means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

Industrial process cooling tower, also written as "IPCT," means any cooling tower that is used to remove heat that is produced as an input or output of a chemical or industrial process(es), as well as any cooling tower that cools industrial processes in combination with any heating, ventilation, or air conditioning system. Any cooling tower which is not classified as a comfort cooling tower is classified as an industrial process cooling tower for purposes of this subpart.

Start of operation means the initiation of recirculation water flow within the cooling tower.

Water treatment chemicals means any combination of chemical substances used to treat water in cooling towers and can include corrosion inhibitors, antiscalants, dispersants and any other chemical substances.

§ 63.402 Standard.

No owner or operator of an IPCT shall use water treatment programs containing chromium or chromium compounds in any IPCT. No chemicals or treatment additives containing chromium compounds shall be introduced into IPCT's for the purpose of corrosion control, water conditioning, or for any other purpose.

§ 63.403 Compliance date.

The requirements of § 63.402 shall be applied on the following schedule:

(a) For existing IPCT's, the compliance date shall be 6 months after [date of publication of final rule].

(b) For those IPCT's, the construction or reconstruction of which commences on or after August 12, 1993, and have an initial startup before [the date of publication of the final rule], the compliance date shall be [the publication date of the final rule].

(c) For those IPCT's, the construction or reconstruction of which commences on or after August 12, 1993, and that have an initial startup after [the date of publication of the final rule], the compliance date shall be the date that the IPCT is placed into operation (the initiation of recirculation water flow).

§ 63.404 Monitoring requirements.

No routine monitoring, sampling, or analysis is required. In accordance with

section 114 of the Act, the Administrator or delegated authority can require water sample analysis of an IPCT if there is information to indicate that the IPCT is not in compliance with the requirements of § 63.402. Water sample analysis shall be conducted in accordance with Reference Method 7196, "Hexavalent Chromium, Colorimetric," SW 846.

§ 63.405 Recordkeeping requirements.

(a) To demonstrate continuing compliance with § 63.402, the owner or operator of each IPCT shall:

(1) Maintain records of water treatment chemical purchases, including invoices and other documentation that includes date(s) of purchase or shipment, trade name or other information to identify composition of the product, and quantity of the product; or

(2) If no water treatment chemicals are used, maintain a copy of the most recent notification of compliance status submitted in accordance with § 63.9(h)[1].

(b) For facilities that have more than one IPCT located at the same source, records for bulk orders of water treatment chemicals do not need to individually identify the treated IPCT's, provided that records for all the affected IPCT's are retained in the same file location.

(c) For those IPCT's that meet the status requirements of § 63.403, the owner or operator shall:

(1) Document and maintain the inventory of water treatment chemicals containing chromium or chromium compounds in existence at the facility as of the effective date in § 63.403; and

(2) Document the disposition or use of those chemicals.

(d) Any existing Federal, State or other regulatory recordkeeping/reporting requirements which the owner or operator already performs and that specify and document quantity, composition, and ultimate use or disposition will be adequate to meet the above inventory requirement.

§ 63.406 Reporting requirements.

(a) *Initial notification of compliance.* (1) Owners or operators of existing IPCT's and IPCT's, construction or reconstruction of which commenced prior to August 12, 1993, shall submit to the Administrator a statement as required by § 63.9(b)(2) indicating whether the IPCT can comply or has complied with the requirements of § 63.402.

(2) Owners or operators of IPCT's, construction or reconstruction of which commences on or after August 12, 1993, shall submit the initial notification in accordance with § 63.9(b)(3) or § 63.9(b)(4). If such an IPCT is constructed at an existing source, the initial notification shall be submitted within 15 days of the start of operation of the IPCT.

(b) *Compliance status report.* (1) In accordance with § 63.9(h), the owner or operator shall submit to the Administrator a notification of compliance status within 30 days after the initial compliance date and annually thereafter, as required by § 70.6(c) of this chapter.

(2) The compliance status report must:

(i) Be signed by a responsible company official who also certifies the accuracy of the report; and

(ii) Certify whether or not the source has complied with the standard in § 63.402, and, if applicable, an explanation of noncompliance; and

(iii) Include a statement of the mechanism by which the owner or operator will obtain or assure continuing compliance.

[1] The EPA plans to propose regulations for subpart A in the future.

[FR Doc. 93–19001 Filed 8–11–93; 8:45 am]
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Part IV

Environmental Protection Agency

40 CFR Part 69

Special Exemptions From Requirements of the Clear Air Act for the Territory of Guam; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[FRL–4679–5]

Special Exemptions From Requirements of the Clean Air Act for the Territory of Guam

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rulemaking.

SUMMARY: On October 19, 1992, the Governor of Guam sent to the EPA a petition for a waiver ("Petition") from certain requirements of the Clean Air Act ("CAA"). The Petition was submitted pursuant to section 325(a) of the CAA. On March 12, 1993, the EPA proposed to partially and conditionally approve the Petition. After meeting with and considering comments submitted by the Guam Power Authority ("GPA") and the United States Navy ("USN"), the EPA has made modifications to the proposed waiver and is promulgating a final waiver in this rulemaking action.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Norman Lovelace, Chief, Office of Pacific Islands and Native American Programs (E–4), Office of External Affairs, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1599.

SUPPLEMENTARY INFORMATION:

Background

By submitting the Petition, the Governor of Guam seeks to have a class of sources, electric generating units, exempted from certain requirements of the CAA. As stated by the Governor in the Petition's cover letter, the Petition is being submitted because "the Territory of Guam is in the midst of a severe energy emergency." Due to a shortage of electric generating capacity, the GPA has instituted periodic, scheduled, and rotating electrical blackouts across the Island of Guam. These blackouts are negatively affecting the provision of drinking water, the treatment of sewage, and vehicle traffic controls.

On March 12, 1993, the EPA proposed to partially and conditionally approve the Petition and published a proposed waiver. 58 FR 13579. On April 7, 1993, the EPA met with the GPA and the USN regarding the EPA's proposed waiver and rulemaking action. The minutes of this meeting have been made part of the rulemaking docket. In a letter dated April 12, 1993, the GPA and the USN submitted comments on the proposed waiver and rulemaking. The EPA has considered the comments submitted in writing and made orally at the April 7 meeting. In this final rulemaking, the EPA has responded to the comments, below, and made modifications to the proposed waiver.

Comments and Responses

Comment 1: The Guam Power Authority ("GPA") and the United States Navy ("USN") seek clarification of the scope of the proposed waiver. Specifically, the GPA and the USN understand, but seek confirmation that:

(1) The units known as the Tenjo Project, Cabras Diesel No. 1, and the Orote Project may commence construction prior to the issuance of a Prevention of Significant Deterioration ("PSD") permit (re: proposed 40 CFR 69.11(a)(1)); and

(2) The waiver of nonattainment requirements contained in proposed 40 CFR 69.11(a)(2) and the waiver allowing the use of intermittent control strategies ("ICS") contained in proposed 40 CFR 69.11(a)(3) applies to the three units covered by proposed 40 CFR 69.11(a)(1) as well as future electric power generating units at the Cabras and Piti power plants.

Response 1: The GPA's and the USN's understanding of the scope of the proposed waiver is not completely correct. Under the terms of the proposed waiver, the Tenjo, Cabras Diesel No. 1 and Orote Projects may commence construction (but not operation) prior to the issuance of a PSD permit for the facilities. The waiver of three nonattainment area requirements (construction ban, lowest achievable emissions rate, and emission offsets) applies to all major sources in the Cabras-Piti nonattainment area, including Cabras Diesel #1 and future electrical generation sources in the area. However, the waiver allowing the use of ICS, as governed by a revised protocol, is applicable to the existing Cabras and Piti Power plants and to the future units known as Cabras Diesels Nos. 1 and 2.

Comment 2: The EPA does not have the authority to terminate a waiver once effected through the rulemaking process and to retroactively enforce the underlying requirements of the Clean Air Act. Termination or modification of a waiver must be accomplished through rulemaking.

Response 2: We disagree with the GPA's and the USN's analysis of the EPA's ability to grant a waiver with terms and conditions that make the waiver automatically self-terminating.

The case cited in the comment, *American Methyl Corp.* v. *E.P.A.*, 749 F.2d 826 (4th Cir. 1984), is not relevant to this situation. In *American Methyl Corp.*, the waiver did not include terms and conditions which could trigger self-termination of the waiver. In such a situation, the Court of Appeals held that termination of the waiver could be accomplished only through a rulemaking action.

It is our position that the EPA has the legal authority to include in waivers such terms and conditions as the EPA determines are necessary to protect the integrity of both the environment and the regulatory process. This includes, in our view, provisions which make a waiver self-terminating. In such a situation, the self-termination of a waiver would neither be nor require a rulemaking action. Rather, the self-termination would be an integral aspect of the original waiver.

While the EPA has the legal authority to create a self-terminating waiver, the EPA has concluded that such a provision is not required in the waiver being granted to Guam. Instead, waiver provisions will create liability for violations of the conditions and requirements set forth in the waiver. For some violations, i.e., operating certain electric generating units prior to issuance of a PSD permit by the EPA, liability would be retroactive.

Comment 3: The GPA and the USN believe that a showing can be made that meteorological data collected by the National Weather Service will be adequate for PSD analysis rather than a full year of data at the meteorological station at Cabras-Piti area. The provision of the proposed rule (proposed 40 CFR 69.11(a)(1)(ii)) stating the EPA will not issue a PSD permit until one year of data from the Cabras-Piti station is submitted should be modified to enable the GPA or the USN to make the above showing to the satisfaction of the EPA.

Response 3: We agree that the waiver should be flexible enough to allow consideration of alternate meteorological data. Proposed 40 CFR 69.11(a)(1)(ii) has been modified accordingly. However, the new waiver provision granting the flexibility to consider this alternate data explicitly states that the discretion to accept or reject such data lies with the EPA.

Comment 4: The GPA and the USN wish to work with the EPA to complete revisions to the Cabras-Piti Area ICS (re: proposed 40 CFR 69.11(a)(3)(i)) and request that a technical meeting be held to discuss various technical issues.

Response 4: The GPA and the EPA have consulted and the revisions to the Cabras-Piti Area ICS are completed.

Comment 5: The GPA and the USN request that: (1) The analysis for best available control technology ("BACT")

determinations will refer to the date of commencement of construction rather than the issuance of the permit for the facilities affected by proposed 40 CFR 69.11(a) (1) and (2) preliminary BACT determinations be completed as soon as possible. The GPA and the USN are concerned that if any significant technology developments occur between the time construction begins and the permit is issued the cost and delay of retrofitting could be prohibitive.

Response 5: EPA makes final BACT determinations after making and publishing a preliminary determination and after there has been an opportunity for public comment and review. EPA cannot agree to considering as final BACT only those technologies available at the time of commencement of construction of each unit. EPA will endeavor to make preliminary BACT determinations as soon as possible. As a practical matter, we do not anticipate any major developments in control technologies for the affected electric generating units within the relatively short time frames anticipated to initiate and complete the PSD process. No change to the proposed rule is needed to address this comment.

Comment 6: The GPA and the USN note that ambient air quality monitoring is a difficult and expensive proposition on Guam and that the monitoring program required in proposed 40 CFR 69.11(a)(2)(iii) should be cognizant of this. The GPA and the USN wish to work with the EPA to design a monitoring program that is appropriate.

Response 6: The EPA is aware of the logistical and economic difficulties in maintaining air monitoring equipment on Guam. We welcome the opportunity to continue consulting with the GPA and the USN on the design of a monitoring program that is appropriate and sufficient. Based upon our initial assessment we estimate that 3–6 monitoring stations may be needed.

Comment 7: The proposed waiver uses the terms "exceedences" and "violations" of the National Ambient Air Quality Standard ("NAAQS") as though they are interchangeable. Clarification is requested.

Response 7: The terms cited were intended to refer to the exceedences of the primary NAAQS for sulfur dioxide as it is set forth in 40 CFR 50.4. For the 24-hour standard, this includes that the maximum concentration not be exceeded more than once per year. The waiver has been modified to clarify this point.

Comment 8: The GPA and the USN seek clarification on whether the EPA will consider data from the meteorological station required by proposed 40 CFR 69.11(a)(2) (i) and (ii) as "on-site" data for purposes of PSD permitting for the facilities known as Cabras Diesels Nos. 1 and 2, Tenjo, Orote, and Piti MILCON.

Response 8: Data from the Cabras-Piti meteorological station will be considered as on-site data for Cabras Diesels Nos. 1 and 2 and the Piti MILCON facilities. With respect to the Tenjo and Orote facilities, the EPA will consider a proposal from the GPA and the USN to utilize data from the Cabras-Piti meteorological station for PSD permitting purposes. The EPA suggests that a proposal be submitted as soon as possible.

Comment 9: The GPA and the USN seek clarification regarding the requirements stated in proposed 40 CFR 69.11(a)(2) (vi) through (viii).

Response 9: These provisions are triggered if the EPA determines that a violation of the primary NAAQS for sulfur dioxide has occurred or will likely occur. The sequence of events is:

1. The EPA notifies the GPA and the USN that a violation of the primary NAAQS has occurred or will likely occur (proposed 40 CFR 69.11(a)(2)(vi)).

2. Within 6 months of receiving such notification, the GPA and the USN will submit a plan which includes a schedule of emission reductions necessary to achieve the primary NAAQS within one year of plan approval (proposed 40 CFR 69.11(a)(2)(vii)). The final rule has been modified to clarify that the plan must be submitted to both the Guam EPA and EPA rather than just the Guam EPA.

3. Upon approval of the plan by EPA, the GPA and the USN will implement the plan (proposed 40 CFR 69.11(a)(2)(viii)).

The waiver would remain in effect during the preparation, approval and implementation of the plan.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rulemaking on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

This rulemaking will apply only to large sources of air emissions used to generate electrical power on Guam. These sources of electrical power will be constructed, owned, and operated by the GPA and/or the USN. Neither of these organizations is a small entity. Therefore, this rulemaking will not impact small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget ("OMB") waived Table 2 and Table 3 rulemaking actions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 rulemaking actions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 69

Air pollution control.

Dated: August 2, 1993.

Carol Browner,

Administrator.

Part 69 of chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 is revised to read as follows:

Authority: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Section 69.11 is amended by adding text to reads as follows:

§ 69.11 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act ("CAA") and a petition submitted by the Governor of Guam ("Petition"), the Administrator of the Environmental Protection Agency ("EPA") conditionally exempts electric generating units on Guam from certain CAA requirements.

(1) A waiver of the requirement to obtain a prevention of significant deterioration ("PSD") permit prior to construction is granted for the electric generating units identified in the Petition as Cabras Diesel No. 1, the Tenjo project, and three 6-megawatt diesel generators to be constructed at Orote, with the following conditions:

(i) Each electric generating unit shall not be operated until a final PSD permit is issued for that unit;

(ii) Each electric generating unit shall not be operated until that unit complies with all requirements of its PSD permit, including, if necessary, retrofitting with the best available control technology ("BACT");

(iii) The PSD application for each electric generating unit shall be deemed complete without the submittal of the required one year of on-site meteorological data, however, EPA will not issue a PSD permit to such a unit prior to submission of such data or data which the EPA finds to be an equivalent and acceptable substitute; and

(iv) If any electric generating unit covered by this paragraph is operated either prior to the issuance of a final PSD permit or without BACT equipment, that electric generating unit shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of that unit.

(2) A waiver of the three nonattainment area requirements (a construction ban, the use of lowest achievable emission rate control equipment, and emission offset requirements) currently applicable to the Cabras-Piti area is granted for electric generating units with the following conditions:

(i) A tower and meteorological station shall be constructed in the Cabras-Piti area by May 1, 1993;

(ii) Meteorological data shall be collected from the Cabras-Piti station which is sufficient to run air quality models both to demonstrate no current exceedences of the primary national ambient air quality standard for sulfur dioxide ("sulfur dioxide NAAQS"), as set forth at 40 CFR 50.4, and sufficient to submit a complete request for redesignation of the area to attainment;

(iii) Ambient sulfur dioxide monitors shall be installed and operated in accordance with the procedures set forth at 40 CFR part 58, the PSD air monitoring requirements, and any additional monitoring requested by EPA to verify the efficacy of the intermittent control strategy ("ICS") of fuel switching;

(iv) Within three years from the effective date of this waiver, the Governor of Guam shall submit to the EPA a complete request that the Cabras-Piti area be redesignated to attainment for the sulfur dioxide NAAQS;

(v) Electric generating units to be constructed in the Cabras-Piti area must submit applications for PSD permits as though the area had been redesignated to attainment for the sulfur dioxide NAAQS;

(vi) The Cabras-Piti area electric generating units shall comply with the fuel switching ICS described in paragraph (a)(3)(i) of this section;

(vii) If the collected data and air quality analysis does not demonstrate to the EPA's satisfaction that there are no current or likely future exceedences of the sulfur dioxide NAAQS, the EPA will so notify the Governor of Guam;

(viii) Within six months of such notification, the Governor of Guam shall submit to the EPA an implementation plan which includes a schedule of emission reductions and/or control measures that will ensure achievement of the sulfur dioxide NAAQS within one year of submission of the implementation plan; and

(ix) If the Governor of Guam fails to submit an implementation plan in a timely fashion, or if EPA disapproves that implementation plan, all electric generating units subject to the fuel switching ICS described in paragraph (a)(3)(i) of this section shall be fueled exclusively with low sulfur fuel.

(3) A waiver of the prohibition on the use of the ICS of fuel switching is granted for electric generating units with the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be the one set forth in a separate EPA document entitled Cabras-Piti Area Intermittent Control Strategy; and

(ii) This protocol may be modified by the EPA to protect against exceedences of the sulfur dioxide NAAQS and to accommodate additional electric generating units.

(b) The waiver will be periodically reviewed (at intervals no longer than three years) and, as deemed appropriate by the Administrator, can be modified or terminated at any time through rulemaking procedures.

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August 12, 1993

Part V

Federal Election Commission

11 CFR Parts 107, et al.
Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Proposed Rule

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FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114, and 9008

[Notice 1993—18]

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to its regulations governing publicly financed Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended, and the Presidential Election Campaign Fund Act. The proposed changes would reorganize these rules and make them more consistent with the rules governing other publicly financed committees. Please note that the draft rules which follow do not represent a final decision by the Commission on the issues presented in this rulemaking.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Comments must be in writing and should be sent to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463. All comments received will be available for public inspection in the Commission's Public Records Office, 999 E Street NW., Washington, DC from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comments on proposed revisions to its regulations at 11 CFR part 107, § 114.1 and part 9008, which concern the public financing of Presidential nominating conventions. The Commission previously sought comments on the convention regulations by publishing a Notice of Proposed Rulemaking (NPRM) on August 22, 1990. See Notice of Proposed Rulemaking, 55 FR 34267 (Aug. 22, 1990). Written comments were received from the Republican National Committee and the Democratic National Committee in response to the Notice. Subsequently, the Commission decided to table further action on that rulemaking until after the 1992 conventions has been held. See Suspension of Rulemaking, 56 FR 14319 (Apr. 9, 1991). Accordingly, the Commission is now seeking additional comments on the proposed changes to the convention regulations outlined below. While some of these changes are newly proposed, most of them were included in the draft regulations the Commission previously considered.

Part 107—Presidential Nominating Convention, Registration and Reports

There would be no substantive changes in this part. However, it would be reorganized so that reporting by convention committees is covered in section 107.1, and host committee reporting is addressed in section 107.2.

Part 114—Corporate and Labor Organization Activity

Section 114.1 Definitions

In section 114.1(a)(2)(viii), the citations to the convention rules would be amended to correspond to the proposed reorganization of 11 CFR part 9008.

Part 9008—Federal Financing of Presidential Nominating Conventions

The Commission proposes revising and reorganizing its rules governing public financing of Presidential nominating conventions to address several issues that have arisen, and to make the convention regulations more consistent with the rules applying to publicly financed Presidential campaign committees. The reorganization of 11 CFR part 9008 would separate the rules concerning convention committees from those addressing host committee and local government activity. Thus, subpart A of part 9008 would cover only convention committees and subpart B would contain the rules regarding host committees and local government activity.

Subpart A—Expenditures by National Committees and Convention Committees

Under the reorganization of part 9008, subpart A would set forth the rules relating to convention committees set up by the national party committees to make arrangements for the party's presidential nominating convention. Within subpart A, the sequence of sections 9008.1 through 9008.12 would be reordered to follow the progression of convention activity from registration through use of funds and sources of contributions to, finally, audits and repayments. New sections 9008.13 through 9008.16 would be added to follow similar provisions for publicly financed Presidential candidates.

Section 9008.1 Scope

Proposed section 9008.1 would continue to explain the scope of the convention rules found in 11 CFR Part 9008. However, the provisions in current section 9008.1(b) regarding reporting by host committees, government agencies and local municipalities would be deleted because they duplicate portions of proposed section 9008.51.

Section 9008.2 Definitions

This section would generally follow current 11 CFR 9008.2.

Section 9008.3 Eligibility for Payments; Registration and Reporting

Proposed section 9008.3(a) would set forth the eligibility requirements for receiving public financing, which are currently located in 11 CFR 9008.8(b). Paragraph (a) of section 9008.3(a) would also reflect several changes in the agreements convention committees must submit as a condition of eligibility to receive public funding. First, the requirement in current section 9008.8(b)(2)(iv) that convention committees agree to establish a separate account for handling private contributions would be eliminated. If a convention committee were to accept private funds, either due to a decision not to accept its full entitlement of federal funds or due to a deficiency in the Presidential Election Campaign Fund, the draft rules provide the option of either setting up a separate account or depositing private contributions with payments received from the Fund. See, proposed section 9008.6(a)(3). This approach is consistent with the rules governing Presidential candidates who accept public financing for the general election. Second, language would be added to paragraph (a)(4)(v) of section 9008.3 to indicate that the convention committee shall agree to provide copies of contracts with its vendors, and documentation regarding reductions, discounts, and items received in exchange for promotional consideration. Both current section 9008.8(b) and proposed section 9008.3(a)(4) require convention committees to provide the Commission with copies of their contracts with host committees and convention cities, upon request. Comments are sought on whether convention committees should be required to attach these contracts to their regularly filed reports, to enhance public disclosure. Finally, a new provision would be added at section 9008.3(a)(4)(vii) requiring convention committees to agree to comply with the relevant provisions of title 2, United States Code, and the Commission's regulations implementing those provisions. This new condition would parallel the candidate agreements for

publicly financed primary and general election Presidential candidates.

Proposed section 9008.3(b) would set forth the registration and reporting requirements for convention committees now found in 11 CFR 9008.12(b). The suggested revisions would delete language in current section 9008.12(b)(1)(ii) which indicates that other committees and organizations representing political parties in making convention arrangements must register and report as political committees. This language is not necessary because these entities are already clearly subject to the registration and reporting requirements of the FECA. The reporting requirements would also be revised to track the reporting dates for political committees filing quarterly reports under Title 2. See, 11 CFR 104.5. In addition, the Commission is now proposing to require that all convention committees file their first quarterly report following either the quarter in which they receive their first payment from the Fund or when they begin receiving funds or making disbursements for convention activity, whichever is earlier. Under the current rules, these committees are able to obtain loans and begin making convention-related disbursements long before they receive their first public financing payment, but none of this activity need be disclosed until three months after that payment is received. Earlier disclosure would provide a more contemporaneous picture of convention committee activity and may also ease the burden of filing a comprehensive first report covering as much as a year's disbursements. When this change was previously suggested, one commenter indicated that it already files reports for the first quarter after beginning to make disbursements for the convention.

Section 9008.4 Entitlement to Payments From the Fund

Section 9008.4 would be reorganized so that paragraphs (a) and (b) incorporate the rules now found in section 9008.3 concerning entitlements to payments from the Fund. Paragraph (c) of section 9008.4 would contain the provisions concerning limitation on payments, which are presently located at 11 CFR 9008.5.

Section 9008.5 Adjustment of Entitlements

The provisions entitled "Adjustment of entitlement" would be moved to section 9008.5 from current section 9008.4.

Section 9008.6 Payment and Certification Procedures

Section 9008.6, "Payment and certification procedures", would be moved from 11 CFR 9008.8 of the present rules. In addition, paragraph (a)(2) would be revised by combining the rules for major and minor parties on when they may accepted private contributions for convention expenses, and by addressing the possibility of a deficiency in the Fund. Unless there is a deficiency in the Fund, or the national committee does not accept all the public financing to which it is entitled, outright cash contributions cannot be accepted because they would cause the convention committee to exceed its spending limits. The Commission notes that under new section 116.5, payments by committee staff for convention expenses are treated as advances, and therefore contributions until reimbursed. Thus, the question has arisen as to the maximum amount a convention committee can accept in staff advances if it provides reimbursement and accepts full public funding. Given that the convention committee is established by the national committee, and is therefore affiliated with the national committee, it would share the national committee's $20,000 contribution limit. Comments are sought on including in the convention regulations language to this effect.

As noted in the earlier discussion of section 9008.3, paragraph (a)(3) of 11 CFR 9008.6 would offer convention committees the choice of setting up a separate account for private contributions or depositing them in the account used for payments from the Fund. This approach would parallel that provided for publicly financed general election candidates in 11 CFR 9005.2(c). Thus, convention committees' accounts must be maintained at depository institutions insured by the Federal Deposit Insurance Corporation. The 1979 amendments to the FECA also permitted political committees to establish campaign depositories at institutions insured by the National Credit Union Administration. However, the Commission has not made this option available to Presidential candidates or convention committees choosing to receive public funding because credit unions do not return canceled checks, thus preventing committees from providing adequate documentation for disbursements drawn upon credit union accounts. See, e.g., 11 CFR 9005.2(c). In the version of paragraph (a)(3) which follows, the references to accounts insured by the Federal Savings and Loan Insurance Corporation would be deleted because these accounts are now insured by the Federal Deposit Insurance Corporation.

Please note that this section would continue to permit the receipt of federal funds either in one lump sum or in a series of payments if the committee so requests.

Section 9008.7 Uses of Funds

With some minor changes for clarity, section 9008.7, "Use of funds," would current 11 CFR 9008.6.

The prior NPRM sought comments on whether a revision to this section is warranted to clarify the distinction between items which are convention expenses and must be defrayed with public funds (and count against the convention committee's expenditure limit) and expenses which are related to ongoing business of the national committee and are not properly paid for with public funds. Given that the convention not only serves as the vehicle for nominating the party's Presidential candidate, but also provides an opportunity to conduct ongoing party business, the line between convention expenses and party expenses can be a fine one. However, the Commission has encountered instances in which the national committee has sought to pay for expenses that are clearly convention-related, particularly if the convention is close to the expenditure limit. The Commission also wishes to ensure that public funds are used solely for running the nominating convention, and not for expenses related to party business.

One option suggested in the earlier NPRM was the creation of a presumption that expenses are convention-related if they are incurred by the convention committee or national committee around the time of the convention or within the convention city's locale. The presumption was suggested as a method for providing committees with clearer guidance, given the broad definition of "convention expenses" and the open-ended list of examples in the regulations. However, both commenters opposed the creation of such a presumption, citing situations where they believed it could improperly result in the use of federal funds for party business.

The Commission has not included such a presumption in the proposed convention regulations. Instead, the language in the current and proposed rules clearly indicates which types of expenses are convention-related and thus subject to the convention spending limits. Proposed section 9008.7 would also follow current section 9008.6 by setting out the general principle that

convention expenses include all expenses incurred by or on behalf of the national party committee or the convention committee with respect to, and for the purpose of conducting, the convention or convention-related activity. This would include all national committee activity in the convention city except for events clearly separate from the convention, such as fundraising events for the party committees, and meetings of the national committee outside the convention. At this point, additional comments are sought on whether to amend the list of permissible convention expenses to exclude part or all of the salary and travel costs for those whose primary role is to conduct ongoing party business while at the convention. In particular, the Commission welcomes comments on how to allocate salary and travel costs for those who may split their time between party business and convention-related duties.

Another issue concerns the sources of funds used to pay civil or criminal penalties. Both current section 9008.6(b)(3) and proposed section 9008.7(b)(3) indicate that such funds are subject to the prohibitions of 11 CFR 110.4 and parts 114 and 115. Comments are sought as to whether these funds should also be subject to the contribution limits set forth in 11 CFR part 110.

Section 9008.8 Limitation of Expenditures

Proposed section 9008.8 would generally follow current section 9008.7 by setting out the expenditure limits for convention committees and an explanation of the categories exempted from application to that limit. Current section 9008.7 has been a source of some confusion because it sets forth the rules pertaining to activities by state and local governments and host committees in addition to explaining the expenditure limits for convention committees. Therefore, as part of the reorganization of part 9008, the substantive provisions governing contributions to and expenditures by host committees and local governments would be moved to proposed sections 9008.52 and 9008.53 in new subpart B.

In addition, the Commission seeks comments on revised language in section 9008.8(b)(4)(ii) clarifying the current policy that payments made by the national committee for legal and accounting expenses count against the convention spending limits if these expenses are incurred in connection with the convention or convention-related activities. As an alternative, comments are welcome on exempting payments by the national party committee for legal and accounting expenses solely for complying with the FECA and the Fund Act, provided that such funds are raised in accordance with the limits and prohibitions of the Act. Under this alternative, such amounts would be reported, and need not be placed in a separate account.

New language would also be included in paragraph (b) of section 9008.8 to clarify that expenditures by government agencies and municipal corporations, or by host committees, will not count against the convention committee's expenditure limit if the funds are spent in accordance with the provisions of proposed sections 9008.52 and 9008.53. On the other hand, host committee expenditures for convention functions other than the purposes spelled out in sections 9008.52 and 9008.53 would count against the convention committee's spending limits. However, comments are requested as to whether it would be preferable to handle such situations through enforcement actions under 2 U.S.C. 437g. The Commission is also interested in comments on how to address situations where a host committee receives contributions from impermissible sources, such as nonlocal businesses, which are then used to defray convention expenses or for other permissible purposes. In some cases, it may be appropriate to count these amounts against the convention committee's spending limits, although there may be situations where enforcement actions are warranted.

New paragraph (b)(5) would be added to section 9008.8 to indicate that the costs of complying with the technical requirements for submission of computerized records are not treated as convention committee expenditures, and therefore, are not subject to the expenditure limits set out in section 9008.8. This was suggested by one of the comments on the new computerized information provisions found in section 9008.10(h).

Section 9008.9 Receipt of In-Kind Donations From Businesses

Proposed section 9008.9 would specify the circumstances under which convention committees and those attending the convention may accept in-kind donations from businesses, and is based on current section 9008.7(c). During the last two convention cycles, several questions have arisen concerning the application of these provisions.

One question involved the Commission's ability to determine when a retail business is offering its standard reduction or discount to the convention committee under this section. Consequently, new paragraph (a)(1)(ii) would be added to explain the documentation that must be provided to the convention commitee to demonstrate that a reduction or discount, such as volume discount on hotel rooms, is within the vendor's ordinary course of business. Although one commenter argued that these documentation requirements were burdensome and impractical, the other comment urged the Commission to adopt section 9008.9(a) with one modification concerning a different issue. The Commission believes that the documentation provisions of this section are needed to ensure that in-kind donations are only made consistently with the provisions of the Act. The proposed rules which follow would differ from the previously proposed rules, however, in several respects. First, the vendor's documentation would have to describe what is provided and the terms of the reduction or discount. Under the proposed revisions, the documentation must include an affirmation signed by the vendor. If needed, the Commission may seek additional information regarding the basis for the vendor's statement. In addition, vendors who do not have established practices of offering such discounts would be able to offer reductions or discounts that are consistent with established practices in their trade or industry. Comments are sought on whether certain types of retail businesses, possibly including restaurants, should be excluded from these documentation requirements, and if so, which types. The Commission also requests comments on whether retail businesses providing less than a certain dollar amount of goods and services, or providing less than a certain percentage discount should also be exempt from the documentation requirements. If so, what amount or percentage would be an appropriate cutoff for such an exemption?

A second issue relates to the practice of offering free items to the convention, such as pianos or cars. Proposed paragraph (a)(2) of section 9008.9 would follow the Commission's decision in Advisory Opinion 1988–25 by permitting businesses to provide products and services at no charge if they submit a signed statement which affirms, among other things, that it is in the ordinary course of that vendor's business to provide products or services in an equivalent amount and on similar terms, such as in return for recognition as an "official provider" of such

products or services, to non-political groups or events. Although the Commission's previous NPRM proposed incorporating in the regulations the conclusion reached in Advisory Opinion 1988–25, comments were also sought on whether the approach taken in that advisory opinion should be adopted, or whether it should be modified to require that products or services be provided at no less than the vendor's cost, notwithstanding the fact that the same business provides items at no charge to non-political clients. *Compare* AO 1975–1. Both of the commenters opposed changing the result of AO 1988–25 in this manner. One comment maintained that businesses should be able to supply their products if there is a commercial purpose and the terms are similar to those provided to nonpolitical entities. Similarly, the other commenter argued that businesses should be able to take advantage of the unique promotional opportunities presented if they normally provide such services or items for nonpolitical events, and if the value provided and commercial benefit are proportionate. As indicated above, at this time the Commission does not intend to modify the conclusion reached in Advisory Opinion 1988–25. However, the proposed language in section 9008.9(a)(2) would seek to clarify the documentation needed to demonstrate that the transaction is in the ordinary course of business. Comments are also sought as to whether to establish exemptions for certain types of official providers, or those that provide products or services of less than a specified dollar amount. If so, which types of official providers should be excluded, and what amount would be appropriate?

Another issue raised by the prior NPRM was whether convention committees should be required to report their receipt of in-kind donations from businesses, including a statement of what was provided and its value. The single comment on this question opposed such reporting obligations because these donations are exempt from the prohibitions on corporate contributions and the spending limits. The proposed rules which follow do not include such language, but additional comments are welcome on this idea.

This rulemaking also presents a related issue concerning the terminology used in different portions of the convention regulations to describe the kinds of businesses that may donate funds or make in-kind donations. For example, "retail businesses" may provide reductions or discounts to convention committees. See current 11 CFR 9008.7(c)(1). "Local businesses" may donate promotional items of nominal value to convention attendees, and may donate funds and in-kind contributions to host committees to promote the convention city and its commerce. See current 11 CFR 9008.7(c)(2) and (d)(2). "Local retail businesses" may donate funds to the host committee to be used to defray convention expenses. See current 11 CFR 9008.7(d)(3). Finally, under AO 1988–25, businesses of any type may seek official provider status, which would enable them to provide certain items for promotional consideration.

The first NPRM questioned whether the same term should be used in each section, or whether a basis exists for these distinctions. In particular, the Commission has considered whether to require that all businesses qualify as "local" to ensure that their goal in offering goods and services is commercial rather than political. In Advisory Opinion 1975–1, the Commission recognized two situations which would not violate 18 U.S.C. 610 (the predecessor to 2 U.S.C. 441b): volume discounts on goods or services purchased by the convention committee and donations to a group organized to promote the convention city. The rationale underlying these exceptions was that they reflected a commercial, rather than political, purpose by the business so involved.

One comment urged the Commission to apply these provisions to all businesses on the grounds that the criteria for "local" and "retail" are confusing and that these distinctions do not further the Commission's objectives. The other comment believed the Commission should retain the approach adopted in the current rules and Advisory Opinion 1988–25, while taking into account legitimate commercial interests of franchisees, branches and dealers affiliated with national corporations.

The Commission is now proposing to retain the current distinctions between activities that may be conducted by retail businesses, local businesses, local retail businesses, and businesses that are official providers. Retail businesses throughout the nation may have strong commercial motivations for using discounts and reductions to attract the conventions as customers. Similarly, many types of businesses, regardless of whether or not they qualify as local or retail, may have sound business reasons for becoming official providers, since convention proceedings reach a national audience. In contrast, donations to promote the convention city and its commerce, as well as donations of promotional items of nominal value to convention attendees are more clearly of commercial value to local businesses. Following the suggestion of one commenter, the revised proposals include new language to clarify when businesses are considered "retail" and when they qualify as "local." The new language is also intended to distinguish retail businesses from wholesale businesses. Retail businesses would consist of those businesses (including franchisees) whose customers are the general public or other end users of their goods or services. Local businesses would include branches of national or regional chains, as well as franchisees and licensed dealers. Finally, references in the attached rules to "Metropolitan Area" (MA) would be changed from "Metropolitan Statistical Area" (MSA). This change would conform to the Office of Management and Budget's adoption of "Metropolitan Area" as a more general term. See, Federal Register Notice, 55 FR 12154 (March 30, 1990).

Section 9008.10 Documentation of Disbursements; Net Outstanding Convention Expenses

Under the current regulations at 11 CFR 9008.8(b)(4)(v), committees must include in the convention committee agreement all the documentation requirements for proving that expenses are convention-related. The proposed revisions to these rules would follow the format of the regulations for publicly financed Presidential candidates by only stating in the convention committee agreement that the committee agrees to comply with the documentation requirements (see attached section 9008.3(a)(4)(iv)), and by setting forth the actual documentation provisions in a separate section. Thus, section 9008.10 would contain the substantive rules regarding the production of evidence of convention expenses. In addition, section 9008.10 would be redrafted to conform to the documentation requirements for publicly financed candidates. See, 11 CFR 9003.5 and 9033.11. For example, the term "particulars" would be changed to "purpose of the disbursement". Also, the language in section 9008.10(a)(4) regarding documentation of disbursements would be modified to indicate that pre-established written committee policies may include daily travel expense policies, but do not include general per diem policies which cover a longer time period or which include a broader range of expenses. This change is consistent with the approach the Commission took in revising the primary and general

election rules. See, 11 CFR 9003.5(b)(1)(iv) and 9033.11(b)(1)(iv).

The Commission is considering adding three new paragraphs to section 9008.10. New paragraph (f) would clarify that convention committees must retain records regarding their disbursements and receipts and present them for Commission review. The records retained by the committee should also reflect its compliance with 11 CFR 104.14. Paragraph (g) would require convention committees to provide a statement of net outstanding convention expenses by October 15th of the election year, which would correspond to the filing date for third quarter reports. The statement would be updated as of six months after the last day of the convention, which is also the date for the interim repayment of unspent funds under current.11 CFR 9008.10(e)(2). This proposal would parallel the current requirements for publicly financed Presidential candidates. See, 11 CFR 9003.5(d), 9004.9, 9033.11(d) and 9034.5. Such statements are intended to enable the audit process to be completed more expeditiously.

Finally, proposed paragraph (h) would apply the Compatible Magnetic Media Requirements ("CMMR") to publicly financed convention committees. The purpose of the CMMR is to establish uniform standards for producing computerized records maintained by publicly financed committees at the time of the Commission's audit. New rules applying the CMMR to publicly financed Presidential candidates became effective on October 3, 1990. See 55 FR 40377 (Oct 3, 1990); see also, 57 FR 4453 (Feb. 5, 1992) (updating the requirements and broadening certain technical standards). During that rulemaking, the Commission noted its intention to include parallel requirements in the convention regulations. See Explanation and Justification, 55 FR 26392 (June 27, 1990). The basic rationale and explanation offered in the June 27, 1990 Explanation and Justification apply equally to convention committees. The categories of computerized records sought from convention committees would be fewer, however, in view of the convention's narrower focus.

Both comments were opposed to these proposals, due to the perceived financial costs associated with altering their existing accounting systems and converting their data to a new format. Given that the Commission has not encountered problems in the past with computerized records maintained and used by the national parties' convention committees, few if any, changes should be necessitated under the CMMR. As noted in the previous discussion of section 9008.8, the costs of complying with the CMMR would not be expenditures by the convention committees, and would not be subject to the national committees' spending limits for the convention.

Section 9008.11 Examination and Audits

Section 9008.11 would contain the provisions on examination and audits which are currently found at 11 CFR 9008.9. Also included would be a new sentence signaling the Commission's intention to follow the same procedures during audits of convention committees as it now does when auditing the committees of publicly financed Presidential candidates.

The Commission would also delete from the convention rules current section 9008.11(e), regarding judicial review of Commission repayment determinations. Although several judicial review provisions are found in the Commission's enabling statutes, the Commission no longer includes references to those provisions in its regulations because any issues arising from a request for such review are issues for resolution by the courts.

Section 9008.12 Repayments

Proposed section 9008.12 would contain repayment rules which generally follow the format of the regulations governing repayment determinations for publicly financed Presidential candidates. See 11 CFR 9007.2 and 9038.2. Section 9008.12 would also include the bases for Commission repayment determinations, currently found in 11 CFR 9008.10, and an expanded version of the repayment determination procedures set out in 11 CFR 9008.11. These changes would apply the same procedures and offer the same opportunities to convention committees as are provided for publicly financed candidates during the repayment process. In addition, paragraph (b)(5)(ii) would specify a 30 day time period for making an interim repayment of unspent funds after the convention has ended.

Section 9008.13 Additional Audits

The Commission's authority to conduct other audits or investigations of a committee in an appropriate case would be set forth in new section 9008.13. It would follow similar provisions for publicly financed Presidential candidates.

Section 9008.14 Petitions for Rehearing; Stays of Repayment Determinations

New section 9008.14 would permit convention committees to file a petition for rehearing after the Commission's final repayment determination, and would also set forth the procedures for seeking a Commission stay of its repayment determination pending appeal. This section would generally follow 11 CFR 9007.5 and 9038.5.

Section 9008.15 Extensions of Time

Section 9008.15 would govern committee requests for extensions of time under part 9008. This new provision would conform to the Commission's established policies concerning extensions of time. See 11 CFR 9007.3 and 9038.4.

Section 9008.16 Stale-Dated Committee Checks

Section 9008.16 would be added to provide procedures for handling stale-dated committee checks, and is based on similar provisions applicable to Presidential candidates accepting public funding.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

This subpart would be created to separate the rules governing host committees, government agencies and local municipalities from the regulations on publicly financed convention committees. As explained below, it would include portions of previous sections 9008.1, 9008.7, 9008.9 and 9008.12.

Section 9008.50 Scope

This new scope section would alert host committees, government agencies and municipalities to the registration and reporting requirements, and would generally describe the areas covered by proposed subpart B. It would follow current section 9008.1(b) by indicating that the reporting requirements do not apply to unsuccessful efforts to attract a convention.

Section 9008.51 Registration and Reports

Paragraphs (a) and (b) of draft section 9008.51 would contain the rules governing host committee registration and reporting found at current 11 CFR 9008.12(a). There would be several revisions to the reporting provisions, however. First, the requirement to file host committee reports would begin in the first quarter of the presidential

election year, rather than with the post-convention report. It has been the Commission's experience under the current system that the host committees' post-convention reports often cover more than a year of convention-related activity. Earlier disclosure and shorter coverage periods may make filing easier for committees and may provide more timely information regarding the convention process. Second, the deadline for filing quarterly reports would be changed to correspond to the filing deadline for quarterly reports filed under title 2. The time for filing the first quarterly report after the post-convention report would also be clarified to specify coverage of the calendar quarter following the period covered by the post-convention report. Finally, host committees would be required to itemize their receipts and disbursements to the extent required by 11 CFR part 104.

The previous NPRM sought comments regarding a possible additional reporting requirement, which is included in the attached draft of section 9008.51(c). This section would implement 2 U.S.C. 437(1), which requires reporting by committees or organizations representing "a State or political subdivision thereof, or any group of persons, in dealing with officials of a national political party" on matters relating to a national nominating convention to be held in that State or political subdivision. This statutory language can be read to require reporting by an entity established by a state or local government, other than a host committee, to receive funds and make disbursements for a convention in that locality, although in the past these entities have not had to register and report. Consequently, the Commission's previous NPRM proposed specific disclosure requirements for municipalities and other government agencies providing services and facilities to a national nominating convention. Expenditures by these entities are largely for the same purposes as those permitted by the regulations for host committees, although the requirements regarding raising funds differ to some extent. See, *e.g.*, proposed section 9008.53. In addition, Advisory Opinions 1982–27 and 1983–29 permit the acceptance of private donations by these entities to defray convention expenses. See discussion of 11 CFR 9008.53(a)(2). For these reasons, the Commission continues to believe that reporting by these entities will serve an important disclosure function.

Both commenters on the first NPRM argued against new reporting rules, and suggested instead that municipalities file copies of written contracts between the national committees and the cities they select. The Commission is continuing to consider whether to require municipalities to file reports which include copies of these contracts. Although this approach would result in public disclosure of amounts specified in the contracts, it would fail to publicly disclose actual disbursements or the sources of the funds spent. Accordingly, the Commission is also considering additional reporting provisions in light of the increased role municipalities have played in recent conventions. The reporting proposals described below have been scaled back so that meaningful disclosure may be accomplished with as little burden on municipalities as possible.

Under proposed section 9008.51(c), municipal corporations and government agencies would be required to file two statements with the Commission describing their general categories of convention-related activity. Within 10 days after the city is selected as the convention site, the municipality or other agency would have to file a letter listing the kinds of facilities and services it intends to provide to the convention, estimating the cost of providing such facilities and services, and stating whether it will use general revenues or funds donated to a separate account to pay for these activities. After the convention, the municipality would submit a second letter reporting the actual totals spent for each general category of activities provided on behalf of the convention. The proposed rules would also include a list of broad categories of expenses, to assist municipalities in providing the general information needed. Additional comments are sought as to whether convention cities should also be required to disclose the sources of any contributions they receive. In preparing these proposed new reporting requirements, the Commission is seeking to ensure that adequate public disclosure is accomplished without imposing unduly burdensome requirements on municipalities and other governmental entities.

Section 9008.52 Contributions to and Expenditures by Host Committees To Promote Convention City

Receipts and disbursements by the host committee to promote the convention city and its commerce would be addressed in section 9008.52. These provisions are currently located at 11 CFR 9008.7(d)(1) and (2). The explanation of the term "local business" would follow the changes made in section 9008.9(b). Revised language would also be included to clarify that banks do not qualify as local businesses under this section.

Section 9008.53 Expenditures for Convention Facilities and Services by Government Agencies, Municipal Corporations and Host Committees

Proposed new section 9008.53 would combine the rules on receipts and disbursements for convention expenses by both host committees and local municipal corporations and government agencies. Since the scope of permissible convention expenses is the same for these groups, the Commission is considering treating them together to avoid the need for cross-referencing. These provisions are currently set forth in sections 9008.7 (b)(1), (b)(2) and (d)(3).

The Commission sought comment on proposed language in paragraph (a)(2) intended to incorporate the conclusions reached in Advisory Opinions 1982–27 and 1983–29. Under these advisory opinions, convention cities were permitted to establish a municipal fund to receive donations and make disbursements in connection with a nominating convention, provided certain conditions were met. First, the fund must have been created to attract conventions and other events to the locality on a broad scale, and cannot be established for the sole purpose of providing services and facilities to the nominating convention. Second, donations to the fund must be unrestricted and may not be designated for any particular use, including the nominating convention. Previously proposed paragraph (a)(2) would have also required that the creation of such a fund be necessitated by a prohibition under local law against the use of general tax revenue for these purposes. One commenter objected to this requirement on the grounds that it would be inconsistent with Advisory Opinion 1983–29. The Commission agrees with the comment. Consequently, the attached proposed rules would not include a requirement restricting the creation of such municipal funds to situations where local law prohibits using tax revenues for convention purposes.

Attached paragraph (b) of new section 9008.53 would also contain several revisions to the rules governing contributions and expenditures to defray certain convention expenses. First, new language would be added to recognize that host committees may accept in-kind donations such as reductions and discounts, as well as items provided in exchange for official

provider status, subject to the requirements of section 9008.9. Second, new section 9008.53(b) would clarify that banks do not qualify as local retail businesses under this section. All bank loans must meet the requirements of 11 CFR 100.7(b)(11). This paragraph would also indicate that the standards in section 9008.9(a)(1) shall be used to determine retail business status for purposes of section 9008.53. Finally, while local municipal corporations and government agencies may donate funds to host committees for convention expenses, they would no longer be subject to the requirement that the amount of the donation be proportionate to the commercial return reasonably expected during the life of the convention. As municipal corporations and government agencies may defray these expenses on their own, without limit, the Commission believes it may be unnecessary to impose a limit on donations by these groups to host committees for the same purpose. In addition, it has been difficult to determine what would be a proportionate return for these entities. However, this requirement would still apply to donations by local businesses. One of the previous public comments objected to applying this criterion to donations from businesses, particularly if the commercial return is measured only during the life of the convention. However, to date this criterion does not appear to have presented difficulties for local businesses, and it has been an essential element of the limited scope of activities first approved in Advisory Opinions 1975–1 and 1975–47, and subsequently incorporated into the current convention regulations. Comments are also sought as to whether the phrase "proportionate to the commercial return reasonably expected" should be further explained in the regulations. For example, the rules could indicate that a dollar for dollar return during the life of the convention is not expected. In the alternative, the Commission would welcome suggestions as to a more appropriate descriptive term.

Section 9008.54 Examination and Audit

Proposed new section 9008.54 sets out the basic rule regarding Commission audits of host committees, which is currently set forth at 11 CFR 9008.9. Consistent with the proposed changes applicable to convention committees, section 9008.54 would include a sentence indicating the Commission's intention to follow the same procedures during audits of host committees that it uses when auditing committees of publicly financed Presidential candidates. In the case of host committees, however, the Commission does not make any repayment calculations because host committees do not receive public funds.

Additional Issues

Recently, questions have arisen as to whether Title VI of the Civil Rights Act of 1964 is applicable to the selection of delegates to the federally funded national nominating conventions. Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in , be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. 2000d. Recently, the U.S. District Court for the District of Columbia ordered the Commission to promulgate rules under Title VI governing the selection and allocation of delegates to the federally-funded nominating conventions. *Freedom Republicans Inc., et al.*, v. *Federal Election Commission*, 788 F. Supp. 600, 601 (D.D.C. 1992). This case is currently pending on appeal before the D.C. Circuit. See *Freedom Republicans Inc., et al.*, v. *Federal Election Commission*, No. 92–5214 (D.C. Cir.). Consequently, the possible promulgation of such regulations must await the decision of the Court of Appeals. Nevertheless, in the interim, the Commission welcomes public comments on what impact, if any, Title VI may have on federally-funded national nominating conventions.

The Commission welcomes comments on the proposed revisions to the convention regulations and the issues presented in this Notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these rules.

List of Subjects

11 CFR Part 107

Political committees and parties, Reporting requirements.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, it is proposed to amend subchapters A and E, chapter I of title 11 of the Code of Federal Regulations as follows:

1. 11 CFR Part 107 would be revised to read as follows:

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

Sec.
107.1 Registration and reports by political parties.
107.2 Registration and reports by committees including host committees, organizations or other groups representing a state, city or other local government agency.

Authority: 2 U.S.C. 437, 438(a)(8).

§ 107.1 Registration and reports by political parties.

Each convention committee established under 11 CFR 9008.3(a)(2) by a national committee of a political party and each committee or other organization, including a national committee, which represents a political party in making arrangements for that party's convention held to nominate a presidential or vice presidential candidate shall register and report in accordance with 11 CFR 9008.3(b).

§ 107.2 Registration and reports by host committees, and committees, organizations or other groups representing a state, city or other local government agency.

Each host committee, and each committee or other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention, shall register and report in accordance will 11 CFR 9008.51.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

2. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

3. Section 114.1 would be amended by revising paragraph (a)(2)(viii) to read as follows:

§ 114.1 Definitions.

(a) * * *
(2) * * *
(viii) Activity permitted under 11 CFR 9008.9, 9008.52 and 9008.53 with respect to a presidential nominating convention;
* * * * * *

4. 11 CFR part 9008 would be revised to read as follows:

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

Subpart A—Expenditures by National Committees and Convention Committees

Sec.
9008.1 Scope.
9008.2 Definitions.
9008.3 Eligibility for payments; Registration and reporting.
9008.4 Entitlement to payments from the fund.
9008.5 Adjustment of entitlement.
9008.6 Payment and certification procedures.
9008.7 Use of funds.
9008.8 Limitation of expenditures.
9008.9 Receipt of in-kind donations from businesses.
9008.10 Documentation of disbursements; net outstanding convention expenses.
9008.11 Examination and audits.
9008.12 Repayments.
9008.13 Additional audits.
9008.14 Petitions for rehearing; stays of repayment determinations.
9008.15 Extensions of time.
9008.16 Stale-dated committee checks.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

9008.50 Scope.
9008.51 Registration and reports.
9008.52 Contributions to and expenditures by host committees to promote convention city.
9008.53 Expenditures for convention facilities and services by government agencies, municipal corporations and host committees.
9008.54 Examination and audit.

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008, 9009(b).

Subpart A—Expenditures by National Committees and Convention Committees

§ 9008.1 Scope.

(a) This Part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential Nominating convention. Under 26 U.S.C. 9008(d), expenditures with regard to such a convention by a national committee receiving public funds are limited to $4,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

(b) Under 2 U.S.C. 437, each committee or organization which represents a national party in making arrangements for that party's presidential nominating convention is required to file disclosure reports. This reporting obligation extends to all such committees or organizations, regardless of whether or not public funds were used or available to defray convention expenses.

§ 9008.2 Definitions.

(a) *Commission* means the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463.

(b) *Fund* means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

(c) *Major party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) *Minor party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

(e) *National committee* means the organization which, by virtue of the by-laws of the political party, is responsible for the day to day operation of that party at the national level.

(f) *New party* means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(g) *Nominating convention* means a convention, caucus or other meeting which is held by a political party at the national level and which chooses the presidential nominee of the party through selection by delegates to that convention or through other similar means.

(h) *Secretary* means the Secretary of the Treasury of the United States.

§ 9008.3 Eligibility for payments; registration and reporting.

(a) *Eligibility requirements.* (1) To qualify for entitlement under 11 CFR 9008.4 and 9008.5, the national committee of a major or minor political party shall establish a convention committee pursuant to paragraph (a)(2) of this section and shall file an application statement pursuant to paragraph (a)(3) of this section. The convention committee, in conjunction with the national committee, shall file an agreement to comply with the conditions set forth at paragraph (a)(4) of this section.

(2) The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention. The convention committee shall register with the Commission as a political committee pursuant to 11 CFR part 102. The convention committee shall receive all public funds to which the national committee is entitled under 11 CFR 9008.4 and 9008.5 and all private contributions made for the purpose of defraying convention expenses. All expenditures on behalf of the national committee for convention expenses shall be made by the convention committee.

(3) The national committee shall file with the Commission an application statement. Any changes in the information provided in the application statement must be reported to the Commission within 10 days following the change. The application statement shall include:

(i) The name and address of the national committee;

(ii) The name and address of the convention committee and of the officers of that committee;

(iii) The name of the city where the convention is to be held and the approximate dates;

(iv) The name, address, and position of the convention committee officers designated by the national committee to sign requests for payments; and

(v) The name and address of the depository of the convention committee.

(4) The convention committee shall, by letter to the Commission, agree to the conditions set forth in paragraphs (a)(4)(i) through (viii) of this section. This agreement shall also be binding upon the national committee.

(i) The convention committee shall agree to comply with the applicable expenditure limitation set forth at 11 CFR 9008.8.

(ii) The convention committee shall agree to file convention reports as required under 2 U.S.C. 437 and 11 CFR 9008.3(b).

(iii) The convention committee shall agree to establish one or more accounts into which all public funds received under 11 CFR 9008.4 and 9008.5 must be deposited and from which all expenditures for convention expenses must be made. Such account(s) shall contain only public funds except as provided in 11 CFR 9008.6(a)(3).

(iv) The convention committee shall agree to keep and furnish to the Commission all documentation of convention disbursements made by the committee as required under 11 CFR 9008.10. The convention committee has

the burden of proving that disbursements by the convention committee were for purposes of defraying convention expenses as set forth at 11 CFR 9008.7(a)(4).

(v) The convention committee shall agree to furnish to the Commission any books, records (including bank records for all accounts), a copy of any contract which the national committee enters into with a host committee, vendor or convention city, a copy of documentation provided by businesses in accordance with 11 CFR 9008.9(a) (1) and (2), and any other information that the Commission may request.

(vi) The convention committee shall agree to permit an audit and examination pursuant to 26 U.S.C. 9008(g) and 11 CFR 9008.11 of all convention expenses; to facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and to pay any amounts required to be paid under 26 U.S.C. 9008(h) and 11 CFR 9008.12.

(vii) The convention committee shall agree to comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9008, and the Commission's regulations at 11 CFR parts 100–116 and 9008.

(viii) The convention committee shall pay any civil penalties included in a conciliation agreement or imposed under 2 U.S.C. 437g.

(5) The application statement and agreement may be filed at any time after June 1 of the calendar year preceding the year in which a Presidential nominating convention of the political party is held, but no later than the first day of the convention.

(b) *Registration and reports by political parties*—(1) *Registration.* (i) Each convention committee established by a national committee under paragraph (a)(2) of this section shall register with the Commission on FEC Form 1 as a political committee pursuant to 11 CFR part 102 and shall file reports with the Commission as required at paragraph (b)(2) of this section. Each report filed by the committee shall contain the information required by 11 CFR part 104.

(ii) A State party committee or a subordinate committee of a State party committee which only assists delegates and alternates to the convention from that State with travel expenses and arrangements, or which sponsors caucuses, receptions, and similar activities at the convention site, need not register or report under this section.

(2) *Quarterly and post convention reports; content and time of filing. Each committee required to register under paragraph (b)(1) of this section shall file reports as follows:*

(i) The first quarterly report shall be filed on FEC Form 4 no later than 15 days following the close of the calendar quarter in which the committee either receives payment under 11 CFR 9008.6 or receives contributions or makes expenditures to defray convention expenses. The committee shall continue to file reports on a quarterly basis no later than the 15th day following the close of each calendar quarter, except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year. Reports shall be complete as of the last day of the preceding calendar quarter and shall be filed until the committee ceases activity in connection with that party's presidential nominating convention under paragraph (c) of this section.

(ii) Any quarterly report due within 20 days before or after the convention shall be suspended and the committee shall in lieu of such quarterly report file a post convention report. The post convention report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. The post convention report shall be complete as of 15 days prior to the date on which the report must be filed.

(c) *Cessation of activity.* A convention committee which has received payments under 11 CFR 9008.6 shall cease activity no later than 24 months after the convention, unless the committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the committee at least 30 days prior to the close of the 24 month period.

§ 9008.4 Entitlement to payments from the fund.

(a) *Major parties.* Subject to the provisions of this Part, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.6 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $4 million, as adjusted by the Consumer Price Index under 11 CFR 9008.5(a).

(b) *Minor parties.* Subject to the provisions of this Part, the national committee of a minor party shall be entitled to payments under 11 CFR 9008.6 with respect to any presidential nominating convention in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount which the national committee of a major party is entitled to receive under 11 CFR 9008.5 as the number of popular votes received in the preceding presidential election by that minor party's presidential candidate bears to the average number of popular votes received in the preceding presidential election by all of the major party presidential candidates.

(c) *Limitation on payments.* Payments to the national committee of a major party or a minor party under 11 CFR 9008.6 from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

§ 9008.5 Adjustment of entitlement.

(a) The entitlements established by 11 CFR 9008.4 shall be adjusted on the basis of the Consumer Price Index pursuant to the provisions of 2 U.S.C. 441a(c).

(b) The entitlements established by 11 CFR 9008.4 shall be decreased by the amount of income generated by the investment of public funds under 11 CFR 9008.7(a)(5), less any tax paid on such income.

(c) The entitlements established by 11 CFR 9008.4 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.8(a) and the amount of private contributions received under 11 CFR 9008.6(a) by the national committee of a political party. In calculating these adjustments, amounts expended by Government agencies and municipal corporations in accordance with 11 CFR 9008.53; in kind donations by businesses to the national committee or convention committee in accordance with 11 CFR 9008.9; expenditures by host committees in accordance with 11 CFR 9008.52 and 9008.53; expenditures to participate in or attend the convention under 11 CFR 9008.8(b)(2); and legal and accounting services rendered in accordance with 11 CFR 9008.8(b)(4) will not be considered private contributions or expenditures counting against the limitation.

§ 9008.6 Payment and certification procedures.

(a) *Optional payments; private contributions.* (1) The national committee of a major or minor party may elect to receive all, part, or none of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5.

(2) If a national committee of a major or minor party elects to receive part or none of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5, or if the Secretary determines there is a deficiency in the Fund under 26 U.S.C. 9008(b)(4), the national

committee may receive and use private contributions, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.8.

(3) All private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of Title 2, United States Code. The convention committee may establish a separate account for private contributions or may deposit such contributions with payments received from the Fund pursuant to paragraph (d) of this section. The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

(b) *Increase in certified amount.* If the application statement is filed before it is possible to determine the cost of living increase for the year preceding the convention, that amount determined by the increase shall be paid to the national committee promptly after the increase has been determined.

(c) *Availability of payments.* The national committee of a major or minor party may receive payments under this section beginning on July 1 of the calendar year immediately preceding the calendar year in which a Presidential nominating convention of the political party involved is held.

(d) *Certification of payment.* After a national committee has properly submitted its application statement and agreement as required under 11 CFR 9008.3(a)(3) and (4), and upon receipt of a written request, payment of the committee's entitlement shall be certified by the Commission to the Secretary of the Treasury.

§ 9008.7 Use of funds.

(a) *Permissible uses.* Any payment made under 11 CFR 9008.6 shall be used only for the following purposes:

(1) Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments; or

(2) Such payment may be used to repay the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses; or

(3) Such payment may be used to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention expenses, where such funds were used to defray convention expenses.

(4) "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to:

(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and seating, decorations, telephones, security, convention hall utilities, and other related costs;

(ii) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(iii) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(iv) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(v) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space.

(vi) Expenses incurred in securing a convention city and facility;

(vii) Expenses incurred in providing a transportation system in the convention city for use by delegates and other persons attending or otherwise connected with the convention;

(viii) Expenses for entertainment activities which are part of the official convention activity sponsored by the national committee, including but not limited to dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(A) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(B) Entertainment activities sponsored by the national committee if the purpose of the activity is primarily for national committee business, such as fundraising events, or selection of new national committee officers;

(C) Entertainment activities sponsored by persons other than the national committee; and

(D) Entertainment activities prohibited by law;

(ix) Expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications;

(x) Administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention; and

(xi) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses.

(5) Any investment of public funds or any other use of public funds to generate income is permissible only if the income so generated is used to defray convention expenses. Such income, less any tax paid on it, will be applied against the national committee's payments under 11 CFR 9008.6, where appropriate, the Commission may determine that a repayment is required on the basis of such income.

(b) *Prohibited uses.* (1) No part of any payment made under 11 CFR 9008.6 shall be used to defray the expenses of any candidate, delegate, or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention. This part shall not prohibit candidates, delegates or alternate delegates who are participating in a presidential nominating convention from attending official party convention activities including but not limited to dinners, concerts and receptions, where such activities are paid for with public funds.

(2) Public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the State in which such expense is incurred or paid, or any regulation prescribed under federal or State laws.

(3) Public funds shall not be used to pay civil or criminal penalties required or agreed to be paid pursuant to 2 U.S.C.

437g. Any amounts received or expended by the national committee or convention committee of a political party to pay such penalties shall not be considered contributions or expenditures, except that such amounts shall be reported in accordance with 11 CFR part 104 and shall be subject to the prohibitions of 11 CFR 110.4 and parts 114 and 115.

§ 9008.8 Limitation of expenditures.

(a) *National party limitations*—(1) *Major parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.4 and 9008.5.

(2) *Minor parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a minor party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which the national committee of a major party is entitled under 11 CFR 9008.4 and 9008.5.

(3) *Authorization to exceed limitation.* The Commission may authorize the national committee of a major party or minor party to make expenditures for convention expenses, which expenditures exceed the limitation established by paragraphs (a) (1) or (2) of this section. This authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, the expenditures are necessary to assure the effective operation of the Presidential nominating convention by the committee. Examples of "extraordinary and unforeseen circumstances" include, but are not limited to, a natural disaster or a catastrophic occurrence at the convention site. In no case, however, will such authorization entitle a national committee to receive public funds greater than the entitlement specified under 11 CFR 9008.4 and 9008.5. All private contributions received to defray expenditures under this paragraph shall be subject to all reporting requirements, limitations (except for limitations imposed by paragraphs (a) (1) and (2) of this section) and prohibitions of the Act (as defined at 2 U.S.C. 431(19)).

(b) *Payments not subject to limit*—(1) *Host committee expenditures.* Expenditures made by the host committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 CFR 9008.52 and 9008.53.

(2) *Expenditures by government agencies and municipal corporations.* Expenditures made by government agencies and municipal corporations shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

(3) *Expenditures to participate in or attend convention.* Expenditures made by presidential candidates from campaign accounts, by delegates, or by any other individual from his or her personal funds for the purpose of attending or participating in the convention or convention related activities, or by State or local committees of a political party on behalf of such delegates or individuals shall not be considered expenditures made by or on behalf of the national party, and shall therefore not be subject to the overall expenditure limitations of this section.

(4) *Legal and accounting services.* (i) The payment of compensation to an individual by his or her regular employer for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitations of this section.

(ii) The payment by the national committee of compensation to any individual for legal and accounting services rendered to or on behalf of the national committee in connection with the presidential nominating convention or convention-related activities shall be considered an expenditure and shall count against the expenditure limitations of this section.

(5) *Computerized information.* Payments to defray the costs of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9008.10(h), and explaining the operation of the computer system's software, shall not be considered expenditures and shall not count against the expenditure limitations of this section.

§ 9008.9 Receipt of in-kind donations from businesses.

(a) *Discounts by retail businesses; Items provided for promotional consideration—(1) Reductions or discounts.* Retail businesses (excluding banks) may sell, lease or rent their products, materials, services or space to the national committee with respect to a presidential nominating convention at reduced or discounted rates, provided that such reductions or discounts are in the ordinary course of business. For purposes of this section, a business shall be considered a retail business if it sells, leases or rents its products, materials, services or space directly to the general public or to other end users. A reduction or discount shall be considered in the ordinary course of business if:

(i) The contract between the convention committee and the vendor states that the discount or reduction is in the ordinary course of the vendor's business; and

(ii) The vendor provides the convention committee with documentation which describes the products, materials, services or space provided and the terms and conditions of the reduction or discount, and which also contains a statement signed by the vendor affirming that:

(A) The vendor has an established practice of providing similar reductions or discounts on the same scale to non-political clients, or that the reduction or discount is consistent with established practice in the vendor's trade or industry;

(B) The value of the products, materials, services or space provided does not exceed the commercial benefit to the vendor; and

(C) The benefit to the vendor is promotional and commercial and not political.

(2) *Items provided for promotional consideration.* Businesses (excluding banks) may provide their products or services to the national committee for use in connection with the presidential nominating convention at no charge, provided that the provision of products or services under this paragraph is in the ordinary course of business. The provision of products or services shall be considered in the ordinary course of business if the business provides the convention committee with documentation which describes the products or services provided and the terms and conditions under which the products or services are provided, and which also contains a statement signed by the vendor affirming that:

(i) The business has an established practice of providing its products or services on the same scale and on similar terms, such as in return for "official provider" status or other promotional consideration, to non-political clients, or that the terms and conditions under which the products or services are provided are consistent

with established practice in the business' trade or industry;

(ii) The value of the products or services does not exceed the commercial benefit to the business; and

(iii) The benefit to the business is promotional and commercial and not political. In addition, the contract between the business and the convention committee shall state that the provision of products or services is in the ordinary course of business for the business involved.

(3) Discounts or reductions, or items provided for promotional consideration, in accordance with paragraphs (a) (1) and (2) of this section will not count toward the national party expenditure limitation under 11 CFR 9008.8(a). For all products, materials, services or space provided under paragraph (a) (1) or (2) of this section, the difference between the usual and normal charge and the amount paid (if any) by the convention committee shall be disclosed as memo entries on a separate Schedule A attached to the convention committee's report.

(b) *Samples and promotional material.* (1) Local businesses may sell, at nominal cost, or provide at no charge, any of their products or services in the form of samples, discount coupons, promotional items, such as maps, pens, or pencils, with the business' name imprinted on the item, to those attending the convention functions. Such samples, coupons and promotional items shall be: Of nominal value; provided solely for bona fide advertising or promotional purposes; and provided in the ordinary course of business.

(2) The samples and promotional material may be distributed by or with the help of persons employed by the business, or employed by or volunteering for the national party or a host committee.

(3) For purposes of this section, a local bank shall be considered a local business.

(4) For purposes of this section, any business, including a branch of a national or regional chain, a franchisee, or a licensed dealer, within the Metropolitan Area (MA) of the convention city shall be considered a local business. There shall be a rebuttable presumption that any business located outside the MA is not a local business. This presumption may be rebutted by a showing that the volume of business in an area outside the MA would be directly affected by the presence of the convention.

(5) The value of the benefits provided under this section will not count toward the national party's expenditure limitation under 11 CFR 9008.8(a).

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

The convention committee must include as part of the evidence of convention expenses the following documentation:

(a) For disbursements in excess of $200 to a payee, either:

(1) A receipted bill from the payee that states the purpose of the disbursement; or

(2) If such a receipted bill is not available, the following documents:

(i) A canceled check negotiated by the payee; plus

(ii) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum that states the purpose of the disbursement;

(iii) Where the documents specified at paragraph (a)(2)(ii) of this section are not available, a voucher or contemporaneous memorandum from the committee that states the purpose of the disbursement;

(3) If neither a receipted bill nor the supporting documentation specified in paragraph (a)(2) (ii) or (iii) of this section is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(4) Where the supporting documentation required above is not available, the committee may present a canceled check and collateral evidence to document the convention expense. Such collateral evidence may include but is not limited to:

(i) Evidence demonstrating that the disbursement is part of an identifiable program or project which is otherwise sufficiently documented, such as a disbursement which is one of a number of documented disbursements relating to the operation of a committee office;

(ii) Evidence that the disbursement is covered by a preestablished written committee policy, such as a daily travel expense policy.

(b) For all other disbursements:

(1) If from the petty cash fund, a record that states full name and mailing address of the payee and the amount, date and purpose of the disbursement; or

(2) A canceled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the disbursement.

(c) For purposes of this section, "payee" means the person who provides the goods or services to the committee in return for the disbursement, except that an individual will be considered a payee under this section if he or she receives $2,000 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(d) For purposes of this section, the term "purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(e) Upon the request of the Commission the convention committee shall supply an explanation of the connection between the disbursement and the convention.

(f) The committee shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related material documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(g) *Net outstanding convention expenses.* A convention committee that is eligible to receive payments under 11 CFR 9008.3 shall file, no later than October 15 of the election year, a statement of that committee's net outstanding convention expenses, which shall be complete as of September 30 of the election year. The convention committee shall file a revised statement of net outstanding convention expenses which shall reflect the financial position of the convention committee as of the end of the sixth month following the last day of the convention. The revised statement shall be filed no later than 30 days thereafter, and shall be accompanied by the interim repayment, if required under 11 CFR 9008.12(b)(5)(ii). The committee's net outstanding convention expenses under this section equal the difference between paragraphs (g) (1) and (2) of this section.

(1) The total of:

(i) All outstanding obligations for convention expenses as of September 30 of the election year; plus

(ii) An estimate of the amount of convention expenses that will be incurred after September 30 of the election year and before the end of the sixth month following the last day of the convention; plus

(iii) An estimate of necessary winding down costs; less

(2) The total of:

(i) Cash on hand as of the close of business on September 30 of the election year, including: all receipts dated on or before that date; currency,

balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of convention expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding convention obligations under paragraph (g)(1) of this section shall not include any accounts payable for non-convention expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR 9008.12 or any amounts paid to secure a surety bond under 11 CFR 9008.14(c).

(4) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the convention whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the convention, but does not include property defined as "other assets" under 11 CFR 9008.10(g)(5). A list of all capital assets shall be maintained by the committee, which shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation. If the committee wishes to claim a higher depreciation percentage for an item, it must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(5) *Other assets.* The term "other assets" means any property acquired by the committee for use in raising funds or as collateral for loans. "Other assets" must be included on the committee's statement of net outstanding convention expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on September 30 of the election year unless the item is acquired after this date, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee, which shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition.

(6) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(7) *Winding down costs.* The term "winding down costs" means:

(i) Costs associated with the termination of the convention such as complying with the post-convention requirements of the Act and other necessary administrative costs associated with winding down the convention, including office space rental, staff salaries and office supplies; and

(ii) Costs incurred by the convention committee prior to September 30 of the election year for which written arrangements or commitment was made on or before that date.

(8) *Review of convention committee statement.* The Commission will review the statement filed by each convention committee under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9008.10 during the audit of that committee under 11 CFR 9008.11.

(h) *Production of computer information.* (1) *Categories of computerized information to be provided.* If the convention committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (h)(1)(i) through (h)(1)(iv) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in paragraph (h)(2) of this section:

(i) Information required by law to be maintained regarding the committee's receipts or disbursements;

(ii) Records used to reconcile bank statements;

(iii) Records relating to the acquisition, use and disposition of capital assets; and

(iv) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, or bank reconciliations.

(2) *Time for production.* If the committee maintains or uses computerized information containing any of the data listed in paragraph (h)(1) of this section, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(3) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(4) *Additional materials and assistance.* Upon request, the Committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

§ 9008.11 Examination and audits.

The Commission shall conduct an examination and audit of the convention committee no later than

December 31 of the calendar year of the convention and may at any time conduct other examinations and audits as it deems necessary. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1.

§ 9008.12 Repayments.

(a) *General.* (1) A national committee that has received payments from the Fund under 11 CFR part 9008 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9008.11 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the committee of any repayment determinations made under this section as soon as possible, but not later than 3 years after the last day of the Presidential nominating convention. The Commission's issuance of an interim audit report to the committee will constitute notification for purposes of the three year period.

(3) Once the committee receives notice of the Commission's final repayment determination under this section, the committee should give preference to the repayment over all other outstanding obligations of the committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that the national committee of a political party that has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Excess payments.* If the Commission determines that any portion of the payments to the national committee or convention committee under 11 CFR 9008.6(b) was in excess of the aggregate payments to which the national committee was entitled under 11 CFR 9008.4 and 9008.5, it shall so notify the national committee, and the national committee shall pay to the Secretary an amount equal to such portion.

(2) *Excessive expenditures.* If the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR 9008.8(a), it shall notify the national committee of the amount of such excessive expenditures, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(3) *Excessive contributions.* If the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(4) *Improper usage or documentation.* If the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.6(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.7 or was not documented in accordance with 11 CFR 9008.10, it shall notify the national committee of the amount improperly used or documented and the national committee shall pay to the Secretary an amount equal to the amount specified.

(5) *Unspent funds.* (i) If any portion of the payment under 11 CFR 9008.4 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

(ii) The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the sixth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. This repayment shall be made no later than 30 calendar days after the date set for determining the committee's financial position under this section. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts previously refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

(iii) All unspent funds shall be repaid to the U.S. Treasury no later than 24 months after the last day of the convention, unless the national committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the national committee.

(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth in paragraphs (c)(1) through (c)(4) of this section.

(1) *Initial determination.* The Commission will provide the committee with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9008.11 and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the committee of the evidence upon which any such determination is based. If the committee does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the committee disputes the Commission's initial repayment determination(s), it shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the committee within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the committee so desires.

(3) *Oral presentation.* A committee that has submitted written materials under paragraph (c)(2) of this section, may request that the Commission provide the committee with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the committee's request, it will inform the committee of the date and time set for the oral presentation. At the date and time set by the Commission, the committee's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2) of this section. The committee representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under paragraph (c)(2) of this section and any oral presentation made under paragraph (c)(3) of this section. A final determination that a committee must repay a certain amount will be accompanied by a written

statement of reasons for the commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the committee shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the committee, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the committee submits written materials under paragraph (c)(2) of this section disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the committee shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the committee, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth in paragraph (b) of this section after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a committee receives or becomes aware of assets not previously disclosed during the audit or repayment process the committee shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified during the audit or repayment process. Newly discovered assets may serve as a basis for additional repayment determinations under paragraph (f) of this section.

(h) *Repayment limit.* No repayment shall be required from the national committee or the convention committee under 11 CFR 9008.12, which, when added to other repayments required from that national committee under this section, exceeds the amount of payments received by the national committee under 11 CFR 9008.4 and 9008.5.

§ 9008.13 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9008.14 Petitions for rehearing: stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination, the committee may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds by which questions were not and could not have been presented during the earlier determination process.

(2) If a committee files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the committee of its determination on the petition. The time periods for making repayment under 11 CFR 9008.12(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The committee's failure to raise an agrument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the committee's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The committee may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9008.12 pending the committee's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9008.12(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the committee's presentation of evidence in the stay request that it:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the committee's designated agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(A) It will suffer irreparable injury in the absence of a stay; and, if so, that

(B) It has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interests; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the committee has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9008.12(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9008.15 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9008 will not be routinely granted.

(b) Whenever a committee has a right or is required to take action within a period of time prescribed by 11 CFR part 9008 or by notice given thereunder, the committee may apply in writing to the Commission for an extension of time in which to exercise such right to take such action. The committee shall demonstrate in the application for extension that good cause exists for its request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a committee that has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the committee in its application.

(d) If a committee fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9008, the Commission may, on the committee's showing of excusable neglect:

(1) Permit such committee to exercise its right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9008.

§ 9008.16 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

§ 9008.50 Scope.

Subpart B governs registration and reporting by host committees representing convention cities and by government agencies and municipalities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees, government agencies and municipal corporations. In addition, subpart B describes permissible expenditures by government agencies, municipal corporations and host committees to defray convention expenses and to promote the convention city and its commerce.

§ 9008.51 Registration and reports.

(a) *Registration by host committees.* (1) Each committee, including a host committee, which deals with officials of a national political party with respect to matters involving a presidential nominating convention shall register with the Commission on FEC Form 1 within 10 days after the date on which such party chooses the convention city. The committee shall clearly indicate on this form its status as a host committee.

(2) Any such committee, organization or group which is unsuccessful in its efforts to attract the convention to a city need not register under this section.

(b) *Post-convention and quarterly reports; content and time of filing.* (1) Each host committee required to register under this section shall begin filing quarterly reports on FEC Form 4 no later than 15 days after the end of the first calendar quarter of the Presidential election year. This report shall disclose all receipts and disbursements, including in-kind contributions, made with respect to a presidential nominating convention, and shall itemize such receipts and disbursements to the extent required by 11 CFR part 104. Each report shall be complete as of 15 days prior to the date on which it must be filed.

(2) In lieu of a third-quarter report, each host committee reporting under this section shall file a post convention report with the Commission of FEC Form 4. This report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall disclose all receipts and disbursements, including in-kind contributions, made after the completion date of the second quarter report. This report shall be complete as of 15 days prior to the date on which it must be filed.

(3) If the host committee has receipts or makes disbursements after the completion date of the post convention report, it shall continue to file quarterly reports beginning no later than 15 days after the end of the calendar quarter which follows the completion date of the post convention report. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the host committee ceases all activity which must be reported under this section.

(4) A host committee shall file a final report with the Commission not later than 15 days after it ceases activity which must be reported under this section, unless such status is reflected in either the post convention report or a quarterly report.

(c) *Registration and post-convention statements by municipalities and local government agencies.* (1) Each organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall file, by letter, a registration statement with the Commission. The registration statement shall be submitted within 10 days after the date on which the party chooses the convention city and shall state: its intention to provide facilities and services to the convention under 11 CFR 9008.53(c), a list of the categories of facilities and services the municipality or government agency expects to provide, an estimate of the cost of providing each category of facilities and services, and whether the municipality or government agency intends to use general tax revenues or private funds donated to a separate convention account to defray the cost of these activities. Categories of facilities and services may include construction, security, communications, transportation, utilities, clean up, meeting rooms and accommodations.

(2) After the convention, the municipality or government agency shall file a statement, by letter, with the Commission reporting the total amounts actually spent for each category of facilities and services provided during the convention. This statement shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election.

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§ 9008.52 Contributions to and expenditures by host committees to promote convention city.

(a) *Host committee.* A host committee includes any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau: Which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees. A host committee must register in accordance with 11 CFR 9008.51.

(b) *Contributions and expenditures to promote convention city and its commerce.* (1) Local businesses (excluding banks), local municipal corporations and government agencies, local labor organizations, and individuals may donate funds or make in-kind contributions to a host committee for the purposes set forth at paragraph (b)(3) of this section.

(2) The donor may restrict the use of funds by earmarking them for a particular project, by having the donation acknowledged (e.g., courtesy of XYZ Company) or by placing any other similar restriction on the use of the funds.

(3) A host committee shall use funds donated under paragraph (b)(1) of this section for only the following purposes:

(i) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site;

(ii) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(iii) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR 9008.9(b); and

(iv) To defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance.

(4) For purposes of this section, any business (including a branch of a national or regional chain, a franchisee, or a licensed dealer), municipal corporation, agency or labor organization within the Metropolitan Area (MA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MA is not local. This presumption may be rebutted by a showing that the volume of business in an area lying outside the MA would be directly affected by the presence of the convention.

§ 9008.53 Expenditures for convention facilities and services by government agencies, municipal corporation and host committees.

(a) *Government agencies and municipal corporations.* (1) Federal, State or local government agencies and municipal corporations may make expenditures for facilities or services with respect to a presidential nominating convention. Such expenditures will not be considered contributions to the national committee, expenditures counting against the national committee's limitation, or illegal corporate contributions by the agency or municipal corporation. In providing facilities or services to the national committee, the agency or municipal corporation may not obtain facilities, services or goods from other persons at less than fair market value, except that the agency or municipal corporation may accept reduced or discounted rates, provided that such reductions were made in the ordinary course of business pursuant to 11 CFR 9008.9(a)(1).

(2) A municipal corporation or other government agency may use private funds donated to a separate account to make the expenditures permitted under this section, provided that:

(i) The separate account is established by the municipal corporation or government agency for the general purpose of promoting the city as a site for conventions and other events or activities and is not used just for the purpose of defraying expenses associated with the presidential nominating convention; and

(ii) Donations to the account are unrestricted and are not solicited or designated for use in connection with any particular convention, event or activity.

(b) *Contributions to and expenditures by host committees to defray convention expenses.* (1) Local retail businesses (excluding banks), as well as local municipal corporations and government agencies may donate funds to a host committee for use by that committee in defraying the convention expenses described in paragraph (c) of this section. Examples of expenditures which the host committee may make for convention expenses include but are not limited to those set forth at paragraph (c) of this section. No other corporate funds may be used to pay such expenses.

(i) The amount of the donation by a local retail business under paragraph (b)(1) of this section must be proportionate to the commercial return reasonably expected by the business during the life of the convention.

(ii) The host committee must maintain funds donated under paragraph (b)(1) of this section in a separate account.

(iii) For purposes of this section, any determination as to whether or not a business, labor organization, municipal corporation or agency is local shall be made in accordance with 11 CFR 9008.52(b)(4). Any determination as to whether or not a business is a retail business shall be made in accordance with 11 CFR 9008.9(a)(1).

(iv) For purposes of paragraph (b)(1)(i) of this section, the life of the convention shall begin seven days before the opening of the convention and end three days after the close of the convention.

(2) Host committees may accept in-kind donations from businesses for use in defraying the convention expenses described in paragraph (c) of this section, provided that such in-kind donations are made and reported in accordance with 11 CFR 9008.9.

(c) *Permissible expenditures.* Examples of expenditures which government agencies, municipal corporations and host committees may make under this section include but are not limited to:

(1) Granting the national committee use of an auditorium or convention center and providing construction and convention related services for that location such as: construction of podiums; press tables; false floors; camera platforms; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations;

(2) Various local transportation services, including the provision of buses and automobiles;

(3) Law enforcement services necessary to assure orderly conventions;

(4) Use of convention bureau personnel to provide central housing and reservation services;

(5) Hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(6) Accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and

(7) Other similar convention-related facilities and services.

§ 9008.54 Examination and audit.

The Commission shall conduct an examination and audit of each host committee registered under 11 CFR

9008.51. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1, except that the Commission will not make any repayment calculations under this section.

Dated: August 6, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 416/P.L. 103–65
To extend the period during which chapter 12 of title 11 of the United States Code remains in effect, and for other purposes. (Aug. 6, 1993; 107 Stat. 311; 1 page)

Last List August 9, 1993

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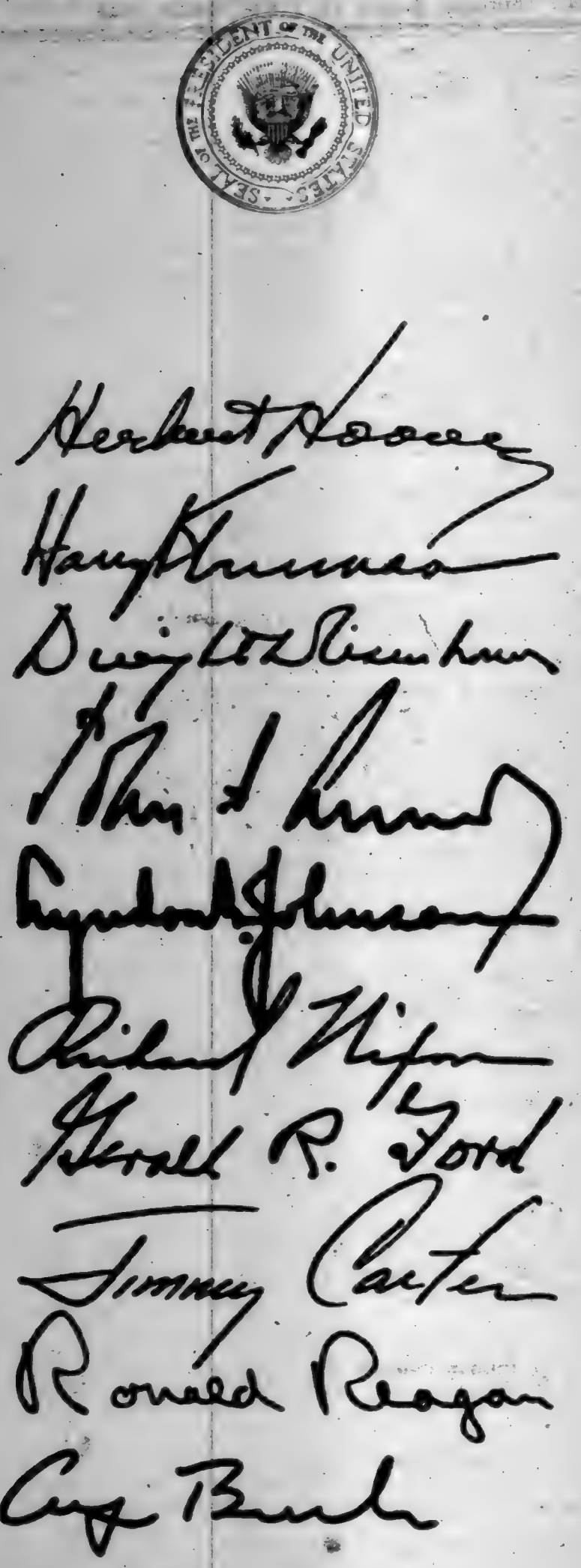

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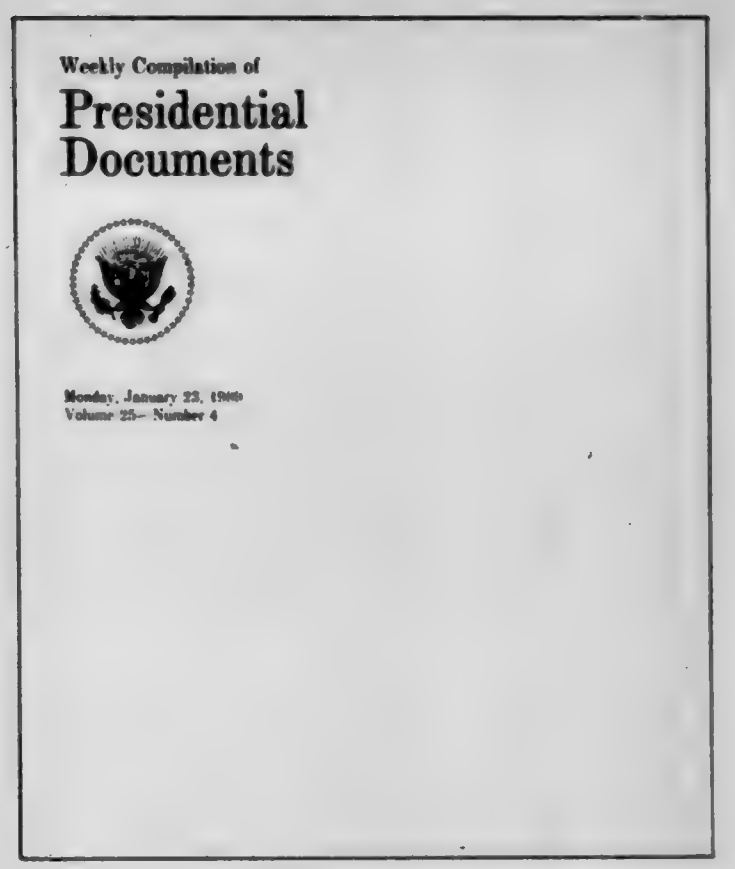

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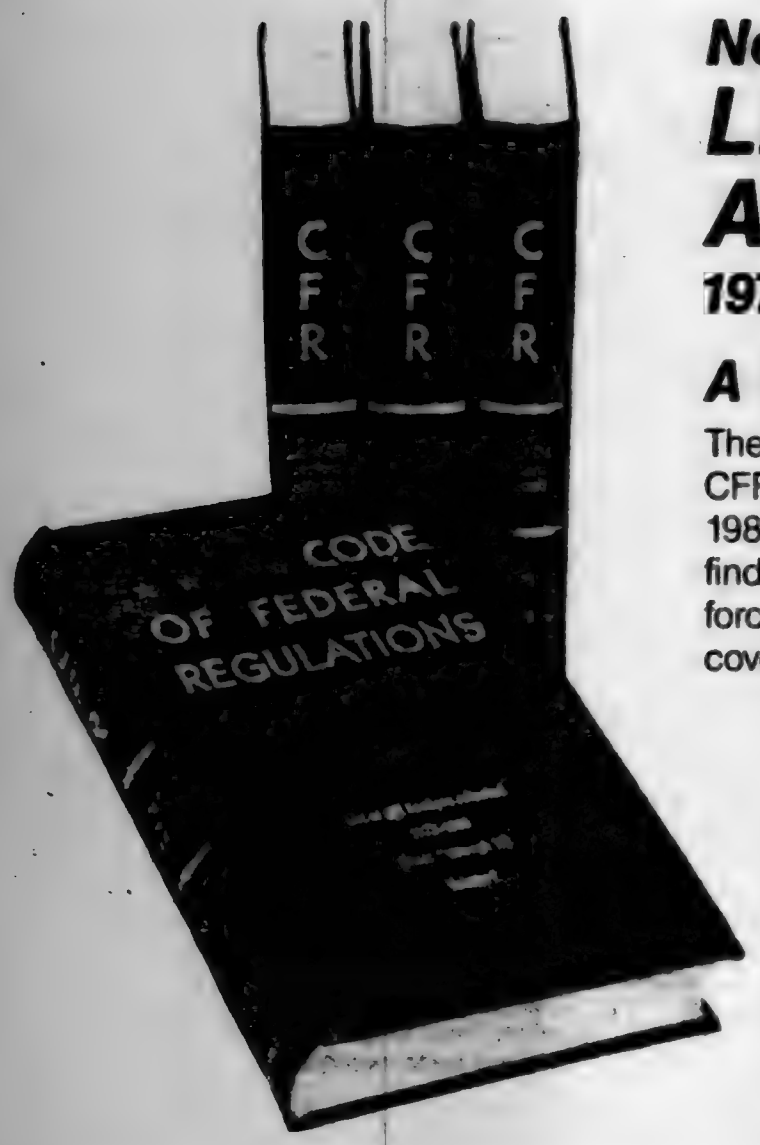

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV–93–928–3]

Papayas Grown in Hawaii; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This action terminates a referendum conducted last March among producers of Hawaiian papayas, and directs that another referendum be conducted. The Secretary of Agriculture has determined that sufficient cause exists to terminate the prior referendum and to hold another referendum, based on nearly 200 petitions received by the Department from producers of Hawaiian papayas representing over two-thirds of the papaya industry.

DATES: The representative production period is from July 1, 1991, through June 30, 1992. The referendum will be conducted from September 1 through September 30, 1993.

ADDRESSES: Copies of the text of the aforesaid marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC, 20090–6456.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2431; Kurt J. Kimmel or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 928 (7 CFR part 928), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted within the period September 1 through September 30, 1993, among producers in the production area who, during the period July 1, 1991, through June 30, 1992, (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production of papayas covered by the said marketing order to ascertain whether continuance of the order is favored by the producers.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of papayas represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum, but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102. It has been estimated that it will take an average of 20 minutes for each of the approximately 300 producers of papayas to participate in the voluntary referendum balloting.

U.S. Department of Agriculture conducted a referendum from March 1 through 31 to determine whether Hawaiian papaya producers favored continuation of the Federal marketing order. During the referendum period, nearly 200 signatures on a petition were received by the Department from producers. Producers signing the petition indicated they needed additional time to review the marketing order before casting their votes to determine whether they favor continuance of their marketing order, allowing the U.S. Department of Agriculture to determine whether sufficient industry support exists to continue the program. Given this level of producer concern, the March referendum is terminated and a new referendum will be held from September 1 through September 30, 1993.

Mr. Kurt J. Kimmel and Mr. Martin Engeler, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*).

Ballots will be mailed to all producers and may also be obtained from the referendum agent and from his appointees at the above address.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: August 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19492 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 998

[Docket No. FV93–998–1FIR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, without change, the provisions of an interim final rule that authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1993–94 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1993–94 crop year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATES: July 1, 1993, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1993–94 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Committee for the fiscal period beginning July 1, 1993. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 70 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1993. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 24–25, 1993, and unanimously recommended 1993–94 crop year administrative expenses of $1,020,000 and an administrative assessment rate of $0.60 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1992–93 crop year budgeted administrative expenditures were $1,042,000, and the administrative assessment rate was $0.57 per ton.

Administrative budget items for 1993–94 which have increased compared to those budgeted for 1992–93 (in parentheses) are: Field representative salaries, $278,778 ($266,420); Committee members travel, $40,000 ($32,000); Committee meeting expenses, $4,000 ($3,000); and audit fees, $9,500 ($8,000). Items which have decreased compared to those budgeted for 1992–93 (in parentheses) are: Executive salaries, $134,304 ($138,364); clerical salaries, $127,479 ($158,366); payroll taxes, $45,000 ($46,850); employee benefits $145,000 ($147,000); and office rent and parking, 52,500 ($54,000). All other items are budgeted at last year's amounts. The administrative budget includes $4,439 for contingencies ($9,000 last year).

The Committee also unanimously recommended 1993 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $1.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The 1992–93 crop year indemnification assessment was $2.00 per net ton. The Committee recommended a lower assessment rate because sufficient reserve funds are available and because the Committee believes it is in the interest of signatory handlers to reduce their indemnification assessment burdens. The $9,000,000 of indemnification claims coverage to be provided on 1993 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee—the same as last year.

The cost of the indemnification insurance premium and the costs to carry out indemnification procedures

(sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are additional indemnification costs which must be authorized and paid from available indemnification funds. Such costs are not expected to exceed $2,000,000.

The total assessment rate is $1.60 per ton of assessable peanuts ($0.60 for administrative and $1.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,700,000 will yield $1,020,000 for program administration and $1,700,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1992–93 indemnification operations of $12,750,000, will provide $14,450,000, which should be adequate for the 1993 fund, and to maintain an adequate reserve.

An interim final rule was published in the **Federal Register** on June 11, 1993 (58 FR 32600). That interim final rule added § 998.406 which authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve for the Committee. That rule provided that interested persons could file comments through July 12, 1993. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 crop year for the program began on July 1, 1993, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding § 998.406, which was published in the **Federal Register** (57 FR 32600), June 11, 1993, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19494 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1007

[DA–93–14]

Milk in the Georgia Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the month of August 1993 provisions of the Georgia Federal milk marketing order that provide for payments to producers on the basis of a base and excess payment plan. The action, which was requested by three cooperative associations that represent a substantial number of producers on the Georgia market, is being taken to remove a disincentive to produce more milk during the short production month of August.

EFFECTIVE DATES: August 1, 1993 through August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 23, 1993; published June 30, 1993 (58 FR 34946).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action will encourage milk production during the month of August, which is a month of declining milk production.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect, and it will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58

FR 34946) on June 30, 1993, concerning the proposed suspension for July and August 1993 of the base and excess payment plan provisions of the Georgia order. The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by July 14, 1993. Several comment letters were received in response to this notice.

One of the comment letters was submitted by a cooperative association with producers in the Georgia market. This cooperative supported the proposed suspension, noting that producer receipts on the Georgia order are down 4 percent for the first 5 months of 1993 compared to the comparable period of 1992, and that Class I utilization is up 9.5 percent during the same period.

Four individual dairy farmers submitted letters opposing the proposed suspension on the grounds that:

(1) They had purchased base earlier in the year and would not be able to recoup their investment if the base and excess payment plan were suspended for July and August;

(2) The suspension would not be in the best interest of dairy farmers in the Georgia market;

(3) It will cause conflicts between dairy farmers delivering milk to different handlers; and

(4) It would be a severe financial strain.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order will not tend to effectuate the declared policy of the Act during the month of August 1993.

1. In § 1007.32, paragraph (a).
2. In § 1007.61(a), the words "of September through January".
3. In § 1007.61, paragraph (b).

Statement of Consideration

This action will make inoperative the requirement that producers be paid on the basis of the base and excess payment plan for the month of August 1993. The proposal was submitted by Dairymen, Inc. (DI), Carolina/Virginia Milk Producers Association, Inc., and Southern Milk Sales, Inc. These three cooperative associations have a substantial amount of milk pooled on the Georgia milk market. In support of their proposal, the cooperative associations stated that the suspension was needed because in recent years milk in this area has been in short supply during July and August. Without the suspension, the cooperatives contend the market's base and excess plan would discourage production in those months.

Producer receipts in the Georgia market for the months of January through May 1993 are about 5 percent below the comparable months of 1992. At the same time, the pounds of milk utilized for fluid use have been running about 10 percent above year-earlier figures, resulting in a Class I utilization that has averaged 79 percent during the first 5 months of 1993, compared to 69 percent for the comparable period of 1992. The extremely hot weather that is now gripping the Southeastern United States can only be expected to further reduce milk production in the Georgia market.

In view of the high Class I utilization now existing in the Georgia market, it may be necessary to bring in supplemental milk to meet the needs of the market during the months of July and August. At such a time, there is no reason to pay the market's producers the excess milk price for any of their production.

Recogizing that the month of July will be over, or nearly so, by the time that this suspension is issued, it is reasonable to limit the suspension period to the month of August 1993. This will help to assure an adequate supply of milk and orderly marketing conditions during August without unnecessarily penalizing base-holding producers during the month of July.

The effect of the suspension should be insignificant on the vast majority of producers in this market. Although it can be expected that the uniform price that will be paid to producers for deliveries during the month of August will be somewhat less than the base price would have been, this difference is partly offset by the fact that producers will not receive the lower excess price for any production in excess of their base. Since there are approximately 575 producers on the Georgia market, we believe that the economic hardship alleged by the four producers who opposed the suspension will be very minimal.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties, and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective August 1, 1993.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7 part 1007 are hereby suspended from August 1 through August 31, 1993:

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1007.32 [Temporarily suspended in part]

2. In § 1007.32, paragraph (a) is suspended in its entirety.

§ 1007.61 [Temporarily suspended in part]

3. In § 1007.61, the words "September through January" in the introductory text of paragraph (a) are suspended, and paragraph (b) is suspended in its entirety.

Dated: August 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19493 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–007–2]

Validated Brucellosis-Free States; New Jersey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding New Jersey to the list of brucellosis-free States. We have determined that New Jersey meets the criteria for classification as a validated brucellosis-free State. The interim rule relieved certain restrictions on the interstate movement of breeding swine from New Jersey.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff

Veterinarian, Swine Health Staff, VS, APHIS, USDA, suite 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the Federal Register on May 13, 1993 (58 FR 28342–28343, Docket No. 93–007–1), we amended the brucellosis regulations in 9 CFR part 78 by adding New Jersey to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before July 12, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 58 FR 28342–28343 on May 13, 1993.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 6th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19491 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB25

Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule interprets a provision of an amendment, enacted on August 10, 1993, to section 11(d)(11) of the Federal Deposit Insurance Act (FDI Act) providing for a national depositor preference for amounts realized from the liquidation or other resolution of any depository institution insured by the Federal Deposit Insurance Corporation (FDIC). The regulation describes the expenses that are includable under the priority in the new statutory amendment for administrative expenses of the receiver. The intended effect of the interim rule is to clarify the requirements of the statute relative to the priority afforded to administrative expenses of the receiver in connection with the liquidation or other resolution of FDIC-insured institutions.

DATES: The interim rule is effective on August 13, 1993. Written comments must be received by the FDIC on or before October 12, 1993.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Stephen N. Graham, Associate Director, Division of Liquidation (202/898–7377), Sharon Powers Sivertson, Assistant General Counsel, Legal Division (202/736–0112), Rodney D. Ray, Counsel, Legal Division (202/736–0348), Joseph A. DiNuzzo, Senior Attorney, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (Id. at 603 & 604) are not applicable here.

Reason for the Interim Rule

The national depositor preference statute was signed into law on August 10, 1993. Public Law 103–66, 107 Stat. 312 (1993). It applies to all FDIC-insured institutions for which a receiver is appointed after that date. The FDIC Board of Directors (Board of Directors) has determined that, in order to ensure an orderly continuation of the handling of closed institutions, it is necessary to clarify the requirements of the statutory amendment relative to the definition and treatment of administrative expenses of the receiver of such institutions. The Board of Directors also believe that it is necessary that the regulation providing this clarification apply immediately to all receiverships subject to the new statutory amendment.

For these reasons, the Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the prior notice and public comment and the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a permanent final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions to the interim rule as may be appropriate based on the comments received.

Background

On August 10, 1993, the President signed into law a bill that amended section 11(d)(11) of the FDI Act (12 U.S.C. 1821(d)(11)) to provide for a national depositor preference for amounts realized from the liquidation or other resolution of FDIC-insured depository institutions. Public Law 103–66, 107 Stat. 312 (1993).

Generally, the amendment provides that distributions shall be made from all future receivership estates in the following order:

1. Administrative expenses of the receiver;
2. Deposit liability claims;
3. Other general or senior liabilities of the institution, other than subordinated obligations or shareholder claims;
4. Subordinated obligations; and
5. Shareholder claims.

The legislation applies to all receiverships of insured institutions established after its enactment date and supersedes any inconsistent state or other federal distribution provisions.

As noted, the first priority encompasses "administrative expenses of the receiver." The language of the statute explicitly covers post-appointment obligations incurred by a receiver as part of the liquidation of an institution. The Board of Directors has determined that this priority also covers certain expenses incurred prior to the appointment of the receiver. Such expenses include obligations which may have been incurred prior to the closing of the institution but which the receiver determines should be paid by the receiver to facilitate the smooth and orderly transfer of banking operations to a purchasing institution or to obtain an accounting and orderly disposition of the assets of the institution. These expenses may include, but are not limited to, for example, the payment of the institution's last payroll, guard services, data processing services, utilities and expenses related to leased facilities. Generally, they do not include expenses such as severance pay claims, golden parachute claims and claims arising from contract repudiations. The interim rule limits the inclusion of expenses within the scope of "administrative expenses" to those that the receiver determines are necessary and appropriate for the orderly liquidation or resolution of the institution. This general language is necessitated by the variety of such expenses ordinarily incurred by a receiver for a particular failed depository institution.

The legislative history of the statute is explicit on the coverage of certain pre-receivership obligations within the scope of the "administrative expenses" priority of the receivership. The House/Senate Conference Report on the legislation notes that: "it is the conferees' intent that the FDIC interpret the depositor preference provision for the payment of administrative expenses of the receiver as including ordinary and necessary expenses of the institution that are unpaid at the time of failure, but only those that the receiver determines are necessary to maintain services and facilities to effect an orderly resolution of the institution." H.R. Rep. No. 213, § 3001, Omnibus Budget Reconciliation Act of 1993, 103rd Cong., 1st Sess. (1993). The conferees noted that such coverage of expenses is the FDIC's current practice (in its role as receiver of failed insured institutions): "the conferees intend that the FDIC continue its current practice of paying these expenses prior to paying deposits or other expenses if it determines such payment is required for an orderly resolution of the institution." *Id.*

To prevent any ambiguity on the coverage of administrative expenses of the institution/receiver that were incurred by the institution prior to the appointment of a receiver, the FDIC is issuing the interim rule. The rule clarifies that receivers have the authority to pay certain pre-closing obligations of the failed institution as an "administrative expense" under the statute.

Interim Rule

The interim rule adds a new section to part 360 of the FDIC's regulations (12 CFR part 360) to clarify the priority for administrative expenses contained in the new depositor preference statute.

As provided for in the statute, all insured institutions for which a receiver is appointed after the date of enactment of the statute will be subject to the priorities provided therein. Pre-appointment expenses that the receiver determines are within the scope of the "administrative expenses" priority will be included within that priority after the enactment date of the statute. As the conferees noted in House/Senate Conference Report, "[p]rior to the implementation of such regulations [to clarify the meaning of the term administrative expenses], it is the conferees' intent that the FDIC continue its current practice of paying these expenses before paying depositors." *Id.*

The current § 360.2 of the FDIC's regulations (12 CFR 360.2) specifies receivership priorities for failed savings associations. These provisions will continue to apply to such savings associations for which a receiver was appointed on or prior to the effective date of the statutory amendment, August 10, 1993. Liquidations or other resolutions of all insured depository institutions (including savings associations) for which a receiver is appointed after that date will be subject to the statutory amendments and the interim rule.

Request for Public Comment

The FDIC is issuing this interim rule in response to the immediate need to clarify the provisions of the statutory amendment. The FDIC is, however, hereby requesting comment during a 60-day comment period on all aspects of the interim rule.

List of Subjects in 12 CFR Part 360

Savings and loan associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 360—RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: Sec. 401(h), Pub. L. 101–73, 103 Stat. 357; 12 U.S.C. 1821(d)(11).

2. A new paragraph (f) is added to § 360.2 to read as follows:

§ 360.2 Priorities.

* * * * *

(f) Under the provisions of section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), the provisions of this § 360.2 do not apply as to all receiverships established and liquidations or other resolutions occurring after August 10, 1993.

3. A new § 360.3 is added to read as follows:

§ 360.3 Administrative expenses.

The priority for "administrative expenses of the receiver", as that term is used in section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), shall include those necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed insured depository institution. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of August, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19688 Filed 8–12–93; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANE–40]

Revocation of Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Claremont, New Hampshire. This action was prompted by the relocation of the Claremont Non-

Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport.

EFFECTIVE DATE: 0901 UTC, September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 270–2428; fax (617) 273–4345 or (617) 272–0395.

SUPPLEMENTARY INFORMATION:

History

On March 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Claremont, NH Transition Area due to the relocation of the Claremont Non-Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport (58 FR 12197).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received no comments to the proposal.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology this amendment is the same as that proposed in the notice. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993. The Class E airspace designation listed in the document will be removed subsequently from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations is prompted by the relocation of the Claremont Non-Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport.

The FAA has determined that this regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ANE NH E5 Claremont, NH [Removed]

* * * * *

Issued in Burlington, Massachusetts, on June 8, 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93–19515 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

14 CFR Part 97

[PR Docket No. 92–136; FCC 93–352]

Relaxing Restrictions on the Scope of Permissible Communications in the Amateur Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. This action addresses two petitions and a letter asking for amendment of § 97.113 of the Commission's Rules. The petitioners indicated this rule needed to be reviewed in light of contemporary communication demands and the operational capabilities of licensees in the amateur service. They also argue that the prohibition against using the amateur service as an alternative to other authorized radio services, except as necessary for emergency communications, may unnecessarily restrict amateur operators from participating in many public service activities and from satisfying their personal communications requirements. The effect of the rule is to provide greater flexibility for amateur stations to transmit communications for public service projects and personal matters and to eliminate rules that bar amateur stations from transmitting occasionally messages that could indirectly facilitate the business or commercial affairs of some party and messages that could be transmitted in other radio services.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 15, 1993, and released July 28, 1993. The complete text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this action, including the rule amendments, may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. These rules for the amateur service have been amended to lessen restrictions on the scope of the permissible communications that amateur stations may transmit. This amendment will permit greater flexibility for amateur stations while transmitting communications for public service projects and personal matters. Prior to this amendment, § 97.113(a) of the Commission's Rules, 47 CFR 97.113(a), prohibited amateur stations

from transmitting any communications the purpose of which is to facilitate the business or commercial affairs of any party, or using the amateur service as an alternative to any other authorized radio service.

2. The amateur service community stated that it generally desired a relaxation of this restriction to accommodate contemporary communications demands and the operational capabilities of amateur station licensees. Any amateur-to-amateur communication, therefore, will be permitted unless specifically prohibited, or unless transmitted for compensation, or unless done for the pecuniary benefit of the station control operator or his or her employer. The Commission specifically noted the American Radio Relay League's statements that it expects no noticeable change in amateur operations as a result of this rule amendment and that the proposed rule is a good, workable middle ground offering the requisite protection against exploitation.

3. The rules are set forth at the end of this document.

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

5. This Report and Order is issued under the authority of sections 301, 303 (l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 301, 303 (l)(1) and (r).

List of Subjects in 47 CFR Part 97

Business communications, Prohibited communications, Radio.

William F. Caton,

Acting Secretary.

Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.113 is revised to read as follows:

§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

(1) Communications specifically prohibited elsewhere in this Part;

(2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;

(4) Music using a phone emission except as specifically provided elsewhere in this Section; communications intended to facilitate a criminal act; messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification;

(5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

(b) An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules; nor shall an amateur station engage in any activity related to program production or news gathering for broadcasting purposes, except that communications directly related to the immediate safety of human life or the protection of property may be provided by amateur stations to broadcasters for dissemination to the public where no other means of communication is reasonably available before or at the time of the event.

(c) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.

(d) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

(e) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information intended for use by the general public and originated from United States Government stations and communications, including incidental music, originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for shuttle retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

[FR Doc. 93–19313 Filed 8–12–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 231, 232, 234, 242, and 244

[Docket No. R–93–1534; FR–2992–F–01]

RIN 2502–AF14

Expansion of Operating Loss Loan Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 427 of the Housing and Community Development Act of 1987. That section expands the coverage of insured operating loss loans in connection with HUD insured multifamily projects to include operating losses (and certain mortgagor cash contributions) for any consecutive 24-month period within the first 10 years after the date of completion of the project. Before the enactment of section 427, operating loss loans were limited to losses incurred during the first 24 months of operation of the project.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Linda D. Cheatham, Director, Office of Insured Multifamily Housing

Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3000. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 427 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) extensively amends subsection 223(d) of the National Housing Act. The major change from previous law effected by the Section 427 was the inclusion of a new subsection (d)(3) authorizing an operating loan program for unsubsidized projects which (1) does not limit coverage to losses in the first 24 months of operation and (2) can be in an amount "not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project". The new subsection (d)(3) reads as follows: To be eligible for insurance pursuant to paragraph (d)(3) of the National Housing Act—

- The existing project mortgage (i) shall have been insured by the Secretary at any time before or after the date of enactment of the Housing and Community Development Act of 1987; (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and (iii) shall not cover a subsidized project, as defined by the Secretary;
- The loan shall be in an amount not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Secretary, except that in no event may the amount of the loan exceed the operating loss during such period;
- The loan shall be made within 10 years after the end of the period of consecutive months referred to in the preceding subparagraph of the National Housing Act; and
- The project shall meet all applicable underwriting and other requirements of the Secretary at the time the loan is to be made.

It should be noted that, under these new statutory provisions, the amount of any loan may not exceed the "operating loss" for the period of 24 or fewer months covered by the loan. The "operating loss" is defined in section 223(d)(1) of the statute. Only expenditures made to cover such operating losses will be eligible for treatment as an "unreimbursed cash contribution" under this rule.

This rule implements subsection 223(d)(3) of the National Housing Act. It should be noted the rule provides that, where the FHA Commissioner has already insured a loan under the pre-1987 law covering the first two years of losses, only one additional loan can be insured under new, post-1987 authority. In no event may more than two operating loss loans be insured by the Commissioner for any particular project.

Public Comment on Proposed Rule

On August 18, 1992 the Department published in the **Federal Register** (57 FR 37119) a proposed rule, identical in text, to this final rule. Two comments were received by the public on this proposed rule.

One comment was from the Institute of Real Estate Management. The Institute stated that it is "very supportive of the proposed rule, but feels that it is necessary to clarify the provision which prohibits the amount of the loan from exceeding 80 percent of the unreimbursed cash contributions of the project owner. It is unclear at what point the advance must be made by the owner so that the amount of the loan could be determined."

The Institute also stated that "it would be advisable to apply the same operating loss loan program to subsidized projects listed in § 207.4(g)(l)(iii), particularly 236 and BMIR projects. The same operating losses encountered by insured projects can also be experienced by projects with direct rental subsidy. The subsidy is not always sufficient to cover these losses."

HUD Response: The new operating loss loan (OLL) program found in section 223(d)(3) permits the insurance of a loan in an amount not exceeding 80 percent of the unreimbursed cash contribution made by the project owner during the period (not to exceed 24 consecutive months) in which an operating loss occurs. The regulation follows the statutory language in 223(d)(3)(B). Handbook instructions will provide the operating mechanisms for the actual processing of OLL applications. The owner will have to specify the period to which the OLL request is applicable.

With respect to use of OLLs for subsidized projects, it was not the intent of Congress to authorize OLLs for subsidized programs such as Section 236 and Below Market Interest Rate projects. The authorizing statute specifically permits OLLs only for unsubsidized projects under the National Housing Act (24 CFR parts 207, 213, 220, 221, 231, 232, 234, 242, and 244). There are no administrative means that would allow the Department to provide insured OLLs to subsidized projects in view of the Congress' specific exclusion.

The second comment was from a private law firm. The commenters suggested that revisions be made in the proposed rule relative to use of the 80 percent of the unreimbursed cash contributions of the project owner to more clearly reflect the statutory language.

HUD Response: Section 223(d) operating loss loans (OLLs) typically provide owners of HUD-insured projects a means for recouping out-of-pocket expenditures that were used to keep the project operating during the loss period. The new OLL program (section 223(d)(3)(B)) permits the insurance of a loan in an amount not exceeding 80 percent of the unreimbursed cash contributions made by the project owner for an operating loss, which is the difference between operating expenses and project income as defined by the regulation and operating instructions. The proposed regulation already follows the statutory language in 223(d)(3)(B) of the National Housing Act. The phrase "to cover operating losses" does not change the meaning of the sentence since HUD has merely reiterated the statutory language that the purpose of an OLL is to cover operating losses. OLLs may not exceed the actual operating losses.

The commenter also asked for an explanation-justification for the maximum mortgage amounts limitation set out in the proposed rule.

HUD Response: The maximum mortgage limit was established because of the Department's concern that there be an overall limitation on mortgage amounts. This limit is similar to the overall limit in the section 241 Supplemental Loan Program which is HUD's other major second mortgage program.

Finally, the commenter discussed a number of aspects of the current OLL program and expansion of the program to formerly coinsured projects. These comments are not germane to this specific rule and therefore are not addressed in this Preamble.

Procedural Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2)

cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule expands the availability of operating loss loans for FHA multifamily mortgagors. This limited category of small entities will be provided additional assistance in their efforts to maintain and operate successful multifamily projects.

This rule was listed as item H–35–90 (Sequence No. 1464) in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24414) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. By providing additional assistance to FHA mortgagors for the successful maintenance and operation of their multifamily projects the rule should prove beneficial to families who rent units in these projects.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have Federalism implications and, thus, are not subject to review under the Order. The rule does not change in any way existing relationships between HUD, the States and local governments.

The Catalog of Federal Domestic Assistance program number is 14.167.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 207, 213, 220, 221, 231, 232, 234, 242 and 244 are amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b; 42 U.S.C. 3535(d). Sections 207.258 and 207.258b are also issued under 12 U.S.C. 1701z–11(e).

2. Section 207.4 is amended by revising paragraph (f)(3) and by adding a new paragraph (g), to read as follows:

§ 207.4 Maximum mortgage amounts.

* * * * *

(f) * * *

(3) *Maximum interest rate.* The loan may bear interest at a rate agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(g) In addition to the insurance of loans to cover two-year operating losses under paragraph (f) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (g)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (f)(1) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 207 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (g)(2) of this section.

(4) The project shall meet all applicable underwriting and other

requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (g) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance under § 207.4(f) or under this paragraph (g), or under both paragraphs (f) and (g) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (f) and (g) of this section in connection with the same period of months referred to in paragraph (g)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 207.4(f), no more than one additional loan may be insured under this paragraph (g). Where no previous insurance has been provided under § 207.4(f), a maximum of two loans may be insured under this paragraph (g).

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Section 213.7 is amended by revising paragraph (k)(3) and by adding a new paragraph (n), to read as follows:

§ 213.7 Maximum insurable amounts.

* * * * *

(k) * * *

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installations on the principal then outstanding.

* * * * *

(n) In addition to the insurance of loans to cover two-year operating losses under paragraph (k) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (n)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (k) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the existing indebtedness relating to the property, does not exceed the amount insurable under section 213 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (n)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (n) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 213.7(k) or under this paragraph (n), or under both paragraphs (k) and (n) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (k) and (n) of this section in connection with the same period of months referred to in paragraph (n)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 213.7(k), no more than one additional loan may be insured under this paragraph (n). Where no previous insurance has been provided under § 213.7(k), a maximum of two loans may be insured under this paragraph (n).

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

5. The authority citation for 24 CFR part 220 continues to read as follows:

Authority 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

6. Section 220.507 is amended by adding a new paragraph (f), to read as follows:

§ 220.507 Maximum mortgage amounts.

* * * * *

(f) In addition to the insurance of loans to cover two-year operating losses under paragraph (e) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (f)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (e) of this section incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 220 of the Act.

(3) The loan shall be made within 10 years after the end of the period of

consecutive months referred to in paragraph (f)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (f) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 220.507(e) or under this paragraph (f), or under both paragraphs (e) and (f) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (e) and (f) of this section in connection with the same period of months referred to in paragraph (f)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 220.507(e), no more than one additional loan may be insured under this paragraph (f). Where no previous insurance has been provided under § 220.507(e), a maximum of two loans may be insured under this paragraph (f).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. The authority citation for 24 CFR part 221 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715*l*; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

8. Section 221.514 is amended by revising paragraph (e)(3) and by adding a new paragraph (f), to read as follows:

§ 221.514 Maximum mortgage amounts.

* * * * *

(e) * * *

(3) *Maximum interest rate.* The loan may bear interest at a rate agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(f) In addition to the insurance of loans to cover two-year operating losses under paragraph (e) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commission at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (f)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (e) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 221 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (f)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (f) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 221.514(e) or under this paragraph (f), or under both paragraphs (e) and (f) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (e) and (f) of this section in connection with the same period of months referred to in paragraph (f)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 221.514(e), no more than one additional loan may be insured under this paragraph (f). Where no previous insurance has been provided under § 221.514(e), a maximum of two loans may be insured under this paragraph (f).

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

9. The authority citation for 24 CFR part 231 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

10. Section 231.7 is revised to read as follows:

§ 231.7 Loans to cover operating loss.

(a) *Loans to cover operating loss during first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (b)(1)(iii), subsidized projects are:

(A) Projects insured under Section 236.

(B) Projects insured under the Section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses (as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months)) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 213 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such a manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 231.7(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 231.7(a), no more than one additional loan may be insured under this paragraph (b). When no previous insurance has been provided under § 231.7(a), a maximum of two loans may be insured under this paragraph (b).

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

11. The authority citation for 24 CFR part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

12. Section 232.31a is revised to read as follows:

§ 232.31a Loans to cover operating loss.

(a) *Loans to cover operating loss during first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at such rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 232 of this Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the load is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 232.31a(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 232.31a(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 233.31a(a), a maximum of two loans may be insured under this paragraph (b).

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

13. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

14. Section 234.531 is revised to read as follows:

§ 234.531 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the

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Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceed the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (b)(1)(iii), subsidized projects are:

(A) Projects insured under Section 236.

(B) Projects insured under the Section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses (as defined in paragraph (a) of the section) incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 234 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter on the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 234.531(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 234.531(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 234.531(a), a maximum of two loans may be insured under this paragraph (b).

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

15. The authority citation for 24 CFR part 242 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z–7; 42 U.S.C. 3535(d).

16. Section 242.95 is revised to read as follows:

§ 242.95 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (a) of this section, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 242 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in each manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 242.951(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an

existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 242.951(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 242.951(a), a maximum of two loans may be insured under this paragraph (b).

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

19. The authority citation for 24 CFR part 244 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5; 42 U.S.C. 3535(d).

20. Section 244.38 is revised to read as follows:

§ 244.38 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 244 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 244.38(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 244.38(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 244.38(a), a maximum of two loans may be insured under this paragraph (b).

Dated: July 30, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–19181 Filed 8–12–93; 8:45 am]

BILLING CODE 4210–27–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the table the rate series for September 1993.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply (*See* 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
September 1993	.055	.05375	.0525	.05125	.05	.0475	.0475	.0475	.0475	.0475	.045	.045	.045	.045	.045	.04

Issued at Washington, D.C., on this 9th day of August 1993.

Martin State,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-19499 Filed 8-12-93; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI 28-01-5741; FRL-4663-7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve a revision to the Wisconsin State Implementation Plan (SIP), Sections NR 420, 425, 439, 484 and 494, Wisconsin Administrative Code, pertaining to implementation of the Stage II Gasoline Vapor Recovery Program. This revision was approved by the Wisconsin Natural Resources Board (NRB) Order AM-15-92. On November 18, 1992, Wisconsin submitted a SIP revision request to USEPA, to satisfy the requirement of section 182(b)(3) of the Clean Air Act (CAA), which requires all ozone nonattainment areas classified as moderate or above to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment. This revision applies to the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha.

EFFECTIVE DATE: This action will be effective October 12, 1993, unless notice is received by September 13, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Written comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (5AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support document and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch (AT-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Angela L. Bandemehr, Regulation Development Section, Air Toxics and Radiation Branch (5AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6858.

SUPPLEMENTARY INFORMATION: Under Section 182(b)(3), USEPA was required to issue guidance as to the effectiveness of these Stage II systems. In November 1991, USEPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, USEPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what USEPA believes a State submittal needs to include to meet the requirement.

The counties in Wisconsin that are designated moderate nonattainment for ozone are Kewaunee, Manitowoc and Sheboygan. The counties designated as severe ozone nonattainment areas are Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha (56 FR 56694, November 16, 1991). Under Section 182(b)(3) of the Clean Air Act (CAA), 42 U.S.C. 7511a(b)(3), Wisconsin was required to submit Stage II vapor recovery rules for these areas by November 15, 1992. On November 18, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted to USEPA Stage II vapor recovery rules that had been approved by the NRB on July 29, 1992, and adopted on August 20, 1992. The rules became effective on February 1, 1993, after they were published in the Wisconsin Administrative Code in January 1993. With this notice of final rulemaking, USEPA is taking action to approve this submittal. USEPA has reviewed the State submittal against the statutory requirements and for consistency with USEPA guidance. A summary of USEPA's analysis is provided below; in addition a more detailed analysis of the State submittal is contained in a Technical Support Document (TSD), dated March 4, 1993, which is available from the Region 5 office listed above.

[1] These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

I. Applicability

Under Section 182(b)(3) of the CAA, 42 U.S.C. 7511a(b)(3), States were required to adopt regulations by November 15, 1992, requiring owners or operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install vapor recovery equipment at their facilities. The CAA specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more that 50,000 gallons of gasoline per month. Section 324 of the CAA, 42 U.S.C. 7625, defines an ISBM. The State has adopted a general applicability requirement of 10,000 gallons per month and has provided an applicability requirement of 50,000 gallons per month for ISBMs.

As more fully discussed in USEPA's "Enforcement Guidance for Stage II Vehicle Refueling Control Programs" (Enforcement Guidance) and General Preamble (57 FR at 13514), the State has provided that the gallons of gasoline dispensed per month will be calculated as the average volume dispensed per month for the 2-year period prior to State adoption of the regulation. In addition, the State has specified that the Stage II requirements apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities.

The State has adopted the statutory definition of ISBM in its regulations. An ISBM is a person engaged in the marketing of gasoline who would be required to pay for the installation and operation of Stage II equipment. There are four exceptions to this definition (i.e., four groups that cannot be ISBMs): (1) A refiner; (2) a person who controls, is controlled by or is under common control with a refiner; (3) a person who is otherwise directly or indirectly affiliated with a refiner or a person who controls, is controlled by or is under common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark or other identifying symbol or name owned by such refiner or any such person; or (4) a person who receives less than 50 percent of his or her annual income from refining or marketing of gasoline.

II. Implementation of Stage II

The CAA specifies that the time period for installation and operation of the Stage II equipment shall run from the State adoption date of the Stage II rule. The Act defines adoption to mean the date the State adopts the requirements for installation and operation of the Stage II equipment. For all facilities, these compliance dates, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990; (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month; and (3) 2 years for all other facilities. The Wisconsin Stage II rule time schedule sets compliance dates of May 15, 1993, November 15, 1993, and November 15, 1994, respectively for the above three deadlines (Section NR 425.035(3), Wis. Admin. Code). The State has adopted this schedule for all affected facilities, including those owned or operated by ISBMs. Although Wisconsin adopted its Stage II regulations on August 20, 1993, USEPA believes it is appropriate to interpret the adoption date to be February 1, 1993.

USEPA is proposing to approve the submitted time table for the following reasons. First, the Act states that the adoption date must be used to calculate the compliance schedule for Stage II implementation at facilities. In this case, USEPA defines the adoption date to be the date after which a rule becomes effective in a State. Based on this definition of adoption date USEPA accepts the February 1, 1993, rule publication date as the adoption date from which the compliance schedule is calculated. Second, the compliance deadlines triggered by this date begin within the time schedule specified by the CAA. Third, remedying this deficiency by amending the compliance schedule would cause further delay in the implementation of Stage II in Wisconsin. Finally, the Wisconsin rule otherwise fulfills the Stage II requirements and USEPA believes it will provide substantial air quality benefits to the regulated areas. Therefore, USEPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible. In the limited circumstances above, USEPA believes that it is not inconsistent to interpret the adoption date to be February 1, 1993.

III. Additional Program Requirements

Consistent with USEPA's Enforcement Guidance, the State requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency. USEPA has indicated three acceptable methods of demonstrating a 95 percent emission reduction efficiency: (1) A method tested and approved by the California Air Resources Board (CARB); (2) an equivalent testing program adopted by the State, conducted by the Program Oversight Agency (POA) or by a third party recognized by the POA, and submitted and approved by USEPA for incorporation into the SIP; or (3) a system approved by CARB. Enforcement Guidance at Section 4.2. The State is requiring sources to use a vapor recovery system that is certified by the CARB to achieve 95 percent vapor recovery. Since all components of the Stage II system must be CARB certified, USEPA believes that this requirement, combined with the annual tests listed below, is sufficient to ensure that major modifications achieve 95 percent vapor recovery. The State requires sources to perform initial compliance tests consisting of a Leak Test on the complete vapor recovery system and a Liquid Blockage Test on each vapor recovery nozzle. A Leak Test and a Dynamic Backpressure Test are required annually. Every 5 years a Leak Test, Liquid Blockage Test and a Dynamic Backpressure Test are required.

With respect to recordkeeping, the State has adopted those items recommended in USEPA's Enforcement Guidance. The State has provided that sources must maintain records on the facility premises for a minimum of 3 years and must make them available upon request to an authorized WDNR representative. The records to be maintained are: (a) Any and all WDNR approvals or permits which are necessary for the operation of the facility or the vapor recovery system; (b) a maintenance and inspection log; (c) results of the compliance tests; (d) all compliance records, including warnings and notices of violation, issued by the WDNR; (e) a permanent record demonstrating required employee training; and (f) the quantity of gasoline dispensed at the facility on a monthly basis. The last record is not required to be maintained on the facility premises but shall be made available to the State within 15 days of a WDNR request to view them.

The State plans to perform facility inspections on an annual basis as was shown in the SIP submittal in a fiscal estimate that provides for funds to fulfill staffing needs of 5.0 FTE per year for inspections. The State will conduct follow-up inspections resulting from identification of violations in vapor recovery systems and subsequent equipment repair verification by the department, as well as on-site discussions with owners, review and evaluation of recordkeeping, and equipment certification review.

To enforce violations of the Stage II requirements the State has an enforcement system, whereby the

WDNR refers any violations to the Wisconsin Department of Justice (Wisconsin DOJ). Under Sections NR 144.98, 144.99, 144.423, and 144.426, Wis. Admin. Code the Wisconsin DOJ has the authority to enforce penalties and violations relating to air pollution.

Rulemaking Action

Because USEPA believes that the State has adopted a Stage II regulation in accordance with the CAA, as interpreted in USEPA's guidance, USEPA is proposing to approve the regulation as a direct final action.

USEPA is publishing this action without prior proposal because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective October 12, 1993, unless, by September 13, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 12, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. Section 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of 2 years (54 FR 2222). USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note.— Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 9, 1993.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(69) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(69) On November 18, 1992, the State submitted rules regulating volatile organic compound emissions from gasoline dispensing facilities' motor vehicle fuel operations.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Chapter NR 420 Control of Organic Compound Emissions from Petroleum and Gasoline Sources; Section 420.02 Definitions, Sections NR 420.02(8m), (24m), (32m), (38m), (39m); Section NR 420.045 Motor Vehicle Refueling; published in Wis. Admin. Code in January 1993, and took effect on February 1, 1993.

(B) Wisconsin Administrative Code, Chapter NR 425 Compliance Schedules, Exceptions, Registration and Deferrals for Organic Compound Emissions Sources in Chapters 419 to 424; Section 425.035 Throughput Reporting and Compliance Schedules for Motor Vehicle Refueling; published in Wis. Admin. Code in January 1993, and took effect on February 1, 1993.

(C) Wisconsin Administrative Code, Chapter NR 439 Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements; Section NR 439.06(3)(c); Section NR 439.06(3)(i); published in the Wisc. Admin. Code in January 1993, and took effect on February 1, 1993.

(D) Wisconsin Administrative Code, Chapter NR 484 Incorporation by Reference; Section 484.05(1) Test Method 21 in appendix A of 40 CFR part 60 is incorporated by reference; Section NR 484.06(2) Other Materials (introduction); Section NR 484.06(2) (u) and (v) were created to incorporate San Diego Air Pollution Control District Test Procedures TP–91–1 and TP–91–2; incorporated by reference in Wis. Admin. Code in January 1993, and took effect on February 1, 1993.

(E) Wisconsin Administrative Code, Chapter NR 494 Enforcement and Penalties for Violation of Air Pollution Control Provisions; renumbered Sections NR 494.025 and 494.03 to NR 494.03 and 494.05; Section NR 494.04 Tagging Gasoline Dispensing Equipment; published in the Wisc. Admin. Code in January 1993 and took effect on February 1, 1993.

(ii) Additional materials.

(A) Stage II Vapor Recovery SIP Program Description dated November 15, 1992.

(B) Letter from WDNR dated March 29, 1993, citing State authority under Sections NR 144.98, 144.99, 144.423, and 144.426, Wis. Admin. Code, to enforce the Stage II program.

(C) Packet of public education materials on Stage II distributed by WDNR.

[FR Doc. 93–19497 Filed 8–12–93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IN7-3-5706; FRL-4663-2]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On November 2, 1992, USEPA proposed to approve a revision to the Indiana Total Suspended Particulate (TSP) State Implementation Plan (SIP) involving an emissions trade for Navistar International Transportation Corporation (Navistar). The proposal stated that prior to final approval it was necessary for the State to submit a modeling analysis consistent with the Emissions Trading Policy Statement (ETPS). Public comments were solicited on the proposed SIP revision and on USEPA's proposed action. This rule discusses the modeling analysis and approves the incorporation of the requested revision, into the SIP.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on September 13, 1993.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone David Pohlman at (312) 886-3299, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Indiana SIP is available for inspection at: Jerry Kurtzweg (ANR-443), Office of Program Management Operations, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-3299.

SUPPLEMENTARY INFORMATION: On July 21, 1989, the Indiana Department of Environmental Management (IDEM) submitted a revision to rule 326 IAC 6-1-12 to the USEPA as a revision to the Indiana TSP SIP. Supplemental material was submitted on February 15, 1990. This revision involves an emission trade or "bubble" for Navistar, which operates a gray-iron foundry in Indianapolis, Indiana. The emissions trade is comprised of increases in emission limits for some sources at Navistar which are offset by the permanent shutdown of other sources.

In a proposed rule published in the **Federal Register** on November 2, 1992 (57 FR 49436), USEPA proposed to approve this trade as consistent with the ETPS, if the State were to submit a Level II modeling analysis showing no ambient impact above significance levels for PM (particulate matter with an aerodynamic diameter of a nominal 10 microns or less). It also stated that the USEPA would interpret significance levels for PM to be the same as those for TSP: 10 micrograms per cubic meter ($\mu g/m^3$) for the 24 hour standard and 5 $\mu g/m^3$ for the annual standard.

On May 5, 1993, the State submitted to USEPA a Level II modeling analysis for Navistar. The analysis used the Industrial Source Complex (ISC) model to evaluate the ambient effects of the PM emission changes resulting from the July 21, 1989, SIP revision request. The short-term and long-term versions of the ISC model, applied in the regulatory default mode in accordance with USEPA guidance, predicted 24-hour and annual impacts from this SIP revision of 3.0 $\mu g/m^3$ and -0.3 $\mu g/m^3$, respectively. These concentrations are well below the applicable significance levels. This SIP revision, therefore, meets USEPA's modeling requirements under the ETPS.

The public comment period for the November 2, 1992, notice of proposed rulemaking closed on December 2, 1992, and no comments were received.

Rulemaking Action

Based on the information contained in the State's July 21, 1989, submittal, supplemental material submitted on February 15, 1990, and the modeling analysis submitted on May 5, 1993, USEPA is approving Indiana's emission trade for Navistar.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 9, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(88) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(88) On February 15, 1990, the Indiana Department of Environmental Management submitted a request to revise the Indiana State Implementation Plan by adding a site specific particulate matter revision for Navistar International Transportation Corporation (Navistar) gray iron foundry and engine plant in Indianapolis, Indiana.

(i) Incorporation by reference.

(A) Title 326 Air Pollution Control Board, Indiana Administrative Code

(IAC) 6–1–12 as amended, effective January 13, 1990.

[FR Doc. 93–19495 Filed 8–12–93; 8:45 am]
BILLING CODE 6560–60–P

40 CFR Part 52

[AK2–1–5480; AD–FRL–4666–3]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA proposes approval of the state implementation plan (SIP) submitted by the State of Alaska Department of Environmental Conservation (ADEC) for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The implementation plan was submitted by ADEC on October 15, 1991, to satisfy certain federal Clean Air Act requirements for an approvable moderate PM_{10} nonattainment area SIP for Eagle River, Alaska. This action to approve this plan has the effect of making requirements adopted by the ADEC federally enforceable by EPA.

EFFECTIVE DATE: October 12, 1993.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Environmental Protection Agency, Air Programs Branch, Docket # AK2–1–5480, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101; Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: 206/553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

The Eagle River, Alaska area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM_{10} nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 12, 1993, EPA announced its proposed approval of the moderate nonattainment area PM_{10} SIP for Eagle River, Alaska (58 FR 13572–13575). In that rulemaking action, EPA described its interpretations of Title 1 and its rationale for proposing to approve the Eagle River PM_{10} SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate PM_{10} nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544).

II. Response to Comments

EPA received no comments on its March 12, 1993, (58 FR 13572–13575) **Federal Register** proposal to approve the Eagle River moderate nonattainment area PM_{10} SIP as a revision.

III. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is approving the plan submitted to EPA on October 15, 1991. EPA has determined that the submittal meets all of the applicable requirements of the Act. Among other things, the Alaska Department of Environmental Conservation has demonstrated the Eagle River moderate PM_{10} nonattainment area will attain the PM_{10} NAAQS by December 31, 1994.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

economic impact on a substantial number of small entities (See 46 FR 8709).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of the Federal Register on July 1, 1972.

Dated: June 3, 1993.

Gerald A. Emison,

Acting Regional Administrator.

Title 40, chapter I, part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(17) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(17) On October 17, 1991, the State of Alaska Department of Environmental Conservation submitted a PM_{10} nonattainment area state implementation plan for Eagle River, Alaska.

(i) Incorporation by reference.

(A) October 15, 1991 letter from Alaska Department of Environmental Conservation to EPA Region 10 submitting the PM_{10} nonattainment area state implementation plan for Eagle River, Alaska.

(B) The PM_{10} nonattainment area state implementation plan for Eagle River, Alaska, as adopted by the Anchorage Assembly on February 6, 1990 and effective on September 24, 1991.

[FR Doc. 93–19496 Filed 8–12–93; 8:45 am]

BILLING CODE 6560-50-P

VOL 58 ISS 155 AG 13 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 155
Friday, August 13, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket 91-161-1]

Tuberculosis in Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the tuberculosis regulations by adding a definition for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States, and by adding requirements for moving cattle and bison interstate from States whose accredited-free status has been suspended. This action appears necessary to clarify the requirements concerning the interstate movement of cattle and bison.

DATES: Consideration will be given only to comments received on or before October 12, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-161-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 77.1 defines and lists accredited-free, modified accredited, and nonmodified accredited States. An accredited-free State, as defined in § 77.1 of the regulations, is a State that has had no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. The definition of accredited-free State also specifies that detection of tuberculosis in any cattle or bison in the State will result in suspension of the State's accredited-free status. If tuberculosis is detected in two or more herds in the State within 48 months, the State's accredited-free status is revoked.

We are proposing to add a new definition to § 77.1 for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States. Accredited-free (suspended) States would be defined as States with accredited-free status in which tuberculosis has been detected in any cattle or bison in the State, and the definition would list States designated accredited-free (suspended).

We are also proposing to add a provision to the definition explaining how States whose accredited-free status has been suspended can qualify for redesignation as an accredited-free State. To qualify for redesignation of accredited-free status, a State would be required to place the herd in which tuberculosis is detected under quarantine pending the completion of an epidemiological investigation. The completed epidemiological investigation would be required to confirm that the disease has not spread from the herd and that any reactor cattle or bison have been destroyed.

Sections 77.3 through 77.5 set out the requirements for moving cattle and bison interstate from accredited-free, modified accredited, and nonmodified accredited States.

We are proposing to revise § 77.3 to provide that cattle and bison not known to be affected with or exposed to tuberculosis may be moved interstate from an accredited-free (suspended) State without restriction. Section 77.3 currently provides that cattle and bison not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited State, may be moved interstate without restriction. We currently apply the same rule to the interstate movement of cattle and bison not known to be affected with or exposed to tuberculosis, that originate in a State whose accredited-free status has been suspended. However, this is not spelled out in the regulations.

These changes appear necessary to clarify what requirements apply to the interstate movement of cattle and bison from States whose accredited-free status has been suspended (not revoked).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Cattle and bison not known to be affected with or exposed to tuberculosis are already allowed to move interstate without restriction from modified accredited States and accredited-free States, including States whose accredited-free status has been suspended. We are proposing to clarify the regulations with respect to requirements for the interstate movement of cattle and bison from a State whose accredited-free status has been suspended. Consequently, this action would not have any economic impact on those persons affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 would be amended as follows.

PART 77—TUBERCULOSIS

1. The authority citation for part 77 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 77.1 would be amended by adding in alphabetical order a definition for "Accredited-free (suspended) State" to read as follows:

§ 77.1 [Amended]

* * * * *

Accredited-free (suspended) State. (1)(i) A State with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State.

(ii) A State is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed.

(2) Accredited-free (suspended) States: None.

* * * * *

3. Section 77.3 would be revised to read as follows:

§ 77.3 Movement from accredited-free States, accredited-free (suspended) States, and modified accredited States.

Cattle or bison not known to be affected with or exposed to tuberculosis, originating in an accredited-free State, an accredited-free (suspended) State, or a modified accredited State, may be moved interstate without restriction.[3]

Done in Washington, DC, this 9th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19541 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–34–P

[3] The regulations of the State of destination should be consulted before shipments are made from accredited-free, accredited-free (suspended) and modified accredited States

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Commodity Options; Prohibited Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to include an additional exception from the prohibition on futures commission merchants ("FCMs") from assuming any financial responsibility for the fulfillment of commodity options. This rule was first promulgated by the Commission's predecessor agency in order to help ensure the financial integrity of FCMs. The Commission believes that this goal is more directly addressed under the Commission's rules regarding required regulatory capital for FCMs. The Commission therefore also is proposing to amend its regulation to provide an appropriate capital treatment for certain of such positions and is also requesting comment on the appropriate treatment for computing net regulatory capital for various other types of option positions on commodities which are not currently included in that rule.

DATES: Comments must be received by September 13, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, and should make reference to "Revision to Rule 1.19."

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Deputy Director, Division of Trading and Markets or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–8955, 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

Commission Rule 1.19 prohibits futures commission merchants ("FCMs") and introducing brokers ("IBs") from assuming any financial responsibility for the fulfillment of any commodity option, with two exceptions. These exceptions are for options traded on or subject to the rules of a designated option contract market or on a foreign board of trade, in accordance with the requirements of part 30 of the Commission's rules.[1]

Commission Rule 1.19 was first promulgated by the Commission's predecessor agency, the Commodity Exchange Authority, in 1973. 38 FR 28031 (October 11, 1973.) At that time,

[1] Commission Rule 1.19 provides that:

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter; or (b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter

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commodity options were prohibited for those commodities enumerated in the Commodity Exchange Act. The commodities enumerated in the Act generally included those domestic agricultural commodities in which futures contracts were traded on United States exchanges.[2] All other commodities were not regulated under the Act. In promulgating this rule, the Commodity Exchange Authority reasoned that:

[t]he purpose of the proposed regulation is to protect the funds of persons trading in regulated commodities through registered futures commission merchants. During the past year selling 'puts' and 'calls', * * * became very popular in nonregulated commodities. The vast majority of this business was done in so-called naked options * * *. [T]he potential liability of the option firm as a result of adverse price movements, is virtually unlimited. Large losses were, in fact, realized over the past year by firms that traded in commodity options. Several of the larger option houses were placed in bankruptcy as a result of such trading. The Commodity Exchange Authority feels an obligation to prevent futures commission merchants under its jurisdiction from exposing themselves to the enormous financial dangers of trading in commodity options and the likely temptation of misappropriating the funds of regulated commodity customers to meet their obligations to option holders.

36 FR at 28031.

Subsequently, in light of the abuses discussed above, the Congress, in enacting the Commodity Futures Trading Commission Act of 1974, granted the Commission broad power to regulate commodity options in the previously unregulated commodities. At that time, commodity options in the previously-regulated, enumerated commodities continued to be prohibited by statute, however.

Shortly following its creation, the Commission promulgated a general anti-fraud rule applicable to commodity option transactions. 40 FR 26504 (June 24, 1975). Later, the Commission promulgated a broad regulatory scheme to govern the trading of commodity options in the United States. See 17 CFR part 32. As part of its consideration of that regulatory scheme for options, the Commission, in 1977, expressed an intent to repeal Rule 1.19, once revisions to Rule 1.17, which establishes the method for computing minimum net capital requirements for FCMs, were adopted. See, 42 FR 18246, 18259 (April 5, 1977).

However, before it undertook the repeal of Commission Rule 1.19, the Commission found it necessary, because of widespread fraud and abuse in the offer and sale of the formerly-unregulated commodity options, generally to suspend the offer and sale of commodity options in the United States, effective June 1, 1978. The Commission provided only two exceptions, for trade options, and for dealer options, from this general suspension of option trading.[3]

Commodity option trading in the United States subsequently was reintroduced as part of the Commission's pilot program for domestic, exchange-traded options. See, 46 FR 54500 (November 3, 1981). As part of this program, Rule 1.19 was amended to exempt FCMs from its prohibitions when offering or selling exchange-traded commodity options pursuant to Part 33 of the Commission's rules, subject to an appropriate capital treatment under Commission Rule 1.17. As the Commission noted in proposing this amendment, "Section 1.19 would however, remain in effect with regard to all other commodity option transactions." 45 FR 33293, 33298 (June 29, 1981). Later, an additional exception to the Rule 1.19 prohibition was added for commodity options traded on or subject to the rules of a foreign board of trade, subject to the above-cited capital treatment. 53 FR 28980 (August 5, 1987).

The Commission, upon further experience over the years, is convinced that its previously stated intent to delete the prohibition in Rule 1.19 as it applies to FCMs, subject to a capital treatment, is appropriate. In this regard, the Commission notes that Rule 1.19 as it applies to FCMs from its prohibitions for options traded on exchanges. The prohibition of Rule 1.19 therefore, currently applies to off-exchange options permitted under part 32 of the Commission's rules. Although concern over the risk to FCMs from dealing in certain over-the-counter options previously may have supported the prohibition, the Commission believes that FCMs generally have had a sufficient opportunity during the intervening years to become sufficiently familiar with option trading and theory, so that they can institute appropriate internal controls to address their risk from such positions provided that the Commission has articulated a capital treatment for such positions.[4]

In light of the above, the Commission is proposing a further exception from the rule 1.19 prohibition on FMCs from assuming any "financial responsibility for the fulfillment of nay commodity option." The effect of this revision will be to permit FCMs to grant certain off-exchange trade options, under Commission Rule 32.4, 17 CFR 32.4.[5] All other trading in off-exchange options remains subject to the general suspension of option trading under Commission Rule 32.11.

Of course, although the proposed exception would permit FCMs to assume financial responsibility for additional types of option positions, the risk of such positions to the FCM would be required to be reflected fully by FCMs in the computation of their minimum required net capital under Commission Rule 1.17. However, Rule 1.17 currently does not explicitly specify a method to compute the net capital treatment for all option positions which otherwise could be included under the exception. Nor does the SEC rule reference a particular treatment for commodity options, and to the extent that such a rule has been modified by interpretation, only forex options, governments and stock indices are separately identified. Therefore, option positions for which Rule 1.17 fails to specify a method of computation are

[2] Specifically, the commodities enumerated in the Act include wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. Commodities not enumerated were, at this time, not regulated under the Act.

[3] Trade options were, and are, exempt from many of the rules contained in part 32, including the suspension of option trading permitted under part 32 rules. Dealer options, which are defined in Rule 32.12(a) as options on a physical commodity granted by a person in the business of buying, selling, producing or otherwise utilizing that commodity or in the business of granting such options and subject to the additional requirements of that rule, also are specifically exempted from the general suspension on option trading, but are subject to a separate regulatory scheme. See, 17 CFR 32.4 and 32.12.

[4] The Commission believes that this prohibition is still appropriately applied to Introducing Brokers because, unlike FCMs, they do not ordinarily have back offices or handle customer funds.

[5] Rule 32.4 provides, in part, that: the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user of merchant is offered or entered into the commodity option transactions solely for purposes related to its business as such.

By amending the prohibition of Rule 1.19 that FCMs not assume financial responsibility for the fulfillment of any commodity option, the Commission is not expanding the scope of options which can be traded legally. That is, the existing general suspension for off-exchange trading of commodity options remains in effect under Commission Rule 32.11. Accordingly, the proposed amendment to Rule 1.19 will permit FCMs to grant options, pursuant to Commission Rule 32.4, where the offeree is a producer, processor or commercial user of the underlying commodity in its business.

excluded until such time as Rule 1.17 is amended to reflect the risk of such positions or the Commission addresses applications on a case-by-case basis. See e.g., Letter 19–1 of the Commodity Futures Trading Commission, (1991–1992 Transfer Binder) Comm. Fut. L. Rep., (CCH) ¶25,065 (May 29, 1991). In other words, the proposed exception from the Rule 1.19 prohibition extends only to options on those underlying commodities for which an appropriate capital treatment is specified under Rule 1.17.

Currently, Commission Rule 1.17 requires that certain "haircuts" must be taken in computing net capital for "securities options." 17 CFR 1.17(c)(5)(vi).[6] The Commission is hereby proposing to extend the treatment contemplated by that provision to over-the-counter options on foreign currencies, as well as security indices and options on government debt.[7] Moreover, the Commission hereby is proposing to apply the same capital treatment to over-the-counter options or options on such "securities." For all such instruments, the charges in § 1.17(c)(5)(vi) would apply rather than those in § 1.17(c)(5)(xi).

Rule 1.17(c)(5)(vi) currently does not specify the treatment of off-exchange options on underlying commodities other than those listed above for the purpose of computing a firm's net capital. Before the proposed exemption from Rule 1.19 would include over-the-counter options on underlying commodities other than foreign currencies, stock indices and government debt, Rule 1.17 would have to be amended to specify the appropriate method of computation for such positions. In this regard, the Commission is considering amending Rule 1.17 to specify the appropriate means of reflecting the risk of such positions in the computation of a firm's net capital. Any such rule would not permit the creation of regulatory capital by the mere writing, granting, issuing or otherwise undertaking to fulfill option transactions.

The Commission is interested in obtaining the views of the public concerning this issue. Specifically, the Commission requests that commenters address the following questions:

1. What would be the impact upon the public, including the customers of futures commission merchants and the regulated markets if this activity were permitted? To what additional risks would customers using these markets be exposed? How would customers of regulated firms benefit? Is it useful and a consistent extension of the existing regulatory scheme to permit firms registered both as futures commission merchants and securities broker/dealers to engage in the same conduct subject to the same capital charges?

What is the likely impact upon self-regulatory organizations (SROs) ability to monitor regulatory compliance? The Commission relies upon the commodity industry's SROs to conduct periodic and "for cause" audits of futures commission merchants for regulatory compliance, including compliance with the Commission's capital requirements.

Are there any risk management or systemic concerns that the Commission should have if regulated firms can make two-way markets in over-the-counter options?

2. Is there current or potential commercial demand that will be addressed by these amendments, i.e., permitting FCMs to grant over-the-counter options? Is there such a demand in commodities other than foreign currencies, stock indices and government debt? If so, which commodities?

3. In computing haircut amounts, current regulatory rules apply a fixed percentage to the value of the securities or commodities underlying a derivative instrument. This methodology, generally, may be more difficult to apply where pricing references are not readily available. Should the Commission have different requirements for options for which there are futures reference prices?

4. Some firms have developed risk-assessment models, based upon pricing methodologies, which are intended to refine coverage of their exposures for risk management purposes. What would be the best regulatory method of specifying a pricing methodology and/or setting appropriate haircuts for options positions, including uncovered, hedge and spread positions? How would the Commission and the relevant SROs audit such pricing models?

5. To what extent should the Commission coordinate any approach to options pricing for risk management and regulatory capital purposes with the Securities and Exchange Commission?

6. Commission regulation 1.17(c)(5)(ii), parts (A), (B) & (C) provides different percentage haircuts for different types of offsetting (or "covered") transactions:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical—no charge.

(B) Inventory which is covered by an open futures contract or commodity option—5 percent of the market value.

(C) Inventory which is not covered—20 percent of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option—10 percent of the market value.

(E) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by an open futures contract or commodity option—20 percent of the market value.

The percentages differ, because the risks for each type of position are different. For example, using futures contracts as cover for inventory held by the firm, which is registered as deliverable on a contract market, would entail little credit risk, whereas forward contracts are subject to a risk of default by the counterparty. In this connection, the Commission is soliciting comment as to what types of over-the-counter options FCMs may envision granting and how best to develop appropriate haircuts to address such intended activity. Commenters should specifically address how best to design charges for default risk, credit risk or market risk based on the type of options to be granted and whether exotic or long-term options ought to be precluded.

7. Exchanges have other financial/market protections, in addition to clearing member capital requirements, intended to manage financial risk. In a similar connection, should there be leverage or position limitations and/or

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[6] 17 CFR 1.17(c)(5)(vi) incorporates by reference the net capital rules of the Securities and Exchange Commission (SEC), which contains a generic treatment for options positions, stating that in computing net capital, the calculation should use:

In the case of securities options used by the applicant or registrant in computing net capital, the deductions specified, in § 240.15c3–1 appendix A of this title, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix:

An SEC interpretative letter, covering the net capital treatment of baskets of securities offset by securities options on broad based security indices was issued to Mr. David Marcus, New York Stock Exchange, Inc., on Febraury 27, 1986. SEC interpretative letters covering foreign currency option spreads and forwards offset by foreign currency options were issued to Ms. Susan R. Mann and Mr. Robert B. Gilmore, of the Philadelphia Stock Exchange, Inc., dated January 15, 1985 and February 14, 1986, respectively. The SEC interpretative letter covering the treatment of government option was issued to Mr. Salvatore Pallante, New York Stock Exchange, Inc., on January 31, 1990. Commission Rule 1.17 currently incorporates by reference securities haircuts, and automatically reflects any amendments to those haircuts permitted by the SEC.

[7] By extending the capital treatment of such instruments under SEC regulations to certain instruments, which are regulated by the Commission under the CEA, see, section 2(a)(1)(B) of the Act, the Commission does not intend to affect jurisdictional boundaries, but rather, merely to treat equally, for regulatory capital purposes, economically similar instruments.

reporting requirements for over-the-counter options? For example, are capital requirements sufficient to assure daily marking-to-market of exposures. See e.g., Letter 91–1 of the Commodity Futures Trading Commission (1991–1992 Transfer Binder) Comm. Fut. L. Rep., (CCH) ¶25,065 (May 29, 1991).

8. Amendment of Rule 1.19 as described herein, could lead to fundamental changes in the business profile of some FCMs. The Commission wishes to be advised as to whether such changes in business profiles might require additional or different internal controls.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "FCMs" and similar entities are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules modify certain minimum capital requirements for FCMs. The proposed amendments also permit FCMs to undertake additional option strategies and do not otherwise impose any additional burdens, but rather, alleviate an already existing prohibition. Accordingly, if promulgated, this rule would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe that the promulgation of the proposed rule amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget ("OMB"). Rule 1.19, including its proposed revision, has no burden associated with it and is not part of a group of rules having a burden.

With respect to the proposed amendments to Rule 1.17, OMB approved the collection of information associated with these rules on January 25, 1993, and assigned OMB control number 3038–0024. The burden associated with this entire collection including this proposed amendment is as follows:

Average burden hours per response—0.50
Number of respondents—100 (FCMs); 15 (IBs)
Frequency of response—Annually

Persons wishing to comment on the estimated paperwork burden associated with these amended rules should contact the Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 1

Commodity options, Financial requirements, Reporting and record keeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g, and 8a of the Act, 7 U.S.C. 6c, 6f, 6g, and 12a (1988), the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a–1, 13a–2, 16, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.17 is proposed to be amended by revising paragraph (c)(5)(vi) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(vi) In the case of securities options and/or other options for which a haircut has been specified for the option or for the underlying instrument in § 240.15c3–1 appendix A of this title, the treatment specified in, or under, § 240.15c3–1 appendix A, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix;

* * * * *

3. Section 1.19 is proposed to be amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 1.19 Prohibited trading in certain "puts" and "calls".

* * * * *

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter;

(b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter; or

(c) For futures commission merchants, any option permitted under § 32.4 of this chapter, *provided however*, that a capital treatment for such options is referenced in § 1.17(c)(5)(vi).

Issued in Washington, DC, this 10th day of August, 1993, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19539 Filed 8–12–93; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–4692–5]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to revise the boundary coordinates for the Matagorda Ship Channel, Texas ocean dredged material disposal site. This revision is necessary because most of the existing designated site has water depths too shallow to accommodate deep draft hopper dredges. The Corps of Engineers (COE) plans to utilize a hopper dredge requiring a 30 foot water depth and much of the existing disposal site is approximately 25 feet deep.

DATES: Written comments must be received on or before September 27, 1993.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202–2733.
Corps of Engineers, Galveston District, 2000 Fort Point Road, Galveston, Texas 77553.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Title I of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.*, (hereinafter referred to as "the Act" or "the MPRSA") regulates the ocean dumping and transportation for purposes of ocean dumping of material. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The EPA's regulations implementing the Act are set forth at 40 CFR parts 220 through 229.

The Act further provides that EPA may designate recommended times and sites for ocean dumping (MPRSA section 102(c)). EPA site designations specify the latitude and longitude of the site and also typically include limitations on the duration of use and type of materials which may be disposed of at the site. EPA's ocean dumping regulations (40 CFR 228.4(b)) provide that the designation of an ocean dumping site is accomplished by promulgation in Part 228 specifying the site. The list of EPA-designated ocean dumping sites and the terms and conditions associated with each designated site appear at 40 CFR 228.12.

By final rule published on September 10, 1990, the EPA designated a dredged material disposal site in the Gulf of Mexico offshore of Port O'Connor, Texas for the continued disposal of dredged material removed from the Matagorda Ship Channel. The existing designated disposal site has never been used. The COE has now requested the EPA to modify the existing site boundaries to include more area with deeper depths (30 feet or greater) so that hopper dredges with deeper drafts could be utilized. For this reason the COE has asked that the site be shifted 3,000 feet seaward.

B. EIS Information

The EPA's Draft and Final Environmental Impact Statements (EIS) supporting designation of the existing site were distributed for public review in July, 1989 and July, 1990, respectively. The EIS alternative evaluation focused on sites located within ten statute miles of the project area, termed Zone of Siting Feasibility (ZSF). The ZSF was based on limits from (1) The cost of transportation of dredged material; (2) the feasibility of monitoring and surveillance; and (3) political boundaries. Specific areas within the ZSF were excluded from consideration for such reasons as interference with biologically sensitive areas, recreationally important areas, jetty buffer or beach buffer zones, the presence of historic properties, etc. The modified disposal site lying 3,000 feet seaward of the existing disposal site is within the ZSF, an area thoroughly addressed in the EISs. The modified site will not encompass any of the ZSF excluded areas.

Five general criteria (§ 228.5) and eleven specific criteria (§ 228.6), which are used in the selection, evaluation and approval of an ocean disposal site, were addressed in the EISs for the existing site. The EIS criteria analysis is also applicable to the modified site. The impacts of disposal at the existing site are the same as those at the modified site. The dredged material proposed for disposal is clean material and meets the ocean dumping criteria. The only change necessary relates to the geographical position of the modified site. This site is approximately one half mile farther offshore. Instead of being 1.5 miles from the coast, the modified site is located about 2 miles from beaches and other amenity areas. Additional modification of the environmental evaluation is not appropriate or required.

C. Proposed Site Designation

The proposed site is located approximately 2 miles from the coast at its closest point. While the water depth at the modified site ranges from 25 to 40 feet, most of the site has depths 30 feet or greater. The coordinates of the rectangular-shaped site are as follows: 28°23'48" N, 96°18'00" W; 28°23'21" N, 96°18'31" W; 28°22'43" N, 96°17'52" W; 28°23'11" N, 96°17'22" W.

D. Regulatory Assessments

Under the Regulatory Flexibility Act, the EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 3, 1993.

W.B. Hathaway,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, part 228 of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12, paragraph (b) (79) is amended by revising the Location to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(79) * * *

Location: 28°23'48" N, 96°18'00" W; 28°23'21" N, 96°18'31" W; 28°22'43" N, 96°17'52" W; 28°23'11" N, 96°17'22" W.

* * * * *

[FR Doc. 93–19483 Filed 8–12–93; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; DA 93–864]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Chief of the Commission's Office of Engineering and Technology has granted a 90 day extension for filing comments and reply comments in response to the Notice of

Proposed Rule Making (NPRM). This extension is in response to a request filed by the National Association of Broadcasters (NAB) and supporting comments filed by the Electromagnetic Energy Policy Alliance and CBS, Inc. The additional time will allow for completion of an important study being sponsored by NAB that will assist the Commission in addressing issues raised in the NPRM and in implementation of new radiofrequency exposure guidelines.

DATES: Comments are due by November 12, 1993. Reply comments are due by December 13, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 653–8169.

SUPPLEMENTARY INFORMATION: 1. On July 9, 1993, the National Association of Broadcasters (NAB) filed a "Request for Extension of Time" with Broadcasters (NAB) and filed a "Request for Extension of Time" with the Commission in the above-named proceeding. The NAB requested that the Commission extend, by a period of ninety (90) days, the time for filing comments until November 12, 1993 and the filing date for reply comments until December 13, 1993. The deadline originally established for filing comments was August 13, 1993, and the date for reply comments was September 13, 1993. The Electromagnetic Energy Policy Alliance (EEPA) and CBS, Inc., have filed comments in support of the NAB's request.

2. The NAB has requested the extension in order to complete a study to develop non-measurement-based techniques for complying with the proposed new radiofrequency (RF) exposure guidelines.[1] The Commission has proposed to incorporate into its rules the newly revised standard of the American National Standards Institute (ANSI) and the Institute of Electrical and Electronics Engineers (IEEE) designated IEEE C95.1–1991 (also ANSI/IEEE C95.1–1992).[2]

3. The NAB points out that the new ANSI/IEEE standard is significantly different than the one it replaces, including new restrictions on currents induced in the human body by RF fields and the specification of two sets of exposure limits. The NAB believes that its study will help the Commission interpret and implement the new guidelines by providing essential technical information relevant to compliance procedures.

4. The NAB study will evaluate the impact of the new standard on compliance methods specified in the Commission's OST Bulletin No. 65; suggest modifications to existing charts and tables in the bulletin; and develop any new charts and tables that may be necessary to demonstrate compliance with either the maximum permissible exposure (MPE) limits or the induced and contact current limits contained in the new standard. The NAB believes that this information will provide a less burdensome set of alternatives, both for licensees and for the Commission, with respect to evaluating compliance with the new guidelines.

5. According to the NAB, it is not possible for its study to be completed within the existing timeframe for submission of comments in this proceeding due to the complex nature of the work involved. The NAB notes that the new standard will have significant impact for the broadcast industry and for other telecommunications services. Therefore, because of the potential benefit that the study results can have for the Commission and for its regulatees, the NAB is requesting the extension in time for filing comments. The EEPA also notes that several of its member organizations have initiated research to support comments on the Commission's proposal.

6. The Commission does not routinely grant requests for extensions of time.[3] However, we recognize the usefulness of the NAB study, and, in this case, we agree that there are extenuating circumstances warranted the granting of additional time. We believe that the public interest will be served by this extension and that the additional time will be to the benefit of all concerned parties in helping assure that new guidelines will be implemented in a reasonable and accurate manner.

7. As noted, the new ANSI/IEEE standard is complex, and a considerable amount of time and effort will be required in order to develop the data and information necessary for its implementation. We expect that the NAB study will provide the Commission with important results that will be very helpful to us in updating our technical bulletin and providing essential guidance to our regulatees with respect to compliance with the new guidelines. We are pleased that the NAB is undertaking this effort, and we agree that an extension of three months is supportable in view of the nature of the research and analytic work required.

8. Accordingly, *It is ordered that* the deadline for filing comments is extended to November 12, 1993, and the deadline for filing reply comments is extended to December 13, 1993. This action is taken pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 93–19449 Filed 8–12–93; 8:45 am]

BILLING CODE 6712–01–M

[1] See Notice of Proposed Rule Making in ET Docket 93–62, 8 FCC Rcd 2849 (1993).

[2] *Id.*, Note 1 at paragraph 1.

[3] 47 CFR 1.46 (1991).

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Correction to a proposed rule; extension of comment due date.

SUMMARY: This document corrects the extension notice which extended the comment due date in this proceeding and sought comment on proposed revisions of regulations pertaining to railroad and motor carrier uniform bills of lading.

DATES: The due date for comment on the proposed rule remains unchanged. Comments must be received by August 30, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 495 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 or Andrew J. Nosacek, (202) 927–5318. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission published an extension of the comment due date in this proceeding on July 26, 1993 at 58 FR 39723. The summary requested comments on the proposed revision of regulations pertaining to "railroad and

motor carrier" uniform bills of lading. Please correct your copy to read "railroad and water carrier" uniform bills of lading.

Decided: July 19, 1993.

By the Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19506 Filed 8–12–93; 8:45 am]

BILLING CODE 7035-01-P

VOL 58 ISS 155 AG 13 1993 UMI

Notices

Federal Register
Vol. 58, No. 155
Friday, August 13, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Joint Council on Food and Agricultural Sciences (hereafter referred to as the JC).

Date: September 20–21, 1993.

Time: September 20—8:30 a.m.–5:30 p.m. September 21—8:30 a.m.–12 Noon.

Place: Ramada Hotel, 901 N. Fairfax Street, Alexandria, Virginin.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: The JC will review the Department's Nutritious and Safe Foods Initiatives and the strategic plans developed by the (1) Federal Coordinating Council for Science, Engineering, and Technology's Committee on Education and Human Resources; and (2) the Experiment Station Committee on Organization and Policy.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 720–3684.

Done in Washington, DC, this August 4, 1993.

Dated: August 3, 1993.

John Patrick Jordan,

Administrator.

[FR Doc. 93–19540 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Suitability Study for the Yellowstone, Buffalo Fork, Gros Ventre, Hoback, Green, Greys and Salt Rivers Being Considered for National Wild and Scenic River Status; Bridger-Teton National Forest; Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final legislative environmental impact statement associated with a study of the suitability of the Yellowstone, Buffalo Fork, Gros Ventre, Hoback, Green, Greys and Salt Rivers in the Bridger-Teton National Forest, in Wyoming, for inclusion in the National Wild and Scenic Rivers System.

The agency invites written comments and suggestions on the suitability of these rivers. In addition, the agency gives notice of the environmental analysis and decision making process associated with the study so that interested and affected people are aware of how they may participate and contribute to the decision.

DATES: Comments should be received in writing by September 1, 1993, to ensure timely consideration.

ADDRESSES: Send written comments to Brian Stout, Forest Supervisor, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001.

FOR FURTHER INFORMATION CONTACT: Susan Marsh or Scott Fitzwilliams, Bridger-Teton National Forest, Jackson District, P.O. Box 1689, Jackson, WY 83001, phone #(307) 739–5500.

SUPPLEMENTARY INFORMATION: The Bridger-Teton National Forest Land and Resource Management Plan was approved in March 1990. Segments of the Yellowstone, Buffalo Fork, Gros Ventre, Hoback, Greys and Salt Rivers were identified as eligible for inclusion in the National Wild and Scenic Rivers System as part of the planning process, but were not studied for their suitability at that time. The decision to be made, based on the environmental impact statement, is whether or not to recommend any or all of the above mentioned rivers for designation and inclusion in the National Wild and Scenic Rivers System. The Forest Plan will be amended accordingly.

The area of consideration for each of the rivers is a corridor a minimum of ¼-mile in width from each stream bank for the length of the eligible river segments.

The eligible segments of the Gros Ventre River are from its source in the Gros Ventre Wilderness to Lower Slide Lake to the Forest boundary. The upper segment of the river, from its source to Horn Ranch, as a wild river, and the lower segment from Horn Ranch to Lower Slide Lake, as a scenic river.

The two eligible segments of the Hoback River are the Upper Canyon from the source in the Wyoming Range to the end of Forest Road 30700 (10 miles), as a wild river, and the Lower Canyon from the confluence with Cliff Creek to the confluence with the Snake River, to which the Hoback is tributary (18 miles0, as a recreational river. The segment from the end of Forest Road 30700 to the confluence with Cliff Creek was determined ineligible for consideration due to lack of outstandingly remarkable values.

The eligible segments of the Greys River extend for 8 miles from its source to Kinney Creek, as a recreational river, and for 50 miles from Kinney Creek to its confluence with the Snake River, as a scenic river.

The eligible 12-mile segment of the Salt River from its source to Forest Road 10072 classifies as a wild river. The 3-mile segment from Forest Road 10072 to the Forest Boundary classifies as a recreational river.

The eligible segments of the Buffalo Fork River include the North Fork from its headwaters to the confluence with the South Fork, the Soda Fork from its headwaters to its confluence with the North Fork, and the South Fork from its headwaters to the confluence with the North Fork. These segments are all entirely within the Teton Wilderness and are classified as wild. The main stem of the Buffalo Fork River from the Teton Wilderness boundary to the confluence with the Snake River in Grand Teton National Park classifies as scenic.

The eligible segment of the Yellowstone River includes both forks of the river from their headwaters to the Forest boundary, approximately 28 river miles, and classifies as wild. This segment of the river is entirely within the Teton Wilderness, and enters Yellowstone National Park at the Forest boundary. The segment within the

National Park has also been determined to be eligible.

The eligible segment of the Green River is a 37-mile stretch between the source of the river in the Bridger Wilderness and the Forest boundary, classified as a wild river.

The following preliminary issues will be considered in the environmental analysis: (1) Effects on the ability of private landowners to retain their properties and use their lands as they choose; (2) effects on current uses of the river corridor including grazing, recreation, oil and gas exploration; (3) effects on future opportunities for impoundments, (4) effects on the level of recreation use if the rivers are designated, which could affect the wilderness resource and grizzly bear conservation; (5) possible effects on visitation in the Wilderness areas and adjacent back-country of Yellowstone National Park; (6) effects on timber harvesting in the area of the study rivers; and others.

A range of alternatives will be considered. They will include, as a minimum, one alternative that does not recommend designation (no action), and one that recommends designation for all the eligible river segments. Additional alternatives may be developed from public comments received during the scoping process. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be utilized in the preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1993. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is very important that those interested in management of these rivers participate at that time. To be most helpful, comments on the draft environmental impact statement should be as site-specific as possible.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, and considered by the Forest Service in preparing the final study report and environmental impact statement. The final report is scheduled to be completed by March 1994. The comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies will be considered in preparing the agency's recommendations for Wild and Scenic River designation.

The responsible official for making recommendations to the Congress is Mike Espy, Secretary of Agriculture, Administration Building, 12th Street & Jefferson Drive, SW., Washington, DC 20250.

The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: August 4, 1993.

Thomas J. Mills,

Acting Deputy Chief.

[FR Doc. 93-19519 Filed 8-12-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Columbus, OH MSA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center program to operate a Columbus, Ohio MBDC for a three (3) year period, starting October 1, 1993 to September 30, 1994 in the Columbus, Ohio MSA (Closing date June 24, 1993). Refer to the **Federal Register** dated May 20, 1993, 58 FR 29388.

Dated: July 14, 1993.

David Vega,

(Regional Director), Chicago (Regional Office).

[FR Doc. 93-19529 Filed 8-12-93; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Tuesday, September 1, 1993, and Thursday, September 3, 1993, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on September 1 and 2, 1993, from 9 a.m. to 5 p.m..

ADDRESS: The meeting will take place at Hyatt Regency Baltimore, on the Inner

Harbor, 300 Light Street, Baltimore, MD 21202-9990.

Agenda

—Welcome and Update
—Overview of Meeting
—Escrowed Encryption Standard Update
—Cryptograhic Key Escrow Procedures
—Federal Trusted System Criteria Update
—Public Participation
—Board Discussion
—Pending Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by August 23, 1993. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

Dated: August 9, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93-19546 Filed 8-12-93; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 13, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Tool Box, Portable
5140-00-329-6305
5140-00-226-9020
5140-00-226-9021
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky

Cradle, Military Fuel Can
7240-01-318-5222
Nonprofit Agency: Knox County Association for Retarded Citizens, Knoxville, Tennessee

Cover, Ironing Board
7290-00-946-7905
Nonprofit Agency: Juniata Branch, Pennsylvania Association for the Blind, Lewistown, Pennsylvania

Pad, Ironing Board
7290-00-633-9124
Nonprofit Agency: Juniata Branch, Pennsylvania Association for the Blind, Lewistown, Pennsylvania

Liner, Field Pack
8465-00-935-6857
8465-00-935-6858
8465-00-258-2432
Nonprofit Agency: ORC Industries, Inc., LaCrosse, Wisconsin

Services

Administrative Services, Department of Energy, Morgantown Energy Technology Center, Morgantown, West Virginia
Nonprofit Agency: Pace Training and Evaluation Center, Star City, West Virginia

Grounds Maintenance, Social Security Administration, Metro West Complex, 300 North Greene Street, Baltimore, Maryland
Nonprofit Agency: Baltimore Association for Retarded Citizens, Inc., Baltimore, Maryland

Grounds Maintenance, Naval and Marine Corps Reserve Center, 1600 West Lafayette Avenue, Moundsville, West Virginia
Nonprofit Agency: Futtrell, Inc., Meadow Land, Pennsylvania

Janitorial/Custodial, U.S. Geological Survey, Menlo Park, California
Nonprofit Agency: Hope Rehabilitation Services, Santa Clara, California

Janitorial/Custodial, Defense Logistics Agency, Defense National Stockpike Zone, Point Pleasant, West Virginia
Nonprofit Agency: Prestera Center for Mental Health Services, Huntington, West Virginia

Mailroom Operation, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California
Nonprofit Agency: Hope Rehabilitation Services, Santa Clara, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-19543 Filed 8-12-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List disposable applicators to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 13, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 11, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 32656) of the proposed addition of these applicators to the Procurement List.

Comments were received from a manufacturer of the applicators other than the firm listed in the Committee's records as the current contractor. The commenter objected to losing the opportunity to compete to supply the applicators to the Government and indicated, without providing supporting data, that inability to compete could cause significant hardship for the commenter.

The Committee does not consider loss of the opportunity to compete on a Government contract, by itself, to constitute severe adverse impact of a company. Where a company has not provided data to support its claim of severe adverse impact, the Committee has normally concluded that no such impact exists. Consequently, the Committee has concluded that the addition of the disposable applicators to the Procurement List will not have a severe adverse impact on the commenter.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Applicator, Disposable
6515–00–234–6838
6515–00–303–8100

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–19544 Filed 8–12–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: September 13, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 30, May 14, 21 and June 18, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 26125, 28564, 29569 and 33622) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to Procurement List:

Commodities

Gasket and Preformed Packing Set
5330–00–884–4807
Cable Assembly, Electrical
6150–01–027–0125
(Remaining 50% of the Government requirement)
Case, Medical, Instrument and Supply Set
6545–00–912–9890
Pad, Comfort, Ground Troops Parachutists'
8470–01–364–7074

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Lead Seal with Cord Attachment
P.S. Item No. 0815

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–19545 Filed 8–12–93; 8:45 am]

BILLING CODE 6820–33–P

VOL 58 ISS 155 AG 13 1993 UMI

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 30, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Gary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Gary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 9, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Application for Indian Education Resource Centers Cooperative Agreement.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 15.
Burden Hours: 1,200.
Recordkeeping Burden:
Recordkeepers: 4.
Burden Hours: 128.
Abstract: This form will be used by State Educational agencies to apply for funding under the Indian Education Resource Centers Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants under the Language Resource Centers Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 20.
Burden Hours: 900.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Language Resource Centers Program. The Department will use the information to make grant awards.

[FR Doc. 93–19450 Filed 8–12–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/AU(EU)–9, for the transfer of 2 material test reactor elements containing 422 grams of uranium and 253 grams of uranium–235 (60 percent enrichment) from the United Kingdom to Australia for use as fuel in the HIFAR research and test reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on August 10, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–19561 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–M

Announcement of Public Scoping Meetings, Reconfiguration Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Announcement of public scoping meetings, programmatic environmental impact statement for reconfiguration of the nuclear weapons complex.

SUMMARY: The Department of Energy (DOE) will hold twelve public scoping meetings during September and October 1993 to enable the public to provide comments on the proposed scope of the Programmatic Environmental Impact Statement (PEIS) being prepared for the Reconfiguration of the Nuclear Weapons Complex. Comments received by DOE will be considered in determining the issues to be addressed in the Reconfiguration PEIS. Notice of proposed changes in the scope of the Reconfiguration PEIS was given by DOE on July 23, 1993 (58 FR 39528). The changes proposed are a result of

significant reductions in the nuclear weapons stockpile which have occurred since February 1991, when DOE originally announced its intent to prepare a PEIS for reconfiguring the nuclear weapons complex (56 FR 5590).

Through this notice, DOE again invites comments on the scope of the PEIS; announces the location, date and time for the public meetings, and provides the rules it will follow for conducting the meetings.

DATES: The dates on which each of the public scoping meetings will be held are given below The public may give oral comments or submit written comments. The submission of a written text of oral comments is also encouraged. To ensure consideration, written comments, not submitted at the public scoping meetings, must be postmarked by October 29, 1993. Late comments will be considered to the extent practicable.

ADDRESSES: Addresses for the public meeting locations are provided below.

Written comments on the scope of the PEIS should be sent to: Howard Canter, Deputy Assistant Secretary, Office of Weapons Complex Reconfiguration, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302, (202) 586–1300.

FOR FURTHER INFORMATION CONTACT: Requests for information on the DOE Nuclear Weapons Complex Reconfiguration Program, requests for copies of the Revised Reconfiguration PEIS Implementation Plan (when available), and requests for copies of the PEIS or PEIS Executive Summary (when available) may also be requested from the above address.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–4600 or 1–(800)–472–2756.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

The revised Notice of Intent (NOI) to prepare a PEIS for Reconfiguring the Nuclear Weapons Complex proposed changes in the PEIS scope reflecting the fact that the future nuclear weapons complex can be smaller and more integrated than previously envisioned in the original NOI. The changes also reflect the increased importance associated with stewardship of existing special nuclear materials that will or may be used in the future to meet national security requirements.

To ensure that the public's concerns and views on the proposed changes in the scope of the PEIS are fully considered, DOE solicits comments on the scope of the Reconfiguration PEIS from all interested individuals, organizations, and governmental entities at the Federal, state, and local levels including Indian tribes.

Public Scoping Meetings

DOE will hold public scoping meetings in Washington, D.C. and near each of the sites to be analyzed in the Reconfiguration PEIS. Each meeting will be held from 9 a.m. to 9:30 p.m., with breaks from 1 p.m. to 2 p.m. and 5 p.m. to 6:30 p.m. DOE may extend the evening sessions, depending on the number of persons wishing to speak.

During the time comments are being received, DOE representatives will also be available in a separate area at the meeting location to answer questions from members of the public.

DOE representatives will host an open house for all interested members of the public at each scoping meeting other than Washington, DC. These open houses will be held at the scoping meeting location from 6 p.m. to 9 p.m. on the evening prior to the day oral comments are received. The purpose of the open houses will be to provide an additional opportunity for members of the public to ask questions of DOE representatives.

Registration

Persons wishing to present oral comments at the public meetings are asked to register. Registration may be done at the meetings on a first-come, first-serve basis as time permits. Registration is not required for the open house.

Preregistration for all meetings is encouraged and may be done by telephoning 1–800–683–0422. Preregistration requests will be taken for each meeting up until 5 p.m. on the Friday prior to the specific meeting. Written requests for preregistration may be mailed to: Robert Menard, Oak Ridge Associated Universities/EESD, P.O. Box 117, Oak Ridge, TN 37831–0117, ATTN: Reconfiguration PEIS.

Rules of Conduct

DOE will retain a presiding officer to chair each meeting. The presiding officer will announce the order of speakers and any additional procedures necessary to conduct the meetings. DOE representatives may ask speakers to clarify their statements to assure that DOE fully understands a comment.

Preregistered speakers are requested to sign in at the meeting registration desk. Registered speakers will be given equal time to present their remarks (five minutes each). Elected officials wishing to speak for their constituencies are asked to identify their office when registering. People who wish to speak on behalf of an organization are asked to identify the organization when registering. It is requested that only one person officially represent an organization at any given meeting. Written comments will be accepted at the scoping meetings. Speakers are encouraged to provide a written text of their oral comments for the record.

Schedule of Public Scoping Meetings

Wednesday, September 8, 1993

Rocky Flats Plant

Ramada Hotel, 8773 Yates Drive, Westminster, Colorado 80030, and

Hanford Site

Shilo Inn, 50 Comstock, Richland, Washington 99352.

Wednesday, September 15, 1993

Los Alamos National Laboratory

Los Alamos Inn, 2201 Trinity Drive, Los Alamos, New Mexico 87544, and

Albuquerque

Ramada Classic, 6815 Manual, NE., Albuquerque, New Mexico 87110.

Wednesday, September 22, 1993

Lawrence Livermore National Laboratory

Holiday Inn Livermore, 720 Las Flores Road, Livermore, California 94550, and

Washington, DC

National Guard Association of the United States, Walsh Rekord Hall of States, 1 Massachusetts Avenue, NW., Washington, D.C. 20001.

Wednesday, September 29, 1993

Pantex Plant

Amarillo Civic Center, 401 S. Buchanan, Amarillo, Texas 79101, and

Oak Ridge Reservation

Pollard Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee 37830–0117.

Wednesday, October 6, 1993

Savannah River Site

North Augusta Community Center, 495 Brookside Avenue, N. Augusta, South Carolina 29841, and

West Broad YMCA, 1110 May Street, Savannah, Georgia 31401.

Wednesday, October 13, 1993

Nevada Test Site

Marjorie Barrick Museum of Natural History at the UNLV Campus, 4505 S.

Maryland Parkway, Las Vegas, Nevada 89154–4012.

Idaho Engineering Laboratory

Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402.

Supporting Documents

DOE will prepare transcripts of the scoping meetings and make these available for public review. DOE will issue a revised PEIS Implementation Plan to provide up-dated information on how the PEIS will be prepared in light of the scoping changes. DOE will announce the availability of the draft PEIS, when completed, in the **Federal Register**, and will solicit public review and comment. Comments on the draft will be considered in preparing the final PEIS.

Copies of all transcripts, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in the Revised NOI; reading rooms are repeated here for the reader's convenience.

California

U.S. Department of Energy, San Francisco Operations Office, Public Reading Room, 1301 Clay Street, room 700N, Oakland, California 94612–5208, (510) 637–1762.

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 12th Avenue, Westminster, Colorado 80030, Attention: Will-ann Lamsens, (303) 469–4435.

Florida

U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640, (813) 587–6715.

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–9162.

Missouri

U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent, Public Library, 11140 Locust Street, Kansas City, Missouri 64137, (816) 942–1780.

New Mexico-Albuquerque

U.S. Department of Energy, Public Reading Room, National Atomic Museum, 20358 Wyoming SE., Albuquerque, New Mexico 87185–5400, Attention: Diana Zepeda, (505) 845–6670/4378.

New Mexico-Los Alamos

U.S. Department of Energy, Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87545, (505) 665–2127.

Nevada

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295–1274.

Ohio

U.S. Department of Energy, Miamisburg Library, DOE Public Reading Room, 35 South Fifth Street, Miamisburg, Ohio 45342, (513) 866–1071.

South Carolina

U.S. Department of Energy Reading Room, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, (803) 641–3320.

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, Room G–209, Oak Ridge, Tennessee 37831, (615) 576–5765.

Texas

U.S. Department of Energy Reading Room, Lynn Library/Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400.

Washington

U.S. Department of Energy, Public Reading Room, Washington State University, 100 Sprout Road, Richland, Washington 99352, (509) 376–8583.

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Issued in Washington, DC, this 6th day of August, 1993.

Everet H. Beckner,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 93–19560 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–P

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR Part 600.7(b) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AGMEF), and Lawrence Berkeley Laboratory (LBL) of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AGMEF—the University of Turabo, Metropolitan University, and the Puerto Rico Junior College. The grant renewal will continue the project through May 31, 1994. The estimated amount is $1,665,000.

PROCUREMENT REQUEST NUMBER: 05–93ER75274.001.

PROJECT SCOPE: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AGMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1991. Eligibility for this award is, therefore, restricted to JSU.

FOR FURTHER INFORMATION CONTACT: Gregory A. Mills, Energy Programs Division, ER–113, U.S. Department of Energy, Oak Ridge, Tennessee 37831–8614, (615) 576–0951.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 93–19558 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–836–000, et al.]

The Montana Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 6, 1993.

Take notice that the following filings have been made with the Commission.

1. The Montana Power Company

[Docket No. ER93–836–000]

Take notice that on July 30, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission

pursuant to 18 CFR 35.13 a Supplement to Rate Schedule FERC No. 175, the General Transfer Agreement Between The Montana Power Company and the Bonneville Power Administration. Montana requests that the Commission accept the Supplement for filing, to be effective on October 1, 1993.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: August 19, 1993, in accordance with Standard Paragraph E end of this notice.

2. The Montana Power Company

[Docket No. ER93–596–000]

Take notice that on July 30, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an amendment to its original filing of a "Firm Capacity and Energy Sales Agreement Between The Montana Power Company and Sierra Pacific Power Company"; and a "Firm Capacity and Energy Sales Agreement Between The Montana Power Company and PacifiCorp." This amended filing provides additional information requested by Commission staff.

Copies of the filing were served upon Sierra Pacific Power Company and PacifiCorp.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER93–701–000]

Take notice that on July 30, 1993, FPL submitted supplemental information regarding its filing in the above-captioned docket. FPL submitted the information in response to a request from the Commission's staff.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Columbus Southern Power Company

[Docket No. ER93–637–000]

Take notice that on August 2, 1993, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company and Ohio Power Company, tendered for filing additional information in Docket No. ER93–637–000 to comply with a FERC Staff request.

A copy of the filing was served upon the City of Columbus, Ohio, American Municipal Power-Ohio Inc., and the Public Utility Commission of Ohio.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER92–316–000]

Take notice that on August 2, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company made a supplemental filing in response to the Commission's order in this proceeding.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Green Mountain Power Corporation

[Docket No. ER93–710–000]

Take notice that on August 2, 1993, Green Mountain Power Corporation (GMP) tendered for filing an amendment to correct errors in the original submittal in this docket, to submit a revised Service Agreeement for Central Vermont Public Service and to submit new Service Agreements for several Vermont municipal utilities. No terms or conditions of the Tariff are affected by this filing.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER89–48–002]

Take notice that on August 2, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power submitted revisions to the Allocation Methodology and Periodic Rate Computation Procedure Manual of the Intercompany Interchange Contract among those companies in response to the Commission's order.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER93–735–000]

Take notice that on July 19, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its June 29, 1993 filing in the above-referenced docket.

Comment date: August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. John D. Zeglis

[Docket No. ID–2801–000]

Take notice that on July 20, 1993, John D. Zeglis (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Officer, American Telephone and Telegraph Company.

Comment date: August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19463 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2256–000]

Consolidated Water Power Co.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Consolidated Water Power Company, licensee for the Wisconsin Rapids Project No. 2256, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2256 is located on the Wisconsin River in Wood County, Wisconsin.

The license for Project No. 2256 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the

licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2256 is issued to Consolidated Water Power Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Wisconsin Rapids Project No. 2256 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19458 Filed 8–12–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93–159–000]

Michigan Gas Storage Co., Proposed Changes in FERC Gas Tariff

August 9, 1993.

Take notice that Michigan Gas Storage Company (MGS), on July 30, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. MGS state that the proposed changes would increase revenues from jurisdictional sales and service by $9.6 million based on the 12-month period ending March 31, 1993, as adjusted.

MGS states that the filed tariff sheets implement a general cost of service increase from that approved by the Commission in MGS' restructuring docket (RS92–7–000). MGS states that the primary reasons for the filing are to avoid a revenue deficiency caused by increasing operating and maintenance expenses, and to include in cost of service the costs of additional pipeline facilities constructed by MGS.

MGS states that copies of the filing were served upon the Company's jurisdictional customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19466 Filed 8–12–93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2292–000]

Nekoosa Papers, Inc.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Nekoosa Papers, Inc., licensee for the Nekoosa Project No. 2292, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2292 is located on the Wisconsin River in Wood County, Wisconsin.

The license for Project No. 2292 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2292 is issued to Nekoosa Papers, Inc. for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Nekoosa Papers, Inc., is authorized to continue operation of the Nekoosa Project No. 2292 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19456 Filed 8–12–93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2255–000]

Nekoosa Papers, Inc.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Nekoosa Papers, Inc., licensee for the Centralia Project No. 2255, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2255 is located on the Wisconsin River in Wood County Wisconsin.

The license for Project No. 2255 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year and annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior

license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2255 is issued to Nekoosa Papers, Inc., for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Nekoosa Papers, Inc., is authorized to continue operation of the Centralia Project No. 2255 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19457 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2291–000]

Nekoosa Papers, Inc.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Nekoosa Papers, Inc., licensee for the Port Edwards Project No. 2291, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2291 is located on the Wisconsin River in Wood County, Wisconsin.

The license for Project No. 2291 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2291 is issued to Nekoosa Papers, Inc. for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Nekoosa Papers, Inc., is authorized to continue operation of the Port Edwards Project No. 2291 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19461 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–592–000]

Nebraska Gas Transport Co. v. KN Interstate Gas Co.; Complaint

August 9, 1993.

Take notice that on July 28, 1993, Nebraska Gas Transport Company (NebGas) filed in Docket No. CP93–592–000 a complaint against KN Interstate Gas Company (KNI) alleging KNI has engaged in unfair, discriminatory, and anticompetitive practices by denying NebGas' request for a tap on KNI's mainline.

NebGas states that it applied to KNI for a mainline tap in order to construct a local distribution line to serve irrigation well motors. NebGas states KNI denied the requested access due to KNI's policy not to bypass existing local distribution facilities.

NebGas alleges the rates charged by the existing local distribution company, KN Energy, Inc. (KN Energy), are arbitrary and not based on a reasonable rate of return. NebGas alleges that KNI's refusal to permit a tap is intended to compel NebGas to continue pay the transportation rates by KN Energy. KNI is a wholly owned subsidiary of KN Energy.

NebGas requests the Commission order KNI to grant NebGas a tap to KNI's mainline and to deliver gas to those points as required in its tariff. NebGas further requests that the Commission order its enforcement staff to commence a formal investigation of KNI's denial of NebGas' request for access to their pipeline to show if proper channels have been circumvented in response to the request.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party must file a motion to intervene in accordance with the Commission's file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 8, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19467 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93-180-000]

Tennessee Gas Pipeline Co.; Filing

August 9, 1993.

Take notice that on July 30, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff to establish a Bastian Bay Demand Surcharge to be effective September 1, 1993, consisting of the following revised tariff sheets:

Third Substitute Original Sheet No. 30
Original Sheet No. 407
Original Sheet Nos. 408–502

Tennessee states that the filing is necessary to assure that Tennessee recovers its "stranded" Bastian Bay costs without interruption.

Tennessee states that copies of the filing are being served on all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before August 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19465 Filed 8–12–93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2239–000]

Tomahawk Power and Pulp Co.; Authorization for Continued Project Operation

August 9, 1993.

On July 31, 1991, Tomahawk Power and Pulp Company, licensee for the Kings Dam Project No. 2239, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2239 is located on the Wisconsin River in Lincoln County, Wisconsin.

The license for Project No. 2239 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2239 is issued to Tomahawk Power and Pulp Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Tomahawk Power and Pulp Company is authorized to continue operation of the Kings Dam Project No. 2239 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19459 Filed 8–12–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-3-58-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

August 9, 1993.

Take notice that Valero Interstate Transmission Company (Vitco), on July 30, 1993 tendered for filing the following tariff sheet as required by Orders 483 and 483–A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2
10th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A. The change in rates to Rate Schedule S–3 includes an increase in purchased gas cost of $0.4744 per MMBtu as compared to the previously scheduled annual PGA filing in Docket No. TA93–1–56.

The proposed effective date of the above filing is September 1, 1993. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1993.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19464 Filed 8–12–93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2113–000]

Wisconsin Valley Improvement Co.; Authorization for Continued Project Operation

August 9, 1993.

On July 30, 1991, Wisconsin Valley Improvement Company, licensee for the Wisconsin Valley Project No. 2113, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2113 is located on the Wisconsin River in Marathon, Lincoln, Oneida, Vilas, and Forest Counties, Wisconsin, and Gogebic County, Michigan.

The license for Project No. 2113 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue

from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2113 is issued to Wisconsin Valley Improvement Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Wisconsin Valley Improvement Company is authorized to continue operation of the Wisconsin Valley Project No. 2113 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19460 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Intent To Prepare an Environmental Impact Statement on the Proposed Sacramento 2004 Power Marketing Program; Correction

AGENCY: Western Area Power Administration, Department of Energy (DOE).

ACTION: Correction notice.

SUMMARY: Today's notice is adding a page that was inadvertently omitted from the Tuesday, August 10, 1993 (58 FR 42536) publication of a Notice of Intent to Prepare an Environmental Impact Statement on the Proposed Sacramento 2004 Power Marketing Program.

SUPPLEMENTARY INFORMATION: The following text should be inserted in the second column before the sentence that begins "The initial scoping meetings will * * *": "This notice of intent (NOI) is published to inform interested parties of the EIS process being initiated. This NOI starts the public scoping process and provides an opportunity for interested persons to have early participation in the EIS preparation process. Issues and alternatives for possible analysis in the EIS will be sought during public scoping activities. Possible issues include: Types of power services to be marketed, length of term of power contracts, determination of preference entities to whom power will be marketed and the amount of power to be marketed to each, and transmission requirements for preference entities not directly connected to Western's transmission system. The scoping process will also help Western identify the scope of evaluation necessary, a range of alternative marketing programs, and measures intended to mitigate environmental impacts.

DATES: Initial public information and scoping meetings will be held at the following locations on the dates listed below:

August 30, 1993: Sheraton Smuggler's Inn, 3737 North Blackstone, Fresno, CA 93770, Hotel telephone (209) 226–2200.

September 1, 1993: Holiday Inn Holidome, 5321 Date Avenue, Sacramento, CA 95841, Hotel telephone (916) 338–5800.

September 2, 1993: Red Lion Inn, 1830 Hilltop Drive, Redding, CA 96002, Hotel telephone (916) 221–8700.

Issued at Washington, DC, August 11, 1993.

Joel K. Bladow,

Assistant Administrator for Washington Liaison.

[FR Doc. 93–19740 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–P

Phoenix Area Projects Proposed Rate Adjustments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice extending the comment and consultation period for the Parker-Davis Project Proposed Rate Adjustments.

SUMMARY: The Western Area Power Administration (Western) is announcing an extension to the comment and consultation period for the rate adjustments for the Parker-Davis Project (P–DP). The original schedule for the comment and consultation period was announced in the **Federal Register** notice on May 8, 1992, at 57 FR 19904. The comment and consultation period was to end on August 6, 1992. Western issued another notice in the **Federal Register** on August 6, 1992, at 57 FR 34776 announcing the rescheduling of public forums and extending the comment and consultation period to September 28, 1992. On July 13, 1993, Western issued a third **Federal Register** notice at FRN 58 37731–37732 reopening the comment and consultation period on the proposed P–DP rate adjustments. The comment and consultation period would end August 2, 1993.

In response to significant increases in purchase power costs, Western informed the P–DP customers by letter June 29, 1993, that the comment and consultation period was reopened and that the public information and public comment forums would be held on July 14, 1993.

On July 14, 1993, Western held another public information forum and public comment forum for the P–DP rate adjustments. Due to the high level of customer concerns, Western has once again extended the comment and consultation period to end on September 4, 1993. Customers were informed of the extension by letter July 27, 1993.

Following the close of the comment and consultation period, Western will prepare, if necessary, another power repayment study for the P–DP which will include any changes due to consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Assistant Secretary for Energy Efficiency and Renewable Energy to be placed in effect on an interim basis as provisional rates and submitted to the Federal Energy Regulatory Commission for approval on a final basis.

EFFECTIVE DATE: The comment and consultation period for the P–DP rate adjustments will end on September 4 1993. Written comments should be received by the end of the comment and consultation period to be assured consideration. Comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area

Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P–DP are established pursuant to the various laws cited in the initial **Federal Register** notice at 57 FR 19904.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Issued at Golden, Colorado, August 5, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–19557 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4692–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 13, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Synthetic Fiber Production Facilities (Subpart HHH)–Information Requirements (EPA ICR No. 1156.06; OMB No. 2060–0059). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that use the solvent-spun synthetic fiber process and produce more than 500 megagrams of fiber per year must provide EPA, or the delegated State regulatory authority, with one-time notifications and the results of the initial performance test, and must keep records, as required of all facilities subject to the general NSPS requirements. The subject facilities must also report the results of subsequent quarterly performance tests that indicate when VOC emissions exceed the standards. The provisions of this subpart do not apply to facilities that use the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber.

The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 5.9 hours per response for reporting and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that use the solvent-spun synthetic fiber process and produce more than 500 megagrams of fiber per year.

Estimated No. of Respondents: 27.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,325 hours.

Frequency of Collection: One-time notifications and performance test results for new facilities; quarterly reports for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, ffice of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19480 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL 4694–3]

Acid Rain Program; Draft Permits and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-page Phase I Acid Rain permits to 26 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on draft permits must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed at the addresses listed in "**SUPPLEMENTARY INFORMATION.**"

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

For plants in Maryland, Pennsylvania, Virginia and West Virginia: Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107.

For plants Georgia: Winston Smith, Director, Air, Pesticides and Toxics Managements Division, EPA Region 4, 345 Courtland Ave. NE., Atlanta, GA 30365;

For plants in Illinois, Indiana, Michigan and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about the draft permits:

For Conemaugh, Jim Topsale at (215) 597–6553, for Brunner Island, Chalk Point, C P Crane, Dickerson, Morgantown, Potomac River, and Sunbury, Kimberly Peck at (215) 597–9839, for Portland, David Campbell at (215) 597–9781. Air, Radiation and

Toxics Division, EPA Region 3 (3AT–22), (address above).

For plants in Georgia, Brian Beals at (404) 347–5014, Air, Pesticides and Toxics Management Division, EPA Region 4, (address above).

For plants in Illinois and Indiana, Cecelia Mijares at (312) 886–0968, for plants in Michigan and Wisconsin, Beth Burns (312) 886–2703. Air and Radiation Division, EPA Region 5 (A–18J), (address above).

SUPPLEMENTARY INFORMATION:

Permits

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996–99.

EPA recently stated, in a July 16, 1993 **Federal Register** notice, that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. *Id.* As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. *Id.* EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996–1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after that date to add units to the plans. *Id.* Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer action on the plans for 1995–99. Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the units, EPA also intends to defer action on those plans for 1995–99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking. In cases where a unit is designated in both a substitution plan as a substitution unit and a reduced utilization plan as a compensating unit, one type of plan can be activated only for years in which the other type of plan designating the unit is not activated. While a unit may be designated as a substitution unit in more than one conditional substitution plan, that substitution unit cannot be in more than one activated plan. Further, the activation of a reduced utilization plan for a substitution unit is contingent on the activation of the substitution plan designating the substitution unit. In addition, the reduced utilization plan designating a compensating unit can only be activated for years in which a reduced utilization plan designating sulfur-free generation for that compensating unit is not activated. EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for the following utility plants:

Region 3

C P Crane in Maryland: 10,058 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each year 1995–1999 and 2,434 Phase I Extension Reserve (Reserve) allowances in each year 1995–1999 to unit 1; 8,987 Table 1 allowances in each year 1995–1999 to unit 2; and a Phase I extension plan in which unit 1 is a transfer unit for Conemaugh. The designated representative is Ronald W. Lowman.

Chalk Point in Maryland: 21,333 Table 1 allowances in each year 1995–1999 and 4,070 Reserve allowances in each year 1995–1996 to unit 1; 23,690 Table 1 allowances in each year 1995–1999 to unit 2; 9,107 substitution allowances in 1995 to unit 3; 2,476 substitution allowances in 1995 to unit 4; a Phase I extension plan in which unit 1 is a transfer unit for Conemaugh; ten conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate units 3 and 4, Dickerson units 1, 2 and 3, and Potomac River units 1, 2, 3, 4 and 5 as substitution units; two conditional substitution plans, one for each substitution unit, in which Morgantown units 1 and 2 designate units 3 and 4 as substitution units; sixteen conditional reduced utilization plans for 1995, two for each compensating unit, in which units 1 and 2 designate Dickerson units 1, 2, and 3, and Potomac River units 1,2,3,4 and 5 as compensating units; and ten conditional reduced utilization plans, one for each unit 1 and 2 for each year 1995–1999, that rely on energy conservation and improved unit efficiency measures. A Phase I extension plan naming unit 2 as control unit is not approved. The Designated representative is James S. Potts.

Dickerson in Maryland: 11,932 substitution or compensating unit allowances in 1995 to unit 1; 11,451 substitution or compensating unit allowances in 1995 to unit 2; 12,049 substitution or compensating unit allowances in 1995 to unit 3; three conditional substitution plans for 1995, one for each substitution unit, in which Chalk Point units 1 and 2 designate units 1, 2 and 3 as substitution units; three conditional substitution plans for 1995, one for each substitution unit, in which Morgantown units 1 and 2 designate units 1, 2 and 3 as substitution units; and twelve conditional reduced utilization plans for 1995, four for each compensating unit, in which Chalk Point units 1 and 2, and Morgantown units 1 and 2 designate units 1, 2 and 3 as compensating units. The designated representative is James S. Potts.

Morgantown in Maryland: 34,332 Table 1 allowances in each year 1995–1999 and 5,532 reserve allowances in each year 1995–1996 to unit 1; 37,467 Table 1 allowances in each year 1995–1999 and 8,125 Reserve allowances in each year 1995–1996 to unit 2; a Phase I extension plan in which units 1 and 2 are transfer units for Conemaugh; ten conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate Chalk Point units 3 and 4, Dickerson units 1, 2 and 3, and Potomac River units 1, 2, 3, 4 and 5 as substitution units; sixteen conditional reduced utilization plans for 1995, two for each compensating unit, in which units 1 and 2 designate Dickerson units 1, 2 and 3, and Potomac River units 1, 2, 3, 4 and 5 as compensating units; and ten reduced utilization plans, one for each unit 1 and 2 for each year 1995–1999, that rely on energy conservation and improved

unit efficiency measures. The designated representative is James S. Potts.

Brunner Island in Pennsylvania: 27,030 Table 1 allowances in each year 1995–1999 to unit 1; 30,282 Table 1 allowances in each year 1995–1999 and 1,713 Reserve allowances in each year 1995–1996 to unit 2; 52,404 Table 1 allowances in each year 1995–1999 and 8,167 Reserve allowances in each year 1995–1996 to unit 3; and a Phase I extension plan in which units 2 and 3 are transfer units for Conemaugh. The designated representative is Robert G. Byram.

Conemaugh in Pennsylvania: 58,217 Table 1 allowances in each year 1995–1999, and the following Reserve allowances to unit 1: 38,377 in 1995, 37,161 in 1996, 23,233 in 1997, 23,789 in 1998 and 23,167 in 1999; 64,701 Table 1 allowances in each year 1995–1999 and the following Reserve allowances to unit 2: 21,052 in each year 1995–1996, 26,965 in 1997, 26,203 in 1998 and 26,906 in 1999; and a Phase I extension plan that requires units 1 and 2 to install qualifying Phase I control technology and that name the following as transfer units: C P Crane unit 1, Chalk Point unit 1, Morgantown units 1 and 2, Brunner Island units 2 and 3, Portland units 1 and 2, Sunbury units 3 and 4, Jack McDonough unit MB1 and Wansley unit 2. The designated representative is Alfred A. Slowik.

Portland in Pennsylvania: 5,784 Table 1 allowances in each year 1995–1999 and 3,589 Reserve allowances in each year 1995–1996 to unit 1; 9,961 Table 1 allowances in each year 1995–1999 and 7,348 Reserve allowances in 1995–1999 to unit 2; and a Phase I extension plan in which units 1 and 2 are transfer units for Conemaugh. The designated representative is Charles S. Mowbray.

Sunbury in Pennsylvania: 8,530 Table 1 allowances in each year 1995–1999 and 603 Reserve allowances in each year 1995–1996 to unit 3; 11,149 Table 1 allowances in each year 1995–1999 and 243 Reserve allowances in each year 1995–1996 to unit 4; and a Phase I extension plan in which units 3 and 4 are transfer units for Conemaugh. The designated representative is Robert G. Byram.

Potomac River in Virginia: 1,913 substitution or compensating unit allowances in 1995 to unit 1; 1,958 substitution or compensating unit allowances in 1995 to unit 2; 3,339 substitution or compensating unit allowances in 1995 to unit 3; 3,593 substitution or compensating unit allowances in 1995 to unit 4; 3,489 substitution or compensating unit allowances in 1995 to unit 5; five conditional substitution plans for 1995, one for each substitution unit, in which Chalk Point units 1 and 2 designate units 1, 2, 3, 4 and 5 as substitution units; five conditional substitution plans for 1995, one for each substitution unit, in which Morgantown units 1 and 2 designate units 1, 2, 3, 4 and 5 as substitution units; and twenty conditional reduced utilization plans for 1995, four for each compensating unit, in which Chalk Point units 1 and 2 and Morgantown units 1 and 2 designate units 1, 2, 3, 4 and 5 as compensating units. The designated representative is James S. Potts.

Region 4

Jack McDonough in Georgia: 19,386 Table 1 allowances in each year 1995–1999, 13,904 Reserve allowances in 1995 and 13,487 Reserve allowances in 1996 to unit MB1; 20,058 Table 1 allowances in each year 1995–1999 to unit MB2; and a Phase I extension plan in which unit MB1 is a transfer unit for Conemaugh. The designated representative is K.E. Adams.

Wansley in Georgia: 68,908 Table 1 allowances in each year 1995–1999 to unit 1; 63,708 Table 1 allowances in each year 1995–1999 and 50,093 Reserve allowances in each year 1995–1996 to unit 2; and a Phase I extension plan in which unit 2 is a transfer unit for Conemaugh. The designated representative is K.E. Adams.

Region 5

Collins in Illinois: 1,263 substitution allowances in 1995 to unit 1; 1,079 substitution allowances in 1995 to unit 2; 1,905 substitution allowances in 1995 to unit 3; 1,555 substitution allowances in 1995 to unit 4; 1,722 substitution allowances in 1995 to unit 5; three substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 1, 2 and 3 as substitution units; two conditional substitution plans for 1995, one for each substitution unit, in which Kincaid unit 1 and 2 designates unit 4 and 5 as substitution units; and five conditional reduced utilization plans, one for each unit 1, 2, 3, 4 and 5, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Crawford in Illinois; 3,438 substitution or compensating unit allowances in 1995 to unit 7; 5,325 substitution or compensating unit allowances in 1995 to unit 8; two conditional substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 7 and 8 as substitution units; four conditional reduced utilization plans for 1995, two for each compensating unit, in which Kincaid units 1 and 2 designated units 7 and 8 as compensating units; and two conditional reduced utilization plans, one for each unit, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Fisk in Illinois: 3,424 substitution or compensating unit allowances in 1995 to unit 19; a conditional substitution plan for 1995 in which Kincaid unit 1 and 2 designate unit 19 as a substitution unit; two conditional reduced utilization plans for 1995, in which Kincaid units 1 and 2 designate unit 19 as a compensating unit; and a conditional reduced utilization plan for unit 19 that relies on sulfur-free generation. The designated representative is Emerson W. Lacey.

Joliet 9 in Illinois: 5,595 substitution allowances in 1995 to unit 5; a conditional substitution plan for 1995 in which Kincaid units 1 and 2 designate unit 5 as a substitution unit; and a conditional reduced utilization plan for unit 5 that relies on sulfur-free generation. The designated representative is Emerson W. Lacey.

Joliet 29 in Illinois: 5,549 substitution or compensating unit allowances in 1995 to unit 71: 4,523 substitution or compensating unit allowances in 1995 to unit 72; 5,200 substitution or compensating unit allowances in 1995 to unit 81; 5,389 substitution or compensating unit allowances in 1995 to unit 82; two conditional substitution plans for 1995, one in which Kincaid units 1 and 2 designate units 71 and 72 as substitution units, and one in which Kincaid units 1 and 2 designate units 81 and 82 as substitution units; four conditional reduced utilization plans for 1995, two for units 71 and 72 and two for units 81 and 82, one in which Kincaid unit 1 designates each pair as compensating units and one in which Kincaid unit 2 designates each pair as compensating units; and four conditional reduced utilization plans, one for each unit 71, 72, 81 and 82, that rely on sulfur-free generation. The designated representative is Emerson W. Lacy.

Kincaid in Illinois: 34,564 Table 1 allowances in each year 1995–1999 to unit 1; 37,063 Table 1 allowances in each year 1995–1999 to unit 2; three substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate Collins units 1, 2 and 3 as substitution units; 19 conditional substitution plans for 1995, one for each substitution unit or pair of units in which units 1 and 2 designate Collins units 4, Collins unit 5, Crawford unit 7, Crawford unit 8, Fisk unit 19, Joliet 29

units 71 and 72, Joliet 29 units 81 and 82, Joliet 9 unit 5, Powerton units 51 and 52, Powerton unit 61 and 62, Waukegan unit 7, Waukegan unit 8, Waukegan unit 17, Will County unit 1, Will County unit 2, Will County unit 4, State Line unit 3, and State Line unit 4 as substitution units; 20 conditional reduced utilization plans for 1995, 10 each for units 1 and 2, that designate the following units or pairs of units: Crawford unit 7, Crawford unit 8, Fisk unit 19, Joliet 29 units 71 and 72, Joliet 29 units 81 and 82, Waukegan unit 7, Waukegan unit 8, Will County unit 3, Will County unit 4, and State Line unit 3 as compensating units; and two conditional reduced utilization plans for units 1 and 2 that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Powerton in Illinois: 8,026 substitution allowances in 1995 to unit 51; 7,929 substitution allowances in 1995 to unit 52; 8,156 substitution allowances in 1995 to unit 61; 8,220 substitution allowances in 1995 to unit 62; two conditional substitution plans for 1995, one in which Kincaid units 1 and 2 designate units 51 and 52 as substitution units and one in which Kincaid units 1 and 2 designate units 61 and 62 as substitution units; and four reduced utilization plans, one for each unit 51, 52, 61 and 62, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Waukegan in Illinois: 6,002 substitution or compensating unit allowances in 1995 to unit 7; 4,758 substitution or compensating unit allowances in 1995 to unit 8; 1,427 substitution or compensating unit allowances in 1995 to unit 17; three conditional substitution plans, one for each compensating unit, in which Kincaid units 1 and 2 designate units 7, 8 and 17 as substitution units; four conditional reduced utilization plans for 1995, two for each compensating unit, one in which Kincaid unit 1 designates unit 7 and unit 8 as compensating units and one in which Kincaid unit 2 designated unit 7 and unit 8 as compensating units; and three conditional reduced utilization plans, one for each unit 7, 8 and 17, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Will County in Illinois: 2,428 substitution or compensating unit allowances in 1995 to unit 1; 2,381 substitution or compensating unit allowances in 1995 to unit 2; 4,940 substitution or compensating unit allowances in 1995 to unit 3; 8,682 substitution or compensating unit allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 1, 2, 3 and 4 as substitution units; four conditional reduced utilization plans for 1995, two for each compensating unit, in which Kincaid unit 1 designates unit 3 and unit 4, and Kincaid unit 2 designates unit 3 and unit 4; and four conditional reduced utilization plans for units 1, 2, 3 and 4 that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

State Line in Indiana: 3,282 substitution or compensating unit allowances in 1995 to unit 3; 5,735 substitution or compensating unit allowances in 1995 to unit 4; two conditional substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 3 and 4 as substitution units; two conditional reduced utilization plans for 1995 in which Kincaid units 1 and 2 designate unit 3 as a compensating unit; and two conditional reduced utilization plans for units 3 and 4 that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Presque Isle in Michigan: 81 compensating unit allowances in 1995 to unit 2; 2,335 compensating unit allowances in 1995 to unit 3; 2,005 compensating unit allowances in 1995 to unit 4; 3,554 compensating unit allowances in 1995 to unit 5; 3,571 compensating unit allowances in 1995 to unit 6; 2,065 compensating unit allowances in 1995 to unit 7; 1,949 compensating unit allowances in 1995 to unit 8; 1,437 compensating unit allowances in 1995 to unit 9; and the parts of 32 conditional reduced utilization plans for 1995, four for each compensating unit, in which North Oak Creek unit 1, South Oak Creek unit 8, Valley unit 4 and Port Washington unit 4 designate units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units. The designated representative is Jere M. Jacobi.

North Oak Creek in Wisconsin: 5,083 Table 1 allowances in each year 1995–1999 to unit 1; 5,005 Table 1 allowances in each year 1995–1999 to unit 2, 5,229 Table 1 allowances in each year 1995–1999 to unit 3; 6,154 Table 1 allowances in each year 1995–1999 to unit 4; four conditional reduced utilization plans, one each for units 1, 2, 3 and 4, that rely on energy conservation measures and sulfur-free generation; the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 1 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units and the parts of these plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

Port Washington in Wisconsin: 1,968 substitution allowances in 1995 to unit 1; 3,782 substitution allowances in 1995 to unit 2; 3,108 substitution allowances in 1995 to unit 3; 2,745 substitution allowances in 1995 to unit 4; 3,412 substitution allowances in 1995 to unit 5; five conditional substitution plans for 1995, one for each substitution unit, in which South Oak Creek unit 5 designates units 1, 2, 3, 4 and 5 as substitution units; five conditional reduced utilization plans, one each for units 1, 2, 3, 4 and 5, that rely on energy conservation and measures and sulfur-free generation; and the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 4 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units, and the parts of these plans for 1995–1999 that rely on energy conservation and measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

South Oak Creek in Wisconsin: 9,416 Table 1 allowances in each year 1995–1999 to unit 5, 11,723 Table 1 allowances in each year 1995–1999 to unit 6; 15,754 Table 1 allowances in each year 1995–1999 to unit 7; 15,375 Table 1 allowances in each year 1995–1999 to unit 8; nine conditional substitution plans for 1995, one for each compensating unit, in which unit 5 designates Port Washington units 1, 2, 3, 4 and 5, and Valley units 1, 2, 3 and 4 as substitution units; a conditional reduced utilization plan for unit 8 that relies on energy conservation measures and sulfur-free generation; and the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 8 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units, and the parts of these plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

Valley in Wisconsin: 3,675 substitution allowances in 1995 to unit 1; 3,713 substitution allowances in 1995 to unit 2; 3,404 substitution allowances in 1995 to unit 3; 3,311 substitution allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which South Oak Creek unit 1 designates units 1, 2, 3 and 4 as substitution units; four conditional reduced utilization plans, one each for unit 1, 2, 3 and 4, that rely on energy conservation measures and sulfur-free generation; the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit,

in which unit 4 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units, and the parts of these plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

Addresses

The administrative records for each plant may be viewed during normal operating hours at the following locations:

Region 3

For plants in Maryland, Pennsylvania, Virginia and West Virginia: EPA Region 3,841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

Region 4

For plants in Georgia: (1) EPA Region 4 Library, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347–4216; (2) Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, GA 30354, (404) 368–7000, and (3) the additional locations for each plant:

For Wansley: Heard County Public Library, 564 Main St., Franklin, GA 30217, (706) 675–6501.

For Jack McDonough: Cobb County Library, 266 Roswell St., Marietta, GA 30060, (404) 528–2346.

Region 5

For plants in Illinois: (1) EPA Region 5, Ralph H. Metcalfe Federal Bldg., Room 1822, 77 West Jackson Blvd., Chicago, IL 60604, and (2) Illinois Environmental Protection Agency Library, 2200 Churchill Road, Springfield, IL 62706.

For plants in Indiana: EPA Region 5, (address above).

For plants in Michigan: Michigan Department of Natural Resources, Air Quality Division, Steven T. Mason Bldg., 4th Fl., 530 W. Alleghan, Lansing, MI 48933.

For plants in Wisconsin: (1) EPA Region 5, (address above), and (2) Wisconsin Department of Natural Resources, 101 S. Webster St., 7th Floor, Madison, WI 53703.

Dated: August 10, 1993.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–19547 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4690–6]

Clean Air Act Advisory Committee Request for Candidates

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The charter for the CAAAC was reissued and the Committee was authorized to be extended until November 19, 1994 under regulations established by the Federal Advisory Committee Act (FACA).

While the CAAAC has been reauthorized, the membership of the Committee expired on March 31, 1993. At this time, EPA requests nominations of candidates for membership on this Advisory Committee. The membership of the Committee will represent a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members will be drawn from: Business and industry; academic institutions; state and local governmental bodies; environmental and nongovernmental organizations; unions and service groups.

DATE: Submit nominations of candidates no later than September 17, 1993. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates are asked to submit a brief statement that summarizes their background, experience, qualification and other relevant information as a part of the review process.

ADDRESSES: Submit suggestions for the list of candidates to Paul Rasmussen, Advisory Committee Nominations, Office of Air and Radiation, (ANR–443), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Fax number: 202–260–8509.

FOR FURTHER INFORMATION CONTACT: Paul Rasmussen at the above address, or call 202–260–7430. The Agency will not formally respond to nominations until the Committee's membership has been chosen.

SUPPLEMENTARY INFORMATION: The CAAAC has been established to advise EPA on the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Clean Air Act of 1990. The programs falling under the purview of the CAAAC include those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing air toxics emissions, issuing operating permits and collecting fees, and carrying out new and expanded compliance authorities. The Clean Air Act Advisory Committee may advise on issues that cut across several program areas.

The responsibilities of the Advisory Committee include providing the Agency with advice on the following:

- Approaches for new and expanded programs, including those using innovative or market-based means to achieve environmental improvements.
- Potential health, environmental, and economic effects of programs required by the 1990 amendments and potential impacts on the public, the regulated community, state and local governments and other Federal agencies.
- Policy and technical contents of proposed major EPA rulemaking and guidance required by the Clean Air Act in order to help effectively incorporate appropriate outside advice and information.
- Integration of existing policies, regulations, standards, guidelines, and procedures in programs for implementing requirements of the Act.

The Committee shall be composed of some 25 to 30 members. Meetings will be open to all interested parties. Committee members shall serve two-year terms, or until the termination of the CAAAC, whichever comes first.

Members of the Committee shall be selected on the basis of their qualifications and diversity of perspectives that will enable them to provide advice and guidance to the Agency in implementing the Clean Air Act of 1990. Both previous members of the CAAAC interested in reappointment to the Committee and newly nominated candidates will be considered for membership.

The Advisory Committee will be authorized to form subcommittees to consider specific issues or actions and report back to the Committee.

Meetings will be held at least four times a year or as necessary, as determined by the Chairperson.

No honoraria or salaries are contemplated in association with membership on the Advisory Committee, but compensation for travel and nominal daily expenses while attending meetings may be provided.

The Agency intends to hold the initial meeting of the reauthorized Clean Air Act Advisory Committee in Washington, D.C. in the month of November, 1993.

Suggestions for the list of candidates should be submitted no later than September 17, 1993.

Dated: August 3, 1993.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–19481 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4623–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements filed August 2, 1993 through August 6, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930262, DRAFT EIS, AFS, NM, Angostura Diversity Unit Vegetative Management Plan, Implementation, Timber Harvesting and Regrowing, Carson National Forest, Camino Real Ranger District, Taos County, NM, Due: November 8, 1993, Contact: Carol Holland (505) 587–2255.

EIS No. 930263, FINAL EIS, FHW, MT, Shiloh Road Interchange Project, Construction, I–90 in the vicinity of the existing Shiloh Road Overpass (I–90 milepost 443) and Improvements to the South Frontage Road, Funding and Section 404 Permit, between the Cities of Laurel and Billing, Yellowstone County, MT, Due: September 13, 1993, Contact: Dale W. Paulson (406) 449–5305.

EIS No. 930264, DRAFT EIS, COE, NC, Wilmington Harbor Channel Widening and Navigation Improvement, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC, Due: September 27, 1993, Contact: Hugh Heine (919) 251–4070.

EIS No. 930265, FINAL EIS, AFS, ID, Big Eightmile, North Fork of Timber and Alder Creek Timber Sale, Reforestation and Road Construction, Implementation, Lemhi Range Roadless Area, Salmon National Forest, Lemhi County, ID, Due: September 13, 1993, Contact: Lynn M. Bennett (208) 756–2215.

EIS No. 930266, FINAL EIS, BLM, UT, Diamond Mountain Resource Area, Resource Management Plan, Implementation, Daggett, Duchesne and Uintah Counties, UT, Due: September 13, 1993, Contact: Jean Nitschke-Sinclear (801) 781–4400.

EIS No. 930267, FINAL EIS, NOA, NC, FL, SC, GA, South Atlantic Region Shrimp Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ), NC, SC, FL and GA, Due: September 13, 1993, Contact: Nancy Foster (301) 713–2341.

EIS No. 930268, FINAL EIS, AFS, ID, Moyer Salt Timber Sale, Timber Harvest and Road Construction/ Reconstruction, Implementation, Salmon National Forest, Cobalt Ranger District, Lemhi County, ID, Due: September 13, 1993, Contact: Lynn M. Bennett (208) 756–2215.

EIS No. 930269, DRAFT EIS, COE, WI, East Channel of the Mississippi River at Prairie du Chien Long-Term Channel Maintenance Plan and St. Feriole Island and Adjacent Mainland Barge Transloading Facility Upgrading and Expansion, Implementation and COE Permits, Prairie du Chien, WI, Due: September 27, 1993, Contact: Dennis Anderson (612) 220–0272.

EIS No. 930270, DRAFT EIS, SFW, OR, Hart Mountain National Antelope Refuge Comprehensive Management Plan, Implementation, Lake County, OR, Due: September 27, 1993, Contact: Barry Reiswig (503) 947–3315.

EIS No. 930271, FINAL EIS, FHW, MI, Grand Rapids South Beltline Construction, I–196 in Ottawa County to I–96 in Kent County, Funding and COE Section 404 Permit, Ottawa and Kent Counties, MI, Due: September 13, 1993, Contact: Norman Stoner (517) 377–1851.

EIS No. 930272, DRAFT EIS, NIH, MD, William H. Natcher Building, Phase II Construction and Consolidation, Located on National Institutes of Health Bethesda Campus, Funding and NPDES Permit, Montgomery County, MD, Due: September 27, 1993, Contact: Thomas Flavin (301) 496–5787.

Amended Notices

EIS No. 930183, DRAFT EIS, AFS, AK, Ushk Bay Timber Sale, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Chichagof Island, AK, Due: August 25, 1993, Contact: Michael Weber (907) 747–6671. Published FR 6–11–93—Review period extended.

EIS No. 930211, FINAL EIS, FHW, PA, PA–33 Extension, US 22 Interchange in Bethlehem Township to I–78 Interchange in Lower Saucon Township, Funding and COE Section 404 Permit, Northampton County, PA, Due: August 20, 1993, Contact: Manuel A. Marks (717) 782–4422. Published FR–6–25–93—Review period extended.

EIS No. 930239, DRAFT SUPPLEMENT. COE, MS, Mississippi River and Tributaries Flood Control, Updated Information, Upper Yazoo Projects (UYP), Yazoo River Basin, several Counties, MS, Due: September 7, 1993, Contact: Gary Young (601) 631–5906. Published FR 7–23–93—Due Date Correction.

Dated: August 10, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–19548 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4623–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 26, 1993 through July 30, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–L65198–OR Rating EC2, Ochoco National Forest and Crooked River National Grassland Revised Land and Resource Management Plan for Standards and Guidelines Regarding Oil and Gas Leasing, Implementation, Grant, Crook, Wheeler, Jefferson and Harney Counties, OR.

Summary: EPA expressed environmental concerns based on the potential for adverse water quality effects. Additional information regarding surface to groundwater effects, air quality effects, and mitigation feedback were requested.

ERP No. D–BLM–G65055–OK Rating EC2, Oklahoma Comprehensive Land and Resource Management Plan for Oil and Gas Leasing and Development, Coal Tract Leasing, Townsite Disposal and Red River Management, Tulsa District, several Counties, OK.

Summary: EPA expressed environmental concerns and requested additional information in the following areas: the preferred alternative and the basis for its selection should be clearly described; mitigation measures for protecting surface waters and ground water from oil and gas activities should

be identified; the proposed use and associated impacts from disposal wells should be addressed; and the presence of prime farmlands in the project area as well as mitigation to protect these soils should be evaluated.

ERP No. D-BLM-K67018-CA Rating EC2, Fort Cady Minerals Solution Mining Project, Construction and Operation, Associated Right-of-Way Grants and Mineral Material Sales Permits, San Bernardino County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to surface water and groundwater resources and the need for additional information in the Final EIS regarding potential impacts to water resources, measures to mitigate project impacts, and Federal Underground Injection Control requirements as mandated by the Federal Safe Drinking Water Act. EPA noted that it would be responsible for permitting and enforcement associated with any Class III underground injection wells needed by the project.

ERP No. D-FHW-B40075-MA Rating EC2, I-495 Interchange Project, Construction between Route 9 and Route 20 Interchange to provide access to Crane Meadow Road, Funding, Right-of-Way, NPDES and COE Section 404 Permits, Marlborough and Southborough, MA.

Summary: EPA had environmental concerns regarding additional measures to be evaluated to protect water supply resources and water quality, and the need to prepare a compensatory mitigation plan to offset adverse wetland impacts. Additionally, EPA expressed concern that air quality benefits from the proposed action would be offset in the future from project support secondary development and increase in vehicle miles traveled. EPA recommended evaluation of Transportation Demand Management alternatives to reduce use of single occupant vehicles.

ERP No. D-FHW-B40130-RI Rating EC2, I-195 Transportation Improvements, between the west end of the Washington Bridge and Interstate Route I-95 through Providence, Funding, COE Section 404 and US Coast Guard Bridge Permits, Providence County, RI.

Summary: EPA expressed environmental concerns based on the need of additional information for the evaluation of impacts to water quality, testing and handling of urban fill soils potentially contaminated by hazardous materials, and mitigation necessary to offset impacts to waters of the United States. EPA recommended that this information be included in the Final EIS.

ERP No. D-FHW-L40183-WA Rating EC2, I-5/196th Street SW/WA-524 Interchange Project, Improvements, Funding, NPDES and COE Section 404 Permits, Snohomish County, WA.

Summary: EPA had environmental concerns based on potential wetland impacts particularly to the unique pine bog community and potential water quality impacts. Additional information is needed on wetland mitigation plans and on water quality mitigation measures.

ERP No. D-FTA-L40200-OR Rating EC2, Hillsboro Corridor Transit Improvements, Implementation, Between SW. 185th Avenue and downtown Hillsboro, Funding, Washington, Clackamas and Multnomah Counties, OR and Clark County, WA.

Summary: EPA had environmental concerns based on the potential for adverse water quality effects. EPA had requested additional information about mitigation measures, mitigation effectiveness, mitigation feedback, and monitoring plans.

Final EISs

ERP No. F-NPS-B61018-VT Appalachian National Scenic Trail Protection from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT.

Summary: EPA continued to object to the National Park Service's proposed relocation of the Appalachian Trail (AT) in Vermont. EPA stated that the choice of an alternative for protecting the existing AT should not be based on whether it potentially affects future ski area development, but on which alternative maximizes protection for the Trail.

Dated: August 10, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-19549 Filed 8-12-93; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4693-9]

Review of a Draft Epidemiology and Human Data Chapter for the Reassessment of Dioxin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of upcoming activities regarding EPA's Reassessment of Dioxin.

SUMMARY: The EPA has scheduled a peer-review workshop to be held on September 7 and 8, 1993, from 9 a.m. to 5 p.m. to review a revised draft of Chapter 7, Epidemiology/Human Data, which will be part of a future *Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds*. The health assessment document is one component of the Agency's reassessment of dioxin.

The draft chapter on epidemiology and other human data is being made available in advance of the workshop as part of the Agency's continuing commitment to conduct the reassessment of dioxin in an open and participatory manner, to keep the public informed of its progress, and to encourage public participation in the document development process. The public is invited to attend the workshop, to present oral comments, and/or to submit written comments. Seating will be limited, and advance reservations are suggested. Information about attending the meeting and obtaining a copy of the draft chapter is provided elsewhere in this notice. At the workshop, a panel of scientific experts from outside the Agency will review the draft epidemiology and human data chapter which, at this stage, is preliminary, developmental, and does not represent Agency policy. Since the chapter evaluates only the human data components of the overall database on dioxin and related compounds, no general conclusions regarding the potential health effects or classification of these compounds will be presented. The chapter will ultimately be part of a full draft health assessment of 2,3,7,8-TCDD and related compounds, which will be completed following this workshop. It is this full draft document that will present EPA's tentative conclusions on the human health consequences of exposure to dioxin. An External Review Draft of the *Health Assessment Document for 2,3,7,8-TCDD and Related Compounds* will be released for public review and comment and review by the Agency's Science Advisory Board.

DATES: The peer-review workshop to review the draft epidemiology and human data chapter will be held September 7, and 8, 1993.

ADDRESSES: Eastern Research Group, Inc. (ERG), an EPA contractor, is providing logistical support for the peer-review workshop. The meeting will be held at The Ritz-Carlton, Pentagon City, in Arlington, Virginia. Members of the public wishing to register to attend the meeting may phone ERG at 617-674-7374 between 9 a.m. and 5 p.m. Eastern Daylight Time. Members of the public who wish to present formal statements at the meeting should phone Helen

Murray (ERG) at 617–674–7307 to request a time slot. Time will be limited in order to give everyone an equal opportunity to speak. Individuals and organizations who are not assigned a time in advance of the workshop will be heard as time permits. In addition, during the meeting some time will be designated for questions and comments from the floor to encourage interactions among authors, peer-panel members, and the other meeting attendees.

Members of the public may also submit written comments and other materials relevant to the topic to: Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02173–3198, Attention: Helen Murray. Comments will be accepted up to 10 working days following the meeting. After that time, written comments should be directed to: Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

ATTENTION:

Dioxin Reassessment

To obtain a copy of the draft epidemiology and human data chapter, interested parties should contact the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566. Please provide your name, mailing address, and the chapter title and EPA number as follows: Chapter 7. Epidemiology/ Human Data, EPA/600/AP–92/001g (Revised June 1993).

The draft chapter also will be provided for inspection at the ORD Public Information Shelf, EPA Headquarters Library, 401 M Street, SW., Washington, DC 20460, between the hours of 10 a.m. and 4 p.m., Monday through Friday, except for Federal holidays, and at all of the EPA Regional and Laboratory libraries.

FOR FURTHER INFORMATION CONTACT: For copies of the document: ORD Publications Center, CERI–FRN, Office of Research and Development, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566.

For questions on the epidemiology and human data chapter: David Bayliss, Human Health Assessment Group, Office of Health and Environmental Assessment (RD–689), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–5726; fax (202) 260–3803.

For questions on the overall reassessment of dioxin: William Farland, Office of Health and Environmental Assessment (RD–689), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7315; fax (202) 260–0393.

SUPPLEMENTARY INFORMATION:

History of the Scientific Reassessment of Dioxin

In April 1991, EPA announced that it would conduct a scientific reassessment of the health risks of exposure to 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and chemically similar compounds collectively known as dioxin. The reassessment is part of the Agency's goals to improve the research and science base and to incorporate improved research and science into EPA decisions.

The EPA has undertaken this task in response to emerging scientific knowledge of the biological, human health, and environmental effects of dioxin. Significant advances have occurred in the scientific understanding of mechanisms of dioxin toxicity, of the carcinogenic and other adverse health effects of dioxin in people, of the pathways to human exposure, and of the toxic effects of dioxin to the environment.

In 1985 and 1988, the Agency prepared assessments of the human health risks from environmental exposures to dioxin. These assessments were reviewed by the Agency's Science Advisory Board (SAB). At the time of the 1988 risk assessment, there was general agreement within the scientific community that there could be a substantial improvement over the existing response approach, but there was no consensus as to a more biologically defensible methodology. The Agency was asked to explore the development of such a method. The current reassessment activities are in response to this request.

The EPA is making each phase of the current reassessment of dioxin an open and participatory effort. It previously has convened two public meetings (on November 15, 1991, and April 28, 1992) to inform the public of the Agency's plans and activities, to hear and receive public comments and reviews of the proposed plans for the reassessment, and receive any current, scientifically relevant information.

The Agency convened two peer-review workshops to review draft documents related to EPA's scientific reassessment of the health effects of dioxin. The first workshop was held September 10 and 11, 1992, to review a draft exposure assessment titled, Estimating Exposures to Dioxin-Like Compounds. The second workshop was held September 22–25, 1992, to review eight chapters of a draft health assessment document. It should be noted that outside scientists have been heavily involved in the writing and peer review of these draft documents.

The purpose of the peer-review workshop scheduled for September 1993 is to review the draft of a revised and expanded epidemiology and human data chapter. The revised chapter evaluates the scientific quality and strength of the epidemiology data in the evaluation of toxic health effects, both cancer and noncancer, from exposure to dioxin, with an emphasis on the specific congener, 2,3,7,8–TCDD. A critical analysis of all available data has been performed. It is hoped that the workshop review will facilitate the production of a thorough, succinct, accurate description of the state of the epidemiologic knowledge regarding the potential carcinogenicity of dioxin and related compounds and their potential to cause other noncancer toxic effects.

Stages of the Reassessment of Dioxin

The scientific reassessment of dioxin consists of five activities:

1. Development of a biologically based dose-response model for dioxin.
2. Update and revision of the health assessment document for dioxin.
3. Laboratory research in support of the dose-response model.
4. Update and revision of the dioxin exposure assessment document.
5. Research to characterize ecological risks in aquatic ecosystems.

The first three activities will result in a Health Assessment Document for 2,3,7,8–Tetrachlorodibenzo-*p*-dioxin (TCDD) and Related Compounds. The process for developing the health assessment document consists of three phases which are outlined in later paragraphs.

The fourth activity is nearing completion. A draft exposure document titled, Estimating Exposures to Dioxin-Like Compounds (EPA/600/6–88/005B), was the subject of a peer-review workshop in September 1992; an External Review draft will be made available for public review and comment this year.

The fifth activity, which is in progress at EPA's Environmental Research Laboratory in Duluth, Minnesota, involves characterizing ecological risks in aquatic ecosystems from exposure to

dioxins. Research efforts are focused on the study of organisms in aquatic food webs to identify the effects of dioxin exposure that are likely to result in significant population impacts. A report titled, Interim Report on Data and Methods for the Assessment of 2,3,7,8–Tetrachlorodibenzo-*p*-Dioxin (TCDD) Risks to Aquatic Organisms and Associated Wildlife (EPA/600/R–93/055), was published in April 1993. This report will serve as a background document for assessing dioxin-related ecological risks. Ultimately, these data will support the development of aquatic life criteria which will aid in the implementation of the Clean Water Act.

As mentioned previously, completion of the health assessment document will involve three phases:

Phase 1 includes completing state-of-the-science chapters and a dose-response model for the health assessment document and conducting a peer review by a panel of experts. Drafts of most of the chapters that ultimately will comprise the Agency's health assessment document were reviewed at a peer-review workshop held in September 1992. A second peer-review workshop is being held in September of 1993 to review a revised draft chapter on epidemiology and other human data.

Phase 2, preparation of the risk characterization, began during the September 1992 workshop with discussions by the peer-review panel and formulation of points to be carried forward into the risk characterization. This work is currently underway.

Phase 3 will involve making External Review Drafts of the health assessment document and the exposure document available for public review and comment and then for review by the EPA's Science Advisory Board (SAB). These reviews will be announced in the **Federal Register** at the appropriate time.

Dated: August 10, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–19677 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4693–1]

Science Advisory Board Public Meetings

Under Public Law 92–463, notice is hereby given of one public meeting and two public teleconference meetings of the Science Advisory Board (SAB).

1. Public Meeting: The Radon Science Initiative Subcommittee (RSIS) of the Radiation Advisory Committee (RAC) will meet September 7–8, 1993, at the Environmental Protection Agency's Facility in Crystal Station, 2800 Crystal Drive, Second Floor Conference Room C, Arlington, Virginia. The meeting will begin at 9 a.m. on Tuesday, September 7 and adjourn no later than 4 p.m. on Wednesday, September 8, 1993. The RSIS will continue its review of the radon science issues, including rewriting the draft SAB report on this topic. This meeting is open to the public, however, seating is limited and is on a first come basis.

2. Teleconference Meetings: The RAC will conduct two teleconferences on September 10 and 17, 1993 from 11 a.m. to 1 p.m. Eastern Time to discuss edits to its draft document on naturally-occurring radioactive materials (NORM). This draft document is currently under preparation and is not yet available to the public. These teleconferences are a continuation of the RAC's discussions and review of the NORM topic from the RAC's July 19–21, 1993 and earlier meetings on this topic. The number of conference lines available is limited, therefore members of the public wishing to participate should telephone Mrs. Diana L. Pozun, Secretary to the SAB's RAC, no later than 2 p.m. Eastern Time on September 2, 1993 at (202) 260–6552.

Copies of the draft NORM document entitled "Diffuse NORM—Waste Characterization and Preliminary Risk Assessment," are available from the Environmental Protection Agency's (EPA's) Air Docket at 401 M Street SW., Washington, DC 20460 (202–260–7548). The Docket Number is R–82–01, and the Item Number is IIA–38. There may be a newer draft document with a different docket and item number. For technical information on the NORM draft document, please contact Mr. William E. Russo of the EPA's Office of Radiation and Indoor Air (ORIA) at (202) 233–9215.

Anyone wishing to provide written public comments for the above meeting or teleconferences should contact Mrs. Diana Pozun at (A–101F), Science Advisory Board, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at Tel. (202) 260–6552. Copies of any statements (should provide at least thirty-five copies) received in the SAB Staff Office ten days prior to a meeting will be mailed to the Committee or Subcommittee before that meeting; copies received after that date will be provided to the Committee or Subcommittee at the meeting. Commenters should register with Mrs. Pozun at least ten days before the meeting or teleconferences, being sure to specify at which meeting or teleconference they wish to provide comments, the nature of the comments, and audiovisual requirements for the meeting. Commenters will be generally limited to five minutes each, and are requested to not be repetitive of any previously submitted comments made to the Agency or the SAB.

Dated: August 2, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–19478 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4692–8]

Science Advisory Board, Executive Committee, RCRA/RIA Steering Committee and Environmental Futures Committee; Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two ad hoc committees of the Science Advisory Board (SAB) will each conduct a meeting on Monday, August 30, 1993 in Conference Room 1 North of the Washington Information Center at the Environmental Protection Agency Headquarters Building at 401 M Street SW., Washington, DC 20460. The RCRA/RIA Steering Committee will meet in the morning from 8:30 a.m. to noon and the Environmental Futures Committee will meet in the afternoon from 1:30 p.m. until 5 p.m.

The RCRA/RIA Steering Committee provides coordination and technical oversight of four SAB Committees that are reviewing technical aspects of the Regulatory Impact Analysis for the RCRA proposed Corrective Action Regulation. During their meeting in the morning of August 30, the Steering Committee will receive status reports on other SAB Committee reviews and develop an outline and schedule for its overview report.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: developing a procedure for short- and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. This meeting will focus on defining the charge and developing an approach.

These meetings are both open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact the Designated Federal Official for these Committees: Dr. Edward S. Bender, Science Advisory Board (A–101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–6552; FAX (202) 260–7118.

Dated: July 29, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–19479 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–60–P

[OPP–42024G; FRL–4180–3]

Notice of Intent to Approve Amendment to Texas Plan for Certification of Applicators of Compound 1080 Livestock Protection Collars

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amended certification plan.

SUMMARY: Texas has submitted to EPA an amended plan for the certification of Compound 1080 Livestock Protection Collar (LPC) applicators. This amended plan will permit pooling of LPC's among certified LPC applicators. Notice is hereby given of the intention of Regional Administrator, EPA Region VI, to approve these plan amendments.

DATES: Written comments must be submitted on or before September 13, 1993.

ADDRESSES: Submitt comments identified by the docket control number OPP–42024G, to Jerry Oglesby, Pesticides and Toxic Substances Branch, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202–2733.

FOR FURTHER INFORMATION CONTACT: Jerry Oglesby (214–655–7563).

SUPPLEMENTARY INFORMATION: In accordance with the provision of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 171, the Texas Department of Agriculture has submitted to EPA for approval, revisions to its current plan for certification of LPC applicators. EPA announced its approval of the Texas LPC certification plan in the **Federal Register** of April 20, 1988 (53 FR 12986). The proposed amendment to the Texas LPC certification plan would permit the designation of collar pool agents. Certified LPC applicators would be permitted to participate in a collar pool administered by a collar pool agent. The purpose of the collar pool is to reduce the number of LPCs in circulation by a pooling of LPCs. Certified LPC applicators would check out the LPCs from the collar pool agent immediately prior to use. When no longer needed, a LPC would be returned to the collar pool agent for distribution to another certified LPC applicator. All collar pool agents would be considered agents of the registrant and be required to keep the same records. Further, the collar pool system would not affect the recordkeeping or reporting requirements of LPC users.

Copies of the amendment are available for review at the following locations during normal business hours:

1. Texas Department of Agriculture, Stephen F. Austin Building, Room 1034f, 17th St. and Congress Avenue, Austin, Texas 78711, Telephone: 512–463–0013.
2. Environmental Protection Agency, Region VI, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202, Telephone: 214–655–7239.

Interested persons are invited to submit written comments on the proposed amendment.

Dated: August 3, 1993.

Joe D. Winkle,

Acting Regional Administrator, Region VI.

[FR Doc. 93–19487 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4691–2]

Chadbourn Tire Fire; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Chadbourn Tire Fire Site, Chadbourn, NC, with Jerry Stephens, President, C & J Tire Service, Inc. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. 404/347–5059.

Written comment may be submitted to the person above within thirty (30) days of the date of publication.

Dated: July 27, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–19482 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The counties of Edwards, Ellis, Lane, Lyon, Marion, Ness, Rooks, Stafford, and Washington for Individual Assistance and Public Assistance.

The counties of Doniphen, Douglas, Dickinson, Ellsworth, Lincoln, McPherson, Osborne, Pottawatomie, Rush, Russell, and Saline for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–19551 Filed 8–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Boone, Burt, Howard, Nuckolls, Thayer, and Webster Counties for Individual Assistance and Public Assistance.

Gage, Jefferson, and Washington Counties for Public Assistance. (Previously designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19550 Filed 8–12–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Anchor Financial Corporation, et al.; Formations of; Acquisitions By; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 7, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Anchor Financial Corporation, Myrtle Beach, South Carolina; to acquire 100 percent of the voting shares of Topsail State Bank, Hampstead, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Griswold Bancshares, Inc., Griswold, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Griswold State Bancshares, Inc., Griswold, Iowa, and thereby indirectly acquire Griswold State Bank, Griswold, Iowa.

2. Mahaska Investment Company, Oskaloosa, Iowa; to acquire 100 percent of the voting shares of Taintor Savings Bank, New Sharon, Iowa.

3. Peotone Bancorp, Inc., Peotone, Illinois; Southwest Bancorp, Inc., Worth, Illinois; Terrapin Bancorp, Inc., Elizabeth, Illinois; Rock River Bancorporation, Inc., Oregon, Illinois; Westbanco, Inc., Westville, Illinois; and Minooka Bancorp, Inc., Minooka, Illinois; to acquire 100 percent of the voting shares of Founders Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Founders Bank of Arizona, Scottsdale, Arizona.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of Firstbank Investment Co, Inc., Lawrence, Kansas, and thereby indirectly acquire Bank of Kansas/Lawrence, Lawrence, Kansas. This proposal will be effected through the merger of Firstbank Investment Co., Inc., into CBI-Kansas, Inc., Kansas City, Missouri.

2. First Community Bankshares, Inc., Fort Morgan, Colorado; to acquire 100 percent of the voting shares of Republic National Bank, Englewood, Colorado.

3. Fourth Financial Corporation, Wichita, Kansas; to merge with Western National Bancorporation, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Western National Bank of Tulsa, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19525 Filed 8-12-93; 8:45 am]

BILLING CODE 6210-01-F

Queens County Savings Bank Employee Stock Ownership Trust and Queens County Savings Bank Incentive Savings Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Queens County Savings Bank Employee Stock Ownership Trust and Queens County Savings Bank Incentive Savings Trust, to acquire up to 21 percent of the voting shares of Queens County Bancorp, Inc., Flushing, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Joseph S. Cowart, Twin City, Georgia; Peggy Thomas Cowart, Twin City, Georgia; Lawrence Floyd Sherrod, Hephzibah, Georgia; and Martha Bridge Sherrod, Hephzibah, Georgia, to collectively acquire 10.85 percent of the voting shares of Swainsboro Bankshares, Inc., Swainsboro, Georgia, and thereby indirectly acquire Citizens Bank of Swainsboro, Swainsboro, Georgia.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ronald L. Moore, Strasburg, Colorado; to acquire an additional 1.25 percent for a total of 19.98 percent of the

voting shares of Rice Insurance Agency, Inc., Strasburg, Colorado, and thereby indirectly acquire First National Bank of Strasburg, Strasburg, Colorado.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19530 Filed 8-12-93; 8:45 am]

BILLING CODE 6210-01-F

Thomas and Melinda Rogers; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Thomas and Melinda Rogers, Minnetonka, Minnesota; to acquire an additional 4.0 percent of the voting shares of First Minnetonka Bancorporation, Inc., Minnetonka, Minnesota, for a total of 26.7 percent, and thereby indirectly acquire First Minnetonka City Bank, Minnetonka, Minnesota.

Board of Governors of the Federal Reserve System, August 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19526 Filed 8-12-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1993.

Name: National Advisory Council on The National Health Service Corps.

Date and Time: September 11-14, 1993.

Place: Pooks Hill Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 2 p.m. on Saturday, September 11, and adjourn at 7 p.m. On Sunday and Monday, September 12 and 13, the meetings will be from 8 a.m. to 5 p.m. On Tuesday, September 14, the meeting will be from 8 a.m. to 12 noon. The agenda for this meeting shall include Bureau of Primary Health Care and Division of the National Health Service Corps update, Scholarship and Loan Repayment Programs update, and discussion on mandatory service.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2900.

Agenda items are subject to change as priorities dictate.

Dated: August 9, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93-19528 Filed 8-12-93; 8:45 am]

BILLING CODE 4160-15-P

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Substance Abuse Prevention Conference Review Committee and the Drug Testing Advisory Board of the Center for Substance Abuse Prevention for September 1993.

The Substance Abuse Prevention Conference Review Committee will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. D. Herman, Committee Management Officer, Center for Substance Abuse Prevention, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4783).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Substance Abuse Prevention Conference Review Committee.

Meeting Date(s): September 20-23, 1993.

Place: Residence Inn—Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: September 20, 1993 8:30 a.m.-9 a.m.

Closed: Otherwise.

Contact: Ferdinand W. Hui, Ph.D., Rockwall II Building, Suite 630; Telephone: (301) 443-4952.

Committee Name: Drug Testing Advisory Board.

Meeting Date(s): September 23, 1993.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: September 23, 1993 8:30 a.m.-10:15 a.m.

Closed: Otherwise.

Contact: Donna M. Bush, Ph.D., room 9A-53 Parklawn Building; Telephone: (301) 443-6014.

Dated: August 10, 1993.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93-19527 Filed 8-12-93; 8:45 am]

BILLING CODE 4162-20-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-44]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 13, 1993.

ADDRESS: For further information, contact Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 6, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Operations/ Chief of Staff.

[FR Doc. 93–19249 Filed 8–12–93; 8:45 am]

Billing Code 4210–29–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on September 14, 1993, at 9 a.m., in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. This meeting will include a discussion and recommendations on projects for the 1994 Annual Work Plan of the Trustee Council.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93–19524 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–RG–M

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records managed by the Office of the Secretary. The system of records notice being abolished is entitled "Committee Management Files—Interior, Office of the Secretary-68." It was previously published in the **Federal Register** on April 11, 1977 (42 FR 19027). Records pertaining to committee management are no longer subject to the Privacy Act.

At one time, the Department's Committee Management Officers maintained a system of records that contained biographies of members of advisory committees and candidates for advisory committee membership and records of committee participation. It was organized in such a way that information pertaining to committee members and candidates for membership was retrieved by name of individual member or candidate. Currently, however, records are not retrievable by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual. Additionally, there is no anticipated future need for such a file structure.

This change shall be effective on publication in the **Federal Register** (August 13, 1993). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, PMO, 1849 "C" Street NW., Mail Stop 5412–MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: August 6, 1993.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 93–19431 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Hart Mountain National Antelope Refuge, or; Environmental Impact Statement

AGENCY: Fish and Wildlife Service, U.S. Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the draft Environmental Impact Statement (DEIS) on the proposed comprehensive management plan for Hart Mountain National Antelope Refuge, Lake County, Oregon, is available for public review. Five alternatives are being considered, including the Preferred Alternative. Comments and suggestions are requested. This notice is being furnished pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: Written comments are requested by October 12, 1993. Open-house meetings will be held on August 28, 29, and 30; and September 1, 2 and 8 (see below for details on locations).

ADDRESSES: Written comments should be addressed to: Refuge Complex Manager, Sheldon-Hart Mountain Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

Service representatives also will be available to meet with interested parties on six occasions. The open-house schedule is:

Sheldon-Hart Mountain Refuge Complex, 18 South G Street, Third Floor, Lakeview Oregon 97630: August 28 from 1 to 4 p.m.; August 30 from 6 to 9 p.m.; September 1 from 1 to 4 p.m.; September 2 from 9 a.m. to 12 noon; September 8 from 6 a.m. to 9 p.m.

The Riverhouse Motor Inn, 3075 N. Highway 97, Bend, Oregon 97701: August 29 from 11 a.m. to 4 p.m.

Copies of the draft EIS may be inspected at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges and Wildlife, Eastside Federal Complex, Third Floor, 911 NE. 11th Avenue, Portland Oregon 97232–4181.

Sheldon-Hart Mountain Refuge Complex, 18 South G. Street, Third Floor, Lakeview, Oregon 97630.

Lake County Library, 513 Center Street, Lakeview, Oregon 97630.

Harney County Library, 80 West D Street, Burns, Oregon 97720.

Klamath County Library, 126 South 3rd Street, Klamath Falls, Oregon 97601.

Deschutes County Library, 507 NW. Wall Street, Bend, Oregon 97701.

Kerr Library, Oregon State University, Corvallis, Oregon 97331.

Central Library, Multnomah County Library System, 801 SW. 10th Street, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Don DeLong, EIS Team Leader, Sheldon-Hart Mountain Refuge Complex, P.O. Box 111, Lakeview, Oregon 97630, (503) 947–3315.

Individuals desiring a copy of the DEIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and were added to the mailing list, and to those people that requested to be added to the mailing list.

SUPPLEMENTARY INFORMATION: The Service developed and analyzed five alternatives for the management of wildlife, habitat, and public use of Hart Mountain National Antelope Refuge. The purpose of this DEIS is to recommend a course of action that would best guide the management of the Refuge's resources.

The DEIS analyzes five alternative approaches to resolving the Refuge's core problems, which are: (1) Unnaturally high densities of shrubs and junipers throughout Refuge uplands, and lack of periodic fire in these habitats; (2) eroded stream channels and deficiency of riparian vegetation along a majority of Refuge streams; and (3) insufficient resources and inadequate facilities to manage the increasing number of Refuge visitors. These problems are the underlying factors currently preventing Refuge goals from being achieved, and thus provide a focal point for the proposed comprehensive management plan.

The five alternatives being considered are:

(1) Baseline Management, which continues emphasis on a livestock grazing program as the primary means of managing Refuge vegetation;

(2) Featured Species Management, which combines the uses of livestock grazing, prescribed burning and herbicides to manage vegetation;

(3) Habitat Restoration Alternative, which would emphasize restoration of Refuge habitats, although not to the extent proposed by the Ecosystem Management Alternative;

(4) Ecosystem Management (Preferred Alternative), which proposes an ecosystems management approach to restoration of Refuge habitats and natural processes; and

(5) Custodial Maintenance, which emphasizes the total exclusion of human intervention.

The Preferred Alternative, if implemented, would (1) reduce shrub and juniper cover on 22,000 to 40,000 acres within 15 years following implementation of the comprehensive management plan, primarily through prescribed burning; (2) allow riparian areas to restore passively, except in limited areas where prescribed burning, willow plantings, and check dams would be used; (3) discontinue the use of livestock on Refuge lands during the next 15 years; (4) redesign one of the existing campgrounds and close the other; (5) create three additional camping areas as mitigation; (6) maintain 162 miles of roads open to the public; (7) continue limited quality hunts for pronghorn, mule deer, and bighorn sheep; and (8) recommend 44,604 acres for further study for potential wilderness designation, and 11,276 acres for further study for potential Research Natural Areas designation.

Dated: August 4, 1993.

William E. Martin,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 93–19209 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–55–M

Managing Migratory Bird Subsistence Hunting in Alaska; Proposed Strategy for Regulating the Taking of Migratory Birds in Alaska for Subsistence Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft environmental assessment.

SUMMARY: This Notice is to inform the public that the U.S. Fish and Wildlife Service (Service) has completed the draft environmental assessment (EA) evaluating alternatives for resolving the problem of ongoing migratory bird subsistence hunting in Alaska during the closed period specified by the 1916 Convention Between the United States and Great Britain for the Protection of Migratory Birds (Convention). This Convention was executed by Great Britain on behalf of Canada, and is referred to in this Notice and the EA as the U.S.-Canada Convention. The draft EA, which tentatively selects a strategy of modifying the Convention to allow a regulated hunt during the closed period, is available from the Service upon request at either of the addresses provided below (See **ADDRESSES:** and/or **FOR FURTHER INFORMATION CONTACT**).

DATES: Comments on this Notice must be received by September 27, 1993.

ADDRESSES: Comments regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C Street NW., Washington, DC 20240, or Regional Director (MB), Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Comments received on this Notice will be available for public inspection during normal business hours in room 634 Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203, or, for those comments originating within Alaska, 3rd Floor, room 3387, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C Street NW., Washington, DC 20240 (703/358–1714), or Mr. Robin West, Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786–3423).

SUPPLEMENTARY INFORMATION: Subsistence hunting of migratory birds for nutritional purposes occurs in the far northern areas of Alaska and Canada as a customary and traditional activity during what is otherwise the closed period between March 10 and September 1. Currently, this closed period is required by the Convention and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 et seq.), which implements the terms of the Convention. Apparently, the framers of the Convention were aware of subsistence activity but unaware of the extent to which it was needed and practiced by far northern rural peoples. Thus, the Convention provides inadequately for subsistence use, with the result that much of the current activity is illegal. However, restricting subsistence hunting to a time period outside of that in which birds are available neither provides equitable access to the resource nor accommodates customary and traditional use. Because the Service recognizes the legitimate need for equitable access to the migratory bird resource for subsistence purposes, regulatory strategies have been under evaluation which would bring about successful resolution of the problem.

The Service's completed draft EA addresses the problem of illegal subsistence hunting of migratory birds in Alaska, and tentatively selects a strategy for resolving it. This draft EA evaluates five alternatives for dealing with regulation of migratory bird subsistence hunting, which are: (1) Take no action (status quo); (2) expand the existing base of cooperative agreements; (3) enforce the current terms of the

Convention; (4) modify the Convention to allow subsistence take; and (5) modify the Migratory Bird Treaty Act to allow subsistence take, without modifying the Convention. The Service's preliminarily identified preferred alternative is for a modified Convention that allows a regulated harvest during a portion, but not all of, the currently closed period (item 4, above). The EA also identifies "action modifiers" which could be used to further specify the course the Service would take in order to bring about a regulated migratory bird subsistence hunt. The "action modifiers" include such factors as who in Alaska would be able to participate, in what areas, what use could be made of birds and byproducts, which bird species' eggs would be eligible for harvest and other management option constraints that would be imposed upon users.

The Service invites comments on the EA. Comments and other information provided as a result of this Notice will enable the Service to make a determination that a full environmental impact assessment (EIS) will or will not be required. Comments will also enable the Service to evaluate its selection of a strategy to resolve the problem. The EIS determination will be provided to the public in the Service's final Notice regarding the strategy to be adopted and advising of the overall status of this issue.

Dated: July 28, 1993.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 93-19503 Filed 8-12-93; 8:45 am]

BILLING CODE 4310-55-P

Geological Survey

Privacy Act of 1974—Revision of System of Records; Correction

This notice is a correction of a notice that was published on July 22, 1993 (58 FR 39230), when, through administrative error, a notice announcing the deletion of two systems of records maintained by the U.S. Geological Survey, previously published on May 27, 1993 (58 FR 30804), was republished as the preamble to a notice announcing the revision of two systems of records maintained by the U.S. Geological Survey. The correct preamble is published below.

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing records maintained by the U.S. Geological Survey. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the Federal Register. The two notices being revised, which were published in their entirety on July 22, 1993 (58 FR 39230), are:

1. "Computer Registration System—Interior USGS-18," previously published on July 8, 1987 (52 FR 25638).

2. "Employee Work Report Edit and Individual Employee Production Rates—Interior, USGS-24," previously published on October 30, 1990 (55 FR 45661).

In notice USGS-18, the existing system location statement and the existing system manager(s) and address statement are revised to delete one location where system records are no longer stored or maintained. In notice USGS-24, the existing system location statement is revised to reflect the correct address of one of the locations. Additionally, in this notice, the existing categories of records in the system statement is revised to delete one category of record that is no longer maintained in the system, and the storage statement is revised to accurately reflect the current means of data storage.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices were effective on publication in the Federal Register. (July 22, 1993). Additional information regarding these actions may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, PMO, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, DC, 20240, telephone (202) 208-6045.

Dated: August 6, 1993.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 93-19432 Filed 8-12-93; 8:45 am]

BILLING CODE 4310-31

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Howes Leather Company, 1 Batterymarch Park, Quincy, MA 02169.
2. Wholly owned subsidiary:
   (a) Ashland Hides Company, Inc. (State of Incorporation: DE)
   (b) Columbia Tanning Corp. (State of Incorporation: MA)

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-19507 Filed 8-12-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 467X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pike and Letcher Counties, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—Exempt Abandonments to abandon its 5.2-mile rail line between milepost CMN-23.0 at Shelby Gap and milepost CMN-28.2 at Jenkins, in Pike and Letcher Counties, KY.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 12, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[1] A stay will be issued routinely by the Commission in those proceedings where an

file an OFA UNDER 49 CFR 1152.27(c)(2),[2] and trail use/railing banking statements under 49 CFR 1152.29 must be filed by August 23, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 2, 1993 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue and environmental assessment (EA) by August 18, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202§ § 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after th3 EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93– 19505 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32308]

Pioneer Valley Railroad Co., Inc.—Acquisition Exemption—Boston & Maine Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the acquisition by Pioneer Valley Railroad Co., Inc. (PVR), of a rail line owned by Boston and Maine Corporation (B&M) within the City of Holyoke, MA, subject to standard labor protective conditions. The line consists of: (1) An approximate 3,600-foot segment between the point of connection with B&M's yard and the point of connection with PVR known as PS 29+12; and (2) an 870-foot segment beginning at a point along the southeasterly sideline of Canal Street and running southwesterly and northwesterly to a point at or near an extension of the southeasterly sideline of Bridge Street across the canal.

DATES: This exemption will be effective on September 12, 1993. Petitions to stay must be filed by August 23, 1993. Petitions to reopen must be filed by September 2, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32308 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Robert L. Calhoun, Sullivan & Worcester, suite 1000, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5271.)

Decided: August 5, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19504 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 466)]

CSX Transportation, Inc.—Abandonment—Between Monticello and Delphi in White and Carroll Counties, IN; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT), to abandon a 14.22-mile line of railroad extending from milepost QA–98.00 near Monticello to Milepost QA–112.22 at the end of the track at Delphi, in White and Carroll Counties, IN. The abandonment certificate will become effective September 13, 1993, unless the Commission finds that (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate CSXT.

Any offers of financial assistance must be filed with the Commission and CSXT no later than 10 days from the date of publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within the 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 6, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19647 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–101 (Sub-No. 10)]

Duluth, Missabe & Iron Range Railway Co.—Abandonment in St. Louis County, MN; Findings

The Commission has issued a certificate authorizing a Duluth, Missabe and Iron Range Railway Company (DM&IR) to abandon its line of railroad between milepost 80.2 at Hinsdale and milepost 84.8 at Embarrass, in St. Louis County, MN, a distance of 4.6 miles. The abandonment certificate will become effective September 13, 1993 unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days after publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA."

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informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late filed trail use statements as long as it retains jurisdiction to do so.

Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 10, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-19646 Filed 8-12-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Attestation by Employers for Off-Campus Work Authorization for F-1 Students

1205-0315, ETA 9034

On Occasion

Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; Small businesses or organizations

10,000 respondents; 1 hour 1 minute per response; 10,013 total hours; 1 form

The information provided on this form by employers seeking to use aliens admitted as students on F-1 visas in off-campus work will permit DOL to meet Federal responsibilities for program administration, management and oversight.

Extension

Pension and Welfare Benefits Administration

ERISA Advisory Opinion Procedure 76-1

1210-0066

On occasion

Businesses or other for-profit; small businesses or organizations 112 responses; 15 hours per response; 1,680 total hours

This procedure is used by plan fiduciaries, administrators and other individuals when requesting a legal interpretation from the Department of Labor Regarding specific facts and circumstances (an Advisory Opinion).

Extension

Occupational Safety and Health Administration

4-Dimethylaminoazobenzene

1218-0044

On occasion

Businesses or other for-profit; small businesses or organizations

Respondents 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to the 4-Dimethylaminoazobenzene (DBA) standard.

This standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Dimethylaminoazobenzene standard. The production of 4-Dimethylaminoazobenzene in the United States is negligible and; therefore, the agency is assuming 1 hour burden.

Extension

Occupational Safety and Health Administration

Beta-Propiolactone

1218-0079

On occasion

Businesses or other for-profit; small businesses or organizations

Respondents 10

	Proposed total burden hours
Notification of Regulated Areas	20
Federal Records Access and Transfer	2
Emergencies/Incident Reports	100
Total hours	122

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to beta-Propiolactone. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the beta-Propiolactone Standard.

Extension

Occupational Safety and Health Administration

Ethyleneimine

1218–0080; OSHA 262
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 10

	Proposed total burden hours
Notification of Regulated Areas	20
Federal Records Access and Transfer	2
Emergencies/Incident Reports	100
Total hours	122

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Ethyleneimine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Ethyleneimine Standard.

Extension

Occupational Safety and Health Administration

N-Nitrosodimethylamine
1218–0081; OSHA 224
On occasion
Businesses or other for-profit; small businesses or organizations
Respondent 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to N-Nitrosodimethylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the N-Nitrosodimethylamine Standard.

There are no burden hours associated with the requirements of this regulation as there is no indication that N-Nitrosodimethylamine is manufactured or used in the United States at this time. However, in the event manufacturing or use resumes, OSHA has allocated 1 hour of burden to keep the OMB approval current on the information requirements.

Extension

Occupational Safety and Health Administration

Benzidine
1218–0082; OSHA 260
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Benzidine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Benzidine Standard.

There is no indication that Benzidine is manufactured or used in the United States at this time. However, in the event manufacturing or use resumes, OSHA has allocated 1 hour of burden to keep the OMB approval current on the information requirements.

Extension

Occupational Safety and Health Administration

3,3′-Dichlorobenzidine (and its salts)
1218–0083; OSHA 257
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 12

	Proposed total burden hours
Notification of Regulated Areas	24
Federal Records Access and Transfer	2
Emergencies/Incident Reports	120
Total hours	146

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 3,3′-Dichlorobenzidine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 3,3′-Dichlorobenzidine Standard.

Extension

Occupational Safety and Health Administration

Alpha-Naphthylamine
1218–0084; OSHA 255
On occasion
Businesses or other for-profit; small business or organizations
Respondents 38

	Proposed total burden hours
Notification of Regulated Areas	76
Federal Records Access and Transfer	2
Emergencies/Incident Reports	380
Total hours	458

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Alpha-Naphthylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Alpha-Naphthylamine Standard.

Extension

Occupational Safety and Health Administration

4-Nitrobiphenyl
1218–0085
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 4

	Proposed total burden hours
Notification of Regulated Areas	8
Federal Records Access and Transfer	2
Emergencies/Incident Reports	40
Total hours	50

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4-Nitrobiphenyl. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 4-Nitrobiphenyl Standard.

Extension

Occupational Safety and Health Administration

Methyl Chloromethyl Ether
1218–0086
On occasion
Businesses or other for-profit; small businesses or organizations

Respondents 12

	Proposed total burden hours
Notification of Regulated Areas	24
Federal Records Access and Transfer	2
Emergencies/Incident Reports	120
Total hours	146

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Methyl Chloromethyl Ether. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Methyl Chloromethyl Ether Standard.

Extension

Occupational Safety and Health Administration

BIS-Chloromethyl Ether
1218–0087
On occasion
Businesses or other for-profit; small businesses or organizations
Respondent 1

	Proposed total burden hours
Notification of Regulated Areas	2
Federal Records Access and Transfer	2
Emergencies/Incident Reports	10
Total	14

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Bis-Chloromethyl Ether. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Bis-Chloromethyl Ether Standard.

Extension

Occupational Safety and Health Administration

2-Acetylaminofluorene
1218–0088
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 3

	Proposed total burden hours
Notification of Regulated Areas	6
Federal Records Access and Transfer	2
Emergencies/Incident Reports	30
Total hours	38

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 2-Acetylaminofluorene. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 2-Acetylaminofluorene Standard.

Extension

Occupational Safety and Health Administration

Beta-Naphthylamine
1218–0089
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 7

	Proposed total burden hours
Notification of Regulated Areas	14
Federal Records Access and Transfer	2
Emergencies/Incident Reports	70
Total hours	86

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Beta-Naphthylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Beta-Naphthylamine Standard.

Extension

Occupational Safety and Health Administration

4-Aminobiphenyl
1218–0090
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4-Aminobiphenyl.

There is no indication that 4-Aminobiphenyl is manufactured or used in the United States. However, in the event manufacturing or use resumes, OSHA has assumed 1 hour of burden in order to maintain OMB approval on the standard's information requirements.

Revision

Pension and Welfare Benefits Administration

Suspension of Benefits Regulation
1210–0048
Businesses or other for-profit; small businesses or organizations

As the result of the February 21, 1990, Supreme Court Decision 110 S. Ct. 929, 58 U.S.L.W. 4200, PWBA is no longer seeking OMB clearance for those paperwork activities involving the employer and the third party (employee) disclosure requirements contained in 29 CFR 2530.203–3.

Signed at Washington, DC this 10th day of August, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–19510 Filed 5–12–93; 8:45 am]

BILLING CODE 4510-23-P

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix of this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of July 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Aluminum Company of America (Wkrs).	Wenatchee, WA .	07/26/93	07/07/93	28,882	Ingot of various shapes and forms.
General Motors Corp., Delco Chassis (Co).	Livonia, MI	07/26/93	07/09/93	28,883	Automobile parts.
General Motors Corp., Delco CLCD (Co).	Wentzville, MO ...	07/26/93	07/09/93	28,884	Passenger cars.
ABB Power (Wkrs)	Bloomington, IN ..	07/26/93	06/30/93	28,885	Electrical components.
Eveleth Mines (USWA)	Eveleth, MN	07/26/93	07/12/93	28,886	Taconite pellets.
AT&T (Wkrs)	North Andover, MA.	07/26/93	07/12/93	28,887	Telecommunications equipment.
Wagner & Brown, Ltd. (Wkrs)	Midland, TX	07/26/93	07/16/93	28,888	Oil and gas.
Zebulon Manufacturing (Wkrs)	Zebulon, GA	07/26/93	07/16/93	28,889	Ladies dresses.
Sandvik Special Metals Corp. (Wkrs).	Kennewick, WA ..	07/26/93	07/13/93	28,890	Titanium products.
Iron City Spring (Wkrs)	Pittsburgh, PA	07/26/93	07/12/93	28,891	Leaf springs for vehicles.
Encore Shoe (Wkrs)	Sanford, ME	07/26/93	07/07/93	28,892	Ladies' shoe components.
LaBelle Industries, Inc. (IAMAW)	Oconomowoc, WI	07/26/93	07/12/93	28,893	Stamping, electronics signs and instr.
Restaura TI (Wkrs)	Midland, TX	07/26/93	07/06/93	28,894	Food services.
Keller Supply, Inc. (Wkrs)	Morenci, MI	07/26/93	07/13/93	28,895	Sell John Deere equipment.
Norris/Obannon (Wkrs)	Tulsa, OK	07/26/93	07/06/93	28,896	Parts for oilfield pumps.
Moore Business Forms, Inc. (Co)	Salem, OR	07/26/93	07/09/93	28,897	Manifold & cut sheet forms.
Augat Automotive (Co)	San Antonio, TX .	07/26/93	07/19/93	28,898	Electrical connectors, wire harnesses.
Meehan Seaway Service (Wkrs)	Milwaukee, WI	07/26/93	07/16/93	28,899	Steel plates & rolled steel.
Publix Group (ACTWU)	Huntington, TN ...	07/26/93	07/15/93	28,900	Men's dress and sport shirts.
Amoco Corp. (Wkrs)	Chicago, IL	07/26/93	07/13/93	28,901	Legal services.
S&H Fabricating & Eng., Inc. (UAW)	Walled Lake, MI .	07/26/93	06/21/93	28,902	Tubing for auto A/C.
S&H Fabricating & Eng., Inc. (Co) ...	Brighton, MI	07/26/93	06/21/93	28,903	Tubing for auto A/C.
Oxford of Alma North (Co)	Alma, GA	07/26/93	07/26/93	28,904	Ladies' dresses, pants, shorts, skirts.

[FR Doc. 93–19511 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,439]

Enron Liquid Fuels Co., Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Enron Liquid Fuels Company, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,439; Enron Liquid Fuels Company, Houston, Texas (July 26, 1993)

Signed at Washington, DC, this 3rd day of August, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–19512 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are

found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the Untied States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, D.C., this 5th day of August 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations 07/01/93 to 07/31/93

CEO name/facility name/address	Approval date
Mr. William Gamboa, Merced Living Care Center, 510 West 26th Street, Merced, CA 95340, 209–723–2911	07/01/93
Mr. William Gamboa, Auburn Gardens Conval. Hosp., 260 Racetrack Street, Auburn, CA 95604, 916–885–7051	07/01/93
Mr. William Gamboa, La Sierra Care Center, 2424 M Street, Merced, CA 95340, 209–723–4224	07/01/93
Mr. William Gamboa, Colony Park Care Center, 159 E. Orangeburg, Modesto, CA 95350, 209–526–2811	07/01/93
Mr. Keith Goodell, Chapman-Harbor Skilled Nursing Ctr., Garden Grove, CA 92640, 714–971–5517	07/06/93
Mr. George Graham, Torrance Memorial Medical Ctr., 3330 Lomita Boulevard, Torrance, CA 90505, 310–784–4894	07/09/93
Ms. Marlene Xerna Robertson, Golden Cross Health Care of F, Golden Cross Care, Inc. dba, Fresno, CA 93706, 209–268–6317	07/14/93
Mr. Sean O'Neal, Delano Regional Medical Ctr., 1401 Garces Highway, Delano, CA 93216, 805–725–4800	07/15/93
Ms. Nelly A. Jocson, Nursing Care Providers, Inc., 3040 21st Avenue, San Francisco, CA 94132, 415–665–0433	07/19/93
Mr. Alexander S. Vista, Vista Health Care Prof. Inc., 17341 Irvine Blvd. Ste. 210, Tustin, CA 92680, 714–838–8887	07/19/93
Ms. Maxine Cooper, Hollywood Community Hospital, 6245 DeLongpre Avenue, Los Angeles, CA 90028, 213–462–2271	07/19/93

Division of Foreign Labor Certifications Approved Attestations 07/01/93 to 07/31/93—Continued

CEO name/facility name/address	Approval date
Ms. Leona Berglund, Crestview Conval. Hospital, 1471 South Riverside Avenue, Rialto, CA 92376, 909–877–1361	07/22/93
Mr. Gerry Garcia, Vermont Care Center, Geri-Care II, Inc., Torrance, CA 90502, 310–328–0812	07/22/93
Mr. Solomon Goldner, Santa Anita Convalescent Hospital, Temple City, CA 91780 818–579–0310	07/22/93
Ms. Janet Parodi, Long Beach Community Hospital, 1720 Termino Avenue, Long Beach, CA 90804, 310–498–1000	07/24/93
Mr. Solomon Goldner, Ocean View Convalescent Ctr., King David Conval. Hosp., Inc., Santa Monica, CA 90404, 310–451–9706	07/28/93
Ms. Ursula S. Durity, Memorial Hospital of Gardena, 1145 West Redondo Beach Blvd., Gardena, CA 90247, 310–532–4200	07/28/93
J.D. Northway, M.D., Valley Children's Hospital, 3151 N Millbrook, Fresno, GA 93703, 209–225–3000	07/28/93
Mr. Solomon Goldner, Georgian Court Nursing and Rehabilitation, San Diego, CA 92123, 619–277–6460	07/28/93
Mr. Bruce Blomstrom, Clinishare, Inc., 20600 Nordhoff Street, Chatsworth, CA 91311, 818–709–4221	07/28/93
Mr. Stephen Lazovitz, Washington Nursing Facility, 2425 25th Street, S.E., Washington, DC 20020, 202–889–3600	07/19/93
Mr. Rex Macklin, Sunrise Rehab. Hospital, Broward Health Corporation, Fort Lauderdale, FL 33511, 305–749–0300	07/01/93
Mr. Richard P. Blinn, Boca Raton Conval. Ctr., The Hillhave Corp., Boca Raton, FL 33487, 407–391–5200	07/01/93
Mr. Richard Blinn, Bay Pointe Nursing Pavilion, The Hillhaven Corporation, St. Petersburg, FL 33712, 813–867–1104	07/09/93
Mr. Richard Blinn, Hillhaven Rehab. Ctr., The Hillhaven Corporation, Tampa, FL 33614, 813–872–2771	07/09/93
Mr. Richard Blinn, Carrollwood Care Center, First Healthcare Corp., Tampa, FL 33625, 813–960–1969	07/15/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 07/01/93 to 07/31/93—Continued

CEO name/facility name/address	Approval date
Mr. Richard P. Blinn, Convalescent Center of the Palm Beaches (The Hillhaven Corp.), West Palm Beach, FL 33401, 407–832–6400	07/19/93
Mr. Robert Scharmann, Abbey Delray South, 1717 Homewood Boulevard, Delray Beach, FL 33445, 407–272–9600	07/22/93
Mr. Richard S. Freeman, West Boca Medical Center, 21644 State Road 7, Boca Raton, FL 33428, 407–488–8000	07/22/93
Mr. Armando Fernandez, North Shore Nursing Home, 9380 N.W. 7 Avenue, Miami, FL 33150, 305–759–8711	07/28/93
Mr. Herbert L. Rogers, Jr., Lake Highlands Retirement And Nursing Ctr., Inc., Clermont, FL 34711, 904–394–2188	07/28/93
Mr. Myers R. Kurtz, Central State Hospital, P.O. Box 325, Milledgeville, GA 31061, 912–453–8441	07/22/93
Mr. J. David Lawrence, Jr., BJC Medical Center, 70 Medical Center Drive, Commerce, GA 30529, 706–335–1000	07/22/93
Mr. Leland M. Yagi, Island Nursing Home, 1205 Alexander Street, Honolulu, HI 96826, 808–946–5027	07/01/93
Mr. W. Alan Stevenson, Wood River Medical Center, Sun Valley Road, Sun Valley, ID 83353, 208–622–3323	07/28/93
Mr. Bryan Barrish, Elmwood Care, Inc., 7733 West Grand Avenue, Elmwood Park, IL 60635, 708–452–9200	07/01/93
Mr. Tali Tzur, Wellington Plaza Nursing Ctr., Inc., Chicago, IL 60657, 312–281–6200	07/01/93
Mr. Romeo Carino, Progressvie Services, Inc., 2600 W. Peterson Ave., Ste. 203, Chicago, IL 60659, 312–338–1170	07/01/93
Mr. Jacob Bakst, Glenwood Care Ctr., Fairfield of Joliet, Joliet, IL 60435, 815–725–0443	07/01/93
Mr. Bradley Alter, Danville Care Ctr., Ltd., 1701 North Bowman, Danville, IL 61832, 217–443–2955	07/01/93
Ms. Frieda Bassman, New York Manor, Inc., 400 E. New York St., Aurora, IL 60505, 708–897–8714	07/01/93
Mr. Bradley Alter, Glenwood Terrace, Ltd., 19330 S. Cottage Grove, Glenwood, IL 60425, 708–758–6200	07/06/93
Mr. Sidney Glenner, Glen Oaks Nursing Home, Inc., 270 Skokie Hwy., Northbrook, IL 60062, 708–498–9320	07/09/93
Mr. Sidney Glenner, Glencrest Nursing & Rehab. Ctr. Ltd., Chicago, IL 60646, 312–338–6800	07/09/93
Mr. Sidney Glenner, Elston Nursing Home, 4340 No. Keyston, Chicago, IL 60641, 312–545–8700	07/15/93
Mr. Sidney Glenner, Glenbridge Nursing and Rehab. Centre, Ltd., Niles, IL 60648 708–966–9190	07/15/93
Mr. Gary L. Callahan, Loretto Hospital, 645 South Central Avenue, Chicago, IL 60644, 312–626–4300	07/19/93
Ms. Elisha Atkin, Imperial of Hazel Crest, Inc., 3300 West 175th Street, Hazel Crest, IL 60429, 708–335–2400	07/22/93
Ms. Elisha Atkin, Hillcrest Healthcare Ctr., Inc., 777 Draper Avenue, Joliet, IL 60432, 815–727–4794	07/22/93
Ms. Flora Sampang, Winston Manor Conval. & Nursing Home, Inc., Chicago, IL 60622, 312–AL2–2066	07/28/93
Mr. Fred Martinez, Jr., St. Charles Parish Hospital, P.O. Box 87, Luling, LA 70070, 504–785–6242	07/07/93
Mr. John J. Burdin, Jr., Lafayette General Medical Ctr, P.O. Box 52009, Lafayette, LA 70505, 318–261–7446	07/19/93
Ms. Nancy Hsu, South Cove Manor Nursing Home, 120 Shawmut Avenue, Boston, MA 02118, 617–423–0590	07/01/93
Mr. Maurice I. May, Hebrew Rehab. Ctr. for Aged, 1200 Centre Street, Roslindale, MA 02131, 617–325–8000	07/28/93
Mr. Ronald R. Peterson, The Francis Scott Key Medical Ctr., Baltimore, MD 21224, 410–550–0100	07/21/93
Mr. Salvatore D. Benisatto, Eastwood Nursing Ctr., 626 E. Grand Blvd, Detroit, MI 48207, 313–923–5816	07/01/93
Mr. Salvatore D. Benisatto, Fr. Solanus Casey Nursing Ctr., 660 E. Grand Boulevard, Detroit, MI 48204, 313–923–5800	07/06/93
Mr. James R. Kaskie, Incarnate Word Hospital, 3545 Lafayette Avenue, St. Louis, MO 63104, 314–865–6775	07/28/93
Mr. Donald L. Ray, Grenada Lake Medical Ctr., 960 Avent Drive, Grenada, MS 38901, 601–226–8111	07/22/93
Ms. Margaret T. Evans, Hillside Nursing Ctr. of Wake Forest, P.O. Box 1826, Wake Forest, NC 27588, 919–556–4082	07/22/93
Ms. Margaret T. Evans, Burnswick Cove, P.O. Box 916, Leland, NC 28451, 919–371–9894	07/22/93
Ms. Florence Johnson, East Carolina Inc., 2462 Stantonsburg Rd., Greenville, NC 27834, 919–830–9100	07/22/93
Ms. Mary T. Lennon, Len Care Nursing Center, P.O. Box 2310, Elizabeth Town, NC 28337, 919–862–8100	07/22/93
Mr. Raymond C. Lemire, Epsom Manor, Inc., Junction Route 4 on 28, Epsom, NH 03234, 603–736–4772	07/01/93
Mr. Richard P. Blinn, Greenbriar Terrace Healthcare, The Hillhaven Corp., Nashua, NH 03062, 603–888–1573	07/06/93
Mr. Paul Cooper, South Jersey Hospital System, 337 Irving Avenue, Bridgeton, NJ 08302, 609–451–6600	07/06/93
Mr. Stephen Lazovitz, Wanaque Convalescent Ctr., 1433 Ringwood Avenue, Haskell, NJ 07420, 201–839–2119	07/06/93
Mr. Lowell Fein, Eagle Rock Conval. Ctr., Inc., T/A/ West Caldwell Care Ctr., West Caldwell, NJ 07006, 201–226–1100	07/06/93
Mr. Enrique D. Melencio, Jr., Aegis Human Resources Mgmt, I, 43 Nicholas Avenue, West Orange, NJ 07052, 201–669–2726	07/09/93
Mr. Warren E. Gager, William B. Kessler Memorial Hospital, Hammonton, NJ 08037, 609–561–6700	07/14/93
Ms. Patricia Peterson, St. Mary's Hospital, 211 Pennington Avenue, Passaic, NJ 07055, 201–470–3000	07/15/93
Mr. William J. Monagle, Somerset Medical Ctr., 110 Rehill Avenue, Somerville, NJ 08876, 908–685–2200	07/19/93
Mr. Stephen Lazovitz, Lakewood of Voorhees Associat, 1302 Laurel Oak Road, Voorhees, NJ 08043, 609–346–1200	07/19/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 07/01/93 to 07/31/93—Continued

CEO name/facility name/address	Approval date
Mr. Niceforo B. Domocol, Prime Human Resources Special, 43 Newkirk Street, Jersey City, NJ 07306, 201–438–6931	07/22/93
Mr. George Cannata, Dover Christian Nursing Ctr., 55 N. Sussex Street, Dover, NJ 07801, 201–361–5200	07/22/93
Ms. Eleanor A. Rivera, Eastern Nursing Services, Inc., 571 Bloomfield Avenue, Verona, NJ 07044, 201–857–5662	07/22/93
Ms. Dolores Turco, Lincoln Park Nursing Ctr., 499–521 Pine Brook Road, Lincoln Park, NJ 07035, 201–696–3300	07/27/93
Ms. Mary Jane Eicke, Northfield Manor Conval. Home, 787 Northfield Avenue, West Orange, NJ 07052, 201–731–4500	07/28/93
Mr. Ulrich J. Rosa, St. Francis Hospital, 25 McWilliams Place, Jersey City, NJ 07302, 201–714–8900	07/28/93
Ms. Linda Moore, Sierra Health Care Center, 1400 Silver, Truth or Consequences, NM 87901, 505–894–7855	07/01/93
Mr. Jeffrey Sicklick, Hebrew Home for the Aged, Fairfield Division, Bronx, NY 10463, 212–549–9400	07/07/93
Ms. Mary Ann Dolak, Hudson Management Consultants, Inc., Rockville, NY 11570, 516–536–8000	07/09/93
Ms. Debra A. Sabato, Cedar Manor Nursing Home, P.O. Box 928, Cedar Lane, Ossining, NY 10562, 914–762–1600	07/09/93
Mr. Gary Horan, Our Lady of Mercy Medical Center (233rd St.), Bronx, NY 10466, 718–920–9000	07/21/93
Ms. Sheila Blutstein, Kings Hwy. Hospital Ctr., Inc., 3201 Kings Highway, Brooklyn, NY 11234, 718–252–3000	07/22/93
Mr. Gary Horan, Our Lady of Mercy Medical Ctr., D'urso Pavilion, Bronx, NY 10461, 718–430–6000	07/22/93
Kenneth Brown, Margaret Tietz Ctr. for Nursing, 164–11 Chapin Pkwy., Jamaica, NY 11432, 718–523–6400	07/28/93
Mr. John S.T. Gallagher, North Shore University Hospital, 300 Community Drive, Manhasset, NY 11030, 516–562–0100	07/28/93
Mr. Stanley F. Hupfeld, Baptist Medical Ctr. of Oklahoma City, OK 73112, 405–949–3112	07/22/93
Mr. Benjamin Astacio, Hospital Bella Vista, P.O. Box 1750, Mayaguez, PR 00681, 809–834–2350	07/09/93
Mr. David L. Henson, Spartanburg Regional Med. Ctr., 101 East Wood St., Spartanburg, SC 29303, 803–591–6000	07/01/93
Sister Annette Crone, St. Joseph Hospital and Health Centers, Memphis, TN 38105, 901–577–2700	07/14/93
Mr. Jerry L. Ivey, Westwood Health Care Center, P.O. Box 190, Decaturville, TN 38329, 901–852–3591	07/20/93
Mr. Jerry L. Ivey, Franklin Manor Nursing Ctr., 1501 Columbia Avenue, Franklin, TN 37064, 615–794–2624	07/20/93
Mr. Jerry L. Ivey, Court Manor Nursing Ctr., 1414 Court, Memphis, TN 38104, 901–272–2492	07/20/93
Mr. Jerry L. Ivey, Cumberland Manor Nursing Ctr., 4343 Hydes Ferry Pike, Nashville, TN 37218, 615–726–0492	07/20/93
Mr. Jerry L. Ivey, Decatur County Manor Nursing, Route 1, Box D–1, Parsons, TN 38363, 901–847–6371	07/20/93
Mr. James Seward, Hillside Hospital, 1265 East College Street, Pulaski, TN 38478, 615–363–7531	07/26/93
Mr. Louis Bremer, Jr., Medical Center Hospital, 504 Medical Center Blvd., Conroe, TN 77304, 409–539–7485	07/01/93
Ms. Joanne Condi, Dallas Rehabilitation Institu, 9713 Harry Hines Blvd., Dallas, TX 75220, 214–358–6000	07/01/93
Dr. George A. Hurst, The University of Texas, Health Center at Tyler, Tyler, TX 75710, 903–877–7740	07/19/93
Mr. George Farr, Children's Medical Ctr. of Dallas, Dallas, TX 75235, 214–640–2000	07/22/93
Mr. Thomas B. Symonds, Mission Hospital, Inc., 900 South Bryan Rd., Mission, TX 78572, 210–580–9400	07/28/93
Mr. Dale Gunnell, University of Utah Hospital, 50 North Medical Drive, Salt Lake City, UT 84132, 801–581–2121	07/01/93
Mr. Richard P. Blinn, Hillhaven Rehabilitation and Convalescent Ctr., Norfolk, VA 23507, 804–623–5602	07/01/93
Mr. Richard P. Blinn, Birchwood Terrace Healthcare, The Hillhaven Corporation, Burlington, VT 05401, 802–863–6384	07/09/93
Total attestations	106

[FR Doc. 93–19509 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment

procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. TN930037, dated Feb. 19, 1993.

Agencies with construction pending projects, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. (See Regulations, 29 CFR part 1, § 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume III

Colorado:
CO930017 (Aug. 13, 1993)
CO930018 (Aug. 13, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT930001 (Feb. 19, 1993)
CT930003 (Feb. 19, 1993)
CT930004 (Feb. 19, 1993)
North Carolina:
NC930008 (Feb. 19, 1993)
New Hampshire:
NH930001 (Feb. 19, 1993)
NH930004 (Feb. 19, 1993)
New Jersey:
NJ930002 (Feb. 19, 1993)
NJ930003 (Feb. 19, 1993)
NJ930004 (Feb. 19, 1993)
NJ930007 (Feb. 19, 1993)
New York:
NY930007 (Feb. 19, 1993)
NY930022 (Feb. 19, 1993)
Pennsylvania:
PA930003 (Feb. 19, 1993)
Rhode Island:
RI930001 (Feb. 19, 1993)
RI930002 (May 14, 1993)
RI930003 (May 14, 1993)
RI930004 (May 14, 1993)
Tennessee:
TN930007 (Feb. 19, 1993)
TN930008 (Feb. 19, 1993)
TN930013 (Feb. 19, 1993)
TN930014 (Feb. 19, 1993)
TN930038 (Feb. 19, 1993)
TN930039 (Feb. 19, 1993)
TN930045 (Jul. 30, 1993)

Volume II

Arkansas:
AR930001 (Feb. 19, 1993)
AR930008 (Feb. 19, 1993)
Iowa:
IA930024 (Apr. 09, 1993)
Illinois:
IL930001 (Feb. 19, 1993)
IL930002 (Feb. 19, 1993)
IL930003 (Feb. 19, 1993)
IL930004 (Feb. 19, 1993)
IL930005 (Feb. 19, 1993)
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Michigan:
MI930001 (Feb. 19, 1993)
MI930002 (Feb. 19, 1993)
Missouri:
MO930002 (Feb. 19, 1993)
MO930011 (Feb. 19, 1993)
MO930015 (Feb. 19, 1993)
Nebraska:
NE930001 (Feb. 19, 1993)
Oklahoma:
OK930016 (Feb. 19, 1993)
Texas:
TX930057 (Feb. 19, 1993)
TX930080 (Jul. 09, 1993)
Wisconsin:
WI930010 (Feb. 19, 1993)

Volume III

Alaska:
AK930001 (Feb. 19, 1993)
Arizona:
AZ930001 (Feb. 19, 1993)
AZ930005 (Jul. 07, 1993)
Colorado:
CO930001 (Feb. 19, 1993)
CO930005 (Feb. 19, 1993)
Hawaii:
HI930001 (Feb. 19, 1993)
Montana:
MT930002 (Feb. 19, 1993)
MT930009 (Aug. 06, 1993)
North Dakota:
ND930001 (Feb. 19, 1993)
ND930005 (Feb. 19, 1993)
Nevada:
NV930005 (Mar. 26, 1993)
Washington:
WA930002 (Feb. 19, 1993)
WA930005 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for

any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th day of August 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–19288 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–9033, et al.]

Proposed Exemptions; Western Asset Management Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state:

(1) The name, address, and telephone number of the person making the comment or request, and

(2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Western Asset Management Co.
Located in Pasadena, CA
[Exemption Application No. D–9033]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (F) of the Code, shall not apply to a proposed exchange (the Exchange) by employee benefit plans (the Plans) of certain debt securities (Debt Securities) for shares in two open-end mutual fund portfolios: the Western Assets Trust, Inc. Corporate Securities Portfolio (the Corporate Fund) and the Western Assets Trust, Inc. Mortgage Securities Portfolio (the Mortgage Fund) (collectively referred to as the Funds), to which the Western Asset Management Company (the Manager), a fiduciary with respect to the Plans, and its affiliates provide investment advisory and other services, provided that the following conditions are met:

(a) The terms of the transaction are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties.

(b) The Exchange is a one time exchange between a Plan and the respective Fund.

(c) No sales commission or dealer mark-up is paid by the Plan in connection with the Exchange.

(d) The assets of any Plan invested in the Funds will be excluded from the assets on which the investment management fee paid by the Plan to the Manager are determined.

(e) With respect to the Corporate Fund, the Debt Securities to be exchanged consist solely of corporate bonds which are rated not less than Baa/BBB by an independent rating agency, or, if unrated, determined to be of comparable quality by the Manager.

(f) With respect to the Mortgage Fund, the Debt Securities to be exchanged consist of mortgage-related debt securities:

(i) Issued by or guaranteed as to the payment of principal and interest by the U.S. Government or its Agencies or Instrumentalities; or

(ii) Rated not less than A by an independent rating agency; or, if unrated, determined to be of comparable quality by the Manager.

(g) In each case in which the Manager makes a rating determination with respect to an unrated Debt Security, the Manager maintains contemporaneous written records of the analysis of that rating determination.

(h) Prior to the Exchange, a Plan fiduciary who is independent of and unrelated to the Manager or any affiliate thereof will receive in writing:

(1) A current prospectus issued by the investment company, and full and detailed disclosures of the investment advisory and other fees charged to or paid by the Plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the Manager may consider such exchanges to be appropriate for the Plan, and whether there are any limitations on the Manager with respect to which plan assets may be invested in shares of the

investment company and, if so, the nature of such limitations;

(2) A list of Debt Securities held by the Plan that would be accepted by the Manager with respect to the Exchange; and

(3) An explanation of the Manager's procedures that would be followed for valuing the Debt Securities for purposes of the Exchange.

(i) After the independent fiduciary receives and reviews the disclosures required under paragraph (h), such fiduciary independently determines whether to exchange each Debt Security for shares in the Funds, and provides written approval for the Exchange.

(j) For purposes of the Exchange, the price of the Debt Securities will be established by a recognized, independent pricing service at the closing price on the business day specified by the independent fiduciary in its written approval of the Exchange. If no price is available from a recognized, independent pricing service for such date, the Manager will determine the price by averaging the mean of the closing bid and asked quotations from each of two recognized, independent market makers for such Debt Securities on the day specified by the independent fiduciary in its written approval of the Exchange.

(k) For purposes of the Exchange, the Manager determines the value of the Debt Securities and the net asset value of the Funds as of the close of business on the same day.

(l) Within seven (7) days after the authorization of each exchange, the independent Plan fiduciary receives a written confirmation that reflects the price of each of the Debt Securities involved in the Exchange. The confirmation will include a written disclosure of the identity of the pricing service or the market makers consulted in determining the value of the Debt Securities.

(m) The independent fiduciary referred to in paragraph (h), or any successor thereto is notified of any change in the rates of the fees referred to in paragraph (h)(1) and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(n) The Manager shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) below to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Manager and /or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not available for examination as required by section (o) below.

(o) (1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) above shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (o)(1)(B) through (D) shall be authorized to examine the trade secrets of the Manager or its affiliates or commercial or financial information which is privileged or confidential.

Definitions

For purposes of this proposed exemption:

(a) An "affiliate" of a person includes:

(1) Any persons directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) For purposes of the proposed exemption, a fiduciary will not be deemed to be an independent fiduciary with respect to the Manager and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Manager or any affiliate:

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director partner, or employee of the Manager or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will be effective only for those Exchanges which occur within five years after the date on which the Final Grant of this exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The Manager, a wholly owned subsidiary of Legg Mason, Inc., is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser with respect to more than $6 billion, approximately 75% of which are plan assets. The Manager serves as investment manager as defined in section 3(38) of the Act with respect to a separate investment account established for each Plan (Plan Account). Most of the Plans to which the Manager serves as investment manager have assets in excess of $50 million.

2. The Manager states that the Plan Accounts are currently invested in certain corporate bonds and mortgage-related debt securities (Debt Securities). The Manager represents that the pro rata allocation of Debt Securities among the Plan Accounts is impracticable because of the reduced marketability and liquidity of odd lots of Debt Securities. The Manager represents that investments by the Plan Accounts in the Funds will avoid these allocation problems because the Plan Accounts will own a pro rata share of any Debt Securities held by the Funds.

3. The Manager and its affiliates have established Western Assets Trust Inc., a registered no-load, open-end investment company with multiple portfolios. Five portfolios have already been registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The Manager proposes to register three additional portfolios including the Funds. These three additional portfolios will be available only to Plan Accounts.

The two Funds which are the subject of the proposed exemption are the Corporate Fund, which will be a corporate bond portfolio, and the Mortgage Fund, which will be a mortgage-related debt securities portfolio. The Manager proposes to notify each existing Plan Account of the availability of the opportunity to exchange Debt Securities for shares in each Fund. The Manager contemplates that in the future other plans will establish new Plan Accounts with the Manager and will receive the same notice. Only one Exchange per Plan would be permitted with respect to each of the Funds. The Debt Securities exchanged for the shares of a Fund would become part of the Fund's investment portfolio.

4. The Manager represents that the acquisition of shares in the Funds through the Exchange would avoid transaction costs. In this regard, no dealer mark-up or commission will be paid by the Plans in connection with the proposed Exchanges. In addition, potential adverse price concessions by the Plan Accounts with respect to the Debt Securities will be avoided. The sale by a Plan of a large volume of any Debt Securities in a relatively illiquid market could result in the Plan lowering its offering price to attract bids. The Manager represents that by exchanging the Debt Securities for shares in the Funds, instead of selling the Debt Securities for cash and then purchasing shares in the Funds, the Plan Accounts would avoid potential negative price concessions caused by illiquidity in the Debt Security market.

5. The Manager represents that the Funds will accept only Debt Securities that meet the respective Fund's rating requirements and the Funds' South Africa-free policy.[1] Any Debt Security that:

(1) Is part of an issue that was less than $150 million when issued;

(2) Meets the Fund's rating requirements; and

(3) Satisfies the Fund's South Africa-free policy will be accepted for purposes of the Exchange.

With respect to the Corporate Fund, the Manager intends to accept for the Exchange only corporate bonds rated not less than Baa/BBB by a recognized, independent rating agency; or, if unrated, determined to be of comparable quality by the Manager. With respect to the Mortgage Fund, the Manager intends to accept for the Exchange only mortgage-related debt securities:

(i) Issued by or guaranteed as to the payment of principal and interest by the U.S. Government or its Agencies or Instrumentalities; or

(ii) Rated A or better by the relevant agencies; or, if unrated, determined to be of comparable quality by the Manager.

In this regard, the Manager represents that it will maintain and follow internal written guidelines for rating unrated Debt Securities which will require the Manager to follow industry practice for rating such securities. In each case in which the Manager makes a rating determination with respect to an unrated security, the Manager will maintain contemporaneous written records of the analysis including the Manager's best judgment as to the comparable quality rating that would have been assigned to that Debt Security if it had been rated by a recognized, independent rating service.

6. The Manager represents that a fiduciary with respect to each Plan who is independent of and unrelated to the Manager or its affiliates, will receive prior to the Exchange a copy of the Funds' current prospectus, including or supplemented by a full and detailed written disclosure of: (i) The Plan Account's investment management fee schedule, the Funds' investment advisory fee schedule, and the nature of any differential between such fees;[2] (ii) a list of the Debt Securities which would be accepted for exchange for shares in the respective Fund; and (iii) a summary of the Manager's procedures that will be followed for valuing the Debt Securities for purposes of the Exchange.The independent Plan fiduciary will then unilaterally determine whether to engage in the Exchange and which of the Debt Securities deemed acceptable to the Manager will actually be exchanged for shares in the Fund.

7. The Manager represents that only Debt Securities for which there is an objective valuation will be involved in the Exchange. For purposes of the Exchange, the price of the Debt securities will be established by a recognized,[3] independent pricing service at the closing price on the business day designated by the independent fiduciary in its written approval for the Exchange. If no price is available from a recognized, independent pricing service for such date, the Manager will determine the price by averaging the mean of the closing bid and asked quotations from each of two recognized, independent market makers for such Debt Securities on the business day designated by the independent fiduciary in its written approval of the Exchange.

8. The Manager represents that it generally uses the Merrill Lynch Securities Pricing Service (Merrill Lynch) which provides a single market price rather than bid and asked prices. The Manager represents that the use of a pricing source other than Merrill Lynch would be for one of three reasons:

(i) The Manager generally relies on a different pricing service with respect to the Debt Security;

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[1] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interests of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries. In order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing plan assets based on a South Africa-free criterion would not be prudent if such investment would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such investments would invoke greater risk to the security of plan assets than other investments offering a similar return. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and benefits in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in the Funds, a plan fiduciary must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement income. A decision to make a particular investment may not be influenced by non-economic factors unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plans.

[2] The Manager represents that assets of any Plan Account invested in the Funds will be excluded from the assets on which the investment management fee paid by the Plan to the Manager are based. In addition, the applicant represents that subsequent cash transactions between the Plan Accounts and the Funds will comply with the terms and conditions of Prohibited Transaction Exemption 77–4 (42 FR 18732, April 8, 1977).

[3] The applicant represents that a pricing service is "recognized" by the securities industry if it is generally deemed to have the qualifications and resources to provide a regular source of reliable price quotation. Similarly, a market maker is "recognized" by the securities industry if it is generally deemed to have the qualifications and resources to provide a regular source of trading in the relevant securities, resulting in a reliable price quotation.

(ii) A price cannot be obtained from Merrill Lynch with respect to a particular Debt Security; or

(iii) The Manager has a well reasoned belief that the fair market value of that particular Debt Security is not reflected in the price available from the previously disclosed pricing source. In this regard, the Manager will include in, or with, its confirmation of the Exchange, the identity of the pricing source the Manager consulted and the reason why it consulted such pricing source.

9. The Manager believes that the use of prices obtained from recognized, independent, objective pricing sources, the pre and post-Exchange disclosures, and the disclosure of the actual market maker or pricing service which values the Debt securities for purposes of the Exchange, will ensure objective valuation of the Debt Securities. In this regard, the Manager represents that its record keeping and its pre and post-Exchange disclosures to the independent Plan fiduciary provide adequate opportunities for the independent Plan fiduciary to monitor the Manager's execution of the valuation procedure with respect to the Exchange.

10. In summary, it is represented that the proposed Exchange satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Plan Accounts participating in the Exchange will avoid potential price concessions that could occur if the Debt Securities were sold in the market;

(b) The Plan Accounts will avoid allocation problems associated with investing in smaller issues of Debt Securities by owning a pro rata share of all of the Debt Securities held by the Funds;

(c) The independent fiduciary for each Plan unilaterally determines whether to engage in the Exchange;

(d) The payment of any fees by the Funds to the Manager and any affiliates with respect to plan assets invested in the Funds will require written approval by an independent fiduciary for the Plan after full written disclosure to the independent fiduciary, including a current prospectus for each of the Funds and a statement describing the fee structure;

(e) The value of the Debt Securities will be established by a recognized, independent pricing service or two recognized, independent market makers; and

(f) Within seven (7) days after the Exchange, the independent Plan fiduciary will receive a written confirmation that reflects the price of each of the Debt Securities involved in the Exchange and a written disclosure of the identity of the pricing service or the market makers consulted in determining the value of the Debt Securities.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PAMCAH–UA Local 675 Pension Fund (the Pension Plan) and PAMCAH–UA Local 675 Training Fund (the Training Plan; collectively, the Plans) Located in Honolulu, HI [Application Nos. D–9103 and L–9104, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the leasing of certain work shop space by the Pension Plan to the Training Plan under the terms of an amended lease (the Amended Lease).

This proposed exemption is conditioned upon the following requirements:

(1) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with unrelated parties; (2) Monroe and Friedlander Management, Inc. (MFMI), an independent fiduciary, monitors the Amended Lease on behalf of the Pension Plan as well as the terms and the conditions of the exemption at all times; (3) the rental charged by the Pension Plan to the Training Plan under the Amended Lease always remains at fair market value as determined by an independent appraiser; (4) the fair market value of the leased space is redetermined every three years by an independent appraiser who has been selected by MFMI; and (5) MFMI makes appropriate adjustments to the rental charged for the leased space as required under the Amended Lease.

Summary of Facts and Representations

1. The Pension Plan and the Training Plan are multiemployer plans that have been established and maintained under section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, and in accordance with the terms of a collective bargaining agreement by and between Local Union 675 of the United Association of Journeymen and Apprentice Plumbers and Pipefitters of the United States and Canada AFL–CIO (the Union) and various contributing employers (the Employers). The Plans are jointly-trusteed by six trustees (the Trustees), three of whom have been selected by the Employers and three of whom have been designated by the Union.

2. The Plans are administered by the Administrative Office which is under the control of a committee consisting of one Employer and one Union Trustee. The committee allocates the operating expenses of the Administrative Office to various funds and programs. Investment decisions for the Plans are made by Dodge & Cox of San Francisco, California and The Boston Company of Green Brae, California, which serve as investment advisers.

3. The geographical jurisdiction of the Plans is the entire State of Hawaii. The Plans share common participants who are engaged as plumbers, pipefitters, steamfitters, welders, and air conditioning, refrigeration and fire sprinkler mechanics. As of July 31, 1992, the Training Plan and the Pension Plan had total assets of $1,145,910 and $172,949,691, respectively. As of February 2, 1993, the Pension Plan had approximately 1,468 participants and the Training Plan had an estimated 1,208 participants. The Plans are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

4. Among the assets of the Pension Plan is certain unencumbered real property consisting of a 19 year old warehouse building (the Building) containing approximately 27,072 square feet of gross building area. The Building is located at 97–731 Kamehameha Highway, Pearl City, Hawaii and it is improved by three warehouse bays. The Pension Plan purchased the Building on February 2, 1990 from Seven-Three-One Associates, a Hawaii limited partnership and an unrelated party. The aggregate purchase price for the Building was $3.07 million. The Pension Plan paid the consideration in cash.

5. The Building was appraised on February 15, 1990 by John F. Yamaguchi, SRPA, RM, IFAS and Lillian T. Izumi, independent appraisers and the President and Vice President, respectively, of Yamaguchi and Yamaguchi, Inc. of Honolulu, Hawaii. In an appraisal report dated March 2, 1990, the appraisers placed the fair market value of the Building at $3.1 million. The appraisers also estimated the annual market rents in the Building to range from $.75 per square foot for warehouse space to $1.00 per square foot for retail space.

5. The Pension Plan has never occupied space in the Building. However, at the time of and subsequent to its acquisition by the Pension Plan, the Building was leased to two unrelated parties and Reliable

Plumbing, Inc. (Reliable), a contributing employer to the Pension Plan.[4] With the exception of Reliable, these leasing arrangements have continued. Reliable, which occupied 4,500 square feet of office space in the Building on a month to month basis, paid the Pension Plan an annual rental of $.75 per square foot of space. On June 30, 1991, Reliable vacated the space it had occupied in the Building.

6. Currently, the Building is not fully leased. It is, however, occupied by two unrelated parties and the Training Plan. Although the Pension Plan previously leased space in the Building to Reliable, no other party in interest has ever occupied space in the Building.

7. On October 1, 1991, the Training Plan began leasing 3,160 square feet of warehouse and classroom space in the Building from the Pension Plan under the provisions of a written lease. The term of the Lease is five years and it permits the Training Plan to occupy additional space in the Building. On January 1, 1992, the Training Plan began leasing 9,480 square feet of new warehouse, classroom and storage space in the Building from the Pension Plan thereby bringing the total amount of rented space to 12,640 square feet. During the first year of the Lease, the Training Plan was required to pay the Pension Plan a monthly rental of $.75 per square foot plus a monthly common area maintenance charge based upon $.13 per square foot. The rental rate was also to be increased by 5 percent for each successive year of the Lease. The monthly and total annual rentals during the first year of the Lease were calculated as follows:

10/1/91–12/31/91

($.75+$.13)×3,160 sq. ft. = $2,780 per month
$2,780.80×3 months = $8,342.40

1/1/92–9/30/92

($.75+$.13)×12,640 sq. ft. = $11,123.20 per month
$11,123.20×9 months = $100,108.80

$100,108.80	Rental between 1/1/92 and 9/30/92
+ 8,342.40	Rental between 10/1/91 and 12/31/91
$108,451.20	Total Rental for Year One of Lease

In addition to paying rent, the Training Plan is required to pay the Pension Plan its pro rata share of all costs related to the operation of the Building. These costs include, but are not limited to, real estate taxes, assessments on all lands and improvements and the cost of operating and maintaining water, electricity and other utilities, public liability, nonstructural repairs and property damage insurance covering all common facilities. The Lease contains no restrictions regarding renewals.

8. The applicants are aware that a prohibited transaction has occurred because of the past leasing arrangement between the Pension Plan and the Training Plan and the fact that the Plans have common Trustees. In support of their application, Ms. Izumi, by letter dated October 28, 1992, confirmed that the original Lease, which provided for a rental rate of $.75 per square foot, was at fair market rental value at its inception and still reflected the fair market rental value for such leased space as of the date of her letter. In requesting prospective relief, the applicants propose to amend the Lease in order that the Pension Plan may continue leasing space in the Building to the Training Plan.[5]

9. The Amended Lease will have an initial term of five years and have the same monthly rental as that charged under the Lease. As noted above, Ms. Izumi has confirmed that $.75 per square foot represents the fair market rental value for such leased space. The Amended Lease will contain two renewal options, each of five years' duration. The Amended Lease will require that MFMI, the independent fiduciary appointed to monitor the terms and conditions of such lease, appoint an independent appraiser who will revalue the Building once every three years to determine the fair market rental value of the space leased. Based upon these independent valuations, MFMI will make appropriate adjustments to the rental being charged.

In addition to paying rent, the Training Plan will still be required to pay the Pension Plan its pro rata share of common area maintenance and operating costs, state general excise taxes, real property taxes and assessments, utility charges, air conditioning costs, refuse collection costs and janitorial service costs. As for renewals, the Amended Lease will provide that there can be no renewal of the lease term unless MFMI determines that such renewal is in the best interest of the Pension Fund and its participants and beneficiaries.

10. As stated above, the Pension Plan has appointed MFMI to serve as the independent fiduciary with respect to the Amended Lease. MFMI is a privately-held property management firm specializing in the management of retail, office and industrial properties. Formed in 1977, MFMI is one of the largest commercial property management firms in Hawaii. MFMI represents that it is completely unrelated to the parties involved in the proposed transaction. In addition, MFMI represents that it has consulted with counsel familiar with the Act regarding the duties, responsibilities and liabilities it will be required to assume in serving as the independent fiduciary on behalf of the Pension Plan. Further, MFMI states that it has acknowleged and accepted such fiduciary duties, responsibilities and liabilities.

MFMI believes the terms of the Amended Lease are indicative of the fair market value for the subject space based upon such factors as the length, rental rate and provisions of the Amended Lease document. MFMI also believes the Amended Lease is in the best interests of the Pension Plan because such plan would be securing a creditworthy tenant whose use is compatible with the Building.

Aside from the independent fiduciary duties noted above, MFMI will collect all rents due and owing from the Training Plan, make fair market adjustments to the rent if required, and take all actions that are necessary and proper to enforce the rights of the Pension Plan and its participants and beneficiaries.

11. In addition to MFMI's review of the transactions, the Trustees, who are also the trustees and the fiduciaries of the Training Plan, represent that they have reviewed the investment needs of the Training Plan, the terms and conditions of the Amended Lease, including the rental rate determined by the independent appraisers. Based upon their consideration of such matters, the Trustees believe the Amended Lease will be in the best interest of the Training Plan. The Trustees also believe that the amount of space leased by the Training Plan is appropriate and necessary for the needs of such plan.

12. In summary, it is represented that the transaction satisfies the criteria for a statutory exemption under section 408(a) of the Act because: (a) The terms of the Amended Lease will remain at least as favorable to the Plans as those obtainable in an arm's length transaction with unrelated parties; (b)

[4] The Department notes that a lease between a plan and a contributing employer, such as Reliable, is a prohibited transaction under section 406(a)(1)(A) of the Act and section 4975(c)(1)(A) of the Code. In this regard, the Department further notes that Reliable has not requested exemptive relief with respect to its leasing of space in the Building from the Pension Plan. Therefore, the Department has not provided any exemptive relief regarding such transaction.

[5] The Department is providing no retroactive exemptive relief herein with respect to the past leasing between the Plans. It notes, in this regard, that there is no excise tax owing under section 4975 of the Code because the Plans are not disqualified persons with respect to each other.

MFMI will monitor the Amended Lease on behalf of the Pension Plan; (c) the rental charged by the Pension Plan to the Training Plan under the Amended Lease will always remain at fair market value as determined by an independent appraiser; (d) the fair market rental value of the leased space will be redetermined every three years by an independent appraiser who has been selected by MFMI; and (e) MFMI will make appropriate adjustments to the rental charged for the leased space as required under the Amended Lease.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Stephen B. Swartz 1992 Profit Sharing Plan (the Plan)
Located in Minneapolis, MN
[Application No. D–9253]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) proposed sale to the Plan, for the total cash consideration of $119,000, of certain improved real property (the Property) by Stephen B. and Harriet K. Swartz who are disqualified persons with respect to the Plan; and (2) the contemporaneous leasing of the Property by the Plan to the Swartzes under the provisions of a written lease (the Lease).[6]

This proposed exemption is conditioned on the following requirements: (1) The terms of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party; (2) the acquisition price that is paid by the Plan for the Property is not more than the independently appraised value of the Property; (3) the Property represents less than 25 percent of the Plan's assets; (4) the Plan is not required to pay any real estate fees or commissions in connection with its purchase of the Property; (5) the rental amount under the Lease is based upon the fair market rental value of the Property as determined by a qualified, independent appraiser; (6) the rental amount is adjusted by the Plan trustee (the Trustee) during every third year of the Lease to the higher of the original rental amount or the fair market rental value of the Property as determined by an independent appraiser who has been selected by the Trustee; and (7) the Swartzes incur all real estate taxes and other costs that are associated with the Property and which are incident to the Lease.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with Stephen B. Swartz as its Trustee and sole participant. As of May 10, 1993, the Plan had total assets of approximately $495,049. Investment decisions for the Plan are made jointly by Mr. Swartz in the capacity of Plan Trustee and Mr. Morton D. Silverman, Managing Director of the Minneapolis, Minnesota division of Piper Jaffray, Inc. Mr. Swartz, an attorney, is a principal in McGladrey & Pullen, a national accounting and consulting firm also having offices in Minneapolis, Minnesota.

2. Mr. Swartz, together with his wife, Harriet, own certain improved real property consisting of a single family lakeshore residence and lot located at Route #1, Deerwood, Minnesota. In January 1977, the Swartzes acquired the land which comprises part of the Property from H.J. and Glenna Hutcheson who were unrelated parties for $15,000. In the Spring of 1980, the Swartzes constructed their lakeshore residence for a total cost of $55,000. The Swartzes, who have been using the Property for vacation purposes, own no other real property that is contiguous to the Property.

3. Both the acquisition of the land and the construction of the house were financed by a mortgage loan from the First National Bank of Deerwood. The original land loan was in the amount of $15,000. That loan was replaced with a $60,000 mortgage loan at the time the house was constructed. Subsequently, the mortgage loan was refinanced with the First State Bank of Eden Prairie, an unrelated party, which presently holds a $65,000 first mortgage on the Property. The current outstanding balance of this mortgage loan is $64,000. According to the applicant, the Swartzes have paid all loan payments in a timely manner and they have never been delinquent in repaying such loan. In addition, the applicant states that there are no prepayment penalties associated with the early repayment of the loan.

4. The Property has been appraised by Mr. Gene Foote, IFAS, SRA, CRA, an independent appraiser from Crosby, Minnesota. In an appraisal report dated September 24, 1992, Mr. Foote placed the fair market value of the Property at $119,000. Mr. Foote also placed the fair market rental value of the Property at $450 per month as of the same date.

5. Mr. and Mrs. Swartz wish to sell and then lease the Property from the Plan. By engaging in these transactions, the Swartzes believe the Plan will be able to diversify its investments and realize a higher return through appreciation. The Swartzes note that the Property has appreciated in value by 65 percent over the last 5 years. This rate of growth, they state, has exceeded the rate of growth experienced by the Plan's assets over the same period and it will probably continue. Accordingly, the Swartzes request an administrative exemption from the Department.

6. With respect to the proposed sale transaction, the Swartzes contemplate selling the Property to the Plan free and clear of the existing mortgage. The anticipated sales price for the Property will be $119,000. This amount reflects the fair market value of the Property as determined by Mr. Foote. The Plan will pay the consideration in cash. In addition, the Plan will not be required to pay any real estate fees or commissions in connection therewith.

7. Contemporaneously with the proposed sale, the Plan will lease the Property to the Swartzes under the terms and conditions of a written lease. The Lease will be for a duration of 10 years. It will provide for a rental of $450 per month which is the fair market rental value of the Property as established by Mr. Foote. In addition to paying rent, the Swartzes will pay the Plan for all real estate taxes, assessments, utilities and property and casualty insurance as well as for the costs of maintaining and repairing the Property. During every third year of the Lease, the rental will be adjusted by the Trustee to the higher of (a) $450 or (b) the fair market rental value as determined by a qualified, independent appraiser who has been selected by the Trustee.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The terms of the transactions will be at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party; (b) the acquisition price that is paid by the Plan for the Property will not be more than the independently appraised value of the Property; (c) the Property represents less than 25 percent of the Plan's assets; (d) the Plan will not be required to pay any real estate fees

[6] Because Mr. Swartz is the Plan sponsor and the sole participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

or commissions in connection with its acquisition of the Property; (e) the rental amount under the Lease is based upon the fair market rental value of the Property as determined by a qualified, independent appraiser; (f) the rental amount will be adjusted by the Trustee during every third year of the Lease to the higher of: (1) The original rental amount or (2) the fair market rental value of the Property as determined by an independent appraiser who has been selected by the Trustee; (g) the Swartzes will incur all real estate taxes and other costs that are associated with the Property and which are incident to the Lease; and (h) Mr. Swartz is the only person in the Plan who will be affected by the proposed transactions and he desires that such transactions be consummated.

Notice to Interested Persons

Because Mr. Swartz is the only participant in the Plan who will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Zero Corporation Pension Plan (the Plan) Located in Los Angeles, California [Application No. D–9379]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain real estate limited partnership interests (the Interests) from the Plan to Zero Corporation (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interests is established by an appraiser independent of the Employer;

2. The Employer pays no less than the greater of the current fair market value of the Interests or the net total Plan expenditures on the Interests as of the date of sale;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no fees or commissions in regard to the sale.

Summary of Facts and Representations

1. The Employer is engaged in the business of engineering, manufacturing and marketing cases, cabinets, cooling equipment and other equipment for the electronics and air transport industries. The Plan is a defined contribution money purchase plan. As of December 31, 1992, the Plan had approximately 1,450 participants and beneficiaries and total assets of $14,482,000.

2. The Interests consist of interests in Balcor Pension Investors I which the Plan purchased in October 1980 and Balcor Pension Investors VII which the Plan acquired in December 1986. The Interests were originally purchased from the Balcor Company (Balcor), an indirect wholly-owned subsidiary of American Express, which sponsors real estate mortgage related partnerships of this kind. The general partners of both partnerships are affiliates of Balcor. The applicant represents that at the time of purchase of the Interests there was no relationship between the Plan or the Employer and either of the two partnerships or the general partner. However, since that time IDS Trust, which also is affiliated with American Express, has become the successor trustee of the Plan. According to the applicant, the selection of IDS as trustee was unrelated to these investments which represent only a small percentage of the assets of the Plan.

3. The Plan initially invested $254,138 in Balcor I and $518,750 in Balcor VII, with the total Plan investments in the two partnerships amounting to $772,888. As of September 30, 1992, the Plan had received returns of capital distributions totaling $177,169 and income distributions totaling $426,598 for the two partnership investments combined. Accordingly, the net total Plan expenditures on the Interests as of September 30, 1992 amounted to $169,121. The applicant represents that the Interests are highly illiquid investments for which there is a very limited secondary market.[7]

4. The partnership agreements provide that quarterly valuations of interests in both partnerships are to be furnished to investors by Valuation Counselors Group, Inc. (the Appraisers) on behalf of Balcor. The Appraisers are in the business of making valuations of this kind in regard to units of partnership investments. The applicant represents that the Appraisers are independent of the Plan and the Employer. Based on the valuation reports from the Appraisers dated November 18, 1992, the value of the Interests for the two partnership investments combined amounted to $502,727 as of September 30, 1992.

5. The Employer has determined to amend the Plan in order to provide that participants will have the opportunity to choose among certain investment funds. In this regard, because the Interests are illiquid and have declined in value, the Employer proposes to purchase the Interests from the Plan. The Employer will pay no less than the greater of the current value of the Interests, based on the latest quarterly valuations, or the net total Plan expenditures on the Interests as of the date of sale. The sale of the Interests will be a one-time transaction for cash. The Plan will pay no commissions or other expenses in regard to the sale.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Employer will pay no less than the greater of the current value of the Interests or the net total Plan expenditures on the Interests as of the date of sale; (2) the sale of the Interests will be a one-time transaction for cash; (3) the Plan will pay no commissions or other expenses in connection with the transaction; and (4) the sale will remove from the Plan investments which have declined in value and for which there is very little liquidity.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

[7] The Department expresses no opinion as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Interests. Section 404(a)(1) of the Act requires, among other things, that a plan fiduciary must act prudently and solely in the interest of the participants and beneficiaries of the plan.

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of August, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–19513 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory Panel (Interdisciplinary Section) to the National Council on the Arts will be held on August 31, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m., for introductions.

The remaining portion of this meeting, from 10 a.m. to 5:30 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–19489 Filed 8–12–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Dance Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on August 31, 1993 to September 2, 1993, from 9 a.m. to 7 p.m. on August 31 and September 1, 1993, and from 9 a.m. to 5 p.m. on September 2, 1993. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 5 p.m. on September 2, 1993 for policy discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 31 and September 1, 1993 and from 9 a.m. to 2:30 p.m., on September 2, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682/5439.

Dated: August 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–19490 Filed 8–12–93; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Notice is hereby given that a meeting of the Theater Program Task Force will be held on August 23, 1993 from 10 a.m. to 5 p.m. at the River Inn, 924 25th Street NW., Washington, DC 20037.

A portion of this meeting will be open to the public from 10 a.m. to 10:30 a.m. for introductions.

During the remaining portion of this meeting from 10:30 a.m. to 5 p.m., the Task Force will discuss non-public commercial or financial information of intrinsic value, and will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 522b. Additionally, discussion concerning purely personal information about individuals submitted with grant applications, (e.g., personal biographical and salary data or medical information) as well as discussion of deliberations of specific panels on which Task Force members have served (information which remains confidential even after the final grant decision is made), will be conducted by the Task Force in closed session in accordance with subsection (c)(6) of 5 U.S.C., 522.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington,

DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–19488 Filed 8–12–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by September 13, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Survey of Graduate Students and Postdoctorates in Science and Engineering

Affected Public: Non-profit institutions.

Respondents/Reporting Burden: 11,000 respondents: 1.5 hours per response.

Abstract: The survey is the only source of national statistics on graduate students and on support for students and postdoctoral appointees in graduate science and engineering programs. Federal agencies, State Education boards, institutions of higher education and others use the data to monitor S&E education progress and to plan for future S&E personnel needs.

Dated: August 10, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 93–19520 Filed 8–12–93; 8:45 am]

BILLING CODE 7555–01–M

Permit Application Received Under the Antarctic Conservation Act of 1978

August 10, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 9, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Dr. Steven D. Emslie, Florida Museum of Natural History, University of Florida, Gainesville, FL 32611.

Activity for Which Permit Requested

Take. Import Into USA—Port of Entry—Miami, FL.

The applicant wishes to salvage carcasses, parts of carcasses, and isolated bones of the species of native seabirds at King George Island and adjacent regions in the Antarctic Peninsula. These materials are needed to obtain skeletal material for scientific study and will be used in comparative osteological analyses and the identification of fossil bird bones. Skeletal series of each species are needed to identify morphological features useful in systematic analyses. Isolated bones will be collected from active and abandoned penguin rookeries for taphonomic studies of bone accumulation in these rookeries, and to identify species of penguins that were present at the rookery in the past.

All specimens will be deposited at the Florida Museum of Natural History where scientific study of the material will be completed by the applicant. Deposition of the material at the Florida Museum will ensure that the specimens are available for study by all interested individuals; the specimens will be available permanently at this museum for scientific study as per the criteria specified by the Antarctic Conservation Act of 1978.

Location

Antarctica Peninsula, King George Island and adjacent regions.

Dates: November 1, 1993–May 1, 1995.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–19521 Filed 8–12–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9024]

Energy Fuels Nuclear, Inc.; Finding of No Significant Impact and Notice of Intent To Issue a Possession Only License to Energy Fuels Nuclear, Inc., for Storage of Source Material in Campbell County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The proposed action is issuance of a possession only license to Energy Fuels Nuclear, Inc., for the storage of a small quantity of source material contained in organic resin to be stored at a secured site in Campbell County, Wyoming.

2. Reason For Finding of No Significant Impact

The proposed action has been determined to have no significant impacts on the environment since the

source material is of a small quantity, and has very low specific activity. Further, the source material, which is attached to organic resin, shall be stored in strong tight containers placed in locked trailers which will be parked within a secured compound. No adverse impact on public health and safety will result from storing the source material at the storage site.

3. Action

The Commission action is to issue a source material license for possession only to Energy Fuels Nuclear, Inc., upon publication of this Notice. This action is based on the Finding of No Significant Impact, and an appropriate radiation safety program as described in the Application for Source Material License submitted July 19, 1993.

This Notice, together with the Environmental Assessment which supports the Finding of No Significant Impact, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Denver, Colorado, this 6th day of August 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–19538 Filed 8–12–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OFI–10 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of an information collection, the Mail Reinterview. OFI Form 10, Mail Reinterview, is completed by individuals who have been interviewed by an OPM investigator during the course of a personnel investigation.

In order to receive equivalent information from subjects of personnel investigations, a supplemental form, OFI Form 10A, Mail Reinterview (Subject), has been added to this information collection. In order to receive equivalent information concerning the performance of other employees involved in the investigative process, OFI Form 10B, Mail Reinterview (FIPC), has been added to this information collection.

It is estimated that 5,700 individuals will respond annually (3,800 to OFI Form 10; 1,500 to OFI Form 10A; and 400 to OFI Form 10B), and that each will require approximately 6 minutes to complete the form, for a total burden of 570 hours. For copies of this proposal call C. Ronald Trueworthy on 703–908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from this publication.

ADDRESS: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, 202–376–3800.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–19537 Filed 8–12–93; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee

SUMMARY: The Federal Prevailing Rate Advisory Committee is correcting the notice published in Volume 58, No. 150, Friday, August 6, 1993. The meeting scheduled for August 19, 1993 is cancelled, there is no meeting scheduled for August 16, 1993.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415, (202) 606–1500.

Dated: August 6, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 93–19534 Filed 8–12–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–19614; 812–8352]

The Burnham Fund Inc., et al.; Application

August 6, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bunham Fund Inc. (the "Fund"), Burnham Asset Management Corporation (the "Adviser"), and Burnham Securities Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on April 15, 1993, and an amendment was filed on June 16, 1993. By supplemental letter dated August 4, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

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may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is an open-end management investment company registered under the Act. The Adviser provides investment advisory services to the Fund pursuant to an investment advisory contract. The Distributor acts as the principal underwriter of the Fund's shares pursuant to a distribution agreement with the Fund.

2. Shares of the Fund currently are sold to investors at net asset value plus a sales commission calculated at a percentage of the offering price at the time of purchase. The maximum sales commission is 5.00%. The sales commission is reduced as the aggregate dollar amount invested increases. As set forth in the Fund's prospectus, certain investors may purchase shares of the Fund at net asset value without the imposition of a sales load. The Fund does not currently have a rule 12b–1 plan.

3. Applicants seek an exemptive order that would permit the Fund to offer multiple classes of shares representing interests in the same portfolio of securities (the "Multi-Class Plan"). Each class would be identical in all respects, except for its class designation, the allocation of certain fees and expenses, and voting rights. Applicants also propose to assess a CDSC on certain redemptions of shares of the Fund, and to waive or reduce the CDSC with respect to certain types of redemptions. The Fund may offer classes of shares with terms different from those described in the application from time to time. Any such new classes, however, would comply with all of the conditions set forth in the application.

A. The Multi-Class Plan

1. Under the proposed Multi-Class Plan, existing shares of the Fund would be designated as Class A Shares. Class B Shares would be offered without a front-end sales load, but would be subject to a CDSC, a rule 12b–1 distribution fee equal to 0.75% of average daily net asset value, and a service fee of 0.25% of average daily net asset value pursuant to a non-rule 12b–1 service plan (a "Service Plan"). Class C Shares would be offered without a front-end sales load or CDSC, but would be subject to a rule 12b–1 distribution fee equal to 0.25% of average daily net asset value. Class C Shares would be offered to clients of financial planners and similar institutional intermediaries ("Financial Planners") who together have invested or are reasonably expected to invest an aggregate of not less than $1,000,000 in the Fund. Class D Shares would be offered with a front-end sales load, which may be waived for certain investors, and subject to a rule 12b–1 distribution fee equal to 0.25% of average daily net asset value.[1]

2. Under the Multi-Class Plan, all expenses incurred by the Fund will be allocated among the various classes of shares based upon the net assets of the Fund attributable to each class, except that shares of a particular class will bear any expenses properly allocable to such class ("Class Expenses"). Consequently, the net income of, and the dividends payable with respect to, each particular class would generally differ from the net income of, and the dividends payable with respect to, the other classes of the Fund. Therefore, the net asset value per share of the classes will differ at times. Class Expenses will be borne on a *pro rata* basis by each outstanding share of the particular class, and will be limited to (a) expenses related to a class' rule 12b–1 plan or Service Plan (and any other costs relating to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan); (b) transfer agency fees as identified by the transfer agent as being attributable to a specific class; (c) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders; (d) Blue Sky registration fees incurred by a class of shares; (e) Commission registration fees incurred by a class of shares; (f) the expense of administrative personnel and services as required to support the shareholders of a specific class; (g) litigation or other legal expenses relating solely to one class of shares; and (h) directors' fees incurred as a result of issues relating to one class of shares.

3. The adoption and implementation of rule 12b–1 plan provisions with respect to any class of shares will be independent of, and not conditioned upon, the adoption or implementation of rule 12b–1 plan provisions with respect to any other class of shares. The provision of promotional and distribution services under a rule 12b–1 plan for a particular class will augment, and not be duplicative of, services otherwise provided under any other rule 12b–1 plan provisions for any other class or the advisory or distribution contracts or any other service contract entered into in connection with the Service Plan. Applicants will comply with the NASD's recently adopted amendment to Section 26 of its Rules of Fair Practice.

B. The CDSC

1. Class B Shares redeemed within eighteen months of purchase would be subject to a CDSC of 1.25 percent of the lesser of the net asset value of the shares at the time of purchase, or the net asset value of the shares at the time of redemption.

2. No CDSC would be imposed on shares derived from the reinvestment of distributions, or on shares representing an increase in the value of the shareholder's account resulting from capital appreciation. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares that are not subject to any CDSC, and then of shares held for the longest period of time. No CDSC will be imposed on shares issued prior to the date of any order granting the requested relief.

3. Applicants propose to waive or reduce the CDSC on redemptions of shares (a) within one year following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder, provided that the shares were held at the time of death or initial determination of disability, and provided that the decedent or disabled person is an individual shareholder or owns such shares with his or her spouse as a joint tenant with right of survivorship; (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keough Plan or a custodial account maintained pursuant to section 403(b)(7) of the Code, after attaining age 59½; and (c) that result from the tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code, or from the death or disability of the employee (see Code sections 72(m)(7) and 408(f)(3)).

4. If a Fund waives or reduces the CDSC, such action will be uniformly applied to all offerees in the specified class. If the directors of the Fund determine not to waive or reduce the CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Any shares purchased prior to the termination of the waiver or reduction would be able to have the CDSC waived or reduced as provided in the Fund's prospectus at the time of the purchase of the shares.

[1] Holders of Class A Shares will be asked to approve the adoption of a rule 12b–1 plan. If the Class A shareholders approve the adoption of the rule 12b–1 plan, the Fund will not offer Class D Shares on the terms described above. If the existing shareholders do not approve the adoption of a rule 12b–1 plan, the Fund will cease offering Class A Shares.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed Multi-Class Plan might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i).

2. Applicants assert that the Multi-Class Plan does not raise any of the legislative concerns that section 18 was designed to ameliorate. The Multi-Class Plan would not involve borrowings, would not affect the Fund's existing assets or reserves, and would not increase the speculative character of the shares of the Fund. No class of shares would have a distribution or liquidation preference with respect to particular assets of the Fund, no class may require that lapsed dividends be paid before dividends are declared on another class, and no class would be protected by any reserve or other account. Applicants assert that the Fund's capital structure under the Multi-Class Plan would not induce shareholders to invest in risky securities to the detriment of other shareholders. Moreover, the Fund's capital structure would not enable insiders to manipulate the expenses and profits among the various classes of shares because the Fund is not organized in a pyramid fashion.

3. Applicants assert that the Multi-Class Plan will both facilitate the distribution of shares by the Fund and provide investors with a broader choice as to the method of purchasing shares.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares will relate solely to (a) the designation of each class of shares of the Fund; (b) expenses assessed to a class as a result of a rule 12b–1 plan providing for a distribution fee or a Service Plan providing for a service fee; (c) different Class Expenses for each class of shares, which are limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Directors' fees incurred as a result of issues relating to one class of shares; and (d) the related voting rights as to matters exclusively affecting one class of shares in accordance with the procedures set forth in rule 12b–1. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The directors of the Fund, including a majority of the independent directors, will approve the Multi-Class Plan prior to its implementation. The minutes of the meetings of the directors regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class Plan will reflect in detail the reasons for determining that the proposed Multi-Class Plan is in the best interests of the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of the Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to directors, and the board shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Distributor at their own cost will remedy the conflict up to and including establishing a new registered management investment company.

5. The Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The directors of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing or a specific class of shares will not be presented to the directors to support any fee charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

7. Dividends paid by the Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner at the same time, on the same day and will be in the same amount, except that each particular class will bear exclusively its own Class Expenses.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert, the Independent Examiner. The Independent Examiner has rendered an initial report to applicants which has been provided to the SEC stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Fund (which the Fund agrees to make), will be available for inspection by the Commission's staff upon written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the

Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Report on Policies and Procedures Placed in Operation," and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition 8 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectus of the Fund will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors with respect to the Multi-Class Plan will be set forth in guidelines that will be furnished to the Directors as part of the materials setting forth the duties and responsibilities of the Directors.

13. The Fund will disclosure the respective expenses, performance data, distribution arrangements, shareholder services, fees, sales loads, and CDSCs applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. The Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset values and public offering prices will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b–1 plan or Service Plan in reliance on the exemptive order.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19476 Filed 8–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19616; 812–8392]

Maxim Series Fund, Inc., 8–13 et al.

August 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Maxim Series Fund, Inc. (the "Fund"), Great-West Life Assurance Company ("GreatWest"), and certain life insurance companies and their separate accounts (the "Accounts") investing now or in the future in the Fund.

RELEVANT 1940 ACT SECTION: Order requested under section 6(c) of the 1940 Act from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies").

FILING DATE: The application was filed on May 13, 1993. An amendment and restatement of the application was filed on July 27, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 11, 1993 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants: Mr. Michael L. Sapir, Jorden Burt Berenson & Klingensmith, 1025 Thomas Jefferson Street, NW, suite 400 East, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Michael V. Wible, Special Counsel, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the 1940 Act as an open-end, diversified management investment company of the series type. The Fund intends to offer its shares to the Accounts of the Participating Insurance Companies for the purpose of funding variable annuity and variable life insurance contracts. The Participating Insurance Companies will establish their own Accounts and design their own variable annuity or variable life insurance products. GreatWest, a life insurance company organized under the laws of Canada and a registered investment adviser under the

Investment Advisers Act of 1940, serves as the investment adviser to the Fund.

2. The Fund currently offers shares in eight separate investment portfolios: the money market portfolio; the bond portfolio; the stock index portfolio; the U.S. government securities portfolio; the zero-coupon treasury portfolio; the total return portfolio; the U.S. government mortgage securities portfolio; and the investment grade corporate bond portfolio. Presently, shares in portfolios of the Fund are sold only to: (a) The separate accounts of the Maxim Series Account, the FutureFunds Series Account, and the Pinnacle Series Account of the Great-West Life & Annuity Insurance Company ("GWL&A") in connection with group and individual variable life insurance policies and variable annuity contracts issued by GWL&A and (b) other separate accounts of GWL&A in connection with certain tax qualified contracts issued by GWL&A.

3. The Fund intends to offer shares of its portfolios to separate accounts of interested insurance companies, including insurance companies not affiliated with GWL&A. Consequently, the Fund would serve as the investment vehicle for various insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts.

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund the variable annuity and variable life separate accounts of other affiliated and unaffiliated insurance companies.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (a "Trust"), Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Rule 6e–3(T) permits mixed funding. Rule 6e–3(T), however, does not permit shared funding, because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts, including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts, of unaffiliated life insurance companies.

3. Applicants therefore request relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding.

4. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or of any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund.

5. Applicants state that the partial relief from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants state that it is therefore unnecessary to apply section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of those Participating Insurance Companies) that may utilize the Fund as the funding medium for variable contracts. The application notes that whatever the number or identity of the Participating Insurance Companies, Applicants anticipate that GreatWest will serve as both investment adviser and underwriter to the Fund.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that pass-through voting privileges will be provided with respect to all contract owners so long as the Commission interprets sections 13(a), 15(a) and 15(b) of the 1940 Act to

require such privileges for variable contract owners.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

8. Applicants represent that the right of the Participating Insurance Companies to disregard voting instructions of contract owners provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under the rules, an insurer can disregard voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be both reasonable and based on specific good faith determinations.

9. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and funding an investment medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of public name recognition of certain insurers as investment experts. Applicants argue that use of the Fund as a common investment medium for variable contracts would reduce or eliminate these reservations of the insurance companies because the companies would benefit from the investment and administrative expertise of GreatWest and its affiliates as well as from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts which will then increase competition with respect to both the design and the pricing of variable contracts. This can be expected to result in greater product variation and lower charges. Thus, Applicants argue that contract owners would benefit because mixed and shared funding will eliminate a significant amount of the costs of establishing and administering separate funds. Mixed and shared funding would also provide a greater amount of assets available for investment by the Fund, thereby promoting economies of scale, permitting increased safety of investments through greater diversification, and making the addition of new portfolios more feasible.

10. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds not affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the requested order is granted:

1. A majority of the Board of Directors of the Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all of the Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. The Participating Insurance Companies and GreatWest will report any potential or existing conflicts to the Board. Participating Insurance Companies and GreatWest will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised, including, information as to a decision by an insurer to disregard voting instructions of contract owners. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of the Participating Insurance Companies under the agreements governing their participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that an irreconcilable material conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable, take steps necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Fund and reinvesting such assets in a different investment medium including another portfolio of the Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners; and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners) that votes in favor of such segregation, or offering to the

affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account.

If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw the separate account investment in the Fund and no charge or penalty will be imposed as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund.

The responsibility to take such remedial action shall be carried out with a view only to the interests of contract owners. For purposes of this Condition Four, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Fund or GreatWest be required to establish a new funding medium for any variable contract. Further, no Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any variable contract if any offer to do so has been declined by a vote of a majority of the affected contract owners.

5. A Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. The Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participating Insurance Companies of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by affiliated and unaffiliated insurance companies; (b) material irreconcilable conflicts may arise from mixed and shared funding arrangements; and (c) the Board will monitor for the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflicts.

9. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act, (although the Fund is not within the trusts described in section 16(c) of the 1940 Act), as well as with section 16(a), and, if applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Participating Insurance Companies and/or GreatWest shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19474 Filed 8–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25865; International Series Release No. 572]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 6, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 30, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or

law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Company (70–8053)

Central Power and Light Company ("CPL"), 539 N. Carancahua Street, Corpus Christi, Texas 78401–2431, an electric public-utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment, under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder, to its application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder. An original notice of the filing of the post-effective amendment was issued by the Commission on July 30, 1993 (HCAR No. 25861) ("Original Notice").

By order dated September 22, 1992 (HCAR No. 25638) ("1992 Order"), CPL was authorized to issue and sell, through December 31, 1994, up to $800 million of new first mortgage bonds ("New Bonds"). As of July 30, 1993, CPL had issued $765 million aggregate principal amount of New Bonds pursuant to the 1992 Order.

CPL now requests authorization to issue and sell up to $360 million of additional first mortgage bonds ("Additional Bonds"), in one or more series, through December 31, 1995. Except as provided below, the Additional Bonds will have the same terms and conditions and be sold in the same manner contemplated by the 1992 Order.

The Additional Bonds will have maturities of not less than three nor more than thirty-five years. CPL estimates that the Additional Bonds will be issued at an interest rate of between 5½% and 8½% depending on market conditions and states that in no event will the interest rate on the Additional Bonds exceed 11%.

CPL proposes to sell the Additional Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. It, therefore, requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. In the Original Notice, CPL also requested authority and was authorized to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the Additional Bonds, and to set the terms of the Additional Bonds, subject to the receipt of the order of this Commission, requested hereby, authorizing their issuance and sale.

In addition, CPL seeks authorization to issue the Additional Bonds with terms that deviate from the standards contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The Additional Bonds may include terms which (i) limit CPL's ability to redeem or refund the Additional Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict CPL's ability to pay dividends on its common stock.

The proceeds from the sale of the Additional Bonds will be used principally to refund all or a portion of $143 million of 9⅞% Series Z Bonds due December 1, 2019 ("Series Z Bonds"). The Series Z Bonds will become redeemable on December 1, 1994, at a general redemption price of $106.98, plus accrued and unpaid interest to the redemption date. If CPL decides to acquire the Series Z Bonds prior to December 1, 1994, it proposes to do so by means of a tender offer to holders of the Series Z Bonds. The proceeds may also be used to redeem all or a portion of $28 million of 6⅝% Series J Bonds due January 1, 1998 ("Series J Bonds") and $36 million of 7% Series L Bonds due February 1, 2002 ("Series L Bonds"). (Hereafter, the Series Z, Series J and Series L Bonds are collectively referred to as the "Old Bonds".) In addition, CPL proposes that the proceeds may be used to redeem all or a portion of CPL's outstanding 500,000 shares of 8.72% Preferred Stock, par value $100 per share ("Preferred Stock"), at the then current applicable redemption price, currently $102.91 per share, together with all unpaid dividends thereon. Any net proceeds not used for the redemption or repurchase of the Old Bonds and Preferred Stock will be used to repay outstanding short-term borrowings incurred or expected to be incurred primarily to finance construction expenditures, to pay for increased fuel and other costs, to provide working capital and for other general corporate purposes. In the event that the proceeds from the sale of the Additional Bonds are less than the amount required to redeem or repurchase all of the Old Bonds or Preferred Stock, CPL will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings pursuant to an order of this Commission dated March 31, 1993 (HCAR No. 25777).

CPL states that it will not redeem or repurchase the Old Bonds or Preferred Stock unless the estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate. Such discount rate would be based on the estimated interest rate of the Additional Bonds issued for refunding purposes.

Northeast Utilities, et al. (70–8084)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned direct and indirect nonutility subsidiary companies, Charter Oak Energy, Inc. ("Charter Oak") and COE Development Corporation ("COE Development"), both at 107 Selden Street, Berlin, Connecticut 06037, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b) and 33 of the Act and rules 45(a), 87(b)(1), 90 and 91 thereunder.

Pursuant to two recent orders of the Commission dated December 30, 1992 (HCAR No. 25726) and December 29, 1992 (HCAR No. 25721), Charter Oak is authorized to pursue preliminary development activities with regard to investment and participation in qualifying cogeneration and small power production facilities ("QFs") and independent power facilities. In addition, Charter Oak is authorized to provide consulting services in relation to QFs and IPPs. Northeast is currently authorized to invest up to $10 million annually in Charter Oak, and Charter Oak is authorized to invest up to $9 million in COE Development annually.

The applicants now request authority for Northeast to invest up to an additional $7 million in Charter Oak for the purchase of an interest in two nonutility subsidiaries that will own an interest in a foreign utility company ("Encoe Partners").[1] Northeast's investment in Charter Oak may take the form of additional acquisitions of common stock or capital contributions.

Encoe Partners is a general partnership[2] formed for the sole

[1] Northeast and Charter Oak have, on behalf of Encoe Partners, qualified Encoe Partners as a foreign utility company under section 33 of the Act.

[2] The general partners of Encoe Partners are Enrici Power Marketing Limited ("Enrici") and Enron Europe Liquids Processing Limited

purpose of building, owning and operating a power generating facility in the United Kingdom ("Power Plant") and acquiring a one-third interest in certain rights and obligations under a power contract ("Contract"). The Power Plant is related to the 1875 MW gas-fired combined cycle power plant recently completed in Teesside, Wilton, Cleveland, England ("Teesside Project"). Encoe Partners has contracted for certain rights necessary to build, own and operate the Power Plant, a 2.176 MW plant that will produce power by harnessing the pressure in the natural gas pipeline feeding the Teesside Project. Encoe Partners will invest up to £3,875,000 in constructing the Power Plant.

Charter Oak intends to acquire its interest in Encoe Partners by acquiring interests in two nonutility subsidiary companies for $4,800,000, excluding transaction costs.[3] Charter Oak will directly acquire an interest in one of Encoe Partners' general partners, COE (UK) Corp. ("COE (UK)"), and its parent company, COE (Gencoe) Corp. ("COE (Gencoe)"). COE (UK) presently has one share of Class A voting common stock issued and outstanding, which is held by COE (Gencoe). Charter Oak intends to acquire three shares of Class A voting common stock and 796 shares of Class B non-voting common stock of COE (UK) for £2,663,323. As a result of this acquisition, Charter Oak will be the owner of 79.9% of the outstanding common stock of COE (UK).

COE (Gencoe) presently has 510 shares of Class A common stock issued and outstanding, which are all held by The JFG Encoe Trust ("Trust"). The applicants request authorization for Charter Oak to acquire 490 shares of Class B common stock of COE (Gencoe) for £167,503, after which Charter Oak will hold 49% of the common stock. The remaining 51% of COE (Gencoe)'s common stock will continue to be held by the Trust.

Authority is also requested for COE (Gencoe), which will then be a subsidiary of Charter Oak, to acquire 200 shares of Class B nonvoting common stock in COE (UK) in addition to the one share of Class A voting common stock which it already owns. In consideration for the acquisition of these shares, COE (Gencoe) will pay COE (UK) £870,010. As a result of this acquisition, COE (Gencoe) will be the beneficial owner of 20.1% of the outstanding common stock of COE (UK). The remainder of the common stock will be held directly by Charter Oak, as discussed above.

The applicants also request authorization for Charter Oak to loan £502,505 to COE (Gencoe) pursuant to a loan agreement and to be evidenced by a promissory note. Interest will be determined at the Applicable Federal Rate as determined under section 1274(d) for the Internal Revenue Code of 1986. The loan will have a term of 10 years, and repayment will be made through a cash flow repayment mechanism. To the extent that available cash flow is not sufficient to repay the loan, interest on the note will be added to the principal amount of the note.

COE (UK) has no obligation to make any further capital contributions to Encoe Partners beyond its initial capital contribution of $4,800,000. Northeast, Charter Oak, COE Development and COE (Gencoe) will not be liable for any other Encoe Partner's obligations.

Enron Power Operations Limited, a wholly owned subsidiary of Enron Europe, will manage the operation of the Power Plant and administer the Contract on behalf of Encoe Partners. The applicants represent that Northeast Utilities Service Company will provide only a minimum amount of services to COE (Gencoe) and COE (UK) on an at-cost basis under section 13(b). These services will consist of monitoring the investment and limited ancillary accounting, legal and tax services related to incorporating the financial statements of COE (Gencoe) and COE (UK) into Northeast's financial statements. The cost of these services will not exceed $25,000 per annum. The applicants represent that no other company in the Northeast Utilities system has or will enter into any sales, service or construction agreement with COE (Gencoe), COE (UK) and Encoe Partners.

In connection with the acquisition of 51% of the outstanding common stock of COE (Gencoe) by the Trust, Charter Oak proposes to provide two of the beneficiaries of the Trust with loans of up to $75,000 to cover certain possible tax assessments and an indemnification of up to $75,000 to cover other possible tax liabilities. The interest rate on the loans would be at the Applicable Federal Rate and the term of the loans would be five years.

("EELPL"), both subsidiaries of Enron Europe Limited ("Enron Europe"), and COE (UK) Corp.

[3] The applicants state that this figure is an estimate that reflects an investment of £3,333,333 at an exchange rate of $1.44 to the British pound. Charter Oak purchased a currency convertible hedge for $186,120 to allow it to convert $4,752,000 to £3,300,000, at an average rate of $1.44 to the British pound.

Allegheny Generating Company (70-8225)

Allegheny Generating Company ("Allegheny Generating"), Tower Forty Nine (36th Floor), 12 East 49th Street, New York, New York 10017, an indirect wholly owned subsidiary company of Allegheny Power System, a registered holding company, has filed a declaration under sections 6, 7, and 12(c) of the Act and Rules 42, 50, and 50(a)(5) thereunder.

Allegheny Generating proposes to issue and sell through December 31, 1994, one or more series of unsecured debentures ("Debentures") in an aggregate principal amount not to exceed $150 million. The Debentures of any such series will mature no later than thirty years from the date of their issuance, and will be issued under an indenture dated December 1, 1986 between Allegheny Generating and Morgan Guaranty Trust Company of New York, as supplemented. The Debentures may include a provision which would preclude Allegheny Generating from redeeming any such Debentures for the first five years after their issuance at a regular redemption price, if such redemption is for the purpose of refunding such Debentures through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to Allegheny Generating of the Debentures.

The proceeds from the Debentures' sale, together with other available cash, will be used to refund $100 million of Allegheny Generating's debentures, 9⅛% Series Due 2016 and $50 million of Allegheny Generating's debentures, 8¾% Series Due 2017, in each case with interest accrued to the redemption date. Allegheny Generating states that it will not enter into the proposed refunding transactions unless the estimated present value savings derived from the net difference between interest payments on the new issues of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate.

Allegheny Generating proposes to sell the Debentures either through the alternative competitive bidding procedures authorized by the Commission's Statement of Policy Concerning Application of Rule 50 under the Public Utility Holding Company Act of 1935 (HCAR No. 22623, Sept. 2, 1982), or through an exception from competitive bidding requirements of Rule 50. Allegheny Generating requests authorization to commence

negotiations with underwriters. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19475 Filed 8–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19615; 812–8306]

Technology Funding Medical Partners I, L.P., et al.; Application

August 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Technology Funding Medical Partners I, L.P. (the "Fund"), Technology Funding Inc. ("TFI"), and Technology Funding Ltd. ("TFL").

RELEVANT ACT SECTIONS: Conditional order requested under section 17(d) and rule 17d–1 thereunder permitting certain joint transactions otherwise prohibited by section 57(a)(4) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 17(d) and rule 17d–1 permitting the Fund to participate in joint transactions with certain affiliated business development companies sponsored and advised by TFI and/or TFL pursuant to an existing order (the "Prior Order").[1]

FILING DATE: The application was filed on May 12, 1993, and an amendment thereto was filed on August 4, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2000 Alameda de las Pulgas, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a limited partnership organized under Delaware law pursuant to an Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). The Fund has elected to be regulated as a business development company under the Act. The Fund is designed to provide individuals with the ability to participate in venture capital investments in emerging companies or in unaffiliated venture capital partnerships (the "Portfolio Companies"). The Fund's investment objectives are long-term capital appreciation from venture capital investments in the Portfolio Companies and preservation of limited partner capital through risk management and active involvement with the Portfolio Companies.

2. TFI and TFL serve as the Managing General Partners of the Fund. TFI is a California corporation registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). TFL is a California limited partnership registered as an investment adviser under the Advisers Act. TFL has five individual general partners and 24 limited partners. TFL owns over 90% of the stock of TFI. The remaining stock is owned by outside investors.

3. The Fund has five general partners, three of whom are individuals (the "Individual General Partners"). No Individual General Partner of the Fund serves as an Individual General Partner of any other business development company sponsored or advised by the Managing General Partners. The Partnership Agreement provides that at least a majority of the general partners of the Fund must be individuals who are not "interested persons" of the Fund within the meaning of the Act (the "Independent General Partners"). All Independent General Partners are (and will be) natural persons.

4. Currently, all of the Individual General Partners of the Fund are also Independent General Partners. The Fund has received an exemptive order determining that its Independent General Partners are not "interested persons" of the Fund or of certain other entities specified in the order within the meaning of section 2(a)(19) of the Act solely by reason of being a general partner of the Fund.[2]

5. The Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the general partners, the general partners shall, within 90 days, designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners.

6. Pursuant to the Partnership Agreement, the Individual General Partners have complete and exclusive authority to manage and control the Fund, except for certain specific activities for which the Managing General Partners are responsible under the supervision of the Individual General Partners. The Individual General Partners provide overall guidance and supervision with respect to the Fund's operations, and perform all duties that the Act imposes on the boards of directors of business development companies organized in corporate form. The Managing General Partners are charged with certain responsibilities pursuant to the Fund's Partnership Agreement, including authority to determine and manage the Fund's venture capital investments and performance of the day-to-day management of operations, subject to supervision of the Individual General Partners.

7. Under the Prior Order, three business development companies sponsored by the Managing General Partners are permitted to engage in co-investment transactions. These business development companies are Technology Funding Partners III, L.P.; Technology Funding Venture Partners IV, An Aggressive Growth Fund, L.P.; and Technology Funding Venture Partners V, An Aggressive Growth Fund, L.P. (the "Partnerships"). The Fund and the Partnerships have identical investment objectives.

8. Applicants seek a conditional order under section 17(d) and rule 17d–1 permitting the Fund to participate with the Partnerships (together with the Fund, the "Co-Investing Funds") in transactions which are otherwise prohibited by section 57(a)(4) and rule

[1] Investment Company Act Release Nos. 17581 (Jul. 11, 1990) (notice) and 17654 (Aug. 7, 1990) (order).

[2] Investment Company Act Release Nos. 19183 (Dec. 28, 1992) (notice) and 19229 (Jan. 25, 1993) (order).

17d–1 (a "co-investment transaction") pursuant to the Prior Order.

Applicant's Legal Analysis

1. Section 17(d) and rule 17d–1 thereunder provide, among other things, that it shall be unlawful for an affiliated person of an investment company, or an affiliated person of such person, acting as principal, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which any such investment company is a participant, unless the Commission has issued an exemptive order regarding such joint enterprise or arrangement. Section 57(a)(4) applies the same prohibitions to affiliated persons of a business development company. Section 57(i) applies the rules adopted under section 17(d) to business development companies.

2. Applicants assert that the fiduciary duties imposed on the general partners provide significant protection for limited partners. In addition, the Managing General Partners will have no financial interest that would serve as a conflict in exercising their fiduciary duties. Specifically, the Managing General Partners will have only their general partner interests in the Co-Investing Funds and their compensation and expense reimbursement arrangements, as described in the application.

3. Applicants contend that the terms of any co-investment transaction will not be less advantageous to any Co-Investing Fund than they are to any other Co-Investing Fund. To the contrary, applicants state that each Co-Investing Fund is offered the opportunity to participate in the co-investment transactions on a *pro rata* basis.

4. Applicants further state that the Fund will participate in co-investment transactions permitted under the Prior Order on the same basis and subject to the same terms and conditions set forth in the Prior Order.

Applicants' Conditions

Applicants have agreed that any relief will be subject to the following conditions:

1. The Co-Investing Funds will not have common Independent General Partners. The general partners of each Co-Investing Fund will approve co-investment transactions in advance. The general partners of each Co-Investing Fund will be provided with periodic information, compiled by the Managing General Partners, listing all venture capital investments made by the other Co-Investing Funds.

2. (a) Before a co-investment transaction will be effected, the Managing General Partners will make an initial determination on behalf of each Co-Investing Fund regarding investment suitability. Following this determination, a written investment presentation respecting the proposed co-investment transaction will be made to the general partners of each Co-Investing Fund, except that such information need not be distributed to the general partners of any Co-Investing Fund that, at that time, does not have funds available for investment. Such information will include the name of each Co-Investing Fund that proposes to make the investment and the amount of each proposed investment. The Managing General Partners will maintain at each Co-Investing Fund's office a copy of the written records detailing the factors considered in any such preliminary determination.

(b) The information regarding the Managing General Partners' preliminary determinations will be reviewed by the Independent General Partners of each Co-Investing Fund. The general partners of each Co-Investing Fund, including a majority of the Independent General Partners, will make an independent decision as to whether and how much to participate in an investment based on what is appropriate under the circumstances. If a majority of the Independent General Partners of any Co-Investing Fund determine that the amount proposed to be invested by the Co-Investing Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, that Co-Investing Fund will not participate in the joint investment. Similarly, a Co-Investing Fund will not participate in a joint investment if a majority of its Independent General Partners determine that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances. A Co-Investing Fund will only make a joint investment with another Co-Investing Fund (or Co-Investing Funds) if a majority of the Independent General Partners of that Co-Investing Fund conclude, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Co-Investing Fund and do not involve overreaching of the Co-Investing Fund on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the Co-Investing Fund and is consistent with the Co-Investing Fund's investment objectives and policies as recited in filings made by the Co-Investing Fund under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to limited partners; and

(iii) The investment by one or more of the other Co-Investing Funds would not disadvantage the Co-Investing Fund in the making of such investment, maintaining its investment position, or disposing of such investment, and that participation by the Co-Investing Fund would not be on a basis different from or less advantageous than that of other affiliated participants.

(c) The Independent General Partners will, for purposes of reviewing each such recommendation of the Managing General Partners, request such additional information from the Managing General Partners as they deem necessary to the exercise of their reasonable business judgement, and they will also employ such experts, including lawyers and accountants, as they deem appropriate to the reasonable exercise of this oversight function.

3. The general partners of each Co-Investing Fund, including a majority of the Independent General Partners, will make their own decision and have the right to decide not to share a particular investment with another Fund. There will be no consideration paid to the Managing General Partners (or affiliated persons of such affiliated persons), directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction. The Managing General Partners will continue, however, their compensation and expense reimbursement arrangements with respect to each Co-Investing Fund and will participate indirectly in a transaction only through their existing general partner interests in each Co-Investing Fund.

4. Each Co-Investing Fund will be entitled to consider purchasing a portion of each co-investment transaction equal to the ratio of the Co-Investing Fund's net assets to the total net assets of all Co-Investing Funds that have determined to participate in the co-investment transaction, provided that each Co-Investing Fund may determine not to take its full allocation where a majority of the Independent General Partners and a majority of the general partners of the Co-Investing Fund determine that to do so would not be in the best interests of the Co-Investing Fund. Once a Co-Investing Fund is fully invested, its net assets will no longer be included in the denominator of this

fraction. All "follow-on" investments, including the exercise of warrants or other rights to purchase securities of the issuer, will be treated in the same manner as the initial co-investment transaction, except that the denominator in the fraction will consist solely of the net assets of those Co-Investing Funds which chose to participate in the initial co-investment transaction.

5. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, at the same unit consideration, on the same terms and conditions, and the approvals will be made in the same period. If one Co-Investing Fund elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by another Co-Investing Fund, notice will be given to each other Co-Investing Fund at the earliest practical time and each other Co-Investing Fund will be given the opportunity to participate in such disposition at the same time for the same unit consideration and in amounts proportional to its respective holdings of such securities. The Managing General Partners will formulate a recommendation as to participation by such Co-Investing Fund in such a disposition and provide the recommendation to the Independent General Partners of such Co-Investing Fund. Each Co-Investing Fund will participate in any such disposition if a majority of its Independent General Partners determines that such action is fair and reasonable to the Co-Investing Fund, is in the best interests of the Co-Investing Fund and does not involve overreaching of the Co-Investing Fund or its limited partners by the Managing General Partners. Each Co-Investing Fund will bear its own expenses associated with the disposition of a portfolio security. The Independent General Partners of each Co-Investing Fund will record in their records the Managing General Partners' recommendation and their decision as to whether to participate in such disposition, as well as the basis for their decision that such action is fair and reasonable to, and is in the best interest of, the Co-Investing Fund.

6. A decision by a Co-Investing Fund (i) not to participate in a co-investment transaction, (ii) to take less or more than its full allocation, or (iii) not to sell, exchange, or otherwise dispose of a co-investment in the same manner and at the same time as the other Co-Investing Fund electing to participate shall include a finding that such decision is fair and reasonable to the Co-Investing Fund or its limited partners by the Managing General Partners. The Independent General Partners of a Co-Investing Fund will be provided quarterly for review all information concerning co-investment transactions made by the Co-Investing Funds, including co-investment transactions in which a Co-Investing Fund has declined to participate, so that they may determine whether all co-investment transactions made during the preceding quarter, including those co-investment transactions that were declined, complied with the conditions set forth above. In addition, the Independent General Partners of a Co-Investing Fund will consider at least annually the continuing appropriateness of the standards established for co-investment transactions by a Co-Investing Fund, including whether use of the standards continues to be in the best interest of the Co-Investing Fund and its limited partners and does not involve overreaching of the Co-Investing Fund or its limited partners on the part of any party concerned.

7. The Independent General Partners of each Co-Investing Fund will maintain the records required by section 57(f)(3) of the Act and will comply with section 57(h) of the Act, and each Co-Investing Fund will otherwise maintain all records required by the Act. All records referred to or required under these conditions will be available for inspection by the Commission and will be preserved permanently, the first two years in an easily-accessible place.

8. No general partner or affiliated person of any general partner will participate in a transaction with a Co-Investing Fund unless a separate exemptive order with respect to such transaction has been obtained. For this purpose, the term "participate" shall not include either the Managing General Partners' existing general partner interests in, or their normal compensation and expense reimbursement arrangements with, each Co-Investing Fund.

9. No co-investment transaction will be made pursuant to the requested order respecting Portfolio Companies in which any applicant or affiliated person of any applicant has previously acquired an interest, provided that this prohibition shall not be applicable to any previous investment specifically permitted by an order of the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19477 Filed 8–12–93; 8:45 am]

BILLING CODE 8010–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 13 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1993 meetings are scheduled as follows:

1. September 8, 9 a.m. to 12:30 p.m., Philadelphia, Pa., Region 1 Advisory Board.
2. September 9, 9 a.m. to 12:30 p.m., Newport Beach, Calif., Region 6 Advisory Board.
3. September 14, 9 a.m. to 12:30 p.m., Atlanta, Ga., Region 2 Advisory Board.
4. September 21, 9 a.m. to 12:30 p.m., Denver, Colo., Region 5 Advisory Board.
5. September 23, 9 a.m. to 12:30 p.m., Dallas, Texas, Region 4 Advisory Board.
6. September 28, 9 a.m. to 12:30 p.m., Kansas City, Mo., Region 3 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Philadelphia, Pa.—Warwick Hotel, 1701 Locust Street.
2. Newport Beach, Calif.—Sheraton Newport Beach, 4545 MacArthur Boulevard.
3. Atlanta, Ga.—Westin Peachtree Plaza, 210 Peachtree Street.
4. Denver, Colo.—Executive Tower Inn, 1405 Curtis Street.
5. Dallas, Texas—Plaza of the Americas, 650 N. Pearl Street.
6. Kansas City, Mo.—Westin Crown Center, One Pershing Road.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions

Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: Topics to be addressed at the six meetings will include: local real estate market conditions, an examination of the RTC Small Investor Program and RTC's single- and multi-family affordable housing disposition program. In addition, the vice president from the respective RTC field office will report on Treasury Secretary Lloyd Bentsen's RTC Management Reforms and review RTC's asset sales strategies and business plan.

Statements: Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: August 10, 1993.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 93–19498 Filed 8–12–93; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 6, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49068.

Date filed:August 2, 1993

Parties: Members of the International Air Transport Association.

Subject:

Telex TC31 Mail Vote 642

US–Australia/New Zealand Excursion Fares

r–1—071w

r–2—073k

Proposed Effective Date: October 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–19523 Filed 8–12–93; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 6, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49069

Dated filed: August 2, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1993

Description: Application of Federal Express Corporation, pursuant to section 401 of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity authorizing it to operate scheduled all-cargo foreign air transportation between the United States and Uruguay.

Docket Number: 49076

Date filed: August 6, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 3, 1993

Description: Application of Traslados, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for renewal of its foreign air carrier permit authorizing it to engage in nonscheduled and charter air transportation of property and mail between Guatemala and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–19522 Filed 8–12–93; 8:45 am]

BILLING CODE 4910-62-P

Aviation Security Advisory Committee

AGENCY: Notice of Aviation Security Advisory Committee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 21, 1993, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the FBI Headquarters, 10th and Pennsylvania Avenue NW., J. Edgar Hoover Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held September 21, 1993, at the Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC.

The agenda for the meeting will include reports from the Universal Access System, Egress, and Transient Aircrew working groups. Additional topics will include Contingency Plans, Implementation of Cargo and Mail Measures, Aviation Security in the Global Community Conference, and Screener Proficiency Evaluation and Reporting System. Attendance at the September 21, 1993, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–7451.

Issued in Washington, DC, on August 9, 1993.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 93–19514 Filed 8–12–93; 8:45 am]

BILLING CODE 4910-13-M

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Federal Highway Administration

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Motor Carrier Advisory Committee. The focus of the meeting is on: (1) the North American Free Trade Agreement; (2) the National Highway System; (3) major regulations; (4) the results of Roadcheck 1993; and (5) findings and next steps for the zero base approach to regulations.

DATES: The meeting will be from 8:30 a.m. to 5 p.m. on September 9, 1993, and from 8 a.m. to 12:00 noon on September 10, 1993.

ADDRESSES: Federal Highway Administration, 400 Seventh Street, SW., room 2201, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, HIA–20, room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 6, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–19453 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–22–P

U.S. INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2549), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Age of Rubens" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts, Boston, Massachusetts, from on or about September 22, 1993, to on or about January 2, 1994, and the Toledo Museum of Art from on or about February 2, 1994 to on or about April 24, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 10, 1993.

Peter Ritenburg,

Acting General Counsel.

[FR Doc. 93–19532 Filed 8–12–93; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 6, 1993.

By direction of the Secretary.

Patti Viers,

Chief, Forms, Correspondence and Mail Management Division.

Reinstatement

1. VA Acquisition Regulation Part 809 (48 CFR chapter 8, part 809)
2. The information is used to qualify contractors and/or their products under applicable Federal or interim Federal specifications. The information is necessary to ensure that VA receives quality products and services.
3. Businesses or other for-profit—Small businesses or organizations
4. 75 hours
5. 30 minutes
6. On occasion
7. 150 respondents

Reinstatement

1. VA Acquisition Regulation part 836 (48 CFR chapter 8, part 836)
2. The information is necessary in order to obtain the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for the design services when the contract price is estimated to be $50,000 or over.
3. Businesses or other for-profit—Small businesses or organizations
4. 5,735 hours
5. 26.8 hours
6. On occasion
7. 214 respondents.

[FR Doc. 93–19468 Filed 8–12–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 6, 1993.

By direction of the Secretary.

Patti Viers,

Chief, Forms, Correspondence and Mail Management Division.

Extension

1. Counseling Record—Personal Information, VA Form 28–1902
2. The form is used to collect information to assist a counseling psychologist in VA to determine the claimant's eligibility for counseling services. The information then becomes the basis for development of approaches to explore the claimant's rehabilitation, training, employment or adjustment needs.
3. Individuals or households
4. 30,000 hours
5. 30 minutes
6. On occasion
7. 60,000 respondents

Revision

1. Monthly Certification of Flight Training, VA Form 22–6553c
2. The form is used by students (veterans, servicemembers and reservists) and flight schools to report the hours and cost of flight training received and the termination of training. The information is used by VA to determine the amount of benefits payable to the student who is pursing flight training.
3. Individuals or households—Businesses or other for-profit—Non-profit institutions—Small businesses or organizations
4. 3,000 hours
5. 30 minutes
6. On occasion—Monthly
7. 1,000 respondents.

[FR Doc. 93–19469 Filed 8–12–93; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 58, No. 155
Friday, August 13, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:07 a.m. on Tuesday, August 10, 1993, the Corporation's Board of Directors determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding payment of claims arising from severance pay or "golden parachute" agreements of failed banks where employment has been terminated after bank failure.

By the same majority vote, the Board further determined that no notice earlier than August 5, 1993, of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 10, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-19638 Filed 8-10-93; 4:39 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 18, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation S (Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records) regarding enhanced recordkeeping requirements for certain wire transfers by financial institutions.

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) regarding: (1) Exceptions to the aggregate insider lending limit; (2) the definition of "extension of credit"; and (3) modifications to the recordkeeping requirements.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19639 Filed 8-11-93; 11:26 am]

BILLING CODE 6210-01-P-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 18, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19640 Filed 8-11-93; 11:26 am]

BILLING CODE 6210-01-P

federal register

Friday
August 13, 1993

Part II

Department of Health and Human Services

Health Care Financing Administration

16 CFR Parts 433 and 447

Medicaid Program; Limitations on Payments to Disproportionate Share Hospitals; Rule and Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433 and 447

[MB-062-F]

RIN 0938-AF99

Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule clarifies HCFA's policies concerning provider related donations and health care related taxes. In addition, this final rule revises regulations with regard to disproportionate share hospital spending limitations. This final rule amends an interim final rule that was published in the **Federal Register** on November 24, 1992. The interim final rule established in Medicaid regulations limitations on Federal financial participation (FFP) in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes. The interim final rule also added provisions that establish limits on the aggregate amount of payments a State may make to disproportionate share hospitals for which FFP is available.

The provisions of the interim final rule were required by the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991.

EFFECTIVE DATE: This rule is effective September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Bernard Truffer (410) 966-1357.

SUPPLEMENTARY INFORMATION:

I. Provider-Related Donations and Health Care-Related Taxes

A. Summary of Interim Final Regulations

The Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102-234), enacted December 12, 1991, amended section 1903 of the Social Security Act (the Act) by adding a new subsection (w) regarding the receipt of provider-related donations and health care-related taxes by a State as the State's share of financial participation under Medicaid. In general, under section 1903(w) of the Act, a reduction in Federal financial participation (FFP) will occur if a State receives donations made by, or on behalf of, health care providers unless the donations are bona fide donations or meet outstationed eligibility worker donation requirements, as specified in the law.

The law specifies the types of health care-related taxes a State is permitted to receive without a reduction in FFP. In general, such taxes are broad-based taxes that apply in a uniform manner to all health care providers in a class, and that do not hold providers harmless for their tax costs. However, the law permits States that have received, by specific dates prior to the enactment of Public Law 102-234, provider-related donations and health care-related taxes that are not permitted by this law, to continue to receive them during the State's transition period without a reduction in FFP.

On November 24, 1992, we published in the **Federal Register** (57 FR 55261) an interim final regulation implementing the limitations on FFP in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes. In this interim final rule, we provided the following changes to our regulations to implement the new statutory provisions:

- We incorporated the statutory definitions of an entity related to a health care provider, provider-related donations, and health-care related taxes.
- We defined bona fide donations.
- We incorporated the classes of health care items and services and providers, as defined by the Act, for purposes of determining permissible health care-related taxes, and expanded the class that included intermediate care facilities for the mentally retarded (ICF/MR) specified in the statute to include ICF/MR services provided in certain group homes for the mentally retarded. We also incorporated an additional class that includes certain licensing or certification fees on providers of medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law.
- We specified the general rules regarding the reduction in State expenditures by revenues generated from provider-related donations and health care-related taxes received by a State or unit of local government before calculating FFP.
- We established the rules regarding the use of revenues from provider donations and health care-related tax programs during a State's transition period.
- We established rules regarding the calculation of the State base percentage (25-percent cap on taxes and donations) for purposes of determining the maximum amount of total provider-related donations and health care-related taxes that a State may receive without a reduction in FFP during a State fiscal year.
- We established rules regarding the types of donations and health care-related taxes that are permissible after the State's transition period. In particular, revenues from broad-based, health care-related taxes that are applied uniformly to providers, and do not exceed the 25-percent cap or hold providers harmless for the cost of the tax, may be received by States without a reduction in FFP.
- We established the waiver criteria under which we will determine whether a tax that does not meet the statutorily defined broad-based or uniform requirements is generally redistributive.
- We provided circumstances in which a provider is considered to be held harmless from a health care-related tax.
- We established reporting requirements for the State's submission of information to HCFA related to provider-related donations received and health care-related taxes collected by the State or units of local government during the Federal fiscal year.

B. Discussion of Public Comments

In response to the November 24, 1992, interim final rule with comment, we received 98 timely items of correspondence. The comments were submitted by hospitals, hospital associations, various levels of State and local governments, and a number of national health care organizations. Only a few of the commenters supported the taxes and donations provisions of the interim final rule in its entirety. The majority of the commenters urged us to reconsider our positions regarding the hold harmless provisions and the classes of health care items and services that are eligible for inclusion as a permissible health care-related tax.

The specific comments made by the commenters relating to the taxes and donations provisions of the interim final rule and our responses follow.

1. General Comments

Comment: One commenter stated that the interim final rule will significantly erode financial support for Medicaid programs in many States.

Response: Prior to the enactment of Public Law 102-234, some States directly linked donations and other voluntary payment programs to

increases in Medicaid payment rates. Other States levied taxes or other mandatory payments on providers and modified Medicaid payment rates in such a way as to reimburse the provider for the cost of the tax. We agree that the statutory provisions and the implementing regulations will affect a State's use of provider-related donations and health care-related taxes, but only to the extent that a State is unable to either comply with the provisions of the law or find alternative sources of State funds to finance the Medicaid program.

Comment: Several commenters indicated that expanding the scope of this rule to tax and donation programs not used to fund the Medicaid program affects intergovernmental transfers and creates an inconsistency between the statute and rule and is not a true reflection of Congressional intent regarding the treatment of intergovernmental transfers. Commenters recommended that we review the statute and revise the regulation to clarify the treatment of intergovernmental transfers. Specifically, commenters requested that we clarify § 433.56 (which defines the separate classes of health care services and providers for purposes of imposing health care-related taxes) to make a State responsible only for taxes and donations received by political subdivisions that, through intergovernmental transfers, contribute to the State's general fund.

Response: These regulations do not interfere with the State's use of intergovernmental transfers unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share of Medicaid.

Comment: One commenter indicated that we should not attempt to dictate how each State should use their hospital tax levies.

Response: We do not agree that we are attempting to dictate States' use of hospital tax levies. The regulatory requirements address only the consequences on FFP, as delineated in the statute, when States receive provider-related donations and/or health care-related taxes. We believe the statute is consistent with our longstanding policy encouraging State flexibility in administering the Medicaid program. We do not want to dictate to States the permissible uses of particular dollars. The only statutory provision indirectly related to the use of health care-related tax revenue is in section 1903(w)(4) of the Act, which specifies three conditions under which a State or local government is determined to hold taxpayers harmless for their tax costs. If any of these conditions are met, the tax program would be determined to have a hold harmless provision and the tax would be impermissible. This section of the statute also provides that States are not precluded from using a tax to reimburse health care providers for medical assistance expenditures, or precluded from relying on this reimbursement to justify or explain the tax. In our view, we believe States may use revenue from otherwise permissible taxes to increase payment rates to the providers subject to the tax. However, States may not make Medicaid or other payments to providers that result in taxpayers being repaid dollar (or part of a dollar)-for-dollar for their tax costs.

Comment: Numerous commenters indicated that we incorrectly explained in the preamble of the interim final rule that the statutory provisions apply to all provider donations and taxes regardless of the use of the funds. Several other commenters indicated a range of general opinions about the regulation, ranging from those who thought it too expansive to those who found it too restrictive. Many of these comments recommended that we revise the rule to remove its regulatory authority over provider donations and taxes unrelated to Medicaid and give consideration to unique circumstances in each State, particularly when revenue from provider donation and tax programs is used to expand, not supplant, Medicaid. Others indicated that we do not have the authority through this regulatory policy to constrain States' non-Medicaid funding programs solely on the basis that health care providers participate in a program.

Response: We acknowledge that the interim final rule contains several technical provisions. However, we believe that the statute is clear regarding the applicability of its provisions and that the interim final rule does not create an inconsistent regulatory policy. Under section 1903(w) of the Act, effective January 1, 1992, a reduction in FFP will occur if a State either receives provider-related donations made by or on behalf of health care providers that are not bona fide or meet outstationed eligibility worker donation requirements (as specified in the law), or receives health care-related taxes that are not broad based or uniformly imposed, or that hold taxpayers harmless for their tax costs. Nowhere does the statute restrict its applicability to the Medicaid program nor is the designated use of this type of revenue addressed. Further, the use of provider-related donations and health care-related taxes to fund State-operated programs is protected to the extent that the technical requirements of the law are met.

Comment: One commenter indicated that the financial obligation to provide for those who cannot afford their own medical care should be spread as widely and as equitably as possible and not placed solely on one small segment of the community—that is, health care providers.

Response: Nothing in the law or the interim final rule was intended to encourage or sanction taxes on health care providers. Rather, the provisions of the law and implementing regulations merely stipulate the rules governing the availability of FFP when States impose such taxes.

Comment: One commenter indicated that § 433.58(g)(2)(ii) (which specifies that a State may not modify health care-related taxes in existence as of November 22, 1991, without a reduction of FFP, unless the modification only makes technical changes that do not alter the rate of the tax or the base of the tax and do not otherwise increase the proceeds of the tax) prohibits States from modifying its tax base during the transition period and precludes a State from coming into compliance by expanding a tax to all hospitals.

Response: Section 433.58(g)(2)(ii) is intended to provide guidance to States on the allowable changes to impermissible tax programs that would not result in a reduction of FFP. We agree that, as written, the regulatory section could be misconstrued. Therefore, we have modified this section by adding subsection (iv) which now explicitly specifies that modifications necessary to bring an impermissible tax program into compliance with the provisions of the statute will be permissible without a reduction of FFP.

Comment: One commenter asked that the cap on health care-related taxes be based on the best available data, including taxes and donations, as of State fiscal year 1992.

Response: Section 1903(w)(5)(C) (i) and (ii) of the Act (codified at § 433.60) specifies the requirements for the computation of the State base percentage during the State's transition period. Specifically, this provision of the law requires that when computing the State base percentage, the total amount of health care-related taxes must be determined based only on those taxes that were in effect, or for which legislation or regulations imposing such taxes were enacted, as of November 22, 1991. Further, in the case of a tax that is not in effect for the entire State fiscal year 1992, the law requires that the amount of the tax must be projected as

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if the tax were in effect for the entire year. With regard to donations, the law explicitly provides that the amount of provider-related donations must be determined based on programs in effect on September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date. Further, section 1903(w)(5) of the Act stipulates that the amount of provider-related donations and health care-related taxes applicable to State fiscal year 1992 will be determined based on the best available data as of the enactment of the law. Therefore, any change in the computation requirements must be accomplished through legislation, not regulation.

Comment: One commenter strongly supports the continuation of the limitation on provider taxes after October 1, 1995.

Response: Section 1903(w)(1)(A)(iv) of the Act (codified at § 433.70(a)(2)) specifies the time periods governing the limitations applicable to the receipt of health care-related taxes. Consequently, any extension of the applicable limits must be accomplished through legislation, not regulation.

Comment: One commenter recommended that we implement the regulation prospectively.

Response: Section 2(c)(1) of Public Law 102–234 requires that the provisions of this law be effective January 1, 1992, without regard to whether or not regulations are promulgated. To delay implementation of this rule by applying it prospectively would be in direct violation of the law. However, when the regulations impose new requirements, such as the hold harmless provisions, we have extended the deadline for compliance.

Comment: Several commenters requested that States that enacted new tax programs be given adequate time to revise such programs, without penalty, to comply with the law. Further, the commenters recommended that the length of the "grace period" be contingent on factors such as whether the State legislatures would need to revise these programs and when these legislatures will be in session.

Response: To accommodate States, we have extended the deadline for compliance of the hold harmless requirements to [30 days after publication date of this final rule]. We do not believe an additional grace period is necessary, since we have made minimal changes to the hold harmless provisions and States have been on notice of these requirements since the publication of the interim final rule on November 24, 1992.

Comment: One commenter suggested that compliance reviews be done on a State-by-State basis, and that three criteria be used to determine cases where a State law may not comply with the new requirements: (1) The reasonableness of the difference in interpretation of the law occurring between two parties; (2) the impact on a State's health care system if a retroactive denial occurs; and (3) the overall impact on the State's fiscal solvency and provision of general services to their citizens. The commenter further recommended that FFP not be withheld until the first quarter beginning after the end of the State legislative session following the publication of the final rule.

Response: The statute precludes implementation of the recommended review criteria or disallowance date. Moreover, we do not agree that compliance reviews should be done on the merits of individual State circumstances. Such reviews would be labor-intensive and administratively burdensome. The results of such reviews would be subjective and weaken the consistency and continuity in the national administration of the law.

Comment: One commenter requested that we make clear that no attempt will be made to disallow claims for FFP or adjust claimed expenditures because they were offset by withheld taxes where the withholding was not applicable in any quarter in which the State was not officially on notice at the outset of the quarter of HCFA's policies.

Response: We do not agree that the scope of these regulations applies to the operational aspects of withheld taxes. To the extent that the voluntary withholding of the tax is reported as the provider's income to the Internal Revenue Service (IRS) on Form 1099–MISC, and the IRS recognizes the full amount of the reported payment as income to the provider, the voluntary withholding of the tax amount would be permissible.

Comment: One commenter believes that States should be given the flexibility to raise funds from providers to administer a reasonable indigent care and Medicaid disproportionate share hospital (DSH) program without having to financially penalize non-Medicaid hospitals or hospitals whose indigent care/Medicaid levels do not reach the highest thresholds.

Response: In accordance with section 1903(w) of the Act, we intentionally described in the interim final rule how a State's expenditure for medical assistance is calculated when a State receives provider-related donations and/or health care-related taxes. We believe that neither the statute nor the interim final rule impairs a State's flexibility to raise funds from providers to administer either State or Federal health care programs.

Comment: One commenter indicated that the rules limit a State's ability to generate revenue, and that the effect of these rules limits a State's taxing authority. Another commenter indicated that the evaluation of State tax programs by HCFA sets a dangerous precedent by allowing a Federal agency a significant degree of control over State government funding.

Response: Neither the statute nor interim final rule limits a State's flexibility to impose health care-related taxes or other mandatory payments. Rather, the regulations address only the consequences on FFP when a State receives revenues from donations and health care-related taxes.

Comment: Numerous commenters expressed concern over our authority to reduce FFP for all impermissible donations and taxes. These commenters believed that we are assuming oversight of individual State's rights and that this policy interferes with each State's rights of taxation.

Response: As mentioned previously in this preamble, nothing in the statute limits a State's flexibility to impose health care-related taxes. Further, section 1903(w)(1)(A) of the Act is clear that the total amount expended by a State during a fiscal year as medical assistance will be reduced by the sum of any revenues received by the State or unit of local government in the State from either impermissible provider-related donations or impermissible health care-related taxes.

2. General Definitions (§ 433.52)

Comment: One commenter recommended that the definition of *entity related to a health care provider* exclude a supplier of health care items or services or a supplier to providers of health care items or services since a supplier cannot reasonably be considered "similar" in nature or kind to the close relationship that exists among corporate affiliates, common owners, or employees/spouses/siblings.

Response: We are concerned that if this category is not added, suppliers will have the power to donate money to the State and charge providers for this donation via the sale of supplies. Such a maneuver would be contrary to the intent of Public Law 102–234. Therefore, we have not revised the definition.

3. Bona Fide Donations (§ 433.54)

Comment: Two commenters suggested that the thresholds for presuming that a donation is bona fide—$5,000 for individuals and $50,000 for organizations—be indexed or periodically reviewed to ensure that they remain reasonable in light of current realities.

Response: We do not agree that the thresholds should be adjusted annually for inflation. The presumption of a bona fide donation threshold was established to minimize the administrative burden on the States and HCFA and to detect and effectively control any potential abusive situations. We believe the established thresholds are at a sufficient level to meet these objectives. If subsequent experience indicates a need for revisions of these thresholds, we will consider subsequent rulemaking to make appropriate revisions.

Comment: One commenter expressed concern that the operational definition of a bona fide donation is overly restrictive and prohibits legitimate donations that pose no significant financial risk to the Federal Government.

Response: Nothing in the interim final rule would in any way limit philanthropic provider donations. Moreover, the interim final rule does not preclude health care providers from making donations to Medicaid or other State programs as long as the requirements of the law are met. In the interim final rule, we exercised our authority to specify the types of provider-related donations that will be considered to be bona fide provider-related donations. In making this determination, we attempted to strike a meaningful balance between the explicit statutory provisions applicable to bona fide donations and those donations that can be presumed to be bona fide assuming a hold harmless practice does not exist.

Comment: One commenter suggested that a reasonable limitation on bona fide donations would be to establish a limit on any and all donations up to a maximum aggregate amount equal to 10-percent of the State's total Medicaid administrative expenditures.

Response: The statute neither imposes nor supports limits on the amount of bona fide provider-related donations a State may receive. To impose such limitations would be restrictive to States and would violate the provisions of the law.

Comment: Two commenters suggested that we broaden the definition of a bona fide donation to include donations from charitable organizations made to the State through health care providers, as long as the provider certifies that the source of the donation is bona fide as defined in the regulations.

Response: The statutory provisions of Public Law 102–234 do not apply to the treatment of donations from non-provider entities (that is, charitable organizations not related to providers). Further, both the statute and the interim final rule already sanction donations from health care providers regardless of the source of the funds when such donations satisfy the requirements of a bona fide donation. There is, however, no statutory authority that would permit health care providers to designate the source of the donated funds for purposes of satisfying the bona fide donation criteria.

4. Outstationed Eligibility Workers (§§ 433.58(d)(2) and 433.66(b)(2))

Comment: One commenter suggested that the regulations be amended to provide States flexibility in designing Medicaid eligibility outreach projects financed, in part, with provider donations to cover State administrative costs.

Response: The statutory provisions applicable to the permissible donations for the administrative costs of outstationed eligibility workers are explicit. Section 1903(w)(2)(C) of the Act is applicable to the direct costs of outstationed eligibility workers and does not include donations for outreach projects. However, nothing in this rule precludes States from receiving bona fide provider-related donations.

Comment: Two commenters requested that the rule be amended to make clear that the prorated costs of outreach activities (such as advertising campaigns) are allowable in the 10-percent cap on direct costs. Another commenter indicated that the rule needs clarification to allow for additional direct costs of outstationed eligibility workers not currently listed in the regulation.

One commenter indicated that outreach activities covers more than just activities applicable to the outstationed (State or local) workers at these sites. Therefore, the regulation should be revised to acknowledge more permissible outreach activities that are not directly tied to eligibility activities of the State or local staff. Specifically, section 1902(a)(55) of the Act directs States to provide receipt and initial processing of applications for medical assistance eligibility at locations other than those (welfare offices) used for receipt and processing of applications for Aid for Families with Dependent Children.

Response: We agree that the prorated costs of outreach activities should be allowable in the 10-percent cap. Therefore, we have modified §§ 433.58(d)(2) and 433.66(b)(2) of the regulations to reflect that prorated costs of all outreach activities applicable to the outstationed workers at these sites—not just pamphlets and materials distributed by the outstationed workers—are part of the costs of outstationed eligibility workers and are, therefore, applicable to the 10-percent cap. In addition, we have removed advertising campaigns as a disallowed cost because it is considered an outreach activity.

We also agree that outreach activities include more than just activities applicable to the outstationed (State or local) workers. However, because the law specifically addresses permissible provider donations only for the direct costs of State or local outstationed eligibility workers, we are not making further modifications, other than those described in the previous paragraph, to these regulations.

5. Health Care-Related Taxes Defined (§ 433.55)

Comment: Several commenters indicated that a health care-related tax subject to the provisions of Public Law 102–234 should include only those taxes that were specifically designed to raise revenue for the State's Medicaid program. Two commenters further indicated that a tax specifically used to improve State-funded health care delivery systems should not be subject to the provisions of Public Law 102–234.

Response: We believe the statute is explicit as to the kinds of taxes that are subject to the requirements of Public Law 102–234. Section 1903(w)(3)(A) of the Act defines a health care-related tax as a tax that is related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals. The statute does not give the Secretary the authority to provide exceptions to the statutory definition of a health care-related tax.

Comment: Two commenters indicated that licensing fees should not be deemed health care related. Several commenters believed that the regulations should be clarified to specify that discretionary assessments (such as certificates of need or State-supported mortgage loan applications),

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Clinical Laboratories Improvement Amendments (CLIA) fees, and Federally mandated rebates that States collect from pharmaceutical manufacturers (including parallel State rebating programs) are not health care-related taxes and, therefore, do not count toward the State's cap.

Response: Section 1903(w)(7)(F) of the Act specifies that the term "tax" includes any licensing fee, assessment, or other mandatory payment, but does not include payment of a criminal or civil fine or penalty (other than a fine or penalty imposed in lieu of or instead of a fee, assessment, or other mandatory payment). This includes certificates of need and State-supported mortgage loan applications. If these fees are imposed across the board, they will probably not meet the 85-percent health care-related test.

We recognize that CLIA and Federally mandated drug rebate programs are Federally controlled programs. Therefore, we want to make clear that all Federally mandated assessments, taxes, or fees are not subject to the provisions of Public Law 102–234. However, fees associated with State-only programs, enacted in lieu of CLIA or other Federal programs, are subject to the provisions of Public Law 102–234.

Comment: One commenter indicated that the definition of health care related should be clarified so that only licensing and certification fees for health care providers who participate in the Medicaid program be subject to the statute.

Response: Section 1903(w)(1)(A)(ii) of the Act makes it clear that all health care-related taxes that are not broad based will be subject to the provisions of this law, regardless of whether the provider participates in the Medicaid program.

Comment: One commenter indicated that § 433.55(c) (which specifies that a tax is considered to be health care related if it is not limited to health care items or services, but the treatment of individuals or entities providing or paying for those health care items or services is different than the tax treatment provided to other individuals or entities) should be revised to specify that when determining if the treatment of a tax applicable to health care providers is different from the treatment of other taxpayers, HCFA will only take into account any State credits or rebates that are explicitly stated in the law related to any of the payers of the tax.

Response: Providing credits and/or rebates that are explicitly stated in the law is not the only method a State can use when targeting the tax to health care providers. For example, a State could provide a tax on a unit that is more prevalent in a health care provider setting (such as a tax on bedpans). A tax on a health care-related unit would automatically provide for unequal treatment of health care individuals or entities subject to the tax.

Comment: One commenter believed that our interpretation that a tax that is applied at a different rate on health care providers and non-health care providers may be health care related is not consistent with statutory intent.

Response: This portion of our regulatory definition of health care-related taxes is directly supported by section 1903(w)(3)(A)(ii) of the Act, which specifies that a health care-related tax includes a tax not limited to health care items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities. An example of this type of unequal treatment is a tax on non-health care providers at a different rate than a tax on health care providers.

Comment: One commenter indicated that the 85-percent test, whereby a tax is considered to be related to health care items or services if at least 85 percent of the burden of the tax falls on health care providers, will allow States to dilute a health care tax by renaming existing taxes.

Response: Section 1903(w)(3)(A) of the Act defines a health care-related tax as a tax that is (i) related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or (ii) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals. The statutory language further points out that in applying clause (i), a tax is considered to be related to health care items or services if at least 85 percent of the burden of such tax falls on health care providers. The remaining portion of section 1903(w)(3)(A) of the Act further distinguishes a health care-related tax as one that is not limited to health care providers but treat health care providers differently. This portion of the statute is not subject to the 85-percent test. We believe section 1903(w)(3)(A)(ii) prevents the State from implementing a tax that may be masked by an existing non-health care-related tax. However, a State can add health care providers to an already existing non-health care-related tax without penalty as long as it meets the 85-percent test.

Comment: One commenter indicated that the regulation goes beyond the statute by limiting the 85-percent test only to health care-related taxes related to health care items or services (§ 433.55(a)(1)). The commenter believed the 85-percent test should also apply to health care-related taxes related to the provision of, or the authority to provide, the health care items or services (§ 433.55(a)(2)) and the payment for the health care items or services (§ 433.55(a)(3)).

Response: Section 1903(w)(3)(A) of the Act specifies that in applying clause (i) (which defines a health care-related tax as a tax that is related to health care items or services, or to the provision of, the authority to provide, or payment for, the health care items or services), a tax is considered to be related to health care items or services if at least 85 percent of the burden of such tax falls on health care providers. The statute does not address how the tax should be considered when it is related to the provision of, or the authority to provide the health care items or services (§ 433.55(a)(2)) or the payment for the health care items or services (§ 433.55(a)(3)).

Comment: One commenter suggested that the term "revenue" be deleted from § 433.55(b), which states that a tax will be considered to be related to health care items or services if at least 85 percent of the burden of the tax revenue falls on health care providers.

Response: The significance of the term revenue in this paragraph is that revenue is the only equitable measure when applying the 85-percent health care related rule in the statute. Therefore, we have not modified the regulation.

Comment: One commenter indicated that the scope of the regulation, as written, is not limited only to the review of public programs involving health care providers but applies to public programs affecting the payers of health care—patients and insurers. The commenter did not believe HCFA has the authority to do this.

Response: Section 1903(w)(3)(A) of the Act specifies that a health care-related tax is a tax that is related to health care items or services or to the provision of, the authority to provide, or payment for, such items or services. Therefore, the statute provides that a tax on health care payments made by payers (that is, insurance payers or patients) is subject to Public Law 102–234 and the implementing Federal regulations.

6. Classes of Health Care Services and Providers Defined (§ 433.56)

Comment: Several commenters wanted us to expand the classes already listed in the statute and our regulations to include additional classes or State defined classes. Commenters had various suggestions for permissible health care classes, including allowing States to recognize their own health care classes, recognizing all licensed providers of Medicaid services, and recognizing all licensed providers in a State. Further suggestions included incorporating permissible classes as identified in the State plan or Federal law as long as the aggregate Medicaid utilization or revenue within the class is no greater than 90 percent, or extending a permissible tax that is also applicable to one or more of the classes listed in the statute. In the latter case, the terms of the tax on the additional categories of providers would have to be the same as those applicable to a statutorily named class, and the tax would have to cover the entire new category in the same manner as its coverage of the statutorily named class.

Response: We have revised § 433.56 to include 10 additional health care classes based on recommendations received by the commenters. These additional classes provide States further flexibility when imposing health care-related taxes.

Comment: One commenter recommended that additional classes may permit States to adopt narrowly focused, rather than broad-based, health care-related taxes in direct contravention of Congressional intent. This commenter found that those health care classes not represented by lobbyists were at the highest risk of being subject to the tax. Small classes that would be affected are nurses, optometrists, social workers, physical therapists, etc. Accordingly, the commenter requested that § 433.56(a)(9) (which provides for other health care items or services not specified in the regulation on which the State has enacted a licensing or certification fee, subject to certain requirements) be revised to apply when at least three of the other classes specified in the regulation are also subject to the tax.

Response: Neither the statute nor the regulations preclude a State from taxing more than one class of health care items or services of providers. The statute allows the States a certain degree of flexibility in determining which providers will be taxed.

Comment: One commenter requested that we clarify in the regulations whether a tax imposed on inpatient hospital services would need to cover revenues or activities of hospitals not related to inpatient hospital services (such as a separate wing certified as a nursing facility) to be broad based. The commenter believed that such a policy would conflict with both the statute and the regulations, both of which list hospitals and nursing facilities as separate classes.

Response: The commenter is correct that both section 1903(w)(7)(A) of the Act and § 433.56 list inpatient hospital services and nursing facility services as separate classes. In addition, we note that the statute and the regulations clearly state that a tax is imposed on the services of providers—not on the providers themselves. Since the class definition is determined by the type of service provided, only the revenues or activities of the provider pertaining to that class of service need be covered by the tax. Therefore, if a hospital has a separate wing that provides nursing facility services, these services would not be subject to an inpatient hospital services tax because nursing facility services is a separate class. Moreover, if there is a tax on all hospital services, including nursing facility services provided in the hospital, we would consider the tax on inpatient hospital services separate from the tax on nursing facility services.

Comment: One commenter indicated that the regulations are not clear in the instance where a provider falls into more than one class of services. This commenter believes a more explicit exemption from the hospital services class should be added to address the situation where services are provided by a facility that is owned and operated by a health maintenance organization (HMO). Several commenters were concerned that a State could unfairly tax a health care provider twice by imposing a separate tax on two provider classes. For example, a State could tax HMO services and inpatient hospital services, resulting in an unfair tax on hospitals that provide HMO services. One commenter suggested that the State have the discretion to choose which class a tax would fall under (HMO or inpatient hospital service). Another commenter suggested that we specify in the regulation that the HMO services class apply to "services of HMOs not otherwise taxed" to ensure an equitable interpretation of the law.

Response: While the regulations specify classes that can be taxed, the regulations cannot interfere with the State's authority to impose taxes on one or more of the providers or prohibit a State from taxing a provider that would fall under two classes. However, we will consider a tax to be broad based when the tax is imposed on all inpatient hospital services, with the exclusion for HMO owned and operated hospitals if the HMO services are also being taxed. However, if HMO services are not being taxed, the tax on inpatient hospital services would not be broad based unless it is imposed on all hospital services, including HMO inpatient hospital services.

Comment: Three commenters suggested that we grandfather in provider classes that had been subject to such tax programs prior to the implementation of Public Law 102–234. More specifically, the commenters suggested that all services that had been operating under an approved program as of January 1, 1992 (or November 22, 1991) should be grandfathered into an approved provider list. Two commenters suggested that we amend the regulations to grandfather in all existing licensing fees regardless of whether the fee exceeds the cost of operating the licensing or certification program.

Response: Section 1903(w)(1)(C)(ii) of the Act provided for a transition period during which, under certain circumstances, States may receive, without a reduction in FFP, revenues from impermissible health care-related tax programs in effect prior to the enactment of Public Law 102–234. We believe that the transition period provision in section 1903(w)(1)(C)(ii) afforded States ample opportunity to correct any licensing fees or provider classes that did not comport with the requirements of Public Law 102–234. Since licensing and certification was a new class, not listed in the statute, we felt a fiscal responsibility to limit these fees to the cost of operating the program.

Comment: Several commenters indicated that they did not believe the new licensing fee class should be added because it exceeds Federal intent. These commenters also believed that the Secretary does not have the authority to create such qualifying conditions. One commenter indicated that the provision in § 433.56(a)(9)(iii) (which specifies that for all health items or services in which the State has enacted a licensing or certification fee, the aggregate amount of the fee cannot exceed the State's estimated cost of operating these programs) would introduce considerable administrative burden for States.

Response: Section 1903(w)(7)(F) of the Act specifies that the term "tax" includes any licensing fee, assessment, or other mandatory payment. Several States asserted that a licensing fee is most likely broad based, and that the revenue generated from the fee is paying

for the administration of the licensing program for the provider on whom the fee is imposed, not for Medicaid services. Therefore, we added to the list of permissible health care classes in the interim final regulations licensing fees that apply to items and services not otherwise listed. This change clarifies that the application of a broad-based and uniform licensing fee on providers of items and services not otherwise listed in the statute is a permissible health care-related tax as long as the revenue generated from the licensing fee does not exceed the estimated costs of operating the licensing program. We believe these conditions are an appropriate exercise of our statutory authority to add additional classes.

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at § 440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)).

Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

Comment: A few commenters suggested limits that could be applied to the licensure fee class. The suggestions included limiting the applicability of the regulation to only licensing and certification fees imposed by the State, not local governments, or limiting the applicability to only those fees imposed as a general purpose, revenue-generating mechanism. One commenter recommended that we add a threshold standard (for example $1,000) for licensing fees, below which fees would be deemed to satisfy the statutory requirements.

Response: We have revised the broad-based requirements in § 433.68(c)(3) to allow automatic approval of a waiver when a licensing fee that is not uniformly applied to all providers in a class is under $1,000 annually and the total amount raised by the State from the fee is used in the administration of the licensing or certification program.

Comment: One commenter requested guidance concerning what is considered a licensing fee and questioned if it included initial application fees, examination fees, and reciprocal licensing fees, or only annual, biannual or triennial renewal fees. The commenter also questioned whether licensing fees of athletic trainers, or funeral directors are health care related.

Response: Any mandatory payment by a health care provider associated with the cost of operating the licensing program is considered a licensing fee. Social workers who provide medical or remedial care services in a health care setting would be considered a provider of health care services for the licensing fee class. Since most athletic trainers and funeral directors provide services outside the clinical setting, these groups would not be considered health care related.

Comment: One commenter suggested that the test covering the cost of the licensing program be applied in the aggregate—that is, the test would be met as long as the fees in the aggregate do not exceed aggregate costs of licensing for all licensed groups. Two commenters recommended deleting the test altogether.

Response: We believe that a test in the aggregate does not follow the intent of the statute because such a test would permit States to target Medicaid providers through the licensing fee process.

Comment: One commenter believed that the exclusive list of classes contained in the regulations is too restrictive. This commenter believed that the restrictive definition of classes is inconsistent with the DSH statute's considerable leeway afforded to States in their designation of hospitals to receive DSH payments.

Response: Based on numerous comments concerning the statute's limited list of classes, we have expanded the list of classes in the final regulations. However, we are unclear as to the correlation made by the commenter between the limited list of classes contained in the statute and regulations and the State's limited ability to define hospitals eligible for DSH payments. The State will still have the flexibility to define hospitals as DSH facilities under the eligibility criteria at section 1923 of the Social Security Act.

Comment: Two commenters recommended that we establish an approval process for those States that wish to tax providers in classes not specified in the statute.

Response: We have revised § 433.56 to include 10 additional health care classes based on recommendations received by the commenters. Also, the Secretary will consider adding additional classes if States can demonstrate the need for additional designations and that any class of classes proposed for addition meets the following criteria:

- The revenue of the class is not predominantly from Medicaid and Medicare (not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other Federal programs combined);
- The class must be clearly identifiable, such as through designation for State licensing purposes, recognition for Federal statutory purposes, or being included as a provider in State plans; and
- The class must be nationally recognized and not be unique to a State.

7. Permissible Health Care-Related Taxes (§ 433.68)

a. General Rule (§ 433.68(a))

Comment: One commenter believes the restrictions on the receipt of tax revenue after a State's transition period ends places severe hardship on States.

Response: In accordance with section 1903(w)(1)(D)(ii) of the Act (codified at § 433.68(a)), the amount of impermissible tax revenue a State may collect during its transition period in State fiscal year 1993 is limited to the amount received, not the amount levied, for that period. Consequently, a reduction in FFP will occur if impermissible tax revenue levied for the transition period is received by the State after that date. Contingent upon the design of a State's tax program and the State's ability to comply with the provisions of Public Law 102–234, a State could experience some degree of difficulty. However, this law was enacted in December 1991 and the statute permitted all States using provider taxes enacted prior to November 22, 1991, to continue such a program through at least September 30, 1992. The purpose of the transition period was to afford States sufficient time to replace health care-related tax and provider-related donation programs

that do not meet the requirements of the law with permissible programs. Therefore, we believe the statute was designed to minimize financial hardship that States could incur.

b. Broad Based and Uniformity Requirements (§§ 433.68(c) and (d))

Comment: Several commenters believed it was not necessary that a uniform tax be applied as a single rate (as specified in § 433.68(d)(1)(i)) provided that a multiple tax rate structure (progressive/regressive) is applied in a consistent and uniform manner or a consistent formula is applied to all providers in the class. These commenters believed that a measure of "generally redistributive" may be better met with a tax using some sliding rate scale. Furthermore, one commenter indicated that we should provide additional guidance as to which types of taxes would fall within the catchall category under § 433.68(d)(1)(iv) (which provides for additional taxes on items or services to be considered as uniformly imposed if the State establishes to the Secretary's satisfaction that the amount of the tax is the same for each provider of such items or services in a class).

Response: Public Law 102–234 requires that a tax be applied as a single rate or amount per provider in order for it to be considered uniform. Section 433.68(d)(1)(iv) provides States with the opportunity to demonstrate through the waiver process that a tax using a consistent formula or a regressive/progressive tax can be more redistributive than one that meets the uniformity requirements under § 433.68(d)(1)(i) through (d)(1)(iii).

Comment: One commenter indicated that a tax that is broad based in one State may not be broad based in another State since some States will have more Medicaid providers to be taxed.

Response: The law does not address a provider who provides services solely to Medicaid recipients. We believe the majority of "Medicaid" providers are "Medicaid" providers for only a portion of their practices. Furthermore, we strongly question whether there are existing providers that furnish services only to Medicaid recipients. The law, however, does allow for the exclusion of Medicaid revenues from a tax. Therefore, services furnished by providers under the Medicaid program may be excluded from a tax and the tax would still be considered uniform if those services were the only excluded services.

Comment: One commenter stated that States should be allowed to exempt non-Federal, public organizations when determining if a tax is broad based. The commenter believed that this would be consistent with the existing provision in § 433.68(c)(1), which specifies that a health care-related tax will be considered to be broad based if the tax is imposed on at least all health care items or services in the class or providers of such items or services furnished by all non-Federal, non-public providers in the State, and is imposed uniformly. This commenter believed that it is administratively pointless for the State to tax revenues from its own programs. Several commenters indicated that in addition to excluding Medicaid and Medicare revenue from the tax, States should be allowed to exclude providers who do not charge for services and providers that lack sufficient revenues to pay the tax.

Response: Section 433.68(c)(1) of our regulations is based on section 1903(w)(3)(B) of the Act, which specifies that a tax is broad based when it is imposed with respect to all items or services in the class furnished by all non-Federal, non-public providers in the State or is imposed with respect to all non-Federal, non-public providers in the class. Therefore, we are bound by the statute to retain this requirement in our regulations. In addition, the statute does not give the Secretary the authority to exclude providers from a broad-based tax except under a waiver in accordance with section 1903(w)(3)(E) of the Act.

Comment: One commenter requested clarification of whether a tax on gross revenues that exempts revenues paid to providers by a State program fails to meet the uniformity requirements.

Response: The regulations allow States to provide specific exclusions as long as the tax is found to be generally redistributive in accordance with the waiver requirements in § 433.68(e). Until the State can make this demonstration, the statute provides that expenditures are reduced by the amount of bad taxes collected.

Comment: One commenter believed we should establish a presumption that gross revenue taxes that exempt revenues from Medicaid and Medicare are permissible, even if they do not meet all of the remaining technical requirements of the law.

Response: Section 1903(w)(1)(A)(iii) of the Act specifies that a tax is not permissible, regardless of its exclusions of Medicare or Medicaid revenue, when a hold harmless practice exists. This section further indicates that a tax is not eligible for Federal matching when there is in effect a hold harmless provision with respect to a broad-based health care-related tax. However, a tax that excluded only Medicaid or Medicare would still meet the uniformity standards.

Comment: One commenter stated that we should clarify in the regulations that States may impose health care-related taxes that contain exemptions, credits, deductions, or exclusions without first going through the waiver process. The commenter acknowledged that if a State does not proceed without first seeking a waiver, it takes the risk that the Secretary will challenge its exemption, credit, deduction, or exclusion.

Response: While it is permissible for the State to implement the tax prior to the approval of its waiver, it is to the State's advantage to submit its waiver request prior to the implementation of its tax.

Comment: One commenter indicated that the definition of uniform tax in § 433.68(d) should be illustrative and not restrictive. Furthermore, the commenter did not believe that an admissions tax requires the Secretary's approval.

Response: Section 1903(w)(3)(C) of the Act provides a precise definition of a uniform tax. Under this section, there are three specific types of taxes defined as uniform. The statute also allows for a fourth category of other types of uniform taxes if approved by the Secretary. Moreover, the items specified in the statute are exclusive, not merely illustrative.

Comment: One commenter believed that it is more appropriate to interpret "net operating revenue" (as defined in the uniformity requirements in § 433.68(d)(1)(iii)) to mean "operating margin" because it is a commonly used interpretation of the term, and the alternative definition in the rule makes the term "net operating revenue" redundant with "receipt." The commenter further believed that even if "net operating revenue" is not interpreted to specifically mean "operating margin," operating margin is sufficiently related as an accounting concept to gross revenues and gross receipts that to interpret this more inclusively to include operating margin as an acceptable tax base for a uniform tax would be consistent with the statute. Therefore, we should clarify in the rule that a tax on operating margins of providers may be a broad-based tax.

Response: Operating margin is not synonymous with net operating revenue. In accordance with Medicare cost finding principles, operating margin reflects a provider's revenues after such revenues are reduced by expenses. On the other hand, net operating revenue is defined in § 433.68(d)(1)(iii) as gross charges of

facilities, less any amounts for bad debts, charity care, and payer discounts. Gross charges and gross receipts are not reduced by expenses to determine net operating revenue. The statute recognizes a tax on net operating revenue as a uniform tax. However, it does not do so with respect to net operating margins, which is an entirely different accounting concept.

c. Generally Redistributive (§ 433.68(e))

Comment: One commenter suggested we define the term "generally redistributive".

Response: As stated in the preamble in the November 24 interim final rule, our definition of "generally redistributive" is the tendency of a State's tax and payment program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the State's share of Medicaid payments.

Comment: Several commenters indicated that the 95 percent generally redistributive test is too restrictive. These commenters proposed a variety of numerical thresholds that were lower than 95 percent.

Response: Section 1903(w)(1)(A)(ii) of the Act specifies that for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan shall be reduced by the sum of any revenues received by the State during the fiscal year from health care-related taxes other than broad-based health care-related taxes. The purpose of this provision was to preclude the use of revenues derived from taxes imposed primarily on Medicaid providers and activities. However, to relieve the restrictive nature of this provision, we believed it was necessary to adopt an alternative for States enacting taxes that were not broad based. Based on Federal review and analysis, we believe the 95 percent test allows States a reasonable degree of flexibility to receive FFP for a tax that is otherwise not broad based or uniform, while continuing to maintain the intent of the statute. However, we have revised the P1/P2 value at § 433.68(e)(1)(iii) to 0.90 for taxes enacted and in effect prior to July 1, 1993.

Comment: Several commenters indicated that we should allow States greater flexibility for waiver requests of the broad-based and uniform requirements. One commenter indicated that we should revise the regulations to remove regulatory authority over provider-related donations and health care-related taxes unrelated to Medicaid to allow this greater flexibility. Some commenters suggested policy-based arguments as an alternative to "statistical" thresholds.

Response: We believe that, as a part of the broad-based and uniform waiver test, health care-related taxes as a whole are an integral part in determining the amount of burden the tax has on Medicaid. We also believe that policy-based arguments do not allow for a reasonable test of the broad-based and uniform requirements. If we allowed a policy-based argument, we would have no specific standards by which a waiver of these requirements could be measured. This subjective analysis would be administratively burdensome and virtually impossible to apply fairly throughout the nation.

Comment: Several commenters requested expansion of the list of providers of items and services excluded in the uniformity waiver if the value of B1/B2 is at least equal to .95 but not greater than 1.

Response: The regulations have been revised to include additional classes of providers of items and services that can be excluded under the uniformity waiver test.

Comment: One commenter indicated that the waiver requirements in § 433.68 (e)(1) and (e)(2) are too restrictive in relation to exemptions for sole community and rural hospitals. This commenter believed that waivers of the broad-based and uniformity provisions should automatically be approved without an additional mathematical test.

Response: The purpose of these requirements is to ensure that the tax burden does not shift to Medicaid by the waiver. We believe that the mathematical tests allow specific standards by which the appropriateness of a waiver of these requirements can be measured.

Comment: A few commenters indicated that the waiver process should be timely and States should be given appropriate guidance in providing adequate information for evaluating the waiver request. Other commenters indicated that a time period should be specified for HCFA to approve a waiver request of the broad-based and uniform requirements.

Response: The statute does not mandate a specified time period for us to approve a waiver of the broad-based and uniformity requirements. Due to the complexity of the tests and the amount of data involved, we did not establish a specified time period. We will, however, review waivers in an expeditious manner and welcome any State questions concerning waivers of the broad-based and uniformity requirements for health care-related tax programs.

Comment: A few commenters indicated that by establishing the threshold of the P1/P2 test at 1, the waiver provisions in § 433.68(e)(1) will allow most taxes that are not broad based to be considered generally redistributive only if such tax is more redistributive than a tax that is applied to all such providers in a class.

Response: We have revised the generally redistributive test to indicate that if the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1, HCFA will automatically approve the waiver.

Comment: A few commenters indicated that the five specified categories of exceptions under the generally redistributive test in § 433.68(e) should be deleted. These commenters also stated that a waiver should be approved if a State can show a particular exception is consistent with public policy.

Response: If we allowed a policy-based argument, we would have no specific standards by which a waiver of these requirements could be measured. This subjective analysis would be administratively burdensome and virtually impossible to apply fairly throughout the nation.

Comment: A few commenters indicated that we should informally review and provide guidance concerning waivers of the broad-based and uniformity requirements on health care-related taxes that are proposed but not yet enacted.

Response: We welcome any State questions concerning waivers of the broad-based and uniformity requirements for health care-related tax programs not yet enacted.

Comment: A few commenters suggested we define waiver standards to cover pooling arrangements.

Response: We have revised the waiver standards in § 433.68(e)(2)(iii)(B)(*8*) to cover pooling arrangements.

Comment: A few commenters suggested that the broad-based requirement should be separate and apart from the uniformity requirement.

Response: Section 1903(w)(3)(B)(ii) of the Act defines a broad-based health care-related tax as a health care-related tax that is imposed uniformly. Consequently, in applying for a waiver of the broad-based requirement, a State must also meet the uniformity requirements.

Comment: A few commenters suggested that we combine the waiver tests for the broad-based and uniformity requirements and conduct a single test of a tax's redistributive nature utilizing a State's total Medicaid expenditures. These commenters suggested that the

test should be whether the waivered tax itself is generally redistributive.

Response: We have designed an efficient test to determine redistributiveness using a comparison of a broad-based, uniform tax against a waivered tax. We do not believe that testing a tax's redistributive nature utilizing total Medicaid expenditures measures anything about the tax itself.

Comment: One commenter indicated we should increase the 90-day limit for States to inventory and analyze taxes and fees that may require a waiver of the broad-based and/or uniformity requirements.

Response: On February 19, 1993, we rescinded the deadline of 90 days in which States were to submit requests for waivers of broad-based and uniform tax requirements for any tax programs in effect before October 22, 1992.

Comment: One commenter requested us to clarify the phrase "applicable to Medicaid," as used in § 433.68(e).

Response: The proportion of the tax revenue applicable to Medicaid means how much of the tax burden shifts to Medicaid.

Comment: One commenter suggested that we not require a provider-by-provider calculation for any class that includes more than 100 providers for a waiver of the uniformity requirement because of the administrative burden. Instead, the commenter suggested that we should use random sampling.

Response: When performing the uniform test, a State must compare the redistributiveness of a broad-based and uniform tax, which is a tax on all providers in the class at the same rate, to the State's proposed tax. Therefore, data from a random sample of providers could not satisfy the requirements of this waiver test.

Comment: One commenter requested that we add "providers of IMD services where the Medicaid State plan prohibits such entities from participating in the Medicaid program" to the defined groups of providers that can be excluded or given a credit/deduction. Two commenters suggested that we eliminate the additional criteria altogether.

Response: We have revised the regulations to include psychiatric hospitals in the list of excluded providers at § 433.68(c)(1)(ii)(B).

Comment: One commenter requested that we revise the regulation to explicitly state that facility costs are an acceptable tax base.

Response: States are given the flexibility to decide what is an acceptable tax base. Using facility costs as a tax base may or may not be uniform.

Comment: One commenter indicated that the statistical test that we have established for waivers will simply serve to deny any waivers. The commenter suggested that there be some burden on HCFA to prove that reasonable waiver requests can and will be approved.

Response: We strongly believe the numerical test is reasonable and that States whose programs meet the waiver tests will have their waiver requests approved.

Comment: One commenter indicated that if a tax program has a tendency to redistribute the funds of a provider tax to those providers with relatively more charity care, and if the program distributes all the provider tax funds that are collected to providers in the affected provider class without using any of the tax funds to claim FFP, the tax would be considered redistributive.

Response: We have defined redistributive as the tendency of a State's tax program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the State's share of Medicaid payments. Assuming a State imposes a non-Medicaid tax and uses the funds solely for Medicaid payments, we believe a perfect redistribution would exist. On the other hand, a tax that is broad based and uniform is not a perfect redistribution. The redistribution test is an attempt to demonstrate how a tax compares to a broad-based and uniform tax.

Comment: One commenter indicated that there is nothing in the test for a broad-based requirement that would address a situation in which only the revenues from private payers, VA payers, Medicare payers, and other insurance payers were taxed with no taxes applicable to the Medicaid payers' revenues. The commenter suggested that this appears to provide an unacceptable cost shift to non-Medicaid patients.

Response: The statute does not restrict a State's taxing authority. The statute and regulation were designed to protect Medicaid providers from being disproportionately taxed. Those excluded providers are providing care for low-income patients. It is up to each State, however, to decide who will be assessed.

Comment: One commenter suggested that States be required to include the effect of taxing Medicaid and Medicare when performing tests for waiver calculation purposes, even if Medicaid and Medicare, among other things, are excluded from the tax.

Response: A broad-based tax applies to all items and services within a class. The waiver of this requirement compares a tax containing exclusions against a tax that is broad based. Consequently, Medicare and Medicaid need to be included to satisfy the broad-based portion of the test. Under the broad-based test, the proportion of the tax applicable to Medicaid under a broad-based tax (P1) would include the effect of taxing Medicaid and Medicare. Under the uniformity test, the slope of the linear regression applicable to the hypothetical broad-based uniform tax (B1) would include the effect of taxing Medicaid and Medicare.

Comment: One commenter indicated that States having taxes on more than one class of providers or multiple taxes and fees on the same class should be able to treat taxes separately and seek waivers only for those taxes that are not broad based and uniform.

Response: We have revised § 433.68(e) to specify that the waiver tests will be applied on a per class basis.

Comment: A few commenters suggested that we change the B1/B2 test to "total tax revenues." Since the current dependent variable in the test is a proportion and the independent variable is an absolute magnitude (the Medicaid statistic), the ratio of the regression coefficients can lead to results that are incorrect.

Response: The Medicaid statistic is not an absolute magnitude. The test breaks down the tax per facility. Therefore, in each case, a value for the tax for each facility will be applied to a value for the Medicaid statistic for each facility. This test is looking at a comparison. It is looking at the proportion of the change.

Comment: One commenter suggested that we delete the waiver approval condition that stipulates the waiver will be approved if the tax program does not fall within the hold harmless provisions.

Response: Section 1903(w)(1)(A)(iii) of the Act specifies that for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan shall be reduced by the sum of any revenues received by the State during the fiscal year from a broad-based health care-related tax, if there is a hold harmless provision with respect to the tax. Consequently, by law, this provision may not be removed from the approval condition of a waiver.

Comment: One commenter indicated that using regression to measure redistributiveness is not logical or statistically valid. The commenter indicated that the problem with using slope alone is that it is not unusual to get a high value for the slope of the regression when two variables in the

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analysis have no real relationship as indicated by a very low correlation. A regression will always generate a value for "slope", and the degree of slope can be determined as often by random errors or outliers as by a real relationship.

Response: The intent of this test is to look at a comparison. We believe a measurable relationship exists when the two variables used are the tax imposed on each provider and the Medicaid activity related to each provider. The test does not look at an absolute value of the slope but, instead, looks at the proportion of the change between a tax that is broad based and a tax that is not broad based.

Comment: One commenter suggested that we revise the regulations to specify that any gross revenues tax that exempts Medicaid and Medicare is automatically redistributive, and States do not need to follow the broad-based and uniform requirements nor go through the waiver process.

Response: The statute permits States to exclude Medicaid and Medicare from an assessment. If the tax excludes Medicaid and Medicare only and is applied at the same rate, the tax is considered broad based and uniform. However, if the tax provides for other exclusions, the State should apply for a waiver.

Comment: One commenter indicated that the regulations apply a very strict test of uniformity to licensing fees based on beds, and that the test is unclear as to how it would apply to this type of fee. The commenter questioned what the Medicaid statistic would be for licensing fees on beds and proposed that we require a reasonable relationship of the licensing fee to the cost of licensing the individual facility.

Response: We have revised § 443.68(c)(3) to waive the broad-based and uniformity requirements in the case of variations in licensing and certification fees for providers where the amount of the fee is not more than $1,000 annually per provider and the total amount raised by the State from the fee is used in the administration of the licensing or certification program.

d. Hold Harmless (§ 433.68(f))

Comment: Several commenters indicated that the numerical values of 75/75 in the second prong of the hold harmless test in § 433.68(f)(3)(i) are too restrictive. These commenters proposed several alternative numerical thresholds and provider exclusions from the test.

Response: We believe that the 75/75 numerical threshold under the second prong of the hold harmless test is a reasonable parameter to ensure that States do not use Medicaid rates to repay providers for tax costs in a way not permitted under the statute, and at the same time, permit States flexibility in the design of their tax and payment programs.

Comment: Several commenters indicated that in § 433.68(f)(3)(i), which states that if the health care-related tax is applied at a rate that is less than or equal to 6 percent of the revenues received by the taxpayer, the tax is presumed to be permissible under the guarantee test, the term "presumed" should be clarified. The commenters proposed alternative language and deletions to revise the regulations.

Response: We have revised the regulations at § 433.68(f)(3)(i) to remove the word "presumed." This should clarify that a tax that is broad-based and uniform, and applied at a rate of 6 percent or less, is considered a permissible health care-related tax under the first prong of the two-prong hold harmless test.

Comment: Several commenters indicated that the 6-percent test is too restrictive and proposed clarifications and deletions to revise the regulations.

Response: As stated in the regulations, the 6-percent threshold is based on the average level of taxes applied to other goods and services in the States. A tax equal to or below the 6-percent level is considered permissible under the first prong of the two-prong hold harmless test.

Comment: Several commenters indicated that in the case of a tax that violates the two-prong hold harmless test, only the portion of the tax over 6 percent should be disallowed.

Response: The intent of the statute was to prevent States from guaranteeing to hold taxpayers harmless for any portion of the costs of the tax. The purpose of the two-prong test is to prevent States from guaranteeing payment of the tax back to the taxpayer, which is prohibited by law. A tax failing this two-prong test is impermissible. We do not believe it reasonable to allow a bad tax to be considered partially good. States do have the option to reduce the rate of the tax and, thus, avoid this situation.

Comment: Several commenters indicated that we should extend the April 1, 1993, compliance deadline to comply with the 6-percent test and proposed alternative dates and contingency factors.

Response: We have extended the deadline for compliance with the 6-percent hold harmless test to September 13, 1993.

Comment: One commenter requested clarification that the 6-percent rate is applied by comparing the amount of the tax imposed to the total revenues applicable to the class of service being taxed. The commenter stated that if the tax is on more than one class, the revenues are applicable to all classes.

Response: The 6-percent rate is applied by comparing the amount of the tax imposed to the total revenues received by the class of service being taxed. In addition, if the tax is on more than one class, the amount of the tax should be compared to the revenues received by each class subject to the tax to determine the 6-percent rate.

Comment: Several commenters indicated that the hold harmless provisions are vague and that the application of the tests must permit States flexibility to improve provider reimbursement without triggering a hold harmless situation and denial of FFP.

Response: We believe the regulations provide clear and specific rules in determining a hold harmless situation. Furthermore, we believe the numerical tests do not prevent States from improving provider reimbursement. Instead, these tests are intended to prevent States from guaranteeing payment of the tax to the taxpayer.

Comment: Several commenters indicated that it is difficult and restrictive to apply the hold harmless test in determining that some portion of the Medicaid payment varies directly with the amount of the tax paid. In any case where a provider receives Medicaid payment that is greater than or equal to the amount of tax paid, it would be shown that there is one-to-one correspondence between some portion of Medicaid payment and the tax.

Response: We have developed a test in the regulation which allows States some degree of "one-to-one" correspondence within certain limitations at § 433.68(f).

Comment: A few commenters indicated that we should revise the regulations to clarify that all grant programs do not violate the hold harmless provisions.

Response: Based on the grant programs we have seen, we believe that certain States are using non-Medicaid funds to indirectly compensate providers for the cost of the tax imposed on private charges. This violates section 1903(w)(4)(A) of the Act. However, it is possible that grant programs could be structured to avoid hold harmless problems.

Comment: One commenter expressed disagreement with the example in the preamble that states that the use of grant payments to third party payers is an example of a hold harmless situation.

Response: We believe that if the tax is considered to be levied on a third party,

the State is directly providing for a non-Medicaid payment to a private pay patient that is positively correlated to the amount of the tax.

Comment: A few commenters indicated that pass-through cost associated with health care-related taxes should be excluded from the hold harmless test since they are allowable costs under the Medicaid program.

Response: A tax can be claimed as an allowable cost and included in the establishment of reimbursement rates. This would not necessarily constitute a hold harmless situation. Section 1903(w)(4) of the Act clearly indicates that the hold harmless provisions must not prevent the use of the tax to reimburse health care providers in a class for expenditures under title XIX nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process. However, pass-through costs associated with health care-related taxes are not excluded from the hold harmless provisions.

Comment: One commenter indicated that we should make clear that provider taxpayers are not held harmless by a provision in a State law that allows the provider to pass the tax incidence through to private sectors.

Response: Pass-through costs associated with health care-related taxes are not excluded from the hold harmless provisions. However, a tax can be claimed as an allowable cost and included in the establishment of reimbursement rates. This, in itself, would not necessarily constitute a hold harmless situation.

Comment: A few commenters requested clarification that a health care-related tax is an allowable cost on a provider's cost report and repayment of the tax as an allowable cost does not create a hold harmless effect in violation of the regulation.

Response: A tax can be claimed as an allowable cost and included in the establishment of reimbursement rates. This would not necessarily constitute a hold harmless situation. Section 1903(w)(4) of the Act clearly indicates that the hold harmless provisions must not prevent the use of the tax to reimburse health care providers in a class for expenditures under title XIX nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process.

Comment: One commenter stated that the intent of the statute was to prohibit States from excluding non-Medicaid services from taxes, assessments and fees—not to exclude Medicaid from recognizing mandatory taxes as an allowable cost in establishing reimbursement rates.

Response: It is true that it was not the intent of the statute to exclude Medicaid from recognizing mandatory taxes as an allowable cost in establishing reimbursement rates. However, this does not exclude the taxes from the hold harmless provisions.

Comment: A few commenters indicated that the regulation is vague in describing positive correlation.

Response: A positive correlation is the statistical term for a positive relationship between two variables. For example, there could be a positive correlation between the amount of education a person has received and his or her income. The two variables being education and income. The term positive correlation used in § 433.68(f)(1) has the same meaning as the statistical term. Therefore, a hold harmless exists if there is a positive correlation between the tax paid and the non-Medicaid payment, or between the tax paid and the difference between the Medicaid payment and the total tax paid. If a provider is receiving a non-Medicaid payment for its tax cost, there would be positive correlation between these two variables, or a hold harmless would exist.

Comment: One commenter indicated that the term "direct correlation" is not achievable since a direct correlation exists any time the correlation is not random.

Response: The hold harmless test applies to all providers subject to the tax. It does not allow for random statistical data. However, the regulations do allow for a correlation to exist by a certain degree according to the statistical thresholds provided for in the hold harmless tests.

Comment: One commenter stated that we should clarify that the phrase "directly correlated" is understood to embody the hold harmless principle.

Response: The hold harmless provisions mean that while States may use revenue from otherwise permissible taxes to increase payment rates to the providers subject to the tax, States may not make Medicaid or other payments to providers that result in taxpayers automatically being repaid dollar (or part of a dollar)-for-dollar for their tax costs. This is a direct correlation and is the embodiment of the hold harmless principle.

Comment: One commenter suggested that we raise hold harmless as an issue only when the facts demonstrate a compelling case of intention to and effect of relieving nursing homes from any significant impact of the tax.

Response: We believe that subjective analysis does not allow for a reasonable test of the hold harmless provisions. The use of a subjective analysis would result in a lack of specific standards by which hold harmless could be measured. In addition, a subjective analysis would be administratively burdensome and virtually impossible to apply fairly throughout the nation.

Comment: One commenter noted that we do not define when an "explicit guarantee" exists and provided a proposed definition.

Response: We have revised the regulations at § 433.68(f)(3)(i) to remove the term "explicit guarantee" and clarify that an indirect guarantee is determined to exist by applying the two prong hold harmless test.

Comment: One commenter indicated that the hold harmless guarantee test should be eliminated, since the statute does not define the term "guarantee" or contain any test to be used to determine whether or not a guarantee exists.

Response: Since not all hold harmless situations are explicit, we believe that it was necessary to adopt a test to ensure that a State does not violate the hold harmless provision of the statute.

Comment: One commenter requested that we clarify the language "revenues received by the provider" to make clear how this would be done in the case of a bed tax or a revenue tax that excludes Medicare and Medicaid.

Response: The total amount paid by the provider based on the bed tax would be compared to total revenues received by the provider to generate the rate of the tax to total revenue. For example, a $1 per bed per day tax may be equal to 4 percent of the provider's total revenue received.

Comment: One commenter indicated that the hold harmless provisions that apply to State-funded programs need clarification. The commenter believed these provisions should not include programs that provide reimbursement to individuals without public or private health insurance coverage for direct medical expenses, but do not recognize or reimburse any provider-specific taxes, assessments, or fees.

Response: Section 1903(w)(4)(A) of the Act specifies that a hold harmless situation exists if the State provides (directly or indirectly) for a payment to taxpayers and the amount of such payment is positively correlated either to the amount of such tax or to the difference between the amount of the tax and the amount of payment under the State plan.

8. Reporting Requirements (§ 433.74)

Comment: Several commenters indicated that a more systematic and comparable reporting process should be developed to provide explicit guidance to States with respect to donations and health care-related tax programs. Other commenters requested that we provide States with detailed information on the reporting requirements, such as supporting documentation, format, timing, and content. Another commenter asked for more specific guidance in the areas of appeals, waiver approval, and process of the reporting requirements.

Response: We agree with these comments. We will, as part of the State Medicaid Manual (SMM), provide guidance to States with respect to the reporting requirements process for donations and health care-related taxes to ensure accuracy of the data.

Comment: Several commenters indicated that the reporting requirements are extensive and administratively burdensome to States. A few commenters requested that we clarify how non-Medicaid funding programs are to be identified and evaluated.

Response: Section 1903(d)(6)(A) of the Act requires that each State submit all provider-related information related to donations made to the State or units of local government, and all health care-related taxes collected by the State or such units, regardless of its association with funding of the Medicaid program, and information related to the total amount of payment adjustments made and the amount of payment adjustments made to individual providers under section 1923(c) of the Act. We will collect this information on a quarterly basis to monitor the program, and to relieve the State from implementing additional reporting requirements on an annual basis.

Comment: A few commenters indicated that it is unclear what process we will use to reduce FFP when a tax program is found to be impermissible. Another commenter indicated that we should establish timeframes for State receipt of notices of FFP disallowances based on impermissible health care-related taxes.

Response: The process of reducing FFP is the same as the current deferral/disallowance procedure specified in §§ 430.40 and 430.42. Notice of FFP disallowance is also based on current Federal policy at § 430.42.

Comment: A few commenters indicated that there is no specified time period for HCFA to approve programs that either the State believes are permissible or that are submitted for a waiver.

Response: The statute does not mandate a specified time period for us to approve States' waiver requests. However, we will review these waivers in a timely manner.

Comment: One commenter requested that we clarify the appeals processes and guidelines needed to properly administer the law. Another commenter indicated that we should establish a separate appeals process for waiver disallowances under the regulations.

Response: Disputes that pertain to disallowances of FFP in Medicaid expenditures are heard by the Departmental Appeals Board as specified at § 430.3(b). The statute does not require us to establish a separate appeals process for waiver disapprovals. We believe that the appeals process specified in § 430.3(b) is adequate for all disallowances, including those the State believes are related to waiver disapprovals.

Comment: One commenter indicated that there is no appeals process if a non-waivered program is not approved.

Response: If a non-waivered program is not approved, and the total amount expended during a fiscal year is reduced by the sum of the impermissible tax, the State may appeal the resulting disallowance to the Departmental Appeals Board.

C. Summary of Revised Regulations

As a result of our review of the comments we received during the public comment period, as discussed in section I.B. of this preamble, and negotiations with States and the National Governors Association (NGA), we are making, in addition to editorial and typographical changes, the following revisions to the regulations published in the November 24, 1992, interim final rule.

1. Classes of Health Care Items or Services

We are adding to § 433.56(a) the following classes of health care items or services:

- Dental services.
- Podiatric services.
- Chiropractic services.
- Optometric/Optician services.
- Psychological services.
- Therapist services—Defined to include physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services, and rehabilitative specialist services.
- Nursing services—Defined to include all nursing services, including services of nurse midwives, nurse practitioners, and private duty nurses.
- Laboratory and x-ray services—Defined as services provided in a licensed, freestanding laboratory or x-ray facility. These services would not include laboratory or x-ray services provided in a physician's office, hospital inpatient department, or hospital outpatient department.
- Emergency ambulance services.
- Ambulatory surgical services, as described for purposes of the Medicare program in section 1832(a)(2)(F)(i) of the Act. These services are defined to include facility services only and do not include surgical procedures.

2. Outstationed Eligibility Worker Donations

We have expanded the definition of donations for outstationed eligibility workers by revising §§ 433.58(d)(2) and 433.66(b)(2) to indicate that the direct costs of outstationed eligibility workers now includes the prorated costs of outreach activities applicable to the outstationed workers at these sites.

3. Waiver Standards

To decrease the burden a State may have when imposing a licensing fee that is not uniform or broad based, we have revised § 433.68(c)(3) to specify that a waiver will automatically be granted in the case of variations in licensing and certification fees for providers where the amount of the fee is not more than $1,000 annually per provider and the total amount raised by the State from the fee is used in the administration of the licensing or certification program.

We have revised § 433.68(e)(1) to indicate that the test for waiver of the broad-based requirements is applied to a tax that is imposed on all revenues but excludes certain providers. We have provided an example of a situation in which this test would apply. We have revised § 433.68(e)(2) to indicate that the test of the broad-based and uniformity requirements is applied to all other taxes not provided in § 433.68(e)(1) and not automatically approved.

We have revised §§ 433.68(e)(1)(ii) and 433.68(e)(2)(ii) in the following manner. Under the current regulations, § 433.68(e)(1)(ii) specifies that if the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is greater than 1, HCFA will automatically approve the waiver request. Similarly, § 433.68(e)(2)(ii) indicates that if the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is greater than 1, HCFA will automatically approve the waiver request. Under this scenario, a tax would be generally redistributive only if such tax is more redistributive than a tax that is applied

to all providers in a class. Consequently, we have revised § 433.68(e)(1)(ii) to indicate that if the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1, HCFA will automatically approve the waiver request. Likewise, we have revised § 433.68(e)(2)(ii) to indicate that if the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 1, HCFA will automatically approve the waiver request.

Also, we have added § 433.68(e)(1)(iii) to indicate that if a tax is enacted and in effect prior to [publication date of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.90, HCFA will review the waiver request. We have added § 433.68(e)(1)(iv) to indicate that if a tax is enacted and in effect after [publication date of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.95, HCFA will review the waiver request.

In addition, we have revised §§ 433.68(e)(1)(iii)(B) and 433.68(e)(2)(iii)(B) by adding the following criteria for favorable treatment under the waiver standards. A tax that excludes or provides credits or deductions to the following providers is permissible:

(1) Financially distressed hospitals: (a) Defined by State statute;

(b) The State's statute has reasonable standards for determining financially distressed hospitals and these standards are applied uniformly to all hospitals in the State; and

(c) No more than 10 percent of non-public hospitals in the State are exempt from the tax;

(2) Psychiatric hospitals; or

(3) Hospitals owned and operated by HMOs.

We have further added to § 433.68(e)(2)(iii)(B)(8) that providers with tax rates that vary based exclusively upon regions, but only if the regional variations are coterminous with preexisting political (and not special purpose) boundaries and enacted and in effect prior to November 24, 1992, will be grandfathered in for special treatment under the uniformity test by applying a B1/B2 value of 0.85 for waivers to permit such variations.

4. Hold Harmless

We have revised § 433.58(g)(2) to specify that the State may modify taxes in existence as of November 22, 1991 in order to comply with the hold harmless rules established at § 433.68(f).

Section 433.68(f)(3)(ii) had indicated that a State must come into compliance with the hold harmless provisions by April 1, 1993. To accommodate the States, we have extended the deadline to September 13

D. Additional Clarifications

As a result of comments and ongoing discussions and negotiations regarding the interim final rule, we are making the following clarifications to HCFA's policies concerning provider-related donations and health care-related taxes:

1. Additional Health Care Classes

The Secretary will consider adding additional classes by further expedited rulemaking if States can demonstrate the need for additional designations and that any class of classes proposed for addition meets the following criteria:

- The revenue of the class is not predominantly from Medicaid and Medicare (not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other Federal programs combined);
- The class must be clearly identifiable, such as through designation for State licensing purposes, recognition for Federal statutory purposes, or being included as a provider in State plans; and
- The class must be nationally recognized and not be unique to a State.

2. Withholding Rules

We are restating our existing policy on withholding rules. We recognize a matchable expenditure if the State meets the following criteria:

- The provider voluntarily elects to have the State withhold the funds, or a State or Federal court requires the State to withhold the funds (such as alimony, child support, or debts owed to the State);
- With respect to payees for whom an Internal Revenue Service (IRS) Form 1099–MISC must be submitted, the State must report the total amount claimed as an expenditure (including the withheld amount) as the provider's income to the IRS on Form 1099–MISC; and
- The IRS recognizes the full amount of the reported payment as income to the provider.

3. Formula for Determining State Base Percentage

We are clarifying that, due to an inadvertent editorial error, the formula contained in the preamble of the interim final rule for determining the maximum amount of provider-related donations and health care-related taxes a State may receive without a reduction in FFP is incorrect. The State base percentage is calculated by dividing the amount of the provider-related donations and health care-related taxes to be received in State fiscal year 1992 by the total non-Federal share of medical assistance expenditures (including administrative costs) in that fiscal year based on the best available HCFA data. This percentage is then multiplied by the State's total medical assistance expenditures for the fiscal year to determine the actual dollar limit. This formula is consistent with the statute and § 433.60 of the regulations. The preamble, however, included administrative costs in the multiplication factor and not in the State base percentage determination.

4. Application of the Uniform and Broad-based Test and Hold Harmless Guarantee Test

- We are clarifying that the waiver tests will be applied on a per class basis.
- We are also clarifying that the hold harmless guarantee test will be performed on a per class basis. For the first prong of the guarantee test, the State will compare the amount of all health care taxes applied to one health care class to 6 percent of the revenues received by all providers in the health care class. For example, if the total amount of three separate taxes on the inpatient hospital services class produces revenue greater than 6 percent of the revenues received by the hospitals, the State would proceed to the 75/75 portion of the guarantee test. If 75 percent of the providers in a class receive 75 percent of their total tax costs back, the providers are considered to be held harmless from the cost of their tax.

II. Disproportionate Share Hospitals

A. Summary of Interim Final Regulations

1. Background

Public Law 102–234 established limits on the amount of FFP for medical assistance expenditures made to disproportionate share hospitals (DSHs) that, because of their geographic location or various other reasons, serve a larger number of Medicaid recipients and other low-income individuals than other hospitals. The law deleted the prohibition of an upper payment limit for DSHs from section 1902(h) of the Act and prohibited HCFA from restricting a State's authority to designate hospitals as DSHs. The law also imposed two restrictions on DSH payments.

The first DSH restriction, effective from January 1, 1992, through September 30, 1992, placed a moratorium on DSH State plan amendments. States may receive FFP for DSH payments made during the

moratorium period only if the payments were made in accordance with specified criteria.

The second DSH restriction, effective October 1, 1992, establishes both national and State limits on DSH payments. The national limit is established at 12 percent of the total amount of medical assistance expenditures (excluding State administrative costs) under Medicaid State plans during the Federal fiscal year (FFY).

In general, each State's DSH limit is similarly set at 12 percent of the State's medical assistance expenditures (excluding administrative costs) during the FFY. States with DSH payments applicable to FFY 1992 above the 12-percent limit are defined as "high-DSH States." States that are designated as "high-DSH States" will have DSH payment adjustments limited to the State base allotment.

States with DSH payments applicable to FFY 1992 below the 12-percent limit are referred to as "low-DSH States." These States are permitted to increase DSH payments to the extent that their Medicaid programs grow and to the extent that these States are entitled to receive a supplemental amount that does not result in the States' aggregate DSH payments exceeding the national limit.

The preliminary national DSH limit and the preliminary State-specific DSH limits are calculated prospectively, before the beginning of the FFY (that is, October 1).The law requires the Secretary, before the beginning of each fiscal year (beginning with fiscal year 1993), to estimate and publish in the **Federal Register** the national DSH payment limit and each State's DSH allotment within that DSH limit.

2. DSH Provisions Published in the Interim Final Rule.

In the November 24, 1992, interim final rule cited earlier under section II of this preamble, we also implemented the DSH provisions of the Public Law 102–234. We provided the following changes to our regulations to implement the statutory provisions:

- We specified the limitation on aggregate DSH payments for the moratorium period January 1, 1992, through September 30, 1992.
- We specified preliminary national and State DSH limitations on aggregate DSH payments beginning October 1, 1992. We specified that the national payment limit on aggregate DSH payments for any FFY beginning on or after October 1, 1992, is equal to 12 percent of total medical assistance expenditures (excluding administrative costs) that are projected to be made during the FFY under State plans. We specified that HCFA will make and publish a preliminary allotment in the **Federal Register** prior to October 1 of each FFY year, update the projections by April 1 of the FFY, and reconcile actual expenditures to final allotments by April 1 of the following year.
- We specified the method and formula for the calculation of individual State DSH payment limits—referred to as the "State DSH allotment." For FFY 1993, each State's base DSH allotment will be calculated using the greater of:

(1) The State's allowable DSH payments applicable to FFY 1992 (beginning on October 1, 1991); or

(2) $1,000,000.

For FFY 1992, HCFA will derive these DSH amounts from payment plans that meet the requirements for FFP during the period from January 1, 1992, through September 30, 1992.

- We specified a process that HCFA would use to update the preliminary national DSH expenditure limit and State DSH allotments.
- We specified a reconciliation process that HCFA would use to reconcile final allotments to actual expenditures.
- We specified the publication requirements that HCFA will follow when publishing both the preliminary and final national DSH expenditure limit and State DSH allotments.
- We specified how HCFA would calculate each State's percentage of total medical assistance payments (excluding administrative costs) during FFY 1992.
- We specified the requirements for State DSH allotments in FFY 1993, FFY 1994, and subsequent years for both high-DSH and low-DSH States. For a high-DSH State, the dollar amount of DSH payments may not exceed the dollar amount of DSH payments applicable to FFY 1992 until the State's DSH payments equal 12 percent or less of its medical assistance payments. For a low-DSH State, the allotment in FFY 1993 would be calculated by HCFA by increasing the State base allotment by a growth factor based on the State's growth in total medical assistance expenditures, including all administrative expenditures, and (2) a supplemental amount if available under the national limit. The FFY 1994 allotment for low-DSH States would be calculated by increasing each State's prior year DSH allotment by: (1) Its State growth amount, and (2) a supplemental amount from a redistribution pool if such a pool is available under the national limit.

The State growth amount for a State in a fiscal year would be equal to the product of (1) The State growth factor, which is the projected percentage increase in the State's total medical assistance expenditures (including total administrative expenditures) relative to the corresponding State medical assistance expenditures (including total administrative expenditures) in the previous FFY, as adjusted by HCFA, and (2) the State's prior year DSH allotment. If there is no growth, the growth factor would be zero. If the State's growth factor is negative, the amount would be deducted from the State's prior year's DSH allotment. We specifically invited public comments on this approach.

- We specified our method of calculating and distributing a redistribution pool to low-DSH States.
- We specified that States that amend their State plans to meet the minimum DSH payment requirements may not have a State DSH allotment that is less than the minimum DSH payment adjustment.
- We specified that if the aggregate amount of the State DSH allotments for any FFY, beginning October 1, 1992, exceeds 12 percent of the total amount of aggregate national medical assistance expenditures (excluding administrative costs) projected to be made during that fiscal year, each State's DSH allotment will be reduced proportionally to ensure that the 12-percent statutory cap is not exceeded.
- We specified reporting requirements for State DSH payments.

B. Preliminary Notice of Individual State Allotments

On November 24, 1992, we also published a notice in the **Federal Register** (57 FR 55261–55265) announcing the preliminary national aggregate DSH limit and individual State allotments for FFY 1993. This notice was published in accordance with the requirement in § 447.298(c) that we publish preliminary DSH allotments at the beginning of the FFY.

C. Discussion of Comments

A summary of the public comments on the DSH portion of the interim final rule included among the 98 timely items of correspondence received and our responses to these comments follow:

1. Reconciliation Process

Comment: Several commenters objected to HCFA's retroactive adjustment of the DSH allotment. These commenters stated that the reconciliation procedures described in § 447.297(d) are unworkable. In accordance with the interim final rule, a State would not be notified of any allotment reductions until the final

allotments are published April 1 of the fiscal year following the fiscal year in which payments are made. The commenters indicated that an allotment reduction at that point in the DSH payment process would confront a State with only two choices: (1) Recoup from hospitals payments in excess of the reduced allotment; or (2) reduce future DSH payments to offset earlier payments in excess of the final allotment. The commenters believed further that the significant lag between payment to a hospital and determination of final State DSH allotments, as envisioned in the interim final rule, makes it almost impossible to recoup payments, given the changing hospital participation in the DSH program from year to year.

Response: As a result of the comments received on this issue and negotiations and consultations with the National Governors' Association and States, we have totally revised the reconciliation process described in § 447.297(d). We will continue to publish preliminary State DSH allotments prior to October 1 of each FFY. However, the final national and State DSH limits for each FFY will be published by April 1 of each FFY. The final limit numbers will be based on our updated estimates of Medicaid expenditures for the FFY. For purposes of determining the final estimated Medicaid expenditures for the FFY, we will use the February Medicaid budget submissions—as reviewed and adjusted, if necessary, by us. However, for purposes of calculating the final FFY 1993 national limits and State DSH allotments, we used FFY 1992 DSH payment adjustment expenditures data reported by the States through March 31, 1993. The data were confirmed and updated, as necessary, by the States in response to an April 1993 letter that was sent to each State Medicaid director.

If we determine that a State has exceeded its final DSH allotment for a FFY, the excess DSH expenditures will be disallowed. If, on the other hand, a State's actual DSH expenditures in a FFY are less than its final State DSH allotment for the year, to the extent permitted by its approved State plan, we will permit the State to make additional DSH expenditures that do not exceed its final DSH allotment for the year.

Comment: Several commenters noted that section 1923(f)(i)(C) of the Act provides for the publishing of the national and State DSH allotments before the beginning of each FFY. The statute requires only one estimate and does not provide for preliminary numbers subject to mid-year updating and final reconciliation. However, the regulation at § 447.297 provides for three different estimates. The commenters believed that three estimates are bound to create chaos by requiring a State to wait 6 months after the close of the fiscal year to learn if it meets the final limit. The commenters are concerned that this requirement will wreck havoc with a State's ability to plan expenses. The commenters interpreted the statute as explicitly providing only one estimate, given prospectively at the beginning of the FFY, that is binding on both the State and the Federal Government.

Response: Because of the normal time lag between a State actually incurring an expense and its submission of a FFP claim, we did not have adequate accurate data available to calculate the FFY 1992 DSH expenditure levels. To be equitable to all States and to satisfy the statutory requirement that we publish a national and State limit at the beginning of each year, we decided to use the latest available data to publish preliminary limit numbers. We believe the issuance of preliminary limit numbers satisfies the statutory publication requirement. We also believe that, while not required by the statute, the publication of mid-year updates is not prohibited by the statute. As we noted above, we have revised the reconciliation process. Final national and State DSH limit numbers will be published by April 1 of each FFY. If a State exceeds its final DSH limit for a FFY, excess expenditures will be disallowed. If, on the other hand, a State's actual DSH expenditures in a FFY are less than its final State DSH allotment, the State is permitted to make additional DSH expenditures that do not exceed its final DSH allotment for the year, if its approved State plan permits these additional payments.

Comment: One commenter noted that the statute requires that estimated DSH limits be published before the beginning of each FFY beginning with FFY 1993. The commenter acknowledged that because of HCFA's lack of existing DSH expenditure data and the need to conduct a special information collection process, these FFY 1993 limits were not published until November 1992. However, the commenter asked if the statutory publication deadlines will be met in the future.

Response: We realize we were late publishing the preliminary FFY 1993 DSH limits. However, as the commenter noted, we needed time to gather and evaluate DSH expenditure data from States via a State survey process before implementing the statutory requirements of section 1923(f) of the Act. We also needed time to consult with the States. This process delayed the publication of the preliminary FFY 1993 DSH limits. (For the same reasons, the publication of the final FFY 1993 limits was delayed beyond the April 1 publication date noted above. These figures are being published as a separate notice in this issue of the **Federal Register**.)

We have subsequently revised the financial reporting requirements contained in the Forms HCFA–37 and HCFA–64 to capture State DSH expenditure data and added specific reporting requirements described in § 447.299. Now that we have these reporting requirements in place, we hope to meet all future publication requirement dates.

Comment: One commenter from a State Medicaid agency stated that HCFA's mid-year revisions could force States to make recoupments after many financially marginal hospitals have been paid their maximum payments and after the public entities have completed their intergovernmental transfers for the year. If HCFA's mid-year revisions indicate that higher DSH payments could be made, State law and the complexity of the administrative process could preclude upward mid-year adjustments to DSH payments.

Response: As we noted above, we eliminated the mid-year revision. The preliminary numbers will be finalized by April 1 of each FFY. We believe the 6-month time lag between publication of the preliminary and final numbers will not be detrimental to States. We recommend that States adopt language within their State plans that would permit them to automatically adjust DSH payments to the published preliminary and final DSH limits. We believe the inclusion of such language within the State plan should help avoid conflicts with State law or other additional administrative complexities.

Comment: One commenter suggested that HCFA indicate how it will advise State Medicaid Directors of the mid-year revisions.

Response: As previously explained, we have eliminated mid-year revisions. We will publish in the **Federal Register** prior to October 1 of each year the preliminary national and State DSH limits for the FFY. Final national and State DSH numbers will be published by April 1 of each FFY.

Comment: One commenter expressed concern that the limits are set based on total DSH spending for only 15 months of actual paid claims activity. The commenter noted that this is too short a period to capture all actual date of service utilization since providers have one year from the service date to actually submit their claim for payment.

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Response: As discussed above, due to the elimination of the mid-year update adjustment, there is now only a 6-month time lag between setting of the preliminary national and State DSH limits and the final national and State DSH limit numbers. Both the preliminary and final DSH numbers are determined based on projections of Medicaid expenditures. Based on these revisions, we believe we have addressed the commenter's concerns.

Comment: One commenter recommended that HCFA delete the word "projections" from all references in § 447.297 (d)(2) and (e). The commenter indicated that this will be final allotments and will not be projections.

Response: We have revised §§ 447.297(d) and (e) to provide that final DSH expenditure "allotments" will be published by April 1 of the FFY.

Comment: One commenter noted a typographical error in the fourth sentence of § 447.297(c) in our description of DSHs. Specifically the reference to "low-number patients" should be changed to "low-income patients."

Response: We agree that this was a typographical error. However, we have completely revised § 447.297(c), and the revised language no longer includes the referenced term.

2. DSH Cap

Comment: Numerous commenters believed that the DSH cap should be the 1992 base DSH percentage plus a growth factor. These commenters noted that the statute specifically provides that low-DSH States are entitled to receive increased DSH payments equivalent to State growth.

Response: We have reevaluated our policy enumerated in the interim final rule and determined that the 12-percent national limit is a target rather than an absolute cap. Since we have now decided that the 12-percent national limit is a target, we have included State growth for low-DSH States in the final FFY 1993 State DSH allotments.

Comment: One commenter objected to the requirement that a State submit an assurance that it has not exceeded its DSH cap. The commenter stated that this is needless paperwork since HCFA knows each State's cap and States already regularly report on DSH payments as a distinct category when submitting financial reports on the Forms HCFA–37 and HCFA–64. The commenter suggested that HCFA monitor a State's compliance with its DSH caps through the financial reports.

Response: Although States do provide specific DSH payment information on both the Forms HCFA–37 and HCFA–64, we still believe it appropriate to require States to submit a separate DSH payment limit assurance with the submission of each State plan amendment. We note that the review of the State plans and the review of the financial reports are two separate and distinct functions carried out by different HCFA components. State plan reviews of a State's methods and standards used to set payment rates are performed by the Division of Payment Policy. The financial reports submitted on the Forms HCFA–37 and HCFA–64 are reviewed by the Office of Medicaid Management to determine the amount of FFP monies that are disbursed. Consequently, we believe the DSH payment limit assurances should be submitted with State plan amendments separately from the financial reports. The requirement of specific assurances with each State plan amendment has been an established HCFA policy to ensure a State's compliance with certain statutory requirements. We believe the addition of this new DSH requirement as part of the State plan review process is the proper means to ensure a State's compliance with the statutory DSH payment limit which this rule implements.

Comment: Numerous commenters disputed HCFA's authority in § 447.298(g) to reduce DSH caps to all States on a pro rata basis if the aggregate of Medicaid DSH allotments, as projected by HCFA, exceeds 12 percent. These commenters believed that the statute does not give HCFA the authority to reduce payments. They concluded that the statute only provides authority for HCFA to increase DSH allotments for supplemental growth amounts to low-DSH States. These commenters explained that the statute guarantees high-DSH States a State DSH allotment that exceeds the 12-percent cap and HCFA cannot just arbitrarily reduce or adjust this guaranteed allotment. Further, these commenters noted that HCFA's method of reducing DSH caps to all States on a pro rata basis is extremely onerous for States because they would be required to change their program payments to come into compliance within the 6 months between April and October when many legislatures are not in session.

Response: We initially chose to reduce DSH caps to all States on a pro rata basis if aggregate medical assistance expenditures exceeded the 12-percent national limit because we determined this was the most equitable means to bring DSH expenditures to the required 12-percent level. However, as explained above, we have subsequently determined that the 12-percent national limit was not intended to be an absolute cap but rather a target towards which all States must strive. In light of our revised interpretation, we have revised § 447.298 by deleting paragraph (g), the national limit adjustment. The FFY 1993 State DSH allotment for high-DSH States will be set based on the dollar amount of DSH expenditures applicable to FFY 1992, while low-DSH States will have their final FFY 1993 State DSH allotment set using FFY 1992 DSH expenditures increased by a growth amount.

Comment: One commenter from a low-DSH State stated that its preliminary DSH allotment (an allotment that may be reduced retroactively) is too small. The commenter noted that the allotment does not include any adjustment for growth in the Medicaid program, nor does it reflect any shift of unused growth not provided to high-DSH States via the redistribution pool. Without a factor for State growth and the supplementary amount from the redistribution pool, the State acknowledged that projected DSH payments under its approved State plan will exceed its State DSH allotment. This commenter pointed out that States have three unattractive options available under this scenario. A State can either choose to: (1) Be out of compliance with the State plan requirements, (2) revise its State plan to reduce DSH payments, or (3) make excess DSH payments with 100 percent State funds.

Response: As explained above, we have included State growth in the final FFY 1993 State DSH allotments for low-DSH States. However, because FFY 1992 DSH expenditure levels exceed the 12-percent targeted levels, we have not provided for a redistribution pool. The statute provides for a redistribution pool only to the extent that total DSH expenditures do not exceed the prescribed national limit.

Comment: One commenter noted that although the DSH statutory language (upon which the regulations are based) was negotiated among the National Governors' Association, HCFA, the Office of Management and Budget, and the States, the negotiated language was intended to provide a mechanism for low-DSH States to move toward the national limit of 12 percent. The commenter pointed out that the negotiated language was based on projections of Medicaid expenditures that were incorrect. In this context, low-DSH States did not object to the negotiated language because it appeared to provide for a reasonable rate of growth in their DSH programs.

However, because of the inaccurate 12-percent estimate, low-DSH States are severely disadvantaged by the new regulations and are being treated unfairly. The commenter asked HCFA to take immediate steps to minimize unfair treatment to low-DSH States.

Response: We realize the 12-percent estimates upon which Congress relied when setting the national limits have subsequently proven to be inaccurate. We believe that if estimates of 1992 DSH spending had been accurately projected, Congress would have set the national limit at a higher level to reflect the true current level of DSH expenditures. With this in mind, we have changed our interpretation of the national DSH limit. We are no longer interpreting the national DSH limit as an absolute cap but rather as a target percentage. Under this revised interpretation, we have eliminated the national limit adjustment from § 447.298(g). We are no longer reducing 1992 State DSH expenditures on a proportional basis to reach the 12-percent specified national limit. We are including a growth factor in the calculation of the State DSH allotments for low-DSH States and are calculating high-DSH States DSH allotments using State aggregate 1992 DSH expenditures. We believe that our revised interpretation provides fair treatment to both high-DSH and low-DSH States.

Comment: One commenter stated that the portion of the interim final rule that sets forth the national DSH payment limit of 12 percent and the State DSH allotment of a low-DSH State for 1992 is based on very questionable assumptions. The commenter questioned how the national DSH limit provision can be used to preempt the provisions concerning calculating the DSH allotment for a low-DSH State. The commenter stated that there is no basis in the law for assuming that, if there is a conflict between the national 12-percent limit and the 1992 State DSH allotment for low-DSH States, the national limit would overrule the provisions relating to setting the DSH allotment for low-DSH States.

Response: As we explained above, based on our revised interpretation that the national limit is not an absolute cap but a target percentage, we have included State growth (§ 447.298(d)) for low-DSH States in the final FFY 1993 State DSH allotments.

Comment: One commenter from a State Medicaid agency recommended that instead of proportionally reducing all State DSH allotments based on the States' share of aggregate national DSH payments, the DSH allotment reduction should be calculated based on the extent to which changes in each State's Medicaid program from year to year contribute to the national overage.

Response: As we previously explained, we have eliminated the national payment limit adjustment described in § 447.298(g). Therefore, no State will have its DSH allotment reduced because 1992 aggregate DSH expenditures exceeded the specified 12-percent limit.

Comment: One commenter noted that the language in § 447.298 (c) and (d) appears to make it possible for low-DSH States to receive an amount in excess of the 12-percent limit. The prior year's allotment appears to be increased by the growth factor without regard to the percent limit. HCFA should clarify whether State growth will be allowed to increase a low-DSH State's percentage above the 12-percent limit.

Response: As we previously explained, we have provided a growth factor to all low-DSH States in the final FFY 1993 State DSH allotments. We have determined that the 12-percent national limit is not an aggregate absolute cap, but a target percentage. This change has permitted State growth to low-DSH States. However, the amount of State growth is limited to the extent that in no FFY will a low-DSH State's DSH allotment be allowed to exceed the 12-percent national DSH target percentage.

Comment: One commenter objected to the rule's national DSH payment limit being applied to individual State allotments. The commenter believes a national funding mechanism standard should not be adopted because States cannot predict the impact of other States' expenditures on their revenues.

Response: A national DSH payment limit is required by section 1923(f)(1)(B) of the Act. However, we are now interpreting this provision as a target percentage rather than an absolute cap. Under the target percentage concept, no State's FFY 1992 baseline DSH expenditures are affected by other States' DSH expenditures. Therefore, under this interpretation, no State has been unfairly penalized due to spending experience of other States.

Comment: One commenter expressed concern that HCFA's limitation in § 447.298(a)(2)(ii) that specifically excludes from the base those DSH payments made in FFY 1992 but applicable to another fiscal year, is inappropriate.

Response: As explained above, we believe it was not the Congress' intent to limit DSH payments based on actual cash payments made in FFY 1992. We believe that the Congress chose FFY 1992 as a baseline measuring period. To avoid skewing the measurement of DSH payments for FFY 1992, we purified the base to remove DSH payment adjustments made in FFY 1992 for prior periods. A complete, detailed description of how we determined FFY 1992 DSH payment adjustments is included in the final FFY 1993 DSH notice that is published as a separate document in this issue of the **Federal Register**.

Comment: One commenter asked for clarification of the method used to make the DSH allotment determinations. Specifically, the commenter questioned if HCFA proceeded as required by section 1923(f)(3) of the Act when determining that there were no dollars available for redistribution to low-DSH States for FFY 1993. The commenter asked that we explain this calculation. The commenter questioned whether preliminary high-DSH State base allotments included only 1992 amounts. The commenter believed that holding high-DSH States to 1992 allotment levels should yield redistribution amounts for low-DSH States due simply to the effects of inflation, not to mention Medicaid program growth for many States.

Response: We explained the method used to make the DSH allotment determinations in the notice published in the **Federal Register** (57 FR 55261) on November 24, 1992. Our calculations were made in accordance with our interpretation of the requirements of section 1923(f) of the Act. However, as we previously explained, we have reevaluated our initial interpretation of the national 12-percent limit specified in the statute and now consider this specified 12-percent national limit a target percentage rather than an absolute cap. Consequently, we have revised our calculation of the DSH State allotments in determining FFY 1993 final limits and are publishing a notice in this issue of the **Federal Register** to provide these revised State DSH allotments. That notice contains an explanation of our method of calculating the final FFY 1993 national target percentage and State DSH allotments.

Comment: Numerous commenters questioned the provision that specifies that a negative supplemental amount can be used to reduce or eliminate the growth factor and to reduce the 1992 base DSH allotment. These commenters stated that the law plainly states that the base allotment may be increased by the growth factor and the supplemental amount. They believed that HCFA was wrong to suggest that the law included the possibility of a negative increase to the base allotment, or that the growth factor could be reduced if the redistribution pool is calculated to have

a negative amount. The commenters believed that the law guarantees low-DSH States the 1992 base allotment plus the growth factor. One commenter further noted that although the supplemental amount may be zero, it may not be used to reduce other factors. The implementation of the national DSH limit may cause the supplemental amount to be zero for some time but cannot set aside other provisions of the law. Several commenters noted that HCFA's interpretation concerning negative growth not only conflicts with the statute but also creates enormous uncertainty among hospitals and States as to what payment levels will be allowed from year to year.

Response: After further consideration of the negative growth issue, we have revised § 447.298(d) by deleting paragraph (d)(1)(ii)(3), which provided for a reduction of the prior year's DSH allotment for those States that had negative growth. States that have a negative growth factor will be treated the same as States whose growth factor is zero. States with zero or negative growth will have their DSH allotments maintained at the prior period's level. However, we added a new paragraph (d)(2) to § 447.298 that provides that if a low-DSH State experiences a level of negative growth such that its previous FFY State DSH allotment would be more than 12 percent of its current FFY's total unadjusted medical assistance expenditures (excluding administrative costs), then the low-DSH State's previous year's DSH allotment will be reduced to the extent necessary to maintain the individual low-DSH States' 12-percent limit. That amount will become the low-DSH State's DSH allotment for the current FFY. In no FFY will a low-DSH State's DSH allotment be allowed to exceed its individual State 12-percent limit.

Comment: Several commenters expressed concern that the process used to develop the FFY 1993 allotments resulted in the reporting of data that required a $1.5 billion adjustment. One commenter noted that it was expected that some adjustments would be required because States had minimal administrative guidance and no regulatory guidance for reporting DSH expenditures. However, the size and scope of adjustments indicate that the reported information used to set the DSH allotments was inaccurate or unreliable. The commenters raised questions regarding the adjustment process and expressed concern that the process was not made public.

Response: The November 24, 1992, DSH notice explained that we purified the FFY 1992 DSH expenditure data submitted by States in June 1992 as the result of our May 6, 1992, State survey request, updated by States in August 1992. As we explained in that notice, the States had submitted unadjusted FFY 1992 DSH expenditures totalling over $18 billion. We reviewed these DSH expenditures and adjusted the State data to remove DSH expenditures that did not qualify under the provisions of section 1923 of the Act as base allotment expenditures. Specific adjustments totalling over $1.5 billion were made for the following categories: (1) Amounts representing retroactive DSH expenditures that were not applicable to FFY 1992; (2) Non-DSH expenditures incorrectly included as DSH expenditures; (3) One-time DSH expenditures, which are not allowable in the calculation of the base allotments, made under plan amendments effective October 1, 1991, through December 31, 1991; and (4) DSH expenditures for non-approvable DSH plans. The total adjustments resulted in adjusted FFY 1992 DSH expenditures of over $16.5 billion. The adjustments were based on the best data available at the time. However, we have revised the reconciliation process at § 447.297(d) to ensure that the latest available data are used in updating and finalizing the FFY 1992 DSH expenditures that are used in setting the final FFY 1993 limits. In the DSH notice published elsewhere in this issue of the **Federal Register**, we again explain how we determined FFY 1992 DSH payment adjustments.

Comment: One commenter observed that the interim final regulations at § 447.298 provide that each State's base DSH allotment is calculated using the greate of: (1) Allowable DSH payments in FFY 1992 (beginning October 1, 1991), or (2) $1 million. The interim final regulations appear to allow States to count payments earned from October 1 through September 30. For States operating on a July 1 through June 30 fiscal year, this language could be construed to allow payments made for two State DSH periods.

Response: All States, regardless of their fiscal year periods, are having their DSH payments limited based on DSH expenditure levels for FFY 1992 (that is, for the period October 1, 1991, through September 30, 1992.) Only DSH expenditures applicable to FFY 1992 are included in the base used for determining the DSH national and State limits. The State fiscal period does not come into play for the DSH limit calculations.

Comment: One commenter recommended that HCFA rewrite § 447.298(a)(3) to clarify that DSH payments are included in the denominator as part of total medical assistance expenditures.

Response: Section 447.298(a)(3) provides that HCFA will calculate a percentage for each State by dividing the disproportionate share hospital base allotment by the "total" medical assistance expenditures, excluding administrative costs. The phrase "total medical assistance expenditures, excluding administrative costs" does include DSH payments. We believe that, by including the word "total," we have clearly included DSH payments in this calculation. Therefore, we believe it unnecessary to make this clarifying change.

Comment: One commenter pointed out that § 447.298(e)(2)(iv) appears to be worded incorrectly. The commenter noted that this paragraph should say the "* * * total amount of additional disproportionate share * * *" and suggested that the word "additional" be inserted to reflect the language in the statute.

Response: We agree that the word "additional" should be inserted in this section and have revised § 447.298(e)(2)(iv) accordingly.

Comment: One commenter objected to § 447.298(a), which provides that State DSH allotments be calculated on an accrual basis, rather than a cash basis. The commenter believed that this regulation is in direct conflict with Public Law 102–234, which states that State base allotments will be the total amount of payment adjustments made during fiscal year 1992. The commenter added that the regulation bases the State allotment on payments attributable to the fiscal year.

Response: Because of the normal time lag between a State actually incurring an expense and its submission of an expenditure claim for FFP, we determined that to be fair to all States in setting the DSH allotments it was reasonable to use total DSH payments attributable to FFY 1992 instead of payments actually paid in FFY 1992. We believe it was not the Congress' intent to limit DSH payments based on actual cash payments made in FFY 1992. Therefore, we did not narrow our interpretation of the statute by using the literal reading of the statute but adopted the expanded interpretation contained in § 447.298(a) that all DSH payments attributable to FFY 1992 be included in the calculation of the State DSH allotments.

3. Other Comments

Comment: One commenter noted that the statute makes no reference to the exclusion of administrative costs in the determination of Medicaid expenditures

for purposes of the calculation of the national 12-percent DSH limit. The commenter believed, therefore, that HCFA exceeded its authority in excluding these costs.

Response: Section 1923(f)(1)(B) of the Act imposes a national DSH payment limit equivalent to 12 percent of the total amount of expenditures under title XIX State plans for medical assistance expenditures incurred during a FFY. Medical assistance expenditures, as described in section 1905(a) of the Act, include payment for part or all of the cost of specific care and services provided. Administrative costs are not included within the section 1905(a) definition of medical assistance expenditures. Sections 1903(a)(2) through (a)(7) of the Act set forth separate FFP matching percentages for State administrative costs, which differ from the FFP matching percentages for medical assistance expenditures. Therefore, in keeping with the statutory distinction between medical assistance expenditures and State administrative costs, we believe we have properly excluded State administrative costs from the calculation of the 12-percent national DSH limit which is tied to medical assistance expenditures.

Comment: One commenter noted that an attempt to limit present DSH payments through new regulations would be devastating and would result in the closure of one particular small rural hospital. The commenter requested that HCFA rethink any planned reductions in DSH payments. The commenter explained that small rural hospitals provide the first and, in many cases, the only medical care to millions of rural citizens living in rural areas.

Response: These regulations do not specifically target rural hospitals. However, section 1923(f) of the Act does not exclude rural hospitals from these new DSH limits. These DSH limits are applied to State aggregate DSH payments to all hospitals. States still have the flexibility to determine which hospitals are designated as DSHs and the amount of DSH payments to be made to qualifying DSHs within the State limits. Under these regulations, States have the flexibility to provide increased DSH payments to rural hospitals by redistributing DSH payments among other hospitals.

Comment: One commenter recommended that the regulations be revised to conform more closely to the law. The commenter explained that there is a significant difference in the definition of State base allotment as contained in section 1923(f)(4)(C) of the Act and the regulation at § 447.298(a)(i). The statute makes it clear that the State base allotment is the greater of $1,000,000 or the total amount of payment adjustments made during fiscal year 1992. The regulation at § 447.298 creates a "State projected disproportionate share hospital payment for FFY 1992." The commenter noted that in the November 24, 1992, **Federal Register** (57 FR 55130–55131), HCFA acknowledges that for a high-DSH State, the State base allotment is the total amount of DSH payment adjustments in 1992. This 1992 limit is guaranteed to the high-DSH States by statute as its share until these payments equal 12 percent of the State's Medicaid budget. The commenter recommended that HCFA change the regulations to reflect the language of the statute.

Response: We used the phrase, "State projected disproportionate share hospital payment for FFY 1992" in § 447.298(a) because the calculation of both the preliminary and final national and State DSH limits are based on estimated Medicaid expenditures. Since these calculations are based on estimated expenditures, we believe the use of the phrase is appropriate.

Comment: One commenter stated that the Secretary should consider publishing regulations on the method that States may employ to determine which hospitals may be "deemed" to be DSHs under 42 U.S.C. 1396r–4(b)(1) (section 1923(b) of the Act) and the method States may use to determine the additional minimum payment under 42 U.S.C. 1396r–4(c). The commenter noted that HCFA omitted addressing these issues out of concern for the proscriptions contained in 42 U.S.C. 1396r–4(b)(4). The commenter expressed his legal opinion that 42 U.S.C. 1396r–4(b)(4) should not be construed to limit the Secretary's authority to publish regulations which assure that States appropriately implement the "deemed" DSH provision of 42 U.S.C. 1396r–4(b)(1). Also the commenter did not construe 42 U.S.C. 1396r–4(b)(4) to prohibit the Secretary from promulgating regulations that interpret the payment provisions of 42 U.S.C. 1396r–4(c), nor did the commenter construe either the now amended or predecessor provision of 42 U.S.C. 1396(h) as imposing such limitations.

Response: We understand the commenter's interest in desiring implementing regulations for the subject areas. However, these issues are outside of the purview of the national and State DSH limits that were the subject of the interim final rule. Although, the commenter advised us that, in his legal opinion, the provisions of 42 U.S.C. 1396r–4 (b) and (c) do not prohibit the issuance of regulations dealing with these issues, we believe that 42 U.S.C. 1396r–4 does limit the Secretary's authority to restrict a State's authority to designate hospitals as disproportionate share hospitals. Therefore, we are not addressing these issues in this final rule. However, should we decide to address these issues at a later date, we will publish a proposed rule.

Comment: One commenter noted that the interim final rule does not provide States any grace period for making changes in their State plans to reflect the necessity to recoup DSH payments that grow directly out of the rule.

Response: We did not provide a grace period for recoupment purposes because States have the flexibility to develop methods and standards for recoupment of overpayments tailored to their particular needs. Many State plans already contain recoupment procedures. If a State plan does not currently contain provisions describing recoupment procedures and the State wishes to develop methods and standards for recoupment purposes, the State may file a State plan amendment to add any necessary recoupment procedures. However, this amendment must comply with all applicable Federal State plan amendment requirements and the State must provide the assurances and related information required in accordance with Federal regulations at §§ 447.253 and 447.255.

Comment: One commenter noted that the prospective reduction of DSH payments raises issues of equity. The commenter observed that the hospital base of a given DSH program may change from year to year as new hospitals qualify and participating hospitals fail to qualify. The rule, as written, could result in payments to hospitals in one fiscal year being reduced to compensate for payments to other hospitals in the preceding fiscal year which necessitated the reduction.

Response: We issued the interim final rules to implement the statutory requirement imposed by Public Law 102–234 that a State's aggregate DSH payments not exceed a specified limit. We did not intend to alter a State's ability to define which hospitals qualify as DSHs or prescribe a State's method for making DSH payments. Under these regulations, States continue to have the flexibility to develop their own methods and standards for complying with the DSH requirements of section 1923 of the Act. As to the commenter's concerns regarding equity, each State has the flexibility to resolve this issue. We hope that each State will be equitable in designing and determining recoupment

procedures that it desires. As previously explained, the State plan must contain a description of the methods and standards that will be used to recoup overpayments.

Comment: A few commenters were concerned with HCFA's assertion in the regulatory impact statement that the interim final regulations will not have a direct or indirect affect on recipients since the rule will not preclude providers from receiving Medicaid payments for services that are furnished. The commenters noted that recipients will likely be affected. The commenters explained that individual State Medicaid programs will be uncertain of the allowable FFP for DSH payments since retroactive adjustments can be made. States will deal with the uncertainties brought about by this rule by reducing DSH payment programs and recouping DSH payments already made to hospitals. These commenters noted that the interim final rule provides no certainty in the amount of DSH funds that will be available to States and hospitals to support DSH facilities. The resulting confusion and uncertainty will work to the detriment of the health care system.

Response: The reference in the impact statement in the interim final rule to recipients was intended to mean individual Medicaid recipients. Since DSH payments are supplemental additional payments to hospitals not specifically tied to a specific Medicaid service provided to a specific Medicaid recipient, we concluded that the interim final DSH regulations would not directly or indirectly affect Medicaid services provided to individual Medicaid recipients.

Comment: Several commenters questioned whether States could appeal the determination of their base allotments as they appeared in the November 1992 notice. These commenters recommended that HCFA add appeals procedures to the regulations.

Response: In the November 1992 notice, we provided only preliminary numbers that we stated would be updated and finalized based on the most recent available data. We, therefore, believe it unnecessary to provide an appeals mechanism for the preliminary numbers. However, if a State has FFP disallowed based on these preliminary numbers, that State is entitled to appeal the disallowance using the appeal procedures for Medicaid FFP disallowances in 45 CFR part 16.

Comment: Several commenters requested that HCFA provide more detailed instructions to States on the reporting documentation and potential adjustments that could be made to their DSH expenditures.

Response: HCFA will issue instructions through a State Medicaid Manual transmittal that will provide guidance to States regarding the reporting of DSH payment adjustment expenditures.

Comment: One commenter suggested that it would be more efficient and cost-effective for the Federal Government to limit DSH payments to States' annualized value of approved State plans for DSH payments relative to total State Medicaid expenditures for medical assistance for the same fiscal period. The commenter explained that this method would reduce State/Federal disputes by eliminating the national cap and holding States to the State 12-percent cap and their annual program growth for the same fiscal period. Another commenter suggested that HCFA adopt a more equitable mechanism for limiting DSH payments. This commenter suggested that the caps of all States be equal percentages of their Medicaid budgets.

Response: We believe that the methods specified by the commenter do not comply with the requirements specified in section 1923(f) of the Act for setting the DSH limits. Section 1923(f) of the Act details specific calculations that must be made in determining the new statutory DSH limits. We have followed these requirements in our calculations of the limits and have incorporated these statutory requirements in our DSH regulations.

Comment: One commenter emphasized that the new DSH assurance required by § 447.272 relative to the applicable DSH payment limits will be subject to variables that comprise the preliminary adjusted and final DSH payment limits. Therefore, the commenter observed, States will be unable to absolutely know or control these variables. Consequently, HCFA should consider these variables in its review of the assurances provided by States.

Response: Section 447.272 requires States to assure HCFA only that DSH payments will not exceed the published limit amounts. Since these amounts are published amounts, they are known factors. To avoid problems with this DSH assurance, we strongly recommend that States add language to their State plans that allow them to make DSH payments up to, but not exceeding, the finally determined published limit amount.

Comment: One commenter expressed concern that the DSH policy will have an extremely adverse impact on access to care that is funded through DSH programs and provider institutions. The commenter noted that implementation of the DSH policy will flow inexorably down hill to the most financially strapped institutions and will consequently disadvantage patients in States that were innocent of the abuses leading to the DSH problem. This commenter noted that this DSH policy will undermine the credibility and disrupt the operation of the fledgling State-County partnership program that relies upon DSH and other Medicaid programs. Further, this commenter noted that the DSH policy is extremely disruptive to the overall health care reform strategies upon which some States embark to facilitate universal access and efficient use of all health care dollars, with a minimum of government regulation.

Response: The interim final DSH regulations implement the statutory provisions of section 1923(f) of the Act. The regulations do not eliminate DSH payments but, instead, constrain States' DSH spending to FFY 1992 levels. The regulations permit DSH payments by low-DSH States to increase in proportion to the State's growth of other Medicaid program expenditures. They do not alter the flexibility afforded to States to determine which hospitals qualify as DSHs and to choose the payment method to determine DSH payments. DSH programs that were in existence in FFY 1992 can continue at the FFY 1992 spending level. The intent of the regulations is to prohibit States from increasing DSH spending beyond the allowable FFY 1992 levels. The Congress believed it necessary to pass section 1923(f) of the Act to constrain and control Medicaid health care costs.

Comment: One commenter noted that HCFA recently separated FFP allowances for DSH out of the aggregate FFP allowances. The commenter pointed out that it is unclear at this time how these quarterly allowances will be affected by the multiple estimates, or if they will take into account date of service and date of payment variations (slow start-up lapse period spending).

Response: For purposes of monitoring DSH payment adjustment expenditures, States will be required to report this information on a quarterly basis. Guidance concerning the specific DSH expenditure reporting requirements described in § 447.299 will be provided through instructions in the State Medicaid Manual.

Comment: Many commenters recommended that HCFA provide public access to the data used for the adjustment of State DSH allotments and the State and national DSH caps.

Response: Under the Freedom of Information Act, these data are currently available to the public. To obtain this information, an individual must submit a Freedom of Information Request to HCFA.

Comment: One commenter requested that HCFA provide more information and guidance concerning the DSH State plan amendment requirements that would allow States retroactively to make additional DSH payments if, after the year-end reconciliation process, a State's actual DSH spending was below its allotment level. Further, this commenter requested that HCFA specify the timeframes for the State receipt of notices of FFP disallowances for DSH expenditures exceeding the DSH allotment.

Response: If a State wishes to make additional DSH payments up to the amount of its finally determined DSH allotment, the State must include language in its State plan that would permit higher payments. In other words, the State plan should contain language that authorizes that total DSH payments for a specified FFY can be made up to the allowable amounts permitted in accordance with the finally determined DSH allotment for the period. If the plan contains such language, we would not consider payments made in accordance with this provision to be retroactive payments. Therefore, we recommend that all States review their currently approved plans to determine if the existing language permits DSH payments for a FFY up to the finally determined DSH limit. If a State's plan does not currently permit these payments, we recommend that the State submit a State plan amendment to include DSH payments for a specified FFY up to the amount of the finally determined DSH allotment. If a State plan amendment is necessary to accommodate such language, the State plan amendment should be submitted in compliance with all the Federal State plan amendment requirements described in regulations. FFP disallowances based on exceeding the DSH allotments will be taken once the final DSH allotments are known. This process will follow the normal FFP disallowance procedures that exist in accordance with the current Federal policy.

Comment: One commenter noted that § 447.296 delineates conditions under which States can revise the disproportionate share portion of their State plans for the period January 1, 1992, through September 30, 1992, to meet the minimum payment requirements of the Act. For this purpose, HCFA defined "minimum payment adjustments" as the amount required by the Medicare payment requirements. The commenter pointed out that the Act does not define a minimum payment adjustment. The statute leaves this definition to a State's discretion as long as the payment is reasonably related to the cost, volume, or proportion of services provided to title XIX recipients or low-income patients. The commenter believes that HCFA would establish a dangerous precedent by designating Medicare payment levels as a minimum requirement, even for the limited purposes of this section. The commenter stated that such a suggestion may not go unnoticed by the courts and could eventually be costly to both the States and to the Federal Government. The commenter expressed an opinion that it is both unnecessary and inappropriate to define minimum payment adjustments in the absence of a definition in the Act, and in light of this section having application to a retroactive period.

Response: Section 447.296(b)(5) was added to implement section 1923(f)(1)(A)(i)(II) of the Act, which permitted States to submit a State plan by September 30, 1992, that increased aggregate DSH payments to meet the minimum payment adjustments required by section 1923(c)(1) of the Act. The regulation specifically links the minimum payment adjustment to the amount required to meet the Medicaid payment requirements of section 1923(c)(1) of the Act. Even though this provision applies only to the moratorium period, we included it in the regulations as a record of the requirements for that period.

Comment: One commenter indicated that in § 447.298(a)(1) and (a)(2), the phrases "payments for," "payments during," and "payments made for the FFY" are confusing. The commenter suggests that the regulations state that all timely DSH payments for services rendered during FFY 1992 be included in the calculation of the State base allotment.

Response: We believe that simply stating that the State's base allotment will be based upon "timely" DSH payments would be too vague.

Comment: One commenter was concerned that the regulation provides an overly restrictive interpretation of the statute as it applies to the DSH payment limits applicable to the States. The commenter warned that the regulations limit the ability of States to help finance these providers at a time when they are often the only "safety net" available to serve the low-income population. Furthermore, the restrictions unfairly penalize States that have limited DSH payments to date but now seek to expand their programs and advantage those States that developed DSH payment programs more quickly.

Response: The interim final regulations implement section 1923(f) of the Act. Section 1923(f) of the Act and these regulations do not eliminate DSH payments but instead constrain States' DSH spending to FFY 1992 levels, while permitting DSH payments by a low-DSH State to increase in proportion to the State's growth of other Medicaid program expenditures. These regulations do not alter the flexibility afforded to States to determine which hospitals qualify as DSHs and to choose the payment method that is used to determine DSH payments. DSH programs that were in existence in FFY 1992 can continue at the FFY 1992 spending level. These regulations were issued to prohibit States from increasing DSH spending beyond the allowable FFY 1992 levels to constrain and control Medicaid health care costs.

Comment: One commenter indicated a conflict in the regulations. The commenter pointed out that § 447.298(b)(2) provides that, "for high-DSH States, the dollar amount of DSH payments in FFY 1993 may not exceed the dollar amount of payments made in FFY 1992." This language is repeated in paragraph (c)(2). Similarly, in setting forth the limitation on aggregate payments for DSHs after FFY 1992, the regulations provide for the calculation of the payment limit based on "actual expenditures" and "payments made by a State." (§ 447.297(c)). In the same section, however, the regulations provide that HCFA will revise the preliminary State allotment based on "* * * the information available as of December 31 of each year, "attributable" to the prior FFY for which the limit is being calculated * * *" (§ 447.297(d)(2)). The commenter believed that the use of the term "actual expenditures" is inconsistent with the recognition of payments "attributable to" the FFY and that these inconsistencies could engender many unnecessary controversies. Accordingly, the commenter suggested revised language that HCFA could use to clarify the regulatory language regarding the calculation of the State base allotment. The commenter also suggested that each reference to the "payments" or "expenditures" that will be considered in the determination or application of the State allotment be clarified by adding "for services rendered during the FFY 1992 in the State base allotment, regardless of when payment is made."

Response: We have revised regulations at §§ 447.298(a)(1)(i), (a)(2)(i), and (b)(2) to state that the amounts used in determining the DSH payments made by the States will be based on payments "applicable to" rather than payments "in" a FFY.

We have not made the commenter's second recommended change. Since DSH payments are not necessarily directly tied to services, we believe that including the word "services" would cause considerable confusion.

D. Changes to the Interim Final Rule

As explained in our responses to comments, we have made the following revisions to the DSH regulations published in the November 1992 interim final rule.

1. Publication of Final National DSH Target and Individual State DSH Allotments

We have revised §§ 447.297(b), (c), (d)(1), and (d)(2) in response to comments concerning the time lag between the publication of the "preliminary" national DSH expenditure target and individual State DSH allotments and the publication of "final" national DSH expenditure target and individual State DSH allotments. As required by law, we will continue to publish the preliminary projected national DSH expenditure target and individual State DSH allotments by October 1 of each FFY. These preliminary amounts will be based upon the most current applicable actual and estimated expenditure information reported to HCFA, and adjusted by HCFA as may be necessary, immediately prior to the October 1 publishing date. However, we will publish the final national DSH expenditure target and individual State DSH allotments by April 1 of each FFY. These final amounts will be based upon the most current, applicable actual and estimated expenditure information reported to HCFA, and adjusted by HCFA as may be necessary, immediately prior to the April 1 publication date. Once the final State DSH allotments are published for the FFY, they will not be recalculated for that FFY based upon any subsequent actual or estimated expenditure information reported to HCFA. This notification will provide the States with the certainty of knowing their final FFY DSH allotments by April 1 of each FFY and that their DSH allotments will not change any further for that FFY.

2. HCFA Monitoring of DSH Payments

We have revised the regulations at §§ 447.298(a)(1)(i), (a)(2)(i), and (b)(2) to state that the amounts used in determining the DSH payments made by the States will be based on payments "applicable to" rather than payments "in" a FFY. Once the final State DSH allotments are published each FFY, actual State DSH expenditures applicable to that FFY will be reviewed on an ongoing basis as States submit expenditure reports to HCFA to ensure that no State spends in excess of its FFY DSH allotment for that FFY. Also, additional DSH expenditures reported in subsequent FFYs that are applicable to previous FFYs will be reconciled back to that previous year's final State DSH allotment to ensure that the final State DSH allotment in any FFY is not exceeded. Any DSH expenditures in excess of the final State DSH allotment for a FFY will be disallowed and be subject to the normal Medicaid disallowance procedures. Finally, if a State's actual DSH expenditures in a FFY are less than its final DSH allotment for that FFY, the State may, to the extent permissible under its approved State plan, make additional DSH expenditures up to the amount of its final State DSH allotment for that FFY.

Although not specifically included in the regulations text, we believe that it is important to note here that since we are making such a significant change to the procedures specified in the interim final regulations for establishing the final FFY national DSH expenditure target amount and State DSH allotments, we have added an additional procedure applicable only to FFY 1993. Specifically, we asked each State to confirm the actual and estimated expenditure information that we intended to use in establishing the final FFY State DSH allotments and national DSH expenditure target amounts. We reviewed any changes or updates submitted by the States and made adjustments as we determined necessary and appropriate.

3. DSH 12-Percent Spending Target

We have made the following changes with regard to DSH spending limitations:

- We have revised the regulations at §§ 447.297(b) to state that 12 percent of total medical assistance expenditures (excluding administrative costs) is a target rather than an absolute cap in determining the amount that can be allocated for disproportionate share hospital payments. We have also revised paragraph (b) to state that HCFA will make final projections by April 1 of the current FFY rather than the April 1 following the FFY.
- We have revised paragraph § 447.297(c) to delete statements that provided that a final reconciliation would be made following the end of the FFY. We have added a new paragraph (c) that provides (1) that a preliminary national DSH expenditure target and State DSH allotments will be published prior to October 1 of each FFY, and (2) that a final national DSH expenditure target and State DSH allotments will be published by April 1 of each FFY.
- We have revised paragraph § 447.297(d) to delete statements that described the process for revising preliminary projections by April 1 of the FFY. We have added a new paragraph (d), which describes the process for determining the final national DSH expenditure target and State DSH allotments by April 1 of the FFY. In addition, we have revised paragraph (e)(2) to state that the final national DSH expenditure target and State DSH allotments will be published by April 1 of each FFY.
- We have revised § 447.298 to reflect that the 12-percent national limit is a target rather than an absolute cap. We are making these revisions based upon the comments we received on the interim final rule and our review of Congressional intent. We now believe that it was not the intent of the legislation to achieve the national 12-percent DSH expenditure limit in a FFY by requiring the State DSH allotments in any FFY to fall below the FFY 1992 State base allotments. We furthermore believe that it was not the intent of the legislation that the low-DSH States should not receive their growth amounts consistent with their individual State Medicaid program growth in those FFYs when the State's Medicaid program expenditures did not grow in excess of the national target percentage.

These revisions are further supported by the fact that the original estimates used by the drafters of the legislation appear to have significantly underestimated the FFY 1992 State DSH base allotments upon which future State DSH allotments would be based and significantly overstated projections of future FFY national Medicaid expenditures against which the national limit would be calculated.

- We have deleted paragraph § 447.298(g), which described the process to be used to reduce State DSH allotments in any FFY that the national aggregate limit exceeded 12 percent.

4. States With Negative Growth

We have added new § 447.298 (d)(2) and (d)(3) to include our method of determining State DSH allotments for low-DSH States that experience a certain level of negative growth. If a low-DSH State experiences a certain

level of negative growth that results in its previous FFY DSH allotment exceeding 12 percent of its current FFY total unadjusted medical assistance expenditures (excluding administrative costs), we will reduce the low-DSH State's previous FFY's DSH allotment to the extent necessary to maintain the low—DSH State's 12-percent limit. The reduced amount will become the low-DSH State's allotment for the current FFY. In no FFY, will a low-DSH State's DSH allotment be allowed to exceed its individual 12-percent limit.

We have revised § 447.298(d)(1)(ii)(2) to provide that, if a low-DSH State's growth factor is negative in any FFY, the State's growth amount will be zero for that FFY and the State's DSH allotment will not be reduced to account for this negative growth except as provided for in § 447.298(d)(2), as explained above.

5. Typographical Corrections

We have revised § 447.298(e)(2)(iv) by adding the word "additional" in response to a comment.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities. However, we do consider all providers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We included a voluntary regulatory flexibility analysis in the November 1992 interim final rule (57 FR 55261) because of the potential controversial nature of the regulations, the number of comments we expected to receive, and the anticipated effect on States' share of FFP. The voluntary analysis attempted to describe the effects the interim final rule would have on States, providers, and Medicaid recipients.

Although we received no comments directly concerned with the impact analysis, many commenters addressed issues that related to costs, such as outstationed eligibility worker donations, compliance with the hold harmless provisions deadline, and low-DSH States' entitlement to increased DSH payments regardless of the 12-percent limit. As a result of these and other comments, we have made changes to the interim final rule in this final rule, which are explained in detail in sections I. and II. of the preamble of this final rule. For example, we have reinterpreted the 12-percent national limit to be a target rather than an absolute cap. As a result of this interpretation, we have allowed for an increase to the FY 1993 DSH allotment of $800 million over our November 24, 1992, projected Federal DSH payments for fiscal year 1993. In light of this increase, we have recalculated our initial State and Federal projected DSH payments published in the interim final rule as follows:

REVISED PROJECTED DSH ALLOTMENTS

[In billions of dollars]

Fiscal year	Federal	State	Total
1993	10.3*	7.6	18.0
1994	10.7	7.9	18.6
1995	11.7	8.7	20.4
1996	13.1	9.7	22.8

*This is the actual 1993 DSH allotment after an increase of $800 million was added to our initial projection of $9.5 billion.

Our initial projections for State and Federal spending associated with State provider tax and donation programs published in the interim final rule were:

PROJECTED FEDERAL MEDICAID SPENDING ASSOCIATED WITH STATE PROVIDER TAX AND DONATION PROGRAMS

[in billions of dollars]

FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
$8.7	$11.3	$14.4	$18.0	$22.0

While we believe that the changes we are making are beneficial to the States, we do not believe the changes have a significant impact on the voluntary analysis that was published in the interim final rule. For this reason, we have determined that the threshold criteria under E.O. 12291 are not met, and that an additional regulatory impact analysis for this final rule is not required. Further, we have determined, and the Secretary certifies, that this final rule would not have significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Chapter IV, Subchapter C is amended as follows:

A. Part 433 is amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(i), 1903(o), 1903(p), 1903(r), 1903(w), 1912, 1917, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), 1396k and 1396(p)).

2. In § 433.56, the introductory text of paragraph (a) is republished, paragraph (a)(8) is revised, paragraph (a)(9) is redesignated as paragraph (a)(19) and revised, and new paragraphs (a)(9) through (a)(18) are added to read as follows:

§ 433.56 Classes of health care services and providers defined.

(a) For purposes of this subpart, each of the following will be considered as a separate class of health care items or services:

* * * * *

(8) Services of health maintenance organizations and health insuring organizations;

(9) Ambulatory surgical center services, as described for purposes of the Medicare program in section 1832(a)(2)(F)(i) of the Social Security Act. These services are defined to include facility services only and do not include surgical procedures;

(10) Dental services;

(11) Podiatric services;

(12) Chiropractic services;

(13) Optometric/optician services;

(14) Psychological services;

(15) Therapist services, defined to include physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services, and rehabilitative specialist services;

(16) Nursing services, defined to include all nursing services, including services of nurse midwives, nurse practitioners, and private duty nurses;

(17) Laboratory and x-ray services, defined as services provided in a licensed, free-standing laboratory or x-ray facility. This definition does not include laboratory or x-ray services provided in a physician's office, hospital inpatient department, or hospital outpatient department;

(18) Emergency ambulance services; and

(19) Other health care items or services not listed above on which the State has enacted a licensing or certification fee, subject to the following:

(i) The fee must be broad based and uniform or the State must receive a waiver of these requirements;

(ii) The payer of the fee cannot be held harmless; and

(iii) The aggregate amount of the fee cannot exceed the State's estimated cost of operating the licensing or certification program.

* * * * *

3. In § 433.58, the introductory text of paragraph (d) is republished, paragraph (d)(2) is revised, and paragraph (g)(2) is revised to read as follows:

§ 433.58 Provider-related donations and health care-related taxes during a State's transition period.

* * * * *

(d) *Permissible donations.* To be permissible donations, the donations must be—

* * * * *

(2) Donations made by a hospital, clinic, or similar entity (such as a Federally-qualified health center) for the direct costs of State or local agency personnel who are stationed at that facility to determine the eligibility (including eligibility redeterminations) of individuals for Medicaid and/or to provide outreach services to eligible (or potentially eligible) Medicaid individuals. Direct costs of outstationed eligibility workers refers to the costs of training, salaries and fringe benefits associated with each outstationed worker and similar allocated costs of State or local agency support staff, and a prorated cost of outreach activities applicable to the outstationed workers at these sites. The prorated costs of outreach activities will be calculated taking the percent of State outstationed eligibility workers at a facility to total outstationed eligibility workers in the State, and multiplying the percent by the total cost of outreach activities in the State. Costs for such items as State agency overhead and provider office space are not allowable for this purpose; or

* * * * *

(g) *Health care-related taxes during the transition period.*

* * * * *

(2) A State may not modify health care-related taxes in existence as of November 22, 1991, without a reduction of FFP, unless the modification only—

(i) Extends a tax program that was scheduled to expire before the end of the State's transition period;

(ii) Makes technical changes that do not alter the rate of the tax or the base of the tax (for example, the providers on which the tax is imposed) and do not otherwise increase the proceeds of the tax;

(iii) Decreases the rate of the tax, without altering the base of the tax; or

(iv) Modifies the tax program to bring it into compliance with § 433.68(f).

4. In § 433.66, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 433.66 Permissible provider-related donations after the transition period.

* * * * *

(b) *Permissible donations.* Subject to the limitations specified in § 433.67, a State may receive, without a reduction in FFP, provider-related donations that meet at least one of the following requirements:

* * * * *

(2) The donations are made by a hospital, clinic, or similar entity (such as a Federally-qualified health center) for the direct costs of State or local agency personnel who are stationed at the facility to determine the eligibility (including eligibility redeterminations) of individuals for Medicaid or to provide outreach services to eligible (or potentially eligible) Medicaid individuals. Direct costs of outstationed eligibility workers refers to the costs of training, salaries and fringe benefits associated with each outstationed worker and similar allocated costs of State or local agency support staff, and a prorated cost of outreach activities applicable to the outstationed workers at these sites. The prorated costs of outreach activities will be calculated taking the percent of State outstationed eligibility workers at a facility to total outstationed eligibility workers in the State, and multiplying the percent by the total cost of outreach activities in the State. Costs for such items as State agency overhead and provider office space are not allowable for this purpose.

5. In § 433.67, paragraph (b) is revised to read as follows:

§ 433.67 Limitations on level of FFP for permissible provider-related donations.

* * * * *

(b) *Calculation of FFP.* HCFA will deduct from a State's quarterly medical assistance expenditures, before calculating FFP, any provider-related donations received in that quarter that do not meet the requirements of § 433.66(b)(1) and provider donations for outstationed eligibility workers in excess of the limits specified under paragraph (a)(2) of this section.

6. In § 433.68, paragraph (c)(3), the introductory text in paragraph (d), paragraphs (e)(1) and (e)(2), and paragraphs (f)(3)(i) and (f)(3)(ii) are revised to read as follows:

§ 433.68 Permissible health care-related taxes after the transition period.

* * * * *

(c) *Broad based health care-related taxes.*

* * * * *

(3) A State may request a waiver from HCFA of the requirement that a tax program be broad based, in accordance with the procedures specified in § 433.72. Waivers from the uniform and broad-based requirements will automatically be granted in cases of variations in licensing and certification fees for providers if the amount of such fees is not more than $1,000 annually per provider and the total amount raised by the State from the fees is used in the administration of the licensing or certification program.

(d) *Uniformly imposed health care-related taxes.* A health care-related tax will be considered to be imposed uniformly even if it excludes Medicaid or Medicare payments (in whole or in part), or both; or, in the case of a health care-related tax based on revenues or receipts with respect to a class of items or services (or providers of items or services), if it excludes either Medicaid or Medicare revenues with respect to a class of items or services, or both. The exclusion of Medicaid revenues must be applied uniformly to all providers being taxed.

* * * * *

(e) *Generally redistributive.* * * *

(1) *Waiver of broad-based requirement only.* This test is applied on a per class basis to a tax that is imposed on all revenues but excludes certain providers. For example, a tax that is imposed on all revenues (including Medicare and Medicaid) but excludes teaching hospitals would have to meet this test. This test cannot be used when a State excludes any or all Medicaid revenue from its tax in addition to the exclusion of providers, since the test compares the proportion of Medicaid revenue being taxed under the proposed tax with the proportion of Medicaid revenue being taxed under a broad-based tax.

(i) A State seeking waiver of the broad-based tax requirement only must demonstrate that its proposed tax plan meets the requirement that its plan is generally redistributive by:

(A) Calculating the proportion of the tax revenue applicable to Medicaid if the tax were broad based and applied to all providers or activities within the class (called P1);

(B) Calculating the proportion of the tax revenue applicable to Medicaid under the tax program for which the State seeks a waiver (called P2); and

(C) Calculating the value of P1/P2.

(ii) If the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1, HCFA will automatically approve the waiver request.

(iii) If a tax is enacted and in effect prior to [publication of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.90, HCFA will review the waiver request. Such a waiver will be approved only if the following two criteria are met:

(A) The value of P1/P2 is at least 0.90; and

(B) The tax excludes or provides credits or deductions only to one or more of the following providers of items and services within the class to be taxed:

(*1*) Providers that furnish no services within the class in the State;

(*2*) Providers that do not charge for services within the class;

(*3*) Rural hospitals (defined as any hospital located outside of an urban area as defined in § 412.62(f)(1)(ii) of this chapter);

(*4*) Sole community hospitals as defined in § 412.92(a) of this chapter;

(*5*) Physicians practicing primarily in medically underserved areas as defined in section 1302(7) of the Public Health Service Act;

(*6*) Financially distressed hospitals if:

(*i*) A financially distressed hospital is defined by the State law;

(*ii*) The State law specifies reasonable standards for determining financially distressed hospitals, and these standards are applied uniformly to all hospitals in the State; and

(*iii*) No more than 10 percent of nonpublic hospitals in the State are exempt from the tax;

(*7*) Psychiatric hospitals; or

(*8*) Hospitals owned and operated by HMOs.

(iv) If a tax is enacted and in effect after [publication date of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.95, HCFA will review the waiver request. Such a waiver request will be approved only if the following two criteria are met:

(A) The value of P1/P2 is at least 0.95; and

(B) The tax complies with the provisions of § 433.68(e)(1)(iii)(B).

(2) *Waiver of uniform tax requirement.* This test is applied on a per class basis to all taxes that are not uniform. This includes those taxes that are neither broad based (as specified in § 433.68(c)) nor uniform (as specified in § 433.68(d)).

(i) A State seeking waiver of the uniform tax requirement (whether or not the tax is broad based) must demonstrate that its proposed tax plan meets the requirement that its plan is generally redistributive by:

(A) Calculating, using ordinary least squares, the slope (designated as (*B*) (that is, the value of the x coefficient) of two linear regressions, in which the dependent variable is each provider's percentage share of the total tax paid by all taxpayers during a 12-month period, and the independent variable is the taxpayer's "Medicaid Statistic". The term "Medicaid Statistic" means the number of the provider's taxable units applicable to the Medicaid program during a 12-month period. If, for example, the State imposed a tax based on provider charges, the amount of a provider's Medicaid charges paid during a 12-month period would be its "Medicaid Statistic". If the tax were based on provider inpatient days, the number of the provider's Medicaid days during a 12-month period would be its "Medicaid Statistic". For the purpose of this test, it is not relevant that a tax program exempts Medicaid from the tax.

(B) Calculating the slope (designated as B1) of the linear regression, as described in paragraph (e)(2)(i) of this section, for the State's tax program, if it were broad based and uniform.

(C) Calculating the slope (designated as B2) of the linear regression, as described in paragraph (e)(2)(i) of this section, for the State's tax program, as proposed.

(ii) If the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 1, HCFA will automatically approve the waiver request.

(iii) If the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 0.95, HCFA will review the waiver request. Such a waiver will be approved only if the following two criteria are met:

(A) The value of B1/B2 is at least 0.95; and

(B) The tax excludes or provides credits or deductions only to one or more of the following providers of items and services within the class to be taxes:

(*1*) Providers that furnish no services within the class in the State;

(*2*) Providers that do not charge for services within the class;

(*3*) Rural hospitals (defined as any hospital located outside of an urban area as defined in § 412.62(f)(1)(ii) of this chapter;

(*4*) Sole community hospitals as defined in § 412.92(a) of this chapter;

(*5*) Physicians practicing primarily in medically underserved areas as defined in section 1302(7) of the Public Health Service Act;

(*6*) Financially distressed hospitals if:

(*i*) A financially distressed hospital is defined by the State law;

(*ii*) The State law specifies reasonable standards for determining financially distressed hospitals, and these standards are applied uniformly to all hospitals in the State; and

(*iii*) No more than 10 percent of nonpublic hospitals in the State are exempt from the tax;

(*7*) Psychiatric hospitals; or

(*8*) Providers or payers with tax rates that vary based exclusively on regions, but only if the regional variations are coterminous with preexisting political (and not special purpose) boundaries. Taxes within each regional boundary must meet the broad-based and uniformity requirements as specified in paragraphs (c) and (d) of this section.

(iv) A B1/B2 value of 0.85 will be applied to taxes that vary based exclusively on regional variations, and enacted and in effect prior to November 24, 1992, to permit such variations.

(f) *Hold harmless.*

* * * * *

(3) * * *

(i) An indirect guarantee will be determined to exist under a two prong "guarantee" test. This specific hold harmless test is effective [30 days after date of publication of this final rule]. In this instance, if the health care-related tax or taxes on each health care class are applied at a rate that produces revenues less than or equal to 6 percent of the revenues received by the taxpayer, the tax or taxes are permissible under this test. When the tax or taxes are applied at a rate that produces revenues in excess of 6 percent of the revenue received by the taxpayer, HCFA will consider a hold harmless provision to exist if 75 percent or more of the taxpayers in the class receive 75 percent or more of their total tax costs back in enhanced Medicaid payments or other State payments. The second prong of the hold harmless test is applied in the aggregate to all health care taxes applied to each class. If this standard is violated, the amount of tax revenue to be offset from medical assistance expenditures is the total amount of the taxpayers' revenues received by the State.

(ii) If, as of [publication date of this final rule], a State has enacted a tax in excess of 6 percent that does not meet the requirements in paragraph (f)(3)(i) of this section, HCFA will not disallow funds received by the State resulting from the tax if the State modifies the tax to comply with this requirement by [30 days after date of publication of this final rule]. If, by [30 days after date of publication of this final rule], the tax is not modified, funds received by States on or after [30 days after date of publication of this final rule] will be disallowed.

7. In § 433.72, paragraph (c) is revised to read as follows:

§ 433.72 Waiver provisions applicable to health care-related taxes.

* * * * *

(c) *Effective date.* A waiver will be effective:

(1) The date of enactment of the tax for programs in existence prior to [publication date of this final rule] or;

(2) For tax programs commencing on or after [publication date of this final rule], on the first day in the quarter in which the waiver is received by HCFA.

B. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 447.297, paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 447.297 Limitations on aggregate payments for disproportionate share hospitals beginning October 1, 1992.

* * * * *

(b) *National payment target.* The national payment target for disproportionate share hospital (DSH) payments for any Federal fiscal year is equal to 12 percent of the total medical assistance expenditures that will be made during the Federal fiscal year under State plans, excluding administrative costs. A preliminary national expenditure target will be published by HCFA prior to October 1 of each year. This preliminary national expenditure target will be superseded by a final national expenditure target published by April 1 of each Federal fiscal year, as specified in paragraph (d) of this section.

(c) *State disproportionate share hospital allotments.* Prior to October 1 of each Federal fiscal year, HCFA will publish in the **Federal Register** preliminary State DSH allotments for each State. These preliminary State DSH allotments will be determined using the most current applicable actual and estimated State expenditure information as reported to HCFA and adjusted by HCFA as may be necessary using the methodology described in § 447.298. HCFA will publish final State DSH allotments by April 1 of each Federal fiscal year, as described in paragraph (d) of this section.

(d) *Final national disproportionate share hospitals expenditure target and State disproportionate share hospitals allotments.*

(1) HCFA will revise the preliminary national expenditure target and the preliminary State DSH allotments by April 1 of each Federal fiscal year. The final national DSH expenditure target and State DSH allotments will be based on the most current applicable actual and estimated expenditure information reported to HCFA and adjusted by HCFA as may be necessary immediately prior to the April 1 publication date. The final national expenditure target and State DSH allotments will not be recalculated for that Federal fiscal year based upon any subsequent actual or estimated expenditure information reported to HCFA.

(2) If HCFA determines that at any time a State has exceeded its final DSH allotment for a Federal fiscal year, FFP attributable to the excess DSH expenditures will be disallowed.

(3) If a State's actual DSH expenditures applicable to a Federal fiscal year are less than its final State DSH allotment for that Federal fiscal year, the State is permitted, to the extent allowed by its approved State plan, to make additional DSH expenditures applicable to that Federal fiscal year up to the amount of its final DSH allotment for that Federal fiscal year

(e) *Publication of limits.*

(1) Before the beginning of each Federal fiscal year, HCFA will publish in the **Federal Register**—

(i) A preliminary national DSH expenditure target for the Federal fiscal year; and

(ii) A preliminary DSH allotment for each State for the Federal fiscal year.

(2) The final national DSH expenditure target and State DSH allotments will be published in the **Federal Register** by April 1 of each Federal fiscal year.

3. In § 447.298, paragraphs (a), (b), (c), (d), and (e) are revised, and paragraph (g) is removed to read as follows:

§ 447.298 State disproportionate share hospital allotments.

(a) *Calculation of State's base allotment for Federal fiscal year 1993.*

(1) For Federal fiscal year 1993, HCFA will calculate for each State a DSH allotment, using the State's "base allotment." The State's base allotment is the greater of:

(i) The total amount of the State's projected DSH payments for Federal fiscal year 1992 under the State plan applicable to Federal fiscal year 1992, calculated in accordance with paragraph (a)(2) of this section; or

(ii) $1,000,000.

(2) In calculating the State's DSH payments applicable to Federal fiscal

year 1992, HCFA will derive amounts from payments applicable to the period of October 1, 1991, through September 30, 1992, under State plans or plan amendments that meet the requirements specified in § 447.296(b). The calculation will not include—

(i) DSH payment adjustments made by the State applicable to the period October 1, 1991 through December 31, 1991 under State plans or plan amendments that do not meet the criteria described in § 447.296; and

(ii) Retroactive DSH payments made in 1992 that are not applicable to Federal fiscal year 1992.

(3) HCFA will calculate a percentage for each State by dividing the DSH base allotment by the total unadjusted medical assistance expenditures, excluding administrative costs, made during Federal fiscal year 1992. On the basis of this percentage, HCFA will classify each State as a "high-DSH" or "low-DSH" State.

(i) If the State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures made under the State plan in Federal fiscal year 1992, HCFA will classify the State as a "high-DSH" State.

(ii) If the State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures made under the State plan in Federal fiscal year 1992, HCFA will classify the State as a "low-DSH" State.

(b) *State disproportionate share hospital allotments for Federal fiscal year 1993.* (1) For Federal fiscal year 1993, HCFA will calculate a DSH allotment for each low-DSH State that equals the State's base allotment described under paragraph (a) of this section, increased by State growth, as specified in paragraph (d) of this section.

(2) For high-DSH States, the dollar amount of DSH payments in Federal fiscal year 1993 may not exceed the dollar amount of DSH payments applicable to Federal fiscal year 1992 (that is, the State base allotment).

(c) *State disproportionate share hospital allotment for Federal fiscal years 1994 and after.* For Federal fiscal years 1994 and after—

(1) For low-DSH States, HCFA will calculate the DSH allotment for each Federal fiscal year by increasing the prior year's State DSHs allotment by—

(i) State growth, as specified in paragraph (d) of this section; and

(ii) A supplemental amount, if applicable, as described in paragraph (e) of this section.

(2) For high-DSH States, the dollar amount of DSH payments applicable to any Federal fiscal year may not exceed the dollar amount of payments applicable to Federal fiscal year 1992 (that is, the State base allotment). This payment limitation will apply until the Federal fiscal year in which the State's DSH payments applicable to that Federal fiscal year, expressed as a percentage of the State's total unadjusted medical assistance expenditures in that Federal fiscal year, equal 12 percent or less. When a high-DSH State's percentage equals 12 percent or less, the State will be reclassified as a low-DSH State.

(d) *State growth.* (1) The State growth for a State in a Federal fiscal year is equal to the product of—

(i) The growth factor that is HCFA's projected percentage increase in the State's total unadjusted medical assistance expenditures (including administrative costs) relative to the corresponding amount in the previous year; and

(ii) The State's prior year DSH allotment.

(2) If the growth factor is zero or is negative, the State growth is zero.

(3) If a low-DSH State experiences a level of negative growth to the extent that its previous Federal fiscal year's DSH allotment would be more than 12 percent of its current Federal fiscal year's total unadjusted medical assistance expenditures (excluding administrative costs), the low-DSH State's previous year's DSH allotment will be reduced to the extent necessary to maintain the individual low-DSH State's 12-percent limit and that amount will become the low-DSH State's DSH allotment for the current Federal fiscal year. In no Federal fiscal year will a low-DSH State's DSH allotment be allowed to exceed its individual State 12-percent limit.

(e) *Supplemental amount available for low-DSH States.*

(1) A supplemental amount is the State's share of a pool of money (referred to as a redistribution pool).

(2) HCFA will calculate the redistribution pool for the appropriate Federal fiscal year by subtracting from the projected national DSH expenditure target the following:

(i) The total of the State DSH base allotments for all high-DSH States;

(ii) The total of the previous year's State DSH allotments for all low-DSH States;

(iii) The State growth amount for all low-DSH States; and

(iv) The total amount of additional DSH payment adjustments made in order to meet the minimum payment adjustments required under section 1923(c)(l) of the Act, which are made in accordance with § 447.296(b)(5).

(3) HCFA will determine the percent of the redistribution pool for each low-DSH State on the basis of each State's relative share of the total unadjusted medical assistance expenditures for the Federal fiscal year compared to the total unadjusted medical assistance expenditures for the Federal fiscal year projected to be made by all low-DSH States. The percent of the redistribution pool that each State will receive is equal to the State's total unadjusted medical assistance expenditures divided by the total unadjusted medical assistance expenditures for all low-DSH States.

(4) HCFA will not provide any low-DSH State a supplemental amount that would result in the State's total DSH allotment exceeding 12 percent of its projected total unadjusted medical assistance expenditures. HCFA will reallocate any supplemental amounts not allocated to States because of this 12-percent limitation to other low-DSH States in accordance with the percentage determined in paragraph (e)(3) of this section.

(5) HCFA will not reallocate to low-DSH States the difference between any State's actual DSH expenditures applicable to a Federal fiscal year and its State DSH allotment applicable to that Federal fiscal year. Thus, any unspent DSH allotment may not be reallocated.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 20, 1993.

Bruce C. Vladeck

Administrator, Health Care Financing Administration.

Dated: August 5, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–19246 Filed 8–9–93; 1:57 pm]

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VOL 58 ISS 155 AG 13 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[MB–073–N]

RIN 0938–AG11

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals; Federal Fiscal Year 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal fiscal year (FFY) 1993 individual State allotments for Medicaid payments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. The final FFY 1993 State DSH allotments published in this notice supersede the preliminary FFY 1993 DSH allotments that were published in the **Federal Register** (57 FR 55261) on November 24, 1992.

EFFECTIVE DATE: The final DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1993.

FOR FURTHER INFORMATION CONTACT: Bill Lasowski, (410) 966–2003.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(13)(A) of the Social Security Act (the Act) requires States to ensure that their Medicaid payment rates include payment adjustments for Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs. These hospitals are referred to as disproportionate share hospitals (DSHs). The payment adjustments are calculated on the basis of formulas specified in section 1923 of the Act.

Section 3 of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (Public Law 102–234, enacted on December 12, 1991) amended section 1923 of the Act to establish limits on the amount of Federal financial participation (FFP) available for payment adjustments for Medicaid expenditures made to DSHs. Specifically, section 3(a) of Public Law 102–234 deleted the prohibition on an upper payment limit for DSHs from section 1902(h) of the Act; and section 3(b) added a subsection (f) to section 1923, which imposed national and State limits on aggregate Medicaid payments to DSHs, effective beginning with FFY 1993. The provisions of section 3 of Public Law 102–234 apply to all 50 States and the District of Columbia, but not to any State whose entire Medicaid program is operated under a waiver granted under section 1115 of the Act (Arizona) or to the Territories.

As prescribed in section 1923(f)(1)(B) of the Act, effective beginning October 1, 1992, the national aggregate DSH limit (now "target" as explained later) is equal to 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY.

Note: Whenever the phrases "total medical assistance expenditures" or "total administrative costs" are used in this notice, they mean both the State and Federal share of expenditures or costs.

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. As prescribed in section 1923(f)(2)(B) of the Act, the State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the "State DSH allotment". Each State's DSH allotment for FFY 1993 is calculated using the State's "base allotment." A State's base allotment is the greater of: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

Sections 1923(f)(2), (3), and (4) of the Act provide the basic formula for determining the State DSH allotments for a FFY. The FFY 1993 DSH allotment for each State is limited to 12 percent of the State's total medical assistance expenditures for FFY 1993 (excluding administrative costs), unless the State is classified as a high-DSH State. A high-DSH State is a State whose base allotment, that is, the total amount of DSH payment adjustments that were applicable to FFY 1992, exceeded 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1993. High-DSH States will have their FFY 1993 State DSH allotment limited to the State's base allotment. A State whose base allotment is below 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1993 (referred to as a "low-DSH State") is permitted to increase FFY 1993 DSH payment adjustments over its base allotment through growth amounts and supplemental amounts. The growth amount for FFY 1993 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1992 and FFY 1993 multiplied by the State's base allotment. There will be no growth factor and no growth amount for any low-DSH State whose Medicaid program did not grow (that is, stayed the same or declined) between FFY 1992 and FFY 1993.

A supplemental amount is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool) that may be available after subtracting the total amount of all State DSH allotments for the previous FFY (for FFY 1993 this is equal to the total of all State base allotments) plus low-DSH State growth amounts from the national 12 percent DSH target amount. Thus, in FFY 1993 the supplemental amounts for low-DSH States will not be provided, as a distribution pool is not available. A distribution pool is available only when the sum of all State base allotments and all low-DSH State growth amounts is below the national 12-percent aggregate DSH target.

Also, no State will receive below a minimum of $1 million as prescribed in the law and regulations.

On November 24, 1992, we published in the **Federal Register** two documents related to DSH payments. One document, an interim final rule (57 FR 55118), added provisions to Medicaid regulations that established limits on the aggregate amount of payments a State may make to disproportionate share hospitals for which FFP is available. The other document, a notice (57 FR 55261), announced the preliminary FFY 1993 individual State DSH allotments. Elsewhere in today's issue of the **Federal Register**, we are publishing amendments to this November 1992 interim final rule. In summary, these amendments revise the interim final regulations to state that 12 percent of total medical assistance expenditures (excluding administrative costs) is a target rather than an absolute cap in determining the amount that can be allocated for disproportionate share hospital payments. In addition, we have revised the regulations to state that low-DSH States that experience negative program growth will not have their DSH allotments reduced. They simply will not receive any growth amount at all.

We also have changed the required publication date of the final national DSH expenditure target and individual State DSH allotments from April 1 "following" the applicable FFY to April 1 "during" the FFY. In conjunction with this change, we have eliminated the

publication of updated preliminary figures by April 1 of the FFY.

We are required by the law and regulations to estimate and publish in the **Federal Register** each State's DSH allotment, which we did on November 24, 1992. We are publishing in this notice the final FFY 1993 State DSH allotments based on the best available data (actual and projected) we have at this time from the States as adjusted by HCFA. States must limit their overall DSH payment adjustments that are applicable to FFY 1993, based on these final FFY 1993 State DSH allotments. These final FFY 1993 State DSH allotments will not be recalculated and republished based upon any additional information received from the States. Thus, each State now has the certainty of knowing that its final FFY 1993 DSH allotment will not change any further. The preliminary FFY 1993 State DSH allotments that were published in the **Federal Register** on November 24, 1992 are superseded by the final DSH State allotments published in this notice.

II. Calculations of the Final FFY 1993 DSH Limits

As explained earlier, sections 1923(f)(2), (3), and (4) of the Act provide the basic formula for determining the State DSH allotments. We have calculated the final FFY 1993 State DSH allotments in this notice in accordance with section 1923(f) of the Act and the applicable regulations as revised elsewhere in today's issue of the **Federal Register**. The results of these calculations are presented in chart format in section III. of this notice.

The total of the final State DSH allotments for FFY 1993 is equal to the sum of the allowable FFY 1992 DSH payment adjustment expenditures made by the States that are applicable to FFY 1992 (that is, the State base allotments) plus growth amounts for all low-DSH States. The State base allotment amounts were determined using the actual FFY 1992 DSH payment adjustment expenditure data reported by the States through March 31, 1993, that were also confirmed and updated, as necessary, by the States in response to a May 18, 1993, letter that was sent to all State Medicaid Directors. The States submitted unadjusted actual and estimated FFY 1992 DSH payment adjustment expenditures of over $18 billion in March 1993. These DSH payment adjustment expenditures were reviewed by us and adjusted to remove DSH payment adjustment expenditures that do not qualify as DSH base allotment payment adjustment expenditures under the provisions of section 1923 of the Act, as amended by Public Law 102–234. Specific adjustments were made for amounts representing retroactive DSH payment adjustment expenditures that were not applicable to FFY 1992, DSH payment adjustment expenditures for non-qualifying DSH plans, and unallowable DSH payment adjustment expenditures. In addition, States have continued to report to us updated actual DSH payment adjustment expenditures applicable to FFY 1992 to adjust their original estimates. The net effect of these adjustments resulted in total adjusted DSH payment adjustment expenditures applicable to FFY 1992 of $17,430,889,000 ($10,018,336,000 Federal share). This amount constitutes the total of all State base allotments.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1993, we classified that State as a "high-DSH" State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan in FFY 1993, we classified that State as a "low-DSH" State. Under both classifications, each State's final base allotment equals the absolute dollar amount of allowable DSH payment adjustments applicable to FFY 1992. There were 32 low-DSH States and 18 high-DSH States for FFY 1993 as a result of this classification made prior to adding the growth amounts for low-DSH States.

We estimated the preliminary FFY 1993 national total medical assistance expenditures for these States to be over $131.1 billion. The expenditures were estimated using the May 1993 State budget projections (Form HCFA–37) for FFY 1993 that were also confirmed and updated as necessary by the States in response to the May 18, 1993, letter.

The overall preliminary national FFY 1993 DSH expenditure target is approximately $15.7 billion (12 percent of $131.1 billion). The final high- and low-DSH States' DSH base allotments total approximately $17.4 billion. Thus, the total of all State DSH allotments for FFY 1993 is approximately $1.7 billion over the FFY 1993 target amount. However, no reductions are being applied to any State DSH allotment to reach the target amount.

In addition, we are providing a total of $521,188,000 ($305,900,000 Federal share) in growth amounts for the 32 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1992 and FFY 1993. To compute this percentage, we first ascertained each low-DSH State's total actual unadjusted FFY 1992 medical assistance and administrative expenditures as reported on the State's quarterly expenditure reports (Form HCFA–64) submitted for the period October 1, 1991, through September 30, 1992. Next, we compared those expenditures to each low-DSH State's total estimated unadjusted FFY 1993 medical assistance and administrative expenditures as reported to HCFA on the State's February 1993 Medicaid budget submission (Form HCFA–37). These amounts were also confirmed and updated as necessary by the States in response to a May 18, 1993, letter that we sent to all State Medicaid Directors.

This growth factor percentage was multiplied by the low-DSH State's base allotment amount to establish the State's growth amount for FFY 1993. The State's growth amount was then added to the State's base allotment amount to establish the final total State DSH allotment for FFY 1993. It should be noted that no State can receive a growth amount that, when added to its base allotment amount, would make the total State DSH allotment for FFY 1993 exceed 12 percent of the State's FFY 1993 estimated medical assistance expenditures. In any low-DSH State where this was the case, the State only received a growth amount which, when added to its base allotment, made its total State DSH allotment for FFY 1993 equal to 12 percent of its estimated FFY 1993 medical assistance expenditures.

There were no supplemental pool amounts provided to the low-DSH States for FFY 1993 since the total of all the State base allotments alone exceeded the 12-percent target amount.

In summary, the total of all final State DSH allotments for FFY 1993 is $17,952,077,000 ($10,324,236,000 Federal share). This total is composed of $17,430,889,000 in base allotments for all States plus $521,188,000 in growth amounts for all low-DSH States. The total of all final State DSH allotments is 13.7 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1993. The total of all final DSH allotments for FFY 1993 is $2,212,415,000 over the FFY 1993 target amount of $15,739,662,000. The final State DSH allotments for FFY 1993 result in there being 29 low-DSH States and 21 high-DSH States. (Three of the 21 high-DSH States were low-DSH States whose full growth amount would have caused their DSH allotment to

exceed 12 percent. These States thus received partial growth amounts that made their total State DSH allotment for FFY 1993 equal to 12 percent of their estimated FFY 1993 medical assistance expenditures and are now classified as high-DSH States.)

Each State should make any necessary adjustments to its DSH spending during the remainder of FFY 1993 to ensure that its actual FFY 1993 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1993. Each State is encouraged to amend its plans as may be necessary to make any adjustments to its FFY 1993 DSH payment adjustment expenditure patterns so that the State will not significantly be over its final FFY 1993 DSH allotment as the ongoing reconciliation between actual FFY 1993 DSH payment adjustment expenditures and the final FFY 1993 DSH allotments takes place.

The FFY 1993 reconciliation to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1993. In addition, additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1993 will continue to be reconciled back to each State's final FFY 1993 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1993 DSH allotment is not exceeded. Any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed.

Any DSH expenditures that are disallowed will be subject to the normal Medicaid disallowance procedures.

III. Final FFY 1993 DSH Allotments Under Public Law 102-234

Key to Chart:

Column and Description

Column A = Name of State
Column B = The State's base DSH allotment. This is an amount that is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000.
Column C = The growth amounts for low-DSH States. This is an increase in a low-DSH State's DSH base allotment to the extent that the State's Medicaid program grew between FFY 1992 and FFY 1993.
Column D = The final FFY 1993 DSH allotments for all States. This is equal to the State base allotments plus the growth amounts for low-DSH States.
Column E = Low/high DSH designator for FFY 1993. "High" indicates the State is a high-DSH State and a "Low" indicates the State is a low-DSH State after calculation of the final State DSH allotments.

FINAL FEDERAL FISCAL YEAR 1993 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUB. L. 102-234

[Amounts are state and Federal shares]
[Dollars are in thousands (000)]

A	B	C	D	E
State	Base allotments for all states	Growth amounts for low DSH states	Final FFY 93 state DSH allotments	Final high or low DSH state designation
AL	$417,458	(1)	$417,458	High.
AK	15,611	$2,219	17,830	Low.
AR	2,540	266	2,806	Low.
CA	2,191,451	(1)	2,191,451	High.
CO	302,014	(1)	302,014	High.
CT	408,933	(1)	408,933	High.
DE	4,800	394	5,194	Low.
DC	32,902	5,098	38,000	Low.
FL	191,400	48,293	239,693	Low.
GA	300,528	42,550	343,078	High.
HI	40,354	5,490	45,844	Low.
ID	1,410	249	1,659	Low.
IL	313,791	67,743	381,534	Low.
IN	211,570	108,905	320,475	Low.
IA	4,633	394	5,027	Low.
KS	188,935	(1)	188,935	High.
KY	264,289	(1)	264,289	High.
LA	1,217,636	(1)	1,217,636	High.
ME	139,209	(1)	139,209	High.
MD	112,979	6,402	119,381	Low.
MA	478,337	11,210	489,547	Low.
MI	544,282	15,450	559,732	High.
MN	42,005	6,574	48,579	Low.
MS	153,342	(1)	153,342	High.
MO	731,894	(1)	731,894	High.
MT	1,000	154	1,154	Low.
NE	3,108	622	3,730	Low.
NV	73,560	(1)	73,560	High.
NH	392,006	(1)	392,006	High.
NJ	1,094,113	(1)	1,094,113	High.
NM	11,839	1,673	13,512	Low.
NY	2,784,477	(1)	2,784,477	High.
NC	332,440	13,105	345,545	High.
ND	1,000	86	1,086	Low.
OH	451,834	58,090	509,924	Low.

FINAL FEDERAL FISCAL YEAR 1993 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUB. L. 102–234—Continued

[Amounts are state and Federal shares]
[Dollars are in thousands (000)]

A	B	C	D	E
State	Base allotments for all states	Growth amounts for low DSH states	Final FFY 93 state DSH allotments	Final high or low DSH state designation
OK	22,340	1,228	23,568	Low.
OR	17,312	2,967	20,279	Low.
PA	967,407	(1)	967,407	High.
RI	81,264	15,896	97,160	Low.
SC	439,759	(1)	439,759	High.
SD	1,000	163	1,163	Low.
TN	430,611	(1)	430,611	High.
TX	1,513,029	(1)	1,513,029	High.
UT	4,540	463	5,003	Low.
VT	23,097	1,306	24,403	Low.
VA	147,798	26,453	174,251	Low.
WA	230,929	39,445	270,374	Low.
WV	84,440	37,443	121,883	Low.
WI	8,683	642	9,325	Low.
WY	1,000	216	1,216	Low.
Totals	17,430,889	521,188	17,952,077	

[1] Not applicable.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final notice such as this that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As noted in the final rule (Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals) published elsewhere in today's **Federal Register**, we believe that the publishing of this notice will not have a significant impact on any aspect of the Medicaid program. Consequently, we are not including a separate regulatory impact analysis in this notice. This notice does not contain rules. Rather, it reflects the DSH allotments for each State as determined in accordance with revised regulations published elsewhere in this issue of the **Federal Register**. A complete impact analysis concerning DSH allotments is included in the preamble to the revised regulations.

We have, however, discussed the method of calculating the final FFY 1993 national aggregate DSH target and the final FFY 1993 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for High-DSH States since we are now interpreting the 12-percent limit as a target. Low-DSH States will get their base allotments plus their growth amounts. While we believe that the changes we are making are beneficial to the States, we believe that the changes will not have a significant impact on the voluntary analysis published in the interim final rule.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 6, 1993.

Donna E. Shalala,

Secretary.

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Part III

Department of Education

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.180G]

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year (FY) 1994

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

This notice support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Applications Available: September 13, 1993.

Deadline for Transmittal of Applications: November 19, 1993.

Deadline for Intergovernmental Review: January 18, 1994.

Available Funds: $1,400,000.

Estimated Average Size of Awards: $200,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 7 grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333.

Priority: Under 34 CFR 75.105(c)(3), 34 CFR 333.1, and 34 CFR 333.3, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Research Projects That Promote Literacy (CFDA 84.180G)

This priority provides support for research projects that examine how advancing the availability, quality, use, and effectiveness of technology, educational media, and materials can address the problem of illiteracy among individuals with disabilities.

Invitational Priority

Within the absolute priority specified in this notice the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) Define literacy as: to read, to communicate, to compute, to make judgments and to take appropriate action;

(b) Are of rigorous design and employ clearly explicated quantitative or qualitative methodologies, or both, appropriate to the purpose of the project; and,

(c) Consider learning and psychosocial factors in examining the availability, quality, and use of specified technology, educational media, and materials, and in examining their effectiveness in providing experiences and opportunities that improve the literacy of children and youth with disabilities.

For Technical Information Contact: For technical information please contact Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8126.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1461.

Dated: August 9, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–19452 Filed 8–12–93; 8:45 am]

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August 13, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1993–94 Season

VOL 58 ISS 155 AUG 13 1993 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AB60

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1993–94 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations that would be established for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands for the 1993–94 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end August 30, 1993.

ADDRESSES: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240. Comments received, if any, on these proposed special hunting regulations and tribal proposals will be available for public inspection during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634 ARLSQ, 1849 C St., NW., Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION: In the May 26, 1993 **Federal Register** (58 FR 30138), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1993–94 hunting season, under the guidelines described in the June 4, 1985 **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

Because of continuing questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, there is a need to provide clarification here. The Service routinely provides **Federal Register** copies of published proposed and final rulemakings and other documents to all State Directors, tribes and others. It is the responsibility of the States, tribes and others to bring any objectionable feature(s) of any regulations to the attention of the Service. Consultation will be initiated at the point in time at which the Service is made aware of a concern. The Service cannot presume to know beforehand what, if any, concerns will be voiced regarding rulemakings.

The guidelines provide for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird populations and the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is normally too small to have significant impacts on the migratory bird resource when compared with the larger off-reservation sport harvest by non-Indians.

An area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include: (a) Details on the harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact on the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as

inflexible. In this regard, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and they were made final beginning with the 1988–89 hunting season (53 FR 31612). It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

It has been necessary over the past several years to make a statement in this proposed rule qualifying the Service's intent with regard to approving duck seasons and limits because of the uncertainty of production. The Service must again note that duck numbers last year were not significantly changed from those of the previous few years, largely because of poor reproduction caused by a long period of drought in the Prairie Pothole Region of Canada and the United States. The extended drought has been especially severe in critical production areas. Although ground water conditions have improved somewhat in some local areas, preliminary results of recent breeding population surveys indicate no overall improvement in duck population status. In fact, these preliminary figures show that, overall, there has been a significant decline in both dabbler and diver numbers approximating 11 percent over the past year, which is 18 percent below the long-term average. Thus, for conservation purposes, restrictive hunting regulations can be expected again for the 1993–94 season.

Hunting Season Proposals from Indian Tribes and Organizations

For the 1993–94 hunting season, the Service received requests from twelve tribes and Indian organizations that followed the 1985 proposal guidelines and were appropriate for publication in the **Federal Register** without further and/or alternative actions. In addition, the Service received proposals or other correspondence from the Klamath Tribe (Oregon), Yakima Tribes (Washington) and the Mille Lacs Band of Chippewa Indians (Minnesota). The Klamath and Yakima proposals do not follow the guidelines required and, therefore, are not appropriate for publication as intended regulations. Also, the Lower Brule Sioux Reservation (South Dakota) has contacted the Service with regard to submitting proposed regulations for the 1994–95 migratory bird hunting season. On May 28, 1993, the Mille Lacs Band forwarded a letter expressing the wish to continue with regulations during the upcoming 1993–94 season as per the Memorandum of Understanding between the Service and the tribe with regard to migratory bird hunting. For the past several hunting seasons, 1986–87 through 1992–93, the Service has reached an agreement with the Mille Lacs Band of Chippewa Indians in Minnesota for hunting by tribal members on their lands. Similar agreements have been reached with other tribes in other hunting seasons. Tribes are encouraged to work with the Service in developing agreements for management of migratory bird resources on tribal lands.

The Service intends to seek further dialogue with these and other tribal groups to develop mutually acceptable hunting regulations and/or to formalize Service-tribal agreements for multi-year tribal formulation of regulations and management of the migratory bird resource. The Service actively solicits regulatory proposals from other tribal groups that have an interest in working cooperatively in the interest of waterfowl and other migratory game birds.

It should be noted that this proposed rule includes generalized regulations for both early and late season hunting. There will be a final rule published later in an August 1993 **Federal Register** that will include tribal regulations for early hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. There will also be a final rule published in a September 1993 **Federal Register** that will include regulations for late season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species. In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same that will be permitted the State(s) in which the tribal hunting area is located. The proposed frameworks for early-season regulations were published in the **Federal Register** in mid-July; these early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established.

As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

The proposed regulations for the twelve tribes with proposals that meet the Service's criteria are shown below.

1. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applies only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size. The waterfowl harvest in the 1992–93 sustenance season was low, and similar to that of the previous seasons.

For the upcoming season, the Penobscot Nation outlined their migratory bird hunting season proposal through the Service's Region 5 Office. The tribe requests special sustenance regulations for tribal members in Penobscot Indian Territory, an area of trust lands that includes but is much larger than the reservation. These additional lands were acquired by the tribe as a result of the 1980 Maine Indian Claims Settlement. The tribe is proposing a 1993–94 sustenance hunting season of 74 days (September 18–November 30), with a daily bag limit of 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese or 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members would be only the larger of the two daily bag limits. All other Federal regulations, including those for nontoxic shot, would be observed by tribal members, including that shooting hours this year would be from one-half hour before sunrise to sunset.

Nontribal members hunting within Penobscot Indian Territory would adhere to the seasons and bag limits established by the State of Maine.

The regulations put forward by the Penobscot Nation are more conservative

than those established last year and the Service proposes to approve them.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. The proposed seasons and bag limits would be more conservative than allowed by the Federal frameworks of last season. As previously stated, Federal frameworks for this current season have not been determined due to the fact that 1993 waterfowl production figures are unknown at present. However, based on existing information they are unlikely to be less conservative than those of the 1992–93 season.

In a May 13, 1993, proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1993–94 hunting season and a closing date of November 30, 1993. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. However, it is proposed again that no canvasbacks be allowed in the bag. Also, the tribe requested that the goose season continue to be closed. The tribe conducts a harvest survey each year, and the duck harvest has routinely been small compared to the size of the reservation and numbers of waterfowl available. The 1992–93 harvest, however, was the largest since recordkeeping began in 1986. Harvest last year, at about 1,258 ducks, was above the highest harvest years of 1987 and 1990, which were 1057 and 1052, respectively. This is still a negligible figure when compared to flyway-wide and nation-wide harvest. Because water conditions on the reservation are again excellent, another good duck production and harvest year is expected.

The requested regulations are essentially the same as were established last year, and the Service proposes to approve the tribe's request for the 1993–94 hunting season.

3. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. In the past, the tribe has observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribe is continuing to develop a wildlife management program, and in a proposal postmarked June 7, 1993, requested that it be able to set its own special waterfowl hunting regulations for the 1993–94 hunting season. These regulations would be in accordance with Federal guidelines and independent of the State of South Dakota seasons. The regulations would apply to both tribal members and nonmembers hunting on tribal and trust lands within the external boundaries of the reservation. The tribe requests a continuous duck season, beginning on October 16 and ending on November 28, 1993, and the same daily bag and possession limits permitted by final Federal frameworks, to be announced. The requested hunting season dates would not be within Federal frameworks. The season and bag limit would be essentially the same as last year, and harvest is again expected to be low because of the small number of hunters. Estimated harvest, based on hunter reports, for ducks last season was about 144.

The tribe requested that the goose hunting season begin on October 9, 1993, and extend through January 2, 1994. The daily bag and possession limits would be those permitted by final Federal frameworks, to be announced. Harvest for last season has been estimated at about 446 geese, of which 412 were Canada geese. Harvest for this coming season should be approximately the same as last season.

The Service proposes to approve the tribal requests for duck and goose hunting regulations. In the past, the duck regulations have been continued on an experimental basis; the Service now considers these regulations to be operational. However, as with all other groups, the Service asks that the tribe continue to survey and report the harvest to ensure that hunting activity and harvest stay as low as anticipated.

4. Yankton Sioux Tribe, Marty, South Dakota

On June 2, 1993, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1993–94 season. The Yankton Sioux tribal waterfowl hunting season is open to both tribal members and nonmembers.

The duck (including mergansers) and coot hunting regulations proposed by the Yankton Sioux Tribe, including seasons and bag limits, are in accordance with those set by the State of South Dakota for the Low Plains Middle and South Zones. The tribe anticipates that seasons would run approximately from October 23 to November 30, 1993, in the South Zone and from October 9 to November 16, 1993, in the Middle Zone. The possession limits for ducks and coots would be twice the daily bag limits; daily limits are expected to be 3 for ducks and 15 for coots.

Swan season and bag limits would be in accordance with those set by the State of South Dakota, for both tribal and nontribal hunters.

The tribe has requested a continuous Canada, snow and white-fronted goose hunting season, beginning approximately October 2, 1993, and ending on December 19, 1993. It is expected that the dark goose daily bag and possession limits would be 1 Canada goose and 1 white-fronted goose (or brant). However, in Canada Goose Unit 2 beginning on November 6, 1993, the daily bag limit may include 2 Canada geese or 1 Canada goose and 1 white-fronted goose (or brant).

A special extended goose season is proposed within the Yankton Sioux Reservation for both tribal and nontribal members. This season would begin at the close of the regular goose season and continue through January 9, 1994. During this extended season, hunting for geese would be allowed only in the special hunting zone established by the Yankton Sioux Tribe in the area commonly known as the Chalk Rock Colony. Bag limit and other regulations information, as well as maps, for this zone will be available at the Bureau of Indian Affairs office in Wagner, South Dakota.

All hunters must be in possession of a valid tribal license while hunting on Yankton Sioux trust lands.

The Service proposes to approve the Yankton Sioux proposal for the 1993–94 hunting season, with a request that the tribe continue to monitor and report the harvest of Canada, snow and white-fronted geese.

5. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. In a May 24, 1993, letter, the tribe requested regulations that are essentially unchanged from those proposed last hunting year.

The hunting zone for waterfowl continues to be restricted to a more limited area than before the 1991–92 hunting year. The open area is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. All other

waters of the reservation would be closed to waterfowl hunting for the 1993–94 season.

The tribe is proposing a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of November 13, 1993, and a closing date of January 2, 1994. The tribe requested a daily duck bag limit of 3, of which: no more than 1 can be a redhead or a canvasback; no more than 1 may be a pintail; and no more than 1 may be a hen mallard. The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate.

For geese, the season is proposed to extend from November 13, 1993, through January 2, 1994. Hunting would be limited to Canada geese, and the daily bag limit is 2.

There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. Season dates for band-tailed pigeons and mourning doves would run concurrently from September 3 through September 12, 1993, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above referenced species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The regulations requested by the tribe for the 1993–94 seasons are somewhat more conservative than those approved last year, and the Service proposes to approve them. The Service greatly appreciates the sensitivity shown by the White Mountain proposal with regard to band-tailed pigeons seasons and bag limits.

6. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide additional protection to mallards and pintails; the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1993–94 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. In a June 2, 1993, proposal, for the 1993–94 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. If 59 days are permitted, as in last year, this could conceivably begin the season on October 23 and conclude it on December 19, 1993, with a later opening and a later closure. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days (93) are permitted as in previous years, the season would have a later opening (October 9, 1993) and a later closing date (January 9, 1994) than last year.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

The Service notes that the requested regulations are nearly identical to those of last year and proposes to approve the tribes' request for the 1993–94 hunting season.

7. The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a letter dated June 7, 1993, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1993–94 seasons as follows.

For ducks and coot, the proposed season for tribal members would be from September 1, 1993, through February 1, 1994. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Federal frameworks, to be announced. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail and wood duck the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks, to be announced. It would be necessary for non-tribal hunters to check with the Tulalip tribal authorities for additional conservation measures which may apply for specific species managed within the "region."

For geese, tribal members are proposed to be allowed to hunt from September 1, 1993, through February 1, 1994. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks, to be announced. For tribal hunters, the goose daily bag and possession limits are proposed to be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington, to be announced. The Tulalip Tribe also sets a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

For snipe, the proposed open seasons follow those regulations for ducks, coot and geese given above. For both tribal and non-tribal hunters, snipe daily bag and possession limits are proposed to be set at 6 and 12, respectively.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit

requirements, and a number of other regulations enforced by the tribe.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, a rough estimate of past harvests indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service intends to concur with the Tulalip Tribes request for the above seasons and requests that the harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

8. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. With the exception of the 1992–93 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California.

In their 1993–94 proposal, the tribes are requesting split dove seasons with regulations as follows. The early season is proposed to begin on September 1 and end on September 15, 1993, with the bag limits being ten (10) mourning or ten (10) white wing doves either singly or in the aggregate. The late season for doves is proposed to open on November 13 and close on December 27, 1993, with the bag limit being ten (10) mourning doves. A possession limit is twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to sunset, and other special tribally set regulations would apply.

The duck regulations proposed are the same as those approved last year. Again this year, as manifested by survey data, the population status of ducks appears to be insecure. Consequently, while the regulations frameworks for ducks have not been announced, it is likely that restrictive regulations will be necessary for the 1993–94 hunting season. Therefore, the Service proposes to establish the same migratory bird hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations would apply both to tribal and non-tribal hunters.

9. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a 4-year cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement will enable all hunters to utilize waterfowl hunting opportunities on the reservation. Reservation proposed special regulations for waterfowl hunting were submitted to the Service in a June 1, 1993, letter and would follow regulations for the Montana area of the Pacific Flyway, included in final Federal frameworks.

As in the past, tribal regulations for non-tribal duck and goose hunters would be at least as restrictive as for the Pacific Flyway portion of the State and, if circumstances warrant, would provide for early closure of goose hunting. Early closure may occur on November 28, 1993, in the special goose management unit that will be described in a later rulemaking. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset over the dates to be specified in the final regulations.

The requested season dates and bag limits are similar to the regulations of the past five years and it is anticipated there will be no significant changes in harvest levels. A large majority of the harvest is by non-tribal hunters. The Service proposes to approve the tribes' request for special migratory bird regulations for the 1992–93 hunting season.

10. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a June 18, 1993, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 1993–94 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks, to be announced. For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the tribe proposes to require tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation. The Service proposes to approve the Navajo Nation request for these special regulations for the 1993–94 migratory bird hunting seasons.

11. Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin

This current hunting season will mark the third year that the Service and the Oneida Tribe have cooperated to establish uniform regulations for migratory bird hunting by tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Conservation Department has enforced their own hunting regulations within those original reservation limits. However, the Oneida Tribes have a good working relationship with the State of Wisconsin and the majority of the seasons and limits have been the same for both.

In a May 3, 1993, letter to the Service, the tribe proposed special waterfowl hunting regulations. For ducks, geese, mourning dove and woodcock, the Tribe described the "outside dates" (seasons) as being September 1 through November 30, inclusive.

Canada goose bag limits would be 2 tribally tagged per day; the tribe will reissue 2 tags as each 2 birds are registered. The possession limit for Canada geese is 4. The Oneida Conservation Department is recommending a season quota of 150 geese taken. If that quota is attained before the season concludes, the Department recommends closing the season early. For ducks, the daily bag limit is 5, which could include: no more than 3 mallards, with only 1 hen; 4 wood ducks; 1 canvasback; 1 redhead; and 1 hooded merganser. The daily bag limits for mourning dove and woodcock would be 10 and 6, respectively. The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

12. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the GLIFWC requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service believes that this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that tribal harvest has been small, the Service has approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish, although unaddressed by the Federal court system, was pivotal in a decision by the Service to approve a special season for the 1836 ceded area in Michigan for the 1991–92 migratory bird hunting seasons.

In a June 7, 1993, letter, the GLIFWC again requested off-reservation special migratory bird hunting regulations for the 1993–94 seasons. The proposed regulations are shown below. The proposal contains some liberalizations in seasons for ducks (including mergansers), coot and rail from 1992–93 for the areas located in Michigan, Minnesota and Wisconsin. The proposed change of season length for ducks would provide for an opening of June 15. This proposal meets the Service's earliest opening date guidelines for tribes, and our intention is to approve this request. The GLIFWC also proposes an increase in the goose bag limit in the Minnesota/Wisconsin zone to 10 birds daily. To meet our guidelines, as well as set bag limits that roughly correspond with other portions of the Flyway, the Service is proposing to approve the requested increase, provided that the daily bag may not exceed 3 Canada geese or 3 white-fronted geese. The remainder of the daily bag limit may be white geese. This decision results from survey information on the Mississippi Valley Population of Canada geese that indicates a breeding bird decline of 29 percent over the past year. Numbers of this population of Canada geese had declined over the previous 2 years, and it is unknown how successful production will be in the current year.

The season changes for ducks and species other than geese would add a week to both ends of the season. Daily bag limits for ducks are deferred from this proposal pending results of the production surveys carried out each summer. However, the GLIFWC has stated that tribal off-reservation harvest in these areas is not expected to exceed 2,000 ducks and 600 geese, and has great cultural significance as a subsistence activity. Further, the GLIFWC believes the biological impact of this level of harvest to be minimal, "yet as an exercise of culture and as an exercise of treaty-reserved rights, this level of harvest is significant to the tribes."

As stated previously, because of depressed population numbers and drought-related habitat problems that are continuing, the Service believes there is a need to continue to provide protection for duck populations. Preliminary survey results for 1993 indicate that duck numbers will remain at depressed levels, and it is likely that restrictive duck regulations will be necessary again in the 1993–94 season. The Service believes that it is appropriate a final decision on the opening date of the duck season should be deferred until ongoing production surveys of duck populations have been completed.

The Commission and the Service are parties to a Memorandum of Agreement designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. The Memorandum of Agreement is intended to have long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this change in reference.

The GLIFWC's proposed 1993–94 waterfowl hunting season regulations are as follows:

Ducks:

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end November 7, 1993.
Daily Bag Limit: Deferred pending results of breeding ground surveys.

B. *Michigan, 1842 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

C. *Michigan, 1836 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

Mergansers:

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end November 7, 1993.
Daily Bag Limit: The daily bag limit would be 5, including no more than 1 hooded merganser.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

Geese: Canada Geese

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end December 1, 1993.
Daily Bag Limit: The daily bag limit would be 10, however, only 3 may be Canadas and 3 may be white-fronted geese.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Geese: Blue, Snow and White-fronted Geese

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end December 1, 1993.
Daily Bag Limit: The daily bag limit would be 10, minus the number of Canada geese taken.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

Other Migratory Birds: Coots and Common Moorhens (Common Gallinules)

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end November 7, 1993.
Daily Bag Limit: The bag limit would be 20, singly or in the aggregate.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

Sora and Virginia Rails

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end November 7, 1993.
Daily Bag Limit: The daily bag limit is 25 singly, or in the aggregate. The possession limit would be 25.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25 singly, or in the aggregate. The possession limit would be 25.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25, singly or in the aggregate. The possession limit would be 25.

Common Snipe

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end November 7, 1993.
Daily Bag Limit: The daily bag limit would be 8.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

Woodcock

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 7 and end November 30, 1993.
Daily Bag Limit: The daily bag limit would be 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

D. *General Conditions*

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.
2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles* v. *State of Wisconsin* regarding migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements, 50 CFR part 20 and shooting hour regulations in 50 CFR part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.
3. Nontoxic shot will be required for all off-reservation hunting by tribal members.
4. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.
5. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

6. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

Public Comment

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

No public comment has been provided to the Service for the Notice of Intent published on May 26, 1993, to promulgate a rulemaking with regard to regulations for migratory bird hunting by American Indian tribal members.

Comment Procedure

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comment. Two considerations compress the time in which this rulemaking process must operate: The need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1993, and on the other hand, the

unavailability until late July of specific reliable data for each year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 30, 1993, is impracticable in terms of publishing timely rulemakings and contrary to the public interest.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 ARLSQ, 1849 C St., NW., Washington, DC. 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 30, 1993, will be considered.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in and/or are available to the public from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act, Executive Orders 12291, 12612, 12630 and 12778, and the Paperwork Reduction Act

In the April 9 **Federal Register,** the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis (RFA), prepared as a part of the FRIA concluded that this rule would have significant effects on small entities. Information contained in that document stated that while the Service believes that its rules for migratory bird hunting are "major," and impact "small entities," particularly small businesses, it has been unable to locate information of the kind needed to complete its analysis on small entities. The FRIA and RFA document the relationships between hunting regulations, and hunter numbers and hunter days, both of which have major economic implications. The Service concluded that the adoption of other regulatory options would have little impact upon hunter expenditures at the national-economy or small-entity levels. Unless migratory bird hunting regulations are established, the national economy stands to lose at least $1 billion annually. Most of this loss would be borne by small entities.

It has been determined that this rule will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240. As noted in the **Federal Register** notice referenced above, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authorship

The primary author of this proposed rulemaking is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Paul R. Schmidt, Chief.

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1994, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1993–94 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA

authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: July 28, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-19502 Filed 8-12-93; 8:45 am]

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Part V

Department of Agriculture

Forest Service

36 CFR Part 222

Range Management; Grazing and Livestock Use and Grazing Fees; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Range Management; Grazing and Livestock Use and Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture gives notice of its intention to revise Forest Service range management regulations to improve administration of permits, to place greater emphasis on stewardship of the rangeland resource, to manage the rangeland resource using an ecological approach, to change the system used to determine the fees for grazing of privately owned livestock on national forests and grasslands in the west, and to achieve greater consistency between the grazing management regulations of the Forest Service and the Bureau of Land Management. The intended effect is to provide for healthy, sustainable rangeland ecosystems on National Forest System lands. The Forest Service solicits comments and suggestions from the public to assist the agency in drafting a proposed rule. Grazing fees also will be addressed in an environmental impact statement which is being prepared with the Bureau of Land Management as the lead agency and the Forest Service as a cooperating agency.

DATES: Written comments must be received by September 13, 1993.

ADDRESSES: Send written comments to Director, Range Management Staff (2200), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jerry W. McCormick, Range Management Staff, (202) 205–1746.

SUPPLEMENTARY INFORMATION:

Background

The existing rules governing rangeland management and livestock use on National Forest System lands (36 CFR part 222, subpart A) address management of the range environment, the issuance and modification of grazing and livestock permits, compensation for permittees' interest in authorized permanent improvements, cooperation in management, range improvements, the use of the range betterment fund, and grazing advisory boards. The current rules were adopted October 28, 1977 [42 FR 56732].

As required by Departmental Regulation 1512–1, Forest Service personnel involved with rangeland management at various levels of the agency participated in a 1987 review of the existing grazing regulations. This review identified areas needing revision and clarification, areas requiring new regulations, and outdated sections which need to be removed. The Forest Service published a proposed rule responding to the findings of the review on August 16, 1988 [53 FR 30954]. That proposed rule has not been finalized, but principal features are being considered in the current effort to identify needed changes to the regulations.

The 1990 report The Forest Service Program for Forest and Rangeland Resources (Recommended 1990 RPA Program) stated that although * * * "public rangeland is in better condition than it has been at any time this century," the Forest Service has deep concerns about the 27% of National Forest System rangelands which have been classified as being in unsatisfactory condition. This report further discussed the role of rangelands in providing forage, habitat, water, recreational opportunities, and open space and signaled the agency's commitment to improve rangeland conditions and management. More recently, the Secretary of Agriculture and the Secretary of the Interior sponsored a series of public meetings on livestock grazing on federal lands. Issues and concerns raised at those meetings have provided additional momentum to develop grazing regulations that are more responsive to the current needs for improved management of rangeland resources.

The existing rules governing grazing fees on national forests and grasslands (36 CFR part 222, subpart C) establish general procedures for application of fees and set forth procedures for calculating fees in the national forests in the 16 western states, national grasslands, and in the Eastern States. Subpart C was last amended January 26, 1990 [55 FR 2650], when the fee system for the eastern states was revised.

Revision of the grazing fee system is part of a comprehensive effort of the Forest Service and the Bureau of Land Management to improve the management of federal rangelands. Revision of the grazing fee system is intended to correct the fundamental problems of the present fee—the wide disparity between rates charged for livestock forage on private and Federal lands and the failure to follow the trend of forage value in the private market. The two agencies are proposing to use the same grazing fee system. However, each agency must prepare a separate proposed rule that reflects the differences in statutory authority between the agencies.

This advance notice includes a specific grazing fee option and preliminary regulatory text which has been selected from a range of fee alternatives considered by the Secretary of Agriculture and Secretary of the Interior. A specific fee option is provided to help focus public comment; however, a full range of grazing fee options will be presented and evaluated in the draft environmental impact statement before the Secretaries make a final decision on a proposed grazing fee.

Revisions Under Consideration

1. *Ecosystem Approach to Multiple Use Management of Rangelands*

In his letter of June 4, 1992, the Chief of the Forest Service stated "the Forest Service is committed to using an ecological approach in the future management of the National Forests and Grasslands." He further stated, "An ecological approach will be used to achieve the multiple-use of management of National Forests and Grasslands. It means that we must blend the needs of people and environmental values in such a way that the National Forests and Grasslands represents diverse, healthy, productive and sustainable ecosystems."

An ecosystem approach to management of National Forest System rangelands considers ways to provide for diversity of plant and animal communities, manage dynamic ecological processes (e.g. animal grazing, fire, hydrology), and sustain the health of rangeland ecosystems, including riparian systems and wetlands. The agency is reviewing its regulations to determine needed changes to implement an ecosystem approach to rangeland management. The public is invited to suggest criteria the agency should include in regulations adopting an ecosystem approach to multiple use management of rangelands. Some of the key questions to be considered in the proposed regulation include:

—At what scale(s) should we conduct rangeland ecosystem analysis: landscape, watershed, unique biological community, allotment?

—How do we integrate large-scale rangeland ecosystem analyses (e.g. landscape scale) into the existing decisionmaking framework for National Forest System planning?

2. *NEPA Analysis and Rangeland Management Decisions*

Grazing allotment management plans provide direction for livestock management on National Forest System lands. These plans must be consistent with the programmatic direction in forest plans. The environmental analysis prepared for an allotment management plan is generally used to disclose the site-specific effects of livestock grazing as required by the National Environmental Policy Act (NEPA).

Changing emphasis to a broader scope of analysis may provide opportunities to improve the efficiency of planning for rangeland resources and to correlate the effects of livestock grazing with other activities and resources. This comprehensive analysis might better identify prescriptions to be applied to livestock grazing and also the actions that will achieve other resource objectives over a broader area than individual grazing allotments.

Because of the expenses and workload associated with updating existing allotment management plans, the agency is questioning whether it is advisable to continue to develop an allotment management plan for each allotment on National Forest System lands. The agency invites comments regarding the role of allotment management plans in National Forest System planning. Key questions to be addressed in the proposed rule include, but are not limited to, the following:

—Should the Forest Service prepare an allotment management plan for every allotment?
—Should allotment plans be prepared to cover multiple allotments?
—What alternative methods are available to analyze and disclose the site-specific effects of livestock grazing as required by NEPA?

3. *Permittee Stewardship*

Improved stewardship of rangelands is a key element to be addressed in the proposed rule. Rangeland stewardship is the joint responsibility of the Forest Service and grazing permittees. The Forest Service conducts planning and analysis to determine rangeland resource objectives and conditions to be achieved. The agency, working with the permittee, is also required to develop prescriptions for livestock grazing and grazing permit terms and conditions that are consistent with overall resource objectives and desired conditions. In turn, permittee operations must comply with the terms and conditions of the permit. However, some livestock grazing practices are not achieving resource management objectives established for National Forest System lands. Accordingly, the agency is examining current administrative policy and practice as well as regulatory and statutory authorities to identify new mechanisms for encouraging and achieving improved stewardship of National Forest System rangelands under grazing permits.

A. Linkage Between Forest Plan Direction and Grazing Permit Terms and Conditions

Forest plans provide management direction and resource objectives for National Forest System rangelands. Since forest plan are generally large, complex documents, livestock grazing permittees often find it difficult to understand how the forest plan applies to their grazing permits and livestock grazing practices. It is also difficult for the Forest Service to achieve forest plan objectives if forest plan direction is not clearly tied to the grazing permit. To eliminate uncertainty and to ensure that forest plan direction is clearly linked to terms and conditions of a grazing permit, the agency is considering amending the grazing regulations to specifically require that forest plan management direction and resource objectives applicable to livestock grazing be added to the terms and conditions of the livestock grazing permit.

B. Permit Tenure

The Granger-Thye Act of 1950 (16 U.S.C. 5801) states that "The Secretary of Agriculture in regulating grazing on the national forests and other lands administered by him in connection therewith is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years." The Federal Land Policy and Management Act of 1976 [46 U.S.C. 1752(b)] specifies that "permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that * * * it will be in the best interest of sound land management to specify a shorter term * * *." Although these statutes permit shorter terms, the Forest Service has seldom exercised the option of issuing grazing permits for less than ten years.

The Forest Service is considering basing permit tenure on a permittee's record of compliance. For a permit renewal, the permit would be issued for a full ten-year period, if the permittee has been in compliance with the terms and conditions of the previous grazing permit. If a permittee has a record of poor or minimal compliance, the agency could decide not to reissue the permit. Where the authorized officer believes the permittee has potential to operate in compliance, a probationary permit of up to five years would be issued. During the probationary period, the permitee would have the opportunity to show diligence in complying with the terms and conditions of the permit. If the permittee was in compliance during the probationary period, a new ten-year permit would be issued. New applicants would be issued a permit for a shorter period, such as five years, so that a new permittee can satisfactorily demonstrate responsible stewardship of the rangeland resource.

C. Disqualification

Terms and conditions are specified in grazing permits to ensure the proper management, and thus protection, of public resources. Current agency regulations make no provision for the disqualification of a permittee whose permit has been cancelled for violations of regulations or permit terms. The lack of regulatory authority to guide disqualification of livestock operators whose conduct and management practices require continuous agency action has resulted in increased costs to the government and frequent resource damage.

The Forest Service is considering establishing provisions that would disqualify for up to three years any applicant who has had a Forest Service or other Federal grazing permit cancelled for violations within the past 36 calendar months. The agency believes a disqualification rule would serve as an effective inducement for permittees to comply with the terms and conditions of the grazing permit.

4. *Administrative Consistency with the Bureau of Land Management*

In the West, National Forest System lands and Federal lands administered by the Bureau of Land Management (BLM) are often intermingled or adjacent. Many livestock operators hold permits from both agencies. Accordingly, grazing policy and procedures of the two agencies should be as similar as their statutory authorities allow. A key objective of the proposed rule is to identify opportunities to adopt policies and procedures similar to those of BLM.

A. Citizenship Requirements

The Forest Service does not presently issue grazing permits to applicants who are not citizens of the United States. Grazing permits are the only Forest Service permits with this qualification. To achieve consistency with other

Forest Service regulations and be more consistent with the Bureau of Land Management, the Forest Service is considering eliminating the eligibility requirement that an applicant must be a citizen of the United States or have filed a petition for naturalization.

B. Livestock Ownership

Current Forest Service regulations require that applicants for and holders of term permits own the livestock grazed under permit. The Forest Service is reviewing this permit requirement of livestock ownership since the Bureau of Land Management and may State Land Departments do not have this requirement. Eliminating the livestock ownership requirement would increase a permittee's ability to make short-term adjustments in livestock numbers. This flexibility could allow Forest Service managers to be responsive to seasonal or annual changes in forage production and changes in resource management objectives that are affected by livestock. It also would reduce the agency's administrative costs associated with the verification of ownership of livestock.

C. Penalties for Unauthorized Use

The Forest Service currently defines unauthorized use as livestock grazing use that is not related to use authorized by a grazing permit (other than use associated with recreation, camping, wild horses, etc.). Excess use is livestock grazing use related to use authorized by a grazing permit where the grazing period or number of livestock exceeds the amount authorized. The Bureau of Land Management identifies both of these as unauthorized grazing use.

Forest Service financial penalties charged for unauthorized and excess livestock grazing on National Forest System lands have been set by the average monthly rate for pasturing livestock on privately owned non-irrigated land for the eleven western states as determined by the Department of Agriculture. In contrast, the Bureau of Land Management has used a charge system using this same value as a base charge which is assessed for non-willful unauthorized use. For willful unauthorized use, the Bureau of Land Management charges double the base rate, and for repeated willful unauthorized use, three times the base rate.

Forest Service financial penalties have not been effective as a deterrent for preventing unauthorized or excess use. The agency is considering adopting the Bureau of Land Management's definition and financial penalties for unauthorized use as a more effective way of gaining compliance.

5. *Administrative Efficiency*

Temporary grazing permits are currently issued for a period of up to one year to allow livestock grazing on some allotments in non-use status, where excess forage is available after permitted use is achieved, to respond to situations such as drought which affect current permits, and for other purposes. Livestock use permits are issued for periods up to one year for grazing unallocated forage by livestock including commercial transportation livestock, livestock trailing across National Forest System lands, and research livestock. Situations requiring use of these types of permits may continue for more than one year. When this is the case, annual processing of these permits and applications increases administrative costs. Using two types of permits to cover temporary livestock grazing uses is often confusing and requires maintenance and use of two sets of policy and procedures. The Forest Service is considering combining these two types of permits into a single type of permit to cover all temporary livestock grazing where a permit is needed. The agency is also considering allowing the issuance of these permits for periods of up to three years.

6. *Advisory Boards*

Grazing advisory boards were authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753). This provision of the Act, however, expired on December 31, 1985, and has not been renewed. The Forest Service is planning to remove the provisions for grazing advisory boards from the regulations.

Under the Federal Advisory Committee Act (5 U.S.C. app. 1) and the implementing regulation at 41 CFR part 101–6.10, the National Forest Management Act of 1976 (Sec. 14. (b)), and the Food and Agriculture Act of 1977 (7 U.S.C. 2281), responsible officials will continue to have the authority to establish multiple-use boards reflecting a variety of viewpoints and resource interests to provide input on management of National Forest System rangeland resources.

7. *Grazing Fees*

Preliminary regulatory text representing one option for revising the current grazing fee system is set out at the end of this notice. This option meets the initial criteria established by the Departments of Agriculture and the Interior to guide selection of a new fee formula. Those criteria are:

1. The fee charged for livestock grazing should approximate market value. Using market value assures that the public receives a fair return for the private use of publicly owned resources.
2. The fee will not cause unreasonable impacts on the stability of western ranching communities.
3. The grazing fee should recover some reasonable amount of government administrative costs, thereby reducing the tax burden.
4. The fee system should be understandable and relatively inexpensive to administer.

The option presented for comment in this advance notice would use a base value adjusted annually by the change in the private land lease rate. Under this option, a new base value of $3.96 would be established for 1991. The initial fee methodologies analyzed by the Departments of the Interior and Agriculture would result in a 1993 grazing fee range of $3.51 to $9.39. This range excludes the current fee formula, which has resulted in a fee far below market value. It also excludes a regional fee structure, also evaluated, which would result in fees as high as $11.08 for 1993 in the Northern Great Plains. The analysis clearly points to an appropriate range of $3.51 to $5.05 for a 1993 fee. It is this range which became the focus of further analysis. The mid-point within this range was selected to serve as a basis for establishing a future fee structure.

Under the option presented at the end of this notice, the base value would be adjusted annually by the change in the Forage Value Index (FVI), which is the change in the private grazing land lease rate in the 17 Western States.

The grazing fee charged for 1993 was $1.86 per head month. To change to the new base value from the fee of $1.86, this option suggests that the $2.10 adjustment be phased in over a three-year period, an increase of $0.70 per year. Each year, the fee would also be adjusted by the change in the Forage Value Index. After the three-year phase-in, the grazing fee would be allowed to change by no more than 25 percent annually, plus or minus, from the amount charged during the previous year. The three-year phase-in and the twenty-five percent per year limit are possible ways to reduce the impact of fee increases on ranchers and ranching communities.

This preliminary option also would provide for decreases in fees in recognition of required conservation practices. The use of credit for required conservation practices on the national grasslands would be similar to the use of range betterment funds on national

forests for implementing rangeland improvement activities. The use of the range betterment fund is not authorized for national grasslands, under the option presented in this advance notice. In the case of the national grasslands, the costs of doing the conservation practices required by the Forest Service and performed by the local grazing association or individual national grassland permittee would be subtracted before the Forest Service collects the grazing fee. In addition, provision is made for giving credit for administrative costs incurred by a local grazing association that otherwise would be a cost to the Forest Service; for example the cost of issuing individual permits and monitoring the number of livestock grazed.

It should be noted that under this option the grazing fee applied to national forests in the west would apply to all national grasslands. The national grasslands historically have been subject to a different fee system than the one used for national forests. In 1992, following consultation with the Association of National Grasslands, the Secretary of Agriculture reduced the national grasslands grazing fee to an amount commensurate with the national forest grazing fee. The option set out in the advance notice would incorporate this change so that the grazing fee on national grasslands would be the same as the fee charged for livestock grazing on lands designated as national forests and land utilization projects.

Summary

National Forest System rangelands are receiving increased demands from a growing population. Although traditionally the primary use of rangelands has been livestock production, the Forest Service also recognizes the importance of rangelands in providing for biodiversity, productive habitat for wildlife and fisheries, clean air, clean water, quality outdoor recreation opportunities, and long-term ecosystem stability. In addition, agency management of rangelands must be responsive not only to permittees, but also to an environmentally concerned public whose interests are much broader than livestock grazing alone and who are vocal in demanding that the agency improve those rangelands that are in unsatisfactory condition. Achieving rangeland management that is sensitive to the environment while sustaining productivity requires that agency direction allow the best use of technology and provide the flexibility to be responsive to change.

The Forest Service is planning to propose new regulations to incorporate an ecosystem approach for the management of rangelands in the National Forest System, to improve the administration of grazing permits, to emphasize and improve rangeland stewardship, to revise the system for determining grazing fees on western national forests and grasslands, and to achieve greater consistency with the rangeland management policies between the Forest Service and the Bureau of Land Management. Public suggestions on provisions to be included in a proposed rule are invited and will be considered in the development of a proposal.

Dated: August 9, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

Grazing Fee Revision—Preliminary Text

The following preliminary regulatory text embodies one option for revising grazing fees on federal lands.

36 CFR Part 222, Subpart C

Section 222.50 General Procedures.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest System lands, except for livestock authorized free of charge pursuant to § 222.3(c)(2)(ii) (B) through (g).

(b) In calculating fees, the agency shall give no consideration for any permit value that may be capitalized into the permit holder's private ranching operation.

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one cow, bull, steer, heifer, horse, or mule or five sheep and goats. A full head month's fee is charged for a month of grazing by adult animals. An animal is considered to be adult it if is weaned, is 6 months of age or older at the beginning of the permitted period of use, or will become 12 months of age during the permitted period of use.

(d) When sheep grazing is already authorized by a grazing permit, no additional charge shall be made for the privilege of lambing upon National Forest System lands.

(e) The grazing fee described in §§ 222.51, 222.53, and 222.54 may be charged for all livestock grazing or livestock use of National Forest System lands authorized by a temporary grazing permit. However, the authorized officer may waive the fee; lower the fee when the Forest Service imposes limitations or requirements on use that reduce value to the user or increase user costs; or raise fees.

(f) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use, unless otherwise authorized by the Chief of the Forest Service.

(g) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief of the Forest Service may specify.

(h) The fee year for the purpose of charging grazing fees will be March 1 through the following February.

Section 222.51 Grazing fees in the West.

(a) A grazing fee shall be established annually for livestock grazing or livestock use of National Forests, National Grasslands, and land utilization projects in the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and on National Grasslands in the States of Kansas, Oklahoma, and Texas. The grazing fee established by this does not apply to grazing or livestock use on the National Forests in the States of Oklahoma and Texas. As used in this section, the term "West" refers to these 17 States.

(b) The annual fee for livestock grazing or livestock use of the National Forests, land utilization projects, and National Grasslands in the West shall be determined by a "base value" which is adjusted annually by the percent change in the rate for grazing livestock on private grazing lands as measured by the forage value index (FVI). The equation is as follows: Grazing fee per head month = Base value times Forage Value Index. The FVI is computed by dividing the current Private Grazing Land Lease Rate (PGLLR) per animal unit month by the 1991 base PGLLR of $8.67.

(c) The base value for 1991 shall be $3.96 per head month.

(d) The 1991 base index value of $8.67 will be used for computing the FVI.

(e) The change from the $1.86 1993 actual fee to the new base value of $3.96 shall be phased in over a three-year period, computed as follows:

(1) The fee for 1994 is ($1.86+$0.70) times FVI.

(2) The fee for 1995 is ($1.86+$0.70+$0.70) times FVI.

(3) The fee for 1996 is ($1.86+$0.70+$0.70+$0.70) or $3.96 times FVI.

(f) Starting with the year 1997 and, thereafter, the annual fee shall be computed, as specified in paragraph (b) of this section, using $3.96 times the FVI, except that the fee charged may not be increased or decreased by more than 25 percent from the fee charged the previous year.

Section 222.52 National Grasslands fee adjustments for conservation practices.

(a) *Computation of grazing fee.* Grazing fees for National Grasslands may be adjusted by giving credit for the implementation of Forest Service required conservation practices. Where livestock grazing is administered by a local grazing association under the terms of a grazing agreement with the Forest Service, credit may also be given for specified administrative costs. The Forest Service shall establish standards in Forest Service Manual Title 2200 (36 CFR 200.1) to guide authorized officers in giving credits for required conservation practices and specified administrative costs.

(b) *Credit for conservation practices.* Requirements for permittee construction or development of conservation practices shall be incorporated into term grazing permits, including grazing agreements, with credits for such improvements to be applied toward the annual grazing fee. Fee credits shall be allowed only for conservation practices which the Forest Service requires the permittee to construct or develop to meet management direction contained in relevant forest land and resource management plans, related implementation plans, and the term grazing permit or grazing agreement. The conservation practices must be used to achieve or maintain vegetative conditions for resource protection, soil productivity, riparian, watershed and wetland values, wildlife and fisheries habitat, and other related values.

(c) *Credit for administrative costs.* In those locations where grazing associations carry out administrative duties as defined in a grazing agreement with the Forest Service, credits for specified reasonable administrative costs of grazing associations may be applied toward the grazing fee. Allowable costs are limited to those activities which the Forest Service would otherwise incur if the grazing association did not perform these tasks. An example, could be a credit to offset the cost of issuing of individual permits and monitoring the number of livestock grazed. Qualifying costs and activities must be identified in each grazing agreement.

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Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 4, 1780, and 4100
Grazing Administration Regulations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 4, 1780, and 4100

[WO-220-4320-02 24 1A]

RIN 1004-AB88

Grazing Administration—Exclusive of Alaska; Department Hearings and Appeals Procedures; Cooperative Relations

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior gives notice of its intention to revise the grazing administration regulations at 43 CFR part 4100 to improve administration of grazing permits and leases, to place greater emphasis on stewardship of the rangeland resource, to obtain fair and reasonable compensation for the grazing of public lands, to manage the rangeland resource using an ecological approach, and to achieve greater consistency between the grazing administration regulations of the Bureau of Land Management (BLM) and the Forest Service (FS). The amendments to the regulations being considered stem from an effort to reform grazing administration and management of the rangeland ecosystem on the public lands. In addition to the amendment of 43 CFR part 4100, the Department of the Interior is providing notice of its intent to revise 43 CFR part 1780—Cooperative Relations, and 43 CFR part 4—Department Hearings and Appeals Procedures. Amendment to these regulations would be necessary to complement the actions being considered in rangeland reform. This advance notice of proposed rulemaking presents a detailed description of the actions being considered, including preliminary regulatory text. This level of detail is provided to assist the reviewer. Public comment is invited and will be considered in the development of the proposed rule.

DATES: Comments on this advance notice of proposed rulemaking must be submitted in writing by September 13, 1993. Comments received or postmarked after this date may not be considered in the issuance of the proposed rule.

ADDRESSES: Send comments on this advance notice of proposed rulemaking to Director (200), Bureau of Land Management, P.O. Box 65800, Washington, DC 20035-9998.

Comments will be available for public review at the Division of Legislation and Regulatory Management, room 5555-MIB, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark W. Stiles, Regulations Analyst, Division of Legislation and Regulatory Affairs, Bureau of Land Management, (202) 208-4256.

SUPPLEMENTARY INFORMATION:

Introduction

This advance notice of proposed rulemaking provides a detailed description of how the Department of the Interior envisions amending pertinent parts of title 43 of the Code of Federal Regulations. The preliminary regulatory text contained in this notice represents a portion of an overall effort titled "Rangeland Reform '94". In addition to the revisions of the current grazing regulations being considered, Rangeland Reform '94 would involve the development of standards and guidelines for livestock grazing in rangeland ecosystems, and the revision of agency manuals and handbooks and other directives to provide procedural guidance to field managers. Proposed national standards and guidelines that would provide policy-level direction for livestock grazing in rangeland ecosystems are presented as an appendix to this advance notice of proposed rulemaking. Requests for copies of the Rangeland Reform '94 summary document which explains the various components of reform should be directed to the address above.

Rangeland Reform '94 is a proposal developed by the Department of the Interior through the BLM, in close cooperation with the U.S. Department of Agriculture and the FS, for effecting fundamental policy changes, including adjustment of the Federal grazing fee, in its rangeland management program. The intent of the proposed changes is to make the BLM's rangeland management program more compatible with ecosystem management, to accelerate restoration and improvement of the public rangelands, to obtain for the public fair and reasonable compensation for the grazing of livestock on public lands, and to streamline certain administrative functions. The proposal has been based on ideas, suggestions and initiatives brought to the agencies in recent years.

In 1991 the BLM Director asked the agency's National Public Lands Advisory Council (NPLAC) to make recommendations that would help guide the BLM's rangeland management program. The NPLAC tasked a small "Blue Ribbon Panel" (Panel) to review the rangeland management program needs and to recommend reform. The Panel produced a report, "Rangeland—Program Initiatives and Strategies", and presented it to the BLM Director and the Secretary of the Interior in March 1992. The report was then distributed to the various rangeland interest groups and individuals. The NPLAC Panel recognized that the report was only the starting point toward the goal of wisely managing resources and meeting human needs. The Panel identified six primary issues for improving rangeland management in the BLM. Foremost among the six issues was the need for well-defined rangeland program goals and objectives embracing the diversity and sustainability of natural resources and the multitude of issues, values and interests associated with the public lands of the West. The Panel also concluded that BLM's primary concern should be the protection of the basic rangeland components of soil, water and vegetation, explaining that, "without assurances for the future well-being of these basic natural resources, there is precious little to squabble about."

Using the Panel report as a springboard, the BLM initiated a major effort to review its overall mission and responsibilities, and to analyze critically how it conducts resource management across the full spectrum of its activities and programs. In the spring and summer of 1993 the Secretary of the Interior held five Town Hall meetings in the West to discuss rangeland management. These meetings gave the livestock industry and other affected or interested parties an opportunity to voice their concerns and provide recommendations about managing public rangelands. From the findings of the Panel and the Town Hall meetings a common theme emerged: the need for reform of the management of public rangelands within the framework of ecosystem management.

Ecosystem management is a process that considers the total environment. It requires the skillful use of ecological, economic, social, and managerial principles in managing ecosystems to produce, restore, or sustain ecosystem integrity and desired conditions, uses, products, values, and services over the long term. Management of individual components of ecological systems for immediate needs is tempered or expanded to responsible management centered on long-term goals and objectives targeted to the entire ecological system. Ecosystem management recognizes that people and

their social and economic needs are an integral part of ecological systems. It is consistent with the BLM's mission and direction under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*, FLPMA) and it is supported by other laws guiding the Bureau's mission.

If a fundamental shift toward ensuring that ecological processes function properly is to occur, the BLM's rangeland management program, along with other resource management programs, must undergo major change. This is the focus of this proposal. It is directed toward achieving sustainability of public land resources and attuning management to the needs of all people, present and future.

The Department feels the actions presented in this advance notice of proposed rulemaking represent the type of measures that must be taken to ensure proper administration of livestock grazing on the public rangelands while enhancing reform in the management of rangelands for the improvement, protection and proper functioning of rangeland ecosystems. The suggested actions are generally presented in the format of a proposed rulemaking. By providing the reader with specific preliminary proposed amendments to the regulations, the Department and the BLM hope to make the complex set of reform actions more understandable while at the same time identifying the types of change the Department and the BLM feel must be considered. The Department and the BLM also hope the presentation of preliminary proposed regulatory text will help to focus public comment.

In developing the concepts of Rangeland Reform the BLM is cooperating with several other natural resource agencies, professional organizations, and interest groups at the State and National level. The FS is a major participant in this effort. Rangeland Reform '94 emphasizes greater similarity and compatibility of the regulations and policies of the BLM with those of the FS and each agency is attempting to move closer together in terms of rangeland management policy. There would be differences only when the basic laws governing resource management activities of the respective agencies are different, or where there are significant on-the-ground differences. There are sound reasons for this level of consistency. Both agencies administer immense tracts of Federal rangeland, often within the same ecosystems and watersheds. Both agencies commonly serve the same grazing permittees and lessees and other groups and organizations which have a keen interest in Federal rangeland policies. There have been many public calls and recommendations for greater consistency in the agencies' management of resources.

In conjunction with this advance notice of proposed rulemaking, the Department of the Interior is reissuing a notice of intent to prepare an environmental impact statement (EIS) and reopening the scoping period for the EIS that will assess the effects of Rangeland Reform '94 on the quality of the human environment. The notice of intent to prepare an EIS is published elsewhere in today's **Federal Register**. The 30-day comment period for the notice of intent will coincide with this advance notice of proposed rulemaking. The EIS will examine the entire reform package and alternative courses of action, including actions reflected in this advance notice of proposed rulemaking. The FS will be a cooperating agency in the preparation of the EIS. Although an EIS is typically not prepared for changes in national program guidance or rulemakings, the Department has decided to prepare an EIS for Rangeland Reform '94 in order to fully disclose proposed actions, alternatives to proposed actions, and the resultant environmental consequences.

This advance notice of proposed rulemaking presents preliminary proposals for amending the BLM's regulations pertaining to grazing administration, including a specific grazing fee option which has been selected from a range of fee alternatives considered by the Secretary of the Interior and the Secretary of Agriculture. The specific fee option and other preliminary proposed amendments are presented to permit public comment to be focused on the types of reform measures the Department and BLM believe to be necessary; however, a full range of options will be presented and evaluated in the draft EIS before the Secretaries make a final decision on the grazing fee and other amendments to the regulations.

The Department of the Interior has made a preliminary determination that the proposed rule, if promulgated as presented in this advance notice, would not constitute a major rule under Executive Order 12291 and that no Regulatory Impact Analysis would be required. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has made the preliminary determination that the proposed rule, if promulgated as presented in this advance notice, may have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). Reviewers are invited to comment on these preliminary findings and to provide information to be used in conducting the assessment of economic effects.

The following discussion summarizes the preliminary proposed amendments and explains the specific changes being considered. These changes are presented in the format of a proposed rule to assist in generating meaningful public discussion and comment prior to developing a proposed rule. Although the preliminary text uses the term "proposed rule", it should not be confused with the proposed rule to be prepared, after consideration of comments received on this advance notice, and made available for public comment this fall.

Brief Discussion of Major Issues

The general topics of the proposed changes to existing regulation and policy are the Federal grazing fee, affected interests, consideration of applicant history of compliance in the issuance of permits or leases, full force and effect of decisions, grazing advisory boards and district advisory councils, issuing grazing preference, permit or lease tenure, prohibited acts, range improvements and water rights, rangeland standards and guidelines, subleasing, suspended non-use, and unauthorized use.

The Federal Grazing Fee

A particularly controversial issue over the years has been how to devise a fair and reasonable grazing fee. The proposed rule presents a formula that is intended to correct the fundamental problems of the present fee, the wide disparity between rates charged for livestock forage on private and on Federal lands and the failure to follow the trend of forage value in the private market, and to increase the funding available to improve ecological conditions. A major criticism of the current fee formula is that while forage value in the private market has increased substantially over time, the Federal grazing fee formula has produced relatively small increases or even decreases. The proposed formula is

essentially a return to the simpler formula that was in effect before 1978 but uses an updated base value. The proposed formula includes a base value which considers the cost differences of operating on public lands as compared to private leases, as well as appraisal data. It would be adjusted annually to reflect the change in the private land lease rate in the 17 Western States (i.e., forage value index). Although no explicit index based on production costs or value of products produced is used, both factors influence the prices paid for forage and so are to some extent implicit in the forage value index.

A base value of $3.96 per animal unit month (AUM) is proposed in this rule. This value represents a midrange between the results obtained through the use of two methods for estimating a fair base value. Explanation of the methodology used in arriving at the $3.96 base value is presented in the discussion of section 4130.7–1. The proposed base value would be phased in over a 3-year period. Thereafter, annual increases or decreases in the grazing fee would be limited to 25 percent of the amount charged the previous year to provide for a measure of stability that will facilitate business planning.

Affected Interests

Public involvement is critical to planning for and managing the uses of the public lands. The levels of public involvement and opportunities for affected interests to participate in the management of public rangelands have lacked consistency among the various offices in the BLM. As the BLM moves toward implementation of ecosystem management, there is an increasing need for broader and more effective public involvement. The proposed rule and policy of the BLM would provide better guidance concerning public participation and would establish criteria for identifying affected interests. The BLM would ensure that the public is afforded reasonable opportunities for participation in rangeland management, particularly in the allotment level planning, monitoring, and evaluation, and in formulating or modifying terms and conditions and standards and guidelines for permits and leases. The BLM will emphasize early public involvement to maximize the benefit of input while reducing the potential for controversy and misunderstanding.

Disqualification Based on Applicants' History

Section 402 of FLPMA (43 U.S.C. 1752) requires that, so long as lands for which the grazing permit or lease are issued remain available for livestock grazing, first priority for renewal of a new permit or lease shall be given to existing permit or lease holders who are in compliance with the Secretary's rules and regulations and the terms and conditions of their permit or lease. The Taylor Grazing Act of 1934 (43 U.S.C. 315b) has a similar provision. Thus, Congress has provided a clear requirement that permittees or lessees must meet if they are to qualify for renewal of a permit or lease. In addition, the Department proposes to consider compliance with all Federal and State laws and regulations pertaining to grazing and terms and conditions of Federal and State grazing permits and leases when determining qualification for renewal or new permits and leases.

The public reasonably expects the public rangeland permittees and lessees to exercise care for the land, just as a private lessor expects due care of private property. Rangeland resources, particularly soil, vegetation and water, are sensitive to misuse and once damaged or altered may require decades to recover. The BLM has experienced instances where noncompliance with the terms and conditions of permits or regulations has placed public rangeland resources at risk. The proposed rule makes clear that an applicant's history of noncompliance with, or violation of, rules and regulations pertaining to grazing and the terms and conditions of BLM or of other Federal or State grazing permits and leases will be reason for the BLM to withhold the renewal of leases or permits and to reject applications for new permits and leases. The finding whether an applicant is in substantial compliance with terms and conditions of grazing permits and related laws and regulations would be made by the authorized officer.

Full Force and Effect of Decisions

The proposed rule would allow most decisions of the authorized officer (BLM field manager) to become effective at the end of the 30-day appeal period as provided in 43 CFR 4.21, as revised (58 FR 4939, Jan. 19, 1993). A decision that is necessary to prevent damage to soil, water, or other resources could be placed in full force and effect, meaning that it could be implemented during the 30-day appeal period. The regulations in 43 CFR parts 4 and 4100 currently allow the authorized officer to place decisions in full force and effect in emergencies to stop resource deterioration, but provide that other decisions that are appealed shall be suspended pending final action on the appeal. This automatic stay of decisions with the filing of an appeal has, in some cases, made it difficult for the BLM to take necessary, responsible action.

Under the proposed rule the decisions of the authorized officer would be issued subject to the provisions of 43 CFR 4.21. The regulations at 43 CFR 4.21 provide that (1) persons adversely affected by a decision shall have 30 days in which to file an appeal and a petition to stay the effect of a decision, (2) the Office of Hearings and Appeals must consider whether to grant a stay within 45 days of the end of the appeal period, and (3) if a stay is granted the decision will not be effective pending final determination of the appeal. Under the proposed rule the authorized officer may provide that the final decision shall be effective on the date of issuance or the date specified in the decision when necessary to protect soil, vegetation and other resources from damage. Decisions made in these circumstances would remain in effect until such time as a stay is granted or until the actions taken are no longer needed to protect resource conditions.

Grazing Advisory Boards and Advisory Councils

To address the broader management focus articulated in the Rangeland Reform '94 package, new advisory committees would be chartered. Grazing Advisory Boards (GABs) and District Advisory Councils (DACs), except for the California Desert District Advisory Council established pursuant to Section 601 of FLPMA, would be discontinued. The provisions for the National Public Lands Advisory Council (NPLAC) would also be removed from the regulations. The BLM intends to establish new committees to be known as "resource advisory councils" under the provisions of Section 309 of FLPMA to provide guidance in the management of public lands. These new committees will conform to the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix) and, when chartered, will serve many of the same purposes as the GABs and DACs but will generally be organized to advise on management of a broader area delineated according to the commonalities of the public land resources rather than administrative boundaries. Removal of the section of the existing rule pertaining to the NPLAC would not preclude the use of national advisory committees. However, the Department intends that resource advisory councils or other advisory committees would serve the purpose of the NPLAC.

The authority to continue the GABs expired pursuant to FLPMA in December 1985. Through a notice published in the Federal Register, May

14, 1986, the Secretary established 40 district GABs under the Department's general agency authority in Title 5 U.S.C. The function of these boards was to provide advice to the BLM on the development of allotment management plans including related range improvements, related rangeland inventory and monitoring, and the expenditure and use of range improvement funds for range improvements. The reasons for establishing the GABS provided in the 1986 **Federal Register** notice included that the boards would provide necessary advice concerning animal husbandry, managing range livestock operations, understanding range facilities and improvement design, installation and maintenance needs, would provide peer contacts for other permittees concerning allotment management plans (AMPs), and would encourage private contribution in appropriate range improvements.

Grazing advisory boards and district advisory councils have performed dedicated and useful service to BLM field managers over the years, but the increased emphasis by BLM on maintaining or restoring healthy sustainable ecosystems necessitates a more diverse membership and a broader geographic scope. To make this transition, the BLM must rely on both good science and advice, and feedback from a wide array of viewpoints on how to best manage the rangeland ecosystem. Resource advisory councils, representing a broad range of interests, experience, and expertise, would provide focused, consensus-based advice and recommendations for achieving healthy, sustainable ecosystems. Resource advisory councils would serve the purposes for which GABs and DACs were established. The proposed changes in 43 CFR part 1780 are also intended to allow the BLM to cooperate with other Federal land management agencies to jointly charter and share advisory committees.

The proposed rule would require that two or more resource advisory councils be established for the area within the jurisdiction of each BLM State Office to provide guidance on the management of public lands and resources within a specified area. At present, there are three or more GABs and DACs operating within the area administered by each BLM State Office, generally one GAB and one DAC providing advice to the same BLM district manager for the same geographic area. Under the proposed rule there would generally be only one resource advisory council for a given geographic area. Under this rule each committee would have 10 to 15 members including at least one member who is an elected local or State official. Resource advisory councils would also include members possessing knowledge and expertise concerning animal husbandry and managing livestock operations. It is intended that the qualifications and terms of membership would be established in each committee's charter pursuant to Section 9 of the Federal Advisory Committee Act (5 U.S.C. Appendix).

Issuing Grazing Preference

The proposed rule would provide for changes in the definition of grazing preference, minimal qualifications for issuing or renewing permits and leases and allocating excess forage. Grazing preference will be used as a term to designate a priority to obtain or hold a grazing permit or lease for a Federal grazing allotment. Adopting the FS approach, BLM will no longer recognize preference as a specified number of AUMs of forage. Grazing permits and leases issued to holders of preference would specify the total number of AUMs apportioned to livestock use of specific public lands. The permittee or lessee would receive an annual authorization specifying allowed livestock use, conservation use, nonuse and any temporarily suspended use in conformance with the land use plan. The proposed rule would establish a requirement for the authorized officer to assess whether operators are in substantial compliance with the terms and conditions of their Federal and State grazing permits and leases and laws and regulations pertaining to grazing. The same assessment would be undertaken when allocating additional available forage. Thus, the Department is proposing to consider a permittee's or applicant's demonstrated stewardship and compliance with the regulations and terms and conditions of current or previously held Federal and State permits or leases in granting priority to receive permits or leases.

Permit or Lease Tenure

The proposed rule would provide for consideration of a permittee's or lessee's demonstrated performance or stewardship in determining how long the permit or lease will be effective. The BLM believes that tenure awarded on the basis of permittee or lessee performance provides a greater incentive to permittees or lessees to practice stewardship and to comply with the terms and conditions of their permits and leases. Currently, grazing permits and leases are issued for 10 years except when: (1) The land is pending disposal, (2) the land will be devoted to a public purpose which precludes a 10-year period, or (3) it is in the interest of sound land management to specify a shorter term. The proposed rule would provide for the issuance of 10-year permits or leases when the permittees, in the estimation of the authorized officer, have been in substantial compliance with all terms and conditions of Federal and State grazing permits and leases and applicable laws and regulations, and the rangeland is moving toward or maintaining desired ecological conditions. A permit or lease for five years or less would be issued when permittees or lessees have been in substantial compliance with all terms and conditions of Federal and State grazing permits and leases and applicable laws and regulations but are failing to make significant progress toward resource condition objectives. In this case the prospective permittee or lessee would be required to institute an approved plan of action for achieving resource condition objectives. A 5-year permit or lease would also be offered to new permittees or lessees. The use of the term "substantial compliance" reflects the Department's intent that technical or other incidents of noncompliance which do not adversely affect rangeland conditions or the BLM's ability to administer grazing of the public lands will not be cause to disqualify applicants.

Prohibited Acts

The proposed rule would make violations of the Wild Horse and Burro Act, Endangered Species Act and other Federal or State laws concerning conservation, protection of natural or cultural resources, and protection of environmental quality a prohibited act. The proposed rule would adopt language that existed in the regulations prior to 1984 and is compatible with FS regulations. Upon the expiration of appeal or review periods following a conviction for violation or an administrative finding of violation of these laws the authorized officer could consider cancellation or suspension of permits and leases when the violation occurred on public land or is found to be related to authorized grazing of public land.

Range Improvements and Water Rights

The proposed rule would require that the title to all new improvements constructed on, or made to the vegetation resource of, public lands, except temporary improvements, would be in the United States. A permittee's or cooperator's interest for contributed funds, labor, and materials would be

documented for proper credit in the event the land is disposed of or the permit or lease is subsequently issued to a different party. The United States would assert its claims and exercise its rights to water developed on the public lands for the benefit of public land resources and uses.

Range Improvement funds are the portion of the grazing receipts that are appropriated by law for range betterment. The proposed rule would provide that one-half of the range improvement funds would be made available to the State and District from which they were derived. The remaining one-half would be allocated by the Secretary or designee on a priority basis for the protection and betterment of the rangeland ecosystem. Range Improvement funds would be used for all forms of on-the-ground rangeland betterment pursuant to FLPMA (43 U.S.C. 1751b) and the Taylor Grazing Act (43 U.S.C. 315i).

Standards and Guidelines

The proposed rule makes reference to applicable standards and guidelines for livestock grazing in rangeland ecosystems. In implementing the Rangeland Reform '94 initiative, the Department intends to develop standards and guidelines for livestock grazing in rangeland ecosystems to be incorporated in land use plans, allotment management plans or other activity plans, range improvement permits, and as terms and conditions of all permits and leases. These standards and guidelines would be developed to reflect the best available science for specific ecosystems or ecoregions, and to provide greater consistency in rangeland management from office to office and agency to agency within each rangeland ecosystem. The standards and guidelines would reflect properly functioning conditions, or those conditions that must be met to ensure sustainability and healthy, productive ecosystems. When data show that properly functioning conditions are not being met, immediate corrective action would be required to be initiated. The BLM and the FS, as well as other agencies, will cooperate in the preparation of appropriate standards and guidelines. Preliminary proposed standards and guidelines for the management of livestock grazing in rangeland ecosystems are presented in an appendix to this advance notice of proposed rulemaking.

Integrating standards and guidelines for the BLM rangeland management program would be a tiered process. The national standards and guidelines would be mandatory. Regional standards and guidelines would be developed when appropriate to ensure that significant values on the local and regional level, which cannot be treated by national direction, would be addressed. Regional standards and guidelines could address values such as waterfowl habitat, essential habitat for bighorn sheep and elk, neotropical migratory bird habitat, critical habitat for endangered species, riparian-wetland conservation areas, salmon spawning areas, and high-use recreation areas such as wild and scenic rivers.

Proposed national standards and guidelines that would provide policy-level direction for livestock grazing in rangeland ecosystems are presented as an appendix to this advance notice of proposed rulemaking. The Department does not intend that these standards and guidelines would be made part of 43 CFR part 4100.

Subleasing

The proposed rule would redefine subleasing as an unauthorized transfer of a grazing permit or lease or an unauthorized grazing use allowed by the permittee. The proposed rule would retain the provision for legal transfer of base leases and permits and the pasturing of livestock owned by persons other than the permittee or lessee. The Department recognizes that a significant amount of the public lands exist as scattered, small, unfenced parcels that are surrounded by private or State-owned land, or are situated in a checkerboard pattern. The fencing of these lands by the BLM in order to provide greater management control makes little economic or environmental sense. Neither does a prohibition against second party leases where the United States is a minority landowner because enforcement would be untenable. At the same time the BLM must be responsive to the fact that the public may not be getting its fair share from a private transaction involving a publicly owned resource. The General Accounting Office (see e.g., RCED–86–168BR), the Office of the Inspector General (see report #92–1–1364) and numerous public interests have expressed concern that permittees and lessees who sublease are unduly benefitting from their permits or leases.

The current and the proposed rule recognize two legitimate types of private leases or agreements affecting public land grazing privileges. The first type is a base property lease and transfer of the Federal grazing permit. One of the requirements for obtaining a grazing authorization is that an applicant must own or control base property to which Federal grazing preference is attached. In a base property lease, a permittee leases base property to another party and the corresponding Federal permit or lease is transferred, if approved by BLM, to the base property lessee who then becomes the new BLM permittee. The second type of lease arrangement is a "management" lease, also referred to as a pasturing contract or agreement. A permittee is authorized by the BLM to allow a second party's livestock to graze on public lands when the livestock are managed by the permittee under the terms and conditions of the existing permit or lease. Permittees must certify that they control the livestock. A key feature of the proposed rule is the provision for levying and collecting a surcharge for Federal grazing use when the BLM approves the transfer of the grazing preference that is attached to a base property, or approves an application to graze unowned livestock to be managed by a permittee or lessee. The surcharges are proposed as a means to collect a "landlord's share" of the lease or management fee. Under the proposed rule the surcharge for a transfer and permit would be an additional 20 percent on all grazing fee billings. The surcharge for pasturing unowned livestock would be 50 percent on grazing fee billings. Where a permittee both leases the base property and grazes unowned livestock, a 70 percent surcharge would be required on grazing fee billings. The Department believes the use of a surcharge is an efficient method for collecting a landlord's share of the lease or management fee without the added costs for accounting, enforcement, and processing associated with other options. Permittees or lessees who knowingly falsify information to avoid paying the surcharge would be subject to penalties including collection of amounts deemed due and possible cancellation of a lease or permit. In addition, the permittee could be prosecuted for fraud.

Suspended Nonuse

The proposed rule would remove reference to suspended nonuse. The AUMs of suspended nonuse that are currently shown in permits and leases would be eliminated as leases and permits are renewed or transferred. Even though the BLM proposes to eliminate suspended nonuse, it will still maintain the authority, as well as a process for increasing active grazing use, if it is consistent with resource management plan decisions and substantiated by monitoring.

Suspended nonuse is a term used to designate AUMs which were once available for active grazing use but were

determined to be unavailable and suspended from grazing by a decision or through agreement. The term originated during the 1940's when the BLM initiated range surveys to "adjudicate" or balance grazing demand with the rangeland capability. Where forage demand exceeded the forage production capability, called rangeland "carrying capacity", the over-obligated AUMs were placed in suspended nonuse. Suspended nonuse creates an unnecessary administrative burden for the BLM because of record maintenance. Over the years the BLM's use of the term "suspended nonuse" led to the notion that suspended nonuse establishes a priority for available forage. Additional available forage, however, is to be allocated according to the objectives and guidelines of land use plans.

Suspended nonuse is also confusing to prospective permittees, realtors and brokers who deal in ranch properties, and other persons interested and involved in public rangeland management. The BLM created the suspended nonuse category because of the prevailing belief that suspended AUMs could be restored through improved management or through brush control, reseeding of more productive forage grasses or other restoration practices. However, it has been the policy of the BLM not to grant priority to suspended nonuse in the allocation of available forage when land use plans are prepared or modified. There appears to remain, however, a significant number of permittees who believe, regardless of land use planning allocations, that suspended nonuse establishes a "priority" for any increased forage. There are many reasons why only a small portion of suspended nonuse has been restored to active use: many adjudication settlements continued an over-allocation of livestock forage; historically, insufficient forage was allocated for wildlife, wild horses and burros, soil, and watershed protection; non-forage shrubs and junipers reinvaded seedings and brush control treatment areas; and shrubs, junipers and invasions of rangelands by noxious or poisonous species reduced available forage. A final reason, receiving greater emphasis with improved knowledge and understanding of natural processes, is the valuable role vegetation plays in preventing accelerated erosion, cycling water and nutrients, and in maintaining environmental quality, all factors that must be considered in the allocation of forage.

Unauthorized Use

The proposed rule would provide authority for nonmonetary settlement of unauthorized use where the use is clearly unintentional, incidental in nature, causes no resource damage, and results in no substantial forage consumption. The BLM recognizes that total permittee control of permitted livestock is not always possible. In some cases, livestock control measures are ineffective for reasons outside the permittees' control. For example, gates may be left open by other public land users. Attempts to prevent all unauthorized use often require more restrictive and costly fencing or cattleguards. In many cases, this is incompatible with other resource management objectives. Incidental or "innocent" trespass actions often cause conflict between the BLM and even the most responsible grazing permittees and lessees. The BLM has often settled these cases, for good reason, without a monetary settlement. However, existing regulations do not provide for nonmonetary settlement.

An audit conducted by the General Accounting Office titled "BLM Efforts to Prevent Unauthorized Livestock Grazing Need Strengthening" (GAO/RCED–91–17, December 1990), recommended that the BLM amend the grazing regulations to establish a procedure for resolving small unauthorized use incidents at the local level. The proposed changes would allow BLM field managers to make nonmonetary settlement of incidental, unintentional unauthorized use where no resource damage occurs and no substantial forage is consumed. At the same time, the Department has retained the authority to take decisive punitive action against persons allowing animals to graze or be driven across public lands without authorization or against the terms and conditions of their permit or lease.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2 Objectives

The proposed rule would amend the objectives statement for part 4100 by including as objectives the preservation of public land and resources from destruction and unnecessary injury and the enhancement of productivity for multiple use purposes.

Section 4100.0–5 Definitions

The proposed rule would revise 11 definitions in § 4100.0–5 and add three new definitions. Generally these amendments would reduce redundancy and make the definitions more concise, germane, and understandable.

The proposed rule would redefine *Active use* to include conservation use and exclude nonuse or temporary suspended use.

The proposed rule would modify the definition for *Affected interest* to provide expanded criteria that would help the authorized officer determine which parties are affected interests. The broadening of the definition of affected interest better reflects the requirements of sections 202(f) and 309(e) of FLPMA. The proposed definition would establish that a party shall be considered an affected interest when the authorized officer determines:

(1) The grazing administration decisions of the BLM could affect an individual's, group's or organization's legitimate use of the public land, or adjacent owner's land, resources, or use authorizations;

(2) The party is a recognized representative of the community interest in a land use or resource value; or

(3) The party could contribute knowledge, expertise or assistance in planning, monitoring, evaluating and formulating decisions concerning grazing permits, rangeland improvements, or management actions.

The definition of *Allotment management plan* would be modified to better describe the focus and purpose of the plan.

The definition of *Consultation, cooperation and coordination* would be modified to reflect the proposed discontinuance of grazing advisory boards; to clarify that consultation, cooperation and coordination apply to the development, revision or termination of allotment management plans; and to include States having not only lands but also resource management responsibility (e.g., wildlife, water quality) in the subject allotment.

The proposed rule would redefine the terms *Grazing lease* and *Grazing permit* to clarify what forms of use are authorized in leases and permits and to clarify that the documents specify a total number of AUMs apportioned.

The definition of *Grazing preference* would be revised to mean the priority to have a Federal permit or lease for a public land grazing allotment that is attached to base property owned or controlled by a permittee or lessee, or applicant. The proposed revision would better match the language of section 3 of the Taylor Grazing Act of 1934. The definition would drop the reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of

grazing privileges. Like the FS, the BLM would identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

The definition of *Land use plan* would be revised to remove the inference that all management framework plans would be replaced by resource management plans.

The definition of *Range improvement* would be expanded to include protection and improvement of rangeland ecosystems as a purpose of range improvements.

The term *Subleasing* would be redefined to mean leases or other agreements that have not been approved by the authorized officer.

The definition of *Suspension* would be revised to reflect the revision of the definition of the term "preference." The term preference would be replaced with "permitted use."

The proposed rule would add a definition of *Activity plan* to mean a plan for managing a use, or resource value or use and would clarify that an AMP is one form of an activity plan.

A new definition of *Affiliate* addresses the controlling interests of a permittee's business relationships. The term is used in determining whether applicants have satisfactory records of performance for receiving or renewing a permit or lease or in receiving additional forage that becomes available for allocation to livestock grazing.

A definition of *Conservation use* would be added to mean an activity for the purpose of protecting the land and its resources from destruction or unnecessary injury. The term would include improving rangeland conditions and the enhancement of resource values or functions.

Section 4100.0–7 Cross-References

This section would be amended to guide the public to the applicable sections of the 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, and 43 CFR part 1780 regarding advisory committees.

Section 4100.0–9 Information Collection

This section would be added to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section discloses to the public the estimated burden hours needed to comply with the information collection requirements in this proposed rule, why the information is being collected, and what the information will be used for by the BLM.

Subpart 4110—Qualifications and Preference

Sections 4110.1 Mandatory Qualifications

This section would be amended by adding requirements that applicants and any affiliates must be determined by the authorized officer to have a record of substantial compliance with the terms and conditions of any Federal or State grazing permits or leases held and with the rules or regulations applicable to those authorizations. The amendment would deny issuance of a permit or lease or the renewal of permits or leases to those applicants who have had a Federal or State grazing permit or lease canceled due to violations of terms or conditions during the 36 months preceding application. The proposed amendment would also affect the allocation of increased forage under §§ 4110.2–3 and 4110.3–1 and conflicting applications under § 4130.1–2. The amendments are intended to reflect the requirements of section 2 of the Taylor Grazing Act and section 102 of FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement and development of resources, and to reflect section 3 of the Taylor Grazing Act and section 402 of FLPMA that provide for renewing permits and leases except where violations of rules and regulations and terms and conditions of the permit or lease have occurred.

Section 4110.1–1 Acquired Lands

The proposed rule would provide for disqualification of applicants who do not have a history of substantial compliance with the terms and conditions of Federal or State grazing leases and related laws and regulations.

Section 4110.2–1 Base Property

This section would be amended by clarifying that base property is required to be capable of serving as a base for livestock operations but it need not be used for livestock production at the time the authorized officer finds it to be base property.

Section 4110.2–2 Specifying Grazing Preference

This section would be renamed "Specifying permitted use" to reflect the redefinition of the term "grazing preference", and would be amended to replace the term "grazing preference" with "permitted use" and to eliminate the reference to suspended nonuse.

Section 4110.2–3 Transfer of Grazing Preference

This section would be amended to reflect the new requirements of section 4110.1–1 pertaining to the applicant's history of performance and by adding a new paragraph (f) to require that new permits or leases stemming from transfer of the base property be for a minimum time period of three years. These provisions are necessary to provide for stability in meeting the objectives of these regulations for protection and improvement of the rangelands and resources and to reduce the administrative work in processing transfers. Currently about 1,850 of the BLM leases or permits, that is approximately 10 percent of the total number, involve leased base property.

Section 4110.2–4 Allotments

This section would be amended to clarify that designation and adjustment of allotment boundaries includes the authority for, and the practice of combining or dividing allotments when determined by the authorized officer to be necessary to achieve resource condition objectives or to enhance administrative efficiency.

Section 4110.3 Changes in Permitted Use

This section would be amended by replacing the term "grazing preference" with "permitted use", and by clarifying that changes in permitted use shall be supported by monitoring data, land use planning decisions, or data collected through other studies.

Section 4110.3–1 Increasing Active Use

This section would be amended by removing paragraph (b), redesignating paragraph (c) as (b), and revising newly designated paragraph (b) to include a permittee's or lessee's history of compliance with the terms and conditions of their permit or lease and demonstrated stewardship as considerations in allocating available forage. Existing paragraph (b) would be removed because it refers to allocating forage to satisfy suspended use. The proposed rule would eliminate the concept of suspended use except when temporary suspensions are necessary. The amendment would emphasize an incentive for grazing operators to manage the rangelands so that the lands improve in condition and productivity.

Section 4110.3–2 Decreasing Active Grazing Use

This section would be amended by revising paragraph (b) to expand the list of methods for determining when a reduction in grazing use is necessary,

and by deleting paragraph (c), which refers to the concept of suspended use. The amendment would add to monitoring as the method of identifying when use exceeds the livestock carrying capacity of the area considered a reference to applicable standards and guidelines and would also add ecological site inventory and other recognized methods for determining forage production. Under this section the authorized officer would be required to take or approve action when use or patterns of use result in less than properly functioning conditions of the ecosystem, as established by applicable standards and guidelines and identified through monitoring, or when use exceeds the livestock carrying capacity. The BLM Technical Reference 4400–5 (*Rangeland Inventory* and *Monitoring Supplemental Studies*) describes acceptable methodologies for estimating forage production. The revised section would allow the use of other acceptable methods to estimate rangeland carrying capacity to be used as the basis for making initial adjustments in grazing use. Subsequent adjustments could be made as monitoring data are collected and analyzed. The amendment would therefore allow more responsive action when use or patterns of use result in a failure to meet resource condition objectives.

Section 4110.3–3 Implementing Changes in Active Use

The proposed rule would rename the section "Implementing reductions in use", and would amend paragraph (b) to remove the terms "consultation, coordination and cooperation", and "suspension of preference" and add in their place the terms "consultation" and "reductions in grazing use", respectively, and provide for the use of other methods for inventory of forage production in addition to monitoring in making an initial reduction. The change in the heading is intended to describe the section more accurately. The removal of the term "coordination and cooperation" is intended to state more precisely the requirements placed on the authorized officer. The statutory requirement for consultation, coordination and cooperation applies to the development, revision and termination of allotment management plans. The reference to other methods of estimating forage production would allow more responsive initial action to improve the rangeland condition while retaining the safeguard that subsequent adjustments be confirmed through monitoring data. The Department intends that when observed rangeland conditions suggest a need for adjustment in use but data adequate for determining the level of adjustment necessary are not available, the authorized officer will take immediate steps to collect data sufficient for determining the initial adjustment. The Department does not intend that extended monitoring would be necessary to begin needed adjustment of use. Paragraph (c) would be amended to remove the word "temporary" because it implies only one season while the influences of natural events such as drought could significantly affect vegetation health and productivity for several months or years after a drought emergency has passed. Other minor amendments clarify the action of the field manager and retain the special provisions for making emergency decisions effective.

Section 4110.4–2 Decrease in Land Acreage

The proposed rule would amend paragraph (a) by removing the words "suspend" and "suspension". As explained above, reductions in authorized use under preference permits or leases would no longer be recognized as suspended use.

Subpart 4120—Grazing Management

Section 4120.2 Allotment Management and Resource Activity Plans

The proposed rule would amend this section to incorporate other activity plans that may prescribe grazing management. It has been the BLM's policy to develop more integrated activity plans for managing resources of an allotment, such as coordinated resource management plans. These integrated plans have allowed the BLM, the permittee or lessee, and other affected interests to take a broader look at the management needs of an area while still addressing actions specific to the various uses and resource conditions of the area. The proposed rule would clarify that allotment management plans, or other activity plans, may be prepared by other agencies or permittees or lessees. Paragraph (a) would be amended by replacing the reference to district grazing advisory boards with advisory committees and including State resource management agencies in the activity planning process as explained above. The amendment would also provide that plans shall include standards and guidelines that are not included as terms and conditions of the permit or lease. The amendment would provide that flexibility granted to permittees or lessees under a plan shall be determined on the basis of demonstrated stewardship. The requirement for earning flexibility is an incentive for cooperating grazing operators to manage for the improvement of rangeland conditions. The proposed rule would make the inclusion of other than public lands in an allotment management plan or other activity plan a discretionary action. Finally, this section would reference the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq., NEPA) analysis and related public participation that is required for the planning and revision of Allotment or activity plans.

Section 4120.3–1 Conditions for Range Improvements

This section would be amended by inserting a new paragraph (f) addressing NEPA reviews of range improvement projects. The amendment clarifies the process for administering protests and appeals of the NEPA decision documents and directs appeals through the administrative remedies process (43 CFR 4160) provided for in grazing administration. At present, appeals of these decisions regarding range improvements go to the Interior Board of Land Appeals without an opportunity for a local field hearing on the facts of the case as is the practice with other rangeland grazing program decisions.

Section 4120.3–2 Cooperative Agreements

The section heading would be revised to clarify that this section deals with cooperative range improvements. The proposed rule would amend this section to make it clear that the United States would have title to all permanent improvements constructed on public lands. Title to temporary improvements used primarily for livestock handling or water hauling could be retained by the permittee or lessee. Most projects constructed and used in rangeland management facilitate the management of other resources or resource uses. To preserve their availability for multiple use the BLM must retain ownership of the project and have management control of the use. The amendment would not change the agreements currently in effect nor affect ownership of rights granted by a State certificate of water right.

Section 4120.3–3 Range Improvement Permits

This section would be amended to make it clear that range improvement permits are issued for temporary livestock handling facilities and for temporary improvements such as troughs for hauled water or loading chutes. The permittee would own these

temporary improvements. The amendment would also clarify that permanent water improvement projects would be authorized through a cooperative range improvement agreement to protect the public interest for multiple use management. The proposed amendment states that the United States shall assert its claims and exercise its rights to water developed on public lands for the benefit of public lands and resources. This would allow the Department to conduct a case-by-case analysis of how it would proceed with asserting individual claims or rights. The proposed amendment would remove the provision that permittees or lessees would control the use of ponds or wells by livestock. Permittees and lessees would be the graziers and, therefore, would control livestock use of water sources. The proposed amendment will not affect ownership or rights currently held in a range improvement permit or a State certificate of water right. The rule would provide for the BLM to mediate disputes about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use.

Section 4120.3–8 Range Improvement Fund

The proposed rule would add a new section to this part that addresses the distribution and use of the "range betterment" funds appropriated by Congress through section 401(b) of FLPMA for range improvement. The range betterment fund has been called the range improvement appropriation by Congress and known by that title in the BLM. The proposed amendment would provide for distribution of the funds by the Secretary or designee. The proposed rule would provide that one-half of the range improvement fund would be made available to the State and District from which they were derived. The remaining one-half would be allocated by the Secretary or designee on a priority basis. All range improvement funds would be used for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems. Current policy requires the return of all range improvement funds to the District from which they were collected. The BLM has found this not to be in the best interest of the public because it prevents use of the funds in areas where they are most needed and results in some offices experiencing difficulty expending available funds efficiently. The proposed amendment would correct the imbalance by ensuring that the funds are distributed on a priority basis. In addition, the proposed rule would clarify that range improvement includes activities such as planning, design, layout, modification, and monitoring/evaluating the effectiveness of specific range improvements in achieving resource condition and management objectives.

Section 4120.5 Cooperation in Management

The proposed rule would add a new section on cooperation in management to recognize and regulate cooperation with State, county, and Federal agencies.

Section 4120.5–1 Cooperation with State, County, and Federal Agencies

This section would recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation and enforcement roles related to these cooperative relationships. The Taylor Grazing Act, The Noxious Weed Control Act, FLPMA, the Public Rangeland Improvement Act (43 U.S.C 1901 *et seq.*), and other statutes and agreements require cooperation with State, county and local governments and Federal agencies.

Subpart 4130—Authorizing Grazing Use

Section 4130.1 Applications

This section would make it clear that applications must contain both the proposed active grazing use as well as nonuse. This amendment is proposed to end confusion about the "failure to use" provisions of subpart 4170. The inadvertent loss of permitted use or preference due to punitive action in response to failure to make use is easily avoided by applying for nonuse and receiving approval from the authorized officer.

Section 4130.1–1 Changes in Grazing Use

This section would provide for field managers to make temporary changes in authorized use, not to exceed 25 percent of the authorized use or 100 AUMs, whichever is greater, following consultation with the affected permittees or lessees and the State having land or responsibility for resources management within the allotment. This would provide latitude to the authorized officer for authorizing minor or incidental adjustments in grazing use without extensive consultation, simplifying day-to-day administration. The provision for 25 percent or 100 AUMS, whichever is greater, is intended to specify what constitutes minor or incremental adjustments. The Department proposes the 100 AUM limitation to provide sufficient latitude in cases where minor adjustments, in terms of the total amount of forage, would constitute a large percentage of the permitted use (i.e., small permits or leases). Needed changes of a temporary nature could be made in a timely manner when the proposed changes conform with the applicable land use plan and are within the terms and conditions and standards and guidelines of the existing permit or lease. Examples of the types of changes that would be considered under this section are the activation of previously approved nonuse taken for other than conservation reasons, placing permitted use in nonuse for conservation purposes, and shortening seasons of authorized use.

Section 4130.1–2 Conflicting Applications

This section would be amended by adding criteria to be considered in granting a use authorization or permit or lease. The proposed rule would incorporate substantial compliance with Federal and State laws and regulations pertaining to grazing and the terms and conditions of permits and leases as well as good stewardship of the public land and provide a means to deny the allocation of public land grazing use to operators who have a history of noncompliance.

Section 4130.2 Grazing Permits or Leases

The rule proposes several amendments concerning the issuance of permits and leases in a manner that would provide permittees or lessees incentive to be good stewards of the public lands. Section 402(b) of FLPMA provides for issuing permits or leases for less than a 10-year period if it is deemed to be in the best interest of sound land management. The Department believes it to be in the best interest of sound land management to issue permits or leases for 5- or 10-year terms to provide greater focus on improving the conditions of the rangeland as required by Section 3 of the Taylor Grazing Act of 1934, sections 102 and 402 of FLPMA, and sections 2 and 4 of the Public Rangelands Improvement Act. The proposed rule would provide for issuing 10-year permits or leases to those who have substantially complied with Federal and State laws and regulations pertaining to grazing and the terms and conditions of permits and leases, including applicable standards and guidelines, are maintaining range improvements, and have met the

objectives of their allotment, within their capability, and have substantially contributed to achievement of or maintenance of the desired resource conditions. The proposed rule would provide for issuing a permit or lease for five years or less when permittees or lessees are in substantial compliance with Federal and State laws and regulations pertaining to grazing and permit or lease terms and conditions, including applicable standards and guidelines, and are maintaining range improvements, where the permittee's or lessee's management has not accomplished resource condition objectives but the permittee or lessee has initiated an approved plan of action plan to meet resource condition objectives. Also, the five year term would apply to new permittees or lessees and in situations where the authorized officer determines a term of five years or less is necessary to protect and conserve the public lands and resources. Permittees and lessees would lose their priority for permit renewal if they fail at the end of five years to meet the terms and conditions of their permits or leases or fail to make substantial progress toward meeting objectives. The proposed rule also provides that permittees or lessees who refuse to accept the terms and conditions of the permit or lease offered would not be granted a permit or lease.

The proposed amendment also clarifies the application for and granting of conservation use and temporary nonuse. Conservation use would be established as one of the allowable uses a permittee or lessee may be granted. The existing regulations grant the authorized officer the discretion to place forage in nonuse for conservation purposes. The change from the term "nonuse for conservation purposes" to "conservation use" is intended to clarify that conservation use is allowable, when in conformance with applicable land use plans, activity plans and standards and guidelines, and will allow the Department to fulfill the requirement of the Taylor Grazing Act to "preserve land and its resources from destruction or unnecessary injury" (43 U.S.C. 315a).

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse are proposed in response to a recommendation from the March 19, 1986, Inspector General's review of the grazing management program.

Section 4130.4–1 Exchange-of-Use Grazing Agreements

This section would include needed requirements that the agreements for exchange of use will be in harmony with management objectives, and will be compatible with existing livestock operations. The agreements would be required to address the fair sharing of maintenance and operation of range improvements and would be approved for the same term as any leased lands that are offered.

Section 4130.4–3 Crossing Permits

This section would provide for terms and conditions for crossing permits, a form of temporary use authorization. The proposed amendments are consistent with the customary practices of BLM field offices.

Section 4130.5 Ownership and Identification of Livestock

This section would be amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee is required to have an approved use authorization and have submitted a copy of the documented agreement or contract that includes information required for the BLM's administration of permits and leases and management of rangeland resources. This generally does not create a new requirement. Many field offices are currently requiring the information to document the legality of the pasturing of livestock owned by persons other than the permittees.

Section 4130.6–1 Mandatory Terms and Conditions

This section would be amended through minor additions and deletions that clarify that use shall not exceed the livestock carrying capacity of the allotment, and by removing unnecessary references to previous sections. The section would be further amended to add a paragraph (c) that would require the incorporation of applicable standards and guidelines in permits and leases. As explained above, standards and guidelines will establish conditions that must be met to ensure sustainability and healthy, productive ecosystems.

Section 4130.6–2 Other Terms and Conditions

This section would be amended to provide for proper rangeland management and to remove unnecessary language. The proposed amendment would allow terms and conditions to provide for improvement of riparian area functions and for protecting other rangeland resources and values consistent with applicable land use plans. The amendments are consistent with the themes of protection, improvement and restoration of the rangelands to increase overall productivity, and will enhance multiple-use management as required by the applicable laws cited above. The addition of paragraph (h), a provision for affirmatively stating that BLM shall have administrative access across the permittee's or lessee's owned or leased private lands, is intended to address attempts made to prevent the BLM from performing functions such as range use supervision, compliance checks, and trespass abatement.

Section 4130.6–3 Modification

The proposed rule would amend this section to remove redundancy, and clarify consultation requirements in the modification of terms and conditions of permits. Further, the amendment would identify the opportunity to be provided the public for review and comment, or to give input, during the evaluation of monitoring results or other data that provide a basis for decisions regarding grazing use or management. The proposed rule would not diminish the opportunity for involvement by affected interests. The proposed rule would provide an orderly process for public participation by affected interests at a level where input provides the rangeland manager with complete information for consideration in making decisions.

Section 4130.7 Payment of fees

The proposed rule would amend this section by removing all of the language pertaining to calculations of grazing fees in paragraph (a)(1) and the minimum grazing fee contained in (a)(3), and would amend the section to address the proposed fee formula and provide for its phase-in over three years. The section would be further amended to provide for assessing a surcharge for the public landlord's share of the legal leasing associated with Federal land grazing, and to clarify that grazing use that occurs before a bill is paid is an unauthorized use, may be dealt with under the settlement and penalties sections of these regulations, and may result in the limitation of flexibility authorized under an allotment management plan.

Rationale for the Proposed Base Value and Grazing Fee Formula

There are a number of alternative base values and alternative fee formulas that could be used to set fees for grazing Federal lands. There have been numerous studies and much public debate concerning what is a reasonable,

fair, and equitable fee for grazing Federal lands. Major considerations in establishing a fee are that market value be charged for livestock forage and that ranchers who lease Federal lands must pay a fee which is comparable to the fee for leasing private lands. Thus the public would receive a fair return for its resources. Other considerations are: a fee should not be so excessive as to cause significant adverse impact to the stability of the dependent western livestock industry and communities; a reasonable portion of the Government administrative costs must be covered; and a fee system must be understandable and reasonably easy to administer.

There are two major sets of data that are reasonable estimates of the market value of Federal forage. The first set of data is the 1966 Western Livestock Grazing Survey (WLGS). Over 10,000 individuals were interviewed to determine the costs of operating on Federal lands versus costs on private land leases, and to collect data on private land lease rates. The WLGS determined that the westwide value for grazing Federal lands equaled $1.23 per AUM during 1966. Updating the $1.23 to 1991 by the change in the private land lease rate index results in a westwide value of $3.25 per AUM. This is one indication of value and is consistent with the concept that public land forage value would have increased at the same rate as the private land forage value.

The second set of data is the 1983 appraisal of the value of grazing on BLM and FS lands in the 16 Western States. Approximately 100,000 persons were interviewed, generating 7,246 useable records of fees paid for livestock grazing. The 16 Western States were divided into six appraisal pricing regions. The appraisers concluded that the value of public land grazing varied from $4.68 per head month in the lowest value region (Southwest) to $8.55 per head month in the highest value region (Northern Plains).

In May 1992, the BLM and FS submitted an update of the 1983 appraisal to Congress. The update, based on additional data for private grazing lease rates gathered during 1991, found no change in the value of grazing in the lowest value region, $4.68 per head month (Southwest) and an increase to $10.26 per head month in the highest value region (Northern Plains).

The Southwest region contains 33 percent of the total AUMs authorized for livestock grazing on BLM and FS lands. Therefore, if a uniform westwide grazing fee is to be charged, a relatively greater weight must be given to the appraised value for the Southwest. A fee higher than the appraised value of $4.68 would, in effect, overprice forage on Federal lands in the Southwest. Thus, based on updated 1991 appraisal data, the most appropriate single westwide grazing fee would appear to be $4.68 per AUM.

The two major fee studies of livestock grazing on public lands were the 1966 fee study and the 1983 grazing value appraisal. Updating the results of the 1966 study and the 1983 appraisal to 1991, the most recent year feasible, is likely to yield the two best estimates of a reasonable grazing fee. An update of the 1966 fee study to 1991, based on changes in private grazing rates —1966 to 1991—yields a grazing fee of $3.25 per AUM. An update of the 1983 grazing value appraisal, based on the new sample collected in 1991, yields an appropriate single westwide value of $4.68 per AUM.

No clear empirical basis exists for choosing between these two fee updates. Thus, the Department has determined that, for the purposes of setting a base value to be employed in establishing future grazing fees, the best approach is to give equal weight to each of the data sets by choosing an average of the two available 1991 updates. The average of $3.25 per AUM and $4.68 per AUM yields a 1991 base value of $3.96 per AUM.

The $3.96 per AUM value is consistent with the findings and recommendations of the 1993 unpublished study conducted by the Grazing Fee Task Group (GFTG) as part of the Incentive Based Grazing Fee Task Force Study. The GFTG included economists from four western Universities, an economist from the FS and three appraisers from the BLM. The GFTG studied several methods for determining public land forage values. The studies were conducted in Wyoming, Idaho, and New Mexico. The major findings of this study include:

1. Total cost valuations yielded inconsistent results. The cost analysis demonstrated that many public land ranchers have paid more in total costs for grazing than the apparent value implied from the private forage market. Forage values estimated using the total cost approach were in the range of $3 to $4 per AUM for cattle grazing on BLM land. The results for FS land suggests a negative value for grazing, which is inconsistent with the observed willingness of livestock operators to pay the current fee.

2. The grazing permit value approach yielded a range of $3 to $5 per AUM in the three test States.

3. Using the Market Appraisal Approach, the estimated 1992 forage value was $3.40 per AUM in New Mexico, and $7.19 per AUM in Wyoming. (An appraisal using this method was not made in Idaho.)

4. A market statistical analysis would not be possible for public lands.

The GFTG concluded that the value of public land forage does not differ in the three test States, with a value of between $3 to $5 per AUM. The GFTG recommended setting a fee in the range of $3 to $5 per AUM. The assessment relied heavily on the values implied from grazing permit values that provide a direct estimate of ranchers' willingness to pay.

In addition, it should be noted that the actual grazing fee in 1980 was $2.36 per AUM on BLM lands and $2.41 per AUM on FS lands. The two agencies did not have the same fee until 1981. Updated for the general rate of inflation in the U.S. economy over the period 1980 to 1993, the 1980 fee, expressed in constant 1991 dollars, was equal to $3.85 per AUM for BLM lands and $3.93 per AUM for FS lands. Therefore, the base fee in 1991 of $3.96 would be almost the same, in real terms, as the fee charged by the BLM and FS in 1980.

The proposed fee formula would index the base value by the private land lease rate. In the future, if the private land lease rate increases in the 17 Western States, the Federal grazing fee would also increase. The fee would be adjusted annually in relationship to the private land lease rate market. The approach of indexing the base value by only the Forage Value Index is also supported by the Incentive Based Grazing Fee Task Group. They concluded that the indices in the Public Rangeland Improvement Act fee formula have caused the grazing fee to fall behind forage value. The private land lease rate for the 17 Western States was chosen because the fee formula would be used to set a westwide fee for grazing on all BLM-administered and National Forest System lands in the 17 Western States. A 1991 General Accounting Office study (GAO/RCED–91–185BR) concluded that the "relatively low fees are an inherent result of the existing formula's design." Using the proposed grazing fee formula the fee for the 1993 grazing season would have been $4.28 per AUM.

Based on the foregoing analysis the Department has determined the following fee formula to be reasonable and equitable to the United States and holders of grazing permits and leases:

The grazing fee shall be equal to the $3.96 base value multiplied by the Forage Value Index computed annually

from data supplied by the National Agricultural Statistics Service, as follows:

Grazing Fee per AUM=$3.96 x Forage Value Index

$3.96=The base value per AUM established for 1991 by averaging $3.25, the 1966 value from the Western Livestock Grazing Survey updated to 1991, and $4.68, the lowest appraisal value of the six pricing regions considered in the 1983 appraisal, updated to 1991; and

Forage Value Index (FVI)=the average estimate (weighted by AUMs) of the annual rental charge per AUM for pasturing cattle on private rangelands in the 17 contiguous western States (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming) divided by $8.67 (average for the years 1990, 1991, and 1992).

The proposed base value for the grazing fee would be phased-in over a 3-year period. The starting point for the base value would be $1.86 per AUM, the actual grazing fee in 1991. Over the years 1994 through 1996, the fee would be calculated as follows:

Grazing Fee per AUM for 1994=$1.86 + $0.70 x FVI

Grazing Fee per AUM for 1995=$1.86 + $0.70 + $0.70 x FVI

Grazing Fee per AUM for 1996 = $1.86 + $0.70 + $0.70 + $0.70 x FVI

Beginning in 1997 and thereafter, the fee would be computed using the proposed formula above.

The proposed fee would retain the 25 percent limit on annual increases or decreases after the base fee is phased in. This limitation would reduce operator uncertainty and allow for effective business planning.

Public Landlord's Share From Leasing Associated with Federal Grazing Use

The proposed rule would provide for collecting a surcharge for leasing activities associated with a Federal permit or lease attached to base property. It would retain the provision for legal transfer of base leases and permits and the pasturing of livestock owned by persons other than the permittee or lessee.

The issue of leasing or pasturing livestock owned by others in connection with public land grazing permits or leases has been controversial and there has been much concern expressed in the West by the livestock industry and conservation organizations, alike. The concern is easily understood when one considers that past Federal grazing fees have been sufficiently low as to present opportunities for substantial profit when a permittee or lessee pastures another party's livestock or leases the base property. Also, the short-term nature of agreements for pasturing livestock owned by persons other than the permittee or lessee presents less incentive for stewardship of the land.

In developing an approach to address these concerns the BLM queried departments responsible for the management of State lands in most of the Western States to determine how they were addressing this issue and if they were collecting a share of the lease or service fees being charged. The BLM found that most of the States that allow subleasing or pasturing of livestock owned by persons other than the permittee or lessee require the payment of a service fee or surcharge, or a portion of the amount in excess of the State's rental fee.

The Department is proposing to charge a surcharge of 20 percent on all grazing fee billings when the base property has been leased. An analysis of the costs and prices indicates that a 20 percent surcharge would be appropriate and is consistent with the approach used by some of the Western States. The Department also proposes to follow the example of the Western States lands departments by charging a higher fee for pasturing livestock owned by persons other than the permittee or lessee. The proposed rule establishes a surcharge of 50 percent for the forage used in pasturing unowned livestock. The surcharge would be 70 percent of the grazing bill when base property is leased and livestock owned by persons other than the permittee or lessee are pastured.

Section 4130.7–3 Service Charge

This section would be amended by adding applications that are made solely for temporary nonuse or conservation use. The service fee would offset the costs of processing such applications.

Section 4130.8 Pledge of Permits or Leases as Security for Loans

This section would be amended to clarify that renewal and the term of the renewal are to the discretion of the authorized officer. Field managers will continue to consider known lien holder interests in their decisionmaking.

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

Paragraph (a)(2) of this section would be amended to end misunderstandings about approved temporary nonuse and failure to make substantial use as authorized. Once temporary nonuse is approved, it becomes an authorized action and is therefore not subject to penalty action under § 4170.1. Other proposed amendments for this section would clarify paragraph (b)(1) to establish that the receipt of a grazing fee bill does not authorize grazing use of the range until the bill is paid. Paragraph (b)(9) would be amended to make it clear that the permittee is responsible for controlling livestock so they do not stray on to "closed to range" areas where grazing is prohibited by local laws, such as "no fence agriculture districts" or municipalities. To be consistent with the FS this section would restore two provisions that existed in this subpart until 1984. These provisions make subject to penalty violations of the Wild and Free Roaming Horse and Burro Act of 1971, the Endangered Species Act, and Federal or State laws or regulations concerning pest or animal damage control, and conservation or protection of natural and cultural resources or environmental quality.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1 Violations

This section would be reorganized for readability and to add the requirement that the authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful to clarify subsequent sections.

Section 4150.2 Notice and Order to Remove

This section would be amended to grant the authorized officer authority and provide for determining if a nonwillful violation is incidental in nature, and to clarify actions for expedient resolution of these innocent or unintended trespasses.

Section 4150.3 Settlement

This section would be amended to provide guidelines for considering nonmonetary settlement that waives fees for unintentional incidental trespasses in a fair manner while preventing needless expense in the best interest of the public. Key provisions of determination would be: The operator is not at fault, an insignificant amount of forage is consumed, no damage occurred, and nonmonetary settlement is in the best interest of the United States. The method for determining the settlement amounts would be amended to base the value of forage on the monthly rate per AUM for pasturing

livestock on private, nonirrigated land in the 17 Western States.

Subpart 4160—Administrative remedies

Section 4160 Administrative Remedies

The proposed rule would amend this section to improve organization, clarify the process and requirements, and to provide for application of the Departmental rule located at § 4.21 of this title regarding full force and effect decisions and petitions for staying the effect of a decision pending determination on appeal.

Section 4160.1 Proposed Decisions

This section would be amended to provide clarification that a final decision may be issued without first issuing a proposed decision when emergency action under § 4110.3–3 of this part is necessary to stop resource damage or to close an area to unauthorized grazing use, the action to be taken is nondiscretionary, the action merely implements decisions previously issued under 43 CFR part 4100, or the action is within established terms and conditions and has been reviewed through the NEPA process and agreement has been reached with the affected permittees or lessees. This proposed amendment does not limit appeal rights provided in § 4160.3. It would serve to expedite the decision process where immediate action is necessary or where the decision has previously been the subject of appropriate analysis and opportunity for protest.

Section 4160.3 Final Decisions

This section would be amended to clarify the process for filing an appeal and a stay of the decision. When no protest is received on a proposed decision it shall become the final decision and shall be appealable for a period of 30 days. This proposed revision would make 43 CFR part 4100 more consistent with the Department's § 4.21 of this title. This section would allow decisions to be implemented at the end of the 30-day appeal period except where a petition for stay has been filed with the Office of Hearings and Appeals, in which case the Office of Hearings and Appeals has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. A stay, if granted, would suspend the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to emergency action are automatically stayed upon the timely filing of an appeal. This has resulted in delays of up to two years before necessary corrective action can be taken. This proposal would protect the public's rights to an appeal and would provide a method for staying decisions where the Office of Hearings and Appeals determines it would be appropriate to do so. At the same time this section would prevent unnecessary delays in action.

The proposed rule also clarifies the amount of grazing use that would be allowable when a decision has been stayed by the Office of Hearings and Appeals or by order of a Federal Court. Where an appellant had no active use the preceding year, the authorized grazing use would be required to be consistent with the decision pending a final determination on appeal. Where a decision proposes to change the amount of authorized grazing use, the active grazing use would remain at no more than the previously determined permitted use during the time an appeal is pending. This amendment would provide for making decisions immediately effective when it is necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under § 4110.3–3 of this part.

Section 4160.4 Appeals

This section would be amended to make it clear that any party whose interest is adversely affected may appeal the final decision of the authorized officer. The amendment would also provide instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have been adversely affected may file within 30 days from the date of receipt of a final decision an appeal and petition to stay the effect of a decision. Under the process of § 4.21 of this title, the Office of Hearings and Appeals would be allowed 45 days from the end of the appeal period to review the petition and issue a determination. A decision will not be in effect during the consideration of a petition for stay unless it was made effective for emergency reasons under § 4110.3–3 of this subpart.

Subpart 4170—Penalties

Section 4170.1–2 Failure to Use

This section would be amended to make it clear that the failure to make substantial grazing use as authorized means the failure to make active grazing use as approved on a grazing use authorization. Permittees and lessees would be required to apply and receive approval for nonuse or conservation use. This section also would include failure to maintain or use water base property in the grazing operation. The failure to make authorized use may result in monitoring studies providing false information which could cause decisions to overobligate the forage resource of the rangeland. The failure to apply for conservation use or nonuse prevents the BLM from having an opportunity to determine if conservation use or nonuse is in conformance with applicable plans and if it will aid in achieving resource condition objectives. Review by the authorized officer of applications for nonuse is also necessary to determine if forage left unused should be allocated to another party through a temporary permit. Finally, water property is crucial to the proper use and operation of livestock grazing in water base areas. If base property waters are not kept in serviceable condition, livestock are forced to over-use the service areas of the remaining waters.

Section 4170.1–3 Bald Eagle Protection Act and Endangered Species Act

The proposed rule would amend this section to include Federal or State predator animal and pest control and environmental protection or resource conservation regulations or laws. These proposed amendments are also made in the section on prohibited acts, section 4140(b) of this part, and discussed earlier. The proposed amendments would adopt language of the grazing administration regulations that existed before 1984.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Section 4.477 Effect of Decision Suspended During Appeal

The proposed rule would revise the heading of this section to reflect that grazing decisions would no longer automatically be suspended when an appeal is filed as provided in the proposed revision of 43 CFR subpart 4160. The proposed rule would also remove other references to suspension of the decision of the authorized officer upon appeal.

PART 1780—COOPERATIVE RELATIONS

Section 1784.0–5 Definitions

The proposed rule would remove replace the term "authorized representative" with "designated Federal Officer" to make the terminology of the rule more consistent

with the terminology of the Federal Advisory Committee Act and 41 CFR 101–6.1019.

Section 1784.2–1 Composition

This section would be amended to remove the eligibility requirement for GAB members. This requirement would no longer be necessary with the discontinuance of the GABs.

Section 1784.2–2 Avoidance of Conflict of Interest

The proposed rule would provide an explicit exception to allow grazing permittees and lessees to serve on advisory committees. This change is necessary to clarify that permittees and lessees would be eligible for service on resource advisory councils.

Section 1784.3 Member Service

The proposed rule would establish that appointments to advisory committees would be for two-year terms unless otherwise specified in the charter. Specific references to GAB, DAC and NPLAC appointments, terms and election procedures would be removed. Advisory committees are established through individual charters or by statute. Membership requirements, terms of appointments and election procedures must be prescribed in these charters and are, therefore, not necessary in this proposed rule.

Section 1784.6–1 National Public Lands Advisory Council

The proposed rule deletes reference to the NPLAC. The purpose of the NPLAC would generally be served through the use of resource advisory councils. As explained above, these councils would provide advice to BLM managers pertaining to all public land resources over a broader geographic area. The Secretary would retain discretionary authority to organize national councils to advise the BLM.

Section 1784.6–4 District Advisory Councils

The proposed rule would retitle and revise this section to remove reference to DACs and to address resource advisory councils. Although references to the California Desert District Advisory Council would be removed, the Department intends that this council would remain intact as a form of advisory committee to provide advice pursuant to section 601 of FLPMA (43 U.S.C. 1781).

Section 1784.6–5 Grazing Advisory Boards

This section would be removed in its entirety. The required functions of GABs would be replaced by resource advisory councils as explained above.

The collections of information contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068.

Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

List of Subjects

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Interior Department, Lawyers, Mines, Penalties, Public lands, Surface mining.

43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1201, the Federal Advisory Committee Act (5 U.S.C. appendix 1), section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. appendix, as amended; 64 Stat. 1262), the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), it is proposed to amend subpart E of part 4 of subtitle A of title 43; subpart 1784 of part 1780, group 1700, subchapter A, chapter II of title 43; and subparts 4100, 4110, 4120, 4130, 4150, 4160 and 4170 of part 4100, group 4100, subchapter D, chapter II of title 43 of the Code of Federal Regulations as set forth below:

PART 4100—GRAZING ADMINISTRATION-EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 1901 *et seq.*, 43 U.S.C. 1181d.

2. Section 4100.0–2 is revised to read as follows:

§ 4100.0–2 Objectives.

The objectives of these regulations are orderly use, improvement and development of the public lands, preservation of the land and its resources from destruction and unnecessary injury, enhancement of their productivity for multiple use purposes by prevention of overgrazing and soil deterioration, stabilization of the livestock industry dependent upon the public range, provide for inventory and categorization of public rangelands on the basis of range conditions and trends; consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*).

3. Section 4100.0–5 is amended by revising the definitions of the terms *Active use, Affected interest, Allotment management plan (AMP), Consultation, cooperation and coordination, Grazing lease, Grazing permit, Grazing preference, Land use plan, Range improvement, Subleasing,* and *Suspension;* and adding in alphabetical order definitions of the terms *Activity plan, Affiliate,* and *Conservation use* to read as follows:

§ 4100.0–5 Definitions.

Active use means the current authorized use, including livestock grazing and conservation use. Active

use does not include temporary nonuse or temporary suspended use of forage.

* * * * *

Affected interest means an individual, group or organization that has submitted written comments to the authorized officer regarding the management of livestock grazing on specific grazing allotments and who has been determined by the authorized officer to be an individual, group or organization (1) whose legitimate use of the public land, or adjacent private land or any other lands, property, resources or use authorization, may be influenced by BLM livestock management actions; (2) who is a bona fide community representative for an interest in a land use or resource value; or (3) who has the capability to contribute substantial knowledge, expertise, or assistance in developing plans, monitoring, evaluating progress in achieving resource objectives, and formulating decisions concerning grazing management actions, improvements, or modifications of terms and conditions or applicable standards and guidelines for permits, leases, or management plans.

* * * * *

Allotment management plan (AMP) means a documented program developed as an activity plan that focuses on the management of livestock grazing on the public lands for the purpose of meeting resource condition, sustained yield, economic and other objectives.

* * * * *

Consultation, cooperation and coordination means an interactive process for obtaining advice, or exchanging opinions on the development, revision or termination of allotment management plans or other activity plans affecting the administration of grazing on public lands, from other agencies and affected permittee(s) or lessee(s), landowners involved, advisory committees where established, any State having lands or responsible for managing resources within the area and other affected interests.

* * * * *

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, temporary suspended use, and conservation use. Leases specify the total number of AUMs apportioned.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, temporary suspended use, and conservation use. Permits specify the total number of AUMs apportioned.

Grazing preference or *preference means* a superior or priority position against all others in the issuance of a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Land use plan means a resource management plan or management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 and establish management direction for resource uses of public lands.

* * * * *

Range improvement means a physical modification or a treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems; and provide habitat for livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

* * * * *

Subleasing means the act of a permittee or lessee entering into an agreement that either: (1) Assigns base property and the associated Federal grazing permit or lease to another party without a required transfer approved by the authorized officer, or (2) allows another party to graze on public lands livestock that are not owned or controlled by the permittee or lessee.

* * * * *

Suspension means temporarily withholding from active use part or all of the permitted use in a grazing permit or lease.

* * * * *

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Affiliate means an entity or person that controls or has the power to control a permittee or lessee. The term "control" means any one or a combination of the following relationships:

(1) With regard to an entity, based on instruments of ownership or voting securities, owning of record in excess of 50 percent of the entity, or having any other relationship which gives a person authority directly or indirectly to determine the manner in which the entity conducts grazing operations;

(2) Having any other relationship which gives a person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations; or

(3) Presumptively in the following relationships, unless a person can demonstrate that he does not in fact have the authority directly or indirectly to determine the manner in which the relevant grazing operation is conducted: being an officer, director, or general partner of the entity; having the ability to commit the financial or real property assets or working resources of the entity; or based on instruments of ownership or voting securities, owning of record 10 through 50 percent of an entity.

Conservation use means an activity for purposes of protecting the land and its resources from destruction or unnecessary injury. The term includes improving rangeland conditions and the enhancement of resource values or functions.

4. Section 4100.0–7 is revised to read as follows:

§ 4100.0–7 Cross Reference.

The regulations at part 1600 of this title govern the development of land use plans; the regulations at subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

5. A new § 4100.0–9 is added as follows:

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047

is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Subpart 4110—Qualification and Preference

6. The introductory text of § 4110.1, and paragraphs (a), (b), and (c) are redesignated as paragraphs (a), (a)(1), (a)(2), and (a)(3), respectively, and a new paragraph (b) is added to read as follows:

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.3, and 4130.4–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

* * * * *

(b) Any applicant who currently holds or has previously held a Federal grazing permit or lease, either directly or indirectly, must be determined by the authorized officer to have a satisfactory record of performance.

(1) The applicant and any affiliate must at the time of permit or lease issuance be determined by the authorized officer to be in substantial compliance with the terms and conditions of any Federal or State grazing permit or lease presently held and with the rules and regulations applicable to those permits and leases. The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliate, if any, are in compliance with existing permit or lease terms and conditions and applicable rules and regulations.

(2) Any applicant or affiliate who has had any Federal or State grazing permit or lease canceled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application shall be deemed to have an unsatisfactory performance record.

(3) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(4) Applicants shall submit an application and any other information requested by the authorized officer in order to determine that all qualifications have been met.

7. Section 4110.1–1 is amended by adding a sentence at the end to read as follows:

§ 4110.1–1 Acquired lands.

* * * However, in the context of lands acquired by purchase or exchange, the authorized officer may determine that an existing permittee or lessee does not qualify under this subpart or that the permittee or lessee, including any affiliates, is disqualified from holding a Bureau of Land Management permit or lease for failure to comply with terms and conditions of any Federal or State grazing permit or lease.

10. Section 4110.2–1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.2–1 Base Property.

(a) * * *

(1) It is capable of serving as a base for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which utilizes public lands outside a grazing district.

* * * * *

11. Section 4110.2–2 is amended by revising paragraph (a), and in paragraph (c) removing the term "grazing preference" and adding in its place the term "permitted use" to read as follows:

§ 4110.2–2 Specifying permitted use.

(a) Permitted use shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, temporary suspended use, and conservation use. Authorized livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan. Permitted use is granted to holders of grazing preference.

* * * * *

12. Section 4110.2–3 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), and (f) as (a)(3), (a)(4), (a)(5), and (g), respectively, adding a new paragraph (a)(2), removing from paragraph (b) the term "grazing preference" and adding in its place the term "permitted use", and adding a new paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

(a) * * *

(1) * * *

(2) The applicant and any affiliates shall be determined to have a satisfactory record of performance under any grazing permits or leases held (see § 4110.1).

(i) The applicant and any affiliates shall be determined to be in substantial compliance at the time of application and permit or lease issuance with the terms and conditions of any Federal or State grazing permit or lease presently held and with the rules and regulations applicable to those authorizations. The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether an applicant and any affiliates are in compliance with existing permit or lease terms and conditions and applicable rules, regulations, standards and guidelines.

(ii) Any applicant or affiliate, who has had any Federal or State grazing permit or lease canceled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application, shall be deemed to have an unsatisfactory performance record.

(iii) In determining whether or not affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(iv) Applicants shall submit an application and any other information requested by the authorized officer in order to determine that all qualifications have been satisfied.

* * * * *

(f) Transfers shall be for a period of not less than 3 years unless determined by the authorized officer to be consistent with management and resource condition objectives.

* * * * *

13. Section 4110.2–4 is amended by adding a sentence at the end to read as follows:

§ 4110.2–4 Allotments.

* * * The authorized officer may combine or divide allotments when necessary for the proper and efficient management of public rangelands.

14. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and may make changes in the permitted use. These changes must be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or found to be necessary through other studies to manage, maintain or improve rangeland productivity or to restore critical ecosystems to properly functioning condition.

15. Section 4110.3–1 is amended by removing paragraph (b), redesignating paragraph (c) as (b), revising newly redesignated paragraphs (b) introductory text and (b)(1), and in newly redesignated paragraph (b)(2) removing the term "grazing preference" and adding in its place the term "permitted use" and removing "and/or" to read as follows:

§ 4110.3–1 Increasing active use.

* * * * *

(b) After consultation, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be in substantial compliance with the terms and conditions of Federal or State permits or leases held and with the laws and regulations pertaining to those authorizations. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

* * * * *

16. Section 4110.3–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 4110.3–2 Decreasing active use.

* * * * *

(b) When monitoring shows grazing use or patterns of use are not consistent with applicable standards and guidelines or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce authorized grazing use to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve resource condition objectives.

17. In § 4110.3–3 the heading and paragraphs (b) and (c) are revised to read as follows:

§ 4110.3–3 Implementing reductions in active use.

* * * * *

(b) After consultation, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. If monitoring, inventory or forage production data acceptable to the authorized officer are available, an initial reduction shall be effective on the date of the agreement or decision and the balance made effective at the start of the third and fifth grazing years following the initial reduction, except when monitoring data show that such an incremental adjustment is inappropriate. When observed rangeland conditions suggest a reduction in use is necessary but available data are insufficient or otherwise inconclusive, additional data shall be collected through monitoring or other methods approved by the Bureau of Land Management. Adjustments based on the additional data shall be implemented by agreement or decision of the authorized officer that will initiate the 5-year implementation period.

(c) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require protection because of conditions such as drought, fire, flood, or insect infestation, or when continued grazing use poses a significant risk of resource damage from these factors, after consultation with, or a reasonable attempt to consult with affected permittees or lessees, other affected interests, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph § 4110.3–3(b) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals.

18. Section 4110.4–2 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(1) Grazing permits or leases may be canceled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be canceled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

Subpart 4120—Grazing Management

19. Section 4120.2 is revised to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans may be developed by permittees or lessees, other Federal or State resource management agencies, and the Bureau of Land Management. When allotment management plans, or other activity plans affecting the administration of grazing allotments, are developed, the following provisions apply:

(a) An allotment management plan or other activity plan intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation and coordination with affected permittees or lessees, landowners involved, any established advisory committees, any State having lands or responsible for managing resources within the area to be covered by such a plan, and other affected interests. The allotment management plan shall include terms and conditions under §§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3 of this title, as well as applicable standards and guidelines that have not been included as permit or lease terms and conditions. The plan shall prescribe the livestock grazing practices necessary to meet specific resource condition objectives. The plan shall specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer. The plan shall provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource condition objectives of the plan. The plan shall become effective upon approval by the principal parties.

(b) Private and State lands, Indian allotments and Indian tribal lands held

in trust or restricted fee status by the United States Government may be included in allotment management plans or other activity plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation concerning the environmental analysis of proposed allotment management plans to the extent practical, and give public notice concerning the availability of environmental documents prepared as a part of the development of an allotment management plan or other activity plan, prior to implementing the plan.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans shall be incorporated as appropriate into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans may be revised or terminated by the authorized officer after consultation with the permittee or lessee and other affected parties and affected interests.

20. A new paragraph (f) is added to § 4120.3–1 as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969, and regulations promulgated thereunder, including requirements relating to categorical exclusions. The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

21. Section 4120.3–2 is revised as follows:

§ 4120.3–2 Cooperative range improvement.

(a) The BLM may enter into a cooperative range improvement agreement with any person, organization, Indian tribal government or other government entity for the installation, use, maintenance, and/or modification of range improvements or rangeland developments needed to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) The United States shall have title to permanent structural range improvements.

(c) The permittee or lessee may retain title to temporary structural range improvements such as loading chutes, corrals and water troughs for hauled water if no part of the cost for improvement was borne by the United States.

(d) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(e) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

22. Paragraphs (b) and (c) of § 4120.3–3 are revised to read as follows:

§ 4120.3–3 Range improvement permits.

* * * * *

(b) The permittee or lessee may hold the title to all temporary range improvements authorized as livestock handling facilities such as corrals and dipping vats and temporary, readily-removable improvements such as troughs for hauled water. The authorization for permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements to protect the public interest for multiple use of rangeland ecosystems. The United States shall assert its claims and exercise its rights to water developed on public lands to benefit the public lands and resources thereon.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for nonuse has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee(s) or lessee(s) shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

23. A new § 4120.3–8 is added to read as follows:

§ 4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resources management funds, authorized range improvement may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary or designee for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems.

(b) Funds appropriated for range improvement are to be used for cost effective investment in improvements that benefit all rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities including the planning, design, layout, modification, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, authorized officers shall consult affected permittees, lessees, and other affected interests.

24. A new § 4120.5 is added to read as follows:

§ 4120.5 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

25. A new § 4120.5–1 is added to read as follows:

§ 4120.5–1 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and

units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds including:

(a) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971; and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Subpart 4130—Authorizing Grazing Use

26. Section 4130.1 is revised to read as follows:

§ 4130.1 Applications.

Applications for grazing permits or leases (active use and nonuse for conservation or protection purposes), annual grazing authorizations (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

27. Paragraph (b) of § 4130.1–1 is amended by adding a new last sentence to read as follows:

§ 4130.1–1 Changes in grazing use.

* * * * *

(b) * * * Temporary changes, not to exceed the greater of 25 percent of the active use or 100 AUMs, may be authorized or required by the authorized officer following consultation with the affected permittees or lessees and the State having land or responsibility for managing resources within the allotment, provided such changes comply with applicable land use plans and are within the scope of the terms and conditions of the existing permits or leases.

28. Section 4130.1–2 is amended by revising paragraph (b), removing the word "and" from paragraph (e) and adding new paragraphs (g) and (h) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(b) Proper use of rangeland resources.

* * * * *

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) Applicant's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellation of grazing use for violations of terms and conditions of agency grazing rules (see 43 CFR 4110.1).

29. Section 4130.2 is amended by redesignating paragraph (d) and (e) as paragraphs (e) and (j), respectively, revising paragraphs (a) and (c), and adding new paragraphs (d), (f), (g), (h) and (i) to read as follows:

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to authorize use on the public lands and other lands under the administration of the Bureau of Land Management. Such use may include livestock grazing, temporary nonuse and conservation use. These grazing permits and leases shall specify terms and conditions as required by § 4130.6 of this title.

* * * * *

(c) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be:

(1) 10 years where permittees or lessees have a record of substantial compliance with established terms and conditions of Federal and State grazing permits or leases and applicable laws and regulations, and have maintained or made satisfactory progress toward established resource condition objectives;

(2) 5 years or less when permittees or lessees have a record of substantial compliance with the terms and conditions of Federal or State grazing permits or leases and applicable laws and regulations, but their management has not resulted in satisfactory progress toward established resource condition objectives, if a plan of action for achieving these objectives has been prepared and initiated; and

(3) 5 years or less when the permit or lease is issued or transferred to a different permittee or lessee.

(d) Permits or leases may be issued for periods shorter than those established in paragraph (c) of this section when:

(1) The land is pending disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of the period as determined under paragraph (c) of this section;

(3) The term of the base property lease is less than the period established under paragraph (c), in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) When the authorized officer determines that a permit or lease for less than 5 years is necessary or desirable to protect and conserve the public lands and the resources thereon.

* * * * *

(f) Permittees or lessees holding expiring grazing permits or leases who are found to be in repeated noncompliance with the terms and conditions of the expiring permit or lease, or who are in violation of any of the provisions of this part, and those permittees or lessees who refuse to accept the proposed terms and conditions of a permit or lease, shall not be offered or granted a new grazing permit or lease.

(g) Nonuse and conservation use may be approved by the authorized officer if it is in conformance with the applicable land use plan, AMP or other activity plan, and standards and guidelines as follows:

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed nonuse will promote resource protection or enhancement, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons other than resource conservation or protection, including but not limited to financial conditions or annual fluctuations of livestock, may be approved for no more than 3 consecutive years.

(h) Permittees or lessees must annually apply for any proposed nonuse, excluding use approved for resource conservation or protection of rangeland ecosystems that is included in a grazing permit or lease, or any permitted use suspended under §§ 4110.3–3 and 4170.1 of this title. Permittee(s) or lessee(s) shall state the reason(s) supporting an application for nonuse.

(i) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.4–2 of this title for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.4–2 of this title.

* * * * *

30. Paragraph (a) of § 4130.4–1 is revised to read as follows:

§ 4130.4–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.6 of this title that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

* * * * *

31. Section 4130.4–3 is revised to read as follows:

§ 4130.4–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain such terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

32. Paragraph (d) of § 4130.5 is revised to read as follows:

§ 4130.5 Ownership and identification of livestock.

* * * * *

(d) Where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

* * * * *

33. Section 4130.6–1 is amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4130.6–1 Mandatory terms and conditions.

(a) * * * The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

* * * * *

(c) Permits and leases shall incorporate applicable standards and guidelines for the management of the rangeland ecosystem.

34. Section 4130.6–2 is amended by revising paragraph (f), removing the period from the end of paragraph (g) and adding a "; and" and by adding a new paragraph (h) to read as follows:

§ 4130.6–2 Other terms and conditions.

* * * * *

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;

(g) * * *

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable access across private and leased lands to the Bureau of Land Management for the orderly administration, management and protection of the public lands.

35. Section 4130.6–3 is revised to read as follows:

§ 4130.6–3 Modification.

Following consultation with the lessees, permittees, other landowners involved, and States having lands or responsibility for managing resources within the affected area, the authorized officer may modify terms and conditions of the permit or lease when the present grazing use is not meeting the land use plan, AMP or other activity plan, or management objectives, or applicable standards and guidelines. To the extent practical, the authorized officer shall provide to affected permittees, lessees, parties and other affected interests an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

36. Section 4130.7–1 is amended by revising paragraph (a), redesignating paragraphs (d) and (e) as (e) and (f), respectively, adding a new paragraph (d), and in newly redesignated paragraph (e) adding a new sentence after the second sentence and a sentence to the end of the paragraph to read as follows:

§ 4130.7–1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraph (a)(2) and (a)(3) of this section, the grazing fee per AUM shall be equal to the $3.96 base value multiplied by the Forage Value Index computed annually from data supplied by the National Agricultural Statistics Service, as follows:

Grazing Fee per AUM=$3.96×Forage Value Index

$3.96=The base value per AUM established for 1991 by averaging $3.25, the 1966 value from the Western Livestock Grazing Survey updated to 1991, and $4.66, the lowest appraisal value of the 6 pricing regions considered in the 1983 appraisal updated to 1991; and

Forage Value Index (FVI)=the average estimate (weighted by AUMs) of the annual rental charge per AUM for pasturing cattle on private rangelands in the 17 contiguous western States (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming) divided by $8.67 (average for the years 1990, 1991, and 1992).

(2) The base value for the fee shall be phased in over the years 1994 through 1996 as follows:

Grazing Fee per AUM for 1994=$1.86+$0.70×FVI
Grazing Fee per AUM for 1995=$1.86+$0.70+$0.70×FVI
Grazing Fee per AUM for 1996=$1.86+$0.70+$0.70+$0.70×FVI

Beginning in the year 1997 and thereafter the fee will be computed using the grazing fee formula specified in paragraph (a)(1) of this section.

(3) Any annual increase or decrease in the grazing fee occurring after the 3-year phase-in shall be limited to not more than 25 percent of the fee in the previous year.

* * * * *

(d) A leasing surcharge shall be added to the grazing fee billings for authorized leasing of base property to which public land grazing preference is attached or authorized grazing of livestock owned by persons other than the permittee or lessee. The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use being made as follows:

(1) 20 percent of the grazing bill for the permitted grazing use that is attached to a leased base property by an approved transfer, or that was leased and attached to another party's base property through an approved transfer;

(2) 50 percent of the grazing bill for pasturing livestock owned by persons other than the permittee or lessee under a grazing authorization; and

(3) 70 percent of the grazing bill when base property is leased and a transfer has been approved and livestock owned by persons other than the permittee or lessee are pastured under a grazing authorization.

(e) * * * Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under §§ 4150 and 4170 of this part when permittees or lessees fail to comply with provisions of this section (see 4130.7–1 (f)). * * * Repeated delays in payment of actual use billings shall be cause to revoke provisions for after-the-grazing-season billing.

37. The first sentence of § 4130.7–3 is revised to read as follows:

§ 4130.7–3 Service charge.

A service charge shall be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. * * *

38. Section 4130.8 is amended by removing the word "shall" and adding in its place the word "may".

Subpart 4140—Prohibited Acts (Amended)

39. Section 4140.1 is amended by revising paragraphs (a)(2), (b)(1)(i), and (b)(9); and adding new paragraphs (b)(11) and (b)(12) to read as follows:

§ 4140.1 Acts prohibited on public lands.

* * * * *

(a) * * *

(1) * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse or use temporarily suspended by the authorized officer.

* * * * *

(b) * * *

(1) * * *

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

* * * * *

(9) Violating State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and laws regarding estray of livestock from permitted public land grazing areas to closed range areas or no-fence agriculture districts;

(10) * * *

(11) Violating any provision of part 4700 of this title concerning the protection and management of wild free-roaming horses and burros;

(12) Violating Federal or State laws or regulations concerning pest or predator control and conservation or protection of natural and cultural resources or the environment including, but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, and the use of chemical toxicants.

Subpart 4150—Unauthorized Grazing Use (Amended)

40. Section 4150.1 is amended by redesignating the second sentence as paragraph (b) and adding a new paragraph (a) following the undesignated first sentence to read as follows:

§ 4150.1 Violations.

* * * * *

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

* * * * *

41. Section 4150.2 is amended by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and adding a new paragraph (a) to read as follows:

§ 4150.2 Notice and order to remove.

(a) Whenever a violation has been determined to be nonwillful and incidental, and the owner of the unauthorized livestock is known, the authorized officer shall notify the alleged violator that a violation has been reported, that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

* * * * *

42. Section 4150.3 is amended by removing the first sentence and revising the sentence following the new first sentence of the introductory text, revising paragraph (a), and removing ""; and" from paragraph (c) to read as follows:

§ 4150.3 Settlement.

* * * The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. * * *

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 17 Western States as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use when the authorized officer determines that each of the following conditions is met:

(1) evidence shows that the unauthorized use occurred through no fault of the livestock operator,

(2) the forage use is insignificant,

(3) the public lands have not been damaged, and

(4) nonmonetary settlement is in the best interest of the United States.

* * * * *

Subpart 4160—Administrative Remedies

43. Section 4160.1 is revised to read as follows:

§ 4160.1 Proposed decisions.

A proposed decision of the authorized officer will be issued prior to the final decision, except when:

(a) Immediate action is necessary to stop resource deterioration, damage to resource values or uses, or to close an area to unauthorized grazing use in accordance with § 4110.3–3 of this part;

(b) The action taken is nondiscretionary;

(c) The action taken implements decisions previously issued under this subpart; or

(d) The action involves the application of discretion within established terms and conditions of permits and leases, and

(1) Required environmental analysis pursuant to the National Environmental Policy Act of 1969 was previously completed; and

(2) Agreement has been reached with the affected permittee or lessee.

44. In § 4160.3 paragraph (a) and (c) are revised and new paragraphs (d), (e), (f) and (g) are added to read as follows:

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

(b) * * *

(c) Any appeal and petition for stay of the decision pending final determination on appeal must be filed within 30 days after receipt of the final decision.

(d) Decisions that are appealed shall remain in effect pending final action

except during the period a petition for a stay is being considered by, or has been granted by the Office of Hearings and Appeals as provided under part 4 of this title.

(e) Except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal. Where an applicant had no active grazing use during the previous year, the authorized use shall be consistent with the decision pending final determination on an appeal.

(f) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the active use authorized to the permittee or lessee shall remain at no more than the previously determined permitted use during appeal.

(g) Notwithstanding the provisions of § 4.21 of this title, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision when necessary to stop resource deterioration or to close an area to unauthorized grazing use in accordance with § 4110.3–3 of this part.

45. Section 4160.4 is revised to read as follows:

§ 4160.4 Appeals.

(a) Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge under § 4.470 of this title by filing a notice of appeal in the office of the authorized officer within 30 days after receipt of the final decision.

(b) A petition for a stay of the decision, if any, shall be filed with the authorized officer together with a notice of appeal. The authorized officer will ensure prompt transmittal of appeals and petitions for stay and the accompanying administrative record to the Office of Hearings and Appeals.

Subpart 4170—Penalties

46. Section 4170.1–2 is revised as follows:

§ 4170.1–2 Failure to use.

After consultation, the authorized officer may cancel permitted use to the extent of failure to use when a permittee or lessee has failed to make substantial use as authorized, or fails to maintain or use water base property in the grazing operation for 2 consecutive grazing fee years.

47. Section 4170.1–3 is amended by revising the section heading, revising the introductory text, and revising paragraph (c) to read as follows:

§ 4170.1–3 Federal or State animal control and environmental protection or resources conservation regulations or laws.

Violation of the Bald Eagle Protection Act, Endangered Species Act, Wild and Free-Roaming Horse and Burro Act, or other Federal and State animal control, conservation or environmental laws or regulations, referenced under § 4140.1 of this title may result in penalty under § 4170.1–1 where:

* * * * *

(c) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of animal control, conservation or environmental laws or regulations where no further appeals are outstanding.

48. The heading of § 4170.2–1 is revised to read as follow:

§ 4170.2–1 Penal provisions under the Taylor Grazing Act.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

49. The authority for 43 CFR part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

50. The authority citation for subpart E, part 4 of title 43 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

51. Section 4.477 is amended by revising the heading, removing paragraph (a), removing the paragraph designation from paragraph (b), and revising the first sentence to read as follows:

§ 4.477 Effect of decision during appeal.

Notwithstanding the provisions of § 4.21 of this part and consistent with the provisions of § 4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. * * *

PART 1780—COOPERATIVE RELATIONS

52. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*

Subpart 1784—Advisory Committees

§ 1784.0–5 [Amended]

53. Section 1784.0–5 is amended by removing from paragraph (d) the term "Authorized representative" and add in its place the words "Designated Federal officer".

54. Section 1784.2–1 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the newly redesignated paragraph (b) to read as follows:

§ 1784.2–1 Composition.

* * * * *

(b) Individuals shall qualify to serve on an advisory committee because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the committee's charter.

55. Section 1784.2–2 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1784.2–2 Avoidance of conflict of interest.

(a) * * *

(1) Holders of grazing permits and leases may serve on advisory committees;

* * * * *

(b) No advisory committee member shall participate in deliberations or vote on any matter in which the member has a direct interest.

56. Section 1784.3 is amended by removing paragraph (a), the introductory language of paragraph (b), paragraphs (b)(3), (b)(4), (b)(5), (c), (d) and (g); redesignating paragraphs (b)(1), (b)(2), (e), and (f) as (a)(1), (a)(2), paragraph (b), and (c), respectively; and adding introductory language to newly redesignated paragraph (a), removing from newly redesignated paragraph (a)(1) the term "district" and adding in its place the term "area", removing the term "his authorized representative" from newly redesignated paragraph (c) and adding in its place the term "the designated Federal officer", and adding a new paragraph (d) to read as follows:

§ 1784.3 Member service.

(a) Appointments to advisory committees shall be for 2-year terms unless otherwise specified in the charter or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorized appointing official.

* * * * *

(d) For purposes of compensation, members of advisory committees shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703.

§§ 1784.4–1 and 1784.5–2 [Amended]

57. Sections 1784.5–1 and 1784.5–2 are amended by removing the term "authorized representative" and adding in its place the term "designated Federal officer", and removing the term "his" and adding in its place the term "the".

§ 1784.6–1 [Reserved]

58. Section 1784.6–1 is removed and reserved.

59. Section 1784.6–4 is revised to read as follows:

§ 1784.6–4 Resource advisory councils.

(a) Two or more resource advisory councils shall be established for the area within the jurisdiction of each Bureau of Land Management State Office.

(b) The Secretary or the designated Federal officer shall appoint not less than 10 nor more than 15 members to serve on each resource advisory council. One appointee of each resource advisory council shall be an official elected to a position in State or local government serving the people of the area for which the council is established.

(c) An advisory council advises the Bureau of Land Management official to whom it reports regarding multiple use plans and programs for public lands and resources within its area.

(d) A resource advisory council and its subcommittee(s) shall meet at the call of the designated Federal officer and elect their own officers. The designated Federal officer shall attend all meetings of the council and its subcommittees.

(e) Administrative support for a resource advisory council and its subcommittees shall be provided by the office of the designated Federal officer.

§ 1784.6–5 [Removed]

60. Section 1784.6–5 is removed in its entirety.

Bob Armstrong,

Assistant Secretary of the Interior.

Appendix

Note: The following appendix will not appear in the Code of Federal Regulations.

Proposed National Standards and Guidelines for General Application to All Components of the Rangeland Ecosystem

1. Grazing management practices will be implemented that will ensure the recovery of threatened or endangered species, prevent species listed by the Fish and Wildlife Service or National Marine Fisheries Service as Category 1 or 2 from becoming threatened or endangered, and prevent other special status species from being considered for listing under the Endangered Species Act.

2. Grazing management practices (e.g., best management practices) will be implemented through terms and conditions of permits and leases, that maintain or restore water quality needed to protect and enhance beneficial uses and that meet or exceed State standards for the protection and propagation of fish, shellfish, and wildlife; and provide for recreation in and on the water.

3. Grazing schedules will include period(s) of rest during times of critical plant growth or regrowth. The timing and duration of rest periods will be determined by the local office administering the grazing authorization.

4. Grazing use will be adjusted before the next grazing season where it is visually obvious or where monitoring data reveal that key resources or watershed functional requirements are not being met because of livestock overuse.

5. Continuous season-long grazing will be authorized only when it has been demonstrated to be consistent with achieving properly functioning condition and meeting identified resource objectives.

6. Pesticides will be used on rangeland only when less intensive management practices have not produced the desired results, where target species are well defined, and where there is minimal risk to nontarget species.

7. Terms and conditions of each permit or lease will include season(s) of use, livestock numbers, kinds of livestock, deferment, rest, or other strategies that maintain or restore vegetation communities required to achieve resource objectives.

8. Development of springs and seeps or other projects affecting water and associated resources will be designed to maintain or enhance ecological values of those sites.

9. Mineral, protein, and other supplements will be placed at least ¼ mile from riparian-wetland areas.

10. Wells will either be drilled at least ¼ mile from riparian-wetland areas, or the water from wells will be made available to livestock at least ¼ mile from riparian-wetland areas.

11. Grazing will be authorized on ephemeral (annual and perennial) rangeland only if valid estimates of production have been made, an identified level of annual growth to remain onsite at the end of the grazing season has been established, and adverse affects on perennial species will be avoided.

12. New livestock management and holding facilities (except fences will be located outside riparian-wetland areas.

13. Riparian-wetland management objectives will be met where existing livestock management and holding facilities are located inside riparian-wetland areas. Where objectives are not being met, appropriate action will be taken which may include relocation or removal of the facilities.

14. Utilization or residual vegetation targets will be applied that will:

a. Improve or restore both herbaceous and woody species (where present or potential exists) to a healthy and vigorous condition and facilitate the ability of vegetation to reproduce and maintain different age classes in the desired riparian-wetland and aquatic plant communities.

b. Leave sufficient vegetation biomass and plant residue (including woody debris) to provide for adequate sediment filtering and dissipation of stream energy for bank protection.

Standards and Guidelines for Unhealthy Ecosystems

The following additional Standards and Guidelines apply to situations where the ecosystems are in poor health, not functioning properly, or are susceptible to degradation.

Riparian-Wetland and Aquatic Components

Properly functioning condition is necessary to dissipate stream energy, improve water quality, aid floodplain development, improve water storage, stabilize streambanks, and develop diverse ponding and channel characteristics, thereby providing greater biodiversity.

Upland and riparian-wetland areas influence aquatic resources, therefore management of grazing must be integrated with the management of the entire watershed. Achieving proper functioning condition and desired plant communities in riparian-wetland areas and uplands contributes the physical and biological characteristics necessary to restore and maintain aquatic habitat. The aquatic component serves as a natural link between the different components of the watershed.

Not Functioning Properly

1. Streambank damage by livestock will be limited to less than 25 percent of the linear length of a stream segment, for example, 10 feet on one bank and 15 feet on the other bank of a 100-foot section of stream.

2. Livestock access to the aquatic zone will be prevented in those seasons and areas where continued grazing would damage important resources, such as spawning areas for salmonids.

3. Grazing management structures within the normal high water line causing deterioration of aquatic areas (e.g., dams, diversions, road crossings) will be removed or modified.

Functioning but Susceptible to Degradation

1. Livestock grazing use shall be adjusted and livestock grazing practices implemented to achieve properly functioning condition and desired plant communities.

2. Livestock use will be adjusted to allow aquatic systems to achieve physical parameters necessary for desired biotic communities.

Upland Component

Uplands are commonly the largest component of the watershed. Most precipitation enters the watershed via uplands, so the condition and treatment of uplands directly affect the health and functioning of the rangeland ecosystem.

Not Functioning Properly

1. Livestock grazing will be adjusted, which may include total rest, to ensure proper functioning condition is reached

where key resources or watershed functional requirements are not being met.

2. Range improvement projects will be limited to those that resolve a resource problem and contribute to achieving properly functioning condition.

3. Land treatment solely oriented toward meeting livestock forage requirements will be discontinued.

Functioning but Susceptible to Degradation

1. Grazing management practices that will improve the uplands to properly functioning condition will be implemented.

2. Livestock grazing will be adjusted (season of use, duration, timing, numbers, etc.) when monitoring shows the use is incompatible with reaching properly functioning condition.

3. Range improvement program shall be limited to those that resolve a resource problem and contribute to properly functioning ecosystems.

Implementation Steps for the Clean Water Act

This section outlines the steps necessary to meet the requirements of the Clean Water Act. The seven steps below need to be followed to select appropriate Best Management Practices (BMPs) and to protect water quality in grazing management. They constitute the Federal non-point source water pollution control strategy. If followed, they will ensure compliance with the Clean Water Act and State water quality requirements.

1. Identify the State-designated beneficial uses for the waters on the area to be grazed.

2. List the water quality standards that must be reached or maintained.

3. Establish objectives to reach or maintain the water quality standards.

4. Implement BMPs grazing strategies and actions to reach the objectives.

5. Monitor BMPs and document if they are being implemented.

6. Monitor and determine if BMPs are effective in meeting objectives. 7.

7. Make changes in management and BMPs if objectives are not being met.

It is not possible to monitor water quality on all areas grazed by livestock. Representative areas can be established to monitor turbidity, temperature, dissolved oxygen, focal coliform, and pH to verify the effectiveness of BMPs.

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Part VII

Department of the Interior

Bureau of Land Management

Grazing Administration, Rangeland Management; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-4320-02-24 1A]

Grazing Administration, Rangeland Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and reopening of scoping.

SUMMARY: The U.S. Department of the Interior through the Bureau of Land Management (BLM) gives notice of its intent to reopen the scoping period for the programmatic environmental impact statement (EIS) that it is developing on rangeland management reform, including future rulemakings. The EIS is being developed pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), with the cooperation of the Forest Service, U.S. Department of Agriculture (USDA—Forest Service).

DATES: Written comments on the scope of the EIS will be accepted until September 13, 1993. Comments postmarked after this date may not be considered in developing the EIS.

ADDRESSES: Scoping comments should be sent to: Michael J. Penfold, Assistant Director, Land and Renewable Resources, Bureau of Land Management, P.O. Box 65800, Washington, DC 20035–0008.

Comments will be available for public review at the Division of Rangeland Management, Bureau of Land Management, U.S. Department of the Interior, 1620 L St. NW., Washington, DC, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Jim Fox at (202) 653–9193; facsimile (202) 653–9118.

SUPPLEMENTARY INFORMATION:

I. Introduction

When submitting comments, please identify whether they relate to the BLM's Advance Notice of Proposed Rulemaking (published separately in today's **Federal Register**), or are scoping comments to be considered in developing the Draft EIS. Comments received after the conclusion of the original scoping period through the date of this notice will be considered along with all original scoping comments and comments received in response to this notice. The Advance Notice of Proposed Rulemaking (ANPR) will be followed by a 30-day comment period, during which the public will be able to suggest changes to the proposals, alternatives, and identify other issues that should be covered in the regulations. The opportunity for public comment on the scope of the Environmental Impact Statement (EIS) has also been extended to coincide with the 30-day ANPR comment period. After review of the comments, the BLM will release proposed regulations and a draft EIS. The release of those documents will be followed by a public comment period of at least 45 days. Comments on the Forest Service's Advance Notice of Proposed Rulemaking should be sent to the address listed in the Advance Notice of Proposed Rulemaking, which is published as a separate notice in today's **Federal Register**.

II. Scoping

Rangeland Reform '94 is a proposal being developed by the U.S. Department of the Interior and the Bureau of Land Management (BLM), in cooperation with the U.S. Department of Agriculture and the Forest Service. These agencies administer livestock grazing on approximately 170 million acres and 100 million acres of public rangelands, respectively. The proposal involves policy and regulatory changes in the BLM's and the Forest Service's rangeland management programs, intended to improve ecological conditions on BLM-managed and Forest Service-managed rangelands while providing for sustainable development.

A major policy element of the reform package is expected to be a set of national Standards and Guidelines for livestock grazing on rangeland ecosystems on BLM-administered lands. This new policy would be used to ensure that livestock grazing on BLM-managed lands occurs in a manner compatible with functioning ecosystems and consistent with the principles of ecosystem-based management. Currently, individual National Forest Land and Resource Management Plans contain standards and guidelines for management of rangeland resources.

The BLM and the Forest Service also propose a number of regulatory changes in their rangeland management program. Some of the regulatory changes are of an administrative or clarifying nature and little environmental effect is expected. In addition, the BLM and the Forest Service propose to change the formula used to calculate grazing fees charged by both agencies on the lands that they administer.

The Department of the Interior recognizes a fundamental need to redirect its resources to improve and restore rangeland ecosystems and to improve and maintain biological diversity. At the same time, both Departments recognize the need to support sustainable economic activities on behalf of rural Western communities. The BLM and the Forest Service also propose to make certain changes to improve the efficiency in the administration of grazing programs. Finally, both Departments seek fair and equitable compensation to the Federal Government for the use of public lands and resources. The purpose of the proposed rangeland management initiatives is to reform the Federal rangeland management programs to meet these needs and to improve the consistency between the BLM and the Forest Service.

Overall, the proposed changes in rangeland management may constitute a major Federal action significantly affecting the quality of the natural and human environment. Therefore, the BLM is developing a programmatic EIS, the Draft Rangeland Reform EIS, to address these issues. The USDA-Forest Service will be a cooperating agency in the preparation of this EIS, in accordance with Council on Environmental Quality regulations (40 CFR 1501.6 and 1508.5).

During the spring and summer of 1993, Interior Secretary Bruce Babbitt held five meetings in the West (Bozeman, MT; Reno, NV; Grand Junction, CO; Albuquerque, NM; and Flagstaff, AZ) to obtain public views on rangeland management. James Lyons, Assistant Secretary for Natural Resources, U.S. Department of Agriculture, or his representative attended all of the meetings with Secretary Babbitt. Hundreds of citizens attended these meetings and over 1,300 letters and written comments were received. After reviewing the comments and ideas expressed at these meetings, the Department of the Interior and the Department of Agriculture initiated the formal scoping process for a rangeland reform EIS, to identify issues and alternatives to be addressed in the Draft EIS.

A notice of intent to prepare the EIS was published in the **Federal Register** on July 13, 1993, requesting public comments and suggestions on the scope of the analysis by July 23, 1993. At that time, the Forest Service was a cooperating agency for purposes of analyzing a grazing fee formula. The Forest Service is now a cooperating agency in the preparation of the EIS as it relates to determining a grazing fee and rangeland reform on National Forests and Grasslands.

During the initial scoping period, comments were received from over 800 individuals. Many people submitted comments requesting that the scoping period be extended.

Using the issues raised during the initial scoping period, the information gathered at the five meetings described above, ideas, suggestions and initiatives brought to the agencies in recent years, and agency files, management plans, and experience, the BLM and the Forest Service developed preliminary ideas about issues, alternatives, and levels of analysis that may be appropriate for the Draft Rangeland Reform EIS, as described later in this notice. As a result of the information and comments from the initial scoping process, the Forest Service also decided to become a cooperating agency for the EIS. Because of the changed circumstances, and the request of many submitting comments that the scoping period be extended, the scoping period has been reopened to provide all interested parties with an opportunity to review preliminary concepts for the EIS so that they may provide additional written comments on the scope of the EIS, including any additional information, issues, or alternatives that should be considered.

The purpose of scoping is to provide an early and open process to determine the scope of the issues to be addressed and to identify the significant issues related to the proposed action. The process is intended to identify reasonable alternatives that should be evaluated in the Draft EIS; identify significant issues to be analyzed in the EIS related to the proposed rangeland initiatives; determine the depth of analysis for issues addressed in the Draft EIS; and identify issues that are outside the scope of the EIS or that do not require detailed analysis.

Interested parties should provide to the BLM information they believe will assist the agencies in conducting an accurate and appropriate analysis of the effects of rangeland reform. Types of information requested include, but are not limited to: information, data, or professional opinions that may contribute to identifying issues significantly affecting the human environment; identification of, and information from, any other EIS or similar study (completed, in progress, or planned) relevant to the proposed rangeland reform initiatives; or information and quantified data that would aid in the characterization of baseline or existing environments.

Interested parties will have further opportunities to participate in the decisionmaking process of the Departments with respect to rangeland reform. The Draft EIS will be made available for public review and comment during a formal public comment period. While no scoping meetings are anticipated to solicit additional public response to the grazing reform proposal, the BLM will hold additional public meetings after publication of the draft EIS. Following the comment period, a Final EIS will be developed. The Final EIS will incorporate additional comments received during the review period. Including public participation throughout the process ensures that the views of all interested parties will be considered by the decisionmakers.

Comments and recommendations are now invited on the scope of the analysis, including but not limited to the proposed action, alternatives to the proposed action, issues to be analyzed, and the appropriate level of analysis. This notice invites participation of other Federal agencies, State, and local governments, as well as affected Indian tribes, scientific community, professional organizations, public land users, the livestock industry, conservation organizations, and other interested parties.

III. Description of the Proposed Action

BLM's preliminary approach to rangeland reform would include national Standards and Guidelines designed to increase the rate of improvement in ecological health and conditions on BLM-administered lands. These Standards and Guidelines, are intended to provide a systematic basis on which to make consistent decisions and would lead to immediate and measurable progress in improving ecological conditions. Consistent nationwide BLM Standards and Guidelines would lessen the subjectivity and confusion associated with making sound resource management decisions, which would instead be based on specific goals related to resource conditions. Integrating Standards and Guidelines for the BLM rangeland management program would be a tiered process. The national Standards and Guidelines would be mandatory. Regional Standards and Guidelines would be developed to ensure that significant values on the local and regional level, which cannot be treated by national direction, would be addressed. Regional Standards and Guidelines could address values such as waterfowl habitat, essential habitat for bighorn sheep and elk, neotropical migratory bird habitat, critical habitat for threatened and endangered species, riparian-wetland conservation areas, salmon spawning areas, and high-use recreation areas such as wild and scenic rivers.

In addition, the proposed action would revise the grazing fee formula for both BLM and Forest Service lands and broaden the use of a portion of the Range Improvement Fund, in an effort to provide for increased emphasis on managing the resources and decreased emphasis on managing the program. The final proposal will include a new formula for calculating grazing fees. This formula will be selected from a range of alternatives, including no change from the current formula, which will be considered by the Secretary of the Interior and the Secretary of Agriculture. A full range of grazing fee options will be presented and evaluated in the Draft EIS before the Secretaries make a final decision on the grazing fee.

Furthermore, both BLM and the Forest Service seek greater program administration efficiencies through a revision of the existing regulations. For BLM, the emphasis on ecosystem management and the restructuring of BLM advisory boards, along with early and frequent public participation, would lead to a more collaborative approach to resolving resource management issues.

Several changes in BLM's regulations will be considered as part of the range reform package (see also the BLM's Advance Notice of Proposed Rulemaking). Areas to be addressed include:

Subleasing (base property, permits, and livestock)
Prohibited Acts
Resource Advisory Boards
Elimination of Suspended Non-Use
Unauthorized Use
Affected Interests
Full Force and Effect
Permit Transfer and Issuance of Permits Based on Performance Records (Disqualification)
Priority for Allocation of Unallocated Forage
Grazing Permit and Lease Tenure
Allocation of Range Improvement Funds
Use of Range Improvement Fund Dollars
Non-Use of Grazing Permit
Ownership of Range Improvements and Water Rights

The Forest Service anticipates developing and/or revising rules related to the following areas (see also the Forest Service's Advance Notice of Proposed Rulemaking):

Ecosystem Approach to Multiple Use Management of Rangelands
NEPA Analysis and Rangeland Management Decisions
Permittee Stewardship
Linkage between Forest Plan Direction and Permit Terms and Conditions

Permit Tenure
Disqualification
Citizenship Requirements
Livestock Ownership Requirements
Penalties for Unauthorized Use
Administrative Efficiency
Advisory Boards

In general, rangeland reform is intended to establish a consistent program aimed at improving ecological conditions while encouraging sustainable development over the long term. This would be done through regulations (see the Advance Notices of Proposed Rulemaking by the BLM and the Forest Service in today's **Federal Register**) and policy guidance. The Forest Service and the BLM will issue separate Records of Decision and regulations.

IV. Issues

Initial scoping comments were received from over 800 individuals and organizations, including individual users, livestock organizations, environmental groups, State and local governments and academia. About 60 percent of these raised a concern over the length of the scoping period. In addition, nearly 40 issues and several specific suggestions were identified in the scoping comments. Issues raised fell into one of four categories:

A. Issues Involving Rangeland Conditions and Resource Use Conflicts

Many people voiced concerns about rangeland conditions and perceived conflicts between livestock grazing and other values and uses of rangeland. Opinions expressed included:

Livestock grazing on public lands should be eliminated on sensitive areas (for example, hot desert areas or riparian areas) or greatly reduced to more environmentally acceptable levels.

Livestock grazing should be eliminated entirely from the public lands.

Livestock use levels should be based on actual and potential carrying capacity of public rangelands, impacts on other resources, and social and economic impacts.

Livestock grazing is an important tool in managing rangeland resources and should not be eliminated.

Special focus should be placed upon riparian-wetland areas, hot desert areas, and ephemeral range.

Ecosystem "sustainability" should be addressed.

The BLM needs to find a better way of expressing objectives for the overall conditions of rangelands.

Ranchers have an important stewardship role on the public land, including providing benefits to wildlife.

The BLM should manage rangeland resources to improve and maintain biological diversity.

Conflicts between livestock grazing and recreational use of public lands should be addressed, including problems of vandalism on range improvements.

Conflicts between big game numbers and livestock numbers should be evaluated, based on the carrying capacity of public rangelands, on impacts to riparian-wetland habitat and other ecologically sensitive areas, and on the need to maintain viable big game populations.

Continued use of animal damage control (ADC) should be assessed, including impacts on both wildlife and livestock numbers, impacts on ranching operations, alternative methods of predator control, and appropriateness of predator control.

BLM should develop and enforce grazing (un)suitability criteria.

BLM should define rangeland management objectives based on desired plant communities and desired future conditions, rather than continue its present focus on potential natural vegetation.

BLM lacks adequate data to assess range conditions, and should not make major decisions about rangeland management until more information has been obtained.

If livestock grazing is not allowed on certain grazing allotments, the Federal Government should have the responsibility to fence the public-private land boundaries.

B. Grazing Fee Issues

A fair and equitable fee for the privilege of grazing on public lands should be identified. The BLM and the Forest Service should develop and use a simple formula to reduce the wide gap between rates charged on public and private lands. The fee should help stabilize the dependent Western livestock industry and should ensure fair return from commercial use of public resources.

The Public Rangelands Improvement Act (PRIA) formula should be reevaluated.

The grazing fee formula should differentiate between small (family) and large (corporate) operators, since large operators can spread the cost of doing business over a bigger operation. It was also suggested that the fee should be based on the individual permittee's ability to pay.

The fee should be tied to rangeland condition.

A higher grazing fee will have the effect of improving the ecological condition of the public rangelands.

C. Social and Economic Issues

A variety of concerns were raised about potential social and economic impacts from rangeland reform.

Impacts on jobs, profits of operators, permit and property values, State and county revenues (tax base effects, Payments in Lieu of Taxes), and rural economies, communities, and lifestyles.

Impacts on private lands (subdivisions, changes in public access, other more intensive uses) and lands administered by other agencies, which are frequently intermingled with or adjoin lands within BLM's jurisdiction.

The effect of all reform alternatives, particularly grazing fee increases, on red meat prices.

A site-specific analysis of impacts to the number of ranch operations, the number of livestock use levels, and related matters.

Stabilization of the livestock industry in the West should be the primary goal of the rangeland management program.

D. Program Administration Issues

A number of issues related to the administration of BLM's range management program were raised.

There is a need to simplify regulations and reduce paperwork. This includes making procedures more consistent among different BLM offices and between the BLM and the Forest Service. Current procedures often vary between offices and agencies.

BLM should formally recognize and deal with "subleasing" under BLM grazing permits and leases. This should include fair compensation for allowing a permittee to transfer base property and permit to another party, or to use the Federal range to pasture controlled livestock owned by a third party.

The concept of "suspended non-use" of livestock forage should be modified or eliminated.

BLM should have greater authority and flexibility to allow non-use, particularly where it would benefit rangeland ecosystems.

BLM grazing permits should be issued for shorter, or longer, periods of time.

The length of permits, or permit "tenure," should be tied to performance.

The functions and responsibilities of grazing advisory boards should be reconsidered.

The need for public involvement in all decisions related to rangeland management should be evaluated. The term "affected interests" should be clarified.

The BLM should have greater flexibility when settling incidental

unauthorized use where resource damage does not occur. Currently, all unauthorized use falls under trespass regulations. There is no mechanism for nonmonetary settlement.

The BLM should have the authority to bar a permittee from holding a permit or lease for a period of years following cancellation of a permit for violation of laws or regulations.

Inconsistencies between regulations should be eliminated, particularly regarding "full force and effect" grazing decisions. The BLM should have greater latitude to implement decisions for more orderly administration of the public rangelands.

Agency regulations should provide priority for issuing permits and preference to those ranching operations that have proven management ability to improve the condition of rangeland ecosystems.

Range Improvement Funds should be made available for a wider range of uses to benefit rangeland ecosystems.

Rangeland reform should evaluate the fiscal and personnel resources that would be needed to fully implement any changes.

Individual EIS's should be prepared by county to address the BLM's rangeland management program. Other programs (for example, wild horses and burros, wilderness, etc.) should also be considered in developing the EIS's. Separate EIS's should be developed for grazing fees, grazing regulation changes, and Standards and Guidelines.

A NEPA analysis, complete with full public involvement for all actions including annual operating plans, should be required.

The Department of the Interior should analyze any possible interference with the value or use of private property that might effect a taking under the Fifth Amendment to the Constitution.

A grazing permit or lease should establish a property right.

V. Level of Analysis

The Proposed Action is expected to implement a set of broad BLM Standards and Guidelines, a new westwide grazing fee formula applicable to both BLM and Forest Service administered lands in the 17 western states, and several regulatory changes related to program administration. Because the connection between these proposals and subsequent implementing actions must necessarily be variable and because they are to be applied to a very wide range of environmental and social conditions, the BLM and the Forest Service regard the Draft EIS as programmatic rather than site-specific. Both agencies will conduct an appropriate site specific environmental analysis (40 CFR 1500–1508) prior to any irreversible or irretrievable commitment of Federal resources.

VI. Proposed Alternatives

Because the initial Notice of Intent and scoping indicated that the Forest Service would be a cooperating agency for the grazing fee, the initial scoping responses did not lead to the development of alternatives that include Forest Service rangeland reform. However, comments received during the re-opened scoping period will be used to develop alternatives that address Forest Service rangeland reform. These will be presented in the Draft EIS.

A. Initial Alternatives

At least three alternatives are expected to be presented in detail in the Draft EIS: Current Management (No Action), Rangeland Reform (the Proposed Action), and No Grazing.

1. Current Management

Under current management, national policies for resource conditions are often unclear. Decisions related to rangeland management are often subjective and are not based on measurable resource condition standards. Patterns in the levels that ranchers use rangeland are frequently major factors in grazing decisions. The initiation of potential improvement in ecological conditions is delayed while several years of monitoring data are collected. Serious site deterioration may continue unabated while the monitoring data is being gathered and analyzed. Grazing receipts do not generate enough funds to cover the costs of needed project work, not to mention the total costs of program administration. Program efficiencies are impeded by restrictions on the use and distribution of Range Improvement Funds, full force and effect decisions, limitations on public participation, and other administrative aspects.

In general, the current rangeland management program has been moving forward. This progress, however, has been slowed by policies that lead to competitive rather than collaborative decisionmaking, limited funding, and ingrained program inefficiencies.

2. Range Reform

The proposed action is described in Section II of this Notice and in the Advance Notice of Proposed Rulemaking, which is published as a separate notice in today's **Federal Register**. This alternative will include several options for calculating the grazing fee formula.

3. No Grazing

Under this alternative, all grazing privileges would be canceled and all livestock would be removed from public rangelands. Public rangelands would be managed for values other than livestock grazing. No range improvement projects for livestock would be constructed. Existing improvements would be assessed and those whose only benefit is for livestock use would be removed. Fences would be constructed by all adjoining landowners who raise livestock to ensure no trespass occurs. All measures for managing livestock grazing on public rangelands in the other two alternatives would be unnecessary.

B. Other Potential Alternatives

A number of other alternatives were proposed during the initial scoping period. These alternatives include numerous versions of Standards and Guidelines and suitability/unsuitability criteria; fewer, or more, regulatory changes involving many of the regulatory issues identified in Section II of this notice; and many grazing fee options such as market-value-based fees, competitive bidding, incentive-based fees, fees geared to private land lease rates, and fees based on the Public Rangeland Improvement Act (PRIA) formula plus a surcharge.

Several programmatic alternatives were also identified in addition to Current Management, the Proposed Action, and No Grazing. These are: an alternative to enhance and emphasize livestock grazing on public rangelands; an alternative to allow States or counties to manage lands that are currently administered by the BLM and Forest Service; and an alternative requiring both the BLM and the Forest Service to adopt National Grassland-management principles on the public lands and the National Forests.

These alternatives will be considered during the development of the Draft EIS, along with any additional alternatives that may be suggested during this re-opened scoping period.

Denise Meridith,

Deputy Director.

[FR Doc. 93–19554 Filed 8–12–93; 8:45 am]

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Monday, August 16, 1993

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Title 3—

The President

Proclamation 6585 of August 11, 1993

To Designate Peru as a Beneficiary Country for Purposes of the Andean Trade Preference Act

By the President of the United States of America

A Proclamation

1. Sections 202 and 204 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201 and 3203) confer authority upon the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other articles, that are the product of any country designated as a "beneficiary country" in accordance with the provisions of section 203 of the ATPA (19 U.S.C. 3202). Pursuant to section 203(b)(2) of the ATPA (19 U.S.C. 3202(b)(2)), I have notified the House of Representatives and the Senate of my intention to designate Peru as a beneficiary country for purposes of the ATPA, together with the considerations entering into such decision. I hereby designate Peru as a beneficiary country under the ATPA, and in order to reflect this designation in the Harmonized Tariff Schedule of the United States (HTS), I have decided that it is necessary to modify general note 3(c)(ix) to the HTS.

2. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 203 of the ATPA and section 604 of the Trade Act of 1974, do proclaim that:

(1) General note 3(c)(ix)(A) to the HTS is modified by inserting in alphabetical sequence "Peru", which is hereby designated as a beneficiary country under the ATPA.

(2) The modifications made by paragraph (1) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of publication of this proclamation in the **Federal Register**.

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IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of August, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-19888
Filed 8-12-93; 3:35 pm]
Billing code 3195-01-P

Editorial note: For the President's letter to Congressional leaders on trade with Peru, see issue 32 of the *Weekly Compilation of Presidential Documents*.

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Marketing

Rules and Regulations

Federal Register
Vol. 58, No. 156
Monday, August 16, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905, 926, and 985

[Docket Nos. FV93-905-2, FV93-926-1, and FV93-985-1 FIR]

Finalization of Interim Final Rules for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Agriculture) is adopting as a final rule, without change, the provisions of the interim final rules that authorized expenses and established assessment rates for the Citrus Administrative Committee, Tokay Grape Industry Committee, and Spearmint Oil Administrative Committee (Committees) under M.O. Nos. 905, 926, and 985, respectively. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994 (§ 905.232), April 1, 1993, through March 31, 1994 (§ 926.232), and June 1, 1993, through May 31, 1994 (§ 985.212).

FOR FURTHER INFORMATION: John R. Toth (M.O. 905), Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone (813) 299–4770; Peter Parks (M.O. 926), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487–5901; Robert J. Curry (M.O. 985), Northwest Marketing Field Office, 1220 SW Third Avenue, room 369, Portland, Oregon 97204, telephone: (503) 326–2724; or Britthany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Orders No. 905 [7 CFR part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; Marketing Agreement and Marketing Order No. 926 [7 CFR part 926] regulating the handling of Tokay grapes grown in San Joaquin County, California; and Marketing Agreement and Marketing Order No. 985 [7 CFR part 985], regulating the handling of spearmint oil produced in the Far West. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, citrus fruit grown in the lower Rio Grande Valley of Texas, Tokay grapes grown in San Joaquin County, California, and spearmint oil produced in the Far West are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable citrus fruit, grapes, and spearmint oil handled during the 1993–94 marketing year, beginning August 1, 1993, through July 31, 1994 (M.O. 905), April 1, 1993, through March 31, 1994 (M.O. 926); and June 1, 1993, through May 31, 1994 (M.O. 985). This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of oranges, grapefruit, tangerines, and tangelos grown in Florida, 3 handlers of Tokay grapes grown in San Joaquin County, California, and 9 handlers of spearmint oil produced in the Far West who are subject to regulation under the respective marketing orders. There are approximately 10,200 producers of citrus fruit, 15 producers of Tokay grapes, and 253 producers of spearmint oil in the regulated areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the citrus fruit, Tokay grape, and spearmint oil producers and handlers may be classified as small entities.

The respective marketing orders require that the assessment rates for a particular marketing year shall apply to all assessable citrus fruit, Tokay grapes, and spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by each Committee and submitted to the Department for approval. The members of the Committee are producers of the regulated citrus fruit, Tokay grapes, and

spearmint oil. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of citrus fruit, Tokay grapes, and spearmint oil. Because these rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

The Citrus Administrative Committee (CAC) met April 27, 1993, and unanimously recommended a budget with expenses of $200,000 for the 1993–94 fiscal year, which is the same expense amount approved for 1992–93 fiscal year. The expense items in the 1993–94 budget are for the administration of the marketing order, and include such major expense items as employee salaries, telephone and facsimile use, and office operations expenses.

The CAC also recommended a 1993–94 assessment rate of $0.00285 per ⅘ bushel carton of fresh fruit shipped, compared with $0.0003 established for 1992–93. Assessment income for 1993–94 is expected to total $182,400, based on estimated shipments of 64,000,000 cartons of assessable fruit. The 1992–93 comparable assessment income total was $187,500, based upon shipments of 60,500,000 cartons of assessable fruit. Interest income for 1993–94 is estimated at $2,500, compared with $4,000 estimated for the 1992–93 fiscal year. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $15,000, will be within the maximum permitted by the order of one fiscal year's expenses.

The Tokay Grape Administrative Committee (TGAC) met on April 2, 1993, and unanimously recommended total expenses for the 1993–94 fiscal year of $5,150 with an assessment rate of $0.07 per carton. In comparison, this is a $125 decrease in expenditures from the 1992–93 fiscal year with the assessment rate remaining unchanged. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $4,500, will be within the maximum permitted by the order of one fiscal year's expenses.

The Spearmint Oil Administrative Committee (SOAC) met on February 25, 1993, and unanimously recommended 1993–94 marketing order expenses of $198,000 and an assessment rate of $0.08 per pound of spearmint oil. In comparison, the 1992–93 marketing year budgeted expenditures were $183,972 and the assessment rate was $0.08 per pound of spearmint oil.

Major expenditure categories in the 1993–94 budget are $81,500 for program administration, $93,500 for salaries, and $23,000 for SOAC travel and compensation. Comparable budgeted expenditures for the 1992–93 marketing year were $72,000, $89,972, and $22,000, respectively.

Assessment income for the 1993–94 marketing year is estimated at $132,000 based on shipments of 1,650,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1993–94 marketing year is estimated at $8,000. The SOAC operational reserve, which is expected to amount to $202,559 on May 31, 1993, will be available to meet the planned $58,000 budget deficit for 1993–94. The projected reserves at the end of the 1993–94 marketing year will not exceed the amount permitted under the marketing order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Interim final rules were published in the **Federal Register** [58 FR 33756, June 21, 1993], for 7 CFR part 905, [58 FR 33012, June 15, 1993], for 7 CFR part 926, and [58 FR 32596, June 11,1993], for 7 CFR part 985. Each interim final rule provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal years for the programs begin on August 1, 1993, for Florida citrus, and began on April 1, 1993, for Tokay grapes, and June 1, 1993, for spearmint oil. The marketing orders require that the rates of assessment for the fiscal years apply to all assessable citrus fruit, grapes, and spearmint oil handled during the fiscal years. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules. No comments were received concerning the three interim final rules that are adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 926

Marketing agreements, Tokay Grapes, Reporting and recordkeeping requirements.

7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR parts 905, 926, and 985 are amended to read as follows:

1. The authority citation for 7 CFR parts 905, 926, and 985 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Annual Code of Federal Regulations.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. For the reasons set forth in the preamble, the interim final rule adding § 905.232 which was published at 58 FR 33756, is adopted as a final rule without change.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

3. For the reasons set forth in the preamble, the interim final rule adding § 926.232 which was published at 58 FR 33012, is adopted as a final rule without change.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

4. For the reasons set forth in the preamble, the interim final rule adding § 985.313 which was published at 58 FR 32596, is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19664 Filed 8–13–93; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 920

[Docket No. FV93–920–1FR]

Kiwifruit Grown in California; Revision of Pack and Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises pack and container requirements for California kiwifruit. The first change adds a new size category to the allowable sizes for packs of kiwifruit. The second change standardizes packaging for certain volume-fill containers packed by weight at 23 pounds. The third change requires all containers of kiwifruit to be marked with the identity of the product; the name, address, and zip code of the shipper; and the quantity of the product within the container. These changes were unanimously recommended by the Kiwifruit Administrative Committee (committee) at its annual meeting.

EFFECTIVE DATE: This final rule becomes effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR Part 920), both as amended, regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California kiwifruit subject to regulation under the marketing order and approximately 600 kiwifruit producers in the production area. The Small Business Administration (13 CFR 121.601) has defined small agricultural producers as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The proposed rule concerning this action was published in the June 30, 1993, **Federal Register** (58 FR 34940), with a 15-day comment period ending July 15, 1993. No comments were received.

Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. Current requirements include specifications that such shipments be at least Size 49, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The production of California kiwifruit for the 1992 season was approximately 12.7 million tray equivalents, compared to the 1991 season production of 7.2 million tray equivalents. This represents a 76 percent increase in California kiwifruit production from 1991 to 1992.

The committee, the agency responsible for local administration of the marketing order, met on February 4, 1993, and unanimously recommended changes to the regulations. These recommended changes and the resulting amendments are as follows:

Additional Size Designation

Section 920.302(a)(4)(ii) of the rules and regulations includes a table that specifies numerical size designations to be used in packing certain containers of kiwifruit. These size designations are defined by numerical counts, which establish the maximum number of fruit per 8-pound sample for each of the established sizes. The size designation table only applies to kiwifruit packed in bags, volume-fill, or bulk containers, and does not apply to kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays. The size designation table defines nine different sizes, beginning with Size 25 (the largest size) and ending with Size 49 (the smallest size). For example, Size 25 means that a maximum number of 27 pieces of kiwifruit may be contained in an 8-pound sample when packed in bags, volume-fill, or bulk containers. The committee recommended adding a Size 21 category which authorizes a maximum number of 22 pieces of fruit in an 8-pound sample.

Size 21 will be the largest size designation for kiwifruit packed in bags, volume-fill, or bulk containers. As a result of improved cultural practices, kiwifruit larger than Size 25 have become more prevalent. During the 1990–91 shipping season, 301 tray equivalents of California kiwifruit

shipments were classified in sizes larger than a Size 25 equivalent, but during the 1992–93 shipping season, 6,022 tray equivalents of California kiwifruit shipments were classified as larger than a Size 25 equivalent. This trend is expected to continue.

Currently, for bags, volume-fill, and bulk containers containing kiwifruit the equivalent of Size 21 or larger, the size is marked as "Size 25." This puts handlers shipping kiwifruit larger than Size 25 at a disadvantage, because handlers may receive higher prices for larger sizes of kiwifruit and could benefit by classifying it as a larger size. A handler does have the option of using containers with molded trays and marking them "21 count," but this container is more expensive than using either bags, volume-fill, or bulk containers. For this reason, more kiwifruit is being shipped in bags, volume-fill, and bulk containers. In 1992, 41.8 percent of California kiwifruit was shipped in either bags, volume-fill, or bulk containers as compared to 18 percent in 1987. There is a need for a Size 21 designation so that kiwifruit marked "Size 21" may be shipped in bags, volume-fill, or bulk containers.

In addition, not having a Size 21 designation makes it difficult for handlers to stay within the size tolerances for the Size 25 designation. Current pack requirements specify that kiwifruit designated as Size 25 must be packed within a ½-inch size tolerance. Since there is no Size 21 designation, kiwifruit of Size 21 or larger is often "blended" into the Size 25 designation. Blending occurs because the four largest size designations have the same size tolerance specified under the order (½-inch) and kiwifruit within that tolerance may be packed in any of those sizes. Blending requires handlers to take special care to stay within the size tolerance and reduces the uniformity of the pack size. Establishing a Size 21 designation could reduce the cost of packing larger-sized fruit by making it easier for handlers to stay within the established size tolerances.

For the above reasons, this change has a positive impact throughout the industry by allowing Size 21 fruit to be uniformly packed in bags, volume-fill, or bulk containers. This change encourages a more uniform pack of larger-sized fruit by decreasing the amount of blending and increasing grower returns since larger fruit often sells at a higher price.

Standardized Packaging

The committee also recommended standardizing the weight of certain volume-fill containers marked by weight at 23 pounds. Paragraph (a)(3) of § 920.52 specifies that the Secretary may fix the weight of containers used in the handling of kiwifruit.

Handlers may ship volume-fill containers of kiwifruit marked by count or by weight depending upon the preference of the receiver. Volume-fill containers marked by count is not affected by this particular change. Also, containers of less than 10 pounds or more than 35 pounds is not affected by this weight standard. Thus, the industry continues to have the flexibility to utilize containers of different weights for a variety of consumer needs.

Currently, there is no standard weight established for volume-fill containers marked by weight. Handlers are shipping volume-fill containers marked by weight primarily of either 21 or 23 pounds. Both containers are sold at essentially the same price. Retailers often expect to receive 23-pound containers and actually receive 21-pound containers. The inconsistency of container sizes has caused confusion and complaints in the marketplace. Standardizing the weight of volume-fill containers marked by weight standardizes marketing practices for the kiwifruit industry.

The committee considered setting the minimum weight for volume-fill containers at 21 pounds rather than at 23 pounds. Those in favor of a 21-pound container believed that such a container packed better. However, some committee members commented that setting a 21-pound standard may result in some loosely packed containers. This in turn could present quality problems caused by a greater amount of jostling during packing and transportation. Proponents of setting a 23-pound standard also pointed out that nearly 90 percent of the volume-fill containers of kiwifruit shipped by the California kiwifruit industry in 1992 were 23-pound containers.

Currently, the committee is aware of three handlers who pack 21-pound volume-fill containers. Most containers used to pack 21 pounds are large enough to contain 23 pounds of kiwifruit. Also, such containers could be used for volume-fill containers marked by count or as 3-layer cartons. This change imposes some minimal costs on some handlers who will have to convert 21-pound volume-fill containers into other types of containers. However, the overall benefits to the California kiwifruit industry by standardizing volume-fill containers at 23 pounds more than offsets the costs imposed on handlers.

An additional packing requirement is added for containers in which quantity is specified by count. The count is required to be equal to three times the size designation. This is already an existing container marking practice of the kiwifruit industry. For example, if the kiwifruit is Size 42, then, on average a total of 126 pieces of fruit would be in the container. The carton would be labeled "Size 42, 126 count." Standardizing the container marking requirements of volume-fill containers marked by count clarifies marketing practices for the kiwifruit industry. Also, the United States Standards for Grades of Kiwifruit in § 51.2338(c)(2) specifies that the actual count shall not vary more than two from the marked count.

Container Marking Requirements

The committee also recommended additional container marking requirements. Section 920.52(a)(3) specifies that the Secretary may set container marking requirements on shipments of kiwifruit. In past years, some container marking requirements on shipments of California kiwifruit were required under the California Agricultural Code. These requirements specified that all containers of kiwifruit be marked with the identity of the product, the name and address of the shipper, and a description of the quantity of kiwifruit contained inside. These three requirements are referred to as identity, responsibility, and quantity (IRQ). The California Department of Food and Agriculture was responsible for the enforcement of these IRQ requirements. Last year, in response to severe budget restraints, the State put this program on a user fee basis. The California kiwifruit industry decided to drop out of the State program, and establish needed container marking requirements under the Federal marketing order.

Specifically, this action establishes under the Federal marketing order's rules and regulations, with minor modifications, the container marking requirements that were formerly required under the California Agricultural Code. The order now requires under § 920.302 that closed containers with cell compartments, cardboard fillers, or molded trays be marked with the count, and that bags, volume-fill, and bulk containers be marked with the size designation, as specified by the size designation table. Also, all containers, except those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export, need to be marked with a lot stamp number.

This action establishes standard container marking requirements similar to IRQ requirements. First, all kiwifruit containers must be labeled with the term "kiwifruit" and the varietal name, if the varietal name is other than Hayward. The container must be labeled as "unknown variety," if the variety of kiwifruit is unknown.

Second, containers also need to be marked with the name and the address of the handler. The address needs to include the city, state, and zip code.

Third, information regarding the quantity of kiwifruit is required to be marked on each of the following types of containers. (1) The count needs to be marked on all molded trays and 3-layer cartons. (2) The net weight and size designation needs to be marked on volume-fill containers packed by weight. Also, the count and size designation needs to be marked on volume-fill containers packed by count. (3) The net weight and size designation or the net weight, count, and size designation needs to be marked on bulk bins. (4) Master containers, which hold more than one individual package, need to be marked to properly express the quantity of the contents. Also, the size designation needs to be marked. For example, a master container packed with 20 packages each containing 1 pound of Size 49 kiwifruit needs to be labeled "20–1 lb. packages, Size 49." (5) The net weight or count needs to be marked on all individual consumer packages. If the count is used, then it needs to be accompanied by the size designation.

When the quantity is expressed in terms of weight, size designation, or count, the marking needs to be accompanied by the words "net weight," "size," or "count" as applicable. For example, a size designation could be marked on a container as "Size 49" or as "49 size," but not as "49."

The lot stamp number could be plainly marked anywhere on the outside of the container. Lot stamp numbers are not required for consumer packages or those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export. All other container marking information needs to be plainly and conspicuously marked on at least one outside principal display panel. The term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown, or examined under normal or customary conditions of display and purchase.

These requirements are necessary because a number of major export markets, including Canada, require these markings. The California kiwifruit industry may have containers of kiwifruit rejected at points of destination unless such containers are properly marked. Currently, containers may pass inspection at the shipping point yet be detained at the point of destination because of improper markings. The mandatory marking of all containers with information regarding the identity, responsibility, and quantity helps prevent problems for shippers and receivers of kiwifruit.

The committee considered not recommending any new container markings, but concluded that invariably some shippers would not follow customary container marking practices. This could damage the reputation of the California kiwifruit industry if improperly marked kiwifruit containers were rejected at the receiving point. Also, mandatory container marking requirements standardizes labeling for California kiwifruit containers. Inconsistent container marking practices could result in confusion in the marketplace and ultimately lower sales and grower revenue.

In addition, the committee considered remaining under the State program and paying an additional assessment of $.001 per container. Not only is this alternative more expensive than adding the IRQ regulations to the Federal order, but it imposes an additional burden by requiring Shipping Point Inspection (SPI) personnel to contact State Standardization personnel each time a mislabeled container was detected. Under this rule, the SPI inspects and certifies compliance with IRQ requirements, in addition to current grade, size, maturity, pack, and container marking requirements under the order.

For purposes of clarification, portions of paragraph (a)(4) and paragraph (a)(5) of § 920.302 regarding container marking requirements are incorporated, in modified form, into a new § 920.303 which deals specifically with container marking requirements. It is the intent of this action to add new container marking requirements to the rules and regulations and not to replace existing container marking requirements.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be implemented prior to the beginning of the shipping season in mid-September. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a proposed rule provided a 15-day comment period and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(5) is removed, and paragraph (a)(4) is revised to read as follows:

Note: The following section will appear in the Code of Federal Regulations.

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) *Pack Requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph. The fruit packed in such containers shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (lbs)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample unit may be more than 4 ounces less than such weight.

(ii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in

diameter if Size 30 or larger; not more than 3/8-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than 1/2-inch in diameter (0.4 mm) if Size 45/46 or smaller. Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph. The following table specifies the numerical size designation to be used in packing such containers as shown in Column 1, and the maximum number of fruit per 8-pound sample as shown in Column 2.

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
21	22
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(iii) For shipments in volume-fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(iv) All volume-fill containers of kiwifruit designated by weight shall hold 23 pounds net weight of kiwifruit unless such containers hold less than 10 pounds or more than 35 pounds net weight of kiwifruit.

* * * * *

3. A new § 920.303 is added to read as follows:

Note: The following section will appear in the Code of Federal Regulations.

§ 920.303 Container marking regulations.

No handler shall ship any kiwifruit except in accordance with the following terms and conditions:

(a) Each package or container of kiwifruit shall bear on at least one outside principal display panel in plain sight and in plain letters, the word "kiwifruit," the name of the variety (if other than the Hayward variety), if known or, when the variety is not known, the words "unknown variety."

(b) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the name and address (including the city, state, and zip code) of the shipper.

(c) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the following information regarding the quantity of kiwifruit packed within the container:

(1) The quantity shall be indicated in terms of count for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

(2) The quantity shall be indicated in terms of the size designation and either the net weight for volume-fill containers packed by weight or the count for volume-fill containers packed by count.

(3) For bulk bins, the quantity shall be indicated in terms of the size designation and net weight; or in terms of the size designation, net weight, and count.

(4) Master containers, which hold more than one individual package, must be properly marked with the quantity of the contents. The size designation must also be indicated.

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. If count is used, it must be accompanied by the size designation.

(6) Designations of size, count, and net weight on each container shall be accompanied by the words "size," "count," or "net weight" as applicable.

(d) Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(e) As used in this section, the term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown or examined under normal or customary conditions of display and purchase.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-19868 Filed 8-13-93; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 923

[Docket No. FV93-923-1FR]

Sweet Cherries Grown in Designated Counties in Washington; Finalize Revised Size and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change an interim final rule which increased the minimum size requirement for Washington sweet cherries that can be shipped to fresh market outlets from 23/32 to 54/64 inch in diameter, and revised the pack requirements for such cherries. Such action was designed to provide fresh markets and consumers with slightly larger fruit, and improve the quality of cherries offered to consumers. This is intended to enhance the image of Washington sweet cherries in the fresh market, and improve returns to producers. This action was recommended by the Washington Cherry Marketing Committee (committee), which works with the Department in administering the marketing order.

EFFECTIVE DATE: This final rule becomes effective September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 923 (7 CFR part 923), as amended, regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not

intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington sweet cherries that are subject to regulation under the marketing order. In addition, there are approximately 1,100 producers in the regulated area. The majority of handlers and producers of Washington sweet cherries may be classified as small entities as defined by the Small Business Administration (SBA) (13 CFR 121.601). Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000.

The interim final rule was issued on May 21, 1993, and published in the **Federal Register** (58 FR 30698, May 27, 1993) with an effective date of May 27, 1993. That rule revised the size and pack requirements for Washington cherries by amending § 923.322. That rule also provided a 30-day comment period which ended June 28, 1993. No comments were received.

The committee met on November 18, 1992, and recommended that the minimum size requirement established for fresh market shipments be increased from $^{52}/_{64}$ to $^{54}/_{64}$ inch in diameter, an increase of $^{2}/_{64}$ inch in diameter. This eliminates the $^{52}/_{64}$ inch or "13 row size" pack and makes the $^{54}/_{64}$ inch or "12 row size" pack the minimum allowable size.

The minimum size increase was designed to improve the image of Washington sweet cherries in the marketplace and provide buyers with slightly larger sized fruit, thus improving the quality level and flavor. That action should encourage repeat purchases and increase cherry sales, shipments, and grower returns.

Approximately 90 million pounds of sweet cherries were shipped during the 1992 season. Shipments of fruit less than $^{54}/_{64}$ inch in diameter accounted for less than one percent of total industry shipments. Approximately $^{1}/_{10}$th of one percent of 1992 shipments consisted of fruit designated as 13 row size. A $^{2}/_{64}$ of an inch increase in the size requirement for sweet cherries grown in designated counties in Washington will have a negligible impact on industry supplies. In addition, the size increase was designed to improve the overall fruit size and quality of the pack. Small cherries tend to be less mature, of poorer flavor, and have more defects affecting quality.

Approximately 95 percent of the total shipments of 13 row size fruit during the 1992 season were shipped during the first two weeks of the season, and 100 percent were shipped during the first four weeks of the season. Initial offerings of cherries set the market tone for the remainder of the season. Purchases of larger, higher quality fruit at the beginning of the season are expected to encourage consumers to make subsequent purchases, thus expanding and stabilizing market demand and increasing returns to growers and handlers.

The committee also recommended a conforming change to the handling requirements. Prior to implementation of the interim final rule, at least 90 percent of the cherries in a lot of face packed containers or containers of 20 pounds or more had to measure at least $^{54}/_{64}$ inch in diameter, and not more than 5 percent could be less than $^{52}/_{64}$ inch in diameter. The intent of that requirement was to restrict the shipment of "13 row size" cherries to containers of 12 pounds or less. Since the increase in the minimum size requirement precluded the shipment of 13 row size cherries, that language is no longer necessary. Therefore, the interim final rule revised paragraph (a)(2) of § 923.322 to reflect the revised minimum size requirement and deleted paragraph (a)(3) of that section relating to face-packed containers and containers of 20 pounds or more.

The interim final rule also made a conforming change to the Washington cherry pack requirements. Paragraphs (c)(2) and (c)(3) of § 923.322, establish pack requirements under the marketing order, which were not in conformity with the Washington State Standards for Grades of Sweet Cherries (Standards) prior to the implementation of the interim final rule. Prior to implementation of that rule, these paragraphs stated that containers marked with a minimum diameter could be shipped if at least 90 percent, by count, of the cherries in any lot met the minimum diameter requirements. The Standards provide that containers marked with a minimum diameter may be shipped only if at least 95 percent, by count, of the cherries in any lot meet the specified minimum diameter. Therefore, the interim final rule revised the current pack requirements under the order concerning minimum diameter markings to conform with the off-size tolerances of the Standards. The interim final rule amended paragraph (c)(2), and eliminated paragraph (c)(3) of § 923.332. That action permitted containers marked with a minimum diameter to be shipped only if at least 95 percent, by count, of the cherries in any lot met the minimum diameter requirements. That action was designed to eliminate possible confusion about labelling requirements, and clarify the requirements, resulting in better service to the industry.

The interim final rule also clarified pack requirements for containers of cherries with row count markings. That action specified that the percentage count for off-size cherries be applied only to individual lots and not to individual containers.

It is the Department's view that this action will benefit producers and handlers. The anticipated increase in demand and grower returns will significantly offset the costs of compliance with the regulations. In addition, the committee believes that the regulatory change will improve returns to producers in the production area while consistently providing fresh markets with slightly larger, good quality, flavorful sweet cherries.

Based on the above information, the Administrator of the AMS has determined that this action will not

have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of sweet cherries grown in designated counties in Washington State.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule as published in the **Federal Register** [58 FR 30696, May 27, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

[**Note:** This section will appear in the annual Code of Federal Regulations.]

2. Accordingly, the interim final rule amending the provisions of § 923.322, which was published in the **Federal Register** [58 FR 30696, May 27, 1993] is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19695 Filed 8–13–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92–1) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning OSM Regulatory Reform I and II issues, State initiatives, and stylistic or editorial changes. The proposed changes are intended to revise the Indiana program to be consistent with changes made to the corresponding Federal regulations, and to address industry petitions and State initiatives.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background of the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

Since July 29, 1982 (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), and August 24, 1988 (Regulatory Reform II), that a number of Indiana regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated March 26, 1992 (Administrative Record No. IND–1057), the Indiana Department of Natural Resources (IDNR) submitted to OSM a State program amendment package consisting of revisions to 60 sections of the Indiana rules. These revisions address some of the changes to the Indiana program that were identified in the two letters referred to above. Industry and the State have also proposed additional changes which Indiana believes will further improve the approved State program.

OSM announced receipt of the proposed amendment in the May 21, 1992 **Federal Register** (57 FR 21634), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 22, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated June 15, 1992 (Administrative Record Number IND–1098), the IDNR submitted to OSM, proposed changes to program amendments 91–8 and 92–1 at 310 IAC 12–2–2, 310 IAC 12–3–112, and 310 IAC 12–3–13. These same changes are also proposed in the 92–1 amendment package. OSM announced receipt of the proposed changes in the August 19, 1992, **Federal Register** (57 FR 37498), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on September 3, 1992. The proposed changes to 310 IAC 12–2–2, 310 IAC 12–3–13, and 310 IAC 12–3–112 were subsequently approved by OSM on December 30, 1992 (57 FR 62207), and will not, therefore, be discussed in this notice.

By letter dated August 19, 1992 (Administrative Record No. IND–1128), OSM responded to Indiana's proposed rules by identifying specific concerns and requesting clarification from Indiana. Indiana responded by letter dated November 5, 1992 (Administrative Record No. IND–1166). Indiana provided additional information by letter dated February 1, 1993 (Administrative Record Number IND–1258). OSM identified additional concerns on March 9, 1993, and March 12, 1993. Indiana responded by letter dated May 17, 1993 (Administrative Record Number IND–1244).

By letter dated December 2, 1992 (Administrative Record Number IND–1175), Indiana submitted program amendment 92–7 concerning subsidence liability. In the 92–7 amendment package, Indiana proposes to add new section 310 IAC 12–5–130.1 to the Indiana program. Some of the new provisions proposed at 310 IAC 12–5–130.1 are closely related to the proposed changes in amendment package 92–1 at 310 IAC 12–5–133. Therefore, the Director transferred the proposed changes at 310 IAC 12–5–133 to Indiana's proposed amendment 92–7.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–2–6.	Petitions	30 CFR 764.13
310 IAC 12–3–6.	Permit Applications.	30 CFR 777
310 IAC 12–3–94.1.	Experimental Practices.	30 CFR 785.13
310 IAC 12–4–16.	Bond Release; Requirements.	30 CFR 800.40
310 IAC 12–5–30.	Discharge into Underground Mine.	30 CFR 816.41(i)
310 IAC 12–5–32.	Stream Buffer Zone.	30 CFR 816.57
310 IAC 12–5–39 (a), (b), and (d).	Excess Spoil	30 CFR 816.71
310 IAC 12–5–42 (b), and (d) through (h).	Coal Processing Waste Banks; Inspection.	30 CFR 816.83
310 IAC 12–5–43.1.	Refuse Piles; Water Control.	30 CFR 816.83
310 IAC 12–5–51.	Protection of Fish, Wildlife and Environmental Values.	30 CFR 816.97
310 IAC 12–5–55.1.	Backfilling and Grading.	30 CFR 816.102
310 IAC 12–5–57.5.	Backfilling/ Grading Previously Mined Areas.	30 CFR 816.106
310 IAC 12–5–82.	Underground Hydrologic Balance.	30 CFR 817.41
310 IAC 12–5–92.	Underground: Surface and Groundwater Monitoring.	30 CFR 784.14
310 IAC 12–5–95.	Underground: Discharge of Water into Underground Mine.	30 CFR 817.41
310 IAC 12–5–97.	Underground: Stream Buffer Zones.	30 CFR 817.57
310 IAC 12–5–100.	Underground: Preblasting Survey.	30 CFR 817.62
310 IAC 12–5–104 (1) through (9).	Underground: Waste and Excess Spoil.	30 CFR 817.71
310 IAC 12–5–106 (b), (d) through (h).	Underground: Inspection of Waste Banks.	30 CFR 817.83
310 IAC 12–5–107.1.	Refuse Piles; Water Control.	30 CFR 817.83
310 IAC 12–5–115.	Underground: Protection of Fish, Wildlife and Environmental Values.	30 CFR 817.97
310 IAC 12–5–119.1.	Underground: Backfilling and Grading.	30 CFR 817.102

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12–0.5 Definitions

a. *310 IAC 12–0.5–6 Affected area.* This definition is amended by deleting the existing language and adding new language which is intended to reflect the language of the Federal counterpart definition at 30 CFR 701.5. The proposed language differs from the counterpart Federal language in the following ways. The proposed language provides that the affected area includes "each" of seven specified examples of "affected area." In response to an OSM letter (Administrative Record Number IND–1128), Indiana clarified in its letter dated November 5, 1992, that the term "each" will be interpreted to mean that "affected area" means any one or more of the specified examples. In addition, Indiana stated that it will clarify the language through its next available rule submittal. By letter dated July 2, 1993 (Administrative Record Number IND–1272), Indiana submitted proposed amendment 93–5 which contains the language clarifications.

In subsections (4), (5), and (6), Indiana uses the terms "an" or "a" to refer to sites and areas which would be considered "affected areas." In response to the OSM letter mentioned above, Indiana clarified that it interprets "an" and "a" as used at subsections (4), (5), and (6) to mean "any" as used in the counterpart Federal definition. In addition, Indiana will clarify the language through its next available rule submittal.

The Federal definition of "affected area" is suspended insofar as it excludes roads which are included in the definition of "surface coal mining operations" (51 FR 41952; November 20, 1986). The proposed definition does not contain the language which is suspended from the Federal definition of "affected area."

The Director finds, with the clarifications discussed above, that the proposed definition is no less effective than the Federal definition of "affected area" at 30 CFR 701.5. The Director is requiring that Indiana further amend 310 IAC 12–0.5–6 (4), (5), and (6) to clarify that Indiana's use of the terms "an" and "a" to refer to sites and areas which would be considered "affected areas" means "any" as used in the counterpart Federal definition at 30 CFR 701.5

b. *310 IAC 12–0.5–32.5 Cumulative impact area.* This definition is added to provide a counterpart to the Federal definition of "cumulative impact area" at 30 CFR 701.5. The proposed definition is substantively identical to the Federal definition with one exception. The proposed language provides that anticipated mining includes the entire projected lives through final bond release of: (1) The proposed operation; (2) existing operations; (3) any operation for which a permit application has been submitted to the IDNR, and (4) any operation which must meet development requirements for leased Federal coal for which actual mine development information is available. While the counterpart Federal definition contains these same four provisions, the Federal definition makes it clear that the four provisions listed do not comprise an exhaustive list, but are "at a minimum." The proposed language, however, does not make this clear. In the letter dated November 5, 1992, Indiana stated that the only difference between the State and Federal language is in style, and that the meanings are the same. That is, Indiana's interpretation of the proposed language would be consistent with the listed items being considered "at a minimum." The Director finds, therefore, that with the clarification discussed above, the proposed definition is no less effective than the Federal regulations.

c. *310 IAC 12–0.5–90.5 Pipeline.* This definition is added to identify those facilities to which the additional notification requirements and protection provisions contained in 310 IAC 12–3–57, 12–3–106, 12–5–99, 12–5–100, 12–5–131, 12–5–133 will apply. In the proposed definition, "pipeline" means the physical facilities through which petroleum, natural gas, or another hazardous product is transported where: (1) Pipe is used which has a nominal diameter of at least six inches; or (2) operations occur at a pressure of more than 275 pounds per square inch. A pipeline also includes compressor units, metering stations, holders, fabricated assemblies, and the valves and other appurtenances attached to the pipe.

There is no direct Federal counterpart to the language of this definition. The Director finds, however, that the proposed definition is not inconsistent with SMCRA and is no less effective than the Federal regulations.

d. *310 IAC 12–0.5–91.5 Previously mined area.* This definition is added to provide that "previously mined area" means land previously mined on which there have been no surface coal mining operations in existence after August 3, 1977, that were not specifically exempted from 30 U.S.C. 1201, *et seq.*, or IC 13–4.1. On September 25, 1991 (56 FR 48714), the Federal definition of "previously mined area" was proposed for amendment, and on January 8, 1993 (58 FR 3466), a final rule notice announcing approval of the revised Federal definition of "previously mined area" was published in the **Federal Register.** The revised Federal definition of "previously mined area" reads as follows: "Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII." The Federal regulations at 30 CFR 816.106 and 817.106 concerning backfilling and grading of previously mined areas provide an exception to the requirements at 30 CFR 816/817.102 (a)(1) and (a)(2) concerning the elimination of high walls. The revised Federal definition achieves its intended effect in that it: (1) limits the applicability of 30 CFR 816.106 and 817.106 to those areas mined prior to August 3, 1977, that are either unreclaimed or reclaimed to lesser standards than those prescribed by SMCRA; and (2) ensures that areas mined prior to that date that have been fully and satisfactorily reclaimed pursuant to SMCRA's standards will not be redisturbed and then reclaimed under the less stringent requirements of 30 CFR 816.106 and 817.106. For a complete explanation of the revised Federal definition, the reader should refer to the January 8, 1993, **Federal Register.**

The Director finds the proposed Indiana definition of "previously mined area" to be no less effective than the revised Federal definition to the extent that the Indiana definition limits previously mined areas to areas affected by surface coal mining operations prior to August 3, 1977. However, the proposed Indiana definition is less effective than the Federal definition to the extent that the Indiana definition does not also limit previously mined areas to lands affected prior to August 3, 1977, that have not been reclaimed to the standards of 30 CFR chapter VII. Therefore, the Director is requiring that Indiana further amend the definition of "previously mined area" at 310 IAC 12–0.5–91.5 to be no less effective than the revised Federal definition of "previously mined area" at 30 CFR 701.5 published on January 8, 1993 (58 FR 3466).

2. 310 IAC 12–2–7 Initial Processing, Record Keeping, and Notification

In addition to nonsubstantive change to this provision, Indiana proposes to amend subsections (h) and (n), and add a new subsection (j). Subsection (h) is revised to provide that the director of IDNR shall return to the petitioner any petition which is found to be incomplete or frivolous. The new language is substantively identical to the Federal regulations at 30 CFR 764.15(a)(3) except Indiana does not have a counterpart to the Federal language which cites 30 CFR 764.13(a). Under the Federal regulation, a petition may be returned if it does not meet the requirements of 30 CFR 764.13(a).

In its letter dated November 5, 1992, Indiana stated that through the definition at 310 IAC 12–0.5–90 and the requirements of who may file a petition at 310 IAC 12–2–6, the Indiana program adequately satisfies the Federal requirements at 30 CFR 764.13(a). The Director agrees and finds that the provision is no less effective than the Federal regulations at 30 CFR 764.15(a)(3). In addition, Indiana stated that for clarification, a reference to 310 IAC 12–2–6 will be added to 310 IAC 12–2–7.

A new subsection (j) has been added which provides that if the petition covers an area for which designation has previously been considered and rejected, the director of IDNR shall determine if the petition presents significant new allegations of facts with evidence which tends to establish the allegations. The petition shall not be considered if such allegations and evidence are not present and shall be returned with written findings and a reference to the record of the previous proceedings in which the issues raised by the petitioner were considered. The Director finds that this proposed addition is substantively identical to the Federal counterpart language at 30 CFR 764.15(a)(4).

Subsection (n), previously subsection (m), is amended by deleting language which states that inspection of public records shall be available free of charge, and copying at reasonable cost during normal business hours. In its place, Indiana has added "under IC 5–14–3" the provision which concerns access to public records. The Director finds that the deletion of the language noted above does not render the Indiana program less effective than the Federal regulations at 30 CFR 764.15(d), and the addition of the citation concerning access to public records is no less effective than the Federal regulations.

3. 310 IAC 12–3–30.5/68.5 Fish and Wildlife Information

Indiana is adding these new sections to provide rules governing environmental resources information concerning fish and wildlife. The proposed rules and substantively identical to the counterpart Federal regulations at 30 CFR 780.16 and 784.21 with two exceptions. The proposed language at subsections (a) lack counterparts to the Federal requirements at subsections (a)(1) which provide that the scope and detail of the required fish and wildlife information shall be determined by the regulatory authority "in consultation with State and Federal agencies with responsibilities for fish and wildlife." Such information must be sufficient to design the protection and enhancement plan. In addition, the proposed rules have no counterpart to 30 CFR 780.16(a)(2)(iii) and 784.21(a)(2)(iii) which require agency consultation concerning site specific information

Indiana addressed these concerns in its November 5, 1992, letter to OSM. Consultation with State and Federal agencies with responsibilities for fish and wildlife as required by 30 CFR 780.16 (a)(1) and (a)(2)(iii), and 784.21 (a)(1) and (a)(2)(iii) is assured by signed memorandums of understanding (MOU) between the Division of Reclamation of the IDNR, and Division of Fish and Wildlife of the IDNR and the U.S. Fish and Wildlife Service (FWS). Indiana noted that to ensure that every permitting action is reviewed for potential impacts upon fish and wildlife, one full-time staff member,

whose duties are outlined in the MOU between the Division of Reclamation and the Division of Fish and Wildlife, is employed by IDNR's Division of Fish and Wildlife for permit review. In addition, the MOU with the FWS assures the Federal participation. Therefore, Indiana asserts, by both policy and rule, existing State procedures are no less effective than the Federal regulations. The Director agrees, and finds the proposed Indiana rules in concert with the MOU's discussed above are no less effective than the Federal regulations.

4. 310 IAC 12–3–33/12–3–71 Permits; Surface Water Information

Subsections 33/71(a) are amended by deleting the requirement to identify the name of the watershed at subsections 33/71(a)(1). The counterpart Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2) do not require the name of the watershed. Therefore, the Director finds the proposed deletion does not render the Indiana rules less effective than the Federal counterparts.

New subsections 33/71/(a)(2) are added to provide that the location of any discharge into a surface water body shall be identified. The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2).

Subsections 33/71(a)(3) are amended by adding that the ownership of surface water bodies must be identified. The Director finds the proposed added requirements to be substantively identical to the counterpart Federal requirements at 30 CFR 780.21(b)(2) and 784.14(b)(2).

Subsections 33/71(b) are amended by deleting the existing language at subsections 33/71(b)(1) and adding in its place the requirement that permit applications shall include baseline information on seasonal flow. Indiana has also added the following requirements. At subsections 33/71(b)(2)(A), specific conductance corrected to 25 degrees celsius may be substituted for total dissolved solids. Subparagraphs 33/71(b)(2) (E), (F) and (G) are added to require total iron, total manganese, and baseline acidity and alkalinity information if there is a potential for acid mine drainage from the mining operation. The Director finds the addition of these provisions to be substantively identical to the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2).

New subsections 33/71(c) have been added to provide that the director of IDNR shall require the applicant to provide additional information to evaluate the probable hydrologic consequences (PHC) and to plan remedial activities if the determination of PHC required by 310 IAC 12–3–47/81 indicates that adverse impacts are reasonably likely to occur to the hydrologic balance, or that acid- or toxic-forming material is present that is reasonably likely to result in contamination of ground or surface water supplies.

The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 780.21(b)(3) and 784.14(b)(3) except that the Indiana language uses the term "reasonably likely" where the Federal regulations state that additional information shall be required if the PHC indicates that adverse impacts "may" occur or if contamination "may" occur. In its letter dated November 5, 1992, Indiana stated that Indiana will interpret the phrase "reasonably likely" as the Federal "may," and that Indiana will amend the language in the next regulation reform package. The Director finds, therefore, that the proposed language, with Indiana's interpretation discussed above, is no less effective than the Federal regulations at 30 CFR 780.21(b)(3) and 784.14(b)(3).

5. 310 IAC 12–3–46.5/80.5 Fish and Wildlife Protection and Enhancement

Indiana is adding these new sections to provide rules governing the required reclamation plan and the protection of fish and wildlife. The proposed rules are substantively identical to the Federal regulations at 30 CFR 780.16/784.21 with one exception. The proposed rules do not contain a counterpart to 30 CFR 780.16/784.21(c). These Federal provisions provide that, upon request, the regulatory authority shall provide the resource information and the protection and enhancement plan required by 30 CFR 780.16/784.21 to the FWS for their review. In response to OSM's concern about the lack of counterparts to the Federal regulations, Indiana asserted that with the MOU between the IDNR Division of Reclamation and the FWS the proposed rules are as effective as the Federal counterparts. Indiana also stated that, for clarity the State will incorporate the counterpart language in the next available rule reform package. The Director finds, and with the understanding that under the MOU between the IDNR and the FWS, the IDNR shall provide to the FWS (within 10 days of a request) the resource information and protection and enhancement plan required by the Indiana program, that the proposed rules are no less effective than the Federal regulations.

6. 310 IAC 12–3–47/81 Protection of Hydrologic Balance

Indiana proposes several nonsubstantive changes throughout these sections. In addition, Indiana proposes to add language at subsections 47(c) and 81(c) which provides that sampling and analysis shall be conducted under 310 IAC 12–5–27 (12–5–92 for underground mining). 310 IAC 12–5–27(c) and (12–5–92(c)) provides that water quality analysis and sampling shall be conducted according to the methodology in the sixteenth edition of "Standard Methods for the Examination of Water and Wastewater (1985)." The Director finds the proposed language to be no less effective than the Federal regulations at 30 CFR 780.21(a) which provide that all water-quality analysis shall be conducted according to the methodology in "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR parts 136 and 434.

7. 310 IAC 12–3–57 Underground: Identification of Interests

Indiana proposes numerous nonsubstantive changes throughout this section. In addition, at subsection 57(a)(2) language is added which provides that each application shall contain the names and addresses of every operator of a pipeline within the area affected.

Indiana has added the definition of "pipeline" to its rules (see Finding 1(c), above) to identify those facilities to which additional notification requirements and protection provisions contained in 310 IAC 12–3–57, 12–3–106, 12–5–99, 12–5–100, 12–5–131, and 12–5–133 will apply. The Director finds that while there is no direct Federal counterpart to the proposed language, the language is not inconsistent with SMCRA and is no less effective than the Federal regulations at 30 CFR part 778 which establish the minimum requirements for permit applications under SMCRA.

8. 310 IAC 12–3–78 Underground: General Permit Requirements

In addition to nonsubstantive wording changes to this section, Indiana proposes to add a new subsection 78(d). Proposed subsection 78(d) provides that if an application for a permit proposes to mine within a zone of influence of an underground mine, the application must include a typical detailed mine plan to a scale of no greater than one inch equals 100 feet. The mine plan shall depict the pillar, entry, crosscut, and

panel dimensions within the zone of influence. There is no direct Federal counterpart to the proposed language. However, the Director finds that the proposed language is not inconsistent with SMCRA at section 507(b) which provides that permit applications contain detailed maps or plans showing the land to be affected and other things specified by the regulatory authority. The Director also finds the proposed language to be consistent with and no less effective that the Federal regulations at 30 CFR 784.11.

9. 310 IAC 12–3–94 Experimental Practices

This section has been repealed and replaced with 310 IAC 12–3–94.1. The Director has determined that proposed 310 IAC 12–3–94.1 is substantively identical to the Federal regulations at 30 CFR 785.13 (see finding section A). The Director finds, therefore, that the proposed deletion of 310 IAC 12–3–94 will not render the Indiana program less effective than the Federal regulations.

10 310 IAC 12–3–98 Prime Farmland

Indiana proposes nonsubstantive changes throughout this section. In addition, Indiana proposes to use the date "August 4, 1977" in several places in this section where the counterpart Federal regulations use the date "August 3, 1977." The Federal regulations at 30 CFR 785.17 concerning prime farmland provide that the prime farmland regulations do not apply to permits issued prior to August 3, 1977. The Indiana counterparts to the Federal "prior to August 3, 1977" language state prior to August 4, 1977. That is, the Federal language excludes August 3, 1977, from the exemption, whereas the Indiana language includes August 3, 1977, in the exemption. In its November 5, 1992, letter concerning this difference, Indiana stated that "no permits with an August 3, 1977, effective date have been issued by the Division." Indiana added that the difference, therefore, is moot. The Director agrees and finds that Indiana's use of the date August 4, 1977, in the proposed language at section 94 is no less effective than the Federal regulations at 30 CFR 785.17.

Indiana proposes to add a new subsection 98(c) which provides that subsection 98(d) applies to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. In addition, proposed 98(c) provides that subsection 98(d) does not apply to an existing surface coal mining operation which held a valid permit on August 3, 1977, with continuous permits held since that date. As discussed above, Indiana's inclusion of August 3, 1977, in the exemption from prime farmland rules does not render the proposed rules less effective than the Federal prime farmland regulations. The Director finds that the proposed subsection 98(c) is no less effective than the Federal regulations at 30 CFR 785.17 (a) and (a)(1).

Indiana proposes to add a new subsection 98(c) which provides that subsection 98(d) applies to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. In addition, proposed 98(c) provides that subsection 98(d) does not apply to an existing surface coal mining operation which held a valid permit on August 3, 1977, with continuous permits held since that date. As discussed above, Indiana's inclusion of August 3, 1977, in the exemption from prime farmland rules does not render the proposed rules less effective than the Federal prime farmland regulations. The Director finds that the proposed subsection 98(c) is no less effective than the Federal regulations at 30 CFR 785.17 (a) and (a)(1).

Indiana proposes to amend subsection 98(d)(1) to add that the soil survey required by subsection 98(d)(1) shall include a description of all soil mapping units and a soil profile for each unit that includes soil horizon depth, pH, and the range of soil densities for each prime farmland soil unit. The Director finds the proposed language is substantively identical to the counterpart Federal provision at 30 CFR 785.17(c)(1)(ii) except that the Federal regulations provide that the representative soil profile must be determined by the U.S. Soil Conservation Service. Therefore, the director is requiring that Indiana further amend the Indiana program to provide that the soil profile required under 310 IAC 12–3–98(d)(1) must be determined by the U.S. Soil Conservation Service.

11. 310 IAC 12–3–106 Permit Applications: Responsibility

In addition to nonsubstantive changes throughout this section, Indiana proposes to amend subsection 106(d)(4). Subsection (d)(4) is amended by deletion of the words "for the information pertaining to the coal seam itself" and replacement of those words by the words "information exempted from public disclosure under section 110 of this rule." In effect, the amendment provides that confidential information submitted with a permit will be protected under 310 IAC 12–3–110. The Director finds the proposed amendment is no less effective than the Federal regulations at 30 CFR 773.13(a)(2) which provide that a permit application shall be public information except for confidential information exempt from disclosure under 30 CFR 773.13(d).

12. 310 IAC 12–3–110 Permit Applications: Public Availability

Indiana is making several nonsubstantive changes to this section. In addition, Indiana is also proposing to amend subsection 110(a) to provide that information contained in a permit application on file with the director of IDNR is a public record under IC 5–14–3, except as provided in subsection 110(b). In its original submittal of this amendment, Indiana cited the State statute IC 5–15–3 rather than IC 5–14–3. In its November 5, 1992, letter to OSM, the IDNR clarified that IC 5–14–3 (Access to Public Records) is the correct citation. Indiana will correct the citation in the State's "errata" process and the correct citation will be published in the Indiana Register. The Director finds, with the understanding that the citation of Indiana's Access to Public Records statute will be corrected through Indiana's "errata" process, that the proposed amendments at subsection 110(a) are no less effective than the Federal regulations at 30 CFR 773.13(d)(1) concerning general availability of public records.

Indiana proposes to amend subsection 110(c) by deleting the phrase "is confidential" and adding in its place the phrase "is a trade secret." Indiana law defines "trade secret" at IC 24–2–3–2. The Indiana definition is not inconsistent with section 508 of SMCRA which provides for the confidentiality of information pertaining to the analysis of chemical and physical properties of the coal. The Director finds that the proposed amendment is no less effective than the Federal regulations at 30 CFR 773.13(d)(3)(ii) which provide that permit information required under section 508 of SMCRA that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential, is confidential.

Indiana is amending subsection 110(d) to provide that the director of IDNR shall provide for procedures to separate the information which is a public record from the information which is a trade secret. In addition to nonsubstantive wording changes, Indiana is deleting the word "confidential" and adding in its place "trade secret." While there is no direct

Federal counterpart to the proposed language, the Director finds the proposed language to be not inconsistent with SMCRA and no less effective than the Federal regulations at 30 CFR 773.13(d).

Indiana is amending subsection 110(e) to provide that an applicant must clearly identify information which the applicant wishes to protect as a trade secret and must submit that information separately from other portions of the application. The Director finds the proposed language to be no less effective than the confidentiality provision at 30 CFR 773.13(d)(3).

The Federal regulations at 30 CFR 773.13(d)(3) (iii) provide that confidential information shall be limited (in addition to those provisions identified at 30 CFR 773.13(d)(3) (i) and (ii)) to information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, 93 Stat. 721, 16 U.S.C. 470). In its letter dated November 5, 1992, Indiana stated that its counterpart to the Federal provision cited above is at IC 13–4.1–3–3(b). The Director agrees. Indiana also stated that the provision at IC 13–4.1–3–3(b) concerning the confidentiality of the nature and location of archaeological resources on public and Indian land will be added to the state's rules in future rulemaking.

Indiana proposes to add a new subsection 110(f). Proposed subsection 110(f) provides that a person who opposes or seeks disclosure of information which pertains to the analysis of chemical and physical properties of the coal to be mined, or information claimed as a trade secret, may submit the request under 310 IAC 12–3–107. The person seeking or opposing disclosure and the applicant shall be notified in writing of an order made by the director of IDNR with respect to that request. The order is subject to administrative review under IC 4–21.5–3–5 and 310 IAC 12–3–118 and 119. The Director finds the proposed provision to be no less effective than the Federal provision concerning confidentiality at 30 CFR 773.13(d)(3) which also provides for procedures for persons both seeking and opposing disclosure of confidential information.

13. 310 IAC 12–3–116 Permit Applications: Terms and Conditions; Right of Entry

Indiana is proposing several non-substantive changes to this section. In addition, Indiana is adding a new subsection 116(e) to provide that the operator shall pay all reclamation fees required by 30 CFR part 870 for coal produced under the permit for sale, transfer, or use, in the manner required by 30 CFR part 870. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 773.17(g).

14. 310 IAC 12–3–127 Permits: Approval for Transfer, Assignment, or Sale of Permit Rights

Indiana is proposing numerous non-substantive changes throughout this section. In addition, Indiana proposes to add a new subsection 127(c)(4). Proposed subsection 127(c)(4) provides that the approval for a transfer, sale, or assignment of rights under a permit shall not be granted except on a written finding that a surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of a Federal or State statute, rule, or regulation. If such a finding cannot be made, the applicant must establish that: (A) the current violation has been or is in the process of being corrected to the satisfaction of the agency which has jurisdiction over the violation; or (B) the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. An appeal taken from an order or determination of the IDNR must conform to IC 13–4.1. If the initial judicial review authority either denies a stay applied for in the appeal or affirms the violation, the applicant shall promptly submit documentation to establish the requirements of clause (A).

The Director finds that the proposed provision is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.15(b)(1) (i) and (ii) except that the proposed provision does not also apply to persons who own or control the applicant and to persons owned or controlled by the applicant as do the Federal regulations at 30 CFR 773.15(b)(1)(ii). Therefore, the Director is requiring that Indiana further amend 310 IAC 12–3–127(c)(4) so the provision will also apply to persons who own or control the applicant and to persons owned or controlled by the applicant.

Indiana is adding a proposed new subsection 127(c)(5) to provide that approval for a transfer, sale, or assignment of rights under a permit shall not be granted except upon written finding that the written findings required under section 310 IAC 12–3–112 concerning permit approval or denial have been made. The Director finds that the proposed amendment is substantively identical to the Federal regulations at 30 CFR 774.17(d) concerning transfer, assignment, or sale of permit rights which provides that the written findings under 30 CFR 775.15(c) must be met for permit approval.

Indiana proposes to add new subsection (d) to provide that Indiana shall notify the permittee, the successor, any person who provides comments under 310 IAC 12–3–127, and OSM of the findings made under 310 IAC 12–3–127(c). The Director finds the proposed amendment is substantively identical to the Federal regulations at 30 CFR 774.17(e)(1) concerning notification.

15. 310 IAC 12–3–128 Permit Reviews

In addition to nonsubstantive changes, Indiana proposes to amend subsection (a) by adding that a successor in interest to a permittee shall immediately provide notice to the director of IDNR of the consummation of the transfer, assignment, or sale of permit rights. The Director finds the proposed language is substantively identical to the Federal regulations at 30 CFR 774.17.

16. 310 IAC 12–3–131 SOAP Eligibility

In addition to nonsubstantive changes, Indiana proposes to add new subsection 131(2)(E). Subsection 131(2)(E) provides that all coal produced by operations owned by members of the applicant's family and the applicant's relatives shall be attributed to the applicant unless the applicant establishes there is no direct or indirect business relationship between or among them. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 795.6(a)(2)(iv).

Indiana proposes to add a new subsection 131(3) to provide that to be eligible for assistance under the Small Operator Assistance Program (SOAP), an operation must also establish that the company was not organized or reorganized solely for the purpose of obtaining assistance. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 795.6(a)(4).

17. IAC 12–4–3 Responsibilities of the IDNR

In addition to nonsubstantive changes, Indiana proposes to amend subsection 3(e) and add a new subsection 3(f). In subsection 3(e) Indiana proposes to delete reference to 30 CFR 800.50, the Federal regulations concerning forfeiture of bonds, and add in its place, reference to 310 IAC 12–4–17, Indiana's rules concerning forfeiture of bonds. The Director finds that the

deletion of the reference to 30 CFR 800.50 and the addition of the citation of Indiana's approved rules regarding forfeiture of bonds at 310 IAC 12–4–17 does not render 310 IAC 12–4–3(a) less effective than the Federal regulations concerning forfeiture of bonds.

Indiana proposes to add new subsection (3)(f) to provide that the IDNR shall require in the permit that adequate bond coverage be in effect at all times. Further, except as provided in 310 IAC 12–4–10(e)(2), operating without bond coverage is a violation of a permit. The Director finds the proposed amendment to be substantively identical to the counterpart Federal regulations at 30 CFR 800.4(g) concerning regulatory responsibilities.

18. 310 IAC 12–5–16 Hydrologic Balance; General Requirements

In addition to nonsubstantive changes throughout this section, Indiana proposes to add language to subsection 16(a). With the new language, subsection 16(a) provides that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 816.41(a) concerning protection of the hydrologic balance.

19. 310 IAC 12–5–24 Hydrologic Balance; Impoundments

Indiana proposes to make numerous nonsubstantive changes throughout this section. In addition, Indiana proposes to amend subsection 24(a)(4) to provide that the impoundment must have an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816.49(a)(4). The Director notes that the proposed language contains a typographical error: the word "overstopping" should be "overtopping." In its November 5, 1992, letter, Indiana stated that the error will be corrected in the State's "errata" process.

Indiana proposes to delete the existing language in subsection 24(c) and to add new language in its place. Subsection 24(c) now provides that an impoundment must comply with 30 CFR 77.216 and have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions and a seismic safety factor of at least 1.2. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 816.49(a)(3).

Indiana proposes to add at subsection 24(c), language which provides that the vertical portion of any remaining highwall must be located enough below the low-water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 816.49(a)(9).

Indiana also proposes to amend subsection 24(c) to provide that if surface runoff enters the impoundment, the side slope must be protected to prevent erosion. The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 816.49(a)(6). The Director also finds that the deletion of the previously approved language at subsection 24(c), in concert with the findings discussed above, does not render the Indiana program less effective than the Federal regulations.

Indiana proposes to amend subsection 24(f) concerning inspections. The proposed language provides that if an examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of IDNR of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director of IDNR shall be notified immediately. The Director shall notify the appropriate agencies that other emergency procedures are required to protect the public. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 816.49(a)(12). However, Indiana has added the proposed language to subsection 24(f) which pertains only to dams and embankments which meet the size or other criteria of 30 CFR 77.216(a), whereas the Federal regulations at 30 CFR 816.49(a)(12) pertain to all impoundments. The Director is approving the proposed language with the understanding that it applies to all dams and embankments and not just those dams and embankments meeting the size or other criteria of 30 CFR 77.216(a). In addition, the Director is requiring that Indiana further amend the Indiana program to clarify that all dams and embankments are subject to the examination and inspection provision which provides that if an examination or inspection discloses that a potential hazard exists, the director of IDNR shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action.

Subsection 24(h) is amended by nonsubstantive changes. However, Indiana uses the term dams "or" embankments where the Indiana rules at subsection 24(f) and 24(g) apply those provisions to dams "and" embankments. In its letter dated November 5, 1992, Indiana stated that Indiana will interpret the provision as if it read "and," and will correct the language in future rulemaking. The Director finds, with the understanding that proposed subsection 24(h) applies to dams "and" embankments, that the proposed amendments are no less effective than the Federal regulations.

20. 310 IAC 12–5–27 Surface and Groundwater Monitoring

In addition to nonsubstantive changes to this section, Indiana proposes to add a new subsection 27(a)(4). Subsection 27(a)(4) provides that if the analysis of a groundwater sample indicates noncompliance with a permit condition, the permittee must: (a) promptly notify the director of IDNR, and (b) immediately take any action required by the reclamation plan or by a permit condition. The proposed language is substantively identical to the Federal regulations at 30 CFR 816.41(c)(2) which also provide that the regulatory authority be notified whenever groundwater sampling indicates noncompliance, and that the operator immediately take the actions provided for in the hydrologic reclamation plan and permit conditions with one exception. The proposed Indiana language lacks a counterpoint to 30 CFR 773.17(e) which concerns permittee actions to minimize any adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition of the permit. Specifically, 30 CFR 773.17(e) specifies three minimum steps to be taken by the permittee. To be no less effective than the Federal regulations at 30 CFR 816.41(c)(2), the Indiana program must contain and reference a counterpoint to 30 CFR 773.17(e). The Director finds the proposed language at 310 IAC 12–5–27(a)(4) to be no less effective than the counterpart Federal regulations at 30 CFR 816.41(c)(2) except to the extent that the Indiana program lacks a referenced counterpoint to 30 CFR 773.17(e). In addition, the Director is requiring that Indiana further amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2) which requires compliance with 30 CFR 773.17(e).

New subsection 27(c) has been added to provide that water quality analysis

and sampling shall be conducted according to the methodology in the 16th edition of Standard Methods for the Examination of Water and Wastewater (1985). The Director finds the proposed language is substantively identical to the Federal regulations at 30 CFR 780.21(a) concerning water sampling and analysis methodology.

21. 310 IAC 12–5–39 Disposal of Excess Spoil

a. In addition to nonsubstantive changes throughout this section, Indiana is adding new subsection 39(c) to provide that excess spoil areas, other than excess box cut spoil outlined under 310 IAC 12–5–39(b), shall be inspected by a registered professional engineer or other qualified specialist under the direction of a registered professional engineer, who shall periodically inspect the fill during construction. The professional engineer or specialist must be experienced in the construction of earth and rock fills. The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 816.71(h) except as discussed below.

The proposed language would exclude excess box-cut spoil outlined under 310 IAC 12–5–39(b) from the inspection requirements at 310 IAC 12–5–39(c). In response to OSM's comments concerning the proposed exclusion (Administrative Record Number IND–1258), Indiana stated that if all or part of the box-cut spoil is not required to achieve approximate original contour, application may be made to the Division of Reclamation for reclassification as excess spoil. Indiana further stated that if the box-cut spoil is reclassified as excess, then it automatically falls into the requirements of subsection (c) of 310 IAC 12–5–39. Under subsection 39(c), the excess box-cut spoil would be subject to the inspection requirements for excess spoil. OSM finds this explanation acceptable because it would eliminate the exclusion for excess box-cut spoil from the inspection requirements at 310 IAC 12–5–39(c).

However, the language of the Indiana rules at 310 IAC 12–5–39(b) and (c) are inconsistent with Indiana's explanation of their intended implementation of these rules. For example, proposed 310 IAC 12–5–39(c) specifically excludes excess box-cut spoil areas outlined under 310 IAC 12–5–39(b) from the inspection requirements at subsection 39(c).

The Director finds that the proposed language at 310 IAC 12–5–39(c) is no less effective than the Federal regulations at 30 CFR 816.71(h) except to the extent that the proposed language does not require that box-cut spoil which is excess spoil be inspected under 310 IAC 12–5–39(c). In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–39(c) or otherwise amend the Indiana program to clarify that box-cut spoil which is excess spoil is subject to the inspection requirements of 310 IAC 12–5–39(c).

b. Indiana is adding new subsection 39(e) to provide that the registered professional engineer shall provide the director of IDNR with a certified report after each inspection required under subsection (c) of 310 IAC 12–5–39. The Director finds the proposed language at subsection 39(c) to be substantively identical to and no less effective than the Federal regulations at 30 CFR 816.71(h)(2). However, the Indiana program lacks a counterpart to 30 CFR 816.71(h)(4) which requires that a copy of each inspection report shall be retained at or near the mine site.

The Director is requiring, therefore, that the Indiana program be further amended to include a counterpart to 30 CFR 816.71(h)(4).

22. 310 IAC 12–5–42/106 Coal Processing Waste Banks; Inspection

a. Indiana is adding new language to subsections 42(c) and 106(c) to provide that in addition to the inspections required under subsections 42(b) and 106(b), regular inspections by the engineer, Mine Safety and Health Administration (MSHA) certified inspector, or other qualified person, must also be conducted during the placement and compaction of coal mine waste materials. Subsections 42(c) and 106(c) are also revised to provide that the director of IDNR "shall" require more frequent inspections under subsections 42/106(b) and 42/106(c) based upon a finding of the potential danger to the health or safety of the public and the potential harm to land, air, and water resources. Prior to this revision, the Indiana rules provided that the director of IDNR "may" require more frequent inspection under the identical circumstances. The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816/817.83(d) with the following exception. The Federal regulations provide that qualified professional specialists who conduct inspections of coal waste banks, must be under the direction of a qualified registered professional engineer. The proposed Indiana revisions, however, while authorizing inspections by MSHA certified inspectors and other qualified persons, do not require that such persons be under the direction of a qualified registered professional engineer. To the extent that the proposed Indiana rules do not require that inspections by MSHA certified inspectors and other qualified persons be under the direction of a qualified registered professional engineer, the proposed rules are less effective than the Federal regulations. Therefore, the Director is not approving the words "MSHA certified inspector, or other qualified person" which appear in the first sentence of subsections 42(c) and 106(c).

b. The approved Indiana language at subsections 310 IAC 12–5–42(a) and 106(a) provide that an MSHA certified inspector may conduct inspections of coal processing waste banks on behalf of the person conducting surface or underground mining operations. The approved language at 310 IAC 12–5–42(a) also provides for inspections by "another qualified person," while the proposed revision to 310 IAC 12–5–106(a) would add authorization of inspections by "another qualified person." As discussed above at Finding 22(a), the Federal regulations at 30 CFR 816/817.83(d) provide that such inspections be conducted by a registered professional engineer or by other qualified specialists under the direction of the professional engineer. Therefore, the existing language at 310 IAC 12–5–42(a) and 106(a) and the proposed language at 310 IAC 12–5–106(a) concerning authorization of inspections by "MSHA certified inspector, or another qualified person" is less effective than the Federal regulations.

Therefore, the Director is not approving the proposed language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or other qualified persons. In addition, the Director is requiring that Indiana amend 310 IAC 12–5–42(a) and 106(a) to either delete authorization of inspections by MSHA certified inspectors or other qualified persons, or clarify that inspections by such persons must be under the direction of a qualified registered professional engineer.

c. Indiana has added new subsections 42(i) and 106(i) as counterparts to the Federal regulations at 30 CFR 816/817.83(d)(3). The Director finds the proposed language to be substantively identical to the counterpart Federal regulations with the following exceptions. The proposed language references 310 IAC 12–5–49(b) as requiring drainage systems (underdrains) and protective filters. The citation is incorrect. The correct citation is 310 IAC 12–5–42(b). In its letter dated

November 5, 1992, Indiana stated that the citation will be corrected through the State's "errata" process. The proposed language also contains a typographical error. The term "prove" should read "provide." Indiana will also correct this via the "errata" process. The Director finds the proposed subsections 42/108(i), with the corrections discussed above, are no less effective than the Federal regulations.

23. 310 IAC 12–5–43/107 Waste Banks; Water Control

Indiana has proposed to delete these sections from the Indiana program. The provisions (a) and (b) from 310 IAC 12–5–43/107 have been incorporated into 310 IAC 12–5–43.1/107.1 and have been found to be no less effective than the Federal regulations by the Director (see Findings section A above). The provisions under 310 IAC 12–5–43/107(c) concerning quality of water discharged from a coal processing waste bank are governed by the Indiana regulations concerning hydrologic balance. For example, 310 IAC 12–5–16(c) provides that in no case shall Federal and Indiana water quality statutes, regulations, standards, or effluent limitations be violated. The Director finds, therefore, that the proposed deletion of 310 IAC 12–5–43/107 will not render the Indiana program less effective than the Federal regulations.

24. 310 IAC 12–5–48 Coal Processing Waste Dams and Embankments

Indiana proposes to amend this provision by deleting the existing language and adding new language in its place. The Director finds the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816.84 concerning coal mine waste impounding structures with the following exceptions.

a. The proposed Indiana rule at subsection 48(a) provides that new or existing impounding structures constructed of coal mine waste or intended to impound coal mine waste must comply with the Indiana provisions at section 310 IAC 12–5–48 and sections 12–5–49 and 50. The Director finds the proposed rules to be substantively identical to the counterpart Federal regulations at 30 CFR 816.84 except that the cited provisions of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to 30 CFR 816.81 which is cited in 30 CFR 816.84. Therefore, the Director is approving 310 IAC 12–5–48(a) except to the extent that the referenced citation of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to the Federal regulations at 30 CFR 816.81. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–48, 49 and 50 or otherwise amend the Indiana program to provide a complete counterpart to 30 CFR 816.81 as cited by the Federal regulations at 30 CFR 816.84.

b. Proposed subsection 48(d) provides that if an impounding structure conforms with 30 CFR 77.216(a) the combination of principal and emergency spillway shall be able to safely pass runoff from the 100-year, six-hour design precipitation event. The counterpart Federal provision at 30 CFR 816.84(b)(2) provides that such a structure shall safely control the probable maximum precipitation of a six-hour precipitation event. Therefore, the proposed 100-year, six-hour standard is less effective than the Federal regulations and cannot be approved. The Director is requiring that Indiana further amend the Indiana program to provide that coal mine waste impounding structures which conform to 30 CFR 77.216 have sufficient capacity to safely control the probable maximum precipitation of a six-hour precipitation event.

c. Proposed subsection 48(f) provides that the term "impounding structure" does not include incised impoundments or impoundments plugged by massive earthen fills which would be treated as incised impoundments under good engineering practices.

According to the Federal regulations at 30 CFR 701.5, an impoundment is a water, sediment, slurry, or other liquid or semi-liquid holding structure or depression, either naturally formed or artificially built. An incised impoundment is an impoundment located entirely within or below the surface of the surrounding land. Such an impoundment has no built-up sides or dams which impound, for example, water. Therefore, incised impoundments cannot fail catastrophically. This is different than an impoundment with an embankment which holds back water (or other substance) above the pre-existing ground surface. Failure by shearing or eroding of the embankment can release a hazardous rush of impounded water.

An impoundment plugged by a massive earthen fill can be viewed as an incised impoundment, having characteristics of both an embankment impoundment and an incised impoundment. In such an impoundment, the embankment which acts as a dam is so extraordinarily large that the impoundment can be viewed as being incised into the earth. Consequently, such an impoundment is not likely to fail as would an impoundment with a normal-size dam (40 feet high with 2h:1v side slopes, crest of 20 feet). Indeed, an impoundment plugged by a massive earthen fill would behave as an incised impoundment.

In its letter dated August 19, 1992, OSM requested that Indiana provide additional information to explain the concept of "massive earthen fills" as proposed by Indiana. In response, Indiana stated in the November 5, 1992, letter that the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) makes determinations on the amount of fill necessary for a structure to be considered incised. Indiana further stated that the State would defer to MSHA's determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

MSHA (District 8, which covers Indiana) does make such determinations (Administrative Record Number IND–1200). Typically, to qualify as an incised impoundment, a massive earthen fill would have interior and exterior embankment slopes of 3h:1v, have a crest width of greater than 150 feet, and have a fill depth of less than 40 feet. Such a fill would have a base of at least 390 feet. Overall, the total volume of a minimum-size massive earthen fill would be 2.7 times greater than that of a normal-size dam. These minimum dimensions would be contingent on low hazard risk of the impoundment, and favorable soil conditions. The minimum size of the massive earthen fill would increase as hazard or volume of impounded water increase and soil conditions worsen.

Soil conditions and topography are very important to the consideration of massive earthen fills creating the equivalent to incised impoundments. The massive earthen fill described above requires a considerable extent of flat-lying terrain—390 feet. If the terrain were not flat-lying, any overtopping of an impoundment would result in a hazardous flow concentrated and directed downslope. Consequently, only flat-lying topography would be free of such a hazard; Indiana has such flat-lying topography.

There is no direct Federal counterpart to the proposed language. The Director finds the proposed language is not inconsistent with SMCRA at section 101(g) which recognizes the diversity in terrain and other such factors in the various coal mining States, and section 515(b)(13) concerning coal mine waste. The Director also finds the proposed language to be no less effective than the Federal regulations at 30 CFR 816.84

concerning impounding structures. The Director is making this finding with the understanding that MSHA will make all the determinations in Indiana as to when a "massive earthen fill" would no longer be considered an "impounding structure." The Director notes that this finding does not free the permittee from adhering to all applicable State and Federal water quality standards, nor from any other applicable performance standards in 310 IAC 12–5. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–48(f) to clarify that Indiana will seek and defer to MSHA's determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

25. 310 IAC 12–5–99 Explosives

In addition to nonsubstantive changes to this section, Indiana is proposing to add a new subsection 99(d)(1)(c). The proposed new language provides that an anticipated blast design shall be submitted if blasting operations will be conducted within 1,000 feet of a pipeline. While there is no direct Federal counterpart to the proposed language, the Director finds the proposed language is not inconsistent with SMCRA and is no less effective than the Federal regulations at 30 CFR 817.61 concerning use of explosives and which serve to protect the public.

26. 310 IAC 12–5–104(10) Underground: Spoil Placement; Certification.

The proposed language provides that spoil shall be placed in horizontal lifts not exceeding four feet thick, except where the director of IDNR approves a greater thickness based upon: (a) A certification by a registered professional engineer that the design ensures the stability of the fill; and (b) a demonstration from the permittee that all other applicable requirements of 310 IAC 12–5–104 are satisfied. The counterpart Federal regulations at 30 CFR 817.71(e)(2) provide that the regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements. The proposed language differs from the counterpart Federal regulations in that the proposed language does not require the registered professional engineer to certify both that the design ensures the stability of the fill, and that the design will meet the other applicable requirements. The Director finds that the proposed language is no less effective than the counterpart Federal regulations except to the extent that the proposed language fails to require the registered professional engineer to certify that the fill design meets all applicable requirements. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–104(10) to provide that the registered professional engineer must certify that the design will meet all applicable requirements.

27. 310 IAC 12–5–121.5 Underground: Previously Mined Areas

Indiana proposes to add this section as a counterpart to the Federal regulations at 30 CFR 817.106. The Director finds the proposed rule to be substantively identical to the counterpart Federal regulations. The Director notes that the proposed language contains two typographical errors which Indiana has indicated will be corrected in the State's "errata" process. At subsection 121.5(b)(1), the word "soil" should read "spoil." At 121.5(b)(2), the words "back fill" should read "backfill."

28. 310 IAC 12–5–131 Underground: Public Notice

In addition to nonsubstantive changes, Indiana proposes to add that the permittee of an underground mine must mail a mining schedule to operators of pipelins within the area above and within 500 feet of the underground workings. There is no direct Federal counterpart to the proposed language concerning pipelines. However, the Director finds that the proposed language is not inconsistent with SMCRA at section 516 concerning surface effects of underground coal mining operations, and is no less effective than 30 CFR 817.122 which provides that such notification be provided to owners and occupants of surface property and structures.

29. 310 IAC 12–5–144 Auger Mining

Indiana has made nonsubstantive changes throughout this section. In addition, subsection 144(c)(1) is amended to clarify that if sealing of auger holes within 72 hours is not possible, the discharge shall be treated within 72 hours after completion to meet applicable effluent limitations and water quality standards until the hole is sealed. The Director finds the revised subsection 144(c)(1) to be substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 819.15(b)(1).

Subsection 144(c)(2) has been amended by deleting some existing language and adding new language. As amended, subsection 144(c)(2) provides that holes which are not discharging water containing toxic-forming or acid-forming material shall be sealed as contemporaneously as practicable with the augering operation in accordance with a schedule approved by the Natural Resources Commission in the approved permit or by the director of IDNR. The Director finds the amended language to be substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 819.15(b)(2).

Subsection 144(d) is being amended by deleting the word "and" and adding in its place the word "or." The effect of this amendment would be to make compliance with the provisions of subsections 144(d)(1) and 144(d)(2) an either/or option. However, the counterpart Federal regulations at 30 CFR 819.15(c)(1) provide that auger holes need not be sealed with an impervious material so as to prevent drainage if the regulatory authority determines that both the resulting impoundment may create a hazard and the drainage from the holes does not pose a threat of pollution. Therefore, the proposed use of "or" at subsection 144(d)(1) is less effective than the Federal regulations at 30 CFR 819.15(c)(1) and is not approved. In addition, the Director is requiring that Indiana further amend subsection 144(d)(1) to provide that auger holes need not be plugged if the conditions at both 144(d)(1) and 144(d)(2) are found to exist.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Bureau of Mines (BOM) had two comments (Administrative Record Number IND–1077). BOM said that the meaning of the term "*sic*" which appears at 310 IAC 12–3–6(c)(1) is unclear. In response, the Director notes that the term "*sic*" means that an error in spelling appears in the text. In this case, the word "an" should be "and."

BOM also said there appears to be a lack of consistency in the use of the terms "application" and "permit" and what they require. The Director disagrees. The term "application" and "permit" are used accurately in the proposed rules. The term "application" consistently refers to the document an

applicant must submit to the regulatory authority as part of the process of obtaining a permit. The term "permit" consistently refers to the document the regulatory authority issues to an applicant upon the applicant's successful completion of the application process.

The U.S. Fish and Wildlife Service recommended (Administrative Record Number IND–1075) that 310 IAC 12–3–33(a)(3) and 310 IAC 12–3–71(a)(3) be amended to specifically include "wetlands." As discussed in finding 4, above, the proposed Indiana language at 310 IAC 12–3–33/71(a)(3) is substantively identical to the counterpart Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2). The cited Federal regulations do not specifically identify "wetlands" as water bodies to be identified. However, the list of surface water bodies identified in the proposed rules (and in the counterpart Federal regulations) is not an exhaustive list as the words "and similar water bodies" indicates. Wetlands, of course, would be one example of a similar water body.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the May 21, 1992, **Federal Register** (57 FR 21634). The comment period closed on June 22, 1992. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings above, the Director is approving, except as noted below, Indiana's program amendment number 92–1 as submitted by Indiana on March 26, 1992, and clarified on November 5, 1992, February 1, 1993, and May 19, 1993.

As discussed above in Finding 1(a), the Director is requiring that Indiana amend 310 IAC 12–0.5–6(4), (5), and (6) to clarify that Indiana's use of the terms "an" and "a" to refer to sites and areas which would be considered "affected areas" means "any" as used in the counterpart Federal definition at 30 CFR 701.5.

As discussed above in Finding 1(d), the Director is approving the definition of "previously mined area" except to the extent that the definition does not limit the definition to apply to lands affected prior to August 3, 1977, that have not been reclaimed to the standards of 30 CFR chapter VII. The Director is also requiring that Indiana amend 310 IAC 12–0.5–91.5 to provide that "previously mined area" also means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

As discussed above in Finding 10, the Director is approving 310 IAC–3–98 except to the extent that the proposed rule fails to require that the soil profile required by 310 IAC 12–3–98(d)(1) be determined by the U.S. Soil Conservation Service. The Director is requiring that Indiana amend the Indiana program to provide that the soil profile required under 310 IAC 12–3–98(d)(1) must be determined by the U.S. Soil Conservation Service.

As discussed above in Finding 12, the Director is approving 310 IAC 12–3–110 with the understanding that the citation of Indiana's Access to Public Roads statute at 310 IAC 12–3–110(a) will be corrected through the State's "errata" process.

As discussed above in Finding 14, the Director is approving 310 IAC 12–3–127 except to the extent that subsection 127(c)(4) does not also apply to persons who own or control the applicant and to persons owned or controlled by the applicant. In addition, the Director is requiring that Indiana amend 310 IAC 12–3–127(c)(4) so the provision will also apply to persons who own or control the applicant and to persons owned or controlled by the applicant.

As discussed above in Finding 19, the Director is approving 310 IAC 12–5–24(f) with the understanding that it applies to all dams and embankments and not just those dams and embankments meeting the size or other criteria of 30 CFR 77.216(a). The Director is also requiring that Indiana amend 310 IAC 12–5–24(f) or otherwise amend the Indiana program to clarify that all dams and embankments are subject to the examination and inspection provision which provides that if an examination or inspection discloses that a potential hazard exists, the director of IDNR shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action.

As discussed above in Finding 19, the Director is approving 310 IAC 12–5–24(h) with the understanding that subsection 24(h) applies to dams "and" embankments.

As discussed above in Finding 20, the Director is approving 310 IAC 12–5–27 except to the extent that subsection 27(a)(4) lacks a referenced counterpart to 30 CFR 773.17(e). The Director is also requiring that Indiana amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2) which requires compliance with 30 CFR 773.17(e).

As discussed above in Finding 21(a), the Director is approving 310 IAC 12–5–39 except to the extent that 12–5–39(c) does not require that box-cut spoil which is excess spoil be inspected under 310 IAC 12–5–39(c). The Director is also requiring that Indiana amend 310 IAC 12–5–39(c), or otherwise amend the Indiana program, to clarify that box-cut spoil which is excess spoil is subject to the inspection requirements of 310 IAC 12–5–39(c).

As discussed above in Finding 21(b), the Director is requiring that the Indiana program be further amended to include a counterpart to 30 CFR 816.71(h)(4).

As discussed in Finding 22(a), the Director is not approving the words "MSHA certified inspector, or other qualified person" as proposed at subsections 310 IAC 12–5–42(c) and 106(c).

As discussed in Finding 22(b), the Director is not approving the proposed language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or other qualified persons.

As discussed in Finding 22(b), the Director is requiring that Indiana amend 310 IAC 12–5–42(a) and 12–5–106(a) to either delete authorization of inspections by MSHA certified inspectors or other qualified persons, or clarify that inspections by such persons must be under the direction of a qualified registered professional engineer.

As discussed in Finding 22(c), the Director is approving 310 IAC 12–5–42(i) and 12–5–106(i) with the understanding that the citation which reads "310 IAC 12–5–49(b)" will be corrected to read "310 IAC 12–5–42(b)" and the word "prove" will be corrected to read "provide."

As discussed in Finding 24(a), the Director is approving 310 IAC 12–5–48(a) except to the extent that the referenced citation of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to 30 CFR 816.81. The Director is also requiring that Indiana further amend 310 IAC 12–5–48, 12–5–49, and 12–5–50 or otherwise amend the Indiana program to provide a complete counterpart to 30 CFR 816.81 which is cited by the Federal regulations at 30 CFR 816.84.

As discussed above in Finding 24(b), the Director is not approving the proposed standard of a 100-year, six-hour precipitation event at 310 IAC 12–5–48(d). The Director is requiring that Indiana amend 310 IAC 12–5–48(d) to provide that coal mine waste impounding structures which conform to 30 CFR 77.216 have sufficient capacity to safely control the probable

maximum precipitation of a six-hour precipitation event.

As discussed above in Finding 24(c), the Director is approving 310 IAC 12–5–48(f) with the understanding that MSHA will make all the determinations in Indiana as to when a "massive earthen fill" would no longer be considered an "impounding structure". The Director is also requiring that Indiana amend 310 IAC 12–5–48(f) to clarify that Indiana will seek and defer to MSHA's determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

As discussed in Finding 26, the Director is approving 310 IAC 12–5–104(10) except to the extent that it fails to require the registered professional engineer to certify that the fill design meets all applicable requirements. The Director is also requiring that Indiana further amend 310 IAC 12–5–104(10) to provide that the registered professional engineer must certify that the design will meet all applicable requirements.

As discussed above in Finding 29, the Director is not approving the deletion of the word "and" and the addition of the word "or" at 310 IAC 12–5–144(d)(1). In addition, the Director is requiring that Indiana amend 310 IAC 12–5–144(d)(1) to provide that auger holes need not be plugged if the conditions at both 310 IAC 12–5–144(d)(1) and (d)(2) are found to exist.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (vv) is added to read as follows:

§ 914.15 Approved of regulatory program amendments

* * * * *

(vv) The following amendment (Program Amendment Number 92–1) to the Indiana Administrative Code (IAC) as submitted to OSM on March 26, 1992, and clarified on November 5, 1992, February 1, 1993, and May 19, 1993, is approved, except as noted below, effective August 16, 1993. The following provisions are not approved: The deletion of the word "and" and the addition of the word "or" in its place at

310 IAC 12–5–144(d)(1) is not approved; the words "MSHA certified inspector, or other qualified person" as proposed at subsections 310 IAC 12–5–42(c) and 12–5–106(c) are not approved; and the proposed language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or other qualified persons is not approved.

The following provisions are approved:

310 IAC 12–0.5–6—Definition of affected area.
310 IAC 12–0.5–32.5—Definition of cumulative impact area.
310 IAC 12–0.5–90.5—Definition of pipeline.
310 IAC 12–0.5–91.5—Previously mined area: except to the extent that the definition does not limit previously mined areas to lands affected prior to August 3, 1977, that have not been reclaimed to the standards of 30 CFR chapter VII.
310 IAC 12–2–6—Procedures for petition.
310 IAC 12–2–7—Processing, record keeping, and notification.
310 IAC 12–3–6—Permits; format and contents.
310 IAC 12–3–30.5—Environmental resources: fish and wildlife.
310 IAC 12–3–33—Surface mining; surface water information.
310 IAC 12–3–46.5—Reclamation plan; fish and wildlife.
310 IAC 12–3–47—Surface permits; protection of hydrologic balance.
310 IAC 12–3–57—Underground permits; identification of interests.
310 IAC 12–3–68.5—Environmental resources: fish and wildlife.
310 IAC 12–3–71—Underground mining; surface water information.
310 IAC 12–3–78—Underground mining; general requirements.
310 IAC 12–3–80.5—Reclamation plan; fish and wildlife.
310 IAC 12–3–81—Underground mining; protection of hydrologic balance.
310 IAC 12–3–94—Repealed.
310 IAC 12–3–94.1—Experimental practices.
310 IAC 12–3–98—Prime farmland: except to the extent that the rule fails to require the soil profile required under 310 IAC 12–3–98(d)(1) be determined by the U.S. Soil Conservation Service.
310 IAC 12–3–106—Permit review, public participation, and approval/disapproval.
310 IAC 12–3–110—Permit terms and conditions; public availability: with the understanding that the citation of Indiana's Access to Public Roads statute at 310 IAC 12–3–110(a) will be corrected.
310 IAC 12–3–116—Right of entry.
310 IAC 12–3–127—Transfer, assignment, or sale of permit rights: except to the extent that 310 IAC 12–3–127(c)(4) does not apply to persons who own or control the applicant and to persons owned or controlled by the applicant.
310 IAC 12–3–128—Succeeding to rights granted under a permit.
310 IAC 12–3–131—SOAP eligibility.
310 IAC 12–4–3—Responsibilities of Department of Natural Resources.
310 IAC 12–4–16—Performance bond release.
310 IAC 12–5–16—Hydrologic balance.
310 IAC 12–5–24—Permanent and temporary impoundments: with the understanding that 310 IAC 12–5–24(f) concerning inspections applies to all size dams and embankments, and that subsection 24(h) applies to dams "and" embankments.
310 IAC 12–5–27—Surface and groundwater monitoring: except to the extent that 310 IAC 12–5–27(a)(4) lacks a referenced counterpart to 30 CFR 773.17(e).
310 IAC 12–5–30—Water discharge into underground mine.
310 IAC 12–5–32—Stream buffer zone.
310 IAC 12–5–39—Disposal of excess spoil: except to the extent that the rule does not require that box-cut spoil which is excess spoil be inspected under 310 IAC 12–5–39(c).
310 IAC 12–5–42—Coal processing waste banks; inspection: except the words "MSHA certified inspector, or other qualified person" which appear in the first sentence of subsection 42(c) are not approved, and with the understanding that at subsection 42(i), the citation which reads "310 IAC 12–5–49(b)" will be corrected to read "310 IAC 12–5–42(b), and the word "prove" will be corrected to read "provide."
310 IAC 12–5–43—Repealed.
310 IAC 12–5–43.1—Coal mine waste; water control measures.
310 IAC 12–5–48—Coal processing waste dams and embankments: except to the extent that at 310 IAC 12–5–48(a) the referenced citation of 310 IAC 12–5–48, 49, and 50 do not comprise a complete counterpart to 30 CFR 816.81, and at 12–5–48(d), the proposed 100-year, six-hour standard is not approved, and at 310 IAC 12–5–48(f) with the understanding that MSHA will make all the determinations in Indiana as to when a "massive earthen fill" would no longer be considered an "impounding structure."
310 IAC 12–5–51—Fish and wildlife.
310 IAC 12–5–55.1—Backfilling and grading.
310 IAC 12–5–57.5—Surface mining; backfilling/grading previously mined areas.
310 IAC 12–5–82—Underground mining; hydrologic balance.
310 IAC 12–5–92—Underground mining; surface and ground water monitoring.
310 IAC 12–5–95—Underground mining; discharge of water into underground mine.
310 IAC 12–5–97—Underground mining; stream buffer zones.
310 IAC 12–5–99—Underground mining; explosives.
310 IAC 12–5–100—Underground mining; preblasting survey.
310 IAC 12–5–104—Underground mining; disposal of waste and excess spoil: except to the extent that 310 IAC 12–5–104(10) fails to require the registered professional engineer to certify that the fill design meets all applicable requirements.
310 IAC 12–5–106—Underground mining; waste banks site inspection: except the language at 310 IAC 12–5–106(a) which would authorize inspections by MSHA certified inspectors or another qualified person is not approved, and the words "MSHA certified inspector, or other qualified person" which appear in the first sentence of subsection 106(c) are not approved, and with the understanding that at subsection 106(i), the citation which reads "310 IAC 12–5–49(b)" will be corrected to read "310 IAC 12–5–42(b)," and the word "prove" will be corrected to read "provide."
310 IAC 12–5–107—Repealed.
310 IAC 12–5–107.1—Coal mine waste; water control measures.
310 IAC 12–5–115—Underground mining; protection of fish and wildlife.
310 IAC 12–5–119.1—Underground mining; backfilling and grading.
310 IAC 12–5–121.5—Underground mining; backfilling/grading previously mined areas.
310 IAC 12–5–131—Underground mining; subsidence control; public notice.
310 IAC 12–5–144—Auger mining: except the deletion of the word "and" and addition of "or" in its place at 310 IAC 12–5–144(d) is not approved.

3. In § 914.16, paragraphs (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), and (aa) are added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(n) By January 7, 1994, Indiana shall amend 310 IAC 12–0.5–6(4), (5) and (6)

to clarify that Indiana's use of the terms "an" and "a" to refer to sites and areas which would be considered "affected areas" means "any" as used in the counterpart Federal definition of "affected area" at 30 CFR 701.5.

(o) By January 7, 1994, Indiana shall amend 310 IAC 12–0.5–91.5 to be no less effective than the Federal definition at 30 CFR 701.5 which reads "previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII."

(p) By January 7, 1994, Indiana shall amend the Indiana program to provide that the soil profile required under 310 IAC 12–3–98(d)(1) must be determined by the U.S. Soil Conservation Service as required by 30 CFR 785.17(c)(1)(ii).

(q) By January 7, 1994, Indiana must amend 310 IAC 12–3–127(c)(4) so the provision will also apply to persons who own or control the applicant and to persons owned or controlled by the applicant as is required by 30 CFR 773.15(b)(1)(ii).

(r) By January 7, 1994, Indiana must amend 310 IAC 12–5–24(f) or otherwise amend the Indiana program to clarify that all dams and embankments are subject to the examination and inspection provision which provides that if an examination or inspection discloses that a potential hazard exists, the director of IDNR shall be promptly informed of the finding and of the emergency procedures formulated for public protection and remedial action as is required by 30 CFR 816.49(a)(12).

(s) By January 7, 1994, Indiana shall amend 310 IAC 12–5–27(a)(4) or otherwise amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2) which references and requires compliance with 39 CFR 773.17(e).

(t) By January 7, 1994, Indiana shall amend 310 IAC 12–5–39(c), or otherwise amend the Indiana program to clarify that box-cut spoil which is excess spoil is subject to the inspection requirements of 310 IAC 12–5–39(c).

(u) By January 7, 1994, Indiana shall amend the Indiana program by adding a counterpart to 30 CFR 816.71(h)(4).

(v) By January 7, 1994, Indiana shall amend 310 IAC 12–5–42(a) and 12–5–106(a) to either delete authorizations of inspections by MSHA certified inspectors of other qualified persons, or clarify that inspections by such persons must be under the direction of a qualified registered professional engineer.

(w) By January 7, 1994, Indiana shall amend 310 IAC 12–5–48, 12–5–49, and 12–5–50 or otherwise amend the Indiana program to be no less effective than the Federal regulations at 30 CFR 816.84 by providing a complete counterpart to 30 CFR 816.81 which is cited in 30 CFR 816.84.

(x) By January 7, 1994, Indiana shall amend 310 IAC 12–5–48(d) to provide that coal mine waste impounding structures which conform to 30 CFR 77.216 have sufficient capacity to safely control the probable maximum precipitation of a six-hour precipitation event as is required by 30 CFR 816.48(b)(2).

(y) By January 7, 1994, Indiana shall amend 310 IAC 12–5–48(f) to clarify that Indiana will seek and defer to the Mine Safety and Health Administration's (MSHA) determination as to when a "massive earthen fill" would no longer be considered an "impounding structure."

(z) By January 7, 1994, Indiana shall amend 310 IAC 12–5–104(10) to provide that the registered professional engineer must certify that the design will meet all applicable requirements.

(aa) By January 7, 1994, Indiana shall amend 310 IAC 12–5–144(d)(1) to provide that auger holes need not be plugged if the conditions at both 310 IAC 12–5–144(d)(1) and (d)(2) are found to exit.

[FR Doc. 93–19651 Filed 8–13–93; 8:45 am]
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30 CFR Part 935

Ohio Permanent Regulatory Program; Normal Husbandry Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the partial approval and deferral of Revised Program Amendment Number 61R to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Ohio Administrative Code (OAC) Section 1501:13–9–15(F). The proposed amendment identifies seeding, planting, fertilizing, and other practices which may be performed without restarting the five-year period of operator responsibility for reclamation success.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated February 11, 1993, Ohio submitted proposed Program Amendment Number 61R with revisions to OAC 1501:13–9–15(F) (Administrative Record No. OH–1831). The proposed revisions identified seeding, planting, fertilizing, and other practices which Ohio would consider to be normal husbandry practices which may be performed on mined lands without restarting the operator's period of responsibility for reclamation success.

OSM announced receipt of the proposed amendment in the April 1, 1993, **Federal Register** (58 FR 17173), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 3, 1993.

OSM reviewed the amendment and met with Ohio on April 30, 1993, to discuss issues and to request clarification of the proposal. As a result of this meeting, Ohio submitted a revised amendment (OH–61R) to OSM on June 11, 1993 (Administrative Record No. OH–1888).

OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and in the same notice, reopened the public comment period and provided an opportunity for a public meeting. The public comment period closed on July 21, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's

findings concerning the proposed amendment to the Ohio program. Only substantive changes are discussed in detail. Revisions which are not discussed below concern nonsubstantive wording changes or revise cross-references and paragraph notations to reflect organizational changes. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

Ohio proposes to reorganize OAC 1501:13–9–15 and to add new regulatory language which will clarify the practices which the State considers nonaugmentative. These revisions are proposed in OAC 1501:13–9–15(F) which consists of seven subparagraphs. Revisions found in subparagraphs (F)(2), (F)(4), (F)(5), (F)(6), and (F)(7) are discussed in these findings.

Ohio proposes to revise subparagraph (F)(2) by deleting introductory language to the subparagraph. The Director finds that the revision is nonsubstantive in nature and that revised subpragraph (F)(2) is no less effective than the Federal rules.

Ohio proposes to revise subparagraph (F)(4) by deleting the word "agronomic" which is used in the existing rule as an adjective to describe the types of practices that will not be considered augmentative. The effect of the proposed revision is to remove the suggestion that nonaugmentative practices are limited to applied plant sciences dealing with crops. The Federal rules at 30 CFR 816.116(c)(4) refer to nonaugmentative practices as "normal husbandry practices" and "selective husbandry practices." In adopting these terms, OSM stated in the preamble discussion that it wanted to avoid restricting approvable practices to the manipulation of the soil alone (53 FR 34641, September 7, 1988). Ohio's deletion of the word "agronomic" is consistent with OSM's preamble discussion that nonaugmentative practices should not be limited to the manipulation of soils. The Director, therefore, finds that the proposed revision of subparagraph (F)(4) is no less effective than 30 CFR 816.116(c)(4).

Ohio proposes in subparagraph (F)(4)(a) to allow seeding, applying soil amendments, and irrigating as practices that will not be considered augmentative when they are recommended by or specified in technical guidelines published by the Ohio State University Cooperative Extension Service as normal practices for maintaining productivity on cropland, pastureland, or grazing land. The rate of application must be an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice. Ohio indicated that it will use as a technical guideline the Ohio Agronomy Guide when deciding whether a specific practice is augmentative. The Ohio Agronomy Guide is the official compilation of adaptive research results and recommendations from the research and extension programs in the Department of Agronomy at Ohio State University. It includes seeding, fertilization and irrigation recommendations for crops and forage production on unmined land in Ohio. The Director has determined that this publication represents normal husbandry practices in Ohio and, therefore, finds that subparagraph (F)(4)(a) is no less effective than 30 CFR 816.116(c)(4).

Ohio proposes to revise subparagraph (F)(4)(b) which concerns the repair of rills and gullies as a normal husbandry practice. OSM will consider this revision as part of proposed amendment 56R and will render a decision on the proposal in a forthcoming rulemaking.

Ohio proposes to revise subparagraph (F)(4)(c) by allowing as a nonaugmentative practice the replanting of trees on areas where the approved planting plan requires woody revegetation. On February 21, 1989, the Director approved the replanting of trees and shrubs as a nonaugmentative practice in Ohio (54 FR 7408). He, therefore, finds that proposed subparagraph (F)(4)(c) is no less effective than 30 CFR 816.116(c)(4) based upon Ohio's previous submission of supporting documentation.

Ohio proposes to add subparagraph (F)(4)(d) which will allow the reseeding of legumes within three years after the initial planting where the legumes are expected to be present five years after the initial planting. Ohio explained that red clover, a legume that is an important component of seed mixtures in Ohio, is a short-lived perennial which behaves as a biennial. It must be reseeded where it is used for forage production. Documentation was submitted by Ohio to support the proposal that reseeding of legumes is a normal husbandry practice (Administrative Record No. OH–1888). The Director, therefore, finds that proposed subparagraph (F)(4)(d) is no less effective than 30 CFR 816.116(c)(4).

Ohio proposes, as part of Revised Program Amendment No. 61R, to add three additional subparagraphs. Proposed subparagraph (F)(5) allows, as a nonaugmentative practice, the reseeding of areas that have been unavoidably disturbed after initial seeding because of repairs due to land movement or third-party interference. The existence of established permanent vegetation prior to the disturbance must be documented and the total acreage of areas reseeded during the initial liability period during any one year shall not exceed ten percent of the total affected acreage with no single area exceeding three acres. Proposed subparagraph (F)(6) allows, as a nonaugmentative practice, the reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or for initial seeding of areas upon which the sediment control system was located and subsequently removed. Proposed subparagraph (F)(7) requires that permanent vegetation, that is established or reestablished under subparagraphs (F)(5) and (F)(6), must have been seeded a minimum of 12 months prior to the request for Phase III bond release.

In the past, OSM has either disapproved or taken no action on proposed State program amendment provisions that would have specified that areas reclaimed following the removal of siltation structures and associated diversions are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. OSM has also previously disapproved proposed State program amendment provisions that would relieve permittees from liability for third-party disturbances. In response to State program amendments recently proposed by Illinois, Kentucky, and Oklahoma and to concerns raised by other parties, OSM is reconsidering its position on these issues. In a separate **Federal Register** notice, OSM is requesting public comment on how SMCRA and the Federal rules should be interpreted. Accordingly, the Director has decided to defer making a finding on proposed OAC 1501:13–9–15(F)(5), (6), and (7) so that Ohio's proposal may be considered with similar proposals from these other States. The Director will announce his final decision on OAC 1501:13–9–15(F)(5), and (6), and (7) in a forthcoming **Federal Register** notice that will address all of the issues raised by Ohio and other States.

IV. Summary and Disposition of Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service; U.S. Department of Labor, Mine Safety and Health Administration; U.S.

Army Corps of Engineers; and the Ohio Historic Preservation Office responded without substantive comment.

The National Coal Association (NCA) and the Ohio Mining and Reclamation Association (OMRA) responded to OSM's invitation for public comment. Both associations commented on proposed OAC 1501:13–9–15(F)(6) which pertains to the seeding of areas where sediment control systems were located. The Director is deferring his decision on this proposed change to OAC and will respond to the comments from NCA and OMRA in the forthcoming **Federal Register** notice announcing his final decision on this issue. No other comments were received from the public and no public hearing was requested or held.

V. Director's Decision

Based on the above findings, the Director is approving, with a deferral, Revised Program Amendment Number 61R, as submitted by Ohio on February 11 and June 11, 1993. The Director has determined that the amendment, which revises OAC 1501:13–9–15(F), is consistent with SMCRA and no less effective than the Federal rules. He is deferring his decision on proposed OAC 1501:13–9–15(F) (5), (6), and (7). The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary. However, by letter dated March 26, 1993, (Administrative Record No. OH–1855), EPA submitted its concurrence without comment.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 1993.

Carl C. Close, Assistant Director,

Eastern Support Center.

For the reasons set out in the preamble, title 30 chapter VII, subchapter T of the Code of Federal regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ooo) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ooo) The following amendment to the Ohio regulatory program, as submitted to OSM on February 11, 1993, and June 11, 1993, is approved with a deferral, effective August 16, 1993 in the **Federal Register**: The approved amendment consists of revisions to the Ohio Administration Code (OAC) at Section 1501:13–9–15 which pertain to nonaugmentative practices. OSM is deferring a decision on proposed changes to OAC 1501:13–9–15(F)(5), (6), and (7) which concern the revegetation of areas where a sediment control system was located and the receeding of

areas disturbed by land movement and third-party interference.

[FR Doc. 93-19850 Filed 8-13-93; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08-93-015]

Drawbridge Operation Regulations; Teche Bayou, LA

AGENCY: Coast Guard, DOT.
ACTION: Final rule; revocation.

SUMMARY: This amendment removes the regulation for the State Route 351 swing span bridge across Bayou Teche, mile 87.5, at Ruth, St. Martin Parish, Louisiana because a fixed span replacement bridge has been constructed and the swing span bridge has been removed. Notice and public procedure have been omitted from this action because the swing span bridge is no longer in existence.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

DRAFTING INFORMATION: The drafters of this amendment are Mr. John Wachter, project officer, and CDR D.G. Dickman, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes a regulation that is now meaningless because it pertains to a drawspan that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.501 is amended by revising paragraph (c) to read as follows:

§ 117.501 Teche Bayou.

* * * * *

(c) The draws of the S31 bridge, mile 90.5, at Breaux Bridge, and the Southern Pacific railroad bridge, mile 91.0, at Breaux Bridge, shall open on signal if at least 48 hours notice is given.

* * * * *

Dated: August 3, 1993.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 93-19715 Filed 8-13-93; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

RIN 2115-AA97

[COTP Pittsburgh Regulation 93-007]

Safety Zone Regulations; Ohio River, From Mile 88.0 to Mile 90.0

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River from mile 88.0 to mile 90.0. This regulation is needed to control vessel traffic in the regulated area during the demolition of a bridge at mile 89.0. The regulation will restrict general navigation in the regulated area during demolition and clearing operations for the safety of vessels transiting the area.

EFFECTIVE DATE: This regulation is effective at 8 a.m. on August 17, 1993 and will terminate at 8 p.m. on September 3, 1993.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644-5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, a bridge is being removed from the navigable waterway. Bridge removal operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Once commenced, such operations should be completed as quickly as possible. Removal operations in this case have proceeded ahead of schedule, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue regulations without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels and to minimize the time a bridge in a weakened condition remains over the waterway.

Background and Purpose

The Wheeling Terminal Railroad Bridge located at mile 89.0 on the Ohio River is no longer an active bridge and must be removed. The bridge consists of several spans, with the main span directly over the navigable waterway. In order to remove these spans, the bridge will be demolished with explosives. The explosions will create an obvious hazard to vessels transiting the area. This demolition will occur in stages with various spans being removed one at a time. The main span will be demolished on August 17, 1993. After the explosives on this span are detonated, the steel and other debris from the bridge will fall into the sailing line of the Ohio River creating an unsafe condition for vessels. The contractor will immediately commence clearing operations, but it will require 24 hours to restore the channel to navigability. Accordingly, during that period, no traffic will be permitted in the safety zone as it would be unsafe for vessels attempting the transit. In addition, such transits would interfere with and delay the clearing operations. For the remaining period that this safety zone is in effect, the Captain of the Port will disseminate information as to when traffic may proceed without restriction through Broadcast Notice to Mariners and other means. Traffic will be permitted to proceed without restriction except during the actual demolition of the other spans. These restrictions will

last approximately 4 hours each. The other spans of the bridge are scheduled to be demolished on August 20, 1993, August 26, 1993, and September 2, 1993. These spans are not over the sailing line.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of actual traffic restrictions (one 24 hour period and three additional four hour periods) and the relatively small size of the area regulated.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation under section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0262 is added, to read as follows:

§ 165.T0262 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 88.0 and mile 90.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective at 8 a.m. on August 17, 1993 and will terminate at 8 p.m. on September 3, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zone without Authority of the Captain of the Port apply.

(d) The Captain of the Port, Pittsburgh, Pennsylvania will announce periods of demolition operations and authorize entry into the safety zone when conditions permit by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Operations Office, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808 for current information.

Dated: July 16, 1993.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 93–19716 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 698

RIN 1840–AB60

Campus Sexual Offenses Education and Prevention Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary promulgates regulations for the Campus Sexual Offenses Education and Prevention Program recently enacted in the Higher Education Amendments of 1992 (1992 Amendments). The program, if funded, would provide grants to institutions of higher education (IHEs) and consortia of IHEs to carry out sexual offenses education and prevention programs. The final regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

The program has not received funding in fiscal year 1993. If the program receives funding, the Secretary will invite applications in a **Federal Register** notice.

The Secretary does not normally publish regulations for an unfunded program. The Secretary is publishing these regulations at this time, however, because of a statutory deadline that applied to the publication of proposed regulations for this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 698.2, 698.11, 698.21, 698.22, 698.24, and 698.30. Sections 698.2, 698.11, 698.21, 698.22, 698.24, and 698.30 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: H. Reed Saunders. Telephone: (202) 708–8922. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement the Campus Sexual Offenses Education and Prevention Program enacted in section 1541 of the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992. The program, if funded, would provide grants to IHEs and consortia of IHEs to carry out sexual offenses education and prevention programs.

The Campus Sexual Offenses Education and Prevention Program addresses National Education Goal 6, that every school—including IHEs—will offer a safe and disciplined environment conducive to learning. The program reflects the objectives of Goal 5 by educating college personnel and college students on how to prevent sexual offenses. The program also is designed to educate college students on how to report and prosecute perpetrators of sexual offenses and seek counseling if they have been the victims of a sexual offense.

On April 8, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 18308). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed

regulations. An analysis of the comments follows.

Comment: One commenter suggested that institutions that receive a grant under this program make distinctions in their written codes of conduct between different types of criminal and non-criminal sexual behavior and the penalties and prosecutorial processes that may apply to this behavior. This commenter believes this information would be useful in educating students and faculty on the types of sexual behavior that are prohibited and the consequences of engaging in different forms of criminal and non-criminal sexual behavior.

Discussion: Section 698.3(a)(4) of the regulations provides that a General Sexual Offense Prevention and Education Grant may support creating, disseminating, or otherwise providing assistance and information about victims' options, on and off campus, to bring disciplinary or other legal action against perpetrators of sexual offenses. The term "sexual offense" is defined to include any sexually related civil or criminal offenses recognized under State law, conduct that would constitute sexual harassment under either Title VII of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972), and any criminal offense recognized under Federal law. The Secretary interprets § 698.3(a)(4) of the regulations to permit an institution to create and disseminate educational information in its written code of conduct concerning the various forms of sexual behavior that would be considered a sexual offense under the regulations, and the penalties and prosecutorial processes that may apply to these offenses.

Changes: None.

Comment: Another commenter suggested that program priority be given to preventive education for perpetrators of sexual offenses. This commenter believes that the proposed regulations placed too much emphasis on the punishment of sexual offenses and not enough emphasis on assisting perpetrators of sexual offenses to refrain from engaging in future criminal and non-criminal sexual behavior.

Discussion: Section 698.3(a)(5) of the regulations provides that General Sexual Offense Prevention and Education Grants may support implementing, operating, or improving sexual offense education and prevention programs, including programs making use of peer-to-peer education. The Secretary believes that education and prevention programs may be targeted towards assisting the perpetrators of sexual offenses to refrain from committing future sexual offenses. The Secretary has the authority under § 698.24 of the regulations to establish these activities for priority and will consider doing so should this program receive funding.

Changes: None.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Sections 698.2, 698.11, 698.21, 698.22, 698.24, and 698.30 contain information collection requirements. If this program receives funding, the Secretary will submit information to fulfill these requirements to the Office of Management and Budget, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), at a later date.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 698

College and universities, Grant program-education, Reporting and recordkeeping requirements, Sexual offenses, Sexual crimes.

Dated: August 6, 1993.

Richard W. Riley,

Secretary of Education

(Catalog of Federal Domestic Assistance Number has not been assigned.)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new part 698 to read as follows:

PART 698—CAMPUS SEXUAL OFFENSES EDUCATION AND PREVENTION PROGRAM

Subpart A—General

Sec.

698.1 What is the Campus Sexual Offenses Education and Prevention Program?
698.2 Who is eligible for a grant?
698.3 What activities does the Secretary fund?
698.4 What regulations apply?
698.5 What definitions apply?

Subpart B—How Does One Apply for a Grant?

698.10 How does an applicant apply for a grant?
698.11 What must an application for a Campus Sexual Offenses Education and Prevention Program grant contain?

Subpart C—How Does the Secretary Make an Award?

698.20 How does the Secretary evaluate an application for a Campus Sexual Offenses Education and Prevention Program grant?
698.21 What selection criteria apply to General Sexual Offense Prevention and Education Grants?
698.22 What selection criteria apply to Model Grants?
698.23 What additional factors does the Secretary consider?
698.24 What priorities does the Secretary establish?

Subpart D—What Conditions Must Be Met After an Award?

698.30 Must a grantee file an annual performance report?

Authority: 20 U.S.C. 1145h, unless otherwise noted.

Subpart A—General

§ 698.1 What is the Campus Sexual Offenses Education and Prevention Program?

(a) Under the Campus Sexual Offenses Education and Prevention Program, the Secretary provides grants to institutions of higher education (IHEs) or consortia of IHEs to carry out sexual offenses education and prevention programs.

(b) Under the program, the Secretary awards two types of grants:

(1) General Sexual Offense Prevention and Education Grants as described in § 698.3(a).

(2) Model Grants as described in § 698.3(b).

(Authority: 20 U.S.C. 1145h)

§ 698.2 Who is eligible for a grant?

(a) An IHE or a consortium of IHEs that satisfies the eligibility requirements of paragraph (b) of this section is eligible for a grant under the Campus Sexual Offenses Education and Prevention Program.

(b) To be eligible for a grant under this program, an IHE or each IHE within a consortium of IHEs must—

(1) Have a student code of conduct, or other written policy governing student behavior, that explicitly prohibits all forms of sexual offenses; and

(2) Have a written policy, in effect and implemented, requiring the disclosure to the victim of any sexual offense of the outcome of any investigation by campus police or campus disciplinary proceedings brought as a result of the victim's complaint against the alleged perpetrator of the sexual offense. However, this paragraph does not authorize disclosure to any person other than the victim.

(Authority: 20 U.S.C. 1145h)

§ 698.3 What activities does the Secretary fund?

(a) The Secretary awards General Sexual Offense Prevention and Education Grants for the following activities:

(1) Providing training for campus security and college personnel, including campus disciplinary or judicial boards, that addresses the issues of sexual offenses.

(2) Developing, disseminating, or implementing campus security and student disciplinary policies to prevent and discipline the perpetrators of sexual offense crimes.

(3) Developing, enlarging, or strengthening support services programs that include medical or psychological counseling to assist victims of sexual offense crimes in their recovery.

(4) Creating, disseminating, or otherwise providing assistance and information about victims' options, on and off campus, to bring disciplinary or other legal action against perpetrators of sexual offenses.

(5) Implementing, operating, or improving sexual offense education and prevention programs, including programs making use of peer-to-peer education.

(b)(1) The Secretary awards Model Grants for model demonstration programs that will be coordinated with local rape crisis centers for developing and implementing—

(i) Quality rape-prevention and education curricula; and

(ii) Local programs to provide services to student sexual offense victims.

(2) The Secretary awards not less than 25 percent of the funds appropriated under this part in any fiscal year for the Model Grants described in paragraph (b)(1) of this section.

(c) The Secretary does not make grants for activities that are necessary to meet the minimum requirements of the Crime Awareness and Campus Security Act of 1990, Public Law 101–542.

(Authority: 20 U.S.C. 1145h)

§ 698.4 What regulations apply?

The following regulations apply to the Campus Sexual Offenses Education and Prevention Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 698.

(Authority: 20 U.S.C. 1145h)

§ 698.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
EDGAR
Facilities
Fiscal year
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Consortium means two or more institutions of higher education that jointly submit an application for a grant under the Campus Sexual Offenses Education and Prevention Program.

Institution of higher education (IHE) means an institution that satisfies the definition of that term in section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1141(a)).

Sexual offense means—

(i) A sexually related civil or criminal offense recognized under State law;

(ii) Conduct that would constitute sexual harassment under either Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) or Title IX of the Education Amendments of 1972 (20 U.S.C. 1681); or

(iii) A sexually related crime recognized under Title 18 of the U.S. Code.

Sexual offense crime means—

(i) A sexually related crime recognized under State law; or

(ii) A sexually related crime recognized under Title 18 of the U.S. Code.

Sexual offenses education and prevention includes programs that provide education seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, prepare informational materials, and any other effort to increase campus awareness of the facts about, or help prevent, sexual offenses.

(Authority: 20 U.S.C. 1145h)

Subpart B—How Does One Apply for a Grant?

§ 698.10 How does an applicant apply for a grant?

An IHE or consortium of IHEs shall submit an application to the Secretary at such time and in such a manner as the Secretary prescribes.

(Authority: 20 U.S.C. 1145h)

§ 698.11 What must an application for a Campus Sexual Offenses Education and Prevention Program grant contain?

An application for a Campus Sexual Offenses Education and Prevention Program grant must—

(a) Include the activities and programs to be carried out with the funds awarded;

(b) Estimate the cost for establishing and operating those activities and programs;

(c) Explain how the activities and programs intend to address the issue of sexual offenses;

(d) Provide assurances that the Federal funds made available under this program will be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of those Federal funds, be made available by the applicant for the purposes described in this part and, in no case, to supplant those funds; and

(e) Include other information and assurances as the Secretary reasonably determines to be necessary.

(Authority: 20 U.S.C. 1145h)

Subpart C—How Does the Secretary Make an Award?

§ 698.20 How does the Secretary evaluate an application for a Campus Sexual Offenses Education and Prevention Program grant?

(a)(1) The Secretary evaluates an application for a General Sexual Offense Prevention and Education Grant on the basis of the selection criteria in § 698.21.

(2) The Secretary evaluates an application for a Model Grant on the basis of the selection criteria in § 698.22.

(3) The Secretary awards up to 100 points for these criteria.

(4) The maximum possible points for each criterion is indicated in parentheses.

(b) The Secretary awards up to 15 additional points to applicants who satisfy the priorities in § 698.24(b).

(Authority: 20 U.S.C. 1145h)

§ 698.21 What selection criteria apply to General Sexual Offense Prevention and Education Grants?

The Secretary uses the following criteria to evaluate an application for a General Sexual Offense Prevention and Education Grant:

(a) *Meeting the purposes of the authorizing statute.* (10 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute authorizing the program, including consideration of—

(1) The objectives of the project; and

(2) How the activities to be funded under a General Sexual Offense Prevention and Education Grant further the objectives of the project.

(b) *Extent of need for the project.* (12 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Campus Sexual Offenses Education and Prevention Program, including consideration of—

(1) The needs addressed by the project (3 points);

(2) How the applicant identified those needs (3 points);

(3) How those needs will be met by the project (3 points); and

(4) The benefits to be gained by meeting those needs (3 points).

(c) *Plan of operation.* (32 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project (20 points);

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) For a multi-year project, include specific objectives to be met during each annual budget period that can be used to determine the progress of the project toward meeting its intended outcomes (3 points);

(3) The extent to which the plan of management ensures proper and efficient administration of the project (3 points);

(4) The ability of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the project period (3 points); and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition (3 points).

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) In determining the qualifications of key personnel under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Extent of impact.* (10 points) The Secretary reviews each application to determine the potential impact of the proposed project. This review includes an examination of both the actual number and percentage of individuals who would be affected by the project.

(i) *Continuation of project.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's plans demonstrate a commitment to continue the project after Federal financial assistance is terminated. The review will include an examination of the support for, and the amount of funds, personnel, and other resources committed to the continuation of the project after Federal financial assistance is terminated.

(Authority: 20 U.S.C. 1145h)

§ 698.22 What selection criteria apply to Model Grants?

The Secretary uses the following criteria to evaluate an application for a Model Grant:

(a) *Meeting the purpose of the authorizing statute.* (12 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute authorizing the program, including consideration of—

(1) The objectives of the project; and

(2) How the activities to be funded under a Model Grant further the objectives of the project; and

(3) The extent to which the project would contribute significantly to strengthening, expanding, or improving sexual offense education and prevention programs in IHEs throughout the nation.

(b) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project (15 points);

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) For a multi-year project, include specific objectives to be met during each annual budget period that can be used to determine the progress of the project toward meeting its intended outcomes (3 points);

(3) The extent to which the plan of management ensures proper and efficient administration of the project (3 points);

(4) The ability of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the project period (3 points);

(5) How the applicant will ensure that project participants who otherwise are eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition (3 points); and

(6) The adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies (3 points).

(c) *Coordination with a local rape crisis center.* (6 points) The Secretary reviews each application for information that shows the extent to which the project is coordinated with a local rape crisis center, as demonstrated by the center's involvement in—

(1) Identifying the needs to be served by the project;

(2) Developing the application; and

(3) Operating the project.

(d) *Quality of key personnel.* (8 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (d)(1) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) In determining the qualifications of key personnel under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(g) *Extent of impact.* (8 points) The Secretary reviews each application to determine the potential impact of the project. This review includes an examination of both the actual number and percentage of individuals who would be affected by the project.

(h) *Continuation of project.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's plans demonstrate a commitment to continue the project after Federal financial assistance is terminated. The review will include an examination of the support for and the amount of funds, personnel, and other resources committed to the continuation of the project after Federal financial assistance is terminated.

(i) *Dissemination.* (15 points) The Secretary reviews each application to determine the extent to which the applicant has—

(1) An effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project, at the local, State, or national level, as appropriate;

(2) A high quality design for the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(3) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(4) The capacity to demonstrate the methods and techniques used by the project; and

(5) The capacity to assist others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 1145h)

§ 698.23 What additional factors does the Secretary consider?

In addition to the criteria in §§ 698.21 and 698.22, the Secretary, to the extent possible, makes awards that ensure the following conditions:

(a) Equitable participation of private and public IHEs.

(b) Equitable geographic participation of IHEs.

(Authority: 20 U.S.C. 1145h)

§ 698.24 What priorities does the Secretary establish?

(a)(1) Each year, the Secretary may establish as an absolute priority one or more of the activities listed in § 698.3(a) and (b)(1).

(2) The Secretary announces these priorities in a notice published in the **Federal Register**.

(b) The Secretary may award up to 15 additional points to applicants who—

(1) Show the greatest need for the sums requested as determined by—

(i) The adequacy of the applicant's financial resources to implement a campus education program regarding sexual offenses (0 to 5 points); or

(ii) The nature and frequency of sexual offenses on an applicant's campus (0 to 5 points); or

(2) Do not have an established campus education program regarding sexual offenses on campus (5 points).

(c) Each year, the Secretary notifies prospective applicants through a notice in the **Federal Register** of the basis on which the priority points in paragraph (b)(1)(i) and (ii) of this section will be allocated.

(Authority: 20 U.S.C. 1145h)

Subpart D—What Conditions Must Be Met After an Award?

§ 698.30 Must a grantee file an annual performance report?

(a) Each grantee shall, in accordance with 34 CFR 74.82, file an annual performance report with the Secretary explaining the activities carried out under its project together with an assessment of the effectiveness of those activities in achieving the purposes of the Campus Sexual Offenses Education and Prevention Program.

(b) The Secretary suspends funding if an applicant fails to submit an annual performance report pursuant to paragraph (a) of this section.

(Authority: 20 U.S.C. 1145h, 1221e–3(a)(1) and 3474; OMB Circular A–110, 34 CFR part 74)

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–71

Property Management Regulation; Uniform Administrative Requirements for Grants and Cooperative Agreements With State and Local Governments

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This action adopts common regulations establishing consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Dyer, General Services Administration, Public Buildings Service, Office of Procurement, 18th and F Streets, NW., room 7316, Washington, DC 20405. Telephone: (202) 501–0907 Extension 46.

SUPPLEMENTARY INFORMATION: With this final rule, the General Services Administration adopts rules and regulations governing the administration and use of grants and cooperative agreements with State and local governments. This final rule establishes consistency and uniformity with other Federal agencies in the employment and management of grants and cooperative agreements with State, local and federally recognized Indian tribal governments. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, which forms the basis for the March 11, 1988 "common" rule, and these General Services Administration regulations governing the same.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

Editorial Note: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, March 11, 1988.

List of Subjects in 41 CFR Part 41 CFR 105–71

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

41 CFR Ch. 105 is amended to add Part 105–71 to read as follows:

PART 105–71—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS

Subpart 105–71.1—General

Sec.

105–71.100 Purpose and scope of this part.
105–71.101 Scope of §§ 105–71.100 through 105–71.105.
105–71.102 Definitions.
105–71.103 Applicability.
105–71.104 Effect on other issuances.
105–71.105 Additions and exceptions.

Subpart 105–71.11—Pre-Award Requirements

105–71.110 Forms for applying for grants.
105–71.111 State plans.
105–71.112 Special grant or subgrant conditions for "high-risk" grantees.

Subpart 105–71.12—Post-Award Requirements/Financial Administration

105–71.120 Standards for financial management systems.
105–71.121 Payment.
105–71.122 Allowable costs.
105–71.123 Period of availability of funds.
105–71.124 Matching or cost sharing.
105–71.125 Program income.
105–71.126 Non-Federal audit.

Subpart 105–71.13—Post-Award Requirements/Changes, Property, and Subawards

105–71.130 Changes.
105–71.131 Real property.
105–71.132 Equipment.
105–71.133 Supplies.
105–71.134 Copyrights.
105–71.135 Subawards to debarred and suspended parties.
105–71.136 Procurement.
105–71.137 Subgrants.

Subpart 105–71.14—Post-Award Requirements/Reports, Records, Retention, and Enforcement

105–71.140 Monitoring and reporting program performance.
105–71.141 Financial reporting.
105–71.142 Retention and access requirements for records.
105–71.143 Enforcement.
105–71.144 Termination for convenience.

Subpart 105–71.15—After-the-Grant Requirements

105–71.150 Closeout.
105–71.151 Later disallowances and adjustments.
105–71.152 Collection of amounts due.

Subpart 105–71.16—Entitlements [Reserved]

Authority: Sec. 205(c), 63 Stat. 390, (40 U.S.C. 486(c)).

Subpart 105–71.1—General

§ 105–71.100 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 105–71.101 Scope of §§ 105–71.100 through 105–71.105.

This section contains general rules pertaining to this part and procedures for control of exceptions from this subpart.

§ 105–71.102 Definitions.

As used in this part: *Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash constributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For non-construction grants, the SF–269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF–271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of the third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O.

12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

Termination does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 105–71.103 Applicability.

(a) *General.* Sections 105–71.100 through 105–71.152 of this subpart apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 105–71.105 or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medical Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act);

(ii) Commodity Assistance (section 6 of the Act);

(iii) Special Meal Assistance (section 11 of the Act);

(iv) Summer Food Service for Children (section 13 of the Act); and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 105–71.103(a)(3) through (8) are subject to Subpart—Entitlement.

§ 105–71.104 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 105–71.105.

§ 105–71.105 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart 105–71.11—Pre-Award Requirements

§ 105–71.110 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants

for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 105–71.111 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 105–71.112 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible, and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart 105–71.12—Post-Award Requirements/Financial Administration

§ 105–71.120 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial result of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability and allocability of costs.

(6) *Source documentation.* Accounting records must be supported

by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 105–71.121 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital the awarding agency may provide cash or a working capital, advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 105–71.143(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 105–71.122 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles:

For the costs of a—	Use the principles in—
State, local or Indian tribal government..	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.

For the costs of a—	Use the principles in—
Educational institutions.	OMB Circular A–21
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 105–71.123 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover or unobligated balances are permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 105–71.124 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements apply.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 105–71.125, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 105–71.125(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of contributions.

(iii) A third party in-kind contribution to a fixed price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and the title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is

to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply.

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 105–71.122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in the building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 105–71.125 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Government revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 105–71.134.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of § 105–71.131 and § 105–71.132.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 105–71.126 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for profit and private and

governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure the appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 105–71.136 shall be followed.

Subpart 105–71.13—Post-Award Requirements/Changes, Property, and Subawards

§ 105–71.130 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 105–71.122) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*— (1) *Non-construction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a non-construction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and non-construction projects.* When a grant or subgrant provides funding for both construction and non-construction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non-construction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under non-construction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 105–71.136 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accomplished by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 105–71.122) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 105–71.131 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives.

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from the sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall

be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 105–71.132 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 105–71.125(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 105–71.132(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 105–71.133 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 105–71.134 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 105–71.135 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award

(subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

§ 105–71.136 Procurement.

(a) *States.* When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agent will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protests to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 105–71.136. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or

administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 105–71.136(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of the price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for preaward review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 105–71.122). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the preaward review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR part 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ 105–71.137 Subgrants.

(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 105–71.142 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 105–71.110;

(2) Section 105–71.111;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 105–71.121; and

(4) Section 105–71.150.

Subpart 105–71.14—Post-Award Requirements/Reports, Records, Retention, and Enforcement

§ 105–71.140 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Non-construction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semiannual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semiannual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may exend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 105–71.141 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date on any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all non-construction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter of credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272A, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriated when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 105–71.141(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 105–71.141(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 105–71.141(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 105–71.141(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 105–71.141(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 105–71.141(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 105–71.141(b)(2).

§ 105–71.142 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees of subgrantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 105–71.136(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rates at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computations are not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 105–71.143 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporary withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Without further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in case of a termination, are noncancellable, and,

(2) The cost would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 105–71.135).

§ 105–71.144 Termination for convenience.

Except as provided in § 105–71.143 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 105–71.143 or paragraph (a) of this section.

Subpart 105–71.15—After-The-Grant Requirements

§ 105–71.150 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 105–71.132(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 105–71.151 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 105–71.142;

(d) Property management requirements in § 105–71.131 and § 105–71.132; and

(e) Audit requirements in § 105–71.126.

§ 105–71.152 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursement,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch.II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart 105–71.16—Entitlements [Reserved]

Dated: July 13, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–19572 Filed 8–13–93; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF DEFENSE

48 CFR Parts 249 and 252

Defense Federal Acquisition Regulation Supplement; Notification of Proposed Program Termination or Reduction

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement to establish a contractor notification requirement in the event of a potential termination or substantial reduction in a defense program.

DATES: *Effective Date:* August 9, 1993.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on

or before September 15, 1993, to be considered in the formulation of the final rule. Please cite DFARS Case 92–D363 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4471 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484), requires the Secretary of Defense to determine which defense programs are likely to be terminated or substantially reduced as a result of the submission of the President's budget or enactment of an appropriations act, within 30 days of such submission or enactment; provide notice of the proposed termination or substantial reduction to each contractor and subcontractor that has a contract of $500,000 or more under a program which will be adversely affected by the termination of, or substantial reduction in, such program; and withdraw the notice initially provided if an appropriations act subsequently restores sufficient funding. Section 4471 also requires that contractors, not later than two weeks after receiving the Government's notice of a potential termination or reduction in a program, provide similar notice to each employee or employee representative, as well as to certain public officials. The notices are intended to help employees of adversely affected contractors and subcontractors to receive benefits under the Job Training Partnership Act (29 U.S.C. 1661).

The interim rule amends DFARS 249 and 252 to establish the statutory notification requirements and set forth contractor responsibilities in a new clause 252.249–7002, Notification of Proposed Program Termination or Reduction. The clause identifies the statutorily-defined recipients of the contractor's notice and requires the contractor to also provide notice to affected subcontractors.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies but the magnitude of the expected impact on small entities as a result of the rule is unknown and impossible to estimate. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and a copy has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. The IRFA states that it is impossible to accurately estimate the number of small business that may be impacted because it is impossible to estimate the number of small entities who currently hold, or prospectively will hold, defense contracts or subcontracts of $500,000 or more and who may be adversely impacted when such contracts or subcontracts are modified or terminated as a result of cutbacks or terminations of the programs which those contracts or subcontracts support. A copy of the IRFA may be obtained from Mr. Eric Mens, telephone number (703) 697–7266. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DFARS Case 92–D363) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not constitute a "collection of information" requiring the approval of OMB under 44 U.S.C. 3501 *et seq.* The notices required by the rule do not constitute a "collection of information" under the Paperwork Reduction Act, as the term is defined in 5 CFR 1320.7(c)(2). Paragraph (c)(2) states that the public disclosure of information originally supplied by the Government to the recipient for purposes of disclosure to the public does not fit into the definition of a "collection of information."

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. The first DoD notifications to contractors were required to be made by May 8, 1993. The second set of notices should be released to contractors 30 days after enactment of the DoD Appropriations Act which is expected to be enacted in October 1993. Therefore, it is essential that guidance be issued as expeditiously as possible.

List of Subjects in 48 CFR Parts 249 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition, Regulations Council.

Therefore, 48 CFR parts 249 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 249 and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 249—TERMINATION OF CONTRACTS

2. Section 249.7003 is added to read as follows:

§ 249.7003 Notification of proposed program termination or reduction.

(a) Section 4471 of Public Law 102–484 is intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661) for employees of DoD contractors and subcontractors adversely affected by program terminations or substantial reductions.

(b) Each military department or defense agency is responsible for establishing procedures to:

(1) Determine which defense programs are likely to be terminated or substantially reduced as a result of the submission of the President's budget or enactment of an appropriations act.

(2) Within 30 days of such submission or enactment, provide notice, substantially as follows, of the proposed termination or reduction to each contractor that has a contract of $500,000 or more under a program identified as likely to be terminated or reduced by at least 25 percent.

"In accordance with section 4471 of Public Law 102–484, you are hereby notified that the (insert program name) has been (contracting officer to insert either (1) or (2) below)—

(1) Identified as likely to be (insert "terminated" or "substantially reduced") by the Fiscal Year (insert fiscal year) President's budget; or

(2) (insert "terminated" or "substantially reduced") by the Fiscal Year (insert fiscal year) "Defense Appropriations Act").

Your responsibilities upon receipt of this notice are set forth in the "Notification of Proposed Program Termination or Reduction" clause in your contract (insert contract number). This is not a notice of termination under the Termination for Convenience or Default clauses of your contract.

You will be notified in the event that appropriations are subsequently restored, at which time you must comply with the requirements of paragraph (c) of the "Notification of Proposed Program Termination or Reduction" clause."

(3) Withdraw the notice provided under Section 249.7003(b)(2) if an appropriations act subsequently restores sufficient funding.

(c) Use the clause at section 252.249–7002, Notification of Proposed Program Termination or Reduction, in all contracts of $500,000 or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.249–7002 is added to read as follows:

252.249–7002 Notification of proposed program termination or reduction.

As prescribed in section 249.7003(c), use the following clause:

Notification of Proposed Program Termination or Reduction (Aug. 1993)

(a) Within two weeks after the Government notifies the Contractor that this contract may be adversely affected by a program termination or reduction, the Contractor shall provide notice of such proposed termination or reduction to—

(1) Each representative of the Contractor's employees whose work is directly related to the contract; or

(2) If there is no such representative at that time, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)) and the chief elected official of the unit of general local government within which the adverse effect may occur; and

(4) Each affected subcontractor.

(b) If the proposed program termination or reduction is likely to result in plant closure or mass layoff, the notice provided an employee under paragraph (a) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act. If the Contractor has specified that the proposed program termination or reduction is not likely to result in plant closure or mass layoff, the employee shall only be eligible to receive services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act.

(c) If the Government subsequently withdraws a notice issued in accordance with paragraph (a) of this clause, the Contractor, within two weeks after receipt of the withdrawal notice shall provide notice of the withdrawal to—

(1) The representatives, employees, offices, officials, and subcontractors specified in paragraph (a) of this clause; and

(2) Each grantee under section 325(a) or 325A(a) of the Job Training Partnership Act, as the case may be, providing training, adjustment assistance, and employment services to each employee described in this paragraph.

(d) An employee who receives notice of withdrawal shall not be eligible for training adjustment assistance, and employment services under section 325 of the Job Training Partnership Act, or section 325A of such Act, as the case may be, beginning on the date the employee receives such notice.

(e) The Contractor shall insert the substance of this clause in all subcontracts of $500,000 or more.

(End of clause)

[FR Doc. 93–19508 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 952 and 970

Acquisition Regulation; Facilities Management and Arbitration; Correction

AGENCY: Department of Energy (DOE).

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to the final rules which were published on June 30, 1993, at 58 FR 34924 and July 6, 1993, at 58 FR 36149. The regulations involve the facilities management and arbitration rules.

EFFECTIVE DATES: August 30, 1993, for the facility management rule (published on June 30, 1993) and August 5, 1993, for the arbitration rule (published on July 6, 1993).

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Management (PR–121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247.

SUPPLEMENTARY INFORMATION:

Background

The corrections revise an erroneous cross reference, and insert missing dates on clause titles.

Correction of Publication

1. The regulation published June 30, 1993, at 58 FR 34924, is corrected as follows:

970.5204–60 [Corrected]

On page 34926, first column, the reference in paragraph (a) to DOE Directive "4300.1C" is changed to read "4320.1B."

2. The regulation published July 6, 1993, at 58 FR 36149, is corrected as follows:

952.237–70 [Corrected]

On page 36152, first column, the date beside the clause title is changed from "(XXX 1992)" to "(AUG 1993)".

970.5204–63 [Corrected]

On page 36152, second column, the date beside the clause title is changed from "(XXX 1992)" to "(AUG 1993)".

Issued in Washington, DC on August 10, 1993.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 93–19559 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR–11, Notice No. 3]

RIN 2130—AA77

Protection of Utility Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA regulations prescribe minimum requirements for certain railroad operating rules and practices, including blue signal protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. Such activities may require employees to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from blue signal protection, unless assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. FRA is revising the exclusionary language to allow augmentation of a crew with a "utility" employee, and creating alternate safety procedures to prevent injury to these employees.

EFFECTIVE DATE: These rules will become effective 30 days after the date of publication.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Office of Safety, FRA, RRS–11, Washington, DC 20590 (telephone: 202–366–9252), or Kyle M. Mulhall, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202–366–0443).

SUPPLEMENTARY INFORMATION:

Background

The "blue signal" provisions of FRA's railroad operating practices regulation (49 CFR part 218, subpart B) were promulgated to prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and subjects them to the danger of personal injury posed by any movement of such equipment. Examples of activities requiring blue signal protection include, but are not limited to, the following: Breaking or making steam and air hose connections (including connection by coupling irons), connecting or disconnecting electric control cables between equipment, replacing broken coach windows, making repairs beneath the car to blower motors or steam regulators, making electric pantograph inspections, repairing or replacing a rear end marker or telemetry device, and conducting initial terminal air brake tests when employees are required to go on, under, or between rolling equipment.

A person requiring blue signal protection is referred to as a "workman." 49 CFR 218.5(a). Train and yard crews are excluded from blue signal requirements except when assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. The rationale for this exclusion is that the crew, working with their assigned engineer in control of the locomotive, has complete control and can prevent the unanticipated movement of the equipment on which crew members are working.

Since promulgation of the regulation, the size of train and yard crews has been significantly reduced through the collective bargaining process and increased operating efficiencies. Implementation of the recommendations of Presidential Emergency Board No. 219 ("PEB 219") (see Pub. L. No. 102–29, 1991) is greatly accelerating this process of change. Through this and prior processes, crews that once consisted of a locomotive engineer, fireman, conductor, and two trainmen, have in many cases been reduced to a locomotive engineer and conductor only.

Role of the Utility Employee

Before and after the PEB 219 process, railroads have used utility employees to assist the train or yard crew on a temporary basis. A recent FRA investigation indicated that at least seven Class I railroads and three regional railroads are experimenting with the use of utility employees to supplement train and yard assignments. This practice has involved at least two hundred employees from the train service ranks at more than sixty-five locations. The following are examples of functions that are being performed by utility employees:

- Operating manual switches in yard or terminal areas or at industrial sidings and sending or receiving hand or radio communications with respect to such switching movements;
- Working with the regular train or yard crew to assemble trains from pre-tested and pre-inspected blocks of cars by preparing couplings between rail cars, coupling air hoses, and assisting switching movements;
- Participating in power brake inspections at initial terminals or intermediate terminals (49 CFR 232.12, 232.13);
- Participating in Freight Car Safety Standards inspections at initial terminals or elsewhere when cars are placed in a train (49 CFR 215.13); and
- Installing, testing, or replacing rear end marking devices (and/or telemetry devices) (see 49 CFR 221.16).

The blue signal regulations have, in the view of the railroads, constituted an impediment to the efficient use of these additional employees. The conflict between regulatory requirements and efficient utilization of personnel reached a critical level which prompted FRA to propose a new rule. In proposing this rule, FRA believed that there might be conditions under which train and yard crews could be temporarily augmented without a diminution of safety.

The Final Rule

The final rule defines the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. This rule is based on the premise that the utility employee should be able to work under essentially the same conditions as other yard or train crew members of the crew with which that employee is associated, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "worker" requiring blue signal protection.

Current regulations require blue signal protection when workers other than train and engine crews are required to go on, under, or between moving equipment. It was determined that train and yard crews could safely perform their tasks without blue signal protection because the characteristics of their activity provide alternative protection for the crew members. They work as a team and maintain communication with each other. The engineer at the controls of the locomotive is aware of other crew members working on the train and can prevent movement of the equipment while any of the crew are in a danger zone. The engineer also is in contact with other trains in the vicinity and can prevent unexpected couplings while crew members are in jeopardy.

Under the present regulation, however, the train and yard crew exclusion does not extend to utility employees. Many railroads believed that the exclusion did cover utility employees working with train and yard crews. FRA evaluated the position of those railroads and disagreed. The utility employee is not covered in the exclusion principally because he or she is not called for a tour of duty as a member of the cohesive working unit, but joins the unit for a brief period and then leaves, or is left by the work unit when the joint activity is completed. In other words, the utility employee is not called to operate the railroad rolling equipment assigned to the cohesive work unit known as the train or yard crew. Utility employees are required to establish full blue signal protection prior to performing any work on, under, or between the equipment. To avoid that necessity, the railroad can instead assign a brakeman to a crew for an entire tour of duty, even though that person's services are only required for a small portion of the duty tour. These assignments, however, thwart railroad efforts to efficiently deploy personnel.

Where the utility employee is working independently of the crew, the requirement for full blue signal protection is justified, since that employee lacks those characteristics that afford alternative protection. However, when the utility employee actually becomes an integral part of the crew, even temporarily, it is difficult from a safety perspective to justify the different regulatory treatment of that employee from other crew members. FRA therefore published a notice of proposed rulemaking (NPRM) to allow utility employees to be excluded from blue signal protection when working as a member of a train or yard crew.

Response to the NPRM

Need for Regulatory Change

A number of commenters took issue with the need for this rule change. Railroad management took the position that the current rule does not preclude utility employees from taking advantage of the exclusion from blue signal protection. Representatives of rail labor objected, generally, that the rule expanded the exclusion at the cost of reduced safety for utility employees, and that the current blue signal rule does not provide adequate protection for train and yard crews.

As noted earlier, FRA disagrees with the railroads concerning the applicability of the current rule. Conversely, FRA believes that the current blue signal rule, in this aspect, is restrictive without benefiting safety. As it now exists, the rule unduly impedes the railroad industry's efforts to improve the efficiency of its operations. As to the concerns expressed by rail labor, FRA does not believe that according a utility employee the same level of protection historically provided to the train and yard crews constitutes a significant diminution of the utility employee's safety. As discussed below, FRA's accident data do not support the view that train crews are currently experiencing repeated injuries ascribable to unexpected train movement. Therefore, while there may be a theoretical cost to safety due to the absence of blue signal protection, FRA does not believe any real safety compromise will occur. Accordingly, FRA is amending the regulation to allow a utility employee to become a member of a train or yard crew (and thus entitled to the exclusion from blue signal requirements) under circumstances where safety will not be compromised.

The rule establishes the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. The rule is founded on the belief that the utility employee can work under the same conditions as the members of the yard or train crew to which the employee is assigned, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "workman" (or "worker," as provided under the gender-neutral amendment that would be made by this proposal) requiring blue signal protection.

NPRM Restrictions

Several commenters from the railroad industry objected to the notice of proposed rulemaking because they believed the procedures for a utility employee to join a crew were too burdensome. The principal objection from both rail labor and rail management was designation of the locomotive engineer as the point of contact for the utility employee with the crew, which increased the burden of responsibility on the engineer. FRA response to this concern is contained below in the section-by-section analysis.

These commenters were also concerned that the communication requirements of the rule would add to radio congestion in major terminals. The reason for the blue signal exclusion for train and yard crews is that the very nature of their work requires a near constant communication with other crew members. As a result, crew members are kept so aware of each others activities that the notice provided by blue signals is redundant. This level of communication is essential to safety, and normally should not cause more communication than occurred when large train crews performed these tasks. FRA believes the resulting burden from these procedural requirements is minor when compared to the need to safeguard the level of communication necessary for the safety of the crew and the utility employee.

Safety Concerns

Some commenters urgently argued that unexpected movement of equipment due to the actions of other train crews could pose serious hazards for utility employees. If this is the case one would expect to find such injuries occurring today among regular brakemen and conductors working in the same environment. To examine this issue, FRA conducted a review of accident/incident records for the past five years concerning fatal and nonfatal injuries incurred by train and yard crews, including any utility employees, that could have resulted from faulty communication between working units (*i.e.*, caused by unexpected equipment movement). Potential incidents were identified from our data base, and then each incident was assigned to an FRA inspector for investigation. FRA was able to identify only two incidents of employees suffering injury as a result of other members of the injured employee's crew causing unexpected movement of the equipment they were called to operate. FRA was not able to identify any case that involved employee injury caused by another crew unexpectedly moving the equipment.

FRA also investigated a 1992 incident in which a brakeman was fatally injured during switching activities of another crew involved in assembling rail cars for his train. Evidence indicates that the brakeman was between rail cars during switching operations without adequate notice to the other crew. This unfortunate incident was avoidable had the brakeman communicated his intentions to the other crew, or fully understood the activities of the other crew.

Considering this information, and the anecdotal testimony provided by the commenters, FRA believes it is clear that a risk does exist if proper communication is not established and maintained between the train and yard crews and utility employees assisting those crews. FRA believes there is adequate justification in the record to propose future rulemaking to establish minimum safety standards for the protection of all train and yard crew members and utility employees from actions of other crews. FRA's review of the limited safety data available also serves to show, however, that there is no substantial injury record for utility employees when working with train or yard crews after establishing adequate communication and understanding of the work assignments, nor is there any crisis with respect to the much larger number of train and yard crew members who are potentially affected by the actions of other crews, such that utility employees would be exposed to unusual risk under the conditions specified in this final rule.

Craft Lines

Comments from rail labor argued that this rule would result in an expansion of train and yard crew functions at the cost of car repair employees. Rail management argued that no such change is planned or would occur. FRA has traditionally viewed the blue signal requirements as addressing functional rather than craft distinctions, with the exception of train and yard crews. For instance, if supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation, unless that person was a member of a crew. Moreover, it must be noted that Congress, in excluding train and yard crews from blue signal requirements, took into consideration the types of duties traditionally performed by those crews and employed craft-based

language to exclude train and yard crew work from the statutory requirement for blue signal protection.

FRA does not intend that this rule cause a material expansion of the tasks performed by train and yard crews without blue signal protection that would decrease the level of safety, particularly for repair and servicing activities. As further discussed below, the final rule addresses these concerns in express language to the effect that only train and yard service duties may be performed without blue signal protection. FRA does not believe that the final rule will materially affect the type of work normally assigned to train or yard crews. Accordingly, it is unlikely to have a major impact on the availability of maintenance of equipment personnel across the national rail system. Any incidental impact can properly be addressed within the scope of other rulemaking activities, if necessary for safety.

FRA believes that many of the comments received in response to this NPRM were beyond the scope of the notice of this rulemaking. As a result, FRA cannot address them in this rule.

In addition, FRA received several late filed comments which were added to the docket. These comments came from rail labor and management. Some commenters urged adoption of the NPRM, withdrawing earlier objections, and one renewed its opposition. FRA considered these comments as much as was possible in such a late stage of the rulemaking process.

Section-by-Section Analysis

Section 218.5 (Definitions) is amended to reorder the existing definitions alphabetically, add new definitions of "controlling locomotive," "ranking crew member," "train and yard crew," "utility employee," and "worker" (in lieu of "workman," in order to make the rule gender-neutral). Under the definition, a "ranking crew member" is an individual responsible for overall supervision of a railroad operating crew and for coordinating the work the crew performs. The ranking crew member is normally specified in the railroad's operating rules, and is typically identified as a Conductor, Yard Engine Foreman, or Locomotive Engineer. If a railroad does not designate who is the ranking crew member, the rule assigns that role to the locomotive engineer since the engineer will have immediate control over movement of the assigned equipment.

Commenters representing rail labor have raised the issue that this rule may encourage the transfer of work from "workers," who require blue signal protection, to "train or yard crews" who do not require such protection. In the final rule, a definition for "train or yard crew" is added. A train or yard crew, a term used in the 1976 amendment to federal railroad safety laws, 45 U.S.C. 431(g)(1), is being defined in order to clarify which railroad employees may be excluded from blue signal protection. FRA has highlighted the limits of the class of employees, the equipment they may be called to operate, and the nature of work that can be safely performed under the exclusion provided in this section. FRA considers the work that was normally performed by train and yard crews under the craft boundaries which existed at the time that the first blue signal regulation was adopted in 1970 to be work excluded from blue signal protection. Generally, train or yard crew members were permitted to work on, under, or between railroad rolling equipment without blue signal protection in order to set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail car couplers for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and positioning retaining valves; and, permit a locomotive engineer to conduct daily visual inspections of the locomotive consist for which he or she was called to operate. Additionally, train or yard crews may inspect, test, install, remove or replace a rear end marking device or end of train device without blue signal protection on their equipment. FRA has long held the belief that any other inspections, tests, services or repairs would be conducted under blue signal protection, even when performed by train or yard service employees. FRA received a number of conflicting comments on this issue. Since these comments were beyond the scope of the notice of the NPRM, FRA believes it will be necessary to revisit this topic in a future rulemaking.

Under the definition, a "utility employee" is an individual assigned to and functioning as a part of a train or yard crew who is subject to both the railroad's operating rules, the Hours of Service Act, and federal drug and alcohol regulations. These defining elements are necessary to ensure that the utility employee is legitimately engaged in service subject to the statutory exclusion and understands and can function safely in the operating environment.

Section 218.22 (Utility employee protection) is a new revised provision which defines the circumstances under which the utility employee may be permitted to function as a member of a train or yard crew without the benefit of the protection provided by the blue signal regulations. It is not anticipated that this section will affect activity within locomotive servicing or car shop areas. FRA requested comments as to whether latitude should have been extended to such areas, but none were received.

Section (a) requires that before a utility employee becomes a temporary member of a train or yard crew, that employee must be subject to the same program of instruction for train and yard crews, and the requirements of §§ 217.9 and 217.11 of this chapter, the drug and alcohol control requirements of part 219, the Hours of Service Act, and the hours of service recording requirements.

Section 217.11 requires that railroads periodically instruct employees on the railroad's operating rules in accordance with its program. FRA expects railroads to amend their programs, if necessary, to ensure that utility employees are thoroughly trained in applicable operating rules. In addition, § 217.9 requires that railroads periodically conduct operational tests and inspections (efficiency tests) to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with its program. FRA expects the railroads to amend their programs, if necessary, to ensure that utility employees are included in the required testing and inspections.

A utility employee who is assigned to a train or yard crew is considered to be involved in the movement of a train for hours of service purposes under section 2 of the Hours of Service Act. The "commingled service" provision would of course be applicable if the utility employee engages in any other service for the railroad. Utility employees performing service covered by the Hours of Service Act are also considered to be in safety sensitive service and subject to FRA drug and alcohol control regulations.

In subsection (b), FRA limits the assignment of the utility employee to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crew member to one train for an entire tour of duty, that employee may not, while awaiting departure from the yard, be temporarily assigned to a second train crew to help them prepare to depart. On the other hand, a member of an inbound train crew at a crew change point,

whose assignment to the train is essentially completed, could then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train (assuming, of course, that hours of service limitations are not exceeded). Furthermore, an employee could not simultaneously perform duties on two different trains. For the exclusion to apply, a utility employee would have to be indistinguishable in duties and location from any other train crew member.

Subsections (c) and (e) establish the procedures for the utility employee to join a train or yard crew. FRA requires that the crew's locomotive engineer will have taken control of the assigned locomotive before a utility employee performs duties with the crew which will place him in the zone of danger. The presence and vigilance of the engineer at the controls (or, at the very least, in the cab) of the controlling locomotive is essential. Not only can the engineer, by his presence, prevent another employee from moving the equipment, but he or she can further guard against failure of the equipment (e.g., the air brakes) that may lead to unexpected movement, and can also guard against dangers posed by oncoming equipment. The presence of the engineer at the controls was a central factor in FRA's decision that train and yard crews can be safely excluded from blue signal protection.

Notwithstanding FRA's views, several comments were received regarding the presence of the engineer in the cab. These comments follow conflicting themes: first, that the engineer's presence was not essential to protection of the crew; and second, that the engineer's presence provides insufficient protection for the crew. Should the engineer leave the cab, that protection is lost. FRA recognizes that operational expediency may require the locomotive engineer to leave the cab. FRA believes the temporary replacement of the locomotive engineer by a member of his or her own crew provides an equivalent level of safety for any utility employee assigned to the crew.

A single locomotive engineer in helper service or a single hostler may not take advantage of the exclusion from blue signal protection unless joined by a utility employee. Absent a crew member to monitor the locomotive, blue signal protection is required. The contribution to safety provided by the presence of a crew member in the cab, together with the other requirements of this rule, provide sufficient protection for train and yard crews and utility employees. FRA also limits the utility employee's exclusion from blue signal protection to activities historically excluded when performed by train and yard service employees.

FRA recognizes that communication and coordination among the entire crew, including the utility employee, is crucial to the safety of the utility employee. When assigned to a train or yard crew and on arriving at the place where work is to be performed, the utility employee must establish personal contact with the ranking crew member. The utility employee must be made fully aware of the tasks to be performed while assigned as a member of that crew. While the assignment of a utility employee to a train or yard crew could be made by oral or written communication initiated by railroad supervision, the utility employee would be required to establish personal contact with the ranking crew member by a face-to-face discussion, telephone, radio or other telecommunication. The ranking crew member is required to inform all crew members about the addition of the utility employee; and communication must be established in the manner normally used by the operating crew. Communication of the identity of the utility employee is necessary to prevent confusion, particularly in the event more than one utility employee is assigned to a particular crew or more than one crew is working in the vicinity.

In subsections (d) and (e) FRA requires that the release of the utility employee cannot occur before all crew members are informed that the utility employee has ceased work with the crew. The notice to the crew members must be conveyed in the same manner as when the utility employee joined the crew. If these procedures are not strictly followed, the potential for misunderstanding and failure to properly account for all employees within the zone of danger would be unacceptably high. When fulfilling the proposed communication requirements by radio, strict adherence to proper procedures under 49 CFR part 220 is essential.

FRA received comments from railroad management questioning the necessity of establishing the maximum number of utility employees assigned to a particular train and the corresponding affect on maximum crew size. FRA believes the level of safety provided by the above communication requirements might be compromised in some circumstances if more than three utility employees were concurrently assigned to a crew. As the number of utility employees increases, the ability of the ranking crew member or locomotive engineer to monitor the location and activity of each crew member would diminish. After considering these opinions, FRA determined that the addition of three utility employees to a post-PEB 219 crew would not compromise safety and still permit an adequate number of employees to accomplish the normal work assignment. Industry practice observed by FRA, shows that five is a manageable number of crew members (a locomotive engineer, a conductor or yard foreman, and three brakemen or switchmen). Under subsection (f), therefore, FRA anticipates that a railroad would rarely need to assign more than two utility employees to a crew in order to create an effective work unit. Adding more than three employees could tax unit cohesion at a risk to safety.

In subsection (g) FRA clearly emphasizes that the exclusion for train or yard crew members is only extended to include utility employees who have met the requirements of this rule. Furthermore, the exclusion for train and yard crews continues to apply only to railroad employees who are assigned to a crew and working on, under, or between rolling equipment they have been called or assigned to operate.

In subsection (h) FRA has clarified that this final rule does not change the provisions of § 221.16. FRA received comments concerning the requirements of § 221.16, but found the issue beyond the scope of the notice provided by the NPRM.

Regulatory Impact Analysis

This rule has been evaluated in accordance with existing policies and procedures and is considered to be major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. It may be inspected and copied in room 8201, 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained by submitting written request to the FRA Docket Clerk at that same address. FRA estimates that the rule will yield a total of approximately $600 million in discounted benefits over 10 years. The potential benefits are about $183 million a year. FRA expects the industry to realize only 30 percent of that amount in the first year and 75 percent of the potential annual benefit in the tenth year.

FRA does not believe this rule will have any direct, adverse economic impact. It is possible that some indirect costs may be associated with the final

rule. FRA estimates that railroads may elect to purchase radio equipment costing $130,000 in discounted costs over ten years. This cost is not imposed by the rule, but railroads may make the expenditure in order to take advantage of the rule.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA believes that this final rule will have a beneficial economic impact on a substantial number of small entities, and did not receive comments proposing this impact be adjusted. A Regulatory Flexibility Analysis has been placed in the docket and copies may be obtained by contacting the FRA Docket Clerk. FRA's analysis found that the rule will allow railroads to operate more efficiently because of increased flexibility in assigning employees. For example, railroads will not have to employ additional crew members for an entire shift if those employees are only needed for yard operations. The reduced time needed to place and remove end-of-train markers should also produce a benefit.

Federalism Implications

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

There are no new information collection requirements in these FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

These rule revisions will not have any identifiable environmental impact.

The Rule

In consideration of the foregoing, FRA amends part 218 of title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority for part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend the part by removing the term "workman" wherever it appears and by inserting in its place "worker," and by removing the term "workmen" wherever it appears and by inserting in its place "workers."

3. Revise § 218.5 to read as follows:

§ 218.5 Definitions.

Absolute block means a block in which no train is permitted to enter while it is occupied by another train.

Blue signal means a clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

Camp car means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

Car shop repair track area means one or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of railroad rolling equipment is under the exclusive control of mechanical department personnel.

Controlling Locomotive means a locomotive arranged as having the only controls over all electrical, mechanical and pneumatic functions for one or more locomotives, including controls transmitted by radio signals if so equipped. It does not include two or more locomotives coupled in multiple which can be moved from more than one set of locomotive controls.

Effective locking device when used in relation to a manually operated switch or a derail means one which is:

(1) Vandal resistant;

(2) Tamper resistant; and

(3) Capable of being locked and unlocked only by the class, craft or group of employees for whom the protection is being provided.

Flagman's signals means a red flag by day and a white light at night, and a specified number of torpedoes and fusees as prescribed in the railroad's operating rules.

Group of workers means two or more workers of the same or different crafts assigned to work together as a unit under a common authority and who are in communication with each other while the work is being done.

Interlocking limits means the tracks between the opposing home signals of an interlocking.

Locomotive means a self-propelled unit of equipment designed for moving other railroad rolling equipment in revenue service including a self-propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control.

Main track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Ranking crew member means an individual in whom the general charge of the train or yard crew is vested in accordance with the railroad's operating rules. Unless otherwise designated by the railroad, the ranking crew member will be the assigned locomotive engineer.

Rolling equipment includes locomotives, railroad cars, and one or more locomotives coupled to one or more cars.

Switch providing access means a switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

Train or yard crew means one or more railroad employees assigned a controlling locomotive, under the charge and control of one crew member; called to perform service covered by Section 2 of the Hours of Service Act; involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew; reporting and working together as a unit that remains in close contact if more than one employee; and subject to the railroad operating rules and program of operational tests and inspections required in §§ 217.9 and 217.11 of this chapter.

Utility employee means a railroad employee assigned to and functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew in the assembly, disassembly or classification of rail cars, or operation of trains (subject to the conditions set forth in § 218.22 of this chapter).

Worker means any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or been assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning.

Note: Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

Testing does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

4. Add a new § 218.22 to read as follows:

§ 218.22 Utility employee.

(a) A utility employee shall be subject to the Hours of Service Act, and the requirements for training and testing, control of alcohol and drug use, and hours of service record keeping provided for in parts 217, 219, and 228 of this chapter.

(b) A utility employee shall perform service as a member of only one train or yard crew at any given time. Service with more than one crew may be sequential, but not concurrent.

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions:

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer of that crew;

(2) The locomotive engineer is in the cab of the controlling locomotive, or, while the locomotive is stationary be replaced in the cab by another member of the same crew;

(3) The utility employee established communication with the crew by contacting the ranking crew member on arriving at the train (as defined for the purpose of this section as one or more locomotives coupled, with or without cars) and before commencing any duties with the crew.

(4) Before each utility employee commences duties, the ranking crew member shall provide notice to each crew member of the presence and identity of the utility employee. Once all crew members have acknowledged this notice, the ranking crew member shall advise the utility employee that he or she is authorized to work as part of the crew. Thereafter, communication shall be maintained in such a manner that each member of the train or yard crew understands the duties to be performed and whether those duties will cause any crew member to go on, under, or between the rolling equipment; and

(5) The utility employee is performing one or more of the following functions: set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail cars for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and position retaining valves; inspect, test, install, remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(d) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall notify the ranking crew member. The ranking crew member shall then provide notice to each crew member that the utility employee is being released from the crew. Once each crew member has acknowledged the notice, the ranking crew member shall then notify the utility employee that he is released from the train or yard crew.

(e) Communications required by § 218.22(c)(4) and (d) shall be conducted between the utility employee and the ranking crew member. This communications shall be conducted either through direct verbal contact, by radio in compliance with part 220 of this chapter, or by oral telecommunication of equivalent integrity.

(f) No more than three utility employees may be attached to one train or yard crew at any given time.

(g) Any railroad employee who is not assigned to a train or yard crew, or authorized to work with a crew under the conditions set forth by paragraph (b) of this section, is a worker required to be provided blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(h) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.

5. In Appendix A to Part 218—Schedule of Civil Penalties, a new section is added in numerical order to the penalty schedule as follows:

Appendix A to Part 218—Schedule of Civil Penalties

Section	Violation	Willful violation
Subpart B—Blue Signal Protection of workers:		
218.22 Utility employees:		
(a) Employee qualifications	$5,000	$7,500
(b) Concurrent service	$5,000	$7,500
(c) Assignment conditions.		
(1) No controlling locomotive	$5,000	$7,500
(2) Empty cab	$5,000	$7,500
(3)(4) Improper communication	$5,000	$7,500
(5) Performing functions not listed	$2,000	$4,000
(d) Improper release of utility employee	$2,000	$4,000
(f) More than three utility employees with one crew	$2,000	$4,000

* * * * *

Appendix C [Redesignated from Appendix B]

6. Appendix B to part 218 is redesignated as Appendix C, and the title is revised to read as follows: "Statement of Agency Enforcement Policy on Tampering".

7. A new appendix B to part 218 is added to read as follows:

Appendix B to part 281—Statement of Agency Enforcement Policy on Blue Signal Protection for Utility Employees

The following examples of the application of the train or yard crew exclusion from required blue signal protection for utility employees are provided to clarify FRA's enforcement policy. In the first four examples, the utility employee is properly attached to and functioning as member of a train or yard crew and is excluded from blue signal protection, provided all the conditions specified in § 218.22 are met:

Example 1: A utility employee assists a train crew by adding or reducing railroad cars to or from the train. The utility employee may perform any duties which would normally be conducted by members of the train crew, i.e., setting or releasing handbrakes, coupling air hoses and other connections, prepare rail cars for coupling, and perform air brake tests.

Example 2: A utility employee is assigned to assist a yard crew for the purpose of classifying and assembling railroad cars. The yard crew onboard their locomotive arrives at the location in the yard where the work is to be performed. At that time, the utility employee may attach himself to the yard crew and commence duties as a member of that yard crew.

Example 3: A utility employee is assigned to inspect, test, remove and replace if necessary, a combination rear end marking device/end of train device on a through freight train. The utility employee attaches himself to the train crew after the arrival of the train and its crew at the location where this work is to be conducted. He may then perform duties as a member of that crew.

Example 4: A railroad manager who properly attaches himself as a utility employee to a train or yard crew, in accordance with § 218.22, may then function as a member of the train or yard crew under the exclusion provided for train and yard crews.

Note: In the last four examples, any railroad employee, including regularly assigned crew members, would need blue signal protection to perform the described function.

Example 5: Prior to the arrival of a through freight train, a utility employee installs an end-of-train device on one end of a block of railroad cars that are scheduled to be picked up by the freight train.

Example 6: A railroad employee attaches himself to a train or yard crew while the crew is in the ready room preparing to take charge of their train. Prior to the train crew leaving the ready room and taking charge of the equipment, the employee couples air hoses and other connections between the locomotives.

Example 7: A railroad employee is attached to a train crew after the train crew has taken charge of the train. It is necessary for the employee to perform a repair on a rail car, such as replacing a brake shoe, in addition to those duties normally performed by train or yard crew members.

Example 8: A train or yard crew, supplemented by three utility employees, has an assigned locomotive and train. The regular crew, including the engineer, has left the train to eat lunch. The utility employees have remained with the train and are coupling air hoses between rail cars in the train.

Issued in Washington, DC, on August 5, 1993.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 93–19484 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–06–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 11)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1993 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts the 1993 User Fee Update and revises its fee schedule in compliance with the regulatory requirement that its fees be updated annually.

EFFECTIVE DATE: This rule is effective on October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202–927–5493, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The update formula produces increases for most fees because all cost factors increased this year. Fees for two of the most frequently made filings will increase as follows: Fee Item (1) for motor carrier applications will increase to $300 and Fee Item (74) for tariff filings will increase to $10. The Commission is deferring any increases in the fees for rail finance, abandonment, and exemption proceedings and complaints and complaint-type declaratory order proceedings until next year because a cost study is being conducted.

The fee increases involved here result only from the mechanical application of the update formula at 49 CFR 1002.3(d), adopted through notice and comment procedure in Regulations Governing Fees For Services—1987 Update, 4 I.C.C.2d 137 (1987). Therefore, the Commission believes that good cause exists for finding that notice and comment are unnecessary for this proceeding under 5 U.S.C. 553(b)(3)(B). See Regulations Governing Fees For Services—1990 Update, 7 I.C.C.2d 3 (1990), and Regulations Governing Fees For Services—1991 Update, 8 I.C.C.2d 13 (1991).

The Commission concludes that these fee increases will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fees for those entities which can make the required showing of financial hardship.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359 (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 4, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. Section 1002.1 is amended by revising paragraphs (b), (c), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $22.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, *etc.*, incidental thereto, at the rate of $15.00 per hour.

* * * * *

(e) * * *

(1) A fee of $38.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate	Grade	Rate
GS–1	$6.46	GS–9	$15.09.
GS–2	7.04	GS–10	16.62
GS–3	7.93	GS–11	18.26
GS–4	8.90	GS–12	21.88
GS–5	9.96	GS–13	26.02
GS–6	11.10	GS–14	30.75
GS–7	12.34	GS–15 and over.	36.17
GS–8	13.66		

* * * * *

3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$300.
(2) A fitness-only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.	$100.
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.66.	$2,700.
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	$50.
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.	$200.
(6) An application to remove restriction or broaden unduly narrow authority.	$300.
(7) An application for authority to deviate from authorized regular-route authority.	$150.
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928.	$100.
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).	$90.
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.	$23
(11) Request for name change of carrier, broker, or household goods freight forwarder	$10.
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.3.	$50.
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).	$60
(14) [Reserved].	
(15)A joint petition to substitute applicant in a pending operating rights proceeding.	$28.
(16) [Reserved].	
Part II: Non-Rail Applications To Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908.	$11,300.
(18) A petition to discontinue motor carrier of passenger transportation in one state.	$1,000.
(19) [Reserved].	
Part III: Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic.	$2,200.
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	$1,000.
(22) An application for approval of a non-rail rate association agreement, 49 U.S.C. 10706.	$13,800.
(23) An application for approval of an amendment to a non-rail rate association agreement.	
(i) Significant amendment	$2,300.
(ii) Minor amendment	$50.
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.	$250.
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	$250.
(26) [Reserved].	
(27) A petition for exemption under 49 U.S.C. 11343(e).	$250.
(28)–(32) [Reserved].	
Part IV: Rail Application for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$3,600.
(ii) Exempt transaction under 49 CFR 1150.31.	$1,500.
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).	$4,400.
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b))(1)(A)(ii).	$2,500.
(36)–(37) [Reserved].	
Part V: Rail Applications To Discontinue Transportation Services	
(38) An application for authority to abandon all or portion of a line of railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act (Subtitle E of Title XI of Pub. L. 97–35), Bankrupt railroads, or exempt abandonments under 49 CFR 1152.50).	$4,500.
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$200.
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.	$900.
(41) Exempt abandonments. 49 CFR 1152.50.	$2,125.
(42) A notice or petition to discontinue passenger train service.	$11,200.
(43) [Reserved].	
Part VI: Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.	$9,400.
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.	$5,100.

Type of proceeding	Fee
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	$185,400.
(ii) Significant transaction	$37,000.
(iii) Minor transaction	$3,100.
(iv) Exempt transaction (49 CFR 1180.2(d)).	$750.
(v) Responsive application.	$3,100.
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b).	$37,000.
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.	$34,900.
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706.	
(i) Significant amendment	$6,400.
(ii) Minor amendment	$50.
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.	$350.
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR part 1175. 49 U.S.C. 11301.	$1,600.
(ii) An exempt transaction under 49 CFR Part 1175.	$750.
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505.	
(i) Financial exemption petitions.	$3,625.
(ii) Abandonment exemption petitions.	$3,000.
(iii) Construction, extension, acquisition, or operation of a rail line.	$3,000.
(iv) Other exemption	$1,625.
(56)–(59) [Reserved].	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods.	$1,000.
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(f)(1)(A).	$1,000.
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparble to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order.	$1,300.
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	$7,700.
(64) A petition for exemption from filing tariffs by bus carriers.	$250.
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	$3,500.
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501.	$1,000.
(67) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate bus carriers. 49 U.S.C. 11501.	$1,900.
(68)–(71) [Reserved].	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	$600.
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	$60.
(74) The filing of tariffs, rate schedules, contracts and/or contract summaries, including supplements.	$10 per series transmitted.
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less).	$70.
(76) Informal complaint about rail rate application.	$250.
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	$3,700.
(ii) An application for original qualification as self-insurer for cargo insurance.	$300.
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond.	$10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR part 1057.	$400.
(80) A petition for reinstatement of revoked operating authority.	$60.
(81)–(82) [Reserved].	
(83) Petition for reinstatement of a dismissed operating rights application.	$400.
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).	$18 per document.

Type of proceeding	Fee
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding.	$1,400.
(86) Informal opinions about rate applications (all modes).	$50.
(87)–(95) [Reserved].	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	$14 per delivery.
(97) Request for service list for proceedings.	$10 per list.
(98) Requests for copies of the one-percent carload waybill sample.	$150.
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	$19 per movement verified.
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.	$90.

[FR Doc. 93–19644 Filed 8–12–93; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 081193A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Atka mackerel in the Central and Western districts of the Aleutian Islands subarea (AI). This action is necessary to fully utilize the total allowable catch (TAC) of Atka mackerel in these districts.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 11, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the BSAI was established by the final 1993 specifications of groundfish (58 FR 8703, February 17, 1993) as 27,200 metric tons (mt), and later augmented from the reserve to a total of 32,000 mt (58 FR 14172, March 16, 1993). The directed fishery for Atka mackerel was closed on March 11, 1993 (58 FR 14173, March 16, 1993).

The final rule implementing Amendment 28 to the FMP, effective on August 11, 1993, establishes three new management districts in the AI (Eastern, Central, and Western districts) and divides the Atka mackerel TAC for 1993 among the new AI districts and the Bering Sea subarea (58 FR 37660, July 13, 1993). The initial TAC specified in the final rule for the Eastern AI district/Bering Sea subarea is 2,992 mt. Because this amount has been harvested as a result of the fishing activity that occurred earlier this year for Atka mackerel, this area remains closed to directed fishing until December 31, 1993. The initial TAC specified for the Western AI district is 11,968 mt, with a current harvest of 0 mt. For the Central AI district, the initial TAC is 12,240 mt and the current harvest is 0 mt.

The Regional Director, Alaska Region, NMFS, has determined that the TAC for Atka mackerel in the Central and Western districts of the AI are sufficient to sustain directed fisheries. Therefore, NMFS is rescinding the closure to directed fishing in the Central and Western districts of the AI effective at 12 noon, A.l.t., August 11, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19689 Filed 8–11–93; 2:25 pm]
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Proposed Rules

Federal Register
Vol. 58, No. 156
Monday, August 16, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 735

RIN 0560–AD14

Using Electronic Cotton Warehouse Receipts—Amendment to the United States Warehouse Act

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to authorize the issuance of electronic cotton warehouse receipts by warehousemen licensed by the Agricultural Stabilization and Conservation Service (ASCS) under the provisions of the United States Warehouse Act (USWA). This rule implements changes made to the USWA by Public Law 102–553, (October 28, 1992).

DATES: Comments must be received by October 15, 1993, in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Licensing Authority Division, U.S. Department of Agriculture (USDA), Agricultural Stabilization and Conservation Service, P.O. Box 2415, room 5962–S, Washington, DC 20013–2415, telephone 202–720–2121, FAX 202–690–0014.

All submissions will be available for public inspection during regular business hours in room 5962, South Agriculture Building, USDA, 14th and Independence Avenue, SW., Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen or Lynda Moore, Agricultural Marketing Specialists, ASCS, USDA, telephone 202–720–2121.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This proposed rule has been reviewed under USDA procedures which implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this proposed rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

No Significant Impact

The Administrator of ASCS certifies that this rule will not have a significant impact on a substantial number of participating individuals and entities because the procedure set out in this rule would not increase, but would rather decrease, the time and paperwork necessary to process an administrative review.

Executive Order 12612

Executive Order 12612 of October 26, 1987, entitled "Federalism", requires that Executive departments and agencies shall, to the extent permitted by law adhere to certain principles of federalism. The Administrator of ASCS has determined that this program will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. This proposed rule does not have any preemptive effect with respect to State laws with the exception that for State law purposes an electronic warehouse receipt issued by a Federally licensed warehousemen shall have the same effect as a paper warehouse receipt issued by the same warehousemen. This proposed rule is not retroactive.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because it has been determined that this rule will not have an adverse effect on a substantial number of small businesses.

Paperwork Reduction Act

This proposal contains new recordkeeping requirements. However, since this procedure would be voluntary, not mandatory, all figures submitted for OMB review will be sketchy estimates. These new recordkeeping requirements will be submitted for OMB approval under the provisions of 44 U.S.C. chapter 35.

Background

Pursuant to the provisions of the USWA, the Secretary has the authority to license public warehousemen of cotton (7 U.S.C. 238 *et seq.*). As a part of this licensing authority, the Secretary has the responsibility to regulate the issuance of warehouse receipts by the cotton warehousemen it licenses (7 U.S.C. 257). Currently, the provisions of section 18 of the USWA and 7 CFR part 735 of the regulations, prescribe the content and the issuance of cotton warehouse receipts.

Public Law 102–553 amended the USWA to provide the Secretary of Agriculture (through ASCS) with the discretionary authority to allow the cotton warehousemen it licenses to issue cotton warehouse receipts in electronic format (electronic warehouse receipts). To implement this discretionary authority, this rule proposes to voluntarily allow USWA licensed warehousemen to issue electronic cotton warehouse receipts for bales of cotton stored by those warehousemen. These electronic warehouse receipts would be maintained by private entities called

providers. This rule proposes that USWA licensed warehousemen be required to use providers of electronic warehouse receipt systems that are licensed by the Secretary for that purpose.

The proposed rule would require providers to give, at no charge, access to its warehouse receipt records to those who have a direct interest in the warehouse receipt. In addition, this rule proposes that providers would allow any party access to the electronic warehouse receipts maintained in its central filing system on a read only basis.

The Secretary would charge providers a fee to cover the agency's costs associated with administering and supervising the electronic warehouse receipt system as authorized by Public Law 102–553. It is anticipated that this fee will initially fall into the range of $.10 to $1.00 per bale.

The proposed rule does not limit the number of providers that may be licensed by the Secretary, nor does it limit the fees that providers may charge USWA licensed warehousemen. The proposed rule would allow warehousemen the opportunity to change providers once a year.

The proposed rule would also allow providers licensed by the Secretary to accept electronic cotton warehouse receipts from warehousemen not licensed by the Secretary. However, the Secretary, under this proposed rule, would not regulate or take any responsibility for such warehousemen, the cotton stored in their warehouses, the content of warehouse receipts issued by such warehousemen, or the manner in which such warehouse receipts are issued. Such matters would be governed by the applicable State law.

The proposed rule would apply the same lost warehouse receipt procedures for lost electronic warehouse receipts as are presently applicable to paper warehouse receipts. It is anticipated that this lost warehouse receipt provision will only come into effect when a provider has suffered a system wide failure affecting its primary and backup systems.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR part 735 be amended as follows:

PART 735—[AMENDED]

1. The authority citation for 7 CFR part 735 is revised to read as follows:

Authority: 7 U.S.C. 268.

2. Section 735.2 is amended by adding paragraphs (bb) through (jj) to read as follows:

Sec. 735.2 Terms defined.

* * * * *

(bb) *Central filing system.* An electronic computer system operated and maintained by a licensed provider where the information on electronic warehouse receipts is recorded.

(cc) *Contract.* A contract entered into between a provider and a user of the central filing system.

(dd) *Electronic warehouse receipt.* Information contained in the central filing system which must be at least the information required to be included in a warehouse receipt under Section 18 of the Act, and § 735.16, regarding a bale of cotton; and the names of the current holder and owners.

(ee) *Financial Institution.* An entity such as a bank or savings and loan that is chartered or licensed by a State or Federal agency to provide financial services.

(ff) *Holder.* An individual or entity in possession, in fact, or by operation of law, of a receipt.

(gg) *Licensing Agreement.* An agreement entered into between the Secretary (ASCS) and a provider that delineates the provider's responsibilities and defines the relationship between the provider and ASCS regarding the provider's maintenance of electronic warehouse receipts and other requirements issued pursuant to this part.

(hh) *Owner.* An individual or entity that has ownership interest in a bale of cotton and is identified on the electronic warehouse receipt as owner.

(ii) *Provider.* An individual or entity licensed under the Act that has a current and valid Licensing Agreement with ASCS.

(jj) *User.* An individual or entity that uses the services of the provider to access warehouse receipt information in the provider's central filing system.

§§ 735.94; 735.95, 735.96, 735.97, 735.98, 735.99 [Added and Reserved]

3. Sections 735.94 through 735.99 are added and reserved.

4. An undesignated centerheading entitled, "Electronic Warehouse Receipts" (§§ 735.100 through 735.108) is added to read as follows:

Electronic Warehouse Receipts

Sec.

735.100 General statement.
735.101 Electronic warehouse receipts.
735.102 Providers.
735.103 Audits.
735.104 Access.
735.105 Provider warehouseman relationship.
735.106 Provider user relationship.
735.107 Suspensions.
735.108 Security.

Electronic Warehouse Receipts

§ 735.100 General statement.

If a licensed warehouseman chooses to issue electronic warehouse receipts, such receipts may only be issued through a provider who is licensed by ASCS. Electronic warehouse receipts issued pursuant to this part are considered equal to paper warehouse receipts issued pursuant to this part. A party listed as a holder of an electronic warehouse receipt issued under this part shall have the same rights and obligations as if that party was in possession of a paper warehouse receipt issued under this part.

§ 735.101 Electronic warehouse receipts.

(a) Electronic warehouse receipts created and issued pursuant to this part shall establish the same rights and obligations with respect to a bale of cotton as a paper receipt pursuant to this part. With the exception of the requirement that warehouse receipts be created on paper (§ 735.19), all other requirements applicable to warehouse receipts created on paper shall apply to electronic warehouse receipts, unless otherwise specified in this part.

(b) An electronic warehouse receipt is considered issued when the licensed warehouseman transmits all the data required to be contained in an electronic warehouse receipt, under this section, to the provider.

(c) Electronic warehouse receipts must be issued as single bale receipts.

(d) Electronic warehouse receipts must designate the name of the current holder and owners of the receipt.

(e) Licensed warehousemen may cancel electronic warehouse receipts only when they are the holder of such receipts.

(f) Licensed warehousemen, only as holder, may correct inaccurate information on the electronic warehouse receipt.

(g) Only the current holder of the receipt may change the holder or owners of the receipt.

(h) Only one unique electronic warehouse receipt number shall exist for a single bale of cotton at a time. An electronic warehouse receipt shall not be issued for a bale of cotton if such bale is covered by an existing, valid warehouse receipt.

(i) An electronic warehouse receipt shall only designate one holder at a time.

(j) Electronic warehouse receipts shall not be issued for defective cotton as defined in § 735.70.

(k) Licensed warehousemen must inform the Secretary of the identity of their licensed provider 60 calendar days in advance of issuing warehouse receipts through that provider.

(l) Owners, holders, and licensed warehousemen may authorize any other user of a provider to act on their behalf with respect to their activities with such provider. Such authorization must be in writing on a form approved by the Secretary.

(m) An electronic warehouse receipt may only be issued if the current holder of the warehouse receipt agrees. In the case of cotton for which no warehouse receipt exists, an electronic warehouse receipt may only be issued if the owner agrees.

(n) Provisions of § 735.18 shall be applicable for lost electronic warehouse receipts.

§ 735.102 Providers.

(a) A provider authorized to maintain electronic warehouse receipts in a central filing system issued under this part must have a valid Licensing Agreement with ASCS.

(b) The provider must furnish performance security as stated in the Licensing Agreement.

(c) Providers must pay fees to the Secretary pursuant to the terms and conditions of the Licensing Agreement to cover the Secretary's estimated costs incident to the oversight of the overall electronic warehouse receipt filing system.

(d)(1) The provider and any individual or entity that is responsible for the information maintained by the provider, must not have an ownership interest in:

(i) Baled cotton,

(ii) A public warehouse that stores cotton, or

(iii) Any other provider.

(2) However, for the purposes of this paragraph, an ownership interest in baled cotton does not include, on the part of financial institutions only, a security interest or subsequent ownership as the result of foreclosure or default.

(e) Licensing Agreements will be for a term no longer than one year ending on April 30.

(f) Providers must establish and retain a contemporaneous record of each and every entry into their central filing system. Such records must be maintained for a period of at least six years, unless otherwise notified in writing by the Secretary.

(g) Providers will be strictly liable to their users and the Secretary for any losses and costs associated with lost or destroyed electronic warehouse receipts.

(h) With the exception of correcting malfunctions and performing system verifications and maintenance, the provider, unless it is acting as a holder (and then solely for the purpose of transferring to a different holder), shall not have access to its central filing system and shall not have the authority to create, amend, void, or cancel electronic warehouse receipts maintained in its central filing system.

(i) A provider may not transfer electronic warehouse receipts from its central filing system to another central filing system until:

(1) The provider has furnished the Secretary with a complete listing of all warehouse receipts being transferred and the identity of the provider who is to receive the warehouse receipts, and

(2) The provider has received written permission from the Secretary to perform such a transfer.

§ 735.103 Audits.

(a) The provider must submit to the Secretary an annual audited financial statement that meets the requirements established in § 735.5 with the exception of § 735.5(d)(1) (i), (e), (g), and (h) applicable to warehousemen; and an electronic data processing audit that shall comply with the standards set by the American Institute of Certified Public Accountants. The electronic data processing audit shall be performed by an independent organization skilled in such audits. These audits shall cover the provider's fiscal year and the completed audits shall be submitted to the Secretary no later than four calendar months following the end of the fiscal year which the audits cover. With respect to the electronic data processing audit, the auditor shall review computer operations, security, and disaster recovery capabilities for said system. In addition, this audit shall review system compliance with current Federal regulations and the Licensing Agreement. This audit shall result in an opinion by the auditor as to current computer operations, security, and disaster recovery capabilities of the system.

(b) All records of original entries and changes in warehouse receipts, ownership, past and present holders, amendments, and any transaction information concerning electronic warehouse receipts, whether it appears on the electronic warehouse receipt or not, must be accessible for audit purposes. All of this information must be maintained by the provider for six years after cancellation of the electronic warehouse receipt.

(c) The provider will grant the Secretary and his designees unlimited, free access at any time to all records in the possession of the provider or under the provider's control relating to its activities conducted under this part. The provider's central filing system must be capable of being directly connected with the ASCS computer system as provided in the Licensing Agreement.

§ 735.104 Access.

(a) A provider must allow read only access, at no cost, to electronic warehouse receipts it maintains, to USWA licensed warehousemen (or their designees) with respect to the electronic warehouse receipts such warehousemen have in the provider's system, to the holder (or their designees) listed on electronic warehouse receipts it maintains, and to owners (or their designees) listed on electronic warehouse receipts it maintains in its central filing system.

(b) Providers may allow access to the electronic warehouse receipts it retains in its central filing system to any other party on a nondiscriminatory basis.

§ 735.105 Provider warehouseman relationship.

(a) A licensed warehouseman may only contract with one licensed provider for a 12-month License Agreement cycle as described in § 735.102(e), per warehouse license issued by the Secretary.

(b) When a licensed warehouseman changes providers, the warehouseman must transfer all warehouse receipts in the central filing system to another provider licensed by ASCS. Such transfer must be effective as of the last day of the month the transfer is made.

(c) Unless the Secretary otherwise agrees, licensed warehousemen must notify all owners and holders of cotton receipted in the central filing system at least 30 calendar days before changing providers.

(d) If a licensed warehouseman does not have a valid contract with a provider licensed under this part, the warehouseman shall not issue electronic warehouse receipts.

§ 735.106 Provider user relationship.

(a) The provider user relationship must be defined by a contract.

(b) The contract should contain the fees that the provider will charge the user for services rendered.

(c) The provider shall not discriminate among its users as defined in § 735.104 regarding access to its

central filing system and must charge fees on a uniform schedule basis to all users for its services.

(d) The provider must furnish the Secretary with copies of its current schedule of fees for all services and charges as they become effective.

§ 735.107 Suspensions.

(a) Pending investigation, the Secretary may suspend or revoke a provider's license. Suspensions or revocations may be issued when the provider:

(1) Does not have control, in whole or in part, of its central filing system;

(2) Does not maintain, in the opinion of the Secretary, adequate security of the central filing system to protect the integrity of the USWA electronic warehouse receipts it maintains;

(3) Does not permit the Secretary access on-demand to the provider's records as required by this part;

(4) Is in the process of dissolution or has been dissolved;

(5) Has ceased to operate and control the central filing system;

(6) Has in any manner become nonexistent, incompetent, or incapacitated to conduct business;

(7) Has in any manner violated or failed to comply with the Act and its regulations or the Licensing Agreement; or

(8) Does not provide adequate and approved performance security required by this part and the Licensing Agreement.

(b) Suspended providers may not accept or transfer electronic warehouse receipts without authority granted by the Secretary. Additionally, during a provider's suspension, the provider's users may not create, amend, cancel, or void electronic warehouse receipts in the central filing system without the express approval of ASCS.

(c) During periods of provider suspension, licensed warehousemen must issue paper warehouse receipts unless otherwise advised in writing by the Secretary.

(d) Hearings and appeals will be conducted in accordance with procedures that are contained in §§ 735.7 and 735.89.

§ 735.108 Security.

(a) Providers' central filing systems must include sufficient security measures to limit access to authorized users, only. The provider will be strictly liable for any losses or damages to the Secretary and all other interested parties with respect to unauthorized entries into the provider's central filing system.

(b) The Licensing Agreement will require specific security measures that all providers must include in their central filing systems. These security measures will include logging of all accesses to an on-line system to support intrusion detection and protection.

(c) Security standards must meet the standards set by the American Institute of Certified Public Accountants, or those requirements set out in the Licensing Agreement.

(d) Both on-site and off-site record security must be maintained.

Signed at Washington, DC, on August 9, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–19657 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–016–2]

Ports Designated for the Exportation of Animals; Kentucky and New Jersey; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction to a proposed rule.

SUMMARY: We are correcting an error in a proposed rule that would amend the Inspection and Handling of Livestock for Exportation regulations. This proposed rule was published in the **Federal Register** on July 13, 1993 (58 FR 37667–37669, Docket No. 93–016–1).

DATES: Consideration will be given only to comments on the proposed rule, as corrected by this document, received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–016–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning the Kentucky port, contact Dr. Michael David, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7511.

For information concerning the New Jersey port, contact Dr. Najam Faizi, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION: On July 13, 1993, we published in the **Federal Register** (58 FR 37667–37669, Docket No. 93–016–1) a proposal that would amend the Inspection and Handling of Livestock for Exportation regulations (contained in 9 CFR part 91) by, among other things, designating Woodstown, NJ, as a port of embarkation and Deep Hollow Farms in Woodstown, NJ, as an export inspection facility for that port. However, the port of embarkation is actually in Salem, NJ, and it is only Deep Hollow Farms that is in Woodstown. This document corrects § 91.14, new paragraph (a)(10)(i), of the proposed rule to reflect the correct address of the port of embarkation, as follows:

PART 91—[CORRECTED]

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(10) * * *

(i) Salem—ocean port.

* * * * *

Done in Washington, DC, this 10th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–19594 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–79–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require repetitive tests of the main rudder power control unit (PCU) to detect

internal leakage of hydraulic fluid, and the eventual replacement of the main rudder PCU with an improved model. This proposal is prompted by results of an investigation which revealed that the secondary slide in the servo valve of certain PCU's can go past the intended maximum-travel position. The actions specified by the proposed AD are intended to prevent secondary slide overtravel from occurring, which could cause the rudder actuator piston and the rudder to move opposite to the intended direction and result in reduced controllability of the airplane.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The manufacturer has advised the FAA that there have been two reports of rudder control anomalies on Boeing Model 737 series airplanes, which were discovered during preflight controls checks. In both cases, the flight crew reported that the rudder pedals operated normally in one direction, but that pedal travel was reduced in the opposite direction while being cycled in accordance with controls checks procedures. When foot pressure was released from the pedals, the pedals recentered as normal. Investigation of this anomaly revealed that, under certain conditions, the secondary slide in the dual servo valve on the rudder power control unit (PCU) can go past the intended maximum-travel position. This condition could cause hydraulic fluid bypass and could cause misdirected hydraulic pressure within the servo valve, which could then cause the rudder actuator piston and the rudder to move in a direction opposite to the intended direction. This condition, if not corrected, could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Service Letter 737–SL–27–82–B, dated July 13, 1993, that describes procedures for conducting a test of the main rudder PCU to detect excessive internal leakage of hydraulic fluid. If certain discrepancies are detected, the service letter recommends the replacement of the main rudder PCU.

The FAA also has reviewed and approved Boeing Bulletin 727–27–1185, dated April 15, 1993, that describes procedures for replacement of the main rudder PCU with an improved model that is not subject to the subject leakage problems.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require periodic tests of the main rudder PCU to detect excessive internal leakage of hydraulic fluid, and correction of discrepancies. This proposed AD also would require the eventual replacement of the main rudder PCU with an improved model; such replacement would constitute terminating action for the periodic tests. The actions would be required to be accomplished in accordance with the service letter and the service bulletin described previously.

There are approximately 2,448 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 729 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 19 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $761,805, or $1,045 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BOEING: Docket 93–NM–79–AD.

Applicability: Model 737 series airplanes; line positions 1 through 2453, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the rudder actuator piston and the rudder to move opposite to the intended direction, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 750 flight hours after the effective date of this AD, perform a test of the main rudder power control unit (PCU), part number 65–44861–2/–3/–4/–5/–6/–7/–8/–9, to detect internal leakage of hydraulic fluid, in accordance with Boeing Service Letter 737–SL–27–82–B, dated July 13, 1993.

(1) If no discrepancy, as described in paragraph B. of the Service Letter, is detected, repeat the test at intervals not to exceed 750 flight hours.

(2) If any discrepancy, as described in paragraph B. of the Service Letter, is detected during any check, prior to further flight, replace the main rudder PCU with a new main rudder PCU having part number 65–44861–11 or 65C37052–2/–3/–4/–5/–6/–7/–8/–9, in accordance with Boeing Service Bulletin 737–27–1185, dated April 15, 1993. Such replacement constitutes terminating action for the tests required by paragraph (a)(1) of this AD.

(b) Within 5 years after the effective date of this AD, replace the main rudder PCU, part number 65–44861–( ), with a new main rudder PCU having part number 65–44861–11 or 65C37052–2/–3/–4/–5/–6/–7/–8/–9, in accordance with Boeing Service Bulletin 737–27–1185, dated April 15, 1993. Such replacement constitutes terminating action for the tests required by paragraph (a)(1) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the airplane has not failed the internal leakage test required by this AD.

Issued in Renton, Washington, on August 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19622 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–100–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Fokker Model F28 Mark 0100 series airplanes. This proposal would require installation of a doubler assembly on the forward partial pressure bulkhead. This proposal is prompted by fatigue testing in which cracking was found in the area of the avionics cooling outlet valve fitting. The actions specified by the proposed AD are intended to prevent cracking and subsequent reduced structural capability of the partial pressure bulkhead, which could result in decompression of the airplane.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–100–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, during fatigue testing conducted on a Fokker Model F28 Mark 0100 test airplane, cracks were found in the

forward partial pressure bulkhead in the area of the avionics cooling outlet valve fitting. Cracking in this area could reduce the structural capability of this bulkhead. If the bukhead fails, decompression of the airplane could occur.

Fokker has issued Service Bulletin SBF100–53–052, dated January 17, 1992, that describes procedures for installing a doubler assembly to reinforce the forward partial pressure bulkhead at the avionics cooling outlet valve fitting, and at the cargo bay outlet valve fitting, if applicable. The RLD classified this service bulletin as mandatory and issued Dutch Airworthiness Directive BLA 92–029, dated February 21, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installing a doubler assembly to reinforce the forward partial pressure bulkhead. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $46,155, or $2,715 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

FOKKER: Docket 93–NM–100–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 to 11286 inclusive, 11289, 11291, 11292, 11293, 11295, 11297, 11300, 11303, 11306, and 11308; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and reduced structural capability of the forward partial pressure bulkhead and subsequent decompression of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later, install a doubler assembly on the forward partial pressure bulkhead in accordance with Fokker 100 Service Bulletin SBF100–53–052, dated January 17, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19623 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–91–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–311 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland, Inc., Model DHC–8–311 series airplanes. This proposal would require repetitive inspections to detect fatigue-related cracking on the rear face of the underwing fairing angles, and replacement of cracked parts. A terminating action is also provided, which, if accomplished, would eliminate the need for the proposed repetitive inspections. This proposal is prompted by a report indicating that, during manufacture, a batch of titanium fairing angles was improperly reworked, resulting in reduced fatigue durability. The actions specified by the proposed AD are intended to prevent failure of the underwing fairing angles, which could result in reduced structural integrity of the wing-to-fuselage attachment.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–91–AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland, Inc., Model DHC–8–311 series airplanes. Transport Canada Aviation advises that reports have been received indicating that, during manufacture, a batch of titanium fairing angles was improperly reworked, by use of a procedure that entailed weld-filling of three fastener holes and redrilling the holes in different locations, resulting in reduced fatigue durability. The welds were made with commercially pure titanium, which has a hardness only one-third that of the angle material. Additionally, there is evidence that, in some cases, holes may not have been fully plugged by the weld operation, resulting in increased geometric stress. This condition, if not corrected, could result in failure of the left- and right-hand underwing fairing angles, which could subsequently result in reduced structural integrity of the wing-to-fuselage attachment.

De Havilland, Inc., has issued Service Bulletin S.B. A8–53–46, Revision 'A', dated May 25, 1993, that describes procedures for repetitive visual inspections to detect fatigue-related cracking on the rear face of the left- and right-hand underwing fairing angles (wing-to-angle attachment fittings). Based upon fatigue testing, the manufacturer recommends that the initial inspection be conducted prior to the accumulation of 6,830 total landings on the airplane. The service bulletin also describes procedures for replacement of cracked fairing angles with new, non-reworked fairing angles that have increased fatigue durability. Installation of these non-reworked fairing angles eliminates the need for the visual inspections. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–93–10, dated May 26, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections to detect fatigue-related cracking on the rear face of the left- and right-hand underwing fairing angles (angle-to-angle wing attachment fittings), and replacement of cracked fairing angles with new, non-reworked fairing angles. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also provide an optional terminating action, which consists of replacement of the currently installed fairing angles with new, non-reworked fairing angles, having increased fatigue durability. If accomplished, this replacement would eliminate the need for the repetitive detailed visual inspections required by this AD.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 93–NM–91–AD.

Applicability: Model DHC–8–311 series airplanes, serial numbers 240 through 279 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the left- and right-hand underwing fairing angles, which could result in reduced structural integrity of the wing-to-fuselage attachment, accomplish the following:

(a) Prior to the accumulation of 6,830 total landings, or within 100 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking on the rear face of the left- and right-hand underwing fairing angles, having part number 85350927, in accordance with de Havilland, Inc., Service Bulletin S.B. A8–53–46, Revision 'A', dated May 25, 1993.

(1) If no cracked fairing angle is found, repeat the inspection thereafter at intervals not to exceed 6,930 landings, in accordance with the service bulletin.

(2) If any cracked fairing angle is found, prior to further flight, replace the cracked fairing angle with a new, non-reworked fairing angle, having part number 85350927–107SP or 85350927–108SP, in accordance with the service bulletin.

(b) Replacement of the currently-installed left- and right-hand underwing fairing angles with new, non-reworked fairing angles, having part number 85350927–107SP or 85350927–108SP, in accordance with de Havilland, Inc., Service Bulletin S.B. A8–53–46, Revision 'A', dated May 25, 1993, constitutes terminating action for the repetitive inspection requirement of paragraph (a)(1) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 9, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19621 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–75–AD]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that currently requires repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the rear spar web of the horizontal stabilizer, and repair, if necessary. This action would revise the inspection procedure required by the existing AD. This proposal is prompted by data indicating that the inspection procedure must be revised to require that the rear spar web is inspected at its aft face. The actions specified by the proposed AD are intended to prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–75–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 29, 1992, the FAA issued AD 93–01–06, Amendment 39–8460 (58 FR 6085, January 26, 1993), to require repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the rear spar web of the horizontal

stabilizer, and repair, if necessary. That action was prompted by reports of failure of rivets connecting the stabilizer rear spar web to the fuselage attachment fittings due to vibration of the tailplane during takeoff. The requirements of that AD are intended to prevent loss of the structural integrity of the horizontal stablizer attachment to the fuselage.

The existing AD requires repetitive inspections of the rear spar web at its forward face. Recently, the FAA has received data indicating that these inspections must be accomplished by inspecting the rear spar web at its aft face, where the rivets can be seen easily. This inspection procedure is described in Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988. Further, an incorrect modification number was cited inadvertently in the existing AD.

Failure of the rivets connecting the stabilizer rear spar web to the fuselage attachment fittings, if not detected and corrected, could result in loss of structural integrity of the horizontal stabilizer-to-fuselage attachment and reduced life of the tailplane.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–01–06 to require repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the aft face of the rear spar web of the horizontal stabilizer, and repair, if necessary. The actions would be required to be accomplished in accordance with Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988.

This AD would also change a modification number that was cited incorrectly in the existing AD.

The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,440, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8460 (58 FR 6085, January 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Short Brothers, PLC: Docket 93–NM–75–AD. Supersedes AD 93–01–06, Amendment 39–8460.

Applicability: Model SD3–60 series airplanes; serial numbers SH3601 through SH3691, inclusive, and SH3694; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

(a) Perform a visual inspection at the aft face of the rear spar web-to-boom riveting, top and bottom, between the fuselage attach fittings at 12.5" left and right of the airplane center line to detect loose, missing, or failed rivets in accordance with Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988, prior to the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 1,000 landings.

(1) For airplanes on which the inspections (at the forward face of the rear spar web-to-boom riveting) required by AD 93–01–06, amendment 39–8460, have been accomplished previously and on which Modification 7948 has not been accomplished: Within 1,000 landings after the last inspection accomplished in accordance with AD 93–01–06, or within 100 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the inspections required by AD 93–01–06 have not been accomplished previously and on which Modification 7948 has not been accomplished: Inspect prior to the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, as applicable.

(i) For airplane serial numbers SH3680 through SH3691 inclusive, and SH3694; and for airplanes affected by this AD that have only used a 15-degree takeoff flap setting since before or upon reaching 5,000 landings: Prior to the accumulation of 12,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes other than those affected by paragraph (a)(2)(i) of this AD: Prior to the accumulation of 8,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later.

(b) If any defective rivet is found as a result of any inspection required by this AD, prior to further flight, repair in accordance with part II of Shorts SD3–60 Service Bulletin SD360–55–16, dated April 1988. Following that repair, continue to perform the repetitive inspections required by paragraph (a) of this AD.

(c) Modification of the horizontal stabilizer spar webs (Modification 7948) in accordance with Shorts SD3–60 Service Bulletin SD360–55–12, Revision 2, dated November 1986, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19613 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: OSM is announcing receipt of a request for an extension of the comment period pertaining to a previously proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas rules pertaining to the mining of coal incidental to the extraction of other minerals; termination of jurisdiction; definitions; employee financial interests; lands unsuitable procedures; permitting procedures; coal exploration; geological and hydrologic information, reclamation plans, and hydrologic balance standards; maps and plans; transportation facilities and roads; alluvial valley floors; archaeological resources; approval of permits; bonding requirements; use of explosives and blaster training and certification; backfilling and grading; coal processing waste disposal; protection of fish and wildlife and related environmental values; revegetation success; and individual civil penalties. Texas also proposed minor changes in wording, numbering, and punctuation of its rules. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t., August 20, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711. Telephone: (512) 463–6900

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment and Request for Extension of Comment Period for Proposed Amendment

By letter dated May 13, 1993 (Administrative Record No. TX–551), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters dated May 20, 1985; June 9, 1987; October 20, 1988; February 7, 1990; and February 21, 1990 (Administrative Record Nos. TX–358, TX–388, TX–417, TX–472, and TX–476) that OSM sent to Texas in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 943.16 (k) through (q).

OSM published a notice in the June 21, 1993, **Federal Register** (58 FR 33785) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. TX–556). The public comment period would have closed July 21, 1993. However, by letter dated July 16, 1993, the Texas Mining and Reclamation Association requested a 30-day extension of time in which to review and possibly provide comments on the proposed amendment (Administrative Record No. TX–563). In response to this request, OSM is extending the comment period to August 20, 1993.

The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposes to amend are discussed below.

(1) Mining of Coal Incidental to the Extraction of Other Minerals

(a) At TCMR 700.002(b)(4), Texas proposes to require that the incidental extraction of coal will be conducted in accordance with the rules proposed under Part 702.

(b) At TCMR Part 702, Texas proposes to add specific regulations concerning the scope, definitions, application requirements and procedures, contents of application for exemption, public availability of information, requirements for exemption, conditions of exemption and right of inspection and entry, stockpiling of minerals, revocation and enforcement, and reporting requirements as they pertain to the exemption for coal extraction incidental to the extraction of other minerals.

(c) At TCMR 787.222(a), Texas proposes to provide an applicant for exemption under Part 702 opportunity for a hearing on the Texas Railroad Commission's (Commission) decision.

(2) Termination of Jurisdiction

At TCMR 700.002(f), Texas proposes to add a rule that the Commission may terminate jurisdiction over a surface coal mining and reclamation operation when all requirements have been completed or all bond has been released and may reassert jurisdiction if fraud, collusion, or misrepresentation have been demonstrated.

(3) Definitions

(a) At TCMR 701.008(4), Texas proposes to revise the definition of "affected area" to mean any land or water surface which is used to facilitate

or which is physically altered by surface coal mining and reclamation operations.

(b) At TCMR 701.008(16), Texas proposes to define the term "coal mine waste" to include coal processing waste and underground development waste.

(c) At TCMR 701.008(19), Texas proposes to change the definition of "coal processing waste" by deleting specific requirements for the waste and including all earth materials separated from the coal and wasted during cleaning, concentrating, or other processing or preparation of coal.

(d) At TCMR 701.008(71), Texas proposes to revise the definition of "road" by deleting requirements for pioneer and construction roadways and by specifically excluding from the definition ramps and routes of travel within immediate mining or disposal areas.

(e) At TCMR 705.011(2), Texas proposes to revise the definition of "coal mining operation" to indicate that developing, producing, preparing, and loading of coal individually constitute a coal mining operation.

(f) At TCMR 705.011(3), Texas proposes to revise the definition of "employee" by deleting redundant language.

(4) Employee Financial Interests

(a) At TCMR 705.010(a)(3), Texas proposes to require the Commissioners to resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director of the Surface Mining and Reclamation Division who is responsible for initiating action to impose the penalties of SMCRA.

(b) At TCMR 705.010(c), Texas proposes to require that members of advisory boards and commissions who perform a function under the Texas Surface Coal Mining and Reclamation Act (Act) shall recuse themselves from proceedings that may affect their financial interests.

(c) At TCMR 705.013(a), .014(a), .015(a), and .016(a), Texas proposes to require that members of advisory boards and commissions who perform a function under the Act must file a financial interest statement.

(d) At TCMR 705.014(b), Texas proposes to require that new employees and new members of advisory boards and commissions must file a financial interests statement within 60 days of appointment unless the appointment date is within 60 days of February 1. Texas also proposes to delete TCMR 705.014(c), which required no subsequent annual filing if the annual filing date occurred within 2 months of the initial filing.

(5) Lands Unsuitable Procedures

At TCMR 761.072(b)(2), Texas proposes to require notification of the National Park Service or U.S. Fish and Wildlife Service of requests for determinations of valid existing rights within boundaries of those agencies' jurisdictions, granting 30 days for response (with the options of granting a 30-day extension), and allowing the Commission the option of acting without a response if none was received by the end of the stated response time.

(6) Permitting Procedures

At TCMR 770.101, Texas proposes to reinstate definitions of "applicant," "application," "complete application," "principal shareholder," "property to be mined," and "violation notice." These definitions had been inadvertently omitted in a previous rulemaking.

(7) Coal Exploration

(a) Texas proposes to add a new section TCMR 776.111(a)(3)(E) that requires an application for Commission approval to conduct coal exploration activities to include a description of measures to be taken to comply with applicable coal exploration performance standards.

(b) At TCMR 815.327(a), Texas proposes to revise the requirements pertaining to the protection of critical habitats during coal exploration activities.

(c) At TCMR 815.328, Texas proposes to revise the coal exploration performance standards rules by adding requirements for a permit in relation to coal exploration and testing. The new language states that no permit is required if the use or sale of the coal extracted is for testing purposes. New sections were added specifying what the exploration application must contain.

(8) Geologic and Hydrologic Information, Reclamation Plans, and Hydrologic Balance Standards

(a) At TCMR 779.127 (b) and (c), Texas proposes to specify what results from the analysis of geologic samples must be included in the application and to allow the Commission to require the applicant to provide additional geologic information, if necessary.

(b) At TCMR 779.128(a)(4) and 783.174(a)(4), Texas proposes to modify the ground water information requirement to specify minimum parameters for analysis of the quality of subsurface water.

(c) At TCMR 779.129(b)(2) and 783.175(b)(2), Texas proposes to modify its rules on surface water information to (1) allow specific conductance as an option rather than total dissolved solids; (2) require more detail in subsection (iii) concerning the inclusion of alkalinity information; and (3) limit the requirement for providing acidity and alkalinity information so that the information is required only when there is a potential for acid drainage.

(d) At TCMR 780.146 (b) and (c), and 784.188 (b) and (c), Texas proposes to (1) clarify the methodologies that may be used for water quality analysis, (2) require water quality descriptions to include dissolved iron, (3) require information on existing wells, springs, and other ground water resources, and (4) require that supplemental data shall be used to plan remedial and reclamation activities.

(e) At TCMR 780.148(c) and 784.190(c), Texas proposes to modify its permanent and temporary impoundment rules by replacing subparagraph (2) with the more specific requirement that ponds meeting the size criteria of the Mine Safety and Health Administration (MSHA) must comply with appropriate rules and adding subparagraph (3) in which a minimum static safety factor is imposed on ponds not meeting MSHA size criteria whose failure could cause loss of life or serious property damage.

(f) At TCMR 783.173, Texas proposes to add new sections (d) and (e) to provide, respectively, for analysis of the engineering properties of the stratum immediately above and below the coal and for additional analyses if the Commission determines that more information is necessary.

(g) At TCMR 816.342(a)(4), Texas proposes to delete language that limits the findings that are required for approval of stream channel diversions to impacts within stream buffer zones.

(h) At TCMR 816.344 (g), (h), (i), and (k), and 817.514 (g), (h), (i), and (k), Texas proposes to provide alternative designs for sedimentation pond spillways. Section (g) allows for a single specifically designed spillway as an alternative to designs with combination principal and emergency spillways and defines the design event for the single spillway. Section (h) provides an alternative to spillways by allowing ponds that rely entirely on storage for controlling sedimentation. Section (i) redefines the design event for ponds using a combination principal and emergency spillway. Section (k) provides that the settled embankment shall be one foot above the water surface in the pond with the emergency spillway or single spillway flowing at design depth.

(i) At TCMR 816.344(r) and 817.514(r) Texas proposes to require additional sedimentation pond design

requirements when the pond impounds water or sediment to an elevation of five feet or more above the upstream toe of the structure and has a storage volume of 20 acre-feet or more. Texas also proposes to require ponds meeting these criteria to safely pass the 100-year, 6-hour event and to have a minimum seismic safety factor of 1.2.

(j) At TCMR 816.347(a)(1) and 817.517(a)(1), Texas proposes to require that permanent and temporary impoundments meeting the size criteria of 30 CFR 77.216(a) shall be designed to meet the requirements of that regulation. The designs must be submitted as part of the permit application.

(k) At TCMR 816.347(a)(4) and 817.517(a)(3), Texas proposes to modify its rules on permanent and temporary impoundments by adding a section to describe requirements for seismic, static, and seepage safety factors.

(l) At TCMR 816.347(a)(5) and 817.517(a)(5), Texas proposes to add subsections to the rules on permanent and temporary impoundments to describe foundation and abutment stability designs and information requirements.

(m) At TCMR 816.347(a)(6) and 817.517(a)(6), Texas proposes to add subsections to the rules on permanent and temporary impoundments to provide for slope protection.

(n) At TCMR 816.347(a)(7) and 817.517(a)(7), Texas proposes to add subsections to the rules on permanent and temporary impoundments to require faces of embankments and surrounding areas to be vegetated, riprapped, or otherwise stabilized.

(o) At TCMR 816.347(b)(8) and 817.517(b)(8), Texas proposes to revise its rules on permanent impoundments to allow for alternatives in spillway designs and to redefine the design events.

(p) At TCMR 816.347(c) and 817.517(c), Texas proposes to require that for permanent and temporary impoundments that use combination principal and emergency spillways there shall be no flow through the emergency spillway resulting from the 10-year, 6-hour precipitation event.

(q) At TCMR 816.347(d) and 817.517(d), Texas proposes to modify its rule on temporary impoundments to correct the references to other rules and to add references to sections .347(b)(8) and .517(b)(8).

(r) At TCMR 816.347(e) and 917.517(e), Texas proposes to modify its rules on permanent and temporary impoundments to add the requirement that slopes shall be designed to be stable in all cases.

(s) At TCMR 816.347(i) and 817.517(i), Texas proposes to add a section to its temporary and permanent impoundment rules to require regular inspections of impoundments during construction and annual inspections until removal or bond release.

(t) At TCMR 816.347(k) and 817.517(k), Texas proposes to add certification requirements for temporary and permanent impoundments meeting the size requirements of 30 CFR 77.216(a).

(u) At TCMR 816.350(b) and 817.519(b), Texas proposes to replace subsection (b)(1) to require permit applications to contain a surface water monitoring plan based on the PHC and the baseline analyses of hydrologic, geologic, and other information contained in the permit application. Monitoring plans must also be based on the postmining land use and the effluent limitations from 40 CFR Part 434.

(v) At TCMR 816.355(a), Texas proposes to revise the allowance for disturbance to stream buffer zones. Such disturbance can only be authorized if the Commission finds that there will be no adverse impact on the water quantity and quality or other environmental resources of the stream and, if a stream channel diversion is planned, it must comply with appropriate standards.

(w) At TCMR 817.509(a), Texas proposes to clarify the hydrologic balance requirements for underground mining activities.

(x) At TCMR 817.522(f), Texas proposes to require the applicant to demonstrate that any discharge into underground mine workings resulting from underground mining activities will minimize disturbance to the hydrologic balance.

(9) Maps and Plans

(a) At 780.142(c) and 784.197(c), Texas proposes to add a reference to the appropriate rules for the requirements for maps and plans and to delete the requirement that maps, plans, and cross sections for sediment ponds and spoil disposal facilities must be prepared only by a registered professional engineer.

(b) At TCMR 780.142(d) and 784.197(d), Texas proposes to require maps and plans for each support facility and to require that the maps and plans comply with applicable support facility requirements.

(10) Transportation Facilities and Roads

(a) At TCMR 780.154 and 784.198, Texas proposes to modify its transportation facility requirements by adding (1) subsection (a)(6) in which fords of streams must have approved drawings; (2) requirements for specifications in subsection (a)(7) in which each nonpermanent road must have plans for removal and reclamation; and (3) a requirement in section (b) for detailed plans and specifications for Class I and II roads to be prepared by, or under the supervision of, and certified by a qualified registered professional engineer.

(b) At TCMR 816.401(b) and 817.570(b), Texas proposes to add to its rules on location of Class I roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(c) At TCMR 816.402(d)(9) and 817.571(d)(9), Texas proposes to require that the minimum safety factor for Class I road embankments shall be 1.3, or greater as the Commission may specify.

(d) At TCMR 816.405 and 817.574, Texas proposes to revise its Class I road maintenance rules by changing "design standards" requirements in section (a) to "performance standards" requirements and deleting in section (c) the language that the road shall not be used until reconstruction is completed. Section (c) now states that Class I roads shall be repaired as soon as practicable.

(e) At TCMR 816.406(a)(4) and 817.575(a)(4), Texas proposes to revise its Class I road restoration rules to require removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(f) At TCMR 816.408(b) and 8187.577(b), Texas proposes to add to its rules on location of Class II roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(g) At TCMR 816.409(d)(9) and 817.578(d)(9), Texas proposes to require that the minimum safety factor for Class II road embankments shall be 1.3, or greater, as the Commission may specify.

(h) At TCMR 816.412 and 817.581, Texas proposes to revise its Class II road maintenance rules by changing "design standards" requirements in section (a) to "performance standards" requirements. Section (b) requires prevention of erosion, siltation, and air pollution, including road dust and dust from other exposed surfaces. This section also contains measures to be used to prevent air pollution. Section (c) was added to state that damaged roads shall be repaired as soon as practical.

(i) At TCMR 816.413(a)(4) and 817.582(a)(4), Texas proposes to revise its Class II road restoration rules to require the removal of road surfacing materials that are incompatible with the

postmining land use and revegetation requirements.

(j) At TCMR 816.415(b) and 817.584(b), Texas proposes to add to its rules on location of Class III roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(k) At TCMR 816.419 and 817.588, Texas proposes to revise its Class III road maintenance rules by adding the statement that maintenance is to prevent erosion, siltation, and air pollution, including road dust and dust from other exposed surfaces. This section also contains measures to be used to prevent air pollution. Section (c) was added to state that damaged roads shall be repaired as soon as practical.

(l) At TCMR 816.420(d) and 817.589(d), Texas proposes to revise its Class III road restoration rules to require the removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(11) Alluvial Valley Floors

At TCMR 785.202(b)(1)(i) and (b)(3), Texas proposes to replace the language requiring baseline data on preserving characteristics of alluvial valley floors with more specific language requiring baseline data on the essential hydrologic functions of the alluvial valley floor that might be affected.

(12) Archaeological Resources

At TCMR 786.210(a)(3), Texas proposes to require that information contained in a permit application on the nature and location of archaeological resources must be kept confidential as required by the Archaeological Resources Protection Act of 1979.

(13) Approval of Permits

(a) At TCMR 786.216(e), Texas proposes to amend the criteria for permit approval to give the Commission the discretion to determine whether additional protection measures are required by the National Historic Preservation Act.

(b) At TCMR 786.216(p), Texas proposes to require the Commission to determine that the applicant has, if applicable, satisfied the requirements for approval of long-term intensive agriculture postmining land use.

(c) At TCMR 786.220(d), Texas proposes to modify its rules on right-of-entry conditions on permits by replacing "permittee" with "operator" in designating who shall pay all reclamation fees.

(14) Bonding Requirements

At TCMR 800.301(b)(2), Texas proposes to require that individual bond increments must be of sufficient size and configuration for efficient reclamation operations should reclamation by the Commission become necessary.

(15) Use of Explosives and Blaster Training and Certification

(a) At TCMR 816.330(f) and 817.500(f), Texas proposes to revise its signs and markers rules to also require blasting signs.

(b) At TCMR 816.357(c) and 817.526(c), Texas proposes to modify its use of explosives rules to require that a blaster and at least one other person are present at the firing of the blast.

(c) At TCMR 816.357(d) and 817.526(d), Texas proposes to revise its blast design standards to include additional kinds of buildings and facilities within 500 or 1000 feet of any blasting operations.

(d) At TCMR 816.358(a) and 817.527(a), Texas proposes to modify its use of explosives rules to broaden the preblast survey area from within ½ mile of the blasting site to within ½ mile from any part of the permit area.

(e) At TCMR 816.360(a) and 817.528(a), Texas proposes to require that the blasting design include limitations based on minimum distances of 500 to 1000 feet from certain specified buildings and facilities and at TCMR 816.360 (h) and (i) and 817.528 (h) and (i) to correct paragraph references.

(f) At TCMR 816.362(d) and 817.530(d), Texas proposes to correct references to other regulations.

(g) At TCMR 817.526(b), Texas proposes to require underground mining activities to comply with applicable State and Federal laws and regulations in the use of explosives.

(h) At TCMR 850.703(b)(1)(A), Texas proposes to revise its blaster training and certification rules to add the requirement that training courses must cover storage and transportation of explosives as well as use.

(i) At TCMR 850.704(b), Texas proposes to revise its blaster training and certification rules by adding to the statement of recognition of other training courses that those courses must include the completion of the list of topics listed in section (a).

(j) At TCMR 850.706(a), Texas proposes to revise its blaster training and certification rules to add the requirement that the examination must cover storage and transportation of explosives as well as use.

(16) Backfilling and Grading

At TCMR 816.385(b)(3) and 817.552(b)(3), Texas proposes to modify the backfilling and grading rules to delete the option to approve outslopes exceeding 1v:2h.

(17) Coal Processing Waste Disposal

(a) At TCMR 816.376(d), Texas proposes to modify its coal processing waste dams and embankments rules to specifically require impoundment structures to meet the criteria of 30 CFR 77.216(a) and to redefine the design event for combination spillways to be the probable maximum precipitation of a 6-hour precipitation event or greater as specified by the Commission.

(b) At TCMR 816.378(a) and (c) and 817.545(a) and (c), Texas proposes to correct citations of other regulations and to revise the water removal requirements for impounding structures constructed of or impounding coal mine waste.

(c) At TCMR 817.538(c)(3), Texas proposes to modify its coal processing waste dams and embankments rules by deleting the rule allowing for variations for the disposal of dewatered fine coal waste.

(d) At TCMR 817.543, Texas proposes to revise its underground mining coal processing waste dams and embankments rules by adding, in section (b), requirements for the design plans for coal processing waste dams and embankments to contain details on the stability of the structure and the potential impact of acid seepage. Section (c) was added to require each impounding structure constructed of coal mine waste intended to impound coal mine waste to be temporary and to be designed, constructed, and maintained in accordance with Part 817 standards. Section (d) was added to require that the combination of principal and emergency spillways on coal waste impoundments meeting the MSHA requirements at 30 CFR 77.216(a) be able to safely pass the maximum 6-hour precipitation event.

(18) Protection of Fish and Wildlife and Related Environmental Values

At TCMR 816.380(e)(10) and 817.547(e)(10), Texas proposes to modify its protection of fish and wildlife and related environmental values rules to delete the reference to cropland as an alternative postmining land use and to delete the reference to lands diverted from fish and wildlife premining land use.

(19) Revegetation Success

(a) At TCMR 816.395(a) and 817.560(a), Texas proposes to revise its

revegetation success standards rules by adding new language to (1) tie success to the postmining land use, the amount of cover, and the requirements of sections .390 and .391 and (2) to provide standards for success and statistically valid sampling techniques.

(b) At TCMR 816.395(b) and 817.560(b), Texas proposes to revise its revegetation success standards rules by adding new language that more specifically addresses the requirements for various land uses.

(c) At TCMR 816.395(c) and 817.560(c), Texas proposes to revise its revegetation success standards rules by adding new language that describes the period of responsibility required for bond release and includes the approved selective husbandry practices.

(d) At TCMR 816.396 and 817.561, Texas proposes to delete its rules on tree and shrub stocking for forest land by replacing these rules with the new language at TCMR 816.395 and 817.560.

(20) Individual Civil Penalties

(a) At TCMR 846.001(2), Texas proposes to revise its individual civil penalties rules to clarify that the definition of "violation, failure, or refusal" includes conditions of a permit as one of the examples of violations, failures, or refusals.

(b) At TCMR 846.004(c), Texas proposes to revise its civil penalties rules by adding procedures to allow service to be performed by mail or other means consistent with Texas law.

(21) Minor Changes in Wording, Numbering, Punctuation

At various places throughout the proposed amendment, Texas proposes minor changes in wording, numbering, and punctuation to correct, order, and clarify the rules. None of these minor changes has an effect on the substantive nature of the rules.

III. Public Comment Procedures

OSM is extending the comment period on the proposed Texas amendment to provide the public additional opportunity to consider the adequacy of the amendment. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of the Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions of proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–19649 Filed 8–13–93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974, as Amended; Exemption of System of Records From Certain Provisions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, Departmental Offices, Office of Enforcement is proposing to exempt a system of records, the Waco Administrative Review Group Investigation (DO/.207) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement and investigative purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records. The exemptions are intended to increase the value of the system of records for the factfinding investigation and administrative review performed by the Waco Administrative Review Group so as not to reveal local, state or Federal

law enforcement techniques, sources and methods or affect the ability of law enforcement agencies to prosecute people for criminal wrongdoing.

DATES: Comments must be received no later than September 15, 1993.

ADDRESSES: Comments (preferably in triplicate) must be submitted to the Department of the Treasury, Office of Enforcement, room 4312, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Nichole L. Jenkins, Attorney, Office of the Assistant General Counsel (Administrative & General Law), (202) 622–0450, room 1410, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: As an investigative and law enforcement office, the Office of Enforcement has a wide variety of investigatory responsibilities. As a part of that Office, the Waco Administrative Review Group is being established to conduct a comprehensive investigation of the Bureau of Alcohol, Tobacco & Firearms (BATF) including analyzing whether BATF procedures, policies and practices were adequate and whether they were followed. The Waco Administrative Review Group will collect and store information obtained during the investigation, conducted by the Waco Administrative Review Group, of individuals involved in the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 31 U.S.C. 321.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is today publishing separately a notice of a system of records, the Waco Administrative Review Group—Treasury/DO.207. This system of records will assist the Office of Enforcement in the proper performance of its functions.

Under 5 U.S.C. 552(a)(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Assistant Secretary intends to exempt the Waco Administrative Review Group Investigation from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and 31 CFR 1.23(c). The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a(j)(2) and (k)(2). As required by Executive Order 12291, it has been determined that this proposed rule is not a "major" rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended by adding the following text immediately preceding the heading THE INTERNAL REVENUE SERVICE:

§ 1.36 Systems exempt in whole or in part from Provisions of 5 U.S.C. 552a and this part.

* * * * *

In accordance with 5 U.S.C. 552a (j) and (k) and § 1.23(c), constituent units of the Department of the Treasury exempt the following systems of records from certain provisions of the Privacy Act for the reasons indicated:

Office of the Assistant Secretary for Enforcement Waco Administrative Review Group Investigation

Notice of Exempt System

(a) *In general.* The Assistant Secretary of the Treasury for Enforcement exempts the system of records entitled "Waco Administrative Review Group Investigation" (Treasury/DO .207) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(b) *Authority:* 5 U.S.C. 552a(j) and (k); 31 CFR 1.23(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary for Enforcement hereby exempts the Waco Administrative Review Group Investigation system of records maintained by the Office of Enforcement, an office reporting to the Assistant Secretary for Enforcement, from the following provisions of the Privacy Act of 1974:

5 U.S.C. 552a(c)(3) and (4);
5 U.S.C. 552a(d)(1), (2), (3) and (4);
5 U.S.C. 552a(e)(1), (2) and (3);
5 U.S.C. 552a(e)(4)(G), (H), and (I);
5 U.S.C. 552a(e)(5) and (8);
5 U.S.C. 552a(f); and
5 U.S.C. 552a(g).

(d) Specific exemptions under 5 U.S.C. 552a(k)(2). To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the Waco Administrative Review Group Investigation, the Assistant Secretary for Enforcement hereby exempts the Waco Administrative Review Group Investigation system of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d)(1), (2), (3) and (4);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4)(G), (H), and (I); and
5 U.S.C. 552a(f).

(e) *Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2).* (1) 5 U.S.C.

552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the Waco Administrative Review Group Investigation would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Waco Administrative Review Group's ability to carry out its mission, since individuals could (A) take steps to avoid detection, (B) inform associates that an investigation is in progress, (C) learn the nature of the investigation, (D) learn whether they are only suspects or identified as law violators, (E) begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records, or (F) destroy evidence needed to prove the violation, and (G) confer with associates to develop a false and misleading account of events that would deter, delay, or complicate the investigation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the Waco Administrative Review Group Investigation would compromise the Waco Administrative Review Group's ability to provide useful tactical and strategic information to law enforcement agencies and to complete a review of the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

(A) Permitting access to records contained in the Waco Administrative Review Group would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by (i) discovering the facts that would form the basis for their arrest, (iii) enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, (ii) using knowledge that criminal or administrative investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance, and (iv) providing them the knowledge to evade investigators' further inquiries.

(B) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection, apprehension or further investigation.

(C) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers might and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal or administrative investigators with valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Office of Enforcement's ability to carry out its mandate.

(D) Furthermore, providing access to records contained in the Waco Administrative Review Group Investigation could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(E) By compromising the law enforcement value of the Waco Administrative Review Group for the reasons outlined in paragraphs (e)(2)(A) through (D) of this paragraph, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Waco Administrative Review Group and thus would restrict the Waco Administrative Review Group's access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a (d)(2) (3) and (4), (e)(4)(h) and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the Waco Administrative Review Group Investigation from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (2) of this paragraph, these provisions should not apply to the Waco Administrative Review Group Investigation.

(4) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules propose to exempt the Waco Administrative Review Group Investigation from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the Waco Administrative Review Group Investigation.

(5) 5 U.S.C. 552a(3) requires an agency to make accounting of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(A) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of the information provided by the Waco Administrative Review Group. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into possible criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection, apprehension or further investigation by altering their operations, by transferring their criminal activities to other geographical areas, by destroying or concealing evidence that would form the basis for arrest, or by developing a false and misleading account of facts that would deter, delay or complicate any investigation.

(B) Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Waco Administrative Review Group has information regarding possible criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Waco Administrative Review Group information-gathering and analysis systems and permit violators to take

steps to avoid detection, apprehension or further investigation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Waco Administrative Review Group Investigation could compromise the Waco Administrative Review Group's ability to provide useful information to law enforcement agencies, since revealing sources for the information could (A) disclose investigative techniques, systems, methods and procedures, (B) result in threats or reprisals against informers by the subjects of investigations, and (C) cause informers to refuse to give full information to criminal or administrative investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." The application of this provision to the Waco Administrative Review Group Investigation could impair the Waco Administrative Review Group's ability to collect and disseminate valuable law enforcement information.

(A) At the time that the Waco Administrative Review Group collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Waco Administrative Review Group purpose.

(B) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program, establish a critical fact in a chain of events, or reveal other investigative leads or sources.

(C) Not all violations of law discovered by the Waco Administrative Review Group fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Waco Administrative Review Group will have to disclose such violations to other law enforcement agencies, including state, other federal agencies, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Waco Administrative Review Group might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Waco Administrative Review Group's attention during the collation and analysis of information in its records.

(D) In order to effectively fulfill its assigned functions, the Waco Administrative Review Group must retain and maintain divergent and diverse information to follow leads, tips, allegations and rumors to an investigative conclusion.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the Waco Administrative Review Group Investigation would impair the Waco Administrative Review Group's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(A) Most information collected about an individual under criminal or administrative investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his possible criminal activities.

(B) An attempt to obtain information from the subject of an investigation will often alert that individual to the existence of a criminal or administrative investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(C) In certain instances, the subject of a criminal or administrative investigation is not required to supply information to criminal investigators as a matter of legal duty.

(D) During criminal or administrative investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The Waco Administrative Review Group Investigation should be exempted from this provision to avoid impairing the Waco Administrative Review Group's ability to collect and collate investigative, intelligence, and enforcement data.

(A) Confidential sources often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation, or his or her associates know that an investigation is in progress.

(B) If it became known that the undercover officer was assisting in an investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(C) Individuals often feel inhibited in talking to a person representing a law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(D) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(E) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity, or any other activity integral or pertinent to the investigation.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(A) Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the Waco Administrative Review Group would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would

seriously restrict the Waco Administrative Review Group's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during an investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because the Waco Administrative Review Group may not have the expertise with which to make such determinations.

(B) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, prove not to be so as an investigation progresses. In addition, application of this provision could seriously impede investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during the investigation.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Waco Administrative Review Group should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelations of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The Waco Administrative Review Group should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules propose to exempt the Waco Administrative Review Group Investigation, since there should be no civil remedies for failure to comply with provisions from which the Waco Administrative Review Group is exempted. Exemption from this provision will also protect the Waco Administrative Review Group from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(f) Exempt information included in another system. Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a (j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

Comments

Consideration will be given to any written comments timely submitted to the Office of Enforcement. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Departmental Disclosure Office, Department of the Treasury, 1500 Pennsylvania Ave., NW., room 1054, Washington, DC.

After consideration of the comments received, notice will be given concerning the exempt status of this system of records. If the Office of Enforcement finally exempts as herein proposed, a final rule amending 31 CFR 1.36 will be published.

Dated: July 29, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management).

Dated: July 28, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–19692 Filed 8–13–93; 8:45 am]

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Notices

Federal Register
Vol. 58, No. 156
Monday, August 16, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–100–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
93–074–07	Upjohn Company	07–19–93	Cantaloupe plants genetically engineered to express resistance to certain fungal plant pathogens.	California.
93–077–03	Upjohn Company	07–20–93	Lettuce plants genetically engineered to express resistance to certain fungal plant plant pathogens.	Arizona, California.
93–085–03	Upjohn Company	07–20–93	Squash plants genetically engineered to express resistance to certain fungal plant pathogens.	Georgia.
93–183–01, renewal of permit 92–156–01, issued on 09–23–92.	Calgene, Incorporated	07–21–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification.	Georgia.

The environmental assessments and findings of no significant impact have been prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*);

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508);

(3) USDA Regulations Implementing NEPA (7 CFR part 1b); and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 10th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–19596 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–099–1]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
93–193–01R	Calgene, Incorporated	07–12–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification.	Alabama, South Carolina.
93–203–01R, renewal of permit 92–156–01, issued on 09–23–92.	Calgene, Incorporated	07–22–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification.	Georgia.

Done in Washington, DC, this 10th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–19595 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–34–P

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1994 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1994 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $88.00 per license.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Trade Analysis Division, room 5531-South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2916.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1994 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1993 has been determined to be $317,986. Of this amount, $145,486 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1993 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $111,650; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $33,836); $87,250 represents the total computer costs to monitor and issue import licenses during 1993; and $85,250 represents other miscellaneous costs, including travel, postage, publications, forms, and an ADP system contractor.

The average number of licenses issued per year for the three years immediately preceding 1994 has been determined to be 3,628. Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1994 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $88.00 per license.

Issued at Washington, DC, the 21st day of July, 1993.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 93–19598 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–10–M

Forest Service

Exemption of Lowell Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover disease-, insect-, and fire-killed timber is exempted from appeal under provisions of 36 CFR part 217.

SUMMARY: During the summer of 1992, substantial mortality was detected outside cutting units in the Cougar Creek drainage. In addition, during the spring of 1993, 3 acres of timber adjacent to several harvest units of the Lowell Creek Timber Sale, in the Lowell and Pete King Creek drainages, were killed during a prescribed burn within the sale area. In 1992 the Lochsa District Ranger, Clearwater National Forest, proposed the salvage harvest of the dead and dying trees. The District Ranger has determined, through environmental analysis documented in the Decision Memo, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged natural resources. Salvage of commercial sawtimber within the study area must be accomplished quickly to avoid deterioration of sawtimber, to reduce the risk of catastrophic wildfires and to reduce the effects of endemic and epidemic pathogens within the study area.

EFFECTIVE DATE: Effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jon B. Bledsoe, District Ranger; Lochsa Ranger District, Clearwater National Forest; Route 1 Box 398; Kooskia, ID 83539. Telephone: 208–926–4275.

SUPPLEMENTARY INFORMATION: Recent drought conditions, combined with maturing timber stands, have increased the number of trees killed by insect and disease in this area. Also, approximately 3 acres of timber outside the harvest units were killed during the burn. In June 1992, the Lochsa District Ranger proposed the salvage harvest of the trees affected by insect and disease. After additional trees were killed during the prescribed burning in 1993, the District Ranger expanded the study area to include the fire-killed timber. All dead trees are within lands designated suitable for timber management and are assigned to Management Area C4 (Clearwater Forest Plan, September 1987). This management area is to be managed for big game winter range as well as timber production. This proposal was designed to accomplish the following: (1) Salvage merchantable timber products before they deteriorate in value, (2) reduce wildfire hazard by reducing fuel loading, and (3) rehabilitate salvaged areas with tree species resistant to the root rot and bark beetles.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (No Action) and salvage and rehabilitate (Proposed Action). The selected alternative would harvest an estimated 500 MBF of dead and dying timber from approximately 183 acres. All salvage areas are accessible from existing roads. No new road construction or reconstruction will occur in conjunction with this project. This salvage timber sale is designed to accomplish the objectives as quickly as possible to reduce the fuel loading to minimize the risk of wildfire, to replace the dead and dying trees with tree species resistant to pathogens predominant in the area, and to recover the volume and value of the timber involved before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System land and recovery of Forest Resources from natural disasters or other natural phenomena, such as wildfires, * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis and the District Ranger's Project File and Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 9, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19617 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exempt Decision for Wally Salvage and Wise Man Salvage Timber Sales From Appeal, Colville National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement the Wally Salvage and the Wise Man Salvage Timber Sales on the Kettle Falls Ranger District of the Colville National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Edward C. Schultz, Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114, or Bruce Bernhardt, Kettle Falls District Ranger, 255 West 11th Street, Kettle Falls, Washington, phone: (509) 738–6111.

SUPPLEMENTARY INFORMATION: In the winter of 1993, there was a windstorm that did extensive damage to several stands of timber on the Kettle Falls Ranger District. Also during 1993, a

small adjacent area, with the wind-damaged timber, was infested with Douglas-fir bark beetle. The proposal covers approximately 114 acres on two timber sale areas. All of the affected areas are within suitable stands for timber management.

In the spring and summer of 1993, stands where timber salvage is authorized, under the Colville National Forest Land and Resource Management Plan, were identified. All of the proposed salvage is located in Management Area 7 (Wood/Forage) where timber production is managed for optimum levels while protecting basic resources.

An interdisciplinary team determined the need to salvage the wind-damaged and insect-infested timber in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 14 inches in diameter. Rapid drying of dead trees results in cracking or "checking", especially of the smaller diameter trees. This "checking" will quickly reduce merchantability as sawlogs.

In spring of 1993, the Kettle Falls District Ranger proposed the salvage harvest of the wind-thrown and insect-infested timber. Analysis was initiated in June 1993, with a letter sent to individuals, State and Federal agencies and other interested parties. This letter discussed the proposed salvage sales. Issues were identified and included: Impacts on recreational sites; maintenance of wildlife habitat; and fuels buildup.

The Wally Salvage will produce about 75,000 board feet of dead or dying timber from 80 acres, while Wise Man Salvage will produce about the same volume, 75,000 board feet, of dead or dying timber, but it will come from 34 acres.

For both salvage sales the following is valid: no trees will be removed that would result in disturbance to riparian areas; areas of highly erodible soils will be avoided in harvest; no new roads will be built; and adequate down woody material and snags will be left; and recreational sites will be protected.

The areas have been surveyed for cultural resources, with no new sites located. A biological evaluation of the areas determined that the proposed projects would have "no effect" on threatened, endangered, or sensitive species of wildlife or plants.

The sales and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume loss and resources damage. Based upon this environmental analysis for these two salvages sales, I have determined that good cause exists to exempt the Wally Salvage and the Wise Man Salvage Timber Sales from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt form appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * such as severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions form review under this part.

After publication of this notice in the **Federal Register** the Decision Memos for the Wally Salvage and the Wise Man Salvage Timber Sales may be signed by the District Ranger. Therefore, these two salvage projects will not be subject to review under 36 CFR part 217.

Dated: August 6, 1993.

Richard A. Ferraro,

Deputy Regional Forester

[FR Doc. 93–19616 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of the Wildcat Bark Beetle Suppression and Recovery Project, Dixie National Forest, Utah.

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that decisions to implement tree baiting, and timber salvage to rehabilitate and recover natural resources from recent mountain pine beetle attack (in the Wildcat area of the Teasdale Ranger District of the Dixie National Forest) are exempted from appeal as per provisions of 36 CFR 217.4(a)(11).

DATES: Effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Marvin R. Turner, District Ranger, Dixie National Forest, P.O. Box 99, Teasdale, Utah 84773, (801) 425–3702.

SUPPLEMENTARY INFORMATION: Several years of drought in southern Utah have reduced soil moisture and added to the weakened condition of large ponderosa pine trees on the Teasdale Ranger District of the Dixie National Forest. Consequently, mountain pine beetle populations have increased.

As part of the effort to rehabilitate and recover timber resources damaged by the insect population buildup, the Teasdale Ranger District has developed a proposal to bait and trap the insects and to further interrupt their life cycles by salvaging insect infected trees. A district ID team has completed the NEPA process to identify issues, develop alternatives and to analyze the effects of implementing proposed recovery activities. This process has resulted in the completion of a categorical exclusion documenting the analysis of the proposed action.

The project area is located approximately 20 miles southeast of Teasdale, Utah, near Utah State Highway 12. The area is approximately 50 acres in size. Approximately 100 trees are dead or dying as a result of bark beetle attack. Mortality has increased substantially within the past year. Additional large trees remain in the stand to support continued population increases. This would result in substantial losses from the standpoint of visual quality, wildlife habitat and forest health. The district is proposing to bait and trap insects within the project area to help break up breeding cycles and reduce future population increases. There is no road construction proposed for the salvage harvest operation.

Management direction for the Wildcat area is established in the Dixie National Forest Land and Resource Management Plan (DNF–LRMP). The DNF–LRMP provides for the removal of salvage timber from lands within the project area. In addition, the plan describes standards and guidelines which must be observed when harvesting timber to protect soil, water, wildlife, visual quality, and other resources. The proposed action for the Wildcat Bark Beetle Suppression and Recovery Project is consistent with the standards and guidelines contained in the DNF–LRMP.

The Regional pathologist and entomologist have analyzed the insect situation and have suggested the recovery process defined in the proposed action. These activities will:

(1) Help break up the insect life cycle;

(2) Prevent further deterioration of visual quality along Utah State Highway 12 (a scenic by way);

(3) Prevent further reductions in wildlife habitat and forest health; and

(4) Prevent increases in fire hazards and fuel loading.

The Forest Supervisor has determined, through scoping and environmental analysis that there is good cause to expedite this project.

The decision for the Wildcat recovery project may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of appeals it is likely that beetle flight will occur before tree baiting and tree salvage can be implemented. This could result in the

loss of many additional large trees within the area. Volume and value lost due to insect damage could easily double within the next few months (value relates to both sawtimber deterioration and loss of visual quality).

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to tree baiting, salvage harvest and restoration of lands affected by mountain pine beetles in the Wildcat project area of the Teasdale Ranger District, Dixie National Forest. The categorical exclusion discloses the effects of the proposed action on the environment and addresses the issues resulting from the proposal.

Dated: August 6, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA, Forest Service.

[FR Doc. 93–19643 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Flat Black Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timer sale project to recover insect-killed, blown-down, and fire-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic, an escaped prescribed burn, and a windstorm on the Fortine District, Kootenai National Forest, have killed or damaged timber in the Advent Creek drainage. In 1993, the Fortine District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Flat Black Salvage Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, to reduce the risk of catastrophic wildfire, and to reduce spruce bark beetle infestations that could damage adjacent stands.

EFFECTIVE DATE: Effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jane P. Kollmeyer, Fortine District Ranger; Kootenai National Forest; P.O. Box 116; Fortine, MT 59918. Telephone: 406–882–4451.

SUPPLEMENTARY INFORMATION: Three separate events; a mountain pine beetle epidemic, a severe windstorm, and an escaped prescribed burn have killed or damaged sawtimber on 91 acres in the Advent Creek drainage. The project area is located within Management Area 12 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland with timber management goals. In January of 1993, the Fortine District Ranger proposed a salvage timber harvest in the Advent Creek drainage. This proposal is designed to meet the following needs: (1) Reduce the risk of catastrophic wildfire by reducing fuel loading; (2) reduce spruce bark beetle levels by harvesting down spruce trees; (3) clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material, allow free movement of seasonal runoff and reduce erosion potential and allow access for fire suppression; and (4) salvage merchantable timber products and contribute to a continuous supply of timer by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in the spring of 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The interdisciplinary team analyzed information disclosed in the Decision Memo and project file. The selected alternative would salvage approximately 300 MBF from 91 acres. This sale would use existing roads; no new roads are required.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for catastrophic wildfire, to reduce bark beetle levels, and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and project file for the Flat Black Salvage Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project would not be subject to review under 36 CFR part 217.

Dated: August 9, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19618 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Exempt Decision for Gusty Salvage Sale From Appeal, Malheur National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Gusty Salvage Sale, located on the Long Creek Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Shoberg, District Ranger, Long Creek Ranger District, Malheur National Forest, 528 E. Main Street, or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845, phone: (503) 757–1731.

SUPPLEMENTARY INFORMATION: During the winter and spring of 1993, the wind blew down or damaged approximately 900 trees located on the Long Creek Ranger District, Malheur National Forest. The trees are scattered over the entire District impacting approximately 500 acres. Salvageable trees in the area averages 20 inches in diameter at breast height. Rapid drying of wind-blown trees has caused cracking or "checking" and blue staining in the ponderosa pine. These conditions are expected to quickly reduce the opportunity to recover merchantable sawlog material. Prompt salvage is needed to recover the maximum economic returns from the harvest.

The harvest of all blown down trees within riparian areas and designated old growth areas has been excluded.

The Gusty Salvage Sale, environmental analysis was started in April of 1993. After letters were sent and contacts made with individuals, State and Federal agencies, the following key issues were identified:

(1) Maximum economic return by salvaging the blown down trees quickly; (2) maintain water quality and fisheries habitat; and (3) retaining sufficient snags and down woody material for wildlife.

The proposed action would salvage about 900 trees. The trees are spread out

over approximately 500 acres of the district. This proposed salvage will harvest approximately 340,000 board feet of commercial timber resources. No roads would be constructed.

An interdisciplinary team of resource specialists developed two alternatives to analyze, including the No-Action Alternative. There is a project file containing specialist assessments and an assessment of the effects of alternatives developed on extraordinary circumstances to meet the objectives of the proposed action and responds to the key issues.

Biological evaluations have been completed for all plant, wildlife and fish proposed, endangered, threatened, and sensitive species within project areas. The biological evaluation indicates that the project could proceed as planned.

This salvage sale and accompanying work is designed to accomplish objectives as quickly as possible and minimize the amount of salvage volume loss and resource damage. This salvage of the blown down trees is important to initiate stand recovery. Based upon the environmental analysis, I have determined that good cause exists to exempt the Gusty Salvage Sale from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Gusty Salvage Sale may be signed by the District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: August 6, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–19615 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

Draft Supplement to the Beaver-Dry Timber Sale Final Environmental Impact Statement Helena National Forest, Lewis and Clark and Powell Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to supplement a final environmental impact statement.

SUMMARY: The Forest Service will complete a supplemental analysis of the Beaver-Dry Timber Sale Final Environmental Impact Statement (FEIS) that was available to the public on April 9, 1993 (**Federal Register**, Page 18394). The supplement is being prepared because the original FEIS was appealed and, upon review by the Deputy Regional Forester, the decision to implement timber harvesting and road construction was reversed back to the Helena National Forest Supervisor. The appeal issue centered around the failure of the FEIS to adequately address the cumulative effects of the timber harvest on sensitive species.

DATES: Public comments concerning the supplemental analysis should be submitted by August 27, 1993.

ADDRESSES: Send written comments to Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena MT, 59626.

FOR FURTHER INFORMATION CONTACT: Questions about the Draft Supplemental EIS should be directed to Maggie Pittman, Helena National Forest, 2880 Skyway Drive, Helena MT, 59601, Phone: (406) 449–5201.

SUPPLEMENTARY INFORMATION: The supplemental analysis will address the cumulative effects of timber harvesting and associated access road construction on sensitive species such as the bull trout.

The area analyzed in the FEIS encompassed 16,700 acres, with action proposed on approximately 650 acres of National Forest system lands in the Beaver and Dry Creek drainages. A portion of the assessment area being proposed for harvest and roading is within the Lincoln Gulch Roadless Area (1601).

Scoping and identification of the environmental issues for the Beaver-Dry proposed actions were discussed in the FEIS.

The Draft Supplement is expected to be available to the public in October, 1993. The comment period on the draft will be 45 days from the date of the EPA's notice of availability in the **Federal Register**. It is very important that those interested in the supplemental analysis participate by the close of the 45 day comment period. Substantive comments and objections will thereby be made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final Supplement to the Beaver-Dry Timber Sale FEIS.

Possible outcomes of this analysis include no change in the original decision, a modification of the original decision, or a supplemental EIS with a new proposed action and new alternatives, ultimately leading to a different decision.

If a modified or new decision is deemed necessary, the Helena Forest Supervisor will consider a variety of information in making that decision. This information includes the comments and responses to the Beaver-Dry Timber Sale FEIS and Draft Supplement, environmental consequences discussed in the Final Supplement, and applicable laws, regulations, and policies.

Dated: August 9, 1993.

James E. Guest,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 93–19571 Filed 8–13–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration

Title: Export Trading Companies Contact Facilitation Service

Form Numbers: Agency—ITA–4094P
OMB–0625–0120

Type of Request: Extension of the expiration date of a currently approved collection; modify the form to use the Standard Industrial Classification (SIC) code rather than the Harmonized code to designate products and services listed.

Burden: 9,000 respondents; 4,500 reporting hours

Average Hours per Response: 30 minutes

Needs and Uses: The Export Trading Company Act of 1982 directs Commerce to provide a service to facilitate contact between producers of exportable goods and firms offering export trade services. The International Trade Administration (ITA) has established a clearinghouse for U.S. suppliers, banks, service organizations and export trading companies (ETCs). This helps U.S. producers identify and contact newly formed ETCs. ETCs may want to utilize this program to identify possible clients for their services. This collection seeks that information needed to provide the benefit to the user.

Affected Public: State or local governments; businesses or other for

profit or non-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5237, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 11, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–19718 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Agency: Office of Procurement
Title: Solicitations: Request for Proposal (RFP) or Invitation for Bids (IFB)
Form Number: Agency Number: None. OMB Number: 0605–0010
Type of Request: Reinstatement
Burden: 2,700 responses; 108,000 reporting hours. Average time is 40 hours
Needs and Uses: When soliciting offers from the private sector, the Department of Commerce must collect sufficient information to properly evaluate the offer and to determine that the offered price is fair and reasonable
Affected Public: Parties interested in selling products or services to the Department of Commerce
Frequency: On occasion
Respondent's Obligation: Required for Benefit
OMB Desk Officer: Gary Waxman (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 11, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–19717 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Docket 38–93; Foreign-Trade Zone 79]

Application for Subzone, Reilly Dairy & Food Company Plant (Dairy Products) Tampa, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, Florida, grantee of FTZ 79, requesting special-purpose subzone status for export activity at the dairy products plant of the Reilly Dairy & Food Company (RDF), located in Tampa, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 6, 1993.

The RDF plant (19,000 sq.ft./12 acres) is located at 6603 South Trask Street, Tampa, Florida. The facility (46 employees) is used to produce various dairy food products for industrial and retail sales. The activity to be conducted under zone procedures would involve cutting, slicing, shredding, and repackaging foreign, ex-quota cheese for reexport, and mixing and/or repackaging foreign milk powder and butter for reexport. None of the foreign dairy products would be entered for U.S. consumption.

Zone procedures would exempt RDF from quota requirements and Customs duty payments on the foreign dairy products used in the export activity. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 15, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 1, 1993).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, 4430 East Adamo, Suite 301, Tampa, FL 33605
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: August 6, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–19724 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–351–820]

Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

PRELIMINARY DETERMINATION: We preliminarily determine that ferrosilicon from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the Act), as amended. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace.

Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

We are investigating whether sales of slag should be excluded from our fair value comparisons. Slag is a by-product of ferrosilicon production and contains impurities which preclude it from being sold as ferrosilicon. We will examine this issue further at verification and will make a determination with regard to slag in the final determination.

Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is July 1, 1992, through December 31, 1992.

Case History

Since the notice of initiation on February 1, 1993 (58 FR 7529, February 8, 1993), the following events have occurred.

On February 3, 1993, we sent a cable to the U.S. consulates in Rio de Janeiro and Sao Paulo requesting a list of all known producers and exporters of the subject merchandise and information about the parties named. On February 12, 1993, the U.S. consulate in Rio de Janeiro provided us with the information requested.

On February 26, 1993, the International Trade Commission (ITC) issued an affirmative preliminary determination (USITC Publication 2605, February, 1993).

On March 8, 1993, we presented an Antidumping Survey to Cia De Ferro Ligas Da Bahia (Ferbasa), Libra Lingas Do Brazil (Libra), Cia Brasileira Carbureto de Calcio (CBCC) and Rima Electrometalurgia S.A. (Rima), in order to identify the Brazilian exporters of ferrosilicon which should receive antidumping questionnaires. On March 10, 1993, we issued antidumping questionnaires to Minas Gerais Minasligas (Minasligas) and Italmagnesio S.A. Industria e Comercio (Italmagnesio). We also issued a cost of production (COP) questionnaire to Minasligas.

On March 19, 1993, Italmagnesio requested a one week extension of time in which to respond to section A, the general information section, of the Department's antidumping questionnaire. On March 22, 1993, we granted the extension. On March 31, 1993, we received Italmagnesio's Section A questionnaire response.

On March 22, 1993, we received responses to the Antidumping Survey from CBCC, Ferbasa and Rima. Also, on March 22, 1993, we received a letter from Libra requesting an eight day extension of time in which to respond to the Antidumping Survey. Although we were unable to grant the request as the letter was not officially filed, we provided filing instructions and allowed five days for the request to be officially filed. On March 26, 1993, we received an officially filed extension request from Libra. On March 26, 1993, we granted Libra the extension for filing its Antidumping Survey response and received a timely response.

On March 24, 1993, Minasligas submitted its response to section A of the questionnaire.

On April 6, 1993, we presented sections A, B (sales in the home market or to third countries), C (sales to the United States), and D (cost of production/constructed value), of the antidumping questionnaire to CBCC.

On April 6, 1993, we received requests from Italmagnesio and Minasligas for an extension of time in which to respond to sections B and C, and sections B, C and D, respectively, of the questionnaire. On April 8, 1993, we granted extensions to Minasligas and Italmagnesio.

On April 8, 1993, we presented supplemental questionnaire instructions to CBCC, Italmagnesio, and Minasligas regarding special reporting requirements applicable to hyperinflationary economies.

On April 8, 1993, Italmagnesio submitted revised quantity and value information.

On April 13, 1993, CBCC requested an extension of time to respond to sections B and C of the questionnaire. On April 19, 1993, we received a request from CBCC for an extension of time in which to respond to section D of the questionnaire. On April 19, 1993, we granted CBCC extensions for responding to sections B, C, and D of the questionnaire.

On April 16, 1993, we issued deficiency letters to Italmagnesio and Minasligas regarding their respective responses to section A of the questionnaire.

On April 20, 1993, petitioners submitted corrections to alleged computational errors in the less than fair value (LTFV) margins that were published in the notice of initiation, amended their sales below the COP allegation, and submitted an allegation of sales below the COP using company-specific data previously reported by Italmagnesio. On April 27, 1993, petitioners provided further detail concerning the computations contained in their April 20, 1993, COP submission On May 10, 1993, we initiated a COP investigation for Italmagnesio and, on May 11, 1993, we issued a COP questionnaire to Italmagnesio.

On April 21, 1993, CBCC submitted its response to section A of the questionnaire. On April 29, 1993, we issued a deficiency letter to CBCC for its section A questionnaire response. On April 30, 1993, Italmagnesio and Minasligas submitted responses to the Department's respective section A deficiency letters.

On May 3, 1993, Minasligas submitted its response to section D of the Department's questionnaire.

On May 6, 1993, CBCC requested a one week extension to respond to sections B and C of the Department's questionnaire.

On May 11, 1993, we denied CBCC's extension request as an extension had previously been granted for this response and because of time constraints in the investigation. On May 13, 1993, we received CBCC's section A deficiency response.

On May 14, 1993, we issued a deficiency letter to Italmagnesio for its section B and C questionnaire response.

On May 14, we received Italmagnesio's section A deficiency response.

On May 18, 1993, we received CBCC's response to sections B and C of the Department's questionnaire.

On May 18, 1993, we issued a deficiency letter to Minasligas for its section B and C questionnaire response.

On May 20, 1993, we issued deficiency letters to Minasligas and Italmagnesio for their respective responses to the Department's section A deficiency letters.

On May 24, 1993, at the request of petitioners, we postponed the preliminary determination until not later than August 10, 1993.

On May 25, 1993, Italmagnesio requested an extension of time in which to respond to the Department's section B and C deficiency letter. On May 25, 1993, we granted this extension.

On May 26, 1993, we received CBCC's section D questionnaire response.

On May 27, 1993, Minasligas submitted a revised exhibit to its section D response.

On May 27, 1993, we issued CBCC a second deficiency letter.

On June 1, 1993, we received Minasligas' section B and C deficiency response.

On June 3, 1993, we received Italmagnesio's response to our second section A deficiency letter.

On June 4, 1993, we issued a deficiency letter to CBCC for its response to sections B and C of the questionnaire.

On June 7, 1993, Italmagnesio submitted clearer copies of exhibits that had previously been submitted on June 4, 1993.

On June 7, 1993, we received an extension request from Italmagnesio to respond to section D of the Department's questionnaire. On June 7, 1993, we granted the extension.

On June 9, 1993, we issued deficiency letters to CBCC and Minasligas based upon their respective section D questionnaire responses.

On June 10, 1993, CBCC submitted its response to the Department's second section A deficiency letter.

On June 14, 1993, Minasligas requested an extension of time in which to respond to the Department's section D deficiency letter. On June 16, 1993, we granted the extension.

On June 15, 1993, Italmagnesio submitted its response to section D of the questionnaire.

On June 21, 1993, CBCC submitted its response to the Department's section B and C deficiency letter.

On June 23, 1993, we issued a deficiency letter to Minasligas based upon its responses to the sections A, B and C deficiency letters.

On June 24, 1993, we issued a deficiency letter to Italmagnesio based upon its response to section D of the questionnaire. On June 28, 1993, we issued a deficiency letter to Italmagnesio based upon its section B and C deficiency response.

On June 29, 1993, CBCC requested an extension of time in which to respond to the Department's section D deficiency letter. On June 30, 1993, we denied CBCC the extension as CBCC had already received an extension of time for this response and because of the time constraints in the investigation. On June 30, 1993, CBCC submitted the majority of its response to the section D deficiency letter. On July 9, 1993, CBCC submitted the balance of its section D deficiency letter. On June 30, 1993, we issued a deficiency letter to CBCC based upon its response to the Department's section B and C deficiency letter.

On June 30, 1993, we received Minasligas' section D deficiency response.

On July 7, 1993, Italmagnesio requested an extension of time in which to respond to the Department's section B, C and D deficiency letters. On July 8, 1993, we granted the extensions.

On July 7, 1993, we received Minasligas' response to the Department's section D deficiency response. On July 7, 1993, we also received Minasligas' response to our deficiency letter based on its responses to our sections A, B and C deficiency letters.

On July 15, 1993, we received a response to the Department's deficiency letter covering CBCC's section A, B and C deficiency responses.

On July 19, 1993, Minasligas submitted its response to the Department's deficiency letter covering Minasligas' section B and C deficiency response.

On July 20, 1993, we received a request from CBCC to extend the final determination in the event of an affirmative preliminary determination. On July 23, 1993, we received a similar request on behalf of Italmagnesio and Minasligas.

On July 20, 1993, petitioners alleged that critical circumstances exist with respect to imports of ferrosilicon from Brazil. See "Critical Circumstances" section of this notice. On July 23, 1993, we solicited export data from CBCC, Italmagnesio, and Minasligas.

On July 22, 1993, Minasligas submitted a revised U.S. sales listing because it discovered a previously unreported sale. The revised sales listing also updated inventory carrying costs that had been corrected in the text of the July 19, 1993, submission but had not been corrected on the diskette containing the sales listing.

On July 23, 1993, Minasligas responded to petitioners' comments on section D of the Department's questionnaire.

On July 23, 1993, we provided Italmagnesio and Minasligas with the Department's proposed methodology for reporting inventory holding gains and losses. We also requested that Italmagnesio and Minasligas submit additional information relating to the inventory holding gains and losses.

On July 26, 1993, Minasligas resubmitted exhibits for its July 19, 1993 submission. On July 26, 1993, Italmagnesio resubmitted copies of exhibits due to poor quality transmission.

On July 28, 1993, Italmagnesio provided inventory gain/loss data. On July 30, 1993, Italmagnesio provided support for the inventory gain/loss data submitted on July 28, 1993. On July 28, Minasligas provided inventory gain/loss data.

On August 2, 1993, petitioners submitted comments on deficiencies in respondent's questionnaire responses and how the Department should treat the deficiencies in the preliminary determination.

On August 6, 1993, Italmagnesio and Minasligas submitted company-specific export data.

On August 6, 1993, we requested all respondents to resubmit their sales listings and product concordances on the basis of the instructions contained in appendix V, the section covering product scope and description criteria, of the questionnaire.

Best Information Available

Because all respondents failed to respond adequately to our questionnaire, we must base our determination on the "best information available" (BIA), pursuant to section 776(c) of the Act. Specifically, all three respondents failed to prepare their model match concordance according to the instructions set forth in appendix V to the Department's antidumping questionnaire and failed to identify unique product characteristics as required by appendix V. Furthermore, respondents failed to supply this information despite the fact that they were specifically requested to do so on three separate occasions including the original questionnaire, the section B and C deficiency letters, and the deficiency letters covering the section B and C deficiency responses. If respondents provide the information as requested within the deadlines set forth in our letter of August 6, 1993, we will conduct verification and consider such

information for purposes of the final determination.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who substantially cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. Because CBCC, Italmagnesio, and Minasligas have all responded to our requests for information, we determined them to be substantially cooperative for purposes of this preliminary determination.

On January, 26, 1993, February 1, 1993, and April 20, 1993, petitioners amended the petition. The April 20, 1993, amendment alleged that the Department had made computational errors in the LTFV margins published in the notice of initiation; it also amended petitioners' allegation of sales below COP by using Brazilian company-specific data. The Department has reviewed the margins contained in its notice of initiation, and has corrected those computational errors which were made. The computational errors include failure to recalculate any figures which were a percentage of the revised cost of manufacturing. The cost of manufacturing was revised based upon conversion errors made by petitioners with respect to two material inputs as detailed in the notice of initiation.

We have, however, determined not to rely on petitioners' April 20, 1993, amendment for purposes of calculating a margin based on BIA in this preliminary determination. Since the purpose of a response is to provide data to the Department so that it can conduct an analysis within the bounds of the statute, it is inappropriate for petitioners to extract information from a response to amend its petition, after initiation, effectively for purposes of proposing a BIA rate. The purpose of the BIA provision, in turn, is to encourage respondents to submit full and accurate responses to the Department's questionnaire. Allowing petitioners to use data contained in responses in a piece-meal manner in order to increase the margins alleged in the petition would serve as a disincentive to respondents to provide full and accurate responses. Therefore, we have rejected petitioners' recommendation that the estimated petition margins should be based on amendments filed following the initiation of the investigation. Accordingly, as BIA, we used the simple average of the LTFV margins as contained in the petition, as amended, as of the date of initiation, corrected as noted above.

Postponement of Final Determination

As noted in the "Case History" section of this notice, we received requests from all respondents to postpone the final determination in the event of an affirmative preliminary determination. We find no compelling reasons to deny these requests. Therefore, in accordance with § 353.20(b)(1) of the Department's regulations, we are postponing the final determination until not later than 135 days from the date of publication of this notice in the **Federal Register**.

Critical Circumstances

On July 20, 1993, petitioners alleged that "critical circumstances" exist with respect to imports of ferrosilicon from Brazil. Section 733(e)(1) of the Act provides that the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and,

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding (A)(ii) above, we normally consider margins of 25 percent or more for purchase price comparisons and 15 percent or more for exporter's sales price comparisons as sufficient to impute knowledge of dumping. Since the preliminary estimated dumping margin for all exporters of ferrosilicon from Brazil is in excess of 25 percent, we can impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we normally consider them massive.

For purposes of determining whether there have been massive imports over a relatively short period of time, the Department relied on official U.S. statistics. We were unable to consider the company-specific information submitted by respondents on August 6, 1993, and August 9, 1993, as there was not sufficient time to analyze it prior to the preliminary determination. Pursuant to 19 CFR 353.16(g), we compared the import volumes for August 1992 through December 1992 as the base period, and January 1993 through May 1993 as the comparison period. This was the most current period prior to the preliminary determination for which import statistics were available.

Based on our analysis of imports of merchandise under the relevant HTS categories, we find that imports of ferrosilicon from the base period to the comparison period have increased by more than 15 percent. We also examined the import data to ensure that the increase in imports did not simply reflect seasonal trends. The data does not indicate that seasonal trends were responsible for the increases in shipments during the comparison period. With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate whether the increase in absolute volume of shipments of ferrosilicon can be accounted for by a change in domestic consumption. Therefore, in accordance with 19 CFR 353.16(a)(2), we find that imports of the subject merchandise have been massive over a relatively short period of time.

Because the dumping margins are sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 733(e) of the Act, we find that critical circumstances exist with respect to imports of the subject merchandise. With respect to the firms covered by the "All Others" rate, because the dumping margins are sufficient to impute knowledge of dumping, and because we have determined that imports of ferrosilicon have been massive over a relatively short time, we determine that critical circumstances also exist for "all other" firms.

We will examine the company-specific export data provided by respondents at verification and will consider the data and any comments for purposes of the final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of ferrosilicon from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after a date which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or positing of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/ exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	28.22	Yes.
Companhia Ferroligas Minas Gerais.	28.22	Yes.
Companhia Brasileira Carbureto de Calcio.	28.22	Yes.
All Others	28.22	Yes.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than October 27, 1993, and rebuttal briefs no later than November 1, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 3, 1993, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: August 10, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19725 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 27, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1989 through November 30, 1990.

Based on our analysis of the comments received and the corrections of certain clerical and computer program errors, we have changed the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1991, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico for the period December 1, 1989 through November 30, 1990 (56 FR 67062). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self- contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, APSA and CINSA, of Mexican porcelain-on-steel cooking ware.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttals from both respondents and the petitioner, General Housewares Corporation (GHC).

Comment 1: Petitioner argues that the Department should compare first quality merchandise sold in the U.S. market only with first quality merchandise sold in the home market because comparing first quality merchandise with second quality (seconds) merchandise ignores market pricing realities and results in distorted margins.

While neither APSA nor CINSA disagrees with petitioner's argument, CINSA notes that it is unnecessary to revise the computer program with respect to its sales, because foreign market value was calculated only on the basis of above-cost home market sales (*i.e.*, sales involving first quality merchandise). CINSA argues that to the extent that the Department attempts to make price comparisons based on quality, the Department should also revise its cost test to make comparisons on the basis of the same quality and cost/price comparisons.

Department's Position: We agree that we should compare first quality merchandise sold in the U.S. market with only first quality merchandise sold in the home market and have revised our model matches accordingly. To do otherwise would distort the margins, since sales prices are dependent on the quality of the merchandise. Similarly, we have compared second quality merchandise sold in the United States with second quality merchandise sold in the home market. Because quality does not make a difference in the cost of the product, we did not revise our cost test to account for quality.

Comment 2: Both petitioner and CINSA contend that the Department should differentiate between the number of enamel coatings in making its fair value comparisons. Petitioner states that comparing a cooking ware item with two coats of enamel with an item with one coat is not a comparison of identical items.

Department's Position: We believe that the number of enamel coatings is an important criteria for model matching. Therefore, we revised our model matches to include the number of coatings as a matching criteria in our price-to-price comparisons.

Comment 3: Petitioner alleges that the Department should correct its computer program to deduct discounts and rebates from home market prices before determining whether sales were below the cost of production. Petitioner claims the gross unit prices reported on CINSA's home market sales tape have not been adjusted for discounts and rebates. The Department's standard practice is to compare home market prices net of discounts and rebates to the cost of production. Petitioner cites Brass Sheet and Strip From The Netherlands; Preliminary Results of Antidumping Duty Administrative Reviews (56 FR 56187, 56189 (November 1, 1991)).

CINSA does not object to petitioner's proposed change in the computer program. However, CINSA submits that the Department must also use net sales prices in the calculation of CINSA's profit ratio. Otherwise, according to CINSA, the Department has overstated CINSA's profit by calculating profit based on gross sales prices.

Department's Position: We agree. We generally deduct discounts actually granted by a manufacturer to its home market customers from the sales price in order to determine the net return on the sale. We consider rebates to be discounts which are granted after the delivery of the merchandise to the customer. Therefore, in our final results we have deducted discounts and rebates from the home market price before determining whether sales are below cost of production and used net sales prices in the calculation of CINSA's profit ratio.

Comment 4: Petitioner argues that the Department should follow its normal practice and limit the use of similar merchandise in making fair value comparisons to those comparisons where the difference in merchandise (difmer) adjustment is less than or equal to 20 percent of the cost of manufacturing the U.S. product. Petitioner contends that for those comparisons where the difmer adjustment exceeds 20 percent of the cost of manufacturing the U.S. merchandise, the Department should use constructed value (CV) as the basis for determining foreign market value (FMV).

Petitioner asserts that in this case, given the size of the difmers proposed by CINSA, the potential for distortion is great due to the fact that CINSA and the Department have not adjusted for the measure of general selling and administrative expenses (GS&A) and profit that is probably incorporated in the price of the U.S. items.

Finally, petitioner contends that it is irrelevant that the difmer is primarily due to a readily discernible factor—the material costs of steel rims on the U.S. product—because it is the value of the difmer rather than its cause which distorts GS&A and profit and results in distorted less than fair value comparisons. Petitioner maintains that because the claimed difmer adjustments for the addition of stainless steel rims exceed 20 percent of the cost of manufacturing the U.S. merchandise compared, the Department should use constructed value as the basis for determining foreign market value comparisons for certain items.

CINSA argues that to the extent that identical merchandise comparisons cannot be made, the Department should make similar merchandise comparisons. While CINSA agrees with petitioner that the Department should incorporate difmer adjustments, CINSA disagrees that constructed value should be used if the reported steel rim adjustment is greater than 20 percent. CINSA notes that in its questionnaire it identified three stainless steel rimmed cookware articles sold in the United States, including difmer adjustments, which the Department could use for comparison. CINSA states that the cost accounting data, from which the differences in material, labor and overhead costs were calculated, was verified by the Department. CINSA contends that the Department is not bound by its informal 20 percent difmer rule, since the rule is not mandated by statute or regulation. According to CINSA, the 20 percent rule is used to determine whether the home market article suggested for comparison may be reasonably compared with the U.S. article.

CINSA contends that in the cases cited by petitioner, the Department was comparing different products, and, thus, adherence to the 20 percent guideline was appropriate, since different products with more than a 20 percent cost differential could not, under the statutory definition, reasonably be considered as "similar" merchandise. CINSA points out that in Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 38114; August 12, 1991) (Cooking Ware from Korea), the Department made difmer adjustments that exceeded 20 percent because the items compared were identical except for a different insertable bottom or cover and for additional knobs or handles. In the present case, the items being compared are identical except for the steel rim.

CINSA maintains that, because the similar comparisons proposed by CINSA consist of items identical to each other except for the addition of a stainless steel rim, and because differences in material, labor and overhead costs were properly quantified by CINSA, to the extent that identical home market price comparisons cannot be made with U.S. sales of stainless steel rimmed cookware, the Department should use home market sales prices of the most similar home market article with adjustments for the costs associated with the stainless steel rim.

Department's Position: We agree with petitioner. The Department follows a guideline of generally applying a 20-percent cost differential cap in order to help ensure that the home market model chosen is "similar" within the meaning of section 771(16) of the Act. The Department generally believes that if the costs of two products are greatly different due to physical differences in the merchandise, then the products may not be of approximately equal value and, thus, may not reasonably be compared to each other. While there are instances in which comparisons are made even if the difmer is in excess of 20 percent of the cost of manufacture, we believe that the difmer in this case is so great as to create an unjustifiable distortion if the comparisons were made. As the petitioner correctly points out, the potential for distortion is great due to the fact that the proposed

methodology would not adjust for the measure of GS&A and profit that logically is incorporated in the price of the U.S. items. Finally, we agree with petitioner that it is irrelevant that the difmer is primarily due to a readily discernable factor (the material cost of steel rims on the U.S. product) because it is the value of the difmer, not the cause, that distorts GS&A and profit in the proposed comparisons.

To the extent that the approach adopted here is inconsistent with prior decisions, such decisions are superseded by this determination and a recent determination. (See Certain Stainless Steel Cooking Ware from the Republic of Korea; Final results of Antidumping Duty Administrative Review (Korean Cooking Ware) (58 FR 9560; February 22, 1993). In Korean Cooking Ware, we used constructed value for those comparisons where the difmer adjustment significantly exceeded 20 percent of the cost of manufacturing the U.S. merchandise. Therefore, our decision in this case to use constructed value for those comparisons where the difmer significantly exceeded 20 percent of the cost of manufacturing the U.S. product is consistent with the Department's current stated practice. See also Policy Bulletin 922 of July 27, 1992 for a more thorough discussion of this policy.

Comment 5: Petitioner argues that the weighted-average margin of all sales is not the appropriate choice for best information available (BIA) for unmatched sales. Since CINSA and APSA failed to provide home market sales, cost of production, constructed value, or similar merchandise and variable cost data for certain sales, BIA should be the highest margin calculated for any U.S. sale made by respondents. Petitioner cites Cooking Ware from Korea (56 FR at 38115), where the respondent failed to provide requested information on particular sales and the Department applied the highest margin calculated on any U.S. sale as BIA.

APSA contends that the Department's selection of BIA was correct. Citing *Zenith Electronics Corporation* v. *United States*, 10 CIT 268, 633 F. Supp. 132 (1986), CINSA and APSA contend that a more adverse BIA is appropriate only where a respondent refuses to cooperate. Respondents state that they have fully cooperated with the Department.

Department's Position: We disagree with petitioner. In Cooking Ware from Korea, the Department used BIA because it discovered at verification that respondent had not reported a number of sales to the United States, the home market and third countries. In that case, it was appropriate for the Department to resort to BIA and to apply the highest margin found on any U.S. sale to the unreported sales discovered at verification. In Cooking Ware from Mexico, Cinsa and APSA responded to all requests for supplemental information made by the Department. However, the Department sometimes encounters a situation where it is not clear whether a respondent should have provided information needed to calculate accurate dumping margins. In this case, the Department recognizes that a gap existed for certain U.S. sales information in this record which required the Department to use "other information" as a reasonable surrogate for the missing data. Rather than make another information request, the Department instead chose to use a neutral and reasonable surrogate to bridge this gap. Not to be confused with "best information available," the Department derives the authority to use neutral information under such circumstances from its own inherent authority to administer the U.S. antidumping law in a fair and equitable manner. The Department considers the weighted-average margin to be a reasonable rate to apply to the unmatched sales in this case. See Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Administrative Review of the Antidumping Finding (58 FR 15481; March 23, 1993) and Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review (58 FR 32093, 32097; June 8, 1993).

Comment 6: Petitioner contends that the statute expressly requires the Department to deduct from U.S. price all inland freight and other transportation expenses incurred by the foreign producer in transporting the merchandise from the foreign plant to the place of delivery (Citing 19 U.S.C. 1677(d)(2)(A)). Petitioner contends that, contrary to the situation with U.S. sales, the Department should not allow CINSA's deduction of home market factory-to-warehouse freight charges incurred on home market sales as direct sales expenses in purchase price comparisons because those charges were incurred prior to the date of sale.

Petitioner argues that the courts have acknowledged that the Department's practice of determining whether movement expenses are directly related to a particular sale by looking to the date of sale is appropriate and have approved the use of the circumstance of sale provision to permit a deduction of foreign inland freight costs from foreign market value. Petitioner cites *Silver Reed America, Inc.* v. *United States*, 7 CIT 23581 F.Supp. 1290 (1984), rev'd on other grounds, *Consumer Prod. Div., SCM Corp.* v. *Silver Reed America, Inc.* 753 F.2d 1033 (1985). In *Silver Reed*, the foreign producer manufactured typewriters at a factory in Kashiwazaki, Japan and shipped them to its central warehouse abutting another factory located in Kodaira, Japan. The typewriters were stored and sold only from the central warehouse. The court concluded that these transportation costs occurring prior to sale were an overhead expense not directly related to the sales under consideration.

CINSA replies that the Department properly deducted CINSA's home market inland freight from foreign market value and refutes petitioner's claim that the freight expense incurred from the factory to the warehouses is an indirect selling expense. CINSA contends that the question as to whether the pre-sale expenses qualify as a circumstance of sale adjustment is not whether the expenses can be tied to a particular sale of the merchandise, but whether they can be tied directly to sales of the subject merchandise.

Department's Position: We agree with respondent. The Department believes that it is appropriate to deduct all movement expenses in calculating FMV. 19 U.S.C. 1677a(d)(2)(A) of the Tariff Act and 19 CFR 353.41(d)(2)(i) require the Department to deduct all inland freight expenses incurred on U.S. sales, regardless of when the expenses are incurred, in order to establish the ex-factory price for sales comparison purposes. Unlike the situation involving U.S. price, the statute and regulations do not provide explicitly for the Department to deduct home market inland freight expenses from FMV. Given this gap in the statutory framework, the Department previously attempted to adjust FMV for home market inland freight expenses as a circumstance-of-sale adjustment set forth in Section 773 of the Act and 19 CFR 353.56. In accordance with these provisions, however, the Department attempted to limit any adjustment to expenses that were incurred as a direct result of the sales under investigation. Consequently, the Department often has denied respondents' claims for pre-sale inland freight expenses because respondents were unable to meet this requirement because they were unable to tie such expenses directly to specific sales. See, e.g., Portable Electric Typewriters From Japan; Final Determination of Sales at Less Than Fair Value (45 FR 18416, 18418 (1990); Final Results of Antidumping Duty Administrative Review, Color

Television Receivers from Korea (51 FR 41365; November 16, 1986).

Given the inequities presented by the Department's earlier approach to the treatment of pre-sale inland freight expenses incurred in the home market, the Department recently changed its approach. See Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (55 FR 35916, 35920; September 4, 1990), Red Raspberries from Canada; Final Results and Termination in Part of Antidumping Duty Administrative Review (56 FR 677; January 8, 1991), Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review (56 FR 26054, 26056; June 6, 1991). In fact, the Department's change in approach was recently upheld in *The AD Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 92–212; (CIT 1992). By deducting pre-sale inland freight expenses on the home market side from FMV, the Department is able to compare the ex-factory prices from United States sales with their counterparts on the home market side.

Moreover, the Department's present approach is consistent with the fundamental principles of the antidumping law. By comparing ex-factory prices corresponding to U.S. sales with ex-factory prices corresponding to home market sales, the Department is able to make a fair comparison of sales in the two markets by reconstructing the prices at a specific common point in the chain of commerce, when the merchandise is leaving the factory gates. The courts have upheld these principles. See *AOC International, Inc. United States*, 721 F.Supp 314, 317 (CIT 1989), *citing Smith-Corona Group* v. *United States*, 713 F. 2d 1568, 1572 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984) and *Budd Company* v. *United States*, Slip Op. 91–80 at 10 (CIT Sept. 5, 1991); *The AD Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 92–212 (CIT 1992).

Comment 7: Petitioner contends that the Department should not allow alleged "commissions" paid to salesmen who are CINSA employees as deductions to foreign market value because they are merely intracorporate transfers of funds. Citing Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Japan, 56 FR 21167 (1991), petitioner states that the Department's long-standing practice has been to deny adjustments to home market prices for commissions paid by respondents to related parties because such payments were merely intracorporate transfers of funds rather than actual commissions paid on the home market sales. According to petitioner, the same reasoning applies to commissions paid to employees; an employee's total compensation is like an intracorporate transfer of funds in that the respondent does not lose anything by characterizing part of that total compensation package as "commissions."

CINSA counters that it did not claim as a deduction any salaries, benefits, or reimbursed expenses paid to its employees. Unlike in the case cited by petitioner, CINSA paid the commissions to company employees, not to a related corporate entity. CINSA maintains that commissions paid to its employees were directly tied to sales, were paid pursuant to contractually agreed upon percentages of sales and did not include salaries, benefits or expenses.

Department's Position: We disagree with petitioner. The Department does not treat commissions paid to employees as intracorporate transfers of funds. See Industrial Forklift Trucks from Japan; Final Determination of Sales at Less than Fair Value, (53 FR 12552, 12562; April 15, 1988). We normally treat commissions to employees as direct selling expenses when tied to sales. See Drycleaning Machinery From West Germany; Final Results of Administrative Review of Antidumping Finding (50 FR 32154; August 8, 1985).

In this review, we verified that CINSA incurred its commission expenses only if the salesmen made a sale; that, while a portion of CINSA's payment to its employed salesmen was attributable to the salesmen's salaries, the remainder of their payments were commissions, equal to a specified percentage of their sales; and that CINSA did not include any sales-related expenses or salaries in their claimed adjustment. We also found CINSA's allocation methodology to be reasonable. As a result, an adjustment for CINSA's commission payments is appropriate.

Comment 8: Petitioner argues that the Department should reduce the prices of all U.S. sales reported by APSA because of deficiencies discovered at verification. Petitioner points out that of the four sales to the United States selected at verification for review the price actually paid by the customers was less than the price listed by APSA on the sales tape because the customers took additional discounts. Petitioner alleges that ignoring or excusing the inaccuracy of the prices discovered only through verification would render the verification process meaningless. Petitioner proposes that, as BIA, the Department should reduce the reported prices for all U.S. sales, except for those verified to be correct, by the average of the additional discounts taken on the U.S. sales.

APSA responds that where it granted "automatic" discounts to customers, the export prices were reported net of discounts, and where Intermex (ITCO), a related trading company in the United States, accounted for short shipments or invoicing errors, ITCO granted a rebate. When such a rebate was authorized, a credit memo was issued, as verified by the Department. APSA maintains that in the instances where three U.S. customers refused to pay the full amount of ITCO's invoice, ITCO continued to carry the unpaid amounts as outstanding balances on their accounts, and continues to demand payment. APSA argues that a partial payment does not constitute a discount paid by ITCO, and that the amounts reported in the sales listing continue to reflect correctly the transaction price for the sales in question and all other sales. Moreover, there is no basis for the Department to reduce the net sales prices for all customers since the Department verified that the sales prices reported by APSA in its sales listing for all other customers were accurate.

Department's Position: During verification, we discovered that APSA had understated the actual prices paid by various customers and that there was no indication of reasonable expectation payment. Section 776 of the Tariff Act of 1930 mandates that we use BIA in these circumstances. As BIA, we drew an adverse inference and reduced reported net prices on all U.S. sales to the those selected customers who took unauthorized discounts by the average of the unauthorized discounts actually deducted from the U.S. sales to the respective customers which were specifically examined.

Comment 9: Petitioner alleges that the methodology used by APSA to calculate inventory carrying costs on ESP sales understates the amount for several reasons. First, APSA's calculation of inventory carrying costs does not account for the time finished goods were held in inventory in the home market. Also, the home market interest rate, not the U.S. interest rate, should be used in the calculation. Second, the methodology should account for the time the merchandise was in transit ("time on the water") to ITCO. Finally, the methodology does not account for the time the merchandise remained in

the inventory of ITCO prior to sale to an unrelated party.

Petitioner contends that the Department's standard practice in fair value comparisons with respect to ESP sales is to deduct an imputed inventory carrying cost to account for the seller's opportunity cost of holding inventory. If the information necessary to calculate imputed inventory costs is not available, petitioner claims that the Department should use BIA. E.g., Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof From The Federal Republic Of Germany, Appendix B, Section 12 (54 FR 18992, 19050-19051; May 3, 1989). Petitioner maintains that because APSA failed to provide complete information for the correct calculation of inventory carrying costs for ESP sales, the Department should use BIA. The appropriate BIA, according to petitioner, is the highest amount reported for inventory carrying costs for any ESP sale.

APSA contends that petitioner misinterpreted ITCO's reported inventory carrying costs, because the Department verified that APSA identified two separate inventory carrying costs, one for home market sales and one for ESP sales made by ITCO. APSA acknowledges that the methodology used to calculate the two imputed inventory carrying charges were similar, but that the variables used in the calculations were different in each market.

APSA disputes petitioner's assumptions that U.S. inventory costs were understated. First, ITCO's reported inventory carrying costs already included the periods between production in Monterrey, shipment to San Antonio ("time on the water"), and time in ITCO inventory. Further, because all export shipments were financed through dollar-denominated FOMEX export loans which were tied to and paid for by specific invoices, the merchandise never really entered APSA's home market inventory. Second, the Department verified that all export sales, including ESP sales, were financed through dollar-denominated FOMEX export loans. APSA maintains that since ITCO paid APSA for the merchandise and used dollar-denominated loans to finance those exports, the imputed inventory carrying costs should be imputed to ITCO in dollar terms, not to APSA in peso terms.

Department's Position: We agree with respondent. We verified that inventory carrying charges were calculated using amounts applicable to each market and that the calculation incorporates the charges for merchandise in inventory between production and the time of shipment. The fact that export shipments were financed through FOMEX dollar-index loans is irrelevant for the purpose of determining whether merchandise entered APSA's home market inventory. We agree with petitioner that we generally use respondent's home-market borrowing rate to calculate the inventory carrying costs when the merchandise is in transit in the home market. However, since we verified that the merchandise was in transit in the home market for less than an average of one day and ITCO financed its export shipments through dollar indexed loans, use of the ITCO's U.S. short-term interest rate to calculate inventory carrying charges is appropriate in this case.

Comment 10: CINSA requests that the Department exclude from its data set the sectional lunch pail, item 10858, which CINSA inadvertently included in its sales tape. CINSA claims that that item is an article of kitchenware based on the description in CINSA's questionnaire response and, therefore, is not within the scope of the antidumping order.

Department's Position: We agree and have dropped item 10858 from the data set.

Comment 11: CINSA alleges that the Department incorrectly calculated U.S. credit expense and credit income on U.S. sales subject to extended credit. Specifically, CINSA states that the Department verified that CINSA offered extended credit terms to two customers. CINSA contends that even though sales to these customers were subject to extended credit terms, CINSA discounted the letters of credit to local banks shortly after the date of sale. CINSA recorded the payment date of each transaction as the date the documents were discounted to the bank and CINSA received payment. CINSA asserts that for sales to these two customers, the Department should calculate both the credit income and the credit expense based on the period between the date of shipment and the date of discounting, since CINSA received payment from the bank for the sale on the date of discounting.

Petitioner on the other hand agrees with the Department's credit calculations for these sales because CINSA has not provided the terms of the discounts on the letters of credit or the discounted amounts paid by the local banks. Therefore, petitioner argues that respondent should not benefit from its failure to provide this information by being allowed to reduce its credit expense.

Department's Position: We agree with petitioner. We have not allowed CINSA's claim because we were unable to verify the expense incurred by CINSA from the discounting of the letters of credit. We have, however, corrected a clerical error. In the credit calculation we divided the term over 330 days rather than 360 days.

Comment 12: CINSA contends that the Department incorrectly adjusted the reported COP to account for depreciation on a revalued basis. CINSA states that the Department normally only uses revalued depreciation in cases of hyperinflation, whereas, for this review, Mexico was not in a state of hyperinflation. CINSA asserts that the submitted financial statements were prepared for tax purposes and that Mexican GAAP calls for the use of historical depreciation. CINSA also contends that the Department's calculation of the revised depreciation amount contained a clerical error.

Petitioner contends that the Department acted correctly in adjusting CINSA's COP submission to reflect revalued depreciation. Petitioner asserts that Mexican GAAP requires that costs reflect depreciation expense based on the updated rather than historical value of assets. Petitioner contends that historical depreciation is included in CINSA's financial statement only as a reference point from which to calculate revalued depreciation expense.

Department's Position: We agree with petitioner. The Department followed Mexican GAAP and adjusted CINSA's COP data to reflect the revalued depreciation. This approach coincided with CINSA's financial statements, which actually showed historical depreciation adjustments for inflation, and which were prepared in accordance with Mexican GAAP. We did, however, recalculate the amount of the adjustment to the COP to correct a clerical error in the calculation.

Comment 13: CINSA claims that the Department incorrectly increased the COP to account for mandatory profit sharing payments made to its employees. CINSA contends that these payments are not related to the cost of production as they are determined based on the amount of profit earned by the company.

Petitioner states that the Department correctly included the profit sharing payments in its calculated cost of production. Petitioner claims that these payments are similar to bonuses paid to employees that are routinely included in GS&A. Petitioner also contends that these payments are similar to other mandatory employee benefits such as health care and pension payments.

Department's Position: We agree with petitioner. Because the profit sharing payments are mandatory, the payments

represent compensation to employees involved in the production of the merchandise and administration of the company. Therefore, these payments are properly part of CINSA's COP of the subject merchandise.

Comment 14: CINSA claims that the Department should have reduced production costs by the amount of short-term interest income in excess of interest expense. CINSA contends that the Department's current administrative practice of limiting the interest income offset to the amount of interest expense does not reflect the economic reality of the verified information in the financial statement.

Petitioner argues that CINSA's claim is contrary to the Department's established administrative practice which attempts to capture the current cost of production. Petitioner states that long-term interest income does not directly relate to current manufacturing costs. Petitioner states that using CINSA's methodology makes companies with long-term investments have higher margins than companies with short-term investments.

Department's Position: In accordance with its long standing policy, the Department limited the offset of short-term interest income to the amount of interest expense. See Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Administrative Review (55 FR 26721 June 29, 1990); Brass Sheet and Strip from Canada; Final Results of Antidumping Administrative Review (55 FR 31414; August 2, 1990); and Final Determination of Sales at Less than Fair Market Value; Sweaters from Taiwan (55 FR 34585; August 23, 1990). The Department reduces interest expense by the amount of short-term interest income to the extent finance costs are included in COP. The Department does not reduce production cost by the excess because income derived from long-term investments is unrelated to the production of the subject merchandise. *Id.* Using total short-term interest income to reduce production cost, as suggested by CINSA, would permit companies with large short-term investment activity to sell their products below the cost of production and also avoid the full imposition of antidumping duties. Accordingly, the amount of the offset was limited to the amount of the expense from the related activity.

Comment 15: CINSA contends that value-added taxes should be taken into account in the calculation of COP. CINSA argues that the statutory provision concerning COP expressly requires that net home market sales be less than "all costs" of producing the merchandise. CINSA then asserts that since COP includes value added taxes, the corresponding sales prices used for comparison should also include the value added taxes.

Petitioner agrees with CINSA that value-added taxes should be included in COP because it is an actual cost incurred to produce the subject merchandise. Petitioner does not agree that value-added taxes should be included in the comparable home market sales price. Petitioner contends that these value added taxes should be excluded from the net price because the company pays the value added tax to the government.

Petitioner also states that if the Department does include value-added taxes in the home market price, the amount included should be limited to the amount paid on the inputs. Petitioner contends that multiplying the home market net sales price by 15 percent would greatly overstate the amount of any offset to be allowed for value added taxes included in COP.

Department's Position: Value added taxes are paid on inputs and, therefore, are costs incurred in production. Upon the sale of the product, value added taxes are reimbursed to CINSA by the ultimate consumer. Any amount of tax which is in excess of the amount paid is payable to the Mexican government. Therefore, in the final results, an amount of tax equal to that paid by CINSA was added to the cost of production and the home market sales price.

In addition, in our price-to-price comparisons for both CINSA and APSA, we have followed the decision of the United States Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States (Zenith Electronics* v. *United States),* Slip Op. 92–1043, –1044, –1045, –1046 (Fed. Cir. March 19, 1993). The court held that section 772(d)(1)(C) of the Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

Furthermore, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

Comment 16: CINSA contends that ITA improperly determined that purchases of enamel frit from a related supplier did not reflect a fair market value. CINSA claims that its price is above cost of production and the fact that it receives a discount from the published price does not reflect prices below market value. CINSA also contends that there is no information on the record which demonstrates that the sales are not at arm's length.

Petitioner contends that CINSA did not comply with the Department's request for related party price information, and that CINSA's claim for a discount which resulted from volume purchases is unsubstantiated in the administrative record.

Department's Position: We agree with petitioner. Because CINSA's submission indicated that the transfer prices from its related supplier were less than the prices paid by an unrelated purchaser of the same material, we determined that the transfer prices were not made at arm's length. Therefore, in accordance with 773(e)(2) of the Act, we used BIA for constructed value to calculate the cost of the enamel frit used by CINSA. For the purposes of constructed value, the Department based enamel frit cost on CINSA's price to the unrelated purchaser as best information available.

Comment 17: CINSA contends that the Department overstated the amount of profit earned on its home market sales in calculating constructed value because is used gross sales rather than net sales. CINSA contends that the Department did not appropriately account for discounts, rebates, inland freight and insurance. Specifically, CINSA notes that discounts and rebates should have been deducted from the sales price. Conversely, CINSA points out that inland freight and insurance expenses were incorrectly deducted from the sales price as they were included in the COP.

Petitioner argues that if the Department decides to deduct discounts and rebates for purposes of the profit calculation, it should also deduct these amounts for the sales below cost comparisons.

Department's Position: For the final results of the review, we modified cost of production calculations to account for discounts and rebates and revised the profit calculations. To determine the profit earned on home market sales and the sales below cost comparisons, the Department deducted discounts and rebates from the gross selling prices as these amounts represented adjustments to the sales price, in accordance with section 773(e)(1)(B) of the Act. Inland freight and insurance costs are not included in COP and CV, as these are movement expenses. Therefore, they were properly deducted from home market sales.

Comment 18: APSA contends that the Department should use the verified home market interest rate, not the original rate claimed by APSA, to calculate home market credit costs. APSA contends that it incorrectly included short-term export loans in its calculation of the weighted-average home market interest rate, as noted in the Department's verification report. The export loans were obtained through the BANCOMEXT export financing program, which the Department previously determined is directly tied to exports and not home market sales. Porcelain-on-Steel Cookware from Mexico, Final Results of Countervailing Duty Review (57 FR 562, 563; March 13, 1992). APSA argues that since BANCOMEXT loans are directly tied to export sales and are not used to finance domestic sales, they should have been excluded from calculation of the average home market interest rate used for home market sales.

Department's Position: We agree with respondent and have used the verified interest rate.

Comment 19: APSA submits that at the time the Department issued the preliminary results of the fourth antidumping administrative review, the final results of the administrative review of the countervailing duty order covering calendar year 1990 had not yet been issued.

APSA notes that the Department has since published the final results of the countervailing duty administrative review for that year. Therefore, for the final results of the fourth administrative review of the antidumping order, the Department should adjust the U.S. price for sales made by APSA after January 1, 1990, in accordance with section 772 of the Tariff Act.

Department's Position: We agree and have made the adjustments.

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
APSA	12/01/89–11/30/90	2.13
CINSA	12/01/89–11/30/90	8.18

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 29.52 percent. On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip O. 93–83, decided that once an "all other: rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all other" rate from the less-than-fair value (LTFV) investigation (or the rate as amended for correction of clerical errors or as result of litigation) in proceedings governed by antidumping duty orders for the purpose of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all other" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purpose of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 29.52 percent, the "all others" rate established in the final notice of LTFV investigation by the Department (51 FR 36435 July 5, 1988)

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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[A-550-806]

Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross L. Cotjanle or Larry Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3534 or 482–0114, respectively.

Final Determination

We determine that imports of certain portable electric typewriters from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The final estimated margins are shown in the "Suspension of Liquidation" section of this notice. Also, the Department determines that critical circumstances do not exist.

Case History

Since the publication of our preliminary determination (58 FR 7534, February 8, 1993), the following events have occurred: On March 2, 1993, the Department postponed the date of its final determination to June 23, 1993 in response to a request from Smith Corona (58 FR 12025). We received timely requests for a public hearing from the respondent, Smith Corona Corporation ("Smith Corona"), and the petitioner, Brother Industries (USA), Inc. ("Brother"). Case and rebuttal briefs were submitted on May 5 and 12, 1993, respectively.

The Department initialed a proposed suspension agreement with Smith Corona on May 21, 1993, and received comments regarding the proposed suspension agreement from Brother on June 14 and 16, 1993. On June 22, 1993, the Department, having determined that the agreement was in the public interest and that effective monitoring of the agreement was practicable, signed an agreement with Smith Corona suspending this investigation.

On June 25, 1993, the U.S. Court of International Trade ("CIT") issued a temporary restraining order preventing the Department from administering the suspension agreement between it and Smith Corona. On July 12, 1993, the temporary restraining order was partially lifted by the CIT allowing the Department to publish the suspension agreement in the **Federal Register** (see, 58 FR 39786, July 26, 1993).

Pursuant to Smith Corona's and Brother's requests of June 23 and July 27, 1993, respectively, the Department is continuing this investigation in accordance with 19 U.S.C. 1673c(g).

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria:

(1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;

(2) Electric, regardless of source of power;

(3) Comprised of a single, integrated unit;

(4) Having a keyboard embedded in the chassis or frame of the machine;

(5) Having a built-in printer;

(6) Having a platen to accommodate paper; and

(7) Only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is November 1, 1990, through April 30, 1991.

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother filed the petition on behalf of the domestic industry.

With respect to Brother's status as an interested party, on September 3, 1992, the CIT, in Slip. Op. 92–152, reversed the Department's determination of September 25, 1991, that Brother was not an interested party and did not have standing to file a petition against PETs from Singapore. The Department has been directed to determine whether the petition in this proceeding was filed "on behalf of" the domestic industry and, if so, to proceed with the investigation (Slip. Op. 92–211, Nov. 30, 1992). For the reasons discussed below, we determine that Brother has filed its petition on behalf of the U.S. industry.

On April 29, 1991, Smith Corona identified itself as a domestic producer of PETs in opposition to the petition filed by Brother. Where a domestic industry member opposing a petition provides a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing party, or parties, do, in fact, represent a majority of the domestic industry. *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19005 (May 3, 1989) ("*Antifriction Bearings*"). Therefore, on May 17, 1991, we issued a standing questionnaire to Smith Corona to ascertain: (1) The extent of Smith Corona's relationship with the exporter of the subject merchandise; (2) the extent to which Smith Corona is an importer of the allegedly dumped merchandise; and, (3) the share of domestic production and sales accounted for by Smith Corona.

After our review of Smith Corona's June 6, 1991 response to the standing questionnaire, we determined that more information was needed to complete our analysis. Therefore, on August 14, 1991, we asked both Smith Corona and Brother to submit to the Department the same U.S. production and sales data which they had submitted to the U.S. International Trade Commission ("ITC"). The ITC format was instructive

because it required the parties to report production and sales data separately for both PETs/portable automatic typewriters ("PATs) and portable electronic word processors ("PEWPs").

Based on the production and sales data submitted, we computed the respective shares of U.S. production and sales held by Smith Corona and Brother. These calculations show that the opponent of the petition, Smith Corona, does not represent a majority of U.S. production or sales (measured by volume or value). Therefore, consistent with the policy articulated in *Antifriction Bearings*, we determine that the petition was filed on behalf of the U.S. industry.

In *Antifriction Bearings*, the Department went on to discuss whether the domestic industry should be defined to exclude related parties or importers for standing purposes, as permitted by section 771(4)(B). In previous investigations, the Department has excluded such firms from the industry. See, for example, *Fabricated Automotive Glass from Mexico: Final Determination of Sales at Less than Fair Value*, 50 FR 1906 (January 14, 1985). The Department pointed out in *Antifriction Bearings* that the firms in opposition were wholly-owned subsidiaries of the responding companies.

In this proceeding, we note that the exporter is a wholly-owned subsidiary of Smith Corona. We further note that imports of the subject merchandise account for more than fifty percent of Smith Corona's sales of this product. Smith Corona, however, argues in its case briefs that it believes that its status as an importer or the fact that it has overseas operations, does not exclude it from the domestic industry. Smith Corona asserts that both it and Brother rely on imports to some extent. Citing *Digital Readout Systems*, 53 FR 47844, 47845 (November 28, 1988) and *3.5" Microdisks and Media Thereof from Japan*, 54 FR 6433 (February 10, 1989), Smith Corona claims that the Act allows producers of inputs, offshore assemblers, and U.S. producers with some foreign production functions to be included in the domestic industry.

We do not agree with Smith Corona's assertions. Under the test applied in *Frozen Concentrated Orange Juice from Brazil; Final Determination of Sales at Less than Fair Value*, 52 FR 8324 (March 17, 1987), the high level of Smith Corona's imports leads us to conclude that, while Smith Corona is a U.S. manufacturer of PETs, its interests in this investigation are closely tied to imports of the allegedly dumped PETs, and thus run counter to the imposition of antidumping duties on imports of PETs from Singapore. Therefore, we do not consider Smith Corona to be a member of the domestic industry in this proceeding.

In its case briefs, Smith Corona also argues that the Department improperly focused on domestic products rather than the nature and extent of petitioner's U.S. operations. To determine whether a majority of the domestic industry supports a petition, Smith Corona states that the Department should analyze PET production in terms of actual U.S. content, not on the total number of units sold. Smith Corona argues that this type of analysis is preferred over a simple count of the typewriters produced. While the Department may not find this method warranted in all cases, Smith Corona asserts that it should implement it in cases, like this one, where a product is assembled from globally-sourced parts and where the petitioner's own U.S. content is low.

Brother argues that Smith Corona has failed to show the uniqueness of this case. Therefore, Brother contends that the Department should not be required to adopt a new approach to analyze standing. Further, Brother argues that the approach proposed by Smith Corona has no legal support in the statute, its legislative history, the Department's regulations, or any other legal precedent.

We are not persuaded that we should make the novel adjustment requested by Smith Corona, i.e., weight the production figures according to the percentage of U.S. value-added. Smith Corona has not cited, nor can we find, any precedent for defining a U.S. industry in terms of the U.S. value added to its product. Nor do we find any statutory basis for doing so. Indeed, the legislative history indicates that the criteria by which we determine Brother's standing should be applied "to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation" S. Rep. No. 249, 96th Cong., 1st Sess., 63. In this instance, Brother is a U.S. producer representing a substantial share of the industry's output and Brother clearly has a "stake" in the outcome of the proceeding. Hence, the standing criteria may not be used to defeat Brother's claim for protection from imports that are alleged to be unfairly traded.

Such or Similar Comparisons

We established one such or similar category of merchandise in accordance with section 771(16) of the Act: portable electric typewriters. For all PETs, comparisons were made solely on the basis of: (1) Type of PET; (2) memory capacity; (3) display screen; (4) display capacity; (5) printing mechanism; and (6) dictionary features. We used third country sales as the basis for foreign market value ("FMV") for Smith Corona, as described below in the "Foreign Market Value" section of this notice.

Because there was no identical merchandise sold in the third country market to compare to sales of merchandise in the United States, sales of the most similar merchandise based on the characteristics described above were used. In determining which merchandise was similar, we limited our comparisons to products sold in the third country that had difference in merchandise adjustments which were less than 20 percent of the total cost of manufacturing for the U.S. merchandise.

Finally, we compared merchandise at the same level of trade. In both the U.S. and U.K. markets, we determined that there were two levels of trade, i.e., retail and wholesale. We also determined that there were sufficient sales in the U.K. market at both levels of trade on which to base our analysis.

Fair Value Comparisons

To determine whether sales of PETs from Singapore to the United States were made at less than fair value ("LTFV"), we compared United States price ("USP") to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

In calculating USP, the Department determined that it was appropriate to use exporter's sales price ("ESP") methodology for all sales in accordance with section 772(c) of the Act. For a further discussion of this issue, see *DOC Position* to Comment 4 in the *Interested Party Comments* section of this notice.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, advertising accrual rebates, promotional allowances, prep allowances,

warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(e) of the Act.

We added to USP the amount of value-added tax which was incurred on "ESP" sales made in the market in which we determined foreign market value (i.e., the U.K.). The Department's policy is to add to U.S. price the absolute amount of tax, if any, on the merchandise sold in the market chosen for product comparison purposes. By adding the amount of tax in the comparison market to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price. See, e.g., *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803 (April 28, 1993).

We have included in our USP calculations certain sales transactions reported by Smith Corona in a separate database as "exceptions." Those transactions include closeout sales, sales of discontinued models, employee sales, consignment sales, and free goods. We included closeout sales and sales of discontinued models in our calculation of USP because the Department does not ignore U.S. sales on the basis of obsolescence. See, e.g., *Portable Electric Typewriters from Japan; Final Results of Antidumping Duty Administrative Review;* 56 FR 14072 (April 5, 1991). Although Smith Corona argued that "employee sales" are sales to related parties and should not be included in the USP analysis, the Department's practice is to include this type of transaction in our analysis. See, *Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping Finding* 46 FR 30163 (June 5, 1981). In addition, sales made to Puerto Rico were included in the U.S. sales data base.

During verification we found minor clerical errors in Smith Corona's reported U.S. data base. These errors were not of the magnitude to draw into question the overall validity of the data reported. Therefore, we have determined it appropriate to use the data as verified, with the following minor adjustments.

For those U.S. sales reported by Smith Corona as purchase price transactions, but reclassified by the Department as ESP transactions, data for various indirect selling expenses were missing. Based on the indirect selling expenses reported for Smith Corona's other ESP sales, we have assigned indirect selling expenses to these transactions.

For certain U.S. sales, Smith Corona did not report movement expenses. For those transactions, as best information available, we have used the highest per unit movement expenses incurred by Smith Corona for sales from the same warehouse.

Finally, we have adjusted Smith Corona's U.S. database for other minor discrepancies found on verification, e.g., prep allowance and warranty expenses (for those sales without reported service allowances). For a detailed explanation of the above adjustments made to U.S. price, as well as those which were denied, see Memorandum to Management from Team, dated July 29, 1993, on file in the Central Records Unit, B–099, of the Department of Commerce.

Foreign Market Value

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of such or similar merchandise to the volume of third country sales of such or similar merchandise. Smith Corona's home market sales were less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with § 353.48 of the Department's regulations. In accordance with section 773(a)(1)(B) of the Act, we calculated FMV based on third country sales.

In selecting which third country market to use for comparison purposes, we followed 19 CFR 353.49(b). Accordingly, we selected the U.K. because (1) it had the largest volume of sales to any third country, and (2) the market, in terms of organization and development, is most like the United States. The Department did not base its selection of the U.K. on the first factor listed in the regulation, because the Department had no information with which to compare the similarity of the merchandise sold to other third country markets to the merchandise sold in the United States. Furthermore, we determined that the volume of sales to the U.K. market was adequate within the meaning of 19 CFR 353.49(b)(1) because the sales of such or similar merchandise exceeded five percent of the volume sold to the United States.

We calculated FMV based on packed, delivered prices to unrelated customers in the U.K. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, U.K. inland freight (U.K. warehouse to customer), rebates, other allowances, cash discounts, a customer-specific discount, and commissions. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We made further deductions for third country indirect selling expenses, including warehousing, inventory carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of U.K. sales, and U.K. indirect selling expenses, capped by the amount of indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

We have excluded sample sales in calculating FMV because Section 773 of the Tariff Act of 1930, as amended, requires that FMV be based on sales made in the ordinary course of trade. These sample sales in the U.K. were transferred free of charge. Therefore, we consider these sample sales not to be in the ordinary course of trade and have disregarded them in the calculation of FMV. See, e.g., *Antifriction Bearings*, at 19087.

During verification we found minor clerical errors in Smith Corona's reported U.K. data base. These errors were not of the magnitude to draw into question the overall validity of the data reported. Therefore, we have determined it appropriate to use the data as verified, with the following minor adjustments.

We have deleted the expense category for U.K. forwarder's fees from the U.K. data base because we found on verification that this expense had also been reported as part of U.K. indirect selling expenses. We have also adjusted the period used to calculate inventory carrying costs for air freight shipments based on verified information.

In addition, we have adjusted Smith Corona's U.K. database for other minor errors found on verification, e.g., U.K. warehousing expenses, U.K. freight expenses, and U.K. rebate amounts. For a detailed explanation of the above adjustments made to U.K. price, as well as those which were denied, see Memorandum to Management from Team, dated July 29, 1993, on file in the Central Records Unit.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PETs from Singapore. Section 735(a)(3) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

With respect to section 735(a)(3)(A)(i) of the Act regarding a history of dumping, petitioner cites the Department's outstanding antidumping order on *Portable Electric Typewriters from Japan*. However, as discussed in our preliminary determination, an outstanding dumping determination involving a class or kind of merchandise from another country does not show a history of dumping of the merchandise subject to this investigation.

In order to impute knowledge pursuant to section 735(a)(3)(A)(ii) of the Act, the Department examines the magnitude of the dumping margins in the investigation. It is the Department's standard practice to impute knowledge of dumping when the margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, when dealing with exporter's sales price sales, margins of 15 percent or greater are sufficient to impute knowledge of dumping. Because the final dumping margin for Smith Corona exceeds 15 percent, we find that the importers knew or should have known that this company was selling the subject merchandise at less than fair value.

To determine whether imports have been massive over a short period of time pursuant to section 733(e)(1)(B) of the Act, we generally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993), and *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). Normally, to determine whether imports have been massive we compare the export volume for the base period, which is a period of not less than three months beginning with the month the petition was filed (provided that the petition was filed before the mid-way point in the month), with an immediately previous period of comparable duration.

We have determined that our normal methodology is inappropriate in this proceeding. The purpose of the critical circumstances provision is to deter exporters whose merchandise is subject to an investigation from circumventing the imposition of antidumping duties by increasing exports to the United States during the period immediately prior to suspension of liquidation of entries. This deterrence is effected through a retroactive suspension of liquidation for 90 days prior to the preliminary determination. Thus, in a "normal" investigation the base period is roughly contemporaneous with the period covered by the retroactive suspension of liquidation.

Unlike the normal investigation, in this investigation 21 months elapsed between the initiation and the preliminary determination. Therefore, the period around the time of initiation is in no way contemporaneous with the period that would be covered by a retroactive suspension of liquidation, and is not just prior to suspension of liquidation. For these reasons, we have decided to use as our base period for determining whether critical circumstances exist, the period following the CIT's September 3, 1992 decision (Slip Op. 92–152). The CIT's decision served as notice of the eventual resumption of the antidumping proceeding and the possibility that future entries may be subject to antidumping duties. Therefore, in terms of the expectations of the parties subject to this investigation, the CIT's decision was similar to the filing of a petition.

Because we were able to obtain and verify data for the five-month period between the court's decision and our preliminary determination, we compared the volume of imports between September 1992 and January 1993 (the month of our preliminary determination), with a commensurate period prior to the court's decision. On this basis, we find that imports have not been massive. Therefore, we determine that critical circumstances do not exist with respect to imports of the subject merchandise from Singapore.

Currency Conversions

We made currency conversions based on the official exchange rates certified by the Federal Reserve Bank in effect on the dates of the U.S. sales.

Verification

As provided in section 776(b) of the Act, we verified the information provided by Smith Corona by using our standard verification procedures, including the examination of relevant sales and financial records and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Smith Corona argues that the fluctuation in the U.S. dollar—U.K. pound exchange rate should not be the cause of an affirmative determination of LTFV sales. It asserts that the appreciation of the dollar-pound exchange rate during the Gulf War, which coincided with the POI, was recognized as a short-lived phenomena after which the exchange rate returned to its pre-war level. Smith Corona states that because the fluctuation in exchange rates was a short-term phenomena and the exchange rates were returning to "normal," it did not believe it was necessary to adjust its prices during the POI or for the next fiscal year.

Smith Corona argues that the Court of Appeals for the Federal Circuit ("CAFC") and the Department's regulations provide that the Department will not take into account dumping margins resulting solely from temporary exchange rate fluctuations. *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924, 932 (1984); 19 CFR 353.60(b). Smith Corona states that if the exchange rates in effect prior to the Gulf War are used, all or almost all of the dumping margin is eliminated. It suggests that the Department use an average exchange rate which excludes the aberrational rates in effect during the Gulf War.

Brother argues that Smith Corona is not entitled to any adjustment for a fluctuation in the exchange rate whether the exchange is considered "sustained" or "temporary." Citing *Coated Groundwood Paper from the United Kingdom; Final Determination of Sales at Less than Fair Value*, 56 FR 56403 (November 4, 1991)("*Groundwood Paper from the U.K.*"), Brother notes that the Department considered the impact of the Gulf War and decided that the exchange rate fluctuation during the period of investigation was sustained rather than temporary.

Brother argues that the Department should continue to find the fluctuation

in the U.S. dollar—U.K. pound exchange rate during the POI to be sustained and conclude that Smith Corona is not entitled to any special currency conversions because it did not act to change any of their pricing practices. If, however, the Department determines that the exchange rate fluctuation was temporary, Smith Corona is not entitled to any exchange rate adjustment because, as admitted to by Smith Corona, the antidumping margin does not result solely from such exchange rate fluctuation, as required by the regulations.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

> For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any differences between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, e.g., *Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan* 52 FR 13855 (April 27, 1987.))

We will also adjust the methodology we employ, if we determine that temporary exchange rate fluctuations have occurred during the POI (i.e., the daily rate varies from the quarterly average rate by more than five percent). (See, e.g., *Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Federal Republic of Germany* 52 FR 822 (January 9, 1987.)) However, we do not interpret the special rule outlined in 19 CFR 353.60 (b) as envisioning the treatment of an entire POI as a temporary fluctuation (see, e.g., *Groundwood Paper from the U.K.*).

In *Groundwood Paper from the U.K.*, the exchange rate fluctuation during the Gulf War was examined to determine whether it was of a temporary nature. In that case we determined that the "movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the pound that, while not entirely steady, (i.e., on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI." Upon examination of the data in the present case, we have reached the same conclusion as in *Groundwood Paper from the U.K.* Since Smith Corona did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations is warranted.

Comment 2

Smith Corona asserts that the Department improperly compared such or similar merchandise. In addition to the seven "matching" criteria used by the Department, respondent argues, that the Department should consider additional factors such as model year and channel of distribution. Smith Corona provided the Department with three criteria which it contends would enable the Department to ensure that the comparison merchandise is "approximately equal in commercial value" in accordance with 19 U.S.C. 1677(16)(B)(iii).

Smith Corona argues that in determining whether merchandise is approximately equal in commercial value, the Department considers commercial and physical interchangeability (*see Malleable Cast Iron Pipe Fittings from Brazil*, 51 FR 10897 (1986)). For example, while production of the private label machines does not involve any difference in costs, there is significant commercial difference between the private label machines and the other product lines. Thus, they are not "approximately equal in commercial value." Smith Corona asserts that price comparisons should also be made between machines which are of the same product line (i.e., which is synonymous with channel of distribution).

Brother argues that the Department should continue to apply the matching criteria used in the preliminary determination and not use as additional criteria the trivial characteristics advocated by Smith Corona (i.e., model year, size of jacket, and product line). Brother contends that the minor product characteristics cited by Smith Corona are properly adjusted for via a difference-in-merchandise adjustment. Brother asserts that the difference in manufacturing costs does not render these machines non-comparable to other machines which fall into the same basic PET category. Furthermore, Brother contends that the Department's practice is to make its such or similar merchandise selections on differences in physical characteristics, not on differences in prices. Brother claims that the Department stated in *Certain Forced Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review, ("Crankshafts from the U.K.")*, 56 FR 5975 (February 14, 1991) that "under section 771(16)(c), the Department has the discretion to make reasonable comparisons without regard to commercial value."

Lastly, Brother claims that in *Stainless Steel Hollow Products from Sweden; Final Administrative Review*, 57 FR 21389 (May 20, 1992), the Department rejected the argument that channel of distribution be added as a criteria in matching such or similar merchandise. It stated that "there is no regulatory basis for comparing identical channels of distribution."

DOC Position

We agree with petitioner. Colors, labels, and jacket sizes are "cosmetic" characteristics and, thus, were not included in the Department's product concordances. To the extent that these characteristics may have resulted in slight differences in cost of production, a difference in merchandise adjustment, rather than a change in matching criteria, would be appropriate.

The commercial value of these characteristics is not relevant to our product comparisons. The Department has previously rejected claims that "such or similar" comparisons should be adjusted to take into account differences in commercial value. As the Department noted in *Crankshafts from the U.K.*,

> We also note that although the statute makes reference to commercial value in section 771(16)(B), we disagree with UEF's argument that this requires the Department to consider differences in prices in making such or similar comparisons. There are many reasons why prices may differ, including the existence of dumping * * *

The CIT has affirmed the Department's policy of not considering commercial value in selecting comparison merchandise. *United Engineering and Forging* v. *United States*, 779 F. Supp. 1375, 1381 (1991).

Furthermore, channel of distribution is not a proper merchandise comparison criterion. The Department has, as Brother notes, stated that "there is no regulatory basis for comparing identical channels of distribution." See, e.g., *Stainless Steel Hollow Products from Sweden; Final Results of Administrative Review*, 57 FR 21389 (May 20, 1992).

Comment 3

Smith Corona argues that the Department should take into account

the different levels of trade in making its sales comparisons. It states that the levels of trade can be broken into three groupings: small office equipment dealers, national retail chains, and those in between. These levels purchase different quantities of machines and should be segregated for purposes of product comparison.

Smith Corona contends that the Department's regulations and past precedent require the Department to compare merchandise at a comparable level of trade (see 19 CFR 353.58; and, e.g., *NTN* Bearing Corp. v. *United States*, 747 F. Supp. 726, 743 (CIT 1990)). A review of the prices reveals a distinction directly related to the level of trade.

Brother claims that where the Department has distinguished between levels of trade, those distinctions have been between wholesalers and retailers. The distinction requested by Smith Corona is between types of retailers. In *Television Receiving Sets, (Monochrome and Color), from Japan: Final Results of Administrative Review of Antidumping Finding*, 46 FR 30163 (June 5, 1981), Brother asserts that the Department stated that it generally considers all retail outlets to be at the same level of trade because they serve the same sector of the population—end-users. Brother requests that the Department continue to consider all sales to be at the same level of trade.

DOC Position

The Department's regulations at 19 CFR 353.58 state that "[t]he Secretary normally will calculate foreign market value and the United States price based on sales at the same commercial level of trade." The Department's policy and practice, as outlined in *Import Administration Policy Bulletin Number 92/1: Matching at Levels of Trade*, is to match at the same level of trade, provided that the respondent reports levels of trade with distinct, discernible functions.

Based on these guidelines, we have determined that Smith Corona's U.S. sales occur at two levels of trade, i.e., retail and wholesale. While Smith Corona's selling practices may vary in certain aspects based on the type of retailer, all the retailers have the same function which is to sell to end-users. In the U.K., we also have determined that there are two levels of trade, i.e., wholesale and retail. In addition, we have established that there were sufficient U.K. sales at each of these levels made during the POI to allow us to match all U.S. sales to retailers with U.K. sales to retailers and all U.S. sales to wholesalers with U.K. sales to wholesalers. We have determined that no further distinction based on level of trade is appropriate here.

Comment 4

Brother contends that the purchase price sales reported by Smith Corona are misclassified. Brother asserts that because of their misclassification, none of the expenses specifically incurred for these sales are captured or allocated to such sales. These sales should be treated by the Department as ESP transactions and all expenses related to these sales should be accounted for in the Department's calculations.

DOC Position

We agree with petitioner. At verification, it became clear that all activities directly and indirectly related to the sales of PETs in the United States were conducted by Smith Corona's related U.S. company. We also verified that Smith Corona Private, Ltd. in Singapore did not incur any selling expenses related to its sales in the United States. Given that Smith Corona's related U.S. company acted as much more than a processor of sales-related documentation, we believe that the use of ESP to determine U.S. price is appropriate. (See, e.g., *Final Determination of Sales at Less Than Fair Value; New Minivans from Japan*, 57 FR 21937 (May 26, 1992.)

Comment 5

Petitioner contends that the Department improperly determined that critical circumstances do not exist with respect to imports of PETs from Singapore. Petitioner argues that to impute knowledge in a particular case it is not appropriate to weight-average the purchase price and ESP sales but to examine which is the predominant type of sale. Whichever type of sale is predominant, the Department should presume knowledge based on the margin associated with that type of transaction.

DOC Position

Based on our reclassification of all purchase price sales as ESP, this issue has become moot. We are using the 15 percent benchmark normally applied to ESP transactions in order to determine a presumption of knowledge of dumping.

Continuation of Suspension of Liquidation

The U.S. Customs Service will continue to suspend liquidation of all entries of PETs from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, until instructions are issued by the Department liquidating entries pursuant to the suspension agreement. If the suspension agreement is terminated in the future, we will then instruct the U.S. Customs Service to require a cash deposit equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Smith Corona PTE Ltd	15.51
All others	15.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: August 6, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-19720 Filed 8-13-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-825]

Initiation of Antidumping Duty Investigation; Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482-1766.

Initiation Investigation

The Petition

On July 19, 1993, we received a petition filed in proper form by Union Camp Corporation (petitioner). Petitioner submitted an amendment to the petition on August 2, 1993. In accordance with 19 CFR 353.12, the petitioner alleges that sebacic acid from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and the petition is filed on behalf of the only U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by this investigation are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include, but are not limited to, CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum APHA color). The principal difference between the grades is the undesirable quantities of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on a March 1993 invoice from a U.S. importer of the subject merchandise from the PRC. In calculating USP, petitioner deducted an amount for ocean freight.

Petitioner, alleging that the PRC is a non-market economy country within the meaning of section 773(c) of the Act, based foreign market value on its factors of production during March 1993 for producing the subject merchandise.

To value the factors of production, petitioner used India and Pakistan as surrogates with comparable economies to the PRC even though there is no evidence on the record that they are significant producers of comparable merchandise, pursuant to section 773(c)(4) of the Act. For purposes of this initiation, we have accepted India and Pakistan as appropriate surrogate selections because there appear to be no other countries with comparable economies to the PRC that produce the subject merchandise. In addition, we have used India and Pakistan as appropriate surrogate selections in other investigations involving merchandise from the PRC. (See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 29705, July 6, 1992). Petitioner, therefore, first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production using Pakistani information before using its own costs. Petitioner valued the factors of production of the subject merchandise in the PRC as follows:

- For castor oil, activated carbon, and caustic potash, natural gas, electricity, and labor, petitioner used values and rates from Indian publicly available published information.
- For caustic soda and sulfuric acid, petitioner used values from a U.S. unclassified cable from the U.S. consulate in Pakistan.
- For crude capryl and steam, petitioner used it own costs.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of production.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.

Based on petitioner's calculations, the dumping margin is 243.40 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on sebacic acid and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of sebacic acid from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by September 2, 1993, whether there is a reasonable indication that imports of sebacic acid from the PRC are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: August 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19719 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal

government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–2A001".

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 92–00001, which was issued on April 10, 1992 (57 FR 13707, April 17, 1992), and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992).

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc. ("AIA"), 1250 Eye Street, NW., Washington, DC 20005. Contact: Mac S. Dunaway, Esquire, telephone: (202) 862–9700.

Application No.: 92–2A001

Date Deemed Submitted: August 11, 1993

Request for Amended Conduct

AIA seeks to amend its Certificate to add each of the following companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2 (1)): CTA Incorporated, Rockville, MD; Digital Equipment Corporation, Marlboro, MA; Dupont Company, Wilmington, DE; Edwards Aerospace, Inc., Irving, TX (Controlling Entity: Edwards Technology, Inc., Irving, TX); Loral Vought Systems Corporation, Dallas, TX (Controlling Entity: Loral Corporation, New York, NY); Reflectone, Inc., Tampa, FL; and Vought Aircraft Company, Dallas, TX.

Dated: August 10, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–19723 Filed 8–13–93; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Dean John A. Knauss Marine Policy Fellowship; Applications

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dean John A. Knauss Marine Policy Fellowship; open for applications.

SUMMARY: In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT: Dr. Bernard L. Griswold, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474–7086
University of California—(619) 534–4440
University of Connecticut—(203) 445–3457
University of Delaware—(302) 831–2841
University of Florida—(904) 392–5870
University of Georgia—(706) 542–7671
University of Hawaii—(808) 956–7031
University of Illinois—(217) 333–1824
Louisiana State University—(504) 388–6710
University of Maine—(207) 581–1436
University of Maryland—(301) 405–6371
Massachusetts Institute of Technology—(617) 253–7131
University of Michigan—(313) 763–1437
University of Minnesota—(612) 625–2765
Mississippi-Alabama Sea Grant Consortium—(601) 875–9341
University of New Hampshire—(603) 749–1565
New Jersey Marine Science Consortium—(908) 872–1300
State University of New York—(516) 632–6905
University of North Carolina—(919) 515–2454
The Ohio State University—(614) 292–8949
Oregon State University—(503) 737–3396
University of Puerto Rico—(809) 832–3585
Purdue University—(317) 494–3622
University of Rhode Island—(401) 792–6800
South Carolina Sea Grant Consortium—(803) 727–2078
University of Southern California—(213) 740–1961
Texas A&M University—(409) 845–3854
Virginia Graduate Marine Science Consortium—(804) 924–5965
University of Washington—(206) 543–6600
University of Wisconsin—(608) 262–0905
Woods Hole Oceanographic Institution—(508) 548–1400 ext. 2578.

SUPPLEMENTARY INFORMATION:

Purpose of the Fellowship Program

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

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Deadlines

- Students must submit applications to the state Sea Grant Director, who will be the applicant's sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).
- Applications are to submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.
- The competitive selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1994 a Fellow will receive a stipend amount of $24,000.

Application

An application will include:
- Personal and academic resume or curriculum vitae.
- Personal education and career goal state which emphasizes expectations from the experience in the way of career development. (not to exceed 2 pages)
- No more than two letters of recommendation with at least one being from the student's major professor.
- A letter of endorsement from the sponsoring state Sea Grant Director.
- Copy of undergraduate and graduate student transcripts. Thesis papers are not desired.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or other will not be considered.

Placement preference in the Executive of Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:
- Strength of Academic Performance.
- Communication Skills (both written and verbal).
- Diversity of Academic Background.
- Work Experience.
- Support of Major Professor.
- Support of Sea Grant Director.
- Ability to Work with People.

Selection

Selection of finalists will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or judgment of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Dated: July 15, 1993.

David B. Duane,

Deputy Assistant Administrator for Extramural Research, Office of Oceanic and Atmospheric Research.

[FR Doc. 93-19592 Filed 8-13-93; 8:45 am]

BILLING CODE 3510-12-M

[I.D. 081093A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Vessel Monitoring System (VMS) Committee on August 20, 1993, in the Conference Room of the Pacific Ocean Producers, 965-B N. Nimitz Hwy., Honolulu, HI. The meeting will begin at 1 p.m.

The VMS Committee will discuss and possibly make recommendations to the Council regarding:

(1) Status of the Council's VMS program;

(2) The effect of a recent National Marine Fisheries Service (NMFS) biological opinion on the Council's VMS program;

(3) Report on the NMFS' Hawaii VMS experiment; and

(4) Other issues as needed.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 541-1974.

Dated: August 10, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-19611 Filed 8-13-93; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License

AGENCY: Office of the Army Judge Advocate General, DOD.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404.4, the Department of the Army hereby gives notice of its intent to grant to Alpha 1 Biomedicals, Inc., a corporation having its principal place of business at Two Democracy Center, 6903 Rockledge Drive, suite 1200, Bethesda, MD 20817, an exclusive license under PCT Application No. PCT/US 93/06485 designating all PCT countries and corresponding applications filed or to be filed in Argentina, Chile, China, Indonesia, Malaysia, Mexico, Philippines, South Africa, Taiwan, Thailand, and Venezuela. All of the preceding applications are based upon U.S. Patent Application Serial No. 07/914,673 entitled "Composition and Method of Treating Hepatitis B" filed 13 July 1992. Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence.

DATES: October 15, 1993.

ADDRESSES: Intellectual Property Law Division, Office of the Judge Advocate General, 901 North Stuart Street, Arlington, VA 22203-1837.

FOR FURTHER INFORMATION CONTACT: Earl T. Reichert, (703) 696-8113.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-19584 Filed 8-13-93; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Domestic Issues Task Force will meet August 24, 1993, from 9 a.m. to 4 p.m., in Alexandria, Virginia.

The purpose of this meeting is to continue efforts to forecast emerging demographic and sociological trends and their effect on the Navy of the future. The agenda of the meeting will consist of discussions about managing diversity, demographics, and personnel within the Navy.

For further information concerning this meeting, contact: J. Kevin Mattonen,

Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, VA 22302–0268, Phone (703) 756–1205.

Dated: August 3, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19581 Filed 8–13–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of July 9 Through July 16, 1993

During the Week of July 9 through July 16, 1993, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertenly omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 9, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of July 9 through July 16, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
06/30/93	Patterson Canal.	RF346–55
07/07/93	ARA Services, Inc.	RF300–21748
07/07/93	Farmland Industries, Inc.	RF352–1
07/08/93	Learjet, Inc	RF272–94766
07/09/93	Boise City Farmers Co-op.	RF272–94767
07/09/93 thru 07/16/93.	Atlantic Richfield refund applications received.	RF304–14224 thru RF304–14234

REFUND APPLICATIONS RECEIVED—Continued

[Week of July 9 through July 16, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
07/09/93 thru 07/16/93.	Beacon Oil refund applications received.	RF238–130 thru RF238–152
07/09/93 thru 07/16/93.	Texaco Oil refund applications received.	RF321–19794 thru RF321–19800
07/12/93	Stanley Ivy Trucks.	RC272–206
07/12/93	Ronald Reeves.	RF272–94788
07/12/93	Yale Transportation Co.	RC272–208
07/12/93	Wells Cargo, Inc.	RF272–207
07/13/93	Lytle Feed & Seed.	RF272–94789
07/13/93	W.S. Thompson Transfer Inc.	RC272–209
07/14/93	Johnston Construction Co.	RC272–210
07/15/93	Fuels, Inc	RF300–21749
07/16/93	Armando Tundidor.	RF349–4

[FR Doc. 93–19705 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–P

Award Based on Acceptance of an Unsolicited Application; EOP Foundation, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to EOP Foundation, Inc., to conduct research to identify which National Policy Initiatives should be undertaken to enhance the use of Integrated Resources Planning (IRP).

FOR FURTHER INFORMATION CONTACT: Warren Zurn, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street NE., Atlanta, GA 30308, (204) 347–1047.

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to EOP Foundation, Inc., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). The advantage offered by selecting this party is that, of the few available practitioners that can contribute to this field, EOP Foundation, Inc., has the unique mating of experience to work required that would make them productive immediately, at the highest comparative rate of cost effectiveness.

The project period for this grant is 10 months. DOE plans to provide FY 1993 funding in the amount of $50,000.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19712 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Council of Great Lakes Governors

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Chicago Support Office, announces, that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to award a grant to the Council of Great Lakes Governors. The award represents continued funding under the U.S. Department of Energy Regional Biomass Energy Program. The objective of this project is to build and maintain the capacity of state energy, forestry, and environmental quality offices to responsibly promote biomass technologies and promote responsible use of biomass energy in the seven states in the Great Lakes region.

SUPPLEMENTARY INFORMATION: The office of the Council of Great Lakes Governors, comprised of seven states, is responsible for the administration and staffing of the Great Lakes Regional Biomass Energy Program (GLRBEP). The GLRBEP has three basic components. A state grant component provides funds (with a 50/50 matching requirement) to each of the states in the region to strengthen and integrate the work of state agencies involved in biomass energy. The applied research and Technology Transfer Program component produces a series of technical reports and studies in areas that have been identified as being important to the development of biomass energy in the region. The third component is a long range planning effort, with substantial involvement from the private sector, to identify

activities necessary to spur greater development and use of biomass energy in the Great Lakes Region.

The grant is being accepted by DOE because DOE knows of no other organization that is conducting or planning to conduct this type of effort in promotion of the use of biomass energy in the Great Lakes region. The project period for the award is 12 months, expected to begin in September 1993. DOE plans to provide funding in the amount of $694,000.

FOR FURTHER INFORMATION CONTACT: Melinda J. Harris; U.S. Department of Energy; Chicago Support Office; 9800 South Cass Avenue; Building 201; Argonne, Illinois 60439; (708) 252–2224.

Issued in Chicago, Illinois, on August 4, 1993.

M.A. Broderick,

Deputy Director, Operations Management Support Division.

[FR Doc. 93–19709 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Award Based on Acceptance of an Unsolicited Application; Lof Energy Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Denver Support Office (DSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Lof Energy Systems, Inc., for developing and further demonstrating the energy savings of an automatic cover for an institutional-sized indoor swimming pool.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Lof Energy Systems, Inc., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist. The DOE has determined in accordance with 10 CFR 600.14(f), that the application submitted by Lof Energy Systems Incorporated is meritorious based on the general evaluation required by 10 CFR 600.14(d).

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention pertains to further development of the design and use of an automated pool-covering system. Documenting the energy savings in a large institutional pool should improve the commercial viability of the automatic pool-cover system capable for use in large institutional pools and natatoriums.

The project period for the grant award is 18-months, expected to begin in October, 1993. DOE plans to provide funding in the amount of $83,310.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Chicago Operations Office, Denver Support Office, 2801 Youngfield Street, suite 380, Golden, Colorado 80401–2266, Dennis D. Maez, Contract Specialist, (303) 231–5750, Extension 140.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19711 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award to the National Conference of State Legislatures

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: "Energy Efficiency Options for State Legislatures." The U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, through the DOE, Chicago Operations Office, Denver Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(6)(2), it intends to award on a non-competitive basis, a cooperative agreement with the National Conference of State Legislatures (NCSL), Denver, Colorado. This action is authorized by Public Law 95–91 and Public Law 94–163. The Energy Policy Act of 1992 contains options for energy efficiency and renewable energy, many of which will be implemented by State Governments. The objective of the Cooperative Agreement is to stimulate adoption of energy efficiency, and encourage the adoption of renewable energy technologies. It is also intended to stimulate State governments, local governments and legislatures to implement State related titles of the Energy Policy Act of 1992 (EPACT), and to encourage the participation of States in the EPACT provisions that are under the domain of State government. The Department would provide funding to assist NSCL with the dissemination of energy efficiency and renewable energy technologies information. The authority and justification for determination of non-competitive financial assistance is DOE Financial Assistance Rule 10 CFR 600.7(b)(2)(i) (A) and (D). In addition, the activities to be funded are a continuation of activities presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activities. The applicant has exclusive domestic capability to perform this activity based on the unique nature of the organization. No other national legislative organization exists which is governed by the State legislatures and directly funded by contributions from general tax revenue of the 50 States. The estimated cost for the two year project period is expected to be approximately $500,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Chicago Operations Office, Denver Support Office, 2801 Youngfield Street, Suite 380, Golden, Colorado 80401–2266, Margaret Learmouth, Contract Specialist, (303) 231–5750, Extension 138.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

Intent To Award a Noncompetitive Assistance Action; Solar Energy Industries Association

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2), the Department of Energy, through the Boston Office, intends to award a grant to the Solar Energy Industries Association (SEIA). The grant will provide initial funding in the amount of $50,000 for an assistance effort aimed at linking utilities with eight direct combustion electric biomass applications. The work will involve the National Wood Energy Association and will assist in securing the financing for the projects, and approaching the state utility regulators on behalf of the Department of Energy. The primary goal of this project is to assist in promoting economic development and energy independence at the local utility level utilizing biomass.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial

assistance under a recent, current, or planned solicitation.

The initial term of this grant will be twelve (12) months from the date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston, MA 02114–2021.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19708 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP93–161–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 10, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 30, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1993:

Fortieth Revised Sheet No. 26
Thirty-fourth Revised Sheet No. 26.1
Thirty-eighth Revised Sheet No. 26A
Thirty-fourth Revised Sheet No. 26A.1

Columbia states that the sales rates set forth on Fortieth Revised Sheet No. 26 and Thirty-fourth Revised Sheet No. 26.1 reflect a WACOG surcharge of 28¢ per Dth in the Commodity rate. Columbia files this surcharge pursuant to Article IV of Columbia's 1985 PGA settlement in Docket No. TA82–1–21–001, *et al.* (See *Columbia Gas Transmission Corp.*, 34 FERC ¶ 161,307 (1985).

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19604 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–53–000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 10, 1993.

Take notice that K N Energy, Inc. ("K N") on July 30, 1993 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1–B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$0.1976	$0.1976
D1 Demand	(0.0007)	(0.0010)
D2 Demand	(0.0161)	(0.0147)
WPS Demand	(0.0014)	(0.0020)
IOR Commodity	0.1808	0.1819

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1993. The proposed effective date for the rate changes is September 1, 1993.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19608 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–620–000]

K N Energy, Inc.; Request Under Blanket Authorization

August 10, 1993.

Take notice that on August 6, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–620–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for delivery of gas to end users under K N's blanket certificate issued in Docket No. CP93–140–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

END USERS

Customer	Location of tap	Use of gas
Resident/Occupant 93–53, Thomas and Philip Trausch	SW/4 Sec. 25–T6N–R11W, Adams Co., Nebraska	Grain Dryer.
Resident/Occupant 93–54, Pioneer Hi-Bred International	W/4 Sec. 20–T11N–R2W, York Co., Nebraska	Commercial.
Resident/Occupant 93–55, Manford Nichols	SW/4 Sec. 28–T27S–R31W, Haskell Co., Kansas	Irrigation.
Resident/Occupant 93–56, Dinklage Feeders	SW/4 Sec. 3–T21N–R53W, Scotts Bluff Co., Nebraska	Commercial
Resident/Occupant 93–57, Tom Deets	SW/4 Sec. 3–TT11N–R16W, Buffalo Co., Nebraska	Grain Dryer.
Resident/Occupant 93–58, Cargill, Inc	NE/4 Sec. 29–T20N–R6W, Boone Co., Nebraska	Grain Dryer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 93-19602 Filed 8-13-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-15-25-000 and TM93-7-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

August 10, 1993.

Take notice that on July 30, 1993 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Tariff sheet	Effective date
Ninety-First Revised Sheet No. 4.	Sept. 1, 1993.
Fifteth Revised Sheet No. 4.1.	Sept. 1, 1993.
Fourteenth Revised Sheet No. 4A.2.	Sept. 1, 1993.
Fifteenth Revised Sheet No. 4A.2.	Dec. 1, 1993.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and Paragraph 17.2 of MRT's FERC Gas Tariff, changes in fixed take-or-pay charges incurred from pipeline suppliers. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is an increase of 5.9 cents per MMBtu in the demand charge and a decrease of 2.6 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA filed July 30, 1993 to be effective August 1, 1993. MRT states that the single part rate under Rate Schedule SGS-1 reflects a decrease of 2.03 cents per MMBtu.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-19606 Filed 8-13-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket PP-82-2]

Application for Amendment of Presidential Permit by Joint Owners of the Highgate Project

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Vermont Electric Power Company, Inc. (VELCO), acting as an agent for the Joint Owners of the Highgate Project [1] (Joint Owners), has applied to the Department of Energy (DOE) to amend the Presidential permit contained in Docket No. PP-82 to allow an increase in the limit for power imports from 200 megawatts (MW) to 225 MW.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP-82-2 should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202-586-5883 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: On August 2, 1993, VELCO, on behalf of the Joint Owners of the Highgate Project, filed an application with the DOE for authorization to operate the Highgate Project at import levels of up to 225 MW. The Highgate Project consists of a 7-mile long, 120,000-volt transmission line and a back-to-back converter terminal. In March 1989, the DOE issued an amendment to Presidential Permit PP-82 authorizing the operation of the Highgate converter terminal at power import levels of up to 225 MW for a period of six months ending in September 1989.

In support of its application VELCO has included studies demonstrating the reliability limit for imports received through the Highgate Interconnection Facilities. VELCO states that the Joint Owners have coordinated these studies with the Northeast Power Coordinating Council and with the Pennsylvania-New Jersey-Maryland Interconnection.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Office of Fossil Energy at the address provided above in accordance with 211 and 214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE no later than September 15, 1993. Additional copies of such petitions to intervene or protests also should be filed directly with John H. Marshall, Attorney, Downs Rachlin & Martin, 9 Prospect Street, St. Johnsbury, Vermont 05819-0099.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interests in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be

[1] The Joint Owners are eight Vermont electric utilities that jointly own facilities authorized by Presidential Permit PP-82. The Joint Owners include: Central Vermont Public Service Corp.; Franklin Electric Light Co., Inc.; Vermont Public Power Supply Authority; Green Mountain Power Corp.; Vermont Electric Generation and Transmission Cooperative, Inc.; Village of Johnson Electric Light Department; Rochester Electric Light and Power Co., Inc.; and the City of Burlington Electric Light Department.

directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed amendment will not adversely impact on the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, State governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, DC, on August 10, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office Fossil Energy.

[FR Doc. 93–19706 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ93–14–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

August 10, 1993.

Take notice that on July 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Ninetieth Revised Sheet No. 4 and Forty-Ninth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective August 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that the Ninetieth Revised Sheet No. 4 and Forty-Ninth Revised Sheet No. 4.1 reflect an increase of 16.43 cents per MMBTu in the commodity cost of purchased gas from PGA rates contained in the out-of-cycle PGA filing to be effective July 1, 1993 in Docket No. TQ93–13–25–000. MRT also states that since the June 29, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in the filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19609 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–605–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

August 10, 1993.

Take notice that on August 2, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–605–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to partially abandon facilities at the Yelm Meter Station in Thurston County, Washington, and to construct and operate replacement facilities in order to better accommodate Northwest's existing firm delivery obligations to Washington Natural Gas Corporation (Washington), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the existing maximum delivery capacity of its Yelm Meter Station is less than Northwest's existing firm delivery obligations to Washington at that point. As result Northwest proposes to replace the two 1-inch regulators with two new 1-inch regulators. Northwest also proposes to replace a 1-inch × 1.5-inch relief valve with a 2-inch × 3-inch relief valve.

Northwest states that the total cost of replacing the facilities is estimated to be approximately $30,630 and Northwest would not require any cost reimbursement from Washington.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19603 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–615–000]

Panhandle Eastern Pipe Line Co.; Application

August 10, 1993.

Take notice that on August 3, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–615–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain farm tap installations and the associated transportation service, all as more fully set forth in the application

which is on file with the Commission and open for public inspection.

Panhandle states that it seeks to abandon and transfer ownership to Peoples Natural Gas Company (Peoples), certain farm tap facilities, along Panhandle's State Line Lateral in Miami and Johnson Counties in Kansas. All facilities abandoned by Panhandle will remain in place for the continued use by Peoples.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-19601 Filed 8-13-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-598-000]

Texas Eastern Transmission Corp.; Application

August 10, 1993.

Take notice that on July 30, 1993 Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed an application in Docket No. CP93-598-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Texas Eastern to: (1) Lease capacity on facilities of a third-party pipeline which would be used for open access transportation, (2) "roll-in" lease payment costs into its system rates, and (3) to abandon the leased capacity after termination of the lease, all as more fully set forth in the application on file and open to public inspection.

Specifically, Texas Eastern requests:

(1) Authorization pursuant to section 7(c) of the NGA to lease 250,000 MMBtu's of capacity in Arkla Energy Resources Company's (AER) existing Line AC and proposed Line ACE, extending from AER's Chandler Compressor Station in Latimer County, Oklahoma, to an interconnection of its proposed Line ACE near Shaw, Mississippi, with the pipeline system of Trunkline Gas Company (Trunkline) and 83,000 MMBtu of capacity in certain gathering facilities attached and/or to be attached to AER's transmission system (leased capacity), and to receive into and deliver from such facilities natural gas pursuant to the AER Capacity Lease, including deliverers into Trunkline's pipeline system near Shaw, Mississippi.

(2) Authorization to use the leased capacity to provide service to Texas Eastern's customers pursuant to Texas Eastern's open-access blanket certificate and FERC Gas Tariff, Sixth Revised Volume No. 1, as such tariff may be in effect from time to time.

(3) Authorization to: (i) Roll-in the costs of the AER Lease in Access Zone ETX and ELA and to charge initial rates for the recovery of the costs of the lease capacity consisting of a reservation surcharge of a maximum of $1.139 per dekatherm per month applicable to transportation from Texas Eastern's Access Zones ETX and ELA to the access area border under Texas Eastern's Rate Schedules FT-1 and CDS, plus applicable compressor fuel on AER, (ii) an interruptible rate of a maximum of $0.2685 and minimum of $0.01 per dekatherm of natural gas transported via the Leased Capacity under Rate Schedule IT-1 and PTI, plus applicable compressor fuel on AER, and (iii) maximum capacity reservation release charges for the release of leased capacity of $8.167 per dekatherm or $0.2685 per dekatherm if the release is on a volumetric basis.

(4) permission and approval pursuant to section 7(b) of the NGA to abandon the leased capacity upon expiration or termination of the Capacity Lease Agreement.

It is stated the leased capacity will provide Texas Eastern's customers with access to the substantial natural gas supplies of the Arkoma and the Anadarko Basins. All of such capacity will be available on a firm basis to all Rate Schedule FT-1 and CDS customers which have firm access right to Access Zones ETX and ELA. In addition, it is noted all Rate Schedule IT-1 and PTI customers shall have access to such capacity on an interruptible basis. It is indicated that the capacity leased from AER will be subject to Texas Eastern's Order No. 636 restructured FERC Gas Tariff.

It is stated the natural gas from the leased capacity will be made available to Texas Eastern's system at three different delivery points: 250,000 MMBtu's of natural gas per day can be delivered from the leased capacity at the primary delivery point on Line ACE at the interconnection with Trunkline's pipeline facilities near Shaw, Mississippi; 50,000 MMBtu's of natural gas per day can be delivered at a secondary delivery point at the proposed interconnection of Line ACE and the pipeline facilities of Texas Gas in Bolivar County, Mississippi; and 100,000 MMBtu's of natural gas per day can be delivered from the Leased Capacity at a secondary delivery point into Texas Eastern's pipeline system at the existing interconnection AER's and Texas Eastern's pipeline systems in Hot Springs County, Arkansas. Therefore, Texas Eastern states it will have the capability to utilize 400,000 MMBtu of primary and secondary delivery capacity to arrange for the flexible access by its shippers to the Arkoma and Anadarko Basins to effectuate the 250,000 MMBtu/D capacity lease agreement.

Texas Eastern explains that there will be four transportation paths on Texas Eastern's system for the transportation of the Arkoma and Anadarko natural gas supplies to markets of Texas Eastern's shippers. One flow path will be on Texas Eastern's 24-inch system from Hot Springs County, Arkansas, to Lebanon, Ohio. Another flow path will be Texas Gas' pipeline system from Bolivar County, Mississippi, to Lebanon, Ohio, and a third flow path will be on Trunkline's pipeline system from Shaw,

Mississippi, to Lebanon, Ohio. From Lebanon, Ohio, the natural gas will flow on Texas Eastern's 24-inch pipeline system to market or from Somerset, Ohio, on Texas Eastern's 30-inch pipeline system to market. The fourth path will be from Shaw, Mississippi, where the natural gas will be delivered by displacement to Texas Eastern's Monroe Lateral, will flow to Kosciusko, Mississippi, and then be transported to market via Texas Eastern's 30-inch pipeline system.

Texas Eastern requests authorization to implement a natural gas supply project benefitting all of its FT–1 and CDS customers having access rights to Access Zones. Texas Eastern states that its proposal will provide many benefits to those customers, making available to those customers the very prolific natural gas supplies of the Arkoma and Anadarko Basins at minimum economic and environmental costs. The lease, it is asserted, will provide Texas Eastern's customer substantial diversity of reliable, long-term gas supplies, and provide them with significant flexibility with respect to the management of their natural gas supply portfolios, capacity releases, transportation paths of the Arkoma and Anadarko natural gas supplies, and in mitigating, through capacity releases, the Rate Schedules FT–1 and CDS surcharge. It is noted that Texas Eastern's customers will have separate capacity release rights for their firm entitlements to the natural gas supplies in these basins and may trade these entitlements on a one-for-one basis with entitlements on other access area segments of Texas Eastern's system.

Texas Eastern states that its proposal is not an incremental project proposal but a proposal to assign all of the capacity of the AER Capacity Lease to its Rate Schedule CDS and FT–1 customers having firm access rights in Access Zone ETX and ELA.

Texas Eastern states that the annual lease payment is $24,500,000, payable quarterly in advance, and is a negotiated amount. Beginning with the sixth anniversary of the commencement of date of the AER Capacity Lease, the annual lease payment is subject to renegotiation if it is greater or less than $500,000 of AER's maximum rates then in effect for comparable service under AER's FERC Gas Tariff. There will be no facilities constructed by Texas Eastern.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance-with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19600 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–35–000]

West Texas Gas, Inc.; Filing

August 10, 1993.

Take notice that on July 30, 1993, West Texas Gas, Inc. (WTG) filed Eight Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective October 1, 1993. Eighth Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19607 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM93–6–49–002]

Williston Basin Interstate Pipeline Co.; Compliance Filing

August 10, 1993.

Take notice that on July 28, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing an explanation of the working papers submitted in Docket Nos. TM93–6–49–000 and TM93–6–49–001 in compliance with ordering paragraph (B) of the Commission's July 16, 1993, "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Rejecting Tariff Sheets and Granting Waiver."

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19605 Filed 8–13–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–70–NG]

Peoples Natural Gas Co., Division of UtiliCorp United Inc.; Order Amending Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it issued DOE/FE Order No. 707–A which amended a long-term natural gas import authorization previously granted to Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Peoples). See DOE/FE Opinion and Order No. 707, 1 FE ¶ 70,664 (November 12, 1992). By this amendment, Peoples is authorized to import from Western Gas Marketing Limited a total of up to 9,000 Mcf of Canadian gas per day on a firm basis and up to 25,000 Mcf of gas per day on an interruptible basis through October 31, 1997.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 10, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–19707 Filed 8–13–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4692–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 15, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION: Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Automobile and Light Duty Truck Surface Coating Operations (Subpart MM)–Information Requirements (EPA ICR No. 1064.06; OMB No. 2060–0034). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation must provide EPA, or the delegated State regulatory authority, with one-time notifications and the results of the initial performance test, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, subject facilities must identify, record and report quarterly each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids exceeds the limit specified. Depending upon how compliance is achieved the owner or operator must install and operate devices to measure and record certain operating characteristics: (1) Where compliance is achieved through the use of a capture system and control device, the owner or operator must report volume-weighted average passing through the control device; (2) where compliance is achieved through the use of thermal incineration the owner or operator must continuously record the incinerator combustion temperature and interpret these records; and (3) where compliance is achieved through the use of catalytic incineration the owner or operator must continuously record the gas temperature upstream and downstream of the incinerator catalyst bed and interpret these records.

The affected facilities must notify EPA or the State regulatory authority of the date upon which demonstration of their control and recording equipment commences.

The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 6.3 hours per response for reporting and 32 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation.

Estimated No. of Respondents: 38.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,174 hours.

Frequency of Collection: One-time notifications and compliance reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19674 Filed 8–13–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4694–1]

Minnesota; Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Minnesota's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate

issuance of a rule for such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals are an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria will apply to all permitted and unpermitted MSWLF facilities.

Minnesota applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Minnesota's application and tentatively determined that Minnesota's permit program is adequate to ensure compliance with the revised Federal MSWLF Criteria. After consideration of all comments received, the EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Minnesota shall be effective on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated revised Federal MSWLF Criteria (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to promulgation of STIR. The EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLF's that are technically comparable to the revised Federal Criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. Third, the State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Fourth, the EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF permit program.

The EPA regional offices will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it grants full approval to a program.

B. State of Minnesota

On April 30, 1993, Minnesota submitted an application to obtain an adequacy determination for the State's municipal solid waste landfill permit program. On May 28, 1993, the EPA published a tentative determination of adequacy for all portions of Minnesota's program. Further background on the tentative determination of adequacy appears at 58 FR 31027, May 28, 1993.

Along with the tentative determination, the EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held at the Minnesota Pollution Control Agency office in St. Paul, Minnesota, on July 28, 1993.

The EPA has reviewed Minnesota's application and has determined that all portions of the State's municipal solid waste landfill permit program will ensure compliance with the revised Federal Criteria. In its application, Minnesota demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria.

The revised Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Minnesota allows samples to be filtered and preserved in the field. The EPA intends to revisit this issue. If the ban on field filtering is upheld, the State will be required to come into compliance with the provisions in 40 CFR 258.53(b). In the meantime, the State will not be given approval of this requirement.

In addition, Minnesota demonstrated that the State's MSWLF permit program has the authority to issue permits incorporating the requirements of the revised Federal Criteria to all MSWLFs in the State, with the exception of those located on Indian Lands. The EPA determined that Minnesota's permit program contains provisions for public participation, compliance monitoring, and enforcement.

Once a MSWLF permit application is considered complete by the State, a notice is published to solicit public comment and requests for a public hearing. All information submitted in the application is available for public review. All written and verbal comments received from the public are considered by the State before a final determination is made. The State will publish a public notice concerning the final issuance of a permit.

The Minnesota compliance monitoring program has the authority to obtain information from a MSWLF facility, as well as the authority to enter and inspect any MSWLF site or record pertaining to solid waste management, to determine compliance. Minnesota has mechanisms to verify the accuracy of information submitted by a MSWLF facility, to verify the sampling methods used by a MSWLF facility, and to produce evidence admissible in an enforcement proceeding. Minnesota has the authority to conduct monitoring or testing to ensure compliance. Minnesota inspects MSWLFs to verify and document compliance with solid waste regulations.

Minnesota has the following authorities to remedy violation of program requirements:

1. Authority to restrain a person from engaging in any activity that may endanger or cause damage to human health or the environment;

2. Authority to sue a person who is violating any statute, regulation, order, or permit that has been issued by the State; and

3. Authority to administratively assess penalties for violating any statute, regulation, order, or permit.

The EPA received the following public comments on its tentative determination of full program adequacy for Minnesota's MSWLF permit program.

One commenter expressed confidence that Minnesota will conduct its MSWLF permit program in an appropriate manner and supported the EPA's decision to grant full program approval to the State.

One commenter asserted that the legitimacy of the MSWLF permit program approvals is questionable because the STIR has not been promulgated. As explained above, section 4005(c)(1)(C) of RCRA requires the EPA to determine whether States have adequate MSWLF permit programs, but does not mandate the Agency to issue a rule for such determinations. The EPA has drafted the STIR to provide procedures to approve MSWLF permit programs. States and Tribes interested in applying for adequacy have used the draft STIR as guidance in preparation of their applications. In addition, the EPA regional offices have used the draft STIR to evaluate applications. However, the Agency believes that is has the necessary statutory authorities to approve MSWLF permit programs before the STIR ispromulgated, and believes that early approvals will be beneficial for compliance with the revised Federal Criteria.

One commenter asserted that Minnesota's application did not address the use of geosynthetic clay liners (GCL's). The commenter suggested that the Minnesota application be amended to allow the use of GCL's as an equivalent to compacted clay in a landfill liner or final cover design. Minnesota's application indicates that the State has composite liner and cap requirements that are consistent with 40 CFR part 258. In addition, the State indicated that it would like to retain the ability to consider alternative liner and cap designs. The alternative designs would be evaluated on groundwater protection standards and through the use of the U.S. EPA Multi-Method and HELP Models. As the application did not specify nor reject certain alternatives, it appears that GCL's could be evaluated as an alternative design. The use of an alternative liner or cap design that includes a GCL, would be a decision made by the State using the parameters included in the application.

C. Decision

After reviewing the public comments, I conclude that Minnesota's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Minnesota is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria independent of any State/Tribal enforcement program. As the EPA explained in the preamble to the revised Federal Criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The EPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by the EPA as Federal law. Consequently, the EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 6, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–19675 Filed 8–13–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59319A; FRL–4639–1]

Certain Chemicals; Approval of Modifications to a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–93–10. The test marketing conditions are described below.

EFFECTIVE DATES: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Edna Pleasants, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202 260–3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME–93–10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the

number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T–93–10

Notice of Approval of Original Application: March 19, 1993. (58 FR 15145).

Modified Test Marketing Period: 365 days commencing on first day of nonexempt commerical manufacture. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 5, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–19673 Filed 8–13–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4693–7]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Border Area Drums Site.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement under Section 122(h) of CERCLA, concerning the Border Area Drums Site ("the site") located at the Otay-Mesa Border Crossing, California, was entered into by EPA Region IX and Barmet Aluminum Corporation ("the settling party"). The materials that were the subject of the response action at the site were found in a pottery factory in Tijuana, Mexico. The proposed settlement requires the settling party to pay $45,000.00, which is a portion of EPA's response costs for the site to the Hazardous Substances Superfund. The response costs incurred by EPA for the site do not exceed $500,000. Therefore, EPA may settle this matter without the prior written approval of the Attorney General.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this settlement. The Agency's response to any comments received will be available for public inspection at EPA Region IX offices located at 75 Hawthorne Street, San Francisco, California, 94105.

DATES: Comments must be submitted on or before September 15, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at EPA Region IX offices located at 75 Hawthorne Street, San Francisco, California, 94105. A copy of the proposed settlement may be obtained at the same address from Steven Calanog, Removal Enforcement Section (H–8–4), telephone (415) 744–2296. Comments on the proposed settlement should reference the Border Area Drums Site located at the Otay-Mesa Border Crossing, California, and EPA Docket No. 09–93–14 and should be addressed to Roger Klein, Office of Regional Counsel (RC–3–2), at 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Steven Calanog at (415) 744–2296 or Roger Klein at (415) 744–1311.

Dated: August 5, 1993.

Keith Takata,

Acting Director, Hazardous Waste Management Division, EPA Region IX.

[FR Doc. 93–19676 Filed 8–13–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

OMB Control No.: 3060–0536

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery

Expiration Date: 02/28/96

Description: In the Third Report and Order in the matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990 (ADA) (CC Docket No. 90–571, FCC 93–357, adopted July 15, 1993, and released July 20, 1993), the Commission adopted rules implementing the TRS Fund, a shared-funding mechanism to recover interstate TRS Costs. The TRS Fund will be administered for two years, on an interim basis, by the National Exchange Carriers Associations, Inc. (NECA). All carriers providing interstate telecommunications services must contribute to the TRS Fund on the basis of their relative share of gross interstate revenues. Contributors' contribution to the TRS fund will be the product of their subject revenues from the prior calendar year and a contribution factor determined annually by the Commission. Contributions must be calculated and filed in accordance with FCC 431, TRS Fund Worksheet. (A public notice will be issued announcing the availability of FCC 431, TRS Fund Worksheet.) Initial contributions to the TRS Fund are due September 26, 1993. TRS providers are also required to provide NECA with true and adequate data necessary to determine TRS fund revenue requirements and payments and are required to submit reports of interstate TRS minutes of use in order to receive payments. Eligible TRS providers must notify the administrator of their intent to participate in the TRS Fund 30 days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year. The information will be used to administer the program.

OMB Control No.: 3060–0457

Title: Amendment of Part 22 of the Commission's Rules to Establish Standards for Conducting Comparative Renewal Proceedings—CC Docket No. 90–358

Expiration Date: 03/31/96

Description: In the Report and Order in the matter of Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Cellular Radio Telecommunications Service (CC Docket No. 90–358, adopted December 12, 1991; and released January 9, 1992), the Commission established standards for conducting cellular radio comparative renewal proceedings. The Commission created

standards for awarding a renewal expectancy; basic qualifications standards for challengers; procedures for preventing possible abuses in the comparative renewal process; and filing and hearing procedures designed to expedite comparative cellular renewal proceedings. A Memorandum Opinion and Order on Reconsideration (Order) was issued in this proceeding by the Commission, adopted March 11, 1993 and released April 9, 1993, which modified certain rules and standards established for conducting comparative renewal proceedings. The Order adopted a two-step procedure for cellular license renewal hearings and also modified the renewal expectany standards. Applicants filing applications which would compete with renewal applications are required to submit certain information, in addition to demonstration of financial qualification and of the availability of proposed ternsmitter-antenna sites. Cellular renewal licensees seeking a renewal expectancy are required to make showings also.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–19585 Filed 8–13–93; 8:45 am]
BILLING CODE 6712-01-M

[PR Docket No. 93–148; DA 93–866]

Private Land Mobile Radio Service; Idaho Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Idaho (Region 12). As a result of accepting the Plan for Region 12, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Idaho Public Safety Plan.

Adopted: August 3, 1993.

Released: August 9, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 28, 1993, Region 12 (Idaho) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Idaho. On April 20, 1993, Idaho filed revisions to the Plan, based on conversations with the Commission's staff.

2. The Idaho Plan was placed on Public Notice for comments due on July 7, 1993, 58 FR 32133 (June 8, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Idaho and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Idaho.

4. Therefore, we accept the Idaho Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz ban in Idaho may commence immediately.

Federal Communications Commission.
Ralph A. Haller,
Chief, Private Radio Bureau.
[FR Doc. 93–19564 Filed 8–13–93; 8:45 am]
BILLING CODE 6712-01-M

[PR Docket No. 93–150; DA 93–867]

Private Land Mobile Radio Services; North Carolina Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for North Carolina (Region 31). As a result of accepting the Plan for Region 31, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of North Carolina Public Safety Plan.

Adopted: August 3, 1993.

Released: August 9, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On May 13, 1992, Region 31 (North Carolina) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in North Carolina. On April 16, 1993, North Carolina filed revisions to the Plan, based on conversations with the Commission's staff.

2. The North Carolina Plan was placed on Public Notice for comments due on July 7, 1993, 58 FR 32134 (June 8, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for North Carolina and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in North Carolina.

4. Therefore, we accept the North Carolina Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in North Carolina may commence immediately.

Federal Communications Commission.
Ralph A. Haller,
Chief, Private Radio Bureau.
[FR Doc. 93–19563 Filed 8–13–93; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Benton, Clayton, Harrison, Montgomery, Jackson, Fayette, Cherokee, Dubuque for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–19699 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 22, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from flooding and severe storms on June 28, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John McKay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Wyandotte, Leavenworth, Harvey, Douglas, and Johnson Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–19697 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Greeley and Nace Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–19700 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

Monroe County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–19698 Filed 8–13–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 93–64]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain

number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the seventh quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Seventh Quarter Review:* September 30, 1993.

Due Date For Public Comments on Members Selected in Seventh Quarter Review: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408–2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in Seventh Quarter, Grouped by FHLBank District

Member	City and state
Federal Home Loan Bank of Boston—District 1 Post Office Box 9106, Boston, Massachusetts 02205–9106	
Mechanics Savings Bank	Hartford, CT.
American Savings Bank	New Britain, CT.
Bridgewater Savings Bank	Bridgewater, MA.
Lexington Savings Bank	Lexington, MA.
South Weymouth Savings Bank	Weymouth, MA.
Weymouth Co-operative Bank	Weymouth, MA.
Peoples Savings Bank	Worcester, MA.
Norway Savings Bank	Norway, ME.
Woodsville Guaranty Savings Bank	Woodsville, NH.
Federal Home Loan Bank of New York—District 2 One World Trade Center, 103rd Floor, New York, New York 10048	
Family First Federal Savings Bank	Clifton, NJ.
First Savings Bank of Little Falls, SLA	Little Falls, NJ.
Manville Savings Bank, SLA	Manville, NJ.
Millville Savings & Loan Association	Millville, NJ.
Sterling Bank	Mount Laurel Township, NJ.
Center Federal Savings Bank	Princeton, NJ.
Pulawski Savings Bank	South River, NJ.
Summit Federal Savings & Loan Association	Summit, NJ.
Landis Savings Bank, SLA	Vineland, NJ.
Wayne Savings Bank, SLA	Wayne, NJ.
Llewellyn-Edison Savings Bank, SLA	West Orange, NJ.
Seneca Federal Savings & Loan Association	Baldwinsville, NY.
Carthage Federal Savings & Loan Association	Carthage, NY.
Fidelity New York, FSB	Floral Park, NY.
First National Bank of Glen Falls	Glen Falls, NY.
Gouverneur Savings & Loan Association	Gouverneur, NY.
Sound Federal Savings & Loan Association	Mamaroneck, NY.
Community Mutual Savings Bank	Mount Vernon, NY.
Poughkeepsie Savings Bank, FSB	Poughkeepsie, NY.
Skaneateles Savings Bank	Skaneateles, NY.
Homestead Savings, FA	Utica, NY.
United Northern Federal Savings Bank	Watertown, NY.
Fajardo Federal Savings Bank	Fajardo, PR.
R & G Federal Savings Bank	Guaynabo, PR.
First Federal Savings Bank	Santurce, PR.
First Virgin Islands Federal Savings Bank	St. Thomas, VI.
Federal Home Loan Bank of Pittsburgh—District 3 625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428	
Delaware Savings Bank, FSA	Wilmington, DE.
Fidelity S&LA of Bucks County	Bristol, PA.
Citizens Savings Association	Clarks Summit, PA.
Valley Federal Savings & Loan Association	Easton, PA.

Member	City and state
Marquette Savings Bank	Erie, PA.
First Federal Savings Bank of Hanover	Hanover, PA.
First FS&LA of Harrisburg	Harrisburg, PA.
Deposit Bank	Indiana, PA.
S&T Bank	Indiana, PA.
Fulton Bank	Lancaster, PA.
Elmwood Federal Savings Bank	Media, PA.
Savings & Loan Association of Milton	Milton, PA.
People's Bank of Oxford	Oxford, PA.
Berean Federal Savings Bank	Philadelphia, PA.
St. Edmond's Savings & Loan Association	Philadelphia, PA.
Dwelling House Savings & Loan Association	Pittsburgh, PA.
Fidelity Savings Bank	Pittsburgh, PA.
First Pennsylvania Savings Association	Pittsburgh, PA.
Stanton Federal Savings & Loan Association	Pittsburgh, PA.
Progress Federal Savings Bank	Plymouth Meeting, PA.
American Savings Bank	Tamaqua, PA.
First Federal Savings Bank	Bluefield, WV.
Point Pleasant Federal Savings Bank	Point Pleasant, WV.
Fed One Savings Bank, FSB	Wheeling, WV.

Federal Home Loan Bank of Atlanta—District 4
Post Office Box 105565, Atlanta, Georgia 30348

SouthTrust Bank	Auburn, AL.
Cullman Savings and Loan Association	Cullman, AL.
Dothan Federal Saving Bank	Dothan, AL.
First FS &LA	Florence, AL.
Bank Independent	Sheffield, AL.
Security Federal Bank, a FSB	Tuscaloosa, AL.
Bank Boynton, a SSB	Boynton Beach, FL.
First FS&LA of the Glades	Clewiston, FL.
Popular Bank of Florida	Coral Gables, FL.
Gibraltar Savings and Loan Association	Hialeah, FL.
First FSB of Citrus County	Inverness, FL.
Floridabank, a FSB	Jacksonville, FL.
Community Savings, FA	North Palm Beach, FL.
J.P. Morgan Florida, FSB	Palm Way, FL.
Sunshine State FS & LA	Plant City, FL.
Partners Savings Bank	Tampa, FL.
Fidelity Federal Savings Bank	Dalton, GA.
First Federal Savings Bank of Georgia	Donaldsonville, GA.
Clayton County Federal Savings and Loan Association	Jonesboro, GA.
Bank of Perry	Perry, GA.
The Savannah Bank	Savannah, GA.
Fairfax Savings Bank, FSB	Baltimore, MD.
The Columbia Bank	Columbia, MD.
Regal Savings Bank	Owings Mill, MD.
State Bank	Fayetteville, NC.
Morganton Federal Savings and Loan Association	Morganton, NC.
Home Savings & Loan Association	Siler City, NC.
Security Savings and Loan Association	Southport, NC.
Jackson Savings Bank, SSB	Sylva, NC.
First Investors Savings Bank, Inc.	Whiteville, NC.
Peoples Federal Savings Bank	Wilmington, NC.
Lowcountry Savings Bank, Inc.	Mount Pleasant, SC.
Newberry Federal Savings Bank	Newberry, SC.
Union Federal Savings Bank	Union, SC.
George Washington National Bank	Alexandria, VA.
Ameribanc Savings Bank, FSB	Annandale, VA.
Metropolitan Bank for Savings, FSB	Arlington, VA.
Guaranty Savings and Loan, F.A	Charlottesville, VA.
Greater Atlantic Savings Bank, FSB	Herndon, VA.

Federal Home Loan Bank of Cincinnati—District 5
Post Office Box 598, Cincinnati, Ohio 45201

First Federal Savings Bank	Campbellsville, KY.
National Bank of Corinth	Corinth, KY.
First Federal Savings Bank of Elizabethtown	Elizabethtown, KY.
Farmers Deposit Bank	Eminence, KY.
Vine Street Trust Company	Lexington, KY.
First National Bank of Louisa	Louisa, KY.
Peoples Bank of Murray	Murray, KY.

Member	City and state
United Commonwealth Bank, FSB	Murray, KY.
West Point National Bank	Radcliff, KY.
Sebree Deposit Bank	Sebree, KY.
North Akron Savings Association	Akron, OH.
Caldwell Savings and Loan Company	Caldwell, OH.
Foundation Savings Bank	Cincinnati, OH.
Pioneer Savings Bank	Cleveland, OH.
Home Federal Savings and Loan Association	Niles, OH.
The Citizens Banking Company	Salineville, OH.
Springfield FS&LA	Springfield, OH.
Mid American National Bank & Trust Company	Toledo, OH.
Peoples Savings Bank of Troy	Troy, OH.
Brownsville Bank	Brownsville, TN.
The First State Bank of Brownsville	Brownsville, TN.
First Federal Savings Bank	Clarksville, TN.
Cordova Bank and Trust Company	Cordova, TN.
Union Savings Bank	Covington, TN.
Security Bank	Dyersburg, TN.
Bank of Friendship	Friendship, TN.
Greeneville Federal Bank, FSB	Greeneville, TN.
Republic Federal Savings & Loan Association	Loudon, TN.
City Bank & Trust Company	McMinnville, TN.
Security Federal Savings & Loan Association	McMinnville, TN.
Munford Union Bank	Munford, TN.
Oakland Deposit Bank	Oakland, TN.
Bank of Commerce	Trenton, TN

Federal Home Loan Bank of Indianapolis—District 6
P.O. Box 60, Indianapolis, IN 46205–0060

Star Financial Bank, Indianapolis	Anderson, IN.
First Community Bank and Trust	Bargersville, IN.
Hendricks County Bank & Trust Company	Brownsburg, IN.
Old National Bank of Evansville	Evansville, IN.
Permanent Federal Savings Bank	Evansville, IN.
The Garrett State Bank	Garrett, IN.
First National Bank of Kokomo	Kokomo, IN.
La Porte Bank & Trust Company	La Porte, IN.
Lafayette Bank & Trust Company	Lafayette, IN.
The Farmers & Merchants State Bank	Logansport, IN.
Star Financial Bank	Marion, IN.
North Salem State Bank	North Salem, IN.
Ripley County Bank	Osgood, IN.
State Bank of Oxford	Oxford, IN.
First Federal Savings Bank	Rochester, IN.
Central National Bank of Howard County	Russiaville, IN.
First Source Bank	South Bend, IN.
Valley American Bank and Trust Company	South Bend, IN.
Sullivan-Peoples State Bank	Sullivan, IN.
Citizens National Bank of Tell City	Tell City, IN.
The American National Bank of Vincennes	Vincennes, IN.
Center Bank	Whiting, IN.
Bank of Lenawee	Adrian, IN.
Inter-City Bank	Benton Harbor, MI.
Blissfield State Bank	Blissfield, MI.
First Community Bank	Harbor Springs, MI.
Independent Bank	Ionia, MI.
G. W. Jones Exchange Bank	Marcellus, MI.
Independent Bank-West Michigan	Rockford, MI.
Citizens Trust & Savings Bank	South Haven, MI.
Sparta State Bank	Sparta, MI.
United Bank and Trust	Tecumseh, MI.

Federal Home Loan Bank of Chicago—District 7
111 East Wacker Drive, Suite 800, Chicago, Illinois 60601

Wedge Bank	Alton, IL.
First FS&LA of Bloomington	Bloomington, IL.
Farmers State Bank of Buffalo	Buffalo, IL.
Chester Savings Bank, FSB	Chester, IL.
Chicago Building Loan and Homestead Association	Chicago, IL.
LaSalle Talman Bank, F.S.B	Chicago, IL.
Sterling Savings Bank	Chicago, IL.
TCF Bank of Illinois	Chicago, IL.

Member	City and state
Flora Savings Bank	Flora, IL.
Advance Savings Bank	Lansing, IL.
Litchfield Community Savings & Loan Association	Litchfield, IL.
First FS&LA of Mattoon	Mattoon, IL.
Morris Federal Savings & Loan Association	Morris, IL.
Hemlock Federal Bank for Savings	Oak Forest, IL.
Community Bank & Trust, S.B	Olney, IL.
Corn Belt Bank and Trust Company	Pittsfield, IL.
Iroquois Federal Savings and Loan Association	Watseka, IL.
Rock Savings Bank, SA	Beloit, WI.
Prime Federal Bank, FSB	De Pere, WI.
Mitchell Savings Bank, SA	Greenfield, WI.
McFarland State Bank	McFarland, WI.
TCF Bank of Wisconsin	Milwaukee, WI.

Federal Home Loan Bank of Des Moines—District 8
907 Walnut Street, Des Moines, Iowa 50309

Exchange State Bank	Collins, IA.
Hawkeye Bank of Humboldt County	Humboldt, IA.
Luana Savings Bank	Luana, IA.
First Federal Banking and Savings, FA	Bemidji, MN.
Inter Savings Bank, FSB	Minneapolis, MN.
Redwood Falls FS&LA	Redwood Falls, MN.
Mid-Central Federal Savings Bank	Wadena, MN.
Community First National Bank of Windom	Windom, MN.
The Cameron Savings and Loan Association	Cameron, MO.
Bank of Chesterfield	Chesterfield, MO.
Community Bank of Excelsior Springs, a SB	Excelsior Springs, MO.
Capital Savings and Loan Association	Jefferson City, MO.
City National Savings and Loan Association	Jefferson City, MO.
Home Savings and Loan Association of the City of Jefferson	Jefferson City, MO.
Bank of Lee's Summit	Lee's Summit, MO.
The Lexington Building and Loan Association	Lexington, MO.
St. Clair County State Bank	Osceola, MO.
Great Southern Savings Bank	Springfield, MO.
Systematic Savings and Loan Association	Springfield, MO.
St. Charles Federal Savings & Loan Association	St. Charles, MO.
Equality Savings and Loan Association	St. Louis, MO.
Heartland Savings Bank, FSB	St. Louis, MO.
Home Federal Savings Bank of Missouri	St. Louis, MO.
United Postal Savings Association	St. Louis, MO.
Heritage Federal Savings Bank	Cando, ND.
Gate City Federal Savings Bank	Fargo, ND.
Northwestern Savings Bank, FSB	Fargo, ND.

Federal Home Loan Bank of Dallas—District 9
5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038

Security Savings Bank, FSB	Conway, AR.
Bank of Elkins	Elkins, AR.
First Federal Savings & Loan Association	Harrison, AR.
Bank of Hot Springs	Hot Springs, AR.
First Bank of Arkansas	Russellville, AR.
Caldwell Bank and Trust Company	Columbia, LA.
Tri-Parish Bank	Eunice, LA.
United Bank and Trust Company	New Orleans, LA.
First Federal Savings and Loan Association	Opelousas, LA.
Springhill Bank & Trust Company	Springhill, LA.
The Federal Savings Bank of Evangeline Parish	Ville Platte, LA.
Citizens Bank & Trust Company	Belzoni, MS.
Merchants and Farmers Bank	Kosciusko, MS.
Laurel Federal Savings and Loan Association	Laurel, MS.
Western Commerce Bank	Carlsbad, NM
First Savings Bank, FSB	Clovis, NM
Citizens Bank	Farmington, NM
First Federal Savings & Loan Association	Bryan, TX.
First National Bank in Canyon	Canyon, TX.
Shelby-Panola Savings Association	Carthage, TX.
First National Bank	Dalhart, TX.
Graham Savings and Loan Association, FA	Graham, TX.
Bank United of Texas, FSB	Houston, TX.
Jacksonville Savings & Loan Association	Jacksonville, TX.
Keller State Bank	Keller, TX.

Member	City and state
First National Bank of Plainview	Plainview, TX.
USAA Federal Savings Bank	San Antonio, TX.
Snyder Savings and Loan Association	Snyder, TX.
The FNB of Central Texas	Waco, TX.
Federal Home Loan Bank of Topeka—District 10 Post Office Box 176, Topeka, Kansas 66601	
Colorado Springs Savings & Loan Association	Colorado Springs CO
Mancos Valley Bank	Mancos, CO.
Equitable Savings and Loan Association	Sterling, CO.
Community First National Bank	Thornton, CO.
The State Bank of Wiley	Wiley, CO.
American Bank of Baxter Springs	Baxter Springs, KS.
Investors Federal Savings	Kinsley, KS.
Lyons Federal Savings Association	Lyons, KS.
Stromsburg Bank	Stromsburg, NE.
First Federal Savings Bank of Oklahoma	Claremore, OK.
Charter National Bank	Oklahoma City, OK.
Home Federal Savings and Loan Association	Oklahoma City, OK.
Federal Home Loan Bank of San Francisco—District 11 307 East Chapman Avenue, Orange, California 92666	
State Savings Bank, FSB	Tucson, AZ.
Humboldt Bank	Eureka, CA.
High Desert National Bank	Hesperia, CA.
Golden State Bank, FSB	Irvine, CA.
Cathay Bank	Los Angeles, CA.
Topa Savings Bank, FSB	Los Angeles, CA.
First Federal Savings and Loan Association	San Bernardino, CA.
Federal Home Loan Bank of Seattle—District 12 1501 4th Avenue, Seattle, Washington, 98101–1693	
Bank of America, FSB	Honolulu, HI.
City Bank	Honolulu, HI.
First Hawaiian Creditcorp, Inc.	Honolulu, HI.
BankWest, N.A.	Kalispell, MT
Clackamas County Bank	Sandy, OR.
Liberty Financial Corporation	Salt Lake City, UT
State Bank of Concrete	Concrete, WA
Whatcom State Bank	Ferndale, WA.

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than September 30, 1993.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than September 30, 1993.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FLHBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: August 10, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–19556 Filed 8–13–93, 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this

notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010746–007.

Title: Columbus/Blue Star (North America) Space Charter & Sailing Agreement.

Parties: Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck, Blue Star (North America) Limited.

Synopsis: The proposed amendment extends the Agreement through March 1, 1996, increases the notice of withdrawal period from 90 to 180 days, and limits the period in which a party may withdraw from the Agreement.

By Order of the Federal Maritime Commission.

Dated: August 11, 1993.

Joseph C. Polking,

Secretary

[FR Doc. 93–19648 Filed 8–13–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Suntrans International, Inc., 1120 Tower Lane, Bensenville, IL 60106. Officers: Heang J. Ahn, President/Director/Stockholder; Young M. Hong, Secretary/Director/Stockholder

Isaca Cargo International, Inc., 3250 NW. 77 Ct., S–200–A, Miami, FL 33122. Officers: Andres Gonzalez S., President/Director; Bernardo Diaz, Secretary/Treasurer

Rush Cargo Service, Inc., 9220 Fountainblue Blvd., #210, Miami, FL 33172. Officers: William R. Tobon, President/Director/Stockholder; Luis E. Cristancho, Director/Stockholder; Juan Antonio Trevino, Stockholder

Bringer Corporation, 3351 NW. 21st Street, Miami, FL 33122. Officers: Eduardo De Castro Filho, President; Zuny Tarrio, Vice President

"J.I.F." Jet International Forwarding, Inc., 4420 NW. 74th Avenue, Miami, FL 33166. Officers: Fancisco D. Ferrey, Chairman; Christina Santana, Vice President; Jose Santana, President

Global Maritime, Inc., 421 S. 9th Street, Ste. 117, Lincoln, NE 68508. Officer: Wahib Wahba, President

Dated: August 10, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary

[FR Doc. 93–19568 Filed 8–13–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC 339]

National Institute for Occupational Safety and Health; Announcement of Cooperative Agreement to the Colorado Department of Health

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement with the Colorado Department of Health (CDH) to conduct an epidemiologic evaluation of cancer and occupational exposure to ionizing radiation and other toxic agents at the Rocky Flats nuclear weapons plant. Approximately $500,000 will be available in FY 1993 to support this project. It is expected that the award will begin on or about September 1, 1993, and will be awarded for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement is to support an epidemiologic study to be conducted in cooperation with investigators at the National Institute for Occupational Safety and Health (NIOSH). This study will be designed to investigate the possible relationships involving all cancers and individual cancer types versus occupational exposure to both internal and external ionizing radiation as well as exposure to other toxic agents found at the plant. Because of the existence of a cancer registry in Colorado, an incidence study addressing these issues is desired by NIOSH if such a study is feasible. However, if an incidence study is only capable of addressing a subcohort of the total cohort employed at Rocky Flats, a mortality study will be conducted either in addition to or in place of the incidence study. The decision to do both an incidence and a mortality study will depend upon the extent of coverage of the workforce by the incidence study.

The CDC will assist in developing the study protocol and assessing the information on morbidity rates for the study area, provide epidemiologic and other technical assistance in both planning and implementation phases, and provide consultation and assistance in monitoring the collection and handling of information and the sampling and testing activities. CDC will also participate in the statistical and epidemiologic analysis, assist in interpreting the study findings, and assemble the peer review committee to review project protocol.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of occupational safety and health. (For ordering a copy of Healthy People 2000, see the Section **Where To Obtain Additional Information.**)

Authority

This program is authorized under Section 20(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)] and the Public Health Service Act, Section 301(a) [42 U.S.C. 241(a)], as amended.

Eligible Applicants

Assistance will be provided only to the CDH for conducting this study. No other applications are solicited. The Program Announcement and application kit have been sent to the CDH.

The CDH is the most appropriate organization to conduct the work under this cooperative agreement because:

1. CDH has already begun to collect, verify and edit dosimetry data necessary for the conduct of this study under previous funding from the Department of Energy.

2. CDH has already assembled a consortium of the best qualified epidemiologists, health physicists and administrators from various institutions to conduct this study. These experts not only represent a high degree of experience in epidemiology and health physics, but they represent the principal participants in past research of the Rocky Flats work force.

3. The close proximity of the CDH to the Rocky Flats plant will allow the CDH to make efficient use of Government funds. Travel costs and office space needed to accomplish the daily tasks associated with the study will be provided at little or no additional cost to the government.

4. The Colorado Cancer Registry is operated out of the CDH which will facilitate the conduct of a cancer incidence study at Rocky Flats.

5. The CDH has a long history of assistance in epidemiologic research from the Health Sciences Center at the University of Colorado. Researchers at the University are already involved in collaboration with CDH on many of the Rocky Flats dosimetry issues.

6. The CDH has the legal responsibility for disease control under the laws of the state.

Executive Order 12372 Review

The application is not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

This project involves research on human subjects; therefore, applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided that demonstrates the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this program please refer to Announcement Number 339 and contact Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6630.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 9, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC)

[FR Doc. 93–19614 Filed 8–13–93; 8:45 am]

BILLING CODE 4160–19–P

[Program Announcement Number 349]

National Institute for Occupational Safety and Health; Cooperative Agreement Program for Demonstration Cancer Control Project for Farm Populations

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements to conduct demonstration projects on effective cancer control for farm populations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of **Healthy People 2000**, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of **Healthy People 2000** see the section **Where to Obtain Additional Information.)**

Authority

This program is authorized under Section 20(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)] and Section 301(a), [42 U.S.C. 241(a)], as amended.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

Availability of Funds

Approximately $900,000 is available in FY 1993 to fund two to three awards. It is expected that the average award will be approximately $300,000, ranging from $200,000 to $450,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to demonstrate the effectiveness of a strategy to reduce cancer morbidity and mortality among farm populations. Epidemiologic data have suggested that some groups of farmers may have increased risk of certain cancers such as lymphoma, leukemia, lymphatic, hematopoietic, skin, lip, brain, prostate, and stomach. The demonstration projects funded will provide a strategy for aspects of prevention, screening and early detection, and timely treatment and followup for cancer patients. The primary focus should be on primary prevention efforts, such as disseminating cancer risk information to farm populations, providing information on reducing or eliminating cancer risks and on the need to know and act on early signs and symptoms of cancer, etc. However, development and implementation of secondary interventions such as cancer screening, with proven effectiveness for early detection, and, therefore, treatment are encouraged.

The rationale for these demonstration projects is the belief that morbidity and mortality from cancer can be reduced by making more effective use of cancer-related information on prevention, detection, and treatment (especially by groups at high risk of either developing cancer or not surviving it). This broad view of cancer control is the thrust of the effort developed over the last 11 years by the National Cancer Institute (NCI).

To ensure optimal reductions in cancer morbidity and mortality among farm populations, it is necessary to evaluate the unique barriers to cancer control encountered by farmers. The cancer control programs conducted within the demonstrations projects should address these barriers.

The proposed demonstration projects *do not* need to focus on *all* of the goals of cancer control; however, innovative cancer control activities should in general, promote cancer control among farm populations and, more specifically:

1. Amplify preventive behaviors and avoidance of risk factors;
2. Increase awareness about cancer control measures such as knowledge of signs and symptoms pertaining to cancer;
3. Promote adherence by asymptomatic individuals to cancer prevention and early detection programs; and
4. Promote cancer control awareness among rural health care practitioners.

Farming is both an occupation and a lifestyle; therefore, the scope of the proposed demonstration projects *need not* be limited to those cancers that are considered to have occupational etiologies *(hereafter referred to as occupational cancers)*.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under *A.*, below and CDC/NIOSH shall be responsible for conducting activities under *B.*, below:

A. Recipient Activities

The recipient will be expected to design and to implement a demonstration project with the following components:

1. Develop an innovative cancer prevention and control program which consists of a coordinated set of activities designed to reduce or overcome barriers which farmers face in obtaining the full range of cancer control services. The program should be designed to ultimately lead to reducing cancer morbidity/mortality in a farm population. The cancer prevention and control activities should pertain to at least one occupational and one non-occupational cancer which are amenable to intervention, including primary prevention. Ideas for activities may include, but are not limited to, the following (please use these ideas as a guide only):

a. Disseminating cancer risk information to farmers, farm wives and family, migrant farm workers, and other hired farm hands;

b. Providing information on reducing or eliminating hazardous exposures;

c. Implementing educational and behavioral programs about the need to know and act on early signs and symptoms of cancer;

d. Promoting the appropriate use of cancer screening for early detection;

e. Ensuring comprehensive and effective treatment and rehabilitation.

2. Developing a cancer prevention and control program which includes migrant farm workers as a targeted farm population is encouraged, but not required. Demonstration projects which address efforts to increase migrant farmers' practice of preventive behaviors, access to risk information, access and utilization of cancer screening and early detection, and effective follow-up, should consider involving hospital and clinic services and other community health resources at both ends of the migrant stream; and

3. Develop a cancer prevention and control program which innovatively utilizes effective health communication strategies, including mass media, to emphasize primary cancer intervention strategies (i.e., dissemination of risk information and encouraging maintenance of preventive behaviors) is encouraged. Such a program should target involvement of community-wide resources and should develop materials which reflect ways to communicate cancer-related information to culturally diverse farm populations, as needed.

B. CDC/NIOSH Activities

1. Provide technical information and support concerning occupational cancers and their risk factors;
2. Provide industrial hygiene guidance in the assessment of farm environments;
3. Provide assistance in the development of epidemiologic studies;
4. Provide consultation on any aspects of biological monitoring including selection of endpoints and methods of assay of carcinogens and premalignant changes;
5. Assist in the analysis, interpretation and dissemination of the study data;
6. Serve as a liaison with other NIOSH-funded cancer control projects. (Since NIOSH is funding a number of different cancer control projects, there will be additional benefit to all recipients if there is an interchange of information gained from investigation of barriers and from different approaches used in the demonstration projects.); and
7. The NCI will provide technical support concerning occupational cancers and their risk factors. NCI will also provide consultation in the areas mentioned in items 3 through 6 of this section.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Extent to which the proposed demonstration project will meet the goal of developing, implementing, and evaluating the effectiveness of interventions designed to reduce cancer morbidity/mortality among farm populations. (20%)
2. Scientific merit of the approach, design, and methodology which will be utilized to conduct the cancer control interventions, and the public health significance of the project. (15%)
3. Extent to which the applicant understands the objectives of the project, the steps to be taken in planning and implementing this project, and the responsibilities of the applicant for carrying out those steps. (10%)
4. Applicant's ability to provide the staff, knowledge, financial and other resources required to perform the responsibilities in this project, and to describe the approach to be used in carrying out those responsibilities. (10%)
5. Feasibility of obtaining participation of subjects and of obtaining existing appropriate data. (10%)
6. Extent to which the proposed schedule clearly defines the timeframe and the feasibility for accomplishing each of the activities to be carried out in the project, and the extent to which a clearly defined method for evaluating the process, content, impact, and effectiveness of the project is proposed. (10%)
7. Qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allocated for them to accomplish program activities; the support staff available for the performance of this project; the facilities, space and equipment available for performance of this project; and the capability of the applicant's administrative structure to foster the development of the project. (15%)
8. Proposed plan for administering this project and the name, qualifications, and time allocations of the project director who will be responsible for its administration. (10%)
9. Estimated cost of the project to the Government as reasonable, clearly justified, and consistent with the intended use of funds; the budget should indicate (a) anticipated costs for personnel, travel, communications and

postage, equipment contracts, and miscellaneous supplies for the budget period, and (b) the applicant's and other sources of funds that will be contributed to meet those needs. (Not Scored)

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 93.956.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 13, 1993.

1. *Deadline:*

Applications shall be considered as meeting the deadline if they are:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

2. *Late applications:*

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 349. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Ms. Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, or by calling (404) 842–6546. Programmatic technical assistance may be obtained from Paul A. Schulte, Ph.D., Chief, Screening and Notification Section, NIOSH, Robert A. Taft Laboratory, 4676 Columbia Parkway, Mailstop R–42, Cincinnati, Ohio 45226–1998, or by calling (513) 841–4475. Additional technical assistance may be obtained from Ms. L. Barbara Connally, Project Administrator, Screening and Notification Section, NIOSH, Robert A. Taft Laboratory, 4676 Columbia Parkway, Mailstop R–42, Cincinnati, Ohio 45226–1998, or by calling (513) 841–4475.

Please refer to Announcement Number 349 when requesting information and submitting an application.

Potential applicants may obtain a copy of **Healthy People 2000** (Full Report, Stock No. 017–001–00474–0) or **Healthy People 2000** (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone: (202) 783–3238.

Dated: August 9, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19619 Filed 8–13–93; 8:45 am]

BILLING CODE 4160–19–P

National Institutes of Health

Meeting of the Fogarty International Center Advisory Board

John E. Fogarty International Center for Advanced Study in the Health Sciences

Pursuant to Public Law 92–463, notice is hereby given of the twenty-fifth meeting of the Fogarty International Center (FIC) Advisory Board, October 5, 1993, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 12:15 p.m. The agenda will include a report by the Director, FIC; a report on the development of FIC's Long-Range Plan, discussions of NIH research in alternative medicine and collaborations with FIC's biodiversity initiative; and a report on health issues from the Afro-American summit in Gabon.

In accordance with the provisions of secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 1:15 p.m. to adjournment for the review of applications to the International Research Fellowship and Senior International Fellowship, and Fogarty International Research Collaboration Awards programs.

Myra Halem, Committee Management Assistant, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), building 31, room B2C08, telephone 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Halem at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program, and 93.934, Fogarty International Research Collaboration Award)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19686 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 14–15, 1993. The meeting will be held in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 14 and from 9 a.m. to adjournment on October 15 for discussion and review of the Division budget and review of

concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately noon on October 14 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. David McB. Howell, (301) 496–6927, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19683 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 27–28, 1993. The meeting will be held in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on September 27 in Building 31, room 2A03.

The Council meeting will be open to the public on September 27 from 10 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, Annual Review of the Intramural Research Program, and a report by the National Center for Medical Rehabilitation Research, NICHD. The meeting will be open on September 28 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 27 from 8 a.m. to 9:45 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on September 28 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19682 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 27–28, 1993, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on September 27 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on September 28 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, room 2039, Bethesda, Maryland 20892, (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: August 10, 1993

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 93–19687 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control (DCPC), National Cancer Institute, and its Subcommittees on October 21–22, 1993. The full Board will meet in Conference Room 6, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will be held at the

Executive Plaza Complex at the times and places listed below. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meetings and rosters of committee members, upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 318, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–8526), upon request.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Dates of Meeting: October 21–22, 1993.

Place of Meeting: Building 31, Conference Room 6.

Open: October 21—12:30 p.m. to 5 p.m.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Open: October 22—8:30 a.m. to 3 p.m.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Name of Committee: Surveillance Subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding.

Name of Committee: Early Detection and Community Oncology Subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza South, Conference Room T–41, 6120 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Early Detection and Community Oncology Subcommittee and review of concepts being considered for funding.

Name of Committee: Cancer Control Science subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza North, Conference room G, 6130 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding.

Name of Committee: Cancer Prevention Research Subcommittee.

Executive Secretary: Linda M. Bremerman, EP N, room 318, Bethesda, MD 20892; (301) 496–8526.

Date of Meeting: October 21, 1993.

Place of Meeting: Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, MD 20892.

Open: 8:30 a.m. to 11 a.m.

Agenda: Discuss current and future programs of Cancer Prevention Research Subcommittee and review of concepts being considered for funding.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda M. Bremerman, (301) 496–8526 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: August 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19626 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Balance and Balance Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Balance and Balance Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on September 21, 1993. The meeting will take place from 8:30 a.m. to 12 noon in room 3C05, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which is open to the public, will discuss changes in the scientific field of balance and balance disorders since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the balance and balance disorders section of the Research Plan. Attendance by the public will be limited to the space available.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica M. Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: August 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19627 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Herman Teitlebaum (301) 594–7245
Date of Meeting: September 9, 1993
Place of Meeting: Westwood Bldg., Rm 321, NIH, Bethesda, MD. (Telephone Conference)
Time of Meeting: 3 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19684 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for September through November 1993, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the scientific review administrator at least two weeks in advance of the meeting.

Study section	September-November 1993 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Tel. 301–594–7234.	Oct. 18–20	8:30	Holiday Inn, Chevy Chase, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Tel. 301–594–7228.	Oct. 27–29	8:30	Residence Inn Marriott, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Tel. 301–594–7297.	Oct. 6–8	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral Medicine, Ms. Carol Campbell, Tel. 301–594–7165 .	Oct. 6–8	8:30	Omni Shoreham Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Michael Knecht, Tel. 301–594–7247.	Oct. 6–8	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Biochemistry, Dr. Adolphus P. Toliver, Tel. 301–594–7263	Oct. 26–28	8:00	The Georgetown Inn, Washington, DC.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Tel. 301–594–7212.	Oct. 21–23	9:00	Holiday Inn, Bethesda, MD.
Biophysical Chemistry, Dr. John Beisler, Tel. 301–594–7149	Oct. 14–16	8:30	Ramada Hotel, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Tel. 301–594–7145	Sept. 29–Oct. 1	9:00	Holiday Inn, Chevy Chase, MD.
Cardiovascular, Dr. Gordon L. Johnson, Tel. 301–594–7216	Oct. 25–27	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Tel. 301–594–7338.	Nov. 11–13	8:30	Holiday Inn, Chevy Chase, MD.
Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, Tel. 301–594–7385.	Sept. 29–Oct. 1	8:00	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Tel. 301–594–7387.	Oct. 13–15	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Tel. 301–594–7154.	Oct. 21–23	8:00	Residence Inn Marriott, Bethesda, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Tel. 301–594–7295.	Oct. 18–20	8:30	Hotel Washington, Washington, DC.
Endocrinology, Dr. Syed Amir, Tel. 301–594–7229	Oct. 6–8	8:00	Holiday Inn, Georgetown, DC.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Tel. 301–594–7060.	Oct. 13–15	8:30	Holiday Inn, Georgetown, DC.
Epidemology & Disease Control-2, Dr. H. M. Stiles, Tel. 301–594–7194.	Oct. 13–15	8:30	Embassy Suites Hotel, Alexandria, VA.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Tel. 301–594–7344.	Oct. 13–15	8:00	The Georgetown Inn, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Tel. 301–594–7190.	Oct. 6–8	8:30	The Latham Hotel, Georgetown, DC.
Experimental Therapeutics-1, Dr. Philip Perkins, Tel. 301–594–7324.	Oct. 20–22	8:30	The Latham Hotel, Georgetown, DC.
Experimental Therapeutics-2, Dr. Marica Litwack, Tel. 301–594–7366.	Oct. 27–29	8:30	Holiday Inn, Chevy Chase, MD.

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Study section	September-November 1993 meetings	Time	Location
Experimental Virology, Dr. Garrett V. Keefer, Tel. 301-594-7099.	Oct. 18-20	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Tel. 301-594-7313.	Oct. 25-27	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Mushtaq Khan, Tel. 301-594-7168	Oct. 4-6	8:30	One Washington Circle Hotel, Washington, DC.
General Medicine B, Dr. Daniel McDonald, Tel. 301-594-7301	Oct. 20-22	8:00	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Tel. 301-594-7202	Oct. 14-16	9:00	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Tel. 301-594-7336	Oct. 20-22	9:00	Holiday Inn, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Tel. 301-594-7257	Oct. 11-13	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Hematology-1, Dr. Clark Lum, Tel. 301-594-7260	Oct. 21-23	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Tel. 301-594-7261	Oct. 6-8	8:30	The Latham Hotel, Georgetown, DC.
Human Development & Aging-1, Dr. Teresa Levitin, Tel. 301-594-7141.	Oct. 20-22	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Peggy McCardle, Tel. 301-594-7293.	Oct. 4-6	8:30	Holiday Inn, Chevy Chase, MD.
Human Development & Aging-3, Dr. Anita Scatek, Tel. 301-594-7358.	Oct. 20-22	9:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Embryology & Development-1, Dr. Arthur Hoversland, Tel. 301-594-7253.	Oct. 21-22	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Human Embryology & Development-2, Dr. Arthur Hoversland, Tel. 301-594-7253.	Oct. 7-8	8:00	Holiday Inn Crowne Plaza, Rockville, MD.
Immunobiology, Dr. Betty Hayden, Tel. 301-594-7310	Oct. 27-29	8:30	Hoilday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, Tel. 301-594-7175.	Oct. 20-22	8:30	Holiday Inn, Chevy Chase, MD.
Lung Biology and Pathology, Dr. Anne Clark, Tel. 301-594-7115.	Oct. 13-15	8:00	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Tel. 301-594-7051	Oct. 20-22	9:00	Embassy Suites, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, Tel. 301-594-7264.	Oct. 14-16	8:30	Holiday Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, Tel. 301-594-7163 ...	Oct. 13-15	8:30	Holiday Inn, Georgetown, DC.
Metabolic Pathology, Dr. Marcelina Powers, Tel. 301-594-7120.	Oct. 27-29	8:00	Ramada Hotel, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, Tel. 301-594-7156	Oct. 27-29	8:00	Holiday Inn, Georgetown, DC.
Metallobiochemistry, Dr. Edward Zapolski, Tel. 301-594-7302 .	Oct. 28-30	8:30	Holiday Inn, Georgetown, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Tel. 301-594-7176.	Oct. 27-29	8:30	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Tel. 301-594-7167.	Oct. 13-15	8:30	Hyatt Regency, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Tel. 301-594-7147.	Oct. 21-23	8:30	Holiday Inn, Chevy Chase, MD.
Molecular Biology, Dr. Robert Su, Tel. 301-594-7320	Oct. 14-16	8:30	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, Tel. 301-594-7169	Oct. 7-8	8:00	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Tel. 301-594-7206.	Oct. 13-15	8:00	Holiday Inn, Governor's House, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Tel. 301-594-7356.	Oct. 12-14	8:00	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, Tel. 301-594-7158	Nov. 4-6	8:00	Washington Marriott, Washington, DC.
Neurology B-1, Dr. Lillian Pubols, Tel. 301-594-7325	Oct. 5-7	8:30	Holiday Inn, Governor's House, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Tel. 301-594-7245	Oct. 13-15	8:30	Holiday Inn, Bethesda, MD.
Neurology C, Dr. Kenneth Newrock, Tel. 301-594-7123	Oct. 6-8	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Tel. 301-594-7090.	Oct. 5-7	8:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Sooja Kim, Tel. 301-594-7174	Oct. 6-8	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Tel. 301-594-7315.	Oct. 13-15	8:30	One Washington Circle Hotel, Washington, DC.
Oral Biology & Medicine-2, Dr. Priscilla Chen, Tel. 301-594-7315.	Oct. 18-20	8:30	Embassy Suites Hotel, Alexandria, VA.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Tel. 301-594-7282.	Oct. 13-15	8:30	Holiday Inn, Chevy Chase, MD.
Pathobiochemistry, Dr. Zakir Bengali, Tel. 301-594-7317	Oct. 13-15	8:30	The Savoy Suites Hotel, Washington, DC.
Pathology A, Dr. Bruce Maurer, Tel. 301-594-7236	Oct. 5-8	7:00 p.m	Holiday Inn, Bethesda, MD.
Pathology B, Dr. Martin Padarathsingh, Tel. 301-594-7192	Oct. 12-15	7:00 p.m	The Savoy Suites Hotel, Washington, DC.
Pharmacology, Dr. Joseph Kaiser, Tel. 301-594-7241	Oct. 13-15	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Tel. 301-594-7166	Oct. 19-21	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Tel. 301-594-7322	Oct. 28-30	8:30	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Michael A. Lang, Tel. 301-594-7332	Oct. 13-15	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.

Study section	September-November 1993 meetings	Time	Location
Radiation, Dr. Paul Strudler, Tel. 301–594–7152	Oct. 18–20	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Reproductive Biology, Dr. Dennis Leszczynski, Tel. 301–594–7218.	Oct. 4–6	8:30	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Tel. 301–594–7368.	Oct. 4–6	8:00	The River Inn, Washington, DC.
Respiratory & Applied Physiology Dr. Everett Sinnett, Tel. 301–594–7220.	Oct. 25–27	8:30	Holiday Inn, Chevy Chase, MD.
Safety & Occupational Health, Dr. Gopal Sharma, Tel. 301–594–7130.	Oct. 5–6	8:00	Embassy Suites, Chevy Chase Pavilion, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, Tel. 301–594–7269.	Oct. 6–8	8:30	Holiday Inn, Capitol Hill, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, Tel. 301–594–7340.	Oct. 14–16	8:00	Embassy Suites Hotel, Crystal City, VA.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Tel. 301–594–7258.	Oct. 18–19	8:00	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Tel. 301–594–7308.	Oct. 20–22	2:00 p.m	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Marozzi, Tel. 301–594–7278	Oct. 27–29	8:00	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, Tel. 301–594–7278	Oct. 20–22	8:00	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Tel. 301–594–7078.	Oct. 6–8	8:00	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, Tel. 301–594–7108	Oct. 13–15	8:30	Holiday Inn, Bethesda, MD.
Visual Sciences A, Dr. Anita Suran, Tel. 301–594–7132	Oct. 20–22	8:00	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubczak, Tel. 301–594–7189..	Oct. 6–8	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsema, Tel. 301–594–7311.	Oct. 13–15	8:30	Holiday Inn, Chevy Chase, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19683 Filed 8–13–93; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

[Social Security Acquiescence Ruling 93-6(8)]

Brewster on Behalf of Keller v. Sullivan; Interpretation of the Secretary's Regulation Regarding Presumption of Death

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 93-6(8).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-4237.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after August 16, 1993. If we made a determination or decision on your application for benefits between August 12, 1992, the date of the Court of Appeals' decision, and August 16, 1993, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security - Disability Insurance; 93.803 Social Security - Retirement Insurance; 93.805 Social Security - Survivors Insurance; 93.807 - Supplemental Security Income.)

Louis D. Enoff

Principal Deputy Commissioner of Social Security

Acquiescence Ruling 93-6(8)

Brewster on Behalf of Keller v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act

Issue: Whether a presumption of death which must be rebutted by the Social Security Administration (SSA) arises under 20 CFR 404.721(b) once a claimant shows that an individual has been absent from his or her residence and has not been heard from for seven

years or whether the presumption only arises if the claimant also proves there is no apparent reason for the absence.

Statute/Regulation/Ruling Citation: Sections 205(a) and 205(g) of the Social Security Act, (42 U.S.C. 405(a) and 405(g)); 20 CFR 404.721(b).

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

Brewster on Behalf of Keller v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992).

Applicability of Ruling: This ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council review).

Description of Case: Plaintiff Sherry Brewster's husband, Joseph Keller, was a pilot and airplane mechanic employed by Air Cortez, located in Ontario, California. Keller has been missing since May 1980.

In 1981 and 1984, plaintiff filed applications for survivors' benefits on behalf of the couple's two minor children. The evidence developed in processing the claims showed that, in April 1980, Keller supposedly piloted a company DC-3 airplane from Ontario, California to San Antonio, Texas for modifications. Keller later telephoned the company president to inform him that he had arrived in San Antonio and that he would return to Ontario on May 9 or 10 after the modifications were completed. When Keller failed to arrive, the company president called the San Antonio airport and learned that Keller had never appeared, and further discovered that a company credit card was missing. A police report was subsequently filed.

The Ontario police contacted the San Antonio police and learned that Keller had been under investigation for drug smuggling. According to the police report, the airplane had not landed at the San Antonio airport as Keller had reported; rather, the plane had landed at an airport in Waco, Texas, where Keller and a man named John Flowers had been from April 27 until May 9, 1980. On May 9, 1980, the airplane had refueled with 800 gallons of gasoline, which had been charged with the company credit card. Drug agents reported seeing the airplane depart in a southerly direction, and a confidential informant told police that the airplane might be located in Barranquilla, Colombia, South America. The police report further stated that plaintiff and Keller's brother had been informed that Keller had died in an airplane crash in Colombia. The police terminated their investigation and advised Keller's family to contact the United States Consulate in South America.

Keller's family contacted the consulate and was informed that a DC-3 airplane with two bodies had crashed on May 13, 1980, near Barranquilla, but neither the airplane nor the bodies could be positively identified. Keller's family was unable to supply adequate dental records to permit identification. They attempted to secure dental records from the Veterans Administration (VA), but because Keller had not been a claimant, the VA had no records.

During the course of their investigation, officers had searched Keller's locker at Air Cortez, as well as his apartment. In the locker, officers found a grenade and a driver's license and birth certificate in the name of Emery Whitthram. Officers also learned that Keller had stated on several occasions that he wanted "to chuck it all and move to Costa Rica."

The Secretary denied plaintiff's 1981 and 1984 applications on the ground that she had failed to submit direct evidence that her husband was dead. The Secretary further found that, because Keller had not yet been missing for seven years, he could not be presumed dead under the regulations. In May 1987, plaintiff filed a third application, relying on the presumption of death created by 20 CFR 404.721(b). The regulation provides that, if a claimant cannot prove that a person is dead, the Secretary will presume death if the claimant offers "[s]igned statements by those in a position to know and other records which show that the person has been absent from his or her residence for no apparent reason, and has not been heard from, for at least 7 years."

In addition to the information previously submitted, plaintiff provided a statement indicating that neither she nor her children had seen or heard from Keller since May 1980, and that she believed he had died in an airplane crash in Colombia, South America in May 1980. She also provided statements from friends and relatives stating that they had not heard from Keller since May 1980 and knew of no problems that would account for his disappearance. Lastly, plaintiff submitted a statement from John Flowers' father that he had not heard from his son since 1980.

Initially, plaintiff's application was granted, but the case was reopened and, on reconsideration, the decision awarding benefits was reversed. Plaintiff filed a request for a hearing and the Administrative Law Judge (ALJ) upheld the denial, finding that plaintiff had not established that Keller had disappeared for "no apparent reason." The ALJ found that, while it was possible that Keller and Flowers had died in the plane crash, it was also possible that Keller had gone into hiding because he was under investigation for drug smuggling or because he had stolen the airplane and credit card. The ALJ also noted the possibility that Keller had "arranged the crash of the aircraft by use of a grenade modified in a similar way to the one found among Keller's possessions." The Appeals Council upheld the denial of benefits.

The district court for the District of Minnesota found that plaintiff had not proved that Keller had been missing for "no apparent reason," and in the alternative found that the Secretary had rebutted the presumption of death.

Holding: In reversing the district court's holding, the Eighth Circuit Court of Appeals held that under 20 CFR 404.721(b) a presumption of death arises when a claimant proves a wage earner has not been seen or heard from for seven years. The court observed that this rule is consistent with the common-law origin of the presumption of death, noting that "it is unfair to require that the affairs of other persons affected by those of the missing person be held in abeyance indeterminately, especially when there is a good chance the missing person is in fact dead." Also, the court rejected the Secretary's position that the claimant must prove that a wage earner's disappearance was for no apparent reason, stating that such a requirement "virtually creates a presumption of life rather than death."

Additionally, the court rejected the Secretary's alternative argument that the Agency had rebutted the presumption, stating that to rebut the presumption of death "requires more from the Secretary than mere conjecture as to possible explanations for the wage earner['s] disappearance." Rather, the court said, the Secretary must set forth evidence that "rationally explain[s] the anomaly of the disappearance in a manner consistent with continued life." Accordingly, Keller's suspected criminal activity, along with his stated desire to begin a new life in Costa Rica, were insufficient in the court's view to overcome the presumption of death. The court also pointed to other "strong circumstantial evidence that Keller is dead."

Statement As To How Brewster Differs From Social Security Policy

By the terms of 20 CFR 404.721(b), the presumption of death arises only when an individual "has been absent from his or her residence for no apparent reason, and has not been heard from, for at least 7 years." This regulation has been

interpreted by SSA to mean that a claimant bears the burden of proving three elements to raise a presumption of an individual's death:

(1) The individual has disappeared;

(2) The disappearance has lasted for seven years; and

(3) There is no apparent reason for the disappearance.

The decision of the Court of Appeals for the Eighth Circuit in *Brewster* holds that the plaintiff only bears the burden of proving the first two elements in order to raise the presumption, and that SSA bears the burden of rebutting the presumption either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner that is consistent with continued life rather than death.

Explanation of How SSA Will Apply The Decision Within The Circuit

This ruling applies only in cases in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, Administrative Law Judge hearing or Appeals Council review.

In cases which involve the application of 20 CFR 404.721(b), the presumption of death arises if the claimant presents evidence that the individual has been absent from his or her residence and not heard from for seven years. The Agency then must bear the burden of rebutting the presumption, either by presenting evidence that the missing individual is alive or by providing an explanation, other than death, to account for the individual's absence in a manner that is consistent with continued life rather than death.

[FR Doc. 93–19679 Filed 8–13–93; 8:45 am]
BILLING CODE 4160–29–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–03–4410–02]

Proposed Resource Management Plan/ Final Environmental Statement; Diamond Mountain Resource Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1970, section 202 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, the proposed Resource Management Plan (RMP)/final Environmental Impact Statement (EIS) has been prepared for the Diamond Mountain Resource Area, Vernal District, Utah, and is available for public review. The proposed (RMP)/ final EIS describes and analyzes options for managing approximately 709,000 acres of public land and 854,000 acres of Federal mineral estate in Daggett County, Duchesne County, and portions of Uintah County, in northeastern Utah.

FOR FURTHER INFORMATION CONTACT: Ron Trogstad, Project Manager, or Jean Nitschke-Sinclear, Team Leader, Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah 84078, telephone 801–781–4400.

SUPPLEMENTARY INFORMATION: The proposed RMP/final EIS analyzes five alternatives to resolve the following three issues: resource uses affecting vegetation, soils and watershed values; special management emphasis areas; and resource availability and accessibility. Each alternative represents a complete management plan for the area. The alternatives can be summarized as (A) no action or change from current management, (B) ecological systems, (C) forage production, (D) resource development, and (E) the proposed plan, which is an optimal mix of management choices from the other four alternatives.

The proposed plan reflects modifications to the draft RMP/EIS's preferred alternative (Alternative E) as a result of public comment and further agency analysis. The proposed plan involves changes to improve clarity, correct weaknesses, and provide modifications to the preferred alternative and environmental analysis, or it provides a compromise on a preferred alternative decision—either selecting a decision from another alternative or developing a new decision. All modifications are within the range of alternatives discussed and analyzed in the draft RMP/EIS.

Wild and Scenic Rivers

Six eligible river segments were analyzed in the proposed RMP/final EIS regarding their suitability for designation into the National Wild and Scenic River System. The suitability determinations are as follows:

Water segment	Values present	Suitable
Upper Green River	Special-status fish species, scenic values, cultural resources, wildlife values, and riparian system.	Yes for scenic.
Middle Green River	Special-status fish species, riparian systems	No.
Lower Green River	Special-status fish species, recreation values, and riparian systems.	Yes for scenic.
Nine Mile Creek, East	Scenic values, cultural resources, and riparian systems	No.
Nine Mile Creek, West	Scenic values, cultural resources, and riparian systems	No.
Argyle Creek	Scenic values and riparian systems	No.

Areas of Critical Environmental Concern (ACEC) Considered

Seven ACECs were considered for designation. The acreage of these units varies among alternatives and is displayed on the following table:

Area name	Critical concerns	Acreage by alternative				
		Proposed plan	A	B	C	D
Browns Park Complex (includes existing Green River Scenic Corridor ACEC and Crouse Canyon).	Crucial deer winter range, scenic values, unique cultural and historic values, Class I trout fishery, riparian values, special-status plant and animal habitat (bald eagle, peregrine falcon, Colorado cutthroat trout, river otter, and Ute Ladies' Tresses).	55,700	19,400	55,700	19,400	19,400
Lears Canyon	Relict vegetation community	1,400	0	1,400	1,400	0
Middle and Lower Green River.	Special-status animal and plant species habitat (bald eagle, peregrine falcon, whooping crane, western yellow-billed cuckoo, Swainson's hawk, western snowy plover, long-billed curlew, white-faced ibis, spotted bat, river otter, Uinta Basin hookless cactus, Colorado Squawfish, humpback chub, bonytail chub, razorback sucker), scenic values, and natural characteristics.	7,900	0	12,700	0	0
Nine Mile Canyon	Cultural resources (Fremont rockart and occupational sites), special-status plant habitat (Toad-flax cress and Uinta Basin hookless cactus).	50,800	0	50,800	0	0
Pariette Wetlands	Riparian systems, biological diversity associated with wetlands, special-status plant habitat (Uinta Basin hookless cactus).	11,600	0	11,600	0	0
Red Creek	Watershed, riparian potential, fragile soils, Colorado River salinity control.	24,020	24,020	24,020	24,020	0
Red Mountain-Dry Fork Complex.	Cultural and paleontological values, relict vegetation communities (Castle Cove and Red Mountain proper), scenic values, riparian system.	25,800	0	25,800	2,200	0

Management prescriptions for the potential ACECs vary by alternative and are described in the proposed RMP/final EIS.

Public participation has occurred through the RMP/EIS process. A Notice of Intent was filed in the **Federal Register** in January 1989. Since that time, public meetings, workshops, mailings, and briefings have been conducted to solicit comments and ideas. The Draft RMP/EIS was published in January 1992, followed by a 90-day comment period. All comments presented throughout the process have been considered.

Copies of the proposed RMP/final EIS are available from the Vernal District Office, 170 South 500 East, Vernal, Utah 84078, 801–781–4400. Public reading copies will be available for review at the public libraries in Duchesne and Uintah Counties, the Daggett County Office Building, all government-document-depository libraries, and at the following BLM locations: Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240; Office of External Affairs, Utah State Office, PO Box 45155, 324 South State Street, Salt Lake City, Utah 84145–0155; and Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Background information and maps used in developing the proposed RMP/final EIS are available for review at the Vernal District Office.

.Written protests on the proposed RMP/final EIS will be accepted for 30 days following the date the Environmental Protection Agency publishes the Notice of Filing of this document in the **Federal Register**.

Any part of this proposed RMP/final EIS may be protested only by parties who participated in the planning process. Protests must pertain to issues that were identified in the plan or through the public comment process. Protests must be sent to the Director (760), Bureau of Land Management (MS406LS), 1849 C Street, NW., Washington, DC 20240. Protests must minimally contain the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested and a citing of pages, paragraph, maps, etc., of the proposed RMP, where practical.
4. A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
5. A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

At the end of the 30-day protest period, the proposed plan, excluding any portion under protest will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest.

G. William Lamb,

Acting State Director.

[FR Doc. 93–19570 Filed 8–13–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT-942–4212–13; UTU–47295]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 240.00 acres of public land out of Federal ownership. This action will also open 174.00 acres of reconveyed land to appropriation under the public land laws.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4118.

SUPPLEMENTARY INFORMATION: 1. The United States has issued an exchange conveyance document to Harley W. Sanders and Garrell N. Sanders for the surface estate of the following described land pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Salt Lake Meridian

T. 11 N., R. 18 W.,
Sec. 20, NE¼, E½SE¼.
Containing 240.00 acres.

2. In exchange for the lands listed in paragraph 1, the United States received the surface estate of the following described land:

Salt Lake Meridian

T. 11 N., R. 18 W.,
Sec. 7, W½NE¼, NE¼NW¼, NE¼SW¼, north 28 rods of NW¼SE¼.
Containing 174.00 acres.

3. At 7:45 a.m., on September 15, 1993, the lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on September 15, 1993 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The purpose of this exchange was to exchange public lands which were isolated and uneconomical to manage by BLM or any other Federal agency. This exchange created a more logical and efficient land management pattern that will better serve the public interest.

Ted D. Stephenson,
Chief, Branch of Lands and Minerals, Operations.

[FR Doc. 93–19680 Filed 8–13–93; 8:45 am]
BILLING CODE 4310–DQ–M

[UT–020–4210–05; U–70301]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action. Recreation and Public Purposes (R&PP) Act classification in Tooele County, Utah.

SUMMARY: The following public land in Tooele County, Utah has been examined and found suitable for classification for conveyance to the State of Utah under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The State of Utah, Division of Facilities and Management, proposes to use the land for an artistic structure known as the Tree of Utah.

DATES: Comments must be received by October 15, 1993.

ADDRESS: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: LaVerne Steah, BLM Salt Lake District Office, (801) 977–4380.

SUPPLEMENTARY INFORMATION: The following described land has been found suitable for conveyance under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.)

Salt Lake Meridian, Utah

T. 1 S., R. 15 W.
Sec. 21, N½NE¼NE¼NE¼NW¼
Containing approximately 1.25 acres.

The land is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, conditions and reservations:

(1) Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

(2) A right-of-way reservation for ditches and canals constructed by the authority of the United States, Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945 (1970)).

(3) All minerals will be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

(4) A right-of-way, serial number U–0141748, for a Federal aid highway granted under the Act of August 27, 1958 (72 Stat. 885 23 U.S.C. 317).

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregative effect will terminate upon the notice in the **Federal Register** or eighteen months from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification to the District Manager at the address listed above. Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a moment. Comments on the classification are restricted to whether the land is physically suited for a monument, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for a monument.

Deane H. Zeller,
District Manager.

[FR Doc. 93–19681 Filed 8–13–93; 8:45 am]
BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Availability of the Draft Bitterroot Ecosystem Chapter of the Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Bitterroot Ecosystem Chapter (Chapter) of the Recovery Plan for the Grizzly Bear *(Ursus arctos horribilis)*. This Chapter addresses recovery of the grizzly bear population in the Bitterroot Mountains of Idaho and Montana and is intended to be added to the Grizzly Bear Recovery Plan. The Service solicits review and comment from the public on this draft Chapter.

DATES: Comments on the draft Chapter must be received on or before October 20, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Chapter may obtain a copy by contacting the U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. Written comments or materials regarding this Chapter should be sent to the same address. Comments and materials received are available on request for public inspection, by appointment, or during regular business hours at the above address for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service in Missoula, Montana (see **ADDRESSES** above), telephone (406) 329–3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe suggested actions that Federal and State agencies and other involved parties can undertake for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and provide initial estimates of time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975 (40 FR 31734), due to current and potential threats to the species' populations and habitat from human activities. A plan for the recovery of grizzly bears in the 48 conterminous States was recently revised and is being finalized for approval. The proposed Bitterroots Recovery Chapter (Chapter) is intended to be added to that recovery plan. It addresses recovery of grizzly bears in the Bitterroot Mountains of Idaho and Montana. Similar recovery chapters already have been completed for other ecosystems where grizzly bears still exist within the conterminous 48 States. These chapters are included in the Grizzly Bear Recovery Plan.

Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in the Bitterroots, and in each of the ecosystems covered in the Grizzly Bear Recovery Plan, can be delisted independently once recovery criteria stated in the plan are met.

Public Comments Solicited

The Service solicits written comments on the Chapter described. All comments received by the date specified in the DATES section above will be considered prior to approval of the Chapter.

Authority: The authority for this action is section 4(f) of the Endangered Species Act. 16 U.S.C. 1533(f).

Dated: August 9, 1993.

John L. Spinks Jr.,

Deputy Regional Director.

[FR Doc. 93-19620 Filed 8-13-93; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 431 (Sub. No. 2)]

Review of the General Purpose Costing System; Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Notice of methodological change.

SUMMARY: The Railroad Accounting Principles Board (RAPB) recommended that the Commission review, at regular intervals, its general purpose costing system known as the Uniform Railroad Costing System (URCS). As a result of our first review, the Commission is seeking comment on proposed modifications of the statistical procedures that underlie the URCS variability study data base. This decision also proposes revisions for various non-statistical URCS costing issues.

The Commission intends to issue a decision requesting comment on issues concerning the URCS regression methodology and selection of regression equations in the fall of this year. Parties are advised that, in accordance with our decision of April 20, 1993, the decision will not be issued earlier then 60 days after the service date of this decision.

DATES: This decision is effective on August 16, 1993. Comments are due November 15, 1993, and must be served on all parties. Reply comments are due December 14, 1993.

ADDRESSES: An original and 15 copies of all comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmitz, (202) 927-5720; or H. Jeff Warren, (202) 927-6242. [TDD for Hearing impaired: (202) 927-5721]

SUPPLEMENTARY INFORMATION: The RAPB recommended the Commission conduct periodic reviews of URCS. By decision served January 11, 1990 in Ex Parte No. 431 (Sub. No. 2). *Review of the General Purpose Costing System*, the Commission initiated its first review.

This decision addresses proposals concerning the regression data base—specifically: (1) The regression account groups; (2) treatment of merged railroads; (3) inclusion of data for Consolidated Rail Corporation (ConRail); (4) evaluation of outliers; and (5) use of the root mean squared error of forecast. This decision also proposes changes to various non-statistical URCS costing issues. These include: (1) Use of a weighted average default variability factor; (2) discontinuance of plain 40 box car reporting; (3) an unit cost updating procedure; (4) a updated train switching conversion factor; (5) allocation of switching and terminal data to individual carriers; and (6) revisions to URCS Phase III and waybill trailer-on-flat-car and container-on-flat-car (TOFC/COFC) costing procedures.

Many of the issues addressed in this proposal will affect the Cost Recovery Percentage (CRP) computations; therefore, we are serving this decision on parties in Ex Parte No. 399, *Cost Recovery Percentage*.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in the proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of our regulation is to improve URCS, which is used to develop cost for Class I (very large) railroads. No new reporting requirements will be placed on the railroad industry, or on small entities that deal with railroads. The economic impact on small entities, if any, will be to provide them with better estimates of Class I railroad variable costs and is not

likely to be significant within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10705a and 10709.

Decided: July 21, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19652 Filed 8–13–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub. No. 1126X)]

Consolidated Rail Corp.—Abandonment Exemption—In Lawrence County, PA

Consolidated Rail Corporation has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon approximately 4.55 miles of rail line (Castle Industrial Track) in New Castle, Lawrence County, PA. The track in question extends from north of the clearance point for the connecting track to the Three Rivers Railroad (former P&LE) at approximately milepost 46.75± to the end of the line at approximately milepost 51.3±.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1993 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 26, 1993.[3] Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by September 7, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 20, 1993. Interested parties may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19645 Filed 8–13–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking as stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1605–92]

Public Opinion Survey on the Potential Usage of Dedicated Commuter Lanes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs the public that the Immigration and Naturalization Service (the Service) will be conducting a public opinion survey periodically over the next twelve months at land border Ports-of-Entry, to determine whether there will be sufficient potential use by the public to warrant the opening of Dedicated Commuter Lands at selected sites. Dedicated Commuter Lanes will reduce traffic back-ups by speeding the inspection process of vehicular traffic without inhibiting the agency's mandate to prevent the illegal entry of both aliens and controlled substances into the United States.

DATES: The survey will begin August 16, 1993, through August 16, 1994. Responses to the survey are entirely voluntary.

FOR FURTHER INFORMATION CONTACT: Donna Kay Barnes, Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone (202) 514–3275.

SUPPLEMENTARY INFORMATION: The Service is presently expanding its Dedicated Commuter Lane process of land border inspection authorized under section 210 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1991, Public Law 101–515. Dedicated Commuter Lanes are vehicular traffic lanes through which a group of identified low-risk frequent border crossers, who have been prescreened and pre-authorized, transit the border. Individual participation in the Dedicated Commuter Land program by border crossers is voluntary. Individuals whose applications for participation in the program are denied are not precluded from applying for admission to the United States through the regular inspection lanes.

In order to acquire data needed to accurately estimate use levels at proposed expansion sites, or at sites suggested for expansion surveys of potential users of the program are invaluable. The information gathered from these surveys will assist the Service in preparing to implement the

Dedicated Commuter Land program, including providing for adequate staffing, controlling the application process, and assessing the need and public support for the program at locations where it may not be readily apparent.

NOTICE: The United States Immigration and Naturalization Service will be conducting public surveys periodically over the next twelve months to determine public opinion and potential use of Dedicated Commuter Lanes at certain land border Ports-of-Entry in the United States. Members of the public will be asked no more than five questions regarding their own border crossing habits as well as their personal opinions about the program. These questions may be asked as people are crossing the border, or in written form in various publications. Responses to these questions, both oral and written, are voluntary, and any person may choose not to participate in the survey. Questions shall be limited in content and format to the following:

1. How often do you cross the border?
2. Do you most frequently cross the border for: (1) Business, or (2) pleasure (including family visits or shopping)?
3. Would you use a Dedicated Commuter Lane if one were available at your usual border crossing?
4. Would you be willing to pay a fee for the use of this lane?
5. Would the availability of such a lane have an impact on how often you cross the border? If so, in what way?

Dated: August 5, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19704 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, on March 31, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in COS. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: The Foxboro Company, Foxboro, MA; the U.S. General Services Administration, Washington, DC, and Booz-Allen & Hamilton, McLean, VA, became members of COS on January 4, 1993. Computer Sciences Corporation, Network Integration Division, Herndon, VA, became a member of COS oh March 11, 1993. AEG; Amdahl Corporation; Bechtel Power Corporation; The Boeing Company; Central Intelligence Agency; Deere & Company; E.I. du Pont de Nemours & Company, Inc.; Eastman Kodak Company; Gsi Danet, Inc.; Hughes Aircraft Company; The National Computing Centre Limited; and the State of Texas Department of Information Resources, resigned from COS effective December 31, 1992. COS was advised that effective March 1, 1993, the name of the Air Force Communications Command, a member of COS, was changed to the Air Force Command, Control, Communications & Computer Agency.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on December 24, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 4, 1993 (58 FR 7158).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19589 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; ADBAC Quat Joint Venture

Notice is hereby given that, on June 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Huntington Laboratories, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership of the ADBAC Quat Joint Venture ("the venture"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, membership has been transferred from Sherex Chemical Company, Inc. to Witco Chemical Company, New York, NY.

No other changes have been made in either the membership or planned activity of the venture. Membership in this group research project remains open, and the parties to the venture intend to file additional written notification disclosing all changes in membership.

On September 8, 1986, the venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 7, 1986, 51 FR 35706.

The last notification was filed with the Department on November 11, 1986. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 16, 1986, 51 FR 45067.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19590 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Spray Drift Task Force

Notice is hereby given that, on July 20, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ICI Americas, Incorporated, Wilmington, DE, has changed its name to Zeneca, Incorporated and Platte Chemical Company, Greeley, CO has changed its name to Nufarm-Platte Party Limited.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Spray Drift Task Force intends to file written notification disclosing all changes in membership.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on January 13, 1993. A notice was published in the Federal

Register pursuant to section 6(b) of the Act on February 8, 1993 (58 FR 7582).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19591 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 90-5]

Privacy Act of 1974; Current Systems of Records; Establishment of New Systems of Records

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of current systems of records and of establishment of new systems of records.

SUMMARY: The Copyright Office last reported on its systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) at 51 FR 19625, on May 30, 1986. This publication of the Copyright Office systems of records reflects changes in the records maintained in the Office in light of (1) its new functions and duties under the Satellite Home Viewer Act of 1988, Pub. L. 100-667; (2) organizational changes in the Office; (3) changed procedures concerning the Mask Work Registration Files; and (4) enactment of the Berne Convention Implementation Act of 1988, Pub. L. 100-568.

The Satellite Home Viewer Act of 1988 added a new section 119 to the Copyright Act of 1976, effective January 1, 1989. For a six year period, the law establishes a statutory license for certain secondary transmissions made by satellite carriers to satellite "dish" owners for private home viewing. In accordance with the new section 119 the Office has established three types of public files including: (1) Network Name and Address File for Satellite Carrier Statutory License, (2) Satellite Carrier Voluntary Agreements File, and (3) Secondary Transmission by Satellite Carrier for Private Home Viewing: Statement of Account. The new files are designated CO-23, CO-24, and CO-25 respectively.

Prior to 1990, mask work recorded documents appear on separate reels of microfilm and are not interspersed with copyright related documents. Mask work documents recorded later are interspersed with copyright related documents rather than on separate reels. That change is reflected in CO-22, Mask Work Recorded Document Files.

The titles of several systems managers have been changed as well as one division name.

The Berne Union Implementation Act of 1988 amended section 407 of the Copyright Act governing mandatory deposit of copies for the use of the Library of Congress. A demand for deposit may now be made even if the copyrighted work is published in the United States without a notice of copyright. Entries for files CO-7 and CO-8 have been amended to delete references to publication with notice.

DATES: Comments should be received on or before September 15, 1993.

ADDRESSES: Interested persons should submit five copies of their written comments:

If by mail to: Office of General Counsel,
U.S. Copyright Office,
Library of Congress, Department 17,
Washington, DC 20540; or
By hand to: Office of General Counsel,
Copyright Office, Library of Congress,
James Madison Memorial Building,
LM 407,
1st and Independence Avenue, SE
Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540; (202) 707-8380.

These systems of records will become effective September 15, 1993, unless the Copyright Office publishes notice to the contrary.

Dated: August 2, 1993

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

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CO-1

SYSTEM NAME:

Master Index Card Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Remitters of all cash received by the Office, and individuals who submit documents for recordation, whether or not accompanied by a remittance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of material and remittances received; records of final disposition of cases (in the form of registration numbers or identity of other fee services), the amount charged and/or the amount refunded, if any. Last cards produced September 14, 1985.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses this system: (1) To keep a record of the receipt and disbursement of all incoming cash; (2) to locate cases in-process before the permanent catalog record is available; and (3) to prepare refund vouchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 index cards in file cabinets.

RETRIEVABILITY:

Alphabetically by remitter's name.

SAFEGUARDS:

These records are maintained in a room which is generally restricted to authorized personnel and locked during nonworking hours. Limited, provisional public access to these records is allowed from 10 a.m. to 11 a.m., Monday through Friday, except legal holidays.

RETENTION AND DISPOSAL:

Five years from September 14, 1985.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Remitters or their authorized agents.

CO-2

SYSTEM NAME:

Copyright In-Process System (COINS).

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make fee service requests to the Office, including individuals who maintain deposit accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

If remittance received: Name of remitter, appropriate cross-references, title of work, amount received, amount used, class of application or fee service code, number of copies, nature of deposit code.

If deposit account: Name of deposit account holder, title of work, debit, credit notation, old balance, new balance, class of application or fee service code, number of copies, nature of deposit code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To record copyright fee charges, reconcile deposits of fees and generate accounting reports; (2) to create a record of receipt of all fee service requests; (3) to determine the status of recently submitted requests, including the registration number assigned; (4) to send periodic statements to deposit account holders of their transactions with the Office; (5) to notify deposit account holders that their accounts have become depleted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records kept from November 1, 1977. All such records are on computer discs and tapes.

RETRIEVABILITY:

By name of remitter, title, deposit account holder, deposit account number, and transaction identification number.

SAFEGUARDS:

Records are stored on tapes and discs in a room which is restricted to authorized personnel and locked during nonworking hours. Computer access is by functional passwords which are restricted to personnel who require access to these records in the performance of their official duties.

RETENTION AND DISPOSAL:

The computerized system is used to store transactions for at least six months, at which time the record is transferred to microfilm for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Fiscal Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals who request fee services, including deposit account holders and Office charge sheets.

CO-3

SYSTEM NAME:

Copyright Claims Registration Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559; Landover Center Annex, 1701 Brightseat Road, Landover, MD. 20785; Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authors and other copyright owners, copyright claimants, applicants for registration or copyright renewal, or the authorized agents of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of copyright claimants; certified statements pertaining to authorship, creation, publication, and other registration related information; general correspondence pertaining to registration of claims to copyright.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports at the request of a member of the public; (2) to respond to requests by the public for information; (3) to correspond with applicants or otherwise process applications and related materials; (4) to monitor and control the flow of work in the Office; and (5) to establish and maintain a public record. It is the general policy of the Copyright Office to deny direct public inspection of in-

process application forms and correspondence, and any related material forming part of a pending application, except upon the request of the copyright claimant or his/her authorized representative. However, information about the material facts alleged in the application will be given to the public upon request. Once registration of a copyright claim has been completed or refused at the final agency level, the registration and correspondence records pertaining to that claim are open for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves; index cards in file cabinets; bound volumes and microform computer tapes and discs.

RETRIEVABILITY:

Registration number, cross-referenced by name of author, name of claimant, and title of work in the Copyright Card Catalog and post-1977 automated catalog files; alphabetically by author's pseudonym (prior to 1938) in Pseudonym Card File; on computer terminals by correspondence control number, remitter's name and any entered cross-references; in the case of physical files, by correspondence control number on a bar code label attached to each file.

SAFEGUARDS:

With the exception of the Copyright Card Catalog and post-1977 automated catalog files, these records are maintained in areas that are restricted to authorized personnel. All records in this system are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Renewals Section, Examining Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559; Head, Records Management Section, and Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Technical Support, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Remitters or their authorized agents.

CO-4

SYSTEM NAME:

Miscellaneous Correspondence Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have: (1) Written to the Copyright Office for general information about copyright; or (2) request fee services such as search reports, copies of records or additional certificates of copyright registration.

CATEGORIES OF RECORDS IN THE SYSTEM:

General correspondence, including, where appropriate, the requester's name and action taken by the Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407-410, 705, 706, 708.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To maintain a record of correspondence with individuals who address inquiries to the Office and with individuals who request fee services; (2) to record the removal and return of documents in a file by Office personnel; and (3) to control and monitor the processing of requests.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves, and, on occasion,

3 x 5 paper slips in a file cabinet.

RETRIEVABILITY:

Alphabetically by correspondent's name.

SAFEGUARDS:

These records are maintained in areas that are restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Some files are retained indefinitely, while others are only retained for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Certification and Documents Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559; Section Head, Mail and Correspondence Control Section, Receiving and Processing Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquires about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, or their authorized agent.

CO-5

SYSTEM NAME:

Recorded Documents files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to, or have submitted for recordation, assignments, licenses, notices of termination of transfer, and other documents pertaining to a copyright; notices of error in the name in a copyright notice; authors of anonymous and pseudonymous works in instances where any person having an interest in the copyright in such a work submits a statement identifying one or more authors of the work; authors of works in instances where any person having an interest in the copyright in a particular work submits a statement of the death of the author or a statement that the author is still living on a particular date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, licenses, notices of termination of transfer, wills, statements of abandonment of copyright, affidavits (such as a statement with respect to the authorship of a work), agreements or contracts, and other documents pertaining to copyright ownership, statements of identity of an anonymous or pseudonymous author, statements of the date of death of an author or that the author is still living on a particular date, and notices of error in the name in a copyright notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 203(a)(4), 205, 302, 304(c), 406(a)(2), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of recorded documents are open to public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays. In addition, the Office uses these records to compile an index to documents received for recordation. The index to documents received and recorded through 1977 is located in the Copyright Card Catalog. Since January 1, 1978, access to assignment documents recorded after 1977 is available in the automated document catalog file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prior to recordation, records are maintained in manila envelopes in file cabinets. Once recorded, original documents are microfilmed and returned to the remitter. Copies of copyright assignments and related documents received prior to 1954 are in bound volumes as well as on microfilm.

RETRIEVABILITY:

By the date the Office received the document and cross-referenced it in the Copyright Card Catalog or automated document catalog file by individual names and titles of works.

SAFEGUARDS:

Prior to recordation, documents and related materials are maintained in a room which is restricted to authorized personnel. All records are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Documents Unit, Technical Support Section, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559; and Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, such individual's authorized agent, and other parties to the document recorded, or such parties' authorized agents, as well as individuals having an interest in the copyright in a work which is the subject of the document submitted for recordation.

CO-6

SYSTEM NAME:

Motion Picture Agreement Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Copyright depositors who have agreed to return to the Library one archival quality copy of any motion picture returned to the depositor if the Library of Congress requests such return within two years of the date of deposit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain the name and address of the depositor and the date on which the Motion Picture Agreement was executed by the Librarian of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to determine if the Library of Congress has a Motion Picture Agreement with the depositor of a motion picture. If the Library has such an agreement, the copy of the motion picture submitted will be returned to the remitter if a written request has been made. In the absence of such an agreement, the Office will retain the copy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Upon receipt of these Agreements, the Copyright Acquisitions Division transcribes some of the information in the agreements onto 3 x 5 cards, copies of which are then sent to the Performing Arts Section of the Copyright Office Examining Division.

RETRIEVABILITY:

Alphabetically by depositor's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Depositors or their authorized agents.

CO-7

SYSTEM NAME:

Deposit Recordation File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, without simultaneously applying for copyright registration, have submitted deposit copies in accordance with the provisions of 17 U.S.C. 407.

CATEGORIES OF RECORDS IN THE SYSTEM:

Title of work, edition statement, imprint, collation, in notice statement, depositor, depositor's address, number of copies received, date received, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To keep a record of compliance with 17 U.S.C. 407; (2) to locate and correspond with those who have published works but who have not deposited the required copies; (3) to prepare weekly statistics on the number and nature of deposits received; and (4) to prepare search reports at the request of a member of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 cards in the cabinet and visible file.

RETRIEVABILITY:

Alphabetically by depositor's name, author's name, and title of work.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Deposit copies submitted.

CO-8

SYSTEM NAME:

Compliance Activity File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Individuals from whom the Office has demanded, in accordance with 17 U.S.C. 407, copies of works published in the United States. It also includes individuals whose works were found to be deposited in accordance with 17 U.S.C. 407 prior to a demand.

CATEGORIES OF RECORDS IN THE SYSTEM:

Author's name, title of work, publisher, copyright claimant, dates of initial and follow-up action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to avoid sending out duplicate correspondence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

4 x 6 index cards in a file cabinet.

RETRIEVABILITY:

Alphabetically by title and claimant's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Copyright Acquisitions Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Printed bibliographies, publishers' catalogs, citations provided by the Library of Congress, published citations of the work, and Office personnel who have personally observed the item cited.

CO-9

SYSTEM NAME:

Office Mailing Lists.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who had frequent contact with the Copyright Office, or had asked to receive all Office information circulars, announcements, and other printed material prepared by the Office. Attorneys who were listed in the annual edition of the "American Bar Association Section of Patent, Trademark, and Copyright Law Committees" as members of the copyright-related committees were also included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 707.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office used these records to address and mail Office information circulars, announcements and other printed material. This file has been inactive since 1985. Mailings are no longer made by the Copyright Office using this file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer print-out sheets in a binder, stored in a desk drawer.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Individuals may request that their names be dropped from the list. No new names are being added to the list.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURE:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, Copyright Office records, trade reference sources, and annual edition of "American Bar Association Section of Patent Trademark and Copyright Law Committee."

CO-10

SYSTEM NAME:

Freedom of Information Act and Privacy Act Requests and Disclosures File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted Freedom of Information Act and/or Privacy Act requests in accordance with 37 CFR parts 203 and 204.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests submitted under the Freedom of Information Act and/or Privacy Act; requests submitted under the Privacy Act for correction or amendment of Office records; and copies of the Office response to these requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 701.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) To maintain an accounting of Freedom of Information Act and/or Privacy Act requests and Office responses to these requests; (2) to maintain an accounting of requests submitted under the Privacy Act to correct or amend a record pertaining to an individual and the Office responses to these requests; (3) to compile the annual report required by the Freedom of Information Act; and (4) to review and compile the annual report required by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by requester's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, and Copyright Office records.

CO-11

SYSTEM NAME:

Address File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Copyright claimants of record whose address has been requested by a member of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of claimant of record, year date of address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 407, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to facilitate searching for addresses of copyright claimants when such addresses are requested by a member of the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 index cards in file drawer.

RETRIEVABILITY:

Alphabetically by claimant of record's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and is locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely; however, obsolete addresses are disposed of as more current addresses are obtained.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Copyright claimants, their authorized agents, phone books, and city directories.

CO-12

SYSTEM NAME:

Bibliographic File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Well-known or prolific authors or authors of well-known works, in those instances where the Office determines that it would be in the public interest to preserve published copyright-related information about such authors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Newspaper clippings, magazine articles, obituaries, book jackets and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the compilation of an index to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets.

RETRIEVABILITY:

Alphabetically by author's name, law firm's name, or title of work.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Reference and Bibliography Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Magazines, newspapers, book jackets, trade reference sources, Copyright Card Catalog, applications and other materials.

CO-13

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Initial Notice of Identity and Changes File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable system owners who submit notices of identity for recordation in the Copyright Office, notices of ownership or control change, or notices of change in the signal carriage complement of cable systems from 1977 to August 27, 1986. The records are now dormant, nothing is being added or deleted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of identity and address of the person who owns the secondary transmission service, name and location of the primary transmitter or transmitters whose signals are regularly carried, changes in any of the preceding categories, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(d)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the preparation of internal statistical reports; and (3) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in locked file cabinet and microfilm (microjackets).

RETRIEVABILITY:

Alphabetically by legal name of the owner of the cable system.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-14

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Statements of Account.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of cable systems who file this, semi-annual statement of accounts required by 17 U.S.C. 111(d)(2).

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal names and addresses of owners of cable systems, call signs and locations of primary transmitters and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(d)(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record; and (3) in the preparation of statements of account which the Copyright Office must submit to the Copyright Royalty Tribunal as required by 17 U.S.C. 111(d)(2).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the cable system, grouped according to accounting period and year.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-15

SYSTEM NAME:

Cable System Videotape Transfer Contracts File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom a cable system has transferred a videotape of a program nonsimultaneously transmitted by it pursuant to a written, nonprofit contract providing for the equitable sharing of costs of such videotape and its transfer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transferor, transferee, title, date contract effective, date of recordation, location of cable system, notation of acknowledgement of receipt by the Copyright Office, related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111(e)(2)(A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet and on microfilm.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Parties to the transfer contracts or such parties' authorized agents.

CO-16

SYSTEM NAME:

Notice of Intention to Obtain Compulsory License for Making and Distributing Phonorecords Embodying Nondramatic Musical Works File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file a notice of their intention to obtain a compulsory license for making and distributing phonorecords embodying nondramatic musical works.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, name of copyright owner, titles, date of recordation of notice, internal notation of date upon which the Office informally acknowledged receipt of the notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 115(b)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record; and (3) in the preparation of internal statistical reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet.

RETRIEVABILITY:

Alphabetically by name of remitter and name of copyright owner.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-17

SYSTEM NAME:

Jukebox License Applications.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Jukebox operators who have applied for, and been issued, a jukebox license from 1978 to 1989. The records are now dormant, nothing is being added or deleted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of operator, manufacturer, serial number or model number, model name, model year, charge per play, capacity, type of sound, person to be contacted for further information, number of jukeboxes, amount of remittance, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 116(b)(1)(A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record; and (3) in the preparation of internal statistical and accounting reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by name of owner, grouped by year.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division,

Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-18

SYSTEM NAME:

Voluntary Licensing Agreements File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit for recordation voluntary licensing agreements between: (1) Copyright owners of published nondramatic musical works and published pictorial, graphic, and sculptural works and public broadcasting entities; and (2) copyright owners of nondramatic literary works and public broadcasting entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actual agreements submitted for recordation, copies of registration certificates of record, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 118(b)(2) and (e)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) in the preparation of internal statistical reports; and (3) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and on microfilm.

RETRIEVABILITY:

Alphabetically by names of copyright owners and public broadcasting entities.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Parties to voluntary licensing agreements or such parties' authorized agents.

CO-19

SYSTEM NAME:

Licensing Division Correspondence File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20559.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who send letters of transmittal and other incidental Licensing Division correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

General correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 115, 116, 118, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records to maintain a record of incidental correspondence with the Licensing Division.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in file cabinet.

RETRIEVABILITY:

Alphabetically by correspondent's name.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are kept in the open file until a reply is received or until the case is closed. Records in the closed file are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains or such individual's authorized agent.

CO-20

SYSTEM NAME:

Secondary Transmissions by Cable Systems: Correspondence Files.

SYSTEM LOCATION:

Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable systems owners and other individuals who correspond with the Licensing Division, the Copyright Office General Counsel or the Register of Copyrights concerning the administration of the cable compulsory licensing system in section 111 of title 17 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office maintains these records to facilitate public access to correspondence of the Licensing Division, Copyright Office General Counsel and the Register of Copyrights on the administration of the section 111 compulsory licensing system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and binders.

RETRIEVABILITY:

Correspondence usually accessible by date letter sent to member of public.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Licensing Division personnel, the Copyright Office General Counsel and the Register of Copyrights.

CO-21

SYSTEM NAME:

Mask Work Registration Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mask work owners, applicants for mask work registration, or the authorized agents of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of mask work owners; certified statements pertaining to creation, commercial exploitation, ownership, and other registration-related information; general correspondence pertaining to registration of mask work claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 908(b), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports at the request of a member of the public; (2) to respond to requests by the public for information; (3) to correspond with applicants or otherwise process applications and related materials; (4) to monitor and control the flow of work in the Office; and (5) to establish and maintain a public record. It is the general policy of the Copyright Office to deny direct public inspection of in-process application forms and correspondence, and any related material forming part of a pending application, except upon the request of the mask work owner or his/her authorized representative. However, information about the material facts alleged in the application will be given to the public upon request. Once registration of a claim to mask work protection has been completed or refused at the final agency level, the registration and correspondence records pertaining to that claim are open for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila envelopes in file cabinets and on shelves; computer tapes and discs; and microform.

RETRIEVABILITY:

Registration number, cross-referenced by name of owner and title of work in the automated or microform catalog files; by correspondence control number, applicant's name, title of work, and any entered cross-references in the automated correspondence management system; by fee service number, applicant's name, title of work, and any entered cross-references in the automated receipts in-process system; in the case of physical files, by correspondence control number on a bar code label attached to each file, for in-process files, and by applicant's name for closed correspondence files.

SAFEGUARDS:

Automated records are available at computer terminals located throughout the Library of Congress. Physical records are maintained in areas that are restricted to authorized personnel. All records in this system are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Mask Work Unit, Examining Division, Department MW, Library of Congress, Washington, DC 20540.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

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RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Applicants or their authorized agents.

CO-22

SYSTEM NAME:

Mask Work Recorded Documents Files.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to, or have submitted for recordation, assignments, licenses, and other documents pertaining to a mask work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignments, licenses, wills, agreements or contracts, and other documents pertaining to mask works.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 908(b), 705.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Records of recorded documents are open to public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays. In addition, the Office uses these records to compile an index to recorded documents, which is interfiled in the automated catalog files.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prior to recordation, records are maintained in manila envelopes in file cabinets. Once recorded, original documents are microfilmed and returned to the applicant. Mask work documents appear on microfilm. Mask work documents recorded prior to 1990 appear on separate reel(s) of microfilm; they are not interspersed with copyright related documents.

RETRIEVABILITY:

Before recordation, by date the Office received the document; after recordation, cross-referenced in the automated catalog files by names of parties and titles of works.

SAFEGUARDS:

Prior to recordation, documents and related materials are maintained in a room which is restricted to authorized personnel. Automated records are available at computer terminals located throughout the Library of Congress. All records are maintained in areas that are locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Documents Unit, Cataloging Division, Copyright Office, Library of Congress, Washington, DC 20559.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, such individual's authorized agent, and other parties named in the document recorded, or such parties' authorized agents, as well as individuals having an interest in the mask work which is the subject of the document submitted for recordation.

CO-23

SYSTEM NAME:

Network Name and Address File for Satellite Carrier Statutory License.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Television networks and individuals to whom a satellite carrier files a list identifying all subscribers to which the satellite carrier makes secondary transmissions of that network's primary transmission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of the television network, the contact person, a full mailing address, phone number and related information required by 17 U.S.C. 119(a)(2)(C).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 119(a)(2)(C).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by legal name of the network owner.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURES:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedures."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains or such individual's authorized agent.

CO-24

SYSTEM NAME:

Satellite Carrier Voluntary Agreements File.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Satellite Carriers, Distributors and Copyright Owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actual agreements submitted, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 119(c)(2)(C).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; and (2) to establish and maintain a public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the satellite carrier, distributor, and copyright owner.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURES:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains or such individual's authorized agent.

CO-25

SYSTEM NAME:

Secondary Transmission by Satellite Carrier for Private Home Viewing: Statement of Account.

SYSTEM LOCATION:

Copyright Office, Library of Congress, Washington, DC 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of satellite carriers who file semi-annual statements of account required by 17 U.S.C. 119(b)(1).

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal names and addresses of owners of satellite carriers, call signs and locations of primary transmitters and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 119(b)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office uses these records: (1) In the preparation of search reports compiled at the request of a member of the public; (2) to establish and maintain a public record; and (3) in the preparation of internal statistical and accounting reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and, after three years, microfilm.

RETRIEVABILITY:

Alphabetically by legal name of the owner of the satellite carrier, grouped according to accounting period and year.

SAFEGUARDS:

These records are maintained in a room restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

NOTIFICATION PROCEDURES:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, DC 20559.

RECORD ACCESS PROCEDURES:

Request from individuals should be in writing addressed to the official designated under "Notification procedure."

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR part 204.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains or such individual's authorized agent.

[FR Doc. 93–19587 Filed 8–13–93; 8:45 am]

BILLING CODE 1410–07–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–065]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Materials and Structures

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on materials and structures.

DATES: August 31, 1993, 8:30 a.m. to 5 p.m.; and September 1, 1993, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 124, Building 1229, Hampton, VA 23681.

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FOR FURTHER INFORMATION CONTACT: Mr. Charles Blankenship, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–6005.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Advanced Subsonic Initiatives
—High Speed Research Initiatives
—Selected Critical Technology Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 10, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–19628 Filed 8–13–93; 8:45 am]

BILLING CODE 7910–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32240, License No. 11–27085–01, EA 93–082]

Twin Falls Clinic & Hospital, Twin Falls, Idaho; Order Imposing Civil Monetary Penalty

I

Twin Falls Clinic & Hospital (Licensee) is the holder of NRC License No. 11–27085–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 30, 1992. The license authorizes the Licensee to use various radioisotopes in accordance with the conditions specified therein. The license is due to expire on October 31, 1996.

II

An inspection of the Licensee's activities was conducted during March 17–18, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 20, 1993. The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice dated May 21, 1993. In its response, the Licensee admitted the violation which resulted in the proposed civil penalty, but requested mitigation for reasons that are summarized in the Appendix to this Order.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered That:* The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 6th day of August 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluation and Conclusion

On May 20, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. Twin Falls Clinic & Hospital responded to the Notice on May 21, 1993. The Licensee admitted the violation that resulted in the proposed civil penalty, but requested mitigation. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

Restatement of Violation

10 CFR 35.32(a), which became effective January 27, 1992, states, in part, that each licensee under this part, as applicable, shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet specific objectives for, among other things, any administration of quantities greater than 30 microcuries of I–131.

Contrary to the above, between November 17, 1992, and March 15, 1993, the licensee administered I–131 to 14 patients in quantities greater than 30 microcuries and did not establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material would be administered as directed by the authorized user.

This is a Severity Level III violation (Supplement VI).

Civil Penalty—$5,000

Summary of Licensee's Request for Mitigation

In its May 21, 1993, letter, the Licensee admitted the above violation but requested mitigation of the penalty, citing the following reasons:

1. During a "licensing inspection" of the facility on January 14, 1992, less than two weeks before the QMP was to be submitted, the inspector endorsed the activities of Twin Falls Clinic & Hospital (TFC&H). No mention of 10 CFR 35.32(a) was made by the inspector, thus giving TFC&H a false impression of compliance with all NRC regulations.

2. TFC&H took immediate action to establish a written QMP upon discovery of the violation, and now requires the Radiation Safety Committee to review documentation from NRC to ensure that the Nuclear Medicine Department remains in compliance with changing requirements.

3. NRC Inspection Report 030–32240/93–01 identifies this violation as a level IV which would carry no associated penalty.

NRC Evaluation of Licensee's Request for Mitigation

The NRC's evaluation of the Licensee's arguments for mitigation is as follows:

1. The NRC has no record of any NRC inspection of TFC&H around the January 14,

1992 timeframe, and NRC cannot confirm TFC&H's assertion that NRC inspected TFC&H on January 14, 1992. The Licensee may be confused because the NRC issued a byproduct material license to TFC&H on January 14, 1992. In any event, TFC&H is responsible for ensuring that it is familiar with and complies with all NRC requirements applicable to their licensed activities, including the requirement to establish and maintain a written QMP.

2. The Enforcement Policy provides for up to 50 percent mitigation for prompt and extensive corrective action. Licensees are expected and required to take corrective actions for violations. The NRC gave TFC&H credit for its corrective actions in the May 20, 1993 Notice. As the letter transmitting the Notice indicated on Page 2 and 3, the penalty was decreased by 50 percent of the base value "* * * because TFC&H took immediate corrective action and action to prevent a recurrence of the violation."

3. The NRC has reviewed Inspection Report 030–32240/93–01 and is unable to find any reference to this violation of 10 CFR 35.32(a) being classified at Severity Level IV. Four additional violations were found during the inspection and were cited at Severity Level IV in a Notice of Violation issued with the inspection report. However, they were unrelated to the violation of 10 CFR 35.32(a) that was the subject of the enforcement conference and the basis for the civil penalty. The NRC has classified the violation at Severity Level III in accordance with the Enforcement Policy, Supplement VI, C.6. In this case, the example given for a Severity Level III violation is a substantial failure to implement the QMP as required by 10 CFR 35.32. TFC&H had no written QMP or procedures established to meet the objectives and requirements of 10 CFR 35.32.

NRC Conclusion

The NRC has concluded that the licensee has not provided any information that would give the NRC a basis for considering a reduction in the size of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of $5,000 should be imposed.

[FR Doc. 93–19632 Filed 8–13–93; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven rescission proposals and 12 deferrals contained in six special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, March 16, April 20, and June 4, 1993.

Rescissions (Attachments A and C)

As of August 1, 1993, seven rescission proposals totaling $356.0 million had been transmitted to the Congress. The funds associated with these proposed rescissions were never withheld from obligation. Congress approved five of the Administration's rescission proposals in Public Law 103–50, the Supplemental Appropriations Act of 1993, which was signed into law on July 2, 1993. A total of $243.0 million was rescinded by that measure. Attachment C shows the status of the FY 1993 rescission proposals.

Deferrals (Attachments B and D)

As of August 1, 1993, $3,111.1 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1993.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

57 FR 46730, Friday, October 9, 1992
58 FR 3368, Friday, January 8, 1993
58 FR 16324, Thursday, March 25, 1993
58 FR 17298, Thursday, April 1, 1993
58 FR 27192, Thursday, May 6, 1993
58 FR 33164, Tuesday, June 15, 1993

Leon E. Panetta,
Director.

ATTACHMENT A.—STATUS OF FY 1993 RESCISSIONS

[In millions of dollars]

	Amounts
Rescissions proposed by the President (funding never withheld)	356.0
Rejected by the Congress	−113.0
Amount rescinded by the Supplemental Appropriations Act	−243.0
Currently before the Congress	0

ATTACHMENT B.—STATUS OF FY 1993 DEFERRALS

[In millions of dollars]

	Amounts
Deferrals proposed by the President	4,467.5
Routine Executive releases through August 1, 1993 (OMB/Agency releases of $1,358.5 million partially offset by cumulative positive adjustments of $2.1 million)	−1,356.4
Overturned by the Congress	
Currently before the Congress	3,111.1

ATTACHMENT C.—STATUS OF FY 1993 RESCISSION PROPOSALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Amount previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of Housing and Urban Development								
Housing programs:								
Annual contributions for assisted housing.	RS3–2	13,000	.....	6–4–93	(*)	.....	.....	

ATTACHMENT C.—STATUS OF FY 1993 RESCISSION PROPOSALS—AS OF AUGUST 1, 1993—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Amount previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Homeownership and opportunity for people everywhere grants.	R93–3	100,000	.....	6–4–93	(*)	.....	.....	
Department of Justice								
Legal activities: Assets forfeiture fund.	R93–4	20,000	.....	6–4–93	(*)	.....	20,000	P.L. 103–50
Department of Transportation								
Federal Aviation Administration:								
Operations	R93–5	3,100	.....	6–4–93	(*)	.....	3,100	P.L. 103–50
Grants-in-aid for airports.	R93–6	35,750	.....	6–4–93	(*)	.....	35,750	P.L. 103–50
Coast Guard: Operating expenses.	R93–7	3,150	.....	6–4–93	(*)	.....	3,150	P.L. 103–50
Independent Agencies								
Board for International Broadcasting: Israel relay station.	R93–1	.....	180,000	4–20–93	(*)	.....	180,000	P.L. 103–50
Total rescissions.		176,000	180,000		0		243,000	

*Funds were never withheld from obligation.

ATTACHMENT D.—STATUS OF FY 1993 DEFERRALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

ATTACHMENT D.—STATUS OF FY 1993 DEFERRALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 9–1–93
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Department of Health and Human Services									
Social Security Administration:									
Limitation on administrative expenses	D93–6	7,267		10–1–92					
	D93–6A		50	4–20–93					7,317
Department of State									
Bureau for Refugee Programs:									
United States emergency refugee and migration assistance fund.	D93–7	10,123		10–1–92					
	D93–7A		47,761	12–30–92	37,000				20,884
Total, Deferrals		2,921,080	1,546,426		1,358,509	0		2,103	3,111,102

ATTACHMENT D.—STATUS OF FY 1993 DEFERRALS—AS OF AUGUST 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 8–1–93
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Funds Appropriated to the President									
International Security Assistance:									
Economic support fund	D93–1	492,736		10–1–92					
	D93–1A		1,492,774	12–30–92	860,572			2,103	1,127,042
Foreign military financing grants	D93–8	1,487,000		12–30–92	130,550				1,356,450
Foreign military financing program	D93–9	149,200		12–30–92	141,946				7,254
Agency for International Development:									
Demoblization and transition fund	D93–2	13,750		10–1–92	5,750				8,000
International disaster assistance, executive	D93–10	63,823		2–26–93	61,397				2,426
Sub-Saharan Africa disaster assistance, executive	D93–11	67,188		2–26–93	67,188				0
Department of Agriculture									
Forest Service:									
Cooperative work	D93–3	364,582		10–1–92	33,151				331,431
Expenses, brush disposal	D93–4	40,241		10–1–92					
	D93–4A		5,835	12–30–92					
	D93–4B		8	3–16–93					46,084
Timber salvage sales	D93–12	222,994		2–26–93	20,000				202,994
Department of Defense—Civil									
Wildlife Conservation, Military Reservations:									
Wildlife conservation, Defense	D93–5	2,175		10–1–92	955				1,220

[FR Doc. 93–19597 Filed 8–13–93; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32726; File No. SR–Amex–93–24]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to a Pilot Program for Execution of Odd-Lot Market Orders

August 9, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes that the Commission extend for six months the Exchange's existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The Exchange received approval, on a pilot basis expiring on August 8, 1993, of amendments to Amex Rule 205.[2]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved, on a pilot basis extending to August 8, 1993, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential. These procedures initially were approved by the Commission on a pilot basis,[3] and subsequently were extended six times.[4]

Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market, either by being received at the trading post or through the Exchange's Post Execution Reporting ("PER") System. Enhancements to the PER system have been implemented to provide for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, odd-lot limit orders that are immediately executable based on the Amex quote at the time the order is received, at the trading post or through PER, are executed in the same manner as odd-lot market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for six months. This will provide the Commission with an additional period of time to assess procedures under the pilot program and will permit the Exchange to provide additional data and information regarding its experience under the pilot program.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–93–24 and should be submitted by September 7, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Sections 6[5] and 11A(a)(1)[6] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, which provide for pricing of odd-lot market orders at the prevailing

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[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expired on August 8, 1993, to continue without interruption.

[2] See Securities Exchange Act Release No. 31828 (February 5, 1993), 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06).

[3] See Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[4] See Securities Exchange Act Release Nos. 31828 (February 5, 1993) 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06); 30305 (January 30, 1992), 57 FR 4653 (approving File No. SR–Amex–92–04); 29922 (November 8, 1991), 56 FR 58409 (approving File No. SR–Amex–91–30); 29186 (May 9, 1991), 56 FR 22488 (approving File No. SR–Amex–91–09); 28758 (January 10, 1991), 56 FR 1656 (approving File No. SR–Amex–90–39); and 27590 (January 5, 1990), 55 FR 1123 (approving File No. SR–Amex–89–31).

[5] 15 U.S.C. 78f (1988).

[6] 15 U.S.C. 78k–1(a)(1) (1988).

market quote rather than at the execution price of a subsequent transaction, should provide investors with more timely execution of these orders. Moreover, these orders should receive less costly executions than under the former procedures because no differential will be charged. In addition, the Exchange has implemented enhancements to its PER system for the automatic execution of odd-lot market orders, as set forth in the Commission's order approving the use of the pilot program procedures.[7]

In its previous orders,[8] the Commission asked the Amex to analyze the difference in executions between using the Intermarket Trading System ("ITS") consolidated best bid or offer as compared with the Amex quote without the differential. Specifically, the Commission expressed interest in whether customers are receiving the best execution, both in terms of price and time, using the new Amex system. The Commission was also interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential.

In response, the Amex submitted the requested information with respect to the difference in executions between the ITS best bid or offer and the Amex quote to the Commission on January 9, 1991, April 22, 1991, October 25, 1991, February 4, 1993 and August 3, 1993.[9] The Amex data indicated that the pilot procedures provide a superior execution for a substantial majority of odd-lot executions. Accordingly, the Commission believes that it is reasonable to extend the pilot for an additional six months to enable the Commission to review fully the Amex reports and to enable the pilot to continue without interruption during the Commission's review. The Commission, however, remains concerned that some odd-lot orders could receive executions at less than the best available price since the Exchange's pricing formula does not include quotations from other markets.[10] Nevertheless, due to the relatively low number of odd-lot market orders,[11] the percentage of Amex quotes that are worse than the ITS best bid or offer, and the benefits to customers under the pilot program procedures as compared to the former pricing procedures, the Commission believes that it is acceptable to continue the pilot's current pricing procedures for an additional six months. During that period, the Commission requests that the Exchange continue to monitor the pilot and provide data on the number of Amex quotes executed that are worse than the ITS consolidated best bid and offer and on the number of odd-lots as a percentage of total Exchange volume. Moreover, the Commission remains interested in the Amex reporting on the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission requests that the Amex submit a report on these matters by November 8, 1993. The Commission expects that any request for another extension of the pilot program or for permanent approval of the pilot procedures will be submitted to the Commission, pursuant to Rule 19b–4 under the Act, by November 8, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[12]

It is therefore ordered, pursuant to Section 19(b)(2)[13] of the Act, that the proposed rule change (SR–Amex–93–24) is approved for a six month period ending on February 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93–19693 Filed 8–13–93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34–32728; File No. SR–NSCC–93–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to NSCC's Clearing Fund

August 10, 1993.

On January 6, 1993, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–93–01) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 17, 1993, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change modifies NSCC's rules by: (1) Eliminating the right of clearing members to use municipal securities to collateralize their clearing fund indebtedness and (2) imposing more specific standards for NSCC's retention of clearing fund deposits upon the retirement of a member.

A. Elimination of Municipal Securities as an Acceptable Form of Clearing Fund Collateralization

NSCC's rules currently permit members to collateralize their clearing fund indebtedness with United States Treasury securities, municipal securities, and letters of credit.[3] Under certain circumstances, NSCC's rules allow NSCC to pledge clearing fund collateral for liquidity purposes.[4] Municipal securities, however, are generally less marketable than U.S. Treasury securities, and consequently, banks tend to give less value to municipal securities pledged as collateral for loans than they give to U.S. Treasury securities.[5] Because of

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[7] See Securities Exchange Act Release No. 26445, *supra* note 3, for a description of the Exchange's odd-lot procedures and the Commission's rationale for approving those procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order.

[8] See *supra* note 4.

[9] See letter from Arne G. Michelson, Senior Vice President, Total Quality-Floor Members, Amex, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 3, 1993; letter from Michael Cavalier, Assistant General Counsel, Regulatory, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated February 3, 1993; letters from Jules L. Winters, Executive Vice President, Operations, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated January 8, 1991, April 19, 1991 and October 23, 1991.

[10] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quote into the NYSE odd-lot pricing procedures through the use of the "Best Pricing Quote." See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990) (File No. SR–NYSE–90–06).

[11] See footnote 9 of Securities Exchange Act Release No. 29922 (November 8, 1991), 56 FR 58409.

[12] No comments were received in connection with the proposed rule change which implemented these procedures. See supra note 3.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31983 (March 11, 1993), 58 FR 14456.

[3] NSCC Rule 4, Section 1, NSCC Rules and Procedures (Rev. September 24, 1992).

[4] *Id.*, NSCC Rule 4, Section 12.

[5] Several reasons exist for this difference in collateral value of municipals versus U.S. Treasuries. Among others, these reasons include: (1) municipal securities issues are often small, local

Continued

this, NSCC believes that permitting members to collateralize their clearing fund indebtedness with municipal securities unnecessarily restricts its liquidity resources. Therefore, NSCC's management has determined that, in order to maximize NSCC's resources, members should no longer be permitted to pledge municipal securities to collateralize their clearing fund indebtedness.

Accordingly, NSCC is amending Section 1 of NSCC Rule 4 (Clearing Fund) to eliminate municipal securities as an acceptable form of clearing fund collateral. NSCC will give members who currently use municipal securities as collateral six months to replace the municipal securities with other acceptable forms of collateral (*i.e.*, United States Treasury securities and letters of credit).

B. Retention of Clearing Fund Deposits of Retired Members

NSCC also is amending Section 6 of NSCC Rule 4 (Clearing Fund) to provide more definitive standards for the retention of clearing fund deposits after a member withdraws from the clearing corporation.[6] Currently, NSCC members who retire either provide an acceptable guarantee to NSCC or have their clearing fund deposits retained until all open transactions have been closed and all obligations to NSCC have been satisfied.

NSCC states that members with short positions in its continuous net settlement system are debited for dividend payments, both cash and securities, on payable date. Members with long positions are credited with corresponding amounts. Occasionally, an issuer will fail to disseminate dividend information in a timely manner. When these announcements ultimately are made, the appropriate debits are charged back to the members that had short positions on the date the dividend amounts should have been debited. Even if a member has retired, NSCC has the right to collect the dividend from the member because the dividend was an obligation for which the member was responsible while still a member. By retaining clearing fund deposits or obtaining a guarantee from retiring members, NSCC minimizes the risk of not being able to collect from retired members dividend payments arising from late dividend announcements and other obligations which mature or arise after retirement.

Based on its experience with aged dividend claims, NSCC believes that, in the absence of an acceptable guarantee, it is appropriate to retain a portion of the clearing fund deposits of retiring members for a specific period of time. Accordingly, NSCC rules set forth its right to retain the greater of: (i) 25% of the retiring member's average clearing fund requirement over the previous twelve months or (ii) $100,000. For members with clearing fund deposits of less than $100,000, NSCC will retain the entire deposit.

NSCC believes it is appropriate to withhold clearing fund deposits for different lengths of time depending on the type of account a clearing member maintains. For a member that has a direct account at a qualified securities depository ("QSD"), NSCC will retain that member's clearing fund deposit for a period of two years after the member ceases to be a member, all open transactions have been closed, and all obligations to NSCC have been fulfilled.[7] For a member that has a sponsored account at a QSD, NSCC faces an additional exposure from claims due to bad deposits made by the member prior to the member's retirement.[8] To protect itself from this risk as well as from the risk of late dividend announcements, in the absence of an acceptable guarantee, NSCC will retain the clearing fund deposit of a member that has a sponsored account at a QSD for a period of four years after the member withdraws from the clearing corporation, all open transactions have been closed, and all obligations to NSCC have been fulfilled.[9]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[10] Sections 17A(b)(3) (A) and (F) of the Act require that clearing agencies be organized and their rules designed to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.[11]

The Commission agrees that eliminating the use of municipal securities should increase the liquidity of the NSCC clearing fund. Because municipal securities tend to be less marketable and to have less loan value than other clearing fund collateral, NSCC's ability to obtain necessary financing by pledging these to a bank in the event of a default by one or more clearing members could be impaired. Moreover, because NSCC is unable to determine the exact loan value of municipal securities, estimates of its aggregate clearing fund are necessarily skewed. Eliminating municipals will help ensure that the clearing fund is a ready pool of liquid assets available to NSCC in the event of a market emergency.

Regarding the proposed periods of retention and standards for the amount of clearing fund deposits to be retained, the Commission agrees that NSCC's codification and implementation of such practices, which are similar to those already being used at DTC, should reduce the risk that NSCC will suffer a loss due to late dividend announcements or other obligations that mature or arise after the member withdraws from the clearing corporation. Thus, the Commission believes that the proposed rule changes will enable NSCC to effectively manage its risk consistent with its responsibilities under the Act.

The Commission notes that no comments were received on the proposed rule change. The Commission further believes that improved safety to NSCC and to the system outweighs any inconvenience that might accrue to retiring NSCC members.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with those of section 17A of the Act, and the rules and regulations thereunder.

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issues with a thin trading market whereas Treasuries are readily marketable with minimal price variations and (2) the ratings provided by statistical firms, such as Standard and Poor's and Moody's, on coupon risk (*i.e.*, risk of timely payment of interest and principal) will vary greatly for different municipal issues whereas Treasuries have no coupon risk.

[6] Pursuant to NSCC Rule 4, Sec. 2, clearing members are entitled to any interest earned on clearing fund deposits. Similarly, after a member withdraws from NSCC, it will be entitled to any interest earned on retained clearing fund deposits. Telephone conversation between Karen L. Saperstein, Director of Legal and Associate General Counsel, NSCC, and Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (July 19, 1993).

[7] A QSD is a registered clearing agency that has entered into an agreement with NSCC pursuant to which the QSD will act as a securities depository for NSCC and will effect book-entry transfers of securities to and from NSCC with respect to the continuous net settlement system. Rule 1, NSCC Rules and Procedures (Rev. September 24, 1992).

[8] For a member that chooses not to maintain direct membership in a QSD, NSCC makes QSD facilities available through the use of a sponsored account. Each sponsored account is assigned a QSD account number by NSCC, and the member is permitted to use that account as if it were a direct depository participant. Procedure IX.B., NSCC Rules and Procedures (Rev. September 24, 1992).

[9] Similarly, in the absence of an acceptable guarantee, The Depository Trust Company ("DTC"), a QSD, has the right to retain any retiring DTC member's deposit to DTC's participants fund for a period of four years. Rule 4, § 6, DTC Rules (rev. August 1991).

[10] 15 U.S.C. 78q-1 (1988).

[11] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the above-mentioned proposed rule change (File No. SR–NSCC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19694 Filed 8–13–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Southwestern Property Trust, Inc., Common Stock, $0.01 Par Value; 8% Convertible Debentures Due 2003) File No. 1–11224

August 10, 1993.

Southwestern Property Trust, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock and debentures are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and debentures commenced trading on the NYSE at the opening of business on July 28, 1993 and concurrently therewith such stock and debentures were suspended from trading on the Amex.

In making the decision to withdraw its common stock and debentures from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock and debentures on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and debentures and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before August 31, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19695 Filed 8–13–93; 8:45 am]

BILLING CODE 8010–01–M

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[12] 15 U.S.C. 78s(b) (1988).

[13] 17 CFR 200.30–3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2669]

Kansas; Amendment #3, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 3, 1993 to include Sedgwick and Sumner Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cowley, Harper, and Kingman in the State of Kansas and Grant and Kay Counties in the State of Oklahoma may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

The economic injury numbers are 793500 for Kansas and 793600 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 6, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–19656 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2668]

South Dakota; Amendment #2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 3, 1993 to include Aurora, Campbell, Clark, Corson, Edmunds, and Hand Counties in the State of South Dakota as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 6, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Buffalo, Dewey, Hyde, Perkins, Potter, Walworth, and Ziebach in South Dakota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration by the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury number for South Dakota is 793800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 6, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–19654 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2667]

Nebraska; Amendment #2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 2 and August 3, 1993 to include the counties of Chase, Dundy, Furnas, Harlan, Hayes, Johnson, Merrick, and Saline in the State of Nebraska as a disaster area as a result of damages caused by severe storms and flooding beginning on June 23, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Perkins County in Nebraska; Phillips and Yuma Counties in Colorado; and Cheyenne, Decatur, Norton, and Rawlins Counties in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is

September 17, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury numbers are 793400 for Nebraska; 793500 for Kansas; and 797800 for Colorado.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 6, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–19655 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, September 27, 1993, through noon Tuesday, September 28, 1993, at the Indiana Small Business Development Center, One North Capitol Street, Indianapolis, Indiana.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Judith Dunn, SBA, 5th Flr., 409 3rd Street, SW., Washington, DC 20416, telephone 202/205–7301.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–19653 Filed 8–13–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20–XXX; Airworthiness Approval of Global Positioning System (GPS) Navigation Equipment for Use as a VFR and IFR Supplemental Navigation System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 20–XXX, Airworthiness Approval of Global Positioning System (GPS) Navigation Equipment for Use as a VFR and IFR Supplemental Navigation System. The proposed AC 20–XXX establishes an acceptable means of obtaining airworthiness approval of Global Positioning System (GPS) Equipment for use as a supplemental navigation system for oceanic, domestic en-route, terminal, and non-precision instrument approach. The AC addresses the approval of stand-alone GPS equipment only.

DATES: Comments submitted must be received on or before November 15, 1993.

ADDRESSES: Send all comments on the proposed AC 20–XXX to: Federal Aviation Administration, Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington DC 20591, or deliver comments to the Federal Aviation Administration, room 806, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz G. Mueller, Federal Aviation Administration, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC announced in this notice by submitting such written data, views, or arguments as they desire to the address above. Comments received on the proposed AC may be examined, both before and after the comment closing date, in room 806, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The proposed advisory circular (AC) establishes an acceptable means of obtaining airworthiness approval of stand alone GPS equipment for use as a supplemental navigation system for oceanic, domestic en-route, terminal, and non-precision instrument approach (except localizer, localizer directional aid (LDA) and simplified directional facility (SDF) operations.

How To Obtain Copies

A copy of the proposed advisory circular may be obtained by contacting Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on August 9, 1993.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–19659 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 20–130A; Airworthiness Approval of Navigation or Flight Management Systems Integrating Multiple Navigation Sensors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 20–130A, Airworthiness Approval of Navigation or Flight Management Systems Integrating Multiple Navigation Sensors. The proposed AC 20–130A establishes an acceptable means of obtaining airworthiness approval of multi-sensor navigation or flight management systems integrating data from multiple navigation sensors.

DATES: Comments submitted must be received on or before November 15, 1993.

ADDRESSES: Send all comments on the proposed AC 20–130A to: Federal Aviation Administration, Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments to the Federal Aviation Administration, room 806, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Federal Aviation Administration, Navigation and Communication Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC announced in this notice by submitting such written data, views, or arguments as they desire to the address above. Comments received on the proposed AC may be examined, both before and after the comment closing date, in room 806, FAA Headquarters Building (FOB–10A),

800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

The proposed advisory circular (AC) establishes an acceptable means of obtaining airworthiness approval of multiple sensors navigation of flight management systems integrating data from multiple navigation sensors (including GPS) for use as a navigation system for oceanic domestic en route, terminal, and non-precision instrument approach (except localizer, localizer directional air (LDA) and simplified directional facility (SDF) operations. The AC does not address GPS equipment incorporating differential GPS capability.

How To Obtain Copies

A copy of the proposed advisory circular may be obtained by contacting Ms. Bobbie J. Smith, Navigation and Communications Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on August 9, 1993.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–19660 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Helicopter Operations on the Quarry Helicopter Route, Boston, Massachusetts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces an informal airspace meeting to solicit information from airspace users concerning the safety of helicopter operations along the Quarry Helicopter Route depicted on the Boston Helicopter Route chart.

TIME AND DATE: The informal airspace meeting will be held from 7 p.m. to 10 p.m. on September 16, 1993.

PLACE: The location of the informal airspace meeting is as follows: City Hall, 1305 Hancock Street, 2nd Floor Conference Room, Quincy, MA 02169.

FOR FURTHER INFORMATION CONTACT: Mr. Willis Nelson, Assistant Manager, Airspace-Rules and Aeronautical Information Division, ATP–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3731.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) This meeting will be informal in nature and will be conducted by FAA representatives. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make presentation to the FAA team will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the team to allocate an appropriate amount of time for each presenter. The team may allocate the time available for each presentation in order to accommodate all speakers. This meeting will not be adjourned until everyone on the list has had an opportunity to address the team. This meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to helicopter operations along the Quarry helicopter route will be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(3) This meeting will not be formally recorded. However, a summary of the comments made at this meeting will be prepared and will be made available to all interested parties by contacting the person listed under the **"FOR FURTHER INFORMATION CONTACT"** section.

Agenda

Opening Remarks and Discussion of Meeting Procedures, Background Information, Public Presentations, Closing Comments.

Issued in Washington, DC, on August 11, 1993.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–19658 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno Cannon International Airport and Reno Stead Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno Cannon International Airport and at Reno Stead Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or
San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert White, Executive Director, Airport Authority of Washoe County at the following address: Airport Authority of Washoe County, 2001 East Plumb Lane, Reno, NV 89502.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from Reno Cannon International Airport and at Reno Stead Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 29, 1993, the FAA determined that the application to impose and use a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 29, 1993.

The following is a brief overview of the application.

Level of proposed PFC: $3.00
Proposed charge effective date: January 1, 1994
Proposed charge expiration date: January 30, 1999
Total estimated PFC revenue: $34,512,792.00
Brief description of the proposed projects: Reno Cannon International Airport
Impose and Use Projects: The Airport Authority of Washoe County local funds share of the FAA approved Letter of Intent (LOI) Project consisting of—reconstruction, widen and extend runway 16L/34R including blast pads, grooving, marking, lighting, signage and drainage; construct connector taxiways A, F, J, K, M, N, and P including marking, lighting, and signage; construct taxiways H, L, and C including marking, lighting, signage; access road improvements and drainage; acquire land for airport development and approach protection; environmental mitigation for runway and taxiway construction; relocate Airport Surveillance Radar, reconstruct taxiway A and taxiway B construction; construct Phase I & II of airport security system; baggage claim expansion; terminal modification for handicap access; residential soundproofing Phase I; construct airport drainage system; reconstruct terminal area ramp; reconstruct taxiway O; reconstruct airport concourse gates
Reno Stead Airport Use Project: Reconstruct taxiways A, C, D, and E
Reno Cannon International Airport Impose Only Projects: Purchase snow removal equipment; construct taxiway B south extension
Reno Stead Airport Impose Only Project: Construct airport perimeter road extension
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Carriers who file FAA form 1800–31

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Hawthorne, California, on August 4, 1993.

Robert C. Bloom,

Acting Manager, Airports Division Western-Pacific Region.

[FR Doc.93–19662 filed 8–13–93; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 31, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3415–X	U.S. Department of Defense, Falls Church, VA (See Footnote 1).	3415
4884–X	Praxair, Inc., Danbury, CT (See Footnote 2).	4884
5704–X	U.S. Department of Defense, Falls Church, VA (See Footnote 3).	5704
7887–X	AeroTech, Inc., Las Vegas, NV (See Footnote 4).	7887
8725–X	CNG Cylinder Co., Long Beach, CA (See Footnote 5).	8725
9421–X	Taylor-Wharton Cylinders, Harrisburg, PA (See Footnote 6).	9421
9645–X	Bonar, Inc., Lindsay, Ontario, CN (See Footnote 7).	9645
9977–X	Hercules Aerospace Co., Magna, UT (See Footnote 8).	9977
10541–X	Aerojet Propulsion Division, Sacramento, CA (See Footnote 9).	10541
10692–X	Technical Manufactured Products, Jasper, GA (See Footnote 10).	10692
10741–X	Northern Natural Gas Co., Houston, TX (See Footnote 11).	10741

Application No.	Applicant	Renewal of exemption
10795–X	Mobil Oil Corp., Fairfax, VA (See Footnote 12).	10795

[1] To modify the exemption to provide for design variations to second stage rocket motors, classed as Division 1.1, 1.2 and 1.3 explosives.

[2] To modify the exemption to provide for additional commodities classed as Division 2.2 and 2.3 (inhalation hazards) for shipment in non-DOT specification cylinders with pressure relief devices.

[3] To modify the exemption to provide for a DOT Specification 1.7C drum and a DOT Specification 2U liner fpr ise orn transporting explosives classed as Division 1.1, 1.2 and 1.3.

[4] To modify the exemption to authorize the transport of rocket reload kits, identified as Articles, explosives, n.o.s. Division 1.4C, as an additional commodity transported in DOT 1.2B fiberboard boxes and not to exceed 62.5 grams.

[5] To modify the exemption to provide for an alternative resting method and eliminate retesting requirements for non-DOT specification cylinder 2 for use in transporting various hazardous materials classed as Division 2.1 or 2.2.

[6] To modify the exemption to provide for alternative testing of non-DOT specification cylinders for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 6.1.

[7] To modify the exemption to provide for an additional non-DOT specification portable tank for use in transporting various hazardous materials.

[8] To modify the exemption to provide for an additional design rocket motor with igniter installed classed as Division 1.3C.

[9] To modify the exemption to provide for design variation to rocket motors, classed as Division 1.3C, transported in specially designed non-DOT specificaion packaging.

[10] To modify the exemption to provide for additional models and design variations to non-DOT specification cylinders for use in transporting petroleum gases, classed as Division 2.1.

[11] To modify the original application to authorize non-DOT specification cylinders comparable to a 4BW for use in transporting compressed natural gas, classed as Division 2.1.

[12] To modify the exemption to provide for the modification of outage and filling requirements of multi-unit tank cars transporting Class 3 material.

Application No.	Applicant	Parties to exemption
4575–P	Allied-Signal, Inc., Morristown, NJ.	4575
4884–P	Allied-Signal, Inc., Morristown, NJ.	4884
4884–P	OSI Specialties, Inc., Sistersville, WV.	4884
6484–P	Texas Allied Chemicals, Inc., San Antonio, TX.	6484
6932–P	Produven, Caracas, Venezuela.	6932
8445–P	Ecosystems Management, Inc., Lafayette, LA.	8445
8451–P	Siebelair International, Inc., Richmond, CA.	8451
8943–P	Franklin Environmental Services, Inc., Wrentham, MA.	8943
9064–P	Union Miniere, Antwerpen; Belgium.	9064
9275–P	Muelhens Inc., Orange, CT.	9275
10001–P	Interstate Welding Sales Corp., Marinette, WI.	10001
10184–P	Allied-Signal, Inc., Morristown, NJ.	10184
10441–P	Environmental Enterprises, Inc., Cincinnati, OH.	10441
10497–P	Martin Marietta, Princeton, NJ.	10497
10916–P	Ashland Chemical, Inc., Columbus, OH.	10916
10967–P	Allied-Signal, Inc., Morristown, NJ.	10967
10982–P	Appleton Papers, Inc., Appleton, WI.	10982

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(a))

Issued in Washington, DC, on August 6, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–19566 Filed 8–13–93; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 15, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11065–N	City of Cincinnati/Department of Sewers, Cincinnati, OH.	49 CFR 173.67(i) & (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2)

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NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11067–N	Hercules Incorporated, Wilmington, DE.	49 CFR 173.255(c), 49 CFR	To authorize the transportation of Organic Peroxide, Type D, liquid, classed as Division 5.2, in DOT Specification 57 portable tanks. (mode 1)
11068–N	Ontario Hydro, Toronto, Ontario, Canada.	49 CFR 49 CFR 178.245–1(b)	To manufacture, mark and sell non-DOT specification portable tanks comparable to DOT Specification 51 except the inlet and outlet openings are located at the side, for shipment of hydrogen sulfide, liquefied, classed as Division 2.3. (modes 1, 2, 3)
11069–N	Coulton Chemical Corporation, Sylvania, OH.	49 CFR (3) SP B14, 49 CFR 172.102(c).	To authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in non-insulated MC 330 and MC 331 cargo tanks. (mode 1)
11070–N	National Aeronautics & Space Administration, (NASA) Washington, DC.	49 CFR 173.304	To authorize the shipment of anhydrous ammonia, classed as Division 2.2, in non-DOT specification cylinders described as part of the closed loop thermal control system for the space program. (mode 1)
11074–N	Interplastic Corporation, St. Paul, MN.	49 CFR 174.67(i) & (j)	To authorize tank cars to remain connected during unloading of dicyclopentadiene, Class 3, without the physical presence of an unloader. (mode 2)
11075–N	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	49 CFR 172.202(e), 172.203(d)(2)(4), 172.310(a)(1), 172.331(b), 173.403(c), 173.425(c)(5), 173.443(a), 174.59, 174.700(e), 174.715(a).	To authorize relief from certain shipping paper, marking, placarding, and other requirements involving full trains of closed gondola cars containing soils and debris having low concentrations of naturally occurring radioactive material. (mode 2)
11077–N	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.226(b) & (173.227(b).	To authorize shipment in exclusive use vehicles, of methylhydrazine in 55 gallon UN 1A1 stainless steel drums and Nitric acid in 55 gallon UN 1B1 aluminum drums which deviate from the required wall thickness, secondary cap seal and overpack requirements for Group I Hazard Zone A&B materials. (mode 1)
11078–N	Ryder Aviall, Inc., Mt. Juliet, TN	49 CFR 173.159(d)(1) & (2)	To authorize the transport of batteries, wet, filled with alkali, electric storage, classed as Class 8, in specially designed packaging meeting UN 1H2 Packing Group III requirements to be shipped as essentially non-regulated. (modes 1, 2, 4, 5)
11080–N	Austin Powder Company, Cleveland, OH.	49 CFR 177.835(g)	To authorize the transportation of detonators for ammunition classed as Division 1.4 on the same motor vehicle with Division 1.1, 1.2, or 1.3 material, in a specially designed container. (mode 1)
11081–N	Central Welding Supplies, Inc., Lexington, KY.	49 CFR 173.302(f)	To authorize compressed carbon monoxide, classed as Division 2.3, to be transported in DOT–3AA6000 cylinders at 4800 psi. (mode 1)
11082–N	Advanced Tissue Sciences, Inc., La Jolla, CA.	49 CFR 173.136(a)(1), 173.137	To authorize an alternative mechanical type test method to determine corrosivity and specific packaging group. (modes 1, 2, 3, 4, 5)
11083–N	Rhone-Poulenc Basic Chemicals Co., Shelton, CT.	49 CFR 172.102 SPB 14	To authorize the use of non-insulated MC312, cargo tanks for transportation of sulfur trioxide, uninhibited, (inhalation hazard) Class 8. (mode 1)
11084–N	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.29(a)(2)	To authorize a one-time shipment of two out-of-test DOT Specification 105A300V rail cars, containing motor fuel anti-knock mixtures residue, Division 6.1. (mode 2)
11085–N	Union Tank Car Company, East Chicago, IN.	49 CFR 173.29(a)(2)	To authorize a one-time shipment of out-of-test DOT specification 111A100W3, rail car, containing fuel oil residue, Class 3. (mode 1)
11086–N	Standard Chlorine of Delaware, Inc., Delaware City, DE.	49 CFR 173.213	To authorize FIBCs manufactured under DOT–E8871 which incorporates a specially designed liner to be reused for the shipment of p-Dichlorobenzene classed as Division 6.1 (modes 1, 2, 3)
11087–N	Safety Storage, Inc., Hollister, CA	49 CFR 176.69(a)	To manufacture, mark and sell a specifically designed container, equipped with a fire protection system, containing certain hazardous materials to be excempt from the general storage requirements aboard cargo vessels. (mode 3)
11088–N	Federal Laboratories, Saltsburg, PA.	49 CFR 172.102	To exempt from labelling requirements small packages of various hazardous materials (i.e. tear gas type products) formerly requiring irritant label now reclassed to require a poison or explosive label. (modes 1, 3, 4, 5)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11089–N	InterTrans Services, Inc., Monmouth Beach, NJ.	49 CFR 172.102 SP74	To authorize the shipment of chloropicrin and residual amount of chloropicrin, Division 6.1, inhalation hazard in DOT Specification 105S and 105A tank cars without thermal protection. (mode 1)
11090–N	Mobile Ripening Systems, Inc., Jessup, MD.	49 CFR 177.809 and 177.817, Part 107, Subpart B, Appendix B, Part 172, Subpart C, D and E; 173.24(b)(1).	To authorize the controlled release of ethylene, contained in DOT specification cylinders, into a transport vehicle for the purpose of ripening fruits and vegetables. (mode 1)
11091–N	National Aeronautics and Space Administrative, Washington, DC.	49 CFR 173.34(e)(15)	To authorize DOT Specification 3A or 3AA cylinders, over 35 years old, used in hydrogen service, to be exempt from certain retest requirements. (mode 1)
11093–N	CP Rail (Canadian Pacific Limited) Montreal, Quebec, CN.	49 CFR 172.704(c)(2)	To extend the training program required under 49 CFR 172.704(c)(2) for train crew employees who transport hazardous materials in CP rail—owned vehicles from once every two years to once every three years. (mode 2)

Note: Notice of Application No. 11051–N Fluoroware Inc. that appeared at page 38459 of the Federal Register for July 16, 1993, should have appeared 11052–N Fluoroware Inc.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Progress, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–19567 Filed 8–13–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number: 15–63]

Prohibition of Trade Involving Nicaragua, Delegation of Authority

Dated: August 9, 1993.

1. Delegation

a. By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b) and Executive Order (E.O.) 12513, dated May 1, 1985, the Director, Office of Foreign Assets Control, is hereby delegated all powers and authorities previously delegated to the Assistant Secretary (Enforcement) by Treasury Order (TO) 105–04 to prohibit trade and certain other transactions involving Nicaragua.

b. Treasury Directive (TD) 15–63 shall be revoked at the conclusion of all matters involving E.O. 12513.

2. Cancellation

TD 15–63, "Prohibition of Trade Involving Nicaragua," dated September 29, 1986, is superseded.

3. Authority

a. E.O. 12513, "Prohibiting Trade and Certain Other Transactions Involving Nicaragua," dated May 1, 1985 (50 FR 18629, 3 CFR, 1985 Comp., p. 342). E.O. 12513 was revoked by E.O. 12707; however, matters involving E.O. 12513 not finally concluded at the time of the revocation are not affected by the revocation.

b. TO 105–04, "Delegation of Authority to the Assistant Secretary for Enforcement," dated May 6, 1985.

4. Office of Primary Interest

Office of the Assistant Secretary (Enforcement).

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–19690 Filed 8–13–93; 8:45 am]

BILLING CODE 4810–25–P

Departmental Offices' Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 57 FR 118 dated June 18, 1992, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith—Director, Office of Thrift Institutions Oversight and Policy
John H. Auten—Director, Office of Financial Analysis
William E. Barreda—Deputy Assistant Secretary (Trade and Investment Policy)
Ralph L. Bayrer—Director, Office of Synthetic Fuels
Kurt Campbell—Special Assistant to the Under Secretary for International Affairs
Mary E. Chaves—Director, Office of International Debt Policy
Phillip N. Diehl—Counsel to the Secretary and Chief of Staff
Lowell Dworin—Director, Office of Tax Analysis
James H. Fall, III—Deputy Assistant Secretary (Developing Nations)
Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office
Geraldine A. Gerardi—Director for Business Taxation
Robert F. Gillingham—Deputy Assistant Secretary (Policy Coordination)
Faith Hochberg—Deputy Assistant Secretary (Law Enforcement)
Edward S. Knight—Executive Secretary and Senior Advisor to the Secretary
Susan Levine—Deputy Assistant Secretary (International Development & Debt Policy)
Michael Levy—Assistant Secretary (Legislative Affairs)
David Lipton—Deputy Assistant Secretary (Eastern European and Former Soviet Union Policy)
John W. Mangels—Director, Office of Operations
Deborah Miller Witchey—Acting Assistant Secretary (Management)
Alicia H. Munnell—Assistant Secretary (Economic Policy)
Edward E. Murphy—Senior Economist (Economic Policy)
Gerald Murphy—Fiscal Assistant Secretary
Barry S. Newman—Deputy Assistant Secretary (International Monetary Affairs)
Frank Newman—Under Secretary for Domestic Finance
Ronald K. Noble—Assistant Secretary (Enforcement)
Thomas P. O'Malley—Director, Management Programs Directorate

Jill K. Ouseley—Director, Office of Market Finance
Marcus W. Page—Deputy Fiscal Assistant Secretary
Charlene J. Robinson—Director, Human Resources Directorate
Leslie Samuels—Assistant Secretary (Tax Policy)
Charles Schotta—Deputy Assistant Secretary (Middle East & Energy Policy)
Sam Sessions—Deputy Assistant Secretary (Tax Policy)
Jeffrey Shafer—Assistant Secretary (International Affairs)
John P. Simpson—Deputy Assistant Secretary (Regulatory, Trade & Tariff Enforcement)
Jane L. Sullivan—Director, Office of Information Resources Management
Lawrence H. Summers—Under Secretary for International Affairs
Edwin A. Verburg—Director, Financial Services Directorate

FOR FURTHER INFORMATION CONTACT: Larry G. Hicks, Executive Secretary, PRB, room 1314, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–1440. This notice does not meet the Department's criteria for significant regulations.

Deborah Miller Witchey,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 93–19588 Filed 8–13–93; 8:45 am]

BILLING CODE 4810–25–M

Departmental Offices

Privacy Act of 1974, New System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed system of records.

SUMMARY: This notice sets forth a system of records, the Waco Administrative Review Group Investigation. The purpose of the system of records is to implement a data base containing records of the investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the Bureau of Alcohol, Tobacco and Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and where appropriate, to disclose to other law enforcement agencies which have an interest in the information.

DATES: Comments must be received on or before September 15, 1993. The system of records will be effective October 15, 1993, unless comments are received which result in a contrary determination.

ADDRESSES: Comments must be submitted to the Office of Enforcement, Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 4312, Washington, DC. 20220. Comments received will be available for inspection at the same address in the Office of Enforcement, Department of the Treasury, between the hours of 9 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nichole L. Jenkins, Attorney, Office of the Assistant General Counsel for Administrative and General Law, Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 1410, Washington, DC 20220, (202) 622–0450.

SUPPLEMENTARY INFORMATION: As an investigative and law enforcement office, the Office of Enforcement has a wide variety of investigatory responsibilities. As a part of that Office, the Waco Administrative Review Group is being established to conduct a comprehensive investigation of the Bureau of Alcohol, Tobacco and Firearms (BATF) including analyzing whether BATF procedures, policies and practices were adequate and whether they were followed. The Waco Administrative Review Group will collect and store information regarding individuals involved in the events leading to the BATF execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993. This information will be obtained during the course of an investigation conducted by the Waco Administrative Review Group. Where appropriate, Treasury will disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 31 U.S.C. 321. The Office of Enforcement will maintain these records to further the Government's investigative, enforcement, and prosecution efforts through collection, analysis and dissemination of the data where appropriate. Since the system of records includes subject files which are necessarily retrieved by personal identifier, the Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires that the Office of Enforcement give general notice and seek public comments.

In a separate publication the Office of Enforcement is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2), and (k)(2) of the same section.

Dated: July 29, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management).

Dated: July 28, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

Treasury/DO .207

SYSTEM NAME:

Waco Administrative Review Group Investigation—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Enforcement, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and its bureaus and persons whose associations with current and former employees relate to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas on February 28, 1993, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) developed in the course of the investigation. (B) Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants who have been identified by the Office of Enforcement, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the Office of Enforcement. (C) Members of the general public who provide information pertinent to the investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal misconduct pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993. (B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law and to comply with the President's specific directive for a factfinding report on the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, with related exhibits, statements, affidavits, records or other pertinent documents obtained

during investigation; (2) transcripts and documentation concerning requests and approval for consensual telephone and consensual nontelephone monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution; (6) videotapes of events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; (7) audiotapes with transcripts of events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; (8) photographs and blueprints pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions, and (9) drawings, sketches, models portraying events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions.

PURPOSE:

The purpose of the system of records is to implement a data base containing records of investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, to disclose to other law enforcement agencies which have an interest in the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena, where relevant and necessary, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and (6) provide a report to the President and the Secretary of the Treasury detailing the investigation and findings concerning the events leading to the Bureau of Alcohol, Tobacco & Firearms' execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records in binders and file jackets and all multisource media information are maintained in locked offices with access, through the administrative documents and records control personnel for the Waco Administrative Review Group, available to personnel with a need to know. Records will be maintained in locked offices during non-business hours. Records will be maintained in the Departmental Offices, in the main Treasury building which is subject to 24-hour security.

RETRIEVABILITY:

Alphabetically by name, and or by number, or other alpha-numeric identifiers.

SAFEGUARDS:

Records and word processing disks are maintained by administrative documents and records control personnel of the Waco Administrative Review Group. All access doors are locked when office is vacant. The records are available on a need-to-know basis to the Waco Administrative Review Group and Office of Enforcement personnel and other Federal and state law enforcement personnel who have an appropriate security clearance.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for six years and indices to those files are stored on-site for ten years. The word processing disks will be retained indefinitely, and to the extent required they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center, Suitland, Maryland, for storage and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Enforcement, Room 4312–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above

RECORD SOURCE CATEGORIES:

See "Categories of Individuals" above This system contains investigatory material for which sources need not be reported.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U S.C. 552(a)(c)(3)(4), (d)(1)(2)(3)(4), (e)(1)(2)(3), 4(G), (H) and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

This system exemption can be found at 31 CFR 1.36.

[FR Doc. 93–19691 Filed 8–13–93; 8:45 am]
BILLING CODE 4810–25

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Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that acetylene black be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 15, 1993. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on November 6, 1990. The petitioner is Chevron Chemical Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS Number: 2903.00.00.50
CAS number: 1333–86–4

This substance is derived from acetylene, a taxable chemical unless it is derived from coal. Acetylene black is a solid produced predominantly by direct thermal decomposition of acetylene.

The stoichiometric material consumption formula for this substance is:

C_2H_2 (acetylene) → 2 C (acetylene black) + 2 H (hydrogen)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.50 per ton unless it is produced from acetylene derived from coal. This is based upon a conversion factor for acetylene of 1.13. If this substance is produced from acetylene derived from coal it would not be a taxable substance.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19580 Filed 8–13–93, 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that butanol be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to this petition must be received by October 15, 1993. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T.R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on November 8, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2905.13.00.00
CAS number: 71–36–3

This substance is derived from the taxable chemicals propylene and methane. Butanol is a liquid produced predominantly by oxo synthesis of propylene with subsequent hydrogenation.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + CH_4 (methane) + H_2O (water) → $C_4H_{10}O$ (butanol) + H_2 (hydrogen)

According to the petition, taxable chemicals constitute 76.3 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.31 per ton. This is based upon a conversion factor for propylene of 0.6746 and a conversion factor for methane of 0.0076.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19576 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that terephthalic acid and polybutene be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 15, 1993. Any modification of the list of taxable substances based upon these petitions would be effective January 1, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T.R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on January 16, 1990. The petitioner is Amoco Corporation, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Terephthalic Acid

HTS number: 2917.36.00 00
CAS number: 100–21–0

This substance is derived from the taxable chemical xylene. Terephthalic acid is a solid produced predominantly by air oxidation of para-xylene.

The stoichiometric material consumption formula for this substance is:

C_8H_{10} (xylene) + 3 O_2 (oxygen) → $C_8H_6O_4$ (terephthalic acid) + 2 H_2O (water)

According to the petition, taxable chemicals constitute 52.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $6.47 per ton before January 1, 1992, and $3.11 per ton for imported terephthalic acid first sold or used after December 31, 1991. This is based upon a conversion factor for xylene of 0.639.

Polybutene

HTS number: 3902.20.50.00
CAS number: 9003–28–5 and 25249–62–1

This substance is derived from the taxable chemical butylene. Polybutene is a polymer produced predominantly by the polymerization of isobutylene.

The stoichiometric material consumption formula for this substance is:

n(C_4H_8) (isobutylene) → $(C_4H_8)_n$ (polyisobutylene)

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.87 per ton. This is based upon a conversion factor for butylene of $1.00.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19577 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that pentaerythritol, trimethylolpropane, 1,3-butylene glycol, and paraformaldehyde be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 15, 1993. Any modification of the list of taxable substances based upon these petitions would be effective July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on September 19, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Pentaerythritol

HTS number: 2905.42.00.00
CAS number: 115–77–5

This substance is derived from the taxable chemicals ethylene, methane, and sodium hydroxide. Pentaerythritol is a solid produced predominantly by the alkaline catalyzed "crossed-cannizzaro" reaction between acetaldehyde and formaldehyde. Most acetaldehyde is produced by direct oxidation of ethylene. All formaldehyde is produced by catalytic vapor phase oxidation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

C_2H_4 (ethylene) + 4 CH_4 (methane) + 2.5 O_2 (oxygen) + NaOH (sodium hydroxide) → 4 H_2 (hydrogen) + HCOONa (sodium formate) + $C_5H_{12}O_4$ (pentaerythritol)

According to the petition, taxable chemicals constitute 62.2 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.66 per ton. This is based upon a conversion factor for ethylene of 0.2877, a conversion factor for methane of 0.9120, and a conversion factor for sodium hydroxide of 0.4700.

Trimethylolpropane

HTS number: 2905.41.00.00
CAS number: 77–99–6

This substance is derived from the taxable chemicals propylene, methane, and sodium hydroxide. Trimethylolpropane is a solid produced predominantly by the mixed aldolization of formaldehyde with n-butryaldehyde. Formaldehyde is produced by catalytic vapor phase oxidation of methanol. Both carbon monoxide and methanol are produced from methane. The most widely used manufacturing technique for butyraldehyde is the process in which propylene is combined with carbon monoxide and hydrogen.

The stoichiometric material consumption formula for this substance is:

C_3H_6 (propylene) + 4 CH_4 (methane) + NaOH (sodium hydroxide) + 1.5 O_2 (oxygen) + H_2O (water) → HCOONa (sodium formate) + 5 H_2 (hydrogen) + $C_6H_{14}O_3$ (trimethylolpropane)

According to the petition, taxable chemicals constitute 68.8 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.45 per ton. This is based upon a conversion factor for propylene of 0.4527, a conversion factor for methane of 0.6214, and a conversion factor for sodium hydroxide of 0.3900.

1,3-butylene glycol

HTS number: 2905.39.10.00
CAS number: 107–88–0

This substance is derived from the taxable chemicals ethylene and methane. 1,3-butylene glycol is a liquid produced predominantly by catalytic hydrogenation of acetaldol. Acetaldol is a condensation product of acetaldehyde. Acetaldehyde is produced by oxidation of ethylene. Hydrogen is obtained by steam reforming methane.

The stoichiometric material consumption formula for this substance is:

2 C_2H_4 (ethylene) + CH_4 (methane) + H_2O (water) + O_2 (oxygen) → 2 H_2 (hydrogen) + CO (carbon monoxide) + $C_4H_{10}O_2$ (1,3-butylene glycol)

According to the petition, taxable chemicals constitute 59 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.89 per ton. This is based upon a conversion factor for ethylene of 0.9298 and a conversion factor for methane of 0.1055.

Paraformaldehyde

HTS number: 2912.60.00.00
CAS number: 30525–89–4

This substance is derived from the taxable chemical methane. Paraformaldehyde is a solid produced primarily from aqueous formaldehyde. Formaldehyde is produced by catalytic vapor phase oxidation of methanol. Methanol is produced from methane.

The stoichiometric material consumption formula for this substance is:

$10\ CH_4$ (methane) + $5\ O_2$ (oxygen) + H_2O (water) → $10\ H_2$ (hydrogen) + $HO(CH_2O)_{10}H$ (paraformaldehyde)

According to the petition, taxable chemicals constitute 92.2 per cent by value of the materials used to produce this substance. The stated cost for methane is $0.0386 per pound, the stated cost for water (steam) is $0.0023 per pound, and the stated cost for oxygen is $0.0030 per pound. The rate of tax for this substance would be $2.31 per ton. This is based upon a conversion factor for methane of 0.6716.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19578 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that propanol be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to this petition must be received by October 15, 1993. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on November 8, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2905.12.00.10

CAS number: 71–23–8

This substance is derived from the taxable chemicals ethylene and methane. Propanol is a liquid produced predominantly by oxo synthesis of ethylene with subsequent hydrogenation.

The stoichiometric material consumption formula for this substance is:

C_2H_4 (ethylene) + CH_4 (methane) + H_2O (water) → C_3H_8O (propanol) + H_2 (hydrogen)

According to the petition, taxable chemicals constitute 70.9 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.58 per ton. This is based upon a conversion factor for ethylene of 0.5251 and a conversion factor for methane of 0.0076.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19579 Filed 8–13–93; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–35: OTS No. 1985]

Avondale Federal Savings Bank, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on August 9, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Avondale Federal Savings Bank, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19634 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–34: OTS No. 5902]

First Federal Savings and Loan Association of Storm Lake, Storm Lake, Iowa; Approval of Conversion Application

Notice is hereby given that on August 6, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Storm Lake, Storm Lake, Iowa, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19633 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–36: OTS No. 3391]

First Federal Savings and Loan Association of Belvidere, Belvidere, Illinois; Approval of Conversion Application

Notice is hereby given that on August 9, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Belvidere, Belvidere, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, IL 60601–4360.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19635 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–38; OTS No. 3699]

First Federal Savings and Loan Association of Anderson, Anderson, South Carolina; Approval of Conversion Application

Notice is hereby given that on August 10, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Anderson, Anderson, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19637 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–37; OTS NO. 4927]

Mutual Federal Savings Bank, Somerset, Kentucky; Approval of Conversion Application

Notice is hereby given that on August 10, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Mutual Federal Savings Bank, Somerset, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: August 10, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19636 Filed 8–13–93; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 156
Monday, August 16, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 16, 23, 30, and September 6, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 16

Thursday, August 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Georgia Power Company's Appeal of LBP-93-5 (Tentative)
(Contact: Cecilia Carson, 301-504-1625)
b. Oncology Services Corportation—Review of LBP-93-10 (Tentative)
(Contact: Margaret Doane, 301-504-2001)
c. Pacific Gas & Electric Co.—Licensing Board's Referred Ruling in LBP-93-13 (Tentative)
(Contact: Roland Frye, 301-504-3505)

Week of August 23—Tentative

Wednesday, August 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

Week of August 30—Tentative

Tuesday, August 31

10:00 a.m.
Briefing on NRC Research Program on Aging (Public Meeting)
(Contact: John Craig, 301-492-3850)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)
(Contact: Shelly Schwartz, 301-504-2325)

Week of September 6—Tentative

Thursday, September 9

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301-492-4516)
3 30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.
Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301-504-1728)
10:30 a.m.
Briefing by advanced Reactor Corporation (Public Meeting)
2:00 p.m.
Briefing on management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301-504-2659)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

DATED: August 11, 1993.

William M. Hill, Jr.,

Secretary Tracking Officer, Office of the Secretary.

[FR Doc. 93-19851 Filed 8-12-93; 3:13 pm]

BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1459]

TIME AND DATE: 10 A.M. (EDT), August 18, 1993.

PLACE: Chattanooga Office Complex Auditorium, Chattanooga, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on May 12, 1993.

DISCUSSION ITEMS:

1. Clean Water Update.
2. Rate Review.

ACTION ITEMS:

New Business

E—Real Property Transactions

E1. Grant of Permanent Easement to Hiwassee Utilities Commission Affecting Approximately 0.10 Acre of Land on Chickamauga Lake, Bradley and McMinn Counties, Tennessee.

E2. Sale of Permanent Easement to South Central Bell Telephone Company Affecting Approximately 2.7 Acres of Land on Chickamauga Lake, Hamilton County, Tennessee.

E3. Change in Land Use Allocation for 16.8 Acres of Land on Kentucky Lake to Allow Construction of a Public Boat Launching Ramp.

F.—Unclassified

F1. Supplement to Contract No. TV-89601V with Fish and Wildlife Associates, Inc.

F2. Filing of Condemnation Cases.

INFORMATION ITEMS:

1. Agreement with Powell Valley Electric Cooperative for a Direct Load Control Program.
2. Supplemental Arrangements Involving Cooperative Efforts with Tennessee Valley Public Power Association and Distributors Insurance Company (TVPPA Insurance).
3. Supplement to Contract No. 91NNP-44970C with Ebasco Constructors, Incorporated. Approval was subject to satisfactory negotiations and final review prior to execution.
4. Supplement to Personal Services Contract TV-83216V with BCP Technical Services, Inc. Approval was subject to satisfactory negotiations and final review prior to execution.
5. Supplement to Personal Services Contract TV-85775V with Stone & Webster Engineering Corporation. Approval was subject to satisfactory negotiations and final review prior to execution.
6. Filing of Condemnation Cases.
7. Supplement No. 8 to Contract No. TV-85454V-1 with Stone and Webster Engineering Corporation. Approval was subject to satisfactory negotiations and final review prior to execution.
8. Amendments to the Rules and Regulations of the TVA Retirement System.
9. Sale of Permanent Easement Affecting Approximately 35 Acres of Land in the Town of Franklin to Williamson County, Tennessee, for Public Recreation.
10. Grant of Permanent Easement Affecting Approximately 1.68 Acres of Land on the Upper Bear Creek Lake, Marion County, Alabama, to the Bear Creek Development Authority for a Water Treatment Plant Expansion.
11. Grant of Permanent Easement Affecting Approximately 10 Acres of Land on Wheeler Lake in Lawrence County, Alabama, to the West Morgan-East Lawrence Water Authority for a Water Treatment Plant.
12. 20-Year Term Easement Affecting 0.05 Acre of Land on Melton Hill Lake in Anderson County to the Claxton Volunteer Fire Department, Incorporated, for Construction of a Fire Station.
13. Public Auction Sale of Property Affecting Approximately 0.07 Acre of Land and Acquisition of 0.05 Acre of Land on Melton Hill Lake in Anderson County, Tennessee, to Carlos E. Gregory.
14. Grant of Permanent Easement Affecting 0.2 Acre of Land on Guntersville Lake, Marion County, Tennessee, to Tennessee Department of Transportation for a Highway Right-of-Way.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President,

Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: August 11, 1993.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 93–19790 Filed 8–12–93; 10:34 am]

BILLING CODE 8120–08–M

Corrections

Federal Register

Vol. 58, No. 156

Monday, August 16, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 930232-3166; I.D. 120492C]

RIN 0648-AD39

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-17607 beginning on page 39680 in the issue of Monday, July 26, 1993 make the following correction:

§ 672.2 [Corrected]

On page 39683, in the first column, in § 672.2(8), in the third line, "of" should read "or".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32681; File No. SR-OCC-92-24]

Self-Regulatory Organizations; The Options Clearing Corp. Order Approving a Proposed Rule Change To Expand the Cross-Margin Program Between The Options Clearing Corp. and the Board of Trade Clearing Corporation to Include Non-proprietary Positions of Market Professionals

July 27, 1993.

Correction

In notice document 93-18415 beginning on page 41302 in the issue of Tuesday, August 3, 1993, the date was omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASW-27]

Proposed Establishment of Class D Airspace: Alice, TX; Corpus Christi, TX

Correction

In proposed rule document 93-17166 beginning on page 38734 in the issue of Tuesday, July 20, 1993, make the following correction:

§ 71.1 [Corrected]

1. On page 38735, in the second column, in § 71.1, under **ASW TX CZ Alice, TX [New]**, in the first line, "lat. 25°" should read "lat. 27°".

BILLING CODE 1505-01-D

federal register

Monday
August 16, 1993

Part II

Commodity Futures Trading Commission

Exemptions for Certain Exchange-Traded Futures and Options Contracts; Notice

COMMODITY FUTURES TRADING COMMISSION

Exemptions for Certain Exchange-Traded Futures and Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petitions for exemptions and request for comment.

SUMMARY: Pursuant to Section 4(c) of the Commodity Exchange Act ("CEA" or "Act"), the Chicago Mercantile Exchange ("CME") and the Board of Trade of the City of Chicago ("CBOT") have applied for exemptions from the requirements of the Act for certain exchange-traded futures and options contracts. The Commodity Futures Trading Commission ("Commission") is hereby giving notice of the petitions and soliciting the views of interested persons.

DATES: Written comments must be received by the Commission by the close of business on November 5, 1993.

ADDRESSES: Interested persons should submit their written views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Pat G. Nicolette, Acting General Counsel, David R. Merrill, Deputy General Counsel, Ellyn S. Roth, Attorney, Office of the General Counsel at (202) 254–9880 or Gerald D. Gay, Director, Division of Economic Analysis at (202) 254–6990, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over "accounts, agreements (including any transaction which is of the character of . . . an 'option' . . .), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market . . . or any other board of trade, exchange, or market . . . ." 7 U.S.C. § 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.[1]

On October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law. P.L. No. 102–546. This legislation added new subsections (c) and (d) to Section 4 of the Act. New Section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than section 2(a)(1)(B).[2] New Section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract, or transaction being exempted will be entered into solely between "appropriate persons" as defined in new Section 4(c)(3)[3] subject to such limitations as may be deemed appropriate by the Commission, in the public interest.[4] In granting such an exemption, the Commission must also determine that the agreement, contract, or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act and that the exemption would be consistent with the public interest and the purposes of the Act.[5]

II. The Application for Exemptive Relief From the CME

On April 8, 1993, the Commission received a petition for exemptive relief submitted pursuant to Section 4(c) of the Act on behalf of the Chicago Mercantile Exchange with respect to the purchase and sale of contracts known as Rolling Spot Futures Contracts and options on those contracts (collectively "Rolling Spot Contracts"). On June 18, 1993 the Commission received a supplement to that petition.[6] Based upon the application and the supplemental submission, the Commission understands that the exemption sought would encompass the same contracts in which the CME was designated by the Commission as a contract market on April 6, 1993 and May 19, 1993.[7] According to the

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[1] Sections 4(a), 4c(b) and 4c(c) of the Act; 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA specifically provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

[2] Specifically, Section 4(c)(1), 7 U.S.C. 6(c)(1), provides that in order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[3] Section 4(c)(3), 7 U.S.C. 6(c)(3), provides that the term "appropriate person" shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this Act.

(F) A cooperation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 et seq.), or a commodity trading advisor subject to regulation under this Act.

(H) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

[4] *See* H.R. Rep. No. 978, 102d Cong., 2d Sess. at 79 (1992).

[5] Specifically, Section 4(c)(2), 7 U.S.C. 6(c)(2), states that the Commission shall not grant any exemption from any of the requirements of subsection (a) unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

[6] The full text of the petition and supplement is reproduced at the end of this notice.

[7] A copy of the Commission's designation orders as well as the memorandum from the Commission's

exchange, the contracts closely mirror common cash market instruments now traded in the over-the-counter market, provide many economic advantages over these instruments, and if allowed to operate with regulatory parity, would provide considerable benefits in terms of costs, price transparency, and counterparty credit exposure to the current users of these instruments. The application also makes clear that trades in Rolling Spot Contracts would be cleared through the CME clearing house and that Rolling Spot Contracts would be eligible for trading through the GLOBEX electronic trading system.

The CME does not seek an exemption from the provisions of the Act and the Commission's rules that generally prohibit fraud, embezzlement, manipulation or attempted manipulation, specifically Sections 4b, 4o, 6(c), 6(d), 6c, 9(a) and 9(b) of the Act and Commission rules 4.15, 33.9 and 33.10. Additionally, the exchange does not seek an exemption from Regulation 1.17,[8] which sets minimum financial requirements for futures commission merchants and introducing brokers, nor from Commission regulation 1.59, which establishes standards for the activities of self-regulatory organization employees and governing members who possess material, non-public information.[9]

Based on the application, the Commission also understands that the application encompasses Rolling Spot Contracts entered into solely between "Eligible Rolling Spot Participants," which would be limited to the following persons or classes of persons:

(1) A bank or trust company (acting on its own behalf or on behalf of another Eligible Rolling Spot Participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot Participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot Participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an Eligible Rolling Spot Participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraphs (1), (2), (3), (4), (5), (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the Rolling Spot Contract in the conduct of its business; or which has a net worth of $1,000,000 and enters into the Rolling Spot Contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot Participant; *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot Participant; *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) An exchange member at the CME, trading on his or her own behalf or on behalf of another Eligible Rolling Spot Participant.

III. The Application for Exemptive Relief From the CBOT

On June 30, 1993, the Commission received a petition submitted on behalf of the CBOT.[10] The petition requests that the Commission propose rules which would establish a "professional trading market exemption" under Section 4(c) of the Act. Based on the petition, the Commission understands that the "professional trading market exemption" would apply to trading in any instrument of the CBOT or other boards of trade, including those which have been previously designated by the Commission, and would exempt such trading from the CEA (except section 2(a)(1)(B)) and Commission rules, subject to certain conditions.

The Commission also understands that the exemption would be available upon written notice to the Commission by an applicable board of trade. To qualify for this exemption, a board of trade would meet to limit trading in exempt instruments to only those parties that satisfy the definition of "professional trader." The term "professional trader" has essentially the same definition as "Eligible Rolling Spot Participant" in the CME application, described above.

The CBOT's petition proposes that any transactions exempted by the Commission pursuant to Section 4(c) of the Act should be subject to an antifraud and antimanipulation rule, which the Commission should adopt specifically for these transactions.[11, 12]

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staff recommending designation are available upon request from the Commissioner's Office of the Secretariat.

[8] Of course, persons not required to register under the Act are, in any event, not subject to Rule 1.17.

[9] The Commission presumes that the exchange is not seeking relief from new Section 9(f) of the Act, which, *inter alia*, imposes certain additional restrictions on these activities.

[10] The full text of the petition is reproduced at the end of this notice.

[11, 12] The CBOT's proposed rule reads as follows:

(a) *Fraud.* It shall be unlawful for any person, directly or indirectly, in or in connection with any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act—

Continued

Violations of that rule would give rise to private rights of action.[13] The CBOT also does not request relief from Commission registration requirements. The petition also provides that the transactions must be cleared through a Commission-approved mutualized-risk clearing system.

The CBOT supports its petition based on the reasoning that "an exempt professional trading market would afford those OTC [over-the-counter] market users the price transparency, legal certainty and reduced credit risk of exchange markets, without the burdens of general federal regulation." According to the exchange, market users "should find it easier and less expensive to engage in derivative transactions on exchanges, thereby reducing price risks and volatility in our national economy overall."

IV. Standards for Exemptive Relief

The Commission is hereby seeking comments concerning the appropriate disposition, pursuant to Section 4(c) of the Act, or the applications submitted by the CME and the CBOT.

As noted above, the Commission, pursuant to Section 4(c) of the Act, is authorized to "exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) [Section 4(a) of the Act] (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction)" from the prohibition on off-exchange futures trading or from any other provision of the Act other than Section 2(a)(1)(B).[14] In addition, in granting any exemption under Section 4(c) from any of the requirements of Section 4(a), the Commission must determine that the exemption would be consistent with the public interest and the purposes of the Act.[15] Finally, the Commission must determine that the agreement, contract or transaction to be exempted will be entered into solely between "appropriate persons" (as defined in Section 4(c)(3)) and that the exemption "will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act."[16]

In considering the issues presented by the petitions, the Commission is seeking comments concerning the following specific issues:

A. Public Interest and Purposes of the Act

1. Generally

The applications are the first received by the Commission to seek exemptive relief pursuant to Section 4(c) for futures and commodity options contracts that are or will be traded on an exchange. They are also the first to seek exemptive relief for transactions that are or will be cleared through a mutualized risk clearing system. As such, they raise significant issues. In granting the Commission exemptive authority Congress specifically expected the Commission to act to bring legal certainty to four particular areas: swaps, forwards, hybrids and bank deposits and accounts. Conference Report at 81. At the same time the conferees disclaimed any intention that the new authority was to prompt a wide-scale deregulation of markets falling within the ambit of the Act, *id.*, and also expressed their intent that the Commission implement this authority in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike, *id.* at 78.

The Commission requests comment on whether the CME and CBT have adequately demonstrated factors that differentiate the transactions which are the subject of these petitions from futures and options contracts as generally traded on designated contract markets? Do the differences justify exempting the transactions from most provisions of the Act and Commission regulations while retaining the applicability of those provisions to other futures and options contracts traded on the exchanges and on other contract markets? For example, most participants in designated futures markets would meet the criteria for eligible participants set forth in the applications. Is adequate information available to evaluate the nature of current exchange-traded futures and options customers, and can the exchanges show how eligible participants would differ from those customers?

Do the applications adequately address the public interest concerns incorporated in Section 3 of the Act? Section 3 recognizes that a "national public interest" exists in transactions conducted on boards of trade, specifically refers to the dissemination of prices involved in such transactions and the use of such prices by producers and consumers of commodities, and finds federal regulation in this area to be imperative. Is this regulatory interest diminished by the exclusion of any category of traders from a market? Furthermore, since the transactions covered by the petitions presumably would be traded subject to exchange or other rules, is there a public interest in retaining some or all of the requirements of Sections 5 and 5a of the Act?[17] In this context, commenters are invited specifically to address different aspects of the public interest served by centralized and dealer markets. Further, how is the public interest served by having different regulatory regimes for centralized and dealer markets?

The Commission, to date, has used its exemptive authority under Section 4(c)

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(1) To cheat or defraud or attempt to cheat or defraud any other person;

(2) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(3) To deceive or attempt to deceive any other person by any means whatsoever.

(b) *Manipulation.* It shall be unlawful for any person to manipulate or attempt to manipulate the price (i) of any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act or (ii) of any commodity in interstate commerce or any contract of sale of a commodity for future delivery on or subject to the rules of any contract market.

(c) *Exemption disqualification.* Any person violating this regulation shall be disqualified from relying upon any exemption granted by the Commission under Sections 4(c) or 4c of the Act.

(d) *Private right of action.* In accordance with the procedures set forth in Section 22 of the Act, any person injured by a violation of subsections (a) or (b) of this regulation may bring a right of action [sic] for actual damages suffered as a result of that violation against any person who committed or aided and abetted that violation.

[13] *Id.*

[14] Any exemptive relief granted by the Commission would not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), including applicable securities laws or antifraud statutes of general applicability, to the exempted contracts or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations. H.R. Rep. No. 978, 102d Cong. 2d Sess. 83 (1992) ("Conference Report").

[15] In this regard, the Conference Report on the 1992 Act states that the "public interest" under Section 4(c) includes the "national public interests noted in the [Act], the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). The Conference Report notes that the reference to the purposes of the Act was intended "to underscore [the] expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." *Id.*

[16] In connection with making this determination, the Conference Report notes that the Commission is expected to consider such regulatory concerns as market surveillance, financial integrity of participants, protection of customers, and trade practice enforcement. H. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[17] Sections 5 and 5a generally deal with contract market designation and operation requirements.

in three instances.[18] In each instance, the Commission was guided by the statement in the Conference Report that the goal of providing the Commission with broad exemptive powers was "to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner." H. Rep. No. 978, 102d Cong., 2d Sess. 81 (1992). To the extent the petitions seek to exempt markets for which designation as a contract market has been sought and obtained, consideration of this proposed exemption may require a different analysis under Section 4(c) than that previously applied. In this regard, what additional or different considerations, if any, from those considered in the context of exempting swaps, hybrids and energy contracts, should be assessed to determine whether the requested exemptions are consistent with Congress' intent in granting the Commission exemptive authority under Section 4(c)?

Commenters are invited to address the extent to which the petitions are consistent with the Congressional directive that "the granting of general exemptive authority is intended to promote responsible economic and financial innovation and fair competition."[19] In considering fair competition the Commission intends to follow the Congressional directive to act "in a fair and even-handed manner to [evaluate] [products and systems sponsored by exchanges and non-exchanges alike."[20] Commenters should address the issue of whether the underlying facts and circumstances of these petitions support exemptive relief similar to that granted the swaps, hybrids and energy contracts discussed above as well as whether additional or different considerations are warranted. The Commission is also interested in receiving comments on whether exemptive relief from selected provisions of the Act other than Section 4(a) or selected regulations would adequately promote competitiveness between exchange-traded and off-exchange products.

2. Registration Requirements

The CME's petition seeks exemptions from the registration requirements of the Act and Commission regulations. In light of the importance of the registration requirement to the Act's regulatory scheme, is it appropriate to permit unregistered persons who may be unfit to conduct business in regulated futures markets for or on behalf of others or to execute orders on exchanges for themselves?[21] Are the customers who could participate in the exempt transactions capable of evaluating the risk of trading through unregistered persons, or are exchange membership requirements and screenings an adequate substitute for the registration system?

3. Customer Protection Requirements and Trade Practices Issues

Both[22] Section 4c(a) of the Act and various Commission regulations (for example, rules 1.38, 1.39 and Part 155) evince a policy determination by Congress and the Commission that the open and competitive execution of customer orders both furthers the economic functioning of the marketplace and protects customers from possible abusive practices. Should the standards set forth in Part 155 of the Commission's regulations designed to prohibit trading ahead of customer orders continue to apply to exempted transactions? The prohibitions against wash sales, cross trades, accommodation trades and fictitious sales in Section 4c(a) as well as Rule 1.38 also reflect a concern that volume, price and open interest information disseminated to other traders and the public reflect competitively-executed *bona fide* transactions and positions in the market. Both the CME and the CBOT petitions seek exemption from these provisions and contemplate off-floor negotiations of trades. Can the Commission grant an exemption from these requirements without a material adverse effect on its ability to discharge its regulatory duties under the Act? Or are the Commission and eligible participants able to monitor adequately broker's activity to detect abusive practices? Should controls be retained on the nature of the procedures for off-floor discussions of trades and of transactions executed on the floor? What are the cost and benefits to market users and, separately, intermediaries in giving up the transparency of open and centralized order execution for privately-negotiated transactions?

If a bifurcated market were to develop, with similar exempt and non-exempt contracts trading simultaneously on an exchange, would trading ahead of a customer in exempt contracts be deemed "trading ahead" of customer orders in a non-exempt contract or vice versa? If so, how would the Commission enforce the trading ahead prohibition as to non-exempt contracts without access to complete records of transactions in both exempt and non-exempt contracts? Would it be permissible to disclose customer orders for exempt transactions or to employ information about such transactions in executing proprietary transactions for the FCM or for a member's own account?

On the other hand, should off-floor pricing of such trades and differential pricing of large trades be permitted? Would the elimination of persons other than "appropriate persons" from this market make such practices consistent with market integrity? Is there any empirical evidence to demonstrate that small orders and retail customers could be better serviced if large orders were handled separately?

Section 166.3 of the Commission's regulations requires Commission registrants to supervise diligently their employees and agents in handling commodity interest accounts. Neither of the exchanges has addressed the continued applicability of this regulation. What are the costs and benefits of continuing to apply the supervision requirement to exempt transactions? How would supervisory systems adequately address a situation where registrants would handle both exempt and non-exempt transactions?

4. Bankruptcy Issues

Part 190 of the Commission's rules contains bankruptcy rules and priorities applicable to futures and futures options accounts on regulated markets. These rules facilitate the transfer and/or liquidation of positions, protect the clearing priority, and support cross-margining and other margining arrangements. How would exempted contracts be treated under the Bankruptcy Rules—for example, could a firm carrying positions only for "appropriate person" be treated as a commodity broker? If not, would customers of such firms be general creditors in the event of the firm's

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[18] 58 FR 5580 (Jan. 22, 1993) (Final Rules for the Regulation of Hybrid Instruments); 58 FR 5587 (Jan. 22, 1993) (Final Rules Exempting Certain Swap Agreements); 58 FR 21286 (Final Order Exempting Certain Contracts Involving Energy Products) (April 20, 1993).

[19] Conference Report at 78.

[20] *Id.*

[21] Recently, Congress amended the Act to require floor traders—those individuals who trade solely for their own accounts on exchange floors—to undergo the same fitness checks and registration process as floor brokers and other industry professionals who directly deal with customer orders and funds. See 58 FR 19575, 19576 (April 15, 1993).

[22] The CME in its petition indicates that it is not seeking an exemption from those provisions of the Act proscribing fraud, embezzlement or manipulation, specifically, Sections 4b, 4o, 6(c), 6(d), 8c, 9(a) and 9(b) of the Act and Commission regulations 4.15, 32.9, 33.9 and 33.10. The CBOT proposes its own antifraud and antimanipulation rule, set forth above.

bankruptcy? Would the clearing organization have a priority relative to margin deposited by such firms? Separately, if an FCM had customers transacting both exempt and non-exempt business, would customers have a priority for regulated business and be general creditors for unregulated business? How would the exchange identify and inform these classes of customers concerning their rights and priorities, if any? How would permitting an FCM to have customers that transact both exempt and non-exempt transactions affect the ability to transfer accounts and assure that solvent customers' positions and payments to the market were uninterrupted in a market emergency?

5. Disclosure

The Commission's requirements with respect to disclosure were adopted in furtherance of the Act's antifraud prohibitions and provide standardized statements of material risks of futures and commodity option transactions. The duty to disclose material risks and other material information exists under the CEA's antifraud provisions, without regard to the specific disclosure requirements established by rule. If exemptions from the Commission's specific disclosure requirements such as Rule 1.55 were granted, how would FCMs and other intermediaries determine what disclosures would be required to be given to customers in order to avoid antifraud liability under the statutory antifraud prohibition or the proposed CBOT rule? Would potentially more disclosure than Commission-specified disclosure be required if no Commission standard existed?[23] Would the exchanges also eliminate special disclosures that may be required for specific products and markets? Would a disclaimer as to scope of regulation be appropriate?

6. Two-Tier Marketplace Issues

Neither petition would preclude the coexistence of markets limited to specified eligible participants and "public" markets not so limited. Would such a two-tier marketplace be consistent with the price discovery purposes and other functions of the futures markets as referred to in the CEA?[24] What effects, if any, on pricing or liquidity in the parallel "public" market may be anticipated from maintenance of an "institutional" or non-public market in the same contract? If an essentially unregulated institutional market results in significantly lower exchange costs than the "public market", as the CME and CBOT contend, how would these differential cost structures be reflected in transaction charges to market participants? Would such differential structures have potential anticompetitive effects upon any categories of market users? In a two-tier marketplace, would a "public market" remain large enough to be sustainable?

7. Financial Integrity

In varying degrees, the requested exemptions appear to assume that high-net worth and institutional participants do not need the financial protections of capital requirements and segregation of customers funds.[25] The proposals also suggest that both exempt and non-exempt transactions would be cleared through the same clearing corporations. Should this be permitted? If so, should the Commission use different criteria to approve clearing systems employed by the "professional trading markets" envisioned by the CBOT than those used to evaluate clearing systems for non-exempt Commission designated contracts? What risks, if any, would be created relative to the clearance of non-exempt transactions? Would this situation increase the financial risk for participants in non-exempt transactions? Would such a situation have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties regarding the integrity of the clearing system?

The requested exemptions would extend to the requirements of the CEA and Commission regulations concerning segregation of customer funds. If the exemptions were granted, should funds of customers engaging in exempt contracts be allowed to be commingled with proprietary funds of an FCM or other intermediary? Would such commingling of funds be consistent with the fiduciary status of an FCM to such customers under the CEA or the common law? On the other hand, if exempt contracts are differentially margined and subject to different financial protections, would it be appropriate to segregate them with regulated customer funds? Are the categories of eligible participants capable of evaluating the increased risks created by the absence of segregation?

The CME indicates in its submission that the Commission's segregation rules interfere with certain types of arrangements in which sophisticated customers engage in the OTC currency markets. Generally, what kinds of desired arrangements in this context are impeded by the current segregation rules?

8. Minimum Capital

The petitions also appear to contemplate that as the funds of customers engaging in exempt transactions would not be required to get segregated, they would not be included in the base amount on which an FCM's net capital requirement is calculated. As the net capital requirement is designed, in part, to protect the claims of customers to segregated customer funds, how would risks that might be created by exempt customers' accounts be addressed to assure that they do not result in increased risks to regulated customers' accounts? For example, should a special capital charge be assessed for open customer positions in exempt transactions? Should such special assessment be computed as if such positions were "naked" proprietary positions? What are the merits of the CME's position in its petition that a firm should be assessed no capital charge whatsoever for carrying this type of business?

9. Risk-Shifting and Price Discovery

The proposed professional market exemption sought by the CBOT places no restraints on the type of contract that can be either created as an exempt contract or converted to an exempt contract. The proposal does not include any mandated disclosure of price or transaction information. Should exchanges be required to provide some minimum level of transparency, *e.g.*, settlement prices, open interest, trading volume, etc., for exempt contracts or should provision of such information be entirely at the discretion of the exchanges? Is there any class of contracts where the exclusion of public customers in order to create an exempt market would be detrimental to the risk-shifting and price discovery functions of the regulated futures markets?

10. Speculative Limits

The Commission required as a condition of trading that each contract market establish speculative position limits. This requirement has been

[23] See, *e.g.*, The Options Clearing Corporation's "Characteristics and Risks of Standardized Options" disclosure document.

[24] In this regard, the Commission notes that it has approved rules, *e.g.*, GLOBEX volatility trading and various large order execution procedures, which allow some degree of bifurcated trading in regulated markets.

[25] The CME would retain Commission rule 1.17, regarding net capital requirements, but would not retain other provisions of the Act or Commission regulations regarding net capital and segregation. The CBT petition would not retain any regulatory requirements concerning net capital or segregation.

waived only where warranted by the liquidity of the markets or the adoption of alternative rules by the exchange. Would it be necessary to require speculative limits (or an alternative such as position accountability rules) for the proposed exempt contracts? Would there be any benefits of speculative limits under these circumstances?

11. Issues Involving Foreign Regulators

Any exemption granted by the Commission in response to the exchanges' petitions may have an impact on the regulatory treatment of U.S. contract markets by foreign jurisdictions. Certain jurisdictions (e.g., the United Kingdom, France and Australia) require that, before their nationals may engage in futures and options transactions on non-domestic futures and options markets, an assessment be made that such non-domestic markets provide adequate investor protection. If the Commission exempted certain contracts from regulatory requirements, those jurisdictions may reassess whether the exempted markets were appropriate for all of their nationals or only certain categories of their nationals. What impact should these issues have on the Commission's consideration of the petitions?

B. Appropriate Persons

Should the Commission consider establishing an exemptive framework applicable to commercial participants in the commodity futures and options markets as requested by the CBOT in its petition or as set forth by the CME?[26] What requirements in the Act and Commission regulations that exist primarily or solely to protect the trading customer could potentially be eliminated without jeopardizing financial or market integrity?

Are the lists of "appropriate persons" set forth in the CME's and CBOT's petitions properly delineated or should they be supplemented or reduced? Should exchange members, as delineated in category Number 12 of both petitions, be included? Who will be responsible for enforcing these access requirements? Do they raise any competitive issues which should be addressed by the Commission in reviewing these petitions?

Are the net worth and total asset criteria applicable to corporations, partnerships, proprietorships, organizations, trusts and other business entities as described in the list of "Eligible Rolling Spot Participants" and "professional traders" set at appropriate levels? Are the persons and entities, *e.g.*, corporations or partnerships with $1 million net worth, within the categories of "Appropriate persons" set forth in the CME petition able to engage in over-the-counter foreign currency markets on the basis of their own credit? If credit support mechanisms are currently used by such persons and entities, what is the nature of these mechanisms and what types of entities make them available?

In light of the largely institutional composition of exchange-traded futures markets generally, what are the fundamental differences between exchange markets and dealers markets?

The two clearing firm defaults that have occurred during the past ten years (Volume Investors, Inc. and Lee B. Stern) were precipitated by trading by flood traders, who would qualify as "appropriate persons" under the petitions. How would the exchanges assure that trading by floor traders would not endanger the financial integrity of regulated firms, other intermediaries, or the clearing system in the absence of otherwise applicable regulatory requirements?

If the trading sophistication of floor traders does not preclude endangerment of the financial integrity of the firms through which they clear, on what basis can the Commission conclude that the sophistication of other participants precludes the need for financial protections? What protection should be maintained for non-appropriate persons transaction in the same markets and using the same clearing facility against potential losses cause by appropriate persons?

C. Ability To Discharge Regulatory and Self-Regulatory Duties

In granting exemptions, the Commission must determine that the exemption "will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act."

1. Reporting Requirements

Both applications would have the Commission retain anti-fraud and anti-manipulation authority. The Commission's ability to enforce these proscriptions is, however, in part dependent on reporting requirements. In particular, the large trader reporting system is the Commission's primary tool for monitoring market concentrations and the potential for corners, squeezes, and other forms of manipulation. It is also used in on-going financial surveillance particularly during times of market volatility.[27] If the Commission were to retain anti-fraud and anti-manipulation authority, should reporting requirements continue to apply? If not, are there other market mechanisms or exchange rules that could substitute for the protections provided by reports to the Commission? If so, would it be sufficient to require the exchanges to maintain the necessary records for exempt contracts rather than requiring them to provide transactions and price data on a routine basis to the Commission?

As a general matter, is it appropriate for the Commission to issue an anti-fraud and anti-manipulation rule, as the CBOT has suggested, that is applicable to exempt transactions as opposed to simply reserving the general provisions of the Act and Commission rules in this regard?

2. Recordkeeping Requirements

Accurate books and records and reports of transactions and account equity not only enhance the Commission's ability to detect and prosecute fraud, but also enable customers to monitor the performance of their accounts and seek legal redress as necessary. In particular, purchase and sale statements and confirmations are necessary for firms and customers to monitor and manage risk exposure on a timely basis. Would customers, under the proposals, be completely dependent on their ability to negotiate recordkeeping obligations on a transaction-by-transaction or account-by-account basis? Is individual negotiation of such obligations a practical and efficient course of action? Commenters may wish to address the viability of governmental and private remedies and the effectiveness of an antifraud enforcement program, in a context in which FCMs and other intermediaries would have no enforceable obligation other than individually negotiated customer agreements to maintain accurate records.

What impact would potentially divergent recordkeeping practices have on the ability of the Commission to determine whether the terms of any

[26] The Commission notes that the laws of most countries with developed markets make some distinctions between different types of customers in the application of this regulatory regimes. *See* Survey on Differential Treatment of Customers, Division of Trading and markets, CFTC, presented at the May 25, 1993 meeting of the Commission's Regulatory Coordination Advisory Committee. Furthermore, the Commission has adopted customer- or participant-based distinctions in its regulations. *See, e.g.*, Rules 4.7 (commodity pool disclosure) and 32.4(a) (trade option exemption).

[27] In this connection, authority for large trader reporting was added to the securities regulatory regime by the Market Reform Act of 1990.

exemptive relief were being complied with, or on the ability of the clearing organization, the exchange, and the Commission to conduct financial surveillance and address systemic risk?

How would the Commission detect and prove wrongful conduct such as misallocations involving both unregulated contracts (for which fewer records might be maintained) and fully regulated contracts, when the same contract could be traded by both "appropriate" persons and those who do not qualify as "appropriate" persons? What potential impact on regulated futures market participants or eligible appropriate participants should be considered in evaluating the potential effect of an exemption from recordkeeping requirements, including audit trail requirements, for some futures contracts traded on an exchange that is a designated contract market for non-exempt contracts? Is there any problem from the perspective of market professionals in determining which records must be maintained using a fraud standard?

3. Audit Trail

An accurate audit trail is essential to detecting abusive practices and reconstructing market activity. In adopting the Futures Trading Practices Act of 1992, Congress emphasized the need for a reliable and detailed audit trail. Can the Commission grant an exemption from audit trail requirements without jeopardizing its ability, and the ability of customers, to detect fraudulent practices by floor brokers and traders? Have the exchanges made an adequate showing that the nature of the transactions or participants reduces or eliminates the need for a sound audit trail, with its concomitant recordkeeping requirements?

4. Federal Oversight of Self-Regulatory Organizations

a. *Generally.* The petitions appear to contemplate elimination of the statutory and regulatory provisions which effectuate federal oversight of exchange self-regulatory programs. (*See, e.g.,* Sections 5 and 5a of the Act and Rules 1.51 and 1.52). For example, the requested exemptions extend to Commission review of exchange rules, exchange responsibility for enforcing its rules, contract market designation, and operational requirements for exchanges. The petitions contemplate a regime under which the exchanges would hold no federally enforceable self-regulatory responsibilities under the CEA or Commission regulations, with the requested exemptions premised primarily upon the nature of the participants in the relevant contracts. If such relief were granted, could the Commission deny comparable relief to entities other than exchanges who may wish to provide facilities for futures or options transactions offered and sold only to qualified customers? What criteria should the Commission use in determining to whom to grant such relief?

b. *Contract terms.* A major portion of the Commission's efforts to prevent manipulation relies on the premise that market problems can be avoided through the appropriate specification of important contract terms. To that end, the Commission reviews contract terms both at the time of designation and when they are amended. With regard to the proposed exemptions, should the Commission retain the right to review contract terms before trading begins, approve subsequent changes in contract terms and conditions, and conduct emergency reviews or should the process be one in which a board of trade notifies the Commission of its intent to trade a transaction pursuant to the exemption it has been granted and then, absent objection, trades the contract?

5. Exchange Governance

The 1992 Act had as one of its purposes the establishment of "higher standards for service on governing boards and disciplinary committees of self-regulatory organizations." H.R. Rep. No. 978, 102d Cong., 2d Sess. 47 91992). These standards require meaningful representation on boards and disciplinary committees of diverse interests, including significant non-member and user representation. In addition, Commission Rule 1.63 prohibits persons with certain disciplinary histories from serving on SRO disciplinary committees, arbitration panels or governing boards for, in general, three years from the date of the disciplinary action.

Is it consistent with the purposes of the 1992 Act to grant an exemption from governance requirements with respect to some contracts traded on an exchange that is otherwise subject to such provisions? If such an exemption were granted, would the maintenance of differential standards for service on the exchange's disciplinary committees addressing conduct involving exempt contracts adversely affect participants in the exempt contract or public confidence in the marketplace as a whole? Would it be consistent with the public interest for persons who would otherwise be disqualified from board or disciplinary service to participate on such boards or committees with respect to matters involving an exempt contract?

6. Emergency Actions

Should exchanges be granted an exemption from Section 8a(9) of the Act? How would emergency actions involving exempt contracts be handled as a matter of exchange governance? [28] Would the sophistication of participants trading in an exempt contract diminish the need for assurance that emergency actions are undertaken by members or other persons without conflicting interests? Would the Commission, in accordance with Section 5a(a)(12) of the Act, be required to report to Congress on exchange emergency actions in a two-tier market where the price of a commodity underlying both an exempt and a regulated transaction could be affected regardless of the nature of the participant? If so, how could the Commission grant an exemption from informational requirements relative to its emergency rules for exempt transactions?

7. Private Rights of Action—Standard of Liability

Section 22 of the CEA generally specifies a "bad faith" standard to be applied in a priviate action against an exchange for failure to enforce its rules. What would be the impact of granting the requested exemptions on the standard of liability for exchanges and their officers, directors, governors, committees, and employees in this regard?

* * * * *

In addition to comments addressing the specific questions set forth above, the Commission is interested in receiving comments concerning any other issues that would assist in its consideration of the petitions. To the extent practicable, comments on specific issues should address any differences between the two petitions.

Issued in Washington, DC, on August 10, 1993.

Jean A. Webb,

Secretary of the Commission.

Chicago Mercantile Exchange
April 7, 1993.

Ms. Jean A. Webb,
Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581

RE: Petition for exemption from The Commodity Exchange Act for Rolling Spot Currency Futures and Option.

Dear Ms. Webb: The Chicago Mercantile Exchange ("Exchange" or "CME") hereby petitions the Commodity Futures Trading

[28] If such an exemption were granted, would state or federal antitrust laws then apply?

Commission ("Commission" or "CFTC") for exemption from certain provisions of the Commodity Exchange Act for the class of contracts known as "Rolling Spot Futures Contracts™," as well as options on those contracts. These instruments: closely mirror common cash market instruments now traded in the over-the-counter (OTC) market; provide many economic advantages over the currently available OTC instruments; and, if allowed to operate with regulatory parity, would provide considerable benefits in terms of costs, price transparency, and counterparty credit exposure to the current users of these instruments.

The Exchange notes that on October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law. This legislation added new subsections (c) and (d) to section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract, transaction, or class thereof, from the exchange-trading requirement of section 4(a) or any other requirement of the Act other than section 2(a)(1)(B). New section 4(c)(2) provides that the Commission may not grant an exemption unless the instrument or class of instruments in question will be entered into solely between appropriate persons listed in new section 4(c)(3), and the Commission determines that instrument or class of instruments will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

The motivation of Congress in including this new exemptive authority in the 1992 Act is clear. Section 4(c)(1), 7 U.S.C. 6(c)(1), reads as follows:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any persons, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction) either unconditionally or on stated terms of conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) or from any other provision of this Act (except section 2(a)(1)(B)) if the Commission determines that the exemption would be consistent with the public interest.

The petition of the Exchange falls squarely under Congress' intent to promote financial innovation and competition. Rolling Spot Futures and Options Contracts are an important innovation that reduces the costs and risks of spot foreign currency transactions. As will be detailed below, the Exchange believes that the natural market for these products will be "appropriate persons" and will restrict the use of the products thusly. Finally, the Exchange believes, from its long experience dealing with sophisticated commercial customers, that the provisions of the Act designed to protect less sophisticated traders are not necessary and are an expensive burden to the customers that will trade the Rolling Spot Futures and Options Contracts. Therefore, if the Commission fails to grant an exemption to Rolling Spot Contracts, it would be doing so in contradiction to Congress' intent to promote innovation and competition.

The Commission has recently used its newly granted authority to exempt both swaps and hybrid Securities. It has a proposal outstanding to further exempt trading in energy contracts by commercial participants in the oil and gas industries. The Commission also takes the position that the OTC market in foreign currency forwards, futures and rolling spot transactions is exempt from CFTC regulation.

The massive OTC market in the instruments to which this exemption applies is operating apart from CFTC jurisdiction and with no significant regulation of its trading or sales practices. Granting the Exchange's petition would be a recognition that the Chicago Mercantile Exchange is an important innovator and provider of services to the entire financial community. Allowing exchanges to compete on equal footing with banks and currency dealers in providing products to commercial customers is an important step that will benefit these customers as new, cost-effective products and services are provided.

The structure of this petition will be as follows:

I. The Rationale for Rolling Spot Contracts
II. Implications of Exemption
III. Summary of Rules for Rolling Spot Contracts

Each section will help justify why the Exchange's Rolling Spot Contracts should be exempt from key provisions of the Act.

I. The Rationale for Rolling Spot Contracts

The foreign exchange market is dominated by spot transactions that typically call for two-day settlement and delivery. This practice, which has been standard for decades, is the cornerstone of one of the most liquid, actively traded markets in the world. Despite phenomenal growth in the past decade, the operational aspects of the spot currency market have not changed significantly. Bilateral netting of positions going to delivery was considered a major innovation in the 1980's. Plans for more ambitious multi-lateral clearing and settlement have been discussed at some length, but little actual progress has been made. The foreign currency market today remains an operations intensive mechanism that could be greatly improved.

One major impediment to progress is, ironically, the competition that exists among participating banks. Bilateral netting of positions has evolved because it was in both parties' best interest to avoid the expense of duplicative deliveries. Multilateral netting, however, adds a broader credit question to the decision. If banks of different credit quality participate in a multilateral scheme, there is a degree of credit sharing across the banks. The triple-A rated participating banks would end up subsidizing the credit standing of lower quality institutions, and in turn, make them more competitive. Consequently, the highest-rated banks are reluctant to participate in such schemes. Consortia of lower-rated institutions are also unlikely to work, since by omitting the trades with higher-rated banks a significant fraction of the incremental operational savings over bilateral netting would be lost.

In addition to clearing and settlement issues, there are operational expenses to be considered. Every trade in the cash market is a "ticket" and typically fees are charged on a ticket-by-ticket basis. While modest on a per trade basis, the total cost can be quite staggering when the volume of currency business done today is considered. Traditionally, bank currency-traders were not responsible for their costs, but increasingly, cost-conscious banks have begun to charge back these operational expenses to stimulate trading desks to generate net as well as gross profits.

Clearing, settlement, and operational efficiencies have long been strengths of the nation's futures exchanges. The Rolling Spot contracts described below bring together these strengths and combine them into a package designed to serve the cash market currency trader. The benefits available from such a product are vast, but only realizable if the instrument is traded in a fashion consistent with current cash market practice. For these reasons, an exemption under section 4(c)(1) is required.

This section of the petition begins with a detailed description of current cash market practices, focusing on the process by which spot transactions are "rolled forward" on a day-by-day basis. Rolling Spot Futures contracts are then described, and shown to provide clearing and operational advantages over current practice.

A. Cash Market Practices

Of the nearly one trillion U.S. dollars that are turned over daily in the foreign exchange market, approximately 58 percent are for spot delivery in two business days.[1] A significant amount of this trading is rolled forward using currency swaps for a subsequent delivery or value date (The value date is the day on which physical currency transfers are made between the principals to the trade). This forward roll process usually is done on either a "tomorrow/next" or a "spot/next" swap basis. Foreign currency traders who decide to roll the spot trade forward as of the same day that the trade was originated, will do so using a "spot/next" swap. Foreign currency traders who decide to roll the spot trade forward as of the business day following the date on

[1] The "Survey of Foreign Exchange Market Activity" published in February 1990 by the Bank for International Settlements (BIS) estimated that in April 1989 "[T]otal reported gross average daily exchange market turnover for the eighteen industrial countries and three Middle and Far Eastern financial centers that supplied data amounted to over $930 billion." Of the over $930 billion U.S. dollar equivalents traded daily, over $540 billion (equal to 58 percent) was traded on a spot basis. Updated currency turnover statistics for April 1992 are expected from the BIS in Early 1993.

which the trade was originated, will do so using a "tomorrow/next" swap.

The value of this swap is determined by the marketplace as it constantly looks for arbitrage opportunities across spot and forward foreign exchange rates and the short-term credit markets of the countries in the foreign exchange transaction. For example, if the spot rate for pound sterling is $1.55, and British interest rates are higher than U.S. interest rates for any maturity, any forward rate will be at a price lower than $1.55. The difference between the spot and forward rates is directly related to the interest rate differential, and is closely monitored by all foreign exchange participants.

Pound Sterling/U.S. Dollar Spot Trade Rolled Forward One Day

Suppose on Monday a Citibank trader buys £10 million for $15.5 million dollars from a Chase Manhattan Bank trader for value date Wednesday (rate is 1.5500 US$/£). Over the course of the day, the Citibank trader decides to keep his position open another day. The Citibank trader does not want to take delivery of £10 million on Wednesday, so the Citibank trader wants to roll the position over until Thursday.

Later in the day on Monday, the Citibank trader calls a Morgan trade and does a "spot/next" swap trade to defer the obligation to pay dollars for pound sterling to Thursday from Wednesday. The Morgan trader quotes the Citibank trader his "spot/next" pound sterling/U.S. dollar swap market of ".25 at .50 pips" (which means .25 pips bid at .50s pips offer). A "pip" or "point" is .01 of a cent in the sterling market. The Citibank trader takes the Morgan trader's "spot next" offer at .50 pips, and the Morgan trader and Citibank trader agree as to the spot rate they will use (1.5500 US$/£). This "spot/next" trade in effect means Citibank is selling sterling it originally would have received from Morgan on Wednesday at the spot rate 1.5500 US$/£ and buying it back from Morgan on Thursday at the agreed upon one business day forward rate of 1.55005 US$/£.

Cash market traders do not necessarily decide on Monday to roll the spot trade (for value Wednesday) to the next value date. Typically, cash market traders wait to decide to roll until after viewing their cash balances the next morning, Tuesday in this example. In this more usual case, the dealer with the open spot transaction for value Wednesday does a "tomorrow/next" or "tom/next" trade on Tuesday. Operationally, on Wednesday and Thursday the "tom/next" trade done on Tuesday looks identical to a "spot/next" trade done on Monday. Quoting practices for "spot/next" and "tom/next" trades are not standardized, but may be quoted in units as fine as .10 swap points (also know by some as "pips").

B. The CME's Innovation

The CME Rolling Spot contracts incorporate an innovative feature to automate the one-day forward roll as described in the example above for any rolling spot position that remains open as of each day's close. Unlike the interbank spot market that requires physical currencies to move between parties involved in swap transactions, the Rolling Spot contracts allow the open spot positions to be rolled forward without the back office compliance of arranging currency transfers. Instead, in addition to the daily mark to market of all open Rolling Spot positions to the day's settlement price, open Rolling Spot positions will have a daily adjustment.

In order to do the daily adjustments to roll the spot positions forward, the CME Clearing House will randomly survey eight dealers in forward currencies ("reference dealers") at 11:00 AM each day to get their current bid and offer for spot/next forward swaps. These quotes must be confirmed in writing (via Reuters Dealing Terminals, telex, facsimile, etc.) before the CME will use them in the survey. The CME Clearing House will calculate the midpoint of each bid and offer quote pair, discard two highest and two lowest midpoints, and average the remaining four midpoints, rounding the resulting mean to .01 swap points, which equals $0.25 in the case of the British Pound Rolling Spot contract. The Spot/Next Swap Point will be posted promptly on the CME Trading Floor and disseminated over the ticker as soon as is possible after the 11:00 AM survey is completed and the calculations are made and verified. Then after the close for the day, if the Swap Point indicate that the forward currency is at a premium, then each open long position will be debited the Swap Points and each open short position will be credited the Swap Points. If the Swap Points indicate that the forward currency is at a discount, then each open long position will be credited the Swap Points and each open short position will be debited the Swap Points. Consider the following example. If the Spot/Next Swap Points for pounds sterling were determined to be 2.01 discount swap points, (i.e. the one-day forward is trading at a price of 2.01 points below spot) or $.000201 per Pound Sterling, then each long position would be credited $50.25 and each short position would be debited $50.25.

The CME selected "spot/next" swap quotes rather than "tom/next" swap points for operational reasons. If the Exchange were to use "tom/next" swap points, the survey would need to be conducted at 6:00 AM or 7:00 AM on the next business day. Operationally, "daily adjustments" could not be made prior to the opening of trading the next business day if the survey were done only minutes before the open. By using "spot/next" swap points, the Exchange is able to do the survey at 11:00 AM Central Time on the same day that the "daily adjustments" are to be applied. Also, by doing the survey at 11:00 AM Central Time, the Exchange can include Chicago, New York City, and London banks in its survey of "reference dealers," and any market participants, who do not want their Rolling Spot positions rolled at a given day's Spot/Next Swap Points, can offset their positions in the trading pit before the close or do an exchange for physical (EFP) transaction.

The operational differences between the CME Rolling Spot Futures Contracts and cash market practice are intentional and are designed to provide advantages over current interbank practices. There are three areas of improvement:

1. Cost of operation
2. Timeliness of payments
3. Mutual offset and clearing house guarantees

Each of these features can be seen as a natural step in the evolution of cash currency trading to reduce costs and improve the safety of the market.

Operational costs are reduced in two ways. First, in today's world, every roll of a cash market position is viewed as a new transaction, and consequently is charged a new back office processing fee. While individually modest in size, these fees can accumulate into a significant sum.

The second operational savings comes from the price at which positions are rolled. Suppose the Swap Points were quoted at 2.25 points bid, offered at 2.50 points. Depending on the initial position of the individual seeking to roll, the ultimate charge would be the bid or the offer. With the CME Rolling Spot, the daily roll occurs at the midpoint (in this case 2.375 which would be rounded to 2.38). This difference means a $3.00 savings per contract for someone who would have rolled the position at the bid. Again, this sum may not seem great, but in an industry that trades hundreds of billions of dollars daily in this fashion, the total can be quite large.

The second improvement comes from the timing of payments. In the interbank market, whenever a forward contract is offset by an opposite transaction, the gains or losses are realized on the scheduled delivery date. For a spot trade, this would be in two days, but for a forward trade of any significant length, the delay could be weeks or months. With a Rolling Spot Futures Contract the net payments are made in cash on the day after the position is closed out. This offers many advantages in terms of timeliness of payments, use of funds and, ultimately, the security of the system.

The third key operational advantage comes from the mutual offset features of the Clearing House. In a cash trade, positions can be only truly offset by an opposite trade with the original counterparty (and as mentioned above, even then the offset is complete only on the delivery date). Positions may be economically offset by taking an opposite position with another counterparty, but there always remains a chain of credit relationships that poses risks until the point that all deliveries are complete.

Rolling Spot Positions established and liquidated at the CME offset automatically, and are not dependent upon the counterparties at all. The CME Clearing House will ultimately act as the buyer to every seller on the Rolling Spot futures, and conversely, just as it does for existing products. This feature accomplishes economies in deliveries. There are no deliveries for positions that are offset, and ultimate deliveries are netted down to the minimum amount necessary. Further there is the advantage of minimizing credit exposures that accumulate in the cash market. Once positions are offset, credit lines are freed up and capital can be redeployed. Each of these features is a source of increased efficiency and savings over the current cash practice.

C. Conclusion

The daily adjustment process for Rolling Spot contracts will thus synthetically mimic usual spot market practices without the complications and costs of frequent physical deliveries of currencies. Additionally, the daily adjustments will ensure that Rolling Spot contracts are priced similarly to spot currency, without the discount or premium usually associated with currency forward or futures contracts. The CME has provided an innovation that builds on and improves standard cash market practice.

II. Implication of Exemption

The CME recognizes that Congress had several specific intentions in crafting the Commodity Exchange Act. Primarily, public customers were to be protected, but it is also an important aim of federal regulation to ensure that price discovery in the markets should not be impaired. Public customers should be protected from deceptive sales practices, and manipulation of prices is to be prevented to protect both the direct participants and those in the public who might use prices discovered in the futures market to guide their commercial decisions. The Exchange shall demonstrate in this section how an exemption to the Act for Rolling Spot Futures Contracts and options on those futures will not compromise Congress' original public policy aims, and, in fact, will promote the kind of competition Congress purposely tried to foster with the Commodity Futures Trading Practices Act of 1992.

A. Customer Protection

Congress' first policy aim, the protection of public customers, is met by excluding from participating in the Rolling Spot Futures and Options any individual who is not a sophisticated investor or who fails to represent a firm trading currencies as part of its business practice. In selecting who might be included as a qualified participant, the Exchange is guided by the Commission in its recent decisions to exempt swaps and hybrids from the Act.

The CME proposes to define "Eligible Rolling Spot Participant" to be limited to the following persons or classes of persons:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible Rolling Spot participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an Eligible Rolling Spot participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an Eligible Rolling Spot participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraph (1) (2) (3) (4) (5) (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the Rolling Spot futures or options contract with the conduct of its business; or which has a net worth of $1,000,000 and enters into the Rolling Spot futures and options contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act of a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another Eligible Rolling Spot participant: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of subsection (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) An exchange member at the CME, trading on his or her own behalf or on behalf of another eligible Rolling Spot participant.

The first eleven entries in the above list are direct analogs to the schedule of eligible swap participants recently approved by the Commission. The rationale for this duplication is that the same firms and individuals that deal in swaps also actively participate in the cash and forward currency markets. In fact, currency swap customers and providers are expected to be prime users of the Rolling Spot futures and options. Their motivation for trading and their capacity for making informed decisions about the market and the vehicles are well established.

Congress' concern about the protection of public customers does not apply to this group, because they have demonstrated their abilities to operate in the cash currency market without Federal oversight. By restricting access to Rolling Spot futures and options to this group, the CME has created a pool of potential traders that would not benefit from the protection offered by the CFTC regulation (otherwise, there would be a public policy argument for the CFTC to regulate OTC foreign currencies, hybrids and swaps).

The only addition to the list that was approved in the swaps exemption is item 12, CME members acting either in the capacity as agent for customers or as traders for their own account. This group is essential to provide both brokerage services and liquidity to the Rolling Spot Contracts. There should be no concern that these individuals are unsophisticated and require the CFTC's protection. Nor should there be a concern about financial wherewithal since every trade done by a local or a broker is guaranteed by a clearing member of the CME that has met stringent financial standards.

The nature of the approved customer list is such that the benefits of consumer protection provided by the Act simply are not required. The risks of Rolling Spot contract are well understood by all of the allowed participants. Disclosure documents and similar requirements that provide this information to the public customer are worse than superfluous for these products. They represent a bureaucratic, expensive step that epitomizes the regulatory costs of trading futures that are completely absent when these sophisticated customers trade comparable instruments in the OTC market. For all of these reasons the Exchange firmly believes that an exemption to the consumer protection sections of the Act is warranted once access to the products is restricted to the set defined above.

B. Price Discovery

Price discovery is also an area that should pose no difficulty if Rolling Spot Futures and Options are exempt from the Act. The spot foreign currency market involves hundreds of billions of dollars in trading daily. Indications of spot and forward rates are available from a myriad of sources, and price information from the CME floor will contribute just a fraction of the total market data which is continuously available.

There is no public objective served in regulating Rolling Spot Futures and Options Contracts to protect price discovery in currencies. In the extreme, the Exchange could choose not to publish prices from these trades without degrading the ability to determine values in the overall market, since it is almost certainly the case that Rolling Spot Futures and Options will represent a small fraction of the total business done worldwide. In fact, the vast majority of all transactions done today are not publicly

reported, yet the markets are quite transparent.

Today, many, but not all, firms that make markets in foreign currency distribute indicative bids and offers. There is almost no dissemination of actual transaction data, but this is less important to a prospective customer than a view of where a transaction might take place. Price discovery in this market is quick, accurate and provided at a modest cost. If an individual bank adds its quotes to this stream, there is not a material improvement in the quality of information.

The CME Rolling Spot Contracts can be viewed in a similar way. Data on Rolling Spot transactions are expected to be provided to the public as a means to advertise the availability of the market. The information that is carried in that data will probably have the same marginal impact on the total pool of information as would adding a large individual bank to the total interbank stream. While it is always nice to have this information available, the process of price discovery in currencies will not be affected in any material way.

When Congress mandated that exchanges widely disseminate information about market transactions, it had two goals in mind. First, for many agricultural and some financial markets, the published futures prices provide the key piece of public information on which allocation decisions are made by participants in the cash market. Removing these futures prices would make it more difficult for a cattle feeder to make accurate supply or marketing decisions or to evaluate the quality of a local packer's bid for finished steers. In this function, futures prices provide a public benefit that extends well beyond the immediate users of the futures market.

The second function that is served by the prompt dissemination of futures prices is the leveling of the informational advantage that might be held by the local participants in the market. By quickly disseminating futures prices, outside participants, who do not necessarily have good access to other sources of market data, are provided a measure of parity with both locals on the floor and cash market traders who have many sources of information at their disposal.

With the Rolling Spot contracts, the list allowed participants includes only those individuals and firms that either already have excellent access to the market data, or have the resources to acquire it. There is no public benefit provided in mandating the subsidy of wealthy individuals or firms in the form of free data. All of the participants are on as equal a playing field as they are today in the OTC currency market. Mandated price dissemination of Rolling Spot contracts is not necessary.

However, as previously mentioned, the CME intends to collect and disseminate Rolling Spot trade data just as we do for all of our other products, but we believe strongly that we should not be *required* to do so. The economic advantages today of advertising our market through transaction price dissemination may at some point give way to a desire to advertise current bids and offers. Depending on the needs and desires of the participants, the information flow may change through time in ways not contemplated by the Act or the specific regulations pertaining to this area. For all of these reasons, an exemption is being requested.

C. Fraud and Manipulation

There is a little chance that the Rolling Spot contracts can ever be manipulated given the size of the underlying cash markets and the incredible quantity of capital that is dedicated to trading and arbitraging these markets. Nevertheless, if an individual were to use a Rolling Spot contract as a vehicle to intend to create an artificial price, or as an instrument in a financial fraud, there would logically need to be a mechanism to control and discipline this behavior.

For many firms and individuals on the approved customer list, anti-fraud provisions in their own regulatory scheme or in state statutes would provide this coverage. However, for some on the list, the anti-fraud provisions of the Commodity Exchange Act are the most logically applies. Moreover, in the area of manipulation, it is the Act that provides clearer guidelines for this specific activity than any other provision in Federal law. Consequently, the Exchange is not requesting an exemption to sections 4(b) or 9(a) or (b) of the Act covering fraud, embezzlement and manipulation.

D. Financial Safeguards and Systemic Risk

There are three key dimensions of the regulation of customer funds that are addressed in the general regulations under the Commodity Exchange Act. The first requires customers' funds to be segregated and separately accounted for (Regulation 1.20). The second frames a set of requirements of record keeping (Regulations 1.31 through 1.37). The third attempts to address financial risk through capital requirements (Regulation 1.17). This section will demonstrate how these regulations are not required for the smooth and safe functioning of the Rolling Spot Futures Contracts as they have been proposed or the market on which they will trade, and that these contracts should be exempt from these regulations.

Segregated funds are required under Regulation 1.20 for all commodity and option customers. Regulations 1.21 through 1.29 further define restrictions on the treatment and documentation of these customer funds. The motivation behind these rules is the protection of customer monies in the event of a default in the house origin by the customer's FCM. The idea is that by clearly identifying and segregating the customer funds, there is no opportunity to commingle funds and to apply those customer monies to losses by the firm.

The current customers of the interbank currency market have no such provisions for segregation of accounts. Relationships with banks and currency brokers involve credit risk and are entered into voluntarily with the understanding that credit balances that have accrued to the customer's account would be in jeopardy should the firm declare bankruptcy. This risk varies, of course, depending on the maturity of the instrument. Long-dated forward contracts can pose a great deal of risk, while spot contracts that actually deliver in two days have very little. Swaps and spot positions that are rolled forward without a marking to market have a risk somewhere between spot and forward.

Customers and exempt Rolling Spot contracts at the CME will not be allowed to have their Rolling Spot positions in segregated funds. There are two main reasons for this restriction. First, the majority of customers are accustomed to this status for their OTC currency accounts. If these positions were in the segregated pool, the restrictions in Regulations 1.21 through 1.29 would interfere unnecessarily with the private arrangements that develop between the sophisticated customer on the approved list and their FCM firm that may also be acting in the capacity of banker or currency broker.

The second reason to keep Rolling Spot Futures and Options out of the segregated funds pool is to isolate exempt positions from the accounts of all other regulated futures and options customers. The Exchange believes that every position in the segregated funds pool should be on a regulated futures or options contract. Presently, OTC positions are not allowed to be in segregated funds, in part because those positions are not subject to the same rules and regulations as the futures accounts. Customers who are in the segregated pool are at risk from other customers in the pool. Therefore, it is essential that if there were to be a default in the customer origin that put other customers at risk, it should be from trading in a fully regulated futures or options position.

The other side of this coin is that the Rolling Spot customer may not want to have his or her funds commingled in the customer funds origin because they believe the risks of a major default from another customer at the FCM puts their funds at greater risk than any problem that might arise from the house origin. While these risks are very remote, the CME Clearing House does have clear legal claim to all the funds in the customer origin in the event of a customer default that is not covered by the firm. In such an event, whether the customer's funds were segregated or not, they would be in jeopardy. The sophisticated customer, realizing this, may believe that the benefits of segregation are minimal relative to the costs posed by restrictions. Outside the segregated pool there would be alternatives like trust arrangements that would give considerable protection in the event of bankruptcy. This could be a particularly attractive feature for pension funds or other organizations facing considerable fiduciary constraints. The Exchange believes these kinds of credit and risk evaluations are regularly made by the allowed participants in their interbank dealings. These sophisticated participants should be able to exercise their judgment in this area as well.

The Exchange further believes there is only one situation where having Rolling Spot Futures or Options accounts in segregated funds poses any significant advantage. This is when a CME market maker or customer is trading between Rolling Spot contracts and traditional CME currency contracts. Profits in one area will largely offset losses in another. If the positions were in the same account,

profits and losses would flow automatically between the positions. While convenient, this feature is hardly essential since transfers between segregated and non-segregated fund accounts are always possible. The fact that all of these positions are marked to market daily eliminates any financing issues that frequently arise between futures and current OTC products.

For all of these reasons the Exchange is requesting exemption from Regulation 1.20, which requires the accounts of all commodities and options customers to be placed in segregated funds. The Exchange believes that current futures customers and customers trading Rolling Spot Futures and Options are all made better off by restricting the latter group to be outside the segregated funds pool.

Various record keeping requirements are enumerated in Regulations 1.31 through 1.37. The primary purpose of these rules is to provide complete trade information to the public customer in a prescribed format. Additional requirements are placed on the FCM's and floor traders describing the types of information on each transaction that must be recorded. The Exchange, in seeking exemption from all provisions of the Act except those pertaining to fraud and manipulation, requests an exemption in this area also. Given the nature of the regulations, additional comment is warranted on why an exemption will not prove counter to the public interest.

Regulations 1.32, 1.33, 1.34, 1.36, and 1.37 all pertain to record keeping regarding monthly statements, "point balances," the daily accounting treatment of segregated funds, and similar topics. As in the discussion of segregated funds, the allowed participants in the Rolling Spot Futures and Options do not require a government mandated format for account statements or other similar steps taken to protect less sophisticated customers. Information on their account activity will be available in virtually any format they desire, because the commercial nature of the business will dictate what information is necessary and how frequently reports are made. It is the common practice today for banks and currency brokers to satisfy the demands of their customers for information, or else face the potential loss of those accounts. Given the sophisticated nature of the allowed participants, this market discipline is all that is required to ensure accurate and timely information is provided to the customers.

Regulation 1.31, would appear to be generic in that it simply defines the process by which records and books required by the Act are kept and made subject to inspection. The Rolling Spot Futures contracts, once exempted from the provisions of the Act and its Regulations, should not have the same reporting requirements, so by extension Regulation 1.31 does not apply. However, it is mentioned here to emphasize two points. First, that record keeping requirements are essentially customer protection measures and second, that commercial firms involved in OTC foreign currency routinely maintain business transaction records for a variety of reasons, independent of any regulatory requirement to do so.

Sophisticated customers know how to evaluate counterparties, and their financial resources allow them to invest in as little or as much investigation as they choose. Just as in the section covering customers account reporting, the allowed participants will select counterparties or agents according to a variety of criteria. An important factor in their decision is the professionalism and thoroughness of their operation, which includes record keeping. The requirements in Regulation 1.31 may be perceived as unnecessary or they may be viewed as inadequate. In either case, satisfying Regulation 1.31 for trades involving Rolling Spot Futures and Options is neither necessary nor desirable.

It is a telling feature of Regulation 1.31 that records must be available to representatives of either the CFTC or the Justice Department. The reference to Justice reminds us that for commercial transactions, including currency swaps, forwards and OTC options, there are protections against fraud in the criminal code. Exempting Rolling Spot Futures and Options from the Act and its Regulations does not eliminate all protection for the counterparties. It simply places these instruments on the same footing as other widely used currency products that are not covered by the unique provisions of the CFTC regulations.

Record keeping requirements for FCM's, IB's and exchange members enumerated in Regulation 1.35 are also designed to protect public customers who might not have the experience, knowledge or resources to detect and prevent abusive behavior with respect to their accounts. In requesting an exemption from this requirement, the Exchange would not be abandoning its commitment to provide a fair and orderly market, but is merely requesting that the plethora of detailed regulations enumerated in Regulation 1.35 to protect unsophisticated public customers not apply to the trading of Rolling Spot Futures and Options.

Regulation 1.17 defines the minimum net capital requirement for FCM's and IB's. The cornerstone of this regulation is that four percent of the customer segregated funds is the minimum necessary in capital, unless the firm is also a securities broker or dealer and the SEC net capital requirement is higher. The acknowledged purposes of this rule are both micro and macro. Firms with adequate capital are less likely to fail and jeopardize their customers' funds, and they are less likely to impose catastrophic losses on the clearing firms with joint responsibility for the system. It is therefore for both customer protection and systemic risk issues that capital rules are devised.

The rules under Regulation 1.17 are believed by many to have serious deficiencies. Two firms could have identical customer origin positions. The firm that has more customer money on deposit, and is therefore facing less economic risk, is required to have the higher level of capital. Because of his perverse feature, firms sometimes encourage customers to "sweep" their accounts of funds in excess of the minimum performance bond required.

The Exchange is not seeking an exemption to Regulation 1.17, since all customer segregated funds will be used to calculate the four percent requirement. We are, however, confirming that Rolling Spot accounts, which are not in segregated funds, will not be included in the base on which the capital requirement is calculated. We will demonstrate why keeping Rolling Spot Futures and Options out of segregated funds will neither pose customer protection issues, nor add to systemic risk.

The logic of the customer protection issue is identical to that already discussed in the first part of the section. Customers from the approved list can evaluate the credit worthiness of their counterparties and their agents adequately without any government guidelines. If a customer places his or her Rolling Spot Futures and Options account with a firm, outside of the customer segregated funds pool, it is in part because of his or her belief that the firm is sufficiently well capitalized to protect his or her financial commitment. The CFTC guidelines are not viewed as necessary to insure this level of comfort and security.

Nor should failure to include these accounts in segregated funds materially affect the likelihood of loss by other customers caused by the failure of the firm. Today, there is outstanding in currency forwards, swaps and spot transactions many multiples of the currency futures open interest at the CME. These accounts are held by banks, currency dealers, and other firms who often also maintain FCM's. Today it is the norm for customers to open accounts for OTC currency transactions, sometimes in addition to, but often in lieu of currency futures accounts. Each of these firms maintains capital against these positions, but the guidelines are frequently less restrictive than what Regulation 1.17 prescribes for segregated funds accounts. It should also be noted that few of these OTC currency spot or forward transactions are collateralized, so they are in some ways riskier than comparable-maturity futures which have both original performance bond and daily variation payments.

Adding a Rolling Spot Futures and Options position to a firm's books outside of segregated funds poses no more risk to the firm or its customers than adding a comparable OTC product, a practice that occurs every day without causing a change in Regulation 1.17 capital requirements. Customers who are in the segregated funds pool are still protected in the event of a problem in the firm's house origin or among its non-segregated funds accounts. There is simply no customer protection issue that needs to be addressed through Regulation 1.17 type requirements.

Systemic risk is similarly unaffected. Some might try to argue that four percent of all customer funds relating to Rolling Spot Futures and Options, whether they are in a segregated state or not, need to be available as capital to enhance the system's ability to handle risk. This view would be an admission of terrible ignorance of what the sources of risk to the system are. Swaps, forwards, spot and OTC option transactions dwarf currency futures on most FCM's books. This OTC business has grown and prospered, serving a sophisticated customer base with

efficiency and security. Does the CFTC believe that the system is less safe in some dimensions because of these outstanding obligations? Since to date there has been no attempt to require FCM's to provide for extra capital among Regulation 1.17 lines for these positions, the answer must be no. Capital requirements, like those devised by the Bank for International Settlements or other jurisdictions or by SRO's must be viewed as providing sufficient protection for the system. Adding Rolling Spot Futures and Options to the non-segregated funds pool adds nothing new to the landscape that has not already been introduced by hundreds of different OTC currency products.

It has been shown how with customer Rolling Spot Futures and Options positions out of the segregated funds pool, the failure of Regulation 1.17 to apply to those funds will not hinder customer protection, detract from a firm's ability to perform its function, or add systemic risk. For Rolling Spot Futures and Options to offer a viable alternative to OTC market alternatives, the elimination of the segregated funds and consequent capital requirements must be an integral part of the process. For all of these reasons an exemption is requested and justified.

E. Position Limits

Section 4a of the Act deals with speculative position limits for futures and options under the CFTC's jurisdiction. In general, all contracts are required to have speculative position limits in order to reduce the chance of unreasonable fluctuations or unwarranted changes in price. In the last few years the Commission has allowed some exchanges to substitute position accountability rules for speculative position limits in commodities with extremely liquid cash markets and where the probability of manipulation or disruption is low. The major currencies at the CME were the first futures and options to be afforded such treatment.

It may appear that position accountability standards would be suitable for Rolling Spot Futures and Options as well, but this conclusion ignores the way business is transacted in the OTC world. When the CFTC exempted swaps and hybrids from the Act early in 1993, speculative position limits were not an issue. In the world of OTC products all positions are entered into by informed, sophisticated parties, constrained only by the financial limits each faces. The Commission implicitly recognized that the cash markets, independent of the futures, do not require Federally imposed regulations designed to minimize disruptive behavior. In a market comprised of sophisticated traders, everyone is equipped to judge the market and his or her own capacities. The situation for Rolling Spot Futures and Options is identical to the OTC currency market in this regard.

Exemption from Section 4a of the Act should be granted because that is the consistent way to treat Rolling Spot Futures and Options. Further, there is nothing about the foreign currency markets that would suggest that a different course would be in the public interest. The markets are among the largest and most actively monitored in the world. Discrepancies among prices in various markets, whether they are spot, swap, forward or future, are readily eliminated through the application of some of the massive quantities of capital that are regularly directed toward these markets. The chance that activity in the Rolling Spot Futures and Options could be of a size to move exchange rates to an unwarranted level, or introduce unnecessary fluctuations, is as low as the chance an individual swap dealer manipulating short term interest rates through the size of his or her swap book. There is no public purpose served in mandating speculative position limits, or position accountability requirements.

F. Restrictions on Options

Part 33 of the Regulations governs the trading of options that are listed at designated boards of trade. The genesis of this chapter can be found in the options pilot program that began for non-agricultural options on October 1, 1982. This experiment was an attempt to demonstrate that commodity options trading, which had been characterized as marked with abuses several times in the history of the country, could be carried out in a beneficial and non-disruptive fashion. Given the background of the pilot program it is not surprising that the original pilot program contained many highly restrictive features. While several of the more draconian features have been softened over the years of positive experience, the chapter remains an exercise of restrictive rules and regulations.

The Exchange believes that with the exception of paragraphs 33.9 and 33.10, which deal with unlawful activities and fraud, none of Part 33 should apply to options on Rolling Spot contracts. Lengthy risk disclosure statements are completely unnecessary for the authorized users of these products. Features in the designation paragraph 33.4, like the restriction that options expire at least a day prior to the last day of trading, are also of no value to customers who readily understand the working of the market and can plan for events like an option assignment that results in a physical delivery.

The other feature of Part 33 that runs contrary to available practice in the OTC market is the treatment of option premiums. Paragraph 33.4(a)(2) requires the full payment of premiums from the buyer, at every step of the transaction. In the OTC market, premiums are frequently paid in full by the buyer at the time of the transaction, but there is no requirement to do so. The credit worthiness of the transactor is evaluated by each party and appropriate terms are arrived at. This should be the case for options on Rolling Spot Futures as well.

The ultimate treatment of option premiums at the CME Clearing House has not been determined. It is likely that due to operational constraints the full premium will be collected from the clearing member holding the buyer's position, which will then be passed on to the sellers' clearing member. The FCM community has informed the Exchange on several occasions that it would be a significant burden to have some contracts where the full option premium is collected and others where it is not. Even if the Exchange chooses to maintain a consistent treatment for all options at the Clearing House, that does not mean that all parts of paragraph 33.4(a)(2) need apply. Firms should have the same flexibility with their customers that they now have in the OTC markets, and the Exchange should have the opportunity, if necessary, to make changes in a timely fashion if competitive forces so dictate.

G. Exchange Trading Standards

Part 155 of the Regulations governs trading standards for members on the floor of an exchange as well as FCM's and IB's. These rules have formed the backbone of protection for public customers who may have neither the experience nor the resources to guarantee that their orders are handled fairly. These rules proscribe front running, disclosure of orders, prearrangement and many other practices. Since the public at large will not be participating in Rolling Spot Futures and Options, and since several of the prohibited activities are desirable and actively followed practices in the OTC markets, exemption from this part of the Regulations is required. An example will demonstrate this need.

Taking the other side of a customer's order is an everyday event in the OTC market. In fact, customers come to expect that treatment if there is not sufficient liquidity available from other sectors of the market. The difference between OTC practice and CFTC regulated exchange practice is that the public at large may not have the resources to evaluate whether they are being disadvantaged by such a trade. This asymmetry of resources and skills between customer and agent prompted the inclusion of a ban on this activity in Part 155. But in the OTC market, the sophisticated customer has many opportunities to evaluate the quality of the execution, and the broker faces the ultimate discipline of a loss of business if the customer is not happy. Customers in the Rolling Spot Futures and Options will be well equipped to monitor their own positions, and there is no reason for a prohibition like 155.3(b)(2).

Other trading practices, like prearrangement, are also standard in the OTC market, and may prove to be beneficial in the trading of Rolling Spot Futures and Options. What is key in this discussion is the ability of all of the participants to observe and evaluate the transactions. If the customer actively solicits an agent in an OTC transaction because of his or her ability to take the other side of the order, or solicit counterparties in a way that would be considered prearrangement in futures, that skill should be valued in the execution of Rolling Spot Futures and Options transactions as well. The customers are sophisticated and they have the ability to see that the potential abuses that can arise from such practices will not occur to them. CFTC regulations are not required in these matters for these customers.

This is not to say, however, that the CME will throw away its rule book in regards to Rolling Spot Futures and Options transactions on its floor. The CME has long had rules on its books, including many not mandated by the Act or the Regulations, that

are designed to ensure a fair and orderly market. For example, the CME does not absolve brokers of their responsibilities for fills just because a "fast market" situation is declared. On some other exchanges a "fast market" is the equivalent of a universal "not held" rule. However, we believe that the customers of the CME find this rule to help in providing broker diligence even in difficult market conditions. This is a pure business decision on the part of the Exchange.

The Exchange also remains today as the only futures exchange in the nation that restricts the activity of dual trading. In the Futures Trading Practices Act of 1992, Congress acted to restrict this same practice unless certain standards of audit accuracy could be met, but the Exchange had acted first, again making a business decision that trades should be conducted in this fashion for the overall benefit of the Exchange and its customers. Despite these decisions, the exemption petition requests freedom from these provisions of the law as well.

As the CME rules currently stand, Rolling Spot Futures and Options could face restrictions on dual trading once they reached the level of liquidity that the members have chosen as being sufficient to be sustainable even under a ban. But dual trading in the OTC markets is a way of life, and it could be that at some time in the future, the Exchange would seek to make a business decision to allow dual trading in these exempt products. An exempt product must be able to meet business challenges from competing sectors as they evolve, and an exemption from the dual trading requirement is as important in this case as it was in the blanket exemption for swaps and hybrids.

Anarchy will not be the new standard for exempt Rolling Spot Futures and Options contracts. While the floor trading practices of exempt Rolling Spot contracts have not been defined, it is certainly true that floor broker front running and disclosure of orders, which can damage even the sophisticated customers who trade these products, will still be a major violation of Exchange rules. These will be violations not because they are in the Act or the Regulations, but because the Exchange recognizes that such behavior is simply bad for business. Such rules define a level of professional conduct that emphasizes how seriously any such transgressions will be treated, not because the customers can't look after themselves, but because of the serious damage that could be done to the institution.

The same approach is taken in the OTC markets. Firms have internal standards of conduct that can be quite severe. These rules have been developed over the years to make sure that even the least experienced trader is aware of the gravity of breaching his or her responsibilities to the customer and the firm. Are there additional rules that need to be mandated from the government? No. The anti-fraud provisions in the law are more than adequate in this regard. Common sense business rules and basic law are all that are required for either the OTC markets or the Rolling Spot Futures and Options contracts.

III. Rules of the Exempt Rolling Spot Futures and Options

The Exchange intends to have defined contract specifications for exempt Rolling Spot Futures and Options, just as it has for all of its regulated contracts. The form of these rules will be quite similar to those already applied for in the Exchange's requests for contract market designation for these products as regulated futures and options. One difference will be in the removal of the standard language referring to necessity of submission for approval to the CFTC of all terms concerning contract expirations, trading hours and the like. The flexibility afforded by exemption, enjoyed by swaps, hybrids and OTC currency products, will be an important element in making and keeping Rolling Spot Futures and Options efficient and competitive market instruments.

The major difference will be the inclusion of a rule defining the eligible rolling spot participant. The twelve categories of eligible traders listed in Section II above will be explicitly identified in the rules governing both futures and options. In this way all FCM's that handle customer orders will be clearly notified of the eligible participant list. Just as in the exempt swaps and hybrid markets today, if an FCM allowed someone who was not an eligible participant to trade these contracts, their enforceability would be questionable since they would be illegal futures contracts under the terms of the exemption. Unlike violations in exempt swaps and hybrids, however, the FCM allowing an ineligible trader to participate in these markets would be subject to Exchange disciplinary action as well. The Exchange believes that the combination of possible economic damage to the firm and disciplinary action from the Exchange will be an effective deterrent to abuses of the eligible participant rule.

The rules that may govern the Rolling Spot Currency Futures and Options are included in the Appendix of this petition. These are supplied for informational purposes. The Board of Governors has not approved a final set of rules for the trading of exempt Rolling Spot Currency Futures and Options at this time. This should not be a concern to the Commission in that the Exchange is planning to go well beyond the steps taken in the swaps, hybrids or OTC currency markets in that we intend to have published rules of both the contract and the trading practices involving the contracts. These rules will be available to all participants, and will be enforced by the Exchange just like any other rule in the CME rulebook. Never before have participants in these markets been afforded the certainty and protection of such a code of contract terms and procedures. If the contract rules are changed in any way, ample public notification will be made, and at no time will changes be allowed which would impact the economic value of existing open interest.

The Exchange intends to begin trading Rolling Spot Currency Futures and Options as regulated products shortly after approval is received by the CFTC. It is our current intention to then convert over to exempt status once approval of this petition is received by declaring that newly listed maturities would be subject to the "exempt" rules. For example, if approval of this petition was received when the June Rolling Spot Futures and Options were listed for trading, that contract would continue to trade through expiration as a regulated product. This is necessary since some customers who may not meet the qualifications of being on the eligible list may have open positions. Once the September contract is listed for trading, it will be subject to the "exempt" rules. Because of the "spot" orientation of the contract, there will usually be only one contract month available for trading, except for a brief period of transition right before expiration.

The transition from regulated to exempt states should not pose any material problems for the users or the Exchange. The commercial orientation of the product will mean that few, if any, customers of the Rolling Spot contracts in the regulated state will be unable to participate once the contracts are exempt. What inconvenience does occur to those public customers who do not qualify to trade in the exempt state will be eased by the availability of the Exchange's traditional currency futures and options. Public customers can still use those traditional currency contracts.

IV. Public Interest and Conclusion

The Chicago Mercantile Exchange is requesting exemption from the bulk of the provisions of the Commodity Exchange Act and its Regulations. The CFTC has recently granted such an exemption to swaps and hybrids, and is considering extending similar treatment to energy contracts traded by commercial participants in the oil and gas industries. In the Futures Trading Practices Act of 1992, Congress explicitly included instruments traded on boards of trade as being eligible for consideration for exemption from the Act, if the Commission determines the exemption would be *consistent* with the public interest.

The public interest in this matter is served by the availability of these innovative, cost effective futures and options contracts in a form that is fair, well-defined, and cost effective from both economic and regulatory standpoints. Congress wanted to promote competition and innovation through its grant of exemptive authority to the CFTC, and this petition is one of the earliest expressions of what can be gained. Commercial traders and other eligible participants will have another important tool at their disposal in the currency markets, and this is most certainly consistent with the public interest.

The Exchange has demonstrated that it intends to offer a product that has many of the same features as products now traded in the OTC currency markets, but with some significant advantages. Unlike the OTC market, the Exchange intends to provide more information on trades on the floor, which should enhance the availability of prices in the market. While the currency markets are among the most transparent of all OTC markets, the addition of Rolling Spot data from the CME will add some transactions information, which can only be a plus.

Further, the Exchange intends to maintain a set of contract and trading rules, which no OTC market in the world maintains. While in

total less restrictive than the bundle of CFTC regulations from which exemption is being sought, these public rules will provide certainty and protection in key areas. The Exchange believes that an appropriate set of rules can be devised that provide benefits in excess of the costs they impose, and on net will be a sound business decision. The eligible participants benefit from having a clear set of guidelines that they can see and evaluate, and they have yet another choice of trading vehicles to express their currency opinions.

The final benefit comes from the availability, for the first time, of access to the CME Clearing House for spot currency contracts. Credit lines will be eased, and counterparty risk will be reduced. Both factors should enhance the liquidity of the OTC market in currencies. This added liquidity, focused on the floor of the CME should also benefit the traditional customers of CME currency futures in that arbitrage between Rolling Spot Futures and Options Contracts and the traditional instruments should be facilitated.

This petition has demonstrated how these innovative products will work in the current scheme of currency trading. The Exchange has also shown how restrictive trading to an eligible list of participants eliminates the need for the layers of regulation designed to protect less sophisticated customers. Further, there are no reasons to deny the exemption petition for price transparency or systemic risk issues. In summary, this petition is consistent with the public interest, it promotes innovation and competition, and it should be approved promptly.

Sincerely,

Todd E. Petzel,

Senior Vice President, Research and Chief Economist.

Appendix—Draft Contract Rules for Exempt Rolling Spot Futures and Options

Chapter _____—Rolling Spot™ Currency Contract Specifications

_____00. Scope of Chapter.—This chapter is limited in application to the contract specification of each Rolling Spot™ Currency which is open for trading and delivery on this Exchange. The procedures for trading, clearing, delivery, settlement and any other matters not specifically contained herein shall be governed by the rules of the Exchange.

_____01. Trading Months and Hours.—Futures contracts shall be scheduled for trading and delivery during such hours and in such months as may be determined by the Board of Governors.

_____02. Contract Modifications.—Specifications shall be fixed as of the first day of trading of a contract, except that all deliveries must conform to government regulations in force at the time of delivery. If any national or international government agency or body issues an order, ruling, directive or law that conflicts with the requirements of these rules, such order, ruling, directive or law shall be construed to take precedence and become part of these rules and all open and new contracts shall be subject to such government orders.

_____03. Delivery.—

A. Procedures

In addition to the procedures and requirements contained in this chapter, delivery procedures shall be governed by the rules set forth in Chapter 7.

B. Restriction

The Rolling Spot™ Currencies traded pursuant to Chapter _____shall be delivered in the country of issuance at a bank designated by the buyer.

C. Delivery Days

Delivery shall be made on the third Wednesday of the contract month. If that day is not a business day in the country of delivery or is a bank holiday in either Chicago or New York City, then delivery shall be made on the next day which is a business day in the country of delivery and is not a bank holiday in Chicago or New York City.

_____03. Eligible Participants in Rolling Spot Futures.

Participation in the Rolling Spot Futures contracts are restricted to the following firms and individuals:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible rolling spot participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible rolling spot participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraphs (1), (2), (3), (4), (5), (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the rolling spot futures or options contract with the conduct of its business; or which has a net worth of $1,000,000 and enters into the rolling spot futures and options contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C.§ 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act of a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of subsection (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) A member at the CME, trading for his or her own behalf or on behalf of another eligible Rolling Spot participant.

_____10. Rolling Spot ™ Pound Sterling (Rolling Cable).—

A. Trading Units

The unit of trading shall be 250,000 Pounds Sterling.

B. Price Increments

Minimim price fluctuations shall be in multiples of $.0001 per Pound Sterling, commonly referred to as one point.

C. Delivery Equivalents

For the purposes of delivery, each open position in Rolling Spot ™ Pound Sterling futures after the termination of trading for that contract month shall be deemed equivalent to four open positions on the same side of the market in Pound Sterling futures in the same contract month, if such Pound Sterling futures contract month is listed for trading.

D. GLOBEX ™ Price Limits

There shall be no trading of the Rolling Spot ™ Pound Sterling futures contract during Electronic Trading Hours (ETH) at a price more than $0.0800 above or below the settlement price of the Reference Regular Trading Hours (RTH) Session.

E. Termination of Futures Trading

Futures trading shall terminate on the second business day immediately preceding the third Wednesday of the contract month. If the foregoing date for termination is a bank holiday in Chicago or New York City, futures trading shall terminate on the next preceding business day common to Chicago and New York City banks and the Exchange.

F. Position Accountability

Each open position in Rolling Spot™ Pound Sterling futures shall be deemed equivalent to four open positions in Pounds Sterling futures on the same side of the market for the application of Rule 3010.F—Position Accountability.

G. Accumulation of Positions

For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding, and the positions of all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated.

H. Daily Adjustments

A daily adjustment shall be made to all open positions at the close of Regular Trading Hours by the Clearing House as follows. At 11:00 a.m. each trading day, the Clearing House shall determine the IMM Pound Sterling Spot/Next Swap Points. These Swap Points shall be promptly posted. If the Swap Points indicate that forward sterling is at a premium, then each open long position shall be debited the Swap Points and each open short position shall be credited the Swap Points. If the Swap Points indicate that forward sterling is at a discount, then each open long position shall be credited the Swap Points and each open short position shall be debited the Swap Points. (For example, if the Spot/Next Swap Points were determined to be 2.01 discount swap points, or $.000201 per Pound Sterling, then each long position would be credited $50.25 and each short position would be debited $50.25.) No adjustment shall be made on the termination of trading day, however. The forward swap value dates and the manner in which bank and Exchange holidays will be treated by the Clearing House shall be published in advance.

To determine the IMM Pound Sterling Spot/Next Swap Points, the Clearing House shall select at random 8 reference dealers from a list of no less than 16 dealers in forward pounds sterling who are active participants in the market for spot/next pound sterling forward swaps at 11:00 a.m. Chicago Time. Each dealer shall be requested to provide (for informational purposes only) its current bid and offer for typically sized spot/next pound sterling forward swaps. These quotes must be confirmed in writing by telex, facsimile, or other hard-copy confirmation before they are accepted as official. Only after confirmation will they be used to determine the Spot/Next Swap Points. The midpoint of each bid-offer pair shall be determined, and the 2 lowest and 2 highest such midpoints shall be eliminated. The arithmetic mean of the remaining 4 midpoints, rounded to the nearest .01 swap points ($.25 per contract) shall be the Spot/Next Swap Points for that trading day. If for any reason there is difficulty in obtaining a quote within a reasonable time interval from one of the dealers in the sample, that dealer shall be dropped from the sample, and another shall be randomly selected to replace it.

I. Final Settlement Price

The settlement price on the termination of trading day shall equal the settlement price on that day for the Pound Sterling futures contract for which that is also the termination of trading day.

Chapter _____—Options on Rolling Spot™ Currency Futures (Proposed Only)

_____00. Scope of Chapter.—This chapter is limited in application to trading in put and call options on Rolling Spot™ Currency futures contracts. The procedures for trading, clearing, inspection, delivery and settlement and any other matters not specifically covered herein shall be governed by the rules of the Exchange.

_____01. Contract Expirations, Trading Hours, and Trading Halts.—Options contracts shall be listed for such expiration dates and scheduled for trading during such hours as may be determined by the Board of Governors.

There shall be no trading in any Rolling Spot™ Currency option contract when the primary futures contract for that Rolling Spot™ Currency is limit bid or offered.

For purposes of this rule, the primary futures contract shall be defined as the futures contract trading in the lead month configuration in the pit.

For purposes of this rule during Electronic Trading Hours (ETH), the GLOBEX® Control Center shall have the responsibility of determining whether the primary futures contract is limit bid or offered.

_____02. Underlying Futures Contract.—The underlying futures contract is the nearest futures contract for which trading terminates at least two Exchange business days after the expiration date of the option.

_____03. Listing of Exercise Prices.—At the commencement of trading in a contract, the Exchange shall list put and call options at the exercise price that is nearest the previous day's settlement price of the underlying futures contract, or, if the underlying futures contract has not yet been listed for trading, at the previous day's settlement price of the most deferred futures contract which is listed for trading. For options on Rolling Spot™ Pound Sterling Futures, the Exchange shall list put and call options at the next fifteen higher and next fifteen lower exercise prices.

When a sale, bid, offer, or settlement price in the underlying futures occurs within half an exercise price interval of the fifteenth highest or fifteenth lowest existing exercise prices for options on Rolling Spot™ Pound Sterling Futures, put and call options at the next higher or next lower regular exercise price respectively shall be listed for trading on the next trading day. New options may be listed for trading up to and including the termination of trading.

The Board may modify the provisions governing the establishment of exercise prices as it deems appropriate.

_____04. Position Limits and Accountability.—For the purposes of position accountability, each open position in Rolling Spot™ Pound Sterling futures and/or options on futures shall be deemed equivalent to four corresponding open positions in Pound Sterling futures and/or options on futures on the same side of the market.

_____05. Accumulation of Positions.—For the purposes of this rule, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions of all accounts of a person or persons acting pursuant to an expressed or implied agreement or understanding, and the positions of all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated.

_____06. Exemptions.—The foregoing position limits shall not apply to commercially appropriate risk reducing option positions defined in accordance with Regulation 1.3(z)(1) of the CFTC and meeting the requirements of Rule 543.A. and shall not apply to other option positions exempted pursuant to Rule. 543.

_____07. Termination of Trading.—Options trading shall terminate at the close of trading on each Friday. If the foregoing date for termination is an Exchange holiday, options trading shall terminate on the immediately preceding business day.

_____08. Contract Modification.—Specifications shall be fixed as of the first day of trading of a contract except that all options must conform to government regulations in force at the time exercise. If the U.S. government, an agency, or duly constituted body thereof issues an order, ruling, directive, or law inconsistent with these rules, such order, ruling, directive, or law shall be construed to become part of these rules and all open and new options contracts shall be subject to such governmental orders.

_____09. Exercise.—In addition to the applicable procedures and requirements of Chapter 7, the following shall apply to the exercise of option contracts on Rolling Spot™ Currency futures.

A. Exercise of Option by Buyer

An option may be exercised by the buyer only upon the termination of trading. To exercise an option the clearing member representing the buyer shall present an exercise notice to the Clearing House by 7:00 p.m. on the day of exercise.

An option that is in the money[1] after the termination of trading shall, in the absence of contrary instructions delivered to the Clearing House by 7 p.m. on the day of termination of trading by the clearing member representing the option buyer, be exercised automatically.

B. Assignment

Exercise notices accepted by the Clearing House shall be assigned through a process of

[1] An option is in the money if the settlement price of the underlying futures contract at the termination of trading lies above the exercise price in the case of a call, or lies below the exercise price in the case of a put.

random selection to clearing members with open short positions in the same series. A clearing member to which an exercise notice is assigned shall be notified thereof as soon as practicable after such notice is assigned by the Clearing House, but not later than 45 minutes before the opening of Regular Trading Hours in the underlying futures contract on the following business day.

The clearing member assigned an exercise notice shall be assigned a short position in the underlying futures contract if a call is exercised or a long position if a put is exercised. The clearing member representing the option buyer shall be assigned a long position in the underlying futures contract if a call is exercised and a short position if a put is exercised.

All such futures positions shall be assigned at a price equal to the exercise price of the option and shall be marked to market in accordance with Rule 814 on the trading day following acceptance by the Clearing House of the exercise notice.

_____10. Emergencies, Acts of God, Acts of Government.—If exercise, assignment, or delivery or any precondition or requirement thereof is prevented by strike, fire, accident, act of government or act of God, the seller or buyer shall immediately notify the Exchange President. If the President determines that emergency action may be necessary, he shall call a special meeting of the Board of Governors and arrange for the presentation of evidence respecting the emergency condition. If the Board determines that an emergency exists, it shall take such action as it deems necessary under the circumstances and its decision shall be binding upon all parties to the contract.

_____11. Eligible Participants in Rolling Spot Options.

Participation in the Rolling Spot Options contracts are restricted to the following firms and individuals:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible rolling spot participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible rolling spot participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible rolling spot participant (a) which has total assets exceeding $10,000,000 or (b) the obligations of which under currency transactions (including but not limited to spot, forward, option and/or swap transactions) are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (6)(a) or by an entity referred to in paragraphs (1) (2) (3) (4) (5) (7) or (8); or (c) which has a net worth of $1,000,000 and enters into the rolling spot futures or options contract with the conduct of its business; or which has a net worth of $1,000,000 and enters into the rolling spot futures and options contract to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employees Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (6) or (11) of this section;

(10) A futures commission merchant subject to regulation under the Act of a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible rolling spot participant: *Provided, however,* that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of subsection (6) or (11) of this section;

(11) Any natural person with total assets exceeding at least $10,000,000; or

(12) A member at the CME, trading for his or her own behalf or on behalf of another eligible Rolling Spot participant.

_____12. Rolling Spot™ Pound Sterling.—

A. Trading Unit

The trading unit shall be an option to buy, in the case of the call, or to sell, in the case of the put, one Rolling Spot™ Pound Sterling futures contract as specified in Chapter —.

B. Minimum Fluctuations

The price of an option shall be quoted in U.S. dollars per pound sterling, except as provided in Rule 584 (GLOBEX™ Volatility Quotes). Each of $0.0001 per pound sterling (one point) shall represent $25.00. For example, a quote of .0070 represents an option price of $1750.00 (70 points x $25.00 per point). The minimum fluctuation shall be one point. A trade may occur at a price of $.00005 ($12.50), whether or not such trades result in the liquidation of positions for both parties to the trade.

If options are quoted in volatility terms, the minimum fluctuation shall be 0.05 percent.

C. Exercise Prices

The exercise prices shall be stated in terms of U.S. dollars per pound sterling in intervals of $.0100, e.g., $1.4100, $1.4200, $1.4300, etc.

Chicago Mercantile Exchange

June 16, 1993.

Ms. Jean A. Webb,

Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

RE: Addition to petition for exemption from the Commodity Exchange Act for Rolling Spot™ Currency Futures and Options.

Dear Ms. Webb: Staff from the Office of General Counsel of the CFTC has asked the CME to provide additional information concerning the extent of our petition to exempt Rolling Spot Futures and Options originally filed on April 7, 1993. In that petition the Exchange requested exemption from all parts of the Commodity Exchange Act ("Act") except those dealing with fraud, embezzlement and manipulation (specifically 4(b) 4(o), 6(c), 9(a) and 9(b)). The CFTC staff has asked that we denominate the specific regulations that would still apply to the Rolling Spot Futures and Options.

The Commission has already acted in three instances to exempt certain classes of financial contracts. For swaps, hybrids, and energy contracts varying degrees of exemption from the Act have been granted. The Commission did not enumerate the regulations which continue to apply to these exempt instruments.

The CME believes that the circumstances to exempt Rolling Spot are most like the exemption granted swaps, and that all of the regulations that the Commission intends to apply to that class of products should also apply to Rolling Spot Futures and Options. The Exchange, based on its own research, believes the following regulations should still apply to Rolling Spot Futures and Options even after the exemption is granted.

Regulation 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

As a self-regulatory organization (SRO), the CME has an obligation to make sure that its employees conduct themselves in a manner that will not harm any of its customers either through disclosure of material, non-public information or through trading on such information. The addition of exempt Rolling Spot Futures and Options does nothing to diminish that responsibility, nor should information concerning Rolling Spot contracts be treated any differently than information concerning regulated futures and options.

While regulation 1.59 does not deal with fraud in direct connection with trading

Rolling Spot Futures and Options, it deals with a very specific behavior that can be viewed as potentially defrauding Rolling Spot customers. As such, the Exchange believes it would not be exempt from Regulation 1.59 under an exemption for Rolling Spot Futures and Options.

Regulation 4.15 Continued applicability of antifraud sections.

This section of the regulations states explicitly that exemptions granted to CTA's, CPO's and the like under part 4 of the regulations do not exempt the exempt party from section 4o of the Act. As this regulation is a specific extension of Section 4o of the Act, it would apply to exempt Rolling Spot Futures and Options.

Regulation 33.9 Unlawful activities.

This regulation specifies unlawful activities in the trading and handling of orders of domestic exchange traded options. The enumerated sections include explicit prohibitions against manipulation, backeting and misrepresentations which can be viewed as extensions of various sections of the Act from which the Exchange is not seeking an exemption. As such, the Exchange believes that Regulation 33.9 would apply to exempt Rolling Spot futures and options.

Regulation 33.10 Fraud in connection with commodity option transactions.

The regulation specifies illegal, fraudulent activity in the trading and handling of orders of domestic exchange traded options. As such, the Exchange believes that Regulation 33.10 would apply to exempt Rolling Spot Futures and Options.

These four regulations are the only regulations under the Act that the Exchange believes would apply to exempt Rolling Spot Futures and Options in all circumstances. There are other parts of the regulations that would apply in part or as they are needed to enforce sections 4(b), 4(o), 9(a) and 9(b) of the Act.

For example, if a Part 11 investigation was begun, looking into a fraud or manipulation involving Rolling Spot Futures and Options, all of the Part 11 provisions would apply. Similarly, Regulation 1.1, Words in singular and plural form, and Regulation 1.3, Definitions, have nothing to do directly with Rolling Spot Futures and Options, but to the extent they are required to clarify the portions of the Act or the regulations from which the contracts will not be exempt, they apply by extension.

The Exchange believes the exemption to the Act from which it has petitioned is broad and, like the swaps exemption previously granted, covers the vast majority of the Act and regulations thereunder. If exchanges are going to innovate and extend the line of products available to sophisticated and commercial traders, such exemptions will be mandatory to offer products that are cost effective when compared to over the counter alternatives.

If there is any other information that you require, please do not hesitate to ask.

Sincerely,

Todd E. Petzel.

Chicago Board of Trade

June 30, 1993.

Jean A. Webb,

Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Dear Ms. Webb: Enclosed is a petition submitted by the Board of Trade of the City of Chicago pursuant to Section 4(c) of the Commodity Exchange Act. The Board of Trade is petitioning the Commission to establish a "professional trading market" exemption. The exemption would exempt from the Act and CFTC rules trading in instruments on the Board of Trade or other boards of trade that is restricted to professional traders and subject to certain other conditions.

The Board of Trade requests that the Commission grant the enclosed petition expeditiously and stands ready to assist the Commission in that endeavor.

Respectfully submitted,

Thomas R. Donovan,

President and Chief Executive Officer, Board of Trade of the City of Chicago.

Petition for a Professional Trading Markets Exemption

June 30, 1993.

In 1992, Congress granted the Commodity Futures Trading Commission exemptive authority for futures contracts. Under Section 4(c) of the Commodity Exchange Act, 7 U.S.C.A. § 6(c), the CFTC may exempt any class of futures contracts from virtually all provisions of the Commodity Exchange Act if that exemption would be "consistent with the public interest." The CFTC also has found that it has similar, albeit implied, authority under CEA § 4c(b), 7 U.S.C. § 6c(b), generally to exempt any options transactions from CFTC regulation.

The CFTC has exercised these exemptive powers on several occasions—for swaps (58 Fed. Reg. 5587 (Jan. 22, 1992)); for hybrids (58 Fed. Reg. 5580 (Jan. 22, 1993)); and for energy contracts (58 Fed. Reg. 21286 (April 20, 1993)). In each instance, the CFTC has been guided by the following overriding principles:

(1) If an instrument will be offered to or traded by individuals (public customers) of limited financial means, then the CFTC will not exempt transactions in the instrument unless another regulatory scheme covers those transactions. (The Hybrid Exemption.)

(2) If an instrument will be offered to or traded by *only* professional traders (not public customers), then the instrument should be exempt from the CEA even if that instrument is not subject to any other form of federal regulation. (The Swaps and Energy Contract Exemptions.)

These two principles are well-grounded in an agency precedent. Since 1978, the CFTC has exempted options offered only to commercial entities—"trade options"—from its options regulations except for antifraud. 17 C.F.R. § 32.4. More recently, the CFTC has interpreted the CEA's Treasury Amendment, based on the purpose and context of the statute, to *exclude entirely* from the CEA certain futures on government securities and foreign currency, unless those futures are marketed to the general public. CFTC *Amicus Curiae* Brief in *Salomon Forex, Inc. v. Tauber*, No. 92–1406 (4th Cir. 1992) *appeal pending*. Under that interpretation, futures contracts traded in dealer markets among professional traders need no regulation.

Consistent with these well-established agency principles, the Board of Trade of the City of Chicago hereby petitions the CFTC for a "Professional Trading Market" exemption. Under the exemption, trading in any instrument on the Board of Trade or other boards of trade would be exempt from the CEA (except for CEA § 2(a)(1)(B)) and CFTC rules, subject to certain conditions.

The conditions would make the exemption available only to trading on boards of trade that notify the CFTC of their intention to operate a Professional Trading Market. Furthermore, to qualify for the exemption, a board of trade must limit trading in exempt instruments to only those parties that satisfy the definition of "professional trader." Individuals who are public customers would be excluded from the "professional trader" definition (except for individuals with $10 million in assets) and could not participate in the exempt Professional Trading Market.

All exempt transactions also would be subject to antifraud and antimanipulation rules. The petition calls for the CFTC to adopt special fraud and manipulation rules that would be applicable to any instruments the agency has exempted or will exempt from, among other provisions, CEA § 4(a), 7 U.S.C. § 6(a). The proposed exemption also would provide that any violations of these special fraud and manipulation rules would be actionable in private damage suits brought under the CEA on the same terms as other private rights of action the statute authorizes. Finally, the proposed Professional Trading Market exemption would be available only to boards of trade that provide mutualized risk, clearing guarantees to market participants under clearing systems the CFTC has approved.

Subject to these general conditions, trading in exempt instruments may occur in any manner. An exempt Professional Trading Market therefore may utilize open outcry competitive bidding on a trading floor, an electronic trading system or a form of over-the-counter dealer market-making in exempt instruments. Exempt instruments are not defined; thus, if the terms and conditions of the exemption are met, a board of trade could offer through its Professional Trading Market any instruments that "may otherwise be subject to regulation under the Act" (58 Fed. Reg. at 5589).

The "Professional Trading Market" exemption is sound public policy "consistent with the public interest" (CEA § 4(c)(1)). Many participants in existing over-the-counter markets want to trade derivative instruments without facing the risks of existing OTC markets. To that end, an exempt professional trading market would afford those OTC market users the price transparency, legal certainty and reduced credit risk of exchange markets, without the burdens of general federal regulation. Exchanges that operate Professional Trading Markets also should be able to provide their services to market users at less cost, since neither the exchanges nor their market users

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would have to bear the costs attendant to CFTC regulation. Hedgers and portfolio managers, among others, should find it easier and less expensive to engage in derivative transactions on exchanges, thereby reducing price risks and volatility in our national economy overall. Moreover, as the agency has found in other contexts, professional traders are capable of assessing for themselves the risk of transacting business in an exempt market, rather than relying upon government to dictate market choices.

The "Professional Trading Market" exemption also would fulfill the CFTC's statutory mandate to grant exemptions that "promote responsible economic or financial innovation and fair competition." CEA § 4(c)(1). No one now doubts that exchange and OTC markets both compete with and complement each other. The CFTC already has granted professional trading market exemptions for instruments in which OTC dealers now make active markets. By this petition, the Board of Trade urges the CFTC to grant exchanges the same type of exemptive relief in accordance with their "fair competition" Congress envisioned when it granted the CFTC exemptive authority in 1992.

I. The 1992 Act Contemplates Exchange-Trading Exemptions

Section 4(c) of the CEA explicitly permits exchange exemptions. The CFTC is authorized to grant exemptions.

on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act.

CEA § 4(c)(1). Thus, Congress understood that even boards of trade that are otherwise designated contract markets could obtain CEA exemptions.

Other provisions in CEA § 4(c) further confirm that exchanges may obtain broad-based exemptions even from the contract market designation requirements in CEA § 4(a). In order to be exempt from any CEA provision, the CFTC must find that the exemption "would be consistent with the public interest." CEA § 4(c)(1). But Congress imposed special restrictions on any exemption—like the exemption sought by this petition—from CEA § 4(a).

One of those restrictions is that only "appropriate persons" may trade instruments exempt from contract market designation. CEA § 4(c)(2)(B)(i). As defined in the statute, the term "appropriate person" includes any "floor broker, or floor trader subject to regulation under this Act * * *." CEA § 4(c)(3)(J). By definition, floor brokers and floor traders engage in activity on exchange trading floors. The inclusion of floor trading professionals among the list of "appropriate persons" signals Congress' recognition that exchange trading, including floor trading in futures contracts, could be exempt from the contract market designation requirement (among other provisions) if the other statutory conditions were met. See CEA § 4(c)(2).

The Conference Report underscores Congress' intention that the CFTC would include exchange trading in any exemptions from the CEA's requirements the agency granted.

The Conferees intend that the Commission, in considering fair competition, will implement this provision in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike.

H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). In applying its exemptive authority, the CFTC was admonished to apply "consistent standards" to exchanges and other markets and to distinguish those markets from each other for purposes of an exemption only if such distinctions are "consistent with the public interest" and "not arbitrary and capricious." *Id.*

Congress also intended that the CFTC would exempt new markets and market innovations, in addition to existing markets. Exemptive authority would give the Commission a means of providing certainty and stability to existing *and emerging markets* so that financial innovation and market development can proceed in an effective and competitive manner.

H.R. Rep. No. 978 at 81 (emphasis added). An exemption for an exchange-sponsored Professional Trading Market would satisfy that congressionally-endorsed objective.

II. Description of the Proposed Exemption

The proposed Professional Trading Market exemption is premised upon a straightforward principle—the regulatory burdens and costs imposed generally under the Commodity Exchange Act are unnecessary and inappropriate for trading activity *exclusively* among professional traders. Exchanges and other boards of trade should be able to sponsor "professionals only" markets that would be exempt from the vast majority of CEA requirements. The proposed exemption would offer boards of trade an opportunity to develop those kinds of markets.

The proposed exemption would be appropriately conditioned to make certain that unsophisticated and poorly-capitalized members of the public could not directly participate in exempted markets. (The proposed rules that would implement a Professional Trading Market exemption are included in Attachment A to this petition.) The exemption would be available only to boards of trade that notify the CFTC in writing of their intention to operate a Professional Trading Market.[1] The notification requirement would prevent bucket shops or boiler rooms from relying upon the Professional Trading Market exemption to claim immunity from CFTC or state prosecution. If a bucket shop (or any other board of trade) failed to file its notice with the CFTC, the bucket shop would be automatically disqualified from exempt status. The notification requirement would also allow the CFTC and state law enforcement officials to know at all times the actual number of Professional Trading Markets that are relying upon the exemption. That information would enable the CFTC to monitor compliance with the conditions to the exemption.

In addition to notice, an exempt Professional Trading Market would be required to meet the following conditions:

(1) Only professional traders may trade in the exempt market;

(2) All trades are subject to broad proscriptions on fraud and manipulation applicable to transactions otherwise exempt from the CEA;

(3) Any parties that allegedly violate those proscriptions are subject to private rights of action in accordance with the procedures in CEA § 22 as well as agency enforcement actions: and

(4) All trades on the Professional Trading Market must be submitted to a clearing system that provides for mutualized risk of loss and that the CFTC has previously found to be acceptable for futures or options trading or that the CFTC finds acceptable for a particular Professional Trading Market.[2]

A. Professional Traders

The professional traders limitation largely replicates the categories of persons the agency previously has allowed to trade instruments that are exempt from the contract market designation requirement. CFTC Rule 35.1(b)(2) and 58 Fed. Reg. at 21294. In addition to those persons, the proposal contemplates that floor brokers, floor traders, and futures commission merchants would qualify as professional traders to the extent that the brokers, traders, or FCMs would be members of the board of trade operating the Professional Trading Market or persons, like lessees, otherwise holding trading privileges on that board of trade. No one could question legitimately the trading sophistication of floor brokers, floor traders and FCMs; trading is their business. Any concerns relating to their creditworthiness would be addressed by the clearing system requirement.

Individuals would not be eligible to trade on a Professional Trading Market unless they have assets in excess of $10 million. That conservative limitation greatly exceeds the "sophisticated investor" thresholds established by the Securities and Exchange Commission under the Securities Act of 1933. (SEC Regulation D treats individuals with a net worth of $1 million as "accredited investors.")[3]

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[1] Under CEA § 1a(1), "[t]he term 'board of trade' means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment." Thus, as used in the statute and this petition, the term "board of trade" includes, but is not limited to, exchanges.

[2] Like the CFTC's swaps exemption, the proposed Professional Trading Market exemption would "not apply to any financial, recordkeeping, reporting, or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act." 58 Fed. Reg. at 5589. Since the CFTC has not indicated, in the context of swaps and other exempt instruments, how it intends to exercise that reserved authority, the proposed exemption does not specifically address those issues. In the swaps exemption and others, the CFTC found the absence of policy in this area not to be an impediment to the adoption of exemptions. That same course should be followed here.

[3] Individuals that do not meet the net worth requirement could participate indirectly in an

B. Antifraud and Antimanipulation

Fraud and manipulation are the core proscriptions of the Commodity Exchange Act. The "public interest" dictates that federal law should prohibit fraudulent or manipulative acts or practices in connection with any transactions that may be subject to the CEA.

Rather than engage in a hyper-technical legal effort to mesh certain exempt transactions with the requirements of the CEA's existing fraud and manipulation provisions, the proposal contains a special antifraud and antimanipulation provision. That approach will make certain that any party committing fraud or engaging in manipulative practices in connection with an otherwise exempt instrument traded on a Professional Trading Market would not be able to wriggle out of liability under the CEA on some legal technicality. In contrast, the other CFTC exemptions adopted under CEA § 4(c) try to fit exempt transactions within the statute's existing constructs, thereby creating possible legal impediments to pursuing fraud and manipulation.

The special fraud and manipulation provisions proposed in this petition are drafted to apply not only to Professional Trading Market transactions, but to any transaction exempt from CEA § 4(a) or CFTC Rule 33.3 (the contract market designation requirement for options). By creating a direct and unambiguous fraud and manipulation provision for transactions that are not traded on designated contract markets under an exemption from CFA § 4(a) or CFTC Rule 33.3, the CFTC would be plugging the legal loopholes in the swaps and energy contract exemptions and effectuating the core protections of the CEA.[4]

In proposing special fraud and manipulation protections for exempt transactions, the petition simply follows the CFTC's approach in adopting special fraud or manipulation rules for options, foreign futures and leverage contracts. In those instances, the agency adopted special rules for each category of instruments rather than rely upon the statute's provisions. The CFTC should adopt the same approach for exempt instruments as well.

C. Private Rights of Action

Private enforcement of CEA protections can be an important means of uncovering, remedying and deterring abusive practices at no cost to the taxpayers. By providing private remedies in accordance with the procedures in CEA § 22 for persons that suffer financial harm from fraud or manipulative practices, the CFTC would certainly be acting in a manner "consistent with the public interest." To the extent that other CFTC exemptions purport to exempt persons engaging in fraud and manipulation from these remedies, the CFTC may want to reconsider that position.

D. Clearing

Any exempt transaction executed on a board of trade's Professional Trading Market must be submitted to the board of trade's clearing system. That system must have been approved by the CFTC either previously in connection with a contract market designation or independent of the designation process. In that way, the CFTC can make certain that no board of trade could claim, for purposes of qualifying for the exemption, to have a reliable clearing system for reducing financial risk in any exempt transaction, when, in fact, the claimed clearing system was either inadequate or did not exist. Any exempt transaction would need to be cleared through a system that received CFTC approval at one time or another.

The proposed exemption treats clearing, like fraud and manipulation protections, as a core protection under the CEA. In that regard, the exemption follows CFTC policy since the agency's inception. In 1976, the agency found a clearing system to be a legal prerequisite for any futures contract that is proposed to be traded; any such contract that is not subject to a clearing system would be "contrary to the public interest" and hence illegal. 41 Fed. Reg. 40093 (1976). Clearing has even been described by the CFTC as the "essence of the integrity of a futures contract." *Id.*

The proposed exemption's clearing requirement reflects that CFTC view. A CFTC-approved, mutualized risk clearing system would sharply reduce credit risk in any exempt transaction. Thus, the existence of a CFTC-approved clearing system should be considered to be "mandated by the public interest" not just "consistent with the public interest" for any exempt transaction under CEA § 4(c)(1).

III. The Public Interest and Prior CFTC Exemptions Compel Granting This Petition

In both the swamps and energy contract exemptions, the CFTC found virtually blanket exemptions from the CEA to be "consistent with the public interest" under CEA § 4(c)(1). In both instances, the CFTC identified "financial integrity" and "customer protection" as key aspects of its public interest determination. Then the agency found those interests to be satisfied based upon the qualifications of the parties' eligible to trade the exempt instruments. In swaps, the agency found:

> The Commission has addressed concerns regarding financial integrity and customer protection through the requirement that swaps only be entered into between eligible swap participants * * *.

58 Fed. Reg. at 5592. In energy contracts, the agency echoed that finding:

> [T]he Commission has addressed concerns regarding financial integrity and customer protection through the requirement that Energy Contracts may only be entered into and/or only be transacted on behalf of "appropriate persons", as defined above.

58 Fed. Reg. at 21292.

The proposed Professional Trading Market exemption would treat these public interest considerations in a manner identical to the agency's approach to swaps and energy contracts. The CFTC would "address concerns regarding financial integrity and customer protection through the requirement" that transactions under the proposed exemption would "be entered into and/or only be transacted on behalf of" professional traders, as defined in the exemption. Since the proposed "professional trader" definition largely mirrors the definitions of "eligible swap participants" and "appropriate persons" to energy contracts, by limiting market participation to "professional traders" the proposed exemption fully satisfies the "consistent with the public interest" standard under CEA § 4(c), as applied by the CFTC in its previously granted exemptions.

The proposal is even more "consistent with the public interest" than its predecessors. The CFTC has recognized the benefits of clearing to be a cornerstone of financial integrity under the CEA; without clearing, the CFTC would find any new futures or options contract to be "contrary to the public interest" under CEA § 5(7), 7 U.S.C.A. § 7(7). 41 Fed. Reg. 40093 (1976). Yet both the swaps and energy contract exemptions forbid clearing arrangements for the exempt instruments, a policy the Commission found to be "consistent with the public interest" under CEA § 4(c). If noncleared instruments traded among professional traders are "consistent with the public interest," then cleared instruments traded among professional traders must, at least, also satisfy that "public interest" standard. The agency's longstanding recognition of the benefits of mutualized clearing logically compels that result.

Other aspects of the public interest findings made by the CFTC also support granting this petition. Like swaps and energy contracts, the Professional Trading Market would be "used by corporations, financial institutions, governments, governmental entities, and others" and would offer instruments that "are used by these entities to hedge or manage financial risk and accomplish other financial objectives" (58 Fed. Reg. at 5592). See also 58 Fed. Reg. at 21292. Like swaps and energy contracts, a Professional Trading Market would allow "participants to negotiate and structure transactions that most effectively address their economic needs" (58 Fed. Reg. at 5592). As a result, the Professional Trading Market would "enhance[] the global competitive position of U.S. businesses" (58 Fed. Reg. at 21292).

The proposed exemption even would serve to reduce legal uncertainty. According to some well-respected legal commentators, public participation is one of the essential ingredients of a futures contract. Russo and Vinciguerra, *Financial Innovation and*

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exempt Professional Trading Market through an interest in a commodity pool or other collective investment vehicle or through a discretionary trading account. In those situations, an individual authorizes a professional to make trading decisions on behalf of the individual. That professional then determines whether to trade in the exempt market and is responsible to make that judgment on a sound basis. Thus, the individual's interests should be protected.

[4] For example, the swaps exemption would require the CFTC to show first that the transactions at issue were futures contracts before it could invoke the antifraud provisions in at least CEA § 4(b), and possibly CEA § 4o. Unless that showing is made, the agency may be hard pressed to rely upon the futures antifraud provisions. In the manipulation area, both the swaps and energy contract exemptions would immunize parties from CEA liability for manipulating the prices of exempt instruments.

Uncertain Regulation: Selected Issues Regarding New Product Development 69 Texas L. Rev. 1431, 1446 (1991) (futures contracts are, by definition, "directly or indirectly offered to the general public"). The CFTC itself at one time espoused that view. *In re Stovall.* [1977–80 Tr. Binder] Comm. Fut. L. Re. (CCH) ¶ 20941, at 23777 (1979). According to those authorities, by excluding public customers from a Professional Trading Market, that market could be said, as a matter of law, not to involve futures contracts even if the instruments traded replicated those traded on designated contract markets today.

The proposed exemption would remove any legal questions concerning these transactions. Even if the instruments offered on the Professional Trading Market are considered to be futures, the proposed exemption would remove those instruments from the CEA's existing regulatory scheme. Thus, consistent with the swaps and energy contract exemptions, the public interest in legal certainty also would be fostered by the proposed Professional Trading Market exemption.[5]

The proposed exemption would not have a material adverse effect on regulatory or self-regulatory responsibilities. CEA § 4(c)(2)(B)(ii). A board of trade-sponsored Professional Trading Market would reduce many regulatory concerns relating to "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement." H.R. Rep. No. 978 at 79. The board of trade could easily coordinate its self-initiated self-regulatory activities for its Professional Trading Market with those of any contract market the board of trade also might sponsor as well as other contract markets and the Commission. To the extent the diffuse and nondisclosed swaps and energy contract markets did not pose regulatory problems for the CFTC under CEA § 4(c)(2)(B)(ii), a board of trade-sponsored Professional Trading Market that notifies the agency of its existence should readily satisfy the statutory standard.

Finally, the proposed exemption is perfectly compatible with, if not required by, the CFTC's mandate to promote fair competition in granting exemptions. CEA §§ 4(c) (1) and 15. Any board of trade—whether an exchange or not—that met the standards of the rule could qualify for the exemption and would "remain free to compete under the [exemption] on an equal footing with" other boards of trade (58 Fed. Reg. 5593 n. 48). Therefore, consistent with the CFTC's findings in the swaps and energy contract exemptions, the proposed Professional Trading Market exemption does not "raise any significant competitive issues" (58 Fed. Reg. at 5593). See also 58 Fed. Reg. at 21293.

Conclusion

The Conference Committee Report on the 1992 Act directed the CFTC to "implement" its exemptive powers "in a fair and even-handed manner to products and systems sponsored by exchanges and non-exchanges alike." H.R. Rep. No. 978 at 78. The Professional Trading Market exemption allows exchanges and other boards of trade to qualify for the same exemptive treatment the CFTC has afforded to swaps and energy contracts. The proposed exemption thus embodies the fair and even handed treatment Congress intended.

Moreover, the regulatory safeguards in the Professional Trading Market proposal are considerably stronger than those the CFTC approved in the swaps and energy contract exemptions. While all three exemptions would exclude public participation in exempt instruments, only the attached exemption would 1) require that the CFTC receive notice that a particular market will rely on the exemption; 2) afford unambiguous protections to all market participants from fraud and manipulation in connection with exempt instruments; 3) permit aggrieved parties to exercise CEA legal remedies to obtain compensation for damages suffered as a result of exempt transactions and 4) mandate that all exempt transactions rely upon the financial integrity of a CFTC-approved clearing system to remove the parties' credit risk from exempt transactions. In short, the proposed exemption is better from every regulatory perspective than the exemptions the CFTC previously has approved.

To be fair and to act in a manner "consistent with the public interest," the Commission should approve the accompanying rules for a Professional Trading Market exemption. Since the proposed exemption merely incorporates and enhances exemptive determinations the agency has already made, that approval should be granted even more expeditiously than the previously-adopted swaps and energy contract exemptions. The Board of Trade will be happy to work with the Commission and its staff toward that end.

Patrick H. Arbor,

Chairman of the Board, Board of Trade of the City of Chicago.

Thomas R. Donovan,

President and Chief Executive Officer, Board of Trade of the City of Chicago.

Attachment A

PART 36—EXEMPTION OF PROFESSIONAL TRADING MARKET TRANSACTIONS.

Authority: 7 U.S.C. 2, 6, 6c, 12a, 25.

§ 36.1 Definitions.

(a) *Scope.* The provisions of this part shall apply to any professional trading market transaction which may be subject to the Act.

(b) *Definitions.* As used in this part:

(1) "Professional trading market" means: a market operated by a board of trade, as that term is defined in Section 1a(1) of the Act, where the board of trade:

(i) permits only professional traders, as that term is defined in § 36.1(b)(2), to enter into transactions executed on or through such market;

(ii) prior to commencement of activities on such market, notifies the Commission, in writing, of the board of trade's intention to operate such market; and

(iii) requires all transactions executed on or through such market to be submitted to, or guaranteed by, a mutualized risk clearing system that the Commission has approved either (A) in the context of a contract market designation already granted under Sections 5 and 6 of the Act or § 33.4 of this chapter, or (B) in a separate approval proceeding if the clearing system has not been approved in the context of contract market designation.

(2) "Professional trader" means:

(i) A bank or trust company (acting on its own behalf or on behalf of another professional trader);

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. § 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person is not formed solely for the specific purpose of constituting a professional trader;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting a professional trader and has total assets exceeding $5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting a professional trader (A) which has total assets exceeding $10,000,000 or (B) the obligations of which under any professional trading market transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (b)(2)(vi)(A) of this section or by an entity referred to in paragraphs (b)(2)(i), (ii), (iii), (iv), (v), (vii) or (viii) of this section; or (C) which has a net worth of $1,000,000 and enters into a professional trading market transaction in connection with the conduct of its business; or (D) which has a net worth of $1,000,000 and enters into a professional trading market transaction to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business.

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. § 80b–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity

[5] The CFTC has acknowledged that "legal certainty" may be a goal of a final exemptive rule, but "it is not a statutory mandated finding which the Commission must make." 59 Fed. Reg. at 5592 n.36. Thus, even if the proposed exemption would not promote legal certainty, the proposed exemption still would be "consistent with the public interest" under CEA § 4(c)(1).

or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et. seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another professional trader: *Provided, however*, that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of (b)(2)(vi) or (xi) of this section;

(x) A futures commission merchant subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another professional trader: *Provided, however*, that if such futures commission merchant is a natural person or proprietorship, the futures commission merchant must also meet the requirements of paragraph (b)(2)(vi) or (xi) of this section;

(xi) Any natural person with total assets exceeding at least $10,000,000; or

(xii) A floor broker, floor trader, or futures commission merchant subject to regulation under the Act that is a member of the board of trade operating the professional trading market, acting on its own behalf or on behalf of another professional trader.

§ 36.2 Exemption.

Any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to any transaction executed on a professional trading market as defined in § 36.1(b)(1) and any board of trade sponsoring a professional trading market, is exempt from all provisions of the Act (except section 2(a)(1)(B) of the Act) and all otherwise applicable regulations thereunder except Part 37 of this chapter adopted under sections 4(c) and 4c of the Act.

PART 37—REGULATION OF EXEMPTIONS GRANTED UNDER SECTIONS 4(c) AND 4c OF THE ACT

§ 37.1 Fraud and manipulation in connection with exempt transactions.

(a) *Fraud.* It shall be unlawful for any person, directly or indirectly, in or in connection with any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act—

(1) To cheat or defraud or attempt to cheat or defraud any other person;

(2) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(3) To deceive or attempt to deceive any other person by any means whatsoever.

(b) *Manipulation.* It shall be unlawful for any person to manipulate or attempt to manipulate the price (i) of any agreement, contract or transaction that is subject to an exemption from Section 4(a) of the Act granted by the Commission under Section 4(c) of the Act or an exemption from § 33.3 of this chapter granted by the Commission under Section 4c of the Act or (ii) of any commodity in interstate commerce or any contract of sale of a commodity for future delivery on or subject to the rules of any contract market.

(c) *Exemption disqualification.* Any person violating this regulation shall be disqualified from relying upon any exemption granted by the Commission under Sections 4(c) or 4c of the Act.

(d) *Private right of action.* In accordance with the procedures set forth in Section 22 of the Act, any person injured by a violation of subsections (a) or (b) of this regulation may bring a right of action for actual damages suffered as a result of that violation against any person who committed or aided and abetted that violation.

[FR Doc. 93–19531 Filed 8–13–93; 12:13 pm]
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Part III

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Part 212
22 CFR Part 41

Unavailability of Transit Without a Visa to Citizens of the Former Yugoslavia; Interim Rules

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1397R–93]

Unavailability of Transit Without a Visa to Citizens of the Former Socialist Federal Republic of Yugoslavia

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This interim rule amends 8 CFR 212.1(f)(3) to clarify that the addition of the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa is effective August 16, 1993.

DATES: This rule is effective August 16, 1993. Interested persons are invited to submit written comments on or before September 15, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. Please include INS number 1397R–93 on your correspondence to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(C) of the Immigration and Nationality Act (the Act) provides authority to the Attorney General acting jointly with the Secretary of State to waive nonimmigrant visa requirements for aliens who are in continuous and direct transit through the United States and are using a carrier who has entered into a TWOV agreement with the Immigration and Naturalization Service (the Service) as provided in section 238(c) of the Act.

This interim rule amends 8 CFR 212.1(f)(3) to clarify that the addition of the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa is effective August 16, 1993.

The addition of the Republics of the former Socialist Federal Republic of Yugoslavia was made by interim rule published at 58 FR 4891 on January 19, 1993. However, pursuant to section 212(d)(4)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(d)(4)(C), an addition to this list of countries can be effective only upon joint action of the Attorney General and the Secretary of State. The Department of State is publishing simultaneously with this revision an interim rule amending 22 CFR 41.2(i) to add the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa. Accordingly, it is necessary to amend 8 CFR 212.1(f)(3) to clarify that the addition therein of the former Yugoslav republics is effective upon the date of joint action taken by the Immigration and Naturalization Service and the Department of State. Comments received on the January 19, 1993 regulation will be addressed when the rule is finalized.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b) (A)–(B) and 553(d) (2)–(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: This rule is necessary to prevent an anticipated sharp increase in the abuse of the TWOV procedure by nationals of the former Socialist Federal Republic of Yugoslavia in the near future. Further, there is a reasonable concern that publication of this rule with an effective date 30 or 60 days after publication could lead to the counter productive result of a surge of individuals attempting to make fraudulent use of the TWOV procedure during the interval between the publication of the rule and its effective date. To preempt such a reaction, the rule is made effective upon the date of its publication.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visa, Ports of entry, Travel restrictions.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by revising the first sentence in paragraph (f)(3) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(f) * * *

(3) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan, Sri Lanka, or a national of a Republic of the former Socialist Federal Republic of Yugoslavia (effective August 16, 1993) which includes Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia. * * *

* * * * *

Dated: August 5, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19582 Filed 8–13–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1847]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Unavailability of Transit Without a Visa to Citizens of the Former Socialist Federal Republic of Yugoslavia

AGENCY: Bureau of Consular Affairs, State.

ACTION: Interim rule, with request for comments.

SUMMARY: This interim rule amends 22 CFR 41.2(i) by adding the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa. Civil disorders and resulting deterioration of economic conditions in the former Socialist Federal Republic of

Yugoslavia have been accompanied by a substantial increase in the fraudulent use of the Transit Without Visa (TWOV) procedure. This rule is necessary to eliminate the abuse of the TWOV privilege by nationals of those Republics which were formerly a part of the Socialist Federal Republic of Yugoslavia which include Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia.

DATES: This rule is effective August 16, 1993. Interested persons are invited to submit written comment on or before September 15, 1993.

ADDRESSES: Written comments, with a reference to this rule to insure proper and timely handling, may be submitted to the Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel (202) 663–1204, or A. Roy Mackay (202) 663–1205, Legislation and Regulations Division.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(C) of the Immigration and Nationality Act (the Act) provides authority to the Attorney General and the Secretary of State, acting jointly, to waive nonimmigrant visa requirements for aliens who are in continuous and direct transit through the United States and are using a carrier which has entered into a TWOV agreement with the Immigration and Naturalization Service (the Service) as provided in section 238(c) of the Act.

The Department of State has learned that the Service is facing an increasing problem with aliens using the TWOV privileges to gain entry into the United States by claiming political asylum. Specifically there has been an increase in the abuse of the TWOV program by nationals of the Republics that formerly comprised the Socialist Federal Republic of Yugoslavia. As a result, air carriers transporting these aliens have become victims of this abuse since they are liable for fines and detention costs associated with TWOV participants who do not depart the United States in a timely manner. Therefore, all of the Republics that formerly comprised the Socialist Federal Republic of Yugoslavia are being added to the list of countries whose nationals will not be able to transit the United States without a visa.

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553(b)(A)–(B) and 553(d)(3). The immediate effectiveness of this rule is necessary to prevent an anticipated sharp increase in the abuse of the TWOV procedure by nationals of the former Socialist Federal Republic of Yugoslavia in the near future. Further, there is a reasonable concern that publication of this rule with an effective date 30 or 60 days after publication could lead to the counter-productive result of a surge of individuals attempting to make fraudulent use of the TWOV procedure during the interval between the publication of the rule and its effective date.To preempt such a reaction, the rule is made effective upon the date of its publication.

In accordance with 5 U.S.C. 605(b), it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities. No Regulatory Impact Analysis is required because this rule is not a major rule within the meaning of section 1(b) of E.O. 12291. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Waiver of visa.

Accordingly, 22 CFR part 41 is amended as follows:

PART 41—AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104, 1153 Note, 1187.

2. In paragraph (i) to § 41.2, the third sentence is revised to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(1) *Aliens in immediate transit without visa (TWOV).* * * * This waiver of visa and passport requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan, Sri Lanka, or a citizen of a Republic of the former Socialist Federal Republic of Yugoslavia which includes Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia.

* * *

* * * * *

Dated: July 28, 1993.

John H. Adams,

Deputy Assistant Secretary for Visa Affairs.

[FR Doc. 93–19562 Filed 8–13–93, 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 821

Medical Devices; Device Tracking; Final Rules and Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 91N-0296]

Medical Devices; Device Tracking; Opportunity for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comments on the final rule on device tracking, which is published elsewhere in this issue of the **Federal Register**. The revised device tracking proposed rule became final on November 29, 1992, by operation of the Medical Device Amendments of 1992 (the 1992 Amendments). Although not required to do so, FDA realizes that there may be issues not previously considered, such as technical issues on specific provisions, and therefore is providing this additional time for comment. If changes are warranted by comments, FDA will make further changes in the rules.

DATES: Written comments by September 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFA-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4765.

SUPPLEMENTARY INFORMATION: The SMDA included provisions requiring FDA rulemaking to require that manufacturers track certain devices from their establishments through the distribution chain to the patients using the devices. Among these provisions were statutory deadlines that were later revised by the 1992 Amendments. The device tracking and statutory deadline provisions are discussed in detail in the preamble to the final rule on device tracking published elsewhere in this issue of the **Federal Register**.

FDA has already provided opportunities for public comment on the proposal that preceded the rule published today as required by the Administrative Procedure Act. Although FDA is allowing additional comments on this rule, this action is in no way required by the Administrative Procedure Act. FDA is not interested in receiving comments that it has already received and considered. Although the agency does not believe that any public purpose would be served by reopening for further comment at this time the issues already addressed in the final rule being published, FDA recognizes that in any rulemaking there will be technical issues involving specific provisions. Therefore, the agency is providing 30 days for comment on this final rule on such issues. Comments should be identified with the docket number found in brackets in the heading of this document. FDA will publish additional changes in the final rule if comments bring to FDA's attention an issue, not already considered, that warrants revision.

III. Opportunity for Comments

Under 21 CFR 10.40(e), an opportunity for comment on this final rule is being provided. Interested persons may, on or before September 15, 1993, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the relevant docket number found in the heading of the document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under the authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, and 374) and under authority delegated to the Commissioner of Food and Drugs.

Dated: July 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-19473 Filed 8-11-93; 11:23 am]

BILLING CODE 4160-01-F

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21 CFR Part 821

[Docket No. 91N-0296]

Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; suspension of effective date; notification of status under the Safe Medical Devices Act; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is suspending the effective date of the final rule on device tracking that appeared in the **Federal Register** of May 29, 1992, until August 29, 1993. The agency is also announcing that the revised proposed rule is now a final rule by operation of law. Further, the agency is amending the regulations to make certain technical amendments. This action is being taken to implement requirements of the Safe Medical Devices Act of 1990 (the SMDA) and the Medical Device Amendments of 1992 (the 1992 amendments).

EFFECTIVE DATE: August 29, 1993.

ADDRESSES:

Submit information concerning the distribution of tracked devices for sale or rental to: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850.

Submit other information to Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, (address above), 301-594-4765.

SUPPLEMENTARY INFORMATION:

I. Background

A. Original Statutory Deadlines

The SMDA (Pub. L. 101-629), which became law on November 28, 1990, added section 519(e) (21 U.S.C. 360i(e)) to the Federal Food, Drug, and Cosmetic Act (the act). Section 519(e) of the act requires that manufacturers track certain devices from the manufacturer through the distribution chain to the patient using the device. Under section 519(e) of the act, manufacturers must track life-supporting or life-sustaining devices that are used outside a device user facility and permanently implantable devices, if the failure of these devices would be reasonably likely to have serious adverse health consequences. Section 519(e) of the act also gives FDA the authority to designate other devices to be subject to tracking.

Section 3(c) of the SMDA required FDA to issue proposed regulations implementing section 519(e) of the act within 9 months of the enactment date of the SMDA (i.e., by August 28, 1991). Section 3(c)(2) of the SMDA required FDA to issue final device tracking regulations not later than 18 months after the enactment date of the SMDA (i.e., by May 28, 1992). If the agency did not issue final regulations by May 28, 1992, section 3(c)(2) of the SMDA provided that there was good cause to consider the agency's proposed regulations as the final regulations on that date, to protect the health of

patients using devices required to be tracked.

In the **Federal Register** of March 27, 1992 (57 FR 10702), FDA published a proposed rule to implement tracking. The period for submitting comments in response to the March 27, 1992, proposal closed on May 26, 1992. By May 15, 1992, the agency had received over 400 comments and expected to receive more comments before the close of the comment period. These comments raised significant issues, including: (1) The rationale for the May 28, 1992, effective date of any final rule; (2) the need to clarify tracking requirements for imported and exported devices; (3) the proposed rule's prohibition against shipping tracked devices to distributors who failed to keep or provide tracking information; (4) objections to many devices identified as types of devices requiring tracking; (5) the data requirements; and (6) reporting timeframes and costs that were alleged, respectively, to be too short and too low in estimates. (See 57 FR 22971 through 22976, May 29, 1992.)

In response to these concerns, FDA revised the March 27, 1992, proposed rule, and on May 27, 1992, the agency issued, put on public display, and filed in the public administrative record in the FDA's Dockets Management Branch, a revised proposed rule that withdrew the March 27, 1992, proposed rule and set forth revised proposed regulations for tracking medical devices. On May 28, 1992, the agency issued, put on public display, and filed in the public administrative record, a notice that the proposed regulations issued the day before had become the final regulations on that date, by operation of section 3(c) of the SMDA. The agency also issued the revised tracking regulations as a final rule. In an attempt to promote public understanding of the final rule status of the May 27, 1992, revised proposed rule, FDA published both the May 27, 1992, revised proposed tracking rule and the May 28, 1992, final tracking rule in the **Federal Register** of May 29, 1992 (57 FR 22971, 22966).

In the May 27, 1992, revised proposed rule, FDA made the following changes from the March 27 proposal:

1. A new provision was added to allow affected parties to apply for exemptions and variances from the rule.

2. FDA announced that it would handle any request for premarket clearance needed to comply with the rule in an expedited manner, if the request was submitted by November 1, 1992.

3. FDA made clear that it was not necessary to track exported devices once they left the United States.

4. FDA removed from the regulation the provision which stated that manufacturers would be required to stop shipping to distributors who were not complying with the tracking requirements. Manufacturers would nevertheless be responsible for taking reasonable steps to ensure compliance by distributors.

5. Under the original proposal, manufacturers would have been responsible for establishing a tracking system that would have enabled them to provide names and addresses to FDA within 3 working days of a request. The revised proposal provided that manufacturers would have to provide distributor information within 3 days and patient information within 10 working days.

6. The March 27, 1992, proposal would have required manufacturers to conduct an audit of their tracking system every 6 months. In response to comments objecting that this proposed requirement was unnecessarily burdensome, FDA changed it in the May 29, 1992, proposal to require an audit every 6 months for the first 3 years for which a device is tracked and annually thereafter.

7. FDA clarified that initial importers are responsible for establishing tracking systems for imported devices.

8. In addition, FDA made a number of revisions in the illustrative list of devices subject to tracking.

B. The 1992 Amendments

On June 16, 1992, the 1992 amendments (Pub. L. 102–300) became law. The 1992 amendments modified certain provisions of the SMDA that dealt with device tracking, postmarket surveillance, and distributor and user reporting of device-associated serious injuries. The 1992 amendments modified the device tracking provisions of the SMDA to: (1) Change the previous May 28, 1992, deadline for issuing final tracking regulations; (2) clarify the date on which section 519(e) of the act becomes effective; and (3) make the regulation which became final by operation of the SMDA on May 28, 1992, a proposed regulation.

Section 2(a)(1) of the 1992 amendments amended section 3(b)(3) of the SMDA to make the tracking requirements of section 519(e) of the act effective upon the expiration of 9 months after the issuance of final implementing regulations. The previous wording of section 3(b)(3) had not set a specific effective date for the regulations.

Section 2(a)(2)(A) and (a)(2)(B) of the 1992 amendments amended section 3(c) of the SMDA to extend the time for FDA to issue a final rule until November 28, 1992, and to provide that if FDA had not yet issued a final rule by then, the revised proposed rule would become the final rule on November 29, 1992, to become effective, as noted above, on August 29, 1993. Because of the statutory mandate of the 1992 amendments, the agency is suspending the effective date of the revised proposed rule (now transformed into a final rule again by operation of the 1992 amendments) until August 29, 1993. Elsewhere in this issue of the **Federal Register**, FDA is also issuing amendments to the illustrative list of tracked devices (21 CFR 821.20(b)) and the list of designated devices (21 CFR 821.20(c)).

II. Comments

FDA received more than 1,700 comments on the March 27, 1992, proposed rule and the subsequent revised proposed rule. Most of these comments requested the deletion of various devices from the illustrative list of devices subject to tracking. As noted above, these comments are discussed elsewhere in this issue of the **Federal Register**. In addition, comments proposed the use of social security numbers as a primary method of tracking, while other comments filed by distributors took issue with requirements that distributors open their records to audit by manufacturers. FDA notes that, to the extent that the preambles to the proposed and revised proposed rules discuss requirements of, or comments on, this final rule, these preambles still provide useful guidance.

As described below, after reviewing the major comments on the revised proposed rule, FDA determined that they did not raise issues that warrant further changes beyond those already included in the final rule published on May 29, 1992. Accordingly, FDA believes it is appropriate that the final rule of May 29, 1992, which the 1992 amendments had transformed into a proposed rule, become a final rule by operation of law under the "hammer" provisions of the 1992 amendments. Despite the statutory "hammer," however, the agency has decided to respond to the most significant comments in order to communicate its views to the industry and the public. FDA also intends to issue a question and answer document to clarify certain issues regarding the tracking requirements.

A. Social Security Numbers

One comment by a trade association suggested an alternative method of tracking permanently implantable

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devices. The comment suggested that, for implantable devices, manufacturers obtain at the time of implantation the name, address, and social security number of the patient and the name and address of the implanting physician. Patients who choose not to provide their social security number would be given the option of electing not to be tracked or taking change of address cards to be sent to the manufacturer when they move. At the time of a recall or patient notification, manufacturers would use Internal Revenue Service (IRS) and Social Security Administration (SSA) data bases to obtain updated addresses. The comment explained that, if this mechanism were employed, manufacturers would not need to keep patient addresses up-to-date on a regular basis. The comment stated that this approach would be more efficient and cost-effective than the one proposed by FDA and would be less intrusive upon patients as there would be no need to constantly contact them to keep their addresses up-to-date. The comment acknowledged that legislation would be required to enable manufacturers to have access to IRS data bases.

FDA is open to the potential for utilizing data bases that could add efficiency to the tracking process while meeting the goal of an effective tracking system. FDA is concerned, however, that neither the SSA nor IRS data bases were designed for this purpose. The IRS data base is limited to persons within specified income levels, while the SSA data base is limited to social security beneficiaries. Moreover, as noted in the comment, these data bases cannot be used to track medical devices without legislation. Due to these limitations, such alternatives remain unavailable as regulatory options at this time. Nevertheless, FDA encourages interested parties to further explore and study additional options to the present regulations to determine if there are alternative effective means of accomplishing the goal of section 519(e) of the act—prompt and complete notification and recalls.

B. Distributor Records

Comments from distributor and supplier associations and from parties involved in renting devices raised questions concerning the information that distributors, final distributors, and multiple distributors are required to report to manufacturers and make available to manufacturers during audits under new § 821.30.

Some comments maintained that the identity of purchasers constitutes end-user sales information and that disclosure to manufacturers of information such as a list of customers or patient users of devices would enable manufacturers to compete with distributors for sale directly to patients and physicians.

Certain comments also claimed that the exact number and identity of devices and the sources from which the devices are received are proprietary information when devices are purchased from brokers and customers of manufacturers rather than from the manufacturers themselves. According to these comments, disclosure of such information would enable manufacturers to exert pressure on these sources to eliminate the middle man. Comments also maintained that disclosing the location of devices, when one firm leases devices to another firm that further rents the devices, would provide manufacturers with the identity of customers with whom manufacturers can deal directly. Finally, comments also objected, to provisions in § 821.30(c)(3) that require distributors, final distributors, and multiple distributors to allow manufacturers to audit this distribution information.

Some comments suggested that distributors could certify compliance with tracking requirements in lieu of providing the actual information to manufacturers; provide information only to FDA, if it is considered commercial and confidential; and restrict auditing of such information, except by FDA.

FDA recognizes that there may be ways to ensure effective tracking other than that set out in this regulation. However, to the extent the comments suggested that FDA be the repository of the tracking information, this is not an appropriate agency function, nor does the agency have the resources to bear the responsibilities this activity would impose.

With respect to the other options raised by the comments, FDA notes that it will accept for review under § 821.2, petitions for exemptions and variances that accommodate distributors' concerns about reporting purportedly proprietary information to manufacturers. It may be appropriate, for example, in certain instances, for a distributor to carry out the tracking responsibilities of a device on the manufacturer's behalf. However, FDA emphasizes that these alternative proposals must ensure that effective tracking is conducted and that all necessary information is collected and maintained in accordance with the tracking regulations. Moreover, that the person submitting the petition would need to take full legal responsibility for this task. FDA has added a reference to the availability of procedures for petitions for exemption or variance in §§ 821.25 and 821.30 for clarification.

With respect to comments on patient or physician names, FDA believes that this information is necessary for effective tracking. FDA believes that there could not be effective tracking of devices unless there are records on the final purchaser of a device. Indeed, it was the lack of this very information for a defective heart valve that prompted the enactment of section 519(e). Thus this information must be part of the tracking.

On the issue of audits, FDA wishes to make clear to both manufacturers and distributors that the records that manufacturers may audit (in the event there is no exemption or variance in place from the audit requirement) are only those records that contain the information that must be reported to the manufacturer under part 821 and nothing more. Thus, under § 821.30(c)(3), a manufacturer is not entitled to ask for or to see any other information or records. FDA notes that, if the information subject to audit (which should have been reported already to the manufacturer) is kept interspersed with other information, distributors can reorganize their recordkeeping systems to avoid making more information available to manufacturers.

FDA also believes that comments from persons involved in renting devices have raised issues in the context of commercial arrangements and schemes that need to be more fully examined and taken into account by the agency in order to ensure effective tracking. These arrangements and schemes include the refurbishing, repurchase, remarketing, transfer, or exchange of new and used tracked devices, the multi-tiered rental of devices and the management of rental devices by persons not owning them. Consequently, the agency is soliciting the submission of information on: (1) How tracking requirements affect firms engaged in such practices as the refurbishing, repurchasing, remarketing, transfer or exchange of new and used tracked devices for the purpose of sale or rental and in the multi-tiered rental of devices by more than one company and the management of rental devices by firms that do not own the devices; (2) the types and numbers of tracked devices that are subject to such practices; and (3) the numbers of brokers, distributors, financial institutions, and other types of firms involved in such practices. This additional information will assist the agency in determining whether FDA should consider modifying its

requirements for tracking sometime in the future.

C. Exemptions and Variances: Premarket Clearance

Because of the change in effective dates as a result of the 1992 amendments, FDA is revising the dates in new § 821.2(d). Under the final rule, if a petition under new § 821.2 is received by August 29, 1993, FDA will approve or disapprove the petition in 60 days or extend the effective date of the regulation for the device that is the subject of the petition.

Similarly in the preamble to the revised proposed rule, FDA stated that it would provide for expedited review of 510(k)'s or PMA supplements that are required to comply with this regulation if the submission is made by November 1, 1992. This date is also changed to August 29, 1993. To ensure prompt attention, each of these submissions should be clearly marked "Tracking 510(k)" or "Tracking PMA," as appropriate.

D. Effect on Other Requirements

Finally, FDA wishes to make clear that this tracking regulation has no effect on other statutory or regulatory requirements, e.g., MDR obligations under 21 CFR part 803 or investigational device exemption (IDE) requirements under 21 CFR part 812. FDA believes it needs to emphasize this point because comments made to CDRH's Medical Device Administration and Monitoring Branch and Office of Device Evaluation indicate that some interested persons believe, incorrectly, that FDA's promulgation of certain tracking definitions (e.g., "serious adverse health consequences" and "permanent implant") have somehow narrowed the scope of the agency's MDR regulations (part 803) or IDE regulations (part 812).

FDA advises that the scope of the tracking regulation is not synonymous with that of either the MDR or the IDE regulation (or any other FDA regulation). These regulations originate in different statutory sections, serve different functions, and use different terminology, and, therefore, each regulation has its own scope as reflected in the pertinent regulatory definitions. The tracking regulation does not modify or alter any obligations imposed under other statutory or regulatory requirements, and industry may not rely on tracking definitions to evade other statutory or regulatory requirements.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

In conjunction with the agency's initial issuance of a proposed rule establishing tracking requirements for medical devices (57 FR 10702, March 27, 1992), FDA placed on file at the Dockets Management Branch a copy of the agency's "Threshold Assessment of the Impact of Requirements For Medical Device Tracking (Second Version)."

Taking into account: (1) FDA's withdrawal of the March 27, 1992, proposed rule and the agency's reproposal of a device tracking regulation containing revised requirements and revised illustrative list of devices subject to tracking (57 FR 22971, May 29, 1992), (2) comments received on the estimated costs to industry of the agency's March 27, 1992, and May 29, 1992, proposed tracking regulations, and (3) revisions to the illustrative list of devices subject to tracking and the clarifications in this preamble, FDA has examined the economic impact of the final tracking regulation and assessed the extent to which the final rule would have an effect upon small business entities in accordance with the economic requirements of Executive Order 12291 and the Regulatory Flexibility Act (Pub L. 96–354). The agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

This regulation will require manufacturers of specific devices to develop, document, and operate a tracking system that will allow them to quickly notify all distributors, health professionals, or patients of a recall or the existence of a serious health risk. Each manufacturer must be able to track each device throughout the distribution system all the way to the patient. Distributors, including hospitals, licensed practitioners, and rental companies, all have to cooperate for the tracking systems to work. Lists of patients and/or distributors must be "audited" on a half-yearly basis for the first 3 years and annually thereafter. The agency considers 23 device types to be subject to tracking at this time. Because most of the included devices are critical devices, the manufacturers of these devices already have to track the devices to the first consignee (at least) under the CGMP regulations. Some manufacturers have indicated to the agency that they already have tracking systems that track the devices even further through the distribution system. For permanent implants, the registry of current patients will have to be maintained on an ongoing basis. For those life-sustaining and life-supporting devices used outside of a device user facility (e.g., an apnea monitor used at home after a high-risk infant leaves the hospital), each device will be tracked to the last purchaser or patient possessing the device. Thus, if a device is rented to several patients over its lifetime, tracking by manufacturers is required only to the level of the multiple distributor (the last purchaser possessing the device) until it becomes necessary to determine the patient currently using the device. Based on the cost analyses below, the economic impact on industry will not exceed the $100 million threshold established under Executive Order 12291. The estimated average annual cost of medical device tracking during the first 8 years following the effective date of this regulation is $40.2 million. The cost is made up of two parts: $37.8 million to track the 19 permanent implants, and $2.4 million to track the 4 devices used outside of device user facilities. In addition, the agency estimates that there would be a $3.6 million one-time cost to set up the tracking systems.

Because of the limited number of devices affected by this regulation, relatively few manufacturers will be affected. Thus, the costs discussed above affect a relatively small number of manufacturers. The overall cost impact is about $176,000 per manufacturer per year ($40.2 million divided by 228 manufacturers), on the average. This overall average cost impact is somewhat misleading, however. Four of the implanted devices, vascular grafts, pacemakers, pacemaker leads and heart valves account for 70 percent of the implantations done annually. These "big four" devices are made by 52 manufacturers. The cost of tracking these four devices is estimated to be $26.3 million per year. Thus, the average impact on each of the 52 "big four" device manufacturers is $506,000. The average cost impact on the remaining 176 manufacturers, after considering separately the impact on the 52 "big four" device manufacturers, is about $79,000 per manufacturer ($40.2 million-$26.3 million = $13.9 million ÷ 176 = 79,000).

FDA has received comments presenting a wide variety of cost estimates for tracking permanent implants. A system used by a pacemaker

manufacturer has been operating for many years with an annual cost of under $5 per patient. Annual costs for systems updated through the periodic sending of post cards or letters have ranged from $10 to $20 per patient per year, after an initial registration cost per patient ranging from $20 to $50. Other industry estimates were $60 to $80 to track a patient with an implant for the life of the device in the patient.

The agency does not know the average time that devices will be tracked. Five years was mentioned as a reasonable lifetime estimate by those in the agency most familiar with the frequently-used implants. Over 60 percent of the "big four" implants are implanted into the elderly; some implants, such as breast implants, are implanted into younger patients, and would be expected to be tracked for more than 20 or 25 years. For this economic assessment, FDA estimated that 8 years might be the average time that a manufacturer might need to track an implant. The requirement is for the life of the device or the life of the patient, whichever is shorter.

The costs of tracking a patient over time depend on the approach taken. One approach is to use a system that has an initial registration of a patient at the time of implant and then uses a periodic followup mechanism (such as a post card, letter, or phone call) to update names and addresses. Another approach uses a health care professional (usually a physician) who remains in periodic contact with his/her patient to update the information. Still another approach is to make use of extant data bases (usually via a contractor) such as those of credit bureaus, motor vehicle registrations, etc. Still another system, which is discussed earlier in this preamble and which would require the passage of enabling legislation, would use one or more national data bases, such as the IRS or SSA data bases. The first-mentioned approach is referred to as the "more expensive" approach; the methods using health professional or existing data bases are referred to as the "cheaper" approaches.

The cost of tracking a device was estimated using a present value approach. This approach attributes the present value of the entire cost to track the device over its lifetime to the year in which the device is implanted. Thus a stream of 8–$10 per year payments would equal some number less than $80 ($10 times 8 years) because the payments in the out years would be worth less than current dollars. Using the average of the $10 and $20 per year estimates ($15) for the estimated average time period (8 years) produces a present value of $88 for the tracking costs over the device's lifetime for those devices utilizing the more expensive system. If it is further assumed that for 30 percent of the implants the cheaper system is used, and that for the remaining 70 percent the more expensive system is used, the average cost to track is $70. This value is consistent with the industry-estimated range of $50 to $80 cited earlier.

For the average implant covered by the tracking regulations, the unit cost is estimated to increase by $70. The cost of a device used outside of the device user facility is estimated to increase by about $12. The general range of costs for these devices is $100 to $13,000 so the increase in unit costs will be significant for some devices.

The cost of a device is usually viewed in the context of the cost of the medical procedure, however. Based on limited data, the costs of the medical procedures associated with the permanently implanted devices are generally over $2,000, and range up to $25,000. It does not appear that this regulation will have a significant economic impact on the cost of the procedure, even though, for a few devices, their costs will be significantly increased. In the short-run, hospitals and/or patients may have to absorb some of the device cost increases because it will take some time for the device cost increases to be included in the diagnosis related group (DRG) reimbursement or third party insurance payment amounts. The demand for the types of procedures using implants is thought to be very inelastic. Thus, the agency expects that, because there would be only a very small decrease in the number of procedures due to the price increase, eventually the costs would be included in the applicable reimbursement or payment system.

The percent of small manufacturers in the medical device industry (those with fewer than 50 employees) is 65 percent. The percent of small manufacturers of the "big four" implants is 46 percent (24 of 52). Thus, the manufacturers most affected by the tracking requirements tend to be larger than the medical device manufacturer population in general.

However, as shown above, the cost impact per manufacturer is considerable for these 52 manufacturers. There are at least two tracking approaches that FDA believes manufacturers will be able to use, and one of the approaches is substantially less expensive than the other. The more expensive approach uses the active involvement of the manufacturer to register and then periodically update the data base. The cheaper approach is to either rely on a health professional to provide the updated information or to rely on existing data bases (e.g., credit bureaus, motor vehicle registrations) to update patient location. The cheaper approach is being used by some manufacturers of pacemakers and pacemaker leads (and perhaps other devices). About half of the 52 manufacturers make these 2 device types and about half of them are small. Thus, many of the small manufacturers affected by the regulation should be able to use a cheaper approach. Only a dozen or so small manufacturers may have to use a more expensive tracking system. In spite of this flexibility, some manufacturers, both large and small, may have difficulty in passing on some or all of the costs of tracking. Although the costs of the regulation may influence attrition or consolidation among device manufacturers, the number of small manufacturers significantly affected by the regulation is relatively small. The agency, therefore, certifies that this regulation does not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1980

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing requirements and instructions, searching existing sources of distribution data, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Medical Devices; Devices Tracking.

Description: FDA is proposing to implement the device tracking requirements of section 519(e) of the act, as added to the act by section 3(b)(1) of the SMDA (Pub. L. 101–629) and as revised by the Medical Devices Amendments of 1992.

The agency is requiring manufacturers, including repackers, relabelers, importers and others, of devices the failure of which would be reasonably likely to have serious adverse health consequences, if the devices either are permanently implantable devices used outside device user facilities, or are otherwise designated by FDA for tracking, to adopt a method of tracking such devices

throughout distribution to the device user or patient. Manufacturers (including others identified as manufacturers), distributors, final distributors, and multiple distributors of the manufacturers' products, are required by the regulation to gather, record, maintain, and furnish to FDA, upon request, the location of the aforementioned types of devices, and the name and address of current users of the devices. The purpose of these tracking requirements is to facilitate identifying the current location of certain types of devices and the identity of all persons using the devices. With this information, manufacturers and FDA can expedite the recall of distributed devices that are dangerous or defective, and can facilitate the timely notification of patients or licensed practitioners of risks associated with such devices.

Description of Respondents: Manufacturers and other parties involved in the manufacture and distribution of certain devices.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

Section	Annual number of responses	Average burden per responses (hours)	Total annual burden (hours)
821.25(a)	[1] 228	176	40,128
821.25(b)	228	473	108,000
821.25(c)	228	40	9,120
821.30(c)	200,000	0.2	40,000
Total			197,248

[1] Section 821.25(a) is a one-time burden for setting up a tracking system. Therefore, the total annual recordkeeping hours were averaged over 3 years.

ESTIMATED ANNUAL REPORTING BURDEN

Section	Annual number of responses	Average burden per response (hours)	Total annual burden (hours)
821.25(d)	8	4	32

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct to FDA's Dockets Managements Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503. Attn: Officer for FDA.

VI. Technical Amendments

As discussed earlier, the 1992 amendments changed the effective date of the tracking regulations. Accordingly, FDA is amending the regulation to change the effective date in § 821.1(c). In addition, FDA is announcing that the date upon which requests for exemptions or variances from tracking requirements must be submitted is August 29, 1993.

FDA is correcting a reference in § 821.25(b) to § 821.25(a)(3)(iii) that it had previously overlooked. The reference should have been to § 821.25(a)(3)(iv). Finally, FDA is correcting the designation for § 821.30(c)(3), which should have been designated § 821.30(d). The text of part 821, including the technical amendments is set forth below, in its entirety. The amendments to § 821.20 are in a final rule published elsewhere in this issue of the **Federal Register**.

List of Subjects in 21 CFR Part 821

Device tracking, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 821 is amended as follows:

1. Part 821 is revised to read as follows:

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

Subpart A—General Provisions

Sec.
821.1 Scope.
821.2 Exemptions and variances
821.3 Definitions.
821.4 Imported devices.

Subpart B—Tracking Requirements

821.20 Devices subject to tracking.
821.25 Device tracking system and content requirements: manufacturer requirements.

Subpart C—Additional Requirements and Responsibilities

821.30 Tracking obligations of persons other than device manufacturers: distributor requirements.

Subpart D—Records and Inspections

821.50 Availability.
821.55 Confidentiality.
821.60 Retention of records.

Authority: Secs. 301, 501, 502, 510, 515, 518, 519, 701, and 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, and 374).

Subpart A—General Provisions

§ 821.1 Scope.

(a) The regulations in this part implement section 519(e) of the Federal Food, Drug, and Cosmetic Act (the act) which requires the adoption of a method of device tracking by any person who registers under section 510 of the act and is engaged in the manufacture and distribution of devices the failure of which would be reasonably likely to have serious adverse health consequences if the devices are life-sustaining or life-supporting devices used outside of a device user facility or are permanently implantable devices. This part also applies to any other device that the Food and Drug Administration (FDA) designates as requiring a method of tracking to protect

the public health. A device subject to this part either by statutory requirement or by FDA designation is referred to herein as a "tracked device."

(b) These regulations are intended to ensure that tracked devices can be traced from the device manufacturing facility to the person for whom the device is indicated, that is, the patient. Effective tracking of devices from the manufacturing facility, through the distributor network (including distributors, retailers, rental firms and other commercial enterprises, device user facilities and licensed practitioners) and, ultimately, to any person for whom the device is intended is necessary for the effectiveness of remedies prescribed by the act, such as patient notification (section 518(a) of the act) or device recall (section 518(e) of the act). Although these regulations do not preclude a manufacturer from involving outside organizations in that manufacturer's device tracking effort, the legal responsibility for complying with this part rests with manufacturers who must register under section 510 of the act, and that responsibility cannot be altered, modified, or in any way abrogated by contracts or other agreements.

(c) Each manufacturer of a tracked device shall implement a method of tracking devices by August 29, 1993.

(d) The primary burden for ensuring that the tracking system works rests upon the manufacturer. A manufacturer or any other person, including a distributor, final distributor, or multiple distributor, who distributes a device subject to tracking, who fails to comply with any applicable requirement of section 519(e) of the act or of this part, or any person who causes such failure, misbrands the device within the meaning of section 501(t)(2) of the act and commits a prohibited act within the meaning of sections 301(e) and 301(q)(1)(B) of the act.

(e) Any person subject to this part who permanently discontinues doing business is required to notify FDA at the time the person notifies any government agency, court, or supplier, and provide FDA with a complete set of its tracking records and information. However, if a person ceases distribution of a tracked device but continues to do other business, that person continues to be responsible for compliance with this part unless another person, affirmatively and in writing, assumes responsibility for continuing the tracking of devices previously distributed under this part. Further, if a person subject to this part goes out of business completely, but other persons acquire the right to manufacture or distribute tracked devices, those other persons are deemed to be responsible for continuing the tracking responsibility of the previous person under this part.

§ 821.2 Exemptions and variances.

(a) A manufacturer, importer, or distributor may seek an exemption or variance from one or more requirements of this part.

(b) A request for an exemption or variance shall be submitted in the form of a petition under § 10.30 of this chapter and shall comply with the requirements set out therein, except that a response shall be issued in 90 days. The Director, Office of Compliance and Surveillance, Center for Devices and Radiological Health (CDRH), shall issue responses to requests under this section. The petition shall also contain the following:

(1) The name of the device and device class and representative labeling showing the intended use(s) of the device;

(2) The reasons that compliance with the tracking requirements of this part is unnecessary;

(3) A complete description of alternative steps that are available, or that the petitioner has already taken, to ensure that an effective tracking system is in place; and

(4) Other information justifying the exemption or variance.

(c) An exemption or variance is not effective until the Director, Office of Compliance and Surveillance, CDRH, approves the request under § 10.30(e)(2)(i) of this chapter.

(d) For petitions received under this section before August 29, 1993, FDA will, within 60 days, approve or disapprove the petition or extend the effective date of this part for the device that is the subject of the petition. Any extension that FDA grants to the effective date will be based upon the additional time FDA needs to complete its review of the petition.

§ 821.3 Definitions.

The following definitions and terms apply to this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., as amended.

(b) *Importer* means the initial distributor of an imported device who is required to register under section 510 of the act and § 807.20 of this chapter. "Importer" does not include anyone who only performs a service for the person who furthers the marketing, i.e., brokers, jobbers, or warehousers.

(c) *Manufacturer* means any person, including any importer, repacker and/or relabeler, who manufactures, prepares, propagates, compounds, assembles, or processes a device or engages in any of the activities described in § 807.3(d) of this chapter.

(d) *Device failure* means the failure of a device to perform or function as intended, including any deviations from the device's performance specifications or intended use.

(e) *Serious adverse health consequences* means any significant adverse experience related to a device, including device-related events which are life-threatening or which involve permanent or long-term injuries or illnesses.

(f) *Permanently implantable device* means a device that is intended to be placed into a surgically or naturally formed cavity of the human body to continuously assist, restore, or replace the function of an organ system or structure of the human body throughout the useful life of the device. The term does not include any device which is intended and used for temporary purposes or which is intended for explantation.

(g) *Life-supporting or life-sustaining device used outside a device user facility* means a device which is essential, or yields information that is essential, to the restoration or continuation of a bodily function important to the continuation of human life that is intended for use outside a hospital, nursing home, ambulatory surgical facility, or diagnostic or outpatient treatment facility. Physicians' offices are not device user facilities and, therefore, devices used therein are subject to tracking if they otherwise satisfy the statutory and regulatory criteria.

(h) *Distributor* means any person who furthers the distribution of a device from the original place of manufacture to the person who makes delivery or sale to the ultimate user, i.e., the final or multiple distributor, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package.

(i) *Final distributor* means any person who distributes a tracked device intended for use by a single patient over the useful life of the device to the patient. This term includes, but is not limited to, licensed practitioners, retail pharmacies, hospitals, and other types of device user facilities.

(j) *Distributes* means any distribution of a tracked device, including the charitable distribution of a tracked device. This term does not include the distribution of a device under an effective investigational device exemption in accordance with section 520(g) of the act and part 812 of this

chapter or the distribution of a device for teaching, law enforcement, research, or analysis as specified in § 801.125 of this chapter.

(k) *Multiple distributor* means any device user facility, rental company, or any other entity that distributes a life-sustaining or life-supporting device intended for use by more than one patient over the useful life of the device.

(l) *Licensed practitioner* means a physician, dentist, or other health care practitioner licensed by the law of the State in which he or she practices to use or order the use of the tracked device.

(m) Any term defined in section 201 of the act shall have the same definition in this part.

§ 821.4 Imported devices.

For purposes of this part, the importer of a tracked device shall be considered the manufacturer and shall be required to comply with all requirements of this part applicable to manufacturers. Importers must keep all information required under this part in the United States.

Subpart B—Tracking Requirements

§ 821.20 Devices subject to tracking.

(a) A manufacturer of any device the failure of which would be reasonably likely to have a serious adverse health consequence, that is either a life-sustaining or life-supporting device used outside of a device user facility or a permanently implantable device, or a manufacturer of any other device that FDA, in its discretion, designates for tracking, shall track that device in accordance with this part.

(b) Manufacturers have the responsibility to identify devices that meet the criteria for tracking and to initiate tracking. By way of illustration and to provide guidance, FDA has set out below a list of example devices it regards as subject to tracking under the criteria set forth in this regulation.

(1) PERMANENTLY IMPLANTABLE DEVICES

21 CFR	Classification
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter
870.3460	Vascular graft prosthesis of 6 millimeters and greater diameter
870.3545	Ventricular bypass (assist) device
870.3610	Implantable pacemaker pulse generator
870.3680	Cardiovascular permanent pacemaker electrode
870.3800	Annuloplasty ring
870.3925	Replacement heart valve
(no cite)	Automatic implantable cardioverter/defibrillator
878.3720	Tracheal prosthesis
882.5820	Implanted cerebellar stimulator
882.5830	Implanted diaphragmatic/phrenic nerve stimulator
(no cite)	Implantable infusion pumps

(2) LIFE-SUSTAINING OR LIFE-SUPPORTING DEVICES USED OUTSIDEDEVICE USER FACILITIES

21 CFR	Classification
868.2375	Breathing frequency monitors (apnea monitors) (including ventilatory efforts monitors)
868.5895	Continuous ventilator
870.5300	DC-defibrillator and paddles

(c) FDA designates the following devices as subject to tracking. Manufacturers must track these devices in accordance with this part.

21 CFR	Classification
878.3530	Silicone inflatable breast prosthesis
878.3540	Silicone gel-filled breast prosthesis
876.3750	Testicular prosthesis, silicone gel-filled
(no cite)	Silicone gel-filled chin prosthesis
(no cite)	Silicone gel-filled angel chik reflux valve
880.5725	Infusion pumps (Electromechanical only)

(d) FDA, when responding to premarket notification submissions and approving premarket approval applications, will notify the sponsor that FDA believes the device meets the criteria of section 519(e)(1) and therefore should be tracked. FDA will also, after notifying the sponsor, publish a notice in the **Federal Register** announcing that FDA believes a new generic type of device is subject to tracking and soliciting comment on FDA's position. If the device is a new generic type of device not already on the example list above, FDA will add it to this list.

§ 821.25 Device tracking system and content requirements: manufacturer requirements.

(a) A manufacturer of a tracked device shall adopt a method of tracking for each such type of device that it distributes that enables a manufacturer to provide FDA with the following information in writing for each tracked device distributed:

(1) Except as required by order under section 518(e) of the act, within 3 working days of a request from FDA, prior to the distribution of a tracked device to a patient, the name, address, and telephone number of the distributor, multiple distributor, or final distributor holding the device for distribution and the location of the device;

(2) Within 10 working days of a request from FDA for life-sustaining or life-supporting devices used outside a device user facility that are intended for use by a single patient over the life of the device and permanent implants that are tracked devices, after distribution to or implantation in a patient:

(i) The lot number, batch number, model number, or serial number of the device or other identifier necessary to provide for effective tracking of the devices;

(ii) The date the device was shipped by the manufacturer;

(iii) The name, address, telephone number, and social security number (if available) of the patient receiving the device;

(iv) The date the device was provided to the patient;

(v) The name, mailing address, and telephone number of the prescribing physician;

(vi) The name, mailing address, and telephone number of the physician regularly following the patient if different than the prescribing physician; and

(vii) If applicable, the date the device was explanted and the name, mailing address, and telephone number of the explanting physician; the date of the patient's death; or the date the device was returned to the manufacturer, permanently retired from use, or otherwise permanently disposed of.

(3) Except as required by order under section 518(e) within 10 working days of a request from FDA for life-sustaining or life-supporting devices used outside device user facilities that are intended for use by more than one patient and that are tracked devices, after the distribution of the device to the multiple distributor:

(i) The lot model number, batch number, serial number of the device or other identifier necessary to provide for effective tracking of the device;

(ii) The date the device was shipped by the manufacturer;

(iii) The name, address, and telephone number of the multiple distributor;

(iv) The name, address, telephone number, and social security number (if available) of the patient using the device;

(v) The location of the device;

(vi) The date the device was provided for use by the patient;

(vii) The name, address, and telephone number of the prescribing physician; and

(viii) If and when applicable, the date the device was returned to the

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manufacturer, permanently retired from use, or otherwise permanently disposed of.

(b) A manufacturer of a tracked device shall keep current records in accordance with its standard operating procedure of the information identified in paragraphs (a)(1), (a)(2) and (a)(3)(i) through (a)(3)(iii) of this section on each tracked device released for distribution for as long as such device is in use or in distribution for use.

(c) A manufacturer of a tracked device shall establish a written standard operating procedure for the collection, maintenance, and auditing of the data specified in paragraphs (a) and (b) of this section. A manufacturer shall make this standard operating procedure available to FDA upon request. A manufacturer shall incorporate the following into the standard operating procedure:

(1) Data collection and recording procedures, which shall include a procedure for recording when data which is required under this part is missing and could not be collected and the reason why such required data is missing and could not be collected;

(2) A method for recording all modifications or changes to the tracking system or to the data collected and maintained under the tracking system, reasons for any modification or change, and dates of any modification or change. Modification and changes included under this requirement include modifications to the data (including termination of tracking), the data format, the recording system, and the file maintenance procedures system; and

(3) A quality assurance program that includes an audit procedure to be run for each device product subject to tracking, at not less than 6-month intervals for the first 3 years of distribution and at least once a year thereafter. This audit procedure shall provide for statistically relevant sampling of the data collected to ensure the accuracy of data and performance testing of the functioning of the tracking system.

(d) When a manufacturer becomes aware that a distributor, final distributor, or multiple distributor has not collected, maintained, or furnished any record or information required by this part, the manufacturer shall notify the FDA district office responsible for the area in which the distributor, final distributor, or multiple distributor is located of the failure of such persons to comply with the requirements of this part. Manufacturers shall have taken reasonable steps to obtain compliance by the distributor, multiple distributor, or final distributor in question before notifying FDA.

(e) A manufacturer may petition for an exemption or variance from one or more requirements of this part according to the procedures in § 821.2 of this chapter.

Subpart C—Additional Requirements and Responsibilities

§ 821.30 Tracking obligations of persons other than device manufacturers: distributor requirements.

(a) A distributor, final distributor, or multiple distributor of any tracked device shall, upon purchasing or otherwise acquiring any interest in such a device, promptly provide the manufacturer tracking the device with the following information:

(1) The name and address of the distributor, final distributor or multiple distributor;

(2) The lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

(3) The date the device was received;

(4) The person from whom the device was received;

(5) If and when applicable, the date the device was explanted, the date of the patient's death, or the date the device was returned to the distributor, permanently retired from use, or otherwise permanently disposed of.

(b) A final distributor, upon sale or other distribution of a tracked device for use in or by the patient, shall promptly provide the manufacturer tracking the device with the following information:

(1) The name and address of the final distributor,

(2) The lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

(3) The name, address, telephone number, and social security number (if available) of the patient receiving the device;

(4) The date the device was provided to the patient or for use in the patient;

(5) The name, mailing address, and telephone number of the prescribing physician;

(6) The name, mailing address, and telephone number of the physician regularly following the patient if different than the prescribing physician; and

(7) When applicable, the date the device was explanted and the name, mailing address, and telephone number of the explanting physician, the date of the patient's death, or the date the device was returned to the manufacturer, permanently retired from use, or otherwise permanently disposed of.

(c)(1) A multiple distributor shall keep written records of the following each time such device is distributed for use by a patient:

(i) The lot number, batch number, or model number, or serial number of the device or other identifier used by the manufacturer to track the device;

(ii) The name, address, telephone number, and social security number (if available) of the patient using the device;

(iii) The location of the device;

(iv) The date the device was provided for use by the patient;

(v) The name, address, and telephone number of the prescribing physician;

(vi) The name, address, and telephone number of the physician regularly following the patient if different than the prescribing physician; and

(vii) When applicable, the date the device was permanently retired from use or otherwise permanently disposed of.

(2) Except as required by order under section 518(e) of the act, any person who is a multiple distributor subject to the recordkeeping requirement of paragraph (c)(1) of this section shall, within 5 working days of a request from the manufacturer or within 10 working days of a request from FDA for the information identified in paragraph (c)(1) of this section, provide such information to the manufacturer or FDA.

(d) A distributor, final distributor, or multiple distributor shall make any records required to be kept under this part available to the manufacturer of the tracked device for audit upon written request by an authorized representative of the manufacturer.

(e) A distributor, final distributor, or multiple distributor may petition for an exemption or variance from one or more requirements of this part according to the procedures in § 821.2.

Subpart D—Records and Inspections

§ 821.50 Availability.

(a) Manufacturers, distributors, multiple distributors, and final distributors shall, upon the presentation by an FDA representative of official credentials and the issuance of Form FD 482 at the initiation of an inspection of an establishment or person under section 704 of the act, make each record and all information required to be collected and maintained under this part and all records and information related to the events and persons identified in such records available to FDA personnel.

(b) Records and information referenced in paragraph (a) of this

section shall be available to FDA personnel for purposes of reviewing, copying, or any other use related to the enforcement of the act and this part. Records required to be kept by this part shall be kept in a centralized point for each manufacturer or distributor within the United States.

§ 821.55 Confidentiality.

(a) Records and other information submitted to FDA under this part shall be protected from public disclosure to the extent permitted under part 20 of this chapter, and in accordance with § 20.63 of this chapter, information contained in such records that would identify patient or research subjects shall not be available for public disclosure except as provided in those parts.

(b) Patient names or other identifiers may be disclosed to a manufacturer or other person subject to this part or to a physician when the health or safety of the patient requires that such persons have access to the information. Such notification will be pursuant to agreement that the record or information will not be further disclosed except as the health aspects of the patient requires. Such notification does not constitute public disclosure and will not trigger the availability of the same information to the public generally.

§ 821.60 Retention of records.

Persons required to maintain records under this part shall maintain such records for the useful life of each tracked device they manufacture or distribute. The useful life of a device is the time a device is in use or in distribution for use. For example, a record may be retired if the person maintaining the record becomes aware of the fact that the device is no longer in use, has been explanted, returned to the manufacturer, or the patient has died.

Dated: July 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19472 Filed 8–11–93; 11:24 am]

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21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Illustrative and Designated Lists for Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is amending the medical device tracking regulations to add the temporo-mandibular joint prostheses to the illustrative list of devices and the penile inflatable implant to the list of devices designated for tracking. These devices are being added to the illustrative and designated device lists based on the significance of the risk to health posed by their use. This action requires manufacturers to track these devices after distribution so that they can be located in the event of a recall or patient notification action.FDA requests comments on these changes. Elsewhere in this issue of the **Federal Register**, the agency is announcing notification of the change of status of the device tracking regulations and is suspending the effective date of the regulations until August 29, 1993.

DATES: These regulations are effective August 29, 1993. Written comments by September 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

The SMDA (Pub. L. 101–629), which became law on November 28, 1990, added section 519(e) (21 U.S.C. 360i(e)) to the Federal Food, Drug, and Cosmetic Act (the act). Section 519(e) of the act requires that manufacturers track certain devices from the manufacturer through the distribution chain to the patient using the device. Under section 519(e) of the act, manufacturers must track life-supporting or life-sustaining devices that are used outside a device user facility and permanently implantable devices, if the failure of these devices would be reasonably likely to have serious adverse health consequences. Section 519(e) of the act also gives FDA the authority to designate other devices to be subject to tracking.

In the **Federal Register** of March 27, 1992 (57 FR 10702), FDA published a proposed rule to implement tracking. The period for submitting comments in response to the March 27, 1992, proposal closed on May 26, 1992. Many comments raised objections to many devices identified as types of devices requiring tracking.

In response to comments received on the March 27, 1992, proposal, FDA revised the March 27, 1992, proposed rule, and on May 27, 1992, the agency issued, put on public display, and filed in the public administrative record in FDA's Dockets Management Branch, a revised proposed rule that withdrew the March 27, 1992, proposed rule and set forth revised proposed regulations for tracking medical devices including changes to the illustrative list of devices subject to tracking and the list of designated devices. On May 28, 1992, the agency issued, put on public display, and filed in the public administrative record, a document that announced that the proposed regulations issued the day before had become the final regulations on that date, by operation of the SMDA. The agency also issued the revised tracking regulations as a final rule. Both the May 27, 1992, revised proposed tracking rule and the May 28, 1992, final tracking rule appeared in the **Federal Register** of May 29, 1992 (57 FR 22971, 22966).

On June 16, 1992, the 1992 Amendments (Pub. L. 102–300) became law. The 1992 Amendments modified the device tracking provisions of the SMDA to: (1) Change the previous May 28, 1992, deadline for issuing final tracking regulations; (2) clarify the date on which section 519(e) of the act becomes effective; and (3) make the regulation which became final by operation of the SMDA on May 28, 1992, a proposed regulation.

Elsewhere in this issue of the **Federal Register**, in a document entitled "Medical Devices; Device Tracking," FDA is announcing that the tracking regulations have become final by operation of law and is suspending the effective date of the device tracking regulations until August 29, 1993.

II. Discussion

FDA received more than 1,700 comments on the March 27, 1992, proposed rule and the subsequent revised proposed rule (published in the **Federal Register** of May 29, 1992). Most of these comments requested the deletion of various devices from the illustrative list of devices subject to tracking. FDA addressed many of the comments in the preamble to the revised proposed rule. Other comments are addressed elsewhere in this issue of the **Federal Register**. FDA notes that, to the extent that the preambles to the proposed and revised proposed rules discuss the criteria for determining whether devices are subject to tracking, or comments on the criteria, these preambles still provide useful guidance. FDA also intends to issue a question

and answer document to clarify certain issues regarding the tracking requirements.

A. Statutory Scheme

1. Devices Subject to Tracking Under Section 519(e)(1) of the Act

Section 519(e)(1) of the act provides for the mandatory tracking of those devices that meet its criteria. However, FDA recognizes that, as the agency charged with implementing and enforcing section 519(e) of the act, its interpretation of the statutory terms and its views on the application of section 519(e)(1) of the act are entitled to great weight. Thus, FDA expects manufacturers to decide which devices are subject to mandatory tracking based upon the guidance issued by FDA in the rule, especially the definitions; in this preamble (which includes an illustrative list of example devices that FDA believes are subject to tracking under section 519(e)(1) of the act), and in future guidance from FDA. To ensure that the list of example devices is readily available to the public in conjunction with the definitions of the key terms, FDA is incorporating this illustrative list in new § 821.20(b)(1) and (b)(2).

In addition, FDA, when clearing premarket notification submissions (510(k)'s) or approving premarket approval applications (PMA's), will notify the person receiving clearance or approval that FDA believes the device is subject to tracking. This notification will be given in writing, but will not be a part of the 510(k) order or the PMA approval order. In addition, FDA will notify the public (through publication of a notice in the **Federal Register**) that FDA believes a new generic type of device is subject to tracking and will solicit comments from the public on the agency's position. In the case of devices that are the subject of approved PMA's, this notification will be given in the same issue of the **Federal Register** as the notice of the PMA approval order that is published after FDA's approval of the PMA for the device. In the case of 510(k) devices, this notice will be published as soon as possible following notification of the manufacturer that a device is substantially equivalent. New generic types of devices that FDA identifies as subject to tracking through the premarket approval and clearance processes will also be added to the list of example devices set out in the regulation.

FDA believes that making the public aware of the fact that FDA believes a device is subject to tracking and soliciting comment from the public will serve two distinct purposes. First, it will serve to notify manufacturers of substantially equivalent devices that FDA believes that the tracking requirements of section 519(e) of the act apply to their devices, while also serving to notify those in the distribution chain of the tracking requirement. Secondly, it will provide consumers and manufacturers and other persons affected by FDA's determination, as well as the manufacturer(s) of the device in question, with the opportunity to share information and views with FDA, thereby ensuring that FDA's enforcement of the tracking provision proceeds deliberately and publicly, based upon complete and balanced information.

2. Designated Devices Subject to Tracking Under Section 519(e)(2) of the Act

The agency will use its discretionary authority to designate and require the tracking of devices under section 519(e)(2) of the act to protect the public health. In assessing whether to designate a device to be tracked under section 519(e)(2) of the act, the agency will focus on the significance of risks to health posed by device use, especially the potential for serious injury, harm, or hazard to the public. Devices that FDA anticipates it will need to designate to be tracked are devices that demonstrate (or may demonstrate) recurrent, unpredictable, unexpected, or widespread failures, when such failures are hazardous or potentially hazardous. In the tracking context, the agency will consider a device to be hazardous if the device presents a risk of injury, death, or other serious adverse effects under the conditions of its intended use. The agency believes it is consistent with the intent of section 519(e)(2) of the act and with the general purpose of the SMDA to designate devices that present such risks to protect the public from devices that are potentially unsafe or ineffective.

The agency will designate a particular device or generic type of device under section 519(e)(2) of the act by written notice, in the form of a letter, issued to the manufacturer(s). In addition, the agency will publish in the **Federal Register** a notice of the agency's designation of a generic type of device for tracking under section 519(e)(2) of the act and will, as with devices subject to tracking under section 519(e)(1) of the act, solicit comment from the public. The agency considers the designation under section 519(e)(2) of the act to be within the agency's discretionary authority and not subject to the rulemaking procedures prescribed by the Administrative Procedure Act.

3. General Comments

a. *Cost.* Many comments suggested that devices on the illustrative list of devices subject to tracking should not be subject to tracking. The general argument was that the cost of tracking was not warranted in light of the perceived benefit. While FDA acknowledges the concerns inherent in these comments, section 519(e) of the act does not identify cost or inconvenience of tracking as factors to be considered when determining if a device is subject to tracking. FDA has done its best, however, to apply and interpret the statutory requirements in a rational manner and to not impose unnecessary requirements.

b. *Current good manufacturing practices.* Several comments suggested that certain devices should not be included in the illustrative list of devices because, according to the comments, they are already subject to tracking under the current good manufacturing practice (CGMP) regulations.

FDA disagrees with these comments. Section 820.151 of the CGMP regulations (21 CFR 821.151) requires manufacturers to maintain records of distribution only to the first consignee. This is clearly not sufficient for tracking purposes under section 519(e) of the act as these records would not provide sufficient information for effective recalls and notifications under section 518(a) and (e) of the act.

c. *Patient privacy.* Many comments complained that the tracking requirements violate principles of physician-patient confidentiality.

FDA has a long-standing policy of carefully guarding the privacy of individual patients by fully observing the provisions of the Freedom of Information Act and the Privacy Act. The final regulations place restrictions on FDA disclosure of patient information in keeping with these laws.

B. Particular Devices

1. Vascular Grafts (Section 519(e)(1) of the Act)

FDA received comments on whether vascular grafts should be tracked. Almost all of the individuals commenting were vascular, transplant, or cardiovascular surgeons. They commented on behalf of themselves, their medical institutions, their professional societies, and their patients. Comments were also received from hospital or medical center administrators.

Almost all of these comments stated that tracking for vascular graft devices should be modified or eliminated. However, several surgeons expressed general agreement with tracking vascular grafts. Moreover, many surgeons and manufacturers acknowledged that at least some vascular grafts should be tracked because of their intended use.

Many surgeons and manufacturers commented that section 519(e) of the act does not require tracking for vascular grafts even though the devices meet the definition of permanent implant (new § 821.3(f)) because of their overall low historical rate of serious complications. The comments argued that serious adverse health consequences from graft failures could never be "more likely than not to occur" from device failure (see 57 FR 10702 at 10704, March 27, 1992) if FDA considers as a whole all the various types, sizes, and clinical uses of vascular grafts as the total number of those grafts, when compared to those used for mandatory circulatory sustaining functions such as various cardiac repair, and aorto-coronary renal, or carotid uses.

FDA disagrees in part with these comments. "Serious adverse health consequences" are events which result in permanent or long-term injury or illness (new § 821.3(e)) that are not generally "treatable or reversible by standard medical techniques proximate in time to the injury." (S. Rept. 613, 101st Cong., 2d sess. 19 (1990)). FDA agrees that vascular grafts used to replace or assist peripheral vasculature or used solely for vascular access do not meet the statutory requirements that failure of the device would be likely to: (1) Result in permanent or long-term illness or injury, and (2) not be treatable or reversible by standard medical techniques, proximate in time to the illness or injury.

However, FDA believes that the vascular grafts used for cardiac repair or for replacement of aorto-coronary, aortic renal, or carotid artery function do require tracking under section 519(e)(1) of the act and the implementing definitions because, when used for these purposes, the graft would, if it failed, result in serious adverse health consequences. Moreover, because the comments expressed near universal agreement that these kinds of vascular grafts usages are subject to tracking, FDA does not believe it would be appropriate to remove them from the illustrative list. However, due to the fact that only some uses of vascular grafts are subject to tracking, FDA is receptive to individual manufacturers' tracking protocols that accurately identify and track only those grafts that fall within the statutory criteria. FDA would be willing to consider tracking protocols that exclude vascular grafts used in peripheral locations or for vascular access, if the manufacturer can ensure that those graft uses subject to tracking are reliably and consistently identified and tracked. FDA believes that these protocols would need to identify how the labeling would distinguish among the various uses of the device.

2. Infusion Pumps (Section 519(e)(2) of the Act)

FDA received comments concerning the tracking of infusion pumps from individuals, corporations, hospitals, and associations representing various professional groups in the health care sector. Almost all of the individuals who commented are health care providers, i.e., physicians and nurses. They submitted their views on behalf of themselves, their medical institutions, their professional societies, and their patients. Comments were also received from hospital and medical center administrators. Many comments, mostly those from health care facilities, objected to the inclusion of electromechanical infusion pumps on the list of devices designated for tracking by FDA. The comments objected not to the requirement to track these devices, but to the fact that, as designated devices, the devices would have to be tracked within device user facilities. The comments said that tracking within device user facilities would be unnecessarily burdensome because: (1) These devices may be used on several different patients per day; (2) in the case of a recall or notification, the devices can be found within a device user facility; and (3) Congress intended that devices used within device user facilities not be tracked.

FDA agrees in part with these comments. Infusion pumps are used both within and outside device user facilities. As noted in the preamble to the reproposed rule, FDA believes that these devices, if they fail, would present a risk of serious adverse health consequences, and that this risk exists even if the pump is not being used to support or sustain life. However, FDA believes, based on its experience and the comments, that these devices can be located within device user facilities, when there is a recall or notification, without a tracking requirement in effect when used within such facilities. FDA, therefore, is keeping infusion pumps on the list of designated devices but is not requiring that they be tracked within device user facilities. If a device is used within a device user facility, the device must be tracked down to the device user facility who must comply with the requirement of § 821.30(b)(1) and (b)(2). If the device is used outside a device user facility, the distributor who provides the device to a patient shall keep records of the device's location and report this information to the manufacturer, as necessary, in accordance with § 821.30(c). This applies even if a device user facility functions as a distributor in providing the patient a device for use outside the facility.

FDA believes that the approach described above will adequately provide for notifications and recalls and is consistent with congressional intent. However, if FDA determines in the future, for these devices or any other device, that tracking within device user facilities is necessary, it will require such tracking. While tracking is mandatory only for life-sustaining or life-supporting devices used outside device user facilities, that does not mean that devices used inside device user facilities can never be tracked. In section 519(e)(2) of the act, Congress clearly gave FDA the authority to designate for tracking devices used within device user facilities.

Finally FDA notes that it has removed the descriptive phrase, "Electromechanical only," from the list in the regulations. FDA has determined that the phrase was unnecessary in light of the terms of the classification regulation for infusion pumps.

3. Defibrillators (Section 519(e)(1) of the Act)

FDA received comments from corporations concerning the placement of defibrillators on the illustrative list of devices for which tracking is mandated by statute. Three comments agreed that defibrillators used within the home fall within the scope of the tracking regulation. However, these comments also argued that defibrillators sold or leased to emergency medical services should not be tracked to the patient level. The comments claimed that there would be no benefit to this, as the patient would not have the device in his or her possession and would not need to be contacted in the event of a problem. According to the comments, the organization which had purchased the device would be the appropriate party to notify.

One comment argued that disposable pads for defibrillators need not be tracked and should be excluded from the tracking requirement. The comment argued that defects in pads are usually materials-related, that any defects would be common to an entire lot, and

that recall of the entire lot would be the most practical way to limit the exposure of patients to defective pads. Another comment suggested that the peddle alone be tracked, and that disposable electrodes and connecting cables not be subject to tracking. This comment urged that the "paddle" be defined as that portion of the defibrillator containing the control that will release energy to the patient.

FDA stresses that what is important here is to be able to locate a tracked device when there is a recall or a notification. In the case of these defibrillators used within device user facilities, tracking the location of defibrillators to the user should achieve the purpose of the statute. If, even with this clarification, affected manufacturers or other entities have difficulty complying with the rule, FDA invites them to seek, either individually or together, an exemption or variance from the regulation which addresses this concern but guarantees the ability to locate defibrillators for recalls or notifications.

With respect to pads, FDA's reports indicate that serious adverse events are often associated with the disposable pads as well as the defibrillator itself. FDA, therefore, believes that it is necessary that the pads be tracked as well as the defibrillator because a failure of the pads can cause serious adverse health consequences. FDA notes that the regulation presently allows recalling defibrillator pads by lot number, if appropriate.

4. Temporo-mandibular Joints (Section 519(e)(1) of the Act)

On its own initiative, FDA has modified the illustrative list of devices for which tracking is mandated by statute to include temporo-mandibular joint (TMJ) prostheses. This includes the total TMJ prosthesis, the glenoid fossa disc prosthesis, the mandibular condyle prosthesis, and the interarticular disc prosthesis. FDA believes that TMJ prostheses are permanently implantable devices that are intended to function throughout the useful life of the device. Further, the high number of irreversible, extremely serious adverse events resulting from the failure of the device demonstrate that failures of this device are reasonably likely to result in adverse health consequence within the meaning of section 519(e)(1) of the act. For example, these implants have been associated with permanent loss of bone extending through the glenoid fossa into the middle cranial space. In lay terms, the failure of the implants can result in loss of mandibular bone or jaw structure, which is not reversible. In addition, device disintegration in situ can result in the permanent development of an ongoing localized inflammatory process with granuloma formation and/or other foreign body reaction that cannot be reversed or for which intervention, timely or not, is not curative or preventive. FDA believes that the seriousness of the device failure reports and the high number of such reports in the medical device reporting (MDR) and problem reporting program (PRP) systems, warrants the device's inclusion on the list. Moreover, while failure of the device is not immediately life-threatening, nevertheless, permanent harm to the patient is more likely than not to result from device failure. In accordance with its commitment to seek comments when announcing that devices are subject to tracking under section 519(e) of the act, FDA solicits comments on the agency's position.

5. Penile Inflatable Implant (Section 519(e)(2) of the Act)

On its own initiative, FDA has modified the illustrative list of devices for which tracking is designated to include the penile inflatable implant. FDA has determined that the relatively high number of device failure reports in the MDR and PRP systems when compared to the number of devices in use warrants this device's inclusion on the list. Further, FDA has concerns regarding the use of silicone oils, gels, and elastomers in the manufacture of these devices as demonstrated by the inclusion of other elastomer and gel-filled implants on the list of devices designated for tracking. Among the risks connected with penile prostheses are: Migration and extrusion of the implant; fibrous capsule formation; mechanical malfunctions; carcinogenicity; and immune-related connective tissue disorders. Because of these concerns about the use of silicone in implants and the other problems associated with the use of these devices, FDA has determined that it is appropriate that these devices be included on the "Designated List" of devices requiring tracking. FDA solicits comments on the agency's position that, under section 519(e)(2) of the act, this device is subject to tracking.

6. Intraocular Lenses

One comment suggested that intraocular lenses (IOL's) be included on the list based upon the history of adverse events related to the use of rigid anterior chamber IOL's. These events have included the need for explanation of the device, migration, corneal transplant surgery following corneal endothelial attrition several years after implantation, and the development of retinal inflammation with impairment of vision in the implicated eye. The comment stated that, despite timely medical intervention some patients have lost vision due to IOL failures. The comment admitted that the rate of complications is relatively low but argued that tracking is needed due to limitations in the premarket approval process, including use of a defined sample size less than the ultimate recipient population, the limited duration of data collection in premarket approval studies, and investigator selection.

FDA does not believe at this time that IOL's meet the statutory criteria for mandatory tracking or that they should be designated for tracking. IOL's are clearly permanently implantable devices. However, the likelihood of blindness or significant loss of vision from device failure is low. Further, timely medical intervention would result in the reversal of the more common medical complications due to unexpected device failure to function. FDA believes that the relatively low rate of complications argues against including IOL's on the list of designated devices.

7. Spinal Interlaminal Fixation Orthosis and Spinal Intervertebral Fixation Orthosis

FDA needs to correct an erroneous statement that was inadvertently included in the preamble to the May 29, 1992, revised proposal. FDA stated with regard to spinal interlaminal and intervertebral body fixation devices that, "[A]fter the completion of healing by bone growth, spinal fusion, or other process, the device no longer serves as the primary support." Although no comments received in response to the May 29, 1992, revised proposal took exception to this statement, the quoted statement is scientifically inaccurate. When two materials of different moduli are loaded in parallel (as is the case for a spinal bone fusion mass and a spinal implant), the higher modulus material (a spinal implant) carries the larger portion of the load than the lower modulus material (a spinal bone fusion mass). Even upon completion of formation, the bone fusion mass would share the weight bearing load with the implant. This scientific fact is backed not only by ongoing clinical studies of spinal fixation devices other than the Harrington Rod and the Dwyer Wire, e.g., by studies of pedicle screw spinal fixation devices, but also by literature reporting device breakage, with and without spinal sequelae, due to fatigue.

Thus, FDA believes it is incorrect to conclude that spinal interlaminal and intervertebral body fixation devices do not fall within the definition of permanently implantable devices because they do not continue to assist, restore, or replace the function of an organ system or structure of the body after implantation of the devices and completion of healing by bone growth, spinal fusion, or other process with the devices in situ.

FDA thus advises that spinal interlaminal and intervertebral fixation devices are "permanent implants." FDA believes, however, that the failure of these devices can be detected and a medical remedy sought in a timely manner so as to minimize the risk of serious adverse health consequences. Therefore, FDA does not believe at this time that these devices meet the criteria for mandatory tracking. FDA emphasizes that this position, as set out in the preamble to the May 29, 1992, revised proposal, applies only to the two devices identified in that preamble, i.e., the Harrington Rod (21 CFR 888.3050) and the Dwyer Wire (21 CFR 888.3060), and does not reflect its position on any other devices that may be promoted and used for spinal and/or pedicle fixation. There are no other devices that have yet been approved for spinal and/or pedicle fixation or otherwise cleared for marketing as spinal and/or pedicle fixation devices.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has examined the economic impact of the final tracking regulation taking into account the revisions to the illustrative list of devices subject to tracking and assessed the extent to which the final rule would have an effect upon small business entities in accordance with the economic requirements of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). FDA has placed on file at the Dockets Management Branch a copy of the agency's "Threshold Assessment of the Impact of Requirements for Medical Device Tracking (Second Version)." The economic impact of this rule is discussed in a final rule published elsewhere in this issue of the **Federal Register** in which the agency is announcing notification of the change of status of the device tracking regulation and is suspending the effective date of the regulations until August 29, 1993.

The agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

V. Paperwork Reduction Act of 1980

This final rule does not add any information collection requirements to 21 CFR part 821 although, pursuant to law, it does add to the list of devices subject to tracking requirements.

VI. Opportunity for Comments

Under 21 CFR 10.40(e), an opportunity for comment on this final rule is being provided. Interested persons may, on or before September 15, 1993, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 821

Device tracking, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 821 is amended as follows:

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

1. The authority citation for 21 CFR part 821 is revised to read as follows:

Authority: Secs. 301, 501, 502, 510, 515, 518, 519, 701, and 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, and 374).

2. Section 821.20 is amended as follows:

a. In the table in paragraph (b)(1) the following entries are added immediately following the entry "870.3460 Vascular graft prosthesis of 6 millimeters and greater diameter" to read as follows:

§ 821.20 Devices subject to tracking.

* * * * *

(b) * * *

(1) Permanently implantable devices.

21 CFR	Classification
* * * * *	
(no cite)	Total temporomandibular joint prosthesis.
(no cite)	Glenoid fossa prosthesis.
(no cite)	Mandibular condyle prosthesis.
(no cite)	Interarticular disc prosthesis (interpositional implant).
* * * * *	

* * * * *

b. In the table in paragraph (c) the following entry is added to appear at the beginning of the table, and by removing from the last entry in the table for 21 CFR 878.5725, the phrase "(Electromechanical only)" to read as follows:

(c) * * *

21 CFR	Classification
876.3350	Penile inflatable implant.
* * * * *	

* * * * *

Dated: July 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19470 Filed 8–11–93; 11:24 am]

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Office of Assistant Secretary

Notice of Funding Availability and the Program Guidelines for the Moving to Opportunity for Fair Housing Demonstration for Fiscal Year 1993

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3638; FR-3303-N-02]

Notice of Funding Availability (NOFA) and the Program Guidelines for the Moving to Opportunity for Fair Housing Demonstration for Fiscal Year 1993

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1993; and notice of Program Guidelines for the moving to opportunity for Fair Housing (MTO) Demonstration Program.

SUMMARY: This notice announces a national competition for the Moving to Opportunity for Fair Housing (MTO) Demonstration Program to be administered by public housing agencies (PHAs) in conjunction with non-profit organizations (NPOs) in five metropolitan areas and the City of Los Angeles. HUD has set aside section 8 funding of approximately $50 million in budget authority for rental vouchers and $20 million in budget authority for rental certificates which will support assistance for an estimated 1,350 rental vouchers (Fiscal Year 1993 Funding) and 550 rental certificates (Fiscal Year 1992 Funding) under the MTO Program. The eligible PHAs must serve a central city with a population that is greater than 400,000 within a metropolitan area with a population that is greater than 1.5 million. In addition, up to $500,000 in housing counseling grant funds will be made available by HUD to provide selected families with housing search assistance in this demonstration. The MTO demonstration provides housing counseling services in combination with tenant-based rental assistance to assist very low-income families with children, who reside in public housing or housing receiving project-based Section 8 assistance located in high-poverty census tracts in the jurisdictions of central city PHAs to move to low-poverty census tracts.

This NOFA invites the City of Los Angeles PHA and other eligible PHAs' which serve a central city and NPOs to submit joint applications for the MTO demonstration program. This NOFA provides instructions to applicants governing the submission of applications, and describes procedures for rating, ranking, and approving applications.

Section 152 of the Housing and Community Development Act of 1992 requires that the Department extend eligibility to Los Angeles for FY 1993 funding. The City of Los Angeles will be funded if the PHA submits an approvable application. The five PHAs with the highest scores (not including Los Angeles) will each receive approximately twenty percent of the special allocation of rental certificates. The same PHAs and the Los Angeles PHA will each receive approximately 17 percent of the rental voucher allocation. If a PHA submits an application for a smaller number of units or fewer than five PHAs plus the Los Angeles PHA submit approvable applications, any residual funding will be awarded proportionately to each PHA selected for participation in the MTO Demonstration. Each selected NPO will receive housing counseling grant funds from HUD.

PHA applications must provide census data for the specific high-poverty census tracts in the central city which it serves and in which it proposes to implement the MTO demonstration program, and identify the public housing projects and section 8 moderate rehabilitation projects and projects receiving section 8 project-based assistance in those tracts. Only families living in public housing projects or projects receiving section 8 project-based assistance within the census tract(s) designated by the PHA will be eligible for assistance under the demonstration.

Section 23 of the U.S. Housing Act of 1937 was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that any PHA receiving additional rental vouchers or certificates in FY 1993 must establish a family self-sufficiency (FSS) program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991 (56 FR 49592). The regulations for the FSS program were published on May 27, 1993 (58 FR 30853). Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published in the **Federal Register** on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

DATES: Applications must be received in room 4220, HUD Building, 451 Seventh Street, SW., Washington, DC 20410, by 3 p.m., EDT on October 15, 1993. A copy of the joint application must also be submitted to the appropriate HUD Field Office. Application forms (HUD–52515) may be obtained from the local HUD Field Office.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0477. Hearing-impaired or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB Control Number 2577–0170.

I. Purpose and Substantive Description

(A) Authority

The MTO Demonstration program is authorized under title I, subtitle C, section 152 of the Housing and Community Development Act of 1992 and the "Annual Contributions for Assisted Housing" heading of title II of the VA, HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991). The regulations governing the rental certificate program are published at 24 CFR part 882. The regulations governing the rental voucher program are published at 24 CFR part 887.

(B) Description of the Demonstration Design

(1) General.

The MTO program is a demonstration to combine housing counseling services with tenant-based rental assistance to assist very low-income families with children, who reside in public housing or housing receiving project-based Section 8 assistance located in high-poverty census tracts in the central city served by the PHAs, obtain housing in low-poverty census tracts located inside or outside the central city served by the PHAs.

(2) Program Design

In the past, HUD has authorized similar programs to reduce racial

segregation in assisted housing programs in compliance with court orders. The MTO program differs from those programs because MTO program assistance is linked to concentrations of poverty rather than racial concentrations.

A family chosen to participate in the demonstration will either be assigned to the "experimental group" or to the "comparison group" for evaluation purposes. One-half of the families selected for the MTO program must be assigned to each group using a random assignment process.

A family assigned to the "experimental group" will receive extensive housing counseling services from the non-profit organization (NPO) to assist the family in obtaining housing in low poverty areas. Each family from the experimental group must initially sign a lease for a unit located in a low-poverty area.

A family assigned to the comparison group will receive the assistance regularly offered by the PHA to a rental voucher or a rental certificate holder, but will not receive any additional housing search assistance from the NPO. A family from the comparison group will receive a rental voucher or rental certificate and will have the freedom to select any housing in accordance with normal program requirements.

When a rental voucher and a rental certificate provided by HUD to the PHA under this demonstration becomes available for reissue (i.e., the family initially selected for the program drops out of the program or is unsuccessful in its search for a unit, or the family is terminated from the program), the rental assistance may only be used for another family eligible for assistance under this demonstration until the Department releases the PHA from that obligation.

Except as provided in this NOFA, the PHAs participating in the MTO demonstration program must continue to follow all the other requirements of the rental voucher and rental certificate programs.

Collection and maintenance of data are required for biennial interim reports and a ten-year final evaluation reports to Congress mandated by the Housing and Community Development Act of 1992. Applicants must cooperate by keeping records for this demonstration. The type of records required will be specified by HUD.

The housing counseling services provided by the NPO will be funded in part from HUD housing counseling grants, under a grant agreement between the NPO and HUD, and in part from local sources. HUD will have available up to $500,000 in housing counseling grant funds for participating NPOs to serve the experimental families. HUD will provide $275 per unit for housing counseling services for each rental certificate and rental voucher provided to the PHA. No more than half of the families in the demonstration will receive housing counseling services from the NPO. Counseling funds will be available in the amount of $550 for each experimental rental voucher and certificate. HUD recognizes that this amount may not be sufficient to fund the housing counseling services required under this demonstration. Therefore, the NPO must provide an equal amount of funds available from other sources to fund adequately the housing counseling services.

(3) HUD Contractor

HUD may contract with an independent third-party (Contractor) to perform several tasks related to the implementation of the MTO program as well as the evaluation of the success of the demonstration program. These services may include, but are not limited to:

(i) Designing the procedures for random assignment of the families who participate in the program;

(ii) Completing a processing handbook of MTO procedures;

(iii) Training NPOs to perform MTO services;

(iv) Assisting PHAs in revising their administrative plans and equal opportunity housing plans as necessary to provide for the implementation and evaluation of the demonstration program; and

(v) Conducting a process and short-term outcome evaluation of the program.

(4) Outreach and Selection of Families

The funding announced by this NOFA will be available for very low-income families living in public housing or housing receiving section 8 project-based assistance within the census tract(s) designated by the PHA. Since most of the families that qualify for assistance under this statutory demonstration will not qualify for a Federal preference (i.e., involuntarily displaced, homeless or living in substandard housing, or paying more than 50 percent of income for rent) and in order to meet the objectives of the demonstration, selection of families that do not meet a Federal preference does not count against the PHA's 10 percent allowance for admission of non-Federal preference holders. Eligible families will be selected for participation in the MTO demonstration program from a special section 8 waiting list established by the PHA only for this demonstration program. All families selected to receive a rental certificate or rental voucher must select a unit which is eligible housing under the rental voucher and rental certificate program rules.

The PHAs selected to participate in this demonstration must conduct special outreach efforts at all public housing and section 8 projects in the designated high-poverty census tracts. The PHA outreach effort must explain the eligibility requirements for the MTO program, the number of MTO rental vouchers and certificates available, and the application and selection procedures. PHAs and NPOs must comply with the requirements of the PHAs' equal opportunity housing plans and all fair housing laws during the implementation of the demonstration program.

A PHA selected for the MTO demonstration must establish an application deadline for families who want to participate in the MTO Demonstration. Applications received by the deadline will be assigned a position on a separate waiting list based on a random assignment using a lottery. The separate waiting list will be maintained throughout the term of the demonstration to provide a list of eligible families that would receive rental assistance if an MTO rental voucher or rental certificate is available to be re-issued.

(C) Definitions

1. *High and low-poverty Census Tracts.* For purposes of this program, high-poverty census tracts and low-poverty census tracts are defined as follows:

(a) A high-poverty census tract is a census tract located within the boundary of the central city served by the PHA in which at least 40 percent of the persons for whom poverty status is determined had incomes in 1989 below the poverty level.

(b) A low-poverty census tract is any census tract located inside or outside the central city in which less than 10 percent of the persons for whom poverty status is determined had incomes in 1989 below the poverty level.

2. *Families in Assisted Housing.* All very low-income families with children who reside in designated high-poverty census tracts in public housing or in housing projects with one or more units of section 8 project-based assistance and who are willing to move to low-poverty areas are eligible to apply for assistance under MTO.

(D) What PHAs May Apply

A PHA that operates a section 8 rental voucher or rental certificate program in a central city with a population greater than 400,000 within a metropolitan area with a total population greater than 1.5 million may apply for rental voucher and rental certificate funding under the MTO demonstration program.

The PHA must select an NPO that is willing to participate in the MTO demonstration program with the PHA. The NPO must have authority under its charter to operate throughout the metropolitan area including the central city. An NPO which is an agent or instrumentality of a participating PHA, i.e., a subsidiary or other entity created or substantially controlled by the PHA, is not eligible to participate in the MTO demonstration.

The cities that meet the population criteria, as determined by HUD, are:

Baltimore, Maryland
Boston, Massachusetts
Chicago, Illinois
Cleveland, Ohio
Dallas, Texas
Denver, Colorado
Detroit, Michigan
Fort Worth, Texas
Houston, Texas
Kansas City, Missouri
Long Beach, California
Los Angeles, California
Milwaukee, Wisconsin
New York, New York
Philadelphia, Pennsylvania
Phoenix, Arizona
San Diego, California
San Francisco, California
San Jose, California
Seattle, Washington
Washington, D.C.

The fact that a city is on the list above does not mean that the MTO program is an appropriate program for the city. The MTO program is intended to improve the ability of very low-income families with children to leave areas of concentrated poverty. Applications for cities where concentrated poverty is a major problem are more likely to be funded than applications for cities where the concentration of poverty is a relatively minor problem.

(E) Roles of Applicants in Demonstration Implementation

(1) Role of Public Housing Agencies

The PHA will select very low-income families with children from its separate waiting list established for this program in accordance with regulations for the rental voucher and rental certificate programs. The families must reside in section 8 or public housing projects located in the census tracts identified in the PHA's application and must be willing to move to low-poverty census tracts. A family selected for the PHA's MTO program must be issued a rental voucher or a rental certificate, and briefed on the benefits of the MTO program for families. All families will receive the housing counseling usually provided by the PHA to a family selected under the rental voucher and rental certificate programs. Families randomly assigned to the experimental group will receive additional housing search assistance provided by NPOs and these families will be informed that they must initially use their section 8 assistance in a low-poverty census tract. In some cases, families who are eligible to participate in the MTO demonstration program may be on both the regular section 8 waiting list and the special MTO waiting list. If such families decline to participate in the MTO demonstration, the families will retain their position on the regular section 8 waiting list and may receive rental assistance in accordance with normal program procedures. The PHAs must submit reports to HUD biennially on the progress of the MTO demonstration. The reports must include the number of persons served, their race, gender and ethnicity, the level of housing counseling services received, the cost of providing the housing counseling services, updates on the employment of families, and other information as determined by HUD.

(2) Role of Non-Profit Organization

The NPO must randomly assign families selected by the PHA for participation in the demonstration to the experimental group or the comparison group. HUD will provide guidance on random assignment procedures.

The NPO must provide individual counseling on housing search in low-poverty census tracts to the families selected for the experimental group with sensitivity to the special needs of the individual families. The NPO must also give guidance to the families on the requirements of unit owners and conduct role-playing sessions in which families learn effective ways to present themselves to the unit owners. The NPO must aggressively recruit unit owners willing to provide housing in low-poverty census tracts throughout the metropolitan area. The NPO must perform credit and housekeeping checks for the families in the experimental group. The NPO must assist the experimental group families in their search for housing. For example, the NPO staff must provide transportation to low-poverty census tracts for a tour and a search for available units and must assist the families in the preliminary inspection of potential units. The NPO must provide information and counseling to the families as they adjust to their new environment. A description of services required to be provided by NPOs is included as Attachment 1 to this NOFA. The NPOs must periodically report directly to HUD with copies of the information to the PHAs.

II. Application Process

(A) Application Submission Deadline

The PHA and NPO must submit an application for funding under this NOFA to the following address: U.S. Department of Housing and Urban Development, Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, room 4220, 451 Seventh Street, SW., Washington, DC 20410 by 3 p.m., E.D.T., on October 15, 1993. HUD Headquarters is the official place of receipt for all applications. Application forms (HUD–52515) may be obtained from the appropriate HUD Field Office. A copy of the application submitted to Washington must also be submitted to the appropriate HUD Field Office.

The application deadline for receipt of the application in HUD Headquarters is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will not accept any application that is not received in HUD Headquarters on or before the application deadline. Applicants should take this requirement into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD Headquarters and the Field Offices will not accept applications which are sent via facsimile (FAX) transmission.

For purposes of expediting the application process, the PHA should encourage the chief executive officer of the unit of general local government to submit a letter with the PHA application commenting on the PHA application in accordance with section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of local government.

(B) Selection Criteria/Ranking Factors

(1) General

HUD will screen all applications and disapprove any that are in the categories listed in section II(C) of this NOFA. HUD will use the selection criteria and point assignment listed below to review and rate all approvable applications. The Los Angeles PHA and the five PHA applications that receive the highest scores under the rating process will be approved and the PHAs will receive rental vouchers and rental certificates in connection with the MTO program.

(2) Selection Ranking Factors

(a) *Selection Criterion 1: Site of Demonstration Program (Maximum of 15 points)—(i) Description:* HUD will assign points for the extent of concentration of the poverty population within all high-poverty tracts, based on an identification of all high-poverty census tracts within the central city served by the PHA.

(ii) *Rating: 15 points.* The poverty population residing in all high-poverty census tracts represents 35 percent or more of the poverty population residing in the central city served by the PHA.

10 points. The poverty population residing in all high-poverty census tracts represents at least 25 percent but less than 35 percent of the poverty population residing in the central city served by the PHA.

5 points. The poverty population residing in all high-poverty census tracts represents at least 15 percent but less than 25 percent of the poverty population residing in the central city served by the PHA.

0 points. The poverty population residing in all high-poverty census tracts represents less than 15 percent of the poverty population in the central city served by the PHA.

(b) *Selection Criterion 2: Number of Assisted Families with Children Residing in Census Tracts Selected by PHA (Maximum of 10 points)—(i) Description:* The PHA shall provide an estimate of the total number of families with children residing in eligible projects that are located in central city high-poverty census tracts selected by the PHA for this demonstration.

(ii) *Rating: 10 point.* The number of families with children residing in eligible projects located in high-poverty tracts is more than three times the number needed to support the demonstration, as proposed in the application.

5 points. The number of families with children residing in eligible projects located in high-poverty tracts is at least two times greater than, but less than three times, the number needed to support the demonstration, as proposed in the application.

0 points. The number of families with children residing in eligible projects located in high-poverty tracts is less than two times the number needed to support the demonstration, as proposed in the application.

(c) *Selection Criterion 3: The Feasibility of the Provision of Housing Search Assistance (Maximum of 25 points)—(i) Description:* The capability of the NPO to provide quality housing counseling services is evidenced by sources of the funds necessary to carry-out the services including but not limited to HUD counseling funds.

Rating: 16–25 points. The NPO budget is sufficient to provide for quality housing counseling services as identified in attachment 1. These services will be adequately funded from HUD counseling funds and other resources. Firm financial commitments are supported by letters from the funding source signed by an official authorized to commit the funds.

1–15 points. The NPO budget is sufficient to provide for quality housing search assistance as identified in attachment 1. These services will be adequately funded from HUD counseling funds and other resources. However, some of the other resources are only partially or contingently committed.

0 points. The NPO budget is unrealistic, or commitments of other resources are inadequate.

(d) *Selection Criterion 4: PHA Administrative Capacity (Maximum of 25 points)—(i) Description:* Overall PHA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates, correct administration of housing quality standards (HQS) and compliance with requirements concerning portability of rental vouchers and certificates including compliance with obligations as an initial or receiving PHA, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements is either excellent or good.

(ii) *Rating: 16–25 points.* Field Office rates overall PHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; the PHA is complying with portability requirements under the rental voucher and certificate programs; not more than 15 percent of the units inspected by the Field Office during the last management review failed to meet housing quality standards (HQS) or the field office is aware of actions taken by the PHA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office documents that the September 30, 1992, report was not reflective of PHA performance;

1–15points. Field Office rates overall PHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with PHA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office during the last management review failed to meet HQS or the field office is aware of actions taken by the PHA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under ACC for one year or more was at least 85 percent as of September 30, 1992, unless Field Office documents that the September 30, 1992, report was not reflective of PHA performance;

0 points. If neither of the above statements apply, assign 0 points.

(e) Selection Criterion 5: NPO Record and Capacity (25 points)—(i) Description. The history and capacity of the NPO to properly administer the housing counseling services as evidenced by existing efforts as well as key staff experience.

(ii) Rating: 16–25 points. The NPO has a history of assisting very low-income families with children in the search for housing and/or has helped to introduce these families into low-poverty census tracts. The NPO exhibits a good knowledge of the section 8 rental voucher and rental certificate regulations and fair housing and equal opportunity requirements. The key personnel of the NPO have considerable experience in the provision of the services required in the application.

1–15 Points. The NPO has some history of assisting very low-income families with children in finding suitable housing and/or helping to introduce low-income persons into low-poverty census tracts. The NPO is familiar with the section 8 regulations, or the key personnel of the NPO have

limited background in the provision of the necessary housing counseling services and limited knowledge of fair housing and equal opportunity requirements.

0 Points. The NPO has no experience with housing search assistance or with the section 8 regulations.

(c) Unacceptable Applications

Applications that fall into any of the following categories will not be processed:

1. (a) The Department of Justice has brought a civil rights suit against the applicant PHA or NPO, and the suit is pending;

(b) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance;

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance.

(d) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 8.57).

2. The PHA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs.

3. The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

4. The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer an additional increment of rental vouchers or rental certificates.

5. The PHA does not administer a rental voucher, certificate or moderate rehabilitation program.

6. The PHA is not in compliance with the Single Audit Act (31 U.S.C. 7501–7507), OMB Circular No. A–128, and HUD's regulations at 24 CFR part 44, or OMB Circular A–133, as applicable.

B. An application that is processed for rating and ranking will not be considered for funding if the application has failed to receive a combined score of at least 32 points under this NOFA for Selection Criteria 3: PHA Administrative Capacity and Selection Criteria 4: NPO Record and Capacity.

(D) Application Selection and Funding Procedures

HUD Headquarters will select the Los Angeles PHA and the five other PHAs with the five highest rated applications. The five PHAs with the highest scores will each receive approximately twenty percent of the special allocation of rental certificates. The same PHAs and the Los Angeles PHA will each receive approximately 17 percent of the allocation for rental vouchers. If a PHA submits an application for a smaller number of units or fewer than five PHAs plus Los Angeles submit approvable applications, any residual funding will be awarded proportionately to each PHA selected for participation in the MTO Demonstration. Each selected NPO will receive housing counseling grant funds from HUD based on the number of MTO rental voucher and rental certificate units approved for the PHA.

III. Checklist of Application Submission Requirements

(1) General

The applications must include the information requested in this section. Applications for less than 50 rental vouchers and rental certificates will not be accepted.

The application must include an explanation of how the application meets, or will meet, the application selection criteria.

(2) Required Application Contents

(a) PHA Application Forms

Each PHA must submit Form HUD–52515, Application for Existing Housing, in accordance with the program regulations.

(b) General

The application must be assembled in the order shown in its table of contents. After the entire application is assembled, please:

(i) Insert a cover sheet to separate each part;

(ii) Mark each exhibit with an appropriately numbered tab;

(iii) Number every page of the application sequentially; and

(iv) Enter the appropriate page number of each exhibit on the table of contents page. Be sure to provide each applicable exhibit (and all its parts) included in the table of contents. Number exhibits in the order given in the table of contents. If an exhibit is not applicable, enter "NA" in the page column of the table of contents.

(c) Narrative Regarding Program Implementation

The PHA and NPO must submit an explanation of how the PHA and NPO propose to implement the MTO demonstration. The PHA and NPO must submit a narrative description which demonstrates that, for the number of units awarded under the MTO demonstration program, the PHA and NPO will be able to assist participating families to execute leases with landlords within 12 months after the approval of the application.

(d) Description of High-Poverty Census Tracts and Eligible Units

The PHA and the NPO must submit a listing and description of all the high-poverty census tracts in the central city served by the PHA where the MTO demonstration program will be implemented. Data from the 1990 Census must be used to identify the target census tracts. A map which shows the target high-poverty census tracts must accompany the application. The percentage of persons living in poverty in 1990 in each census tract can be obtained from the Census Bureau publication "1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas", Washington, DC, Series CPH–3. Applicants are cautioned that the Census may not have published the data for a particular city by the time this notice is published. Many city and state planning agencies have the applicable data and accompanying census tract maps. The poverty percentages for census tracts may also be obtained from the Public Housing Division staff in the appropriate Field Office at the time the applicant obtains the application forms. The HUD Field Office does not have the capacity to identify census tract boundaries or provide required maps.

The application must also identify the public housing and the Section 8 moderate rehabilitation projects located within the designated high-poverty census tracts. The HUD Field Office will provide, upon request from the PHA, the names of projects receiving project-based Section 8 assistance in the designated high-poverty census tracts identified by the PHA. Applicants may contact the Public Housing Division Staff in the appropriate Field Office to obtain the identity of all projects receiving project-based section 8

assistance in the designated high-poverty census tracts.

(e) Description of Low-Poverty Census Tracts

The PHA and the NPO must submit a listing and description of low-poverty census tracts in the metropolitan area including data which demonstrates the availability of housing opportunities and rents at or below the current section 8 Fair Market Rents (or exception rents) in low-poverty census tracts for families who participate in the MTO demonstration. A map which shows the low-poverty target census tracts must accompany the application. The percentage of persons living in poverty in 1990 in each census tract can be obtained from the Census Bureau publication "1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas", Washington, DC, Series CPH–3. Applicants are cautioned that the Census may not have published the data for a particular city by the time this notice is published. Many city and state planning agencies have the applicable data and accompanying census tract maps. The poverty percentages for census tracts may also be obtained from the Public Housing Division staff in the appropriate Field Office at the time the applicant obtains the application forms. The HUD Field Office does not have the capacity to identify census tract boundaries or provide required maps.

(f) Description of Housing Counseling Services

The NPO must submit a description of the housing counseling services to be provided by the NPO to the families with children who will participate in the MTO program. The NPO must provide a separate budget listing the sources of income and the cost of the housing counseling services for the first year. The budget detail should include a breakdown of expenses including proposed staffing levels, transportation, advertising, administration, training and all other costs associated with providing the housing counseling services to families and implementing the MTO demonstration program. The NPO must include copies of documents, if any, which show firm financial commitments from other sources to support the housing counseling services identified by the NPO for the first year of the MTO demonstration.

(g) Description of NPO Experience

The NPO must submit a narrative description of the NPO's history in assisting very low-income families with children in the search for housing. The NPO should demonstrate that its personnel have a good knowledge of the Section 8 rental voucher and rental certificate programs and fair housing and equal opportunity requirements. The NPO should provide resumes, references, or other available documents which show that the key personnel in the NPO have experience in the provision of the housing counseling assistance services.

(h) NPO Charter Documents

The NPO must have an organizational charter which authorizes the NPO to conduct metropolitan-wide activities. A copy of the NPO's organizational documents must accompany the application.

(i) Agreement to Cooperate With HUD Evaluation of MTO Demonstration

As a part of the application for funding, each PHA and NPO applicant must submit a letter in which each applicant agrees to participate and cooperate in any evaluation efforts undertaken by HUD to determine the effectiveness of the MTO demonstration.

(j) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees (PHAs and NPOs) of Federal agencies to certify that they will provide a drug-free workplace. Thus, each PHA and NPO must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See attached Certification for Drug-Free Workplace, attachment 2.)

(k) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) generally prohibits recipients of Federal contracts, grants, and loans from the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR part 87.110, any PHA and NPO which submits an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist PHAs and NPOs, the text for the certification regarding lobbying (attachment 3 and Standard Form LLL, "Disclosure Form to Report Lobbying" (attachment 4) is attached.

(l) Certification Regarding Compliance With Single Audit Act

The PHA must be in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, in order to be eligible for funding. The certification must include the period covered by the last audit conducted and submitted to HUD in accordance with these requirements, or the period covered by the audit currently under contract. Applicants who are not currently in compliance with the audit requirements are not eligible for funding. To complete the application, a PHA must submit a certification of its compliance with the Single Audit Act (attachment 5).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate Field Office no later than the date and time specified in section II of this NOFA. The Field Office will initially screen all applications and notify PHAs of technical deficiencies by letter.

If an application has technical deficiencies, the PHA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the Field Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All PHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate Field Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All PHAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. A PHA application that does not comply with the requirements of 24 CFR § 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, after the expiration of the 14-day cure period, will be rejected from processing.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effect on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including PHAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The MTO demonstration can be expected to provide additional decent and sanitary housing for very low-income families with children who seek to move to low-poverty census tracts. Further, the housing counseling services provided by the non-profit organizations are expected to increase the families' ability to secure rental housing in low-poverty census tracts. Since the impact on the family is considered beneficial, no further review is necessary.

(D) Accountability in the Provision of HUD Assistance

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR §§ 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosures reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the Federal Register on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh street, SW., Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103,

HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: July 14, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Attachment 1—Moving to Opportunity for Fair Housing Demonstration Program Description of Housing Counseling Services

1. A Non-Profit Organization (NPO) which is selected as a participant under this NOFA must aggressively recruit owners and managers of property in low-poverty census tracts throughout the metropolitan area who are interested in renting to Section 8-assisted tenants. In recruiting owners and managers of property in low-poverty census tracts, the NPO is reminded of the provisions of the Equal Opportunity Housing Plan which includes actions (1) to further affirmatively national fair housing policies pursuant to the Fair Housing Act by promoting a wider choice of housing opportunities for minorities and female-headed households and (2) to achieve participation by owners of units of suitable price and quality located outside census tracts of high-poverty or minority concentrations. The NPO shall conduct the recruitment in person, by telephone, in writing, at meetings of landlord associations, by special brochures, and by other economically feasible means. The NPO shall make special efforts to obtain the participation of owners and managers of more than 500 units and of owners and managers of units with 3 or more bedrooms. In recruiting such owners and managers, the NPO shall evaluate whether the units will meet the housing quality standards. Recruitment of landlords shall be an ongoing process used to identify housing units that assisted families might wish to rent and NPOs shall devote staff resources to landlord recruitment throughout the course of the demonstration.

2. The PHA shall provide the NPO with a list of the names of families that have been selected to participate in this demonstration. The NPO shall assign each family on the list to the experimental group or the control group status by some random method (such as whether the last digit of the social security number of the head of household is even or odd) only until one-half the families are either experimental or controls. The families selected to be in the control group will be given a rental voucher or certificate by the PHA and these families can search for a unit to lease. The families selected for the experimental group will receive housing counseling assistance, but can only receive assistance if they initially lease a unit in a low-poverty census tract.

3. The families selected for participation in the experimental group will receive guidance from the NPO in selecting a suitable unit. The PHA and NPO shall inform the family of its responsibilities and the responsibilities of the owner. This guidance in addition to the housing counseling services shall include:

(a) Family and owner responsibilities under the lease and assistance contract;

(b) Applicable housing quality standards and procedures for compliance with those standards;

(c) Significant aspects of applicable State and local landlord-tenant laws;

(d) Significant aspects of Federal, State, and local fair housing laws:

(e) Applicable fair market rents or payment standards, determination of total tenant payment and establishment of housing assistance payments.

4. If a family is selected for the experimental group, the NPO may require the family to submit a letter from the current landlord about the family's tenancy history, and a general letter of reference.

5. At a group briefing for MTO families selected for the experimental group, NPOs shall give the families guidance about what landlords are looking for in a tenant, and shall conduct role-playing sessions in which families learn about effective ways to present themselves to landlords. NPOs must present brief, realistic introductions about the advantages and disadvantages of living in low-poverty census tracts in the metropolitan area. NPOs shall give families maps showing low-poverty neighborhoods of the metropolitan area. To the extent practicable, such neighborhoods shall be both inside and outside census tracts of minority concentration.

NPOs shall also describe in detail effective housing search strategies, and warn against ineffective search strategies. These may be to some extent different by site. For example, the Gautreaux program in Chicago advises families to look for rental housing ads in neighborhood newspapers, and notices on bulletin boards in village halls. It advises against telephone shopping, because landlords may then screen on accent or grammar, and against starting off an interview with a prospective landlord by asking, "Do you accept Section 8?"

The importance of the housing search strategies must be emphasized. It is hoped that individual housing search by assisted families, rather than the organized landlord recruitment effort, will be the main source of placements.

6. The PHA must assure that each family selected for MTO receives a rental voucher or rental certificate holder's packet. The packet must contain:

(a) Request for Lease Approval;

(b) Required Lease Provisions and Prohibited Lease Provisions;

(c) Information on Lead-Based Paint hazards;

(d) Forms for inspection of housing units;

(e) Fair Housing: It's your Right (HUD–1260–FHEO) dated July 1990, or the Spanish translation thereof (HUD–1260–1–FHEO SPAN) dated September 1991, as appropriate;

(f) Information about total tenant payment or the family's portion of the rent to owner and the fair market rent or payment standard appropriate for the family size and composition;

(g) The schedule of allowances for utilities and other services;

(h) Such other items as HUD may subsequently determine are needed.

7. NPOs must perform credit checks on MTO families selected for the experimental group. Owners of rental property in low-poverty census tracts will generally do credit checks in any case. The purpose of the MTO credit check is to avoid the landlord having to do the check, thereby saving the assisted family time and often money. If the credit history is unfavorable, NPOs may suggest ways to cure the credit problem. When the landlord recruitment effort described above leads to the identification of potential low-poverty census tract units, the NPO is not obligated to show them to a family, including a family with a credit history that is not acceptable to most property owners, although the experimental group family always has the right to seek a unit of its choice in low-poverty census tracts.

8. NPOs shall visit applicant families in their homes, to do the following:

(a) Observe the family's treatment of the rental property it currently occupies; and

(b) Provide individual counseling on relocation to low-poverty census tracts, sensitive to the special needs of the individual family.

The reason for the housekeeping check is that a small minority of assisted family heads have grown up in dysfunctional families in which they never learned housekeeping skills. When they lease a unit in a low-poverty census tract, this frequently leads to early termination of the lease by the landlord because of lease violations. If the family's treatment of its current unit would not be acceptable to most private landlords in low-poverty census tracts, the NPO shall inform the family of the areas of deficiency and offer to schedule a return visit in which improvement could be demonstrated. It shall also inform the family that without improvement, its chances of successfully leasing a unit in a low-poverty census tract are not good. When the landlord recruitment effort described above leads to the identification of potential low-poverty census tract units, the NPO is not obligated to show them to families with housekeeping standards that are not acceptable to most property owners, although the family always has the right to seek a unit of its choice in low-poverty census tracts.

For the individual counseling component of the home visit, the NPO staff shall be well informed about (a) public transportation routes, (b) public school systems, (c) hospital and public health clinic locations, (d) new industrial and major retail facilities, or other potential employment centers. If the assisted family receives a rental voucher, the NPO shall point out to the family the amount of rent and utilities it will be able to afford from month to month, and shall offer to help the family draw up a monthly budget for the purpose of estimating the maximum feasible rent to owner for that family.

9. Depending on the success of the landlord recruitment effort, the NPO shall be obliged to show no more than three units in low-poverty census tracts to the assisted family that are appropriate for the needs and objectives described by the family during the home visit, subject to the exceptions for credit history and housekeeping noted previously. The NPO shall drive the family head to the unit in question, pointing out community features and facilities as relevant, and introducing the family head to the landlord.

HUD does not expect that the landlord recruitment effort will always be successful at identifying three appropriate units for each family. In particular, larger families requiring more bedrooms than average may often find appropriate units only in single-family homes and duplexes; the recruitment of the owners of these units is sometimes not economically feasible for the NPO. NPOs may also not be able to locate appropriate units for families with other special needs or objectives.

10. The NPO shall share such favorable information as it has accumulated about the assisted family with property owners identified either by the family or by the landlord recruitment effort, including but not limited to favorable letters of reference, credit history, and the result of the home visit, with the object of speeding up the landlord's screening decision. NPOs shall also help to negotiate rents within the fair market rent/payment standard and rent reasonableness limits. The NPO shall warn a landlord that an outstanding housing quality standards violation will prevent the PHA's approval of the unit until the violations are corrected.

11. The NPO shall contact each assisted experimental group family in a low-poverty census tract within 90 days of the beginning of the lease term. The NPO shall offer such additional counseling and/or referral as will aid in assuring a satisfactory adjustment to the new environment. Families shall be assured of the availability of a supportive services counselor to help them if problems relating to their placement arise. Two frequent problems are: (1) Delays in transferring paperwork from one public assistance office to another, which may lead to income support checks not coming on time; (2) unexpectedly high utility hookup deposits. NPOs shall ensure that their staff are familiar with prevailing local solutions to these and other common move-in problems.

From time to time the NPO shall sponsor meetings of assisted families who live in the same area, to discuss common problems (e.g., child care, transportation) and facilitate their solution.

12. The NPO shall also contact, by mail, the owner or manager of the unit in which an assisted family is placed and assure the owner or manager of the availability of a supportive services counselor to help with problems that may arise in the family's adjustment to the new environment. Counseling and/or referral to appropriate public or private agencies involved with employment, education, health, and social services shall be provided by the NPO to assisted families or owners or managers who request assistance, in consultation with the appropriate PHA.

13. The NPO shall contact assisted families by mail approximately 120 days before each of the first two annual reexamination's and HQS inspections for their units to offer assistance.

14. Inspection of the unit for compliance with the housing quality standards of section 8, and execution of assistance contracts with owners, will be the responsibility of the PHA.

15. The NPO shall report every complaint of discrimination on the grounds of race, color, religion, national origin, sex, handicap, age or familial status arising from this demonstration to the appropriate HUD Regional/Field Office or to a state or local agency, as appropriate.

Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies. Certification Regarding Drug-Free Workplace Requirements Alternate I.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employees will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Signed by: (Name, Title & Signature of Authorized PHA Official)

(Name & Title)

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized PHA Official)

(Name & Title)

(Signature & Date)

Attachment 3—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA Official)

(Name & Title)

(Signature & Date)

BILLING CODE 4210-33-M

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Attachment 4

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
☐ c. cooperative agreement
☐ d. loan
☐ e. loan guarantee
☐ f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
☐ c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:
Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:
Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one--time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form-LLL

BILLING CODE 4810-33-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. 1352. The filing of a form if required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SL–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for addition information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardeed, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipients, include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for BID (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for the collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Disclosure of Lobbying Activities.—Continuation Sheet

Reporting Entity: _____

Page _____of _____

Attachment 5.—Certification Regarding Single Audit Act

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act (31 U.S.C. 7501–7507), OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized PHA Official)

_____

(Name & Title)

_____

(Signature & Date)

Attachment 6.—Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the joint application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

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INITIAL SCREENING CHECKLIST

PHA		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	1. The application contains a cover letter stating the total number of rental vouchers or rental certificates requested in the application and indicates whether or not the applicants are willing to accept a reduced number.
☐	☐	☐	☐	2. The application includes form HUD 52515 (including the number of two and three bedroom rental certificates) and the monthly adjusted income (see section H of HUD 52515) by bedroom size for which the PHA has submitted an application.
☐	☐	☐	☐	3. The application contains a written narrative explanation of the proposed implementation of the MTO demonstration and includes a leasing schedule, which provides for the lease-up of 100 percent of the units within 12 months of application approval.
☐	☐	☐	☐	4. The application contains a description of the Census data which shows the high-poverty census tracts where the families with children reside and specifies the assisted housing units which qualify them for assistance under the demonstration.
☐	☐	☐	☐	5. The application contains a description of the housing stock for the low-poverty census tracts in the metropolitan area.
☐	☐	☐	☐	6. The application contains a description of the housing search assistance to be provided by the NPO; a budget of sources of income and the cost of the services; and copies of letters from other sources which will provide firm commitments of financial support for the services.
☐	☐	☐	☐	7. The application contains a description of the experience of the NPO in assisting in the housing search of very low-income families. The NPO addresses its knowledge of the section 8 rental voucher and rental certificate programs.
☐	☐	☐	☐	8. The application contains separate letters from the PHA and the NPO which commits each organization to cooperate with each other in the implementation of the MTO demonstration, and with HUD in the evaluation of the demonstration.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT, AND SINGLE AUDIT ACT

PHA		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's drug-free workplace requirement set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (attachment 2).)
☐	☐	☐	☐	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the PHA or NPO obtaining more than $100,000 in budget authority. To comply, PHAs and NPOs must submit an Anti-Lobbying Certification (attachment 3) and if warranted, a Disclosure of Lobbying Activities (attachment 4).
☐	☐	☐	☐	The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR part 44; or OMB Circular No. A–133. The PHA must submit a Single Audit Act Certification (attachment 5). PHAs who are not currently in compliance with the audit requirements will not be eligible for funding.

[FR Doc. 93–19599 Filed 8–13–93; 8:45 am]
BILLING CODE 4210–33–M

federal register

Monday
August 16, 1993

Part VI

Department of Education

34 CFR Part 81
General Education Provisions Act; Enforcement; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 81

RIN 1880-AA35

General Education Provisions Act; Enforcement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ). The regulations implement amendments to Part E of the General Education Provisions Act (GEPA) made by Public Law 100-297, enacted April 28, 1988. These regulations are needed to clarify and refine the existing general procedural regulations and enhance the operating efficiency of the OALJ.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frank J. Furey, Director, Office of Hearings and Appeals, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-3644. Telephone (202) 732-1828. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 6, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (57 FR 506) that included a discussion of the proposed revisions. As a result of public comment, several changes in the provision to govern the process for interlocutory appeal to the Secretary from an administrative law judge's interim ruling were adopted. The changes include clarifying (1) the circumstances where interlocutory review is available and (2) that the Secretary will request documentation beyond what is filed with the petition for review after the petition is accepted and only if necessary. On November 30, 1992, the Secretary published final regulations for this part in the **Federal Register** (57 FR 56794) providing that certain filings in Department administrative proceedings may be submitted by facsimile. The Secretary amends §§ 81.20 and 81.42 to permit the submissions of certain filings by facsimile.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 81.20 Interlocutory Appeals to the Secretary From Rulings of an ALJ

Comments: Two comments were received on this issue. One supported the proposed amendment of 34 CFR part 81 to add § 81.20 to provide for interlocutory appeals to the Secretary of Education from certain rulings of an administrative law judge. The commenter stated that the provision will reduce the number of remands of cases to the administrative law judges and may encourage the resolution of cases through settlement.

Another comment was received suggesting three modifications. First, the commenter stated that these appeals should also be authorized if subsequent review of an administrative law judge's decision will be an inadequate remedy. The commenter stated that a party may be seriously affected by an administrative law judge's ruling, but no adequate remedy will be available at the end of the proceeding because the issue will be rendered moot.

Second, the commenter suggested that the NPRM be revised to require an administrative law judge to certify a request for interlocutory appeal before it may go to the Secretary. Third, the commenter suggested that the Secretary should decide an interlocutory appeal on the basis of the record before an administrative law judge. Hence, the Secretary would have before him the arguments presented on the issues proffered on appeal, and further written submission would not ordinarily be required after the filing of the petition for review and response.

Discussion: It is the intention of the Secretary that interlocutory review be available if no adequate remedy will be available at the end of the proceeding or the immediate resolution of the question will materially advance the proceeding and the issue involves a controlling question of law. An example of this is an administrative law judge's decision to deny a claim of privilege.

Second, the Department did not revise § 81.20 as suggested to require that an administrative law judge certify an interlocutory appeal before it goes to the Secretary. The interlocutory appeal procedure is intended to include both instances where an administrative law judge certifies the issue for review, and those in which an administrative law judge states a view that review by the Secretary is either appropriate or not appropriate.

Third, under the rule, each party submits a petition for review of the interim ruling that must be accompanied by a copy of the finding, ruling, or opinion at issue. Accordingly, the Secretary reviews the administrative record, or relevant portions, to the extent the Secretary deems that review necessary. The existing material in the record may be sufficient to enable the Secretary to reach a decision on the issues. If additional argument or documents are needed, the Secretary will request them after the filing of the petition for review and response.

Changes: Section 81.20(a)(2) is revised to clarify that the interlocutory appeals procedure is available where no adequate remedy is available at the end of the proceeding or the immediate resolution of the question will materially advance the proceeding and the issue involves a controlling question of law. Section 81.20(g) is revised to provide that the Secretary may provide the parties with reasonable time to submit written argument "or other existing material in the administrative record" on the issue subject to review.

Section 81.37 Application for Review of a Disallowance Decision

Comment: One commenter supported the amendment to this provision to require the Department of Education to provide an administrative law judge with a copy of any document identified in a disallowance decision, within ten (10) days after receipt of a copy of an application for review.

Changes: None.

Executive Order 12291

These regulations were reviewed in accordance with Executive Order 12291 They are not classified as major because they do not meet the criteria for major regulations established in that order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 81

Enforcement, General Education Provisions Act.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: May 27, 1993.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 81 as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

1. The authority citation for part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

2. Section 81.2 is amended by revising the definition of *Secretary* to read as follows:

§ 81.2 Definitions.

* * * * *

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

* * * * *

3. Section 81.14 is amended by revising paragraph (a) to read as follows:

§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations, or for approval of a settlement agreement, the ALJ may grant a stay of the proceedings upon a finding of good cause.

* * * * *

4. Section 81.18 is amended by revising paragraph (a) to read as follows:

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and makes the transcript available to the parties. Transcripts are made available to non-Departmental parties at a cost not to exceed the actual cost of duplication.

* * * * *

§§ 81.20–81.35

[Redesignated as §§ 81.30–81.45]

5. Sections 81.20 through 81.35 are redesignated as §§ 81.30 through 81.45, respectively.

6. In the list below, for each redesignated section in the left column, remove the cross-reference in the middle column and add, in its place, the cross-reference listed in the right column:

Section	Remove	Add
81.30(a)	81.21	81.31
81.31(a)	81.22	81.32
81.31(c)	81.24	81.34
81.34(a)	81.20	81.30
81.35(a)	81.21	81.31
81.35(c)	81.26	81.36
81.37(b)	81.24(b)(2)	81.34(b)(2).
81.38(b)	81.24	81.34
81.38(b)(1)(ii)	81.24	81.34
81.38(c)	81.24	81.34
81.38(c)	81.27	81.37
81.38(c)(1)	81.27(d)	81.37(d)
81.38(c)(3)	81.27	81.37
81.39(a)	81.27	81.37
81.40	81.28	81.38
81.40(c)	81.22	81.32
81.40(d)	81.23	81.33
81.45(b)(1)	81.27	81.37
81.45(b)(2)	81.34	81.44
81.45(d)	81.28	81.38
81.45(d)	81.34	81.44

7. A new § 81.20 is added to subpart A to read as follows:

§ 81.20 Interlocutory appeals to the Secretary from rulings of an ALJ.

(a) A ruling by an ALJ may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of an initial decision, grant review of a ruling upon either an ALJ's certification of the ruling to the Secretary for review, or the filing of a petition seeking review of an interim ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be accompanied by a copy of the ruling and any findings and opinions relating to the ruling. The petition must be filed with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(c) A copy of the petition must be provided to the ALJ at the time the petition is filed under paragraph (b)(2) of this section, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect that service.

(d) If a party files a petition under this section, the ALJ may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the ALJ's receipt of the petition for interlocutory review. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) (1) A party's response, if any, to a petition or certification for interlocutory review must be filed within seven days after service of the petition or certification, and may not exceed ten pages, double-spaced, in length. A copy of the response must be filed with the ALJ by hand delivery, by regular mail, or by facsimile transmission.

(2) A party shall serve a copy of its response on all parties on the filing date by hand-delivery or regular mail. If agreed upon by the parties, service of a copy of the response may be made upon the other parties by facsimile transmission.

(f) The filing of a request for interlocutory review does not automatically stay the proceedings. Rather, a stay during consideration of a petition for review may be granted by the ALJ if the ALJ has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument or other existing material in the administrative record with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a request for interlocutory review within

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15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the ALJ's ruling.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1234(f)(1))

8. Redesignated § 81.37 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding a new paragraph (c) to read as follows:

§ 81.37 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the Office of Hearings and Appeals, and, as required by § 81.12(b), shall serve a copy on the applicable Departmental official who made the disallowance decision.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision.

(c) Within 10 days after receipt of a copy of the application for review, the authorized Departmental official who made the disallowance decision shall provide the ALJ with a copy of any document identified in the notice pursuant to § 81.34(b)(2).

* * * * *

9. Redesignated § 81.41 is amended by revising paragraph (c) to read as follows:

§ 81.41 Initial decision.

* * * * *

(c) The initial decision is transmitted to the Secretary by hand-delivery or Department mail, and to the parties by certified mail, return receipt requested, by the Office of Administrative Law Judges.

* * * * *

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

10. Redesignated § 81.42 is revised to read as follows:

§ 81.42 Petition for review of initial decision.

(a) If a party seeks to obtain the Secretary's review of the initial decision of an ALJ, the party shall file a petition for review with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand delivery or by "overnight or express" mail. If agreed upon by the parties, service of a copy of the petition may be made upon the other party by facsimile transmission.

(d) Any written submission to the Secretary under this section must be accompanied by a statement certifying the date that the filed material was served on the other party.

(e) A petition for review of an initial decision must contain—

(1) The identity of the initial decision for which review is sought; and

(2) A statement of the reasons asserted by the party for affirming, modifying, setting aside, or remanding the initial decision in whole or in part.

(f)(1) A party may respond to a petition for review of an initial decision by filing a statement of its views on the issues raised in the petition with the Secretary, as provided for in this section, not later than 15 days after the date it receives the petition.

(2) A party shall serve a copy of its statement of views on the other party by hand delivery or mail, and shall certify that it has done so pursuant to the provisions of paragraph (d) of this section. If agreed upon by the parties, service of a copy of the statement of views may be made upon the other party by facsimile transmission.

(g)(1) The filing date for written submissions under this section is the date the document is—

(i) Hand delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday or a Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(e), 3474(a))

11. Redesignated § 81.43 is revised to read as follows:

§ 81.43 Review by the Secretary.

(a) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case.

(b) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(c) The Secretary may affirm, modify, set aside, or remand the ALJ's initial decision.

(1) If the Secretary modifies, sets aside, or remands an initial decision, in whole or in part, the Secretary's decision includes a statement of reasons that supports the Secretary's decision.

(2) (i) The Secretary may remand the case to the ALJ with instructions to make additional findings of fact or conclusions of law, or both, based on the evidence of record. The Secretary may also remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(ii) If a case is remanded, the ALJ shall make new or modified findings of fact or conclusions of law or otherwise modify the initial decision in accordance with the Secretary's remand order.

(iii) A party may appeal a modified decision of the ALJ under the provisions of §§ 81.42 through 81.45. However, upon that review, the ALJ's new or modified findings, if supported by substantial evidence, are conclusive.

(3) The Secretary, for good cause shown, may remand the case to the ALJ to take further evidence, and the ALJ may make new or modified findings of fact and may modify the initial decision based on that new evidence. These new or modified findings of fact are likewise conclusive if supported by substantial evidence.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(d), 3474(a))

12. Redesignated § 81.44 is amended by revising paragraph (b) to read as follows:

§ 81.44 Final decision of the Department.

* * * * *

(b) If the Secretary modifies or sets aside the ALJ's initial decision, a copy of the Secretary's decision is sent by the Office of Hearings and Appeals to the parties by certified mail, return receipt requested. The Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

* * * * *

[FR Doc. 93–19448 Filed 8–13–93; 8:45 am]
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federal register

Monday
August 16, 1993

Part VII

Congressional Budget Office

Notice of Transmittal of Sequestration Update Report for Fiscal Year 1994 to Congress and the Office of Management and Budget

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CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 1994 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1994 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 93–19796 Filed 8–13–93; 12:01 pm]

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federal register

Monday
August 16, 1993

Part VIII

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products; Interim Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93-012I]

RIN 0583-AB57

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw meat and poultry product labeling. The handling instructions address safe storage of raw product, prevention of cross-contamination, cooking of raw product, and handling of leftovers. The rule provides additional safeguards to protect consumers from exposure to possible bacterial contaminats found in raw meat and poultry products. This action is being taken in an effort to reduce the risk of foodborne illness.

DATES: Interim rule effective date is October 15, 1993; comments must be received on or before September 15, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Patrick J. Clerkin, (202) 254-2537. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2537.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this interim final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Risk Analysis

This rule will reduce the risk of foodborne illness associated with the handling, preparation, and storage of meat and poultry products. Reduced risk would lead to public health benefits that are measured in terms of reduced medical costs, reduced time loss from work, reduced pain and suffering, and loss of life.

The Department of Agriculture (USDA) has recently published estimates that the annual cost of foodborne illnesses ranges from $5,162 to $6,076 million. The estimated cost of foodborne illnesses attributable to meat and poultry products is $3,880 to $4,330 million annually. The estimated costs by pathogen are contained in Table 1.

The estimates in Table 1 were developed after the widespread outbreak of foodborne illness attributed to *Escherichia coli* 0157:H7 in undercooked hamburgers from a fast-food chain in 1993. Although the States have voted to make foodborne illness from *E. coli* 0157:H7 a disease that must be reported to the Center for Disease Control (CDC), such reporting will not be effective for some time. Thus, cost estimates for *E. coli* should be reviewed as preliminary. Even without CDC reporting, the Department continues to become aware of new cases of illness. Recent cases of illness and death from *E. coli* 0157:H7 attributable to home-prepared hamburgers are discussed elsewhere in this preamble. The gravity of many cases of illness resulting from *E. coli* 0157:H7 and the continuing evidence of consumers undercooking hamburgers creates a public health emergency that is not reflected in the numbers of Table 1. Recent reports of morbidity and mortality indicate a level of risk that has led the Department to issue this rule on an interim final basis.

TABLE 1.—ESTIMATED ANNUAL COSTS FOR SELECTED FOODBORNE PATHOGENS, 1992

Pathogens*	Cases	Deaths	Annual medical and productivity costs ($ million)	Attributable to meat and poultry	
				Percent of cases	Costs** ($ million)
Bacteria:					
Salmonella	1,920,000	960–1,920	$1,188–$1,588	50	$600–$800
Campylobacter jejuni or coli	2,100,000	120–360	907–1,016	50	450–500
Escherichia coli O157:H7	7,668–20,448	146–389	229–610	50	100–300
Listeria monocytogenes	1,526–1,581	378–433	209–233	50	100
Parasites:					
*Toxoplasma gondii****	2,090	42	2,628	100	2,630
Trichinella spiralis	131	0	0.8	100	0
Taenia saginata	894	0	0.2	100	0
*Taenia solium*****	210	0	0.1	100	0
Total			5,162–6,076		3,880–4,330

*Analysis assumes 100% of human illnesses are foodborne for *Campylobacter, Escherichia coli, Trichinella,* and the *Taenias* and assumes 96% of *Salmonella* cases, 85% of *Listeria* cases, and 50% of *Toxoplasma* cases are foodborne. Meat and poultry are assumed to be responsible for 100% of foodborne parasitic diseases and 50% of foodborne bacterial diseases.

**Estimates rounded.

***Productivity losses are high for survivors who develop mental retardation or blindness as a result of toxoplasmosis. These costs exclude toxoplasmic encephalitis infections in 2,250 to 10,200 AIDS patients annually which are a significant cause of premature death (50% of cases may also have a foodborne origin).

****Costs are estimated at less than $0.1 million, although estimates do not include costs for cysticercosis which may have an indirect foodborne transmission.

Reference: *Agricultural Outlook,* Economic Research Service, USDA, AO-197 (June 1993), pp. 32-36.

While the safe handling instructions are required for raw meat and poultry products, the instructions will also help prevent all foodborne illnesses that can be prevented by safe handling practices, both at food service facilities and in the kitchens of private residences. In other words, the health risk addressed by this rule is not measured by the costs that can be attributed simply to raw products, but rather by the costs that can be attributed to the full range of unsafe food handling practices that can lead to foodborne illness. These include: (1) Cross-contamination from raw product to a ready-to-eat product such as a tossed salad; (2) cooking to a temperature that does not kill any existing pathogens; (3) recontamination of cooked product with juices from raw product (e.g., using the same plate to carry meat to and from the barbecue grill without washing it before the trip from the grill); (4) leaving leftovers uncovered for long periods of time without refrigeration; and (5) leaving any cooked product at room temperature.

Since most foodborne illness associated with meat and poultry products can be attributed to some improper handling or cooking practice, one can conclude that this rule will address the entire $3,880 to $4,330 million of cost attributable to meat and poultry products. Outbreaks of foodborne illness attributed to contaminated, "ready-to-eat" deli cold-cuts are probably the most removed from safe handling, but even in these cases the messages on refrigerating cooked meat products have an indirect application. Assessments of CDC outbreak data have identified infected food handlers as a potential source of foodborne illness. However, in such cases, it is usually impossible to determine whether the food handler is a victim or a source.

Cost Analysis

The rule provides extensive flexibility for communicating safe handling instructions. The instructions could be incorporated onto existing labels or could be added to packages in the form of pressure-sensitive labels, i.e., self-adhesive stickers similar to address labels commonly used today. For packages that are labeled in official inspected establishments, the firms can decide whether to apply pressure-sensitive labels (self-adhesive stickers) or make permanent modifications to approved labels. Such label modifications will be generically approved.

Retail grocery stores have the same option. Fresh product is normally wrapped in clear plastic wrap and labeled with a pressure-sensitive label that includes the store name and provides spaces for net weight, unit price, and total price.

Based on discussions with manufacturers and suppliers of stickers and pressure-sensitive labels, retail stores are paying from $.01 to $.025 for existing labels. Increasing the size does not have much affect on cost. Adding the text will most likely increase the per label cost from $.0025 to $.005. This analysis assumes that all pre-packaged fresh product already includes some form of commercially prepared label and that the incremental cost of including the safe handling instructions will increase the cost by an estimated $.0025 to $.005 per label. The Department requests specific comments on these assumptions and on the cost of alternative ways of providing safe handling instructions, e.g., repeated instructions on the plastic wrapping.

The Department has developed preliminary cost estimates based on an estimate that consumers purchase approximately 15 billion retail packages of fresh meat and poultry products annually. This estimate is based on two approaches for estimating the number of retail purchases.

Today, consumers purchase between 55 and 60 billion pounds of meat and poultry on a retail weight basis. An estimated 40 billion pounds are consumed as fresh cuts as opposed to processed products such as sausage or chicken soup. An estimated 55 to 65 percent or 22 to 26 billion pounds are purchased at retail stores for household preparation. If the average retail package is 2 pounds, then there are from 11 to 13 billion packages. At 1.5 pounds per package, the estimate increases to 14.7 to 17.3 billion packages.

A second approach is based on the average weekly purchases per household. There are approximately 95 million (March 1992) households in the United States. If each household purchases 3 packages per week, the total is 14.8 billion. A range of 2 to 4 packages per week varies the estimate from 9.9 to 19.8 billion.

Using the estimate of 15 billion packages and the estimate of $.0025 to $.005 per label, the addition of safe handling instructions will cost from $37.5 to $75 million dollars. The Department has estimated that the employee time to apply labels will not change. Most of the cost will be borne by retail stores.

Net Benefit Analysis

The benefits of the rule are directly related to the effectiveness of the safe handling messages in changing consumer or food service employee behavior. Reductions in unsafe handling practices should result in proportional reductions in the number of cases of foodborne illness. That is, a change that reduces unsafe food handling practices by one percent should reduce the number of foodborne illnesses by the same level.

The Department conducted a literature search for possible studies on the effectiveness of safe handling instructions. Such instructions have been used for a wide range of consumer products from medical devices to power tools to pesticides and home cleaning chemicals. The Department is not aware of any quantitative estimate of effectiveness. Most studies focus on the relative effectiveness of different message or mediums.

In order to maximize the benefits of the rule, the Department conducted focus group research to determine which of several safe handling label formats would be most useful to consumers.[1] Six different formats using different messages, some with accompanying symbols, were evaluated. FSIS selected one format based on the preliminary reporting of that evaluation.

In order to increase the effectiveness of safe handling labels, the Department will also implement a comprehensive information and education campaign to increase consumer awareness of the new labels and also increase the level of understanding of the messages the labels are intended to convey. The combined effect of having the most useful label and the accompanying education campaign should assume a relatively high level of effectiveness.

Without a specific estimate for effectiveness in reducing illness, the Department examined the level of effectiveness that would be required to offset the cost estimates discussed above. Using high and low estimates for both costs and benefits, Table 2 shows that an effectiveness level of two percent would yield net benefits for both cost levels and that higher levels of effectiveness would result in substantial net benefits.

[1] A copy of the results of the focus group study is available for public review in the FSIS Hearing Clerk's office.

TABLE 2.—ESTIMATED BENEFITS AND COSTS

[Millions of dollars per year]

Effectiveness in preventing cases of foodborne illness (percentage)	Estimated benefits		Estimated costs		Estimated net benefits	
	Low	High	Low	High	Low	High
1	$38.8	$43.3	$37.5	$75	(36.2)	5.8
2	77.6	86.6	37.5	75	2.6	49.1
5	169	216.5	37.5	75	94.0	179.0
10	388	433	37.5	75	313.0	358.0
20	776	866	37.5	75	701.0	828.5

Executive Order 12778

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule affects a substantial number of small entities, but the economic impact will not be significant.

The rule affects both retail stores and inspected establishments. In 1991, USDA estimated there were 253,000 foodstores in the United States. These stores are categorized as follows:

Supermarkets (Sales > $2.5 million each).	23,813
Superettes (Sales < $2.5 million each).	94,647
Covenience Stores	51,000
Specialty Stores	82,895
Total	253,055

Most of the small businesses affected will be superettes and specialty stores, such as meat markets, butcher shops, and locker plants. The specialty store category includes a large number of small businesses that do not sell meat and poultry products, e.g., confectionery stores. Most convenience stores do not sell raw meat and poultry products.

There are currently approximately 6,500 federally inspected meat and poultry establishments. Based on responses to a 1992 survey related to nutrition labeling, an estimated 35 percent of 2,275 establishments ship a fresh product in a consumer-sized package. For the nutrition labeling survey, a consumer-sized package was defined as any package that could be transported in a standard shopping cart, recognizing that consumer packages now include the larger items that consumers purchase at buying clubs or wholesale stores. Consumer-sized packages will have to include the safe handling instructions.

Other establishments ship bulk packages exclusively to the hotel, restaurant, and institutional trade. Such packages will also have to be labeled with safe handling information. Retail establishments, such as supermarkets and meat markets that package products for individual household consumers, will be able to provide safe handling information by such means as pressure-sensitive labels on consumer size packages. Such labeling could be provided without creating a significant economic impact. As discussed earlier, the Department estimates that the maximum cost of bulk pressure-sensitive labels will be from $.01 to $.02 per label, but most retail stores will have the option of modifying existing pressure-sensitive labels for a fraction of that cost. The rule envisions that all labeling could be accomplished during the packaging or wrapping process, thereby minimizing any extra labor.

Inspected establishments will have the option of adding safe handling instructions to the product label by applying a separate pressure-sensitive label or making permanent modifications to approved labels for both consumer-sized packages and institutional-sized packages. Firms will presumably make that choice when the one-time cost of label modifications is less than the continuing material costs for purchasing pressure-sensitive labels.

The events of 1993 resulting from the public health hazard of *E. coli* O157:H7 has raised many issues related to responsibility, product liability, and protection of markets. Labeling rules issued for other consumer products have recognized the benefits of protecting the manufacturer. Safe handling instructions also protect markets by helping to reduce the negative publicity that accompanies the reporting of foodborne illness. Preventing illness protects markets and also protects manufacturers and distributors from the potential costs of product liability claims.

Comments

Interested persons are invited to submit comments concerning this interim final rule. Written comments should be sent to the Policy Office and refer to Docket No. 93–012I. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Mr. Patrick J. Clerkin so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in

response to this rule will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are wholesome, not adulterated, and properly marked, labeled, and packaged.

Section 2 of the FMIA (21 U.S.C. 602) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary authority to regulate meat, meat food, and poultry products to protect consumers' health and welfare. Subsection 1(n)(12) of the FMIA (21 U.S.C. 601(n)(12)) and Subsection 3(h)(12) of the PPIA (21 U.S.C. 453(h)(12)) state that the term "misbranded" applies to any product if it falls to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend, and unrestricted by any of the foregoing, such information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Section 7(d) of the FMIA (21 U.S.C. 607(d)) states: "No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted." the PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

FSIS carries out its responsibility under these laws by inspecting meat and poultry products and facilities at federally inspected establishments. As part of the inspection, FSIS routinely monitors for the presence of microbial contamination in commercially cooked or processed ready-to-eat meat and poultry products to assure that they are safe. The samples are tested in FSIS laboratories. After product leaves the federally inspected establishment, FSIS compliance officers monitor the product as it is handled, sold, and transported in commerce. State and local food regulatory agencies regulate and inspect grocery stores, restaurants, and other establishments that sell food. The reported incidence of unsafe products reaching consumers is low.

In 1972, the American Public Health Association and eight other public health and consumer interest groups brought suit in the U.S. District Court for the District of Columbia against the U.S. Department of Agriculture alleging that labels placed on meat and poultry products were false and misleading because they failed to warn consumers against the dangers of food poisoning caused by Salmonella and other bacteria. The Court of Appeals affirmed the District Court's order dismissing the action, and ruled that the Secretary of Agriculture did not abuse his discretion by choosing to undertake a consumer education program instead of requiring labeling instructions for meat and poultry products. Since that ruling, USDA has conducted a massive and increasingly targeted food safety campaign to inform consumers about safe handling and cooking of meat and poultry products. FSIS has offered a toll-free nationwide hotline, staffed by food safety specialists, and conducted campaigns, directed at such specialized audiences as food handlers, institutions, health professionals, and at-risk populations, as well as food handlers in the home. Additionally, FSIS has permitted the voluntary labeling of poultry products with safe handling instructions since 1987. FSIS does not monitor participation in voluntary labeling, however, one trade association has said that 75 percent of its members offer handling instructions on their labels.

New Policy Direction

In recent years, FSIS has been aware that a growing percentage of the U.S. population consists of persons lacking experience in food preparation and knowledge of safe food handling and storage methods. Studies of foodborne illness outbreaks have repeatedly shown improper food handling to be the frequent cause of foodborne illnesses. Improper cooling of cooked foods has been ranked as the leading factor. Other factors cited included inadequate cooking, cross-contamination, and inadequate reheating.

Studies of consumer knowledge and practices indicate that a significant number lack basic food safety information and skills, particularly with respect to the relationship between temperature and foodborne illness. A nationwide study done in 1972 (Jones and Weimer) classified 63 percent of a national sample as "high risk" based on the use of one or more food handling practices identified by the researchers as unsafe.[2] A study by Woodburn and VanDeRiet, published in 1985, concluded that cross-contamination between raw and cooked foods, inadequate cooking, and unsafe holding temperatures were frequent food handling practices in the home.[3] A 1990 study of the knowledge of food safety and home food preparation practices in 2,000 randomly selected households (Williamson, Gravani and Lawless) showed that: (1) 18 percent were not concerned or not sure about leaving cooked meat out at room temperature for over 4 hours; (2) 68 percent would leave a large quantity of cooked stew in the pot it was cooked in or would store it in a deep container; (3) 29 percent would leave cooked chicken on the counter to cool before refrigerating it; and (4) 23 percent would thaw hamburger on the countertop at room temperature.[4]

Information from CDC reveals that: (1) Undercooking was a factor in 108 of 345 (31.3 percent) home outbreaks of foodborne illness that occurred between 1973 and 1982 (data includes all foods); and (2) Cooking foods ahead, i.e., 12 hours or more before serving, was a factor in 12.8 percent of the home outbreaks.

While the Agency has long been committed to a program of consumer education to help prevent foodborne illness, as exemplified by its distribution of publications for consumers and its Meat and Poultry Hotline, it has become convinced of the need for more direct methods of placing food safety information in the hands of consumers. Thus, Agency òfficial in early January began to advocate in their speeches and writings that the mandatory safe handling instructions on the labeling of meat and poultry products was a necessary component of a program to combat foodborne illness.

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[2] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[3] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[4] A copy of this study is available for public review in the FSIS Hearing Clerk's office

The Agency's new policy direction gained additional impetus following the mid-January 1993 outbreaks of a severe food poisoning that led to four deaths among approximately 500 confirmed cases in Washington, Idaho, California, and Nevada. The outbreaks were linked to the pathogenic bacterial strain *E. coli* 0157:H7. Because most of the cases were traceable to undercooked hamburgers served at a fast-food restaurant chain, Federal and local authorities have intensified their regulatory activities. The Secretary of Agriculture has stated that USDA has a moral obligation to do everything possible to prevent future outbreaks caused by *E. coli* 0157:H7 and other pathogens. In accordance with this obligation, FSIS has developed a comprehensive pathogen reduction strategy to reduce the risk of future foodborne illnesses resulting from pathogens associated with meat and poultry products. Mandatory labeling of raw meat and poultry with safe handling instructions is part of that Pathogen Reduction Program.

On February 10, 1993, John Kinsman, *et al.*, filed suit in the U.S. District Court for the District of Columbia to enjoin the Secretary of Agriculture from affixing the official inspection legend to meat and poultry products unless it was accompanied by a label warning the consumer that the meat or poultry product may contain bacteria capable of causing infection, disease, or death and prescribing handling and cooking instructions. On May 5, 1993, USDA and the plaintiffs reached a court-sanctioned agreement under which the suit was dismissed and USDA agreed to publish its anticipated proposed regulation by August 15, 1993, to mandate safe handling labeling requirements for raw meat and poultry products.

In the recent two months, the Department has become aware of nine separate incidents where *E. coli* 0157:H7 has been the cause of illness or death or at least suspected of being the cause. The number of possible incidents and the seriousness of the effects has led the Department to conclude that the public needs additional safe handling information as soon as possible. Packages of meat and poultry products offer a readily available vehicle for reaching most of the population in a short time. The following incidents have led the Department to conclude that it is time to require safe handling information on raw meat and poultry products and require it immediately via the interim final rulemaking process.

San Diego, CA

A woman was diagnosed with *E. coli* 0157:H7. The specific cause of her disease was not determined, but it was suspected that it might be due to the consumption of a hamburger purchased at a fast food restaurant. Her illness was confirmed on July 2, 1993.

Ellensburg, WA

Five people were diagnosed with *E. coli* O157:H7 after having eaten various foods at a pot-luck supper at a Bible camp during the period July 11 through 15. The five cases were confirmed. No source was ever specifically identified.

Vancouver, WA

The health department reported three confirmed cases of *E. coli* O157:H7 in this area. The illnesses were attributed to ground beef products consumed at various fast food restaurants. There was no confirmation of *E. coli* in the product. This was not determined by the State of Washington to be an outbreak. The reason for this is the county reports having a normal background of as many as eight cases per month. Therefore, these three were not considered outside their usual findings.

Corvalis, OR

The health department reports three to five cases of *E. coli* O157:H7 as a result of undercooked hamburger purchased from a local grocery store. This outbreak was reported to USDA on July 30. It is still under investigation. The source of the ground beef has been traced from the grocery store back to a processing plant, and the Department is now determining the plants that supplied meat to the processing company.

Mendoncino, CA

FSIS contacted the Mendoncino County Health Department to follow up on reports of an *E. coli* O157:H7 outbreak in that community. We were notified that around the July 4th holiday, three to four people became ill with *E. coli* O157:H7. Product containing *E. coli* O157:H7 has been recovered from consumers. The product implicated is ground beef sold through a local grocery store. Those people who are ill reported having undercooked hamburgers over the 4th of July holiday. During this investigation there was also an incidental finding of *E. coli* O157:H7 in ground beef at another grocery store. It is not known if this product is associated with this outbreak. That product has since been traced back to a possible source, and similar product is now being withdrawn from the market. One person in this outbreak has died; however, it was an 83 year old woman with other serious health problems, and her death is not being directly related to the *E. coli*.

Maine

On July 22, 1993, FSIS contacted the state officials to follow-up on reports of an *E. coli* O157:H7 outbreak in Maine. On July 23rd the State reported to us that they thought there was a link among seven persons found positive for *E. coli* O157:H7 and the consumption of meat. There was no one single source identified in this outbreak, although there was a common link to a slaughter plant in the local area. FSIS could not find any positive meat samples, and therefore could not confirm that the slaughter plant was the source of the meat. This case is interesting in that a child, age five, died in late June from *E. coli* O157:H7. It remains unclear as to whether or not this child consumed meat or unpasteurized milk; however, the child lived on a dairy farm and it was possible she came in contact with the bacteria directly from the cattle on the farm. This farm in turn sold cattle to the slaughter plant where other people affected with this disease purchased their meat.

Indiana

An eight month old child died on July 20 diagnosed with hemolytic uremic syndrome (HUS). It is the Department's understanding that *E. coli* O157:H7 has not been isolated in this case, but it is strongly suspected as the cause of HUS.

Chicago, IL

A six year old child died on July 20 diagnosed with HUS. This child was also laboratory negative for *E. coli* O157:H7 although it is a strong consideration in the cause of his death. A meat sample from the family has been submitted for testing, and the results are not yet in.

Michigan

A three year old child died in Michigan on July 30 who was positive for *E. coli* O157:H7 and had a history of having eaten ground beef products prior to the onset of illness. Three children from another family are also all infected with *E. coli* O157:H7, and their family reports having purchased meat from the same grocery store where the meat consumed by the three year old who died was purchased. All four children had a history of having eaten undercooked ground beef. These cases are under investigation.

Under these circumstances, the Department has determined that there is

good cause to publish this interim rule without an opportunity for prior public comment. Immediate action is necessary to protect the public health. However, implementation of the interim rule is delayed for 60 days to enable the affected businesses to obtain the required labeling.

We will consider comments that are received within 30 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we were making to the rule as a result of the comments.

Parameters of Food Safety

After reviewing available information, FSIS in conjunction with the Food and Drug Administration (FDA) identified the following parameters of safe handling by consumers: how to safely store raw product and thaw frozen product; how to avoid cross-contamination during preparation; how to cook for optimal safety and palatability; and, how to store leftovers after preparation. For institutions, hot holding of prepared food is an additional parameter. (The term institutions as used throughout this preamble includes hotels, restaurants, or similar institutions.) In addition, the Agency is requiring that the safe handling instructions include a rationale statement specifying the reason why it is important to follow such instructions. The Agency believes that consumers will pay more attention to the safe handling instructions if they understand that mishandling will lead to the growth of bacteria and possibly to illness.

Labeling

Various methods have been used in the past to inform consumers of handling instructions. Such methods have included putting the instructions on the product label, on inserts, on tags attached to the product, and on point of purchase materials displayed near the product at the point of sale. Some research has indicated that such information was best communicated by means such as point of purchase information and other consumer education efforts. However, other published research has shown that the best location for handling information is on the outside of the package of meat and poultry products where it will be prominent and visible at the time of purchase. FSIS has concluded that the outside label is the most appropriate location for safe handling instructions.

The Agency strongly believes that safe handling instructions must be visible on products at the time they are purchased. The number of packaged raw products that are not large enough to accommodate these instructions and all other mandatory information is not significant. The Agency is, nevertheless, interested in receiving comments on the need for an alternative means of providing for safe handling instructions, e.g., requiring the rationale statement on the outside label with a referral statement indicating that important safe handling information is located on an insert label.

The Agency considered three options for presenting safe handling information on the label. These options included long word messages, short word messages, and short word messages with symbols or graphic representations to accompany the message. To collect information on which format would most effectively influence consumer behavior, FSIS initiated consumer focus-study research.

In the FSIS initiated consumer focus-study, most participants wanted to see safe handling instructions on raw meat and poultry products. Consumers in the study expressed a preference for the safe handling instructions to be on the package label and felt that other labeling, such as pamphlets or in-store signs, should only be used to supplement package labels. Instructions with graphic illustrations were generally preferred to those without graphic illustrations and the short word messages were preferred to the long word messages. Also, most participants of the focus group study felt that the rationale statement was a necessary part of the safe handling instructions.

Current Regulations

The Federal meat and poultry products inspection regulations currently require the placement of safe handling statements on packaged products that require special handling to maintain their wholesome condition. Sections 317.2 and 381.125 of the Federal meat and poultry products inspection regulations (9 CFR 317.2(k) and 9 CFR 381.125, respectively) provide that packaged products which require special handling to maintain their wholesome condition shall have prominently displayed on the principal display panel of the label the statement: "Keep Refrigerated," "Keep Frozen," "Perishable Keep Under Refrigeration," or such similar statement as the Administrator may approve in specific cases.

The Rule

FSIS is amending the Federal meat and poultry products inspection regulations by mandating the inclusion of safe handling instructions on the labels of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Products requiring safe handling instructions are those that are uncooked or have not been otherwise further processed to make them ready-to-eat. The Department has established required cooking temperatures for certain beef, pork, poultry, and patty products. These requirements are set forth at 9 CFR 318.17, 318.10, 381.150, 318.23, respectively. The Department has also established processing requirements for the curing or other treatment of certain meat products to control microbial activity. Some of these products are identified in part 319 of the meat inspection regulations. These cooked products and products that have been otherwise further processed so as to render them ready-to-eat are not considered to be a sufficient risk of microbial contamination to warrant the application of safe handling labels. FSIS is interested in comments about the appropriateness and inclusiveness of these categories.

The safe handling instructions should (a) inform consumers of how to safely store raw product and include an appropriate method of thawing product, if it is frozen; (b) inform consumers of how to avoid cross-contamination of food during preparation; (c) provide cooking instructions; and (d) inform consumers of how to handle leftovers including a 2-hour maximum on allowing food to stand at room temperature.

The rule provides for the use of two different rationale statements depending on where the product is labeled. One rationale statement will be used on products fully labeled at the federally inspected establishments and a second rationale statement will be used on products labeled at retail. The latter reflects the fact that the product has been further processed without continuous inspection.

The rule requires the following four safe handling statements for use on the label of products distributed to consumers: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Refrigerate

leftovers within 2 hours. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement as shown in Exhibit 1. The Agency is interested in comments and suggestions regarding the appropriateness and effectiveness of the symbols.

BILLING CODE 3410-D-C

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Exhibit 1

Safe Handling Instructions

This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

Keep refrigerated or frozen.
Thaw in refrigerator or microwave.

Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry].

Cook thoroughly.

Refrigerate leftovers within 2 hours.

BILLING CODE 3410-DM-C

The rule requires the following four safe handling statements for use on the label of products distributed to institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement as shown in Exhibit 2.

BILLING CODE 3410-DM

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Exhibit 2

Safe Handling Instructions

This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

Keep refrigerated or frozen.
Thaw in refrigerator or microwave.

Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry].

Cook thoroughly.

Keep foods hot at 140° F or higher.
Immediately after service, refrigerate leftovers.

BILLING CODE 3410-DM-C

Each of the four safe handling instructions must appear on the product label. FSIS is allowing safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribe the exact language of the safe handling instructions. The Agency is interested in comments pertaining to whether manufacturers should be permitted to use other special handling statements that are different than the aforementioned statements or any variations of such statements with the approval of the Administrator.

The safe handling instructions must accompany each product and must appear either on the principal display panel or the information panel of the product label. The safe handling information may be supplemented by point-of-purchase materials, videos, live demonstrations or other media. Examples of point-of-purchase materials to display safe handling information may include large placards (e.g., wall posters, signs, aisle hangers), pamphlets, brochures, and notebooks.

FSIS is exempting products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another Federal or State establishment will not be available to consumers or food service institutions, FSIS believes it is unnecessary to require safe handling instructions on such packaging.

Failure to provide safe handling instructions on the labeling of products subject to these regulations will be regarded as misbranding under section 1 of the FMIA and section 3 of the PPIA.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Interim Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 is amended by adding a new paragraph (l) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, sheep, goat, horse, or other equine not heat processed in a manner that conforms to the time and temperature combinations in the Table for Time/Temperature Combination For Cooked Beef, Roast Beef, and Cooked Corned Beef in § 318.17, prior to being removed from the cooking medium or that have not undergone other further processing that would render them ready-to-eat; all meat or meat products of swine identified in § 318.10(a)(1) as being classed as products that are customarily well cooked in the home or elsewhere, before being served to the consumer; and all comminuted meat patties not heat processed in a manner that conforms to the time and temperature combinations in the Table for Permitted Heat-Processing Temperature/Time Combinations For Fully-Cooked Patties in § 318.23, prior to being removed from the cooking medium; except as exempted under paragraph (l)(4) of this section.

(l)(1)(i) Safe handling instructions shall accompany every meat or meat product, specified in this paragraph (l), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label's principal display panel or on the information panel. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (l)(2) and (l)(3) of this section. The safe handling information shall be set off in a box by use of hairlines and shall be all black or one color type printed on a white or other neutral contrasting background whenever practical.

(2) (i) The labels of the meat and meat products, specified in this paragraph (l), packaged and labeled in official establishments shall include the following rationale statement as part of the safe handling instructions, "This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the meat and meat products, specified in this paragraph (l), packaged and labeled at retail shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) (i) The meat and meat products, specified in this paragraph (l), destined for household consumers shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw meat separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Refrigerate leftovers within 2 hours. (A graphic illustration of a clock shall be displayed next to the statement.)

(ii) The meat or meat products, specified in this paragraph (l), destined for hotels, restaurants, or similar institutions shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw meats separate from other foods. Wash working surfaces (including cutting boards), utensils and hands after touching raw meat. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. (A graphic illustration of a clock shall be displayed next to the statement.)

(4) Meat or meat products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (l)(1) through (l)(3) of this section.

3. Section 317.5 is amended by deleting the word "or" following the semicolon at the end of paragraph (b)(12), replacing the period at the end of paragraph (b)(13) with a semicolon followed by the word "or", and adding a new paragraph (b)(14) to read as follows:

§ 317.5 Generically approved labeling.

* * * * *

(b) * * *

(14) The addition of safe handling instructions as required by § 317.2 of this subchapter.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

5. Section 381.125 is amended by designating the current paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 381.125 Special handling label requirements.

* * * * *

(b) Safe handling instructions shall be provided for all poultry products not heat processed in accordance with the provisions of § 381.150(b) or that have not undergone other further processing that would render them ready-to-eat, except as exempted under paragraph (b)(4) of this section.

(1) (i) Safe handling instructions shall accompany the poultry products, specified in this paragraph (b), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label's principal display panel or on the information panel. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (b)(2) and (b)(3) of this section. The safe handling information shall be set off in a box by use of hairlines and shall be all black or one color type printed on a white or other neutral contrasting background whenever practical.

(2) (i) The labels of the poultry products, specified in this paragraph (b), packaged and labeled in official establishments shall include the following rationale statement as part of the safe handling instructions, "This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the poultry products, specified in this paragraph (b), packaged and labeled at retail shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed poultry. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) (i) Poultry products, specified in this paragraph (b), destined for household consumers shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw poultry. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Refrigerate leftovers within 2 hours. (A graphic illustration of a clock shall be displayed next to the statement.)

(ii) Poultry products, specified in this paragraph (b), destined for hotels, restaurants, or similar institutions shall bear the labeling statements:

(A) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(B) Keep raw poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw poultry. (A graphic illustration of a bar of soap shall be displayed next to the statement.);

(C) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(D) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. (A graphic illustration of a clock shall be displayed next to the statement.)

(4) Poultry products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (b)(1) through (b)(3) of this section.

6. Section 381.134 is amended by deleting the word "or" following the semicolon at the end of paragraph (b)(12), replacing the period at the end of paragraph (b)(13) with a semicolon followed by the word "or", and adding a new paragraph (b)(14) to read as follows:

§ 381.134 Generically approved labeling.

* * * * *

(b) * * *

(14) The addition of safe handling instructions as required by § 381.125 of this subchapter.

Done at Washington, DC, on: August 12, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19797 Filed 8–13–93; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	¹ Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
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13	(869–019–00041–1)	28.00	Jan. 1, 1993
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	16.00	Apr. 1, 1993
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
*1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–019–00058–5)	19.00	Apr. 1, 1993
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–019–00065–8)	30.00	Apr. 1, 1993
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
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800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–019–00076–3)	22.00	Apr. 1, 1993
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–019–00080–1)	17.00	Apr. 1, 1993
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869–019–00089–5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–019–00101–8)	6.00	⁴ Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–019–00102–6)	8.00	Apr. 1, 1993
27 Parts:			
*1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[6] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
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1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
*630–699	(869–019–00124–7)	14.00	[7] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
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200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
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18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
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52	(869–017–00139–2)	33.00	July 1, 1992
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61–80	(869–017–00141–4)	16.00	July 1, 1992
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100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
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19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–017–00154–6)	28.00	July 1, 1992
102–200	(869–017–00155–4)	11.00	[7] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–399	(869–017–00157–1)	23.00	Oct. 1, 1992
400–429	(869–017–00158–9)	23.00	Oct. 1, 1992
430–End	(869–017–00159–7)	31.00	Oct. 1, 1992
43 Parts:			
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1000–3999	(869–017–00161–9)	30.00	Oct. 1, 1992
4000–End	(869–017–00162–7)	13.00	Oct. 1, 1992
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
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200–499	(869–017–00165–1)	14.00	Oct. 1, 1992
500–1199	(869–017–00166–0)	30.00	Oct. 1, 1992
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46 Parts:			
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140–155	(869–017–00172–4)	12.00	Oct. 1, 1992
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500–End	(869–017–00176–7)	14.00	Oct. 1, 1992
47 Parts:			
0–19	(869–017–00177–5)	22.00	Oct. 1, 1992
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48 Chapters:			
1 (Parts 1–51)	(869–017–00182–1)	34.00	Oct. 1, 1992
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49 Parts:			
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50 Parts:			
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200–599	(869–017–00198–8)	20.00	Oct. 1, 1992
600–End	(869–017–00199–6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869–019–00053–4)	36.00	Jan. 1, 1993
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Title	Stock Number	Price	Revision Date
Complete set (one-time mailing)		188.00	1991
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Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

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Tuesday
August 17, 1993

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

When: September 15 at 9:30 a.m.
Where: Jimmy Carter Presidential Library, One Copenhill Avenue, Atlanta, GA
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Rules and Regulations

Federal Register
Vol. 58, No. 157
Tuesday, August 17, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, and 843

RIN 3206–AF65

Miscellaneous Corrections of Retirement Regulations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations correcting errors and updating tables currently contained in the regulations on retirement in Title 5, Code of Federal Regulations. These regulations correct erroneous statutory and regulatory references in the regulations concerning survivor elections under the Civil Service Retirement System (CSRS), the definition of part-time service under the Federal Employees Retirement System (FERS), and court orders affecting CSRS or FERS benefits. They also correct the language governing the effective date of changes in the "normal cost percentages" under FERS. This change is necessary to make the language of the regulations conform with both the original intended purpose of the regulations and the construction that we have given the regulations since they were issued. The regulations also update tables of salary data published by other agencies that OPM uses to compute certain FERS benefits; revise instructions to agencies concerning employee deductions in back pay situations to conform the procedure with statutory requirements; and revise the CSRS survivor election regulations to conform with recent decisions of the U.S. Court of Appeals for the Federal Circuit and the Merit Systems Protection Board.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: We have recently become aware of several errors in provisions of title 5, Code of Federal Regulations, concerning retirement benefits administered by the Office of Personnel Management. These regulations correct those errors by making the regulatory language conform with the purpose that the regulation was intended to accomplish when it was originally issued. The changes in regulatory text made by these regulations neither adopt new nor change existing OPM practices.

1. Erroneous References

Part 838 of title 5, Code of Federal Regulations, OPM's regulations on court orders affecting retirement benefits, contains several regulatory references to sections that do not exist. Most of these references are to § 843.602 which does not exist. The correct reference is to § 843.102 which contains the definition involved. These regulations correct 12 erroneous regulatory references.

Sections 838.237(b)(4) and 838.1012(b)(4) of title 5, Code of Federal Regulations, concerning payments of a court-awarded former spouse's share of an employee annuity to children in cases in which the former spouse has died and additional benefits are payable, contain incorrect statutory references. OPM's practice has been to accept court orders awarding the former spouse's share of an employee annuity to one or more children (of the employee) regardless of the age of the children. In revising the regulations on court orders affecting retirement benefits last summer, OPM was not attempting to limit payments to children who would qualify for a survivor annuity. We were merely trying to specify that only children of the employee can qualify, as has been our practice. We incorrectly referred to the statutory definition of a child in sections 8341 and 8441 which govern survivor annuity benefits and for that reason contain age restrictions. The statutory references should be to sections 8342(c) and 8424(d) of title 5, United States Code, which govern payment of the lump-sum credit as a death benefit and do not include similar age restrictions. These regulations correct that error.

The definition of part-time service in § 842.402 of title 5, Code of Federal Regulations, includes a reference to "any period of time credited as nonpay status time under 5 U.S.C. 8411(e)." Section 8411(e) applies only to credit for periods of leave without pay to serve with an employee organization. The correct reference is section 8411(d) which concerns credit during nonpay status generally. The amendment to § 842.402 corrects this erroneous reference.

2. Changes Required by Statute or Appellate Decisions

To qualify for a child survivor annuity based on the death of a parent who was an employee or retiree under CSRS, the child must have been dependent on the parent. OPM has considered all legitimate and adopted children dependent and has generally refused to consider evidence to the contrary. In the case of *Cull* v. *Office of Personnel Management*, 55 M.S.P.R. 476 (1992), the Merit Systems Protection Board decided that other claimants must be allowed to prove lack of dependency. The amendment to § 831.615 changes our rule treating legitimate and adopted children as dependent to a presumption of dependency that may be rebutted by appropriate evidence.

The amendment to § 831.627, which concerns the annual notice that Public Law 95–317 requires that OPM provide to retirees about their survivor election rights under certain sections of 8339 of title 5, United States Code, conforms that section to the recent decision in the case of *Brush* v. *OPM*, 982 F.2d 1555 (Fed. Cir. 1992). The court decided that the annual notice requirement in Public Law 95–317 applied to former spouse election rights as well as elections for current spouses based on post-retirement marriages. The annual notices that OPM has sent have included the information about former spouse election rights from the inception of such election rights even though OPM did not believe the statute required its inclusion. However, to conform with the court decision, these regulations make the regulatory provision applicable to former spouses as well as current spouses, by removing the reference in the current regulatory text that limits the regulation's application to current spouses based on post-retirement marriages.

The amendment to § 841.507(b) concerning employee deductions to be

collected from gross back pay is required to avoid conflicting instructions concerning adjustments required by statute and by OPM regulations in 5 CFR 550.805(e) to the amount of back pay due an employee under 5 U.S.C. 5584. Agencies must withhold the appropriate employee deduction; however, the amount of back pay from which the withholding can be made must be computed in accordance with the provisions of § 550.805(e).

3. Effective Date of Changes in Normal Cost Percentages

The regulatory language in § 841.408 of title 5, Code of Federal Regulations, does not plainly state that changes in normal cost percentages, the rates that agencies pay to fund the Federal Employees Retirement System, change only at the beginning of a fiscal year. The supplementary information to OPM's interim regulations (published at 51 FR 47185, December 31, 1986) on normal cost percentages contains such a statement, but the regulatory text does not.

Agencies make their budget plans more than a year in advance. To plan their budgets effectively, agencies should know their retirement costs before September of the year before they take effect. For this reason, as a general rule, we try to publish changes in normal cost percentages during July or August to allow 14 or 15 months for budgetary planning. Clearly, to allow changes published during July, August, or September to be effective during the same calendar year would be counterproductive.

When OPM last changed the normal cost percentages, the notice was published in August 1990 to be effective in October 1991, the beginning of fiscal year 1992. The timing of that notice was to allow the appropriate planning time for the changes in Government costs. Perhaps more importantly, the effective date of that change shows how we interpreted the present, poorly-worded rule. These regulations correct the regulatory text to state expressly that all changes in normal cost percentages are effective at the beginning of the first pay period of a fiscal year.

4. Updating Table

The amendment to appendix B to subpart C of part 843 merely updates a statistical table, for use in computing FERS annuity and survivor supplements, that contains data about the average total wages of all workers. This table contains no material which OPM collects, analyzes, or otherwise determines or influences. When we last published this table only data for calendar years before 1985 was available. We are adding the data for the calendar years 1985 through 1991.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of these regulations would be contrary to the public interest. These regulations only correct ambiguous, incomplete or incorrect regulatory text. They make no changes in policy or practice, and are merely technical corrections. Notice of proposed rulemaking is unnecessary and would not be in the public interest.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 841

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Alimony, Claims, Disability benefits, Government employees, Income taxes, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347; * * *

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

2. The authority citation for part 838 continues to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, and J also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; subpart H also issued under 5 U.S.C. 1104.

§§ 831.602, 831.615, 831.627, 838.237, 838.422, 838.701, 838.722, 838.732, 838.734, 838.911, 838.912, 838.921, 838.931, 838.932, 838.1012, and 842.402 [Amended]

4. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
831.602	(a)	Subpart Q of this part	Part 838 of this chapter.
831.615	(d)(1)	Considered	Presumed.
831.627	text	Code, in the event of post-retirement marriages.	Code.
838.237	(b)(4)	8341(a)(4)	8342(c).
838.237	(b)(4)	8441(4)	8424(d).
838.422	(a)(2)	838.2007(c)	831.2007(c).
838.701	(a)	843.602	843.102.
838.722	(c)(1)(ii)	843.602	843.102.
838.722	(c)(2)(iii)	843.602	843.102.
838.732	(a)	843.602	843.102.
838.732	(b)	843.602	843.102.
838.734	text	843.602	843.102.
838.911	(d)	843.602	843.102.
838.912	(b)(2)	843.602	843.102.
838.921	(b)(2)	843.602	843.102.
838.931	text	581.804(b)(2)	838.804(b)(2).
838.932	(a)	838.8804(b)(2)	838.804(b)(2).
838.1012	(b)(4)	8341(a)(4)	8342(c).
838.1012	(b)(4)	8441(4)	8424(d).
842.402	Part-time service	8411(e)	8411(d).

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

5. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Public Law 99–335; § 841.508 also issued under section 505 of Public Law 99–335; subpart J also issued under 5 U.S.C. 8469.

Subpart D—Government Costs

6. In § 841.408, paragraph (a) is revised to read as follows:

§ 841.408 Effective date of normal cost percentages.

(a) Except as provided in paragraph (b) of this section and in § 841.412, normal cost percentages stated in a notice of normal cost percentages under § 841.407 will be effective at the beginning of the first full pay period of the first fiscal year that commences at least 3 months after the date of publication of the notice.

* * * * *

Subpart E—Employee Deductions and Government Contributions

7. In § 841.507, paragraph (b) is revised to read as follows:

§ 841.507 Correction of unjustified or unwarranted personnel action.

* * * * *

(b) The agency will withhold the appropriate employee deductions from the amount of basic pay included in gross back pay giving due regard to deductions described in § 550.805(e) of this chapter.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

8. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

9. Appendix B to subpart C of part 843 is revised to read as follows:

APPENDIX B TO SUBPART C OF PART 843—AVERAGE TOTAL WAGES TABLE

Calendar year	Amount
1951	$2,799.16
1952	2,973.32
1953	3,139.44
1954	3,155.64
1955	3,301.44
1956	3,532.36
1957	3,641.72
1958	3,673.80
1959	3,855.60
1960	4,007.12
1961	4,086.76
1962	4,291.40
1963	4,396.64
1964	4,576.32
1965	4,658.72
1966	4,938.36
1967	5,213.44
1968	5,571.76
1969	5,893.76
1970	6,186.24
1971	6,497.08
1972	7,133.80
1973	7,580.16
1974	8,030.76
1975	8,630.92
1976	9,226.48
1977	9,779.44
1978	10,556.03
1979	11,479.46
1980	12,513.46
1981	13,773.10
1982	14,531.34
1983	15,239.24
1984	16,135.07
1985	16,822.51
1986	17,321.82
1987	18,426.51
1988	19,334.04
1989	20,099.55
1990	21,027.98
1991	21,811.60

[FR Doc. 93–19722 Filed 8–16–93; 8:45 a.m.]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 92–070–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and

vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On February 25, 1993, we published a document in the **Federal Register** (58 FR 11383–11389, Docket No. 92–070–1) in which we proposed to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of those fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow those importations at the request of various importers and foreign ministries of agriculture, and after determining that the fruits or vegetables could be imported under certain conditions without significant pest risk. In the proposed rule, we also proposed several editorial changes in the regulations for the sake of clarity.

We solicited comments on the proposed rule for a 45-day period ending on April 12, 1993. We received 15 comments by that date. The comments came from fruit growers, fruit distributors, State agricultural agencies, fruit growers' cooperative associations, and a citrus packers' trade association. We carefully considered all of the comments we received. They are discussed below.

Comment: The Animal and Plant Health Inspection Service (APHIS) should reconsider its proposal to allow carambola (*Averrhoa carambola*) from the Cook Islands to be imported into the United States, because there is too great a risk of introducing exotic pests, especially the fruit flies *Bactrocera melanota* (also known as *Dacus melanotus*) and *Bactrocera xanthodes*.

Response: None of the information available to APHIS indicates that carambola is a host of *Bactrocera melanota* or *Bactrocera xanthodes*. However, information contained in the "Journal of Economic Entomology" (Vol. 83, No. 1, 1990, p. 14) indicates that *Bactrocera melanota* does infest avocado, papaya, and granadilla. Based on this *Bactrocera melanota* host range information, the scarcity of any other definitive host range information, and the lack of an effective treatment for these particular fruit fly pests, we agree that our proposal to allow carambola from the Cook Islands to be imported into the United States should be withdrawn.

Comment: Inspection at the port of arrival for identified injurious plant pests is an unsound quarantine policy. The responsibility to export a pest-free product should remain at origin, while destination inspection should merely affirm the phytosanitary actions taken at origin and the commodity's freedom from pests. Now, however, inspection upon arrival is the only pest exclusion used for some commodities.

Response: We agree that exporting countries have a responsibility to ship pest-free products. There is always some risk, however, that pests could be present on imported produce, so APHIS must take measures to prevent the introduction of pests into the United States.

Inspection at the port of first arrival is never the sole means of pest exclusion for any commodity, but is only one aspect of APHIS' approach to pest exclusion. Before a fruit or vegetable is approved for importation into the United States, a pest risk analysis is conducted for the commodity. If a pest risk is found to be associated with a commodity proposed for importation, APHIS then determines what, if any, measures can be taken to allow the commodity to be imported without the risk of the pest being introduced into the United States. For example, in certain cases our regulations impose restrictions such as specific growing and shipping requirements or inspection in the country of origin. Certain commodities are required to be treated for pests at the point of origin, while in transit, or upon arrival in the United States. As a final precaution, all fruits and vegetables are subject to inspection at the port of first arrival. APHIS inspectors are aware of any potential pest risk associated with a particular commodity and conduct their inspections accordingly. We consider the measures taken in the exporting countries, coupled with the safeguards required by the regulations, to be adequate to prevent the introduction of injurious plant pests into the United States.

Comment: APHIS is proposing to allow the importation of various root crops from several countries without sampling for burrowing nematodes, reniform nematodes, or other injurious nematodes. In addition, the foliage of youngia greens, which is proposed for importation from South Korea, could harbor the foliar nematode *Aphelenchoides besseyi*, and APHIS did not include nematode sampling as a condition of entry for that commodity.

Response: In many plants, parasitic nematodes produce symptoms through their feeding on the cellular contents of the plant; breakdown of tissue is followed by the invasion of secondary fungi and bacteria, causing necrotic lesions to develop. These necrotic and decayed tissues are obvious, visible symptoms that an inspector would look for during an inspection. Similarly, there are predictable visible symptoms produced by specific nematode/host combinations (e.g., foliar nematodes typically cause leaf and stem tissues to be distorted and have associated necrotic spots). Therefore, we continue to believe that, for selected crops, visual inspection is adequate to prevent the introduction of nematodes.

Comment: APHIS is proposing to allow Mandarin orange to be imported into the United States from Bermuda without treatment. According to the book "Fruit Flies of Economic Significance; Their Identification and Bionomics" (White and Harris, 1992), the fruit fly *Anastrepha obliqua* occurs in Bermuda and is a pest of citrus.

Response: We investigated the report cited by the commenter back to its source. The White and Harris book cites "CIE Map 90," June 1988, which in turn cites "Review of Applied Entomology (Series A—Agriculture)," volume 28, page 26. That reference states, in part, "Injurious insects intercepted on imported plants include *Anastrepha fraterculus* var. *mombinpraeoptans*, Stein, in mangoes from the British West

Indies * * *" (*Anastrepha fraterculus* var. *mombinpraeoptans* is synonymous with *Anastrepha obliqua*, the name currently used.) It appears, then, that a record of the interception of *Anastrepha obliqua* on cargo coming into Bermuda was misinterpreted as meaning that the pest was present in Bermuda. APHIS continues to believe that economic species of *Anastrepha* do not occur in Bermuda.

Comment: On what scientific evidence did APHIS base its determination that the thrips *Haplothrips chinensis* does not attack strawberries in South Korea between the end of August and early June?

Response: The source of the strawberry plants is tissue culture, which the South Korean Government's Rural Development Administration (RDA) uses to produce mother plants for propagation. The strawberry plants propagated from the mother plants are distributed to the farmers by the RDA's Rural Guidance Office. The mother plants are tested to verify their virus-free status. The testing also serves to maintain high phytosanitary conditions, keeping potential vectors out and the propagated plants free of insects. On the farms, the strawberry plants are grown in vinyl houses constructed in the fields following the rice harvest. By producing the strawberries in the winter, there is less pressure from insects moving in from other crops or weeds, so it is easier to maintain clean production facilities.

Furthermore, thrips, as a pest group, are detectable by inspection. We have intercepted thrips on many different hosts from around the world, and we have numerous interception records of *Haplothrips chinensis*. Although there are literature reports that *Haplothrips chinensis* occurs on strawberries, we have never intercepted this thrips on strawberry fruits from countries where it is known to occur. The combination of the clean conditions under which the strawberries are grown, our ability to detect thrips should they be present, and the lack of interception records of this thrips on strawberries leads us to believe that the conditions placed on the importation of strawberries from South Korea are adequate to guard against the introduction of this plant pest.

Comment: Many consumers now recycle their food waste and at least attempt to propagate certain plant materials purchased for consumption, such as ginger root, other root crops, and seed from exotic fruits. This inappropriately propagated produce could find its way into commerce and thus has the potential to spread diseases or pests.

Response: APHIS has long recognized that some products imported for consumption are capable of being propagated and that individuals may from time to time, out of curiosity, plant them. While we do not believe that the extent of this practice makes it a significant pest risk, we have, in the past, explored three ways of preventing the practice: (1) Prohibit the importation of all commodities that could potentially be propagated; (2) treat all commodities capable of propagation with sprout inhibitor; or (3) devitalize the products prior to export.

We believe that the first option, prohibition, should be applied only to products that present pest risks that cannot be mitigated in other ways. We have experimented with the second option, using sprout inhibitors, but they do not offer sufficient quarantine security for high-risk products and are not registered for most products. The third option, devitalization, in most cases renders a product unacceptable for the fresh fruit and vegetable market.

Countries are becoming more and more sophisticated in their production and phytosanitary practices, so the quality of fruits and vegetables in general is increasing. Products are graded and inspected during packing and prior to export, and the products are inspected again upon arrival in the United States. All of this reduces the likelihood of a pest entering the United States. If, once a commodity has been imported into the United States, a person chooses to try to propagate that commodity, the person would likely choose the healthiest-looking material, thus further reducing the probability that a plant pest would be spread. The limited degree of risk that remains must be accepted if free trade is to be maintained.

Miscellaneous

In addition to the changes discussed above that have been made in response to comments, we are making two other changes in this final rule. In our proposed rule, we listed apples from Guyana in § 319.56–2x as requiring treatment for the Mediterranean fruit fly (Medfly) and fruit flies of the genus *Anastrepha*. While apples from Guyana do require treatment for *Anastrepha*, our mention of Medfly was incorrect. To the best of our knowledge, Medfly does not exist in Guyana. Therefore, this final rule does not include requirements pertaining to Medfly with regard to the importation of apples from Guyana.

Finally, we have reconsidered our position regarding the importation into the United States of cucurbits from South Korea, which was one of the commodities included in the proposed rule. The original pest risk assessment we conducted for cucurbits from South Korea did not uncover any evidence of fruit fly pests of cucurbits in that country, so we proposed allowing the commodity to be imported into the United States. However, after the assessment was completed and the proposed rule was published, we received a copy of a paper titled "Classification of the Fruit-pests from Korea," by Jong Jung Kwon. The paper lists the fruit fly *Bactrocera depressus* (Shiraki) as occurring in South Korea and includes cucurbits among the fruit fly's hosts. Until we can obtain additional information with respect to the biology, hosts, and distribution of *Bactrocera depressus* in South Korea, we cannot make a satisfactory determination regarding the pest risk associated with the importation of cucurbits from South Korea. We have, therefore, withdrawn that commodity from this final rule.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Effective Date

Dr. Lonnie J. King, the Acting Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making this rule effective upon signature. This rule relieves restrictions on the importation of fruits and vegetables from certain parts of the world. In addition, the shipping season for some of the fruits and vegetables is approaching, so prompt implementation is necessary for this rule to be effective in time to allow for their shipment. This rulemaking will benefit interested U.S. importers, distributors, and retailers by allowing them to import, distribute, and sell additional fruits and vegetables from certain parts of the world. It will also provide U.S. consumers with additional sources of fruits and vegetables.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This rule revises the status of certain commodities from certain countries, allowing their importation into the United States for the first time.

These changes are based on biological risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The risk assessments indicated that the fruits or vegetables listed in this rule can, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, will be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables in this proposal will be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Thus, this action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

Most of the fruits and vegetables in this rule are specialty items that are either not grown in the United States or are grown in very limited quantities. In general, U.S. fruit and vegetable producers will not be negatively affected by the increased importation of these specialty items. Consumers will benefit from the greater availability of the items at potentially lower prices. A positive net impact on the U.S. economy is expected overall.

A positive net impact on the U.S. economy is also expected with regard to those fruits and vegetables that are produced in significant quantities in the United States. These fruits and vegetables include apples, pears, grapes, and strawberries.

The average annual U.S. production of fresh apples for 1987–1989 was approximately 2.5 million metric tons (Agricultural Statistics, 1991). Zimbabwe and Guyana will be allowed to export apples to the United States, but it is unlikely that either country will export quantities significant enough to affect domestic apple producer prices. Total apple production in Zimbabwe for 1987–1989 averaged approximately 6,000 metric tons annually (FAO Yearbook, 1989). If Zimbabwe exported its entire annual apple production to the United States, it would represent only about .24 percent of total annual U.S. fresh apple production. Guyana produces less than 500 metric tons of apples annually (FAO Yearbook, 1989), which is less than .02 percent of the average annual U.S. fresh apple production.

The same situation exists for pears from Zimbabwe and grapes from Jordan. U.S. pear production is approximately 450,000 metric tons annually (Agricultural Statistics, 1991). Zimbabwe produces less than 500 metric tons of pears annually (FAO Yearbook, 1989), which is less than .11 percent of annual U.S. pear production. Additionally, any pears exported from Zimbabwe are likely to be exported to the United States in the spring, which is opposite the peak U.S. pear production season (September to December). Therefore, it is unlikely that these exports will affect U.S. fresh pear prices. Total grape production in Jordan is approximately 3 percent of U.S. fresh grape production and 0.4 percent of total U.S. grape production (FAO Yearbook, 1989).

This rule will allow South Korea to export strawberries to the United States. Total strawberry production in South Korea was estimated to average approximately 36,000 metric tons annually from 1987–1989 (FAO Yearbook, 1989). This figure represents over 9 percent of fresh U.S. strawberry production and almost 7 percent of total U.S. strawberry production (Agricultural Statistics, 1991).

South Korean strawberry production levels are high enough to influence U.S. strawberry prices if significant quantities of the commodity are exported to the United States from South Korea. However, South Korean agricultural officials have estimated that strawberry exports will be very minimal, due in part to the relatively high market price being received for fresh strawberries in South Korean markets. Therefore, the importation of strawberries from South Korea will not have a significant effect on U.S. producers of that commodity.

The aggregate impact of this rule is expected to be positive. U.S. consumers will benefit from greater availability of specialty fruits and vegetables. It is not likely that any producers, large or small, of traditional U.S. fruits and vegetables will be affected in a significant way by the easing of importation restrictions on these particular commodities. There may be a very limited number of U.S. producers growing small quantities of specialty items who may decide to no longer compete with their foreign counterparts, but it is not possible to determine how many of these smaller entities exist.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the fresh fruits and vegetables imported under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the fruits and vegetables imported under the conditions specified in this rule will not present a significant risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*),

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508),

(3) USDA Regulations Implementing NEPA (7 CFR part 1b), and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In § 319.56a, paragraph (a)(7) is revised as set forth below and paragraph (a)(12) is amended by removing the word "section" and adding the word "subpart" in its place.

§ 319.56a Administrative instructions and interpretation relating to entry into Guam of fruits and vegetables under § 319.56.

(a) * * *

(7) Arrowroot, asparagus, bean sprouts, broccoli, cabbage, carrots (without tops), cassava, cauliflower, celery, chives, cow-cabbage, dasheen, garlic, gingerroot, horseradish, kale, kudzu, leek, lettuce, onions, Portuguese cabbage, turnip, udo, water chestnut, watercress, waterlilyroot, and yam bean root, from Taiwan (Formosa).

* * * * *

§ 319.56–2 [Amended]

3. In § 319.56–2, at the end of paragraph (a), "§ 319.56–1(b)." is removed and "§ 319.56–1." added in its place.

4. In § 319.56–2t, the introductory paragraph is revised, the list of commodities is amended by revising the entry for "Korea" in the first column to read "South Korea" and moving that entry to the appropriate alphabetical location, and by adding, in alphabetical order, the following:

§ 319.56–2t Administrative instructions; conditions governing the entry of certain fruits and vegetables.

The following commodities may be imported into all parts of the United States, unless otherwise indicated, from the places specified, in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country/locality	Common name	Botanical name	Plant part(s)
•	•	•	•
Belize	Banana	*Musa* spp	Flower in bracts with stems.
Bermuda			
•	•	•	•
	Mandarin orange	*Citrus reticulata*	Fruit.
•	•	•	•
	Papaya	*Carica papaya*	Fruit.
•	•	•	•
	Peach	*Prunus persica*	Fruit.
	Pineapple guava	*Feijoa* spp	Fruit.
•	•	•	•
Cook Islands			
•	•	•	•
	Ginger	*Zingiber officinale*	Root (Prohibited entry into Puerto Rico, Virgin Islands, and Guam due to ginger weevil (*Elytroteinus subtruncatus*)).
•	•	•	•
	Lemongrass	*Cymbopogon* spp	Leaf.
	Tossa jute	*Corchorus olitorius*	Leaf.
•	•	•	•
Costa Rica			
•	•	•	•
	Yam bean	*Pachyrhizus tuberosus* or *P. erosus*.	Root.

Country/locality	Common name	Botanical name	Plant part(s)
Jamaica	Fenugreek	*Trigonella foenum-graecum*	Leaf, stem, root.
Panama	Fenugreek	*Trigonella foenum-graecum*	Leaf, stem.
St. Vincent and the Grenadines	Turmeric	*Curcuma longa*	Rhizome.
South Korea	Aster greens	*Aster scaber*	Leaf, stem.
	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root (Prohibited entry into Guam due to dasheen mosaic virus).
	Strawberry	*Fragaria* spp	Fruit (Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to, a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*)).
	Youngia greens	*Youngia sonchifolia*	Leaf, stem, root.
Taiwan	Burdock	*Arctium lappa*	Root.
Tonga	Pumpkin	*Cucurbita maxima*	Fruit.
Zambia	Pea, snow	*Pisum sativum* spp. *sativum*	Flat immature pod.

5. In § 319.56–2x, paragraph (a), the list of fruits and vegetables is amended by adding, in alphabetical order, the following:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country	Fruit or vegetable	Treatment
Guyana	Apple (fruit) *Malus domestica*	Cold treatment—for fruit flies of the genus *Anastrepha*.
Israel	Litchi (fruit) *Litchi chinensis*	Cold treatment—for Mediterranean fruit fly (A sample of fruits should be exposed to the treatment to determine fruit tolerance before commercial shipments are attempted.)
Jordan	Grape (fruit) *Vitis* spp	Fumigation with methyl bromide—for Mediterranean fruit fly and grape vine moth (*Lobesia botrana*)

Country	Fruit or vegetable	Treatment
Zimbabwe	Apple (fruit) *Malus domestica*	Cold treatment—for Mediterranean fruit fly and Natal fly.
	Kiwi (fruit) *Actinidia deliciosa*	Cold treatment—for Mediterranean fruit fly and Natal fly.
	Pear (fruit) *Pyrus communis*	Cold treatment—for Mediterranean fruit fly and Natal fly.

Done in Washington, DC, this 9th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-19542 Filed 8-16-93; 8:45 am]

BILLING CODE 3410-34-P

7 CFR Part 917

[Docket No. FV93-917-1 FR]

Fresh Pears and Peaches Grown in California; Finalize Revised Variety-Specific Size Requirements for Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that added 7 varieties of peaches to variety-specific size requirements under the marketing order handling regulations for California peaches and removed 3 varieties from those requirements. The minimum size requirements are expected to result in more suitable sizes of peaches being shipped to the fresh market, an improved market for fresh California peaches, and increased returns to California peach producers.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 917 [7 CFR part 917] regulating the handling of pears and peaches grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 250 California peach handlers subject to regulation under the order covering pears and peaches grown in California, and about 1,600 producers of peaches in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Fresh California peach shipments are regulated during the period April 15 through November 23 each year by grade, maturity, and size under California Peach Grade and Size Regulation [7 CFR 917.459]. These regulations have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Peach Commodity Committee (committee) and approved by the Secretary. The committee met on January 26, 1993, and unanimously recommended that variety-specific size requirements be established for 7 peach varieties and that such requirements be removed for 3 varieties.

The interim final rule was issued on June 7, 1993, and published in the **Federal Register** [58 FR 32591, June 11, 1993], with an effective date of June 11, 1993. That rule amended § 917.459 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended July 12, 1993. No comments were received.

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (c)(3). Upon implementation of the interim final rule, § 917.459 was amended to establish variety-specific size requirements for 7 peach varieties, and remove 3 varieties from variety-specific size requirements.

Paragraph (a)(4) of § 917.459 was revised to include the Crown Princess peach variety under the variety-specific size requirements for size 80 peaches. Paragraph (a)(5) of § 917.459 was revised to include the Early Elegant Lady, June Pride, Late Ito Red, Prima Gattie, Tra Zee and White Lady peach varieties under the variety-specific size requirements for size 72 peaches. That rule also removed the Elberta, Fayette, and Windsor peach varieties from the variety-specific size requirements specified in § 917.459 (a)(5), because less than 10,000 packages of each of these varieties were produced during the 1992 season. Peach varieties removed from the peach variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

Variety-specific size requirements are applied to a particular peach variety when that variety is first produced in commercially significant quantities during a particular season. The committee considers such quantity to be 10,000 packages during a season, the same quantity used during the past several seasons. Peach varieties that exceeded 10,000 shipped packages during the 1992 season were included in the interim final rule to be regulated under variety-specific size requirements for each fruit.

The peach varieties that were removed from the variety-specific size requirement list for 1993 season shipments were not produced during the 1992 season in quantities significant enough to warrant variety-specific size coverage. These varieties became subject to minimum size requirements for non-listed varieties, because they still warranted some size coverage. The size requirements established for non-listed varieties are generally less restrictive than those for listed varieties, but help provide retailers and consumers with the sizes of fruit they prefer.

This action is designed to maintain minimum size requirements for California fresh peaches consistent with crop and market conditions, and to help the California peach industry continue to provide those sizes of fresh fruit desired by consumers. The size requirements for those peach varieties not mentioned in the interim final rule were not changed.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** [58 FR 32591, June 11, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will appear in the Code of Federal Regulations.

2. Accordingly, the interim final rule amending the provisions of § 917.459, which was published in the **Federal Register** [58 FR 32591, June 11, 1993], is adopted as a final rule without change.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19671 Filed 8–16–93; 8:45 am]

BILLING CODE 3410–02–P

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV93–981–2IFR]

Almonds Grown in California; Interim Final Rule To Revise the Administrative Rules and Regulations Concerning Creditable Promotion/ Advertising Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on revisions to the administrative rules and regulations established under the Federal marketing order for California almonds. This action will change the focus of the Almond Board of California's (Board) advertising program by broadening the scope of creditable promotion/ advertising activities available to handlers and expanding the Board's ability to engage in a significant generic promotion/advertising program. It will also contribute to more effective and efficient use of industry promotion/ advertising funds. The Board, the agency responsible for local administration of the order, recommended this action.

DATES: This interim final rule is effective August 17, 1993. Comments received by September 16, 1993 will be considered prior to finalization of the rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX Number (202) 720–5698. Comments should reference the docket number, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the

order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the almond handlers and producers may be classified as small entities.

This action revises § 981.441 of Subpart—Administrative Rules and Regulations and is based on a recommendation of the Board and other available information. Authority for marketing promotion, including paid advertising, was added to the almond marketing order in 1972. This authority allows handlers to receive credit against an assessment obligation for their own paid promotional activities, and also provides for generic promotion to be conducted by the Board on behalf of the industry.

Under the current program, handlers may offset a portion of their assessment obligation with their individual paid advertising and promotional activities. These creditable activities are delineated in the rules and regulations issued under the marketing order. Specific procedures and documentation requirements are also contained in the rules and regulations.

When this program was initiated, there were a relatively small number of handlers, and a relatively large portion of the annual almond production was sold on store shelves. The advertising program was structured with a strong emphasis on handler advertising and promotion, with a complementary generic program conducted by the Board.

Since that time, almond production has increased dramatically. Markets have expanded, and the number of handlers has increased. The relative proportion of each year's almond crop sold to ingredient manufacturers in bulk quantities has likewise increased. Due to this major structural change, the industry believes the current advertising program is no longer the most effective method of promoting California almonds. Although the creditable advertising regulations have changed over the years, some industry members believe the program disproportionately benefits a particular segment of the industry. There is also a belief that the creditable advertising regulations are restrictive and result in ineffective and inefficient expenditure of advertising funds. The current consensus in the industry is that future promotion/advertising efforts should place more emphasis on a generic program, while recognizing that promotion/advertising by individual handlers remains important.

With the changing industry structure, the resulting changes to existing advertising regulations has placed an increased administrative burden on the Board's staff. For example, handlers can receive credit for advertisements conducted in the crop year following the year in which the assessment obligation is incurred. If they choose not to advertise and apply for credit, the monetary obligation reverts to the Board. Maintaining a record of each handler's account and obligations is increased significantly when factoring in this "carryover" provision. Questions arise as to which crop year the advertising applies and whether the appropriate documentation requirements were adhered to, depending on which crop year applies. Accordingly, compliance actions pertaining to delinquent assessments can be complicated, and at the very least, may be delayed significantly because of the "carryover".

Another aspect of the current program allows handlers who pay money directly to the Board by specified dates the benefit of receiving 150% credit against their promotion/advertising portion of their assessment obligation (in effect, a 33% discount). This was designed to encourage handlers without individual promotion/advertising programs to contribute to the Board's generic promotion program. However, some in the industry believe that handlers utilizing this provision do not pass the "discount" on to growers (Board assessments are typically deducted from handler's payments to growers). If true, this would result in handlers profiting from monies charged to growers for advertising purposes.

The current creditable advertising program lends itself to assessment collection difficulties. Under the current system, handlers are required to pay an assessment to the Board only after they choose not to conduct their own advertising. Payment is not required until the end of the crop year, or, in cases where handlers file an extension, approximately six months after the end of the crop year. Thus, often the Board must attempt to collect the assessment well after the crop year has concluded.

Another aspect of the advertising program that has received criticism in the past is that the types of advertising and promotional activities available for credit may have been too restrictive to benefit all handlers. In addition, there have been complaints that the generic promotion program administered by the Board has not been as effective as the industry would prefer.

For these reasons, the Board and its Public Relations and Advertising Committee met on several occasions in an attempt to develop a promotion/advertising program that will be widely accepted as beneficial to the entire industry. As a result of these efforts, the Board recommended, by a 9–1 vote at its April 20, 1993, meeting, an action to substantially revise the creditable promotion/advertising program in conjunction with expanding the Board's ability to engage in a significant generic advertising and promotion program. The new program incorporates several components of the previous program with new concepts developed by the industry.

The sole Board member opposing the recommendation is generally opposed to the concept of creditable advertising programs, believing that all handlers should be required to fund the generic program equally and any advertising done on their own should be at their discretion and cost.

Some of the major components of the new program follow.

All handlers will be assessed equally, and those so choosing will receive

credit from the Board for their promotional activities in the form of a refund after they submit appropriate proof of performance (documentation). This form of crediting is termed "Credit-Back". Criteria outlining acceptable documentation is contained in the regulations and includes information necessary to ensure the activity is creditable and was conducted.

Activities qualifying for Credit-Back will be expanded to allow a broader range of options including marketing research, in-store demonstrations, trade fairs, seminars and exhibits, couponing, sponsorships, printing costs, trade and consumer product publicity, direct mail, sales and marketing presentation kits, and 50/50 advertising with retailers. These new activities will provide handlers with a wider range of promotional opportunities for which they may receive credit. As mentioned earlier, previous creditable activities were criticized as being too restrictive to benefit all handlers. The added activities are all widely accepted and used forms of marketing promotion.

Qualified promotional activities in foreign markets conducted pursuant to a contract with the USDA's Foreign Agricultural Service (FAS) and/or the California Department of Food and Agriculture (CDFA) will also be eligible for Credit-Back. These activities will be eligible for credit only to the extent that they are not reimbursable by FAS or CDFA. Handlers must certify that such activities are not reimbursable. The former regulations contained a similar provision.

Certain types of advertising will not be eligible for Credit-Back. Advertisements in publications that target the almond farming or grower trade will not be eligible. Those publications' articles and advertisements primarily concern agricultural or food production topics. The Board feels this medium for advertising is not an effective method of promoting almonds, since readers of these publications are well aware of almonds. In addition, outdoor advertising in almond producing counties will not be eligible for Credit-Back, except when such advertising directs consumers to a handler operated outlet for almonds. The Board feels that most outdoor advertising in almond-producing counties is directed primarily at growers and is not an effective method of promoting the consumer sales of almonds. These provisions are consistent with a previous Board recommendation that resulted in publication of a final rule on June 15, 1993, which revised the former program regulations.

Under the new system, handlers will be eligible to receive Credit-Back for 50 percent of their individual expenditures on qualified promotional activities. In other words, handlers will be required to expend $2.00 in order to get $1.00 Credit-Back from the Board. This practice recognizes that handler advertising is beneficial to the industry, but is also inclined to be more beneficial to individual handlers. The previous regulations contain a similar provision.

In order to be eligible for Credit-Back, handler promotional activities must be conducted in the crop year to which the assessment applies. This makes good advertising sense, because the most effective time to promote a product is when the supply and consumption patterns are heaviest. In addition, there are administrative and compliance problems associated with carrying over obligations and activities into a subsequent crop year.

Handlers will be eligible to receive credit only up to the amount of assessments paid into the Credit-Back program. Credit received will not be transferrable between handlers, as this would create an unnecessary administrative burden on Board staff and serves no useful purpose. The primary reason for this provision is for clarification, since there are various other marketing order obligations that are transferrable.

Several of the provisions relate to administration of the program. Handlers will be required to declare their intent to utilize the Credit-Back system within 15 days of the beginning of the crop year. They will provide notification to the Board, either in writing or telephonically, and to what extent they want to utilize the program. This deadline is intended to help the Board plan its finances for the crop year, especially as they relate to the Board's generic promotion program. However, in the event this program is not implemented at the beginning of the 1993–94 crop year, the Board recommended extending this date to October 15. This recommendation was made unanimously at a May 18, 1993, Board meeting. By extending this date on a one-time basis, the Board may not fully realize the early planning benefits in the first year. However, it is willing to sacrifice this inconvenience during the period of program transition.

Handlers will be required to file an application with the Board to obtain pre-approval of creditable activities in order to facilitate program operations by avoiding disputes regarding what constitutes a creditable activity. This will allow handlers to determine if their proposed activity is creditable prior to expending funds, especially during the transition phase from the old to new program. The Board staff will assign a pre-approval number for each activity, which will be referenced upon final approval of the activity. This may place an additional administrative burden on Board staff initially, but will save time later in the process as claims are submitted for final approval.

After promotional activities are conducted, handlers must submit claims to the Board in writing to be eligible for Credit-Back payment. Documentation in the form of invoices, cancelled checks, a pre-approval number, and physical evidence of the activity must be submitted along with the claim. An additional element for eligibility in the Credit-Back program requires handlers to file at least one claim prior to January 15 of the applicable crop year. This is intended to eliminate the potential practice of handlers stating their intent to participate in the program, then not conducting any creditable activities. Such a practice would hinder the Board's planning efforts. This requirement is not expected to place a burden on handlers, since most of the promotional activity occurs in the autumn months, when supply and consumption are greatest. Board staff will make a final review of claims to ensure all applicable criteria have been met before Credit-Back payments are issued.

Handlers will be required to submit, within 15 days of the end of the crop year, a statement in writing of all creditable promotional commitments outstanding at the close of the crop year The purpose of this is to allow the Board to close out it's accounting records at the end of the season.

Payments to handlers for their creditable activities will be made by the Board on February 15, April 15, June 15, and 30 days after submission of final claims for the applicable crop year. Handler claims must be submitted at least one month in advance to receive credit on those dates. This provides both handlers and the Board a schedule for planning purposes.

Finally, an appeals process will be specified to provide handlers recourse in the event a claim for a promotional activity is deemed not creditable. Handlers may request the Public Relations and Advertising Committee to review Board staff decisions concerning denied claims. If not satisfied with that committee's decision, handlers may request the Board to review the issue. Finally, handlers may request the Department to review the Board's decisions. The Department maintains

the right to review all decisions at any point of this process.

The changes were recommended with the intent of enabling the industry to develop a promotion/advertising program which better reflects current needs due to changed industry structure and marketing practices.

The program is expected to eliminate the potential problem of handlers failing to pass on the "discount" incentive of timely assessment payments to their growers. Growers will thus receive the full advertising benefit of the assessments which are deducted from their payment from handlers.

It is expected that program compliance will improve as a result of the widespread industry support for these changes. In addition, as a result of improved administration of the program, compliance should improve. Handlers utilizing the Credit-Back provision will be required to submit documentation prior to receiving a refund of assessments paid to the Board. This will provide a financial incentive for handlers to comply with the promotion/advertising program.

These changes are expected to enable the industry to develop an advertising and promotion program that will further increase worldwide demand for California almonds, while providing for more efficient and effective program administration.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received in response to this action, will be considered before finalization of this rule.

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0071.

The Board would like the changes to be effective in time for use in the 1993–94 crop year, which began on July 1, 1993. The Board believes this action will be better administered if implemented at the beginning of the crop year. However, the Board believes it can adequately administer the program for the 1993–94 crop year if the changes are implemented within a reasonable time after the beginning of the crop year.

After consideration of the Board's recommendations and other relevant information presented, it is found that the changes as set forth in this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action should be effective as soon as possible as the 1993–94 crop year began on July 1, 1993; (2) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule; (3) this action was discussed at a public meeting and was recommended by the Board; and (4) this action provides handlers with additional flexibility in the types of promotion/advertising allowed for crediting.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.441 is revised to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) In order for a handler to receive credit for his/her own promotional activities from his/her pro rata portion of advertising assessment payments, pursuant to § 981.41(c), the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted in the form of a payment from the Board, hereinafter termed "Credit-Back." Credit-Back will be granted in an amount not to exceed 50 percent of a handler's proven expenditures for qualified activities.

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses.

(c) The Board shall grant Credit-Back for qualifying activities only to the handler who performed such activities and who filed a claim for Credit-Back in accordance with this section.

(d) Credit-Back shall be granted only for qualified promotional activities which are conducted and completed during the crop year for which Credit-Back is requested.

(e) The following requirements shall apply to Credit-Back for all promotional activities:

(1) Credit-Back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for Credit-Back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities. To this end, the Board may issue guidelines for qualifying activities from time to time as warranted. For activities in markets other than the United States and Canada, paragraph (e)(5) of this section shall also apply.

(2) The clear and evident purpose of each activity shall be to promote the sale, consumption or use of California almonds, and nothing therein shall detract from this purpose.

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising or sponsorships in the California almond growing counties of Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus and Tulare counties, except that, outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back for travel expenses will not be allowed in any case.

(i) *Paid advertising directed to end-users, trade or industrial users.* Credit-Back shall be granted for money spent on paid advertising space or time including, but not limited to, newspapers, magazines, radio, television, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity;
(C) Printing costs for promotional material;
(D) Direct mail printing and distribution;
(E) Retail in-store demonstrations;
(F) Point-of-sale materials (not including packaging);
(G) Sales and marketing presentation kits;
(H) Trade fairs and exhibits;
(I) Trade seminars;
(J) 50/50 advertising with retailers;
(K) Couponing (printing, distribution and handling costs only);
(L) Purchase of Board produced promotional materials; and
(M) Sponsorships.

(iii) For any qualified activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or the words "California Almonds", the amount allowed for Credit-Back claim shall reflect that portion of the activity represented by almonds, or the handler's actual payment, whichever is less.

(iv) When products containing almonds are promoted, the amount allowed for Credit-Back claim shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. In addition, the product must display the handler's name or brand, or the words "California Almonds" on the primary, face label.

(5) Credit-Back for promotional activities in a foreign market shall be granted at 50 percent of a handler's unreimbursed expenditures for qualified activities in any foreign market, if the handler is promoting pursuant to a contract with the Foreign Agricultural Service, USDA (FAS) and/or the California Department of Food and Agriculture (CDFA). Such activities must also meet the requirements of paragraphs (e) (1), (2), (3), (4) and (6) of this section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) Within 15 days after start of the applicable crop year, a handler must declare to the Board his/her intention to apply for Credit-Back funds, and for what amount of his/her assessment funds he/she intends to seek Credit-Back: Provided, That, with respect to the 1993–94 crop year, handlers must declare their intent no later than October 15, 1993. If a handler's intent is not declared on or before that time, there will be no further consideration of Credit-Back claims from that handler for that entire crop year.

(ii) If a handler has declared his/her intention to apply for Credit-Back funds, but does not submit any approved activity claims by January 15 of the crop year, he/she will be ineligible to apply for any Credit-Back funds for that entire crop year.

(iii) After a handler has declared to the Board his/her intention to apply for Credit-Back funds, he/she must get pre-approval from the Board in writing for each activity he/she plans to conduct. Once pre-approval is received, the handler can then conduct the activity and, upon completion, submit a claim to the Board.

(iv) All claims submitted to the Board for any qualified activity must include:

(A) Reference to the pre-approval number for the activity assigned by the Board;

(B) A description of the activity and when and where it was conducted;

(C) Copies of all invoices from suppliers or agencies;

(D) Copies of all canceled checks issued by the handler in payment of these invoices; and

(E) An actual sample, picture or other physical evidence of the activity.

(v) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (c)(6)(vi) of this section. To receive payment on these dates, handler claims must be submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(vi) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after close of that crop year. Final claims must be submitted within 105 days after the close of that crop year.

(f) *Appeals.* If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19666 Filed 8–16–93; 8:45 am].

BILLING CODE 3410-02-P

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7 CFR Parts 1033, 1036 and 1049

[Docket Nos. AO–166–A61; AO–179–A56; and AO–319–A39; DA 90–015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Federal milk marketing orders. For all three orders, the amendments implement a plan for pricing milk on the basis of its protein, as well as butterfat, components. The amendments also include adjustments to the protein price based on the somatic cell count of producer milk.

Pooling standards for producer milk and pool distributing and supply plants are made more uniform between the three markets. Amendments to the Ohio Valley and Indiana orders will price some diverted milk at the location of the plant from which it is diverted. The level of the Indiana Class I price differential is reduced, and the location adjustment provisions of the Indiana order are amended.

The maximum allowable marketing service assessment rates for all three orders are increased, and the maximum allowable administrative assessment

rate under the Eastern Ohio-Western Pennsylvania order is increased to the level allowable under the other two orders.

The amendments are based on proposals by handlers considered at a public hearing held August 14–17, 1990, in Columbus, Ohio, and August 28–29, 1990, in Indianapolis, Indiana. The changes are necessary to reflect current marketing conditions and to insure orderly marketing in the affected marketing areas.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

This final rule, which has been reviewed under Executive Order 12778, Civil Justice Reform, is not intended to have a retroactive effect. It will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued July 25, 1990; published July 31, 1990 (55 FR 31056).

Notice of Reconvened Hearing: Issued August 21, 1990; published August 23, 1990 (55 FR 34569).

Recommended Decision: Issued July 30, 1992; published August 13, 1992 (57 FR 36536).

Extension of Time for Filing Exceptions, Issued September 14, 1992; published September 17, 1992 (57 FR 42899).

Final Decision: Issued June 9, 1993; published June 17, 1993 (58 FR 33347).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders, as hereby amended; and

(3) The issuance of the order amending each of the specified orders is favored by at least two-thirds of the producers who participated in a referendum and/or who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

Order Relative to Handling

On and after October 1, 1993, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR parts 1033, 1036 and 1049 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. Section 1033.7 is amended by revising the introductory text of paragraph (b), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), adding a new paragraph (b)(2); and changing the words "50 percent" in the introductory text of paragraph (c) and in paragraph (c)(2) to "35 percent"; to read as follows:

§ 1033.7 Pool plant.

* * * * *

(b) A supply plant from which 35 percent or more during the months of January through November, and 30 percent in December, of the receipts at such plant from producers (including

producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1033.9(c) is delivered by transfer or diversion as fluid milk products except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) * * *

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants;

* * * * *

2. In § 1033.13, paragraphs (e)(2), (e)(3) and (f) are revised to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) * * *

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

* * * * *

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that for the months of March through August the uniform price applicable to milk of producers located within the State of Ohio or the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw that is diverted to a plant located outside the marketing area and outside the State of Ohio shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided,* that 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable during the preceding months of September through February.

3. Section 1033.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1033.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1033.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1033.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein, and somatic cell count as the market administrator may prescribe; and

* * * * *

4. Section 1033.31 is amended by revising paragraph (a)(2), the second sentence of paragraph (b), and paragraph (c), to read as follows:

§ 1033.31 Payroll reports.

(a) * * *

(2) The total pounds of milk and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

(b) * * * Such payroll shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat and milk protein content thereof, the somatic cell count of the milk, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

5. Section 1033.32 is amended by revising paragraphs (e)(2), (e)(4) and (e)(5), and paragraph (f) to read as follows:

§ 1033.32 Other reports.

* * * * *

(e) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein content, and its somatic cell content;

* * * * *

(4) The total pounds of skim milk, butterfat and milk protein, and the somatic cell count of milk received from a handler described in § 1033.9(c); and

(5) The total pounds of skim milk, butterfat and protein in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds, butterfat and milk protein included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1033.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1033.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1033.43 is amended by revising paragraph (d) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.42(a) and the value thereof shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60(a), (b), (h), (i) and (j).

* * * * *

8. Section 1033.50 is amended by revising the section heading, revising the introductory text, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1033.50 Class and component prices.

Subject to the provisions of § 1033.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1033.73 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1033.73 times 35, and rounding the result to the nearest whole cent.

9. Section 1033.53 is revised to read as follows:

§ 1033.53 Announcement of class and component prices.

The market administrator shall announce on or before: (a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month;

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1033.50(d), (e) and (f) for the preceding month; and

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.50(b).

10. The undesignated center heading before § 1033.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS".

11. Section 1033.60 is revised to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1033.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1033.9(b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class I, both multiplied by the difference between the Class I price (adjusted pursuant to § 1033.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class II, both multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1033.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1033.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1033.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1033.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1033.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1033.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1033.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (i) through (iv), and the corresponding step of § 1033.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of

the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (v) and (vi) and the corresponding step of § 1033.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(11) and the corresponding step of § 1033.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1033.44, and the pounds of skim milk in Class I bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the skim milk price for the month computed pursuant to § 1033.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, and the pounds of protein in Class II and Class III skim milk in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the protein price for the month, computed pursuant to § 1033.50(e) and adjusted pursuant to § 1033.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to § 1033.44, and the pounds of butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the butterfat price for the month computed pursuant to § 1033.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1033.76(c).

12. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (a) through (g) and (k) and (l), excluding the values in paragraphs (a) and (b) associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1033.74(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

13. New sections 1033.62 through 1033.66 are added under the undesignated center heading "Differential Pool and Handler Obligations", as follows:

§ 1033.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (h) and (i), excluding the values associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1033.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1033.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1033.61 to the basic formula price for the month.

§ 1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1033.61, the producer protein price computed pursuant to § 1033.62, and the uniform price computed pursuant to § 1033.63(a).

§ 1033.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1033.61 and adjusted pursuant to § 1033.74, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1033.62 and adjusted pursuant to § 1033.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1033.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1033.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

14. In § 1033.70, paragraph (b) is revised to read as follows:

§ 1033.70 Producer-settlement fund.

* * * * *

(b) The difference between the amount added pursuant to § 1033.61(d) and the amount resulting from the subtraction pursuant to § 1033.61(f) shall be deposited in, or withdrawn from, this fund, as the case may be.

15. Section 1033.71 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1033.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) through (l) and the value of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) as determined pursuant to § 1033.60(a), (b), (h), (i) and (j), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

* * * * *

16. Section 1033.72 is amended by revising paragraphs (b), introductory text, and (d)(2) to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) of the amount determined pursuant to § 1033.65, less:

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

17. Section 1033.86 is amended by revising paragraph (a) to read as follows:

§ 1033.86 Deduction for marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is amended by revising paragraph (b) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

* * * * *

2. Section 1036.13 is amended by revising the reference "(e), (f) and (g)" in paragraphs (a)(3) and (b) to "(e) and (f)", revising paragraphs (e), (f) and (h) to read as follows, and removing and reserving paragraph (g):

§ 1036.13 Producer milk.

* * * * *

(e) During March through August, subject to the conditions of paragraph (f) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) Diverted to a nonpool plant for the account of a handler operating a pool plant or for the account of a handler described in § 1036.9(c), subject to the following conditions:

(1) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(2) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(3) During each of the months of September through November not less than one day's production of a producer must be physically received at a pool plant;

(4) Milk of a producer shall not be eligible for diversion unless the milk of such producer has been physically received at least once as producer milk at a pool plant and the dairy farmer has not been pooled on another federal order since that time;

(5) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(6) Any milk diverted in excess of the limit set forth in paragraph (f)(1) and (f)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(7) Milk diverted to another order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(g) [Reserved]

(h) Milk diverted pursuant to paragraphs (a)(3), (a)(4) and (b) of this section shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.

3. Section 1036.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1036.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1036.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein, and somatic cell count as the market administrator may prescribe; and

* * * * *

4. Section 1036.31 is amended by revising paragraph (a)(2) and paragraph (b)(3) to read as follows:

§ 1036.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

(b) * * *

(3) The average butterfat and milk protein content, and the somatic cell count, of such milk;

* * * * *

5. Section 1036.32 is amended by revising paragraph (c)(2) and paragraph (d) to read as follows:

§ 1036.32 Other reports.

* * * * *

(c) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein contents, and its average somatic count;

* * * * *

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds, butterfat and protein, and somatic cell count included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1036.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1036.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1036.50 is amended by revising the section heading, revising the introductory text, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1036.50 Class and component prices.

Subject to the provisions of § 1036.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1036.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class

III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1036.74 times 35, and rounding the result to the nearest whole cent.

8. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1036.50(d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1036.50(b).

9. The undesignated center heading before § 1036.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS"

10. Section 1036.60 is revised to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1036.9(a), (b), and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1036.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1036.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1036.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1036.44(a)(15) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1036.44(a)(15), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44(a)(15) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(15) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1036.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7)(i) through (iii), and the corresponding step of § 1036.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7)(iv) and (v) and the corresponding step of § 1036.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1036.44 multiplied by the skim milk price for the month computed pursuant to § 1036.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1036.50(e) and adjusted pursuant to § 1036.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to § 1036.44 multiplied by the butterfat price for the month computed pursuant to § 1036.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than

the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1036.76(c).

11. Section 1036.61 is revised to read as follows:

§ 1036.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1036.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1036.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price".

12. Section 1036.62 is revised to read as follows:

§ 1036.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1036.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

13. New sections 1036.63 through 1036.66 are added under revised undesignated center heading "Differential Pool and Handler Obligations" to read as follows:

§ 1036.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1036.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1036.65 and 1036.73.

§ 1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 13th day after the end of the month the weighted average differential price computed pursuant to § 1036.61, the producer protein price computed pursuant to § 1036.62, and the uniform price computed pursuant to § 1036.63(a).

§ 1036.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1036.61 and adjusted pursuant to § 1036.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1036.62 and adjusted pursuant to § 1036.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1036.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1036.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

14. Section 1036.71 is amended by revising the introductory text of paragraph (b), paragraph (b)(1), and paragraph (c) to read as follows:

§ 1036.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month the value of such handler's milk pursuant to § 1036.60(a) through (l), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1036.60(g);

* * * * *

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by the sum of the following:

(1) The quantity of such receipts classified as Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price (adjusted pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price at the receiving plant (adjusted pursuant to § 1036.52) and the Class III price;

(2) The quantity of such receipts classified as Class II pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price;

(3) The quantity of skim milk in such receipts classified as Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price for the month computed pursuant to § 1036.50(f);

(4) The pounds of protein in the skim milk in such receipts classified in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of skim milk from a pool plant operated by a cooperative association, or from a cooperative association in its capacity as a handler pursuant to § 1036.9(c);

(5) The pounds of butterfat in all three classes as determined pursuant to § 1036.44(b)(15) multiplied by the butterfat price for the month computed pursuant to § 1036.50(d); less

(6) Any payments made by the handler pursuant to paragraphs (a)(2) and (a)(3) of this section for such month.

* * * * *

15. Section 1036.72 is revised to read as follows:

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant for location pursuant to § 1036.75, the protein price before adjustments are made for somatic cell count, and the butterfat price.

16. Section 1036.73 is amended by revising paragraphs (a)(2) introductory text, (b)(2), (d)(2) and (d)(3) to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month, to each producer not less than the value determined pursuant to § 1036.65, less the following amounts:

* * * * *

(b) * * *

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be in the amount determined for such milk pursuant to § 1036.65, less the payments made pursuant to paragraph (b)(1) of this section.

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content and somatic cell count of the milk for which payment is being made;

(3) The minimum rates of payment required by the order and the rates of payment used if such rates are other than the applicable minimum rates;

* * * * *

§ 1036.85 [Amended]

17. Section 1036.85 is amended by changing the words "3 cents" in the introductory text to "4 cents."

§ 1036.86 [Amended]

18. Section 1036.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.3 is revised to read as follows:

§ 1049.3 Route disposition.

"Route disposition" means a delivery (including that packaged for another person, another distributing plant, disposition from a plant store or from a distribution point, and distribution by a vendor or vending machine) of any packaged fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

2. Section 1049.6 is revised to read as follows:

§ 1049.6 Supply plant.

Supply plant means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product and is physically unloaded and received into a distributing plant during the month.

3. Section 1049.7 is amended by revising paragraphs (a) and (b), redesignating present paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 1049.7 Pool plant.

* * * * *

(a) A distributing plant with:

(1) Total route disposition of not less than 40 percent during each of the months of September through February, 35 percent during each of the months of March through July, and 30 percent during the month of August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other pool or other Federal order plants;

(ii) A plant meeting such percentage requirement for the two immediately preceding months and the requirement of paragraph (a)(2) of this section for the current month may remain qualified under this paragraph in the current month; and

(iii) A plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June and July immediately following if the plant meets the requirements of paragraph (a)(2) of this section;

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such

route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

(b) A supply plant from which not less than 40 percent during the months of September through February and not less than 35 percent during the months of March through August, of the Grade A milk received from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph. Pool supply plant qualification shall be subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants; and

(3) The shipping percentage requirements of this paragraph may be increased or decreased temporarily by up to 10 percentage points by the market administrator if such person finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision on either such person's own initiative or at the request of interested persons. If the investigation shows that a temporary revision might be appropriate, the market administrator shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed temporary revision.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or by meeting the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

* * * * *

4. Section 1049.13 is revised to read as follows:

§ 1049.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1049.9(c) under the conditions set forth therein;

(c) Received by a handler described in § 1049.9(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1049.9(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that the uniform price applicable to milk that is diverted to a plant located outside the areas specified in § 1049.52(a) (1) through (3) shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm: *Provided*, That 65 percent or more of such producer's milk is delivered to a plant or plants in an area specified in § 1049.52(a) (1) through (3) or to a plant at which the same or a higher uniform price is applicable.

5. Section 1049.30 is amended by revising paragraphs (a)(1), (a)(6), and (c), to read as follows:

§ 1049.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants, showing the pounds of milk, butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(6) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route dispositions and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants, the butterfat and milk protein content of such milk, and the somatic cell count of the milk;

* * * * *

(c) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1049.9 (b) or (c), showing:

(i) The quantities of such receipts delivered to each pool plant of other handlers; and

(ii) The classification of such receipts diverted pursuant to § 1049.13.

(2) [Reserved]

* * * * *

6. Section 1049.31 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1049.31 Payroll reports.

(a) * * *

(3) The average butterfat content, average milk protein content, and average somatic cell count of such milk; and

(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the producer protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

7. Section 1049.32 is amended by removing paragraph (a) and the paragraph designation from paragraph (b) and removing the words ""paragraph (a) of this section and".

8. Section 1049.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1049.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

9. Section 1049.50 is amended by revising the section heading, revising the introductory text and paragraph (a), and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1049.50 Class and component prices.

Subject to the provisions of § 1049.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1049.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1049.74 times 35, and rounding the result to the nearest whole cent.

10. Paragraphs (a) and (b) of § 1049.52 are revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk received at pool plants located in the following zones, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be adjusted as set forth in paragraphs (a)(1) through (a)(7), as follows, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(1) *Zero adjustment zone.* Any Indiana county not specifically named in paragraphs (a)(2) through (a)(5) of this section, and not part of the Louisville-Lexington-Evansville marketing area.

(2) *Plus 10-cent adjustment zone.* The Indiana counties of Jackson, Jefferson, Jennings, Lawrence, Ripley, Scott and Switzerland.

(3) *Minus 10-cent adjustment zone.* The Indiana counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White.

(4) *Minus 20-cent adjustment zone.* The Indiana counties of Dekalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and Whitley; and the Michigan counties of Berrien, Branch, Cass and St. Joseph.

(5) *Minus 35-cent adjustment zone.* The Indiana counties of Lake and Porter.

(6) At locations in other Federal order marketing areas, the appropriate price adjustment shall be the difference between the applicable Class I price effective at such plant location under the order for the area in which the plant is located and the Class I price specified in § 1049.50(a). For purposes of this paragraph, the locations in the Ohio counties of Defiance, Paulding, Van Wert and Williams, and the Michigan counties of Hillsdale, Lenawee and Monroe that are not part of any Federal milk order marketing area, will be considered to be in pricing zone 1 of the Ohio Valley milk marketing area.

(7) At locations outside any Federal order marketing area and north of 38 degrees latitude, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be minus 2.0 cents for each 10 miles or fraction thereof from such point in addition to the amount of the location adjustment pursuant to paragraphs (a) (1) through (5) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and handlers pursuant to § 1049.9 (b) and (c) and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which the Class I price is not less than the Class I price at the transferee plant, and then to receipts from plants with lower Class I prices in sequence beginning with the plant having the highest Class I price.

* * * * *

11. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1049.50 (d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1049.50(b).

12. The undesignated center heading before § 1049.60 is revised to read

"DIFFERENTIAL POOL AND HANDLER OBLIGATIONS"

13. Section 1049.60 is revised to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to § 1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1049.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1049.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1049.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1049.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1049.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1049.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1049.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1049.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) (i) through (iv), and the corresponding step of § 1049.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) (v) and (vi) and the corresponding step of § 1049.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(11) and the corresponding step of § 1049.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1049.44 multiplied by the skim milk price for the month computed pursuant to § 1049.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1049.50(e) and adjusted pursuant to § 1049.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1049.76(c).

14. Section 1049.61 is revised to read as follows:

§ 1049.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1049.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1049.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

15. Section 1049.62 is revised to read as follows:

§ 1049.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1049.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

16. New §§ 1049.63 through 1049.66 are added under the revised undesignated center heading "Differential Pool and Handler Obligations" to read as follows:

§ 1049.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1049.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1049.65 and 1049.73.

§ 1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 14th day after the end of the month the weighted average differential price computed pursuant to § 1049.61, the producer protein price computed pursuant to § 1049.62, and the uniform price computed pursuant to § 1049.63(a).

§ 1049.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1049.61 and adjusted pursuant to § 1049.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1049.62 and adjusted pursuant to § 1049.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1049.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1049.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment:

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	-.025	-.0078125
451,000 to 500,000	-.050	-.015625
501,000 to 550,000	-.075	-.0234375
551,000 to 600,000	-.100	-.031250
601,000 to 650,000	-.125	-.0390625
651,000 to 700,000	-.150	-.046875
701,000 to 750,000	-.200	-.062500
751,000 and above	-.250	-.078125

17. Section 1049.71 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1049.71 Payments to the producer settlement fund.

(a) * * *

(1) The total obligation of the handler for such month as determined pursuant to § 1049.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant to § 1049.75;

(ii) The value of the protein in such handler's receipts of producer milk at the producer protein price computed pursuant to § 1049.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1049.60(g).

* * * * *

18. Section 1049.73 is amended by revising the first sentence of paragraph (a)(2), paragraph (c)(2)(ii), and paragraph (d)(2) to read as follows:

§ 1049.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month to each producer, not less than the value determined pursuant to § 1049.65, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to § 1049.107. * * *

* * * * *

(c) * * *

(2) * * *

(ii) On or before the 16th day of the following month for milk received during the month, not less than the value of milk determined pursuant to § 1049.65, less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) * * *

(2) The daily and total pounds of producer milk, its butterfat and milk protein content, and the somatic cell count of the milk;

* * * * *

19. Section 1049.75 is revised to read as follows:

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The weighted average differential price for producer milk received at pool plants or diverted to nonpool plants shall be adjusted according to the location of the plants at which it was received or was deemed to have been received at the rates set forth in § 1049.52(a), except that the adjusted weighted average differential price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than zero for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average differential price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

20. Section 1049.78 is revised to read as follows:

§ 1049.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to § 1049.71, § 1049.76, § 1049.77(a), § 1049.78, § 1049.85, or § 1049.86(a) shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1049.86 [Amended]

21. Section 1049.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

Dated: August 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19667 Filed 8–16–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1099

[Docket No. AO–183–A45; DA–90–017]

Milk in the Paducah, Kentucky, Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and withdrawal.

SUMMARY: This rule withdraws an order to terminate the Paducah, Kentucky, Federal milk order and amends the order based on a hearing held in the fall of 1990. The major changes to the order relate to milk classification and the pricing of reconstituted milk.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

This final rule, which has been reviewed under Executive Order 12778, Civil Justice Reform, is not intended to have a retroactive effect. It will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

Prior documents in this proceeding:

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12469).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 FR 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Extension of Time for Filing Exceptions: Issued December 24, 1991; published January 6, 1992 (57 FR 383).

Order Terminating the Orders: Issued October 20, 1992; published October 26, 1992 (57 FR 48449).

Reinstatement of the Orders: Issued January 19, 1993; published February 2, 1993 (58 FR 6679).

Final Decision: Issued February 5, 1993; published March 5, 1993 (58 FR 12634).

Proposed Termination of Order: Issued April 20, 1993; published April 27, 1993 (58 FR 25577).

Referendum Order: Issued June 25, 1993; published July 1, 1993 (58 FR 35362).

Findings and Determinations

The order to terminate the Paducah, Kentucky, milk marketing order, issued October 20, 1992 (57 FR 48449), which was suspended effective December 1, 1992, (58 FR 6679), is hereby withdrawn. The order was reinstated on December 1, 1992, to comply with a temporary restraining order issued by the United States District Court for the Western District of Tennessee on December 31, 1992.

When producer approval of the amended orders was not indicated in a referendum, comments were sought concerning possible termination of the order. The comments received indicated that there had been a substantial change in producers supplying the market. A new referendum was ordered using May 1993 as the representative period. The amended order subsequently was approved. Therefore, it is appropriate at this time to withdraw the termination order issued October 20, 1992 and to proceed to amend the order as approved by producers.

The following findings and determinations supplement those that were made when the Paducah order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in all Federal milk order marketing areas.

Based on the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk marketed within the marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by producers of at least two-thirds of the milk produced for sale in the marketing area who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

Order Relative to Handling

On and after October 1, 1993, the handling of milk in the Paducah, Kentucky, marketing area shall be in conformity to, and in compliance with, the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. The authority citation for 7 CFR part 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. Section 1099.15 is revised to read as follows:

§ 1099.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

3. Section 1099.16 is revised to read as follows:

§ 1099.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

4. A new § 1099.19 is added to read as follows:

§ 1099.19 Commercial food processing establishment.

Commercial food processing establishment means any facility other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§ 1099.13, 1099.41 and 1099.52.

5. Section 1099.40 is revised to read as follows:

§ 1099.40 Classes of utilization.

Except as provided in § 1099.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1099.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processor if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk items, yogurt and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i)–(iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i)–(iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1099.15 and the fluid cream product definition pursuant to § 1099.16; and

(7) In shrinkage assigned pursuant to § 1099.41(a) to the receipts specified in § 1099.41(a)(2) and in shrinkage specified in § 1099.41 (b) and (c).

6. Section 1099.42 is amended by replacing the semicolon at the end of the text of paragraph (a)(1) with a period and adding the following sentence immediately thereafter, and by revising paragraphs (d)(2) (vi) and (vii) to read as follows:

§ 1099.42 Classification of transfers and diversions.

* * * * *

(a) * * *

(1) * * * The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

* * * * *

(d) * * *

(2) * * *

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

* * * * *

7. Section 1099.43 is amended by adding a new paragraph (d) to read as follows:

§ 1099.43 General classification rules.

* * * * *

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1099.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1099.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

8. Section 1099.44 is amended by revising paragraph (a)(2), revising the first sentence of paragraph (a)(5), revising paragraphs (a)(6), (a)(7)(i), and (a)(9), and by revising the reference "(a)(2)" in paragraphs (a)(7)(v), (a)(8)(i), (a)(8)(ii), and the introductory text of paragraph (a)(11) to "(a)(2)(i)", to read as follows:

§ 1099.44 Classification of producer milk.

* * * * *

(a) * * *

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

* * * * *

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1099.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. * * *

* * * * *

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a

fluid cream product) that is used to produce, or added to any product specified in § 1099.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1099.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

(7) * * *

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1099.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5) and (a)(6) of this section;

* * * * * *

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1099.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5) and (a)(7)(i) of this section;

* * * * * *

9. Section 1099.45 is amended by revising paragraph (b) to read as follows:

§ 1099.45 Market administrator's reports and announcements concerning classification.

* * * * * *

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1099.43(d) and § 1099.44 on the basis of such report, (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

* * * * * *

10. Section 1099.60 is amended by revising paragraphs (d), (f) and (g), and adding new paragraphs (h) and (i) to read as follows:

§ 1099.60 Handler's value of milk for computing uniform price.

* * * * * *

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1099.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(7) (i) through (iv) and the corresponding step of § 1099.44(b), excluding receipts of bulk fluid cream products from another order plant and bulk concentrated fluid milk products from pool plants, other order plants and unregulated supply plants;

* * * * * *

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1099.43(d) and § 1099.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(11) and the corresponding step of § 1099.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1099.43(d);

(h) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1099.76 (a)(5) or (c); and

(i) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any Class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

11. Section 1099.76 is amended by revising paragraphs (a)(3) and (a)(5) and by adding a new paragraph (c) to read as follows:

§ 1099.76 Payments by handler operating a partially regulated distributing plant.

* * * * * *

(a) * * *

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

* * * * * *

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less $1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

* * * * * *

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1099.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but

not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

12. Section 1099.85 is amended by revising paragraph (b) to read as follows:

§ 1099.85 Assessment for order administration.

* * * * *

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1099.43(d) and other source milk allocated to Class I pursuant to § 1099.44 (a)(7) and (a)(11) and the corresponding steps of § 1099.44(b), except such other source milk that is excluded from the computations pursuant to § 1099.60 (d) and (f); and

* * * * *

Dated: August 9, 1993.

Eugene [illegible],

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-19670 Filed 8-16-93; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931, 932 and 933

[No. 93-59]

Members of the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending in its entirety its existing regulations governing membership in the Federal Home Loan Bank System (FHLBank System) in response to changes made to the Federal Home Loan Bank Act (Bank Act) by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The final rule sets forth membership application procedures, eligibility requirements for membership approval, stock requirements for membership, requirements and procedures in connection with termination of membership, and provisions concerning the transfer of Federal Home Loan Bank (FHLBank) stock in consolidations involving member and nonmember institutions. In addition, it clarifies access to noncredit services provided by the FHLBanks.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, (202) 408-2882, Assistant Director, District Banks Directorate, or Sharon B. Like, (202) 408-2930, Attorney-Advisor, or Bruce W. McDougal, (202) 408-2505, Attorney-Advisor, Office of Legal and External Affairs, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Pre-FIRREA Membership Procedures

Prior to the enactment of FIRREA (Pub. L. 101-73, 103 Stat. 183 (Aug. 9, 1989)), the FHLBank System was regulated by the former Federal Home Loan Bank Board (Bank Board). All federally chartered savings associations were (and still are) required by the Bank Act to be members of the FHLBank System. In addition, if a state chartered savings association chose to be federally insured, as a condition of obtaining deposit insurance from the Federal Savings and Loan Insurance Corporation (FSLIC), such association was required to become a member of the FHLBank System. Consequently, the former Bank Board concurrently approved an applicant's membership in the FHLBank System at the time the applicant received its federal charter and, in the case of a state chartered savings association, at the time of approval of its FSLIC deposit insurance.

Insurance companies and state chartered savings banks insured by the Federal Deposit Insurance Corporation (FDIC) also were eligible, but not required, to join the FHLBank System. In contrast to FSLIC-insured savings associations, these voluntary members were subject to a FHLBank membership application process. The Bank Board delegated the authority to approve membership applications of eligible voluntary members to the Principal Supervisory Agents (PSAs) of the Bank Board, who were generally the FHLBank presidents. See 12 U.S.C. 1437 (1989); see also 12 CFR 523.3-3 and 541.18 (1989). This practice continued until the enactment of FIRREA.

B. Changes Made To Bank Act By FIRREA

FIRREA made several changes to the Bank Act, which resulted in changes to FHLBank membership rules and procedures. Section 702(a) of FIRREA created the Finance Board and transferred from the former Bank Board to the Finance Board the responsibility for the supervision and regulation of the twelve FHLBanks. 12 U.S.C. 1422a(a) (as amended) (Supp. IV 1992). The Bank Board's authority to charter federal savings associations was transferred to the Office of Thrift Supervision (OTS). The Bank Board's authority to administer deposit insurance for savings associations was transferred to the FDIC.

FIRREA also made significant changes to the membership eligibility criteria in section 4 of the Bank Act. 12 U.S.C. 1424. First, FIRREA permitted commercial banks and credit unions to become members for the first time. *Id.* at 1424(a).

Second, FIRREA added the requirement that an insured depository institution have at least 10 percent of its total assets in residential mortgage loans in order to be eligible to become a member of a FHLBank. 12 U.S.C. 1424(a)(2)(A) (the 10 percent requirement).

Section 2B(a)(1) of the Bank Act empowers the Finance Board, *inter alia*, to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of the Bank Act, including regulations on membership in the FHLBank System. 12 U.S.C. 1422b(a)(1). The Finance Board's existing regulations on membership in the FHLBank System were originally promulgated by the former Bank Board at 12 CFR part 523. The Finance Board, pursuant to its authority in section 2B(a)(1) to administer the Bank Act, adopted and redesignated the former Bank Board's membership regulations at 12 CFR part 933. See 54 FR 36757, Sept. 5, 1989. However, these regulations were designed to administer membership eligibility requirements that were contained in the Bank Act prior to FIRREA.

II. Proposed Rulemaking

In order to address the significant changes that FIRREA made to the membership rules in the Bank Act, the Finance Board on December 11, 1992, published for public comment a notice of proposed rulemaking concerning the requirements for membership in the FHLBank System (proposed rule) (57 FR 58732, Dec. 11, 1992). The comment period ended February 9, 1993. The

Finance Board received 32 comment letters on the proposed rule. Responses were submitted by ten FHLBanks (two of the FHLBanks sent two comment letters each), eight trade associations, seven thrift members, one commercial bank member, one insurance company nonmember, and three credit union nonmembers. In general, the great majority of the commenters expressed overall support for the proposed rule. A discussion of the comment letters is included in the analysis of the final rule.

III. Analysis of Final Rule

A. Membership Application Approval Process

Section 933.2 of the final rule sets forth the review and approval process for applications for membership in a FHLBank.

Under § 933.2(a) of the final rule, any institution seeking membership in a FHLBank, other than an institution otherwise required by law to become a member of a FHLBank, is required to submit an application to the FHLBank. Under § 933.2(b) of the final rule, the application for membership is then submitted by the FHLBank to the Finance Board for action. One FHLBank requested clarification that, consistent with current practice, the FHLBanks would continue to review applications and make recommendations on membership to the Finance Board. The Finance Board contemplates that the current practice of the FHLBanks reviewing applications and making recommendations on membership to the Finance Board will continue.

Section § 933.2(d) of the final rule provides that an institution otherwise required by law to become a member of a FHLBank is automatically approved for membership, and becomes a member of the FHLBank of the district in which its principal place of business is located upon the purchase of the required stock in that FHLBank. Section 5(f) of the Home Owners' Loan Act (HOLA) requires all federally chartered savings associations and federally chartered savings banks to be members of the FHLBank System and to qualify for such membership in the manner provided in the Bank Act. 12 U.S.C. 1464(f) (Supp. IV 1992). The Finance Board believes that the factors considered by the OTS when reviewing an application for such a federal charter are the same factors considered by the Finance Board. Therefore, it is not necessary to require these institutions to file an additional application for membership with the Finance Board. This approach was supported by two FHLBanks and a thrift trade association.

Unlike federally chartered savings associations and federally chartered savings banks, state chartered savings associations are not required by statute to be members of the FHLBank System. However, as a trade association commenter noted, these institutions now are required by an OTS regulation to be FHLBank members until April 19, 1995. See 58 FR 14510, March 18, 1993. Accordingly, such institutions also come within the provisions of § 933.2(d) of the final rule and, thus, have automatic approval of membership.

Under §§ 933.2(d) and 933.7(b) of the final rule, an institution receiving automatic membership approval has 60 calendar days from the date of such membership approval to purchase its FHLBank stock. In response to a comment of a FHLBank that § 933.2(d) of the proposed rule was inconsistent with the definition of "member" in § 933.1(n), § 933.2(d) of the final rule has been clarified to require the purchase of stock in order to be a "member."

Under § 933.2(e) of the final rule, an insured depository institution member that converts from one type of charter to another automatically becomes a member of the FHLBank of which the converting institution was a member on the effective date of such conversion, if the resulting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are identical.

B. Delegation to FHLBanks

Under § 933.3(a) of the final rule, the board of directors of a FHLBank is delegated the authority to approve applications for membership that meet all of the criteria set forth in the Bank Act, this part 933 and policy guidelines to be established by the Finance Board. The board of directors of a FHLBank may further delegate the authority to approve such applications to the president or other senior officers of the FHLBank. Under § 933.3(c), the board of directors of a FHLBank shall not have the authority to deny applications for membership. Instead, applications that are not approved under delegated authority must be submitted to the Finance Board for action.

Three FHLBanks and a thrift trade association supported the delegation to the FHLBanks in the proposed rule. One FHLBank noted that delegation, even on a limited basis, would eliminate duplicative efforts, expedite the membership process, and enable the FHLBanks to be more responsive to applicants, thus improving the public's perception of the FHLBank System. Two FHLBanks specifically supported allowing the FHLBanks to further delegate the authority to approve applications to senior management. Two other FHLBanks supported incorporating the delegation criteria in policy guidelines to be established by the Finance Board.

C. Eligibility Requirements for Membership Approval

Section 4(a)(1) of the Bank Act, as amended by FIRREA, lists the types of financial institutions eligible to become members of the FHLBank System generally to include any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. 12 U.S.C. 1424(A)(1). FIRREA permitted commercial banks and credit unions to become members for the first time. This change was in recognition of the fact that such institutions have demonstrated substantial commitment to providing credit for the purchase or construction of residential housing. See 135 Cong. Rec. S. 10205 (daily ed. Aug. 4, 1989) (statement of Sen. Riegle).

Any eligible institution under section 4(a)(1) also must meet the membership criteria of section 4(a) of the Bank Act in order to become a member of the FHLBank System. 12 U.S.C. 1424(a). Section 4(a) contains two separate sets of membership criteria. The criteria set forth in section 4(a)(1) of the Bank Act apply to all applicants for membership in the FHLBank System. However, section 4(a)(2) of the Bank Act provides that the criteria set forth therein apply to "insured depository institutions". These two sets of criteria now are discussed in turn.

1. Section 4(a)(1) Membership Criteria

Under the section 4(a)(1) membership criteria, an institution shall be eligible for FHLBank membership if the institution:

(A) Is duly organized under the laws of any State or of the United States;

(B) Is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and

(C) "Makes" such "Home mortgage loans" as, in the judgment of the Board, are "long-term" loans * * *.

12 U.S.C. 1424(a)(1)(A) through (C) (emphasis added). The requirement in paragraph (C) that an institution makes such home mortgage loans as, in the judgment of the Finance Board, are long-term loans, is hereafter referred to as the "makes" test.

The criteria in paragraphs (A) and (B) of section 4(a)(1) are straightforward and, thus, are merely restated in § 933.4(a)(1) and (2) of the final rule. In contrast, there are three separate components to the "makes" test in paragraph (C) that must be defined (*i.e.*, "home mortgage loans," "long-term," and "makes"). The final rule defines or implements each of these three components in §§ 933.1(i), 933.1(l) and 933.4(a)(3), respectively.

a. *Definition of "home mortgage loans".* Section 4(a)(1)(C) of the Bank Act provides that an institution is eligible for FHLBank membership if it makes such "home mortgage loans" as, in the judgment of the Finance Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C). A "home mortgage loan" is defined in the Bank Act as a loan made by a member upon the security of a "home mortgage." *Id.* at 1422(5). The Bank Act further defines a "home mortgage" generally as a mortgage upon real estate upon which is located one or more homes or other dwelling units, "all of which may be defined by the Board," and shall include, in addition to "first mortgages," such classes of "first liens" as are commonly given to secure advances on real estate. *Id.* at 1422(6).

Based on the above statutory definitions, a "home mortgage loan" is essentially a loan secured by a first mortgage on real property with one or more structures designed primarily for residential use. See also 75 Cong. Rec. 12609 (1932) (remarks of Rep. Hancock, stating that the term is defined to mean a first mortgage on residential real estate housing).

Section 933.1(i) of the final rule defines the term "home mortgage loan" as:

(1) A domestic loan, whether or not fully amortizing, or an interest in such a loan, which loan or interest is secured by a mortgage, a deed of trust or other security agreement which creates a first lien on one of the following interests in real property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property; or

(2) A mortgage pass-through security which represents an undivided ownership interest in:

(i) Long-term loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (i)(1) of this section;

(ii) Securities which represent an undivided ownership interest in long-term loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (i)(1) of this section; or

(3) Any loans which the Board in its discretion otherwise determines are home mortgage loans.

Loans secured by nonresidential real property shall not be considered home mortgage loans.

The types of loans and other assets that qualify or do not qualify as "home mortgage loans" under the various paragraphs of the definition of "home mortgage loan" in § 933.1(i) of the final rule are discussed in further detail below.

(1) Loans secured by one-to-four family property. In order to determine what types of loans constitute loans secured by one-to-four family property which come within the definition of "home mortgage loans," it is necessary to look to the definition of "one-to-four family property" in § 933.1(q) of the final rule.

Current Finance Board practice includes loans secured by first mortgages on one-to-four family property as satisfying the definition of "home mortgage loan." For ease of asset identification by applicants for membership, § 933.1(q) of the final rule defines the term "one-to-four family property" similarly to the definition in the FDIC Report of Condition and Income (Call Report), subject to several exceptions. The term is defined in § 933.1(q) as follows:

(1) Real property that is solely residential, which property includes one-to-four dwelling units or more than for dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

i. "Dwelling unit". The term "one-to-four family property" is defined in § 933.1(q) to include real property that is solely residential, which property includes one-to-four dwelling units. A "dwelling unit" is defined in § 933.1(g) of the final rule as a single room or a unified combination of rooms designed for residential use. This definition is intended to incorporate a single-family home, a residence in a building containing one-to-four units, a residence in a multifamily of five or more units, or single room occupancy (SRO) units.

Sections 931.7 and 931.8 of the Finance Board's existing regulations (12 CFR 931.7, 931.8) contain separate definitions of "home" and "other dwelling unit," which are component terms of and implement the definition of "home mortgage" in section 2(6) of the Bank Act, 12 U.S.C. 1422(6). Section 933.1(g) of the final rule merge these two terms into the definition of "dwelling unit." Accordingly, §§ 931.7 and 931.8 of the Finance Board's existing regulations are removed from part 931.

In contrast to the proposed rule, which had defined "dwelling unit" as "a single, unified combination of rooms," the final rule is intended to include SRO units in the definition of "one-to-four family property" (and "multifamily property" in § 933.1(o)) by defining the component term "dwelling unit" as "a single room *or* a unified combination of rooms" (emphasis added). SRO units are residential in nature, and their inclusion in the definition of "one-to-four family property" (and "multifamily property") is consistent with the housing finance mission of the FHLBanks. This also is consistent with the definition of "dwelling unit" in the Finance Board's recently adopted advances rule. See 12 CFR 935.1 (58 FR 29456 May 20, 1993).

ii. Manufactured Housing. The term "one-to-four family property" is defined in § 933.1(q) of the final rule to include manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property. This continues the Finance Board's current practice of including loans secured by such manufactured housing as "home mortgage loans." "Manufactured housing" is defined in § 933.1(m) of the final rule by reference to the definition in the Manufactured Home Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5402(6), which generally includes mobile homes. (See also 12 CFR 545.45.)

The legislative history of FIRREA supports the inclusion of manufactured housing as security that would qualify the loan as a "home mortgage loan" where state law treats the collateral as real property. Specifically, the FIRREA Conference Report states that all references to housing in FIRREA are intended to include manufactured housing, but not temporary shelters such as recreational vehicles or campers

which are designed to be moved frequently. See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 437 (1989) (FIRREA Conference Report).

(2) Loans secured by multifamily property. In order to determine what types of loans constitute loans secured by multifamily property which come within the definition of "home mortgage loans," it is necessary to look to the definition of "multifamily property" in § 933.1(o) of the final rule.

Current Finance Board practice excludes loans secured by first mortgages on multifamily property from those loans that are considered "home mortgage loans." However, the statutory definition of "home mortgage loans" can be interpreted to include multifamily loans that are secured by a first mortgage on real estate. The Finance Board believes that it is appropriate to expand the types of loans that qualify as "home mortgage loans" to include multifamily loans since such an interpretation is consistent with the housing finance mission of the FHLBanks.

In addition, commenters generally supported the inclusion of multifamily loans in the definition of "home mortgage loan." A trade association commenter specifically supported the inclusion of multifamily loans. A thrift member also supported the inclusion of multifamily loans, noting that multifamily property constitutes the most significant percentage of housing today and should be included in the measurement of any institution's commitment to housing.

Accordingly, the definition of "home mortgage loan" in § 933.1(i) of the final rule specifically includes loans secured by a first mortgage on multifamily property. For ease of asset identification by applicants for membership, § 933.1(o) of the final rule defines the term "multifamily property" similarly to the definition in the FDIC Call Report. The term is defined in § 933.1(o) as follows:

> (1) Real property that is solely residential and which includes five or more dwelling units; or
>
> (2) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.
>
> Multifamily property as defined in paragraphs (o)(1) and (2) of this section includes nursing homes, dormitories and homes for the elderly.

"Multifamily property" (and "one-to-four family property") is defined to include real property which includes five or more (or one-to-four) dwelling units with commercial units combined, provided the property is "primarily residential." One FHLBank commented that this definition should be clarified by expressly incorporating the FDIC Call Report instructions for determining whether property is "primarily residential." A thrift trade association recommended that "primarily residential" be defined as property where not more than 25 percent of the investment consists of commercial space, or in the alternative, where more than 50 percent of the available square footage floor space of a structure is for residential or common area purposes. A thrift member also questioned how the term would be defined.

The FDIC Call Report instructions do not define the term "primarily residential." The definition is left to the discretion of the respondent when reporting assets on the Call Report. Thus, if the Finance Board were to specifically define this term, it could conflict with the Call Report treatment of loans that are "primarily residential." Applicants for membership thus should simply consider as "primarily residential" for membership purposes the same loans secured by multifamily property (and loans secured by one-to-four family property) that they would include as loans that are "primarily residential" in the FDIC Call Report.

(3) Loans secured by leaseholds on one-to-four family property or multifamily property. The definition of "home mortgage loans" specifically includes, in § 933.1(i)(1)(ii) of the final rule, loans secured by a leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed. Inclusion of loans secured by such leasehold interests in the definition of "home mortgage loan" in the final rule implements section 2(6) of the Bank Act, 12 U.S.C. 1422(6), which defines "home mortgage" to include such interests in property.

(4) Loans secured by combination business/farm property. The definition of "home mortgage loans" specifically includes, in § 933.1(i)(1)(iii) of the final rule, loans secured by combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property. The term "combination business or farm property" is defined in § 933.1(f) of the final rule as real property for which the total appraised value is attributable to residential, and business or farm uses.

The proposed rule generally excluded loans secured by combination business or farm property from the definition of "home mortgage loan," because they generally are treated by the federal banking agencies for financial reporting purposes as predominantly commercial or agricultural in nature.

However, the Finance Board's recently adopted advances rule treats combination business or farm property as "residential real property" if at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property. 12 CFR 935.1 (58 FR 29456 May 20, 1993). The Finance Board believes that it should maintain consistency throughout its regulations, to the extent possible. Given the Finance Board's decision for purposes of the advances rule, the membership rule has been changed accordingly.

One FHLBank requested clarification as to whether the appraised value of the property is to be evaluated as of the most recent appraisal or as of the time of loan origination when determining whether the property securing a loan meets the definition of "combination business or farm property." Consistent with the Finance Board's recently adopted advances rule, and the FHLBanks' collateral practices, the most recent appraisal should be used.

(5) Mortgage pass-through securities. The definition of "home mortgage loan" specifically includes, in § 933.1(e)(2) of the final rule, certain mortgage pass-through securities. A mortgage pass-through security is included in the definition of "home mortgage loan" if it represents an undivided ownership interest in long-term qualifying loans, or in securities representing an undivided ownership interest in such loans. The term was defined this way because the holder of a mortgage pass-through security receives a *pro rata* share of the interest and principal repayments from the underlying pool of mortgage loans or mortgage pass-through securities.

Two financial institutions trade associations supported the inclusion of mortgage pass-through securities in the definition of "home mortgage loan." One of the commenters specifically agreed with the analysis that since mortgage pass-through securities represent an ownership interest in the underlying mortgage loans, the securities should be treated the same as the underlying loans. By contrast, two thrift members commented that mortgage pass-through securities should not be included in the definition of "home mortgage loan" for purposes of the "makes" test. One of the commenters specifically noted that such

a definition could open FHLBank membership to institutions that only purchase and invest in such securities, but that do not actually originate home mortgage loans. The commenter also stated a general concern that the proposed rule contained "aggressive" interpretations of the definition of "home mortgage loan," which did not clearly focus on the FHLBank System's housing finance mission.

The Finance Board currently treats such mortgage pass-through securities as home mortgage loans for purposes of satisfying the "makes" test. Consistent with this practice, the Finance Board believes that allowing applicants to use mortgage pass-through securities as "home mortgage loans" to satisfy the "makes" test complies with the Bank Act's definition of "home mortgage loan." Therefore, the final rule defines "home mortgage loan" to include mortgage pass-through securities which represent an undivided ownership interest in one or more long-term loans, or securities representing an undivided ownership interest in long-term loans, all of which loans independently satisfy the definition of "home mortgage loan" (*i.e.*, first mortgage loans, etc.) at the time of issuance of the security.

The Finance Board currently treats collateralized mortgage obligations (CMOs) and other mortgage debt securities as home mortgage loans for purposes of satisfying the "makes" test. Under the final rule, CMOs and other mortgage debt securities do not come within the definition of "home mortgage loan" for purposes of satisfying the "makes" test, because they do not represent an ownership interest in the underlying pool of mortgage loans, but rather a debt obligation that is secured by the underlying mortgage loans.

Three FHLBanks commented that CMOs and other mortgage debt securities should be included in the definition of "home mortgage loans," because the marketplace makes no distinction between CMOs and mortgage pass-through securities. In addition, the three FHLBanks pointed out that CMOs or other mortgage debt securities are a major source of funds for housing finance.

Two financial institutions trade associations and a thrift member stated that they agreed with the proposed rule and that CMOs should not be included in the definition of "home mortgage loan" for purposes of the "makes" test. The thrift trade association agreed with the distinction made in the preamble to the proposed rule that CMOs do not represent an ownership interest in the underlying mortgage loans, whereas mortgage pass-through securities represent such an ownership interest.

CMOs and other mortgage debt securities do not represent an ownership interest in the underlying pool of mortgage loans. Instead, they represent a debt obligation that is secured by the underlying mortgage loans. While an argument can be made that the secondary market does not differentiate between mortgage debt securities and mortgage pass-through securities, the Finance Board believes that, for purposes of satisfying the "makes" test, an institution must hold an ownership interest in home mortgage loans.

Accordingly, CMOs and other mortgage debt securities do not come within the definition of "home mortgage loan" for purposes of satisfying the "makes" test. However, as discussed below, applicants may continue to use CMOs and other mortgage debt securities to satisfy the 10 percent requirement.

(6) Other loans includable. The definition of "home mortgage loan" in § 933.1(i)(3) of the final rule also specifically includes any loans which the Finance Board in its discretion otherwise determines are home mortgage loans. For example, the Finance Board could use this provision to determine, on a case-by-case basis, that other types of loans and new loan products are "home mortgage loans" and, therefore, can be used to satisfy the "makes" test.

(7) Exclusion of loans secured by "nonresidential real property". The definition of "home mortgage loan" in § 933.1(i) of the final rule follows current Finance Board practice and specifically excludes loans secured by "nonresidential real property." Section 933.1(p) of the final rule defines "nonresidential real property," for purposes of this part, as:

> real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

As stated above, the definition of "home mortgage loans" makes clear that the Finance Board can determine, on a case-by-case basis, that specific properties are more residential than nonresidential in nature, and, thus, that loans secured by such properties would be considered to be "home mortgage loans." This Finance Board discretion is also reflected in the definition of "nonresidential real property" by the proviso "except as otherwise determined by the Board in its discretion."

The proposed rule defined "nonresidential real property" to include, among other things, nursing homes, dormitories and homes for the elderly (or retirement homes), because these properties are treated as nonresidential in the FDIC Call Report. Thus, under the proposed rule, these "nonresidential real property" loans generally would not be "home mortgage loans" and, thus, could not be used to satisfy the "makes" test, except as determined otherwise by the Finance Board under its case-by-case authority.

A FHLBank commented that the definition of "nonresidential real property" was too broadly drawn. The FHLBank recommended treating dormitory, nursing home and hospital loans as residential real property loans, because the properties securing such loans are used to house individuals, often for quite extended periods of time. The FHLBank also commented that it is irrelevant for Finance Board proposes that other federal banking agencies treat loans secured by such properties as nonresidential for financial reporting purposes. The FHLBank further noted that having the Finance Board make case-by-case determinations of applicants' requests that certain loans be treated as residential rather than nonresidential would needlessly consume an undue amount of time and resources of the Finance Board.

The Finance Board's recently adopted advances rule treats dormitories and homes for the elderly as "residential real property" for purposes of determining what is eligible collateral for FHLBank advances, as well as for satisfying the residential housing finance assets test. See 12 CFR 935.1, 935.9, 935.13 (58 FR 29456, May 20, 1993). Thus, unless the definition of "nonresidential real property" that was in the proposed membership rule is changed, the membership rule would define "nonresidential real property" differently from, and inconsistent with, the Finance Board's advances rule.

It is not anticipated that the Finance Board will receive a large number of requests from membership applicants for case-by-case determinations that loans are more residential than nonresidential in nature, because the definition of "home mortgage loan" is broad and should be easily met if an institution is engaged in housing finance. It is anticipated that requests for case-by-case determinations will be received only in the rare cases where applicants are on the borderline and need additional qualifying assets in

order to meet the membership eligibility criteria.

However, the Finance Board has determined that a further broadening of the definition of "home mortgage loan" will both maintain consistency with the definitions in the advances rule, and also reduce the likelihood of requests for case-by-case determinations. To the extent possible, such case-by-case decisions should be handled on an exception basis only with supportable reasons for granting such exceptions. In addition, the Finance Board believes that dormitories, nursing homes and homes for the elderly, but not hospitals, are residential in nature. It is further noted that, unlike the treatment of such loans under the FDIC Call Report, the OTS treats dormitory and retirement home loans as residential for purposes of its Thrift Financial Report.

Accordingly, dormitories, nursing homes and homes for the elderly have been deleted from the definition of "nonresidential real property" and, instead, have been specifically added to the definition of "multifamily property" in § 933.1(o) of the final rule. Thus, loans backed by such property may be included as "home mortgage loans" towards satisfying the "makes" test.

(8) Other loans not included. Certain types of loans—loans on unimproved property, land development loans, residential construction loans and loans secured by junior liens—are not intended to be included in the definition of "home mortgage loans" in § 933.1(i) of the final rule. These loans are discussed further below.

(i) Loans on unimproved property, land development loans, residential construction loans. The Finance Board has determined that loans on unimproved property, land development loans and residential construction loans are not includable in the definition of "home mortgage loan" in the final rule.

Loans on unimproved property are loans secured by vacant land. Land development loans are loans secured by real estate made to finance land improvements preparatory to erecting structures, such as laying sewers, water pipes, etc. Residential construction loans are loans secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property (see § 933.1(h)). All three types of loans do not come within the definition of "home mortgage loan," because they generally are not secured by property upon which is located one or more homes or dwelling units (which is required by the statutory definition of "home mortgage loan").

The treatment of loans secured by unimproved property in the final rule contrasts with their FDIC Call Report treatment, which includes vacant lots in established one-to-four family or multifamily sections or in areas set aside primarily for one-to-four family or multifamily dwelling units in the Call Report line items for loans secured by one-to-four family property or multifamily property. On the other hand, the treatment of land development loans and residential construction loans in the final rule is similar to their treatment in the FDIC Call Report, which excludes such loans with original maturities of 60 months or less from the Call Report line items for loans secured by one-to-four family property or multifamily property. These loans, however, are not included within the definition of "home mortgage loan" in the final rule, irrespective of the maturities of such loans.

(ii) Loans secured by junior liens. The Finance Board also has determined that loans secured by junior liens are not includable in the definition of "home mortgage loans" in the final rule. This is because the statutory definition of "home mortgage loans" requires that they be secured by first mortgages or liens.

This treatment of loans secured by junior liens in the final rule contrasts with their FDIC Call Report treatment, which includes such loans in the Call Report line items for loans secured by one-to-four family property or multifamily property.

b. *Definition of "long-term".* Section 4(a)(1)(C) of the Bank Act provides that an institution is eligible for FHLBank membership if it makes such home mortgage loans as, in the judgment of the Finance Board, are "long-term" loans. 12 U.S.C. 1424(a)(1)(C). Thus, it is within the discretion of the Finance Board to determine what is a "long-term" loan for purposes of the "makes" test in section 4(a)(1)(C) of the Bank Act. Section 933.1(1) of the final rule implements this statutory provision by defining "long-term" as a term to maturity of five years or greater, or any other term to maturity which the Finance Board in its discretion determines is long-term.

At the time of enactment of the Bank Act, home mortgage loans generally consisted of non-amortizing straight-line mortgage loans with no guarantee of renewal, which required repayment of the total outstanding principal at the end of the maturity period, which was usually three to five years. See 75 Cong. Rec. 12608 (June 10, 1932) (remarks of Rep. Hancock); see also 75 Cong. Rec. 12605 (June 10, 1932) (remarks of Rep. Overton) and 75 Cong. Rec. 14644 (July 6, 1932) (remarks of Sen. Copeland). The legislative history of the Bank Act indicates that Congress intended to create an alternative to such short-term non-amortized credit. *Id.* At the same time, in drafting this provision, Congress gave the Finance Board discretion in defining "long- term."

The proposed rule defined "long-term" as a term to maturity of greater than five years. This was in order to be consistent with the definition of "long-term" as it relates to FHLBank advances that is used in the Finance Board's community support rule, 12 CFR 936.1(n), and recently adopted advances rule, 12 CFR 935.1 (58 FR 29456, May 20, 1993). In both cases, "long-term" FHLBank advances are defined as advances with terms to maturity of greater than five years. The proposed rule, however, also allowed the Finance Board to determine, on a case-by-case basis, that home mortgage loans with terms to maturity of five years or less otherwise meet the definition of "long-term" home mortgage loan.

The Finance Board received a number of differing comments on the definition of "long-term" home mortgage loan. The comments ranged from a bank trade association that commented that "long-term" should be a term to maturity of three years or greater, since requiring that loans be greater than five years in maturity would likely exclude many banks substantially involved in three- to five-year home mortgage lending, to a thrift member that commented that "long-term" should be defined as 30 years or longer. A thrift trade association supported the proposed rule's definition of "long-term" as a term to maturity of greater than five years, and a thrift member commented that "long-term" should continue to be defined as 15 years or longer or, alternatively, that the Finance Board should reconsider its proposal to accept on a case-by-case basis loans with maturities of less than five years as "long-term."

However, the majority of the comment letters received on the "long-term" issue recommended that the definition of "long-term" for purposes of the "'makes" test should be a term to maturity of five years or greater, instead of greater than five years.

The commenters favoring defining "long-term" as five years or greater set forth two major reasons for making such a change in the definition of "long-term." First, several noted that without long-term funding, it would be imprudent for potential applicants to hold loans with maturities of greater than five years in portfolio. For

example, one FHLBank commented that, from a practical standpoint, many institutions that do not have access to long-term funds perceive five years as the longest term mortgage they can prudently offer, and that once membership is obtained, the maturity of their home mortgage loans may be prudently extended through funding by long-term advances. Similarly, another FHLBank commented that limiting "long-term" to greater than five years would exclude many commercial banks that have prudently structured the terms of their home mortgage loans to protect against interest rate risk exposure by making loans with maturities of five years.

The second reason suggested for changing the definition focused on the changes that have occurred in the home mortgage lending market since the creation of the FHLBanks. For example, one FHLBank concurred with the analysis in the preamble to the proposed rule that inclusion of loans with terms to maturity of under ten years is an accurate reflection of changes in the marketplace. However, it commented further that the limitation of "long-term" to loans with terms to maturity of greater than five years would not be an accurate reflection of the marketplace, since most loans under ten years are five-year balloon mortgages. Another FHLBank also maintained that accepting loans with terms to maturity of five years would be a more accurate reflection of the marketplace. It commented further that a change in the definition would not significantly alter the effect of the rule, since most five-year residential loans are, in fact, slightly longer than five years because of the manner in which they are funded.

The Finance Board believes that limiting "long-term" to loans with terms of 15 or 30 years simply does not accurately reflect the current marketplace. Many financial institutions, in response to the demands and preferences of their customers, currently offer mortgage loans with terms to maturity of three to ten years, in lieu of or in addition to the traditional 15- or 30-year mortgage loan.

Moreover, given the fact that most residential mortgage loans are refinanced (or repaid through the sale of the residence) in less than ten years from origination, three- to ten-year mortgage loans actually reflect the realities of most customers' habits and actions. For borrowers who plan to stay in their homes less than ten years, balloon payment loans provide a lower-cost, fixed-rate alternative to a 15- or 30-year fixed-rate mortgage loan. These circumstances account in large part for the growing availability of these types of loans at financial institutions.

In view of the foregoing, inclusion of home mortgage loans with terms to maturity of five years or greater among the categories of loans deemed to be "long-term" and, thus, which qualify an institution for FHLBank membership recognizes marketplace realities, and further helps promote the availability of affordable home financing to consumers.

Accordingly, § 933.1(l) of the final rule defines "long-term" as a term to maturity of five years or greater, or any other term to maturity which the Finance Board in its discretion determines is long-term. In taking action on membership applications, the Finance Board may determine on a case-by-case basis that certain loans with an original term to maturity of less than five years meet the "long-term" standard. For example, a mortgage with a term to maturity of less than five years that permits refinancing without requalification could be determined by the Finance Board to be "long-term." This flexibility is built into the final rule in order to permit the Finance Board to respond to innovations in mortgage financing.

The final rule does not distinguish between fully amortizing loans and loans that are not fully amortizing. Changes in the mortgage marketplace over the past 60 years have greatly reduced the concerns which existed concerning mortgage loans which are not fully amortizing. In 1932, when the Bank Act was originally enacted, there was considerable concern regarding a borrower's ability to refinance a balloon payment. Today, mortgage financing is more readily obtainable, particularly if the borrower has five years or more to secure that refinancing.

Therefore, the final rule includes within the definition of "long-term" in § 933.1(l) a term to maturity of five years or greater, regardless of whether the loan is non-amortizing, not fully amortizing, or fully amortizing.

c. *Implementation of "makes" requirement.* Section 4(a)(1)(C) of the Bank Act provides that an institution is eligible for FHLBank membership if it "makes" such home mortgage loans as, in the judgment of the Finance Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C). Thus, it is necessary to determine what constitutes "making" a home mortgage loan under the "makes" test. Section 933.4(a)(3) of the final rule implements this "makes" requirement.

Both the Finance Board and its predecessor, the Bank Board, have interpreted "makes" to include both originating and purchasing qualifying loans, as well as mortgage pass-through securities backed by qualifying loans. See Opin. Gen. Couns, Bank Board (Jan. 25, 1988). Consistent with the proposed rule, § 933.4(a)(3) of the final rule continues to include all such transactions within the scope of the "makes" requirement.

A FHLBank commenter recommended that the "makes" requirement be "expanded" to require that the applicant originate, purchase or hold long-term home mortgage loans. The FHLBank contended that this would help to include those applicants which may not be active in originating and/or purchasing such home mortgage loans at the time of application, but which hold such loans in their portfolio. However, lenders cannot hold mortgage loans unless they have first originated or purchased them. Accordingly, the Finance Board does not believe that the suggested revision will expand the "makes" requirement and, thus, has not implemented this suggested revision in the final rule.

Two thrift members commented that the "makes" requirement should require that an applicant originate (or purchase) and hold long-term home mortgage loans for the foreseeable future. One of the commenters suggested that originators who hold mortgages can better serve their market needs by applying knowledgeable and common sense criteria to borrowers. The other commenter suggested that this would ensure that the resources of the FHLBank System are used to support portfolio mortgage lending, in contrast to assisting mortgage loan originators which resell in the secondary market. The commenter believes that originators that resell in the secondary market are served by other government-sponsored enterprises. Another thrift member urged that membership be limited to regulated depository institutions that are primarily residential lenders and that hold mortgage loans in their portfolios, arguing that the basic mission of the FHLBank System is to support portfolio lending. The final rule does not incorporate these comments, reflecting the Finance Board's view that the statute should be broadly rather than narrowly interpreted in order to facilitate the FHLBank System's support of housing finance.

The proposed rule also included the assets of an institution's consolidated subsidiaries within the scope of the transactions used to satisfy the "makes" test. The normal industry practice of insured depository institutions is to file financial reports with their federal regulators on a consolidated basis. In view of this practice, the Finance Board

currently consolidates subsidiaries of such insured depository institution applicants for purposes of determining satisfaction of the "makes" test. Thus, the proposed rule defined a "consolidated subsidiary" in § 933.1(g) as a subsidiary of a member whose assets and liabilities are consolidated with those of the member for purposes of reports filed with the member's appropriate Federal banking agency. This definition reduced or eliminated the need for accounting adjustments on the part of the applicant or FHLBank staff, since the consolidation of assets as part of the application review process would have been based on the consolidation standards used by the applicant's appropriate Federal banking agency.

Several comment letters advised that in some instances insurance companies may not file consolidated financial reports. One FHLBank recommended that insurance companies be required to consolidate the assets of those entities of which they own 51 percent or more of the common stock. Another FHLBank commented that, for purposes of satisfying the "makes" test, insurance company applicants should be given credit for those assets of any affiliates or subsidiaries in which the insurance companies have at least a 20 percent equity interest, up to the percentage of the equity interest.

The Finance Board will be issuing policy guidelines clarifying how applicants should calculate asset originations and purchases of subsidiaries and other affiliates for purposes of the "makes" test. The Finance Board anticipates that the guidelines will continue the current Finance Board practice of consolidating subsidiaries for insured depository institution applicants that file consolidated financial statements with their regulator and, until such guidelines are issued, will continue to evaluate applications for membership consistent with current practice. Because of the questions raised on consolidation for insurance companies and the need for flexibility in addressing these questions, the Finance Board believes that these issues are best handled through policy guidelines. Accordingly, the references to consolidated subsidiaries in §§ 933.1(g) and 933.3(a)(3) of the proposed rule have been deleted in the final rule.

One FHLBank recommended that a one-year grace period should be allowed for *de novo* institutions approved for membership to meet the "makes" test, just as it is permitted for *de novo* insured depository institution members to meet the 10 percent requirement under section 4(a)(2) of the Bank Act, as implemented by § 933.4(b)(2) of the final rule (discussed below). The one-year grace period for meeting the 10 percent requirement is mandated specifically by section 4(a)(2) of the Bank Act. In contrast, the Finance Board interprets section 4(a)(1) to require that an institution meet the "makes" test at the time of its application for membership. Thus, the Finance Board has not adopted the recommended change in the final rule.

2. Section 4(a)(2) Membership Criteria

Section 4(a)(2) of the Bank Act establishes the following membership eligibility criteria for "insured depository institutions" that are not members of the FHLBank System on January 1, 1989 (hereafter, the section 4(a)(2) criteria):

(A) The insured depository institution has at least 10 percent of its total assets in residential mortgage loans;

(B) the insured depository institution's financial condition is such that advances may be safely made to such institution; and

(C) the character of its management and its home-financing policy are consistent with sound and economical home financing.

12 U.S.C. 1424(a)(2) (A), (B), and (C).

As required by statute, §§ 933.4(a) (4) and (5) and 933.4(b) of the final rule apply all of the section 4(a)(2) criteria to insured depository institutions. In addition, the final rule applies the criteria of paragraphs (B) and (C) of section 4(a)(2) to insurance company applicants, but not the 10 percent requirement found in paragraph (A) of section 4(a)(2).

a. *Definition of "residential mortgage loans" in the 10 percent requirement.* Section 4(a)(2)(A) and § 933.4(b) of the final rule provide that an insured depository institution applicant shall be eligible for membership if it has at least 10 percent of its total assets in "residential mortgage loans." Thus, it is necessary to define "residential mortgage loans" for purposes of implementing the 10 percent requirement in the statute.

The term "residential mortgage loans" is not defined in the Bank Act or current Finance Board regulations. However, the legislative history of FIRREA indicates that the 10 percent requirement is a product of a compromise between the Senate and the House of Representatives. The compromise changed the threshold percentage requirement from a test that required 60 percent of assets in "Qualified Thrift Investments" (QTIs) under the "Qualified Thrift Lender" (QTL) test in section 10(m) of HOLA, 12 U.S.C. 1467a(m), to a test that required 10 percent of assets in "residential mortgage loans." This requirement was added to ensure that only applicants that demonstrate a significant commitment to residential mortgage lending acquire access to FHLBank System benefits. See FIRREA Conference Report at 424–25. Thus, in determining the types of loans that satisfy the 10 percent requirement, it is reasonable to look for guidance, in part, at the types of loans (*i.e.*, QTIs) that qualify for the QTL test under the QTL regulation implementing section 10(m), 12 CFR part 563 (as amended by 58 FR 15082, March 19, 1993).

In contrast to the requirement in section 4(a)(1) that institutions make "long-term" home mortgage loans, section 4(a)(2)(A) of the Bank Act has no similar long-term requirement for residential mortgage loans. Therefore, there is no statutory requirement that the years to maturity for residential mortgage loans be defined for the 10 percent requirement.

Section 933.1(r) of the final rule defines "residential mortgage loans," as used in the 10 percent requirement, specifically as any one of the following types of domestic loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state laws as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (r) (1) through (4) of this section;

(ii) Securities representing an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (4) of this section; or

(iii) Mortgage debt securities as defined in paragraph (r)(6) of this section;

(6) Mortgage debt securities secured by:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (4) of this section;

(ii) Securities which meet the requirements of paragraph (r)(5) of this section; or

(iii) Securities secured by assets, all of which assets at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (5) of this section;

(7) Home mortgage loans secured by leasehold interests, as defined in § 933.1(i)(1)(ii) of this part, except that the period of the lease term may be for any duration; or

(8) Any loans which the Board in its discretion otherwise determines are residential mortgage loans.

The types of loans and other assets included within the definition of "residential mortgage loans" in § 933.1(r) of the final rule are discussed in further detail below.

(1) Home mortgage loans and funded residential construction loans. Section 933.1(r) (1) and (2) of the final rule includes in the definition of "residential mortgage loans": (i) Home mortgage loans and (ii) funded residential construction loans. "Home mortgage loans" are defined in § 933.1(i) and, thus, residential mortgage loans include all loans included in the "home mortgage loan" definition, as discussed above. A "funded residential construction loan" is defined in § 933.1(h) as the portion disbursed to the borrower of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property.

Explicit language in the legislative history of section 4(a)(2)(A) of the Bank Act indicates that one-to-four family, multifamily and funded residential construction loans are to be included as "residential mortgage loans" for purposes of the 10 percent requirement. See FIRREA Conference Report at 428. Current Finance Board practice is to include such loans as satisfying the 10 percent requirement.

Since the definition of "residential mortgage loans" includes "home mortgage loans" as defined in § 933.1(i), unless otherwise included in other paragraphs of the "residential mortgage loan" definition, loans that are not included or that are specifically excluded from the "home mortgage loan" definition, also do not meet the definition of "residential mortgage loan." As discussed above, consistent with current Finance Board practice, loans on unimproved property and land development loans which finance land improvements preparatory to erecting structures do not come within the definition of "home mortgage loan." and, thus, also are not included in the definition of "residential mortgage loan." In addition, since the definition of "home mortgage loans" specifically excludes "nonresidential real property" loans, loans secured by "nonresidential real property," as defined in § 933.1(p) and discussed above, also are excluded from the definition of "residential mortgage loans."

(2) Manufactured housing loans not secured by real estate. Manufactured housing loans secured by real estate under state law are included in the definition of "home mortgage loan" and, thus, are included in the definition of "residential mortgage loans" by virtue of § 933.1(r)(1) of the final rule. However, consistent with the proposed rule, § 933.1(r)(3) also includes in the definition of "residential mortgage loan," manufactured housing loans that are not secured by real estate under state law. This is a change from current Finance Board practice. Although manufactured housing loans not secured by real estate may be treated by federal banking agencies as consumer loans for some purposes, they are residential in nature, as residents often live in such housing on a full-time, permanent basis. In addition, such loans are includable on a limited percentage basis as QTIs that qualify for the QTL test under the QTL regulation. See 12 CFR 563.51(f)(1). Therefore, all manufactured housing loans can be used to meet the 10 percent requirement.

(3) Loans secured by junior liens. Consistent with the proposed rule and current Finance Board practice, § 933.1(r)(4) of the final rule includes loans secured by junior liens on one-to-four family property or multifamily property in the definition of "residential mortgage loan." In contrast to the definition of "home mortgage" in the Bank Act as used in the "makes" test, residential mortgage loans are not required to be secured by first mortgages or first liens in order to be used to meet the 10 percent requirement. In addition, such loans are includable as QTIs that qualify for the QTL test under the QTL regulation. See 12 CFR 563.51(f)(1). Further, two financial institutions trade associations supported the inclusion of loans secured by junior liens, including home equity loans, as "residential mortgage loans." The Finance Board agrees with these commenters and, thus, has adopted § 933.1(r)(4) as proposed.

(4) Mortgage pass-through securities and mortgage debt securities. The definition of "residential mortgage loan" in § 933.1(r) (5) and (6) of the final rule specifically includes both mortgage pass-through securities and mortgage debt securities which, therefore, are included towards satisfying the 10 percent requirement. This is in contrast to the definition of "home mortgage loan" in § 933.1(i), which includes mortgage pass-through securities but not mortgage debt securities.

Mortgage debt securities can consist of CMOs, mortgage-backed bonds, stripped instruments such as interest-only strips (IOs) or principal-only strips (POs), or CMO residuals. This list of securities is meant to be illustrative and not exhaustive of the types of investments which the Finance Board considers as qualifying as mortgage debt securities in the continually evolving secondary mortgage market.

Section 933.1(r) (5) and (6) of the final rule requires that, to qualify as "residential mortgage loans," mortgage pass-through securities and mortgage debt securities must be entirely backed by assets described in paragraphs (r) (1) through (6), which assets meet the definition of "residential mortgage loan" at the time of issuance of the security.

While the proposed rule specifically included both mortgage pass-through securities and mortgage debt securities, § 933.1(r) (5) and (6) of the final rule expands the categories of securities that are included in the definition of "residential mortgage loan" from that in the proposed rule to include mortgage pass-through securities representing an undivided ownership interest in mortgage debt securities, as well as mortgage debt securities secured by other mortgage debt securities or by mortgage pass-through securities.

Two thrift members commented that the definition of "residential mortgage loan" should be the same as the definition of "home mortgage loan" which, as discussed earlier, they suggested should not include mortgage pass-through securities. Current Finance Board practice includes mortgage pass-through securities in both the definition of "home mortgage loan" for purposes of the "makes" test and the definition of "residential mortgage loan" for purposes of the 10 percent requirement. The Finance Board continues to believe that mortgage pass-through securities are appropriate instruments to include for both of these statutory requirements.

Those thrift members also suggested, in the alternative, that CMOs should be excluded from the definition of "residential mortgage loan" for purposes of the 10 percent requirement, in order to make the definitions of "home mortgage loan" and "residential mortgage loan" identical. Neither commenter provided an argument explaining why the definition of "residential mortgage loan" for purposes of the treatment of CMOs needs to be the same as "home mortgage loan" and why it should not be based on those loans that are QTIs, as suggested in the preamble to the proposed rule.

On the other hand, three FHLBanks supported the inclusion of CMOs and other mortgage debt securities in the definition of "residential mortgage loan" for purposes of the 10 percent requirement. Two of the FHLBanks commented that the purchase of such securities supports housing finance in the same manner as does the purchase of mortgage pass-through securities.

For the policy reasons stated by those commenters supporting the proposed rule, the Finance Board has decided to include mortgage debt securities in the definition of "residential mortgage loan." The Finance Board believes that the Bank Act allows for more flexibility in defining "residential mortgage loan" for purposes of the 10 percent requirement than in defining "home mortgage loan" for purposes of the "makes" test. Furthermore, because the 10 percent requirement appears to have been a legislative compromise from the higher 60 percent QTL requirement, it is appropriate to consider those loans that satisfy the QTL requirement when determining those loans to be included in the 10 percent requirement. QTIs include securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing. 12 U.S.C. 1467a(m)(4)(C)(ii)(III); 12 CFR 563.51(f)(1)(iii) (as amended by 58 FR 15082, March 19, 1993). In addition, current Finance Board practice includes CMOs and other mortgage debt securities for purposes of satisfying the 10 percent requirement, and the Finance Board continues to believe that this practice is appropriate.

Accordingly, § 933.1(r)(6) of the final rule includes CMOs and other mortgage debt securities as "residential mortgage loans" for purposes of satisfying the 10 percent requirement.

The proposed rule also specifically sought comment regarding whether the inclusion of CMOs created the possibility of "double-counting" of assets. The Finance Board was concerned that, because the mortgage loans underlying a CMO continue to be held by the originator of the CMO, there was a possibility that one applicant for FHLBank membership could list mortgage loans that back a CMO as assets, and another applicant could show the CMO that represents the mortgage loans as an asset. Such a situation could permit both applicants to be credited with essentially the same assets for purposes of evaluating their compliance with the 10 percent requirement.

A FHLBank commented that if the purpose of the 10 percent requirement is to evaluate an applicant's commitment to housing finance, "double-counting" of assets, even if it may occur, is not inappropriate. A bank trade association also stated that a purchaser of CMOs or other mortgage debt securities is supporting housing finance just as much as the purchaser of mortgage pass-through securities, even though there may be some "double-counting" of assets.

The Finance Board, however, continues to believe that any "double-counting" of assets in connection with the inclusion of CMOs or other mortgage debt securities for purposes of satisfying the 10 percent requirement would be inappropriate. Thus, in order to preclude any such "double-counting," § 933.4(b)(1) of the final rule provides that the seller of a mortgage debt security may not count the assets used to secure such security to satisfy the 10 percent requirement.

(5) Home mortgage loans secured by leaseholds. Consistent with the proposed rule, the definition of "residential mortgage loan" in § 933.1(r)(7) of the final rule includes home mortgage loans secured by leasehold interests, as defined in § 933.1(i)(1)(ii). In contrast to the loans secured by leaseholds included in the definition of "home mortgage loan," the period of the term of a lease that secures a home mortgage loan under the "residential mortgage loan" definition may be for any duration.

(6) Other loans includable. Consistent with the proposed rule, the definition of "residential mortgage loan" in § 933.1(r)(8) of the final rule also includes any other loans which the Finance Board in its discretion otherwise determines are residential mortgage loans.

The Finance Board could use this provision to determine on a case-by-case basis that other types of loans and new loan products satisfy the 10 percent requirement.

(7) Other loans excluded. Consistent with the proposed rule and current Finance Board practice, residential loans in process do not come within the definition of "residential mortgage loan" in § 933.1(r) of the final rule and, therefore, may not be counted towards satisfying the 10 percent requirement. Residential loans in process are mortgage loan commitments under which the proceeds have not yet been disturbed to the borrower. For example, construction loans where the funds are not released until specific conditions are met are loans in process. *See* Thrift Financial Report, Schedule SC-line 280.

b. *Assets included in the 10 percent requirement calculation.* Section 933.3(a)(4) of the proposed rule included the assets of an institution's consolidated subsidiaries within the scope of the transactions used to satisfy the 10 percent requirement. For the reasons discussed above for the "makes" test, the reference to consolidation of assets has not been retained in § 933.4(b)(1) of the final rule and will be addressed in future Finance Board policy guidelines. As stated above, the Finance Board will continue its current practice of consolidating subsidiaries for insured depository institutions that file consolidated financial statements with their regulators.

One FHLBank commenter requested clarification, in calculating residential mortgage loans as 10 percent of total assets, as to whether any foreign assets of the applicant's consolidated subsidiaries should be counted as part of total assets. The Finance Board believes that only domestic assets should be included in calculating the 10 percent requirement, as well as the "makes" test. Section 933.4(b)(1) of the final rule (as well as the definitions of "home mortgage loan" and "residential mortgage loan" in §§ 933.1(i) and 933.1(r), respectively) have been revised accordingly.

c. *Financial condition.* Section 4(a)(2)(B) of the Bank Act requires that, in order to be eligible for FHLBank membership, an insured depository institution's financial condition must be such that advances may be safely made to it. 12 U.S.C. 1424(a)(2)(B). Section 933.4(a)(4) of the final rule implements this requirement and applies it to all applicants for membership, including applicants (such as insurance companies) that are not insured depository institutions.

d. *Character of management and home-financing policy.* Section 4(a)(2)(C) of the Bank Act requires that the character of an insured depository institution's management and its home-financing policy be consistent with sound and economical home financing in order to be eligible for FHLBank membership. 12 U.S.C. 14249(a)(2)(C). Section 933.4(a)(5) of the final rule implements this requirement and applies it to all applicants for membership, including applicants (such as insurance companies) that are not insured depository institutions.

D. Membership Approval Eligibility Requirements for Insurance Companies

Insurance companies have been eligible to be members of the FHLBank System since the enactment of the Bank Act in 1932. See 47 Stat. 725 (July 22, 1932). Since certain of the membership eligibility criteria in the statute are not expressly applicable to insurance companies, in the proposed rule the Finance Board sought public comment on which, if any, of those eligibility criteria should be applied to insurance companies. The following discusses the various comments received on the various insurance company issues that are resolved in this rulemaking.

The preamble to the proposed rule requested comment on whether insurance company applicants should be subject to the section 4(a)(2) criteria, which criteria are only expressly applicable under the statute to insured depository institutions. Three FHLBanks, as well as two insurance company trade associations and a nonmember insurance company, commented that insurance company applicants should not be subject to any of the section 4(a)(2) criteria. Another FHLBank specifically commented that the 10 percent requirement contained in section 4(a)(2)(A) should not apply to insurance company applicants. One FHLBank also objected to applying the 10 percent requirement to insurance companies, but noted that the Finance Board has the authority to apply the other two section 4(a)(2) criteria to insurance companies. Another FHLBank recommended that instead of applying the 10 percent requirement as the rule, that case-by-case analysis be utilized to determine whether insurance companies' housing-related activities achieve the same objectives as the 10 percent requirement.

Two thrift members and two financial institutions trade associations supported applying all of the section 4(a)(2) criteria to insurance companies. The bank trade association recommended that if identical standards cannot be found for insurance companies, insurance companies should be subject to comparable standards that are no less stringent than those applied to other applicants.

A number of commenters that opposed applying the section 4(a)(2) criteria to insurance companies argued that such criteria are not applicable to insurance companies because the statute makes these criteria expressly applicable to "insured depository institutions," and insurance companies are not "insured depository institutions" as defined in section 2(12) of the Bank Act, see 12 U.S.C. 1422(12). Several commenters argued that applying the section 4(a)(2) criteria to insurance companies would exceed the Finance Board's authority. A number of commenters cited an axiom of statutory construction described as stating that where a statute is clear on its face, it cannot be changed or interpreted by policy or directives.

However, while section 4(a)(2) of the Bank Act, by its terms, applies to insured depository institutions, section 4(a)(2) does not prohibit or preclude the application of the membership eligibility criteria set forth in that section to other membership applicants. Under the Bank Act, the Finance Board's primary duty is to ensure that the FHLBanks operate in a financially safe and sound manner. See 12 U.S.C. 1422a(a)(3)(A) (as amended). In addition, to the extent consistent with its primary duty, the Finance Board is responsible for, *inter alia*, supervising the FHLBanks, and ensuring that the FHLBanks carry out their housing finance mission. *Id.* at 1422a(a)(3)(B); see 12 U.S.C. 1422b(a)(1). Pursuant to these general powers, the Finance Board may determine that some or all of the section 4(a)(2) membership eligibility criteria should be applied to insurance company applicants.

Several commenters cited policy reasons supporting applying all of the section 4(a)(2) criteria to insurance company applicants. First, applying the same eligibility criteria to all applicants would treat all applicants for membership, whether insured depository institutions or insurance companies, in an equitable and consistent manner. This position was specifically supported by a thrift member and two financial institutions trade associations.

Second, applying the adequate financial condition and character of management/home-financing policy criteria to insurance company applicants would be consistent with the Finance Board's duties to ensure that the FHLBank System is safe and sound and carries out its housing finance mission. A thrift member commented that all applicants for membership should be required to clearly demonstrate an ability to further the housing finance mission of the FHLBank System. The member also argued that savings associations would be competitively disadvantaged if "their competitors" are free to avail themselves of the advantages of membership in the FHLBank System without the same required level of housing finance commitment.

A number of commenters also cited policy reasons for not applying the section 4(a)(2) criteria to insurance company applicants. A FHLBank suggested that applying the 10 percent requirement to insurance companies would fail to promote the FHLBanks' housing finance mission, and an insurance company trade association argued that applying any of the section 4(a)(2) criteria would work contrary to the FHLBanks' housing mission. The argument also was made that other provisions of the Bank Act applicable to approved FHLBank members, such as the requirement that long-term advances be used only for residential housing finance, the collateral requirements for advances, the QTL restrictions, and the community support requirements, sufficiently promote the FHLBanks' housing finance mission and safe and sound operation so as to justify not applying any or all of the section 4(a)(2) criteria to insurance company applicants. See 12 U.S.C. 1430 (a), (e), 12 CFR part 935 (58 FR 29456, May 20, 1993), and 12 U.S.C. 1430(g), 12 CFR part 936.

Several commenters argued that the 10 percent requirement could block or discourage many insurance companies involved in housing finance from becoming members because their residential mortgage loan investments, while substantial in absolute dollars, may not represent a significant enough percentage of their balance sheet by virtue of their large size. This could limit the potential for expansion of FHLBank membership. In other words, insurance companies that fail the 10 percent requirement and therefore that cannot qualify for membership may in fact have significant residential mortgage loans based on dollar volume and be a significant participant in the housing finance market.

A thrift member and a bank trade association commented that large commercial banks, for example, also may have a sizable dollar amount of residential mortgage loans, yet they still are required to meet the 10 percent requirement. Thus, they concluded, there is no reason to apply a different standard to insurance companies than to commercial banks.

As reflected in § 933.4(c) of the final rule, the Finance Board has determined not to apply the 10 percent requirement to insurance company applicants. In the alternative, § 933.4(c) requires that such applicants have mortgage-related assets that reflect a commitment to housing finance, as determined by the Finance Board. This alternative test recognizes the differences in the lines of business of the banking and insurance industries and establishes an alternative test for insurance companies that requires a commitment to housing finance. This commitment will be evaluated by the Finance Board on a case-by-case basis. For example, even though an insurance company applicant may not meet the 10 percent requirement, the company's mortgage-related assets, as an absolute dollar volume, can be quite significant given the average asset size of an insurance company. The alternative test also is consistent with the Finance Board's recommendation to remove the 10 percent requirement for all members as presented in the report that the Finance Board filed with Congress in April of this year entitled "Report on

the Structure and Role of the Federal Home Loan Bank System."

While not specifically applying the 10 percent requirement, the final rule in § 933.4(a) (4) and (5) continues to apply the financial condition and character of management/home-financing policy criteria to insurance company applicants. This recognizes the importance of financial condition and character of management/home-financing policy in developing a strong membership base to ensure the continued success of the FHLBank System's housing finance mission.

Accordingly, under §§ 933.4(a) (4) and (5) and 933.4(c) of the final rule, insurance company applicants are subject to the financial condition and character of management/home-financing policy criteria of sections 4(a)(2) (B) and (C) of the Bank Act, as well as a requirement that they have mortgage-related assets that reflect a commitment to housing finance, as determined by the Finance Board.

E. Membership at Principal Place of Business

Under section 4(b) of the Bank Act, institutions eligible to join the FHLBank System may become members only of the FHLBank of the district in which their "principal place of business" is located, or of a FHLBank in an adjoining district if demanded by convenience and then only with the approval of the Finance Board. See 12 U.S.C. 1424(b). This requirement is implemented in § 933.5(a) of the final rule.

1. Home Office as Principal Place of Business

The Bank Act does not define the term "principal place of business." However, § 931.24 of the Finance Board's existing regulations (12 CFR 931.24) defines the term as the state in which the member maintains its home office established as such in conformity with the laws under which the member is organized.

The Finance Board received comments both in favor of and against retaining the presumption that an institution's "principal place of business" is the state in which it maintains its "home office." A FHLBank and two financial institutions trade associations expressly supported the retention of the "home office" presumption. In contrast, another FHLBank recommended that an institution's "principal place of business" not be its "home office," but instead be determined by consideration of multiple factors, including the location of its home office, with "principal place of business" being governed by the location where the majority of those factors occur.

Section 933.5(b) of the final rule retains the presumption that an institution's "home office," established as such in accordance with the laws under which the member is organized, is its principal place of business, because the Finance Board believes that the "home office" designated by most members and applicants in their charters or articles of incorporation constitutes their principal place of business.

2. Designation of Principal Place of Business Based on Factors Other Than Home Office

Section 933.5(c) of the final rule changes the standards in the Finance Board's existing regulations that govern the designation of a member's principal place of business to a state other than the state in which it maintains its home office.

Prior to FIRREA, the Principal Supervisory Agents (PSAs) of the FHLBank (*i.e.*, the FLHBank presidents), in order to facilitate the FHLBanks' examination and supervision functions, had the authority to apply certain criteria in order to ascertain whether or not a member's charter accurately reflected its true principal place of business and, if not, to transfer the member's principal place of business to a different FHLBank district. See 12 CFR 523.3–2(c) (1989). The review was aimed at assuring the accessibility, validity and reliability of information needed to adequately supervise savings associations.

Since the FHLBanks are no longer involved in the examination and supervision of their members, § 933.5(c) of the final rule eliminates the use of supervisory considerations in determining which FHLBank district is the district of the member's "principal place of business" and eliminates the provision that permits a FHLBank president to unilaterally redesignate a member's principal place of business.

Under § 933.5(c)(1) of the final rule, a member or an applicant for membership may request in writing to the FHLBank in the district where such institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. The board of directors of the FHLBank in the district where such institution maintains its home office shall designate within 90 days of receipt of such written request a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria based on administrative functions are satisfied:

(1) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(2) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(3) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

Under § 933.5(c)(4) of the final rule, if the board of directors of the FHLBank in the district where the institution maintains its home office fails to make the designation requested by such institution pursuant to § 933.5(c)(1), the institution can request in writing that the Finance Board make the designation.

Under § 933.5(d)(1) of the final rule, no transfer of membership between FHLBank districts may take effect until the FHLBanks involved agree on an orderly method of transfer of membership. Under § 933.5(d)(2), if the FHLBanks involved fail to reach an agreement, the Finance Board is required to determine the conditions of the transfer.

The Finance Board requested comment in the proposed rule on whether the provisions on determination of principal place of business should provide members greater flexibility to transfer their membership to a different FHLBank district. Recognizing that some members operate nationwide, the Finance Board sought guidance on having a less restrictive or more restrictive rule on transferring membership, and the impact, if any, that a less restrictive rule would have on FHLBank membership.

One FHLBank commented that the final rule should permit both the member and the FHLBank, rather than only the member, to request a designation of a member's principal place of business to another FHLBank district. Another FHLBank opposed the right of a member or applicant to appeal to the Finance Board its FHLBank's denial of its request for designation of its principal place of business to another district. By contrast, a third FHLBank supported the right of a member or an applicant to appeal to the Finance Board a denial of its request for designation to another district.

In addition, comments were received on which of the affected FHLBanks should have the authority to approve a member's or an applicant's request for designation of its principal place of business to another district. In particular, a thrift member supported

having a member's current FHLBank make the determination on a request for such designation and transfer. In contrast, two FHLBanks commented that the sending and receiving FHLBanks should make a mutual decision whether to approve a request for such designation and transfer. One of the FHLBanks recommended that if the sending and receiving FHLBanks could not reach a mutual agreement, then the Finance Board should make the final decision.

Several comments were received on the criteria to be used in determining whether to approve a member's or applicant's written request to designate a state other than the state in which it maintains its "home office" as its "principal place of business." A FHLBank and two financial institutions trade associations expressly supported the three standards contained in the proposed rule. In contrast, five other FHLBanks suggested that the decision to approve a request for such designation be based on operationally-oriented criteria (*i.e.*, where the institution actually does business), as opposed to administrative functions criteria.

The Finance Board believes that the final rule should provide a means for institutions to transfer membership from one district to another district that is more appropriate or convenient through the establishment of reasonable procedures and standards for such transfers. The Finance Board believes that the standards and procedures for membership transfers in § 933.5(c) of the final rule adequately achieve this goal. Accordingly, based on the policies articulated by those commenters supporting the proposed rule, the Finance Board has decided to adopt § 933.5(c) as proposed.

3. Principal Place of Business in Consolidations

While § 933.5(c) governs membership transfers, § 933.11(b) of the final rule governs determinations of principal place of business and, thus, location of membership, in consolidations involving members from more than one FHLBank district. The provisions address the potential for "district shopping" that can arise in such consolidations. Specifically, there has been concern that an institution in one FHLBank district could consolidate with a smaller institution located in another FHLBank district, change its "home office" to the latter district, and thereby transfer its membership to a district that might only have a tangential connection to the consolidated institution and its operations.

Section 933.11(b)(1) of the final rule deals with this potential concern. It provides that upon the consolidation of two members from different FHLBank districts, the newly consolidated institution will remain a member of its FHLBank and the disappearing institution's membership will terminate. However, if more than 80 percent of the assets of a newly consolidated institution are derived from the assets of the disappearing institution, then § 933.11(b)(1) provides that the consolidated institution will continue to be a member of the disappearing institution's FHLBank and the membership of the other institution will terminate upon consummation of the consolidation.

The Finance Board received one comment specifically discussing the proposed rule's provision addressing the potential "district shopping" concern. A FHLBank commented that the principal place of business of the resulting institution in a merger of two members from different districts should be determined by the same criteria as those used for transfers of membership and that there should be no presumption in favor of the resulting institution's new "home office." Alternatively, the FHLBank recommended that membership be required to be maintained in the disappearing institution's district if a majority of the resulting institution's assets, as opposed to 80 percent, are derived from the assets of the disappearing institution. The FHLBank argued that this would ensure that membership is in a district with a significant connection to the resulting institution.

The Finance Board believes that it is important to have reasonable standards established that ensure the stability of the FHLBank System by preventing "forum shopping" in consolidations of members from two different districts. The Finance Board believes that the standards and procedures for determining the district of membership for newly consolidated institutions contained in § 933.11(b)(1) of the final rule adequately achieve this goal. Accordingly, the Finance Board has decided to adopt § 933.11(b)(1) as proposed.

F. Stock Requirements

1. Minimum Stock Purchase

Section 6(b) of the Bank Act requires all members to purchase FHLBank stock equal to one percent of the member's "aggregate unpaid loan principal," but not less than $500. 12 U.S.C. 1426(b). Section 6(b)(4) of the Bank Act specifically defines "aggregate unpaid loan principal" as the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations. 12 U.S.C. 1426(b)(4). In addition, section 10(e)(3) of the Bank Act requires each member to purchase FHLBank stock as if at least 30 percent of its assets were home mortgage loans. 12 U.S.C. 1430(e)(3). Thus, if an institution's portfolio of home mortgage loans is less than 30 percent of its total assets, it must compute its minimum stock purchase as if it has 30 percent of its total assets in home mortgage loans, and purchase FHLBank stock equal to one percent of the unpaid principal of that 30 percent plus one percent of the aggregate unpaid principal of the institution's home-purchase contracts and similar obligations.

The final rule implements and defines these statutory provisions. Section 933.7(a)(1) and (2) of the final rule implements the minimum stock purchase requirements in sections 6(b) and 10(e)(3), respectively, of the Bank Act. Thus, the stock requirements under these sections are the mandatory minimum levels of stock a member must purchase and hold under the Bank Act. In addition, § 933.1(b) of the final rule defines "aggregate unpaid loan principal" consistent with the definition in section 6(b)(4) of the Bank Act, 12 U.S.C. 1426(b)(4), and "home mortgage loan" is defined in § 933.1(i) of the final rule.

A thrift member objected to basing the stock purchase requirements on mortgage-related assets, arguing that a better test of membership would be to utilize total institution assets. However, as discussed above, the Bank Act specifically states that the requirement shall be the aggregate unpaid principal of the institution's home mortgage loans, home-purchase contracts and similar obligations. See 12 U.S.C. 1426(b)(4).

Section 933.7(a)(3) of the proposed rule required an FHLBank to include the assets of the member's consolidated subsidiaries when calculating the member's minimum stock purchase requirement. As discussed above, the normal industry practice of insured depository institutions is to file financial reports with their federal regulators on a consolidated basis. In view of this practice, the Finance Board currently consolidates subsidiaries of insured depository institutions that file consolidated financial reports with their regulators for purposes of determining their stock purchase requirements.

However, as also discussed above, questions have been raised about

consolidation requirements for insurance companies. Specifically, one FHLBank commented that the capital stock purchase requirement for a consolidated subsidiary in § 933.7(a)(3) of the proposed rule may not reflect the accounting practices currently maintained in the insurance industry.

The Finance Board has determined to address consolidations of subsidiaries for all members for purposes of calculation of the stock purchase requirement in policy guidelines. The Finance Board anticipates that the guidelines will continue the current Finance Board practice of consolidating subsidiaries for insured depository institutions that file consolidated financial reports with their regulators and, until such guidelines are issued, will continue to determine such institutions' stock purchase requirements consistent with current practice. Because of the questions raised on consolidation for insurance companies and the need for flexibility in addressing these questions, the Finance Board believes that these issues are best handled through policy guidelines. Accordingly, § 933.7(a)(3) of the proposed rule has been deleted in the final rule.

2. Timing of Stock Purchase

Section 6(c) of the Bank Act establishes the point in the application process at which an applicant for membership in the FHLBank System is required to pay for its minimum stock purchase. 12 U.S.C. 1426(c). Section 6(c) provides, in pertinent part, that stock subscriptions shall be paid for at the time of application therefor or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months. *Id.*

Section 933.7 of the Finance Board's existing regulations (12 CFR 933.7) interprets section 6(c) to require an applicant to subscribe for stock when it submits an application for membership. However, this provision of the existing regulation creates confusion as to when an applicant actually becomes a member. Section 2(4) of the Bank Act defines the term "member" as any institution which has subscribed for the stock of an FHLBank. 12 U.S.C. 1422(4). Thus, if an applicant subscribes for stock at the time it submits its application for membership with an FHLBank, the applicant would seem to meet the definition of a "member" under the Bank Act before the application has been approved. This confusion has been eliminated in the final rule by postponing the stock purchase requirement until after the applicant has been approved for membership and by defining "member" in § 933.1(n) of the final rule as an institution that has been approved for membership in an FHLBank and has purchased stock in the FHLBank in accordance with §§ 933.7 or 933.11 of this part. Accordingly, §§ 931.9 and 931.22 of the Finance Board's existing regulations (12 CFR 931.9, 931.22), which define "member" as an institution admitted to membership in an FHLBank, have been removed from part 931.

Section 933.7(b)(1) of the final rule specifically provides that, upon approval of membership, an institution has 60 calendar days in which to purchase its required minimum stock. Section 933.7(b)(2) provides that, in the alternative, an institution approved for membership (at its election) may purchase the stock in quarterly installments. The first one-quarter installment must be purchased within 60 calendar days of the date of membership approval, and a further sum of not less than one-fourth of the total amount shall be purchased at the end of each succeeding period of four months from the date of membership approval.

The proposed rule provided for a 30-calendar-day stock purchase period or, in the alternative, allowed the approved applicant at its election to purchase the stock in quarterly installments, with the first quarterly installment due within 30 calendar days of its approval for membership. In addition, the proposed rule permitted the Finance Board to extend the stock purchase period for an additional period not to exceed 30 calendar days, upon evidence of good cause.

A bank trade association supported the proposed 30-day period and 30-day extension period for approved applicants. One FHLBank recommended requiring the stock purchase within 30 calendar days of receipt of the Finance Board's written notification of membership approval, rather than within 30 days of the date Finance Board membership approval. Another FHLBank commented that calendar days should be changed to business days throughout the rule. A third FHLBank recommended a 60-day calendar period for approved applicants, and urged a 60-day-calendar-day extension period, with requests for extensions made directly to the FHLBank rather than to the Finance Board. Another FHLBank supported a 90-day calendar period for approved applicants.

Thus, the claim that was being made by a number of the commenters was that the 30-day period is insufficient time to ensure final approval by the applicant's board of directors, to ensure that the funds for the purchase of the stock are available, and to provide applicants with adequate time for planning and making provisions for the stock purchase.

Based upon the comments, the Finance Board has determined that the timing for stock purchase requirements should be further extended to allow for 60 calendar days to purchase the minimum stock requirement, or first installment thereof. However, in view of the additional 30 days provided, the Finance Board has determined that there should be no opportunity to request an extension. Section 933.7(b) of the final rule has been revised accordingly. Calendar days rather than business days have been retained in the final rule as the easiest and the most appropriate means to calculate this period of time. Using calendar days eliminates any confusion as to appropriate counting of holidays and weekends.

As stated above, under § 933.7(c) of the final rule, an institution approved for membership becomes a member at the time it purchases its minimum stock requirement or when it purchases the first installment of its minimum stock requirement. Since the institution is deemed a member once it has purchased its first installment, that first installment purchase entitles an institution to the privileges of membership, including the ability to obtain advances from its FHLBank. However, the borrowing capacity of an institution purchasing stock in installments would be limited by the advances-to-capital stock requirements in section 10(c) and 10(e) of the Bank Act. See 12 U.S.C. 1430(c) and 1430(e); 12 CFR 935.13, 935.15 (58 FR 29456, May 20, 1993). If an institution purchases its first installment, but fails to purchase the remaining installments due on its minimum stock requirement, the remedy—just as with any other member that does not hold adequate FHLBank stock as required by law—would be for the Finance Board, within its discretion, to remove the institution from membership pursuant to § 933.14 of the final rule.

One FHLBank requested clarification as to whether an applicant may purchase stock prior to membership approval and, if so, whether such purchase enables the applicant to access the FHLBank's credit window. An

applicant cannot purchase stock in a FHLBank until it is approved for membership. As discussed above, it may not receive FHLBank advances until it is a "member," *i.e.*, it has been approved for membership and has purchased its minimum stock requirement (or first installment thereof).

Under § 933.7(d) of the final rule, if an institution that has submitted an application and been approved for membership fails to purchase its minimum stock requirement or its first quarterly installment within 60 calendar days of the date of its approval for membership, the approval shall be null and void and the applicant, if it wants to be a member, shall be required to submit a new application for membership.

3. Adjustments in Stock Holdings

Section 933.9(a) of the final rule provides that a FHLBank may from time to time increase or decrease the amount of stock any member is required to hold. The language "may from time to time," which was unintentionally omitted in the proposed rule, is retained from § 933.9 of the Finance Board's existing regulations (12 CFR 933.9).

Section 933.9(b)(1) of the final rule implements section 6(b)(1) of the Bank Act, 12 U.S.C. 1426(b)(1), by providing that a FHLBank shall calculate annually, in the manner set forth in § 933.7(a) of this part, each member's required minimum holdings of stock in the FHLBank in which it is a member using calendar year-end financial data provided by the member to the FHLBank, pursuant to § 933.18(d) of this part, and shall notify each member of the adjustment in its minimum stock requirement.

One FHLBank requested clarification as to whether a FHLBank will be required to solicit from an institution resulting from a charter conversion (see § 933.2(e)) a new stock requirement calculation reflecting the member's financial condition as of the date of the conversion. Since the converted institution is the same as the former institution, the Finance Board does not believe that a new stock requirement calculation as of the conversion date is necessary or required.

Section 933.9(b)(2) of the final rule implements another provision of section 6(b)(1) of the Bank Act, 12 U.S.C. 1426(b)(1), by providing that if, after the annual adjustment required by § 933.9(b)(1) is made, the amount of stock a member is required to hold is decreased, the FHLBank may, in its discretion and upon proper application of the member, retire such excess stock. A thrift member commented that the FHLBank should be required to retire the excess stock upon proper application of the member. A FHLBank commented that application of the member should not be required. Under section 6(b)(1) of the Bank Act, the FHLBank has the discretion to decide whether to redeem excess stock, but only upon proper application of the member. See *id.* Accordingly, these recommendations have not been adopted in the final rule.

Section 933.9(b)(2) of the proposed rule provided that a FHLBank may require a member to give 30 calendar days written notice of its intention to apply to retire excess stock. Since a FHLBank has the discretion, upon proper application of the member, to determine whether and when to retire excess stock, this provision is unnecessary. Accordingly, it has been deleted in the final rule.

One FHLBank commented that § 933.9(c) of the final rule should include a cross-reference to § 935.15(b) of the Finance Board's recently adopted advances rule, which allows a FHLBank to unilaterally redeem excess stock, without a request from a member. *See* 12 CFR 935.15(b) (58 FR 29456, May 20, 1993). The advances rule provision applies to unilateral redemptions of stock in excess of the member's advances-to-stock requirement, not the minimum stock requirement. Accordingly, this recommendation has not been adopted in the final rule.

4. Stock Holdings After Consolidation of Members

a. *Members in same district.* The final rule revises § 932.5 of the Finance Board's existing regulations (12 CFR 932.5) and redesignates it as paragraph (a) of § 933.11 of the final rule. Section 933.11(a) of the final rule governs the treatment of FHLBank stock in a consolidation of two or more members located in the same FHLBank district into one institution operating under the charter of one of the consolidating institutions. Under § 933.11(a)(1) of the final rule, upon such a consolidation, the transfer of the FHLBank stock held by the disappearing institution to the consolidated institution shall be deemed approved by the Finance Board pursuant to section 6(f) of the Bank Act, 12 U.S.C. 1426(f). Section 933.11(a)(2) provides that the stock of the disappearing institution(s) held by the consolidated institution may be redeemed as long as the consolidated institution holds the minimum amount of stock calculated in the manner set forth in § 933.7(a) of the final rule based on the consolidated institution's total assets and the consolidated institution's stock holdings are not reduced to an amount less than required by sections 6(b), 10(c) and 10(e) of the Bank Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

b. *Members in different districts.* The final rule adds a new § 933.11(b), which governs the treatment of FHLBank stock in a consolidation of two member institutions which are members of different FHLBanks into one institution operating under the charter of one of the consolidating institutions (interdistrict consolidation). As discussed above with respect to determinations regarding "principal place of business" for purposes of membership, § 933.11(b)(1) provides that in an interdistrict consolidation, the disappearing institution's membership terminates upon the effective date of the consolidation and, thus, the cancellation of its charter, except when more than 80 percent of the assets of the consolidated institution are derived from the assets of the disappearing institution. In such cases, the consolidated institution shall continue to be a member of the disappearing institution's FHLBank and the membership of the other institution shall terminate upon consummation of the consolidation.

Section 933.11(b)(2) of the final rule provides that the liquidation of any outstanding indebtedness owed to the disappearing institution's FHLBank and redemption of stock of such FHLBank shall be carried out in accordance with § 933.16 of this final rule (discussed below). Thus, although the consolidated institution will be a member of only one of the FHLBank districts of which it formerly was a member, it may be required to hold the FHLBank stock of the FHLBank of which it is no longer a member so long as that FHLBank requires that the stock be held as collateral for any outstanding indebtedness owed to the FHLBank.

Under § 933.11(b)(3) of the final rule, the consolidated institution is entitled to receive dividends on outstanding FHLBank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Bank Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter, 12 CFR 932.3, since holders of FHLBank stock share in dividend distributions without preference. However, under § 933.11(b)(4) of the final rule, the consolidated institution may not vote the FHLBank stock acquired in the consolidation from the disappearing institution, since the consolidated institution is no longer a member of the disappearing institution's FHLBank. See 12 U.S.C. 1424(b). Further, of course, the consolidated institution may not

include the FHLBank stock acquired in the consolidation from the disappearing institution in its calculation of the number of votes it is allowed to cast in an election of directors of the FHLBank of which it is a member, since such stock represents an ownership interest in a different legal entity. See *id.* at 1427(b). Of course, the consolidated institution also may not include the stock of the disappearing institution's FHLBank in the annual calculation of its required minimum stock holdings pursuant to § 933.9(b)(1) of the final rule.

One thrift member suggested that the membership rule should permit the consolidated institution to elect to continue to hold the FHLBank stock of the disappearing institution, subject to "appropriate restrictions." The commenter did not suggest what such appropriate restrictions might be.

However, in an interdistrict consolidation, the membership of the disappearing institution terminates (unless the 80 percent standard described above applies) upon the cancellation of its charter. Under section 6(f) of the Bank Act, FHLBank stock may be transferred to a nonmember only to enable it to become a member. See 12 U.S.C. 1426(f). Since the consolidated institution is already a member of another FHLBank, it may not become a member of the disappearing institution's FHLBank (unless that FHLBank is the appropriate FHLBank for the consolidated institution pursuant to the 80 percent standard described above). Accordingly, the consolidated institution has no right to continue to hold stock in the FHLBank of the disappearing institution (unless that FHLBank is the appropriate FHLBank for the consolidated institution pursuant to the 80 percent standard described above), except as required to support advances outstanding from such FHLBank.

G. Membership and Stock Holdings After Charter Conversions and Nonmember Acquisitions of Members

Section 933.2(e) of the final rule addresses the membership and stock holding requirements of a depository institution member that converts to another charter form. Section 933.12 of the final rule addresses the membership and stock holding requirements where a nonmember acquires a member.

1. Charter Conversions

Under § 933.2(e) of the final rule, when an insured depository institution member converts to a different charter form and continues to be an insured depository institution, and the assets of the institution immediately before and immediately after the conversion are identical, the resulting institution automatically becomes a member of the FHLBank of which the converting institution was a member on the effective date of such conversion. This automatic membership was determined to be appropriate because the newly chartered institution is identical to the former institution except for its form of charter. No application for membership thus would be required. This approach was supported by two FHLBanks in their comment letters.

However, if the conversion involves a savings association that converts its charter to that of a commercial bank or state savings bank, the new institution would be permitted to withdraw from membership in its FHLBank because it is no longer required by law to be a FHLBank member. While section 6(e) of the Bank Act prohibits federally chartered savings associations from withdrawing from FHLBank membership and the OTS prohibits state chartered institutions regulated by the OTS from withdrawing until April 19, 1995, see 58 FR 14510, March 18, 1993, there is no authority to prohibit commercial banks or state chartered savings banks that are not regulated by the OTS from withdrawing from membership. See 12 U.S.C. 1426(e).

A FHLBank and a thrift trade association supported this approach. One thrift member commented that until voluntary membership is applicable to all members of the FHLBank System, it would be inequitable to provide piece-meal voluntary membership status to only certain classes of members, such as those converting to state chartered savings bank charters not regulated by the OTS. By contrast, one FHLBank commented that a transition to voluntary membership is in the best interest of the FHLBank System, and the treatment of charter conversions and nonmember acquisitions of members in the membership rule furthers this goal.

While the Finance Board agrees with these comments and has supported the concept of an orderly transition to voluntary membership for all, as discussed above, there is no requirement that commercial banks and state chartered savings banks that are not regulated by the OTS be members of the FHLBank System. Thus, the Finance Board has no authority to prohibit such institutions from withdrawing from membership.

2. Nonmember Acquisitions of Members

The final rule revises § 932.6 of the Finance Board's existing regulations (12 CFR 932.6) and redesignates it as § 933.12.

Under § 933.12(a) of the final rule, if a member is consolidated into an institution that is not a member, its membership in the FHLBank terminates as of the effective date of the consolidation and, thus, the cancellation of its charter. This provision reflects the comment of one FHLBank that the provision should provide for automatic termination rather than suggesting that the FHLBank need take action to terminate the membership.

While the membership of the disappearing institution automatically terminates, under § 933.12(b) of the final rule, if the newly consolidated institution's principal place of business is located in the same FHLBank district as the disappearing institution, it has 60 calendar days after the cancellation of the charter of the disappearing institution to notify the disappearing institution's FHLBank that it intends to apply for membership in such FHLBank. One FHLBank recommended that the 60-day notification period be extended to 90 business days, contending that immediately after a consolidation, a consolidated institution may not have the time or resources to devote to a full consideration of the advantages and disadvantages of FHLBank membership. The Finance Board believes that 60 calendar days is sufficient time for such notification period, particularly in view of the additional 60 days given under § 933.12(c) to apply for membership after notification is given, therefore giving a maximum total of 120 days before an application for membership must be filed.

Under § 933.12(c) of the final rule, in order to be a member of a FHLBank (and, thus, to be able to hold stock in a FHLBank), a consolidated institution must apply for membership pursuant to § 933.2 of the final rule within 60 calendar days of giving the § 933.12(b) notification. The consolidated institution then is subject to the same membership application procedures and eligibility criteria in this final rule as all other applicants for membership, and shall become a member upon approval of its application for membership and its purchase of FHLBank stock pursuant to § 933.12(d)(2)(ii) of this part.

When an institution that is not a FHLBank member acquires FHLBank stock as a result of a consolidation the nonmember consolidated institution generally may not continue to hold the stock of the disappearing institution's FHLBank, except as required to support outstanding advances. However,

§ 933.12(d)(1) of the final rule provides that the disappearing institution's FHLBank may permit the consolidated institution to continue to hold any outstanding FHLBank advances and stock of the disappearing institution during the period prior to giving the § 933.12(b) notification. In addition, § 933.12(d)(1) provides that if notification is given by the consolidated institution pursuant to § 933.12(b) of its intention to apply for membership, the disappearing institution's FHLBank may permit the consolidated institution to continue to hold the FHLBank stock of the disappearing institution during the 60-day period after receipt of such notification and during the processing of an application for membership. One FHLBank requested clarification of the applicable "methodology for maintaining and managing an institution's stock balance during the initial 60-day notification period." Section 933.12(d)(1) of the final rule clarifies that the consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section during such period, as well as during the pendency of any membership application.

Section 933.12(d)(2)(i) of the final rule provides that if the consolidated institution's application for membership is approved, the transfer of the FHLBank stock held by the disappearing institution to the consolidated institution shall be deemed approved by the Finance Board pursuant to section 6(f) of the Bank Act, 12 U.S.C. 1426(f).

In response to a FHLBank comment, § 933.12(d)(2)(ii) of the final rule clarifies that the consolidated institution is required to maintain the minimum stock purchase requirement only after its application for membership has been approved. If the amount of stock acquired by the consolidated institution is less than the amount required to meet the minimum stock requirement of § 933.7(a) of the final rule, the additional amount of stock required to meet such requirement must be purchased within 60 calendar days of the date of membership approval. At the election of the consolidated institution, such additional amount of stock required to be purchased may be purchased in installments, provided that not less than one-fourth of such total additional amount must be purchased within 60 calendar days of the date of membership approval, and that a further sum of not less than one-fourth of such total additional amount must be purchased at the end of each succeeding period of four months from the date of membership approval.

Section 933.12(d)(2)(iii) of the final rule provides that a consolidated institution that has been approved for membership shall become a member at the time it purchases the additional amount of stock required to meet its minimum stock requirement of § 933.7(a) or the first installment thereof.

The proposed rule provided that a nonmember that acquires stock in a consolidation and that decides to join the FHLBank System must purchase any additional stock necessary to meet the minimum stock purchase requirement within 30 calendar days of its approval for membership, with an opportunity to request a 30-day extension to purchase the additional stock. For the reasons discussed above for newly approved applicants for membership, the Finance Board has determined that nonmembers that acquire stock in a consolidation and that decide to join the FHLBank System should be given 60 calendar days from the date of membership approval to purchase any additional stock necessary to meet their minimum stock purchase requirement or the first installment thereof, without the opportunity for an extension. The final rule has been revised accordingly.

Under § 933.12(d)(3) of the final rule, if the consolidated institution does not apply for membership, or if its application for membership is denied, the liquidation of any outstanding indebtedness owed to the disappearing institution's FHLBank and redemption of stock of such FHLBank shall be carried out in accordance with § 933.16 of the final rule (discussed below). The consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section.

Under § 933.12(e) and (f) of the final rule, a consolidated institution is entitled to receive dividends on outstanding FHLBank stock acquired in the consolidation from the disappearing institution, but may not vote the FHLBank stock acquired in the consolidation unless and until the consolidated institution is a FHLBank member.

If a consolidated institution applies for membership and is not approved or if it chooses not to become a FHLBank member, the consolidated institution would not be subject to the ten-year moratorium on reacquiring FHLBank membership in section 6(h) of the Bank Act, 12 U.S.C. 1426(h), and § 933.17 of the final rule. This is due to the fact that the consolidated institution was never a member of the FHLBank System, but simply acquired FHLBank stock in a consolidation of institutions.

H. Withdrawal And Removal From Membership

1. Procedure for Withdrawal

The final rule revises § 933.32 of the Finance Board's existing regulations on voluntary withdrawal (12 CFR 933.32) and redesignates it as § 933.13. Section 933.32 provided that a FHLBank shall submit to the Finance Board any notice of withdrawal filed with it by a member, and that a member may cancel its notice of withdrawal by notifying the Finance Board any time before the effective date of withdrawal. Section 933.13(a) of the final rule revises § 933.32 to provide that a member that is eligible under applicable law to withdraw from FHLBank membership may do so after providing the Finance Board and its FHLBank at least six months written notice of its intention to withdraw from membership in conformance with section 6(e) of the Bank Act. 12 U.S.C. 1426(e). Section 933.13(b) of the final rule also revises § 933.32 to allow a member to cancel its notice of withdrawal by providing to both the Finance Board and its FHLBank a written cancellation notice before the effective date of the withdrawal. After such cancellation of its notice of withdrawal, a member would need to provide an additional full six months written notice if it subsequently decides to withdraw.

A FHLBank requested clarification of whether a withdrawal or cancellation notice would be effective if the member provided such notice only to the Finance Board or only to the FHLBank, and not to both parties. The rule as proposed has not been changed because the plain language of the rule makes clear that such notice must be provided to both parties in order to be effective.

Section 933.13(c) of the final rule provides that the liquidation of any outstanding indebtedness owed to the FHLBank in which membership has been terminated and redemption of stock of such FHLBank shall be carried out in accordance with § 933.16 of the final rule.

Under § 933.13(d) and (e) of the final rule, an institution that has withdrawn from FHLBank membership is entitled to receive dividends on outstanding stock of the FHLBank in which membership has been terminated, but may not vote the FHLBank stock.

2. Procedure for Removal

The final rule revises § 933.33 of the Finance Board's existing regulations on removal (12 CFR 933.33) and

redesignates it as § 933.14. Section 933.14 of the final rule partially reorganizes and consolidates the language in § 933.14 of the proposed rule for greater clarity.

Under § 933.14(a) of the final rule, consistent with the proposed rule, if a FHLBank believes that any of the grounds for removing a member from membership in paragraph (b) of this section exists, the FHLBank may submit a written request to the Finance Board stating the grounds for removal and recommending removal of such member from membership.

Section 933.14(b) of the final rule sets forth the statutory grounds contained in section 6(e) of the Bank Act, 12 U.S.C. 1426(e), for removing a member from membership, and adds an additional ground in § 933.14(b)(4) pursuant to the Finance Board's general supervisory powers over the FHLBanks. The following grounds are those enumerated in § 933.14(b) for removing a member from membership in a FHLBank:

(1) Failure by the member to comply with any provision of the Act or any regulation of the Board adopted under the Act;

(2) Insolvency of the member. A member is deemed insolvent if its assets are less than its liabilities;

(3) The member's management or home-financing policies are inconsistent with sound and economical home financing or with the purposes of the Act; or

(4) Any other condition exists with respect to the member that the Board believes would jeopardize the safety and soundness of the member's Bank.

A bank trade association supported the inclusion of the fourth ground for removal as essential to protect the health and integrity of the FHLBank. By contrast, a thrift member recommended its deletion, arguing that it does not, on its face, appear to cover circumstances not already covered by the three statutory grounds. The Finance Board believes that it must have sufficient flexibility to ensure the FHLBanks' safety and soundness in situations that may arise that cannot be predicted at the present time. Accordingly, § 933.14(b)(4) of the final rule retains the fourth ground for removal in order to ensure this flexibility.

Section 933.14(c)(1) of the final rule provides that if the Finance Board believes that any of the grounds for removal exists, and it believes that the member should be removed from membership, it must give the member at least 30 calendar days written notice of its intention to remove the member from membership. Section 933.14(c)(2) provides that such notice shall state the grounds for removal and the time and place for a hearing on such removal action.

Section 933.14(c)(3) of the final rule provides that the Finance Board shall then conduct a hearing on the removal action. Section 933.33 of the Finance Board's existing regulations on removal (12 CFR 933.33) references the OTS's adjudicatory procedures for hearings (12 CFR part 509). Section 933.14(c)(3) of the final rule does not reference the OTS's adjudicatory procedures. Instead, § 933.14(c)(3) states that hearings on removal of members from the FHLBank System shall be conducted in accordance with procedures established by the Finance Board.

Section 933.14(d) of the final rule provides that if the Finance Board determines, in its sole discretion and after complying with the aforementioned procedures, that any of the grounds for removal exists, it may remove the member from membership.

Section 933.14(e) of the final rule provides that the liquidation of any outstanding indebtedness owed to the FHLBank in which membership has been terminated and redemption of stock of such FHLBank shall be carried out in accordance with § 933.16 of the final rule.

Under § 993.14(f) and (g) of the final rule, an institution that has been removed from FHLBank membership is entitled to receive dividends on outstanding stock of the FHLBank in which membership has been terminated, but may not vote the FHLBank stock.

3. Automatic Termination of Membership for Institutions Placed in Receivership

Section 933.15(a) of the final rule provides for the automatic termination of membership for FHLBank members placed in receivership. A bank trade association commented that it is prudent for institutions placed in receivership to be automatically terminated from FHLBank membership.

Section 933.15(b) provides that the liquidation of any outstanding indebtedness owed to the FHLBank in which membership has been terminated and redemption of stock of such FHLBank shall be carried out in accordance with § 933.16 of the final rule. The receiver may be required to maintain FHLBank stock for as long as the FHLBank requires it as collateral securing any outstanding indebtedness to the FHLBank.

Under § 993.15(c) and (d), the receiver is entitled to receive dividends on outstanding FHLBank stock of the institution placed in receivership, but may not vote the FHLBank stock.

I. Orderly Liquidation of Advances and Redemption of Stock

The final rule adds § 933.16 to implement the requirements in section 6(e) of the Bank Act governing the orderly liquidation of advances and redemption of FHLBank stock when an institution ceases to be a member of a FHLBank. See 12 U.S.C. 1426(e).

1. Redemption When Advances Remain Outstanding

Under § 993.16(a)(1) of the final rule, if an institution ceases to be a member of a FHLBank pursuant to §§ 933.13, 933.14 or 933.15, such institution, or its receiver under § 933.15 of this part, may continue to hold the stock of the FHLBank of which such institution is no longer a member so long as the FHLBank requires that the stock be held as collateral for any outstanding indebtedness owed to the FHLBank. If an institution ceases to be a member of a FHLBank pursuant to §§ 933.11(b) or 933.12(d)(3), the consolidated institution may continue to hold the stock of the disappearing institution's FHLBank so long as such FHLBank requires that the stock be held as collateral for any outstanding indebtedness owed to the FHLBank.

Under § 933.16(a)(2), the indebtedness of the institution that has ceased to be a member of the FHLBank owed to such FHLBank shall be liquidated in an orderly manner as determined by the FHLBank in accordance with § 935.19 of the Finance Board's recently adopted advances rule. Upon completion of such liquidation, the institution's remaining FHLBank stock shall be surrendered and canceled. This means the FHLBank is entitled to immediately redeem the institution's remaining FHLBank stock.

Section 933.16(a) of the final rule tracks the language in section 6(e) of the Bank Act, 12 U.S.C. 1426(e), and does not retain the language of *pro rata* redemptions contained in the proposed rule. The proposed rule provided that as any indebtedness owed to the FHLBank is liquidated, the FHLBank may redeem outstanding FHLBank stock on a *pro rata* basis. This language has been deleted from the final rule as unnecessary.

2. Redemption When No Advances Remain Outstanding

Under § 933.16(b) of the final rule, if an institution that has creased to be a member of a FHLBank owes no outstanding indebtedness to such FHLBank, the institution's stock in such FHLBank shall be surrendered and canceled. This means the FHLBank is entitled to immediately redeem the institution's FHLBank stock.

Section 933.16(c) of the final rule provides that for stock redeemed under either § 933.16 (a) or (b) of the final rule, the institution would receive a sum equal to the original amount it paid for such FHLBank stock. However, if at any time the Finance Board finds that the paid-in capital of the FHLBank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the FHLBank, the FHLBank shall on the order of the Finance Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Finance Board. Under the proposed rule, the impairment provision was included under paragraph (b) but not under paragraph (a). In response to two FHLBank comments, paragraph (c) was added to § 933.16 of the final rule to make it clear that, in the case of a *pro rata* payment due to an impairment, the amount received by an institution for the redeemed stock under paragraphs (a) or (b) would be the same for all institutions, whether or not they have outstanding borrowings.

J. Reacquisition of Membership

Section 933.17 of the final rule implements section 6(h) of the Bank Act, which provides that an institution which withdraws from membership may require membership in any FHLBank only after the expiration of a period of ten years after the withdrawal. 12 U.S.C. 1426(h). There are two statutory exceptions to this ten-year moratorium on reacquiring membership. These two exceptions, as well as a third, are contained in § 933.17 of the final rule, and are as follows: (1) Such institution may acquire membership in a FHLBank if a withdrawal is the consequence of a transfer of membership on a non-interrupted basis between FHLBanks pursuant to § 933.5 of this part; or (2) such institution shall acquire membership in a FHLBank in connection with obtaining a charter as a federally chartered savings association; or (3) such institution shall acquire membership in a FHLBank if membership is otherwise required by law. Institutions in the latter two cases are automatically approved for FHLBank membership pursuant to § 933.2(d) of the final rule.

Of course, an institution that applies for membership, even if its application is approved, is not subject to the ten-year moratorium if it never becomes a "member." Under § 933.7 (c) and (d) of the final rule, an applicant approved for membership that fails to purchase its minimum stock requirement or first quarterly installment thereof within the required 60-day period, is not a "member" as defined in § 933.1(n) of the final rule. The institution therefore is not subject to the ten-year moratorium on reentry in the FHLBank System for withdrawals of "members" from the FHLBank System.

A member that has converted to a commercial bank or state savings bank charter form that has been automatically approved for membership pursuant to § 933.2(e) and that withdraws from membership, would be subject to the ten-year moratorium on reacquiring membership in any FHLBank.

A FHLBank requested clarification as to whether the ten-year moratorium applies to removals of members as well as withdrawals. In the history of the FHLBank System, no member has ever been removed from FHLBank membership. The Finance Board believes that this question is thus best addressed by the Finance Board when, if ever, such a situation arises. Accordingly, this question is not addressed in the final rule.

K. FHLBank Access to Information

Section 933.18 of the final rule revises §§ 933.18 and 933.22 of the Finance Board's existing regulations on reports and examinations (12 CFR 933.18, 933.22) to implement the changes made to section 22(b) of the Bank Act, 12 U.S.C. 1442(b), by FIRREA. Both sections, as revised, are combined as § 933.18 of the final rule. Specifically, § 933.18 implements section 22(b) of the Bank Act, and requires that as a condition precedent to FHLBank membership each member:

(a) Consents to such examinations as the Bank or the Board may require for purposes of the Act;

(b) Agrees that reports of examinations by local, state, or federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request; and

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency, may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members.

See 12 U.S.C. 1442(b).

In addition, § 933.18(d) of the final rule requires members to provide their FHLBank with their calendar year-end financial data each year, to allow the FHLBank to undertake the annual adjustment calculation of the member's minimum stock purchase requirement required by § 933.9(b)(1) of the final rule. Section 933.18(e) of the final rule requires members to provide their FHLBank with copies of the Call Report, Thrift Financial Report, or other appropriate reports of condition and operations within 20 calendar days of their filing with the member's appropriate Federal banking agency. This will allow the FHLBank to monitor the member's credit quality and financial condition.

One FHLBank recommended that the final rule include a mechanism for enforcing the reporting provisions, expressing concern over the lack of an effective method to enforce reporting short of threatening to remove an uncooperative member from FHLBank membership. The commenter stated that such a mechanism would ensure that the FHLBanks have access at all times to the information they need to operate effectively. However, neither the Finance Board nor the FHLBanks have the authority under the Bank Act to regulate members and, thus, membership removal is the only enforcement mechanism available.

L. Institutions Eligible To Make Application To Become Members

In 1980, Congress expanded the scope of the FHLBanks' non-credit services through the enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). See Public Law 96–221, 94 Stat. 149 (March 31, 1980). Specifically, section 311 of DIDMCA added section 11(e)(2) of the Bank Act to permit the FHLBanks, subject to such rules and regulations (including definitions of terms used in this paragraph) as the Finance Board may prescribe, to provide correspondent services to members and "institutions which are eligible to make application to become members pursuant to section 4 of the Bank Act." 12 U.S.C. 1431(e)(2). The "eligible to make application" language is not defined anywhere in the Bank Act. However, section 11(e)(2) of the Bank Act contains explicit language which grants the Finance Board considerable discretion to define the terms used in that section, including the "eligible to make application" language.

Section 933.1(j) of the final rule, consistent with the proposed rule, defines "institutions which are eligible to make application to become members" for purposes of contracting for FHLBank correspondent services as: Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or any insured depository institution, regardless of whether the institution applies for or would be approved for membership. Under this definition, a nonmember that is interested in accessing FHLBank

correspondent services need not satisfy the membership eligibility criteria in section 4(a), such as the 10 percent requirement, but simply must come within one of the categories of institutions listed in section 4(a) as eligible to become a member of the FHLBank System.

A FHLBank and a bank trade association supported this definition in § 933.1(j), agreeing with the Finance Board's view that the plain language and legislative history of section 11(e)(2) of the Bank Act fully support such interpretation. The trade association commented that this interpretation would allow commercial banks which are not members, or which do not meet the eligibility requirements for membership, to contract for services from the FHLBanks nevertheless. The definition was also supported by a corporate credit union. By contrast, a thrift member disagreed with the interpretation, arguing that the fundamental mission of the FHLBank System is to promote home financing, and institutions that could become members if they applied for membership have been deemed to further that basic purpose. A credit union trade association also disagreed with this interpretation of the statutory language and legislative history.

The Finance board continues to believe that its interpretation of the plain language and legislative history of section 11(e)(2) of the Bank Act is the correct one. Accordingly, § 933.1(j) is retained as proposed.

Regulatory Flexibility Act

The final rule largely implements statutory requirements applicable to institutions applying for membership in the FHLBank System, regardless of their size. The Finance Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The final rule would not impose any new recordkeeping requirements and requires only minimal additional reporting at minimal cost for institutions applying for FHLBank membership. The final rule allows applicants for membership for the most part to demonstrate that they satisfy the requirements of the final rule by providing copies of reports already generated for other purposes. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities.

For these reasons, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) in accordance with the requirements of section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, 5 CFR 1320.13, and assigned OMB control Number 3069–0004. The title, description of need and use, and the respondent description for the information collection requirements are discussed in the **SUPPLEMENTARY INFORMATION**. Any comments on this information collection should be sent to: Gary Waxman, Paperwork Reduction Project, OMB, room 3208, New Executive Office Building, Washington, DC 20503, and to the Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

In accordance with 5 CFR 1320.21, the following table discloses the estimated annual reporting burden for each collection of information in this final rule:

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collected	Average number of respondents	×	Average number of responses per respondent	=	Total average responses	×	Average hours per response	=	Total average hours
1. Membership Application	900		1		900		13.0		11,700.0
2. Stock Calculation	3,300		1		3,300		0.6		1,980.0
3. Membership Withdrawal	6		1		6		0.6		3.6
4. Principal Place of Business	6		1		6		3.5		21.0
Total	4,212		1		4,212		[1]3.3		13,704.6

[1] Weighted average hours per response.

List of Subjects

12 CFR Part 931

Definitions, Federal home loan banks.

12 CFR Part 932

Conflict of interests, Federal home loan banks.

12 CFR Part 933

Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, subchapter B of the Code of Federal Regulations, as follows:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1427.

§§ 931.7—931.9 and 931.22 [Removed]

2. Sections 931.7, 931.8, 931.9 and 931.22 are removed.

PART 932—ORGANIZATION OF THE BANKS

3. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1464; 18 U.S.C. 207; 42 U.S.C. 8101 *et seq.*

§§ 932.2, 932.4, 932.5, 932.6, and 932.7 [Removed]

4. Sections 932.2, 932.4, 932.5, 932.6, and 932.7 are removed.

5. Part 933 is revised to read as follows:

PART 933—MEMBERS OF THE FEDERAL HOME LOAN BANKS

Subpart A—Definitions

Sec.

933.1 Definitions.

Subpart B—Application For Membership

933.2 Membership application approval process.
933.3 Delegation.
933.4 Eligibility requirements for membership approval.
933.5 Determination of membership in a district.

Subpart C—Stock Requirements

933.6 Par value and price of stock.
933.7 Stock purchase.
933.8 Issuance and form of stock.
933.9 Adjustments in stock holdings.
933.10 Purchase of excess stock.

Subpart D—Consolidations Involving Members

933.11 Consolidations of members.
933.12 Consolidations involving nonmembers.

Subpart E—Withdrawal and Removal From Membership

933.13 Procedure for withdrawal.
933.14 Procedure for removal.
933.15 Automatic termination of membership for institutions placed in receivership.

Subpart F—Orderly Liquidation of Advances and Redemption of Stock

933.16 Orderly liquidation of advances and redemption of stock.

Subpart G—Reacquisition of Membership

933.17 Reacquisition of membership.

Subpart H—Bank Access to Information

933.18 Reports and examinations.

Subpart I—Membership Insignia

933.19 Official membership insignia.

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

Subpart A—Definitions

§ 933.1 Definitions.

As used in this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

(b) *Aggregate unpaid loan principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

(c) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

(d) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(e) *Board* means the Federal Housing Finance Board.

(f) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(g) *Dwelling unit* means, for purposes of this part, a single room or a unified combination of rooms designed for residential use.

(h) *Funded residential construction loan* means the portion disbursed to the borrower of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property.

(i) *Home mortgage loan* means:

(1) A domestic loan, whether or not fully amortizing, or an interest in such a loan, which loan or interest is secured by a mortgage, a deed of trust or other security agreement which creates a first lien on one of the following interests in real property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property; or

(2) A mortgage pass-through security which represents an undivided ownership interest in:

(i) Long-term loans, all of which loans at the time of issuance of the security meet the requirements of paragraph (i)(1) of this section;

(ii) Securities which represent an undivided ownership interest in long-term loans, all of which loans at the time of issuance of the security meet the

requirements of paragraph (i)(1) of this section; or

(3) Any loans which the Board in its discretion otherwise determines are home mortgage loans.

Loans secured by nonresidential real property shall not be considered home mortgage loans.

(j) *Institutions which are eligible to make application to become members* means, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(k) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(l) *Long-term* means, for purposes of this part, a term to maturity of five years or greater, or any other term to maturity which the Board in its discretion determines is long-term.

(m) *Manufactured housing* means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

(n) *Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.7 and 933.11 of this part.

(o) *Multifamily property* means, for purposes of this part:

(1) Real property that is solely residential and which includes five or more dwelling units; or

(2) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.

Multifamily property as defined in paragraphs (o) (1) and (2) of this section includes nursing homes, dormitories and homes for the elderly.

(p) *Nonresidential real property* means, for purposes of this part, real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

(q) *One-to-four family property* means, for purposes of this part:

(1) Real property that is solely residential, which property includes one-to-four dwelling units or more than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

(r) *Residential mortgage loan* means any one of the following types of domestic loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state laws as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (4) of this section;

(ii) Securities representing an undivided ownership interest in loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (4) of this section; or

(iii) Mortgage debt securities as defined in paragraph (r)(6) of this section;

(6) Mortgage debt securities secured by:

(i) Loans, all of which loans at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (4) of this section;

(ii) Securities which meet the requirements of paragraph (r)(5) of this section; or

(iii) Securities secured by assets, all of which assets at the time of issuance of the security meet the requirements of paragraphs (r)(1) through (5) of this section;

(7) Home mortgage loans secured by leasehold interests, as defined in § 933.1(i)(1)(ii) of this part, except that the period of the lease term may be for any duration; or

(8) Any loans which the Board in its discretion otherwise determines are residential mortgage loans.

(s) *State* means, for purposes of this part, a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

Subpart B—Application for Membership

§ 933.2 Membership application approval process.

(a) *Application.* An applicant for membership in a Bank shall submit to that Bank an application which satisfies Board requirements.

(b) *Approval process.* All applications for membership received by a Bank shall be submitted to the Board for action, except as set forth in § 933.3 of this part.

(c) *Action on applications.* If an application is submitted to the Board for action, the Board shall promptly notify the Bank after action is taken on the application. Upon receipt of notice of Board action, the Bank shall promptly inform the applicant of such action.

(d) *Automatic approval.* Any institution required by law to become a member of a Bank is automatically approved for membership, and becomes a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 933.7(b)(1) of this part. No application for membership must be submitted.

(e) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one type of charter to another automatically becomes a member of the Bank of which the converting institution was a member on the effective date of such conversion, if the resulting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are identical. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue. No application for membership must be submitted.

§ 933.3 Delegation.

(a) The Board hereby delegates to the board of directors of each Bank the authority to approve membership applications that meet all the criteria set forth in the Act, this part and policy guidelines established by the Board. The board of directors of each Bank may further delegate the authority to approve such applications to the president or other senior officers of the Bank.

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(b) If the board of directors of a Bank approves an application pursuant to this section, the Bank shall notify the Board of its action within 10 calendar days of the Bank's approval.

(c) The board of directors of a Bank shall not have the authority to deny applications for membership. If the board of directors of a Bank cannot approve an application for membership, the application shall be submitted to the Finance Board for action.

§ 933.4 Eligibility requirements for membership approval.

(a) *General eligibility requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, upon application, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States;

(3) It originates or purchases long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it; and

(5) The character of its management and its home-financing policy are consistent with sound and economical home financing.

(b) *Additional eligibility requirement for insured depository institutions.* (1) An insured depository institution applicant for membership shall be eligible to become a member of a Bank only if the applicant has at least 10 percent of its total domestic assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 933.1(r)(6) of this part shall not be used to meet this requirement.

(2) An insured depository institution member that recently has commenced business operations shall have until one year after commencing its initial business operations to meet the 10 percent residential mortgage loans requirement contained in paragraph (b)(1) of this section.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* An applicant for membership that is not an insured depository institution shall be eligible to become a member of a Bank if the applicant has mortgage-related assets that reflect a commitment to housing finance, as determined by the Board.

§ 933.5 Determination of membership in a district.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section.

(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, the Board and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that the Board make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on termination of membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.13, 933.14 and 933.16 of this part, including the restriction on reacquiring Bank membership set forth in § 933.17 of this part.

Subpart C—Stock Requirements

§ 933.6 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Board has fixed a higher price.

§ 933.7 Stock purchase.

(a) *Minimum stock purchase.* (1) Each member shall purchase stock in the Bank in which it is a member in an amount equal to one percent of the member's aggregate unpaid loan principal, but not less than $500.

(2) If a member has less than 30 percent of its total assets in home mortgage loans, it shall purchase stock in an amount that would be required under paragraph (a)(1) of this section if at least 30 percent of such member's total assets were home mortgage loans.

(b) *Timing of minimum stock purchase.* (1) Within 60 calendar days after an institution is approved for membership in a Bank pursuant to §§ 933.2(c) or 933.3 of this part, or an institution is automatically approved for membership pursuant to § 933.2(d) of this part, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) At the election of an institution approved for membership, including those automatically approved under § 933.2(d) of this part, the institution may purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total

amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total shall be purchased at the end of each succeeding period of four months from the date of approval of membership.

(c) *Commencement of membership.* An institution that has been approved for membership shall become a member at the time it purchases its minimum stock requirement or the first installment thereof pursuant to this section.

(d) *Failure to purchase minimum stock requirement.* If an institution that has submitted an application and been approved for membership fails to purchase its minimum stock requirement or its first installment within 60 calendar days of the date of its approval for membership, such approval shall be null and void and the institution, it is wants to be a member, shall be required to submit a new application for membership.

(e) *Reports.* The Bank shall make monthly reports to the Board setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section.

§ 933.8 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) Stock may be issued in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank may convert all outstanding certificated stock to uncertificated form at its discretion.

§ 933.9 Adjustments in stock holdings.

(a) *Adjustment in general.* A Bank may from time to time increase or decrease the amount of stock any member is required to hold.

(b)(1) *Annual adjustment.* A Bank shall calculate annually, in the manner set forth in § 933.7(a) of this part, each member's required minimum holdings of stock in the Bank in which it is a member using calendar year-end financial data provided by the member of the Bank, pursuant to § 933.18(d) of this part, and shall notify each member of the adjustment.

(2) *Redemption of excess shares.* If, after the annual adjustment required by paragraph (b)(1) of this section is made, the amount of stock that a member is required to hold is decreased, the Bank may, in its discretion and upon proper application of the member, retire such excess stock, and the Bank shall pay for each share upon surrender of the stock an amount equal to the par value thereof (except that if at any time the Board finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board) or, at its election, the Bank may credit any part of such payment against the member's debt to the Bank.

(c) A member's stock holdings shall not be reduced under this section to an amount less than required by sections 6(b), 10(c) and 10(e) of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

§ 933.10 Purchase of excess stock.

A member may purchase stock in excess of the minimum amount required by § 933.7(a) of this part as long as such purchase is approved by the member's Bank and the laws under which the member operates permit such purchase.

Subpart D—Consolidations Involving Members

§ 933.11 Consolidations of members.

(a) *Consolidation of members in same district*—(1) Upon consolidation of two or more member institutions which are all members of the same Bank district into one institution operating under the charter of one of the consolidating institutions, the transfer of the Bank stock held by the disappearing institution(s) to the consolidated institution shall be deemed approved by the Board pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f).

(2) The stock of the disappearing institution(s) held by a consolidated institution under this section may be redeemed, provided that the consolidated institution holds the minimum amount of stock calculated in the manner set forth in § 933.7(a) of this part based on the consolidated institution's total assets and the consolidated institution's stock holdings are not reduced to an amount less than required by sections 6(b), 10(c) and 10(e) of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

(b) *Consolidation of members in different districts*—(1) Termination of membership. Upon consolidation of two member institutions which are members of different Banks into one institution operating under the charter of one of the consolidating institutions, the disappearing institution's membership terminates upon cancellation of its charter, except that if more than 80 percent of the assets of the consolidated institution are derived from the assets of the disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which the disappearing institution was a member prior to the consolidation and the membership of the other institution terminates upon consummation of the consolidation.

(2) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.16 of this part.

(3) *Dividends on acquired Bank stock.* The consolidated institution is entitled to receive dividends on outstanding Bank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(4) *No voting rights.* The consolidated institution may not vote the Bank stock acquired in the consolidation from the disappearing institution.

§ 933.12 Consolidations involving nonmembers.

(a) *Termination of membership.* If a member is consolidated into an institution that is not a member, its membership in the Bank terminates upon cancellation of its charter.

(b) *Notification of decision to seek membership.* When a consolidated institution resulting from a consolidation described in paragraph (a) of this section has its principal place of business in a state in the same Bank district as the disappearing institution, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the disappearing institution to notify the disappearing institution's Bank that it intends to apply for membership in such Bank.

(c) *Application for membership.* If the consolidated institution has provided notification pursuant to paragraph (b) of this section, it must apply for membership pursuant to § 933.2 of this part within 60 calendar days of the notification.

(d) *Treatment of outstanding advances, Bank stock and minimum stock requirements*—(1) Prior to membership approval. The disappearing institution's Bank may permit the consolidated institution to continue to hold any outstanding Bank advances and stock, and the consolidated institution shall have the limited rights

associated with such stock in accordance with paragraphs (e) and (f) of this section: (i) During the initial 60-day notification period; (ii) for 60 calendar days after receipt of notification that the consolidated institution intends to apply for membership; and (iii) during the processing of an application for membership.

(2) *Upon membership approval.* (i) If the application of the consolidated institution for membership is approved, the transfer of the Bank stock held by the disappearing institution to the consolidated institution shall be deemed approved by the Board pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f).

(ii) If the application of the consolidated institution for membership is approved:

(A) The consolidated institution shall purchase any additional amount of stock required to meet the minimum stock requirement of § 933.7(a) of this part, based on the consolidated institution's total assets, within 60 calendar days of the date of approval of membership; or

(B) At the election of the consolidated institution, the amount of stock required to be purchased to meet the requirement of § 933.7(a) of this part may be purchased in installments, provided that not less than one-fourth of such total additional amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total additional amount shall be purchased at the end of each succeeding period of four months from the date of approval of membership.

(iii) A consolidated institution that has been approved for membership shall become a member at the time it purchases the additional amount of stock required to meet the minimum stock requirement of § 933.7(a) of this part or the first installment thereof.

(3) *Upon failure to apply for or be approved for membership.* If the consolidated institution does not apply for membership, or if its application for membership is denied; then the liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.16 of this part, and the consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section.

(e) *Dividends on acquired Bank stock.* The consolidated institution is entitled to receive dividends on outstanding Bank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(f) *No voting rights on acquired Bank stock.* The consolidated institution may not vote the Bank stock acquired in the consolidation from the disappearing institution unless and until the consolidated institution is a Bank member.

Subpart E—Withdrawal and Removal From Membership

§ 933.13 Procedure for withdrawal.

(a) *Notice of withdrawal.* Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Board and its Bank at least six months written notice of the member's intention to withdraw from membership.

(b) *Cancellation of notice of withdrawal.* A member may cancel its notice of withdrawal by providing both the Board and its Bank written notice of cancellation any time before the effective date of the withdrawal.

(c) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.16 of this part.

(d) *Dividends on Bank stock.* An institution that has withdrawn from Bank membership pursuant to this section is entitled to receive dividends on outstanding stock of the Bank in which membership has been terminated in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(e) *No voting rights on Bank stock.* An institution that has withdrawn from Bank membership pursuant to this section may not vote the Bank stock.

§ 933.14 Procedure for removal.

(a) *Bank request for removal.* If a Bank believes that any of the grounds for removal of a member from membership contained in paragraph (b) of this section exists, the Bank may submit a written request to the Board stating the grounds for removal and recommending removal of the member from membership.

(b) *Grounds.* The following are grounds for removing a member from membership in a Bank:

(1) Failure by the member to comply with any provision of the Act or any regulation of the Board adopted under the Act;

(2) Insolvency of the member. A member is deemed insolvent it its assets are less than its liabilities;

(3) The member's management or home-financing policies are inconsistent with sound and economical home financing or with the purposes of the Act; or

(4) Any other condition exists with respect to the member that the Board believes would jeopardize the safety and soundness of the member's Bank.

(c) *Procedure.* (1) If the Board believes that any of the grounds for removal contained in paragraph (b) of this section exist, and it believes that the member should be removed from membership, it shall provide the member with at least 30 calendar days written notice of its intention to remove the member from membership.

(2) Such notice shall be served as determined by the Board and shall state the grounds for such removal action and the time and place of a hearing at which the member may be heard.

(3) A hearing on such removal action shall be conducted in accordance with procedures established by the Board.

(d) *Removal by Board.* If the Board determines, in its sole discretion and after complying with the requirements of paragraph (c) of this section, that any of the grounds for removal of a member contained in paragraph (b) of this section exists, it may remove the member from membership.

(e) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.16 of this part.

(f) *Dividends on Bank stock.* An institution that has been removed from Bank membership pursuant to this section is entitled to receive dividends on outstanding stock of the Bank in which membership has been terminated in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(g) *No voting rights on Bank stock.* An institution that has been removed from Bank membership pursuant to this section may not vote the Bank stock.

§ 933.15 Automatic termination of membership for institutions placed in receivership.

(a) *Automatic termination.* As of the effective date of being placed in receivership, an institution's Bank membership automatically terminates.

(b) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding

indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.16 of this part.

(c) *Dividends on Bank stock.* The receiver is entitled to receive dividends on outstanding Bank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(d) *No voting rights on Bank stock.* The receiver may not vote the Bank stock.

Subpart F—Orderly Liquidation of Advances and Redemption of Stock

§ 933.16 Orderly liquidation of advances and redemption of stock.

(a)(1) If an institution ceases to be a member of a Bank pursuant to §§ 933.13, 933.14 or 933.15 of this part, the institution, or its receiver under § 933.15 of this part, may continue to hold the stock of the Bank of which such institution is no longer a member so long as the Bank requires that the stock be held as collateral for any outstanding indebtedness owed to the Bank. If an institution ceases to be a member of a Bank pursuant to §§ 933.11(b) or 933.12(d)(3) of this part, the consolidated institution may continue to hold the stock of the disappearing institution's Bank so long as such Bank requires that the stock be held as collateral for any outstanding indebtedness owed to the Bank.

(2) The indebtedness of the institution that has ceased to be a member of a Bank owed to such Bank shall be liquidated in an orderly manner as determined by the Bank in accordance with § 935.19 of this chapter, and upon completion of such liquidation, such institution's remaining stock in the Bank shall be surrendered and canceled.

(b) If an institution that has ceased to be a member of a Bank has no outstanding indebtedness owed to the Bank, such institution's stock in the Bank shall be surrendered and canceled

(c) An institution that has ceased to be a member shall receive for stock redeemed under paragraphs (a)(2) or (b) of this section a sum equal to the original amount paid for the stock redeemed, except that if at any time the Board finds that the paid-in capital of the Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the Bank, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board.

Subpart G—Reacquisition of Membership

§ 933.17 Reacquisition of membership.

An institution which withdraws from membership pursuant to § 933.13 of this part may acquire membership in a Bank only after the expiration of a period of 10 years thereafter, except:

(a) Such institution may acquire membership in a Bank if such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to § 933.5 of this part; or

(b) Such institution shall acquire membership in a Bank in connection with obtaining a charter as a federally chartered savings association (as defined in 12 U.S.C. 1813), or if otherwise required by law to become a member of a Bank, which institution is automatically approved for Bank membership pursuant to § 933.2(d) of this part.

Subpart H—Bank Access to Information

§ 933.18 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or the Board may require for purposes of the Act;

(b) Agrees that reports of examinations by local, state or federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request;

(c) Agrees to give the Bank of the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in § 933.9(b)(1) of this part; and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

Subpart I—Membership Insignia

§ 933.19 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words "Member Federal Home Loan Bank System."

By the Federal Housing Finance Board.

Dated: July 28, 1993.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–18961 Filed 8–16–93; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–161–AD; Amendment 39–8634; AD 93–14–10]

Airworthiness Directives; Boeing 737–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires structural inspections to detect cracks of the forward and aft body frames adjacent to the aft lower cargo door and repair of cracked parts, and provides an optional modification, which, if installed, would terminate the repetitive inspections required by that AD. This amendment requires repetitive inspections to continue after installation of the optional modification. This amendment is prompted by a structural reassessment of the Model 737 series airplane. The actions specified by this AD are intended to prevent the development of undetected frame cracking, which could result in rapid loss of cabin pressure.

DATES: Effective September 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle

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Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87–06–08 R1, Amendment 39–5763 (52 FR 41703, October 30, 1987), which is applicable to certain Model 737 series airplanes, was published in the Federal Register on February 17, 1993 (58 FR 8719). The action proposed to require structural inspections to detect cracks of the forward and aft body frames adjacent to the aft lower cargo door and repair of cracked parts, and to provide an optional modification. The action also proposed to require additional repetitive inspections after the previously-considered "terminating modification" or repair has been accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that AD 87–06–08 R1 be revised, rather than superseded. The commenter believes that it is considerably easier for operators to track their paperwork and minimize the risk of clerical error, if the basic AD number remains unchanged. The commenter suggests that, in order for the AD number to have any significance, the AD should be revised, not superseded, whenever the applicable service bulletin is revised. The FAA does not concur. The FAA's current policy (reference FAA Order 8040.1B) is that, whenever a "substantive change" is made to an existing AD, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive.

This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. Because maintenance records frequently omit the revision suffix, supersedure is appropriate where it is necessary to ensure that maintenance records will clearly identify which version of the AD has been complied with. Since the change in this AD adds repetitive inspections following incorporation of the optional modification under the previously issued AD, the new AD must be issued as a supersedure. This will ensure that any future maintenance record will identify the new AD number to indicate that the additional repetitive inspections were performed following incorporation of the optional modification. This procedure facilitates the efforts of the FAA's Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

Further, with regard to administrative costs (paperwork changes) to affected operators, Federal Aviation Regulations (FAR) Section 121.380(a)(2)(v), "Maintenance recording requirements," requires that persons holding an operating certificate and operating under FAR Part 121 must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: a superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously."

The same commenter requests that, since the modification and crack repairs provided in paragraph (c)(1) of the proposal are already mandated by the "Structural Modification AD" [reference AD 90–06–02, Amendment 39–6489, (55 FR 8372, March 7, 1990)], then the modification and crack repairs that would be required by the proposed AD should be approved as an alternative method of compliance for AD 90–06–02. The FAA concurs that the modification and crack repairs provided by paragraph (b)(1) of this final rule are identical to those required by AD 90–06–02, as described in Boeing Service Bulletin 737–53–1096. Accordingly, the FAA has added a new "Note" to this final rule, stating that compliance with the requirements of paragraph (b)(1) constitutes compliance for the modification and crack repair recommendations of Boeing Service Bulletin 737–53–1096, as mandated by AD 90–06–02.

Boeing Commercial Airplane Group requests that the historical background statement be changed in the Summary of the preamble to the notice to indicate that the action was prompted by a structural reassessment of aging Model 737 series airplanes, which was conducted by the Boeing Model 737 Structures Working Group (part of the Airworthiness Assurance Task Force). The commenter states that the Structures Working Group recommended incorporation of the Flight Safety Addendum inspection program described in Revisions 4 and 5 of Boeing Service Bulletin 737–53–1096. The commenter also mentions that incorporation of the Flight Safety Addendum inspection program is described in the 737 Supplemental Structural Inspection Document (SSID) D6–37089, and mandated by AD 84–21–06 R1 [amendment 39–5813, (53 FR 6794, March 3, 1988)]. That AD was issued to ensure safe operation of Model 737 series airplanes throughout their operational life. The FAA concurs that clarification of the background information is necessary. The wording of the Summary section of the preamble to the final rule has been revised accordingly.

The same commenter requests that paragraph (e) of the proposal should refer to the Flight Safety Addendum included in Boeing Service Bulletin 737–53–1096. The FAA does not concur. The FAA infers that the commenter believes that reference to the Flight Safety Addendum in paragraph (e) of the proposal would clarify the requirements of this AD. However, the FAA has determined that it is not necessary to refer to the addendum, since the requirements of the Flight Safety Inspection Program are incorporated in paragraph (e) of the final rule.

The same commenter contends that the requirements of paragraphs (a) and (b) of the proposal are redundant, since both paragraphs require repetitive close visual inspections to detect cracks of the forward and aft body frames adjacent to the aft lower cargo door in accordance with Boeing Service Bulletin 737–53–1096. The FAA concurs. The FAA infers that the commenter would prefer to incorporate the contents of paragraphs (a) and (b) of the proposal into one paragraph. The FAA has determined that the repetitive detailed visual inspections to detect cracks of the

forward and aft body frames adjacent to the aft lower cargo door are identical in all versions of Boeing Service Bulletin 737–53–1096. Therefore, the contents of paragraphs (a) and (b) of the proposal have been combined into paragraph (a) of the final rule. The paragraph structure of the final rule has been reformatted accordingly.

Paragraph (d) of the final rule has been revised to clarify that the inspection area includes the forward and aft body frames adjacent to the aft lower cargo door.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,198 Model 737–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 464 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $102,080, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5763 (52 FR 41703, October 30, 1987), and by adding a new airworthiness directive (AD), amendment 39–8634, to read as follows:

93–14–10 Boeing: Amendment 39–8634. Docket 92–NM–161–AD. Supersedes AD 87–06–08 R1, Amendment 39–5763.

Applicability: Model 737–200 and –300 series airplanes, line numbers 6 through 1204, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (a) of this AD restates the requirements of paragraph (a) of AD 87–06–08 R1, amendment 39–5763. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraph (a) of AD 87–06–08 R1 have been accomplished previously, paragraph (a) of this AD does not require that they be repeated.

To prevent the development of undetected frame cracking, which could result in rapid loss of cabin pressure, accomplish the following:

(a) Prior to the accumulation of 20,000 landings, or within 1,000 landings after December 17, 1987 (the effective date of AD 87–06–08 R1, amendment 39–5763), whichever occurs later, unless previously accomplished within the last 3,000 landings prior to December 17, 1987, conduct a close visual inspection to detect cracks of the forward and aft body frames adjacent to the aft lower cargo door, in accordance with Boeing Service Bulletin 737–53–1096, dated July 24, 1986; or Revision 1, dated April 2, 1987; or Revision 2, dated July 30, 1987; or Revision 3, dated February 8, 1990; or Revision 4, dated February 14, 1991; or Revision 5, dated January 16, 1992. Thereafter, repeat the detailed visual inspections at intervals not to exceed 4,000 landings.

(b) If any crack is detected during any of the inspections required by this AD, prior to further flight, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable:

(1) Modify or repair the crack in accordance with Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987; or Revision 2, dated July 30, 1987; or Revision 3, dated February 8, 1990; or Revision 4, dated February 14, 1991; or Revision 5, dated January 16, 1992. After modification or repair, accomplish the requirements of paragraph (d) of this AD.

Note 2: Compliance with the requirements of paragraph (b)(1) of this AD constitutes compliance for the modification and crack repair recommendations of Boeing Service Bulletin 737–53–1096, as mandated by AD 90–06–02, amendment 39–6489.

(2) If any crack is found that does not exceed the limits specified in the Boeing 737 Structural Repair Manual (SRM), the crack may be temporarily repaired in accordance with the SRM. After such repair is accomplished, repeat the close visual inspections required by paragraph (a) of this AD at intervals not to exceed 4,000 landings until modification or repair is accomplished in accordance with the service bulletins specified in paragraph (b)(1) of this AD. After such modification or repair, accomplish the requirements of paragraph (d) of this AD.

(c) If no crack is detected during any of the inspections required by this AD, repeat the close visual inspections required by paragraph (a) of this AD at intervals not to exceed 4,000 landings until modified in accordance with Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987; or Revision 2, dated July 30, 1987; or Revision 3, dated February 8, 1990; or Revision 4, dated February 14, 1991; or Revision 5, dated January 16, 1992. After modification, accomplish the requirements of paragraph (d) of this AD.

(d) For any area that is modified or repaired in accordance with Boeing Service Bulletin 737–53–1096, initial release, dated July 24, 1986; Revision 1, dated April 2, 1987; Revision 2, dated July 30, 1987; Revision 3, dated February 8, 1990; Revision 4, dated February 14, 1991; or Revision 5, dated January 16, 1992: Prior to the accumulation of 28,000 landings after the modification or repair has been accomplished, or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 4,000 landings, conduct a detailed visual inspection to detect cracks of the forward and aft body frames adjacent to the aft lower cargo door, in accordance with the service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, modification, and repairs shall be done in accordance with Boeing Service Bulletin 737–53–1096, initial release, dated July 24, 1986; or Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987; or Boeing Service Bulletin 737–53–1096, Revision 2, dated July 30, 1987; or Boeing Service Bulletin 737–53–1096, Revision 3, dated February 8, 1990; or Boeing Service Bulletin 737–53–1096, Revision 4, dated February 14, 1991; or Boeing Service Bulletin 737–53–1096, Revision 5, dated January 16, 1992, as applicable. Revision 2 of Boeing Service Bulletin 737–53–1096 contains the specified effective pages:

Page No.	Shown on page	Shown on page
1–2, 4–18, 23	2	July 30, 1987.
3, 19–22, 24	1	Apr. 2, 1987.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 16, 1993.

Issued in Renton, Washington, on July 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19727 Filed 8–16–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–201–AD; Amendment 39–8635; AD 93–14–11]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. This amendment will also require stress relieving of the crossover pneumatic duct assemblies. This amendment is prompted by several reports of ruptured engine bleed air crossover ducts. The actions specified by this AD are intended to prevent failure of the engine bleed air crossover ducts, which could result in loss of pneumatics and damage to adjacent structure.

DATES: Effective September 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2670; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on February 2, 1993 (58 FR 6740). That action proposed to require dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. That action also proposed to require stress relieving of the crossover duct assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that the FAA withdraw the proposal. The commenter maintains that, based on an assessment of the effects of duct rupture in the air supply crossover, such rupture does not represent an unsafe condition as described in the proposal; therefore, the commenter states that an AD is not warranted. The commenter further states that in the event of such a rupture, the requirements of Federal Aviation Regulations (FAR) 25.1309, "Equipment, Systems, and Installations," would be complied with, allowing continued safe flight and landing without reducing the capability of the airplane or the ability of the flight crew to cope with adverse operating conditions. In addition, the Model 767 operations manual describes procedures for dealing with the loss of system operation following a duct rupture.

The FAA does not concur with the request to withdraw this AD. The FAA has determined that the purpose of this final rule is to prevent failure of the engine bleed air crossover ducts which, in combination with other failures, could result in loss of the pneumatics system operation and damage to adjacent structure. The FAA has determined that the procedures required by this action are the appropriate actions that must be taken on all affected airplanes in order to prevent these failures and ensure continued operational safety. The appropriate vehicle for mandating such action is the airworthiness directive.

One commenter requests clarification as to which crossover ducts are subject to the unsafe condition described in the proposal. The commenter requests that the proposal be limited to the four Model 767 crossover ducts bounded by the left, right, and center isolation valves. The commenter further states that these four ducts are the only ducts for which a single failure could have the effects described in the proposal, and are the only ducts addressed by Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992.

The FAA notes that Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992, which is the service document specified in the proposal, addresses the four engine bleed air crossover ducts located between the isolation valves; these are the same four crossover ducts that are referenced by the commenter. The FAA considers that further clarification of the rule is not necessary.

One commenter notes that clarification is needed in the Discussion section of the preamble to the proposal. The commenter states that in the event of a duct rupture, the potential for damaged panels would be restricted to secondary structure consisting of access and pressure relief panels, which would not affect flight safety.

The FAA does not concur that clarification is needed. Based on service history, the FAA has determined that, in the event of a duct rupture, the resultant damage could extend beyond the secondary structure. It could result in loss of pneumatics for cabin pressurization, air conditioning, air driven hydraulic pump, wing thermal anti-ice, hydraulic reservoir

pressurization, engine cross starting ability, and cargo heating, and could also damage air conditioning panels. Thus, operational safety of the airplane would be adversely affected.

Several commenters request that the proposal be revised to reference Boeing Service Bulletin 767–36A0041, Revision 1, dated February 25, 1993, since it describes procedures for changing the part number of the crossover ducts once the ducts have been stress relieved. This will better identify the crossover ducts which have been stress relieved. The commenters state that the original issue of Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992, which is referenced in the proposal, does not specify a change in the part number. The commenters note that they are unable to track which crossover ducts have been stress relieved because there is no specific part number change. The commenters are concerned that they are at risk of re-installing a crossover duct that has not been stress relieved.

The FAA concurs with these commenters' request. Since issuance of the proposal, the FAA has reviewed and approved Boeing Service Bulletin 767–36A0041, Revision 1, dated February 25, 1993. Revision 1 is essentially identical to the original issue, but includes information about an optional way to identify ducts once they have been stress relieved. The FAA has determined that this option would make future tracking of changed parts easier. Therefore, the final rule has been revised to include Revision 1 to the service bulletin as an additional appropriate source of service information.

Several commenters request that the rule contain an optional compliance schedule for accomplishing the proposed inspection and stress relieving of the crossover ducts. The commenters request a compliance time of 12 to 18 months to complete both the inspection and stress relieving of the crossover ducts, in lieu of the proposed compliance time of 6 months or 7,000 total flight cycles, whichever occurs later, to perform the inspection and the additional 3,000 flight cycles after inspection to accomplish the stress relieving. The commenters cite the following reasons as justification for this request:

1. The commenters state that a majority of their Model 767 series airplanes have already accumulated more than 7,000 total flight cycles and, therefore, the crossover ducts would have to be inspected within 6 months after the effective date of the final rule.

2. The commenters further state that a compliance time of 6 months would require that they special schedule the stress relief work on their fleets, at considerable additional expense.

3. The manufacturer has advised the commenters that there is a 63-week lead time for availability of spare crossover ducts.

4. Several commenters indicate that they have purchased an extra ship-set of ducts and are installing stress-relieved parts, one ship-set at a time, at "C" check intervals (approximately every 15 to 18 months).

5. The commenters note that the proposed compliance time of 3,000 flight cycles for rework (stress relieving) of the ducts could equal as much as 30 months for some operators. (This includes the initial 6-month compliance time for the dye penetrant inspection.)

6. The commenters state that, under the optional compliance time schedule that they have suggested, all of the requirements could be accomplished within 18 months after the effective date of the final rule.

The FAA concurs in part with the commenters' request. The FAA does not agree that there is a parts availability problem; the manufacturer has advised the FAA that there is a limited supply of crossover duct ship-sets in stock, based on predicted needs due to duct failure during proof pressure tests or for unrepairable ducts. However, the FAA does agree that it would be appropriate to include an optional compliance schedule for inspecting and for stress relieving of the crossover pneumatic duct assemblies, as suggested by the commenters. The optional compliance schedule suggested by the commenters will not adversely affect safety, and will allow the work to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available. The final rule has been revised to include an optional compliance schedule of 18 months after the effective date of this AD for accomplishing the dye penetrant inspection and stress relieving of the crossover duct assemblies. The compliance schedule as proposed in the notice is indicated as "Option 1" in the final rule; the newly added optional compliance schedule is indicated as "Option 2."

One commenter requests that the compliance time for the initial dye penetrant inspection be extended from the proposed 6 months to 24 months. The commenter notes that, in order to inspect and subsequently rework its entire fleet within the proposed compliance time, it would have to special schedule the work and purchase two ship-sets of spare crossover pneumatic ducts at considerable expense. The down time of a "C" check for a Model 767 series airplane does not permit rework of removed ducts to meet the incoming date of the next "C" check, which means that two "C" check cycles will be required to modify its fleet. The commenter states that, based on its operation of Model 767 series airplanes, crack growth in the area of the crossover pneumatic ducts is relatively slow, and that cracks can be detected adequately by visual inspections. The commenter notes that it has already begun visually inspecting the crossover pneumatic ducts.

The FAA cannot determine whether the visual inspection suggested by the commenter would provide an acceptable level of safety to the actions required by this rule. However, under the provisions of paragraph (d) of the final rule, the FAA would consider reviewing a request for use of this inspection as an alternative method of compliance with this rule, if more detailed justification for use of the inspection is provided.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 307 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD, that it will take approximately 64 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $404,800, or $3,520 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule"

under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-14-11 Boeing: Amendment 39-8635. Docket 92-NM-201-AD.

Applicability: Model 767 series airplanes, line position 001 through 307, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine bleed air crossover ducts, which could result in loss of pneumatics and damage to adjacent structure, accomplish the following:

(a) *Option 1:* As an alternative to the requirements of paragraph (b) of this AD, accomplish the following:

(1) Within 6 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs later, conduct a dye penetrant inspection and proof pressure test of the crossover pneumatic ducts, in accordance with Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992; or Revision 1, dated February 25, 1993.

(i) If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(ii) Stress relieving of the ducts, in accordance with the service bulletin, may be accomplished in conjunction with the initial dye penetrant inspection and proof pressure test required by this paragraph. Such action constitutes terminating action for the requirements of paragraph (a)(2) of this AD.

(2) Within 3,000 flight cycles after accomplishing the initial dye penetrant inspection and proof pressure test required by paragraph (a)(1) of this AD, conduct an additional dye penetrant inspection and proof pressure test of the crossover pneumatic ducts, and stress relieve the crossover pneumatic duct assemblies, in accordance with Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992; or Revision 1, dated February 25, 1993. If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(b) *Option 2:* As an alternative to the requirements of paragraph (a) of this AD, accomplish the following:

(1) Within 18 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs later, conduct a dye penetrant inspection and proof pressure test of the crossover pneumatic ducts and stress relieve the crossover pneumatic duct assemblies, in accordance with Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992; or Revision 1, dated February 25, 1993.

(2) If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(c) Replacement of all crossover pneumatic ducts with stress relieved ducts in accordance with Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992; or Revision 1, dated February 25, 1993, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, test, repair, and replacement shall be done in accordance with Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992; or Boeing Service Bulletin 767-36A0041, Revision 1, dated February 25, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 16, 1993.

Issued in Renton, Washington, on July 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-19726 Filed 8-16-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-15-AD; Amendment 39-8641; AD 93-14-17]

Airworthiness Directives; Aerospatiale Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes, that requires a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished; and, if necessary, a one-time general visual inspection of the fastener holes for peening or cracks, and modification or repair, as necessary. This amendment is prompted by a report that, during assembly, spotfacing of some fastener holes in the front and rear wing spar fittings was not performed on these airplanes. The actions specified by this AD are intended to prevent reduced structural integrity of the wing spar fittings.

DATES: Effective September 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72–100 and –200 series airplanes was published in the **Federal Register** on April 7, 1993 (58 FR 18051). That action proposed to require a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished; and, if necessary, a one-time general visual inspection of the fastener holes for peening or cracks, and modification or repair, as necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,470, or $770 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–14–17 Aerospatiale: Amendment 39–8641. Docket 93–NM–15–AD.

Applicability: Model ATR72–100 and –200 series airplanes on which Modification 3196 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing spar fittings, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished, in accordance with Aerospatiale Service Bulletin ATR72–57–1008, dated November 19, 1992.

(1) If spotfacing of the fastener holes has been accomplished, no further action is required by this AD.

(2) If spotfacing of the fastener holes has not been accomplished, prior to further flight, perform a one-time general visual inspection of the fastener holes for peening or cracks, in accordance with the service bulletin.

(i) If no peening or crack is found, prior to further flight, install a shim and replace existing nuts with self-aligning nuts, in accordance with the service bulletin.

(ii) If any peening or crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, installation, replacement, and repair shall be done in accordance with Aerospatiale Service Bulletin ATR72–57–1008, dated November 19, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 16, 1993.

Issued in Renton, Washington, on July 19, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19728 Filed 8–16–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 91

[Docket No. 24456; Amendment No. 91–233]

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects the Airspace Reclassification Final Rule effective September 16, 1993. The Airspace Reclassification Rule inadvertently assigned the authority to air traffic controllers to allow aircraft operators to deviate from the maximum airspeed restriction below 10,000 feet. The authority to approve deviation from the speed limits contained in the Federal Aviation Regulations (FAR) rests with the Administrator, and the FAA did not intend to amend the approving authority. This action reestablishes the Administrator as the proper authority to permit waivers of aircraft speed. This action also corrects the inadvertent inclusion of Class B airspace in the maximum airspeed restriction effected by the Airspace Reclassification Final Rule.

EFFECTIVE DATE: This correcting amendment is effective as of September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Messieurs Aaron I. Boxer or Joseph C. White, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1989, the FAA published a Notice of Proposed Rulemaking on Airspace Reclassification (54 FR 42916) which proposed, among other things, that the nomenclature of various airspace areas be renamed to conform with agreements with the International Civil Aviation Organization. On December 17, 1991, the FAA published a final rule on Airspace Reclassification (56 FR 65638) which becomes effective on September 16, 1993. Section 91.117 of the Federal Aviation Regulations (FAR) (14 CFR 91.117) was amended as part of this process.

Section 91.117(a) requires that any aircraft operated below 10,000 feet be flown no faster than 250 knots (288 m.p.h.) unless otherwise authorized by the Administrator of the FAA. Section 91.117(b) provides that, unless authorized or required by ATC, no person may operate an aircraft within an airport traffic area faster than 200 knots (230 m.p.h.), except for operations within a terminal control area. The preamble to the proposed airspace reclassification rule included a discussion of several recommendations received from the National Airspace Review (NAR) task group. NAR 1–2.1.3 recommended several changes to operating requirements in Terminal Control Areas (Class B airspace). Included in NAR 1–2.1.3 was a recommendation to delegate the authority to approve deviation from the 250 knot speed restriction in Class B airspace to air traffic control. The FAA had adopted other portions of NAR 1–2.2.3 through separate actions, but had not intended to incorporate the recommended delegation of authority or include Class B airspace in the 200 knot rule. However, the rule language amending § 91.117(a) inadvertently included such redelegation, and that amending § 91.117(b) inadvertently included the Class B airspace area. This action establishes the Administrator as the sole approving authority for deviations from the aircraft speed restrictions contained in § 91.117(a) and excludes the Class B airspace area from the speed restrictions contained in § 91.117(b).

List of Subjects in 14 CFR Part 91

Air traffic control, Air transportation, Airmen, Airports, Aviation safety.

The Amendment

Accordingly, 14 CFR part 91 in effect as of September 16, 1993, is amended by making the following correcting amendments:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125l articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.117 is corrected by revising paragraphs (a) and (b) to read as follows:

§ 91.117 Aircraft speed.

(a) Unless otherwise authorized by the Administrator, no person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 m.p.h.).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class C or Class D airspace area at an indicated airspeed of more than 200 knots (230 mph.). This paragraph (b) does not apply to any operations within a Class B airspace area. Such operations shall comply with paragraph (a) of this section.

* * * * *

Issued in Washington, DC, on August 10, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–19663 Filed 8–16–93; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1204 by revising subpart 4, "Small Business Policy," to reflect the current rate of small purchases threshold for applicability of the policy. This subpart establishes NASA's small business policy and outlines the delegation of authority in implementing this policy.

EFFECTIVE DATE: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Ralph C. Thomas, III, 202–358–2088.

SUPPLEMENTARY INFORMATION: NASA published its final rule in the Federal Register on April 28, 1982 (47 FR 18124). This amendment makes editorial corrections and revises the proposed procurement threshold in § 1204.403 (a) and (b).

NASA has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings, facilities, and real estate, Government contracts, Government employees, Government procurement, Grant programs—science and technology, Intergovernmental relations, Labor unions, Security measures, Small businesses.

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

For reasons set forth in the Preamble, 14 CFR part 1204, subpart 4, is revised to read as follows:

Subpart 4—Small Business Policy

Sec.

1204.400 Scope of subpart.
1204.401 Policy.
1204.402 Responsibilities.
1204.403 General requirements.

Authority: 42 U.S.C. 2473(c)(5); 42 U.S.C. 2473b; Public Law 101–507, the VA/HUD/Indep. Agencies Appropriation Act for FY 1991, at 104 Stat. 1380 (Nov. 5, 1990); and 15 U.S.C. 631–650.

Subpart 4—Small Business Policy

§ 1204.400 Scope of subpart.

This subpart establishes NASA's small business policy and outlines the delegation of authority in implementing this policy as required by Federal law.

§ 1204.401 Policy.

(a) It is the policy of NASA to enable small business concerns (including small women-owned businesses), Historically Black Colleges and Universities, and other minority

educational institutions the opportunity to participate equitably and proportionately in its total purchases and contracts consistent with NASA's needs to execute its missions.

(b) In carrying out the NASA procurement program, the primary consideration shall be that of securing contract performance, including obtaining deliveries of required items or services at the time, in the quantity and of the quality prescribed. In the area of research and development contracts, the general policy of NASA is to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the interest of the civilian space program that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small and small disadvantaged business firms.

§ 1204.402 Responsibilities.

(a) *Office of Small and Disadvantaged Business Utilization (OSDBU).* The Associate Administrator for Small and Disadvantaged Business Utilization, NASA Headquarters, is responsible for the development, supervision, and coordination of the NASA Small Business Program. The Associate Administrator is also responsible for formulating policy and procedures relating to small business, and representing NASA before other Government agencies on matters primarily affecting small business.

(b) *NASA Headquarters and Field Installations.* The Directors of Field Installations and the Associate Administrator for Procurement at Headquarters will designate a qualified individual as a "Small Business Specialist" to provide a central point of contact to which small and small disadvantaged business concerns may direct inquiries concerning participation in the NASA procurement program, or secure assistance in submitting bids or proposals and performance of contracts. Where the Director of the Field Installation considers that the volume of procurement at the Installation does not warrant a full-time Small Business Specialist, the Director may assign such duties to qualified procurement personnel on a part-time basis. NASA Field Installations shall establish and maintain liaison with the Small Business Administration (SBA) Procurement Center Representative (PCR) or the appropriate Small Business Administration Regional Office in matters relating to Field Installation procurement activities. A Small Business Technical Advisor shall be assigned to each contracting activity within the agency to which the SBA has assigned a PCR.

§ 1204.403 General requirements.

(a) All proposed procurement transactions in excess of $25,000 shall be examined by a Small Business Specialist prior to issuance of bids or requests for proposals to determine suitability for small participation or set-asides, unless the transaction has already been set-aside for small business by the contracting officer.

(b) The appropriate office of the Small Business Administration (assigned PCR) shall be informed of proposed procurements estimated to exceed $25,000.

(c) A Bidder's list shall be maintained at each Field Installation on a current basis and reviewed to ensure that small business firms are given an equitable opportunity to participate in those procurements suitable for performance by such firms. Installations may use, at their option, the SBA Procurement Automated Source System (PASS) in lieu of the separate Center Bidder's list, if resources can be conserved.

(d) NASA Small Business Specialists shall acquire descriptive data, brochures, or other information concerning small business firms that appear competent to perform research and development (R&D) work in fields in which NASA is interested and furnish such information to appropriate NASA personnel for consideration of these firms in future R&D procurements. The Small Business Specialists at Headquarters and Field Installations shall assist and consult, as necessary, with NASA technical personnel in analyzing such information, arranging field inspection of facilities, making appointments for technical personnel with representatives of small business firms, and obtaining from other agencies appraisals of work performance by such firms. When feasible, Small Business Specialists shall conduct or participate in outreach conferences and training sessions to inform small businesses of contracting opportunities with the Agency.

(e) In accordance with Public Law 95–507, NASA will require contractors having contracts in excess of $1 million for the construction of any public facility, and in excess of $500,000 for all other contracts, and of such nature as to afford opportunities for subcontracting in substantial amounts, to establish and conduct small business subcontracting programs. Such programs will be periodically reviewed by NASA Small Business Specialists to evaluate their adequacy.

(f) NASA will encourage competent small business concerns to submit unsolicited proposals for research and development work in areas within NASA's responsibility, which may lead to contracts for such work. The formation of contractor pools or joint ventures to perform research and development work will also be encouraged.

(g) NASA Small Business Specialists will disseminate to small business concerns information concerning inventions for which NASA holds patents on behalf of the United States and under which it is NASA policy to grant licenses.

(h) Small business participation in NASA procurement shall be accurately measured, recorded, and publicized.

(i) NASA small business personnel shall assist small business concerns to obtain payments under their contracts, late payment interest penalties, or information due to such concerns.

Dated: August 10, 1993.

Daniel S. Goldin,

Administrator.

[FR Doc. 93–19642 Filed 8–16–93; 8:45 am]

BILLING CODE 7510–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32737; File No. S7–27–93]

RIN 3235–AD62

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its net capital rule under the Securities Exchange Act of 1934, to make the rule applicable to certain specialists that are currently exempt from the rule. The Commission is further amending the rule to exempt certain specialists from the application of the rule's haircut and undue concentration deductions with respect to their specialty securities. Options market makers on the floors of the national securities exchanges will continue to be exempt from the net capital rule under certain conditions.

EFFECTIVE DATE: The amendments become effective on April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli (202) 272–2904, Harry Melamed (202) 272–2382, Michael P. Jamroz (202) 272–2372, or Glen P. Barrentine (202) 272–7339, Division of Market Regulation, 450 5th Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Commission's Proposal

On December 28, 1988, the Securities and Exchange Commission ("Commission") proposed for comment amendments to its net capital rule, Rule 15c3–1 [1] under the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[2] which would have made the rule applicable to certain currently exempt specialists.[3] Under the amendments as proposed, options market makers on the floors of the national securities exchanges would continue to be exempt from the net capital rule under certain conditions. The amendments also would have allowed specialists a one day "grace period" within which to meet the rule's haircut and undue concentration deductions arising from positions in their specialty securities.[4]

The Commission is amending the rule to make it applicable to all specialists other than options market makers.[5] In light of many of the comments received, however, the amendments as adopted contain, in place of the proposed one day grace period, provisions that generally exempt certain specialists from the application of the rule's haircut and undue concentration deductions with respect to their specialty securities.

B. The Net Capital Rule

The net capital rule requires all broker-dealers subject to the rule [6] to maintain certain specified minimum levels of net capital.[7] The Commission originally adopted the net capital rule on October 29, 1942.[8] From 1944 until 1975, however, the rule granted an exemption to any broker-dealer, including a specialist, that was a member of one of the major national securities exchanges if that member was in good standing and subject to the capital rule of its exchange. In response to a directive of Congress, contained in section 15(c)(3) of the Act, to "establish minimum financial responsibility requirements [by September 1, 1975] for all brokers and dealers," the Commission, in 1975, eliminated from the net capital rule, the general exemption previously granted to members of all major national securities exchanges.[9]

The Commission continued the exemption for specialists that had no customers and generally restricted their securities business to that of a specialist.[10] In deciding to retain the exemption for specialists, the Commission stressed that the securities industry was then in a state of flux and that the Commission was not at that time in a position to recommend minimum capital requirements for specialists which differed from the financial responsibility rules of the various exchanges.[11] Thereafter, the Commission solicited the views of all interested persons with regard to the appropriate net capital requirements for specialists.[12] The Commission took no further action at that time, however, and the specialist exemption remained a part of the net capital rule.

In response to the October 1987 market break and as a part of its comprehensive market break study,[13] the Commission's Division of Market Regulation ("Division") examined the specialist financial responsibility rules and financial surveillance systems of the various exchanges and noted several problems involving, among other things, limitations in the exchanges' systems of monitoring their specialists' securities positions and financial conditions and inadequacies in the exchanges' specialist financial responsibility rules.[14] The Division concluded that the capital requirements then imposed by the exchanges on their equity specialists did not reflect the actual capital required to ensure the maintenance of fair and orderly markets in different types of securities.[15]

Although the exchanges, in general, took steps after the market break of 1987 to improve their financial surveillance systems and their specialist capital

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[1] 17 CFR 240.15c3–1.

[2] Securities Exchange Act Release No. 26402 (December 28, 1988), 54 FR 315 (January 5, 1989). All comments are available in File No. S7–27–88 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[3] A specialist is an exchange member that is registered with its exchange as such and is responsible for making a market in one or more assigned securities. Generally, the exchange assigns each security to a single specialist or to a "specialist unit," *i.e.*, an association of two or more specialists. For purposes of the net capital rule, options market makers are also defined as specialists. Options market makers are traders on the floors of the various exchanges that stand ready to buy or sell one or more option classes and are registered with their exchanges as such. In contrast to most other specialists, market makers compete against one another in each class of options traded. In return for the right to make a market in assigned securities, specialists, including options market makers, undertake certain responsibilities required by Rule 11b–1 (17 CFR 240.11b–1) under the Act including the obligation to assist in the maintenance of a fair and orderly market in each of their specialty securities.

Options market makers are distinguished from other specialists by the fact that options market makers do not maintain a so-called specialist's book containing a listing of all orders away from the current market price. Specialists other than options market makers also are responsible for disseminating accurate quotations in their specialty securities and performing other responsibilities commonly associated with specialists.

[4] The haircut deductions take into account market and credit risk. The undue concentration deduction found at paragraph (c)(2)(vi)(M) of the net capital rule applies to all long or short proprietary securities positions of a single class or series of an issuer, the market value of which exceeds 10% of the broker-dealer's net capital before haircuts.

[5] Certain options market makers on the floors of the exchanges perform functions that may be similar to the functions performed by specialists that, as a result of these amendments, will no longer be exempt from the net capital rule. In determining whether a particular options market maker will be exempt from the net capital rule, as amended hereby, the specific label applied by an exchange to the functions of a particular class of broker-dealers will not be dispositive. In making this determination, the Commission will look solely to whether the functions performed by the class of broker-dealers in question are more like those performed by specialists that are subject to the rule.

[6] Paragraph (b) of the net capital rule grants an exemption from the rule to three classes of broker-dealers: (a) Certain specialists; (b) certain floor brokers; and (c) broker-dealers that have been granted a specific exemption by the Commission. Generally, the Commission has granted an exemption only to certain insurance companies, registered as broker-dealers because they sell variable annuity products that have been deemed to be securities.

[7] "Net capital," as that term is defined in subparagraph (c)(2) of the rule, is computed by adding to a broker-dealer's net worth, determined in accordance with generally accepted accounting principles, certain liabilities subordinated to the claims of creditors including customers and by deducting from net worth assets not readily convertible into cash and certain percentages (called "haircuts") of the market value of all proprietary positions held by the broker-dealer.

[8] See Securities Exchange Act Release No. 3323 (October 29, 1942), 7 FR 8844 (November 3, 1942), adopting the net capital rule.

[9] See Securities Exchange Act Release No. 11497 (June 20, 1975), 40 FR 29795 (July 10, 1975), eliminating the general exemption from the net capital rule for members of exchanges.

[10] Subparagraph (b)(1) of the rule exempts from the requirements of the rule specialists that, among other things, (i) limit their securities activities to trading with only brokers, dealers, or other members of the exchange on which they act as specialists and (ii) are subject to the capital requirements of that exchange. Absent such exemption, the net capital rule would require specialists to maintain net capital, under the aggregate indebtedness method, equal to a minimum of $100,000 ($50,000 until December 31, 1993, and thereafter $75,000 until June 30, 1994) and, under the alternative method, equal to a minimum of $250,000 ($150,000 until December 31, 1993, and thereafter $200,000 until July 1, 1994).

[11] Securities Exchange Act Release No. 9891 (December 5, 1972), 38 FR 56 (January 3, 1973).

[12] Securities Exchange Act Release No. 11561 (July 30, 1975), 40 FR 33747 (August 11, 1975).

[13] Division of Market Regulation, The October 1987 Market Break (1988) [hereinafter cited as "Market Break Report"].

[14] See generally id. at 4–48 to 4–68.

[15] Id. at 4–68.

requirement rules, the Commission continued to study whether sufficient reasons still existed to exempt specialists from the rule and the ramifications of applying the rule to specialists. As a result, the Commission decided to propose for comment amendments to the net capital rule that would make the rule applicable to all specialists on the floors of the national securities exchanges, other than options market makers.

C. Brief Summary of Comments

In response to the proposing release, the Commission received comment letters from fifty-four entities. The commenters included seven securities exchanges; [16] thirty-five New York Stock Exchange, Inc. ("NYSE") equity specialists; nine other equity specialists, options specialists, and options market makers at exchanges other than the NYSE or at a combination of exchanges; two accounting firms; and the Securities Industry Association.

Almost every commenter expressed concern that application of the net capital rule to specialists would conflict with their obligation of assisting in the maintenance of fair and orderly markets. These commenters expressed concern that the rule would reduce specialists' buying power [17] and that, in order to remain in compliance with the rule, specialists, especially in volatile, downward market situations, would be unwilling to assume positions necessary to fulfill their obligations to the market or might actually liquidate their positions.

With regard to the one day grace period, many commenters expressed their view that one day would not be enough time for specialists to raise needed capital. Specialists that could not raise the needed capital during the one day grace period would be forced to liquidate their positions at the end of the period. Commenters stressed that this could introduce considerable destabilizing selling pressure and a sudden imbalance of those specialty securities in the market place, especially in volatile market situations where, because of their obligations, specialists have assumed large positions.

Several commenters stated that the exchanges, with their financial responsibility rules and surveillance programs, are the most appropriate entities for the regulation of specialists. Many of the commenters urged that the exchanges be given discretionary authority in the application of the net capital rule's haircut and undue concentration deductions to individual specialists on a case by case basis in non-crisis situations and to all specialists as a group in crisis situations.

Other commenters suggested that the net capital rule should be applied to specialist units as a whole and not to individual specialist participants.[18] These commenters pointed out that trading could be disrupted in the specialty securities of a unit comprised of two or more individual specialists operating though a joint account if the capital of one participant fell below its net capital requirement even though the unit as a whole had adequate capital. They also believed that application of the net capital rule to specialists would require each member of a unit to take haircuts on the total position held by the unit.

Finally, several commenters stressed that options market makers should not be treated differently from options specialists. These commenters pointed out that options specialists on the NYSE, Philadelphia Stock Exchange, Inc., and American Stock Exchange, Inc. ("Amex") compete with options market makers on the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc. ("PSE"). As a result, any provision that increased the cost of doing business for options specialists, without a similar increase for options market makers, would give the options market makers and the exchanges on which they trade an unfair competitive advantage over options specialists and their exchanges.

II. Rule Amendments

After a careful study of the comments received, the Commission is hereby adopting, with certain modifications, the proposed amendments making the net capital rule applicable to all specialists other than options market makers on the floors of the national securities exchanges.[19]

Specialists are central to the exchange market mechanism. As demonstrated by the October 1987 market break, however, they are exposed to risks of capital shortfalls and, indeed, financial failure during periods of extreme market volatility.[20] Although, as previously noted, the exchanges, in general, have taken steps to improve their financial surveillance systems and their specialist capital requirements, the Commission does not believe that sufficient reasons still exist to exempt specialists other than options market makers from the net capital rule and the overall uniform, minimum financial responsibility which results from its application.

Application of the net capital rule to specialists other than options market makers is necessary to provide reasonable assurance that specialists are maintaining minimum levels of liquid capital. More significantly, the Commission believes that application of the rule will provide significant monitoring and consistent reporting benefits. For example, application provides the Commission with a uniform measure whereby it may review and monitor, both in its regular scheme of oversight and examination and during crisis situations, the financial health of all specialists at all exchanges. This would also allow the Commission to compare the performances of specialists to the amounts of capital committed to their businesses.[21] The amendments also require specialists to monitor their net capital as closely as other broker-dealers are now required, require them to give the Commission notice of the occurrence of certain conditions that suggest that the specialists may be in financial

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[16] The New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Midwest Stock Exchange, Inc. (now known as the Chicago Stock Exchange, Incorporated), the Philadelphia Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Boston Stock Exchange, Inc.

[17] See generally Market Break Report, supra note 13, at 4–57, n.138, for the definition of the term "buying power."

[18] At many exchanges, the function of specialist is performed by units which are joint ventures comprised of registered broker-dealers.

[19] The Commission recognizes that application of the rule to specialists will require previously exempt specialists to change some of their operations. In order to ameliorate the effect of such changes, resulting from this transition, the Commission would not object if the Division did not raise any question if all subordination agreements entered into prior to the date of publication of this release in the **Federal Register** to be deemed satisfactory subordination agreements, as defined in Appendix D to the rule, until such time as they are no longer in force, and further allowed the capital contributed under such agreements to be deemed equity capital for purposes of the debt/equity of paragraph (d) of the rule.

[20] At the end of trading on October 16, 1987, one of the 55 specialist units on the NYSE had no buying power. By the end of trading on October 19, 1987, 13 units had no buying power. In the Market Break Report, the Division evaluated the likely impact on NYSE specialists had an additional 250 point drop in the market occurred on October 20. Based on its evaluation, the Division believed an additional 15 to 20 specialists units would have exhausted their buying power. Market Break Report, *supra* note 13, at 4–58 and 4–59. Additionally, several equity specialists on the NYSE and the Amex were unable to continue to conduct business and were acquired by better capitalized firms or were able to continue in business only through agreements with their clearing broker-dealers to lower their margin requirement. *Id.* at 4–61 to 4–65.

[21] Each exchange has its own specialist capital requirements and its own method of calculating specialist capital.

difficulty,[22] and prevent the removal of capital from a specialist that is in a financially vulnerable state.[23]

Despite these considerations, in order to prevent the possibility that application of the rule with its haircut and undue concentration deductions to currently exempt specialists would significantly reduce their buying power, the Commission is not adopting that portion of the proposal which would have exempted the specialists from such deductions for one day. Rather, the Commission is adopting an amendment which exempts certain specialists from such deductions as to their specialty securities. This exemption will apply in general only to those specialists that are currently exempt from the net capital rule and will not apply to those specialists that have elected paragraph (a)(7) of the rule because they are clearing members of The Options Clearing Corporation.

The exemption provided by this new paragraph (c)(2)(vi)(N) from the rule's haircut and undue concentration deductions will not apply to net capital calculations made for purposes of compliance with the provisions of the rule restricting the withdrawal of equity capital and relating to satisfactory subordination agreements. For example, specialists that are not required to deduct haircuts from net worth in computing net capital must, before withdrawing any equity capital, take into account all haircuts and undue concentration deductions that would be required but for paragraph (c)(2)(vi)(N). Specialists that act solely as options specialists, however, would be allowed to withdraw equity capital so long as their tentative net capital, i.e., net capital before haircut and undue concentrations deductions, is equal to at least 25% of their total deductions and 120% of their required minimum net capital before haircuts.[24] All specialists covered by paragraph (c)(2)(vi)(N) must also include a separate calculation of haircuts that would otherwise be required in any net capital computation required by paragraph (a)(11) of Rule 17a–3 [25] or made on any report required under Rule 17a–5.

The Commission also is adopting a technical amendment to paragraph (c)(2)(x). That paragraph requires carrying firms to take certain deductions from net worth on account of their guarantees of options positions purchased or written by specialists exempt from the net capital rule. Since options specialists (as opposed to options market makers) are no longer exempt from the rule, this technical amendment is necessary to ensure that carrying firms continue to take the deductions required by paragraph (c)(2)(x) on account of their guarantees of options positions purchased or written by specialists covered by paragraph (c)(2)(vi)(N).

In regard to comments that the rule should be applied to specialist units as a whole rather than to individual broker-dealer participants, the Commission is not persuaded that there is any overriding need to make such a fundamental change in the net capital rule. The net capital rule applies to individual broker-dealers, not to units. Each broker-dealer is separately responsible for its financial condition. Moreover, since specialists being made subject to the net capital rule by these amendments will be able to operate with only $100,000 in net capital and without the need to deduct haircuts, any concern that existed should be considerably eased.

Finally, the Commission does not believe that it is necessary to apply the rule to options market makers because, on an individual basis, they are not as integral to the proper functioning of the markets in their securities. Specialists other than options market makers perform several functions that options market makers do not, including the maintenance of a specialist's book containing a listing of all orders away from the current market price and the dissemination of accurate quotations in their specialty securities. Moreover, the exchanges that use options specialists look to a single specialist or specialist unit to handle all trades whereas options market makers compete with other market makers. As a result, while a specialist's failure would bring trading in the specialist's securities to a halt, the failure of an options market maker need not cause such a result. In addition, because currently exempt options specialists would not be subject generally to the rule's haircut and undue concentration deductions, the Commission does not believe that approval of these amendments places options specialists at a meaningful competitive disadvantage with options market makers.

III. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("Final Analysis") in accordance with 5 U.S.C. 604 regarding these amendments to Rule 15c3–1. The Final Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules, which are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers. The Initial Regulatory Flexibility Analysis ("Initial Analysis") solicited written comments with respect to any aspect of the Initial Analysis. The Commission received several comments that, although not specifically referring to the Initial Analysis, addressed issues raised in the Initial Analysis.

In Section IV, "Small entities subject to the rule," the Initial Analysis stated, "The rule amendments have the potential to affect all small brokers or dealers [26] that are registered as specialists." The Midwest Stock Exchange, Inc. (now known as the Chicago Stock Exchange, Incorporated) stated that by applying the net capital rule, some smaller capitalized firms may be forced out of business because of their inability to raise additional capital. According to the PSE, the smaller, less-capitalized specialists will be precluded from essential market participation because of the requirements of the net capital rule. One commenter stated that the application of the net capital rule would impose the heaviest burden on the growing number of independent traders that are joining the regional

[22] Rule 17a–11 (17 CFR 240.17a–11) under the Exchange Act requires, among other matters, all broker-dealers subject to the net capital rule to notify the Commission in the event:

(a) their net capital is less than the minimum required by the rule; or

(b) their net capital falls below specified levels (commonly referred to as "early warning levels") set above the minimum requirements of the net capital rule.

[23] Paragraph (e) of the net capital rule requires a broker-dealer to notify the Commission of, and authorizes the Commission to restrict, for a period of up to 20 business days, any withdrawal by a broker-dealer of equity capital where such withdrawal, together with all other such withdrawals during the preceding 30 calendar day period, exceeds 30% of the broker-dealer's excess net capital. Paragraph (e) also prohibits a stockholder or partner from withdrawing equity capital of the broker-dealer if, among other reasons, the withdrawal would cause its net capital to be less than 120% of the minimum dollar amount required, or less than 25% of its total haircut and undue concentration deductions from net worth in computing net capital.

Under Appendix D to the rule, amounts may not be repaid under a satisfactory subordination agreement if the repayment would reduce net capital below required amounts.

[24] Additionally, as to options specialists, the notice provisions of paragraph (e)(1) and the temporary restrictions on withdrawal of net capital of paragraph (e)(3) would be based upon tentative net capital rather than net capital.

[25] Paragraph (a)(11) of Rule 17a–3 requires all broker-dealers subject to the net capital rule to make a monthly net capital computation.

[26] Paragraph (c) of 17 CFR 240.0–10 defines for purposes of the Regulatory Flexibility Act the term small business or small organization when those terms are used in reference to a broker or dealer. The Initial Analysis stated that approximately thirty of the estimated 170 specialists are small business.

exchanges and are being awarded specialist or market maker responsibilities.[27] The Final Analysis states that the Commission believes new paragraph (c)(2)(vi)(N) should alleviate most of the concerns that the application of the net capital rule will require specialists to maintain capital in excess of the amounts now required by the exchanges.

In Section V, "Reporting, recordkeeping, and other compliance requirements," the Initial Analysis stated, "the exact effect the application of the net capital rule will have on specialists cannot be immediately quantified." Several commenters stated that the imposition of the net capital rule would provide neither additional protection to the investing public or the broker-dealer community nor surveillance or capital requirements that are more adequate than those now employed by the exchanges but would make regulatory compliance more onerous and costly. The Final Analysis states that one of the main purposes and benefits of applying the net capital rule to specialists is that the Commission will have a uniform measure whereby it may review the liquidity of all specialists at all exchanges. The Final Analysis also points out that the application of the rule will not pose any regulatory burdens on the specialists, whether large or small, in addition to those the majority of all other broker-dealers, including over-the-counter market makers, have in complying with the rule.

A copy of the Final Analysis may be obtained by contacting Glen P. Barrentine, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5–1, Washington, DC 20549.

IV. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3) and 23 thereof, 15 U.S.C. §§ 78o(c)(3) and 78w, the Commission is adopting amendments to § 240.15c3–1 of title 17 of the Code of Federal Regulations in the manner set forth below.

[27] Since none of these commenters cited the Initial Analysis or the Regulatory Flexibility Act, the Commission is unable to determine positively if the commenters' use of the words "small" and "smaller" was simply in reference to specialists that are smaller in comparison to other specialists (and may or may not be small businesses or small organizations under the Regulatory Flexibility Act) or was actually in reference to those specialists that the commenters believe fall within the definition of small business or small organization. The Commission is of the opinion that the use of the words "small" and "smaller" was not in reference to the Regulatory Flexibility Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, 17 CFR part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15c3–1 by revising paragraph (b)(1) and the introductory text of paragraph (c)(2)(x)(A) and adding paragraph (c)(2)(vi)(N) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers and dealers.

* * * * *

(b) Exemptions:

(1) The provisions of this section shall not apply to any specialist:

(i) whose securities business, except for an occasional non-specialist related securities transaction for its own account, is limited to that of acting as an options market maker on a national securities exchange;

(ii) that is a member in good standing and subject to the capital requirements of a national securities exchange;

(iii) that does not transact a business in securities with other than a broker or dealer registered with the Commission under section 15 or section 15C of the Act or a member of a national securities exchange; and

(iv) that is not a clearing member of The Options Clearing Corporation and whose securities transactions are effected through and carried in an account cleared by another broker or dealer registered with the Commission under section 15 of the Act.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(N) Any specialist that limits its securities business to that of a specialist (except for an occasional non-specialist related securities transaction for its own account), that does not transact a business in securities with other than a broker or dealer registered with the Commission under section 15 or 15C of the Act or a member of a national securities exchange, and that is not a clearing member of The Options Clearing Corporation need not deduct from net worth in computing net capital those deductions, as to its specialty securities, set forth in paragraph (c)(2)(vi) of this section or Appendix A to this section, except for paragraph (e) of this section limiting withdrawals of equity capital and Appendix D to this section relating to satisfactory subordination agreements. As to a specialist that is solely an options specialist, in paragraph (e) the term "net capital" shall be deemed to mean "net capital before the application of paragraph (c)(2)(vi) of this section or Appendix A to this section" and "excess net capital" shall be deemed to be the amount of net capital before the application of paragraph (c)(2)(vi) of this section or Appendix A to this section in excess of the amount of net capital required under paragraph (a) of this section. In reports filed pursuant to § 240.17a–5 and in making the record required by § 240.17a–3(a)(11) each specialists shall include the deductions that would otherwise have been required by paragraph (c)(2)(vi) of this section or Appendix A to this section in the absence of this paragraph (c)(2)(vi)(N).

* * * * *

(x) *Brokers or Dealers Carrying Accounts of Options Specialists.* (A) With respect to any transaction in options listed on a registered national securities exchange or a facility of a registered national securities association for which a broker or dealer acts as a guarantor, endorser or carrying broker or dealer for options purchased or written by a specialist that is either not otherwise subject to the provisions of this section or is described in paragraph (c)(2)(vi)(N) of this section, such broker or dealer shall adjust its net worth by deducting, for each class of option contracts in which each such specialist is a market maker, an amount equal to 50 percent of the market value of each option contract in a long position and 75 percent of the market value of each contract in a short position; provided, however, that:

* * * * *

Dated: August 11, 1993.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19755 Filed 8–16–93; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid Liquid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplement provides for use of a lasalocid ruminant free-choice liquid Type C feed for pasture cattle to be fed at 60 to 200 milligrams per head per day (mg/hd/day).

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8638.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, filed supplemental NADA 96–298 which provides for use of a 150 grams per ton lasalocid ruminant free-choice liquid Type C feed for pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers) for increased rate of weight gain. The NADA is approved as of July 26, 1993, and the regulations are amended in § 558.311(b) and (e) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because the application contains no reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended by revising paragraphs (b)(4) and (b)(6), by redesignating paragraph (e)(3) as paragraph (e)(4), and by adding new paragraph (e)(3) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(4) 15 percent activity to No. 000004 for use in ruminant free-choice Type C feeds as in paragraphs (e)(2) and (e)(3) of this section.

* * * * *

(6) 20 percent activity as a liquid Type A article to No. 000004 for use in cattle feeds as in paragraphs (e)(1)(vi), (e)(1)(vii), (e)(1)(ix), (e)(1)(xi), (e)(1)(xii), (e)(1)(xiii), and (e)(3) of this section, and for use in sheep feeds as in paragraph (e)(1)(viii) of this section.

* * * * *

(e) * * *

(3) It is used as a ruminant free-choice liquid Type C feed as follows:

(i) *Specifications.*

Ingredient	Percent	International feed No.
Cane Molasses	55.167	4–13–241
Condensed Molasses Fermentation Solubles	24.0	5–25–399
50% Urea Solution (23% N)	12.0	N/A
Ammonium Polyphosphate Solution	1.0	6–08–42
Phosphoric Acid (54%)	3.0	6–03–707
Xanthan Gum	0.05	8–15–818
Water	4.0	N/A
Trace Mineral Mix [1]	0.5	N/A
Vitamin Premix [1]	0.2	N/A
Bovatec Liquid 20 (90.8 gm/lb) [2]	0.083	N/A

[1] Content of vitamin and trace mineral premixes may be varied. However, they should be comparable to those used for other free-choice liquid feeds. Formulation modifications require FDA approval prior to marketing. The amount of selenium and ethylenediamine dihydroiodide (EDDI) must comply with published regulations (for selenium see 21 CFR 573.920; for EDDI see 51 FR 11483, April 3, 1986).

[2] To provide 150 gm lasalocid per ton, use 1.652 lb (0.083%) of Bovatec Liquid 20 (90.8 gm/lb). If dry Bovatec-68 (68 gm/lb) is used, use 2.206 lbs per ton (0.111%), replacing molasses.

(ii) *Amount.* 150 grams per ton (.017 percent).

(iii) *Indications for use.* Cattle: for increased rate of weight gain.

(iv) *Limitations.* For pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers). Feed continuously on a free-choice basis at a rate of 60 to 200 milligrams lasalocid per head per day. Each use of this free-choice liquid Type C feed must be the subject of an approved FD–1900 as in § 510.455 of this chapter.

(v) *Sponsor.* See No. 000004 in § 510.600(c) of this chapter.

* * * * *

Dated: August 9, 1993.

Andrew J. Beaulieau,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–19738 Filed 8–16–93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Employment Standards Administration, Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. After a committee has investigated conditions in American Samoa, it recommends minimum wage rates that must be published in the **Federal Register**, and that become the new minimum wage rates. Industry Committee No. 20 for American Samoa has completed its review and established new minimum wage rates that are published herewith.

EFFECTIVE DATE: This rule shall become effective on September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Daniel F. Sweeney, Deputy Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S3028, Washington, DC 20210, Phone: 202–219–8353.

SUPPLEMENTARY INFORMATION: Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 661 (58 FR 26006), the Secretary of Labor appointed and convened Industry Committee No. 20 for Industries in American Samoa, referred to the Committee the question of the minimum rates of wages to be paid under section 8 of FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee filed with the Acting Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, the recommendations of Industry Committee No. 20 are hereby published, revising § 697.1 of part 697, title 29, Code of Federal Regulations. Because, under sections 5, 6, and 8 of the Fair Labor Standards Act and 29 CFR 511.18, the Department has no authority to approve or modify the rates recommended by the industry committee, the Department finds, pursuant to 5 U.S.C. 533(b)(3)(B), that notice and public procedure thereon under the Administrative Procedure Act are not necessary.

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See: 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 697

American Samoa, Minimum wages, Wage and Hour Division.

Accordingly, part 697 of chapter V of Title 29, Code of Federal Regulations is amended as set forth below.

PART 697—INDUSTRIES IN AMERICAN SAMOA

Part 697 of Title 29 CFR is amended as follows:

1. The authority citation for part 697 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Sections 697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), are revised to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is $3.00 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $3.05 an hour thereafter.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, steverdoring, lighterage and maritime shipping agency activities, is $3.35 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $3.50 an hour thereafter. The minimum wage for classification B, all other activities, is $3.20 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $3.35 an hour thereafter.

* * * * *

(c) *Tour and travel service industry.* (1) The minimum wage this industry is $2.65 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.85 an hour thereafter.

* * * * *

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $3.15 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $3.30 an hour thereafter.

* * * * *

(e) *Construction industry.* (1) The minimum wage for this industry is $2.90 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $3.00 an hour thereafter.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $2.20 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.35 an hour thereafter.

* * * * *

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $2.50 an hour for a period of one year following the September 1, 1993 effective date

specified in § 697.3, and $2.60 an hour thereafter.

* * * * *

(h) *Ship maintenance industry.* (1) The minimum wage for this industry is $2.80 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.95 an hour thereafter.

* * * * *

(i) *Bottling, brewing and dairy products industry.* (1) The minimum wage for this industry is $2.55 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.75 an hour thereafter.

* * * * *

(j) *Printing and publishing industry.* (1) The minimum wage for this industry is $2.80 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.95 an hour thereafter.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage for this industry is $3.05 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $3.25 an hour thereafter.

* * * * *

(l) *Private hospitals and educational institutions.* (1) The minimum wage for this industry is $2.55 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.75 an hour thereafter.

* * * * *

(m) *Government employees industry.* (1) The minimum wage for this industry is $2.37 an hour effective October 1, 1994.

* * * * *

(n) *Miscellaneous activities industry.* (1) The minimum wage for this industry is $2.10 an hour for a period of one year following the September 1, 1993 effective date specified in § 697.3, and $2.25 an hour thereafter.

* * * * *

3. Section 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective on September 1, 1993.

Signed at Washington, DC, this 26th day of July 1993.

Maria Echaveste,

Administrator, Wage and Hour Division, Department of Labor.

[FR Doc. 93–19862 Filed 8–16–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 930402–3212; I.D. 060993C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Amendment to an emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) amends an emergency interim rule to establish fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California. This rule amends the previous emergency interim rule and its extension (58 FR 31664, 58 FR 42030) by providing for an all-salmon-except-coho fishery from Point Arena, California, to the U.S.-Mexico border, open from September 6 through September 30, 1993. The fishery is subject to closure upon attainment of a catch quota of 7,400 chinook salmon. These management measures are intended to increase the economic opportunity for the ocean commercial salmon fishermen while continuing to prevent overfishing, to apportion the ocean harvest equitably among non-treaty commercial and recreational fisheries, and to provide for inside fisheries and spawning escapement.

DATES: Effective from 0001 hours P.D.T., September 6, 1993, until 2400 hours P.D.T., November 2, 1993. Comments will be accepted through August 27, 1993.

ADDRESSES: Comments on the amended emergency interim rule may be sent to Rolland A Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis at 310–980–4030, or William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries off Washington, Oregon, and California are managed under a framework fishery management plan (FMP), which was approved in 1934 and has been amended four times since then (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989; 56 26774, June 11, 1991). Regulations at 50 CFR part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notice in the **Federal Register**.

Based on concerns regarding the spawning escapement for and Indian inriver harvest of Klamath River fall chinook salmon, the Secretary disapproved the 1993 salmon seasons recommended by the Pacific Fishery Management Council (Council) and, by emergency rules (58 FR 26922, 58 FR 31664, 58 FR 42030), implemented alternative management measures for the 1993 ocean salmon fisheries which were considered, but not recommended, by the Council during a May 10, 1993, telephone conference.

The Council requested that, if the Secretary were to implement the alternative seasons, they be extended through October and a September troll season south of Point Arena, California, be considered to provide more beneficial fisheries while meeting the Secretary's management objectives for Klamath River fall chinook. The California Department of Fish and Game (CDFG), with the concurrence of California representatives to the Council's Salmon Advisory Subpanel, developed and recommended on July 22, 1993, the adoption of measures providing for commercial salmon fishing south of Point Arena from September 6 to September 30, 1993.

Preseason modeling predicted that 7,400 chinook would be taken in the area, reducing the spawning escapement of Sacramento River fall-run chinook to about 149,100 adult fish, which is within the escapement goal range of 122,000–180,000 adult spawners. To ensure that a shift in fishing effort or greater availability of chinook does not lead to a greater than expected impact, CDFG recommended that the fishery be limited to a 7,400 chinook quota. The fishery will be closed before September 30, 1993, if the quota is reached before that date. Based on the average weight and price per pound of chinook landed in San Francisco and Monterey during September 1992, the exvessel value of this additional fishery would be between $200,000 and $250,000.

Winter-run chinook from the Sacramento River are listed under the Federal Endangered Species Act as a threatened species. In 1991, NMFS issued a biological opinion which determined that the 1990 level of impacts from the ocean fisheries would not jeopardize the continued existence

of the winter run. The overall impact of the 1993 salmon management program on the winter run is expected to be significantly less than in 1990, the base year for the biological opinion. The addition of a September fishery south of Point Arena will increase the harvest rate from 65 to 67 percent in 1993 for the Central Valley Index stocks of fall chinook; the rate for the base year of 1990 was 79 percent, considerably more than this year's will be. These rates are only indicators of the relative impact on winter-run chinook because they are less vulnerable to the ocean fisheries than fall-run chinook due to the timing of the seasons as well as their growth and migration patterns.

Because of the difficulties in monitoring such a small quota, CDFG requested that all fish taken south of Point Arena be landed south of Point Arena, and that all fish landed south of Point Arena, regardless of their origin, be counted against the quota.

The proposed fishery is expected to divert some fishing effort from the Fort Bragg area further north where Klamath River fall chinook are relatively more abundant, and thus has the potential for reducing the overall catch of Klamath River fall chinook in 1993. This fishery, however, will not impact the fall chinook adults that return to spawn in the Klamath River in 1993 because those fish will have entered the River by September 1. Klamath River chinook caught beginning September 1 are counted against the ocean fishery's allocation for the following year.

Management Measures

From Point Arena, California, to the U.S.-Mexico border, the commercial fishery for all salmon except coho will open September 6 and continue through September 30, unless closed earlier because the catch quota of 7,400 chinook salmon is reached. Conservation Zone 3 (Winter Chinook Conservation Zone) [1] is closed. All chinook salmon taken south of Point Arena must be landed south of Point Arena, and all fish landed south of Point Arena will be counted toward the quota. All other size limits and fishing gear restrictions in effect for this area in 1993 continue to apply.

Classification

The 1993 management measures described above are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the offices of the Regional Directors (see **ADDRESSES**) during business hours until the end of the comment period.

The Assistant Administrator for Fisheries (Assistant Administrator) has determined that the measures described in this preamble are necessary to respond to emergency situations and are consistent with the Magnuson Act and other applicable law. According to the NMFS Policy Guidelines for the Use of Emergency Rules (57 FR 375, January 6, 1992), an emergency exists in the troll salmon fishery off California because there is a situation that "* * * can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice, public comment, and deliberative consideration of the impacts on the participants to the same extent as would be expected under the normal rulemaking process." Opening of a limited troll fishing season south of Point Arena, California, will provide commercial fishermen the opportunity to increase the exvessel value of the 1993 chinook landings by $200,000 to $250,000 while still meeting spawning escapement and allocation goals. Advanced public notice, public comment, and deliberative consideration took place through the Council's preseason process of developing annual recommendations for the ocean salmon seasons. There would be little marginal value in delaying this action for additional public comment and deliberation and the cost to the commercial fishery would be substantial. Therefore, this emergency action is justified on an economic basis as it will preserve a significant economic opportunity that would otherwise be foregone. Implementation of this emergency rule meets the goals and objectives of the FMP.

The Assistant Administrator finds that the reasons justifying the promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act. Any delay in implementing this rule would cause unnecessary economic harm to users of the resource. The public had opportunities to comment on the management measures being implemented during meetings of the Council and its advisory committees in March, April, and May 1993. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this rule. This rule relieves a restriction on commercial fishermen because it opens an area to fishing that otherwise is closed.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. This determination has been submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

NMFS prepared an environmental assessment for this action and for the management measures which this action amends and the Assistant Administrator concluded that there will be no significant impact on the human environment. Copies of the environmental assessments are available from the Regional Directors (see **ADDRESSES**).

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis needs to be prepared.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. California is expected to implement State regulations compatible with the Federal rule.

On March 31, 1991, NMFS issued a biological opinion that considered the effects of the FMP on Sacramento River winter-run chinook salmon. The opinion concluded that implementation

[1] The ocean area bounded by a line commencing at Bolinas Pt. (Marin County, 37°54'17" N. latitude, 122°43'35" W. longitude) southerly to Duxbury Buoy to Channel Buoy 1 to Channel Buoy 2 to Pt. San Pedro (San Mateo County, 37°35'40" N. latitude, 122°31'10" W. longitude).

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of the plan is not likely to jeopardize the continued existence of the species. This modification of the 1993 season falls within the scope of the 1991 opinion, and the resulting seasons and management measures comply with the recommendations and incidental take conditions contained in the biological opinion. Therefore, it was not necessary to reinitiate consultation on Sacramento River winter-run chinook salmon.

On May 28, 1993, NMFS issued a biological opinion that considered the effects of the 1993 salmon management measures on wild sockeye salmon, wild spring/summer chinook salmon, and wild fall chinook salmon from the Snake River that concluded that the 1993 salmon management measures were not likely to jeopardize the continued existence of the listed stocks. An addendum to the biological opinion has been prepared that concludes the effect of this rule, although not specifically considered in the May 28 opinion, is expected to fall within the scope of the impacts considered in the May 28 opinion. The best available information indicates that very few of the listed stocks are caught in fisheries south of Point Arena, and the actual 1993 catch of chinook salmon to date has been considerably less than anticipated. The addendum concludes that the proposed modification would not alter the previous finding that the fisheries under the Pacific Ocean Salmon Fishery Management Plan were not likely to jeopardize the continued existence of the listed species.

Authority: 16 U.S.C. 1801 et seq.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: August 12, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 93–19888 Filed 8–12–93; 5:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 157
Tuesday, August 17, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. AO–214–A7; FV93–981–1]

Almonds Grown in California; Hearing on Proposed Amendment of Marketing Agreement and Order No. 981, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 981, hereinafter referred to as the "order". The order regulates the handling of almonds grown in California. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order.

The Almond Board of California (Board) has submitted several proposed amendments. The Department of Agriculture (Department) has received additional proposed amendments from interested persons in response to a press release issued by the Department. These proposals were submitted by the Board and other interested parties to improve the administration, operation, and functioning of the order.

DATES: The hearing is scheduled to begin at 9 a.m. in Modesto, California, on November 3, 1993, and will continue on each consecutive business day through November 18, 1993, if necessary.

ADDRESSES: The hearing will be held at the Red Lion Hotel, 1150 9th St., Modesto, California 95354.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509 or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 2202 Monterey St., Suite 102B, Fresno, CA 93721; telephone: (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Board submitted the following proposals:

1. Revise the definitions of "cooperative handler" to conform with California State law, "to handle" to improve clarity, "trade demand" to remove the option of not including exports as part of trade demand, and "settlement weight" to include inedible kernels in adjustments to settlement weight;

2. Change the date for the beginning of the crop year from July 1 to August 1 to more closely coincide with the industry's harvesting and marketing activities;

3. Increase the Board composition from 10 members to 12 members to improve grower representation and make corresponding changes relating to quorum size and number of votes needed for recommending certain activities;

4. Change the Board members' terms of office from one-year to three-year staggered terms of office to provide continuity of Board operations;

5. Limit Board members' tenure to nine consecutive years to increase industry participation and improve representation on the Board;

6. Require that handlers maintain records in the State of California to provide reasonable access by Board auditors and increase the efficiency of program management and operation by Board employees;

7. Require that handlers submit grower lists to the Board to facilitate Board nomination procedures and the efficient management of marketing order operations;

8. Require that handlers pay interest and/or late payment charges for late assessment payments to provide incentives for prompt payment;

9. Authorize the Board to enter into multi-year contracts for production and market research development projects to enhance the Board's ability to negotiate long-term contracts;

10. Require that continuance referenda be conducted every five years beginning July 31, 1999, to provide for periodic determination of grower support for the marketing order;

11. Require each person selected to serve as a member or alternate member

on the Board to qualify, prior to selection, by providing information to the Secretary of Agriculture that such person agrees to serve on the Board;

12. Expand the range of paid advertising activities for which handlers may receive credit against their assessment obligation in order to improve the effectiveness of the industry's market development efforts.

The Board works with the Department in administering the order. The Board believes that its proposed changes would improve the administration, operation, and functioning of the order.

The Fruit and Vegetable Division of the Agricultural Marketing Service (AMS) proposed authority to make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing. AMS also proposed that continuance referenda be conducted on a periodic basis.

In addition, the Department issued a press release that invited almond growers, handlers and other interested persons to propose amendments to the marketing order. Five persons submitted additional proposals.

Mr. Brian Leighton submitted the following proposals on behalf of Cal-Almond, Inc.:

1. Require a continuance referendum be conducted every four years beginning July 31, 1996, to provide for periodic determination of growers' support of the marketing order;

2. Require grower lists be submitted to the Board by independent and cooperative handlers for distribution to any and all interested handlers and growers;

3. Eliminate organically grown almonds from regulation under the marketing order;

4. Preclude disposal of reserve almonds into secondary markets, so that at no time may the Board or the Secretary require disposal of reserve almonds into such markets, but instead almond reserves can be rolled over from year to year to prevent the destruction of said almonds;

5. Preclude the imposition of a reserve or any percentage of a reserve that would prevent the release to saleable channels of less than 125 percent of the three previous years average sales volume;

6. Eliminate the branded advertising program in sections 981.41 and 981.441;

7. Preclude Board generic advertising and promotion that is directed solely at store shelf snack almonds;

8. Provide for an assessment rate for the entire Board budget of no more than 1 cent per pound;

9. For each handler, preclude any reserve percentage from applying to such handlers first 250,000 pounds, redetermined kernel weight, of the crop handled in the particular crop year in which a reserve is imposed provided that said handler taking advantage of said exemption: (a) has been a handler and paid assessments for each of the previous 2 years; (b) is not associated or under contract with, or a director, controller, shareholder, or owner of, or a partner, in any other handler facility taking advantage of said exemption;

10. Require seven affirmative votes for all Board recommendations (assuming the Board remains at 10 members), or requiring 8 affirmative votes (a super majority) if it is increased to 12 as is proposed by the Board;

11. Require that the number of cooperative members on the Board cannot exceed the percentage of total industry almonds handled in the preceding year by the cooperative, rounded to the closest whole number;

12. Require that all incoming inspections must be performed prior to the last day of February in the then current crop year;

The SNA Nut Company submitted the following two proposed amendments:

1. Limit Board members terms to six consecutive years rather than nine. Members may run again after sitting out one term.

2. Require that as a grower elected member of the Board, a person's annual income from almond production should be at least 40 percent of his/her annual income.

The Almond Growers Council submitted one proposed amendment as follows:

1. Change the definition of grower as follows: A grower is a person whose primary involvement and income, in the almond industry, is derived from growing almonds.

Panoche Creek Packing submitted one proposed amendment as follows:

1. Delete the following sentence from Section 981.81(a) of the marketing order: "Upon redetermination of the kernel weight of almonds received by handlers for their own account as provided in 981.61 such redetermined weight for each handler, adjusted for receipts on which assessments have been paid, shall be the basis upon which he shall pay assessments."

The Vaupel Associates submitted the three following amendments on behalf of eight almond growers:

1. Exempt certified organic almonds from promotion and advertising assessments;

2. Require a specified portion of production research funds to be expended for development of production methods which reduce or eliminate the use of synthetic chemicals;

3. Create an exemption for certified organic almonds from reserve requirements.

These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is being held for the purpose of:

(i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order;

(ii) Determining whether there is a need for the proposed amendments to the order; and

(iii) Determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals. Proposals submitted by the Almond Board of California:

Proposal No. 1

Revise § 981.14 to read as follows:

Section 981.14 Cooperative Handler

Cooperative handler means any handler as defined in § 981.13 of this subpart and which qualifies for treatment as a nonprofit cooperative association as defined in Section 54001, *et seq.* of the California Food and Agricultural Code.

Proposal No. 2

Revise § 981.16 to read as follows:

Section 981.16 To Handle

To handle means to use almonds commercially of own production or to sell, consign, transport, ship (except as common carrier of almonds owned by another) or in any other way to put almonds grown in the area of production into any channel of trade for human consumption worldwide. This use of almonds may take place either within the area of production or by transfer from the area of production to points outside or by receipt as first receiver at any point of entry in the United States or Puerto Rico of almonds grown in the area of production, exported therefrom and submitted for reentry or which are reentered free of duty. However, sales or deliveries by a grower to handlers, hullers or other processors within the area of production shall not, in itself, be considered as handling by a grower.

Proposal No. 3

Amend § 981.18 by removing the word "and" at the end of paragraph (b); removing the period and adding the word "and" at the end of paragraph (c); and adding a new paragraph (d) to read as follows:

Section 981.18 Settlement Weight

* * * * *

(d) For inedible kernels as defined in § 981.8.

Proposal No. 4

Revise § 981.19 to read as follows:

Section 981.19 Crop Year

Crop year means the twelve month period from August 1 to the following July 31, inclusive.

Proposal No. 5

Revise § 981.21 to read as follows:

Section 981.21 Trade Demand

Trade demand means the quantity of almonds (kernel weight basis) which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution worldwide.

Proposal No. 6

Revise §§ 981.30 and 981.31 to read as follows:

Section 981.30 Establishment

The Almond Board shall consist of twelve members, each with an alternate.

Section 981.31 Membership Representation

Membership of the Board will be determined in the following manner:

(a) Three members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Those growers who market their almonds through cooperative handlers; and

(2) Those growers who market their almonds through other than cooperative handlers.

(b) Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (b) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Cooperative handlers; and

(2) All handlers, other than cooperative handlers.

(c) One member and an alternate shall be selected from nominees submitted by each of the following groups designated in paragraphs (c) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) The group of cooperative handlers or the group of handlers other than cooperative handlers, whichever received for their account more than 50 percent of the almonds delivered by all growers as determined by December 31 of the then current crop year; and

(2) Those growers whose almonds were marketed through the handler group identified in paragraph (c)(1) of this section.

Proposal No. 7

Amend § 981.32 by revising paragraph (a), and by amending paragraph (b)(2) by removing the date "March 31" and adding in its place the date "December 31" to read as follows:

Section 981.32 Nominations

(a) *Method.* Each year the terms of office of one third of the Board shall expire, except in 1994 when all terms of office shall expire, except where otherwise provided. Nominees for the respective member and alternate positions shall be chosen by ballot delivered to the Board. Nominees chosen by the Board in this manner shall be submitted by the Board to the Secretary on or before February 20 of each year together with such information as the Secretary may require. If a nomination for any Board member or alternate is not received by the Secretary on or before February 20, the Secretary may select such member or alternate from persons belonging to the group to be represented without nomination. The Board shall mail to all handlers and growers, other than the cooperative(s) of record, the required ballots with all necessary voting information including the names of incumbents willing to accept renomination, and, to such growers the name of any person proposed for nomination in a petition signed by at least 15 such growers and filed with the Board on or before January 20. Distribution of ballots shall be announced by press releases, furnishing pertinent information on balloting, issued by the Board through newspapers and other publications having general circulation in the almond producing areas.

* * * * *

Proposal No. 8

Revise § 981.33 to read as follows:

Section 981.33 Selection and Term of Office

(a) Members and their respective alternates for positions open on the Board shall be selected by the Secretary from persons nominated pursuant to § 981.32, or, at the discretion of the Secretary, from other qualified persons, for a term of office beginning March 1. Members and alternates shall continue to serve until their respective successors are selected and qualified.

(b) The term of office of members of the Board shall be for a period of three years beginning on March 1 of the years elected except where otherwise provided. However, for the initial ten members of the Board selected pursuant to this section and to paragraphs (a) and (b) of § 981.31, three members shall serve for a term of one year; three members shall serve for a term of two years; and four members shall serve for a term of three years. At the time of nomination under § 981.32, the Board shall make this designation by lot. The term of office for the two members selected under paragraph (c) of § 981.31 shall always be for a period of one year.

(c) Board members may serve for a total of nine consecutive years. Members who have served for nine consecutive years must leave the Board for at least one year before becoming eligible to serve again. A person who currently has served less than nine consecutive years on the Board may not be nominated to a new three year term if his or her total consecutive years on the Board at the end of that new term would exceed nine years. This limitation on tenure shall not include service on the Board prior to 1994.

Proposal No. 9

Revise § 981.34 to read as follows:

Section 981.34 Qualification and Acceptance

Any person to be selected as a member or alternate of the Board shall, prior to such selection, qualify by providing such background information as necessary and by advising the Secretary that he/she agrees to serve in the position for which nominated. Grower members and alternates may be growers or employees of growers, and handler members and alternates may be handlers or employees of handlers. In the event any member or alternate ceases to be qualified for the position for which selected, that position shall be deemed vacant.

Proposal No. 10

Amend § 981.40 by revising paragraphs (b) and (c) and amending paragraph (e) by removing the word "seven" and adding in its place the word "eight" to read as follows:

Section 981.40 Procedure

(a) * * *

(b) *Quorum.* The presence of eight members shall be required to constitute a quorum. All decisions of the Board shall be as follows except where otherwise specifically provided: 8 or 9 members present 6 votes, 10 members present 7 votes, 11 or 12 members present 8 votes.

(c) *Voting by mail, telegram or fax.* The Board may vote by mail, telegram or fax upon written notice to all members, or alternates acting in their place, including in the notice a statement of a reasonable time, not to exceed 10 days, in which a vote by mail, telegram or fax must be received by the Board for counting. Voting by mail, telegram or fax shall not be permitted at any assembled meeting of the Board. When a proposition is submitted for vote by mail, telegram or fax, at least ten members of the Board must vote in favor of its passage or the proposition shall be defeated.

* * * * *

Proposal No. 11

Amend § 981.41 by amending paragraph (c) by removing all text following the words "15 percent" in the last sentence and removing the colon after "15 percent" and adding in its place a period.

Proposal No. 12

Amend § 981.49 by amending the introductory paragraph by removing the word "six" and adding in its place the word "eight" and by revising paragraph (b) to read as follows:

Section 981.49 Board Estimates and Recommendations

* * * * *

(b) The estimated handler carryover and the estimated reserve inventory as of July 31;

* * * * *

Proposal No. 13

Amend § 981.60 by revising paragraph (b) to read as follows:

Section 981.60 Determination of Kernel Weight

(a) * * *

(b) *Almonds for which settlement is made on unshelled weight.* The settlement weight for unshelled almonds shall be determined on the basis of representative samples of unshelled almonds reduced to shelled weight.

Proposal No. 14

Amend § 981.61 by revising the last sentence to read as follows:

Section 981.61 Redetermination of Kernel Weight

* * * Weights used in such computations for various classifications of almonds shall be: (a) for unshelled almonds, the kernel weight based on representative samples reduced to shelled weight; (b) for shelled almonds, the net weight; and (c) for shelled almonds used in production of almond products, the net weight of such almonds.

Proposal No. 15

Remove § 981.62.

Proposal No. 16

Amend § 981.66 by revising paragraph (e) and by revising the introductory paragraph in § 981.67 by changing all references to the date "September 1" to "December 31".

Proposal No. 17

Amend § 981.70 by revising the first sentence to read as follows:

Section 981.70 Records and Verification

Each handler shall keep records which will clearly show the details of his or her receipts of almonds, withholdings, sales, shipments, inventories, reserve disposition, advertising and promotion activities, as well as other pertinent information regarding his or her operation pursuant to the provisions of this part: *Provided*, That, such records shall be kept in the State of California. * * *

Proposal No. 18

Add a new § 981.76 to read as follows:

Section 981.76 Handler List of Growers

No later than December 31 of each crop year, each handler governed by this subpart shall submit to the Board a complete list of growers who have delivered almonds to such handler during that crop year.

Proposal No. 19

Revise § 981.80 to read as follows:

Section 981.80 Expenses

The Board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it for the maintenance and functioning of the Board. The Board may contract for a period of up to five years for services, goods or other reasonable expenses. Such a multi-year contract will remain binding upon the parties according to its terms while the Order is in effect. The Board may accumulate and maintain a reserve fund for such purposes as the Secretary may determine appropriate. The recommendations of the Board as to the expenses for each crop year, together with all data supporting such recommendations shall be submitted to the Secretary on or before August 1 of the crop year in connection with which such recommendation is made.

Proposal No. 20

Amend § 981.81 by adding a new paragraph (e) and add § 981.475 to read as follows:

Section 981.81 Assessments

* * * * *

(e) Any assessment not paid by a handler within a period of time prescribed by the Board may be subject to an interest or late payment charge or both. The period of time, rate of interest and late payment charge shall be as recommended by the Board and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

Section 981.475 Interest and Late Payment Charges

(a) *Interest charges.* There shall be an interest charge for any assessment not received at the Board's office within 30 days of the invoice date shown on the handler's assessment statement. The interest rate shall be the current commercial prime rate of the Board's bank plus 3 percent and shall be applied to the unpaid balance.

(b) *Late payment charges.* In addition to the interest charges described above, the Board shall impose a late payment charge of an additional five percent on any assessment plus accrued interest not received at the Board's office within 60 days of the invoice date shown on the handler's assessment statement.

Proposal No. 21

Amend § 981.90 by revising paragraph (b)(2), redesignating and republishing (b)(3) as (b)(4) and adding a new (b)(3), to read as follows:

Section 981.90 Effective Time, Suspension, or Termination

(a) * * *

(b)(1) * * *

(2) *When favored by growers.* The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of almonds who have been engaged in the production of almonds for market within the State of California during the current crop year. In order for such a vote to be effective, the majority voting to terminate must also be determined to have produced more than 50 percent of the volume of all almonds produced for market within the state during that crop year. Termination under this provision must be announced on or before July 1 of the current crop year in order for it to be effective for the following crop year.

(3) In any event, the Secretary shall conduct a referendum as soon as practical after the end of the fiscal year ending July 31, 1999, and at such time every fifth year thereafter, to ascertain whether continuation of the Order is favored by a majority of almond growers who have been engaged in the production of almonds for market within the State of California during the current crop year. In order for such a vote to be effective, the majority voting for continuation or termination must also be determined to have produced during that crop year more than 50 percent of the volume of all almonds produced for market within the state. Termination under this provision must be announced on or before July 1 of the current crop year in order to be effective for the following crop year.

(4) *If enabling legislation is terminated.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

* * * * *

Proposal No. 22

Amend § 981.441 as follows:

Remove the date "June 30" in paragraph (b) and add in its place "July 31";

Remove the date "July 15" in paragraph (c)(6) and add in its place "August 15";

Remove the date "July 15" in paragraph (d)(1)(i)(G) and add in its place "August 15";

Remove the date "July 15" in paragraph (d)(1)(iii)(C) and add in its place "August 15"; and

Remove the date "June 30" in paragraph (e)(3) and add in its place "July 31".

Proposal No. 23

Amend § 981.467 by amending paragraph (a) by removing the date "July 1" and adding in its place "August 1".

Proposal No. 24

Amend § 981.472 by amending paragraph (a) by removing the dates "July 1 to August 31" and adding in its place "August 1 to July 31. Interest and Late Payment Charges."

Proposals submitted by Mr. Brian Leighton on behalf of Cal-Almond, Inc.:

Proposal No. 25

Revise § 981.4 to read as follows:

Section 981.4 Almonds

Almonds means (unless otherwise specified) all varieties of almonds (except bitter almonds and organically grown almonds as certified to be such by the California Department of Food and Agriculture, or their authorized representative, and further provided that said organically grown almonds are organically processed and handled, as certified by the California Department of Food and Agriculture, or its authorized representatives), either shelled or unshelled, grown in the State of California, and for the purposes of research, includes almond shells and hulls.

Proposal No. 26

Amend § 981.31 by requiring that the cooperative representation on the Board cannot exceed the percentage of the industry tonnage handled by the cooperative in the preceding year. No specific amendatory language was provided.

Proposal No. 27

Amend § 981.40 by revising paragraph (b) as follows:

Section 981.40 Procedure

(a) * * *

(b) *Quorum.* All decisions of the Board shall be by a majority vote of the members present plus one additional vote. The presence of six members shall be required to constitute a quorum. [If the Board's recommendation to increase to 12 the number of Board members, then the last sentence of paragraph (b) should be changed to "eight members shall be required to constitute a quorum."]

* * * * *

Proposal No. 28

Amend § 981.40 by revising paragraph (e) and amend § 981.41 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c); by removing paragraph (e); and by revising paragraphs (a), (b), (c) introductory text, (c)(4) and adding (c)(5) to read as follows:

Section 981.40 Procedure

(e) *Additional voting requirements.* Adoption of recommendations by the Board with respect to projects pursuant to § 981.41 involving production research, marketing research and development projects, and marketing promotion including paid advertising, shall require at least seven affirmative votes.

Section 981.41 Research and Development

(a) *General.* The Board, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of almonds. The expenses of such projects shall be paid from funds collected pursuant to § 981.81(a).

(b) *Authorization.* If, on the basis of an Almond Board recommendation pursuant to § 981.40(a) with respect to projects pursuant to this section, and appertaining rules and regulations established by the Secretary on the recommendation of the Board, and upon notice and comment pursuant to the Administrative Procedures Act, the Secretary concurs that such activity should be permitted, he shall authorize such activities.

(c) *Promotion guidelines.* All marketing promotion activity engaged in by the Board, including paid advertising, shall be subject to the following terms and conditions:

(1) * * *

(2) * * *

(3) * * *

(4) No promotion or advertising shall be directed solely at snack almonds nor shall the primary purpose of any Board

advertising or promotion be directed for the consumption or sale of snack almonds.

(5) Upon conclusion of each activity, but at least annually, the Board shall summarize and report the results of such activity to its members and to the Secretary.

Proposal No. 29

Amend § 981.41 by removing the second sentence in paragraph (a) and by removing § 981.441.

Proposal No. 30

Amend § 981.47 by revising the last sentence to read as follows:

Section 981.47 Method of Establishing Salable and Reserve Percentages

* * * The total saleable percentage shall not be less than 125 percent of the average sales volume for the previous three crop years.

Proposal No. 31

Remove §§ 981.51, 981.54, 981.55 and 981.66; revise § 981.48; amend § 981.50 by revising the first sentence; amend § 981.52 by removing the last sentence; and revise § 981.67 to read as follows:

Section 981.48 Increase of Salable Percentage

Upon request by the Board or, if the Board should fail to request, by two or more handlers who have handled at least 15 percent of all almonds handled in the preceding crop year, and after findings of fact (based upon a revision of the estimates required under § 981.49 and other pertinent information) the quantity of saleable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year, the Secretary may increase the saleable percentage. Such findings shall be made in the manner specified in § 981.47. If the Secretary does not increase the saleable percentage to 100 percent prior to the end of the then current crop year, any reserve percentage not released during the then current crop year will be continued into the succeeding crop year and this fact will be considered by the Board and Secretary in determining any new crop year saleable and reserve percentages.

Section 981.50 Reserve Obligation

Whenever salable and reserve percentages are in effect for a crop year, each handler shall withhold from handling a quantity of almonds having a kernel weight equal to the reserve percentage of the kernel weight of all almonds such handler receives for that handler's account during the crop year; *Provided*, That, any quantity of almonds disposed of pursuant to § 981.67, in a manner permitting accountability to the Board, shall not be included in such receipts. * * *

Section 981.67 Disposition by Handler

If a handler desires not to hold the handler's reserve percentage established for any crop year, or held over through any succeeding crop year, the handler may, upon notification to the Board, transfer all or any portion of said handler's reserve to any other handler, provided said buying handler fully accounts to the Board for the selling handler's reserve. The buying handler must be a handler of record at the beginning of the crop year in which the reserve was imposed. The Board shall not be concerned about the sales price or any other arrangements between the selling handler and the buying handler except to account for the buying handler being obligated for the selling handler's reserve obligation. If a handler desires not to hold such handler's own reserve, but makes no arrangements for another handler to receive and become obligated for such handler's reserve, such handler may make such reserve available to the Board pursuant to § 981.52, and said Board shall promptly dispose of said reserve to the highest bidding handler, after notification to all handlers, and pay the net proceed (after costs of disposition) to the surrendering handler. If no handler bids for the purchase of said reserve almonds, the Board shall promptly dispose of said almonds into charitable outlets, provided they are not for resale.

Proposal No. 32

Amend § 981.49 by revising the introductory paragraph and paragraph (f) to read as follows:

Section 981.49 Board Estimates and Recommendations

To aid the Secretary in fixing the saleable and reserve percentages, the Board shall furnish to the Secretary, not later than August 1, the following estimates (kernel weight basis) and recommendations for the crop year, and in the event the Secretary is not performing any economic studies with respect to a reserve, based upon an economic study conducted by an independent contractor paid for with Board assessments, shall be adopted by the affirmative vote, as set forth in § 981.40(b).

* * * * *

(f) An economic study conducted by an independent economist determining that such a reserve would effectuate the purposes of the Act in raising returns to growers, taking into account of the costs of holding said reserve.

* * * * *

Proposal No. 33

Amend § 981.49 by revising paragraph (e) to read as follows:

Section 981.49 Board Estimates and Recommendations

* * * * *

(e) The recommended salable and reserve percentages to be established, after establishing the average sales volume for the three previous years, and accounting for the fact that said saleable percentage shall not be less than 125 percent of the average sales for the three previous crop years.

* * * * *

Proposal No. 34

Revise § 981.50 to read as follows:

Section 981.50 Reserve Obligation

Whenever saleable and reserve percentages are in effect for a crop year, each handler shall withhold from handling a quantity of almonds having a kernel weight to the reserve percentage of the kernel weight of all almonds such handler receives for his/her own account during the crop year, in excess of the first 250,000 pounds redetermined kernel weight; *Provided*, That, said 250,000 pound exemption does not apply to a handler who has not been a handler and paid assessments for each of the two previous crop years, and/or to one who is associated or under contract with, or is a director, controller, shareholder, or owner of, or a partner in any other handler facility taking advantage of said exemption. Provided further, that any quantity of almonds delivered to outlets such as poultry or animal feed or crushing into oil, in a manner permitting accountability to the Board, shall not be included in such receipts. The quantity of almonds hereby required to be withheld from handling shall constitute, and may be referred to as the "reserve" or "reserve obligation" of a handler. The almonds handled as saleable almonds by any handler, in accordance with the provisions of this part, shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the Act.

Proposal No. 35

Revise § 981.70 to read as follows:

Section 981.70 Records and Verification.

Each handler shall keep records which shall clearly show the details of his/her receipt of almonds,

withholdings, sales, shipments, inventories, reserve disposition, and other pertinent information in respect to his operations pursuant to the provisions of this part. Such records shall be retained by the handler for two years after the end of the crop year to which they apply. Each handler's premises shall be accessible to authorized representatives of the Board and the Secretary for examination and audit of the aforesaid records and for inspection and observation of almonds. The Board may make such checks of almonds or audits of each handler's records only after providing at least 24 hours advance notice to the handlers (which notice requirement may be waived in writing by the handler), and said audit may only be done to insure that accurate information as required in this part is being furnished by handlers. Handlers are not required to provide any labor or equipment to the Board to facilitate said inspection, other than to merely make said records and almonds available for inspection.

Proposal No. 36

Amend § 981.71 by removing the first sentence and adding, in its place, two new sentences to read as follows:

Section 981.71 Record of receipts

For the purpose of establishing any reserve obligation, furnishing statistical information and assessments to the Board necessary for the conduct of its operations, each handler shall have incoming inspections conducted on all almonds to be received for that crop year no later than the last day of February for the then current crop year. Each handler, on receiving almonds for his own account, shall issue to the person from whom so received a receipt therefore. * * *

Proposal No. 37

Remove all references to creditable advertising in § 981.81, paragraphs (a) and (b). No specific amendatory language was provided.

Proposal No. 38

Revise § 981.80 and amend § 981.81 by adding a new paragraph (e) to read as follows:

Section 981.80 Expenses

The Board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each crop year, for the maintenance of an operating reserve fund, and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate, provided, however, that the assessment rate assessed pursuant to § 981.81 shall not exceed $.01 per pound of almonds, kernel weight basis, received by a handler for his own account, except pursuant to the provisions of § 981.81(e). The recommendation of the Board as to the expenses for each such year, together with all data supporting such recommendation, shall be submitted to the Secretary on or before August 1 of the crop year in connection with which such recommendation is made, and the Secretary shall not impose any assessment rate until after complying with the notice and comment provisions, and the other requirements of the Administrative Procedure Act.

Section 981.81 Assessment

* * * * *

(e) Under no circumstances shall the assessment rate imposed for any crop year exceed $.01 per pound. If the Secretary determines that any increase in the assessment rate is necessary in order to secure sufficient funds, as described in paragraph (a) of this section, the amount of the increased assessment in excess of $.01 per pound, shall be the amount of the reduction from the $.01 per pound limitation for the following crop year.

Proposal No. 39

Amend § 981.90 by redesignating paragraph (b)(2) as (b)(2)(i) and adding a new paragraph (b)(2)(ii) to read as follows:

Section 981.90 Effective Time, Suspension, or Termination

* * * * *

(b) * * *

(b)(2)(ii) The Secretary shall conduct a referendum within the period beginning May 1, 1996 and ending July 15, 1996, to ascertain whether continuance of the Almond Marketing Order is favored by growers. The Secretary shall conduct such referendum within the same period every fourth fiscal period thereafter.

Proposal No. 40

Amend § 981.90 by adding a new paragraph (b)(2)(iii) to read as follows:

Section 981.90 Effective Time, Suspension, or Termination

(a) * * *

(b) * * *

(b)(2)(iii) No later than January 31, 1996, each handler shall provide to the Almond Board a list of the names and addresses of all growers from whom said handler received almond production for the then current crop year. The Almond Board shall provide, upon written request, to any handler, grower, or representative of either the complete list of the names and addresses of all said growers submitted to said Almond Board, but they shall be distributed in such a way that handler affiliation is not identified. The Board may charge said requester for the Board's production and mailing costs.

Proposal No. 41

Amend the order to authorize payment of interest in the event a suit or administrative petition on payment of the assessments is successful. No specific amendatory language was provided.

Proposals submitted by SNA Nut Company, Inc.:

Proposal No. 42

Amend § 981.33 by allowing each new Board member to serve for a total of six consecutive years beginning with the election of nominees under this section. Members who have served for six consecutive years must leave the Board for one year before becoming eligible to serve again. No specific amendatory language was provided.

Proposal No. 43

Amend the marketing order to require that grower elected members of the Board's annual income from almond production be at least 40 percent of its income. No specific amendatory language was provided.

Proposal submitted by Almond Growers Council:

Proposal No. 44

Revise § 981.12 to read as follows:

Section 981.12 Grower

Grower is a person whose primary involvement and income, in the almond industry, is derived from growing almonds.

Proposal submitted by Panoche Creek Packing:

Proposal No. 45

Amend § 981.81 by deleting the second sentence from paragraph (a).

Proposals submitted by Vaupel Associates on behalf of eight almond growers:

Proposal No. 46

Amend § 981.41 by amending paragraph (a) by adding a sentence at the end of the paragraph to read as follows:

Section 981.41 Research and Development

(a) * * * Notwithstanding the foregoing, handlers will not be assessed for marketing promotion, including

advertising, for the number of pounds of certified organic almonds handled.

* * * * *

Proposal No. 47

Amend § 981.41 by amending paragraph (a) by adding a sentence at the end of the paragraph to read as follows:

Section 981.41 Research and Development

(a) * * * A minimum of 25 percent of funds collected for projects involving production research shall be spent on research and development of production methods which reduce or eliminate the use of synthetic chemicals in the production and handling of almonds.

Proposal No. 48

Amend § 981.47 by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

Section 981.47 Method of Establishing Salable and Reserve Percentages

* * * * *

(b) Notwithstanding the provisions of paragraph (a), the Secretary shall exempt from any reserve that is established, that part of the crop which is sold as "certified organic" under standards established by the Organic Foods Production Act of 1990, (7 U.S.C. § 2101, *et seq.*) and the California Organic Foods Act of 1990, as amended. The Board shall propose regulations to assure procedures to implement this section.

Amend § 981.50 by inserting after the words, "into oil", the words, "or sold as certified organic".

The Fruit and Vegetable Division, Agricultural Marketing Service, submitted the following two proposals:

Proposal No. 49

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Proposal No. 50

Provide authority to conduct a continuance referendum on a periodic basis.

(Authority: 7 U.S.C. 601–674)

Dated: August 3, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–19843 Filed 8–16–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1004

[DA–93–23]

Milk in the Middle Atlantic Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain portions of a provision of the Middle Atlantic Federal milk marketing order for the months of September 1993 through February 1994. For those months, the proposal would relax the limit on the period of automatic pool plant status for supply plants and reserve processing plants. The suspension was requested by a federation of cooperative associations representing approximately 90 percent of the market's producer milk. The proponent contends that this action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

DATES: Comments are due no later than September 1, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action in not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), suspension of the following provisions of the order regulating the handling of milk in the Middle Atlantic marketing area is being considered for the months of September 1993 through February 1994:

1. In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 15th day after publication of this notice in the **Federal Register**. The filing period is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend certain portions of the pool plant definition which allows supply plants and reserve processing plants that have met pooling requirements by moving milk to pool distributing plants during the immediately preceding months of September through February to retain pool status for the months of March through August. The proposed suspension would relax the limit on the period of automatic pool plant status for the period of September 1993 through February 1994.

According to the Pennmarva Dairymen's Federation request, a decline in the percentage of the Middle Atlantic market's producer milk used in Class I and a reduction of products processed at pool distributing plants have made maintaining pool status difficult for producers whose milk historically has been associated with the market. Pennmarva stated that the proposed action is necessary to ensure that producers whose milk has been displaced from plants that have shifted their regulatory status to the New York-New Jersey order (Order 2) maintain association with the Middle Atlantic marketing order, thus, eliminating unnecessary and uneconomical movements of milk to maintain pool status.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 9, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–19669 Filed 8–16–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF ENERGY

10 CFR Part 768

Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities

AGENCY: Office of Environmental Restoration and Waste Management, Energy.

ACTION: Notice of proposed rulemaking; rescheduling of public hearing.

SUMMARY: The Department of Energy (DOE), Office of Environmental Restoration and Waste Management published a proposed rule on August 2, 1993 entitled "Uranium Enrichment Decontamination and Decommissioning Fund; procedures for Special Assessment of Domestic Utilities." (58 FR 41164) These regulations implement sections 1801 and 1802 of the Atomic Energy Act of 1954 (Act), as amended by the Energy Policy Act of 1992 and create the Uranium Enrichment Decontamination and Decommissioning Fund (Fund) providing for a Special Assessment of domestic utilities for payment into the Fund. This notice announces a new public hearing date that was previously scheduled for Thursday August 19, 1993.

DATES: Written comments must be submitted to DOE on or before September 1, 1993. DOE has scheduled a public hearing at 9 a.m., on Monday, August 30, 1993.

ADDRESSES: Comments and requests to attend the hearing in Germantown, Maryland, in the Main Auditorium should be addressed to: Ross Bradley, U.S. Department of Energy, Uranium Enrichment Decontamination and Decommissioning Fund Manager, Mail Stop EM–42, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903–7646. All comments received will be available for public review in the Freedom of Information Public Reading Room, Monday, through Friday, 9 a.m. to 4 p.m., 1000 Independence Avenue, Washington, DC 20585, (202) 586–6025.

FOR FURTHER INFORMATION CONTACT: Ross Bradley, U.S. Department of Energy, Uranium Enrichment Decontamination and Decommissioning Fund Manager, Mail Stop EM–42, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903–7646; Edward Le Duc, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–11, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6947; or Lawrence Leiken, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–31, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6975.

Clyde W. Frank,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–19875 Filed 8–16–93; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–10]

Proposed Modification of Control Zones; Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the control zones for Seattle-Tacoma International Airport, Boeing Field Airport, and Renton Municipal Airport. These changes are necessary to reflect the actual airspace delegated to each airport traffic control tower. The control zones would be depicted on appropriate aeronautical charts for pilots' use.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–10, 1601 Lind Avenue S.W. Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–10, 1601 Lind Avenue S.W., Renton Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the

following statement is made: "Comments to Airspace Docket No. 93–ANM–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zones for the Seattle-Tacoma International, Boeing Field, and Renton Airports, Washington. These changes will reflect the actual airspace delegated to each respective air traffic control tower. The control zones would be depicted on appropriate charts for pilots' use. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zones listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ANM WA CZ Seattle, Seattle-Tacoma International Airport, WA [Revised]

Seattle-Tacoma International Airport, WA (lat. 47°26'56" N, long. 122°18'34" W)

Boeing Field, King County International Airport, WA (lat. 47°31'48" N, long. 122°18'07" W)

That airspace extending upward from the surface to and including 10,000 feet MSL beginning at lat. 47°22'37" N, long. 122°14'53" W, clockwise along the 5 mile radius of the Seattle-Tacoma International Airport to lat. 47°29'38" N, long. 122°24'46" W. Thence clockwise along the 5 mile radius of Boeing Field/King County International Airport to lat. 47°30'00" N, long. 122°25'00" W, thence east along a line to lat. 47°30'00" N, long. 122°18'00" W, thence southeast along a line to lat. 47°26'00" N, long. 122°14'51" W, thence south along a line to lat. 47°25'49" N, long. 122°14'54" W, thence south along a line to the point of beginning.

ANM WA CZ Seattle, Boeing Field/King County International Airport, WA [Revised]

Boeing Field/King County International Airport, WA (lat. 47°31'48" N, long. 122°18'07" W)

Seattle-Tacoma International Airport, WA (lat. 47°26'56" N, long. 122°18'34" W)

Renton Municipal Airport, WA (lat. 47°29'35" N, long. 122°12'58" W)

That airspace extending upward from the surface to and including 2,500 feet MSL beginning at lat. 47°30'00" N, long. 122°25'00" W, clockwise along the 5 mile radius of Boeing Field/King County International Airport to lat. 47°34'32" N, long. 122°11'57" W, thence southwest along a line to lat. 47°33'41" N, long. 122°14'03" W, thence southwest along a line to lat. 47°31'13" N, long. 122°15'32" W, thence southeast along a line to lat. 47°30'00" N, long. 122°13'33" W, thence south along a line to lat. 47°28'09" N, long. 122°13'33" W, thence southeast along a line to lat. 47°27'45" N, long. 122°12'58" W, thence south along a line to the intersection of a 5 mile radius of the Seattle-Tacoma International Airport and a 5 mile radius of Renton Municipal Airport at lat. 47°24'38" N, long. 122°12'02" W, thence clockwise along the 5 mile radius of the Seattle-Tacoma International Airport to lat. 47°22'37" N, long. 122°14'53" W, thence north along a line to lat. 47°25'49" N, long. 122°14'54" W, thence north along a line to lat. 47°26'00" N, long. 122°14'51" W, thence northwest along a line to lat. 47°30'00" N, long. 122°18'00" W, thence west along a line to the point of beginning.

ANM WA CZ Renton, WA [Revised]

Renton Municipal Airport, WA (lat. 47°29'35" N, long. 122°12'58" W)

Boeing Field/King County International Airport, WA (lat. 47°31'48" N, long. 122°18'07" W)

Seattle-Tacoma International Airport, WA (lat. 47°26'56" N, long. 122°18'34" W)

That airspace extending upward from the surface to and including 2,500 feet MSL beginning at the intersection of a 5 mile radius of Boeing Field/King County International Airport and a 5 mile radius of Renton Municipal Airport at lat. 47°34'32" N, long. 122°11'57" W, thence clockwise along the 5 mile radius of Renton Municipal Airport to the 5 mile radius of Seattle-Tacoma International Airport at lat. 47°24'38" N, long. 122°12'02" W, thence north along a line to lat. 47°27'45" N, long. 122°12'58" W, thence northwest along a line to lat. 47°28'09" N, long. 122°13'33" W, thence north along a line to lat. 47°30'00" N, long. 122°13'33" W, thence northwest along a line to lat. 47°31'13" N, long. 122°15'32" W, thence northeast along a line to lat. 47°33'41" N, long. 122°14'03" W, thence northeast along a line to the point of beginning.

* * * * *

Issued in Seattle, Washington, on August 4, 1993.

Temple H. Johnson,

Manager, Air Traffic Division.

[FR Doc. 93–19819 Filed 8–16–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–13]

Proposed Modification of Control Zone; Tacoma, McChord AFB, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the control zone for McChord AFB Airport by excluding the airspace overlying the Spanaway, Shady Acres Airport, Washington. This action would allow operations to and from the Shady Acres Airport without radio communication with McChord AFB control tower.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–13, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–13, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which desribes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone for McChord AFB Airport, WA. The reclassification of airspace which will be effective September 16, 1993, necessitated enlarging the control zone for MChord AFB and consequently this expansion encompassed the Shady Acres Airport. The FAA endeavors to exclude satellite airports located within control zones where safety would not be substantially compromised. This action would avoid any adverse impact on the Shady Acres Airport and simplify ATC coordination responsibilities between the primary and the satellite airport. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ANM WA CZ Tacoma McChord AFB, WA [Revised]

Tacoma, McChord AFB, WA, (lat. 47°08'17" N, long. 122°28'34" W)

McChord VORTAC (lat. 47°08'52" N, long. 122°28'30" W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5.4 mile radius of the McChord AFB, and within 1.8 miles each side of the McChord VORTAC 182° radial extending from the 5.4 mile radius to 6.6 miles south of the VORTAC; excluding that airspace southwest of a line extending from lat. 47°09'56" N, long. 122°36'07" W; to lat. 47°04'18" N, long. 122°31'28" W; and excluding that airspace at and below 1400 feet MSL within an area bounded by a line beginning at lat. 47°03'09" N, long. 122°26'10" W, thence to lat. 47°05'00" N,

long, 122°26'38" W, thence to lat. 47°06'17" N, long. 122°26'34" W, thence to lat. 47°07'19" N, long. 122°20'47" W, thence clockwise via a 5.4 mile radius arc of McChord AFB Airport to point of beginning.

* * * * *

Issued in Seattle, Washington, on August 3, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-19820 Filed 8-16-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-AEA-03]

Proposed Alteration of Transition Area; Rochester, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the existing 700 foot Transition Area established at Rochester, NY, to provide additional controlled airspace to increase the effective utilization of airspace by air traffic control in the vicinity of Rochester, New York.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the rule in triplicate to: John W. Kies, Acting Manager, System Management Branch, AEA-530, Docket No. 93-AEA-03, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan Jr., Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; Telephone: (718) 553-1229.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AEA-03". The postcard will be date/time stamped and returned to the commentor. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot Transition Area at Rochester, NY, to reflect additional airspace needed by air traffic control to provide for more efficient use of the airspace in the area. The proposed expansion would include the airspace between the 7-mile and 20.5-mile arcs from the 198° radial to the 288° radial from the Rochester VORTAC, extending upward from 700 feet above the surface of the earth. The coordinates for this airspace docket are based on North American Datum 1983. Transition Areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Transition Area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that, when promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510(a); E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation

* * * * *

AEA NY TA Rochester, NY [Revised]
Greater Rochester International Airport, NY
(lat. 43°07'08" N., long. 77°40'21" W.)
BREIT NDB (lat. 43°07'35" N., long. 77°33'14" W.)
Rochester VORTAC (lat. 43°07'15" N., long. 77°40'25" W.)
Genesee VORTAC (lat. 43°50'04" N., long. 77°43'58" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Greater Rochester International Airport

and within 3 miles each side of the Rochester localizer east course extending from the 7-mile radius to 10 miles east of the BREIT NDB and within 4 miles each side of the 135° bearing from the BREIT NDB extending from the 7-mile radius to 11.3 miles southeast of the NDB and within 3.5 miles each side of the Rochester VORTAC 214° radial extending from the 7-mile radius to 9.2 miles southeast of the VORTAC and that airspace within a 20.5-mile radius of the Rochester VORTAC beginning clockwise from the Rochester VORTAC 189° (T) 198° (M) and Geneseo VORTAC 195° (T) 204° (M) radials, extending clockwise along the 20.5-mile radius to the Rochester VORTAC 279° (T) 288° (M) radial.

* * * * *

Issued in Jamaica, New York, on July 30, 1993.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 93–19661 Filed 8–16–93; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 336

RIN 3220–AA67

Duration of Normal and Extended Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to revise its regulations under the Railroad Unemployment Insurance Act (RUIA) to update the provisions concerning the duration of normal unemployment and sickness benefits under the RUIA and to add provisions concerning the establishment of extended benefit periods under the RUIA.

DATES: Comments must be received by September 16, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: This proposed revision to part 336 would revise the part heading from "Exhaustion of Rights to Benefits" to "Duration of Normal and Extended Benefits", and consists of two proposed subparts. Proposed Subpart A explains how long a qualified railroad employee may receive normal unemployment and sickness benefits. Proposed Subpart B explains under what circumstances an employee with 10 or more years of railroad service may receive extended unemployment or sickness benefits and the duration of an employee's extended benefit period. This proposed rule also proposes to remove existing § 336.3, which relates to payment of extended unemployment benefits under the Temporary Extended Railroad Unemployment Insurance Benefits Act of 1961. Extended benefits are no longer payable under that Act. As revised, § 336.3 would explain the duration of normal sickness benefits under the RUIA.

The Board has determined that this is not a major rule under Executive Order No. 12291; therefore, no regulatory impact analysis is required. The information collection requirements contained in this rule have been approved by the Office of Management and Budget under control number 3220–0070.

List of Subjects in 20 CFR Part 336

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 336 is proposed to be revised to read as follows:

Part 336—Duration of Normal and Extended Benefits

Subpart A—Normal Benefits

Sec.

336.1 Introduction.
336.2 Duration of normal unemployment benefits.
336.3 Duration of normal sickness benefits.
336.4 Base year compensation.
336.5 Notice to employee.

Subpart B—Extended Benefits

336.10 Eligibility.
336.11 Exhaustion of rights to normal unemployment benefits.
336.12 Exhaustion of rights to normal sickness benefits.
336.13 Years of service requirement.
336.14 Extended benefit period.
336.15 How to claim extended benefits.
336.16 Notice to employee.

Authority: 45 U.S.C. 362(l).

Subpart A—Normal Benefits

§ 336.1 Introduction.

(a) *General.* This subpart explains how long a qualified employee may receive normal unemployment or sickness benefits under the Railroad Unemployment Insurance Act during a benefit year. Under section 2(c) of that Act, normal unemployment benefits are payable for up to 130 days of unemployment within a benefit year, or in an amount equal to the amount of the employee's "base year compensation", whichever is less. A similar limitation applies to the payment of sickness benefits. An employee who exhausts his or her normal unemployment or sickness benefits may be eligible for payment of extended unemployment or extended sickness benefits under the conditions set forth in subpart B of this part.

(b) *Definitions.* The terms *benefit year, base year,* and *compensation* are defined in part 302 of this chapter. The term *registration period* is defined in parts 325 and 335 of this chapter. For the purposes of this subpart, and as explained in § 336.4 of this part, an employee's *base year compensation* may include compensation in excess of the monthly compensation base (as defined in part 302 of this chapter) even though such excess may not be counted for the purpose of determining whether such employee is a "qualified employee" within the meaning of part 302.

(c) *Recovery of benefits.* When unemployment or sickness benefits are recovered by the Board for one or more days, the Board will disregard those days in determining whether the employee has exhausted normal unemployment or sickness benefits with respect to the applicable benefit year.

§ 336.2 Duration of normal unemployment benefits.

(a) *130 compensable day limitation.* A qualified employee who has satisfied the waiting period for a benefit year may receive benefits for a maximum of 130 days of unemployment within such benefit year, subject to the limitation on payment explained in paragraph (b) of this section. In any registration period beginning after the end of the waiting period and before the beginning of the next ensuing benefit year, benefits are payable for days of unemployment in excess of four, but the aggregate number of compensable days may not exceed 130 for the benefit year. An employee who is unemployed on all days during a registration period could have a maximum of 10 compensable days of unemployment in such registration period. The amount of benefits for each compensable day of unemployment is the amount of the daily benefit rate computed for such employee pursuant to part 330 of this chapter.

(b) *Base year compensation limit.* Notwithstanding the provisions of paragraph (a) of this section, the Board will not pay unemployment benefits to a qualified employee, with respect to his or her days of unemployment within a benefit year, in an amount greater than

the amount of his or her base year compensation, as computed under § 336.4 of this part.

(c) *Unemployment due to a strike.* The limitations set forth in paragraphs (a) and (b) of this section also apply to an employee whose unemployment is due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed. But no unemployment benefits are payable for the employee's first 14 days of unemployment due to such stoppage of work.

§ 336.3 Duration of normal sickness benefits.

The duration of normal sickness benefits is the same as the duration of normal unemployment benefits, as set forth in § 336.2 of this part. A qualified employee who has satisfied the benefit year waiting period and is otherwise eligible for sickness benefits may receive benefits for a maximum of 130 days of sickness within a benefit year, but the amount paid as sickness benefits may not exceed the amount of the employee's base year compensation, as computed under § 336.4 of this part.

§ 336.4 Base year compensation.

(a) *Formula.* For the purposes of this part, an employee's base year compensation includes any compensation in excess of the monthly compensation base (as defined in part 302 of this chapter) for any month in the applicable base year but shall not include any amount that exceeds the value of "X" in the following formula: X = $775(A/$600). In this formula, "A" is the dollar amount of the monthly compensation base with respect to months in such base year. For example, if an employee had railroad earnings of $1,500 per month in each of three months in base year 1990, the employee's base year compensation for purposes of part 302 of this chapter would be $2,235 (three times the monthly compensation base of $745 per month for months in 1990). But the employee's base year compensation for purposes of computing maximum normal unemployment (or sickness) benefits under this subpart would be $2,886 (three times $962), and his or her normal unemployment (or sickness) benefits would not be considered exhausted until he or she is paid unemployment (or sickness) benefits in an amount equal to $2,886. In this example, $962 is the amount computed as the value of "X" in the above formula when "A" is equal to $745.

(b) *Employer's duty to report.* The base year employer(s) of an employee shall provide information as to the amount of an employee's monthly compensation in excess of the monthly compensation base, as defined in part 302 of this chapter, unless the amount of the employee's compensation at the monthly compensation base limit, as already reported to the Board, is equal to or greater than an amount equal to 130 times the daily benefit rate applicable to the employee's days of unemployment or days of sickness.

(Approved by the Office of Management and Budget under control number 3220–0070.)

§ 336.5 Notice to employee.

The Board will notify an employee when it appears that his or her right to normal unemployment or normal sickness benefits will be exhausted. Such notice will include information about the availability of extended benefits under subpart B of this part if the employee has completed 10 years of railroad service and the availability of normal benefits for the next ensuing benefit year if the employee is not eligible for extended benefits.

Subpart B—Extended Benefits

§ 336.10 Eligibility.

(a) Except as provided in paragraph (b) of this section, an employee may receive extended unemployment or extended sickness benefits under this part if he or she:

(1) Has exhausted normal unemployment or normal sickness benefits (as the case may be) under subpart A of this part;

(2) Has completed 10 years of railroad service, as set forth in § 336.13 of this part; and

(3) Continues to have days of unemployment or days of sickness, as the case may be.

(b) An employee is not eligible for extended sickness benefits if he or she has voluntarily retired or has attained age 65. In the case of claims for unemployment benefits, an employee is not eligible for extended unemployment benefits if he or she has voluntarily left work without good cause or has voluntarily retired.

§ 336.11 Exhaustion of rights to normal unemployment benefits.

For the purposes of this part, the Board considers that an employee has exhausted his or her current rights to normal benefits for days of unemployment if:

(a) The employee received unemployment benefits for 130 days of unemployment in the benefit year; or

(b) The employee received unemployment benefits in the benefit year equal to the amount of his or her base year compensation; or

(c) At the end of a normal benefit year during which the employee was qualified for benefits, he or she received less than the maximum unemployment benefits for the benefit year and he or she is not qualified for benefits in the next succeeding benefit year.

§ 336.12 Exhaustion of rights to normal sickness benefits.

For the purposes of this part, the Board considers that an employee has exhausted his or her current rights to normal benefits for days of sickness if:

(a) The employee received sickness benefits for 130 days of sickness in the benefit year; or

(b) The employee received sickness benefits in the benefit year equal to the amount of his or her base year compensation; or

(c) At the end of the normal benefit year during which the employee was qualified for benefits, he or she received less than the maximum sickness benefits for the benefit year and he or she is not qualified for benefits in the next succeeding benefit year.

§ 336.13 Years of service requirement.

(a) *Statutory basis.* For the purposes of this part, an employee is not eligible for extended unemployment or sickness benefits if he or she does not have at least 10 years of railroad service. An employee who has 120 service months as defined in part 210 of this chapter, whether or not consecutive, is considered to have 10 years of railroad service, and an employee who has 180 service months, whether or not consecutive, is considered to have 15 years of railroad service.

(b) *Initial determination.* The Board will determine whether an employee has 10 years, or 15 years, of railroad service on the basis of reports filed by employers pursuant to part 209 of this chapter. The number of years of service shown in the Board's records will be accepted as correct for the purposes of this part, unless the employee claims credit for more service than that shown in the Board's records and such additional service is verified. In any such case, the Board will afford the employee an opportunity to establish credit for additional service if such service would be sufficient to bring the employee up to 10 years, or 15 years, of service. If the claim for credit for additional service is made by an employee who has at least 10 years of railroad service but is claiming credit for at least 15 years, the Board will not delay the establishment of an extended benefit period based on 10 years of service but shall extend the ending date of such period if the employee is able

to establish credit for 15 years of railroad service.

(c) *Effective date.* An employee acquires 10 years, or 15 years, of railroad service, as the case may be, as of the first day with respect to which creditable compensation is attributable in his 120th, or 180th, month of service.

§ 336.14 Extended benefit period.

(a) *Defined.* An extended benefit period consists of seven consecutive 14-day registration periods in the case of an employee having 10–14 years of railroad service and 13 consecutive 14-day registration periods in the case of an employee having 15 or more years of railroad service.

(b) *Beginning date.* In the case of unemployment benefits, an extended benefit period begins with the first day of unemployment after the day on which the employee exhausts his or her rights to normal unemployment benefits. In the case of sickness benefits, the beginning date is the first day of sickness after the employee exhausts normal sickness benefits. Such first day of unemployment or first day of sickness must be within the same benefit year with respect to which the employee exhausted normal unemployment or normal sickness benefits, as the case may be. However, no extended benefit period may begin on any day of unemployment or sickness prior to the date on which the employee acquired 10 years of railroad service.

(c) *Ending date.* If an employee has 10 but less than 15 years of railroad service, his or her extended benefit period ends on the 97th day after it began. If an employee has 15 or more years of railroad service, his or her extended benefit period ends on the 181st day after it began. If an employee attains age 65 during an extended sickness benefit period, such extended benefit period will terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of paying benefits for his or her days of unemployment, if any, during such extended benefit period. If an extended sickness benefit period terminates because the employee has attained age 65 and if at that point the employee has rights to normal sickness benefits, the employee will be paid normal sickness benefits if he or she is otherwise entitled to payment thereof.

(d) *Maximum number of compensable days.* During an extended benefit period consisting of seven consecutive 14-day registration periods, extended benefits may be paid for a maximum of 65 days of unemployment (or 65 days of sickness, as the case may be). During an extended benefit period consisting of 13 consecutive 14-day registration periods, extended benefits may be paid for a maximum of 130 days of unemployment (or 130 days of sickness, as the case may be).

§ 336.15 How to claim extended benefits.

An employee who has 10 or more years of railroad service who exhausts his or her rights to normal unemployment or normal sickness benefits and who wishes to claim extended unemployment or extended sickness benefits may do so by claiming benefits on the forms provided by the Board pursuant to parts 325 or 335 of this chapter. The claim forms provided for this purpose are the same as those provided for claiming normal benefits. No special application for extended benefits is required, and no waiting period applies to the payment of extended benefits.

§ 336.16 Notice to employee.

Upon determining that an employee is eligible for a period of extended unemployment or sickness benefits, the Board will notify the employee of the beginning and ending dates of such extended benefit period.

Dated: August 9, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–19770 Filed 8–16–93; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 93N–0173]

RIN 0905–AD90

Regulation of Dietary Supplements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 15, 1993, the comment period for the advance notice of proposed rulemaking for regulation of dietary supplements. The document was published in the **Federal Register** of June 18, 1993 (58 FR 33690). The document requested public comment on approaches for assuring the safety of dietary supplements including products containing vitamins, minerals, amino acids, herbs and other similar nutritional substances, and announced the availability of, and requested comments on, recommendations made in the document entitled "Task Force on Dietary Supplements Final Report." FDA is taking this action in response to requests to allow additional time for public comment.

DATES: Comments by December 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5233.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 1993 (58 FR 33690), FDA announced in an advance notice of proposed rulemaking that it is reviewing the manner in which it regulates dietary supplements, including products containing vitamins, minerals, amino acids, herbs, and other similar nutritional substances. FDA requested public comment on approaches, consistent with the requirements of the Federal Food, Drug, and Cosmetic Act (the act) for assuring the safety of such products offered as dietary supplements. FDA announced the availability of the Task Force on Dietary Supplements Final Report and requested comment on the recommendations made in that document. The notice also referenced the report entitled "Safety of Amino Acids Used As Dietary Supplements" prepared for FDA by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology. Interested persons were given until August 17, 1993, to respond to the advance notice of proposed rulemaking.

The agency received six requests from three trade associations and three manufacturers for an extension of the comment period for either 120 days or 1 year. Two comments that requested a 1-year extension of the comment period argued that, because the notice aims to completely restructure the regulation of dietary supplements, a major impact on the supplement industry could be a likely outcome. The comments argued that FDA delay the regulatory process until Congress passes new legislation on this topic.

The comments also mentioned the 1-year moratorium established by the

Dietary Supplement Act of 1992 on the implementation of the Nutrition Labeling and Education Act of 1990 with respect to dietary supplements. One of the comments stated that the intent of the moratorium was to provide time for Congress and others to identify more fully and to consider the public health issues associated with the use of dietary supplements, and to develop a comprehensive approach for reforming the regulation of dietary supplements. The comment stated that it would be inappropriate for FDA to proceed with rules proposed in the notice before Congress completes its assessments of these issues. The comment urged that a 1-year extension would allow all interested parties time to devote sufficient resources to respond to the issues raised in the advance notice of proposed rulemaking, and to assure that the entire process can be based on the outcome of the ongoing congressional evaluation of dietary supplement regulation.

The agency disagrees with these comments. In fact, FDA would be remiss in fulfilling its responsibilities under current law if it were to wait 1-year in anticipation of new legislation that may or may not be developed for the regulation of dietary supplements. It is not unusual for FDA to be conducting an administrative process while Congress is considering legislation on the same topic. For example, the scientific standard for health claims for food proposed by FDA on February 13, 1990 (55 FR 5176) was subsequently incorporated by Congress almost verbatim in the Nutrition Labeling and Education Act of 1990.

The agency believes that progress can be made if it proceeds to work toward the objectives identified in the advance notice of proposed rulemaking. Because the next step in the administrative process will involve the development of a proposed regulation that will again be open for public comment, the agency is not convinced that there is merit in waiting a year in anticipation of legislative changes that may not occur. Accordingly, the agency denies the requests for a 1-year extension.

Of the four comments requesting an extension of the comment period for an additional 120 days, some cited the inadequacy of the 60-day comment period in light of the length of the advance notice of proposed rulemaking including the need to review the Dietary Supplements Task Force Final Report. One comment described difficulty in getting a copy of the Dietary Supplement Task Force Final Report. Several comments cited the heavy burden of devoting resources to preparing responses to the three proposed labeling rules dealing with dietary supplements which were published on the same date and for which a time extension was not possible given the statutory deadline.

One comment stated that more time is needed to respond to the specific questions and to gather information on amino acids and amino acid-containing supplements. The additional time would be used to meet with scientific experts in order to provide meaningful scientific data and expert opinions, particularly on amino acid issues. Another comment indicated that an additional 120 days are needed to complete market research on consumer perceptions of dietary supplements and to provide documentation that approximately 80 percent of dietary supplements in the marketplace are safe.

The agency recognizes that the advance notice of proposed rulemaking requested comments to a number of questions and two additional reports, and submission of data, and that additional time may be required to develop and coordinate this information so that the comments are useful to the agency. The agency also recognizes that three proposed regulations with statutory dates were published in the same **Federal Register** and that these proposals have the same comment period. In addition, an error in the June 18, 1993, document advising how copies of the Dietary Supplement Task Force Final Report may be obtained created delays for individuals requesting copies of this report for comment. This error was corrected by notice in the **Federal Register** of June 25, 1993 (58 FR 34389).

Those comments that promised to provide the agency with scientific and other substantive information on dietary supplements offered the most compelling reasons for an extension of the comment period. In anticipation of receipt of these and other data, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments. Accordingly, the comment period is extended for an additional 120 days. However, this extension in no way limits the agency's ability to take appropriate regulatory action against dietary supplement products.

Interested persons may, on or before December 15, 1993, submit to the Dockets Management Branch (address above) written comments regarding the advance notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: August 12, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19893 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 166

[Docket No. 90P–0025]

Margarine; Standard of Identity to Permit Use of Any Form of Oil of Marine Species Affirmed as GRAS or Approved as a Food Additive for This Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a tentative final rule that sets forth an amendment to the U.S. standard of identity for margarine to permit the use of any form of oil from a marine species that has been affirmed as generally recognized as safe (GRAS) or approved as a food additive for this use. This action is in response to a petition submitted by the National Fish Meal and Oil Association (NFMOA). FDA believes this action will provide increased flexibility to manufacturers in the selection of lipid ingredients in margarine and will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by September 16, 1993. The agency proposes that any final rule that may be issued based upon this tentative final rule shall become effective October 18, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5112.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of August 30, 1990 (55 FR 35439), FDA published a proposal based on a petition from NFMOA, 1525 Wilson Blvd., suite 500, Arlington, VA 22209, to amend the U.S. standard of identity for margarine (§ 166.110 (21 CFR 166.110)) to permit the use of any form of marine oil that

has been affirmed as GRAS or approved as a food additive for this use as an additional optional edible fat or oil ingredient in margarine. Interested persons were given until October 29, 1990, to submit comments.

The NFMOA petition was filed under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)), which requires formal rulemaking in any action for the amendment of a food standard. However, in November 1990, the Nutrition Labeling and Education Act of 1990 was signed into law, and it removed food standard rulemaking proceedings, except for action for the amendment or repeal of food standards of identity for dairy products or maple sirup, from the formal rulemaking proceedings of section 701(e) of the act. Therefore, further action on the NFMOA petition is subject to the informal notice and comment rulemaking proceedings of section 701(a) of the act. This tentative final rule is being published under those procedures. Because there was an opportunity to comment on the proposal when it was published in 1990, the comment period on this tentative final rule will be 30 days.

II. Comments to Proposal

FDA received six letters, each containing one or more comments, from trade associations, industry, consumers, and the U.S. Congress in response to the proposal. Five of the letters supported, and one letter opposed, the proposal. One of the supporting letters requested clear labeling requirements. A summary of the suggested modification and of the opposing letter and the agency's responses follows:

1. One comment expressed concern about possible allergic reactions occurring in persons sensitive to fish and fish products and requested that FDA require that any margarine made with marine oil to be clearly labeled as such.

The agency finds the concern expressed by the comment to be unfounded. First, source information is part of the ingredient's common or usual name that is required under provisions of section 403(i) of the act (21 U.S.C. 343(i)). The agency requires that such names accurately identify or describe, in as simple and direct terms as possible, the basic nature of the ingredient or its characterizing properties. This requirement is set forth in 21 CFR 102.5(a), which establishes principles for devising common or usual names for foods.

In addition, the standard of identity for margarine in § 166.110(d) requires that each of the edible fats or oils used in the food be declared on the label in accordance with the applicable sections of 21 CFR parts 101 and 130. As provided in 21 CFR 101.4(b)(14), each individual fat or oil ingredient of a food must be declared by its specific common or usual name (e.g., "beef fat," "cottonseed oil").

Finally, "hydrogenated menhaden oil" or "partially hydrogenated menhaden oil" is the name of the ingredient as defined in 21 CFR 184.1472 and must be identified as such in the ingredient statement. If FDA lists other oils of marine species as food additives for use in margarine or affirms such oils as GRAS for such use, the name of the oil will reflect its source.

For these reasons, the agency concludes that persons with allergies to fish and fish products will be adequately informed of the presence of such oils in margarine.

2. One comment raised the issue of adverse health effects from the increased use of oil derived from menhaden, whose schooling and feeding habits locate them, during growth and maturation, in areas contaminated by substances classified as toxic or hazardous.

FDA considered the safety of partially hydrogenated and hydrogenated menhaden oils during the GRAS review process (GRASP 6G0316) (54 FR 38219, September 15, 1989). After evaluation of all available information, the agency concluded that the use of partially hydrogenated and hydrogenated menhaden oil as an edible fat or oil should be affirmed as GRAS. Information concerning this review is on display at the Dockets Management Branch (address above) under Docket No. 86G–0289 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. No evidence of contamination of these oils was presented during that review. Therefore, FDA is not aware of any basis for the concern expressed by the comment. If FDA receives evidence that listed oils contain deleterious substances and are a health hazard, the agency will take appropriate action.

FDA will evaluate carefully, as part of its review of any future petitions for the listing of other oils of marine species for use in margarine, the possibility that such oils could contain deleterious substances. The agency notes that margarine is adulterated under section 402(e) of the act (21 U.S.C. 342(e)) if any of the raw material used therein consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for food.

III. Conclusion

The agency has tentatively concluded that it is reasonable to provide for the optional use of any form of oil of marine species that has been affirmed as GRAS or listed as a food additive for this use, and that doing so will promote honesty and fair dealing in the interest of consumers.

Accordingly, after consideration of all comments, the agency is issuing a tentative final rule to amend the standard of identity for margarine as set forth below. In addition to the proposed changes, FDA is making some minor editorial changes for clarity and is revising the format of the section.

IV. Economic Impact

FDA has examined the economic implications of this tentative final rule to amend 21 CFR part 166 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. The agency tentatively concluded in the August 30, 1990, proposal, that this action would not result in a significant economic impact on a substantial number of small entities. Manufacturers may continue to produce margarine using current formulations. Thus, no changes are required in formulations unless manufacturers wish to reformulate their products. FDA has received no new information or comments that would alter the tentative finding that it set out in the proposed rule, that there is no substantive economic issue in this rulemaking, and that this is not a major rule as defined by either Executive Order 12291 or the Regulatory Flexibility Act.

V. Environmental Impact

In the preamble to the proposed rule, FDA reported its finding that this action qualified for categorical exclusion under 21 CFR 25.24(b)(1), and that neither an environmental assessment nor an environmental impact statement was required. FDA received one comment on the proposed rule that claimed that this action would result in increased fishing pressure that could adversely affect the menhaden fishery, and that the agency had not considered this potential impact prior to issuing the proposed rule. Although the comment did not provide evidence to support the contention that the menhaden fishery would be adversely affected, FDA requested an environmental assessment (EA) from the

petitioner. The decision to ask for an EA takes into consideration the agency's assessment of this issue as part of its previous action to affirm partially hydrogenated menhaden oil and hydrogenated menhaden oil as GRAS (54 FR 38219). The agency also has information indicating that the market for menhaden oil as a component of margarine is large, approximately 40 million pounds per year.

Based on information in the petitioner's EA submitted for the current action and on the agency's analysis of the reports on the menhaden fisheries issued subsequent to FDA approval of GRASP 6G0316 (54 FR 38219), FDA has concluded that the proposed action will not have a significant impact on the menhaden fishery. Amending the margarine standard of identity will not increase the volume of crude menhaden oil that is produced. The only change will be that crude menhaden oil will more often be retained in the United States for further processing into food grade products, instead of being shipped to Europe and elsewhere for this same use.

FDA has carefully considered the potential environmental effects of this action, including the effects on the menhaden fishery, and has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact, and the evidence supporting that finding, which includes the petitioner's environmental assessment, the finding of no significant impact for FDA's approval of GRASP 6G0316 (54 FR 38219), and a copy of "National Marine Fisheries Service Final Purse-seine Landings of Gulf and Atlantic Menhaden in the 1990 and 1991 Fishing Seasons" may be seen at the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 166

Food grades and standards, Food labeling, Margarine.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 166 be amended as follows:

PART 166—MARGARINE

1. The authority citation for 21 CFR part 166 is revised to read as follows:

Authority: Secs. 201, 401, 403, 407, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 347, 348, 371, 379e).

2. Section 166.110 is amended by adding new paragraph headings for paragraphs (a) and (c), by revising paragraph (a)(1), and in paragraphs (b) and (d) the paragraph headings "Optional ingredients" and "Label declaration", respectively, are italicized to read as follows:

§ 166.110 Margarine.

(a) *Description.* * * *

(1) Edible fats and/or oils, or mixtures of these, whose origin is vegetable or rendered animal carcass fats, or any form of oil from a marine species that has been affirmed as GRAS or listed as a food additive for this use, any or all of which may have been subjected to an accepted process of physico-chemical modification. They may contain small amounts of other lipids, such as phosphatides or unsaponifiable constituents, and of free fatty acids naturally present in the fat or oil.

* * * * *

(b) *Optional ingredients:* * * *

* * * * * *

(c) *Nomenclature.* * * *

(d) *Label declaration.* * * *

Dated: July 22, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19735 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 216 and 218

RIN 1010–AB82

Amendment of Regulations Governing Assessments for Incorrect Reports

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its Royalty Management Program (RMP) regulations governing assessments for incorrect reports submitted by royalty payors, lease operators, lessees, or other parties. The proposed amendments would add an assessment, in the same amount that is currently applied to incorrect reports received by the designated due date, to incorrect reports that are received late. The rule would provide consistency in MMS' practice for incorrect reporting assessments.

DATES: Written comments must be received on or before September 16, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedure Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Philip Wilson of the Reports and Payments Division and David Steiber of the Division of Verification, RMP, MMS, Lakewood, Colorado.

I. Background

Paragraphs 30 CFR 216.40(b) and 218.40(b) of title 30 of the Code of Federal Regulations (30 CFR) authorize MMS to assess an amount not to exceed $10 for each report received by the designated due date for that report but which is incorrectly completed. The reports subject to this assessment are required to be submitted to MMS by royalty payors, lease operators, lessees or other parties in accordance with statutes, regulations, contracts, orders or terms of Federal or Indian mineral leases. The purpose of this assessment is to compensate the Government for administrative costs incurred as a result of researching and resolving reporting errors so that the report can be accepted and processed through the MMS' automated Production Accounting and Audity System or Auditing and Financial System. Under § 216.40 (c) and (d), a report is defined as each line item on a Monthly Report of Operations (Form MMS–3160), Oil and Gas Operations Report (Form MMS–4054), Gas Analysis Report (Form MMS–4055), Gas Plant Operations Report (Form MMS–4056), Production Allocation Schedule Report (Form MMS–4058), Solid Minerals Operations Report (Form MMS–4059), and Solid Minerals Facility Report (Form MMS–4060). Under § 218.40(c), a report is defined as each line item on a Report of Sales and Royalty Remittance (Form MMS–2014).

II. Discussion of Proposed Rule

Current MMS regulations provide for an assessment for incorrect reports received prior to the designated due date for that report. However, the administrative costs incurred by MMS to research and resolve reporting errors are identical whether the report is received timely or late. So that MMS may be compensated for all administrative costs incurred due to

reporting errors, MMS is proposing to amend § 216.40(b) and § 218.40(b) to include as assessable all reports that are submitted incorrectly, regardless of whether the report was received by the designated due date or was received late. Therefore, a report that is both late and incorrect would be subject to two assessments, one under § 216.40(a) or § 218.40(a) for being late and one under the amended subsection (b) for being incorrect.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the day specified in the **DATES** section of this preamble.

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rulemaking would compensate the Government for administrative costs incurred as the result of reporting errors and provide for consistency in MMS' practice for incorrect reporting assessments.

Executive Order 12630

The Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12278.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Minerals royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, and Reporting recordkeeping requirements.

30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 216 and 218 are proposed to be amended as set forth below:

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (b) of § 216.40 is revised to read as follows:

§ 216.40 Assessments for incorrect or late reports and failure to report.

* * * * *

(b) An assessment of an amount not to exceed $10 may be charged for each report which is incorrectly completed.

* * * * *

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

(1) The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (b) of § 218.40 is revised to read as follows:

§ 218.40 Assessments for incorrect or late reports and failure to report.

* * * * *

(b) An assessment of an amount not to exceed $10 may be charged for each report which is incorrectly completed.

* * * * *

[FR Doc. 93–19747 Filed 8–16–93; 8:45 am]
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30 CFR Part 218

RIN 1010–AB74

Collection of Royalties, Rentals, Bonuses, and Other Monies Due Under Federal and Indian Mineral Leases by Administrative Offset

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations at 30 CFR part 218 to add a new provisions governing collection by administrative offset of royalties, rentals, bonuses, and other amounts due under Federal and Indian oil, gas, and other mineral leases. This rule would implement provisions of the Debt Collection Act of 1982.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are Geoffrey Heath and Peter J. Schaumberg, Office of the Solicitor, Washington, DC.

I. Background

The MMS administers over 25,000 producing leases for oil, natural gas, coal, other minerals, and geothermal

steam underlying Federal lands, Indian tribal and allotted lands, and the Outer Continental Shelf (OCS). The MMS is responsible for the collection, accounting, and disbursement of over $4 billion in bonus, rental, royalty, and other revenues derived from these leases each year. The MMS also is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, and lease terms.

Most lessees, and parties who pay royalty on behalf of lessees, have interests in more than one lease. In many cases, a lessee or royalty payor may have an interest in hundreds (or, for some major producers, even thousands) of leases. All royalty payors submit reports of sales and royalty which separately report, by line, royalties according to each lease, product produced, and selling arrangement.

In some cases, royalty reports may reveal an underpayment. In most cases, underpayments cannot be detected from the information on the report and are discovered through MMS' regular audits. When evidence of underpayment is found, MMS will issue an order to pay the underpaid amounts.

Such orders may be appealed administratively to the MMS Director and the Interior Board of Land Appeals (IBLA). See 30 CFR part 290 and 43 CFR part 4. During such administrative appeals, orders to pay are suspended upon the posting of an adequate surety instrument (e.g. a bond or letter of credit) for the amounts in dispute under 30 CFR 243.2. Decisions of the IBLA, or of an Assistant Secretary, are final for the Department of the Interior (Department) and are subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706. During judicial review, the effectiveness of a departmental decision typically will be suspended if a surety instrument is continued in effect. See 5 U.S.C. 705.

In most instances, a payor will pay amounts owed after a decision or order, whether or not appealed, has become final and there is no further appeal. However, in some cases, the payor may refuse or be unable to pay. In that event, MMS will first seek to collect against an appeal bond, letter of credit, or other MMS-approved surety instrument, if the original order was appealed, or against the lease bond. Nevertheless, there are still some cases in which surety is not available.

In addition, a payor may refuse to pay and assert as a defense that the order allegedly is barred by the statute of limitations. However, the statute of limitations is a bar to a judicial remedy and does not operate to nullify an underlying right.

In these and other cases, it is appropriate for MMS to collect unpaid royalties through other available means. Because most payors and lessees have interests in other leases, it is not uncommon that for some of those leases, there are overpayments, resulting from a variety of causes, for which a payor otherwise would claim a refund or credit. Because in such cases money would be owing from MMS to the payor, it is appropriate for the agency to exercise its right to administrative offset. The MMS believes that it should not allow credits or grant refunds when a payor or lessee owes money on other leases.

Administrative offset is recognized as a proper method to collect amounts owning if a judicial action otherwise would be barred by the statute of limitations. Additionally, in some cases, administrative offset may be a more efficient and less costly method than judicial litigation or imposing civil penalties.

The Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1449, applicable sections codified at 31 U.S.C. 3701, 3711, 3716, 3718, and 5 U.S.C. 5514 (DCA), specifically provides for an agency's exercise of administrative offset at 31 U.S.C. 3716, which also grants authority and instructs each agency to prescribe appropriate regulations. Additionally, the agency acts under standards which the Attorney General and the Comptroller General prescribe jointly. See 31 U.S.C. 3711(e)(2) and 4 CFR part 102. However, the authority proposed to be implemented in these regulations is not in derogation of this Agency's existing right to offset under other applicable law. Administrative offset is an available remedy even in the absence of the DCA.

In view of the specific provisions of the DCA, MMS is proposing new regulations, which MMS anticipates would be used in virtually all cases. The proposed regulations are discussed in section II below.

II. Discussion of Proposed Rule

The MMS is proposing to add a new subpart I entitled, "Collection by Administrative Offset," to its regulations at 30 CFR part 218 to implement the DCA provisions. One of the requirements of the DCA is that Federal agencies issue regulations consistent with the DCA and the Federal Claims Collection Standards (4 CFR, chapter II) to implement collecting claims by administrative offset under the DCA's provisions at 31 U.S.C. 3716. The proposed new regulations are consistent with all of the requirements of 31 U.S.C. 3716 and 3720A and the joint General Accounting Office/ Department of Justice regulations at 4 CFR part 102. See proposed §§ 218.605, 218.608, 218.609, and 218.612.

Section 218.602 of the proposed regulations contains the definition of relevant terms. A "claim" is defined for purposes of these regulations as an amount which has been determined to be owing by a decision or order which is final for the Department, for which no action for judicial review is pending wherein the decision or order remains suspended. Specifically, the phrase "decision or order of an official of the Department of the Interior which is not subject to further administrative review within the Department" means a decision or order of:

(1) The Secretary, Deputy Secretary, an Assistant Secretary, the Director of the Office of Hearings and Appeals, or the IBLA (if no action for judicial review thereof is pending or if a decision or order has not been suspended pending disposition of an action for judicial review); or

(2) The MMS Director, if no appeal to the IBLA is filed within the time allowed under 30 CFR 290.7 and 43 CFR 4.22 and 4.411; or

(3) An officer of MMS, if no appeal to the MMS Director is filed within the time allowed under 30 CFR 290.3 and 290.5.

Proposed § 218.604 addresses the scope of administrative offset which would be available. The MMS would be able to collect a claim arising in connection with any onshore or offshore Federal lease or any Indian lease by withholding and applying to the claim any amount due to the payor in connection with any onshore or offshore Federal lease for which that payor makes payments.

The MMS recognizes that leases on different categories of Federal land, or on Federal land within different States, or on the OCS result in payment of portions of lease revenues to different recipients under various permanent indefinite appropriations. See, e.g., 30 U.S.C. 191, providing for the State in which a Federal mineral lease on the public domain is located to receive 50 percent (for Alaska, 90 percent) of the revenues derived from the lease; 30 U.S.C. 355, incorporating for purposes of mineral lease revenues the disbursement schemes applicable to other types of revenues derived from acquired Federal lands, of which there are several categories; and 43 U.S.C. 1337(g), providing for coastal States to receive 27 percent of the revenues

derived from certain leases within 3 nautical miles of the seaward boundary of the coastal State. For Indian leases, the tribal or allottee lessors on whose behalf MMS acts are entitled to all of the revenues derived from the lease. In many cases, overpayments made under other leases will have been distributed to these recipients pursuant to those appropriations or paid to Indian lessors.

When MMS exercises its right to administrative offset, the payments made to the recipients of permanent indefinite appropriations for Federal leases would be adjusted through recoupment of the proper amounts from the next regular distribution to that recipient, or, in the case of acquired lands, to the surface management agency if not paid directly by MMS, in the same manner as MMS presently does in correcting payment errors. That procedure would not apply to Indian leases.

Overpayments under Indian leases would not be available for offset to collect underpayments under Federal leases or under other Indian leases with different ownership interests. Overpayments under Federal leases, however, would be available for offset against underpayments under Indian leases. Amounts collected by administrative offset would be paid or distributed to the proper recipient in accordance with applicable law.

Proposed paragraphs (a)(1) and (b)(1) of § 218.604 also provide that amounts available for offset include both amounts which MMS owes directly to a payor as well as amounts due from MMS "to another person on behalf of that payor." The latter category would include amounts MMS owes to an operator or other designated royalty payor which pays royalties under other leases on behalf of the underpaid lessee or payor. It also would include a corporate marketing affiliate or wholly-owned corporate subsidiary.

Under long-settled applicable law and regulations (e.g., 30 U.S.C. 1721(a) and 30 CFR 218.54 for oil and gas leases), interest is owed on all underpayments of royalty. In addition, except as provided under a recent rule published on December 30, 1992, titled "Offsetting Incorrectly Reported Production between Different Federal or Indian Leases (Cross-Lease Netting)," 57 FR 62200, promulgating 30 CFR 218.42 and amending other provisions, overpayments on one lease are not credited against, and do not operate to stop the accrual of late payment interest on, underpayments on another lease not within the same unit. To the extent claims for underpayments on a particular lease later are satisfied by administratively offsetting overpayments on a different lease or leases, interest will no longer accrue. Subsection (d) of the proposed § 218.604 clarifies that late payment interest continues to accrue until the administrative offset is actually effected and the amount withheld is applied to satisfy all or part of a claim.

In many cases, overpayments are not apparent from royalty reports or in situations where an audit has not yet been performed, and MMS therefore will not have specific knowledge of existing overpayments. When the payor finds such overpayments, however, it would usually submit a credit adjustment to recoup it, within the restrictions of applicable law. Therefore, under proposed § 218.605(g), MMS may issue a notice of intention to offset either:

(1) When it knows of a specific overpayment, or

(2) When it wants to offset any overpayments which may exist on some other set of leases and apply them to the underpayment, even though it does not specifically know whether and to what extent overpayments may in fact exist under the other leases.

In the latter event, under proposed § 218.606 the payor would be prohibited from reporting any credit adjustment with respect to any payment made in connection with any lease identified in the notice as a lease to which § 218.605(g)(2) applies. The payor must then report all credits which otherwise would have been reported as credit adjustments as a credit balance pursuant to MMS instructions. The MMS would then apply the reported credit balance to the amount of the underpayment until the underpayment is recovered. The MMS would then notify the payor to discontinue reporting a credit balance.

Many of the claims which MMS will seek to collect through administrative offset are claims for which the payor asserts a statute of limitations bars MMS from bringing a judicial action to collect. In lieu of collecting by administrative offset, MMS may be willing in many instances to accept the payor's agreement to waive and not assert a limitations defense against a judicial enforcement or collection action to the extent of the amount which would be collected by offset. The proposed § 218.610 allows the payor to request MMS to accept such an agreement.

Proposed §§ 218.611 and 218.612 pertain to requesting other Federal agencies to offset monies owed to a payor by the other agency, and to handling requests received from other Federal agencies to offset monies which MMS owes to the payor to collect an amount which the payor owes to the other agency, respectively. Proposed § 218.613 would allow MMS to request the Internal Revenue Service to offset against any tax refund owed to a payor.

The MMS also is proposing to make the final rule effective as of the date that this proposed rule is published in the **Federal Register**. The MMS specifically would like comments on the proposed effective date.

The final rule would be applicable to excess payments that were made prior to the effective date of the rule that would be subject to offset after the effective date.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the date identified in the **DATES** section of this preamble.

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rulemaking would implement provisions of the DCA to provide for collection, by administrative offset, of claims owed to the United States Government by individual debtors. It does not add additional regulatory requirements for Federal and Indian lessees. It only permits the Federal Government to collect legitimate claims. There are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections (2)(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public land-mineral resources, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is proposed to be amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; 43 U.S.C. 1801 et seq.

2. A new subpart I is added to read as follows:

Subpart I—Collection by Administrative Offset

Sec.

218.601 Scope of regulations.
218.602 Definitions.
218.603 When administrative offset may be used.
218.604 Scope and method of administrative offset.
218.605 Required notice and records inspection opportunity.
218.606 Prohibition against credit adjustments after receipt of notice of intention to offset; application of balance until claim is satisfied.
218.607 When use of mandated procedures is not required.
218.608 Time limitation on use of administrative offset.
218.609 Written agreements to repay in lieu of offset.
218.610 Waiver of statute of limitations defense in lieu of offsets.
218.611 Requests for administrative offset directed to other Federal agencies.
218.612 Requests for administrative offset received from other Federal agencies.
218.613 Reduction of tax refunds to satisfy claims.

Subpart I—Collection by Administrative Offset

§ 218.601 Scope of regulations.

(a) The provisions of this subpart apply to the collection by the Minerals Management Service (MMS) of claims, as defined in this subpart, for royalties, interest, and other amounts due in connection with any lease issued by the Secretary of the Interior (Secretary) under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any Federal land or interest in land, Indian tribal or allotted land, or from the Outer Continental Shelf, by administrative offset, as defined in 31 U.S.C. 3701(a)(1), under 31 U.S.C. 3716.

(b) The provisions of this subpart are supplemental to and not in derogation of:

(1) Any right to collect any amount due by means of offset which MMS may have by virtue of any other law or regulation or common law principle; and

(2) Any right to collect any amount due by any other means available to MMS under any law or regulation.

§ 218.602 Definitions.

For purposes of this subpart:

Administrative offset means withholding money payable by the United States, or held by the United States, to satisfy a debt a payor owes to the United States or owes to the United States as administrator on behalf of any Indian tribe or allottee.

Claim means any amount owed to the United States, or to the United States as administrator of any lease on behalf of any Indian tribe or allottee, as royalty, interest, or any other obligation arising in connection with any lease, or as civil penalties pursuant to 30 U.S.C. 1719 or 30 CFR part 241 or any successor regulation, or 43 U.S.C. 1350 or 30 CFR part 250 subpart N or any successor regulation, which has been determined to be owing by a decision or order of:

(1) an official of the Department of the Interior which is not subject to further administrative review within the Department and with respect to which no action for judicial review is pending or, if such an action is pending, if the decision or order has not been suspended pending disposition of the action for judicial review; or

(2) any court of competent jurisdiction.

Lease means any lease issued by the Secretary under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any Federal land or interest in land, Indian tribal or allotted land, or from the Outer Continental Shelf.

Payor means a lessee or any person, as defined in 30 U.S.C. 1702(12), who makes royalty or other payments under any lease or who owes any civil penalty pursuant to 30 U.S.C. 1719 or 30 CFR part 241 or any successor regulation, or 43 U.S.C. 1350 or 30 CFR part 250 subpart N or any successor regulation.

§ 218.603 When administrative offset may be used.

The MMS may use administrative offset, as provided in § 218.604, whenever a payor fails to pay any claim.

(a) The Assistant Secretary for Land and Minerals Management has determined that it is in the best interests of the United States to collect claims by administrative offset because of the decreased costs of collection and the acceleration in the payment of claims.

(b) If the 6-year period for bringing an action on a claim provided in section 2415 of Title 28, United States Code, has expired, the Director of his/her designee shall examine the claim to determine whether the likelihood of collecting such a claim and the best interests of the United States justify the use of administrative offset.

§ 218.604 Scope and method of administrative offset.

(a)(1) After giving notice as prescribed in § 218.605, MMS may collect any claim against a payor in connection with any onshore or offshore Federal lease by withholding any amount due from MMS to that payor, or payable to another person on behalf of that payor, in connection with any Federal onshore or offshore lease for which that payor makes payments, and applying that amount to the claim as an offset.

(2) If any portion of the amount due by MMS to the payor which is applied as an offset to an MMS claim previously had been paid or distributed to any non-

Federal recipient or to any specific fund in the United States Treasury before such offset, as prescribed by applicable law, MMS will recoup the amount previously distributed or paid from subsequent regular distributions or payments to that recipient or fund.

(b) (1) After giving notice as prescribed in § 218.605, MMS may collect any claim against a payor in connection with any Indian lease by withholding any amount due from MMS to that payor, or payable to another person on behalf of that payor, in connection with:

(i) Any Indian allotted or tribal lease for which that payor pays royalties with identical individual and proportionate beneficial ownership interests as the lease with respect to which the claim arose; or

(ii) Any Federal onshore or offshore lease for which that payor pays royalties, and applying that amount to the claim as an offset.

(2) If any portion of the amount due from MMS to the payor which is applied as an offset to a claim in connection with an Indian lease was originally paid to MMS in connection with any Federal onshore or offshore lease and had been paid or distributed to any non-Federal recipient or to any specific fund in the United States Treasury before such offset, as prescribed by applicable law, MMS will recoup the amount previously distributed or paid from subsequent regular distributions or payments to that recipient or fund.

(c) Any amount applied to a claim as an offset will be attributed to the underpaid lease and will be paid or distributed in accordance with applicable law.

(d) Late payment interest on underpayments owed under applicable law or regulations shall continue to accrue until an administrative offset is effected and the amount withheld is applied to satisfy all or part of a claim.

§ 218.605 Required notice and records inspection opportunity.

(a) Before collecting a claim by administrative offset under this part, the MMS Director or his/her designee shall give written notice by certified mail, return receipt requested, of the agency's intention to offset at least 30 days before effecting the offset. Such notice shall include a written explanation of the payor's rights under this section, as required by 31 U.S.C. 3716(a) and 4 CFR 102.3(b)(2). See 30 CFR 243.4 for regulations governing serving of official correspondence.

(b) Pursuant to 4 CFR 102.3(b)(2)(ii), the final decision or order pertaining to the claim constitutes written notice of the type and amount of the claim as required by 31 U.S.C. 3716(a) and 4 CFR 102.3(b)(2).

(c) Pursuant to 4 CFR 102.3(b)(2)(ii), the available administrative appeals to the MMS Director from decisions or orders of MMS officers under 30 CFR part 290 and 30 CFR 250.201 through 250.205, and from the MMS Director to the Interior Board of Land Appeals under 30 CFR 290.7 and 43 CFR part 4 constitute the opportunity for agency review of the agency's decision related to the claim required by 31 U.S.C. 3716(a) and 4 CFR 102.3 (b)(2) and (c). The regulations in this subpart shall not be construed to provide a second opportunity for agency review of the merits of the claim.

(d) The written notice under paragraph (a) of this section shall advise the royalty payor of the payor's right to inspect and copy the agency's records regarding the claim, as required by 31 U.S.C. 3716(a) and 4 CFR 102.3(b)(2). The payor may inspect and copy such records at the office in which they are maintained any time within 30 days after receipt of the notice under paragraph (a) of this section upon a minimum of 5 days advance written notice to MMS. The MMS may charge the payor for any costs of copying.

For civil penalty proceedings under 30 CFR part 250 subpart N, the provisions of 30 CFR 250.201(c) constitute the required opportunity to inspect and copy the agency's records.

(e) The written notice under paragraph (a) of this section shall advise the payor of the payor's right to make a written agreement with MMS to repay the claim in lieu of collection by offset if the payor meets the conditions set forth in § 218.609.

(f) The written notice under paragraph (a) of this section is not administratively appealable within the Department of the Interior and constitutes the final action of the Department.

(g) The written notice under paragraph (a) of this section may notify the payor of either:

(1) MMS' intention to offset any specifically identified overpayment under any lease; or

(2) MMS' intention to offset overpayments which the payor otherwise would recoup by reporting credit adjustments under any lease or set of leases, through the procedure provided under § 218.606, or both.

§ 218.606 Prohibition against credit adjustments after receipt of notice of intention to offset; application of balance until claim is satisfied.

(a) After a payor has received a notice of intention to offset under § 218.605(a), the payor shall not report any credit adjustment on a Form MMS–2014 or any other royalty report form with respect to any payment made in connection with any lease identified in the notice as a lease to which § 218.605(g)(2) applies.

(b) For all leases identified in the notice of intention to offset as leases to which § 218.605(g)(2) applies, the payor shall report all credits which otherwise would have been reported as credit adjustments as a credit balance pursuant to instructions which MMS shall issue in the MMS Oil and Gas Payor Handbook or otherwise. The payor shall not recoup the credit balance.

(c) Each month, MMS will apply the reported credit balance to the amount of the claim until the claim is satisfied. After the claim has been satisfied, MMS will notify the payor to discontinue reporting a credit balance.

§ 218.607 When use of mandated procedures is not required.

Pursuant to 4 CFR 102.3(b)(5), MMS may effect offset without the procedures required under this part if failure to effect an offset would substantially prejudice MMS' ability to collect the claim.

§ 218.608 Time limitation on use of administrative offset.

Pursuant to 31 U.S.C. 3716(c) and 4 CFR 102.3(b)(3), MMS shall not effect an administrative offset to collect a claim for money more than 10 years after the amount due became a claim within the meaning of this subpart.

§ 218.609 Written agreements to repay in lieu of offset.

(a) Pursuant to 4 CFR 102.3(b)(2)(i), MMS will balance the Government's interest in collecting the debt against fairness to the debtor in determining whether to accept a repayment agreement in lieu of collecting a claim by administrative offset. In all circumstances, the determination whether to accept a written repayment agreement is within the discretion of the MMS Director or his/her designee. Ordinarily, MMS will accept a written agreement to repay the amount of the claim in lieu of offset only when an offset would result in undue financial hardship to the royalty payor or would be against equity and good conscience.

(b) The MMS Director or his/her designee may require a payor to submit a bond or letter of credit or other appropriate surety in a form acceptable to MMS securing the amounts to be paid under a repayment agreement, including interest, as a condition of MMS accepting a written repayment agreement.

(c) Nothing in this section shall be construed to limit the Government's authority or discretion to enter into any settlement agreement or compromise regarding any claim or amount owed.

§ 218.610 Waiver of statute of limitations defense in lieu of offset.

If MMS, under § 218.605(a), has given a payor a notice of intention to collect by offset a claim for which the payor asserts a judicial collection action would be barred by any statute of limitations, the payor may request MMS to accept an agreement that the payor would waive and agree not to assert a limitations defense against collection or enforcement of that claim, to the extent of the amount MMS has proposed to collect by offset, in lieu of collecting the claim by offset.

§ 218.611 Requests for administrative offset directed to other Federal agencies.

(a) The MMS Director or his/her designee may request another Federal agency to administratively offset monies payable by that agency to a payor and transfer such funds to MMS for purposes of collecting a claim owed by that payor.

(b) In requesting such offset, MMS will provide the Federal agency holding the funds with a written certification:

(1) That the payor owes the claim;

(2) Of the amount and basis of the claim; and

(3) That MMS has complied with § 218.605 and with the requirements of 4 CFR part 102.

§ 218.612 Requests for administrative offset received from other Federal agencies.

Any Federal agency may request that monies owed to a payor by MMS in connection with any Federal onshore or offshore lease be administratively offset and transferred to that agency for purposes of collecting a debt which the payor owes to that agency. The MMS shall effect the requested offset only after:

(a) Receipt of a written certification by the creditor agency:

(1) That the payor owes the debt;

(2) The amount and basis of the debt;

(3) That the agency has promulgated regulations for the use of administrative offset; and

(4) That the agency has complied with its own regulations and the applicable provisions of 4 CFR part 102; and

(b) A determination by MMS that collection by offset against funds owed by MMS to the payor would be in the best interests of the United States under the circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 218.613 Reduction of tax refunds to satisfy claims.

(a) Under 31 U.S.C. 3720A and 26 CFR 301.6402–6T, MMS may submit notice of any claim in excess of $25, which has been owed for more than 3 months (but not more than 10 years), and which MMS is unable to collect by administrative offset against amounts owed to the royalty payor by MMS, to the Internal Revenue Service (IRS) for purposes of reducing any refund of Federal taxes owed to the royalty payor and payment of such reduction to MMS in full or partial satisfaction of such claim.

(b) Before submitting a notice to the IRS under paragraph (a) of this section, MMS shall notify the royalty payor by certified mail that it intends to take such action if the claim is not paid within 60 days, as required by 31 U.S.C. 3720A(b)(1). See 30 CFR 243.4 for regulations governing serving of official correspondence.

(c) In connection with MMS notices to the IRS for refund reductions, the available administrative appeals to the MMS Director from decisions or orders of MMS officers under 30 CFR part 290, and from the MMS Director to the Interior Board of Land Appeals under 30 CFR 290.7 and 43 CFR part 4 constitute:

(1) The opportunity for the royalty payor to present evidence that all or part of the debt which is the subject of the claim is not past due or is not legally enforceable; and

(2) The procedure for the Agency to consider any evidence presented by the royalty payor and determine whether the debt which is the subject of the claim is valid, past due and legally enforceable, as required by 31 U.S.C. 3720A(b) (2)–(4). The regulations in this subpart shall not be construed to provide a second opportunity for Agency determination regarding the validity or merits of the claim.

(d) All administrative charges incurred in connection with the referral of any claim to the IRS under 31 U.S.C. 3720A(d) and 26 CFR 301.6402–6T(i), including any fees charged to MMS by the IRS, shall be assessed on the claim and increase the amount of the offset.

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30 CFR Part 218

RIN 1010–AB73

Limitations on Credit Adjustments Submitted by Lessees and Other Royalty Payors Under Federal and Indian Mineral Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is proposing to amend its regulations at 30 CFR part 218 to prescribe time and other limitations on the reporting of credit adjustments to previous payments made under Federal onshore and Indian oil, gas, and other mineral leases. The proposed amendments also provide for similar limitations on the reporting of certain credit adjustments under Federal offshore leases.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, Attention: David S. Guzy, telephone (303) 231–3432.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are Geoffrey Heath and Peter J. Schaumberg, Office of the Solicitor, Washington, DC.

I. Background

The MMS administers over 25,000 producing leases for oil, natural gas, coal, other minerals, and geothermal steam underlying Federal lands, Indian tribal and allotted lands, and the Outer Continental Shelf. The MMS is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, and lease terms.

All royalty payors submit monthly reports of sales and royalty which separately list, by line, royalties according to each lease, product produced, and selling arrangement. When a payor discovers an overpayment, it usually submits a credit adjustment, i.e., a negative line to cancel the prior report line, together with a new line showing the corrected information. If the credit adjustment

recoups the overpayment by reducing the current royalty paid, otherwise allowed under applicable law then the credit adjustment has resulted in a "credit." Under section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1339 (Section 10), a lessee or payor under an offshore lease must first submit a request for the credit to MMS, which must then report it to Congress and wait a statutorily prescribed period before allowing the credit. Further, the payor must make the request within 2 years of the date of the original payment. MMS plans to issue proposed regulations applicable to refunds and credits under Section 10 in the near future.

Current statute law does not provide for a time limitation on credit adjustments under onshore Federal or Indian leases analogous to that provided in the OCSLA. Therefore, there have been many instances in which payors have reported credit adjustments many years after the original payment, including for time periods for which the payor may be no longer required to maintain records.

II. Discussion of Proposed Rule

The MMS believes that it is appropriate to require specific notice of and express authorization for the above described credit adjustments after several years have passed.

Consequently, MMS is proposing to add a new subpart H, entitled "Limitations on Credit Adjustments," to its regulations at 30 CFR part 218 to establish new regulations governing the reporting of adjustments to previous royalty payments and other amounts paid in connection with any Federal or Indian mineral lease. The proposed new regulations are discussed below.

Section 218.500 Scope of Regulations

This section describes the scope of the proposed regulations under subpart H of 30 CFR part 218. These rules would apply to the reporting of adjustments to previous royalty payments and certain other payments made in connection with Federal and Indian leases. The rules would not apply to adjustments to MMS interest assessments or reporting assessments such as those under 30 CFR 218.40.

Section 218.501 Definitions

This section establishes definitions for purposes of the proposed regulations under subpart H of 30 CFR part 218.

A "credit adjustment" is an adjusting royalty report line which reduces a royalty or other payment reported and paid in a previous period. If a credit adjustment results in a reduction of a current or future royalties, the payor has taken a "credit." An "offset" is a netting or cancelling of previous overpayments against previous underpayments on the same lease or across lease boundaries if all the individual leases are part of an approved unit or communitization agreement.

Section 218.502 General Time Limits on Credit Adjustments for Onshore Federal and Indian Leases

For onshore Federal and Indian leases, this section would restrict credit adjustments without prior authorization to royalty or other payments due within 5 years before the date of the adjustment, unless otherwise limited by applicable regulation or MMS order. An example, of such a limitation is the coal valuation rules at 30 CFR 206.257(i), which provide that contract revisions or amendments may be applied retroactively to value for royalty purposes for periods no longer than 2 years, unless MMS approves otherwise.

Otherwise allowable credit adjustments could be reported with respect to royalty or other payments made more than 5 years but less than 10 years before the date of the adjustment only after receiving approval from MMS. Credit adjustments with respect to any payment made more than 10 years before the date of the adjustment would be prohibited, with one class of exceptions. A payor, with prior MMS approval, may report a credit adjustment to offset an overpayment against an underpayment on a lease, to the extent the offset does not result in a credit, where the overpayment and underpayment both occur within either the same audit period or the same time period covered by an MMS order to perform a restructured accounting which began more than 10 years before the date that MMS receives the report of the offset and ended within 10 years of that date.

MMS requests comments on the proposed 5- and 10-year time period. MMS specifically requests comments on whether the periods for recoupment on Indian leases should be different than for Federal leases. Comments should include an explanation of the justification for the periods suggested.

Section 218.503 General Time Limits on Credit Adjustments Resulting in Offsets for Federal Leases on the Outer Continental Shelf

Section 10 governs credits and refunds of excess payments under OCS leases. MMS will issue separate regulations applicable to credit adjustments that result in credits on OCS leases. However, offsets of overpayments against underpayments under a single OCS lease which do not result in credits against current or future royalties due are not subject to Section 10, unless an underpayment was created as a result of a credit adjustment to recoup an overpayment, or was otherwise created intentionally to provide an underpayment against which to offset an overpayment. The reasons why Section 10 does not apply to offsets are explained in two Solicitor's opinions, Refunds and Credits Under the Outer Continental Shelf Lands Act. Sol. Op. M–36942, 88 I.D. 1091 (December 15, 1981), and Applicability of Section 10 of the Outer Continental Shelf Lands Act, Sol. Op. M–36977, _____ I.D. _____ (Jan. 15, 1993). Therefore, proposed § 218.503 establishes time limits on credit adjustments for OCS leases which result in offsets and not in credits, and which are consistent with the provisions for onshore Federal and Indian leases.

A payor would be allowed to report credit adjustments which result only in offsets without MMS approval for an overpayment which MMS received within 10 years of the date MMS receives the report of the offset. The payor, with prior MMS approval, also may offset an overpayment and an underpayment which both occur within either the same audit period or the same time period covered by an MMS order to perform a restructured accounting which began more than 10 years before the date that MMS receives the report of the offset and ended within 10 years of that date.

MMS again requests comments on the proposed time period. Comments should include an explanation of the justification for any different periods suggested.

Section 218.504 Other Exceptions to Time Limits for Reporting Credit Adjustments for Federal Onshore, Indian, and OCS Leases

This section proposes first that notwithstanding the proposed §§ 218.502 and 218.503, a payor would be prohibited from reporting any credit adjustment for any payment made within a period for which MMS had audited that payor's royalty payments and notified the payor in writing that the audit period was closed, unless the payor obtained MMS approval for reporting the credit adjustment. MMS anticipates that it would not routinely grant such approval. When an audit period is formally closed in writing, transactions within that period normally are regarded as concluded. An exception where approval may be granted would include a situation where

the audit closure specifically reserved one issue as open which was later resolved.

Another example where approval could be granted is if ongoing litigation resulted in changes to transactions within an otherwise closed audit period.

Second, this section proposes that also notwithstanding the proposed §§ 218.502 and 218.503, a payor may report a credit adjustment for a payment made within a period for which that payor is currently being audited only after notifying MMS that it is reporting the credit adjustment. This is necessary to ensure that MMS auditors have current information regarding the effect of subsequent actions by the payor on transactions within the period under audit.

To ensure compliance with this requirement, this section also proposes that if payor fails to notify MMS of the credit adjustment beforehand, MMS has the authority to disallow the credit adjustment and require repayment of any amount recouped with interest.

Proposed audit regulations which MMS is developing will further address a payor's obligation to notify MMS of credit adjustments and other actions it may take affecting a period currently under audit.

Section 218.503 Authority of MMS to Prohibit Credit Adjustments and Related Matters

For all categories of leases, many lessees have asserted that various MMS orders to pay issued in the last few years allegedly are barred by the statute of limitations. Because MMS may administratively offset overpayments under other leases against underpayments under a particular lease for which a judicial action to collect otherwise would be barred, it is appropriate to prohibit recoupments of overpayments to the extent necessary to enable MMS to effectuate such an offset. Thus, under this proposed section, if a payor alleges in an administrative or judicial proceeding that MMS is time-barred from collecting any amount due within 10 years before the date of an MMS order to pay, MMS may prohibit the payor from reporting any credit adjustment which results in a credit, and may disallow any refund request, with respect to any payments made in connection with any other lease for which it paid royalties within the previous 10 years. Thereafter, the payor may not report any credit adjustment which would result in a credit with respect to any payment made in connection with the identified lease without prior MMS approval.

The payor must then report as a credit balance all credit adjustments which otherwise would have resulted in credits, until the aggregate of the credit balances equals the amount which the payor claims is time-barred, together with interest on the amount claimed by MMS. MMS would issue instructions, in the MMS *Payor Handbook* or otherwise, regarding specific procedures. After the aggregate credit balance equals the amount specified, the payor may resume reporting otherwise allowable credit adjustments without further MMS approval, except that MMS may require that the credit balance be increased to reflect increased interest accruals. The MMS would not apply the aggregate credit balance against the amount which the payor claims is time-barred through administrative offset until the amount becomes a "claim" as defined in 30 CFR 218.602 of proposed new regulations governing collection of royalties, interest, and other amount due under Federal and Indian mineral leases by administrative offset as provided under the Debt Collection Act of 1982. Those proposed regulations are published elsewhere in this issue of the **Federal Register**.

If MMS issues an order to a payor pursuant to proposed § 218.505(a) directing the payor not to report certain credit adjustments, and if the payor reports adjustments in contravention of that order, then MMS may issue a Notice of Noncompliance for civil penalties pursuant to 30 CFR part 241 and 30 U.S.C. 1719.

Paragraph (b) of this section would provide that in lieu of prohibiting credit adjustments and recoupments, MMS may be willing in many instances to accept the payor's agreement to waive and not assert a limitations defense against a judicial enforcement or collection action of the amount which the payor claims is time-barred, together with interest on the amount claimed by MMS. The proposed subsection 218.503(b) allows the payor to request MMS to accept such an agreement.

Under paragraph (c) of this section, MMS could establish threshold amounts for any category of leases, above which a payor may not report a credit adjustment which results in a credit without prior MMS approval. The MMS also could require a payor to refrain from reporting a credit adjustment for any amount submitted for approval for a reasonable period of time as MMS may need to verify the nature and amount of any overpayment.

Section 218.506 Effect of Time-Bar Defenses on Audit Practice

Paragraph (a) of this section clarifies the law and current practice that MMS may apply any overpayments made in connection with an underpaid lease, which are discovered upon audit, to satisfy the allegedly time-barred underpayment.

Paragraph (b) of this section clarifies that MMS will first offset a payor's overpayments and underpayments on the same lease which occurred within the same audit period or within 10 years of the date MMS asserts the offset, whichever is longer, beginning with the oldest underpayment first, before holding any net overpaid amount for application to underpayments under any other lease through administrative offset. For example, if there is an underpayment which was discovered during the audit of a prior period and which occurred within ten years of the date MMS asserts an offset, and the payor alleges that MMS is time-barred from recovering such underpayment, if MMS discovers a larger overpayment in the audit of the current period, MMS will offset first against the underpayment on the same lease.

Similarly, if the payor previously had been instructed not to report any credit adjustments for its overpayments on that lease and had established a credit balance under § 218.503, all or part of the credit balance would be applied first to any net underpayment by the payor on the same lease. If, after such application, the payor still is net overpaid, MMS may then hold the balance to be applied to underpayments on other leases through administrative offset.

Paragraph (c) of the proposed § 218.506 would provide two exceptions to this priority. The first is that MMS would offset overpayments and underpayments occurring in consecutive months, where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month, before applying the rule of paragraph (b). The purpose of this exception is that MMS recognizes that on many occasions, production is inadvertently reported for the immediately preceding production month or the immediately succeeding production month and royalties have otherwise been paid correctly. Such reporting errors should be corrected before offsetting an overpayment against an unrelated underpayment.

The second exception is the analog of the first exception when the error occurs in the "cross-lease netting" context. Recently promulgated regulations at 30 CFR 218.42(b) (57 FR 62200 (Dec. 30, 1992)) address this situation. If a reporting error falls within that regulation, the allowed cross-lease offset should be reported before an overpayment is applied to an unrelated underpayment on the same lease.

Section 218.507 Relationship of Credit Adjustments to Known Underpayments

Payors have continued to report credit adjustments to recoup overpayments occurring in particular months even though known underpayments from other (particularly earlier) periods under the same lease are still outstanding and unpaid, including known underpayments with respect to which the payor claims MMS is barred by a statute of limitations from collecting. Proposed § 218.507 addresses this situation. In the event there are known underpayments from any other period under the same lease, it requires the payor to apply the amount which would have been recouped from current month's royalties as a result of a credit adjustment (or for which the payor would have requested a refund) to underpayments on the same lease, including, but not limited to, underpayments which the payor asserts MMS is time-barred from collecting, and to revise its royalty reports for the underpaid period accordingly.

The payor would be required to offset the overpayment against the oldest known underpayments first, including interest owed thereon, which occurred within a defined period. Underpayments subject to such offset would be those which occurred either (1) within 10 years of the date MMS receives the report of the offset (or the date MMS should have received the report of the offset if the payor had acted diligently after discovery of the overpayment and underpayment), or (2) within either the same audit period or the same time period covered by an MMS order to perform a restructured accounting as the overpayment occurred, if that period began more than 10 years before the date MMS receives the report of the offset and ended within 10 years of that date.

There would be two exceptions to this priority similar to those applicable under the proposed § 206.506. Notwithstanding the general rule, a payor should first offset overpayments and underpayments occurring in consecutive months, where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month. A payor also should first offset related overpayments and underpayments subject to the "cross-lease offsetting" regulation at 30 CFR 218.42(b).

The requirements of this proposed section would not apply to situations where the MMS has alleged that the payor has underpaid but the payor disputes the liability in an administrative appeal or judicial proceeding (on grounds other than time bar), and has posted an adequate surety instrument for amounts due which have been calculated. This provision reflects current MMS practice and is consistent with a recent decision of the Assistant Secretary for Land and Minerals Management, *Office of the State Controller of California*, MMS–92–0278–O&G (Jan. 15, 1993).

Section 218.508 Effect of Offsets on Late Payment Interest

This section specifies that in cases where overpayments have been offset against underpayments, late payment interest charges under applicable law and regulations will be assessed only on the net underpayment, if any, remaining after offset.

Section 218.509 Exceptions

This section specifies that adjustments resulting from any of the following are not within the limitations prescribed under the proposed rule:

(a) The retroactive effect of a unitization or communitization agreement; and

(b) Changes in allowed estimated payments;

The MMS also is proposing to make the final rule effective as of the date that this proposed rule is published in the **Federal Register**. The MMS specifically would like comments on the proposed effective date.

The final rule would apply to credits or proposed credits that would be subject to reporting after the effective date of the rule but that would apply to royalty and other payments for production months prior to the date of the rule.

The policy of the Department of the Interior (Department) is, whenever, practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the ADDRESSES section of this preamble. Comments must be received on or before the date identified in the DATES section of this preamble.

Procedural matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rulemaking would establish time limitations on the reporting of credit adjustments to previous payments made under Federal onshore and Indian oil, gas, and other mineral leases. There are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral

resources. Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is proposed to be amended as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; 43 U.S.C. 1801 et seq.

2. A new subpart H is added to read as follows:

Subpart H—Limitations on Credit Adjustments

Sec.

218.500 Scope of regulations.
218.501 Definitions.
218.502 General time limits on credit adjustments for onshore Federal and Indian leases.
218.503 General time limits on credit adjustments resulting in offsets for Federal leases on the Outer Continental Shelf.
218.504 Other exceptions to time limits for reporting credit adjustments for Federal onshore, Indian, and OCS leases.
218.505 Authority of MMS to prohibit adjustments credits and related matters.
218.506 Effect of time-bar defenses on audit practice.
218.507 Relationship of credit adjustments to known underpayments.
218.508 Effect of offsets on late payment interest.
218.509 Exceptions.

Subpart H—Limitations on Credit Adjustments

§ 218.500 Scope of regulations.

The provisions of this subpart apply to the reporting of adjustments to previous royalty payments and other amounts, excluding interest and reporting assessments, paid in connection with any lease issued by the Secretary under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any onshore Federal land or interest in land onshore or Indian tribal or allotted land, in which result either in credits against current royalty payments or refunds, or in offsets of previous overpayments against previous underpayments on the same lease or unit. In addition, §§ 218.503 through 218.509 also apply to offsets of overpayments and underpayments on leases on the Outer Continental Shelf (OCS). Credits and refunds of excess payments made under Federal leases on the OCS are governed by section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1339 (Section 10) and not the rules in this subpart.

§ 218.501 Definitions.

For the purpose of this subpart:

Credit or *crediting* means reduction of a current or future royalty or other payment made in connection with a lease as a result of reporting a credit adjustment.

Credit Adjustment means any adjustment reported on a Report of Sales and Royalty Remittance (Form MMS–2014) or any other royalty report form which reduces any royalty or other payment made in connection with a lease which was reported and paid in any previous period.

Lease means any lease issued by the Secretary under any law providing for the disposition under lease of oil, gas, coal, any other mineral, or geothermal steam, from any Federal land or interest in land or Indian tribal or allotted land, or, for purposes of §§ 218.503 through 218.509 only, from the Outer Continental Shelf. For purposes of this subpart, the term "lease" also applies to a unit where reporting is done on a unit basis.

Offset means to net or cancel previous overpayments against previous underpayments on the same lease or across lease boundaries if all the individual leases are part of an approved unit or communitization agreement.

Payor means any person, as defined in 30 U.S.C. 1702(12), who pays royalty or other payments under any lease, and includes the payor's predecessors in interest and successors in interest.

§ 218.502 General time limits on credit adjustments for onshore Federal and Indian leases.

Subject to other provisions of this subpart, and subject to the limitations of subpart I of this part, payors under onshore Federal and Indian leases:

(a) may report otherwise allowable credit adjustments with respect to payments made within 5 years before the date of the adjustment without advance approval of MMS, unless otherwise limited by applicable regulations or MMS order;

(b) may report otherwise allowable credit adjustments with respect to payments made more than 5 years but less than 10 years before the date of the adjustment only after receiving MMS approval; and

(c) shall not report any credit adjustment with respect to any payment made more than 10 years before the date of the adjustment, except that a payor, after receiving MMS approval, may report a credit adjustment to offset an overpayment against an underpayment which both occur within either the same audit period or the time period covered by an order to perform a restructured accounting, the beginning of which is more than 10 years before the date that MMS receives the Form MMS–2014 that includes the report of the offset and the end of which is within 10 years of that date, to the extent such offset does not result in a credit.

§ 218.503 General time limits on credit adjustments resulting in offsets for Federal leases on the Outer Continental Shelf.

A payor may offset an overpayment made on any OCS lease (or unit) against an underpayment made in any prior month on that same lease or unit for the same or a different product without submitting a request for refund or credit under Section 10, to the extent that reporting a credit adjustment does not result in a credit, if the underpayment was not created as a result of a credit adjustment to recoup the amount of the overpayment, or was not otherwise created intentionally to provide an underpayment against which to offset the overpayment, and either—

(a) MMS received the overpayment within 10 years of the date that MMS receives the Form MMS–2014 that includes the report of the offset; or

(b) the overpayment and underpayment occurred within either the same audit period or the time period covered by an order to perform a restructured accounting, the beginning of which is more than 10 years before the date that MMS receives the Form MMS–2014 that includes the report of the offset and the end of which is within 10 years of that date, and the payor receives MMS approval to report the offset.

§ 218.504 Other exceptions to time limits for reporting credit adjustments for Federal onshore, Indian, and OCS leases.

(a) Notwithstanding the provisions of §§ 218.502 and 218.503, a payor shall not report any credit adjustment for any payment made within a period for which MMS had audited that payor's royalty payments and notified the payor in writing that the audit period was closed, without MMS approval.

(b) Notwithstanding the provisions of §§ 218.502 and 218.503, a payor may

report a credit adjustment for a payment made within a period for which MMS is currently auditing that payor's payments only after notifying MMS that it is reporting the credit adjustment. If a payor fails to notify MMS of the credit adjustment, MMS may disallow the credit adjustment and require that any amount recouped be repaid with interest computed in accordance with 30 CFR part 218.

§ 218.505 Authority of MMS to prohibit adjustments credits and related matters

(a) (1) Following any allegation by any payor in any administrative or judicial proceeding that MMS is time-barred from collecting any amount from that payor which was due within 10 years before the date of an MMS order to pay the amounts due, MMS may issue an order prohibiting the payor from reporting any credit adjustment which results in a credit with respect to any payment made in connection with any lease for which that payor paid royalties or other payments within 10 years before the date of such order, and may disallow any refund request with respect to any such lease. After a payor has received such an order, the payor shall not report any credit adjustment which results in a credit on a Form MMS–2014 or any other royalty report form with respect to any payment made in connection with any lease identified in the order without prior MMS approval.

(2) For all leases identified in the order issued under paragraph (a)(1) of this section, the payor shall, pursuant to instructions which MMS shall issue in the "MMS Payor Handbook" or otherwise, report as a credit balance all credit adjustments which otherwise would have resulted in credits. The payor shall not recoup the credit balance.

(3) The payor shall continue to report credit balances pursuant to paragraph (a)(2) of this section until the aggregate of the credit balances equals the amount which the payor claims is time-barred, together with interest thereon through the date of the order issued under paragraph (a)(1) of this section and for 1 year in advance, as specified in such order.

(4) After the aggregate credit balance established pursuant to paragraph (a)(2) of this section equals the amount specified in the order, the payor may resume reporting otherwise allowable credit adjustments which result in credits without further MMS approval, except that MMS may periodically require that the credit balance be increased through the procedure provided in paragraphs (a)(1) through (a)(3) of this section to reflect increased interest accrued.

(5) The MMS will not apply the aggregate credit balance against the amount which the payor claims is time-barred by way of administrative offset until the amount which MMS alleges the payor owes becomes a "claim" as defined in 30 CFR 218.602.

(b) If MMS have issued an order under paragraph (a) of this section prohibiting the payor from reporting any credit adjustment which results in a credit with respect to any payment made in connection with any lease, MMS may limit or remove the prohibition if the payor agrees in writing that the payor waives and agrees not to assert a limitations defense against collection or enforcement of the amount which the payor claims is time-barred, together with interest on the amount MMS claims.

(c) The MMS Director or his/her designee may:

(1) by notice published in the **Federal Register** or through amendment to the MMS payor handbooks, or otherwise by order establish threshold amounts for any lease or category of leases, above which a payor may not report a credit adjustment to any previous payment made for any production month under any lease which results in a credit without prior MMS approval, under such procedures as may be prescribed; and

(2) order any payor to not recoup or report a credit adjustment which results in a credit for any amount submitted for approval for such reasonable period of time as may be necessary for MMS to verify the nature and amount of any overpayment. A payor may not divide the amount of any prior payment for any production month under any lease to be recouped through use of a credit adjustment into smaller increments to be recouped or reported as successive credit adjustments in successive months for purposes of avoiding the requirements of this subpart.

§ 218.506 Effect of time-bar defenses on audit practice.

(a) Following any allegation by any payor in any administrative or judicial proceeding that MMS is time-barred from collecting any amount due from that payor with respect to any lease, MMS may apply any overpayments, determined in accordance with paragraph (b) of this section, made in connection with that lease by that payor which are discovered upon audit to satisfy the allegedly time-barred underpayment.

(b) If a payor has made an overpayment with respect to a lease, MMS first will offset that overpayment against that payor's underpayments on the same lease, which occurred within he same audit period or within 10 years of the date MMS asserts the offset, whichever is longer, beginning with the oldest underpayment first. Any net overpayment remaining after such offset may be held for application to any claim resulting from an underpayment under any other lease through administrative offset.

(c) (1) Notwithstanding paragraph (b) of this section, MMS will first offset overpayments and underpayments occurring in consecutive months where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month.

(2) Notwithstanding paragraph (b) of this section, if a payor demonstrates that an overpayment which MMS has used to offset against underpayments on a lease pursuant to paragraph (b) would be subject to offsetting against a related underpayment on a different lease pursuant to 30 CFR 218.42(b), MMS will first account for the allowed cross-lease offset before applying the overpayment to an underpayment on the same lease.

§ 218.507 Relationship of credit adjustments and refund requests to known underpayments.

(a) If a payor otherwise would report a credit adjustment which would result in a credit, or otherwise would request a refund of an amount previously paid, under circumstances where there are known underpayments occurring in any other period under the same lease, the payor shall apply the amount which otherwise would have been recouped from current month's royalties, or for which a refund would have been requested, as an offset against any known underpayment under that lease (including, but not limited to, underpayments which the payor asserts MMS may not collect because of a statute of limitations), as prescribed in paragraph (b) of this section.

(b)(1)(i) Any overpayment shall be offset first against the oldest known underpayments, including interest owed thereon, occurring on the same lease:

(A) within 10 years of the date that MMS receives the Form MMS–2014 that includes the report of the offset, or the date that MMS should have received the report of the offset if the payor had acted diligently after discovery of the overpayment and underpayment; or

(B) within either the same audit period or the same time period covered

by an MMS order to perform a restructured accounting as the overpayment occurred, the beginning of which is more than 10 years before the date that MMS receives the Form MMS–2014 that includes the report of the offset and the end of which is within 10 years of that date.

(ii) The payor shall revise its royalty report for the underpaid period accordingly.

(2)(i) Notwithstanding paragraph (b)(1) of this section, a payor shall first offset overpayments and underpayments occurring in consecutive months where both the overpayment and the underpayment arise because a volume of production reported for one production month should have been reported for the immediately preceding or immediately succeeding production month.

(ii) Notwithstanding paragraph (b)(1) of this section, a payor shall first offset an overpayment subject to offsetting against a related underpayment on a different lease pursuant to 30 CFR 218.42(b), before applying the overpayment to an underpayment on the same lease.

(c) This section does not apply in any case where the MMS has alleged that the payor has underpaid but the payor disputes the liability for additional royalties (on grounds other than time bar) in an administrative appeal or judicial proceeding, and has posted an adequate surety instrument under part 243 of this title or other applicable law for amounts due which have been calculated.

§ 218.508 Effect of offsets on late payment interest.

If a payor offsets overpayments against underpayments pursuant to this subpart, late payment charges pursuant to 30 U.S.C. 1721(e) or 30 CFR part 218 shall be assessed each month only on the net amount of underpayment, if any, remaining after the offset.

§ 218.509 Exceptions.

Adjustments in reporting resulting from any of the following shall not be considered to be credit adjustments within the meaning of this subpart:

(a) The retroactive effect of a unitization or communitization agreement;

(b) Changes in allowed estimated payments.

[FR Doc. 93–19740 Filed 8–16–93; 8:45 am]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842 and 843

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; State Inspection and Enforcement Authority, Federal Inspection and Enforcement Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comment.

SUMMARY: OSM is seeking comments concerning the rule changes suggested in a petition submitted pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The petitioners seek to revise the regulations addressing the oversight role and responsibilities of OSM in States, which have been delegated primary responsibility over the regulation of surface coal mining and reclamation operations by the Secretary of the Interior. The petition focuses on the treatment of citizen complaints alleging violations at surface coal mining operations and citizen complaints alleging that a State permitting decision does not conform to applicable requirements. The petition suggests OSM amend its regulations at 30 CFR parts 840, 842 and 843 relating to the issuance of Federal ten-day notices of States, handling my OSM of potentially improvidently issued or allegedly deficient permits, and processing of citizen complaints that allege either on-the-ground violations or defects in State-issued permits. Comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on September 16, 1993.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660–NC, 1951 Constitution Avenue, NW., Washington, DC. 20240; or hand-deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone (202) 208–2550 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Substance of Petition
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the suggested change should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed (see **ADDRESSES**) may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition, copies of 30 CFR parts 840, 842, and 843, and other OSM regulations are available for inspection and may be obtained at the location listed under **ADDRESSES**.

Public Hearings

OSM will not hold public hearings on the proposed revision, but OSM personnel will be available to meet with the public during business hours 9 a.m. to 5 p.m. during the comment period. In order to arrange such a meeting, call or write to the person identified under **FOR FURTHER INFORMATION CONTACT**.

II. Background and Substance of Petition

OSM received a letter dated July 16, 1992, from Gregory E. Conrad transmitting a petition for rulemaking on behalf of the Interstate Mining Compact Commission, a multi-State governmental organization representing 17 eastern and midcontinent States. The petitioners requested that 30 CFR parts 840, 842 and 843 be amended to address the oversight role of OSM in States where a State regulatory program is in effect. The petition focuses on the treatment of citizen complaints alleging violations at surface coal mining operations and citizen complaints alleging that a State permit decision does not conform to applicable requirements. The text of the petition appears at the end of this notice.

Under section 201(g) of SMCRA, any person may petition Director of OSM to initiate a proceeding for the issuance amendment, or repeal of any of the regulations implementing SMCRA.

Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter notice of that decision will be published in the **Federal Register**. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before final rulemaking. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt for the petition for rulemaking is a preliminary step prior to the initiation of the rulemaking process. If a decision is made to grant the petition, a rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute major Federal action having a significant effect on the human environment for which an environmental impact a statement under the National Environmental Policy Act 44 U.S.C. 4322(a)(c), is needed.

List of Subjects

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: August 9, 1993.

W. Hord Tipton,

Acting Director.

Appendix

The text of the petition dated July 16, 1993 from Gregory E. Conrad is as follows.

Note: In the Petition for Rulemaking, the petitioner states that language in the regulations suggested for deletion is interlined. For purposes of publication in the **Federal Register**, these suggested deletions appear in brackets.

Interstate Mining Compact

July 16, 1993.

Honorable Bruce Babbitt,

Secretary, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

Dear Mr. Secretary: On behalf of the member states of the Interstate Mining Compact Commission and several other affected coal-producing states, we enclose a petition for rulemaking pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The petition addresses the role of the Office of Surface Mining (OSM) in primacy states with respect to the treatment of citizens complaints alleging violations at surface coal mining operations and citizen complaints alleging that a state permitting decision does not conform to applicable requirements or otherwise contains "deficiencies".

When Congress debated the enactment of SMCRA, it established a unique combination of roles for the federal government, the states and citizens. The states were provided with front line authority for the implementation of SMCRA. OSM was vested with oversight responsibilities to assure that the objectives of SMCRA were accomplished. Citizens were imbued with some of the most extensive and far-reaching public participation rights of any federal statute. Congress envisioned that this allocation of authority would serve to achieve he purposes of SMCRA.

The importance of citizen rights under SMCRA is a critical element of the overall scheme of enforcement. The purpose of our petition is to give meaning to those rights in the larger scheme of implementation under the Act and to recognize the role of the states in effectuating those rights. The petition essentially provides for citizens to exercise their rights of public participation within the guise of federally approved state programs, which contain a plethora of procedures designed to enhance the exercise of those rights.

The states strongly support an effective and meaningful public participatory role in the implementation of their programs. At the same time, the states believe that role should conform to the procedures set out in their approved regulatory programs as envisioned by Congress during SMCRA's enactment.

We trust that you will expeditiously process our petition according to the procedures at 30 CFR 700.12. Should you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,

Gregory E. Conrad,

Executive Director.

Petition for Rulemaking

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(e), the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1211 (c)(2) and (g), and regulations of the Office of Surface Mining Reclamation and Enforcement (OSM), 30 CFR 700.12, the Interstate Mining Compact Commission petitions the Director of OSM for certain amendments and modifications to regulations contained in 30 CFR Parts 840, 842 and 843 relating to the issuance of Federal Ten-Day Notices in those states with primary regulatory authority under SMCRA, the handling by OSM of potentially improvidently issued or allegedly deficient state permits, and the handling of citizen complaints that allege either on-the-ground violations or defects in state-issued permits. The proposed amendments and modifications will conform OSM's permanent program regulations to the plain language of the statute, Congressional intent and existing case law.

Description of Petitioners

The Interstate Mining Compact Commission (IMCC or Compact) is a multi-state governmental organization representing 17 eastern and midcontinent states in which about 70% of the Nation's coal is produced. The Commission's purposes are to promote the protection and restoration of land, water and other resources affected by mining, and to do so through programs in each member state that achieve comparable benefits in resource protection while maintaining an efficient, productive and viable mining industry. Most Commission member states have "primacy" under SMCRA, that is, their regulation of surface coal mining operations within their borders is under programs established by state law and regulation that OSM has formally determined are at least as stringent as the requirements of SMCRA.[1]

Proposed Amendments and Modifications

Petitioners request the following amendments and modifications to the permanent program regulations of the Office of Surface Mining. Language in the regulations suggested for deletion is interlined; new language is italicized.

1. Add a new 30 CFR 842.2 as follows:

Section 842.2 Definitions

As used in this Part the following terms have the specified meanings:

Appropriate Action means enforcement action or other action authorized under the State program to cause a violation to be corrected or a showing of good cause for failure to do so. An action or response by a State regulatory authority that is not arbitrary, capricious, or an abuse of discretion (as that term is used in Federal case law) under the State program shall be considered appropriate action.

Good Cause includes:

(i) Under the State program, the possible violation does not exist;

[1] The IMCC member states include the following states with approved regulatory programs under SMCRA: Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Missouri, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, West Virginia. IMCC is also supported in this petition effort by the member states of the Reclamation Committee of the Western Interstate Energy Board (WIEB) which include New Mexico, North Dakota, Montana, Colorado, Utah and Wyoming. IMCC is also supported by the states of Iowa and Kansas in this petition effort. These latter eight states all operate "primacy" programs under SMCRA.

(ii) The State regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program does exist;
(iii) The State regulatory authority lacks jurisdiction under the State program over the possible violation or operation;
(iv) The State regulatory authority is precluded by an administrative or judicial order from an administrative body or court of competent jurisdiction from acting on the possible violation, including an order granting temporary relief under the state program; or
(v) The State regulatory authority is diligently pursuing or has exhausted appropriate enforcement provisions of the State program.

Reason to believe that a violation exists means that an alleged condition or practice would, if true, constitute a violation. Where a state is the regulatory authority, reason to believe must be based on the state's response to a person's allegation that a violation exists in addition to a federal inspection to determine whether there is reason to believe that a violation exists.

Violation includes:
(i) In states where there is no State regulatory authority, a violation of the Act, this chapter, or any condition of an exploration approval or permit imposed by the Act or this chapter; or
(ii) In states where there is a State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and part 733 of this chapter, a violation of the approved State program or condition of an exploration approval or permit, imposed by the State program, exists on the site of a surface coal mining operation. Violation does not include a defect in the approval of the permit or exploration approval.

2. Amend 30 CFR 842.11 as follows:

Section 842.11 Federal inspections and monitoring.

General Requirements.

(a) Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary—

(1) To monitor and evaluate the administration of approved State programs. Such monitoring and evaluation inspections shall be conducted jointly with the State regulatory authority where practical and where the State so requests;

(2) To develop or enforce Federal programs and Federal lands programs;

(3) To enforce those requirements and permit conditions imposed under a State program not being enforced by a State, under section 504(b) or section 521(b) of the Act, part 733 of this chapter, or as provided in this section [and];

(4) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with; and

(5) In response to citizens' request for federal inspections.

Note: Existing section 842.11(b) is now incorporated in other sections of the proposed rule language, i.e. 842.2, 842.13 and 842.14.]

(b) [c] The Office, when acting as the regulatory authority under a Federal program or a Federal lands program and when enforcing a State program in whole or in part, pursuant to section 504(b) or section 521(b) of the Act and part 733 of this chapter, shall conduct inspections of all coal exploration and surface coal mining and reclamation operations under its jurisdiction. The Office shall—

(1) With respect to active surface coal mining and reclamation operations;

(i) Conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit requirements and conditions imposed under an applicable program.

(A) Aerial inspections shall be conducted in a manner which resonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(B) Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: *Provided,* That any indication of a condition, practice or violation constituting cause for issuance of a cessation order under section 521(a)(2) shall be investigated on site immediately, *And provided further,* That an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(ii) Conduct an average of at least one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations.

(2) With respect to inactive surface coal mining and reclamation operations:

(i) Conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining and reclamation operation; and

(ii) Conduct such partial inspections of each inactive surface coal mining and reclamation operation as are necessary to ensure effective enforcement of the regulatory program and the Act.

(iii) For purposes of this section, an inactive surface coal mining and reclamation operation is one for which—

(A) The Office has secured from the permittee the written notice provided for under §§ 816.13(b) or 817.131(b) of this chapter; or

(B) Reclamation Phase II as defined at § 800.40 of this chapter has been completed.

(3) With respect to coal exploration operations, conduct such inspections as are necessary to ensure compliance with the Act by those coal explorations which substantially disturb the natural land surface.

(c) [d] The inspection required under paragraphs (a), and (b) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations including those which operate nights, weekends, or holidays.

(2) Occur without prior notice to the permittee or any agency or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the applicable program.

(d) [e] Abandoned site means a surface coal mining and reclamation operation for which the Office has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The Office:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to sections 518(e), 518(f), 521(a)(4) or 5212(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(e) [f] (1) In lieu of the inspection frequency established in paragraph *(b)* [c] of this section, the Office shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site.

(2) Before ceasing to perform inspections at the frequency required by paragraph *(b)* [c] of this section at an abandoned site, the regulatory authority shall:

(i) Evaluate the environmental conditions and operational status of the site: and

(ii) Document in writing the inspection frequency necessary to comply with paragraph *(e)* [f] (1) of this section, and the reasons for selecting that frequency.

3. Amend 30 CFR 842.12 by deleting existing subsection (a) and revising the balance of the section as follows:

Section 842.12 Requests for Federal Inspections

(a) In states where there is no State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and part 733 of this chapter, a person may request a Federal inspection by furnishing to an authorized representative of

the Secretary a signed, written statement (or an oral report followed by a signed, written statement) alleging that a violation exists at the minesite. The statement shall set forth a phone number and address where the person can be contacted.

(b)(1) In states where there is a State regulatory authority and the Office is not enforcing the State program under Section 504(b) or 521(b) of the Act and part 733 of this chapter, a person may request a Federal inspection by furnishing to an authorized representative of the Secretary a signed, written statement) (or an oral report followed by a signed, written statement) setting forth a phone number and address where the person can be contacted and alleging:

(i) That a violation exists at the minesite; and

(ii) That the State regulatory authority has been notified, in writing, of existence of the violation and the State regulatory authority has:

(A) Provided a response to the complaint, or

(B) Failed to respond within the time frames set forth in the state regulatory authority's citizens complaint procedures.

(b)(2) The statement in Section (b)(1) shall set forth with reasonable specificity the violation of the state program or condition of a permit; the date upon which the person informed the state regulatory authority; the response or action taken by the state regulatory authority; and any other information relevant to the state's disposition of the person's request for a state inspection and enforcement action including whether the person has requested under the state program administrative or judicial review of the state regulatory authority's decision not to inspect or take enforcement action with respect to the alleged violation.

(c)[b] The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law.

(d)[c] If a Federal inspection is conducted as a result of information provided to the Office by a person as described in paragraph (a) of this section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(e)[d] Within ten days of the Federal inspection or, if there is no Federal, inspection, within 15 days of receipt of the person's written statement, the Office shall send the person the following:

(1) If a Federal inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the Office under Sec. 842.156.

(f)[e] The Office shall give copies of all materials in paragraphs (e)[d](2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under paragraph (c)[b] of this section.

4. Add a new 30 CFR 842.13 as follows:

Section 842.13 Federal Inspections to Evaluate Approved State Programs

(a) In States where there is a State regulatory authority and the Office is not enforcing the State program under section 504(b) or 521(b) of the Act and part 733 of this chapter, after an inspection to monitor and evaluate the administration of an approved State program (pursuant to § 842.11(a)(1)), if an authorized representative of the Secretary has reason to believe that a violation exists on the site of a surface coal mining operation, the authorized representative shall notify the State regulatory authority of the alleged violation, unless a cessation order was required under section 843.11 at the time of the inspection.

(b) The State regulatory authority shall have ten days to take appropriate action to cause the violation to be corrected or to show good cause for failure to take appropriate action and to inform the authorized representative of its response.

(c) After receiving a response from the State regulatory authority, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met. Failure by the State regulatory authority to respond within the ten days shall not prevent the authorized representative from making the determination, and will constitute a waiver of the state regulatory authority's right to request review Under paragraph (d) of this section.

(d) The authorized representative shall immediately notify the State regulatory authority in writing when in response to a ten-day notice the State regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. The notification shall include a detailed explanation of why the State's action or response is considered to be arbitrary, capricious or an abuse of discretion. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, for informal review of that written determination by the Deputy Director. Informal review shall include a hearing before the Deputy Director, if requested by the State. Such a request for informal review may be submitted to the appropriate OSMRE field office or to the office of the Deputy Director in Washington, DC. The request must be received by OSMRE within 5 days from receipt of OSMRE's written determination.

(e) Unless a cessation order was required under section 843.11, or unless the State regulatory authority has failed to respond to the ten-day notice, no Federal inspection action shall be taken or notice of violation issued regarding the ten-day notice until the time to request informal review as provided in § 842.13(d) has expired or, if informal review has been requested, until the Deputy Director has completed such review.

(f) After reviewing the written determination of the authorized representative and the request for informal review, including any hearing, submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Director decide that the State regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority and to the permittee a written explanation of his decision, including a detailed explanation of why the Deputy Director finds the State's action to be arbitrary, capricious or an abuse of discretion, and if the ten-day notice resulted from a request for a federal inspection under 842.12 or 842.14 of this part, he shall send written notification of his decision to the person who made the request. Any determination made under this paragraph shall constitute final agency action by the Secretary within the meaning of 5 U.S.C. 704.

5. Add a new 30 CFR 842.14 as follows:

Section 842.14 Federal Inspection Responding to Citizen Requests

(a) In states where there is no State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and part 733 of this chapter, an authorized representative of the Secretary shall immediately conduct a Federal inspection when he or she has reason to believe there exists:

(1) A violation at the minesite of the Act, this chapter, the applicable program, or any condition of a permit or an exploration approval, or

(2) Any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(b) In states where there is a State regulatory authority and the Office is not enforcing the State program under Section 504(b) or 521(b) of the Act and part 733 of this chapter, an authorized representative of the Secretary shall immediately conduct a Federal inspection when:

(1) A person alleges that there exists:

(i) A possible violation at the minesite of the applicable State program, or any

condition of a permit or an exploration approval, or

(ii) Any condition, practice, or violation at the minesite which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources, and

(2) The person supplying the information supplies adequate proof that the State regulatory authority has been notified of the alleged violation and has failed to respond or has failed to take appropriate action.

(c) (1) If, after the inspection and review of any State regulatory response, the authorized representative has reason to believe that the alleged violation exists on the site of the surface coal mining operation, the authorized representative shall notify the State regulatory authority of the alleged violation, unless a cessation order was required under Section 843.11 at the time of the inspection.

(2) The State regulatory authority shall have ten days to take appropriate action to cause the violation to be corrected or to show good cause for failure to take appropriate action and to inform the authorized representative of its response.

(3) After receiving a response from the State regulatory authority, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met. Failure by the State regulatory authority to respond within the ten days shall not prevent the authorized representative from making the determination, and will constitute a waiver of the state regulatory authority's right to request review under paragraph (4) of this section.

(4) The authorized representative shall immediately notify the state regulatory authority in writing when in response to a ten-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. The notification shall include a detailed explanation of why the State's action or response is considered to be arbitrary, capricious or an abuse of discretion. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, for informal review of that written determination by the Deputy Director. Informal review shall include a hearing before the Deputy Director, if requested by the state. Such a request for informal review may be submitted to the appropriate OSMRE field office or to the office of the Deputy Director in Washington, DC. The request must be received by OSMRE within 5 days from receipt of OSMRE's written determination.

(5) Unless a cessation order was required under Section 843.11, or unless the state regulatory authority has failed to respond to the ten-day notice, no Federal inspection action shall be taken or notice of violation issued regarding the ten-day notice until the time to request informal review as provided in Section 842.14(c)(4) has expired or, if informal review has been requested, until the Deputy Director has completed such review.

(6) After reviewing the written determination of the authorized representative and the request for informal review, including any hearing, submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Director decide that the State regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority and to the permittee a written explanation of his decision, including a detailed explanation of why the Deputy Director finds the state's action to be arbitrary, capricious or an abuse of discretion, and if the ten-day notice resulted from a request for a Federal inspection under 842.12 or 842.14 of this part, he shall send written notification of his decision to the person who made the request. Any determination made under this paragraph shall constitute final agency action by the Secretary within the meaning of 5 U.S.C. 704.

6. Amend existing 30 CFR 842.13 as follows:

Section 842.15 Right of Entry

(a) Each authorized representative of the Secretary conducting a Federal inspection under sec. [842.11] 842.12, 842.13 and 842.14: * * *

7. In accordance with the renumbering of the above sections, the following section numbers also change:

Existing section 842.14 becomes 842.16
Existing section 842.15 becomes 842.17
Existing section 842.16 becomes 842.18

8. Delete existing section 843.21 and add a new section 773.28 to read as follows:

Section 773.28 Procedures for OSMRE Actions Pertaining to Improvidently Issued State Permits.

(a) If OSMRE has reason to believe that a state surface coal mining and reclamation permit meets the criteria for an improvidently issued permit in Sec. 773.20(b) of this chapter, or the state program equivalent, and the state has failed to take appropriate action on the permit under state program equivalents of Sections 773.20 and 773.21 of this chapter, OSMRE shall conduct a review to determine whether action pursuant to Section 732.17 or part 733 of this chapter is appropriate in light of the state's overall administration of its permitting program.

(b) Prior to initiating the review process, the Office shall notify the state of its intent to conduct such review, of the basis for the decision, and of the state's opportunity to provide input to the Office as set forth in subsection (c) of this section.

(c) In the course of its review, OSMRE shall provide an opportunity for the state to demonstrate to OSMRE in writing either that:

(1) The permit does not meet the criteria of Sec. 773.20(b) of this chapter, or the state program equivalent;

(2) the state is in compliance with the state program equivalent of Sections 773.20 and 773.21 of this chapter; or

(3) the alleged error or omission is of such limited scope and nature as not to render the state program incomplete or ineffective, and the state's overall administration of the permitting component of its approved program is satisfactory.

(d) Unless OSMRE has first completed a procedure pursuant to part 733 to substitute federal enforcement of a state program, and is acting in accordance with that part, or unless OSMRE has determined pursuant to part 842 that there exists at the minesite a condition, practice, or violation which creates an imminent danger to the health or safety of the public or which is causing or would reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources, in no instance shall OSMRE intervene or attempt to intervene in any state permitting action in such a manner as to directly or indirectly overturn, nullify, supersede, or render invalid or ineffective any decision or action of the state regulatory authority regarding a permitting matter.

9. Add a new 30 CFR 773.29 as follows:

Section 773.29 Procedures for OSMRE Actions Pertaining to Alleged Defects in State Permits

(a) If OSMRE has reason to believe that a state surface coal mining and reclamation permit contains significant defects, OSMRE shall conduct a review to determine whether action pursuant to Section 732.17 or part 733 of this chapter is appropriate in light of the state's overall administration of its permitting program.

(b) Prior to initiating the review process, the Office shall notify the state of its intent to conduct such review, of the basis for the decision, and of the state's opportunity to provide input to the Office as set forth in subsection (c) of this section.

(c) In the course of its review, OSMRE shall provide an opportunity for the state to demonstrate to OSMRE in writing either that:

(1) The state is in compliance with the approved state program;

(2) The alleged defect is of such limited scope and nature as not to render the state program incomplete or ineffective, and the state's overall administration of the permitting component of its approved program is satisfactory; or

(3) The state has addressed the alleged defect or problems that might result therefrom.

(d) Unless OSMRE has first completed a procedure pursuant to part 733 to substitute federal enforcement of a state program, and is acting in accordance with that part, or unless OSMRE has determined pursuant to part 842 that there exists at the minesite a condition, practice, or violation which creates an imminent danger to the health or safety of the public or which is causing or would reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources, in no instance shall OSMRE intervene or attempt to intervene in any state permitting action in such a manner as to directly or indirectly overturn, nullify, supersede, or render invalid or ineffective any decision or action of the state regulatory authority regarding a permitting matter.

Change existing 843.22 to 843.21.

Note: These proposed amendments and modifications reflect a reworking of OSM's existing regulations at 30 CFR Sections 842.11 and 842.12. Much of the language in the existing regulations remains unchanged and is simply reorganized into what IMCC considers to be a more readable and understandable format. For purposes of comparison, the following table contains references between existing OSM rules and IMCC's proposed reorganization.

Existing OSM rule in 30 CFR	Proposed version of rule
842.11(a)	842.11(a).
842.11(c)	842.11(b).
842.11(d)	842.11(c).
842.11(e)	842.11(d).
842.12(a)	842.12(a).
842.12(b)	842.12(c).
842.12(c)	842.12(d).
842.12(d)	842.12(e).
842.12(e)	842.12(f).
842.13	842.15.
842.14	842.16.
842.16	842.17.
842.16	842.18.
842.11(b)(1)(ii)(B) (2) & (3).	842.2. (Definition of "Appropriate Action").
842.11(b)(1)(ii)(B)(4)	842.2 (definition of "Good Cause").
842.11(b)(2)	842.2 (Definition of "Reason to Believe").
842.11(b)(1)(i)	842.2 (Definition of "Violation").
No equivalent section	842.11(a)(5).
No equivalent section	842.12(b).
842.11(b)(1) (i) and (ii)(A).	842.13(a), 842.14(a).
Based on 842.11(b)(1)(ii)(B)(1) and (C).	842.14(b).
Based on 842.11(b)(1)(ii)(B)(1).	842.13(b); 842.14(c)(1) & (2).
842.11(b)(1)(i)(B)(1)	842.13(c); 842.14(c)(3).
842.11(b)(1)(iii)(A)	842.13(d); 842.14(c)(4).
842.11(b)(1)(iii)(B)	842.13(e); 842.14(c)(5).
842.11(b)(1)(iii)(C)	842.13(f); 842.14(c)(16).
842.21	773.28.
No equivalent section	773.29.

Statement of Facts and Law in Support of Amendment and Modification of Existing Federal Regulations

I. Background

During the course of state program implementation over the past several years, several questions have arisen regarding the role of the Office of Surface Mining (OSM) in primacy states with respect to the treatment of citizen complaints alleging violations at surface coal mining operations and citizens complaints alleging that a state permit decision does not conform to applicable requirements or otherwise contains "deficiencies". These questions tend to manifest themselves in the context of Ten-Day Notices issued by OSM to primacy states requiring the states to take appropriate action to cause the alleged "violation" to be resolved or show good cause for failing to do so. These issues as well as the relevant statutory provisions must be addressed in the context of the states' primary regulatory authority under the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 *et seq.* and the federal oversight role which OSM recedes to once the Secretary of the Interior approves a state program. It is the purpose of this petition to address these two critical questions.[2]

SMCRA establishes a two-phased implementation scheme for the regulation of surface coal mining operations. The first stage, or interim program, involves the promulgation of federal standards implementing certain aspects of SMCRA with federal enforcement of those standards accompanied by continuing, or concurrent, state regulation. 30 U.S.C. 1252. The second phase, or permanent program, is to be adopted in each state through a state or federal program "with enforcement responsibility lying with *either* the State or Federal government." *Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 269 (1981). If a state receives approval of its program, it assumes "exclusive" jurisdiction, or primacy, over the regulation of surface coal mining operations within its borders, 30 U.S.C. 1253(a) and, the "statute does not provide for concurrent jurisdiction in the states and federal government." *Haydo* v. *Amerikohl Mining Co., Inc.*, 830 F.2d 494, 497 (3rd Cir. 1987). ("We have encountered nothing * * * which leads us to believe that anything other than the ordinary meaning of "exclusive" was intended." 830 F.2d at 497.) The Secretary of Interior maintains an oversight role once the state has assumed jurisdiction. How this oversight role is performed goes directly to the issue of the allocation of authority under SMCRA between the state and federal governments.

Since SMCRA does not provide for concurrent jurisdiction, one manner in which to delineate this allocation of authority is to first set forth the role provided under the Act for states with approved programs, and then apply the statutory provisions for the Secretary's oversight role in that context.

A. State Role

Pursuant to a state program, the state applies the national standards to the local conditions in that state through the implementation of its program requirements. Once the Secretary approves the state program as capable of meeting the Act's requirements, he "is not directly involved in local decision making." *In Re: Permanent Surface Mining Regulation Litigation* (en banc), 653 F.2d 514, 518 (DC Cir. 1981) (hereinafter "In Re: (en banc)"). The state becomes "the *sole* issuer of permits * * * [and] permit decisions are matters of state jurisdiction in which the Secretary plays no role." *Id.* at 519 (emphasis supplied).

In a primacy state, it is the state law, state regulations and a state-issued permit which apply and establish an operator's obligations. SMCRA Sec. 503(a); *Haydo*, 830 F.2d at 498; In Re: (en banc), 653 F.2d at 519; *National Wildlife Federation* v. *Lujan*, 928 F.2d 453, _____, n.1 (DC Cir. 1991) (Wald, J., concurring). Neither SMCRA nor the federal permanent program rules apply in a primacy state. *Id.* See also *Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. at 271 (permanent program is not self-implementing, but becomes effective through the approved state or federal program under Sections 503 or 504). At best, SMCRA and federal rules only establish standards for the approval of state programs. *Haydo*, 830 F.2d at 498 n. 2. *NWF* v. *Lujan*, 928 F.2d 453, _____, n.1 (Wald, J., concurring) (SMCRA does not technically apply in states that have assumed exclusive jurisdiction).

Just as the state program is the law in primacy states, the state-issued permit applies the law, and establishes the permittee's obligations. The state, as the sole issuer of permits, decides:

> Who will mine in what areas, how long they may conduct mining operations, and under what conditions the operations will take place. It decides whether a permittee's techniques for avoiding environmental degradation are sufficient and whether the proposed reclamation plan is acceptable. The state * * * inspects the mine to determine compliance; [and] [w]hen permit conditions are violated, the state is charged with imposing appropriate penalties.

In Re: (en banc), 653 F.2d at 519 (citations omitted).

Thus, when it assumes exclusive jurisdiction over the regulation of surface coal mining operations, the state, as the "regulatory authority", performs the duties and functions required under SMCRA through state laws and regulations.

It is worth noting here the principal components required of a state program before the Secretary exercises the primary means of guaranteeing "effective state programs": the approval process. The requirements for state programs relevant to this discussion include:

- State law for the regulation of surface mining operations in a manner consistent with SMCRA;
- Sanctions for violations of state law, regulations, and permit conditions;
- State law which provides for effective implementation, maintenance, and enforcement of a permit system consistent with SMCRA.

Section 503(a)

Together, these requirements include a permitting system that provides procedures,

[2] There was some hope upon the adoption of the Ten-Day Notice rule in 1988 that the types of issues addressed in this petition would be resolvable. However, over five years of experience under this rule have demonstrated that issues arising out of alleged violations at surface mining sites are still the source of federal/state tension and disagreement. The failure of the courts to resolve the underlying issue of federal enforcement authority in primacy states has only exacerbated the problem. (See footnote 4, *infra*.) Adding to the complexity of the issue is the question of how alleged defects in state-issued permits are to be handled. This petition attempts to lay out meaningful and workable solutions for these difficult implementation problems.

public participation, and appeals; citizen complaints; and appeals of the state authority's decisions on those complaints. 30 CFR 732.15(b)(10). In other words, state permits are issued under state laws and are subject to state procedures and remedies the state adopted to obtain regulatory authority under the Act. *cf. Laurel Pipeline Co.* versus *Bethlehem Mines Corp.*, 624 F. Supp. 538, 539–41 (W.D. PA. 1986); *NWF* v. *Lujan*, 928 F.2d 453, _____, n. 1 (Wald, J. concurring).

In addition to the rights provided to citizens in the state permitting process and the administrative and judicial review of state permitting decisions, it must be remembered that the Act and the approved regulatory programs provide for a number of other, powerful tools for citizens to utilize. It provides for lawsuits by citizens to compel an agency to enforce its law and regulations, or to compel compliance by a requested entity. It provides the right to petition for rulemaking. It provides that one may petition OSM to review the adequacy of a state program, and for OSM to take that program over if the state is found to be incapable of enforcing and lacking in intent to enforce the program.

There are, in short, several explicit procedures and recourse for citizens' involvement in a state's implementation of SMCRA. We therefore believe that section 521(a)(1) of the Act, providing for handling of citizens' complaints of specific violations, was intended to deal with on-the-ground violations, as explained below. It was intended, and should not be used, as an all-purpose substitute for the specific procedures set forth elsewhere in the Act.

B. The Federal Role

Once the state becomes the exclusive "on the scene" regulatory authority, the Secretary of Interior recedes to a role of "oversight". Typically, this role is carried out through occasional federal inspections of "surface coal mining and reclamation operations * * * to *evaluate* the administration of approved State programs." SMCRA Section 517(a). However, in one of the first opinions surveying the statute and its allocation of authority, the United States Court of Appeals for the District of Columbia Circuit characterized the state programs approval process as the "Secretary's *primary* means of guaranteeing effective state programs," *In Re: (en banc)*, 653 F.2d at 520; and, the federal takeover of a state program under Sec 521 (b) as "the Secretary's ultimate power over lax state enforcement." *Id.* at 519. This petition concerns the Secretary's conduct of his "oversight" role between those two points. The issues addressed in this petition are how the Secretary performs his oversight role in a primacy state (1) under the authority reserved in Sections 517(a) and 521(a) without intruding upon the permitting authority or "jurisdiction" vested exclusively with the state and (2) when the Secretary is confronted with written allegations of either a violation or "poor state performance" by another person (known colloquially under SMCRA as a "citizen complaint").

II. Citizen Complaints in Primacy States

The so-called citizen complaint provision is found at Section 517(h)(1) of SMCRA and addresses alleged violations at the "surface mining site". The Act also affords the citizen a right to "informal" review of any refusal to issue a citation with respect to the alleged violation.[3] OSM has required each state to adopt similar procedures with the opportunity for the same informal review of the handling of citizen complaints. 30 CFR 732.15(b)(10). OSM's existing rules implementing this statutory provision recognize that the states should receive all citizen complaints since it requires that the written complaint give OSM reason to believe that a violation exists:
and that the state regulatory authority, if any, has been notified, in writing, of the existence of the violation, condition, or practice.
30 CFR 842.12(a).

The troublesome aspect of OSM's procedure occurs when citizens file complaints directly with OSM rather than with the regulatory authority in primary states. In an effort to address this scenario, OSM has fashioned a policy directive (INE–35) that calls for citizen complaints received by OSM to be transmitted to the state by way of a Ten-Day Notice (TDN). Although this procedure provides a mechanism for OSM to track citizen complaints that it receives and passes on to the state for action it runs afoul of its existing requirements for the issuance of TDNs at 30 CFR 842.11 and runs counter to the principles of primacy.

Over the past several years, OSM and the states have attempted to agree on revisions to OSM's directive on TDN's (INE–35) to accommodate the procedures required under OSM rules and to accommodate the primacy concerns of the states. See comments filed by the Interstate Mining Compact Commission dated April 5, 1990; April 3, 1992; August 18, 1992 and October 6, 1992. During this same period, OSM has put forth several draft revisions of Directive INE–35 in an attempt to address both its own and the states' concerns. In the final analysis, both parties reached the conclusion that several critical aspects of the procedure for handling citizen complaints should be addressed by rulemaking in order to clarify the respective state and federal roles.

A. Citizen Complaints Alleging On-the-Ground Violations

The states believe that primacy can only have meaning where deference is paid to the states to interpret and enforce their own state laws. As was recognized by the court in *Haydo* v. *Amerikohl Mining Inc.*, 830 F.2d 494 (3d. Cir. 1987), SMCRA anticipates that state courts have exclusive jurisdiction over surface mining reclamation activities within their borders. As a general proposition, then the state program is the law within the state and the state's interpretation of its own law should prevail. This is equally true for the adjudication of rights and remedies that arise under the state program as well as the handling of citizen complaints alleging violations of the state program.

In line with this reasoning, the states assert that all citizen complaints alleging on-the-ground violations must be submitted to the state regulatory authority in primacy states. The state regulatory authority must be provided an opportunity to review and respond to citizen complaints pursuant to its own citizen complaint procedures, which are a required component of every approved state program. Should the citizen be dissatisfied with the state regulatory authority's response to the complaint, he/she may appeal the decision of the agency in accordance with the state's administrative and judicial appeal procedures, which are also required to be a part of the approved state program.

Citizen complaints to OSM that do not demonstrate prior notification to and response by the state regulatory authority should be transmitted by OSM to the state as a matter of course and the citizen should be informed by OSM that recourse lies with the state and its approved procedures for review of such complaints—including, if necessary, review of a state inspector's refusal to issue a citation.

Transmittal of a citizen complaint through a ten-day notice when the state has not been previously apprised of the complaint by the citizen triggers a federal process which is duplicative of the existing state program procedures. Congress' intent was to avoid such federal-state overlap. S. Rep. No. 128 at 90; See also section 201(c)(12) (cooperate with state regulatory authorities to minimize duplication of inspection, enforcement, and administration of the Act). Citizen complaint procedures and the ten-day notice process must be reconciled with the deliberate allocation of authority under SMCRA. If OSM immediately invokes the ten-day notice process to intervene in a state program matter when the citizen has never availed himself of the state procedures and remedies, OSM undermines the statutory provisions for primacy and the rationale for the requirement that state programs provide the same opportunities found in SMCRA for citizen participation.

To the extent a state persistently handles citizen complaints inadequately, OSM's general oversight role provides the avenue to evaluate the state's administration of its program. Citizens may also petition the Director to evaluate the state's implementation of the program if they believe the state is not effectively implementing, administering, or enforcing. 30 CFR 733.12(a)(2). The general oversight function serves adequately to ensure that states will routinely handle citizen complaints under similar procedures without OSM intruding upon the state's jurisdiction on a case-by-case basis. The use of ten-day notices upon receipt of a citizen complaint which has not been previously made to and pursued with the state undermines the state program and creates "federal-state overlap"

[3] The statute calls for informal review of the decision to not issue a citation. While this occurs initially under 30 CFR 842.14 (a) and (b), OSM rules also confer an additional "formal" review by the Office of Hearings and Appeals pursuant to 30 CFR 842.15(d) and 43 CFR 4.1281. It remains unclear what provision of SMCRA mandates the creation of formal review of the Director's decision instead of leaving the final decision within the agency itself. To the extent these procedures are applied in a manner to confer upon OHA jurisdiction to evaluate a state permit decision, they could conflict with the case law that holds that state permitting decisions are matters in which the Secretary plays no role.

which Congress expressly stated it intended to avoid.[4]

In passing the Act, Congress anticipated the possibility that a state might fail to properly enforce its state program. However, the mechanisms it provided for dealing with such occurrences did not include blanket OSM authority to issue overriding federal NOVs in primacy states. Instead, the Act expects OSM to take over enforcement of the state program (either wholly or partially) when the state has failed to enforce it. The Act requires that, when OSM "has reason to believe" 30 U.S.C. 1271(b) that the state is failing to effectively enforce all or part of any state program, OSM must, after public notice and notice to the affected state, hold a hearing to determine whether the "State has not adequately demonstrated its capability and intent to enforce such State program * * *" 30 U.S.C. 1271(b). If, after the hearing, OSM finds that the state either cannot or will not enforce the state program, OSM takes over the administration of the state program, including permitting, inspections and enforcement action. 30 U.S.C. Section 1271(b); 30 CFR Section 733.12. Thus, the substitution of federal enforcement for any part of a state program or promulgation of a federal program remain OSM's ultimate power over lax state enforcement. 30 U.S.C. 1271(b).[5]

Given our concerns about OSM's use of TDN's in conjunction with the agency's current regulations on federal NOV authority, and our position that in a primacy state all citizen complaints should be submitted to and addressed by the state regulatory authority, our position on the handling of citizen complaints can be summarized as follows: A citizen complaint involving alleged on-the-ground violations at a surface mining site in a primacy state must be submitted to the state regulatory authority, whether the complaint is filed directly with the state or with OSM.[6] OSM must not transmit the citizen complaint to the state by means of a TDN and will inform the citizen that he/she must pursue the matter with the state pursuant to the citizen complaint procedures in the approved state program. Should the citizen be dissatisfied with the state regulatory authority's response to the complaint, he/she must pursue the administrative and judicial appeal procedures provided under the approved state program.

This is our preferred approach and embraces what we consider to be the best reading of SMCRA and its legislative history. However, we recognize that there are alternative views of how the Act was intended to operate. We therefore offer in this petition an alternative approach to the handling of citizen complaints in primacy states. Under this approach, which is detailed in the proposed regulatory language above, citizen complaints alleging on-the-ground violations at surface mining sites in primacy states must be submitted to the state regulatory authority. Where such a citizen complaint is filed with OSM instead of, or simultaneously with, the state, OSM will transmit the complaint to the state for action. OSM will not use a Ten-Day Notice to accomplish this transmittal. The state will review the complaint and respond pursuant to its procedures for handling citizen complaints contained in the approved state program. A copy of the state response will be filed with the citizen and OSM. If the citizen is dissatisfied, he/she may either appeal the decision to the state administrative board of appeal provided for in the approved state program (this is the most appropriate action) or may notify OSM that he/she was dissatisfied with the state action/response.

It is important to emphasize here that, although the citizen has an option to go directly to OSM, this is one of two acceptable administrative remedies, the other being the use of the state appeals process. As we discuss later in this petition (pages 31–33, *infra*) the concept of exhaustion of state administrative and judicial remedies is a sacrosanct component of state regulatory authority and a judicially recognized principle of effective administrative procedure under regulatory programs. The states do not intend to compromise this requirement of exhaustion by putting forth the alternative approach discussed in this petition. Rather, we have attempted to fashion an acceptable middle ground whereby citizens consider notification of OSM only after seriously pursuing the remedies provided at the state level. Essentially, citizens would have to justify, as part of the information provided to OSM in their notification, why they chose not to pursue the administrative and judicial appeal remedies provided at the state level. (See proposed Section 824.12(b)) Given the integrity and credibility of the states' administrative and judicial appeal remedies, we anticipate that citizens will pursue those remedies in the majority of instances. In this regard, we would be interested to hear from citizens in their comments on this petition why they would not choose to pursue the remedies available to them at the state level.

Upon receipt of a citizen's notification that he/she has submitted a complaint to the state regulatory authority, has received a response by the state to the complaint, and is unsatisfied with the response and elects not to appeal the state agency's decision to the state administrative board of appeal, OSM will review the state's response and, unless it deems it to be unnecessary, will conduct a federal inspection or investigation of its own in order to determine whether there is "reason to believe" that a violation exists. If OSM establishes a "reason to believe" after reviewing the state response and conducting any investigation/inspection, OSM will issue a Ten-Day Notice to the state in accordance

[4] The reflexive and inappropriate use of federal TDN's in conjunction with the handling of citizen complaints in primacy states is of critical importance given the potential federal enforcement authority that grows out of the TDN process. Pursuant to OSM's current rules at 30 CFR 842.11 and 843.12, where OSM determines, in response to a TDN, that the state has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure, a federal inspection will be ordered and, if the alleged violation actually exists, a notice of violation or cessation order, as appropriate shall be issued. The states have joined in a legal challenge to OSM's authority to issue federal notices of violation in primacy states as being inconsistent with SMCRA (See IMCC Intervention Briefs in *National Coal Association, et al.* v. *Lujan*, C.A. Nos. 87–2076–JGP, 88–2273–JGP and 88–2416–JGP (Consolidated) filed on May 15, August 21 and September 12, 1989). While this pervasive enforcement authority issue is pending before the court, the states are intent on minimizing the number of actions that find themselves the subject of TDNs and thus open to federal intrusion through the issuance of federal NOVs.

In this regard, a review of the manner in which OSM has employed TDN's and resulting NOVs as an oversight tool discloses that instead of filling some perceived statutory "void," the agency has created for itself a regulatory loophole to circumvent established procedures for resolving oversight problems with the states. The original reason used by OSM for inserting NOV authority to fill the so-called "gap" was its anticipation that states would ignore violations of the law. However, 15 years of enforcement by the states pursuant to their regulatory programs has convincingly demonstrated that this is not the case. In fact, the typical federal NOV today arises from OSM's disagreement with the state's interpretation of their program, the manner in which the state compels abatement of violations, alleged discrepancies in state issued permits and even deficiencies in state programs approved by OSM. In each instance, the statute and regulations establish procedures for an "appropriate" OSM response to resolve the matter: program amendments, 30 CFR 732, permit revisions, 30 CFR part 774, and preemption of state law, 30 CFR part 730.

OSM's use of oversight NOV's to address the states' implementation of their programs has rendered the full range of oversight tools superfluous. The resolution of program deficiencies, interpretational disputes and permit discrepancies is better suited for the established procedures for program amendments and permit revisions. To the extent a state response to a ten-day notice discloses a view of a program or permit requirement different than that shared by OSM, the program amendment or permit revision processes reach the issue at a broader program level. Moreover, the underlying issues in controversy between OSM and the state deserve meaningful consideration through a rulemaking proceeding with broader public participation than that which occurs in an isolated enforcement proceeding.

[5] It is important in addressing the issue of regulatory authority under SMCRA that the Act be read as a whole. As the U.S. Court of Appeals for the DC Court noted: "It is a fundamental principle of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute so that no part will be inoperative or superfluous, void or insignificant." *In re Surface Mining Regulations Litigation (Consolidated)*, 627 F.2d 1346 at 1348 (DC Cir. 1980). In this regard, Section 526(e) of SMCRA (which provides for citizen suits challenging a regulatory authority's failure to implement its program) would be superfluous if state administrative and judicial decisions can simply be overturned by the issuance of federal NOV's.

[6] This position is consistent with the legislative history of SMCRA, including early discussions of how section 521(a) was intended to operate. In explaining how identical language to that in existing section 521(a) was expected to operate, the House Interior and Insular Affairs Committee stated in its report on H.R. 25 in 1975 that: "In order to prevent federal-state overlap, the federal inspector is only to use his authority under section 521(a)(3) where the Secretary is the regulatory authority. However in other circumstances the Secretary must insure, in accordance with the provisions of section 521(a)(1), that the State is notified of the compliance problem so that it may act under the terms of the approved state program." H. Rep. No. 94–45, 94th Cong., 1st Sess. 155 (1975).

with section 842.14(c). At this juncture, the procedures for the handling of TDN's (and any appeal thereof) contained in OSM's existing rules will apply. Of course, where OSM determines during its reason to believe review that an imminent harm exists, it would conduct a federal inspection if one had not already been undertaken and would immediately follow up with appropriate enforcement action in accordance with its existing rules.

We believe that this alternative procedure is consistent with the primacy principles and public participation/citizen access requirements of SMCRA. It also gives weight to the reason to believe determination required under section 521(a) of the Act. This determination is critical in deciding whether OSM is to insert itself into the state's implementation of its regulatory program. Until now, this determination has been a perfunctory one—based solely on allegations of possible violations without any effort to examine the veracity or credibility of the complaint. The procedures we set out above would remedy this situation by calling for several preconditions prior to issuance of a federal TDN in connection with a citizen complaint: the State regulatory authority must have been notified first and been provided an opportunity to respond pursuant to its approved citizen complaint procedures (proposed 842.12(b)); the citizen must specifically notify OSM that it has done so and has chosen not to pursue state administrative or judicial appeal procedures contained in the state program (proposed 842.12(b)(2)); OSM must review the state response and, unless it determines it to be unnecessary, conduct a federal inspection or investigation (proposed 842.14) in order to determine whether there is reason to believe that a violation has occurred (proposed 842.14(c)). Only after these preconditions are met may OSM proceed to a Ten-Day Notice pursuant to section 842.14(c).

We assert that this procedure is supported by the legislative history, as well as the plain meaning of SMCRA. In its discussion of section 521(a)(1) of the Act, Congress stated that "It is anticipated that 'reasonable belief' could be established by a *snapshot of an operation in violation* or other simple *and effective documentation of a violation.*" H. Rep. No. 95–218, 95th Cong., 1st Sess., at 129 (1975) (Emphasis added). Obviously Congress had something more in mind with regard to reason to believe determinations than the mere filing of a complaint. The agency is expected to go behind the bald allegations of the complaint and determine, based on a "snapshot" (or investigation/inspection, even if limited in scope) of the alleged violation at the surface mining site, or some other effective documentation (such as the state's analysis contained in its response to the complaint) whether to proceed with any further action (a Ten-Day Notice or, in the case of an imminent harm, a federal inspection followed by appropriate enforcement action).

This process also gives credence and credibility to the primacy scheme contained in SMCRA by deferring to the procedures in the approved state program and providing for serious and meaningful consideration by the federal government in its oversight capacity whether to proceed with expanded federal involvement in the state's business via TDN.

Several other provisions are built into these proposed adjustments to OSM's existing rules to protect the states' rights to operate their approved programs where, in fact, OSM proceeds to a Ten-Day Notice. First, the standard of review of state action in response to a TDN has been better defined in two ways. OSM's rules provide that OSM will find the state's action or response to have met the "appropriate action" or "good cause" criteria at 842.11(b)(1)(ii)(B) (3) and (4) as long as it is not "arbitrary, capricious or an abuse of discretion" as judged by the approved state program. 30 CFR 842.11 (b)(1)(iii)(B)(2). OSM has never defined this term, but instead stated in the preamble to the Ten-Day Notice rule that the term provides for deference to the state. 53 Fed. Reg. 26728, 26732. In fact, OSM stated in the TDN rule preamble that "Concerns about future application of those words will best be decided when specific fact situations have arisen and can be evaluated." 53 Fed. Reg. 26733. Given over five years of experience under this rule and in an effort to better define this term and provide some guidance as to its application, the provision in OSM's rules that discusses the standard (842.11(b)(1)(ii)(B)(2)) has been amended by referring to "federal case law". (See proposed section 842.2.) Several federal courts have provided insight into the meaning of the arbitrary, capricious and abuse of discretion standard that we believe are applicable to OSM's review of state responses or actions.

Two of the leading federal cases that provide instruction on the arbitrary, capricious and abuse of discretion standard are *Wong Wing Hang* v. *Immigration and Naturalization Service*, 360 F. 2d 715 (2d cir. 1966) and *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971). Acknowledging the difficulty of defining "abuse" in the absence of standards in the Immigration and Nationality Act itself, Judge Friendly in *Wong* stated that discretion would be abused if the action or decision "were made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as an invidious discrimination against a particular race or group, or, in Judge Learned Hand's words, on other 'considerations that Congress could not have intended to make relevant.' (citing *U.S. ex rel. Koloudis* v. *Shaughnessy*, 18 F.2d 489, 491 (2nd Cir. 1950)" *Wong Wing Hang, supra*, 360 F.2d 715 at 719.

In *Citizens to Preserve Overton Park* v. *Volpe*, the U.S. Supreme Court, in addressing the question of whether the Secretary of Transportation acted within the scope of his authority in authorizing a six-lane interstate highway through a Memphis public park, discussed the arbitrary, capricious and abuse of discretion standard: "To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S. 402 at 416, citing L. Jaffe, Judicial Control of Administrative Action 182 (1965). Citing the *Wong* case, the Court went on to note that "Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." 401 U.S. at 416.

There are several cases in accord with *Wong* and *Overton Park*, among which are the following: *Heckler* v. *Chaney et al.*, 470 U.S. 821 (1985); *Consolidation Coal* v. *Costle*, 483 F. Supp. 1003 (S.D. Ohio 1979); *McNutt* v. *Hills*, 426 F. Supp. 990 (D.D.C. 1977); *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). All of these cases stand for the proposition that in order for OSM to find that a state's action or response has been arbitrary, capricious or an abuse of discretion under the approved state program, OSM must specifically find that there has been a clear error of judgment on the state's part or that the state's decision was made without a rational explanation, inexplicably departed from established policy or rested on an impermissible basis. It also is clear from these cases that the amount of deference that OSM should pay to state actions or responses is fairly significant. Concumitantly, OSM's standard of review is a very narrow one and should be conducted accordingly.

In addition to abiding by these interpretations of the standard of review, OSM is also being requested under the proposed amendments to provide a detailed, written explanation of why the state's action or response is considered to be arbitrary, capricious or an abuse of discretion. (See proposed 842.13(d) and (e); 842.14(c)(4) and (6)). We have found that in almost every instance, OSM's notification to the state concerning the state's response to a TDN merely states a conclusion that the response was arbitrary, capricious or an abuse of discretion without any explanation of the basis for this finding. We believe it is incumbent upon OSM to flesh out its basis for finding the state's response to run afoul of the standard of review. This should be readily accomplishable given the criteria set forth in the federal case law referenced above. It also will facilitate future appeals of OSM's action by the state pursuant to the proposed provisions discussed below.

Another protection built into the proposed regulatory adjustments is the right to an informal hearing by the state before the Deputy Director as part of a state's request for informal review of OSM's determination regarding the state's response to the TDN. (See 842.13(d) and 842.14(c)(4)). Our experience has been that, pursuant to OSM's TDN Directive (INE–35), the OSM field office has an additional opportunity to provide input to the Deputy Director where a state requests informal review of OSM's determination that a state has failed to take appropriate action or show good cause for such failure in response to a TDN. In an attempt to level the playing field, we believe it is necessary to allow the state an opportunity, at its request, to present further information or evidence to the Deputy Director in the course of his informal review. We would not be adverse to the appropriate OSM field office being represented at the hearing as well. However, the significant factor is that the state be provided an

opportunity to react to the information being provided to the Deputy Director by his staff. Any other procedure places the states at a serious disadvantage which is totally inappropriate and unjustified.

Finally, as we have argued for years, we believe the state, like all other parties under SMCRA, should have a right to appeal OSM's informal decision. We have therefore crafted language that would define the informal decision as "final agency action" thereby providing a right to judicial review of OSM's decision before the United States courts pursuant to 5 U.S.C. 702 and 704. See our proposed language at 842.13(f) and 842.14(c)(6). Given the significant state rights that are being affected by the current federal enforcement provisions (which permit the issuance of federal NOV's in primacy states following an adverse decision in the TDN process), it is only fair that the state have an opportunity to be fully heard prior to direct federal intervention in its approved regulatory program. We therefore petition OSM to incorporate our suggested regulatory language in its rules thereby assuring a right of appeal for states as an integral part of the TDN process.

We assert that this route of appeal, rather than one which would first proceed through OHA and IBLA is appropriate for several reasons. The issue of state responses to TDNs raises serious concerns regarding the allocation and implementation of state and federal regulatory authority under SMCRA. Since the Director of OSM speaks for the Secretary in his capacity as Director, there is no reason to delay review of OSM decisions by the federal courts, especially where the question of state and federal regulatory authority is involved. If a matter is serious enough for a state to want to pursue it beyond the informal review proceeding, the matter should move directly into federal court where appropriate and objective scrutiny will be provided. Furthermore, given the time sensitive nature of some issues addressed in TDNs, it is important to move any appeal directly into the federal courts rather than interposing an intermediate stop at the Interior Board of Land Appeals. Finally, there is no justification to delay action by the federal courts given the "final agency action" inherent in the OSM decision following informal review.

In this regard, it should be noted that SMCRA at section 517(h) requires the Secretary only to provide for *informal* review of his decision not to issue a citation for a violation alleged by a complainant. It is this latter review that has been provided to the states in OSM's existing rules at 30 CFR 842.11(b)(1)(iii). However, for other complainants, OSM went further than required under SMCRA by providing not only for informal review, but for subsequent *formal* appeal to the Office of Hearing and Appeals and from there to the federal courts. See 30 CFR 842.15(d) and 43 CFR part 4. We assert that there are equally as strong arguments for providing the states with a formal appeal route as there are for other affected parties.

It is the integrity of our regulatory programs and the credibility of our decisions as regulatory authorities that are on-the-line once we reach the level of informal review. If a state and OSM are unable to settle a TDN issue by or at the informal review stage, obviously another route of resolution is required. And, of course, halting the appeal process and the states' recourse at the informal review stage (the current practice) is simply not equitable or acceptable where differences remain. The states should logically be provided access to an unbiased forum (the courts) for resolving differences with OSM.

There is no rational reason for OSM to refuse the states' request that the Deputy Director's decision at the informal review stage be defined as "final agency action". Further, there is no harm done to OSM or any interested party by providing this route of judicial review. States are not likely to appeal every informal OSM decision to the United States courts, given resource constraints alone. The savings in time and cost established by appeal directly to the courts without the interim Department of Interior or OHA and IBLA review will benefit OSM and any other interested parties or intervenors, as well as the states. The potential that a federal court may overturn the OSM determination cannot be construed as potential harm to any party, but rather as equity under the law as intended by Congress.

In sum, fundamental principles of fairness call for an effective and meaningful opportunity for independent review of OSM decisions that affect the states and we therefore urge OSM to adopt this revision to its rules.

B. Citizen Complaints Alleging Permitting Deficiencies[7]

Another related issue presented by OSM's policy directive on TDNs (INE–35) is the handling of citizen complaints received by OSM that allege non-conformance of state-issued permits to applicable requirements and processes in the approved program. For the reasons articulated above, these matters should only be handled by the state regulatory authority and, for reasons in addition to those discussed earlier, citizen complaints about permit requirements and processes should not be handled or transmitted through ten-day notices.

OSM has however expanded or allowed expansion of the use of citizens complaints to the extent that the mere filing of a complaint may trigger OSM intrusion, by use of a Ten-Day Notice, into ongoing administrative and legal processes for review of state permitting decisions. In other cases, OSM procedures are allowing use of the complaint process to raise a challenge to a state permitting decision, when the complainant has failed or decided not to follow the clearly defined and publicly announced procedures for administrative and judicial appeal of that decision. In some of the more extreme cases, OSM is allowing use of the complaint process for challenges to state decisions made years earlier, and not challenged at the time by either the complainant or anyone else.

The Act established specific procedures to contest permit decisions. The doctrine of exhaustion of administrative remedies precludes the use of a citizen complaint to displace the specific and appropriate remedies under approved state programs and to collaterally challenge a state-issued permit.

State programs contain the corollary provisions of SMCRA to provide ample opportunity for persons to participate in the state decision making process on whether, and under what conditions, to issue a permit. Section 513 (public notice and hearings). These procedures include the right to an administrative and later judicial appeal. Section 514. See also 30 CFR 773.13; 773.15. On the other hand, so-called "citizen complaints" are actually requests for an inspection of the "surface mining site" on the basis of an alleged violation at the mine site. Section 517(h)(1). *See also* 30 CFR 842.12 ("Requests for Federal Inspection"). Not one word is found in the statute or implementing regulations about the adequacy of permit decisions. This is not surprising in view of the ample opportunity for citizen participation in the permit review and appeal process. *See* e.g. SMCRA Section 513 (Public Notice and hearings); Section 514 (Decision and appeals); 30 CFR 773.13; 773.15. Nor does the legislative history indicate an intent for the citizen complaint procedures to supersede the specific and appropriate procedures for participation in the permit review process. *See.* S. Rep. No. 128, 95th Cong. 1st Sess. 59 (1977) (providing citizen access to administrative appellate procedures will ensure that regulatory authority decisions are grounded upon complete information).

Congress addressed a similar concern in its discussion of the citizen suit provision of Section 520, which in its own words:

> is not intended to override the more specific provisions of this bill which provide more precise requirements for citizen participation in the *permit application* and performance bond release proceedings.

S. Rep. No. 128, 95th Cong. 1st Sess. 88 (1977).[8]

This principle applies equally to citizen complaints. The well-defined administrative scheme in SMCRA and state programs preclude the use of citizen complaints to collaterally challenge a permit decision in a forum other than that prescribed by the applicable law. The applicable law on such

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[7] The larger question of OSM authority to interfere with the state permitting process is addressed in Part III of our petition. Much of the discussion in Part III is equally applicable to and in many ways supports our position on the handling of citizen complaints that allege permit deficiencies, which is discussed in this section of the petition. We have addressed the issue of citizen complaints alleging permit defects here simply for the sake of consistency.

[8] This principle was recently applied in a state court decision construing an approved SMCRA program. *Armstrong* v. *Wayland*, Civ. No. 91–C–1632 (Cir. Ct. WV Sept. 24, 1991) (exclusive remedy for challenging a permit is an appeal under permit review provisions of state law; citizen suit provision does not authorize a collateral attack on the issuance of a permit on the grounds that permit issuance would be a violation of the statute). *See also McGrady* v. *Calloghan*, 244 S.E. 2d 793 (W. Va. 1978); *Fitch* v. *West Virginia*, No. 19268 (W.V. Sup. Ct. App. Nov. 29, 1989).

matters is the state program and not SMCRA oversight provisions. *Haydo; In Re: (en banc)*; 653 F.2d at 519 (administrative and judicial appeals of permit decisions are matters of state jurisdiction in which the Secretary plays *no* role).

The exhaustion of administrative remedies has long been associated with the SMCRA implementation scheme. See *e.g. Mullins Coal Co.* v. *Clark*, 759 F.2d 1142, 1145–46 (4th Cir. 1985); *Shawnee Coal Co.* v. *Andrus*, 661 F.2d 1083, 1092 (6th Cir. 1981). When a person partially or completely forgoes his right to contest a permit, and pursue an appeal in a timely manner, it cannot avoid the statutory bar to review through a collateral proceeding at either the state or federal level. See Section 514(f); 526(a)(2) (permit decisions must be appealed within thirty days); *Cf. Peabody Coal Co.* v. *U.S.*, Civ. No. 86–502 PCT CLH, Slip. Op. at 6 (D. Ariz. March 11, 1988), *accord*, *The Hopi Tribe* v. *OSM*, 109 IBLA 374, 377–78 (1989) (neither OSM nor IBLA have authority to extend the statutory time limit to challenge a permit). Since neither a citizen suit nor complaints filed with the permitting authority can serve as a basis to collaterally attack a permit decision under a federal or state program, a citizen complaint lodged with OSM in its oversight role cannot implicitly create federal jurisdiction to circumvent applicable procedures.

Even under the Clean Water Act, which explicitly reserves with EPA the authority to veto state permitting decisions, the courts have ruled that no federal jurisdiction exists to compel EPA to exercise such authority even when the state permit *does not conform* to the guidelines or regulations under the Clean Water Act. To imply federal jurisdiction "would upset the federal-state balance struck by Congress." *District of Columbia* v. *Schramm*, 631 F.2d 854, 860 (D.C. Cir. 1980). And since the permits are issued under state law, they are subject to the legal remedies the state adopted to obtain the permit granting authority under the Act. In short, Congress intended that the states apply their own law and procedures in deciding controversies involving state permits. *District of Columbia* v. *Schramm*, 631 F.2d at 863. To do otherwise would allow someone "dissatisfied with a decision of a state board, to circumvent the appellate process envisioned by the statute." *Shell Oil Co.* v. *Train*, 585 F.2d 408, 414 (9th Cir. 1978).

This rationale is even more compelling under SMCRA where Congress declined to reserve any federal role in individual state permit decisions. For OSM to entertain a citizen complaint regarding a state-issued permit subverts the specific administrative scheme established under the law and improperly attempts to create a basis for federal jurisdiction when none exists. Our proposed amendments to OSM's existing rules (at 30 CFR 842.11(b)(1) and 843.21) would correct this inappropriate use of citizen complaints.[9]

[9] A contrary reading of SMCRA would severely curtail, if not eliminate, the doctrine of exhaustion of administrative remedies, which is designed to assure that citizens and others affected by government action await the outcome of administrative proceedings before pressing their claims in the federal courts. This promotes judicial economy by allowing the agency to "make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies". *Shawnee Coal Co.* v. *Andrus*, 661 F. 2d 1083, 1092 (6th Cir. 1981). Application of this doctrine assures the integrity of agency procedures, helps the agency more effectively carry out its statutory responsibilities, and avoids burdening the courts with unnecessary controversies.

OSM attempted to resolve this procedural discrepancy in proposed revisions to its Ten-Day Notice Directive (INE–35) by incorporating the substance of its response to West Virginia Division of Environmental Protection Director David Callaghan (dated January 9, 1922) concerning the handling of permit defects. OSM failed to go far enough in resolving this significant issue. Under the terms of the Callaghan letter, the agency would not issue TDN's where permit-specific defects are alleged *unless* the defect "would result in an inspectable violation in which case a TDN shall be issued". We assert, based on the reasons set forth in this petition, that a TDN is never appropriate for cases of alleged permit defects. Instead, citizens (or OSM) must abide by existing remedies for the resolution of alleged permit deficiencies which are contained in each state program and which have been approved by OSM.

The proper and exclusive remedy for a citizen to pursue its objections to a permit's issuance is via the specific administrative procedures set out in the state program.

A citizen suit will not lie for the review of state decision-making, particularly as it pertains to a specific permitting action. Similarly, a citizen complaint is equally inappropriate in view of the available procedures for seeking review of agency decision making. First, a citizen complaint should always be filed with the primary regulatory authority. Second, since this route of relief is unavailable in view of the specific procedural remedy of permit appeals, it is inappropriate for OSM to entertain a citizen complaint in a matter within the state's exclusive authority. Upon receipt of such a complaint, OSM should merely transmit it to the state and inform the citizen of such action, noting that the citizen could avail itself of the specific statutory and regulatory procedures to appeal the permit decision. Otherwise, OSM allows for and in fact creates an impermissible collateral attack upon the state permitting decision.

A review of the so-called "citizen complaint" provisions also disclose that their purpose is directed at conditions on the ground which may constitute a violation of standards. The statutory authority for citizen requests for inspections pertains to any violation the person believes "exists at the surface mining site" SMCRA Section 517(h)(1). Similarly, the regulations implementing this provision address inspections and violations at the site. 30 CFR 842.12. Nothing is found in the statute, regulation or preamble explanation of the rules regarding the permit itself or alleged inadequacy of a permit.

The legislative history discloses that the citizen complaint procedures were intended for the inspection of on-the-ground conditions which may violate performance standards. In fact, the discussion appears to imply that it was limited to a review of the decision not to issue a citation. In any event, the history indicates nothing in the way of a citizen request for inspection as a means to displace citizen participation in the permit review process. Compare S. Rep. No. 128, 95th Congress 1st Sess. 59 (1977) (providing citizen access to administrative appellate procedures will ensure that regulatory authority decisions grounded upon complete information), with S. Rep. No. 128 at 85 (discussing Section 517(h)—persons aggrieved by an inspection of a surface mining operation have right to an informal review of failure to issue a citation).

In summary, we urge OSM to delete all references to permit defects with regard to citizen complaints in its rules and directives. A citizen must pursue any concerns with regard to permit issuance through the existing state administrative and judicial appeal procedures which are part of the approved state program. OSM may not, in contravention of these procedures and the dictates of SMCRA, provide a separate route of relief. Furthermore, should the citizen or OSM believe that the alleged permit defect is evidence of programmatic problem, either party can pursue actions pursuant to Parts 732 and 733 of 30 CFR regarding amendment or takeover of all or portions of a state's program. A citizen can also bring suit pursuant to section 520 challenging the state's failure to effectively implement its program. Appropriate adjustments to OSM's existing rules at 30 CFR 843.21 have been included in our petition to address this aspect of alleged permitting deficiencies. (See proposed section 773.28 and 773.29.)

III. State Permits and Federal Oversight

Aside from the question of the appropriateness of citizen complaints alleging and challenging permit defects is the larger question of OSM authority to involve itself in the State permitting process at all (whether by ten-day notice or some other mechanism). With the "exclusive" grant of authority provided states with an approved program, the state regulatory authority is the "sole" issuer of permits. Just as the state program applies the national requirements of SMCRA to local conditions in that state, the state-issued permit represents the state's decision making in applying those state standards to the particular circumstances. The state program provides ample opportunity for persons affected by a surface coal mining operation to comment on the application; request an informal conference and a hearing; and appeal any state decision to an administrative review board, and a state court of competent jurisdiction. See Sections 513, 514.[10]

[10] Considering the state's greater familiarity with its laws and regulations tailored to meet its local conditions, Section 101(f); the burden placed upon the permittee to demonstrate that the application is in compliance with the state program, Section 510(a), (b); and, the ample opportunity for public participation and scrutiny, Sections 513, 514; one could argue that a State-issued permit carries a presumption of conformance to applicable state standards and requirements in the absence of a timely objection. Cf. Section 506(d)(1) (permit

On the other hand, SMCRA reposes with OSM a general responsibility to evaluate the administration of state programs. Yet, the statutory provisions which speak directly to the implementation of this role contemplate on-the-ground inspections of surface coal mining operations. Sections 517(a) and 521(a). Allegations of non-conformance of the permit to regulatory requirements often do not manifest themselves in on-the-ground conditions which directly conflict with the regulatory requirement, but instead raise questions of how that requirement will be satisfied by the deployment of operation and reclamation techniques in a specific circumstance. While not exhaustive, the various situations that have arisen involving the alleged non-conformance of state-issued permits can be characterized generally as follows:

a. An approved practice in the permit is inconsistent with the federal Act and regulations, or the state program (often this circumstance involves a difference of opinion in the application of a standard or requirement).

b. The approved permit did not contain information required under the federal Act, regulations, or state program.

c. The state decision to approve the permit is based upon analysis or technical conclusions with which OSM disagrees.

d. The permit was approved without the complete adherence to applicable procedures, *e.g.*, public notice incomplete.

It should be noted that in almost all of these circumstances, if the state itself discovers any one of these non-conformance problems, as the permitting authority it could require a permit revision as a curative measure. But, such a request occurs under an orderly proceeding in which it provides the permittee initially with written notice and findings supplying the basis for such a requirement and affords the permittee with an opportunity for a hearing. Section 511(a).

It is against this background that the federal oversight role must be evaluated and performed to minimize conflict and maintain day-to-day allocation of governmental authority between the states and federal government. Again, the principal mechanism for performing the federal oversight responsibilities arises in the occasional inspections, the purpose of which are "to evaluate the administration of approved state programs . . ." Section 517(a). To this end, when such an oversight inspection provides the Secretary with reason to believe that a person is in violation of any requirement of the Act, or any permit condition required by the Act, he shall notify the State. The State must either (1) "take appropriate action" to cause the correction of the violation; or (2) "show good cause for such failure". Section 521(a). If the State fails to do either, then the Secretary will "order an inspection of the surface coal mining operation at which the alleged violation is occurring, *unless* the information available to the Secretary is a result of a *previous* federal inspection." *Id.*

A literal reading of Section 521(a) indicates that if the ten-day notice issued to the state arose from an oversight inspection, then no direct follow-up inspection is required even where the Secretary remains displeased or in disagreement with the state. If this information arose from a citizen complaint, section 521(a) appears to require a federal inspection if the Secretary remains dissatisfied with the state response. IMCC and others maintain that this and other provisions of the Act demonstrate the absence of federal authority to issue notices of violation (NOV) in primacy states under any circumstances, save an imminent danger to the public or significant, imminent harm to the environment. *Compare* section 521(a)(2) (cessation order (CO) authority on the basis of *any* federal inspection) with (a)(3) (NOV authority on the basis of types of inspections specifically listed).[11] Even if one assumes that a continuing federal enforcement role is authorized in primacy states, the issue presented here is to what extent can, or should, it be exercised when issues arise from permitting decisions of the State. Again, the allegations of non-conformance of a state-issued permit will often not manifest themselves as conditions on the ground which violate the State program.

In most instances where OSM disagrees with a state-issued permit, ad-hoc federal intervention in an individual permit through direct enforcement action against the permittee would have the same effect as commandeering the state permitting process. The statute and case law would preclude such a result since the grant of exclusive jurisdiction vests the state as the sole issuer of permits "in which the Secretary plays *no* role." *In Re: (en banc)*, 653 F.2d at 519. An enforcement action against the permittee based upon OSM's view of non-conformity of a permit to applicable standards would be nothing less than exercising a "veto power" over state permits, authority which Congress expressly withheld from the Secretary. In stating that permit decisions under SMCRA are matters of state jurisdiction in which the Secretary plays no role, the District of Columbia Circuit contrasted the absence of federal authority under SMCRA with the scheme established under another federal environmental statute:

> The *independence* of a state administering an approved state program under the Surface Mining Act may be *contrasted* with the *continuing role* of the Environmental Protection Agency after a state has assumed responsibility for pollution discharge permits under the Federal Water Pollution Control Act. The EPA Administrator *retains veto power* over individual permit decisions under the statute. [33 U.S.C.] Section 1342(d).

In Re: (en banc), 653 F.2d at 519 n. 7.[12]

Thus, to allow OSM to accomplish at the back-end what Congress forbade initially would essentially vest OSM with day-to-day "concurrent jurisdiction" which does not exist under the permanent program in a primacy state; *Haydo*, 830 F.2d at 497; and improperly allow the Secretary to become "directly involved in local decision making after the program has been approved." *In Re: (en banc)*, 653 F.2d at 518.

The use of SMCRA's inspection and enforcement provisions as a means to dislodge state permitting decisions does not fit well with the statutory scheme. Issues involving the non-conformance of a permit to applicable standards are resolved through a request by the state regulatory authority to the permittee for a permit revision, and not enforcement action. See Section 511(c); 30 CFR 774.11(b). This process is accompanied by notice, findings supplying the basis for the request, and an opportunity for a hearing before the revision must be submitted. *Id.* When OSM is the regulatory authority, it must proceed to correct permit problems through the revision process. It appears incongruous for OSM to take direct enforcement action against a permittee in a state where it has no direct jurisdiction, and lacks permitting authority, when it could not conduct itself in such a manner where it does have "exclusive jurisdiction" as in a federal program state. Moreover, an enforcement action under Section 521(a) generally requires the prescription of abatement measures to assure compliance and presumes that such measures are within the power of the permittee. However, if the enforcement action requires the submission of a revision to a state-issued permit, the State regulatory authority is the only one empowered under SMCRA to request and approve a revision. If the state disagrees that a revision is warranted under the state program, the permittee cannot fully comply and remains in jeopardy because of a continuing disagreement between the state and OSM. Moreover, the permittee has been denied its rights to prior notice, findings, and a hearing under SMCRA for permit revisions.

It also appears incongruous with the statutory scheme to permit OSM in its general oversight role to take action it could not otherwise pursue even when it takes action to substitute either federal enforcement or a federal program for all or part of the state program. In two provisions which discuss direct federal intervention, the statute requires that the Secretary, *before* issuing any enforcement orders, first afford the permittee an opportunity to revise a permit it finds does not conform to the requirements of the applicable regulatory

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carries a right of successive renewal with burden upon opponents of renewal).

[11] The discussion herein does not evaluate this issue which remains the subject of litigation in *National Coal Association, et. al.* v. *Lujan*, Civ. Nos. 87–2076–JGP and 88–2273–JGP (D.C.C.) in which IMCC is an intervenor. The regulation in question in that litigation, known as the ten-day notice rule, assumes OSM has authority to issue notices of violation in primacy states in certain circumstances. 30 CFR 842.11 and 843.12(a)(2); 53 FR 26728 (July 14, 1988). This rule discusses some of the circumstances where OSM believes federal enforcement action is not permissible and the type of deference OSM will afford state responses to federal ten-day notices.

[12] Even under the Clean Water Act which explicitly reserves with EPA authority to take action against state-issued permits, the courts have ruled that such authority is discretionary and EPA cannot be compelled to exercise such authority even when it decides that the state permit *does not conform* to the applicable guidelines or regulations. *District of Columbia* v. *Schramm*, 631 F.2d 854, 860 (DC Cir. 1980). To imply federal jurisdiction "would upset the federal-state balance struck by Congress." *Id.*

program. Sections 504(d), 521(b). See also 53 FR 26730, 26735. A permittee operating in a primacy state in which OSM has not completed, let alone initiated, a proceeding to "take-over" a state program has ample grounds for relying on the permit issued by the state permitting authority without becoming subject to direct intervention or enforcement by OSM in its oversight role.

However, this is not to say that OSM has absolutely no recourse. The federal action, if it decides it is necessary, is captured in the ten-day notice rule's guiding principles for OSM's oversight role in these circumstances:

> the regulatory focus shifts from individual situations to a broader evaluation of a state's overall program.

53 FR 26731. See also 53 FR at 26738.

In other words, OSM will use the other mechanisms the law provides for "resolving problems with state implementation of the program; and, these mechanisms allow inadequacies to be corrected without placing the mine operator in the middle of conflicting orders from state and federal officials." *Id.*

The legislative history further confirms that Congress "carefully delineated" the federal and state authority when the state is the regulatory authority. The history contains discussions about the relative roles of the state and federal governments; the statutory intent to avoid state-federal overlap; and, the procedures for displacing the state as the regulatory authority. See e.g. S. Rep. No. 128, 95th Cong. 1st Sess. 72,90,92 (1977); H.R. Rep., No. 218, 95th Cong. 1st Sess. 129 (1977). While the appropriate context for reading these excerpts remains subject to debate, they certainly provide a basis for avoiding federal intervention in individual permitting matters. Yet, another excerpt from the legislative history discloses that the issue of federal intervention in individual state permits did not go by without some direct discussion. In comments filed with the House and Senate on the pending legislation, which later became law, the Department of Interior requested such authority as follows:

> Although the Department does not foresee having to intervene in state regulatory programs often, the bill provides *no method of intervention* in cases where the state program may be faltering in only one or two areas short of state program revocation. In these instances the *Department needs the authority to review selected permits*. We recommend adding a provision which would permit limited intervention without withdrawing approval of a state regulatory program.

H.R. Rep. No. 218, 95th Cong., 1st Sess. 156 (1977); S. Rep. No. 128 at 113.

Congress did not accommodate this request. Nothing changed in the prior versions of the bills, nor in those that passed both houses in 1977 to confer any "limited" or "select" intervention authority. In fact, the bill finally enacted imposed additional notice and hearing procedures prior to direct federal intervention or takeover of the state program, and provided a grace period for permittees to conform their permits if necessary after a federal takeover. H.R. Rep. No. 493, 95th Cong. 1st Sess. 110 (1977). See also *In Re: Permanent Surface Mining Regulation Litigation*, 653 F.2d at 519 n. 7 (appeals court noting the absence of federal authority in individual permit decisions).

In sum, OSM's use of ten-day notices to raise concerns with state permits should be construed as an unauthorized attempt to confer upon itself regulatory authority Congress expressly withheld under the statute. Certainly any follow-up to such a notice against the permittee would cross the bounds of authority SMCRA delineates for the federal government when the state is the regulatory authority.

An oversight role which refrains from taking direct federal enforcement against a permittee complying with a permit OSM believes may not be in conformance with applicable standards would fall squarely within the general policy framework set forth in the agency's ten-day notice rules. The ten-day notice rule sets forth how OSM conducts its day-to-day oversight activities in the context of the federal agency's interaction with a permittee in a primacy state. 30 CFR 842.11(b)(1); 843.12(a)(2); 53 FR 26728 (July 14, 1988). The rule embodies the principles set forth earlier in this petition with respect to the allocation of regulatory authority in primacy states. The purpose of the rule is to minimize overlap and conflict between the states and federal government, *and* to avoid "placing the mine operator in the middle of conflicting orders from the state and federal officials." 53 FR at 26731. Central to this purpose, and pertinent to this discussion is the recognition that when disputes arise between the states and federal government, the resolution must avoid "penalizing the operator when the state is at fault * * *" *Id.* at 26730.[13]

The ten-day notice rule principally focuses upon disputes over on-the-ground conditions. However, there are some references to the situation where it is believed that a permit may not reflect applicable program requirements. For instance, the ten-day notice rule establishes that when OSM believes that a state erred in issuing a permit by authorizing a particular "on-the-ground" practice, the appropriate course of action by the state, if the state concurs, is to request a permit revision under Section 511 procedures rather than taking enforcement action. 53 FR at 26734. However, this excerpt from the preamble does not mention what federal action would occur if the state and OSM continue to disagree about the permit's conformance to applicable regulatory requirements. Nonetheless, the general intent of the rule supports refraining from federal action directed at the permittee. Instead, the rule directs federal action toward evaluating whether to pursue any of the other available mechanisms the law provides "for resolving problems with state implementation of the program." 53 FR at 26731 (listing such actions as program amendments; substituting federal enforcement of all or part of the state programs; etc.).

The case law and ten-day notice rules clearly establish the state program, and not SMCRA, as the law in the state which imposes obligations upon the permittee. 53 FR at 26728, 26736, 26737; *citing In Re: (en banc), supra.*; See also *NWF* versus *Lujan*, 928 F.2d at_____n.1 (Wald, J., concurring); *Laurel Pipeline, supra.* Thus, to the extent a ten-day notice is issued on the basis of an alleged violation of the Act or federal rules, no citation can be issued against the permittee because "factual situations . . . characterized as 'violations of the Act' are not enforceable against operators until incorporated * * * into the state program." 53 FR at 26737 *citing Haydo, supra.* To the extent the state program appears deficient, as evinced by the state's application of the program, OSM's role is to decide whether the state needs to amend its program. 53 FR 26731, 26735–36, 26738.

Often, the disagreement between the state and OSM may not clearly fall into the category of a deficient state program. Instead, these disputes will turn upon the differences of opinion on how to apply a provision in a particular circumstance. The array of disputes over the interpretation and application of state program provisions share similar considerations to those discussed above about activities which allegedly do not conform to the federal Act or rules; and, in those circumstances, the ten-day notice rule advises against a federal oversight role which includes direct federal action against the permittee. Again, when OSM disagrees how the state has construed and applied a state program requirement in a permit, the matter represents a disagreement between the two government entities which must be resolved without the "issuance of a federal NOV to an operator merely because OSMRE and the state cannot resolve the disagreement * * * between them." 53 FR at 26737.

It is important to note that the state's interpretation and application must be accorded deference given its greater familiarity with its laws and regulations. Id. at 26734–35. The evaluation of the state response occurs against the state program and not SMCRA or the federal rules. If, despite this deference, the Secretary still believes that the state's interpretation of the state's own program is inconsistent with the terms of the program approval, it must decide how serious this departure is and whether it should persuade the state to request a permit revision, or in the face of the state adhering to its views, request a program amendment or supersede the state program. 53 FR at 26732–34. See the earlier discussion of the arbitrary, capricious and abuse of discretion standard at pages 18–19, *supra.*

[13] An important aspect of this rule is the process, and its flexibility, established to ascertain whether the state is "at fault". In other words, while the federal inspector may believe the violation exists, the process and standards afford the opportunity to discern whether in fact the state response is reasonable. It is of no consequence that the state response does not mirror that which OSM would provide in the same circumstance, but instead the inquiry goes to whether the response fits within the wide ranges of discretion afforded the state regulatory authorities. When "disagreements arise, most likely these are the fault of *either* the Secretary or the state, and not the fault of the operator." 53 FR 26737. Thus, the deliberative process contemplated under the ten-day notice rule affords the Secretary the opportunity to also decide whether the federal agency erred in its initial "belief" that a violation exists.

In sum, a policy that precludes direct federal enforcement action against an individual state permittee when allegations arise that the state-issued permit fails to conform to applicable program requirements comports with the statutory scheme and its allocation of regulatory jurisdiction under SMCRA. Moreover, such a policy would follow from the agency's ten-day notice rule which places "limitations under which OSM can issue NOVs in primacy states" so as "to allow disagreements to be sorted out without unnecessary issuances of federal NOVs." 53 FR at 26737.[14]

The other reasons which have arisen in ten-day notices such as disagreements over the adequacy of information, technical analysis, or procedures find an even less compelling basis for pursuing direct federal intervention or action against the permittee. The reasons discussed above more than adequately provide a limitation upon OSM's authority since issues related to the quantitative or qualitative character of the permit decision constitute the purest form of disputes over subjective judgment. However, they do raise a threshold issue of whether even a ten-day notice should be issued.

As discussed earlier, the statutory provisions for the ten-day notice contemplate an on-the-ground inspection which detects a possible violation of a standard by the permittee. Alleged deficiencies about the quantity and quality of either information or technical analysis hardly provides what the Act requires as reason to believe that "any person is in violation of any requirement of this Act or any permit condition required by this Act." Section 521(a)(1). Instead, these issues involve a difference of opinion as to whether two people would make the same policy judgment based upon a given set of facts and information. Such issues are not amenable to the purpose of the enforcement procedures whereby the inspector must set forth: The nature of the permittee's violation; remedial action required; the period of time established for abatement; a description of the surface coal mining operation to which the notice applies; and, a statement that the failure to meet the abatement date leads to an order for the cessation of the operations. Section 521(a) (2) and (5). These enforcement provisions contemplate that abatement is within the power of the permittee. This simply is not the case where a permittee is subjected to an action by the federal agency which lacks permitting authority merely because of a continuing disagreement with the state agency vested with the permitting authority under SMCRA.

The ten-day notice process itself seems inapplicable to the oversight function for evaluating the overall implementation of the permitting component of the state program. While the Act applies the ten-day notice procedure in the context of an inspection of the "surface coal mining operation" itself, sections 517 (a); 521(a)(1), quantitative and qualitative concerns over state permit review and decisions present consideration of "state performance" and not the permittee's possible violation of a performance standard.[15] Because these quantitative, qualitative, and procedural issues arising from permits do not either arise from an inspection of the operation itself, or present a possible violation by the permittee, the ten-day notice process does not appear to be the appropriate mechanism for initiating the process whereby the state either "causes" the non-existent violation of the permittee to be corrected, or shows good cause for such failure. See Section 521(a)(1). Instead, these types of concerns representing "state performance" issues are best left to comprehensive resolution with the state if they persist and pervade state program implementation. Contrarily, limited and non-systemic permitting errors by the state need not and should not precipitate OSM action against either the permittee or the state's program. Many such errors are harmless, and those which may or would result in actual on-the-ground problems can be dealt with by the state on a case-by-case basis. OSM's backstop authority exists through the imminent harm cessation order process, which can be implemented if a true harm occurs or is threatened due to the state's ongoing failure. To the extent inadequate performance continually pervades the permitting component of the state program, Congress set forth the means for correction under Section 521(b) which includes notice, hearings, and a decision whether to "take-over" part or all of the program. See also 30 CFR part 773 (establishing a deliberative process that can be terminated if the state and federal agency resolve the performance problem).

In summary, where OSM believes that a state-issued permit does not conform to applicable regulatory standards, the Act and rules direct that the "disagreement" be resolved between the state and federal agency *without* direct federal intervention in the realm of the states in the form of an enforcement proceeding. In those instances where the disagreement essentially involves the quantitative and qualitative nature of the permit information, analysis, and decision, even the use of the ten-day notice or any similar process patterned after Section 521(a)(1) of SMCRA would appear to go beyond the most natural reading of the language and intent of the statute. A policy which precludes issuance of federal NOVs in primacy states on the basis of alleged non-conformity of the permit, and refrains from the case-by-case ten-day notice type of procedure for informational and qualitative analysis concerns with permits, is consistent with SMCRA, its legislative history, and applicable case law. This policy can be accommodated via changes to the existing ten-day notice rule together with revisions to OSM's existing rules on improvidently issued permits at 30 CFR 843.21. The proposed regulatory language suggested above accounts for the incorporation of such a policy. (See proposed §§ 773.28 and 773.29.) The only thing left for OSM to do is to adjust its policy directive (INE–35) accordingly. This must go hand-in-hand with the regulatory revisions suggested above.

With respect to the proposed revision of section 843.21, we recognize that portions of this rule are currently before the U.S. District Court for the District of Columbia in litigation challenging OSM's rules on ownership and control and improvidently issued permits. *National Wildlife Federation, et. al* versus *Lujan*, C.A. No. 88–3117 (D.D.C.). Our revisions are based on the rationale set forth in the petition and upon a recognition that federal enforcement action in the permitting area is inappropriate regardless of how the issue is framed. Thus, although the improvidently issued permits rule (30 CFR 843.21) deals primarily with permits that should not have been issued due to an undiscovered (or improperly handled) permit block against an applicant, the

[14] Some may contend that decisions of the Interior Board of Land Appeals (IBLA) require that OSM engage in a ten-day notice process and even take action directly against a state permittee in matters involving an alleged non-conformity of a permit. *See e.g. Samuel Mullinax*, 96 IBLA 52 (1987); *W.E. Carter*, 116 IBLA 262 (1990); *Paul F. Kuhn*, 120 IBLA 1 (1991). However, with the exception of *Kuhn*, these cases were decided under different federal rules which did not place the current limitations upon OSM's oversight authority as does the current ten-day notice rule. The *Kuhn* case references the ten-day notice rule but fails to even examine, let alone discuss, its possible application to the case at hand, and instead sets forth erroneous premises citing a string of cases all decided prior to the ten-day notice rule. For example, the Board stated in *Kuhn*, "no definition of the phrase, 'appropriate action' has been provided by OSM." 120 IBLA at 16, *citing* a 1982 version of 30 CFR 843.12. This is flatly wrong, and the opinion makes no mention of the other consideration of whether the state showed good cause for not taking action.

Kuhn also misstates some of the precedent that serves as the basis for its decision as follows:

> where it is evident that a permit has been issued in violation of state regulatory requirements, this Board has declared such action inappropriate, and has ordered *federal enforcement*. *Citing* W.E. Carter, *supra*.
>
> 120 IBLA at 20.

Not only was the case it cites not decided under the ten-day notice standards now applicable, the Board in *Carter* only ordered a federal inspection but never reached the issue of what type of federal action should follow the inspection. In many respects *Kuhn* is advisory at best since it chose to articulate its views despite the fact that the permitting controversy was moot. 120 IBLA at 23 n. 9. *Compare with, Hopi Tribes* v. *OSM*, 109 IBLA 374, 381 (1989) (an appeal is moot if there is no effective relief which the Board can afford to the appellant).

Finally all of these cases were considered in the context of citizen complaints and the Board was either never advised of or chose not to consider the issue, discussed *infra*, that citizen complaints cannot displace the more specific procedures to contest state permit decisions. To the extent one construes these cases as rejecting this view, the cases then simply remain contrary to applicable case law because it would allow the Secretary to review state permitting decisions, a matter in which "the Secretary plays no role." *In Re: (en banc)*, 653 F. 2d at 519.

[15] Generally, OSM performs oversight of state permitting as a separate component of the annual review and not through occasional inspection of the surface coal mining operation under section 517(a). See Policy Directive Reg.-8 "Oversight of State Regulatory and State and Tribal Abandoned Mined Land Reclamation Programs" Transmittal No. 693 (Nov. 12, 1991). The only rule which discussed annual evaluation of state programs simply states: "The Director shall evaluate the administration of each state program at least annually." 30 CFR 733.12(a)(1).

situation is not different than where a citizen alleges a defect in a state-issued permit based on a wholly different ground, i.e. a technical deficiency or discrepancy. In neither case is there an on-the-ground violation at a surface mining site that can be identified. Based on our above analysis and discussion, this is where we draw the line between appropriate federal intervention by way of federal inspections and TDN issuance and inappropriate interference in the sacrosanct area of state permitting authority. Thus, where any type of alleged permit defect is involved—be it AVS related, technical or procedural—OSM's action is limited to addressing the programmatic deficiencies associated therewith pursuant to its annual evaluation program, a state program amendment (30 CFR 732.17) and/or a federal takeover proceeding (30 CFR part 733). Our suggested language changes for 30 CFR 843.21 reflect this position. (*See* proposed section 773.28 and 773.29.)

IV. Conclusion

The Congressionally contemplated scheme for enforcing the provisions of SMCRA pursuant to approved state regulatory programs calls for a careful balancing of state and federal interests. Nowhere is this balancing more critical than in the handling of citizen complaints that allege violations of the approved state program at surface mining sites. Consistent with the intent of Congress and the principles of cooperative federalism and primacy woven throughout SMCRA, this petition for rulemaking attempts to address the appropriate procedures for handling citizen complaints alleging on-the-ground violations in the context of OSM's existing regulations and in terms of the respective roles of the state and OSM thereunder. We assert that the approach contained in our proposal is consistent with SMCRA and Congressional intent and provides a meaningful and workable resolution of this complex issue.

The petition also addresses the proper role of the Secretary acting through OSM when the federal agency believes that the state-issued permit does not conform to the Act, or the state program. Again, this issue must be examined in the context of the deliberate allocation of authority between the state and federal government, along with the principle that it is not SMCRA or the federal rules but, instead, the state program which applies in a primacy state. A related issue is the treatment of information received by OSM from a citizen of the primacy state with respect to an alleged non-conformity of a state-issued permit to the Act or state program. For similar reasons, the answer to both issues points toward resolution of the alleged non-conformity of the permit with the state regulatory authority without federal action against the permittee. The discussion above addresses the reasons why in various circumstances federal intervention in specific state permitting matters is generally inappropriate and would contravene the deliberate allocation of state and federal authority under SMCRA, unless, and until, the Secretary formally substitutes federal enforcement for all or part of a state program.

The requested amendments and modifications to OSM's federal regulations will conform the permanent regulatory program to the plain language of the statute, congressional intent and existing case law. Moreover, the changes as requested, will correct severe flaws in OSM's present approach to the issuance of ten-day notices and to oversight by directing the agency's monitoring efforts to the appropriate procedures already established for resolving the issues which arise in the course of the states' implementation of their approved regulatory programs.

Accordingly, for the reasons stated herein, Petitioners request that the Director immediately grant the petition pursuant to section 201(g) of the Act and 30 CFR 700.12 and promptly thereafter commence an appropriate proceeding to promulgate the requested amendments and modifications in accordance with section 501 of SMCRA and 5 U.S.C. 553.

Respectfully submitted,

Gregory E. Conrad,

Executive Director, Interstate Mining Compact Commission.

[FR Doc. 93–19583 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Chapter VI

The Higher Education Amendments of 1992

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of a meeting to continue negotiated rulemaking.

SUMMARY: The Assistant Secretary for Postsecondary Education of the United States Department of Education (Department) will reconvene a group to participate in negotiated rulemaking sessions. This group will continue its review of draft proposed regulations for certain sections of parts B, G, and H of title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992. These sections relate to the Department's student financial assistance programs. This meeting continues negotiated rulemaking sessions held April 26–30, 1993 and June 14–18, 1993. The Assistant Secretary published a notice inviting the public to observe these negotiations in the **Federal Register** April 27, 1993 (58 FR 25590–25591). The Department has arranged for a mediator from the private sector to mediate this session. The meeting is open to members of the public who wish to observe the process.

DATES: The session is scheduled for August 16 through 18, 1993. Each full day of negotiations will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037. Telephone number: (202) 872–1500.

FOR FURTHER INFORMATION CONTACT:

If you have questions about the upcoming negotiations, please contact Mr. Robert W. Evans at (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Issues for Negotiation

The issues that will be negotiated relate to the Student Assistance General Provisions, 34 CFR part 668, subparts A and B; Third-party Servicers; and Consultants.

Background

Section 492 of part G of title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 that were signed into law July 23, 1992, contains procedural requirements the Department is to follow in developing and issuing regulations to govern Part B (Federal Family Education Loan Program, formerly Guaranteed Student Loans); Part G (General Provisions); and Part H (Program Integrity Triad) of Title IV. In particular, paragraph (b) of section 492 requires the Secretary, after holding regional meetings, to "prepare draft regulations implementing parts B, G, and H of this title * * * and submit such regulations to a negotiated rulemaking process." The statute further requires that participants in this negotiated rulemaking process be chosen by the Secretary from individuals nominated by groups participating in the regional meetings that preceded the negotiating sessions. The statute requires the Secretary to select individuals as negotiators who reflect the "diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets."

Participants

The list of the participants whom the Department has invited to participate are those listed under Group I in the April 27, 1993 **Federal Register** notice. The Department may add additional negotiators to this list.

Dated: August 12, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–19823 Filed 8–16–93; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[VA18–1–5964 and VA17–1–5965; FRL–4693–8]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Virginia; Approval of the Maintenance Plan for the Richmond Area and Redesignation of the Richmond Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 12, 1992, the Commonwealth of Virginia's Department of Environmental Quality (VDEQ) submitted a request to EPA to redesignate the Richmond moderate ozone nonattainment area from nonattainment to attainment. On November 12, 1992, the VDEQ also submitted a maintenance plan for the Richmond area as a revision to the Virginia State Implementation Plan (SIP). The EPA is proposing to redesignate the Richmond ozone nonattainment area from nonattainment to attainment and proposing to approve the maintenance plan submitted by the VDEQ as a revision to the Virginia SIP because the relevant requirements set forth in the Clean Air Act, as amended in 1990, (CAA) have been met. These actions are being taken in accordance with the CAA.

DATES: Comments must be received on or before September 16, 1993.

ADDRESSES: Comments should be sent to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The state submittal and the Technical Support Document (TSD) prepared on these proposed actions is available for public review at the above address and at the Virginia Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia, 23240;

FOR FURTHER INFORMATION CONTACT: Cristina M. Schulingkamp, (215) 597–0545.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. (1977 Act, sections 110(a)(1) and 172.) The Richmond nonattainment area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on March 3, 1978. (40 CFR 81.347) In accordance with section 110 of the 1977 Act, the Commonwealth of Virginia submitted a part D ozone SIP on January 12, 1979, which EPA approved as meeting the requirements of section 110 and Part D of the 1977 Act. In its SIP, the Commonwealth of Virginia projected that the Richmond nonattainment area would attain the ozone standard by December 31, 1982. The area failed to attain the standard. On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The nonattainment designation of the Richmond area continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990; furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) of the CAA. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.347.

The Richmond ozone nonattainment area more recently has attained the ozone NAAQS, based on air quality data from 1989 through 1991. In an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 12, 1992 the VDEQ submitted an ozone maintenance plan for the Richmond area as a revision to the Virginia SIP. On November 12, 1992, the Commonwealth of Virginia also requested that EPA redesignate the Richmond area to attainment with respect to the ozone NAAQS.

II. Evaluation Criteria

According to section 107(d)(1)(E) of the CAA, five specific requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act.
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of Virginia's Submittal

The Commonwealth of Virginia's November 12, 1992 redesignation request for the Richmond area included information and documentation sufficient for EPA to determine that the five requirements of section 107, noted above have been met. Following is a brief description of how each of these requirements has been fulfilled. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A Technical Support Document (TSD) has been prepared by EPA on these rulemaking actions, dated July 23, 1993. That TSD is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this notice.

1. Attainment of the Ozone NAAQS

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient ozone monitoring data for 1989 through 1991 show attainment of the ozone NAAQS in the Richmond area. *See* 40 CFR 50.9 and appendix H. Because the Commonwealth's November 12, 1992 request for redesignation included documentation that the Richmond ozone nonattainment area has complete, quality-assured data showing attainment of the standard over the most recent consecutive three calendar year period, the Richmond area has met the first statutory criterion for redesignation to attainment of the ozone NAAQS found at section 107(d)(3)(E)(i) of the CAA.

It is important to note that the 1992 and 1993 ozone seasons (April through October of each calendar year) will have passed prior to the time EPA would be taking final action on today's proposal to redesignate the Richmond area to attainment. There were no violations of the ozone standard in the Richmond area in 1992. EPA will not take final action to redesignate the Richmond area to attainment until it has reviewed the relevant monitoring data and determined that the area did not violate the ozone standard during the 1993 ozone season.

2. Meeting Applicable Requirements of Section 110 and Part D

As previously stated, EPA fully approved the Commonwealth's SIP for the Richmond area as meeting the

requirements of section 110(a)(2) and part D of the 1977 Act. The amended CAA, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act as of November 12, 1992, the date the Commonwealth submitted its redesignation request.

2.A. Section 110 Requirements

Although section 110 was amended by the CAA, the Richmond SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, *See* 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). It contains enforceable emission limitations, it requires monitoring, compiling, and analyzing ambient air quality data, it requires preconstruction review of new major stationary sources and major modifications to existing ones, it provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

Before the Richmond ozone nonattainment area may be redesignated to attainment, it also must have fulfilled applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Richmond ozone nonattainment area was classified as moderate. (*See* 56 FR 56694, codified at 40 CFR 81.347). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176— as well as the applicable requirements of subpart 2 of part D.

2.B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended Act. EPA has not determined that these requirements are applicable to ozone nonattainment areas on or before November 12, 1992—the date the Commonwealth submitted a complete redesignation request for Richmond. Therefore, the Commonwealth was not required to meet these requirements for purposes of redesignation.

2.B.2. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176 of the Act requires States to develop transportation/air quality conformity procedures which are consistent with Federal conformity regulations. Section 176 provides that EPA must develop federal conformity regulations, requiring States to submit these procedures as a SIP revision by November 15, 1992. EPA has not yet promulgated final conformity regulations; therefore no regulatory submittal date has been established. If EPA determines the conformity regulations to be applicable to attainment areas, the Commonwealth will revise the SIP to be consistent with the final Federal regulations on conformity upon promulgation of the final rules.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

The Richmond nonattainment area is classified as moderate. The requirements of subpart 2 of part D of the CAA for moderate areas are found at section 182(b). As of November 12, 1992, the date Virginia submitted a complete redesignation request for the Richmond nonattainment area, the Richmond area was required to meet the provisions of section 182(a)(2)(A) to correct its Reasonably Available Control Technology (RACT) requirements in effect prior to enactment of the 1990 CAA amendments. Virginia submitted those RACT corrections as SIP revisions to EPA on May 14, 1991 and June 20, 1991. EPA proposed approval of these RACT corrections on June 25, 1993 (58 FR 34392). EPA must take final rulemaking action to approve these RACT corrections prior to or in concert with any final action redesignating the Richmond area to attainment in order to satisfy section 107(d)(3)(E)(v) of the CAA for redesignation.

Although not required in order to meet section 110(k) or Part D because the Commonwealth submitted its request that EPA redesignate the Richmond area to attainment on November 12, 1992, the VDEQ has adopted and submitted the following regulations as SIP revisions applicable to the Richmond nonattainment area: Annual Emission Statement regulations, Stage II Vapor Recovery regulations, and amended NSR provisions including the offset ratio of 1.15:1 for moderate areas. These SIP revisions are the subject of separate rulemaking notices. It is important to note that these requirements will, in addition to the existing SIP's RACT requirements, continue to be effective in the Richmond area as part of the Commonwealth's maintenance plan even if the area is redesignated to attainment.

3. Fully Approved SIP Under Section 110(k) of the Act

As stated previously, upon final approval of the RACT corrections noted above, the Commonwealth will have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above. Therefore, the redesignation criterion of section 107(d)(3)(E)(ii) will have been met by the time EPA takes final action redesignating the area to attainment.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, EPA approved the Commonwealth's SIP control strategy for the Richmond nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Since enactment of the amended Act, the Commonwealth submitted corrections to its RACT regulations as identified above. EPA finds that these additional, recently adopted measures contribute to the permanence and enforceability of reductions in ambient ozone levels in the Richmond area. Between 1988 and 1990, because of permanent and enforceable state and federal provisions, emissions of volatile organic compounds (VOCs) were reduced by 24.0 tons/day and emissions of nitrogen oxides were reduced by 1.4 tons/day. Most of the reductions came from mobile sources and gasoline marketing-related activities due to the changes in the actual volatility, expressed as Reid Vapor Pressure (RVP), of gasoline marketed for use in the Richmond area from 9.9 RVP to 8.4 RVP and the increase in the percent of automobiles

operated in the Richmond area meeting more stringent emission standards. It must be noted here that since 1992 the federal RVP requirement of 7.8 has been effective in the Richmond area. The Commonwealth's maintenance plan requires the continuation of the federal RP program and their implementation of the federal reformulated gasoline program. These reductions due to lower RVP and more stringent tailpipe standards resulting from the Federal Motor Vehicle Control Program were determined using the mobile emission inventory model MOBILE5 and the relevant vehicle miles traveled data.

Permanent and enforceable decreases in VOCs at stationary sources contributed a small amount to the total VOC reduction in the Richmond area. In association with its emission inventory, the Commonwealth demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which the Richmond area's ambient air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions. The point source growth rate in the Richmond area was determined to be 1.21 using new and modified source data from the period of 1988 to 1990. The determination of emission reductions considered such factors as allowable emission rates and production capacities in order to show that the improvements were the result of implemented controls.

EPA finds that the combination of state measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed the Richmond area to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

The EPA is proposing approval of the Commonwealth's maintenance plan for the Richmond area because EPA finds that Virginia's submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the Richmond nonattainment area will have a fully approved maintenance plan in accordance with section 175A.

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

5.A. Emissions Inventory—Base Year Inventory

The Commonwealth of Virginia submitted comprehensive inventories from area, stationary, mobile and biogenic sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 VOC inventory is considered most representative of attainment conditions because no violations occurred in 1990 and it reflects the typical inventory for the three-year period demonstrating attainment of the standard. The Commonwealth's submittal contains detailed inventory data and summaries by source categories. The Commonwealth's submittal also contains information related to how it comported with EPA's guidance, which model and emission factors were used (note MOBILE5 was used), how VMT data was generated, what RVP was considered in the base year, and other technical information verifying the validity of the Richmond emission inventory.

5.B. Demonstration of Maintenance—Projected Inventories

In addition to the continued sale and use of lower RVP gasoline (7.8) and fleet turnover to automobiles meeting more stringent emission standards, mobile source emission projections are dependent upon the implementation of the federal reformulated gasoline program and Stage II Vapor Recovery controls for motor vehicle refueling in the Richmond area. The Commonwealth of Virginia adopted regulations for Stage II Vapor Recovery on October 5, 1992 which became effective in the Commonwealth on January 1, 1993. The Commonwealth formally submitted its Stage II Vapor Recovery Program to EPA as a SIP revision on November 5, 1992.

EPA's proposed action to approve that SIP revision is the subject of a separate rulemaking notice. As previously noted, the Virginia's Stage II Vapor Recovery Program, the federal RVP program and the eventual implementation of the federal reformulated gasoline program must remain in effect in the Richmond area even if it is redesignated because those programs are part of the Commonwealth's maintenance plan. Mobile source emissions were projected using MOBILE5 with a VMT growth rate of 2.69 percent per year based on historic increases. Point and area source emission projections assume the continued use of RACT on all source types, and the preconstruction permit program for new and modified major sources including lowest achievable emission rate and offset requirements. A point source growth rate of 1.21 percent was used to project emissions from new sources based on the growth rate data from 1988 to 1992. Total emissions were projected from the 1990 base year out to year 2005. The projections demonstrate that the ozone standard will be maintained i.e., emissions are not expected to exceed the level of the base year inventory during this time period.

The TSD prepared for this rulemaking contains summary charts of the base year inventory and of the projected inventory by source categories.

5.C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Richmond area depends, in part, on the Commonwealth's effort toward tracking indicators of continued attainment during the maintenance period. The Commonwealth will track the status and effectiveness of the maintenance plan by periodically updating the emissions inventory. The VDEQ has committed to perform this tracking on an annual basis in order to enable the Commonwealth to implement the contingency measures of its maintenance plan as expeditiously as possible.

The Commonwealth's annual update will indicate new source growth, and other variations from the attainment inventory, including changes in VMT, traffic patterns and other MOBILE5 factors. The Commonwealth will continue to monitor ambient ozone levels by operating its ambient ozone air quality monitoring network in accordance with 40 CFR part 58. In cases where measured mobile source parameters have changed over time, the Commonwealth recognizes that it may also need to conduct studies to determine the need for and location of additional ambient monitors.

5.D. Contingency Plan

The level of emissions in the Richmond area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with

the NAAQS, the Richmond area may exceed or violate the NAAQS. Therefore, Virginia has provided contingency measures with a schedule for implementation in the event of future ozone air quality problems. The Commonwealth has developed contingency provisions in the maintenance plan that address two situations.

The first situation would be that there is a potential increase in the emission inventory that "crosses" the plan's so-called "emissions action line" and "invades" the "emission safety margin," but does not exceed the 1990 emissions level cap. In this instance, the VDEQ will monitor the observed growth rate on a yearly basis. Updated EPA-approved methods will be used to estimate emissions. The VDEQ will determine if emissions are expected to exceed the emissions level predicted for year 2005. If this "emissions action line" is projected to be exceeded in 2005 or any year prior to 2005, contingency measures will be implemented as follows. For post-1994 emissions above the "action line," with no recorded (monitored) ozone violations, the VDEQ will: (1) Prepare a complete, comprehensive emission inventory; and (2) require implementation of a basic automobile inspection and maintenance (I/M) program (enabling I/M legislation is already in place for this contingency).

The second situation which would trigger the maintenance plan's contingency measures would be monitored violations of the ozone NAAQS. If more than one exceedance of the ozone standard of 0.12ppm occurs in a single year, the action line will be considered crossed for the purposes of the following:

(1) For post-1994 violations of the ozone standard, require VOC emission offsets for new and modified major sources at a ratio higher than 1.15 to 1.

(2) For post-1994 violations after #1 has been implemented, require VOC controls on non-major sources. Source selection will be based on emission reduction needs/potential and cost effectiveness.

(3) For post-1994 violations after #1 and #2 have been implemented, require implementation of one or more transportation control measures (TCMs) sufficient to achieve at least a 0.5 tons/day reduction in actual VOC emissions. Measures will be selected based on emission reduction needs/potential and cost effectiveness. Transportation measures include trip reduction programs, including but not limited to employer-based transportation management plans, area-wide ride share programs, work schedule changes, and telecommuting; transit improvements; traffic flow improvements; alternate fuel programs or vehicle fleet operations; vehicle anti-tampering programs; and any other transportation related measures deemed appropriate. EPA finds that the contingency measures provided in the maintenance plan meet the requirements of section 175A(d) of the CAA.

The VDEQ will assess the need for these contingency measures after each ozone season, and in either situation would implement them as necessary prior to the next ozone season. EPA finds that the contingency measures provided in the maintenance plan meet the requirements of section 175A(d) of the CAA.

5.E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the Commonwealth has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for the additional ten years.

EPA has determined that the maintenance plan adopted by the Commonwealth of Virginia and submitted to EPA on November 12, 1992 meets the requirements of section 175A of the CAA. Therefore, EPA is proposing to approve the maintenance plan submittal. In addition EPA has determined that upon final approval of the maintenance plan the provisions of section 107(d)(3)(E)(iv) for redesignation will have been met.

IV. Proposed Action

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the person and address listed in the **ADDRESSES** section at the beginning of this notice.

Proposed Action: EPA proposes to approve the ozone maintenance plan for the Richmond area submitted by the Commonwealth of Virginia on November 12, 1992 as a revision to the Virginia SIP because it meets the requirements of section 175A. In addition, EPA is proposing to redesignate the Richmond nonattainment area to attainment, subject to final approval of the maintenance plan and the VOC RACT corrections as SIP revisions, because of the Agency has determined that the provisions of section 107(d)(3)(E) of the CAA for redesignation of nonattainment areas to attainment have been met.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. Ozone State Implementation Plans (SIPs) are designed to satisfy the requirements of Part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. Today's proposed redesignation action should not be interpreted as authorizing the Commonwealth of Virginia to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the currently approved ozone SIP. Changes to the ozone SIP's regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA.

Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation under section 173(b) of the CAA and in a SIP deficiency call made pursuant to section 110(k)(5).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 23, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 93–19678 Filed 8–16–93; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register
Vol. 58, No. 157
Tuesday, August 17, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Rustic Rehab Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage project designed to recover dead and dying timber and rehabilitate National Forest system lands is exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: In 1993, field reconnaissance identified areas where significant timber mortality had occurred from root disease in the northern fork of Armstrong and Fortier creek drainages in the Idaho Panhandle National Forests. The Fernan Ranger District has proposed a salvage timber sale project to recover the dead and dying timber and rehabilitate several stands. The proposal also includes a watershed rehabilitation project. The District Ranger has determined, through project file analysis and preparation of a Decision Memo, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber and the watershed project rehabilitation within the affected area must be accomplished quickly to avoid further deterioration of sawtimber, to reduce the risk of catastrophic wildfire, and to rehabilitate the stands as quickly as possible for long-term watershed stability.

EFFECTIVE DATE: Effective on August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Donald J. Bright, District Ranger; Fernan Ranger District, Idaho Panhandle National Forests; 2502 East Sherman Avenue; Coeur d'Alene, ID 83814. Telephone: 208–769–3000.

SUPPLEMENTARY INFORMATION: In the spring of 1993, field reconnaissance identified areas where significant timber mortality has occurred from root disease in the upper reaches of the northern fork of Armstrong and Fortier creek drainages. The stands in need of rehabilitation are located within lands designated as suitable for timber management and assigned to Management Area 1 (Idaho Panhandle Forest Plan, August 1987). The Fernan District Ranger has proposed the salvage harvest of dead and dying trees in the area and rehabilitation of these stands. This proposal was designed to meet the following needs: (a) reduce the spread of the bark beetle infestation, (b) reduce wildfire hazard by reducing fuel loading, (c) rehabilitate timber stands that are understocked due to root disease and restock the sites to species less susceptible to root disease, and (d) capture the value of dead and dying timber products. The proposal will also improve the existing watershed condition by returning several stream crossings along an old logging road back to their original contours and correcting the water flow that is diverted down the roadway.

An interdisciplinary team was convened, and scoping begin in 1993. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected action will salvage approximately 290 MBF of dead and dying timber and rehabilitate approximately 32 acres in five small harvest units. All harvest units are accessible from existing roads. No road construction or reconstruction will occur in conjunction with this action.

To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> "Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part."

Based on the analysis documented in the Rustic Rehab Project File and the District Ranger's Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 11, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19794 Filed 8–16–93; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government-Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology; Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Mary Beth Pignone, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, Room B256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

NIST Docket No. 93–014
Title: Alloys for Cryogenic Service
Description: An austenitic alloy is described for use at cryogenic temperatures and which is comprised of nickel, chromium, molybdenum, manganese, nitrogen, and iron, with the nitrogen concentration being approximately 0.1%–0.2% of the alloy. The weld metal disclosed exhibits superior properties when used at cryogenic temperatures. These properties include a superior tearing modulus, fracture toughness, and yield strength. The invention also provides a method that comprises welding a metal part alloy intended

for exposure to cryogenic temperatures.

Dated: August 11, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–19799 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–13–M

Patent and Trademark Office

[Docket No. 930808–3208]

Foreign Filing of Secrecy Order Inventions in Designated Countries—Republic of Korea Designated on July 29, 1993

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to 37 CFR part 5, the U.S. Patent and Trademark Office has designated the Republic of Korea as a country that is available for foreign filing of secrecy order patent applications after July 29, 1993. The "Agreement Between the Government of the United States of America and the Government of the Republic of Korea for the Safeguarding of Secrecy of Inventions Relating to Defense and for which Applications for Patents Have Been Made" was signed at Seoul on January 6, 1992, and entered into force on July 29, 1993. After this date, either Government may permit the filing of patent applications under secrecy with the other Government (the "Receiving Government"), which shall safeguard their secrecy.

FOR FURTHER INFORMATION CONTACT: Robert E. Garrett, Director, Special Laws Administration & Designs, by telephone at (703) 308–0753 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Under the provisions of 37 CFR part 5—Secrecy of Certain Inventions and Licenses to File Applications in Foreign Countries—the Patent and Trademark Office may, with the approval of the defense agency sponsoring the secrecy order, permit the filing of secrecy order applications under 37 CFR 5.5 in designated foreign countries. The designated countries are those where the Government of the United States of America has entered into reciprocal patent secrecy arrangements.

The United States of America has detailed arrangements with 17 countries, most of whom are members of the Coordinating Committee for Multilateral Export Controls (COCOM). These arrangements provide protection for classified and other sensitive inventions when patent applications are being held in secret. These countries are as follows: Australia, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Republic of Korea, Luxembourg, Netherlands, Norway, Portugal, Sweden, Turkey and United Kingdom.

Such arrangements between the United States of America and the Republic of Korea include the "Agreement Between the Government of the United States of America and the Government of the Republic of Korea for the Safeguarding of Secrecy of Inventions Relating to Defense and for which Applications for Patents Have Been Made," signed at Seoul on January 6, 1992, and implementing procedures thereto ("the 1992 Agreement"). The 1992 Agreement entered into force on July 29, 1993, after which time either Government may permit the filing of patent applications under secrecy with the other Government (the "Receiving Government"), which shall safeguard their secrecy.

The 1992 Agreement stipulates that the rights of private owners of patents and technical information should be fully recognized and protected in accordance with domestic laws applicable to such rights. It also recognizes that privately owned technology should, to the greatest extent practicable, be exchanged through commercial agreements between owners and users. Other provisions are intended to assure fair treatment of private owners when they deal directly with a foreign government and to prevent private information that is communicated through government channels from being used except as provided for in the agreement.

The 1992 Agreement also provides for the establishment of a Technical Property Committee composed of representatives from each government. The Technical Property Committee is charged with general responsibility for making recommendations to the two governments on any matters relating to the Agreement which are brought before the Committee by either government. Policy guidance for the representatives of the United States of America on the Technical Property Committee is provided by the Department of Commerce, the Department of Defense, the Department of State and other U.S. Government agencies.

The U.S. Patent and Trademark Office has provided for the addition of the Republic of Korea as a country that is available for foreign filing of secrecy order applications in the following manner:

- As of July 29, 1993, the Republic of Korea will be included in all type 1 secrecy orders (as defined in "Secrecy Order and Permit for Foreign filing in Certain Countries" 51 FR 32938 (September 17, 1986), 1071 Official Gazette 31 (October 21, 1986)) as one of the authorized countries for foreign filing.
- Any type 1 secrecy order issued prior to July 29, 1993, is hereby modified to include the Republic of Korea as one of the authorized countries for foreign filing after July 29, 1993.
- Under all other U.S. Patent and Trademark Office secrecy orders, foreign filing in the Republic of Korea will be considered on a case-by-case basis under 37 CFR 5.5.

Dated: August 5, 1993.

Michael K. Kirk,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93–19798 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

August 11, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 448 is being increased by application of swing, reducing the limits for the Fabric Group and the sublevel for Category 224 to account for the increase.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54221, published on November 17, 1992; and 58 FR 7126, published on February 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 11, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 10, 1992, as amended on February 8, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, as amended, concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 19, 1993, you are directed to amend further the directive dated November 10, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Arab Republic of Egypt:

Category	Adjusted twelve-month limit[1]
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	73,636,982 square meters.
Sublevel in Fabric Group 224	17,307,486 square meters.
Level not in a group 448	16,960 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.93–19841 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits and Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Lesotho

August 11, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and amending visa requirements.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated July 30, 1993, the Governments of the United States and the Kingdom of Lesotho agreed to amend the coverage and limits on Categories 338/339/638/639 and 347/348/647/648 for the periods December 1, 1992 through November 30, 1993 and December 1, 1993 through November 30, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the current limit on Categories 338/339/638/639 and establish a limit only on knit shirts other than tee shirts, tank tops and sweatshirts in part-Categories 338–B/339–B/638–B/639–B. The current limit on Categories 347/348/647/648 is being amended to cover only cotton trousers, breeches and shorts in Categories 347/348. In addition, the visa requirements are being amended for goods produced or manufactured in Lesotho and exported from Lesotho on and after September 1, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 61051, published on December 23, 1992; and 58 26121, published on April 30, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated July 30, 1993, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 11, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Lesotho and exported during the twelve-month period which began on December 1, 1992 and extends through November 30, 1993.

Effective on August 19, 1993, you are directed, pursuant to a Memorandum of Understanding (MOU) dated July 30, 1993, between the Governments of the United States and the Kingdom of Lesotho, to cancel the import controls and charges for Categories 338/339/638/639 and 647/648 (see Categories 347/348/647/648). The import control for Categories 347/348 and the charges already made to Categories 347/348 shall be retained. Also, you are directed to establish and amend the limits for the following categories:

Category	Twelve-month restraint limit[a]
338–B/339–B/638–B/639–B[b].	760,000 dozen.
347/348	375,000 dozen.

[a] The limits have not been adjusted to account for any imports exported after November 30, 1992.

Category 338–B: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2065, 6110.90.0068 and 6114.20.0005; Category 339–B: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2075, 6110.90.0070, 6114.20.0010 and 6117.90.0022; Category 638–B: only HTS numbers 6103.23.0075, 6103.29.1050, 6105.20.2010, 6105.20.2030, 6105.90.3030, 6109.90.1049, 6110.30.1050, 6110.30.2050, 6110.30.3050, 6110.90.0076, and 6114.30.1010; Category 639–B: only HTS numbers 6104.23.0036, 6104.29.1050, 6104.29.2055, 6106.20.2010, 6106.20.2030, 6106.90.2030, 6106.90.3030, 6109.90.1090, 6110.30.1060, 6110.30.2060, 6110.30.3055, 6110.90.0078, 6114.30.1020 and 6117.90.0026.

For the import period December 1, 1992 through June 30, 1993, you are directed to charge the following amounts to the limit established for Categories 338–B/339–B/638–B/639–B. Additional charges will be provided as data become available.

Category	Amount to be charged
338–B	152,772 dozen.
339–B	272,803 dozen.
638–B	–0–
639–B	28,149 dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated July 30, 1993 between the Governments of the United States and the Kingdom of Lesotho.

For visa purposes, you are directed to amend the directive dated April 23, 1993 to include the coverage of merged part-Categories 338–B/339–B/638–B/639–B (knit shirts other than tee shirts, tank tops and sweatshirts)[1] and eliminate the coverage of merged Categories 338/339/638/639 for goods produced or manufactured in Lesotho and exported from Lesotho on and after September 1, 1993. The coverage of merged Categories 347/348/647/648 shall be amended to include only Categories 347/348. Categories 647 and 648 shall no longer be merged.

Merchandise in the foregoing categories which is produced or manufactured in Lesotho and exported from Lesotho on and after September 1, 1993, must be accompanied by the correct category, merged category, part-category, or merged part-category corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19842 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 338–B: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2065, 6110.90.0068 and 6114.20.0005; Category 339–B: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2075, 6110.90.0070, 6114.20.0010 and 6117.90.0022; Category 638–B: only HTS numbers 6103.23.0075, 6103.29.1050, 6105.20.2010, 6105.20.2030, 6105.90.3030, 6109.90.1049, 6110.30.1050, 6110.30.2050, 6110.30.3050, 6110.90.0076 and 6114.30.1010; Category 639–B: only HTS numbers 6104.23.0036, 6104.29.1050, 6104.29.2055, 6106.20.2010, 6106.20.2030, 6106.90.2030, 6106.90.3030, 6109.90.1090, 6110.30.1060, 6110.30.2060, 6110.30.3055, 6110.90.0078, 6114.30.1020 and 6117.90.0026.

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA), Department of Defense (DoD).

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: B.R. Webster, Defense Mapping Agency, Office of Human Resources, 8613 Lee Highway, Fairfax, VA 22031–2137, telephone (703) 285–9521

SUPPLEMENTARY INFORMATION: Per 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective 20 August 1993.

Allder, William R. Jr.
Deputy Director for Modernization Development, DMA Systems Center
Ancell, A. Clay
Assistant Deputy Director Production, DMA
Brown, William J.
Deputy Director for Programs, Production and Operations, DMA Aerospace Center
Buck, Irvin P.
Chief, Scientific Data Department, DMA Hydrographic/Topographic Center
Coghlan, Thomas K.
Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
Daugherty, Kenneth I.
Deputy Director, DMA
Dierdorff, Curtis L.
Deputy Director for Human Resources, DMA
Gustin, Russell T.
Deputy Director for Programs and Operations, DMA Systems Center
Hall, Charles D.
Deputy Director for International Programs, DMA
Hall, Robert H.
Deputy Director for Plans & Requirements, DMA
Hennig, Thomas A.
Deputy Director for Research and Engineering, DMA
Hogan, William N.
Director, DMA Hydrographic/Topographic Center
Jackson, Mikel F.
Chief, Digital Products Department, DMA Hydrographic/Topographic Center
Johnson, James E.
Chief, Mapping and Charting Department, DMA Hydrographic/Topographic Center
Knopfel, Lawrence
Chief, Mapping and Charting Department, DMA Aerospace Center
Labovitz, Mordecai Z.
Deputy Director for Acquisition, Installations and Logistics, DMA
Mendez, John M.
Deputy Director for Programs, Production and Operations, DMA
Muncy, Larry N.
Chief, Analysis Division, DMA Office of Support Services
Peeler, Paul L., Jr.
Director, DMA Reston Center
Phillips, Earl W.
Director, DMA Systems Center
Robinson, Bill E.
Deputy Director/Deputy for Development Group, DMA Reston Center
Smith, Kathleen M.
Deputy Director for Information Resources Management, DMA
Smith, Lon M.
Director, DMA Aerospace Center
Smith, Robert N.
Assistant Deputy Director for Advanced Systems Requirements, DMA
Smith, William D.
Deputy Comptroller, DMA

Vaughn, John R.
Comptroller, DMA
Ward, Curtis B.
Chief, Reston Department, DMA
Reston Center

Dated: August 11, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Washington Headquarters Services, Department of Defense.

[FR Doc. 93–19769 Filed 8–16–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 16, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 11, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education
Type of Review: REVISION
Title: Student Aid Report
Frequency: Annually
Affected Public: Businesses or other for-profit; small businesses or organizations
Reporting Burden:
Responses: 12,667,589
Burden Hours: 2,559,062
Recordkeeping Burden:
Recordkeepers: 7,300
Burden Hours: 634,467
Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by the applicant to the participating institutions of their choice. The institution submits Part 3 of the SAR to ED to receive funds for the applicant.

[FR Doc. 93–19772 Filed 8–16–93; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.219]

Student Literacy Corps and Student Mentoring Corps Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide grants to institutions of higher education (IHEs) to promote the development of literacy corps programs and mentoring corps programs to be operated by IHEs in public community agencies in the communities in which such institutions are located. This program supports the strategy for moving the Nation toward the National Education Goals, especially Goals Two, Three and Five, which call for increasing the high school graduation rate, increasing academic competency and increasing adult literacy and lifelong learning.

Eligible Applicants: Institutions of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, including branch campuses of the institutions.

Deadline for Transmittal of Applications: October 22, 1993.

Deadline for Intergovernmental Review: December 3, 1993.

Applications Available: September 21, 1993.

Available Funds: $1,000,000.

Estimated Range of Awards: Up to $100,000.

Estimated Average Size of Awards: $95,000.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation: (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Darlene B. Collins, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, D.C. 20202–5251. Telephone: (202) 708–6128 or 708–7389. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1138–1138e.

Dated: August 12, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–19824 Filed 8–16–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Chicago Field Office

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of intent of make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Albers Air Conditioning Corporation for constructing and field testing a pre-production prototype of a gas-fired, CFC-free, 10-ton air conditioning system.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Albers Air Conditioning Corporation would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention pertains to the development and commercialization of a superior air conditioning system possessing unique capabilities. Documenting the technical and economic viability of these enhancements will significantly improve the overall commercial viability of the technology not only in the targeted light commercial market, but in other markets yet to be tapped.

The project period for the grant award is 18 months, expected to begin in October, 1993. DOE plans to provide funding in the amount of $95,514.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, Room 1060 North, Oakland, CA. 94612–5219.

Issued in Chicago, Illinois, on August 6, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19848 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (DSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to America Solar Network, Ltd., to demonstrate through prototype testing, the feasibility of using low-cost, lightweight polymeric materials in the design and construction of a solar water heater.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to American Solar Network, Ltd., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention pertains to the development and commercialization of a superior low-cost, active, solar water heater and storage alternative. These enhancements will significantly improve the product, reduce manufacturing costs, and enhance its commercial viability.

The project period for the grant award is 24 months, expected to begin in October, 1993. DOE plans to provide funding in the amount of $99,294.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, Room 1060 North, Oakland, CA 94612–5219.

Issued in Chicago, Illinois, on August 6, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19854 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (DSO), announces, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(f), that DOE intends to award a grant to Con-Tech Industries, Inc., to support the design, testing, and pre-production activities of a unique, dual-flush valve mechanism for residential and commercial water closets. Because this device reduces the amount of water used in waste disposal, it will lead to energy savings at municipal treatment plants. Con-Tech Industries Inc., holds three U.S. patents issued on this technology.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Con-Tech Industries, Inc. would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention pertains to the development and commercialization of a superior dual-flush system possessing unique capabilities. Documenting the technical and economic viability of these enhancements will significantly improve the overall commercial viability of the technology both in the residential and commercial markets and with original equipment manufacturers.

The project period for the grant award is 18 months, expected to begin in October, 1993. DOE plans to provide funding in the amount of $99,985.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, Room 1060 North, Oakland, CA. 94612–5219.

Issued in Chicago, Illinois, on August 6, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19852 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Grant, G2 Systems Corporation

AGENCY: Department of Energy.

ACTION: Notice of Intent to Make an Award Based on an Unsolicited Application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to G2 Systems Corporation, R. W. Griffiths, president, for developing a

structural monitoring system using fiber optics, which is its overall objective.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to G2 Systems Corporation, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology is that this highly promising new technology, unlike conventional technology, can improve the monitoring capabilities since, unlike existing systems, it can monitor movements in a structure along the entire length of an embedded sensor. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been issued. The extent of the energy saved by the improved monitoring comes from greater reliability, which leads to increased operating efficiencies and more effective maintenance procedures.

The project period for the grant award is 18-months, expected to begin in October 1993. DOE plans to provide funding in the amount of $99,982.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, Room 1060 North, Oakland, CA. 94612-5219.

Issued in Chicago, Illinois on August 6, 1993

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93-19847 Filed 8-16-93; 8:45 am]

BILLING CODE 6450-01-M

Savannah River Operations Office (SR), Financial Assistance Award, Intent To Award a Noncompetitive Grant

AGENCY: Savannah River Operations Office, DOE.

ACTION: Notice.

SUMMARY: The DOE announces that it plans to award a grant to the Lower Savannah Council of Governments (LSCOG), Aiken, South Carolina. The grant entitled, "Savannah River Regional Diversification Initiative", will be awarded for six-month period with DOE support of $100,000. Pursuant to 10 CFR 600.7(b)(2)(i)(B) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that a noncompetitive award is appropriate since the activity would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of the activity would enhance the public benefits to be derived.

FOR FURTHER INFORMATION CONTACT: Beth O'Rear, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802. Telephone: (803) 725-1345.

SUPPLEMENTARY INFORMATION:

Procurement Request Number: 09-93SR18344.000.

Project Scope: The purpose of this grant is to facilitate establishment of the Savannah River Regional Diversification Initiative (SRRDI) Board which will serve as liaison to develop plans and programs relating to the changing mission of the Savannah River Site and its impact on communities in the surrounding area.

The LSCOG was created by the General Assembly of the State of South Carolina for the purpose of coordinating and promoting cooperative programs and actions among its members, for providing technical assistance and to make recommendations on matters affecting the public health, safety, education, pollution control, utilities, planning, and development and such other matters as the common interest of the participating governments may dictate. DOE has determined: (1) Support of the SRRDI Board activities through a grant to LSCOG will enhance public benefits to be derived, and (2) award of the grant on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina, on: August 6, 1993.

Robert E. Lynch,

DOE Savannah River Operations Office, Head of Contracting Activity.

[FR Doc. 93-19858 Filed 8-16-93; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a new grant to S-Cal Corporation, Inc., for developing the hardware and technology of a method for cutting steam losses during cyclic steam injection of oil wells, which is capable of producing the same amount of oil from one well as is now being produced from two to six wells, which is its overall objective.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to S-Cal Corporation, Inc., would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject oil production capability provided by this invention did not exist.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been filed. The extent of the energy saved would come from a system of unique downhole equipment and procedures for completing laterally deviated wheelbarrows originated from a single vertical wellbore that would allow the hot oil to be pumped up around the steam injection tubing, conserving energy, and allowing the field to be pumped both continuously and at twice the depth for steam injection than is now possible. The project period for the grant award is 18 months, expected to begin in October 1993. DOE plans to provide funding in the amount of $99,999.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, room 1060 North, Oakland, CA 94612-5219.

Issued in Chicago, Illinois on August 6, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93-19850 Filed 8-16-93; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO) announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a new grant to SPARKTECH, for

developing a new acoustic humidity sensor that is rugged and able to operate trouble-free in the harsh environments that occur commonly in many industries, which is its overall objective. For example, a sensor which is accurate and stable is needed for controlling the humidity in dryer hoods in paper mills.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to SPARKTECH would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject technology provided by this invention did not exist.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been obtained. The extent of the energy saved would come from an acoustic humidity sensor system that is rugged enough to operate in harsh industrial environments and particularly in dryers where considerable energy is now being wasted, because of the tendency now to err on the side of overdrying for lack of a suitable sensor.

The project period for the grant award is 18 months, expected to begin in October 1993. DOE plans to provide funding in the amount of $99,540.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, room 1060 North, Oakland, CA 94612–5219.

Issued in Chicago, Illinois on August 6, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19853 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a new grant to Surface/Interface, Inc., for developing a charge distribution analysis technique and instrument which is capable of measuring previously unmeasurable fundamental properties of dielectric and semiconducting materials, in particular catalysts, which is its overall objective.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Surface/Interface, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject research capability did not exist.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been filed. The extent of the energy saved would come from ability to custom design catalysts for many reactions that are now difficult or impossible to carry out. New and improved catalysts for many energy-related commercial processes should be possible. The project period for the grant award is 18 months, expected to begin in October 1993. DOE plans to provide funding in the amount of $96,600.

FOR FURTHER INFORMATION CONTACT: Martha Dixon, Director, U.S. Department of Energy, San Francisco Support Office, 1301 Clay Street, room 1060 North, Oakland, CA 94612–5219.

Issued in Chicago, Illinois, on August 6, 1993.

Alan E. Smith,

Director, Operations Support Management Division.

[FR Doc. 93–19849 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office

Financial Assistance Award; Notice of Intent

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Dallas Support Office, announces that it intends to award a grant to Texas A&M University. The proposed award meets the criteria in 10 CFR 600.7(b)(2)(i)(B) in addition to the type of factors listed in 10 CFR 600.14(d). The financial assistance is for support of the Sixteenth National Industrial Energy Technology Conference, April 14–15, 1994, in Houston, Texas. Texas A&M University is the conference host.

SUPPLEMENTARY INFORMATION: The Industrial Energy Technology Conference is the most significant annual national conference concentrating on industrial energy efficiency applications and related environmental concerns. Agenda include: environmental issues impacting industry, impact of air quality regulations on energy, industry/utility interface, heat and power systems, energy-related equipment, process design for energy conservation, and alternate fuels. The conference is attended by senior energy managers, plant engineers, utility representatives, suppliers, and industry consultants. DOE's mission of increasing industrial efficiency will be advanced through participation in the conference. Results of the conference will impact favorably on industrial energy decision-making in both the public and private sectors. Academic research will be stimulated.

The DOE will provide funds in the amount of $10,000 for a project period of 12 months.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois, on August 6, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–19855 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center

Financial Assistance Award (Cooperative Agreement Award); Notice of Intent

AGENCY: Morgantown Energy Technology Center, U.S. Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) Criteria (A) the DOE, Morgantown Energy Technology Center (METC) gives notice of its plans to award a Cooperative Agreement to the University of Utah, Department of Chemical and Fuels Engineering, 3290 Merrill Engineering, Salt Lake City, UT 84112–1183, in the amount of approximately $850,666, including cost-sharing of $115,666, and will cover a twelve (12) month project period.

FOR FURTHER INFORMATION CONTACT:

Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, telephone: (304) 291–4009, Procurement Request No. 21–93MC30256.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for continuing work necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The Cooperative Agreement is to provide financial assistance to the University of Utah for advancing the development of surface extraction processes applicable to commercialization of domestic resources. By providing financial support, DOE expects to stimulate the utilization of a currently underused valuable natural resource (the recovery of bitumen from tar sands), yielding a substitute for imported oil, and in helping to stabilize our energy supply.

Louis L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–19857 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Policy, Planning, and Program Evaluation; Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of inquiry; extension of comment period.

SUMMARY: Through this action, DOE is extending the deadline for the submission of responses to the notice of inquiry for guidelines for the voluntary reporting of greenhouse gas emissions, their reduction, and carbon fixation achieved through any measure.

DATES: This action extends the deadline for submission of responses to September 27, 1993.

ADDRESSES: Written comments should be submitted in quadruplicate to Ms. Jean Vernet, Office of Environmental Analysis (PO–60), U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Vernet, at the address above, or by telephone at (202) 586–4755.

SUPPLEMENTARY INFORMATION: On July 27, 1993, DOE published a notice of inquiry for the development of the guidelines for the voluntary reporting of greenhouse gas emissions, their reduction, and carbon fixation (58 FR 40116). Under section 1605(b) of the Energy Policy Act of 1992 (EPACT; Pub. L. 102–486), the Secretary of Energy with the Energy Information Administration (EIA) is to establish a voluntary reporting system and database on emissions of greenhouse gases (GHGs), reductions of these gases, and carbon fixation. The notice is directed at obtaining information that will be useful in developing the guidelines for the voluntary reporting program required under section 1605(b)(1).

A number of requests for an extension of the deadline for submissions have been made, citing the participation of individuals and groups in related international meetings on the subject of greenhouse gas reductions which were scheduled concurrent to the comment period, and the complexity of the issues involved in the reporting program.

In response to these requests, DOE has decided to allow an additional thirty-day period for submission of public comments. The comment period will close on September 27, 1993.

Issued in Washington, DC on August 10, 1993.

Susan F. Tierney,

Assistant Secretary, Office of Policy, Planning, and Program Evaluation.

[FR Doc. 93–19859 Filed 8–16–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP93–596–000, et al.]

CNG Transmission Corp., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP93–596–000]

August 4, 1993.

Take notice that on July 30, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–596–000 an application for an order to vacate the order issued in Docket No. CP78–289 which authorized CNG's pipeline LA–26 located in the Vermilion area of offshore Louisiana or, in lieu thereof, an application under section 7(b) of the Natural Gas Act for permission and approval to abandon pipeline LA–26 by sale to Midcon offshore, Inc. (Midcon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that its predecessor, Consolidated Gas Supply Corporation, and Panhandle Eastern Pipeline Company were authorized to construct pipeline LA–26 by order issued July 25, 1978, in Docket No CP78–289 (4 FERC ¶ 61,083).

CNG asserts that although the Commission certificated the 12-inch, 5.8 mile pipeline as a transmission facility, the pipeline serves a gathering function under the Commission modified Farmland criteria as set forth in *Amerada Hess Corp. et al.*

CNG further states that since it will be shedding virtually all of its sales market as a part of the restructuring under Order No. 636 and will not be acquiring gas supplies in the future, it no longer requires the use of this facility.

Comment date: August 25, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP93–597–000]

August 4, 1993.

Take notice that on July 30, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, file in Docket No. CP93–597–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided to Amoco Energy Trading Company (Amoco), formerly Pan American Petroleum Corporation, and a delivery point, which was authorized in Docket No. CP70–289–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline proposes to abandon an interruptible transportation service being performed under a transportation agreement dated April 3, 1970. Trunkline states that, in accordance with Article VI of the agreement, Amoco gave Trunkline written notice by letter dated June 29,1993, of its desire to terminate the agreement. Trunkline explains that the service involves the transportation of up to 20,000 Mcf per day of natural gas for Amoco's account from the Northeast Ramsey Field Area in Colorado County, Texas, to the delivery point in Waller County, Texas. Trunkline states that the agreement is on file as Trunkline's Rate Schedule PT–1.

Trunkline advises that, upon receiving authorization to abandon the delivery point, Trunkline and Amoco would reverse the physical flow of the meter at the delivery point to receive gas

from Amoco, pursuant to Trunkline's blanket certificate issued in Docket No. CP83–84–000. Trunkline avers that, since the new receipt meter would be located at the same site as the existing delivery meter, on existing right-of-way, no environmental impact is expected with regard to the abandonment. Trunkline states that there would be no cost associated with the abandonment since Amoco would reimburse it for the cost of reversing the flow of gas.

Comment date: August 25, 1993, in accordance with Standard Paragraph F at the end of the notice.

3. Trunkline Gas Company

[Docket No. CP93–602–000]

August 4, 1993.

Take notice that on August 2, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed an application with the Commission in Docket No. CP93–602–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon interruptible transportation services provided to Louisiana Industrial Gas Supply System (LIGS), as authorized in Docket Nos. CP84–759–000 and CP85–167–000, all as more fully set forth in the application which is open to the public for inspection.

Trunkline proposes to abandon interruptible transportation services provided to LIGS under Trunkline's FERC Rate Schedules T–89 and T–97.[1] Trunkline states that LIGS requested termination of these services via letter dated March 1, 1993. No facilities would be abandoned in this proposal.

Comment date: August 25, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP93–593–000]

August 4, 1993.

Take notice that on July 20, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–593–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas emergency exchange service with ANR Pipelines Company (ANR), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that by Commission order issued December 9, 1977, as amended, in Docket Nos. CP77–253–000 and CP78–8–000, (1 FERC ¶ 61,232) Panhandle and ANR were authorized, among other things, to exchange on an emergency gas-for-gas basis up to 100,000 Mcf of natural gas per day at the interconnection between the pipeline facilities of Panhandle and ANR in Defiance County, Ohio. Such exchange is made in accordance with a Letter Agreement between Panhandle and ANR dated August 19, 1977 which is currently designated as Rate Schedule E–10 in Original Volume No. 2 of Panhandle's FERC Gas Tariff.

Panhandle states that this service is no longer required and that ANR has filed to abandon its related part of this service in the Docket No. CP93–320–000 proceeding. No facilities are proposed to be abandoned.

Comment date: August 25, 1993, in accordance with Standard Paragraph F at the end of the notice.

5. Williams Natural Gas Company

[Docket No. CP93–604–000]

August 5, 1993.

Take notice that on August 2, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–604–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR) for authorization to abandon the direct sale of gas to the Longbranch Trailer Park (Longbranch) and to convert the direct sale facilities located in Sedgwick County, Kansas, to a town border delivery for Western Resources, Inc. (WRI), under the blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that in 1992 the owner of the Longbranch Trailer Park requested that WRI assume the distribution of gas within the park. WRI agreed to the distribution and WNG now seeks authority to abandon the direct sale to Longbranch and convert the facilities from a direct sale status to an additional town border delivery for WRI. The volume of gas delivered will remain the same.

Comment date: September 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP93–606–000]

August 5, 1993.

Take notice that on August 2, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–606–000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon approximately 6.2 miles of pipeline and meter station formerly serving Arkansas Louisiana Gas Company (Arkla) located in Bossier Parish, Louisiana under Arkla's blanket certificate issued in Docket No. CP82–430–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to abandon, in place, approximately 12,125 feet of 12-inch pipeline and approximately 13,648 feet of 8-inch pipeline of TPL 218; approximately 6,883 feet of 8-inch pipeline of FPL 401; and to abandon, by removal, a 6-inch meter station at the Bossier City Gate station in Bossier Parish, Louisiana used to provide sales service to Arkla. United states that on February 2, 1993, United was authorized to abandon its obligation to serve Arkla and that these facilities are not currently in use. United states that no existing service to any customer would be affected by the abandonment of these facilities and that the abandonment would be accomplished without detriment or disadvantage to its other customers. United's tariff does not prohibit the proposed modification of facilities, it is indicated.

Comment date: September 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP93–600–000]

August 5, 1993.

Take notice that on July 30, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–600–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to utilize facilities originally installed for NGPA section 311 transportation to Midcoast Energy Resources, Inc. (Midcoast) under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to utilize facilities originally installed for NGPA section 311 transportation to Midcoast for its plant in Rice County, Kansas at a cost of $4,610, to be reimbursed by Midcoast. It is stated that there would be no detriment to WNG's other customers.

Comment date: September 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

[1] See the respective orders at 31 FERC ¶ 62,032 (1985) and 34 FERC ¶ 62,253 (1986).

8. Tennessee Gas Pipeline Company

[Docket No. CP93–616–000]

August 6, 1993.

Take notice that on August 3, 1993, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP93–616–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to (i) provide a firm transportation service on behalf of Columbus Southern Power Company (Columbus Southern), and (ii) construct new pipeline facilities to provide that firm transportation service, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Tennessee states that it proposes a firm transportation service of a maximum daily quantity of up to 117,000 Dth for Columbus Southern through a new 17-mile pipeline lateral extending from Tennessee's "200" mainline system to the site of a Columbus Southern electrical generation facility in Conesville, Ohio. The estimated cost of the lateral is $7,180,178, it is stated. Tennessee further states that the proposed facilities will be initially financed with funds on hand. Tennessee proposes to recover the cost of that lateral facility through an incremental rate.

Comment date: August 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

9. CNG Transmission Corporation

[Docket No. CP93–607–000]

August 6, 1993.

Take notice that on August 2, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–607–000 an application under section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities in Clearfield County, Pennsylvania by sale to Shawmut Development Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, the facilities to be abandoned by CNG consist of approximately 14.9 miles of pipeline ranging in size from 2 to 3-inches. CNG states that, although there are no sales points located on the facilities, five interruptible shippers transport natural gas utilizing the facilities. CNG further states that there are receipt point for two gas purchase contracts on the facilities and the Shawmut would transport this gas for CNG without fee for the remaining life of the contracts.

CNG asserts that although the facilities were classified as transmission and gathering facilities, and treated as jurisdictional facilities by CNG, the facilities serve a gathering function under the Commission modified Farmland criteria as set forth in *Amerada Hess Corp. et al.*

CNG further states that it will be shedding virtually all of its sales market as a part of the restructuring under Order No. 636. CNG asserts that the sale of these facilities would not significantly impact its ability to serve any remaining sale obligations and that it would continue to purchase gas connected to the facilities until the gas purchase contracts terminate or are assigned to other purchasers.

Comment date: August 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP93–617–000]

August 6, 1993.

Take notice that on August 3, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–617–000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205), for authorization to utilize facilities originally installed for the delivery of NGPA Section 311 transportation gas to Midcoast Energy Resources, Inc. (Midcoast) for other purposes, under its blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that it proposes to utilize the NGPA Section 311 facilities installed to deliver transportation gas to Midcoast for the Augusta power plant located in Butler County, Kansas, for any purpose. WNG further states that the cost to construct the facilities was $7,760 which was reimbursed by Midcoast.

WNG says that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specific without detriment or disadvantage to its other customers.

Comment date: September 20, 1993, in accordance with Standard paragraph G at the end of this notice.

11. Arkla Energy Resources Company

[Docket No. CP93–601–000]

August 6, 1993.

Take notice that on July 30, 1993, Arkla Energy Resources Company (AER) 525 Milam St., Shreveport, Louisiana 71101, filed in Docket No. CP93–601–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for certificate of public convenience and necessity and abandonment authority necessary to construct new pipelines facilities and abandon by lease capacity in new and existing pipeline facilities located in the states of Oklahoma, Arkansas and Mississippi, as more fully set forth in The application on file with the Commission and open to public inspection.

AER states that it seeks authority (1) to construct, own and operate a new pipeline with a capacity of 300 MMcf per day extending from the eastern terminus of AER's Line AC near Glendale, Arkansas to a point of interconnection for Texas Eastern Transmission Corporation (Texas Eastern) at or near the Shaw Compressor Station in Bolivar County, Mississippi (Line ACE) and to provide service through such facilities; (2) to abandon to by lease, Texas Eastern firm capacity of 250 MMcf per day in Line ACE and certain existing facilities pursuant to a capacity lease agreement (Agreement) between AER and Texas Eastern; and (3) to reacquire the leased capacity upon the expiration or termination of the Agreement.

It is stated that the proposed pipeline facilities, known as Line ACE, will consist of approximate 84 miles of pipeline (four (4) miles of 36-inch and the remainder 30-inch diameter), an 8,850 horsepower compressor station and appurtenant facilities with an initial capacity of approximately 300 MMcf per day. The compressor station, consisting of two compressor units and ancillary facilities, will be located near Star City, Arkansas. AER estimates that the cost of constructing the Line ACE facilities will be approximately $96.1 million, including overheads. AER states that the proposed facilities will be financed from available funds or short-term borrowings.

Under the Agreement, Texas Eastern will lease firm capacity of up to 250,000 MMBtu per day in AER's transmission system from the outlet of AER's Chandler Compressor Station on Line AC in Latimer County, Oklahoma to a primary point of delivery at the eastern terminus of the new Line ACE in Bolivar County, Mississippi, for a primary term of ten years. The Agreement also allows Texas Eastern to

utilize the leased capacity to access up to 83,000 MMBtu per day of wellhead supplies through AER gathering facilities located in the specified Gathering Area. AER propose to charge Texas Eastern an annual rental of $24.5 million. AER states that it will continue to own, maintain and operate the facilities subject to the Agreement and retains full rights to utilize capacity in such facilities in excess of Texas Eastern utilization. AER also requests that the Commission issue per-granted certificate authority to reacquire the leased capacity upon expiration or termination of the Agreement and to treat the Agreement for accounting and rate purposes as an "operating lease" pursuant to the Uniform System of Accounts for Natural Gas Companies.

AER state that it will offer services through the portions of Line ACE capacity not subject to the Texas Eastern Agreement on an open-access basis pursuant to its existing rate schedules and proposed to charge the applicable effective rates as provided in its FERC Gas Tariff. AER requests pre-granted approval to recover the costs of such facilities on a rolled-in basis in future AER section 4 rate proceedings.

Comment date: August 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

12. Arkla Energy Resources Company

[Docket No. CP93-601-000]

August 6, 1993.

Take notice that on July 30, 1993, Arkla Energy Resources Company (AER) 525 Milam St., Shreveport, Louisiana 71101, filed in Docket No. CP93-601-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for certificate of public convenience and necessity and abandonment authority necessary to construct new pipeline facilities and abandon by lease capacity in new and existing pipeline facilities located in the states of Oklahoma, Arkansas and Mississippi, as more fully set forth in The application on file with the Commission and open to public inspection.

AER states that it seeks authority (1) to construct, own and operate a new pipeline with a capacity of 300 MMcf per day extending from the eastern terminus of AER's Line AC near Glendale, Arkansas to a point of interconnection for Texas Eastern Transmission Corporation (Texas Eastern) at or near the Shaw Compressor Station in Bolivar County, Mississippi (Line ACE) and to provide service through such facilities; (2) to abandon by lease, Texas Eastern firm capacity of 250 MMcf per day in Line ACE and certain existing facilities pursuant to a capacity lease agreement (Agreement) between AER and Texas Eastern; and (3) to reacquire the leased capacity upon the expiration or termination of the Agreement.

It is stated that the proposed pipeline facilities, known as Line ACE, will consist of approximately 84 miles of pipeline (four (4) miles of 36-inch and the remainder 30-inch diameter), an 8,850 horsepower compressor station and appurtenant facilities with an initial capacity of approximately 300 MMcf per day. The compressor station, consisting of two compressor units and ancillary facilities, will be located near Star City, Arkansas. AER estimates that the cost of constructing the Line ACE facilities will be approximately $96.1 million, including overheads. AER states that the proposed facilities will be financed from available funds or short-term borrowings.

Under the Agreement, Texas Eastern will lease firm capacity of up to 250,000 MMBtu per day in AER's transmission system from the outlet of AER's Chandler Compressor Station on Line AC in Latimer County, Oklahoma to a primary point of delivery at the eastern terminus of the new Line ACE in Bolivar County, Mississippi, for a primary term of ten years. The Agreement also allows Texas Eastern to utilize the leased capacity to access up to 83,000 MMBtu per day of wellhead supplies through AER gathering facilities located in the specified Gathering Area. AER propose to charge Texas Eastern an annual rental of $24.5 million. AER states that it will continue to own, maintain and operate the facilities subject to the Agreement and retains full rights to utilize capacity in such facilities in excess of Texas Eastern utilization. AER also requests that the Commission issue pre-granted certificate authority to reacquire the leased capacity upon expiration or termination of the Agreement and to treat the Agreement for accounting and rate purposes as an "operating lease" pursuant to the Uniform System of Accounts for Natural Gas Companies.

AER state that it will offer services through the portions of Line ACE capacity not subject to the Texas Eastern Agreement on an open-access basis pursuant to its existing rate schedules and proposed to charge the applicable effective rates as provided in its FERC Gas Tariff. AER requests pre-granted approval to recover the costs of such facilities on a rolled-in basis in future AER section 4 rate proceedings.

Comment date: August 27, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19766 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

August 6, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

A. *Type of Application:* Amendment of License.

B. *Project Number:* 6221–028.

C. *Date Filed:* July 23, 1993.

D. *Applicant:* Black Creek Hydro, Inc.

E. *Name of Project:* Black Creek.

F. *Location:* Black Creek, a tributary of the North Fork Snoqualmie River, in King County, Washington.

G. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

H. *Applicant Contact:* Mr. Toby Freeman, Freeman Consulting, 1300 114th Avenue SE., suite 220, Bellevue, WA 98004, (206) 450–4096.

I. *FERC Contact:* Mr. Steve Hocking, (202) 219–2656.

J. *Comment Date:* August 31, 1993.

K. *Description of Application:* The applicant requests Commission approval to amend the project's license to delete the approved overhead 115 kV transmission line and approve a 10.3-mile, 34.5-kV underground line. Approximately 8.3 miles of the proposed line, would be buried within the shoulder of existing roads on land owned by the Weyerhaeuser Company. The remaining 2 miles would be buried along King County roads utilizing existing easements.

L. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19783 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–70–001]

Black Marlin Pipeline Co.; Motion to Place Suspended Rates Into Effect

August 11, 1993.

Take notice that on July 30, 1993, Black Marlin Pipeline Company (Black Marlin) tendered for filing a Motion to Place Suspended Rates Into Effect. Black Marlin is submitting Substitute Third Revised Sheet No. 4, to First Revised Volume No. 1 of its FERC Gas Tariff.

Black Marlin states that the Commission's Order issued February 25, 1993 in the captioned docket suspended Black Marlin's filed rates to be effective August 1, 1993. Black Marlin states that it is moving, pursuant to Section 154.67 of the Commission's regulations, to place the suspended rates into effect as of August 1, 1993.

Black Marlin states that copies of the filing have been mailed to all customers affected by this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19787 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA93–1–21–002, and TQ93–6–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 11, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 30, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective August 1, 1993:

Thirty Second Revised Sheet No. 26C

Columbia states that the instant filing reflects a revision to Columbia's ITS rates to correct the development of the Current TCRA Surcharge Adjustment as developed in Columbia's Annual PGA filing at Docket No. TA93–1–21 which became effective May 1, 1993. The incorrect rates were also contained in Columbia's Quarterly PGA filing effective August 1, 1993 at Docket No. TQ–93–6–21. The Summer Period ITS rate has been reduced by .12¢/Dth and the Winter Period ITS rate has been increased by .12¢/Dth. Any overcollections of the Summer Period TCRA Surcharge since the May 1993 billings will be refunded to the applicable customers.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19784 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93-8-24-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

August 11, 1993.

Take notice that on July 30, 1993, Equitrans, Inc. (Equitrans) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective August 1, 1993:

First Revised Substitute Forty-Third Revised Sheet No. 10
First Revised Substitute Thirty-First Revised Sheet No. 34

Equitrans states that the filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect an increase in purchased gas costs in the Southwest and Appalachian regions, and the increased Account No. 858 demand costs incurred as the result of the effective restructuring of Kentucky West Virginia Gas Company. The filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

Concerning the purchased gas cost adjustment under Rate Schedule PLS Equitrans states that there is no change in the demand cost and an increase in the commodity cost of $0.2305 per dekatherm Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1344 per Dth.

Pursuant to Section 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on August 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-19782 Filed 8-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-325-001]

Georgia Power Co.; Notice of Filing

August 11, 1993.

Take notice that on July 14, 1993, Georgia Power Company (Georgia Power) tendered for filing revised tariff sheets for its FERC Electric Tariff, First Revised Volume No. 2 (partial requirements service which will replace certain resale restrictions ordered deleted by the Commission.

Georgia Power states that the tariff changes comply with the Commission's Order of June 14, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-19776 Filed 8-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-839-000]

MG Electric Power Inc.; Notice of Filing

August 11, 1993.

Take notice that on August 2, 1993, MG Electric Power Inc. (MG Electric) tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule No. 1, to be effective on November 30, 1993.

MG Electric intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MG Electric purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, MG Electric will be functioning as a marketer. In MG Electric's marketing transactions, MG Electric proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where MG Electric does not take title to the electric power and/or energy, MG Electric will be limited to the role of a broker and charge a fee for its services. MG Electric is not in the business of generating or transmitting electric power. MG Electric does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-19777 Filed 8-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-73-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

August 11, 1993.

Take notice that an informal settlement conference will be convened in this proceeding at 10 a.m. on Tuesday, August 24, 1993. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-captioned proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19785 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–630–000]

Northern Natural Gas Co.; Notice of Request Under Blanket Authorization

August 11, 1993.

Take notice that on August 9, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–630–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Peoples Natural Gas Company, Division of UtiliCorp United (Peoples) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request is on file with the Commission and open to the public inspection.

Northern proposes to upgrade the Northup #1 town border station, located in Martin County, Minnesota, to accommodate increased deliveries of gas to Peoples for resale to residential and commercial customers. Northern advises that Peoples has requested increased service due to expansion to new areas which previously have not been supplied with natural gas.

Northern projects that the proposed peak day and annual volumes would amount to 450 Mcf per day and 59,042 Mcf, as compared to present volumes of 360 Mcf per day and 37,479 Mcf. Northern states that the deliveries of gas would be made pursuant to currently effective service agreement(s) with Peoples and that People's current firm entitlement is sufficient to service this increased load. Northern estimates that the proposed upgrade would cost $21,242.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19773 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–165–000]

OkTex Pipeline Co.; Application

August 11, 1993.

Take notice that on August 6, 1993, OkTex Pipeline Company (OkTex) filed in Docket No. RP93–165–000 an application pursuant to section 4 of the Natural Gas Act for permission and approval to increase OkTex's rates.

OkTex states that it proposes to increase its rates in order to take into account an increase in rates base, in depreciation expense, and ad valorem taxes. OkTex asserts that the increase will allow OkTex to earn a reasonable rate of return on its investment.

OkTex states that copies of the filing are being mailed to the customers and interested state regulatory agencies shown on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19781 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–845–000]

Public Service Electric and Gas Co.; Filing

August 11, 1993.

Take notice that Public Service Electric an Gas Company (PSE&G) of Newark, New Jersey, on behalf of itself and Baltimore Gas and Electric Company (BG&E) of Baltimore, Maryland on August 4, 1993, tendered for filing an agreement for the sale, purchase, and/or exchange of Pennsylvania-New Jersey-Maryland Interconnection (PJM) Installed Capacity Credits. Pursuant to the agreement, PJM Installed Capacity Credits will be sold, purchased, and/or exchanged at a rate not to exceed the rate for purchasing capacity as set forth in the appropriate schedule of the PJM Agreement.

Copies of the filing have been served upon BG&E and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19786 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–148–001]

Tennessee Gas Pipeline Co.; Tariff Adjustment Filing

August 11, 1993.

Take notice that on July 30, 1993, Tennessee Gas Pipeline Company (Tennessee) filed an amendment to its filing on July 1 of a transportation cost rate adjustment (TCRA). Tennessee states that this amendment reflects modifications required by the Commission's order of June 30, 1993, in Docket No. RS92–23. Tennessee Gas Pipeline, 64 FERC ¶61,020 (1993) and the service levels resulting from final customer elections. Tennessee requests that the following tariff sheet be

accepted and allowed to go into effect September 1, 1993, concurrent with the implementation of the restructured tariff filed in Docket No. RS92–23:

Substitute Original Sheet No. 30.

Tennessee states that the filing reflects annual costs of $36,855,275 and firm billing determinants for the annual period September 1993–July 1994. The billing determinants are the maximum daily quantities for Rate Schedules FT–A and FT–G, and the imputed determinants for the one part rate under Rate Schedule FT–GS. The levels of service under these schedules have been determined from the service elections provided by customers in Docket No. RS92–23. Utilizing these costs and billing determinants, Tennessee has derived a demand surcharge of $0.62 dth and a volumetric surcharge under Rate Schedule FT–GS of $0.0387 per dth, which is designed as a 60% load factor derived rate. The commodity portion of the recovery results in the adjustment of $.0047.

Tennessee has requested an effective date of September 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19780 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–151–001]

Tennessee Gas Pipeline Co.; Tariff Adjustment Filing

August 11, 1993.

Take notice that on July 30, 1993, Tennessee Gas Pipeline Company (Tennessee) filed an amendment to its filing on July 1 of its gas supply realignment (GSR) demand rate adjustment. Tennessee states that this amendment is being made to reflect the Commission's order of March 16, 1993, in Docket No. RS92–23. Tennessee Gas Pipeline, 62 FERC ¶61,250 (1993). Tennessee requests that the following tariff sheet be accepted and allowed to go into effective September 1, 1993, concurrent with the implementation of the restructured tariff filed in Docket No. RS92–23:

Second Substitute Original Sheet No. 30
Original Sheet No. 397A

Tennessee states that the filing reflects the same annual costs of $34,717,434 as the July 1 filing. The firm billing determinants for the annual period September 1993—July 1994 have been adjusted to reflect Commission's determination concerning conversion of part 157 service to part 287 service. The billing determinants are the maximum daily quantities for Rate Schedules FT–A and FT–G, and the imputed determinants for the one part rate under Rate Schedule FT–GS. The levels of service under these schedules have been determined from the service electronics provided by customers in Docket No. RS92–23. Utilizing these costs and billing determinants, Tennessee has derived a demand surcharge of $0. ____dth and a volumetric surcharge under Rate Schedule FT–GS of $0.0411 per dth, which is designed as a 60% load factor derived rate.

Tennessee has requested an effective date of September 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19779 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–57–000]

Tennessee Gas Pipeline Co.; Notice of Tariff Filing

August 11, 1993.

Take notice that on August 4, 1993, Tennessee Gas Pipeline Company (Tennessee), tendered for filing Third Revised Sheet No. 75 to Original Volume No. 2 of its FERC Gas Tariff to be effective January 1, 1993.

Tennessee states that the sole purpose of this tariff sheet is to revise the Maximum Daily Transportation Quantity to 20,605 Dth per day for the period January 1, 1993 through December 31, 1995, under Tennessee's Rate Schedule T–20.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR. 385.211 and 385.214). All such motions or protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19775 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP85–177–109 and RP85–177–110]

Texas Eastern Transmission Corp.; Refund Reports

August 11, 1993.

Take notice that on June 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed with the Federal Energy Regulatory Commission (Commission) reports of refunds made in compliance with Ordering Paragraphs (B) and (F) of the Commission's order issued April 28, 1993.

Texas Eastern states that it made a PGA refund of $21,065,801.00 and a Gas Supply Inventory Reservation Charge refund of $6,072,700.97 to its jurisdictional customers on May 28, 1993.

Texas Eastern states that a copy of the refund summary schedule and detailed calculations of their individual refund amounts was sent to each of Texas Eastern's affected customers, and was also sent to the respective state regulatory commissions.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's

Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copes of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19788 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–162–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

August 11, 1993.

Take notice that July 30, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet Nos. 483–489, with a proposed effective date of September 1, 1993.

In response to the Order issued on May 14, 1993, in TGPL's Docket No. RS92–86–000, TGPL has filed to revise its FERC Gas Tariff to provide a Form of Service Agreement for Pipeline Interconnect Balancing Agreements (PIBA). TGPL states that the tariff sheets contain procedures that describe the general manner in which PIBAs will function at TGPL pipeline interconnects. By this filing, TGPL requests that the Commission authorize TGPL to flow through its existing cash-out account those amounts associated with the resolution of imbalances under PIBAs voluntarily entered into by TGPL.

TGPL states that it is serving a copy of the instant filing to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19789 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–51–000]

Transcontinental Gas Pipe Line Corp.; Notice of Report of Refunds

August 11, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) on June 30, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with Sections 34 through 37 of the General Terms and Conditions of TCPL's FERC Gas Tariff, Third Revised Volume No. 1.

TCPL states that on June 30, 1993, it refunded $64,603.30, including interest, to its sales and transportation customers in connection with Producer Settlement Payment (PSP) Charges collected over the period may 1, 1992 through April 30, 1993 and Litigant Producer Settlement Payment (LPSP) Charges collected over the period June 1, 1992 through May 31, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19774 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–844–000]

West Texas Utilities Co.; Notice of Filing

August 11, 1993.

Take notice that on August 3, 1993, West Texas Utilities Company (WTU) tendered for filing an Agreement for Transmission Wheeling Service between WTU and Southwestern Electric Service Company (SESCO) in unexecuted form. Under the Agreement, WTU will provide SESCO with transmission wheeling service for firm capacity and associated energy that SESCO will purchase from Central Power and Light Company. WTU requests that the Agreement be accepted to become effective as of August 4, 1993.

Copies of the filing have been served on SESCO and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19778 Filed 8–16–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–43–NG]

Sonat Marketing Co.; Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Sonat Marketing Company to export up to 100 Bcf of natural gas to Mexico over a two-year period beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on August 11, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-19860 Filed 8-16-93; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of scheduling of public information forum, public comment forum, and consultation and comment period for the Boulder Canyon Project proposed annual rate review.

SUMMARY: Western Area Power Administration (Western) is announcing the scheduling of a public information forum, public comment forum, and consultation and comment period for the annual rate review for the Boulder Canyon Project (BCP). Notice of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA-58 (WAPA-58) and Rate Schedule BCP-F4, placing the proposed ratesetting methodology and increased power rates for the BCP into effect on an interim basis, was published in the **Federal Register** at 57 FR 61074-61083 on December 23, 1992. The methodology utilized in WAPA-58 requires that Western modify the BCP rate, either an increase or decrease, on an annual basis. Western is announcing the first annual rate review for adjustments to the existing BCP rates. The proposed rates for energy and capacity are expected to be placed in effect on October 1, 1993, pursuant to the new methodology.

The proposed rates are based on a composite rate of 13.82 mills per kilowatthour (mills/kWh). This composite rate consists of an energy rate of 6.91 mills/kWh and a capacity rate of $1.19 per kilowatt per month ($/kW/month).

The existing composite rate for BCP power is 14.56 mills/kWh, comprised of an energy rate of 7.28 mills/kWh and capacity rate of $1.28/kW/month.

The Assistant Secretary approved the existing rate schedule on an interim basis, effective on January 1, 1993, with such rate schedule to continue on an interim basis pending the Federal Energy Regulatory Commission (FERC) approval on a final basis or until replaced by a new rate schedule.

The following table compares the existing BCP power rates with the proposed rates:

Type of rate	Existing rates January 1, 1993	Proposed rates October 1, 1993
Composite Rate (mills/kWh)	14.56	13.82
Energy Rate (mills/kWh)	7.28	6.91
Capacity Rate ($/kW/month)	1.28	1.19

PROCEDURES: A revised Power Repayment Spreadsheet Study (PRSS), on which the proposed rates are based, has been distributed to the BCP customers and other interested parties prior to publication of this notice. Following the close of the consultation and comment period, Western will consider any changes as a result of public comments.

DATES: The consultation and comment period will begin on August 17, 1993, and will end on September 17, 1993. The decision to shorten the comment period to less than 90 days was made due to the fact that all BCP contractors, Western, and the Bureau of Reclamation are in agreement on the new methodology. Western expects the comments to be limited to the numerical values entered into the PRSS. Therefore, the shortened comment and review period should be adequate.

The public information forum, at which Western will present the new numerical values used in developing the first annual rate review to the existing BCP rates, will be held at Western's Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona, beginning at 9 a.m. on August 31, 1993. The public comment forum at which Western will receive oral and written comments will be held at the same location beginning at 1 p.m. on August 31, 1993.

Written comments should be received by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: Mr. Thomas Hine, Area Manager, Western Area Power Administration, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005-6457, (602) 352-2453.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Eiler, Assistant Area Manager, for Power Marketing, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, (602) 352-2650.

SUPPLEMENTARY INFORMATION: Power rates for the BCP are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the Colorado River Storage Project Act of 1965 (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the charges for the sale of power from the BCP, final rule (general regulations) (10 CFR part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986.

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such ratesetting methodology and rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such ratesetting methodology and rates to FERC.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for energy and capacity are and will be made available for inspection and copying at the Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona, 85005.

Issued in Washington, DC, August 10, 1993.

Joel K. Bladow,

Assistant Administrator for Washington Liaison.

[FR Doc. 93-19856 Filed 8-16-93; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–999–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

The counties of Beadle, Jerauld, and McPherson for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–19810 Filed 8–16–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072693 AND 080693

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Continental Homes Holding Corp., William O. Milburn, Milburn Investments, Inc., Miltex Management, Inc	93–1354	07/26/93
Parker & Parsley Petroleum Company, Parker & Parsley Petroleum Corporation, The Partnerships	93–1355	07/26/93
S.A. Louis Dreyfus et Cie, Parker & Parsley Petroleum Company, Parker & Parsley Petroleum Company	93–1356	07/26/93
Eli Lilly and Company, Monsanto Company, Continental Pharma, Inc	93–1380	07/26/93
HS Resources, Inc., BMR Corporation, BMR Corporation	93–1359	07/27/93
Merrill Lynch Capital Appreciation Ptnship. No. B–IX LP, Jack Eckerd Corporation, Jack Eckerd Corporation	93–1361	07/27/93
Merrill Lynch & Co., Inc., Jack Eckerd Corporation, Jack Eckerd Corporation	93–1362	07/27/93
Merrill Lynch Capital Appreciation Company Limited II, Jack Eckerd Corporation, Jack Eckerd Corporation	93–1363	07/27/93
TECO Energy, Inc., Transco Energy Company, Magnolia Methane Corp	93–1382	07/27/93
Jack Eckerd Corporation, EDS Holdings, Inc., EDS Holdings, Inc	93–1360	07/28/93
IVAX Corporation, Joan B. Johnson, Johnson Products Co., Inc	93–1379	07/28/93
AIF II, L.P., Salant Corporation, Salant Corporation	93–1383	07/28/93
Joan B. Johnson, IVAX Corporation, IVAX Corporation	93–1384	07/28/93
Jeremy M. Jacobs, Matsushita Electrical Industrial Co., Ltd., Yosemite Park and Curry Co	93–1385	07/28/93
Richard G. Haworth, J. Hanley Sayers, Globe Holdings, Inc	93–1353	07/29/93
Tribune Company, William Benton Foundation, Compton's Multi-Media Publishing Group, Inc	93–1365	07/29/93
The St. Paul Companies, Inc., Kemper Corporation, Economy Fire & Casualty Company	93–1372	07/29/93
The Estate of James Campbell, Corporate Property Investors, Corporate Property Investors	93–1340	07/30/93
Electrafina, S.A., Oakridge Energy, Inc., Oakridge Energy, Inc	93–1378	07/30/93
Fred W. Smith, Donald W. Reynolds Inter Vivos Trust, Donrey, Inc	93–1389	07/30/93
E.H. Patterson, Donald W. Reynolds Inter Vivos Trust, Donrey, Inc	93–1390	07/30/93
Ross Pendergraft, Donald W. Reynolds Inter Vivos Trust, Donrey, Inc	93–1391	07/30/93
Century Telephone Enterprises, Inc., Continental Bank Corporation, Celutel of Biloxi, Inc., Pascagoula Cellular	93–1400	07/30/93
EPIC Holdings, Inc., EPIC Holdings, Inc., McKinney Hospital Venture	93–1406	07/30/93
Credit Lyonnais S.A., Carolco Pictures Inc., Carolco Pictures Inc	93–1434	07/30/93
Office Depot, Inc., Eastman Office Products Corporation, Eastman Office Products Corporation	93–1361	08/02/93
Stuart M. Sloan, Tektronix, Inc., University Village, Inc	93–1386	08/02/93
Rolled Alloys, Inc., Atek Metals Center, Inc., Atek Metals Center, Inc	93–1395	08/02/93
Elkay Manufacturing Company, Govett American Endeavour Fund Limited, Yorktowne, Inc	93–1432	08/02/93
Bernard J. Ebbers, John W. Kluge, Resurgens Communications Group, Inc	93–1321	08/03/93
Francesco Galesi, John W. Kluge, Resurgens Communications Group, Inc	93–1322	08/03/93
The 1818 Fund, L.P., John W. Kluge, Resurgens Communications Group, Inc	93–1323	08/03/93
Stiles A. Kellett, John W. Kluge, Resurgens Communications Group, Inc	93–1324	08/03/93
John A. Porter, John W. Kluge, Resurgens Communications Group, Inc	93–1325	08/03/93
DEP Corporation, H.F. Johnson Distributing Trust/Samuel C. Johnson, S.C. Johnson & Son, Inc	93–1392	08/03/93
Komatsu Ltd., Applied Materials, Inc., Applied Materials, Inc	93–1417	08/03/93
HM/Trident, L.P., Parker & Parsley Petroleum Company, Parker & Parsley Gas Processing Co	93–1147	08/04/93
CarnaudMetalbox, HMP Holdings N.V., Zeller Plastik GmbH	93–1349	08/04/93
Noble Drilling Corporation, The Western Company of North America, The Western Company of North America	93–1375	08/04/93
Cominco Fertilizers Ltd., Crop Production Services, Inc., Crop Production Services, Inc	93–1419	08/04/93
Land Free II Investment Limited, Forum Group, Inc., Forum Group, Inc	93–1452	08/04/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072693 AND 080693—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ralston Purina Company, The Gates Corporation, The Gates Corporation	93-0780	08/05/93
Chemical Banking Corporation, Society Corporation, Ameritrust Texas Corporation	93-1394	08/05/93
John W. Kluge, Valentine Brown, III, Hoody Corporation	93-1399	08/05/93
George D. Johnson, Jr., Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	93-1424	08/05/93
Blockbuster Entertainment Corporation, WJB Realty L.P., WJB Realty L.P	93-1425	08/05/93
Blockbuster Entertainment Corporation, SHV Holding Corporation, Southeastern Home Video, Inc	93-1426	08/05/93
Blockbuster Entertainment Corporation, WJB Video Limited Partnership, WJB Video Limited Partnership	93-1427	08/05/93
Blockbuster Entertainment Corporation, United International Holdings, UI Video Holdings, Inc	93-1428	08/05/93
Policy Management Systems Corporation, Cybertek Corporation, Cybertek Corporation	93-1247	08/06/93
Policy Management Systems Corporation, Cybertek Corporation, Cybertek Corporation	93-1249	08/06/93
Iowa-Illinois Gas and Electric Company, Robert R. Dyson, c/o The Dyson-Kissner-Moran Corp., DKM Resources, Inc	93-1329	08/06/93
Peter Kiewit Sons', Inc., Evergreen Capital Corp., C-TEC Corporation	93-1339	08/06/93
Liberty Mutual Insurance Company, Crownx Inc., Crown America Life Insurance Company	93-1420	08/06/93
Salomon Inc., The Dow Chemical Company, The Dow Chemical Company	93-1423	08/06/93
New England Mutual Life Insurance Company, New England Mutual Life Insurance Company, Back Bay Advisors, Inc., Loomis Sayles & Company	93-1429	08/06/93
New England Mutual Life Insurance Company, New England Mutual Life Insurance Company, Back Bay Advisors, Inc., Loomis Sayles & Company	93-1430	08/06/93
Leggett & Platt, Incorporated, Armco Inc., Adcom Wire (Partnership), L&P Carthage Wire Mill	93-1433	08/06/93
Pacific Nuclear Systems, Inc., BBC Brown Boveri Ltd., ABB Impell Corporation and ABB Government Services Inc	93-1438	08/06/93
Pacific Nuclear Systems, Inc., ASEA AB, ABB Impell Corporation and ABB Government Services Inc	93-1439	08/06/93
Damark International, Inc., Fingerhut Companies, Inc., COMB Corporation	93-1443	08/06/93
DQE, Inc., Mestek, Inc., Chester Environmental Inc	93-1463	08/06/93
General Electric Company, American Express Company, Shearson Lehman Hutton Mortgage Corporation	93-1476	08/06/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20680. (202) 326-3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93-19804 Filed 8-16-93; 8:45 am]

BILLING CODE 6750-01-M

[Docket C-3451]

Ion Systems, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California corporation from misrepresenting the contents, validity, results, conclusions or interpretations of any test or study with respect to the NO-RAD System or any other radon-remediation device, or from knowingly selling components of the system to others who make unsubstantiated performance claims about them. The consent order requires the respondent to have competent and reliable scientific evidence to substantiate representations it makes about any performance characteristics of any radon-remediation device.

DATES: Complaint and Order issued July 29, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway Street, Room 1184, Boston, MA 02222-1073. (617) 565-7240.

SUPPLEMENTARY INFORMATION: On Tuesday, May 18, 1993, there was published in the **Federal Register**, 58 FR 28966, a proposed consent agreement with analysis In the Matter of Ion Systems, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93-19801 Filed 8-16-93; 8:45 am]

BILLING CODE 6750-01-M

[Docket C-3453]

Marshall Field & Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Chicago-based retail chain to comply with the disclosure provisions of the Fair Credit Reporting Act (FCRA) for future applicants denied employment based on information obtained from a consumer reporting agency regardless of whether alternative employment is offered. It also requires the company to send a letter to past job applicants denied employment, since August 1990, but not previously given the requisite disclosure, so that recipients can check the information for accuracy and seek to correct any errors.

DATES: Complaint and Order issued August 3, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Cynthia Lamb or Donald d'Entremont, FTC/S–4429, Washington, D.C. 20580, (202) 326–3001 or 326–2736.

SUPPLEMENTARY INFORMATION: On Tuesday, May 25, 1993, there was published in the **Federal Register**, 58 FR 30057, a proposed consent agreement with analysis In the Matter of Marshall Field & Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128–36; 15 U.S.C. 1681–1681(f))

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–19803 Filed 8–16–93; 8:45 am]

BILLING CODE 6750–01–M

[Docket C–3450]

Nature's Cleanser, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based corporation, that markets herbal products, and its officer from making the alleged false claims, and requires them to offer full refunds to all consumers who purchased the products. The order requires the respondents to have competent and reliable scientific evidence to substantiate any future claims regarding the performance, benefits or effectiveness of any food, drug or device.

DATES: Complaint and Order issued July 12, 1993.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Linda Badger, San Francisco Regional Office, 901 Market Street, suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Tuesday, May 4, 1993, there was published in the **Federal Register**, 58 FR 26549, a proposed consent agreement with analysis In the Matter of Nature's Cleanser, Inc., et. al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–19800 Filed 8–16–93; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3452]

PerfectData Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California marketer of electronic office equipment care and maintenance products from representing that any product containing a Class I or Class II ozone-depleting substance—as defined by the Clean Air Act Amendments of 1990—is ozone friendly, contains no ozone depleting CFCs, or has ozone guard, and from representing or implying that any such product will not damage or deplete the ozone in the upper atmosphere. The respondent also is prohibited from making any environmental benefit claims for any of its products unless the company possesses and relies upon competent and reliable scientific evidence to substantiate the claims.

DATES: Complaint and order issued August 2, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Ralph Stone, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Friday, February 12, 1993, there was published in the **Federal Register**, 58 FR 8285, a proposed consent agreement with analysis In the Matter of PerfectData Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–19802 Filed 8–16–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Requests for Nominations of Members of Clinical Practice Guideline Panel on Screening for Colorectal Cancer

The Agency for Health Care Policy and Research (AHCPR) announced a request for proposal and intends to award a contract to a non-profit organization to develop, and then to update, a clinical practice guideline, and to develop related medical review criteria, standards of quality, and performance measures for screening for colorectal cancer. Collaborative support for this effort is being provided by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The contractor will establish a panel of health care experts and consumers to assist in developing a clinical practice guideline on screening for colorectal cancer. The AHCPR, on behalf of the

[1] Copies of the Complaint and the Decision and Order are available for the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

contractor, invites nominations of qualified individuals to serve as chairperson(s) and members of the panel.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) was enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Pub. L. 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR can arrange for development of guidelines: 1. Panels of qualified experts and health care consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the contract process for development of a clinical practice guideline for screening for colorectal cancer.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) is charged with conduct and support of research, training, health information dissemination, and other programs with respect to diabetes mellitus and endocrine and metabolic diseases; digestive diseases and nutritional disorders; and kidney, urologic, and hematologic diseases (42 U.S.C. 285c et seq.). Collaboration with AHCPR in the development of a clinical practice guideline on colorectal cancer screening is consistent with NIDDK's mandate to encourage research into and programs for providing information to patients, their families, and health care providers and for development of model programs for cost effective and preventive patient care.

Panel Nominations

The panel that will assist the contractor in developing the clinical practice guideline for colorectal cancer screening will consist of two co-chairpersons and ten to fifteen other members. The work will be divided into three phases. Phase I is development of the clinical practice guideline. Phase II is development of medical review criteria, standards of quality, and performance measures based on the guideline.

Phase III is the update of the guideline. One-third of the panel members will rotate off the panel after Phase II of the contract and be replaced prior to Phase III to add new expertise to the panel.

The role of the panel members is to assist the contractor to: Develop a decision-making process; determine the focus of the guideline and the questions to be addressed; advise and monitor the review and analysis of the scientific literature; consider and advise on principal health care issues; monitor and provide counsel on development of medical review criteria, standards of quality, and performance measures; and review and approve the interim and final drafts of the different versions of the guideline. The co-chairpersons will provide leadership in carrying out these roles.

To assist in identifying members for the panel, AHCPR and NIDDK are requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, physicians' assistants, nurses, nurse practitioners, pharmacists allied health and other health care practitioners, health care institutions, and consumers with pertinent experience or information. In making panel selections, AHCPR, in consultation with NIDDK, will maintain, to the extent possible, a balance of individuals selected from academic settings and individuals selected without full-time academic appointments. At least two members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline. Some participants in the guideline process (panel members, consultants, peer or pilot reviewers) should have expertise in epidemiology, health services research, or health economics, and familiarity with the clinical conditions being studied. To the extent possible, the panel should have appropriate representation in terms of gender, minority populations, and geographic areas of the United States.

AHCPR and NIDDK are especially interested in receiving nominations of individuals with: (1) Experience in developing and/or commitment to developing clinical guidelines, medical review criteria, standards of quality, and performance measures; (2) relevant training and clinical experience; (3) relevant experience in basic and/or clinical research in colorectal cancer,

including publication of relevant peer-reviewed articles; (4) demonstrated interest in quality of care, medical outcomes, and medical effectiveness; (5) knowledge of the epidemiology of colorectal cancer or other cancers; (6) experience in health services research or health economics, with expertise in the area of cancer or cancer screening including colorectal cancer; and (7) personal experience of colorectal cancer screening or colorectal cancer, either as a patient, family member or friend of a colorectal cancer patient, or as a person who actively works with cancer prevention or cancer support group programs. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or the final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons should take into consideration the criteria specified below, which AHCPR, in consultation with NIDDK, will use in approving final selections:

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical practice guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedures or clinical services;
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Subsequent to approval by AHCPR, in consultation with NIDDK, the contractor will appoint the panel co-chairpersons. After the panel co-chairpersons have been appointed, nominations for members of the panel will be reviewed by the contractor and the co-chairpersons, prior to proposing panel members to AHCPR. Following AHCPR review and approval of proposed members' qualifications, review of the overall composition of the panel to ensure representation of a range of expertise and experience, and review of potential conflict of interest, in consultation with NIDDK, the contractor will appoint panel members.

Nominations should indicate whether the individual is being recommended to serve on the panel as a co-chairperson or as a member. Each nomination must include two copies of the individual's curriculum vitae or resume, and two copies of a letter of nomination with a statement of the rationale for the specific nomination.

To be considered, nominations must be received by September 13, 1993 at the following address: Barbara Fleming, M.D., Ph.D., Project Officer, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Supported Clinical Practice Guidelines," dated April 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document can be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, Suite 310, 6000 Executive Blvd, Rockville, MD 20852. Information about this contract, RFP No. 282–93–0029, can be obtained from Michele Trotter, Division of Acquisition Management, Government Acquisition Branch, room 5–101, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Requests for copies of the contract solicitation may be transmitted by facsimile to 301–443–3849.

Dated: August 9, 1993.

Richard J. Greene,

Acting Administrator.

[FR Doc. 93–19629 Filed 8–16–93; 8:45 am]

BILLING CODE 4150–90–U

Requests for Nominations of Members of Clinical Practice Guideline Panel on Nosocomial Urinary Tract Infection

The Agency for Health Care Policy and Research (AHCPR) announced a request for proposal and intends to award a contract to a non-profit organization to develop, and then to update, a clinical practice guideline, and to develop related medical review criteria, standards of quality, and performance measures for nosocomial urinary tract infection. The contractor will establish a panel of health care experts and consumers to assist in developing a clinical practice guideline on nosocomial urinary tract infection and to assist in developing medical review criteria, standards of quality, and performance measures. The AHCPR, on behalf of the contractor, invites nominations of qualified individuals to serve as chairperson(s) and members of the panel.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b-12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410), enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Pub. L. 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which AHCPR can arrange for development of guidelines: 1. Panels of qualified experts and health care consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the contract process for development of a clinical practice guideline for nosocomial urinary tract infection.

Section 914 of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act,the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Panel Nominations

The panel that will assist the contractor in developing the clinical practice guideline for nosocomial urinary tract infection will consist of two co-chairpersons and ten to fifteen other members. The work will be divided into three phases. Phase I is development of the clinical practice guideline. Phase II is development of medical review criteria, standards of quality, and performance measures based on the guideline. Phase III is the update of the guideline. One-third of the panel members will rotate off the panel after Phase II of the contract and be replaced prior to Phase III to add new expertise to the panel.

The role of the panel members is to assist the contractor to: develop a decision-making process; determine the focus of the guideline and the questions to be addressed; advise and monitor the review and analysis of the scientific literature; consider and advise on principal health care issues; monitor and provide counsel on development of medical review criteria, standards of quality, and performance measures; and review and approve the interim and final drafts of the different versions of the guideline.

The co-chairpersons will provide leadership in carrying out these roles.

To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, physicians' assistants, nurses, nurse practitioners, pharmacists, allied health and other health care practitioners, health care institutions, and consumers with pertinent experience or information. In making panel selections, AHCPR, will maintain, to the extent possible, a balance of individuals selected from academic settings and individuals selected without full-time academic appointments. At least two members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline. Some participants in the guideline process (panel members, consultants, peer or pilot reviewers) should have expertise in epidemiology, health services research, or health economics, and familiarity with the clinical conditions being studied. To the extent possible, the panel should have appropriate representation in terms of gender, minority populations, and geographic areas of the United States.

AHCPR is especially interested in receiving nominations of individuals with: (1) Experience in developing and/or commitment to developing clinical guidelines, medical review criteria, standards of quality, and performance measures; (2) relevant training and clinical experience; (3) relevant experience in basic and/or clinical research in nosocomial infections and/or urinary tract infections, including publication of relevant peer-reviewed articles; (4) demonstrated interest in quality of care, medical outcomes, and medical effectiveness; (5) knowledge of the epidemiology of nosocomial infections and/or urinary tract infections; (6) experience in health services research or health economics, with expertise in the areas of nosocomial infections and/or urinary tract infections; and (7) personal experience of urinary tract infections and/or nosocomial urinary tract infections, either as a patient, family member or friend of a patient, or as a person who actively works with consumer groups interested in nosocomial and/or urinary tract infections. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or the final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons should take into consideration the criteria specified below, which AHCPR will use in approving final selections:

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on the clinical conditions(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical practice guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedures or clinical services;
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Subsequent to approval by AHCPR, the contractor will appoint the panel co-chairpersons. After the panel co-chairpersons have been appointed, nominations for members of the panel will be reviewed by the contractor and

the co-chairpersons, prior to proposing panel members to AHCPR. Following AHCPR review of the overall composition of the panel to ensure representation of a range of expertise and experience, and review of potential conflict of interest, the contractor will appoint panel members.

Nominations should indicate whether the individual is being recommended to serve on the panel as a co-chairperson or as a member. Each nomination must include two copies of the individual's curriculum vitae or resume, and two copies of a letter of nomination with a statement of the rationale for the specific nomination.

To be considered, nominations must be received by September 13, 1993 at the following address: Marietta Anthony, Ph.D., Project Officer, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guidelines development process is contained in the AHCPR Fact Sheet, "AHCPR–Supported Clinical Practice Guidelines," dated April 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document can be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd, Suite 310, Rockville, MD 20852. Information about this contract, RFP No. 282–93–0029, can be obtained from Michele Trotter, Division of Acquisition Management, Government Acquisition Branch, Room 5–101, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Requests for copies of the contract solicitation may be transmitted by facsimile to 301–443–3849.

Dated: August 9, 1993.

Richard J. Green,

Acting Administrator.

[FR Doc. 93–19631 Filed 8–16–93; 8:45 am]

BILLING CODE 4190–00–U

Food and Drug Administration

[Docket No. 93N–0205]

Daco Laboratories, Ltd.; Proposal to Withdraw Approval of Applications for Medicated Animal Feeds; Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), is providing an opportunity for hearing on a proposal to withdraw approval of all applications held by Daco Laboratories, Ltd., for animal feeds bearing or containing new animal drugs (NAD's). This action is based on new information showing the firm's methods and controls used for manufacturing, processing, and packing medicated feeds are inadequate to assure and preserve the identity, strength, quality, and purity of the NAD's therein and on the fact that these inadequacies were not corrected within a reasonable time after receipt of written notice from FDA.

DATES: Requests for hearing and data and information in support of the hearing request are due by September 16, 1993.

ADDRESSES: Requests for hearing in response to this notice should be identified with Docket No. 93N–0205 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen A. Kandra, Center for Veterinary Medicine (HFV–246), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8765.

SUPPLEMENTARY INFORMATION: CVM is providing an opportunity for a hearing on a proposal to withdraw approval of all the medicated feed applications (MFA's) held by the firm doing business as Daco Laboratories, Ltd., Routes 26 and 72, Forreston, IL 61030 (the home office address is Box 753, 1132 Erie St., Stratford, Ontario, Canada N5A6W1), for the manufacture of animal feeds bearing or containing new animal drugs. Daco Laboratories is a feed mill that manufactures both medicated and nonmedicated animal feeds. The seven MFA's, held by Daco Laboratories Ltd. and/or its subsidiary Vet-Way Feeds, were approved under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)) and are identified as follows:

1. G 138–723 for medicated feeds containing melengestrol acetate for cattle use; approved April 25, 1985.
2. F 138–724 for medicated feeds containing monensin for cattle use; approved July 4, 1986.
3. F 141–520 for medicated feeds containing neomycin sulfate and oxytetracycline for chicken, turkey, swine, cattle, and mink use; approved May 22, 1987.
4. G 142–705 for medicated feeds containing chlortetracycline, sulfamethazine, and penicillin for swine use; approved July 19, 1988.
5. G 145-955 for medicated feeds containing apramycin sulfate for swine use; approved July 16, 1987.
6. F 147–219 for medicated feeds containing sulfamethazine and tylosin for swine use; approved September 28, 1987.
7. G 147–745 for medicated feeds containing arsanilic acid for chicken, turkey, and swine use; approved August 17, 1987.

To manufacture a Type B or C animal feed bearing or containing a Category II NAD (i.e., Type A medicated article) a firm must file an MFA (Form FDA 1900) with FDA and obtain its approval. FDA does not approve such an application unless, among other things, the firm agrees to comply with the agency's regulations for current good manufacturing practice (CGMP) for medicated feeds (21 CFR part 225), which are intended to help ensure that feed bearing or containing an NAD meets the requirements of the act pertaining to identity, strength, quality, and purity. The agency determines whether the firm's manufacture of medicated feed is in compliance with the CGMP regulations by inspecting the facilities and controls used for, and the methods used in, the manufacture, processing, and packing of the feed by the firm.

On August 17, 18, 22, 23, and 24, 1988, FDA inspected Daco Laboratories, Ltd. The inspection revealed significant deviations from the CGMP's for medicated feeds. The FDA investigator noted the deviations on an inspectional observations form (Form FDA 483) (Ref.1), issued a copy to the firm's representative, and discussed the deviations with her. The deviations included the following:

1. Use of outdated drugs from the active inventory to manufacture medicated feeds in violation of 21 CFR 225.42.
2. Failure to assay certain medicated feeds, as required by 21 CFR 225.58(b)(1).
3. Failure to document followup investigation of and corrective action

taken on out-of-limits assay reports, as required by 21 CFR 225.58(d).

4. Failure to maintain inventory control records that permit a comparison of the theoretical and actual amount of drug used on a daily basis, as required by 21 CFR 225.42(b)(7).

5. Failure to maintain label specimens for 1 year following distribution of a custom batch, as required by 21 CFR 225.80(b)2).

As a result of the failed CGMP inspection, FDA sent a notice of adverse findings (NAF) letter dated December 5, 1988 (Ref. 2), to the firm via certified mail. The NAF letter again listed the previously mentioned deviations and requested that the firm respond in writing within 30 days indicating the procedures being established to ensure its full compliance with the act. The firm did not respond to the letter.

Subsequently, the firm requested a followup inspection which FDA performed on December 28, 1988. The agency found that Daco Laboratories had made substantial corrections with regard to the deficiencies noted during the last inspection. Form FDA 483 was not issued. (See summary of findings in the Establishment Inspection Report (EIR) (Ref. 3).)

The firm was inspected again October 16 through 23, 1991. The inspection revealed numerous violations of CGMP regulations for medicated animal feeds. A Form FDA 483 containing 11 items (Ref. 4) was presented to and discussed with a representative of the firm. Some of the most significant violations were the same as those detected during the August 1988 inspection; they consisted of the following:

1. Failure to maintain a system for receipt, storage, and inventory of drugs to assure their identity, strength, quality, and purity, as required by 21 CFR 225.42(b).

2. Failure to perform potency assays on certain medicated feeds, as required by 21 CFR 225.58(b)(1).

3. Failure to perform investigations and/or corrective actions on out-of-tolerance potency assays (eight such assays were found which lacked documentation of followup or corrective action), as required by 21 CFR 225.58(d).

4. Failure to maintain copies of proofread labels, as required by 21 CFR 225.80(b)(2).

The inspection also disclosed that the firm had shipped Type A medicated articles to consignees without assurance that they held the required approved MFA's. Consequently, the articles were unsafe within the meaning of section 512(a)(1) of the act (21 U.S.C. 360b(a)(1)) and, therefore, adulterated within the meaning of section 501(a)(5) of the act (21 U.S.C. 351(a)(5)). The agency stressed the seriousness of the violations to the firm in a warning letter dated February 5, 1992 (Ref. 5). The letter requested that the firm submit a detailed plan to the agency within 15 working days for correcting and preventing recurrence of the violations. The letter also notified the firm that if it did not promptly comply with the request, the agency was prepared to exercise one or more options, including issuing a notice of opportunity for a hearing on a proposal to withdraw approval of its MFA's. Additionally, the letter informed Daco Laboratories that FDA will not approve new MFA's until the violations are corrected.

Daco Laboratories responded to the warning letter by a letter dated April 13, 1992 (Ref. 6), stating that all of the violations cited during the October 1991 inspection had been corrected.

The next inspection, which was initiated on September 23, 1992, and concluded on October 5, 1992, revealed continuing violations. In its April 13, 1992, response to FDA's warning letter, the firm claimed it had corrected these violations. A Form FDA 483 which listed 10 CGMP deviations (Ref. 7) was presented to and discussed with a representative of the firm. The repeat deviations included the following:

1. Failure to perform the required three assays of finished medicated feeds containing drugs covered by MFA's, as required by 21 CFR 225.58(b)(1).

2. Failure to document followup investigation of and corrective action for out-of-tolerance potency assay, as required by 21 CFR 225.58(d).

3. The inspection again found distribution of Type A medicated articles without documentation that the consignee held an approved MFA. Consequently, the articles were unsafe within the meaning of section 512(a)(1) of the act (21 U.S.C. 360b(a)(1)) and, therefore, adultered within the meaning of section 501(a)(5) of the act (21 U.S.C. 351(a)(5)).

Accordingly, CVM is proposing to withdraw approval of the MFA's held by Daco Laboratories, Ltd., and/or Vet-Way Feeds as identified above, under section 512(m)(4)(B)(ii) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Form FDA 483 in EIR of August 17, 18, 22, 23, and 24, 1988.

2. NAF, FDA to Daco Laboratories, Ltd., dated December 5, 1988.

3. EIR of December 28, 1988.

4. Form FDA 483 in EIR of October 16-23, 1991.

5. Warning letter, FDA to Daco Laboratories, Ltd., dated February 5, 1992.

6. Letter, Daco Laboratories, Ltd. to FDA, dated April 13, 1992.

7. Form FDA 483 in EIR of September 23, 28, and 29, and October 5, 1992.

Therefore, notice is given to Daco Laboratories, Ltd., and to any other interested persons who may be adversely affected, that CVM proposes to issue an order under section 512(m)(4)(B)(ii) of the act withdrawing approval of MFA's G 138–723, F 138–724, F 141–520, G 142–705, G 145–955, F 147–219, and G 147–745, and all amendments and supplements thereto, on the grounds that new information, evaluated together with the evidence available when the applications were approved, shows that the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such animal feeds are: (1) Inadequate to assure and preserve the identity, strength, quality, and purity of the NAD's therein, and (2) were not made adequate within a reasonable time after receipt of written notice from FDA specifying the inadequacies.

In accordance with provisions of section 512 of the act and regulations promulgated under it (21 CFR part 514), and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84), CVM hereby provides an opportunity for a hearing to show why approval of the MFA's identified in this notice, and all amendments and supplements to the applications, should not be withdrawn under section 512(m)(4)(B)(ii) of the act. Any hearing would be subject to the provisions of 21 CFR part 12.

An applicant who decides to seek a hearing shall file on or before September 16, 1993, a written notice of appearance, request for hearing, and the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 514.200.

Procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and

request for a hearing, submission of information and analysis to justify a hearing, other comments, and a grant or denial of a hearing, are contained in 21 CFR 514.200.

The failure of a sponsor to file a timely, written appearance and request for a hearing as required by 21 CFR 514.200 shall be construed as an election not to avail himself of the opportunity for a hearing. In such case, the Director, Center for Veterinary Medicine, under the authority delegated to him in 21 CFR 5.84(a)(2), without further notice will enter a final order withdrawing approval of the applications.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the documentation and analysis in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the MFA's, or that the request for a hearing is not made in the required format or with the required analysis, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing. If a hearing is requested and is justified by the sponsor's response to this notice, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will begin will be issued as soon as practicable.

All submissions under this notice shall be filed in four copies and, except as provided in 21 CFR 10.20(j), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512 (21 U.S.C. 360b)) and under authority delegated to the Director, Center For Veterinary Medicine (21 CFR 5.84).

Dated: August 5, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–19737 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration Workshop for the Compressed Medical Industry; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Southwest Region Small Business Assistance Program, the Center for Drug Evaluation and Research, and the Office of Small Business, Scientific and Trade Affairs are sponsoring a public workshop on FDA requirements that apply to the compressed medical gas industry. This workshop is designed to assist the industry in complying with regulations for manufacturing and repacking medical gases.

DATES: The public workshop will be held on September 28, 1993, 8:30 a.m. to 3:30 p.m.

ADDRESSES: The public workshop will be held at the Food and Drug Administration's Southwest Regional Office conference room, 7920 Elmbrook Dr., suite 102, Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Marie Falcone, Southwest Region Small Business Program, Food and Drug Administration, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214–655–8100 extension 128, or Jeanne White, Office of Small Business, Scientific and Trade Affairs (HF–50), Food and Drug Administration, rm. 15–61, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776. Those persons interested in attending this meeting should FAX their registration to 214–655–8130, including name, firm name, address, and telephone number. There is no registration fee for this workshop, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the industry shows that a high percentage of medical gas firms are unaware of applicable regulations and guidelines or are not in compliance with applicable requirements. This workshop is designed to assist the medical gas industry and is free of charge to attendees.

Dated: August 11, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19741 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–01–F

FDA Commissioner's Industry Exchange Meetings Concerning User Fee Implementation; Notice of Public Meeting

AGENCY: Food and Drug Administration, DHHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA), the Office of the Commissioner, the Office of Small Business, Scientific and Trade Affairs, the Center for Drug Evaluation and Research, and the Center for Biologics Evaluation and Research, are cosponsoring public meetings with the Pharmaceutical Manufacturer's Association and the Biotechnology Industry Organization on the user fee implementation program. This meeting is intended to provide an exchange of information between FDA and the pharmaceutical industry for implementation of this program.

DATES: The industry exchange meetings will be held on Thursday, August 26, 1993, from 9:00 a.m. to 5:30 p.m. in Philadelphia, PA and on Wednesday, October 6, 1993, from 8:30 a.m. to 5 p.m. in Burlingame, CA. Interested persons must register by August 20, 1993, for the meeting in Philadelphia, PA and by October 1, 1993, for the meeting in Burlingame, CA.

ADDRESSES: The industry exchange meetings will be held at the Sheraton Society Hill, One Dock St., Philadelphia, PA and at the Marriott San Francisco Airport, 1800 Old Bayshore Hwy., Burlingame, CA.

FOR FURTHER INFORMATION CONTACT: Mary Ann Danello or Jeanne White, Food and Drug Administration, Office of Small Business, Scientific and Trade Affairs (HF–50), 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776. Those persons interested in attending the Philadelphia meeting should mail their registration to Megan McLaughlin, Registration Coordinator, Food and Drug Administration, 900 U.S. Customhouse, 2d and Chestnut Sts., Philadelphia, PA 19106 or FAX 215–597–8212. Those persons interested in attending the Burlingame, CA meeting, should mail their registration to Mark Roh, Pacific Region Small Business Assistance Program, Food and Drug Administration, Federal Office Bldg., rm. 526, 50 United Nations Plaza, San Francisco, CA 94102, or FAX 415–556–2822. Registration should include the name, firm name, address, and telephone number of all attendees. There is no registration fee for this meeting, but advance registration is required. Early registration is encouraged due to seating limitations.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs holds industry exchange meetings to disseminate information on timely issues and to get industry's views on these issues. This meeting was organized by FDA's Office of the Commissioner, the Office of Small

Business, Scientific and Trade Affairs, the Center for Drug Evaluation and Research, and the Center for Biologics Evaluation and Research.

Under the provisions of the Prescription Drug User Fee Act of 1992, FDA was authorized to collect user fees for certain applications, products and establishments. Revenues derived from user fees are to be dedicated to expediting the review and approval of applications for certain human drug products, including certain biological products. These and other issues pertaining to user fees will be discussed at the meeting.

Dated: August 11, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19742 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[PN–2109]

Announcement of Cycle for Rural Health Medical Education Demonstration Projects

The Health Resources and Services Administration (HRSA), in coordination with the Health Care Financing Administration (HCFA), announces that proposals for fiscal year 1994 Rural Health Medical Education Demonstration Projects are being accepted under the authority of section 4038 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (the Act), as amended by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

Section 4038, as amended, authorizes Rural Health Medical Education Demonstration Projects to assist physicians to develop clinical experience in rural areas using payment for graduate medical education under the Social Security Act and requires the Secretary of Health and Human Services to enter into agreements with 10 teaching hospitals as sponsors of the demonstration projects. Seven demonstration projects are ongoing and three more could be effected under section 4038.

Eligible hospitals are those which currently receive payments for direct and indirect graduate medical education costs as defined under Medicare. These hospitals may be public or private entities, nonprofit or for profit. These projects will be for a 3 year period and are intended to assist resident physicians in developing field experience in rural areas.

Under these agreements, each of the sponsoring hospitals will make arrangements with a small rural hospital to provide for resident rotations for a period of 1 to 3 months for physicians who have completed at least 1 year of residency training in family practice, osteopathic general practice, primary care internal medicine, or primary care pediatrics. The number of physicians and the duration of the rotation is to be a part of the arrangements between the sponsoring hospital and the rural hospital.

For the purposes of these projects, payments made for the indirect costs of graduate medical education, pursuant to section 1886 (d)(5)(B) of the Social Security Act and 42 CFR 412.105, for any part of a year that a resident works at a small rural hospital, will be treated as if the resident was working at the sponsoring hospital, and not as if the resident was working in the small rural hospital. All other requirements set forth in 42 CFR 412.105 will apply. In addition, in order to be counted, the resident's time spent in the rural hospital must count toward certification as part of an approved program under 42 CFR 413.86(b).

Medicare's share of the direct graduate medical education costs of the sponsoring hospital will be increased for the duration of the project to meet any reasonable additional direct costs incurred for the education and training of resident physicians at the rural site. The sponsoring hospital will be required to account separately for the costs of the demonstration project. Medicare will reimburse the sponsoring hospital for Medicare's share of the additional costs the hospital incurs in connection with the project under the reasonable cost authority methodology described in section 1861(v) of the Act. Reimbursement for these costs will be in addition to the hospital's payment under section 1886(h).

It should be noted that direct costs may be claimed only once and will not be reimbursed under both sections 1886(h) and 1861(v).

In this demonstration an emphasis is being placed on cost effectiveness of the projects. Proposed projects will be evaluated on the reasonableness and cost effectiveness demonstrated in the description of additional costs associated with the project which would be reimbursed under a reasonable cost methodology. These costs are to be estimated for each of the 3 years of the demonstration project. The costs and the cost effectiveness of a proposed project will be considered during the review of proposals.

Additional costs may include arrangements for supervision of the residents at the rural site, housing of the residents, and travel by residents and supervisors from the sponsoring hospital. Any reimbursement request for additional costs will require review by the Medicare intermediaries to determine the accuracy and reasonableness of the claim. Teaching hospitals wishing to apply should note that Medicare will only reimburse the sponsoring hospitals for Medicare's share of the cost. The sponsoring hospital will have to seek reimbursement from other payers for costs of the demonstration related to non-Medicare patients. Sponsoring teaching hospitals should note that residents participating in the project may be counted as "on-site" or "off-site" personnel for purposes of determining direct medical education costs; however, each resident may be counted only once.

It should be noted that there will be no reimbursements directly to rural hospitals. All reimbursements associated with the demonstration projects will be made to the sponsoring hospital.

Project Criteria

Agreements for Rural Health Medical Education Demonstration Projects will be entered into only after proposals for participation are received and a review is conducted by the Department. The following project criteria were established in 1989 after receipt of public comments and will be used in FY 1994.

(1) Only residents from family medicine, osteopathic general practice, primary care internal medicine, or primary care pediatric residency programs will be eligible for participation in the demonstration projects. All residents participating in the project must have completed at least 1 year of resident training.

(2) For the purpose of this demonstration, a small rural hospital is defined as a general hospital of 100 or fewer inpatient beds available for the lodging of patients, excluding newborn beds (except those in intensive care units), skilled nursing beds and beds in any distinct part of the hospital not subject to the Medicare prospective payment system, e.g., psychiatric beds and postoperative beds. The hospital must be located in a county that is not included in either a Metropolitan Statistical Area or a New England County Metropolitan Area as determined by the Office of Management and Budget (OMB). The Department considers hospitals of 100

beds or fewer as offering training opportunities significantly different from experience offered at most hospitals which sponsor graduate medical education. To participate in the demonstration, a rural hospital must maintain its "rural" status throughout the demonstration for Medicare payment purposes.

Hospitals interested in entering into an agreement with the Department should notify HRSA. Materials regarding entry into an agreement will be sent only to those programs and hospitals making a request.

Requests for proposal instructions and other questions should be directed to: Glen Taylor, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6820, FAX: (301) 443–8890.

The proposal instructions have been approved by OMB under the Paperwork Reduction Act. The OMB clearance number is 0915–0145.

To receive consideration to enter into an agreement with the Department to conduct a demonstration project, a project proposal should be received by October 18, 1993. Proposals shall be considered "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late proposals not accepted for processing will be returned to the applicant.

This program, Rural Health Medical Education Demonstration Projects, is listed at 93.906 in the Catalog of Federal Domestic Assistance. The review of proposals under this demonstration are not subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: July 13, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–19743 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–15–P

Announcement of the Methodology for Implementation of the Statutory Required Submission of Information for Selected Grant Programs Under Titles VII and VIII of the Public Health Service Act for Fiscal Year 1994

SUMMARY: The Health Professions Education Extension Amendments of 1992 and the Nurse Education and Practice Improvement Amendments of 1992 (Pub. L. 102–408, dated October 13, 1992) and technical amendments (Pub. L. 102–531) authorize a required submission of information (sections 791(b) and 860(e)(2)) for selected grant programs in titles VII and VIII of the Public Health Service (PHS) Act. The information submission requirement is an eligibility requirement. The information must be submitted as directed in the guidance or the application cannot be considered for an award. The information provided will be used only to make the initial determination whether an application is acceptable for processing. It will not be used during the merit review process or for making funding decisions.

The burden for collection of this information has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act. In addition, input was elicited from constituency groups affected by this information submission requirement. This notice will describe the methodology for implementation of the required submission of information authorized by sections 791(b) and 860(e)(2) of the PHS Act.

EFFECTIVE DATE: The methodology for implementing the required submission of information which is described in this notice is for use in FY 1994 grant cycles for the programs which are subject to this required submission of information.

SUPPLEMENTARY INFORMATION: Sections 791(b) and 860(e)(2) of the PHS Act include the required submission of information for selected grant programs under titles VII and VIII. Grant programs which are subject to required submission of information are:

Departments of Family Medicine (section 747(b)),
Grants for Predoctoral Training in Family Medicine (section 747(a)),
Grants for Graduate Training in Family Medicine (section 747(a)),
Grants for Faculty Development in Family Medicine (section 747(a)),
Grants for Predoctoral Training in General Internal Medicine and/or General Pediatrics (section 748),
Grants for Residency Training in General Internal Medicine and/or General Pediatrics (section 748),
Grants for Faculty Development in General Internal Medicine and/or General Pediatrics (section 748),
Residency Training and Advanced Education in the General Practice of Dentistry (section 749),
Grants for Physician Assistant Training Program (section 750),
*Grants for Physician Assistant Faculty Development (section 750),
Podiatric Primary Care Residency Training (section 751),
Grants for Preventive Medicine Residency Training (section 763),
Allied Health Traineeships (section 766),
Allied Health Project Grants (section 767),
Advanced Nurse Education (section 821),
Nurse Practitioner and Nurse-Midwifery Programs (section 822)
Professional Nurse Traineeships (section 830),
Nurse Anesthetist Education Programs (section 831(a)),
Nurse Anesthetist Traineeships (section 831(a)), and
Grants for Nurse Anesthetist Faculty Fellowships (section 831(b)).

Statutory Required Submission of Information Provision

Sections 791(b) and 860(e)(2) provide that an award under selected grant programs in titles VII and VIII of the PHS Act may be made only if the applicant for the award submits the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

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* Program currently in development.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Statutory Definition of "Graduate"

Under sections 791(c) and 860(e)(3), "graduate" is defined as an individual who has successfully completed all training (and residency requirements) necessary for full certification in the health profession selected by the individual.

Completion of all training for certification purposes will be defined in program specific notices based on the characteristics of the program.

Definition of "Disadvantaged"

The definition of "Disadvantaged" is that which is currently in use for health professions programs (42 CFR 57.1804(c)). An individual from a disadvantaged background is one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or

(2) Comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and by the Secretary for use in all health professions programs.

Methodology for Implementation

The methodology for implementing the required submission of information includes (1) definitions and (2) data elements for each of the requirements.

Additional Definitions

For purposes of making awards under this program, the term "applicant" means that institutional entity for which the grant funds are requested.

Individuals "recruited" are the numbers that have completed applications to the program of the applicant.

Individuals "admitted" refers to the numbers who have applied and are accepted to the program.

Individuals "enrolled" refers to the numbers who have been accepted and actually attend the program.

"Rotations or preceptorships" for students/trainees refers to those blocks of time during the academic program which are established for educational experiences that occur in clinical settings.

In describing student rotations or preceptorships and resident clinical training, "principal focus" means that the majority of the patients in the health care settings selected for these experiences are individuals who reside in or comprise a medically underserved community.

"Recent graduates" means individuals who have successfully completed all training and residency requirements necessary for full certification in the health profession selected by the individual, within the last two years or more.

"Primary health care" means care which may be initiated by the client or provider in a variety of settings and which consists of a broad range of personal health care services, including promotion and maintenance of health, prevention of illness and disability, basic care during acute and chronic phases of illness, guidance and counseling of individuals and families, and referral to other health care providers and community resources when appropriate.

If necessary, more detailed definitions for the above terms will appear in the program materials.

Statutory Definition of "Medically Underserved Community"

Section 799(6) of the PHS Act defines "medically underserved community" as an urban or rural area or population that—

(A) Is eligible for designation under section 332 as a health professional shortage area;

(B) Is eligible to be served by a migrant health center under section 329, a community health center under section 330, a grantee under section 340 (relating to homeless individuals), or a grantee under section 340A (relating to residents of public housing); or

(C) Has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics).

The above definition includes geographic areas or populations without adequate health care services. This definition should be used when determining the number of individuals recruited, admitted or enrolled from the applicant's program who are from medically underserved communities.

Information about an applicant's training program, faculty clinical practice, and graduate practice outcomes may include practice settings which are not included among the above designations. In keeping with the congressional intent that eligible entities should not be limited to formally designated HPSAs and populations served by CHC, MHC, or homeless health centers, the list of types of practice sites that can be claimed under this provision has been expanded to include the following:

Community Health Centers (section 330)
Migrant Health Centers (section 329)
Health Care for the Homeless Grantees (section 340)
Public Housing Primary Care Grantees (section 340A)
Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act)
National Health Service Corps sites, freestanding (section 333)
Indian Health Service Sites (Public Law 93–638 for tribally operated sites and Public Law 94–437 for IHS operated sites)
Federally Qualified Health Centers (section 1905(a) and (l) of the Social Security Act)
Primary Medical Care Health Professional Shortage Areas (HPSAs) (facilities and geographic) (designated under section 332) For primary care physicians and other health personnel except dentists and nurses
Dental HPSAs (facilities and geographic) (designated under section 332) For dentists only
Nurse Shortage Areas (old section 836, currently section 846) For nurses only
State or Local Health Departments (Regardless of sponsor—for example, local health departments who are funded by the State would qualify.)
Ambulatory practice sites designated by State Governors as serving medically underserved communities

This list of practice sites has been proposed for public comment in the announcement of proposed methodology for implementation of the statutory general funding preference (sections 791(a) and 860(e)(1)). Comments on the above list are invited only in response to that separate general funding preference notice.

Data Elements for Each Information Requirement

Data elements have been identified so that the data obtained from the required submission of information for these grant programs will be suitable for developing a data base and can easily and appropriately be compared to similar data from other applications.

Information Requirement (1): A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

Data elements include (a) the number of training days or weeks for each

rotation, preceptorship, or clinical training program, (b) the type and location of the medically underserved community used, and (c) the number and percent of total students involved.

Narrative descriptions should contain information that is specific to the type of program, e.g., predoctoral, dentistry, nursing. Qualitative information should focus on characteristics of the training, i.e., elected/required/selected, clinical content, services provided, patient mix, and faculty supervision. For new programs, it is acceptable to provide qualitative information about the planned training component of the academic program with projected quantitative data based on the approved curriculum.

Information Requirement (2): The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

Data elements include the number and percent of the total faculty for (a) faculty on admissions committee(s) including both formal and informal processes, (b) faculty on admissions committee(s) in clinical practice, and (c) faculty on admissions committee(s) with clinical practice in medically underserved communities.

Information Requirement (3): With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

The data elements include (a) the total number of individuals who were recruited, admitted, enrolled, and graduated in 1992 and 1993, and (b) the number of individuals from disadvantaged backgrounds or medically underserved communities who were recruited, admitted, enrolled, and graduated in 1992 and 1993 (Individuals who fit both categories should not be double counted).

New programs should provide as much data as are available, except that new programs not having admitted students are not required to provide this information. If this data cannot legally be collected, the source of prohibition must be cited.

Information Requirement (4): If applicable, the number of recent graduates who have chosen careers in primary health care.

The data elements include (a) the number of recent graduates for 1992 and 1993 who are in primary care and (b) the total number of graduates for 1992 and 1993.

For new programs or where data are not available, a statement of the strategy for how a program intends to influence graduate career choice will be acceptable.

Information Requirement (5): The number of recent graduates whose practices are serving medically underserved communities.

The data elements include (a) the number of recent graduates whose practices are serving medically underserved communities for 1992 and 1993, and (b) the total number of graduates for 1992 and 1993.

For new programs or where data are not available, a statement of the strategy for how a program intends to influence graduates to practice in medically underserved communities will be acceptable.

Information Requirement (6): A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

An acceptable response must include (a) a statement regarding whether or not the program will continue after Federal assistance under title VII or title VIII, and (b) a brief narrative to describe to what extent the program will continue after Federal assistance. To the degree possible, the following descriptive information should be provided: (1) extent to which institutional monies have been used to complement Federal monies in previously funded projects, by project and year; (2) the extent to which Federally-funded projects have been institutionalized such that contiguous funding was not sought for more than two consecutive project periods; and/or (3) if Federal funding was sought for more than two project periods, the extent to which subsequent applications have built on evolutionary program growth and represent new initiatives which contribute to overall program strengths.

Additional Information

Interested persons are invited to comment on the definitions and data elements. The comment period is 30 days. All comments received on or before September 16, 1993 will be considered before the final implementation methodology is established. Written comments should be addressed to: Ms. Shirley Johnson, Director, Office of Program Development, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Office of Program Development, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Dated: August 11, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–19744 Filed 8–16–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

SCIENTIFIC REVIEW ADMINISTRATOR: Dr. Leonard Jakubczak (301) 594–7198

DATE OF MEETING: August 19, 1993.

PLACE OF MEETING: Westwood Bldg., Rm 325C, NIH Bethesda, MD. (Telephone Conference)

TIME OF MEETING: 2 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19844 Filed 8–16–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3519; FR–3339–P–02]

Announcement of Funding Awards for the Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of Fiscal Year 1993 funding awards made under the Community Development Work Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the awards to be used by institutions of higher education, area-wide planning organizations and states to assist economically disadvantaged and minority students participating in work study programs.

FOR FURTHER INFORMATION CONTACT:

James H. Turk, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708–3176. The TDD number is (202) 708–0564. These are not toll-free numbers. Application packages (requests for grant application) may be obtained by written request from the following address: Processing and Control Branch, Office of Community Planning and Development, Headquarter Department of Housing and Urban Development, Seventh Street, SW., room 7255, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: Section 107(c) of the Housing and Community Development Act of 1974, as amended, (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management.

In a Notice of Funding Availability published in the **Federal Register** on November 12, 1992 (57 FR 53842), the Department announced the availability of $3 million for the Community Development Work Study Program.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 the Department is publishing details concerning the recipients of these awards as follows:

FY 93 COMMUNITY DEVELOPMENT WORK STUDY PROGRAM

Applicant	No. of students	Amount awarded
HUD Region: I		
New Hampshire College:		
Dr. Michael Swack, 2500 N. River Road, Manchester, NH 03104, Telephone: 603–668–2211	4	$117,680
HUD Region: II		
Hunter College & Foundation:		
Dr. Eugenie L. Birch, 695 Park Avenue, New York, NY 10021, Telephone: 212–772–5593	5	148,500
Suny Buffalo Research Foundation:		
Ms. Mary A. Atkinson, The UB Commons, 520 Lee E, Suite 211, Amherst, NY 14228, Telephone: 716–645–2980	4	120,000
Pratt Institute:		
Mr. Ron Shiffman, 379 DeDalb Ave, 2nd Floor, Brooklyn, NY 11205, Telephone: 718–636–3486	3	90,000
HUD Region: III		
Metropolitan Washington COG:		
University of Maryland, University of D.C., Howard University, University of Virginia, Northern Virginia Campus	12	357,480
Carnegie Mellon University:		
Mr. Alfred Blumstein, 500 Forbes Street, Pittsburgh, PA 15213, Telephone: 412–268–2159	4	120,000
Morgan State University:		
Dr. Elva E. Tillman, Armory Room 204, Coldspring Lane & Hillen, Baltimore, MD 21239, Telephone: 301–319–3004	3	90,000
HUD Region: IV		
Jackson State University:		
Dr. Curtina Moreland-Young, 3825 Ridgewood Road, Box 18, Jackson, MS 39211, Telephone: 601–982–6266	3	90,000
Eastern Kentucky University:		
Dr. Terry Busson, Lancaster Avenue, Richmond, KY 40475–3101, Telephone: 606–622–1019	3	85,680
Alabama A&M University:		
Ms. Constance W. Jordan, Huntsville, Madison, AL 35762, Telephone: 205–851–5425	3	82,440
University of Tennessee at Chattanooga:		
Dr. Deborah Arfken, 615 McCallie Avenue, Chattanooga, TN 37403–259, Telephone: 615–755–4667	3	90,000
Clemson University:		

FY 93 COMMUNITY DEVELOPMENT WORK STUDY PROGRAM—Continued

Applicant	No. of students	Amount awarded
Dr. Jose R. Caban, Clemson, SC, Telephone: 803–656–3926	3	59,115
HUD Region: V		
Mankato State University:		
Mr. Robert A. Barrett, Blue Earth County, Mankato, MN 56002–8400, Telephone: 507–389–1714	4	117,474
University of Cincinnati:		
Mr. John E. Kleymeyer, School of Planning, 548 One Edwards Center, Cincinnati, OH 45221–0073, Telephone: 513–556–0214	3	90,000
University of Wisconsin at Green Bay:		
Dr. Ray Hutchinson, 2420 Nicolet Dr., Green Bay, WI 54311–7001, Telephone: 414–465–2337	3	63,846
HUD Region: VI		
Texas Tech University:		
Mr. Charles J. Fox, P.O. Box 41015, Lubbock, TX 79409, Telephone: 806–742–3125	4	114,632
Southern University:		
Dr. Damien D. Ejigiri, Box 12596, Baton Rouge, LA 70813, Telephone: 504–771–3103	4	113,870
North Central Texas COG:		
University of North Texas, University of Texas at Arlington, University of Texas	9	192,033
Alamo Area Council of Government:		
Alamo Area COG, St. Mary's University, Trinity University	12	360,000
HUD Region: VII		
Kansas State University:		
Mr. Robert E. Burns, Fairchild Hall Room 2, Manhattan, KS 66506, Telephone: 913–532–5985	4	115,294
Iowa State University:		
Dr. Eric Domain Kelley, 126 College of Design, Ames, IA 50011, Telephone: 515–294–8959	4	106,576
University of Kansas:		
Ms. Marion Sheppard, KU Dept. of Public Administration, 318 Blake Hall, Lawrence, KS 66045, Telephone: 913–864–3527	3	79,347
University of Nebraska-Lincoln:		
Dr. Gordon Scholz, Office of Sponsored Programs, 303 Administration Building, Lincoln, NE 68588–0430, Telephone: 402–472–9284	3	86,213
HUD Region: VIII		
Board of Regents University of Colorado:		
Dr. Bob Horn, Campus Box 123 P.O. 17336, Denver, CO 80217–3364, Telephone: 303–556–4815	3	88,377
HUD Region: IX		
Regents of the University of California:		
Dr. Neil Maxwell, 336 Sproul Hall, Berkeley, CA 94720, Telephone: 510–642–0123	3	90,000
HUD Region: X		
Eastern Washington University:		
Dr. Dick Winchell, Dept. of Planning, Mail Stop 50, Cheney, WA 99004, Telephone: 509–359–2288	3	60,462
University of Washington:		
Dr. Dennis M. Ryan, Chairman, Department of Urban Design and Planning, College of Architecture and Urban Planning, Seattle, WA 98195	5	150,000
Grand Total	117	3,279,019

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Dated: August 11, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3449; FR–3283–N–03]

NOFA for Lead-Based Paint (LBP) Risk Assessments; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Lead-Base Paint (LBP) Risk Assessments. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410, telephone (202) 708–1800, or (202) 708–0850 (voice/TDD). For information related to Indian Housing Authorities, contact: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410, telephone (202) 708–1015, or (202) 708–0850 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide funds to Public Housing Agencies and Indian Housing Authorities (referred to jointly as "HAs") for LBP risk assessments, in accordance with section 14(a)(3) of the U.S. Housing Act of 1937 (1937 Act). The Department issued a NOFA announcing the availability of $23,853,455 for Housing Authorities to conduct risk assessments. Risk assessments are intended "to assess the risks of lead-based paint poisoning * * * in all projects constructed before 1980 that are, or will be, occupied by families." Section 14(a)(3) of the 1937 Act requires that professional risk assessments include dust and soil sampling and laboratory analysis. The goal of the risk assessment is to enable a HA to identify lead hazards so that appropriate interim measures can be implemented until testing and abatement can be fully undertaken.

The 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on June 29, 1992, 57 FR 28910. Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $9,055,821 was awarded to 189 HAs. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing (by Region) the names of the HAs, state and amounts of those awards as follows:

NOFA for Lead-Based Paint (LBP) Risk Assessments

Region I:	
Boston, MA	$185,675
Bridgeport, CT	53,961
Norwalk, CT	22,770
New Britain, CT	11,850
Meriden, CT	6,435
East Hartford, CT	2,970
Connecticut HA, CT	17,820
Auburn, ME	2,475
Region II:	
Watertown, NY	5,940
Rochester, NY	200,970
Dunkirk, NY	2,475
New York City, NY	249,985
Spring Valley, NY	1,485
Newark, NJ	198,482
Long Branch, NJ	16,830
Jersey City, NJ	62,865
Lodi, NJ	2,970
Bayonne, NJ	24,255
Hoboken, NJ	18,315
Garfield, NJ	5,445
Florence, NJ	2,475
Hightstown, NJ	4,950
Neptune, NJ	10,500
Glassboro, NJ	2,475
Freehold, NJ	2,475
Region III:	
Annapolis, MD	26,235
Baltimore, MD	282,645
Charleston, WV	49,500
Wheeling, WV	11,385
Philadelphia, PA	237,600
Chester, PA	70,290
Reading, PA	9,900
Bethlehem, PA	11,880
Easton, PA	14,850
Lancaster, PA	14,850
Portsmouth, VA	22,770
Richmond, VA	146,520
Lynchburg, VA	5,940
Franklin, VA	14,000
Department of Public and Assisted Housing, Washington, DC	249,945
Alexandria, VA	14,850
Glenarden, MD	5,445
Region IV:	
Augusta, GA	122,760
Columbus, GA	44,055
Rome, GA	22,770
Macon, GA	48,510
Albany, GA	21,285
Elberton, GA	14,850
Eastman, GA	14,850
Hartwell, GA	14,355
Hawkinsville, GA	4,950
Royston, GA	9,900
Lavonia, GA	24,750
Tallapoosa, GA	7,425
Lee County, GA	19,305
Harris County, GA	14,355
Buena Vista, GA	4,950
Winder, GA	9,900
Ellaville, GA	2,475
Charleston County, SC	44,550
N. Charleston, SC	9,900
Wilmington, NC	25,740
Raleigh, NC	41,085
Kinston, NC	17,325
High Point, NC	30,690
Concord, NC	9,675
Winston-Salem, NC	29,700
Durham, NC	29,700
Rocky Mount, NC	20,790
Chapel Hill, NC	54,945
Statesville, NC	13,860
Asheboro, NC	4,995
Forest City, NC	5,940
Meridian, MS	41,580
Jacksonville, FL	66,330
St. Petersburg, FL	29,700
Tampa, FL	99,000
Dade County, FL	158,895
Sarasota, FL	13,365
Lakeland, FL	15,840
Sanford, FL	17,325
Panama City, FL	14,355
Cocoa, FL	16,335
Brevard County, FL	35,145
Titusville, FL	17,820
Flagler County, FL	7,425
Ocala, FL	7,920
Crestview, FL	7,920
Levy County, FL	9,900
Gilchrist County, FL	2,475
Melbourne, FL	7,920
Dunedin, FL	2,475
Pinellas County, FL	9,900
Gainesville, FL	12,375
Alachua County, FL	17,325
Deland, FL	4,950
Tallahassee, FL	14,355
Palm Beach County, FL	51,975
Louisville, KY	141,569
Lexington, KY	11,880
Rogersville, TN	12,375
Harriman, TN	15,345
Maryville, TN	7,920
Memphis, TN	133,155
Jackson, TN	18,810
Region V:	
Chicago, IL	250,000
Peoria, IL	49,005
Springfield, IL	16,335
Greater Metro Area, IL	10,395
Danville, IL	10,890
Madison County, IL	23,265
Rock Island, IL	18,330
Rockford, IL	101,475
St. Clair County, IL	26,730
Williamson County, IL	27,720

Jackson County, IL	20,295
Cincinnati, OH	130,185
Cuyahoga, OH	247,500
Akron, OH	150,000
Jefferson, OH	18,340
Stark, OH	144,540
Ashtabula, OH	7,425
Portsmouth, OH	11,880
Ann Arbor, MI	18,375
Muskegon Heights, MI	15,840
Milwaukee, WI	250,000
Winona, MN	3,465
Potawatomi Indian, WI	2,475
Region VI:	
El Paso, TX	68,520
Haskell, TX	4,950
Killeen, TX	16,387
Bryson, TX	4,605
Floydada, TX	7,500
Houston, TX	150,000
Galveston, TX	23,265
N. Little Rock, AR	16,830
Little Rock, AR	29,205
Sevier County, AR	7,425
Helena, AR	8,010
Stephens, AR	4,950
Parkin, AR	4,950
New Orleans, LA	245,025
Alexandria, LA	2,970
Jennings, LA	5,925
Colfax, LA	2,475
Austin, TX	34,200
San Antonio, TX	195,000
Laredo, TX	16,830
Weslaco, TX	11,773
Alamo, TX	7,425
San Marcos, TX	22,452
Lockhart, TX	16,387
Johnson City, TX	10,530
Smithville, TX	16,387
Schulenburg, TX	10,530
Ingleside, TX	4,950
Kyle, TX	10,530
Elgin, TX	10,530
Goliad, TX	10,530
Region VII:	
Southern Iowa Regional, IA	6,930
Kansas City, KS	68,805
Medicine Lodge, KS	2,475
Kansas City, MO	120,780
Lincoln, NE	64,845
Bellevue, NE	9,900
St. Louis, MO	109,395
Columbia, MO	12,870
Region VIII:	
Richland County, MT	3,000
Region IX:	
Guam	8,910
Hawaii	252,060
Los Angeles City, CA	224,700
Kern County, CA	33,210
San Bernardino County, CA	145,035
Riverside County, CA	22,770
Calexico, CA	12,870
Flagstaff, AZ	12,870
Maricopa County, AZ	29,970
Pinal County, AZ	7,425
Sacramento City, CA	125,235
Sacramento County, CA	100,485
Butte County, CA	15,345
Oakland City, CA	591,030
Kings County, CA	8,910
Mendicino County, CA	11,385
Las Vegas, NV	58,595
Region X:	
Portland, OR	83,655
Seattle, WA	219,285
Tacoma, WA	21,285
Cook Inlet, AK	66,808

Dated: August 6, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93-19731 Filed 8-16-93; 8:45 am]

BILLING CODE 4210-33-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-3387; FR-3146-N-02]

Announcement of Funding Awards for the Neighborhood Development Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of Fiscal Year 1992 funding awards made under the Neighborhood Development Demonstration Program. The purpose of this notice is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Office of Technical Assistance, Community and Neighborhood Management Division, CGTC Department of Housing and Urban Development, room 7154, 451 Seventh Street SW., Washington, DC 20410; telephone number (202) 708-2186. The TDD number is (202) 708-0564. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) authorized the Neighborhood Development Demonstration Program. Two million dollars were appropriated for a sixth round of the Program under the Departments of Veterans Affairs and Housing and Urban Development Appropriations Act of 1992.

The purpose of the program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities.

In a NOFA published in the **Federal Register** on April 7, 1992 (57 FR 11894), the Department announced the availability of $1.9 million for the Neighborhood Development Demonstration Program.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 the Department is publishing details concerning the recipients of these awards as follows:

Neighborhood Development Demonstration Program

Mr. Paul Licshetti, Program Director, Nueva Esperanza, Inc., 401 Main Street, Holyoke, MA 01040, NDDP Grant: $50,000

Mr. James V. Oliver, Portland West Neighborhood Planning Council, 155 Brackett Street, Portland, ME 04102, NDDP Grant: $50,000

Mr. Robert M. Farley, Executive Director, Unified Vailsburg Services, 40 Richelieu Terrace, Newark, NJ 07106, NDDP Grant: $50,000.

Ms. Doris W. Koo, Executive Director, Asian Americans for Equality, Inc., 176-180 Eldridge Street, New York, NY 10002, NDDP Grant: $50,000

Ms. Catherine Clarke, Mount Hope Housing Company, 1892 Morris Avenue, Bronx, NY 10453, NDDP Grant: $50,000

Mr. Glenn Metsch-Ampel, Executive Director, Housing Conservation Coordinators, 777 10th Avenue, New York, NY 10019, NDDP Grant: $28,000

Mr. Manuel Allende-Perez, Executive Director, P.O.D.E.R. Inc., 73 Carpenter Avenue, Newburgh, NY 12550, NDDP Grant: $50,000

Ms. Anne Burke, Planner, Newburgh Ministry Inc., 9 Johnston Street, Newburgh, NY 12550, NDDP Grant: $50,000

Ms. Mariadele Priest, Neighbors Helping Neighbors, Inc., 503 Ditmas Ave., 2nd Floor, Brooklyn, NY 11218, NDDP Grant: $26,000

Ms. Cathy Mickens, NHS of Jamaica, Inc., 160-16 121st. Ave., Jamaica, NY 11434, NDDP Grant: $50,000

Mr. Robert M. Sedowski, Executive Director, NEHDA, Inc., 101 Gertrude St., Syracuse, NY 13230, NDDP Grant: $34,500

Mr. Michael Rochford, Executive Director, St. Nicholas Neighborhood Preservation Corp., 11-20 Catherine St., Brooklyn, NY 11211, NDDP Grant: $50,000

Ms. Grace Braley, REAPS, P.O. Box 340, Yonkers, NY 10705, NDDP Grant: $35,000

Ms. Cecelia Moy Yep, Executive Director, Philadelphia Chinatown Development Corp., 1011 Race Street, Philadelphia, PA 19107, NDDP Grant: $50,000
Mr. Dean Rhorbach, Executive Director, NHS of Reading, 221 W. Buttonwood Street, Reading, PA 19601, NDDP Grant: $50,000
Ms. Deborah Fischetti, Executive Director, Kensington Action Now, 821 East Allegheny Avenue, Philadelphia, PA 19134, NDDP Grant: $50,000
Mr. David S. Freeman, Administrative Analyst, All Citizens Taking Initiative On Needs, 605 East Washington Street, Suffolk, VA 23434
Ms. Sharon E. Stacy, Ivanhoe Civic League, Inc., P.O. Box 201, Ivanhoe, VA 24350, NDDP Grant: $50,000
Ms. Mattie Thornhill, White Rock Neighborhood, Council, 1117 Virginia St., Lynchburg, VA 24504, NDDP Grant: $46,000
Mrs. Bessie Pippens, Dunbar-Abrams Foundation, Inc., P.O. Box 443, Bessemer, AL 35021, NDDP Grant: $50,000
Ms. Cynthia M. Hewitt, Atlanta Neighborhood Housing Services, 15 James P. Brawley Drive S.W., Atlanta, GA 30314, NDDP Grant: $50,000
Ms. Mary Nelson, Bethel New Life Inc., 367 N. Karlov, Chicago, IL 60624, NDDP Grant: $50,000
Mr. David Stocker, Rockford Neighborhood Redevelopment Corp., 1110 Kilburn Ave., Rockford, IL 61101, NDDP Grant: $50,000
Mr. Chris Brown, Director, ACORN Housing Corp. of Illinois, 410 S. Michigan Avenue, 4th Floor Annex, Chicago, IL 60605, NDDP Grant: $50,000
Mr. Allan Ickler, Central Neighborhood Improvement Assoc., Inc., 310 East 38th Street, Minneapolis, MN 55409, NDDP Grant: $50,000
Ms. Jan Morlock, Executive Director, East Side Neighborhood Development Co., 907 Payne Ave., St. Paul, MN 55101, NDDP Grant: $50,000
Mr. Chuck Ackerman, Director, Near West Housing Corporation, 4115 Bridge Avenue, Cleveland, OH 44113, NDDP Grant: $50,000
Mrs. Claire M. Rumpke, President, Carthage Civic League, 6911 Vine Street, Cincinnati, OH 45216, NDDP Grant: $50,000
Ms. Daphne A. Sloan, Executive Director, Walnut Hills Redevelopment Foundation, Inc., 2601 Melrose Avenue, Cincinnati, OH 45206 NDDP Grant: $50,000
Mr. Paul Green, Hough Area Partners in Progress, Inc., 1215 East 79th Street, Cleveland, OH 44103, NDDP Grant: $50,000
Ms. Rose Wildenhaus, St. Mary Development Corp., 427 Steele Avenue, Dayton, OH 45410, NDDP Grant: $50,000
Ms. Maria Pesante, President, Millvale Resident's & Community Council, 1901 Millvale Court, Cincinnati, OH 45228, NDDP Grant: $50,000
Mr. John W. Nowell, NHS of Kenosha, Inc., 5605 16th Avenue, Kenosha, WI 53140, NDDP Grant: $50,000
Ms. Maureen Heine, Executive Director, St. Margaret of Scotland Housing Corp., 4067 Shenandoah, St. Louis, MO 63110, NDDP Grant: $50,000
Mr. Martin Shaloo, Project Director, Acorn Housing Corp. Inc., 808 North, 1st. Street, Phoenix, AZ 85004, NDDP Grant: $50,000
Ms. Joanie Junqueira, Pajaro Valley Affordable Housing Corp., 1110 Main Street, Suite 3, Watsonville, CA 95076, NDDP Grant: $50,000
Ms. Diana Friou, Deputy Mayor, Charity Cultural Services Center, 827 Stockton Street, San Francisco, CA 94108, NDDP Grant: $50,000
Ms. Carla P. Dartis, President, Drew Economic Development Corporation, 3209 North Alameda, Suite J1, Compton, CA 90222, NDDP Grant: $50,000
Mr. Marion Scates, Director, Los Angeles NHS Inc., 3982 S. Figueroa St. #209, Los Angeles, CA 90037, NDDP Grant: $50,000
Mr. Douglas J. Bystry, Santa Ana NHS, Inc., 1617 West 7th Street, Santa Ana, CA 92703, NDDP Grant: $30,000

Dated: August 11, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–19733 Filed 8–16–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–966–4230–05–P]

Publication; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to The Aleut Corporation for 97.70 acres. The lands involved are on Unalaska Island, Alaska.

SEWARD MERIDIAN, ALASKA

Serial No.	Land description	Acreage
AA–12230	Tps. 77–78 S., R. 122 W.	26.75
AA–12232	T. 76 S., R. 122 W.	39.63
AA–12234	T. 71 S., R. 118 W.	1.17
AA–12236	T. 72 S., R. 116 W.	1.21
AA–12238	T. 77 S., R. 122 W.	2.37
AA–12239	T. 73 S., R. 115 W.	26.57

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 16, 1993, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Bernice P. Leskosky,

Acting Chief, Branch of Southwest Adjudication.

[FR Doc. 93–19846 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–JA–P

[CA–016–03–3110–10–B002; CACA 24007]

Exchange of Public And Private Lands In San Luis Obispo County, California; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.28S., R.15E.,
Sec. 18 E½SE¼, 80 acres (Tract #1)

Sec. 19 E½NE¼, 80 acres (Tract #1)
T.29S., R.16E.,
Sec. 18 Lot 2, 41.36 acres (Tract #2)
Sec. 18 SE¼NE¼, 40 acres (Tract #3)

Total Acreage: 241.36 acres, in San Luis Obispo County, CA. In exchange for the above lands, the United States will acquire an equal value of lands within the Carrizo Plain Natural Area. The legal descriptions of the Carrizo Plain lands were published in the **Federal Register** on March 26, 1993, Vol. 58, No. 57, Pages 16413 and 16414.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire some of the private inholdings within the BLM lands in the Carrizo Plain Natural Area (in S.L.O. and Kern Counties), mainly for endangered species protection. The public interest will be well served by completing the exchange. Publication of this notice in the **Federal Register** segregates the above public lands from settlement, location, appropriation, and entry under the public lands laws, right-of-way laws, permit laws, and mining laws, but not exchange under section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first. The exchange will be on an equal value basis, not an acre-for-acre basis. An appraisal will establish the fair market value of the public and private lands. The patent(s) for the above public lands will:

1. Reserve to the United States on Tracts #1, 2, and 3 a right-of-way reservation for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. Reserve to the United States on Tract #1 all common variety mineral materials such as sand, stone, gravel, pumice, pumicecite, cinders, clay, shale, etc., pursuant to the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq*).
3. Reserve to the United States on Trace #2 those rights associated with road rights-of-way numbers CAS 076589 and CAS 072953, pursuant to 44 L.D. 513, and the right to enforce all or any of the terms and conditions of the rights-of-way, include the right to renew or extend them upon their termination.
4. Be subject to those rights on Tract #1 for communication cable purposes granted by right-of-way number CAS 077189, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).
5. Be subject to those rights on Tract #1 associated with oil and gas lease number CACA 17817 issued pursuant to the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*) for the duration of said lease and any authorized extensions of said lease.

Interested parties may submit comments to the BLM Area Manager at the following address until October 1, 1993. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

Dated: July 19, 1993.

James Wesley Abbott,

Area Manager.

[FR Doc. 93–17896 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–40–M

[ES–962–4950–10–4041; ES–046154, Group 92, Arkansas]

Filing of Plat of the Dependent Resurvey, Subdivision of Sections and the Survey of the Center Line of State Highway No. 43 in Sections 31 and 32

The plat of the dependent resurvey of the south boundary (Standard Parallel North); a portion of the subdivisional lines; the survey of the subdivision of certain sections and the survey of the center line (as built) of Arkansas State Highway No. 43, in sections 31 and 32, Township 17 North, Range 22 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 26, 1993.

The survey was made upon request submitted by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 26, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 1, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19752 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–060–0600–02; ES–046167, Group 192, Florida]

Filing of Plat of the Dependent Resurvey, Subdivision of Sections 1 and 2 and Metes-and-Bounds Survey

The plat of the dependent resurvey of portions of the east and north boundaries, a portion of the subdivisional lines; and the survey of the subdivision of sections 1 and 2, and the metes-and-bounds survey of certain parcels in sections 1 and 2, Township 51 South, Range 41 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 7, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 7, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 13, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19751 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–060–0600–02; ES–046166, Group 192, Florida]

Notice of Filing of Plat of the Dependent Resurvey, Subdivision of Section 36 and Metes-and-Bounds Survey

The plat of the dependent resurvey of a portion of the east boundary; a portion of the subdivisional lines; the survey of the subdivision of section 36, and the metes-and-bounds survey of certain parcels in section 36, Township 50 South, Range 41 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 7, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 7, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 13, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19750 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Intent To Prepare an Environmental Assessment (EA) Addressing Potential Genetic Management Options for the Florida Panther

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service, in cooperation with other members of the Florida Panther Interagency Committee, intends to prepare an EA addressing potential genetic management options for the endangered Florida panther (*Felis concolor coryi*), as specified under Task 1241 of the Florida Panther Recovery Plan. One option under consideration, which has received conceptual approval from the Florida Panther Interagency Committee, is a program to restore historic gene flow into the panther. Such a program would involve restoration of gene flow into the panther from other *Felis concolor* subspecies historically exchanging genes with the panther under natural conditions. The Fish and Wildlife Service invites input from the public; affected Federal, State, and local agencies; and other interested parties on the scope of options and issues that should be addressed in the EA.

DATES: Comments from all interested parties must be received by September 16, 1993, considered in the development of the EA.

ADDRESSES: Please send correspondence concerning this notice to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan, Florida Panther Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

SUPPLEMENTARY INFORMATION:

Background

The Florida panther (*Felis concolor coryi*) represents one of this Nation's most critically endangered animals—presently consisting of a single population in south Florida estimated to number 30 to 50 adults. The Florida panther's existence is severely threatened by both rapid and gradual extinction processes. Factors of concern include habitat loss, environmental contaminants, highways, prey resources, human activities, disease, and genetic erosion. Recent population viability analysis projections indicate that under existing demographic and genetic conditions the Florida panther will likely be extinct in 25 to 40 years. Actual time to extinction could be accelerated significantly by the occurrence of a catastrophic population reducing event.

Extinction of the Florida panther can be avoided only if programs to expand the existing population and to enhance existing genetic conditions are successful. Programs to expand the population must include actions to preserve habitats that are considered essential to meeting the needs of a self-sustaining population in south Florida and actions to reestablish populations elsewhere within the Florida panther's historic range. Programs to enhance genetic conditions must consider actions to preserve existing genetic diversity, manage for inbreeding problems, and restore historic gene flow.

Literature indicates that gene exchange with the Florida panther (*Felis concolor coryi*) occurred from the north through *F. c. cougar*, and from the west and northwest through *F. c. stanleyana* and *F.c. hippolestes* (S.P. Young and E.A. Goldman, 1946, The Puma—Mysterious American Cat, Dover Pub., Inc., N.Y.). This natural gene flow ceased at the time the Florida panther became isolated, likely a century or longer ago. Isolation and accompanying population declines and inbreeding have resulted in the lost of vast amounts of the Florida panther's historic genetic diversity and health. From a genetic standpoint, the present Florida panther contains only a fraction of the variability existing prior to isolation.

Overall genetic health has now reached a point where the continued existence of the Florida panther is doubtful without a genetic restoration program. Sperm abnormality exceeds 90 percent. Cryptorchidism, a testicle descending abnormality (usually involving only 1 testicle), is now a prevalent trait in the radio-instrumented segment of the wild population (55 percent). Of more immediate concern however, is the fact that 50 percent (2 of 4) of the male kittens handled in 1992 had *no* descended testicles, thus rendering them functionally sterile. Life threatening congenital heart defects have also been observed in the population. Additionally, some scientists now have concerns over what appears to be an inability of some, otherwise healthy individuals, to overcome infectious agents that eventually result in life threatening/terminal conditions; raising questions of possible immune deficiencies.

Genetic concerns have been raised on numerous occasions over the recent past and have been the topic of two workshops specific to the issue (May 1991 and October 1992). Experts in the fields of genetics, small population biology, captive breeding, panther health, biology and demographics, etc., participating in these workshops have concluded that genetic restoration is critical to the survival of the Florida panther. Because erosion of genetic health is continuing and could rapidly accelerate at any time, it has been emphasized that a program to restore genetic health to the Florida panther must be initiated as quickly as possible.

Author

The primary author of this notice is Dennis B. Jordan, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: August 6, 1993.

W.T. Olds, Jr.,

Assistant Regional Director, FWS, Ecological Services, Southeast Region.

[FR Doc. 93–19792 Filed 8–16–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Mississippi River Coordinating Commission

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: October 14, 1993; 8:30 a.m. until 5 p.m.

ADDRESS: Holiday Inn—International Airport, 3 Appletree Square (I–494 at 34th Avenue), Bloomington, Minnesota.

The agenda for the meeting consists of Commission review and discussion of input received from the public on the draft comprehensive management plan and draft environmental impact statement for the Mississippi National River and Recreation Area.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National

River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, MN 55101, (612) 290–4160.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

Dated: August 4, 1993.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 93–19845 Filed 8–16–93; 8:45 am]

BILLING CODE 4310-70-P

Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands Commission

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands Commission will be held at 8:30 a.m. to 4 p.m., at the following location and date.

DATES: September 1–2, 1993.

LOCATION: Carambola Beach and Golf Resort, Estate Davis Bay, St. Croix, Virgin Islands 00851.

FOR FURTHER INFORMATION CONTACT: Geraldine Smith, Acting Superintendent, Virgin Islands National Park, 6010 Estate Nazareth #10, St. Thomas, U.S. Virgin Islands 0082–3406.

SUPPLEMENTARY INFORMATION: The purpose of the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands Commission is to make recommendations on how all lands and waters within the boundaries of the park can be jointly managed by the governments of the United States Virgin Islands and the United States in accordance with Public Law 102–247; to consult with the Secretary of the Interior on the development of the general management plan required by Section 105 of Public Law 102–247; and to provide advice and recommendations to the Government of the United States Virgin Islands, upon request of the Government of the United States Virgin Islands.

The matters to be discussed at this meeting include the organization of the Commission and other administrative matters, review of the legislation for the Preserve, discussion of issues affecting the Preserve, and a visit to the Preserve. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may also file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Acting Superintendent at the address above. Minutes of the meeting will be available at the Virgin Islands National Park headquarters at the above address for public inspection approximately 4 weeks after the meeting.

Dated: August 10, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 93–19844 Filed 8–16–93; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 7, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 1, 1993.

Beth M. Boland,

Acting Chief of Registration, National Register.

CALIFORNIA

Orange County

Pierotti, Attlio and Jane, House, 1731 N. Bedford Ave., Fullerton, 93000907

CONNECTICUT

Hartford County

Marlborough House, 226 Grove St., Bristol, 93000906

DELAWARE

New Castle County

Meeteer House, 801 Kirkwood Hwy., Mill Creek Hundred, Newark vicinity, 93000888

Pyle, Joshua, House and Wagon Shed, 2603 Faulk Rd., Brandywine Hundred, Wilmington vicinity, 93000887

FLORIDA

Duval County

Casa Marina Hotel, 12 Sixth Ave., North, Jacksonville Beach, 93000893

Sarasota County

Earle House, 4521 Bayshore Rd., Sarasota, 93000908

IOWA

Clay County

Kirchner, Philip and Anna Parrish, Log House, 4969 120th Ave., Peterson vicinity, 93000897

Linn County

Ash Park Historic District (Mount Vernon MPS), 5th–7th Aves., N, between 6th and 8th Sts. NW, Mount Vernon, 93000899

Mount Vernon Commercial Historic District (Mount Vernon MPS), 1st St. between 2nd and 1st Aves., North, Mount Vernon, 93000898

KANSAS

Dickinson County

Abilene Union Pacific Railroad Freight Depot, 110 N. Cedar St., Abilene, 93000894

LOUISIANA

Rapides Parish

Bontemps, Arna Wendell, House, 1327 Third St., Alexandria, 93000886

MARYLAND

Somerset County

Upper Fairmount Historic District, both sides of MD 361, Upper Fairmount, 93000900

MASSACHUSETTS

Bristol County

Carpenter Homestead, 80 Walnut St., Seekonk/Rehoboth, Seekonk, 93000902

MISSOURI

Cedar County

Caplinger Mills Historic District, Jct. of Washington Ave. and Sac River, Caplinger Mills, 93000903

NEW HAMPSHIRE

Strafford County

Farmington Town Pound, NW side of Pound Rd. 300 ft. north of the jct. of Ten Rod Rd., Farmington, 93000884

NEW JERSEY

Morris County

Hanover Village Historic District, Area surrounding Hanover Rd. and Mount Pleasant Ave., East Hanover Township, East Hanover, 93000901

NORTH CAROLINA

Graham County

Snowbird Mountain Lodge, 275 Santeetlah Rd., Robbinsville vicinity, 93000885

Pender County

US Naval Ordnance Testing Facility Assembly Building [US Naval Ordnance Test Facilities, Topsail Island MPS], Jct. of Channel Blvd. and Flake Ave., Topsail Beach, 93000909

US Naval Ordnance Testing Facility Control Tower [US Naval Ordnance Test Facilities, Topsail Island MPS], SW corner of S. Anderson Blvd. and Flake Ave., Topsail Beach, 93000910

US Naval Ordnance Testing Facility Observation Tower No. 2 [US Naval Ordnance Test Facilities, Topsail Island MPS], 1000 blk. S. Anderson Blvd., Topsail Beach, 93000911

OHIO

Delaware County

Richey, James, Farmhouse, 1395 South OH 257, Delaware vicinity, 93000891

Fairfield County

Dovel—Bowers House, 380 W. Columbus St., Pickerington, 93000890
Pickerington Carnegie Library, 15 W. Columbus St., Pickerington, 93000892

Huron County

Hunts Corners, jct. of Sandhill Rd. and OH 547, Monroeville vicinity, 93000896

Mahoning County

Idora Park, SE of the jct. of McFarland and Parkview Aves., Youngstown, 93000895

SOUTH CAROLINA

Greenville County

Wyche, C. Granville, House, 2900 Augusta Rd., Greenville, 93000904

Richland County

Granby Mill Village Historic District [Textile Mills designed by W.B. Smith Whaley MPS]. Roughly bounded by Catawba, Gist, Heyward, and Church Sts., Columbia, 93000905

WISCONSIN

Door County

Bohjanen's Door Bluff Pictographs, Address Restricted, Liberty Grove vicinity, 93000881

Waushara County

Whistler Mound Group, Address Restricted, Hancock, 93000882

WYOMING

Carbon County

Union Pacific Railroad Depot, jct. of N. Front and Fourth Sts., Rawlins, 93000883

Lincoln County

Salt River Hydroelectric Powerplant, End of Co. Rd. 12–104, .7 mi W of US 89, Etna vicinity, 93000889

[FR Doc. 93–19749 Filed 8–16–93; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in United States v. Alaska Pulp Corp (Rowan Bay)

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* versus *Alaska Pulp Corporation*, No A91–358CIV, was lodged with the United States District Court for the District of Alaska on August 4, 1993.

The Consent Decree requires Alaska Pulp Corporation to remove all hazardous wastes from a dump at the Rowan Bay logging camp on Kuiu Island in the Tongass National Forest in southeast Alaska. The Consent Decree also requires Alaska Pulp Corporation to clean up several areas contaminated with petroleum and to pay a civil penalty to the United States of $250,000.

The Department of Justice will receive written comments relating to the Consent Decree for thirty (30) days from the date of the publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 (with a copy to Robert R. Klotz, Environment and Natural Resources Division, Environmental Enforcement Section, United States Department of Justice, 301 Howard Street, Suite 870, San Francisco, California 94105) and should refer to *United States* versus *Alaska Pulp Corporation* (Rowan Bay), DOJ Ref. No. 90–7–1–637.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, room C–253, 222 West Seventh Avenue, Anchorage, Alaska 99513–7567; at the Library of the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Tenth Floor, Seattle, Washington, 98101; and at the Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005, Tel. (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting copies, for a copy of the Consent Decree with attachments, please tender a check in the amount of $67.50 (25 cents per page reproduction charge) payable to the Consent Decree Library. For a copy of the Consent Decree without attachments, please tender a check in the amount of $7.50 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Myles E. Flint,
Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–19758 Filed 8–16–93; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alloyd Asbestos Abatement Co., et al.*, Civil Action No. C–3–91–107, was lodged on August 5, 1993 with the United States District Court for the Southern District of Ohio. The Consent Decree provides for penalties for violating section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c), as amended, and the National Emission Standards for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"), 40 CFR part 61, subpart M. The Consent Decree requires Defendant Springfield Family YMCA to establish an asbestos control program, achieve full compliance with the asbestos NESHAP, and pay a civil penalty of $2,500 for its past violations of the Act and the asbestos NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alloyd Asbestos Abatement Co., et al.*, DOJ Ref. #90–5–2–1–1554.

The proposed consent decree may be examined at the office of the United States Attorney, 602 Federal Building, 200 West Second Street, Dayton, Ohio, 45402; the Region Five Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,
Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–19759 Filed 8–16–93; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(i) and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* versus *The Selmer Company, L.P., North American Philips Corp., MacMillan, Inc.*, Civil Action No. S89–00348, has been lodged with the United States District Court for the Northern District of Indiana on August 4, 1993.

The Consent Decree resolves the claims against defendants under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. The

proposed consent order provides for an investigation by defendants of the nature and extent of contamination at the Selmer site, 500 Industrial Parkway, Elkhart, Indiana, the provision of municipal water to certain residences along Outer Drive, Elkhart, Indiana, and the payment by defendants of $445,000 plus interest for past response costs of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *The Selmer Company, L.P., et al.*, D.J. Ref. 90–11–2–461.

The proposed consent order may be examined at the office of the United States Attorney for the Northern District of Indiana, 204 S. Main Street, South Bend, Indiana 46601, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $60.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 93–19761 Filed 8–16–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on June 1, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Integrated Information Technology, Inc. ("IIT") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and IIT, Santa Clara, CA. Bellcore and IIT entered into an agreement effective as of May 13, 1993, to engage in cooperative research with respect to video communication and multimedia technology to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19765 Filed 8–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation

Notice is hereby given that, on July 23, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Biotechnology Research and Development Corporation ("BRDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in BRDC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ECOGEN Inc. voluntarily withdrew from BRDC, effective September 30, 1992. In addition, BRDC and GalaGen Inc., Arden Hills, MN entered into a Cooperative Research Agreement, effective as of May 1, 1993. BRDC and Pig Improvement Company, Inc., Franklin, KY entered into a Cooperative Research Agreement, effective July 1, 1993. Pursuant to the Cooperative Research Agreements, GalaGen Inc. and Pig Improvement Company, Inc. agreed to provide funds to BRDC for cooperative research, and the Animal Health Care Division of BRDC will use the funds to sponsor and fund animal health care. No other changes have been made in either the membership or planned activities of BRDC.

Membership in BRDC remains open, and the parties intend to file additional written notification disclosing any changes in membership.

On April 12, 1988, the venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 1988, (53 FR 16919).

The last notification was filed with the Department on October 8, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 5, 1991 (56 FR 56257).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 93–19762 Filed 8–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; DDBSA Joint Venture

Notice is hereby given that, on July 2, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), H.B. Fuller Company has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership to the DDBSA joint venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notification stated the addition of Drexel Chemical Company, Memphis, TN and Kay Chemical Company, Greensboro, NC to the DDBSA joint venture.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this joint venture remains open, and the parties intend to file additional written notification disclosing all changes in membership.

The objective of the venture is to sponsor and conduct toxicological research on the chemical known as alkylbenzene sulfonates (EPA case #4006) and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Reregistration Notice-List D issued by the EPA in October 1989.

On April 15, 1992, H.B. Fuller Company filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 29, 1992, 57 FR 22829.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19764 Filed 8–16–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Michigan Materials and Processing Institute

Notice is hereby given that, on July 12, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), the Michigan Materials and Processing Institute ("MMPI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following company was recently accepted as an Associate Member in MMPI: Republic Composite Materials, Inc., Okemos, MI. The following companies have resigned as Full Members of MMPI: Allied-Signal Corporation; Shell Development Company; and BASF Corporation.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1993, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 6, 1990, 55 FR 36710. The last notification was filed with the Department on August 26, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1992, 57 FR 46408.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 93–19763 Filed 8–16–93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corp.

Notice is hereby given that, on July 15, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, et seq. ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following additional parties have become new, non-voting members of POSC: Oilware, Inc., Houston, TX; Central Geophysical Expedition, Moscow, Russia; Texas A&M University, College Station, TX; Intellitic International, St. Quentin en Yvelines, France; BRGM Service Geologique National, Orleans, France.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on April 12, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 17, 1993, 58 FR 28900.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 93–19768 Filed 8–16–93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1933 Appliance Industry-Government CFC Replacement Consortium, Inc.

Notice is hereby given that, on July 1, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), the Appliance Industry-Government CFC Replacement Consortium, Inc. ("Corporation"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its participants' status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become additional participants of the Corporation as of July 1, 1993: Panasonic Industrial Company, division of Matsushita Electric Corporation, Secaucus, NJ; UOP Molecular Sieves, Cleveland, OH; 3M Corporation, St. Paul, MN; and Exxon Research and Engineering Company, Florham Park, NJ. In addition, Mobay Corporation, Pittsburgh, PA, merged with Miles Inc., Pittsburgh, PA (effective January 1, 1992), with Miles Inc. being the surviving corporation. As a result of the merger, the rights and obligations of Mobay as a participant in the Corporation have been transferred by operation of law to Miles as of that date. As of July 1, 1993, The B.F. Goodrich Company, Geon Vinyl Division, terminated its participation in the Corporation.

No other changes have been made in either the membership or planned activity of the Corporation.

On September 19, 1989, the Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 1, 1989, (54 FR 46136).

The last notification was filed with the Department on March 1, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 3, 1991 (56 FR 13654).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19767 Filed 8–16–93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree United States v. Waste Management of Illinois, Inc., et al.

Notice is hereby given that a Consent Decree in *United States* v. *Waste Management of Illinois, Inc., et al.*, Civil Action No. 93 C 4577, was lodged with the United States District Court for the Northern District of Illinois on July 29, 1993. This action was brought under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that defendants will pay $636,000 of past response costs incurred by the U.S. Environmental Protection Agency in connection with the H.O.D. Landfill Superfund Site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* versus *Waste Management of Illinois, Inc., et al.*, D.O.J. Ref. No. 90–11–3–1006.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirksen Building, room 1200, 219 South Dearborn Street, Chicago, Illinois 60604 and at the

Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of a 34 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $8.50 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–19760 Filed 8–16–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,696]

Allied Signal, Inc., Phillipsdale Plant, Rumford, Rhode Island; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 20, 1993, applicable to all workers of the subject firm. The notice will soon be published in the **Federal Register**.

The Department reviewed the certification for workers of the Allied-Signal's Phillipsdale plant in Rumford, Rhode Island. The Department is amending the certification to show the proper name of the worker group.

The amended notice applicable to TA–W–28,696 is hereby issued as follows:

All workers of Allied-Signal, Inc., Phillipsdale plant, 10 New Road, Rumford, Rhode Island who became totally or partially separated from employment on or after June 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–19869 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales of production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,722; Anchor Woven Label Co., Alcoa, TN

TA–W–28,486; H & K Dallas, Dallas, TX

TA–W–28,565; Moench Tanning Co., Gowanda, NY

TA–W–28,717; Oberdorfer High-Tex, Inc., Sandpoint, ID

TA–W–28,741; Menumaster, Inc., Sioux Falls, SD

TA–W–28,730; Delong Sportswear, Harmony, ME

TA–W–28,685, TA–W–28,685A; Ringier America, Inc., New Berlin Div., New Berlin, WI and Brookfield Div., Brookfield, WI

TA–W–28,693; CMI Cronstroms, Inc., Minneapolis, MN

TA–W–28,694; CMI Cronstroms, Inc., Eagan, MN

TA–W–28,781; Villa Fashions, Inc., Shenandoah, PA

TA–W–28,713; Rohr, Inc., Hagerstown, MD

TA–W–28,746; IMC Fertilizer, Inc., New Wales Chemical Div., Mulberry, FL

TA–W–28,682; Northwest Aluminum Co., The Dalles, OR

TA–W–28,760; Target Sportswear, Inc., Kent II Plant, Curwensville, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–28,737; RB & W Corporation, Kent, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,875; Seatt Corp., El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,688; McKay Welding Products, York, PA

U.S. imports of welding equipment and apparatus decreased absolutely and relative to domestic production in 1992 compared with 1991.

TA–W–28,657; Eastern Associated Coal Corp., Harris #12 Mine, Charleston, WV

U.S. imports of coal were negligible in 1991 and 1992.

TA–W–28,669; Cooperweld Steel Co., Warren, OH

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA–W–28,683; Pictsweet Frozen Foods, Fairmont, MN

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports or articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA–W–28,634; Tokin Magnetics, Inc., Fremont, CA

A certification was issued covering all workers separated on or after February 1, 1993.

TA–W–28,744; Jockey International, Carlisle, KY

A certification was issued covering all workers separated on or after May 17, 1992.

TA–W–28,835; Jockey International, Kenosha, WI

A certification was issued covering all workers separated on or after June 17, 1992.

TA–W–28,739; Office Technologies, Inc., Oklahoma City, OK
A certification was issued covering all workers separated on or after May 24, 1992.

TA–W–28,782; Torch Operating Co., Houma, LA
A certification was issued covering all workers separated on or after May 15, 1992.

TA–W–28,656; International Resistive Corp., Corpus Christi, TX
A certification was issued covering all workers separated on or after May 3, 1992.

TA–W–28,663; Profco, Bakersfield, CA
A certification was issued covering all workers separated on or after May 3, 1992.

TA–W–28,745; Marion Rohr Corp., Hornell, NY
A certification was issued covering all workers separated on or after May 26, 1992.

TA–W–28,871; Hondo Oil & Gas, Calabasa, CA and Operating at Various Locations in the Following States: A; CA, B; CO, C; OK, D; TX, E; WY
A certification was issued covering all workers separated on or after July 7, 1992.

TA–W–28,761 and TA–W–28,762; Western Atlas International, Core Laboratories, Anchorage, AK and Bakersfield, CA
A certification was issued covering all workers separated on or after May 23, 1992.

TA–W–28,763 and TA–W–28,763A; Western Atlas International, Core Laboratories, New Orleans, LA and Lafayette, LA
A certification was issued covering all workers separated on or after May 23, 1992.

TA–W–28,764 and TA–W–28,764A; Western Atlas International, Core Laboratories, Tulsa, OK and Oklahoma City, OK
A certification was issued covering all workers separated on or after May 23, 1992.

TA–W–28,765; Western Atlas International, Core Laboratories, Corpus Christi, TX and Operating at The Other Following Locations: A; Houston, TX, B; Midland, C; Dallas, TX
A certification was issued covering all workers separated on or after May 23, 1992.

TA–W–28,766; Western Atlas International, Core Laboratories, Casper, WY
A certification was issued covering all workers separated on or after May 23, 1992.

I hereby certify that the aforementioned determinations were issued during the month of July 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 10, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–19873 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,667]

Complete Auto Transit, Inc. Ypsilanti, MI; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated July 23, 1993, the Teamsters Local #299 requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on July 6, 1993 and was published in the **Federal Register** on July 27, 1993 (58 FR 40161).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that Complete Auto Transit was a contract carrier for all of General Motors C-P-C plant truckaway assembled vehicles at the Willow Run plant in Ypsilanti, Michigan. The union also states that the company equipment was designed and modified to haul the plant's Caprice Sedan and Wagon production. Accordingly, the union contends that its jobs were directly controlled by General Motors.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of Section 223(3) of the Trade Act. Only in very limited circumstances are service workers, such as those engaged in contract hauling, certifiable.

The Department's notice of negative determination delineated the conditions necessary for workers of a firm providing a service to be certified eligible to apply for trade adjustment assistance.

The "control" which the Department mentioned in its denial notice is control over the workers. The investigation findings show that the maintenance of benefits and all payroll transactions and personnel actions are controlled by Complete Auto Transit and not by any of its customers. The findings also show that none of the customers has any authority over the employees of Complete Auto Transit.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of August 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–19870 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28, 802, et al.]

Digital Equipment Corp.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

In the matter of TA–W–28, 802 Buffalo, New York; TA–W–28–802A Alpharetta, Georgia.

This notice corrects the notice on petition TA–W–28,802 which was published in the **Federal Register** on July 7, 1993 (58 FR 36422) in FR Document 93–15996.

A printing error and an omission concerning the location of the facilities appear on page 36422 in the second column of the 23rd line of the Appendix Table under TA–W–28, 802. The line should read "Buffalo, NY" instead of "Maynard, MA." The line should also include "Alpharetta, GA., TA–W–28, 802A."

Signed in Washington, DC, this August 9, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–19864 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC, this 2nd day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dunbar Slag Corp (USWA)	Sharon, PA	08/02/93	07/14/93	28,905	Steel.
Fibronics International (Workers)	Hyannis, MA	08/02/93	07/02/93	28,906	PC boards.
AnSon Gas Corp (Workers)	Oklahoma City, OK	08/02/93	07/12/93	28,907	Crude oil, natural gas.
Duffy Electronics & Mfg Co (Workers)	Belmar, NJ	08/02/93	07/20/93	28,908	Printed circuit boards.
Parker Hannifin (Co)	Trumann, AR	08/02/93	07/15/93	28,909	Air conditioner hoses.
Micro Abrasives (Workers)	Westfield, MA	08/02/93	07/16/93	28,910	Abrasive powders.
Honeywell Inc, Keyboard Div. (Co)	El Paso, TX	08/02/93	07/21/93	28,911	Keyboards.
Halliburton Resevoir Services (Co)	Carrollton, TX	08/02/93	07/22/93	28,912	Oil and gas.
Halliburton Energy Services Group (Co).	Carrollton, TX	08/02/93	07/22/93	28,913	Oil and gas.
Superior Mold & Iron (Workers)	Penn, PA	08/02/93	01/06/93	28,914	Ingot molds, stools, slag pots, etc.
Campbell Soup Co. (UFCW)	Salisbury, MD	08/02/93	07/22/93	28,915	Frozen foods.
Nestle Beverage Co (Workers)	Sunbury, OH	08/02/93	07/27/93	28,916	Coffee.
Lake Shore, Inc (Co)	Ontonagon, MI	08/02/93	07/21/93	28,917	Material handling equipment.
EEMCO (IAMAW)	Los Angeles, CA	08/02/93	07/20/93	28,918	Aerospace actuators.
Regal Beloit Corp (Workers)	Maxton, NC	08/02/93	07/21/93	28,919	Drill bits.
Alliance Resources (USA), Inc (Workers).	New Orleans, LA	08/02/93	07/21/93	28,920	Oil and gas.
Mobil Mining & Minerals Co (Co)	Nichols, FL	08/02/93	07/02/93	28,921	Phosphate rock.
General Electro Mechanical Corp (IAM)	Buffalo, NY	08/02/93	07/20/93	28,922	Rivefer machines.
Overton Apparel, Inc (ILGWU)	Livingston, TN	08/02/93	07/26/93	28,923	Ladies' sportswear.
Stephanie Fashions, Inc (ILGWU)	Roanoke, AL	08/02/93	07/26/93	28,924	Ladies' sportswear.
Cooper Industries (Workers)	Cypress, TX	08/02/93	07/22/93	28,925	Airplane components.

[TA–W–28,055]

General Electric Company (Evendale Plant), Cincinnati, OH

Notice of Revised Determination on Reconsideration

On May 18, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the subject firm. The notice was published in the **Federal Register** on May 26, 1993 (58 FR 30186).

Investigation findings show that the workers produce jet engines for commercial and military use. The findings also show that GE does not import jet engines.

Findings on reconsideration support the Department's initial negative determination for workers producing jet engines at the Evendale plant. The findings show that GE does not build the Evendale engine outside of the United States.

Other findings on reconsideration, however, show that the Rotating Parts Operation at Evendale is gradually being phased out. A substantial percent of the rotating parts production was transferred to overseas foreign sources and imported back to GE resulting in the layoff of workers in the Rotating Parts operation in 1992. These workers are separately identifiable by part, classification and foreign sourcing.

The remaining production of rotating parts is being transferred to other GE domestic locations; accordingly, there is no adverse trade impact with these workers. A domestic transfer would not provide a basis for certifying this group of workers.

Findings on reconsideration in the Fabrication Operations show that the production on the turbine frame for the LM 6000 engine was transferred to Europe and imported back to GE resulting in worker separations at Evendale in 1991 and 1992..

Other findings on reconsideration show that there was no adverse trade impact to workers assigned to the airfoils (blades) operation. Production of blades is being transferred to other domestic locations.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers in the Rotating Parts operation at GE's Evendale plant in Cincinnati, Ohio were adversely affected by increased imports of articles like or directly competitive with the

rotating parts produced at the Evendale plant in Cincinnati, Ohio. In accordance with the provisions of the Act, I make the following revised certification for workers and former workers of General Electric Company's Evendale plant in Cincinnati, Ohio.

All workers and former workers of General Electric Company's Rotating Parts Operation and Fabrication Operation on the turbine frame for the LM 6000 engine at the Evendale plant in Cincinnati, Ohio whose production was transferred overseas and who became totally or partially separated from employment on or after November 18, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of August 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services; Unemployment Insurance Service.

[FR Doc. 93–19874 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,528, TA–W–28,528A]

Hilti Steel Industry Division, Tulsa, Oklahoma, Sisco, Inc., Tulsa, Oklahoma; Negative Determination Regarding Application for Reconsideration

By an application dated July 28, 1993, the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 17, 1993 and published in the **Federal Register** on July 2, 1993 (58 FR 35980).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers of Hilti Steel and Sisco Inc., performed mold repair services at Sharon Steel Corporation in Farrell, Pennsylvania whose workers were certified eligible for trade adjustment assistance (TA–W–28,048).

The union claims that had the Sharon workers performed the mold repair services, the mold repair service workers would have been certified eligible for TAA. The union is correct in its understanding, because the service workers would have been employees of a firm, Sharon Steel, that produced an article adversely affected by increased imports. The workers' firm in the instant case, however, is Hilti/Sisco which does not produce an article within the meaning of the Trade Act but performs contract repair services.

The union also claims that since mold maintenance is an integral part of Sharon's steel production, the workers maintaining and repairing the molds should be certified for TAA.

In determining worker group eligibility under the Trade Act, the Department looks at the articles produced by the firm that employs the petitioning workers. The Sharon workers were certified because of increased imports of steel which were like or directly competitive with the articles produced by Sharon and which contributed importantly to worker separations and declines in sales and production at Sharon. Contract repair services provided by independent firms for mold maintenance for other firms with certified workers would not provide a basis for certification, notwithstanding how integral the services are to the production process.

Finally, the 25 percent test mentioned by the union in its application is not applicable to the Hilti/Sisco situation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of August 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–19867 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,099]

IBM Corp., San Jose, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at IBM Corporation, San Jose, California. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,099; IBM Corporation, San Jose, California (August 9, 1993)

Signed at Washington, DC, this 9th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–19865 Filed 8–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,597 Houston, Texas, TA–W–28,673, Lafayette, Louisiana, TA–W–28,674 Black Lake, Louisiana, TA–W–28,675 Berwick, Louisiana]

Nerco Oil & Gas, Inc.; Negative Determination Regarding Application for Reconsideration

By an application dated July 29, 1993, the company requested administrative reconsideration of the subject petitions for trade adjustment assistance. The denial notice was signed on July 1, 1993 and was published in the **Federal Register** on July 27, 1993 (58 FR 40161).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that Nerco Oil & Gas is primarily a producer of natural gas.

Company officials state that natural gas is a commodity and that (1) price and (2) all the purchases of domestic importers of natural gas together with the customers of Nerco Oil & Gas must be considered.

In order for a worker group to be certified for trade adjustment assistance, all three of the Group Eligibility Requirements of the Trade Act must be met—(1) a significant decrease in employment, (2) an absolute decrease in sales or production and (3) an increase of imports of articles that are like or directly competitive with those of the workers' firm and which "contributed importantly" to declines in sales or production and employment at the workers' firm.

The Department's denial was based on the fact that the "contributed

importantly" test of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Nerco Oil & Gas' major declining customers in 1991, 1992 and the first quarter of 1993 shows that none imported natural gas or crude oil while decreasing their purchases from Nerco Oil and Gas. The survey included indirect imports—purchases from domestic firms who import.

Price is not one of the Group Eligibility Requirements necessary for certification and would not, in itself, provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of August 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-19866 Filed 8-16-93; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of Additions to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: These additions to the annual list of labor surplus areas are effective September 1, 1993.

SUMMARY: The purpose of this notice is to announce two additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: Richard Hardin, Chief, Division of Planning, USES, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-219-5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Order 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 6, 1992, (57 FR 46050).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Acting Assistant Secretary as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are effective September 1, 1993.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on August 9, 1993.

Carolyn M. Golding,

Acting Assistant Secretary.

Additions to the Annual List of Labor Surplus Areas

[September 1, 1993]

Labor surplus areas	Civil jurisdictions included
Pennsylvania:	
New Castle City	New Castle City in Lawrence County.
Balance of Lawrence County.	Lawrence County less New Castle City.

[FR Doc. 93-19871 Filed 8-16-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before October 1, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each

schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of Agriculture, Forest Service (N1–95–93–1). Case files for routine special use permits.
2. Department of the Air Force (N1–AFU–93–14). Tax and Litigation Records.
3. Department of the Interior, U.S. Geological Survey (N1–57–93–3). Individual photographs of USGS personnel other than high level officials and prominent scientists/topographers.
5. Department of Labor, Office of Assistant Secretary of Administration and Management (N1–174–93–2). Background papers and working files for the Departmental Directives System.
6. Department of State, All Foreign Service Posts (N1–84–93–13). Utility bills.
7. Department of Treasury, Office of Thrift Supervision (N1–483–93–7). General program and administrative records relating to Washington Operations.
8. African Development Foundation (N1–487–93–1). Routine and facilitative records.
9. Defense Logistics Agency (N1–361–93–5). Records relating to logistics systems.
10. Environmental Protection Agency, Office of Policy, Planning and Evaluation (N1–412–93–2). Freshwater-based recreation survey records.
11. National Aeronautics and Space Administration (N1–255–89–4). Updated comprehensive records schedule.
12. National Archives and Records Administration, Office of Records Administration, (N1–64–93–3). Retained Records Database .
13. Office of the Secretary of Defense (N1–330–93–6). Routine records relating to official visits, GAO audits, and legislative branch relations.

Dated: August 10, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–19791 Filed 8–16–93; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will amend the Technical Specifications (TS) to reflect the transitioning of the stainless steel clad core to one with zircaloy cladding. The proposed action is in accordance with the licensee's amendment request dated April 23, 1993, with supplemental information provided by letter dated June 17, 1993.

The Need for the Proposed Action

The licensee is in the process of transitioning from a stainless steel clad core to a zircaloy clad core. With zircaloy cladding the boron worth increases and thus, a given change in the boron concentration produces a greater change in the overall core reactivity. Therefore, an increase in the shutdown margin is required to compensate for the additional reactivity added by a boron dilution event with a zircaloy clad core. This TS is needed to reflect the new boron shutdown margin requirements.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The TS increases the shutdown margin to 2000 pcm for Modes 1, 2, and 3 with four-loop operation, to 2800 pcm for Mode 3 with less than four-loop operation, and to 3400 pcm for Modes 4 and 5, or with only one of three boron injection paths available in Modes 1, 2, 3, and 4, or with only one charging pump available in Modes 1, 2, 3, and 4, or with the boric acid tank inoperable in Modes 1, 2, 3, and 4.

The NRC staff has reviewed these changes to the TS as a result of the transitioning to zircaloy clad fuel and has determined that the new boron concentrations will provide sufficient shutdown margin requirements, and that these requirements can be achieved with the minimum boric acid tank volume or the minimum refueling water storage tank (RWST) volume specified in the TS. These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such

action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff consulted with the State of Connecticut regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated April 23, 1993 and June 17, 1993. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland this 10th day of August 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–19807 Filed 8–16–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2); Exemption

I.

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of North Anna Power Station, Units 1 and 2 (the facility) at steady-state reactor power levels for each unit not in excess of 2905 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility includes two pressurized water reactors located at the licensee's site in Louisa County, Virginia.

II.

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.2 of appendix E requires that each licensee at each site shall annually exercise its emergency plan.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(ii) of 10 CFR part 50 describes the special circumstances for an exemption where the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of appendix E, section IV.F.2 is to demonstrate that the emergency plan is adequate and capable of being implemented, and that the state of emergency preparedness provides reasonable assurance that adequate protection measures can and will be taken in the event of a radiological emergency.

III.

By letter dated June 18, 1993, the licensee requested a one-time exemption from the requirements of 10 CFR 50.47 and appendix E to conduct an annual exercise of the North Anna emergency plan in 1993. The licensee had planned to conduct an "off-year" exercise, that is, an exercise of the utility's emergency plan, with limited participation of the Commonwealth of Virginia and local organizations, on August 18, 1993. The previous emergency preparedness exercise at the North Anna Power Station, conducted on January 15, 1992, was a full-participation biennial exercise. The licensee requested that an exemption be granted because the requirement to perform an exercise of the North Anna emergency plan in 1993 was not necessary to achieve the underlying intent of the rule in that the emergency plan was adequately exercised and demonstrated in 1993 in the licensee's response to the Unit 2 feedwater event that occurred on April 24, 1993. The licensee stated that the Commonwealth of Virginia is in concurrence with the exemption request; however, the State is retaining plans to demonstrate select six-year exercise objectives of the Federal Emergency Management Agency on the scheduled exercise date. The licensee, in a letter dated July 16, 1993, has committed to support the offsite agencies in the demonstration of these objectives. The schedule for future exercises at North Anna will not be affected by this one-time exemption.

To support their request, the licensee provided information on the feedwater event, the key elements of the North Anna Power Station emergency plan demonstrated during the event, and the critique of emergency response activities conducted by the licensee following the event.

On April 24, 1993, at 5:30 a.m., North Anna Unit 2 experienced severe flow oscillations and subsequent water hammer in the feedwater system while operating at 71 percent power. The unit was manually tripped by the operators with all equipment performing as expected. To provide additional technical staffing and to assist in personnel accountability, an Alert was declared at 6:02 a.m. Following stabilization and further assessment of the unit, the Alert was downgraded to an Unusual Event at 8:16 a.m., and the Unusual Event was terminated at 10:45 a.m.

Section 8.6.2 of the North Anna Power Station emergency plan states that utility-only exercises shall include:

(a) An emergency classification of at least an Alert.

(b) Use of communication systems.

(c) Activation of at least one offsite emergency response plan action (e.g., medical transport, fire assistance, offsite monitoring, law enforcement assistance).

In response to the feedwater flow oscillation event, the following key elements of the North Anna emergency plan were demonstrated:

- Classification of the event in accordance with Emergency Plan Implementing Procedures (EPIPs).
- Notification of State, local, and Federal emergency response organizations and personnel.
- Activation, staffing and operation of the emergency response facilities including the Control Room, Technical Support Center, Operational Support Center, and the Local Emergency Operations Facility.
- Communications between emergency facilities, principal response organizations and emergency personnel.
- Media and public information dissemination through the issuance of press releases.
- Emergency facilities and equipment to support the emergency response.

Licensee response activities included the development of initial and follow-up messages (13 total) to offsite organizations, continuous communication with the NRC, station accountability, event assessment in the Control Room and Technical Support Center, and interfacing with State emergency operations personnel at the Local Operations Facility. Although the event did not require dose assessment, all dose assessment capabilities were fully activated and offsite monitoring teams were staged for dispatch.

The licensee conducted a comprehensive self-assessment of their response to the feedwater event, documented in an Emergency Plan Activation Report, dated June 18, 1993. VEPCO's critique identified several areas for improvement and outlined the specific corrective actions to enhance licensee performance in those areas.

In addition to the response to the feedwater event, other licensee activities related to the demonstration of emergency preparedness in 1993 included (1) a practice exercise conducted on July 14, 1993, fulfilling the requirements for a Post-Accident Sampling Drill, Environmental Monitoring Drill, Radiological Monitoring Drill, Communications Drill, and Emergency Callout Drill, (2) a combined functional drill conducted on June 16, 1993, which fulfilled the requirements for a Fire Drill and tested revised damage control procedures, and (3) two separate drills conducted on February 24 and April 13, 1993, to practice and demonstrate environmental and radiological monitoring and station response activities to a medical emergency.

The most recent NRC Systematic Assessment of Licensee Performance (SALP) report for North Anna, issued on June 18, 1993, for the period November 3, 1991 to April 3, 1993, indicated that the licensee has continued to maintain a strong emergency preparedness program with effective offsite support. The licensee has consistently maintained a Category 1 rating in the functional area of emergency preparedness.

Based upon a review of the licensee's request for an exemption from the requirement to conduct an exercise of the North Anna emergency plan in 1993, the NRC staff finds that the underlying purpose of the regulation has been achieved through the licensee's response to the Unit 2 feedwater event which occurred on April 24, 1993. The licensee fully activated and staffed all of its emergency response facilities and performed all necessary response actions under actual conditions. Both onsite and offsite emergency response organizations were involved in the event. The response to the feedwater event tested the adequacy of the emergency plan implementing procedures, tested emergency equipment and communications networks, and provided a unique opportunity to ensure that emergency response personnel were familiar with their duties. NRC Inspection Report Nos. 50–338/93–14 and 50–339/93–14 concluded that the "licensee responded to the event in a conservative manner, in an emergency response perspective, by declaring an Alert classification. Emergency response facilities were activated and staffed in a timely manner. Notifications to the NRC and State and local agencies were made in a timely manner." The licensee has identified corrective actions to improve the level of emergency preparedness at North Anna through a post-event critique.

The staff concludes that the licensee satisfactorily demonstrated the adequacy of the North Anna emergency plan and its capability of implementing the plan in the response to the Unit 2 feedwater event on April 24, 1993. Thus, an exercise in 1993 is not necessary to achieve the underlying purpose of the rule. The requested exemption from the requirement in 10 CFR part 50, appendix E, section IV.F, to perform an exercise of the North Anna emergency plan in 1993, will not adversely affect the overall state of emergency preparedness at the North Anna site because the emergency plan was adequately exercised and demonstrated during the licensee's response to the April 24, 1993 feedwater event.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter dated June 18, 1993, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (58 FR 40840). A copy of the licensee's request for exemption and supporting documentation is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 10th day of August 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II. Office of Nuclear Reactor Regulation.

[FR Doc. 93–19808 Filed 8–16–93; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Sumter County Land, Sumter County, FL

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Sumter County Land, located in Sumter County, Florida, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 15, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Steve Skakandy, Resolution Trust Corporation, c/o Graimark/MIG Joint Venture, 1920 Corporate Drive, Boynton Beach, FL. 33426, (407) 364–0432; Fax (407) 369–1985.

SUPPLEMENTARY INFORMATION: The Sumter County Land property is located near the east bank of the Withlacoochee River in central western Sumter County approximately two (2) miles south and west of County Road 470. The property contains wetlands and is adjacent to the Jumper Creek Wildlife Management Area, a State owned and managed preserve. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Sumter County Land property consists of approximately 320 acres of undeveloped land containing marsh lands and wetlands with a small portion of the northwest corner of the

property fronting the Withlacoochee River. The property is irregular in shape with heavily wooded hammocks. The only access to the property is through the State owned lands adjacent to the site on the south and east.

Property size. Approximately 320 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 15, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 15, 1993 to Mr. Steve Skakandy at the above ADDRESSES and in the following form:

Notice of Serious Interest

RE: Sumter County Land,
Federal Register Publication Date: August 17, 1993.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: August 11, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–19729 Filed 8–16–93; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–5407.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extensions:

Form F–7	File No. 270–331.
Form F–8	File No. 270–332.
Form F–X	File No. 270–336.
Schedule 13E–4	File No. 270–190.
Schedule 13E–4F	File No. 270–340.
Schedule 14D–1F	File No. 270–338.
Schedule 14D–9F	File No. 270–339.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), that the Securities and Exchange Commission (Commission) has submitted for OMB approval the extension of the following forms and schedules under The Securities Act of 1933 (1933 Act) and the Securities Exchange Act of 1934 (1934 Act):

Form F–7 is the registration of securities by Canadian issuers offered upon the exercise of rights granted to existing security holders of the registrant (1933 Act). Approximately ten respondents file Form F–7 annually at an estimated two burden hours per response.

Form F–8 is the registration of securities by Canadian issuers to be issued in an exchange offer (1933 Act). Approximately five respondents file Form F–8 annually at an estimated two burden hours per response.

Form F–X is the appointment of agent for service of process (1933 Act). Approximately 50 respondents file Form F–X annually at an estimated two burden hours per response.

Schedule 13E–4 is the issuer tender offer form (1934 Act). Approximately 121 respondents file Schedule 13E–4 annually at an estimated 232 burden hours per response.

Schedule 13E–4F is the issuer tender offer form—Canadian issuers (1934 Act). Approximately three respondents file Schedule 13E–4F annually at an estimated two hours per response.

Schedule 14D–1F is the third party tender offer form—Canadian issuers (1934 Act). Approximately five respondents file Schedule 14D–1F annually at an estimated two burden hours per response.

Schedule 14D–9F is the tender offer target response form—Canadian issuers (1934 Act). Approximately five respondents file Schedule 14D–9F annually at an estimated two burden hours per response.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503 (Project Nos. 3235–0383, 3235–0378, 3235–0379, 3235–0203, 3235–0375, 3235–0376, and 3235–0382).

Dated: August 6, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19757 Filed 8–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32731; File No. SR–CHX–93–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Establishment of Rules To Allow for and Govern the Trading of Standardized Baskets and To Trade a Specific Basket of Stocks, the Chicago Basket

August 10, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 2, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange")[1] filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] As of July 8, 1993, the Midwest Stock Exchange, Inc. ("MSE") changed its name to the Chicago Stock Exchange, Inc. See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR–MSE–93–13) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Certificate of Incorporation and Constitution to effect a name change) and 32489 (June 18, 1993), 58 FR 34285 (June 24, 1993) (File No. SR–MSE–93–16) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Rules to make conforming changes in accordance with its name change).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to establish rules allowing for and governing the trading of standardized baskets on the Exchange floor. The Exchange is also seeking Commission approval to trade a specific basket product on the Exchange.[2]

The specific basket product which the Exchange proposes to trade, which will be known as the "CXM" basket, represents a new trading product for the securities industry. The CXM basket is a basket of stocks that will be comprised of the stocks included in the Chicago Mercantile Exchange's ("Merc") new XMI stock index futures contract [3] and will offer a highly correlative hedge to that contract. This Basket will be comprised of a fixed quantity of 25 shares of each of the stocks included in the new Merc futures contract. The new Merc futures contract is a stock index futures contract which, pending the approval of the Commodity Futures Trading Commission ("CFTC"), will be based on the American Stock Exchange's ("Amex") Major Market Index ("MMI"). The MMI, in turn, is a broad-based, price-weighted index currently based on 20 stocks listed on the New York Stock Exchange, Inc. ("NYSE"). The new Merc futures contract is intended to replace the "BC" futures contract, a stock-index futures contract based on the MMI, currently traded on the Chicago Board of Trade ("CBOT").

The general rules for basket trading and trading of the CXM basket submitted for Commission approval were attached as Exhibit A to the proposed rule change and are available at the Commission and at the CHX.

[2] Simultaneous with the filing of the present proposed rule change, the Exchange is withdrawing file No. SR–MSE–92–10 which was submitted to the Commission on August 12, 1992. See letter from George T. Simon, Foley and Lardner, to Diana Luka-Hopson, Branch Chief, Commission, dated July 29, 1993. The Commission published, for notice and comment, File No. SR–MSE–92–10 which, like the File No. SR–CHX–93–16, proposed to establish rules for the trading of a standardized basket. See Securities Exchange Act Release No. 32011 (March 17, 1993), 58 FR 15868. No comments were received on the proposal contained in File No. SR–MSE–92–10.

[3] The Commission understands that the Merc plans to trade its new futures stock index contract, discussed more fully herein, under the symbol "XMI." Telephone conversation between George Simon, Foley and Lardner, and Betsy Prout, Staff Attorney, Commission, on August 5, 1993. The Merc expects to receive final approval to trade the XMI contract shortly.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish rules allowing for and governing the trading of standardized baskets on the Exchange floor and to seek Commission approval to trade a specific basket of stocks on the CHX. The specific basket product which the Exchange proposes to trade will be known as the "CXM" Basket.

The CXM Basket is a basket of stocks that will be comprised of the stocks included in the Merc's new XMI stock index futures contract and will offer a highly correlative hedge to that contract. This Basket will be comprised of a fixed quantity of 25 shares of each of the stocks included in the new Merc futures contract. The new Merc futures contract is a stock index futures contract which, pending the approval of the CFTC, will be based on the Amex's MMI. The MMI, in turn, is a broad-based, price-weighted index currently based on 20 stocks listed on the NYSE. The new Merc futures contract is intended to replace the "BC" futures contract, a stock-index futures contract based on the MMI, currently traded on the CBOT.

The CBOT has for many years traded the BC futures contract as well as options on that futures contract. Since the beginning of trading in the BC futures contract, there was expressed an interest and need for an efficient way to hedge the futures contract with the equity cash market. Based upon this need, the equity cash market trading facility was developed in order to create an offsetting position with the BC futures contract. Now that the BC futures contract will be traded on the Merc as the XMI futures contract, this facility will be used to create an offsetting position with the Merc's new contract.

The CXM essentially represents a trading facility. That is, the CXM is a product which will allow the buyer or seller of the basket to purchase or sell a defined group of stocks in a single transaction which will require the payment for, or delivery of, each of the securities underlying the basket.

The trading market for the CXM on the CHX floor will consist of a registered specialist, to be known as a Designated Primary Market Maker ("DPM"), and Registered Market Makers ("RM"). DPMs will be required to continuously quote a two-sided market for four CXM baskets. RMs will be required to continuously quote a two-sided market for one CXM basket. The DPM will be required to maintain $250,000 in excess net capital. All members of the Exchange will have access to buy and sell the CXM.

The CXM will be traded at a specific, fixed location on the CHX trading floor. The floor will be configured to accommodate a sizable "crowd" without disrupting others on the trading floor. Facilities will be visible to the crowd to display information from the futures and options markets. The displays will also show market information for the CXM.

The CXM will be traded in a price of whole dollars and fractions of one dollar with a minimum variation of 1/8th and in quantities of 100 shares where 100 shares equals 1 CXM basket.[4] One hundred shares shall be the minimum unit of trade for the CXM. In the price expression, one point will equal one dollar.

The Exchange's automated order routing system ("MAX") may be used to enter orders and send reports as with any other issue; however, the MAX system will only be used for its order routing capability and not for automatic execution.

CXM Basket trades and quotes will be available on "Network B." As with any other CHX exclusive issue, the DPM will disseminate quotes through CQS. A goal of the CXM trading facility is to

[4] On April 6, 1993, 100 shares of CXM was equal to 500 individual equity shares (25 shares of each stock) where 1300 shares of CXM is approximately equal to two futures contracts. The closing price of CXM on April 6 would have been approximately 275¼. The closing price multiplied by 100 (the number of shares) equals $27,512.50. The closing value of the futures on April 6, 1993 was $175,030. Therefore, 13 CXMs equate to $357,662 which compares with two futures contracts which equates to $350,060. Although the CXM will be based on the Merc's new contract, as stated earlier, because the Merc's contract and the BC futures contract are based on the identical index and because the Merc contract is not yet traded, the above dollar values for the futures contracts refer to the BC futures contract.

quote a tighter spread than the sum of the individual stock prices.

The CXM will be traded for settlement on T+5 (*i.e.*, regular way) but special settlements and cash settlements will be allowed.

At the end of the trading day, all CXM transactions will be recorded with Midwest Clearing Corporation ("MCC"). MCC will then aggregate all CXM buy transactions within one account as well as all sell transactions. These two aggregated transactions will be burst into the component stocks. Dollar values will be assigned to each individual stock based upon the NYSE closing price of each stock relative to the total closing price of all stocks in the CXM basket at the NYSE close.[5] Then, the component securities will be processed in the Continuous Net Settlement system on a regular T+5 settlement cycle.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHS. All submissions should refer to File No. SR–CHX–93–18 and should be submitted by September 7, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19816 Filed 8–16–93; 8:45 am]

BILLING CODE 8010–01–M

[5] For a more detailed description of the algorithm and clearing methods the MCC proposes to use in conjunction with CXM transactions, see Securities Exchange Act Release No. 31858 (February 16, 1993), 58 FR 9581 (February 22, 1993) (notice of filing of MCC proposed rule change to permit processing of basket trades). The Commission understands that the Exchange plans to submit a proposed rule change to the Commission which will discuss more fully how the algorithm and clearing methods will apply to the present proposal. Telephone conversation between George Simon, Foley and Lardner, and Betsy Prout, Staff Attorney, Commission, on August 5, 1993.

[6] 15 U.S.C. 78f(b)(5) (1988).

[Release No. 34–32729; File No. SR–ICC–93–02]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the On-Line Transmission of Reports and Documents

August 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 14, 1993, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–ICC–93–02) as described in Items I, II, and III below, which Items have been prepared primarily by ICC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change accommodates the on-line transmission of reports and documents between ICC and its clearing members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to accommodate the on-line transmission of reports and documents between ICC and its clearing members. ICC has begun offering on-line viewing of all daily and expiration reports to clearing members that have access to the Clearing Management and Control System ("C/MACS"). On-line viewing of reports is generally available twenty-four hours per day with the exception of a brief daily reloading period and Sundays following non-expiration Saturdays. On-line reports are available for a clearing member's most recent trade activity date and the second most recent trade activity date.

The on-line report inquiry system currently allows clearing members to print partial or full reports from ICC at the clearing members' locations. Accordingly, ICC anticipates that clearing members' on-site printing will eventually replace ICC's current method of printing and distributing hard copy reports. Those clearing members who elect to rely solely on the on-line report system and to cancel their receipt of hard copy reports will benefit from the ability to receive and analyze information in a more timely manner. In addition, ICC will benefit from the decreased printing and paper costs

[1] 15 U.S.C. 78s(b)(1) (1988).

associated with hard copy report distribution.

To accommodate the implementation of the on-line report inquiry system, ICC is amending its rules to permit on-line distribution of clearing reports. Specifically, references to ICC's obligation to "issue" or "deliver" certain reports have been changed in several ICC rules to an obligation to "make available" such reports. These changes reflect that ICC's obligation to provide reports to clearing members will be fulfilled at the time ICC makes the on-line report available via a computer terminal for those clearing members who elect to discontinue receipt of hard copy reports.

In addition, Interpretations and Policies sections are added to ICC Rule 211 (Documents Submitted to the Corporation [ICC]) and ICC Rule 213 (Reports by the Corporation [ICC]) to clarify the responsibilities of ICC and its clearing members with respect to the delivery and receipt of on-line reports. Interpretation .01 to Rule 211 permits clearing members to submit specific types of reports, notices, instructions, and other data by on-line data entry. That same Interpretation also provides that clearing members shall be bound by all input submitted to ICC by on-line data entry and that the failure of any clearing member to correct, reenter, or reedit any input prior to the applicable cut-off time shall constitute a waiver of the clearing member's right to have such input changed. Interpretation .02 to Rule 211 provides that if unusual or unforeseen conditions prevent a clearing member from submitting input to ICC by on-line data entry prior to any applicable cut-off time, ICC may require the clearing member to submit such item by other approved means and/or extend the applicable cut-off time.

ICC will add Interpretations and Policies .01, .02, and .03 to its Rule 213. Interpretation .01 repeats language contained in Interpretation .01 to Rule 211 to the effect that a clearing member's failure to correct, reenter, or reedit any input prior to the applicable cut-off time constitutes a waiver of the right to change input submitted to ICC via on-line data entry. Interpretation .02 provides that ICC's obligation to furnish, issue, or deliver clearing reports to clearing members is fulfilled when those reports are made available by ICC. Interpretation .03 provides that if unusual or unforeseen conditions prevent ICC from making available any on-line report prior to any applicable cut-off time, ICC may provide such report by other approved means and/or extend the applicable cut-off time.

Finally, the proposal amends ICC Rule 101 (Definitions) to add two new terms, "on-line data entry" and "on-line data retrieval." "On-line data entry" is defined to mean the direct transmission by a clearing member to ICC via on-line computer terminals of reports, notices, instructions, data, or other items. "On-line data retrieval" is defined to mean the direct access by clearing members via on-line computer terminals of reports, notices, instructions, data, and other items made available by ICC.

ICC believes that the proposed rule change is consistent with Section 17A of the Act[2] in that it promotes new data processing and communication techniques that create the opportunity for more efficient, effective, and safer techniques for the clearance and settlement of securities transactions.

B. SRO's Statement on Burden on Competition

ICC believes that the proposed rule change does not impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICC has not solicited or received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[3] and the Commission's order temporarily approving ICC's registration as a securities clearing agency because the filing primarily relates to ICC's futures clearing activities and does not concern the clearance and settlement of securities positions and the safeguarding of securities and related funds.[4] At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-ICC-93-02 and should be submitted by September 7, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-19756 Filed 8-6-93; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78q-1 (1988).

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556 [File No. SR-ICC-600-21 n. 15.

[5] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-32730; File No. SR-NASD-93-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change to Article IX, Section 4 of the NASD By-Laws Relating to the Filling of Vacancies on NASD Nominating Committees

August 10, 1993.

On May 13, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder.[3] The rule change amends Article IX, Section 4 of the NASD By-Laws[4] relating to filling

[1] On August 9, 1993, the NASD amended the proposed rule change by providing the results of a vote of the NASD membership on the proposed rule change. The proposal was approved by the membership, with 1,964 voting in favor, 122 opposed and 11 not voting, out of 2,097 valid ballots received. Letter from T. Grant Callery, Vice President and General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC, dated August 6, 1993.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b-4 (1992).

[4] NASD Manual, NASD By-Laws, Art. IX, Sec. 4, (CCH) ¶ 1224.

vacancies on nominating committees. Under the rule as amended, the procedures under the NASD By-Laws for filling vacancies on Nominating Committees will conform to those currently in place for District Committees. In particular, where a vacancy arises on a Nominating Committee prior to the expiration of the term of office, that Nominating Committee will now appoint the replacement member.

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release (Securities Exchange Act Release No. 32516, June 25, 1993) and by publication in the **Federal Register** (58 FR 35988, July 2, 1993). No comments were received in response to the Commission release. This order approves the proposed rule change.

As the NASD indicated in its rule filing, the NASD's By-Laws currently provide for different procedures to be used to fill vacancies on the District Nominating Committees and on the District Committees themselves. Article IX, Section 4 of the NASD By-Laws provides that Nominating Committee vacancies caused by other than the expiration of a member's term of office shall be filled by appointment by the remaining members of the Nominating Committee if the unexpired term is for less than six months, but that if the unexpired term is for six months or more, such vacancy shall be filled by special election.[5] Article VIII, Section 5 of the By-Laws relating to the filling of vacancies on District Committees, however, provides that the District Committee shall appoint a representative of a member firm having a place of business in the District to fill any vacancy resulting from the unexpired term of a departed committee member and that such appointment shall be effective until the next regularly scheduled election occurs.[6]

The NASD has concluded that the special election provision for Nominating Committee vacancies serves no valid purpose and is a costly and cumbersome mechanism, particularly in view of the fact that the term of Nominating Committee members is only one year. The rule change amends Article IX, Section 4 of the By-Laws to provide for the same procedures to be used in filling Nominating Committee vacancies as are used to fill District Committee vacancies. Accordingly, a vacancy on a Nominating Committee shall be filled, until the next regularly scheduled election, through appointment by the Nominating Committee of a representative of a member of the NASD eligible to vote in the same District.

The Commission has determined to approve the NASD's proposal. The Commission finds the rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A(b) (4) and (5) of the Act.[7] Sections 15A(b) (4) and (5) of the Act require, in part, that the rules of the NASD be designed to assure fair representation of the NASD's members by making it easier and less costly for the NASD to fill vacancies on any of its Nominating Committees. The rule change eliminates unnecessary and inefficient procedures without compromising investor protection and the public interest. In addition, the Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–93–34 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19815 Filed 8–16–93; 8:45 am]

BILLING CODE 8010–01–M

[5] *Id.*

[6] *Id.*, Sec. 5.

[Release No. 34–32732; File No. SR–MSTC–92–03]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change Relating to Various Committees

August 10, 1993.

I. Introduction

On July 2, 1992, the Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–92–03) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 22, 1992, to solicit comments from interested persons.[2] On May 11, 1993, MSTC filed an amendment to the proposed rule change.[3] No comments were received. As discussed below, this order approves the proposal.

II. Description of the Proposal

MSTC is amending Article IV, Sections 2 and 3 of its By-Laws regarding committee composition and structure. These sections involve the Finance Committee, the Compensation Committee, and the new Audit Committee.

Section 2 of the By-Laws governs the Finance Committee. The Finance Committee is required to review all annual profit plans and budgets for MSTC prior to their submission to the Board of Directors ("Board"). The Finance Committee also is required to formulate an investment policy for submission to the Board and must conduct a quarterly review of all MSTC's investments. Currently, the By-Laws require the Finance Committee to be comprised of the Chairman of the Board, the President of MSTC, and three MSTC directors. The rule change provides that the Board shall designate two or more directors to constitute the Finance Committee.[4]

Section 3 of the By-Laws currently requires that MSTC have a Compensation Committee comprised of three directors. The Compensation Committee is responsible for establishing the compensation of the principal executive officer and for establishing with the principal executive officer a comprehensive corporate compensation policy. The rule change eliminates the Compensation Committee. Currently, the Compensation Committee is inactive and its designated responsibilities are being performed by the Compensation Committee of the Chicago Stock Exchange ("CHX"), which was formally the Midwest Stock Exchange.[5] MSTC will continue to allow the CHX Compensation Committee to perform such duties.

New section 3 of the By-Laws provides for the establishment of an Audit Committee comprised of two or more nonmanagement directors designated by the Board.[6] It participates

[7] 15 U.S.C. 78*o*–3(b)(4) & (5).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 30932 (July 10, 1992), 57 FR 32585.

[3] *Infra* note 6.

[4] The designation must be by a resolution adopted by a majority of the Board.

[5] The CHX is the parent corporation of the MSTC. The CHX Compensation Committee preforms this function for the whole CHX complex. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSTC, and Jeffrey T. Brown, Staff Attorney, Division of Market Regulation, Commission (July 7, 1992).

[6] Pursuant to the amendment filed May 11, 1993, no director designated to be a member of the Audit Committee is allowed to hold a management position with MSTC, CHX, or any of CHX's

in the selection of MSTC's independent public accountant and reviews the nature, scope, and results of the work to be performed by the independent public accountant on behalf of MSTC. The Audit Committee also reviews with the independent public accountant and the internal auditor MSTC's internal controls and the adequacy of the internal audit program.

III. Discussion

Section 17A(b)(3)(C) of the Act[7] requires that the rules of a clearing agency assures a fair representation of its members and participants in the administration of its affairs. The rule change provides flexibility in the structure of the Finance Committee and in the new Audit Committee by not mandating that a fixed number of Board members comprise either. This structuring should help facilitate the fair representation of MSTC's participants in the financial planning and monitoring of MSTC's affairs.

By having the CHX Compensation Committee perform the duties of the MSTC Compensation Committee, the CHX complex will have one compensation committee instead of several. Furthermore, because the CHX Compensation Committee will continue to perform the responsibilities of the MSTC Compensation Committee, there will be no disruption in Compensation Committee functions at MSTC. This restructuring is consistent with the finding of section 17A(a)(1)(B)[8] that inefficient procedures for clearance and settlement impose unnecessary costs on investors and with the goal of section 17A to eliminate such costs.

Section 17A(b)(3)(A)[9] requires that a clearing agency safeguard securities or funds within its custody or control or for which it is responsible. The formation of a formal Audit Committee should promote the safeguarding of securities or funds of MSTC's participants by instituting a system of oversight on the internal controls of MSTC.

IV. Conclusion

For the reasons stated above, the Commission finds that MSTC's proposal is consistent with section 17A of the Act.[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that MSTC's proposed rule change (File No. SR–MSTC–92–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19817 Filed 8–16–93; 8:45 am]

BILLING CODE 8010-01-M

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subsidiaries or affiliates. The proposal requires that the designation be by a resolution adopted by a majority of the Board. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry Carpenter, Division of Market Regulation, Commission (May 6, 1993).

[7] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[8] 15 U.S.C. 78q–1(a)(1)(B) (1988).

[9] 15 U.S.C. 78q–1(b)(3)(A) (1988).

[10] 15 U.S.C. 78q–1 (1988).

[11] 15 U.S.C 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1992).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement for the Second Grand Central Parkway to LaGuardia Airport (LGA) Flyover and Associated Access/Egress Ramps and Roadway Improvements Project

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Eastern Region of the FAA announces: (1) The FAA, acting as "Lead Agency" and the New York State Department of Transportation (NYSDOT), acting as "Joint Lead Agency" intend to prepare an Environmental Impact Statement (EIS) for a proposal by the Port Authority of New York and New Jersey, acting as "Sponsor", to develop the Second Grand Central Parkway to LaGuardia Flyover and Associated Access/Egress Ramps and Roadway Improvements. For preparation and development of the tasks associated with the environmental studies, the "Project Area" is defined as the sites and the immediate adjacent area where actual construction of the project components will take place. The "Study Area" encompasses the geographic area from the Brooklyn-Queens Expressway (BQE) Grand Central Parkway (GCP) intersection on the west, to the Northern Boulevard GCP intersection on the east, and from LGA on the north to Astoria Boulevard on the south.

The Federal and State EIS Scoping process will consist of a public Scoping meeting in Queens to allow public comments and an Interagency Scoping meeting to obtain comments from cognizant Federal, State and Local Agencies. Additionally, involved and interested agencies and persons may submit written comments representing concerns and issues they believe should be addressed in the EIS. The joint FAA and NYSDOT public Scoping meeting will begin at 5 p.m. on September 13, 1993 at The LaGuardia Marriott Hotel, 102–05 Ditmars Boulevard, East Elmhurst, Queens, New York. All persons wishing to present oral comments must register at the Scoping meeting. Registration will begin at 4 p.m. and close at 8 p.m. In recognition of their constituency, public officials at the Public Meeting will be allowed to speak at the first opportunity after they register. All persons registered by the close of registration will be heard. Oral comments will be limited to five minutes per person. The Interagency Meeting will be held after the Public Scoping meeting at a time and place to be announced in a letter to cognizant agencies.

WRITTEN COMMENTS: In addition, written comments may be submitted to Mr. Anthony P. Spera, Manager, Planning and Programming Branch, Federal Aviation Administration, Airports Division AEA–610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430, (718) 553–1245. In order for written comments to be considered they must be received by Mr. Spera on or before September 13, 1993. Questions concerning the draft EIS or the process being applied by the FAA should be directed to Mr. Spera.

SUPPLEMENTARY INFORMATION: Information, data, opinions and comments obtained throughout the course of the Scoping process may be used in the preparation of the EIS. The purpose of this Notice of Intent is to inform the public and Local, State and Federal Government agencies that an EIS will be prepared and to provide those interested with the opportunity to present their opinions, comments, information or other relevant observations concerning the environmental impacts related to the implementation of this proposal.

A draft copy of the Scoping Document can be obtained for review from Mr. Anthony P. Spera at the aboved referenced address. Implementation of the Second GCP to LGA Flyover and Associated Access/Egress Ramps and Roadway Improvements would provide direct access to and from the eastern end of LGA and reduce on-airport travel time; reduce airport related traffic movements through the community and reduce airport related congestion on the GCP. Major actions to be addressed in the EIS will include, but not be limited to, the following alternatives:

Alternative 1—Under this alternative vehicles destined for the east and of

LGA from the eastbound GCP would veer right to enter the flyover access lane ramp at a point just west of the 102nd Street Bridge and proceed on grade under the Bridge. Once past the Bridge, the ramp would gradually gain in height and veer north and over both the east and west bound lanes of the GCP and onto the airport where it would again proceed on grade and connect with the on-airport roadway system. To accommodate the flyover access lane, the 97th Street access ramp to the eastbound GCP would have to be relocated to the south of its current location. Another component of this alternative involves the construction of an on-airport exit ramp from the east end of LaGuardia Airport directly on to the westbound LGA. To accommodate the construction of this exit ramp, the existing west bound GCP service roadway would be relocated just to the north of its current location.

Alternative 2—Under this alternative, vehicles destined for the east end of LGA from the eastbound GCP would veer left to enter the flyover access lane ramp at a point just west of the 102nd Street Bridge and proceed, on grade, under the Bridge. Once past the Bridge, the ramp would gradually gain in height and veer north over the westbound lanes of the GCP and onto the airport where it would proceed on grade and connect with the on-airport roadway system. To accommodate the flyover access ramp, the eastbound lanes of the GCP would be relocated just south of their current location. The exit ramp to the westbound GCP, described under Alternative 1 above, does not change under this alternative.

Alternative 3—Under this alternative vehicles destined for the east end of LGA from the eastbound GCP would veer right and enter an expanded two lane ramp on to the existing flyover. At the appropriate height, the ramp destined for the east end of airport would veer off to the right and over both the eastbound and westbound lanes of the GCP and onto the airport where it would connect with the on-airport roadway system. The exit ramp onto the westbound GCP, described under Alternative 1 above, does not change under this alternative.

Alternative 4—This alternative evaluates the results of providing no improvements to the existing access to the east end of LGA.

FOR FURTHER INFORMATION CONTACT: Anthony P. Spera, Federal Aviation Administration, AEA–610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Telephone (718) 553–1245.

Issued in Jamaica, New York, on August 6, 1993.

Anthony P. Spera,

Manager, Planning and Programming Branch, Airports Division, Federal Aviation Administration, Eastern Region Office, Jamaica, New York.

BILLING CODE 4910–13–M

UMI VOL 58 ISS 157 AUG 17 1993

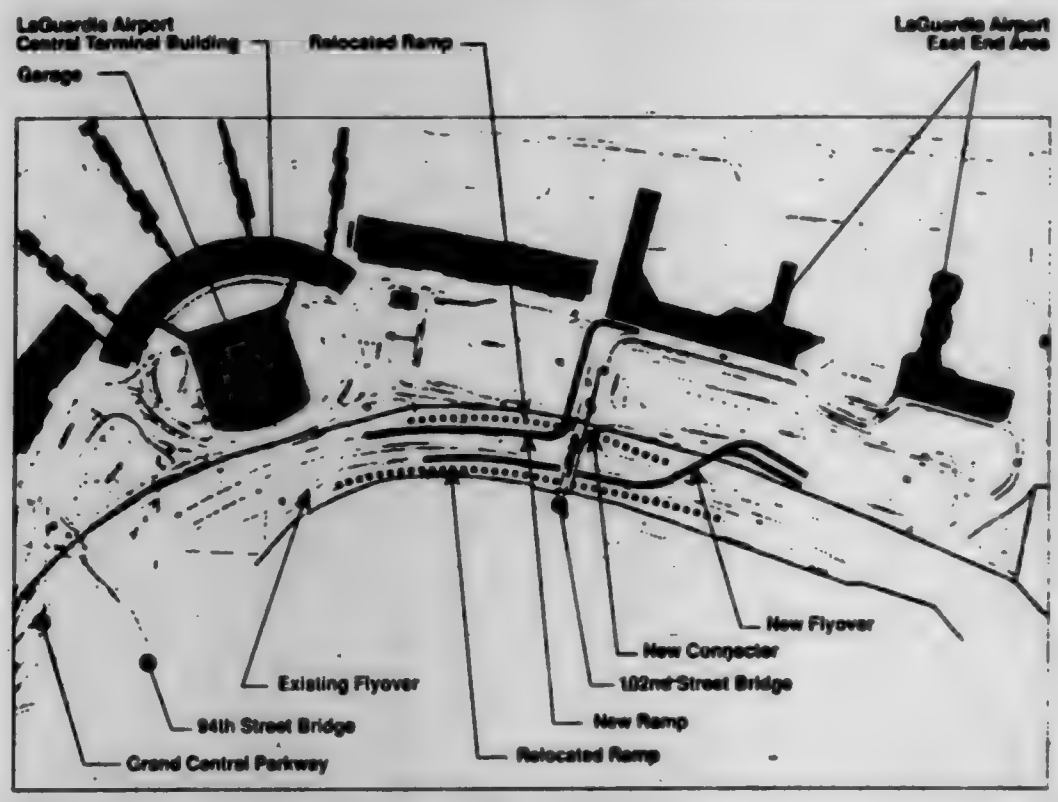

GCP/LGA Second Flyover and Associated Access/Egress Ramp and Roadway Improvements
Alternative 1

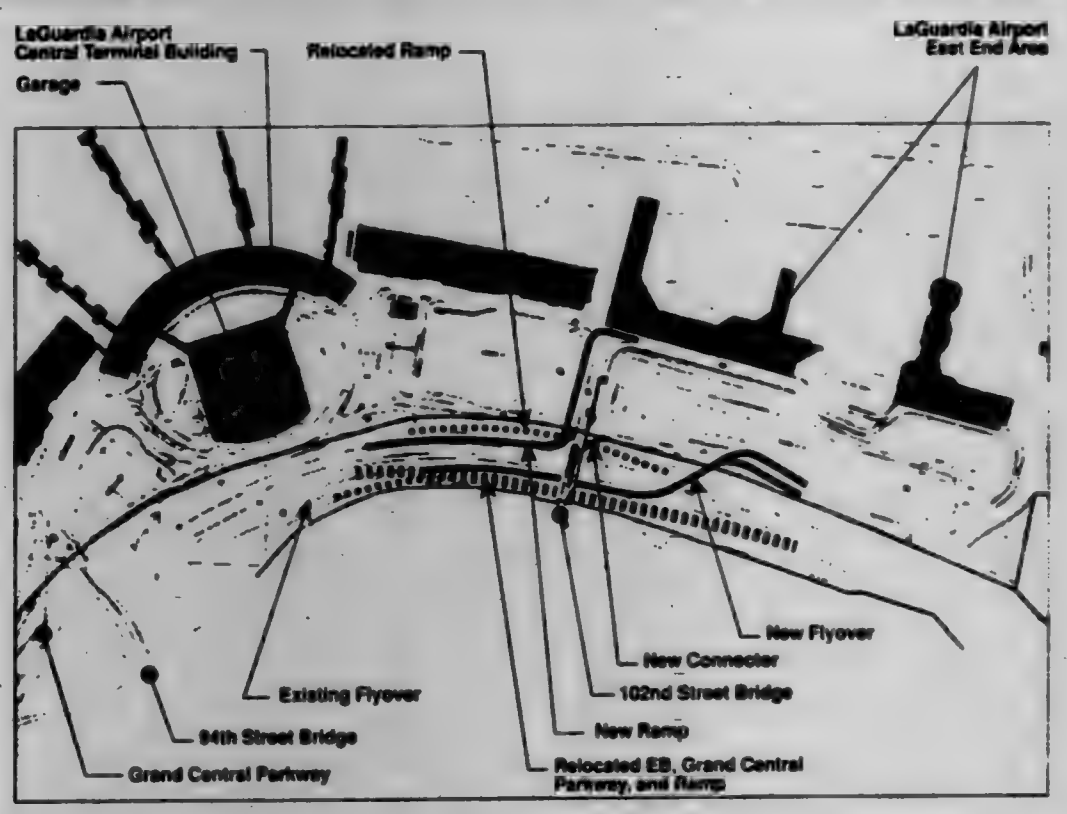

GCP/LGA Second Flyover and Associated Access/Egress Ramp and Roadway Improvements
Alternative 2

LaGuardia Flyover - Alternatives 1 & 2

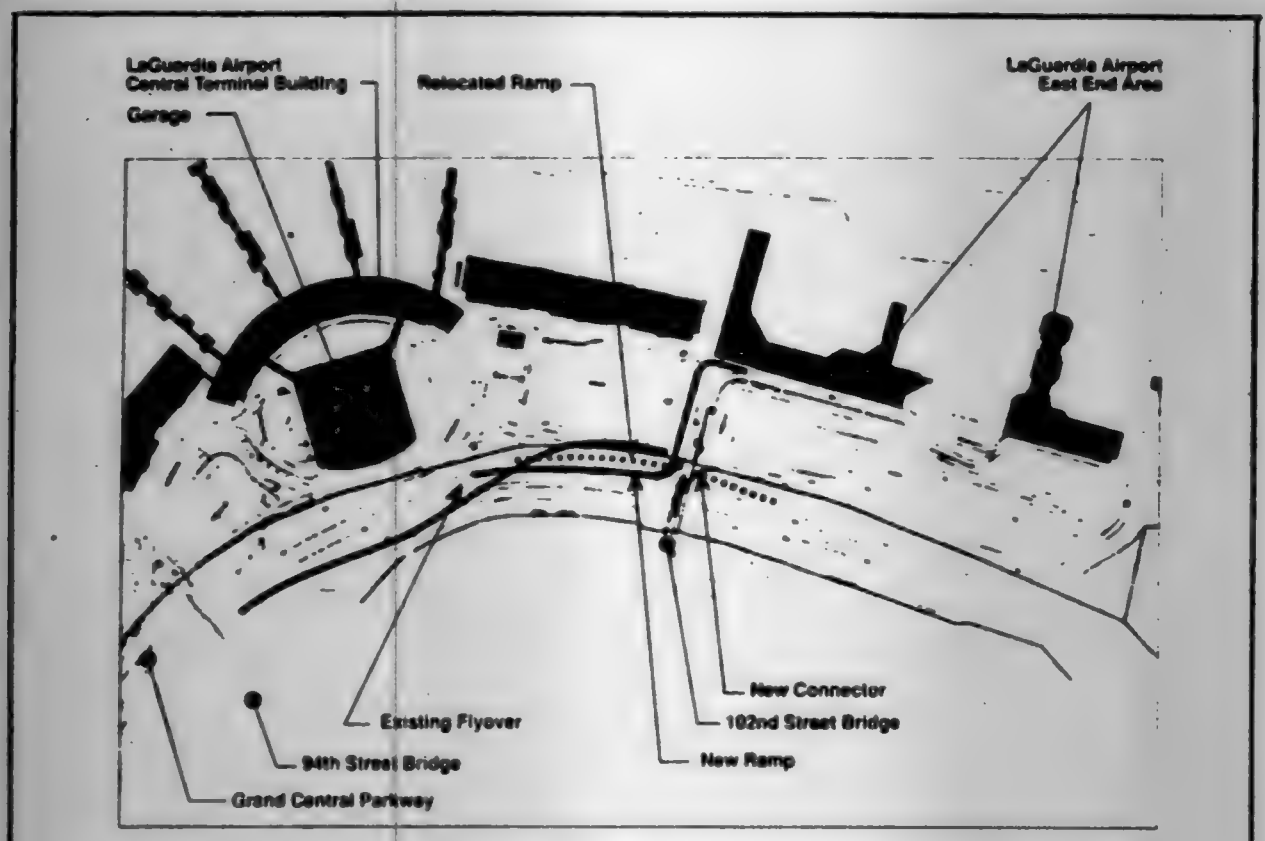

GCP/LGA Second Flyover and Associated
Access/Egress Ramp and Roadway Improvements
Alternative 3

New Roadways
Relocated Roadways

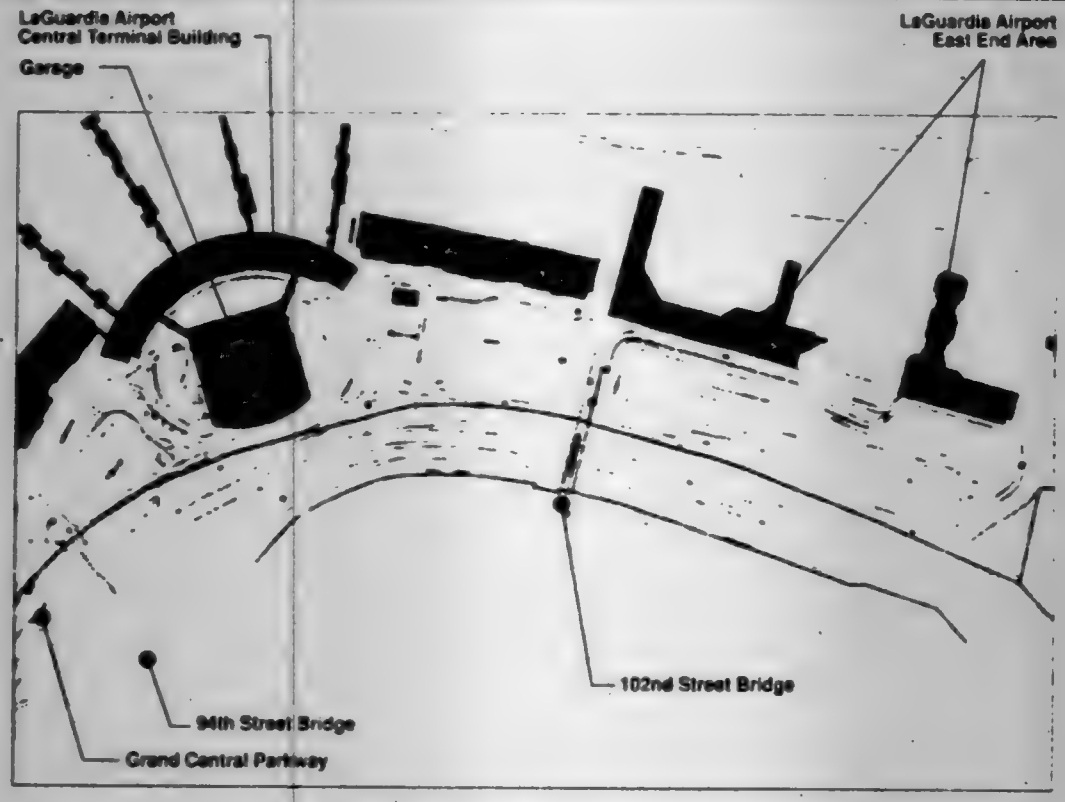

GCP/LGA Second Flyover and Associated
Access/Egress Ramp and Roadway Improvements
Alternative 4 (No Action)

LaGuardia Flyover - Alternatives 3 & 4

[FR Doc. 93–19825 Filed 8–16–93; 8:45 am]

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102–388, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Sacramento Regional Transit District, Sacramento, CA	CA–03–0397–00	$2,112,500	07/02/93
Northern Indiana Commuter Transportation District, Chicago, IL–IN	IN–03–0065–00	5,040,000	07/13/93
Minnesota Department of Transportation, Minnesota	MN–03–0044–00	1,589,646	07/02/93
East-West Gateway Coordinating Council, St. Louis, MO–IL	MO–03–0037–00	2,000,000	07/01/93
New Jersey Transit Corporation, New York, NY–Northeastern NJ	NJ–03–0098–00	3,254,318	07/07/93
Lane Transit District, Eugene-Springfield, OR	OR–03–0046–00	4,517,760	07/02/93

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City of Modesto, Modesto, CA	CA–90–X548–00	$2,365,389	07/07/93
Santa Cruz Metropolitan Transit District, Santa Cruz, CA	CA–90–X569–00	1,194,853	07/01/93
City of Fresno, Fresno, CA	CA–90–X572–00	1,656,232	07/01/93
Housatonic Area Regional Transit District, Danbury, CT–NY	CT–90–X223–00	330,194	07/06/93
Greater New Haven Transit District, New Haven-Meriden, CT	CT–90–X225–00	1,947,776	07/15/93
Norwalk Transit District, Norwalk, CT	CT–90–X226–00	374,501	07/21/93
Milford Transit District, Bridgeport-Milford, CT	CT–90–X227–00	230,535	07/15/93
Greater Bridgeport Transit District, Bridgeport-Milford, CT	CT–90–X228–00	1,500,000	07/02/93
Rock Island County Metropolitan Mass Transit District, Davenport-Rock Island-Moline, IL–IA	IL–90–X221–00	775,106	07/01/93
Chicago Transit Authority, Chicago, IL–IN	IL–90–X223–00	18,343,032	07/13/93
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL–IN	IL–90–X224–00	9,724,900	07/16/93
Suburban Bus Division-RTA, Chicago, IL–IN	IL–90–X227–00	3,359,960	07/13/93
South Bend Public Transportation Corporation, South Bend-Mishawaka, IN–MI	IN–90–X176–00	1,540,720	07/02/93
Jackson Transit System, Jackson, MI	MI–90–X177–00	379,648	07/16/93
Suburban Mobility Authority for Regional Transportation, Detroit, MI	MI–90–X182–00	1,560,000	07/01/93
Jackson Transit System, Jackson, MI	MI–90–X188–00	101,334	07/01/93
City of Saginaw System, Saginaw, MI	MI–90–X195–00	786,615	07/01/93
City of Columbia Department of Public Works, Columbia, MO	MO–90–X085–01	134,120	07/01/93
Bi-State Development Agency, St. Louis, MO–IL	MO–90–X092–00	2,497,141	07/01/93
City of St. Joseph, St. Joseph, MO–KS	MO–90–X093–00	476,221	07/01/93
City of Raleigh, Raleigh, NC	NC–90–X157–00	1,671,659	07/02/93
Toledo Area Regional Transit Authority, Toledo, OH–MI	OH–90–X178–01	2,882,456	07/07/93
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK–90–X042–01	675,368	07/01/93
Lane Transit District, Eugene-Springfield, OR	OR–90–X047–00	485,000	07/02/93
City of San Angelo, San Angelo, TX	TX–90–X257–01	127,064	07/02/93
Vermont Agency of Transportation, Vermont	VT–90–X016–00	160,000	07/02/93
Spokane Transit Authority, Spokane, WA	WA–90–X144–00	3,152,252	07/21/93

Issued on: August 11, 1993.
Edward R. Fleischman,
Director, Office of Capital and Formula Assistance.
[FR Doc. 93–19730 Filed 8–16–93; 8:45 am]
BILLING CODE 4910-47-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–80]

Canadian Provincial Practices Affecting Imports of Beer From the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of action taken pursuant to section 301 of the Trade Act of 1974; monitoring under section 306 of the Trade Act; and request for comments.

SUMMARY: On July 24, 1992, in response to Canadian provincial practices that restrict sales of U.S. beer in Canada, the United States Trade Representative (USTR) took action under section 301 of the Trade Act of 1974 (Trade Act) in the form of additional 50 percent ad valorem duties on beer of the province of Ontario. Pursuant to section 307(a)(1) of the Trade Act, the USTR has terminated that action in view of Canada's agreement to provide satisfactory terms of access for U.S. beer to the Ontario market. USTR will monitor implementation of the agreement pursuant to section 306 of the Trade Act.

DATES: The modification of the Harmonized Tariff Schedule of the United States (HTSUS) described below is effective with respect to imports entered, or withdrawn from warehouse for consumption, on or after August 5, 1994. Written comments from interested parties are due by noon Friday, September 17, 1993.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Weiss, Deputy Assistant United States Trade Representative for North American Affairs, (202) 395–3412, or William Kane, Office of the General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: On December 27, 1991, the USTR determined, pursuant to section 301(a) of the Trade Act of 1974 (Trade Act), and consistent with a report of a dispute settlement panel established under the General Agreement on Tariffs and Trade (GATT), that acts, policies or practices of Canada relating to importation and sale of U.S. beer violate the provisions of a trade agreement (GATT). 57 FR 308 (Jan. 3, 1992) The USTR also determined pursuant to section 304 of the Trade Act that action should be taken in the form of substantially increased duties on beer from Canada sufficient to offset fully the nullification or impairment of GATT rights resulting from these Canadian acts, policies or practices. Id.

In April 1992, the United States and Canada reached an Agreement in Principle, in which Canada committed in general terms to the implementation of the GATT panel report by Canadian provinces by September 1993. Negotiations then commenced to complete an agreement containing specific details regarding Canada's implementation of the panel report. Although most provinces undertook in good faith to implement the panel findings, the province of Ontario steadfastly refused. As a result, on July 24, 1992, the USTR determined to impose additional duties of 50 percent ad valorem on beer brewed or bottled in the province of Ontario. See 57 FR 33747 (July 30, 1992).

At the initiative of the USTR, negotiations with Canadian federal and provincial officials resumed in 1993. These negotiations produced an agreement that will substantially increase the opportunities for U.S. brewers to sell beer in Ontario and the other provinces. With regard to Ontario, the agreement includes provisions that: Mandate access of U.S. beer to the stores and services of Ontario's Brewers Retail Incorporated (BRI), through which the vast majority of beer in Ontario is sold; limit the fees that BRI may charge for carrying U.S. beer; reduce the Ontario minimum price to permit U.S. brewers more opportunity to compete on the basis of price; and reduce the Ontario Liquor Control Board's fees for handling U.S. beer. The agreement also includes provisions requiring Canada to: Implement the remaining terms of the Agreement in Principle by September 30, 1993 (and verify implementation); eliminate the existing 50 percent ad valorem duties on beer produced by the two section 301 petitioners Stroh and Heileman; and eliminate the duty on Canada's beer imports that originate in the United States pursuant to the U.S.-Canada Free Trade Agreement. Taken as a whole, the agreement should significantly improve opportunities for exports of U.S. beer to Ontario and other provinces.

Accordingly, the USTR has determined that the existing section 301 action should be terminated immediately. Section 307(a)(1)(A) of the Trade Act authorizes the USTR to terminate any action, subject to the specific direction, if any, of the President, if, *inter alia*, the foreign country has agreed to eliminate or phase out the offending act, policy or practice, or has agreed to an imminent solution to the burden or restriction on U.S. commerce that is satisfactory to the USTR.

Prior to taking this action, USTR consulted with the section 301 petitioners Heileman and Stroh and with representatives of other U.S. brewers with regard to modification and termination of the existing action. An opportunity for public comment prior to this action was not possible in view of the need for expeditious action. Immediate termination of the section 301 action was required so that U.S. brewers could obtain expeditiously the increased opportunities for sale of U.S. beer in Canada under the terms of the agreement, including the opportunity to sell beer in Ontario during the remaining portion of the peak summer selling period for beer.

However, interested members of the public are now invited to submit comments to USTR regarding this action. USTR will review these comments upon receipt.

Public Comments

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due no later than 12 noon, Friday, September 17, 1993. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file [Docket 301–80] open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page (on each of the 20 copies), and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket open to public inspection.

As required by the statute, the USTR will monitor the implementation of the agreement pursuant to section 306 of the Trade Act, and if, on the basis of this monitoring, the USTR considers that Canadian authorities are not

satisfactorily implementing the agreement, the USTR will determine what further action to take under section 301(a) of the Trade Act.

Modification of the Harmonized Tariff Schedule of the United States (HTSUS)

Accordingly, the HTSUS is hereby modified by deleting subheading 9903.22.03, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 5, 1993.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 93–19861 Filed 8–16–93; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 16, 1993.

Dated: August 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. CHAMPVA Claim Form, VA Form 10–7949a, and Application for Medical Benefits for Dependents or Survivors-CHAMPVA, VA Form 10–10d
2. The forms are used to determine eligibility of persons applying for medical care and in the processing of payments to those providing care under CHAMPVA (Civilian Health and Medical Program of Veterans Affairs).
3. Individuals or households—Businesses or other for-profit-Small businesses or organizations.
4. 27,467 hours.
5. 5 minutes.
6. On occasion.
7. 329,600 respondents.

[FR Doc. 93–19753 Filed 8–16–93; 8:45 am]

BILLING CODE 8320–01–M

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee, comprised of 57 national voluntary organizations, will be held at The Holiday Inn, 1355 North Harbor Drive, San Diego, California 92101–3385.

Registration of the conferees and orientation of new committee members will be held beginning at 8 a.m. on October 13, 1993. The committee will officially convene with the Opening Session at 5 p.m., October 13, 1993, and will conclude at 12 noon, October 16, 1993.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the Department's nationwide medical program.

For further information contact the Director, Voluntary Service (161A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 535–7405.

Dated: August 6, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–19754 Filed 8–16–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 157
Tuesday, August 17, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 3, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19954 Filed 8–13–93; 12:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 10, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19955 Filed 8–13–93; 12:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 17, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb. 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 93–19956 Filed 8–13–93; 12:29 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 24, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19957 Filed 8–13–93; 12:29 pm]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, August 19, 1993, 10 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: August 12, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–19984 Filed 8–13–93; 3:55 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), notice is hereby given that at 5:05 p.m. on Thursday, August 12, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to CrossLand Federal Savings Bank, New York City (Brooklyn), New York.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation: and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552B (C)(4), (C)(8), (C)(9)(a)i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 13, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–19964 Filed 8–13–93; 12:28 pm]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 39591, July 23, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, July 28, 1993.

CHANGES IN THE MEETING: The following topics were added to the agenda during the closed portion of the meeting.

- Legislative Strategy Update
- Federal Home Loan Bank of Indianapolis 1992 Incentive Compensation Award

The Board determined that agency business required its consideration of these matters on less than seven days' notice to the public; that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of these matters in a meeting open to public observation; and that these matters could be considered in the closed portion of the meeting pursuant to section 552b(c)(6) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–19980 Filed 8–13–93; 12:48 pm]

BILLING CODE 6725-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 19, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Virginia Crews Coal Co.*, Docket No. WEVA 92–246, etc. (Issues include whether the judge erred in finding that a violation of 30 CFR 75.220(a)(1) was not the result of the unwarrantable failure of Virginia Crews to comply with the safety standard.)

2. *Rhone-Poulenc of Wyoming Co.*, Docket No. WEST 92–519–M. (Issues include whether the judge erred in dismissing this civil penalty proceeding brought by the Secretary of Labor under 30 U.S.C. § 815(d) because the Secretary failed to file his proposal for penalty within 45 days of Rhone-Poulenc's notice of contest as required by 29 CFR 2700.27.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: August 11, 1993.

[FR Doc. 93–19918 Filed 8–13–93; 9:44 am]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 23, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisitions of check sorter equipment within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20014 Filed 8–13–93; 3:55 pm]

BILLING CODE 6210–01–P

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federal register

Tuesday
August 17, 1993

Part II

Department of Energy

10 CFR Part 820
Procedural Rules for DOE Nuclear Activities; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 820

Procedural Rules for DOE Nuclear Activities

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing procedural rules to be used in applying its substantive regulations and orders relating to nuclear safety. These procedural rules are intended to be an essential part of the framework through which DOE deals with its contractors, subcontractors, and suppliers to ensure its nuclear facilities are operated in a manner that protects public and worker safety and the environment. In particular, this part sets forth the procedures to implement the provisions of the Price-Anderson Amendments Act of 1988 (PAAA) which subjects DOE contractors to potential civil and criminal penalties for violations of DOE rules, regulations and orders relating to nuclear safety (DOE Nuclear Safety Requirements). DOE is also publishing its enforcement policy to inform contractors and other persons of the bases and anticipated processes for various enforcement actions.

EFFECTIVE DATE: This rule will become effective on September 16, 1993.

FOR FURTHER INFORMATION CONTACT:
Richard Black, Director, Office of Enforcement, U.S. Department of Energy, Washington, DC 20585, (301) 427–1692

or

Ben McRae or Susan Kuznick, Office of General Counsel, GC–31, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background

DOE has reassessed the continued safe operation of its nuclear facilities in light of a restructured need for weapons production and a general realization of the need for improvement in the physical and working conditions of its facilities. Consistent with this reassessment, DOE has identified and will implement many new nuclear safety requirements in rules and orders that affect the operation and management of the nuclear facilities by DOE contractors. DOE contractors consist of entities from private industry and the not-for-profit sector, including educational institutions. In order to ensure that the new set of expectations and requirements could and would be met, DOE decided to provide monetary incentives in its Management and Operating (M&O) contracts for actions consistent with or exceeding requirements and to penalize actions and activities that were not in compliance with requirements.

PAAA is consistent with this "carrot and stick" approach to contractor performance. PAAA renewed DOE's authority to indemnify contractors for public liability arising from a nuclear incident. As a condition of renewed indemnification and to ensure that contractor performance was consistent with prescribed standards, Congress also mandated a new DOE program, separate and apart from contractual award fees, to subject contractors to civil and criminal penalties for violations of DOE nuclear safety requirements.

On September 21, 1989, DOE published a Notice of Inquiry (NOI) and Request for Public Comments on Implementation of the Price-Anderson Amendments Act of 1988 Civil and Criminal Penalty Authority (54 FR 38865). The NOI proposed a framework of DOE nuclear safety enforcement which was, in part, adapted from the U.S. Nuclear Regulatory Commission's (NRC) enforcement approach and policy with respect to commercial licensees. Comments on the NOI generally addressed issues in four broad categories: (1) The applicable DOE Nuclear Safety Requirements to be enforced; (2) the effect of PAAA penalty implementation on management and operating contractors; (3) the treatment of nonprofit educational institutions; and (4) the DOE General Statement of Enforcement Policy.

After consideration of the NOI comments, DOE developed an enforcement program and policy and published a Notice of Proposed Rulemaking (NOPR) to solicit comments on the proposed 10 CFR part 820 Procedural Rules for DOE Nuclear Activities and the General Statement of Enforcement Policy (56 FR 64290, December 9, 1991). The NOPR requested written comments by February 3, 1992, (subsequently extended to March 25, 1992) and invited oral comments at a public hearing on January 13, 1992. Comments were received from 17 public sources—mostly comments from DOE contractors or their attorneys. One law firm indicated it represented five contractors in its compilation of comments.

In addition, on May 15, 1992, DOE published a clarification to its NOPR on 10 CFR part 820 to further clarify the definition of DOE Nuclear Safety Requirement (57 FR 20796). This Notice of Clarification was issued because the comments to the NOPR indicated uncertainty concerning what provisions in the CFR would be the basis for assessing civil penalties under the authority of PAAA. The Notice of Clarification provided 30 days for public comment. In response to this notice, public comments from eight contractors or their attorneys were received. The basic thrust of the comments was that further clarity was needed as to what was encompassed within the scope of DOE requirements "directly related to nuclear safety."

Copies of all written comments and a copy of the transcript of the public hearing are available for examination in the DOE Freedom of Information Reading Room, Room 1E–190, Docket No. NS–RM–91–820, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020. Particularly informative are the DOE responses to the NOI as set forth in the NOPR that discuss a wide range of substantive and procedural issues which have been raised relating to contemplated DOE enforcement authority.

The final DOE enforcement rule and policy statement adopted today has carefully considered the issues raised by the comments in response to the NOI, the NOPR, and the Notice of Clarification. Many of the comments were raised in response to the NOI and were considered in the NOPR. To the extent that DOE has not changed its position with respect to those issues, they will not be addressed here unless a further response is needed for clarity. As discussed below, many of the comments were premised on misinterpretations or a misapplication of the proposed rule. To the extent the misinterpretations were the result of a lack of clarity in the proposed rule, the discussion below should further clarify the intent, scope, and application of DOE enforcement authority. To the extent that the comments indicated uncertainty as to the implementation of part 820, the discussion below will provide more detail on how the enforcement rule will be implemented. It will also specifically delineate those rule or policy revisions that resulted from consideration of the comments, or resulted from further DOE refinement of the enforcement rule or policy.

II. DOE's Responses to Comments

The following discussion describes the issues raised in comments, provides DOE's position on the comments, and sets forth any resulting changes to the

procedural rules or the enforcement policy. DOE has also made a number of editorial, stylistic, and format changes for clarity and consistency. As a logical grouping, the comments and issues raised are divided into two groups—(1) comments received on the procedural rules in 10 CFR part 820; and (2) comments received on the General Statement of Enforcement Policy (Appendix A to part 820).

A. Procedural Comments

1. Enforcement Concepts

a. *Definition of "DOE Nuclear Safety Requirements."* The most prevalent issue raised by comments was the scope of requirements to be the subject of PAAA enforcement. This was also one of the major issues raised in the NOI and in the Notice of Clarification, and was discussed at length in those notices. The thrust of the concerns raised by the commenters is that: (a) The requirements may not be promulgated in accordance with the provisions of the Administrative Procedures Act (APA) (5 U.S.C. 551 *et seq.*) and the DOE Organization Act (DOEOA) (42 U.S.C. 7191) relating to notice and comment; (b) the requirements may go beyond "nuclear" safety and delve into areas such as "worker" or "environmental" safety not enforceable pursuant to PAAA authority; and (c) the term "nuclear safety" is so undefined and ambiguous that contractors will be required to act at their peril without a clear understanding of what actions might subject them to possible PAAA sanctions.

After carefully considering these comments, DOE has decided to retain the broad definition of "DOE Nuclear Safety Requirement", as discussed in the NOPR and the Notice of Clarification. The concerns expressed in the comments did not appear to take into account sufficiently DOE's decision in the proposal to limit as a matter of policy the subset of nuclear safety requirements that can provide a basis for a PAAA civil penalty, as described below.[1] As set forth in 10 CFR 820.20(b) (formerly, 10 CFR 820.20(d)), DOE will assess civil penalties only on the basis of a violation of (1) any DOE Nuclear Safety Requirement set forth in the Code of Federal Regulations (CFR); (2) a violation of a Compliance Order; or (3) any program or plan explicitly required by a provision of the CFR or by a Compliance Order.

All DOE Nuclear Safety Requirements set forth in the CFR will be promulgated through appropriate APA notice and comment rulemaking procedures. Compliance Orders are not "rules" within the meaning of 5 U.S.C. 551, and thus are not subject to these rulemaking procedures. The programs and plans referenced in 10 CFR 820.20(b) must be explicitly required by a provision in the CFR or a Compliance Order.

Commenters have questioned whether future DOE rules pertaining to such matters as security, personnel, record retention, and procurement might subject a contractor to PAAA enforcement if one of the requirements in those rules is violated. DOE answered that question in its Notice of Clarification. That notice specifically indicated that the requirements of proposed 10 CFR parts 830 and 835 would be enforceable DOE Nuclear Safety Requirements. This also applies to the requirements of proposed 10 CFR part 834. Likewise, substantive requirements in 10 CFR part 820, such as § 820.11 on information requirements, were identified as DOE Nuclear Safety Requirements. These requirements impose substantive duties on contractors at nuclear facilities because a failure to perform that duty could jeopardize public or worker safety or the environment.

Similarly, the Notice of Clarification indicated that certain provisions of the DOE Whistleblower Rule (10 CFR part 708, DOE Contractor Employee Protection Program) would constitute DOE Nuclear Safety Requirements if, for instance, a reprisal were found to be in response to the worker's raising or disclosing legitimate nuclear safety-related information or concerns. The intent is to impose an affirmative duty to protect worker safety at DOE nuclear facilities by subjecting chilling effect reprisals against contractor employees to PAAA enforcement. Clearly, other sanctions might be available to protect the whistleblower, such as through other DOE or Department of Labor remedial actions against the employer, or judicial actions brought under whistleblower statutes or common-law tort principles. But the safety of all workers at DOE facilities can only be protected by DOE contractors, which is the objective of an effective DOE enforcement program designed to ensure timely and complete disclosure of information that might be pertinent to safe nuclear operations.

Any deterrent to that flow of information can potentially constitute a violation of DOE Nuclear Safety Requirements as imposed through the DOE Whistleblower protection provisions. This is in accord with the NRC enforcement policy which also subjects licensees to possible enforcement action under the NRC Whistleblower regulation if they discriminate against employees raising safety issues or otherwise engaging in protected activities as established in the Energy Reorganization Act or the Atomic Energy Act. See 10 CFR 50.7.

DOE cannot specify or predetermine the universe of DOE regulations that will relate to nuclear safety because all of the nuclear activities and programmatic areas that will be subject to rulemaking are unknown at this time. Future events, operational activities or new information pertaining to DOE nuclear facilities could dictate the need for additional or expanded regulations to control or improve nuclear activities. As previously discussed, these requirements will be promulgated consistent with appropriate rulemaking procedures and, therefore, will not be imposed in an arbitrary or unfair manner.

For the most part, the commenters have narrowly construed "nuclear safety" to require a direct nexus between the regulated activity and public health and safety such that a violation of the requirement would be the immediate cause of a health or safety impact. For example, one comment urged that DOE specify as DOE Nuclear Safety Requirements only those regulations that pertain to the "control or mitigation of radiation." As we have explained, the nexus does not need to be so direct or the definition so narrow. Indeed, the nexus might be as broad as a requirement to develop, maintain, and control information or a requirement to implement a quality assurance plan that relates to nuclear activities. A violation of an information or quality assurance requirement may not result in a direct or potential immediate threat to health or safety, but it could be an important link in a sequence of activities or events that could lead to a nuclear incident or a radiological exposure. Thus, these requirements are properly DOE Nuclear Safety Requirements.

b. *Enforcement of compliance orders.* DOE proposes to assess civil penalties for violations of Compliance Orders issued pursuant to 10 CFR 820.41. See 10 CFR 820.20. Comments questioned the validity of this enforcement option because they allege it was not authorized by the PAAA and it is not consistent with APA notice and comment provisions. With respect to statutory authority, DOE was given

[1] This limitation on the types of nuclear safety requirements that may be a basis for a PAAA civil penalty does not affect any contractual obligations of a contractor to comply with a nuclear safety requirement set forth in a DOE Order or Notice.

specific PAAA authorization to penalize violations of any "order related to nuclear safety * * *". 42 U.S.C. 2282a. With respect to consistency with APA provisions, Compliance Orders are "orders" rather than "rules" within the meaning of 5 U.S.C. and therefore are not subject to notice and comment rulemaking requirements under 5 U.S.C. 553. Accordingly, their issuance is fully consistent with all relevant provisions of the APA and DOEOA.

c. *Enforcement of technical safety requirements.* Operations at DOE nuclear reactors are governed by facility-specific Technical Specifications (Tech Specs) and operations at most non-reactor nuclear facilities are governed by facility-specific Operational Safety Requirements (OSRs). Proposed subpart G of part 820 would have subjected a contractor to PAAA enforcement for nuclear safety-related noncompliances with applicable Tech Specs or OSRs. Some commenters have suggested that this subpart G enforcement provision is inconsistent with PAAA authority (not a rule, regulation or order) and APA (not issued with notice and comment opportunity).

DOE recognizes that current Tech Specs/OSRs were not developed and implemented with civil penalty enforcement sanctions in mind and many are not consistent with current standards in scope, form, content, and quality. In addition, many of the current Tech Specs/OSRs contain conditions that may not be pertinent to safe operation or may be inconsistent with other conditions. Because of these and other considerations, DOE has decided as a matter of policy that DOE and contractor resources would be best utilized and nuclear safety would be better improved by revising current Tech Specs/OSRs to meet the requirements that will be imposed by proposed § 830.320. Accordingly, it is deleting subpart G from part 820. At the same time, DOE is reemphasizing the need for contractors to remedy the deficiencies in current Tech Specs/OSRs through revisions prior to the adoption of proposed § 830.320 which will require the development and DOE approval of new facility-specific TSRs. When proposed § 830.320 is fully implemented, DOE will vigorously pursue enforcement actions against any violations of its requirements concerning TSRs because these operational limits truly provide essential margins of safety at nuclear facilities. Since proposed § 830.320 will constitute a DOE Nuclear Safety Requirement, contractors will be subject to PAAA enforcement for violations of TSRs required by proposed § 830.320.

d. *Enforcement of a program or plan required to Implement a CFR Regulation or a Compliance Order.* Proposed 10 CFR 820.20(d)(3) indicated that violations of any program, plan, or other provision required to implement a DOE regulation or Compliance Order might be subject to PAAA civil penalties. Comments stated that such action is illegal under the APA and DOEOA. DOE does not agree with these comments since the requirement to develop and implement a program or plan will be in fulfillment of an explicit provision in a regulation or Compliance Order properly promulgated. These program or plan provisions will be binding on appropriate contractor activities and will be subject to compliance evaluations and corrective actions. Noncompliances or deficiencies with respect to a program or plan required by a DOE Nuclear Safety Requirement identified in § 820.20(b) (i.e., a regulatory or Compliance Order requirement) will be a violation of the underlying requirement and provide a basis for a PAAA civil penalty.

The identification of regulatory and Compliance Order requirements in § 820.20(b) provides a basis to assess civil penalties for violations of program or plan provisions required to implement these requirements. Thus, non-compliance with such a program or plan would be a violation of a nuclear safety requirement even if not specified in § 820.20(b). However, to fairly apprise persons subject to civil penalties of the binding nature of program or plan provisions required to implement regulatory or Compliance Order requirements, DOE has retained the reference to programs and plans in § 820.20(b).

Finally, proposed § 820.20(d) has been redesignated so that it is now § 820.20(b). This was a stylistic revision to indicate a preference for defining the "basis" for the assessment of civil penalties before defining the "exemptions" from the assessment of civil penalties instead of vice-versa.

e. *Definition of contractor.* The rule has been amended to add a definition of "contractor" so that it is clear that the term will encompass subcontractors and suppliers of indemnified contractors for purposes of PAAA enforcement. This definition is consistent with section 274A of the PAAA (42 U.S.C. 2282a) incorporated as section 234A of the AEA.

f. *Definition of person.* Several comments were directed to the comprehensive definition of any "person" subject to DOE Nuclear Safety Requirements and enforcement actions as a result of being involved in DOE nuclear activities. These comments questioned the legality of holding contractors responsible for violations committed by persons not in a contractual relationship with DOE, such as subcontractors or suppliers to contractors. Another comment noted that a parent corporation legally cannot be responsible for violations and penalties assessed against a subsidiary.

DOE considered and discussed some of these contractual and legal issues in the NOPR. The NOPR indicated that the definition of "person" in 10 CFR 820.2 was the same definition as in the Atomic Energy Act of 1954 (AEA) (42 U.S.C. 2011 *et seq.*) which is a statutory authority for DOE activities. This all-encompassing definition ensures all entities that may be DOE contractors (e.g., corporations, partnerships, sole proprietorships, institutions, etc.) are subject to the provisions of part 820. Furthermore, the PAAA grant of DOE enforcement authority is independent of contractual relationships and the PAAA specifically authorized civil penalties to be assessed against suppliers and subcontractors of DOE contractors. See 42 U.S.C. 2282a. In addition, DOE indicated in the NOPR that affiliated entities, such as parent corporations, would be responsible for any penalty assessed against the contractor.

Although the DOE General Statement of Enforcement Policy in appendix A to part 820 states that contractors, subcontractors, and suppliers shall be subject to civil penalties as a result of violations of DOE Nuclear Safety Requirements, the procedural rules in part 820 have been revised to also reflect this PAAA authorization of civil penalty assessment authority. Section 820.20(b) (formerly, § 820.20(d)) has been revised to make clear that, in accordance with section 234A of the AEA, civil penalties may be assessed against any "person" that is a contractor indemnified under the AEA (including its subcontractors and suppliers) not otherwise exempted from the assessment of civil penalties.

Furthermore, consistent with the NOPR, the definition of "person" in § 820.2 has been revised to reflect that affiliated entities, such as a parent corporation, may be responsible for any penalty assessed against the contractor. DOE believes the primary focus of its enforcement process should be the actual entity that conducts or is primarily responsible for a DOE activity. Therefore, DOE endeavors to ensure these entities are financially responsible. In accordance with the authority granted the Secretary under

AEA Sec. 170 d(2) (42 U.S.C. 2209), indemnification policies and agreements will be reviewed and revised, as appropriate, to provide and maintain financial protection of such a type and in such amounts as shall be determined to cover public liability arising out of or in connection with the contractual activity. Independent subsidiaries will be required to maintain adequate financial protection for their activities. Various means exist to provide the requisite financial protection including the posting of a surety bond or a guarantee by a parent.

One comment questioned the wisdom of letting any "person" request the initiation of an investigation (10 CFR 820.21(b)) since this would allow foreign governments or any political subdivision of such government to request an investigation of a DOE nuclear activity. DOE does not believe it is prudent to preclude any nuclear safety investigation that is based on a reasonably credible source merely because the source may have reasons other than public health and safety as the motive. Sufficient investigative and evidentiary safeguards exist to assure that confidential or classified information is not disclosed and the rights of all persons are protected. See 10 CFR 820.12. Thus, except as clarified above, the concerns of commenters on the definition of a person are found to be without merit.

g. *Definition of nuclear incident.* Several comments suggested that the term "nuclear incident" be defined in order to ensure consistency with the required response to incidents involving radioactive materials. *See e.g.*, AEA Sec. 11 q. (42 U.S.C. 2014 q.). One comment questioned whether mixed waste incidents would be considered a nuclear incident for purposes of part 820. DOE has concluded that it is not necessary to define "nuclear incident" in part 820 because enforcement is dependent on violations of defined DOE Nuclear Safety Requirements rather than the occurrence of a "nuclear incident". To the extent the term "nuclear incident" must be defined for purposes of part 820, it will have the same meaning as in the Act. See 10 CFR 820.2(b). In sum, a definition of "nuclear incident" is not required under part 820.

h. *Definition of DOE official.* One comment expressed confusion regarding who may be a DOE Official for purposes of actions required under part 820. DOE Officials could include the Director of Enforcement for PAAA investigation and enforcement decisions; the General Counsel for an interpretation of a requirement; the appropriate Secretarial Officer for an exemption; the Deputy Assistant Secretary for Naval Reactors for activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note; and the Presiding Officer for an enforcement adjudication decision.

i. *Definition of director.* The proposed definition of Director referred to the Director of the Office of Nuclear Safety. As a result of internal reorganization since the issuance of the proposal, this reference is no longer accurate. The definition has been revised to refer to the DOE Official to whom the Secretary has assigned the authority to issue Notices of Violation under subpart B of part 820.

2. DOE Enforcement Process

a. *NRC as model.* Comments to both the NOI and the NOPR questioned whether the NRC enforcement program should be used as the model for the DOE enforcement program because of the difference between NRC licensees and DOE contractors. It is argued that DOE contractors have no economic incentive to violate requirements whereas NRC licensees may have an incentive to violate requirements or license conditions in order to keep their facilities in operation and producing income. Extending the argument, commenters assert that DOE contractors will not violate requirements with the same degree of willfulness as would a violator with a financial incentive. In short, the thrust of the comments is that the DOE liability and penalty provisions and policy should be more lenient than NRC's.

DOE considered and responded to this issue in the NOPR. The NOPR indicated that Congress enacted the PAAA penalty provisions to provide additional safety incentives for DOE contractors. DOE generally adopted the NRC system so that it could consider the unique circumstances that might be present in the DOE contractor system and mitigate or escalate the base penalty as appropriate. The differences between NRC licensee and DOE contractor situations have been recognized. DOE believes that flexibility in the enforcement policy will allow it to consider all relevant factors that may have a bearing on the circumstances of a violation. Further, DOE questions the underlying premise to the claim that there is never a financial incentive to operate facilities at variance with applicable DOE Nuclear Safety Requirements. For example, award fee production objectives may provide sufficient incentive to operate in a noncompliance condition in order to meet production goals.

b. *DOE enforcement program and policy.* The proposed DOE enforcement program and policy were discussed at length in the NOPR in response to NOI comments. Several comments have been offered to improve the process. One comment suggested that DOE should provide alternate dispute resolution and encourage the use of settlement conferences to avoid protracted litigation on contested violations or to settle uncontested issues. DOE agrees with this comment. That is why an informal enforcement conference may be provided prior to issuance of a Preliminary Notice of Violation (10 CFR 820.22), settlement conferences are encouraged at any time during the enforcement process (10 CFR 820.23(a)), and a mechanism exists for Consent Orders (10 CFR 820.23(b)). However, one comment stated that it was unlawful and inappropriate to "compel" attendance at an informal conference. DOE believes that not only is it lawful to compel attendance by subpoena of any person who may have violated a DOE Nuclear Safety Requirement, but it would be in that person's best interests to attend to present facts which might have a crucial bearing on the enforcement investigation or the consideration of an appropriate penalty.

More importantly, DOE may want to compel attendance at an informal conference of persons who may have significant information concerning the alleged violation and who may only produce that information under the power of a subpoena. In this regard, one comment requested that such information produced at an informal conference be considered confidential. DOE notes that these informal conferences are predecisional. They will not normally be open to the public and there will be no transcript. See 10 CFR 820.22. While minutes of the conference will be written and maintained by DOE, proper requests for confidentiality or privilege will be considered and granted if appropriate.

It has been suggested that DOE PAAA enforcement should only be used for extraordinary or egregious occurrences. While the comment did not expound on this suggestion, DOE believes it has its roots in the same concerns that led to a number of NOI comments. That is, DOE should recognize its supervisory responsibility at DOE facilities; DOE should recognize the contractor funding limitations for needed improvements at these facilities; DOE should recognize its role in creating the noncompliance situation; DOE should recognize that contractors might not be in sufficient control of a situation or have proper knowledge of applicable requirements; and DOE, as mandated by the PAAA, should take into account the "ability to

pay" and the "effect on ability to continue to do business" in determining the amount of any civil penalty. As indicated in the NOPR, DOE has considered all of these concerns in its adoption of the General Statement of Enforcement Policy. The DOE enforcement policy has sufficient flexibility to permit DOE to be firm but fair in the exercise of its authority so that all relevant mitigation factors are considered. DOE's consideration of these matters in the enforcement deliberative process is a compelling reason why the contractor should attend the informal conference.

A number of comments were submitted with respect to PAAA enforcement remedies. Several comments urged sanctions other than civil or criminal penalties for lesser violations—e.g., warning letters, contract penalties. The DOE enforcement process does, however, provide alternative resolution mechanisms. DOE can terminate investigations, enter into Consent Orders which might prescribe other appropriate remedies and corrective actions, and issue Compliance Orders to mandate appropriate remedies for existing or potential violations. In addition, the DOE enforcement policy permits DOE to refrain from issuing a Notice of Violation or a civil penalty in the exercise of its discretion. See part 820 appendix VIII.D. In appropriate minor and isolated occurrences, DOE will use its discretion to refrain from issuing Notices of Violation and treat the violation as a "noncompliance" which will be identified, evaluated, and tracked to determine generic or specific compliance problems. These alternatives provide a positive response to commenters on this issue since it is clear that to provide only contract remedies for violations would be inconsistent with the PAAA authority granted by Congress.

An available remedy in the DOE enforcement process is the "modification, suspension, or recision of a contract". See 10 CFR 820.2. One comment stated that this remedy was not authorized by PAAA. While it is correct that PAAA subjected contractors to civil penalties for violations of DOE Nuclear Safety Requirements, the Secretary has independent power under the AEA and the DOE Act to authorize contract sanctions such as modification or termination. Thus, these sanctions may be incorporated in an enforcement action if properly authorized by the Secretary.

Other comments were directed at ways to improve the DOE enforcement program which were outside the rule or the policy, such as (1) ensure proper training of investigators, (2) establish a program to disseminate information of violations to all contractors, and (3) provide internal procedures to ensure enforcement consistency. DOE appreciates these comments and will encourage suggestions for improvements at all times. The above comments will be duly considered in the establishment of the DOE enforcement program. The processes and procedures of the DOE enforcement program will be set forth in the DOE Enforcement Manual. This Manual will be available to the public and DOE encourages suggestions to improve these processes for enforcement.

c. *Information requirements.* Section 820.11 imposes requirements on persons required to provide information to or maintain information for DOE—i.e., the information must be complete and accurate in all material respects; and the information pertaining to a violation of a DOE Nuclear Safety Requirement, a Nuclear Statute, or the AEA must not be concealed or destroyed. Several comments were raised regarding the parameters of these requirements.

Comments suggested that DOE should adopt a due diligence standard regarding the completeness and accuracy of information that might be reviewed or inspected by DOE. The thrust of this comment is that, despite the best efforts of a contractor to develop and maintain complete and accurate information in, for instance, design basis documentation, that information may not be adequately controlled due to the passage of time and changes to structures, systems, and components.

The short answer to this comment is that information required by DOE to be developed and maintained because of its safety significance will be required to be controlled despite revisions to the activities over time which are the subject of the information. Requirements on design basis, safety analyses, and other safety significant information will be established by DOE and will address the type, quantity, and time requirements of information that must be controlled. Any violation of these information requirements will subject the violator to PAAA civil penalties. Circumstances concerning the type, quantity, timing, control procedures, etc., relating to the information will be factors to be considered in the assessment and adjustment of a civil penalty.

For example, if initially inaccurate or incomplete information is corrected before detection of or reliance on that information by DOE and a full factual accounting is made, enforcement action will not normally be taken. DOE's emphasis will be on the prompt identification and correction of inaccurate/incomplete information by contractors. Similarly, if initially accurate information is later rendered inaccurate/incomplete by subsequent events, such as newly discovered information or technology advances, an enforcement action normally will not be taken if the outdated information is identified and corrected in a timely manner by the contractor. On the other hand, if DOE discovers or relies on the outdated information before it is corrected, an enforcement action normally will be taken. In short, a contractor has an affirmative duty to update and maintain all information that is pertinent to nuclear safety.

The circumstances surrounding a failure to correct will be considered in the determination of the appropriate enforcement action or penalty. Circumstances which may be considered include: Significance of misinformation, opportunity and means to detect, timeliness of detection and correction, controls on development and maintenance of information, and other incidents of misinformation. In sum, violations for failure to develop, maintain, or provide required information will be considered on a case-by-case basis taking into account the facts and circumstances of the violation. DOE will reasonably enforce these violations to ensure that contractors have implemented effective processes to adequately develop, maintain, and control information that is significant to the safe conduct of their nuclear activities.

d. *Special report orders.* Any DOE Official, as defined above, may issue a Special Report Order (SRO). The SRO would require any person involved in a nuclear activity or otherwise subject to the jurisdiction of DOE to file a special report providing information relating to a DOE Nuclear Safety Requirement, the AEA, or a Nuclear Statute. See 10 CFR 820.8(b). One comment questioned DOE's authority to issue SROs which are required to be enforced pursuant to a United States District Court order per 820.8(g).

The authority for DOE to issue SROs is found in the General Authority provisions of the AEA. In Sec. 161(c), DOE is authorized to "make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this Act, or in the administration or

enforcement of this Act, or any regulations or orders issued thereunder. For such purposes, the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify or appear and produce documents, or both, at any designated place." 42 U.S.C. 2201(c). The authority in Sec. 161 has been generally granted to DOE pursuant to Sec. 104(h) of the Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*), and Sec. 301 of the DOEOA. See also Senate Report No. 93–980, 93d Cong., 2d Sess., 82–85 (1974). Sec. 642 of the DOEOA also authorizes the Secretary, in the absence of an express prohibition, to delegate functions to DOE officers and employees and to authorize "such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate."

3. Regulatory Exemptions/ Interpretations

a. *Exemptions from DOE nuclear safety requirements.* Processes for exemption relief from DOE Nuclear Safety Requirements are set forth in subpart E to part 820. It provides criteria and procedures for exemptions which are to be considered and granted if appropriate by the Secretarial Officer who is primarily responsible for the activity from which relief is requested. If relief is requested by a nuclear entity from provisions of proposed 10 CFR parts 834 or 835, the exemption must be considered and granted if appropriate by the Assistant Secretary for Environment, Safety and Health.

A few of the criteria have been clarified in the final subpart E. These clarifications provide more detail on the special circumstances that may be considered by the Secretarial Officer when making exemption determinations. For example, § 820.62(d) has been revised to provide temporary relief from the application of specified DOE Nuclear Safety Requirements when it can be demonstrated that special circumstances exist (e.g., a piece of redundant equipment breaks down and operational status is needed to comply with technical specifications) and the contractor is taking good faith actions to achieve compliance (e.g., the part has been ordered expeditiously). However, temporary relief can only be granted by the Secretarial Officer when all the criteria of 820.62 have been demonstrated—i.e., (a) authorized by law, (b) no undue risk to human health or safety, (c) consistent with safe operation of the facility, and (d) special circumstances exist.

Several comments faulted the exemption criteria, maintaining it does not provide relief in circumstances where scheduling, DOE funding, or other DOE activities contributed to the noncompliance condition. The exemption relief is either granted or denied based on considerations of: (1) Whether the relief would be authorized by law; (2) whether the relief would present an undue risk to human health or safety; (3) whether the relief would result in a condition that is consistent with the safe operation of a nuclear facility; and (4) whether other specified special circumstances exist to grant the relief. While time, money, and DOE contributions may be factors in the exemption considerations, the overall exemption must be consistent with and based on the factors in § 820.62. The Secretarial Officer must also utilize any procedures deemed necessary and appropriate to administratively process and consider the exemption.

By issuing DOE Nuclear Safety Requirements through the rulemaking process, DOE is sending a strong message that it believes these requirements are important to nuclear safety and that exemptions should only be granted if they do not unduly jeopardize health and safety. Factors of time and money are secondary considerations after it has been determined that the relief is authorized by law and the exemption would not compromise health or safety.

However, DOE recognizes that, in some cases, it may be necessary to phase-in full compliance with certain requirements. For that reason, several requirements in proposed 10 CFR parts 830 and 835 provide expressly for implementation plans to be submitted by contractors and approved by DOE. Where there is no express provision for an implementation plan, it may be necessary to seek an exemption for phasing-in compliance. Subpart E has been revised to provide in § 820.65 that DOE has the discretion to make an expedited exemption determination for implementation plans reasonably demonstrating that full compliance will be achieved within two years. The exemption process is expedited by eliminating the requirement to determine that special circumstances exist. Any implementation plan indicating that full compliance with specified requirements will not be achieved within two years must seek an exemption to those requirements pursuant to the regular exemption process (that is, special circumstances must be demonstrated).

One comment stated that a denial of an exemption request should be based on valid scientific evidence and not be based merely on the discretion of the Secretarial Officer. DOE concludes that the requirement that the exemption decision: (1) Be in writing, (2) set forth the reasons for the decision, and (3) be filed with the Office of the Docketing Clerk will provide sufficient safeguards against arbitrary decisionmaking.

It was also suggested that subpart E provide an appeal procedure from adverse exemption decisions by the Secretarial Officers. The rule has been revised to provide an appeal to the Secretary from exemption decisions by a Secretarial Officer. See 10 CFR 820.66. Accordingly, the final rule provides that within fifteen (15) days of the filing of an exemption decision by a Secretarial Officer, the person requesting the exemption may file a Request to Review with the Secretary, or the Secretary may decide, *sua sponte*, to review. If no Request to Review is filed or the Secretary does not decide to review *sua sponte* within 15 days, the exemption decision becomes a Final Order. If action is taken to review, the Secretary shall have thirty (30) days (unless extended in writing) to review the exemption decision and any requested relief. If the Secretary takes no action, then the decision becomes a Final Order at the end of the 30 day period. If the Secretary takes action, then the Secretary's decision will constitute a Final Order when it is filed.

b. *Interpretations of DOE nuclear safety requirements.* Pursuant to subpart D part 820, the General Counsel is responsible for formulating and issuing any interpretation concerning the AEA, a Nuclear Statute, or DOE Nuclear Safety Requirements and all interpretations must be filed with the Office of the Docketing Clerk. Most comments on this procedural mechanism concerned the adequacy of this interpretation process in terms of consistency, technical adequacy, finality, and continuing validity.

DOE believes that consistency of interpretations is ensured by having the General Counsel develop and issue the interpretation. A federal agency's legal office is normally the organization responsible for issuing opinions on or interpretations of legal requirements applicable to or promulgated by that agency. This helps assure consistency and legal accuracy. Filing the interpretations in an appropriate docket file in the Office of the Docketing Clerk also assures consistency by having a central, accessible, and lasting repository for the interpretations. This file will be open to contractors and the

public except for classified or privileged opinions.

The General Counsel will not formulate or issue interpretations on technical matters without appropriate technical input from DOE Field or Headquarters personnel. Section 820.52 permits the General Counsel to utilize any procedure which is appropriate to comply with these responsibilities. A requirement mandating that the General Counsel utilize appropriate technical resources, as one comment urged, is not considered necessary as DOE concurrences on technical matters are a normal internal function for adequacy, accuracy, and consistency. These normal internal reviews are DOE administrative functions that do not need to be prescribed by regulatory requirements.

Finally, one comment urged a process to review and validate past interpretations. The validation of past interpretations will be a continual process through the issuance of interpretations, the development and implementation of new or revised regulations, and the request for new interpretations based on changed conditions. These processes are sufficient to assure the continued validity of past interpretations.

4. Enforcement Adjudication

a. *Notices of violation.* A PAAA enforcement adjudication begins when DOE issues a Preliminary Notice of Violation and a reply is filed pursuant to the provisions of 10 CFR 820.24. After reviewing the reply, DOE may issue a Final Notice of Violation which, if contested, initiates an enforcement hearing process. See 10 CFR 820.25, 820.26. It is noted that in the proposed rule, this hearing process was termed a "PAAA adjudication." In the final rule, this hearing process is called an "enforcement adjudication" since the term is more generally understood in legal nomenclature.

One comment suggested that the procedures for the issuance of preliminary and final notices of violation be combined and that a single Notice of Violation be issued. However, three things are accomplished by the issuance of a Preliminary Notice of Violation (PNOV). First, the respondent may terminate the enforcement action by agreeing to comply with the proposed remedy and waiving any right to contest the notice or the remedy prior to issuance of a Final Notice of Violation. Second, DOE may terminate the enforcement action upon consideration of the reply to the PNOV. Third, the PNOV provides a vehicle for settlement conferences to be held at any time which may facilitate resolution of some or all of the matters in controversy. These could be substantial accomplishments served by the PNOV.

Another comment noted that the provisions for the issuance of Notices of Violation did not set forth requirements as to what should be specified in the notices—i.e., what nuclear safety or statutory requirements were violated and the facts surrounding the violation. DOE agrees that the alleged violator should be provided sufficient facts in the notice in order to effectively reply or consider the other available options. That is why the definition of "Preliminary Notice of Violation" and "Final Notice of Violation" in § 820.2(a) specified the facts that were required in the notices. Both §§ 820.24 and 820.25 have been clarified to ensure that proper information similar to § 820.2(a) is specified in the notices of violation.

One comment stated that Notices of Violation should disclose the federal court action that is required by 42 U.S.C. 2282a(c)(3) for DOE to obtain an order of judgment for an unpaid assessment. DOE does not believe it is appropriate or required to inform the respondent that if it elects to waive further legal proceedings and the civil penalty is assessed but not paid, further federal court judicial review is required when DOE seeks judicial authority to enforce the assessment.

Judicial review of final administrative decisions is always available by law (5 U.S.C. 702) and usually is provided in individual statutes. PAAA provides this right, and DOE recognizes this right of judicial review in 10 CFR 820.25(b)(2). If the Final Notice of Violation contains a civil penalty, it will request that the respondent elect: (1) To waive further proceedings; (2) to request an on-the-record adjudication; or (3) to notify DOE of the intent to seek judicial review. Accordingly, the elections available to the respondent in the Final Notice of Violation are fully consistent with APA and PAAA provisions.

As originally proposed, replies to notices of violation were required to be filed within 15 days. One comment complained that this was insufficient time to file a reply, particularly if the enforcement matter is technical and complex. DOE agrees that 15 days is insufficient to respond to notices of violation because the reply must respond to the factual and legal issues raised in the notice. Accordingly, the time limit for reply in 10 CFR 820.24(b) and 820.25(b) has been changed to 30 days. Since the respondent should have been apprised of the facts surrounding the notice by reason of the investigation and the informal conference, 30 days should be sufficient in almost all cases. If more time is needed because of the complexity or new issues, the respondent could request an extension from the Director upon good cause shown.

An election to initiate an on-the-record adjudication is only available if the Final Notice of Violation contains a civil penalty. One comment indicated that an enforcement adjudication should also be available if the notice did not contain a civil penalty because the adverse implications of even a minor violation might impact contract award fees. As a legal matter, however, the PAAA authorized on-the-record adjudication only when civil penalties were assessed. See AEA Sec. 234A. As a practical matter, it is unlikely that a minor violation without a civil penalty assessed could affect contract award fees to such an extent that a contractor would be willing to engage in protracted litigation in a attempt to vindicate its position. In order to conserve scarce DOE and judicial resources, Congress did not authorize adjudication under these circumstances. Thus, an on-the-record enforcement adjudication is only available as a remedy option if civil penalties are assessed.

In the same vein, one comment suggested that nonprofit and educational contractors exempt from civil penalties in accordance with 10 CFR 820.20(b), should also have the right to an enforcement adjudication because they might be subject to criminal penalties. Notwithstanding the fact that exempt contractors do not have a right to an enforcement adjudication, they will have a right to trial and the other rights accorded defendants in the criminal justice system if and when they become subject to criminal sanctions. Their right to appropriately answer and defend the charges against them is thus fully protected.

Another comment stated that the right to an enforcement adjudication should be expanded to include those persons who are not respondents to a Notice of Violation but might be required to take or refrain from required actions pursuant to a Consent Order or any other settlement of an enforcement matter. This might include suppliers or subcontractors who might be affected by the actions required to resolve a violation of a contractor. While DOE recognizes that these persons might be affected by actions required to resolve contractor violations, their remedy lies not in the DOE enforcement process but in contract terms and conditions that address disputes or changed conditions. If a supplier or subcontractor commits a violation of a DOE Nuclear Safety

Requirement and becomes subject to a PAAA civil penalty, as discussed above, then it will have the right to an enforcement adjudication. Similarly, if a person could be liable for payment of part or all of the penalty assessed against the respondent, then it could petition the Presiding Officer to intervene as a party in the enforcement adjudication. See 10 CFR 820.37(a).

b. *Prehearing procedures.* If a respondent files a request for an on-the-record adjudication, an enforcement adjudication is initiated and an administrative law judge is appointed to preside. Section 820.27 requires the respondent must also file a written answer to the Final Notice of Violation. As originally proposed, the answer was due at the same time the request was filed—that is, within 15 days of the Final Notice of Violation. Several comments indicated that this was insufficient time to file an answer. DOE agrees that further time should be allowed. Since § 820.25(b) has been revised to provide 30 days for an election to be filed requesting an enforcement adjudication, this will effectively revise § 820.27(a) to provide 30 days for an answer to be filed responding to the Final Notice of Violation.

Once an answer has been filed, the Presiding Officer will establish a schedule and direct the parties to appear at a prehearing conference. Discovery beyond the exchange of witness lists and documents, including oral depositions, may be permitted by the Presiding Officer based on a consideration of the factors set forth in 10 CFR 820.28(f). One comment interpreted this provision as precluding discovery against DOE. This interpretation is incorrect. A full range of discovery will be available against DOE upon a proper showing to the Presiding Officer.

c. *Ex parte discussions/separation of functions.* Once a respondent has requested an enforcement adjudication, *ex parte* and separation of function requirements preclude discussions about the merits of the case between the Presiding Officer (the DOE Official responsible for adjudication decisionmaking) and any party to the proceeding, including any DOE staff member who performs an investigative or prosecutorial function in that specific proceeding or any factually related proceeding. See 10 CFR 820.35 and 820.3. One comment suggested that the distinction between the time an on-the-record enforcement adjudication is "requested" in § 820.3(a) and the time an adjudication is "commenced" in § 820.3(b) should be clarified. DOE agrees that this distinction could be confusing and thus has revised § 820.3(b) to reflect the *ex parte* prohibition against the Director once an adjudication has been "requested".

d. *Evidentiary matters during investigation or hearing.* Part 820.8 allows a DOE Official to obtain information or evidence for the full and complete investigation of any matter related to a DOE nuclear activity and, in particular, to determine compliance with applicable DOE Nuclear Safety Requirements. This section has been clarified to indicate that the taking of information or evidence by DOE Officials is not limited to only those matters that will result in enforcement actions. For example, DOE Officials have the authority to subpoena documents to obtain information to support exemption or interpretation decisions requested pursuant to the provisions of subparts D or E.

Section 820.8(j) is discretionary in terms of whether subpoenaed statements or testimony during an investigation will be recorded. One comment suggested that all testimony compelled by subpoena during an enforcement investigation should be recorded and that the witness should be provided with the transcript. The purpose of discretionary recording is that during an investigation it might be more effective to gather factual information by an informal interrogation. Certain witnesses feel more inclined to give complete and accurate information if their statements are not under oath and/or recorded. Other witnesses may have no personal knowledge of factual matters but may identify others who do have knowledge. Such interviews are brief and need not be recorded to preserve the information. It is therefore unduly costly and cumbersome to hamper the investigative process in the manner proposed. It is thus appropriate to give the DOE Official discretion in the DOE fact-finding mission. If witness' statements are to be used at an enforcement adjudication, they must be in writing and verified by the witness. When placed into evidence, these statements would be subject to cross-examination and thus all defendants' rights will be adequately protected.

In this regard, 10 CFR 820.8 has been clarified to indicate the distinction between statements of a potential witness and testimony of an actual witness. Factual statements made during investigations do not need to be recorded. But if those statements are to be used as evidence during an enforcement adjudication, they need to be in writing and verified, submitted as prefiled testimony, affirmed under oath, and subjected to cross-examination, all in accordance with the provisions of § 820.29(c).

Pursuant to 10 CFR 820.8(k), witnesses giving statements during investigations or testimony during hearings can be sequestered during examination. One comment raised a due process argument that all parties should have the right of cross-examination of the sequestered witness. However, the purpose of sequestration is to exclude other witnesses and their attorneys from the examination to preclude possible collaboration on the factual issues or otherwise impair the integrity of the inquiry. During an investigation there is no right of cross-examination of potential witnesses giving statements. During an enforcement adjudication hearing, there would normally be only two parties—DOE and the contractor. No party would be excluded from cross-examination of witnesses' testimony under these circumstances.

In addition, since witnesses' testimony is prefiled, all witnesses know in advance the basic positions to be taken by other witnesses. Accordingly, the value of sequestration during presentation of a case-in-chief is minimal and should only be granted by the Presiding Officer when a clear need arises and a convincing case is made by one of the parties that sequestration is needed to develop a full and complete record. For example, DOE may request sequestration of defense witnesses if additional facts are disclosed after the testimony has been filed that relate to the alleged violation and DOE wants to question each witness about those newly-discovered facts. In this situation, sequestration would allow DOE to question each witness about those facts without fear that other testimony might taint or detract from the objectivity of that witnesses' testimony. Similarly, intervening facts may have a crucial bearing on a contractor's case and it might request sequestration of prosecution witnesses to preclude collaboration on or prejudice of those factual matters.

As indicated in 10 CFR 820.29(a), hearings will be conducted in accordance with the Federal Rules of Evidence. Consistent with normal practice in administrative hearings, the Presiding Officer will have broad discretion to admit relevant and material evidence. Comments requested clarification or amplification regarding the rules of evidence and the examination of witnesses. One comment questioned whether the prohibition of "direct oral testimony" except as permitted by the Presiding Officer (see

10 CFR 820.29(c)) should apply to oral rebuttal testimony. The evidentiary procedures established by part 820 recognize that in complex and technical adjudications all parties should be fairly apprised of the evidence supporting and rebutting their respective positions on the issues. There should be no evidentiary "surprises" and prefiled direct testimony and verified witness statements should facilitate the fair and expeditious resolution of the issues. However, the general prohibition against oral direct testimony does not apply to rebuttal testimony which the Presiding Officer may allow as a result of the cross-examination of a witness. Oral rebuttal testimony would be allowed in circumstances where cross-examination of a witness reveals a statement of fact or opinion that was not disclosed in a prior statement and fairness requires a chance to present rebutting testimony through a "live" witness.

Section 820.29(d) states that each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence. One comment suggested that DOE should have the burden of proving violations by "clear and convincing" evidence. However, that standard of proof is not appropriate for administrative determinations. It is well settled that generally an agency must prove its case by a preponderance of the evidence and need not meet the additional burden of the standard of clear and convincing evidence. *Steadman* v. *SEC*, 450 U.S. 91 (1981).

B. Enforcement Policy Comments

1. Purpose of Enforcement Policy

Many comments were received regarding the overall fairness of the DOE enforcement policy and the need to ensure a consistent and equitable enforcement process. These comments were centered on a concern that DOE's enforcement authority might be more focused on implementation of punitive sanctions rather than the reasonable exercise of discretion and restraint based on the unique factual circumstances of the violation.

It is clear that DOE does not intend to exercise its enforcement discretion in a heavy handed and unreasonable manner. The General Statement of Enforcement Policy (Appendix A to this part) specifically states that the purpose of the DOE enforcement program is to promote and protect health and safety at DOE facilities by providing positive incentives for a DOE contractor to promptly identify, assess, report, and correct nuclear safety deficiencies. DOE is confident that, in most circumstances, these positive incentives will help ensure compliance, deter possible future violations, and encourage the continuous overall improvement of operations at DOE nuclear facilities. DOE wants to emphatically restate and reinforce that enforcement objective with this publication of the final enforcement policy.

The DOE goal in the compliance arena is to enhance and protect the radiological health and safety of the public and workers at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks not only to attain compliance with DOE nuclear safety requirements but to sustain it. The DOE enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of noncompliances, and the initiation of comprehensive corrective actions to resolve both the noncompliance conditions and the program or process deficiencies that led to the noncompliance.

In the development of the DOE enforcement policy, DOE recognized that the reasonable exercise of its enforcement authority would reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliances. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. The effectiveness of these contractor initiatives and activities will be given significant weight in exercising enforcement discretion.

The PAAA provides DOE with the discretionary authority to compromise, modify, or remit civil penalties with or without conditions. In implementing the PAAA, DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action and proposing any penalty. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to nuclear facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements. DOE is confident that the reasonable exercise of enforcement authority, coupled with the appropriate application of safety requirements to nuclear facilities, will help assure a proper and continuing level of safety vigilance and result in a sound enforcement program.

These concepts of a sound and viable enforcement program have been restated in the Introduction and Purpose sections of the final statement of enforcement policy. Those sections have been revised to reflect DOE's renewed emphasis on safety and an enforcement program that has been developed and will be implemented with objectives to achieve safety inquisitiveness and a way of operations that stresses voluntary compliance with applicable safety requirements. Voluntary compliance through effective contractor initiatives and activities is a cornerstone of the DOE enforcement program.

As indicated, DOE will consider contractor voluntary compliance initiatives and activities, including whether any DOE actions had implications on the effectiveness of those activities, in the exercise of enforcement authority. Contrary to concerns stated in several comments, the discretionary aspects of DOE enforcement authority is properly set forth in the policy statement rather than being incorporated into a substantive or procedural rule. The ability to compromise, modify, or remit civil penalties reflects DOE's intent to exercise discretionary enforcement functions based on the consideration of the voluntary compliance initiatives and activities noted above and stated in the enforcement policy. In order to meet its statutory mandate, flexibility in the enforcement of safety requirements must be maintained. However, the public has the right to be informed of and guided by the types of considerations DOE will utilize when making its enforcement determinations and the policy statement usefully serves this role. DOE will consider future revisions to the policy based on the success of the compliance assurance programs implemented by DOE contractors.

2. Application of DOE Nuclear Safety Requirements to Nuclear Facilities

DOE recognizes that the scope of and potential hazard from DOE nuclear activities may vary significantly among categories of facilities. This wide variance in activities at nuclear facilities has caused uncertainty regarding whether those activities will be subject to all or only part of (or exempt from) the DOE Nuclear Safety Requirements when they are implemented in the CFR. DOE believes that while regulatory requirements are generally applicably they should be enforced at each category

of facility in a manner that is commensurate with the health and safety potential hazard from the nuclear activities conducted therein. For example, Table 1A in appendix A to part 820 reflects this graded approach to facility classification and allows DOE to apply civil penalties commensurate with the potential hazard from nuclear activities.

Furthermore, DOE is compiling a facility list that will identify all DOE nuclear facilities and group them in categories depending on nuclear activities conducted at those facilities. DOE also intends to develop a matrix that will generally describe the level of compliance with various types of requirements which will be expected at each category of facilities. During the development of the matrix, DOE may consider whether some categories of facilities should be granted a full or partial exclusion from certain specified requirements. Any such categorical exclusion would, at a minimum, be based on the criteria set forth in § 820.62.

This classification process will ensure that PAAA civil penalties will appropriately reflect the severity of the hazards to the public or workers that might result from activities at each facility which are not in conformance with its requirements. The facility list and matrix will be developed as reference tools and are intended to assist contractors in their compliance efforts. Their duty to comply, therefore, is not suspended until the issuance of a final list and matrix. Compliance efforts must begin with the effective date of each DOE Nuclear Safety Requirement and/or as established in DOE-approved implementation plans.

3. Severity of Violations

One aspect of DOE's discretionary enforcement authority is the designation of a severity level for violations of nuclear safety requirements. In accordance with the enforcement policy (Section VI), this designation is based on the relative safety significance of the violation. The most significant violations (Severity Level I) are defined as those which involve actual or high potential for adverse impact on the safety of the public or workers at DOE facilities. At the other end of the scale, Severity Level III violations are less serious but are more than a minor concern: i.e., if left uncorrected they could lead to a more serious concern.

In addition, DOE has the discretion to treat isolated minor violations as "noncompliances". Noncompliances will not be the subject of formal enforcement action through the issuance of a Notice of Violation. They, however, will be reported to and tracked by the Director to assure proper corrective actions are taken and to determine whether they are recurring on a generic, facility-specific, or contractor-specific basis. If noncompliances are recurring on a generic basis across the DOE complex, they may be indicative of a need to reconsider the regulatory treatment of the area in which the noncompliances are recurring. If noncompliances are recurring because of contractor or facility compliance problems, DOE may choose in its discretion to consider the noncompliances in the aggregate as a more serious concern warranting issuance of a Notice of Violation and a possible civil penalty.

This severity level or noncompliance designation framework for contractor violations is obviously discretionary. Comments on this issue were directed at the discretionary nature of DOE's actions. Most wanted more definition or detail on some of the factors that will determine the severity level such as the following: The potential adverse impact of the violation, whether there are related minor violations, the nature of recurring violations, contractor culpability related to the violation, senior management involvement, the duration of the violation, the past performance of contractor in compliance initiatives, prior notice of the violation, and whether multiple examples of a particular violation were identified.

The relative weight given to all of these factors in arriving at the appropriate severity level or designation of noncompliance will be dependent on the unique factual circumstances of each case. In furtherance of its goal of voluntary compliance, DOE must retain an appropriate level of enforcement discretion that is not amenable to exact definition. Nor is it possible to define agency action in response to hypothetical events. DOE will appropriately follow the general guidance that is set forth in this enforcement policy. But it will also shape the enforcement sanction based on a number of factors that are both within and outside the control of the contractor, and are wholly dependent on the particular facts of the case. These fact-dependent considerations should not, and need not be prescriptive in order to shape an appropriate enforcement action and sanction.

By the same token, consideration of these factors will prevent unbridled enforcement discretion. These factors are not vague or unknown concepts to contractors. DOE contractors are generally familiar with the set of expectations that are attached to these factors in the context of an enforcement action. Further, DOE will continue to engage in a dialogue with individual contractors to enhance the clarity of compliance requirements and expectations. If DOE consideration of these factors should result in a DOE enforcement action, the Notice of Violation will contain detailed information regarding the violation, and the facts considered relevant by DOE to support the recommended action. See 10 CFR 820.24.

The degree and amount of evidence necessary to support a designation of severity level is a function of the significance and complexity of the violation. Consideration and documentation of the designation of severity level will address the following basic evidentiary questions relating to the existence and circumstances of the violation as appropriate:

- What requirement was violated?
- How was the requirement violated?
- What was the safety significance of the violation?
- When was the requirement violated and what was the duration of the violation?
- By whom was the requirement violated?
- What were the technical, programmatic, or managerial causes of the violation?
- Were there multiple examples of a particular violation?
- Should the contractor have been aware or did it have prior notice of the violation?
- Was management involved directly or indirectly in the violation?

Once the circumstances surrounding the existence of a violation are understood and documented, the significance and the commensurate severity level will be determined based on the evidence of the case and the guidance in the enforcement policy.

Several comments claimed that the enforcement policy did not give adequate guidance concerning the application of "recurring" and "multiple" violations as used in Section VI to determine the severity level. Recurring or repetitive violations are those violations that reasonably could have been prevented by a contractor's corrective action for a previous similar violation or noncompliance condition which has or should have been previously documented. They are of concern because DOE expects a contractor's corrective actions to be effective in eliminating repeated violations. Effective corrective action is a primary objective of a contractor's

compliance assurance initiatives. Therefore, the failure to correct past noncompliances/violations is cause for special attention and consideration of escalated enforcement action by designation of a higher severity level.

Multiple violations are those that have the same underlying cause or programmatic deficiency, or are those which contributed to or were the unavoidable consequence of the underlying problem. For example, multiple related violations that result from inadequate training, procedures, safety evaluations, management or quality controls might be aggregated as violations of a programmatic deficiency. Depending on the number and nature of the multiple violations, DOE has the discretion to consider an escalation of the severity level. A group of similar noncompliances can also be aggregated and designated a violation at the appropriate severity level.

Aggregation of violations for designation of a severity level should not be confused with the use of multiple examples of a violation of a specific requirement. These are used to define the scope or extent of a problem, but are cited as one violation in the Notice of Violation. Multiple examples are usually preceded by the words "contrary to" in the notice to indicate their use as examples of the violation.

4. Determination of Civil Penalty

After a severity level is determined as discussed above, the amount of any civil penalty is determined. A determination of the monetary amount of the civil penalty is a two-part process. First, DOE will determine the base civil penalty to be imposed by reference to: (1) The facility category as determined by table 1A of appendix A to this part, and (2) the percentage of the table 1A amount determined by the severity level of the violation as depicted in table 1B of appendix A. Next, the base penalty will be escalated or mitigated by the adjustment factors or totally excused by the exercise of discretion as permitted by Section VIII of appendix A. This process for determining the civil penalty recognizes the potential health or safety implication by the type of DOE facility (e.g., a violation of a nuclear safety requirement at an operating Category A DOE reactor could potentially have a greater impact on human health and safety than a similar violation at a warehouse storing low level nuclear waste material) and the commensurate due diligence expected from contractors to comply with DOE Nuclear Safety Requirements applicable to their nuclear facilities, the effectiveness of voluntary compliance activities of the contractor, and DOE's role, if any, in the violation and further amplified in the DOE Enforcement Manual.

These factors are all described in the General Statement of Enforcement Policy. They differ from the factors to be considered in the designation of severity level because they are largely unrelated to the factual circumstances surrounding the existence of the violation itself. The civil penalty adjustment factors pertain to the effectiveness of contractor activities to identify and resolve both the noncompliance condition and the program or process deficiency that led to the noncompliance.

Comments to the civil penalty determination process were varied and many. Many comments raised a concern about how a contribution of DOE to the noncompliance condition that resulted in a violation may be considered. Several comments suggested that inadequate DOE direction should be given greater weight in the mitigation of the penalty. DOE recognizes that historically DOE direction from Field Offices, Headquarters, or in contract terms relating to direction or authorization may, at times, not have had sufficient clarity or may have been at variance with the nuclear safety requirements or implementing guidance. DOE will work to eliminate these problems in the future. Acknowledging this potential, however, the enforcement policy clearly gives DOE discretion to consider all the facts and circumstances regarding DOE's involvement in the alleged violation.

Contractors will be given every opportunity in the investigation process, in the enforcement conference, and in response to the Preliminary Notice of Violation to present facts relating to this issue as well as all other issues. Depending on the facts, mitigation based on this factor might include termination of the enforcement action, or remission or reduction of the penalty.

DOE emphasizes that if a contractor becomes aware of conflicting or confusing DOE programmatic or contractual direction, it is obligated to promptly identify and report the problem and seek exemption or interpretive relief if necessary. As noted in the enforcement procedural rules and as discussed above, however, exemptions from or interpretations of DOE Nuclear Safety Requirements must be determined by DOE in accordance with proper procedures and must be in writing before they can be offered as probative evidence in support of relief from an enforcement action.

Lack of funding by DOE in order to attain compliance is a repeated contractor comment to the proposed DOE enforcement policy. This issue was specifically considered in the development of the enforcement policy. For the reasons discussed in section VIII therein, lack of funding by itself will not be considered as a mitigating factor in enforcement actions. A further comment on this issue stated that DOE contractors lack economic incentive to violate nuclear safety requirements. Presumably, this comment was raised on the theory that if an unsafe condition is found, DOE will provide the funds to correct it or the contractor will terminate operations. By comparison, NRC utility licensees have an economic incentive to continue to produce electricity even if, for instance, the terms of the applicable technical specifications contained in license conditions are violated. This argument would conclude that because there is no economic incentive to continue operations in an unsafe condition, DOE contractors would not act with the requisite intent to violate nuclear safety requirements.

It is true that in many circumstances DOE may contribute funding to correct an unsafe or noncompliance condition. Therefore, when such conditions are identified, they should be promptly reported and assessed. Thus, where it is appropriate, additional funding can be provided and corrective actions can be instituted by the contractor. However, it should be made clear that the failure of DOE to contribute funding does not, without more, exculpate the contractor. DOE will exercise appropriate enforcement discretion when considering all of the facts and circumstances consistent with the guidance in the enforcement policy. If the contractor acted promptly and effectively upon discovery of the violation/noncompliance condition, DOE has the discretion to refrain from issuing a Notice of Violation or may partially or totally mitigate the civil penalty.

Several comments raised concerns regarding the relationship between PAAA civil penalties and the award-fee process under the terms of M&O contracts. These comments, in essence, suggested that civil penalties were in conflict with various terms imposed by the contract or requirements imposed by DOE Acquisition Regulations. Similar comments regarding the financial arrangements between DOE and its contractors were raised in response to the NOI and addressed by DOE in the NOPR. The short answer to all these comments and concerns is that Congress enacted civil penalty provisions in the PAAA to provide additional incentives,

apart from contractual award-fee incentives, to comply with nuclear safety requirements. Thus, PAAA civil penalties and contractual award-fees are independent.

As noted in the NOPR, the independence of PAAA civil penalties and contractual award-fees could result in a contractor being paid a low award-fee for generally poor safety performance and incurring a civil penalty when specific violations are enforced. It was also noted in the NOPR that DOE recently amended its Acquisition Regulations to change the structure and amounts of fees to be paid its profit-making and fee bearing M&O contractors. These contractors will now be entitled to earn enhanced award fees if their nuclear safety compliance assurance initiatives and activities are effective. In short, Congress and DOE have instituted a financial and enforcement process to provide ample incentive to comply with DOE Nuclear Safety Requirements with requisite rewards and sanctions based on an indemnified contractor's (including subcontractors and suppliers) safety performance.

5. Subcontractors and Suppliers

DOE's enforcement policy is also applicable to subcontractors of and suppliers to indemnified DOE contractors. See Appendix A, Section IX; see also Definitions of Contractor and Person, Section I.A.6, *supra*. One comment stated that a civil penalty should not be imposed on a contractor based on vicarious liability. That is, where a violation is committed by a subcontractor or supplier, the partial liability with a resulting civil penalty should not be attributed to a contractor in the absence of a specific finding of fault on the part of the contractor. However, this argument ignores the reality of the liability and responsibility of the general contractor for the defects, shoddy workmanship, negligence, violations, etc. of a subcontractor of or supplier to the contractor. Similar to the construction industry, a general contractor can be liable for contract damages or code violations resulting from the work or products of its subcontractors or suppliers. A contractor's remedy in these situations is either appropriate indemnification clauses in its contracts, or legal suits that seek reimbursement for damages or penalties paid by the contractor. Notwithstanding a contractor's remedies, it does have a continuing obligation and responsibility to assure that a subcontractor's or supplier's performance is in compliance with applicable specifications and requirements. Therefore, DOE finds this concern to be without merit.

Another comment argued that appropriate mitigation factors should be applied to the proposed civil penalty of a contractor that had to use the services or products of a subcontractor or supplier solely because of federal government procurement law or practices. One theory underpinning this argument is that in many situations a M&O contractor is required to use a low bidder or a minority contractor and is therefore subject to services or products that may not be the best quality. Procurement law is well settled on the issue that no bid need be accepted where the bidder cannot reasonably demonstrate that it can comply with established or stated codes, standards, or requirements pertaining to performance. A nuclear safety violation will not be excused on the theory it resulted from federal procurement practices. It is the responsibility of the contractor to reject bids that cannot meet the quality or other specifications stated in the request-for-proposal (RFP) and to inspect services and products to assure compliance with those specifications if the RFP is accepted.

6. Inaccurate and Incomplete Information

DOE, pursuant to rule (10 CFR 820.11) and policy (Section X. of appendix A to part 820), has the discretion to enforce violations of DOE Nuclear Safety Requirements that require contractors to provide accurate and complete information to DOE. These informational requirements pertain to both written and oral statements. Section X of the enforcement policy indicates how DOE will exercise discretion in its consideration of enforcement action for both written and oral statements. One comment was concerned that oral statements made to DOE are not inherently as reliable as written statements and, therefore, they should not be considered for enforcement action. This comment infers that oral statements might not be made with the requisite knowledge, authority, or formality to render them enforceable.

However, this comment goes to the heart of an enforcement problem that is addressed in Section X. DOE recognizes that in the past oral information in some situations may have been provided to DOE without the proper reflection or management review. At the same time, DOE must be able to rely on all information concerning significant nuclear safety matters. Accordingly, the enforcement policy gives DOE the discretion to consider all the facts and circumstances surrounding oral statements. Enforcement considerations will include those factors listed in Section X. As indicated therein, factors such as the significance of the information, the degree of intent or negligence involved in the communication, and the opportunity and the time available to correct the information before it was relied on by DOE, will be primary considerations. It bears repeating that, as a general matter, if an inaccurate statement (oral or written) is promptly identified and corrected before it is relied on by DOE, or before DOE raised a question about the information, no enforcement action will be taken. Similarly, if a previously accurate statement is later rendered inaccurate because of subsequent events (e.g., newly discovered information or advance in technology), enforcement action will not normally be taken if the outdated information is timely identified and corrected by the contractor.

III. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a "major rule" for purposes of the Executive Order because its promulgation will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

Pursuant to section 3(c) of E.O. 12291, this final rule was submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354 (5 U.S.C. 601–612) which requires preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities

and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information and reporting requirements herein are not substantially different from existing reporting requirements contained in DOE contracts with DOE prime contractors covered by these rules. DOE will submit any new information collection requests concerning these rules to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR part 1320.

D. Review Under the National Environmental Policy Act

DOE has reviewed the promulgation of this final rule with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). The rule specifies procedures and standards for DOE enforcement actions under the PAAA. As noted in the CEQ regulations, major Federal actions "do not include bringing judicial or administrative civil or criminal enforcement actions" (40 CFR part 1508.18(a)). Therefore, DOE has concluded that the promulgation of this rule does not represent a major Federal action with significant effects on the human environment within the meaning of NEPA and that no further review under NEPA is required.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in paragraphs 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect; describes any administrative proceedings; and defines key terms. DOE certifies that the final rule meets the requirements of paragraphs 2(a) and (b) of Executive Order 12778.

F. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgation and implementing a policy action.

Today's final rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

List of Subjects in 10 CFR Part 820

Government contracts, DOE contracts, nuclear safety, civil penalty, criminal penalty.

Issued in Washington, DC on August 3, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health, Department of Energy.

For the reasons set out in this preamble, chapter III of title 10 of the Code of Federal Regulations is amended by adding a new part 820 as set forth below.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

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Appendix A to Part 820—General Statement of Enforcement Policy

Authority: 42 U.S.C. 2201, 2282(a), 7191.

Subpart A—General

§ 820.1 Purpose and scope.

(a) *Scope.* This part sets forth the procedures to govern the conduct of persons involved in DOE nuclear activities and, in particular, to achieve compliance with the DOE Nuclear Safety Requirements by all persons subject to those requirements.

(b) *Questions not addressed by these rules.* Questions that are not addressed in this Part shall be resolved at the discretion of the DOE Official.

(c) *Exclusion.* Activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion are excluded from the requirements of subparts D and E of this part regarding interpretations and exemptions related to this part. The Deputy Assistance Secretary for Naval Reactors or his designee will be responsible for formulating, issuing, and maintaining appropriate records of interpretations and exemptions for these facilities and activities.

§ 820. Definitions.

(a) The following definitions apply to this part:

Act or *AEA* means the Atomic Energy Act of 1954, as amended.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Consent Agreement means any written document, signed by the Director and a person, containing stipulations or conclusions of fact or law and a remedy acceptable to both the Director and the person.

Contractor means any person under contract (or its subcontractors or suppliers) with the Department of Energy with the responsibility to perform activities or to supply services or products that are subject to DOE Nuclear Safety Requirements.

Department means the United States Department of Energy or any predecessor agency.

Director means the DOE Official to whom the Secretary has assigned the authority to issue Notices of Violation under Subpart B of this Part, including the Director of Enforcement, or his designee. With regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, the Director shall mean the Deputy Assistant Secretary for Naval Reactors or his designee.

Docketing Clerk means the Office in DOE with which documents for an enforcement action must be filed and which is responsible for maintaining a record and a public docket for enforcement actions commencing with the filing of a Preliminary Notice of Violation. It is also the Office with which interpretations, exemptions, and any other documents designated by the Secretary shall be filed.

DOE means the United States Department of Energy or any predecessor agency.

DOE Nuclear Safety Requirements means the set of enforceable rules, regulations, or orders relating to nuclear safety adopted by DOE (or by another Agency if DOE specifically identifies the rule, regulation, or order) to govern the conduct of persons in connection with any DOE nuclear activity and includes any programs, plans, or other provisions intended to implement these rules, regulations, orders, a Nuclear Statute or the Act, including technical specifications and operational safety requirements for DOE nuclear facilities. For purposes of the assessment of civil penalties, the definition of DOE Nuclear Safety Requirements is limited to those identified in 10 CFR § 820.20(b).

DOE Official means the person, or his designee, in charge of making a decision under this part.

Enforcement adjudication means the portion of the enforcement process that commences when a respondent requests an on-the-record adjudication of the assessment of a civil penalty and terminates when a Presiding Officer files an initial decision.

Exemption means the final order that sets forth the relief, waiver, or release, either temporary or permanent, from a DOE Nuclear Safety Requirement, as granted by the appropriate Secretarial Officer pursuant to the provisions of subpart E of this part.

Filing means, except as otherwise specifically indicated, the completion of providing a document to the Office of the Docketing Clerk and serving the document on the person to whom the document is addressed.

Final Notice of Violation means a document issued by the Director in which the Director determines that the respondent has violated or is continuing to violate a DOE Nuclear Safety Requirement and includes:

(i) A statement specifying the DOE Nuclear Safety Requirement to which the violation relates;

(ii) A concise statement of the basis for the determination;

(iii) Any remedy, including the amount of any civil penalty;

(iv) A statement explaining the reasoning behind any remedy; and

(v) If the Notice assesses a civil penalty, notice of respondent's right:

(A) To waive further proceedings and pay the civil penalty;

(B) To request an on-the-record adjudication of the assessment of the civil penalty; or

(C) To seek judicial review of the assessment of the civil penalty.

Final Order means an order of the Secretary that represents final agency action and, where appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE or his designee.

Hearing means an on-the-record enforcement adjudication open to the public and conducted under the procedures set forth in Subpart B of this part.

Initial Decision means the decision filed by the Presiding Officer based upon the record of the enforcement adjudication out of which it arises.

Interpretation means a statement by the General Counsel concerning the meaning or effect of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

Nuclear Statute means any statute or provision of a statute that relates to a DOE nuclear activity and for which DOE is responsible.

Party means the Director and the respondent in an enforcement adjudication under this Part.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department or the United States Nuclear Regulatory Commission. For purposes of civil penalty assessment, the term also includes affiliated entities, such as a parent corporation.

Preliminary Notice of Violation means a document issued by the Director in which the Director sets forth the preliminary conclusions that the respondent has violated or is continuing to violate a DOE Nuclear Safety Requirement and includes:

(i) A statement specifying the DOE Nuclear Safety Requirement to which the violation relates;

(ii) A concise statement of the basis for alleging the violation;

(iii) Any proposed remedy, including the amount of any proposed civil penalty; and

(iv) A statement explaining the reasoning behind any proposed remedy.

Presiding Officer means the Administrative Law Judge designated to be in charge of an enforcement adjudication who shall conduct a fair and impartial hearing, assure that the facts are fully elicited, adjudicate all issues, avoid delay, and shall have authority to:

(i) Conduct an adjudicatory hearing under this Part;

(ii) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(iii) Exercise the authority set forth in Section 820.8;

(iv) Admit or exclude evidence;

(v) Hear and decide questions of fact, law, or discretion, except for the validity of regulations and interpretations issued by DOE;

(vi) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(vii) Draw adverse inferences against a party that fails to comply with his orders;

(viii) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

Remedy means any action necessary or appropriate to rectify, prevent, or

penalize a violation of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirements, including the assessment of civil penalties, the requirement of specific actions, or the modification, suspension or recision of a contract.

Respondent means any person to whom the Director addresses a Notice of Violation.

Secretarial Officer means the Assistant Secretary or Office Director who is primarily responsible for the conduct of an activity under the Act. With regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, Secretarial Officer shall mean the Deputy Assistant Secretary for Naval Reactors.

Secretary means the Secretary of Energy or his designee.

(b) Terms defined in the Act and not defined in these rules are used consistent with the meanings given in the Act.

(c) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 820.3 Separation of functions.

(a) *Separation of Functions.* After a respondent requests an on-the-record adjudication of an assessment of a civil penalty contained in a Final Notice of Violation, no person shall participate in a decision-making function in an enforcement proceeding if he has been, is or will be responsible for an investigative or prosecutorial function related to that proceeding or if he reports to the person responsible for the investigative or prosecutorial function.

(b) *Director.* The Director shall be responsible for the investigation and prosecution of violations of the DOE Nuclear Safety Requirements. After the request for an enforcement adjudication, the Director shall not discuss *ex parte* the merits of the proceeding with a DOE Official or any person likely to advise the DOE Official in the decision of the proceeding.

(c) *Presiding Officer.* A Presiding Officer shall perform no duties inconsistent with his responsibilities as a Presiding Officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of an investigative or prosecutorial function. The Presiding Officer may not consult any person other than a member of his staff or a special assistant on any fact at issue unless on notice and opportunity for all parties to participate, except as required for the disposition of *ex parte* matters as authorized by law.

§ 820.4 Conflict of interest.

A DOE Official may not perform functions provided for in this part regarding any matter in which he has a financial interest or has any relationship that would make it inappropriate for him to act. A DOE Official shall withdraw at any time from any action in which he deems himself disqualified or unable to act for any reason. Any interested person may at any time request the General Counsel to disqualify a DOE Official or request that the General Counsel disqualify himself. In the case of an enforcement adjudication, a motion to disqualify shall be made to the Presiding Officer. The request shall be supported by affidavits setting forth the grounds for disqualification of the DOE Official. A decision shall be made as soon as practicable and information may be requested from any person concerning the matter. If a DOE Official is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in this section shall replace him.

§ 820.5 Service.

(a) *General rule.* Any document filed with the Docketing Clerk must be served on the addressee of the document and shall not be considered filed until service is complete and unless accompanied by proof of service; provided that the filing with the Docketing Clerk of any document addressed to the DOE Official shall be considered service on the DOE Official.

(b) *Service in an Enforcement Adjudication.* Any document filed in an enforcement adjudication must be served on all other participants in the adjudication.

(c) *Who may be served.* Any paper required to be served upon a person shall be served upon him or upon the representative designated by him or by law to receive service of papers. When an attorney has entered an appearance on behalf of a person, service must be made upon the attorney of record.

(d) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail or as otherwise authorized or required by the DOE Official. The DOE Official may require service by express mail.

(e) *When service is complete.* Service upon a person is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By mail, on deposit in the United States mail, properly stamped and addressed; or

(3) By any other means authorized or required by the DOE Official.

(f) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgement of the person served or his counsel;

(2) The certificate of counsel if he has made the service;

(3) The affidavit of the person making the service; or

(4) Any other means authorized or required by the DOE Official.

(g) *Deemed service.* If a document is deemed filed under this Part, then the service requirements shall be deemed satisfied when the document is deemed filed.

§ 820.6 Computation and extension of time.

(a) *Computation.* In computing any period of time set forth in this Part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* A DOE Official may grant an extension of any time period set forth in this Part.

(c) *Service by mail.* Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Where a pleading or document is served by express mail, only two (2) days shall be added.

§ 820.7 Questions of policy or law.

(a) *Certification.* There shall be no interlocutory appeal from any ruling order, or action decision of a DOE Official except as permitted by this section. A Presiding Officer in an enforcement adjudication may certify, in his discretion, a question to the Secretary, when the order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion, and either an immediate

decision will materially advance the ultimate termination of the proceeding, or subsequent review will be inadequate or ineffective.

(b) *Decision.* The certified question shall be decided as soon as practicable. If the Secretary determines that the question was improvidently certified, or if he takes no action within thirty days of the certification, the certification is dismissed. The Secretary may decide the question on the basis of the submission made by the Presiding Officer or may request further information from any person.

§ 820.8 Evidentiary matters.

(a) *General.* A DOE Official may obtain information or evidence for the full and complete investigation of any matter related to a DOE nuclear activity or for any decision required by this part. A DOE Official may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(b) *Special Report Orders.* A DOE Official may issue a Special Report Order (SRO) requiring any person involved in a DOE nuclear activity or otherwise subject to the jurisdiction of DOE to file a special report providing information relating to a DOE Nuclear Safety Requirement, the Act, or a Nuclear Statute, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required by this Part.

(c) *Extension of Time.* The DOE Official who issues a subpoena or SRO pursuant to this section, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(d) *Reconsideration.* Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may request reconsideration of the subpoena or SRO with the DOE Official who issued the document. If the subpoena or SRO is not modified or rescinded within 10 days of the date of the filing of the request, the subpoena or SRO shall be effective as issued and the person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the filing. There is no administrative appeal of a subpoena or SRO.

(e) *Service.* A subpoena or SRO shall be served in the manner set forth in § 820.5, except that service by mail must be made by registered or certified mail.

(f) *Fees.* (1) A witness subpoenaed by a DOE Official shall be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(2) If a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage shall be paid by the DOE if the person shows:

(i) The presence of the subpoenaed witness will materially advance the proceeding; and

(ii) The person who requested that the subpoena be issued would suffer a serious hardship if required to pay the witness fees and mileage. The DOE Official issuing the subpoena shall make the determination required by this subsection.

(g) *Enforcement.* If any person upon whom a subpoena or SRO is served pursuant to this section, refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the United States District Court to enforce the subpoena or SRO.

(h) *Certification.* (1) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that a diligent search has been made for each document responsive to the subpoena, and to the best of his knowledge, information, and belief all such documents responsive to the subpoena are being produced unless withheld on the grounds of privilege pursuant to paragraph (i) of this section.

(2) Any information furnished in response to an SRO shall be accompanied by the sworn certification under penalty of perjury of the person to whom it was directed or his authorized agent who actually provides the information that to the best of his knowledge, information and belief a diligent effort has been made to provide all information required by the SRO, and all information furnished is true, complete, and correct unless withheld on grounds of privilege pursuant to paragraph (i) of this section.

(3) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason for failing to comply with the subpoena or SRO.

(i) *Withheld information.* If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (h) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, a memorandum of law supporting the claim of privilege, and an identification of the person whose privilege is being asserted.

(j) *Statements/testimony.*

(1) If a person's statement/testimony is taken pursuant to a subpoena, the DOE Official shall determine whether the statement/testimony shall be recorded and the means by which it is recorded.

(2) A person whose statement/testimony is recorded may procure a copy of the transcript by making a written request for a copy and paying the appropriate fees. Upon proper identification, any potential witness or his attorney has the right to inspect the official transcript of the witness' own statement or testimony.

(k) *Sequestration.* The DOE Official may sequester any person who furnishes documents or gives testimony. Unless permitted by the DOE Official, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(l) *Attorney.* (1) Any person whose statement or testimony is taken may be accompanied, represented and advised by his attorney; provided that, if the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(2) The DOE Official shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. The DOE Official may take actions as the circumstances may warrant in regard to any instances where any attorney refuses to comply with directions or provisions of this section.

§ 820.9 Special assistant.

A DOE Official may appoint a person to serve as a special assistant to assist the DOE Official in the conduct of any proceeding under this part. Such appointment may occur at any appropriate time. A special assistant shall be subject to the disqualification provisions in § 820.5. A special assistant may perform those duties assigned by the DOE Official, including but not limited to, serving as technical interrogators, technical advisors and special master.

§ 820.10 Office of the Docketing Clerk.

(a) *Docket.* The Docketing Clerk shall maintain a docket for enforcement actions commencing with the issuance of a Preliminary Notice of Violation, interpretations issued pursuant to subpart D of this part, exemptions issued pursuant to subpart E of this part, and any other matters designated by the Secretary. A docket for an enforcement action shall contain all documents required to be filed in the proceeding.

(b) *Public inspection.* Subject to the provisions of law restricting the public disclosure of certain information, any person may, during Department business hours, inspect and copy any document filed with the Docketing Clerk. The cost of duplicating documents shall be borne by the person seeking copies of such documents. The DOE Official may waive this cost in appropriate cases.

(c) *Transcript.* Except as otherwise provided in this part, after the filing of a Preliminary Notice of Violation, all hearings, conferences, and other meetings in the enforcement process shall be transcribed verbatim. A copy of the transcript shall be filed with the Docketing Clerk promptly. The Docketing Clerk shall serve all participants with notice of the availability of the transcript and shall furnish the participants with a copy of the transcript upon payment of the cost of reproduction, unless a participant can show that the cost is unduly burdensome.

§ 820.11 Information requirements.

(a) Any information pertaining to a nuclear activity provided to DOE by any person or maintained by any person for inspection by DOE shall be complete and accurate in all material respects.

(b) No person involved in a DOE nuclear activity shall conceal or destroy any information concerning a violation of a DOE Nuclear Safety Requirement, a Nuclear Statute, or the Act.

§ 820.12 Classified, confidential, and controlled information.

(a) *General rule.* The DOE Official in charge of a proceeding under this part may utilize any procedures deemed appropriate to safeguard and prevent disclosure of classified, confidential, and controlled information, including Restricted Data and National Security Information, to unauthorized persons, with minimum impairment of rights and obligations under this part.

(b) *Obligation to protect restricted information.* Nothing in this part shall relieve any person from safeguarding classified, confidential, and controlled information, including Restricted Data or National Security Information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

Subpart B—Enforcement Process

§ 820.20 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures for investigating the nature and extent of violations of the DOE Nuclear Safety Requirements, for determining, whether a violation has occurred, for imposing an appropriate remedy, and for adjudicating the assessment of a civil penalty.

(b) *Basis for civil penalties.* DOE may assess civil penalties against any person subject to the provisions of this part who has entered into an agreement of indemnification under 42 U.S.C. 2210(d) (or any subcontractor or supplier thereto), unless exempted from civil penalties as provided in paragraph (c) of this section, on the basis of a violation of:

(1) Any DOE Nuclear Safety Requirement set forth in the Code of Federal Regulations;

(2) Any Compliance Order issued pursuant to subpart C of this part; or

(3) Any program, plan or other provision required to implement any requirement or order identified in paragraphs (b)(1) or (b)(2) of this section.

(c) *Exemptions.* The following contractors, and subcontractors and suppliers thereto, are exempt from the assessment of civil penalties under this subpart with respect to the activities specified below:

(1) The University of Chicago for activities associated with Argonne National Laboratory;

(2) The University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratory;

(4) University Research Association, Inc. for activities associated with FERMI National Laboratory;

(5) Princeton University for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

(d) *Nonprofit educational institutions.* Any educational institution that is considered nonprofit under the United States Internal Revenue Code shall receive automatic remission of any civil penalty assessed under this part.

§ 820.21 Investigations.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with the Act and the DOE Nuclear Safety Requirements and take such action as he deems necessary and appropriate to the conduct of the investigation or inspection, including any action pursuant to § 820.8.

(b) Any person may request the Director to initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection shall set forth the subject matter or activity to be investigated or inspected as fully as possible and include supporting documentation and information. No particular forms or procedures are required.

(c) Any person who is requested to furnish documentary evidence, information or testimony in an investigation or during an inspection shall be informed, upon written request, of the general purpose of the investigation or inspection.

(d) Information or documents that are obtained during any investigation or inspection shall not be disclosed unless the Director directs or authorizes the public disclosure of the investigation. Upon such authorization, the information or documents are a matter of public record and disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and 10 CFR part 1004. A request for confidential treatment of information for purposes of the Freedom of Information Act shall not prevent disclosure by the Director if disclosure is determined to be in the public interest and otherwise permitted or required by law.

(e) During the course of an investigation or inspection any person

may submit at any time any document, statement of facts or memorandum of law for the purpose of explaining the person's position or furnish information which the person considers relevant to a matter or activity under investigation or inspection.

(f) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the investigation may be closed without prejudice to further investigation or inspection by the Director at any time that circumstances so warrant.

§ 820.22 Informal conference.

The Director may convene an informal conference to discuss any situation that might be a violation of the Act or a DOE Nuclear Safety Requirement, its significance and cause, any correction taken or not taken by the person, any mitigating or aggravating circumstances, and any other useful information. The Director may compel a person to attend the conference. This conference will not normally be open to the public and there shall be no transcript.

§ 820.23 Consent order.

(a) *Settlement policy.* DOE encourages settlement of an enforcement proceeding at any time if the settlement is consistent with the objectives of the Act and the DOE Nuclear Safety Requirements. The Director and a person may confer at any time concerning settlement. These settlement conferences shall not be open to the public and there shall be no transcript.

(b) *Consent order.* Notwithstanding any other provision of this Part, DOE may at any time resolve any or all issues in an outstanding enforcement proceeding with a Consent Order. A Consent Order must be signed by the Director and the person who is its subject, or a duly authorized representative, must indicate agreement to the terms contained therein and must be filed. A Consent Order need not constitute an admission by any person that the Act or a DOE Nuclear Safety Requirement has been violated, nor need it constitute a finding by the DOE that such person has violated the Act or a DOE Nuclear Safety Requirement. A Consent Order shall, however, set forth the relevant facts which form the basis for the Order and what remedy, if any, is imposed.

(c) *Effect on enforcement adjudication.* If a Consent Order is signed after the commencement of an enforcement adjudication, the adjudication of the issues subject to the Consent Order shall be stayed until the completion of the Secretarial Review Process. If the Consent Order becomes a Final Order, the adjudication shall be terminated or modified as specified in the Order.

(d) *Secretarial review.* A Consent Order shall become a Final Order 30 days after it is filed unless the Secretary files a rejection of the Consent Order or a Modified Consent Order. A Modified Consent Order shall become a Final Order if the Director and the person who is its subject sign it within 15 days of its filing.

§ 820.24 Preliminary notice of violation.

(a) If the Director has reason to believe a person has violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Preliminary Notice of Violation. The Notice and any transmittal documents shall contain sufficient information to fairly apprise the respondent of the facts and circumstances of the alleged violations and the basis of any proposed remedy, and to properly indicate what further actions are necessary by or available to respondent.

(b) Within 30 days after the filing of a Preliminary Notice of Violation, the respondent shall file a reply.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a statement of all relevant facts pertaining to the situation that is the subject of the Notice. The reply shall state any facts, explanations and arguments which support a denial that a violation has occurred as alleged; demonstrate any extenuating circumstances or other reason why the proposed remedy should not be imposed or should be mitigated; and furnish full and complete answers to the questions set forth in the Notice. Copies of all relevant documents shall be submitted with the reply. The reply shall include a discussion of the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE.

(d) The respondent may terminate an enforcement action if the reply agrees to comply with the proposed remedy and waives any right to contest the Notice or the remedy. If a respondent elects this option, the Preliminary Notice of Violation shall be deemed a Final Order upon the filing of the reply.

§ 820.25 Final notice of violation.

(a) *General rule.* If, after reviewing the reply submitted by the respondent, the Director determines that a person violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Final Notice of Violation. The Final Notice shall concisely state the determined violation, any designated penalty, and further actions necessary by or available to respondent.

(b) *Effect of final notice.* (1) If a Final Notice of Violation does not contain a civil penalty, it shall be deemed filed as a Final Order 15 days after the Final Notice is filed unless the Secretary files a Final Order which modifies the Final Notice.

(2) If a Final Notice of Violation contains a civil penalty, the respondent must file within 30 days after the filing of the Final Notice:

(i) A waiver of further proceedings;

(ii) A request for an on-the-record adjudication; or

(iii) A notice of intent to seek judicial review.

(c) *Effect of waiver.* If a respondent waives further proceedings, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent. The respondent must pay any civil penalty set forth in the Notice of Violation within 60 days of the filing of waiver unless the Director grants additional time.

(d) *Effect of request.* If a respondent files a request for an on-the-record adjudication, then an enforcement adjudication commences.

(e) *Effect of notice of intent.* If a respondent files a Notice of Intent, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent.

(f) *Amendment.* The Director may amend the Final Notice of Violation at any time before an action takes place pursuant to paragraph (b) of this section. An amendment shall add fifteen days to the time periods under paragraph (b) of this section.

(g) *Withdrawal.* The Director may withdraw the Final Notice of Violation, or any part thereof, at any time before an action under paragraph (b) of this section.

§ 820.26 Enforcement adjudication.

If a respondent files a request for an on-the-record adjudication, an enforcement adjudication is initiated and the Docketing Clerk shall notify the Secretary who shall appoint an Administrative Law Judge to be the Presiding Officer.

§ 820.27 Answer.

(a) *General.* If a respondent files a request for an on-the-record adjudication pursuant to § 820.25, a written answer to the Final Notice of Violation shall be filed at the same time the request is filed.

(b) *Contents of the answer.* The answer shall clearly and directly admit,

deny or explain each of the factual allegations contained in the Final Notice of Violation with regard to which respondent has any knowledge, information or belief. Where respondent has no knowledge, information or belief of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state the circumstance or argument that is alleged to constitute the grounds of defense and the facts that respondent intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the Final Notice of Violation constitutes an admission of the allegation.

(d) *Amendment of the answer.* The respondent may amend the answer to the Final Notice of Violation upon motion granted by the Presiding Officer.

§ 820.28 Prehearing actions.

(a) *General.* The Presiding Officer shall establish a schedule for the adjudication and take such other actions as he determines appropriate to conduct the adjudication in a fair and expeditious manner.

(b) *Prehearing conference.* The Presiding Officer, at any time before a hearing begins, may direct the parties and their counsel, or other representatives, to appear at a conference before him to consider, as appropriate:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters that may expedite the disposition of the proceeding.

(c) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, at least five (5) days before any prehearing conference, each party shall make available to all other parties, as appropriate, the names of the expert and other witnesses it intends to call, together with a brief narrative summary of their expected testimony, and copies of all documents and exhibits that each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(d) *Prehearing conference order.* The Presiding Officer shall prepare an order incorporating any action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(e) *Alternative to prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte*, may direct the parties to make appropriate filings with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Except as provided by paragraph (c) of this section, further discovery under this section shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order to take further discovery shall make a motion therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the party from whom the information was sought, or the issuance of a default order under 820.38.

§ 820.29 Hearing.

(a) *General.* Except as otherwise provided by this Part or the Presiding Officer, a hearing shall be conducted in accordance with the Federal Rules of Evidence. The Presiding Officer shall have the discretion to admit all evidence that is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, if he believes the evidence might facilitate the fair and expeditious resolution of the proceeding. But such evidence may be reasonably limited by the Presiding Officer in scope and length in order to permit prompt resolution of the proceeding. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information, and shall protect classified and unclassified controlled nuclear information, as well as any other information protected from public disclosure pursuant to law or regulation. The confidential, trade secret, or classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence in camera, including the preparation of a supplemental initial decision to address questions of law, fact, or discretion that arise out of that portion of the evidence that is confidential, includes trade secrets, is classified, or is otherwise protected.

(b) *Subpoenas.* The attendance of witnesses or the production of documentary evidence may be required by subpoena.

(c) *Examination of witnesses.* There shall be no direct oral testimony by witnesses, except as permitted by the Presiding Officer. In lieu of oral testimony, the Presiding Officer shall admit into the record as evidence verified written statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall have delivered a copy of the statement to the Presiding Officer and the opposing counsel not less than 10 days prior to the date the witness is scheduled to testify. The witness presenting the statement shall swear or affirm that the statement is true and accurate to the best of his knowledge, information, and belief and shall be

subject to appropriate oral cross-examination upon the contents thereof provided such cross-examination is not unduly repetitious.

(d) *Burden of presentation; burden of persuasion.* The Director has the burden of going forward with and of proving that the violation occurred as set forth in the Notice of Violation and that the proposed civil penalty is appropriate. Following the establishment of a *prima facie* case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Notice of Violation. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 820.30 Post-hearing filings.

Within fifteen days after the filing of the transcript of the hearing, or within such longer time as may be fixed by the Presiding Officer, any party may file for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. Reply briefs may be filed within ten days of the filing of briefs. All filings shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

§ 820.31 Initial decision.

(a) *Initial Decision.* The Presiding Officer shall file an Initial Decision as soon as practicable after the period for filing reply briefs under 820.30 has expired. The Initial Decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, any remedy and a proposed Final Order. A party may file comments on an Initial Decision within fifteen days of its filing.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and that a civil penalty is appropriate, the Initial Decision shall set forth the dollar amount of the civil penalty. If the Presiding Officer decides to assess a penalty different in amount from the penalty assessed in the Final Notice of Violation, the Initial Decision shall set forth the specific reasons for the increase or decrease.

§ 820.32 Final Order.

(a) *Effect of Initial Decision.* The Initial Decision shall be deemed filed as a Final Order thirty days after the filing of the Initial Decision unless the Secretary files a Final Order that modifies the Initial Decision or the Secretary files a Notice of Review.

(b) *Notice of review.* If the Secretary files a Notice of Review, he shall file a Final Order as soon as practicable after completing his review. The Secretary may, at his discretion, order additional procedures, remand the matter or modify the remedy, including an increase or decrease in the amount of the civil penalty from the amount recommended to be assessed in the Initial Decision.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the Final Order within thirty (30) days after the Final Order is filed unless otherwise agreed by the parties.

§ 820.33 Default order.

(a) *Default.* The Presiding Officer, upon motion by a party or the filing of a Notice of Intent to issue a Default Order *sua sponte*, may find a party to be in default if the party fails to comply with the provisions of this Part or an order of the Presiding Officer. The alleged defaulting party shall have ten days to answer the motion or the Notice of Intent. No finding of default shall be made against the respondent unless the Director presents sufficient evidence to the Presiding Officer to establish a *prima facie* case against the respondent. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the Final Notice of Violation and a waiver of respondent's rights to an on-the-record adjudication of such factual allegations. Default by the Director shall result in an order to dismiss the Final Notice of Violation with prejudice.

(b) *Effect of Default Order.* When the Presiding Officer finds a default has occurred, he shall file a Default Order against the defaulting party. This order shall constitute an Initial Decision.

(c) *Contents of a default order.* A Default Order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of fact, law or discretion, and the remedy.

§ 820.34 Accelerated decision.

(a) *General.* The Presiding Officer, upon motion of any party or sua sponte, may at any time render an Accelerated Decision in favor of the Director or the respondent as to all or any part of the adjudication, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the adjudication. In addition, the Presiding Officer, upon motion of the respondent, may render at any time an Accelerated Decision to dismiss an action without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a *prima facie* case or other grounds that show no right to relief on the part of the Director.

(b) *Effect of Accelerated Decision.* (1) If an Accelerated Decision is rendered as to all the issues and claims in the adjudication, the decision constitutes an Initial Decision of the Presiding Officer, and shall be filed with the Docketing Clerk.

(2) If an Accelerated Decision is rendered on less than all issues or claims in the adjudication, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon file an interlocutory order specifying the facts that appear substantially uncontroverted, and the issues and claims upon which the adjudication will proceed.

§ 820.35 Ex Parte discussions.

At no time after a respondent has requested an on-the-record adjudication of the assessment of a civil penalty shall a DOE Official, or any person who is likely to advise a DOE Official in the decision on the case, discuss *ex parte* the merits of the proceeding with any interested person outside DOE, with any DOE staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to a DOE Official during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. Any oral communication shall be set forth in a written memorandum and served on all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

§ 820.36 Filing, form, and service of documents.

(a) *Filing in an enforcement proceeding.* The original and three copies of any document in an enforcement proceeding shall be filed with the Docketing Clerk commencing with the filing of a Preliminary Notice of Violation.

(b) *Form of documents in an enforcement proceeding.* (1) Except as provided herein, or by order of the DOE Official, there are no specific requirements as to the form of documents filed in an enforcement proceeding.

(2) The first page of every document shall contain a caption identifying the respondent and the docket number.

(3) The original of any document (other than exhibits) shall be signed by the person filing it or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Docketing Clerk and all participants to the proceeding. A person who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under this part.

(5) The Docketing Clerk may refuse to file any document that does not comply with this section. Written notice of such refusal, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any document refused for filing.

§ 820.37 Participation in an adjudication.

(a) *Parties.* In an enforcement adjudication, the Director and the respondent shall be the only parties; provided that the Presiding Officer may permit a person to intervene as a party if the person demonstrates it could be liable in the event a civil penalty is assessed.

(b) *Appearances.* Any party to an enforcement adjudication may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(c) *Amicus Curiae.* Persons not parties to an enforcement adjudication who wish to file briefs may so move. The motion shall identify the interest of the person and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer shall issue an order setting the time for filing such brief. An *amicus curiae* is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

§ 820.38 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or *sua sponte*, consolidate any or all matters at issue in two or more enforcement adjudications under this part where there exists common parties or common questions of fact or law, consolidation would expedite and simplify consideration of the issues, and consolidation would not adversely affect the rights of parties engaged in otherwise separate adjudications.

(b) *Severance.* The Presiding Officer may, by motion or *sua sponte*, for good cause shown order any enforcement adjudication severed with respect to any or all parties or issues.

§ 820.39 Motions.

(a) *General.* All motions in an enforcement adjudication except those made orally, shall be in writing, state the grounds therefor with particularity, set forth the relief or order sought, and be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon.

(b) *Answer to motions.* Except as otherwise specified by a particular provision of this Part or by the Presiding Officer, a party shall have the right to file a written answer to the motion of another party within 10 days after the filing of such motion. The answer shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no answer is filed within the designated period, the party may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter or longer time for an answer, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer shall rule on a motion as soon as practicable after the filing of the answer. The decision of the Presiding Officer on any motion shall not be subject to administrative appeal.

Subpart C—Compliance Orders

§ 820.40 Purpose and scope.

This subpart provides for the issuance of Compliance Orders to prevent, rectify or penalize violations of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement and to require action consistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

§ 820.41 Compliance order.

The Secretary may issue to any person involved in a DOE nuclear activity a Compliance Order that:

(a) Identifies a situation that violates, potentially violates, or otherwise is inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement;

(b) Mandates a remedy or other action; and,

(c) States the reasons for the remedy or other action.

§ 820.42 Final Order.

A Compliance Order is a Final Order that constitutes a DOE Nuclear Safety Requirement that is effective immediately unless the Order specifies a different effective date.

§ 820.43 Appeal.

Within fifteen days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request shall not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

Subpart D—Interpretations

§ 820.50 Purpose and scope.

This subpart provides for interpretations of the Act, Nuclear Statutes, and DOE Nuclear Safety Requirements. Any written or oral response to any written or oral question which is not provided pursuant to this subpart does not constitute an interpretation and does not provide any basis for action inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

§ 820.51 General counsel.

The General Counsel shall be the DOE Official responsible for formulating and issuing any interpretation concerning the Act, a Nuclear Statute or a DOE Nuclear Safety Requirement.

§ 820.52 Procedures.

The General Counsel may utilize any procedure which he deems appropriate to comply with his responsibilities under this subpart. All interpretations issued under this subpart must be filed with the Office of the Docketing Clerk which shall maintain a docket for interpretations.

Subpart E—Exemption Relief

§ 820.60 Purpose and scope.

This subpart provides for exemption relief from provisions of DOE Nuclear Safety Requirements at nuclear facilities.

§ 820.61 Secretarial Officer.

The Secretarial Officer who is primarily responsible for the activity to which a DOE Nuclear Safety

Requirement relates may grant a temporary or permanent exemption from that requirement as requested by any person subject to its provisions; provided that, the Secretarial Officer responsible for environment, safety and health matters shall exercise this authority with respect to provisions relating to radiological protection of workers, the public and the environment. This authority may not be further delegated.

§ 820.62 Criteria.

The criteria for granting an exemption to a DOE Nuclear Safety Requirement are determinations that the exemption:

(a) Would be authorized by law;

(b) Would not present an undue risk to public health and safety, the environment, or facility workers;

(c) Would be consistent with the safe operation of a DOE nuclear facility; and

(d) Involves special circumstances, including the following:

(1) Application of the requirement in the particular circumstances conflicts with other requirements; or

(2) Application of the requirement in the particular circumstances would not serve or is not necessary to achieve its underlying purpose, or would result in resource impacts which are not justified by the safety improvements; or

(3) Application of the requirement would result in a situation significantly different than that contemplated when the requirement was adopted, or that is significantly different from that encountered by others similarly situated; or

(4) The exemption would result in benefit to human health and safety that compensates for any detriment that may result from the grant of the exemption; or

(5) Circumstances exist which would justify temporary relief from application of the requirement while taking good faith action to achieve compliance; or

(6) There is present any other material circumstance not considered when the requirement was adopted for which it would be in the public interest to grant an exemption.

§ 820.63 Procedures.

The Secretarial Officer shall utilize any procedures deemed necessary and appropriate to comply with his responsibilities under this subpart. All exemption decisions must set forth in writing the reasons for granting or denying the exemption, and if granted, the basis for the determination that the criteria in § 820.62 have been met and the terms of the exemption. All exemption decisions must be filed with the Office of the Docketing Clerk which shall maintain a docket for exemption decisions issued pursuant to this subpart.

§ 820.64 Terms and conditions.

An exemption may contain appropriate terms and conditions including, but not limited to, provisions that :

(a) Limit its duration;

(b) Require alternative action;

(c) Require partial compliance; or

(d) Establish a schedule for full or partial compliance.

§ 820.65 Implementation plan.

With respect to a DOE Nuclear Safety Requirement for which there is no regulatory provision for an implementation plan or schedule, an exemption may be granted to establish an implementation plan which reasonably demonstrates that full compliance with the requirement will be achieved within two years of the effective date of the requirement without a determination of special circumstances under § 820.62(d).

§ 820.66 Appeal.

Within fifteen (15) days of the filing of an exemption decision by a Secretarial Officer, the person requesting the exemption may file a Request to Review with the Secretary, or the Secretary may file, *sua sponte*, a Notice of Review. The Request to Review shall state specifically the respects in which the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested.

§ 820.67 Final order.

If no filing is made under Section 820.66, an exemption decision becomes a Final Order fifteen (15) days after it is filed by a Secretarial Officer. If filing is made under § 820.66, an exemption decision becomes a Final Order 45 days after it is filed by a Secretarial Officer, unless the Secretary stays the effective date or issues a Final Order that modifies the decision.

Subpart F—Criminal Penalties

§ 820.70 Purpose and scope.

This subpart provides for the identification of criminal violations of the Act or DOE Nuclear Safety Requirements and the referral of such violations to the Department of Justice.

§ 820.71 Standard.

If a person subject to the Act or the DOE Nuclear Safety Requirements has, by act or omission, knowingly and willfully violated, caused to be violated, attempted to violate, or conspired to violate any section of the Act or any applicable DOE Nuclear Safety Requirement, the person shall be subject to criminal sanctions under the Act.

§ 820.72 Referral to the Attorney General.

If there is reason to believe a criminal violation of the Act or the DOE Nuclear Safety Requirements has occurred, DOE may refer the matter to the Attorney General of the United States for investigation or prosecution.

Appendix A to Part 820—General Statement of Enforcement Policy

I. Introduction

This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to ensure compliance with its enforceable nuclear safety regulations and orders (hereafter collectively referred to as DOE Nuclear Safety Requirements) and, in particular, exercise the civil penalty authority provided to DOE in the Price Anderson Amendments Act of 1988, 42 U.S.C. 2282a (PAAA). The policy set forth herein is applicable to violations of DOE Nuclear Safety Requirements by DOE contractors who are indemnified under the Price Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to DOE's Nuclear Safety Requirements as specified in the PAAA. It is not intended to establish a "cookbook" approach to the initiation and resolution of situations involving noncompliance with DOE Nuclear Safety Requirements. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases. This policy statement is not applicable to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion.

Both the Department of Energy Organization Act, 42 U.S.C. 7101, and the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, require DOE to protect the public health and safety, as well as the safety of workers at DOE facilities, in conducting its nuclear activities, and grant DOE broad authority to achieve this goal.

The DOE goal in the compliance arena is to enhance and protect the radiological health and safety of the public and worker at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that activity seeks to attain and sustain compliance with DOE Nuclear Safety Requirements. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for

the open and prompt identification and reporting of noncompliances, and the initiation of comprehensive corrective actions to resolve both the noncompliance conditions and the program or process deficiencies that led to noncompliance.

In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. These initiatives and activities will be duly considered in exercising enforcement discretion.

The PAAA provides DOE with the authority to compromise, modify, or remit civil penalties with or without conditions. In implementing the PAAA, DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to nuclear facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the radiological health and safety of the public and workers at DOE facilities by:

a. Ensuring compliance by DOE contractors with applicable DOE Nuclear Safety Requirements.

b. Providing positive incentives for a DOE contractor's:

(1) Timely self-identification of nuclear safety deficiencies,

(2) Prompt and complete reporting of such deficiencies to DOE,

(3) Root cause analyses of nuclear safety deficiencies,

(4) Prompt correction of nuclear safety deficiencies in a manner which precludes recurrence, and

(5) Identification of modifications in practices or facilities that can improve public or worker radiological health and safety.

c. Deterring future violations of DOE requirements by a DOE contractor.

d. Encouraging the continuous overall improvement of operations at DOE nuclear facilities.

III. Statutory Authority

Section 17 of the PAAA makes most DOE contractors covered by the DOE Price-Anderson indemnification system, and their subcontractors and suppliers, subject to civil penalties for violations of applicable DOE nuclear safety rules, regulations and orders. 42 U.S.C. 2282a. Furthermore, Section 18 of the PAAA makes all employees of DOE contractors, and their subcontractors and suppliers, subject to criminal penalties, including monetary penalties and imprisonment, for knowing and willful violations of applicable DOE nuclear safety rules, regulations and orders. 42 U.S.C. 2273(c). Suspected, or alleged, criminal violations are referred to the Department of Justice for appropriate action. 42 U.S.C. 2271. Therefore, DOE's enforcement authority and policy will apply only to civil penalties since decisions on criminal violations are the responsibility of the Department of Justice. However, referral of a case to the Department of Justice does not preclude DOE from taking civil enforcement action in accordance with this policy statement. Such actions will be coordinated with the Department of Justice to the extent practicable.

IV. Responsibilities

The Director, as the principal enforcement officer of the DOE, has been delegated the authority to conduct enforcement investigations and conferences, issue Notices of Violations and proposed civil penalties, and represent DOE in an enforcement adjudication.

V. Procedural Framework

10 CFR part 820 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of contested enforcement actions in the event a DOE contractor elects to litigate contested issues before an Administrative Law Judge.

Pursuant to 10 CFR § 820.22, the Director initiates the civil penalty process by issuing a Preliminary Notice of Violation and Proposed Civil Penalty (PNOV). The DOE contractor is required to respond in writing to the PNOV, either admitting the violation and waiving its right to contest the proposed civil penalty and paying it, admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty, or denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE contractor's response, the Director of Enforcement may determine that no violation has occurred, that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a Final Notice of Violation (FNOV) or an FNOV and Proposed Civil Penalty.

An opportunity to challenge a proposed civil penalty either before an Administrative Law Judge or in a United States District Court is provided in the PAAA, 42 U.S.C. 2282a(c), and 10 CFR part 820 sets forth the procedures associated with an administrative hearing, should the contractor opt for that method of challenging the proposed civil penalty. A formal administrative enforcement proceeding pursuant to section 554 of the Administrative Procedures Act is not initiated until the DOE contractor against which a civil penalty has been proposed requests an administrative hearing rather than waiving its right to contest the civil penalty and paying it. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of an administrative proceeding or by consent order after a formal proceeding has begun.

VI. Severity of Violations

Violations of DOE Nuclear Safety Requirements have varying degrees of safety significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of DOE Nuclear Safety Requirements are categorized in three levels of severity to identify their relative safety significance, and Notices of Violation are issued for noncompliance which, when appropriate, propose civil penalties commensurate with the severity level of the violation(s) involved.

Severity Level I has been assigned to violations that are the most significant and Severity Level III violations are the least significant. Severity Level I is reserved for violations of DOE Nuclear Safety Requirements which involve actual or high potential for adverse impact on the safety of the public or workers at DOE facilities. Severity level II violations represent a significant lack of attention or carelessness toward responsibilities of DOE contractors for the protection of public or worker safety which could, if uncorrected, potentially lead to an adverse impact on public or worker safety at DOE facilities. Severity Level III violations are less serious but are of more than minor concern: i.e., if left uncorrected, they could lead to a more serious concern. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

Isolated minor violations of DOE Nuclear Safety Requirements will not be the subject of formal enforcement action through the issuance of a Notice of Violation. However, these minor violations will be identified as noncompliances and tracked to assure that appropriate corrective/remedial action is taken to prevent their recurrence, and evaluated to determine if generic or specific problems exist. If circumstances demonstrate that a number of related minor noncompliances have occurred in the same time frame (e.g. all identified during the same assessment), or that related minor noncompliances have recurred despite prior notice to the DOE contractor and sufficient opportunity to correct the problem, DOE may choose in its discretion to consider the noncompliances in the aggregate as a more serious violation warranting a Severity Level III designation, a Notice of Violation and a possible civil penalty.

The severity level of a violation will be dependent, in part, on the degree of culpability of the DOE contractor with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently than those in which there is gross negligence, deception or wilfulness. In

addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE contractor activities and a decrease in protection of public and worker health and safety.

Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE contractor in the particular activity area involved, whether the DOE contractor had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each case.

DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either failure to make a required report or notification to the DOE or an untimely report or notification, will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware, or should have been aware of the condition or event which it failed to report.

VII. Enforcement Conferences

Should DOE determine, after completion of all assessment and investigation activities associated with a potential or alleged violation of DOE Nuclear Safety Requirements, that there is a reasonable basis to believe that a violation has actually occurred, and the violation may warrant a civil penalty or issuance of an enforcement order, DOE will normally hold an enforcement conference with the DOE contractor involved prior to taking enforcement action. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty or enforcement order but which could, if repeated, lead to such action. The purpose of the enforcement conference is to assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based, discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE contractor's corrective actions, determine whether there are any aggravating or mitigating circumstances, and obtain other information which will help determine the appropriate enforcement action.

DOE contractors will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid pre-decisional discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of public or worker health and safety, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Actions

This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties. In determining whether to impose enforcement sanctions, DOE will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, e.g., instances which involve NRC licensed entities which are also DOE contractors, and in which the NRC exercises its own enforcement authority.

The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation. Administrative actions, such as determination of award fees where DOE contracts provide for such determinations, will be considered separately from any civil penalties that may be imposed under this Enforcement Policy. Likewise, imposition of a civil penalty will be based on the circumstances of each case, unaffected by any award fee determination.

Notice of Violation

A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of the DOE Office of Nuclear Safety that one or more violations of DOE Nuclear Safety Requirements has occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in Section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in Section VIII, the notice of violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in Section VIII, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances, or if the circumstances otherwise warrant increasing Severity Level III violations to a higher severity level.

DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with DOE Nuclear Safety Requirements. Should a contractor believe that a shortage of funding precludes it from achieving compliance with one or more DOE Nuclear Safety Requirements, it must pursue one of two alternative courses of action. First, it may request, in writing, an exemption from the requirement(s) in question from the appropriate Secretarial Officer (SO), explicitly addressing the criteria for exemptions set forth in 10 CFR 820.62. A justification for continued operation for the period during which the exemption request is being considered should also be submitted. In such a case, the SO must grant or deny the request in writing, explaining the rationale for the decision. Second, if the criteria for approval of an exemption cannot be demonstrated, the contractor, in conjunction with the SO, must take appropriate steps to modify, curtail, suspend or cease the activities which cannot be conducted in compliance with the DOE Nuclear Safety Requirement(s) in question.

DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all DOE Nuclear Safety Requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

Finally, certain contractors are explicitly exempted from the imposition of civil penalties pursuant to the provisions of the PAAA, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. See 10 CFR 820.20(c). In addition, in fairness to non-profit educational institutions, the Department has determined that they should be likewise exempted. See 10 CFR 820.20(d). However, compliance with DOE Nuclear Safety Requirements is no less important for these facilities than for other facilities in the DOE complex which work with, store or dispose of radioactive materials. Indeed, the exempted contractors conduct some of the most important nuclear-related research and development activities performed for the Department. Therefore, in order to serve the purposes of this enforcement policy and to emphasize the importance the Department places on compliance with all of its nuclear safety requirements, DOE intends to issue Notices of Violation to the exempted contractors and non-profit educational institutions when appropriate under this policy statement, notwithstanding the statutory and regulatory exemptions from the imposition of civil penalties.

Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violations of applicable DOE Nuclear Safety Requirements, including Compliance Orders. See 10 CFR 820.20(b). Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting and correction of violations of DOE Nuclear Safety Requirements.

Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in Section VIII, civil penalties will be proposed for Severity Level I and II violations. Civil penalties will be proposed for Severity Level III violations which are similar to previous violations for which the contractor did not take effective corrective action. "Similar" violations are those which could reasonably have been expected to have been prevented by corrective action for the previous violation. DOE normally considers civil penalties only for similar Severity Level III violations that occur over a reasonable period of time to be determined at the discretion of DOE.

DOE will impose different base level civil penalties, considering the severity level of the violation(s), and a categorization of DOE facilities operated by Price-Anderson indemnified contractors. Tables 1A and 1B show the daily base civil penalties for the various categories of facilities. However, as described above in Section IV, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of affiliated entities to the contractor (such as parent corporations) when it asserts that it cannot pay the proposed penalty.

DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Tables 1A and 1B identify the daily base civil penalty values for different severity levels and different categories of facilities. After considering all relevant circumstances, civil penalties may be escalated or mitigated based upon the adjustment factors described below in Section VIII. In no instance will a civil penalty for any one violation exceed $100,000 per day. However, it should be emphasized that if the DOE contractor is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered as a separate violation and, as such, subject to a separate civil penalty. Further, as described above in Section VIII, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1A—BASE CIVIL PENALTIES

Facility categories	Base civil penalty [1]
Category A reactors (>20 MWTh)	$100,000
Transuranic material production, processing, reprocessing, handling, storage, or waste disposal facilities; device assembly facilities	75,000
Non-Transuranic material, production, processing, reprocessing, handling, storage or waste disposal facilities	50,000
Category B reactors (<20 MWTh), including critical facilities [2]	10,000
All other nuclear facilities, including those with inventories consisting solely of sealed sources [3]	10,000

[1] Potential base civil penalties set forth in this table are, pursuant to the PAAA, per day for each violation.

[2] Critical Facilities are experimental facilities used to measure neutron multiplication characteristics (at essentially zero power) of assemblies of fuel, moderator and other materials.

[3] This category includes facilities that handle or store transuranic or non-transuranic materials consisting solely in sealed sources.

TABLE 1B.—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percentage of amount in table 1A)
I	100
II	50
III	20

Adjustment Factors

DOE's enforcement program is not an end in itself, but a means to achieve compliance with DOE Nuclear Safety Requirements, and civil penalties are not collected to swell the coffers of the United States Treasury, but to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of nuclear safety deficiencies and violations of DOE Nuclear Safety Requirements by the DOE contractors themselves rather than by DOE, and the prompt correction of any deficiencies and violations so identified. DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with DOE Nuclear Safety Requirements. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of nuclear safety-related problems that may constitute, or lead to, violations of DOE Nuclear Safety Requirements before, rather than after, DOE has identified such violations. Thus, DOE contractors will almost always be aware of nuclear safety problems before they are discovered by DOE. Obviously, public and worker health and safety is enhanced if deficiencies are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of nuclear safety-related problems by DOE contractors has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE contractors.

Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of DOE Nuclear Safety Requirements. Thus, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

Further, in cases involving willfulness, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Tables 1A and 1B may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with DOE Nuclear Safety Requirements or place the facility or operation in a safe configuration are not taken.

Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to

identify root cause and prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Tables 1A and 1B. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1A. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation or corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE Nuclear Safety Requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take, or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, and may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 820.60, no interpretation of a DOE Nuclear Safety Requirement is binding upon DOE unless issued in writing by the General Counsel. Further, as discussed in Section VIII of this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

a. In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it.

(2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

b. DOE may refrain from proposing a civil penalty for a violation involving a past problem, such as in engineering design or installation, that meets all of the following criteria:

(1) It was identified by a DOE contractor as a result of a formal effort such as a Safety System Functional Inspection, Design Reconstitution program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;

(2) Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and

(3) It was not likely to be identified by routine contractor efforts such as normal surveillance or quality assurance activities.

DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

c. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

(1) It was promptly identified by the DOE nuclear entity;

(2) It is normally classified at a Severity Level III;

(3) It was promptly reported to DOE;

(4) Prompt and appropriate corrective action will be taken, including measures to prevent recurrence; and

(5) It was not a willful violation or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

d. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

(1) It was an isolated Severity Level III violation identified during a Tiger Team inspection conducted by the Office of Environment, Safety and Health, during an inspection or integrated performance assessment conducted by the Office of Nuclear Safety, or during some other DOE assessment activity.

(2) The identified noncompliance was properly reported by the contractor upon discovery.

(3) The contractor initiated or completed appropriate assessment and corrective actions within a reasonable period, usually before the termination of the onsite inspection or integrated performance assessment.

(4) The violation is not willful or one which could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance issue and any corrective actions can be properly tracked and monitored.

e. If DOE initiates an enforcement action for a violation at a Severity Level II or III and, as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

IX. Procurement of Products or Services and the Reporting of Defects

DOE's enforcement policy is also applicable to subcontractors and suppliers to DOE Price-Anderson indemnified contractors. Through procurement contracts with these DOE contractors, subcontractors and suppliers are generally required to have quality assurance programs that meet applicable DOE Nuclear Safety Requirements. Suppliers of products or services provided in support of or for use in DOE facilities operated by Price-Anderson indemnified contractors are subject to certain requirements designed to ensure the high quality of the products or services supplied to DOE facilities that could, if deficient, adversely affect public or worker safety. DOE regulations require that DOE be notified whenever a DOE contractor obtains information reasonably indicating that a DOE facility (including its structures, systems and components) which conducts activities subject to the provisions of the Atomic Energy Act of 1954, as amended or DOE Nuclear Safety Requirements either fails to comply with any provision of the Atomic Energy Act or any applicable DOE Nuclear Safety Requirement, or contains a defect or has been supplied with a product or service which could create or result in a substantial safety hazard.

DOE will conduct audits and assessments of its contractors to determine whether they are ensuring that subcontractors and suppliers are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on public or worker radiological safety, and ensure that DOE contractors have in place adequate programs to determine whether products or services supplied to them for DOE facilities meet applicable DOE requirements and that substandard products or services are not used by Price-Anderson indemnified contractors at the facilities they operate for DOE. As part of the effort of

ensuring that contractual and regulatory requirements are met, DOE may also audit or assess subcontractors and suppliers. These assessments could include examination of the quality assurance programs and their implementation by the subcontractors and suppliers through examination of product quality.

When audits or assessments determine that subcontractors or suppliers have failed to comply with applicable DOE Nuclear Safety Requirements or to fulfill contractual commitments designed to ensure the quality of a safety significant product or service, enforcement action will be taken. Notices of Violations and civil penalties will be issued, as appropriate, for DOE contractor failures to ensure that their subcontractors and suppliers provide products and services that meet applicable DOE requirements. Notices of Violations and civil penalties will also be issued to subcontractors and suppliers of DOE contractors which fail to comply with the reporting requirements set forth in any other applicable DOE Nuclear Safety Requirements.

X. Inaccurate and Incomplete Information

A violation of DOE Nuclear Safety Requirements for failure to provide complete and accurate information to DOE, 10 CFR § 820.11, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a DOE contractor normally will be categorized based on the guidance in Section VI, "Severity of Violations".

DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE contractors concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as

(a) The degree of knowledge that the communicator should have had regarding the matter in view of his or her position, training, and experience;

(b) The opportunity and time available prior to the communication to assure the accuracy or completeness of the information;

(c) The degree of intent or negligence, if any, involved;

(d) The formality of the communication;

(e) The reasonableness of DOE reliance on the information;

(f) The importance of the information that was wrong or not provided; and

(g) The reasonableness of the explanation for not providing complete and accurate information.

Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE contractor. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE contractor or others on behalf of the DOE contractor, if a record was made of the oral information and provided to the DOE contractor thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the DOE contractor and was not subsequently corrected in a timely manner.

When a DOE contractor has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE contractor identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE contractor prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

If the initial submission was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was corrected.

The failure to correct inaccurate or incomplete information that the DOE contractor does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE contractor later determines that the initial submission was in error and does not correct it or if there were clear opportunities to identify the error.

XI. Secretarial Notification and Consultation

The Secretary will be provided written notification of all enforcement actions involving proposed civil penalties. The Secretary will be consulted prior to taking action in the following situations:

a. Proposals to impose civil penalties in an amount equal to or greater than $100,000;

b. Any proposed enforcement action that involves a Severity Level I violation;

c. Any action the Director believes warrants the Secretary's involvement; or

d. Any proposed enforcement action on which the Secretary asks to be consulted.

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Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 290 and 886

Management and Disposition of HUD-Owned Multifamily Projects and Certain Multifamily Projects Subject to HUD-Held Mortgages; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 290 and 886

[Docket No. R-93-1585; FR-2159-F-03]

RIN 2502-AD43

Management and Disposition of HUD-Owned Multifamily Projects and Certain Multifamily Projects Subject to HUD-Held Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department's multifamily property disposition regulations to incorporate statutory amendments affecting the disposition of HUD-owned properties and also the management and disposition of properties with delinquent HUD-held mortgages.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, room 6164, 451 7th Street SW., Washington, DC 20410. Telephone (202) 708–3555; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control numbers 2502–0204, 2505–0052, and 2506–0121.

I. Introduction

On August 6, 1992 (57 FR 34834), the Department published a proposed rule amending its requirements governing the management and disposition of HUD-owned multifamily housing projects. The regulations, at 24 CFR part 290, implement HUD's statutory authority, contained in section 207(k) and (*l*) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was amended by section 181 of the Housing and Community Development Act of 1987 (1987 Act), section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (1988 Act), and section 579 of the National Affordable Housing Act (NAHA). Generally, the statutory amendments specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and moderate-income housing, and included certain projects with HUD-held mortgages within the scope of section 203. The Department has been carrying out its multifamily property disposition program and its servicing of delinquent HUD-held multifamily mortgages on a project-by-project basis in conformity with the requirements of section 203, as amended. The final rule, when effective, will revise HUD's multifamily property disposition regulations to conform them to section 203, as amended.

HUD has made some changes in the final rule in response to the public comments, which are discussed in Section III of this preamble. In addition, HUD has made a minor adjustment to the provision on negotiated sales at § 290.104(b)(1) of the final rule to restore the separation between formerly subsidized and formerly unsubsidized projects that exists under the current rule. The change permits negotiated sales of unsubsidized projects only to an agency of the Federal, State, or local government. HUD has determined that since negotiated sales generally involve lower sales prices, negotiated sales of unsubsidized projects should be limited to governmental agencies.

The Department no longer publishes fair market rents for substantial rehabilitation because their limited use does not justify the cost involved in their determination. Therefore, the final rule, in both parts 290 and 886, has been changed to provide that initial contract rents may not exceed 144 percent of fair market rents for existing housing, which are published annually under 24 CFR part 888. This maximum amount, which the Department's experience has shown to be more than adequate to meet statutory intent, will assure that the project has enough income to cover the costs of rehabilitation, operating costs, and a reasonable rate of return.

This final rule also adds two new sections to 24 CFR part 886, to conform these regulations to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (URA) and to the implementing regulations at 49 CFR part 24 issued by the Department of Transportation (DOT) on March 2, 1989 (54 FR 8912).

HUD published an interim rule on February 19, 1988 (53 FR 4964), advising that it would make effective as of April 2, 1989 "all the rule changes necessary to implement amendments" to the URA. The provisions in this rule will conform part 886 regulations to the DOT final rule at 49 CFR part 24 while adding definitions or descriptions that are peculiar to HUD's programs.

II. Public Comments

During the public comment period on the proposed rule, HUD received five public comments. Those comments focused on the following issues:

Management and Disposition Purpose and Goals (Section 290.5)

Comment: Section 203(a) of the Housing and Community Development Amendments of 1978 lists the goals of the property disposition program and directs HUD to manage and dispose of projects in a way that will further those goals in the least costly fashion among other reasonable alternatives available. Those goals are listed in § 290.5(a) of the rule. Section 290.5(b) of the rule provides that, in connection with an individual project, HUD may balance competing goals in a way that will achieve the overall purpose of the program. One commenter stated that the rule should provide that preservation (one of the goals) is the most important. The commenter quotes the House Report to the 1988 Act indicating that HUD must use cost only for choosing the most reasonable alternative that furthers the preservation objectives.

HUD response: HUD does not agree that the rule should state that preservation is the most important objective of the disposition program. Section 203(a) lists preservation as one of six goals and does not specify that it is the most important of the goals. In fact, section 203(a) explicitly states that the Secretary "may balance competing goals * * * in a manner which will further the achievement of the overall purpose of this section." The overall purpose of the section encompasses all six goals.

Furthermore, Congress limited the preservation objective, through the amendment made by section 579 of NAHA, by eliminating the requirement to preserve vacant units in unsubsidized projects and by permitting the use of certificates and vouchers in unsubsidized projects in areas with "an adequate supply of habitable affordable housing for low-income families."

HUD does agree that the thrust of section 203(a), as amended, is to preserve the supply of low- and moderate-income housing in those areas that do not have an adequate supply of habitable affordable housing for low-income families, but believes that the

rule, as drafted, accomplishes this purpose.

Regarding the commenter's quote on "cost," the Department believes that by including, verbatim, the statutory language regarding cost in § 290.5(a), it follows the statute. The Department notes that the legislative history the commenter quotes is in the context of a discussion on negotiated sales. The sentence before the language quoted by the commenter states: "Again, in this context [negotiated sales] the Committee reiterates that maximizing the federal government's financial return on the sale of these projects is not the paramount purpose of this program." (See H. Rept. No. 100–122, 100th Cong., 1st Sess. 38 (1987).) HUD believes the Committee may merely have intended that HUD not discourage negotiated sales by placing artificially high purchase prices on properties in an effort to reduce HUD's costs, rather than the broad admonishment suggested by the commenter.

Management Provisions—HUD-Held Mortgages (Section 290.51)

Comment: Section 290.51 of the rule provides management provisions applying equally to HUD-owned projects and projects where HUD is mortgagee-in-possession (MIP), as well as projects subject to a HUD-held mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD but HUD is not MIP. The same commenter asserts that the duties to maintain HUD-owned and MIP projects and keep them in full occupancy are critical components of the preservation program and should be set out separately. The commenter is especially concerned that these duties are qualified by the language "shall in the least costly fashion among reasonable alternatives available." (See § 290.51(a)(3).)

With regard to maintenance of a project, paragraph (a)(3)(i) of § 290.51 provides that, to the greatest extent possible, a level of services necessary to maintain occupied housing in decent, safe, and sanitary condition must be provided. The commenter argues that, rather than using the statutory exception "to the greatest extent possible," the rule should take note of the legislative history. The commenter quotes the House Report stating that all units are to be maintained in a decent, safe, and sanitary condition, "except in the extraordinary circumstances where the project is vacant and requires major rehabilitation or, as an absolute last resort, demolition." (H. Rept. No. 100–122, 100th Cong., 1st Sess. 38 (1987).) The commenter suggests that the rule should state that HUD and owners have a duty to maintain units in decent, safe, and sanitary condition unless the project is vacant, and a duty to maintain full occupancy subject only to those rare instances where demolition is necessary.

HUD response: The commenter places a burden on HUD that is greater than that imposed by the statute or congressional intent. The commenter asserts that HUD has a duty to maintain full occupancy of projects "except in those rare cases where, as a last resort, demolition is necessary." HUD agrees that it has an obligation to maintain the inventory in decent, safe, and sanitary condition as required by the statute to ensure that it meets appropriate habitability standards.

However, both section 203 and the legislative history limit this responsibility. For example, the statute states that HUD is not obligated to provide rents for rehabilitation that exceed the contract rents for substantially rehabilitated units as published in the **Federal Register**. (See section 203(d)(1).) The House Report on the 1987 Act states that under such circumstances HUD may sell the project without rehabilitation subsidies and thereby not preserve the project as low- and moderate-income rental or cooperative housing. (See H. Rept. No. 100–122, 100th Cong., 1st Sess. 39 (1987).) Similarly, section 203(d)(2) provides for HUD to dispose of projects with certificates or vouchers if they are not subsidized and are located in markets with an adequate supply of habitable affordable housing for low-income families. Clearly, this provision shows that Congress does not intend that HUD provide for full occupancy in all circumstances other than when demolition is necessary. In fact, much of the HUD inventory competes directly with conventional rental housing and pursuing the rent cutting and incentives necessary to obtain full occupancy in markets with significant vacancies would further destabilize those markets, aggravating financial problems for both HUD-insured and conventionally financed developments in those areas.

The Department also believes that it is inappropriate to maintain occupancy of units that do not meet site and neighborhood standards and are subject to adverse environmental conditions that are beyond its control to correct. (A more extensive explanation of the Department's position on site and neighborhood standards is provided in our response to comments on § 290.105(d)) later in this preamble.)

The legislative history also provides additional guidance on how far HUD should go toward maintaining full occupancy. The Conference Report on the 1987 Act states that HUD is not required to preserve properties that are substantially incomplete (Conference Report, H. Rept. No. 100–426, 100th Cong., 1st Sess. 188 (1987)). The Conference Report on the 1988 Act expands this intent by noting that HUD may allow demolition when projects "are unfit for rehabilitation or the rehabilitation would cost substantially more than constructing new housing." (Conference Report, H. Rept. No. 100–1089, 100th Cong., 2d Sess. 97 (1988).)

There is no need to modify the language in the final rule since both the statute and the history of the legislation state that the circumstances under which HUD is not required to maintain full occupancy are when projects are not in safe, decent, and sanitary conditions.

Comment: Another of the management requirements in § 290.51(a)(3) provides that HUD or the owner must "maintain all vacant buildings and land in a way that eliminates health and safety hazards to the public and ensures the proper security of the property." Two other commenters suggested a reasonableness standard for § 290.51(a)(3)(iii), arguing that the requirement to eliminate health and safety hazards to the public and to ensure the proper security of the property could be interpreted to compel expenditures without regard to a reasonable balancing of risks and costs.

HUD response: HUD believes the language in § 290.51(a)(3)(iii) clearly sets forth an owner's obligation. The policy is not unlike State and local laws, which require owners of property to take such measures as are necessary to assure that their property is not a hazard to the public health or safety. Public health and safety are regulated by the police powers of a community and are applied uniformly without discrimination based on ability to pay. HUD believes that properties it assists should be subject to the same health and safety standards as the rest of the community.

Comment: Section 290.51(b)(2) provides that HUD may require owners to contract for management services with a manager determined by HUD to meet specified criteria. The two commenters recommended that § 290.51(b)(2) be changed to provide that HUD will not require a change of management agent or change in the terms and conditions of the management agreement, so long as the project is in compliance with the workout plan. The commenters stated that an owner's willingness to enter into a workout plan is typically based on its

confidence in the management agent and upon the particular terms and conditions of the management agreement. This would also recognize that management considerations are a material part of workout plans, and neither the owner nor HUD should be allowed to make material changes without the consent of the other party.

HUD response: The rule states that HUD "may" require an owner to change management. Good management of a property is the key to its success. The fact that an owner is currently under a workout does not automatically mean there are no problems with the property manager, or that the property manager is operating the property in accordance with the requirements of section 203. Therefore, HUD sees no need to change the language in § 290.51(b)(2).

Rents During HUD Ownership (Section 290.55)

Comment: A commenter stated that for formerly subsidized projects, rents should be established as they were before September 1988, *i.e.*, similar to the Section 8 programs. The commenter contends that this would ensure that rents would be immediately affordable, rather than set at a level that may not be affordable. At the least, according to the commenter, HUD's obligation to update rents periodically to maintain comparability should be balanced against its obligation to set rents at levels necessary to achieve the statutory duty to obtain full occupancy.

HUD response: The Department does not agree that rents should be set at the Section 8 level during HUD ownership of formerly subsidized projects. Given that Section 8 is a resource that may not always be available or appropriate, the statute governing HUD-owned sales has historically provided the Department flexibility in developing disposition programs and, in fact, does not mandate the use of Section 8 (see further comments on § 290.105). "Subsidized" projects have their rents set at "affordable" levels pursuant to the section of the National Housing Act under which their mortgage is insured, and one of the Department's sales options is to continue operating the project after a sale as if it is still insured. The Department believes that lowering rents during the period HUD owns a project, to a Section 8 level, unnecessarily limits the Department's flexibility to utilize other disposition methods provided for by statute which may be more appropriate and better meet the statutory requirement to preserve the project in the "least costly fashion among the alternatives available."

Manner of Disposition and Terms and Conditions of Sale (Section 290.105)

Comment: With regard to the situations listed in § 290.105(d) where HUD may determine not to preserve units as affordable housing for low-income use, one commenter argued that some of the environmental factors listed in paragraph (d)(3) go beyond the legal definition of "uninhabitable." The commenter refers specifically to neighborhood conditions such as inadequate police or fire protection, high crime rates, drug infestation, and lack of public community services. The commenter contends that preservation of the project may be an important step in an overall revitalization strategy for the neighborhood.

HUD response: HUD disagrees that its concern for the environmental impact on the area as related to the habitability of units goes too far. The standards HUD has incorporated into the rule are taken from the site and neighborhood standards specified at 24 CFR 886.307(k), which are intended to prevent low-income residents assisted with property disposition Section 8 from living units that do not meet Housing Quality Standards. HUD does not believe Congress intends HUD to preserve projects that do not meet site and neighborhood standards, whether or not they receive Section 8. The impact of the commenter's position would be to apply a lower environmental standard to projects preserved without Section 8 than those that receive Section 8.

HUD's position is consistent with the Conference Report accompanying the 1987 Act, which states that HUD is not expected to take the actions contemplated by section 203(a) when "the project is uninhabitable due to environmental factors beyond the control of the Secretary." (Conference Report. H. Rept. 100–426, 100th Cong., 1st Sess. 188 (1987).)

Contrary to the commenter's assertion, HUD believes that the rule, as drafted, can only be construed to mean that it intends to preserve projects that are undertaken as part of an overall revitalization strategy. Section 290.105(d)(3) requires HUD and/or the purchaser "to show that the environmental factors cannot be mitigated." Presumably, responsible local government would not undertake an overall revitalization strategy for the area if the environmental hazards could not be mitigated.

Comment: The commenter also objected to the inclusion of paragraph (d)(5), which would allow reduction in units through demolition, in the determination not to preserve units. The commenter asserts that demolition should be evaluated under criteria similar to those in the current rule at 24 CFR 290.43.

HUD response: HUD agrees, in part. The decision to demolish is a decision not to preserve coupled with decisions about the impact of demolition itself. The final rule has been revised to include a new § 290.9, which provides standards for demolition in addition to those specified in § 290.105(d).

Comment: With regard to the proposed rule's preamble discussion on disposition without the benefit of Section 8 (and § 290.105(f)), the same commenter asserted that HUD does not always request adequate Section 8 funds based on its current inventory and projected acquisitions and sales activity. The commenter argued that HUD should request an adequate amount to fulfill the congressional purpose of section 203, or should hold properties until sufficient funds are available. The commenter also objected to allowing owners to establish minimum income requirements, stating that this would effectively prohibit poverty level households from having access to the housing.

HUD response: HUD does not agree that the sole intent of the section 203 is to preserve projects through Section 8 and only in the absence of such rental assistance consider alternative preservation methods, for the reasons discussed below.

First, the statute specifically lists three preservation alternatives and does not require that HUD consider them in any particular order or under defined circumstances, such as the absence of section 8. When exercising its option to preserve projects without section 8, HUD believes that it can do so without first requesting a section 8 appropriation from Congress. Nothing in the statute or the legislative history suggests that preservation without section 8 can be considered only after Congress rejects an appropriations request. If this had been Congress' intent, Congress would have made it a prerequisite to implementing section 203(a)(d)(3).

Second, the Conference Report on the 1987 Act states a threshold level of expected preservation:

"Notwithstanding the availability of appropriated funds the Committee intends and has always intended that at a minimum HUD will continue the low and moderate income use restrictions in effect prior to foreclosure under the program through which the project was assisted or insured in order to advance the preservation objective." (Conference Report, H. Rept. No. 100–426, 100th Cong., 1st Sess. 37 (1987).) When HUD provides for the preservation of units or

projects without section 8 assistance, it will require that such projects remain available to and affordable by low- and moderate-income persons by imposing income restrictions and rent structures that target to the same levels of affordability as prior to foreclosure. Section 290.105(f) of the final rule has been changed to make this intent clear.

HUD does not agree with the commenter's assertion that when HUD preserves projects without section 8 by establishing minimum rents, it penalizes very low-income families. When HUD selects this disposition method, it has the effect of stretching available section 8 to cover more units since the assistance is used to preserve units occupied by very low-income tenants as opposed to units occupied by moderate-income tenants. Further, before foreclosure, subsidized non-section 8 projects were not affordable by very low-income families, but were an important part of the assisted housing inventory.

The commenter also asserted that HUD should hold properties off the market when section 8 is not available. However, nothing in the history of the legislation suggests this is an intent of Congress, nor is it a stated option under section 203(a), as amended. HUD believes that Congress intends that properties should be returned to private ownership as rapidly as possible in order to both maintain their character as privately owned low- and moderate-income housing and in order to minimize the costs to the taxpayers. HUD's holding costs are substantial and this alternative would not be "the least costly among the reasonable alternatives available" to HUD.

Term of Use Restriction (Section 290.105(b))

Comment: A commenter pointed out that the legislative history indicates that the preexisting use restriction should be carried forward for a term at least equivalent to the remaining term of the original mortgage. (Section 290.105(b) generally establishes a minimum 15-year use restriction.)

HUD response: The Department agrees with the commenter and has revised § 290.105(c) to provide that, in a foreclosure sale of a rental housing project, all residential units to be preserved must be preserved as rental or cooperative housing for the greater of 20 years or the remaining term of the mortgage, unless the mortgage can be prepaid without the Secretary's consent, in which case the use restriction may be only 20 years.

Second Notice of Foreclosure Sale

Comment: A commenter recommended that HUD permit tenants and local governments to comment on the terms of the final foreclosure package for a 30-day period.

HUD response: The Department does not agree that a second foreclosure notice should be sent. The Department's position on this was explained in length in the preamble to the proposed rule. It has been the Department's experience that the Initial Notice is sufficient to achieve the desired input of the tenants.

Bid Price at Foreclosure

Comment: A commenter stated that the rule should address the issue of how HUD will set its bid price at the foreclosure sale.

HUD response: This comment appears to be based on the assumption that the Department will foreclose in a manner intended to circumvent the statute. This is a mistaken assumption as can be seen by the procedures set forth in this rule, *i.e.*, the preservation requirements in foreclosures are now almost identical to those used in the sale of HUD-owned projects. The Department believes that its pricing procedure is best delineated through internal processing instructions.

Part 886

Comment: A commenter pointed out that the rule proposed removing the definitions of "moderate rehabilitation" and "substantial rehabilitation" from part 886, but these terms are still used in several sections throughout that part. The commenter was concerned that an interpretation of the regulations will be difficult and imprecise in the absence of explicit definition.

HUD response: The Department agrees with the comment. The final rule has been revised to remove the distinctions between "moderate rehabilitation" and "substantial rehabilitation." In the past years, the distinction has never had any practical application in the property disposition program and has been an unnecessary complication.

III. Other Matters

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control numbers 2502–0204, 2505–0052, and 2506–0121.

Any assistance made available to a purchaser under this rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, *e.g.*, a **Federal Register** Notice published April 9, 1991 (56 FR 14436) entitled "Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance").

A Finding of No Significance Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule constitutes a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it may have an annual effect on the economy of $100 million or more. The Department published a preliminary regulatory impact analysis on April 26, 1993 (58 FR 21960) for public comment. No public comments were received, and no changes were made to the final rule that would change the analysis; therefore, the final analysis is identical to the preliminary analysis, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These revisions to the policies governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

HUD has determined, in accordance with Executive Order 12612, Federalism, that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the rule would impose terms and conditions on

States that acquire projects under this rule, that is clearly the intent of section 203(e) of the Housing and Community Development Amendments of 1978, and therefore no further review is necessary or appropriate.

HUD has determined that this rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

This rule was listed as Sequence Number 1437 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24408) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 290

Mortgage insurance, Low and moderate-income housing.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the preamble, chapters II and VIII of title 24 of the Code of Federal Regulations are amended as follows:

1. Part 290 is revised, to read as follows:

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES

Subpart A—General Provisions

Sec.

290.1 Applicability.
290.3 Definitions.
290.5 Management and disposition purpose and goals.
290.7 Displacement, relocation, and acquisition.
290.9 Demolition.
290.11 Waivers.

Subpart B—Management Provisions

290.51 Management.
290.53 Occupancy.
290.55 Rental rates during ownership by HUD.

Subpart C—Disposition Provisions

290.100 Foreclosure notice.
290.102 Notices for HUD-owned rental housing projects.
290.103 Factors considered in determining the terms and conditions in foreclosures and dispositions.
290.104 Methods of disposition.
290.105 Manner of disposition and terms and conditions of sale.
290.107 Analysis, recommendation, and determination for foreclosure sales and sales of HUD-owned projects.
290.109 Right of first refusal to local government and State housing finance agency.
290.111 Occupancy in projects acquired from HUD.

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 290.1 Applicability.

This part applies to HUD-owned multifamily housing projects and to rental housing projects that are subject to mortgages held by HUD that are either delinquent, under workout agreements, or being foreclosed, by HUD. Specific provisions, as noted in the rule text, apply only to "rental housing projects" as defined in § 290.3, including a HUD-owned rental housing project.

§ 290.3 Definitions.

Cooperative means a nonprofit, limited equity, consumer, or mutual housing association.

Eligible tenant means a tenant (1) who is a low- and moderate-income family, or (2) who is or (immediately prior to HUD's acquisition of the project) was receiving HUD rental assistance under section 23 (as in effect prior to January 1, 1975), section 8, Rent Supplement, or Rental Assistance Payments.

Formerly subsidized rental housing project means a HUD-owned rental housing project that was a subsidized rental housing project immediately before HUD acquired the project. If HUD has acquired the project more than once, its status as a subsidized rental housing project is determined as of HUD's most recent acquisition.

Formerly unsubsidized rental housing project means a HUD-owned rental housing project that was not a subsidized rental housing project immediately before HUD acquired the project. If HUD has acquired the project more than once, its status as an unsubsidized rental housing project is determined as of HUD's most recent acquisition.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low-income person means a person or family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 50 percent of the median for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

Moderate-income person means a person or family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act (other than projects consisting of one to eleven units insured under section 220(d)(3)(A) of that Act, which are classified as single family homes) or is or was subject to a loan under section 202 of the Housing Act of 1959 or section 312 of the Housing Act of 1964. The term also includes a manufactured home court or park, hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself.

Rental housing project means a multifamily project other than a multifamily project that is a hospital, intermediate care facility, nursing home, group practice facility, or board and care home. A retirement service center is a "rental housing project." A manufactured home court or park is a "rental housing project." Furthermore, the unit preservation goal set forth in § 290.5(a) of this part shall be applicable if HUD forecloses on or acquires five or more manufactured homes as part of its foreclosure of the mortgage on the project. Vacant land is not a "rental housing project," regardless of which mortgage insurance program or loan program it was financed under. In addition, eligible property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program is not a rental housing project.

Subsidized rental housing project means a rental housing project in which

tenants are receiving the benefits of any of the following programs:

(1) Below market interest mortgage under section 221(d)(3) of the National Housing Act;

(2) Interest reduction payments made in connection with a mortgage insured under section 236 of the National Housing Act;

(3) Rent supplement assistance payments under section 101 of the housing and urban Development Act of 1965;

(4) Direct loans at below market interest rates made under section 202 of the Housing Act of 1959, sections 401 and 404(b)(3) of the Housing Act of 1950, or section 312 of the Housing Act of 1964;

(5) Housing assistance payments under section 23 of the United States Housing Act of 1937 in effect before January 1, 1975, or section 8 of the United States Housing Act of 1937, if more that 50 percent of the units in the project are receiving such assistance. Housing assistance payments under the Section 8 Rental Certificate program, 24 CFR part 882, subparts A, B, C, and F, and the Section 8 Rental Voucher program, 24 CFR part 887, are excluded in determining whether a project is a subsidized rental housing project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

§ 290.5 Management and disposition purpose and goals.

(a) *Purpose and goals.* The purpose of this part is to manage and dispose of HUD-owned multifamily projects, and rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or being foreclosed by HUD, in a manner that is consistent with the National Housing Act, section 203 of the Housing and Community Development amendments of 1978, and other relevant statutes, and that will, in the least costly fashion among the other reasonable alternatives available, further the goals of:

(1) Preserving so that they are available to and affordable by low- and moderate-income persons:

(i) In subsidized and formerly subsidized rental housing projects, all units;

(ii) In HUD-owned formerly unsubsidized rental housing projects, at least the units that are occupied by low- and moderate-income persons;

(iii) In unsubsidized rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or being foreclosed by HUD, at least the greater of the number of units occupied by low- and moderate-income persons on the date of assignment or foreclosure;

(2) Preserving and revitalizing residential neighborhoods;

(3) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(4) Minimizing the involuntary displacement of tenants;

(5) Minimizing the need to demolish multifamily projects; and

(6) Maintaining the rental housing project for the purpose of providing rental or cooperative housing.

(b) *Competing goals.* In determining the manner by which a project shall be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the achievement of the overall purpose of this part.

§ 290.7 Displacement, relocation, and acquisition.

(a) *Scope of section.* This section applies to all HUD-owned multifamily projects and all rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or in foreclosure by HUD. When HUD is not the mortgagee-in-possession or owner, HUD will require the owner of the project to comply with this section.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) for a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily project, but is not subject to paragraph (d) of this section (*e.g.*, occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily project or as a direct result of the foreclosure of a HUD-held mortgage on a rental housing project or sale of a HUD-owned project without Federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable (and where appropriate, accessible), decent, safe, and sanitary dwelling unit in a HUD-owned multifamily project, in a public housing project, or in another HUD subsidized rental housing project, or

(ii) Assistance under the Section 8 Certificate program (see § 882.209(a)(4)(ii)(B) of this title) or the Housing Voucher program (see § 887.155(c) of this title), if the assistance is available; and

(5) Such other Federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels*—(1) *General.* Whenever assistance under 24 CFR part 886, subpart C (or other Federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party, any resulting displacement is subject to paragraph (d) of this section. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of "initiation of negotiations".* Under the URA, for purposes of determining the method of computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term *displaced person* means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes, but may not be limited to:

(A) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date of the transfer of title to the purchaser.

(B) Any person that HUD determines was displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project.

(C) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the transfer of title to the purchaser, if the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or thirty percent of gross household income.

(D) A tenant-occupant of a dwelling unit who is required to relocate temporarily for the project, but does not return to the building/complex, if either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex for the project, if either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (d)(3)(i) of this section, a person does not qualify as a "displaced person" if:

(A) The person is excluded under 49 CFR 24.2(g)(2).

(B) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(C) The person moves into the property after transfer of title to the purchaser.

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (*e.g.*, to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of, the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.9 Demolition.

Demolition may result from HUD's decision not to preserve units as set forth at § 290.105(d) of this part at either a foreclosure or HUD-owned sale. In such cases, HUD will require that the purchaser either restore the project to local code standard or require that it be demolished. Demolition may also be required when a project is HUD owned or HUD is mortgagee-in-possession if HUD determines that the project is a public hazard or threat to the public safety. Demolition may not occur in occupied projects until the requirements of § 290.7 of this part have been met.

§ 290.11 Waivers.

Upon completion of a determination and finding of good cause, the Assistant Secretary for Housing may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with the HUD Reform Act of 1989 and HUD policies regarding publication of waivers.

Subpart B—Management Provisions

§ 290.51 Management.

(a)(1) With respect to any HUD-owned rental housing project and any rental housing project where HUD is mortgagee-in-possession, HUD shall manage the project in accordance with the requirements of paragraph (a)(3) of this section.

(2) With respect to any rental housing project subject to a HUD-held mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD, but HUD is not mortgagee-in-possession, the owner shall manage the project in accordance with the requirements of paragraph (a)(3) of this section.

(3) HUD or the owner, as appropriate, shall in the least costly fashion among the reasonable alternatives available:

(i) To the greatest extent possible, provide the level of services necessary to maintain occupied housing in decent, safe, and sanitary condition;

(ii) Minimize the involuntary displacement of tenants to the greatest extent possible, consistent with sound management practices;

(iii) Maintain all vacant buildings and land in a way that eliminates health and safety hazards to the public and ensures the proper security of the property;

(iv) To the greatest extent possible, maintain full occupancy;

(v) Maintain all such reports for purposes of providing rental or cooperative housing for the longest feasible period (for projects being sold at foreclosure sales or HUD-owned property sales, this period generally shall be 20 years); and

(vi) Respond to the needs of the tenants and work cooperativaly with resident organizations.

(b)(1) HUD, in accordance with the Federal Acquisition Regulations, 48 CFR chapter 1 and the HUD Acquisition Regulations, 48 CFR chapter 24, may contract for management services for a HUD-owned multifamily project or a

rental housing project where HUD is mortgagee-in-possession with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program determined by HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) With respect to a rental housing project subject to a mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD, but for which HUD is not a mortgagee-in-possession, HUD may require the owner to contract for management services with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program acceptable to HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

(c) Projects shall be managed in accordance with the management objectives contained in paragraph (a)(3) this section, the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR parts 100 et al, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations, which prohibit discrimination against disabled individuals; Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, which prohibit discrimination based on race, color, or national origin in programs receiving Federal financial assistance; the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146, which prohibit discrimination based on age in programs receiving Federal financial assistance; and Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

(d) HUD shall conduct outreach efforts to minority-owned and female-owned businesses to become managers of the projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 39) (Minority Business Enterprises), Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development), and Executive Order 12138 (3 CFR, 1979 Comp., p. 393) (National Women's Business Enterprise Policy).

§ 290.53 Occupancy.

(a) *HUD-owned multifamily project or project where HUD is mortgagee-in-possession.* Except as provided in paragraph (b) of this section, occupancy in a HUD-owned multifamily project or in a rental housing project where HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily projects who are eligible for assistance in accordance with § 290.7 of this part.

(b) *Formerly unsubsidized project.* In a formerly unsubsidized project, at least the number of units that received rental assistance before acquisition by HUD shall be rented to eligible tenants.

(c) *Evictions.* Eviction from a HUD-owned multifamily project is governed by 24 CFR part 247, subpart B.

(d) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.7 of this part to tenants required to vacate the premises.

§ 290.55 Rental rates during ownership by HUD.

(a) *Determining a schedule of maximum rental rates.* As soon as practicable after HUD assumes management responsibility, HUD shall establish a schedule of maximum rental rates for each unit in a HUD-owned multifamily project that is comparable to the rates charged in similar multifamily projects, based on unit size, location, condition, services, and amenities provided, and is conducive to attracting high occupancy without impacting adversely on the viability of other multifamily projects and other housing projects in the area. HUD shall review and update the maximum rental rate schedule periodically to maintain current comparability.

(b) *Rents in projects acquired on or after September 19, 1988.* Except as modified by this section, HUD shall set rents in a multifamily project acquired by HUD on or after September 19, 1988, as if the rent setting requirements that governed rents before the project was acquired still applied.

(1) For families residing in a subsidized project when HUD becomes mortgagee-in-possession or when HUD acquires such a project, as appropriate, HUD shall request an income certification from each family. This certification shall be conducted as soon as practicable after HUD becomes the owner or mortgagee-in-possession, unless the family's income has been examined by the owner or by HUD not more than four months before such action. If a tenant does not certify income as required by this paragraph (b)(1), the tenant must pay the unit rent as determined under paragraph (a) of this section.

(2)(i) For families applying for admission to a subsidized or formerly subsidized project, HUD shall request an income certification from each family (and, thereafter, at each annual recertification) to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with part 813 of this title. This information is also used in HUD's foreclosure or disposition analysis. Rental voucher and rental certificate holders need not certify to HUD since they do so with the local PHA as part of those programs.

(ii) For families applying for admission to an unsubsidized or formerly unsubsidized project, HUD shall request sufficient information for income verification to determine the family's ability to pay the unit rent. If necessary for use in HUD's foreclosure or disposition analysis, HUD may request an income certification from families who are not paying a subsidized rent.

(3) HUD shall determine rent, for a unit in a multifamily project that, at the time of acquisition by HUD, had a market-based rent, from the schedule of maximum rental rates established under paragraph (a) of this section. HUD, however, may set a lower rent if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(c) *Rents in projects acquired before September 19, 1988.* Each tenant (other than an eligible tenant in a formerly subsidized project) in a HUD-owned multifamily project acquired by HUD before September 19, 1988, shall be

charged a rent based on the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set lower rent, if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy. Each eligible tenant in a formerly subsidized project acquired by HUD before September 18, 1988 shall be charged the lesser of an amount equal to the tenant rent that would be payable by the eligible tenant under part 813 of this title, or the rent established for the unit under paragraph (a) of this section.

(d) *Utility allowance.* For a tenant in a HUD-owned rental housing project, or project where HUD is mortgagee-in-possession, whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD shall deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(e) *Notice of rent changes.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or project where HUD is mortgagee-in-possession, HUD shall provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous locations around the project.

(f) *Disclosure and verification of Social Security Numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(g) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this chapter.

(Approved by Office of Management and Budget under control number 2502–0204)

Subpart C—Disposition Provisions

§ 290.100 Foreclosure notice.

(a) *Content of notice.* HUD shall issue a notice to each tenant of the general terms and conditions that HUD proposes to impose on a purchaser other than HUD concerning the sale and future use and operation of a rental housing project through the foreclosure of a HUD-held mortgage on the project. The notice shall contain an invitation to tenants to submit written comments thereon during a period of not less than 30 days following the date of the notice. The notice shall state:

(1) HUD's interest in learning of tenant plans and capacity for the acquisition of the project for use as rental or cooperative housing;

(2) In brief, the proposed manner of disposition of the project, including general conditions upon the sale, length of restrictions, or future use and operation of the project as may be required, and the general extent of any repairs that may be required to be performed by a purchaser other than HUD after disposition;

(3) The extent to which, and the eligibility requirements for, rental assistance that may be provided;

(4) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of assistance available under § 290.7 of this part;

(5) That HUD's final determination of the terms and conditions to be imposed on the foreclosure of a HUD-held mortgage will not be made until after HUD considers the comments received from tenants within the specified comment period.

(b) *Delivering or mailing notices to tenants.* The notice required to be issued to tenants under paragraph (a) of this section must be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession of a project, the notice also must be posted in the project office.

§ 290.102 Notices for HUD-owned rental housing projects.

(a) *Required notices.* (1) If HUD develops a disposition recommendation within 30 days after acquiring a rental housing project, it shall issue to tenants only the notice of disposition recommendation set forth in paragraph (d) of this section;

(2) If HUD develops a disposition recommendation after 30 days of acquiring a rental housing project, it shall issue to tenants both the pre-disposition recommendation notice specified by paragraph (b) of this section, and the notice of disposition recommendation specified by paragraph (d) of this section. In addition, HUD shall issue to State and local government agencies the notice set forth in paragraph (c) of this section.

(b) *Pre-disposition recommendation notice.* Where required by paragraph (a)(2) of this section, HUD shall issue to tenants a pre-disposition recommendation notice stating that:

(1) HUD owns the project;

(2) HUD is developing its disposition plan; that HUD normally seeks to sell HUD-owned projects as rapidly as possible and will require the purchaser to undertake any needed repairs not completed by HUD; and that during HUD's ownership or during its status as mortgagee-in-possession, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition pursuant to standards established by HUD;

(3) If HUD sells the project with a project-based subsidy, tenants who do not qualify for the subsidy will not be required to move due to the imposition of subsidy;

(4) If it appears that tenants may be required to relocate temporarily or permanently in connection with the management or disposition of the project, an explanation of the relocation assistance that will be available under § 290.2 of this part; and

(5) Tenants are invited to submit proposals to HUD (*e.g.*, expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident

initiative), comments, and facts, which will be considered by HUD in making its property disposition determination; the length of time within which tenants may submit such proposals, which shall be at least 30 days following the date of HUD's notice; and that tenants may submit proposals to HUD at any time during the specified time period.

(c) *Notice to State and local government agencies.* The notice to State and local government agencies required by paragraph (a)(2) of this section shall be sent to such agencies that may have an interest in acquiring the rental housing project. The notice shall include information on the availability of the project for purchase; request the State and local government agencies to notify nonprofit organizations in their jurisdiction that may have an interest in acquiring the rental housing project to submit to HUD any comments or expressions of interest concerning the proposed disposition; and request a written reply within 30 days.

(d) *Notice of disposition recommendation.* The disposition recommendation notice required by paragraphs (a) (1) and (2) of this section shall contain an invitation to tenants to submit written comments thereon during a period of not less than 30 days following the date of such notice, and shall state:

(1) In brief, the proposed manner of disposition of the project, including such conditions upon the sale and future use and operation of the project as may be contemplated and the extent of any repairs that may be required to be performed by the purchaser after disposition;

(2) The extent to which rental assistance may be provided and the eligibility requirements therefor;

(3) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of assistance to be provided under § 290.7 of this part;

(4) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office and for inspection at the project office; and

(5) That HUD's final determination of the manner by which the project is to be disposed of will not be made until after HUD considers the comments received from tenants, and from State and local government agencies and nonprofit entities within the specified comment period.

(e) *Delivering or mailing notices to tenants.* Any notice required to be issued to tenants under this section must be delivered to each unit in the project or sent to each unit by first class mail. The notice also must be posted in the project office.

(f) *Section 8 notice.* If the project will be sold with Section 8 assistance under 24 CFR part 886, subpart C, a notice must be sent to the local government in which the project is located in accordance with 24 CFR 886.306.

§ 290.103 Factors considered in determining the terms and conditions in foreclosures and dispositions.

In determining the terms and conditions to impose on the foreclosure of a mortgage or the disposition of a multifamily project, in accordance with § 290.5:

(a) *Multifamily project.* HUD shall consider with respect to any multifamily project:

(1) The results of a financial analysis of the project in accordance with procedures established by the Department;

(2) The results of a physical analysis of the project in accordance with procedures established by the Department;

(3) The number of occupants in the multifamily project that might be temporarily relocated or displaced as a result of the manner of disposition;

(4) Environmental reviews in accordance with HUD requirements implementing the National Environmental Policy Act of 1969 in 24 CFR part 50 and the other statutes, executive orders and HUD standards cited in § 50.4 of this title that apply to the disposition of the project; and

(5) For buildings located within a Special Flood Hazard Area (SFHA), the estimated cost of annual flood insurance coverage required by section 102(a) of the Flood Disaster Protection Act (FDPA), which is a condition of HUD approval of insured financing or other financial assistance. HUD also may not approve insured financing for a building located within an SFHA if the property is located in a community that is suspended for, or otherwise not participating in, the National Flood Insurance program.

(b) *Rental housing projects.* If the multifamily project is a rental housing project, HUD also shall consider (among other factors):

(1) Whether the project is a subsidized or formerly subsidized rental housing project;

(2) The occupancy rate and income levels of the occupants of the rental housing project at a time reasonably proximate to the time of the disposition analysis and—

(i) For a rental housing project subject to a HUD-held mortgage that HUD is foreclosing, HUD shall consider the number of low- and moderate-income persons occupying units in the project at the date of assignment or the date of the foreclosure sale, whichever is greater. In the event there is no information available on the number of low- and moderate-income persons occupying units on the date of assignment, then the number of such persons on the date of the foreclose sale will be considered; or

(ii) For a HUD-owned rental housing project, the number of low- and moderate-income persons occupying units in the project at the time of its acquisition by HUD or the date of the sale, whichever is greater;

(3) Characteristics, including rental levels, of comparable housing;

(4) Feasibility of converting the rental housing project to cooperative ownership, including the degree of interest and support from present residents;

(5) The comments, proposals, and facts submitted by the residents; and

(6) The availability of Section 8 assistance, purchase money mortgage, or other financial assistance that could be used in the disposition.

§ 290.104 Methods of disposition.

(a) *Multifamily Mortgage Foreclosure Act.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure laws.

(b) *Methods of disposition.* HUD may dispose of a HUD-owned multifamily project on a sealed bid, auction, request for proposals, negotiated, or other basis, on such terms as HUD considers appropriate to furthering the purpose stated in § 290.5. The specific methods of disposition include:

(1) *Negotiated sales.* A negotiated sale involves the disposition of a project to a person or entity without a public offering. HUD may negotiate the sale of any project to an agency of the Federal, State, or local government. When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD and a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a formerly subsidized project to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (*e.g.*, nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low- to moderate-income rental housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- and moderate-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(2) *Request for Proposals (RFPs).* If HUD determines that a competitive disposition process is appropriate, but price is not the determining criterion for a sale, HUD may authorize a sale through a Request for Proposals when HUD determines that:

(i) A cooperative conversion is the best future use for the project, and two or more nonprofit entities with demonstrated successful experience in providing affordable rental or cooperative housing are or may be interested in acquiring the project and converting it to a low- and moderate-income cooperative within a time frame acceptable to HUD;

(ii) Two or more nonprofit entities with demonstrated successful experience are or may be interested in acquiring the project and maintaining it as rental housing affordable by low- and moderate-income families for a period of time longer than 20 years; or

(iii) Such other circumstances approved by the Assistant Secretary for Housing or designee.

(3) *Competitive sealed bids.* A disposition by competitive sealed bid involves a public offering of the project, whereby the project is sold to the highest bidder who also meet the qualifications stated in the bid kit. This process may be used where the terms and conditions of sale are established by HUD, and the determining factors in the selection of a purchaser are price and evidence that the purchaser can meet HUD standards.

(4) *Auctions.* Projects for which price is the determinative factor may also be sold at auction. In an auction, oral bids are solicited and bidders must meet qualifications set forth by HUD. This process may be used where the terms and conditions of sale are established by HUD, and the determining factors in the selection of a purchaser are price and evidence that the purchaser can meet HUD standards.

(c) *Equity restrictions.* In the sale of any project where there is no competition on the sales price, HUD will impose limitations on return on equity and the resale or refinancing of the project. Such limitations shall provide that, during the period of any affordability restrictions imposed as a condition of the sale, HUD shall be entitled to receive all or any portion of the sales or refinancing proceeds, as determined by HUD and provided for in HUD's sales documents.

§ 290.105 Manner of disposition and terms and conditions of sale.

(a) *Disposition objectives.* HUD shall seek to dispose of all projects in a manner that is the least costly among the reasonable alternatives available to further the goals of § 290.5.

(b) *Preserving units for low- to moderate-income persons.* HUD shall maintain the following units as affordable to low- and moderate-income persons for at least 15 years:

(1) In a subsidized or formerly subsidized rental housing project, all units;

(2) In an unsubsidized or formerly unsubsidized rental housing project:

(i) For projects owned by the Secretary, those units occupied by low- or moderate-income persons at the time of acquisition or sale, whichever number is greater; or

(ii) For all other projects, those units occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever number is greater.

(c) *Maintaining projects as rental or cooperative housing.* Except as provided in paragraph (d) of this section, HUD shall maintain a rental housing project for the purpose of providing rental or cooperative housing for the longest feasible period. For HUD-owned projects, the rental maintenance period shall generally be at least 20 years. For foreclosure sales, the rental maintenance period shall be the greater of 20 years or the remaining term of the mortgage, unless the mortgage can be prepaid without the Secretary's consent, in which case the use restriction may only be 20 years.

(d) *Determination not to preserve.* HUD may determine to dispose of, or demolish, a HUD-owned rental housing project or to foreclose a HUD-held mortgage on a rental housing project, or any portion thereof, without ensuring its continued availability as affordable rental or cooperative housing for low- and moderate-income families only if one or more of the following factors exist:

(1) The costs of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 144 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market;

(2) Construction is substantially incomplete;

(3) Preservation is infeasible because of environmental factors that cannot be mitigated by HUD or the purchaser, *e.g.*, the project is located on a site that cannot be made to comply with Section 8 Site and Neighborhood standards in 24 CFR 886.307(k). Factors that adversely affect the health, safety, and general welfare of residents, and cannot be mitigated by HUD, may include air pollution, smoke, mud slides, fire or explosion hazards, chemical contamination, significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection, high crime rates, drug infestation, and lack of public community services needed to support a safe and healthy living environment for residents;

(4) HUD determines the project is unfit for rehabilitation;

(5) Rehabilitation would cost substantially more than constructing new housing;

(6) A reduction in the number of units in the project will enhance long-term project viability, such as for demolition of a building to provide space for a playground, open space, conversion of rental units to common space for community activities for residents, combining one-bedroom units to create larger units for families, or other uses of the units that benefit the residents;

(7) Continued preservation of the project as rental or cooperative housing, is not compatible with State or local land use plans for the area in which the project is located;

(8) In the case of unsubsidized or formerly unsubsidized projects, HUD determines that there is available in the area an adequate supply of habitable affordable housing for low-income

families. In making this determination, HUD will rely on the field office with jurisdiction over the project to define the market area for the project based on the field office's knowledge of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination using established market analysis techniques, and will consider information that demonstrates:

(i) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(ii) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(iii) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(iv) A significant number, or proportion, of the households holding section 8 certificates or housing vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

(9) HUD conclusively demonstrates that decent and affordable low-income housing is not needed in the community for existing residents or persons who desire to reside in the community.

(e) *Relocation assistance.* If HUD decides not to preserve an occupied rental housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in § 290.7 of this part.

(f) *Provisions to ensure affordability.* Whenever HUD determines to dispose of a HUD-owned rental housing project, or to impose terms and conditions on the foreclosure of a HUD-held mortgage on a rental housing project, in a manner that ensures continued affordable housing for low- and moderate-income families for at least those units specified in § 290.5(a) of this part, HUD shall, in the least costly fashion, do one or more of the following that achieves this objective:

(1) Impose income eligibility and rent limitations on some or all of the units in the project;

(2) To the extent budget authority is available, enter into contracts under section 8 and 24 CFR part 886, subpart C, with purchasers of rental housing projects, which contracts shall include any units in a subsidized or formerly subsidized project that are occupied by persons not eligible for assistance under section 8, but that subsequently become vacant and are required to be leased by the owner to eligible tenants; and which provide for the operation, rehabilitation, and distributions of surplus cash (when applicable) for such projects, and are not in excess of 144 percent of the most recent Fair Market Rents for Existing Housing published by HUD in the **Federal Register**;

(3) Provide other Federal project-based rent subsidy for some or all of the units;

(4) In the case of an unsubsidized or formerly unsubsidized rental housing project that is acquired by a purchaser other than HUD at foreclosure, or after sale by HUD, enter into annual contribution contracts with public housing agencies to provide vouchers or certificates under section 8 to all low-income families who are eligible for such assistance on the date that the project is acquired by the purchaser, if HUD determines that there is available in the area an adequate supply of habitable affordable housing for low-income families;

(5)(i) Provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owners of rental housing projects that are acquired by a purchaser other than HUD at foreclosure, or after sale by the Secretary, on terms that will ensure that, for a period of not less than 15 years:

(A) The project will remain available to and affordable by low- and moderate-income persons; and

(B) Such low- and moderate-income persons shall pay no more for rent than the amount payable under section 3(a) of the U.S. Housing Act of 1937.

(ii) *Combined assistance.* Whenever HUD provides both section 8 assistance under paragraph (f)(2) of this section and financial assistance under paragraph (f)(5) of this section, the section 8 contract may cover fewer than the total number of units identified under § 290.5(a), so long as all of the requirements of paragraph (f)(5(i) (A) and (B) of this section are met;

(6) Condition the disposition on the provision of State or local project-based rent subsidy for some or all of the units;

(7) Provide such other forms of assistance as may be available to HUD; or

(8) Continue the low- and moderate-income use restrictions on projects that were assisted or insured prior to foreclosure to assure that such projects remain available and affordable to low- and moderate-income persons.

(g) *Conditioning the sale and future use of projects.* HUD may impose such conditions upon the sale and the future use and operation of a HUD-owned rental housing project and upon the foreclosure and future use of a rental housing project subject to a HUD-held mortgage, that HUD considers necessary or appropriate to furthering the purpose stated in § 290.5. Such conditions may include, but are not limited to, the following:

(1) HUD shall, unless clearly inappropriate, require that repairs be performed to a rental housing project by the purchaser after disposition in order to return the project to decent, safe, and sanitary condition, and may provide such conditions or arrangements as HUD considers appropriate in order to ensure full and timely performance of the repair requirements it imposes. A disposition program which provides for repairs to be performed by the purchaser or other conditions of sale may not be approved by HUD unless it provides for rescission of the sale or reconveyance of the project to HUD if the repairs, which are a requirement of the sale, are not carried out in a timely manner. The right of rescission or reconveyance shall expire six months after the repairs have been inspected and accepted by HUD as being completed. In the event the purchaser fails to complete required repairs within the time established by HUD, if there is a lender involved, the lender will be provided a reasonable time to complete the repairs;

(2) HUD may require the inclusion of appropriate covenants running with the land in the instrument effecting or recording the transfer of a multifamily project if HUD considers it necessary or appropriate in order to ensure

compliance with the obligations imposed under the disposition.

(h) *Minimum purchaser qualifications.* Each purchaser of a project that HUD requires to be continued in use as a rental housing project must be determined by HUD to be capable of satisfying the conditions of the disposition; implementing a sound financial and physical management program; responding to the needs of the tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and financial resources to the project; and meeting any other requirements as HUD may determine; and

(2) In foreclosure sales and sales of HUD-owned projects and as long as any HUD assistance under the terms of the sale remains in effect, any purchaser, except a Federal, State, or local government agency, must be approved by HUD under the Previous Participation Review and Clearance procedures in 24 CFR part 200, subpart H.

§ 290.107 Analysis, recommendation, and determination for foreclosure sales and sales of HUD-owned projects.

(a) *Analysis and recommendation.* HUD shall analyze each project being foreclosed or sold (if HUD-owned) as required by § 290.103 of this part, and subsequently prepare a recommendation, which includes, but is not necessarily limited to:

(1) The use and any restrictions, including occupancy or rent restrictions, needed to maintain that use;

(2) The type, amount, term, and source of any subsidy or financial assistance;

(3) The method to be used to obtain a purchaser;

(4) The extent and estimated cost of repairs to be completed by the purchaser, HUD, or both;

(5) If applicable, the number of tenants that would be temporarily relocated or displaced as a result of the recommended disposition, and if applicable, a description of the temporary relocation or displacement assistance to be provided and its estimated cost;

(6) The minimum stated or unstated sales price; and

(7) The type, amount, and terms of any financing to be provided or insured.

(b) *Final foreclosure package and disposition program.* After completing the analysis and preparing a recommendation under § 290.107(a), including considering any comments received in response to the notice provided tenants, HUD shall make a final determination of the terms and conditions HUD will impose on the foreclosure and future use of a rental housing project subject to a HUD-held mortgage or of the disposition program for a HUD-owned rental housing project.

(c) *Applicability of fair housing authorities.* HUD shall administer all aspects of the foreclosure or disposition of multifamily projects under this part in accordance with Executive Order 11063 and the Fair Housing Act (42 U.S.C. 3601–19), which Act prohibits discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status, and all regulations issued pursuant to these authorities; Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs receiving Federal financial assistance, and implementing regulations at 24 CFR part 1; and the Age Discrimination Act of 1975, which prohibits discrimination based on age in programs receiving Federal financial assistance, and implementing regulations at 24 CFR part 146.

§ 290.108 Right of first refusal to local government and State housing finance agency.

(a) *Notice of right to purchase.* Except in the case of a negotiated sale to a State or local government, upon approval of the disposition program for a HUD-owned rental housing project, HUD shall notify the unit of general local government in which the project is located and the State housing finance agency (or other agency or agencies designated by the Governor) of their respective right to purchase the project on the terms and conditions specified in the disposition program. The notice shall contain those terms and conditions, including the sales price, the amount of subsidy, if any, HUD proposes to provide, any use restrictions, and other applicable information.

(b) *Submission of offers.* The local government and the State housing finance agency shall have 90 days from the date of HUD's notice in which to make an offer to purchase the project. If HUD and the local government or designated State agency cannot reach agreement within 90 days after the date of HUD's notification, HUD may offer the project for sale to the general public.

(c) *HUD acceptance of offer.* HUD shall accept an offer that complies with the terms and conditions of the disposition plan. HUD may accept an offer that does not comply with the terms and conditions of the disposition plan if HUD determines that the offer will further the preservation objectives of § 290.5 by actions that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons.

(d) *Restrictions on transfer of property.* A local government or State housing finance agency that has acquired a project under a right of first refusal under this section may not transfer such project to a private entity, unless the local government or State housing agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based upon prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to § 290.105(f)(2).

§ 290.111 Occupancy in projects acquired from HUD.

The purchaser of any rental housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the section 8 Fair Market Rent for a comparable unit in the area, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

2. The authority citation for 24 CFR part 886 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f; 42 U.S.C. 3535(d).

3. Section 886.133 is added to read as follows:

§ 886.133 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organization, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided;

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (as defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the owner. A low-income person who is dissatisfied with the owner's determination on such appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of owner.* (1) The owner shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The owner is responsible for such compliance notwithstanding and third party's contractual obligation to the owner to comply with these provisions.

(2) The cost of providing required relocation assistance is an eligible project cost to the same extent and in the same manner as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(g) *Definition of displaced person.* (1) for purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of the application to HUD;

(ii) Before submission of the application to HUD, if HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs;

(A) The tenant moves after execution of the Housing Assistance Payments Contract, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or

(*2*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term "initiation of negotiations" means the owner's execution of the Housing Assistance Payments Contract.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121.)

4. Section 886.301 is revised to read as follows:

§ 886.301 Purpose.

The purpose of this subpart is to provide for the use of Section 8 housing assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects (as defined in 24 CFR 290.5).

5. Section 886.302 is amended by removing the definitions of the terms *Minimum Design Standards for Rehabilitation for Residential Properties, Moderate Rehabilitation,* and *Substantial Rehabilitation;* by revising the definitions of the terms *Decent, safe, and sanitary, Eligible project or project, Fair market rent,* and *Owner;* and by adding the definition for *Rehabilitation,* to read as follows:

§ 886.302 Definitions.

* * * * *

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if the project meets the requirements of § 886.307 of this part.

Eligible project or project. A HUD-owned multifamily rental housing project or a rental housing project subject to a HUD-held mortgage that was purchased through a foreclosure sale (see 24 CFR part 290) of HUD-owned home properties together having five or more dwelling units: (1) For which the final disposition program developed in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families, and (2) the units of which are decent, safe, and sanitary.

* * * * *

Fair market rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services required to be paid to lease a unit in the appropriate Section 8 program, not to exceed 144 percent of the most recent Fair Market Rents for Existing Housing published by the Secretary in the Federal Register in accordance with 24 CFR part 888.

* * * * *

Owner. The purchaser, under this subpart, of a HUD-owned project, including a cooperative entity, or the purchaser through a foreclosure sale of a project that was subject to a HUD-held mortgage.

* * * * *

Rehabilitation. The rehabilitation of an eligible project to upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards described in § 886.307 of this part, or other standards approved by HUD, from a condition below those standards and requiring repairs that may vary in degree from gutting and extensive reconstruction to the cure of deferred maintenance. Rehabilitation may exceed the requirements of § 886.307 of this part.

§ 886.304 [Amended]

6. Section 886.304(b) is amended by removing the word "repairs" in the heading and adding in its place the word "rehabilitation"; and by removing the word "repaired" in the first sentence and adding in its place the word "rehabilitated".

7. Section 886.307 is amended by revising the first sentence to read as follows:

§ 886.307 Housing quality standards.

Housing assisted under this part shall meet the performance requirements set forth in this section. * * *

* * * * *

§ 886.309 [Amended]

8. Section 886.309(g) is amended by removing the words "for substantially rehabilitated projects" from the heading.

9. Section 886.310 is revised to read as follows:

§ 886.310 Initial contract rents.

Initial contract rents for units in projects covered by this subpart shall not exceed 144 percent of Fair Market Rents for Existing Housing, published under 24 CFR part 888, nor shall the contract rents exceed rents charged by the owner for unassisted units in the project.

10. Section 886.311 is revised to read as follows:

§ 886.311 Term of contract.

The contract term for any unit shall not exceed 15 years.

11. Section 886.318 is amended by adding a new paragraph (d) to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(Approved by Office of Management and Budget under control number 2505–0052)

§ 886.321 [Amended]

12. Section 886.321(c)(1) is amended by removing the words "moderate or substantial" in the first sentence.

§ 886.329 [Amended]

13. Section 886.329(d) is amended by removing the word "substantial" in the first sentence, and by removing the word "substantially" in the third sentence.

14. Section 886.330 is amended by revising paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 886.330 Work write-ups and cost estimates.

(a) *HUD preparation of work write-ups.* If needed, a work write-up, including plans and specifications, will be made by HUD specifying necessary rehabilitation.

* * * * *

(c) *HUD preparation of cost estimates.* HUD shall perform or cause to be performed a cost estimate to complete rehabilitation. * * *

15. Section 886.331(a)(1) is revised to read as follows:

§ 886.331 Agreement to enter into housing assistance payments contract.

(a) * * *

(1) A statement that the Owner agrees to rehabilitate the project unit(s) to make the unit(s) decent, safe, and sanitary in accordance with the work write-up, cost estimates, and this subpart.

* * * * *

16. Section 886.332(c)(2) is amended by revising the first sentence to read:

§ 886.332 Rehabilitation period.

* * * * *

(c) * * *

(2) Contract Rents for project units being rehabilitated shall not be

increased except in accordance with this subpart. * * *

17. Section 886.333(d)(2) is revised to read as follows:

§ 886.333 Completion of rehabilitation.

* * * * *

(d) * * *

(2) Within the same time period, a HUD representative shall inspect the units, to determine whether the units meet the Housing Quality Standards, the Agreement to Enter into the HAP, and any applicable work write-up.

* * * * *

18. Section 886.338 is added to read as follows:

§ 886.338 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the owner's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the owner. A low-income person who is dissatisfied with the owner's determination on such appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of owner.* (1) The owner shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The owner is responsible for such compliance notwithstanding any third party's contractual obligation to the owner to comply with these provisions.

(2) The cost of providing required relocation assistance is an eligible project cost to the same extent and in the same manner as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of the application to HUD;

(ii) Before submission of the application to HUD, if HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the execution of the contract to provide Housing Assistance Payments, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or

(*2*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease

and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the owner's execution of the Housing Assistance Payments Contract.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121.)

Dated: August 10, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Part IV

Federal Trade Commission

16 CFR Part 500
Regulations Under Section 4 of the Fair Packaging and Labeling Act; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 500

Regulations Under Section 4 of the Fair Packaging and Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") seeks comment on a proposal to amend its regulations issued under section 4 of the Fair Packaging and Labeling Act (FPLA) to require the use of the units of both the customary inch/pound measurement system and the metric measurement system in the net quantity statement for certain consumer commodities. This action is being taken to implement 1992 amendments to the FPLA, which require such dual measurement system disclosure.

DATES: Written comments will be accepted until October 18, 1993.

ADDRESSES: Comments should be addressed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Avenue, NW., Washington, DC 20580. Comments should be identified as "16 CFR Part 500—Comment."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant—Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3029 or Bret S. Smart, Consumer Protection Specialist, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION:

I. Background

In 1967, Congress enacted the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*) (FPLA). Congress declared that packages and their labels should be marked to enable consumers to obtain accurate information as to the quantity of the contents and to facilitate value comparisons.

To effectuate its policy of providing consumers accurate quantity information on commodity labels, Congress in the FPLA set out general disclosure requirements and delegated to various agencies, including the FTC, the duty of promulgating regulations. The FTC in 1968 published regulations that provided detailed guidance to industry on what to include in statements of identity of products; in the identification of manufacturers, packers, or distributors; and in declarations of net quantities (33 FR 4718, March 19, 1968; 16 CFR part 500).

The 1967 FPLA specified that the quantity disclosures be made in the traditional American inch/pound system of measurement. The FTC's implementing regulations thus required use of the inch/pound system of measurement. The FTC regulations, however, also permitted the use of the metric system of measurement as an additional net quantity disclosure (16 CFR 500.21).

In 1992, Congress amended the FPLA to require that the quantity disclosure on labels of consumer commodities be in both the metric system and the customary inch/pound system of measurement. This amendment is consistent with the overall policy that the metric system is the preferred system of weights and measures for commerce in the United States (Omnibus Trade and Competitiveness Act, Public Law 100–418, 15 U.S.C. 205b).

Because of the metric amendments to the FPLA, the FTC is conducting this rulemaking to amend its regulations to reflect the requirement for dual disclosure.

The regulations issued under the FPLA are scheduled for FTC regulatory review during fiscal year 1993. Therefore, this Notice has incorporated the questions approved by the Commission for regulatory review.

As discussed in more detail below, the Commission Rules prescribe special procedures for the promulgation and amendment of FPLA regulations. (16 CFR part 1, subpart C)

II. The Fair Packaging and Labeling Act

The Fair Packaging and Labeling Act is designed to prevent the use of unfair and deceptive methods of packaging and labeling of consumer commodities. The FPLA states that it shall be unlawful for persons to sell or distribute commodities whose labels do not conform "to the provisions of this Act and of regulations promulgated under the authority of this Act." (15 U.S.C. 1452) The main requirements of the FPLA are that the label on a package disclose the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor of the commodity; and the net quantity of contents in terms of weight, measure, or numerical count. (15 U.S.C. 1453)

A. Shared Enforcement and Implementation Authority

In the FPLA, Congress has established a system of divided authority for implementation and enforcement. The authority to promulgate and enforce regulations with regard to foods, drugs, devices, or cosmetics is vested in the United States Food and Drug Administration. (15 U.S.C. 1453(a), 15 U.S.C. 1456(a)). With respect to any other consumer commodity, authority is vested in the FTC (15 U.S.C. 1454(a), 15 U.S.C. 1456(b)). With regard to imports of consumer commodities into the United States, the Secretary of the Treasury enforces FPLA. (15 U.S.C. 1456(c)) Additionally, several other agencies have adopted parallel disclosure schemes on their own initiative.

B. Consumer Commodities

The FPLA defines consumer commodities as being any food, drug, device, or cosmetic and any other article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.[1]

The FPLA grants the FTC the authority to grant exemptions to commodities it regulates under the Act.[2] Acting under this authority, the FTC has exempted the following products from certain FPLA requirements—camera film; Christmas tree ornaments; replacement bags for vacuum cleaners; chamois; paper table covers; certain cellulose sponges; candles; and solder. (16 CFR part 501)

In a similar vein, the FTC has interpreted the meaning of "consumer commodity" as used in FPLA as not including 52 commodities or classes of commodities. These include such items as antifreeze and automotive accessories, garden tools and hardware, toys, typewriter ribbons, and woodenware. (16 CFR part 503)

C. Procedures for Promulgating Regulations Under FPLA

The FPLA sets out the procedures to be followed by the FTC in promulgating regulations. The FPLA states that regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)).[3]

[1] 15 U.S.C. 1459(a).
[2] 15 U.S.C. 1454(c).
[3] 15 U.S.C. 1455(b).

The FTC has implemented this statutory requirement to use the rulemaking procedures of section 371 of the Federal Food, Drug, and Cosmetic Act by adopting 16 CFR part 1 subpart C, which sets forth the procedures for the promulgation of rules under authority other than section 18(a)(1)(B) of the FTC Act.

Subpart C requires issuing a general notice of proposed rulemaking that includes, among other things, the terms of the proposed rule or description of the subjects and issues involved and notice that interested persons may participate in the proceedings by submission of written data, views, or arguments.

III. FTC Regulations Issued Under the FPLA

In 1968, the FTC issued regulations implementing the FPLA (33 FR 4718, March 19, 1968). There are twenty-seven regulations, of which twenty-two relate to the net quantity of contents declaration. Several of the regulations relate to the measurement system to be used in the net quantity declaration. For example, § 500.8 prescribes the units of weight and measures to be used; §§ 500.9 through 500.14 set out how weight, fluid measure, length, width, area, and cubic measure should be expressed; and § 500.16 states how fractions should be treated.

Each of the regulations mandating measurement disclosure requires the use of customary inch/pound units. This is because section 4 of the original FPLA (15 U.S.C. 1453) states that required net quantity disclosure be in pounds, inches, feet, yards, pints, quarts, gallons, etc.

One of the FTC regulations issued under FPLA allows the optional use of metric units in addition to the mandated inch/pound units. Section 500.21 (16 CFR 500.12) states:

> A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental net quantity statement and an accurate statement of the net quantity of contents in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels. Standard metric abbreviations may be used.

Thus, under the present regulations, manufacturers, packers, and distributors of consumer commodities subject to FTC regulations must make net quantity of contents disclosure using inch/pound units, but may choose to make additional disclosure in metric units.

IV. Federal Policy To Promote the Metric System

The use of the metric system of measurement has been authorized by Federal law since 1866 and the United States was an original signatory party to the 1875 Treaty of the Meter (15 U.S.C. 205a). In 1988, Congress as part of the Omnibus Trade and Competitiveness Act (Pub.L. 100–418, 15 U.S.C. 205b) declared that the metric measurement system is the preferred system of weights and measures for the United States.

While the 1988 Act grants exceptions from metric usage where the use is "impractical" or likely to cause "significant inefficiencies" or "loss of markets to United States firms," Congress has clearly established that the metric system of measurement is the preferred system to be used by the Federal Government.

In 1992, the FPLA was amended to require that the International System of Units ("SI metric system") as well as the customary inch/pound system of measure be used in the label declaration of net quantity of contents of consumer commodities. (Pub.L. 102–329, August 3, 1992) It is these amendments which the FTC must implement in revising the regulations issued under the FPLA.

V. The 1992 Metric Amendments to the FPLA

The 1992 substantive amendments to the FPLA relate to the metric system of measurement. These amendments alter the FPLA by requiring all labels for consumer commodities printed after February 14, 1994 to state the net quantity of contents in both the customary inch/pound system of measure and the SI metric system. Apart from the changes made to section 4 (15 U.S.C. 1453), section 5 (15 U.S.C. 1454), and section 13 (15 U.S.C. 1461), the FPLA remains the same. Specifically, the statutory amendments are as follows.

Section 4 of FPLA requires that a consumer commodity bear a label which specifies the identity of the commodity, the name and place of business of the manufacturer, packer, or distributor, and the net quantity of contents. The amendments to section 4 require that the contents label be in both the customary inch/pound and metric systems of measurement.

Subsection (a)(2) has been amended to mandate the disclosure of contents in terms of mass as well as weight. The original FPLA only required weight, a unit of the customary system of measure. Mass (measured in kilograms and multiples and submultiples) is the metric term for the quantity of matter in an object.

Subsection (a)(2) specifies that the metric disclosure shall use the "SI metric system." The "SI" system is the International System of Units (Le Systeme International d'Unites) as interpreted or modified for use in the United States by the Secretary of Commerce (55 FR 52242, Dec. 20, 1990). There are several government publications giving guidance on use of the SI.[4]

Subsection (a)(3)(A)(ii) states that decimal fractions of the pound and decimal fractions of the SI metric system units shall be carried out to no more than three places on random packages, i.e., packages with varying weight or mass from a lot of the same consumer commodity. The original FPLA required that decimal fractions of the pound be carried out to no more than two places.

Subsection (a)(6) states that content labels containing SI metric disclosure are not required for foods that are packaged at the retail store level. This amendment affects FDA, rather than FTC, regulations.

The amendment states that the effective date for the changes to FPLA is February 14, 1994. However, the grandfather clause states that the changes to FPLA do not apply for consumer commodities for which labels were printed before the effective date. Thus, if a company had a ten-year supply of non-complying labels on February 14, 1994, the company could continue to use them until the supply was exhausted.

VI. Provisions of the Proposed Rule

The following is a section-by-section analysis of the proposed metric amendments to the Commission's FPLA regulations.

A. Section 500.2 Terms Defined

The Commission proposes both significant and minor technical changes to this section. The Commission proposes amending subsection (a) to include a reference to the 1992 statute amending FPLA and subsection (c) to reflect that the Administrator of the Environmental Protection Agency rather than the Secretary of Agriculture enforces the Federal Insecticide, Fungicide and Rodenticide Act.

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[4] See, "The International System of Units (SI)," NIST Special Publication 330, U.S. Department of Commerce, August, 1991; "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, September, 1991; and "Preferred Metric Units for General Use by the Federal Government," Federal Standards 376B (Preprint Copy), General Services Administration, January 27, 1993.

Proposed subsection (d) deletes references to repealed statutes.[5] In proposed subsection (h), as in other proposed amendments, the metric equivalent for an existing inch/pound reference is added. The use of both systems in the regulations is called for by the FPLA and is consistent with the requirements of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100, 15 U.S.C. 205b).

Proposed subsection (j) is new and defines the term "SI metric," a term used throughout the proposed amendments to the regulations. The definition is derived from official Federal Government publications relating to metric terminology,[6] and makes reference to the statutory authority granted to the Secretary of Commerce to interpret and modify the International System of Units (SI) for the United States.

Proposed subsection (k) is new and defines the term "customary inch/pound," which is used in the 1992 metric amendments to section 4(a)(2) of FPLA (15 U.S.C. 1453) and throughout the proposed amendments to the regulations.

Proposed subsection (l) is new and defines the term "'e' mark." This is a certification mark used in the European Economic Community (EC) to establish that the package is appropriately filled in accordance with EC standards. The term is defined because the proposed amendments to § 500.6 (Net Quantity of Contents) allow the term to be used in addition to the mandated content quantity disclosure. Failure to allow the use of the mark could be an impediment to American companies selling in the EC.

B. Section 500.6 Net Quantity of Contents Declaration, Location

This section relates to the technical requirements to be followed in the presentation of the declaration of contents. There are several proposed amendments to subsection (b). First, the words "or mass" are added after the word "weight." This addition is required by the metric amendments to section 4(a)(2) of FPLA. The same addition is made in each of the proposed regulations that refer to weight so that they uniformly read "weight or mass."

A proposed example of an improper metric qualifier, i.e., "giant liter," has been added to the existing examples of improper inch/pound qualifiers. This example should aid in the preparation of labels. Further, the proposed amendment includes a parenthetical metric size descriptor in addition to the existing inch/pound size reference.

Another proposed amendment to this section allows the use of the "e" mark as part of the statement of the net quantity of contents. Without the change, the "e" mark could be considered an improper qualifier and its use violative of the regulations.

C. Section 500.7 Net Quantity of Contents, Method of Expression

The only proposed change to this section is the addition of "or mass" each time the term "weight" is used.

D. Section 500.8 Units of Weight or Mass and Measure

This section specifies the measurement units which must be used in making the content disclosure statements. The proposed amendments to this section implement the 1992 metric amendments to FPLA by specifying the metric units which must be used in dual declaration statements. Neither the amendments to FPLA nor the proposed regulations require that one measurement system be used first in order. Thus, manufacturers may put metric first or inch/pound first as they choose.

The proposed examples of disclosures set out in this section and others are intended to assist manufacturers in designing labels which comply with the proposed amendments to the regulations. The examples are not mandatory and set out different options. For instance, in the only reference to fractions of measurement units, the amendments to FPLA state that decimal fractions of pounds and metric mass units may be "carried out to not more than three decimal places." (15 U.S.C. 1453) This is a change from the original FPLA, which restricted decimal fractions to two places. The examples in the proposed amended regulations use different decimal places to show that the manufacturer can choose which to use. As another instance of options presented to manufacturers, some of the examples used in the amended regulations state the metric measurement first while others put inch/pound first.

Proposed subsection (a) requires the use of grams, milligrams, and kilograms as well as pounds and ounces in weight or mass declarations. Examples of dual declarations are included, such as "Net Mass 425.24 g (15 oz)" and "Net Wt 15 oz (425.24 g)."

Proposed subsection (b) requires the use of liters and milliliters as well as gallons, quarts, and points in fluid measure disclosure. The term "Celsius" replaces "Centigrade" because Centigrade is obsolete for temperature measurement.

Proposed subsection (c) states that meters, centimeters, and millimeters must be used as well as inches in linear measure.

Proposed subsection (d) requires that area measurement use square meters, square centimeters, and square millimeters as well as square yards, square feet, and square inches.

Proposed subsection (e) states that dry measure statements shall use liters and milliliters as well as bushels, pecks, dry quarts, and pints.

Proposed subsection (f) requires, in cubic measure disclosures, the use of cubic meters and cubic centimeters as well as cubic yards, cubic feet, and cubic inches.

E. Section 500.9 Units of Weight and Mass, How Expressed

The Commission proposes amending this section to include the requirement for the use of mass as well as weight and continues to describe the appropriate customary inch/pound units to be used on packages of various weights.

Proposed subsection (a) includes the "net mass" disclosure and has several metric examples added. This proposed subsection allows the term "net mass" as an alternative to "net weight" in stating the net quantity of contents.

Proposed subsection (b) reflects the amendment to FPLA which deletes the former avoirdupois (the system of weight based upon the pound of 16 ounces) requirement that packages weighing less than four pounds disclose both the total number of ounces and the number of pounds, with any remainder in ounces or common or decimal fractions of the pound. Thus, under the old law, if a package weighed 3 and one-half pounds it would properly be labeled "56 oz. (3 lbs. 8 oz.)." The new law requires only the expression of pounds and remainder of ounces, so that in the prior example "3 lbs. 8 oz." would be sufficient. For weights greater than 1 pound but less than 4 pounds manufacturers will have the option of including an additional statement of weight in ounces "immediately adjacent" to the required expression in pounds, as subsection (b)(2) has been amended to allow this discretionary second expression of weight. Subsection

[5] In the proposed amendments, there are a few technical changes that are not related to metric.

[6] "Preferred Metric Units for General Use by the Federal Government," Federal Standard 376B, General Services Administration, January 27, 1993; "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, September, 1991; and "The International System of Units (SI)," NIST Special Publication 330, U.S. Department of Commerce, August 1991.

(b)(1) retains the requirement that disclosure be given exclusively in ounces for packages containing less than one pound; subsection (b)(3) retains the requirement that for weights of 4 pounds or more disclosure be given exclusively in whole pounds, with any remainder in ounces or fractions of the pound.

Proposed subsection (c) states that for random packages, i.e., packages with varying weights from a lot of the same commodity, the decimal fractions of the pound should not be carried out to more that three places. Further, this proposed subsection is changed to reflect the amendment to FPLA that random packages, unlike other packages, are not required to, but may, include a metric statement of mass.

F. Section 500.10 Units of Fluid Measure, How Expressed

This section continues to describe how the inch/pound fluid measure statement must be expressed. Because of changes to the original FPLA, proposed subsection (b)(2) deletes the prior requirement that both the total number of fluid ounces and the largest whole unit (quarts, quarts and pints, or pints) plus remainder be used for items of at least 1 pint but less than 1 gallon. Under the amended FPLA, there is no requirement that the disclosure in fluid ounces be made when the amount is greater than a pint. Nevertheless, for quantities of at least 1 pint but less than 1 gallon manufacturers will have the option of including an additional statement of net quantity in fluid ounces "immediately adjacent" to the required expression of largest whole unit because proposed subsection (b)(2) allows this discretionary second expression of fluid measure. Proposed subsection (b)(1) retains the requirement that disclosure be given exclusively in fluid ounces for quantities less than one pint; proposed subsection (b)(3) retains the requirement for quantities of one gallon or more that disclosure be given exclusively in largest whole unit, with any remainder in terms of fluid ounces or fractions of the pint or quart. Throughout the proposed section, metric equivalents of examples are given.

G. Section 500.11 Measurement of Commodity Length, How Expressed

This section describes how to express linear measure in terms of yards, feet, and inches. The proposed amendments reflect the determination by Congress not to continue to require the disclosure of the total number of inches for items one foot or more in length. For those items one foot or more in length, disclosure should be made in the largest whole unit with the remainder in inches or common or decimal fractions of the foot or yard.

H. Section 500.12 Measurement of Commodities by Length and Width, How Expressed

This section describes how to express the net quantity in the inch/pound system for bidimensional commodities which are measured by length and width, such as roll type goods like foils and tapes. The proposed amendments add metric parentheticals to the inch/pound statements and examples.

The Commission proposes amending subsection (a)(1) because it requires that length and width be expressed in "linear inches and fractions thereof." This requirement is inconsistent with proposed amendments to § 500.8(c), which provide that "statements of linear measure shall be in terms of both yards, feet, and inches and SI metric meters, centimeters, or millimeters." Consequently, the Commission proposes amending subsection (a)(1) to read that length and width are to be expressed "in linear measure" and that the "customary inch/pound statement is to be expressed in inches and fractions thereof."

Likewise, because amended § 500.8(d) provides that "statements of measure of area shall be in terms of both square yards, square feet, and square inches and SI metric square meters, square centimeters, and square millimeters," the Commission proposes amending subsection (a)(2) to be consistent. This proposed amendment changes the requirement under subsection (a)(2) that disclosure "be expressed in terms of square inches, followed in parentheses by the length and width in the largest whole unit (yard or foot)," to read that net quantity is to "be expressed in terms of area, followed by length and width" and that the "customary inch/pound statement of area is to be expressed in square inches with length and width expressed in the largest whole unit (yard or foot)."

For the same reasons described above, the Commission proposes modifying two other existing subsections in section 500.12. Subsection (a)(3) is rewritten to reconcile it with proposed amendments to the disclosure provisions of § 500.8(d), and subsection (b) is amended to reconcile it with the linear measure disclosure provisions of proposed § 500.8(c).

I. Section 500.13 Measurement of Commodities by Area Measure Only, How Expressed

This section describes how to express the net quantity in the inch/pound system for commodities that are measured in area only. The proposed amendments add metric parentheticals to the inch/pound statements. The proposed amendments reflect the determination by Congress not to continue to require the disclosure of square inches for areas one square foot or greater.

J. Section 500.15 Units of Count, More Than One Ply

The proposed amendment to this section includes a metric example.

K. Section 500.16 Measurement of Container Type Commodities, How Expressed

The proposed amendments to this section renumbers it from 500.15a and adds metric parentheticals to the inch/pound statements and examples.

Further, proposed §§ 500.16 (b)(1) and (b)(2) are brought into conformity with other sections of the proposed amendments by specifying the customary inch/pound units of liquid and dry measurement which should be used.

L. Section 500.17 Fractions

The proposed amendments to this section renumber it from 500.16 and add the requirement that SI metric declarations contain only decimal fractions. This prohibition against using common fractions with metric units is consistent with FTC staff interpretations dating from 1984 and with proper metric usage. In accordance with the amendments to FPLA, the proposed amendment to this section states that decimal fractions shall not be carried out to more than three decimal places, rather than the previous two decimal places.

M. Section 500.18 SI Metric Prefixes

This is a proposed new section and presents the metric prefixes to be used on labels. Unlike scientific metric prefix charts which have prefixes for huge amounts, *e.g.* "exa-" for units with eighteen trailing digits (1,000,000,000,000,000,000) and for minuscule amounts, *e.g.* "atto-" for units with eighteen preceding digits (.000,000,000,000,000,000,1), the chart is restricted to prefixes usable in the size range of consumer commodities. Thus, the chart mentions "kilo-", "hecto-", "deca-", "deci-", "centi-", and "milli-".

N. Section 500.19 Conversion of Metric Quantities to Inch/Pound and Inch/Pound Quantities to Metric Quantities

This is a proposed new section. It sets out the conversion factors for converting

from metric to inch/pound and from inch/pound to metric quantities. The chart facilitates compliance with the 1992 amendments to FPLA requiring dual inch/pound and metric disclosure by giving manufacturers the technical information they need to convert one measurement system to the other. The factors used in this chart are consistent with those published in the "Guide for the Use of the International System of Units," NIST Special Publication 811, Department of Commerce, September, 1991 and "Preferred Metric Units For General Use by the Federal Government," Federal Standard 376B, General Services Administration, January 27, 1993.

O. Section 500.20 Conspicuousness

The proposed amendment to this section renumbers it from § 500.17.

P. Section 500.21 Type Size in Relationship to the Area of the Principal Display Panel

The proposed amendment to this section renumbers it from § 500.18 and adds metric parentheticals. Proposed subsection (g) is new and relates to the size requirements of the "'e' mark."

Q. Section 500.22 Abbreviations

The proposed amendment to this section renumbers it from § 500.19.

R. Section 500.23 Expression of Net Quantity of Contents in SI Metric Units

This is a proposed new section. Proposed subsection (a) sets out the "rule of 1000" which states that, with exceptions, metric disclosure should be in units ranging in value from 1 to 1000. Thus, the declaration would be "750 mL" rather than "0.75L." The "rule of 1000" has been used by industry and FTC staff since 1984 and has the effect of simplifying and unifying label disclosure.

Proposed subsection (b) sets out the symbols to be used for SI metric units. These symbols are consistent with those preferred for government usage (see publications listed in above discussion of Section 500.19 Conversion of Metric Quantities). This subsection also provides metric abbreviations parallel to those in the Section 500.22 Abbreviations portion of the rules.

Section 500.24 Supplemental Statements
Section 500.25 Net Quantity, Average Quantity, Permitted Variations
Section 500.26 Representations of Servings, Uses, Applications
Section 500.27 Multiunit Packages
Section 500.28 Variety Package
Section 500.29 Combination Packages

The proposed amendments to these six sections renumber them, add metric examples and parentheticals, and make reference to "mass" as well as weight where appropriate. In the proposed amendment to section 500.26 the reference to the National Bureau of Standards has been changed to read "National Institute of Standards and Technology."

VII. Other Statutory and Regulatory Considerations

In promulgating the proposed amendments to the FPLA regulations, the Commission has considered certain statutory and regulatory requirements. These requirements arise under the National Environmental Policy Act of 1969 (42 U.S.C. 4321); the Paperwork Reduction Act (44 U.S.C. 3501); the Metric Conversion Act (15 U.S.C. 205b); the Commission's Regulatory Review Program; and the Regulatory Flexibility Act (5 U.S.C. 603).

A. National Environmental Policy Act

Under the Commission's rules (16 CFR subpart I, section 1.81 *et seq.*) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321), no "major" rule amendment "significantly affecting the quality of the human environment" will be proposed unless an environmental assessment or impact statement has been prepared (16 CFR 1.82). For the following reasons, it is not appropriate to have an environmental assessment or statement for the proposed amendments to regulations issued implementing the metric amendments to FPLA.

First, the proposed amendments are not "major," within the meaning of that term in the National Environmental Policy Act. They do not independently create significant new duties. Whatever environmental consequences, if any, may come from metric measurement translation and disclosure are not the result of the proposed amendments to the regulations, but instead are consequences of the amendments to FPLA by Congress. Second, the environmental effects, if any, of the amendments are so uncertain that any environmental analysis would be based on speculation (See, 16 CFR 1.83(a)). Third, the amendments of FPLA have a grandfather clause which states that labels printed prior to February 14, 1994 may continue to be used until the supply is exhausted. Thus, companies will not have to discard unused labels into the waste stream and, by so doing, cause damage to the environment.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Commission, before promulgating a rule that requires the "collection of information," must obtain approval from the Office of Management and Budget. The proposed amendments only require that certain information be disclosed to consumers. In 1990, the Supreme Court ruled that the authority of the Office of Management and Budget to approve "collection of information" by Federal agencies does not include authority to review agency rules requiring companies to disclose information to third parties (*Dole* v. *Steelworkers*, 494 U.S. 26 (1990)). Under this case, the proposed metric labeling requirements would not be considered collection of information. Thus, the Commission need not seek approval from the Office of Management and Budget.

C. The Metric Conversion Act

Section 205b of the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, expresses Congressional policy regarding measurement systems. This Act states that the metric measurement system is the preferred system of weights and measures in the United States. It also requires federal agencies to use the metric system of measurement in all procurement, grants, and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

The proposed amendments fully comply with the requirements of the Metric Conversion Act. Each of the proposed amended regulations providing for quantity disclosure requires a statement of net quantity of contents in metric units as well as in customary inch/pound units. The proposed amendments add metric examples and parenthetical metric equivalents to the existing regulations. Further, the proposed amendments explicitly present conversion factors from inch/pound to metric and vice versa and fully describe metric units and prefixes.

D. The Commission's Regulatory Review Program

The Commission also is conducting a review of its current regulations, issued under the Fair Packaging and Labeling Act, and seeks information about the costs and benefits of the regulations and their regulatory and economic impact. The following questions relate not only to part 500, the subject of the proposed rulemaking, but also to Part 501, Exemptions from Requirements and Prohibitions Under part 500 (16 CFR part 501); Part 502, Regulations Under

Section 5(c) of FPLA (16 CFR part 502); and Part 503, Statements of General Policy or Interpretation (16 CFR part 503).

(1) Have the regulations issued under FPLA had a significant economic impact (costs or benefits) on entities subject to its requirements? Will the proposed amendments have a significant economic impact on entities subject to their requirements?

(2) Is there a continuing need for the regulations as currently promulgated?

(3) What burdens does adherence with the regulations place on entities subject to their requirements? What burdens will the proposed amendments place on entities subject to their requirements?

(4) What changes should be made to the regulations to minimize the economic effect on such entities? How can the proposed amendments be designed to minimize the economic effect on such entities?

(5) Do the regulations overlap or conflict with other federal, state, or local government laws or regulations? Are there other federal, state, or local government laws or regulations that overlap or conflict with the proposed amendments?

(6) Have technology or economic conditions changed since the regulations were issued, and, if so, what effect do the changes have on the regulations? What effect do current technology or economic conditions have on the proposed amendments?

E. Ex Parte Communications

Pursuant to Commission rule 1.26(b)(5), 16 CFR 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

F. Regulatory Flexibility Act

This Notice of Proposed Rulemaking contains an initial regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 603–604. A regulatory analysis must be conducted unless the head of the agency "* * * certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (5 U.S.C. 605(b)) Based upon the information currently available, the Commission believes that it is unlikely that the proposed amendments will have a significant economic impact on a substantial number of small firms. However, given the existing uncertainty on this question, the Commission presents the analysis below and requests public comment on the potential costs of the proposed amendments.

Section 603 of the Regulatory Flexibility Act requires that the Notice of Proposed Rulemaking contain certain information for the initial regulatory flexibility analysis. Specifically, the reasons for the proposed amendments and their objective are to implement the explicit directives of Congress in the FPLA. Similarly, the legal basis is provided by the FPLA. (5 U.S.C. 603(b)(1)–(2)) There are no recordkeeping or reporting requirements proposed in the rules, and the compliance requirements are essentially the measurement and labeling tasks described in more detail below. (5 U.S.C. 603(b)(4)) There also are no relevant Federal rules which may duplicate, overlap, or conflict with the proposed rules, inasmuch as the Commission, the FDA, and other agencies with authority to implement the FPLA are given exclusive jurisdiction over various classes of consumer commodities. (5 U.S.C. 603(b)(5))

The Commission's proposed rules cover every company in the economy that produces consumer commodities other than those commodities falling within the authority of other agencies or otherwise exempted from the statute's coverage. Based on the information now available, it is not feasible for the Commission to estimate the number of entities within this class of industry that are small companies within the meaning of the Regulatory Flexibility Act. (5 U.S.C. 603(b)(3)) Nevertheless, the information in hand suggests that the overall economic impact of the proposed metric amendments to the regulations issued under FPLA may not be significant. In essence, all the proposed amendments require is that companies make simple mathematical conversions from the inch/pound measurement system into the metric measurement system and include the metric equivalents on already mandated label disclosure of contents of consumer commodities.[7] The FPLA states that non-complying labels printed prior to February 14, 1994 may continue to be used until the supply is exhausted.

Similarly, the direct costs imposed on consumers as a result of the amendments appear to be minimal since consumers will still obtain disclosures in the customary inch/pound system. There are, however, likely to be some indirect costs associated with the amendments as firms incur costs associated with complying with the amendments. There are basically three types of costs that firms incur as a result of labeling regulations. These costs are inventory disposal costs, administrative costs, and printing costs. Inventory disposal costs consist of the value of inventory that must be disposed of in order to comply with the proposed regulation. These costs will be zero since the amendments do not apply to labels that were printed before the effective date of the regulation.

Administrative costs represent the additional costs incurred at an administrative level in order to comply with the regulation. Administrative costs include determining which products fall within the scope of the regulations; establishing a corporate position on the policy; devising a compliance strategy; and overseeing the compliance strategy. These costs are likely to be relatively low for the proposed change to the FPLA. Most products that are already covered by the FPLA will be subject to the proposed amendments and the proposed amendments appear to clearly state what products would be excluded. In addition, firms would not need to undertake potentially costly analytic or market testing to comply with the proposed change. Thus, it appears that administrative costs per firm would be low.

Printing costs consist of the additional printing costs incurred due to the proposed changes in the regulations. These costs will vary among firms

[7] Further, whatever economic impact on small business, if any, that may come from metric measurement translation and disclosure is not the result of the proposed amendments to the regulations but is the consequence of the amendments to FPLA by Congress.

depending on various factors including, but not necessarily limited to the following: (1) How frequently the firm typically changes its labels; (2) the average inventory of labels; and (3) the printing process utilized by the firm. For example, if the firm updates its labels on a yearly basis, it may delay its normal label update to coincide with changes it will have to make in response to the proposed changes in the FPLA. If so, the additional printing costs caused by the proposed change would be minimal. If, however, the firm normally updates its labels only once every ten years and if it has recently updated its labels, then its costs will be higher. Incremental printing costs will also depend, to some extent, on the average inventory. The greater the time period between reordering labels, the more likely it is that the label change due to the regulation can be planned to coincide with a planned label change, all else being equal. The type of printing process utilized by the firm also affects the incremental printing costs. While firms may be able to simply engrave the new information on existing plates if flexography or lithography printing methods are used and space permits, new cylinders would be required if gravure printing is utilized. Given the relative simplicity of the label change required by the proposed amendment, the fact that many firms already disclose information in metric, and the fact that many firms are likely to have been aware since late 1992 that the amendments were scheduled to take effect on February 14, 1994, printing costs per firm associated with the amendments are likely to be low.

Thus, the proposed amendments, if promulgated, may not have a significant impact on a substantial number of small entities. However, to ensure that no substantial economic impact is being overlooked, the Commission requests comments on this issue. Further, the questions asked in the Regulatory Review section of this NPR seek detailed economic information about the impact and burden of the current and proposed regulations. After reviewing any comments received, the Commission can determine whether a final regulatory flexibility analysis is necessary.[8]

[8] The FDA, based on studies it conducted to determine the economic impact of its nutritional labeling rules, stated that the metric amendments to its food labeling rules "* * * may have a significant economic impact on small businesses * * *" in the food industry (58 FR 29719, May 21, 1993). The FTC does not have equivalent economic information on the myriad industries covered by the FTC regulations issued under the FPLA but seeks economic information in the proposed NPR.

There are no significant alternatives to the proposed regulations which will accomplish the stated objectives of the applicable statutes and which minimize any significant economic impact on small entities. (5 U.S.C. 603(c)) For example, it would be difficult to devise different or simplified labeling requirements for small entities that would still implement dual disclosure requirements and yet avoid the principal cost to such businesses, *i.e.*, redesigning labels. (5 U.S.C. 603 (1) and (2)) For the same reason, the use of general performance standards rather than explicit requirements likely would not result in substantial cost savings. (5 U.S.C. 603(c)(3)) Moreover, the FPLA is quite specific in directing the use of particular modes of disclosure in most instances.

However, if the comments demonstrate that compliance with the proposed regulations will result in economic hardship or significant cost to small businesses, the Commission could undertake exemption proceedings under section 5(b) of the FPLA. For example, the FDA in its NPR for metric amendments to food labeling regulations stated that it is contemplating exemption proceedings if warranted by the facts. The FDA notes that an exemption is intended to be granted only in exceptional circumstances and that based on presently available information "* * * FDA is unable to conclude that exceptional circumstances exist for small firms that would make compliance with the requirements of the proposed rules impracticable." (58 FR 29720, May 21, 1993) At this time, the Commission cannot determine whether such exceptional circumstances might exist for firms with the coverage of its FPLA proposed rules, and seeks comment on whether such circumstances exist for particular categories of companies.

To ensure that no substantial economic impact is being overlooked, the Commission specifically requests information about the companies subject to the amended regulations, including the number and size of the companies. The Commission seeks facts relating to whether the proposed amendments, if promulgated, would have a significant economic impact on a substantial number of small entities in the industries subject to the amended regulations.

VIII. Comments

Interested persons may, on or before October 18, 1993, submit to the Secretary, Federal Trade Commission (address above) written comments regarding this proposal. Received comments may be seen in the Public Reference Section, room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC.

List of Subjects in 16 CFR Part 500

Fair Packaging and Labeling Act, Labeling, Packaging and containers, Trade practices.

For the reasons set out in the preamble, the Federal Trade Commission proposes to amend title 16 of the Code of Federal Regulations by revising part 500 to read as follows:

PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT

Sec.

500.1 Scope of the regulations of this part.
500.2 Terms defined.
500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.
500.4 Statement of identity.
500.5 Name and place of business of manufacturer, packer or distributor.
500.6 Net quantity of contents declaration, location.
500.7 Net quantity of contents, method of expression.
500.8 Units of weight or mass and measure.
500.9 Units of weight or mass, how expressed.
500.10 Units of fluid measure, how expressed.
500.11 Measurement of commodity length, how expressed.
500.12 Measurement of commodities by length and width, how expressed.
500.13 Measurement of commodities by area measure only, how expressed.
500.14 Statements of cubic measure and dry measure.
500.15 Units of count, more than one ply.
500.16 Measurement of container type commodities, how expressed.
500.17 Fractions.
500.18 SI metric prefixes.
500.19 Conversion of metric quantities to inch-pound and inch/pound quantities to metric quantities.
500.20 Conspicuousness.
500.21 Type size in relationship to the area of the principal display panel.
500.22 Abbreviations.
500.23 Expression of net quantity of contents in SI Metric units.
500.24 Supplemental statements.
500.25 Net quantity, average quantity, permitted variations.
500.26 Representations of servings, uses, applications.
500.27 Multiunit packages.
500.28 Variety packages.
500.29 Combination packages.

Authority: Sec. 4, 6, 80 Stat. 1297, 1299, 1300; 15 U.S.C. 1453, 1454, 1455.

§ 500.1 Scope of the regulations of this part.

The regulations in this part establish requirements for labeling of consumer commodities as hereinafter defined with respect to identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and net quantity of servings, uses, or applications represented to be present.

§ 500.2 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The term *Act* means the "Fair Packaging and Labeling Act" (Pub. L. 89–755, approved Nov. 3, 1966; 80 Stat. 1296 et seq.; 15 U.S.C. 1451 et seq., as amended by Pub. L. 102–329, August 3, 1992)

(b) The term *regulation* or *regulations* means regulations promulgated by the Commission pursuant to sections 4, 5, and 6 of the Act (15 U.S.C. 1453, 1454, 1455).

(c) The term *consumer commodity* or *commodity* means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. For purposes of the regulations in this part the term *consumer commodity* does not include any food, drug, device or cosmetic as defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); any meat or meat product, poultry or poultry product, or tobacco or tobacco product, any commodity subject to packaging or labeling requirements imposed by the Administrator of the Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Virus-Serum-Toxin Act (21 U.S.C. 151–157); any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*); any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551–1610).

(d) The term *package* means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that commodity to retail purchasers. For purposes of the regulations in this part the term *package* does not include shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof unless used in retail display; shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236); or transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring any part of the label information required by this part.

(e) The term *label* means any written, printed, or graphic matter affixed to or appearing upon any consumer commodity or affixed to or appearing upon a package containing any consumer commodity; except that:

(1) An inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by this part, and

(2) For the purposes of the regulations in this part the term *label* does not include written, printed, or graphic matter affixed to or appearing upon commodities, or affixed to or appearing upon containers or wrappers for commodities sold or distributed to industrial or institutional users.

(f) The term *person* includes any firm, corporation or associations.

(g) The term *commerce* means:

(1) Commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and

(2) commerce within the District of Columbia or within any territory or possession of the United States, not organized with a legislature, but shall not include exports to foreign countries.

(h) The term *principal display panel* means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel must be large enough to accommodate all the mandatory label information required to be placed thereon by this part without obscuring designs, vignettes, or crowding. This definition does not preclude utilization of alternate principal display panels on a label of a package, but alternate principal display panels must duplicate the information required to be placed on the principal display panel by this part. This definition does not preclude utilization of the container closure as the surface bearing the principal display panel if that label location is the one most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel of a label appearing on a cylindrical surface is that 40 percent of the circumference which is more likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel of a consumer commodity marketed in a decorative type container, or a container having a capacity of ¼ ounce (7.89 Ml) or less, may be considered to be a tear-away tag or tape affixed to the container and bearing the mandatory label information as required by this part, but the type size of the net quantity of contents statement shall be governed by the dimensions of the container itself. The principal display panel of a consumer commodity marketed on a display card to which the immediate container of the commodity is affixed may be considered to be the display panel of the card, and the type size of the net quantity of contents statement is governed by the dimensions of the display card.

(i) The term *random package* means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, that is, packages with no fixed weight pattern.

(j) The term *SI metric* refers to units belonging to the International System of Units (abbreviated "SI" from the French, *Le Systeme International d'Unites)*, as interpreted or modified for use in the United States by the Secretary of Commerce. They include the SI units (together with their multiples and submultiples) as well as other metric units (e.g., the liter) that are accepted for use with the SI units because of their practical importance.

(k) The term *customary inch/pound* refers to units belonging to the system of units used in the United States based or derived from the ounce, pound, and ton for weight; on the inch, foot, yard, and mile for length; the fluid ounce, pint, quart and gallon for volume; and dry pint, dry quart, peck and bushel for dry measure.

(l) The term *"e" mark* refers to the symbol "e" used in connection with the quantity declarations on labels of some consumer commodities marketed primarily in the European Community (EC). The "e" mark constitutes a

representation by the packer or importer that the package to which it is applied has been filled in accordance with the average system of quantity specified by the EC. The average system is a method of declaring package fill in the EC and other countries of the world, including the United States.

§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.

(a) No person engaged in the packaging or labeling of any consumer commodity for distribution in commerce, and no person (other than a common carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, shall distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of the Act and of the regulations in this part.

(b) Persons engaged in business as wholesale or retail distributors of consumer commodities shall be subject to the Act and the regulations in this part to the extent that such persons are engaged in the packaging or labeling of consumer commodities, or prescribe or specify by any means the manner in which such consumer commodities are packaged or labeled.

(c) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act (15 U.S.C. 1454(b)), shall, upon being prepared for distribution in commerce or for sale at retail, and before being distributed in commerce or offered for sale at retail, be labeled in accordance with the requirements of the Act and the regulations in this part.

(d) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act, shall bear a label specifying the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and the net quantity per serving, use or application, where there is a label representation as to the number of servings, uses, or applications obtainable from the commodity.

(e) Regulations will be promulgated by the Commission exempting particular consumer commodities from one or more of the requirements of section 4 of the Act and the regulations thereunder to the extent and under such conditions as are consistent with the declared policy of the Act whenever the Commission finds that, because of the nature, form, or quantity of the particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable is impracticable or is not necessary for the adequate protection of consumers. Proceedings for the promulgation of such exempting regulations may be commenced by the Commission upon its own initiative or pursuant to petition filed with the Secretary by any interested person or group stating reasonable grounds for the proposed exemption, pursuant to § 1.15 of this Chapter of the Commission's general procedures.

§ 500.4 Statement of identity.

(a) The principal display panel of a consumer commodity shall bear a specification of the identity of the commodity.

(b) Such specification of identity shall comprise a principal feature of the principal display panel, shall be in such type size and so positioned as to render it easily read and understood by the consumer, and shall be in lines generally parallel to the base on which the package or commodity rests as it is designed to be displayed.

(c) Such specification of identity shall be in terms of:

(1) The name now or hereafter specified in or required by any applicable Federal law or regulation; or in the absence thereof,

(2) The common or usual name of the commodity; or in the absence thereof,

(3) The generic name or in other appropriately descriptive terms such as a specification which includes a statement of function.

(d) The specification of identity shall not be false, misleading, or deceptive in any respect. Ingredients or components which are not present in the commodity in a substantial or significantly effective amount may not be mentioned in the specification of identity; except that a component present in a formulation in substantial and effective amounts, but not present in the final product due to conversion or transformation into a different entity (which different entity is present in the final product), may be mentioned in the specification of identity.

§ 500.5 Name and place of business of manufacturer, packer or distributor.

(a) The label of a consumer commodity shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor. Where the consumer commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity; such as "Manufactured for _____," "Distributed by _____," or any other wording that expresses the facts.

(b) The requirement for declaration of the manufacturer, packer, or distributor shall in the case of a corporation be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(c) The statement of the place of business shall include the street address, city, State, and Zip Code; however, the street address may be omitted if it is shown in a current city directory or telephone directory.

(d) If a person manufactures, packs, or distributes a consumer commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such consumer commodity was manufactured or packed or is to be distributed, unless such statement could be misleading.

(e) Standard abbreviations may be used in complying with the requirements of this section.

§ 500.6 Net quantity of contents declaration, location.

(a) The label of a consumer commodity shall bear a declaration of the net quantity of contents separately and accurately stated on the principal display panel.

(b) The declaration of net quantity shall appear as a distinct item on the principal display panel, shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and, shall not include any term qualifying a unit of weight or mass, measure, or count such as "jumbo quart," "giant liter," "full gallon," "when packed," "minimum," or words of similar import. The declaration of net quantity shall be separated (by at least a space equal to twice the width of the letter "N" of the style of type used in the net quantity statement) from other printed label information appearing to the left or right of the declaration. However, the "e" mark shall not be considered to be a qualifying word or phrase and may be used as part of the statement of the net quantity of contents where warranted. When used, the "e" mark shall be at least 3 millimeters

(0.118 inches) in height and shall appear immediately after the metric portion of the net quantity of contents statement. The declaration of net quantity of contents shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package or commodity rests as it is designed to be displayed: Provided, That

(1) on consumer commodities having a principal display panel of 5 square inches (32.25 cm^2) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part and

(2) The requirements as to separation, location, and type size, specified in this part are waived with respect to variety and combination packages as defined in this part.

§ 500.7 Net quantity of contents, method of expression.

The net quantity of contents shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass, size, or measure so as to give accurate information regarding the net quantity of contents thereof, and thereby facilitate value comparisons by consumers. The net quantity of contents statement shall be in terms of fluid measure if the commodity is liquid, or in terms of weight or mass if the commodity is solid, semi-solid, or viscous, or a mixture of solid and liquid. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, or a solid, semi-solid, or viscous product by fluid measure, numerical count, and/or size, or (as in the case of lawn and plant care products) by cubic measure, it may be used, when such declaration provides sufficient information to facilitate value comparisons by consumers. The declaration may appear in more than one line of print or type.

§ 500.8 Units of weight or mass and measure.

(a) Statements of weight or mass shall be in terms of both avoirdupois pound and ounce and SI metric kilograms, grams, or milligrams. (Examples of avoirdupois/metric declarations: "Net Wt 15 oz (425.24 g)" or "Net Wt 1½ lbs (680.38 g)" or "Net Wt 3.5 oz (99.22 g) e"; Examples of metric/avoirdupois declarations: "Net Mass 425.24 g (15 oz)" or "Net Mass 680.38 g (1½ lbs)" or "Net Mass 99.22 g e (3.5 oz).")

(b) Statements of fluid measure shall be in terms of both the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof and SI metric liters or milliliters and shall (except in the case of petroleum products, for which the declaration shall express the volume at 60° Fahrenheit (15.6° Celsius)) express the volume at 68° Fahrenheit (20° Celsius). (Examples of gallon/metric declarations: "Net 12 fl oz (354.88 Ml)" or "Net Contents 1 gal (3.78 L)" or "8 fl oz (236.58 mL)"; Examples of metric/gallon declarations: "Net 500 mL (1.05 pt)" or "Net Contents 1 L (1.05 qt).")

(c) Statements of linear measure shall be in terms of both yards, feet, and inches and SI metric meters, centimeters, or millimeters.

(d) Statements of measure of area shall be in terms of both square yards, square feet, and square inches and SI metric square meters, square centimeters, or square millimeters.

(e) Statements of dry measure shall be in terms of both the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof and SI metric liters or milliliters.

(f) Statements of cubic measures shall be in terms of both cubic yard, cubic foot, and cubic inch and SI metric cubic meters or cubic centimeters.

§ 500.9 Units of weight or mass, how expressed.

(a) The term "net weight" or "net mass" shall be used in stating the net quantity of contents in terms of weight or mass. For example: "Net Wt 1 lb (453.59 g)" or "Net Mass 453.59 g (1 lb)".

(b) With the exception of random packages, the statement of net quantity of contents in terms of avoirdupois weight shall be expressed as follows:

(1) If less than 1 pound, in terms of ounces. (Examples: "Net Weight 12 oz. (340.19 g)" or "Net Mass 340.19 g (12 oz)".)

(2) If at least 1 pound but less than 4 pounds, in whole pounds, with any remainder in ounces or common or decimal fractions of the pound, except that it shall be optional to include an immediately adjacent additional expression of net quantity in terms of ounces. (Examples: "Net Wt. 1 lb. 8 oz. (680.38 g)" or "Net Wt. 1.5 lb./24 oz. (680.39 g)" or "Net Wt. 24 oz. (1½ lb.)".)

(3) If 4 pounds or more, in terms of whole pounds, with any remainder in terms of ounces or common or decimal fractions of the pound.

(**Examples:** "Net Weight 5 pounds 4 ounces (2.38 kg)" or "Net Mass 2.38 kg (5 lbs 4 oz)" or "Net Wt. 5 ¼ lbs. (2.38 kg)" or "Net Mass 2.38 kg (5¼ lbs.)" or "Net Wt. 5.25 lbs. (2.38 kg) or "Net Mass 2.38 kg (5.25 lbs)".)

(c) If the net quantity of contents declaration appears on a random package it may, when the net weight exceeds 1 pound, be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places. When the net weight does not exceed 1 pound, the declaration on the random package may be in terms of decimal fractions of the pound in lieu of ounces.

(**Examples:** "Net Wt. 0.75 lb." and "Net Weight 1.05 pounds.")

Such decimal declaration shall be exempt from the type size and placement requirements of section 4(a) of the Act if the accurate statement of net weight is presented prominently and conspicuously on the principal display panel of the package. The net quantity of contents declaration on a random package is not required to, but may include a statement in terms of the SI metric system carried out to not more than 3 decimal places.

(d) It is sufficient to distinguish avoirdupois ounce from fluid ounce through association of terms.

(**Examples:** "Net Wt. 6 oz." vs. "6 fl. oz." or "Net Contents 6 fl. oz.")

§ 500.10 Units of fluid measure, how expressed.

(a) Use of the terms "net" or "net contents" is optional.

(b) Declaration of net quantity of contents in terms of fluid measure shall be identified as such in each instance and the statement of U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof shall be expressed as follows:

(1) If less that 1 pint, in terms of fluid ounces.

(**Example:** "Net Contents 8 fl. oz. (236.58 mL)" or "Net Contents 236.58 mL (8 fl. oz.)".)

(2) If at least 1 pint but less than 1 gallon, in terms of the largest whole unit (quarts, quarts and pints or pints, as appropriate), with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart, except that it shall be optional to include an immediately adjacent additional expression of net quantity in terms of fluid ounces.

(**Examples:** "1 qt. (946.35 mL)" or "Net contents 1 qt. 1 pt. 8 oz./56 fl. oz. (1.65 L)", but not in terms of quart and ounce such as "1 quart 24 ounces (1.65 L)".)

(3) If 1 gallon or more, in terms of the largest whole unit (gallons followed by common or decimal fractions of a gallon or by the next smaller whole unit or units viz, quarts and pints) with any

remainder in terms of fluid ounces or common or decimal fractions of the pint or quart.

(Examples: "Net contents 2½ gal. (9.46 L)", "Contents 2.5 gal. (9.46 L)", or "Net contents 2 gallons 2 quarts (9.46 L)" but not as "2 gallons 4 pints (9.46 L)".)

§ 500.11 Measurement of commodity length, how expressed.

Declaration of net quantity in terms of yards, feet, and inches shall be expressed as follows:

(a) If less than 1 foot, in terms of inches and fractions thereof.

(b) If 1 foot or more, in terms of the largest whole unit (a yard or foot) with any remainder in terms of inches or common or decimal fractions of the foot or yard, except that it shall be optional to express the length in the preceding manner followed by a statement of the length in terms of inches.

§ 500.12 Measurement of commodities by length and width, how expressed.

For bidimensional commodities (including roll-type commodities) measured in terms of commodity length and width, the declaration of net quantity of contents shall be expressed in the following manner:

(a) The declaration of net quantity for bidimensional commodities having a width of more than 4 inches (10.16 cm) shall:

(1) When the commodity has an area of less than 1 square foot (929.03 cm^2) be expressed in terms of length and width in linear measure. The customary inch/pound statement is to be expressed in inches and fractions thereof.

(2) When the commodity has an area of 1 square foot (929.03 cm^2) or more, but less than 4 square feet (3716.12 cm^2), be expressed in terms of area, followed by the length and width. The customary inch/pound statement of area is to be expressed in square inches with length and width expressed in the largest whole unit (yard or foot) with any remainder in inches or common or decimal fractions of the yard or foot except that a dimension of less than 2 feet (60.96 cm) may be stated in inches. Commodities consisting of usable individual units (e.g., paper napkins) while requiring a declaration of unit area need not declare the total area of all such individual units.

(3) When the commodity has an area of 4 square feet (3716.12 cm^2) or more, be expressed in terms of area, followed by the length and width. The customary inch/pound statement of area is to be expressed in square feet with the length and width expressed in the largest whole units (yards or feet) with any remainder in terms of inches or common or decimal fractions of the foot or yard except that a dimension of less than 2 feet (60.96 cm) may be stated in inches.

(4) For any commodity for which the quantity of contents is required by paragraph (a) (2) or (3) of this section to include a declaration of the linear dimensions, the quantity of contents, in addition to being declared in the manner prescribed by the appropriate provisions of this regulation, may also include, after the customary inch/pound statement of the linear dimensions of the largest unit of measurement, a parenthetical declaration of the linear dimensions of said commodity in terms of inches.

(Example: "25 sq. ft. (12 in. × 8.33 yd.) (12 in. × 300 in.) 2.32 m^2 (30.48 cm × 7.62 m)".)

(b) For bidimensional commodities having a width of 4 inches (10.16 cm) or less, the declaration of net quantity shall be expressed in terms of width and length in linear measure. The customary inch/pound statement of width shall be expressed in terms of linear inches and fractions thereof, and length shall be expressed in the largest whole unit (yard or foot) with any remainder in terms of the common or decimal fractions of the yard or foot, except that it shall be optional to express the length in the largest whole unit followed by a statement of length in inches or to express the length in inches followed by a statement of length in the largest whole unit.

(Example: "2 inches × 10 yards (5.08 cm × 9.14 m)", "2 inches × 10 yards (360 inches) 5.08 cm × 9.14 m", or "2 inches × 360 inches (10 yards) 5.08 cm × 9.14 m".)

§ 500.13 Measurement of commodities by area measure only, how expressed.

For commodities measured in terms of area measure only declaration of net quantity in terms of square yards, square feet, and square inches shall be expressed in the following manner:

(a) If less than 1 square foot (929.03 cm^2), in terms of square inches and fractions thereof.

(b) If at least 1 square foot (929.03 cm^2) but less than 4 square feet (3716.12 cm^2), in terms of square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

(c) If 4 square feet (3716.12 cm^2) or more, in terms of the largest appropriate whole unit (square yards, square yards and square feet, or square feet) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard.

§ 500.14 Statements of cubic measure and dry measure.

Statements of cubic measure and dry measure do not require a dual declaration of net quantity of contents, but shall be expressed in terms most appropriate to the providing of accurate information as to the net quantity of contents, and to the facilitating of value comparisons by consumers. When the content declaration on a commodity sold in compressed form is stated in terms of cubic measure there may also be a statement indicating the amount of material from which the final product was compressed. Such statement shall not exceed the actual amount of material that can be recovered.

§ 500.15 Units of count, more than one ply.

If the commodity is in distinct usable units made up of one or more components or ply, the statement of net quantity of contents shall (in addition to complying with the requirements of linear and area measurement declaration for each unit as specified in Section 500.12) include the number of ply and the total number of usable units.

(Example: "100 2-ply facial tissue, 8½ inches × 10 inches" (21.59 × 25.40 cm).

For the purposes of this section, roll type commodities (e.g. paper towels), irrespective of perforations, shall not be considered to be usable units, and shall be labeled in terms of total area measurement and the number of ply. Such area measurement, however, shall be supplemented by a count statement and the dimensions of a single unit.

§ 500.16 Measurement of container type commodities, how expressed.

Notwithstanding other provisions of this Part 500 of the regulations pertaining to the expression of net quantity of contents by measurement, commodities designed and sold at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled in accordance with the following paragraphs:

(a) The declaration of net quantity for container commodities shall be expressed as follows:

(1) For bag type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise) Net quantity of contents in terms of feet and inches shall be expressed as follows:

(i) When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of 2 feet or more will be expressed in feet with any

remainder in terms of inches or common or decimal fractions of the foot.

(**Example:** "25 bags, 17 in. × 20 in. (43.18 × 50.80 cm)" or "200 bags, 20 in. × 2 ft. 6 in. (50.80 × 76.20 cm)", or "50 bags, 20 in. × 2½ ft." (50.80 × 76.20 cm))

(ii) When the unit bag is gussetted, the dimensions will be expressed as width, depth and length in terms of inches except that any dimensions of 2 feet or more will be expressed in feet with any remainder in terms of inches or the common or decimal fractions of the foot.

(**Examples:** "25 bags, 17 in. × 4 in. × 20 in. (43.18 × 10.16 × 50.80 cm)", or "200 bags, 20 in. × 12 in. × 2½ ft. (50.80 × 30.48 × 76.20 cm)")

(2) For other square, oblong, rectangular or similarly shaped containers, in terms of count followed by length, width, and depth except depth need not be listed when less than 2 inches (5.08 cm).

(**Example:** "2 cake pans, 8 in. × 8 in. (20.32 × 20.32 cm)", or "roasting pan, 12 in. × 8 in. × 3 in. (30.48 × 20.32 × 7.62 cm)")

(3) For circular or other generally round shaped containers, except cups, and the like, in terms of count followed by diameter and depth except depth need not be listed when less than 2 inches (5.08 cm).

(**Example:** "4 pie pans, 8 in. diameter (20.32 cm)" or "2 cake pans, 8 in. diameter × 4 in. (20.32 × 10.16 cm)")

(b) When the functional use of the container is related by label reference in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

(1) Liquid measure for containers which are intended to be used for liquids, semi-solids, viscous materials or mixtures of solids and liquids. The customary inch/pound statement of capacity shall be stated in terms of the largest whole U.S. gallon of 231 cubic inches, quart, pint, or ounce with any remainder in terms of the common or decimal fraction of that unit.

(**Example:** Freezer Boxes: "4 boxes, 1 qt. capacity, 6 in. x 6 in. x 4 in. (946.35 mL capacity, 15.24 x 15.24 x 10.16 cm)")

(2) Dry measure for containers which are intended to be used for solids. The customary inch/pound statement of capacity shall be stated in terms of the largest whole U.S. bushel of 2,150.42 cubic inches, peck, dry quart, or dry pint with any remainder in terms of the common or decimal fraction of that unit.

(**Example:** Leaf Bags: "8 bags, 6 bushel capacity, 4 feet x 5 feet (211.43 L capacity—1.21 m x 1.52 m).")

(3) Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent container.

(**Example:** Garbage Can Liners: "10 liners, 2 ft. 6 in. x 3 ft. 1 in., fits up to 30 gallon cans (76.20 x 93.98 cm, fits up to 113.55 L cans".)

(c) Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit.

(**Example:** "24 cups, 6 fl. oz. capacity" (177.44 mL).)

(d) For purposes of this section, the use of the terms "capacity," "diameter," and "fluid" is optional.

§ 500.17 Fractions.

(a) SI metric declarations of net quantity of contents of any consumer commodity may contain only decimal fractions. Other declarations of net quantity of contents may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that:

(1) If there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed, and

(2) If linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than three places.

(b) If a statement includes small fractions, smaller variations in the actual size or weight of the commodity will be permitted as provided in § 500.22, than in cases where the larger fractions or whole numbers are used.

§ 500.18 SI metric prefixes.

The following chart indicates SI prefixes that may be used on a broad range of consumer commodity labels:

Prefix	Symbol	Multiplying factor*
kilo-	k	$\times 10^3$
hecto-	h	$\times 10^2$
deca-	da	$\times 10$
deci-	d	$\times 10^{-1}$
centi-	c	$\times 10^{-2}$
milli-	m	$\times 10^{-3}$

*10^2=100; 10^3=1000; 10^{-1}=0.1; 10^{-2}=0.01. Thus, 2 kg=2×1000=2000 g and 3 cm=3×0.01=0.03 m.

§ 500.19 Conversion of metric quantities to inch-pound and inch/pound quantities to metric quantities.

For calculating the conversion of metric quantities to inch-pound quantities and inch/pound quantities to metric quantities, the factors in the following metric inch/pound conversion chart and none others shall be employed:

METRIC INCH/POUND CONVERSION FACTORS

Inch/Pound	Metric
Length	
1 inch=2.54 cm*	1 millimeter=0.039 370 in.
1 foot=30.48 cm	1 centimeter=0.393 701 in.
1 yard=0.9144m*	1 meter=3.280 84 ft.
Area	
1 square inch=6.4516 cm^2*.	1 square centimeter=0.155 000 in^2.
1 square foot=929.0304 cm^2.	1 square decimeter=0.107 639 ft^2.
1 square yard=0.836 127 m^2.	1 square meter=10.763 9 ft^2.
Volume or Capacity	
1 cubic inch=16.3871 cm^3.	1 cubic centimeter=0.061 023 7 in^3.
1 cubic foot=0.028 316 8 m^3.	1 cubic decimeter=0.035 314 7 ft^3.
1 cubic yard=0.764 555 m^3.	1 cubic meter=35.314 7 ft^3; =1.307 95 yd^3.
1 fluid ounce=29.573 5 mL.	1 milliliter=0.033 814 0 fluid oz.
1 liquid pint=473.177 mL; =0.473 177 L.	1 liter=1.05669 liquid quart.
	1 liter=0.264 172 gallon.
1 liquid quart=946.353 mL; 0.946 353 L.	1 dry pint=550.610 5 mL.
	1 dry quart=1.101 221 L.
1 gallon=3.785 41 L	1 dry peck=8.809 768 L.
1 bushel=35.2391 L	
Weight or Mass	
1 ounce=28.349 5 g	1 milligram=0.000 035 274 0 oz; =0.015 432 4 grain.
1 pound=453.592 g; =0.453 592 kg.	1 gram=0.035 274 0 oz.
	1 kilogram=2.204 62 lb.

*Exactly.

Note: These conversion factors are given to six significant digits to provide such accuracy when necessary.

§ 500.20 Conspicuousness.

The statement of net quantity of contents shall appear in conspicuous and easily legible boldface type or print in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a statement of net quantity blown, embossed, or molded on a glass or plastic surface is permissible when all label information is so formed on the surface.

§ 500.21 Type size in relationship to the area of the principal display panel.

(a) The statement of net quantity of contents shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package or commodity and shall be uniform for all packages or commodities of substantially the same size. For this purpose, "area of the principal display panel" means the area of the side or surface that bears the principal display panel, exclusive of tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles and jars. This area shall be:

(1) In the case of a rectangular package or commodity where one entire side properly can be considered to be a principal display panel side, the product of the height times the width of that side;

(2) In the case of a cylindrical or nearly cylindrical container or commodity, 40 percent of the product of the height of the container or commodity times the circumference; and

(3) In the case of any otherwise shaped container or commodity, 40 percent of the total surface of the container or commodity: Provided, however, That where such container or commodity presents an obvious "principal display panel" such as the top of a triangular or oval shaped container, the area shall consist of the entire top surface.

(b) With area of principal display panel defined as above, the type size in relationship to area of that panel shall comply with the following specifications:

(1) Not less than 1/16 inch (1.587 mm) in height on packages the principal display panel of which has an area of 5 square inches or 32.258 cm²) less.

(2) Not less than 1/8 inch (3.175 mm) in height on packages the principal display panel of which has an area of more than 5 (32.258 cm²) but not more than 25 square inches (161.29 cm²).

(3) Not less than 3/16 inch (4.762 mm) in height on packages the principal display panel of which has an area of more than 25 (161.29 cm²) but not more than 100 square inches (6.45 m²).

(4) Not less than 1/4 inch (6.35 mm) in height on packages the principal display panel of which has an area of more than 100 square inches (6.45 m²), except not less than 1/2 (12.7 mm) inch in height if the area is more than 400 square inches 25.80 m²).

(c) Where the statement of net quantity of contents is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in paragraph (b) of this section shall be increased by 1/16 of an inch (1.587 mm).

(d) Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(e) The ratio of height to width of a letter shall not exceed a differential of 3 units to 1 unit (no more than 3 times as high as it is wide).

(f) When fractions are used, each component shall meet one-half the minimum height standards.

(g) The type size requirements specified in this section do not apply to the "e" mark. (See § 500.6(b))

§ 500.22 Abbreviations.

The following abbreviations and none other may be employed in the required net quantity declaration:

Inch—in.
Feet or foot—ft.
Fluid—fl.
liquid—liq.
Ounce—oz.
Pound—lb.
Quart—qt.
Square—sq.
Weight—wt.
Yard—yd.
Gallon—gal.
Pint—pt.
Avoirdupois—avdp.
Cubic—cu.
(Periods and plural forms shall be optional.)

§ 500.23 Expression of net quantity of contents in SI Metric units.

(a) The selected multiple or submultiple prefixes for SI metric units shall result in numerical values between 1 and 1000, except that centimeters or millimeters may be used where a length declaration is less than 100 centimeters. For example, "1.96 kg" instead of "1960 g" or "750 mL" instead of "0.75 L".

(b) The following symbols for SI metric units and none others may be employed in the required net quantity declaration:

centimeter—cm
cubic centimeter—cm³
meter—m
milligram—mg
liter—L
milliliter—mL
cubic meter—m³
kilogram—kg
gram—g
millimeter—mm
square meter—m²
square centimeter—cm²
(Symbols, except for liter, are not capitalized. Periods should not be used after the symbol. Symbols are always written in the singular form.)

§ 500.24 Supplemental statements.

Nothing contained in the regulations in this part shall prohibit supplemental statements, at locations other than the principal display panel, describing in non-deceptive terms the net quantity of contents: Provided, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of commodity contained in the Package. (Examples of prohibited language are: "Giant Quart," "Jumbo Liter," "Full Gallon," "When Packed," "Minimum," or words of similar import.) Required combination declarations of net quantity of contents (for example, a combination of net weight or mass plus numerical count, numerical count plus dimensions of the commodity, etc.) are not regarded as supplemental net quantity statements and shall be located on the principal display panel. Dilution directions or other similar directions for use are not regarded as supplemental net quantity statements and may be located on the principal display panel. Size characterizations in compliance with standards promulgated under section 5(c)(1) of the Act may appear on the principal display panel.

§ 500.25 Net quantity, average quantity, permitted variations.

(a) The statement of net quantity of contents shall accurately reveal the quantity of the commodity in the container exclusive of wrappers and other material packed therewith: Provided, That in the case of a commodity packed in a container designed to deliver the commodity under pressure, the statement shall declare the net quantity of the contents that will be expelled when the instruction for use are followed. The propellant is included in the net quantity statement.

(b) Variations from the stated weight or mass or measure shall be permitted

when caused by ordinary and customary exposure, after the commodity is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or mass or measure.

(c) Variations from the stated weight or mass, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages which occur in good packaging practice: Provided, that such variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the commodity is below the quantity stated, and no unreasonable shortage in any package will be permitted even though overages on other packages in the same shipment or delivery compensate for such shortage. Variations from stated quantity of contents shall not be unreasonably large.

§ 500.26 Representations of servings, uses, applications.

(a) The label of any packaged consumer commodity which bears a representation as to the number of servings, uses, or applications of such commodity contained in such package shall bear in immediate conjunction therewith, and in letters the same size as those used for such representations, a statement of the net quantity (in terms of weight or mass, measure, or numerical count) of each such serving, use, or application: Provided, That such statement may be expressed in terms that differ from terms used in the required statement of net contents (e.g., cupsful, tablespoonful, etc.), when such differing terms describe a constant quantity. Such statement may not be misleading in any particular.

(b) Representations as to the total amount of object or objects to which the commodity may be applied or upon which or in which the commodity may be used, will not be considered to be representations as to servings, uses, or applications, if such amount is expressed in terms of standard units of weight or mass, measure, size, or count.

(c) If there exists a voluntary product standard promulgated pursuant to the procedures found in part 10, title 15, Code of Federal Regulations, by the Department of Commerce, quantitatively defining the meaning of the terms "serving," "use," or "application" with respect to a particular consumer commodity, then any label representation as to the number of servings, uses, or applications in such packaged consumer commodity shall correspond with such quantitative definition. (Copies of published standards will be available upon request from the National Institute of Standards and Technology, Department of Commerce, Washington, DC 20899.)

§ 500.27 Multiunit packages.

(a) A multiunit package is a package intended for retail sale, containing two or more individual packaged or labeled units of an identical commodity in the same quantity. The declaration of net quantity of contents of a multiunit package shall be expressed as follows:

(1) The number of individual packaged or labeled units;

(2) The quantity of each individual packaged or labeled unit; and

(3) The total quantity of the multiunit package.

Examples: Soap bars: "6 Bars, Net Wt. 3.4 ozs. (96.38 g) each, Total Net Wt. 1 lb. 4.4 oz. (578.32 g)" Facial Tissues: "10 Packs, each 25 two-ply tissues, 9.7 in. x 8.2 in. (24.638 x 20.828 cm), Total 250 Tissues."

(b) The individual packages or labeled units of a multiunit package, when intended for individual sale separate from the multiunit package, shall be labeled in compliance with the regulations under this part 500 applicable to that package.

(c) A multiunit package containing unlabeled individual packages which are not intended for retail sale separate from the multiunit package may contain in lieu of the requirements of Paragraph (a) of this section, a declaration of quantity of contents expressing the total quantity of the multiunit package without regard for inner packaging. For such multiunit packages it shall be optional to include a statement of the number of individual packages when such a statement is not otherwise required by the regulations.

Examples: Deodorant Cakes: "5 Cakes, Net Wt. 4 ozs. (113.39 g) each, Total Net Wt. 1.25 lb. (566.99 g)" or "5 Cakes, Total Net Wt. 1 lb. 4 ozs. (566.99 g)";

Soap Packets: "10 Packets, Net Wt. 2 ozs. (56.69 g) each, total Net Wt. 1.25 lb. (566.99 g)" or "Net Wt. 1 lb. 4 ozs. (566.99 g)" or "10 Packets, Total Net Wt. 1 lb. 4 ozs. (566.99 g)."

§ 500.28 Variety packages.

(a) A variety package is a package intended for retail sale, containing two or more individual packages or units of similar but not identical commodities. Commodities which are generically the same but which differ in weight or mass, measure, volume, appearance or quality are considered similar but not identical. The declaration of net quantity for a variety package will be expressed as follows:

(1) The number of units for each identical commodity followed by the weight or mass, volume, or measure of that commodity; and

(2) The total quantity by weight or mass, volume, measure, and count, as appropriate, of the variety package. The statement of total quantity shall appear as the last item in the declaration of net quantity and shall not be of greater prominence than other terms used.

Examples:*

(i) 2 sponges 4½ ins. x 4 ins. x ¾ in. (11.43 cm x 10.16 cm x 1.9 cm); 1 sponge 4½ ins. x 8 ins. x ¾ in. (11.43 cm x 20.32 cm x 1.9 cm); 4 sponges 2½ ins. x 4 ins. x ½ in. (6.35 cm x 10.16 cm x 1.27 cm)—total: 7 sponges.

(ii) 2 soap bars Net Wt. 3.2 ozs. (90 g) each; 1 soap bar Net Wt. 5.0 ozs. (141 g)—total: 3 bars Net Wt. 11.4 ozs. (323 g).

(iii) Liquid Shoe Polish: 1 Brown 3 fl. ozs. (88 mL); 1 Black 3 fl. ozs. (88 mL); 1 White 5 fl. ozs.. (147 mL)—total: 11 fl. ozs. (325 mL).

(iv) Picnic Ware: 34 spoons; 33 forks; 33 knives—total 100 pieces.

* **Note:** In examples (ii) and (iii), SI units were determined by rounding down the corresponding inch/pound quantity.

(b) When the individual units in a variety package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be labeled in compliance with the applicable regulations under this part 500.

§ 500.29 Combination packages.

(a) A combination package is a package intended for retail sale, containing two or more individual packages or units of dissimilar commodities. The declaration of net quantity for a combination package will contain an expression of weight or mass, volume, measure or count or a combination, thereof, as appropriate for each individual package or unit: Provided, That the quantity statements for identical packages or units shall be combined.

Examples:

(1) Lighter fluid and flints: 2 cans—each 8 fl. ozs. (236.58 mL); 1 package—8 flints.

(2) Sponges & Cleaner: 2 sponges each 4 in. x 6 in. x 1 in. (10.16 x 15.24 x 2.54 cm); 1 box cleaner—Net Wt. 6 ozs. (170.09 g).

(3) Picnic Pack: 20 spoons, 10 knives and 10 forks, 10 2-ply napkins 10 ins. x 10 ins. (25.4 x 25.4 cm) 10 cups—6 fl. ozs. (177.44 mL).

(b) When the individual units in a combination package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be in compliance with the applicable regulations under this part 500.

display panel of which has an area of

declaration:

or mass or measure shall be permitted

pack

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-19805 Filed 8-16-93; 8:45 am]

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federal register

Tuesday
August 17, 1993

Part V

Department of Education

Cooperative Demonstration Program—Community Education Employment Centers; Notice

VOL 58 ISS 157 AG 17 1993 UMI

DEPARTMENT OF EDUCATION

Cooperative Demonstration Program—Community Education Employment Centers

AGENCY: Department of Education.

ACTION: Notice of proposed priority and proposed selection criteria for fiscal year 1994.

SUMMARY: The Secretary proposes an absolute priority for awards to be made in fiscal year (FY) 1994 to establish urban and rural Model Community Education Employment Centers under the Cooperative Demonstration Program. The Secretary takes this action to improve the access of disadvantaged youth to quality vocational education programs. Community Education Employment Centers should serve disadvantaged youth in both urban and rural areas by providing model high school programs that combine the best of academic, vocational, and school-to-work curricula. The Secretary also proposes selection criteria to be applied in evaluating applications submitted for this competition.

DATES: Comments must be received on or before September 16, 1993.

ADDRESSES: Comments should be addressed to Kate Holmberg, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4512, Switzer Building, Washington, DC. 20202–7327.

FOR FURTHER INFORMATION CONTACT: Kate Holmberg. Telephone: (202) 205–5563. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the Cooperative Demonstration Program authorized by section 420A(a)(1) of the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2301 *et seq.* (1990) (the Perkins Act), the Secretary provides financial assistance for, among other things, projects that support model programs that improve access for special populations to quality vocational programs.

In the Senate Report and House Conference Report accompanying the Department of Education Appropriations Act of 1993, Congress expressed the intent that a portion of the funds appropriated for demonstration projects under title IV of the Perkins Act be used to fund "model community education employment centers" (S. Rep. No. 397, 102d Cong., 2d Sess. 226 (1992); H. Conf. Rep. No. 974, 102d Cong., 2d Sess. 38 (1992)). The Secretary agrees that these centers could be an important and effective means by which the academic, vocational, and employment needs of disadvantaged youth in urban and rural areas can be met. The Secretary also believes that Community Education Employment Centers can demonstrate alternative structures for secondary schooling within which the more comprehensive and explicit goals for school-to-work transition can be fully realized for disadvantaged youth. Community Education Employment Centers will, likewise, contribute to Goals 2 and 5 of the National Education Goals—by increasing the high school graduation rate of disadvantaged rural and urban youth and by enabling these youth to acquire the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

For these reasons the Secretary proposes to reserve, from the FY 1993 appropriation for the Cooperative Demonstration Program, funds to conduct a competition with an absolute priority for applications proposing model community education employment centers in urban and rural areas. The requirements for these centers, as proposed for this competition, are contained in title III, part G, Subpart 1, of the Perkins Act. In addition, the Secretary proposes, in reviewing applications under this competition, to apply the selection criteria for Community Education Employment Centers contained in 34 CFR part 408.

The Secretary will announce the final absolute priority for this competition in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with, or following, publication of the notice of final priority.

Proposed Priority:

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

(a) An application under this competition must propose a demonstration project that would—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes and, to the extent possible, maintain an average class size of 15 students or fewer;

(4) Have the option to organize community education and employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population;

(5) Offer a broad array of secondary school coursework, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that is developed through regular consultation with employer-labor panels with knowledge of relevant industries, and that offers skills in planning, management, finances, technical and production competence, underlying principles of technology, labor and community issues, economic development and health, safety, and environmental issues;

(iv) Courses in health, nutrition, and parenting;

(6) Offer students on-site opportunities for assistance with career planning, community-based career exploration, and career decision-making, employability, entrepreneurial skills, interpersonal communication skills, and remedial studies;

(7) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(8) Provide technical assistance and training to staff from other schools and local educational agencies within the State who wish to replicate community education employment center capabilities;

(9) Seek to use community organizations to provide support for educational activities and services to parents and students; and

(10) Offer school-to-work transition services.

(b) An application under this competition must propose a demonstration project that would establish in each community education employment center a support system to coordinate services for students, including—

(1) A comprehensive program of confidential guidance counseling, providing—

(i) Guidance for career and personal decisionmaking and postsecondary institution placement;

(ii) Mentoring and referral to appropriate social services; and

(iii) An accessible counseling service to help parents to focus on the enhancement of student education;

(2) An on-site job service office to offer students—

(i) Career guidance, development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(ii) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(iii) Assistance in arranging part-time employment so long as this employment does not adversely affect academic performance;

(3) Assistance in arranging a summer program of work, education, or enrichment sessions;

(4) To the extent possible, providing transportation to and from the community education employment center and part-time job sites; and

(5) Access to day care services for children of participating students.

(c) An application under this competition must propose a project that would employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in each community education employment center by—

(1) Encouraging parents and students to make informed decisions in reviewing and selecting the choice of community education employment center programs;

(2) Conducting regular parent seminars to—

(i) Inform parents about community education employment center operations;

(ii) Obtain parent input; and

(iii) Disseminate information on how parents can encourage student performance;

(3) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student, to discuss student progress, plans, and needs;

(4) Providing for a range of roles in which parents may work with students at home, as class assistants, or as volunteer coordinators;

(5) Establishing a council of advisors consisting of one individual representing each of the following entities:

(i) The local educational agency;

(ii) The State council on vocational education, the State agency responsible for secondary vocational education, or both;

(iii) The student body;

(iv) The local teacher organization or organizations;

(v) Guidance counselors;

(vi) Community-based organizations;

(vii) Parents; and

(viii) The appropriate private industry council.

(6) The council of advisors must provide recommendations to, and work with, eligible recipients to—

(i) Establish annual community education employment center priorities, programs, and procedures;

(ii) Establish student selection criteria to ensure that all students in the school district have an equal opportunity to attend the community education employment center and that participants would be representative of the secondary school population in the school district or in the service area designated in the application;

(iii) Promote a student code of conduct developed in consultation with the students and teachers;

(iv) Assist in the selection of the community education employment center principal, administrators, department chairpersons, and teachers;

(v) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(vi) Make recommendations for the selection of curriculum textbooks, software, and other learning resources and equipment; and

(vii) Make recommendations regarding the coordination of activities assisted under this program with activities assisted under the Job Training Partnership Act and school-to-work transition programs in their area.

(d) An application under this competition must propose a project that would—

(1) Only employ professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(2) Ensure that community education employment center teachers receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(3) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

Proposed Selection Criteria for Evaluating Applications

Note: Certain sections of 34 CFR part 408 are referenced in the following proposed selection criteria. Although part 408 has not yet been codified in the Code of Federal Regulations, it can be found in the **Federal Register** of August 14, 1992 (57 FR 36767–71), where it was published as part of the final regulations implementing the Carl D. Perkins Vocational and Applied Technology Education Act.

For this proposed FY 1994 grant competition under the Cooperative Demonstration Program—Community Education Employment Centers, the Secretary proposes to use the following selection criteria and to assign maximum possible points to the selection criteria as indicated in parentheses:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school and transition from secondary school to postsecondary school or employment;

(3) Proposed activities will be coordinated with the entities listed in § 408.10(f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures, and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of § 408.30; and

(6) Parental and community participation will be provided for, as required in § 408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by the Community Education Employment Center Program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science, as measured by standardized tests;

(iii) Graduation of students from high school;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the provision for meeting and reporting on the requirements in § 408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting and training others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in § 408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in 34 CFR 408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate

(2) The Secretary reviews each application to determine the commitment to the project, including whether—

(i) The uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) The applicant has the capacity to continue, expand, and build upon the

project when Federal assistance under this competition ends.

Additional Factor the Secretary Proposes to Consider

The Secretary proposes to apply the following urban/rural distribution factor to applications submitted in this competition:

After evaluating each application according to the proposed selection criteria, the Secretary may select one or more applications of acceptable quality for funding, other than the most highly rated applications, if the Secretary concludes that this selection would improve the distribution of grants among applicants serving rural and urban youth.

Paperwork Reduction Act of 1980

This proposed priority contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priority to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

This proposed priority would affect the following types of entities eligible to apply for a grant under this program: State and local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions; and any combination of these types of entities. The Department needs and uses the information to enable the Secretary to determine which applicants would most likely develop and disseminate successful model projects for demonstration throughout the Nation.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 hours per response for 100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this competition.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed absolute priority and these proposed selection criteria.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4512, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Applicable Program Regulations: 34 CFR part 426.

Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199–G Cooperative Demonstration Program)

Dated: August 10, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–19771 Filed 8–16–93; 8:45 am]

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Part VI

Department of Commerce

International Trade Commission

Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–815]

Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Annika L. O'Hara, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5055 or 482–4198, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determination that producers or exporters in the United Kingdom of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37393, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination regarding the class or kind of merchandise covered in this investigation. The ITC determined that imports of certain cut-to-length carbon steel plate from the United Kingdom are materially injuring a U.S. industry.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cut-to-length carbon steel plate from the United Kingdom. These countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from the United Kingdom which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register**, are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determination in this investigation, and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit in the amounts indicated below:

Certain Cut-To-Length Carbon Steel Plate

Country-Wide Ad Valorem Rate—12.00 percent

Glynwed Steels Limited Ad Valorem Rate—0.73 percent

This determination constitutes a countervailing duty order with respect to certain cut-to-length carbon steel plate from the United Kingdom pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this investigation, certain cut-to-length carbon steel plate, constitute the following "class or kind" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this investigation are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this investigation is grade X–70 plate.

Correction of Ministerial Error

On July 2, 1993, the respondent in this countervailing duty investigation alleged that the Department made a ministerial error in calculating the subsidy margin in our final determination pursuant to 19 CFR 355.28. On July 12, 1993, petitioners agreed with the respondent's allegation.

Specifically, the respondent alleged that the Department used "mismatched" numerators and denominators in its spin-off calculation. According to the respondent, the Department incorrectly compared the net asset values of the spun-off productive units (*e.g.*, fixed assets, stocks, debtors, etc.) with the tangible asset values of the British Steel Corporation (*i.e.*, fixed assets only). We agree with the respondent that we inadvertently used the incorrect asset values for the spun-off productive units. Clearly, the Department intended to compare like assets with like assets in its spin-off calculation. We have, therefore, made the appropriate changes to our spin-off calculation.

In addition, after the issuance of the Department's final determination in this investigation, we discovered that we had erroneously added £291 million for

sales by "associated undertakings" to British Steel plc's (BS plc) total sales value. In a February 10, 1993 submission, BS plc stated that the amount of sales attributable to "associated undertakings" were already included in the company's total sales value. Because the sales by "associated undertakings" were double-counted in the calculation of the subsidy margin in our final determination, we have subtracted these sales (*i.e.*, £291 million) from BS plc's total sales.

The final margin percentage in this notice reflects these recalculations for certain cut-to-length carbon steel plate from the United Kingdom.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman, Office of Countervailing Compliance, at (202) 482–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19830 Filed 8–16–93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[C–423–805]

Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From Belgium

AGENCY: Import Administration, International Trade Administration.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Vincent Kane, Office of Countervailing Investigations, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2239 or 482–2815, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in Belgium of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37273, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the three classes or kinds of merchandise covered by these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Belgium are materially injuring a U.S. industry. The ITC also determined that U.S. industries are not materially injured, or likely to be materially injured, by reason of imports of certain hot-rolled carbon steel flat products and certain cold-rolled carbon steel flat products from Belgium.

Therefore, in accordance with section 706 of the Act (19 U.S.C. section 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cut-to-length carbon steel plate from Belgium. These countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Belgium which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit for all entries of certain cut-to-length carbon steel plate in the amounts indicated below:

Country-Wide Rate—5.85 Percent *Ad Valorem*

Cockerill Sambre—25.97 Percent *Ad Valorem*

In accordance with section 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of the ITC's notice of the negative final determinations on all entries of certain hot-rolled carbon steel flat products and certain cold-rolled carbon steel flat products from Belgium. In addition, U.S. Customs officers should refund all deposits of estimated countervailing duties on entries of certain hot-rolled carbon steel flat products and certain cold-rolled carbon steel flat products from Belgium and release all bonds posted on this merchandise.

This determination constitutes a countervailing duty order with respect to certain cut-to-length carbon steel plate from Belgium pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this order, certain cut-to-length carbon steel plate, are outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-

rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Correction of Ministerial Errors

Petitioners and respondents in these countervailing duty investigations alleged that the Department made ministerial errors in calculating the subsidy margin in our final determinations pursuant to 19 CFR 355.28. The Department has determined to correct certain of these alleged errors as described below. For further information, see the July 23, 1993, memorandum from Susan H. Kuhbach to Barbara R. Stafford regarding *Correction of Clerical/Ministerial Errors Made in the Final Determinations*. This memo is on file in the Central Records Unit (Room B–099) of the Main Commerce building.

Specifically, petitioners alleged that the Department in computing whether grants provided pursuant to the program entitled "Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970" were equal or greater than 0.50 percent of a company's sales, neglected to add together grants received in the same year under the same program. We agree with petitioners that we inadvertently failed to add together grants received by Fabfer given in the same year under the same program. This change increases the calculated subsidy rate for Fabfer for this program from 0.46 percent to 0.49 percent.

Petitioners also argue that the Department made a mistake when assigning a rate based on best information available ("BIA") for the same program to Cockerill Sambre. They argue that, based on the BIA hierarchy outlined in the final determinations, the Department should have selected the rate calculated for Fabfer as BIA for Cockerill Sambre. We agree with petitioners that the Department inadvertently failed to assign the correct BIA rate to Cockerill Sambre. Therefore, we have assigned Fabfer's rate as this rate reflects the highest rate among petitioners' rates, other companies' calculated rates, or previous investigation or review rates. This change increases the subsidy rate for Cockerill Sambre for this program from 0.11 to 0.49 percent.

Petitioners note that the Department stated in its final determination that companies received a countervailable benefit from the receipt of government assistance to pay early retirement costs. However, the notice stated that no rate was calculated for this program because the benefit amount was countervailed under other programs. Petitioners allege that this benefit has not been captured in connection with any other program. We agree with petitioners' allegation. After reviewing our calculations, we find that for Fabfer and Cockerill Sambre, the benefits received under this program were not included in other program calculations. In the final determinations, the Department determined it appropriate to treat early retirement grants as recurring. Therefore, we calculated benefits for these two companies only for grants received in 1991. Based on this change, Fabfer's rate for this program has changed from 0.50 to 0.56 percent, and Cockerill Sambre's program rate has changed from 0.50 to 0.97 percent.

Petitioners allege that the Department used an incorrect benchmark in calculating a benefit for certain Clabecq loans. They note that although the Department has determined to use the long-term benchmark as of the last year that the interest rate on a particular SNCI loan is renegotiated, petitioners state that the Department verified that the interest rates on these loans had not been renegotiated. We agree with petitioners. Upon further review of Clabecq verification exhibits and our calculations, we confirmed that no significant changes (including any interest rate revisions) were made to these loans after the date specified by petitioners. Consequently, we have amended our calculations accordingly.

With respect to the same loan program, Clabecq alleges that the Department used an incorrect benchmark in calculating a benefit for a certain loan. Specifically, Clabecq asserts that the Department has used as a benchmark an average of the benchmark interest rates for certain years. Clabecq notes that under the Department's methodology, the Department should have used a long-term fixed rate benchmark as of the last renegotiation date under the variable rate loan agreement. We agree with Clabecq. Upon further review of Clabecq verification exhibits and our calculations, we confirmed that we inadvertently used an incorrect benchmark.

The overall effect resulting from the two changes to the loan program described above is that Clabecq's program rate decreases from 0.37 to 0.12 percent. Furthermore, because Clabecq's rate for this program was used as the BIA rate for Cockerill Sambre, Cockerill Sambre's rate for this program will also change. It should be noted that Clabecq's rate is still the appropriate rate to use as BIA based on the hierarchy established in the final determinations.

Sidmar alleges that with respect to the SidInvest calculations, even though the Department stated in its final determinations that it intended to use "Sidmar Group" sales as the denominator pursuant to this program, it used only the sales of Sidmar plus Sidmar's related service center. We agree with Sidmar. Upon review of our calculations, we noted that we inadvertently failed to use Sidmar Group sales as we outlined in the final determinations notice. Consequently, we have amended our calculations, with the result that Sidmar's rate for this program changes from 0.99 percent to 0.54 percent.

Petitioners allege that for the Accelerated Depreciation tax program the Department explicitly stated in its final determination that for Cockerill Sambre it intended to assign as BIA the highest rate applied to the company for a tax program in the 1982 investigation. Petitioners note, however, that the Department inadvertently failed to assign such a rate. We agree with petitioners. Upon further review of our calculations, we note that a rate of 0.40 percent should have been assigned to Cockerill Sambre for this program. Therefore, we have amended our calculations accordingly.

Petitioners allege that for two other tax programs—the Exemption of Corporate Income Taxes for Grants Received under the 1970 Law and Exemption from Real Estate Taxes—the Department failed to assign Cockerill Sambre rates for these programs even though as BIA the company was found to have benefitted from them. We agree with petitioners. For the reasons

described above, we have assigned the rate of 0.40 percent to Cockerill Sambre for these two programs. We have amended our calculations accordingly.

The final margin percentages in this notice reflect the recalculations for certain cut-to-length carbon steel plate from Belgium.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19832 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–818]

Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Rick Herring, Office of Countervailing Compliance, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3691 or 482–2786, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in Brazil of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37295, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the four classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Brazil are materially injuring a U.S. industry. The ITC also determined that U.S. industries are not materially injured, or likely to be materially injured, by reason of imports of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products from Brazil.

Therefore, in accordance with section 706 of the Act (19 U.S.C. section 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cut-to-length carbon steel plate from Brazil. These countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Brazil which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits of 5.44 percent *ad valorem* from USIMINAS, 48.64 percent *ad valorem* from COSIPA, and 23.10 percent *ad valorem* from all other producers and exporters, for all entries of certain cut-to-length carbon steel plate from Brazil.

In accordance with sections 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of ITC's notice of the negative final determinations on all entries of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products from Brazil. In addition, U.S. Customs officers should refund all deposits of estimated countervailing duties on entries of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products from Brazil and release all bonds posted on this merchandise.

This determination constitutes a countervailing duty order with respect to certain cut-to-length carbon steel plate from Brazil pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this order, certain cut-to-length carbon steel plate are described below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness

and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Correction of Ministerial Error

On July 12 and 15, 1993, respectively, petitioners and respondents in these countervailing duty investigations, alleged that the Department made ministerial errors in calculating the subsidy rate in our final determinations pursuant to 19 CFR 355.28.

Specifically, respondents contended that the Department overstated COSIPA's benefit from the BNDES loan program because all service payments on BNDES loans during 1991 were the result of debt assumption already reflected as a countervailable equity infusion. We agree with respondent and we have reduced COSIPA's estimated net subsidy during the period of investigation attributable to the BNDES loan program, from 0.96 percent to zero. Because COSIPA resumed service payments in 1992 on its outstanding BNDES debt, the deposit rate remains unchanged at 0.66 percent *ad valorem*.

Respondents argued that the Department overstated USIMINAS' benefit from the IPI rebate program by using an incorrect numerator. We agree and have reduced USIMINAS' net subsidy and deposit rate attributable to the IPI rebate program from 2.00 percent to 1.98 percent *ad valorem*.

Respondents contended that the Department overstated USIMINAS' benefit from countervailable equity infusions. Petitioners argued that the Department understated COSIPA's benefits from countervailable equity infusions. These errors resulted from: (a) using exchange rates for the wrong dates to convert the cruzeiro values of the infusions into dollar values; and, (b) two instances where discount rates based on incorrect dates were used to allocate the benefits over time.

We agree with both respondents and petitioners regarding the aforementioned clerical errors. For USIMINAS, correction of these errors reduces the net subsidy and deposit rate attributable to countervailable equity infusions from 3.45 percent to 3.03 percent ad valorem. For COSIPA, correction of these errors increases the net subsidy and deposit rate attributable to countervailable equity infusions from 43.12 percent to 47.40 percent *ad valorem*.

Respondents argue that the Department incorrectly assumed that the equity infusion amount received in each year is fully absorbed by the company each year. Thus, rather than calculate the variable "GAMMA" by taking the average of the ratio of allocable subsidies received by the firm in each year over the firm's net worth in that year, respondents state that GAMMA should be the net present value of all remaining subsidies in 1991 divided by the net worth of USIMINAS in 1991.

We disagree. It is inappropriate to classify the derivation of GAMMA as a ministerial or clerical error. Respondents are actually arguing for a change in the Department's methodology used to measure the proportion of the purchase price of a privatized firm attributable to prior subsidies, and, as such, we will not address the argument here. See, a July 23, 1993 memo from Barbara E. Tillman to Joseph A. Spetrini regarding *Correction of Clerical/Ministerial Errors Made in the Final Determinations*. This memo is on file in the Central Records Unit (Room B–099 of the Main Commerce building).

The final duty deposit rates in this notice reflect these recalculations for certain cut-to-length carbon steel plate from Brazil.

The Department also received clerical error allegations involving the investigations of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products. We agree with some of the clerical error allegations raised in those investigations. Those allegations are detailed in the above cited July 23, 1993 memorandum. These clerical errors caused the following changes to the net subsidies in those investigations: (1) For certain hot-rolled carbon steel flat products, the rate for USIMINAS changed to 5.06 percent, the rate for CSN changed to 31.10 percent, the rate for COSIPA changed to 48.64 percent, and the all other rate changed to 30.25 percent; (2) for certain cold-rolled carbon steel flat products, the rate for USIMINAS changed to 5.06 percent, the rate for CSN changed to 31.10 percent, the rate for COSIPA changed to 48.64 percent, and the all other rate changed to 22.25 percent; and (3) for certain corrosion-resistant carbon steel flat products, the country-wide rate changed to 30.88 percent. However, these clerical error corrections have no effect on this order since the ITC determined that U.S. industries are not materially injured, or likely to be materially injured, by reason of imports of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products from Brazil.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in 771(9) of the Act (19 U.S.C. section 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19831 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–580–818]

Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Jacqueline Arrowsmith, Office of Antidumping Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

Countervailing Duty Orders

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the

Department) made its final determinations that producers or exporters in Korea of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37338, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the four classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products other than certain clad plate of 0.1875 inch or more in thickness (see scope description below) from Korea are materially injuring a U.S. industry. The ITC also determined that U.S. industries are not materially injured, or likely to be materially injured, by reason of imports of certain hot-rolled carbon steel flat products and certain cut-to-length carbon steel plate from Korea.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from Korea. These countervailing duties will be assessed on all unliquidated entries of certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products other than certain clad plate of 0.1875 inch or more in thickness from Korea which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3, of the GATT Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations, and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit in the amounts indicated below:

Certain Cold-Rolled Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—3.95 Percent

Certain Corrosion-Resistant Carbon Steel Flat Products
Country-Wide *Ad Valorem* Rate—2.69 Percent

In accordance with section 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of the ITC's notice of the negative final determinations on certain hot-rolled carbon steel flat products and certain cut-to-length carbon steel plate from Korea. In addition U.S. Customs officers should refund all estimated countervailing duties on entries of certain hot-rolled carbon steel flat products and certain cut-to-length carbon steel plate and clad products (a type of corrosion-resistant carbon steel flat products) in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness from Korea and release all bonds posted on this merchandise.

These determinations constitute countervailing duty orders with respect to certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from Korea pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Orders

The products covered by these orders are certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products as described below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Correction of Ministerial Error

On July 20, 1993, respondents in these countervailing duty investigations alleged that the Department made ministerial errors in calculating the subsidy rates in our final determinations pursuant to 19 CFR 355.28.

Specifically, respondents alleged that Union's benefit from foreign currency loans was overstated because the benefits from three loans were double-counted. We agree that the benefits from one loan and part of another were double-counted, but disagree that there was any double-counting with respect to part of one loan and the third loan. We have corrected the double-counting by eliminating the benefit calculations where duplicated. We also corrected the inadvertent omission of a loan from Union's benefit calculation.

Respondents also contended that Union should have received its own rate because it was found to receive *de minimis* subsidies. We agree that Union should have received its own rate based on our final determination that Union's rate was *de minimis*. However, after correcting the errors noted above, including accounting for one loan omitted in the final determination, Union's corrected rate is 0.54 percent *ad valorem*, which is not *de minimis*. Therefore, Union should not receive its own rate.

Respondents alleged that Dongbu's long-term loan and bond benefit was overstated due to the overstatement of a bond amount in the Department's calculations. We agree that this bond amount was overstated. However, in reviewing the calculation of Dongbu's benefit, we also determined that we understated the calculated benefit from pre-1991 fixed-rate loans. Therefore, after correcting the bond amount used in our calculations and using the correct total benefit amount, the calculated benefit from this program increased from 1.00 percent *ad valorem* to 1.97 percent *ad valorem*.

Respondents alleged that benefits to related parties from the directed credit/preferential access program were included in the numerator, but related-party sales were not included in the denominator. We agree and have recalculated the benefit for POSCO and Dongkuk by including sales by related parties. We avoided double-counting of sales by eliminating sales between the related parties. In addition, because no information was submitted concerning sales by one firm related to POSCO, we did not add any amount to the denominator for sales by this related party.

Respondents alleged that the Department incorrectly included loans from the Korea Export-Import Bank in calculating the benefit from the directed credit/preferential access to foreign loans program. We disagree that this was a ministerial error. The Department intended to countervail the benefits from these loans.

Respondents alleged that there may be a clerical error in the calculation of the benefits from export tax reserves, because no party commented on the calculation as reflected in the preliminary determinations and the change in methodology for the final determinations was not sufficiently explained. No clerical error was made. We intended to modify the calculation of the benefits from these export programs. A further explanation of this change has been provided in a memorandum of August 11, 1993, from Holly A. Kuga to Joseph A. Spetrini regarding Corrections of Clerical/Ministerial Errors Made in Final Determinations: Certain Steel Products from Korea. This memo is on file in the Central Records Unit (room B–099 of the main Commerce building).

In addition to the errors alleged by respondents, we have found and corrected four other ministerial errors in the calculation of the benefits from the directed credit/preferential access to foreign loans program.

(1) An incorrect benefit amount for one loan to POSCO was used in our calculation of *ad valorem* rates.

(2) Due to data input errors, the calculated benefit from Korea Iron & Steel's fixed-rate pre-1991 loans was incorrect.

(3) Also due to data input errors, the calculated benefit from Pohang Coated Steel's fixed-rate pre-1991 loans was incorrect.

(4) In calculating Dongkuk's *ad valorem* rate for the directed credit and utility programs, we inadvertently used the total sales figure from an earlier questionnaire response instead of the revised figure provided in Dongkuk's January 19, 1993, response.

The final subsidy rates in this notice reflect the recalculations for certain cold-rolled carbon steel flat products and certain corrosion-resistant steel products from Korea.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish, during the

anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19833 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–810]

Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Kelly Parkhill, Office of Countervailing Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3691 or 482–2786, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in Mexico of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37352, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the four classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Mexico are materially injuring a U.S. industry. The ITC also determined that U.S. industries are not materially injured, or likely to be materially injured, by reason of imports of certain corrosion-resistant carbon steel flat products from Mexico.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cut-to-length carbon steel plate from Mexico. These countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Mexico which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 20.25 percent *ad valorem* for all entries of certain cut-to-length carbon steel plate from Mexico.

In accordance with sections 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of ITC's notice of the negative final determination on certain corrosion-resistant carbon steel flat products from Mexico. In addition U.S. Customs officers should refund all deposits of estimated countervailing duties on entries of certain corrosion-resistant carbon steel flat products from Mexico and release all bonds posted on this merchandise.

This determination constitutes a countervailing duty order with respect to certain cut-to-length carbon steel plate from Mexico pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this order are certain cut-to-length carbon steel plates as described below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Correction of Ministerial Error

On July 12, 1993, counsel for Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") in these countervailing duty investigations alleged that the Department made two ministerial errors when calculating the subsidy rate in our final determinations pursuant to 19 CFR 355.28. On July 8, 1993, counsel for Industrias Monterrey S.A. de C.V. ("IMSA") submitted two ministerial error allegations pursuant to 19 CFR 355.28. On July 19, 1993, petitioners submitted an objection to the ministerial allegations made by AHMSA.

AHMSA's first allegation concerns the Department's methodology for allocating the benefits of equity infusions/grants over time in an intermittently hyperinflationary environment. Respondents allege that, in using the mortgage based methodology for amortizing subsidies over time, the Department did not amortize principal in a straight line fashion and, as a result, the remaining subsidy balance was too high at the time of privatization. AHMSA's second allegation concerns the calculation of "Gamma" in the privatization adjustment. AHMSA asserts that the calculation of Gamma, which is a simple average of the amount of subsidies received in each year divided by the company's net worth, was "seriously flawed, and leads to absurd results." Petitioners argue that these are not proper ministerial error allegations since they relate to methodological issues. We agree with petitioners and therefore, have made no adjustments to the final subsidy rate calculation.

IMSA alleges that: (1) The peso inflation adjustment factor used in the Bancomext loan benefit calculation was inappropriate since the entire calculation of the benefit is in U.S. dollars, and (2) the Department mistakenly included in the Bancomext loan benefit calculation an amount that the Department had verified should have been deleted from the relevant list of Bancomext loans.

The Department determined that it was appropriate to use the peso inflation adjustment factor when calculating the benefit to IMSA from its countervailable Bancmext loans. The inflation adjustment factor is, therefore, part of the Department's chosen methodology—not a ministerial error.

IMSA's comments concerning the Bancomext loan benefit calculation appear to be correct. The Department inadvertently included in this calculation an amount that does not represent a Bancomext loan. As stated on page 6 of the IMSA verification report, this item is actually a letter of credit and not a Bancomext loan. We have recalculated IMSA's total Bancomext loan benefit for the period of investigation excluding the amount of this letter of credit. However, the deletion of this amount in the calculation has no effect on either the Bancomext *ad valorem* rate (0.36 percent) or IMSA's overall rate (5.71 percent).

The allegations of ministerial errors are more fully discussed in a July 27, 1993, memo from Barbara E. Tillman to Roland L. MacDonald regarding Ministerial Error Allegations on Behalf of Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") and Industrias Monterrey S.A. de C.V. ("IMSA").

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19834 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–817]

Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Kristin M. Heim, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798.

Countervailing Duty Orders

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in Germany of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37315, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the four classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products other than clad plate of 0.1875 inch or more in thickness (see scope description below) and certain cut-to-length carbon steel plate from Germany are materially injuring U.S. industries. The ITC also determined that a U.S. industry is not materially injured, or likely to be materially injured, by reason of imports of certain hot-rolled carbon steel flat products from Germany.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products other than clad plate of 0.1875 inch or more in thickness and certain cut-to-length carbon steel plate from Germany. These countervailing duties will be assessed on all unliquidated entries of certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products except clad plate (certain clad products of 0.1875 inch or more in thickness; see scope description below) and certain cut-to-length carbon steel plate from Germany which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior

materially injured, by reason of imports resistant carbon steel flat products from these investigations is grade X–70 plate.

to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the GATT Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit in the amounts indicated below:

Certain Cold-Rolled Carbon Steel Flat Products
Country-Wide Ad Valorem Rate—0.85 Percent
Certain Corrosion-Resistant Carbon Steel Flat Products
Country-Wide Ad Valorem Rate—0.60 Percent
Certain Cut-To-Length Carbon Steel Plate
Country-Wide Ad Valorem Rate—14.84 Percent
Ilsenburg—0.80 Percent
Preussag—1.72 Percent
Percent Thyssen—0.51 Percent

In accordance with sections 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of the ITC's notice of its negative final determination regarding certain hot-rolled carbon steel flat products from Germany. In addition, U.S. Customs officers will refund all deposits of estimated countervailing duties on entries of certain hot-rolled carbon steel flat products and clad products (a type of corrosion-resistant carbon steel flat products) in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness from Germany and release all bonds posted on this merchandise.

These determinations constitute countervailing duty orders with respect to certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Germany pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Orders

The products covered by these orders, certain flat-rolled steel products, constitute the following three separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209 13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-

free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Correction of Ministerial Error

From July 7 through 20, 1993, petitioners and respondents in these countervailing duty investigations alleged that the Department made ministerial errors in calculating the countervailing duty rates in our final determinations pursuant to 19 CFR 355.28.

The allegations made by all of the parties are fully discussed in the July 29, 1993, Allegations of Ministerial Errors memorandum from Susan H. Kuhbach to Barbara R. Stafford. This memorandum is on file in the Central Records Unit (room B–099 of the Main Commerce building). After reviewing all of the parties' allegations, we determined that we used an incorrect sales figure for Thyssen Stahl AG in our subsidy calculations. This change increases the calculated subsidy rate for certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products by 0.01 percent. It also increases Thyssen's significantly different rate for certain cut-to-length carbon steel plate by 0.01 percent. We further determined that we used an incorrect benefit amount for Thyssen with respect to the ECSC Article 56(2)(b) Redeployment Aid program.

The final countervailing duty rates in this notice reflect the recalculation for certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Germany.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(k), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19836 Filed 8–16–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–401–804]

Countervailing Duty Order: Certain Steel Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Annika L. O'Hara or Stephanie L. Hager, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4198 or 482–5055, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in Sweden of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37385, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the two classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Sweden are materially injuring a U.S. industry. The ITC also determined that a U.S. industry is not materially injured, or likely to be materially injured, by reason of imports of certain corrosion-resistant carbon steel flat products from Sweden.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cut-to-length carbon steel plate from Sweden. These countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Sweden which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or

after the date of publication of this order in the **Federal Register**.

Entries of certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the GATT Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations, and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 4.27 percent ad valorem for all entries of certain cut-to-length carbon steel plate from Sweden.

In accordance with section 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of ITC's notice of the negative final determination on all entries of certain corrosion resistant carbon steel flat products from Sweden. In addition, U.S. Customs officers should refund all deposits of estimated countervailing duties on entries of certain corrosion resistant carbon steel flat products from Sweden and release all bonds posted on this merchandise.

This determination constitutes a countervailing duty order with respect to certain cut-to-length carbon steel plate from Sweden pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this investigation are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this investigation is grade X–70 plate.

Allegation of Ministerial Error

On July 21, 1993, the respondent in this countervailing duty investigation alleged that the Department made a ministerial error in the calculation of the subsidy margin in our final determinations pursuant to 19 CFR 355.28. Petitioners did not comment on the respondent's allegation.

Specifically, the respondent alleged that the Department did not calculate the "grant cap" for the variable-rate structural loans and the outstanding reconstruction loans pursuant to section 355.49(d)(3) of the Department's Proposed Regulations. We agree with the respondent that we inadvertently omitted the "grant cap" calculations from our calculation of the subsidy margin in our final determinations. Pursuant to the respondent's allegation, we have performed the "grant cap" calculations and have found that the benefits calculated in our final determinations do not exceed the "grant caps" calculated. Therefore, the countervailing duty rate in our final determinations remains unchanged (see July 23, 1993 memorandum from Annika L. O'Hara to Barbara R. Stafford regarding Allegation of Ministerial Error Made in the Final Determinations which is on file in the Central Records Unit).

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman, Office of Countervailing Compliance, at (202) 482–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19837 Filed 8–16–93; 8:45 am].

BILLING CODE 3510–DS–P

[C–427–810]

Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products From France

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Susan Strumbel, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0167 or 482–1442, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in France of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37304, July 9, 1993). On August 9, 1993,

in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the four classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain corrosion-resistant carbon steel flat products other than clad plate of 0.1875 inch or more in thickness (see scope description below) from France are materially injuring a U.S. industry. The ITC also determined that U.S. industries are not materially injured, or likely to be materially injured, by reason of imports of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate from France.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain corrosion-resistant carbon steel flat products from France. These countervailing duties will be assessed on all unliquidated entries of certain corrosion-resistant carbon steel flat products other than clad plate of 0.1875 inch or more in thickness from France which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain corrosion-resistant carbon steel flat products made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the GATT Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in these investigations and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 15.12 percent *ad valorem* for all entries of certain corrosion-resistant carbon steel flat products from France.

In accordance with sections 705(c)(2) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of the ITC's notice of the negative final determinations on all entries of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate from France. In addition, U.S. Customs officers should refund all deposits of estimated countervailing duties on entries of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate and clad products (a type of corrosion-resistant carbon steel flat products) in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness from France and release all bonds posted on this merchandise.

This determination constitutes a countervailing duty order with respect to certain corrosion-resistant carbon steel flat products from France pursuant to section 706 of the Act (19 U.S.C. § 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this investigation are certain corrosion-resistant carbon steel flat products as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Correction of Ministerial Error

On July 9, 1993, petitioners and respondents in these countervailing duty investigations alleged that the Department made ministerial errors in

calculating the subsidy margin in our final determinations pursuant to 19 CFR 355.28.

Specifically, respondents alleged that the Department used an incorrect sales figure in calculating the subsidy rate attributed to the European Coal and Steel Community (ECSC) loans. Petitioners argue that this is a methodological issue and not a ministerial error. We agree with respondents that we inadvertently used an incorrect sales figure in allocating the benefit on the ECSC loans. This change reduces the calculated subsidy rate for the ECSC loan program from 0.16 percent to 0.14 percent.

Both petitioners and respondents argue that the Department made a mistake in calculating the benefit arising from unreported participative loans. We are unable to provide their arguments because they are of a proprietary nature. However, their arguments are fully discussed in a July 23, 1993 memo from Susan H. Kuhbach to Barbara R. Stafford regarding Correction of Clerical/ Ministerial Errors Made in the Final Determinations. This memo is on file in the Central Records Unit (Room B–099 of the Main Commerce building).

After further analysis of these calculations, we agree with petitioners' assessment of the Department's calculation methodology with respect to this program. As petitioners noted, the Department indicated in the final determinations of these investigations that the appropriate methodology in this instance is to treat the outstanding amount of principal as a zero rate short-term loan. Since we had to resort to the best information available for these unreported loans, we should have used a zero interest rate as stated in our final determinations. Therefore, we revised our calculations to determine the benefit from these unreported loans. The revision did not change the calculated subsidy rate for the program under which the unreported participative loans were given. The subsidy rate for outstanding loans discovered at verification therefore remains at 0.01 percent.

Respondents argue that in its calculation of the benefit attributed to CFDI loans, the Department neglected to use the OECD benchmark rates submitted by them. Rather, the Department used IMF rates, which it specifically stated it was not going to use. We agree that we intended to use the OECD rates as our benchmark rather than the IMF rates. We corrected our inadvertent error and revised our calculations accordingly.

Respondents and petitioners also argue that the Department made other adjustments to the CFDI loans that were incorrect. However, due to the proprietary nature of these transactions, the parties' arguments are not discussed in this notice. Please see the memo dated July 23, 1993, referenced above, for a detailed discussion of their arguments.

As reported in the memo, we agreed with some parts of their arguments and revised our calculations accordingly. These changes reduced the calculated subsidy rate for CFDI loans from 0.35 percent to 0.00 percent.

The final margin percentage in this notice reflects these recalculations and amends our final countervailing duty determination of certain steel products from France. This order applies only to certain corrosion-resistant carbon steel flat products from France.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19838 Filed 8–16–93; 8:45 am]

BILLING CODE 3510-DS-P

[C–469–804]

Countervailing Duty Order: Certain Steel Products From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie Hager or David Boyland, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5055 or 482–0588, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. section 1671d(a)), on June 21, 1993, the Department of Commerce (the Department) made its final determinations that producers or exporters in Spain of certain steel products receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 37374, July 9, 1993). On August 9, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding each of the two classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Spain are materially injuring a U.S. industry. The ITC also determined that a U.S. industry is not materially injured, or threatened with material injury, by reason of imports of certain cold-rolled carbon steel flat products.

Therefore, in accordance with sections 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cut-to-length carbon steel plate from Spain. These countervailing duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Spain which were entered, or withdrawn from warehouse, for consumption, on or after December 7, 1992, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 6, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and on all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**.

Entries of certain cut-to-length carbon steel plate made on or after April 6, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties. In accordance with Article 5, paragraph 3 of the GATT Subsidies Code, a suspension of liquidation pursuant to a preliminary determination may remain in effect no longer than 120 days. The 120-day period commenced on December 7, 1992, the publication date of the preliminary determinations in

these investigations and was terminated on April 6, 1993. Under this provision, suspension of liquidation may be resumed only upon publication of a countervailing duty order (see, 19 CFR 355.20(c)(I)(ii)).

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 36.82 percent *ad valorem* for all entries of certain cut-to-length carbon steel plate from Spain.

In accordance with section 705(c)(3) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for countervailing duty purposes as of the date of publication of the ITC's notice of the negative final determination on all entries of certain cold-rolled carbon steel flat products. In addition, U.S. Customs officers should refund all deposits of estimated countervailing duties on entries of certain cold-rolled carbon steel flat products from Spain and release all bonds posted on this merchandise.

This determination constitutes a countervailing duty order with respect to certain cut-to-length carbon steel plate from Spain pursuant to section 706 of the Act (19 U.S.C. section 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this investigation is flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this investigation is grade X–70 plate.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19835 Filed 8–16–93; 8:45 am]

BILLING CODE 3510-DS-P

federal register

Tuesday
August 17, 1993

Part VII

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Adjustment and Economic Diversification Planning Program; Special Purpose Grants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-93-1625; FR-3404-P-01]

Community Adjustment and Economic Diversification Planning Program, Special Purpose Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule would implement a new program of planning grants for community adjustment and economic diversification activities needed as the result of the effects on localities of certain Department of Defense (DoD) related actions, such as base closings or contract cancellations. Section 801(c)(2) of the Housing and Community Development Act of 1992 added a new section 107(b)(6) to the Housing and Community Development Act of 1974 to authorize these special purpose planning grants to units of general government in nonentitlement areas.

DATES: Comments must be submitted on or before September 16, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. week days at the above address.

FOR FURTHER INFORMATION CONTACT: James Selvaggi, Deputy Director, Office of Technical Assistance, room 7214, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2090 or (TDD) (202) 708–4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) by the Office of Management and Budget (OMB) and have been assigned OMB control number 2535–0084.

Background

Congressional Initiative

On October 28, 1992, the President signed into law the Housing and Community Development Act of 1992 (Pub. L. 102–550) (HCD Act of 1992). In section 801(c)(2) of this law, Congress added a section 107(b)(6) to the Housing and Community Development Act of 1974 (42 U.S.C. 5307(b)(6)) (HCD Act of 1974) to authorize grants for planning community adjustment and economic diversification activities under any of four criteria: (1) The proposed or actual establishment, realignment or closing of a military installation, (2) the cancellation or termination of a Department of Defense (DoD) contract or the failure to proceed with an approved major weapon system program, (3) a publicly announced planned major reduction in DoD spending that would directly and adversely affect a unit of general government, and will result in the loss of 1,000 or more full-time DoD and contractor employee positions over a five-year period in the unit of general government and the surrounding area, or (4) the Secretary (in consultation with the Secretary of Defense) determines that an action described in 1, 2, or 3 is likely to have a direct and significant adverse consequence on the unit of general local government.

The statutory features of this program are: (1) The provision of assistance for planning, but not for implementation, of community adjustments and economic diversification activities, (2) limitation of assistance to units of general government in nonentitlement areas; i.e., in an area which is not a metropolitan city or part of an urban county or Indian Tribe under Title I of the Housing and Community Development Act of 1974, as amended, and (3) the four defined criteria that trigger eligibility for assistance. These criteria closely parallel the criteria in 10 U.S.C. 2391, Military Base Reuse Studies and Community Planning Assistance, which trigger assistance available from the DoD for both advance adjustment planning and implementation of adjustment and economic diversification activities.

The Congress further directed HUD to issue a proposed rule within 60 days and a final rule within 120 days of enactment of the authorizing HCD Act of 1992. Because the Department has not been able to meet these deadlines, the period for public comment on this proposed rule is being reduced to 30 days, to facilitate the production of a more timely final rule.

With respect to funding for this program, HUD anticipates allocation of about one million dollars for FY 1993 from funds available under sec. 107 of the HCD Act of 1974.

Replication With DoD Adjustment Planning Assistance

After consultation with DoD's Office of Economic Adjustment, HUD confirmed that its new planning grant program, although limited to assisting nonentitlement communities, closely replicates the community adjustment planning assistance available from DoD under 10 U.S.C. 2391(b). (Section 2391(b)). Under that program, DoD may award grants to States and local governments to plan community adjustments and economic diversification activities.

Section 2391(b) was recently amended by section 4301 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484, approved October 10, 1992) to add a fifth criterion to four others, any of which trigger eligibility to apply for adjustment planning grants: (1) The proposed or actual establishment, realignment, or closure of a military installation; (2) cancellation or termination of a DoD contract, (3) a publicly announced planned major reduction in DoD spending that would directly and adversely affect a community, (4) encroachment by a civilian community on a military installation, or (5) closure or significantly reduced operations of a defense facility as the result of the merger, acquisition, or consolidation of the defense contractor operating the defense facility. DoD criteria 1, 2, and 3 are indentical to HUD's criteria 1, 2, and 3.

With respect to funding for the DoD section 2391(b) adjustment planning program, HUD understands that some $29.9 million is currently available. DoD also indicates: (1) That it awards planning adjustment grants within the context of extensive on-site visitation; extensive community, State, and private sector consultation; and thorough DoD review and analysis, and (2) that this process may extend over several years, depending on the complexity of the DoD-generated impacts and the community's ability to develop capacity to plan for, as distinguished from adjusting to, these impacts.

Federal Interagency Coordination

HUD proposes to administer the section 107(b)(6) planning grant program in coordination with long-

standing and extensive Federal agency programs and arrangements in support of DoD-impacted communities.

The President's Economic Adjustment Committee (EAC), established in 1970 and amended most recently by Executive Order 12788 of January 15, 1992, is composed of 23 Federal agencies, including HUD, and is chaired by the Secretary of Defense. The EAC coordinates Federal interagency policy and program operations with respect to assisting communities to develop strategies and take actions to adjust to DoD-generated impacts and to diversify local economies.

Most recently, the EAC has focused on coordinating Federal assistance to the communities affected by the 1991 Military Base Closure and Realignment Commission's final list recommending 43 military bases for closure and 28 for realignment. With the end of the Cold War and consequent downsizing of the defense industry, there will be additional and substantial community impacts. Additional need for community adjustment planning and economic diversification is certain to be a near term concern of the EAC.

Under the aegis of the EAC, the DoD's Office of Economic Adjustment (DoD–OEA) administers numerous assistance programs: Military Base Reuse Studies (Section 2391(a)); Community Adjustment Planning (Section 2391(b)); Economic Adjustment through the Department of Commerce's Economic Development Administration (DoC–EDA) (Section 4103); Adjustment for Employees (Section 4201); Defense Conversion Adjustment (Section 4203); Small Business Loans (Section 4301); and Export Financing for Firms Formerly Engaged in Defense Production (Section 4303).

DoD coordinates closely with the DoC–EDA. DoD appropriations Acts currently provide for the transfer of $50 million to DoC–EDA to implement adjustment projects and economic diversification activities, after they have been planned. Pursuant to the January 27, 1992, Memorandum of Understanding between DoD–OEA and DoC–EDA, DoD is responsible for providing adjustment planning assistance and DoC–EDA is responsible for funding projects that implement community adjustment and economic diversification. The agencies coordinate fully in reviewing applications for planning and implementation assistance.

DoD and the Small Business Administration also have a Memorandum of Understanding to coordinate the provision of small business loans and export financing in support of community adjustment and economic diversification.

HUD Administrative Policy for Sec. 107(b)(6) Planning Assistance

In order to provide clear guidance to eligible nonentitlement area applicants, distinguish the type of planning assistance available from HUD and from DoD, and minimize waste of public funds through duplicative projects, HUD proposes to award section 107(b)(6) planning assistance according to the following policies.

(1) Recognizing the extensive multi-year process used by DoD to develop local capacity to plan before it makes grants for full-scale planning, HUD will give priority to applicants seeking to undertake startup or "initial" planning activities that will enable the applicants to qualify more speedily for DoD full-scale planning assistance.

(2) HUD will not fund site planning, architectural and engineering studies, feasibility and cost analyses and similar planning for specific projects, because assistance for such project planning is available from EDA pursuant to its memo of understanding with DoD dated January 27, 1992.

(3) HUD will encourage applicants for its planning grants to give appropriate local priority to planning for housing, including shelter for the homeless, and for adjusting to economic or fiscal impacts on the community. These types of planning will often complement, or fill in, the full range of planning topics usually funded by DoD.

(4) HUD will encourage applicants to coordinate fully any planning assisted under this program with the strategies and activities of relevant State designated enterprise zones, and of Federal enterprise zones, when enacted.

(5) HUD will not fund Base Re-use Studies or demonstration planning activities intended to evolve new planning techniques for impacted communities because assistance is available from DoD for these purposes.

(6) Consistent with Executive Order 12788 of January 15, 1992 governing the President's Economic Adjustment Committee, HUD will secure advisory reviews of all section 107(b)(6) applications by DoD's Office of Economic Assistance.

(7) In view of the high dollar-volume of prior planning assistance awarded by DoD to impacted communities, the current availability of some $29.9 million for additional DoD planning assistance, and the statutory limitation to assist only nonentitlement areas, HUD proposes to allocate initially up to $1 million for section 107(b)(6) grants. Assuming a grant range of $75,000 to $100,000 for startup planning, an estimated 10–15 awards would be made. HUD would issue a notice annually announcing the amount of funding available for this program.

(8) Since these grants are to provide initial planning assistance to address promptly the circumstances facing affected localities but beyond their control, HUD proposes to award section 107(b)(6) assistance on a noncompetitive basis. The proposed rule would: (a) Provide for open submission of applications, or referrals from DoD, throughout the fiscal year; and (b) specify the submission requirements and the factors HUD would use to qualify applicants for funding.

HUD considered, but discarded, two other administrative approaches. First, operating a routine competitive program yearly, or even quarterly, would impose unnecessary delay on communities needing to respond quickly to suddenly announced DoD or defense facility actions, such as contract cancellations or plant closings. Second, transferring program responsibility and/or funds to DoD from HUD would not be responsive to Congressional intent. HUD therefore proposes to administer the program, on a noncompetitive basis, but closely coordinated with DoD, in order to be fully responsive to potential applicants.

HUD proposes to assess the initial year of program experience and applicant demand, and then determine whether to continue the proposed approach, including the level of funding, or to develop other approaches more beneficial to potential applicants.

Given the 60-day mandate by the Congress to issue this proposed rule, HUD has consulted primarily only the DoD-OEA and the DoC-EDA. Therefore HUD now invites comments on this proposed rule from other Federal agencies; State agencies administering the Small Cities Community Development Block Grant program on behalf of nonentitlement areas; units of general government that are potential applicants; businesses, corporations, or associations involved in the defense industry; or any other interested party.

Other Matters

Regulatory Impact Analysis

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for

consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12606, The Family

The General Counsel, as the Designated Officer under Executive Order 12606, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves assistance for units of general local government in nonentitlement areas for planning community adjustments and economic diversification as a result of DoD-generated impacts, and should have no direct effect on family-related issues and concerns.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationships between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. While this rule would provide funding directly to units of general local government in nonentitlement areas, the Department believes that there exists ample access by State and local governments to make their views known to the Department in a timely and effective manner. The rule will provide for State coordination by units of general local government in nonentitlement areas on eligible community adjustment and economic diversification activities planning.

Environmental and Intergovernmental Review

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20510.

The intergovernmental review set forth in Executive Order 12372 shall be accomplished by the units of general local government in nonentitlement areas through State coordination of each proposed activity.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C., 605(b), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The planning assistance awards that will be based on this rule would be used by units of general local government in nonentitlement areas for community adjustment and economic diversification activities planning as a result of military base closures, or contract cancellations.

Semiannual Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

There is no Catalog of Federal Domestic Assistance program listing for this rule.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student Aid, Virgin Islands.

For the reasons set out in the preamble, the Department proposes to amend 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.401 would be added, to read as follows:

§ 570.401 Community adjustment and economic diversification planning assistance.

(a) *General.*—(1) *Purpose.* The purpose of this program is to assist units of general local government in nonentitlement areas to undertake the planning of community adjustments and economic diversification activities, in response to physical, social, economic or governmental impacts on the communities generated by the actions of the Department of Defense (DoD) defined in paragraph (a)(2) of this section.

(2) *Impacts.* Funding under this section is available only to communities affected by one or more of the following DoD-related impacts:

(i) The proposed or actual establishment, realignment, or closure of a military installation;

(ii) The cancellation or termination of a DoD contract or the failure to proceed with an approved major weapon system program;

(iii) A publicly announced planned major reduction in DoD spending that would directly and adversely affect a unit of general local government and result in the loss of 1,000 or more full-time DoD and contractor employee positions over a five-year period in the unit of general local government and the surrounding area; or

(iv) The Secretary of HUD (in consultation with the Secretary of DoD) determines that an action described in paragraphs (a)(2)(i–iii) of this section is likely to have a direct and significant adverse consequence on the unit of general local government.

(3) *Form of awards.* Planning assistance will be awarded in the form of grants.

(4) *Program administration.* HUD will publish in the **Federal Register** early in each fiscal year the amount of funds to be available for that fiscal year for awards under this section. HUD will accept applications throughout the fiscal year, and will review and consider for funding each application according to the threshold and qualifying factors in paragraphs (f) and (g) of this section.

(b) *Definitions.* In addition to the definitions in § 570.3 of this part, the following definitions apply to this section:

(1) *Adjustment planning.* Generally, developing plans and proposals in direct response to contraction or expansion of the local economy, or changes in the physical development or the social conditions of the community, resulting from a DoD-generated impact. Typically, this planning includes one or more of the following tasks: collecting, updating, and analyzing data; identifying problems; formulating solutions; proposing long- and short-term policies; recommending public- and private-sector actions to implement community adjustments and economic diversification activities; securing

citizen involvement; and coordinating with Federal, State, and local entities with respect to the DoD-related impacts.

(2) *Community adjustment.* Any proposed action to change the physical, economic, or social infrastructure within the jurisdiction or surrounding area, directly and appropriately in response to the DoD-generated impact.

(3) *Contract.* (i) Any defense contract in an amount not less than $5 million (without regard to the date on which the contract was awarded); and

(ii) Any subcontract that is entered into in connection with a contract (without regard to the effective date of the subcontract) and involves not less than $500,000.

(4) *Defense facility.* Any private facility producing goods or services pursuant to a defense contract.

(5) *DoD.* The Department of Defense.

(6) *Economic diversification activities.* Any public or private sector actions to change the local mix of industrial, commercial, and service sectors, or the mix of business ventures within a sector, that are intended to mitigate decline in the local economy resulting from DoD-generated impacts or, in the case of expansion of a military installation or a defense facility, that are intended to respond to new economic growth spawned by that expansion.

(7) *Military installation.* Any camp, post, station, base, yard, or other jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

(8) *Realignment.* Any action that both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(9) *Section 107* means section 107 of the Housing and Community Development Act of 1974, 42 U.S.C. 5307. Section 107(b)(6) was added by section 801 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

(10) *Section 2391(b).* The Department of Defense adjustment planning program as set out in 10 U.S.D. 2391(b).

(11) *Small Cities CDBG Program.* The Community Development Block Grant program for nonentitlement areas in which the States have elected not to administer available program funds. The regulations governing this program are set out in subpart F of this part.

(12) *Surrounding area.* The labor market area as defined by the Bureau of Labor Statistics that:

(i) Includes all or part of the applicant's jurisdictions; and

(ii) Includes additional areas outside the jurisdiction.

(c) *Eligible applicants.* Any unit of general local government, excluding units of general government that are entitlement cities or are included in an urban county.

(d) *Eligible activities.* Activities eligible for adjustment planning assistance include, generally:

(1) Initial assessments and quick studies of physical, social, economic, and fiscal impacts on the community;

(2) Preliminary identification of potential public and private sector actions needed for the community to initiate its response;

(3) If timely, modification of the applicant's current comprehensive plan or any functional plan, such as for housing, including shelter for the homeless, or for transportation or other physical infrastructure;

(4) If timely, modification of the applicant's current economic plans and programs, such as for business development, job training, or industrial or commercial development;

(5) Preparation for and conduct of initial community outreach activities to begin involving local citizens and the private sector in planning for adjustment and diversification;

(6) Environmental reviews related to DoD-related impacts;

(7) Initial identification of and coordination with Federal, State and local entities that may be expected to assist in the community's adjustment and economic development; and with State-designated enterprise zones, and Federally-designated enterprise zones, when enacted.

(8) Any other planning activity that may enable the community to organize itself, establish a startup capacity to plan, propose specific plans and programs, coordinate with appropriate public or private entities, or qualify more quickly for the more substantial planning assistance available from DoD.

(e) *Ineligible activities.* Activities ineligible for adjustment planning assistance are;

(1) Comprehensive community planning.

(2) Base re-use planning.

(3) Site planning, architectural and engineering studies, feasibility and cost analyses and similar planning for specific projects to implement community adjustment or economic diversification.

(4) Planning by communities which are encroaching on military installations.

(5) Demonstration planning activities intended to evolve new planning techniques for impacted communities.

(6) Any planning activity proposed to supplement or replace planning that has been or is being assisted by the DoD Sec. 2391(b) adjustment planning program.

(7) Any other planning activity the purpose of which is not demonstrably in direct response to a DoD-related impact triggered by the four criteria specified in paragraph (a)(2) of this section.

(f) *Threshold requirements.* No application will qualify for funding unless it meets the following requirements:

(1) Verification by HUD that the applicant is a unit of general government in a nonentitlement area.

(2) Verification by HUD and DoD that a triggering event described in paragraph (a)(2) of this section has occurred.

(3) With respect to communities affected by the 49 base closings and 28 realignments listed by the 1991 Base Closure and Realignment Commission, verification by DoD that it has provided no prior funding and that the applicant may benefit from startup planning assistance from HUD.

(4) Determination by HUD that the proposed planning activities are eligible.

(5) Determination by HUD that the submission requirements in paragraph (h) of this section have been satisfied.

(g) *Qualifying factors.* HUD will make funding decisions on qualified applications on the basis of the factors listed below, in the order of such applications received, while program funds remain available. HUD will also request and consider advice from DoD's Office of Economic Assistance concerning the relative merits of each application.

(1) The adequacy of the applicant's initial assessment of actual or probable impacts on the community and the surrounding area;

(2) The adequacy and appropriateness of the startup planning envisioned by the applicant in response to the impacts;

(3) The type, extent, and adequacy of coordination that the applicant has achieved, or plans to achieve, in order to undertake planning for community adjustment and economic diversification.

(4) The cost-effectiveness of the proposed budget to carry out the planning work envisioned by the applicant;

(5) The capability of the organization the applicant proposes to do the planning;

(6) The credentials and experience of the key staff the applicant proposes to do the planning;

(7) The presence of significant private sector impact, as measured by the extent to which the DoD-generated impact is projected to decrease or increase the employment base by 10% or more;

(8) The presence of significant public sector impact, as measured by the extent to which the DoD-generated impact is projected to decrease or increase the applicant's capital and operating budgets for the next fiscal year by 10% or more;

(9) The degree of urgency, to the extent that a suddenly announced action, e.g. a plant closing, is officially scheduled to occur within a year of the date of application.

(h) *Submission requirements.* Applicants may request an application kit and instructions at any time from: Director, Office of Technical Assistance, Room 7214, 451 Seventh Street, SW., Washington, DC 20410. An application (an original and three copies) may subsequently be submitted at any time to the above address. Each application shall include the following:

(1) The Standard Form SF–424 as a face sheet, signed and dated by a person authorized to represent and contractually or otherwise commit the applicant;

(2) A concise title and brief abstract of the proposed planning work, including the total cost;

(3) A narrative that:

(i) Documents one or more of the triggering events described in paragraph (a)(2) of this section that qualifies the applicant to apply for planning assistance for community adjustments and economic diversification;

(ii) Provides an initial assessment of actual or probable impacts on the applicant community and the surrounding area;

(iii) Provides an initial assessment of the type and extent of startup planning envisioned by the applicant in response to the DoD-generated impact; and

(iv) Describes the measures by which the applicant has already coordinated, or plans to coordinate, with the DoD Office of Economic Assistance, the Economic Development Administration of the Department of Commerce, the Department of Labor, any military department, or any other appropriate Federal agency; appropriate State agencies, specifically including the agency administering the Small Cities CDBG Program and appropriate State-designated enterprise zones, when enacted; appropriate other units of general local government in the nonentitlement area; appropriate businesses, corporations, and defense facilities concerned with impacts on the applicant community; and homeless nonprofit organizations, with respect to title V of the Stewart B. McKinney Act (42 U.S.C. 11411–11412), requiring that Federal property be considered for use in assisting the homeless.

(4) A Statement of Work describing the specific project tasks proposed to be undertaken in order to plan for community adjustment and economic diversification activities;

(5) A proposed budget showing the estimated costs and person-days of effort for each task, by cost categories, with supporting documentation of costs and a justification of the person-days of effort;

(6) A description of the qualifications of the proposed technical staff, including their names and resumes;

(7) A work plan that describes the schedule for accomplishing the tasks described in the Statement of Work, the time needed to do each task, and the elapsed time needed for all the tasks; and

(8) Other materials, as prescribed in the application kit; these materials will include required certifications dealing with: Drug-Free Workplace Requirements; Disclosure Regarding Payments to Influence Certain Federal Transactions; and Prohibition Regarding Excessive Force.

(i) *Approval procedures.*—(1) *Acceptance.* HUD's acceptance of an application meeting the threshold requirements of paragraph (f) does not assure a commitment to provide funding or to provide the full amount requested. HUD may elect to negotiate both proposed tasks and budgets in order to promote more cost-effective planning.

(2) *Notification.* HUD will provide notification about whether a project will be funded, rejected, or held for further consideration by HUD and DoD.

(3) *Form of award.* HUD will award funds in the form of grants.

(4) *Administration.* Project administration will be governed by the terms of individual awards and by the following provisions of this part:

Subpart A, sec. 570.5;
Subpart E, secs. 570.400 (d), (e), (f), and (g);
Subpart J, secs. 570.500(c), 570.501, 570.502, 570.503, and 570.509;
Subpart K, secs. 570.601, 570.602, 570.609, 570.610, and 570.611.

The environmental review requirements of 24 CFR part 58 do not apply.

(Approved by the Office of Management and Budget under OMB control number 2535–0084.)

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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August 17, 1993

Part VIII

Environmental Protection Agency

40 CFR Part 280

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL-4694-2]

RIN 2050-AD44

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency. (EPA)

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a rule that would allow certain members of the regulated community (i.e. petroleum marketers with 1 to 12 underground storage tanks (USTs) at more than one facility or fewer than 100 USTs at a single facility, local governments, and Indian Tribes) to become part of a new compliance group subject to a new financial responsibility compliance date of December 31, 1998 if they meet certain Federally determined criteria. The new compliance date would provide relief from the financial responsibility requirements to certain UST owners in order to ensure that adequate supplies of petroleum are available to rural communities and for the provision of essential community services. The criteria proposed to determine eligibility for this 1998 compliance date include compliance with technical requirements, operation of tanks in rural areas, a hardship criterion for petroleum marketers, and an essential services criterion for local governments.

DATES: Comments are due by October 1, 1993.

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST–3–15), Office of Underground Storage Tanks (OS–400), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in the public docket, located in room 2616 (Mail), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (703) 412–9810 in Virginia. For technical questions, contact Andrea Osborne in the Office of Underground Storage Tanks at (703) 308–8883.

SUPPLEMENTARY INFORMATION: EPA is proposing a rule to amend the financial responsibility requirements for underground storage tanks (USTs) containing petroleum that appeared in the **Federal Register** on October 26, 1988 (53 FR 43322), as amended December 23, 1991 (56 FR 66369). Specifically, this rule modifies the compliance dates under 40 CFR 280.91(d) and (e). Under the modification, certain petroleum marketing firms and local governments meeting Federally-determined criteria would be required to comply with the financial responsibility requirements by December 31, 1998. EPA is also considering the options of: (1) Not extending the compliance date; and (2) extending the compliance date between 1993 and 1998. This proposed rule applies only to local governments and petroleum marketers formerly in Category IV. Category IV marketers includes owners of 1–12 USTs at more than one facility or fewer than 100 USTs at a single facility. Small non-marketers (such as car dealerships or private school bus companies), with net worth of less than $20 million, would not be eligible for any extension and would be required to comply with the Federal financial responsibility requirements by December 31, 1993. Under this rulemaking, USTs owned by Indian Tribes on Indian lands would also be eligible for the 1998 compliance date. The changes resulting from this proposed rulemaking would provide additional time for States to develop assistance programs targeted to small rural marketers and local governments which provide essential services to rural communities, and, which may have the most difficulty complying with the Federal financial responsibility requirements. This proposed rule would apply specifically to marketers which meet all technical requirements to date, which are located in rural areas as defined by the Farmers Home Administration, and which demonstrate financial need; local governments with tanks in compliance with applicable technical requirements, located in rural areas, which provide essential community services; and tanks owned by Indian tribes on Indian lands currently in compliance with the technical requirements.

The contents of this preamble are listed in the following outline:

I. Authority
II. Background
III. Proposal
  A. Criteria for Category IV Petroleum Marketers
  B. Criteria for Local Governments
  C. Criteria for Indian Tribes
  D. Implementation
IV. Alternatives to the Proposal
  A. No Extension
  B. Shorter Extensions
V. Economic Impacts
  A. Economic Impact Analysis
  B. Regulatory Flexibility Analysis
  C. Regulatory Impact Analysis
  D. Paperwork Reduction Act

I. Authority

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

II. Background

On October 26, 1988, EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). To meet the requirements, owners and operators must demonstrate that they can pay for the costs of cleanups and third-party damages resulting from any leaks that may occur. In the final rule, EPA established a phased compliance schedule for owners and operators of petroleum USTs. The principal reason for adopting the phased compliance approach was to provide the time necessary for providers (including private insurance companies and States intending to establish State assurance funds) of financial assurance mechanisms to develop new policies and programs or conform their policies and programs with EPA requirements. (See 53 FR 43324.)

When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the time necessary for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. Petroleum marketers owning or operating 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth were required to comply by January 24, 1989, based primarily on their ability to qualify for self-insurance. Petroleum marketers with 100 to 999 USTs were required to comply by October 26, 1989. These marketers were estimated to be relatively more likely to be able to obtain insurance; some of them were also expected to qualify as self-insurers. Petroleum marketers owning 13 to 99 USTs at more than one facility were originally required to comply by April 26, 1990. However, on May 2, 1990, the Agency published a

rule (55 FR 18566) extending this compliance date to April 26, 1991. These marketers were thought to be less likely to be able to obtain insurance than members of the October 26, 1989, compliance group. Petroleum marketers owning or operating fewer than 13 USTs at more than one facility or owning only one facility with fewer than 100 USTs, as well as non-marketers with less than $20 million in net worth and local governments were required to comply by October 26, 1990. This group was expected to rely primarily on State assurance funds for compliance. On October 31, 1990, EPA extended the compliance deadline for one year for small marketers (with fewer than 13 USTs or fewer than 100 USTs at a single facility) and small non-marketers (with less than $20 million in net worth). This extension was based on the rate of development of State assurance funds. In addition, EPA extended the compliance deadline for local governments until one year after publication of a final rule with additional mechanisms for local governments to demonstrate compliance. This rule was published on February 18, 1993 (58 FR 9026).

On December 23, 1991, EPA once again extended the compliance deadline for the Category IV group (small marketers with fewer than 13 tanks at more than one facility or less than 100 tanks at a single facility as well as non-marketers with net worth less than $20 million) to December 31, 1993 (56 FR 66369). EPA based the extension on its understanding that more members of this compliance group than the Agency had originally projected must rely on State assurance funds, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. EPA believed that, in order for owners and operators to rely on State assurance funds as compliance mechanisms, States must have more time to submit their State assurance funds to EPA for approval.

The 1993 compliance date gave States additional time to develop and implement State assurance funds which help owners and operators meet the financial responsibility requirements. Currently, 30 State assurance funds have been approved by EPA and an additional six State assurance funds have been submitted to EPA for approval. (It is important to note that upon submission of a State assurance fund to the EPA Regional Administrator, the fund is considered to be approved unless and until EPA disapproves it.) Additionally, States will have more time to develop and implement financial assistance programs (e.g., direct loan programs, loan guarantee programs, grant programs) which help owners and operators (especially small businesses) pay for technical requirements such as tank upgrading. These technical improvements, in turn, help USTs meet insurers' underwriting criteria.

The Agency, however, continues to be concerned about the effects of our regulations on the regulated community. By analyzing the costs of the requirements, EPA has found that the financial responsibility compliance costs are often tied to early compliance with technical requirements such as tank upgrading, since, for example, private insurance companies may refuse to provide coverage unless they are certain that a site does not pose a high risk of leaking. EPA believes, in fact, that the costs associated with the technical requirements are an important factor underlying the inability of some small owners and operators to meet the financial responsibility requirements. These technical costs coupled with the lack of a State assurance fund, grant, or loan program could force some small, rural gas stations to close their tanks when the 1993 financial responsibility compliance date falls. Tank closure is particularly problematic when those tanks provide essential services to rural communities. A later compliance date for small, rural marketers and some local governments that would otherwise be unable to meet the 1993 financial responsibility requirements could, when tied to the December 1998 tank upgrade or replacement deadline, provide necessary relief. Also, a 1998 financial responsibility compliance date need not have a dramatically adverse effect on human health and the environment, since the technical requirements for USTs remain in place and since many compliance dates, most notably the leak detection dates, have already been put into effect.

As a result of this concern about the availability of fuel in rural areas, EPA is proposing a December 31, 1998 compliance date for certain marketers, local governments, and Indian tribes that own tanks on Indian lands, which meet Federally-determined criteria. Currently 17 loan or grant programs are operational or planned by States. The Agency believes that the additional time will allow more States to develop assistance programs targeted to small, rural owners—those most in need of an effective financial responsibility compliance mechanism. EPA plans to use the additional time to work with the States to help achieve innovative solutions to the problems faced by these small, rural owners. The Agency emphasizes, however, that this new compliance date would be limited to a small sub-group of owners currently in Category IV and would not change the compliance date for the entire Category. (Category IV refers to 40 CFR part 280, § 280.91 (d) and (e). This rule would modify § 280.91 (d) and (e), and add a new paragraph (f)). Also, EPA stresses the fact that any change in the financial responsibility compliance date does not remove the liability on the part of the owner or operator to clean-up a leak.

Current Financial Responsibility Deadlines

January 24, 1989: Marketers with 1000 or more tanks; Non-Marketers with Net Worth Greater Than $20 Million.

October 26, 1989: Marketers With 100–999 Tanks.

April 26, 1991: Marketers with 13–99 Tanks.

December 31, 1993: Marketers with 1–12 Tanks at More Than One Facility or Fewer Than 100 Tanks at One Site; Non-Marketers With Net Worth Less Than $20 Million.

February 18, 1994: Local Governments and Indian Tribes.

III. Proposal

As discussed earlier, EPA is concerned about the continued inability of certain small, rural owners to comply with the financial responsibility requirements due to the high costs of the underlying technical requirements. The Agency believes that the financial responsibility requirements often drive early compliance with the technical regulations such as tank upgrading and leak detection. Many insurers, for example, will not insure a tank which cannot demonstrate that it is not leaking, leading to installation of leak detection equipment sometimes prior to the actual leak detection compliance date. (The final leak detection compliance date for newer tanks installed between 1980–1988 is December 22, 1993.) Tanks may also need repair or replacement before an insurance company is willing to provide coverage. These replacement or repair costs, which may range from a few thousand dollars to more than $30,000, are then in addition to insurers' premiums. Coverage itself may not be available or affordable to the UST owner until after these tank upgrading costs have been paid. State assurance funds, another financial responsibility compliance mechanism, may also restrict coverage unless owners or operators can verify that the tanks are in technical compliance with all applicable technical regulations. Therefore, complying with the financial responsibility requirements may extend

well beyond the costs of the actual assurance mechanism. In addition, assurance mechanisms may not even be available until after technical upgrading costs have been paid, leading to the possibility of tank closure.

The Agency recognizes that tank closures in rural areas may be particularly burdensome in rural communities. Residents could be faced with long drives to purchase petroleum from neighboring towns and rural local governments could find it difficult to obtain petroleum for vital services such as police and fire departments. EPA is proposing, therefore, a limited additional extension of the compliance date targeted to those groups most in need. In order to meet the objective of securing adequate fuel supplies in small towns and rural areas while continuing to protect human health and the environment from the risks associated with leaking USTs, this proposal has been targeted to petroleum marketers, local governments, and Indian Tribes owning tanks on Indian lands only. The Agency believes that the continued operation of USTs owned by non-marketers, such as car dealerships or private school bus companies, is not essential to their economic well-being and therefore expects small non-marketers (those with less than $20 million in net worth) to meet the December 31, 1993 compliance date. As retail fuel continues to be available in these small towns and rural areas, (in part, due to the possible 1998 compliance date for certain marketers as proposed in this rulemaking) non-marketers will face relatively little hardship if forced to close their USTs since their livelihood is not dependent upon sales of petroleum from their tanks. Fuel prices may increase slightly as non-marketers pay retail prices for petroleum, but EPA analysis shows that these costs may be more than off-set by the cost savings resulting from freedom from the technical maintenance and monitoring costs associated with UST ownership and operation.[1] Non-marketers that close their tanks also ensure that they do not need to pay for the often unpredictable costs of cleaning-up a leak. The Agency solicits comments regarding the exclusion of non-marketers from this proposed rule.

This proposed rule discusses the Federal criteria used to determine extension eligibility for the following subgroups: petroleum marketers previously in Category IV (that is, marketers with fewer than 13 tanks at more than one facility or less than 100 at a single site), local governments, and USTs on Indian lands owned by Indian Tribes. The proposed compliance date of December 31, 1998 was selected because this date corresponds with the final technical compliance date for tank upgrading. Owners and operators unable to comply with the financial responsibility requirements at that time face the more costly technical requirement of upgrading their USTs. At that point, tanks not in technical compliance would be forced to close with or without the financial assurance coverage. Conversely, owners able to meet the technical requirements at that time (which were phased-in over a ten-year period to 1998) would be likely to obtain an affordable assurance mechanism either through State assurance funds, private insurance or other mechanisms since the tanks would be considered an insurable, reasonable risk.

A. Criteria for Category IV Petroleum Marketers

In 1988, Congress mandated that EPA develop regulations to protect human health and the environment from the risks associated with leaking underground storage tanks (Resource Conservation and Recovery Act, section 9003). EPA has been working to achieve this objective, while, at the same time, striving to create and implement regulations which pose the least possible cost and administrative burden to the regulated community. With this original statutory intent in mind, therefore, the Agency believes that the first criterion associated with a 1998 financial responsibility compliance date must revolve around the UST technical regulations. In order to protect human health and the environment, the requirement to detect and clean-up leaks, for example, must continue to be enforced. A 1998 financial responsibility compliance date for small marketers need not compromise this protection. Similar to the financial responsibility deadlines, most technical compliance dates were phased-in, with older tanks (those most likely to leak) coming into compliance first. A financial responsibility compliance date to 1998 corresponds with this technical compliance phased-in approach and can be accomplished without necessarily reducing the requisite level of protection to human health and the environment. For these reasons, EPA has incorporated compliance with the technical regulations as its first criterion for small marketers. With regard to protection of human health and the environment, the Agency points out, however, that regardless of whether owners or operators have obtained a financial responsibility mechanism, that owner or operator with leaking tanks is still required to clean-up a leak. In this case, owners and operators that have obtained the financial responsibility mechanism are in a position to ensure that money exists to pay for a clean-up. This assurance still provides the best protection of human health and the environment. The Agency seeks comments with regard to the inclusion of the technical requirements criterion.

The second criterion proposed for small marketers corresponds directly to the objective of this proposed extension: that small, isolated communities have access to petroleum. Therefore, EPA examined several definitions of "rural" which could be applied to small petroleum marketers. Initially, the definition of rural as provided by the U.S. Bureau of the Census was considered. The Census defines rural areas as non-urbanized places of fewer than 2,500 persons.[2] The Agency obtained census tapes consisting of the 1990 U.S. Census database and analyzed the data by county with regard to rural population versus total population, rural area versus total area, county population, and population density.[3] The Census analysis, however, proved to be unworkable for several reasons. First, the Census Bureau will not classify a county as either rural or urban since most counties encompass both rural and urban areas.[4] Therefore, a breakdown of rural area according to county could only be defined as the percentage of rural area in that county; e.g. a county might be considered 65% or 80% rural. Some trends were discovered in additional analysis which broke down counties according to population size and density. In both cases, however, neither variable proved to be a reliable indicator of rural for the purposes of this rule. For example, although the mean population of counties generally increased as population density increased, some counties with a relatively low population density had a relatively large overall population. Conversely, some counties with relatively low populations had rather high population densities. An additional factor proved

[1] Economic Impact Analysis of Additional Mechanisms for Local Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks, November 1992, Section 2.2.4, pg. 2–8 and 2–9.

[2] U.S. Bureau of the Census, Population Division, "1990 U.S. Census Database of Population and Land Area by County," Appendix A.

[3] Memorandum from William Driscoll, James Dickson, and Tony Bansal to Andrea Osborne, EPA, "Spreadsheets from the 1990 U.S. Census Database of Population and Land Area by County," July 9, 1992.

[4] Ibid.

troublesome with regard to the U.S. Census data in that the information was not readily available to the public.[5] The public availability feature is considered a vital component of this rulemaking to ensure that the final rule will be easy for the regulated community to implement.

The Agency continued its analysis by examining how other Federal agencies define "rural." The Federal Highway Traffic Safety Administration, for example, allows increases of the "speed limit of a highway to 65 miles per hour if the surrounding 'geographic area' is not within a Metropolitan Statistical Area and the population is less than 50,000." The Rural Electrification Agency stated that an incorporated area with a population of 15,000 would qualify as rural, but the Agency did not include townships which were not incorporated. The U.S. Department of Agriculture defines areas as "agricultural" or "non-agricultural," but not rural, per se.[6] These interpretations of rural did not appear to be adequate for the purposes of the rule, and, once again, maps defining these areas were not readily accessible to the public.

The definition of "rural" finally accepted for purposes of this proposed rule was obtained from the Farmer's Home Administration within the U.S. Department of Agriculture. The Farmers Home Administration (FmHA) "operates Federal loan programs designed to strengthen family farms, finance new and improved rural housing, develop community facilities, and maintain and create rural employment * * * The agency's goal is to serve as a temporary source of supervised credit and technical support for rural Americans * * * until they are able to qualify for private sector resources."[7] In effect, FmHA's goal is not to compete with banks, but to distribute loans in rural, less economically viable areas.[8] FmHA defines rural as an "open country * * * town, village, city or place * * * which is not part of or associated with an urban area and which * * * has a population not in excess of 10,000 * * * or has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a Metropolitan Statistical Area (MSA), and has a serious lack of mortgage credit for low and moderate-income households."[9] (A Metropolitan Statistical Area carries the same meaning as a Standard Metropolitan Statistical Area (SMSA) for purposes of this rule.)[10] The rural status of an area under the FmHA program is reviewed every five years for population shifts. During the review, notices are published in the local newspapers at least 180 days before a final decision regarding rural status is made.[11] Rural areas may change somewhat over time with demographic shifts, but the FmHA definition of rural has been in existence since passage of the Title V Housing Act of 1949 (42 USC 1471).

The FmHA approach to rural is the proposed option selected by EPA because its approach parallels EPA's goals in proposing this rulemaking—both target rural areas most in need of financial assistance. In addition, public information is easily obtainable from maps located in 2,000 FmHA county offices nation-wide (e.g. approximately 40 offices per State). "More than 11,000 full-time employees serve all 50 States plus Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This decentralized network of staff and offices enables FmHA to maintain a close, one-on-one relationship with its borrowers."[12] FmHA offices are listed in telephone books under "Department of Agriculture" in the "U.S. Government Section." Therefore, UST owners eligible for the financial responsibility extension to 1998 could simply telephone local FmHA county offices and either determine over the phone that a particular area is rural or visit an office to view maps which would describe which areas would be considered rural and which are deemed to be "ineligible." EPA is interested in receiving comments on the appropriateness of the FmHA definition.

EPA is also proposing a hardship factor as part of the criteria for an extension. The Agency's goal would be to grant the extension only to those UST owners and small communities which would suffer undue hardship by meeting the 1993 financial responsibility compliance date. However, the Agency has found that "hardship" is difficult to define. EPA first sought hardship measures from the Small Business Administration (SBA). SBA, however, was unable to provide the necessary information since the Agency uses no specific cut-off levels to assess the economic viability of companies prior to issuing small business loans, and instead relies on a variety of factors to assess a firm's financial solvency and strength.[13]

EPA recognizes that both UST owners and consumers could suffer hardship. Creating a factor to measure both types of hardship pose significant difficulties. Even if the Agency could devise a test which accurately measures hardship, EPA is concerned that UST owners would need to perform detailed calculations and retain substantial records in order to demonstrate eligibility. Moreover, States and EPA could have difficulty explaining the factor to numerous small businesses and administering its requirements.

Therefore, the Agency requests comment on whether the Agency should adopt any factor to measure hardship. Instead of a hardship factor, the Agency instead could rely on the rural factor to target the extension to those owners and communities potentially in need. While this option could grant an extension to some communities and UST owners who are able to comply in 1993, regulators and the regulated community would face less administrative costs.

The Agency believes that an accurate and simple measure of hardship would be preferable, however. Hardship could be imposed on the tank owner or the community served by the UST. To simplify the calculation of the factor, the Agency is proposing to measure the financial hardship imposed on the tank owner and requests comment on an alternative that would measure hardship to the community.

EPA realized that the first piece of information necessary to determine financial hardship was some measure of the income or profit earned on an annual basis by rural marketers. Therefore, to obtain a rough estimate, EPA conducted a limited telephone inquiry, targeting petroleum marketers in rural counties in various States and regions of the country. On average, the respondents owned three USTs

[5] Memorandum to the record, "Conversation with Mike Ratcliffe, U.S. Bureau of the Census, July 1992," September 25, 1992.

[6] Memorandum from Suzanne M. Boughner, William Driscoll, and James Dickson to Andrea Osborne, EPA, "The Definition of Rural by Government Agencies," July 2, 1992.

[7] U.S.C. Department of Agriculture, Farmers Home Administration, "This is FmHA," January 1990, pg. 1.

[8] Memorandum to the record, "Meeting between David Adams, FmHA Loan Specialist and Contracting Officer's Representative and Andrea Osborne, EPA, at the U.S. Department of Agriculture on July 16, 1992," September 25, 1992.

[9] Title V Housing Act of 1949, section 1944.10.

[10] Memorandum to the record, "Conversation between Andrea Osborne, EPA, and Paul Loizeaux of the Office of General Counsel, U.S. Department of Agriculture on August 26, 1992," September 25, 1992.

[11] Boughner, Driscoll, and Dickson. ICF Inc. memorandum to A. Osborne, EPA, July 2, 1992.

[12] U.S. Department of Agriculture, Farmers Home Administration, "This is FmHA," January 1990, Pg. 1.

[13] Memorandum to the record, "Conversation between Andrea Osborne, EPA and Steve Dixon, Small Business Administration on August 24, 1992," September 25, 1992.

containing petroleum and sold petroleum in a county with a population density of 18 people per square mile. Respondents were selected from Florida, Arkansas, Mississippi, Nebraska, Alabama, Washington and Montana. Profit margins from the survey indicated that most small marketers receive approximately 10 cents profit for every gallon sold. On average, our respondents sold 144,000 gallons of gasoline per year, leading to average yearly profits on petroleum sales of approximately $14,000 per year.[14] EPA cautions that the profit figures are derived from a limited phone inquiry, and the questions may not have addressed all the issues related to profitability. The Agency encourages comments with regard to the accuracy and national scope of its assumptions.

The second piece of information required to assess hardship was some measure of costs associated with ownership of USTs. To calculate costs, EPA assumed that owners would spend an additional $11,000 per year in loan payments used to upgrade their facility. The actual cost of tank upgrading, which often includes installation of cathodic protection devices, amounts to approximately $10,930 per tank or $43,720 for an average four-tank facility.[15] The Agency assumed that the owner would pay for a facility upgrade by obtaining a standard 5-year loan at prime plus 2.1%. The prime rate has recently been set at six percent, leading to an estimated rate of 8.1%. Annual payments on the $43,720 5-year loan at 8.1%, therefore, result in yearly costs of almost $11,000 in principal and interest.

EPA analysis on loan affordability shows that in order for firms to remain viable after a loan, they must have net revenues (i.e., total revenue minus all expenses, salaries, depreciation, etc.) at least equal to or higher than the annual payment for the loan.[16] In this scenario, therefore, small firms planning to upgrade a facility (containing on average 3–4 tanks) would need net revenues of at least $11,000 to remain viable.

One additional cost facing small marketers who must comply with the financial responsibility requirements is the cost of the financial assurance mechanism. Insurance, generally considered more costly to obtain than other mechanisms such as State funds or guarantees, was selected as the financial assurance mechanism for the purposes of this analysis. EPA contacted several of the larger providers of UST insurance (including Agricultural Excess & Surplus Insurance Co., Environmental Impairment Insurance Group Inc., Front Royal Group Inc., and Lloyd's of London), and used figures from a 1992 UST Status Survey completed by Petroleum Marketers Association of America to confirm EPA estimated costs of private insurance. The private insurers confirmed costs per tank in the range of $792—3,100, with the per facility costs of insurance premiums for 3–5 tanks totalling approximately $3,000 per year, but obviously dependent upon the condition and age of the tanks.

To determine a cut-off figure for economic hardship, EPA looked at the estimated costs described above: $11,000 per year in tank upgrading loan payments and $3,000 per year in private insurance costs. The Agency also assumed that the rural marketer is not subject to the costs associated with a leaking tank (which average over $100,000 per leak) and that the owner paid him or herself a reasonable base salary as part of the daily operational costs of the facility. With this in mind, the Agency totalled the annual tank costs of $11,000 (tank upgrading loan payments) and $3,000 (tank insurance costs) to reach a sum of $14,000 in costs. This figure is equal to the yearly profit on gasoline sales of approximately $14,000 for small marketers. However, as stated above, viable firms must have net profits at least equal to costs, including annual loan payments, in order to remain solvent after a loan. The Agency believes a cushion of $1,000 would be a fair means of measuring interest rate fluctuations and other uncertainties and therefore obtained a cut-off figure of $15,000 for this hardship criterion. In other words, small rural marketers with gasoline profits of $15,000 or under per year would be given additional time to 1998 to meet the financial responsibility compliance deadline; those with gasoline profits of more than $15,000 would not be eligible for the 1998 compliance date. EPA defines profits as meaning net income over a given period of time, or, in this case, one year. Net income refers to the total revenue from gasoline sales remaining after deduction of all business expenses, outlays (such as salary), depreciation, and returns on capital.

The Agency believes that the additional time to 1998 would help more States implement loan and grant programs targeted to small, rural marketers that would help them pay for the costs associated with technical maintenance and compliance. By 1998, these tanks would be in good condition, in compliance, and eligible for affordable assurance mechanisms.

With regard to the cut-off figure of $15,000, the Agency notes that private insurance costs of $3,000 per year were included because small retailers that do not qualify for this 1998 compliance date would be faced with a financial responsibility compliance deadline of December 31, 1993. If they used private insurance as their financial responsibility mechanism, they would likely be required to upgrade their tanks prior to obtaining insurance. A cut-off of $11,000 in annual profits—equal to the cost of the loan for upgrading only—would be too low for small retailers to upgrade and obtain insurance. The cut-off for this proposal, therefore, has been calculated to include upgrading ($11,000), insurance ($3,000) plus a cushion ($1,000), equal to $15,000.

EPA solicits comments on the viability and reasonableness of this approach and specifically on whether the financial income figures used to determine extension eligibility should include personal or business income, or both. In addition, the Agency requests comment on whether gasoline throughput of an owner's facility(ies) should be used as a financial surrogate in lieu of profit. For example, a cut-off level of 144,000 gallons per year (as determined by the earlier telephone inquiry) could be set for small marketers.

The Agency considered adding a second component to our approach concerning the percentage of gasoline revenue obtained on a yearly basis by the owner. The Agency questioned whether wealthy business persons who owned or operated a small gasoline station on the side, for example, would be equipped to pay for the costs of financial assurance coverage and the associated technical compliance costs without the need for the 1998 compliance date. A person, for example, may receive 75% of his or her yearly income from an insurance business, and rely upon gasoline profits to merely supplement that base. EPA acknowledges, however, that profits from related businesses could be affected by UST closures. For example, in the phone inquiry, the Agency learned that many small country stores (that also sell gasoline) could lose 25–60% of their business if they did not sell gasoline. The Agency welcomes comments on whether the percentage of income received from gasoline sales

[14] Memorandum from Scott Schafer, Ed VanderPloeg, William Driscoll, and James Dickson to Andrea Osborne, EPA, "Results of Country Store/Gasoline Marketer Interviews," July 31, 1992.

[15] Memorandum from James Dickson, ICF, to Andrea Osborne, EPA, "Ability of Single-Station Gasoline Marketers to Afford to Demonstrate Financial Responsibility," December 9, 1992.

[16] Ibid.

versus other income should be added to EPA's approach to determine hardship.

EPA also considered whether the number of tanks owned by petroleum marketers should be another factor included in the approach to determine hardship. Gas stations typically own 3–6 tanks per station, and some thought was given to whether the Category IV criteria of 1–12 tanks at several facilities was too lenient in including larger marketers. The Agency concluded, however, that fewer than 13 tanks was still a relatively small number and has not decreased tank ownership below that Category IV description for the purposes of this proposed rule.

The Agency requests comments on an alternative measure of hardship. EPA has concerns about the economic and distributional effects of a hardship criterion on consumers and specific communities. For example, a hardship criterion will exclude some owners of small, rural gasoline stations. Complying with the financial responsibility requirements will impose costs on the owners. Depending on the specific situation (e.g., extent of competition with other providers in the same general area, price elasticity of demand for gasoline), these owners may try to pass on the added cost by raising the prices that they charge. Consumers in those areas may lose part of their "disposable income" to pay for the increased cost of gasoline. If consumers purchase significant amounts of gasoline and have relatively little disposable income, then the extra costs could impose hardship on the community.

In order to evaluate the extent of these potential economic effects on consumers, the Agency solicits data on estimates of the price elasticity of gasoline (i.e., the percentage change in the demand for gasoline compared to a certain percentage change in the price charged). In addition, the Agency requests data on the number of consumers in a rural area with only one supplier of gasoline and the amount of gasoline the typical rural consumer purchases. Based on this data, the Agency could measure the loss in consumer income due to the price increase. The Agency requests comment on this methodology to measure hardship.

B. Criteria for Local Governments

EPA recognizes that the provision of essential public services such as police and fire protection is dependent upon the availability of fuel for emergency vehicles. The Agency is concerned that, in some cases, fuel may not always be adequately provided for by local retail marketers in some rural communities. Limited hours of operation and a low concentration of gasoline service stations in a remote area could impinge upon the ability of a small, rural town to provide for timely public assistance. In these cases, the best option for a small local government may be to own and operate its own USTs to guarantee fuel availability as needed. In order to guarantee that essential community services are not compromised, the Agency is proposing the provision of these essential services as a criterion used to help determine whether a local government receives the 1998 financial responsibility compliance date. The services intended in this proposed rulemaking are defined as fire, police, or ambulance services, or as otherwise allowed by the implementing agency.

Two of the criteria discussed for petroleum marketers—technical UST compliance and rural—have also been included as the final two criteria for local governments seeking a financial responsibility compliance date of 1998. The three criteria included for local governments are intended to meet the Agency objective of securing fuel supplies for essential services in rural areas in an environmentally safe manner. EPA solicits comments on the local government criteria, including whether the essential services are adequately defined by the Agency.

C. Criteria for Indian Tribes

USTs directly owned by Federally-recognized Indian Tribes are treated as local government USTs for the purposes of the financial responsibility requirements. Unlike towns and cities, however, Indian Tribes do not receive access to a variety of State and Federal UST assistance. State assurance funds, for example, generally do not apply to tribes because States do not have the authority to levy and collect taxes on Indian lands. State financial assurance funds do not necessarily exclude tribally-owned tanks and a Tribe could opt to pay the fee voluntarily to participate in the fund. To date, however, this has not proven satisfactory to sovereign Indian tribes and use of State funds as a financial assurance mechanism has been minimal.

In addition to minimal reliance on State funds, Indian tribes, which do not impose taxes, seldom have the financial resources to self-insure. Also, other mechanisms proposed for local governments (such as a bond rating test) may not be appropriate for Indian tribes. Federal clean-up assistance for tribal USTs is also limited because Tribes, as sovereign nations, cannot receive State program grants, and assistance from the Federal Leaking Underground Storage Tank Trust Fund is available only in emergency situations. EPA acknowledges these concerns and for these reasons, proposes allowing a 1998 financial responsibility compliance date for all USTs owned by Indian Tribes on Indian lands as long as the USTs are in technical compliance with the UST technical rules currently in place. This criterion is essential to help ensure the protection of human health and the environment on Indian lands. EPA intends to work with Indian Tribes to help find creative solutions for affordable financial responsibility assurance mechanisms. The Agency notes that this additional extension applies only to tribal ownership of USTs on Indian lands. Individual Indians who owned USTs and non-Indians that owned USTs on tribal lands would fall into one of the previously outlined categories (depending on their size and whether they are marketers or non-marketers) and could be eligible for this additional extension as petroleum marketers. EPA solicits comments on whether Indian Tribe eligibility for the 1998 compliance date should also be determined based on a hardship factor or rural criterion. In addition, the Agency would be interested in knowing whether tanks owned by individual Indians (as opposed to Tribes) are generally covered under State assurance funds.

D. Implementation

EPA intends to propose regulations which pose the least burden to the affected regulated community. Therefore, no change in reporting requirements or recordkeeping procedures is incorporated in this proposal. This proposed compliance date, if adopted, would require that UST owners self-certify for an extension and keep a record of the rule checklist on file for enforcement purposes. The attached checklist has been incorporated into this proposal for ease in implementation; UST owners can simply copy the form, complete it, and keep it on file. The Agency proposal for the 1998 financial responsibility deadline for a limited group of rural marketers, local governments and Indian Tribes is initially considered a one-time certification using data from the year when the rule is finalized. Comments are solicited, however, to determine whether the checklists should remain a one-time certification or should be updated annually. Annual updating of the checklists could provide for a more accurate picture of the yearly financial status of a petroleum marketer

or local government. This advantage, however, should be balanced with the increased recordkeeping burden and potential confusion resulting from the possible loss of the later compliance date during an annual update. Checklists, regardless of whether they are completed once or on an annual basis, should be kept on file one year past the compliance date (e.g., December 31, 1999) and should be made available to implementing agencies at any time upon request. The Agency is interested in learning whether State implementing agencies want to be notified when an owner or operator determines that it is in the 1998 compliance date category and whether a notification requirement should be included in the final rule.

Implementation of 1998 compliance date by State Regulatory Agencies would vary according to State law, and could be dependent upon whether the State had received State Program Approval under 40 CFR part 281. Generally, States which already received State Program Approval would need to add this additional compliance group via a State rulemaking effort if they choose to incorporate the 1998 date and then seek EPA approval for the revision. States which have not received State Program Approval may automatically incorporate this date into their regulations if they incorporate EPA regulations by reference, or may be required to initiate a new State rule to either allow or disallow this new compliance group. Some States, which cannot by State law be more or less stringent than the Federal government may also be obligated to make regulatory changes depending on the current State requirements. EPA hopes that implementation of this 1998 date will allow States as much flexibility as possible, and notes that according to the statute, States can choose to be more stringent than the Federal government and therefore choose not to allow the 1998 compliance date. The Agency is interested in receiving comments on the issue of State implementation to know the extent to which obstacles exist with regard to State implementation of this rule.

IV. Alternatives to the Proposal

A. No Extension

In addition to the proposed rule, EPA is considering the option of not changing the compliance date for any UST owner or operator. A variety of reasons contribute to consideration of this option. First, the size of the regulated community in need of a later compliance date may not justify the proposed rulemaking. EPA has intentionally targeted only a small portion of the initial Category IV compliance group, since the vast majority of the category is expected to be able to comply with the 1993 financial responsibility compliance date. A proliferation of State funds has been a major reason behind this compliance, particularly with regard to small owners and operators. Forty-three States, in fact, should have operational funds by 1993. Of the remaining eight States, including the District of Columbia, six either already operate or plan to implement grant or loan programs which help small owners and operators pay for the costs of tank upgrading. After the tank improvements, the UST owners in these States are better able to obtain affordable insurance to comply with the financial responsibility regulations. The Agency estimates that as many as 94% of all tanks could receive State assistance in the form of a State assurance fund or loan or grant program by 1993. Of that remaining 6% of the tanks, perhaps half could be considered small owners or operators from Category IV, and of that number, even fewer would qualify for the 1998 compliance date under this rulemaking.

B. Shorter Extensions

EPA is also considering the option of extending the compliance deadline for a shorter period of time. The Agency is concerned that an extension to 1998, the deadline discussed earlier in this package, might provide disincentives for owners to avoid taking whatever steps possible to obtain financial assurance. A shorter extension would maintain pressure on owners and operators to come into compliance and on other public and private institutions to aid in developing or supplying financial assurance mechanisms. EPA is therefore soliciting comments in this proposal on whether some interim date, between 1993 and 1998, would provide needed relief to the targeted portion of the initial Category IV compliance group, and might be more appropriate than the 1998 date. After review of the public comments to 's rule, EPA may establish a date for compliance between 1993 and 1998 in the final rule.

In evaluating this alternative to the proposal, the Agency would like commenters to consider that all USTs are required to be tested by December 22, 1993 for compliance with Federal leak detection requirements. By 1998, UST owners either will have demonstrated that their existing tanks are not leaking or will have replaced or repaired tanks found to have leaks. In either case, they would be in a better position than they may be now to qualify for private insurance. Thus, compliance dates between 1993 and 1998 may be more appropriate than 1998.

Commenters should also address what consideration, if any, should be given to the following: (1) The time period necessary to allow State legislatures to enact either State financial assurance funds or assistance programs targeted to these owners; (2) the time period necessary for States with existing financial assistance programs to work through their backlog of applications and use repayments to offer assistance to additional needy owners; and (3) the time period necessary for EPA review and approval of new State financial assurance funds for use as financial responsibility compliance mechanisms.

Finally, commenters should consider whether, and to what extent, Indian tribes may need additional time to evaluate their needs and to consider their options for complying with the financial responsibility requirements.

V. Economic Impacts

This section provides an estimate of the economic impacts of the proposed rule. Because the proposed rule will not cause an annual impact on the economy of $100 million or more and will not cause an increase in the costs of production or the prices charged by the affected community, a Regulatory Impact Analysis is not required. Instead, EPA has prepared an economic impact analysis to estimate the number of affected facilities that would benefit from this additional flexibility.

A. Economic Impact Analysis

The economic analysis examines the potential economic effects of adopting a new compliance category to 1998. It provides an estimate of the number of potentially affected entities, a comparison of the financial condition of affected entities with and without a State assurance fund, and an analysis of rural entities.

Overall, approximately 1.7 million USTs are subject to the technical and financial responsibility standards. These USTs are owned by approximately 250,000 companies, local governments and Indian Tribes. The number of Category IV USTs and entities that could be eligible for the 1998 compliance date as a percentage of the total UST universe can be broken down as follows:

	USTs (percent)	Entities (percent)
Category IV Marketers	391,000 (23)	72,500 (29)
Local Governments	62,000 (3.6)	24,000 (9.6)
Indian Tribes	6,000 (0.4)	1,000 (0.4)
Totals	459,000 (27)	97,500 (39)

These 97,500 eligible entities (which includes petroleum marketers, local governments and Indian Tribes) would then be further reduced by inclusion of the rural, hardship, and essential services criteria. Many of these eligible entities, however, may already be receiving financial responsibility coverage through participation in State funds.

Small, rural service stations, local governments, or Indian Tribes required to obtain private insurance or otherwise cope with cleanup costs without State aid, however, face potentially severe impacts. EPA estimates that 45 percent of small stations could suffer severe financial distress, and 41 percent could fail. Small stations in rural areas may be even more heavily affected, because they tend to have a smaller revenue base and are less financially robust than stations in metropolitan areas. Small local governments and USTs owned by Indian Tribes are expected to be in much the same situation.

However, the development of State assurance funds and State financial assistance programs (generally, loan or grant programs which pay for tank upgrading, thereby helping owners qualify for private insurance) provides relief to UST owners and operators, particularly those with fewer facilities and USTs. State assurance and assistance funds can pay for cleanups and help owners meet the financial responsibility requirements, possibly negating the need for the 1998 compliance date. In addition, State assurance funds can reduce instances of failure over the next ten years if their deductibles are small enough. In fact, State assurance funds with $10,000 deductibles can reduce failures from 41 percent to only 14 percent. State financial assistance programs that help firms upgrade their USTs can also help by alleviating some of the burden associated with obtaining insurance.

Currently, EPA estimates that 43 States will have operational assurance programs by 1993. In addition, 17 States have loan or grant programs which often target assistance to those least likely to be able to afford the financial costs of compliance with the technical and financial requirements. By 1993, EPA estimates that only one or two States plus the District of Columbia may be without any form of State assistance to UST owners (either an assurance or assistance fund.) Also, two-thirds of all State assurance funds currently in operation allow access to coverage with deductibles of $10,000 or less, further helping to reduce the incidence of business failure. Also, coverage, in every State except one, is currently provided to local governments as well as private companies. Continued State funding of assurance and assistance programs to guarantee this level of coverage to small, rural marketers and rural local governments, however, may be somewhat diminished in the future as State budgetary requirements reduce the money available to the regulated community. State assistance to Indian Tribes has not proven to be a viable alternative to date. In both situations, a 1998 financial responsibility compliance deadline may provide flexibility to those unable to access State resources.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act generally requires all federal agencies to review the impact of their regulations to determine whether the regulations will have a significant economic impact on a substantial number of small entities. If so, the Agency must prepare a Regulatory Flexibility Analysis. EPA believes that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The new compliance deadline to 1998 will provide relief to members of this compliance group by allowing them additional time to comply with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Regulatory Impact Analysis

1. Compliance with Executive Order 12291

Executive Order 12291 requires Federal agencies to prepare a Regulatory Impact Analysis (RIA) for all "major" rules. Major rules are defined as rules likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers or individual industries; or,

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this proposed rule is not a major rule. Therefore, no RIA has been prepared.

D. Paperwork Reduction Act

This proposed rule places no additional information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: August 10, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 280 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h.

2. Section 280.91 is amended by revising paragraphs (d) and (e), and by adding paragraphs (f) and (g) to read as follows:

§ 280.91 Compliance dates.

* * * * *

(d) All petroleum UST owners not described in paragraphs (a), (b), (c), (e), or (f) of this section, December 31, 1993.

(e) All local government entities not included in paragraph (f) of this section, February 18, 1994.

(f) All petroleum UST owners previously in paragraph (d) or (e) of this section that meet the following Federal criteria; December 31, 1998:

(1) Petroleum Marketers which meet the technical requirements to date, are located in an area defined as rural by the Farmers Home Administration, and

that earn annual profits on gasoline of $15,000 or less;

(2) Local governments which meet the technical requirements to date, are located in an area defined as rural by the Farmers Home Administration, and own USTs which provide essential services; (Essential services are defined as fire, police, or ambulance services, or as otherwise defined by the Implementing Agency).

(3) Indian Tribes that own USTs on Indian lands which meet the technical requirements to date.

(g) All petroleum UST owners included in paragraph (f) of this section must maintain the following checklist in figure G–1 in on-site files for one year past the compliance date to demonstrate that they meet the above Federal criteria:

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Figure G-1

COMPLIANCE DATE CHECKLIST

Category IV

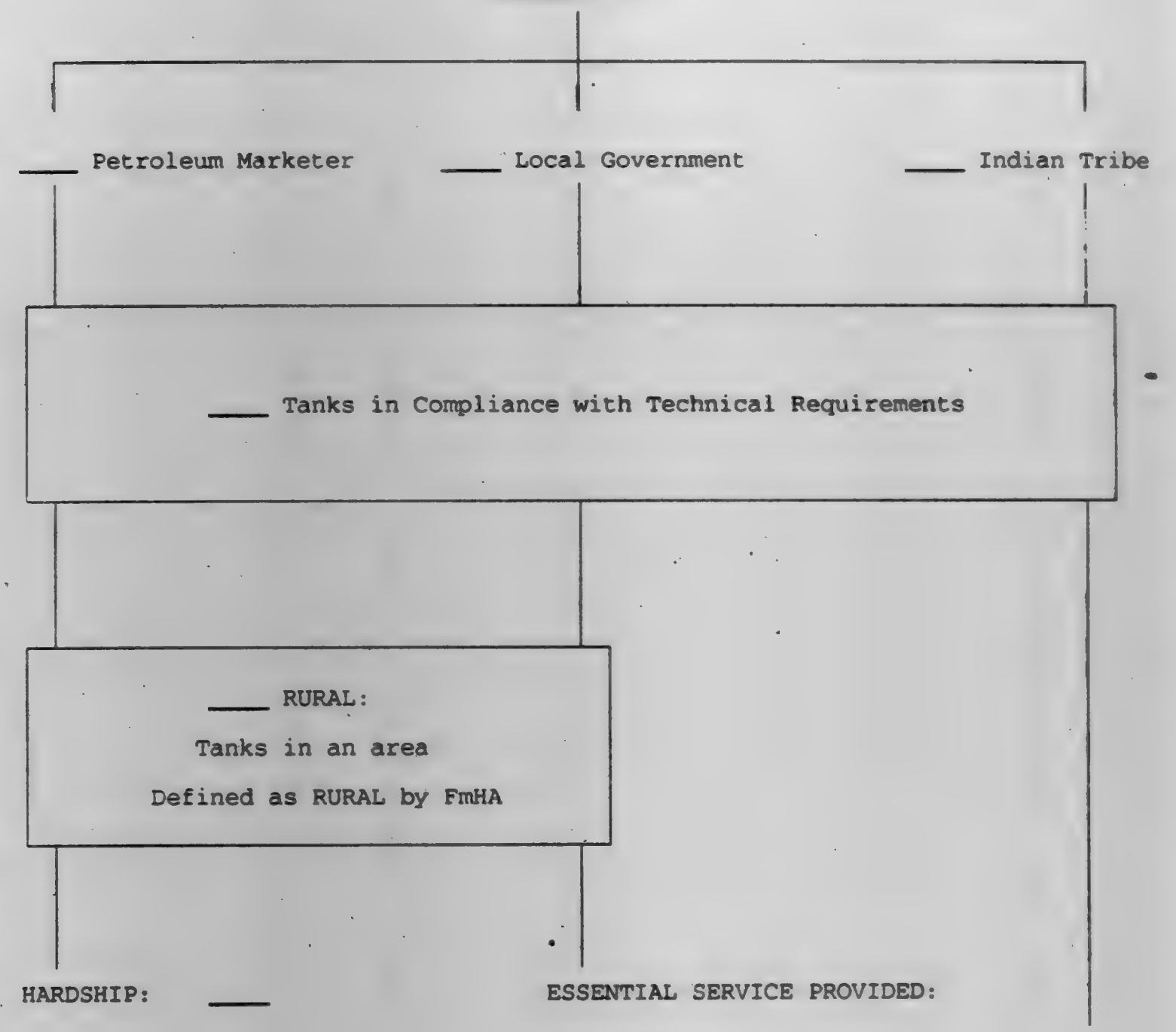

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Annual Profit on Gasoline Sales is $15,000 or less.	Please Describe: _____	

FINANCIAL RESPONSIBILITY COMPLIANCE DATE TO DECEMBER 31, 1998

"I certify, under penalty of law, that this document and the information contained herein, is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

[signature of owner]

Billing Code 6560-50-P

[FR Doc. 93-19826 Filed 8-16-93; 8:45 am]
BILLING CODE 6560-50-C

federal register

Tuesday
August 17, 1993

Part IX

Department of Labor

Employment and Training Administration

20 CFR Part 614

Unemployed Compensation for Ex-servicemembers; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 614

RIN 1205–AA26

Unemployment Compensation for Ex-servicemembers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor published an interim final rule to implement statutory amendments contained in the Emergency Unemployment Compensation Act of 1991 affecting the Unemployment Compensation for Ex-servicemembers (UCX) Program. No comments were received. Consequently, this final rule adopts the interim final rule without change.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra T. King, Chief, Division of Program Development and Implementation, or Robert J. Gillham, Chief, Federal Programs Group, Office of Program Management, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 219–5309 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The interim final rule published at 57 FR 59798 (December 15, 1992), amending 20 CFR part 614 (Unemployment Compensation For Ex-servicemembers) and implementing section 301 of Pub. L. 102–164, is adopted as a final rule without change. No written comments were received. Operating instructions for implementing these statutory amendments were issued by the Department on November 22, 1991, in General Administration Letter (GAL) No. 3–92, published at 56 FR 67333 (December 30, 1991). The operating instructions in GAL 3–92 supplement these amendments to 20 CFR part 614.

The UCX program is financed with Federal funds to furnish unemployment benefits to eligible individuals who are separated from the Armed Forces and are unable to obtain work. The program, created by Pub. L. 85–848, approved on August 28, 1958, has been codified at 5 U.S.C. 8521–8525.

The interim final rule, 57 FR 59798 (December 15, 1992), and the final rule which adopts the interim final rule without change, implement sections 301(a) and 301(b) of the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102–164). Sections 301(a) and 301(b) amended 5 U.S.C. 8521, affecting entitlement to UCX. Section 301(a) repealed 5 U.S.C. 8521(c) which required a 4-week waiting period and a 13-week maximum for payment of UCX benefits. Section 301(b) amended 5 U.S.C. 8521(a) by reducing the amount of active duty in a reserve status from 180 continuous days to 90 continuous days necessary to be considered "Federal service" for UCX qualifying purposes.

Section 301(c) of Public Law 102–164 provides that the UCX amendments contained in section 301 are effective for weeks of unemployment beginning on or after November 15, 1991, the date of enactment of Public Law 102–164. This means that the UCX amendments contained in section 301 shall be effective for all UCX initial claims filed for weeks of unemployment beginning on or after November 15, 1991, as well as for weeks of unemployment beginning on or after November 15, 1991, for unexpired UCX claims. Furthermore, the Department interprets the amendment in section 301(b) of Public Law 102–164 to apply to previously denied UCX claims of reservists who had less than 180 but at least 90 days of continuous active duty in a reserve status, for weeks of unemployment beginning on or after November 15, 1991. Thus, the application of the UCX amendments in sections 301(a) and 301(b) to unexpired UCX claims requires redetermination of those claims, and such redeterminations have already been completed pursuant to operating instructions issued to the States soon after the enactment of the amendments. It was emphasized, however, that in making those redeterminations, the UCX amendments are applicable only for weeks of unemployment beginning on or after November 15, 1991 as provided by section 301(c).

Further, many reservists may have had 90 days or more of continuous active duty in a reserve status, but did not file UCX claims because they had less than 180 days of such service.

Accordingly, in order to effectuate these statutory amendments, the Department has determined that the application of the State time limitations on claims filing will be limited, as explained below. The general rule is that State law is followed on procedural matters (i.e., claims filing, determinations and redeterminations) unless inconsistent with Federal law. Here, applying State time limitations on claims filing would thwart the purpose of these statutory amendments. It is Congress' intent to cover Desert Shield and Desert Storm veterans under the UCX amendments made by section 301 of Public Law 102–164.

The effective date of UCX amendments as provided in the language of section 301(c) carries out this Congressional intent. Section 301(c) clearly provides that UCX amendments apply to weeks of unemployment, rather than to new claims filed, on and after the date of enactment. Furthermore, the Congressional Record regarding these amendments expresses Congress' intent to include Desert Shield and Desert Storm veterans in the amendment's coverage. The only way to extend the UCX amendments to Desert Shield and Desert Storm veterans is to require States and cooperating State agencies to redetermine all UCX claims for claimants whose benefit year expired after November 15, 1991. Thus, this Federal law authority will ensure a uniform application of the UCX amendments as intended by Congress.

Also, States and cooperating State agencies will not apply State law claims filing time limitations to reservists who did not previously file UCX claims because they had less than 180 days of continuous active duty in a reserve status, where the claimant's benefit year would have expired on or after November 15, 1991, if he/she had filed a UCX claim. However, State law provisions regarding back-dating of claims apply to UCX first claims.

Once a UCX claimant meets the qualifying requirements of 5 U.S.C. 8521, as amended by section 301 of Public Law 102–164, it is the Congressional intent to treat UCX claimants for weeks of unemployment beginning on or after November 15, 1991 under the same terms and conditions as apply to claimants covered under the applicable State UI law.

In a prior amendment to these regulations, published at 53 FR 40550 (October 17, 1988), § 614.27 was amended to delete the reference to Veterans Administration and was redesignated § 614.25. However, § 614.27 was inadvertently not deleted from the regulations. Consequently, § 614.27 is removed.

An explanation of specific changes that were made in 20 CFR part 614 may be found in the interim final rule that was published at 57 FR 59798 on December 15, 1992.

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C.

553(d)(3). The undersigned has determined that good cause exists for waiving the requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based on the fact that an interim final rule has been in effect since its publication at 57 FR 59798 on December 15, 1992, and this final rule adopts the interim final rule without change. Therefore, no purpose would be served by delaying the effective date of the final rule.

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

The rule in this document will not increase the Federal paperwork burden on the private or public sectors under the Paperwork Reduction Act. The reason for such certification is that this rule only incorporates statutory amendments to an individual entitlement program and which only affect individuals applying for benefits under the UCX Program.

Regulatory Flexibility Act

The final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States or individuals. Since these regulations involve an entitlement program for individuals administered by the States, and are directed to the States, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 614

Labor, Unemployment Compensation for Ex-servicemembers (UCX), Unemployment Compensation.

PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

Accordingly, for the reasons set forth in the preamble, the interim rule amending 20 CFR part 614, which was published at 57 FR 59798 on December 15, 1992, is adopted as a final rule without change.

Signed at Washington, DC, on August 11, 1993.

Carolyn M. Golding,

Acting Assistant Secretary.

[FR Doc. 93–19872 Filed 8–16–93; 8:45 am]

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H.R. 460/P.L. 103–67
To provide for the conveyance of certain lands and improvements in Washington, District of Columbia, to the Columbia Hospital for Women to provide a site for the construction of a facility to house the National Women's Health Resource Center. (Aug. 11, 1993; 107 Stat. 686; 5 pages)

H.R. 616/P.L. 103–68
To amend the Securities Exchange Act of 1934 to permit members of national securities exchanges to effect certain transactions with respect to accounts for which such members exercise investment discretion. (Aug. 11, 1993; 107 Stat. 691; 1 page)

H.R. 2348/P.L. 103–69
Legislative Branch Appropriations Act, 1994 (Aug. 11, 1993; 107 Stat. 692; 22 pages)

H.J. Res. 110/P.L. 103–70
To authorize the Administrator of the Federal Aviation Administration to conduct appropriate programs and activities to acknowledge the status of the county of Fond du Lac, Wisconsin, as the "World Capital of Aerobatics", and for other purposes. (Aug. 11, 1993; 107 Stat. 714; 1 page)

H.J. Res. 157/P.L. 103–71
To designate September 13, 1993, as "Commodore John Barry Day". (Aug. 11, 1993; 107 Stat. 715; 2 pages)

S. 1295/P.L. 103–72
Fluid Milk Promotion Amendments Act of 1993 (Aug. 11, 1993; 107 Stat. 717; 1 page)

S. 1295/P.L. 103–73
Rehabilitation Act Amendments of 1993 (Aug. 11, 1993; 107 Stat. 718; 19 pages)

S.J. Res. 99/P.L. 103–74
Designating September 9, 1993, and April 21, 1994, each as "National D.A.R.E. Day". (Aug. 11, 1993; 107 Stat. 737; 2 pages)

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103d Congress, 1st Session, 1993

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 1st Session, 1993.

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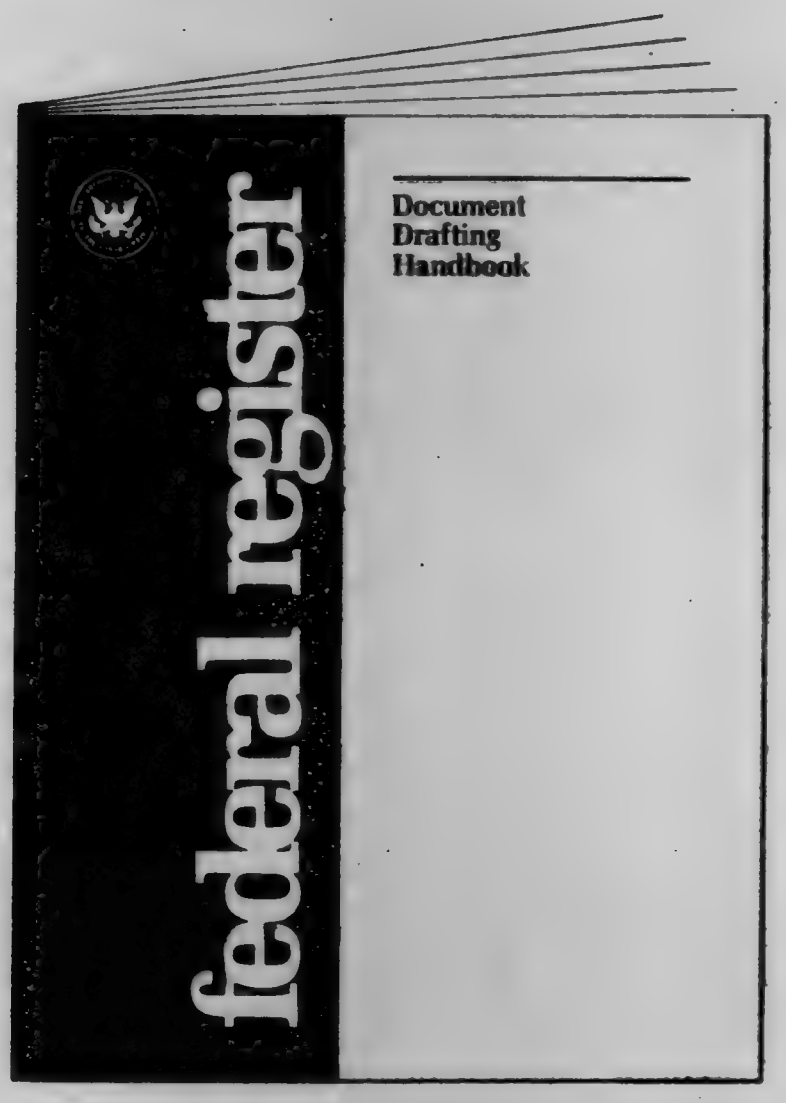

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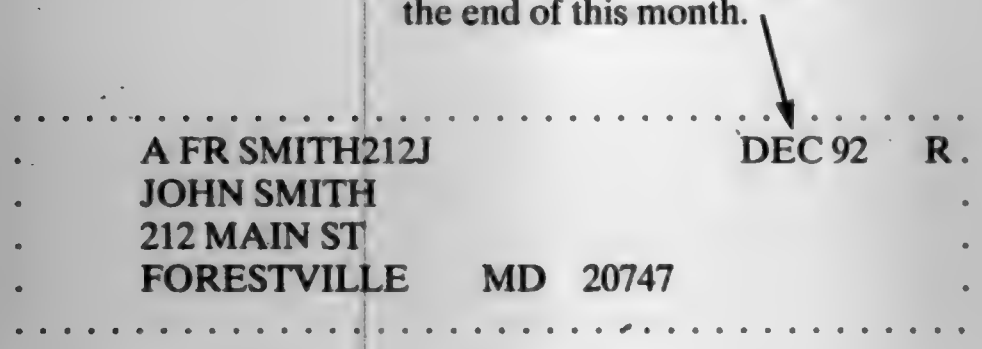

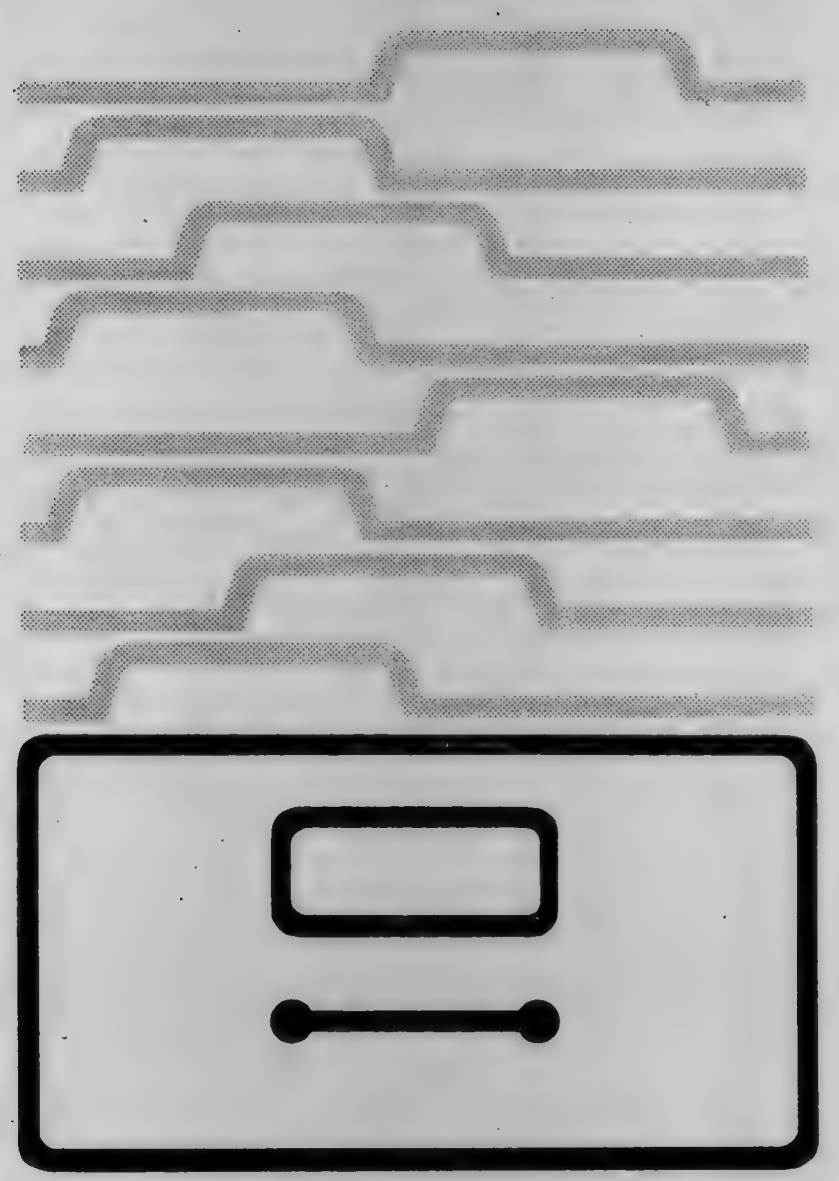

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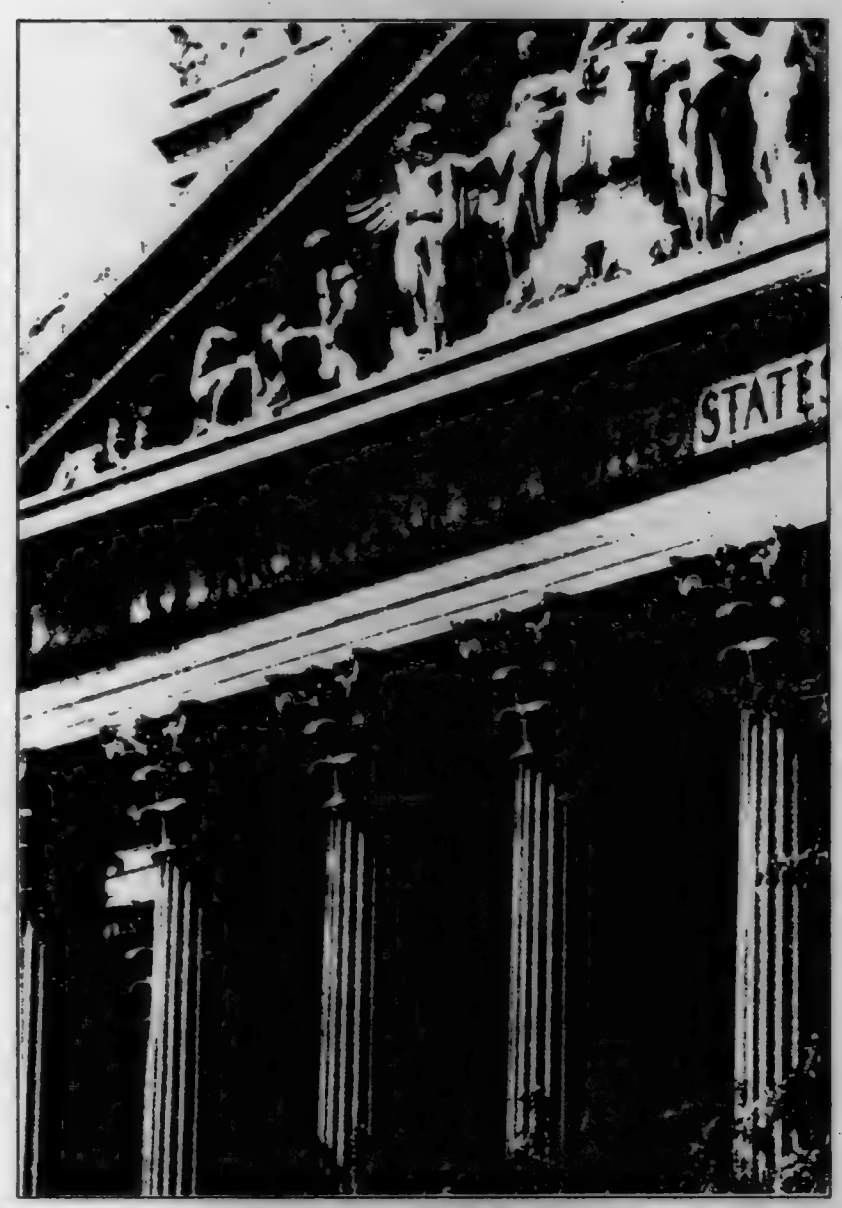

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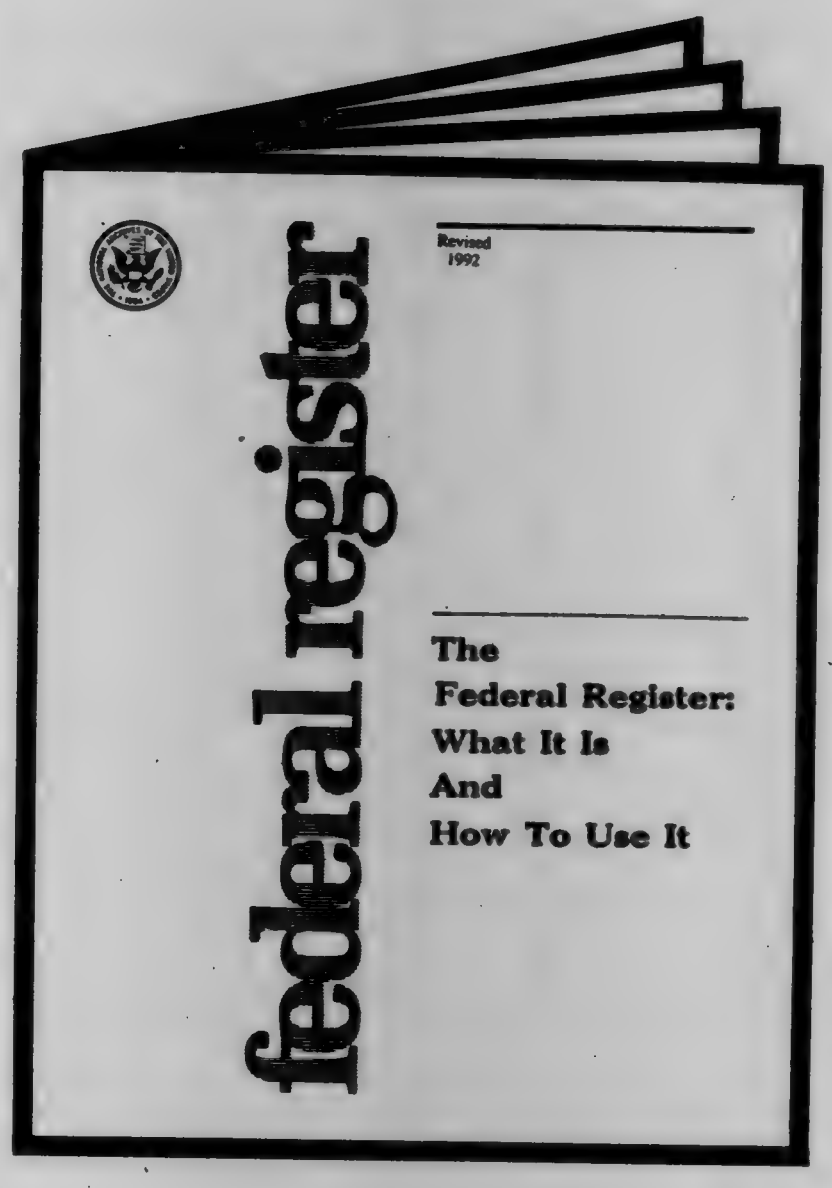

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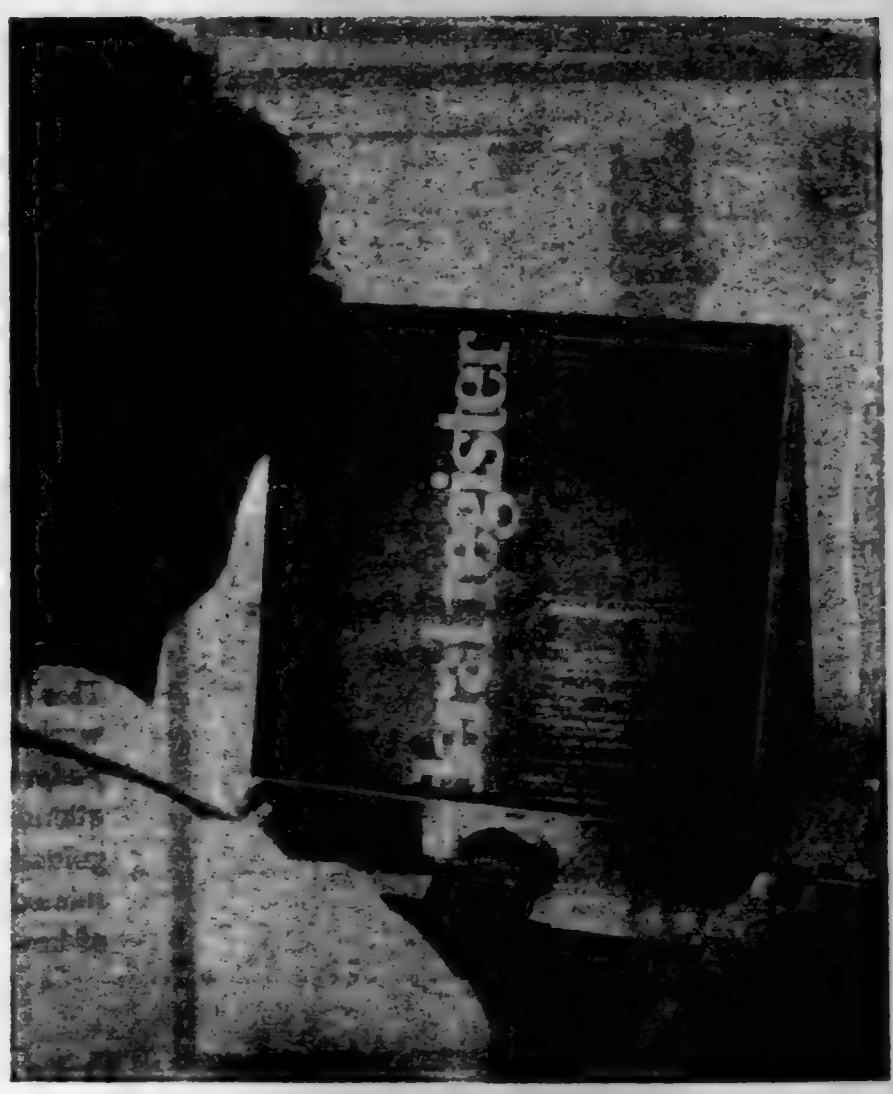

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Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 58, No. 158
Wednesday, August 18, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–30 of July 2, 1993

Determination Under Section 405(a) of the Trade Act of 1974, as Amended—Romania

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act (19 U.S.C. 2435(a)), that the "Agreement on Trade Relations between the Government of the United States of America and the Government of Romania" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 2, 1993.

[FR Doc. 93–20141
Filed 8–16–93; 4:07 pm]
Billing code 4710–10–M

Editorial note: For the President's letter to Congressional leaders and the proclamation on trade with Romania, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1224).

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Rules and Regulations

Federal Register
Vol. 58, No. 158
Wednesday, August 18, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 320, and 381

[Docket No. 91-006F-C]

RIN 0583-AB34

Nutrition Labeling of Meat and Poultry Products; Corrections

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; corrections.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making corrections to its final rule on nutrition labeling of meat and poultry products, which was published in the **Federal Register** on January 6, 1993 (58 FR 632).

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Background

The final rule on nutrition labeling that is the subject of these corrections was published in the **Federal Register** on January 6, 1993 (58 FR 632). The final rule amends the Federal meat and poultry products inspection regulations by permitting voluntary nutrition labeling on single-ingredient, raw meat and poultry products, and by establishing mandatory nutrition labeling for all other meat and poultry products, with certain exceptions.

Need for Corrections

As published, the final rule contains errors which may be misleading; these errors, therefore, must be corrected.

FSIS inadvertently included the term "unsaturated fatty acids" in the nutrient content claims regulations (9 CFR 317.354 and 381.454) for "good source," "high," and "more." FSIS is deleting this term from the regulations because there is no Daily Reference Value (DRV) for unsaturated fat.

In addition, the Agency is correcting various nutrient content claims provisions because of errors made in cross-referencing the Food and Drug Administration's (FDA) regulations. FSIS failed to cross-reference 21 CFR 101.54(e) in § 317.354 and § 381.454, pertaining to relative claims using the terms "more," "fortified," "enriched," and "added." FSIS is adding that cross-reference.

FSIS cross-referenced several provisions in 21 CFR 101.54, 101.56, 101.60, 101.61, and 101.62, which provide FDA's definitions for meal products and main dish products. FSIS clearly explained its position on meal-type products in the preamble to its final rule, published on January 6, 1993. The Agency explained that FDA, in response to comments received on its proposed meal products definition, established a separate definition, "main dish product," that would represent a significant portion of the meal and have separate criteria for claims on these products. However, FSIS received strong support for its proposed meal-type products definition and deemed it unnecessary to create a separate criteria for main dish products. In cross-referencing FDA's regulations, FSIS inadvertently cross-referenced several provisions providing FDA's definitions for meal products and main dish products. Because FDA and FSIS have different definitions for meal products, FSIS is clarifying that the meal-type products definition, as it pertains to meat and poultry products, shall be as prescribed in 9 CFR part 317 and part 381, and that FSIS's regulations do not provide a definition for main dish products.

FSIS also incorrectly cross-referenced several provisions in 21 CFR 101.62 which provide disclosure levels for total fat and cholesterol. As the Agency explained in the preamble of its final rule, FSIS is clarifying that its regulations do not provide disclosure levels for total fat and cholesterol.

The provision providing the synonym for percent fat free was unintentionally omitted from the final nutrition labeling regulations. In the preamble of its final rule on nutrition labeling, FSIS clearly explained that it is adopting FDA's definition for "_____ percent fat free" claims and providing the synonym "_____ percent lean" as an alternative for meat and poultry products. FSIS is, therefore, adding to § 317.362(a) and § 381.462(a) of the regulations a provision providing the synonym for percent fat free.

FDA published final nutrition labeling regulations on January 6, 1993 (58 FR 2065). On April 1 and 2, 1993, FDA published corrections to its final regulations on nutrition labeling. In its final nutrition labeling regulations, FSIS cross-referenced all the provisions of FDA's regulations where the provisions were identical, and provided codified language only for those provisions where there were variations from FDA because of the different products that FSIS regulates. FDA has now made corrections to its final regulations. FSIS has carefully reviewed those corrections, and agrees that they are necessary and appropriate. FSIS is adopting the corrections FDA made to its final regulations on nutrition labeling since both agencies are committed to providing consumers with the most consistent food labeling system possible. FSIS adopts the corrections made to cross-referenced provisions as follows: Food Labeling; Serving sizes (58 FR 17085); Food Labeling; Reference daily intakes and daily reference values (58 FR 17104); Food Labeling; mandatory status of nutrition labeling and nutrient content revision, format for nutrition label (58 FR 17328); and Food Labeling; Nutrient content claims, general principles, petitions, definition of terms, definitions of nutrient content claims for the fat, fatty acid, and cholesterol content of food (58 FR 17341).

Correction of Publication

Accordingly, the final rule on nutrition labeling of meat and poultry products, published January 6, 1993 (58 FR 632), is corrected as follows:

Preamble [corrected]

1. On page 643, Table 2, under the nutrient "Cholesterol," the increments rounding column is corrected from "Nearest .5 mg" to "Nearest 5 mg."

2. On page 650, first column, #7, second line of the title, the word "her" is corrected to read "per."

3. On page 653, first column, #3, seventh line from the bottom, the words "and the calories" is corrected to read "or the calories."

4. On page 654, Table 7, under the Nutrient "Total Fat," the "Low" column is corrected to read "Reference Amount: > 30g or > 2 T: <=3 g/RACC <=30g or <=2 T: <=3 g/RACC & /50g."

5. On page 657, first column, second paragraph, fifth line from the bottom, after the word "Administration," the words "200 C Street, SW." are added, and after "Washington, DC," the zip code "20240" is corrected to read "20204."

§ 317.309 [Corrected]

6. On page 665, second column, eighth line of § 317.309(b), the reference to "§ 317.400(b)" is corrected to read "§ 317.400(c)."

7. On page 665, third column, the second sentence of § 317.309(f)(1) is corrected to read "Nutrition information may be given in a linear fashion only if the label will not accommodate a tabular display and, in that case, any subcomponents declared shall be listed parenthetically after principal components (e.g., saturated fat shall be declared in parenthesis after total fat)."

8. On page 665, third column, last line, after the words "core nutrients" (§ 317.309(g)(1)), the following parenthetical phrase is added: "(i.e., calories, total fat, sodium, total carbohydrate, and protein)."

9. On page 666, third column, eighth line, in § 317.309(h)(5), the word "below" is corrected to read "above."

§ 317.312 [Corrected]

10. On page 667, in § 317.312(b) Table 2, under the Reference Amount for Ready-to-cook for the ninth Product Category entry (Entrees without sauce, . . .), "106 g." is corrected to read "114 g."

§ 317.313 [Corrected]

11. On page 669, third column, second line (§ 317.313(i)), the reference to "21 CFR 101.13(i) (1) through (3)" is corrected to read "21 CFR 101.13(i)."

12. On page 669, third column, last line of § 317.313(p), the reference to "101.13(p) (1)" is corrected to read "101.13(p)."

§ 317.354 [Corrected]

13. On page 670, third column, the section heading for § 317.354 is corrected to read as follows: § 317.354 *Nutrient content claims for "good source," "high," and "more."*

14. On page 670, third column, fifth line of § 317.354, the reference to "101.9(c)(11)(iv)" is corrected to read "101.9(c)(8)(iv)."

15. On page 670, third column, seventh line of § 317.354, the reference to "CFR 101.9(c)(12)(i)" is corrected to read "CFR 101.9(c)(9)."

16. On page 670, third column, eighth and ninth lines of § 317.354, the words "and unsaturated fatty acids" are removed.

17. On page 671, first column, the second line (§ 317.354) is corrected to read "101.54, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

§ 317.356 [Corrected]

18. On page 671, first column, the last line of § 317.356(a) is corrected to read "101.56, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

§ 317.360 [Corrected]

19. On page 671, first column, the last line of § 317.360 is corrected to read "with 21 CFR 101.60, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

§ 317.361 [Corrected]

20. On page 671, first column, the last two lines of § 317.361 are corrected to read "accordance with 21 CFR 101.61, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

21. On page 671, first column, § 317.362(a) is corrected to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) A claim about the level of fat, fatty acid, and cholesterol in a meat product may only be made on the label and in the labeling of the product in accordance with:

(1) 21 CFR 101.62(a);

(2) 21 CFR 101.62(b), except the meal products definition shall be as prescribed in § 317.313(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "— percent fat free" is "— percent lean";

(3) 21 CFR 101.62(c), except there will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 317.313(l), and there will be no provision for main dish products;

(4) 21 CFR 101.62(d)(1);

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except there will be no provision for main dish products;

(6) 21 CFR 101.62(d)(2), except the meal products definition shall be as prescribed in § 317.313(l) and there will be no provision for main dish products;

(7) 21 CFR 101.62(d)(2)(i), except for the phrase "and contain 13 g or less of fat per reference amount customarily consumed";

(8) 21 CFR 101.62(d)(2)(i) (A) through (C);

(9) 21 CFR 101.62(d)(2)(ii), except for the phrase "and contain 13 g or less of total fat per reference amount customarily consumed, per labeled serving, and per 50 g (for dehydrated foods that are typically consumed when rehydrated with only water, the per 50 g refers to the 'as prepared' form)";

(10) 21 CFR 101.62(d)(2)(ii) (A) through (C);

(11) 21 CFR 101.62(d)(2)(iii)(E);

(12) 21 CFR 101.62(d)(4), except the meal products definition shall be as prescribed in 317.313(l) and there will be no provision for main dish products;

(13) 21 CFR 101.62(d)(4)(i) (A) through (C);

(14) 21 CAR 101.62(d)(4)(iii);

(15) 21 CFR 101.62(d)(5), except the meal products definition shall be as prescribed in 317.313(l), and there will be no provision for main dish product; and

(16) 21 CFR 101.62(d)(5)(i) (A) through (C).

* * * * *

§ 317.380 [Corrected]

22. On page 674, third column, the last line of § 317.380(c), the reference to "§ 317.360(b)(2) and (3)" is corrected to read "§ 137.360."

§ 381.409 [Corrected]

23. On page 676, first column, eighth line of § 381.409(b), the reference to "§ 381.500(b)" is corrected to read "§ 381.500(c)."

24. On page 676, second column, the second sentence of § 381.409(f)(1) is corrected to read "Nutrition information may be given in a linear fashion only if the label will not accommodate a tabular display and, in that case, any subcomponents declared shall be listed parenthetically after principal components (e.g., saturated fat shall be declared in parenthesis after total fat)."

25. On page 676, second column, last line, after the words "core nutrients" (§ 381.409(g)(1)), the following parenthetical phrase is added: "(i.e., calories, total fat, sodium, total carbohydrate, and protein)."

26. On page 677, second column, twelfth line of § 381.409(h)(5), the word "below" is corrected to read "above."

§ 381.412 [Corrected]

27. On pages 677 and 678, in § 381.412(b) Table 2, the column headings which read "Reference" are corrected to read "Reference Amount."

28. On page 678, in § 381.412(b) Table 2, under the Reference Amount for Ready-to-cook for the first Product Category entry (Entrees without sauce, * * *, "106g" is corrected to read "114g."

§ 381.413 [Corrected]

29. On page 680, first column, last line of § 381.413(i), the reference to "21 CFR 101.13(i)(1) through (3)" is corrected to read "21 CFR 101.13(i)."

30. On page 680, second column, last line of § 381.413(p), the reference to "101.13(p)(1)" is corrected to read "101.13(p)."

31. On page 681, second column, the section heading for § 381.454 is corrected to read as follows:

§ 381.454 Nutrient content claims for "good source," "high," and "more."

32. On page 681, second column, fifth line of § 381.454, the reference to "101.9(c)(11)(iv)" is corrected to read "101.9(c)(8)(iv)."

33. On page 681, second column, seventh line of § 381.454, the reference to "CFR 101.9(c)(12)(i)" is corrected to read "CFR 101.9(c)(9)."

34. On page 681, second column, eighth and ninth lines of § 381.454, the words "and unsaturated fatty acids" are removed.

35. On page 681, second column, the last line of § 381.454 is corrected to read" 101.54, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provision for main dish products."

§ 381.456 [Corrected]

36. On page 681, second column, the last line of § 381.456(a) is corrected to read "101.56, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provision for main dish products."

§ 381.460 [Corrected]

37. On page 681, second column, the last line of § 381.460 is corrected to read " with 21 CFR 101.60, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provisions for main dish products."

§ 381.461 [Corrected]

38. On page 681, second column, the last two line of § 381.461 are corrected to read "accordance with 21 CFR 101.61, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provision for main dish products."

39. On page 681, third column, § 381.462 is corrected to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content of poultry products.

(a) A claim about the level of fat, fatty acid, and cholesterol in a poultry product may be made on the label and in the labeling of the product in accordance with:

(1) 21 CFR 101.62(a);

(2) 21 CFR 101.62(b), except the meal products definition shall be as prescribed in § 381.413(1), there will be no provision for main dish products, and the following provision shall be added: "A synonym for the term "_____ percent fat free" is _____ percent lean";

(3) 21 CFR 101.62(c), except there will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 381.413(1) and there will be no provision for main dish products;

(4) 21 CFR 101.62(d)(1);

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except there will be no provision for main dish products;

(6) 21 CFR 101.62(d)(2), except the meal products definition shall be as prescribed in § 381.413(1) and there will be no provision for main dish products;

(7) 21 CFR 101.62(d)(2)(i), except for the phrase "and contain 13 g or less of fat per reference amount customarily consumed";

(8) 21 CFR 101.62(d)(2)(i) (A) through (C);

(9) 21 CFR 101.62(d)(2)(ii), except for the phrase "and contain 13 g or less of total fat per reference amount customarily consumed, per labeled serving, and per 50 g (for dehydrated foods that are typically consumed when rehydrated with only water, the per 50 g refers to the "as prepared" form)";

(10) 21 CFR 101.62(d)(2)(ii) (A) through (C);

(11) 21 CFR 101.62(d)(2)(iii)(E);

(12) 21 CFR 101.62(d)(4), except the meal products definition shall be as prescribed in § 381.413(1) and there will be no provision for main dish products;

(13) 21 CFR 101.62(d)(4)(i) (A) through (C);

(14) 21 CFR 101.62(d)(4)(iii);

(15) 21 CFR 101.62(d)(5), except the meal products definition shall be as prescribed in § 381.413(1), and there will be no provision for main dish product; and

(16) 21 CFR 101.62(d)(5)(i) (A) through (C).

* * * * *

§ 381.480 [Corrected]

40. On page 685, first column, the last line of § 381.480(c), the reference to "§ 381.460(b)(2) and (3)" is corrected to read "§ 381.460."

Done at Washington, DC, on August 4, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-19886 Filed 8-17-93; 8:45 am]

BILLING CODE 3410-DM

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-16-AD; Amendment 39-8657; AD 93-15-12]

Airworthiness Directives; SAAB-SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes, that currently requires replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits. This amendment requires replacement of additional life-limited components. This amendment is prompted by the identification of life limits for additional landing gear components on the affected airplanes. The actions specified by this AD are intended to prevent reduced structural capability of the MLG and the NLG.

DATES: Effective on September 17, 1993.

The incorporation by reference of SAAB Service Bulletin SAAB 340-32-066, Revision 2, dated June 12, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of September 17, 1993.

The incorporation by reference of SAAB-Scania Service Bulletin SAAB 340-32-066, Revision 1, dated October 17, 1990 (including Attachments 1 through 8), as listed in the regulations, was approved previously by the Director of the Federal Register as of March 16, 1992 (57 FR 5376, February 14, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S-581.88, Linkoping, Sweden. This information

may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–03–08, Amendment 39–8163 (57 FR 5376, February 14, 1992), which is applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes, was published in the **Federal Register** on April 12, 1993 (58 FR 19071). The action proposed to require replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 210 airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $4,700 per airplane. (These work hours and parts cost estimates are reiterated from AD 92–03–08.) This AD will not add any new additional economic burden on affected operators, other than minimal costs associated with replacing additional life-limited landing gear components identified in Attachment 9 of the referenced service bulletin. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,541,400, or $7,340 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8163 (57 FR 5376, February 14, 1992), and by adding a new airworthiness directive (AD), amendment 39–8657, to read as follows:

93–15–12 SAAB-Scania: Amendment 39–8657. Docket 93–NM–16–AD. Supersedes AD 92–03–08, Amendment 39–8163.

Applicability: Model SF340A series airplanes, serial numbers 004 through 159, inclusive; and SAAB 340B series airplanes, serial numbers 160 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the main landing gear (MLG) and the nose landing gear (NLG), accomplish the following:

(a) Remove the MLG and NLG components identified in the attachments (listed below) to SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after April 15, 1991 (the effective date of AD 91–07–02, Amendment 39–6932), whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN SAAB 340–32–066 ATTACHMENTS

AP Precision Hydraulics Service Bulletin Number	Date Issued	Attachment Number
AIR83530–32–07 ..	January 1990.	1
AIR83570–32–04 ..	January 1990.	2
AIR83572–32–01 ..	January 1990.	3
AIR84306–32–07 ..	January 1990.	4
AIR84350–32–01 ..	January 1990.	5
AIR83022–32–18 REV 1.	August 1990	6

(b) Remove the MLG and NLG components identified in the attachments (listed below) to SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after March 16, 1992 (the effective date of AD 92–03–08, Amendment 39–8163), whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN SAAB 340–32–066 ATTACHMENTS

AP Precision Hydraulics Service Bulletin Number	Date Issued	Attachments Number
AIR83064–32–02 ..	January 1990.	7
AIR84310–32–07 ..	January 1990.	8

(c) Remove the MLG and NLG components identified in the attachments (listed below) to SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after the effective date of this AD, whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN SAAB 340–32–066 ATTACHMENTS

AP Precision Hydraulics Service Bulletin Number	Date Issued	Attachment Number
AIR83530–32–07 Rev 1.	January 1992.	1
AIR83570–32–04 Rev 1.	January 1992.	2
AIR83572–32–01 Rev 1.	January 1992.	3
AIR84306–32–07 Rev 1.	January 1992.	4
AIR84350–32–01 Rev 1.	January 1992.	5
AIR83022–32–18 Rev 2.	January 1992.	6
AIR83064–32–02 Rev 1.	January 1992.	7
AIR84310–32–07 Rev 1.	January 1992.	8
AIR83608–32–01 ..	January 1992.	9

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modifications shall be done in accordance with SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, and SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990. Revision 2 of SAAB Service Bulletin SAAB 340–32–066 contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
Title Page, 1.	2	June 12, 1992.
Attachment 1		
1	1	January 1992.
2–3	Original	January 1990.
Attachment 2		
1–2	1	January 1992.
Attachment 3		
1	1	January 1992.
2	Original	June 1990.
Attachment 4		
1–2	1	January 1992.
Attachment 5		
1–2	1	January 1992.
Attachment 6		
1, 3	2	January 1992.
2, 4	Original	January 1990.
Attachment 7		
1, 3	1	January 1992.
2	Original	January 1990.
Attachment 8		
1	1	January 1992.
2–3	Original	January 1990.
Attachment 9		
1–2	Original	January 1992.

The incorporation by reference of SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, was approved previously by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 16, 1992 (57 FR 5376, February 14, 1992). Copies may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

This amendment becomes effective on September 17, 1993.

Issued in Renton, Washington, on August 4, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19953 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On June 9, 1993, the Commodity Futures Trading Commission ("Commission" or "CFTC") published for comment proposed amendments to Regulation 4.5 ("the proposal"),[1] which excludes certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO") under conditions specified in § 4.5 (c)–(f). Currently, § 4.5(a)(4) (i)–(iii) provides that the definition of the term "commodity pool" (as set forth in § 4.10(d)) shall not be construed to include certain pension plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and pension plans defined as government plans in ERISA. Therefore, these pension plans do not have to meet the conditions specified in § 4.5 (c)–(f). The proposed amendments would have extended this "pool exclusion" provision to certain ERISA and government employee welfare benefit plans. In addition, the Commission proposed to permit a person who is a "designated" fiduciary of a pension plan or an employee welfare benefit plan subject to ERISA to be excluded from the definition of the term CPO with respect to such person's operation of such plans and subject to compliance with the provisions of § 4.5. Only named fiduciaries of these ERISA plans currently are so excluded. Finally, the Commission clarified an issue which is related to the calculation of the five percent margin/premium operating constraint specified in § 4.5(c)(2)(i).

The comment period ended on July 9, 1993, and no written comments were received. However, in consideration of certain technical information provided by telephone by staff of the U.S. Department of Labor to Commission staff during the comment period, the Commission has determined to adopt the proposed amendments to Regulation 4.5 in slightly modified form, as discussed herein. Specifically, since under no employee welfare benefit plans subject to ERISA are plan benefits tied to the performance of the plan investments, under the final rule all such plans will be excluded from the term "commodity pool."

EFFECTIVE DATE: September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Supervisory Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4m(1) of the Commodity Exchange Act ("Act") makes it unlawful for any person to engage in business as

[1] 56 FR 32314 (June 9, 1993).

a CPO without being registered as such.[2] Part 4 of the Commission's regulations governs the operations and activities of CPOs through certain operational, disclosure, reporting and recordkeeping requirements set forth in subpart B thereof.[3]

Regulation 4.5 (50 FR 15868–84, April 23, 1985), which became effective on April 23, 1985, and was amended effective March 1, 1993 (58 FR 6371–74, January 28, 1993), provides for the exclusion from the CPO definition, under specified conditions, of certain otherwise regulated persons—registered investment companies, state or federally regulated financial depository institutions, state regulated insurance companies, and trustees and named fiduciaries of pension and employee welfare benefit plans covered by ERISA—in connection with their operation of "qualifying entities".

In addition, the rule provides that the definition of the term "commodity pool" (as set forth in § 4.10(d)) shall not be construed to include certain pension plans so that such plans do not have to meet these specified conditions. Specifically, § 4.5(a)(4) (i)–(iii) excludes from the commodity pool definition (1) noncontributory pension plans covered under title I of ERISA, (2) contributory defined benefit plans covered by title IV of ERISA (which commit no voluntary employee contributions to margin or premium for futures or option contracts), and (3) plans defined as governmental plans in section 3(32) of title I of ERISA.

II. Discussion

When the Commission amended § 4.5 earlier this year, it made the operators of employee welfare benefit plans covered by ERISA eligible for exclusion from the CPO definition under the conditions of the rule but did not exclude any such plans from the definition of a commodity pool. In the proposed rulemaking, the Commission stated that the arguments made previously for the current pension plan pool exclusion could be articulated for specific types of employee welfare benefit plans and that parallel treatment therefore should be afforded to such employee welfare benefit plans. However, the Commission now believes that such parallel treatment can be effected by excluding from the commodity pool definition all employee welfare plans that are subject to the fiduciary responsibility provisions of ERISA and that the distinctions that were made in the proposal between contributory and noncontributory plans are unnecessary. This because all employee welfare plans subject to ERISA specify benefits which are not tied to the performance of the plan investments regardless of whether employees contribute to the plan or not.

As proposed, the Commission also is amending § 4.5 to permit ERISA fiduciaries other than named fiduciaries to avail themselves of the CPO exclusion. Also as proposed, the final rule continues to permit such non-named fiduciaries to claim the exclusion through the notice of eligibility filed by the named fiduciary.

In addition to these amendments to § 4.5, the Commission wishes to reiterate herein the clarification concerning computation of the rule's five percent initial margin/premium constraint on the assumption or non-hedge positions. As stated in the proposed rulemaking, it is the Commission's intent that unrealized profits and losses on a qualifying entity's existing futures and option positions are to be accounted for in the calculation of the liquidation value of the entity's portfolio only when additional futures and option positions would be assumed. This will prevent funds from assuming additional positions when substantial amounts of money have previously been committed to existing positions but not require funds to liquidate positions as a result of market forces beyond the control of the fund. The Commission notes that its staff has received several informal inquiries on this aspect of the rule since the rule was amended earlier this year and believes that the clarification made herein is responsive to such questions.

III. Other Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted this rule in its proposed form and its associated information collection requirements to the Office of Management and Budget. While this rule has no burden, the group of rules (3038–0005) of which this is a part has the following burden:

Average Burden Hours Per Response—29.10
Number of Respondents—2,822
Frequency of Response—Monthly, Quarterly, Semi-Annually, Annually, on Occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB Washington DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in § 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that § 4.5 as amended would not have a significant economic impact on them because it would not require the refiling of a notice with the Commission. Moreover, the Commission notes that the amended rule potentially would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the amended § 4.5 will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 4k, 4l, 4m, 4n,

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[2] The term commodity pool operator is defined in section 1a(4) of the Commodity Exchange Act, as amended, to mean:

"[A]ny person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order."

[3] Sections 4.20–4.23. Commission rules referred to herein are found at 17 CFR ch. I (1992).

4o, 8a and 14 thereof, 7 U.S.C. 2, 6k, 6l, 6m, 6n, 6o, and 12a and 18, the Commission is amending part 4 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: Sections 1a, 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a, and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.5 is proposed to be amended by revising paragraphs (a)(4), (b)(4), the introductory text in paragraph (c), and adding a new paragraph (a)(4)(iv) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) * * *

(4) A trustee of, a named fiduciary of (or a person designated or acting as a fiduciary pursuant to a written delegation from or other written agreement with the named fiduciary) or an employer maintaining a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

(i) * * *

(ii) * * *

(iii) * * *

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974.

* * * * *

(b) * * *

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That such entity will be operated in the manner specified in paragraph (c)(2) of this section.

(c) Any person who desires to claim the exclusion provided by this section shall file with the Commission a notice of eligibility; *Provided, however,* That a plan fiduciary who is not a named fiduciary but who has an agreement with a named fiduciary as described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

* * * * *

Issued in Washington DC, on August 11, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19812 Filed 8–17–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fermenta Animal Health Co. under the National Academy of Sciences/National Research Council, Drug Efficacy Study Implementation Program. The supplemental application provides for: (1) Expanding the "me-too" use of oxytetracycline hydrochloride (OTC HCl) soluble powder to the drinking water of chickens for the control of infectious synovitis, chronic respiratory disease, air sac infections, and fowl cholera caused by bacteria susceptible to oxytetracycline (21 CFR 520.1660d(e)(1)(i)); and (2) decreasing the preslaughter withdrawal period of medicated turkey drinking water from 5 to 4 days.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, is the sponsor of NADA 38–200 which provides for use of OTC HCl soluble powder in the drinking water of turkeys for the control of specific diseases caused by bacteria susceptible to oxytetracycline. The firm has filed a supplemental application providing for: (1) Expanding the "me-too" use of OTC HCl soluble powder to the drinking water of chickens for the control of infectious synovitis, chronic respiratory disease, air sac infections, and fowl cholera caused by bacteria susceptible to oxytetracycline (21 CFR 520.1660d(e)(1)(i)); and (2) decreasing the preslaughter withdrawal period of medicated turkey drinking water from 5 to 4 days. The supplemental NADA is approved as of July 9, 1993, and 21 CFR 520.1660d is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. The agency is further amending this section by adding new paragraph (a)(5) to list the concentration of OTC HCl (i.e., the grams of drug product containing 1 gram of OTC HCl) in Fermenta's several products.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for an exclusivity period because no new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) conducted or sponsored by the applicant were essential to the approval of the supplemental NADA.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1660d is amended by adding new paragraph (a)(5), by revising paragraph (b)(3), and by revising the last two sentences in paragraphs (e)(1)(ii)(A)(*3*), (e)(1)(ii)(B)(*3*), and (e)(1)(ii)(C)(*3*) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) * * *

(5) Each 4.2 grams of powder contains 1 gram of OTC HCl (packets: 3.8 and 15.2 oz; pails: 4.74 and 23.7 lb).

(b) * * *

(3) No. 054273 for use of OTC HCl concentration in paragraph (a)(5) of this section in turkeys and chickens.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(*3*) * * * Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 017144 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054273.

(B) * * *

(*3*) * * * Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 017144 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054273.

(C) * * *

(*3*) * * * Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 017144 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054273.

* * * * *

Dated: August 4, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–19736 Filed 8–17–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Gallimycin® (Erythromycin) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Sanofi Animal Health, Inc. (Sanofi), providing for use of Gallimycin® (Erythromycin) Injection for the treatment of cattle for bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *Pasteurella multocida*. One supplement reflects compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group (DESI) evaluation of the drug's effectiveness and FDA's conclusions. The other provides for revising the tolerance for residues of erythromycin in edible tissues of beef cattle to 0.1 parts per million (ppm).

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210, filed two supplements to its approved NADA 12–123 Gallomycin® (Erythromycin) Injection. The NADA provides for the treatment of cattle for bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *P. multocida* susceptible to erythromycin. The drug contains 200 milligrams (mg) of erythromycin per milliliter of sterile nonaqueous solution for intramuscular use at 4 mg per pound of body weight once daily for up to 5 days. The application was originally approved on March 22, 1960.

The drug was the subject of a NAS/NRC DESI evaluation of effectiveness (DESI 12123V); the findings were published in the **Federal Register** of August 18, 1970 (35 FR 13157). NAS/NRC evaluated the drug as "probably effective" for use in the treatment of certain diseases in cattle, sheep, swine, horses, dogs, cats, chickens, and turkeys, when such diseases are caused by micro-organisms sensitive to erythromycin. NAS/NRC stated:

(1) Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified the claim must be dropped.

(2) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of."

(3) The dosages in large animals and frequency of administration in all species need to be documented. The dosage should be expressed on the basis of milligrams of erythromycin per pound of body weight.

(4) The resistance statement and statements claiming more effectiveness than other antimicrobial agents need to be deleted.

(5) Certain items in the labeling need revision including withdrawal times, cautions, misleading association of sensitivity statement and certain diseases, and the recommended use as an aid in curtailing weight loss due to handling and transporting cattle.

(6) Directions for use should provide for administering the preparation with sterile equipment.

(7) Directions for lay use are inadequate.

FDA concurred with the NAS/NRC findings.

The NAS/NRC evaluation is concerned only with the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

Sanofi filed a supplemental NADA which reflected compliance with the results of the NAS/NRC DESI review and FDA's conclusions.

Sanofi filed another supplement which revised the tolerance for residues of erythromycin in uncooked, edible beef cattle tissues to 0.1 parts per million (ppm). The current tolerance of zero is an outmoded expression of an intent to regulate residues at the sensitivity of the existing analytical method. The revised tolerance of 0.1 ppm is consistent with toxicological data supporting the current tolerance in uncooked, edible swine tissues.

The supplements are approved as of June 30, 1993, and the regulations are amended by revising §§ 522.820 and 556.230 (21 CFR 552.820 and 556.230) to reflect the approvals.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this

approval does not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approvals and conducted or sponsored by the applicant were not required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522
Animal Drugs.
21 CFR Part 556
Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.820 is revised to read as follows:

§ 522.820 Erythromycin injection.

(a) *Sponsor.* See 050604 in § 510.600(c) of this chapter.

(b) *NAS/NRC status.* The conditions of use have been reviewed by NAS/NRC and found effective.

(c) *Dogs and cats.*—(1) *Specifications.* Each milliliter of polyethylene glycol vehicle contains 100 milligrams of erythromycin base with 2 percent butyl aminobenzoate.

(2) *Conditions of use*—(i) *Amount.* 3 to 5 milligrams per pound of body weight, intramuscularly, two to three times daily, for up to 5 days.

(ii) *Indications for use*—(A) *Dogs.* For the treatment of bacterial pneumonia, upper respiratory infections (tonsillitis, bronchitis, tracheitis, pharyngitis, pleurisy), endometritis and metritis, and bacterial wound infections caused by *Staphylococcus* spp., *Streptococcus* spp., and *Corynebacterium* spp., sensitive to erythromycin.

(B) *Cats.* For the treatment of bacterial pneumonia, upper respiratory infections (rhinitis, bronchitis), secondary infections associated with panleukopenia, and bacterial wound infections caused by *Staphylococcus* spp. and *Streptococcus* spp., susceptible to erythromycin.

(iii) *Limitations.* Administer by deep intramuscular injection into the heavy muscles of the neck and limbs. Do not administer intravenously or intraperitoneally. Avoid subscutaneous use. Do not administer from moist or wet syringe. As with all antibiotics, appropriate in vitro culturing and susceptibility testing of samples taken before treatment should be conducted. Do not administer in conjunction with penicillin. As with all antibiotics, excessive continuous use may result in an overgrowth of nonsusceptible organisms. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Cattle.*—(1) *Specifications.* Each milliliter of nonaqueous, buffered, alcohol base sterile solution contains 200 milligrams of erythromycin base.

(2) *Related tolerances.* See § 556.230 of this chapter.

(3) *Conditions of use*—(i) *Amount.* 4 milligrams of erythromycin base per pound of body weight once daily for up to 5 days.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *Pasteurella multocida* susceptible to erythromycin.

(iii) *Limitations.* For intramuscular use only. Do not use in female dairy cattle over 20 months of age. Do not slaughter treated animals within 6 days of last treatment. To avoid excess trim, do not slaughter within 21 days of last injection.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Sec. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.230 is amended by revising paragraphs (a) and (b) to read as follows:

§ 556.230 Erythromycin.

* * * * *

(a) 0.1 part per million in uncooked edible tissues of beef cattle and swine.

(b) Zero in milk.

* * * * *

Dated: August 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–19739 Filed 8–17–93; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Transfer of Levo-alphacetylmethadol From Schedule I Into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) transfers the Schedule I narcotic, levo-alphacetylmethadol (LAAM), into Schedule II of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule II will be applicable to the manufacture, distribution, importation and exportation of LAAM. Additionally, the use of LAAM for the treatment of narcotic addiction will be subject to compliance with the requirements of the Narcotic Addict Treatment Act of 1974 and regulations concerning narcotic treatment programs.

EFFECTIVE DATE: August 18, 1993, except for those individuals who are currently registered with DEA and possess LAAM shall take inventory and meet recordkeeping requirements on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: LAAM is a synthetic opioid agonist. It will be marketed under the trade name of ORLAAM for the treatment of narcotic addiction. In a letter dated March 12, 1993, the Assistant Secretary for Health, acting on behalf of the Secretary of the Department of Health and Human Services, recommended to the Administrator of the DEA that LAAM be transferred from Schedule I into Schedule II of the CSA pending approval of a New Drug Application (NDA) for the use of LAAM in the

treatment of narcotic addiction. The Administrator of the DEA, in an April 28, 1993 **Federal Register** notice (58 FR 25790), proposed to transfer LAAM into Schedule II of the CSA if and when the Food and Drug Administration (FDA) approved an NDA for LAAM. This notice provided an opportunity for all interested persons to submit their comments, objections or requests for a hearing in writing on the proposed transfer of LAAM from Schedule I into Schedule II. Comments to the Administrator of the DEA were to be received on or before May 28, 1993. The Administrator received one comment supporting the transfer of LAAM into Schedule II but received no objections or requests for a hearing regarding this proposal. The FDA has notified the DEA that LAAM is safe and effective for use in the treatment of narcotic addiction as recommended in the approved labeling. The NDA for LAAM was approved on July 9, 1993.

Based on the information gathered and reviewed by the DEA, the scientific and medical evaluation and scheduling recommendation of the Assistant Secretary for Health, and the FDA's approval of the NDA for LAAM, the Administrator of the DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b) and 812(b), finds that:

(1) LAAM has a high potential for abuse;

(2) LAAM has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and

(3) Abuse of LAAM may lead to severe psychological or physical dependence.

The above findings are consistent with the placement of LAAM into Schedule II of the CSA. This transfer will apply to the *levo* isomer of alphacetylmethadol while all other isomers of alphacetylmethadol will remain in Schedule I.

The following regulations are effective with respect to LAAM on August 18, 1993, except for those individuals who are currently registered with DEA in accordance with part 1301 or 1311 of title 21 of the Code of Federal Regulations and possess LAAM shall take inventory and meet recordkeeping requirements on or before September 17, 1993:

1. *Registration.* Any person who manufactures, distributes, dispenses, delivers, imports or exports LAAM, or who conducts a narcotic treatment program using LAAM, or who engages in research or conducts instructional activities with LAAM, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. *Security.* LAAM must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulations.

3. *Labeing and packaging.* All labels and labeling for commercial containers of LAAM must comply with the requirements of §§ 1302.03–1302.05, 1302.07, and 1302.08 of title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for LAAM shall submit applications pursuant to 21 CFR 1303.11, 1303.12, and 1303.22.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of LAAM shall take an inventory pursuant to §§ 1304.11–1304.19 of title 21 of the Code of Federal Regulations.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.29 of title 21 of the Code of Federal Regulations shall do so regarding LAAM.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of title 21 of the Code of Federal Regulations shall do so regarding LAAM.

8. *Order forms.* All registrants involved in the procurement or distribution of LAAM shall comply with the order form requirements of part 1305 of title 21 of the Code of Federal Regulations.

9. *Prescriptions.* All prescriptions for products containing LAAM shall comply with §§ 1306.01–1306.07 and §§ 1306.11–1306.15 of title 21 of the Code of Federal Regulations.

10. *Importation and exportation.* All importation and exportation of LAAM shall be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

11. *Criminal liability.* Any activity with respect to LAAM not authorized by, or in violation of the CSA or the Controlled Substances Import and Export Act shall be unlawful. The applicable penalties before August 18, 1993, shall be those of a Schedule I narcotic controlled substance. On August 18, 1993 LAAM, for the purposes of criminal liability, shall be treated as a Schedule II narcotic substance.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the transfer of LAAM will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). Many of the regulatory requirements imposed on Schedule II substances are similar to those imposed on Schedule I substances. Additionally, substances in Schedule II may be used in medical treatment in the United States and this action will allow the marketing of the product ORLAAM that has been approved by FDA.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

In accordance with the provisions of 21 U.S.C. 811(a), this ruling to transfer LAAM from Schedule I to Schedule II is a formal rule making "on the record after opportunity for hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements for Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Record keeping requirements.

Under the authority vested in the Attorney General (21 U.S.C. 811(a)) and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), the Administrator hereby rules that 21 CFR part 1308 be revised as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is amended by revising paragraph (b)(4) to read as follows:

§ 1308.11 Scedule I.

* * * * *

(b) * * *

(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM)—9603

* * * * *

3. Section 1308.12 is amended by redesignating the existing paragraphs (c)(11) through (c)(25) as (c)(12) through (c)(26) respectively and adding a new paragraph (c)(11) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(11) Levo-alphacetylmethadol—9648

[Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM]

* * * * *

Dated: August 11, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–19818 Filed 8–17–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8483]

RIN 1545–AR05

Earnings and Profits of Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final income tax regulations relating to regulated investment companies (RICs) and real estate investment trusts (REITs). The regulations provide guidance to RICs and REITs that have earnings and profits (E&P) accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT. This guidance is needed to clarify the requirements for maintaining RIC or REIT status after a merger or other reorganization. The regulations also provide procedural guidance to REITs that distribute non-REIT E&P.

DATES: The effective date of these regulations is December 22, 1992.

These regulations apply to taxable years ending on or after December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Silver, 202–622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds §§ 1.852–12 and 1.857–11 to the Income Tax Regulations (26 CFR part 1) under sections 852 and 857 of the Internal Revenue Code (Code).

On December 23, 1992, the Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** (57 FR 61017). One commentator submitted written comments concerning the proposed regulations and requested a public hearing. A public hearing on those comments was held on March 1, 1993.

Explanation of Provisions

This document provides guidance to a RIC or REIT that has non-RIC or non-REIT E&P (that is, E&P that was accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT). The regulations clarify that a company is not taxable as a RIC or REIT for a taxable year if it has non-RIC or non-REIT E&P at the close of the taxable year, even if the E&P was succeeded to in a reorganization.

The regulations prescribe identical rules for both RICs and REITs. Under the regulations, a RIC that succeeds to non-RIC E&P is generally required to distribute that E&P if the RIC is to continue to be taxable as a RIC. Similarly, a REIT that succeeds to non-REIT E&P is generally required to distribute that E&P if the REIT is to continue to be taxable as a REIT.

The one commentator on the proposed regulations questioned the scope of the regulations and argued that the statutory language of section 852(a)(2) of the Code is directed at a non-RIC that elects RIC status and not at a non-RIC that attains RIC status through a merger or other reorganization with an existing RIC. The commentator suggested that the E&P acquired by a RIC when it acquires a non-RIC through a merger or other reorganization is not "accumulated" for purposes of section 852(a)(2) of the Code since, under section 381(c)(2), the RIC succeeds to the E&P on the date of the reorganization. The commentator also suggested that, in enacting section 852(a)(2), Congress was concerned with operating companies that would sell their assets used in business, purchase investment assets, and then elect RIC status without distributing accumulated E&P. The commentator reasoned that Congress was not concerned with this happening through a merger of a non-RIC into a RIC because the continuity of business enterprise requirement for a reorganization would not be satisfied.

As asserted by the commentator, the legislative history of section 852(a)(2) of the Code indicates that Congress was concerned with operating companies that sold their assets, invested the proceeds in passive investment assets, and obtained conduit treatment without distributing the earnings from the operating activities. H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1744 ff. (1984). There is no indication, however, that Congress intended to limit the application of the statute to that particular fact situation. The resulting statute clearly is broader than the transaction described in the legislative history and applies to all non-RIC E&P, no matter what its source.

The same concerns arise no matter how the non-RIC E&P comes to be held by a RIC. For instance, a historic investment business may not elect RIC status without distributing its non-RIC E&P. There is no reason to distinguish between that transaction and one in which the same company merges into a RIC. Moreover, any interpretation of the statute that distinguishes between corporations electing RIC status and corporations reorganizing into RICs would result in inconsistent tax treatment based solely on the form of the transaction.

After consideration of the comments, the Service continues to believe that the regulations are supported by legislative history and accurately reflect congressional concern. Section 852(a)(2) of the Code was intended to require a RIC that had non-RIC E&P, from whatever source, to distribute that E&P as a prerequisite to the RIC being taxable under subchapter M, part I.

The legislative history of section 857(a)(3) of the Code indicates that section 857(a)(3) serves a purpose similar to that of section 852(a)(2): Congress did not want companies to be taxable as REITs if they had non-REIT E&P. S. Rep. No. 313, 99th Cong., 2d Sess. 769, 775 (1986). As with RICs, the same principles apply to non-REIT E&P, whether it is carried over when the company converts to REIT status or it is succeeded to when a REIT reorganizes with a corporation that is not taxable as a REIT.

Finally, the regulations retain the rule in the proposed regulations that distribution rules similar to those in section 852(e) are to apply to REITs. No comments were received on this portion of the proposed regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nellie Howard of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.852–12 and 1.857–11 are added to read as follows:

§ 1.852–12 Non-RIC earnings and profits.

(a) *Applicability of section 852(a)(2)(A)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(A) unless—

(i) Part I of subchapter M applied to the company for all its taxable years ending on or after November 8, 1983; and

(ii) For each corporation to whose earnings and profits the investment company succeeded by the operation of section 381, part I of subchapter M applied for all the corporation's taxable years ending on or after November 8, 1983.

(2) *Special rule.* See section 1071(a)(5)(D) of the Tax Reform Act of 1984, Public Law 98–369 (98 Stat. 1051), for a special rule which treats part I of subchapter M as having applied to an investment company's first taxable year ending after November 8, 1983.

(b) *Applicability of section 852(a)(2)(B)*—(1) *In general.T1 An investment company does not satisfy section 852(a)(2)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that*—

(i) Were earned by a corporation in a year for which part I of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part I of subchapter M applied and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(iii) Were accumulated in a taxable year ending before January 1, 1984, by a corporation to which part I of subchapter M applied for any taxable year ending before November 8, 1983; or

(iv) Were accumulated in the first taxable year of an investment company that began business in 1983 and that was not a successor corporation.

(2) *Prior law.* For purposes of paragraph (b) of this section, a reference to part I of subchapter M includes a reference to the corresponding provisions of prior law.

(c) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

§ 1.857–11 Non-REIT earnings and profits.

(a) *Applicability of section 857(a)(3)(A).* A real estate investment trust does not satisfy section 857(a)(3)(A) unless—

(1) Part II of subchapter M applied to the trust for all its taxable years beginning after February 28, 1986; and

(2) For each corporation to whose earnings and profits the trust succeeded by the operation of section 381, part II of subchapter M applied for all the corporation's taxable years beginning after February 28, 1986.

(b) *Applicability of section 857(a)(3)(B); in general.* A real estate investment trust does not satisfy section 857(a)(3)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(1) Were earned by a corporation in a year for which part II of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied; or

(2) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part II of subchapter M applied and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied.

(c) *Distribution procedures similar to those for regulated investment companies to apply.* Distribution procedures similar to those in section 852(e) for regulated investment companies apply to non-REIT earnings and profits of real estate investment trusts.

(d) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: July 13, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 93–19573 Filed 8–17–93; 8:45 am]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4694–8]

Prevention of Significant Deterioration, Delegation of Authority; North Coast Unified Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco, has delegated to North Coast Unified Air Quality Management District, California, authority to implement the NO_2 increment program and implement the Federal Prevention of Significant Deterioration (PSD) Program for sources with stack heights greater than 65 meters.

DATES: The effective date of the initial delegation was August 30, 1985. The effective date of the revised delegation is January 8, 1993. A petition for review must be filed by October 18, 1993.

ADDRESSES: North Coast Unified Air Quality Management District, 2389 Myrtle Avenue, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Matt Haber, New Source Section (A–5–1), Stationary Source Branch, Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. Telephone: (415) 744–1254.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated authority under the provision which are found in 40 CFR 52.21(u), to the North Coast Unified Air Quality Management District to:

(A) Implement the PSD provisions for major stationary sources or major modifications which would either have stacks taller than 65 meters or would use "dispersion techniques" which commence construction after the effective date of this delegation; and

(B) Implement the Nitrogen Oxides provisions of the PSD rule promulgated

by EPA on October 17, 1988 at 53 FR 40656.

Information on this delegation together with a copy of the delegation is provided below: North Coast Unified Air Quality Management District received authority for PSD on August 30, 1985. The amended delegation became effective on January 8, 1993. The following letter and attached agreement represent the terms and conditions of the amended delegation.

Date: The PSD Delegation of Authority is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must filed by October 18, 1993.

Dated: August 10, 1993.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

January 11, 1993.

Wayne Morgan,

Air Pollution Control Officer, North Coast Unified Air Quality Management District, 2389 Myrtle Avenue, Eureka, CA 95501.

Dear Mr. Morgan: I am pleased to transmit the EPA–NCUAQMD Prevention of Significant Deterioration (PSD) delegation agreement. The agreement extends the District's PSD authority to include scources with stack heights greater than 65 meters, and the federal NO_2 increment provisions.

EPA will continue to provide any guidance or technical assistance that may be needed in the District's implementation of this agreement. EPA is committed to including the District in decisions relating to determinations of compliance or noncompliance with permits issued under this agreement, intended PSD enforcement actions, and in any intended revocation proceedings related to this agreement. We are also committed to maintaining, as I know you are, unobstructed channels of communication between our agencies. We look forward to a continuing partnership in the permitting program.

Sincerely,

Daniel W. McGovern,

John Wise,

for Regional Administrator.

U.S. EPA-North Coast Unified AQMD Agreement for Delegation of Authority for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21)

The undersigned, on behalf of the North Coast Unified Air Quality Management District (NCUAQMD or the District) and the United States Environmental Protection Agency (U.S. EPA), hereby agree to the delegation of authority of the administrative and enforcement elements of the stationary source review and the Nitrogen Dioxide Increment provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), from the U.S. EPA to the NCUAQMD, subject to the terms and conditions below. In the July 31, 1985 **Federal Register** (50 FR 30943), EPA approved the North Coast Air Basin Air Pollution Control Regulations which were adopted by NCUAQMD on November 3, 1982 and amended subsequently. The PSD portion of Regulation 1 was determined to generally meet the requirements of 40 CFR 52.21. However, EPA retained the authority to apply 40 CFR 52.21 for projects which are major stationary sources or major modifications under 40 CFR 52.21 and which would either have stacks taller than 65 meters or would use "dispersion techniques" as defined in 40 CFR 51.1. This delegation agreement authorizes NCUAQMD to implement the PSD provisions for any such sources or modifications which commence construction after the effective date of this delegation. In addition, this delegation agreement authorizes NCUAQMD to implement the Nitrogen Oxides provisions of the PSD rule promulgated by EPA on October 17, 1988 at 53 FR 40656. District Authorities to Construct (permits) issued in accordance with the provisions of § 52.21 will be deemed to meet Federal PSD permit requirements pursuant to the provisions of this delegation agreement. This delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

Permits

1. For those major stationary sources, or major modifications, with stack heights greater than 65 meters: In determining the degree of air pollutant emission limitation required under the applicable State Implementation Plan or this delegation agreement, no credit shall be given for: (1) That portion of any stack height which exceeds good engineering practice (GEP) or for (2) any other dispersion technique. (Refer to the enclosed June 1985 EPA Guideline for Determination of GEP Stack Height.)

2. District permits issued pursuant to this agreement must meet the requirements of 40 CFR 52.21. District Authorities to Construct must be issued prior to the beginning of actual construction, as that term is defined in 40 CFR 52.21(b)(11), as required by 40 CFR 52.21(i)(1).

3. EPA reserves authority for performing the review of the visibility impacts of new or modified major stationary sources that may adversely impact visibility in mandatory Class I areas, unless the District permits comply with EPA's final regulations regarding visibility review (50 FR 28544, July 12, 1985).

4. The North Coast AQMD shall forward to EPA, at or prior to the beginning of the public comment period, a summary of: (1) The findings related to each PSD application for new sources, major modifications and permit amendments (2) the justification for the District's preliminary determination, and (3) a copy of the draft PSD permit. Should there be any comments or concerns about the pending PSD permit, EPA will communicate them to the District as soon as possible prior to the close of the public comment period.

5. The North Coast AQMD shall forward to EPA copies of the proposed final action on PSD permit applications prior to issuance, as well as copies of substantive public comments. Any substantive public comments not incorporated will be addressed, and a summary of the response will be provided.

6. The North Coast AQMD will send to EPA a copy of all applicability determinations and justifications made that would involve PSD exemptions for new or modified major sources.

7. The North Coast AQMD will request EPA guidance on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.21 to the extent that implementation, review, administration or enforcement of these sections has not been covered by determinations or guidance sent to the District.

8. Pursuant to its authority under the Clean Air Act and upon reasonable notice, EPA may review the permits issued by the District under this agreement to ensure that the District's implementation of § 52.21 is consistent with the contemporaneous time frame and actual emissions baseline requirements of federal regulations (40 CFR 52.21(b)(3)).

9. Pursuant to provisions of section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)), EPA may not delegate and hereby retains its responsibilities to ensure that PSD permitting actions by the District are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify their critical habitats.

10. Pursuant to the provisions of 40 CFR 52.21(u)(2), the District shall consult with the appropriate State or local agency primarily responsible for managing land use prior to making any determinations under this Agreement.

11. The District shall conduct a periodic review of the NO_2 increment status for each section 107 area designated as attainment over which it has jurisdiction and shall prepare a summary report of that review. Such

review shall be made in accordance with current U.S. EPA guidance as provided to the District. Emissions from the following sources consume NO_2 increment: (1) Any new major stationary source or modification of a major stationary source on which construction begins after February 8, 1988; and (2) minor, area, and mobile sources, after the minor source baseline date as defined by 40 CFR 52.21. The initial review of the NO_2 increment status shall address the consumption of NO_2 increment, if any, between February 8, 1988, and the effective date of this Agreement. If NO_2 increment consumption has not begun, the summary report shall so state.

12. Pursuant to its authority under the Act and upon reasonable notice, EPA may review NO_2 increment consumption analyses performed by NCUAQMD under this agreement to ensure that the District's implementation of Regulation 1 is consistent with the requirements of the federal regulations (40 CFR 52.21).

13. District permits issued pursuant to this agreement which meet the requirements of 40 CFR 52.21 will be considered valid by EPA. The determination of whether District permits are in compliance or noncompliance with 40 CFR 52.21 shall be made by EPA.

14. The primary responsibility for enforcement of the PSD regulations in the District will rest with the District. The District will enforce the provisions that pertain to the PSD program, except in those cases where the rules and policy of the District are more stringent. In that case, the District may elect to implement the more stringent requirements. In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the District will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority. Nothing in this agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the District pursuant to this agreement.

General Conditions

1. This delegation may be amended at any time by the formal written agreement of both the NCUAQMD and the U.S. EPA, including amendment to add, change, or remove conditions or terms of this agreement.

2. If the District adopts revisions to Regulation 1 that EPA deems to be less stringent than 40 CFR 52.21 provisions or conditions of this agreement, EPA may take steps to revoke the delegation in whole or in part pursuant to condition 3 below or the parties may amend the agreement pursuant to condition 1 above. Any substantive amendments to Regulation 1 that are adopted by the District shall not be applied under this agreement until the agreement is amended so to provide.

3. If the U.S. EPA determines that the NCUAQMD is not implementing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after having provided written notification to the District of the deficiencies and allowed a reasonable time to respond, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NCUAQMD.

4. The permit appeal provisions of 40 CFR 124 shall apply to all appeals to the Administrator on permits issued by the NCUAQMD under this delegation (address enclosed). For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by the NCUAQMD shall contain a statement that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19: (1) The effective date of the permit is 30 days after the date of the final decision to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The NCUAQMD shall inform EPA Region IX in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by the NCUAQMD to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

6. This delegation of authority becomes effective upon the date of the signatures of both parties to this Agreement.

Dated: December 22, 1992.

Wayne Morgan,

North Coast Unified Air Quality Management District.

Dated: January 8, 1993.

John Wise,

U.S. Environmental Protection Agency.

[FR Doc. 93-19976 Filed 8-17-93; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6893

[NM-010-4210-06; NMNM 86724]

Withdrawal of Public Land for Juana Lopez Research Natural Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the paleontological resource values of Juana Lopez Research Natural Area. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico 87107, 505-761-8700.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management research natural area:

New Mexico Principal Meridian

T. 19 N., R. 1 W.,
Sec. 14, E½SE¼SW¼, and W½SW¼SE¼;

The area described contains 40 acres in Sandoval County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-19908 Filed 8-17-93; 8:45 am]

BILLING CODE 4310-FB-M

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43 CFR Public Land Order 6994

[OR-943-4210-06; GP3-249; OR-47551]

Withdrawal of National Forest System Lands for the North Fork John Day River-Elkhorn Drive Scenic Byway Corridor; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,189.37 acres of National Forest System lands in the Umatilla and Whitman National Forests from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the North Fork John Day River-Elkhorn Drive Scenic Byway Corridor. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the scenic, recreational, water quality, and fishery resource values of the North Fork John Day River-Elkhorn Drive Scenic Byway Corridor:

Willamette Meridian

Umatilla National Forest

T. 7 S., R. 35½ E.,
Sec. 34, those portions of the W½NE¼ and NE¼SE¼ outside the boundary for the North Fork John Day Wilderness.

Whitman National Forest

Tracts of land located within the following described townships and sections as more particularly identified and described below:
T. 7 S., R. 35½ E.,
Secs. 35 and 36.
T. 7 S., R. 36 E.,
Secs. 27 and 31 to 35, inclusive.

Beginning at a point on the west section line of sec. 35, T. 7 S., R. 35½ E., and 500 feet north of the centerline of Forest Development Road (FDR) 73 as shown on U.S.G.S. 7.5 minute topographic quadrangle maps Trout Meadows, Oreg. dated 1972 and photorevised 1983 and Crawfish Lake, Oreg. dated 1972 and photorevised 1984; Thence following a line in an easterly direction 500 feet north of the centerline of said FDR 73 as shown on said map to where said line intersects the north section line of sec. 33, T. 7 S., R. 36 E.; Thence easterly along said north section line to the northeast section corner of said sec. 33; Thence southerly along the east section line of said sec. 33 to a point on said east section line 500 feet north of the centerline of FDR 7300380 as shown on U.S.G.S. 7.5 minute topographic quadrangle map Crawfish Lake, Oreg. dated 1972 and photorevised 1984; Thence following a line in an easterly direction 500 feet north of the centerline of said FDR 7300380 as shown on said map and continuing in a southerly direction on a line 500 feet east of the centerline of USFS Trail 1640 from the point where said trail intersects FDR 7300380 as shown on said map to where said line intersects the north boundary of the North Fork John Day Wilderness in the S½, sec. 35, T. 7 S., R. 36 E.; Thence westerly along said north boundary of the North Fork John Day Wilderness to the northwest corner of said Wilderness in the SW¼, sec. 36, T. 7 S., R. 35½ E.; Thence southeasterly along the Wilderness boundary to a point on the Wilderness boundary which intersects a line 330 feet south of the centerline of the North Fork John Day River as shown on U.S.G.S. 7.5 minute topographic quadrangle maps Crawfish Lake, Oreg. dated 1972 and photorevised 1984 and Trout Meadows, Oreg. dated 1972 and photorevised 1983; Thence following a line in a westerly direction 330 feet south of the centerline of said river as shown on the said maps to where said line intersects the west section line of sec. 35, T. 7 S., R. 35½ E.; Thence northerly along said west section line to the point of beginning. The areas described aggregate 1,189.37 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-19909 Filed 8-17-93; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7581]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate

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Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program:			
New Hampshire, Lincoln, town of, Grafton County	330062	May 10, 1993	Sept. 7, 1979.
Nebraska, Otoe County, unincorporated areas	310462	July 2, 1993	—
Texas, Houston County, unincorporated areas	480872	do	Nov. 1, 1977.
Washington, SeaTac, city of, King County	530320	July 16, 1993	—
New Hampshire, Dummer, town of, Coos County	330201	July 20, 1993	Jan. 17, 1975.
Arkansas, Oppelo, city of, Conway County	050597	July 26, 1993	—
Texas, Vernon, city of, Wilbarger County	481652	do	—
Arkansas, Marvell, city of, Phillips County	050170	July 28, 1993	Mar. 12, 1976.
New Eligibles—Regular Program:			
Missouri, Weldon Spring, city of, St. Charles County	290901	July 2, 1993	Dec. 15, 1992.
Iowa, Des Moines County, unincorporated areas	190113	July 20, 1993	Feb. 17, 1982.
Massachusetts, Hamilton, town of, Essex County	250084	July 26, 1993	June 4, 1990.
Illinois, Pontoosec, village of, Hancock County	170272	July 30, 1993	Oct. 18, 1983.
Reinstatements—Regular Program:			
Ohio, Perry, village of, Lake County	390320	June 11, 1975, Emerg.; Dec. 15, 1978, Reg.; Mar. 19, 1990, Susp.; July 16, 1993, Rein.	Dec. 15, 1978.
Alabama, Hobson City, town of, Calhoun, County	010021	Apr. 16, 1975, Emerg.; Sept. 30, 1983, Reg.; Sept. 30, 1983, Susp.; July 16, 1993, Rein.	Sept. 30, 1983.
New York, Cherry Creek, village of, Chautauqua County.	360136	Aug. 8, 1978, Emerg.; Aug. 8, 1978, Reg.; Nov. 4, 1992, Susp.; July 26, 1993, Rein.	Feb. 15, 1978.
Westford, town of, Otsego County	361282	Oct. 12, 1976, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.; July 26, 1993, Rein.	June 1, 1988.
South Dakota, Montrose, city of, McCook County	460052	Dec. 16, 1975, Emerg.; Aug. 5, 1986, Reg.; Aug. 3, 1989, Susp.; July 20, 1993, Rein.	Aug. 5, 1986.
Massachusetts, Webster, town of, Worcester County.	250343	July 28, 1975, Emerg.; July 5, 1982, Reg.; June 16, 1993, Susp.; Aug. 4, 1993, Rein.	June 16, 1993.
Regular Program Conversions:			
Region II			
New York, Schoharie, town of, Schoharie County	361198	July 5, 1993, Suspension Withdrawn	July 5, 1993.
Schoharie, village of, Schoharie County	361061	do	July 5, 1993.
Region III			
Pennsylvania, Bristol, township of, Bucks County	420984	do	Dec. 18, 1979.
Rockdale, township of, Crawford County	422394	do	May 1, 1986.
South Shenango, township of, Crawford County	422397	do	July 7, 1985.
Turbot, township of, Northumberland County	420744	July 5, 1993, Suspension Withdrawn	Aug. 15, 1979.
Valley, township of, Chester County	421206	do	Aug. 1, 1984.
Venango, township of, Crawford County	421574	do	Feb. 1, 1985.
Woodcock, Borough of, Crawford County	422403	do	Jan. 17, 1985.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IV			
Georgia, Fannin County, unincorporated areas	130249	.....do	July 5, 1993.
Region I			
Maine, St. George, town of, Knox County	230229	July 19, 1993, Suspension Withdrawn	July 19, 1993.
Region IV			
North Carolina, Cherokee County, unincorporated areas.	370059	.....do	July 19, 1993.
Tennessee, Rogersville, city, Hawkins County	470096	.....do	July 19, 1993.
Region VI			
Oklahoma, Sand Springs, city of Tulsa and Saga Counties.	400211	.....do	July 19, 1993.

Code for reading fourth column:
Emerg.—Emergency; Reg.—Regular; Susp—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: August 11, 1993.

Donald L. Collins,

Assistant Administrator, Federal Insurance Administration.

[FR Doc. 93–19811 Filed 8–17–93; 8:45 am]

BILLING CODE 6718-21-P

44 CFR Part 65

[Docket No. FEMA–7074]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Boulder	City of Boulder	Aug. 5, 1993, Aug. 12, 1993, *Boulder Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, 1739 Broadway, Boulder, Colorado 80306.	July 6, 1993	080024
Georgia: DeKalb	Unincorporated areas	July 16, 1993, July 23, 1993, *Atlanta Journal.*	Ms. Liane Levetan, Chief Executive Officer of DeKalb County, 1300 Commerce Drive, Decatur, Georgia 30030.	July 9, 1993	130065 C
North Carolina: Wake	Town of Cary	Aug. 4, 1993, Aug. 11, 1993, *Cary News.*	The Honorable Koka E. Booth, Mayor of the Town of Cary, P.O. Box 1147, Cary, North Carolina 27512–1147.	July 27, 1993	370238 E
Texas: Denton	City of Denton	July 22, 1993, July 29, 1993, *Denton Record Chronicle.*	The Honorable Bob Castleberry, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	July 8, 1993	480194
Texas: Tarrant	City of Colleyville	July 22, 1993, July 29, 1993, *Colleyville News and Times.*	The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	June 23, 1993	480590
Texas: Tarrant	City of Fort Worth	July 23, 1993, July 29, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 16, 1993	480596
Texas: Tarrant	City of Fort Worth	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	June 28, 1993	480596
Texas: Tarrant	City of Westworth Village.	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable W.O. Henker, Mayor, City of Westworth Village, 311 Burton Hill Road, Fort Worth, Texas 76114.	June 28, 1993	480616
Texas: Tarrant	Town of Westover Hills	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable Sam Berry, Mayor, Town of Westover Hills, 5824 Merrymount Road, Fort Worth, Texas 76107.	June 28, 1993	480615

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19696 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropraite flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Cleburne (FEMA Docket No. 7069).	Unincorporated areas ..	May 5, 1993, May 12, 1993, *The Sun Times.*	The Honorable Claude Dill, County Judge, County Courthouse, Heber Springs, Arkansas 72543.	Apr. 6, 1993	050424
Arkansas: Van Buren (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 23, 1993, Apr. 30, 1993, *The Sun Times.*	The Honorable Dale Lynch, Van Buren County Judge, P.O. Box 160, Clinton, Arkansas 72031.	Apr. 6, 1993	050566

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Contra Costa (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 21, 1993, Apr. 28, 1993, *Contra Costa Times.*	The Honorable Tom Torlakson, Chairman, Contra Costa County Board of Supervisors, 300 East Leland Road, Pittsburg, California 94565.	Apr. 15, 1993	060025
California: San Diego (FEMA Docket No. 7067).	City of San Diego	Apr. 22, 1993, Apr. 29, 1993, *San Diego Daily Transcript.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Apr. 13, 1993	060295
California: Ventura (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 23, 1993, Apr. 29, 1993, *Star Free Press.*	Ms. Susan Lacey, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Apr. 13, 1993	060413
Colorado: Arapahoe (FEMA Docket No. 7067).	City of Greenwood Village.	Apr. 22, 1993, Apr. 29, 1993, *The Villagers Newspaper.*	The Honorable Rollin Barnard, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111–4591.	Apr. 16, 1993	080195
Connecticut: New London (FEMA Docket No. 7065).	Town of East Lyme	Mar. 5, 1993, Mar. 12, 1993, *The Day.*	Mr. David Cini, First Selectman of the Town of East Lyme, New London County, P.O. Box 519, Niantic, Connecticut 06357.	Feb. 26, 1993	090096 D
Idaho: Ada (FEMA Docket No. 7069).	Unincorporated areas ..	May 14, 1993, May 21, 1993, *Idaho Statesman.*	The Honorable Bern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.	Apr. 23, 1993	160001
Oklahoma: Oklahoma (FEMA Docket No. 7069).	City of Oklahoma City .	Apr. 22, 1993, Apr. 29, 1993, *The Journal Record.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Oklahoma City, Oklahoma 73102.	Mar. 18, 1993	405378
Texas: Tarrant (FEMA Docket No. 7067).	City of Fort Worth	Apr. 2, 1993, Apr. 8, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Mar. 24, 1993	480596

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19701 Filed 8–17–93; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and

modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Carefree (town), Maricopa County (FEMA Docket No. 7057)	
Grapevine, Wash:	
Approximately 1,300 feet upstream of the confluence with Rowe Wash	*2,517
Approximately 0.51 mile upstream of Father Kino Trail	*2,725
Galloway Wash-North Tributary:	
Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash	*2,311
Approximately 0.53 mile downstream of Father Kino Trail	*2,449
Approximately 0.44 mile downstream of Father Kino Trail	*2,462
Approximately 0.8 mile upstream of Father Kino Trail	*2,629
Rowe Wash:	
Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1	*2,537
Approximately 0.6 mile upstream of the confluence with Rowe Wash-Tributary 1	*2,704
Maps are available for review at Town Hall, 100 Easy Street, Carefree, Arizona.	
Cave Creek (town), Maricopa County (FEMA Docket No. 7057)	
Grapevine Wash:	
At the confluence with Rowe Wash	*2,482
Approximately 1,300 feet upstream of the confluence with Rowe Wash	*2,517
Galloway Wash-North Tributary:	
At the confluence with Unnamed Tributary to Galloway Wash	*2,218
Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash	*2,311
Approximately 0.53 mile downstream of Father Kino Trail	*2,449
Approximately 0.44 mile downstream of Father Kino Trail	*2,462
Ocotillo Wash-Tributary 1:	
Approximately 450 feet upstream of the confluence with Ocotillo Wash	*2,291
Approximately 0.84 mile upstream of the confluence with Ocotillo Wash-Tributary 1A	*2,450
Ocotillo Wash-Tributary 1A:	
At the confluence with Ocotillo Wash-Tributary 1	*2,319
Approximately 0.7 mile upstream of the confluence with Ocotillo Wash-Tributary 1	*2,453
Ocotillo Wash-Tributary 2:	
At the confluence with Ocotillo Wash	*2,226
At Echo Canyon Road	*2,274
Approximately 0.73 mile upstream of Echo Canyon Road	*2,402
Ocotillo Wash-Tributary 3:	
At the confluence with Ocotillo Wash	*2,164
At Echo Canyon Road	*2,264
Just upstream of Highland Road (upper crossing)	*2,374
Ocotillo Wash-Tributary 4:	
At the confluence with Ocotillo Wash	*2,124
Approximately 100 feet upstream of Schoolhouse Road	*2,215
Approximately 700 feet upstream of Echo Canyon Road	*2,314
Rowe Wash:	
Approximately 1,900 feet upstream of Echo Canyon Road	*2,315
At the confluence with Grapevine Wash	*2,484
Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1	*2,537
Willow Springs Wash:	
Approximately 700 feet downstream of the confluence with Willow Springs Wash-Tributary 2	*2,168
Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,218
Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,255
Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing)	*2,273
Willow Springs Wash-Tributary 1:	
At the confluence with Willow Springs Wash	*2,101
Approximately 1,250 feet downstream of Morningstar Road	*2,162
Willow Springs Wash-Tributary 2:	
At the confluence with Willow Springs Wash	*2,211

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream of the confluence with Willow Springs Wash	*2,211
Willow Springs Wash-Tributary 5:	
At the confluence with Willow Springs Wash	*2,053
Approximately 100 feet upstream of Spur Cross Road	*2,118
Just downstream of Schoolhouse Road	*2,200
Just downstream of Rockway Hills Drive	*2,251
Willow Springs Wash-Tributary 5A:	
At the confluence with Willow Springs Wash-Tributary 5	*2,119
Approximately 0.6 mile upstream of the confluence with Willow Springs-Wash-Tributary 5	*2,184
Maps are available for review at the Planning Department, Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.	
Chandler (city), Maricopa County (FEMA Docket No. 7063)	
Flooding behind Southern Pacific Spur:	
Approximately 100 feet southeast of the intersection of Southern Pacific Spur and West Tremaine Drive	*1,212
At the intersection of Santan Street and Sacramento Street	*1,217
Just east of the intersection of Germann Road and Southern Pacific Spur	*1,218
Approximately 200 feet northeast of the intersection of Chandler Heights Road and Southern Pacific Spur	*1,217
Approximately 500 feet east of the intersection of Rigge Road and Southern Pacific Spur	*1,216
Flooding behind Southeast branch of Southern Pacific Spur:	
Approximately 1,500 feet southeast of the intersection of Chandler Heights Road and Southern Pacific Spur	*1,219
Flooding behind Consolidated Canal East Branch:	
Approximately 200 feet south and 300 feet east of Chandler Heights Road and Consolidated Canal East Branch	*1,221
Just south of the intersection of McQueen Road and Consolidated Canal East Branch	*1,226
Approximately 700 feet south of the intersection of Germann Road and Consolidated Canal East Branch	*1,229
Just northeast of the intersection of Wilie Road and Consolidated Canal East Branch	*1,231
Just northeast of the intersection of Pecos Road and Consolidated Canal East Branch	*1,233
Flooding behind Consolidated Canal East Branch:	
Approximately 2,800 feet south and 700 feet east of the intersection of Ray Road and Cooper Road	*1,238
Maps are available for review at the Department of Public Works, 200 East Commonwealth Avenue, Chandler, Arizona.	
Coconino County (unincorporated areas) (FEMA Docket No. 7053)	
Oak Creek:	
Approximately 4,435 feet downstream of the confluence with Munds Canyon Creek	*4,485
Approximately 3,820 feet downstream of the confluence with Munds Canyon Creek	*4,500
Approximately 3,000 feet downstream of the confluence with Munds Canyon Creek	*4,519
Approximately 1,050 feet downstream of the confluence with Munds Canyon Creek	*4,552
Maps are available for review at Coconino County, Department of Community Development, 219 East Cherry, Flagstaff, Arizona.	
Gila Bend (town), Maricopa Country (FEMA Docket No. 7057)	
Gila Bend Canal:	
Approximately 300 feet east of the intersection of Old U.S. Highway 80 and Papago Street	#3
Approximately 100 feet east of the intersection of Watermelon Road and Gila Bend Canal	#2
Maps are available for review at the Town Administration Office, 644 West Pima Street, Gila Bend, Arizona.	
Gilbert (town), Maricopa County (FEMA Docket No. 7063)	
Flooding behind Southern Pacific Railroad:	
Approximately 200 feet south of the intersection of McQueen Road and Baseline Road	*1,213
At Guadalupe Road	*1,220
Just downstream of Western Canal	*1,226
Approximately 200 feet west of the intersection of Western Canal and Oak Street	*1,231
Approximately 500 feet east of the intersection of Southern Pacific and Roosevelt Water Conservation District Canal	*1,322
At Power Road	*1,332
Flooding behind Southern Pacific Spur:	
Approximately 200 feet southeast of the intersection of Southern Pacific Spur and Baseline Road	*1,212
Approximately 500 feet southeast of the intersection of Elliot Road and Southern Pacific Spur	*1,214
Flooding behind Consolidated Canal East Branch:	
Approximately 400 feet north of the intersection of Ray Road and 131st Street	*1,239
Approximately 2,000 feet southwest along Consolidated Canal from the intersection of Southern Pacific and Consolidated Canal East Branch	*1,240
At the intersection of Elliot Road and Lindsay Road	*1,243
Just southeast of the intersection of Baseline Road and Consolidated Canal East Branch	*1,247
Flooding behind Eastern canal:	
Approximately 1,200 feet south and 300 feet west of the intersection of Germann Road and Lindsay Road	*1,260
Approximately 600 feet south of the intersection of Ray Road and Eastern Canal	*1,267
Approximately 1,000 feet east of the intersection of Guadalupe Road and Eastern Canal	*1,271
Approximately 400 feet south of the intersection of Guadalupe Road	*1,279
Approximately 2,000 feet north of the intersection of Guadalupe Road and Eastern Canal	*1,279
Just south of the intersection of Baseline Road and South Greenfield Road	1,281
Maps are available for review at the Engineering Department, Municipal Center, 1025 South Gilbert Road, Gilbert, Arizona.	
Maricopa County (unincorporated areas) (FEMA Docket No. 7068)	
Aguila Farm Channel:	
At the confluence with Centennial Wash	*2,110
Just upstream of Eagle Eye Avenue	*2,162
Approximately 1.86 miles upstream of Eagle Eye Avenue	*2,197
North Branch Centennial Wash:	
At the confluence with Aguila Farm Channel	*2,119
Approximately 2.65 miles upstream of the confluence with Aguila Farm Channel	*2,184
Caterpillar Tank Wash:	
At the confluence with Agua Fria River	*1,266
At Caterpillar Tank Road	*1,397
Upstream of CAP Canal	*1,526
Cave Creek Wash:	
Approximately 1,700 feet upstream of the Granite Reef Aqueduct (CAP Canal)	*1,519
Just downstream of Cave Buttes Dam	*1,563
Approximately 740 feet upstream of Morning Star Road	*2,148
At the confluence with Cottonwood Creek	*2,291
At Spur Cross Road	*2,349
Centennial Wash:	
At La Paz-Maricopa County line	*2,050
At the confluence with Aguila Farm Channel	*2,110
Cline Creek:	
At the confluence with Skunk Creek	*2,002
At New River Road	*2,055
Approximately 2,350 feet upstream of 12th Street	*2,208
Tributary X5:	
At the confluence with Cline Creek	*2,092
Approximately 1,350 feet upstream of 14th Street	*2,258
Tributary C8:	
At the confluence with Cline Creek	*2,076
Approximately 630 feet upstream of 18th Street (at the confluence with Tributary X1)	*2,239
Tributary C8:	
At the confluence with Cline Creek	*2,076
Just downstream of 16th Street	*2,205
Approximately 1.53 miles upstream of 16th Street	*2,390
Tributary X1:	
Approximately 800 feet downstream of 20th Street (at the confluence with Tributary C8)	*2,338
Approximately 2,950 feet upstream of 22nd Street	*2,425
Tributary X2:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 200 feet downstream of 18th Street (at the confluence with Tributary C6)	*2,219
Approximately 1,200 feet upstream of 22nd Street	*2,422
Tributary X3:	
Approximately 370 feet downstream of 14th Street (at the confluence with Tributary C6)	*2,160
Approximately 580 feet upstream of 20th Street	*2,314
Tributary X4A:	
At the confluence with Tributary C6	*2,093
Approximately 1,200 feet upstream of 12th Street	*2,194
Tributary X4B:	
At the confluence with Tributary X4A	*2,126
Approximately 525 feet upstream of 12th Street	*2,190
Cottonwood Creek:	
At the confluence with Cave Creek Wash	*2,292
Just upstream of Sierra Vista Drive	*2,359
Approximately 1.5 miles upstream of the confluence with Cottonwood Creek-Tributary 1	*2,672
Approximately 3.25 miles upstream of the confluence with Cottonwood Creek-Tributary 1	*3,220
Cottonwood Creek Tributary 1:	
At the confluence with Cottonwood Creek	*2,410
Approximately 2,500 feet upstream of the confluence with Cottonwood Creek-Tributary 2	*2,545
Cottonwood Creek Tributary 2:	
At the confluence with Cottonwood Creek-Tributary 1	*2,452
Approximately 1,150 feet upstream of the confluence with Cottonwood Creek-Tributary 1	*2,507
East Garambuio Wash:	
At the confluence with Twin Buttes Wash	*1,420
Upstream of CAP Canal	*1,529
Fleming Springs Wash:	
At the confluence with Willow Springs Wash	*2,534
Approximately 800 feet upstream of Unnamed Road	*2,823
Gila River:	
Approximately 1.0 mile north of the intersection of Indian Road and Stout Road	*661
Approximately 3,400 feet downstream of Fornes Road	*661
At Pierpont Road	*679
At Woods Road	*698
Approximately 4,300 feet west of the intersection of Old U.S. Highway Eighty and Section Line 35/36 in Township 2 North and Range 5 West	*732
Just upstream of Gillespie Dam	*765
Flooding behind Gila Bend Canal:	
Approximately 2,000 feet east, then 1,200 feet downstream from the intersection of Old U.S. Highway eighty and Pierpont Road	*745
Approximately 2,000 feet east, then 1.0 mile upstream from the intersection of Old U.S. Highway Eighty and Pierpont Road	*753
Approximately 4,000 feet downstream of Gillespie Dam	#1
Approximately 2,800 feet east and 1,500 feet south of the intersection of Old U.S. Highway Eighty and Patterson Road	#1
Approximately 4,500 feet south and 3,500 feet east of the intersection of Old U.S. Highway Eighty and Fornes Road	#1
Approximately 200 feet north of the intersection of Old U.S. Highway Eighty and Section Line 35/36 in Township 2 South and Range 5 West	#2
Approximately 1,000 feet east of the intersection of Old U.S. Highway Eighty and Patterson Road	#2
Just north of Woods Road	#2
Approximately 2,500 feet south and 4,000 feet east of Old U.S. Highway Eighty and Pierpont Road	#2
Approximately 2,500 feet south and 4,300 feet east of the intersection of Old U.S. Highway Eighty and Fornes Road	#2
Approximately 100 feet east of the intersection of Watermelon Road and Gila Bend Canal	#2
Approximately 1.7 miles upstream of Woods Road	#3
Just south of Woods Road	#3
Approximately 1,500 feet south and 3,000 feet east of the intersection of Old U.S. Highway Eighty and Pierpont Road	#3
Approximately 8,000 feet south and 5,000 feet east of the intersection of Old U.S. Highway Eighty and Pierpont Road	#3
Approximately 500 feet east of the intersection of Old U.S. Highway Eighty and Cotton Center Road	#3
Grass Wash:	
At the Atchison, Topeka, and Santa Fe Railroad	*2,159
Approximately 200 feet upstream of U.S. Highway 60 & 70	*2,160
At Black Eagle Road	*2,174
Approximately 3.7 miles upstream of Black Eagle Road	*2,211
Jackrabbit Wash:	
Approximately 700 feet Canal	*1,358
At Wickenburg Road	*1,522
Approximately 200 feet upstream of Vulture Mine Road	*1,710
Unnamed Tributary of Jackrabbit Wash:	
At the confluence with Jackrabbit Wash	*1,450
Just downstream of Wickenburg Road	*1,508
At Vulture Mine Road	*1,703
Morgan City Wash:	
At the confluence with Agua Fria River	*1,419
Just upstream of Castle Hot Springs Road	*1,686
At the confluence of Tributary M–8	*1,864
At the confluence of Tributary M–5	*2,135
Approximately 2,900 feet upstream of the confluence of M–2 Tributary	*2,520
Rodger Creek:	
At the confluence with Skunk Creek	*1,916
At New River Road	*2,037
At the confluence with Tributary R–2	*2,282
Approximately 2.0 miles upstream of the confluence with Tributary R–2	*2,555
Rowe Wash:	
Approximately 1,925 feet downstream of the confluence with Rowe Wash-Tributary 2	*2,704
Approximately 25 feet downstream of the confluence with Roe Wash-Tributary 2	*2,844
Star Wash:	
At the confluence with Jackrabbit Wash	*1,367
Approximately 2.1 miles above the confluence with Jackrabbit Wash	*1,422
Tribby Wash:	
Approximately 1,350 feet upstream of CAP Canal (at Jomax Road Alignment)	*1,556
At Patton Road	*1,587
At White Wing Road	*1,669
Just downstream of the convergence with Tribby Wash-West Channel	*1,742
At Grand Avenue (U.S. Highway 60 & 89)	*1,855
Tribby Wash Middle Channel:	
At the convergence with Tribby Wash-West Channel	*1,751
At the divergence from Tribby Wash	*1,774
Tribby Wash West Channel:	
At the convergence with Tribby Wash	*1,743
At the divergence from Tribby Wash	*1,783
Twin Buttes Wash:	
At the confluence with Agua Fria River	*1,240
Just downstream of Beardsley Canal crossing	*1,318
At the confluence of East Garambuio Wash	*1,420
Upstream of CAP Canal	*1,518
Wagner Wash:	
At the confluence with Hassayampa River	*1,247
At the lower crossing of Sun Valley Parkway	*1,439
At the upper crossing of Sun Valley Parkway	*1,499
At the CAP Canal	*1,552
West Garambuio Wash:	
At the confluence of East Garambuio Wash	*1,424
Upstream of CAP Canal	*1,534
White Peak Wash:	
At the confluence with Twin Buttes Wash	*1,373
At the confluence of West Fork White Peak Wash	*1,458
Upsteam of CAP Canal	*1,533
West Fork White Peak Wash:	
At the confluence of White Peak Wash	*1,458
Upstream of CAP Canal	*1,533
Willow Springs Wash:	
Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,218
Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,255
Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing)	*2,273
At Sierra Vista Drive (lower crossing)	*2,334
Approximately 1,800 feet upstream of the confluence with Fleming Springs Wash and Unnamed Road	*2,612
Willow Springs Wash-Tributary 1:	
Approximately 1,250 feet downstream of Morningstar Road	*2,162
Just upstream of Spur Cross Road	*2,204
Approximately 2.1 miles upstream of Spur Cross Road	*2,519
Willow Springs Wash-Tributary 1A:	
At the confluence with Willow Springs Wash-Tributary 1	*2,210
Approximately 0.97 mile upstream of the confluence with Willow Springs Wash-Tributary 1	*2,490
Willow Springs Wash-Tributary 2:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream of the confluence with Willow Springs Wash	*2,211
At the confluence with Willow Springs Wash-Tributary 2A	*2,282
Approximately .94 mile upstream of the confluence with Willow Springs Wash-Tributary 2A	*2,467
Willow Springs Wash-Tributary 2A:	
At the confluence with Hollow Springs Wash-Tributary 2	*2,282
Approximately 1.0 mile upstream of the confluence with Willow Springs Wash-Tributary 2	*2,462
Willow Springs Wash-Tributary 4:	
At the confluence with Willow Springs Wash	*2,336
Approximately 1.1 miles upstream of the confluence with Willow Springs Wash	*2,562
Flooding behind CAP Canal:	
Just upstream of the confluence of Daggs Wash and CAP Canal	*1,382
Approximately 2,800 feet west and 1,200 feet south of the intersection of CAP siphon and Hassayampa River	*1,349
Approximately 3,500 feet west and 2,500 feet south of the intersection of CAP siphon and Hassayampa River	*1,355
Approximately 2,300 feet west and 500 feet south of CAP siphon and Hassayampa River	*1,353
500 feet north of the intersection of the CAP Canal and Wagner Wash	*1,552
Approximately 1,800 feet west of the intersection of CAP Canal and Jackrabbit Wash	*1,381
Approximately 3,300 feet east and 1,500 feet north of the intersection of CAP Canal and Jackrabbit Wash	*1,377
Approximately 7,000 feet west and 2,000 feet north of the intersection of CAP Canal and Wickenburg Hassayampa Road	*1,362
Flooding behind Consolidated Canal East Branch:	
Approximately 2,000 feet south and 700 feet east of the intersection of Chandler Heights Road and Consolidated Canal East Branch	*1,221
Approximately 3,000 feet south of the intersection of Queen Creek Road and McQueen Road	*1,228
Just northeast of the intersection of Queen Creek Road and Consolidated Canal East Branch	*1,229
Just northeast of the intersection of Germann Road and Consolidated Canal East Branch	*1,231
Approximately 500 feet south of the intersection of Frye Road and Cooper Road	*1,233
Approximately 2,000 feet south of the intersection of Ray Road and Consolidated Canal East Branch	*1,236
Approximately 200 feet east and 1,000 feet south of the intersection of Ray Road and Consolidated Canal East Branch	*1,237
Approximatley 500 feet east and 100 feet north of the intersection of Warner Road and Gilbert Road	*1,240
Just east of the intersection of Baseline Road and Consolidated Canal East Branch	*1,247
Flooding behind Eastern Canal:	
Just upstream of the intersection of Riggs Road and Gilbert Road	*1,250
Approximately 1,500 feet south of the intersection of Germann Road and Eastern Canal	*1,260
Approximately 500 feet east of the intersection of Val Vista Drive and Eastern Canal	*1,267
Approximately 1,400 feet east and 300 feet north of the intersection of Val Vista Drive and Ray Road	*1,268
Just north of the intersection of Warner Road and Greenfield Road	*1,273
Approximately 1,300 feet south of the intersection of Guadalupe Road and Eastern Canal	*1,278
Approximately 300 feet south and 100 feet east of the intersection of Baseline Road and South Greenfield Road	*1,281
Flooding behind Southern Pacific Railroad:	
Approximately 500 feet east and 200 feet south of the intersection of Southern Pacific and Williams Field Road	*1,301
At Signal Butte Road	*1,437
Approximately 2,100 feet upstream from Signal Butte Road	*1,446
Flooding behind Southern Pacific Spur:	
Approximately 200 feet northeast of the intersection of Southern Pacific Spur and Queen Creek Road	*1,218
Just northeast of the intersection of Ocotollo Road and Southern Pacific Spur	*1,221
Approximately 1,000 feet south and 500 feet east of the intersection of Consolidated Canal East Branch and Southern Pacific Spur	*1,219

Maps are available for review at the Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, Arizona.

Maricopa County (unincorporated areas) (FEMA Docket No. 7039)

Basin 6A:

Approximately 2,500 feet south and 2,000 feet east of the intersection of 64th Street and Lone Mountain Road	*1,221

Subject to flooding from more than one source:

Basin 3, 4A, 4B, 4C or 4D:	
At the intersection of Grovers Avenue and 68th Street	#1
Basin 5, 6A, 6B, or 6C:	
Approximately 1,900 feet west and 1,300 feet south of the northeast corner of Section 31 in Township 5 North Range 4 East	#1
Basin 6A, 6B, or 6C:	
Approximately 1,100 feet south of the intersection of 64th Street and Lone Mountain Road	#1

Maps are available for review at the Maricopa County Flood Control District, 3335 West Durango Street, Phoenix, Arizona.

Mesa (city), Maricopa County (FEMA Docket No. 7063)

Flooding Behind Southern Pacific Railroad:

At Power Road	*1,332
At the intersection of Sossaman Road and Germann Road	*1,356

Maps are available for review at the Engineering Department, 20 East Main Street, Suite 400, Mesa, Arizona.

Phoenix (city), Maricopa County (FEMA Docket No. 7039)

Subject to flooding from more than one source:

Basin 3, 4A, 4B, 4C or 4D:	
Approximately 500 feet west and 1,000 feet south of the intersection of Scottsdale Road and Beardsley Road	#1
Basin 4A, 4B, 4C or 4D:	
Approximately 1,000 feet west of the intersection of Scottsdale Road and Deer Valley Road	#1
Approximately 3,000 feet north of the intersection of Anderson Drive and 58th Way	#1
Basin 5, 6A, 6B, or 6C:	
Approximately 2,200 feet north and 500 feet west of the southeast corner of Section 31, in Township 5 North Range 4 East	#1

Maps are available for review at the Street Transportation Department, 125 East Washington Street, Phoenix, Arizona.

Phoenix (city), Maricopa County (FEMA Docket No. 7068)

Cave Creek:	
At the confluence with Moon Valley Wash	*1,281
Just downstream of 19th Avenue	*1,321
Just downstream of Bell Road	*1,363
Approximately 800 feet downstream of Central Avenue	*1,408
At Beardsley Road	*1,433
Approximately 1,700 feet upstream of the Granite Reef Aqueduct (CAP Canal)	*1,519
East Fork Cave Creek:	
At the confluence with Cave Creek	*1,329
At 7th Avenue	*1,346
Approximately 1,400 feet downstream of Central Avenue	*1,355

Maps are available for review at the Street Transportation Department, 125 East Washington Street, Phoenix, Arizona.

Queen Creek (town), Maricopa County (FEMA Docket No. 7063)

Flooding Behind Southern Pacific Railroad:	
Approximately 200 feet southeast of the intersection of Sossaman Road and Southern Pacific	*1,356
Just east of the intersection of Southern Pacific and Ellsworth Road	*1,396
At Signal Butte Road	*1,437

Maps are available for review at the Planning Department, Town Hall, 22350 South Ellsworth Road, Queen Creek, Arizona.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Scottsdale (city), Maricopa County (FEMA Docket No. 7039)	
Basin 1A:	
Approximately 2,500 feet west of the intersection of 104th Street and Section Line 29/32 of Township 4 North Range 5 East	#1
At the intersection of Mountain Spring Road and 112th Street	#3
Basin 2B:	
At the intersection of Pima Road and Beardsley Road	#1
At the intersection of Foothill Road and Church Road	#1
Basin 3:	
Approximately 900 feet south of the intersection of Alma School Road and Desert Highland Drive	#1
Basin 4A:	
Approximately 4,000 feet east of the intersection of Pima Road and Dynamite Boulevard	#1
Basin 4C:	
Approximately 2,000 feet north and 3,000 feet east of the intersection of Pima Road and Dynamite Boulevard	#2
Approximately 100 feet north and 1,700 feet east of the intersection of Pima Road and Dynamite Boulevard	#3
Basin 5:	
Approximately 2,600 feet west and 2,600 feet north of the intersection of Scottsdale Road and Dynamite Boulevard	*1,281
At the intersection of Lone Mountain Road and Section Line 23/24 in Township 5 North Range 4 East	*1,321
Basin 6A:	
Approximately 1,500 feet south and 200 feet west of the intersection of Scottsdale Road and Lone Mountain Road	*1,363
Approximately 2,000 feet north of the intersection of Lone Mountain Road and Section Line 13/14 in Township 5 North Range 4 East	*1,408
Approximately 500 feet north of the intersection of Pima Road and Dove Valley Road	*1,433
Basin 6C:	
Approximately 1,500 feet east of the intersection of Dove Valley Road and Section Line 13/14 in Township 5 of North Range 4 East	*1,519
Subject to flooding from more than one source:	
Basin 1A or 1B:	
Approximately 1,000 feet east and 2,500 feet south of the intersection of Beardsley Road and 96th Street	*1,329
Approximately 500 feet north of the intersection of Mountain Spring Road and 104th Street	*1,346
Basin 1A, 1B, 2A, or 2B:	
At the intersection of Old Verde Canal and Section Line 5/6 in Township 3 North Range 5 East	*1,355
Basin 2A or 2B:	
At the intersection of Beardsley Road and 96th Street	*1,356
At the intersection of Deer Valley Road and Church Road	*1,396
Basin 2A, 2B or 3:	
At the southwest corner of Section 36 in Township 4 North Range 4 East	*1,437
Basin 2B or 3:	
At the intersection of Union Hills Road and Section Line 35/26 in Township 4 North Range 4 East	#1
Basin 2B, 3, 4A, 4B, 4C or 4D:	
Approximately 2,000 feet east and 1,000 feet north of the intersection of Bell Road and Scottsdale Road	#1
Basin 3, 4A, 4B, 4C or 4D:	
At the intersection of Scottsdale Road and Beardsley Road	#1
Basin 4A or 4B:	
Approximately 2,500 feet east of the intersection of Pima Road and Dynamite Boulevard	#2
Basin 4A, 4B or 4C:	
At the intersection of Jomax Road and Wrangler Road	#1
Approximately 1,000 feet east and 1,000 feet south of the intersection of Pima Road and Dynamite Boulevard	#2
Approximately 1,500 feet east and 200 feet south of the intersection of Pima Road and Dynamite Boulevard	#3
Basin 4A, 4B, 4C or 4D:	
At the intersection of Pinnacle Peak Road and Los Portones Drive	#1
At the intersection of Happy Valley Road and Section Line ½ in Township 4 North Range 4 East	#2
Approximately 1,000 feet west of the intersection of Saddlehorn Road and Gate Road	#2
Approximately 100 feet south and 1,700 feet west of the intersection of Jomax Road and Wrangler Road	#1
Basin 6A, 6B or 6C:	
Approximately 300 feet north of the intersection of Scottsdale Road and Lone Mountain Road	#2
Maps are available for review at City Clerk's Office, 3939 Civic Center Plaza, Scottsdale, Arizona.	#3
Scottsdale (city), Maricopa County (FEMA Docket No. 7064)	
Cottonwood Creek:	
Approximately 3.25 miles upstream of the confluence with Cottonwood Creek-Tributary 1	#2
Approximately 3.28 miles miles upstream of the confluence with Cottonwood Creek-Tributary 1	#3
Grapevine Wash:	
Approximately 0.51 mile upstream of Father Kino Trail	#2
Approximately 0.53 mile upstream of Father Kino Trail	#3
Galloway Wash-North Tributary:	
Approximately 0.8 mile upstream of Father Kino Trail	#1
Approximately 0.95 mile upstream of Father Kino Trail	#3
Maps are available for review at the Transportation Panning Department, 7447 East Indian School Road, Scottsdale, Arizona.	#1
Surprise (town), Maricopa County (FEMA Docket No. 7058)	
Trilby Wash:	
At the concrete overchute at C.A.P. Canal	#2
Approximately 1,350 feet upstream of C.A.P. Canal (at Jomax Road Alignment)	#1
Maps are available for review at the Building Administration and Community Development Department, 15815 North Hollyhock Street, Surprise, Arizona.	
CALIFORNIA	
Sacramento (city), Sacramento County (FEMA Docket No. 7063)	
American River:	
Just upstream of confluence with the Sacramento River	*31
Just upstream of State Highway 160	*35
Approximately 8,000 feet upstream of Business Interstate 80	*42
Approximately 2,000 feet upstream of H Street	*46
Approximately 700 feet downstream of Watt Avenue	*52
American River (Detailed flooding adjacent to the River):	
At the intersection of N Street and 28th Street	*20
At the intersection of W Street and 33rd Street	*26
At the intersection of 35th Street and Folsom Boulevard	*29
At the intersection of 41st Street and M Street	*30
At the intersection of D Street and 46th Street	*32
Just north of the intersection of Business Route 80 and the Southern Pacific Railroad	*43
At the intersection of Callister and Carlson Drive	*44
Approximately 3,000 feet south of the intersection of Arden Way and Challenge Way	*44
At the intersection of Jordan Way and Jed Smith Drive	*45
At the intersection of Julliard Drive and Occidental Drive	*48
At the Mossglen Circle	*49
Arcade Creek:	
Just upstream of the confluence with Natomas East Main Drainage Canal	*36
Approximately 1,300 feet upstream of Rio Linda Boulevard	*37
Just upstream of Marysville Boulevard	*40
Deep Ponding:	
At the intersection of Deer Gren Drive and Red Deer Way	*15
Approximately 1,000 feet west of the intersection of Archean Way and Deer Creek Drive	*15
At the intersection of Decathalon Circle and Archean Way	*15
Approximately 500 feet west of the intersection of Deer Gren Drive and Red Deer Way	*15
Approximately 800 feet west of Black Trail Drive and Deer Gren Drive	*15
At the intersection of Deer Lake Drive and Evalita Way	*15
Approximately 300 feet east of the intersection of Deer Water Way and Sea Meadow Way	*15
Approximately 800 feet southeast of the intersection of Deer Lake Drive and SeaForest Way	*15
At the intersection of Amine Way and Chinquapin Way	*16
Approximately 2,000 feet southwest of the intersection of Emhardt Avenue and Franklin Boulevard	*15

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3,000 feet southwest of the intersection of Earnhardt Avenue and Franklin Boulevard	*15
Approximately 400 feet southwest of the intersection of Emhardt Avenue and Franklin Boulevard	*15
Approximately 400 feet north of the intersection of Eddington Court and Euler Way	*15
At the intersection of Deer Creek Drive and Decathlon Circle	*15
Approximately 200 feet south of the intersection of Mack Road and Archean Way	*15
South of the intersection of Deer Lake Drive and De la Vina Way	*15
Approximately 300 feet east of the intersection of Deer Water Way and Deer Lake Drive	*15
Approximately 50 feet southwest of the intersection of Valley Hi Drive and Chinquapin Way	*15
Approximately 800 feet south of the intersection of Deer Lake Drive and Sea Forest Way	*15
At the intersection of Valley Hi Drive and Halker Way	*15
Approximately 1,000 feet south of the intersection of La Coruna Drive and Valley Hi Drive	*15
Approximately 8,000 feet south of the intersection of 23rd Street and Craig Avenue	*15
At the intersection of Meadowview Road and 24th Street	*18
At the intersection of Meadowgate Drive and Winner Way	*18
At the intersection of Golfview Drive and Mangrum Avenue	*18
At the intersection of Greenhaven Drive and Pocket Road	*19
At the intersection of Havenside Drive and Florin Road	*19
At the intersection of Riverside Boulevard and Park Riviera Drive	*19
At the intersection of 26th Avenue and Euclid Avenue	*19
At the intersection of Freeport Boulevard and Wentworth Avenue	*24
At the intersection of 9th Avenue and 33rd Street	*24
At the intersection of P Street and 18th Street	*24
At the intersection of Truxel Road and West El Camino Avenue	*33
At the intersection of Del Paso Road and El Centro Road	*33
At the intersection of Orchard Lane and West El Camino Avenue	*33
At the intersection of Bercut Drive and Richards Boulevard	*35
At the intersection of North 12th Street and Sitka Street	*35
At the intersection of Bell Court Avenue and Englewood Street	*36
At the intersection of Taylor Street and Interstate Highway 880	*36
At the intersection of Norwood Avenue and Las Palmas Avenue	*36
Approximately 2,000 feet west of the intersection of 20th Street and A Street	*38
At the intersection of Response Road and Heritage Lane	*41
Dry Creek:	
Just upstream of the confluence with Natomas East Main Drainage Canal	*38
Approximately 8,700 feet upstream of the confluence with Natomas East Main Drainage Canal	*38
Lower Magpie Creek:	
Approximately 500 feet upstream of Natomas East Main Drainage Canal	*36
Just downstream of Rio Linda Boulevard	*36
Morrison Creek:	
Approximately 300 feet upstream of Elk Grove Florin Road	*47
Natomas East Drainage Canal:	
Just upstream of the confluence with Natomas Main Drainage Canal	*33
Just downstream of Elkhorn Boulevard	*33
Natomas East Main Drainage Canal:	
Approximately 1,000 feet upstream of Northgate Boulevard	*35
Just downstream of Interstate 880	*37
Approximately 2,500 feet upstream of Main Avenue	*38
Just downstream of the City of Sacramento Corporate Limits	*38
Natomas Main Drainage Canal:	
Just upstream of Garden Highway	*33
Just upstream of Interstate 880	*33
Natomas West Drainage Canal:	
Just upstream of the confluence with Natomas Main Drainage Canal	*33
Just downstream of Del Paso Road	*33
Robla Creek:	
Just upstream of the confluence with Natomas East Main Drainage Canal	*38
Just upstream of Rio Linda Boulevard	*39
Sacramento River:	
Approximately 4,000 feet downstream of Sleepy River Way	*26
Approximately 200 feet upstream of Evros River Court	*27
Approximately 1,200 feet upstream of 43rd Avenue	*29
Approximately 1,000 feet upstream of Darnel Way	*30
Approximately 3,000 feet upstream of I Street	*31
Shallow Flooding:	
Approximately 500 feet southeast of the intersection of Arden Way and Challenge Way	#2
At the intersection of Woodbine Avenue and 47th Avenue	#2
Approximately 500 feet north of the intersection of 47th Avenue and Romack Circle	#3
At the intersection of Kitchner Avenue and Zelda Way	#3
At the intersection of Edna Street and 24th Street	#3
At the intersection of Alvarado and Rivera Drive	#2
At the intersection of Arcade Boulevard and Clay Street	#1
Approximately 1,500 feet north of the intersection of Tunis Road and Barros Drive	#2
Approximately 800 feet south of the intersection of Arden Way and Evergreen Street	#1
Unionhouse Creek:	
Just upstream of the confluence with Morrison Creek	*15
Approximately 400 feet downstream of Franklin Boulevard	*15

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the Department of Public Works, Engineering Division, 927 10th Street, Room 100, Sacramento, California.	
Sutter County (unincorporated areas) (FEMA Docket No. 7063)	
Cross Canal (Distance upstream of confluence with Sacramento River):	
Just upstream	*39
Approximately 10,000 feet	*40
Approximately 20,000 feet	*40
Approximately 28,000 feet	*40
Curry Creek:	
Approximately 1,500 feet downstream of the Union Pacific Railroad	*41
Just upstream of the Union Pacific Railroad	*41
Just downstream of Pleasant Grove Road	*41
Approximately 2,000 feet upstream of Pleasant Grove Road	*41
Approximately 3,000 feet upstream of Pleasant Grove Road	*41
Deep Ponding:	
At the intersection of Riego Road and Power Line Road	*33
At the intersection of Pacific Avenue and Riego Road	*33
At the intersection of Sankey Road and Power Line Road	*33
At the intersection of Sankey Road and Pacific Avenue	*33
Just south of the intersection of Howsley Road and Route 70/90	*33
Howsley Creek:	
Approximately 5,000 feet downstream of the Union Pacific Railroad	*40
Approximately 1,000 feet downstream of the Union Pacific Railroad	*40
Approximately 1,000 feet upstream of the Union Pacific Railroad	*40
Approximately 3,800 feet upstream of the Union Pacific Railroad	*41
Natomas East Main Drainage Canal:	
Approximately 5,800 feet downstream of Riego Road	*39
Approximately 1,000 feet downstream of Riego Road	*39
Approximately 5,000 feet upstream of Riego Road	*40
Approximately 7,500 feet upstream of Riego Road	*40
Natomas East Main Drainage Canal (Shallow Flooding):	
Approximately 5,000 feet downstream of Riego Road, west overbank	#3
Approximately 3,000 feet downstream of Riego Road, west overbank	#2
Approximately 1,500 feet downstream of Riego Road, west overbank	#2
Approximately 2,000 feet upstream of Riego Road, west overbank	#2
Approximately 4,500 feet upstream of Riego Road, west overbank	#3
Approximately 6,000 feet upstream of Riego Road, west overbank	#3
Approximately 7,500 feet upstream of Riego Road, west overbank	#1
Approximately 1,000 feet downstream of Sankey Road	#2
Pleasant Grove Creek:	
Approximately 4,000 feet downstream of the Union Pacific Railroad	*41
Approximately 500 feet upstream of the Union Pacific Railroad	*41
Approximately 1,400 feet upstream of Fifield Road	*41

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pleasant Grove Creek Canal (Shallow Flooding):	
Just downstream of Sankey Road, west overbank	#1
Pleasant Grove Creek Bypass:	
Approximately 2,000 feet downstream of the Union Pacific Railroad	*40
Approximately 500 feet upstream of the Union Pacific Railroad	*40
Approximately 2,500 feet upstream of the Union Pacific Railroad	*41
Approximately 3,800 feet upstream of the Union Pacific Railroad	*41
Pleasant Grove Creek Canal:	
Just downstream of Howsley Road	*40
Approximately 400 feet upstream of Fifield Road	*41
Approximately 200 feet downstream of Key Road	*41
Just downstream of Sankey Road	*41
Sacramento River:	
Approximately 5,000 feet downstream of Riego Road	*36
Approximately 1,000 feet upstream of the confluence with Cross Canal	*39
Yolo Bypass	
Just downstream of the Freemont Weir	*36
Just upstream of the Freemont Weir	*39
Maps are available for review at the Sutter County Department of Public Works, Planning Department, 1160 Civic Center Boulevard, Suite A, Yuba City, California.	
West Sacramento (city), Yolo County (FEMA Docket No. 7063)	
Sacramento River:	
Approximately 36,000 feet downstream of Tower Bridge	*26
Approximately 26,000 feet downstream of Tower Bridge	*29
Approximately 13,500 feet downstream of Tower Bridge	*30
Approximately 4,000 feet upstream of Tower Bridge	*31
Approximately 1,400 feet downstream of Interstate 80	*31
Deep Ponding:	
At the intersection of Bevan Avenue and Jefferson Boulevard	*25
At the intersection of Interstate Highway 80/National Highway 40 and Harbor Boulevard	*25
Approximately 1,500 feet north of the intersection of Enterprise Boulevard and Lake Road	*27
At the intersection of F Street and Fifth Street	*28
At the intersection of Reed Avenue and Interstate Highway 80	*30
Sacramento River Deep Watership Channel:	
Approximately 24,000 feet downstream of Jefferson Boulevard	*25
Approximately 32,000 feet downstream of Jefferson Boulevard	*25
Yolo Bypass:	
Approximately 17,000 feet downstream of Interstate Highway 80/National Highway 40	*26
Approximately 3,500 feet downstream of Interstate Highway 80/Interstate Highway 40	*27
Maps are available for review at the Department of Public Works, Community Development Department, 1951 South River Road, West Sacramento, California.	
COLORADO	
Greenwood Village (city), Arapahoe County (FEMA Docket No. 7063)	
Goldsmith Gulch:	
Approximately 650 feet downstream of East Orchard Road	*5,643
Just upstream of East Orchard Road	*5,670
At the corporate limits just upstream of South Dayton Street	*5,670
Maps are available for review at the Planning and Zoning Department, City Hall, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado.	
Wellington (town), Larimer County (FEMA Docket No. 7063)	
Boulder Creek:	
At County Road 62	*5,180
At Burlington, Northern Railroad	*5,185
Just upstream of Cleveland Avenue	*5,194
Approximately 1,000 feet downstream of County Road 64	*5,205
Approximately 450 feet upstream of County Road 64	*5,213
Maps are available for review at Town Hall, 3735 Cleveland Street, Wellington, Colorado.	
CONNECTICUT	
Manchester (town), Hartford County (FEMA Docket No. 7057)	
Hop Brook:	
At a point approximately 600 feet upstream of the confluence with Hockanum River	*75
At a point approximately 1,525 feet upstream of South Main Street Ramp "E"	*225
Porter Brook:	
At the confluence with Hop Brook	*225
At a point approximately 120 feet upstream of the confluence with Hop Brook	*227
Birch Mountain Brook:	
At the confluence with Hop Brook	*225
At a point approximately 70 feet upstream of the confluence with Hop Brook	*225
Folly Brook:	
At a point approximately 1,500 feet upstream of the confluence with Hop Brook	*114
At a point approximately 5,750 feet upstream of the confluence with Hop Brook	*118
Globe Hollow Brook:	
At the confluence with Hop Brook	*187
At a point approximately 560 feet upstream of the confluence with Hop Brook	*187
Maps are available for inspection at the Department of Planning, 494 Main Street, Manchester, Connecticut 06045.	
IDAHO	
Canyon County (unincorporated areas) (FEMA Docket No. 7063)	
Boise River:	
Approximately 1,300 feet upstream of the confluence with the Snake River	*2,187
Approximately 200 feet downstream of Hexon Road	*2,212
Just downstream of Parma-Roswell Road (State Highway 18)	*2,223
Approximately 400 feet downstream of U.S. Highway 95	*2,245
Just downstream of Notus-Greenleaf Road	*2,297
Approximately 100 feet upstream of Union Pacific Railroad	*2,396
Approximately 900 feet downstream of Canyon-Ada County Line	*2,451
Mill Slough:	
At the upstream corporate limits of City of Middleton	*2,396
Approximately 1,700 feet upstream of the upstream Corporate Limits of City of Middleton	*2,400
Maps are available for review at the Department of Planning and Zoning, 1115 Albany, Caldwell, Idaho.	
Middleton (city), Canyon County (FEMA Docket No. 7063)	
Boise River:	
At the west corporate limits located approximately 1,300 feet to the west of Whitin Lane	*2,380
At the confluence of Mill Creek	*2,383
Maps are available for review at City Hall, City of Middleton, 15 North Dewey, P.O. Box 176, Middleton, Idaho.	
Notus (city), Canyon County (FEMA Docket No. 7063)	
Boise River:	
Approximately 6,100 feet downstream of Notus-Greenleaf Road	*2,287
At the intersection of Alpine Avenue and First Street	*2,296
At Notus-Greenleaf Road	*2,297
Approximately 1,450 feet upstream of Notus-Greenleaf Road	*2,300
Maps are available for review at City Hall, 375 Notus Road, Notus, Idaho.	
Parma (city), Canyon County (FEMA Docket No. 7063)	
Boise River:	
Along Main Street 1,200 feet west of Roswell Boulevard, just north of the railroad	*2,217
At Parma Airport	*2,223
At the extreme southeastern corner of the City of Parma	*2,226
Maps are available for review at City Hall, 305 North Third Street, Parma, Idaho.	
KANSAS	
Erie (city), Neosho County, (FEMA Docket No. 7058)	
Puckets Run Creek:	
Approximately 1,300 feet downstream of Fifth Street	*855

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Third Street	*889
Just upstream of Carville Street	*891
Approximately 100 feet downstream of Atchison, Topeka and Santa Fe Railroad	*896
Maps are available for review at the City Clerks Office, Erie City Hall, 224 South Main Street, Erie, Kansas.	
LOUISIANA	
Alexandria (city), Rapides Parish (FEMA Docket No. 7064)	
Chatlin Lake Canal:	
Approximately 500 feet upstream of Midway Avenue	*73
At the confluence of Mill Bayou	*74
At the confluence of West Tributary Chatlin Lake Canal	*74
West Tributary Chatlin Lake Canal:	
At the confluence with Chatlin Lake Canal	*74
Approximately, 1,500 feet upstream of Texas and Pacific Railroad	*75
Hynson Bayou:	
Just upstream of the confluence of Horseshoe Drainage Canal	*73
Approximately 500 feet upstream of Texas and Pacific Railroad	*74
Just upstream of Lee Street	*76
Approximately 500 feet downstream of Bryn Mawr Drive, at a pedestrian bridge	*78
Just upstream of Georges Lane	*79
Maps are available for review at the City of Alexandria Utility Building, 1546 Jackson Street, Alexandria, Louisiana.	
MISSOURI	
Rolla (city), Phelps County (FEMA Docket No. 7063)	
Burgher Branch:	
Approximately 70 feet upstream of the corporate limits	*967
Approximately 100 feet upstream of Soest Road	*993
Approximately 120 feet upstream of 10th Street	*1,015
Just downstream of old St. James Road	*1,058
Approximately 0.57 mile upstream of old St. James Road	*1,065
East Fork of Burgher Branch:	
At the confluence with Burgher Branch	*987
Approximately 60 feet upstream of Soest Road	*991
Approximately 80 feet upstream of 10th Street	*1,024
Burgher Branch Tributary:	
Approximately 270 feet upstream of the confluence with Burgher Branch	*1,002
Just downstream of Holloway Street	*1,046
Approximately 100 feet downstream of Iowa Street	*1,055
Dutrocarter Creek:	
At the corporate limits, located approximately 900 feet downstream of State Highway "O"	*977
Just upstream of Pete Avenue	*1,031
Approximately 100 feet upstream of State Highway 72	*1,050
Approximately 80 feet downstream of Burlington Northern Railway	*1,069
Dutrocarter Creek:	
At the confluence with Dutrocarter Creek	*900
Just upstream of State Highway "O"	*985
At the corporate limits located approximately 0.25 mile upstream of State Highway "O"	*992
Spring Creek Tributary:	
At the limit of detailed study located at the downstream most corporate limits	*963
Just downstream of Meadow Brook Drive	*973
Approximately 50 feet downstream of Vichy Road	*991
At the upstream limit of detailed study, located approximately 0.4 mile upstream of Vichy Road	*1,019
Maps are available for review at City Hall, City of Rolla, 102 West 9th Street, Rolla, Missouri.	
West Plains (city), Howell County (FEMA Docket No. 7063)	
North Fork Howell Creek:	
At the confluence with Howell Creek	*964
Just upstream of Thornburgh Street	*969
Approximately 1,700 feet upstream of Thornburgh Street (streamside/landside of levee)	*973/*972
Approximately 600 feet downstream of Burlington Northern Railroad (streamside/landside of levee)	*975/*972
Just downstream of Burlington Northern Railroad	*976
South Fork Howell Creek:	
Approximately 2,700 feet upstream of Outer Road	*1,018
Just upstream of Unnamed Road	*1,023
Approximately 800 feet upstream of Unnamed Road	*1,026
Burton Branch:	
Approximately 1,000 feet upstream of Davis Drive	*1,011
Approximately 600 feet upstream of Harrison Road	*1,021
Approximately 4,000 feet upstream of U.S. Highway 63	*1,031
Maps are available for review at the City Hall, 1910 Holiday Lane, West Plains, Missouri.	
NEVADA	
Carson City (city), Independent City (FEMA Docket No. 7058)	
Carson River:	
Approximately 8,000 feet downstream of the confluence of Clear Creek	*4,639
At the confluence of Clear Creek	*4,645
Approximately 7,000 feet upstream of the confluence of Clear Creek, at the Corporate Limits	*4,646
Clear Creek:	
Approximately 800 feet upstream of the confluence with Carson River	*4,645
Maps are available for review at the Community Development Department, 2621 Northgate Lane, Suite 62, Carson City, Nevada.	
NEW YORK	
Rockland (town), Sullivan County (FEMA Docket No. 7061)	
Beaver Kill:	
At its confluence of Willowemoc Creek	*1,276
At approximately 1.46 miles upstream of Old State Route 17	*1,306
Little Beaver Kill:	
At confluence with Willowemoc Creek	*1,421
Approximately 150 feet upstream of County Route 178	*1,467
Willowemoc Creek:	
At confluence with Beaver Kill	*1,277
Approximately 0.6 mile upstream of County Route 178	*1,444
Stewart Brook:	
At confluence with Willowemoc Creek	*1,290
Approximately 530 feet upstream of confluence with Willowemoc Creek	*1,290
Cattail Brook:	
At confluence with Willowemoc Creek	*1,421
Approximately 350 feet upstream of confluence with Willowemoc Creek	*1,421
Maps available for inspection at the Town Clerk's Office, Main Street, Livingston Manor, New York.	
NORTH CAROLINA	
Burke County (unincorporated areas) (FEMA Docket No. 7061)	
Linville River:	
At confluence with Lake James	*1,207
Approximately 2.6 miles upstream of State Route 126	*1,308
Maps available for inspection at the Burke County Resource Center, Morganton, North Carolina.	
Davis County (unincorporated areas) (FEMA Docket No. 7061)	
Yadkin River:	
Approximately 1,300 feet downstream of Idols Dam	*700
Approximately 500 feet upstream of Interstate Route 40	*710
Carter Creek Tributary:	
At confluence of Carter Creek	*701
Approximately 0.65 mile upstream of confluence of Carter Creek	*701
Carter Creek:	
Within community	*701
Bailey Creek:	
Approximately 2,500 feet downstream of SR 1621	*701
Approximately 1,800 feet upstream of Private Drive	*721
Smith Creek:	
At confluence with Carter Creek	*701
Approximately 1,000 feet upstream of Interstate Route 40	*749
Maps available for inspection at the Davie County Courthouse, 123 South Main Street, Mocksville, North Carolina.	
Winston-Salem (city), Forsyth County (FEMA Docket No. 7063)	
Hanes Park Branch:	
Just downstream of Buena Vista Road	*830
Approximately 1,300 feet upstream of Robinhood Road	*830
Monarcas Creek:	
Just downstream of Bethabara Road	*801
Just upstream of Bethabara Road	*807
Just downstream of North Cliffe Drive	*822
Just upstream of North Cliffe Drive	*829
Just upstream of University Parkway	*840

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Building Inspector's Office, 100 Liberty Walk, Winston-Salem, North Carolina.	
NORTH DAKOTA	
Forest River (city), Walsh County (FEMA Docket No. 7063)	
Forest River:	
Approximately 2,400 feet downstream of Burlington Northern Railroad	*858
Just upstream of County Road 6	*863
Approximately 3,500 feet upstream of Soo Line Railroad	*865
Maps are available for review at the First American Bank, Main Street, Forest River, North Dakota.	
OHIO	
Powell (vil), Delaware County (FEMA Docket No. 7064)	
Bartholomew Run:	
Approximately 1,000 feet downstream of confluence of Tylers Run	*820
Approximately 50 feet upstream of CSX Transportation	*921
Tylers Run:	
At downstream corporate limits	*830
At upstream corporate limits	*861
Retreat Run:	
Approximately 100 feet downstream of State Route 315	*775
Approximately 600 feet upstream of Retreat Lane West	*910
Maps available for inspection at the City Hall, 260 Village Park Drive, Powell, Ohio.	
OKLAHOMA	
Chickasha (city), Grady County (FEMA Docket No. 7058)	
Congo Creek:	
Approximately 1,500 feet downstream of the Chicago, Rock Island and Pacific Railroad	*1,086
Just upstream of First Street	*1,092
Just upstream of Ninth Street	*1,125
Just downstream of Country Club Road	*1,163
Just upstream Brookpart Lane	*1,192
Congo Creek East Branch:	
Just upstream of the Chicago, Rock Island and Pacific Railroad	*1,088
Just upstream of Grand Avenue	*1,090
Just downstream of H.E. Bailey Turnpike	*1,098
Lightner Diversion of Congo Creek:	
At the confluence with Congo Creek	*1,106
Approximately 860 feet upstream of the confluence with Congo Creek	*1,107
At the divergence from Congo Creek	*1,112
9th Street Diversion of Congo Creek:	
At the confluence with Congo Creek	*1,117
Approximately 300 feet upstream of the confluence with Congo Creek	*1,123
At the divergence from Congo Creek	*1,124
Congo Creek Middle Branch:	
Just downstream of Country Club Road	*1,149
Approximately 950 feet upstream of Country Club Road	*1,154
Approximately 4,350 feet upstream of Country Club Road	*1,175
Line Creek:	
Just upstream of Highway 62	*1,098
Approximately 1,000 feet downstream of Iowa Avenue	*1,105
Just downstream of 29th Street	*1,110
Just upstream of 29th Street	*1,112
Approximately 4,280 feet upstream of 29th Street	*1,121
Rock Hollow Creek:	
Just upstream of Dan Allen Drive	*1,100
Just downstream of Frisco Avenue	*1,101
Approximately 3,140 feet upstream of 29th Street	*1,103
West Side Creek:	
At the confluence with Line Creek	*1,108
Just upstream of Georgia Avenue	*1,120
Just upstream of Grand Avenue	*1,136
Just upstream of Carolina Avenue	*1,149
Approximately 3,100 feet upstream of Country Club Road	*1,170
West Side Creek Tributary A:	
At the confluence with West Side Creek	*1,156
Just upstream of 29th Street	*1,166
Just upstream of the upper dam	*1,196
Maps are available for review at City Hall, 101 North Sixth Street, Chickasha, Oklahoma.	
PUERTO RICO	
Rio Culebrinas Basin (FEMA Docket No. 7061)	
Rio Guayabo:	
Approximately 110 meters upstream of confluence with Bahia De Aguadilla (Atlantic Ocean)	*2.7
At the confluence of Rio Culebra	*3.1
Rio Culebra:	
Approximately 3.4 kilometers above confluence with Bahia De Aguadilla (Atlantic Ocean)	*12.0
At the confluence with Rio Guayabo	*3.1
Cano Guayabo:	
At confluence with Rio Culebra	*7.1
Approximately 1.5 kilometers upstream of confluence with Rio Culebra	*9.5
Unnamed Stream:	
At confluence with Cano Guayabo	*9.5
Approximately 510 meters upstream of confluence with Cano Guayabo	*10.1
*Elevations in Meters (Mean Sea Level)	
Maps available for inspection at the Minillas Governmental Center, De Diego Avenue, Stop 22, North Building, 13th Floor, San Juan, Puerto Rico.	
RHODE ISLAND	
North Smithfield, Town (Providence County) (FEMA Docket No. 7063)	
Cmoldall Brook:	
At confluence with Blackstone River	*116
Aprpoximately 630 feet upstream of Old Great Road	*279
Maps available for inspection at the Town Clerk's Office, Memorial Town Building, 1 Main Street, Slatersville, Rhode Island.	
UTAH	
Carbon County (unincorporated areas) (FEMA Docket No. 7063)	
Price River:	
At the confluence with Cardinal Wash	*5,462
Approximately 200 feet upstream of 400 East Street	*5,490
Approximately 500 feet downstream of the confluence of Gordon Creek	*5,586
Approximately 2,800 feet upstream of Third West Street and North of Highway 6	*5,517
Meads Wash:	
At the upstream side of Highway 6	*5,487
At the Denver and Rio Grande Western Railroad	*5,499
Approximately 2.3 miles upstream of the Denver and Rio Grande Western Railroad	*5,672
Maps are available for review at the Planning and Zoning Department, 65 South First East, Price, Utah.	
Price (city), Carbon County (FEMA Docket No. 7063)	
Price River:	
Approximately 400 feet downstream of Carbon Avenue	*5,498
Just downstream of 300 West Street	*5,506
Approximately 600 feet upstream of 100 North Street	*5,530
At the intersection of 300 South Street and Seventh West Street	*5,517
Approximately 200 feet north of the intersection of 100 North Street and Price River Drive	*5,528
Meads Wash:	
Approximately 1,050 feet downstream of 400 South Street	*5,502
Just upstream of 100 North Street	*5,570
Approximately 1,300 feet upstream of 800 North Street	*5,660
Maps are available for review at the Department of Public Works, 432 West 600 South, Price, Utah.	
St. George (city), Washington County (FEMA Docket No. 7063)	
Fort Pierce Wash:	
Approximately 3,300 feet downstream of Fort Pierce Drive	*2,552
Approximately 1,400 feet downstream of Fort Pierce Drive	*2,561
Approximately 100 feet upstream of Fort Pierce Drive	*2,569
Approximately 2,350 feet upstream of Fort Pierce Drive	*2,578
Maps are available for review at the Office of the City Engineer, 175 East 200 North, St. George, Utah.	
VIRGINIA	
Montgomery County (unincorporated areas) (FEMA Docket No. 7058)	
Roanoke River:	
Approximately 725 feet downstream of County boundary (in Roanoke County)	*1,180
Approximately 200 feet downstream of confluence of North and South Forks Roanoke River	*1,194
North Fork Roanoke River:	
At upstream side of Norfolk and Western Railway	*1,196
Approximately 300 feet upstream of Interstate Route 81	*1,232
South Fork Roanoke River:	
Approximately 300 feet upstream of confluence with Roanoke River	*1,195
Approximately 250 feet upstream of Norfolk and Western Railway	*1,214

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Montgomery County Courthouse, Franklin and Main Street, Christiansburg, Virginia.	
Pulaski (town), Pulaski County (FEMA Docket No. 7063)	
Peak Creek:	
Approximately 0.8 mile downstream of the confluence of Thorn Spring Branch	*1,865
At upstream side of Commerce Street	*1,934
Tract Fork:	
At the confluence with Peak Creek	*1,918
At upstream side of Altoona Road	*1,929
Sproules Run:	
At the confluence with Peak Creek	*1,904
Approximately 0.10 mile downstream of U.S. Route 11 (5th Street)	*1,909
Maps available for inspection at the Town Engineer's Office, 42 1st Street, N.W., Pulaski, Virginia.	
WISCONSIN	
Unincorporated areas of Jackson County (FEMA Docket No. 7058)	
East Fork Black River:	
Just upstream of Pray Road	*930
About 0.5 mile downstream of Cranberry Road	*961
Maps available for inspection at the County Courthouse, 307 Main Street, Black River Falls, Wisconsin.	
Maiden Rock (village), Pierce County (FEMA Docket No. 7055)	
Mississippi River:	
Within community	*682
Unnamed Coulee:	
At mouth	*682
About 440 feet downstream of County Highway S, at bottom of steps	*758
About 400 feet downstream of County Highway S, at top of steps	*765
About 90 feet upstream of County Highway S	*783
Maps available for inspection at the Village Hall, Maiden Rock, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-19702 Filed 8-17-93; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 76

[MM Docket No. 92-266; FCC No. 93-389]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rules; limited temporary stay.

SUMMARY: The Commission has temporarily stayed the effectiveness of its rules implementing the rate regulation provisions of the Cable Act of 1992 with respect to small cable television systems—that is, those systems that have 1,000 or fewer subscribers. This action is necessary to enable the Commission to review petitions for reconsideration that indicate that the rules create administrative burdens and costs of compliance that disproportionately affect small cable systems. This action is intended to permit the Commission to make any necessary modifications to its rules consistent with the Cable Act's directive that the Commission reduce the administrative burdens and costs of compliance for small cable systems. This action does *not* affect cable television systems that have more than 1,000 subscribers. For those systems, the rate regulation rules are effective September 1, 1993, as scheduled.

EFFECTIVE DATE: The effective date of the amendments to parts 0 and 76, published at 58 FR 29737 (May 21, 1993), extended to October 1, 1993, by an order, published at 58 FR 33560 (June 18, 1993), and moved to September 1, 1993 by an order, published at 58 FR 41042 (August 2, 1993), is temporarily stayed for those cable systems that have 1,000 or fewer subscribers. This limited, temporary stay is effective September 1, 1993 and will remain in effect until the Commission terminates the stay and establishes a new effective date in an order on reconsideration addressing the administrative burdens and costs of compliance for small cable systems. The Commission will publish in the Federal Register the new effective date of the rules with respect to small cable systems at that time.

FOR FURTHER INFORMATION CONTACT: Richard K. Welch, Office of the General Counsel, 202-632-6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order segment of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC No. 93-389, adopted August 10, 1993, and released August 10, 1993. A synopsis of the Further Notice of Proposed Rulemaking segment of this decision is published elsewhere in this issue of the Federal Register. The complete text of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at 202-857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Memorandum Opinion and Order

The Commission's Memorandum Opinion and Order addresses three petitions to stay the effectiveness of the Commission's rules implementing the rate regulation provisions of the Cable Act of 1992. The Commission adopted these rules in a Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177 (released May 3, 1993), 58 FR 29736 (May 21, 1993). In an Order released July 27, 1993, MM Docket No. 92-266, FCC 93-372, 58 FR 41042 (Aug. 2, 1993), the Commission established September 1, 1993, as the effective date of the rules. The petitions seek a stay of the rules until the Commission resolves pending petitions for reconsideration and completes a parallel rulemaking concerning cost-of-service standards for cable systems subject to rate regulation, or, in the alternative, until judicial review of the rules is complete.

The Commission denies the petitions to the extent they seek a universal stay of the rules for all cable systems nationwide. The petitioners have not met the standards for grant of such a stay. In particular, the petitioners have not demonstrated that the cable industry will suffer irreparable harm if a stay is not granted.

Nevertheless, the Commission has decided that a limited, temporary stay of the rules with respect to small cable systems—those systems that have 1,000 or fewer subscribers—will serve the public interest. The Cable Act of 1992 directs the agency to design its rules to reduce the administrative burdens and costs of compliance for cable systems that have 1,000 or fewer subscribers. Moreover, the Commission has received numerous petitions for reconsideration indicating that the rules as currently drafted pose inordinate burdens for small cable systems. Accordingly, a temporary stay of the rules with respect to cable systems that have 1,000 or fewer subscribers will give the Commission an opportunity to evaluate fully the arguments and proposals currently before the Commission on ways to reduce administrative burdens and costs of compliance that may disproportionately affect small cable systems. The temporary stay for small

cable systems will remain in effect until the effective date of the Commission's order on reconsideration addressing the application of the rules to small cable systems. Thus, to the extent that the petitions for stay request this limited relief, the Commission grants the petitions.

The Commission emphasizes that the temporary, limited stay does not apply to cable systems that have more than 1,000 subscribers. For such systems, which do not fall within the statutory definition of "small system," the rate regulation rules will take effect September 1, 1993, as scheduled.

Ordering Clauses

Accordingly, *it is ordered*, That the petitions for stay filed by InterMedia Partners, and the Coalition of Small System Operators, Prime Cable of Alaska, L.P., and the Community Antenna Television Association, Inc., on July 28, 1993, and Century Communications Corp. on August 2, 1993, are granted to the limited extent they seek a stay of the cable television rate regulation rules with respect to cable systems that have 1,000 or fewer subscribers, and otherwise are denied.

It is further ordered, That the Commission's cable television rate regulation rules adopted in Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 93–177 (released May 3, 1993), 58 FR 29736 (May 21, 1993) are temporarily stayed with respect to those cable systems with 1,000 or fewer subscribers. This limited stay shall remain in effect until the effective date of the Commission's order on reconsideration addressing issues concerning administrative burdens and costs of compliance for small cable systems.

List of Subjects in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–19889 Filed 8–13–93; 4:54 pm]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 27A)]

Rail General Exemption Authority: Used Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule.

SUMMARY: The Commission is exempting from its regulation the rail transportation of used motor vehicles (STCC 41–118). The Commission has concluded that regulation of the rail transportation of the commodities contained in this code is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from the abuse of market power. Accordingly, as set forth below, these commodities are being added to the list of exempt commodities in our regulations.

EFFECTIVE DATE: This action is effective on September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: In a decision served January 25, 1993, and published January 26, 1993, (58 FR 6104), we instituted a proceeding to consider whether to exempt from the provisions of 49 U.S.C. subtitle IV the rail transportation of used motor vehicles (STCC 41–118).[1] We concluded, preliminarily, that exemption of the rail transportation of STCC 41–118 commodities would be consistent with the 49 U.S.C. 10505(a) exemption criteria.

Comments were filed by the Association of American Railroads (AAR) on behalf of itself and its member railroads, Mitsubishi Motor Sales of America, the American Automobile Manufacturers Association, and General Motors Corporation. All commenters support the proposed exemption.

The rail carrier exemption provision, 49 U.S.C. 10505(a), requires us to exempt "a person, class of persons, or a transaction or service" when we find: (1) That regulation is not necessary to carry out the rail transportation policy in 49 U.S.C. 10101a (RTP); and (2) either (a) that the transaction or service is of limited scope, or (b) that regulation is not needed to protect shippers from the abuse of market power.

We believe the exemption of used motor vehicles satisfies the section 10505(a) exemption criteria. We find that regulation here is not necessary to carry out the RTP, and that the exemption would be consistent with, and in furtherance of, the RTP. The comments affirm that effective and vigorous competition exists for the rail transportation of used vehicles. The exemption would further enhance this competition by providing railroads more flexibility to quote and change their prices in response to market demand and to offer immediate service to shippers based on those new prices. The ability to respond quickly and efficiently to the marketplace would thus allow railroads to become more effective competitors in response to shipper needs and other forms of transportation. The exemption would permit railroads to operate more efficiently by eliminating unnecessary administrative costs and paperwork burdens associated with tariff and contract summary filing for used motor vehicles.

The exemption would not bring about any public health or safety concerns, discourage fair wages or safe and suitable working conditions, result in predatory pricing or practices, or discourage energy conservation. The exemption would allow, to the maximum extent possible, competition to establish reasonable rates; minimize the need for Federal regulatory control; and ensure the continuation of a sound transportation system.

We find that regulation of the rail transportation of used motor vehicles (STCC 41–118) is not needed to protect shippers from the abuse of market power. We find that regulation is not needed to protect shippers from the abuse of market power. Indeed, some of the largest shippers of used motor vehicles have filed comments in support of the exemption. This transportation consists primarily of fleet sales resulting from manufacturers' "buy-back" programs from large rental fleets and from other vehicles being disposed of by rental companies. The traffic generally originates in major automobile rental markets and is typically transported in carload lots or multiple carload shipments to numerous geographically dispersed distribution centers throughout the country.

The transportation of used motor vehicles is a highly competitive market. AAR notes that before 1991, rail carriers played only a small role in the transportation of these commodities with the vast amount of traffic handled by motor carriers. Since 1991, rail traffic for used motor vehicles has expanded but still represents a small fraction of

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[1] The 1993 version of the Standard Transportation Commodity Code, Tariff 6001–U (effective January 1, 1993) defines STCC code 41–118 as "USED VEHICLES." It includes three subgroupings: STCC 41–118–20 is defined as "BUSES, MOTOR, PASSENGER, OR MOTOR COACHES, USED TITLED VEHICLES"; STCC 41–118–30 is defined as "MOTOR VEHICLES, AUTO, USED TITLED PASSENGER, SU [set up]"; and STCC 41–118–35 is defined as "MOTOR VEHICLES, AUTOMOBILE, USED TITLED VEHICLES, FREIGHT, SU, INCLUDING MOTOR VEHICLE TRACTORS, DRIVING TRUCKS FOR FREIGHT VEHICLES." Thus, the commodities classified under STCC 41–118 can be described as "used motor vehicles."

the market.[3] Motor carriers remain powerful competitors for this traffic. An exemption would enable the railroads to become more effective competitors for this traffic and thus give shippers additional options. There is also intense rail-to-rail and geographic competition because shippers have numerous options in selecting origin and destination points for used motor vehicle traffic and thus need not limit rail transportation to only one carrier.

Based upon these findings, we are exempting the rail transportation of used motor vehicles (STCC 41–118) from the provisions of 49 U.S.C. subtitle IV by adding this STCC code to the list of exempted commodities found at 49 CFR 1039.11. The exemption is subject to the exceptions contained in 49 CFR 1039.11(a), which generally relate to car hire and car service, and in 49 CFR 1039.11(b), which requires carriers to continue to comply with applicable accounting and reporting requirements.

Environmental and Energy Consideration

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that this action will not have a significant impact on a substantial number of small entities. The shippers of used motor vehicles are, by and large, major corporations.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: August 4, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Vernon A. Williams,

Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a) is amended by adding to the chart, after STCC No. 39, STCC No. 41–118 (Used vehicles):

[3] Mitsubishi states, however, that it uses rail for about 90% of its used vehicle traffic.

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	* * * *	*
41 118	6001–U, eff. 1–1–93.	Used vehicles.
*	* * * * *	

[FR Doc. 93–20113 Filed 8–17–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC05

Endangered and Threatened Wildlife and Plants: Coffin Cave Mold Beetle (Batrisodes texanus) and the Bone Cave Harvestman (Texella reyesi) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; technical corrections.

SUMMARY: Recently published taxonomic studies have revealed that two listed species, the Kretschmarr Cave mold beetle (*Texamaurops reddelli*) and the Bee Creek Cave harvestman (*Texella reddelli*), each comprise two species. The next republication of the List of Endangered and Threatened Wildlife will include two additional entries, the Coffin Cave mold beetle (*Batrisodes texanus*) and the Bone Cave harvestman (*Texella reyesi*), to ensure that recognition and protection under the Endangered Species Act (Act) is provided for species equivalent to the originally listed taxa. This rule describes the technical basis for these changes to the List.

EFFECTIVE DATE: September 17, 1993.

ADDRESSES: Lisa O'Donnell, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, 611 East 6th Street, room 407, Austin, Texas 78701.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, telephone: 512/482–5436.

SUPPLEMENTARY INFORMATION:

Background

A final rule listing five species of Texas karst invertebrates as endangered was published by the U.S. Fish and Wildlife Service (Service) on September 16, 1988 (53 FR 36029–36033). That final rule included the Kretschmarr Cave mold beetle (*Texamaurops reddelli* Barr and Steeves) and the Bee Creek Cave harvestman (*Texella reddelli* Goodnight and Goodnight). Recently published taxonomic revisions by Chandler (1992) and Ubick and Briggs (1992) present evidence that each of these species, as formerly recognized, actually comprises two species.

The final rule listing the Kretschmarr Cave mold beetle (*Texamaurops reddelli*) indicated that this species was known from Kretschmarr, Amber, Tooth, and Coffin caves in Travis and Williamson counties, Texas. Coffin Cave, Williamson County, was the northern-most locality recognized for that species. The Coffin Cave population was subsequently placed in the newly described species *Batrisodes texanus*, along with specimens from a few Williamson County localities to the south of Coffin Cave (Chandler 1992). The genera *Texamaurops* and *Batrisodes* are very similar, the key difference being a "pencil" of appressed setae present on the metatibiae in *Batrisodes*, but absent in *Texamaurops*. Detection of this character requires magnification of the appropriate appendages. All known localities of *Texamaurops reddelli* and *Batrisodes texanus* are within the recognized range of the Kretschmarr Cave mold beetle as it was originally listed, although additional localities have been discovered within that range. Both species continue to face the same general threats identified in the original listing. Because these two species together are equivalent to the originally listed Kretschmarr Cave mold beetle, both species will be included as endangered species in the next republication of the List of Endangered and Threatened Wildlife (50 CFR 17.11). *Texamaurops reddelli* will retain the common name of Kretschmarr Cave mold beetle, as in previous publications of the List, and the new entry for *Batrisodes texanus* will include the common name of "Coffin Cave mold beetle."

The final rule listing the Bee Creek Cave harvestman (*Texella reddelli*) indicated that this species was known from several caves, which are distributed about 22 miles (34 km) along the edge of the Edwards Plateau in Travis and Williamson counties, Texas. *Texella reyesi* was subsequently described to include some of the specimens formerly attributed to *Texella reddelli*, as well as specimens from several newly-discovered localities (Ubick and Briggs 1992). According to Ubick and Briggs (1992, p.208), "[t]he two species are clearly very closely related and, using the standards of genitalic distinctness applied to other

Texella species, may even be considered conspecific." Both of these species continue to face the same general threats identified in the original listing of the Bee Creek Cave harvestman. Their combined ranges, including newly-discovered localities, extend about 31 miles (50 km) along the edge of the Edwards Plateau in Travis and Williamson counties. Although the weak differentiation of the two species would justify the continued recognition of all of these populations under the single name recognized in the original listing, the Service prefers to follow the published revision in taxonomy and recognize *Texella reddelli* and *Texella reyesi* as equivalent to the originally-listed Bee Creek Cave harvestman. Both species will therefore be included as endangered species in the next republication of the List of Endangered and Threatened Wildlife (50 CFR 17.11). *Texella reddelli* will retain the common name of Bee Creek Cave harvestman, as in previous publications of the List, and the new entry for *Texella reyesi* will include the common name of "Bone Cave harvestman."

The Service has determined that this amendment to 50 CFR of taxonomic changes does not impact or change the status of the species covered under the current List of Threatened and Endangered Wildlife nor does it affect the types of activities that are permitted or prohibited. Since this final rule reflects actions already accomplished by the scientific community, this document is not a rule as contemplated by the Regulatory Flexibility Act (5 U.S.C 601) and Executive Order 12291. Therefore, as provided by 5 U.S.C. 553(b)(3)(B), the Service has determined that solicitation of public comment is unnecessary and serves no public interest.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chandler, D.S. 1992. The Pselaphidae (Coleoptera) of Texas caves. Texas Mem. Mus., Speleol. Monogr. 3:241–253.

Ubick, D., and T.S. Briggs. 1992. The harvestman family Phalangodidae. 3. Revision of *Texella* Goodnight and Goodnight (Opiliones: Laniatores). Texas Mem. Mus., Speleol. Monogr. 3:155–240.

Author

The primary author of this final rule is Dr. Steven M. Chambers, Division of Endangered Species, U.S. Fish and Wildlife Service Regional Office, P.O. Box 1306, Albuquerque, N.M. 87103 (telephone: 505/766–3972).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) in the entries for "Beetle, Kretschmarr Cave mold" under Insects and for "Harvestman, Bee Creek Cave" under Arachnids by revising the "When listed" column to read "327, 513".

3. Amend § 17.11(h) by adding the following entries, in alphabetical order under Insects and Arachnids, respectively, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Insects							
*	*	*	*	*	*	*	*
Beetle, Coffin Cave mold	*Batrisodes texanus*	U.S.A. (TX)	NA	E	327,513	NA	NA
*	*	*	*	*	*	*	*
Arachnids							
*	*	*	*	*	*	*	*
Harvestman, Bone Cave	*Texella reyesi*	U.S.A. (TX)	NA	E	327,513	NA	NA
*	*	*	*	*	*	*	*

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Dated: July 27, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–19533 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920780–2180; I.D. 081293A]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Turtle excluder device exemption.

SUMMARY: NMFS will allow 55-minute tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through September 15, 1993. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs.

EFFECTIVE DATE: This rule is effective from August 16, 1993 through September 15, 1993.

ADDRESSES: Comments on the collection-of-information requirement in this action should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator (301/713–2319) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

In consecutive 30-day notice actions (most recently published May 17, 1993 (58 FR 28793), June 16, 1993 (58 FR 33219) and July 19, 1993 (58 FR 38537)), NMFS allowed limited tow times as an alternative to the requirement to use TEDs by shrimp trawlers in a small area off the coast of North Carolina. This area seasonally exhibits high concentrations of brown algae, *Diclyopteris* spp., and a red alga, *Halymenia* sp. Shrimp live within the algae, which shrimpers harvest. Use of TEDs under these conditions is impractical because they clog or exclude a large portion of the algae. Because nesting season in the restricted area generally occurs from May 15 though August 15, previous tow-time limits have been 30 minutes. This action increases the tow-time limit to 55 minutes because the nesting season is essentially over. A 55-minute tow time allows fishermen to harvest shrimp efficiently and maintains adequate protection for sea turtles that still may be nesting in this area. NMFS will continue to monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED-use impracticable.

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that immediate action is necessary to conserve sea turtles pursuant to the regulations at 50 CFR 227.72(e)(6). The AA has also determined that incidental takings of sea turtles during shrimp trawling are unauthorized unless these takings are consistent with the supplemental section 7 consultation and revised incidental take statement prepared by NMFS on July 2, 1993.

This 30-day action is also necessary while an interim final rule is processed. NMFS expects to issue, at the expiration of this action, an interim final rule continuing the exemption through November, 1993.

Recent Events

The North Carolina sea turtle stranding network reported that only three turtle strandings occurred in the restricted area during the previous exemption period. Two of those strandings were apparent deliberate mutilations: One turtle was shot at close range, and one turtle was hacked to pieces. Other mutilations have been reported outside of the restricted area and NMFS investigations have found no evidence related to shrimpers operating in the restricted area. In general, sea turtle strandings in the exemption area have been lower than average. However, sea turtle strandings in areas south of the restricted area have been higher than average.

On five observed trips on shrimping vessels during the last exemption period in the restricted area, NMFS observers recorded that all shrimpers were using TEDs and no turtles were caught. Algae concentrations have increased steadily in the past month and observers reported that algae repeatedly clogged TEDs. Observers report that the highest concentrations of algae start about one third of a mile (0.6 km) from shore. As a result, shrimpers tend to fish closer inshore where TEDs may be towed longer without clogging. At this time shrimpers appear to be opting for longer tow times with TEDs instead of shorter tow times without them.

North Carolina Department of Marine Fisheries (NCDMF) enforcement reports that shrimping effort in the restricted area has been moderate because inshore areas in the southern parts of North Carolina are being more heavily fished. Enforcement officials report that, in the restricted area, most shrimpers are using TEDs and the few shrimpers using the tow-time alternative were complying with the 30-minute tow-time limit.

NMFS has determined that the environmental conditions in the restricted area may render TED-use impracticable in the next month. While algae levels have been low this year, NMFS expects that the algae will continue to increase.

Sea Turtle Conservation Measures

The sea turtle conservation measures published at 58 FR 38537 (July 19, 1993) are extended here for another 30 days, although the tow-time limit of 30 minutes is increased to 55 minutes. The owner or operator of a shrimp trawler trawling in the North Carolina restricted area must register with the Director, Southeast Region, NMFS, by telephoning 813/893–3141. Information required for registering is described in the previous exemptions. Shrimp trawlers in the restricted area must restrict tow times to 55 minutes or less when tow times are used as a alternative to the requirement to use TEDs. Tow times are measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

Classification

The AA has determined that this action is necessary to provide relief from an impractical TED-use requirement, while providing adequate protection for listed sea turtles, and while NMFS processes an interim final rule extending this action through November 1993. This action is consistent with the Endangered Species Act (ESA) and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a major rule. Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general

notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The environmental assessments prepared for this action are described in the TED exemption published at 58 FR 28793 (May 17, 1993).

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl in the North Carolina restricted area. This collection of information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**).

The AA, pursuant to section 553(b)(B) of the APA, finds there is good cause to extend this exemption on an immediate basis and that it is impracticable and contrary to the public interest to provide advance notice and opportunity for comment. Failure to implement temporary measures would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Dated: August 12, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, NOAA.

[FR Doc. 93–19958 Filed 8–13–93; 12:58 pm]

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VOL 58 ISS 158 AG 18 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 158
Wednesday, August 18, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93–13]

Risk-Based Capital Guidelines: Collateralized Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend the risk-based capital guidelines to lower the risk-weight from 20 percent to zero percent for securities lending and repurchase agreement transactions, as well as certain collateralized letters of credit. This proposal would modify the OCC's risk-based capital guidelines so that the risk-weight assigned to transactions collateralized with cash or government securities more accurately reflects the minimal operational risk and the near absence of credit risk. In addition, this proposal would eliminate the disparity in the risk-based capital treatment of collateralized transactions in international markets, enabling national banks to compete more effectively with foreign banks. The OCC also is considering whether there are other transactions for which banks maintain a positive collateral margin of either cash or government securities that it could prudently reassign to the zero percent risk-weight category.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Interested persons are invited to submit written comments to Docket Number [93–13], Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Robert Hemming, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division, (202) 874–4460; or Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis (202) 874–5220; Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC adopted its risk-based capital guidelines in 1989 to implement the International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement). See 54 FR 4168 (January 27, 1989). These guidelines, developed in cooperation with the Federal Deposit Insurance Corporation and the Federal Reserve Board, provide minimum capital requirements that vary primarily on the basis of the credit risk profiles of the assets and off-balance sheet activities of banks.

Under the present U.S. risk-based capital guidelines, all transactions collateralized by cash or government securities issued by OECD [1] countries are risk-weighted at 20 percent.[2] However, some transactions collateralized with cash or near-cash assets expose banks to significantly less credit risk than other such transactions. The OCC believes that typical securities lending and repurchase agreement transactions, as well as certain collateralized letters of credit expose banks to insignificant credit risk. Accordingly, the OCC proposes to permit transactions collateralized by cash or government securities to qualify for the zero percent risk-weight category.

The OCC is proposing that only securities lending and repurchase agreement transactions, and certain collateralized letters of credit be included in the zero percent risk-weight category. Because the OCC believes that other collateralized transactions may have similar minimal risks, the OCC requests comment on whether these other collateralized transactions could be prudently assigned to the zero percent risk-weight category.

Discussion

In developing U.S. risk-based capital guidelines, the federal banking agencies initially proposed assigning transactions collateralized by cash or government securities to a 10 percent risk-weight category. See 53 FR 8550, 8553 (March 15, 1988). Under the Basle Agreement, signatory countries have some latitude in assigning risk-weights to claims collateralized by cash or OECD government securities. Specifically, paragraph 39 of the Basle Accord provides:

> In view of the varying practices among banks in different countries for taking collateral and different experiences of the stability of physical or financial collateral values, it has not been found possible to develop a basis for recognizing collateral generally in the weighting system. The more limited recognition of collateral will apply only to loans secured against cash or against securities issued by OECD central governments and specified multilateral development banks. These will attract the weight given to the collateral (i.e. a zero or a low weight).

When the federal banking agencies adopted the final risk-based capital guidelines, they eliminated the 10 percent risk-weight category in the interest of simplicity. See 54 FR 4168 (January 27, 1989). To limit the types of claims qualifying for the zero percent risk-weight category, the agencies assigned claims collateralized by cash and OECD central government

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[1] OECD countries include countries that are full members of the Organization for Economic Cooperation and Development (OECD) plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.

[2] Specifically, 12 CFR part 3, appendix A, section 3(a)(2) assigns a 20 percent risk weight for:

(1) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States's Government or its agencies, or the central government of an OECD country.

(2) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies.

(3) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions of regional development institutions in which the United States is a shareholder or contributing member.

(4) Assets collateralized by cash held in a segregated deposit account by the reporting national bank.

securities, including securities unconditionally guaranteed by the U.S. government, to the lowest non-zero risk-weight, which is 20 percent. See 54 FR at 4173–4174.

Recently, the OCC reexamined the capital treatment of certain collateralized transactions, including securities lending and repurchase agreement transactions, collateralized letters of credit, and other similar collateralized transactions. Although the collateral securing these transactions qualifies for the zero percent risk-weight, the current U.S. risk-based capital guidelines assign these transactions to the 20 percent risk-weight category, primarily because of concerns associated with operational risk.

As a result of the reexamination of these transactions, the OCC believes that appropriately collateralized securities lending and repurchase agreement transactions, as well as collateralized letters of credit that serve as financial guarantees, expose national banks to virtually no credit risk and minimal operational risk. The OCC is less certain about the level of risk exposure of banks engaged in other types of collateralized transactions, including some collateralized letters of credit and collateralized swap agreements. The OCC invites comment on the risk exposure of banks engaged in collateralized letters of credit not covered by this proposal, as well as collateralized swaps and any other similar transactions secured with cash or OECD government securities.

The Proposal

The OCC proposes to assign those securities lending and repurchase agreement transactions, as well as collateralized letters of credit that serve as financial guarantees, to the zero percent risk-weight category that satisfy the criteria described below.

(1) The bank's counterparty must maintain a positive collateral margin relative to the value of the bank's exposure to the underlying claim. If the counterparty fails to maintain the positive margin, the transaction would no longer qualify for the zero percent risk-weight category.

(2) If the bank's counterparty uses cash as collateral for the transaction, the cash as collateral must be on deposit in the "lending" bank.

(3) If the bank's counterparty uses government securities to collateralize the transaction, the securities must be fully secured under a perfected security interest. Typically, this will require that the securities be either held by the bank or by a third party acting on behalf of the bank.

Qualifying Transactions: Securities Lending Transactions, Repurchase Agreement Transactions, and Collateralized Letters of Credit

The OCC believes that securities lending, repurchase agreement transactions, and collateralized letters of credit that serve as financial guarantees expose a participating bank to minimal risks. A typical contract for each of these transactions is structured to conform with the collateral requirements of this proposal, insulating a lending bank from credit risk. The OCC believes that it would be prudent to assign the zero percent risk-weight to the transactions described below if the transactions are collateralized as outlined in this proposal.

A typical securities lending transaction involves the short-term loan of securities that are collateralized fully by cash or government securities. The bank lends its own securities, or those of a third party to broker/dealer, who contracts to repay the loan with identical securities when the loan matures. In addition to earning income from the pledged collateral, the security lender typically continues to receive any income from the lent securities while the loan is outstanding.

Repurchase agreements are similar to securities lending transactions and expose participating banks to similar risks. Although repurchase agreements are structured as a sale of securities with an agreement to repurchase the same securities on a specified date, the market views repurchase agreements as collateralized loans. On the day the transaction is initiated, securities are sold for cash; on the day the transaction is unwound, the transaction is reversed and the cash lender receives a fee in addition to the securities originally sold.

Collateralized reinsurance letters of credit are an example of the financial guarantees that the OCC believes would qualify for the zero percent risk-weight category. A bank issues a reinsurance letter of credit to back a claim on a reinsurance company once a claim is made. These letters of credit are short-term financial guarantees, paying only if the reinsurance company does not meet its financial obligations. The reinsurance company typically pledges collateral in the form of cash or government securities to the bank issuing the letter of credit.

A bank engaged in any of the transactions described above typically requires the counterparty to secure the transactions with collateral in the form of cash or government securities. If the bank also requires the counterparty to maintain collateral such that the value of the collateral exceeds that of the lent securities or the amount of the letter of credit, in principle, the bank is not exposed to counterparty credit risk.

Operational Risk of Collateralized Transactions

The OCC is concerned about a bank's exposure to operational risk when engaged in the collateralized transactions of this proposal. Operational risk is the risk of bank loss because of its failure to process a transaction properly. The failure may be caused by inadequate controls, a breakdown in communication between the parties involved in a transaction, a malfunction in the bank's computer system, or a natural catastrophe. Most transactions expose banks to operational risk. The OCC believes that the growth and maturation of the securities lending, repurchase agreement, and collateralized letter of credit markets has led to an overall reduction in the operational risk associated with transactions in these markets.

Although a bank cannot completely eliminate operational risk for a given transaction, banks can minimize the effect of some factors that contribute to operational risk. Banks cannot eliminate the operational risk caused by violent weather, earthquakes, and other natural disasters; nor can they be certain that their computer systems will always operate flawlessly. However, banks can ensure that their internal controls, back-up systems, and their communication with counterparties are well-designed. Experience in processing specific transactions will improve bank efficiency in those markets as banks refine their systems of risk management and communication.

As activity has expanded in the markets for securities lending and repurchase agreements, and the markets for financial guarantees, banks have established routine practices and more standardized contracts. The existence of more uniform contract terms, particularly with regard to the treatment of pledged collateral, reduces the operational risk exposure of a bank arising from a misunderstanding of contract terms between the bank and its various counterparties. With more experience processing transactions, banks are also able to improve their systems of internal controls related to collateralized financial guarantees and securities lending and repurchase agreement transactions.

The OCC believes that the operational risk of these transactions may be further reduced if the bank's counterparty

pledges and maintains collateral such that the value of the collateral exceeds that of the bank's exposure to the counterparty. In addition, the bank should ensure that it acquires and maintains sufficient control over the collateral.

Perfection of Interest

Collateralized transactions differ from other types of transactions in that the assets are guaranteed by a pledge of collateral, which represents a security interest. The degree of protection afforded by the security interest is dependent on the quality of the collateral and the legal effectiveness of the pledge. Under this proposed rule, the quality of the collateral is maintained by limiting the types of qualifying collateral to cash (both domestic and foreign currency) and OECD government securities. With respect to the legal effectiveness of the pledge, the OCC believes that safe and sound banking practice generally requires that a bank acquire and maintain sufficient control over the collateral to protect the interest of the bank. Consequently, this proposed rule would require that a bank perfect its security interest in the collateral in order for the transaction to qualify for the zero percent risk-weight category. This requirement is consistent with the collateral requirements for national bank lending limits and affiliate transactions. See 12 CFR 32.6(d); *Fitzpatrick* v. *Federal Deposit Insurance Corporation*, 765 F.2d 569, 573–574 (6th Cir. 1985).

Maintaining the Collateral

The OCC will assign to the zero percent risk-weight category only those transactions for which a bank's counterparty continuously maintains a positive collateral margin, such that the value of the collateral exceeds the value of the bank's exposure to the counterparty. The OCC would assign at least a 20 percent risk-weight to any portion of a claim that is not collateralized in accordance with the requirements of this proposal.

Banks should calculate the collateral margin, fully taking into account any change in the market value of the bank's exposure to a counterparty under a claim, in relation to the market value of the collateral held in support of that claim. If the market value of the counterparty's collateral held by the bank falls below 100 percent of the amount of the bank's exposure under the claim, then the transaction no longer qualifies for the zero risk-weight.

A bank acting as principal, or as agent for a collateralized transaction, may wish to reinvest the collateral supplied by the counterparty. If the bank chooses to reinvest the collateral in securities other than OECD government securities, the transaction would no longer qualify for the zero risk-weight category. Instead, the transaction would qualify for the risk-weight category associated with the newly purchased collateral. For example, if a counterparty deposited cash with the bank, the bank may choose to reinvest the cash in commercial paper. The OCC believes that, in this case, the transaction would qualify for the 100 percent risk-weight category associated with the commercial paper.

Under the positive margin requirement, the OCC believes that a bank's potential risk of loss is very limited. For a bank to experience a loss, the market value of pledged collateral would have to decline substantially relative to the exposure of a bank under the claim on the very same day that a counterparty defaults.

If any of the components of these collateralized transactions—securities, bank deposits, or financial guarantee—is denominated in foreign exchange, fluctuations in exchange rates also could cause changes in market value. A bank should ensure that its counterparty for any given transaction maintain a positive collateral margin with respect to fluctuations in both interest rates and foreign exchange rates on a daily basis.

For financial guarantees, banks should monitor the market value of the pledged collateral to ensure that the counterparty is maintaining a positive collateral margin. If the collateral is securities, changes in market interest rates and other economic factors could reduce or eliminate the positive collateral margin on any given day. For securities lending and repurchase agreements, changing market factors could cause changes in both the market value of securities lent and those held as collateral.

In a market with a normal amount of volatility, if the bank adjusts the positive collateral margin daily, it is insulated from the counterparty credit risk. However, if market conditions are highly volatile, the lending bank may not be entirely insulated from credit risk. If the collateral margin falls below 100 percent on the same day as a counterparty defaults, a lending bank could experience a loss. The loss the bank would experience would be limited to the shortfall of the market value of the collateral relative to the size of the credit exposure. The OCC believes that potential bank losses for the transactions covered by this proposal would be very limited. The OCC invites comment concerning potential bank losses for other transactions satisfying the collateral requirements of this proposal.

Bank Indemnification

The OCC has some specific concerns with regard to a bank that acts as agent in a securities lending transaction. The OCC is concerned that a bank would indemnify a third party against all credit risk arising from the transaction. Normally, an agent does not bear any risk of loss in a securities lending transaction, but acts only as a representative for the principal. However, in securities lending transactions, the bank may agree to indemnify its customer against loss. If the bank limits the indemnification to the loss that the customer could incur in a default—in the case of a shortfall in the market value of the securities held as collateral relative to the lent securities—the bank, as agent, is exposed to the same minimal credit risk as the customer.

This proposal clarifies that where a bank is acting as agent for a customer in a securities lending transaction, the transaction would qualify for the zero percent risk-weight provided that the bank's indemnification is limited. Under this proposal, any indemnification extended by a bank must be limited to the loss the customer would experience as a result of a difference arising between the market value of the lent securities and the market value of the collateral securing the loan.

The OCC is uncertain about other indemnification agreements in the current market place and invites comment describing these agreements. The OCC may disqualify from the zero percent risk-weight category any transaction where the bank indemnifies the third party for any additional credit risk.

Swap Agreements and Other Collateralized Transactions

The OCC is considering whether other collateralized transactions, including collateralized swap agreements, expose banks to the same minimal risk as transactions currently assigned to the zero percent risk-weight category. The OCC wishes to reassign to the zero percent risk-weight category all collateralized transactions that conform with the requirements of this proposal. Therefore, the OCC requests comment from banks that engage in other collateralized transactions that might prudently be reassigned to the zero percent risk-weight category. The OCC is particularly interested in market

practices for collateralized swap agreements and collateralized letters of credit.

A swap agreement is a contract between two counterparties to pay and receive, at set intervals, amounts determined by the differences between two interest rates or the values of two currencies. Banks may serve as intermediaries between two counterparties with offsetting financial needs, creating a matched swap agreement. Banks may also act as one of the counterparties in an unmatched swap agreement. For both matched and unmatched swaps, the bank may be exposed to the credit risk of its counterparties. However, if the bank's counterparty collateralizes the swap agreement with cash or government securities, the credit risk to the bank may be minimal.

To comply with the requirements of this proposal, the bank must ensure that the counterparty maintains a positive collateral margin relative to the credit exposure implied by the swap agreement. The bank's credit exposure is the market value of the swap agreement, which is the value of the expected net cash flows over the life of the contract. The value of the expected net cash flows is relatively easy to measure in the market for a basic swap agreement. However, a bank might have difficulty measuring the market value of swap agreements with unique contract terms—swap agreements based on underlying commodities not widely traded, infrequently used indices, or negotiated for unusual maturities. A bank could design a unique swap agreement to meet the specific needs of an individual client that would have less value to other market participants.

Under this proposal, a bank must daily verify the market value of its credit exposure, as well as the market value of the collateral securing the claim. The bank may find it difficult to verify this positive margin on a daily basis for swap contracts that are not widely traded. If the positive margin is difficult to verify, the bank may not be certain it is insulated from the counterparty credit risk. Therefore, the transaction would not qualify for the zero percent risk-weight category.

Transactions With Collateral Pledged by Banks

The OCC also is concerned about a bank issuing a letter of credit where a counterparty requests that the bank post collateral to secure their own letter of credit. The bank would be fully exposed to the counterparty, because the counterparty has a legal claim on bank assets. The OCC does not intend to include these collateralized letters of credit in the zero risk-weight category. Nor would the OCC include any other transaction where a bank pledges collateral to guarantee its own performance.

International Comparability of Capital Standards

In reexamining the capital treatment of transactions collateralized with cash and government securities, the OCC noted that most foreign supervisors subscribing to the Basle Agreement assign the zero percent risk-weight to transactions collateralized with cash or government securities. Reassigning these transactions to the zero percent risk-weight category under U.S. capital standards would eliminate the disparate capital treatment.

Issues for Specific Comment

The OCC invites comments on all aspects of this proposal. Additionally, the OCC is interested in comment on the following specific issues:

(1) Should additional requirements be established to ensure that only very low-risk transactions are assigned to the zero percent risk-weight category? For example, should the zero percent risk-weight be available only to institutions that have appropriate management and operating systems in place?

(2) Should the OCC establish a specific minimum positive margin required for collateralized transactions to qualify for the zero percent risk-weight for those credit exposures with market values that experience normal volatility? Should the OCC require that national banks maintain margins in excess of this minimum for those exposures with more volatile market values?

(3) For some securities lending transactions, banks indemnify their clients against losses that could occur if the market value of the lent security exceeds that of the collateral provided. Should the OCC permit transactions with indemnification agreements that cover additional losses to qualify for the zero percent risk-weight?

(4) At this time, the OCC believes that this proposal would apply only to securities lending transactions, repurchase agreements, and certain collateralized financial guarantees. The OCC invites comment as to whether, in the current market place, there are other collateralized transactions that expose banks to minimal risk that have contracts structured to meet the collateral requirements of this proposal. The OCC is specifically interested in comments concerning (a) bank participation in collateralized markets for swap agreements and (b) bank issued collateralized letters of credit other than financial guarantees.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The adoption of this proposed rule would benefit national banks by eliminating the capital requirement for certain collateralized transactions and by achieving competitive equality with other financial institutions both domestically and internationally. While the exact volume of collateralized transactions is unknown, the OCC believes that eliminating the capital requirements for these types of collateralized transactions should not significantly impact national banks, regardless of size.

Executive Order 12291

It has been determined that this document is not a major rule as defined in Executive Order 12291, and a regulatory impact analysis is not required. This proposed rule will eliminate the capital requirement for national banks for certain qualifying collateralized transactions. As a result, the proposed rule will reduce somewhat the cost of bank operations. Inasmuch as the exact volume of collateralized transactions is unknown, the OCC believes that eliminating the capital requirements for these types of collateralized transactions should not significantly impact national banks. Therefore, the effect of this proposed rule should not be material.

Authority and Issuance

For the reasons set out in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In appendix A, section 3 is amended by adding a new paragraph (a)(1)(viii) and (ix), revising paragraph (a)(2)(iv), removing (a)(2)(xii), and redesignating paragraph (a)(2)(xiii) as (a)(2)(xii) to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *
(1) * * *
(viii) That portion of assets collateralized by cash on deposit if:
(A) The bank holds the cash on deposit in a segregated deposit account; or
(B) The bank is acting as a customer's agent in a transaction involving the loan or sale of securities that is collateralized by cash delivered to the bank, and any obligation by the bank to indemnify the customer does not exceed the difference between the market value of the securities and the cash collateral received.
(ix) That portion of assets collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country, if:*
(A) The bank has a perfected security interest in the collateral;
(B) The bank maintains a daily positive margin of collateral fully taking into account any change in the market value of the collateral held as security; and
(C) The transaction involves no more than minimal risk.
(2) * * *
(iv) That portion of assets collateralized by cash on deposit or by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country that do not qualify for the zero percent risk weight category.

* * * * *

Dated: May 13, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93–19896 Filed 8–17–93; 8:45 am]

BILLING CODE 4810–33–M

* Assets collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country include, but are not limited to, securities lending transactions, repurchase agreements, and collateralized letters of credit such as reinsurance letters of credit and other similar financial guarantees. However, the OCC may at its discretion require that certain collateralized transactions, such as other collateralized letters of credit and collateralized swap agreements, be risk-weighted at 20% if they involve more than minimal risk.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–8]

Proposed Modification of Transition Area, Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Tillamook Transition Area to accommodate an amendment to the Non-directional Radio Beacon (NDB–A) approach to the Tillamook Municipal Airport.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–8, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–8, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Tillamook transition area to accommodate the NDB–A approach to the Tillamook Airport. This proposal would add controlled airspace to contain IFR operations during portions of the terminal operation and while transitioning between the terminal and en route environments. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ANM OR TA Tillamook, OR [Revised]

Tillamook Airport, OR
(lat. 45°25'07" N, long. 123°48'49" W)
Wilson NDB, OR
(lat. 45°29'05" N, long. 123°51'23" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Tillamook Airport, and within 2.5 miles each side to the 148° and 328° bearings of the Wilson NDB extending from the 7.4-mile airport radius to 7 miles northwest of the Wilson NDB.

* * * * *

Issued in Seattle, Washington, on August 3, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–19991 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–16–93]

RIN 1545–AR50

Recapture of LIFO Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that describe the events that trigger the recapture of LIFO benefits under section 1363(d) of the Internal Revenue Code of 1986 when a C corporation elects to become an S corporation or merges into an S corporation in a tax-free reorganization. The proposed regulations reflect changes made to the law by the Revenue Act of 1987 and affect corporations that use the last-in, first-out (LIFO) method of accounting.

DATES: Written comments must be received by October 18, 1993. A public hearing has been scheduled for October 25, 1993. Requests to speak at the hearing, along with outlines of oral comments, must be received by October 4, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments and requests to speak at the public hearing, along with outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (attn: CC:DOM:CORP:T:R (PS–16–93), room 5228), Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (PS–16–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the Commissioner's Conference Room, Third Floor, room 3313, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Elissa J. Shendalman, (202) 622–3040 (not a toll-free call). Concerning the public hearing, Carol Savage, (202) 622–8452 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1363(d) of the Internal Revenue Code of 1986 (Code). Section 10227(a) of the Revenue Act of 1987 amended section 1363 by adding section 1363(d).

Explanation of Provisions

This document provides guidance on the applicability of section 1363(d) to inventory of a C corporation that elects to become an S corporation or merges into an S corporation in a tax-free reorganization.

The legislative history of section 1363(d) of the Code indicates that, in enacting section 1363(d), Congress was concerned that taxpayers using the LIFO method might avoid the built-in gain rules of section 1374. Whether goods are disposed of following a conversion from C to S corporation status depends upon the inventory method used by the taxpayer. Thus, a C corporation using the LIFO method of accounting will not be taxed on the built-in gain attributable to LIFO inventory to the extent it does not liquidate LIFO layers during the ten-year period following the conversion. Section 1363(d) addresses this problem by having the corporation add an amount equal to the difference between the value of its inventory on the day of its S corporation election using the FIFO method and the value using the LIFO method to the gross income of the corporation for the last taxable year that the corporation operated as a C corporation.

Under the proposed regulations, an S corporation that succeeds to LIFO inventory in a tax-free reorganization with a C corporation is also subject to the LIFO recapture provisions of section 1363(d) of the Code. If a corporation could avoid the LIFO recapture amount by merging with either a new or a preexisting S corporation, the reorganization provisions of the Code could be used to circumvent both sections 1363(d) and 1374.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for October 25, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Elissa J. Shendalman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1363–2 is added to read as follows:

§ 1.1363–2 Recapture of LIFO benefits.

(a) *In general.* A corporation must include the LIFO recapture amount (as defined in section 1363(d)(3)) in its gross income—

(1) In its last taxable year as a C corporation if the corporation inventoried assets under the LIFO method for its last taxable year before its S corporation election becomes effective; or

(2) In its last taxable year of existence if the corporation inventoried assets under the LIFO method during its last taxable year before transfer of these assets to an S corporation in a transaction where the S corporation's basis in the asset is determined in whole or in part by reference to the basis of the asset (or any other property) in the hands of a C corporation.

(b) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount in the gross income of the corporation shall be payable in four equal installments. The corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year the corporation operated as a C corporation or its last year of existence, whichever is applicable. The three succeeding installments must be paid—

(1) In the case of a corporation described in paragraph (a)(1) of this section, on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three years; and

(2) In the case of a corporation described in paragraph (a)(2) of this section, on or before the due date for the successor corporation's returns (determined without regard to extensions) for the succeeding three years.

(c) *Basis adjustments.* Appropriate adjustments to the basis of inventory are to be made to reflect any amount included in income under this section.

(d) *Effective dates.* (1) The provisions of paragraph (a)(1) of this section apply to S elections made after December 17, 1987. For an exception, see section 10227(b)(2) of the Revenue Act of 1987.

(2) The provisions of paragraph (a)(2) of this section apply to transfers made after August 18, 1993.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–19574 Filed 8–17–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[PS–16–93]

RIN 1545–AR50

Recapture of LIFO Benefits; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations that describe the events that trigger the recapture of LIFO benefits under section 1363 (d) of the Internal Revenue Code of 1986 when a C corporation elects to become an S corporation or merges into an S corporation in a tax-free reorganization.

DATES: The public hearing will be held on Monday, October 25, 1993, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Monday, October 4, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R, (PS–16–93), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1363(d) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, October 4, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19575 Filed 8–17–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E4010/P566; FRL–4638–5]

RIN No. 2070–AC18

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide glyphosate and its metabolite, aminomethylphosphonic acid, in or on the raw agricultural commodity celeriac, at 0.2 part per million (ppm). The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP1E4010/P566], must be received on or before September 17, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 1E4010 to EPA on behalf of the Agricultural Experiment Station of California. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on the raw agricultural commodity celeriac, at 0.2 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. Several acute toxicology studies placing the technical-grade glyphosate in Toxicity Category III (oral and eye irritation) and Toxicity Category IV (dermal and eye irritation).

2. A chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a no-observed-effect-level (NOEL) of 500 mg/kg/day. No effects were observed.

3. An 18-month carcinogenicity study in mice dosed at levels of 0, 150, 750, and 4,500 mg/kg/day. A systemic NOEL of 5,000 ppm and lowest-observed-effect-level (LOEL) of 30,000 ppm were established. Effects included increased hepatocyte hypertrophy and necrosis, chronic interstitial nephritis in males; decrease body weight in both sexes; increase in relative and absolute weight of testes and ovaries; and proximal tubule epithelial basophilia and hypertrophy in females.

4. A 2-year chronic feeding/carcinogenicity study in rats dosed at 0, 100, 400, and 1,000 mg/kg/day with a NOEL of 400 mg/kg/day and a LOEL of 1,000 mg/kg/day. The test revealed decreased body weight and body weight gain in females, cataracts in males, decreased urinary pH in males, increased relative liver weight (to body) at 12 months, and increased absolute and relative liver weights (to brain) at 24 months in males. No carcinogenic effects were observed under the conditions of the study.

5. A three-generation reproduction study in rats dosed at 0, 3, 10, and 30 mg/kg/day with a parental and reproductive NOEL of 30 mg/kg/day (HDT) and a developmental NOEL of 10 mg/kg/day. There was an increased incidence of focal tubular dilation of the kidney of male F3b weanlings (pups) of rats fed 30 mg/kg/day.

6. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a maternal NOEL of 175 mg/kg/day based on increased incidences of soft stool, diarrhea, nasal discharge, and deaths at the 350 mg/kg/day dose level. No toxicologically significant signs of developmental toxicity were observed at any dose level.

7. A teratology study was performed in rats using dose levels of 0, 300, 1,000, and 3,500 mg/kg/day. A maternal and a developmental NOEL of 1,000 mg/kg/day was established. Maternal rats showed a 28-percent decrease in body weight gain. There was an increase in the number of litters and fetuses with unossified sternebrae and a decrease in fetal body weight at the 3,500- mg/kg/day dose.

8. A battery of the following mutagenicity tests were performed: gene mutation assay (Ames and mammalian test), negative; structural chromosomal aberration assay (cytogenic *in vivo*), negative; and other genotoxicity assays (rec-assay in *B. subtilis*), negative.

The Agency (Peer Review Committee) has classified glyphosate as Group E for carcinogenicity potential (evidence of noncarcinogenicity for humans), based on lack of convincing carcinogenicity evidence in adequate studies in two species. A detailed discussion of carcinogenicity evaluations for glyphosate is provided in a **Federal Register** notice of May 5, 1993 (58 FR 26725).

The Dietary Risk Evaluation System (DRES) chronic exposure analysis used a Reference Dose (RfD) of 2.0 mg/kg/body weight/day based on a NOEL of 175 mg/kg/bwt/day from the developmental toxicity study in rabbits and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) for the overall U.S. population from published and proposed uses of glyphosate utilizes 1 percent of the RfD. The proposed use on celeriac would contribute an additional 2×10^{-10} mg/kg/bwt/day to the TMRC, which would not raise the risk expressed as a percentage of the RfD. The TMRC from published uses of glyphosate for the subgroup most highly exposed, children 1 to 6 years old, utilizes 1 percent of the RfD. Though no consumption estimates for celeriac are available for this subgroup, it can be assumed that consumption is small and that this petition would not add appreciable risk to the existing risk.

The nature of the residue is adequately understood for the purpose of the proposed tolerance, and an adequate analytical method utilizing high-pressure liquid chromatography (HPLC) is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since celeriac is not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.364 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E4010/P566]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending 180.364(a) in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Celeriac	0.2
* * * * *	

* * * * *

[FR Doc. 93-19648 Filed 8-17-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300292; FRL-4632-7]

RIN No. 2070-AC18

Components of Semiochemical Dispensers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of components of semiochemical dispensers, made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site, as inert ingredients (carriers) in pesticide formulations applied to growing crops only. This regulation is proposed by the Agency on its own initiative.

DATES: Comments, identified by the document control number [OPP-300292], must be received on or before September 17, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: The Agency proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site, as inert ingredients (carriers) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

I. Definitions

a. *Semiochemicals.* Chemicals that are emitted by plants or animals and modify the behavior of receptor organisms. These chemicals must be naturally occurring or substantially identical to naturally occurring semiochemicals.

b. *Semiochemical dispenser.* A single enclosed or semienclosed unit that releases semiochemical(s) into the surrounding atmosphere via volatilization and is applied in a manner to provide point-source distribution of the semiochemical(s) into the environment.

II. Background

The Agency has received requests from researchers and registrants of semiochemical pesticide dispensers for clearance of the inert components in these dispensers. Agency-approved semiochemical dispensers include, but are not limited to, twist ties, similar to those used to close plastic food- storage bags; tags, similar to those used in nurseries to mark and price plants by attachment to tree or vine limbs; pieces of rope impregnated with semiochemicals for placement between or within rows of field crops; and cups which contain semiochemicals and are attached to wooden stakes or nonedible portions of growing crops. These dispensers are applied as discreet point-source dispensers of semiochemicals

and are not applied in a broadcast manner. At present only a limited number of dispenser materials are exempted from the requirement of a tolerance. Semiochemicals are considered to be low-risk, low-exposure substances because they have a nontoxic mode of action, are host-specific, are not likely to negatively impact nontarget organisms, are volatile, and are nonpersistent in the environment. They are applied at rates less than 50 grams per acre or at rates less than peak naturally occurring background levels. A generic exemption for this low-risk, low-exposure group of substances will facilitate the use of semiochemicals by reducing regulatory burdens.

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided to develop this generic exemption without additional information. This decision was based upon the minimal exposure expected from this use and the nature of the substances involved. Exposure will be limited to inadvertent physical contact during growing only. In actuality, EPA expects the chances of any measurable residues occurring in food to be extremely low. To ensure that this is the case, EPA has specified in the exemption that the design of the dispenser must be such as to preclude any contamination by its components of the raw agricultural commodity or processed foods/feeds derived from the commodity. Furthermore, solid matrix polymeric materials generally pose low risk to humans. Many of the components used in these dispensers have been approved for food-contact uses of far greater dietary significance.

The exemption is limited to components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients) that are large enough to be retrieved from the site and are applied as point-source distributors of semiochemicals only. For example, a 2-inch plastic twist tie applied at the rate of 400 twist ties per acre to the limbs of fruit trees would be large enough to be retrieved from this site while 2-millimeter plastic beads applied broadcast at the rate of 20,000 beads per acre would not. The exemption will not apply to components of semiochemical formulations applied in a broadcast manner either to a crop field plot or to individual plants.

EPA has found that, when such products are used in accordance with good agricultural practice, a tolerance is not necessary to protect the public health. A generic exemption for this low-risk, low-exposure group of substances will facilitate the use of semiochemicals which are a low-risk naturally occurring pesticide. These ingredients are useful. Therefore, EPA proposes that an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300292]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1122 to subpart D, to read as follows:

§ 180.1122 Components of semiochemical dispensers; exemption from the requirement of a tolerance.

(a) Components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site, are exempted from the requirement of a tolerance when used as inert ingredients (carriers) in pesticide formulations applied to growing crops only. These dispensers shall conform to the following specifications:

(1) Exposure must be limited to inadvertent physical contact only. The design of the dispenser must be such as to preclude any contamination by its components of the raw agricultural commodity or processed foods/feeds derived from the commodity by virtue of its proximity to the RAC or as a result of its physical size.

(2) The dispensers must be applied as point-source distributors of semiochemicals only. This exemption does not apply to components of semiochemical formulations applied in a broadcast manner either to a crop field plot or to individual plants.

(b) A semiochemical dispenser is a single enclosed or semi-enclosed unit that releases semiochemical(s) into the surrounding atmosphere via volatilization and is applied in a manner to provide point-source distribution of the semiochemical(s) into the environment.

(c) Semiochemicals are chemicals that are emitted by plants or animals and modify the behavior of receptor organisms. These chemicals must be naturally occurring or substantially identical to naturally occurring semiochemicals.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 414, 424, 431, and 447

[BPD-309-P]

RIN 0938-AB50

Medicare and Medicaid Programs; Payment for Clinical Diagnostic Laboratory Tests

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish in regulations methods for determining fee schedules applicable for outpatient clinical diagnostic laboratory tests and payment policy related to these fee schedules. It would implement in regulations the requirements of a number of laws, the most recent being the Omnibus Budget Reconciliation Act of 1990. This proposed rule would also allow certain adjustments or exceptions to the fee schedules as authorized by statute. It would limit payments under both Medicare and Medicaid. Since 1984, statutorily-imposed fee schedules have been implemented by instructions to HCFA regional offices, fiscal intermediaries, and carriers. This proposed rule would codify these existing policies in regulations.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 18, 1993.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services. Attention: BPD-309-P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmissions. In commenting, please refer to file code BPD-309-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890).

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy is $4.50. An an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles Spalding, (410) 966-4496.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Background Before July 1, 1984

Before July 1, 1984, Medicare payments for diagnostic laboratory tests furnished by independent laboratories and physicians were made on a reasonable charge basis, subject to the annual Part B deductible of $75 and 20 percent coinsurance for which the beneficiary was responsible. Diagnostic laboratory tests performed by hospitals for their outpatients were also paid for under Part B of Medicare, but on the basis of reasonable costs (or charges if they were lower than costs). Payment on these bases, also, was subject to the Part B deductible and copayment. Diagnostic laboratory tests for inpatients of hospitals were paid for on the basis of Part A reasonable costs or under the prospective payment system if the beneficiary had Part A coverage. They were paid for on the basis of Part B reasonable costs if the beneficiary had only Part B coverage. The Part A deductible and Part B deductible and coinsurance applied, respectively. If the hospital accepted patient specimens from physicians or other laboratories in the community, the hospital was paid under Part B in the same manner as an independent laboratory.

Medicare Part B payments for tests furnished by physicians, independent laboratories, or hospital laboratories for non-hospital patients (that is, for patients that are neither inpatients nor outpatients of the hospital) could be made on a reasonable charge basis either directly to the laboratory or to the beneficiary on the basis of an itemized bill. Laboratories could bill the Medicare program and be paid directly for the tests only if they accepted assignment of benefits. By accepting assignment, the laboratories agreed to accept as the full payment for the service the amount that the Medicare carrier determined to be the reasonable charge. However, if a laboratory did not accept assignment, it could bill the beneficiary, and the beneficiary would be liable for any difference between the laboratory's fees and the amounts allowed as reasonable by the carrier.

The carrier determined the reasonable charge for a clinical diagnostic laboratory test using the reasonable charge rules under subpart E of 42 CFR part 405. In general, the reasonable charge for a laboratory test was the least of: (1) The actual charge billed for the test, (2) the customary charge for the test, (3) the prevailing charge in the locality for the test, or (4) the charge applicable to the carrier's own policy holders and subscribers for a comparable test under comparable circumstances. In addition, the law provides (see the fifth sentence following section 1842(b)(3)(L) of the Social Security Act) that reasonable charges for medical services, supplies, and equipment that do not vary significantly in quality from one supplier to another may not exceed the lowest charge levels at which such items and services are widely and consistently available in a locality. Twelve commonly performed laboratory tests were subject to this lowest-charge-level provision.

Other statutory provisions have been available to limit the amount of reasonable charges. For example, since 1972, section 1833(h) of the Social Security Act (the Act) has authorized payment of 100 percent of negotiated rates for diagnostic laboratory tests, that is, without beneficiary coinsurance payments. However, this provision has not been implemented. Additionally, the former section 1842(h) of the Act was added by section 918 of the Omnibus Reconciliation Act of 1980, Public Law 96-499, to limit payment, for tests performed by independent laboratories but billed by physicians, to cover the costs of specimen collection and handling plus the lower of the independent laboratory's reasonable charge or the independent laboratory's charge to the physician, subject to deductible and coinsurance payments. The collection and handling fee was not authorized for laboratories or for

physicians who performed their own tests. Further, if the bill from the physician did not indicate who performed the test, payment was limited to the carrier's estimate of the lowest available charge in the locality. (This provision was later repealed by section 2303(e) of the Deficit Reduction Act of 1984 (DEFRA '84), Public Law 98–369, effective for tests furnished on or after July 1, 1984.)

Under the Medicaid programs, the States have generally used their own payment methodologies for outpatient diagnostic laboratory tests. However, the Medicare limit on payment to physicians billing for tests performed by independent laboratories discussed above also applied to the Medicaid programs (see former section 1902(a)(43) of the Act, as it existed before being stricken by section 2303(g)(1)(B) of DEFRA '84).

B. Legislative History Beginning July 1984

On July 18, 1984, DEFRA '84 was signed into law. Section 2303 of DEFRA '84 established a new method for determining payment amounts for outpatient clinical diagnostic laboratory tests paid for under the Medicare and Medicaid programs.

Generally, section 2303 of DEFRA '84 amended section 1833(h) of the Act to require the establishment and application of fee schedules to payments for clinical diagnostic laboratory tests under Part B of the Medicare program. Additionally, section 2303 added section 1903(i)(7) to the Act to provide that Federal financial participation is not available to the extent that payments by States under Medicaid exceed the fee-schedule amounts established under Medicare. The statute required that the fee-schedule amounts be updated for the second and subsequent years by an updating factor equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average). The fee schedules for tests performed during the period beginning July 1, 1984, and ending on June 30, 1987, were to be established on a regional, statewide, or carrier service area (as the Secretary determined to be appropriate). For tests performed on or after July 1, 1987, the fee schedules were to be established on a nationwide basis.

Under the authority of the amendment, the fee schedules apply to payments for tests performed in a physician's office, in an independent laboratory, in a hospital laboratory (for patients other than inpatients), and in a rural health clinic for patients who receive no other services from the clinic. The fee schedules do not apply to tests performed in hospitals and skilled nursing facilities for inpatients. The fee schedules do not apply to facilities where laboratory tests are paid for under approved State or regional payment control programs. The fee schedule provisions apply, under the Medicare program, to tests performed on or after July 1, 1984, and, under Medicaid, for tests performed on or after July 1, 1984, and paid for through quarterly Federal financial participation payments made on or after October 1, 1984.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272, was signed into law. Section 9303 of COBRA established a national limitation amount on the fee-schedule method, revised the effective date for implementation of a national fee schedule to January 1, 1988, and made certain other modifications to the provisions of section 1833(h) of the Act.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509, was signed into law. Section 9339 of OBRA '86 added payment for travel allowances, further revised the effective date for implementation of a national fee schedule to January 1, 1990, and made certain other modifications to the provisions of section 1833(h) of the Act.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, was signed into law. Section 4064 provided for limitations on changes in fee schedules, reduced the fee schedules of certain automated and similar tests by 8.3 percent, revised the calculation of national limitation amounts, and made certain other modifications to the provisions of section 1833(h) of the Act.

On November 10, 1988, the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) was signed into law. Section 8421 amended section 1833(h) of the Act to provide special rules for payment to certain laboratories of travel fees to collect samples.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239, was signed into law. Section 6111 of OBRA '89 amended section 1833(h) of the Act to reduce national limitation amounts, to strike the requirement for a national fee schedule, and to provide certain restrictions on payments to referring laboratories.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, was signed into law. Section 4154 of OBRA '90 amended section 1833(h) of the Act to limit annual adjustments in fee schedules for 1991, 1992, and 1993, to reduce national limitation amounts, and to make certain other modifications.

C. Program Implementation

Because of the limited timeframe for implementing the statutory provisions described and because, for the most part, the provisions are clear and nondiscretionary, we have implemented the basic fee-schedule program set forth in the provisions through instructions and memoranda issued to HCFA regional offices, fiscal intermediaries, and carriers.

To implement the provisions of DEFRA '84, in July 1984, HCFA issued the revised Medicare Intermediary Manual Instructions (Transmittal No. IM 84–1) and the Hospital Manual Instructions (Transmittal No. IM 84–2) and, in September 1984, HCFA issued the revised Carrier Manual Instructions (Transmittal No. IM 84–3). Section 1833(h)(2) of the Act, as added by section 2303(d) of DEFRA '84, required that the fee-schedule amounts be updated for the second and subsequent years by an updating factor equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average). We computed the initial annual change from the midpoint of the base year used to compute the initial fee schedules (CY 1983). We could have chosen a number of alternative annual periods to compute the Consumer Price Index (CPI) change (for example, January to January, June to June, or July to July for years beginning in 1983 or 1984). Since the fee schedule is based on charges for 1983 that were used to derive prevailing charges beginning July 1, 1984, we believed that 1983 was the appropriate base year from which to measure change. Also, since the prevailing charge is based on charges that were made throughout 1983, we believe that it was appropriate to determine a rough approximation of the average charge for 1983 from which we established updates. We assumed that prices increase during a normal year at a uniform rate each month. Prices, therefore, at the midpoint of the year, will be approximately the same as the average price for the entire year. The months of June and July lie on either side of the midpoint of the year. July was chosen because it was the first month of the laboratory fee schedule update.

Although section 2306 of DEFRA '84 changed the date for updating customary and prevailing charges from July 1 of each year to October 1, the change did not apply to laboratory fee schedules because section 1833(h)(2)

contained its own update schedule. Under that provision, tests performed on or after July 1, 1985, were updated by the percentage increase or decrease between the CPI for July 1983 and the CPI for July 1984.

Section 2303(h) of DEFRA '84 required that the Secretary simplify the procedures for the filing of claims and issuance of payments for clinical diagnostic laboratory tests. HCFA implemented simplified billing instructions in section 4030 of the Medicare Carrier Manual in October 1986 (Transmittal No. 1171) that reduce the amount of patient information necessary on a HCFA–1500 submitted by independent laboratories. These instructions were renumbered to become section 4021 of the Medicare Carrier Manual in April 1989 (Transmittal No. 1298).

To implement the provisions of COBRA, in June 1986, HCFA issued Hospital Manual Instructions and Intermediary Manual Instructions (Transmittal No. 483 and Transmittal No. 1279, respectively) and an Intermediary/Carrier Program Memorandum (No. 86–6). Section 9303(a) of COBRA amended the date for updating fee schedules. It required that the scheduled July 1, 1986, update be delayed until January 1, 1987, and specified that the January 1, 1987, update be adjusted by an 18-month increase or decrease in the CPI. We made concomitant changes in the CPI measurement periods. For tests performed on or after January 1, 1987, the fee schedule amounts were updated by the percentage increase or decrease in the CPI for the 18 month period from July 1984 to January 1986. For tests performed on or after January 1, 1988, the fee schedule amounts have been updated at the beginning of each calendar year (January 1) by the change in the CPI for the 12-month period from the January two years prior to the calendar year to the January of the immediately preceding calendar year. The applicable CPI updating factor has been published in HCFA's operating instructions before the beginning of each new fee-schedule year.

To implement the provisions of OBRA '86, in November 1986, we issued Intermediary Manual Instructions (Transmittal No. 1302); in December 1986, we issued Carrier Manual Instructions (Transmittal No. IM 86–6), and in February 1987, we issued Hospital Manual Instructions (Transmittal No. 502).

To implement the provisions of OBRA '87, in April 1988, we issued Intermediary Manual Instructions, Hospital Manual Instructions and Carrier Manual Instructions (Transmittal Nos. 1378, 535, and IM–88–2, respectively). Section 4064(b)(1) of OBRA '87 amended section 1833(h)(2) of the Act, beginning April 1, 1988, to reduce the fees for certain tests by 8.3 percent. We implemented this provision by Medicare Carrier Manual Instructions (Transmittal No. IM 88–2). The affected tests, listed below by the Current Procedural Terminology Fourth Edition (CPT–4) code, are those that before July 1, 1984, were subject to the lowest charge level (LCL) limits.

Automated Tests

80002–80019

Tests Subject to LCL Limits

82465	Cholesterol, Serum
85022	Complete Blood Count
85031	Complete Blood Count
85018	Hemoglobin
85014	Hematocrit
85610	Prothrombin Time
85650	Sedimentation Rate
85651	Sedimentation Rate
82947	Glucose
82948	Glucose
81000	Urinalysis
84550	Blood Uric Acid
84520	Blood Urea Nitrogen
85048	White Blood Cell Count

To implement the provisions of Public Law 100–647, in May 1989, we issued Carrier Manual Instructions (Transmittal No. 1308).

To implement the provisions of OBRA '89, in February 1990, we issued a Carrier Program Memorandum (Transmittal No. B–90–1); in March 1990, we issued a Carrier Program Memorandum (Transmittal No. B–90–3); and, in May 1990, we issued Carrier Manual Instructions (Transmittal No. 1347).

To implement the provisions of OBRA '90, in December 1990, we issued a Carrier Program Memorandum (Transmittal No. B–90–11).

II. Discussion of Provisions of the Regulations

A. General

This rule would amend 42 CFR chapter IV to implement in regulations the statutory provisions and HCFA payment policies regarding fee schedules for clinical diagnostic laboratory tests. Following is a discussion of the various provisions we propose to include in regulations.

B. Basic Payment Policy for Fee Schedules-General

1. Carrierwide Fee Schedules

Section 1833(h) of the Act requires that fee schedules "be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) * * *." We determined that establishment of the schedules on a carrierwide basis, not to exceed a statewide basis, was most appropriate. Accordingly, we implemented the fee schedule program on this basis in our program instructions and memoranda and are proposing to use this basis in our regulations. Charge data were already accumulated by carriers for their entire service area and, if a carrier serviced more than one State, the information was maintained separately by State. Therefore, the data necessary for developing fee schedules on this basis were readily accessible. Development of statewide schedules (where more than one carrier serves a State) or regional schedules would be more difficult since to do so would require merging data from carriers that, in some cases, had incompatible data systems. In the absence of compelling reasons to prefer either statewide or regional rates, we believe that the most administratively feasible basis was chosen.

2. "Lesser of" Provisions

Section 2303(a) of DEFRA '84 amended section 1833(a) of the Act to require that the amounts paid for laboratory tests under Part B be based on "the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests" or on the basis of negotiated rates. Section 9303(b) of COBRA amended sections 1833(a)(1)(D)(i) and (a)(2)(D)(i) and added section 1833(h)(4)(B) of the Act to add a national limitation amount to the list of "lesser of" requirements. Therefore, payment is based on the lowest of the fee schedule amount, the national limitation amount, or the actual charge.

3. Excluded and Included Tests

a. *General.* Generally, the clinical diagnostic laboratory tests paid for under the fee schedules are identified by codes 80002 through 89399 of the Current Procedural Terminology, Fourth Edition (CPT–4). (CPT–4 is revised annually, and we will make any necessary changes to update our lists of tests either paid or not paid for under the fee schedules through manual issuances.) Following are descriptions of those tests that are either included or excluded from the proposed fee-schedule provisions.

b. *Excluded tests.* Certain clinical diagnostic laboratory tests can be performed safely and effectively only by physicians and, therefore, are considered physician services. These tests listed below by CPT–4 code numbers, are not subject to the fee-

schedule provisions but are paid for as physician services.

80500–80502 Clinical pathology consultation
85095–85109 Codes dealing with bone marrow smears and biopsies
86077–86079 Blood bank services
88000–88125 and 88160–88199 Certain cytopathology services
88300–88399 Surgical pathology services

There are other codes in the 80000 series representing tests that are not clinical diagnostic laboratory tests. These include codes for procedures, services, blood products, and autotransfusions. Other tests primarily associated with the provision of blood products also are not considered clinical diagnostic tests. These tests include the various blood crossmatching techniques. We have identified the following codes as never subject to fee-schedule limitations:

86060
86012
86013
86016–86019
86024
86034
86066
86070
86100
86120
86128
86130
86265–86267
86455–86587
86595
89100–89105
89130–89141
89350
89360

The above listing is as complete as we are able to determine to date and is being used by our contractors in the current administration of the fee schedule program. We have given directions to them that, if they identify other tests that they believe are services or products not considered diagnostic tests, this assessment should be confirmed by the HCFA regional office before removal from fee-schedule limitations.

c. *Tests that may be included or excluded.* Tests identified by the following codes are not subject to fee-schedule limitations if they are submitted for payment on the same bill with charges for blood products:

86011
86014
86031–86033
86080
86082–86095
86105

The above codes can also represent tests serving a diagnostic purpose; if no blood product is provided and billed on the same claim, these codes are assumed to represent tests that are diagnostic in nature and, therefore, subject to the fee schedules.

d. *Included tests.* Tests for which the fee schedules apply under current program implementation include 12 diagnostic laboratory tests that had previously been subject to the lowest-charge-level (LCL) provision (see regulations at § 405.511(c) regarding calculating the lowest charge level). Because payment for the 12 tests is intended to be covered by the fee-schedule provisions, we no longer pay for the tests according to the LCL provision. These 12 tests are as follows:

1. Cholesterol, Blood Test
2. Complete Blood Count
3. Hemoglobin
4. Hematocrit
5. Prothrombin Time
6. Sedimentation Rate
7. Blood Sugar (Glucose)
8. Cytologic Study (Papanicolaou type)
9. Urinalysis
10. Blood Uric Acid
11. Blood Urea
12. Leukocycte Count

e. *Special circumstances.* The fee schedules have been applied by our contractors to all clinical diagnostic laboratory tests that are covered under Part B, with the following clarifications regarding special circumstances. Except as indicated below, we would include these clarifications in the regulations.

- Laboratory services performed by a participating skilled nursing facility (SNF) for its own inpatients (but not those tests performed for inpatients of the SNF by others) are payable on a cost basis. This is in accordance with section 1833(h)(1)(A) of the Act, which exempts from the fee-schedule requirements tests performed by a provider for an inpatient of the provider.
- In accordance with § 413.170, payment for outpatient maintenance dialysis treatments are made on the basis of prospective payment rates (also known as composite rates). These rates are intended to cover certain laboratory tests associated with the dialysis treatment. Therefore, additional payments for such laboratory tests are not made. However, laboratory tests furnished to dialysis patients where payment is not made on the basis of composite rates are payable in accordance with the fee schedules. (Section II. F. of this preamble contains a more detailed discussion of payment for dialysis services.)
- If hospitals are paid under alternative payment programs approved by HCFA (for example, under State cost control systems authorized under section 1886(c) of the Act), the normal Medicare payment principles are waived. If such a waiver covers payment for outpatient clinical diagnostic laboratory tests, payment for those tests in made in accordance with the particular program payment rules and not on the basis of the fee schedules. If the alternative payment programs does not control payment for laboratory tests that would otherwise be subject to the fee schedules, the fee schedules apply.
- In accordance with section 1833(a)(3) of the Act and regulations in part 405, subpart X, independent rural health clinics (RHCs) are paid on the basis of estimated allowable cost. At the beginning of the cost reporting period, an all-inclusive rate is determined and is subject to reconciliation at the end of the period based on reported and approved actual costs. Medicare pays 80 percent of the all-inclusive rate, subject to the deductible. The all-inclusive rates subject to final reconciliation include, as an incident to a physician's professional service, the costs of furnishing clinical diagnostic laboratory tests. Therefore, payment to RHCs for laboratory tests for patients of the RHC will not be made on the basis of the fee schedules. Rather, payment will continue to be made under the existing rules for RHCs.
- Payment to health maintenance organizations, competitive medical plans, and health care prepayment plans (see section 1833(a)(1)(A) of the Act) is made in accordance with section 1876 of the Act and part 417 of the regulations. Amounts paid under section 1876(a)(3) of the Act are in place of amounts that would otherwise be payable under section 1833(a) of the Act (which includes the provision for payment for laboratory tests on the basis of fee schedules). Therefore, laboratory tests for enrollees of these entities are not subject to the fee schedules. However, Medicare beneficiaries who are non-enrollees may also receive services from such organizations. In these cases, laboratory tests (for non-enrollees) are paid for on the basis of the fee schedules.
- In accordance with part 418, HCFA pays a predetermined payment amount for each of four categories of hospice care. The rates are intended as payment for all hospice care services provided. Additional payment for laboratory tests furnished as part of that care would be inappropriate. Therefore, the fee schedules do not apply to laboratory tests furnished by a hospice, either directly or under arrangements with another provider or supplier. However, the professional services of an attending physician not employed by (or providing services under arrangements with) the hospice are not covered by the

hospice payment rates (see §§ 418.24(d)(2)(iii) and 418.304(c)). Therefore, the professional services associated with a laboratory test furnished by this physician are payable under the physician fee schedule.

• Laboratory tests furnished to an inpatient of a participating hospital must be furnished by the hospital or by others under arrangements made with them by the hospital. These tests are payable under the prospective payment system or, with respect to services provided in hospitals or units excluded from the prospective payment system and with respect to services provided to inpatients eligible for payment for Part B services only, on a reasonable cost basis. This clarification does not require a change in Medicare Part B regulations.

4. Fee-Schedule Amounts

Section 1833(h)(2) of the Act, as added by section 2303(d) of DEFRA '84, required that, for the first year (that is, for tests performed on or after July 1, 1984, and before July 1, 1985), the fee schedules for payment of physicians and independent laboratories be established at 60 percent of the prevailing charge level. Also the fee schedules for payment of hospital outpatient laboratory tests were required to be established at 62 percent of the prevailing charge level.

As explained earlier, we have used carrierwide data to determine the prevailing charges. The carrierwide prevailing charges are the amounts set at the 75th percentile of the customary charges, weighted by frequency, made for similar services in each carrier's entire service area during calendar year (CY) 1983. If a carrier's service area includes more than one entire State (for example, Massachusetts Blue Shield services New Hampshire, Vermont, Maine, and Massachusetts), prevailing charges are separately calculated based on customary charges for each State. In several instances (for example, in the Kansas City and Washington, DC metropolitan areas), customary charges from portions of more than one State, but less than an entire State, make up a carrier service area.

The carrierwide fee-schedule amounts applicable for the first year are updated for the second year and subsequent years as explained in paragraph 5. following.

With regard to the 60 and 62 percent fee schedule amounts, the Conference Report (the report), which accompanied DEFRA '84 (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1304 (1984)), explained the distinction between laboratory tests performed by hospitals for their own outpatients and tests performed for persons who are not patients of the hospital (see item 10.a of the report). The basis for the distinction is whether the hospital laboratory is "acting as an independent laboratory" (see item 10.c. of the report). We are proposing in regulations to limit the meaning of "outpatient laboratory tests" to those tests ordered as a result of the patient's visit to an outpatient department of the hospital. Tests ordered in settings other than in a hospital's outpatient department (for example, in the office of a physician's private practice or in another hospital's outpatient department) would be considered services provided to a non-hospital patient.

Section 9339(a) of OBRA '86 amended section 1833(h) of the Act to provide that, for tests performed on or after January 1, 1987, the 62 percent fee schedule must be used only for outpatient tests performed by qualified outpatient laboratories. Section 9339(a) added section 1833(h)(1)(D) of the Act, which defined "qualified hospital laboratory" as a hospital laboratory which provides some tests 24 hours a day in order to serve a hospital emergency room that is available to provide services 24 hours a day, seven days a week. Section 4064(c) of OBRA '87, as amended by section 411(g)(3) of The Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, provides that beginning April 1, 1988, a qualified hospital laboratory is one that is located in a sole community hospital as defined by the Act.

The Joint Commission on Accreditation of Healthcare Organizations allows an emergency room to be classified as a 24-hour emergency room if physicians are physically present or available within 30 minutes through a medical staff call roster to handle emergencies 24 hours a day. We are adopting this standard to determine if an emergency room operates on a 24-hour basis. If the emergency room meets this standard 7 days a week and if the laboratory has laboratory technicians on duty or on call at all times to provide some testing for the emergency room, the laboratory would be considered qualified to have payment based on the 62 percent fee schedule for tests performed for its own outpatients.

5. Revision of Calculation Period for Annual Update Factor

We could have selected any of several alternative annual periods to compute the CPI change. Our initial choice of period was the historic data period for computing reasonable charges, that is, January to January. Subsequent to the initial fee schedule legislation for clinical diagnostic laboratory tests (DEFRA '84), section 4062(b) of OBRA '87 established fee schedules for durable medical equipment (DME) and provided for a similar updating methodology. However, the period used to calculate the updating factor for DME is the 12-month period ending with June of the preceding year. There is no reason to believe that, over the long run, annual changes in the CPI measured January to January are significantly different from those measured June to June. Therefore, for administrative simplicity, this rule would change the period used to calculate the annual update factor for clinical diagnostic laboratory tests to mirror the period used for DME. Since, as noted in (d) above, the update factor is specified through 1993, the revised calculation period would not be applied until January 1994.

6. Who May Be Paid

a. *Assigned claims.* Section 1833(h)(5)(A) of the Act, as added by section 2303(d) of DEFRA '84 and amended by section 6111(b) of OBRA '89 and further amended by section 4154(e)(1) of OBRA '90, requires that in the case of assigned claims or claims submitted under a provider agreement, payment be made only to the person or entity that performed or supervised the performance of the test with two exceptions as follows:

1. Payment may be made to another physician who shares his or her medical practice with the physician who performed or supervised the performance of the test.

2. Payment for a clinical diagnostic laboratory test performed by a laboratory at the request of another laboratory (not a physician) may be made to the referring laboratory in any of the following circumstances:

(a) The referring laboratory is in, or is part of, a rural hospital.

(b) The referring laboratory is wholly owned by the performing laboratory, the performing laboratory is wholly owned by the referring laboratory, or both laboratories are wholly owned by a third entity.

(c) Not more than 30 percent of the tests for which the referring laboratory, other than a laboratory described in paragraph (b) above, receives requests for testing during the year in which the test is performed are performed by another laboratory.

Section 9343(c) of OBRA '86 has created, in situations in which tests are ordered for a hospital outpatient, an additional exception to the rule that payment may be made only to the person or entity that performed or

supervised the performance of the test. Section 9343(c) of OBRA '86 amended section 1862(a)(14) of the Act to require that all payments for services furnished to hospital patients must be made to the hospital. Therefore, if a test is ordered for a hospital outpatient, payment must be made to the hospital rather than to the person or entity that performed or supervised the performance of the test.

The language of the statute and Conference Report accompanying DEFRA '84 suggests that the term "person", used in section 1833(h)(5) in reference to who may be paid, is meant to include only physicians. Therefore, we have implemented in instructions and are proposing to include in regulation that payment be made only to physicians or entities except as discussed above.

Under section 1833(h)(5)(C) of the Act, as added by section 2303(d) of DEFRA '84, for tests performed between July 1, 1984, and December 31, 1986, payment for clinical diagnostic laboratory tests performed by laboratories independent of a physician's office or rural health clinic could only be made on an assigned basis or to a provider of services with a provider agreement. For this purpose, a laboratory owned, leased, or otherwise maintained by a group of physicians who do not otherwise share a medical practice, is considered independent of a physician's office (see section 11. below). Between July 1, 1984, and December 31, 1986, assignment generally continued to be optional for physicians. However, assignment was, and continues to be, mandatory for physicians and physician groups that enrolled as "participating physicians" under provisions of section 1842(h) of the Act as added by section 2306(c) of DEFRA '84.

b. *Unassigned claims.* Under section 2303(d) of DEFRA '84, in the case of unassigned claims, payment was authorized to be made to the beneficiary on the basis of an itemized bill from the physician or entity (that is, a medical group) that performed or supervised the test. However, payment could no longer be made to the beneficiary on the basis of an unassigned claim from a laboratory. Under section 9303(b)(3) of COBRA, as clarified by section 4154(c)(1)(A) of OBRA '90, for services furnished on or after January 1, 1987, payment can no longer be made to the beneficiary on the basis of an unassigned claim from a physician.

Section 4085(b) of OBRA '87, as clarified by section 4154(c)(1)(B) of OBRA '90, amended section 1833(h)(5) by adding subparagraph (D), which provided that for tests performed on or after January 1, 1988, a person who knowingly, willfully, and on a repeated basis bills on an unassigned basis may be subject to sanctions in accordance with section 1842(j)(2) of the Act.

We are proposing no other changes in regulations regarding who may bill the program directly for laboratory services.

7. National Limitation Amounts.

Section 9303(b) of COBRA added section 1833(h)(4)(B) to the Act to require that a national limitation amount be established as a ceiling on payments under clinical diagnostic laboratory fee schedules. Initially, for services performed between July 1, 1986, and December 31, 1987, the national limitation amount for any test was set at 115 percent of the median of the fee schedules established for that test in the various carrier service areas. The national limitation amount is to be separately calculated for the 60 percent and 62 percent fee schedules. After December 31, 1987, and until a national fee schedule amount was established, the national limitation amount was to be calculated as 110 percent of the median of the fees established for the test.

Section 4064(b)(2) of OBRA '87 further amended section 1833(h) of the Act to require that the period for the initial national limitation amount (115 percent of the median of fees) would be extended to March 31, 1988, and that, after March 31, 1988, and until a national fee schedule amount was established, the national limitation amount was to be calculated as the median of the fee schedules established for the test.

Section 6111(a) of OBRA '89 further amended section 1833(h) of the Act to eliminate the establishment of nationwide fees and to require that, after December 31, 1989, the national limitation amount was to be calculated as 93 percent of the median of the fee schedules established for the test.

Section 4154(b) of OBRA '90 further amended section 1833(h) of the Act to require that, after December 31, 1990, the national limitation amount is to be calculated as 88 percent of the median of the fee schedules established for the test. We would include this provision in the regulations.

8. Payment Amounts

Sections 1833(a)(1)(D), 1833(a)(2)(D), and 1833(b)(3) of the Act require that, if payment is made on an assignment basis or under a provider agreement, or for tests required in connection with a second opinion required by a Peer Review Organization under section 1164(c)(2) of the Act or a third opinion, the payment is 100 percent of the lowest of the fee-schedule amount, the national limitation amount, or the actual charge. No beneficiary deductible or coinsurance is applicable.

9. Specimen Collection Fee

Section 1833(h)(3) of the Act, as added by section 2303(d) of DEFRA '84, permits payment of a nominal fee, in addition to the laboratory fee, for the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test is performed. We set this fee at $3. Section 1833(h)(3) of the Act is silent with respect to how the specimen fee is to be paid. We have chosen to apply the same conditions for payment and to calculate payment as we do for the laboratory tests. That is, the claim must be submitted under an assignment agreement or under a provider agreement, the payment would be 100 percent of the collection-fee amount, and the deductible and coinsurance would not apply. We are proposing to implement this payment methodology in the regulations. (Payment of an unassigned claim for collection performed by a physician prior to January 1, 1987, was paid at 80 percent of the collection-fee amount and was subject to any unmet deductible amount and coinsurance.)

The collection fee would be paid only to the physician or entity that actually extracts or supervises the extraction of the specimen from the patient except that, in the case of a specimen collection for a hospital outpatient, only the hospital may be paid.

In the case of a nursing facility where the patient is covered under the skilled nursing benefit, the costs of the skilled nursing necessary to perform specimen collection are paid for as Part A costs, and a separate payment is not made under part 414, subpart F. Additionally, in accordance with section 1833(h)(3) of the Act, only one collection fee is allowed for each patient encounter, regardless of the number of specimens drawn. That is, if a series of specimens is required to complete a single test (for example, glucose tolerance test), or if collecting more than one specimen to complete two or more tests, the collections would be treated as a single encounter. However, if separate kinds of specimens must be collected (for example, a venipuncture and a urinary catheterization), we consider there to have been multiple encounters, and a separate fee may be paid for each type of specimen. A fee would not be allowed in instances in which the cost of collecting the specimen is minimal, such as taking a throat culture, or a routine capillary puncture (for example.

as used for determining clotting or bleeding time).

In the case of dialysis patients, the costs of specimen collection are included in the prospective payment amount (that is, the composite rate) paid to facilities for dialysis treatment or the amounts paid to physicians under monthly capitation payments. Therefore, if the composite rate applies, a separate specimen collection fee generally is not payable.

Section 1842 of the Act was amended by section 2303(e) of DEFRA '84, which deleted the former subsection (h). That subsection had authorized the payment of a specimen collection and handling fee. At the same time, section 2303(d) of DEFRA '84 amended section 1833(h)(3) of the Act to authorize the payment of a specimen collection fee to cover the costs of collecting samples. Consequently, the statute no longer contains provisions authorizing handling costs. Therefore, we will no longer make payment for routine handling charges if a specimen is referred from one laboratory to another.

The $3 collection fee is payment for all costs of collecting the specimen with the exception of an additional amount that may be paid for travel expenses as discussed below.

10. Travel Allowance

Section 9339(c) of OBRA '86 amended section 1833(h)(3) of the Act to provide for the payment of a travel allowance to cover the transportation and personnel expenses for trained personnel to collect specimens from homebound patients or inpatients of facilities other than hospitals. Due to the variability in time, distance, and wage circumstances in different locales, we have chosen to implement this provision by allowing carriers and intermediaries substantial discretion in calculating travel allowances. We have provided general guidance through our manuals. In November 1986, we issued Intermediary Manual Instructions (Transmittal No. 1302) and, in December 1986, we issued Carrier Manual Instructions (Transmittal No. IM 86–6). Since more than one patient, including non-Medicare patients, could be served during any given trip, we are requiring that carriers assure proper proration of the allowance among all patients who receive any services during the trip. Since trained personnel perform the specimen collection at many facilities, it is unnecessary to send technicians from laboratories to collect specimens. Therefore, we propose that the travel allowance can be paid only if a specimen collection fee is also payable; that is, no travel allowance would be paid if a technician merely performs a messenger service to pick up a specimen drawn by other personnel.

The Office of the Inspector General has found that, under the currently implemented instructions, where travel fees are paid on a per mile basis, certain laboratories have claimed mileage far in excess of the minimum distance necessary for a technician to travel. Therefore, we propose to give the carrier the authority to review any claim (for instance, if the carrier determines the claim has unusually high charges for travel) and limit any travel allowance for specimen collection to the payment that would be made to the closest (to the collection site) laboratory that could provide the service.

Section 8421 to Public Law 100–647 amended section 1833(h)(3) of the Act to establish a special travel allowance for certain clinical laboratories based on the number of miles traveled and the personnel costs associated with the collection of each individual sample. We implemented the provision through detailed Carrier Manual instructions (Transmittal No. 1308). Since the provision was applicable only to services provided between April 1, 1989, and December 31, 1990, this rule would have no associated provision.

Once again, section 1833(h)(3) of the Act is silent with respect to how payment is to be made for the travel allowance. We have chosen to apply the same conditions for payment and to calculate payment as we do for laboratory tests and specimen collection fees. That is, the claim must be submitted under assignment or under a provider agreement, the payment would be 100 percent of the travel allowance amount, and the deductible and coinsurance would not apply. The travel allowance would be paid only to the physician or entity that actually draws or supervises the drawing of the specimen from the patient.

In the case of dialysis patients, the costs of travel to furnish services to home dialysis patients are included in the amount paid to physicians under monthly capitation payments. Therefore, if the composite rate applies, separate travel allowance generally is not payable.

11. Changes in the Definition of an Independent Laboratory

The definition of an independent laboratory that was in the regulations at § 493.2 until September 1, 1992, precluded a laboratory that was located in a hospital and that served the hospital's patients from being considered independent. A number of laboratories located in hospitals merely lease space from the hospitals and are neither owned nor supervised by the hospitals or their organized medical staffs. Nevertheless, under the above-mentioned definition of an independent laboratory, these laboratories were defined as hospital-based facilities. For payment purposes, we propose to define an independent laboratory as a facility maintained for the purpose of performing diagnostic laboratory tests that is independent of (that is, is not owned, controlled, managed or supervised by) a hospital, a hospital's organized medical staff, or an attending or consulting physician's office; or that is a facility owned, leased, maintained, or operated by or for a group of physicians if the group is not otherwise a shared medical practice. Thus, location of a laboratory would no longer be a factor in determining whether a laboratory is hospital-based or independent.

The proposed definition would require that, if laboratories maintained by physicians (or rural health clinics) for their own patients accept specimens on referral from other physicians (or rural health clinics), they meet the conditions for coverage of services of independent laboratories for tests performed on those specimens that are referred.

12. Distinction Between Physician's Office Laboratory and an Independent Laboratory

We also propose to strengthen the distinction between a physician's office laboratory and an independent laboratory by requiring that a laboratory that is a joint venture under any type of legal structure be considered an independent laboratory unless all the physicians involved share a common medical practice. We believe that such joint ventures are independent of attending physicians' offices. We consider tests performed by such laboratories to have been referred from one entity (that is, the attending physician's medical practice) to another entity (that is, the shared laboratory practice) that is independent of the attending physician's office and, therefore, only payable to the laboratory.

We have received a number of inquiries regarding our definition of a shared medical practice. We would define a shared medical practice as two or more physicians actually practicing medicine together under a legal entity that meets the requirements of a group practice as set forth in proposed § 411.351 in a separate proposed rule published on March 11, 1992 (57 FR 8588). Proposed § 411.351 defines "group practice" as follows:

"Group practice" means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association that meets the following conditions:

(1) Each physician who is a member of the group furnishes substantially the full range of patient care services that the physician routinely furnishes including medical care, consultation, diagnosis, and treatment through the joint use of shared office space, facilities, equipment, and personnel.

(2) Substantially all of the patient care services of the physicians who are members of the group (that is, at least 85 percent of the aggregate services furnished by all physician members of the group practice) are furnished through the group and are billed in the name of the group and the amounts received are treated as receipts of the group. The group practice must attest in writing that it meets this 85 percent requirement.

(3) The practice expenses and income are distributed in accordance with methods previously determined by members of the group.

We invite comments on our proposed definition of shared medical practice.

C. Changes in Medicaid Requirements

Section 2303(g) of DEFRA '84 amended section 1903(i) of the Act to require that, effective October 1, 1984, quarterly Federal financial participation payments to States under the Medicaid program may not be made for amounts for clinical diagnostic laboratory tests that exceed the amounts that would be paid for such tests under Medicare. To implement this provision, we issued operational instructions to Medicaid State agencies regarding this requirement. In addition, Medicare carriers have furnished copies of applicable fee schedules to all Medicaid State agencies. We would include the limitations of section 1903(i) of the Act in this regulation.

State agencies have also been informed that section 2303(g) eliminated the former section 1902(a)(43) of the Act. That provision had been the sole authority for State Medicaid agencies to allow billing by physicians for clinical diagnostic laboratory tests that are not personally performed or supervised by the physician. Therefore, States may no longer allow this billing practice and must pay only the physician or entity that actually performs or supervises the performance of the test.

On March 14, 1990, we published a final rule with comment in the **Federal Register** (55 FR 9538) regarding laboratory requirements under both the Medicare and Medicaid programs. That rule removed, from the Medicare regulations, the requirement that, for a physician laboratory to be considered independent, it must process at least 100 specimens for other physicians during any calendar year. Through an oversight, this requirement was not removed from the Medicaid regulations. We are, therefore, proposing to revise § 431.54(d)(2), which concerns requirements for competitive bidding for the purchase of laboratory tests, by removing the reference to the 100 specimen requirement.

D. Exceptions and Adjustments

1. Wage Rate Adjustments

Section 1833(h)(4) of the Act permits the Secretary to provide for an adjustment to take into account, with respect to the wage portion of expenses of providing laboratory tests, the difference between regional or local area wage rates and the wage rates on which the fee schedules were based. We have chosen not to implement this adjustment at this time. First, the information available to us indicates that labor costs represent less than half of total costs of providing laboratory tests and are decreasing as a proportion of total costs due to advancing technology. Second, we have no data regarding the extent to which laboratory wages vary by area within a carrier service area. Third, unlike other Medicare services for which wage adjustments have been applied, laboratory tests can be, and frequently are, performed at sites unrelated to the patient's location. Wage adjustments could simply provide an incentive for services to be provided in high wage cost areas. Finally, it would be unwieldy to try to maintain an accurate representation of the decreasing effect of wages over time. For all of these reasons, we do not propose to make an adjustment at this time. However, we invite comments and quantitative data on this topic.

2. Emergency Laboratory Tests

Section 1833(h)(2)(B)(i) of the Act allows the Secretary to make adjustments or exceptions to the fee schedules to assure adequate payment for emergency laboratory tests needed for the provision of bona fide emergency services. We propose to allow this adjustment only for bona fide emergency tests performed outside of the hours that a laboratory customarily performs that type of test (this would include situations in which a laboratory technician must be called in during his or her off hours to perform an emergency test). For this purpose, we propose to establish, at § 414.366(c), a definition similar to the definition of bona fide emergency service in section 1861(v)(1)(K) of the Act, as amended by section 2318 of DEFRA '84. We recognize that hospital laboratories, in particular, frequently perform services on non-routine or "STAT" basis. We considered and rejected the concept of providing an adjustment to the fee schedule in every instance in which a test was performed "STAT." We believe that providing an adjustment in those instances would be extremely costly since it could encourage manipulation and since determining whether a test was performed under "STAT" conditions would be very subjective.

We are limiting the availability of this adjustment to laboratories other than hospital laboratories that are qualified to receive the 62 percent fee schedule. As discussed in section II.B.4. of this preamble, the increased costs of emergency testing by qualified hospital laboratories is made up through the two percent payment differential.

We are not proposing to detail in regulations the specific method of determining the amount of the adjustment. Instead, we are instructing the carriers to judge the reasonableness of additional charges on a case-by-case basis. Many carriers have been providing such adjustments under reasonable charge principles for many years.

We invite interested parties to submit data on the relative proportion of bona fide emergency laboratory test volume, costs, and charges to total laboratory test volume, costs, and charges in both the hospital outpatient and nonhospital environments.

3. Low-volume High-cost Tests

Section 1833(h)(2)(B)(ii) of the Act allows the Secretary to make adjustments or exceptions to the fee schedules to assure adequate payment of "certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality."

We are not proposing to implement this authority at this time. We invite comments on approaches to implementing this adjustment on a national basis.

4. Technological Changes

Section 1833(h)(2)(A)(i) of the Act also grants the Secretary discretion, in making annual updates to the fee-schedule amounts (based on the CPI), to make further adjustments considered

justified by technological changes. It should be recognized that such adjustments could be made not only to increase fee-schedule amounts if new high cost technologies are employed, but also to provide for reductions in existing fees if technology reduces costs through increased efficiency. We will investigate for future purposes the feasibility of making such adjustments by recalibrating charge limits based on the costs and relative values of tests in an efficient and economically operated clinical diagnostic laboratory. We are not proposing to implement this authority at this time. We invite comments and suggestions on alternative approaches to implementing this provision.

E. Dialysis Services

The Conference Report accompanying DEFRA '84 states that the fee schedule is not to apply to clinical laboratory tests that are paid for under the prospective payment rate for outpatient maintenance dialysis services (also known as the composite rate). In accordance with regulations at § 413.170, these services are payable only to dialysis facilities.

Clinical laboratory services furnished to dialysis patients that are not included under the composite rate system would be billed for and payable under the usual methods provided for in this proposed rule. We considered other billing and payment options for separately payable laboratory services furnished to patients of independent dialysis facilities. One option was to require the independent laboratory performing the services to look to the independent facility for payment, and the facility would, in turn, bill and be paid according to the fee schedule by its intermediary. This option would violate section 1833(h)(5) of the Act, which requires the laboratory actually performing the test to bill and be paid directly according to the fee schedule. The second option was to require the independent laboratory to bill and be paid directly according to the schedule by the intermediary that handles claims from the facility for its dialysis services. Independent laboratories, however, have always dealt with carriers, not intermediaries. We believe it would be cumbersome, inefficient, and costly to require independent laboratories to deal with intermediaries for services furnished for dialysis patients if those laboratories deal with carriers for all other services. Therefore, we rejected the second option in favor of having independent laboratories bill carriers under the same procedures that apply to all other laboratory services they furnish.

III. Summary of Regulation Changes

The following highlights those regulations that would be modified as a result of this rule.

- In § 405.501(a), regarding determination of reasonable charges, a cross-reference to the provisions in new part 414, subpart F of chapter IV, "Payment for Clinical Diagnostic Laboratory Tests," is added as an exception to the provision that Medicare pays no more for part B medical and other health services than the reasonable charge.
- In § 405.502(a), regarding criteria for determining reasonable charges, we have deleted reference to services billed by physicians but performed by an outside laboratory.
- In § 405.505, regarding determination of "locality", a parenthetical sentence is added to clarify that "locality" is different from determination of "area" as used to establish fee schedules for clinical diagnostic laboratory tests.
- In § 405.506, regarding charges higher than customary or prevailing charges or lowest charge levels, a cross-reference to § 414.366, "payments in addition to fee-schedule amounts," is added.
- § 405.511, regarding reasonable charges for medical services, supplies, and equipment, paragraph (a)(2), which applied the provisions of the section to certain laboratory services, is deleted.
- Section 405.511(c)(3), regarding lowest charge levels for laboratories, is deleted.
- Section 405.515, which contains requirements for payment for clinical laboratory services billed by physicians, is deleted.
- In § 405.556, regarding conditions for payment of charges for physician laboratory services, paragraph (c) is revised to clarify that payment for nonphysician laboratory services furnished to a provider patient is made in accordance with the payment provisions of part 414, subpart F.
- In § 413.170, regarding payment for outpatient maintenance dialysis, a cross-reference to the new section containing requirements for payment for clinical diagnostic laboratory tests (part 414, subpart F of chapter IV) is added.
- A new subpart F, "Payment for Clinical Diagnostic Laboratory Tests," is added to part 414 to establish the method of payment for outpatient clinical diagnostic laboratory tests and the payment of physician laboratory services. We also establish, for purposes of subpart F, definitions of "hospital," "independent laboratory," "non-hospital patients," "outpatient laboratory tests," "qualified hospital laboratory," and "shared medical practice."
- Section 424.55(b)(1), regarding assignment, is revised to specify that, in accepting assignment, the supplier agrees to accept as the full charge for clinical diagnostic laboratory tests the amount determined by the carrier in accordance with part 414, subpart F.
- In § 424.64, regarding to whom payment can be made on the basis of an unpaid bill after the beneficiary's death, paragraphs (c)(1) and (c)(2) are revised to clarify that the physician or supplier must agree to accept the payment amount determined by the carrier as the full payment.
- In § 431.54, which concerns requirements for competitive bidding or other arrangements under Medicaid, paragraph (d)(2) is revised by removing the requirement that, for a physician laboratory to be considered independent, it must process at least 100 specimens for other physicians during any calendar year
- Section 447.10, which concerns prohibition against reassignment of provider claims under Medicaid, is revised by deleting references to payment for laboratory services.
- Section 447.300, which sets forth the basis and scope of part 447, subpart D, "Payment Methods for Other Institutional and Noninstitutional Services," is revised to reflect the statutory authority for the subpart as we propose to revise it.
- Section 447.342, which concerns physician billing for clinical laboratory services, is revised to set forth the general rule that Federal financial participation is not available to the extent that any payment for a clinical diagnostic laboratory test exceeds the amount determined for the same service under Medicare in accordance with part 414, subpart F.
- Other technical changes (for example, correcting a cross reference in a case where the referenced section has been redesignated by another rule) and editorial changes (for example, improving punctuation or format) have been made.

V. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in——

- An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individua' industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Un'ted States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

. This proposed rule, which applies to both the Medicare and Medicaid programs, would establish in regulations, methods for determining fee schedules applicable for outpatient clinical diagnostic laboratory tests and payment policy related to these fee schedules. It would implement in regulations the requirements of a number of laws, the most recent being OBRA '90. As discussed in detail in section I.C. of this preamble, these laws, starting with the DEFRA '84, have all been implemented by appropriate instructions and memoranda issued to HCFA regional offices, fiscal intermediaries, and carriers. To implement the provisions of OBRA '90, we issued a Carrier Program Memorandum in December 1990. Note that another statute, the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578, is expected to have a significant impact on laboratory costs and was the subject of separate rulemakings (57 FR 7002, 57 FR 7188, and 57 FR 7218). CLIA rules will have no effect on the payment methodology that is the subject of this rule, and there is no authority to increase fees to take into account cost increases caused by CLIA.

We are including, as a matter of general information, our estimate of the impact of the statutory provisions of OBRA '90. The impact of the previous statutory provisions cannot be reliably estimated in light of the changes made in subsequent legislation and subsequent industry behavioral response.

Section 6111(a) of OBRA '89 amended section 1833(h) of the Act to eliminate the establishment of nationwide fees and required that, after December 31, 1989, the national limitation amount was to be calculated as 93 percent of the median of the fee schedules established for the test. Section 4154(b) of OBRA '90 further amended section 1833(h) of the Act to require that, after December 31, 1990, the national limitation amount is to be calculated as 88 percent of the median of the fee schedule established for the test. This reduction would affect those providers in areas with local fees for tests above 88 percent of the median. At this time we do not know how many laboratories or tests would be affected, but this provision is specifically required by the statute.

Section 4154(a) of OBRA '90 also amended section 1833(h) of the Act to require that the annual adjustment in the fee schedules for each of the years 1991, 1992, and 1993 be 2 percent. Absent this amendment to the Act, the increase in the annual adjustment would have been 5.2 percent in 1991 and 5.7 percent in 1992 instead of the 2 percent mandated by the statute.

The savings estimate for OBRA '90 in the table below reflects the reduction to the national limitation amount and the constraint on the update factor for 1991, 1992, and 1993.

MEDICARE PROGRAM SAVINGS

[In millions of dollars] [1]

	Fiscal year—				
	1992	1993	1994	1995	1996
Reduction in national limitation amount: Section 4154(b) ..	$100	$110	$130	$140	$160
Constraint on update factor: Section 4154(a) ..	100	160	200	230	260
Total	200	270	330	370	420

[1] Rounded to the nearest $10 million.

Since Federal financial participation is not available to the extent that any payment for a clinical diagnostic test exceeds the amount determined for the same service in accordance with Medicare regulations, we believe States with fee schedules with rates that exceed the revised national limitation amount of 88 percent of the median would reduce fees to comply with the proposed regulations. We are not able to estimate the effect of the statutory changes on Medicaid expenditures because we do not have data concerning how many States would be affected and the magnitude of changes in payment in those States.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers to be small entities. Individuals and States are not included in the definition of a small entity. In considering whether to prepare a regulatory flexibility analysis, we must determine whether this proposed rule would have a significant economic impact on those laboratories it would affect. The major impact on laboratory fee schedule increases and the reduction in the national cap on laboratory fee schedules is the result of the statute and would not be substantially altered by these proposals.

We are including discussion here of two of the discretionary decisions in this proposed rule. We are proposing to apply the same conditions of payment of specimen collection and travel allowance fees as for payment of laboratory tests. That is, claims for specimen collection and travel allowance services must be assigned and Medicare payment will be 100 percent of the fee. We believe this is the best interpretation of the statute. If assignment by the laboratory were not required, laboratories would be able to charge any amount for specimen collection or travel to make up for the reductions in payment of laboratory tests. Beneficiaries would bear the burden of the charges in excess of Medicare's payment.

If we chose to pay 80 percent of the approved amount instead of 100 percent, laboratories would be burdened with collecting small coinsurance amounts for specimen collection and travel. The cost of billing in some cases would exceed the amount billed. For 1991, we estimated a program cost of $29 million by paying 100 percent of specimen collection and travel claims rather than 80 percent. If we paid 80 percent of the approved amount and assignment was not mandatory, there would be a substantial cost shift from the Medicare program to beneficiaries. While we are not able to estimate the total effects on beneficiaries, payments for laboratory tests are reduced by several hundred million dollars each year. It can therefore be assumed that excess charges for specimen collection and travel would be used by laboratories to offset these decreases in Medicare payment. Charges for specimen collection and travel allowances exceeded allowed charges by $165 million in 1991. At a minimum, we would expect beneficiaries to bear a portion of this additional cost if we did not require assignment. However, the excess charges could be considerably more if laboratories and physicians increased their charges for specimen collection and travel in order to defray what they might consider to be inadequate payment for laboratory tests.

In addition, we are proposing to allow carriers to limit the allowance for travel

to collect specimens to no more than what would be paid to the closest laboratory that could perform the service. There would be no additional burden on laboratories since carriers would determine the distance of the closest appropriate laboratory to the patient. There would be a small savings to the Medicare program as a result of any limitations that carriers find appropriate on payment for travel.

Because the effects of this proposed rule are primarily associated with statutory requirements in section 1833(h) of the Act, we believe that this proposed rule would not meet RFA criteria. Therefore, the Secretary certifies that the regulation would not have a significant economic, impact on a substantial number of small entities. If, as a result of comments or new data, we determine that some small entities would be significantly affected, we will include a regulatory flexibility analysis in the final rule.

C. Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We do not believe there would be any significant changes in services provided by or payments made to small rural hospital as a result of this proposed rule. Therefore, we are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Other Required Information

A. Collection of Information

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

B. Response to Comments.

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

Lists of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

End-stage renal disease (ESRD), Health professions, Laboratories, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

As discussed in the preamble, we propose to amend 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; and Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

A. Part 405, subpart E is amended as follows:

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1848, 1861 (b), (v), and (aa), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395m(b), 1395u (b) and (h), 1395w–4, 1395x (b), (v), and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In § 405.501, paragraph (a) is revised to read as follows:

§ 405.501 Determination of reasonable charges.

(a) Except as specified in paragraph (b) and (c) of this section and in part 414, subpart F of this chapter regarding payment for clinical diagnostic laboratory tests, Medicare pays no more for Part B medical and other health services than the "reasonable charge" for such service (subject to any deductible and coinsurance amounts as specified in §§ 410.152 and 410.160 of this chapter). The reasonable charge is determined by the carriers.

* * * * *

3. In § 405.502, the introductory text of paragraph (a) is revised and paragraph (a)(8) is removed and reserved to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate payment to the various ways in which health services are furnished and billed. The criteria for determining what charges are reasonable include:

* * * * *

(8) [Reserved]

* * * * *

§ 405.505 [Amended]

4. Section 405.505 is amended by adding the following parenthetical sentence after the first sentence: "(Determination of 'locality' is different from the determination of 'area' used in § 415.358 to establish fee schedules for clinical diagnostic laboratory tests.)"

5. Section 405.506 is revised to read as follows:

§ 405.506 Charges higher than customary or prevailing charges or lowest charge levels.

A charge that exceeds the customary charge of the physician or other person who furnished the medical or other health service, or the prevailing charge in the locality, or an applicable lowest charge level, may be found to be reasonable only if there are unusual circumstances or if there are medical complications requiring additional time, effort, or expense that support an additional charge, and only if it is acceptable medical or medical service practice in the locality to make an extra charge in such cases. (Additional charges related to clinical diagnostic laboratory tests are addressed in § 414.366.)

§ 405.506 [Amended]

6. The authority citation following § 405.506 is removed.

7. In § 405.511, paragraph (a) is revised to read as follows and paragraph (c)(3) is removed:

§ 405.511 Reasonable charges for medical services, supplies, and equipment.

(a) *General rule.* A charge for any medical service, supply, or equipment (including equipment servicing) that in the judgment of HCFA generally does not vary significantly in quality from one supplier to another (and that is identified by a notice published in the Federal Register) is not considered reasonable if it exceeds any of the following:

(1) The customary charge of the supplier (see § 405.503).

(2) The prevailing charge in the locality (see § 405.504).

(3) The charge applicable for a comparable service and under comparable circumstances to the policyholders or subscribers of the carrier (see § 405.508).

(4) The lowest charge level at which the item or service is widely and consistently available in the locality (see paragraph (c) of this section). Allowance of additional charges exceeding the lowest charge level can be approved by the carrier on the basis of unusual circumstances or medical complications in accordance with § 405.506.

(5) The inflation-indexed charge, as determined under § 405.509, in the case of medical services, supplies, and equipment that are paid on a reasonable charge basis (excluding physicians' services).

* * * * *

§ 405.515 [Removed]

8. Section 405.515 is removed.

9. In § 405.556, paragraph (c) is revised to read as follows:

§ 405.556 Conditions for payment of charges: Physician laboratory services.

* * * * *

(c) *Independent laboratory services furnished to a provider patient.* Laboratory services furnished to a provider patient by an independent laboratory (as defined in § 414.352) are paid on a reasonable charge basis under this subpart only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory is made by the intermediary to the hospital in accordance with part 412 or 413 of this chapter, as applicable. Payment for nonphysician services furnished by an independent laboratory to a hospital outpatient or any other provider patient is made in accordance with part 414, subpart F of this chapter.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

B. Part 413 subpart H is amended as follows:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.170 [Amended]

2. In § 413.170, paragraph (a)(1) is amended by adding the following parenthetical sentence at the end: "(Part 414, subpart F, of this chapter contains additional provisions pertaining to payment for laboratory services furnished in connection with outpatient maintenance dialysis.)"

C. Part 414 is amended as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1832, 1833, 1861, 1871, 1881, and 1903 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395x, 1395hh, 1395rr, and 1396b).

2. A new subpart F is added and subpart G is added and reserved to read as follows:

Subpart F—Payment for Clinical Diagnostic Laboratory Tests

Sec.

414.350 Scope.
414.352 Definitions.
414.354 Applicability.
414.358 Calculation of fee-schedule amounts.
414.362 National limitation amounts.
414.366 Payments in addition to fee-schedule amounts.
414.370 Prohibition of billing on an unassigned basis.
414.374 Amount of payment.
414.375 To whom payment is made.

Subpart G—[Reserved]

Subpart F—Payment for Clinical Diagnostic Laboratory Tests

§ 414.350 Scope.

This subpart establishes that payment for clinical diagnostic laboratory tests is based on fee schedules. It contains provisions related to the following:

(a) Applicability of the provisions of this subpart.

(b) The calculation and use of fee schedules as a basis for payment for clinical diagnostic laboratory tests.

(c) Limitations on the fee-schedule amount

(d) Payments in addition to the fee-schedule amount.

(e) How the amount of payment is determined for clinical diagnostic laboratory tests.

(f) Prohibition of billing on an unassigned basis.

(g) To whom payment is made.

§ 414.352 Definitions.

The following definitions apply to this subpart:

Hospital is an institution that meets the following conditions:

(a) Is primarily engaged in providing to inpatients, by or under the supervision of doctors of medicine or osteopathy, diagnostic and therapeutic services for the diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(b) Provides 24-hour nursing service furnished or supervised by a registered professional nurse and has a licensed practical nurse or registered professional nurse on duty at all times.

(c) Is licensed under State law, as applicable.

(d) Is not primarily engaged in providing skilled nursing care and related services for patients who require medical or nursing care.

Independent laboratory is a facility maintained for the purpose of performing diagnostic laboratory tests and that meets one of the following conditions:

(a) It is not owned, controlled, managed, or supervised by any of the following:

(1) A hospital (including nonparticipating hospitals eligible for payment for emergency services).

(2) A hospital's organized medical staff.

(3) An attending or consulting physician's office.

(b) It is owned, leased, maintained, or operated by or for a group of physicians and the group is not otherwise a shared medical practice as defined in this section. A physician's office laboratory, as otherwise defined in this section, that accepts specimens on referral for testing from other physicians or entities is considered an independent laboratory. A facility is not considered an independent laboratory if it is

maintained by a physician, group medical practice, skilled nursing facility, or rural health clinic to perform diagnostic laboratory tests exclusively for its own patients.

Non-hospital patients are patients in settings other than a hospital's inpatient or outpatient department.

Outpatient laboratory tests are clinical diagnostic tests ordered as a result of a patient's visit to an outpatient department of a hospital.

Physician's office laboratory is a facility that is maintained by a physician, group medical practice, or rural health clinic to perform laboratory tests exclusively for its own patients.

Qualified hospital laboratory is a hospital laboratory that meets all of the following conditions:

(a) Has staff on duty or on call 24 hours a day, 7 days a week, to perform clinical diagnostic tests to serve a hospital emergency room.

(b) Serves a hospital emergency room that has physicians physically present or available within 30 minutes through a medical call roster 24 hours a day, 7 days a week.

(c) Is in a hospital that meets the requirements for a sole community hospital specified at § 412.92 of this chapter.

Shared medical practice is two or more physicians actually practicing medicine together under a legal entity that meets the requirements for a group practice specified at § 411.351 of this chapter.

§ 414.354 Applicability.

(a) *General rule.* Except as specified in paragraphs (b) through (j) of this section, Medicare Part B pays for clinical diagnostic laboratory tests on the basis of fee schedules under this subpart. (The actual amount of payment for each test performed is determined as set forth in § 414.374.)

(b) *Exception: Tests furnished to Part B-only inpatients by a hospital or by others under arrangements.* For patients eligible for payment for Part B services only, payment is made on a cost basis, subject to the applicable Part B deductible and coinsurance, to a hospital for laboratory tests furnished to inpatients of that hospital by the hospital or by others under arrangements made by the hospital.

(c) *Exception: Tests performed by a SNF for its inpatients.* Laboratory tests performed by a participating SNF for its inpatients are payable on a cost basis, subject to the applicable Part B deductible and coinsurance.

(d) *Exception: Tests associated with dialysis.* No separate payment is made for laboratory tests for which payment is made as part of the dialysis prospective payment rate as explained in § 413.170. Payment for laboratory tests furnished to dialysis patients, if not made on the basis of prospective payment rates, is made in accordance with this subpart.

(e) *Exception: Hospitals paid under alternative payment programs.* If a hospital is paid under an alternative payment program approved by HCFA, the provisions of this section are waived with respect to payment for outpatient clinical diagnostic laboratory tests to the extent that the alternative payment program controls payment for those tests.

(f) *Exception: Tests in rural health clinics.* Laboratory tests furnished by rural health clinics to their own patients are paid for in accordance with subpart X of part 405 and not on the basis of fee-schedule amounts.

(g) *Exception: Tests by health maintenance organizations, competitive medical plans, and health care prepayment plans.* Laboratory tests furnished to enrollees of health maintenance organizations, competitive medical plans, and health care prepayment plans are paid for in accordance with part 417 of this chapter. Laboratory tests furnished to non-enrollees by such organizations or plans are paid for in accordance with this subpart.

(h) *Exception: Tests under hospice care.* Outpatient clinical diagnostic laboratory tests furnished as part of hospice care are paid for in accordance with part 418 of this chapter, subpart E.

(i) *Exception: Tests considered physician services.* Clinical diagnostic laboratory tests that can be performed safely and effectively only by physicians are considered physician services. These tests are not subject to the fee-schedule for laboratory tests. They are paid for as physician services.

(j) *Exception: Physician laboratory services.* A laboratory service that meets the payment conditions of § 405.556 (a) and (b) and that is furnished to a patient of a provider is a physician laboratory service and is payable under the physician fee schedule.

§ 414.358 Calculation of fee schedule amounts.

(a) *General rule.* Fee-schedule amounts for diagnostic laboratory tests performed on or after July 1, 1984, are based on carrierwide prevailing charge levels and are calculated on a carrierwide basis not to exceed a statewide basis using the methodology explained in paragraphs (b) through (h).

(b) *Calculation of fee-schedule amounts for tests performed during the year beginning July 1, 1984.* Fee-schedule amounts for diagnostic laboratory tests are set at 60 and 62 percent of the carrierwide prevailing charge levels, applicable as set forth in paragraph (i) of this section. (The carrierwide prevailing charge levels are the 75th percentile of customary charges made for the calendar year ending December 31, 1983, weighted by frequency. Customary charges are those made for similar services in each carrier's total service area within each State or in those carrier service areas that include portions of different States but not all of any one State.)

(c) *Calculation of fee-schedule amounts for tests performed during the 18-month period beginning July 1, 1985.* For diagnostic laboratory tests performed on or after July 1, 1985, and before January 1, 1987, fee-schedule amounts are calculated by increasing or decreasing the fee-schedule amounts determined under paragraph (b) of this section by the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average) from July 1983 to July 1984.

(d) *Calculation of fee-schedule amounts for tests performed during 1987.* For diagnostic laboratory tests performed during 1987, fee-schedule amounts are calculated by increasing or decreasing the fee-schedule amounts determined under paragraph (c) of this section by the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average) from July 1984 to January 1986.

(e) *Calculation of fee-schedule amounts for tests performed during 1988.* (1) No adjustment in the fee schedules is made to take into account any increase in the Consumer Price Index for 1988.

(2) For tests previously subject to the lowest charge levels, under § 405.502(a)(6), performed after March 31, 1988, the fee-schedule amounts otherwise established for 1988 are reduced by 8.3 percent. (The reduced fee schedule amounts serve as the base for 1989 and subsequent years for those tests.)

(f) *Calculation of fee-schedule amounts for tests performed on or after January 1, 1989.* Except as specified in paragraphs (g) and (h) of this section, for diagnostic laboratory tests performed on or after January 1, 1989, fee-schedule amounts are calculated by annually adjusting effective January 1 the fee-schedule amounts determined for the preceding year by the increase or decrease in the Consumer Price Index for All Urban Consumers (U.S. city

average) for the 12-month period ending January of the preceding year.

(g) *Calculation of fee-schedule amounts for tests performed in 1991, 1992, or 1993.* For diagnostic laboratory tests performed in 1991, 1992, or 1993, fee-schedule amounts are calculated by annually adjusting the fee-schedule amounts determined for the preceding year by 2 percent.

(h) *Period used to determine change in Consumer Price Index.* Effective January 1, 1994, the 12-month period used to determine the change in the Consumer Price Index for All Urban Consumers (U.S. city average) is the 12-month period ending June of the preceding year.

(i) *Applicability of the 60 and 62 percent fee-schedules.* (1) For diagnostic laboratory tests performed during the period July 1, 1984, through December 31, 1986, the 60-percent fee schedule is applicable to tests performed by physicians, independent laboratories, and hospital laboratories (for non-hospital patients), and the 62-percent fee schedule is applicable to outpatient laboratory tests performed by hospital laboratories for their outpatients.

(2) For diagnostic laboratory tests performed on or after January 1, 1987, the 60-percent fee schedule is applicable to tests performed by physicians, independent laboratories, and hospital laboratories (other than outpatient laboratory tests performed by qualified hospital laboratories for their outpatients), and the 62-percent fee schedule is applicable to tests performed by qualified hospital laboratories (as defined in § 414.352) for their outpatients.

§ 414.362 National limitation amounts.

For a clinical diagnostic laboratory test performed after December 31, 1990, the national limitation amount is 88 percent of the median of all the fee schedules established for that test for that laboratory setting.

§ 414.366 Payments in addition to fee-schedule amounts.

(a) *Payment for specimen collection.* A fee of $3 is paid for collection of specimens necessary for clinical diagnostic laboratory tests.

(1) One collection fee is allowed for each type of specimen drawn in a single encounter. If different types of specimens are drawn, a separate fee is allowed for each type. If a series of specimens is required to complete a single test, the series is considered a single encounter.

(2) In the case of a nursing facility patient, payment may be made only if no qualified personnel are available at the site to draw the specimen.

(3) Payment of a specimen collection fee is allowed for laboratory tests associated with maintenance dialysis treatment not paid for under prospective payment (composite) rates.

(4) Payment under paragraph (a)(1) is not allowed if the cost of collecting the specimen is minimal.

(b) *Payment for travel allowances.* Payment of a travel allowance is made if it is necessary for trained personnel to travel to the location of a homebound or nursing facility patient in order to collect a specimen.

(1) Payment is prorated by the number of patients served, both Medicare and non-Medicare and both patients from whom specimens are drawn and patients for whom specimens are only transported.

(2) Payment of a travel allowance is allowed for drawing specimens for laboratory tests associated with maintenance dialysis treatment not paid for under prospective payment (composite) rates.

(3) The local carrier processing the claim may review the claim for payment under this paragraph and limit that payment to the amount that would be paid to the closest (to the collection site) laboratory that could perform the service.

(c) *Payment for emergency laboratory tests.* For laboratories other than qualified laboratories, a payment in addition to amounts determined under paragraph (a) or (b) of this section or under § 414.358 or 414.362 is allowed for clinical diagnostic laboratory tests needed for the provision of bona fide emergency services if those services are performed outside the hours that a laboratory customarily performs them.

(1) *Definition of bona fide emergency services.* For purposes of paragraph (c) of this section, *bona fide emergency services* means services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of such severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(i) Placing the patient's health in serious jeopardy.

(ii) Serious impairment to bodily functions.

(iii) Serious dysfunction of any bodily organ or part.

(2) *Additional amount determined reasonable.* Payment is based on additional amounts deemed reasonable by the local carrier processing the Medicare claim. Approval of additional payment amounts is made on a case-by-case basis.

§ 414.370 Prohibition of billing on an unassigned basis.

Except for a test performed by a rural health clinic, a person or entity may not bill for a clinical diagnostic laboratory test other than on an assignment-related basis. A person or entity that knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test on an unassigned basis is subject to sanctions in accordance with section 1842(j)(2) of the Act.

§ 414.374 Amount of payment.

Except as specified in § 414.354 (b) through (j), and subject to the provisions of § 414.375 regarding to whom payment may be made, the amount of payment made on an assignment-related basis to providers (under a provider agreement), independent laboratories, and physicians is 100 percent of: the charges billed, the fee-scheduled amount as determined under § 414.358, or the national limitation amount as determined under § 414.362, whichever is least; plus, subject to the provisions of § 414.375 regarding to whom payment may be made, any additional amounts payable under § 414.366.

§ 414.375 To whom payment is made.

(a) *Payment for clinical diagnostic laboratory tests.* Subject to the provisions of section 1877 of the Act concerning limitations on certain physician referrals, payment for clinical diagnostic laboratory tests is made only to the physician or entity that performs or supervises the performance of the test, with the following exceptions:

(1) Payment may be made on an assignment-related basis (under § 424.55 or § 424.64) to a physician who has a shared medical practice with the physician who performed or supervised the performance of the test.

(2) Payment for a clinical diagnostic laboratory test performed at the request of an independent or hospital laboratory by another laboratory may be made on an assignment-related basis (under § 424.55 or § 424.64) to the referring laboratory in any of the following circumstances:

(i) The referring laboratory is in, or is part of, a rural hospital.

(ii) Either the referring laboratory is wholly owned by the performing laboratory, the performing laboratory is wholly owned by the referring laboratory, or both laboratories are wholly owned by a third entity.

(iii) Not more than 30 percent of the tests for which the referring laboratory, other than a laboratory described in paragraph (a)(2)(ii) of this section, receives requests for testing during the

year in which the test is performed are performed by another laboratory.

(3) Payment may be made in accordance with the requirements of § 424.66 to an entity that pays for clinical diagnostic laboratory tests under a health benefits plan.

(4) For tests performed for hospital outpatients, payment is made only to the hospital that ordered the test.

(b) *Payment of a specimen collection fee and related travel allowance.* Payment of a specimen collection fee and related travel allowance (if any) is made only to the physician or entity that collected or supervised the collection of the specimen, except as follows:

(1) Payment may be made on an assigned basis (under § 424.55 or § 425.64) to another physician who has a shared medical practice with the physician who collected or supervised the collection of the specimen.

(2) Payment may be made in accordance with the requirements of § 424.66 to an entity that pays for the collection of specimens under a health benefits plan.

(3) For specimens drawn for hospital outpatients, payment is made only to the hospital that ordered the specimen collection.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

Subpart D—To Whom Payment Is Ordinarily Made

D. Part 424, subpart D is amended as follows:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh and 1395ii).

2. In § 424.55, paragraph (b)(1) is revised to read as follows:

§ 424.55 Payment to the supplier.

* * * * *

(b) In accepting assignment, the supplier agrees to the following:

(1) To accept, as full charge for the service, the Medicare-approved amount, such as the reasonable charge, or the payment amount for clinical diagnostic laboratory tests subject to the fee schedule provisions of subpart F of part 414, as determined by the carrier or HCFA, as appropriate.

* * * * *

3. Section 424.64(c) is revised to read as follows:

§ 424.64 Payment after beneficiary's death: Bill has not been paid.

* * * * *

(c) *To whom payment is made.* In the situation described in paragraph (b) of this section, Medicare pays as follows:

(1) *Payment to the supplier.* Medicare pays the physician or other supplier if it does the following:

(i) Files a claim on a HCFA-prescribed form in accordance with the applicable requirements of this subpart.

(ii) Upon request from the carrier, submits evidence that the services for which it claims payment were, in fact, furnished.

(iii) Agrees in writing to accept the payment amount determined by the carrier as the full charge for the services.

(2) *Payment to a person who assumes the legal obligation to pay for the services.* If the physician or other supplier does not agree to accept the payment amount determined by the carrier as full charge for the service, Medicare pays any person who submits to the carrier all of the following:

(i) A statement indicating that he or she has assumed the legal obligation to pay for the services.

(ii) A claim on a HCFA-prescribed form in accordance with the requirements of this subpart. (If a claim had been submitted by or on behalf of the beneficiary before he or she died, submission of another claim form is not required; a written request by the person seeking payment meets the requirement for a claim.)

(iii) An itemized bill that identifies the claimant as the person whom the physician or other supplier holds responsible for payment. (If such an itemized bill had been submitted by or on behalf of the beneficiary before he or she died, submission of another itemized bill is not required.)

(iv) If the intermediary or carrier requests it, evidence that the services were actually furnished.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

E. Part 431 is amended as follows:

1. The authority citation for part 431 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart B—General Administrative Requirements

2. In § 431.54, the introductory texts of paragraphs (d) and (d)(2) are republished and paragraphs (d)(2)(i) and (d)(2)(ii) are revised to read as follows:

§ 431.54 Exceptions to certain State plan requirements.

* * * * *

(d) *Special procedures for purchase of medical devices and laboratory and X-ray tests.* The Medicaid agency may establish special procedures for the purchase of medical devices or laboratory and x-ray tests (as defined in § 440.30 of this chapter) through a competitive bidding process or otherwise, if the State assures in the certification required under § 431.51(d), and HCFA finds, as follows:

* * * * *

(2) Laboratory services are furnished through laboratories that meet the following requirements:

(i) They are independent laboratories, or inpatient or outpatient hospital laboratories that provide services for individuals who are not hospital patients, or physician laboratories.

(ii) They meet the requirements of part 482 or part 493 of this chapter.

* * * * *

PART 447—PAYMENTS FOR SERVICES

F. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

Subpart A—Payments: General Provisions

2. In § 447.10, paragraph (a) is revised, paragraph (g)(1) is removed, and paragraphs (g)(2), (g)(3), and (g)(4) are renumbered as (g)(1), (g)(2), and (g)(3), respectively, to read as follows:

§ 447.10 Prohibition against reassignment of provider claims.

(a) *Basis and purpose.* This section implements section 1902(a)(32) of the Act, which prohibits State payments for Medicaid services to anyone other than a provider or recipient except in specified circumstances.

* * * * *

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

3. Section 447.300 is revised to read as follows:

§ 447.300 Basis and purpose.

In this subpart, §§ 447.302 through 447.334 and § 447.361 implement section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care. Section 447.342 implements section 1903(i)(7) of the Act, which specifies that FFP is not available for any payment for a clinical laboratory test to the extent the payment made by

the State exceeds the amount that would be paid for the test under Medicare. Section 447.371 implements section 1902(a)(13)(E) of the Act, which requires that the State plan provide for payment for rural health clinic services in accordance with regulations prescribed by the Secretary.

4. Section 447.342 is revised to read as follows:

§ 447.342 Payment for clinical diagnostic laboratory tests.

FFP is not available for any payment for a clinical diagnostic laboratory test to the extent that the payment exceeds the amount determined for the same service in accordance with Medicare regulations in part 414, subpart F of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program; 93.778, Medical Assistance Program)

Dated: March 18, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 20, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–19612 Filed 8–17–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7073]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472 (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The table published under the authority of § 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MARYLAND	
Deer Park (town) Garrett County	
Little Youghiogheny River:	
Approximately 170 feet downstream of downstream corporate limits	*2,438
At upstream corporate limits	*2,455
At confluence with Little Youghiogheny River	*2,443
At upstream corporate limits	*2,455
Maps available for inspection at the Town Hall, Deer Park, Maryland.	
Send comments to the Honorable Jack Hinebaugh, Mayor of the Town of Deer Park, Garrett County, Route 4, P.O. Box 655, Deer Park, Maryland 17052.	
NORTH CAROLINA	
Harrisburg (town), Cabarrus County	
Back Creek:	
Approximately 1.9 miles downstream of Robinson Church Road	*585
At downstream side of Caldwell Road	*606
Maps available for inspection at the Town Hall, Harrisburg, North Carolina.	
Send comments to the Honorable A. J. Blackwelder, Mayor of the Town of Harrisburg, Cabarrus County, P.O. Box 100, Harrisburg, North Carolina 28075.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Hawaii	Hawaii County, Unincorporated Areas.	Keopu Drainageway	Approximately 525 feet upstream of Hualalai Road.	*70	*60
			Approximately 1,110 feet upstream of Hualalai Road.	*110	*114
			Approximately 1,150 feet downstream of Hawaii Belt Road.	*137	*135
			Approximately 450 feet downstream of Hawaii Belt Road.	*203	*203
		Waiaha Drainageway	Just downstream of Kuakini Highway	*166	*164
			Just upstream of Kuakini Highway	*166	*170
			Just downstream of Hawaii Belt Road	*357	*357
		Waiaha Drainageway, Splitflow No. 2.	Approximately 600 feet upstream of Keaubou-Kailua Middle Road.	*254	*254
			Approximately 260 feet downstream of Hawaii Belt Road.	*304	*296
			Just downstream of Hawaii Belt Road	*310	*310

Maps are available for review at the Hawaii County Department of Public Works, Division of Engineering, 25 Aupuni Street, Hilo, Hawaii.

Send comments to the Honorable Stephen Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.

Illinois	Jacksonville (city), Morgan County.	Town Brook	Approximately 75 feet upstream of Clay Avenue.	*580	*579
			Approximately 650 feet upstream of Massey Lane.	None	*604

Maps available for inspection at the Jacksonville City Hall, Inspection Department, 200 West Douglas, Jacksonville, Illinois.

Send comments to the Honorable Ron Tendick, Mayor of the City of Jacksonville, Morgan County, 200 West Douglas, Jacksonville, Illinois 62650.

Louisiana	Concordia Parish, unincorporated areas.	Cross Bayou, Turtle Lake, and Black Bayou.	At confluence of Bayou Cocodrie	None	*51
			Approximately 150 feet upstream of U.S. Route 65.	None	*54
		Vidalia Canal	Approximately 1,000 feet upstream of confluence with Bayou Cocodrie.	None	*49
			At Union Pacific Railroad	None	*57
		Crooked Bayou	At confluence with Vidalia Canal	None	*54
			Approximately 1.8 miles upstream of confluence with Vidalia Canal.	None	*57
		Black River	At confluence with Red River	None	*60
			At confluence with Tensas River	None	*63
		Tensas River	At confluence with Black River	None	*63
			Approximately 0.63 mile upstream of confluence with Little Tensas River.	None	*63

Maps available for inspection at the Parish Courthouse, 4001 Carter Street, Vidalia, Louisiana.

Send comments to Mr. Russell Wagoner, Concordia Parish President, 4001 Carter Street, room #1, Vidalia, Louisiana 71373.

Maryland	Garrett County, unincorporated areas.	Little Youghiogheny River.	Approximately 700 feet upstream of the confluence with Youghiogheny River.	*2,367	*2,366
			Approximately 1 mile upstream of Boiling Spring Road.	None	*2,472
		Bradley Run	At the confluence with Little Yoghiogheny River.	*2,370	*2,371
			Approximately 25 feet downstream of Chessie System.	*2,370	*2,371

Maps available for inspection at the Planning and Zoning Office, 313 E. Adler Street, Oakland, Maryland.

Send comments to Mr. Elwood Groves, Chairman of the Garrett County Board of Commissioners, 203 South 4th Street, Oakland, Maryland 21550.

Maryland	Loch Lynn Heights (town) Garrett County.	Little Youghiogheny River.	At downstream corporate limits	*2,391	*2,390
			At upstream corporate limits	*2,392	*2,391

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, Mountain Lake Park, Maryland.					
Send comments to the Honorable Charles Tressler, Mayor of the Town of Loch Lynn Heights, Garrett County, 505 Shenandoah Avenue, Mountain Lake Park, Maryland 21550.					
Maryland	Mountain Lake Park (town), Garrett County.	Little Youghiogheny River.	Approximately 1,100 feet downstream of Chessie System.	*2,391	*2,390
			At State Route 135	*2,402	*2,403
Maps available for inspection at the Town Hall, Mountain Lake Park, Maryland.					
Send comments to the Honorable David Turney, Mayor of the Town of Mountain Lake Park, Garrett County, Walton Lane, P.O. Box 2182, Mountain Lake Park, Maryland 21550.					
Michigan	Baldwin (township), Iosco County.	Lake Huron/Tawas Bay.	Along Tawas Bay shoreline, around Tawas Point, and north along Lake Huron shoreline, to approximately 4,800 feet due east of intersection of Baldwin Resort Road and Tawas Beach Road.	None	*584
		Lake Huron	Shoreline along Lake Huron from approximately 0.9 mile northeast of intersection of Scott Road and Forest Street, to approximately 1,900 feet southwest of intersection of Scott Road and Forest Street.	None	*589
			Shoreline 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23.	None	*587
			Shoreline at Point au Sable	None	*584
			Shoreline along Lake Huron from Tawas Point State Park to a point approximately 2.2 miles northeast along shoreline.	None	*584
		Shallow Flooding from Lake Huron.	Approximately 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23.	None	#1
			Approximately 3,800 feet northeast of intersection of U.S. Route 23 and Birchcrest Drive, approximately 190 feet northwest of Lake Huron shoreline.	None	#2
		Tawas River	At confluence with Tawas Lake	None	*588
			At downstream corporate limits	None	*588
		Tawas Lake	Entire shoreline	None	*588
Maps available for inspection at Township Hall, 1119 Monument Road, Tawas City, Michigan.					
Send comments to The Honorable FLoyd M. Peters, Township Supervisor, Township of Baldwin, Township Hall, 1119 Monument Road, Tawas City, Michigan 48763.					
Michigan	East Tawas (city), Iosco County.	Tawas Bay	Shoreline from approximately 3,000 feet west of Newman Street to approximately 2,200 feet from west of Newman Street.	*584	*587
			Shoreline approximately 2,100 feet west of Newman Street to approximately 80 feet west of Newman Street.	*584	*585
			Shoreline from 400 feet west of Alice Street extended to approximately 2,600 feet east of Alice Street.	*584	*587
Maps available for inspection at the City Manager's Office, City Hall, 120 West Westover Street, East Tawas, Michigan.					
Send comments to the Honorable Robert C. Bolen, Mayor of the City of East Tawas, Iosco County, City Hall, 120 West Westover Street, East Tawas, Michigan 48730.					
Michigan	Tawas City (city), Iosco County.	Tawas Bay	From Town Line Road to a point approximately 3,200 feet north along Tawas Bay shoreline.	*584	*586
			Shoreline 200 feet south of intersection of Hale Street and Lake Street.	*584	*587
			Shoreline 650 feet north of intersection of Hale Street and Lake Street to the intersection of Fourth Avenue and Lake Street.	*584	*587
			Shoreline between intersection of Wheeler Street and Lake Street and corporate limits with East Tawas.	*584	*587
		Shallow flooding from Tawas Bay (Lake Huron).	Area along Tawas Bay shoreline from intersection of Fourth Avenue and Lake Street to a point approximately 1,000 feet southeast.	*584	#1

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Manager's Office, City Hall, 815 Lake Street, Tawas City, Michigan.					
Send comments to The Honorable James Lansky, Sr., Mayor of the City of Tawas City, City Hall, 815 Lake Street, Box 568, Tawas City, Michigan 48764-0568.					
Minnesota	Hendrum (city) Norman County.	Wild Rice River	At downstream corporate limits	*871	*869
			At upstream corporate limits	*871	*870
Maps available for inspection at the City Hall, Hendrum, Minnesota.					
Send comments to the Honorable John Leiseth, Mayor of the City of Hendrum, Norman Country, P.O. Box 44, Hendrum, Minnesota 56550.					
New York	New York (city) Bronx, Queens, Kings, New York, and Richmond Counties.	Sweet Brook	At confluence of Colon Tributary	None	*14
			Approximately 1,000 feet downstream of Delmar Avenue.	None	*95
		Eltingville Tributary	At confluence with Sweet Brook	None	*39
			From center of structure approximately 180 feet upstream of Wilson Avenue.	None	*52
		Arbutus Creek	At confluence with Arbutus Lake	*11	*10
			Approximately 780 feet upstream of Amboy Road.	None	*56
		Jansen Tributary	At confluence with Arbutus Creek	None	*25
			Approximately 1,340 feet upstream of confluence with Arbutus Creek.	None	*37
		Denise Tributary	At confluence with Arbutus Creek	None	*15
			Approximately 1,400 feet upstream of Jansen Stret.	None	*51
		Lemon Creek	Approximately 100 feet downstream of Amboy Road.	None	*13
			Approximately 350 feet upstream of Roosville Avenue.	None	*102
		Sandy Brook	Approximately 360 feet upstream of Richmond Parkway.	None	*42
			Approximately 1,100 feet upstream of Bloomingdale Road.	None	*85
Maps available for inspection at the New York Commission—Department of Environmental Protection, 59-17 Junction Boulevard, Elmhurst, New York.					
Send comments to the Honorable David Dinkins, Mayor of the City of New York, Bronx, Queens, Kings, New York, and Richmond Counties, Office of the Mayor, 52 Chambers Street, New York, New York 10007.					
North Carolina	Cabarrus County, unincorporated areas.	Adams Creek	At confluence with Dutch Buffalo Creek	None	*518
			Upstream side of State Route 73	None	*631
		Afton Run	Approximately 0.55 mile upstream of Coddle Creek.	605	*606
			At Dogwood Boulevard	None	*666
		Back Creek	Approximately 450 feet upstream of State Route 1158 (Pharr Mill Road).	540	*541
			Approximately 0.57 mile upstream of County Route 1173 (Caldwell Road).	None	*614
		Caldwell Creek	At confluence with Reedy Creek	541	*544
			Approximately 1.31 miles upstream of State Route 1135 (Morrison Road).	None	*625
		Clarke Creek	Upstream side of County Route 1448	None	*607
			Approximately 0.25 mile upstream of Harris Road.	None	*632
		Dutch Buffalo Creek	Approximately 0.19 mile downstream of State Route 200.	506	*507
			At upstream side of State Route 73	None	*525
		Fuda Creek	At confluence with Back Creek	None	*525
			Approximately 0.25 mile upstream of Picadilly Lane.	None	*676
		McKee Creek	At confluence with Reedy Creek	None	*577
			Approximately 0.85 mile upstream of Peach Orchard Road.	None	*603
		Reedy Creek	Approximately 0.26 mile upstream of confluence with Rocky River.	533	*534

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Reedy Creek Tributary #1..	Approximately 0.78 mile upstream of confluence of Reedy Creek Tributary #1..	None	*608
			At confluence with Reedy Creek	None	*602
			Upstream side of Plaza Road Extension	None	*622

Maps available for inspection at the Cabarrus County Government Center, 65 Church Street, Concord, North Carolina.

Send comments to Ms. Carolyn Carpenter, Chairperson of te Cabarrus County Commission, Government Center, 65 Church Street, Concord, North Carolina 28025.

North Carolina ..	Catawba County, unincorporated areas.	Jacob Fork	At confluence with Henry Fork	None	*821
			Approximately 250 feet upstream of S.R. 1116 bridge.	None	*918

Maps available for inspection at the Government Service Center, Planning and Development Office, 100–A Southwest Boulevard, Newton, North Carolina.

Send comments to Mr. J. Thomas Lundy, Catawba County Manager, P.O. Box 389, Newtown, North Carolina 28658.

North Carolina ..	Concord (city), Cabarrus County.	Afton Run	Approximately 300 feet downstream of County Route 1430.	*605	*610
			Upstream side of Interstate Route 85	None	*620

Maps available for inspection at City Hall, Concord, North Carolina.

Send comments to the Honorable Bernie A. Edwards, Mayor of the City of Concord, Cabarrus County, P.O. Box 308, Concord, North Carolina 28026.

North Carolina ..	Monroe, (city), Union County.	Stewarts Creek	Approximately 0.8 mile upstream of U.S. Route 601.	None	*529
			Approximately 80 feet upstream of Secondary Road 1514 (Rocky River Road).	None	*625

Maps available for inspection at the Monroe City Hall, 300 West Crowell Street, Monroe, North Carolina.

Send comments to the Honorable Lynn A. Keziah, Mayor of the City of Monroe, Union County, P.O. Box 69, Monroe, North Carolina 28111.

North Carolina ..	Union County, Unincorporated Areas.	Stewarts Creek	100 feet downstream of State Route 200	None	*495
			Approximately 80 feet upstream of Secondary Road 1514.	None	*625

Maps available for inspection at the Union County Manager's Office, 500 North Main Street, Monroe, North Carolina.

Send comments to Mr. John L. Munn, Union County Manager, P.O. Box 218, Monroe, North Carolina 28111–0218.

Ohio	Batavia (village), Clermont County.	East Fork Little Miami River.	Approximately 1.3 miles downstream of State Route 32.	None	*554
			Approximately 0.47 mile upstream of Norfolk and Western Railway.	*580	*576

Maps available for inspection at the Batavia Village Offices, 389 East Main Street, Batavia, Ohio.

Send comments to The Honorable Edmund Parrott, Mayor of the Village of Batavia, Clermont County, 389 East Main Street, Batavia, Ohio 45103.

Ohio	Clermont (county)	East Fork Little Miami River.	Approximately 0.2 mile upstream of confluence with Little Miami River.	*511	*512
			Approximately 2.4 miles upstream of State Route 222.	None	*601
		Stonelick Creek	At confluence with East Fork Little Miami River.	*538	*539
			Approximately 200 feet upstream of confluence with East Fork Little Miami River.	*538	*539

Maps available for inspection at the Building Inspection Office, 2400 Clermont Center Drive, 2nd Floor, Suite 202, Batavia, Ohio.

Send comments to Mr. Steven Wharton, Clermont County Administrator, 76 South Riverside Drive, Batavia, Ohio 45103.

Ohio	Milford (city), Clermont and Hamilton Counties.	East Fork Little Miami River.	Approximately 1,003 feet upstream of confluence with Little Miami River.	*511	*512
			Approximately 0.4 mile upstream of Interstate Route 275.	None	*518

Maps available for inspection at the City Hall, 29 High Street, Milford, Ohio.

Send comments to Mr. David Spinney, Manager of the City of Milford, Clermont and Hamilton Counties, 29 High Street, Milford, Ohio 45150.

Pennsylvania	Texas (township), Wayne County.	Lackawaxen River	Approximately 1,000 feet downstream of Park Street Bridge.	*927	*925

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.1 miles upstream of Bear Swamp Road Bridge (upstream corporate limit).	*1,076	*1,079

Maps available for inspection at the Texas Township Building, Bear Swamp Road, Honesdale, Pennsylvania.

Send comments to Mr. John McDonald, Chairman of the Township of Texas Board of Supervisors, Wayne County, Bear Swamp Road, Honesdale, Pennsylvania 18431.

South Carolina ..	Horry County, unincorporated areas.	Waccamaw River	Approximately 0.6 mile downstream of U.S. Route 501.	*9	*10
			Approximately 2.2 miles upstream of the confluence of Stanley Creek.	*16	*17

Maps available for inspection at the Horry County Building Inspection Department, 801 Main Street, Room 121, Burroughs Complex, Conway, South Carolina.

Send comments to Mr. Douglas E. Freeman, Horry County Administrator, 103 Elm Street, P.O. Box 1236, Conway, South Carolina 29526.

Texas	Denton County	Denton Creek (Above Grapevine Lane).	At U.S. Highway 377	*564	*564
			Just upstream of Interstate Highway 35 West	None	*582
			Approximately 1,000 feet upstream of the confluence of Trail Creek.	None	*597
			At F.M. 407	None	*610
			Approximately 2,400 feet upstream of Old Justin-Ponder Road.	None	*635
		Clear Creek	At the confluence with Elm Fork Trinity River	*537	*537
			Just upstream of F.M. 428	None	*560
			Just upstream of F.M. 2164	None	*588
			At Rector Road	None	*601
			Approximately 300 feet upstream of Interstate Highway 35.	None	*620
		Little Elm Creek	At the confluence of Running Branch	*537	*537
			At the confluence of Mustang Creek	None	*547
			Just upstream of F.M. 1385	None	*556
			Approximately 5,000 feet downstream of Mobberly Road.	None	*566
			Just upstream of Mobberly Road	None	*571
		Pecan Creek (Above Little Elm Creek).	At the confluence with Little Elm Creek	None	*537
			Approximately 10,000 feet upstream of the confluence with Little Elm Creek.	None	*546
			Just upstream of F.M. 428	None	*561
			Approximately 5,000 feet upstream of F.M. 428.	None	*570
			Just upstream of Mustang Road	None	*575
		Mustang Creek	At the confluence with Little Elm Creek	None	*548
			Just upstream of F.M. 428	None	*560
			Just upstream of Mobberly Road	None	*574
		Doe Branch	Approximately 3,000 feet downstream of U.S. Highway 380.	*537	*537
			Just upstream of Fish Trap Road	None	*549
			Just upstream of Parvin Road	None	*567

Maps are available for review at Denton County Department of Public Works, Plats and Map Division, 110 West Hickory, Denton, Texas.

Send comments to The Honorable Jeff Mosley, Denton County Judge, 110 West Hickory, Denton, Texas 76201.

Washington	Okanogan County, unincorporated areas.	Methow River	At Mazama Creek Road	*2,102	*2,102
			Approximately 630 feet downstream of the confluence with Early Winters Creek.	*2,152	*2,151
			Approximately 7,500 feet upstream of the confluence with Early Winters Creek.	*2,201	*2,200
			Approximately 690 feet upstream of the confluence with Gate Creek.	*2,252	*2,250
			Approximately 2,380 feet upstream of the confluence with McGee Creek.	*2,299	*2,300
			At the confluence with Lost River	*2,351	*2,359

Maps are available for review at Okanogan County Office of Planning and Development, Administration Building, 237 Fourth North, 2nd Floor, Okanogan, Washington.

Send comments to The Honorable Ronald Weeks, Chairperson, Okanogan County Board of Commissioners, P.O. Box 791, Okanogan, Washington, 98840.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19703 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266; FCC No. 93–389]

Cable Television Act of 1992

AGENCY: Federal Comununications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission has issued a Further Notice of Proposed Rulemaking seeking comment regarding the application of its rules implementing the rate regulation provisions of the Cable Act of 1992 to small cable television systems—that is, those systems that have 1,000 or fewer subscribers. This action is taken concurrently with the Commission's decision, published elsewhere in this issue of the **Federal Register**, to temporarily stay its rate regulation rules with respect to small cable systems until the Commission reconsiders the administrative burdens and costs of compliance with the rules on small cable systems. This action is necessary to supplement the record to facilitate the Commission's review of petitions for reconsideration focusing on the application of the rules to small cable systems. This action is intended to permit the Commission to make any necessary modifications to its rules consistent with the Cable Act's directive to reduce administrative burdens and costs of compliance for cable systems that have 1,000 or fewer subscribers.

DATES: Comments are due on or before August 31, 1993, and reply comments are due on or before September 10, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard K. Welch, Office of the General Counsel, 202–632–6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice of Proposed Rulemaking segment of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC No. 93–389, adopted August 10, 1993, and released August 10, 1993. A synopsis of the Memorandum Opinion and Order segment of this decision is published elsewhere in this issue of the **Federal Register**. The complete text of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Further Notice of Proposed Rulemaking

In the Report and Order adopting our cable television rate regulation rules, we stated that we would apply our small system rules to systems with under 1,000 subscribers, regardless of whether the system is independent or owned by an MSO.[1] In so doing, we declined invitations by certain commenters to draw a distinction between small independently owned cable systems and those small systems that are affiliated with or controlled by large MSOs.[2] We noted that the language of the Cable Act does not distinguish between such systems, and that the problems faced by small systems serving smaller, often more rural communities occur whether or not the system is owned by an MSO. We thus declined to presume that large corporate ownership of a small system automatically would make compliance with our rate regulation rules and procedures less costly.[3]

Upon further reflection, we have decided to explore further whether any relief that we ultimately may provide to small cable systems should extend to all small systems or only to such systems that are not affiliated with or controlled by large MSOs.[4] In particular, we seek comment on whether we should establish a "subscriber cap" that, with respect to MSO owned small systems, would limit relief to those systems that are controlled by an MSO having less than a certain number of subscribers in the aggregate. This cap could be set, for example, at one million total subscribers for the MSO, or at some lower or higher figure. We seek comment on the need for such a cap generally, and, if such a cap is warranted, the specific number of aggregate subscribers that would serve as the demarcation point for small system relief for MSO-owned systems.

Our previous survey of industry data indicates that, for those small systems responding to the survey, approximately 83 percent are affiliated with an MSO.[5] Thus, for those small systems responding, approximately 17 percent represented independently owned systems. We are interested in gaining more information on the number of independently owned cable systems with fewer than 1,000 subscribers, the number that are affiliated with MSOs, and the size of the parent MSOs. Commenting parties are encouraged to provide detailed information on these issues.

We also solicit comment on the generic differences between independent small systems and those small systems affiliated with or owned by MSOs. Specifically, we seek comment on whether our rate regulation rules create disproportionate problems for small, independent systems that are not faced to the same degree by MSO-owned small systems. We particularly are interested in comments addressed to the issue of whether small systems owned by MSOs enjoy economies of scale and scope not available to independent small systems. In this regard, we seek comment on the types of cost advantages available to MSO-owned systems, including, for example, volume discounts for programming, favorable rates on debt acquisition, and discounts on equipment, maintenance and supplies. If such economies of scale and scope exist, at what point (*i.e.*, aggregate number of subscribers) do such economies warrant adoption of a subscriber cap for purposes of determining regulatory relief for small systems owned by MSOs? We also seek comment on any incentives that such a

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[1] *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92–266, FCC 93–177, at para. 464 (released May 3, 1993) ("*Report and Order*"), 58 FR 29736 (May 21, 1993).

[2] See, *e.g.*, NATOA Comments at 88 (small systems controlled by large MSOs have a variety of cost advantages, particularly access to programming discounts, and the ability to acquire debt at the favorable rates a large corporation can obtain); USTA Comments at 16–17 (larger MSOs are likely to have greater leverage with respect to local government and to have corporate resources that stand-alone small systems or those operated by smaller MSOs do not have); Northland Comments at 17–18 (large MSOs are likely to enjoy substantial programming volume discounts, discounts on maintenance and supplies, and are likely to be able to purchase debt at a more favorable rate than smaller MSOs).

[3] *Report and Order*, at para. 464.

[4] We note that our review of the distinct attributes of small, independently owned cable systems, as compared to those small systems affiliated with large MSOs, will be guided in part by our reconsideration of the rate regulation mechanism, and how it may apply uniquely to small systems. See, *e.g.*, petitions for reconsideration filed by Coalition of Small System Operators, Community Antenna Television Association, Inc.

[5] For purposes of the survey, an MSO was defined as a company with two or more systems.

cap might create, and conversely, whether the absence of such a subscriber cap could create incentives for the disaggregation of systems to place some systems within the cap. If disaggregation occurs, we also solicit comment on whether the Commission should consider such restructuring an evasion under Section 623(h).

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980).

Reason for action: This Further Notice of Proposed Rulemaking is issued to obtain comment on whether the Commission should distinguish between small independent cable television systems and those small systems affiliated with or owned by an MSO, for purposes of modifying the Commission's cable television rate regulation rules to reduce administrative burdens and cost of compliance for small cable systems.

Objectives: To modify existing rules to implement section 623(i) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992.

Legal Basis: The proposed action is authorized under sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 543.

Reporting, record keeping and other compliance requirements: The proposal under consideration in this Further Notice of Proposed Rulemaking may modify reporting and record keeping requirements for cable systems subject to the Commission's rate regulation rules with 1,000 or fewer subscribers.

Federal rules which overlap, duplicate or conflict with these rules: None.

Description, potential impact, and number of small entities involved: Any rules changes in this proceeding could affect cable systems with 1,000 or fewer subscribers, specifically such systems that are affiliated with or owned by an MSO. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any significant alternatives minimizing the impact on small entities consistent with stated objectives: The Further Notice of Proposed Rulemaking seeks comment on how to reduce administrative burdens and cost of compliance for cable systems subject to the Commission's rate regulation rules that have 1,000 or fewer subscribers.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Comment Dates

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 31, 1993, and reply comments on or before September 10, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

It is further Ordered; That, pursuant to sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), and 543, notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Further Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statement of issues.

It is further Ordered; That the Secretary shall send a copy of this Further Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–19890 Filed 8–13–93; 4:54 pm]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1805, 1839, and 1852

Proposed Changes to NASA FAR Supplement; More Efficient Use of Contracts for Federal Information Processing Resources

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: NASA has revised the NASA FAR Supplement to allow broader use of contracts for Federal Information Processing (FIP) resources. Under these changes, options or indefinite delivery/indefinite quantities on contracts for FIP resources that are in excess of the NASA contracting activity's ultimate requirements may be ordered for delivery to other NASA installations.

DATES: Comments on this proposed rule are due no later than October 18, 1993.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Tom O'Toole, Telephone: (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

NASA often acquires Federal Information Processing (FIP) resources through indefinite delivery/indefinite quantity (ID/IQ) contracts or through contracts with options for these deliverables. The quantities included in these contracts are the NASA contracting activity's best estimate of its requirements over the contract period of performance. In some cases, the actual requirements of the contracting activity by the end of the contract are less than the original estimates. As a result, these contracts occasionally have ordering capacities in excess of the contracting activity's ultimate requirements. Other NASA installations may have requirements for FIP resources that are satisfied by the products in this "excess ordering capacity", and orders are placed against this capacity for delivery to the other NASA installations. To expedite this process, NASA has developed procedures and a contract clause to authorize and effect these orders.

In short, the NASA policy is that the first priority of these contracts is to satisfy the anticipated requirements of the contracting activity. However, should the actual requirements of that installation be less than the maximum quantities/values specified in the contract, NASA may order the remaining available quantities/values to satisfy the requirements of other NASA installations. Orders are placed at the prices specified in the contract and delivered to another NASA installation. When appropriate, an equitable adjustment for transportation cost variances associated with delivery to the alternate delivery point may be negotiated.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–03–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1805, 1839, and 1852

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1805, 1839, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1805—PUBLICIZING CONTRACT ACTIONS

2. Section 1805.207 is amended by adding paragraph (c) to read as follows:

1805.207 Preparation and transmittal of synopses.

* * * * *

(c) Each notice publicizing the procurement of FIP resources under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources shall include options for additional quantities of such resources shall include the following:

The ____ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: ____ (List other NASA installations and their locations).

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

3. Section 1839.7003–4 is amended by adding paragraph (a)(6) as follows:

1839.7003–4 APR format.

(a) * * *

(6) When FIP resources are being acquired under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources, include a statement in the APR similar to the following:

The ____ (identify contracting activity) is the primary requiring activity for the items described in this APR. However, to further the most efficient and economical agency-wide acquisition of these resources, the contract will allow delivery to other NASA installations having requirements for the same resources. The ____ (identify contracting activity) will have the sole authority to place orders under this contract and authorize delivery to the alternate delivery points.

4. Section 1839.7008 is added to read as follows:

1839.7008 NASA contract clause.

(a) The contracting officer shall insert the clause substantially as stated at 1852.239–70, Alternate Delivery Points, in solicitations and contracts for Federal Information Processing Resources when:

(1) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities of such resources; and

(2) Delivery is F.O.B. destination to the contracting activity.

(b) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 1852.239–70 is added to read as follows:

1852.239–70 Alternate delivery points.

As prescribed in 1839.7008(a), insert the following clause:

Alternate Delivery Points

(Date)

(a) The first priority of this contract is to satisfy the anticipated requirements of ____ (identify contracting activity). However, should the actual requirements of ____ (contracting activity) be less than the maximum quantities/values specified in Section B of this contract, ____ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List Installations and Their Locations)

(b) The prices of the deliverables in section B are F.O.B. destination ____ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

Alternate I

(Date)

As prescribed in 1839.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[FR Doc. 93–19809 Filed 8–17–93; 8:45 am]

BILLING CODE 7510–01–M

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition To Delist the Grizzly Bear in the Northern Continental Divide Ecosystem, the Cabinet-Yaak Ecosystem, the Selkirk Ecosystem, and the North Cascades Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner requested that the Service delist the grizzly bear (*Ursus arctos horribilis*) populations in the Northern Continental Divide ecosystem, the Cabinet-Yaak ecosystem, the Selkirk ecosystem, and the North Cascades ecosystem. The Service finds that the petitioner did not provide substantial information to indicate that the requested action may be warranted for any of the four populations.

DATES: The finding announced in this notice was approved on August 10, 1993.

ADDRESSES: Questions and comments concerning this finding should be sent to Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service office at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen (see ADDRESSES above), telephone (406) 329–3223.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a 90-day finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted.

On December 11, 1992, a petition was received from James F. Rathbun dated December 8, 1992. The petitioner requested that the Fish and Wildlife Service (Service) delist the grizzly bear (*Ursus arctos horribilis*) populations in the Northern Continental Divide ecosystem, the Cabinet-Yaak ecosystem, the Selkirk ecosystem, and the North Cascades ecosystem.

The petitioner asserted that the species was not historically abundant in these four ecosystems and that the species should never have been listed in these ecosystems because there is no evidence that the populations were ever threatened or endangered. The petitioner did not provide any information to substantiate these assertions. Reliable historical information on grizzly bear numbers is not available. Recent studies of grizzly bear habitats and densities provide support that these ecosystems historically maintained a higher population number of grizzly bears than exists today. Threats identified in the final rule that listed the grizzly bear as a threatened species (41 FR 12382) showed that the grizzly bear in the lower 48 States was indeed a species that could become endangered in the foreseeable future. Furthermore, the Service recently published findings on two petitions, one for the North Cascades ecosystem (56 FR 33892) and one for the Cabinet-Yaak ecosystem (58 FR 8250), that indicated that reclassification of grizzly bears from threatened to endangered within each of these two ecosystems was warranted, but precluded by species with higher listing priorities.

The petitioner asserted that the above four ecosystems represent fringe areas that extend into the United States from Canada, and that grizzly bears in Canada are not threatened or endangered. The petitioner further asserted that these four grizzly bear populations are not distinct populations because they inhabit an ecosystem that is part of the larger (Canadian) ecosystem and because individual grizzly bears migrate across the U.S./Canadian border.

The Service disagreed that these United States ecosystems represent extensions of Canadian ecosystems. Historically, the range of the grizzly bear extended from Mexico throughout the United States west of the Mississippi River northward to Alaska. Today, the range of the grizzly bear is confined to less than 2 percent of its original area in the contiguous United States in distinct regions of Montana, Idaho, Wyoming, and Washington. Grizzly bear populations in the conterminous United States currently exist in ecosystems that represent the remaining fragments of the once extensive grizzly bear range throughout the southern portion of North America.

While grizzly bears are more abundant in Canada, there have been significant habitat modifications within Canada that are suspected to have caused declines or losses of grizzly bear populations in many areas.

The Service agreed that grizzly bears migrate across the U.S./Canadian border and that grizzly bears in the United States ecosystems are not separate from grizzly bears in adjacent Canadian ecosystems. However, such separation is not required for listing populations under the Act.

The petitioner also asserted that the Glacier National Park portion of the Northern Continental Divide ecosystem is, by itself, large enough to be a grizzly bear ecosystem. The petitioner did not provide any information to substantiate this assertion. The Service believes that Glacier National Park alone is not capable of sustaining a large enough population of grizzly bears to ensure long-term genetic viability and survival of the population and therefore does not constitute an adequate grizzly bear recovery zone.

In summary, the Service found that the petitioner did not supply substantial information to indicate that the petitioned action may be warranted in the Northern Continental Divide ecosystem, the Cabinet-Yaak ecosystem, the Selkirk ecosystem, or the North Cascades ecosystem. More detailed information regarding the above decisions may be obtained from the Service's Missoula office (see ADDRESSES above).

Author

This notice was prepared by Patricia Worthing at the Service's Ecological Services Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: August 10, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19901 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-55-P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Notice of Finding on a Petition To Change the Status of the Grizzly Bear Populations in the Yellowstone Grizzly Bear Ecosystem and the Northern Continental Divide Ecosystem From Threatened to Recovered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioners requested that the grizzly bear (*Ursus arctos horribilis*) populations in the Yellowstone Grizzly Bear ecosystem and the Northern Continental Divide ecosystem be reclassified from threatened to recovered. The Fish and Wildlife Service finds that the petitioners did not provide substantial information to indicate that the petitioned action may be warranted for either population.

DATES: The finding announced in this notice was approved on August 10, 1993.

ADDRESSES: Questions and comments concerning this finding should be sent to Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Fish and Wildlife Service office at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen (see **ADDRESSES** above), telephone (406) 329–3223.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a 90-day finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted.

On July 17, 1992, a petition was received from the Montanans for Multiple Use dated July 9, 1992. The petitioners requested that the Service reclassify the grizzly bear (*Ursus arctos horribilis*) populations in the Northern Continental Divide ecosystem and the Yellowstone Grizzly Bear ecosystem from threatened to recovered.

The petitioners asserted that various grizzly bear population estimates for the Northern Continental Divide ecosystem and the Yellowstone Grizzly Bear ecosystem meet the recovery criteria detailed in the draft revised Grizzly Bear Recovery Plan (Recovery Plan) (U.S. Fish and Wildlife Service 1992). The Service agrees that both grizzly populations meet some of the criteria necessary to warrant delisting; however, each population fails to meet certain criteria detailed in the Recovery Plan. The population in the Yellowstone Grizzly Bear ecosystem does not meet the criteria for distribution of family groups, and the Northern Continental Divide ecosystem does not meet the 6-year period required for recording population parameters. Further, prior to delisting, the Recovery Plan recommends completion of a conservation plan to ensure conservation of the population and its habitat after delisting. Such a conservation plan has not been completed for either the Yellowstone Grizzly Bear ecosystem or the Northern Continental Divide ecosystem.

At such time that any grizzly bear population meets all the recovery criteria established in the then current Grizzly Bear Recovery Plan, and when a conservation strategy is approved to ensure that the grizzly bear is adequately managed after delisting, delisting of the population will be pursued. If a population is delisted, the responsibility for its continued management will revert back to the State wildlife agency.

In summary, the Service found that the petitioners did not provide substantial scientific or commercial information to indicate that their petitioned action may be warranted in either the Northern Continental Divide ecosystem or the Yellowstone Grizzly Bear ecosystem. More detailed information regarding the above decisions may be obtained from the Service's Missoula office (see **ADDRESSES** above).

References Cited

U.S. Fish and Wildlife Service. 1992. Draft Revised Grizzly Bear Recovery Plan. Missoula, Montana. 200 pp.

Author

This notice was prepared by Anne Vandehey at the Service's Missoula office (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: August 10, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–19900 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Lake Erie Water Snake, Nerodia Sipedon Insularum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine threatened status for the Lake Erie water snake, *Nerodia sipedon insularum*, and thereby provide the species protection under the Endangered Species Act of 1973, as amended. This island subspecies was once abundant and widespread throughout the islands of Lake Erie and on the adjacent mainland. However, in the last 50 years, the population has dramatically declined due to habitat loss caused by rapid shoreline development and to active eradication by island residents. The snake population has been reduced on all islands and eliminated from at least one island where it once was abundant. The population is currently estimated to include only 1262 adults.

DATES: Comments from all interested parties must be received by November 16, 1993. Public hearing requests must be received by October 4, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Fort Snelling, Minnesota, 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species, at the above address (612–725–3276).

SUPPLEMENTARY INFORMATION:

Background

The Lake Erie water snake, *Nerodia sipedon insularum*, was formally recognized as a distinct subspecies in 1937 (Conant and Clay, 1937). The snake inhabits the limestone island archipelago of western Lake Erie (including Pelee, North Bass, Middle Bass, Rattlesnake, South Bass, Green, Kelleys, and Middle Islands), Point Pelee, Ontario and the mainland peninsula between Catawba and Marblehead, Ohio.

The Lake Erie water snake was once widespread and abundant on the islands, but the species has declined on all islands. The remaining population is currently estimated at 1262 adults (lower and upper bounds on the estimate are 523 to 4064 adults). As evidence of the dramatic population decline, it took King (1986) a month or more to capture the same number of snakes as Conant and Clay (1937) captured in a single day. King (1986) found snakes on 10 of 12 islands surveyed. He reported that snakes have been extirpated from at least one of these islands in the last 50 years.

The limestone islands of Lake Erie range in size from 1 acre to approximately 15 square miles. They are wooded, and the largest island has an inland marsh. The islands are largely platted for summer home development. The snakes are confined to the limestone slabs and crevices along the cliffs and rocky beaches of the shoreline and are directly affected by this development. Summer residents actively kill the snakes after mistakenly assuming they are poisonous.

—"The locals are unaware of its biological/zoological significance and methodically kill it as a 'midget moccasin'." (Davisson, *in litt.*, 1989).

—"Both habitat destruction, particularly shoreline development, and outright killing of these snakes is contributing to their demise." (King, *in litt.*, 1983).

The Lake Erie water snake is predominately uniform gray in color. It resembles the closely related *Nerodia sipedon sipedon* in scutellation, but the banded color pattern typical of the mainland form has been suppressed. Although there is variation in color pattern within the island subspecies, most of the population (94.7 percent of the adults and 83.8 percent of newborns) can be distinguished from the mainland subspecies (Conant and Clay 1963). In addition, King (1986) documented that the island subspecies has a larger adult body size, lower growth rate, and shorter tail than the mainland subspecies. Differences between subspecies may also exist in size of newborns, diet, and intensity of predation.

Both subspecies of snakes are strong swimmers and move freely between the islands and the mainland. The two subspecies often interbreed. As a result, the young of the island subspecies can range in color from limestone gray to fully banded. On the islands, the banded morph stands out against the limestone and is consumed more readily than the gray morph by visual predators such as gulls (Camin and Ehrlich 1958). As a result of this highly selective predation on banded individuals, the influence of interbreeding is reduced and the island population remains a distinct subspecies.

The snakes range in size from 15.5 cm snout-to-vent-length (SVL) to 110 cm SVL, with females averaging slightly larger than males (82.1 vs 62.5 cm SVL). Age classes are determined in part by size differences; young-of-the-year are less than 27 cm SVL, juveniles (snakes that are 1–3 years old) range from 27 cm to 59 cm and adults (snakes that are older than 3 years) range from 43 to 110 cm (King 1986).

During King's study, snakes were active throughout most of the frost free days of the year, roughly April to October. They fed primarily on fishes and amphibians. Males were more easily trapped early in the season than later primarily because they were actively looking for and courting females emerging from hibernation. Courtship and reproductive behavior occurred from May until early June. Females were more easily captured later in the season. There was some evidence that larger females were more likely to reproduce annually than smaller females. Litter size averaged 22.9 young (range 9–50 individuals). Newborns averaged 18.1 cm in length (12.5–21.0) and larger females produced more and larger young than small females. Females fed over a longer portion of the season and grew at a faster rate than males.

The Lake Erie water snake was recognized as a Category 2 candidate in the Service's September 18, 1985 (50 FR 37958) Vertebrate Wildlife Notice of Review. Category 2 comprises taxa for which there is some evidence of vulnerability, but for which the information necessary to list is lacking. It was again included in Category 2 on January 6, 1989 (54 FR 554), but given the research by King (1986), it should have been listed as Category 1 at that time. The Service concluded that enough information was available to propose listing of the species as threatened and changed its status to Category 1 in the November 21, 1991, Notice of Review (56 FR 225). Listing priority for this species is 6.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lake Erie water snake, *Nerodia sipedon insularum*, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The population decline of Lake Erie water snakes has been caused by increased human activity on the islands. The islands are extensively platted for lake shore developments such as summer homes and marinas—projects that have accelerated in recent years and have resulted in significant habitat loss for the snakes.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Residents on the islands actively kill the snakes under the mistaken notion they are poisonous, which they are not (Davisson, *in litt.*, 1989; King, *in litt.*, 1983). Scientific reference collections of snake specimens exist in a variety of locations as a result of past research. More recent research on the snake has involved capture and release methods that do not impact the population (i.e., King 1986). There may be some collecting for hobby purposes but the main threat to the population is the direct eradication program carried on by island residents and habitat loss due to shoreline development (See previous section and background information).

C. *Disease or predation.* Not known to be a threat at this time.

D. *The inadequacy of existing regulatory mechanisms.* Most of the land where the Lake Erie water snakes are known to occur is privately owned and platted for development. Currently, the subspecies is not legally protected in the United States. It was listed as threatened by the State of Ohio (in accordance with chapter 119 of the Ohio Revised Code) and as endangered by the Society for the Study of Amphibians and Reptiles—Endangered and Threatened Amphibians and Reptiles of the United States; but neither listing results in legal protection from habitat

destruction or take. Although one island (West Sister Island) is part of the Ottawa National Wildlife Refuge, no snakes are known to occur on this protected land. The snake is currently protected on the Canadian islands under the Endangered Species Act R.S.O. 1980 (Regulation 287 of Revised Regulations of Ontario). Several areas on the islands (Fish Point, Lighthouse Point on Pelee Island, and all of Sister Island) have been designated Nature Preserves by the Ministry of Natural Resources, Canada.

E. *Other natural or manmade factors affecting its continued existence.* No additional threats have been identified.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Without the protection of the Act continued development of the islands will result in population decline and threat of extinction. Based on this evaluation, the preferred action is to list the Lake Erie water snake, *Nerodia sipedon insularum*, as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that such a designation would not be prudent for the Lake Erie water snake. This determination is based on the premise that the species is threatened by taking, and identification of critical habitat can be expected to increase the degree of this threat (50 CFR 424.12). As discussed under Factors A and B in the Summary of Factors Affecting the Species, the Lake Erie water snake is threatened by direct eradication programs by island residents (Davisson, *in litt.*, 1989; King, *in litt.*, 1983).

Publication of critical habitat descriptions and maps would make the Lake Erie water snake more vulnerable to eradication and increase enforcement problems. Protection of this species' habitat will be addressed through the conservation planning process pursuant to section 10(A)2(A) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Fort Snelling, Minnesota, 55111–4056.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Camin, J.H. and P.R. Ehrlich. 1958. Natural selection in water snakes (*Natrix sipedon* L.) on islands in Lake Erie. Evolution 12:504–511.

Conant, R. and W.M. Clay. 1937. A new subspecies of water snake from islands in

Lake Erie. Occ. Pap. Mus. Zool., Univ. Michigan 346:1–15.
Conant, R. and W.M. Clay. 1963. A reassessment of the taxonomic status of the Lake Erie water snake. Herpetologica 19:179–184.
King, R.B. 1986. Population ecology of the Lake Erie water snake. Copeia 1986:757–772.

Authors

The primary authors of this proposed rule are Jan L. Eldridge and Kate Winsor of the Service's Regional Office in the Federal Building, Fort Snelling, Minnesota, 55111–4056 (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Reptiles, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
REPTILES	.....	.....	.....		.....	.....	.....
•	•	•	•	•	•	•	•
Lake Erie water snake.	*Nerodia sipedon insularum*	U.S.A. (OH); Canada (ONT).	NA	T	.....	N/A	N/A
•	•	•	•	•	•	•	•

Dated: July 27, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19454 Filed 8–17–93; 8:45 am]
BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Copperbelly Water Snake, Nerodia erythrogaster neglecta

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the northern copperbelly water snake (*Nerodia erythrogaster neglecta* Conant) and thereby provide the species protection under the Endangered Species Act of 1973, as amended (Act). Historic records and recent studies indicate that this animal has declined significantly, especially in the northern two-thirds of its range, and now persists in various scattered, isolated pockets where habitat is still suitable. The population is estimated to include only 1,530 adults rangewide with 368 breeding pairs. The northern copperbelly water snake has been most adversely affected by the loss of continuous tracts of swamp-forest habitat. Critical habitat is not being proposed.

DATES: Comments from all interested parties must be received by October 18, 1993. Public hearing requests must be received by October 4, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species (see **ADDRESSES** section), 612/725–3276, FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

The northern copperbelly water snake, (*Nerodia erythrogaster neglecta* Conant, was formally recognized as a distinct subspecies in 1949 (Conant 1949). The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *" (§ 4.(15)). Therefore, although taxonomically recognized as a subspecies, *Nerodia erythrogaster neglecta* will be referred to as a "species" through the remainder of this proposal. This legal, as opposed to biological, use of the term "species" should not be understood to mean that this proposal covers the entire species *Nerodia erythrogaster*. This proposal covers only the subspecies *Nerodia erythrogaster neglecta*.

The key field identification feature of the northern copperbelly water snake is its coloration. The snake has a solid dark (usually black) back with a bright orange-red venter, which is visible from a lateral view. Compared to similar species, the head and eyes of the northern copperbelly water snake are proportionally larger (Clay 1936, 1938; Conant 1938; 1951; Minton 1972). Snakes found in the northern portion of their range are, on average, larger than snakes from the southern portion of their range (Conant 1938, 1949, 1951; Minton 1972; Sellers 1991).

Schmidt (1953) describes the historic range of the northern copperbelly water snake as "south central Michigan and northwestern Ohio, southwestward through Indiana to extreme southeastern Illinois and adjacent Kentucky." The snake's range may have once included portions of Tennessee, Wisconsin, Pennsylvania, and West Virginia. Today, the northern copperbelly water

snake as "south central Michigan and northwestern Ohio, southwestward through Indiana to extreme southeastern Illinois and adjacent Kentucky." The snake's range may have once included portions of Tennessee, Wisconsin, Pennsylvania, and West Virginia. Today, the northern copperbelly water snake occurs in the lower Ohio River Valley and lower Wabash River Valley in extreme southwestern Indiana and adjacent Illinois and Kentucky, and in southern Michigan, northeastern Indiana, and northwestern Ohio. Historic records and recent studies indicate that this animal has declined significantly, especially in Michigan, Ohio, and the northern two-thirds of Indiana, and now persists only in various scattered, isolated pockets where habitat is still suitable. The population is estimated at 1,530 adults rangewide with 368 breeding pairs (Sellers 1991).

The northern copperbelly water snake migrates seasonally throughout its habitat. The habitat consists of lowland swamps or other warm, quiet waters. Wooded corridors are also necessary for migratory access to wooded lakes, streams, or other permanent waters. Upland slopes above floodstage line with underground hibernation sites below the frost line must also be accessible. When habitat is restricted in size or interrupted with impermeable barriers, such as roads or cleared areas, northern copperbelly water snake populations will decline or disappear (see Factor A). In order to sustain a viable population of northern copperbelly water snakes (about 50 individuals with 12 breeding pairs), 500–600 acres of continuous swamp-forest habitat is needed. Sellers (1991) describes the habitat as willow-buttonbush or cypress swamps adjacent to wooded cover for access to permanent wetlands and to wooded upland hibernation sites above floodstage.

The northern copperbelly water snake emerges from its upland hibernation sites in early springs, migrates to wetland areas through wooded corridors, and can often be seen basking near shallow wetland edges in woodlands. When the woodland swamps begin to dry in later spring, the snakes disperse and move the through wooded corridors or along waterways to permanent waters, it they are available. If permanent waters are not accessible, the snakes will remain around shallow swamps or move throughout the surrounding woodlands. Summer activities usually center around wooded and permanent water bodies, brushy ditches, and lowland wet woods. Snakes become difficult to find in mid-summer and early fall as they are active mainly in the terrestrial, brushy part of habitat (Conant 1951) and move to hibernation sites during this period.

Northern copperbelly water snakes hibernate in deep cavities in wooded uplands above the floodstage line and ponding areas. If upland sites are unavailable, the snakes will use bottomlands. However upland hibernation sites are essential to the survival of viable populations of the snake. A mid-winter flood, coupled with freezing temperatures, could be lethal to snakes if floodplain and riverbank areas were the only hibernation sites available. Bottomland hibernation sites have been identified as felled tree root networks (Lodato 1985), dense brushpiles, fieldstone piles, and perhaps beaver and muskrat lodges.

This species is know to form small groups (colonies) in the spring and fall. Colonies of snakes have been observed swimming, feeding, courting, and resting together (Contant 1938; Martin 1982, pers. comm. *in* Sellers 1991). Courtship and mating occur in April, May, and June. The northern copperbelly water snake has a longer gestation period than other natricine snakes sharing its range. Their average litter size is also smaller, average 18 per litter (Schmidt and Davis 1941). Young snakes are born in the fall near or in the hibernation site and may not become active until the following spring.

The northern copperbelly water snake was recognized as a category 2 candidate in the Service's December 30, 1982 (50 FR 47251), January 6, 1989 (50 FR 544), and November 21, 1991 (50 FR 56225) Notice of Review. Listing priority for this species is 6. Category 2 species warrant concern but conclusive information necessary for listing is lacking. As a result of a status survey prepared by Sellers (1991), the Service concluded that enough information was available to support the need for protection of the species under the Act. On November 12, 1991, the Service reassigned this species to Category 1.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss and fragmentation is the primary factor threatening the continued existence of the northern copperbelly water snake. The loss and fragmentation of continuous tracts (500–600 acres) of this species' swamp-forest habitat prevents a population's access to the seasonally used parts of its habitat that are required to sustain a viable population over time. The northern copperbelly water snake can adapt to certain limited disturbances such as artificial pond construction or selective timber harvesting. However, severe habitat loss and fragmentation has forced this species to use less suitable habitat and has led to the eventual decline and extirpation of once-viable populations.

Specific threats that have led to the extirpation of northern copperbelly water snake populations include clearcutting woodlots, brush and land clearance, widescale draining of wetlands, habitat constriction by surrounding development, wetland succession, and road construction. For example, in the late 1940's, northern copperbelly water snakes were extirpated from a site in Eaton County, Michigan, by dredging and ditching. A site in Hardin County, Ohio and a site in Williams County, Ohio were cleared and drained in the early 1950's, extirpating the northern copperbelly water snake from these areas. One Michigan site is bisected by a road that is scheduled for upgrading. The site is considered to be a significant location for the northern copperbelly water snake and habitat will be destroyed or degraded by the proposed project. In addition to habitat loss, snakes attempting to cross the upgraded road may be injured or killed by vehicles. Discussions are underway between the State and county to modify the plans to minimize damage to the snakes and habitat.

Another modification to the northern copperbelly water snake's habitat is the widespread use of insecticides and other chemicals that impact the aquatic food chain upon which the snake is dependent for food (Minton 1972).

In addition to the above threats, northern copperbelly water snakes in the lower Ohio River Valley and lower Wabash River Valley face habitat loss and fragmentation caused by surface mining, oil exploration and extraction, river dams that cause flooding of shallow wetlands and wooded areas,

timber clearcutting, row crop expansion, and stream channelization and dredging. In Indiana, a coal mining company is expanding its surface mining operation and northern copperbelly water snake habitat will be destroyed or degraded by the expansion.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

During the first 30 years after its discovery, many northern copperbelly water snakes were collected as specimens for museums. Although museums have abandoned this practice, amateur collectors continue to take snakes (Sellers 1991). The species is collected fairly regularly because of its rarity, its large size and its unique coloration, and its value in the pet trade. For example, an international commercial dealer reportedly offered $260 to an amateur collector for a breeding pair of northern copperbelly water snakes. One youth camp in the northern part of the snake's range encourages the capture of reptiles, including northern copperbelly water snakes, as part of their camp activities. The methods used to capture the snakes often injures them and the participants may attempt to take the snakes home with them. On one occasion, the Ohio Department of Natural Resources was called by the Toledo Zoo to investigate an attempt by several campers from this camp to sell a number of northern copperbelly water snakes (Seller 1991).

C. Disease or Predation

During migration the snakes are vulnerable to predation, especially when their migration routes are interrupted by cleared areas such as roads, mowed areas, and farmlands. The ability to migrate safely throughout its home range is a limiting factor in the life history of the northern copperbelly water snake.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms are not sufficient to reduce losses of the northern copperbelly water snake. Section 404 of the Clean Water Act regulates placement of fill material in the waters of the United States. This should have provided significant oversight on a wide variety of activities that would have prevented the destruction and fragmentation of this species' wetland habitat. Michigan, Ohio, and Indiana confer full legal protection to the northern copperbelly water snake. However, Illinois and Kentucky offer no legal protection to the snake. The Endangered Species Act offers additional possibilities for protection through section 6 (cooperation between the states and the Service), through section 7 (interagency cooperation), and through section 9 (prohibited acts).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Weather extremes such as drought, flooding, and mild winters may influence the population of the northern copperbelly water snake as it affects the snake's access to and use of upland hibernation sites with deep cavities, ability to estivate for prolonged periods, and access to and use of wood corridors from swamps to permanently-wet ponds, lakes, and streams.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the northern copperbelly water snake, *Nerodia erythrogaster neglecta*, as a threatened species. A threatened species, as defined under section 3(19) of the Act, is a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Critical habitat is not being proposed at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). As discussed under Factor B in the Summary of Factors Affecting the Species, the northern copperbelly water snake would become vulnerable to collectors who would be drawn to the known populations by the publication of critical habitat maps and other specific location information. Critical habitat designation would not provide additional protection over that afforded through the normal recovery process and through section 7 consultation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with

otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Clay, W. M. 1936. The taxonomy and phylogenetic relationships of the water snakes, *Natrix erythrogaster* and *n. sipedon*. Univ. Michigan (unpub):1–250.

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Conant, R. 1938. The reptiles of Ohio. Amer. Midl. Nat. 20(1):1–200.

Conant, R. 1949. Two new races of *Natrix erythrogaster*. Copeia (1):1–15.

Conant, R. 1951. The reptiles of Ohio, 2nd ed. Amer. Midl. Nat. 20(1):1–284.

Minton, S. A., Jr. 1968. The fate of amphibians and reptiles in a suburban area. J. Herpet. 2(3–4): 113–116.

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Schmidt, K. P. 1953. A checklist of North American amphibians and reptiles. Am. Soc. of Ichthy. and Herp. Chicago, VIII, 280 pp.

Schmidt, K. P. and D. D. Davis. 1941. Field book of snakes of the United States and Canada. New York: G. P. Putnam's Sons. 365 pp.

Sellers, M. A., Jr. 1991. Final report of the rangewide status survey of the northern copperbelly water snake *Nerodia erythrogaster neglecta*, Conant. Report to the U.S. Fish and Wildlife Service. 33 pp.

Author: The primary author of this proposed rule is Kate Winsor of the Service's Regional Office in the Bishop Henry Whipple Federal Building, Fort Snelling, Minnesota 55111–4056.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under *Reptiles*, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
REPTILES							
•	•	•	•	•	•	•	•
Northern copperbelly water snake.	*Nerodia erythrogaster neglecta.*	U.S.A. (MI, OH, IL, IN, KY).	Entire	T	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: July 26, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19455 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–55–M

VOL 58 ISS 158 AG 18 1993 UMI

Notices

Federal Register
Vol. 58, No. 158
Wednesday, August 18, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Burnt Cabin Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover fire-killed timber is exempted from appeals under provisions of 36 CFR 217.4(a)(11).

SUMMARY: In August 1992, 80 acres of National Forest timber in the Beaver Ridge area were killed or damaged by the Cabin Complex of wild fires. Immediately following the fire, the Powell District Ranger, Clearwater National Forest, proposed a salvage timber sale project to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis that was categorically excluded from documentation in the Burnt Cabin Decision Memo, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and the subsequent loss of value.

EFFECTIVE DATE: Effective on August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret J. Gorski, District Ranger; Powell Ranger District, Clearwater National Forest; Lolo, MT 59847. Telephone (208) 942–3113.

SUPPLEMENTARY INFORMATION: Lightning-caused wildfires in August of 1992 killed approximately 80 acres of timber in the Beaver Ridge area. Immediately following the fire, the Powell District Ranger proposed the salvage harvest of the fire-killed timber. The fire-killed timber is located within lands designated as suitable for timber management and assigned to Management Areas E1 and A6 (Clearwater Forest Plan, 1987). This proposal was designed to meet the following needs:

(a) Salvage dead timber while it still has maximum value as a wood product;

(b) Reduce the wildfire hazard by reducing fuel loading;

(c) Reforest timber stands that are understocked through site preparation, planting and natural regeneration;

(d) Salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in September of 1992. The District Ranger determined that the proposed action should be categorically excluded from documentation in an environmental assessment or environmental impact statement. Including the no action alternative, three alternatives were analyzed. The selected alternative would salvage 250 MBF of timber from 34 acres. Approximately 750 feet of temporary road construction will be required to access one cutting unit.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates, loses value, and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal.

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part.

Based on the information presented in the Decision Memo and the project file for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 11, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19795 Filed 8–17–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Drop Creek Blowdown Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District, Kootenai National Forest, produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 5 acres of timber in the Drop Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, August 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the Drop Creek area. The proposal is designed to meet the following needs:

(1) Recover dead and dying timber before it loses it commercial value;

(2) Rehabilitate the affected timber stands; and

(3) Reduce the potential for wildfire by reducing fuel loading.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative will salvage approximately 40 MBF of dead and damaged timber from approximately 5 acres. All savage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decision related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the Drop Creek Blowdown Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 11, 1993.

Christopher D. Risbrudt,

Deputy Region Forester Northern Region.

[FR Doc. 93–19934 Filed 8–17–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee will be convened at 8:30 a.m. and adjourn at 5:00 p.m. on Thursday, September 9, 1993, in the auditorium of the Augusta Civic Center, Community Drive, Augusta, ME 04330. The purpose of the meeting is to provide an orientation for new members and to receive briefings on hate crimes, migrant and immigrant workers, and equal educational opportunity for racial and language-minority students.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Barney Berube, 207–287–5876, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 9, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–19910 Filed 8–17–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 930639–3138]

National Voluntary Laboratory Accreditation Program (NVLAP)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of change—NVLAP Commercial Products Testing Program.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), announces expansion of the scope of laboratory accreditation for the Commercial Products Testing Program (CPL) to include Wood Based Products (WBP) for laboratories that test wood based products. Laboratory accreditation for testing laboratories for wood based products is responsive to the request made by the American Plywood Association (APA) and subsequently supported by the National Particleboard Association (NPA), and U.S. Department of Housing and Urban Development (HUD). The request letters indicated the importance of international acceptance and reciprocity as important factors in laboratory arrangements. The effect of the change is to meet the purpose of the program for commercial products laboratory testing accreditation and to foster international trade.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), Building 411, A124, Gaithersburg, MD 20899; or telephone (301) 975–4016, FAX (301) 926–2884.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 15 CFR 7.18 "Adding to an established LAP", NVLAP announces the expansion of the CPL program to include Wood-Based Products (WBP). The Commercial Products Testing Program (CPL) was established in 1984 at the request of the International Coalition for Procurement Standards (ICPS). The purpose of the program was to develop a list of accredited laboratories so that purchasing contracts prepared by purchasing officials could specify that vendors supply products and materials tested by an accredited laboratory. The ICPS request identified a number of standards and test methods for paints and related coatings, paper and paper products, and mattresses for initial inclusion in the program. The scope of the CPL program established in 1984 was defined as those products important to the purchasing community listed in "Selected ASTM Standards for the Purchasing Community" Second Edition, 1990, published by the American Society for Testing and Materials (ASTM). The program initially included paint and related materials, paper and paper products, and mattresses. Other products could be added in response to written requests, either as listed in the ASTM Book, or for test methods in standards other than ASTM (48 FR 45448–45453, dated October 5, 1983). The last expansion of the CPL program for plumbing products was announced in the **Federal Register** (55 FR 51458–51459 dated December 14, 1990).

The test methods listed below are presented under category headings for convenience.

General—Wood Products

To avoid duplication in the list of test methods within each category, the General—Wood Products listing represents those methods which would appear under more than one category. Several test methods which did not fit specifically into any of the other categories are also listed here.

Notation:

AITC designates American Institute of Timber Construction
ANSI designates American National Standards Institute
ASTM designates American Society for Testing and Materials

ASTM D906—Strength Properties of Adhesives in Plywood Type Construction in Shear by Tension Loading
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 11–20: Static Bending
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 28–33: Tensile Strength Perpendicular to Surface
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 126–127: Moisture Content and Specific Gravity
ASTM D2718—Structural Panels in Planar Shear (Rolling Shear)
ASTM D2719—Structural Panels in Shear Through-the-Thickness, Method C: Two-Rail Shear
ASTM D3043—Structural Panels in Flexure, Method C: Pure Moment
ASTM D4442—Direct Moisture Content Measurement of Wood and Wood-Base Materials, Method A: Primary Oven-Drying
ASTM D4442—Direct Moisture Content Measurement of Wood and Wood-Base Materials, Method B: Secondary Oven-Drying
ASTM E72—Strength Tests of Panels for Building Construction, Racking Load: Evaluation of Sheathing Materials on a Standard Wood Frame
ASTM E72—Strength Tests of Panels for Building Construction, Racking Load: Evaluation of Sheathing Materials (Wet) on a Standard Wood Frame
ASTM E564—Static Load Test for Shear Resistance of Framed Walls for Buildings
ASTM E695—Measuring Relative Resistance of Wall, Floor, and Roof Construction to Impact Loading
AFG–01–84—Adhesives for Field-Gluing Plywood to Wood Framing—Sec. 3.1: Shear Strength (APA)
AFG–01–84—Adhesives for Field Gluing Plywood to Wood Framing—Sec. 3.2: Durability (APA)

Fire Tests

ASTM E84—Surface Burning Characteristics of Building Materials
ASTM E906—Heat and Visible Smoke Release Rates for Materials and Products
ASTM E1354—Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter

Particleboard and medium-density fiberboard

Formaldehyde

ASTM E1333—Determining Formaldehyde Levels From Wood Products Under Defined Test Conditions Using a Large Chamber
FTM 1–83—Small Scale Test Method for Determining Formaldehyde Emissions from Wood Products: Two Hour Desiccator Test
EN 120:92—Wood-Based Panels—Determination of Formaldehyde Content, Extraction Method Called the Perforator Method. CEN, European Committee for Standardization. Brussels, Belgium. (English)

Physical/Mechanical Properties

ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 61–67: Direct Screw Withdrawal
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 68–73: Hardness
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 118–124: Accelerated Aging
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 100–106: Water Absorption and Thickness Swelling
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 107–110: Linear Variation with Change in Moisture Content
ANSI/A208.1—Wood Particleboard, Section 3.4.4: Concentrated Load

Structural-Use Panels

ASTM D3044—Shear Modulus of Plywood
ASTM D3500—Structural Panels in Tension, Method B: Tensile Strength of Large Specimens
ASTM D3501—Testing Plywood in Compression, Method B: Compression Test for Large Specimens
ASTM E661—Performance of Wood and Wood-Based Floor and Roof Sheathing Under Concentric Static and Impact Loads.
PS–1—Construction and Industrial Plywood—Sec. 4.5.2: Vacuum-Pressure
PS–1—Construction and Industrial Plywood—Sec. 4.5.3: Boiling
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.1: Performance Under Concentrated Static and Impact Loads
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.2: Performance under Uniform Loads
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.4: Fastener-Holding Performance, Lateral Loads, Direct Withdrawal Loads
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.7: Linear Expansion and Thickness Swell Measured from Oven Dry to Vacuum-Pressure Soak
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.8: Linear Expansion and Thickness Swell Measured after Wetting on One Side
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.9: Linear and Thickness Expansion Measured by Exposure to Relative Humidity
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.17: Moisture Cycle for Quality Assurance (Single Cycle Test)
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.18: Moisture Cycle for Delamination and Strength Retention (Six-Cycle Test)
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.19: Bond Durability Associated with Knots and Knotholes
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.20: Radial Probe Test

Hardwood Plywood

HP–1—Interim Voluntary Standard for Hardwood and Decorative Plywood—Sec. 4.3: Dry Shear
HP–1—Interim Voluntary Standard for Hardwood and Decorative Plywood—Sec. 4.4: Cyclic-Boil Shear Test
HP–1—Interim Voluntary Standard for Hardwood and Decorative Plywood—Sec. 4.6: Three-Cycle Soak Test
ASTM E96—Water Vapor Transmission of Materials

Structural Composite Lumber, Glulam, I-Joists

ASTM D143—Small Clear Specimens of Timber, Sec. 47–54: Static Bending
ASTM D143—Small Clear Specimens of Timber, Sec. 100–104: Tension Parallel to Grain
ASTM D143—Small Clear Specimens of Timber, Sec. 90–94: Shear Parallel to Grain
ASTM D198—Static Tests of Timbers in Structural Sizes, Sec. 4–11: Flexure
ASTM D198—Static Tests of Timbers in Structural Sizes, Sec. 28–35: Tension Parallel to grain
ASTM D905—Strength Properties of Adhesive Bonds in Shear by Compression Loading
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials, Part A—Sec. 21–27: Tensile Strength Parallel to Surface
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials, Part A—Sec. 81–86: Shear Strength in the Plane of the Board
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials, Part A—Sec. 87–90: Glue-Line Shear (Block Type)
ASTM D1101—Integrity of Glue Joints in Structural Laminated Wood Products for Exterior Use
ASTM D1761—Mechanical Fasteners in Wood—Sec. 1–11: Nail, Staple, or Screw Withdrawal Test
ASTM D2395—Specific Gravity of Wood and Wood-Base Materials—Method A: Volume by Measurement
ASTM D2559—Adhesives for Structural Laminated Wood Products for Use Under Exterior (Wet Use) Exposure Conditions: Resistance to Shear by Compression Loading
ASTM D2559—Adhesives for Structural Laminated Wood Products for Use Under Exterior (Wet Use) Exposure Conditions: Resistance to Delamination During Accelerated Exposure
ASTM D4688—Evaluating Structural Adhesives for Fingerjointing Lumbers
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T106: Strip Tension Test for End Joints (Used in Lamination Repair)
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T107: Shear Test
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T110: Cyclic Delamination Test
AITC D200—Inspection Manual for Structural Glued Laminated Timber—T114: Bending Test for End Joints
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T116: Modulus of Elasticity of E-Rated Lumber by Static Loading

AITC 200—Inspection Manual for Structural Glued Laminated Timber—T119: Full Size End Joint Tension Test
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T123: Sampling, Testing, and Data Analysis to Determine Tensile Properties of Lumber

Sandwich Constructions

ASTM C273—Shear Properties in Flatwise Plane of Flat Sandwich Constructions or Sandwich Cores
ASTM C297—Tensile Strength of Flat Sandwich Constructions in Flatwise Plane
ASTM C365—Flatwise Compressive Strength of Sandwich Cores
ASTM C393—Flexural Properties of Flat Sandwich Constructions
ASTM C480—Flexure-Creep of Sandwich Constructions
ASTM C481—Laboratory Aging of Sandwich Constructions
ASTM D1183—Resistance of Adhesive to Cyclic Laboratory Aging Conditions

Dated: August 12, 1993.

Arati Prabhaker,

Director.

[FR Doc. 93–19986 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of Modification 1 to Permit No. 825 to the Columbia River Inter-Tribal Fish Commission and issuance of Permit No. 850 to the Washington Department of Fisheries.

On March 23, 1993 (58 FR 17383), the Columbia River Inter-Tribal Fish Commission (CRITFC) was issued Permit 825, under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217–227), authorizing two of the five projects proposed in their application. On June 9, 1993 (58 FR 33434), an Amendment authorizing the remaining three projects proposed in their application was issued. Notice is hereby given that on August 3, 1993 as authorized by the provisions of the ESA, NMFS issued Modification 1 to Permit 825. The Modification authorizes the CRITFC to hold cryopreserved gametes at the Washington State University.

On September 22, 1992 (57 FR 43706) notice was published that an application had been filed by the Washington Department of Fisheries (WDF) to take adult listed Snake River fall chinook salmon (*Ocorhynchus twshawytscha*) for the purposes of scientific research, as authorized by the ESA and the NMFS regulations governing listed fish and wildlife. On April 29, 1993, (58 FR 25971) notice was given that the WDF had revised their application. Notice is hereby given that on August 11, 1993 as authorized by the provisions of the ESA, NMFS issued Permit 850 for the above taking subject to the conditions set forth in the permit.

Issuance of this Modification and Permit, as required by the ESA, was based on the finding that such documents: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of the Modification; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This Modification and Permit were also issued in accordance with and are subject to parts 217–227 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, Permits and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: August 11, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–19793 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for an incidental take permit (P211H).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a permit to incidentally take endangered or threatened species, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR Part 217–227).

ODFW requests authorization to continue operations of seven Oregon propagation and stocking programs, including: (1) Wallowa Hatchery; (2) Round Butte Hatchery; (3) Oak Springs Hatchery; (4) Roaring River Hatchery; (5) Big Creek Hatchery; (6) Clatsop County Economic Development Council Fisheries Project; and (7) the Salmon Trout Enhancement Program. ODFW requests this authorization for a duration of five years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503/230–5400).

Dated: August 13, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–19959 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 870.

SUMMARY: On June 4, 1993, notice was published in the **Federal Register** (58 FR 31693) that a request for a scientific research permit to take marine mammals had been submitted by Dr. Bruce R. Mate, Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5296. This request was for a 5-year permit to place satellite-linked radio tags on a total of 150 bottlenose dolphins (*Tursiops truncatus*). Up to 10,000 additional bottlenose dolphins may be harassed during the capture operations during the first year of the research. Activities during 1993 would occur principally in Matagorda Bay, Texas, the Gulf of

Mexico, and off the eastern coast of Texas. Subsequent years' activities would occur in Sarasota Bay, Florida, in the North Atlantic, off California, and around Hawaii.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices.

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Room 7324, Silver Spring, MD 20910 (301/713–2289);
Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200);
Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141);
Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and
Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 11, 1993, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), NMFS issued the requested permit for the above activities subject to special conditions set forth therein.

Dated: August 11, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–19937 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Number: Personal Information Questionnaire, NAVMC 10064, OMB Number 0703–0012.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 30 minutes.

Responses per Respondent: 1.

Number of Respondents: 16,700.

Annual Burden Hours: 8,350.

Annual Responses: 16,700.

Needs and Uses: The Personal Information Questionnaire is used as a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for service as a commissioned officer.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 12, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19880 Filed 8–17–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: Defense FAR Supplement (DFARS) part 232, Contract Financing, and part 252, Solicitation Provisions and Contract Clauses.

Type of Request: Expedited processing; approval date requested: 30 days after publication in the Federal Register.

Average Burden per Response: 1 hour.

Responses per Respondent: 1.

Number of Respondents: 800.

Annual Burden Hours: 800.

Annual Responses: 800.

Needs and uses: This requirement provides for the collection of information from contractors who are awarded incrementally funded, fixed-price DoD contracts where the contract is funded with research and development funds; where Congress has incrementally appropriated program funds; or where funds are made available on an incremental basis for either base services or hazardous/toxic waste remediation contracts and the head of the contracting activity has approved the use of incremental funding. The information collection requires these contractors to notify the Government when the work under the contract will, within ninety days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (e.g. allot additional funds for continued performance, terminate the contract, terminate certain contract line items).

Affected Public: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, 22202–4302.

Dated: August 12, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19879 Filed 8–17–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Performance Review Boards List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Mr. Charles A. Hawkins

Air Force Materiel Command

Brig Gen Francis C. Gideon, Jr.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–19938 Filed 8–17–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Open Meeting of Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 9 September 1993.

Time of Meeting: 1400–1600 (2 hours).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's C3I Issue Group members will meet with their sponsor (DISC4) to discuss the status of two sponsor-initiated studies. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–19921 Filed 8–17–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Education Goals Panel; Public Hearing

AGENCY: National Education Goals Panel: Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the date and location of a forthcoming public hearing sponsored by the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: September 7, 1993 from 2 p.m. to 5:30 p.m.

ADDRESSES: Minnesota State Capitol, St. Paul, Minnesota, room 15, Ground Floor. The Northwest entrance to the Capitol is handicap accessible.

FOR FURTHER INFORMATION CONTACT: Emily Wurtz, 1850 M Street, NW., suite 270, Washington, DC 20036. Telephone: (202) 632–0952. Those needing assistance for people with disabilities should call Capitol Information at (612) 296–2739. Individuals who use a telecommunications device for the deaf (TDD) may call (612) 296–0075.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals set in 1990.

The hearing is open to the public. The agenda includes time for expert testimony and public comment on how best to develop criteria to review and approve voluntary world-class education standards. Minnesota Governor Arne H. Carlson, Honeywell Chief Executive Officer James Renier, and Director for Education and Human Resources at the American Association for the Advancement of Science Shirley Malcom will introduce the event and will be followed by prepared testimony from the public and an "open-mike" question and answer session. To reserve time to speak, please contact Leona Schutz in Governor Carlson's office at 612–296–8983. Written testimony may also be submitted at the hearing or sent directly to: Emily Wurtz, National Education Goals Panel, 1850 M Street, NW., suite 270, Washington, DC 20036.

Dated: August 12, 1993.

Ann V. Bailey,

Committee Management Officer, U.S. Department of Education.

[FR Doc. 93–19940 Filed 8–17–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Virginia Polytechnic Institute and State University

AGENCY Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) it is making a financial assistance award under Cooperative Agreement Number DE–FC01–89CE15971 to Virginia Polytechnic Institute and State University continuing an activity presently being funded by the Department of Energy for which competition for support would have a significant adverse effect on continuity or completion of the activity. The first budget period of a three year project period will fund administration, development and implementation of Energy Related Inventions Program workshops and Innovative Concepts Program Fair. Funding in the amount of $510,934 is to be provided for the first budget period by this cooperative agreement. The Government's three year estimate for the total project is $2,237,000.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The objectives of the proposed agreement, in which Virginia Polytechnic Institute and State University and the Department Energy will work cooperatively to develop and implement the Energy Related Invention Program educational programs and the Innovatiive Concepts Program Fair, are to manage Commercialization Planning Workshops, National Innovation Workshops, and the Innovative Concepts Fair and to undertake related initiatives involving commercialization, curriculum development, training, demonstration, and evaluation. The term of the proposed cooperative agreement shall be three years from the effective date of the award.

Issued in Washington, DC, on August 12, 1993.

Carol M. Rueter,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–19981 Filed 8–17–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–465–000, et al.]

Florida Power & Light Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 10, 1993.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Co.

[Docket No. ER93–465–000]

Take notice that on July 26, 1993, Florida Power & Light Company (FPL) tendered for filing revisions to its March 19, 1993 filing in this proceeding in response to the May 18, 1993 Deficiency Letter from the Director, Division of Applications. FPL's amended filing contains the following: (i) Transmission Service Tariff Nos. 1, 2 and 3; (ii) amendments to each of FPL's Agreements to Provide Specified Transmission Service; (iii) an Amendment to the Agreement to Provide Coordination Transmission Service and Additional Transmission Service Between FPL and the Utility Board of the City of Key West, Florida (Key West) (Coordination Transmission Agreement); (iv) a revised Wholesale Electric Service Tariffs for partial requirements and full requirements service; (v) revised Attachments A and B to the Aggregate Billing Partial Requirements Service Agreement Between FPL and Seminole Electric Cooperative, Inc. (ABPRSA); (vi)

amendments to the Service Schedule in each of FPL's interchange contracts; (vii) cost support information; and (viii) prepared direct testimony of FPL witnesses describing the items above.

FPL's filing also includes additional information, in the form of Period I and Period II cost support data, testimony and an explanation of its amended filing. FPL states that the amended filing is in accordance with section 35 of the Commission's regulations.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

[Docket No. ER93-840-000]

Take notice that on August 2, 1993, PSI Energy, Inc. (PSI) tendered for filing the Third Supplemental Agreement, dated June 1, 1993, to the Interim Schedule Power Agreement, as amended (1989 Agreement), dated May 24, 1989, between PSI Energy, Inc., (PSI), and Wabash Valley Power Association, Inc. (Wabash Valley). Such 1989 Agreement has been designed as PSI's Rate Schedule FERC No. 241.

The Third Supplemental Agreement modifies various sections of the 1989 Agreement. The changes are due primarily to the expiration of the initial term of the 1989 Agreement which terminated on July 31, 1992.

Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

The parties have requested an effective date of October 1, 1993.

Comment date: August 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER93-694-000]

Take notice that on August 2, 1993, Southern California Edison Company (Edison) tendered for filing additional information which was requested by Commission Staff in Docket No. ER93-694-000.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. National Electric Associates Partnership

[Docket No. ER90-168-113]

Take notice that on July 26, 1993, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

5. Arizona Public Service Co.

[Docket No. ER93-841-000]

Take notice that on August 2, 1993, Arizona Public Service Company (ASP) tendered for filing the proposed Power Sale Agreement between APS and Portland General Electric Company (PGE).

The agreement proposes that APS will make available to PGE, when pre-scheduled by PGE, up to 100 MW of firm power and energy commencing on October 1, 1993 and ending April 30, 1996, during the months of October, November, December, January, February, March and April. The rate for sales under the agreement contains a Capacity Charge component and an Energy Charge component. Additionally, there are provisions for daily energy cost floors and ceilings as well as a minimum load factor requirement.

A copy of this filing has been served on PGE, the Arizona Corporation Commission and the Oregon Public Utility Commission.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Energy, Inc.

[Docket No. ER93-826-000]

Take notice that on July 29, 1993, Midwest Energy, Inc. (Midwest) tendered for filing a Notice of Cancellation of the following rate schedules:

Rate Schedule
1 CKP and Sunflower Electric
2 CKP and Kansas City Power & Light
3 CKP and Kansas Power and Light
4 CKP and City of Oakley
5 CKP and City of Colby

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER93-838-000]

Take notice that on August 2, 1993, Public Service Company of Colorado tendered for filing amendments to its FERC Electric Service Rate Schedule, FERC No. 51. Under the proposed amendment Public Service is seeking to revise the scheduling of Western Area Power Administration Preference Power deliveries to Intermountain Rural Electric Association, Inc This amendment will have no impact on the rates for service under this agreement.

Public Service requests an effective date of October 1, 1993 for the proposed amendment.

Copies of the filing were served upon Intermountain Rural Electric Association, Inc, and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corp

[Docket No. ER93-823-000]

Take notice that on July 29, 1993, Allegheny Power Service Corporation (Allegheny) tendered for filing on behalf of Monangahela Power Company a notice of cancellation of FERC rate schedule No. 47.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corp

[Docket No. ER93-837-000]

Take notice that on July 30, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Burlington Electric Department (BED) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93-313-000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its July 26, 1993 filing of the proposed Service Agreement with O&R, Niagara Mohawk requests an effective date for this Service Agreement of July 26, 1993, the date of filing with FERC.

A copy of this filing has been served upon BED and the New York State Public Service Commission.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19941 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2458 and 2572]

Great Northern Paper, Inc; Intent To Hold Scoping Meetings and Site Visit

August 12, 1993.

The Federal Energy Regulatory Commission (FERC) published on April 20, 1993, in the **Federal Register** a notice of intent to prepare an Environmental Impact Statement (EIS) for the Penobscot Mills and Ripogenus Projects (Nos. 2458 and 2527), Maine. The projects consist of the Ripogenus, Millinocket Lake Storage, North Twin, Millinocket, Dolby, and East Millinocket developments situated on the West Branch of the Penobscot River in Penobscot and Piscataquis counties, Maine. FERC will conduct project site visits on Monday, August 23 and Tuesday, August 24, and two scoping meetings on Wednesday, August 25, 1993, in Millinocket, Maine.

All interested individuals are invited to attend the site visits. Trip participants will meet at the Atrium Motel in Millinocket at 8 a.m. on August 23 and 24, and vans will be available to take them to the site. Please make reservations for the site visits by calling VERSAR at 401–964–9200 before August 17, 1993.

All interested individuals, organization representatives and agencies with environmental expertise and concerns are invited to attend the scoping meetings on August 25. The purpose of the meetings is to obtain agency and public comment on environmental issues that should be addressed in the EIS. Scoping will consist of a morning meeting, from 9 a.m. to 12 noon at the Atrium Motel, for government agencies to voice their concerns and recommendations; and an evening meeting, from 7 to 10 p.m. at Stern High School in Millinocket which for the public to express their concerns and recommendations.

Objectives

To focus discussion, a preliminary EIS scoping document outlining subject areas to be addressed at the meetings will be distributed by mail to parties on the FERC service and mailing lists. Copies of the preliminary scoping document will also be available at the meetings.

During the meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) will become part of the formal record of the Commission proceedings on the Penobscot Mills and Ripogenus projects. Individuals presenting statements will be asked to identify themselves for the record.

Participants at the public meetings are asked to limit comments to five minutes to allow everyone an opportunity to speak.

Persons choosing not to speak, but having views on the issues or information relevant to the issues, may submit written statements at the meetings for inclusion in the public record. Written scoping comments may also be filed until September 1, 1993, with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show one or both of the following captions on the first page:

Penobscot Mills Project No. 2458, Maine
Ripogenus Project No. 2527, Maine

All those formally recognized by the Commission as intervenors in the Penobscot Mills and Ripogenus projects are asked to refrain from discussing the merits of the project with the staff or its contractor outside of announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing written comments or documents with the Commission, to serve a copy of the written comments or documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Edward R. Meyer at (202) 219–2781.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19950 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93–3953–000 through ST93–4495–000]

Panhandle Eastern Pipe Line Co; Self-Implementing Transactions

August 12, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), Section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any intestate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–3953	Panhandle Eastern Pipe Line Co.	Quanex Corp	06–01–93	G–S	3,500	N	I	05–01–93	04–30–98
ST93–3954	Panhandle Eastern Pipe Line Co.	Clinton Gas Transmission, Inc.	06–01–93	G–S	50,000	N	I	05–01–93	04–30–98
ST93–3955	Panhandle Eastern Pipe Line Co.	Anchor Glass Container Corp.	06–01–93	G–S	3,800	N	F	05–01–93	04–30–94
ST93–3956	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	06–01–93	G–S	500	N	F	05–01–93	03–31–94
ST93–3957	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	06–01–93	G–ST	3,952	N	F	05–01–93	03–31–98
ST93–3958	Sabine Pipe Line Co	Tauber Oil Co	06–01–93	G–S	50,000	N	I	05–21–93	Indef.
ST93–3959	Sabine Pipe Line Co	Kerr-McGee Corp	06–01–93	G–S	12,934	N	I	05–01–93	Indef.
ST93–3960	Sabine Pipe Line Co	Samedan Oil Corp	06–01–93	G–S	3,921	N	I	05–01–93	Indef.
ST93–3961	Transtexas Pipeline	Tennessee Gas Pipeline Co.	06–01–93	C	5,000	N	I	05–12–93	Indef.
ST93–3962	Valero Transmission, L.P.	Texas Gas Transmission Corp.	06–01–93	C	6,000	N	I	05–12–93	Indef.
ST93–3963	Tennessee Gas Pipeline Co.	O & R Energy Inc	06–01–93	G–S	300,000	N	I	05–01–93	Indef.
ST93–3964	Panhandle Eastern Pipe Line Co.	Quantum Chemical Corp.	06–01–93	G–S	15,000	N	I	05–01–93	03–31–98
ST93–3965	Panhandle Eastern Pipe Line Co.	AGF Direct Gas Sales, Inc.	06–01–93	G–S	1,000	N	I	05–01–93	04–30–98
ST93–3966	Panhandle Eastern Pipe Line Co.	Dunn Co	06–01–93	G–S	250	N	I	05–01–93	04–30–98
ST93–3967	Panhandle Eastern Pipe Line Co.	Tristar Gas Co	06–01–93	G–S	15,000	N	I	05–01–93	03–31–03
ST93–3968	Southern Natural Gs Co.	Texican Natural Gas	06–01–93	G–S	10,000	N	I	05–01–93	Indef.
ST93–3969	Southern Natural Gs Co.	Louisiana Municipal Natural Gas.	06–01–93	G–S	25,000	N	I	05–01–93	Indef.
ST93–3970	Southern Natural Gs Co.	Chevron USA, Inc	06–01–93	G–S	30,000	N	I	05–01–93	Indef.
ST93–3971	Colorado Interstate Gas Co.	Transwestern Pipeline Co.	06–02–93	G–S	50,000	N	I	04–29–93	Indef.
ST93–3972	Colorado Interstate Gas Co.	Montana Power Co	06–02–93	B	20,000	N	I	04–25–93	Indef.
ST93–3973	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	06–02–93	G–S	40,000	A	I	04–15–93	Indef.
ST93–3974	Colorado Interstate Gas Co.	Synder Oil Corp	06–02–93	G–S	41,800	N	F	05–11–93	05–01–08
ST93–3975	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	06–02–93	G–S	54,000	A	F	05–01–93	04–30–94
ST93–3976	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	06–02–93	G–S	13,000	N	I	05–01–93	Indef.
ST93–3977	Colorado Interstate Gas Co.	Enron Gas Marketing, Inc.	06–02–93	G–S	100,000	N	I	05–15–93	Indef.
ST93–3978	Channel Industries Gas Co.	Seagull Marketing Services.	06–02–93	G–I	50,000	N	I	05–04–93	Indef.
ST93–3979	Midcon Texas Pipeline Corp.	Natural Gas P/L Co. of America.	06–02–93	C	40,000	N	I	05–01–93	Indef.
ST93–3980	Arkla Energy Resources Co.	Tristar Gas Marketing Co.	06–02–93	G–S	50,000	N	I	05–20–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–3981	Transcontinental Gas P/L Corp.	Stellar Gas Co	06–02–93	G–S	1,900,000	N	I	05–24–93	Indef.
ST93–3982	Valero Interstate Trans. Co.	Valero Transmission, L.P.	06–03–93	B	5,000	Y	I	06–01–93	Indef.
ST93–3983	K N Energy, Inc	Panhandle Eastern Pipe Line Co.	06–03–93	G	14,000	N	I	05–08–93	Indef.
ST93–3984	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	06–03–93	G–S	200,000	N	I	05–07–93	Indef.
ST93–3985	Tennessee Gas Pipeline Co.	Louis Dreyfus Energy Corp.	06–03–93	G–S	100,000	N	I	05–14–93	Indef.
ST93–3986	Northern Border Pipeline Co.	Renaissance Energy Ltd.	06–03–93	G–S	50,000	Y	I	06–01–93	01–14–94
ST93–3987	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	06–03–93	B	255	Y	F	06–01–93	Indef.
ST93–3988	Arkla Energy Resources Co.	Polaris Pipeline Corp	06–03–93	G–S	5,000	N	I	06–02–93	Indef.
ST93–3989	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	06–03–93	B	200	Y	F	06–01–93	Indef.
ST93–3990	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	06–03–93	B	125	Y	F	06–01–93	Indef.
ST93–3991	Arkla Energy Resources Co.	Dold Foods, Inc	06–03–93	G–S	200	N	I	06–01–93	Indef.
ST93–3992	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	06–03–93	G–S	50,000	N	I	05–20–93	Indef.
ST93–3993	Transcontinental Gas P/L Corp.	TXG Gas Marketing Co.	06–03–93	G–S	200,000	N	I	05–19–93	Indef.
ST93–3994	Natural Gas P/L Co. of America.	Olympic Fuels Co	06–03–93	G–S	20,000	N	I	05–22–93	Indef.
ST93–3995	Tennessee Gas Pipeline Co.	Riverside Pipeline Co	06–04–93	B	11,745	N	I	05–06–93	Indef.
ST93–3996	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co.	06–04–93	G–S	100,000	N	I	05–18–93	Indef.
ST93–3997	Natural Gas P/L Co. of America.	DGS Trading Inc	06–04–93	G–S	75,000	N	I	05–22–93	Indef.
ST93–3998	Trailblazer Pipeline Co	Coastal Oil & Gas Corp.	06–04–93	G–S	353,000	N	I	06–01–93	Indef.
ST93–3999	Channel Industries Gas Co.	Highland Energy Corp	06–04–93	G–I	10,000	N	I	05–06–93	Indef.
ST93–4000	Transamerican Natural Gas Corp.	Natural Gas Pipeline Co. of America.	06–04–93	C	50,000	N	I	04–29–93	Indef.
ST93–4001	CNG Transmission Corp.	City of Richmond	06–04–93	B	10,000	N	I	05–01–93	Indef.
ST93–4002	CNG Transmission Corp.	Baltimore Gas and Electric.	06–04–93	B	20,000	N	I	05–01–93	Indef.
ST93–4003	Trunkline Gas Co	Enron Gas Marketing, Inc.	06–04–93	G–S	100,000	N	I	05–25–93	Indef.
ST93–4004	Trunkline Gas Co	Triumph Natural Gas, Inc.	06–04–93	G–S	20,000	N	I	05–25–93	Indef.
ST93–4005	Trunkline Gas Co	Yuma Gas Corp	06–04–93	G–S	50,000	N	I	05–27–93	Indef.
ST93–4006	Trunkline Gas Co	Premier Gas Co	06–04–93	G–S	50,000	N	I	05–13–93	Indef.
ST93–4007	ANR Pipeline Co	Cincinnati Gas & Electric.	06–07–93	B	100,000	N	I	05–06–93	Indef.
ST93–4008	ANR Pipeline Co	Arco Natural Gas Marketing, Inc.	06–07–93	G–S	100,000	N	I	05–15–93	Indef.
ST93–4009	ANR Pipeline Co	Anadarko Trading Co	06–07–93	G–S	25,000	N	F	05–07–93	Indef.
ST93–4010	ANR Pipeline Co	Jackson Pipeline Co	06–07–93	B	16,000	N	I	05–07–93	Indef.
ST93–4011	ANR Pipeline Co	Orbit Gas Co	06–07–93	B	3,000	N	I	05–06–93	Indef.
ST93–4012	ANR Pipeline Co	Pennzoil Gas Marketing Co.	06–07–93	G–S	10,000	N	I	05–08–93	Indef.
ST93–4013	Kern River Gas Transmission Co.	Valero Gas Marketing, L.P.	06–07–93	G–S	100,000	N	I	05–08–93	Indef.
ST93–4014	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc	06–07–93	G–S	75,000	N	I	05–06–93	Indef.
ST93–4015	Tennessee Gas Pipeline Co.	ELF Exploration, Inc	06–07–93	G–S	50,000	N	I	05–06–93	Indef.
ST93–4016	Trailblazer Pipeline Co	DGS Trading Inc	06–07–93	G–S	77,250	N	I	05–01–93	Indef.
ST93–4018	Canyon Creek Compression Co.	Columbia Gas Transmission Corp.	06–07–93	G	10,000	N	I	05–15–93	Indef.
ST93–4019	High Island Offshore System.	United Gas Pipe Line Co.	06–07–93	K	207,500	N	I	05–05–93	Indef.
ST93–4020	Transcontinental Gas P/L Corp.	Appalachian Gas Sales.	06–07–93	G–S	30,000	N	I	05–19–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4021	Transcontinental Gas P/L Corp.	CNG Producing Co	06-07-93	G-S	400,000	N	I	05-26-93	Indef.
ST93-4022	Questar Pipeline Co ...	Mountain Fuel Supply Co.	06-07-93	B	46,000	Y	I	05-08-93	Indef.
ST93-4023	Great Lakes Gas Transmission LP.	ANR Pipeline Co	06-07-93	G	110,000	N	I	05-10-93	10-31-93
ST93-4024	Panhandle Eastern Pipe Line Co.	Associated Natural Gas Co.	06-08-93	G-S	5,825	N	I	05-01-93	04-30-94
ST93-4025	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06-08-93	G-S	52,800	N	F	05-01-93	04-30-97
ST93-4026	Tennessee Gas Pipeline Co.	Pennzoil Gas Marketing Co.	06-08-93	G-S	60,000	N	I	05-14-93	Indef.
ST93-4027	Mojave Pipeline Co	El Paso Natural Gas Co.	06-08-93	G-S	400,000	N	I	05-22-93	05-21-94
ST93-4028	Enogex Inc	Natural Gas Pipeline Co.	06-08-93	C	50,000	N	I	05-27-93	Indef.
ST93-4029	Colorado Interstate Gas Co.	Grand Valley Gas Co .	06-08-93	G-S	10,000	N	I	05-18-93	Indef.
ST93-4030	Colorado Interstate Gas Co.	Rangeline Corp	06-08-93	G-S	10,000	N	I	05-26-93	Indef.
ST93-4031	Colorado Interstate Gas Co.	Associated Interstate Pipeline Co.	06-08-93	G-S	10,000	N	I	05-18-93	Indef.
ST93-4032	Iroquois Gas Trans. System, L.P.	Louis Dreyfus Energy Corp.	06-09-93	G-S	100,000	N	I	05-21-93	Indef.
ST93-4033	Exxon Gas System, Inc.	Southeastern Marketing Co.	06-09-93	C	30,300	N	I	05-07-93	Indef.
ST93-4034	ANR Pipeline Co	United Gas Pipe Line Co.	06-09-93	G	100	N	F	05-10-93	Indef.
ST93-4035	Northwest Pipeline Corp.	Westcoast Resources, Inc.	06-09-93	G-S	25,643	N	F	06-01-93	Indef.
ST93-4036	Columbia Gulf Transmission Co.	Brooklyn Interstate Nat. Gas Corp.	06-09-93	G-S	50,000	N	I	05-26-93	Indef.
ST93-4037	Columbia Gulf Transmission Co.	Transcontinental Gas Pipe Line Corp.	06-09-93	G	60,000	N	I	06-01-93	Indef.
ST93-4038	Columbia Gulf Transmission Co.	United Gas Services Co.	06-09-93	G-S	200,000	N	I	05-20-93	Indef.
ST93-4039	Columbia Gulf Transmission Co.	Vesta Energy Co	06-09-93	G-S	20,000	N	I	05-29-93	Indef.
ST93-4040	Columbia Gulf Transmission Co.	Tauber Oil Co	06-09-93	G-S	50,000	N	I	06-01-93	Indef.
ST93-4041	Columbia Gulf Transmission Co.	Sonat Marketing Co ...	06-09-93	G-S	20,000	N	I	06-01-93	Indef.
ST93-4042	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc.	06-09-93	G-S	130,000	N	I	05-19-93	Indef.
ST93-4043	Columbia Gulf Transmission Co.	Direct Gas Supply Corp.	06-09-93	G-S	25,000	N	I	06-01-93	Indef.
ST93-4044	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co.	06-09-93	G-S	100,000	N	I	05-26-93	Indef.
ST93-4045	Black Marlin Pipeline Co.	Union Carbide Chem. & Plastics Co.	06-09-93	G-S	10,000	N	I	05-28-93	Indef.
ST93-4046	Black Marlin Pipeline Co.	Sonat Marketing Co ...	06-09-93	G-S	5,000	N	I	05-11-93	Indef.
ST93-4047	Black Marlin Pipeline Co.	Amoco Gas Co	06-09-93	G-S	80,000	N	I	05-27-93	Indef.
ST93-4048	Louisiana Intrastate Gas Corp.	ANR Pipeline Co., et al.	05-09-93	C	30,000	N	I	06-01-93	02-01-96
ST93-4049	Delhi Gas Pipeline Corp.	Texas Eastern Trans. Co., et al.	06-07-93	C	30,300	N	I	05-07-93	Indef.
ST93-4050	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06-09-93	G-S	2,600	N	F	05-01-93	03-31-96
ST93-4051	Panhandle Eastern Pipe Line Co.	Illinois Power Co	06-09-93	G-S	75,900	N	F	05-01-93	04-30-96
ST93-4052	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	06-09-93	G-S	3,000	N	F	05-01-93	03-31-94
ST93-4053	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	06-09-93	G-S	40,391	N	F	05-01-93	03-31-98
ST93-4054	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	06-09-93	G-S	7,904	N	F	05-01-93	03-31-98
ST93-4055	Panhandle Eastern Pipe Line Co.	Union Electric Co	06-09-93	G-S	35,000	N	F	05-01-93	10-31-95
ST93-4056	United Gas Pipe Line Co.	Sonat Marketing Co ...	06-10-93	G-S	26,200	N	I	06-03-93	10-01-93

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4057	United Gas Pipe Line Co.	Union Pacific Fuels, Inc.	06-10-93	G-S	60,000	N	I	06-03-93	10-01-93
ST93-4058	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	06-10-93	G-S	102,704	N	I	06-02-93	09-30-93
ST93-4059	United Gas Pipe Line Co.	Red River Gas Co	06-10-93	G-S	1,046	N	I	05-27-93	09-24-93
ST93-4060	United Gas Pipe Line Co.	Louis Dreyfus Energy Corp.	06-10-93	G-S	104,800	N	I	05-27-93	09-24-93
ST93-4061	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	06-10-93	G-S	249,719	A	I	05-11-93	09-30-94
ST93-4062	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America.	06-10-93	C	10,000	N	I	05-14-93	Indef.
ST93-4063	Valero Transmission, L.P.	Transcontinental Gas Pipeline Co.	06-10-93	C	5,500	N	I	05-14-93	Indef.
ST93-4064	Valero Transmission, L.P.	United Gas Pipeline Co.	06-10-93	C	3,000	N	I	05-21-93	Indef.
ST93-4065	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	06-10-93	C	8,500	N	I	05-19-93	Indef.
ST93-4066	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	06-10-93	C	4,000	N	I	05-13-93	Indef.
ST93-4067	Valero Transmission, L.P.	Texas Gas Transmission Co.	06-10-93	C	20,000	N	I	05-18-93	Indef.
ST93-4068	Northern Natural Gas Co.	Excel Gas Marketing, Inc.	06-10-93	G-S	20,000	N	F/I	04-01-93	Indef.
ST93-4069	Northern Natural Gas Co.	Energy Development Corp.	06-10-93	G-S	75,000	N	F/I	04-01-93	Indef.
ST93-4070	Northern Natural Gas Co.	Kimbell Energy Corp ..	06-10-93	G-S	40,000	N	F/I	04-30-93	Indef.
ST93-4071	Northern Natural Gas Co.	Minnegasco	06-10-93	G-S	125,000	N	F/I	03-01-93	03-31-08
ST93-4072	Northern Natural Gas Co.	Transok Gas Co	06-10-93	G-S	25,000	N	F/I	11-01-92	Indef.
ST93-4073	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	06-10-93	G-S	5,049	N	F	05-01-93	03-31-95
ST93-4074	Panhandle Eastern Pipe Line Co.	Western Resources, Inc.	06-10-93	G-S	10,049	N	F	05-01-93	03-31-95
ST93-4075	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06-10-93	G-S	9,979	N	F	05-01-93	04-30-97
ST93-4076	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06-10-93	G-S	4,474	N	F	05-01-93	03-31-96
ST93-4077	Panhandle Eastern Pipe Line Co.	Union Electric Co	06-10-93	G-S	59,742	N	F	05-01-93	03-31-95
ST93-4078	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06-10-93	G-S	9,764	N	F	05-01-93	03-31-95
ST93-4079	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06-10-93	G-S	664	N	I	05-01-93	03-31-96
ST93-4080	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06-10-93	G-S	1,709	N	F	05-01-93	03-31-96
ST93-4081	National Fuel Gas Supply Corp.	Continental Energy Marketing, Inc.	06-10-93	G-S	50,000	N	I	05-01-93	03-31-13
ST93-4082	Lone Star Gas Co	El Paso Natural Gas Co., et al.	06-10-93	C	20,000	N	I	05-13-93	Indef.
ST93-4083	Natural Gas P/L Co of America.	Gas Energy Development Co.	06-10-93	G-S	20,000	N	I	06-04-93	Indef.
ST93-4084	Natural Gas P/L Co of America.	Panhandle Trading Co	06-10-93	G-S	100,000	N	I	06-03-93	Indef.
ST93-4085	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co., et al.	06-11-93	C	7,500	N	I	05-14-93	06-01-93
ST93-4086	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	06-11-93	C	15,500	N	I	05-12-93	Indef.
ST93-4087	Williston Basin Line Inter. P/L Co.	Cenex	06-11-93	G-S	8,173	N	I	05-13-93	12-31-93
ST93-4088	Tejas Gas Corp	Mississippi River Trans. Co.	06-11-93	C	500	N	I	04-01-95	Indef.
ST93-4089	Tennessee Gas Pipeline Co.	Southern Gas Co., Inc	06-11-93	G-S	32,000	N	I	05-15-93	Indef.
ST93-4090	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	06-11-93	G-S	51,550	N	I	05-14-93	Indef.
ST93-4091	Northern Natural Gas Co.	ONG Western, Inc	06-11-93	B	25,000	N	I	05-12-93	Indef.
ST93-4092	Northern Natural Gas Co.	Midland Marketing Corp.	06-11-93	G-S	200,000	N	I	05-01-93	Indef.

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Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/ A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4093	Northern Natural Gas Co.	Tristar Gas Co	06-11-93	G-S	50,000	N	I	05-08-93	Indef.
ST93-4094	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	06-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4095	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	06-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4096	Transwestern Pipeline Co.	Chevron USA Production Co.	06-11-93	G-S	6,116	N	F	06-02-93	06-30-93
ST93-4097	Transwestern Pipeline Co.	American Hunter Exploration.	06-11-93	G-S	5,000	N	F	06-01-93	06-30-93
ST93-4098	Transwestern Pipeline Co.	American Hunter Exploration.	06-11-93	G-S	20,000	N	F	06-01-93	06-30-93
ST93-4099	Transwestern Pipeline Co.	Chevron USA Production Co.	06-11-93	G-S	11,066	N	F	06-01-93	06-30-93
ST93-4100	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	6-11-93	G-S	10,300	N	F	06-01-93	06-30-93
ST93-4101	Transwestern Pipeline Co.	Enron Gas Processing Co.	6-11-93	G-S	5,300	A	F	06-01-93	06-30-93
ST93-4102	Transwestern Pipeline Co.	Enron Gas Processing Co.	6-11-93	G-S	5,361	A	F	06-01-93	06-30-93
ST93-4103	Transwestern Pipeline Co.	Bridgegas USA, Inc ...	6-11-93	G-S	10,000	N	F	06-01-93	06-30-93
ST93-4104	Transwestern Pipeline Co.	Enron Gas Marketing, Co.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4105	Transwestern Pipeline Co.	Enron Gas Processing Co.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4106	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	4,000	A	F	06-01-93	06-30-93
ST93-4107	Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	6-11-93	G-S	10,788	N	F	06-01-93	06-30-93
ST93-4108	Transwestern Pipeline Co.	Tristar Gas Co	6-11-93	G-S	10,000	N	F	06-01-93	06-30-93
ST93-4109	Transwestern Pipeline Co.	Equitable Resources Marketing Co.	6-11-93	G-S	3,000	N	F	06-01-93	06-30-93
ST93-4110	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4111	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4112	Transwestern Pipeline Co.	Yates Petroleum Corp	6-11-93	G-S	20,000	N	F	06-01-93	06-30-93
ST93-4113	Transwestern Pipeline Co.	Richardson Products Co.	6-11-93	G-S	5,000	N	F	06-01-93	06-30-93
ST93-4114	Transwestern Pipeline Co.	Richardson Products Co.	6-11-93	G-S	10,000	N	F	06-01-93	06-30-93
ST93-4115	Transwestern Pipeline Co.	Phillips Petroleum Co .	6-11-93	G-S	100,788	N	I	05-13-93	Indef.
ST93-4116	Transwestern Pipeline Co.	New Mexico Natural Gas, Inc.	6-11-93	G-S	2,000	N	I	05-21-93	Indef.
ST93-4117	Transwestern Pipeline Co.	Enron Gas Processing Co.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4118	Transwestern Pipeline Co.	Enron Gas Processing Co.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4119	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4120	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4121	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4122	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6-11-93	G-S	5,000	A	F	06-01-93	06-30-93
ST93-4123	Columbia Gas Transmission Corp.	Enron Gas Marketing, Inc.	6-11-93	G-S	300,000	Y	I	05-26-93	Indef.
ST93-4124	Columbia Gas Transmission Corp.	Domino Sugar Corp ...	6-11-93	G-S	20,000	Y	I	05-26-93	Indef.
ST93-4125	Columbia Gas Transmission Corp.	Engelhard Corp	6-11-93	G-S	2,500	Y	I	05-26-93	Indef.
ST93-4126	Natural Gas P/L Co. of America.	Harvest Energy Co	6-11-93	G-S	3,000	N	I	06-02-93	Indef.
ST93-4127	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	6-11-93	G-S	20,000	N	F	06-01-93	06-30-93
ST93-4128	Natural Gas P/L Co. of America.	Seagull Marketing Services, Inc.	6-11-93	G-S	16,000	N	I	06-01-93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–4129	Louisiana Intrastate Gas Corp.	Columbia Gulf Trans. Co., et al.	6–14–93	C	60,000	N	I	06–04–93	Indef.
ST93–4130	Northern Natural Gas. Co.	Minnegasco, Div. of Arkla, Inc.	6–14–93	B	178,006	N	I	05–04–93	Indef.
ST93–4131	Northern Natural Gas. Co.	Midwest Gas, Div. of Midwest Power.	6–14–93	B	194,400	N	F	04–01–93	Indef.
ST93–4132	Panhandle Eastern Pipe Line Co.	Wellsville Fire Brick Co.	6–14–93	G–S	2,500	N	I	05–01–93	03–31–98
ST93–4133	Panhandle Eastern Pipe Line Co.	Columbia Gas Transmission Corp.	6–14–93	G	350	N	I	05–01–93	Indef.
ST93–4134	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co	6–14–93	G–S	500	Y	I	05–01–93	Indef.
ST93–4135	Panhandle Eastern Pipe Line Co.	Tylex, Inc	6–14–93	G–S	1,500	N	F	05–01–93	03–31–96
ST93–4136	Panhandle Eastern Pipe Line Co.	Colorado Interstate Gas Co.	6–14–93	G	1,000	N	I	05–01–93	04–30–93
ST93–4137	Panhandle Eastern Pipe Line Co.	North American Refractories Co.	6–14–93	G–S	1,800	N	I	05–01–93	03–31–98
ST93–4138	Midwestern Gas Transmission Co.	DGS Trading	6–14–93	C	10,000	N	I	04–23–93	Indef.
ST93–4139	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	150,000	N	I	04–23–93	Indef.
ST93–4140	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	15,000	N	I	05–19–93	Indef.
ST93–4141	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	50,000	N	I	05–12–93	Indef.
ST93–4142	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	15,000	N	I	05–20–93	Indef.
ST93–4143	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	200,000	N		05–01–93	Indef.
ST93–4144	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	50,000	N	I	05–20–93	Indef.
ST93–4145	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	20,000	N	I	05–20–93	Indef.
ST93–4146	Questar Pipeline Co	Western Gas Resources, Inc.	6–14–93	G–S	20,000	N	I	06–01–93	Indef.
ST93–4148	Columbia Gas Transmission Corp.	City of Richmond	6–14–93	G–S	40,000	Y	I	05–20–93	Indef.
ST93–4149	Columbia Gas Transmission Corp.	Midcon Marketing Corp.	6–14–93	G–S	300,000	Y	I	06–01–93	Indef.
ST93–4150	Texas Gas Transmission Corp.	Energy Transportation Man., Inc.	06–14–93	G-S	12,000	N	I	06–01–93	Indef.
ST93–4151	Texas Gas Transmission Corp.	Columbia Gas Development Corp.	06–14–93	G–S	55,000	N	I	06–05–93	Indef.
ST93–4152	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	06–14–93	G–S	150,000	N	I	03–01–92	Indef.
ST93–4153	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	06–14–93	G–S	150,000	N	I	03–01–92	Indef.
ST93–4154	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp.	06–14–93	G–S	400,000	N	I	06–10–88	Indef.
ST93–4155	Northern Natural Gas Co.	City of Harbors	06–14–93	G–S	1,400	N	F	05–01–93	Indef.
ST93–4156	Northern Natural Gas Co.	Sheehan's Gas Co	06–14–93	G–S	669	N	F	06–01–93	Indef.
ST93–4157	Paiute Pipeline Co	WP Natural Gas Co	06–15–93	G–S	17,906	N	F	02–28–93	Indef.
ST93–4158	Paiute Pipeline Co	Premier Services Corp	06–15–93	G–S	850	N	F	02–28–93	Indef.
ST93–4159	Paiute Pipeline Co	Eagle-Pitcher Minerals, Inc.	06–15–93	G–S	1,680	N	F	02–28–93	Indef.
ST93–4160	Paiute Pipeline Co	Gold Fields Operating Co.	06–15–93	G–S	1,100	N	F	02–28–93	Indef.
ST93–4161	Paiute Pipeline Co	Cyanco Co	06–15–93	G–S	2,000	N	F	02–28–93	Indef.
ST93–4162	Paiute Pipeline Co	United Engine & Machine Co.	06–15–93	G–S	250	N	F	02–28–93	Indef.
ST93–4163	Paiute Pipeline Co	Harvey's Report Hotel/Casino.	06–15–93	G–S	380	N	F	02–28–93	Indef.
ST93–4164	Paiute Pipeline Co	Southwest Gas Corp	06–15–93	G–S	11,148	N	F	02–28–93	Indef.
ST93–4165	Paiute Pipeline Co	Caesars Tahoe	06–15–93	G–S	300	N	F	02–28–93	Indef.
ST93–4166	Paiute Pipeline Co	Harrah's Club	06–15–93	G–S	500	N	F	02–28–93	Indef.
ST93–4167	Paiute Pipeline Co	Wimar Tahoe Corp	06–15–93	G–S	225	N	F	02–28–93	Indef.
ST93–4168	Paiute Pipeline Co	Sierra Pacific Power Co.	06–15–93	G–S	105,774	N	F	02–28–93	Indef.
ST93–4169	Paiute Pipeline Co	Southwest Gas Corp	06–15–93	G–S	87,892	A	F	02–28–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4170	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	06-15-93	C	50,000	N	I	06-01-93	Indef.
ST93-4171	Northern Natural Gas Co.	Anadarko Trading Co .	06-15-93	G-S	50,000	N	I	05-14-93	Indef.
ST93-4172	Northern Natural Gas Co.	Interstate Power Co ...	06-15-93	G-S	36,270	N	I	04-01-93	Indef.
ST93-4173	Northern Natural Gas Co.	Iowa Electric Light and Power Co.	06-15-93	G-S	69,028	N	I	04-15-93	Indef.
ST93-4174	Northern Natural Gas Co.	Louis Dreyfus Energy Corp.	06-15-93	G-S	9,500	N	I	05-15-93	12-13-93
ST93-4175	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America.	06-16-93	C	100,000	N	I	05-21-93	Indef.
ST93-4176	Oasis Pipe Line Co	Northern Natural Gas Co.	06-16-93	C	50,000	N	I	05-21-93	Indef.
ST93-4177	Houston Pipe Line Co	Tennessee Gas Pipeline Co.	06-16-93	C	50,000	N	I	05-20-93	Indef.
ST93-4178	Houston Pipe Line Co	Phillips Gas Pipeline Co.	06-16-93	C	25,000	N	I	05-27-93	Indef.
ST93-4179	Oasis Pipe Line Co	El Paso Natural Gas Co.	06-16-93	C	50,000	N	I	05-18-93	Indef.
ST93-4180	Oasis Pipe Line Co	Transwestern Pipeline Co.	06-16-93	C	100,000	N	I	05-01-93	Indef.
ST93-4181	Houston Pipe Line Co	Northern Natural Gas Co.	06-16-93	C	50,000	N	I	05-02-93	Indef
ST93-4182	Houston Pipe Line Co	Black Marlin Pipeline Co.	06-16-93	C	17,500	N	I	05-22-93	Indef
ST93-4183	Houston Pipe Line Co	United Gas Pipe Line Co.	06-16-93	C	25,000	N	I	05-29-93	Indef
ST93-4184	Houston Pipe Line Co	Sabine Pipeline Co	06-16-93	C	50,000	N	I	05-01-93	Indef
ST93-4185	Houston Pipe Line Co	Sabine Pipeline Co	06-16-93	C	20,000	N	I	05-06-93	Indef
ST93-4186	Houston Pipe Line Co	Transcontinental Gas P/L Corp.	06-16-93	C	20,000	N	I	05-27-93	Indef
ST93-4187	Houston Pipe Line Co	Transcontinental Gas P/L Corp.	06-16-93	C	25,000	N	I	05-19-93	Indef.
ST93-4188	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06-16-93	C	50,000	N	I	05-12-93	Indef.
ST93-4189	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06-16-93	C	50,000	N	I	05-27-93	Indef.
ST93-4190	Houston Pipe Line Co	Texas Eastern Transmission Corp.	06-16-93	C	100,000	N	I	05-04-93	Indef.
ST93-4191	Houston Pipe Line Co	Texas Eastern Transmission Corp.	06-16-93	C	15,000	N	I	05-01-93	Indef.
ST93-4192	Panhandle Eastern Pipe Line Co.	Peoples Natural Gas Co.	06-16-93	G-S	1,500	N	I	05-01-93	Indef.
ST93-4193	Panhandle Eastern Pipe Line Co.	Energy Dynamics, Inc	06-16-93	G-S	1,000	N	I	05-02-93	04-30-94
ST93-4194	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06-16-93	G-S	27,775	N	F	05-01-93	03-31-00
ST93-4195	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06-16-93	G-S	22,775	N	F	05-01-93	03-31-00
ST93-4196	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06-16-93	G-S	5,000	N	F	05-01-93	03-31-03
ST93-4197	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06-16-93	G-S	50,182	N	F	05-01-93	03-31-03
ST93-4198	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06-16-93	G-S	50,182	N	F	05-01-93	03-31-00
ST93-4199	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06-16-93	G-S	353,000	N	I	05-01-93	Indef.
ST93-4200	El Paso Natural Gas Co.	Richardson Products Co., Ltd..	06-16-93	G-S	103,000	N	I	05-17-93	Indef.
ST93-4201	Columbia Gulf Transmission Co.	Amoco Production Co	06-16-93	G-S	100,000	N	I	06-04-93	Indef.
ST93-4202	Columbia Gulf Transmission Co.	Stellar Gas	06-16-93	G-S	50,000	N	I	06-05-93	Indef.
ST93-4203	Columbia Gulf Transmission Co.	Sonat Marketing Co ...	06-16-93	G-S	20,000	N	I	05-19-93	Indef.
ST93-4204	United Gas Pipe Line Co.	Eastex Gas Transmission Co.	06-17-93	G-S	146,720	N	I	06-11-93	10-09-93
ST93-4205	United Gas Pipe Line Co.	American Natural GS Production Co.	06-17-93	G-S	524	N	I	06-08-93	10-06-93
ST93-4206	United Gas Pipe Line Co.	Colonos Natural Gas Trading Co.	06-17-93	G-S	20,960	N	I	06-09-93	10-07-93

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4207	United Gas Pipe Line Co.	National Gas Resources Ltd. Part.	06-17-93	G-S	52,400	N	I	05-02-93	09-30-93
ST93-4208	United Gas Pipe Line Co.	Tauber Oil Co	06-17-93	G-S	50,000	N	I	05-02-93	09-30-93
ST93-4209	United Gas Pipe Line Co.	Vesta Energy Co	06-17-93	G-S	104,800	N	I	05-09-93	10-07-93
ST93-4210	United Gas Pipe Line Co.	O&R Energy, Inc	06-17-93	G-S	31,440	N	I	06-11-93	10-09-93
ST93-4211	United Gas Pipe Line Co.	Midcon Gas Services Corp.	06-17-93	G-S	4,386	N	F	06-15-93	10-13-93
ST93-4212	United Gas Pipe Line Co.	Coastal Gas Marketing Co.	06-17-93	G-S	262,000	N	I	05-10-93	10-06-93
ST93-4213	Gateway Pipeline Co .	Excel Resources, Inc .	06-17-93	G-S	30,000	N	I	06-01-93	09-29-93
ST93-4214	Panhandle Eastern Pipe Line Co.	Clinton Gas Marketing, Inc.	06-17-93	G-S	2,000	N	I	05-14-93	05-13-96
ST93-4215	Panhandle Eastern Pipe Line Co.	Michcon Trading Co ...	06-17-93	G-S	50,000	Y	I	05-01-93	10-31-93
ST93-4216	Panhandle Eastern Pipe Line Co.	Missouri Public Service (Utilicorp).	06-17-93	G-S	3,022	Y	F	05-01-93	03-31-96
ST93-4217	Delhi Gas Pipeline Corp.	Natural Gas P/L Co. of Amer., et al.	06-17-93	C	5,000	N	I	05-17-93	05-31-93
ST93-4218	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	06-17-93	G-S	20,000	N	I	05-19-93	09-05-93
ST93-4219	Pacific Gas Transmission Co.	Grand Valley Gas Co .	06-17-93	G-S	50,000	N	I	05-27-93	Indef.
ST93-4220	Northern Natural Gas Co.	City of Duluth	06-17-93	G-S	23,000	N	F	06-01-93	Indef.
ST93-4221	Tennessee Gas Pipeline Co.	VHC Gas Systems, L.P.	06-18-93	G-S	100,000	N	I	05-25-93	Indef.
ST93-4222	Florida Gas Transmission Co.	Florida Power & Light Co.	06-18-93	G-S	562,898	N	I	06-19-93	Indef.
ST93-4223	Arkla Energy Resources Co.	Cage Gas Marketing, Inc.	06-18-93	G-S	10,000	N	I	06-01-93	Indef.
ST93-4224	Arkla Energy Resources Co.	Unimark LLC	06-18-93	G-S	2,000	N	I	05-01-93	Indef.
ST93-4225	Arkla Energy Resources Co.	Coastal Gas Marketing Co.	06-18-93	G-S	150,000	N	I	05-01-93	Indef.
ST93-4226	Northwest Pipeline Corp.	Canadian Hydrocarbons Marketing.	06-18-93	G-S	20,514	N	F	06-01-93	Indef.
ST93-4227	Northwest Pipeline Corp.	Development Associates, Inc.	06-18-93	G-S	40,764	N	F	06-01-93	Indef.
ST93-4228	El Paso Natural Gas Co.	Meridian Oil Trading Inc.	06-18-93	G-S	257,500	N	F	06-06-93	Indef.
ST93-4229	El Paso Natural Gas Co.	U.S. Gas Transportation, Inc.	06-18-93	G-S	10,300	N	I	06-04-93	Indef.
ST93-4230	El Paso Natural Gas Co.	Chevron U.S.A. Inc	06-18-93	G-S	51,500	N	I	06-01-93	Indef.
ST93-4231	El Paso Natural Gas Co.	Landmark Gas Corp ..	06-18-93	G-S	5,150	N	I	06-03-93	Indef.
ST93-4232	El Paso Natural Gas Co.	Conoco Inc	06-18-93	G-S	50,000	N	I	06-05-93	Indef.
ST93-4233	El Paso Natural Gas Co.	Bridgegas U.S.A. Inc .	06-18-93	G-S	25,000	N	I	06-03-93	Indef.
ST93-4234	El Paso Natural Gas Co.	Eastex Hydrocarbons, Inc.	06-18-93	G-S	51,000	N	I	06-03-93	Indef.
ST93-4235	El Paso Natural Gas Co.	Delhi Gas Marketing Corp.	06-18-93	G-S	25,750	N	I	04-01-93	Indef.
ST93-4236	Lone Star Gas Co	Transwestern Natural Gas Co., et al.	06-18-93	C	80,000	N	I	05-21-93	Indef.
ST93-4237	Enogex Inc	Riverside Pipeline Co., L.P.	06-18-93	C	20,000	N	I	06-01-93	Indef.
ST93-4238	Enogex Inc	Riverside Pipeline Co., L.P.	06-18-93	C	100,000	N	I	06-09-93	Indef.
ST93-4239	Channel Industries Gas Co.	Sabine Pipe Line Co ..	06-18-93	C	15,000	N	I	05-21-93	Indef.
ST93-4240	Questar Pipeline Co ...	Colorado Interstate Gas Co., et al.	06-21-93	G	10,000	N	I	06-02-93	Indef.
ST93-4241	Questar Pipeline Co ...	Union Pacific Fuels, Inc.	06-21-93	G-S	20,000	N	I	06-01-93	Indef.
ST93-4242	Trunkline Gas Co	Olympic Fuels Co	06-21-93	G-S	40,000	N	I	05-01-93	Indef.
ST93-4243	Trunkline Gas Co	Olympic Fuels Co	06-21-93	G-S	40,000	N	I	06-01-93	Indef.
ST93-4244	Trunkline Gas Co	Olympic Fuels Co	06-21-93	G-S	40,000	N	I	06-02-93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4245	ANR Pipeline Co	Coenergy Ventures, Inc.	06-21-93	G-S	9,061	N	F	06-04-93	3-31-95
ST93-4246	ANR Pipeline Co	Tristar Gas Marketing Co.	06-21-93	G-S	50,000	N	F	06-03-93	Indef.
ST93-4247	ANR Pipeline Co	Consumer Power Co	06-21-93	B	300,000	N	I	06-02-93	Indef.
ST93-4248	ANR Pipeline Co	AIG Trading Corp	06-21-93	G-S	300,000	N	I	06-03-93	Indef.
ST93-4249	Trunkline Gas Co	AGIP Petroleum Co, Inc.	06-21-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4250	Valero Transmission, L.P.	Natural Gas P/L Co of America.	06-21-93	C	5,000	N	I	05-30-93	Indef.
ST93-4251	Valero Transmission, L.P.	Transcontinental Gas P/L Co.	06-21-93	C	1,000	N	I	06-03-93	Indef.
ST93-4252	Valero Transmission, L.P.	United Gas Pipe Line Co.	06-21-93	C	5,000	N	I	06-01-93	Indef.
ST93-4253	Valero Transmission, L.P.	Natural Gas P/L Co of America.	06-21-93	C	1,136	N	I	06-01-93	Indef.
ST93-4254	TransTexas Pipeline	Trunkline Gas Co	06-21-93	C	4,200	N	I	06-01-93	Indef.
ST93-4255	Valero Transmission, L.P.	Trunkline Gas Co	06-21-93	C	4,200	N	I	06-01-93	Indef.
ST93-4256	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	06-21-93	C	20,000	N	I	06-01-93	Indef.
ST93-4257	Valero Transmission, L.P.	Texas Gas Transmission Corp.	06-21-93	C	5,000	N	I	06-02-93	Indef.
ST93-4258	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06-21-93	G-S	25,396	N	I	06-01-93	03-31-95
ST93-4259	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co	06-21-93	G-S	15,000	N	F	06-01-93	06-30-93
ST93-4260	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	06-21-93	G-S	4,882	N	F	05-21-93	03-31-95
ST93-4261	Panhandle Eastern Pipe Line Co.	Kokomo Gas & Fuel Co.	06-21-93	G-S	10,096	N	F	05-01-93	03-31-95
ST93-4262	Panhandle Eastern Pipe Line Co.	United Cities Gas Co	06-21-93	G-S	4,803	N	F	05-01-93	03-31-96
ST93-4263	Panhandle Eastern Pipe Line Co.	K N Energy, Inc	06-21-93	G	100	N	I	05-01-93	04-30-98
ST93-4264	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	06-21-93	G-S	1,500	N	F	06-01-93	06-30-93
ST93-4265	Panhandle Eastern Pipe Line Co.	Tenngasco Corp	06-21-93	G-S	50,000	N	I	06-01-93	05-23-98
ST93-4266	Panhandle Eastern Pipe Line Co.	Entrade Corp	06-21-93	G-S	5,000	N	I	06-01-93	06-30-93
ST93-4267	Panhandle Eastern Pipe Line Co.	Wea Cana Energy Marketing.	06-21-93	G-S	10,000	N	F	06-01-93	10-31-93
ST93-4268	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	06-21-93	G-S	32,128	N	F	05-12-93	03-31-94
ST93-4269	Panhandle Eastern Pipe Line Co.	Arcadian Partners, L.P	06-21-93	G-S	4,500	N	F	06-01-93	06-30-93
ST93-4270	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	06-21-93	G-S	5,294	N	F	06-01-93	06-30-93
ST93-4271	Tennessee Gas Pipeline Co.	TransAmerican Natural Gas Corp.	06-21-93	G-S	150,000	N	I	05-20-93	Indef.
ST93-4272	Tennessee Gas Pipeline Co.	Unified Natural Gas Group, L.P.	06-21-93	G-S	10,000	N	I	05-10-93	Indef.
ST93-4273	Tennessee Gas Pipeline Co.	Vintage Gas, Inc	06-21-93	G-S	20,000	N	I	06-01-93	Indef.
ST93-4274	Tennessee Gas Pipeline Co.	CNG Trading Co	06-21-93	G-S	650,000	N	I	06-01-93	Indef.
ST93-4275	Tennessee Gas Pipeline Co.	Torch Gas, L.C	06-21-93	G-S	100,000	N	I	06-03-93	Indef.
ST93-4276	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	06-21-93	G-S	30,000	N	I	05-21-93	Indef.
ST93-4277	Tennessee Gas Pipeline Co.	Altresco Pittsfield, L.P	06-21-93	G-S	50,000	N	I	05-22-93	Indef.
ST93-4278	Transcontinental Gas P/L Corp.	United Texas Trans. Co, et al.	06-21-93	B	250,000	N	I	06-01-93	Indef.
ST93-4279	Transcontinental Gas P/L Corp.	O & R Energy, Inc	06-21-93	G-S	800,000	N	I	06-14-93	Indef.
ST93-4280	Trunkline Gas Co	Brooklyn Interstate Natural Gas.	06-21-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4281	Trunkline Gas Co	EP Operating L.P	06-21-93	G-S	25,000	N	I	06-01-93	Indef.
ST93-4282	Trunkline Gas Co	Penzoil Gas Marketing Co.	06-21-93	G-S	25,000	N	I	06-01-93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4283	Trunkline Gas Co	Entrade Corp	06-21-93	G-S	50,000	N	I	06-03-93	Indef.
ST93-4284	Trunkline Gas Co	Texaco Exploration & Product., Inc.	06-21-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4285	Trunkline Gas Co	Union Oil Co of California.	06-21-93	G-S	5,000	N	I	06-01-93	Indef.
ST93-4286	Trunkline Gas Co	Polaris Pipeline Corp ..	06-21-93	G-S	25,000	N	I	06-01-93	Indef.
ST93-4287	Trunkline Gas Co	Fina Natural Gas Co ..	06-21-93	G-S	25,000	N	I	06-01-93	Indef.
ST93-4288	Trunkline Gas Co	Nerco Oil & Gas, Inc ..	06-21-93	G-S	50,000	N	I	06-01-93	Indef.
ST93-4289	Trunkline Gas Co	Coastal Gas Marketing Co.	06-21-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4290	Channel Industries Gas Co.	Hoechst Celanese Chemical Group.	06-21-93	G-I	50,000	N	I	06-01-93	Indef.
ST93-4291	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	06-22-93	G-S	5,000	N	F	06-01-93	06-30-93
ST93-4292	Panhandle Eastern Pipe Line Co.	Guardian Industries Corp.	06-22-93	G-S	2,000	A	F	06-01-93	06-30-93
ST93-4293	Panhandle Eastern Pipe Line Co.	Ford Motor Co	06-22-93	G-S	25,000	A	F	06-01-93	06-30-93
ST93-4294	Panhandle Eastern Pipe Line Co.	Central Soya Co, Inc .	06-22-93	G-S	2,000	A	F	06-01-93	06-30-93
ST93-4295	Texas Gas Transmission Corp.	Eastex Hydrocarbons, Inc.	06-22-93	G-S	50,000	N	I	06-09-93	Indef.
ST93-4296	Texas Gas Transmission Corp.	Associated Natural Gas, Inc.	06-22-93	G-S	10,000	N	I	05-27-93	Indef.
ST93-4297	Texas Gas Transmission Corp.	Arkla Energy Marketing Co.	06-22-93	G-S	15,000	N	I	06-01-93	Indef.
ST93-4298	Texas Gas Transmission Corp.	Stellar Gas Co	06-22-93	G-S	50,000	N	I	06-01-93	Indef.
ST93-4299	Texas Gas Transmission Corp.	Panhandle Trading Co	06-22-93	G-S	50,000	N	I	06-02-93	Indef.
ST93-4300	Texas Gas Transmission Corp.	GM Hydrocarbons, Ltd	06-22-93	G-S	5,000	N	I	06-01-93	Indef.
ST93-4301	Texas Gas Transmission Corp.	Associated Natural Gas, Inc.	06-22-93	G-S	10,000	N	I	06-01-93	Indef.
ST93-4302	Gasdel Pipeline System Inc.	Amerada Hess Corp ..	06-22-93	G-S	1,397	N	I	06-01-93	Indef.
ST93-4303	Gulf States Transmission Corp.	Eagle Natural Gas Co	06-22-93	G-S	30,000	N	I	06-01-93	Indef.
ST93-4304	Gulf States Transmission Corp.	Union Pacific Fuels, Inc.	06-22-93	G-S	40,000	N	I	06-01-93	Indef.
ST93-4305	Louisiana Resources P/L Co, L.P.	Louisiana Gas Pipeline Co, L.P.	06-22-93	C	80,000	N	I	06-01-93	Indef.
ST93-4306	Westar Transmission Co.	Northern Natural Gas Co.	06-22-93	C	100,000	N	I	05-20-93	Indef.
ST93-4307	Westar Transmission Co.	Natural Gas Pipeline Co of America.	06-22-93	C	100,000	N	I	05-21-93	Indef.
ST93-4308	Gulf States Pipeline Corp.	Southern Natural Gas Co, et al.	06-22-93	C	40,000	N	I	06-01-93	Indef.
ST93-4309	Gulf States Pipeline Corp.	Gulf States Trans. Corp, et al.	06-22-93	C	30,000	N	I	06-01-93	Indef.
ST93-4310	Valero Transmission, L.P.	Valero Interstate Transmission Co.	06-23-93	C	1,000	N	I	06-01-93	Indef.
ST93-4311	Valero Transmission, L.P.	Trunkline Gas Co	06-23-93	C	10,000	N	I	06-01-93	Indef.
ST93-4312	Natural Gas P/L Co of America.	Enron Gas Marketing, Inc.	06-23-93	G-S	150,000	N	I	05-29-93	Indef.
ST93-4313	Great Lakes Gas Trans. L.P.	ANR Pipeline Co	06-23-93	G	57,398	A	F	06-01-93	04-01-13
ST93-4314	Transcontinental Gas P/L Corp.	Access Energy Corp ..	06-23-93	G-S	30,000	N	I	06-02-93	Indef.
ST93-4315	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	06-23-93	G-S	500,000	A	I	06-11-93	Indef.
ST93-4316	East Tennessee Natural Gas Co.	Equitable Resources Marketing Co.	06-24-93	G-S	75,000	N	I	06-16-93	Indef.
ST93-4317	Tennessee Gas Pipeline Co.	Excel Intrastate Pipeline Co.	06-24-93	G-S	90,000	N	I	06-01-93	Indef.
ST93-4318	Tennessee Gas Pipeline Co.	Laser Marketing Co ...	06-24-93	G-S	83,325	N	I	05-27-93	Indef.
ST93-4319	Webb/Duval Gatherers	Natural Gas Pipeline Co of America.	06-24-93	C	75,000	N	I	04-01-93	Indef.
ST93-4320	Westar Transmission Co.	Natural Gas Pipeline Co of America.	06-24-93	C	50,000	N	I	05-29-93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4321	Panola/Rusk Gatherers.	Natural Gas Pipeline Co of America.	06-24-93	C	20,000	N	I	05-01-93	Indef.
ST93-4322	Panhandle Eastern Pipe Line Co.	Direct Gas Supply Corp.	06-24-93	G-S	100,000	N	I	06-01-93	05-31-98
ST93-4323	Panhandle Eastern Pipe Line Co.	Rangeline Corp	06-24-93	G-S	700	N	I	06-01-93	05-31-98
ST93-4324	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	06-24-93	G-S	7,000	N	F	06-01-93	06-30-93
ST93-4325	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	06-24-93	G-S	20,000	N	I	06-01-93	05-31-98
ST93-4326	Panhandle Eastern Pipe Line Co.	Hadson Gas Systems, Inc.	06-24-93	G-S	10,000	N	I	06-01-93	05-31-98
ST93-4327	Northern Natural Gas Co.	Midwest Natural Gas, Inc.	06-24-93	G-S	1,378	N	F	06-02-93	Indef.
ST93-4328	Northern Natural Gas Co.	Northern States Power Co.	06-24-93	G-S	20,013	N	F	06-01-93	Indef.
ST93-4329	Northern Natural Gas Co.	Superior Water, Light & Power Co.	06-24-93	G-S	2,359	N	F	06-01-93	Indef.
ST93-4330	Northern Natural Gas Co.	Osage Municipal Utilities.	06-24-93	G-S	867	N	F	06-01-93	Indef.
ST93-4331	Northern Natural Gas Co.	Northern Minnesota Utilities.	06-24-93	G-S	4,514	N	F	06-01-93	Indef.
ST93-4332	Northern Natural Gas Co.	Fremont Department of Utilities.	06-24-93	G-S	3,512	N	F	06-01-93	Indef.
ST93-4333	Northern Natural Gas Co.	Municipal Natural Gas	06-24-93	G-S	297	N	F	06-01-93	Indef.
ST93-4334	Northern Natural Gas Co.	Northern Illinois Gas Co.	06-24-93	G-S	30,813	N	F	06-01-93	Indef.
ST93-4335	Northern Natural Gas Co.	Michigan Gas Co	06-24-93	G-S	10,651	N	F	06-01-93	Indef.
ST93-4336	Northern Natural Gas Co.	City of Two Harbors	06-24-93	G-S	624	N	F	06-01-93	Indef.
ST93-4337	Northern Natural Gas Co.	Sheehan's Gas Co	06-24-93	G-S	312	N	F	06-01-93	Indef.
ST93-4338	Northern Natural Gas Co.	Municipal Natural Gas—Sioux Center.	06-24-93	G-S	239	N	F	06-01-93	Indef.
ST93-4339	Northern Natural Gas Co.	Metropolitan Utilities District.	06-24-93	G-S	47,655	N	F	06-01-93	Indef.
ST93-4340	Northern Natural Gas Co.	Natural Gas, Inc	06-24-93	G-S	611	N	F	06-01-93	Indef.
ST93-4341	Northern Natural Gas Co.	Austin Utilities	06-24-93	G-S	5,203	N	F	06-01-93	Indef.
ST93-4342	Natural Gas P/L Co of America.	Seagull Marketing Services, Inc.	06-24-93	G-S	50,000	N	I	05-26-93	Indef.
ST93-4343	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06-24-93	B	23,016	N	F	06-01-93	Indef.
ST93-4344	Algonquin Gas Transmission Co.	Energy Transportation Management.	06-24-93	G-S	5,000	N	I	06-01-93	Indef.
ST93-4345	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	06-24-93	B	31,963	N	F	06-01-93	Indef.
ST93-4346	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-24-93	G	77,500	N	F	06-01-93	11-01-02
ST93-4347	Algonquin Gas Transmission Co.	Providence Gas Co	06-24-93	B	12,808	N	F	06-01-93	Indef.
ST93-4348	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06-24-93	B	1,877	N	F	06-01-93	Indef.
ST93-4349	Algonquin Gas Transmission Co.	Granite State Gas Transmission, Inc.	06-24-93	B	5,200	N	F	06-04-93	Indef.
ST93-4350	Algonquin Gas Transmission Co.	Granite State Gas Transmission, Inc.	06-24-93	B	1,540	N	F	06-04-93	11-01-02
ST93-4351	Algonquin Gas Transmission Co.	Central Hudson Gas Co.	06-24-93	B	874	N	F	06-01-93	Indef.
ST93-4352	Algonquin Gas Transmission Co.	Providence Gas Co	06-24-93	B	1,889	N	F	06-01-93	Indef.
ST93-4353	Algonquin Gas Transmission Co.	Boston Gas Co	06-24-93	B	97,059	N	F	06-01-93	Indef.
ST93-4354	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	06-24-93	G-S	50,000	N	I	06-01-93	Indef.
ST93-4355	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	06-24-93	B	29,921	N	F	06-01-93	Indef.
ST93-4356	Algonquin Gas Transmission Co.	Town of Middleborough.	06-24-93	B	845	N	F	06-01-93	Indef.

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ST93-4357	Algonquin Gas Transmission Co.	Fall River Gas Co	06-24-93	B	14,606	N	F	06-01-93	Indef.
ST93-4358	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	06-24-93	B	53,696	N	F	06-01-93	Indef.
ST93-4359	Algonquin Gas Transmission Co.	City of Norwich	06-24-93	B	4,478	N	F	06-01-93	Indef.
ST93-4360	Algonquin Gas Transmission Co.	Orange & Rockland Utilities, Inc.	06-24-93	B	1,104	N	F	06-01-93	Indef.
ST93-4361	Algonquin Gas Transmission Co.	Orange & Rockland Utilities, Inc.	06-24-93	B	5,069	N	F	06-01-93	Indef.
ST93-4362	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06-24-93	B	6,340	N	F	06-01-93	Indef.
ST93-4363	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06-24-93	B	11,514	N	F	06-01-93	Indef.
ST93-4364	Tejas Gas Corp	Mississippi River Transmission.	06-25-93	C	4,403	N	I	05-01-93	Indef.
ST93-4365	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	06-25-93	C	2,000	N	I	06-12-93	Indef.
ST93-4366	CNG Transmission Corp.	Penntech Papers	06-25-93	G-S	10,000	N	I	06-01-93	Indef.
ST93-4367	CNG Transmission Corp.	Entrade Corp	06-25-93	G-S	30,000	N	I	06-01-93	Indef.
ST93-4368	CNG Transmission Corp.	Phoenix Diversified Ventures.	06-25-93	G-S	3,000	N	I	06-01-93	Indef.
ST93-4369	Tennessee Gas Pipeline Co.	Stellar Gas Co	06-25-93	G-S	60,000	N	I	06-03-93	Indef.
ST93-4370	Tennessee Gas Pipeline Co.	Yankee Gas Services Co.	06-25-93	B	4,000	N	I	06-02-93	Indef.
ST93-4371	Tennessee Gas Pipeline Co.	Fitchburg Gas & Electric Light Co.	06-25-93	B	3,079	N	I	05-28-93	Indef.
ST93-4372	Lone Star Gas Co	El Paso Natural Gas Co, et al.	06-25-93	C	100,000	N	I	05-27-93	Indef.
ST93-4373	Lone Star Gas Co	Delhi Gas Pipeline Co, et al.	06-25-93	C	60,000	N	I	05-26-93	Indef.
ST93-4374	Northern Natural Gas Co.	Bridgegas U.S.A., Inc	06-25-93	G-S	100,000	N	F/I	06-01-93	Indef.
ST93-4375	Northern Natural Gas Co.	Apache Corp	06-25-93	G-S	45,000	N	F	05-28-93	Indef.
ST93-4376	Northern Natural Gas Co.	Transwestern Pipeline Co.	06-25-93	G	100,000	Y	F/I	04-30-93	Indef.
ST93-4377	Northern Natural Gas Co.	City of Sanborn	06-25-93	G-S	254	N	F	06-01-93	Indef.
ST93-4378	Northern Natural Gas Co.	Iowa Electric Light & Power Co.	06-25-93	G-S	48,218	N	F	06-01-93	Indef.
ST93-4379	Northern Natural Gas Co.	Midwest Power Systems, Inc.	06-25-93	G-S	138,756	N	F	06-01-93	Indef.
ST93-4380	Northern Natural Gas Co.	City of Ponca	06-25-93	G-S	260	N	F	06-01-93	Indef.
ST93-4381	Northern Natural Gas Co.	Western Gas Utilities, Inc.	06-25-93	G-S	1,301	N	F	06-01-93	Indef.
ST93-4382	Northern Natural Gas Co.	Northwestern Public Service Co.	06-25-93	G-S	6,938	N	F	06-01-93	Indef.
ST93-4383	Northern Natural Gas Co.	Interstate Power Co	06-25-93	G-S	13,363	N	F	06-01-93	Indef.
ST93-4384	Northern Natural Gas Co.	City of Duluth	06-25-93	G-S	13,009	N	F	06-01-93	Indef.
ST93-4385	Northern Natural Gas Co.	Cedar Falls Utilities	06-25-93	G-S	3,504	N	F	06-01-93	Indef.
ST93-4386	Northern Natural Gas Co.	City of Brooklyn	06-25-93	G-S	260	N	F	06-01-93	Indef.
ST93-4387	Northern Natural Gas Co.	Hutchinson Utility Comm..	06-25-93	G-S	2,602	N	F	06-01-93	Indef.
ST93-4388	Northern Natural Gas Co.	City of Waukee	06-25-93	G-S	434	N	F	06-02-93	Indef.
ST93-4389	Northern Natural Gas Co.	St. Croix Valley Natural Gas, Inc.	06-25-93	G-S	1,500	N	F	06-01-93	Indef.
ST93-4390	Northern Natural Gas Co.	Circle Pines Utilities	06-25-93	G-S	503	N	F	06-01-93	Indef.
ST93-4391	Northern Natural Gas Co.	City of Sabula	06-25-93	G-S	139	N	F	06-01-93	Indef.
ST93-4392	Arkla Energy Resources Co.	Enserch Gas Co	06-25-93	G-S	1,000	N	I	06-24-93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4393	Arkla Energy Resources Co.	Prior Intrastate Corp ..	06-25-93	G-S	5,000	N	I	04-01-93	Indef.
ST93-4394	Florida Gas Transmission Co.	Prior Intrastate Corp ..	06-25-93	G-S	30,000	N	I	06-04-93	Indef.
ST93-4395	Florida Gas Transmission Co.	Fort Pierce Utilities Authority.	06-25-93	G-S	685	N	I	06-01-93	Indef.
ST93-4396	Panhandle Eastern Pipe Line Co.	Illinois Power Co	06-25-93	G-S	58,500	N	F	05-01-93	03-31-96
ST93-4397	Panhandle Eastern Pipe Line Co.	New Mexico Natural Gas, Inc.	06-25-93	G-S	1,000	N	I	05-01-93	04-30-98
ST93-4398	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	06-25-93	G-S	50,000	N	I	06-12-93	04-30-98
ST93-4399	Panhandle Eastern Pipe Line Co.	Indiana Gas Co, Inc ...	06-25-93	G-S	5,450,980	N	F	05-01-93	03-31-96
ST93-4400	Northern Natural Gas Co.	City of Sac City	06-25-93	G-S	45,000	N	I	06-01-93	Indef.
ST93-4401	Trunkline Gas Co	Aquila Energy Marketing Corp.	06-28-93	G-S	20,000	N	I	06-11-93	Indef.
ST93-4402	Trunkline Gas Co	Bridgegas, U.S.A., Inc	06-28-93	G-S	200,000	N	I	06-15-93	Indef.
ST93-4403	Trunkline Gas Co	CNG Producing Co	06-28-93	G-S	30,000	N	I	06-14-93	Indef.
ST93-4404	Trunkline Gas Co	Enron Gas Marketing, Inc.	06-28-93	G-S	150,000	N	I	06-18-93	Indef.
ST93-4405	Trunkline Gas Co	Elf Exploration, Inc	06-28-93	G-S	75,000	N	I	06-10-93	Indef.
ST93-4406	Trunkline Gas Co	Samedan Oil Corp	06-28-93	G-S	30,000	N	I	06-15-93	Indef.
ST93-4407	Tennessee Gas Pipeline Co.	Catex Energy, Inc	06-28-93	G-S	12,400	N	I	06-01-93	06-30-93
ST93-4408	Tennessee Gas Pipeline Co.	Unigas Energy, Inc	06-28-93	G-S	5,000	N	I	06-01-93	Indef.
ST93-4409	Tennessee Gas Pipeline Co.	Pennzoil Gas Marketing Co.	06-28-93	G-S	60,000	N	I	06-10-93	Indef.
ST93-4410	Valero Transmission, L.P.	Arkla Energy Resources.	06-28-93	C	5,000	N	I	06-09-93	Indef.
ST93-4411	Columbia Gulf Transmission Corp.	Enron Gas Marketing, Inc Corp.	06-28-93	G-S	130,000	N	I	06-12-93	Indef.
ST93-4412	Columbia Gulf Transmission Corp.	NGC Transportation, Inc.	06-28-93	G-S	80,000	N	I	06-12-93	Indef.
ST93-4413	Columbia Gulf Transmission Corp.	Tejas Power Corp	06-28-93	G-S	150,000	N	I	06-18-93	Indef.
ST93-4414	Columbia Gulf Transmission Corp.	Alliance Resources Corp.	06-28-93	G-S	1,500	N	I	06-01-93	Indef.
ST93-4415	Columbia Gulf Transmission Corp.	Krupp & Associates ...	06-28-93	G-S	30,000	A	I	06-01-93	Indef.
ST93-4416	Columbia Gulf Transmission Corp.	Empire Exploration, Inc.	06-28-93	B	16,200	N	F	06-15-93	Indef.
ST93-4417	Northern Natural Gas Co.	Owatonna Public Utilities.	06-28-93	G-S	2,688	N	F	06-01-93	Indef.
ST93-4418	Northern Natural Gas Co.	Lake Park Municipal Utilities.	06-28-93	G-S	260	N	F	06-01-93	Indef.
ST93-4419	Northern Natural Gas Co.	Wisconsin Power & Light Co.	06-28-93	G-S	8,672	N	F	06-01-93	Indef.
ST93-4420	Northern Natural Gas Co.	Wisconsin Southern Gas Co, Inc.	06-28-93	G-S	667	N	F	06-01-93	Indef.
ST93-4421	Northern Natural Gas Co.	Manilla Municipal Gas Department.	06-28-93	G-S	146	N	F	06-01-93	Indef.
ST93-4422	Northern Natural Gas Co.	Rolfe Municipal Gas Department.	06-28-93	G-S	173	N	F	06-01-93	Indef.
ST93-4423	Northern Natural Gas Co.	City of Remsen	06-28-93	G-S	314	N	F	06-01-93	Indef.
ST93-4424	Northern Natural Gas Co.	Northern States Power Co.	06-28-93	G-S	111,005	N	F	06-01-93	Indef.
ST93-4425	Transok, Inc	ANR Pipeline Co, et al	06-28-93	C	35,000	N	I	03-19-93	Indef.
ST93-4426	Transok, Inc	ANR Pipeline Co, et al	06-28-93	C	10,000	N	I	06-02-93	Indef.
ST93-4427	Houston Pipe Line Co	Northern Natural Gas Co.	06-28-93	C	20,000	N	I	06-01-93	Indef.
ST93-4428	Houston Pipe Line Co	Sabine Pipeline Co	06-28-93	C	10,000	N	I	06-01-93	Indef.
ST93-4429	Monterey Pipeline Co	ANR Pipeline Co	06-28-93	C	25,000	N	I	05-19-93	Indef.
ST93-4430	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06-29-93	G-S	2,549	A	F	06-12-93	10-31-93
ST93-4431	Panhandle Eastern Pipe Line Co.	NGC Transportation Inc.	06-29-93	G-S	29,000	N	F	06-01-93	06-30-93
ST93-4432	Panhandle Eastern Pipe Line Co.	Coenergy Ventures, Inc.	06-29-93	G-S	38,722	N	F	06-01-93	06-30-93

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4433	Overland Trail Transmission Co.	Kern River Gas Transmission.	06-29-93	C	100,000	A	I	06-02-93	Indef.
ST93-4434	ANR Pipeline Co	Printpak Inc	06-29-93	G-S	2,000	N	I	05-29-93	Indef.
ST93-4435	ANR Pipeline Co	Coastal Gas Marketing Co.	06-29-93	G-S	500,000	A	I	05-26-93	Indef.
ST93-4436	ANR Pipeline Co	Iowa Southern Utilities Co.	06-29-93	G-S	31,355	N	F	06-01-93	10-31-03
ST93-4437	ANR Pipeline Co	Stand Energy Co	06-29-93	G-S	2,000	A	I	06-01-93	Indef.
ST93-4438	ANR Pipeline Co	Kerr-McGee Corp	06-29-93	G-S	50,000	N	I	06-01-93	Indef.
ST93-4439	Tennessee Gas Pipeline Co.	Arkla Energy Marketing Co.	06-29-93	G-S	550,000	N	I	06-05-93	Indef.
ST93-4440	Exxon Gas System, Inc.	Houston Light & Power Co.	06-29-93	C	70,000	N	I	05-01-93	09-30-97
ST93-4441	United Gas Pipe Line Co.	Prior Intrastate Corp ..	06-29-93	G-S	524,000	N	I	6-18-93	10-16-93
ST93-4442	United Gas Pipe Line Co.	Olympic Pipeline Co ..	06-29-93	G-S	10,480	N	I	06-18-93	10-16-93
ST93-4443	United Gas Pipe Line Co.	Union Pacific Fuels, Inc.	06-29-93	G-S	60,000	N	I	06-18-93	10-16-93
ST93-4444	United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	06-29-93	G-S	209,600	N	I	06-18-93	10-16-93
ST93-4445	Southern Natural Gas Co.	Texaco Gas Marketing Co.	06-25-93	G-S	59,000	N	I	05-21-93	Indef.
ST93-4446	Southern Natural Gas Co.	Savannah Electric & Power.	06-25-93	G-S	500,000	N	I	05-27-93	Indef.
ST93-4447	Southern Natural Gas Co.	Chevron USA Inc	06-25-93	G-S	150,000	N	I	06-09-93	Indef.
ST93-4448	Southern Natural Gas Co.	Dowling Energy, Inc ...	06-25-93	G-S	2,000	N	I	06-12-93	Indef.
ST93-4449	Columbia Gas Transmission Corp.	New Jersey Natural Gas Co.	06-29-93	B	10,000	Y	I	06-01-93	Indef.
ST93-4450	Columbia Gas Transmission Corp.	C.D. & G. Development Co.	06-29-93	G-S	4,154	N	F	06-01-93	Indef.
ST93-4451	Columbia Gas Transmission Corp.	Owens Corning Fiberglas.	06-29-93	G-S	12,000	Y	I	06-09-93	Indef.
ST93-4452	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	06-29-93	G-S	675	N	I	06-15-93	Indef.
ST93-4453	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	06-30-93	C	4,000	N	I	06-01-93	Indef.
ST93-4454	Delhi Gas Pipeline Corp.	Arkla Energy Resources.	06-30-93	C	25,000	N	I	06-01-93	Indef.
ST93-4455	Delhi Gas Pipeline Corp.	ANR Pipeline Co, et al	06-30-93	C	10,000	N	I	06-01-93	Indef.
ST93-4456	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co of America.	06-30-93	C	250,000	N	I	06-18-93	Indef.
ST93-4457	Delhi Gas Pipeline Corp.	Panhandle Eastern P/L Co, et al.	06-30-93	C	15,000	N	I	06-02-93	Indef.
ST93-4458	Delhi Gas Pipeline Corp.	Williams Natural Gas Co, et al.	06-30-93	C	13,000	N	I	06-01-93	Indef.
ST93-4459	Delhi Gas Pipeline Corp.	ANR pipeline Co, et al	06-30-93	C	30,000	N	I	06-01-93	Indef.
ST93-4460	K N Energy, Inc	Associated Natural Gas, Inc.	06-30-93	G-S	100,000	N	I	06-05-93	Indef.
ST93-4461	K N Energy, Inc	K N Gas Marketing Inc	06-30-93	G-S	2,660	N	I	06-01-93	09-01-93
ST93-4462	K N Energy, Inc	K N Gas Marketing, Inc.	06-30-93	G-S	1,043	N	I	06-01-93	09-30-93
ST93-4463	ANR Pipeline Co	Tenaska Marketing Ventures.	06-30-93	G-S	10,000	N	I	06-01-93	Indef.
ST93-4464	ANR Pipeline Co	Boyd Rosene & Associates, Inc.	06-30-93	G-S	20,000	N	F	06-01-93	Indef.
ST93-4465	ANR Pipeline Co	ARCO Natural Gas Marketing, Inc.	06-30-93	G-S	100,000	N	I	06-09-93	Indef.
ST93-4466	ANR Pipeline Co	Maxus Gas Marketing Co.	06-30-93	G-S	60,000	N	I	06-01-93	Indef.
ST93-4467	Panhandle Eastern Pipe Line Co.	Clinton Gas Marketing Inc.	06-30-93	G-S	7,000	N	I	05-14-93	03-31-98
ST93-4468	Iroquois Gas Trans. System, L.P.	Yuma Gas Corp	06-30-93	G-S	40,000	N	I	06-16-93	Indef.
ST93-4469	Tennessee Gas Pipeline Co.	Oryx Gas Marketing, L.P.	06-30-93	G-S	31,500	N	I	06-01-93	Indef.
ST93-4470	Midcon Texas Pipeline Corp.	Natural Gas Pipeline Co of America.	06-30-93	C	20,000	N	I	06-05-93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4471	Natural Gas P/L Co of Americ.	Shell Oil Co	06-30-93	G-S	10,000	N	F	06-01-93	05-31-94
ST93-4472	Transcontinental Gas P/L Corp.	Transco Offshore Gathering Co.	06-30-93	G-S	5,000,000	A	I	06-01-93	Indef.
ST93-4473	Transcontinental Gas P/L Corp.	Sonat Marketing Co	06-30-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4474	Mississippi River Trans. Corp.	MG Natural Gas Corp	06-30-93	G-S	3,500	N	F	06-01-93	Indef.
ST93-4475	Mississippi River Trans. Corp.	Monsanto Co	06-30-93	G-S	3,000	N	I	06-01-93	Indef.
ST93-4476	Mississippi River Trans. Corp.	Village of Dupo	06-30-93	G-S	60	N	F	06-01-93	Indef.
ST93-4477	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	N	F	06-01-93	06-30-93
ST93-4478	Transwestern Pipeline Co.	Yates Petroleum Corp	06-30-93	G-S	10,000	N	F	06-15-93	06-27-93
ST93-4479	Transwestern Pipeline Co.	Reliance Pipeline Co	06-30-93	B	100,000	N	I	06-04-93	Indef.
ST93-4480	Northern Natural Gas Co.	Brooklyn Interstate Nat. Gas Co.	06-30-93	G-S	100,000	N	I	05-28-93	Indef.
ST93-4481	Northern Natural Gas Co.	Iowa-Illinois Gas & Electric Co.	06-30-93	G-S	8,000	N	F	06-01-93	Indef.
ST93-4482	Northern Natural Gas Co.	Wisconsin Gas Co	06-30-93	G-S	14,965	N	F	06-01-93	Indef.
ST93-4483	Northern Natural Gas Co.	Peoples Natural Gas Co.	06-30-93	G-S	99,711	N	I	06-01-93	Indef.
ST93-4484	Northern Natural Gas Co.	Quatro Oil & Gas, Inc	06-30-93	G-S	450	N	F/I	06-03-93	Indef.
ST93-4485	Northern Natural Gas Co.	Sioux Pointe, Inc	06-30-93	G-S	400,000	N	F/I	03-25-93	Indef.
ST93-4486	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	12,045	N	F	06-01-93	06-01-93
ST93-4487	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	7,000	N	I	06-01-93	06-30-93
ST93-4488	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	A	F	06-01-93	06-30-93
ST93-4489	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	A	F	06-01-93	06-30-93
ST93-4490	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	A	F	06-30-93	06-30-93
ST93-4491	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	A	F	06-30-93	06-30-93
ST93-4492	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	10,000	N	F	06-01-93	06-30-93
ST93-4493	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	N	F	06-01-93	06-30-93
ST93-4494	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	1,000	N	F	06-30-93	06-30-93
ST93-4495	Transwestern Pipeline Co.	Lone Star Gas Co	06-30-93	B	5,000	A	F	06-01-93	06-30-93

[1] Notice of transactions does not constitute a determination that filings comply with commission. Regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 93-19951 Filed 8-17-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-13791T Texas-146]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 12, 1993.

Take notice that on August 9, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Frio Formation, Hanson Sand, underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of approximately 4,400 acres located in portions of the Hidalgo Canal Company Subdivision, the Steele and Pershing Subdivision, and the A.J. McColl Subdivision in portions of the following surveys:

Porcion 64 (Juan Antonio Villareal Survey, A-44)
Porcion 65 (Mario Ujardo De Los Rios Survey, A-41)
Porcion 66 (Jose Felix Hinojosa Survey, A-39)
Porcion 67 (Domingo Fonseca Survey, A-33)
Porcion 68 (Gregorio Camacho Survey, A-28).

The notice of determination also contains Texas' findings that the

referenced portion of the Frio Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19948 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13792T Texas–145]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 12, 1993.

Take notice that on August 9, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Frio Formation, 9400 Ft. Sand, underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of approximately 4,200 acres located in portions of the Hidalgo Canal Company Subdivision and the Steele and Pershing Subdivision in portions of the following surveys:

Porcion 64 (Juan Antonio Villareal Survey A–44)
Porcion 65 (Mario Ujardo De Los Rios Survey (A–41)
Porcion 66 (Jose Felix Hinojose Survey, A–39)
Porcion 67 (Domingo Fonseca Survey, A–33).

The notice of determination also contains Texas' findings that the referenced portion of the Frio Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19949 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–163–000]

Aquila Energy Marketing Corp. v. Natural Gas Pipeline Co. of America; Complaint

August 12, 1993.

Take notice that on August 2, 1993, Aquila Energy Marketing Corporation (Aquila) filed a complaint against Natural Gas Pipeline Company of America (Natural) alleging violations of the NGA, the Commission's regulations, orders and directives, as well as certain provisions of Natural's FERC Gas Tariff by seeking to impose cash-out costs on historical imbalances based on an improper method of valuation. Aquila asserts that Natural's interpretations of Commission orders and policy as well as Natural's FERC Gas Tariff are inconsistent with Commission orders and policy as they relate to the cash-out of historical imbalances.

Aquila seeks orders from the Commission (i) requiring Natural to refrain from assessing any cash-out costs against shippers' historical imbalances until resolution of this proceeding; (ii) requiring Natural to clarify its tariff language to conform with Commission policy and orders; and (iii) granting such further relief as may be appropriate.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 13, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19945 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–164–000]

Hope Gas, Inc. v. Texas Eastern Transmission Corp.; Complaint

August 12, 1993.

Take notice that on August 5, 1993, Hope Gas, Inc. (Hope) filed a complaint against Texas Eastern Transmission Corporation (Texas Eastern): (1) For failure to comply with Texas Eastern's effective filed gas tariff and for undue discrimination in violation of Section 4 of the Natural Gas Act (NGA); (2) for denying Hope the choice of services contemplated by Order No. 636; and (3) for failure to perform in conformity with its legally binding service agreement for provision of firm transportation service to Hope under Rate Schedule SCT.

Hope states that this complaint against Texas Eastern deals with a denial of service to Hope under Rate Schedule SCT, on file as part of Texas Eastern's Order No. 636 restructuring tariffs (Docket No. RS92–11–000). Hope asserts that Texas Eastern has refused, in part, to honor its filed SCT Rate Schedule by declining to provide Hope with SCT service in the full amount of Hope's maximum daily quantity (MDQ) of 5,000 Dth/day. Hope asserts that, instead, Texas Eastern has agreed to provide Hope only with maximum daily quantities under Rate Schedule SCT of 3,308 Dth/day.

Hope states that Texas Eastern's refusal to provide Hope with transportation service under Rate Schedule SCT in the full amount of 5,000 Dth/day violates the express terms of Texas Eastern's tariff, and, as such, contravenes Section 4 of the Natural Gas Act. Hope argues that Texas Eastern also is unduly discriminating against Hope to the extent that it is providing SCT service to other small shippers, but, without reasonable basis, is refusing to do so for Hope.

Hope requests that the Commission order Texas Eastern to immediately cease and desist from its denial of service to Hope, and to honor its obligations under statute, tariff and contract by providing SCT service to Hope in the full amount of 5,000 Dth/day.

Any person desiring to be heard or to protests said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 13, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19946 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–47–035]

Northwest Pipeline Corp.; Report of Refunds

August 12, 1993.

Take notice that on July 15, 1993, Northwest Pipeline Corporation (Northwest) filed a refund report with the Federal Energy Regulatory Commission (Commission) to reflect the higher volumes in the Phase I Settlement approved by the Commission's order issued October 19, 1989, in Docket No. RP88–47–000, and to comply with the Commission's orders issued April 28, 1989 and September 24, 1992, in Docket No. RP89–137–000, *et al.*

Northwest states that on July 1, 1993, in accordance with the Commission's September 24, 1992 order, it refunded $12,053,507.70 to its transportation and sales customers who had paid both fixed and volumetric surcharges based on take-or-pay settlement costs found ineligible for recovery either under Order No. 500 or Order No. 528. Northwest states that this amount includes applicable interest, accrued from the date of initial invoice payment through the refund date. Northwest further states that included in the commodity portion of this refund are amounts representing a reduction in the volumetric surcharge rate for the period April 1, 1989 through November 30, 1989, due to a change in the underlying billing determinants as a result of the Phase I Settlement in Northwest's RP88–47–000 rate proceeding as ordered by the Commission on April 28, 1989, and reaffirmed in an order issued December 29, 1989.

Northwest states that it served a copy of the refund report on all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before August 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19943 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–132–002]

Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

August 12, 1993.

Take notice that on August 10, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing an amendment to its filing on May 28 of revision to its recovery of take-or-pay and contract reformation costs pursuant to article XXX of the General Terms and Conditions of Volume One of its FERC Gas Tariff. This amendment reflects corrections to reflect actual payments made by EnergyNorth, Inc. that require an adjustment of its direct bill take-or-pay transition cost liability. The following changes are proposed to be effective July 1, 1993 and September 1, 1993 respectively:

Fourth Revised Volume No. 1
Substitute Third Revised Sheet No. 39
Fifth Revised Volume No. 1
Substitute Original Sheet No. 39

Tennessee states that copies of the tariff filing is being mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19944 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–166–000]

Tennessee Gas Pipeline Co.; Tariff Adjustment Filing

August 12, 1993.

Take notice that on August 10, 1993, Tennessee Gas Pipeline Company (Tennessee), tendered for filing the following revised tariff sheets to amend the General Terms and Conditions of Fifth Original Volume No. 1 (filed in Docket No. RS92–23) of its tariff, to be effective September 10, 1993:

First Revised Sheet No. 319
Original Sheet No. 319A
Original Sheet No. 319B
Original Sheet No. 319C

Tennessee states that the purpose of these revisions is to establish a mechanism for resolving transportation imbalances that remain outstanding after implementation of restructuring on the Tennessee system. Tennessee states that the reconciliation and resolution of these imbalances would be completed during the six month period following implementation of the restructured tariff on Tennessee, which six month period coincides with the period allowed for clean-up of trailing costs under Tennessee's direct bill mechanism for unrecovered PGA costs. Tennessee states that in-kind resolution of imbalances after restructuring will no longer be feasible since Tennessee will no longer have the system supply or storage capability to accommodate physical payback.

Tennessee states that copies of the filing are being mailed to all customers and affected state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19947 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4693–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Metal Coil Surface Coating (Subpart TT)–Information Requirements (EPA ICR No. 0660.05; OMB No. 2060–0107). This is a request for renewal of a currently approved information collection.

Abstract: The provisions of this subpart apply to the following affected facilities in a metal coil surface coating operation: (1) Each prime coat operation; (2) each finish coat operation; and (3) each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously. Owners or operators of subject facilities must provide EPA, or the delegated State regulatory authority, with one-time notifications and initial compliance reports, and must keep records, as required of all facilities subject to the general NSPS requirements. Owners or operators of subject facilities must notify EPA or the state regulatory authority of the date upon which demonstration of the compliance devices commences. In addition, the owner or operator of the subject facilities must install and operate devices that control emissions and that measure and record the operating characteristics of those devices. (1) Where compliance is achieved through the intermittent use of a control device, reports must include separate values of the weighted average VOC-content of coatings used with and without the control device in operation. (2) Where compliance is achieved through the use of an emission control device that destroys VOC's, reports must include the combustion temperature for thermal incinerators, and the gas temperature both upstream and downstream of the incinerator catalyst bed.

Owners or operators of subject facilities must report all periods of emissions in excess of the standard quarterly.

The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 5.8 hours per response for reporting and 74.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Facilities having the following metal coil surface coating operations: (1) Prime coat operations; (2) finish coat operations; and (3) prime and finish coat operations combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

Estimated No. of Respondents: 116.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 11,310 hours.

Frequency of Collection: One-time notifications and initial demonstration reports for new facilities; quarterly reports for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 12, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19979 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4693–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Submission of Unreasonable Adverse Effects Information Under FIFRA section 6 (a)(2). (EPA ICR No: 1204.05; OMB No: 2070–0039). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Under section 6 (a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticide registrants are required to report to the EPA, and keep records of, any information they receive about a previously-registered pesticide which indicates that potential adverse and unreasonable environmental effects may ensue from its production or use.

Respondents are required to submit to the Agency, and keep records of, the following: (1) Studies showing new or more severe toxicological responses than previously reported of any type in any strain of test organism; (2) epidemiological studies of human population groups; (3) studies or incidents tending to show lack of efficacy of certain pesticide products with public-health related uses; (4)incidents involving toxic or adverse effects to non-target organism; (5) information on excess residues on food or feed, or residues in surface water, ground water and drinking water; (6) information on metabolites or impurities which may be of toxicological concern; and (7) other information which may be relevant to risk/benefit determinations of any type.

The Agency uses these data to determine whether a pesticide should be re-registered.

Burden Statement: The burden for this collection of information is estimated to average 72.6 hours per response per respondent for reporting and 15.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search for existing data sources, gather

and maintain the data needed and complete and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 110.

Estimated No. of Responses per Respondent: 29.8.

Estimated Total Annual Burden on Respondents: 9,688 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: August 12, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19977 Filed 8–17–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4634–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only. (EPA ICR No: 0276.06; OMB No: 2070–0040). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticide registrants must submit to the EPA a permit application when they wish to ship or use an unregistered pesticide, or an unregistered pesticide use, for experimental purposes. Respondents are required to complete, submit to the Agency, and keep records of, EPA Form No. 8750–17. In addition, respondents are required to submit to the Agency, and keep records of, a final report on the results of the experimental use program. The information on the final report must include the amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticides material, and affected food/feed commodities.

Under the existing Experimental Use Permit (EUP) regulations, small-scale experimental use pesticides–tests conducted on ten acres of land or less, and against a particular pest–would be exempt. However, any food or feed crops involved in, or affected by, the tests, must be either destroyed, used only to feed experimental animals, or used if a tolerance or exemption from a tolerance has been established.

The Agency uses the information to decide whether to grant an Experimental Use Permit, and to monitor the EUP program in compliance with section 5 of the FIFRA.

Burden Statement: The burden for this collection of information is estimated to average 9.1 hours per response for reporting and 1 hour per recordkeeper annually. This estimate includes the time needed to review instructions, complete the form, prepare and submit the final report, and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 125.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,263 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 12, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19978 Filed 8–17–93; 8:45 am]

BILLING CODE [illegible]

[OPP–100126; FRL–4637–7]

Kevric Company; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Kevric Company has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Kevric Company consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Kevric Company to fulfill the obligations of the contract.

DATES: Kevric Company will be given access to this information no sooner than August 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–D2–0038, Kevric Company will assist OPP to obtain use and usage information on the use of microbicides at aquatic sites. The information obtained will be used to assess economic and environmental impacts along with data requirements for reregistration of these microbicides. This contract involves no subcontractor.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Kevric Company to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information

has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Kevric Company, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Kevric Company is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied.

Records of information provided to this contractor will be maintained by the Project Officer for this contract in OPP. All information supplied to Kevric Company by EPA for use in connection with this contract will be returned to EPA when Kevric Company has completed its work.

Dated: August 3, 1993.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–19486 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL 4695–1]

Waste Isolation Pilot Plant Subcommittee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL92463, EPA gives notice of a two-day meeting of the Waste Isolation Pilot Plant (WIPP) Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). This will be the second meeting of the WIPP Subcommittee whose mission is to provide advice to the EPA regarding the Agency's role in reviewing the Department of Energy's activities pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA), PL102–579.

Discussion at the meeting will center around EPA's development of compliance criteria which will be used in certifying whether the WIPP complies with the 40 CFR part 191 radioactive waste disposal standards. More specifically, the WIPP Subcommittee will be asked to review the following three issues:

1. To reduce uncertainty in WIPP compliance assessment, should EPA specify certain "future states" assumptions? If so, what aspects of the future should EPA address and how?

2. Should EPA specify certain assumptions related to human intrusion? If so, what aspects of human intrusion should EPA address and how?

3. Should EPA address the use of engineered barriers at the WIPP? If so, why and how?

EPA staff will also make a presentation to the subcommittee on the status of their efforts to develop these criteria. The second day will be committed to an open discussion by the subcommittee of the criteria issues that have been presented by the EPA.

DATES: The public meeting will take place September 22–23, 1993, and will be held at the BDM International Complex, Sandia Vista Building, Sandia Vista Conference Center, 2301 Buena Vista in Albuquerque, New Mexico. On September 22nd, the meeting will begin at 9 a.m. and end at 5 p.m. and will resume the following day, September 23d, at 9 a.m. and end at 2:30 p.m.

ADDRESSES: Members of the public wishing to submit comments on the compliance criteria should submit them in writing to: USEPA, Office of Radiation and Indoor Air, Criteria and Standards Division, Mailcode 6602J, 401 M Street, SW., Washington, DC 20460, ATTN: Judi Maguire. Written comments may also be submitted at the public meeting. A limited period of time for oral comments to the WIPP Subcommittee will also be provided.

FOR FURTHER INFORMATION CONTACT: Rhonda Maddox, Office of Radiation and Indoor Air, Criteria and Standards Division, Mailcode 6602J, 401 M Street, SW., Washington, DC 20460; telephone (202) 233–9762, for questions and information about the compliance criteria. For general questions or information on the meeting logistics contact Rafaela Ferguson at (202) 233–9362 or call EPA's toll-free WIPP Information Line, 800–331–WIPP.

Dated: August 12, 1993.

Gordon Schisler,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 93–19975 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50768; FRL–4636–9]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale testing of nonindigenous strains of *Bacillus thuringiensis* from the Ciba-Geigy Corporation.

DATES: Written comments must be received on or before September 17, 1993.

ADDRESSES: By mail: Comments in triplicate, must bear the docket control number OPP–50768 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register**

of June 26, 1986 (51 FR 23313), has been received from the Ciba-Geigy Corporation of Greensboro, North Carolina. The purpose of the proposed testing is to evaluate the efficacy of 19 *Bacillus thuringiensis* strains isolated from Switzerland against the Colorado potato beetle on potatoes. The proposed field tests are to take place in Florida, New York, Pennsylvania, and Wisconsin from summer of 1993 to summer of 1995 with a combined acreage of 0.32 acre per year per strain. Following the review of the Ciba-Geigy Corporation application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: August 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-19974 Filed 8-17-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100125; FRL-4637-6]

Dynamac Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corp. has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Dynamac Corp. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Dynamac Corp. to fulfill the obligations of the contract.

DATES: Dynamac Corp. will be given access to this information no sooner than August 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5259

SUPPLEMENTARY INFORMATION: Under Contract Number 68-D2-0053, Dynamac Corp. will assist in the review of data summaries and reformatted existing studies to identify data gaps and adverse effects, examine all product chemistry and residue chemistry data, and prepare documentation for each pesticide on product chemistry and residues. This contract involves no subcontractor.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Dynamac Corp. to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Dynamac Corp., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corp. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied.

Records of information provided to this contractor will be maintained by the Project Officer for this contract in OPP. All information supplied to Dynamac Corp. by EPA for use in connection with this contract will be returned to EPA when Dynamac Corp. has completed its work.

Dated: August 3, 1993.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93-19485 Filed 8-17-93; 8:45 am]

BILLING CODE 6560-50-F

[PF-579; FRL-4636-3]

Ciba-Geigy Corp.; Amended Pesticide Petition for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Ciba-Geigy Corp. the filing of an amendment to pesticide petition (PP) 6F3422 proposing to establish regulations for combined residues of the insecticide cyromazine plus its major metabolite, melamine, in or on cabbage, barley, wheat, sugar beets, sorghum, and sweet potatoes when grown as rotational crops to a Trigard® 75W treated crop.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-579], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phillip O. Hutton, Product Manager (PM 18), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: EPA has received from the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, pesticide petition (PP) 6F3422 proposing to amend 40 CFR 180.414 for the insecticide cyromazine (*N*-cyclopropyl-1,-3,5-triazine-2,4,6-triamine) plus its major metabolite melamine (1,3,5-triazine-2,4-6-triamine), calculated as cyromazine, in or on the following raw agricultural commodities when grown as rotational crops to a Trigard® 75W (cyromazine) treated crop: cabbage at 0.05 part per million (ppm); sweet potatoes at 0.05 ppm; sugar beets (roots and tops) at 0.05 ppm; wheat grain at 0.05 ppm, wheat forage

at 0.5 ppm, wheat hay at 0.2 ppm, and wheat straw at 0.5 ppm; barley grain and forage at 0.1 ppm, barley hay at 0.05 ppm, and barley straw at 1.5 ppm; sorghum grain at 0.1 ppm, sorghum forage at 0.05 ppm, and sorghum fodder at 0.1 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography.

Authority: 7 U.S.C. 346a and 371.

Dated: August 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–19829; Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180899; FRL 4639–3]

Receipt of Application for Emergency Exemption To Use Pseudomonas Fluorescens; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Pennsylvania Department of Agriculture (hereafter referred to as the "Applicant") for use of the biological pesticide, Pseudomonas fluorescens biotype G (biovar), strain NCIB 12089, trade name Victus, to control bacterial blotch, caused by *Pseudomonas tolaasii*, on up to 100 acres of mushrooms in Pennsylvania. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 2, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180899," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703–308–8327).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the biological pesticide, Pseudomonas fluorescens biotype G (biovar), strain 12089, trade name Victus, to control bacterial blotch, caused by *Pseudomonas tolaasii*, on up to 100 acres of mushrooms in Pennsylvania. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, a dramatic increase in bacterial blotch has been seen since April, 1993. The increase may have resulted from changes in cultural practices (i.e. a change in the casing material used at the mushroom facility) which were made earlier in the year to ward off a potentially devastating infestation of LaFrance virus. Since then, it has not been possible to regain equilibrium conditions and reduce the blotch problem, despite the use of best management growing practices and use of chlorine, the only available alternative for blotch control. Economic losses during the first two months of the epidemic are estimated at approximately $607,440. Losses are expected to continue at $80,000 per week until the disease is under control.

Under the proposed exemption, up to 5 applications per crop would be made: at spawning, at casing, at pinning, and after harvest of the first and second flushes. Applications would be made at the rate of 3 ml. of Victus concentrate, equivalent to at least 10,500 million cells of strain NCIB 12089, per square meter of mushroom bed surface.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Pseudomonas fluorescens biotype G (biovar), strain NCIB 12089, trade name Victus, is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Pennsylvania Department of Agriculture.

Dated: August 4, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–19839 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–42052O; FRL–4639–5]

Testing Consent Agreement Development for Listed Chemical Substances; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice serves three purposes. First, it identifies and lists in the order in which they will be addressed, those chemical substances or categories of chemical substances for which EPA has chosen to pursue testing through Enforceable Consent Agreements (ECAs) negotiations. Second, it requests interested parties who want to monitor or participate in negotiations for these chemical substances to identify themselves to EPA. Third, it removes carbon disulfide from the ECA "open season" program.

DATES: To be designated an "interested party" for the chemical substances listed in Table 1. written notice must be received by EPA on or before September 17, 1993.

EPA will contact all interested parties who have expressed a desire to participate in or monitor negotiations in accordance with 40 CFR 790.22(b)(3) to advise them of meeting dates.

ADDRESSES: Submit written request to be an "interested party" in triplicate,

identified by the document control number (OPPTS–42052O) to: Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 1992, (57 FR 31714, document control number OPPTS–42052K), EPA established an "open season" or period of time for industry and others to submit testing consent agreement proposals on any substances for which the Agency has not issued final test rules. The Agency offered this "open season" because EPA had been approached by chemical companies interested in negotiating consent agreements for substances that are, or are expected to be, the subject of proposed test rules.

The procedures for requiring the testing of chemical substances and mixtures under section 4 of TSCA include the adoption of ECAs and the promulgation of test rules. See 40 CFR part 790. ECAs may be adopted where timely consensus on a testing program can be reached by EPA, affected manufacturers or processors, and other interested parties. If timely consensus cannot be reached or seems unlikely, and the Agency makes certain statutory findings under TSCA, then EPA will issue a test rule under TSCA section 4.

On March 30, 1993 (59 FR 16669), after evaluating the testing proposals submitted during the open season, EPA issued a **Federal Register** notice which identified a three tier priority ranking of the testing proposals received from manufacturers, solicited parties interested in monitoring or participating in ECA negotiations of tier I chemicals to identify themselves to EPA, and extended the opportunity for manufacturers to supplement their test proposals for tier II, tier III and unranked chemicals.

With negotiations for tier I chemicals underway, EPA has reevaluated the tier II, tier III, and unranked proposals received in response to the March 1993 notice. This review resulted in the listing for ECA "Open Season" chemicals described in Unit II, Table 1. These chemicals are listed in the order in which EPA will pursue ECAs.

This notice requests all "interested parties" who wish to monitor or participate in testing negotiations for the substances listed in Table 1, to identify themselves in writing to EPA. Regarding the July 17, 1992 and the March 30, 1993 notices, persons who submitted testing program proposals are already considered "interested parties" of record.

II. Listing of Testing Proposals

In response to the March 30th notice, EPA received additional information for glycidol methacrylate, a testing proposal for the alkyl C_{12}–C_{14} glycidyl ethers, a request for removing carbon disulfide from the open season program, a testing proposal for brominated flame retardants, and a request for adding phenol to tier I.

The factors considered in evaluating these chemicals for testing included: (1) Comparison of the testing program proposal with EPA's views concerning testing needs; (2) the likelihood of success in negotiating an ECA; and (3) the Agency's programmatic priorities for action on given chemical substances or categories. Based upon the additional information it has received, EPA has listed the "open season" chemicals as shown below in the following Table 1:

TABLE 1.—REVISED LISTING FOR OPEN SEASON CHEMICALS

Chemical Substance	Cas No.
Alkyl (C_{12}–C_{14}) Glycidyl Ethers	2461–18–9
	15965–99–8
	16245–87–9
	38954–75–5
	68081–04–5
	68609–97–2
Glycidyl Methacrylate (GMA)	106–91–2
Silicon Based Glycidyl Ethers	2530–83–8
	2897–60–1
	17963–04–1
	7422–52–8
	71808–64–5
	126–80–7
	69156–42–5
Phenol	108–05–2
Brominated Flame Retardants (BFR)	32534–81–9
	32536–52–0
	1163–19–5
	37853–59–1
	3194–55–5
Removed From Open Season.	
Carbon Disulfide	75–15–0

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations for the substances now listed. These negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Submitters of testing proposals in response to the **Federal Register** notice of July 17, 1992 are already considered interested parties and do not have to respond to this notice. Additionally, any persons who respond to this notice on or before September 17, 1993 will be given the status of "interested parties" and will be afforded opportunities to monitor or participate in the negotiation process. These "interested parties" will not incur any obligations by being so designated.

Negotiations will be conducted in meetings open to the public. The negotiation time schedule for each chemical will be established at the first negotiation meeting. If a consent agreement is not established in principle within the agreed upon time-frame and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under a test rule.

IV. Removal of a Chemical Substance from the "Open Season" Program

Carbon disulfide is one of the chemical substances subject to the Developmental and Reproductive Toxicity multi-substance test rule. On April 28, 1993, EPA received a letter from the Chemical Manufacturers Association urging EPA to clarify in a **Federal Register** notice that EPA did not receive a test proposal for carbon disulfide. CMA requested and EPA has agreed to remove carbon disulfide from the "open season" program.

V. Public Meetings and General Schedules for Alkyl (C_{12}–C_{14}) Glycidol Ethers, Glycidyl Methacrylate, silicon based Glycidyl Ethers, Phenol, and Brominated Flame Retardants (BFR)

Public meetings will be scheduled to initiate negotiations for the above chemical substances at EPA headquarters, 401 M St., SW., Washington, DC 20460, from either 9 a.m. to 12 noon or 1 p.m. to 4 p.m., in rm. 101, Northeast Mall. The deadline to be designated an interested party for the above listed chemical substances is September 17, 1993. EPA will use its best efforts to send a draft consent agreement to each of the interested parties approximately 3 weeks before the public meeting for their particular chemical substance. Further, to facilitate attendance at these meetings, EPA will

contact all interested parties who have expressed a desire to participate in or monitor negotiations and advise them of the exact meeting dates and times. The Agency expects to reach agreement in principle within 10 weeks of those public meetings.

Dated: August 10, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–19973 Filed 8–17–93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1160
Name: Kogel Overseas, Inc.
Address: 5930 W. Jefferson Blvd., Los Angeles, CA 90016
Date Revoked: July 5, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 918
Name: Albert E. Bowen, Inc.
Address: One World Trade Center, Ste. 3327, New York, NY 10048
Date Revoked: July 9, 1993
Reason: Surrendered license voluntarily.

License Number: 1937
Name: Agricultural Air Exports, Inc.
Address: 1633 Bayshore Highway, Rm. 222, Burlingame, CA 94010
Date Revoked: July 9, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3095
Name: Flamingo International, Inc.
Address: 7350 NW. 12th St., Ste. 200, Miami, FL 33126
Date Revoked: July 11, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2569
Name: John H. Duncan Forwarding, Inc.
Address: 5944 Luther Lane, Ste. 309, Dallas, TX 75225
Date Revoked: July 14, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3380
Name: J.P. Milton International Corporation
Address: 181 S. Franklin Ave., Valley Stream, NY 11581
Date Revoked: July 18, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3425
Name: Eden Air Freight, Inc.
Address: 3095 Redhill Ave., Costa Mesa, CA 92626
Date Revoked: July 22, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3221–R
Name: Bellair International Ocean/Air Inc. dba Bellair Express, Houston, Texas
Address: 3050 McKaughan, Houston, TX 77032
Date Revoked: July 23, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3499
Name: Expedite! Inc.
Address: 16514 Air Center Blvd., Houston, TX 77032
Date Revoked: July 28, 1993
Reason: Surrendered license voluntarily.

License Number: 3185
Name: Footwork-Hamacher Inc.
Address: 99 Hudson Street, New York, NY 10013
Date Revoked: July 31, 1993
Reason: Surrendered license voluntarily.

License Number: 3611
Name: Sea-Wings International, Inc.
Address: 389–B W. Irving Park Rd., P.O. Box 583, Wood Dale, IL 60191
Date Revoked: August 1, 1993
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–19939 Filed 8–17–93; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P52–93]

Petition of Transax Data as Agent for Everstrong, Inc., DBA Everstrong Line for Temporary Exemption From Electronic Tariff Filing Requirements

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than August 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Mr. Steve Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Poling,

Secretary.

[FR Doc. 93–19960 Filed 8–17–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Beverly Alton Barnette, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Beverly Alton Barnette, Daytona Beach Shores, Florida; to acquire 28.65 percent of the voting shares of Tara Bankshares Corporation, Riverdale, Georgia, and thereby indirectly acquire Tara State Bank, Riverdale, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. David H. Clemmons, Harrisburg, Illinois; to acquire an additional 10.8 percent of the voting shares of Shawnee Bancorp, Inc., Harrisburg, Illinois, for a total of 12.72 percent, and thereby indirectly acquire The Bank of Harrisburg, Harrisburg, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Dr. Richard E. Martin, Pryor, Oklahoma; to acquire an additional 78.8 percent of the voting shares of CNBO Bancorp, Inc., Pryor, Oklahoma, for a total of 97.6 percent, and thereby indirectly acquire Century National Bank of Oklahoma, Pryor, Oklahoma.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200

North Pearl Street, Dallas, Texas 75201-2272:

1. Calvin Fryar, Brownwood, Texas; to acquire an additional 5.33 percent for a total of 16 percent; and Fred Perry, Brownwood, Texas, to acquire an additional 5.33 percent for a total of 16 percent of the voting shares of Brownwood Bancshares, Inc., Brownwood, Texas, and thereby indirectly acquire Citizens National Bank at Brownwood, Brownwood, Texas.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19881 Filed 8-17-93; 8:45 am]

BILLING CODE 6210-01-F

Golden Isles Financial Holdings, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Golden Isles Financial Holdings, Inc., Brunswick, Georgia; to engage *de novo* through its subsidiary, First Bank Mortgage Corporation, Brunswick, Georgia, in mortgage lending activities, specifically to make, acquire, originate and service mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. The activities will be conducted throughout the Southeastern United States.

2. Golden Isles Financial Holdings, Inc., Brunswick, Georgia; to engage *de novo* through its subsidiary, First Credit Corporation, Brunswick, Georgia, in consumer finance activities and credit related insurance activities through its subsidiary, specifically to make, acquire or service loans that are generally made by consumer finance companies pursuant to § 225.25(b)(1)(i); and to provide credit related insurance products, pursuant to §§ 225.25(b)(8)(i) and (b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the Southeastern United States.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bankers Bancorporation of Wisconsin, Madison, Wisconsin; to engage *de novo* through its subsidiary, Bankers' Service Corporation, Madison, Wisconsin, in bank stock valuations pursuant to § 225.25(b)(4)(vi)(A)(1); electronic data processing services pursuant to § 225.25(b)(7); electronic data feasibility studies, consumer compliance law reviews, loan quality control reviews, director examinations and internal audit functions, and trust examinations pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the States of Minnesota, Iowa, Michigan and Illinois.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19882 Filed 8-17-93; 8:45 am]

BILLING CODE 6210-01-F

The Magnolia State Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. The Magnolia State Corporation, Bay Springs, Mississippi; to acquire Jones County Finance Co., Laurel, Mississippi, and thereby engage in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19883 Filed 8–17–93; 8:45 am]

BILLING CODE 6210–01–F

The Poca Valley Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 10, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. The Poca Valley Bankshares, Inc., Walton, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Poca Valley Bank, Walton, West Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Delta Corporation, Helena, Arkansas; to acquire at least 75.25 percent of the voting shares of The Delta State Bank, Elaine, Arkansas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Watford City Bancshares, Inc., Watford City, North Dakota; to merge with Fessenden Bancshares, Inc., Fessenden, North Dakota, and thereby indirectly acquire First International Bank and Trust, N.A., Fessenden, North Dakota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert Lee Bancshares, Inc., Robert Lee, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Robert Lee (Delaware), Inc., Wilmington, Delaware, and thereby indirectly acquire Robert Lee State Bank, Robert Lee, Texas. In connection with this application, Robert Lee (Delaware), Inc., Wilmington, Delaware, has applied to become a bank holding company by acquiring 93.61 percent of the voting shares of Robert Lee State Bank, Robert Lee, Texas.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19884 Filed 8–17–93; 8:45 am]

BILLING CODE 6210–01–F

Public Finance Service, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Public Finance Service, Inc., Bala Cynwyd, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Public Savings Association, Bala Cynwyd, Pennsylvania. Public Savings Association will convert to a Pennsylvania savings bank and will operate under the name Public Savings Bank.

In connection with this application, Applicant also proposes to acquire Public Consumer Discount Company, Inc., Bala Cynwyd, Pennsylvania, and thereby engage in making and collecting consumer finance loans pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. These activities will be conducted throughout the State of Pennsylvania.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19885 Filed 8–17–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Variability of Respiratory Trace Deposition in Workers: Meeting

The National Institute for Occupational Safety and Health (NOISH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Variability of Respiratory Trace Deposition in Workers.

Time and Date: 8:30 a.m.–2:30 p.m., September 21, 1993.

Place: Appalachian Laboratory, room 138, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to review the project entitled, "Variability of Respiratory Tract Deposition in Workers." Viewpoints and suggestions from industry, labor, academic, other government agencies, and the public are invited.

Contact Person for Additional Information: Lu-Ann F. Beeckman, Ph.D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 240, Morgantown, West Virginia 26505–2888, telephone 304/291–4223.

Dated August 11, 1993.

Elvin Hilyer

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19936 Filed 8–17–93; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 93F–0243]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,5,6,7-tetrachloro-2-[2-(4,5,6,7-tetrachloro-2,3-dihydro-1,3-dioxo-1H-inden-2-yl)-8-quinolinyl]-1H-isoindole-1,3(2H)-dione (C.I. Pigment Yellow 138), as a colorant in all food-contact polymers.

DATES: Written comments on petitioner's environmental assessment by September 17, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4383) has been filed by BASF Corp., 8 Campus Dr., Parsippany, NJ 07054. The petition proposes to amend the food additive regulations to provide for the safe use of 4,5,6,7-tetrachloro-2-[2-(4,5,6,7-tetrachloro-2,3-dihydro-1,3-dioxo-1H-inden-2-yl)-8-quinolinyl]-1H-isoindole-1,3(2H)-dione (C.I. Pigment Yellow 138, CAS Registry No. 30125-47-4), as a colorant in all food-contact polymers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 17, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19892 Filed 8–17–93; 8:45 am]

BILLING CODE 4160-01-F

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Establishment of Interested Parties List

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it will publish a request for applications (RFA) notice announcing the anticipated availability of funds for fiscal year (FY) 1994 for awarding grants to support clinical trials on the safety and effectiveness of orphan products (i.e., those for diseases and conditions affecting a U.S. population of less than 200,000, or those for which there is no reasonable expectation of cost recovery). Potential applicants interested in having their names placed on a mailing list to receive the FY 94 RFA should write or call the Office of Orphan Products Development (OPD).

ADDRESSES: Submit written requests to be placed on the mailing list to Carol A. Wetmore, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carol A. Wetmore or Patricia R. Robuck (address above), 301–443–4903.

SUPPLEMENTARY INFORMATION: Contingent on the availability of FY 1994 funds, in September 1993, FDA plans to publish in the **Federal Register** a notice announcing that it intends to award approximately $9.1 million for 25 to 30 new grants and continuations. FDA advises that potential applicants interested in having their names placed on a mailing list to receive the FY 94 RFA write or call OPD (address above).

One established requirement for all studies submitted pursuant to an OPD-funded program, including studies for products already approved, is that they must be conducted under an investigational new drug application (IND) or an investigational device exemption (IDE). The IND/IDE number will be required to appear on the face page of the application with the title of the project. Other proposed submission requirements are: Evidence of product availability, evidence of patient availability, and a well-supported explanation as to why the product is appropriate for an OPD grant.

Dated: August 11, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19891 Filed 8–17–93; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally

funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

06/693,866 ..... Cloning and Expression of HTLV–III DNA [encoding immunoreactive polypeptides useful in assays for detecting HTLV–III. Licensing Specialist: Steven M. Ferguson.

07/057,183 ..... Human Immunodeficiency Virus Specific Proteolytic Enzyme and a Method for Its Synthesis and Renaturation (see also 07/201,654). Licensing Specialist: Steven M. Ferguson.

07/172,152 ..... [Recombinant] Trans-Activating Factor of HTLV–III/LAV [useful for turning on the LTR promotor for construction of high efficiency expression systems]. Licensing Specialist: Steven M. Ferguson.

07/201,654 ..... Human Immunodeficiency Virus Specific Proteolytic Enzyme and a method for Its Synthesis and Renaturation (see also 07/057,183). Licensing Specialist: Steven M. Ferguson.

07/202,508 ..... Method of Treating AIDS, ARC or Lymphoadenopathy Syndrome with Poly-ICLC [a synthetic double-stranded RNA complex] Alone or in Combination with AZT. Licensing Specialist: Steven M. Ferguson.

07/270,865 ..... Quantitive, Syncytium-Forming Microassay for the Detection of HIV Neutralizing Antibody. Licensing Specialist: Steven M. Ferguson.

07/286,977 ..... 2,3 Epoxy Alcohols, Acids and Derivatives as Anti-Retroviral Chemotherapeutic Agents (U.S. Patent No. 5,190,969). Licensing Specialist: Steven M. Ferguson.

07/323,778 ..... Rabbit Model for Diagnosing and Testing Vaccines or Therapeutic Agents Against AIDS (U.S. Patent No.5,183,949). Licensing Specialist: Steven M. Ferguson.

07/334,089 ..... Chemotherapeutic Composition for AIDS [using inhibitors of nucleoside and nucleobase transport such as dipyridamole]. Licensing Specialist: Steven M. Ferguson.

07/401,411 ..... Immunodominant Sites of HTLV–1 Envelope Protein [useful as immunogenic peptides for vaccine or diagnostic use]. Licensing Specialist: Steven M. Ferguson.

07/429,287 ..... Construction of Non-Infectious Retroviral Mutants Deficient in Viral RNA. Licensing Specialists: Steven M. Ferguson.

07/454,827 ..... Synthetic Peptides as Modulators of Functional Responses of Intact Cells [synthetic peptides as pharmacological agents, effectively inhibit cellular functions at the cellular molecular level in intact cells]. Licensing Specialist: Carl C. Floyd.

07/478,081 ..... Method for Detection of Human Immunodeficiency Virus and Cell Lines Useful Therefor. Licensing Specialist: Steven M. Ferguson.

07/535,407 ..... [Diagnostic] Method for Detecting Immune Dysfunction in Asymptomatic AIDS Patients and [also useful] for Predicting Organ Transplant Rejection. Licensing Specialist: Steven M. Ferguson.

07/594,156 ..... A Plant Protein Useful for Treating Tumors and HIV Infections. Licensing Specialist: Steven M. Ferguson.

07/703,118 ..... Method for Preventing Integration of Retroviral DNA into Host DNA. Licensing Specialist: Mark D. Hankins.

07/716,571 ..... [Novel compound useful for stimulating the] Growth of Kaposi's Sarcoma Cells in Tissue Culture. Licensing Specialist: Steven M. Ferguson.

07/742,750 ..... CD4+, Latently HIV–1–Infected Hematopoietic Progenitor Cells [that mimic the physiologic HIV–1 latency in the body]. Licensing Specialist: Steven M. Ferguson.

07/749,541 ..... Anti-HIV Proteins GAP 31, DAP 30 and DAP 32, DNA Coding Therefor and Therapeutic Uses Thereof. Licensing Specialist: Steven M. Ferguson.

07/751,998 ..... Multideterminant Peptide Antigens that Stimulate Helper T Lymphocytes Response to HIV in a Range of Human Subjects. Licensing Specialist: Steven M. Ferguson.

07/754,987 ..... Method of Detecting Infectious HIV Strains [using CD4 expressing HeLa T4 cells with an inducible β-galactosidase gene]. Licensing Specialist: Steven M. Ferguson.

07/760,530 ..... Method to Induce Cytotoxic T Lymphocytes Specific for a Broad Array of HIV–1 Isolates Using Hybrid Synthetic Peptides. Licensing Specialist: Steven M. Ferguson.

07/774,402 ..... Reagents for the Detection and Differentiation of SIV and HIV Groups of Viruses. Licensing Specialist: Steven M. Ferguson.

07/811,896 ..... Acquired Immune Deficiency Syndrome (AIDS) Viral Envelope Protein and Methods of Testing for Aids. Licensing Specialist: Steven M. Ferguson.

07/827,877 ..... Novel Plasmid (pJL6) [that produces large amounts of the protein coded by the exogenous gene]. Licensing Specialist: Carl C. Floyd.

07/832,236 ..... Method of Inhibiting HIV Protease. Licensing Specialist: Steven M. Ferguson.

07/847,311 ..... Potent Peptide for Stimulation of Cytotoxic T Lymphocytes Specific for the HIV–1 Envelope. Licensing Specialist: Steven M. Ferguson.

07/847,744 ..... Method of Modulating CD4–MHC Class II Interaction and Compounds Therefore. Licensing Specialist: Steven M. Ferguson.

07/861,249 ..... Calanolides, Novel Antiviral Compounds Compositions and Uses Thereof. Licensing Specialist: Steven M. Ferguson.

07/861,938 ..... Therapeutic Use of Restriction Enzymes Against Viruses, Including HIV. Licensing Specialist: Steven M. Ferguson.

07/870,547 ..... Vectors for Ligation-Independent Cloning and Methods for Using Same. Licensing Specialist: Carl C. Floyd.

07/873,640 ..... Aerosolization of Protein Therapeutic Agent. Licensing Specialist: Girish Barua.

07/882,078 ..... Test of HIV-Specific T Lymphocyte Function that Detects Exposure to HIV Antigens and Possibly Early HIV Infection. Licensing Specialist: Steven M. Ferguson.

07/882,646 ..... Dynamically Stable Associative Learning Neural Network System. Licensing Specialist: John Fahner-Vihtelic.

07/903,253 ..... Methods for the Treatment of HIV [using a platelet activating factor (PAF) antagonist]. Licensing Specialist: Steven M. Ferguson.

07/906,716 ..... Method for Viral-Proofing a Protective Barrier. Licensing Specialist: John Fahner-Vihtelic.

07/915,581 ..... Apparatus and Method for Testing Condoms as Barriers to Virus Penetration. Licensing Specialist: John Fahner-Vihtelic.

07/917,213 ..... Inhibition of Retroviral Expression by Interferon-Induced Cellular Genes and Proteins. Licensing Specialist: Steven M. Ferguson.

07/920,130 ..... Amino Acid Sequencing Peptides and Methods for Their Use. Licensing Specialist: Carl C. Floyd.

07/921,992 ..... DNA Segment Encoding a Natural Killer Cell Receptor. Licensing Specialist: Marjorie D. Hunter.

07/929,630 ..... The Use of CD4+ Plasma Membrane Vesicles (CD4PMV) as a Therapeutic Agent for AIDS. Licensing Specialist: Steven M. Ferguson.
07/930,315 ..... Pharmaceutical Compositions Containing AZO Dye Derivatives and Method of Using Same. Licensing Specialist: Steven M. Ferguson.
07/937,097 ..... Ear Based Hearing Protector/Communication System. Licensing Specialist: John Fahner-Vihtelic.
07/943,248 ..... Expression of Active Human Protein C in Mammary Tissue of Transgenic Animals Using a Long WAP Promoter. Licensing Specialist: Carl C. Floyd.
07/946,813 ..... Method for Concentrating a Solute by Countercurrent Chromatography. Licensing Specialist: John Fahner-Vihtelic.
07/950,020 ..... [Efficient alternative] Methods for Detection of Mycoplasmas [in mammalian cell cultures]. Licensing Specialist: Carl C. Floyd.
07/952,277 ..... Eleven Highly Informative Microsatellite Repeat Polymorphic DNA Markers. Licensing Specialist: Carl C. Floyd.
07/952,800 ..... New Member of the Nuclear Hormone Receptor Superfamily and a cDNA Clone Thereof. Licensing Specialist: Carl C. Floyd.
07/958,870 ..... Carriers for Self-Administration of Lyophilized Medicament to Animals [An animal food product for self-administration of medication to animals]. Licensing Specialist: Carl C. Floyd.
07/963,328 ..... Supercoiled Minicircle DNA as a Unitary Promoter Vector. Licensing Specialist: Carl C. Floyd.
07/965,544 ..... The Use of Monoclonal Antibodies That Define Oncostatin M to Inhibit Growth of Kaposi's Sarcoma. Licensing Specialist: Carl C. Floyd.
07/966,244 ..... Improved Multi-Unit Analyser. Licensing Specialist: John Fahner-Vihtelic.
07/967,658 ..... An Immunological Detection Assay for Human Immunodeficiency Virus (HIV) Based on the HIV Nucleocapsid Protein, p7. Licensing Specialist: Steven M. Ferguson.
07/971,093 ..... A Method of Generation of Nested Deletions [Randomed-primed/anchored polymerase chain reaction, a novel method to generate clones from nested deletions]. Licensing Specialist: Carl C. Floyd.
07/974,055 ..... Detection of Isocyanates in Air by Use of Polar Organic Solvents. Licensing Specialist: John Fahner-Vihtelic.
07/998,231 ..... Compositions and Methods for Inhibiting Deoxyhypusine Synthase and the Growth of Cells. Licensing Specialist: Marjorie D. Hunter.
08/010,695 ..... Multifinger Topocatheter Tip for Multilumen Catheter for Angioplasty and Manipulation. Licensing Specialist: John Fahner-Vihtelic.
08/010,696 ..... Prosthetic Ligament Abrasion Tester. Licensing Specialist: John Fahner-Vihtelic.
08/011,183 ..... Antiviral Naphthoquinone Compounds, Compositions and Uses Thereof. Licensing Specialist: Steven M. Ferguson.
08/012,988 ..... Complementary DNA Encoding the Macrophage Inflammatory Protein-1 (MIP–1)/Rantes Receptor. Licensing Specialist: Carl C. Floyd.
08/015, 983 ..... Method and Apparatus for Localization and Spectroscopy of Objects Using Optical Frequency Modulation of Diffusive Waves. Licensing Specialist: John Fahner-Vihtelic.
08/017,062 ..... Recombinant Protein Bioreactor System. Licensing Specialist: John Fahner-Vihtelic.
08/020,462 ..... Screening Test that Identifies Individuals at Increased Risk for the Development of Lymphoid Leukemia and Lymphoma. Licensing Specialist: Marjorie D. Hunter.
08/020,952 ..... Oxy-Hydrogen Propelled Torpedo for Introducing Angioplasty Guide Wire. Licensing Specialist: John Fahner-Vihtelic.
08/021,767 ..... Light Sensor for Photo-Dynamic Therapy. Licensing Specialist: John Fahner-Vihtelic.
08/025,336 ..... Human Liver Epithelial Cell Line and Culture Media Therefor. Licensing Specialist: Steven M. Ferguson.
08/025,471 ..... Monoterpenes, Sesquiterpenes and Diterpenes as Cancer Therapy. Licensing Specialist: Marjorie D. Hunter.
08/026,939 ..... pH-Zone Refining Countercurrent Chromatography. Licensing Specialist: John Fahner-Vihtelic.
08/027,111 ..... Improved Cross-Axis Coil Planet Centrifuge for Separation of Biopolymers. Licensing Specialist: John Fahner-Vihtelic.
08/029,917 ..... cDNA Encoding the Rat D, Dopamine Receptor Linked to Adenylyl Cyclase Activation and Expression of the Receptor Protein in Plasmid-Transfected Cell Lines. Licensing Specialist: Arthur J. Cohn.
08/038,198 ..... Method of Exciting Laser Action and Delivering Laser Energy for Medical and Scientific Application. Licensing Specialist: John Fahner-Vihtelic.
08/038,344 ..... Cystathionase and Derivatives Thereof. Licensing Specialist: Marjorie D. Hunter.
08/039,613 ..... Dust Control Plenum for a Hand Sander. Licensing Specialist: John Fahner-Vihtelic.
E–030–92/1 ..... Handheld Spirometry with Improved Accuracy. Licensing Specialist: John Fahner-Vihtelic.
E–085–92/1 ..... An Anti HIV Protein, TAP 29 from Trichosanthes, DNA Coding Therefor and Therapeutic Uses Thereof. Licensing Specialist: Steven M. Ferguson.

Opportunity for a License: Assay for Inhibitors of HIV DNA Integration

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to license a novel *in vitro* assay system for identifying potential anti-retroviral (anti-HIV) drugs that target HIV integration and the HIV integrase protein. The lack of therapeutics in clinical development which affect this step in the HIV life cycle was noted recently in *Science*, Vol. 260, p. 1257 (May 28, 1993). This particular assay can be useful for determining whether viral integration into a host or target DNA is achieved or alternatively, whether integration is inhibited by a test drug. The assay uses HIV and MoLV recombinant integrase (IN) protein and synthetic oglionucleotides as substrates. Each step of the assay can be carried out in microtiter well plates enabling the easily automated simultaneous processing of large numbers of samples.

This new assay is believed to have significant advantages over current integration assays that are time consuming and utilize cells infected with HIV. For a more indepth discussion on this assay see: Craigie, et al., *Nucleic Acids Research*, Vol. 19, p. 2729, (March, 1991).

NIH is the assignee of the patent rights for this technology covered by U.S. Patent Application 08/038,182 (FWC of 07/572,186) and developed by Dr. Robert Craigie, Dr. Frederic Bushman and Dr. Kiyoshi Mizuuchi of the National Institute of Diabetes, Digestive and Kidney Diseases.

ADDRESSES: Licensing information and a copy of the U.S. patent application may be obtained by contacting Steven M. Ferguson, Technology Licensing Specialist, National Institutes of Health, Office of Technology Transfer, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed confidentiality agreement will be required to receive copies of the patent applications.

Dated: August 10, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–19903 Filed 8–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3590; FR–3409–N–03 and N–93–3591; FR–3408–N–03]

Fund Availability for Supportive Housing for Persons with Disabilities and Supportive Housing for the Elderly; Extensions for Cleveland Field Office and New York Regional Office

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of limited deadline extension.

SUMMARY: This Notice announces an extension of the application deadline for capital advances for the Supportive Housing for Persons With Disabilities and Supportive Housing for the Elderly programs for those applicants whose applications were submitted late to the Cleveland Field Office and the New York Regional Office as a result of conflicting instructions issued by those offices.

DATES: For affected applicants, the deadline date is being extended to August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen J. Havens, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, room 6112, 451 Seventh St. SW., Washington, DC 20410, telephone 202–708–2730. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On May 5, 1993, HUD published Notices of Fund Availability for the Supportive Housing for Persons with Disabilities (58 FR 26824) and Supportive Housing for the Elderly (58 FR 26843) programs. In these NOFAs, HUD established an application deadline of 4 p.m. local time on July 8, 1993 in each HUD field office. Late applications were received in the Cleveland Field Office and the New York Regional Office because of conflicting information given to potential applicants on the time of the deadline, erroneously stated at close of business local time (4:40 p.m. in Cleveland and 5 p.m. in New York).

In today's Notice, HUD is extending the application deadline only for those sponsors whose applications were rejected or not accepted as a result of reliance upon the later submission time in the Cleveland Field Office and New York Regional Office. For those applicants who qualify, the application deadline is extended until 4 p.m. local time on August 23, 1993.

An applicant may qualify for extension of the application deadline for capital advances under the Supportive Housing for Persons With Disabilities and Supportive Housing for the Elderly programs if:

(1) The applicant certifies that it relied upon the deadline times established by the Cleveland Field Office and the New York Regional Office rather than the published NOFA deadline; and

(2) The applicant certifies and the HUD office determines that an attempt was made to deliver or the applications were actually delivered to the Cleveland and New York offices prior to their stated deadlines (4:40 p.m. in Cleveland and 5 p.m. in New York).

If HUD approves the certification, the application will be accepted for review.

A qualified applicant may resubmit its previously submitted application as long as the application is received by the Cleveland or New York office by the extended deadline above. All submission requirements published in the May 5, 1993 NOFAs other than the date by which such applications must be received remain unaffected by this Notice.

Dated: August 12, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–19899 Filed 8–17–93; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3655; FR–3559–N–01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c)(5) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

DATES: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1824; TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989)) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from April 1, 1993 through June 30, 1993.

I. Mortgagees cited for failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA) and/or Quality Control Plan requirements for the origination of HUD-FHA insured mortgages.

Action: Letters of Reprimand

Cause: HUD monitoring reviews that disclosed noncompliance by the following mortgagees with the Department's reporting requirements under HMDA and/or failure to comply with HUD-FHA requirements for maintaining a Quality Control Plan.

Mortgagees issued a Letter of Reprimand for failure to meet HMDA reporting requirements and to maintain an adequate loan origination Quality Control Plan:

Westminister Mortgage Company, Houston, Texas; First American Mortgage of Texas, Austin, Texas; Aviles & Associates, Inc., Tampa, Florida; Suburban Financial Corporation, Leawood, Kansas; Allied Mortgage Capital Corporation, Houston, Texas; United Security Financial, Salt Lake City, Utah; First Choice Mortgage Corporation, Independence, Ohio; Johnston & Nelson, Inc., Phoenix, Arizona; Columbia Mortgage Incorporated, Phoenix, Arizona; Mortgage Center, Inc., Houston, Texas;

and United Mortgagee, Inc., Richmond, Virginia.

Mortgagees issued a Letter of Reprimand for failure to report HMDA data only:

Suburban Mortgage, Inc., Phoenix, Arizona; First Texan Mortgage Group, Houston, Texas; Republic Mortgage Corporation, Phoenix, Arizona; Adobe Financial Corporation, Mesa, Arizona; and Golden Financial Services, Houston, Texas.

Mortgagees issued a Letter of Reprimand for failure to maintain an adequate Quality Control Plan only:

Fox Mortgage Services, Inc., Houston, Texas; National Mortgage & Investment, Inc., Phoenix, Arizona; T.L. Hibbs Mortgage Corporation, Scottsdale, Arizona; and Peter Cook Mortgage, Tempe, Arizona.

II. Broekema & Associates, Inc. (formerly Bowest Corporation) La Jolla, California

Action: Settlement Agreement that includes reimbursement to the Department in the amount of $400,000.

Cause: A HUD monitoring review citing violations of HUD-FHA loan servicing requirements that included: failure to take prompt collection action to minimize the number of delinquent loans; failure to initiate foreclosure in a timely manner; and failure to comply with the requirements of the assignment program.

III. American Mortgages, Inc., Bethesda, Maryland

Action: Settlement Agreement that provides for implementation of a corrective plan of action to bring the company into compliance with HUD-FHA requirements for sound capital resources under the multifamily coinsurance program.

Cause: Failure to meet HUD-FHA sound capital resources requirements under the multifamily coinsurance program.

IV. Golden State Mortgage Company of Colorado, Englewood, Colorado

Action: Enforcement of Settlement Agreement that provides for indemnification to the Department in the amount of $71,716 for two improperly originated HUD-FHA insured mortgages.

Cause: Failure to comply with the terms and conditions of a Settlement Agreement with the Department.

V. Love Funding Corporation, Washington, D.C.

Action: Settlement Agreement that provides for indemnification to the Department in the amount of $237,000 for any claim loss in connection with an improperly originated coinsured multifamily project mortgage.

Cause: A HUD Office of Inspector General Audit Report that disclosed violations of HUD-FHA multifamily program requirements.

VI. Royal Thrift & Loan Company, Los Angeles, California

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with seven improperly originated Title I loans, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I program requirements that included: failure to verify borrowers' source of funds; failure to obtain detailed work descriptions and adequate estimates of repairs from borrowers; permitting a borrower to misuse loan proceeds; and use of misleading advertising regarding the Title I program.

VII. The Money Store, Union, New Jersey

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with two improperly originated Title I loans.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I program requirements that included: failure to obtain property appraisals which complied with the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board of the Appraisal Foundation; untimely property inspections; permitting borrowers to use loan proceeds for ineligible items; and failure to ensure that detailed descriptions and copies of work proposals or contracts were provided by borrowers.

VIII. County Mortgage Company, West Caldwell, New Jersey

Action: Settlement Agreement that includes indemnification to the Department in the amount of $311,508 in connection with 12 improperly originated HUD-FHA insured mortgages.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA program requirements including: overinsured mortgages; approving an ineligible loan for HUD-FHA mortgage insurance; submitting a defaulted loan for insurance endorsement; failure to verify the source and/or adequacy of mortgagors' funds; failure to perform a face-to-face interview with a mortgagor; and improper gift letters.

IX. First Mortgage Corporation, Tempe, Arizona

Action: Settlement Agreement that includes indemnification to HUD for claim losses in connection with seven HUD-FHA insured mortgages.

Cause: A HUD monitoring review which disclosed that the president of the company was a co-mortgagor on seven insured mortgages on which HUD-FHA paid insurance claims, and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

X. Standard Mortgage Corporation, New Orleans, Louisiana

Action: Settlement Agreement that includes reimbursement to the Department in the amount of $43,312 for property preservation and protection claims paid by HUD, and compliance with HUD-FHA requirements for property preservation and protection work on HUD-acquired single-family properties.

Cause: A HUD Office of Inspector General investigation report citing violations of HUD-FHA program requirements and prudent business practices in property preservation and protection work during the period 1983 through 1987. The Report alleged that an officer of the company received improper payments for steering preservation work to another company formed for the purpose of performing the work for Standard Mortgage.

XI. Delmar Financial Company, Clayton, Missouri

Action: Settlement Agreement that includes indemnification to the Department in the amount of $30,725 in connection with two improperly originated HUD-FHA insured mortgages, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review citing the company for failure to verify borrowers' source of funds to close the transactions in connection with two insured mortgages.

XII. United Southern Mortgage Company, Charlottesville, Virginia

Action: Proposed Settlement Agreement that would include indemnification to the Department for an improperly originated mortgage and noncompliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed an overinsured mortgage, failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and failure to maintain an adequate Quality Control Plan.

XIII. Venture Mortgage, Inc., Marietta, Georgia

Action: Proposed Settlement Agreement that would include indemnification to the Department for one improperly originated mortgage, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA requirements including: submitting a defaulted loan for mortgage insurance endorsement; failure to maintain an adequate Quality Control Plan; and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

XIV. S&L Financial Service Corporation, Clearwater, Florida

Action: Proposed Settlement Agreement that would provide for indemnification to the Department for one improperly originated mortgage, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violation of HUD-FHA program requirements including failure to ensure that an investor mortgagor did not have a financial interest in more than seven contiguous rental properties; and failure to maintain an adequate Quality Control Plan.

XV. Sound Mortgage, Inc., Seattle, Washington

Action: Settlement Agreement that provides for indemnification to the Department in the amount of $48,258 for one improperly originated mortgage; and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that cited violations of HUD-FHA requirements including: failure to ensure that a borrower made the minimum required investment in the property; and failure to maintain an adequate Quality Control Plan.

XVI. Hallmark Mortgage Services, Inc., Tampa, Florida

Action: Settlement Agreement that includes indemnification to the Department in the amount of $42,414 for one improperly originated mortgage, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review citing violations of HUD-FHA requirements that included: permitting a strawbuyer to obtain mortgage insurance; and failure to maintain an adequate Quality Control Plan.

XVII. Interwest Mortgage Corporation, Salt Lake City, Utah

Action: Letter of Reprimand

Cause: A HUD monitoring review that cited the company for failure to maintain an adequate Quality Control Plan and to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

Dated: August 5, 1993

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93-19972 Filed 8-17-93; 8:45am]

BILLING CODE 4210-27-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-03-4320-01]

Meeting of the Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 16, 1993. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Year 1993 and 1994,

2. Proposed Allotment Management Plans, and

3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 a.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 9, 1993.

Rodney Harris,

District Manager

[FR Doc. 93-19895 Filed 8-17-93; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-2300-02; GP3-342; OR-44611]

Orders Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 3,040 acres of acquired land to surface entry, and 1,720 acres to mining and mineral leasing. The mineral estate in 40 acres is not in Federal ownership and the 1,280-acre balance is already open to mining and mineral leasing.

EFFECTIVE DATE: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 32 S., R. 32¾ E.,
Sec. 2, SW¼ and W½SE¼;
Sec. 3, S½;
Sec. 4, E½SE¼;
Sec. 9, E½NE¼ and SE¼;
Sec. 10;
Sec. 11, W½E½, W½, and SE¼SE¼;
Sec. 14, W½E½ and W½;
Sec. 15, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 23, NW¼NE¼.

The area described contains 3,040 acres in Harney County.

2. At 8:30 a.m., on September 23, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on September 23, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on September 23, 1993, the following described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal

law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 32 S., R. 32¾ E.,
Sec. 2, SW¼ and W½SE¼;
Sec. 3, S½;
Sec. 4, E½SE¼;
Sec. 9, E½NE¼;
Sec. 10, N½;
Sec. 11, SW¼NE¼, NW¼, NE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, W½NE¼, NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 1,720 acres in Harney County.

4. At 8:30 a.m., on September 23, 1993, the lands described in paragraph 3 will be opened to applications and offers under the mineral leasing laws.

Dated: August 9, 1993.

Robert D. DeViney,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–19897 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4210–06; GP3–343; OR–45862]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 160 acres of public lands out of Federal ownership. This action will also open 120 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, a Deed has been issued transferring 160 acres in Yamhill County, Oregon from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 3 S., R. 7 W.,
Sec. 8, S½SW¼ and SW¼SE¼.

The area described contains 120 acres in Tillamook County.

At 8:30 a.m., on September 23, 1993, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on September 23, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on September 23, 1993, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on September 23, 1993, the land will be opened to applications and offers under the mineral leasing laws.

Dated: August 9, 1993.

Robert D. DeViney,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–19904 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–33–M

[ES–962–4950–10–4041; ES–046154, Group 92, Arkansas]

Filing of Plat of the Dependent Resurvey, Subdivision of Sections and the Survey of the Center Line of State Highway No. 43 in Sections 31 and 32

The plat of the dependent resurvey of the south boundary (Standard Parallel North); a portion of the subdivisional lines; the survey of the subdivision of certain sections and the survey of the center line (as built) of Arkansas State Highway No. 43, in sections 31 and 32, Township 17 North, Range 22 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19913 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–4950–10–4513: ES–046166, Group 192, Florida]

Filing of Plat of the Dependent Resurvey, Subdivision of Section 36 and Metes-and-Bounds Survey

The plat of the dependent resurvey of a portion of the east boundary; a portion of the subdivisional lines; the survey of the subdivision of section 36, and the metes-and-bounds survey of certain parcels in section 36, Township 50 South, Range 41 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19914 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–4950–10–4513; ES–046167, Group 192, Florida]

Filing of Plat of the Dependent Resurvey, Subdivision of Sections 1 and 2 and Metes-and-Bounds Survey

The plat of the dependent resurvey of portions of the east and north boundaries, a portion of the subdivisional lines; and the survey of the subdivision of sections 1 and 2, and the metes-and-bounds survey of certain parcels in sections 1 and 2, Township 51 South, Range 41 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93-19915 Filed 8-17-93; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-060-4950-10-4489; ES-046152, Group 31, Missouri]

Filing of Plat of Dependent Resurvey and the Survey of the Cuivre Island Acquisition Boundary

The plat of the dependent resurvey of a portion of the subdivisional lines, and U.S. Survey No. 3288 (Cuivre Island) and the metes-and-bounds survey of the Cuivre Island acquisition boundary, Township 48 North, Range 3 East, Fifth Principal Meridian, Missouri, will be officially field in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93-19912 Filed 8-17-93; 8:45 am]

BILLING CODE 4310-GJ-M

National Park Service

National Register of Historic Places; NHL Boundaries

August 12, 1993.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (Phone: 202-343-9536).

Lolo Trail National Historic Landmark, Idaho County, Idaho, and Missoula County, Montana, designated a landmark on October 10, 1960.

Beth Boland,

Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.

[FR Doc. 93-19963 Filed 8-17-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-319-332, 334, 336-342, 344, 347-353 and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final)

Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject countervailing duty investigations, the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products [2] that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products [1]
Belgium	701-TA-319			
Brazil	701-TA-320			
France				701-TA-348 [2]
Germany	701-TA-322 [3]		701-TA-340 [4]	701-TA-349 [5]
Korea			701-TA-342 [6]	701-TA-350 [5]
Mexico	701-TA-325			
Spain	701-TA-326 [7]			
Sweden	701-TA-327			
United Kingdom	701-TA-328 [3]			

[1] Other than clad plate.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The products covered by the subject investigations (cut-to-length plate, hot-rolled products, cold-rolled products, and corrosion-resistant products) are provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, 7212.60, 7214, 7215, and 7217 of the Harmonized Tariff Schedule of the United States. Clad plate is defined as carbon steel plate that has been covered with a metallic coating (such as nickel, copper, stainless steel, or titanium) on one or both sides by a process that forms a physical bond between the cladding material and the carbon steel substrate. For a complete description of the products, see the Department of Commerce's final antidumping and countervailing duty determinations (58 FR 37062, July 9, 1993).

[2] Chairman Newquist and Commissioner Brunsdale dissenting.
[3] Chairman Newquist, Commissioner Brunsdale, and Commissioner Crawford dissenting.
[4] Commissioners Brunsdale and Crawford dissenting.
[5] Commissioner Brunsdale dissenting.
[6] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting.
[7] The Commission also determines, pursuant to section 705(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

The Commission determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion resistant products [1]
Austria			701–TA–336.	
Belgium		701–TA–329	701–TA–337 [2].	
Brazil		701–TA–330 [3]	701–TA–338 [2]	701–TA–347 [4]
France	701–TA–321 [4]	701–TA–331 [3]	701–TA–339 [2].	
Germany		701–TA–332 [3].		
Italy	701–TA–323 [5]		701–TA–341 [6].	
Korea	701–TA–324	701–TA–334 [3].		
Mexico				701–TA–351 [7]
New Zealand				701–TA–352 [4]
Spain			701–TA–344 [4].	
Sweden				701–TA–353 [4]

[1] Vice Chairman Watson and Commissioners Rohr, Brunsdale, Crawford, and Nuzum found two separate industries within this category; clad plate and corrosion-resistant products other than clad plate, and with regard to clad plate made negative determinations with regard to imports from France. (To the extent that any such determination is deemed necessary, the Commission would have made negative determinations with respect to subsidized imports from all other subject countries because there were no imports from those countries during the period examined.) Chairman Newquist did not find a separate industry producing clad plate; therefore, his determinations on clad plate correspond to his determinations on other corrosion-resistant products.
[2] Chairman Newquist and Commissioner Nuzum dissenting.
[3] Chairman Newquist dissenting.
[4] Commissioner Nuzum dissenting.
[5] Vice Chairman Watson not participating.
[6] Commissioner Nuzum dissenting, Vice Chairman Watson not participating.
[7] Commissioners Rohr and Nuzum dissenting.

On the basis of the record developed in the subject antidumping investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been sold in the United States at less than fair value (LTFV):

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products [1]
Australia				731–TA–612 [2]
Belgium	731–TA–573			
Brazil	731–TA–574			
Canada	731–TA–575			731–TA–614 [2]
Finland	731–TA–576			
France				731–TA–615 [3]
Germany	731–TA–578 [4]		731–TA–604 [5]	731–TA–616 [2]
Japan				731–TA–617 [2 6]
Korea			731–TA–607 [7]	731–TA–618 [2]
Mexico	731–TA–582			
Netherlands			731–TA–608 [7]	
Poland	731–TA–583 [4 6]			
Romania	731–TA–584 [4 6]			
Spain	731–TA–585 [6]			
Sweden	731–TA–586			
United Kingdom	731–TA–587 [4]			

[1] Other than clad plate.
[2] Commissioner Brunsdale dissenting.
[3] Chairman Newquist and Commissioner Brunsdale dissenting.
[4] Chairman Newquist, Commissioner Brunsdale, and Commissioner Crawford dissenting.
[5] Commissioners Brunsdale and Crawford dissenting.

[6] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.
[7] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting.

The Commission determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been sold at LTFV:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products [1]
Argentina			731-TA-597	
Austria			731-TA-599	
Belgium		731-TA-588	731-TA-600 [2]	
Brazil		731-TA-589 [3]	731-TA-601 [2]	731-TA-613 [4]
Canada		731-TA-590 [5]	731-TA-602 [5]	
France	731-TA-577 [4]	731-TA-591 [3]	731-TA-603 [2]	
Germany		731-TA-592 [3]		
Italy	731-TA-579 [6]		731-TA-605 [7]	
Japan		731-TA-594 [3]	731-TA-606 [3]	
Korea	731-TA-581	731-TA-595 [3]		
Mexico				731-TA-619 [8]
Netherlands		731-TA-596 [5]		
Spain			731-TA-609 [4]	

[1] Vice Chairman Watson and Commissioners Rohr, Brunsdale, Crawford, and Nuzum found two separate industries within this category: clad plate and corrosion-resistant products other than clad plate, and with regard to clad plate made negative determinations with regard to imports from France and Japan. (To the extent that any such determination is deemed necessary, the Commission would have made negative determinations with respect to LTFV imports from all other subject countries because there were no imports from those countries during the period examined.) Chairman Newquist did not find a separate industry producing clad plate; therefore, his determinations on clad plate correspond to his determinations on other corrosion-resistant products.
[2] Chairman Newquist and Commissioner Nuzum dissenting.
[3] Chairman Newquist dissenting.
[4] Commissioner Nuzum dissenting.
[5] Chairman Newquist and Commissioner Rohr dissenting.
[6] Vice Chairman Watson not participating.
[7] Commissioner Nuzum dissenting, Vice Chairman Watson not participating.
[8] Commissioners Rohr and Nuzum dissenting.

Background

The Commission instituted these investigations effective December 7, 1992, and February 4, 1993, following preliminary determinations by Commerce that imports of certain flat-rolled carbon steel products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and/or were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of December 18, 1992 and February 18, 1993 (57 FR 60247; 58 FR 8974). The hearing was held in Washington, DC, on June 29 and 30, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 9, 1993. The views of the Commission are contained in USITC Publication 2664 (August 1993), entitled "Certain Flat-rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom: Investigations Nos. 701-TA-319-332, 334, 336-342, 344, 347-353, and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final)."

By order of the Commission.

Issued: August 11, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-19988 Filed 8-17-93; 8:45 am]

BILLING CODE 7020-02-P

International Trade Commission

In the Matter of: Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof. Investigation No. 337-TA-348.

Notice of Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Kent R. Stevens, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Jeffrey R. Whieldon, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: August 9, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93-19987 Filed 8-17-93; 8:45am]

BILLING CODE 7020-02-P

Notice of Decision not to Review and Initial Determination Granting Joint Motion to Terminate Investigation with Respect to Respondent Seagate Technology, Inc. on the Basis of a Settlement Agreement

In the Matter of Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives. Investigation No. 337–TA–350.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 53) issued on July 9, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Seagate Technology, Inc. ("Seagate") to terminate the investigation with respect to Seagate on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On June 15, 1993, Aine and Seagate filed a joint motion to terminate the investigation with respect to Seagate on the basis of a settlement agreement. On July 9, 1993, the ALJ issued an ID granting the joint motion and terminating the investigation as to Seagate. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: August 10, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19990 Filed 8–17–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–636–638 (Final)]

Stainless Steel Wire Rod From Brazil, France, and India

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–636–638 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, France, and/or India of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of stainless steel wire rod from Brazil, France, and India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on December 30, 1992, by Al Tech Specialty Steel Corp.; Armco Stainless & Alloy Products, Inc.; Carpenter Technology Corp.; Republic Engineered Steels, Inc.; Talley Metals Technology, Inc.; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report for these investigations will be placed in the nonpublic record on September 30, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations

beginning at 9:30 a.m. on October 14, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 7, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 12, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is October 7, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 22, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 22, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: August 11, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19989 Filed 8–17–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–337 (Sub.–No. 2X), Dakota, Minnesota & Eastern Railroad Corporation—Abandonment exemption—in Brown County, South Dakota. EA available 8/10/93.

AB–391 (Sub.–No. 2X), Red River Valley & Western Railroad Company—Abandonment Exemptiom—in Cass and Barnes Counties, ND. EA available 8/13/93.

AB–55 (Sub.–No. 471X), CSX Transportation, Inc.—Abandonment in Lucas County, OH. EA available 8/13/93.

AB–167 (Sub.–No. 1118X), Consolidated Rail Corporation—Abandonment in Chester County, PA. EA available 8/13/93.

AB–167 (Sub.–No. 1124X), Consolidated rail Corporation—Abandonment in Chester County, PA. EA available 8/13/93.

Comments on the following assessment are due 30 days after the date of availability.

AB–362 (Sub.–No. 2X), Texas and Oklahoma RR. Co.—Exempt Abandonment—Between the Oklahoma-Texas State Line and Orient Junction (Sweetwater), TX. EA available 8/6/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19952 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Resource Conservation and Recovery Act

This supplemental notice is being provided concerning the lodging of a proposed Consent Decree in *United States of America* v. *General Chemical Corp., et al.*, Civil Action No. 93–10923T. The prior notice appeared in the **Federal Register** on May 17, 1993 in volume 58, number 93, at page 28,895. Notice of the lodging of the above-referenced Consent Decree with the United States District Court for the District of Massachusetts is being provided consistent with 28 CFR 50.7, 42 U.S.C. 6973(d) and 42 U.S.C. 9622(d). The United States' complaint, filed at the same time as the consent decree, seeks recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and under the Resource Conservation and Recovery Act (RCRA) against the General Chemical Corp. and other entities responsible for hazardous substances and hazardous wastes found at the Silresim Superfund Site in Lowell, Massachusetts, a National Priorities List facility. The consent decree provides that the defendants will pay $40,989,278 to the United States so that the U.S. Environmental Protection Agency (EPA) can perform the response actions contained in the Record of Decision (ROD) issued by EPA. The remedial work will include excavation and treatment of contaminated soils and pumping and treating the contaminated groundwater.

The names of each of the settling parties with whom the United States and the Commonwealth of Massachusetts are resolving their claims are as follows: General Chemical Corporation; Worcester Stamp Co.; Adcole Corporation; A.E. Burgess Leather Company, Inc.; Aerospace Metals Company, Inc. (for Suisman and Blumenthal, Inc.); Akzona Chemicals Inc. (for Brand-Rex Company); Alden Research Laboratory; Alfa-Laval Food & Dairy Group, Inc. (for Contherm Division, formerly Contherm Corporation); Allen-Bradley Company.

Inc. (for Electronics Corp. of America); Allied-Signal Inc. (for Allied Chemical Corporation and The Warner & Swasey Company); Altron Incorporated; American Cyanamid Company; American Finish & Chemical Company; American Optical Corporation; American Power Devices; American Telephone & Telegraph Company (for Western Electric Company, Incorporated); Anderson Power Products Company Inc.; Anson Incorporated; Arlon Inc. (for Keene Corporation); Arrow Automotive Industries, Inc.; ARA Services, Inc. (for Smith's Transfer Corporation); Artisan Industries, Inc.; Augat Inc.; Ausimont USA, Inc. (for Pandel-Bradford, Inc. and Styletek, Inc.); Bacon Industries, Inc.; The Badger Company, Inc.; Barclay Chemical Company, Inc.; BASF Corporation (for BASF Systems Corporation); Bellofram Corporation; The B.F. Goodrich Company; Black & Decker (U.S.) Inc.; BLH Electronics, Inc.; Borden, Inc. (for Chemical Division, Columbus Coated Fabrics Division, and Prince Packaging); Borden & Remington Corp.; Boston City Hospital; Boston Edison Company; Boston Insulated Wire & Cable Company, Inc. (for BIW Cable Systems, Inc.); B.P. Chemicals Inc. (for Vistron Company, Inc.); Bull HN Information Systems, Inc. (for Honeywell Information Systems Inc.); Capitol Circuits Corp.; Capitol—EMI Music, Inc. (for Capitol Magnetic Products); Capitol Molding Corp.; Cerberus Technologies, Inc. (for Arrowhead Enterprises, Inc.); Ceridian Corporation (for Micro-Bit Corporation); CBS Inc. (for Columbia Magnetics); C.F. Jameson & Company, Inc.; Champion International Corporation (for St. Regis Paper Company); Chelsea Industries, Inc. (for Pyrotex Corp.); Chemical Waste Management, Inc. (for Interex Corporation); Chemineer (for Kenics Corp.); Ciba-Geigy Corporation; Circuit-Wise, Inc.; Clean Way Industries, Inc.; Columbia Equipment Co., Inc.; Copolymer Rubber & Chemical Corporation; Coppus Engineering Corporation; Corning, Inc. (for Components, Incorporated a/k/a Corning Components); Coulter Systems Corporation (for Coulter Information Systems, Inc.); Craig Systems Corp.; Data General Corporation; Datapoint Corporation (for Inforex, Inc.); David Clark Company Incorporated; Delta Electronics Mfg. Corp.; Di-An Controls, Inc.; Digital Equipment Corporation; The Dow Chemical Company; Dow Corning Corporation; Dynatech Corporation; Eastman Kodak Company; ECC Corporation; EG&G, Inc.; EG&G Watertown, Inc. (for Torque Systems Incorporated); E.I. du Pont de Nemours and Company (also for New England Nuclear); Ekco Group, Inc. (for Centronics Data Computer Corp.); Electro Signal Lab, Inc.; Electronic Products, Inc.; Eljer Manufacturing, Inc. (for Simonds Saw & Steel Co. and Wallace Murray Corporation); Emerson & Cuming, Inc. (for Amicon Corp.); Emhart Industries, Inc. (for Bostik Division, USM Corporation and Emhart Corporation); Engelhard Corporation; Ercon, Inc.; Esselte Pendaflex Corporation (for Dymo Graphic Systems Inc. and Dymo Retail Systems Inc.); Essex County Gas Company (for Haverhill Gas Co.); Fairchild Semiconductor Corporation (for Fairchild Camera and Instrument Corporation); Fenwal Incorporated; Ferrofluidics Corporation; Figgie International Inc. (for Myer World a/k/a Meyer/ World Packaging Manufacturing Company); G & R Screw Machine Products, Inc.; GAF Corporation; GAR–DOC, Inc.; General Electric Company, Inc. (also for Automated Systems Division, RCA Corporation); General Latex and Chemical Corporation; General Signal Corporation (for TAU-Tron, Inc.); Geochem, Inc.; George Demarais; George S. Carrington Company, Inc. (for George S. Carrington Division, Fox Valley Corporation); Germanium Power Devices Corp.; The Gillette Company; GKN North America Incorporated (for Presmet Corporation); Gordett Enterprises, Inc. (for National Heel Company, Inc.); Gould Inc.; Grimes Aerospace Company (for Cambridge Thermionics, Inc., Conductor Lab, Inc., and Consolidated Metal Finish, Inc.); GTE Products Corporation (for GTE Sylvania Incorporated); Haartz-Mason, Inc.; HADCO Corporation (for HADCO Printed Circuits Company); Halliburton Industrial Services, Inc. (for Halliburton Services Divison, Halliburton Company); Hamblet & Hayes Co.; Hartford Hospital; Hartford Bearing Co. (for Hartford Precision Products Company); Hermetite Corp.; Hewlett-Packard Company, Inc.; Hitchiner Manufacturing Co., Inc.; Hoechst Celanese Corporation (for Foster Grant Co., Inc.); Honeywell Inc. (also for Industrial Solid State Controls, Inc.); Hoya Micro Mask, Inc. (for SEMPRO Company, Inc.); Hurley Packaging Corporation; Hybrid Systems Corporation; IBM Corporation; ICI Americas Inc., now Zeneca Inc. (for United Finish Co., Inc.); Icon Corporation; Inco United States, Inc. (for Exide Safety Systems Division, ESB Inc.); Ionics, Incorporated; ITT Semiconductors Div., ITT Corporation; JANCO, Inc. (for JANCO Sales, Inc.); John Danais Co., Inc.; Keyes Fibre Company (for Madico Inc.); Koch Membrane Systems, Inc. (for ABCOR, Inc.); K.W. Thompson Tool Company, Inc.; Lepage's, Inc.; Litton Industries, Inc. (for Electrodyne and Reed Rolled Thread); Litton Systems, Inc. (for ITEK Optical Systems Divison, formerly ITEK Corporation); Lockheed Sanders, Inc. (for Sanders Associates, Inc.); Loctite Luminescent Systems, Inc. (for Atkins & Merrill); Loral Corporation (for GHZ Devices Company, Inc.); Lowell Shoe, Inc.; M/A–COM Omni Spectra, Inc. (for Omni Spectra, Inc.); Marisol, Inc.; Mason and Dixon Tank Lines, Inc.; Mass Disposal Service Corp.; McCord Winn Division, Textron, Inc. (for J.H. Winn Inc.); Miles, Inc. (for Compugraphic Corporation); Millipore Corporation (also for Waters Associates, Inc.); MKS Instruments, Inc.; Mobil Oil Corporation (for Mobil—Carteret and Mobil Solar Energy Corporation); Monsanto Company, Inc. (for Monsanto Industrial Chemicals Company); Morton International, Inc. (for Ventron Division); Nashua Corporation; NAVTEC, Inc.; NCR Corporation (for National Cash Register Company); Neles-Jamesbury, Inc. (for Jamesbury Corp.); New England Medical Center Hospitals, Inc.; New IMLAC Corporation (for IMLAC Corporation); NI Industries, Inc. (for Norris Industries, Inc.); Northeast Laboratory Machine Company, Inc.; Pacific Scientific Company (for Sigma Instruments, Inc.); Package Chemical Co., Inc.; Parker-Hannifin Corporation (for W.H. Nichols); Parker's Express, Inc.; Parlex Corporation; Peirce Bros. Oil Service, Inc.; Pervel Industries, Inc.; Pfizer, Inc.; Polaroid Corporation; Quality Coatings, Inc. (for Quality Enamel); Rathbone Corporation (for Carlisle Screw Corp.); Raymark Industries, Inc. (for Raybestos-Manhattan, Inc.); Raytheon Company; Rosenthal North America, Inc. (for Metalized Ceramics Corporation); Rospatch Orlando, Inc. (for Infrared Industries, Inc.); Roy Bros., Inc.; Rule Industries, Inc.; Scott Paper Company (for Scott Graphics, Inc.); S.D. Warren Company; Searle & Co. (for Searle Labs); Semicon, Inc.; Semiconductor Processing Co., Inc.; Sequa Corporation (for Kollsman Instrument Company); The Sibley Co.; Silicon Transistor Corporation (also for KSC Semiconductor Corp.); Simplex Time Recorder Co.; Simplex Wire & Cable Company; Spelco, Inc. (for Sprague Electric Company); Spire Corporation (for Simulation Physics, Inc.); The Stanley Works; Strem Chemicals, Inc.; Suffolk Services, Inc.; Suffolk

University; Teledyne Components Company, Inc. (for Teledyne Philbrick); Teradyne, Inc.; Texas Instruments Incorporated; Textron Defense Systems (for Avco Everett Research Laboratory, Inc.); Textron Inc. (for Bridgeport Machines and Davidson Interior Trim, formerly Davidson Rubber Company); TNCO, Inc.; Transcom Manufacturing Company Inc. (for Transcom Electronic); Transitron Electronics Trust (for Transitron Electronic Corp.); Tyco Engineered Systems, Inc. Division, Tyco Laboratories, Inc. (for Multi-Circuits); Unitrode Corporation (for Unitrode Computer Products Corporation); University System of New Hampshire; Van Waters & Rogers, Ltd. (for McArthur Chemical Company, Inc.); Varian Associates, Inc.; Wang Laboratories, Inc.; Weymouth Art Leather Company; White Consolidated Industries, Inc. (for Jerguson Gage & Valve Co. Division); Wickes Manufacturing Company (for Gamewell Systems Corporation); Wingaersheek Turbine Divison, Victor Equipment Company; Worcester Controls Corporation; Worthen Industries (for UPACO Adhesives Inc.); W.R. Grace & Co.—Conn.; W.W. & C.F. Tucker, Inc.; Department of the Air Force—Hanscom Air Force Base; Department of the Navy—Portsmouth Naval Shipyard.

The Department of Justice will extend the comment period for thirty (30) days from the date of this publication for comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Chemical Corp. et al.*, D.J. Ref. 90–11–2–774.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Federal Building, U.S. Post and Courthouse, Boston, MA 02109 and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, MA 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost, exclusive of the costs of copying the appendix) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–19906 Filed 8–17–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PowerOpen Association, Inc.

Notice is hereby given that, on July 12, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: Harris Computer, Ft. Lauderdale, FL; Tadpole Technology PLC, Cambridge, United Kingdom; David Strom, Inc., Port Washington, NY; Firesign Computer Co., San Franciso, CA; Dolphin Server Technology AS, Oslo, Norway; Enabling Technologies Group, Inc., Dunwoody, GA; System Group Inc., South Bend, IN; CCT, Southbury, CT; B&E Software GmbH, Hilden, Germany; MacroTek GmbH, Dortmund, Germany; New Media Inc., Cleveland, OH; Worldata Corp., Bolton, MA; PBS Professional Business, Klef, Germany; Helios Software, Hanover, Germany; Informix Software, Inc., Menlo Park, CA; UniWare Computer GmbH, Berlin, Germany; Formation, Inc., Moorestown, NJ; JSB Computer Limited, Cheshire, United Kingdom; Mosaic Multisoft Corp., San Diego, CA; Universal Algorithms, Inc., Portland, OR; BAeSEMA, New Malden, Surrey, United Kingdom; Locus Company, Burlington, MA; Cygnus Support, Mountain View, CA; Lucid, Inc., Menlo Park, CA; Radstone Technology Corp., Montvale, NJ; Six Schwarz Und Kissner GmbH, Echterdingen, Germany; Mount Bonnell, Inc., Austin, TX; MacLaboratory Inc., Devon, PA; BGS Systems, Waltham, MA; Center for High Performance, Marlborough, MA; E–Systems, Dallas, TX; Beckman Software Engineering, Ventura, CA; Lightwell Co., Ltd, Tokyo, Japan; Must Software International, Norwalk, CT; ACSC, Inc., Los Angeles, CA; Applix, Inc., Westboro, MA; Object Technology Inc., Phoenix, AZ; and MicroAge, Tempe, AZ.

On April 21, 1993, PowerOpen filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 22, 1993 (58 FR 33954).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19907 Filed 8–17–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of an expedited clearance of an information collection that will affect the public. Interested persons are invited to submit comments by September 13, 1993. The survey instrument is printed with this notice. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1994 Survey of Scientific and Engineering Research Facilities.

Affected Public: Non-profit institutions.

Respondents/Reporting Burden: 415 respondents; 23 hours per response.

Abstract: This survey of adacemic research (1994) will update data from previous biennial surveys in 1988 and 1990, 1992 and will document trends in facilities amount, condition, adequacy, cost and needs. Findings will be used to inform institutions, state and Federal facilities programs and policy.

Dated: August 13, 1993.

Herman G. Fleming,

Reports Clearance Officer.

Attachment 3—1994 Survey of Scientific and Engineering Research Facilities at Colleges and Universities

National Science Foundation, National Institutes of Health

Acting out of concerns raised by the academic community, Congress directed the National Science Foundation (NSF) to collect and analyze data about research facilities at colleges and universities and to report to Congress every two years. This survey is in response to that requirement under authorization of the National Science Foundation Act of 1950, as amended.

For this survey, we're asking you to respond to 12 items in these five categories:

- amount of space in your institution,
- amount and condition of research space in your institution,
- costs of renovation/repair and new construction of research space completed or begun,
- amount of new space needed for current research projects, and
- miscellaneous topics.

We will use the information that you provide us for a report that gives a broad, quantitative picture of

- the cost, availability, and condition of existing research facilities; and
- the current capital spending by colleges and universities, sources of funding, and plans for future construction and renovation of research facilities.

The report is used by Congress, many higher education associations, and university and college administrations to help make policy decisions. NSF and NIH do not use or allow other agencies to use the information from this survey to affect individual institutional funding.

The president or chancellor of your institution named the individual on the label below to coordinate data collection for this survey. Please correct any wrong information on the label.

Label

If someone other than the person listed above coordinates the data collection, please tells us whom we may call if we have questions about the information.

Name _____

Title/Department _____

Telephone no. and ext. _____

Completing this survey requires an average of 30 hours. If you wish to comment on this burden, contact Herman Fleming, Reports Clearance Officer, NSF, at 202–357–9520, and the Office of Management and Budget, Paperwork Reduction Project (OMB Number 3145–0101), Washington, DC 20503.

Return the completed survey by January 6, 1994, to: The Gallup Organization, One Church Street, Suite 900, Rockville, MD 20850.

If you have any questions or comments about the survey, contact Dr. Ann Lanier of NSF at (202) 634–4035 or Marlene Battelle of The Gallup Organization at 1–800–288–9439.

Definitions and Guidelines

Use the definitions and guidelines in this section as you fill out the survey.

Definitions

Research—Refers to all research and development activities of an institution that are budgeted and accounted for. Research can be funded by the federal government, state governments, foundations, corporations, universities, or other sources.

Research Facilities—Refers to the physical plant in which research activities take place, including

- research laboratories;
- controlled environment space, such as clean or white rooms;
- technical support space, such as carpentry and machine shops;
- facilities for laboratory animals, such as animal production colonies, holding rooms, isolation and germ-free rooms;
- faculty or staff offices, to the extent that they are used for research;
- department libraries, to the extent that they are used for research; and
- fixed (built-in) equipment such as fume hoods and benches.

Does not include:

- Non-fixed equipment costing less than $1 million (these data are collected in a separate NSF/NIH survey);
- facilities that have been designated as federally funded research and development centers, such as Brookhaven, Kitt Peak, Fermi, etc.; or
- facilities that are used by faculty but are not administered by the institution, such as research space at VA or other non-university hospitals.

Research Space—Refers to the net assignable square feet (NASF) of space in facilities within which research activities take place.

Repair/Renovation—Refers to the fixing up of facilities in deteriorated condition, capital improvements on facilities, conversion of facilities, and so on.

New Construction—Refers to additions to an existing building or construction of a new building.

Science and Engineering (S&E) Fields—Because every institution has its own way of classifying fields of study, for consistency please use the cross reference (see page 16) to classify areas of study at your institution. The cross reference identifies the departments that are included within each of the science and engineering (S&E) fields used in this survey. The cross reference is based on the classification of instructional programs used by the National Center for Educational Statistics.

If you are unable to separate data for academic programs, report the combined data under "Other Sciences, not elsewhere classified" and list the fields that those data represent.

For this survey, Science and Engineering (S&E) Fields includes

- Engineering
- Physical Sciences
- Environmental Sciences
- Mathematics
- Computer Sciences
- Agricultural Sciences
- Biological Sciences
- Medical Sciences
- Psychology
- Social Sciences
- Other Sciences, not elsewhere classified

It does not include:

- law, business administration/management (except economics), humanities, history, the arts, or education (except educational psychology).

Guidelines

For multi-purpose space—Prorate the net assignable square feet (NASF) to reflect the proportion of use devoted to research activity.

For example, if a room or building is devoted to research activity approximately 40% of the time, count 40% of the NASF as research space.

For shared space—Prorate the NASF to reflect the proportion of use devoted to each field.

For example, if a room or building is devoted equally to research activity in Computer Science and Mathematics, count 50% of the NASF as research space for Computer Sciences and 50% for Mathematics.

For multi-purpose facilities—Prorate the cost of repair/renovation and new construction projects to reflect the proportion of research space involved.

For multi-year projects—Allocate the entire project completion cost (planning, construction, fixed equipment) to the fiscal year in which construction actually began or is expected to begin.

Amount of Space in Your Facility

Item 1a. Instructional and Research Space

To determine the current amount of instructional and research space in your facilities, include

- all space assigned to the fields or to the departments within fields, such as departmental and faculty offices, conference and seminar rooms, research space, and instructional space; and
- space leased by your institution.

If the information is not available, you may estimate the amounts.

1. In Column 1 on the next page, fill in the current amount of net assig nable square feet (NASF) devoted to *instruction and research* for each field on department listed.

2. Then near the bottom of Column 1, fill in the current *total* NASF devoted to instruction and research for

- science and engineering (S&E) facilities,
- non-science facilities, and
- all S&E and all non-science facilities.

3. In Column 2, fill in the current amount of NASF devoted to *research only* for each S&E field or department listed.

4. Then at the bottom of Column 2, fill in the *total* NASF devoted to research in all S&E fields.

Note for institutions using a facilities inventory system based on either NCES, NACUBO, or WICHE classifications:

You may define the universe of total NASF devoted to instruction and research as the space that is assigned to functional category 1 (Instruction) and to functional category 2 (Research).

Please refer to pages 95–96 in Appendix 2 of *Postsecondary Education Facilities Inventory and Classification Manual*, U.S. Department of Education, Office of Educational Research and Improvement, NCES 92–165. The definitions in that book are adapted from the 1988 NACUBO *Taxonomy of Functions* and the 1972 WICHE *Program Classification Structure*.

Field	Column 1 Instructional and Research NASF	Column 2 Research NASF
Science and Engineering (S&E) Fields		
Engineering		
Physical Sciences		
Environmental Sciences.		
Mathematics		
Computer Sciences		
Agricultural Sciences.		
Biological Sciences: Other than medical school.		
Biological Sciences: Medical school.		
Medical Sciences: Other than medical school.		
Medical Sciences: Medical school.		
Psychology		
Social Sciences		
Other Sciences not elsewhere classified. List them:		
Total for all S&E facilities.		
Total for all non-science facilities.		
Total for all S&E and all non-science facilities.		

Item 1b. Leased Research and Development Space

Look at the total research space for all S&E facilities at the bottom of Column 2 in the chart above.

How much of that space is leased?

_____NASF of leased research space.

Amount of Research Space

Item 2. Amount of Research Space, by Field

To rate whether the amount of research space at your institution reported in Item 1a, Column 2 is sufficient for current research programs, consider

- only the existing amount of research space, and
- only your current research programs.

For each field listed below, circle one of the following codes:

A Adequate amount; sufficient to support all the needs of your research in the field

B Generally adequate amount; sufficient to support most research needs in the field, but may have some limitations

C Inadequate amount; not sufficient to support the needs of your research in the field

D Nonexistent space, but needed

NA Not applicable or not needed

Field	Amount of research space (circle one in each row)				
Engineering	A	B	C	D	NA
Physical Sciences	A	B	C	D	NA
Environmental Sciences	A	B	C	D	NA
Mathematics	A	B	C	D	NA
Computer Sciences	A	B	C	D	NA
Agricultural Sciences	A	B	C	D	NA
Biological Sciences: Other than medical school	A	B	C	D	NA
Biological Sciences: Medical school	A	B	C	D	NA
Medical Sciences: Other than medical school	A	B	C	D	NA
Medical Sciences: Medical school	A	B	C	D	NA
Psychology	A	B	C	D	NA
Social Sciences	A	B	C	D	NA
Other Sciences, not elsewhere classified. List them:	A	B	C	D	NA

Who provided the above assessments (e.g., deans, department heads, physical plant administrators, the survey coordinator)?

_____

_____

Item 3. Current Condition of Research Space, by Field

To rate the condition of current research space reported in Item 1a, Column 2,

- consider only current research programs,
- consider the type of research conducted in the facility, and
- exclude non-fixed research instrumentation costing less than $1 million.

For each field, fill in the percentage of research space that falls into each category below.

A Suitable for use in the most highly developed and scientifically sophisticated research in the field

B Effective for most purposes but not applicable to category A

C Effective for some purposes but in need of limited renovation or repair

D Requires major repair or renovation to be used effectively

E Requires replacement

NA Not applicable or no research space in this field

Field	Percentage of research space according to condition						
	A	B	C	D	E	NA	Total
Engineering							100
Physical Sciences							100
Environmental Sciences							100
Mathematics							100
Computer Sciences							100
Agricultural Sciences							100
Biological Sciences: Other than medical school							100
Biological Sciences: Medical school							100
Medical Sciences: Other than medical school							100
Medical Sciences: Medical school							100
Psychology							100
Social Sciences							100
Other Sciences, not elsewhere classified							100
List them:							

Who provided the above assessments (e.g., deans, department heads, physical plant administrators, the survey coordinator)?

Costs of Projects Completed or Begun

Item 4a. Research Facilities Projects Over $100,000: Your FY 1992 and FY 1993

To report the completion costs and net assignable square feet (NASF) involved in repair/renovation and new construction of research facilities,

- consider only projects begun during your Fiscal Year 1992 or your Fiscal Year 1993,
- consider only projects over $100,000 (see Item 7 for projects under $100,000), and
- prorate as necessary.

1. In Columns 1 and 3, fill in the *completion costs* for repair/renovation and for new construction for each field listed. Then fill in the total completion costs for all science and engineering (S&E) fields at the bottom of Columns 1 and 3.

2. In Columns 2 and 4, estimate the NASF involved in these projects for each field listed. Then estimate the total NASF involved for all S&E fields at the bottom of Columns 2 and 4.

Field	Repair/renovation begun during your FY 1992 or 1993		New construction begun during your FY 1992 or 1993	
	Column 1	Column 2	Column 3	Column 4
	Cost	NASF	Cost	NASF
Engineering				
Physical Sciences				
Environmental Sciences				
Mathematics				
Computer Sciences				
Agricultural Sciences				
Biological Sciences: Other than medical school.				
Biological Sciences: Medical school				
Medical Sciences: Other than medical school				
Medical Sciences: Medical school				
Psychology				
Social Sciences				
Other Sciences, not elsewhere classified.				
List them:				
Total for All S&E Fields.				

Item 4b. Costs To Comply With the 1990 Americans With Disabilities Act

Look at the total cost reported in Item 4a in the last row of Column 1. Estimate the percentage of these total repair and renovation costs that your institution spent to bring this space into compliance with the 1990 Americans with Disabilities Act.

_____% spent to comply with the 1990 Americans with Disabilities Act.

Item 5. Sources of Funding for Research Facilities Projects Over $100,000: Your FY 1992 and FY 1993

To provide the sources of funding for the projects begun during your Fiscal Year 1992 or your Fiscal Year 1993 that you reported in Item 4a,

1. Look back at the last row of the chart in Item 4a. Copy the totals that you wrote in Columns 1 and 3 into the first row below.

2. Fill in the expected dollar amounts of funding expected from each source listed below:

Source	Column 1	Column 2
	Repair/ Renovation begun during your FY 1992 or 1993	New Construction begun during your FY 1992 or 1993
Cost of All Projects for S&E Research Facilities:		
Federal Government.		
State or Local Government.		
Private Donation.		
Institution Funds: Operating funds, endowments, indirect cost recovery, etc.		
Tax-Exempt Bonds.		
Other Debt Financing.		
Other Sources of Funding. List them:		

Item 6. Actual vs. Planned Research Facilities Spending: Your FY 1992 and FY 1993

(1) Did your institution fill out this survey in 1992?

- Yes. Go to (2).
- No. Go to Item 7 on the next page.

(2) On the copy of your responses to the 1992 survey (included in this survey package), look at the total amount your institution planned to spend for repair/ renovation of research facilities during your Fiscal Year 1992 and your Fiscal Year 1993. You'll find this amount listed under Item 5 in the 1992 survey.

Now, look at the amount you wrote in the first row of Column 1 in Item 5 on the previous page. Is that amount within 25% (±) of the amount of spending listed under Item 5 in your 1992 survey?

- Yes. Go to (3).
- No. What factors account for the difference?

(3) On the copy of your responses to the 1992 survey, look at the total amount your institution planned to spend for new construction of research facilities during your Fiscal Year 1992 and your Fiscal Year 1993. You'll also find this amount under Item 5 in the 1992 survey.

Now, look at the amount you wrote in the first row of Column 2 in Item 5 on the previous page. Is that amount within 25% (±) of the amount of spending listed under Item 5 in your 1992 survey?

- Yes. Go to Item 7 on the next page.
- No. What factors account for the difference?

Item 7. Repair/renovation Projects Between $5,000 and $100,000: Your FY 1992 and FY 1993

To report the completion costs involved in repair/renovation of science and engineering (S&E) research facilities,

- include only costs for research components,
- consider only projects begun during your Fiscal Year 1992 or your Fiscal Year 1993, and
- consider only projects costing between $5,000 and $100,000 (see Item 4a for projects over $100,000).

Fill in the total dollar amount in the space below, prorating as necessary.

$_____Total for all S&E research facilities.

Item 8. Planned Research Facilities Over $100,000 Scheduled To Begin Construction in Your FY 1994 and FY 1995

To report the completion costs and net assignable square feet (NASF) for repair/ renovation and new construction of research facilities that your institution plans to begin,

- consider only projects in which construction is planned to begin during your Fiscal Year 1994 or your Fiscal Year 1995,
- consider only projects to cost over $100,000, and
- prorate as necessary.

1. In Columns 1 and 3, fill in the *completion costs* for repair/renovation and for new construction for each field listed. Then fill in the total completion costs for all science and engineering (S&E) fields at the bottom of Columns 1 and 3.

2. In Columns 2 and 4, estimate the NASF involved in these projects for each field listed. Then fill in the total NASF for all S&E fields at the bottom of Columns 2 and 4.

Field	REPAIR/RENOVATION scheduled to begin in your FY 1994 or 1995		NEW CONSTRUCTION scheduled to begin in your FY 1994 or 1995	
	Column 1	Column 2	Column 3	Column 4
	Expected Cost	Estimated NASF	Expected Cost	Estimated NASF
Engineering				
Physical Sciences				
Environmental Sciences				
Mathematics				
Computer Sciences				
Agricultural Sciences				
Biological Sciences: Other than medical school.				
Biological Sciences: Medical school				
Medical Sciences: Other than medical school				
Medical Sciences: Medical school				
Psychology				
Social Sciences				
Other Sciences, not elsewhere classified				

Field	REPAIR/RENOVATION scheduled to begin in your FY 1994 or 1995		NEW CONSTRUCTION scheduled to begin in your FY 1994 or 1995	
	Column 1	Column 2	Column 3	Column 4
	Expected Cost	Estimated NASF	Expected Cost	Estimated NASF
List them:				
Total for All S&E Fields.				

New Space Needed

Item 9. Research Space Needed for Current Faculty and Programs but not Scheduled to Begin Construction During your FY 1994 or FY 1995

1. Does your approved institutional plan include any deferred space that requires repair/renovation or new construction? (Deferred space must satisfy the following three criteria: the space must be necessary to meet the critical needs of your current faculty or programs; construction must not be scheduled to begin during your Fiscal Year 1994 or your Fiscal Year 1995; and the construction must not currently have funding.)

- Yes. Go to 2.
- No. Go to Item 10 on the next page.

2. In Column 1, estimate the completion costs for deferred space which needs repair/renovation for each field listed. Then fill in the total costs for all science and engineering (S&E) fields at the bottom of Column 1.

3. In Column 2, estimate the completion costs for deferred space which needs new construction for each field listed. Then fill in the total costs for all S&E fields at the bottom of Column 2.

Do not include

- space needed for current faculty and programs that are not part of an approved institutional plan,
- space needed for an expansion in the number of current faculty, or
- space needed to develop new programs.

4. If you cannot provide cost estimates, then check here and fill in estimated square footage in the chart.

Field	Column 1	Column 2
	Estimated costs for needed Repair/ Renovation not scheduled to begin during your FY 1994 or 1995	Estimated costs for needed New Construction not scheduled to begin during your FY 1994 or 1995
Engineering		
Physical Sciences		
Environmental Sciences.		
Mathematics		
Computer Sciences		
Agricultural Sciences.		
Biological Sciences: Other than medical school.		
Biological Sciences: Medical school.		
Medical Sciences: Other than medical school.		
Medical Sciences: Medical school.		
Psychology		
Social Sciences		
Other Sciences, not elsewhere classified.		
List them:		
Total For All S&E fields.		

Miscellaneous Topics

Item 10. Facilities for Laboratory Animals

1. Does your institution have facilities for laboratory animals?

- No. Go to Item 11 on the next page.
- Yes. Go to 2.

2. To report on facilities for laboratory animals,

Include

- both departmental and central facilities that are subject to government (U.S. Public Health Service, USDA, state) regulations concerning humane care and use of laboratory animals; and
- all animal housing areas (e.g., cage rooms, stalls, wards, animal production colonies, laboratory space occupied by animals), holding rooms, isolation and germ-free rooms, surgical facilities, and other related service areas (e.g., feed storage rooms, cage washing rooms, casting rooms, shops, storage), if these areas directly support research.

Do not include

- agricultural field buildings sheltering animals that do not directly support research or that are not subject to government regulations concerning humane care and use of laboratory animals, or
- areas for treatment of animals that are veterinary patients.

Fill in the total amount of net assignable square feet (NASF) allotted to these facilities. Then fill in the amount of NASF allotted to research facilities for laboratory animals.

_____Total NASF.
_____Research NASF.

3. Fill in the percentage of research NASF that

	Percent
Fully meet government regulations	
Needs limited renovation or repair to meet government regulations	
Needs major renovation, repair, or replacement to meet government regulations.	
Total	100

4. Fill in the cost of repair/renovation and construction projects planned to begin during your Fiscal Year 1994 or your Fiscal Year 1995.

$ _____

Item 11. Limit on Tax-exempt Bonds

1. Is your institution a private college or university?

- No. Go to Item 12.
- Yes. Go to 2.

2. Recent federal tax reform legislation established a limit on tax-exempt bonds of $150 million per private college or university.

Has your institution reached the limit on tax-exempt bonds?

- Yes.
- No, but we expect to within the next two fiscal years.
- No, and we do not expect to within the next two fiscal years.

Item 12. Feedback

We appreciate the time you have taken to fill out the 1994 survey. We will be extensively revising the 1996 survey to help make your task less burdensome and to improve the reliability of the information.

1. Would you be willing to discuss drafts of the revised survey with members of the development team?

- Yes. Please write your name and phone number below.

• No.

2. How many person-hours were required to complete this form? _____

You are finished with the survey. *Return it by January 6, 1994, to: The Gallup Organization, One Church Street, Suite 900, Rockville, MD 20850.*

Cross Reference Between NSF Field Categories and the NCES Classification of Instructional Programs

Use this chart to identify the departments that are included within each of the science and engineering (S&E) fields used in this survey.

Engineering

101 Aerospace Engineering
- 14.02 Aerospace, aeronautical, and astronautical engineering

102 Agricultural Engineering
- 14.03 Agricultural engineering

103 Biomedical Engineering
- 14.05 Bioengineering and biomedical engineering

104 Chemical Engineering
- 03.0509 Wood sciences
- 14.07 Chemical engineering

105 Civil Engineering
- 04.02 Architecture
- 14.04 Architectural engineering
- 14.08 Civil engineering
- 14.14 Environmental health engineering

106 Electrical Engineering
- 14.09 Computer engineering
- 14.10 Electrical, electronics, and communications engineering
- 14.1002 Microelectronic engineering

107 Engineering Science
- 14.12 Engineering physics
- 14.13 Engineering science

108 Industrial Engineering/Management Science
- 14.17 Industrial engineering
- 14.27 Systems engineering
- 30.06 Systems science

109 Mechanical Engineering
- 14.11 Engineering mechanics
- 14.19 Mechanical engineering

110 Metallurgical and Materials Engineering
- 14.06 Ceramic engineering
- 14.18 Materials engineering
- 14.20 Metallurgical engineering
- 40.0701 Metallurgy

111 Mining Engineering
- 14.15 Geological engineering
- 14.16 Geophysical engineering
- 14.21 Mining and mineral engineering

112 Nuclear Engineering
- 14.23 Nuclear engineering

113 Petroleum Engineering
- 14.25 Petroleum engineering

114 Engineering, not elsewhere classified
- 14.01 Engineering, general
- 14.22 Naval architecture and marine engineering
- 14.24 Ocean engineering
- 14.28 Textile engineering
- 14.99 Engineering, other
- 19.09 Textiles and clothing (excluding 19.0902, Fashion Design)
- 30.03 Engineering and other fields

Physical Sciences

201 Astronomy
- 40.02 Astronomy
- 40.03 Astrophysics
- 40.09 Planetary science

202 Chemistry
- 40.05 Chemistry

203 Physics
- 40.08 Physics

204 Physical Sciences, not elsewhere classified
- 40.01 Physcial sciences, general
- 40.0799 Miscellaneous physical sciences, other
- 40.099 Physical sciences, other

Environmental Sciences

301 Atmospheric Sciences
- 40.4 Atmospheric sciences and meteorology

302 Geosciences
- 14.26 Surveying and mapping sciences
- 40.06 Geological sciences
- 40.0703 Earth sciences

303 Oceanography
- 26.0607 Marine biology
- 40.0702 Oceanography

304 Environmental Sciences, not elsewhere classified

Mathematics

402 Mathematics and Applied Mathematics
- 06.1302 Operations research (quantitative methods)
- 27.01 Mathematics, general
- 27.03 Applied mathematics
- 27.04 Pure mathematics
- 27.99 Mathematics, other
- 30.08 Mathematics and computer science

403 Statistics
- 27.02 Actuarial sciences
- 27.05 Statistics

Computer Sciences

401 Computer Sciences
- 06.12 Management information systems
- 11 Computer and information sciences, general
- 30.09 Imaging science

Agricultural Sciences (see also 102 and 901)

501 Agricultural Sciences
- 02.01 Agricultural sciences, general
- 02.02 Animal sciences
- 02.03 Food sciences
- 02.04 Plant sciences
- 02.05 Soil sciences
- 02.99 Agricultural sciences, other
- 03.01 Renewable natural resources, general
- 03.03 Fishing and fisheries
- 03.05 Forestry and related sciences
- 03.06 Wildlife management
- 03.99 Renewable natural resources, other
- 31.04 Water resources

Biological Sciences

601 Anatomy
- 18.0201 Clinical anatomy
- 26.0601 Anatomy

602 Biochemistry
- 18.0202 Clinical biochemistry
- 26.02 Biochemistry and biophysics

603 Biology
- 26.01 Biology, general
- 26.0604 Embryology

604 Biometry and epidemiology
- 18.2202 Epidemiology
- 26.0602 Biometrics and biostatistics

605 Biophysics

606 Botany
- 26.03 Botany (excluding 26.0302, Bacteriology, see 611)

607 Cell Biology
- 26.04 Cell and molecular biology
- 26.0606 Histology

608 Ecology
- 26.0603 Ecology

609 Entomology and Parasitology
- 26.0610 Parasitology
- 26.07102 Entomology

610 Genetics
- 26.0703 Genetics, human and animal

611 Microbiology, Immunology, and Virology
- 18.0203 Clinical microbiology
- 18.1002 Allergies and endomology
- 18.1009 Immunology
- 26.0302 Bacteriology
- 26.05 Microbiology

612 Nutrition
- 19.05 Food sciences and human nutrition
- 20.0108 Food and nutrition
- 26.0609 Nutritional sciences

613 Pathology
- 18.0204 Clinical pathology
- 18.1018 Pathology
- 26.0704 Pathology, human and animal

614 Pharmacology
- 18.0206 Clinical toxicology
- 26.0612 Toxicology
- 26.0705 Pharmacology, human and animal
- 42.14 Psychopharmacology

615 Physiology
- 18.0205 Physiology
- 26.0706 Physiology, human and animal

616 Zoology
- 26.0701 Zoology
- 26.0799 Zoology, other

617 Biosciences, not elsewhere classified
- 26.0699 Miscellaneous specialized areas, life sciences, other
- 26.99 Life sciences, other

Medical Sciences (see also 103)

701 Anesthesiology
- 18.1003 Anesthesiology

702 Cardiology

703 Cancer Research/Oncology

704 Endocrinology
- 26.0605 Endocrinology

705 Gastroenterology

706 Hematology
- 18.08 Hematology

707 Neurology
- 18.1024 Neurology
- 26.0608 Neurosciences

708 Obstetrics and Gynecology
- 18.1013 Obstetrics and gynecology

709 Ophthalmology
- 18.1014 Ophthalmology
- 18.12 Optometry

710 Otorhinolaryngology
- 18.1017 Otorhinolaryngology/otolaryngology

711 Pediatrics
- 18.1019 Pediatrics
- 20.0102 Child development

712 Preventive Medicine and Community Health
- 18.1007 Family practice
- 18.1022 Preventive medicine

713 Psychiatry

18.1023 Psychiatry
18.1106 Psychiatry/mental health
714 Pulmonary Disease
715 Radiology
18.1012 Nuclear medicine
18.1025 Radiology
26.0611 Radiobiology
716 Surgery
18.1004 Colon and rectal surgery
18.1011 Neurological surgery
18.1016 Orthopedic
18.1021 Plastic surgery
18.1026 Surgery
18.1027 Thoracic surgery
717 Clinical Medicine, not elsewhere classified
18.0299 Basic clinical health sciences, other
18.1001 Mredicine, general
18.1005 Dermatology
18.1008 Geriatrics
18.1010 Internal medicine
18.1020 Physical medicine and rehabilitation
18.1028 Urology
18.1099 Medicine, other
18.13 Osteopathic medicine
18.15 Podiatry
30.01 Biological and physical sciences
718 Dental Sciences
18.04 Dentistry
18.1015 Orthodontic surgery
719 Nursing
18.11 Nursing (excluding 18.1106, Psychiatry/Mental Health, see 713)
720 Pharmaceutical Sciences
18.14 Pharmacy
721 Veterinary Sciences
18.24 Veterinary medicine
722 Health Related, not elsewhere classified
17.0807 Occupational therapy
17.0813 Physical therapy
17.0899 Rehabilitation services, other
17.99 Allied health, other
18.07 Health sciences administration
18.09 Medical laboratory
18.22 Public health
18.99 Health sciences, other
723 Speech Pathology and Audiology
18.01 Audiology and speech pathology

Psychology

801 Psychology
13.08 School psychology (not including Educational Psychology)
17.0801 Art therapy
42 Psychology (including Educational Psychology)

Social Sciences

901 Agricultural Economics
01.0102 Agricultural business and management
01.0103 Agricultural economics
902 Anthropology (Cultural and Social)
45.02 Anthropology
45.03 Archeology
903 Economics (except Agricultural)
06.05 Business Economics
45.06 Economics
904 Geography
45.07 Geography
905 History and philosophy of science
906 Linguistics
23.06 Linguistics
42.12 Psycholinguistics
907 Political Science
44.01 Public affairs, general
44.03 International public service
44.04 Public administration
44.05 Public policy studies
44.99 Public affairs, other
45.09 International affairs
45.10 Political science and government
908 Sociology
45.05 Demography
45.11 Sociology
909 Sociology and Anthropology
910 Social Sciences, not elsewhere classified
04.03 City, community, and regional planning
05 Area and ethnic studies
06.06 Human resources development
06.15 Organizational behavior
31.03 Parks and recreational management
43.01 Criminal justice
44.02 Community services
44.07 Social work
45.01 Social sciences, general
45.04 Criminology
45.12 Urban studies
45.99 Social sciences, other

[FR Doc. 93–19983 Filed 8–17–93; 8:45 am]
BILLING CODE 7555–01–M

Permit Application Received Under the Antarctic Conservation Act of 1978

August 13, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 10, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817 .

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Alan B. Crockett
EG&G Idaho, Inc.
PO Box 1625
Idaho Falls, ID 83415

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctica. This permit application is for the transport and use of vials of non-toxic, freeze dried fluorescent bacteria at McMurdo for assessing sediment toxicity. It is anticipated that about 300 vials of microorganisms will be required for the planned work. The vials and test equipment would be shipped to McMurdo as air cargo or hand carried depending upon when the permit application is approved. The test is being widely used by EPA and others for assessing toxicity of sediments, soil, and wastes. If necessary, the sediment samples containing the microorganisms can be autoclaved/sterilized after the testing is completed.

Location

McMurdo Station, Antarctica

Dates

10/15/93–2/28/95

Thomas F. Forhan,
Permit Office, Office of Polar Programs.

[FR Doc. 93–19982 Filed 8–17–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into

account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published July 22, 1993 (58 FR 39251). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EDT).

ACRS Subcommittee Meetings

Advanced Boiling Water Reactors, September 8, 1993, Bethesda, MD. The Subcommittee will discuss the status of resolution of the remaining open issues in the ABWR Standard Safety Analysis Report and the resolution of USIs and GSIs. Also, it will discuss the NRC staff's schedule for submittal of the Final Safety Evaluation Report.

Planning and Procedures, September 8, 1993, Bethesda, MD (2 p.m.—4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS matters the release of which would represent a clearly unwarranted invasion of personal privacy.

401st ACRS Meeting, September 9–11, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Proposed Rulemaking on the Fracture Toughness Requirements for Reactor Pressure Vessel (RPV)—Revisions to 10 CFR 50.61, Appendix G and Appendix H, and a New Rule on Thermal Annealing (10 CFR 50.66)*—Review and comment on the proposed rulemaking on the fracture toughness requirements for RPV for protection against pressurized thermal shock events. Also, review and comment on a new rule on thermal annealing of the RPV. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

B. *Proposed Priority Ranking of Generic Issues*—Review and comment on the priority rankings proposed by the NRC staff for a number of generic issues. Representatives of the NRC staff will participate.

C. *Proposed Generic Letter on Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators from Plant Technical Specifications*—Review and comment on the proposed generic letter on removal of accelerated testing and special reporting requirements for emergency diesel generators from plant technical specifications. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

D. *Proposed Guidelines for Digital Instrumentation and Control (I&C) Systems Upgrades*—Review and comment on the guidelines proposed by NUMARC for 10 CFR 50.59 evaluations of digital I&C systems upgrades. Representatives of the NRC staff and the industry will participate.

E. *SECY–93–143, "NRC Staff Actions to Address the Recommendations in the Report on the Reassessment of the NRC Fire Protection Program"*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding SECY–93–143. Representatives of the industry will participate, as appropriate.

F. *Status of Individual Plant Examination (IPE) Program*—Hear a briefing by and hold discussions with representatives of the NRC staff on the status of the IPE Program, including how generic issues are addressed in the IPE program. Representatives of the industry will participate, as appropriate.

G. *Periodic Meeting Between the ACRS and the Commissioners*—Meet with the Commissioners to discuss matters of mutual interest.

*H. *Insights Gained from Foreign Trips and U.S. Military Sources regarding Digital I&C Issues*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding insights gained by the staff from its interactions with foreign regulatory authorities and nuclear utilities as well as U.S. military sources on digital I&C issues. This session will be closed to discuss foreign proprietary information per 5 U.S.C. 552b(c)(4) and classified national security information per 5 U.S.C. 552b(c)(1).

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Materials and Metallurgy, Mechanical Components, and Advanced Boiling Water Reactors.

L. *Future Activities*—Discuss anticipated and proposed Committee activities, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Thermal Hydraulic Phenomena, September 21, 1993, Oregon State University (OSU), LaSalle Stewart Center, Corvallis, OR. The Subcommittee will continue its review of the Westinghouse integral systems test programs supporting the AP600 design certification effort. The meeting discussion will focus on the OSU integral systems test facility program.

Severe Accidents, September 22–24, 1993, Sheraton Portland Airport Hotel, Portland, OR. The Subcommittee will continue its review of the severe accident and PRA issues associated with the GE ABWR design certification effort.

Decay Heat Removal Systems, October 5, 1993, Bethesda, MD. The Subcommittee will review the proposed rule to address resolution of Generic Issue–23, "Reactor Coolant Pump Seal Failure."

Mechanical Components, October 5, 1993, Bethesda, MD. The Subcommittee will discuss the status of the ongoing NRC and industry activities associated with motor-operated valves, check valves, butterfly valves, and other related matters.

Improved Light Water Reactors, October 6, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Safety Evaluation Report

for the EPRI passive LWR Utility Requirements document.

Planning and Procedures, October 6, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

402nd ACRS Meeting, October 7–9, 1993, Bethesda, MD. Agenda to be announced.

Advanced Boiling Water Reactors, October 26–27, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

Ad Hoc Subcommittee on Design Acceptance Criteria/Computers in Nuclear Power Plant Operations, November 2, 1993, Bethesda, MD. The Subcommittees will review Chapter 7, "Instrumentation and Control Systems" of the Standard Safety Analysis Report for the ABWR design and associated Design Acceptance Criteria/Inspections, Tests, Analyses, and Acceptance Criteria.

Safeguards and Security, November 3, 1993, Bethesda, MD. The Subcommittee will review the proposed SECY paper on Internal Threat and the Rulemaking Associated with Staff Recommendation for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants. Portions of this meeting may be closed to discuss safeguards information.

Planning and Procedures, November 3, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

403rd ACRS Meeting, November 4–6, 1993, Bethesda, MD. Agenda to be announced.

Advanced Boiling Water Reactors, November 16–17, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

ABB–CE Standard Plant Designs, December 8, 1993, Bethesda, MD. The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB–CE System 80+ design.

Planning and Procedures, December 8, 1993, Bethesda, MD (4 p.m.–6 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on ABWR issues for consideration by the full Committee.

ACNW Full Committee and Working Group Meetings

57th ACNW Meeting, September 29–30, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. Review and comment on the Low-Level Waste Performance Assessment Program. Representatives of the NRC staff will participate.

B. Continue preparation of the ACNW Strategy Implementation Issues Paper.

C. Hear a report from the Chairman on the National Academy of Sciences Workshop on EPA Standards held in Las Vegas, NV. Representatives of the NRC staff will participate, as appropriate.

D. Discuss activities related to the upcoming ACNW visit to the proposed Yucca Mountain repository site during October 1993.

E. Hear a report on the August 24, 1993, DOE/NRC Technical Exchange meeting on the Engineered Barrier Systems.

*F. Discuss anticipated and proposed activities, future meeting agenda, budget and organizational matters, as appropriate. Portions of this meeting may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

G. Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

ACNW Working Group on Characterization of the Unsaturated Zone Flow and Transport Properties Fracture vs. Matrix Flow, October 26, 1993, Las Vegas, NV. The Working Group will examine the relationships between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

58th ACNW Meeting, October 27–28, 1993, Las Vegas, NV. Agenda to be announced.

59th ACNW Meeting, November 22–23, 1993, Bethesda, MD. Agenda to be announced.

60th ACNW Meeting, December 15–16, 1993, Bethesda, MD. Agenda to be announced.

Dated: August 12, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–19966 Filed 8–17–93; 8:45 am]

BILLING CODE 7590–01–M

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Tennessee

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Tennessee. The MOU provides the basis for mutually agreeable procedures whereby the State of Tennessee may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Tennessee. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective July 15, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the

NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Tennessee to provide data related to plant conditions during emergencies at commercial nuclear power plants in Tennessee.

Dated at Rockville, Maryland, this 9th day of August 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Tennessee and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Tennessee enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

The State of Tennessee/Division of Radiological Health (TDRH) recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. TDRH fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the "Tennessee Multi-Jurisdictional Radiological Emergency Response Plan."

III. Scope

A. This Agreement defines the way in which NRC and TDRH will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Tennessee.

B. It is understood by the NRC and the State of Tennessee that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Tennessee or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Tennessee on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Tennessee authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Tennessee during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Tennessee. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring and ERDS workstation.

V. TDRH's General Responsibilities

A. TDRH will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, TDRH will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. TDRH agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

c. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the liaisons currently established between the State of Tennessee and the Tennessee Valley Authority (TVA) for the interpretation of technical information. Clarification of specific data related to the ERDS system will be pursued through the NRC. TDRH will not request clarification of ERDS data through the plant operators.

VI. Implementation

TDRH and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. TDRH and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and TDRH agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and TDRH will protect sensitive information to the extent permitted by the Federal Freedom of Information Act,

the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to TDRH by the NRC. TDRH may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, TDRH will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Division of Radiological Health. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and TDRH staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and TDRH will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: July 1, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: July 15, 1993.

For the State of Tennessee.

Michael H. Mobley,

Director, Division of Radiological Health.

[FR Doc. 93-19971 Filed 8-17-93; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 26, 1993, through August 6, 1993. The last biweekly notice was published on August 4, 1993 (58 FR 41499).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 17, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 22, 1993

Description of amendment request: The amendment will revise the Technical Specifications (TS) to include an Augmented Erosion/Corrosion Program for the piping in the auxiliary feedwater (AFW) building and related piping as committed to in Connecticut Yankee Atomic Power Company's (CYAPCO's) letter dated December 24, 1991. The existing program of weld inspections (augmented In-service Inspection Program) is being removed in lieu of this new Erosion/Corrosion program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

CYAPCO has reviewed the proposed change in accordance with 10 CFR 50.92 and has concluded that the change does not involve a significant hazards consideration. The bases for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

This proposed change will modify the technical specifications to incorporate an augmented inspection and testing methodology which will continue to monitor the steam-supply piping to the Terry turbines and to the atmospheric steam-dump valves. The purpose of the new augmented Erosion/Corrosion Program is to reduce the probability of a HELB due to potential erosion/corrosion degradation by performing piping inspections on the piping in question. The consequences of a HELB remain unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The potential for an unanalyzed accident is not created since there are no changes in the way the plant is operated. The testing methodologies that CYAPCO proposes on using are permitted for use by the NRC Staff. These testing methodologies will replace existing test methodologies which the NRC Staff has indicated did not adequately substantiate piping integrity. The new methodology, which was discussed in general terms with the NRC Staff, will, we believe, identify piping that may experience erosion/corrosion.

3. Involve a significant reduction in margin of safety.

This change fulfills the intention of the NRC Staff request and our commitments: it will contribute to reducing the probability of HELBs due to erosion/corrosion degradation in the AFW building by the performance of examinations. It also reduces the probability of a single-piping failure in the auxiliary steam piping resulting in a common-mode failure of the AFW system. Since this proposed change alters inspection requirements to the technical specifications, it continues to contribute to the safety of the plant. The augmented ISI Program did detect welding flaws on the 3-inch steam-supply piping to the Terry turbines which would not have been included in the scope of the 10-year ISI Program. However, the augmented Erosion/Corrosion Program will also inspect this steam supply piping which would normally be excluded for the regular Erosion/Corrosion Program. Therefore, the margin of safety is maintained by including piping which would have been excluded from the normal inspection programs. Further, since the proposed change does not negatively impact any accident previously analyzed or create any new accidents, there is no reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: July 19, 1993

Description of amendment request: The proposed amendment would change the reporting requirement for effluent releases from semiannual to annual. This change is consistent with the revision to 10 CFR 50.36a(a)(2) which was published in the **Federal Register** on August 31, 1992 (57 FR 39358).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability of consequences of an accident previously evaluated?

The proposed change does not affect the probability or consequences of an accident. The proposed change is to the Administrative and Radiological Effluent Releases sections of the Facility Technical Specifications, and is administrative in nature.

All the proposed changes reflect the revision to 10 CFR 50.36a(a)(2) which were published in the Federal Register on August 31, 1992. The Revision changes the reporting requirement for effluent releases from semiannual to annual, with a specified time between reports not to exceed 12 months.

The change will only affect the content of the radioactive effluent report by including four quarters (12 months) instead of two quarters (6 months). The total released for the period of the report will be 12 months instead of 6 months.

2. Will the proposed change(s) create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change is required to implement the change to 10 CFR 50.36a(a)(2) and [is] administrative in nature. Neither the material condition of the facility nor the accident analyses are affected by this proposed change. Therefore, the proposed change does not create the possibility of a different type of accident than previously evaluated.

3. Will the proposed change involve a significant reduction in the margin of safety?

No radioactive effluent release limits have changed. This change reflects a reporting period of 12 months instead of 6 months and is only administrative.

Therefore, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: William M. Dean, Acting

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 28, 1989, as supplemented May 1, 1991, September 26, 1991, March 18, 1992, August 24, 1992, August 28, 1992, and May 19, 1993.

Description of amendment request: The proposed amendment would add new operability requirements, action statements, and surveillance requirements to assure the availability of shutdown cooling to the Primary Coolant System (PCS) during certain operational conditions. Specifically, the proposed amendment would (1) add new Technical Specifications (TS) Sections 3.1.9 and 3.7.3, (2) add new surveillance item 14 to Table 4.2.2, (3) revise related TS affected by restricting operation of the Shutdown Cooling System (SDCS) to when PCS temperature is less than or equal to 300°F, and (4) revise appropriate Bases pages.

Proposed TS Section 3.1.9 adds shutdown cooling equipment operability requirements for the PCS and SDCS when fuel is in the reactor and the PCS temperature is less than or equal to 300°F. Proposed Section 3.7.3 identifies the electrical system requirements to permit shutdown cooling systems and equipment to be operable whenever PCS temperature is less than or equal to 300°F. Proposed Item 14 to Table 4.2.2 adds a surveillance to verify that the shutdown cooling requirements of Section 3.1.9 will be maintained. The above proposed changes increase the range of PCS temperatures over which the steam generators and associated equipment

must be operable and add definitions and operability requirements for the SDCS systems. These proposed changes integrate various requirements and guidance from Combustion Engineering (CE) Standard Technical Specifications (STS), CE Restructured STS, NRC Generic Letter 88-17, and specifics of the Palisades SDCS design configuration. The June 28, 1989, application was initially noticed in the **Federal Register** on March 7, 1990 (55 FR 8221).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they only add operability and surveillance requirements to the TS to assure continued availability of shutdown cooling to the reactor. The proposed requirements are in conformance with those specified in the Palisades Final Safety Analysis Report (FSAR) and reflect current analyses of postulated accidents and operating practices. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they do not affect the material condition of the plant nor the manner in which the facility is operated. The proposed changes are consistent with Standard Technical Specifications, in conformance with the Palisades FSAR, take into consideration the specifics of the Palisades SDCS design configuration, and reflect current analysis and operating practices. Therefore, no new or different kind of accident is created.

3. The changes do not involve a significant reduction in a margin of safety because the proposed changes do not affect the manner in which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility. Therefore, the proposed changes would not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: William M. Dean, Acting

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 24, 1993

Description of amendment request: The proposed amendment would modify Technical Specification (TS) surveillance requirement 4.6.1.2 which requires, in part, that if two consecutive periodic Type A containment leak rate tests fail to meet the applicable acceptance criteria, a Type A test shall be performed at least every 18 months until two Type A tests meet the acceptance criteria, at which time the normal schedule (3 times during a 10-year interval) is resumed. The licensee proposes a one-time exemption from this accelerated test frequency, based on corrective actions to be taken for the Type A test failures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change provides a schedular exemption to the increased frequency testing requirements contained in Fermi 2 [TS] 4.6.1.2 for the primary containment Integrated Leak Rate Test. The change does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

This change allows the submittal of a Corrective Action Plan (CAP) as an exemption to Appendix J requirements for NRC Staff review in lieu of more frequent Type A tests. The approval of a CAP as an alternative, will adequately maintain containment leakage surveillance requirements and overall containment integrity. Therefore, this change cannot increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that a new or different kind of accident will not be possible due to this change. Since there are no changes in the way the plant is operated, the potential of an unanalyzed accident is not created. No new failure modes and no new testing methodologies are introduced.

3. Involve a significant reduction in a margin of safety.

Plant [TS] including an NRC-approved CAP ensure that the containment's margin of safety is maintained. The CAP, for penetrations determined to be the cause of the failure of the "As-Found" ILRTs [Integrated Leak Rate Tests], will provide added assurance that containment integrity will be maintained without the need for additional ILRTs. Moreover, before Detroit Edison may utilize the proposed alternative, its CAP must be formally approved by the NRC Staff as an exemption to Appendix J, pursuant to 10CFR50.12. Thus, the addition of a CAP, as an alternative to increased Type A test frequency, will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: William M. Dean, Acting

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 29, 1993

Description of amendment request: The proposed amendment would provide an updated laboratory testing standard for surveillance testing of representative activated charcoal samples from the Control Room Emergency Filtration (CREFS) and Standby Gas Treatment Systems (SGTS) Also, the proposed amendment would modify the Action Requirements for inoperability of a CREFS filter train. This proposed amendment supersedes the licensee's previous amendment request dated January 29, 1992 which was noticed in the **Federal Register** on April 28, 1993 (58 FR 25853).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change provides an updated standard for laboratory analysis of representative charcoal samples from filter units in the "...(SGTS) and the...(CREFS) [and]... The proposed change to modify the action requirements during shutdown conditions to allow fuel handling and core alterations during charcoal replacement and duct leakage surveillance testing...[do not]:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

By providing an improved procedure for charcoal analysis the proposal provides greater assurance that the installed charcoal can perform its design function and, thus, the consequences of evaluated accidents are valid. The method of laboratory analysis has no effect upon how the plant is operated, including the method of sample removal. Therefore, the probability of any evaluated accident is unchanged. The proposed [change to the] action requirement recognizes that the potential radiological source term due to a fuel handling accident is significantly less than the CREFS design source term. Allowing fuel handling when the CREFS charcoal filtration capability is lost does not result in a significant increase in consequences for the fuel handling accident (FHA) since adequate protection is maintained using the required to be operable SGTS subsystem. The evaluation of a FHA under the proposed action requirement determined that a control room thyroid dose of 1.37 rem would result. This is less than the current evaluation of the FHA which concludes that the FHA is bounded by the more severe loss-of-coolant accident during power operation scenario which has an evaluated thyroid dose of 7.1 rem. The change does not affect system operation and thus does not increase any accident probability.

(2) Create the probability of a new or different kind of accident from any accident previously evaluated.

As described in (1) above, the proposal has no effect on the manner of plant operation. The proposal does not involve any change to the plant design. Therefore, the change creates no new accident modes.

(3) Involve a significant reduction in a margin of safety.

By providing an improved procedure for charcoal analysis, the proposal acts to maintain existing safety margins. [With respect to the change in action requirements], since adequate protection is maintained by continuing to meet the standards of General Design Criterion 19, safety margins are not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: William M. Dean, Acting

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 20, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) of the Turkey Point Units 3 and 4 relating to the implementation of the revised requirements of Title 10 Code of Federal Regulations (CFR) Part 20 which became effective June 21, 1991. Specifically, TS 1.0 "Definitions," 3/4.3.3 "Monitoring Instrumentation" relating to radiation, 3/4.11 "Radioactive Effluents," 5.0 "Design Features" and 6.0 "Administrative Controls" would be revised. Consistent with 10 CFR Part 20, the proposed TS changes would revise:

(a) concentration limits for liquid effluent releases

(b) dose measurement distance, and controls for very high radiation areas

(c) certain definitions, references and the site area map

(d) administrative controls for recordkeeping

(e) frequency of reporting the quantity of liquid and gaseous effluents released to unrestricted areas and solid waste releases (shipped for burial or disposal) from semiannual to annual basis.Applicable surveillance requirements and TS Bases would also be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed to facilitate implementation of the new 10 CFR Part 20 requirements or revise the reporting frequency for the Radiological Effluent Release Report are either administrative in nature or are necessary for operational flexibility. Compliance with the limits of the new 10 CFR Part 20 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed changes do not affect any assumptions or conditions in any of the Updated Final Safety Analysis Report (UFSAR) accident analyses. Since the UFSAR accident analyses remain bounding, their radiological consequences are not adversely affected.

Therefore, the probability or consequences of an accident previously evaluated are not affected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed to facilitate implementation of the new 10 CFR Part 20 requirements or revise the reporting frequency for the Radiological Effluent Release Report are administrative in nature, or are required for operational flexibility. Compliance with the limits of the new 10 CFR Part 20 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. They do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting single failure been identified as a result of the proposed changes.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The changes being proposed to facilitate implementation of the new 10 CFR Part 20 requirements or revise the reporting frequency for the Radiological Effluent Release Report are administrative in nature, or are required for operational flexibility. Compliance with the limits of the new 10 CFR Part 20 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. The changes in measurement distances for the determination of high radiation areas will not result in an increase in individual or cumulative occupational radiation exposure since it will result in more conservative identification of high radiation areas. Margins of safety as discussed in the Technical Specification BASES are not affected by these changes.

Therefore, a significant reduction in a margin of safety would not be involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 18, 1993

Description of amendment request: The proposed amendment would change Clinton Power Station (CPS) Technical Specifications (TS) 6.2.3.1, "Independent Safety Engineering Group (ISEG) Function;" 6.2.3.4, "ISEG Records;" 6.4.1, "Training;" and 6.5.2.2, "Nuclear Review and Audit Group (NRAG) Composition." The amendment proposed editorial changes that reflect administrative/organization changes which have occurred at CPS. The amendment also included a proposed title change to correct a position title from "Director-Nuclear Training" to "Director-Operations Training."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are of an administrative or editorial nature. Since these are changes which do not impact plant design or operation, they cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are editorial only and do not affect the plant design or operation. No new failure modes are introduced by changes of this nature, and as a result, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes only involve corrections to position titles or the removal of extraneous information. They do not alter the duties, responsibilities, or required qualifications associated with the affected positions or the affected review groups (ISEG and NRAG). An equivalent level of safety and effectiveness is maintained, and, in addition, the proposed changes do not alter the plant design or operation. As a result, the proposed changes cannot reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 18, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by clarifying TS wording for the Low Pressure Coolant Injection (LPCI) and Containment Spray modes of the Residual Heat Removal (RHR) system to assure consistency with requirements of the DAEC Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The probability or consequences of a previously-analyzed accident will not be increased by these proposed changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing TS requirements and are consistent with the DAEC UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG-1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no opportunity exists to increase the probability or consequences of a previously-analyzed accident.

2) The possibility of a new or different kind of accident from those previously analyzed will not be created by these changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing requirements. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG-1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to introduce a new or different kind of accident.

3) The margin of safety will not be decreased as a result of these changes because they merely clarify existing TS requirements and are consistent with the UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG-1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 18, 1993

Description of amendment request: Technical Specification (TS) 6.2.3, Independent Safety Engineering Group (ISEG), requires the establishment of a separate organization composed of at least five full-time engineers who are dedicated to performing independent technical reviews. The proposed amendment would revise TS 6.2.3 to delete the requirement to maintain a five-person organization, and require that the technical reviews be performed by personnel who are independent of the plant management chain.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change does not affect the operation of the plant, nor revise any plant design, configuration, or procedure related to the operation of the plant. The proposed change affects only the requirements for an organizational composition, and does not have any effect upon the radiological consequences of an accident previously evaluated.

B. The change does not create the possibility of a new or different kind of accident from any accident previously

evaluated (10 CFR 50.92(c)(2)) because it does not affect the plant design, nor the way plant equipment is operated. The change does not affect equipment reliability, nor revise the requirements for maintenance or repair. The change does not have the potential to introduce any new failure mechanism.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because it does not alter the design or operation of any plant system structure or component, nor change the manner in which any plant system is operated. The proposed change modifies an existing administrative requirement that is not referenced in the bases of any Technical Specification to define or establish a margin of safety for the operation of the plant.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 18, 1993

Description of amendment request: The proposed amendment would modify the Seabrook Station Technical Specifications (TS) to reduce the frequency of surveillances that are required to verify the integrity of the Condensate Storage Tank (CST) Enclosure. Specifically, surveillance requirement TS 4.7.1.3 would be changed to require verification of CST Enclosure integrity every 18 months instead of every 12 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change does not affect the operation of any active component. The CST Enclosure is designed to ensure the availability of the CST water volume following the rupture of the CST by a tornado generated missile entering the top of the CST.

The CST Enclosure and its seals are passive devices and are not subject to transient or cyclical forces from the normal operation of the plant. The most likely failure mode for the penetration seals is long term degradation due to aging. The CST Enclosure 18 month inspection will be more comprehensive than the current inspection and may be more effective in identifying long term degradation.

The proposed change will not affect the probability of a tornado-induced accident. The failure of the CST Enclosure during this accident sequence is itself improbable due to the relatively low hydrostatic pressure in the vented CST. The proposed revision to the CST Enclosure integrity verification apparently will not significantly increase the probability or consequences of a tornado-induced accident sequence.

Therefore, it appears that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed change does not affect the design, properties, or function of the CST Enclosure nor will it affect the ability of the CST Enclosure to perform its design safety function.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not modify the plant nor revise any aspects of plant operation or operating procedures. The proposed change does not invalidate any assumptions nor accident analyses presented in Chapter 6 and 15 of the UFSAR. The proposed change does not affect the integrity of the CST Enclosure and does not revise its capabilities. The change does not revise the conclusions reached in the bases for Technical Specification 3/4.7.1.3, Condensate Storage Tank, nor the description of the Enclosure's functions as described in UFSAR Section 3.8.4.1.g.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 30, 1993

Description of amendment request: The amendment increases the volume requirements of the boric acid storage system of Technical Specification 3.1.2.6 in order to meet the requirements of the redesigned core for Cycle 5 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the attached proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Cycle 5 reload core design meets all applicable design criteria and ensures that all pertinent licensing basis acceptance criteria are met. The demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could: (a) adversely affect the ability of existing components and systems to mitigate the consequences of any accident and/or; (b) adversely affect the integrity of the fuel rod cladding as a fission product barrier. Furthermore, adherence to applicable standards and criteria ensures that these fission product barriers maintain the design margin of safety.

This is a change to the technical specifications only. There are no hardware changes (i.e, the tanks are designed to accommodate the new limit) associated with the proposed change and no change to the functioning of any equipment which could affect any accident precursors. Therefore, the probability or consequences of any previously evaluated accident is not significantly increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change reflects the revised [Reloading Safety Evaluation] RSE. There are no hardware changes associated with it and no change to the functioning of any equipment which could introduce new or unique accident precursors. All design and

performance criteria will continue to be met and no new single-failure mechanisms have been created as documented in the RSE, nor will they cause the core to operate in excess of pertinent design basis operating limits. Therefore, the possibility of an accident of a different type than any previously evaluated in the FSAR has not been created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The RSE documents that the margin of safety, as defined in the Bases to the Millstone Unit 3 Technical Specifications, is not reduced. The Cycle 5 reload core redesign meets all applicable design criteria and ensures that all pertinent licensing basis acceptance criteria are met. It has been determined that the Millstone Unit No. 3 VANTAGE 5H reload design and safety analysis limits remain applicable, and that these limits are supported by the applicable Millstone Unit No. 3 Technical Specifications for Cycle 5.

This change is more restrictive in that it increases the volume requirements for the boric acid storage system in Modes 1 through 4. This change is necessary to support Cycle 5 operation prior to initial entry into Modes 1 or 2. However, the current analysis of record remains bounding with this proposed change in place. Therefore, the change will not affect any of the plant's safety analysis and will have no impact in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: July 29, 1993

Description of amendment requests: The proposed amendments would incorporate a reference to the revised methodologies described in WCAP-13677 and NSPNAD-93003 into the Prairie Island Technical Specifications (TS) so the model revisions can be used in the determination of the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative change to [TS] Section 6.7.A.6.b incorporates references to revised core analysis methodology reviewed and approved by the NRC Staff. Because the proposed change is administrative in nature and because the revised methodology referenced in the change will have prior NRC review and approval, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As stated above, the proposed change does not contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of the proposed changes. The cycle-specific core operating limits will be calculated using the revised NRC-approved methods and submitted to the NRC. The [TS] will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety is not affected by the addition of references to NRC approved core analysis methodology to the [TS]. The margin of safety provided by the current [TS] remains unchanged. The [TS] continue to require operation within the core limits obtained from NRC-approved reload design methodologies. The actions to be taken when or if limits are violated remain unchanged.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the plant in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: William M. Dean, Acting

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 6, 1993 (Reference LAR 93-03)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to relax the slave relay test frequency for slave relays K612A, K614B, K615A, and K615B from quarterly to once per 18 months during refueling or extended cold shutdowns. The specific TS change proposed is as follows: Technical Specification (TS) 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," would be revised to add Table Notation 3. The notation would relax the slave relay test frequency for slave relays K612A, K614B, K615A, and K615B from quarterly to at least once per 18 months during refueling or extended cold shutdowns. The affected slave relays cause isolation of the charging and letdown portions of the chemical and volume control system, and actuate charging pump suction valves associated with volume control tank and refueling water storage tank isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes proposed eliminate charging and letdown thermal and hydraulic transients not anticipated when the system was designed. Additionally, reactivity transients are reduced. The relaxed surveillance frequency does not significantly increase the chances of a slave relay failure, since generic problems with slave relays would be identified through the testing of the other slave relays at DCPP.

A PRA [probablistic risk assessment] was performed to quantify the increase in the CDF [core damage frequency] as a result of the relaxed test frequency. The PRA demonstrated that the CDF associated with testing slave relays K612A, K614B, K615A, and K615B on an 18-month frequency is not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the surveillance testing frequency for the previously described relays does not introduce any new component into the facility, change the operating methodology of the plant, or result in changes to parameters governing plant operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The increased surveillance frequency for the previously described relays will result in a longer operational period without testing the described relays and valves. However, the proven, high reliability of the currently installed slave relays assures that there is an insignificant effect on the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 7, 1993 (Reference LAR 93-04)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change TS 5.1.3 "Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents," to be consistent with a recent interpretation of the restricted area definition in 10 CFR 20. Specifically, TS 5.1.3 would be revised to remove two references to a restricted area.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

A change to the defined restricted area has no effect on any plant operating parameters. Consequently, a change to the defined restricted area will not effect the probability or consequences of an accident occurring.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revision to the DCPP TS is administrative in nature. Further, the proposed changes would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed revision to the DCPP TS does not affect the margin of safety of any accident analysis since it does not affect the parameters for any accident analysis, and has no effect on the current operating methodologies or actions which govern plant performance.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 7, 1993 (Reference LAR 93-05)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the gaseous effluent limit of TS 6.8.4.g., "Radioactive Effluent Controls Program," and the Bases for TS 3/4.11.1.4, "Liquid Holdup Tanks," due to recent revisions to 10 CFR 20. The specific TS changes proposed are as follows: (1) The proposed administrative change to the Bases for TS 3/4.11.1.4 would change the basis for the radioactive material concentration of the liquid holdup tanks from less than the limits of 10 CFR 20, Appendix B, Table II, Column 2 to less than the limits of 10 CFR 20.1001 - 20.2401, Appendix B, Table 2, Column 2.(2) The proposed administrative change to TS 6.8.4.g.3) would change the reference from 10 CFR 20.106 to the equivalent section, 10 CFR 20.1302, in the revision to 10 CFR 20. (3) The proposed changes to TS 6.8.4.g.7) would specify the dose rate for noble gases as less than or equal to 500 millirem (mrem) per year to the whole body, and less than or equal to 3000 mrem per year to the skin. The dose rate for Iodine-131, Iodine-133, tritium, and all particulates with half lives greater than 8 days would be less than or equal to 1500 mrem per year to any organ.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the gaseous effluent release limits maintains the release limits at their current level. The proposed change will not alter the type or amount of effluents discharged, and will have no effect on any DCPP parameter.

The change to the reference to 10 CFR 20 is administrative and will have no effect on plant systems or operating methodology.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes only maintain the limits on which the plant has operated in the past. No actual change in any DCPP

parameter would occur. Consequently, the changes do not effect the margin of safety of any accident analysis since the parameters are not affected. Additionally, the changes have no effect on the current operating methodologies or actions which govern plant performance.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 21, 1993

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements for testing the Safety/Relief Valves (SRVs). Currently, the TSs require that at least one half of the SRVs be removed, set pressure tested, and reinstalled or replaced at least once-per-18-months such that all of the SRVs are tested at least once-per- 40-months. The licensee is proposing to revise the TSs such that only the pilot stage portions of the SRVs are required to be removed and tested at the specified frequencies, and will require the main (mechanical) stage portion of the SRVs to be setpoint tested at least once per 5 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications (TSs) currently require that one-half of the safety/relief valves (SRVs) be tested at least once per 18 months, and that they be rotated such that all 14 SRVs are tested at least once per 40 months. This requirement was incorporated into the Hope Creek TSs based upon the recommendations of General Electric Servics Information Letter (SIL) 196, which was issued to address concerns relative to upward setpoint drift resulting from potential malfunctions in the pilot stage of the SRVs. PSE&G believes that the mechanical stage of the SRVs has proven to be highly reliable and need not be subject to these requirements. We are therefore proposing that the mechanical stage portion of the SRVs be tested at least once every 5 years. The pilot stage of the SRVs will continue to be tested in accordance with the recommendations of SIL 196. PSE&G believes that these proposed testing requirements will not significantly affect the reliability of the SRVs and will continue to ensure adequate capability of the SRVs to perform their intended safety functions. We therefore believe that the proposed changes will not significantly increase the probability or consequences of a previously analyzed accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not involve any hardware or logic changes, nor alters the way in which any plant system is operated; therefore, there are no new possibilities or types of accidents introduced.

3. Will not involve a significant reduction in a margin of safety.

As discussed in Criterion 1 above, the proposed testing frequency and applicability will provide a comparable degree of assurance that the SRVs will be capable of performing their intended function. In addition, the implementation of the proposed amendment will result in a reduction of radiological exposure of plant personnel and provide an enhancement to personnel safety. We therefore believe that the proposed change will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 6, 1991, September 20, 1991, December 19, 1991, January 31, 1992, August 19, 1992, and April 28, 1993. The March 6, 1991, request was previously noticed (56 FR 31441 dated July 10, 1991). This notice supersedes that previous notice.

Description of amendment request: The amendment request modifies Technical Specification (TS) Sections 3/4.8.1.1 and 3/4.8.1.2 and the associated Bases Section for Salem, Units 1 and 2. It incorporates guidance of Generic Letter 84-15 with regard to modified surveillance testing and operability requirements to improve diesel generator reliability. It also includes changes outside the scope of the Generic Letter, based on the operating experience and accepted industry practice, intended to improve the TS regarding A.C. power sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. do not involve a significant increase in the probability or consequences of an accident previously evaluated. Reducing the test frequency while in an action statement and modifying Emergency Diesel Generator (EDG) starting and loading requirements is intended to enhance diesel reliability by minimizing repetitive testing and facilitating testing in accordance with the manufacturer's recommendations. The proposal to eliminate Action Statement operability testing for a diesel inoperable because of preventive maintenance or pre-test inspection will facilitate the performance of activities to enhance overall EDG reliability.

The proposed changes to EDG test loads will continue to demonstrate the ability of the EDG's to respond to loading conditions, consistent with the manufacturer's ratings. Using the proposed basis for determining test frequency according to individual diesel generator performance will prevent overtesting of the diesels because it would increase the test frequency of only those diesels which have an increase in failure rate.

The changes proposed to make the Unit 1 EDG surveillance requirements identical to that of Unit 2 is a conservative change; it will provide Unit 1 with a more comprehensive testing program. The proposed changes will continue to assure availability of the diesels and should serve to enhance EDG reliability and consequently the overall safe operation of the Salem Generating Station.

2. do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change affects testing frequency, starting and loading practices only and has no impact on the accident analysis. No new operating modes or equipment are introduced which could initiate or affect the progression of an accident.

3. do not involve a significant reduction in a margin of safety. The changes in the testing requirements do not adversely affect the capability of the diesels to perform their required function. The purpose of the proposed changes is to increase the overall reliability of the diesels. In adopting many of the suggestions identified in GL 84-15, the requested change would implement actions

which have been determined by the NRC to reduce the risk of core damage from station blackout events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 11, 1993, and supplemented by letter dated July 19, 1993

Description of amendment request: The proposed amendment reduces the boron concentration in the boric acid storage tank from 12 percent by weight to between 3.75 and 4 percent by weight. The reduced boron concentration results in eliminating the need for heat tracing in the boric acid tank piping systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The reduction of the boric acid concentration in the boric acid tanks (BAT) and elimination of requirements for the associated heat trace circuits will not significantly increase the probability or consequence of an accident previously evaluated. Only minor modifications are planned, and while operating procedures will be revised to reflect the new boration method, the capability to safely shut down has not been changed or modified. TS controls have been placed on the boric acid tank to ensure that the lack of heat tracing does not result in the boron precipitating out of solution. Originally, Salem had the ability to borate at 10 gallons per minute (gpm) with boron solution of 20,000 parts per million (ppm). With the proposed change, Salem will provide the ability to borate at 33 gpm with a solution of between 6,560-ppm to 6,990-ppm boron. This will ensure that the boron addition rate remains essentially the same. In addition, boron addition from the BAT is not taken credit for in any accident analysis.

Two independent and redundant boration flow paths with appropriate borated water are provided to compensate for reactivity changes and all expected transients throughout core life. The sources of borated water are the BATs and the Refueling Water Storage Tank (RWST). The RWST is necessary for ECCS [emergency core cooling system] requirements. The current Technical Specification Bases covers using feed and bleed from the RWST [or the BAT]. [The licensee's analysis has shown that the borated water from a BAT and additional make-up from either the second BAT and/or batching, or the RWST will provide the required volume and boration.]

The existing boric acid tank heaters, with the BAT pumps on recirculation, will ensure that there is no precipitation of boric acid in the majority of the safety related portion of the boric acid injection system. This includes the boric acid tanks, the BAT pumps, and most of the process lines.

The exception is on the injection paths between the BAT pump recirculation line and the suction line to the charging pumps. A 4% [6990 ppm] boric acid solution will not cause line blockage even with the temperatures well below 50° F. At 50° F, [12.5% (875 ppm)] or less, of the [4%] boric acid [solution] will precipitate out creating a small film at the bottom of the piping. Since this portion of the flowpath does not contain a significant amount of 4% boric acid solution, there is no significant amount of boron precipitating out. Also, this film will not adhere to the piping and will not cause the blockage of the flow path. When ambient temperature is restored, the film will go back very quickly into solution. Based upon this analysis, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new of different kind of accident from any previously evaluated.

The original Salem design required heat trace circuits to ensure the boron, which was at 12% by weight, would remain in solution and be available for reactor coolant system reactivity control throughout core life. By lowering the boron concentration to 3.75 to 4.0 percent by weight, there is no possibility of boron precipitating out of the solution as long as the boric acid solution remains above 58°F. The auxiliary building, where this equipment is located[,] normally remains well above 58°F. Continuous monitoring of the required area temperatures, in conjunction with an alarm in the main control room, will allow for operator actions to ensure the solution temperature remains above the TS-required temperature of greater than or equal to 63°F. By eliminating the need for the heat trace, there is an increase in the availability of the boric acid storage system. This stored volume remains adequate to bring the unit to a safe, cold shutdown. Therefore, the removal of requirements for heat trace circuits and the reduction of the boron concentration in the BATs do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The margin of safety requirements is not affected by the removal of the heat trace circuits and reduction of the boric acid concentration in the BATs. The required flow paths and borated water sources are still available as before. The required quantity of borated water is still available based upon the new evaluation, and the ability to deliver this borated water remains the same. As stated previously, the reduction of the boric acid concentration in the BATs will ensure that the boric acid remains in solution at the normal room temperature in the auxiliary building. To ensure this, temperature will be continuously monitored at the control room. With the above changes, there will be a net improvement in system reliability and, accordingly, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 24, 1992, as revised December 17, 1992, March 4, 1993, and April 29, 1993

Description of amendments request: The amendments would revise the Technical Specifications to implement the revision to 10 CFR Part 20, Standards for Protection Against Radiation.

The licensee's March 4, 1993, letter revises Proposed Change 5 of the August 24, 1992, submittal. Specifically, the revision of the prior proposal pertains to gaseous effluent release rates which would be revised to maintain the current instantaneous dose rate limits contained in the Technical Specifications. This amendment was previously noticed on September 30, 1992 (57 FR 45089).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes will facilitate the implementation of the new 10 CFR 20 requirements. Compliance with other applicable regulatory requirements will continue to be maintained. Also, the proposed changes do not alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amount of gaseous effluent released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any change in the methodology that will be used in the radiological effluent monitoring of gaseous releases since current technical specification requirements will continue to be employed. Accordingly, the methodology that will be used in the control of gaseous effluents will remain unchanged. Additionally, annual doses will be limited to the doses specified in 10 CFR 50, Appendix I and 40 CFR 190. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 30, 1993

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Technical Specifications (TS) Section 6 to replace the requirements associated with the Boron Dilution Mitigation System (BDMS) with alarms, indicators, procedures, and controls to assure proper resolution of potential boron dilution events. The proposed changes include revisions to the Technical Specifications (the removal of the BDMS); the addition of alarms and indicators; a change to the normal plant lineup; and procedural enhancements. Because these changes relate to an alternative method of addressing postulated boron dilution events, the changes are presented for approval in a single package.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The only event potentially impacted by the proposed change is the inadvertent boron dilution event. The discussion of the probability and consequences of an inadvertent boron dilution event at CPSES is provided in FSAR Section 15.4.6. Primarily, the proposed changes revise the method of detecting and mitigating the event. The only aspect of the changes that impact the potential causes of an inadvertent boron dilution event is the increased requirement to isolate potential dilution sources in MODES 3, 4, and 5. As a result, the overall probability of the event is slightly decreased.

The alternate methods to detect and mitigate this event achieve the same basic goal as the originally proposed BDMS - to prevent a return to critical during an inadvertent dilution event. Because the BDMS as installed could not be shown to always be successful and the proposed change results in a design that does prevent a return to critical, the proposed change represents an improved response to the event. Thus it can be concluded that there is no increase in the consequences of a postulated boron dilution event.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to plant procedural requirements to either operate a reactor coolant pump or to isolate/control potential dilution sources does not create the potential for a new or different kind of accident because these new requirements are configurations which have always been allowed. Similarly, the new normal position for the letdown divert valve does not create a new or different accident because the new normal position has always been an allowed position. The other procedural changes only increase the plant operators' awareness of potential boron dilution problems or provide the steps needed to respond to available indications and alarms to mitigate the potential event. As a result, these procedural changes do not create the possibility of a new or different kind of accident.

The proposed changes also include addition of new redundant VCT [volume control tank] high level alarms and a new alarm indicating that the letdown divert valve is not in the "VCT" position. Because the alarms are passive, they do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The design criterion and margin of safety for the previous BDMS was that the dilution event is terminated prior to the loss of all shutdown margin. The same criterion will be met following the implementation of the proposed changes. Therefore there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 21, 1993

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 Technical Specifications to replace the existing requirements for operation of the control room HVAC system with requirements for operation of the control room emergency filtration/pressurization system and control room air conditioning system that are consistent with the requirements of the Westinghouse Standard Technical

Specifications (NUREG-1431) issued on September 28, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed changes have no impact on the probability of an accident. The control room ventilation systems are support systems which have a role in the detection and mitigation of accidents but do not contribute to the initiation of any accident previously evaluated.

The administrative changes (e.g., reorganizing the Technical Specifications by function) have no impact on the course of any accidents previously evaluated. Expanding the applicability to include movement of irradiated fuel assemblies and adding action requirements to suspend CORE ALTERATIONS and the movement of irradiated fuel assemblies are changes which improve the ability to mitigate fuel handling accidents.

Removing the action requirement in MODES 5 and 6 when one train is inoperable and the second cannot be powered from an operable emergency power source represents a slight decrease in the potential availability of the Control Room Emergency Filtration/ Pressurization System. However, due to the high reliability of the offsite power sources, the lack of any direct relationship between loss of offsite power and a fuel handling accident, and the capability of powering these systems from the other CPSES unit, the slight decrease in availability is not considered significant.

Specifying an allowed outage time (AOT) of 30 days for the heating and cooling of recirculated air while one train is inoperable and while each train is capable of 50% of load requirements (but not 100%), is based on the significance of the heating and cooling function but does represent an increase in AOT (from 7 days) and thus an increase in the probability that the functions could be unavailable. This increase is not considered significant based on several factors including: the design is based on the worst postulated meteorological conditions; generally, less than design cooling is required and a partial failure in the system may have no impact; an unavailability failure does not create an immediate irreversible impact (i.e., temperature will increase slowly over a period of time); the system could very possibly be restored or its loss mitigated without any impact on the course of whatever accident is being considered; and the extended AOT would allow more opportunity to perform major required maintenance and thus may provide an overall improvement in equipment reliability.

The new surveillance requirement to test the performance of the heating and cooling functions tends to improve the ability to detect long term degradation. Deleting the STAGGERED TEST BASIS for the heater surveillance and using actual actuation signals to test the automatic actual logic are expected to have little or no impact on system availability.

Overall, some of the proposed changes may increase the system's availability during an accident and others may decrease the system's availability. The net effect is not significant and, as a result, does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes do not involve any hardware or setpoint changes. System operation has not been changed to create new system configurations not previously allowed. As a result, even though the changes could have a minor impact on system availability and thus accident mitigation, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

None of the changes being proposed alters the environmental conditions which are to be maintained in the control room during normal operations and following an accident. As a result, the margin of safety for these functions remains the same. The only potential impact is the system's postulated availability, as discussed in response to question 1 above. As noted in that response, there is no significant impact on the accident analyses. Thus, even if system availability issues were considered an aspect of margin of safety, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 28, 1993

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 Technical Specifications to allow the use of certain NRC-approved methodologies, incorporate cycle-specific changes to the core safety limit curves and N-16 overtemperature reactor trip setpoints. In addition, the minimum required reactor coolant system (RCS) flow is increased, a previously imposed penalty on pressurizer pressure uncertainty is removed, and the uncertainty allowance for the N-16 power indication is increased.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

A. Revision to incorporate TU Electric's topical reports

The NRC assures that appropriate core operating limits are applied by requiring that the operating limits be determined using NRC approved analytical methods. These approved methods are listed in TS Section 6.9.1.6b. TU Electric has developed the in-house analysis capability to determine and confirm core operating limits. The TU Electric methodology has been documented in a series of TU Electric submittals which get approved by the NRC. This TS revision adds the TU Electric documents (which are NRC approved or will be approved prior to Unit 1, Cycle 4) to the list of acceptable methods.

Because the revision is administrative only, it cannot directly affect the probability or the consequences of any previously evaluated accident. The core operating limits are set to assure that relevant plant parameters are maintained such that potential accidents are within the bounds of the accident analyses. Because the applicable limits of the safety analysis will continue to be met, there is no significant impact on the consequences of an accident previously evaluated. In addition, since the core operating limits do not affect any accident initiators, the change has no impact on the probability of any accident previously analyzed.

B. Increase in Unit 1 Thermal Design Flow

This revision increases the Unit 1 Thermal Design Flow rate assumed in the safety analyses by 3.5%. The actual core flow is unchanged and is approximately 7.9% higher than the value assumed in previous accident analyses. The remaining 4.4% flow is sufficient to account for all uncertainties associated with the core flow measurement. Since this change only involves analysis methodology and does not affect actual core flow, it does not increase the actual probability or consequences of any postulated accident.

When considered separately, increasing the thermal design flow is a conservative change. Although there is no impact on the initiation

of any postulated accidents, the potential severity of the affected accidents is typically less when flow is increased. In general, the increased ability to remove heat from the fuel will reduce the peak temperature seen by the fuel and reduce the potential for undesirable boiling conditions. Thus, the increase in the thermal design flow will not increase the probability or consequences of an accident previously analyzed.

C. Increase in Unit 1 Minimum Pressurizer Pressure

The CPSES Unit 1 safety analysis value for pressurizer pressure was assessed a penalty (-12 psi, treated as a bias on pressurizer pressure uncertainty) due to the non-repeatability of the Barton 763 pressure transmitters at high temperatures. This penalty was assessed so that the same control range could be retained for pressurizer pressure. These transmitters were refurbished and now have acceptable repeatability. The penalty can be removed from the safety analysis value without affecting the normal control range. Removing the penalty increases the assumed safety analysis value. Because the same control range is being maintained and the transmitters were previously refurbished, it is expected that actual pressurizer pressure range that is maintained in the unit will not be changed as a result of this change in the safety analysis value. Thus, when considering normal plant operations, this change by itself is not expected to have any impact on the actual probability or consequences of an accident.

I*COM008*n general, increasing the required minimum pressurizer pressure is a conservative change. An increase in pressure delays the onset of the various modes of boiling and allows better heat transfer which can be expected to result in lower peak fuel temperatures. Thus, the increase in minimum indicated pressurizer pressure will not change the probability of an accident but will tend to decrease the severity of the analysis results for accidents previously analyzed.

D. Revision to the Unit 1 Core Safety Limits

Analyses of reactor core safety limits are required as part of reload calculations for each cycle. TU Electric has performed in-house analyses of the Unit 1, Cycle 4 core to determine the reactor core safety limits. The newer methodologies and safety analysis values result in new operating curves which, in general, permit plant operation over a broader range of acceptable conditions. This increase means that if a transient were to occur with the plant operating at the limits of the new curve, the transient might be more severe than if the plant were operating within the bounds of the old curve. However, since the new curves were developed using approved methodologies which are wholly consistent with and do not represent a change in the Technical Specification bases for safety limits, all applicable postulated transients will continue to be properly mitigated. As a result, there will be no significant increase in the consequences, as determined by accident analyses, of any accident previously evaluated.

E. Revision to Unit 1 Overtemperature and Overpower N-16 Reactor Trip Setpoints, Parameters and Coefficients

As a result of changes discussed in paragraphs "A", "B", "C" and "D" above, the Overtemperature N-16 reactor trip setpoint has been recalculated. An additional uncertainty allowance has also been added to the statistical combination of uncertainties used to determine both the Overtemperature and Overpower N-16 reactor trip setpoints and parameters. These trip setpoints help ensure that the core safety limits are maintained and that all applicable limits of the safety analysis are met.

Based on the calculations performed, the safety analysis value for Overtemperature N-16 reactor trip setpoint has increased. This essentially means if a transient were to occur, the actual course of the transient could be slightly more severe. However, the analysis performed show that, using the new methodologies, all core safety limits are met and all applicable limits of the safety analysis are met. The safety analysis value for Overpower N-16 remains unchanged. Both of these parameters have setpoints to allow the mitigation of postulated accidents and have no impact on accident initiation. Therefore, the changes in safety analysis values do not involve an increase in the probability of an accident and, based on satisfying the core safety limits and all applicable safety analysis limits, there is no significant increase in the consequences of any accident previously evaluated.

In addition, the changes result in setpoint values which offer safety benefits. By including an additional allowance to the combination of uncertainties used to determine these setpoints, the required frequency of N-16 power indication readjustments has been reduced. Not only does this reduce the wear on the hardware but it also reduces the potential for personnel error while working on sensitive safety related process equipment. The higher Overtemperature N-16 setpoints offer another operational improvement. The risk of turbine runbacks or reactor trips due to upper plenum flow anomalies will be minimized, thus reducing potential challenges to the plant safety system. A final benefit is that the new methods for considering N-16 setpoints and values will be consistent with Unit 2, which reduces the potential for personnel error due to unit differences.

Considering both the safety analysis impact and the benefits described above, the changes in N-16 setpoints and parameters probably reduce the probability of an accident and do not significantly increase the consequences of an accident previously evaluated.

SUMMARY

The changes in the amendment request provide new methodologies, changes in safety analysis values, new core safety limits and new N-16 setpoint and parameter values to assure that all applicable safety analysis limits have been met. The potential for an accident to occur has been reduced and there has been no significant impact on the consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve the use of new analysis methodologies, revised safety analysis values, and the calculation of a new core safety limits and reactor trip setpoints. As such, the changes play an important role in the analysis of postulated accidents but none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

In reviewing and approving the methods used for safety analyses and calculations, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. While the actual impact on safety is discussed in response to question 1, the impact on margin of safety is discussed below.

A. Revision to incorporate TU Electric's topical reports

The use of the methodology contained in the TU Electric topical reports does not in itself have any impact on the margin of safety. Satisfaction of event-specific acceptance criteria provide the margin of safety. The methodologies demonstrate, in a conservative manner (through input selection), that the event acceptance criteria are satisfied.

The proposed methods developed by TU Electric have been approved by the NRC or approval is expected soon. When approved, the methods identify the methodologies, correlations, etc. that may be used by TU Electric and establish the applicable safety analysis limits that must be met. Therefore, including these new methods in the TS does not change the margin of safety. It merely incorporates the previously approved margin of safety in the TS.

B. Increase in the Unit 1 Thermal Design Flow

In performing the DNB-related analysis, the Reactor Coolant System Thermal Design Flow rate assumed in these analyses is increased by 3.5 percent to insure that all applicable limits of the safety analysis are met. The TS 3.2.5 limit for this parameter will be changed to insure that it is maintained within the normal steady-state envelope of operation assumed in the transient and accident safety analyses (i.e., ensuring that the Thermal Design Flow rate assumed in the safety analyses remains valid). The Technical Specification limits are consistent with the initial safety analysis assumption (plus uncertainties) and have been analytically demonstrated to be adequate to maintain a minimum DNBR (departure from nucleate boiling ratio) at or above the safety analysis DNBR limit throughout each analyzed transient. Because the 95/95 DNBR acceptance criteria is met with the proposed change and assumptions of the safety analyses are maintained valid by the Technical Specification limits, there is no change in a margin of safety.

C. Increase in the Unit 1 Minimum Pressurizer Pressure

The removal of the bias on the CPSES Unit 1 pressurizer pressure due to refurbishment of the pressure transmitters by the vendor has allowed TU Electric to increase the minimum

pressurizer pressure value used in the safety analysis. The TS 3.2.5 limit for this parameter will be changed to ensure that it is maintained within normal steady state envelope of operation assumed in the transient and accident analyses (i.e., ensuring pressurizer pressure assumed in accident analyses remains valid). The Technical Specification limits are consistent with the safety analysis assumptions (plus uncertainties) and have been analytically demonstrated to be adequate to maintain a minimum DNBR at or above the safety analysis limit throughout each analyzed transient. Because the 95/95 DNBR acceptance criteria is met with the proposed change and assumptions of the safety analyses are maintained valid by the Technical Specification limits, there is no change in the margin of safety.

D. Revision to the Unit 1 Core Safety Limits

The TU Electric reload analysis methods (see A above) have been used to determine new core safety limits. All applicable safety analysis limits have been met. The methods used are wholly consistent with TS BASES 2.1 which is the bases for the safety limits. In particular, the curves assure that for Unit 1, Cycle 4, the calculated DNBR is no less than the safety analysis limit and the average enthalpy at the vessel exit is less than the enthalpy of saturated liquid.

In conjunction with the core safety limit methodology, the NRC approved TUE-1 DNB correlation is used for performing DNB-related analyses. This correlation will be applied to the core configuration of CPSES Unit 1, Cycle 4 and future core configurations. The TUE-1 correlation DNBR limit is established such that there is a 95 percent probability with 95 percent confidence level that DNB will not occur when the minimum DNBR for the limiting fuel is greater than or equal to the TUE-1 correlation DNBR limit. This 95/95 criteria defines the "margin of safety" for the DNB-related analyses and remains valid even though the DNB correlation and associated correlation limit are changed. Margin is retained in the DNB-related analysis for known and potential effects such as hydraulic differences between the two co-resident fuel assembly designs and the presence of the Reactor Coolant System lower plenum flow anomaly. The TUE-1 correlation DNBR limit plus margin constitutes the safety analysis DNBR limit. The accident analyses are preformed to ensure that the safety analysis DNBR limit acceptance criteria are satisfied. Because the 95/95 DNBR acceptance criteria remains valid and continues to be satisfied, no change in a margin of safety occurs.

E. Revision to Unit 1 Overtemperature and Overpower N-16 Reactor Trip Setpoints, Parameters and Coefficients

Because the core safety limits for CPSES Unit 1, Cycle 4 are recalculated, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint which protect the core safety limits must also be recalculated. The Overtemperature N-16 reactor trip setpoint helps prevent the core and Reactor Coolant System from exceeding their safety limits during normal operation and design basis anticipated operational occurrences. The design basis analyses in Chapter 15 of the CPSES Final Safety Analysis Report (FSAR) affected by the change in the safety analysis value for the CPSES Unit 1 Overtemperature N-16 reactor trip setpoint are the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal at Full Power (FSAR Section 15.4.2), and Inadvertent Opening of a Pressurizer Safety or Relief Valve (FSAR Section 15.6.1). These affected events have been re-analyzed with the revised safety analysis value for the Overtemperature N-16 reactor trip setpoint to demonstrate compliance with event specific acceptance criteria. Because all event acceptance criteria are satisfied, there is no degradation in a margin of safety.

The nominal Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint (Technical Specification Table 2.2-1) are determined based on a statistical combination of all of the uncertainties in the channels to arrive at a total uncertainty. The total uncertainty (which includes the addition of the indicated N-16 power SMTE [sensor measurement and test equipment] allowance discussed below) plus additional margin is applied in a conservative direction to the safety analysis trip setpoint value to arrive at the nominal and allowable values presented in Technical Specification Table 2.2-1. Meeting the requirements of Technical Specification Table 2.2-1 assures that the Overtemperature N-16 reactor trip setpoint assumed in the safety analyses remains valid. The CPSES Unit 1, Cycle 4 Overtemperature N-16 reactor trip setpoint is higher than previous cycles which provides more operational flexibility to withstand mild transients without initiating automatic protective actions. Although the setpoint is higher, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint are consistent with the safety analysis assumption which has been analytically demonstrated to be adequate to meet the applicable event acceptance criteria. Thus, there is no reduction in a margin of safety.

The inclusion of the additional SMTE uncertainty for indicated N-16 power into the channel statistical allowance will increase the total statistical combination of all uncertainties associated with the channels for the Overtemperature N-16 and Overpower N-16 reactor trip setpoints. The increase in the channel total uncertainty is accounted for in determination of the nominal setpoint presented in Table 2.2-1 for these reactor trip functions. The safety analysis values for the Overtemperature N-16 and Overpower N-16 reactor trip setpoints which use the indicated N-16 power are not affected by this enhancement. The change in the "S" term only affects the determination of channel operability and has no impact on the nominal setpoints presented in the Technical Specification Table 2.2-1. Incorporating the indicated N-16 power SMTE allowance into the statistical treatment of the Overtemperature N-16 and Overpower N-16 reactor trip setpoint does not reduce a margin of safety because the nominal and allowable setpoints continue to be determined in such a way as to assure that the assumptions in the accident analyses are valid.

SUMMARY

The proposed changes to the CPSES Technical Specifications involve using NRC approved (or soon to be approved) licensing analysis methods developed by TU Electric to determine the Technical Specification core safety limits and perform DNB-related analysis for CPSES Unit 1, Cycle 4. The DNB-related analyses are performed by TU Electric using a qualified, state-of-the-art departure from nucleate boiling (DNB) correlation, TUE-1, which has also been approved by the NRC for the CPSES Unit 1, Cycle 4 core configuration. In performing these analyses, the Reactor Coolant System Thermal Design Flow rate is increased by 3.5 percent and the removal of the bias on the system pressure uncertainty due to the thermal non-repeatability of the pressurizer pressure transmitters is credited. Because the core safety limits for CPSES Unit 1, Cycle 4 are recalculated, the Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint which protect the core safety limits are also recalculated. In conjunction with the Overtemperature N-16 reactor trip setpoint calculation, an operational enhancement is added to statistically include the sensor measurement and test equipment (SMTE) allowance associated with the indicated N-16 power into the statistical setpoint determination of the Reactor Trip System Instrumentation trip setpoints.

Using the NRC approved TU Electric methods, the core safety limits are determined such that all applicable limits of the safety analyses are met, particularly the 95/95 DNBR limit. The Technical Specification 3.2.5 limits for the DNB Parameters insure the assumptions in the safety analyses remain valid. Because the applicable event acceptance criteria continue to be met, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black

Virginia Electric and Power Company, Docket Nos. 50-280, 50-281, 50-338 and 50-339, Surry Power Station, Units No. 1 and No. 2, Surry County, Virginia and North Anna Power Station, Units No. 1 and No 2, Louisa County, Virginia

Date of amendment request: July 16, 1993

Description of amendment request: The proposed changes would revise the North Anna, Units 1 and 2 (NA-1&2) and Surry 1&2 Technical Specifications (TS) in accordance with the revised 10 CFR Part 20 regulations for radiation protection published in the **Federal Register** on May 21, 1991 and the change in radiological effluent reporting requirements published in the **Federal Register** on August 31, 1992. In addition, the NA-1&2 and Surry 1&2 site map would be changed to make the identification of the unrestricted area for gaseous effluents consistent with NUREG-0472 and Offsite Dose Calculation Manual (ODCM).

The revision of Part 20 to Title 10 of the Code Federal Regulations (10 CFR 20) incorporates advances and developments in radiation protection that have occurred since the original 10 CFR 20 was issued and implements a new philosophy of radiation protection based on the risk assessments and dose methodologies of the International Commission on Radiological Protection 26 and 30. As a result of this rule revision, severaladministrative changes are being made to the TS including reference changes to reflect the new 10 CFR 20 and terminology changes and additions associated with the revised rule.

The proposed changes to the effluent control program section of the TS are in response to the new dose limits to members of the general public. The revision of Appendix B, Table II, Columns 1 and 2, unrestricted Maximum Permissible Concentrations to the effluent concentration values associated with the new dose limits, which are a factor of ten less than current public dose limits, necessitates changes in the liquid and gaseous release rate limits. These changes will provide the operational flexibility necessary to implement the new 10 CFR 20 requirements.

The proposed TS changes dealing with the change in radiological effluent reporting frequency are in response to a recent change in NRC regulations. The requirements in 10 CFR 50.36a have been amended to reduce the frequency for submittal of the Radiological Effluent Release Reports from semiannually to annually.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Specifically, operation of North Anna Power Station and Surry Power Station in accordance with the Technical Specification changes will not:]

1. Result in a change in the types or amounts of effluents released nor will there be an increase in individual or cumulative radiation exposures. In addition, these changes do not impact the operation or design of any plant structures, systems or components. These changes ensure compliance with 10 CFR 50.36a and 10 CFR 50, Appendix I and result in levels of radioactive materials in effluents being maintained As Low As Reasonably Achievable (ALARA). [Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

2. Affect the plant design or operation nor do they result in a change to the configuration of any equipment. There will be no change in types or increase in the amount of effluents released offsite. As a result, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve any actual change in the methodology used in the control of radioactive wastes or radiological environmental monitoring. Therefore these changes do not [involve a significant reduction in a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.Local Public Document Room locations: Swem Library, College of William and Mary, Williamsburg, Virginia 23185 and The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: May 10, 1993, supplemented by letter dated May 21, 1993

Description of amendment request: The amendment proposes to change Section 6 (Administrative Controls) section of the Technical Specifications (TS) to modify the composition, organizational assignments, and reporting relationship of the personnel performing the Independent Safety Engineering Group (ISEG) function in the current Nuclear Safety Assurance Division (NSAD). In addition, the proposed change would modify the title of the Quality Assurance (QA) member of the Plant Operations Committee (POC) to reflect the new QA organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes are administrative in nature and involve no physical alteration of the plant, or changes to setpoints, operating conditions, or operating parameters. The response of the plant to previously evaluated accidents thus is not affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The administrative nature of the proposed changes do not affect the design, operation, maintenance, or testing of the plant. Thus, no new failure modes are created. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The proposed changes reflect a planned organizational change that do not change the qualification requirements or competence of the personnel performing the ISEG function. Therefore, these changes do not involve a significant reduction in a margin to safety.

The NRC staff has determined that it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 26, 1993

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 15.3.7, Section 15.4.6, and Table 15.4.1-2. The revisions will incorporate items that were identified during a comparison of the accident analyses in the Point Beach Nuclear Plant Safety Analysis Report (FSAR) and the Limiting Conditions for Operation (LCO) and surveillance sections of the Point Beach TS. The changes will add systems or equipment required by the accident analyses. The proposed amendments would also change the diesel generator testing requirements by eliminating the daily testing requirement when one diesel generator is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed technical specification change will not create a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes add operating conditions and limiting conditions for operation (LCOs) and surveillances for the 120 VAC vital instrument bus system and diesel fuel oil system. This change also proposes a surveillance for the diesel generator room exhaust fans and a revision to eliminate the daily testing requirement when one diesel generator is inoperable. The basis for Section 15.3.7 is also being revised to support the above changes and also to remove an administrative error. With the exception of the proposed removal of the daily diesel generator testing requirements, the above revisions add additional requirements to the Technical Specifications, making the document more restrictive and enhancing the overall operation of Point Beach Nuclear Plant.

The only revision that will relax existing requirements is the proposed revision to eliminate the daily testing of the emergency diesel generators when one diesel generator is inoperable. Rather than test the operable diesel generator daily when one diesel is inoperable, the operable diesel would be tested only once during the seven day period to determine if a common failure mode existed for both diesel generators. If a diesel generator is removed from service for maintenance, the other diesel generator will be tested prior to taking the diesel generator out of service to ensure operability. Although the operable diesel would be tested for operability less often, the initial common-mode failure test would be sufficient to ensure that the remaining diesel was operable and verify that the failure mode which caused inoperability in one diesel generator did not affect the other diesel. Also, testing the operable diesel generator less frequently will reduce the amount of wear induced in the diesel generators which could increase their reliability, and is consistent with NUREG-1366.

The installation of the static transfer switches in the 120 VAC vital instrument bus system was performed in accordance with 10 CFR 50.59. Although not required for the installation of the plant modification, the addition of the LCOs and surveillance for the 120 VAC vital instrument bus system is proposed to further enhance the reliability and operation of the system.

Since there is no physical change to the facility, its systems, or its operation as a result of this technical specification change request, the proposed changes will not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of this facility under the proposed technical specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes add operating conditions and limiting conditions for operation (LCOs) and surveillances for the 120 VAC vital instrument bus system and diesel fuel oil system. This change also proposes a surveillance for the diesel generator room exhaust fans and a revision to eliminate the daily testing requirement when one diesel generator is inoperable. The basis for Section 15.3.7 is also being revised to support the above changes and also to remove an administrative error. With the exception of the proposed removal of the daily diesel generator testing requirements, the above revisions add additional requirements to the Technical Specifications, making the document more restrictive and enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax existing requirements is the proposed revision to eliminate the daily testing of the emergency diesel generators when one diesel generator is inoperable. This is consistent with recent NRC guidance and supported by the demonstrated high reliability of our diesel generators.

The installation of the static transfer switches in the 120 VAC vital instrument bus system was performed in accordance with 10 CFR 50.59. Although not required for static transfer switch installation, the addition of the LCOs and surveillance for the 120 VAC vital instrument bus system is proposed to further enhance the reliability and operation of the system. The static transfer switches were installed to transfer loads to an alternate AC power source upon an inverter failure or a fault condition that causes instrument bus voltage to drop below a preset level. The alternate AC power source is not classified as safety-related. Failure of this source will not cause an inverter failure or prevent the inverters from supplying their respective instrument buses. In addition, the time allowed for the loads to be powered from the alternate AC power source will be limited to 8 hours, after which time the plant must proceed to hot shutdown.

Since there is no change to the function of plant systems or its operation as a result of this technical specification change request, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed technical specification change will not create a significant reduction in a margin of safety. The proposed changes add operating conditions and limiting conditions for operation (LCOs) and surveillances for the 120 VAC vital instrument bus system and diesel fuel oil system. This change also proposes a surveillance for the diesel generator room exhaust fans and a revision to eliminate the daily testing requirement when one diesel generator is inoperable. The basis for Section 15.3.7 is also being revised to support the above changes and also to remove an administrative error. With the exception of the proposed removal of the daily diesel generator testing requirements, the above revisions add additional requirements to the Technical Specifications, making the document more restrictive and enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax existing requirements is the proposed revision to eliminate the daily testing of the emergency diesel generators when one diesel generator is inoperable. This is consistent with recent NRC guidance and supported by the demonstrated high reliability of our diesel generators. The installation of the static transfer switches in the 120 VAC vital instrument bus system was performed in accordance with 10 CFR 50.59. Although not required for the installation of the plant modification, the addition of the LCOs and surveillance for the 120 VAC vital instrument bus system is proposed to further enhance the reliability and operation of the system.

Since there is no change to the function of plant systems or its operation as a result of this technical specification change request, the proposed changes will not create a significant reduction in a margin of safety. In fact, the addition of the proposed operating restrictions may increase the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 26, 1993

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Section 15.3.4 by adding operating conditions and limiting conditions for operation for the atmospheric steam dump valves, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features. This change also proposes to revise the surveillance requirements in Section 15.4.8 for the auxiliary feedwater system. The bases for Technical Specifications Sections 15.3.4 and 15.4.8 are also being revised to support this change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will add operating conditions and limiting conditions for operation for the atmospheric steam dump lines, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features installed at Point Beach Nuclear Plant. This change will also revise the surveillance requirements for the turbine-driven auxiliary feedwater system. The change will additionally add explanatory text to the bases of the associated sections. These proposed revisions will add additional requirements to the Technical Specifications, making the document more restrictive, enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax any existing requirements is the proposed revision of the AFW pump valve testing requirements. This proposed revision would change the requirements to require the tests to be performed quarterly instead of monthly. This surveillance interval is consistent with the testing intervals for the AFW pumps and with ASME Section XI requirements. There is no physical change to the facility, its systems, or its operation. Thus, an increased probability or consequences of an accident previously evaluated cannot occur.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change will add operating conditions and limiting conditions for operation for the atmospheric steam dump lines, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features installed at Point Beach Nuclear Plant. This change will also revise the surveillance requirements for the turbine-driven auxiliary feedwater pumps. The change will additionally add explanatory text to the bases of the associated sections. These proposed revisions will add additional requirements to the Technical Specifications, making the document more restrictive, enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax any existing requirements is the proposed revision of the AFW pump valve testing requirements. This proposed revision would change the requirements to require the tests to be performed quarterly instead of monthly. This surveillance interval is consistent with the testing intervals for the AFW pumps and with ASME Section XI requirements. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety. This proposed change will add operating conditions and limiting conditions for operation for the atmospheric steam dump lines, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features installed at Point Beach Nuclear Plant. This change will also revise the surveillance requirements for the turbine-driven auxiliary feedwater pumps. The change will additionally add explanatory text to the bases of the associated sections. These proposed revisions will add additional requirements to the Technical Specifications, making the document more restrictive, enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax any existing requirement is the proposed revision of the AFW pump valve testing requirements. This proposed revision would change the requirements to require the tests to be performed quarterly instead of monthly. This surveillance interval is consistent with the testing intervals for the AFW pumps and with ASME Section XI requirements. There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur. In fact, the additional requirements being proposed for addition to the Technical Specifications may result in an increased margin of safety by assuring these systems function as analyzed in the Point Beach Nuclear Plant Final Safety Analysis Report.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 26, 1993 as supplemented on March 9, 1993

Description of amendment request: The amendment would revise present Technical Specification (TS) 15.3.1.A.3 by clarifying the exception for when one decay heat removal method must be in operation. In addition, the licensee proposes to renumber specification 15.3.1.A.3.a.(3) as 15.3.1.A.3.a.(4).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A proposed facility operating license amendment does not present significant hazards consideration if operation of the facility in accordance with the proposed amendment will not:

1. Create a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Will not create a significant reduction in a margin of safety.

Criterion 1

The residual heat removal (RHR) system at PBNP serves two purposes to the shutdown reactor:

1. The system removes decay heat from the reactor core to allow cooldown of a subcritical unit once reactor coolant system temperature is less than 350 degrees F.

2. Provides a system to ensure mixing of the reactor coolant system volume when the reactor coolant pumps are secured.

The system is not involved in the initiation of any analyzed accidents as documented in the PBNP FSAR. Hence, the changes proposed cannot create an increase in the probability of such events. However, the system is involved in mitigating the consequences of evaluated accidents through the removal of decay heat. The proposed changes will introduce and allow a short time period (1 hour) during normal shutdown operations when all reactor coolant pumps and residual heat removal pumps may be de-energized. While this

relaxation is significant, the provisions for this relaxation, as well as the short period of time allowed, sufficiently address the functions which the RHR system (or operable reactor coolant system loop) provide to a shutdown reactor core when temperature is less than 350 degrees F; that is: 1) no operations are permitted which could cause a dilution of reactor coolant system boron concentration (thus inserting positive reactivity), and 2) maintenance of reactor coolant system temperature such that subcooling of at least 10 degrees F exists, ensuring boiling does not occur in the shutdown core. The brevity of the relaxation, combined with the two restrictive provisions cited, is sufficient to maintain the probability or consequences of previously analyzed accidents as being unaffected.

Criterion 2

The relaxation of the requirement to have one decay heat removal method in operation in no way introduces any new criteria to system operation such that any new or different kind of accident from any accident previously evaluated is created. Securing of the decay heat removal methods under the tight provisions allowed cannot create the possibility of a new or different accident because reactor reactivity remains unaffected and the reactor coolant system is maintained in a subcooled configuration during the brief time allowed.

Criterion 3

As stated above, both the brevity of the relaxation as well as the strict provisions which must be in effect during the brief period of relaxation, support the fact that a significant reduction in a margin of safety will not be introduced. The NRC has previously analyzed and accepted the proposed wording in its generic documents.

Operation of PBNP in accordance with these proposed amendments cannot create an increase in the probability or consequences of an accident previously evaluated, create a new or different kind of accident, or result in a significant reduction in a margin of safety. Therefore, the proposed changes do not present a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 24, 1993

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 15.6 to update several position titles. All title changes are administrative only. However, several modifications to the Manager's Supervisory Staff (MSS) duties are proposed to more closely reflect the intent of Revision 5 of the Westinghouse Standard Technical Specifications and remove a redundant review of the Facility Fire Protection Program implementing procedures. In addition, this change request proposes to modify Section 15.6.5 to revise the composition of the MSS membership.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes are administrative in nature. They consist of title changes due to organizational changes and allow assignment of qualified personnel to the MSS as needed to discuss and resolve issues related to the safe and reliable operation of the Point Beach Nuclear Plant (PBNP). The changes will allow the Chairman of MSS to fully utilize the expertise and experience within the Wisconsin Electric Nuclear Power Department for MSS members and will result in more critical and thorough reviews of plant issues and events. In addition, there is no physical change to the facility, its systems, or its operations. Operation of the PBNP in accordance with these proposed amendments cannot create an increase in the probability or consequences of an accident previously evaluated, create a new or different kind of accident, or result in a significant reduction in a margin of safety. Therefore, the proposed changes do not present a significant hazards consideration.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 11, 1993

Description of amendment request: The proposed revisions will modify Technical Specification 15.3.1.G, "Operation Limitations," Specification 3, to reduce the reactor coolant system raw measured total flow rate limit by 2,600 gallons per minute (gpm), change the temperature difference overtemperature and temperature difference overpower setpoints, and change the Reactor Core Safety Limits for Unit 2. These changes must be made to accommodate the RCS flow rate reduction which results from an increase in the number of tubes plugged in the Unit 2 steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change reduces the Unit 2 Reactor Coolant System raw measured total flow rate limit by 2,600 gpm. Evaluations performed by Westinghouse and Wisconsin Electric have determined that all the safety analysis requirements are still met at the reduced flow rate limit without increased consequences. A reduction of the RCS flow limit does not affect any parameters that could affect the probability of an accident. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change reduces the Unit 2 Reactor Coolant System raw measured total flow rate limit by 2,600 gpm. Evaluations performed by Westinghouse and Wisconsin Electric have determined that all the safety analysis requirements are still met at the reduced flow rate limit and this change does not create the possibility of a new or different kind of accident. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety. This proposed change reduces the Unit 2 Reactor Coolant System raw measured total flow rate limit by 2,600 gpm. Evaluations performed by Westinghouse and Wisconsin Electric have determined that all the safety analysis requirements are still met at the reduced flow rate limit. The DNBR margin used for this change in the RCS flow limit is margin in excess of the margin of safety for DNBR. The reduction of the overtemperature and overpower [temperature difference] setpoints prevent the possibility of exceeding the core safety limits. Therefore, this reduction in RCS total flow rate limit does not reduce any existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: July 16, 1993

Brief description of amendment: The proposed amendment would revise Technical Specifications (TSs) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable incore detectors. The incore detectors are required to verify that the core power distribution is consistent with the safety assumptions used in the safety analyses and to protect the current power distribution TS limits. The proposed changes would also apply penalties to the values measured by the incore detectors prior to their comparison with TS limits to assure that the TS limits monitored by the incore detectors will continue to be valid.

Date of publication of individual notice in **Federal Register:** July 22, 1993 (58 FR 39253)

Expiration date of individual notice: August 23, 1993

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 26, 1993

Brief description of amendment request: The proposed amendment would revise the Technical Specifications to increase the storage capacity of the Spent Fuel Pool to a maximum of 3152 fuel assemblies, including storage capacity for 323 fuel assemblies in a proposed rack that could temporarily be located in the cask loading area of the cask pit during full-core offloading.

Date of individual notice in **Federal Register:** July 30, 1993 (58 FR 40841)

Expiration date of individual notice: August 30, 1993

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 18, 1993

Brief description of amendments: The proposed amendments would revise the basis of the scram and isolation setpoints for the main steamline radiation monitors as defined in NRC Safety Evaluations of January 18 and August 24, 1989. The proposed change would reduce the potential for unwarranted challenges to safety systems during a special test of the Hydrogen Water Chemistry (HWC).

Date of issuance: August 3, 1993

Effective date: August 3, 1993

Amendment Nos.: 143 and 138

Facility Operating License Nos. DPR-29 and DPR-30. The amendments approve the licensee's May 18, 1993, application.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32379)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 19, 1993

Brief description of amendment: The amendment updated the reactor coolant system (RCS) leakage test pressure technical specifications to agree with the requirements of the 1980 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI through winter 1981 addenda).

Date of issuance: August 2, 1993

Effective date: August 2, 1993

Amendment No.: 167

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30194)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 7, 1993

Brief description of amendment: The amendment corrected typographical errors that were introduced in the original Technical Specifications and in subsequent amendments.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 149

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34076).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 21, 1992.

Brief description of amendment: The amendment revised the Technical Specifications to reflect an organization change which consolidates assessments, operations experience reviews, and the Independent Safety Engineering Group (ISEG) functions. The change deletes the ISEG and creates a new section on Independent Technical Reviews.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 83

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 7, 1993

Brief description of amendment: The amendment revised the Technical Specifications by removing reference to the Radioactive Effluent Release Reports being issued on a semiannual basis. The 10 CFR 50.36(a)(2) is now amended to require these reports on an annual basis.

Date of issuance: July 29, 1993

Effective date: July 29, 1993

Amendment No.: 84

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34079)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 23, 1993

Brief description of amendments: These amendments change the Technical Specifications 6.2, Organization, related to the Operations Manager qualifications.

Date of issuance: August 4, 1993

Effective date: August 4, 1993 Amendment Nos. 156, 149 Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30194)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 17, 1993

Brief description of amendment: The amendment 1) increases the minimum fuel storage requirements for the emergency diesel generators (EDGs), 2) revises alternate train testing requirements for the EDGs, 3) revises the monthly EDG load testing requirement, 4) adds a requirement to perform a semi-annual demonstration of the emergency load capability test of the EDGs, 5) revises the Remedial Actions to be taken if more than one of the required electrical sources becomes unavailable when the reactor is critical, 6) removes an unnecessary restriction on 115 kV reserve station power, 7) revises or adds the Basis associated with each item, 1 through 6, above, and 8) makes minor editorial changes.

Date of issuance: August 3, 1993

Effective date: To be implemented within 30 days of issuance

Amendment No.: 140

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25857)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 24, 1992, as supplemented June 30, 1993

Brief description of amendment: The amendment revises the Technical

Specifications to utilize a revised correlation for the Flow Biased Scram and Average Power Range Monitors Rod Block functions. The revisions are an integral part of the process computer upgrade that was implemented during the recent refueling outage (Reload 13). The process computer upgrade utilizes the "3D Monicore" software which was supplied as part of the computer upgrade.

Date of issuance: July 26, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 143

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61116)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 15, 1993

Brief description of amendment: The amendment permits the use of new ZIRLO fuel assemblies.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 81

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19485)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: May 7, 1992, as revised June 24, 1993.

Brief description of amendments: The amendments (1) relocate the Containment Penetration List from Section 4.4 of the Technical Specifications into plant procedures in accordance with the guidance of Generic Letter 91-08, (2) changes Section 3.6.C of the Technical Specifications to clarify when non-automatic containment isolation valves are required to be operable and what actions are to be taken in response to inoperability of a non-automatic containment isolation valve, and (3) deletes condensate cross-connect valve C-41-1 from Section 3.4.B.1.g of the Technical Specifications.

Date of issuance: July 29, 1993

Effective date: July 29, 1993

Amendment Nos.: 107 and 100

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24674) The June 24, 1993, submittal provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 21, 1993

Brief description of amendment: The amendment revised the Technical Specifications to increase the maximum bypass pressure for the steam generator low-pressure signal trip setting from 550 psia to 600 psia.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 153

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34084)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska, 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 27, 1991, as supplemented October 5, 1992, and July 20, 1993.

Brief description of amendments: The proposed amendments revise Technical Specification (TS) 3/4.4.4, "Relief Valves," and (TS) 3/4.4.9.3, "Overpressure Protection Systems," and their associated bases to implement the recommendations of Generic Letter 90-06. These amendments include additional provisions for power operated relief valve (PORV) and block valve reliability and low temperature overpressure protection.

Date of issuance: July 23, 1993

Effective date: July 23, 1993

Amendment Nos.: 81 and 80

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24214)The October 5, 1992, and July 20, 1993 submittals provided clarifying information that did not change the initial proposed no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 18, 1992, telecopy dated January 28, 1993, and letters dated March 25, and May 20, 1993

Brief description of amendments: The amendments changed the Technical Specifications to remove cycle-specific parameter limits in accordance with NRC Generic Letter 88-16 and revised Section 5.3.1 in accordance with NRC Generic Letter 90-02, Supplement 1.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 126 and 95

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8776)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 14, 1991 and March 3, 1992

Brief description of amendments: The amendments revised the Technical Specifications to delete the temperature leak detection system isolation function (ambient and differential) in the Residual Heat Removal pump rooms.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 127 and 96

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34084)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 1, 1993

Brief description of amendments: The amendments changed the Technical Specifications to revise the reporting frequency of the Semiannual Radioactive Effluent Release Report from semiannual to annual pursuant to the revised 10 CFR 50.36a, which the Commission published in the Federal Register on August 31, 1992.

Date of issuance: August 5, 1993

Effective date: August 5, 1993

Amendment Nos.: 128 and 97

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34085)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 28, 1992 and October 19, 1992, as supplemented by letters dated March 16, 1993, April 13, 1993, May 28, 1993, and June 7, 1993, June 23, 1993, July 1, 1993, and July 7, 1993

Brief description of amendments: The amendments extend the interval for certain Technical Specification surveillance requirements to 24 months with an additional 25 percent grace period. The extension of the interval is accomplished for some surveillances by explicitly embedding the term 24 months in the particular line item requirement. For other surveillances, the extension is accomplished by changing the TS Section 1.0 definition of operating cycle or refueling cycle to a maximum of 732 days. A 25 percent grace period beyond the 732 days is allowed.

Date of issuance: August 2, 1993

Effective date: August 2, 1993Amendments Nos.: 179 and 182

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55567)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, [REGIONAL DEPOSITORY] Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 9, 1993

Brief description of amendment: Technical Specifications Table 4.1-1 to change the frequency of primary auxiliary building (PAB) area temperature sensor testing to accommodate operating on a 24-month fuel cycle. This change followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Date of issuance: July 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 135

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30198)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 9, 1993

Brief description of amendment: The amendment revised Technical Specifications Table 4.1-1 to extend the frequency of turbine building water level sensor testing to accommodate operating on a 24-month fuel cycle. This change followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Date of issuance: July 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 136

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30199)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 25, 1993

Brief description of amendment: The amendment revised the Technical Specifications (Appendix A) and the Radiological Environmental Technical Specifications (Appendix B) to incorporate the changes listed below:

(1) The frequency of process and area radiation monitor calibration (specified in Appendix A Table 4.1-1 and Appendix B Tables 3.1-1 and 3.2-1) was changed to accommodate operation on a 24-month cycle.

(2) The frequency of radioactivity recorder calibration (specified in Appendix B Table 3.1-1) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

In addition, the following administrative changes were incorporated:

(1) Appendix A Table 4.1-1 was changed to identify and specify each radiation monitor by its appropriate tag number and the table was reformatted for consistency.

(2) Appendix B Tables 3.1-1 and 3.2-1 were changed to identify and specify each radiation monitor by its appropriate tag number.

(3) Appendix B Tables 2.1-1 and 3.1-1 were changed to clarify monitoring requirements for the condensate polisher waste release path. In addition, Appendix B Table 2.1-1 was reformatted for consistency.

(4) Appendix A Table 4.1-1 and Appendix B Table 3.1-1 were changed to clearly indicate that the surveillance requirement for monitors R-25/26 and R-23 will remain as once per 18 months.

(5) The Bases for Appendix A Section 3.3 was changed to clarify the control room ventilation radiation monitoring requirements.

Date of issuance: August 4, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 137

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16871)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 18, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 4.3.B.1 and associated Bases to require verification of control rod coupling integrity each time a control rod is withdrawn to the "full out" position and prior to declaring a control rod operable after work on a control rod or the control rod drive system that could affect coupling. These changes make the James A. FitzPartrick TSs consistent with the guidance provided by the NRC's revised Standard Technical Specifications for General Electric plants (NUREG-1433).

Date of issuance: July 23, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 193

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16229)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 15, 1993

Brief description of amendment: The amendment makes several changes to Table 4.7-2, "Exception to Type C Tests." Specifically, the changes (1) added system numbers to the valve identification numbers for seven control rod drive containment isolation valves and clarified the penetration arrangement, (2) removed valves 10MOV-57 and 10MOV-67 from the table, (3) added valves 10RHR-729A and 10RHR-729B to the table, and (4) corrected errors introduced in *Amendment No.* 143.

Date of issuance: July 29, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 194

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32391)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 11, 1992, and supplemented by letters dated July 16, 1992, February 2, 1993, and July 2, 1993

Brief description of amendments: The amendments modify the Reactor Trip System, Engineered Safety Features Actuation System, Instrument Sections and associated Bases for Surveillance Test Intervals and Allowed Outage Times. These changes are line-item improvements previously approved by the NRC and documented in safety evaluations for WCAP-10271 and Supplement 1, WCAP-10271, Supplement 2, and Supplement 2, Revision 1. Changes also modify the Semi-Automatic Transfer to Recirculation on Refueling Water Storage Tank Low Level. This Functional Unit is not part of the program covered in the WCAP and was analyzed on a plant-specific basis.

Date of issuance: August 4, 1993

Effective date: As of the date of issuance and to be implemented within 120 days of the date of issuance.Amendment Nos. 142 and 121

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992(57 FR 40220)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 6, 1992

Brief description of amendment: The amendment modifies Figures 3.4-2 and 3.4-3 to TS 3/4.4.9, Pressure/ Temperature Limits, Reactor Coolant System, to remove Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule," and removes the reference to this table in Surveillance Requirement 4.4.9.1.2. The changes to the Pressure/Temperature (P/T) limits provide new heatup and cooldown curves based on the analysis of specimen X of the radiation surveillance program. The request to remove Table 4.4-5 is based on the guidance of Generic Letter 91-01 (GL 91-01), "Removal of the Schedule for Withdrawal of Reactor Vessel Material Specimens from Technical Specifications."

Date of issuance: July 28, 1993

Effective date: July 28, 1993

Amendment No.: 113

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992(57 FR 55590)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 20, 1994 [sic 1992]

Brief description of amendments: These amendments revise the Technical Specification 3/4.4.5, "Reactor Coolant System Leakage," to allow the required RCS water inventory balance to be performed within 120 hours of the previous balance when this activity requires interruption of transient evolutions. Previously, performance of a water inventory balance was required every 72 hours.

Date of issuance: August 3, 1993

Effective date: August 3, 1993

Amendment Nos.: 108 and 97

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8784)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 1, 1993; amended June 16, 1993 (TS 93-01)

Brief description of amendments: The amendments incorporate the changes necessary to decrease the frequency of the Radioactive Effluent Release Report from semiannual to annual.

Date of issuance: August 2, 1993

Effective date: August 2, 1993

Amendment Nos.: Unit 1: 169, Unit 2: 159

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19487)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 4, 1991, as clarified by letters dated March 11, 1992 and March 11, 1993

Brief description of amendment: The amendment revised Technical Specifications 3/4.4.4, 3.4.9.3 and their associated Bases to incorporate changes recommended in Generic Letter 90-06, "RESOLUTION OF GENERIC ISSUE 70, 'POWER-OPERATED RELIEF VALVE AND BLOCK VALVE RELIABILITY,' AND GENERIC ISSUE 94, 'ADDITIONAL LOW-TEMPERATURE OVERPRESSURE PROTECTION FOR LIGHT-WATER REACTORS,' PURSUANT TO 10 CFR 50.54(f)" dated June 25, 1990.

Date of issuance: August 5, 1993

Effective date: August 5, 1993

Amendment No.: 83

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11116)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 10, 1993, as supplemented July 28, 1993

Brief description of amendments: The amendments revise the NA-1&2 TS pertaining to the High Head Safety Injection (HHSI) flow balance tests by removing the uncertainty of flow measurements caused by instrument inaccuracies.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 171, 151

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19491)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: April 21, 1993

Brief description of amendments: These amendments provide clarification of the design response time of the containment hydrogen analyzers and delete a channel check for the analyzers.

Date of issuance: August 6, 1993

Effective date: August 6, 1993Amendment Nos. 181, 181

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30202)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 17, January 29, and April 16, 1992

Brief description of amendments: These amendments modify the Technical Specifications to increase the surveillance test intervals for reactor protection and safeguards circuits. The amendments remove requirements to check Analog Rod Position, Rod Position Bank Counters, and Steam Generator Flow Mismatch Channels during a cold shut down condition of the plant, and also clarify the test requirements for the Overpower Delta T function to ensure consistency with the test requirements for the Overtemperature Delta T function.

Date of issuance: July 28, 1993

Effective date: July 28, 1993

Amendment Nos.: 140 and 144

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8788)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 1, 1993

Brief description of amendment: The amendment revises Technical Specification Section 6.9.1.7, Semiannual Radioactive Effluent Release Report, and associated reporting requirements in Technical Specification Sections 3.11 and 6.14 to extend the reporting period from semi-annually to annually.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment No.:

Amendment No. 65

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34098)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 93-19806 Filed 8-18-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 030-12231, Licenee No. 13-17124-01 EA 93-022]

Community Hospital South, Indianapolis, IN; Order Imposing Civil Monetary Penalty

I

Community Hospital South, Indianapolis, Indiana (Licensee) is the holder of Byproduct License No. 13-17124-01 first issued by the Nuclear Regulatory Commission (NRC or Commission) on October 7, 1976, and renewed in its entirety on March 31, 1988. The license expired on June 30, 1993, and is currently under timely renewal. The license authorizes the Licensee to use any radiopharmaceutical identified in 10 CFR 35.100, to use any radiopharmaceutical identified in 10 CFR 35.200 except technetium-99m generators, any radiopharmaceutical for therapy identified in 10 CFR 35.300, and any brachytherapy source identified in 10 CFR 35.400, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on November 17, 1992. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 10, 1993. The Notice stated the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letter dated April 5, 1993. In its response, the Licensee denied Violations I and K, admitted Violations N and S with mitigating circumstances, admitted fully the remainder of the violations, and requested remission of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that with the exception of Violations M, O, and P, which are withdrawn, the violations occurred as stated; that the penalty proposed for the remaining violations designated in the Notice should be mitigated by $1,250 based on reconsideration of the application of the factor in the Enforcement Policy for Prior Opportunity to Identify; and that a civil penalty of $5,625 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered,* That:

The Licensee pay a civil penalty in the amount of $5,625 within 30 days of the date of this Order, by check, draft, electronic transfer, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the

hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations I and K in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation as modified in Section III above that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On March 10, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on November 17, 1992, at Community Hospital South, Indianapolis, Indiana (Licensee). Community Hospital South responded to the Notice by letter dated April 5, 1993. In its response, the Licensee denied Violations I and K, admitted Violations N and S with mitigating circumstances, and admitted the remaining violations. In addition, the Licensee believes the NRC's assessment of the civil penalty adjustment factors was based on incorrect information. The Licensee disagreed with the NRC position (set forth in the March 10, 1993, letter transmitting the Notice) on escalating the amount of the base civil penalty for identification (50 percent) and for prior opportunity to identify (100 percent). The Licensee states that extenuating circumstances exist. Further, the Licensee requested remission of the civil penalty because of prior good performance. The NRC's evaluation and conclusions regarding the Licensee's request are as follows:

I. Violations Assessed Civil Penalties

A. Restatement of Violation I

10 CFR 35.22(b)(6) requires that, to oversee the use of licensed material, the Radiation Safety Committee must review annually, with the assistance of the Radiation Safety Officer, the licensee's radiation safety program.

Contrary to the above, from about February 15, 1990, to November 17, 1992, the licensee, through its Radiation Safety Committee, did not review, with the assistance of the Radiation Safety Officer, the licensee's radiation safety program annually.

Restatement of Licensee's Response to Violation I. The annual review of the operations was performed. The personnel exposure assays and the consulting physicist/lab reviews were reviewed at every meeting. The construction of the report was delegated by the Radiation Safety Officer to the Consultant.

NRC's Evaluation of Licensee's Response to Violation I. The Licensee's response refers to certain activities that were reviewed at each Radiation Safety Committee meeting. However, review of these activities does not constitute an "annual review of the radiation safety program." 10 CFR 35.22(b)(6) distinguishes the annual review of the radiation safety program from the other reviews delineated in 10 CFR 35.22(b)(1) through 35.22(b)(5). Several of the required reviews are part of the routine business of the Radiation Safety Committee (e.g. recommendations for maintaining individual and collective doses as low as reasonably achievable (10 CFR 35.22(b)(1)), approval of specified individuals (10 CFR 35.22(b)(2)), and approval of minor changes in radiation safety procedures (10 CFR 35.22(b)(3))). Other reviews are required at quarterly intervals (e.g. a review of a summary of the occupational radiation dose records (10 CFR 35.22(b)(4)), and a review of all incidents involving byproduct material (10 CFR 35.22(b)(5))). However, in addition to these reviews, the Radiation Safety Committee is also required by 35.22(b)(6) to review the radiation safety program annually.

The annual review of the Licensee's radiation safety program by the Radiation Safety Committee is described in Regulatory Guide 10.8, Appendix F, "Model Radiation Safety Committee Charter and Radiation Safety Officer Delegation of Authority." The Licensee committed to Appendix F in Section 10.1 of the application dated February 29, 1988. Additionally, Appendix F is referenced in Condition 15.A of the NRC License. Responsibility No. 7 of Appendix F of Regulatory Guide 10.8 indicates that, "The Committee shall * * * review at least annually the RSO's summary report of the entire radiation safety program to determine that all activities are being conducted safely, in accordance with NRC regulations and the conditions of the license, and consistent with the ALARA program and philosophy. The review must include an examination of records, reports from the RSO, results of NRC inspections, written safety procedures, and the adequacy of the management control system."

The Licensee's response does not indicate that the Committee reviewed the RSO's summary report of the entire radiation safety program to determine that all activities were being conducted safely and in accordance with NRC regulations and the conditions of the license and the ALARA program and philosophy. The Licensee's response also does not indicate that the Radiation Safety Committee made a determination of the adequacy of the radiation safety program on an annual basis.

All of the reviews required by 10 CFR 35.22(b) are conducted for the purpose of maintaining individual and collective occupational doses as low as reasonably achievable (ALARA). To oversee the use of licensed material, the Committee must complete each of these six reviews at the times and occasions indicated by 10 CFR 35.22(b). If the Committee does not complete each of these six reviews, then the Committee has failed to oversee the use of licensed material. Conducting the other reviews required by 10 CFR 35.22(b)(1) through 35.22(b)(5) does not substitute for the annual review required by 10 CFR 35.22(b)(6).

The Licensee's response indicated that the RSO delegated many of the RSO's regulatory responsibilities to the consultant, including documenting the Radiation Safety Committee's annual review. NRC Information Notice No. 90–71, "Effective Use of Radiation Safety Committees to Exercise Control Over Medical Use Programs," describes the responsibilities of the Radiation Safety Committee that includes the annual review of the radiation safety program, responsibilities of the RSO, and use of consultants. If the Radiation Safety Committee does not possess the necessary experience or training to perform the required annual review, then the Licensee may seek qualified assistance from outside consultants. However, it is the Licensee's responsibility to ensure that the review, even if performed by a consultant, and corrective actions meet the regulatory requirements.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a basis to find that the annual review was performed as required; therefore, the violation occurred as stated.

B. Restatement of Violation K

10 CFR 35.220 requires that a Licensee authorized to use byproduct material for imaging and localization studies possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 1000 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Contrary to the above, as of November 17, 1992, the licensee did not possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour.

Restatement of Licensee's Response to Violation K. The survey instruments possessed did not meet the intent of 10 CFR 35.220. The instruments, Victoreen CDV–700 and Victoreen 740F, were identified in various communications with the NRC. Because the range was covered and the NRC had approved amendments listing those instruments, the Licensee stated it believed it was in full compliance.

However, the Licensee stated that immediately following the November 17 inspection, it obtained a survey meter from Community Hospital East that covered the range up to 100 millirem per hour. It also purchased a Ludlum Model 14–C that covered the required range. This instrument had been budgeted for prior to the site survey and was received, calibrated and placed into service on December 12, 1992.

NRC's Evaluation of Licensee's Response to Violation K. The Licensee admits that the survey instruments described in its written correspondence with the NRC did not meet the intent of 10 CFR 35.220. In addition, that correspondence (including the Licensee's renewal application of February 29, 1988) merely lists the survey instruments as "additional equipment" and does not request the staff to approve them for any particular purpose. In reviewing the license, the staff did not approve the instruments as satisfying the requirements of 10 CFR 35.220. Regardless of the Licensee's renewal application submitted to the NRC (dated February 29, 1988) and its assertion of tacit approval of the instrumentation in its possession at the time of submission of the license renewal, 10 CFR 35.999 (effective April 1, 1987) provides, in part, that at the time of license renewal and thereafter the amendments to 10 CFR part 35 shall apply. Therefore, effective April 1, 1987, the Licensee was required to comply with any new requirements found in amended 10 CFR Part 35, in addition to the conditions of the existing license. 10 CFR 35.220 (effective April 1, 1987) required that the Licensee possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour. The detection survey instrument possessed by the Licensee at the time of the inspection on November 17, 1992, was only capable of measuring dose rates over the range 0.1 millirem per hour to 50 millirems per hour.

The NRC notes that prior to the NRC inspection, the Licensee had budgeted for the purchase of a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour; however, the Licensee had delayed that purchase for almost one year. The violation was identified by the Licensee's consultant (as described below). Therefore, once the Licensee identified the problem, the Licensee should have corrected the problem by obtaining the instrument on a timely basis. Further, the inspector found it necessary on several occasions during the inspection to remind the Licensee to obtain the required instrumentation. During the inspection, the Licensee borrowed an appropriate survey instrument until one could be purchased.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a basis to find that the Licensee possessed the required survey instrumentation; therefore, the violation occurred as stated.

C. Restatement of Violation N

10 CFR 35.50(e) requires, in part, that a licensee retain records of dose calibrator tests for accuracy, linearity and geometrical dependence and the records must include the signature of the Radiation Safety Officer.

Contrary to the above, from about February 17, 1989, to November 17, 1992, the licensee's records of dose calibrator tests for accuracy, linearity and geometrical dependence did not include the signature of the Radiation Safety Officer.

Restatement of Licensee's Response to Violation N. Violation admitted with mitigating circumstances. The tests were performed and the results were reviewed by the Radiation Safety Committee. The consulting physicist was authorized by the Radiation Safety Officer to perform the review.

NRC's Evaluation of Licensee's Response to Violation N. The Licensee admitted the violation because the Radiation Safety Officer did not sign the records of dose calibrator quality assurance tests. The NRC recognizes the Radiation Safety Officer as the individual who is responsible for ensuring the safe use of licensed material for the institution. Although certain tasks may be delegated, the Radiation Safety Officer may not delegate responsibility for certain matters specifically assigned by regulation (including the obligation to sign records imposed by 10 CFR 35.50(e)) to another individual. The signature of the Radiation Safety Officer is an indication of acknowledgement of the test results on behalf of the Licensee. Lack of the Radiation Safety Officer's signature is an indication that dose calibrator quality assurance test results were not directly within the knowledge of the Licensee.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a basis to find that the Radiation Safety Officer signed the records as required; therefore, the violation occurred as stated.

D. Restatement of Violation S

10 CFR 35.70(h) requires, in part, that a licensee retain records of each contamination survey required by 10 CFR 35.70. The records must include, in part, the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters.

Contrary to the above, from January 2, 1992 to November 17, 1992, the licensee failed to retain records of surveys required by 10 CFR 35.70 that included the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters. Specifically, removable contamination was expressed in counts per minute.

Restatement of Licensee's Response to Violation S. The Licensee admitted the violation with mitigating circumstances. The counting efficiency of the Licensee's well counter had been determined and trigger levels established. However, the data from the well counter was stored as counts per minute (cpm) on the well counter tape.

NRC's Evaluation of Licensee's Response to Violations S. Notwithstanding the Licensee's description of its method of counting samples and the form in which the data were recorded, the Licensee did not deny that the data in the records were in incorrect units. In summary, the Licensee admitted the violation.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a

basis to find that it recorded removable contamination results in disintegrations per minute per 100 square centimeters; therefore, the violation occurred as stated.

E. NRC Withdrawal of Violations M, O, and P

Violation M was for the Licensee's failure to test a sealed source containing 224 microcuries of cesium-137 for leakage at required six month intervals, with no other interval approved by the Commission or an Agreement State. This failure also resulted in Violation O and P because the Licensee had no records of leakage test results and physical inventories containing the signature of the Radiation Safety Officer.

The Licensee stated that at the time of the last NRC inspection on February 16, 1989, the inspector advised it to discontinue doing leak tests on its source because the activity level was below the requirement. This was questioned by the physicist and documented in the Radiation Safety Committee meeting minutes. However, the Licensee stopped doing leak tests on this source based on this advice, and discontinued the preparation of any records for those tests.

Although the Licensee unconditionally admitted Violation M and O, the staff has considered the Licensee's claim that an NRC inspector had advised the Licensee that leak tests were not necessary. Additionally, the staff has reviewed the Licensee's contention that the physical inventory was not signed by the Radiation Safety Officer because the source was below the activity that required a leak test. The staff did provide such advice for leak tests during the February 16, 1989, inspection. In view of that advice, which was erroneous because 10 CFR 35.59(b)(2) was in effect at the time of that inspection, the Licensee discontinued the leak test of its sealed source and preparation of records for those tests as required by 10 CFR 35.59(d). Additionally, the Licensee's Radiation Safety Officer discontinued signing records of physical inventories for this source as required by 10 CFR 35.59(g). While it appears that the Licensee was in violation of 10 CFR 35.59(b)(2) and 35.59(d) from January 17, 1991 through November 17, 1992, and 10 CFR 35.59(g) from February 17, 1989 through November 17, 1992, the Licensee did act in good faith based upon the advice of an NRC inspector.

Subsequent to the inspection, the NRC inspector was in contact with the Licensee's consulting medical physicist. The consultant performed the required leak test and removable radioactivity was not detected. However, the record of that leak test was not signed by the Licensee's Radiation Safety Officer because he had delegated to the consulting medical physicist the authority to sign that record. As stated above with reference to records of dose calibrator tests, the Radiation Safety Officer cannot delegate such authority.

Conclusion. The evidence supports the Licensee's position that during a February 16, 1989, inspection, the NRC inspector provided erroneous advice and the Licensee in good faith discontinued performing the leakage test for its sealed source and preparation of records for those tests. Additionally, the Licensee's Radiation Safety Officer discontinued signing records of leak tests and physical inventories. Therefore, in the staff's discretion, Violations M, O, and P are withdrawn. However, as explained in Section II below, this does not affect either the scope of the Severity Level III problem or the amount of the civil monetary penalty assessed to the problem.

II. Summary of Licensee's Request for Mitigation

The Licensee requests remission of the proposed civil penalty because according to the Licensee, the asserted bases for the increase of the base civil penalty are factually incorrect and extenuating circumstances exist. Acknowledging that violations did occur, the Licensee asserts that it was acting to perform the duties, in substance, expected of it. The Licensee also asserts that it acted promptly to correct the violations.

The License states that it is not fair or desirable to penalize the hospital under the civil penalty adjustment factors of Identification and Prior Opportunity to Identify. The Licensee contends that the NRC inappropriately escalated the civil penalty because not all of the violations were identified by the NRC, the Licensee took corrective action, and the Licensee's medical physicist diligently reviewed and reported on compliance matters. Therefore, any increase in the amount of the civil penalty would discourage a licensee from finding and correcting issues and would be in direct opposition to the NRC's enforcement philosophy of encouraging licensees to identify issues.

The Licensee argues that in most instances, the goals of the NRC's regulations have been accomplished and that the hospital and its employees, especially the consulting physicist, have acted responsibly. The Licensee states that in a few instances there was ignorance of the requirement; however, in most circumstances there was a genuine effort to comply. Therefore, as a result of positive licensee performance, the Licensee requests mitigation by at least 50 percent and as much as 100 percent of the base civil penalty.

The Licensee opposes the 25 percent escalation based on the Correction Action factor. The Licensee argues that xenon-133 procedures were immediately terminated when the Licensee was informed by the NRC inspector on November 17, 1992, of the apparent violation. Additionally, the Licensee believes that the promptness with which it corrected all the violations that involved use of radioactive materials, should be considered a mitigating factor. Therefore, as a result of prompt and immediate corrective actions, the Licensee requests the base civil penalty be reduced by 50 percent. Additionally, the Licensee took exception to a statement in NRC's letter of March 10, 1993, transmitting the Notice of Violation and Proposed Imposition of Civil Penalty that the proposed corrective actions did not include measures to ensure management involvement in radiation safety.

In conclusion, the Licensee states that mitigation of 100 percent of the civil penalty amount is justified as a result of reducing the base civil penalty by 50 percent under licensee performance and 50 percent under corrective action.

NRC Evaluation of Licensee's Request for Mitigation. The Licensee is correct that the NRC Enforcement Policy (Policy) encourages licensees to monitor, supervise and audit activities in order to assure safety and compliance. However, this is only one goal of the Policy. The purpose of the Policy is to ensure compliance, obtain prompt correction of violations, deter future violations and encourage improvement in the performance of a licensee.

The findings of the November 17, 1992, inspection and the discussions with the Licensee's representatives during the February 18, 1993, enforcement conference clearly indicated that the Licensee's Radiation Safety Officer (RSO) was not ensuring that radiation safety activities were performed in accordance with approved procedures and regulatory requirements in the daily operation of the Licensee's byproduct material program, as required by 10 CFR 35.21(a). This was clearly the root cause of all the violations.

Furthermore, the RSO permitted the consulting medical physicist to assume his (the RSO's) duties. The Licensee is still responsible for the radiation safety program, as required by the license, if

the licensee employs a consultant to assist the RSO. In this instance, the consulting medical physicist identified some violations in the radiation safety program and communicated those violations to Licensee management; however, few if any corrective actions were initiated by the RSO or Licensee management. The fact that previously identified violations went uncorrected demonstrates the lack of managerial attention to radiation safety; and, in the aggregate, the violations represent a significant breakdown in the control of NRC licensed activities at Community Hospital South. Therefore, the violations were appropriately categorized as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR part 2, appendix C. The staff's withdrawal of Violations M, O, and P does not negate the above facts or conclusions. Accordingly, the remaining violations represent a Severity Level III problem, and the staff's withdrawal of Violations M, O, and P is not a basis for reduction of the proposed civil penalty.

The Licensee contends that the NRC was inconsistent in applying the civil penalty adjustment factors and the Licensee was penalized because the consulting medical physicist diligently reviewed and reported on compliance matters. However, while the consulting medical physicist identified four violations to management, Licensee management was unresponsive and permitted these four violations to continue uncorrected.

The Licensee believes that it should receive credit for the findings of the consultant medical physicist and that, therefore, the civil penalty adjustment factors of Identification and Prior Opportunity to Identify were misapplied. The NRC disagrees that the Identification factor was misapplied. The Licensee is correct that the cover letter enclosing the Notice of Violation and Proposed Imposition of Civil Penalty incorrectly states that the NRC identified all the violations. In escalating the base civil penalty by 50 percent under the Identification factor, the NRC recognizes that the Licensee's consultant identified four of the violations prior to the NRC inspection (i.e. Radiation Safety Committee did not meet quarterly, ventilation rates were not measured in rooms of xenon-133 usage, need for proper survey instrumentation, and the lack of annual refresher training for ancillary personnel). However, the remaining 13 of the 17 violations (not counting Violations M, O, and P) were identified by the NRC. The NRC Enforcement Policy states, in part, "The purposes of this [Identification] factor is to encourage licensees to monitor, supervise, and audit activities in order to assure safety and compliance." NRC expects licensees to be pro-active in auditing their programs and instituting corrective action when violations are identified. In this case, the NRC identified the majority of the violations as a result of the Licensee's failure to effectively audit their program. Accordingly, 50 percent mitigation under the Identification factor is warranted.

In escalating the base civil penalty by 100 percent under the Prior Opportunity to Identify factor, the NRC considered the fact that the Licensee's consulting medical physicist provided periodic written reports to management that addressed four of the violations; however, management did not correct two of those violations (i.e. ventilation rates were not measured in rooms of xenon-133 usage, and the need for proper survey instrumentation). Additionally, Licensee management failed to plan and take effective corrective steps to correct the remaining violations (i.e. Radiation Safety Committee did not meet quarterly and the lack of annual refresher training for ancillary personnel) within a reasonable time after identification. Moreover, the NRC issued a Notice of Violation to the Licensee dated February 16, 1989, identifying five violations. Two of the violations (i.e., annual refresher training for ancillary personnel was not conducted, and ventilation rates were not measured in rooms of xenon-133 usage) were repeat violations identified during the November 17, 1992, inspection. The License should have identified these violations sooner as a result of the consultant's audit findings, and taken effective and lasting corrective steps within a reasonable time. Therefore, the Licensee had prior opportunity to identify and correct violations which, in part, contributed to the breakdown in the control of licensed activities and represent a lack of attention or carelessness toward licensed responsibilities. However, since you only had a prior opportunity to identify some of the violations contributing to the breakdown in control of your program, the NRC staff has reconsidered its position and finds that, on balance, escalation of 50 percent, as opposed to 100 percent, is appropriate based on the Prior Opportunity to Identify factor.

The Licensee argues that escalation of the base civil penalty by 25 percent for corrective action is not appropriate since the example cited in the Notice describing the continued use of xenon-133 and the failure to perform room ventilation studies is incorrect. The NRC acknowledges that the Licensee discontinued performing xenon-133 studies in the unauthorized location ("Raytheon Room") upon identification of the violation by the NRC. On November 17, 1992, the Licensee changed locations where xenon-133 was administered and resumed the use of xenon-133 for patient studies in the original authorized location (room 1). However, the Licensee failed to resume the performance of measurements of ventilation rates in room 1 until February 1993. Therefore, the same violation for failure to perform measurements of ventilation rates continued in room 1 after NRC identification of the initial problem in the "Raytheon Room". Additionally, the Licensee did not take immediate actions upon discovery of other violations (i.e., need for proper survey instrumentation and the lack of annual refresher training for ancillary personnel) to restore safety and compliance with the requirements. Once the consultant identified the failure to possess proper survey instrumentation, the Licensee did not purchase the instrumentation for almost a year. In addition, up to the time of the enforcement conference, the annual refresher training for ancillary personnel had not been conducted. In regards to these violations, the Licensee did not take prompt, extensive, or lasting corrective action upon their discovery to restore safety and compliance.

Addressing the Licensee's request for mitigation up to 100 percent for good past performance, the NRC Enforcement Policy provides in pertinent part, "License Performance * * *. Notwithstanding good performance, mitigation of the civil penalty based on this factor is not normally warranted where the current violation reflects a substantial decline in performance that has occurred over the time since the last NRC inspection * * *." Even if the Licensee's past performance had been good, this guidance negates the Licensee's request for mitigation. Moreover, the Licensee's past performance has not been good such as to warrant mitigation under this factor. Five violations were identified during the last inspection on February 16, 1989.

Two of those violations had not been corrected at the time of the November 17, 1992, inspection. Those violations were: (1) Annual refresher training was not conducted for employees involved with radiation safety; and (2) ventilation rates in rooms where xenon-133 was

used were not done at six month intervals. Furthermore, the corrective action for a third violation from the February 16, 1989, inspection was not effective. While the Licensee did appoint a nursing representative to serve on the Radiation Safety Committee, the Licensee did not ensure the attendance of that person. As a result, the nursing representative did not attend any meetings of the Radiation Safety Committee following the appointment. Therefore, no mitigation for good past performance is warranted.

Conclusion on Mitigation. The NRC staff has concluded that the information provided in the Licensee's response provides an adequate basis for partial mitigation of the civil penalty. Accordingly, a reduction of the civil penalty in the amount of $1,250 is warranted.

III. NRC Conclusion

The information provided by the Licensee in its Reply and Answer to a Notice of Violation, dated April 5, 1993, described extenuating circumstances for Violations M, O, and P contending that an NRC inspector told the Licensee to discontinue the activities associated with those violations. Such advice was provided to the Licensee regarding Violations M and O. The information provided was erroneous, but the Licensee apparently acted in good faith and discontinued the regulatory actions associated with Violations M, O, and P. Consequently, M, O, and P have been withdrawn. As explained above, withdrawal of Violations M, O, and P does not affect the overall Severity Level III problem associated with the breakdown of the management oversight of licensed activities. However, based on reconsideration of the factor for Prior Opportunity to Identify, a reduction of $1,250 in the amount of the proposed civil penalty is warranted.

In summary, the Licensee's Reply and Answer to a Notice of Violation, including the extenuating circumstances surrounding Violations M, O, and P, did not provide an adequate basis for reduction of the severity level. However, a reduction of $1,250 in amount of the proposed civil penalty is warranted. Consequently, a civil penalty in the amount of $5,625 should be imposed.

[FR Doc. 93–19970 Filed 8–17–93; 8:45 am]
BILLING CODE 7590–01–M

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit 2; Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by Niagara Mohawk Power Corporation (NMPC) to withdraw a portion of their February 27, 1993, application for a proposed amendment to Facility Operating License NPF–69 for Nine Mile Point Nuclear Station, Unit 2, located in Oswego County, New York.

The proposed amendment involved changes to the Technical Specifications (TSs) to modify the recirculation flow upscale rod block setpoint and permit the use of NRC-approved power correlations other than the GEXL correlation. Changes to the TS Bases were also proposed that would reflect the use of NRC-approved power correlations, incorporate revisions to General Electric Company's approved analytical techniques, update references, and reflect changes made to the Reload Section of the Updated Safety Analysis Report.

On June 18, 1993, the licensee submitted a letter to the NRC requesting withdrawal of the proposed change to the recirculation flow upscale rod block setpoint. The licensee requested withdrawal since it could not at that time provide the Commission with an analytical basis for the proposed change. The recirculation flow upscale rod block performs no safety function and no design basis treatment or accident analysis takes credit for it.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing which was published in the **Federal Register** on March 31, 1993 (58 FR 16866).

For further details with respect to this action, see the application for amendment dated February 27, 1993, and the licensee's letter of June 18, 1993, which withdrew the portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

John E. Menning,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–19968 Filed 8–17–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–410]

Niagara Mohawk Power Corporation, (Nine Mile Point Nuclear Station Unit 2); Exemption

I.

Niagara Mohawk Power Corporation (NMPC or the licensee) is the holder of facility Operating License No. NPF–69, which authorizes operation of Nine Mile Point Nuclear Station, Unit 2 (the Facility or NMP2), at a steady-state reactor power level not in excess of 3323 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Oswego County, New York. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Section III of appendix J to 10 CFR part 50 requires the development of a program to conduct periodic leak testing of the primary reactor containment and related systems and components, and components penetrating the primary containment pressure boundary. The interval between local leak rate tests for Type B tests is specified by section III.D.2 to be no greater than 2 years.

III.

By letter dated May 28, 1993, NMPC requested a one-time only schedular exemption until the end of the 1993 refueling outage (currently scheduled to begin on October 1, 1993) from the requirements of 10 CFR part 50, appendix J, section III.B., regarding Type B tests of expansion bellows in four Traversing Incore Probe containment penetrations (2NMT*Z31A, C, D, and E). The requested exemption would permit continued reactor operation as well as other activities (e.g., maintenance and refueling operations, surveillance tests, etc.) until the end of the 1993 refueling outage. Otherwise, the required testing would require a plant shutdown solely to perform the required leak tests.

IV.

Section III.D.2 of appendix J to 10 CFR part 50 states that Type B tests shall be performed during reactor shutdowns for refueling, at an interval not to exceed 2 years. However, due to an oversight, the expansion bellows in the four penetrations have not been Type B tested to date. These bellows cannot be Type B tested during reactor operations. Therefore, to preclude a reactor shutdown solely to perform the required tests, the licensee has requested a one-time exemption from the leak test requirements of 10 CFR part 50, Appendix J, until the 1993 refueling outage when these bellows will be Type B tested as required by the regulations.

The 2-year interval requirement for Type B testing is intended to be often enough to preclude significant deterioration between tests and long enough to permit the tests to be performed during routine plant outages. Leak rate testing of containment penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Furthermore, some containment penetrations, including the four subject penetrations, cannot be tested at power. For those penetrations that cannot be tested during power operation, or for which testing at power would yield unnecessary radiation exposure of personnel, the Commission staff believes the increase in confidence of containment integrity following a successful test is not significant enough to justify the hardships and costs associated with a plant shutdown specifically to perform the required tests prior to the 1993 refueling outage.

V.

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2) (ii) and (iii) are present justifying and exemption; namely, that: (1) application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule and (2) compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted.

The underlying purpose of section III.D.2 of appendix J to 10 CFR part 50 is to provide an interval short enough to prevent serious deterioration from occurring between tests and long enough to permit testing to be performed during regular plant outages. For containment penetrations, such as the four subject penetrations, that cannot be tested at power, the increased confidence in containment integrity following successful testing is not significant enough to justify a plant outage solely to perform the tests prior to the 1993 refueling outage. A plant shut down solely to perform the required test would be an undue hardship. The licensee has presented information accepted by the Commission, which gives a high degree of confidence that the components affected by this exemption will not degrade to an unacceptable extent. The details of the NRC staff's review of the licensee's exemption request are discussed in a safety evaluation dated August 11, 1993. Acceptable leakage limits are defined in section III.B.3(a) of appendix J to 10 CFR part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (54 FR 37759).

This Exemption is effective upon issuance and shall expire at the end of the 1993 refueling outage which is currently scheduled to begin on October 1, 1993.

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–19969 Filed 8–17–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32741: International Series Release No. 573]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

August 12, 1993.

Foreign private issuers with total assets in excess of $5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*, as amended by Public Law No. 94–29 (June 4, 1975)] (the "Act").[1]

Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) provides an exemption from registration under Section 12(g) of the Act for a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on NASDAQ.[2] Securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in NASDAQ on that date were grandfathered indefinitely.[3] However, the exemption was extended to Canadian securities only until January 1986.

When it adopted Rule 12g3–2 and other rules relating to foreign securities,[4] the Commission indicated that from time to time it would issue lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[5] The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.[6] The

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*, as amended by Public Law No. 94–29 (June 4, 1975)].

[2] Securities Exchange Act Release No. 20284 (October 6, 1983).

[3] If, however, the securities are delisted from NASDAQ or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

[4] Securities Exchange Act Release No. 8066 (April 28, 1967).

[5] The last such list was contained in Securities Exchange Act Release No. 30850 (June 28, 1992).

[6] Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the

Continued

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Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.[8] Any questions regarding Rule 12g3–2 or the list included herein should be directed to Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549 ((202) 272–3248). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549 ((202) 272–7450).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Company	File No.	Country
A.C.T. Industrial Corporation	82–1071	Canada.
AB Astra	82–3299	Sweden.
ABN AMRO Holding N.V	82–3246	Netherlands.
ADI Technologies	82–3438	Canada.
AFF Automated Fast Foods Ltd	82–1967	Canada.
AI Software, Inc	82–3551	Canada.
Aaron Oil Corp	82–3473	Canada.
Abbey National PLC	82–2898	United Kingdom.
Acepharm, Inc	82–3345	Canada.
Acheron Resources Ltd	82–3025	Canada.
Adastral Resources Ltd	82–2124	Canada.
Adonos Resources Inc	82–2992	Canada.
Adrian Resources	82–3406	Canada.
Advanced Info Ser	82–3236	Thailand.
Aerovias de Mexico, S.A	82–3195	Mexico.
Afmin Holdings Ltd	82–1853	South Africa.
Afrikander Lease, Ltd	82–245	South Africa.
Agarwal Resources Ltd	82–2562	Canada.
Agen Ltd	82–2330	Australia.
Air Canada	82–2548	Canada.
Airpro Industries, Inc	82–3268	Canada.
Alaskon Resources Ltd	82–1858	Canada.
Alban Exploration Ltd	82–1941	Canada.
Albert Fisher Group PLC	82–1020	United Kingdom.
Alcatel N.V	82–3059	Netherlands.
Algoma Steel Corporation Ltd	82–99	Canada.
All North Resources Ltd	82–1646	Canada.
Allegheny Mines Corporation	82–3340	Canada.
Allied Lyons PLC	82–878	United Kingdom.
Almaden Resources Corp	82–2116	Canada.
Alpargatas, S.A.I.C	82–3122	Argentina.
Alta Explorations Ltd	82–685	Canada.
Altai Resources, Inc	82–2950	Canada.
Amalgamated Steel Mills Berhad	82–3319	Malaysia.
Amer Group Ltd	82–1544	Finland.
Amera Industries Corp	82–3263	Canada.
America West Capital Corp	82–3435	Canada.
American Power & Waste Ltd	82–3365	Canada.
Amoy Properties Ltd	82–3410	Hong Kong.
Ampolex Ltd	82–3078	Australia.
Amway Japan Limited	82–3411	Japan.
Anglo American Corp. of S. Africa	82–97	South Africa.
Anglo American Gold Investment Co	82–146	South Africa.
Anvil Resources Ltd	82–1244	Canada.
Apasco, S.A. de C.V	82–3103	Mexico.
Applied Intl. Holding Ltd	82–1867	Hong Kong.
Aquarius Coatings, Inc	82–3517	Canada.
Aras Serono Group	82–1768	Luxembourg.
Argenta Systems, Inc	82–1320	Canada.
Ariel Resources Ltd	82–1705	Canada.
Asea, AB	82–736	Sweden.
Ashgrove Resources Ltd	82–2535	Canada.
Asia Cement Corporation	82–3385	Taiwan.
Asia Fiber Co. Ltd	82–2842	Thailand.
Asia Pacific Resources	82–2883	Canada.

conditions of the exemption provided by Rule 12g3–2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission as of July 30, 1993.

[7] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] See, e.g., *Hanly* v. *SEC*, 415 F.2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company	File No.	Country
Astra Holdings Plc	82-2536	United Kingdom.
Athabaska Gold Res. Ltd	82-1906	Canada.
Athena Gold Corp	82-2226	Canada.
Atlas Copco AB	82-612	Swedan.
Atna Resources Ltd	82-1556	Canada.
Attwood Gold Corp	82-1920	Canada.
Auridiam Consolidated N.L	82-3452	Australia.
Aurochs Mining Exploration Inc	82-3041	Canada.
Auspex Gold Ltd	82-2778	Canada.
Australian Consolidated Press Group Ltd	82-3278	Australia.
Australian Hydrocarbons	82-656	Australia.
Australian National Industries Ltd	82-3351	Australia.
Autobyte Technologies, Inc	82-1435	Canada.
Avanticorp International, Inc	82-2059	Canada.
B.A.T. Industries	82-33	United Kingdom.
B.Y.G. Natural Resources Inc	82-2038	Canada.
BAA plc	82-3372	United Kingdom.
BBC Brown Boveri Ltd	82-2871	Switzerland.
BGM Diversified Energy, Inc	82-3516	Canada.
BHF Bank	82-3404	Germany.
BMD Enterprises Ltd	82-1984	Canada.
BSN Groupe	82-3001	France.
BTR, PLC	82-696	United Kingdom.
BWI Resources Ltd	82-2914	Canada.
BY & G Ventures Corporation	82-1342	Canada.
Banca Cremi S.A	82-3396	Mexico.
Banco Nacional de Mexico S.A	82-3420	Mexico.
Banco Rio de la Plata S.A	82-3354	Argentina.
Banco de Galicia y Buenos Aires	82-3384	Argentina.
Bank of East Asia	82-3443	Hong Kong.
Bank of Fukuoka, The	82-1117	Japan.
Bank of Montreal	82-126	Canada.
Bank of Nova Scotia	82-132	Canada.
Bank of Scotland	82-3240	United Kingdom.
Bankinter, S.A	82-2972	Spain.
Banque Indosuez	82-3262	France.
Bar Resources Ltd	82-1047	Canada.
Barytex Resources Corp	82-1104	Canada.
Battle Creek Developments Ltd	82-2824	Canada.
Beatrix Mines Ltd	82-1054	South Africa.
Beaufield Resources Inc	82-1557	Canada.
Bergesen d.y. A/S	82-1697	Norway.
Berkeley Govett & Co. Ltd	82-3154	Channel Island.
Bespak Plc	82-3348	United Kingdom.
Big I Developments Ltd	82-1094	Canada.
Biron Bay Resources Limited	82-3239	Canada.
Blue Circle Industries PLC	82-927	United Kingdom.
Blue Range Resource Corporation	82-3302	Canada.
Blyvooruitzicht Gold Mining Co. Ltd	82-68	South Africa.
Body Shop International Plc	82-3534	United Kingdom.
Bombardier	82-3123	Canada.
Bonaventure Resources Ltd	82-2920	Canada.
Booker PLC	82-1531	United Kingdom.
Borealis Exploration Ltd	82-1656	Canada.
Boron Chamicals International Ltd	82-3496	Canada.
Bowater Industries PLC	82-3	United Kingdom.
Bracken Mines Ltd	82-219	South Africa.
Bradsue Resources Ltd	82-1508	Canada.
Braiden Resources Ltd	82-2121	Canada.
Brascan, Ltd	82-4	Canada.
Bravo Resources Inc	82-2560	Canada.
Bre-x Minerals Ltd	82-2750	Canada.
Breckenridge Resources Ltd	82-1647	Canada.
Bresea Resources Ltd	82-1377	Canada.
Bridge Oil Ltd	82-2157	Australia.
Brierly Investments Ltd	82-1093	New Zealand.
Brigadier Resources Ltd	82-1410	Canada.
Britannia Gold Corporation	82-733	Canada.
Brooks Resources Ltd	82-2434	Canada.
Brunswick Mining and Smelting Corp. Ltd	82-2827	Canada.
Bryndon Ventures, Inc	82-1363	Canada.
Buffelsfontein Gold Mining Co., Ltd	82-302	South Africa.
Burmah Castrol PLC, The	82-5	United Kingdom.
Burns Philip & Co. Ltd	82-1565	Australia.

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Company	File No.	Country
C.E.L. Industries Ltd	82-3421	Canada.
C.P. Polsphand Co. Ltd	82-3260	Bermuda.
C.R. Provinl Financial Services Corp	82-1901	Canada.
CCL Industries Inc	82-2549	Canada.
CIBA-GEIGY Ltd	82-2918	Switzerland.
CML Microsystems PLC	82-3176	United Kingdom.
CS Holdings	82-3477	Switzerland.
CSK Corp	82-761	Japan.
CSR Limited	82-2693	Australia.
Cabo Ventures, Inc	82-1401	Canada.
Cabot Resources Corporation	82-2550	Canada.
Cactus West Explorations Ltd	82-3268	Canada.
Calais Resources, Inc	82-3525	Canada.
Calneva Resources Ltd	82-2738	Canada.
Cambridge Software, Inc	82-3307	Canada.
Can Dorado Mines Ltd	82-3232	Canada.
Canada Tungsten Mining Corp. Ltd	82-290	Canada.
Canadian Conquest Explorations Inc	82-2473	Canada.
Canadian Educational Courseware Inc	82-3400	Canada.
Canadian Frobischer Resources	82-3254	Canada.
Canadian Giant Exploration Limited	82-3482	Canada.
Canadian Hydro Developers	82-3347	Canada.
Canadian Imperial Bank of Commerce	82-103	Canada.
Canadian Pioneer Energy Inc	82-3072	Canada.
Canadian Water Corp	82-3206	Canada.
Canfibre Group Ltd	82-2222	Canada.
Canguard Health Technologies Inc	82-1184	Canada.
Cantrell Capital Corporation	82-3218	Canada.
Cape Range Ltd	82-3545	Australia.
Capilano International Inc	82-3094	Canada.
Captive Air International, Inc	82-2367	Canada.
Carlin Gold Co. Inc	82-1770	Canada.
Castle Capital Inc	82-3216	Canada.
Cathay Clemente (Holdings) Limited	82-3457	Cayman Islands.
Cathay Pacific Airlines Ltd	82-1390	Hong Kong.
Cathedral Gold Corp	82-1990	Canada.
Celanese Canada Ltd	82-171	Canada.
Celtic Resources Ltd	82-3204	Canada.
Cemex, S.A	82-2744	Mexico.
Centenary Holdings S.A	82-3070	Luxembourg.
Central Crude Ltd	82-1933	Canada.
Central Norseman Gold Corp. Ltd	82-2953	Australia.
Central Pacific Minerals N.L	82-354	Australia.
Ceramica Carabobo, C.A	82-3097	Venezuela.
Champion Technology Holdings Limited	82-3442	Cayman Islands.
Charter Consolidated PLC	82-233	United Kingdom.
Chase Resource Corp	82-1976	Canada.
Chauvco Resources Ltd	82-3316	Canada.
China Light & Power Co. Ltd	82-1197	Hong Kong.
China Steel Corporation	82-3296	China.
Choice Software Systems	82-3377	Canada.
Christies International plc	82-1180	United Kingdom.
Chubb Group plc	82-3394	United Kingdom.
Ciboney Group Limited	82-3504	Jamaica.
Cigarrera La Moderna SA de CV	82-3419	Mexico.
Ciments Francais	82-3336	France.
Circa Telecommunications Inc	82-3128	Canada.
Citation Gold Corp	82-2950	Canada.
Clarins	82-2960	France.
Clarion Environmental Technologies, Inc	82-3533	Canada.
Cliff Resources Corp	82-3483	Canada.
Coats Viyella PLC	82-1751	United Kingdom.
Coca-Cola Amatil Ltd	82-2994	Australia.
Colony Pacific Explorations Ltd	82-1115	Canada.
Colray Resources, Inc	82-1536	Canada.
Comac Food Group Inc	82-2456	Canada.
Comalco Ltd	82-1092	Australia.
Cominco, Ltd	82-107	Canada.
Commonwealth Gold Corporation	82-2786	Canada.
Commonwealth Richmond Properties Inc	82-2215	Canada.
Compagnie Bancaire	82-3368	France.
Compagnie Generale des Est. Michelin	82-3354	France.
Compagnie de Suez	82-2946	France.
Companhia Energetica Minas Gerais	82-3465	Brazil.

Company	File No.	Country
Companhia Suzano De Papel E Celulose	82-3550	Brazil.
Compania Naviera Perez Companc	82-3295	Argentina.
Compania Sevillana de Electricided S.A	82-3111	Spain.
Compass Resources Ltd	82-2041	Canada.
Con-Space Communications Ltd	82-3378	Canada.
Concert Industries Ltd	82-1003	Canada.
Consolidated Boulder Mountain Resources	82-1139	Canada.
Consolidated Cambridge Mines Limited	82-3474	Canada.
Consolidated Cottonbalis Corporation	82-3376	Canada.
Consolidated Eurocan Ventures Ltd	82-2948	Canada.
Consolidated Manus Industries Inc	82-3225	Canada.
Consolidated Nirvana Industries Ltd	82-1079	Canada.
Consolidated Pemberton Technologies Ltd	82-3524	Canada.
Consolidated Pine Channel Gold Corp	82-2583	Canada.
Consolidated Redding Exploration Corp	82-2757	Canada.
Continental AG	82-1357	Germany.
Continental Caretech Corp	82-3056	Canada.
Continental Precious Minerals Inc	82-3358	Canada.
Controladora Comercial Mexicana	82-3177	Mexico.
Copene Petroquimica do Nordeste S.A	82-3367	Brazil.
Cord Holdings Ltd	82-980	Australia.
Corporacion Financiera del Valle S.A	82-3437	Columbia.
Corporacion Industrial Sanluis S.A	82-2867	Mexico.
Corporacion Mapfre S.A	82-1987	Spain.
Creator Capital, Inc	82-3015	Canada.
Credit Bank A.E	82-3389	Greece.
Credito Italiano S.P.A	82-3185	Italy.
Crew Natural Resources	82-2662	Canada.
Cross Canada Resources Inc	82-2095	Canada.
Cross Lake Minerals Ltd	82-2636	Canada.
CrossRoads Oil Group PLC	82-3182	United Kingdom.
Crystallex International Corporation	82-1701	Canada.
Cuda Consolidated, Inc	82-2445	Canada.
Cumulus Technology Ltd	82-1553	Canada.
Curlew Lake Resources Inc	82-1978	Canada.
Cyclone Capital Corporation	82-2459	Canada.
Cyn Tech Ventures Ltd	82-2675	Canada.
Czar Resources Ltd	82-3136	Canada.
DESC, Sociedad de Fomento Industrial	82-3168	Mexico.
DRC Resources Corp	82-713	Canada.
DSM, N.V	82-3120	Netherlands.
Dab Investments Ltd	82-1245	South Africa.
Dai'ei Inc., The	82-230	Japan.
Dairy Farm International Holdings Ltd	82-2952	Hong Kong.
Daiwa Danchi Co., Ltd	82-1218	Japan.
Darius Technology Ltd	82-1257	Canada.
De Beers Centenary AG	82-3059	Switzerland.
De Beers Consolidated Mines, Ltd	82-91	South Africa.
Decade International Development Ltd	82-3374	Canada.
Deelkraal Gold Mining Co. Ltd	82-246	South Africa.
Deep Basin Petroleum Corp	82-2811	Canada.
Delgratia Developments, Ltd	82-3398	Canada.
Delmay Mining Corporation	82-3412	Canada.
Delta Gold N.L	82-1221	Australia.
Demand Technologies Ltd	82-2033	Canada.
Den Danske Bank af 1871 Aktieselskab	82-1263	Denmark.
Denehurst Ltd	82-2334	Australia.
Dentonia Resources Ltd	82-627	Canada.
Derlan Industries Ltd	82-2959	Canada.
Derrick Petroleum Corporation	82-1695	Canada.
Deutsche Bank A.G	82-334	Germany.
Development Bank of Singapore, The	82-3172	Singapore.
Dia Met Minerals Ltd	82-3234	Canada.
Diamond International Industries Inc	82-1314	Canada.
Diasyn Technologies Ltd	82-2295	Canada.
Discovery Distribution Corp	82-3148	Canada.
Discovery West Corporation	82-1046	Canada.
Dixons Group plc	82-3331	United Kingdom.
Dofasco Ltd	82-3226	Canada.
Dominguez & Cia Caracas S.A	82-3429	Venezuela.
Dominio Textile Inc	82-3460	Canada.
Doornfontein Gold Mining Co. Ltd	82-213	South Africa.
Dorel Industries Inc	82-2600	Canada.
Dresdner Bank A.G	82-229	Germany.

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Company	File No.	Country
Driefontein Consolidated Ltd	82-124	South Africa.
Dupont Canada Inc	82-19	Canada.
Durban Roodeports Deep Ltd	82-156	South Africa.
Durum Energy Corporation	82-3346	Canada.
E.R.G. Australia Ltd	82-2372	Australia.
EI Environmental Engineering Concepts	82-1598	Canada.
EVN Energie-Versorgung Nud. Akt	82-3178	Austria.
Eaglecrest Explorations Ltd	82-603	Canada.
East Daggafontein Mines Ltd	82-42	South Africa.
East Midlands Electricity PLC	82-3029	United Kingdom.
East Rand Gold & Uranium Co. Ltd	82-289	South Africa.
East Rand Proprietary Mines, Ltd	82-238	United Kingdom.
Eastern Electricity PLC	82-3040	United Kingdom.
Eastfield Resources Ltd	82-1929	Canada.
Ecstall Mining Corp	82-2647	Canada.
Edinov Corporation	82-3519	Canada.
Egoli Consolidated Mines	82-909	South Africa.
Elan Energy	82-3224	Canada.
Elandsrand Gold Mining Co. Limited	82-266	South Africa.
Elbit Industries Ltd	82-2958	Israel.
Elsevier N.V	82-3049	Netherlands.
Email Limited	82-2951	Australia.
Emerald Isle Resources Inc	82-1479	Canada.
Empaques Ponderosa, S.A. de C.V	82-3151	Mexico.
Emperor Mines Ltd	82-969	Australia.
Empresas La Moderna SA de CV	82-3348	Mexico.
Encor Inc	82-2561	Canada.
Enerwaste Minerals Corporation	82-626	Canada.
Envases Venezolanos, S.A.C.A	82-3294	Venezuela.
Envirotrest Systems, Inc	82-3431	Canada.
Equinox Resources Ltd	82-1152	Canada.
Equus Petroleum Corporation	82-1302	Canada.
Eridania Z.N., S.P.A	82-902	Italy.
Espirito Santo Financial Holding S.A	82-2883	Luxembourg.
Esselte AB	82-1355	Sweden.
Essina Industries Corporation	82-1371	Canada.
Euro Disneyland S.C.A	82-2907	France.
European Ventures Ltd	82-3491	Canada.
Eurotunnel PLC	82-3000	United Kingdom.
Eurotunnel S.A	82-2999	France.
Even Resources Ltd	82-2493	Canada.
Evergo International Holdings Co. Ltd	82-868	Hong Kong.
Excel Data Inc	82-2733	Canada.
F.H. Faulding & Company Limited	82-2882	Australia.
FCA International Ltd	82-1310	Canada.
FNI Fashion Network	82-2511	Canada.
Faber Group Berhad	82-3505	Malaysia.
Fairfield Minerals Ltd	82-1784	Canada.
Fairhaven International Ltd	82-550	Bermuda.
Fairmont Resources, Inc	82-3492	Canada.
Fairway Industries Ltd	82-1962	Canada.
Falcon Point Resources Ltd	82-1713	Canada.
Fastlane International Enterprises, Inc	82-1334	Canada.
Federal Energy Corporation Ltd	82-3352	Canada.
Fenway Resources Ltd	82-2903	Canada.
First Australian Resources N.L	82-3494	Australia.
First Entertainment Corporation	82-3484	Canada.
First Guardian Petroleum Corp	82-2354	Canada.
First Pacific Co. Ltd	82-836	Hong Kong.
Fisons PLC	82-202	United Kingdom.
Fletcher Challenge Canada Ltd	82-658	Canada.
Fomento Economico Mexicano	82-3009	Mexico.
Footwall Explorations Ltd	82-2177	Canada.
Foresthill Resources Inc	82-3500	Canada.
Formation Capital Corp	82-2783	Canada.
Forte Plc	82-3416	United Kingdom.
Fotex Eleo Amatlat Magyar Fotoaz	82-3286	Hungary.
Four Seasons Hotels	82-3312	Canada.
Franz Capital Corp	82-2574	Canada.
Free State Consolidated Gold Mines	82-44	South Africa.
Free State Dev. & Invest. Corp. Ltd	82-296	South Africa.
Freegold Recovery Inc	82-1225	Canada.
Fuji Photo Film Co., Ltd	82-78	Japan.
G.B. Holdings Ltd	82-2192	Singapore.

Company	File No.	Country
GKN PLC	82-1042	United Kingdom.
Galleon Mining Ltd	82-3258	Canada.
Garden Lake Resources Ltd	82-3469	Canada.
Gemstar Resources Ltd	82-3493	Canada.
Genbel Investments Ltd	82-235	South Africa.
Gencor Ltd	82-311	South Africa.
General Electric Company PLC, The	82-3121	United Kingdom.
Genesys Pharma Inc	82-3523	Canada.
Geo-Data International Ltd	82-2115	Canada.
Gerle Gold Ltd	82-1209	Canada.
Glencairn Explorations Ltd	82-2640	Canada.
Glendale Resources, Inc	82-2353	Canada.
Glimmer Resources, Inc	82-1970	Canada.
Global Teleworks Corporation	82-3375	Canada.
Globe Resources, Inc	82-049	Australia.
Gold Fields Property Co., Ltd	82-214	South Africa.
Gold Fields of South Africa Ltd	82-204	South Africa.
Gold Greenlees Trott PLC	82-2684	United Kingdom.
Gold Mines of Kalgoorlie Ltd	82-2076	Australia.
Golden News Resources Inc	82-3450	Canada.
Golden Peaks Resources Ltd	82-3343	Canada.
Golden Rainbow Resources Inc	82-3449	Canada.
Golden Star Resources	82-1275	Canada.
Golden Trump Resources Ltd	82-797	Canada.
Golden Unicorn Mining Corporation	82-3532	Canada.
Goldnev Resources	82-1080	Canada.
Goldpac Investments Ltd	82-1167	Canada.
Goldrush Casino & Mining Corporation	82-3323	Canada.
Goodman Fielder Wattle Ltd	82-2009	Australia.
Govett Strategic Investment Trust PLC	82-287	United Kingdom.
Graham Gold Mining Corp	82-2978	Canada.
Grand America Minerals Ltd	82-3392	Canada.
Grand Hotel Holdings Ltd	82-3406	Hong Kong.
Grande Portage Resources Ltd	82-1767	Canada.
Granduc Mines Ltd	82-3124	Canada.
Grasim Industries Ltd	82-3322	India.
Great Eastern Mines Ltd	82-732	Australia.
Greater Lenora Resources Corp	82-837	Canada.
Greenwood Environmental, Inc	82-2195	Canada.
Grootviel Proprietary Mines Ltd	82-222	South Africa.
Gruma S.A. de C.V	82-3434	Mexico.
Grupo Carso, S.A. de C.V	82-3175	Mexico.
Grupo Embotellador de Mexico	82-3413	Mexico.
Grupo Financiero Banamex Accival	82-3325	Mexico.
Grupo Financiero Bancomer S.A. de C.V	82-3273	Mexico.
Grupo Financiero Invermexico SA de CV	82-3447	Mexico.
Grupo Financiero Mexival	82-3321	Mexico.
Grupo Financiero Prime Internacional	82-3548	Mexico.
Grupo Gigante, S.A. de C.V	82-3142	Mexico.
Grupo Industrial Maseca, S.A. de C.V	82-3215	Mexico.
Grupo Sidek, S.A. de C.V	82-2596	Mexico.
Grupo Simec, S.A. de C.V	82-3132	Mexico.
Grupo Situr, S.A. de C.V	82-3187	Mexico.
Grupo Synkro, S.A. de C.V	82-2847	Mexico.
Grupo Syr, S.A. de C.V	82-3305	Mexico.
Grupo Televisa, S.A. de C.V	82-3213	Mexico.
Grupo Video Visa, S.A. de C.V	82-3193	Mexico.
Guardian Communication Industries Inc	82-857	Canada.
Guinness PLC	82-1478	United Kingdom.
Gwalia Resources Ltd	82-2126	Australia.
H. Jager Developments Inc	82-2618	Canada.
HSBC Holdings PLC	82-683	United Kingdom.
Habsburg Resources Inc	82-891	Canada.
Haddington Resources Ltd	82-2024	Canada.
Hang Lung Development Co. Ltd	82-1439	Hong Kong.
Hang Seng Bank Ltd	82-1747	Hong Kong.
Hanna Pacific Steel Co. Ltd	82-2435	Canada.
Harbour Petroleum Company Ltd	82-3427	Canada.
Hardman Resources N.L	82-3472	Australia.
Harmony Gold Mining Co. Ltd	82-238	South Africa.
Hars Systems, Inc	82-1870	Canada.
Harvard Capital Corp	82-2415	Canada.
Helikopter Service A.S	82-3135	Norway.
Henderson Land Development Co. Ltd	82-1551	Hong Kong.

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Company	File No.	Country
Highgrade Ventures Ltd	82-2257	Canada.
Highveld Steel & Vanadium Corp. Ltd	82-596	South Africa.
Hillsdown Holdings PLC	82-1407	United Kingdom.
Hindalco Industries Ltd	82-3428	India.
Hokuriku Bank Ltd	82-1045	Japan.
Hol-Lac Gold Mines Limited	82-3529	Canada.
Hollinger Inc	82-117	Canada.
Hong Kong & China Gas Co. Ltd	82-1543	Hong Kong.
Hong Kong Gold Corp	82-3459	Canada.
Hong Kong Land Holdings Limited	82-2954	Hong Kong.
Hopewell Holdings Ltd	82-1547	Hong Kong.
Horace Small Apparel Plc	82-3341	United Kingdom.
Huhtamaki Oy	82-2925	Finland.
Hydromet Corporation Limited	82-3543	Australia.
Hysan Development Co. Ltd	82-1617	Hong Kong.
Hyundai Motor Company	82-3423	Korea.
I.M.P.A.C.T. Minerals Inc	82-3233	Canada.
ILM Resources Ltd	82-1207	Canada.
IRSA Inversiones Y Representaciones S.A	82-3537	Argentina.
IVS Intelligent Vehicle Systems Ltd	82-2929	Canada.
Iasco Industries Inc	82-2793	Canada.
Iberdrola I, S.A	82-3382	Spain.
Idaho Consolidated Metals Corp	82-3166	Canada.
Image Data International Corporation	82-2700	Canada.
Imasco Ltd	82-118	United Kingdom.
Impala Platinum Holdings Limited	82-359	South Africa.
Imperial Metals Corp	82-1032	Canada.
Industrias de Papel Simao S.A	82-3383	Brazil.
Infocorp Computer Solutions Ltd	82-3513	Canada.
Insular Explorations Ltd	82-1827	Canada.
Insulpro Industries Inc	82-3281	Canada.
Interactive Communications Corp	82-3054	Canada.
Interfirst Resources Inc	82-2302	Canada.
Interlock Consolidated Enterprises	82-3359	Canada.
Internacionale de Ceramica S.A. de C.V	82-2873	Mexico.
International Brace Resources Inc	82-1014	Canada.
International Capri Resources Ltd	82-2460	Canada.
International Consort Industries, Inc	82-993	Canada.
International Container Terminal Serv	82-3453	Philippines.
International Mahogany Corporation	82-2375	Canada.
International Nederlanden Groep N.V	82-3458	Netherlands.
International Northair Mines Ltd	82-305	Canada.
International PCBX Systems Inc	82-3527	Canada.
International R.S.V. Resource Corp	82-3366	Canada.
International Slocan Developments Ltd	82-3414	Canada.
International Tessa Capital Corporation	82-3530	Canada.
International Ticker Tape Resources Ltd	82-3373	Canada.
International Tower Hill Mines Ltd	82-3248	Canada.
International UNP Holdings Ltd	82-2731	Canada.
Intermova Resources Ltd	82-3499	Canada.
Iris Resources, Inc	82-1215	Canada.
Isras Investment Company Ltd	82-3243	Israel.
Izone International Ltd	82-782	Canada.
J. Sainsbury PLC	82-913	United Kingdom.
James Hardie Industries Ltd	82-972	Australia.
Japan Airlines Company Ltd	82-122	Japan.
Jardine Matheson Holdings	82-2953	Hong Kong.
Jardine Strategic Holdings Ltd	82-3085	Bermuda.
Jarvis Resources Ltd	82-962	Canada.
Jason Mining Ltd	82-1257	Australia.
Jefferson Smurfit Group PLC	82-1311	Ireland.
Jericho Resources Ltd	82-2976	Canada.
Jetta Resources Ltd	82-3405	Canada.
Jilbey Exploration Ltd	82-1629	Canada.
John Labatt Ltd	82-1103	Canada.
Johnson Electric Holdings Ltd	82-2415	Canada.
Jonpol Explorations Ltd	82-1989	Canada.
Joutel Resources Ltd	82-502	Canada.
Julia Mines N.L	82-1666	Australia.
Kawasaki Steel Corporation	82-3389	Japan.
Kensbrook Development Corporation	82-3390	Canada.
Keppel Corporation Limited	82-2564	Singapore.
Kestral Resources Ltd	82-2890	Canada.
Kettle River Resources Ltd	82-666	Canada.

Company	File No.	Country
Key Anacon Mines Ltd	82-23	Canada.
Keylock Resources Inc	82-3271	Canada.
Kia Motors Corp	82-3205	Korea.
Kidston Gold Mines Ltd	82-2351	Canada.
Kimberly Clark De Mexico	82-3308	Mexico.
Kingfisher PLC	82-968	United Kingdom.
Kinova Holdings Corporation	82-3558	Canada.
Kinross Mines Ltd	82-220	South Africa.
Kirin Brewery Co. Ltd	82-188	Japan.
Kloof Gold Mining Co., Ltd	82-205	South Africa.
Kobe Steel Ltd	82-3371	Japan.
Koninklijke Van Ommeren Ceteco N.V	82-1217	Belgium.
Koninklijke Wessanen N.V	82-1306	Netherlands.
Kopel (Drive Yourselves) Ltd	82-3137	Israel.
L'Oreal	82-735	France.
LMX Resources Ltd	82-2139	Canada.
La Rock Mining Corporation	82-1486	Canada.
Ladbroke Group PLC	82-1571	United Kingdom
Lafarge Coppee	82-3369	France.
Land Lease Corporation Limited	82-3498	Australia.
Landstar Properties Inc	82-2240	Canada.
Langtec Capital Corporation	82-2385	Canada.
Lansing Enterprises, Inc	82-2016	Canada.
Laser Friendly, Inc	82-3536	Canada.
Laura Ashley Holdings PLC	82-1356	United Kingdom.
Le Groupe Videotron Ltee	82-3269	Canada.
Legion Resources Ltd	82-2556	Canada.
Leslie Gold Mines Ltd	82-223	South Africa.
Lessonware Ltd	83-3370	Canada.
Lion Land Berhad	82-3342	Malaysia.
Listed Ventures Inc	82-3230	Canada.
Lodestar Explorations Inc	82-3110	Canada.
London Electricity PLC	82-3037	United Kingdom.
Lonrho PLC	82-191	United Kingdom.
Loumic Resources Ltd	82-2670	Canada.
Lucas Gold Resources Corp	82-2297	Canada.
Luxor Industrial Corporation	82-822	Canada.
Lydenburg Platinum Ltd	82-312	South Africa.
MBF Holdings Berhad	82-3469	Malaysia.
MIM Holdings Ltd	82-173	Australia.
Maesa Petroleum, Inc	82-1208	Canada.
Magnatron International Corp	82-2975	Canada.
Major General Resources Ltd	82-2996	Canada.
Malayan United Ind. Berhad of Malaysia	82-2586	Malaysia.
Mandarin Oriental International Ltd	82-2955	Hong Kong.
Mango Resources Ltd	82-3454	Canada.
Manhattan Minerals Corp	82-3328	Canada.
Mantex S.A.I.C.A.-S.A.C.A	82-3241	Venezuela.
Manweb PLC	82-3036	United Kingdom.
Maple Leaf Springs Water Corporation	82-3432	Canada.
Marks and Spencer PLC	82-1961	United Kingdom.
Maruberi Corp	82-616	Japan.
Mavesa S.A	82-3397	Venezuela.
Maximusic North American Corporation	82-2140	Canada.
Maxwell Energy Corporation	82-3061	Canada.
McCulloch's Canadian Beverages, Inc	82-3512	Canada.
Medya Holdings AS	82-3515	Turkey.
Melinga Resources Ltd	82-2745	Canada.
Merit Technologies Ltd	82-1414	Canada.
Metall Mining Corporation	82-3481	Canada.
Metana Minerals N.L	82-2175	Australia.
Metra Corp	82-933	Finland.
Micrologix Biotech, Inc	82-3179	Canada.
Mikado Resources Ltd	82-1256	Canada.
Mill City Gold Mining Corp	82-3076	Canada.
Minefinders Corp. Ltd	82-2227	Canada.
Minera Rayrock Inc	82-3471	Canada.
Minerex Resources, Ltd	82-946	Canada.
Minerva Gold Mines Ltd	82-3275	Canada.
Minnova Inc	82-3475	Canada.
Minorco	82-206	Bermuda.
Minotaur Explorations Ltd	82-2446	Canada.
Minvita Enterprises Ltd	82-2161	Canada.
Mirage Resource Corporation	82-1838	Canada.

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Company	File No.	Country
Miramar Mining Corp	82-1566	Canada.
Mirror Group Newspapers PLC	82-3114	United Kingdom.
Mishibishu Gold Corp	82-2682	Canada.
Mitsubishi Kasei Corp	82-1191	Japan.
Molinos Rio de la Plata S.A	82-3180	Argentina.
Molson Companies Ltd	82-2954	Canada.
Morgan Crucible Company	82-3387	United Kingdom.
Moricorp Enterprises Inc	82-3255	Canada.
Motion Works Corp	82-3250	Canada.
Mount Burgess Gold Mining Co. N.L	82-1235	Australia.
Mountain Province Mining Corporation	82-2540	Canada.
Mountain West Resources Inc	82-1201	Canada.
Multinational Resources, Inc	82-1095	Canada.
Mutual Resources Ltd	82-1171	Canada.
N.V. Amev	82-3118	Netherlands.
NTC Capital Corporation	82-2157	Canada.
NV Koninklijke Nederlandse Vlie. Fok	82-3014	Netherlands.
NV Verenigd Bezit VNU	82-2676	Netherlands.
Nacasa Ventures Inc	82-939	Canada.
Naneco Minerals Ltd	82-2618	Canada.
National Mutual Asia Ltd	82-3426	Hong Kong.
National Power PLC	82-3060	United Kingdom.
Navarra Resources Corp	82-3077	Canada.
Naxos Resources Ltd	82-2588	Canada.
Nestle S.A	82-1252	Switzerland.
Nevada North Resources Inc	82-1665	Canada.
Nevada Star Resources Corp	82-3068	Canada.
New Age Ventures Inc	82-3344	Canada.
New Claymore Resources Ltd	82-3433	Canada.
New World Developments Co. Ltd	82-2971	Hong Kong.
Newcrest Mining Ltd	82-3267	Australia.
Newhawk Gold Mines Ltd	82-739	Canada.
Nintendo Co. Ltd	82-2544	Japan.
Nippon Shokubai Kagaku Kagyo Co. Ltd	82-1484	Japan.
Nissan Motor Co., Ltd	82-207	Japan.
Niugini Mining Ltd	82-1230	New Guinea.
Noble Metal Group Inc	82-3220	Canada.
Nokia Corporation	82-1490	Finland.
Noranda Forest Inc	82-3173	Canada.
Normandy Resources N.L	82-1975	Australia.
Noront Resources Ltd	82-2304	Canada.
North American Nippon Technologies Corp	82-3048	Canada.
North Broken Hill Peko Ltd	82-2531	Australia.
North West Water Group PLC	82-2813	United Kingdom.
Northern Electric Plc	82-3039	United Kingdom.
Northern Orion Explorations Ltd	82-3153	Canada.
Northfield Minerals Inc	82-2065	Canada.
Northfork Ventures Ltd	82-3062	Canada.
Northumbrian Water Group Plc	82-2802	United Kingdom.
Norweb Plc	82-3038	United Kingdom.
OMV Aktiengesellschaft	82-3209	Austria.
Octagon Industries, Inc	82-3310	Canada.
Oil City Lubricants Ltd	82-1260	Canada.
Oil Search Limited	82-3456	Papua New Guinea.
Olds Industries Inc	82-3461	Canada.
Olympus Optical Company Ltd	82-3326	Japan.
Omron Corp	82-1170	Japan.
Onword Learning Systems Inc	82-2930	Canada.
Orange Free State Investments Ltd	82-1220	South Africa.
Orbit Oil and Gas Ltd	82-3107	Canada.
Orenda Forest Products Ltd	82-934	Canada.
Orthotronics Medical Technologies Inc	82-2479	Canada.
Osito Ventures Limited	82-2236	Canada.
Osprey Mortgage Securities Ltd	82-3441	Isle of Jersey.
P.T. Gadjah Tunggal	82-3201	Indonesia.
PIC Prospectors International Corp	82-2039	Canada.
PWA Corp	82-3203	Canada.
Pacific Century Explorations Ltd	82-2120	Canada.
Pacific Copperfields Inc	82-3235	Canada.
Pacific Northern Ventures Ltd	82-3333	Canada.
Pacific Talc Ltd	82-3159	Canada.
Pact Resources N.L	82-1368	Australia.
PanContinental Mining Ltd	82-1368	Canada.
PanGlobal Enterprises, Inc	82-3223	Canada.

Company	File No.	Country
Parallax Development Corp	82-1854	Canada.
Park Meditech Inc	82-3249	Canada.
Pechiney International	82-3350	France.
Pelsart Resources N.L	82-484	Australia.
Pentos PLC	82-2592	United Kingdom.
Peregrine Investments Holdings Ltd	82-3466	Hong Kong.
Pernod Ricard S.A	82-3361	France.
Peugeot S.A	82-3531	France.
Pioneer International Ltd	82-2701	Australia.
Pittencrieff PLC	82-3415	United Kingdom.
Placer Pacific Ltd	82-1952	Australia.
Ponderosa Industrial S.A. de C.V	82-2880	Mexico.
Poseidon Gold Ltd	82-2875	Australia.
Power Corp. of Canada	82-137	Canada.
Power Financial Corp	82-1716	Canada.
PowerGen PLC	82-3066	United Kingdom.
Premier Consolidated Oilfields PLC	82-2617	United Kingdom.
President Enterprises Corp	82-3424	Taiwan.
Primo Gold Ltd	82-3335	Canada.
Princeton Mining Co	82-1243	Canada.
Promatek Industries Ltd	82-1351	Canada.
Provigo Inc	82-2570	Canada.
Prudential Corporation PLC	82-1477	United Kingdom.
Pure Gold Resources, Inc	82-3520	Canada.
Quadrum S.A. de C.V	82-2863	Mexico.
Quattro Resources Ltd	82-2625	Canada.
Queenstake Resources Ltd	82-565	Canada.
Quillo Technologies, Inc	82-1960	Canada.
Quinto Mining Corp	82-475	Canada.
RJK Explorations Ltd	82-2629	Canada.
Racal Electronics Plc	82-481	United Kingdom.
Ranchmen's Resources Ltd	82-2615	Canada.
Rand Mines Ltd	82-304	South Africa.
Randex Ltd	82-224	United Kingdom.
Randfontein Estates Gold Mining	82-267	South Africa.
Rank Organisation Ltd., The	82-17	United Kingdom.
Rayrock Yellowknife Resources Inc	82-376	Canada.
Reako Explorations Ltd	82-1286	Canada.
Redland PLC	82-2156	United Kingdom.
Reed International Plc	82-2856	United Kingdom.
Regeena Resources, Inc	82-3560	Canada.
Reliance Industries Ltd	82-3300	India.
Repola Ltd	82-3161	Finland.
Resorts World Berhad	82-3229	Malaysia.
Response Biomedical Corporation	82-1365	Canada.
Rhonda Mining Corporation	82-3418	Canada.
Rich Mineral Corp	82-2632	Canada.
Richmont Mines Inc	82-2940	Canada.
Ridgeway Petroleum Corporation	82-1819	Canada.
Riley Resources	82-2159	Canada.
Riva Petroleum Inc	82-2945	Canada.
Roche Holdings Ltd	82-3315	Switzerland.
Rockford Technology Corp	82-2223	Canada.
Rockwealth International Resource Corp	82-2723	Canada.
Rocraven Resources Ltd	82-493	Canada.
Rolls-Royce PLC	82-2821	United Kingdom.
Roper Resources Inc	82-2020	Canada.
Rosenthal A.G	82-1648	Germany.
Rothmans International Ltd	82-94	United Kingdom.
Royal Bank of Canada	82-796	Canada.
Royal Nedlloyd Group NV	82-1056	Netherlands.
Rustenburg Platinum Holdings Ltd	82-241	South Africa.
Ryde Industries Inc	82-2326	Canada.
S.A. Brewing Holdings Ltd	82-2692	Australia.
STET Societa Finanziaria Telefonica PA	82-1073	Italy.
Sabre Marketing Corp	82-3214	Canada.
Safeguard Ventures Inc	82-3071	Canada.
Saga Petroleum A.S	82-2869	Norway.
Saint Helena Gold Mines Ltd	82-232	South Africa.
Sakura Bank Ltd	82-3055	Japan.
Samantha Explorations N.L	82-323	Australia.
Samoth Capital Corp	82-2931	Canada.
Samsung Electronics Co. Ltd	82-3109	Korea.
San Andreas Resources Corporation	82-3313	Canada.

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San Miguel Corp	82-305	Philippines.
Sandoz Ltd	82-3156	Switzerland.
Sandvik AB	82-1463	Sweden.
Santos Ltd	82-34	Australia.
Sanyo Electric Co. Ltd	82-264	Japan.
Sanyo Securities Co. Ltd	82-1857	Japan.
Saragon Resources Ltd	82-3338	Canada.
Sasol Ltd	82-631	South Africa.
Scottish Hydro-Electric PLC	82-3099	Scotland.
Scottish Power PLC	82-3100	Scotland.
Sears Roebuck de Mexico S.A. de C.V	82-3261	Mexico.
Sechura Inc	82-1278	Canada.
Seeboard PLC	82-3033	United Kingdom.
Sega Enterprises Ltd	82-3439	Japan.
Seine River Resources, Inc	82-2942	Canada.
Selkirk Springs International	82-2526	Canada.
Semi-Tech (Global) Company Ltd	82-3337	Bermuda.
Serenpet Inc	82-3362	Canada.
Sharp Corp	82-1116	Japan.
Shinawatra Computer Co. Ltd	82-3140	Thailand.
Shiseido Company Ltd	82-3311	Japan.
Shun Tak Holdings	82-3357	Hong Kong.
Siderurgica Venezolana "Sivensa"	82-3060	Venezuela.
Siebe, Plc	82-2142	United Kingdom.
Siemens Aktiengesellschaft	82-73	Germany.
Sikaman Gold Resources Ltd	82-1651	Canada.
Silent Witness Enterprises Inc	82-3464	Canada.
Silver Eagle Resources Ltd	82-2450	Canada.
Silver Ridge Resources	82-3012	Canada.
Silver Talon Mines Ltd	82-3051	Canada.
Silver Tusk Mines Ltd	82-723	Canada.
Silverspar Energy Corporation	82-478	Canada.
Simint Spa	82-3270	Italy.
Singapore Land Ltd	82-2194	Singapore.
Sino Land Co. Ltd	82-1868	Hong Kong.
Skyline Gold Corporation	82-1449	Canada.
Slumber Magic Adjustable Bed	82-2057	Canada.
Smedvig A.S	82-3551	Norway.
SoCal Capital Corporation	82-3298	Canada.
Societe Generale	82-3501	France.
Sol Petroleo S.A	82-3448	Argentina.
Solvay & Cie S.A	82-2691	Belgium.
Sons of Gwalia N.L	82-1039	Australia.
Sorata Developments Inc	82-3208	Canada.
South African Breweries Ltd	82-303	South Africa.
South African Land & Expl. Co., Ltd	82-59	South Africa.
South China Morning Post	82-3327	Hong Kong.
South Roodepoort Main Reefs Area Ltd	82-930	South Africa.
South Wales Electricity PLC	82-3031	United Kingdom.
South Western Electricity PLC	82-3030	United Kingdom.
Southern Electric PLC	82-3032	United Kingdom.
Southern Pacific Petroleum N.L	82-353	Australia.
Southern Water PLC	82-2797	United Kingdom.
Southvaal Holdings Ltd	82-197	South Africa.
Southward Energy Ltd	82-3005	Canada.
Springboard Resources Ltd	82-3292	Canada.
St. Philips Resources Inc	82-3152	Canada.
Star Valley Resources Corp	82-2418	Canada.
Stateside Energy Corporation	82-549	Canada.
Statoil	82-3444	Norway.
Stelco Inc	82-141	Canada.
Stilfontein Gold Mining Co. Ltd	82-301	South Africa.
Stina Resources Ltd	82-2062	Canada.
Stormin Resources Inc	82-2803	Canada.
Stralak Resources Ltd	82-976	Canada.
Stratabound Minerals Corporation	82-3284	Canada.
Stratcomm Media Ltd	82-1778	Canada.
Strategic Technologies Inc	82-1548	Canada.
Sumitomo Metal Industries Ltd	82-3507	Japan.
Summit Resources Ltd	82-2922	Canada.
Sun Entertainment Holding Corporation	82-1776	Canada.
Sun Free Enterprises Ltd	82-2822	Canada.
Sun Hung Kai Properties Ltd	82-1755	Hong Kong.
Suncor Inc	82-3257	Canada.

Company	File No.	Country
Sundance Resources Ltd	82-1412	Canada.
Sutton Group Financial Services Ltd	82-2795	Canada.
Svenska Cellulosa Aktiebolagot SCA	82-763	Sweden.
Sway Resources Inc	82-3476	Canada.
Swire Pacific Ltd	82-2184	Hong Kong.
Synex International Inc	82-862	Canada.
T&H Resources Ltd	82-2669	Canada.
T&N PLC	82-1011	United Kingdom.
T.E.N. Private Cable Systems Inc	82-1563	Canada.
TI Group PLC	82-2697	United Kingdom.
TME Resources Inc	82-1200	Canada.
TNT Limited	82-2910	Australia.
Tai Cheung Holdings Limited	82-3528	Canada.
Tamara Resources, Inc	82-1214	Canada.
Tan Range Exploration Corp	82-3446	Canada.
Tarron Industries Ltd	82-1881	Canada.
Tate & Lyle PLC	82-905	United Kingdom.
Techtana Capital Ltd	82-1848	Canada.
Teijin Seiki Co. Ltd	82-1493	Japan.
Tele Radio Systems	82-3330	Canada.
Telecom Argentina-*-Stet France Telecom	82-3259	Argentina.
Telecommunicacoes Brasileiras S.A	82-3355	Brazil.
Telefonica de Argentina S.A	82-3227	Argentina.
Telesis Computer Networking Inc	82-3386	Canada.
Telesis Industrial Group	82-2977	Canada.
Television Broadcasts Ltd	82-1072	Hong Kong.
Telstra Corporation Limited	82-3562	Australia.
Templar Energy Ltd	82-3463	Canada.
Tenajon Resources Corp	82-2032	Canada.
Teollisuuden Voima Oy	82-2973	Finland.
Teranet IA Inc	82-3244	Canada.
Terra Health Corporation	82-3356	Canada.
Tesco Plc	82-3277	United Kingdom.
Teuton Resources Corp	82-1394	Canada.
Texas Dome Resource Corp	82-3425	Canada.
The Wharf (Holdings) Ltd	82-3291	Hong Kong.
Thermo Tech Technologies, Inc	82-1114	Canada.
Thios Resources Inc	82-1909	Canada.
Thorn EMI Ltd	82-373	United Kingdom.
Tiomin Resources Inc	82-3430	Canada.
Toba Gold Resources	82-2966	Canada.
Tolltreck Systems Limited	82-3478	Australia.
Tomahawk Resources Ltd	82-2909	Canada.
Tomra Systems A/S	82-3334	Norway.
Topper Gold Corp	82-2694	Canada.
Toronto Dominion Bank	82-142	Canada.
Toyobo Co., Ltd	82-1172	Japan.
Toyota Motor Co., Ltd	82-208	Japan.
Trafalgar House PLC	82-1894	United Kingdom.
Trans America Industries Ltd	82-1980	Canada.
Treminco Resources Ltd	82-1384	Canada.
Trimel Corp	82-3108	Canada.
Trimin Resources Inc	82-1833	Canada.
Trinity International Holdings PLC	82-3043	United Kingdom.
Trio Gold Corp	82-2127	Canada.
Triquanta Investments Limited	82-3511	Canada.
Trove Investment Corp	82-2476	Canada.
Troymin Resources Ltd	82-3503	Canada.
Trust Company of Australia Ltd	82-1443	Australia.
Tusk Minerals, Inc	82-3297	Canada.
Twin Star Energy Corp	82-2213	Canada.
Tycoon Ventures Inc	82-3468	Canada.
UNI Storebrand A.S	82-3141	Norway.
USA Video Corporation	82-1601	Canada.
Unibanco Uniao de Bancos Brasileiros SA	82-3353	Brazil.
Unisel Gold Mines Ltd	82-236	South Africa.
Unitech PLC	82-2412	United Kingdom.
United Biscuits PLC	82-3079	United Kingdom.
United Keno Hill Mines Ltd	82-61	Canada.
United Overseas Bank	82-2947	Singapore.
United Overseas Land Ltd	82-2180	Singapore.
United Rayore Gas Ltd	82-747	Canada.
Universal Trident Industries Ltd	82-3026	Canada.
Vaal Reefs Exploration & Mining Co. Ltd	82-56	South Africa.

Company	File No.	Country
Valerie Gold Resources	82-3339	Canada.
Valley Oil & Gas Corp	82-1991	Canada.
Vananda Gold Ltd	82-1883	Canada.
Velcro Industries, N.V	82-145	Neth. Ant.
Venezuelan Gold Fields Ltd	82-1789	Canada.
Vexco Laboratories Inc	82-3486	Canada.
Viceroy Resources Corporation	82-1193	Canada.
Vickers PLC	82-1359	United Kingdom.
Victoria Petroleum N.L	82-322	Australia.
Victoria Resource Corporation	82-2889	Canada.
VitaMed Biopharmaceuticals Ltd	82-3096	Canada.
Vlakfontein Gold Mining Co. Ltd	82-217	South Africa.
Volkswagen AG	82-2188	Germany.
Vortex Energy & Minerals Ltd	82-3462	Canada.
Vtech Holdings Limited	82-3565	Bermuda.
Wace Group PLC	82-2369	United Kingdom.
Wayside Gold Mines Ltd	82-1606	Canada.
Welback Holdings Limited	82-3556	Bermuda.
Welkom Gold Holdings Ltd	82-57	South Africa.
West Rand Consolidated Mines Ltd	82-314	South Africa.
Western Areas Gold Mining Co. Ltd	82-268	South Africa.
Western Canadian Land Corporation	82-1446	Canada.
Western Copper Holdings Ltd	82-3422	Canada.
Western Deep Levels, Ltd	82-58	South Africa.
Western Premium Resources Corporation	82-3287	Canada.
Westgroup Corporations Inc	82-2833	Canada.
Westpine Metals Ltd	82-3116	Canada.
Westward Explorations Ltd	82-3027	Canada.
Westwin Ventures Inc	82-2349	Canada.
White Knight Resources Ltd	82-2850	Canada.
White Plains Resources Corporation	82-2687	Canada.
Wildrose Ventures, Inc	82-3542	Canada.
Williams Creek Explorations Ltd	82-3146	Canada.
Windarra Minerals Ltd	82-561	Canada.
Windsor Court Holdings Inc	82-3495	Canada.
Winkelhaak Mines Ltd	82-221	South Africa.
Wolters Kluwer N.V	82-2683	Netherlands.
Woodside Petroleum Ltd	82-2280	Australia.
Woolworths Limited	82-3544	Australia.
World Organics, Inc	82-2769	Canada.
World Wide Minerals Ltd	82-2444	Canada.
Worthing Industries Inc	82-3253	Canada.
Xenova Group Plc	82-3554	United Kingdom.
Yellow Point Mining Corporation	82-1349	Canada.
Yellowjack Resources Ltd	82-1765	Canada.
York Centre Corp	82-2616	Canada.
Yorkshire Electricity Group PLC	82-3034	United Kingdom.
Yorkshire Water PLC	82-2782	United Kingdom.
Young-Shannon Gold Mines Ltd	82-2928	Canada.
Z Landerbank Austria AG	82-3407	Austria.
Zapopan N.L	82-2997	Australia.
Zicton Gold Ltd	82-2749	Canada.
Zodiac Hurricane Marine Inc	82-1281	Canada.

[FR Doc. 93-19994 Filed 8-17-93; 8:45 am]
BILLING CODE 8010-01-P

[Release No. 34-32738; File No. SR-GSCC-92-18]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Amending Rules on Financial Reporting Requirements

August 11, 1993.

On December 28, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-92-18) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to amendments to rules on financial reporting requirements. Notice of the proposal was published in the Federal Register on March 16, 1993.[2] No comment letters were received.

I. Description

A. Background

The failure in 1990 of Drexel Burnham Lambert, Inc. led to various legislative and regulatory changes. Among them were the amendments adopted by the Commission to its uniform net capital rule, Rule 15c3-1,[3] to require broker-dealers to notify the Commission prior to certain withdrawals of their equity capital.[4] The amendments addressed the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31974 (March 10, 1993, 58 FR 14299.

[3] 17 CFR 240.15c3-1 (1992).

[4] Securities Exchange Act Release No. 28927 (February 28, 1991), 56 FR 9124.

Commission's concern that significant amounts of equity capital could be withdrawn from a broker-dealer between reporting periods without notification to the Commission or to the broker-dealer's examining authority if the withdrawal did not cause the broker-dealer's net capital to decline below certain levels established under the rule. Such capital withdrawals might indicate that the broker-dealer is experiencing financial difficulty, that its equity is being improperly appropriated for the benefit of its owners, and/or that its owners are being favored to the detriment of customers and other creditors.

The purpose of the proposed rule change is to enhance GSCC's financial responsibility standards and to provide greater symmetry between those standards and the Commission's uniform net capital rule by amending GSCC's rules to incorporate for GSCC members the notice provisions of paragraph (e)(1) of the uniform net capital rule.

B. Rule 15c3–1(e)(1)

Generally, Rule 15c3–1(e)(1) prohibits (1) the withdrawal of the broker-dealer's equity capital by action of a stockholder or a partner or by redemption or repurchase of shares of stock by the broker-dealer's affiliates or through the payment of dividends or any similar distribution and (2) the making of any unsecured advance or loan to a stockholder, partner, sole proprietor, employee, or affiliate if such withdrawal, advance, or loan exceeds certain percentages of the broker-dealer's excess net capital unless the broker-dealer provides notice to the Commission, its designated examining authority, the Commodity Futures Trading Commission ("CFTC") if the broker-dealer is registered with the CFTC.[5]

II. Discussion

Sections 17A(b)(3)(A) and (F)[6] of the Act require that a clearing agency be organized and its rules be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with these requirements.

GSCC 's proposed rule change requires any member broker-dealer to inform GSCC of any Rule 15c3–1(e)(1) notification that the member is required to give and requires the member to furnish a copy of such notice to GSCC on the same day the notice is given to the Commission. This will serve to alert GSCC that a member may be experiencing financial difficulty so that GSCC may investigate the situation and take appropriate steps to protect itself and other members from any risk it discovers. Thus, the notice requirement should help GSCC to assure the safeguarding of securities and funds in GSCC's custody or control or for which it is responsible.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–92–18) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19878 Filed 8–17–93; 8:45 am]

BILLING CODE 8010-01-M

[5] Rule 15c3–1(e)(1) requires that a broker-dealer must give written notice (i) two business days before making such withdrawals of equity capital or before making such advances or loans if those withdrawals, advances or loans exceed in any thirty day period thirty percent of the broker-dealer's excess net capital and (ii) within two business days after any such withdrawals, advances, or loans if those withdrawals, advances, or loans exceed in any thirty day period twenty percent of the broker-dealer's excess net capital.

[6] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[7] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32739; File No. SR–MBS–93–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Fee and Trade Input Standard

August 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 26, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–05) as described in Items I, II, III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes new trade input compliance standards and adopts a fee for the failure of a participant to comply with the new trade input compliance standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to establish new trade input compliance standards and adopt a fee for the failure of a participant to comply with the new trade input compliance standards. The new stardard requires that, during August and September of 1993, no more than 10% of any participant's account trade input for the month be submitted on trade date +1 ("T+1"), regardless of processing pass, and, beginning in October of 1993, such amount be limited to 5% of each account's input.[2] Failure to adhere to the new standard will result in a $500 charge to the participant for each account in non-compliance.

MBS believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act,[3] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[2] Participant trade reassignment accounts will be exempt from the compliance program.

[3] 15 U.S.C. 78q–1(b)(3)(D) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from participants, however, none were received. In addition, MBS' New Products/Services Committee has recommended adoption of the new trade input compliance standards.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes a due, fee, or other charge imposed by the self-regulatory organization and constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning he foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–93–05 and should be submitted by [insert date 21 days after the date of publication in the **Federal Register**].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19814 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32740; File No. SR–NASD–92–62]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Public Availability of Arbitration Awards

August 12, 1993.

On December 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19 (b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder.[2] The rule change amends Part III, section 41(f) of the NASD Code of Arbitration Procedure (the "Code") to make all arbitration awards, their contents, and the names of arbitrators publicly available.[3]

Notice of the proposed rule change, together with the substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 32150, April 15, 1993), and by publication in the **Federal Register** (58 FR 21494, April 21, 1993). No comment letters were received. For the reasons discussed below the Commission is approving the NASD's rule change as proposed.

Currently, public customer arbitration awards issued on or after May 10, 1989 are publicly available, but with the names of the arbitrators deleted. The NASD's Arbitration Department provides parties to a pending arbitration with copies of awards previously rendered by the arbitrators selected to decide their cases. Industry arbitration awards have not been made available to the public.

The proposed rule change was prompted by several factors. First, the current system of deleting arbitrators' names from awards for some but not all requestors has become burdensome to both the parties and the NASD's Arbitration Department staff. Second, all other securities industry self-regulatory organizations ("SRO") make public customer awards publicly available,. without deletion of arbitrators' names.[4]

In its rule filing with the Commission, the NASD is proposing to amend section 41(f) of part III of the Code to delete the reference to awards involving public customers, the result of which is to make all awards publicly available; delete the requirement of removing arbitrators' names from publicly-available awards; and delete the provision of obtaining awards by the arbitrators chosen to hear a particular case involving a public customer, since all awards would now be available.[5]

Once the rule is implemented, the parties will be provided with a list of all publicly available awards rendered by each arbitrator. The list will detail the case name and number, the date of the award and whether the arbitrator concurred or dissented.[6]

The Commission finds that including the names of the arbitrators in publicly-available awards is a positive step to increase public access to the arbitration process. Public access to full awards is not likely to have any adverse impact on

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The NASD will implement this rule change on October 1, 1993. For public customer cases, the rule change will apply to awards rendered on or after May 10, 1989. For industry cases, including employment disputes, the rule change will apply to awards rendered on or after October 1, 1993.

[4] The award rule in the Uniform Code of Arbitration, adopted by the Securities Industry Conference on Arbitration, a group of representatives from each self-regulatory organization that administers an arbitration program, a representative of the securities industry, and four representatives of the public, states only that summary information contained in the awards will be made publicly available in accordance with the policies of the sponsoring SRO. The Uniform Code was developed principally for the administration of public customer cases, and its award provision does not directly address industry arbitrations.

[5] The arbitration code of the New York Stock Exchange ("NYSE") takes a different approach to the disclosure of arbitration awards, and gives public customers the option of requesting that their names be removed before the awards are made public. See *e.g.*, NYSE Rule 627(f). The NASD believes that the names of all parties, including members, associated persons, and customers, should be publicly disclosed and therefore does not propose to provide the option of deleting customer's names.

[6] Parties will be advised that they may obtain copies of awards by contacting the NASD's Rockville office. Under the proposed rule change, awards would be indexed by arbitrator so that requestors can obtain the awards in which they are interested. A party to a pending arbitration would receive, at no cost, either the last five awards rendered by each arbitrator regardless of when rendered or all of the awards rendered in the prior 12-month period, whichever compilation of awards is greater. Any additional awards requested by a party will be provided at a cost of $5.00 per award, up to a maximum of $70 per case. Persons other than parties to a proceeding who request an award will be charged $5.00 per award, with no ceiling. See letter to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, from Suzanne Rothwell, Associated General Counsel, NASD, dated August 2, 1993.

arbitrators, or to reduce their willingness to serve in the future. In its filing with the Commission, the NASD submitted a letter to the Commission stating that a memorandum was sent to all active arbitrators, numbering about 7,000, to provide them with information about the planned disclosure of their names on awards to the parties.[7] The NASD did not receive any comments from the arbitrators on the upcoming disclosure of their names on awards. Further, since 1989 the NYSE has disclosed the names of arbitrators.

The proposed rule change is consistent with section 15A(b)(6) of the Act[8], which requires that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest. The proposed rule will promote the public interest by increasing the information available on arbitration awards and reducing the time needed to make information available to the public customer and other requestors of awards. The proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore, ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–92–52 be, and thereby is approved, effective October 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19877 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19623; 812–8160]

National Multi-Sector Fixed Income Fund, et al.; Application

August 12, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: National Multi-Sector Fixed Income Fund, Inc., National Total Return Fund, National Stock Fund, National Income and Growth Fund, National Federal Securities Trust, National Securities Tax-Exempt Bonds, Inc., National Bond Fund, National Worldwide Opportunities Fund, National Asset Reserve, National's California Tax-Exempt Bonds, Inc., NSR Distributors, Inc. (the "Distributor"), and National Securities & Research Corporation (the "Adviser").

RELEVANT ACT SECTIONS: Conditional, amended order requested under section 6(c) for exemption from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants, on behalf of themselves, any other open-end management investment companies that in the future may be in the same "group of investment companies" as defined in rule 11a–3 (the "Funds"), and any entity controlling, under common control with or controlled by the Distributor or the Adviser that may in the future serve as, respectively, the Funds' distributor or investment adviser, seek a conditional, amended order that would permit the Funds (a) to issue an unlimited number of classes of securities representing interests in the same portfolio, and (b) to assess a contingent deferred sales charge ("CDSC") on redemptions of shares of some of the classes, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on November 13, 1992, and amended on February 2, 1993, April 16, 1993, and July 15, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, National Securities & Research Corporation, Two Pickwick Plaza, Greenwich, Connecticut 06830, Attn: Lisa M. Hurley, Esq.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, and Elizabeth G. Osterman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each of the Funds is an open-end management investment company registered under the Act, and is either a Maryland corporation or a Massachusetts business trust. The Adviser provides investment advisory and administrative services to each of the Funds. Dillon, Read International Asset Management, a registered investment adviser, is the subadviser of National Worldwide Opportunities Fund. The Distributor acts as principal underwriter of the Funds' shares, and has a dealer arrangement with unaffiliated broker-dealers pursuant to which such firms sell the shares of the Funds.

2. The SEC issued an order in 1991 (the "Existing Order"),[1] pursuant to which the Funds may offer two classes of shares ("Class A" and "Class B") representing interests in the same portfolio, and impose and, under certain circumstances, waive a CDSC on the redemption of such shares.

3. The Funds offer Class A shares at net asset value plus a front-end sales load. Class A shares are also subject to a rule 12b–1 plan providing for a combined distribution and servicing fee at an annual rate of up to .30 percent of the average daily net asset value of the class.

4. Three of the Funds offer Class B shares at net asset value subject to a CDSC, as described below. Class B shares are also subject to a rule 12b–1 plan providing for a combined distribution and servicing fee at an annual rate of up to 1 percent of the average daily net asset value of the class. Class B shares automatically convert to Class A shares after a specified period of years.

5. Applicants propose to establish a multiple class distribution system (the "Multi-Class Distribution System") to enable each of the Funds to offer an unlimited number of classes of shares that would be subject to a front-end sales load, a CDSC, a rule 12b–1 plan providing for a distribution fee and/or service fee, a combination of the above, or none of the above. Classes of shares subject to a rule 12b–1 plan and a CDSC

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[7] See letter to Christopher J. Michailoff, Attorney, Over-the-Counter Regulation, Division of Market Regulation, SEC, from Suzanne Rothwell, Associate General Counsel, NASD, dated April 14 1993.

[8] 15 U.S.C. 78o–3.

[9] 17 CFR 200.30–3(a)(12).

[1] Investment Company Act Release Nos. 18429 (Dec. 3, 1991) (notice) and 18465 (Dec. 31, 1991) (order).

are referred to herein as "Deferred Option" classes. Applicants will comply with the NASD's Rules of Fair Practice that would subject asset-based distribution charges to regulation as sales loads.

6. Under the proposed Multi-Class Distribution System, the Funds would continue to offer Class A shares. They would also offer a third class of shares ("Class C"). Under the proposed arrangement, Class B shares would no longer be sold.

7. The Funds would offer Class C shares at net asset value subject to a CDSC, as described below. Class C shares also would pay a combined distribution and servicing fee at an annual rate of up to 1 percent of the average daily net assets of the class pursuant to a rule 12b–1 plan.

8. Investment income and unrealized and realized gains or losses will be allocated daily to each class of shares based on the percentage of net assets of the outstanding or dividend eligible shares, as appropriate, in each class of a Fund at the beginning of each day. Operating expenses[2] will be allocated daily to each class of shares based on the percentage of the Fund's net assets in each class at the beginning of the day. Expenses that have a greater cost for one class than another (*i.e.*, rule 12b–1 fees and possibly transfer agent fees) will be charged separately to each class.

9. Shares of one class automatically may convert to another class with lower ongoing distribution fees after a specified period of time, as disclosed in a Fund's prospectus. Class B shares currently convert to Class A shares. Applicants intend that Class C shares also will convert to Class A shares, although if a Fund were to continue to offer Class B shares after the creation of Class C shares, that Fund's Class C shares would not have conversion feature.

10. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares or Class C shares are also, respectively, Class B shares or Class C shares, except that, for purposes of conversion, they will be considered held in a separate sub-account. Each time a shareholder's Class B shares or Class C shares, other than those in the sub-account, convert to Class A, a *pro rata* portion of the shares in the sub-account also will convert to Class A.

11. The conversion feature is subject to the availability of an opinion of counsel or Internal Revenue Service private letter ruling to the effect that such conversion of shares does not constitute a taxable event under federal income tax law, and may be suspended if such a ruling or opinion is not available.

12. Applicants reserve the ability to convert shares of any class to shares of another, consistent with the standards, policies, conditions, and representations set forth in the application regarding the conversion of Class B and Class C shares to Class A shares. Such ability to convert shares will be subject to the terms fully disclosed in a Fund's registration statement current at the time of sale.

13. It is anticipated that each class of shares may be exchanged for shares of the same class in another Fund to the extent that the shareholder would have been eligible to purchase the shares acquired in the exchange. The exchange privileges will comply with rule 11a–3 under the Act.

14. Applicants expect that the CDSC applicable to Class B shares will vary from 2 percent to 5 percent for redemptions made during the first year after purchase to 1 percent for redemptions made during the fourth year after purchase. Applicants expect that the CDSC applicable to Class C shares will be 1.5 percent for redemptions made during the first year after the initial purchase. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or at the time of redemption. The CDSC of any particular Fund or class thereof may be higher or lower than that described in the application. The CDSC schedule will comply, to the extent applicable, with the requirements of article III, section 26(d) of the NASD's Rules of Fair Practice.

15. The CDSC will not be imposed on redemptions of shares purchased more than six years prior to their redemption. The CDSC will not be imposed on shares derived from the reinvestment of dividends or capital gains distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period.

16. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares derived from reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate. Redemption requests placed by a shareholder who owns both Class A shares and Class B or Class C shares subject to a CDSC will be satisfied first by redeeming the Class A shares, unless the shareholder has made a specific election to redeem the Class B or Class C shares.

17. Applicants propose to waive the CDSC (a) on redemptions made within one year following the death or disability, as defined in Section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder; (b) in connection with (i) a lump sum or other distribution following retirement, or, in the case of an individual retirement account ("IRA"), Keogh Plan, or custodial account pursuant to section 403(b)(7) of the Code, after the shareholder has attained age 59½, or any redemption resulting from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code, or from the death or disability of the employee, or (ii) in the alternative, in connection with a distribution following retirement under a tax-deferred retirement plan, or attaining age 70½ in the case of an IRA, Keogh Plan, or custodial account pursuant to section 403(b) of the Code, or resulting from the tax-free return of an excess contribution to an IRA; (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees, partners and employees of the Funds, the Adviser, the Distributor, or their subsidiaries, by members of the immediate families of such persons, by dealers having a sales agreement with the Distributor, or any affiliated broker-dealer, or by any trustee or custodian of any qualified retirement plan or IRA established for the benefit of any person or entity covered in waiver categories (a) through (c), by any state, county, or city, or any instrumentality, department, authority, or agency thereof which is prohibited or limited by applicable investment laws from paying a sales-related charge, or by trust companies and bank trust departments which hold shares in a fiduciary capacity; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (e) in connection with redemptions by shareholders holding shares of a Fund worth over $1 million immediately prior to redemption; (f) in connection with redemptions effected by advisory accounts managed by the Adviser or its

[2] Operating expenses include fees paid to the Adviser and all other expenses such as custody fees, professional fees, and printing charges.

affiliates; (g) in connection with redemptions by tax-exempt employee benefit plans resulting from the enactment or promulgation of any law or regulation pursuant to which continued investment in the Funds would be improper, provided that such waiver is subject to applicants' right to require a concurring opinion of counsel; and (h) in connection with redemptions effected by registered investment companies in connection with the combination of the investment companies with a Fund by merger, acquisition of assets, or by any other transaction.

18. If the Funds waive or reduce the CDSC, such waiver or reduction will be applied uniformly to all offerees in the specified class. If the Directors/Trustees of a Fund determine to discontinue the waiver or reduction of the CDSC, the disclosure in the Fund's prospectus will be appropriately revised. Any shares purchased prior to the termination or reduction of such waiver will be able to have the CDSC waived or reduced as provided in the Fund's prospectus at the time of the purchase of such shares.

19. The Funds may provide a *pro rata* credit, to be paid for the Distributor, for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within 365 days, or shorter, of the redemption.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed Multi-Class Distribution System might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g), and thus prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d), and rule 22c-1, to the extent necessary to permit the imposition and waiver of a CDSC on redemptions of Fund shares.

2. Applicants believe that the proposal will permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Applicants assert that, under the proposed Multi-Class Distribution System, the Funds will save the organizational and other continuing costs that would be incurred if the Funds were required to establish new separate investment portfolios.

3. Applicants believe that the Multi-Class Distribution System does not raise any of the concerns that prompted the SEC to recommend the adoption of section 18 (*i.e.*, underfunded debt, preference stocks, and convertible securities). The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds, since all such shares will participate *pro rata* in all of a Fund's appreciation, income and expenses, with the exception of the differing rule 12b-1 fees and any differing transfer agency costs payable by each class. Applicants contend that mutuality of risk will be preserved with respect to each class of shares in a Fund.

4. Applicants assert that the proposed capital structures of the Funds will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders, because the investment risks of each Fund will be borne equally by all of its shareholders. Moreover, the proposed capital structures will not enable insiders to manipulate the expenses and profits among the various classes of shares, because the Funds are not organized in a pyramid fashion, all expenses and profits of a Fund, other than the differing class expenses, will be borne *pro rata* by class, and all shareholders will have equal voting rights, except concerning matters relating to a particular rule 12b-1 plan.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) the impact of the respective rule 12b–1 plan payments made by each of the classes of shares of a Fund, any higher incremental transfer agency costs attributable solely to the Deferred Option shares of a Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 distribution plan, except as provided in condition 4 below; (c) the different exchange privileges of each class of shares; (d) the fact that only certain classes will have a conversion feature; and (e) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the Independent Directors/Trustees, shall have approved the Multi-Class Distribution System, prior to the implementation of the Multi-Class Distribution System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Multi-Class Distribution System will reflect in detail the reasons for determining that the proposed Multi-Class Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the SEC staff.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between or among the interests of the classes of shares offered. The Directors/Trustees, including a majority of the Independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares (the "Target Class") under the plan, existing shares of a class of shares that converts into the Target Class shares after a period of time (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing

Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the Adviser and the Distributor. The Purchase Class shares sold after the implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

5. The Directors/Trustees of the Funds will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of a particular class of shares will be used to justify any distribution fee charged to that class. Expenditures not related to the sale of a particular class will not be presented to the Directors/Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors/Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under rule 12b–1 plans relating to each respective class of shares, will be borne, exclusively by that class and any incremental transfer agency costs relating a particular class of shares will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of income and expenses between the classes has been reviewed by an expert (the "Independent Examiner") who has rendered a report to applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, and Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses between such classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition 7 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective action if this representation is not concurred in by the Independent Examiner, or appropriate substitute Independent Examiner.

9. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Multi-Class Distribution System will be set forth in guidelines which will be furnished to the Directors/Trustees.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

13. Applicants acknowledge that the grant of the amended exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

14. The conversion of one class of shares to another class of shares will be done on the basis of the relative net asset value of the two classes without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based

sales charge and service fee to which they were subject prior to the conversion.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19993 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19624; 812–8208]

The New England Funds, et al.; Application

August 12, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The New England Funds (the "New England Trust"), TNE Funds Trust (the "TNE Trust") (the New England Trust and TNE Trust are collectively referred to herein as "Trusts"), TNE Investment Services Corporation (the "Distributor"), and TNE Investment Services, L.P. (the "Successor Distributor").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), 22(d) and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to section 6(c) of the Act to permit the Trusts and any other registered open-end investment management company for which the Distributor serves as principal underwriter to issue and sell multiple classes of securities of each of the Trusts' now existing or hereafter created series (each such series, a "Fund"), and to permit the imposition and waiver of a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATE: The application was filed on December 8, 1992, and amended on April 14, 1993, June 25, 1993, and July 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service of applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o TNE Investment Services Corporation, 399 Boylston Street, Boston, Massachusetts 02166.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is registered under the Act as an open-end management investment company. The New England Trust currently consists of nine series, and the TNE Trust currently consists of seven series. The Distributor, a wholly-owned subsidiary of New England Investment Companies, Inc., is a registered broker-dealer and serves as the principal underwriter for both Trusts. Under separate administrative services agreements, the Distributor also acts as administrator for several of the Funds, furnishing those Funds with personnel, office space, facilities, and equipment necessary for the conduct of their affairs. The Successor Distributor will succeed to all of the business and operations of the Distributor as part of a larger reorganization of New England Investment Companies, Inc. and its subsidiaries that is expected to occur later in 1993 (the "Reorganization"). The order is sought on behalf of the Successor Distributor as well as the Distributor, and the statements and representations made with respect to the Distributor will apply to the Successor Distributor upon consummation of the Reorganization. No change in the actual control or management of the Funds' principal underwriter will result from the Reorganization.

2. Each of the Funds currently offers one class of shares ("Class A"), except for the TNE International Equity Fund, which offers a second class of shares ("Class C") pursuant to a Commission order.[1]

3. Applicants seek an exemption under sections 18(f)(1), 18(g), and 18(i) to permit each of the Funds to issue and sell four classes of shares ("Class A," "Class B," "Class C," and "Class D"). Applicants also seek an order to permit the Funds to issue additional classes of shares, the terms of which may differ from the Class A, Class B, Class C and Class D shares. Shares of different classes may be sold under different sales arrangements, and may have different exchange privileges and minimum investment amounts. In addition, applicants seek relief for any other registered open-end investment management company for which the Distributor or the Successor Distributor serves as principal underwriter and which may in the future offer separate classes of shares on substantially the same terms set forth in the application and subject to the conditions set forth in the application.

4. Class A shares will be offered at net asset value plus a front-end sales load. The sales load typically will be at a rate in the 3% to 6.5% range, and will be subject to reductions for larger purchases and under right of accumulation and letter of intent purchase arrangements. In addition, the Class A shares will bear ongoing service and/or distribution fees under a plan adopted by the relevant Fund pursuant to rule 12b–1. Each such rule 12b–1 plan will provide for payment to the Distributor of a "service fee" (as such term is defined in section 26 of Article III of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD Rule")), at an annual rate not exceeding .25% of the average daily net asset value of the Class A shares. In the case of certain Funds, the rule 12b–1 plan may also provide for the payment to the Distributor of an additional amount (currently not expected to exceed .10% of Class A average daily net asset value) as an "asset-based sales charge" as defined in the NASD Rule. Each Fund's Class A rule 12b–1 plan will relate solely to its Class A shares.

5. Class B shares will be offered at net asset value without a front-end sales load, but subject to a CDSC, as described below. In addition, the Class B shares will bear ongoing service and/or distribution fees under a plan adopted by the relevant Fund pursuant to rule 12b–1. Each Fund's Class B rule 12b–1

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[1] The New England Funds, Investment Company Act Release Nos. 19067 (Oct. 28, 1992), (notice) and 19118 (Nov. 24, 1992) (order).

plan will have terms substantially the same as those of its Class A rule 12b–1 plan, except that, in addition to the .25% annual service fee, the Class B shares may bear an asset-based sales charge of up to .75% of Class B average net assets annually. Each Fund's Class B rule 12b–1 plan will relate solely to its Class B shares.

6. Class C shares will be offered at net asset value without a sales load. In addition, the Class C shares will not bear rule 12b–1 distribution or service fees. Class C shares will bear certain other expenses that may be lower than the comparable expenses borne by shares offered to retail investors. These expenses are of three types: (1) Administrative services fees, (2) transfer agency fees, and (3) Blue Sky and prospectus costs. Class C shares will be offered only to certain qualified institutional investors that wish to make very large investments. Investors eligible to purchase Class C shares are expected to include tax-qualified employee benefit plans, endowments, foundations and tax-exempt organizations, and certain insurance company separate accounts.[2]

7. Class D shares will be offered at net asset value without a front-end sales load, but subject to a CDSC as described below. In addition, the Class D shares will bear ongoing service and/or distribution fees under a plan adopted by the relevant Fund pursuant to rule 12b–1. Each such rule 12b–1 plan will provide for payment of a service fee at an annual rate not exceeding .25% of the average daily net asset value of the Class D shares and an asset-based sales charge of up to.75% of Class D average net assets annually. Each Fund's Class D rule 12b–1 plan will relate solely to its Class D shares.

8. In the case of certain Funds, the administrative services fee may be charged at a higher annual percentage rate of the average daily net assets of the Class A, Class B, and Class D shares than of the Class C shares. This fee will be payable to the Distributor pursuant to an administrative services agreement with each Fund, in consideration of certain administrative personnel, facilities and services furnished by the Distributor, including shareholder relations services and oversight and supervision of the activities of the Fund's transfer agent. These services do not include investment advisory services or distribution services, which are provided separately under the Fund's investment advisory and distribution agreements with the relevant investment adviser and the Distributor. Class A, Class B and Class D shareholders will be offered an array of services that are not available to Class C shareholders, such as automatic investment plans, systematic withdrawal plans, an automatic dividend diversification program and, in the case of Class A shares, rights of accumulation, sales load discounts for quantity purchases and letter of intent purchase arrangements.

9. The total asset value of all outstanding shares of all classes will be computed on a pro rata basis for each Fund regardless of class, and all expenses incurred by a Fund will be allocated among the classes of shares based on the relative aggregate net asset value of each class, except for rule 12b–1 plan fees, administrative services fees, transfer agency fees and Blue Sky and prospectus costs (collectively, "Identifiable Class Expenses"). Because of the differing Identifiable Class Expenses among the classes of shares, it is expected that the net income attributable to, and the dividends payable on, Class B and Class D shares will be lower than the net income attributable to, and the dividends payable on, Class A, which in turn will be lower than the net income attributable to, and the dividends payable on, Class C shares.

10. In general, Class B shares will convert automatically into Class A shares after a specified period (currently expected to be eight years) following the purchase date. Class B shares acquired by exchange from Class B shares of another Fund will convert into Class A shares based on the time of initial purchase. Class B shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shared will convert into Class A shares at the same time as the shares with respect to which they were purchased are converted. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling from the Internal Revenue Service or an opinion of counsel that such conversion will not constitute taxable events for federal tax purposes. There can be no assurance that such ruling or opinion will be available, and the conversion of Class B shares to Class A shares will not occur if such ruling or opinion is not available. In such event, Class B shares would continue to be subject to higher expenses than Class A shares for an indefinite period.

11. Applicants expect that shares of each Fund may be exchanged for shares of the same respective class in any other Fund without payment of an additional sales charge. In addition, applicants expect that shares of each class will be exchangeable for shares of money market funds in the *TNE* fund group which are not covered by the application. All exchanges of shares of any class of any Fund will be effected in accordance with all applicable provisions of rule 11a–3 under the Act.

12. Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(b) of the Act and rule 22c–1 thereunder to permit the Funds to assess a CDSC on redemptions of certain classes of shares, and to permit the Funds to waive the CDSC on redemptions of certain shares.

13. Class B and Class D shares may be subject to the imposition of a CDSC if such shares are redeemed within a particular period of time after their purchase. Class D shares would be subject to a CDSC of up to 1.0% on shares redeemed during the first year after purchase, and no CDSC would apply thereafter. Class B shares would be subject to a variable rate CDSC (declining over time) for a period of several years after purchase. Any CDSC adopted for Class B, Class D, or any future class of shares will comply with the requirements of section 26(d) of Article III of the NASD's Rules of Fair Practice.

14. No CDSC would be imposed with respect to: (a) redemptions of shares which were purchased more than a specified number of years prior to the redemptions; (b) shares derived from the reinvestment of distributions; or (c) the amount which represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

15. In determining the applicability and rate of any CDSC, it will be assumed that redemption is made first of shares representing reinvestment of dividends and capital gain distributions, and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if

[2] The minimum initial investment amount for Class A, Class B and Class D shares currently is expected to be $2,500. The minimum initial investment amount for Class C shares currently is expected to be $1,000,000 ($2,000,000 for certain investors), although no specified minimum investment amount will apply to investments by certain insurance company separate accounts and certain tax-qualified employee benefit plans. These amounts may be changed from time to time, but it is anticipated that, even if the specific amounts change, the Class A, Class B and Class D shares would continue to have a low minimum investment, while Class C shares would have a much higher minimum investment.

any, being imposed at the lowest possible rate. In addition, redemption requests placed by shareholders who own shares of more than one class will be satisfied first by redeeming the shareholder's shares of the class or classes not subject to a CDSC, unless the shareholder has elected specifically to redeem shares which are subject to a CDSC.

16. The CDSC would be waived for the following redemptions: (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year after death or disability of a shareholder, (b) in connection with distributions pursuant to systematic withdrawal plan established by a Fund, and (c) in connection with redemptions of shares that constitute retirement plan distributions which are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets. If the Funds waive or reduce the CDSC, such waiver or reduction will be applied uniformly to all offerees in the category specified.

17. Under a previous Commission order, applicants may impose a CDSC on purchases of Class A shares of $1 million or more which are not subject to an initial sales charge.[3] Except for Class A shares covered by this previous order, no CDSC will be imposed on any shares covered by the application that are issued prior to the date of the order granting the exemptive relief requested. If a Fund ceases waiving or reducing the CDSC for any of the reasons set forth above, the disclosure in that Fund's prospectus will be revised appropriately. In the event a Fund ceases waiving or reducing the CDSC, an investor who purchased Fund shares prior thereto will not be affected by such action, but will enjoy the same waiver rights or reduced CDSC in effect on the day the investor purchased the shares.

Applicants' Legal Analysis

1. Applicants request an exemptive order under section 6(c) to permit the proposed issuance and sale of multiple classes of shares representing interests in the Funds that might be deemed: (a) to result in the issuance of a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares of the Funds, and to permit the Funds to waive the CDSC with respect to redemptions of certain shares.

2. Applicants believe that the issuance and sale by the Trusts of multiple classes of shares will better enable the Trusts to meet the competitive demands of today's financial services industry. The proposed arrangement would permit the Trusts both to facilitate the distribution of shares of the Funds in the institutional and retail marketplaces, and to offer retail investors a choice between different sales load structures. As a result, both retail and institutional shareholders would potentially reap the benefits associated with higher Fund net asset levels. In comparison, applicants contend that no such benefits would result if they organized separate Funds for the retail and institutional marketplaces, and for front-end and deferred load retail purchases.

3. Applicants assert that the requested relief does not present the concerns which section 18 was designed to address because the proposed arrangement does not involve borrowings, or affect the Funds' existing assets or reserves. Applicants further assert that the proposed arrangement will not increase the speculative character of the shares of the Funds because all such shares will participate pro rata in all of a Fund's income and expenses, with the exception of the Identifiable Class Expenses (which will disproportionately reduce the net income of the respective classes). In addition, applicants contend that under the proposed arrangement mutuality of risk will be preserved with respect to each class of shares in a Fund because all classes will represent interests in a single pool of assets presenting the same investment risk to all shareholders of the Fund, regardless of class.

4. Applicants assert that investors will not be given misleading impressions as to the safety or risk of the shares of any class, and the nature of such shares will not be rendered speculative. All classes of shares will be redeemable at all times, no class of shares will have any preference or priority over the other classes of shares of the particular Fund in the usual sense (i.e., no class will have a distribution or liquidation preference with respect to particular assets of a Fund and no class will be protected by any reserve or other account), and the similarities (and, with respect to the Identifiable Class Expenses and rule 12b–1 plan voting rights, the dissimilarities) of the classes will be disclosed in the Trusts' prospectuses.

5. The Funds' capital structures under the proposed arrangement will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders, since the investment risks of each Fund will be borne equally by all of its shareholders. The Funds' capital structures under the proposed arrangement will not enable insiders to manipulate the expenses and profits among the classes of shares since the Funds are not organized in a pyramid fashion. In addition, all of the expenses and profits of a particular Fund, except the Identifiable Class Expenses, will be borne by each class of shares on the basis of its relative aggregate net assets, and all shareholders of each Fund will have equal voting rights (except with respect to matters pertaining to the Class A, Class B and Class D distribution plans).

6. Applicants further contend that the proposed arrangement does not raise concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Funds. Moreover, applicants will take appropriate steps to ensure that any performance information for any class of shares of the Funds that are disclosed in the Trusts' registration statements, shareholder reports and any advertising materials, including newspaper advertisements, are fairly disclosed. In addition, any information provided by applicants to any newspaper or similar listing of the Funds' net asset values and public offering prices will identify clearly to which class such information relates.

Conditions to Relief

If the requested relief is granted, applicants agree to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to:

(a) The impact of the respective rule 12b–1 plan payments made by each class of shares (or the absence of any such distribution or service fees), and any Identifiable Class Expenses that may be imposed upon a particular class of shares and which are limited to:

(i) transfer agency fees attributable to a specific class of shares;

(ii) printing and postage expenses related to preparing and distributing

[3] The New England Funds, et al., Investment Company Act Release Nos. 17829 (Oct. 30, 1990) (notice) and 17877 (Nov. 27, 1990) (order).

materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class;

(iii) Blue Sky registration fees incurred by a class of shares;

(iv) SEC registration fees incurred by a class of shares;

(v) administrative services fees payable under each class's respective administrative services agreement, if any; and

(vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order;

(b) Voting rights on matters which pertain to rule 12b–1 plans, except as provided in condition 2 below;

(c) The different exchange privileges of the various classes of shares;

(d) The designation of each class of shares of a Fund and;

(e) Conversion features that may be available to various classes.

2. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), shares of the class that will convert (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the investment adviser and the Distributor. The Purchase Class shares sold after the implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD Rule, if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they are subject prior to the conversion.

4. The Trustees of the relevant Trust, including a majority of the Independent Trustees, will approve the Multiple Class System prior to the implementation of the Multiple Class System by a particular Fund. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the reasons for the Trustees' determination that the Multiple Class System is in the best interests of both the Funds and their respective shareholders.

5. The initial determination of the Identifiable Class Expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees of the relevant Trust, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by a Fund to meet Identifiable Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

6. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Fund's investment adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Fund's investment adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

7. The Trustees of the Trusts will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of the relevant class of shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the rule 12b–1 plans relating to a particular class of shares, will be borne exclusively by such class and except that any Identifiable Class Expenses may be borne exclusively by the applicable class(es) of shares.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among such classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the

Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expense or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

15. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution plans in reliance on the exemptive order.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (November 2, 1988), as currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19992 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19620; File No. 812–8376]

PFL Life Insurance Company, et al.

August 11, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: PFL Life Insurance Company ("PFL Life"), PFL Wright Variable Annuity Account (the "Separate Account") and Wright Investors' Services Distributors, Inc. ("WISD").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.[1]

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain flexible premium group and individual variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on April 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Craig D. Vermie, Esq., PFL Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. PFL Life is a stock life insurance company incorporated in Iowa and principally engaged in the sale of life insurance and annuity policies.

2. The Separate Account was established under the laws of Iowa by PFL Life to support the Contracts and has filed a registration statement under

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[1] Applicants represent that the application will be amended during the Notice Period to include certain representations not included in the original application.

the 1940 Act as a unit investment trust.[2] The Separate Account has several subaccounts, the assets of which are invested solely in corresponding portfolios of the Wright Managed Blue Chip Series Trust (the "Trust").

3. The Trust is an open-end management investment company and has filed a registration statement under the 1940 Act.

4. WISD is registered under the Securities Exchange Act of 1934 as a broker-dealer and will serve as the distributor and principal underwriter of the Contracts.[3]

5. The Contracts are flexible premium variable annuity contracts issued either as individual policies or as a group policy with certificates thereunder issued to individuals. The certificates and individual contracts are substantially identical. Premium payments for the Contracts may be allocated to one or more of the subaccounts of the Separate Account or to the general account of PFL Life (the "Fixed Account"). The Contracts provide for a series of annuity payments beginning on the annuity commencement date. There are annuity payment options available on both a fixed and a variable basis. A death benefit is payable on the death of an annuitant prior to the annuity commencement date (the "Death Benefit"). The Death Benefit is the greater of (a) the Annuity Purchase Value, or (b) premium payments (net of withdrawals) plus 5.0% annual interest.

6. PFL Life deducts an annual administrative charge of the lesser of two percent of Annuity Purchase Value[4] or $30 per year. This charge is used to compensate PFL Life for the administrative services provided under the Contracts. The annual administrative charge will not be increased.[5] and PFL Life does not anticipate any profit from this charge.

7. Annuity Purchase Value may be transferred between subaccounts and to or from the Fixed Account. PFL Life currently imposes no charge for any transfer but reserves the right to impose a $25 charge for the thirteenth and each subsequent transfer during a contract year. PFL Life does not anticipate any profit from this charge.

8. PFL Life will deduct the aggregate premium taxes paid on behalf of a particular Contract on the annuity commencement date, upon withdrawal of the entire Contract, or upon payment of the death benefit. In the future, PFL Life may deduct charges from the Separate Account or the Contracts for federal, state, or local taxes other than premium taxes.

9. PFL Life imposes a daily charge to compensate it for bearing mortality and expense risks in connection with the Contracts. The charge is at an effective annual rate of 1.00% of the value of the net assets in the Separate Account; approximately one-third of that amount is attributable to mortality risks and the remaining two-thirds is attributable to expense risks. The rate of the charge is guaranteed not to increase. The mortality and expense risk charge applies prior to the annuity commencement date and, if a variable payment option is selected, after the annuity commencement date.

10. The mortality risk assumed by PFL Life arises from its obligation to make annuity payments regardless of how long all annuitants or any individual annuitant may live. PFL Life also assumes a mortality risk in connection with its contractual Death Benefit guarantee.

11. The expense risk assumed by PFL Life is the risk that PFL Life's actual administrative costs will exceed the amount received from administrative charges.

12. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will be borne by PFL. Conversely, if the charge exceeds the amount necessary to cover costs, any excess will be profit to PFL Life. PFL Life currently anticipates a profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Contracts.

3. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by PFL Life and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on PFL Life's analysis of publicly available information about similar industry products, taking into consideration current charge level, the existence of charge level guarantees, and guaranteed annuity rates. PFL Life represents that will maintain a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and the results of, its comparative survey.

4. The cost of distributing the Contracts is paid from the general account of PFL Life, which may include profits from the mortality and expense risk charge. PFL Life represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract owners. The basis for such conclusion will be set forth in a memorandum, available to the Commission upon request.

5. PFL Life represents that the Separate Account will only invest in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

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[2] Applicants represent that the application will be amended during the Notice Period to make this representation.

[3] Applicants represent that the application will be amended during the Notice Period to make this representation.

[4] Annuity Purchase Value is defined as premiums paid, minus any partial withdrawals or transfers, plus or minus any applicable excess interest adjustment on prior withdrawals or transfers, plus accumulated gains and losses in the Separate Account, plus accumulated interest in the Fixed Account, and minus any applicable charges, premium taxes and transfer fees. Applicants represent that the application will be amended during the Notice Period to include this definition.

[5] Applicants represent that the application will be amended during the Notice Period to make this representation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-19813 Filed 8-17-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement for the Newark International Airport Ground Access Automated People Mover—Northeast Corridor Connection Project

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of intent.

SUMMARY: The Eastern Region of the FAA announces:

The FAA, acting as "Lead Agency," intends to prepare an Environmental Impact Statement (EIS) for a proposal by the Port Authority of New York and New Jersey, acting as "Sponsor," to develop the Newark International Airport (EWR) Ground Access Automated People Mover—Northeast Corridor Connection Project (Newark Airport APM–NEC Connection Project). The Study Area generally encompasses the transportation corridor between the cities of Newark and Elizabeth and, in more detail, an area in the vicinity of Newark International Airport.

The major transportation facilities within the Study Corridor include NJ Route 1&9, NJ Route 22, Interstate 78, the New Jersey Turnpike (Interstate 95), Consolidated Rail Corporation (Conrail), National Rail Passenger Corporation (Amtrak), and New Jersey Transit Corporation (NJ Transit) Rail Lines, the Newark City subway system and NJ Transit bus service. Major project elements may include grading, filling, paving, erection and construction of new transportation facilities (including rolling stock, controls, maintenance equipment, etc.) within the Study Area, or improvement of existing transportation facilities within the Study Area.

The EIS scoping process will consist of two public scoping meetings to allow for public comments and an Interagency Scoping Meeting to obtain comments from cognizant Federal, State and Local agencies. The Public meetings will be held in the cities of Newark and Elizabeth and the Interagency Meeting will be held at One World Trade Center, New York, NY. Additionally, involved and interested agencies and persons may submit written comments representing concerns and issues they believe should be addressed in the EIS.

The initial public scoping meeting will begin at 3 pm on September 13, 1993 at the Robeson Center Multi-Purpose West Room (2nd Floor), Rutgers University—Newark Campus, 350 Martin Luther King Boulevard, Newark, NJ. All persons wishing to present oral comments must register at the scoping meeting. Registration will begin at 2 pm and close at 6 pm. All persons registered by the close of registration will be heard. Oral comments will be limited five (5) minutes per speaker.

The second public scoping meeting will begin at 3 pm on September 14, 1993 at the Theatre Facility at the Union County College—Elizabeth Campus, 12 West Jersey Street, Elizabeth, NJ. All persons wishing to present oral comments must register at the scoping meeting. Registration will begin at 2 p.m. and close at 8 p.m. All persons registered by the close of registration will be heard. Oral comments will be limited to five (5) minutes per speaker. In recognition of the representation of their constituency, public officials at either Public Meeting will be allowed to speak at the first opportunity after they register.

WRITTEN COMMENTS: In addition written comments may be submitted to Mr. Anthony P. Spera, Manager, Planning and Programming Branch, Airports Division, AEA–610, Federal Aviation Administration Eastern Region Office, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430, (718) 553–1245. In order for written comments to be considered they must be received by Mr. Spera on or before September 14, 1993. Questions concerning the EIS or the process being applied by the FAA should also be directed to Mr. Spera.

SUPPLEMENTARY INFORMATION: Pertinent information, data, opinions and comments obtained throughout the course of the scoping process will be used in the preparation of the EIS. The purpose of this Notice of Intent is to inform the public and local, State and Federal government agencies that an EIS will be prepared and to provide those interested with the opportunity to present their opinions, comments, information or other relevant observations concerning the environmental impacts related to implementation of this proposal.

A draft copy of the Scoping Document can be obtained for review from Mr. Anthony P. Spera at the above-referenced address.

Implementation of the Newark Airport APM–NEC Connection Project would improve airport accessibility by connecting Newark International Airport to the regional transportation networks serving Manhattan and New Jersey. The project, by reducing travel time, will increase travel reliability, improve air quality and reduce automobile vehicle miles traveled. Major actions to be addressed in the EIS include the following three (3) alternatives.

Alternative 1—Newark Airport APM–NEC Connection

The Newark Airport APM–NEC Connection Project would connect EWR with the nearby Amtrak and NJ Transit rail transit systems by constructing a proposed new Rail Station to be located in the vicinity of Haynes Avenue on the Northeast Corridor (NEC) and extending the on-airport Automated People Mover (APM), currently under construction on EWR, from EWR Parking Lot E to the proposed new Rail Station. This project would provide exclusive airport service for both air passengers and airport employees.

Study Area

The study area in which the potential APM alignments can be sited is described below. For the purposes of the EIS, the impacts associated with each of the developed system alignments will be included in the effort, and once a preferred alignment is determined, one or more additional public information meetings will be held to allow for comment on the selected preferred alignment. This will ensure that the final specific route and alignment for the Newark Airport APM–NEC Connection will have been addressed in the EIS.

Potential APM Extension Route Alignment Study Area

The APM Extension Route Alignment Study Area generally will comprise an area that is (a) between the APM station in EWR Parking Lot E and the proposed Rail Station at the NEC in the vicinity of Haynes Avenue, (b) bounded on its western side by northwestern portions of Lot 5026 Blocks 35 and 44* (the Anheuser Busch and Square Corp. properties respectively), and (c) bounded on its eastern side by the southwestern portion of Block 5008 Lot 132* (the 148 Haynes Corp. property). [* as indicated on tax maps filed at the City of Newark Tax Surveyors Office, Newark City Hall, Newark, NJ.]

Alternative routes and alignments within the Study Area will be developed and a preferred alignment

selected based upon engineering feasibility, constructibility, ridership potential, and environmental considerations.

Independent of the Newark APM–NEC Connection Project, New Jersey Transit Corporation (NJ Transit) is expected to undertake efforts for the preparation of two EIS's for a Newark-Elizabeth Rail Link and a Newark City Subway Maintenance Building. These potential projects could impact the ridership of the Newark Airport APM–NEC Connection Project and would consist of: (1) A new light rail system to serve portions of Newark from Broad Street to The Government Center and continue, via the remainder of the Newark-Elizabeth right-of-way from Broad Street to Midtown, Elizabeth, with a station-stop at the Newark Airport APM–NEC Connection; and/or (2) Construction of a subway yard and maintenance and repair shop in Newark. The study will include the potential cumulative impacts of these two proposals on the Newark APM–NEC Connection Project.

Alternative 2—Traffic System Management

A Traffic System Management (TSM) plan would include low cost operational improvements to the existing transportation access systems. These TSM options would include increased Airlink and/or other bus services, added stops on bus routes or new routes serving the airport area, including Haynes Road connections, and/or incorporate increased NJ Transit and local bus operations.

Alternative 3—No Build ("No Action")

This alternative evaluates the results of providing no improvements to the existing airport access system. Access to Newark International Airport is currently provided by, but not necessarily limited to the following:

1. Vehicular access via major highways including I-78, the New Jersey Turnpike and U.S. Routes 1&9 and Route 22.

2. Franchise bus/limo/service.

From Manhattan:

—NJ Transit express bus service (from Port Authority Bus Terminal (PABT) at 40th Street to EWR;
—Olympia Trails Express bus service from World Trade Center (WTC), Grand Central Station (GCS) or NY Penn Station (NYPenn) to EWR;
—Gray Line Air Shuttle Mini Bus (from Midtown Manhattan) to EWR;
—Path Subway (from WTC), NJ Transit or Amtrak Trains into Newark Penn Station (NJPenn), then Airlink/NJ Transit bus from NJPenn to EWR.

From Queens:

—NJ Transit bus sevice or local bus/subway into NYPenn or GCS, then Olympia Trails Coach Bus Service, to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR;
—local bus/subway into PABT, NYPenn or GCS, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Bronx:

—local bus/subway into Penn Station or GCS, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Staten Island:

—NJ Transit bus service to EWR.

From New Jersey:

—Trans Coach Lines bus service to EWR;
—NJ Transit bus service to EWR, from NJ Penn;
—Princeton Airport Shuttle Service to EWR from Middlesex & Mercer Counties.

From Pennsylvania:

—Princeton Airport shuttle service to EWR from Yardley, PA;
—Transbridge Coach Lines bus service to EWR from Easton, Bethlehem and Allentown, PA;
—NJ Transit to NJ Penn Station, then Airlink Bus to EWR.

From Connecticut:

—Rail or bus to GCS or NYPenn, then Olympia Trails Coach Bus Service, to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Westchester:

—Rail or bus to GCS or NYPenn, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Long Island:

—Classic Airport Rideshare to EWR (on demand);
—Long Island Railroad (LIRR) to NYPenn, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Upstate New York:

—NJ Transit Bus Service to EWR;
—Metro North to GCS or NYPenn, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony P. Spera, Federal Aviation Administration, Eastern Region Office, AEA–610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Telephone (718) 553–1245.

Issued in Jamaica, New York, on August 6, 1993.

Anthony P. Spera,

Manager, Planning and Programming Branch, Airports Division, Federal Aviation Administration, Eastern Region Office, Jamaica, New York.

[FR Doc. 93–19822 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261, or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Denis R. Horn, General Manager of the Monterey Peninsula Airport District at the following address: Monterey Peninsula Airport District, Highway 68 and Olmsted Road, P.O. Box 550, Monterey, CA. 93940.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District office, 831 Mitten Road, room 210, Bulingame, CA. 94010–1303, telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 14, 1993, the FAA determined that the application to impose and use a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1994
Proposed charge expiration date: May 30, 2000
Total estimated PFC revenue: $3,960,855

Brief description of the proposed projects:

The six impose and use project elements for which the Monterey Peninsula Airport District requests authority to collect PFC revenue and use are: Security Access Control, Storm Drain Rehabilitation, Taxiway/Apron Rehabilitation, Environmental Assessment-Westside Airport Access Road to Garden Road, Airport Signage System, and Westside Access Connection to Garden Road.

The six impose only project elements for which Monterey Peninsula Airport District requests authority to collect PFC revenue are: Residential Soundproofing Phase 2–5, Terminal Renovation/ Improvement, Environmental Impact Report New Northside Ground Access Road, New Northside Ground Access Road (Phase 1), Old Northside Road Relocation, and Terminal Road Improvements (Phase 1).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled/ Intermittent Part 135 Air Taxis.

Any person may inspect the application, in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Hawthorne, California, on July 14, 1993.

Herman C. Bliss,

Western-Pacific Region, Manager, Airports Division.

[FR Doc. 93–19821 Filed 8–17–93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Utah County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of the intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project in Utah County, Utah. If the study and analysis conclude that all appropriate FHWA/UDOT criteria for a Finding of No Significant Impact (FONSI) are met then the document may be converted from an EIS to a FONSI.

FOR FURTHER INFORMATION CONTACT: Bill Gedris, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Salt Lake City, Utah 84118, telephone (801) 963–0183; or R. James Naegle, Utah Department of Transportation, 4501 S. 2700 W., Salt Lake City, Utah 84119, telephone (801) 965–4160; or Alan Mecham, Utah Department of Transportation, District Six Office, 825 N. 900 W., Orem, Utah 84057, telephone (801) 227–8001.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement (EIS) for the proposed project located in Provo, Utah which includes:

(a) The widening of I–15 from the State Highway 75 interchange to north of the Center Street interchange (approximately 4.5 miles);

(b) Reconstruction of the I–15/ University Avenue interchange;

(c) The addition of a new connector road which will connector 1860 South to U.S. Highway 89 (approximately 0.9 miles);

(d) Any needed modifications to 1860 South, from University Avenue to U.S. Highway 89, and University Avenue, from I–15 to East Bay Boulevard, to accommodate present and future traffic needs.

The improvements mentioned are necessary to provide for the existing and projected traffic demand. Alternatives under consideration include:

(1) No action;

(2) Transportation System Management (TSM) which includes low cost improvements such as mass transit, signal optimization, ridesharing, etc.;

(3) A build alternative that provides for an east access from the interchange and improves traffic flow on I–15, University Avenue and 1860 South.

A public scoping meeting will be held to help establish the purpose, scope, framework and approach for the study. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed project. Comments may be made either orally at the meeting or in writing within 30 days of the meeting. After a draft EIS has been prepared a public hearing will be held. Public notice will be given of the time and place of the scoping meeting and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction is used. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 6, 1993.

Donald P. Steinke,

Division Administrator, FHWA, Salt Lake City, Utah.

[FR Doc. 93–19911 Filed 8–17–93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. NCI 3257]

Motorcycle Helmets Manufactured by Chico of Ft. Lauderdale, Inc.; Public Proceeding Scheduled

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting.

SUMMARY: NHTSA will hold a public meeting on September 15, 1993 regarding an initial determination that certain motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. fail to comply with Federal Motor Vehicle Safety Standard No. 218.

FOR FURTHER INFORMATION CONTACT: John Lee, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; 202–366–5299.

SUPPLEMENTARY INFORMATION: Pursuant to section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1412(a), NHTSA's Associate Administrator for Enforcement has made an initial determination that certain motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. (Chico), do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets," 49 CFR 571.218. Compliance tests performed for NHTSA indicate that Chico's "Florida's Choice" "LBL" and "LBL Winner" model helmets do not meet the impact attenuation, penetration, and retention system requirements of FMVSS No. 218 and therefore would not provide adequate protection to users in the event of a crash. In addition, the "LBL Winner" helmets fail to comply with the labelling requirements of the Standard.

A public proceeding will be held at 10 a.m., on September 15, 1993 in room 2230, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, at which time the manufacturer will be afforded an opportunity to present data, views, and arguments to establish that the helmets covered by this initial determination comply with FMVSS No. 218.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6111, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2832, before the close of business on September 13, 1993. Written comments must be submitted to the same address on or before September 15, 1993.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in its Technical Reference Library, room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 15 U.S.C. 1412; delegation of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: August 12, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–19930 Filed 8–17–93; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Pipeline Safety User Fees

This notice announces changes that the Research and Special Programs Administration (RSPA) will be implementing to the fiscal year 1993 pipeline safety user fee. As stated in the pipeline safety user fee provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("The Act") (Pub. L. 99–272; April 7, 1986), The Act authorizes the assessment and collection of user fees to fund the activities conducted under the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended, (49 app. U.S.C. 1671 et seq.) Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), as amended, (49 app. U.S.C. 2001 et seq.). RSPA assesses each operator of regulated interstate and intrastate natural gas transmission pipelines and hazardous liquid pipelines a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has in service. The fee schedule for LNG facilities is based on the number of plants and total storage capacity. The fees to be assessed in 1993 for each category are described below.

In accordance with the provisions of The Act, Departmental resources were taken into consideration and total program costs for fiscal year 1986 through fiscal year 1990 were apportioned on the basis of 80 percent for gas program activities and 20 percent for liquid program activities. In fiscal year 1991, as a result of increased allocation of resources to the hazardous liquid program, RSPA calculated the user fees on the basis of 75 percent for gas program activities, and 25 percent for liquid program activities. For fiscal year 1993, RSPA is calculating the user fees on the basis of 75 percent for gas program activities and 25 percent for liquid program activities from October 1, 1992 (the beginning of the Federal fiscal year) through June 30, 1993. However, from July 1, 1993 through September 30, 1993, the user fee will be calculated on the basis of 60 percent for gas program activities and 40 percent for liquid program activities. This increase in the amount of the fee apportioned to hazardous liquid pipeline operators reflects enactment of the Pipeline Safety Act of 1992 (Pub. L. 102–508; October 24, 1992), which mandates that RSPA place an increased emphasis on environmental protection.

For fiscal year 1993, the pipeline safety user fee assessments will be mailed to pipeline operators on or about August 16, 1993. Based on the allocation, stated above, the fee for natural gas transmission pipelines will be $37.92 per mile and $17.37 per mile for hazardous liquid pipelines (the 1992 user fee for gas transmission pipelines was $43.64/mile and for hazardous liquid pipelines $17.88/mile). There is no change in the rates for LNG:

Total storage capacity	Assessment/plant
<10,000	=$1,250
10,000–100,000	=$2,500
100,000–250,000	=$3,750
250,000–500,000	=$5,000
>500,000	=$7,500

In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative changes will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Issued in Washington, DC, on August 12, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–19887 Filed 8–17–93; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 17, 1993.

Dated: August 11, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.442(e), Transition Plan
2. The transition plan is a recordkeeping requirement set up to monitor compliance to provide accessibility for the handicapped where grants for Federal financial assistance has been received.
3. State or local governments—Businesses or other for-profit—Non-profit insitutions—Small businesses or organizations
4. 477 hours
5. 7 minutes disclosure burden—4 hours recordkeeping burden
6. Not applicable
7. 116 respondents

[FR Doc. 93–19935 Filed 8–17–93; 8:45 am]
BILLING CODE 8320-01-M

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Part II

Department of the Interior

Bureau of Indian Affairs

Colorado River Indian Irrigation Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colorado River Indian Irrigation Project

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The purpose of this document is to give the public notice of the amount of the operation and maintenance assessment rate and excess water charge for the Colorado River Indian Irrigation Project for 1994 and how the assessment will be billed. The assessment is based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including the actual costs for labor, materials, equipment, services equipment replacement and reserves to cover emergency expenses.

The basic annual 1994 assessment rate for operation and maintenance will be $27.00 per assessable acre for the first 5 feet of water. The charge for water in excess of this annual water apportionment will be $8.00 per acre foot.

The energy costs for pumped water will not be paid by the Project but will be billed directly to those receiving pumped water by the electric utility.

DATES: This assessment rate will become effective January 1, 1994.

ADDRESSES: All comments concerning the 1994 Operation and Maintenance Assessment rate and excess water charge for the Colorado River Indian Irrigation Project must be in writing and addressed to the Superintendent, Colorado River Agency, Bureau of Indian Affairs, Parker, Arizona 85344.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First St., Phoenix, Arizona 85001, telephone number (602) 379–6600.

SUPPLEMENTARY INFORMATION: Authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of change in the irrigation operation and maintenance assessment rate and excess water charge is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, section 7b, and in accordance with the Code of Federal Regulations, title 25, § 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the Colorado River Indian Irrigation Project for calendar year 1994 and subsequent years.

The Colorado River Indian Tribes (CRIT) and water users were notified of the proposed changes in the operation and maintenance assessment rates at the March 18, 1993, CRIT Irrigation Committee Meeting.

The current operation and maintenance assessment rate of $22.00 was established in December, 1983. At full use of the apportioned 5 acre-feet, the unit cost of water has increased from $4.40 to $5.40 per acre-foot. The costs of labor, materials, power, equipment and energy have continued to increase each year until costs now exceed revenue from current assessments and have nearly depleted reserves. The basic operation and maintenance assessment for a given year is calculated by using the estimated cost of Project operation for that calendar year divided by the assessable acreage.

Colorado River Indian Irrigation Project 1994 Annual Operation and Maintenance Assessment Rate and Excess Water Charges

Basic Assessments: The basic assessment rate against the land to which water can be delivered under the Colorado River Indian Irrigation Project, Arizona for operation and maintenance of the Project, is hereby fixed at $27.00 per assessable acre. The assessment is due whether water is used or not. Payment of this assessment will entitle the water user to up to 5 acre-feet of water per year per assessable acre of land.

Excess Water Charge: If and when available, water in excess of the basic allotment may be delivered upon written request to the Superintendent by landowners or users at the rate of $8.00 per acre foot or fraction thereof. The excess water charge is payable at the time of written request for such water and must be paid prior to delivery.

Pumped Water Energy Charges: The energy costs for pumped water will not be paid by the Project but will be billed directly to those receiving pumped water by the electric utility.

Effective Period: The assessments and water charges above shall become effective for Calendar Year 1994 and continue in effect until further notice.

Payment: Irrigation water will not be delivered until the annual basic operation and maintenance assessments are paid. Payment of the annual basic assessment may be made in two installments if the leaseholder's accounts are in good standing. On January 1 of each year, the first half of the assessment shall become due and payable. This entitles the water user to not more than one-half of the annual basic water apportionment prior to July 1. The second half of the assessment will be due and payable on July 1 and shall entitle the water user to the remaining basic water apportionment. Water delivery will not be continued for any tract after July 1 of any year unless and until the remaining half of the basic water assessment has been paid.

Interest and Penalty Fees: An interest penalty of one percent per month, or fraction thereof, from January 1 until paid, shall be added to all assessments and charges which are not paid on or before January 1 and July 1 of each year, respectively.

No Water: Water will not be delivered to any tract of land in succeeding years until full payment of the previous years' operation and maintenance assessments, inclusive of penalties, has been made or unless arrangements have been made under CFR 25 (Indians) Part 171—Operation and Maintenance, § 171.17a (1) and (2).

Part-Year Assignments and Leases: When new assignments or leases of Project lands become effective, and when basic assessments have not been paid in full for the half of the calendar year the new lease covers, the assignee or lessee will be required to pay in full the unpaid portion of the annual basic assessment for that half year, plus any interest and penalty fees before any water is delivered. If only half the assessment is paid, only half the basic apportionment will be delivered. All part-year assignees and lessees shall be charged for excess water at the current rate of $8.00 when water ordered is in excess of one-half of the annual water apportionment in that half-year.

Certification: No water will be delivered for use on Project lands under lease until the Superintendent has certified that the lessee has paid the required operation and maintenance assessments.

Water Users Responsibility for Water After Delivery: The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in a suitable condition for delivery of irrigation water. Water users are to maintain their ditches and fields in accordance with land lease agreements.

Distribution and Apportionment: All project water is considered a common water supply in which all assessable lands of the project are entitled to share equally. Such water will be distributed

to the lands of the project as equitably as physical conditions permit.

Dated: August 2, 1993.

Woodrow W. Hopper Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–19916 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–P

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Part III

Department of the Interior

Bureau of Indian Affairs

San Carlos Indian Irrigation Project O&M Assessment Rates, Arizona; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Indian Irrigation Project O&M Assessment Rates, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of assessment rate change.

SUMMARY: The purpose of this document is to give the public notice of the 1994 assessment rate of $35.00 per acre for operating and maintaining the Joint Works of the San Carlos Indian Irrigation Project. The assessment rate is based on an estimate of the cost of normal operation and maintenance of the irrigation project divided by the project acreage. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including labor, materials, equipment and services for irrigation canals, dams, flow control gates, pumps and other facilities.

DATES: This annual assessment rate is for Fiscal Year 1994, and subsequent years, and will become effective October 1, 1993.

ADDRESSES: All comments concerning the proposed O&M Assessment Rate for the San Carlos Indian Irrigation Project must be in writing and addressed to the Superintendent, San Carlos Agency, Bureau of Indian Affairs, Coolidge, Arizona 85228.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First St., Phoenix, Arizona 85001, telephone (602) 379–6600.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This Notice of rate change in the irrigation operation and maintenance rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs, by the Secretary of Interior in Secretarial Order Number 3150, section 7b, and in accordance with the Code of Federal Regulations, title 25, § 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the San Carlos Indian Irrigation Project for Fiscal Year 1994, and subsequent years.

The basic assessment rate was set at $29.95 for fiscal year 1993. The initial estimate of costs in FY1994 would require an assessment rate of $56.50 (an increase of 89%). The lowest rate the Bureau of Indian Affairs can fulfill its minimum obligations with is $35.00 (an increase of 17%).

Major changes in organizational structure are taking place at the Project resulting from Public Law 102–231, the bill that calls for divestiture of the Power Division. In addition, the divestiture changes the source of power to operate Project wells from internal (with no profit component) to external. There will be two providers and the Western Area Power Administration has raised their rates for power delivered to these providers. Many meetings have been held between parties affected by these changes. The Bureau of Indian Affairs is seriously concerned that the rate established will be too low to cover "normal" operation and maintenance costs. Project water users have reluctantly agreed to the rate change as one they will barely be able to pay.

Assessment Rate

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476) and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and San Carlos Irrigation and Drainage District, and in accordance with applicable provision of the Order of the Secretary of the Interior of June 15, 1938, the basic assessment rate for the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for Fiscal Year 1994 is hereby fixed at $35.00 for each assessable acre of land.

Payment: The assessment is due and payable on or before the 15th of May prior to the fiscal year the assessment is for, as provided for in the Act of Congress of June 7, 1924 (43 Stat. 475–476) as implemented by the Repayment Contract between the United States and the San Carlos Irrigation and Drainage District (as supplemented on November 12, 1935 and May 29, 1947), and the Secretarial Order defining the Joint, District and Indian Works of the San Carlos Federal Irrigation Project; Turning Over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District.

Duty of Water: Payment of the assessment will entitle the water user to their proportionate share of available water.

Dated: August 2, 1993.

Woodrow W. Hopper, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–19917 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-02-P

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Part IV

Department of the Interior

Bureau of Indian Affairs

Salt River Indian Irrigation Project, Arizona; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Indian Irrigation Project, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The purpose of this document is to give the public notice of the amount of the assessment for operating and maintaining the Salt River Indian Irrigation Project for 1993 and how the assessment will be billed. The assessment is based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including pumped water, and maintaining the facilities for the year.

The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 became effective approximately December 9, 1991. As of that date, all water for irrigation on the Salt River Reservation belongs to the Community. In prior years, assessments were against specific parcels of land because the water rights were associated with those parcels.

The Community has elected not to have the Salt River Project manage the on reservation system; therefore, the Bureau of Indian Affairs will continue to operate the Salt River Indian Irrigation Project to deliver the Community's water below the Arizona Canal (within the capability of the Project distribution system) as directed by the Community. The Bureau of Indian Affairs will collect funds from water users sufficient to operate the Project in calendar year 1993 and pay certain fees for stored water accrued in calendar year 1992.

The assessment rate is $42.50 per acre for leased land and entitles the water user to 3.75 acre feet of water per acre. Spill water will be delivered without additional charge. Excess water (beyond the 3.75 acre feet per acre when no spill water is available) will be delivered for $8.50 per acre foot if it is surface water and $42.00 per acre foot for groundwater (pumped from wells). The acreage used to determine the assessment rate includes the 9,229 acres currently leased for farming.

Enrolled Community members or their spouses irrigating their own property (10 acres or less) will be charged $2.00 per acre foot. They will not be charged the basic assessment rate. Municipal and industrial surface water rates will be $10.00 per acre foot. Churches will be charged $1.00 per acre foot. Groundwater, if required by these customers, will be $42 per acre foot.

DATES: The annual assessment became effective January 1, 1993.

ADDRESSES: All comments concerning the O&M Assessment Rate for the Salt River Indian Irrigation Project must be in writing and addressed to the Superintendent, Salt River Agency, Bureau of Indian Affairs, Scottsdale, Arizona 85256.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First St., Phoenix, Arizona 85001, telephone (602) 379–6600.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of change in the irrigation operation and maintenance assessment and water delivery rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, Section 7b, and in accordance with the Code of Federal Regulations, Title 25, Part 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment and water delivery rates for the Salt River Indian Irrigation Project for calendar year 1993 and subsequent years.

The basic 1992 assessment rate was $50 per acre foot to leased lands and entitled each water user to 3 acre feet per acre. Spill water was available early in the year, so the project was able to deliver all water requested. The acreage used to determine the assessment rate was 7,849 acres. The rate for spill water was charged at $9 per acre foot. The rate for excess water was $35 per acre foot. Enrolled Community members were charged $10 per acre foot with no basic assessment charge.

The 1992 basic operation and maintenance charges were calculated by using the estimated cost of Project operation for calendar year 1992 divided by the acreage leased to water users for commercial farming.

Basic Assessment: The basic 1993 operation and maintenance rate assessed against the leased farmland in the Salt River Irrigation Project to which water can be delivered through the irrigation project works is hereby fixed at $42.50 per acre for delivery of 3.75 acre feet of water per acre. Irrigation water will not be delivered until the basic operation and maintenance assessments are paid. Payment of the basic assessment may be made in two installments if the leaseholder's past accounts are in good standing. The first half ($21.25 per acre) by March 29, 1993, and the second half by July 1, 1993. The rate for excess water will be $8.50 per acre foot. Spill water will not be charged against the apportionment of 3.75 acre feet per acre this year.

Community Members: Enrolled members of the Community and their spouses who farm their own land will not be subject to the basic assessment rate. They may purchase water at the rate of $2.00 per acre foot. Payment will be required at the time of the order.

Municipal and Industrial: The rate for delivery of water for Municipal and Industrial purposes is hereby fixed at $10.00 per acre foot. The rate for delivery of water to churches is $1.00 per acre foot. Pumped water, if required, will be delivered for $42.00 per acre foot.

Interest and Penalty Fees: Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulation, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, Part 3.8, Debt Collection Procedures.

Delivery of Water: Delivery of water shall be made to all tracts of land for which the basic assessment and/or water delivery rates are paid as set for the year 1993.

Dated: August 6, 1993.

Linda L. Richardson,

Deputy Commissioner of Indian Affairs.

[FR Doc. 93–19919 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-02-P

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Part V

Environmental Protection Agency

40 CFR Part 165
Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–190002; FRL–4628–8]

Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy Statement.

SUMMARY: Section 19(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with regulations promulgated under the authority of section 19(f)(1). The Agency has not yet promulgated regulations under section 19(f)(1) and is unlikely to do so by December 24, 1993. To avoid having the provisions of section 19(f)(2) adversely impact the States and EPA, the Agency is publishing this policy which sets forth a process whereby the Agency will make an interim determination of adequacy for those States with primary use enforcement responsibility and/or certification programs. This determination would be based on an initial commitment by a State to conduct a number of activities which will position the State to have an adequate program in place by the time compliance with the regulations promulgated under section 19(f)(1) is required. After the section 19(f)(1) regulations are promulgated, the Agency will establish criteria for evaluating State programs under FIFRA section 19(f)(2) to ensure that they in fact do have and continue to have adequate compliance programs for regulations promulgated under section 19(f). The criteria and process for this will be published in the **Federal Register** for public comment after the regulations under section 19(f)(1) are promulgated.

EFFECTIVE DATE: This policy is effective August 18, 1993.

ADDRESSES: Submit written comments identified by the document control number (OPP–190002), by mail to: Public Information Branch, Field Operations Division, Office of Pesticide Programs (H7506–C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Public Docket, room 1128, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. All written comments will be available for public inspection in the Public Docket at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (EN–342W), 401 M St., SW., Washington DC 20460, telephone (703) 308–8383, facsimile (703) 308–8218.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

FIFRA section 19(f)(1)(A) states that not later than 3 years after the effective date of the subsection [December 24, 1988], the Administrator shall, in consultation with the heads of other interested Federal agencies, promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal. Section 19(f)(1)(B) states that the regulations may: (1) Specify, for each major type of pesticide container, procedures and standards providing for, at a minimum, triple rinsing or the equivalent degree of pesticide removal; (2) specify procedures that can be implemented promptly and easily in various circumstances and conditions; (3) provide for reuse, whenever practicable, or disposal of rinse water and residue; and (4) be coordinated with requirements for the rinsing of containers imposed under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

FIFRA section 19(f)(2) states that 5 years after the effective date of the subsection [December 24, 1993], a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with regulations promulgated under the authority of section 19(f).

The residue removal regulations for refillable and nonrefillable containers are scheduled to be proposed in 1993 as new subparts of 40 CFR part 165. The statute states that the Administrator must make a determination that a State has an adequate program to assure compliance with regulations promulgated under 19(f) by December 24, 1993, or the State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11. Although the Agency did not meet the statutory deadline under section 19(f)(1)(A) for promulgation of regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal, the deadline under section 19(f)(2) for the Administrator to determine that States have an adequate enforcement program for these residue removal regulations remains in effect in the absence of an amendment to the statute.

FIFRA does not specifically address what should happen if EPA fails to meet the statutory deadline for promulgating regulations under section 19(f)(1). Section 19(f)(2) on its face suggests that Congress intended the provisions as strong encouragement for States to develop and implement enforcement programs for the residue removal regulations in a timely manner. This reading of section 19(f)(2) would be consistent with the other FIFRA provisions governing the Federal/State scheme of pesticide enforcement. Nothing in section 19(f) indicates that Congress intended to punish the states for EPA's failure to meet the deadline for promulgation of regulations. EPA believes that it should not construe section 19(f) so as to prejudice public interests because of the negligence or failure of EPA. The Policy Statement creates "an interim determination of adequacy" as a best effort to come close to Congressional intent in section 19(f)(2) and to avoid States losing their primary enforcement and certification authority after December 24, 1993.

This policy provides guidance on the procedures and criteria EPA will follow to make an interim determination of adequacy for States with primary use enforcement responsibility and/or certification programs. This determination will be based on the existence of an adequate program in an individual State for enforcement of existing pesticide laws and a written commitment by the State to undertake activities in three areas.

The interim determination is temporary and would expire 2 years after promulgation of the final rule under section 19(f)(1). Thereafter, States would have to have a program to assure compliance with the section 19(f) regulations. Two years is the period Congress originally intended to allow States to develop and implement programs for enforcement of the new residue removal requirements. EPA does not believe that Congress intended to penalize States for the Agency's delay in issuing the final rule by allowing States less time to establish their programs. EPA also believes that 2 years will be

needed for the States to develop and implement their programs after the regulations are promulgated. Also 2 years is consistent with anticipated dates for compliance with the regulations proposed under section 19(f)(1).

The activities a State is to commit to in writing include (1) review of the proposed section 19(f) regulations, identification of any changes to State laws that would be necessary for enforcement of the regulations, and development of an estimated timeline for making those changes; (2) development and submission to EPA of a strategy, within 12 months of promulgation of the final rule under section 19(f)(1), for implementing an enforcement program for the section 19(f) requirements; and (3) conducting a program to inform the regulated community of the requirements of the rule, after the final rule is promulgated. States that undertake these above activities will be doing what they can reasonably be expected to do at this time. Additionally, they will be taking the necessary steps so that they can be carrying out an adequate program for enforcement of the new requirements within 2 years of promulgation of the final rule. EPA will judge the evidence, on a case by case basis, to determine whether a State has committed to undertake activities necessary to develop a compliance program.

After the regulations under section 19(f)(1) are promulgated, the Agency will establish criteria for evaluating State programs to ensure that they in fact do have and continue to have adequate compliance programs for regulations promulgated under section 19(f). The criteria and process for this will be published in the **Federal Register** after the regulations under section 19(f)(1) are promulgated. Submission of a commitment by a State does not waive any rights a State has to comment on or challenge the requirements proposed under the authority of section 19(f) nor is it a commitment to actually change State law.

Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this policy is not a "major" policy because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices.

B. Paperwork Reduction Act

This policy and associated information collection request (ICR) amend a previously approved ICR (OMB Clearance No. 2070–0113) and imposes additional burden hours as a result. The information collection requirements in this policy have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 40 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1547.01) and a copy may be obtained from Chief, Information Policy Branch, PM–223, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Public reporting burden for collection of information under this policy is estimated to average 3 hours per response, including time for reviewing the policy and drafting a commitment letter.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated: August 6, 1993.

Carol M. Browner,
Administrator.

Policy for Making an Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs

Section 19(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with section 19(f).

A. Current Programs

States which have primary enforcement responsibility prior to December 24, 1993, have programs in place to ensure compliance with current pesticide laws. In States without primacy, EPA enforces the Federal pesticide laws. In either case, there is a current program for enforcement of residue removal requirements which will be effective until compliance with the section 19(f) regulations is required. For most of the section 19(f)(1) regulations, EPA plans to propose a compliance date of 2 years. Other requirements may have later compliance dates.

B. Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs

To obtain an EPA interim determination under FIFRA section 19(f)(2) that the State program is adequate for the period between December 24, 1993 and 2 years after the promulgation of the final rule under section 19(f)(1), a State should submit a written commitment as described below:

(a) *Who should submit a written commitment.* Any State wishing to continue to exercise its primary enforcement authority under section 26, or certify applicators under section 11, should submit a written commitment to carry out the activities specified in paragraph (b) below. The commitment should be signed by the designated State Lead Agency.

(b) *What should be submitted.* A State should submit a written commitment to:

(1) Review the proposed regulations under section 19(f)(1) of FIFRA within 3 months of proposal to determine if the State can enforce the provisions under its existing State laws and regulations. This time period for review is the same as the comment period for the proposed regulation. If the comment period is extended, the review period for the States would be similarly extended.

(2) Identify significant changes which would be necessary to State laws and regulations in order to effectively enforce the proposed EPA regulations and develop an estimated timetable to effect these changes.

(3) Reevaluate, within 6 months after the final regulations are promulgated, the preliminary evaluation as set out in paragraphs (b)(1) and (2) above.

(4) Develop and submit to EPA an adequate strategy for implementing a program for enforcement of the section 19(f) regulations within 12 months of promulgation, if, after reviewing the section 19(f) final regulations the State decides to develop and maintain an enforcement program. The implementation strategy would have to address the following elements:

(A) Communicating the requirements of the final rule with the affected regulated community, e.g., registrants, dealers, and users,

(B) Establishing cooperative relationships with other State agencies, where applicable, and

(C) Developing a compliance monitoring strategy based on EPA's compliance monitoring strategy.

(5) Conduct the outreach/communication program under paragraph (b)(4)(A) above after the final rule has been promulgated, during the period before the first compliance date for the rule. States do not have to wait for their implementation strategy to be completed to conduct their program. (OMB Control No. 2070–0113)

(c) *Where to submit the written commitment.* The written commitment should be submitted by the State to the appropriate EPA Region, to the office which handles pesticide enforcement and administers the State cooperative enforcement agreement. Regions will submit the written commitment to EPA Headquarters, Office of Compliance Monitoring for inclusion in the Public Docket.

(d) *When to submit.* The written commitment should be submitted within 60 days after publication in the **Federal Register** of this policy in order to assure expedited processing. EPA will accept commitments after this date, but commitments submitted after 60 days may be processed at a later date. EPA will try to process all submissions by December 24, 1993.

(e) *Determination of completeness.* Upon receipt, the EPA Regional office will review the State submission for completeness and forward it to EPA Headquarters for inclusion in the Public Docket and to serve as the basis for the Administrator's determination. An interim determination of adequacy of the State's compliance program must be made by the Administrator, to allow the continuation of a State's primary enforcement authority under section 26 and certification authority under section 11 after December 24, 1993.

(f) *Incomplete submissions.* Incomplete submissions will be returned to the State with an explanation why the submission is incomplete. A State may complete the submission and return it to the Regional office for reprocessing. Incomplete submissions may result in delays in processing the submission prior to December 24, 1993.

(g) *Commitments submitted after 60 days.* Failure to submit a written commitment within 60 days of promulgation of the policy may result in the Administrator not being able to make an interim determination of adequacy prior to December 24, 1993. In the event of no affirmative determination being made by December 24, 1993, the State's primary enforcement authority under section 26 and ability to certify applicators under section 11 would be automatically suspended by operation of section 19(f)(2) until the Administrator makes a determination of adequacy.

(h) *Notification of EPA's determination.* EPA will inform the State of its determination through publication in the **Federal Register** of a list of States that the Administrator has determined under this process to be carrying out an adequate enforcement program. However, for States that fail to submit a timely commitment, notice of EPA's determination may be provided by a letter to the State from the Administrator followed by publication in the **Federal Register** at a later date.

(i) *Expiration of interim determination of adequacy.* The Administrator's interim determination of adequacy expires 2 years after publication of the final rule issued under the authority of section 19(f)(1).

C. Continued Determinations of Adequacy

When regulations are promulgated under the authority of section 19(f)(1), EPA will develop, and publish in the **Federal Register**, any additional criteria necessary for evaluation of a State program to adequately enforce the provisions of the new rules and provide timeframes for addressing the criteria.

[FR Doc. 93–19827 Filed 8–17–93; 8:45 am]
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Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved addendum to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Pari-Mutuel Racing Addendum to the Gaming Compact Between the Devils Lake Sioux Tribe and the State of North Dakota, which was enacted on April 8, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 3, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19922 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–P

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Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

VOL 58 ISS 158 AG 18 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Tohono O'odham Nation and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19923 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-02-M

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August 18, 1993

Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

VOL 58 ISS 158 AG 18 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the White Mountain Apache Tribe and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19924 Filed 8–17–93; 8:45 am]

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Part IX

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Ak-Chin Indian Community and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19925 Filed 8–17–93; 8:45 am]

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Part X

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Cocopah Indian Tribe and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT:

Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19926 Filed 8–17–93; 8:45 am]

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Part XI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

VOL 58 ISS 158 AG 18 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved The Fort McDowell Mahave-Apache Indian Community of Arizona and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19927 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-02-M

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August 18, 1993

Part XII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Pascua Yaqui Tribe of Arizona and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19928 Filed 8–17–93; 8:45 am]

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Part XIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tonto Apache Tribe and the State of Arizona Gaming Compact of 1993, which was enacted on July 6, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19929 Filed 8–17–93; 8:45 am]

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Part XIV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Yavapai-Apache Nation and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19930 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–01–M

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Part XV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Agreement Between the Yavapai Prescott Indian Tribe and the State of Arizona concerning Class III Gaming, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19931 Filed 8–17–93; 8:45 am]

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Part XVI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Gila River Indian Community and State of Arizona Gaming Compact of 1993, which was enacted on July 6, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19932 Filed 8–17–93; 8:45 am]

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Part XVII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 5, et al.
Food Labeling for Human Consumption; Rules, Proposed Rule and Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 101

[Docket Nos. 91N-0384, 84N-0153, and 91N-0317 et. al.]

RIN 0905-AD08 and 0905-AB68

Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Foods; Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying its regulations on nutrient content claims and nutrient content claims used with a standardized term. In January of 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments." The document gave interested persons an opportunity to comment on technical issues not raised in earlier comments pertaining to nutrient content claims. This document addresses the comments that the agency received in response to that document that identified technical matters or specific provisions that resulted in unintended technical consequences and that were not raised in earlier comments.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS-156), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993, FDA published a final rule entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food" (58 FR 2302) (hereinafter referred to as "nutrient content claims final rule"). That final rule, among other things, defined nutrient content claims (also known as "descriptors") and provided for their use on food labels; defined specific nutrient content claims that included the terms "free," "low," "good source," "high," "reduced," "less (or fewer)," "more," and "light" or "lite;" established values for these terms for various nutrients; and established procedures for the submission and review of petitions regarding the use of nutrient content claims.

In that same issue of the **Federal Register**, FDA also published a final rule entitled "Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term" (58 FR 2431) (hereinafter referred to as "the general standard"). This final rule provided a general definition and standard of identity for foods named using a nutrient content claim, such as "fat free" or "light," in conjunction with a traditional standardized name (for example "reduced fat sour cream").

II. Technical Issue Comments

A. Nutrient Content Claims, General Principles

In the **Federal Register** of January 6, 1993, FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as the "implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters such as inconsistencies or unintended consequences of specific provisions not raised in earlier comments. In order to ensure consideration of any comments, interested persons were to certify that their comments were so limited. FDA further advised that if the comments identified any technical provisions of the final rules that FDA agrees should be changed, FDA would take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the nutrient content claims final rule, FDA received approximately 50 letters containing one or more comments from industry, consumers, and other interested persons. Of these submissions, 25 included technical issue comments as described in the implementation final rule. The other submissions raised matters that merely require clarification or that are beyond the scope of technical concerns and would require further rulemaking. FDA is responding below to the specific technical issues that the comments raised. Those issues that are beyond the scope of this document or that are otherwise not relevant to this rulemaking are not discussed below. These matters should be the subject of separate rulemaking or petitions to the agency (e.g., a definition for a new term). In addition, FDA has included in this document technical changes that it is making after reconsideration of the regulations on its own initiative or in response to informal questions. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comments, the agency finds that further opportunity for public comment on them is unnecessary.

Minimum Type Size

1. In several sections in the nutrient content claims final rule, the agency prescribed minimum type size requirements for a variety of required declarations (e.g., § 101.13(g) (21 CFR 101.13(g)) for referral statements). However, the agency did not specify minimum type size requirements for certain other required information (e.g., § 101.13(j)(2)(iv) accompanying information), even though a one-sixteenth inch minimum was discussed in the preamble for these provisions. The agency was relying on the general provisions in § 101.2(c) (21 CFR 101.2(c)) which specifies the minimum acceptable type size for required labeling information. However, § 101.13 and the other regulations for nutrient content claims in subpart D of part 101 (21 CFR part 101) are not listed in § 101.2(b), which identifies the sections to which § 101.2(c) is applicable. The agency has received numerous inquiries about the fact that there is no codified minimum type size for some of the labeling information required under the nutrient content claims regulation.

FDA has determined that there remains a need to specify the minimum type size for this type of information. Therefore, the agency is modifying § 101.2(b) to include §§ 101.13, 101.54, 101.56, 101.60, 101.61, 101.62, and 101.65 among those sections for which a minimum type size for required label information is specified. For consistency, the agency is also modifying § 101.2(f) to include §§ 101.13, 101.54, 101.56, 101.60, 101.61, 101.62 and 101.65. Finally, because § 101.25 was removed by the nutrient content claims final rule,

reference to this section is being deleted from § 101.2(b) and (f). In effect, label information required by the nutrient content claims regulations, but whose type size is not otherwise specified, will be required to be in letters and/or numbers no less than one-sixteenth of an inch in height unless otherwise specified by § 101.2(c).

Type Size and Style

2. In § 101.13(f) of the nutrient content claims final rule, the agency required that a nutrient content claim be in type size and style no larger than two times that of the statement of identity.

Some comments stated that the words "and style" must have been a typographical error. They said that because type style is not related to type size these words did not make sense in the sentence and should be dropped.

While the agency agrees that the words "and style" are used in an awkward manner in § 101.13(f), the agency believes that the concept that is the basis of the requirement remains important. There is a great variety of print styles available for use in labeling. Some of these styles, like Helvetica 95 Black, are very bold and prominent. Others, like Helvetica 25 Ultra Light, are thin and much less prominent. The purpose of the phrase "and style" as used in § 101.13(f) was to ensure that a claim not have undue label prominence compared to the statement of identity by virtue of the style of type used. However, because this phrasing has presented some confusion, the agency is modifying the provision to require that a claim not have an unduly prominent style when compared to the statement of identity. Accordingly, FDA has revised § 101.13(f) to state that a nutrient content claim shall be in type size no larger than two times the statement of identity and shall not be unduly prominent in type style compared to the statement of identity.

The agency advises that in implementing § 101.13(f), after taking into account the relative difference in the size of the claim compared to the size of the statement of identity, claims that are noticeably more prominent because of a difference in style will not be considered in compliance with this requirement.

Referral Statements on the Information Panel

3. Section 403(r)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act), which was added by the Nutrition Labeling Education Act of 1990 (the 1990 amendments), requires that all products making a nutrient content claim bear the referral statement "See ———— for nutrition information," with the blank filled in with the identity of the panel on which nutrition labeling is located. Section 101.13(g)(2) states that if the nutrient content claim appears on more than one panel, the referral statement may be omitted from the panel that bears the nutrition information.

A question has been raised as to whether the referral statement is required on the information panel if the claim does not appear on any other panel, or whether it may also be omitted if the claim appears only on the information panel.

The preamble to the nutrient content claims final rule (58 FR 2302 at 2306, comment 6) states that under § 101.13(g)(2) the referral statement is not required when a claim appears on the information panel. As reflected by this response, the agency intended that the referral statement not be required on the panel that bears nutrition information. However, because the wording of § 101.13(g)(2) is apparently unclear, the agency is modifying § 101.13(g) to specifically state that the referral statement is not required on the panel that bears nutrition information. Although this modification creates an apparent redundancy in the regulation, FDA is willing to accept redundancy in this instance in the interest of clarity.

Substitute Referral Statement on Small Packages Bearing Claims

4. In the final rule on nutrition labeling, the agency provided in § 101.9(a) (21 CFR 101.9(a)) that if a nutrient content claim was made on a product label, the product would have to bear nutrition labeling without regard to whether it was exempt from mandatory nutrition labeling for some other reason (e.g., the small business exemption). In addition, as noted above, section 403(r)(2)(B) of the act requires that all products that make nutrient content claims bear in immediate proximity to the claim the referral statement "See ———— for nutrition information," with the blank filled in with the identity of the panel on which nutrition labeling is located. Finally, the mandatory nutrition labeling regulation provides in § 101.9(j)(13)(i) that foods in small packages that have a total surface area available to bear labeling of less than 12 square inches (sq in) and that make no nutrient content claims and provide no other nutrition information, may provide an address or telephone number that a consumer can use to obtain the required nutrition information.

As discussed in the document for nutrition labeling, published elsewhere in this issue of the **Federal Register**, the agency has learned through inquiries informal questions that some products, many intended for individual use with meals in restaurants, have extremely small areas available to bear labeling information (less than 3 sq in), and thus do not have sufficient space available to bear the normal nutrition labeling information required when a nutrient content claim is made. In the nutrition labeling technical corrections document published elsewhere in this issue of the **Federal Register**, the agency has modified § 101.9(j)(13)(i)(B) to permit individual serving-size packages of food for use in restaurants and similar situations to use the minimum type size allowed under § 101.2(c)(5) of one thirty-second inch for nutrition labeling, provided that the packages comply with the requirements of that regulation, including that they have a total area available to bear labeling of 3 sq in or less. If a package still cannot comply with this requirement, manufacturers are advised to write the agency requesting alternative means of compliance in accordance with § 101.9(g)(9).

The agency recognizes that in many of these situations, there will not be sufficient space available for the specified referral or disclosure statement. For some packages, there will be a single panel of available label space. In such circumstances, no referral statement is necessary because, as explained in the previous comment, the claim is on the same panel as the nutrition information. However, in those circumstances in which the claim is on a panel other than the one containing the nutrition information, the agency believes that it is reasonable to permit the referral statement to be one thirty-second inch in height as permitted in § 101.2(c)(5). Therefore, the agency is modifying § 101.13(g)(1) to permit products that comply with § 101.2(c)(5) to have a referral statement in the minimum type size of one thirty-second inch.

Because other type size requirements in § 101.13 and in regulations in subpart D refer to § 101.13(g) for their size requirement, this modification will have the effect of changing the minimum type size to one thirty-second inch for all declaration provisions referring to § 101.13(g). For consistency, the agency is also modifying § 101.13(d)(2), which requires a disclaimer statement for substitute foods and requires the same relative type size but does not reference § 101.13(g) and § 101.13(i)(2), which requires a disclaimer statement on certain percent and amount claims, to permit the information to appear in type

of one thirty-second inch in appropriate circumstances. The agency is also modifying 101.13(g) for clarity and consistency with § 101.13(d)(2).

In those rare circumstances where the product is not able to comply with this modified requirement, any request for alternative means of compliance in accordance with § 101.9(g)(9) should include a suggestion for a referral statement to be used to identify the location of nutrition labeling.

Accompanying Information on Small Packages

5. In § 101.13(j)(2) and in the relevant sections in the various nutrient content claims regulations in subpart D of part 101, the agency required that for foods bearing relative claims, the label or labeling must state the identity of the reference food and the percentage (or fraction) by which the amount of the nutrient that is the subject of the claim in the labeled food differs from the amount of the nutrient in the reference food. This information must be adjacent to the most prominent claim. The agency also required that quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that of the reference food be provided adjacent to the most prominent claim or on the information panel.

FDA received inquiries in response to the implementation final rule about how to present this information on small packages. The agency advises that because the minimum type size requirement for this statement is established by § 101.2 (see comment 1 above), all exemptions provided in § 101.2(c) for small package sizes would apply to the required accompanying information. Consequently, for example, accompanying information could be provided in type size as small as one thirty-second inch on packages having less than 12 sq in of available label space that met the requirements for an exemption in § 101.2(c)(2) or (c)(3).

However, some manufacturers of extremely small packages (less than 3 sq in) inquired about how to provide the required accompanying information when there was insufficient label space to do so even taking into account the exemptions in § 101.2(c).

The agency determined in the nutrient content claims final rule that the percentage that the nutrient has been reduced and the identity of the reference food (e.g., 25 percent fewer calories than regular cheesecake) are essential to consumer understanding of the claim. This information can often be structured in such a way that it is part of the claim or takes up little more space than the claim itself. Thus, it would not be appropriate to excuse packages with a small amount of label space that make comparative claims from the requirement to place this information adjacent to the most prominent claim.

However, because of the limited amount of space available to provide the required information, and the fact that an alternate means of presentation of that information is possible, the agency finds that it is appropriate to provide more flexibility for declaration of the quantitative information comparing the amount of subject nutrient in the labeled food with that in the reference food on packages with an extremely small amount of available space (that is, those with less than 3 sq in). The agency believes that in this limited circumstance, it is more important that the required information be presented rather than that it be presented in the manner that is most appropriate to prevent consumer confusion, i.e., as part of the same presentation of information, therefore, for these products. The statement of the amount of the subject nutrient that is part of the nutrition information can satisfy the requirement for the portion of the accompanying information that specifies the amount of the nutrient for the labeled product. A statement of the amount of nutrient for the reference product would still be required.

However, as is the case with referral statements on extremely small labels (less than 3 sq in of available label space), if the manufacturer still believes that there is insufficient label space to comply with this requirement, the agency believes that it is appropriate for the manufacturer to request flexibility under § 101.9(g)(9) and suggest appropriate steps that may be taken to comply with these requirements.

Alternate Spellings

6. In the nutrient content claims final rule (58 FR 2302 at 2321 (comment 60)), the agency stated that "although [it had] not specifically provided for variations in the spelling of various descriptive terms or their synonyms, except for 'light' ('lite'), the agency believes that reasonable variations in the spelling of these terms would be acceptable provided that these variations are not misleading to consumers." The agency added that it would consider on a case-by-base basis variations in spelling whose use is questionable.

Comments requested that the agency formally codify this policy so that there would be no confusion as to the permissibility of nonmisleading spelling variations.

The agency agrees that codifying the policy will facilitate compliance by providing in the codified language, rather than in just the preamble, explicit permission to use alternate spellings of descriptive terms. This provision will eliminate any confusion as to permitted label statements. Therefore, FDA is adding new § 101.13(b)(4), which states, that the use of reasonable variations in the spelling of the various descriptive terms and their synonyms, e.g., "hi," and "lo," is permitted provided that these variations are not misleading.

Definition of Meal-Type Products

7. In the nutrient content claims final rule, the agency defined a "meal product" and a "main dish product" for the purpose of making a nutrient content claim using the meal/main dish claims criteria. These criteria are different from those for individual foods. The definition for a "main dish product", among other things, requires that the food weigh at least 6 ounces (oz) per labeled serving and contain not less than 40 grams (g) for each of at least two different foods from two of the following four food groups: (1) Bread, cereal, rice and pasta group; (2) fruits and vegetable group, (3) milk, yogurt, and cheese group, and (4) meat, poultry, fish, dry beans, eggs, and nuts group. The definition also requires that these foods should not include sauces, condiments, relishes, pickles, olives, jams, jellies, syrups, breading, or garnishes. The agency stated, however, that the amount of a food in a sauce, e.g., tomatoes in a tomato sauce, could count toward the 40 g criterion. For meals, the agency required that the food weigh at least 10 oz per labeled serving and contain not less than 40 g from each of at least 3 different foods from 2 or more of the described food groups and again excluded certain foods from the 40 g criterion.

Several comments maintained that many main dish products would not be able to meet the specified definition. They stated, for example, that the major ingredient for many products was a large portion of pasta, often with sauce. The comments requested that for main dish products, the 40 g requirement be eliminated, or that the requirement be 40 g from one food group and not less than 10 g from two or more additional food groups with a total contribution from all food groups of at least 80 g (6 oz is about 170 g). They requested that the requirements for meals be similarly modified.

The comments further claimed that the requirement that FDA adopted would force manufacturers to add to their products excessive amounts of

certain ingredients such as cheese, in amounts in excess of the reference amount customarily consumed (RACC) for the individual food. These comments cited, as an example, that for the cheese in a meal-type product to meet the 40 g criterion, and thereby to qualify as one portion of food from a food group, the meal type product would have to contain more cheese than the 30 g that constitutes the RACC for an individual serving of cheese. This amount, the comments said, is significantly higher than one half the RACC of an average individual food that the agency stated was the basis for the 40 g criterion for a portion of food to qualify as a component of a meal-type product.

The agency does not intend to preclude meal-type products that are consistent with dietary recommendations that diets include a variety of foods from meeting the definitions for meals and main dishes and from qualifying to use the definitions for nutrient content claims for meal-type products. However, the definitions for main dishes suggested by the comments are far too broad. For example, the definition suggested by the comments would allow a product that is little more than a single ingredient with a small amount (10 g) each of two other foods to be mixed together and be considered a main dish for purposes of making claims. Such a food would not necessarily be the major component of a meal, as required by the definition of main dish products. The agency believes that such foods are more properly considered to be mixed dishes, which may still make a claim if they qualify for it using the RACC for mixed dishes and the criteria for individual foods (see § 101.12(b), Table 2, (21 CFR 101.12(b), Table 2).

However, the agency acknowledges that in the preamble and the codified language, it stated that to qualify for the definition of a meal, each 40 g would have to come from different foods. These statements have the unintended effect of prohibiting manufacturers from using a combination of foods from one of the four food groups to meet the 40 g criterion. For example, they would prohibit combinations such as shrimp and scallops, peas and carrots, or even swiss cheese and cheddar cheese from being considered a food from a food group unless a single ingredient contributed 40 g of food to the product. The agency did not intend to so limit the definition.

The agency intended to permit manufacturers to combine different foods from the same food group to meet the 40 g criterion. This position will allow a wider variety of products to qualify as meal-type products than would the position the agency inadvertently took in the final rule, but will still encourage manufacturers to make products that contain a variety of foods with different nutrient profiles. By allowing combinations of foods from the same food group to qualify for the 40 g criterion, certain nutrient dense ingredients could be combined with less nutrient dense foods from the same food group, or a variety of foods in the same food group could be used. For example, carrots and peas together could be used to meet the 40 g criterion for the fruit and vegetable food group and a combination of cheese and milk could be used to meet the 40 g criterion for the dairy food group. Similarly, for meals, it would be appropriate to combine two or more foods (e.g., two or three fruits or vegetables totaling at least 40 g) to meet the requirement of a 40 g portion of food from a food group. Consequently the agency is modifying § 101.13(l)(1)(ii) and (m)(1)(ii) to reflect these criteria.

However, because the dietary guidelines suggest that people should eat a variety of foods from the various food groups, as the agency stated in the final rule, a product that purports to constitute a meal, and therefore a major portion of the day's food intake, should have significant portions of at least three different foods having different nutrient profiles. Hence, the agency believes that each portion of food in a food group that constitutes one of the required 40 g portions should be composed of different foods or combinations of foods than the other 40 g portions. Foods that are made from similar ingredients (e.g., two foods each made from flour, eggs, and water) or that have similar nutrient profiles, e.g., a variety of pastas, would not provide variety and nutrient diversity and therefore would not be appropriate to constitute two of the three required portions of a meal. Therefore, 80 g of a variety of pasta would generally not qualify as two 40 g portions of different foods in a meal. However, a variety of pastas could be combined to meet the requirements for one 40 g portion.

Rounding

8. The agency has received many inquiries as to whether a product must meet the definition of a claim based on the rounded or the unrounded values.

In the nutrient content claims final rule, the agency stated in § 101.13(o) that compliance with requirements for nutrient content claims would be determined using the analytical methodology prescribed for determining compliance with nutrition labeling in § 101.9. The agency also stated in § 101.13(j)(1)(ii)(B) that for purposes of relative claims other than "light," when comparing a single manufacturer's product to the labeled product, the nutrient value for the single manufacturer's product shall be the value declared in the nutrition labeling of the product, i.e., the rounded value. However, the agency did not further specify whether the values used to determine compliance with a claim were to be the rounded or unrounded values.

The agency acknowledges that the requirement for relative claims that stipulates that the nutrient value for a single manufacturer's product must be the value declared in the nutrition labeling on the product may result in the unintended consequence of causing inconsistencies between the various required label values, specifically, the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the food has been modified. These inconsistencies will have the additional unintended consequence of causing consumer confusion. For example, a product that is reduced in fat by 25 percent compared to a reference product may contain 5.5 g fat (rounded to 6 g of fat in the nutrition label) when the reference product contains 7.4 g of fat (rounded to 7 g of fat). If the labeled values were used to declare the nutrient values in the accompanying information, the product would appear to have a reduction of only about 15 percent. Consequently, if rounded labeled values are used in the accompanying information, it would appear that the product was not reduced in fat to the extent declared, and consumer skepticism and confusion would result. There might also be consumer confusion if the actual values that were used to make the comparison, and that were shown in the accompanying information, differed from the values in the nutrition information.

Conversely, if all claims were based on rounded values rather than actual values, a relative claim could comply with the definitions but still be misleading if the percentage reduction specified was 25 percent or greater but the actual reduction was not. For example, if a food containing 5.4 g of fat (rounded to 5 g of fat) was compared to a food containing 6.5 g of fat (rounded to 7 g) it would appear, using the rounded values, that there was greater than a 25 percent reduction in the amount of fat in the labeled product. However, using the actual values, the

labeled food would have been reduced by only slightly more than 15 percent. FDA stated in the nutrient content claims final rule that nutrient reductions less than 25 percent were not meaningful and were therefore misleading. There would still be other circumstances which might be confusing. For example, if a food was reduced in the level of a nutrient by at least 25 percent and therefore qualified to make a reduced claim, the specified percentage reduction might differ from the declaration of amounts of nutrient in the compared foods depending on whether rounded or unrounded values were used to specify the percentage reduction.

Therefore, particularly for relative claims, there are advantages and disadvantages in requiring either the rounded or the unrounded nutrient values to be used in determining whether a food qualifies to make a nutrient content claim and to be declared on the label. The agency believes, however, that it is more important to prevent consumer confusion by having consistency on the food label than to be prescriptive as to the method by which nutrient values for relative claims are determined and used. It is essential, though, as discussed in the nutrient content claims final rule, that the actual nutrient reductions must be nutritionally meaningful. Therefore, to help eliminate consumer confusion, the agency is modifying § 101.13(j)(1)(ii)(B) to permit comparisons to a single manufacturer's product using either the values declared in the nutrition labeling or the actual nutrient values, provided that the label is internally consistent, that is, that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the food has been modified are consistent and will not cause confusion when compared, and that the actual modification is at least equal to the percentage specified in the definition of the claim.

Further, for absolute claims, because there is no need to specify the actual amount of the nutrient in the food relative to the claim and, as discussed in the mandatory nutrition labeling final rule, because there is no nutritional difference between rounded and unrounded values of a nutrient in a food, the agency does not see a need to specify which value should be used in determining whether or not a food qualifies to make a nutrient content claim.

Exemption for Grandfathered "Diet" Soft drinks.

9. Section 403(r)(2)(D) of the act, which was added by the 1990 amendments, states that section 403(r)(2) of the act does not apply to a claim that uses the term "diet" if the claim is contained in the label or labeling of a soft drink, was in use on such soft drink before October 25, 1989, and the use of the term was in conformity with § 105.66 at the time of enactment of the 1990 amendments. This provision has the effect of exempting such claims from the referral and disclosure statement requirements and the special disclosure statements (those required by section 403(r)(2)(A) of the act).

One comment asked that the exemption be included in the regulation to ensure that it is applied uniformly.

To clarify the existing exemption and to facilitate compliance, the agency is modifying § 101.13(q)(2) to state that claims for such grandfathered soft drinks are exempt from section 403(r)(2) of the act, including the referral (§ 101.13(g)) and disclosure (§ 101.13(h)) statement requirements. This modification fully responds to the comment's concern.

Applicability of General Requirements of Nutrient Content Claims to Claims About Salt and Sugar

10. Sections 101.60 and 101.61 establish the requirements for nutrient content claims about calories and sugar and sodium and salt, respectively. However, the introductory paragraphs to these sections state only that the general requirements in these introductory paragraphs are applicable to claims about calories and sodium. The agency intended that the general requirements apply to all claims and specifically that general requirements for claims defined in §§ 101.60 and 101.61 apply to all claims defined therein. Therefore, to avoid any possible confusion as to the applicability of these general requirements, the agency is adding explicit mention of sugar and of salt in the general requirements paragraphs in §§ 101.60(a) and 101.61(a), respectively.

Criteria for "Free" Claims

11. In the November 27, 1991, document on nutrient content claims (56 FR 60421) (hereinafter referred to as the nutrient content claims proposal), the agency proposed that claims, including claims that a food was "free" of a nutrient, be based on the amount of nutrient in a labeled serving of the product and in a RACC. In the nutrient content claims final rule, the agency determined, based on comments, that using the amount of nutrient per labeled serving as a criterion for various claims, in addition to the amount of nutrient per RACC, was too restrictive. Consequently, in the final rule, the agency retained the requirement that most claims, including those for products "free" of a nutrient, be based on the amount of a nutrient per RACC and deleted the criterion of amount of the nutrient per labeled serving. The agency further required that if the value of the nutrient in a labeled serving of the food did not meet the maximum or minimum amount of nutrient per RACC that qualifies a food for the claim, the claim must be followed by declaration of the criteria for the claim e.g., "sodium free, less than 5 mg sodium per 240 milliliters (8 fl oz)" (see § 101.13(p)(1)).

In addition, in the final nutrition labeling regulation (58 FR 2079), FDA prescribed how the nutrient values are to be expressed in nutrition labeling. The nutrition labeling regulation prescribed levels for nutrients that are nutritionally trivial, i.e., those nutrients that are present in a food at insignificant amounts and that consequently are declared as zero on the nutrition label (e.g., less than 5 calories and less than 0.5 g total fat). Because these values are nutritionally trivial, they are also the defining values for "free" claims.

Comments pointed out that there are situations, primarily on single serving products whose labeled serving exceeds the RACC, in which a product bearing a "free" claim will have a value in nutrition labeling other than zero for that nutrient. This situation, the comments said, would be confusing to consumers. For example, if an 8 fl. oz. (240 milliliters (mL)) bottle of soda contained 4 calories, the value for those calories could be rounded to zero in the nutrition labeling, and the product would meet the definition for "calorie free" (less than 5 calories per 240 mL). However, if the same soda were sold in a single serving 12 fl. oz. container, a labeled serving of the product would contain 6 calories. While this product would meet the current requirements for a "calorie free" claim based on the RACC, it would have to declare 5 calories in the nutrition label. The comment said that declaration of a numeric value other than zero in nutrition labeling for a nutrient for which a "free" claim is made would have the unintended effect of permitting seemingly conflicting labeling information that would be confusing to consumers. The comments suggested that "free" claims, therefore, should be based on the amount of nutrient per labeled serving rather than per RACC.

The agency agrees that because of the unique nature of the word "free," i.e., that there is none of the nutrient in the food, the perception and expectations created in consumers' minds by the use of the word, in the situations cited in the comments, would be in conflict with a nutrient value other than zero in the nutrition information. Such declarations could be confusing to consumers, and this consequence is unintended. "Free" claims are different than claims such as "low," which do not create an expectation in consumers' minds that the food bearing the claim will possess a specfic amount of the nutrient in question.

Consequently, FDA has reconsidered this aspect of the final rule. Based on the considerations discussed above as well as those of justice and the public interest, FDA has decided that to present misleading and confusing labeling when "free" is used, it will include in the final rule the requirement for "free" claims that it proposed in the November 27, 1991, document that the determination of whether a product is free of a nutrient be based on the value of the nutrient per RACC and per labeled serving. Moreover, this change in the requirements for "free" claims on individual foods eliminates an inconsistency with the requirements for "free" claims for meal-type products. Meal-type products must meet the required nutrient values on a per labeled serving basis, regardless of the size of the serving. Consequently, the agency is including this reuqirement for "free" claims in §§ 101.60(b)(1)(i), 101.60(c)(1)(i), 101.61(b)(1)(i),101.62(b)(1)(i), 101.62(c)(1)(i), 101.62(d)(1)(i)(A), and 101.62(d)(1)(ii)(A).

Per 50-g Criterion for Rehydrated Products

12. The determination as to whether a product can make a claim is based on the amount of nutrient in the product "as packaged." In the nutrient content claims final rule, the agency also established a requirement that products having a small RACC (30 g or less or 2 tablespoons or less) that bear certain claims, such as "low," must meet the nutrient values for the claim (e.g., 3 g of fat or less) per 50 g of product as well as per RACC. However, the agency provided that for dehydrated products that typically must be rehydrated with water before consumption, the 50 g criterion refers to the "as prepared" form. In the nutrient content claims final rule, FDA stated that this provision would make the basis of the claim for these products consistent with the nutrient values in nutrition labeling which are based on the amount of product customarily consumed. The agency stated that such a requirement for foods that are reconstituted with water is appropriate because water generally adds a negligible amount of additional nutrients to the "as packaged" form of the product, although it does increase the weight of the dehydrated food.

One comment requested that this exception to the per 50 g criterion be extended to products that are reconstituted with diluents other than water that contain a negligible amount of nutrients such as vinegar. The comment suggested that this modification would be consistent with the intent of the final regulation and would assure that dehydrated foods are not forced to meet a more rigid standard than equivalent amounts of the regular product because the per 50 g criterion was being applied to a more nutrient dense form of the food. The comment maintained that to not allow reconstitution of products with such diluents when determining compliance with the per 50 g criterion would have the unintended effect of prohibiting claims on certain dehydrated products when the regular version of the product would qualify for the claim. The comments maintained that when such products are reconstituted in whole or part with certain diluents other than water, they have similar nutrient profiles compared to regular versions of the same foods because, on a per serving basis, the diluent makes an insignificant contribution to the nutrient content of the food.

In response to this comment, the agency has reconsidered this aspect of the final rule. Although the agency still believes that it is appropriate to base all claims on the amount of nutrient in the "as packaged" form, the agency agrees that where a RACC of the diluent used to reconstitute a product contributes insignificant amounts of nutrients, the difference in nutrient profiles between the "as packaged" and the "as prepared" versions of the food bearing the claim would be insignificant when equivalent portions of the food are compared.

Therefore, the agency is modifying the regulations to provide that foods that must be reconstituted with a diluent that has an insignificant amount of all nutrients per RACC may make claims based on the reconstituted ("as prepared") version of the product. Insignificant amounts of nutrients (as defined in § 101.9(f)(1)) are the amounts that can be declared as zero in nutrition labeling, or, in the case of total carbohydrate, dietary fiber and protein, as less than 1 g. The agency has modified § 101.13(h) and the various affected provisions in part 101 subpart D (e.g., §§ 101.60(b)(2)(i)(B) and 101.62(d)(2)(i)) to reflect this change.

Light in Sodium

13. In the final rule, the agency provided for use of the terms "light" and "light in sodium" when the amount of sodium in a food has been reduced by at least 50 percent. The agency stated in § 101.56(c)(1)(i) that the term "light" or "lite" without further qualification could be used on a product for which the reference food contains 40 calories or less and 3 g of fat or less per RACC if the sodium content is reduced by 50 percent or more. The agency also provided in § 101.56(c)(2)(i) that the term "light in sodium" as a single term could be used on a product for which the reference food contains more than 40 calories or more than 3 g fat per RACC if it is reduced in sodium by 50 percent or more.

Inquiries to the agency have raised the question whether the manner in which the regulation was worded would preclude products whose sodium content has been reduced by 50 percent but whose reference food contains 40 calories or less and 3 g of fat or less, from using the term "light in sodium."

The agency did not intend to prohibit products that qualify for an unqualified "light" claim to express, in more explicit terms, the actual nature of the nutrient modification made to the food, such as "light in sodium," "light in fat," or "light in calories." Therefore, the agency sees no problem with "low calorie," "low fat" foods that qualify for the term "light" because of a 50 percent reduction in sodium content using the term "light in sodium." Likewise, it would not consider that foods that qualify to use the unmodified term "light" because of their calorie or fat content are prohibited from using the more explicit descriptions, "light in fat" or "light in calories."

The agency does not believe that it is necessary to provide a change in the codified language that would specifically state this position. However, if FDA finds that labeling using the terms "light in sodium," "light in fat" or "light in calories," carries a problem, the agency would consider additional rulemaking in the future.

Fortification

In § 101.54(e) of the nutrient content claims final rule, the agency defined "more" as a relative claim used to describe the level of protein, vitamins, minerals, dietary fiber, or potassium in a food that contains at least 10 percent

more of the Daily Value (DV) per reference amount than an appropriate reference food. In addition, the agency stated that for "more" claims in which the claim is based on a nutrient that has been added to the food, the fortification must be in accordance with the policy on fortification of foods in § 104.20 (21 CFR 104.20). Finally, the agency determined that the terms "fortified," "enriched," and "added" have the same nutritional meaning as the term "more." The agency concluded that, except for standardized foods in which one of the terms was defined, all foods bearing these terms would have to comply with the same quantitative definition as the term "more." However, the agency differentiated appropriate reference foods for the various terms.

14. A number of comments raised concerns about the final rule for "more," stating that FDA had not adequately considered the consequences of these provisions. They stated that because the fortification policy does not include current nutrition information and is not all inclusive, certain rationally fortified foods would be prohibited from making "more" claims, as well as the "fortified" and "enriched" claims. For example, the fortification policy does not address the issue of fortification with fiber. Many comments stated that the fortification policy was intended to be a policy and not a regulation, that FDA had acknowledged that the policy was incomplete, and that at the time of the original publication of the fortification policy it was anticipated that additional bases for rational fortification could be included from time to time. Comments maintained that the agency has unintentionally endangered consumer awareness and consumption of fortified products, such as breakfast cereals, and; has outlined a final rule that will be confusing to consumers and that will inadvertently limit the rational fortification of foods.

One comment requested that the reference to § 104.20 be deleted from the regulation. Other comments suggested that in order to allow for nutrient content claims on fortified foods for beneficial nutrients that are not covered by the fortification policy, the agency should revise § 101.54 to state that fortification of the food must be in accordance with the policy on fortification of foods in § 104.20 or be otherwise rational.

The agency has considered these comments. It was not the agency's intention to preclude rational addition of a nutrient to a food simply because it was not explicitly addressed in the fortification policy in § 104.20. However, the agency is concerned that to delete any reference to the fortification policy could result in claims on foods with irrational or inappropriate fortifications. The agency recognizes that there are additions of nutrients to foods other than those specifically mentioned in § 104.20 that are rational. The agency notes that the fortification policy as specified in § 104.20, was developed at a time when less technology was available for food formulation and when food consumption behaviors and recommendations may have varied from those considered appropriate today. For example, the fortification policy does not address the issue of fortification of foods with fiber, and yet there may be a number of applications of fiber fortification that can be considered rational and appropriate. The same considerations may apply to fortification of foods with food components such as carotenes or the addition of vitamins and minerals for which RDI's are established, to breakfast cereals.

However, to make such changes would require amending § 101.54(e)(1)(ii) and § 101.54(e)(2)(ii) for individual foods and meal-type products, respectively, to specify that rational fortifications other than those described in § 104.20 may qualify for "more" claims. The agency believes that such changes are outside the scope of this proceeding and require additional rulemaking. The agency is, therefore, not making these changes at this time. FDA intends to initiate rulemaking to permit rational fortifications other than those described in § 104.20 to qualify for "more" claims.

15. Many comments were also concerned that the terms "enriched," "fortified," and "added" had been determined by FDA to be synonymous with "more." The comments suggested that the terms "enriched" and "fortified" had never been associated with the term "more," and that equating these terms with "more" is not discussed in the fortification policy. Further, they stated that the historical meaning for "fortified" has generally been that vitamins or minerals have been added during processing—not that the food is better than another food. They said that to prohibit rationally fortified products from using these terms is inconsistent with the valuable role that these foods play in the diet.

Other comments suggested that not all foods heretofore identified as fortified have an added 10 percent of the DV of the subject nutrients. Comments stated that in many instances, including various standards of identity, a level of fortification other than 10 percent of the DV of an added nutrient is specified as the level required for the food to bear the term "fortified." The comments stated that if foods that have rational additions of nutrients do not qualify for the "more" claim, and are, therefore, not able to specify that those nutrients have been "added" to the food or that the food is "fortified," consumers may not be able to distinguish traditionally fortified foods from nonfortified foods. The comments said that as a result, fewer foods, such as cereals and other grain products, will contain rational, beneficial fortifications. This effect, they concluded, would not be in the interest of public health, especially for children and the elderly.

Many comments suggested that the terms "enriched," "fortified," and "added" be permitted on foods containing a total of 10 percent of the relevant DV of the nutrient per reference amount (some of which is added) instead of only being permitted on foods that contain an additional 10 percent of the DV of the nutrient. This step would make the amount of nutrient in foods bearing these claims the same as that for "good source" claims. Other comments suggested that "enriched," "fortified," and "added" be deleted from the final rule.

The agency continues to be convinced that the terms "enriched," "fortified," and "added" are nutrient content claims that must be defined in order to be used. As stated in the nutrient content claims final rule (58 FR 2302 at 2364), the agency believes that the term "added" is related to the term "more" as the term "reduced" is related to the term "less." Both "added" and "reduced" describe differences in the level of a nutrient between two similar foods that result from a manipulation in the level of that nutrient in the food bearing the term. Just as the 1990 amendments required that "reduced" be defined because it is a nutrient content claim, the agency believes that the term "added" must also be defined, or it cannot be used. In addition, as reflected in the agency's fortification policy (§ 104.20(h)(3)) the terms "enriched" and "fortified" are synonymous with "added."

However, the agency recognizes that there are a variety of historical uses of the terms "fortified" and "enriched" to which FDA has not objected even though the food did not bear an additional 10 percent of the DV of a nutrient compared to an appropriate reference food. The terms have come to mean that some level of nutrient was added to a food beyond the level of the nutrient that the particular product would have had were it not fortified or

enriched. Therefore, the agency continues to believe that the terms "added," "enriched," and "fortified" signal a difference in a food either compared to a similar food or compared to itself without the addition of the nutrient. However, unlike "reduced," the unfortified food is often not marketed because of the recognized nutritional benefits that the fortified product has over the unfortified version of the food. Therefore, the agency considers that even though the unfortified version of a food is not marketed, it is the appropriate reference food.

In addition, as discussed in the nutrient content claims proposal (56 FR 60421 at 60453), the agency continues to believe that, consistent with the longstanding provision in § 101.9(c)(7)(v), "No claim may be made that a food is nutritionally superior to another food unless it contains at least 10 percent more of the [Reference Daily Intake (RDI) or Daily Reference Value (DRV)] of the claimed nutrient per serving (portion)." This provision was carried through in the July 19, 1990 mandatory nutrition labeling proposal (55 FR 29487), and the agency retained the concept in the definition for "more," i.e., that a food must contain at least 10 percent more of the RDI for vitamins or minerals or of the DRV for protein, dietary fiber, or potassium before a comparative claim using the term "more" may be used. The agency went on to explain that at least a 10 percent difference relative to the RDI or DRV is necessary before consumers can be assured that there is truly a difference in the foods being compared. It further said that this finding is consistent with the agency's proposed definition of "[good] source" which the agency ultimately adopted (58 FR 2302 at 2361) and which requires that a nutrient must be present in a food at a level of at least 10 percent of the RDI or DRV before the food can be designated as a "[good] source" of the nutrient.

Therefore, the agency continues to believe that "enriched," "fortified," and "added" appropriately have the same quantitative definitions as the term "more," and that for a food to bear the terms, there must be a 10 percent difference in the amount of nutrient in the labeled food and the reference food. Consequently, the agency is not changing the definition for "more" or its related terms, "enriched," "fortified," and "added."

However, the agency recognizes that the terms "enriched," "fortified," and "added" have historically been used to signal that a nutrient has been added to a food. The agency tentatively considers that it would be appropriate to except from this 10 percent added requirement, the limited circumstances in which the use of the terms "'fortified," "enriched," and "added" have traditionally been used to signal that, through the rational addition of a nutrient, a food contains a significant amount of the specified nutrient, as well as those limited circumstances in which fortifications have been sanctioned by recognized, authoritative scientific bodies or nutrition based organizations e.g., the National Academy of Sciences, or the Women, Infants and Children Program (WIC) of the U.S. Department of Agriculture (USDA). However, to permit a food to be labeled with the terms "added," "fortified," or "enriched" in such circumstances would require additional rulemaking. Such exceptions to the 10 percent added requirement raise significant questions that are beyond the scope of this proceeding. Consequently, the agency is not making these changes at this time. As soon as practicable, FDA intends to initiate rulemaking to permit such fortifications.

The agency notes that section 403(r)(5)(C) of the act exempts claims (e.g., "fortified" and "enriched") that are required by a standard of identity from compliance with the definitions established in part 101, subpart D.

16. Comments requested that the referral statement requirement be eliminated when the terms "fortified," "enriched," and "added" are part of the statement of identity. Other comments requested that the accompanying information not be required because it could be cumbersome and confusing, especially when a wide variety of nutrients are added to a food.

The agency cannot excuse a food that bears a claim, even in the statement of identity, from carrying the referral statement because that statement is required by the statute (section 403(r)(2)(B) of the act). However, identification of the reference food and the information on the difference between the labeled food and the reference food are not specifically required by the statute. In the proposal (56 FR 60421 at 60445), the agency stated that it was necessary to identify the reference food because the amount of a nutrient in a food product, e.g., potato chips, may vary widely. To not provide this information would be to not provide a fact that was material to the understanding of the claim. FDA advises that because the terms "fortified," "enriched," and "added" imply that specific nutrients are added to a specific food, i.e., the unfortified version of the food itself, and because these foods often do not exist in their unfortified form, explicit identification of the reference food does not appear to be necessary because it would not significantly contribute to the understanding of the claim. However, the agency also recognizes that as written, the regulations require identification of the reference. Thus, FDA intends to address this issue in the rulemaking it will initiate on the use of "fortified."

Saturated Fat Free Claims; Second Criterion

17. In the nutrient content claims final rule, the agency added a second criterion for saturated fat free claims, i.e., that the level of *trans* fatty acid not exceed 1 percent of the total fat. This criterion was added because there is increasing scientific evidence that suggests that *trans* fatty acid acts in a similar manner to saturated fat with respect to raising serum cholesterol and, therefore, should be controlled. The agency stated that it would be misleading for products that were labeled "saturated fat free" to contain measurable amounts of *trans* fatty acid because consumers would expect such products to be "free" of components that significantly raise serum cholesterol. The agency stated that 1 percent was the appropriate threshold because analytical methods for measuring *trans* fatty acid below that level are not reliable.

The comments stated that in foods where the total fat content is under 30 g per serving, the 1 percent criterion is 0.3 g. Furthermore, if a cracker or cookie having a serving size of 30 g contained 5 percent fat (1.5 g) it would only be allowed to have 0.015 g of *trans* fatty acids compared to 0.5 g of saturated fat. The comments claimed that these amounts (0.015 g or 0.3 g) cannot be adequately analyzed. The comments suggested that FDA should either eliminate the *trans* fatty acid criterion from the definition of saturated fat free, or that the agency should change it to less than 0.5 g *trans* fatty acid per RACC, an amount that is analyzable and that is consistent with the definition of "free" for fat and saturated fat.

The agency has considered these comments. It did not intend to include a criterion that would, in some cases, not be analyzable. The agency still believes that because there is evidence to suggest that *trans* fatty acid acts in the same manner as saturated fat with respect to serum cholesterol, the level of *trans* fatty acid in those products bearing a "saturated fat free" claim should be limited. However, the agency is persuaded by the comments that the 0.5 g *trans* fatty acid per RACC is an

appropriate second criterion for a saturated fat free claim because this value is analyzable, and it is the same as the value (i.e., a level of 0.5 g) as defined for "saturated fat free" and "fat free." As discussed in the nutrient content claims final rule (58 2302 at 2320), this level is near the reliable limit of detection for a nutrient in a food. In addition, to be consistent with the requirement that free claims be based on a per RACC and per labled serving basis, the agency is persuaded that the *trans* fatty acids should also be less than 0.5g per RACC and per labeled serving for these foods.

Therefore, the agency is modifying § 101.62(c)(1)(i) to require that for products bearing a "saturated fat free" claim, the food contain less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per reference amount customarily consumed or, in the case of a meal product or main dish product, that the product contain less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per labeled serving.

Lean

18. In the nutrient content claims final rule, FDA adopted the definition of "lean" of the Food Safety and Inspection Service's (FSIS), USDA. FSIS provided that the term "lean" may be used on the label and in labeling for a product that contains less than 10 g of fat, less than 4 g of saturated fat, and less than 95 milligrams of cholesterol per 100 g and per RACC for individual foods and per 100 g and per labeled serving size for meal-type products.

Comments supporting use of the terms "lean" on the labels of meat products and meal-type products persuaded FDA to include a provision in the nutrient content claims final rule consistent with that of FSIS to provide for use of the term "lean" to describe certain comparable foods regulated by FDA under the act. These foods include fishery products and certain types of meat products (e.g., bison, rabbit, and game meats) not regulated by USDA under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or in situations in which these products are not subject to USDA regulation.

At the same time, in the mandatory nutrition labeling final rule, FDA defined "saturated fat" (§ 101.9(c)(2)(i)) as the sum of all fatty acids containing no double bonds. This definition was somewhat different from the one that it had previously used, which included only lauric, myristic, palmitic, and stearic acids within the coverage of this term. As a result of the new definition, the number of saturated fatty acids increased, and the declared amount of saturated fatty acid for many foods will be increased.

One comment pointed out that, when FDA adopted the FSIS definitions of "lean," neither agency took into consideration the fact that at the same time the definition of saturated fat was also being changed. The comment contended that the change in definition of saturated fat had the unintended technical consequence that foods, particularly products that contain dairy-based ingredients, that would have qualified to bear the claim "lean" under the old definition may no longer qualify because of the change in the definition.

The agency acknowledges that it did not discuss the effects of adopting a changed definition for "saturated fat" on foods that would be eligible to bear "lean" on labels or in labeling in either the mandatory nutrition labeling final rule or in the nutrient content claims final rule.

FDA agrees that the modification to the saturated fat definition may possibly affect a product's ability to qualify for a "lean" claim which is an unintended effect. The agency has concluded that to avoid changing the universe of products that FSIS envisioned would qualify to bear the term "lean," it should have modified the "lean" definition to reflect the change in the saturated fat definition. To offset this unintended effect, FDA will join with FSIS and increase the saturated fat criterion for the "lean" definition from less than 4 g to 4.5 g or less.

FDA adopted the definition for "lean" and "extra lean" for products that it regulates in the nutrient content claims final rule. In the preamble to that regulation, the agency noted that the data used by FSIS to develop the definitions included nutrient contents of meat, poultry, and fish. Having decided to adopt FSIS' revision to the saturated fat criterion for "lean," FDA has reconsidered both definitions and is now less certain than previously that the definition for "lean," and possibly also "extra lean," developed from data on flesh foods is appropriate for food products that do not contain flesh foods as ingredients. The agency intends to reevaluate its decision and will consider additional rulemaking to reexamine how the terms "lean" and "extra lean" should apply to nonflesh foods.

Environmental Impact Statement

19. Under § 101.69(h), all petitions for nutrient content claims must include either a claim for a categorical exclusion under § 25.24 (21 CFR 25.24) or an environmental assessment under § 25.31 (21 CFR 25.31). However, this requirement was not specifically articulated in each of the individual petition format paragraphs. To be consistent with the petition formats for health claims in § 101.70(f) and food additives in § 171.1(c), and to help ensure that this required information is not omitted from food labeling petitions, the agency is specifically articulating this requirement in §§ 101.69(m)(1), (n)(1), and (o)(1).

B. Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term

In the **Federal Register** of January 6, 1993 (58 FR 2431), FDA adopted a new general definition and standard of identity in § 130.10 (21 CFR 130.10) for food named by the use of a nutrient content claim defined in part 101 (such as "fat free," "low calorie," or "light") in conjunction with a traditional standardized name (for example "reduced fat sour cream"). The purpose of the new standard was to assist consumers in maintaining healthy dietary practices by providing for modified versions of certain standardized foods that bear descriptive names that are meaningful to consumers.

The new standard requires, among other things, that the modified versions of the standardized foods: (1) Not be nutritionally inferior, (2) possess performance characteristics that are similar to those of the standardized food, (3) contain a significant amount of any mandatory ingredient required to be in the food simulated, and (4) be made from the same types of ingredients as permitted in the standard for the traditional food, except that ingredients may be used to improve texture, prevent syneresis, add flavor, extend shelf life, improve appearance, or add sweetness. However, any ingredients that are specifically prohibited by the standard for the traditional food may not be used in the modified version of that food. Section 130.10 provides for the use of water and fat analogs to replace fat and calories but specifically prohibits the replacement of required ingredients of standardized foods with ingredients from a different source. For example, vegetable oil may not replace milkfat in the manufacture of a modified version of sour cream.

20. The agency has received several inquiries regarding § 130.10(d)(3) which states that "an ingredient or a component of an ingredient that is specifically prohibited by the standard as defined in parts 131 through 169 of this chapter, shall not be added to a

substitute food" (58 FR 2431 at 2447). Comments claimed that this provision is inconsistent with the policy in § 130.10(b) that requires that nutrients be added to the new food to restore nutrient levels, so that the new food is not nutritionally inferior. One comment suggested that FDA amend § 130.10(d)(3) by adding an exception to allow for compliance with § 130.10(b). The comments contended that without such an exception, no nutritionally improved versions of important products such as peanut butter would be permitted, except when labeled as imitations.

The agency acknowledges that it is arguable that a conflict exists between §§ 130.10(b) and (d)(3). Any conflict that exists was unintended, and is a consequence of the agency's need to develop a general definition and standard of identity for modified foods that would require that such foods resemble the traditional food in as many ways as possible and yet enable these new foods to achieve a nutritional goal. One of the provisions deemed necessary in the general standard was to prohibit the use of substances in the manufacture of the modified food that are prohibited in the traditional standardized food. Unfortunately, it prevents the addition of vitamins in modified peanut butter products. Thus, such food may not be made under the general standard (§ 130.10).

In the case of peanut butter, the standard of identity in § 164.150 states that artificial flavorings, artificial sweeteners, chemical preservatives, vitamins, and color additives are not suitable ingredients for use in the food. According to testimony at the hearings and the resulting findings of fact (33 FR 10506 at 10509; July 24, 1968) when the standard of identity for peanut butter was adopted, addition of vitamins was thought to be unnecessary when peanut butter was consumed as part of a balanced diet.

FDA notes that peanut butter is the only case where a conflict exists with a prohibition of added nutrients and the need to add nutrients to make a modified version of food that is not nutritionally inferior to the traditional standardized food. FDA does not believe that it would be appropriate to make a technical modification of § 130.10 to allow the addition of nutrients to peanut butter as requested by the comments. Amendment of the standard of identity for peanut butter to delete the specific reference to the addition of vitamins in § 164.150(c) could accomplish the same result. This approach would allow the general standard to remain a generic standard applicable to any standardized food. Accordingly, FDA intends to initiate a rulemaking as soon as possible to remove the specific prohibition in the peanut butter standard regarding added vitamins.

In the interim, the agency notes that the common or usual name regulation for peanut spreads in 21 CFR 102.23 permits the manufacture and distribution of modified peanut butter products containing fewer calories and less fat under the name "peanut spread." The peanut spread common or usual name regulation also provides for the addition of nutrients, so that these products will not be nutritionally inferior to peanut butter and thus will not be required to be labeled with the term "imitation."

21. In § 130.10(d)(2) of the general standard, FDA required that "an ingredient or component of an ingredient that is specifically required by the standard (i.e., a mandatory ingredient) as defined in parts 131 through 169 of this chapter shall not be replaced or exchanged with a similar ingredient from another source unless the standard, as defined in parts 131 through 169 of this chapter, provides for the addition of such ingredient (e.g., vegetable oil shall not replace milkfat in light sour cream)."

One comment stated that § 130.10(d)(2) should be revised or deleted because this provision and the provision in § 130.1(d)(4) that requires that a significant amount of a mandatory ingredient be present in the modified food have the effect of making the entire regulation unworkable and unusable for a large portion of standardized foods. The comment stated that to make a reduced calorie version of a traditional standardized food, it may be necessary to replace the mandatory sugar ingredient with a noncaloric sweetening ingredient or the mandatory fat with a nonfat ingredient. The comment contended that unless such substitutions are permitted, the new version is impossible to make.

FDA does not believe that a modification of § 130.10(d)(2) is warranted and is not making the requested change. FDA believes that the comment overstated the problem. Water and fat analogs may be used to replace part of the fat required to be in the traditional standardized food, in accordance with § 101.30(d)(5), as long as their use is not prohibited by the standard. Thus, if the standard of identity for the traditional food requires that it contain vegetable oil, the modified reduced fat version of the food must include a significant amount of this ingredient under § 101.30(d)(4), as noted by the comment. This amount must be at least sufficient to achieve its technical effect in the food, e.g., contributing substantially to the food's rheological properties. However, the amount of oil can be significantly reduced over that traditionally used, and the rheological properties of the food achieved by the use of the other ingredient. The agency also recognized, that in making reduced fat versions of traditional standardized foods, manufacturers would need to add other ingredients such as water and fat analogs to counter the loss in creaminess or lubricity provided by the fat component, and it provided for such ingredients in § 101.30(d)(5) of the standard. In addition, as noted in the final rule, removal of the milkfat from ice cream would be acceptable under § 130.10 as long as the product retained its dairy character through the use of nonfat dairy ingredients. However, vegetable oil could not be used to replace the milkfat of traditional dairy products in the manufacture of "reduced cholesterol" or "no cholesterol" dairy products under § 130.10. Consumers consider ice cream to be made from milk products, and they may be misled if vegetable oil is used as a replacement for milkfat in making the modified version of this food.

With respect to the use of nonnutritive sweeteners such as saccharin in modified versions of standardized foods, the agency does not consider these products to be the traditional foods. FDA has established standards of identity for some products made to contain artificial sweeteners, e.g., artificially sweetened canned fruit cocktail in 21 CFR 145.136). Nonstandardized products may be made as special dietary foods under § 105.66 (21 CFR 105.66) and labeled accordingly. Alternatively, manufacturers may petition to amend the standards of identity for the traditional foods to allow for the use of nonnutritive sweeteners as well as nutritive carbohydrate sweeteners, where appropriate.

22. Section 130.10(d)(4) of the general definition and standard of identity requires that an ingredient that is specifically required by the standard of identity as defined in parts 131 through 169 of this chapter shall be present in the modified product in a significant amount. A significant amount of an ingredient is at least that amount that is required to achieve the technical effect of that ingredient in the food.

Some comments on § 130.10(d)(4) suggested that FDA should remove this paragraph, and others suggested that it should be amended because it adversely

affects manufacturers' ability to produce modified versions (e.g., nonfat, no cholesterol, or sodium free) of standardized foods. To allow manufacturers to make such nonfat or no cholesterol versions of products such as mayonnaise, one comment suggested that § 130.10(d)(4) be modified to read as follows:

An ingredient that is specifically required by the standard as defined in parts 130 through 169 of this chapter, shall be present in the product in a significant amount unless the defined nutrient content claim used as part of the name of the food is generally understood by consumers to be inconsistent with the presence of a significant amount of the ingredient (e.g., "fat free" is inconsistent with the use of vegetable oil or cream). A significant amount of an ingredient or component of an ingredient is at least that amount that is required to achieve the technical effect of that ingredient in the food.

FDA does not agree that removal or modification of § 130.10(d)(4) is necessary. FDA notes that this provision was included in § 130.10 to help to ensure that the modified product made under this standard would not deviate so far from the traditional standardized food as to be misleading to consumers. In addition to requiring that the new food possess similar performance characteristics as the traditional food, i.e., physical properties, flavor characteristics, functional properties, and shelf life, FDA required that ingredients mandated to be present in a food by a standard of identity must also be present in the modified food, and that no ingredients prohibited from use in the standardized food be used.

As stated in the final rule (58 FR 2431 at 2433), the agency believes that consumers expect that a product such as "light mayonnaise" would contain a significant amount of vegetable oil and egg yolk because these ingredients are required to be present in regular mayonnaise. These ingredients are also designated in recipes in cookbooks for making mayonnaise. FDA continues to believe that this provision is necessary to promote honesty and fair dealing in the interest of consumers because it will ensure that a § 130.10 food will bear an appropriate relationship to the traditional standardized food.

FDA acknowledges that some manufacturers may wish to make "nonfat" or "no cholesterol" versions of foods for which standards of identity require that the food contain a certain level of vegetable oil or animal fat, and that they will be prohibited from doing so under § 130.10. However, the agency points out that such foods may be marketed with appropriate labeling. For example, products made to simulate mayonnaise that contain no fat may be labeled with terms such as "mayonnaise dressing," "imitation mayonnaise," or other such name that is not misleading. In the case of products simulating margarine products, but containing no fat or oil ingredient, the term "spread" may be used. In each instance, if the standardized term is used in conjunction with a term such as dressing or spread, the agency would expect that the characteristics of the resulting food would be similar to those of the standardized food so as not to be misleading to consumers.

The agency is also taking this opportunity to modify the provisions for nutrient content claim petitions to correct an editorial error that appeared in the final rule of January 6, 1993. Section 101.69(c) provides that an original petition for a nutrient content claim should be submitted to the agency along with one copy of the petition or a computer readable disk containing the petition. The format provisions for the various types of nutrient content petitions, however, refer to the petition as being in quadruplicate. The amendments below remove "in quadruplicate" from each of the format sections.

III. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical amendments to labeling of food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354). The amendments are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The changes in this document are technical in nature and do not affect the overall intent of the regulation.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.2 is amended by revising paragraphs (b) and (f) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(b) All information required to appear on the label of any package of food pursuant to §§ 101.4, 101.5, 101.8, 101.9, 101.13, 101.17, subpart D of part 101, and part 105 of this chapter shall appear either on the principal display panel or on the information panel, unless otherwise specified by regulations in this chapter.

* * * * *

(f) If the label of any package of food is too small to accommodate all of the information required by §§ 101.4, 101.5, 101.8, 101.9, 101.13, 101.17, subpart D of part 101, and part 105 of this chapter, the Commissioner may establish by regulation an acceptable alternative method of disseminating such information to the public, e.g., a type size smaller than one-sixteenth inch in height, or labeling attached to or inserted in the package or available at the point of purchase. A petition requesting such a regulation, as an amendment to this paragraph shall be submitted pursuant to part 10 of this chapter.

3. Section 101.13, effective May 8, 1994, is amended by adding new paragraph (b)(4); by revising paragraphs (d)(2) and (f), the introductory text of paragraph (g), paragraph (g)(1), the parenthetical phrase in paragraph (h)(1); and paragraphs (i)(2), (j)(1)(ii)(B), (l)(1)(ii) introductory text, (m)(1)(ii) introductory text, and (q)(2) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(b) * * *

(4) Reasonable variations in the spelling of the terms defined in part 101 and their synonyms are permitted

provided these variations are not misleading (e.g., "hi" or "lo").

* * * * *

(d) * * *

(2) This disclaimer shall be in easily legible print or type and in a size no less than that required by § 101.105(i) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch, unless the package complies with § 101.2(c)(5), in which case the disclaimer may be in type of not less than one thirty-second of an inch.

* * * * *

(f) A nutrient content claim shall be in type size no larger than two times the statement of identity and shall not be unduly prominent in type style compared to the statement of identity.

(g) The label or labeling of a food for which a nutrient content claim is made shall contain prominently and in immediate proximity to such claim, the following referral statement: "See _____ for nutrition information" with the blank filled in with the identity of the panel on which nutrition labeling is located, except that when such a claim appears on the panel that bears nutrition information the referral statement may be omitted.

(1) The referral statement "See [*appropriate panel*] for nutrition information" shall be in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, and in a size no less than that required by § 101.105(i) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch, unless the package complies with § 101.2(c)(5), in which case the referral statement may be in type of not less than one thirty-second of an inch.

* * * * *

(h) * * *

(1) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form) * * *

* * * * *

(i) * * *

(2) The use of the statement on the food implicitly characterizes the level of the nutrient in the food and is not consistent with such a definition, but the label carries a disclaimer adjacent to the statement that the food is not "low" in or a "good source" of the nutrient, such as "only 200 mg sodium per serving, not a low sodium food." The disclaimer must be in easily legible print or type and in a size no less than that required by § 101.105(i) for the net quantity of contents statement except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch unless the package complies with § 101.2(c)(5), in which case the disclaimer may be in type of not less less than one thirty-second of an inch, or

* * * * *

(j) * * *

(1) * * *

(ii) * * *

(B) For relative claims other than "light," including "less" and "more" claims, the reference food may be the same as that provided for "light" in paragraph (j)(1)(ii)(A) of this section, or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name. The nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product shall be either the values declared in nutrition labeling or the actual nutrient values, provided that the resulting label is internally consistent to (i.e., that the values stated in the nutrition information, the nutrient values in the accompanying information and the declaration of the percentage of nutrient by which the food has been modified are consistent and will not cause consumer confusion when compared), and that the actual modification is at least equal to the percentage specified in the definition of the claim.

* * * * *

(l) * * *

(1) * * *

(ii) Containing not less than three 40-g portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section.

* * * * *

(m) * * *

(1) * * *

(ii) Containing not less than 40 g of food, or combinations of foods, from each of at least two of the following four food groups, except as noted in paragraph (m)(1)(ii)(E) of this section.

* * * * *

(q) * * *

(2) A soft drink that used the term "diet" as part of its brand name before October 25, 1989, and whose use of that term was in compliance with § 105.66 of this chapter as that regulation appeared in the Code of Federal Regulations on that date, may continue to use that term as part of its brand name, provided that its use of the term is not false or misleading under section 403(a) of the act. Such claims are exempt from the requirements of section 403(r)(2) of the act (e.g., the referral statement also required by § 101.13(g) and the disclosure statement also required by § 101.13(h)). Soft drinks marketed after October 25, 1989, may use the term "diet" provided they are in compliance with the current § 105.66 of this chapter and the requirements of § 101.13.

* * * * *

4. Section 101.60 is amended by revising the introductory text of paragraph (a), paragraph (b)(1)(i), and the parenthetical phrase in paragraph (b)(2)(i)(B) and paragraph (c)(1)(i) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

(a) *General requirements.* A claim about the calorie or sugar content of a food may only be made on the label or in the labeling of a food if:

* * * * *

(b) * * *

(1) * * *

(i) The food contains less than 5 calories per reference amount customarily consumed and per labeled serving.

* * * * *

(2) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form) * * *

* * * * *

(c) * * *

(1) * * *

(i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii), per reference amount customarily consumed and per labeled serving or, in the case of a meal product or main dish

product, less than 0.5 g of sugars per labeled serving; and

* * * * *

5. Section 101.61 is amended by revising the introductory text of paragraph (a), paragraph (b)(1)(i) and the parenthetical phrase in paragraphs (b)(2)(i)(B) and (b)(4)(i)(B) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

(a) *General requirements.* A claim about the level of sodium or salt in a food may only be made on the label or in the labeling of the food if:

(b) * * *

(1) * * *

(i) The food contains less than 5 milligrams (mg) of sodium per reference amount customarily consumed and per labeled serving or, in the case of a meal product or a main dish product, less than 5 mg of sodium per labeled serving; and

* * * * *

(2) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50-g criterion refers to the "as prepared" form) * * *

* * * * *

(4) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50-g criterion refers to the "as prepared" form) * * *

* * * * *

6. Section 101.62 is amended by revising paragraph (b)(1)(i), the parenthetical phrase in paragraph (b)(2)(i)(B), paragraph (c)(1)(i), the parenthetical phrase in the introductory text of paragraph (d)(1)(i), paragraph (d)(1)(i)(A), the parenthetical phrase in the introductory text of paragraph (d)(1)(ii), paragraph (d)(1)(ii)(A) and the parenthetical phrase in the introductory text of paragraph (d)(2)(ii), paragraph (d)(2)(ii)(A), the introductory text of paragraph (d)(2)(iv), (d)(2)(iv)(A), the introductory texts of paragraphs (d)(4)(i) and (d)(4)(ii), and paragraphs (e)(1) and (e)(2) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * *

(1) * * *

(i) The food contains less than 0.5 gram (g) of fat per reference amount customarily consumed and per labeled serving or, in the case of a meal product or main dish product, less than 0.5 g of fat per labeled serving; and

* * * * *

(2) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(c) * * *

(1) * * *

(i) The food contains less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per reference amount customarily consumed and per labeled serving, or in the case of a meal product or main dish product, less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per labeled serving; and

* * * * *

(d) * * *

(1) * * *

(i) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) The food contains less than 2 mg of cholesterol per reference amount customarily consumed and per labeling serving or, in the case of a meal product or main dish product, less than 2 mg of cholesterol per labeled serving; and

* * * * *

(ii) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) The food contains less than 2 mg of cholesterol per reference amount customarily consumed and per labeling serving or, in the case of a meal product or main dish product, less than 2 mg of cholesterol per labeled serving; and

* * * * *

(2) * * *

(ii) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(iv) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(4) * * *

(i) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(ii) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(e) *"Lean" and "extra Lean" claims.* (1) The term "lean" may be used on the label or in labeling of foods except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) provided that the food is a seafood or game meat product and as packaged contains less than 10 g total fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g;

(2) The term defined in paragraph (e)(1) of this section may be used on the label or in the labeling of meal products as defined in § 101.13(l) or main dish products as defined in § 101.13(m) provided that the food contains less than 10 g total fat, 4.5 g or less saturated

fat, and less than 95 mg cholesterol per 100 g and per labeled serving;

* * * * *

7. Section 101.69 is amended in paragraphs (m)(1), (n)(1), and (o)(1) by removing ", in quadruplicate," from the second paragraph in the letter, and by adding a new paragraph "E." to paragraph (m)(1), and a new paragraph "C." to paragraphs (n)(1) and (o)(1) before the phrase "Yours very truly," to read as follows:

§ 101.69 Petitions for nutrient content claims.

* * * * *

(m) * * *

(1) * * *

E. The petitioner is required to submit either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

* * * * *

(n) * * *

(1) * * *

C. The petitioner is required to submit either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

* * * * *

(o) * * *

(1) * * *

C. The petitioner is required to submit either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

Dated: August 10, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19610 Filed 8–12–93; 8:45 am]

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Food and Drug Administration

21 CFR Parts 5, 101, 105, and 130

[Docket Nos. 90N–0134 et al.]

RIN 0905–AD08 and 0905–AB68

Food Labeling: Establishment of Date of Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying the date of applicability of the mandatory nutrition labeling and nutrient content claims provisions of the Federal Food, Drug, and Cosmetic Act (the act), which were added by the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). Although the date, May 8, 1994, remains the same, under this modification it will apply to all food products labeled on or after May 8, 1994, rather than to all food products initially introduced into interstate commerce on or after that date. This action is in accordance with section 10(a)(3)(B) of the 1990 amendments, which allows the Secretary of Health and Human Services (the Secretary) (and by delegation, FDA) to delay, for up to 1 year, the date on which FDA will enforce any section if undue economic hardship would result.

DATES: FDA will apply section 403(q) and 403(r)(2) of the act and the regulations that implement this section of the act (21 CFR 101.9 implements section 403(q) except 403(q)(4) of the act; 21 CFR 101.13, subpart D of 21 CFR part 101, and 21 CFR 130.10 implement section 403(r)(2)) on May 8, 1994, for all products labeled on or after that date.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403(q) (nutrition labeling) and 403(r)(2) (nutrient content claims) of the act are effective May 8, 1993. However, under section 10(a)(3)(B) of the 1990 amendments, the Secretary may delay the application of that section of the act for up to 1 year if it is found that compliance with it by that date would cause an undue economic hardship. On January 6, 1993, in a final rule entitled "Food Labeling: Establishment of a Date of Application" (58 FR 2070) (hereinafter referred to as "the date of application final rule"), FDA made this finding and announced that it would delay application of those sections until May 8, 1994, at which time all foods introduced into interstate commerce would have to comply.

Although the 1990 amendments require that regulations implementing section 403(q) and 403(r)(2) of the act be promulgated 24 months after the date of their passage (see sections 2(b)(2) and 3(b)(2) of the 1990 amendments), they are silent as to when they are to be effective. For consistency of implementation, FDA made the regulations implementing these sections of the act effective on their date of applicability, that is, May 8, 1994.

The agency advised that compliance could begin immediately with these regulations, which include: (1) Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Labeling (Docket Nos. 90N–0135, 91N–0162, 78P–0091, 87P–0194/CP, and 90P–0052) (58 FR 2079); (2) Food Labeling: Reference Daily Intakes and Daily Reference Values (Docket No. 90N–0134) (58 FR 2206); (3) Food Labeling; Serving Sizes (Docket No. 90N–0165) (58 FR 2229); (4) Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food (Docket Nos. 91N–0384 and 84N–0153) (58 FR 2302); (5) Food Labeling; Use of Nutrient Content Claims for Butter (Docket No. 91N–0344) (58 FR 2448); (6) Food Labeling; Label Statements on Foods for Special Dietary Use (Docket No. 91N–384L) (58 FR 2427); and (7) Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term (Docket No. 91N–0317 et al.) (58 FR 2431). The agency stated, however, that "[A]ll products initially introduced into interstate commerce on or after May 8, 1994, shall comply" with the requirements of these final rules.

II. Technical Issue Comments

In the **Federal Register** of January 6, 1993 (58 FR 2066), FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990: Opportunity for Comments" (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days, until February 5, 1993, for the submission of comments on technical matters or unintended technical consequences of specific provisions of the regulations. FDA advised that it was not interested in receiving comments that it had already considered, and thus it required that interested persons certify that their comments focused solely on the type of technical matters outlined by the agency. FDA further advised that if the comments identified any technical provisions of the final rules that the agency ultimately agreed should be changed, the agency would take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the date of application final rule, FDA received 12

letters from industry and industry associations that argued that even though the agency intended to delay the date that it would apply the final rules on nutrition labeling and nutrient content claims for a full year, the approach that the agency took in the date of applicability final rule would not have that effect. By linking the delay in application to the date that product was introduced into interstate commerce rather than the date the food is labeled, the comments argued, the agency would force firms to begin to apply the new labels well in advance of the date that FDA said that it expected compliance to begin.

The comments said that processed fruits, vegetables, fish, and other foods that are of a seasonal nature would be most directly affected by the agency's action with respect to the applicability date. The comments pointed out that these products are often labeled months before they are introduced into interstate commerce. For example, the comments pointed out that under the date of application final rule, seasonal products packed in the summer of 1993 would have to be labeled in accordance with the new rules because some of these products were intended to be introduced into interstate commerce after May 8, 1994. The comments argued that such a result would completely undercut the agency's purposes in delaying the applicability date of the final rule. One comment from a manufacturer of seasonal products noted that if this approach were adopted by FDA, at least 50 percent of its 1993 pack would bear the old label and those products not distributed by May 8, 1994, would either have to be destroyed or relabeled.

Other comments pointed out that the economic impact analysis was understated as to the cost the new labeling requirements would have on the food industry because the cost data submitted by industry had been based on the presumption that products labeled up through May 7, 1994, could continue to be sold.

Several comments argued that the language "All products initially introduced into interstate commerce on or after May 8, 1994, shall comply" is not consistent with the 1990 amendments or with the intent of Congress. These comments interpreted section 10(a)(2) of the 1990 amendments, which states that section 403(q) and 403(r) of the act shall not apply to food that was labeled before the effective date of the amendments made by sections 2 and 3 of the 1990 amendments, to mean that section 403(q) and 403(r)(2) of the act shall not apply to food labeled before the effective date of the implementing regulations, regardless of the effective date chosen by FDA. Moreover, some of the comments stated that the term "initially introduced into interstate commerce" is confusing (i.e., whether it applies to a product that has actually crossed a State line or has simply been identified for interstate shipment). These comments also expressed concern about the difficulty in determining when introduction into interstate commerce actually occurs and the use of the term for enforcement purposes. Depending on the interpretation, the comments noted that large manufacturers had an advantage over small firms because they could gain exemption for a product from the new labeling requirements by moving it before the effective date to an interstate warehouse for subsequent distribution, something that many smaller firms do not have the capacity to do. Thus, the comments argued that the term creates an "unlevel playing field" for the various food manufacturers.

All of the comments stated that applying the effective date to products labeled on or after May 8, 1994, would provide a more even-handed approach to the implementation of the new labeling requirements and also provide for more efficient enforcement.

The agency has carefully considered the issue raised by these comments. FDA does not agree that section 10(a)(2) of the 1990 amendments means that section 403(q) and 403(r)(2) of the act do not apply to food labeled before the effective date of the implementing regulations. While section 10(a)(2) of the 1990 amendments does state that section 403(q) and 403(r)(2) of the act are not to apply to food labeled before the effective dates of the amendments made by sections 2 and 3 of the 1990 amendments, section 10(a)(1)(A) and 10(a)(1)(B) of the 1990 amendments specify those dates. They state that the amendments made by sections 2 and 3 shall take effect 6 months after the date of promulgation of all final regulations required to implement section 403(q) and 403(r) of the act or, if such regulations are not promulgated, 6 months after the date proposed regulations are to be considered as such final regulations; that is, 6 months after November 8, 1992.

Therefore, the date on which the amendments made by sections 2 and 3 of the 1990 amendments took effect is May 8, 1993. The 1990 amendments do not provide for extending the effective date of these amendments. Section 10(a)(3)(B) states, however, that the Secretary may delay the application of section 403(q) and 403(r)(2) for no more than 1 year. Neither the 1990 amendments nor their legislative history state how the agency should implement such a delay. Moreover, as stated above, the 1990 amendments are silent as to the date that the regulations implementing section 403(q) and 403(r)(2) of the act are to be effective.

Traditionally, FDA has implemented the effective date of a statutory provision of a regulation, unless otherwise directed by law, by relating it to the initial introduction of a product into interstate commerce (e.g., see "Uniform Compliance Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors" (55 FR 276, January 4, 1990)) because the authority of the act extends to products shipped in interstate commerce. The agency took this traditional approach in the date of application final rule.

After review of the various comments, however, FDA has reconsidered whether to employ this approach in applying section 403(q) and 403(r)(2), using the principles set out in § 10.33 (21 CFR 10.33) as guidance. Based on the comments, FDA recognizes that applying section 403(q) and 403(r)(2) of the act to all foods introduced into interstate commerce after May 8, 1994, will not provide the full effect that FDA intended in delaying the application of these sections.

First, making compliance turn on the date that food enters interstate commerce will mean that large firms will have a greater opportunity to take advantage of the delay than small firms because small firms generally have more limited distribution systems. The delay in application of section 403(q) and 403(r)(2) of the act was intended, however, to provide relief, in large measure, to small firms. Thus, the "date introduced into interstate commerce" formulation of the date of application does not advance the purposes of the delay.

Basing the date of application on the date of labeling will result in a more equitable application of the regulations because it will mean that the date of application will turn simply on the date that the food is labeled and not on access to a distribution system. Thus small firms will have a greater opportunity to participate in the delay under such a formulation than under that provided in the date of application final rule.

Making the date of application turn on the date of labeling will also be easier to enforce than if it turned on the date of introduction into interstate commerce. A particular lot of a food

product may be introduced into interstate commerce on a series of dates over a period of time. Thus, a lot that bears proper labeling at the time that distribution begins may at some point in its life become misbranded, unless it is relabeled. Such a result would in no way help to ease the undue economic hardship that the delay in applicability was intended to address.

Finally, the agency recognizes that a change in the applicability date (and thus the date that the regulations are to be effective) will mean that all packers, including seasonal packers, will have the benefit of the full 1-year delay in the application of section 403(q) and 403(r)(2) of the act that the agency has determined appropriate under section 10(a)(3)(B) of the 1990 amendments (58 FR 2070 at 2075).

The agency acknowledges that a change in the definition of how the applicability date will be administered will result in some delay in the time that all products appearing on the grocery shelf will be labeled in complete conformance with the new regulations. However, FDA believes that the effects of this delay will have minimal impact in terms of either consumer confusion or public health consequences. The agency points out that products have already begun to appear in the marketplace with labels conforming to the new nutrition labeling requirements. The agency also points out that under either the "introduced into interstate commerce" or "labeled before" effective date formulation, there will be a period of time in which products labeled according to the two different regulatory requirements will be in the marketplace. These products will, primarily, be those with long shelf lives that are either introduced into interstate commerce or labeled just before the effective date. Therefore, under any possible scenario, there will be a transition period during which products labeled in conformance with the two different regulatory requirements will be in the marketplace simultaneously.

Consumers will have some time to become accustomed to this situation, and FDA food label education materials explain to consumers that two different labels will be on the market at the same time and provide instructions in how to distinguish the new label. Therefore, the additional incremental delay in new label appearance being introduced by this document should not result in any significant increase in potential consumer confusion. The agency also points out that the primary beneficiaries from this delay, that is, processed fruits, vegetables, fish, and other foods that are of a seasonal nature, will begin applying the new labels as the packing season of the summer of 1994 progresses and the new labels will appear in the market only a few months after the May 8, 1994, effective date.

Therefore, based on the public interest and consideration of justice, FDA has reconsidered the applicability date for section 403(q) and 403(r)(2) of the act and the effective date of the regulations implementing those provisions (§ 10.33(d)). Based on the factors discussed above, FDA has decided that it will apply that section of the act, and that the regulations implementing it will be effective, to all products that are labeled after May 8, 1994 (§ 10.33(d)). The term "labeled" means the date that the label is affixed to the product or product container.

III. Economic Impact

The agency agrees that the regulatory impact analysis (RIA) that it published in the **Federal Register** of January 6, 1993, did not consider the cost to industry caused by applying the effective date based on the date of introduction into interstate commerce (58 FR 2927, January 6, 1997). In reviewing the information submitted in response to the proposals and the RIA of November 27, 1991 (56 FR 60366 *et seq.*), the agency recognizes that the data and information submitted did not anticipate the manner in which the agency would apply the effective date for the regulations implementing section 403(q) and 403(r)(2) of the act. Although the technical issue comments contained only minor amounts of information and data concerning the costs of the application of the effective date, FDA has assessed the potential costs of the action being implemented in this final rule.

In the date of application final rule, the agency concluded, based on its review of available data and comments, that the costs of the overall food labeling reform initiative will be reduced by nearly one-half (a cost savings of approximately $700 million) by extending the date for compliance with the food labeling requirements to May 8, 1994. Further, the agency concluded that action will significantly alleviate the economic hardship that would otherwise result if section 403(q) and 403(r)(2) of the act were made applicable, as proposed, on May 8, 1993.

Technical issue comments to the date of application final rule expressed concern that the application of the May 8, 1994, effective date to products initially introduced into interstate commerce on or after May 8, 1994, was inconsistent with congressional intent, unfair to small business, and created a hardship for firms manufacturing foods of a seasonal nature. Only limited information was presented as to the economic costs that would occur because of the application of the effective date to the date of introduction into interstate commerce. Based on its review of this information and the technical issue comments, the agency finds that changing the application of the effective date so that it applies to the date of labeling of food products will result in the full reduction of costs that FDA projected. Based on the information presented in the technical issue comments, FDA believes that a major result of the modification of the application of the effective date will be to provide industry with greater flexibility in the scheduling of their steps to implement the requirements of FDA's labeling regulations. Although no information was presented that would enable the agency to assess the impact that modifying the application of the effective date would have on potential benefits from the food labeling reform initiative, the agency believes that the effect will be minimal.

IV. Environmental Impact

The agency previously considered the environmental effects of the action being taken in its final rules establishing requirements under the provisions of the 1990 amendments. As announced in the final rules for nutrition labeling (58 FR 2066 *et seq.*, January 6, 1993), the agency determined that, under 21 CFR 25.24(a)(8) and (a)(11), these actions are of a type that do not individually or cumulatively have a significant impact on the human environment. Therefore, neither and environmental assessment nor an environmental impact statement was required. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental assessment or environmental impact statement is not required.

Dated: August 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18888 Filed 8–12–93; 8:45 am]

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21 CFR Part 101

[Docket Nos. 85N-0061, 91N-0098, 91N-0099, and 91N-0100]

RIN 0905-AB67, 0905-AD05

Food Labeling; Health Claims: General Requirements; Fiber-Containing Fruits, Vegetables, and Grain Products and Cancer and Coronary Heart Disease; Fruits and Vegetables and Cancer; and Folic Acid and Neural Tube Defects; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations concerning the use of health claims in food. On January 6, 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments." The document gave interested persons an opportunity to comment on technical issues not raised in earlier comments pertaining to food labeling regulations on health claims. This document responds to technical comments that the agency received in response to that document and corrects inconsistencies and unintended technical consequences of those regulations.

EFFECTIVE DATE: These technical amendments are effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5916.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA published a final rule to adopt general requirements pertaining to: (1) The use of health claims that characterize the relationship of a substance to a disease or health-related condition on the labels and in labeling of foods in conventional food form, and (2) the content of petitions regarding the use of such health claims pertaining to specific substances in such food. This action was taken in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535) that bear on health claims for conventional foods. At the same time, the agency announced its decisions about health claims on 10 disease-nutrient relationships specified in the 1990 amendments.

In the **Federal Register** of April 1, 1993, FDA published corrections of typographical and editorial errors in its final rules implementing the 1990 amendments, including the regulations on general requirements for health claims for food (58 FR 17097), on folic acid and neural tube defects (58 FR 17099), and on dietary fiber and cardiovascular disease (58 FR 17100). The correction notices did not address comments on technical matters or technical unintended consequences of the final rules.

II. Technical Issue Comments

In the **Federal Register** of January 6, 1993 (58 FR 2066), FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (hereinafter referred to as "the implementation final rule"). The implementation final rule provided 30 days for interested persons to comment on technical issues arising in any of the final rules implementing the 1990 amendments. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters and to technical unintended consequences of specific provisions not raised in earlier comments. In order to ensure consideration of any comments, FDA directed interested persons to certify that their comments were so limited. FDA further advised that if the comments identified any technical provision of the final rules that FDA agrees should be changed, FDA would take action to modify that provision. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

After publication of the general requirements for health claims final rule and the 10 health claim final rules, FDA received approximately 150 submissions on these rules from industry, consumers, and other interested persons each containing one or more comments. FDA has determined that 22 of the 150 comments qualify in whole or part as comments on technical issues as described in the implementation final rule and is responding below to the specific technical issues that the comments raised. Those issues that do not qualify as technical issue comments, or are otherwise not relevant to this rulemaking, are not discussed below. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comment, the agency finds that further opportunity of public comment on them is unnecessary.

III. Technical Corrections

A. Section 101.14

In the final document on health claims general requirements (58 FR 2478), § 101.14(e)(6) (21 CFR 101.14(e)(6)) prohibits health claims on the label or labeling of a food in conventional food form unless the food contains 10 percent or more of the Reference Daily Intakes (RDI's) or Daily Reference Values (DRV's) for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

1. One comment stated that, in the preamble to the nutrient content claims final rule (58 FR 2302 at 2326), the agency indicated that the claim "useful only in not promoting tooth decay" is an unauthorized health claim, thus suggesting that a health claim petition should be submitted for such a statement. The comment noted, however, that virtually none of the sugar-free products on the market would qualify for a health claim based on the requirements of § 101.14(e)(6).

FDA acknowledges that certain food products that have been specially formulated relative to a specific disease condition such as dental caries may be determined to be appropriate foods to bear a health claim but be foods of limited nutritional value. Although not stated in the preamble to the final regulation on general requirements for health claims, it was the agency's intention that such situations be dealt with in the regulations authorizing specific health claims. That is, an exception to the general principle expressed in § 101.14(e)(6) could be granted by regulation, but limited to a specific health claim. Therefore, to clarify this, FDA is adding to § 101.14(e)(6) the phrase "* * * or where provided for in regulations in part 101, subpart E."

2. Comments received on § 101.14(e)(6) indicated concern about the phrase "prior to any nutrient addition." Some comments stated that FDA made it clear in the proposal that it was focusing on foods such as candies, soft drinks, and snack foods (56 FR 60537 at 60556 and 60557, November 27, 1991), and that the final regulation, because of its apparent comprehensiveness, is inconsistent with the intent expressed in the preamble. Several comments stated that this paragraph is very restrictive and will

prohibit health claims on certain breads and other products that are consistent with dietary guidelines for Americans. One comment requested clarification of the paragraph, asking which foods it applies to and the basis for precluding fortification of a food making a health claim to achieve a nutritional benefit which is incidental to the health claims benefit. The comment noted that the paragraph applies more broadly than explained in the preamble and may preclude health claims on much larger categories of foods than candies, soft drinks, and snacks. According to the comment, an unintended consequence of this rule may be the elimination from the diet of nutritionally important foods recommended by the U.S. Dietary Guidelines. The comment recommended that enriched, restored, and fortified foods should be excluded from the reach of this regulation. One comment stated that health claims should be based on appropriate fortification; otherwise, there is no incentive for industry to add important nutrients, such as calcium, to improve the nutritional quality of products or restore nutrients lost in processing. Many comments suggested that FDA needs a more flexible fortification policy. In particular, some comments noted that there is no scientific reason to distinguish between naturally present nutrients and those added pursuant to a policy of rational fortification. Some comments agreed with FDA that it is appropriate that foods bearing health claims should be those consistent with current dietary guidelines.

FDA considers the changes requested by the comments to be beyond the scope of this rulemaking. Interested persons who believe that § 101.14(e)(6) is scientifically inappropriate may petition the agency to revoke or amend the regulation.

The agency recognizes that the issues surrounding fortification—including what might be considered rational fortification with nutrients not addressed in FDA's fortification policy (21 CFR 104.20)—are complex. However, some of the comments misinterpret § 101.14(e)(6). With that regulation, FDA sought to prevent the fortification of food of little or no nutritional value for the sole purpose of qualifying that food for a health claim (58 FR 2478 at 2522). In the preamble to the final rule (58 FR 2522), FDA "stresse[d] that the exclusion of fortification pertains only to fortification to specifically meet the requirements of this provision and not to fortification of the food itself." A food that has traditionally been formulated in accordance with the fortification policy (or one that meets a standard of identity that includes fortification), and that, in that form, contains 10 percent or more of the RDI or DRV for vitamin A, vitamin, C, iron, calcium, protein, or fiber per reference amount customarily consumed, would not be precluded by § 101.14(e)(6) from being fortifed to qualify for a health claim.

The agency disagrees that an unintended consequence of this rule may be the elimination from the diet of nutritionally important foods recommended by the U.S. Dietary Guidelines. As stated in the preamble to the final rule, "Based on a review of the regulatory food composition data base, the agency notes that most foods consistent with dietary guidelines meet [the criterion in § 101.14(e)(6)]." (58 FR 2522).

B. Sections 101.76, 101.77, and 101.78

Section 101.76(c)(ii)(C) (21 CFR 101.76(c)(ii)(C)) specifies that a fiber-containing grain product, fruit, or vegetable bearing a health claim related to cancer and diets high in such foods must meet, without fortification, the nutrient content requirements of § 101.54 (21 CFR 101.54) for a "good source" of dietary fiber. Also, § 101.77(c)(ii)(C) (21 CFR 101.77(c)(ii)(C)) requires that such products contain, without fortification, at least 0.6 grams (g) of soluble fiber per reference amount customarily consumed when making a health claim relating diets high in such foods to a reduced risk of coronary heart disease. Additionally § 101.78(c)(ii)(C) (21 CFR 101.78(c)(ii)(C)) specifies that fruit and vegetable products bearing a health claim relating diets high in such foods to reduced risk of cancer must meet, without fortification, the nutrient content requirements of § 101.54 for a "good source" of at least one of the following: dietary fiber, vitamin A, or vitamin C.

3. Comments submitted to §§ 101.76 and 101.77 requested clarification of the term "without fortification" as used in these final regulations. One of the comments also requested confirmation that the use of fiber-containing ingredients in bakery products that already contain fiber does not constitute "fortification." Another comment stated that, in the agency's discussion of dietary fiber in its final rule on mandatory nutrition labeling, FDA equated "fortification" with "supplementation," a definition that connotes an addition to a fiber source so that the resulting level of fiber in that source exceeds the indigenous level (58 FR 2079 at 2096). The comment asked FDA to clarify that the combination of multiple grains in a food, each of which contains an indigenous level of fiber, is not "fortification" as the agency used the term in its final rule.

In developing the criteria for the health claims related to cancer and fiber-containing grain products, fruits, and vegetables, and to coronary heart disease and fiber-containing fruits, vegetables, and grain products, a prime consideration for the agency was that the scientific evidence supports health claims for foods and dietary patterns rather than for specific nutrients. Further, there is strong reason both for allowing claims only for foods high in fiber and for prohibiting claims if they give the impression that dietary fiber, as a single nutrient, is responsible for the benefit. This is based on the conclusion that, even where the scientific evidence is strongest, it is not possible to separate the effects of fiber from those of other components of the diet.

Thus, consistent with the scientific evidence, the agency limited these claims to those grain products, fruits, and vegetables containing a "good" source of dietary fiber per reference amount in the case of cancer-related health claims (58 FR 2537 at 2545 and 2622 at 2636) and to those fruits, vegetables, and grain products containing at least 0.6 g of soluble fiber per reference amount for claims related to coronary heart disease (58 FR 2552). The agency then addressed the issue of fiber as an ingredient as opposed to naturally occurring fiber. Both §§ 101.76 and 101.77 stipulate that foods must qualify for the claim based on their natural level of fiber. The agency indicated that the purpose of this requirement was to preclude the use of claims on foods that required fortification in order to meet the qualifying criteria (58 FR 2537 at 2545 and 2552 at 2574). The agency explained that this requirement is consistent with the scientific basis for the claim; that is, that grains, fruits, and vegetables in their native form correlate with the health effects. FDA further explained that, because there are not sufficient data that specifically identify dietary fiber, or particular components of fiber, as causal and because this nutrient is being used as a marker for the substance or substances in grain products, fruits, and vegetables, that provide the observed protective effect, it is the native composition of the foods that identifies their usefulness. The agency also noted that, at the same time, this requirement does not prohibit fortification of qualifying foods with dietary fiber, once the qualifying level has been met naturally.

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Therefore, FDA stipulated in the final rule that foods must meet the qualifying criteria for fiber content without fortification. The agency recognizes that this provision, which excludes fortified foods, may have prohibited claims on foods that could be determined to appropriately bear a health claim related to the specific health conditions. However, the provision is derived from the scientific evidence and from the standard established for determining the basis for health claims. It was the agency's clear intention to provide for this restriction in the final rule. To reevaluate the issue is beyond the scope of the technical corrections addressed in this document.

IV. Minor Clarifications to the Preambles to the Regulations

4. One comment stated that, under section VI.C. "Inappropriate Levels of Other Substances" in the preamble to the general requirements final regulation (58 FR 2478 at 2520), FDA incorrectly indicated that it did not receive any comments on the proposed regulation to prohibit claims for any food where a substance, other than one for which a disqualifying nutrient level is established, is present at an inappropriate level as determined in the specific provision authorizing the claim in part 101, subpart E. The comment noted that it had submitted a comment opposing this provision. The earlier comment stated that Congress gave the agency great flexibility to make exceptions to the disqualifying level requirements where an otherwise prohibited health claim would assist consumers in maintaining sound dietary practices. Further, the comment stated that the proposed approach would reintroduce an undesirable degree of inflexibility by barring health claims for foods that have levels of other substances not identified by Congress as creating special risks. The comment concluded that, if the agency adopts such an approach, it should be willing to grant exceptions to disqualification with respect to foods having inappropriate levels of these other substances.

FDA notes that the above comment was received and was inadvertently overlooked. The agency has now reviewed the comment, but concludes that it does not require a change in the final regulation. The agency has explained that § 101.14(e)(4) is intended to prevent health claims from appearing on foods that contain substances other than the substance that is the subject of the claim if any of those other substances, although not harmful in their own right, could interfere with the claimed effect on the risk of disease (56 FR 60555 through 60556, November 27, 1991; 58 FR 2520, January 6, 1993). It is not the agency's intent to apply § 101.14(e)(4) rigidly.

5. One comment stated that section 403(r) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)) is "limited to disease prevention (health) claims that relate to a 'nutrient.'" The comment made three points: (1) In § 101.14, FDA is exceeding the statutory scope of that specific provision to the extent that FDA interprets this section to refer to disease prevention claims that relate to food in general; (2) the agency is blurring the distinction between disease prevention claims for specific nutrients and dietary guidance for food in general; and (3) not all dietary guidance that relates food categories to disease prevention requires a specific regulation.

FDA disagrees with the comment's interpretation of section 403(r) of the act as applying to disease prevention claims. "Disease prevention" claims are not within the scope of the final health claim regulations. A product that is intended to prevent disease is a drug under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)).

FDA defined the term "health claim" in § 101.14(a)(1) as, in part, any claim on the label or in labeling of a food that characterizes the relationship of any substance to a disease or health-related condition. For the sake of clarity, the agency uses the term "dietary guidance" to refer to claims that do not contain both basic elements of a health claim (i.e., a substance and its relationship to a disease or health-related condition) (58 FR 2478 at 2487). The agency believes it adequately addressed the remaining issues raised in this comment in the preamble to the final rule see, e.g., 58 FR 2479 through 2480, and 2487.

6. One comment noted that, in section IV.B.4 of the preamble to the folic acid and neural tube defects final rule (58 FR 2606 at 2617), the agency stated that products containing 800 micrograms (µg) of folic acid were drugs. The comment stated that 800 µg of folic acid is the U.S. RDA for pregnant and lactating women.

The agency agrees that products containing 800 µg of folic acid are not necessarily drugs. Section 172.345 states that folic acid may be safely added to food specified for pregnant or lactating women for its vitamin property provided that the maximum daily ingestion will not exceed 8 milligrams. The agency intends to address the issue of folic acid further in future rulemaking.

V. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical amendments to the health claims regulations for food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354). The amendments are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.14 is amended by revising paragraph (e)(6) to read as follows:

§ 101.14 Health claims: general requirements.

* * * * *

(e) * * *

(6) Except for dietary supplements not in conventional food form or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19447 Filed 8–12–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 90N–0165

RIN 0905–AD08

Food Labeling; Serving Size; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making technical revisions to the regulations that established the general rules for declaring serving sizes as part of the nutrition label. In January 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons 30 days to comment on technical issues not raised in earlier comments pertaining to nutrition labeling. This document addresses the comments received and corrects unintended technical consequences of the final rule.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2229), FDA issued a final rule entitled "Food Labeling; Serving Sizes" (hereinafter referred to as "the serving size final rule"). The final rule amended the agency's nutrition labeling regulations to: (1) Define "serving size" as the amount of food customarily consumed per eating occasion, (2) establish reference amounts customarily consumed per eating occasion (reference amounts) for 139 food product categories, (3) provide procedures for using the reference amounts to determine serving sizes for use on product labels, (4) require the use of both common household and metric measures to declare serving sizes, (5) define "single-serving containers," (6) require that the use of claims be based on the reference amount, (7) permit the declaration of serving size in U.S. measures, and (8) permit the optional declaration of nutrient content per 100 grams (g) or 100 milliliters (mL).

II. Technical Issue Comments

In the same issue of the **Federal Register**, FDA issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters and to technical unintended consequences of specific provisions that they had not raised in earlier comments. To ensure consideration of any comments, FDA directed interested persons to certify that their comments were so limited. FDA further advised that if the comments identified any technical provisions of the final rules that the agency agrees should be amended, FDA would take action to do so. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality of these rules.

Following publication of the serving size final rule, FDA received 15 letters containing 1 or more comments, from industry, consumers, and other interested parties, and over 1,000 telephone calls and other communications on this document. Approximately 10 percent of these communications submitted technical issue comments or raised technical issues as described in the implementation final rule. FDA is responding below to the specific technical issues that the comments raised. Those issues that do not qualify as technical issue comments or are otherwise not relevant to this rule making are not discussed below. Issues that are not merely technical in nature should be the subject of petitions to the agency for further rulemaking. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comment, the agency finds that further opportunity for public comment on them is unnecessary.

III. Technical Corrections

1. One technical comment requested that § 101.9(b)(2)(i) (21 CFR 101.9(b)(2)(i) be further divided into paragraphs to make it easier to interpret. FDA acknowledges that the inclusion of a variety of specifications in one paragraph may be confusing and has therefore subdivided § 101.9(b)(2)(i). The agency has also reordered some of the information and made minor editorial changes in it to improve its comprehensibility. For example, in new § 101.9(b)(2)(i)(B), FDA has made it explicit that for products that are in discrete units that contain between 50 and 67 percent of the reference amount, the manufacturer may declare the serving size as either 1 or 2 units.

2. Several comments asked how to treat products made up of distinct and separate foods packaged together in the same container and intended to be consumed together.

In the mandatory nutrition labeling final rule ("Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079 at 2184)), FDA specified in § 101.9(h)(1) that when separately packaged ingredients are intended to be eaten at the same time, the nutrition information may be specified per serving for each component or, alternatively, as a composite value. This approach was inadvertently omitted in the serving size regulation, and thus no provision for these types of serving size declarations is available. Thus, FDA recognizes that it needs to address how to declare serving sizes for these products when the manufacturer chooses to list the nutrition information separately for each component.

Products that consist of two or more ingredients packaged together and presented as a single product include "complete" products, such as chow mein components in multiple cans and pizza mix with a prepared crust, and mixes and kits with separate packets that require the addition of water or other ingredients, such as macaroni and cheese mix (pasta and cheese packets), stir-fry kits (sauce, vegetables, rice, and noodles packets), cake mix kits (mix, filling, frosting, nuts, and fruit packets), and salad kits (dressing, croutons, grated cheese, and bacon bits packets). Also included among these types of products are products that are distinct and separate foods packaged together in the same container and intended to be consumed together (e.g., pancakes with syrup, chips and dip).

First, for a number of these products, the serving size can be expressed as the amount of the main ingredient plus proportioned minor ingredients based on the "reference amount for the combined product" (see § 101.12(f)). For example, the "reference amount for the combined product" calculated for a

package of 4 pancakes (220 g) and syrup (100 g) is 160 g (110 g pancakes plus 50 g syrup). The serving size for the composite product could be expressed as "2 pancakes with syrup (160 g)," and the serving size for each component could be expressed as "2 pancakes (110 g)" and either "syrup for 2 pancakes (50 g)" or "—— tbsp syrup (50 g)" if 50 g of syrup makes —— tbsp. The number of servings for this package would be "2." Therefore, FDA has revised §§ 101.9(b)(2)(i), (b)(2)(ii), and (b)(2)(iii) and added § 101.9(b)(2)(i)(H) to provide this option for serving sizes for products that consist of two or more foods that are packaged and presented to be consumed together. FDA has revised § 101.9(b)(5) to specifically allow this option in § 101.9(b)(5)(vii) rather than the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii).

However, because serving size declarations are to be on an "as packaged" basis, and they must relate to established reference amounts, another alternative is required when the various components are each best described using different measures (e.g., gram, cup, fluid ounce, fraction). This situation can be illustrated by the example of a macaroni and cheese product containing a package of dry macaroni and a pouch of cheese sauce. There is no clear indication as to the appropriate household measure for the composite "as packaged" serving size declaration.

FDA has determined that a workable option for declaring serving sizes for composite nutrition values for these products would be the use of ounces to reflect, on an "as packaged" basis, the entire contents of the combined package. For example, the reference amount for prepared macaroni and cheese is 1 cup. If a 12 ounce (oz) package (9 oz dry macaroni and 3 oz dry cheese mix) makes 3 cups of prepared macaroni and cheese, then the serving size for the composite product is 4 oz.

An ounce declaration, however, under § 101.9(b)(5)(iii), must be accompanied by an appropriate visual unit to assist consumers in conceptualizing the serving size. The visual unit of measure will be especially useful for products such as these because it can present a complicated array of information to the consumer in a readily understood way. Continuing with the macaroni and cheese example, the serving size for the composite product could be expressed as "4 oz (112 g/about 2/3 cup macaroni and 2 tbsp dry cheese mix)."

If the manufacturer lists the nutrition information separately for each component that makes up the finished food product, declaration in ounces is still an appropriate approach. Using the macaroni and cheese example, the serving size for each component could be expressed as "3 oz dry macaroni (84 g/about 2/3 cup)" and "1 oz dry cheese mix (28 g/about 2 tbsp)." Declaration in ounces thus allows consumers to sum the individual ounce portions, allows greater ease in comparison among similar products, and is consistent with the declarations used for these same products when a composite declaration is used.

Accordingly, FDA is adopting this approach as one alternative. The agency has included macaroni and cheese kits in § 101.9(b)(2)(iii) as an additional example of a nondiscrete bulk product, and in new § 101.9(b)(5)(vii), FDA has specified that ounces may be used to declare the serving size for products that consist of two or more distinct foods packaged and presented to be consumed together as an alternative to the options described above. The agency has also stated that the information may be provided for each component or as a composite.

3. In the final regulation (58 FR 2229 at 2292), FDA provided in § 101.9(b)(6) that single serving containers of products with large reference amounts (i.e., 100 g (or mL) or larger) may declare 1 or 2 servings per container if they contain more than 150 percent but less than 200 percent of the reference amount. This provision applies to products that are "packaged and sold individually."

Although not specifically mentioned in written comments received by the agency, in reviewing the document, FDA has become aware that the agency inadvertently omitted a similar provision in § 101.9(b)(2)(i) for products within multiserving packages, and this unintended technical inconsistency would allow individual units packaged and sold separately to be labeled as one or two servings while not permitting the same label declaration on the same product when sold as part of a multiserving package. Therefore, FDA is adding paragraph (E) to § 101.9(b)(2)(i) to permit products within multiserving packages to be declared as one or two servings if they have reference amounts of 100 g (or mL) or larger and contain more than 150 percent but less than 200 percent of the reference amount.

4. In § 101.9(b)(5), FDA established a hierarchy for expressing the serving size in household measures: (1) Cups, tablespoons, and teaspoons; (2) piece, slice, tray, jar, and fraction; and (3) ounces with a visual unit of measure. In the preamble to the final rule (58 FR 2229 at 2274 to 2275), FDA said that there is wide variability in the unit size of some products, such as seafood and pickles, which are usually sold and consumed as discrete individual units. The agency noted that this variability would make it very difficult to express the serving size as the number of discrete pieces, even though this declaration would be the appropriate one to use according to the hierarchal listing. Consequently, in the final rule, FDA revised section § 101.9(b)(2)(i) to state that the serving size for certain products in discrete units that naturally vary in size would be expressed as the number of ounces most closely approximating the reference amount. FDA noted that ounces is not appropriate for products such as fish sticks, because even though there is some variability, the manufacturer controls the unit size.

A number of comments reported difficulty in conforming the directions in § 101.9(b)(2)(i) with § 101.9(b)(5). The comments stated that it is unclear whether all products that naturally vary in size are to be declared in ounces, particularly because there are some products that naturally vary in size that can readily be measured in a cup, because the pieces of these products are very small (e.g., sunflower seeds and popcorn), or that are measurable by the piece, because the product is graded to provide substantial uniformity in size (e.g., olives). The comments asked about how the serving size for these types of products should be declared.

The agency's intent was that small bulk products that naturally vary in size, but that could be measured in cups, tablespoons, or pieces, would use the appropriate one of these units as the unit of measure in declaring serving size. FDA intended to allow products in discrete units with sufficient variability to make it difficult to use pieces as a serving size (e.g., pickles) to use ounce declarations in place of piece declarations.

To make the agency's intent clear, FDA has rearranged § 101.9(b)(2)(i) and included § 101.9(b)(2)(i)(G), to specify that: "The serving size for products that naturally vary in size (e.g., pickles, shellfish, whole fish, and fillet of fish) may be the amount in ounces that most closely approximates the reference amount for the product category." FDA cannot by regulation definitively describe all products that fall into this category. Therefore, it is incumbent on the manufacturer to determine whether an individual product naturally varies in size such that ounces would be the appropriate measure.

Some small bulk products that would seem to be measurable by cups, tablespoons, or pieces may be so

variable that such declaration becomes impractical. In such instances, an ounce measure may be the logical household measure. The manufacturer should discuss any such situations with FDA, and the agency will make a determination on a case by case basis under § 101.9(g)(9).

To conform § 101.9(b)(5) to this clarification, FDA has added § 101.9(b)(5)(vi) to provide appropriate units for these types of products and has revised § 101.9(b)(5) to specifically allow this option rather than the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii).

5. In its definition of products in discrete units (§ 101.9(b)(2)(i)), FDA included individually packaged products within multiserving packages. Several comments requested that 1 unit be the serving size for these products, and a few comments noted that the products could be sold individually as single-serving containers.

In considering these comments, FDA recognized that there is potential ambiguity between the rules provided in § 101.9(b)(6) for single-serving containers and those provided in § 101.9(b)(2)(i) for individually packaged products within multiserving containers. This ambiguity could produce inconsistent labeling on the inner and outer packaging of these products. For example, if labeled and sold individually, 10-g candy bars could be considered single-serving packages, and the serving size would be "1 candy bar." However, if several candy bars are packaged within a multiserving package, the serving size, when determined in accordance with § 101.9(b)(2)(i), is the number of whole units that most closely approximates the reference amount for the product category, 40 g. Thus the serving size for the multiserving package would be "4 candy bars," and a bag containing 40 candy bars would be labeled as "10 servings." If each of the candy bars in the multiserving packages is labeled as a single serving, the outer and inner labeling would have inconsistent nutrient values on a per serving basis.

The agency has determined that, when the individual units are completely and appropriately labeled as single-serving containers, one unit is the labeled serving size to be used on the multiserving container. This approach will mean that the inner and outer labeling values on these types of products will be consistent, and that the number of servings declared on the multiunit package will be equal to the number of units in the package. Accordingly, FDA has added § 101.9(b)(2)(i)(I) to provide for serving size declaration of 1 unit for products containing several individual single-serving containers that are fully labeled, and the agency has added § 101.9(b)(8)(iv) on the number of servings when a product contains such individually labeled containers. Both of these provisions require that each of the individual units bear all required labeling information, including nutrition labeling. To improve clarity, the agency has also divided paragraph (b)(8) into subparagraphs and made minor editorial changes.

Alternatively, the inner units may be labeled in accordance with § 101.9(j)(15)(ii) and (j)(15)(iii) with the statement, "This unit not labeled for retail sale." If the individual units do not bear complete labeling, the serving size for the product must be determined in accordance with the provisions for discrete units in § 101.9(b)(2)(i), and the number of servings per container shall be determined in accordance with § 101.9(b)(8)(i).

Finally, FDA acknowledges that there may be a level of product below which labeling an individual unit as 1 serving is grossly inconsistent with food consumption patterns and would be misleading. This would be the case, for example, if a 3-g candy bar were labeled as a single serving. The agency has no basis, however, upon which to determine a lower level for such serving size declaration and is unaware of blatant attempts to mislead consumers in this fashion. Furthermore, FDA believes that the cost of fully labeling individual units is such that there may be an economic limit to this practice. Nonetheless, the agency will monitor this practice in the marketplace as needed and will initiate rulemaking to establish a lower limit, if necessary.

6. Many comments expressed confusion about how to deal with products that require further preparation (e.g., cake mix, variety mix, pasta).

Products requiring further preparation were discussed in response to comment 23 in the preamble to the final rule (58 FR 2229 at 2238 to 2239). The agency confirmed that nutrition labeling for these products is required on an "as packaged" basis and provided an example for pancakes to illustrate how to generate a serving size for the "as packaged" product using the reference amount in the table for the ready-to-eat product.

In the pancake example, FDA directed the manufacturer to determine the quantity of the unprepared product required to make one reference amount for the prepared product and stated that this amount is the "reference amount for the unprepared product" (see § 101.12(c)) (21 CFR 101.12(c)). The manufacturer then determines the household measure closest to the "reference amount for the unprepared product" and uses it to express the serving size. In the pancake example, 40 g of pancake mix made 110 g of pancakes, the reference amount for pancakes. The weight of 1/3 cup of pancake mix was closer to 40 g than the weight of other possible fractional cup measures such as 1/4 or 1/2 cup. The agency stated that "[t]he serving size for this pancake mix will be about 1/3 cup (40 g)."

FDA has reexamined the serving size declaration for these types of products in deciding how to ease the confusion that many comments expressed. FDA recognized that use of the term "about" as part of the primary household measure declaration is not appropriate because it is inconsistent with the provisions of the Federal Food, Drug, and Cosmetic Act (the act) in that it makes the metric amount, rather than the amount in common household measure, the effective serving size. However, section 403(q)(1)(A)(i) of the act (21 U.S.C. 343(q)(1)(A)(i) states that the serving size is an amount declared in common household units. It is impossible to calculate the values for the various nutrients in a food if the serving is "about 1/3 cup."

Therefore, for products that require further preparation, the serving size will be the household measure that is closest to the "reference amount for the unprepared product" and will not include the word "about." In the pancake example, if the weight of 1/3 cup of pancake mix is closest to 40 g (the "reference amount for the unprepared product"), and if 1/3 cup of pancake mix weighs 42 g, the serving size for this pancake mix would be "1/3 cup (42 g)." FDA has incorporated pancake mix into the list of examples in § 101.9(b)(2)(iii) as an additional example of a nondiscrete bulk product to try to help eliminate the confusion asserted in the comments.

However, if this procedure is applied to products where the entire contents of the package is used to prepare one discrete unit, the approach results in unintended inconsistencies in terms of the number of servings per container. For example, if 480 g of cake mix makes 900 g of prepared cake, then 1/12 of the prepared cake (75 g) is the closest fraction to the 80 g reference amount for medium cakes under § 101.9(b)(2)(ii). The reference amount for the unprepared product is 40 g, 1/12 of the 480 g in the mix. If the household measure closest to 40 g is 1/3 cup (44

g), then using the procedure described previously, the serving size would be listed as "1/3 cup (44 g)," where 44 g of cake mix makes close to, but not exactly, 1/12 of a prepared cake. However, the number of servings for this product would be listed as "about 11" (480 g divided by 44 g equals 10.9), which would be inconsistent with reference amounts based on 1/12 of the unprepared and prepared products and would be confusing if the manufacturer voluntarily included a second column of nutrition information for 1/12 of a prepared cake.

To resolve this unintended inconsistency, FDA has determined that for products that require further preparation, where the entire contents of the package are used to prepare a large discrete unit usually divided for consumption (e.g., cake mix, pizza kit), the serving size is the amount of the unprepared product used to make the "reference amount for the unprepared product," determined in accordance with § 101.12(c). For these products, because the entire contents of the package is used at one time and can be considered to be a large discrete unit, the fraction of the box that makes the "reference amount for the unprepared product" is the most appropriate household measure. Thus, for example, because the entire box is used to make a cake, and because the serving size for the prepared food is 1/12 cake, the appropriate serving size for the unprepared product is 1/12 package.

When a fraction of a box is the primary household measure, FDA is encouraging manufacturers to include a visual unit of measure in the serving size declaration as additional assistance to consumers in understanding how much mix is used. For the cake mix example provided above, the serving size could be listed as "1/12 package (40 g/about 1/3 cup mix)." The second column of information could provide nutrition information on "1/12 prepared cake." The number of servings would be listed as "12" in both columns. These changes have been incorporated into § 101.9(b)(2)(ii), and § 101.9(b)(5)(v) has been added to provide that, in these circumstances, the fraction of the package is to be used to express the serving size. In addition, FDA has revised § 101.9(b)(5) to reflect the latter provision.

7. Comments stated that the rounding rules for tablespoon declarations resulted in confusing and inadvertent consequences for dry mixes and concentrated products. To illustrate the problem, the comments pointed out that approximately 1.5 tablespoons (tbsp) of ice tea mix is used to make 240 mL (one serving) of the prepared product, while the regulations provide for serving sizes in whole number increments of tablespoons for quantities less than 1/4 cup but greater then or equal to 1 tbsp. Thus 1.5 tbsp of ice tea mix would be rounded to "2 tablespoons (—— g)." This results in considerable inconsistency between the declaration of the serving size and the preparation instructions (about 33 percent) and could be potentially very confusing to the consumer.

FDA acknowledges that allowing for only whole numbers of tablespoons is a significant problem for concentrated products that require further preparation and, in particular, for beverages reconstituted with water. The agency inadvertently omitted consideration of the 1 to 2 tbsp range in the final rule. The agency has decided that given the nature of the products involved, the lack of a provision for fractional amounts between 1 and 2 tbsp is a significant omission. Therefore, FDA is modifying § 101.9(b)(5)(i) to allow use of the fractions 1/3, 1/2, and 2/3 tablespoons between 1 and 2 tbsp. Thus, for the example above, if 1.5 tbsp of ice tea mix makes 240 mL of beverage, the manufacturer could list the serving size as "1 1/2 tbsp (—— g)," which allows the manufacturer to more closely reflect the actual amount of product needed to prepare the final product in the nutrition information.

8. One comment noted that use of the term "about" is included in § 101.9(b)(5)(iii) for rounding ounces but was not included in the rest of the hierarchy (§ 101.9(b)(5)(i) and (ii)) for other household measures.

This statement was inadvertently left in the final rule. As discussed in comment 6 (section III of this document), use of the term "about" is inappropriate as part of the primary serving size declaration. Furthermore, this wording has been misinterpreted to mean that "about" should be used anytime the reference amount value is not an even multiple of 1 oz (28 g) or anytime half ounces are declared. It was the agency's intent to delete it. Consequently, FDA has removed the phrase "with rounding indicated by use of the term 'about' (e.g., about 2.5 oz)" from § 101.9(b)(5)(iii)).

9. Several comments noted that instructions in § 101.9(b)(2)(i) and (b)(5) for determining the appropriate household measure for single serving containers of beverages were ambiguous. The preamble to the final rule (58 FR 2229 at 2280) discussed the use of unit declaration for single servings (e.g. 1 can, 1 package), but the agency failed to include it in the codified provisions. Without this specification, some manufacturers could conclude that it would be most appropriate to follow § 101.9(b)(5) in which FDA establishes a hierarchy to be used for expressing label serving sizes beginning with cups, tablespoons, teaspoons, and fluid ounces. As an example, one comment asked whether single servings of liquids (such as milk, juice, and soda) are required to use "—— cups" rather than "1 can, box, or container" as the household measure, or whether the manufacturer could make a choice.

In § 101.9(b)(2)(i), FDA provided that the serving size for products in discrete units shall be the number of whole units that most closely approximates the reference amount. Thus, the serving sizes of individually packaged products within multiserving containers is the appropriate number of such products that supplies the reference amount. For example, because cans and boxes are discrete units, the serving size for soda in a six-pack would be "1 can" rather than "1 cup," and the serving size for small boxes of raisins would be "2 boxes" rather than "1/2 cup." Although § 101.9(b)(2)(i) specifies that the number of discrete units should be listed, the agency inadvertently failed to include provision for these products in the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii).

Thus, FDA is adding § 101.9(b)(5)(iv), which states that household units for serving sizes of single serving containers and individually packaged products within multiserving containers must be stated using a description of the container (e.g., can, box, package), and that the serving sizes of other discrete units must be stated using a description of the individual unit (e.g., piece, slice, cracker, bar).

10. A few comments noted that the conversion factors for ounces to grams and for fluid ounces to milliliters are different in the net contents declaration (§ 101.7(r), proposed rule for Metric Labeling Requirements (58 FR 29716 at 29725)) than in the serving size declaration (§ 101.9(b)(5)(iv), redesignated as § 101.9(b)(5)(viii)). Therefore, in cases where the net quantity of contents and the serving size refer to the same amount of product in the container, i.e. single-serving containers, two different values for the amount of product would appear on the label. For example, the net quantity of contents for a 12 fluid ounce (fl oz) can of soda would be 355 mL (12 fl oz x 29.5735 mL/fl oz), and the serving size for the same 12 fl oz can would be "1 can (360 mL)" (12 fl oz x 30 mL/fl oz). If a manufacturer opted to give the

metric equivalent for this single serving of soda, two discrepant values would appear on the label and could potentially cause consumer confusion.

This discrepancy is only a problem for single-serving containers where the net contents and the serving size refer to the same amount of product. The net contents declaration is always required to be on the label. A manufacturer is not required to declare the metric equivalent on single serving containers under § 101.9(b)(7). However, FDA has determined that if a manufacturer optionally declares the metric equivalent, the serving size declaration should agree with the net contents declaration. Therefore, the agency is making minor corrections to § 101.9(b)(7) to ensure that consistent information is provided to consumers. FDA has divided this section into subparagraphs and made minor editorial changes to improve clarity. The agency incorporated the provision for agreement between serving size and net quantity values into new § 101.9(b)(7)(i).

11. One comment noted that in § 101.9(b)(7) there are rules for rounding gram weights of household measures, but there are no rules for rounding milliliters for beverages and other liquids.

The absence of rounding rules for milliliters was unintended. FDA has revised § 101.9(b)(7)(ii) to correct this omission. When it is necessary to round the parenthetical milliliter equivalent of the household measure, such as for concentrated liquids, rules similar to those for grams shall apply. The milliliter equivalent shall be rounded to the nearest whole number except for quantities that are less than 5 mL. Milliliter amounts between 2 and 5 mL shall be rounded to the nearest 0.5 mL, and amounts less than 2 mL shall be expressed in 0.1-mL increments.

12. The agency received many comments stating that, for foods that are diluted or reconstituted with water (e.g., powdered beverages, canned soup) or prepared with water as the only added ingredient (e.g., dry soups, dry mixes), there are no provisions for indicating how much of the finished product is prepared using the specified amount of unprepared product. The comments noted that, although a second column is allowed to provide nutrition information for the "as prepared" form of the product, this listing would be unnecessary and needlessly repetitive because it would contain identical listings to those for the mandatory "as packaged" column. Furthermore, the extra space required for two columns would be prohibitive to many manufacturers because concentrated or dry products often come in small containers.

FDA did not intend to omit provisions that would allow for the declaration of additional information, useful to consumers, for those products for which the only added ingredient is water and the nutrient information is not substantially altered by preparation. FDA is therefore adding new § 101.9(b)(7)(v) to allow for a voluntary nonmisleading declaration that describes the amount of the finished product made from the stated serving size, for example "makes 1 cup prepared." This voluntary declaration is to be in parentheses at the end of the serving size declaration. It is to be used only for products that require the addition of water or another ingredient that contains insignificant amounts of nutrients in the amount added and that are prepared in such a way that there is no significant change to the nutrient profile.

13. Comments stated that the provisions for declaring the number of servings per container could be problematic for some individually packaged products containing at least 200 percent of the reference amount and packaged within multiserving packages. For example, if a package of microwave popcorn contains four inner packages that each make 3.2 servings, each inner package makes "about 3 servings," which in turn results in a total package content of about 12 servings (4 times 3). However, if all the popcorn is considered together, the total package makes 12.8 servings (4 times 3.2) and would be required to be labeled as "about 13 servings." Statements on the labeling that the individual inner packages each make "about 3 servings" but that the entire package makes "about 13 servings" are inconsistent and could cause consumer confusion. Furthermore, even if the inner packages were not labeled, "about 13 servings" would be confusing on a package containing four inner packages because 13 is not an even multiple of four.

To clarify this situation, FDA has added new provision § 101.9(b)(8)(v) which deals with packages that contain several individually packaged multiserving units. For this type of product, the number of servings shall be determined by multiplying the number of servings per individual inner unit by the total number of inner units. Specifying the method of determining the number of servings ensures that there is consistency between the number of servings listed on the outer labeling and the number of units and the number of servings per individual unit. Each inner unit is considered to be a separate package with a specified number of servings, and the number of servings in the outer package reflects (i.e., is a multiple of) the number of servings in the inner packages. Thus, in the popcorn example, the serving size would be approximately 1/3 of an individual unit, "—— cup (—— g unpopped popcorn)," and each individual unit contains "about 3 servings." The number of servings in the entire package would be "about 12" (4 packets times "about 3" servings per packet).

14. In order to provide manufacturers with examples of how serving sizes should appear on product labels, FDA added a label statement column to Tables 1 and 2 of the final rule (58 FR 2229 at 2294 to 2298). In response to comment 24 in the final rule (58 FR 2229 at 2239), the agency stated that, where possible, it also provided the exact household measure and the equivalent metric measure based on the U. S. Department of Agriculture (USDA) values. For example, the label statement column for confectioner's sugar states "1/4 cup (30 g)."

While this information was intended to be helpful, it may have inadvertently lead to confusion. A comment regarding shortenings agreed with the reference amount, 1 tbsp, but expressed concern about the label statement column listing a specific gram weight, "1 tbsp (13 g)." The comment noted that a listing of "1 tbsp (—— g)" would be more consistent with the remainder of the table where gram amounts are generally not used. It also pointed out that most retail shortenings weigh 12 g per tbsp with the remainder weighing 11 g per tbsp, and that manufacturers vary densities of shortenings in order to alter hardness.

Another comment noted that the regulation specifies that the equivalent metric quantity should be declared in milliliters for fluids and in grams for all other foods, § 101.9(b)(7). However, the comment observed that the label statement column in Table 2 (58 FR 2229 at 2296) lists "1 tbsp (14 g) for butter, margarine, or oil." Because oil is a fluid, the comment asked whether the metric equivalent for oil should be in grams or milliliters.

Finally, several comments noted that the label statement for pastas used ounces as the household measure for lasagna noodles, whereas large shells, which may have similar weights, used pieces as the household measure. The comments questioned whether pieces or ounces should be used for lasagna noodles because the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii) indicates that pieces are preferred over ounces.

FDA acknowledges that providing specific values, even as examples, can result in confusion in many cases. FDA included the label statement column to provide examples of the types of serving sizes that may be used on product labels and never intended them to be an all-inclusive list. The agency has come to recognize, however, that many manufacturers have assumed that their serving size should be identical to that listed in the label statement column regardless of the weight or volume of their specific product. Therefore, FDA has decided to make some minor changes in the label statement column to provide more generic examples and to include milliliter examples which it inadvertently overlooked.

Specifically, in cases where the reference amount is a volumetric measure, FDA has retained the volumetric expression and eliminated the value for the specific gram equivalent weight. For example, FDA has revised the label statement for shortening, which has a reference amount of 1 tbsp, from "1 tbsp (13 g)" to "1 tbsp (—— g)." In cases where the reference amount is a gram weight, and the household measure is not expressed as a weight, specific values for both the household measure and the gram equivalent have been deleted. For example, the label statement for cottage cheese, which has a reference amount of 55 g, has been changed from "1/3 cup (48 g) for dry curd cottage cheese; 1/4 cup (62 g) for ricotta cheese" to "—— cup (—— g)." Finally, FDA agrees that lasagna noodles can be measured by the piece and has included them as an example for pieces rather than ounces.

FDA has modified parts of Table 1 for infant and toddler foods in § 101.12(b) (58 FR 2229 at 2294) as follows:

Product category	Label statement (formerly)	Label statement (new)
Cereals, dry instant	1/3 cup (13 g)	—— cup (—— g)
Dinners, desserts, fruits, vegetables or soups, ready-to serve, junior type.	—— cup(s) (——g)	—— cup(s) (——g);—— cup(s) (—— mL)
Dinners, desserts, fruits, vegetables or soups, ready-to-serve, strained type.	—— cup(s) (—— g)	—— cup(s) (—— g);—— cup(s) (—— mL)
Dinners, stews or soups for toddlers, ready-to-serve.	—— cup(s) (—— g)	—— cup(s) (—— g); —— cup(s) (—— mL)

FDA has modified parts of Table 2 for the general food supply in § 101.12(b)) (58 FR 2229 at 2294 to 2298) as follows:

Product category	Label statement (formerly)	Label statement (new)
Cereals and grains:		
Pastas, plain	—— cup(s) (—— g); —— piece(s) (—— g) for large pieces (e.g., large shell) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., lasagna or spaghetti noodles).	—— cup(s) (—— g); —— piece(s) (—— g) for large pieces (e.g., large shells or lasagna noodles) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., spaghetti)
Starches, e.g., cornstarch, potato starch, tapioca, etc..	1 tbsp (8 g) for cornstarch; 1 tbsp (10 g) for tapioca; 1 tbsp (—— g) for others.	—— tbsp (—— g)
Dairy Products and Substitutes:		
Cottage cheese	1/2 cup (105 g) for small curd; 1/2 cup (113 g) for large curd, lowfat, or with fruit added; 1/2 cup (—— g) for others.	—— cup (—— g)
Cheese used primarily as ingredients, e.g., dry cottage cheese, ricotta cheese.	1/3 cup (48 g) for dry curd cottage cheese; 1/4 cup (62 g) for ricotta cheese.	—— cup (—— g)
Cheese, grated hard, e.g., Parmesan, Romano.	1 tbsp(s) (5 g)	—— tbsp (—— g)
Cream or cream substitutes, powder	1 tsp (2 g)	——tsp (—— g)
Sour cream	2 tbsp (30 g)	—— tbsp (—— g)
Dessert Toppings and Fillings:		
Other dessert toppings, e.g., fruits, syrups, spreads, marshmallow cream, nuts, dairy and nondairy whipped toppings.	2 tbsp (—— g)	2 tbsp (—— g); 2 tbsp (60 mL)
Egg and Egg Substitutes:		
Egg substitutes	—— cup(s) (—— g)	—— cup(s) (—— g); —— cup(s) (—— mL)
Fats and Oils:		
Butter, margarine, oil, shortening	1 tbsp (14 g) for butter, margarine, or oil; 1 tbsp (9 g) for whipped butter or margarine; 1 tbsp (13 g) for shortening.	1 tbsp (—— g); 1 tbsp (15 mL)
Dressings for salads	2 tbsp (—— g)	—— tbsp (—— g); —— tbsp (—— mL)
Mayonnaise, sandwich spreads, mayonnaise-type dressings.	1 tbsp (14 g) for mayonnaise; 1 tbsp (15 g) for imitation mayonnaise, mayonnaise-type dressings or sandwich spreads.	—— tbsp (—— g)
Legumes:		
Beans, plain or in sauce	1/2 cup (—— g)	—— cup (—— g)
Miscellaneous:		
Baking powder, baking soda, pectin	1/4 tsp (—— g)	—— tsp (—— g)
Salads:		
Gelatin salad	1/2 cup (120 g)	—— cup (—— g)

Product category	Label statement (formerly)	Label statement (new)
Sauces, Dips, Gravies, and Condiments		
Barbecue sauce, hollandaise sauce, tartar sauce, other sauces for dipping (e.g., mustard sauce, sweet and sour sauce), all dips (e.g., bean dips, dairy-based dips, salsa).	2 tbsp (—— g)	2 tbsp (—— g); 2 tbsp (60 mL)
Major main entree sauces, e.g., spaghetti sauce.	1/2 cup (—— g)	—— cup (—— g); —— cup (—— mL)
Minor main entree sauces, (e.g., pizza sauce, pesto sauce), other sauces used as toppings (e.g., gravy, white sauce, cheese sauce), cocktail sauce.	1/4 cup (—— g)	1/4 cup (—— g); 1/4 cup (120 mL)
Major condiments, e.g., catsup, steak sauce, soy sauce, vinegar, teriyaki sauce, marinades.	1 tbsp (—— g)	1 tbsp (—— g); 1 tbsp (15 mL)
Minor condiments, e.g., horseradish, hotsauces, mustards, worcestershire sauce.	1 tsp (—— g)	1 tsp (—— g); 1 tsp (5 mL)
Soups:		
All varieties	1 cup (—— g)	—— cup (—— g); —— cup (—— mL)
Sugars and Sweets:		
Confectioners sugar	1/4 cup (30 g)	—— cup (—— g)
Honey, jams, jellies, fruit butter, molasses	1 tbsp (—— g)	1 tbsp (—— g); 1 tbsp (15 mL)
Sugar	1 tsp (—— g)	—— tsp (—— g)
Vegetables:		
Pickle relishes	1 tbsp (15 g)	—— tbsp (—— g)
Vegetable pastes	2 tbsp (33 g) tomato paste; 2 tbsp (—— g) all others.	—— tbsp (—— g)
Vegetable sauces or purees, e.g., tomato sauce, tomato puree.	1/4 cup (61 g) tomato sauce; 1/4 cup (63 g) tomato puree; 1/4 cup (—— g) all others.	—— cup (—— g); —— cup (—— mL)

15. Some comments pointed out that although grains and pastas have reference amounts for both the dry and the prepared forms of the product, "Beans, plain or in sauce" (listed under Legumes) does not. The reference amount for beans is provided only for the prepared form of the product, even though beans, like grains and pastas, are very commonly sold in the dry form, and the rehydration process for beans is similar to that for grains and pastas.

The agency inadvertently omitted providing for a reference amount for dry beans as it had provided for other products requiring rehydration. Accordingly, FDA has revised the reference amount for "Legumes: beans, plain or in sauce" to read "130 g for beans in sauce or canned in liquid prepared; 90 g for others prepared; 35 g dry." This value is based on USDA yield data and represents the average weight of dry beans that would yield 90 g of prepared beans (Ref. 1).

16. One comment suggested that there is an error in the declaration of the reference amount for "Baking Decorations, e.g. colored sugars and sprinkles for cookies, cake decorations" (58 FR 2229 at 2296), which states "1/4 tsp or 4 grams if not measurable by teaspoon." The comment noted that the 1991 reproposal (56 FR 60394, 60419) listed the reference amount as 1 tsp, and the comment also noted that there was no discussion in the preamble to the final rule to indicate the basis for the change.

FDA agrees that the reference amount of "1/4 teaspoon" given in Table 2 of the final serving size regulation is incorrect. The printed value is a typographical error. The reference amount listed is revised to state "1 teaspoon or 4 g if not measurable by teaspoon." This reference amount is the same as that proposed by the agency in 1991.

17. One comment stated that the wording in § 101.12(c) is unclear and therefore confusing: "The reference amount of a product that requires cooking or the addition of water or other ingredients shall be the amount required to prepare one reference amount of the final product as established in paragraph (b) of this section." The comment suggested that for products requiring further preparation, the agency should provide a better method of referring to the reference amount generated for the unprepared product using the reference amount in the table.

The agency agrees that using the term "reference amount" to refer to both the reference amount of the prepared and the unprepared products is confusing. However, the agency believes that it is necessary to have a term that can be used to refer to the amount of the unprepared product that makes the reference amount of the prepared product because the serving size declaration is for the unprepared (i.e., "as packaged") product. Furthermore, depending on the form of the unprepared product, there are situations in which two different reference amount values for unprepared products are generated for the same product category. For example, frozen and refrigerated pastas both require further preparation, but different amounts of the frozen form and of the refrigerated form would be needed to make the reference amount of the prepared product. Finally, for some products that require further preparation, the agency actually has provided reference amounts for the unprepared or uncooked forms of the product in § 101.12(b) of the regulation, e.g. cooked and uncooked fish and dry and prepared pasta and rice.

To improve clarity, FDA is changing the terms used in § 101.12(c) and in the footnotes to the tables to "reference amount for the prepared product" and "reference amount for the unprepared product" to distinguish, respectively, between the reference amount provided in the tables and the reference amount generated by using the table value and the provisions in § 101.12(c). The agency recognizes that it may still be confusing to have values that differ from those in the tables (§ 101.12(b))(58 FR 2229 at 2294 to 2298) that are referred to as "reference amounts," and at some future time, FDA may need to reexamine how to deal with and discuss

products that do not have reference amounts established in the tables.

Furthermore, to ensure that the serving sizes of like products are as consistent as possible, products that require further preparation but are in a form for which there is an established reference amount in Table 1 or Table 2 of the final rule (58 FR 2229 at 2294 to 2298), such as refrigerated or frozen pasta, are required to use the reference amount provided and should not generate their own (see comment 21 of section IV. of this document). Therefore, the agency is specifically restricting § 101.12(c) to products that do not have reference amounts in the tables.

18. Several comments provided evidence that, for products that require further preparation, the provisions for establishing the "reference amount for the unprepared product" have unintended effects. First, for products that are used to make foods that are consumed in small discrete units, such as muffins, the prescribed approach to determining a "reference amount for the unprepared product" resulted in discrepancies between the number of servings declared per package (e.g., "about 5") and the number of discrete units prepared in accordance with package directions (e.g., "makes 8 muffins"). Second, for products that prepare large discrete units, there were discrepancies between the number of servings declared per package (e.g., "about 11") and the declaration of a "friendly" fraction of a large discrete unit (e.g., "1/10 cake") for use in an optional second column of nutrition information.

The provision for establishing a "reference amount for the unprepared product" for products that require further preparation was illustrated in the pancake example in response to comment 23 in the final rule (58 FR 2229 at 2238 to 2239) and is discussed in comment 6 above. In the pancake example, FDA directed the manufacturer to determine the quantity of the unprepared product required to make the reference amount for the prepared product. This amount of dry pancake mix is to be used as the "reference amount for the unprepared product," § 101.12(c).

The purpose of the pancake example was to provide a description of the process for deriving the "reference amount for the unprepared product" and the serving size for a product that requires further preparation. It reflects an approach to bulk products that are used to make discrete units where the reference amount tables (58 FR 2229 at 2294 to 2298) contain reference amounts for the product "as prepared" but not "as packaged." FDA acknowledges that unintended effects occur when an entire package is used to prepare discrete units (e.g. cake and muffin mixes), and that the resultant discrepancies may be confusing to consumers.

For cake mixes, the agency has determined that the discrepancies can be remedied by providing for a reference amount for the unprepared product that reflects the fraction of the prepared product closest to the reference amount for the prepared product for the specific product category. A serving size derived from this "reference amount for the unprepared product" will reflect that it is based on a portion of the entire package. In the example provided above, the "reference amount for the unprepared product" would be the amount of cake mix needed to make 1/10 cake, the optional second column could provide nutrition information on "1/10 cake," and the number of servings would be listed as "10." This approach is consistent with that for arriving at the serving size for ready-to-serve products, that is, the fraction of a large discrete unit that comes closest to the reference amount for the prepared product for the specific product category.

For muffin mixes, the agency has taken a different approach. While it is true that cake mix batters may be subdivided to prepare individual layers, the primary way in which a cake mix is used is to make one discrete unit. Any layers that are made are assembled to make the cake.

However, when mixes that prepare small discrete units are subdivided, like pancakes or muffins, the consumer controls the finished size of the prepared product and may use a packaged muffin mix to make several small muffins or a few larger muffins. Therefore it makes sense to continue to present the "reference amount for the unprepared product" for these products as the amount of bulk product used to prepare the reference amount for the prepared product.

19. In the final regulation, the reference amount for products packaged and presented to be consumed together and for which there is no established reference amount in the tables (58 FR 2229 at 2294 to 2298) (e.g., peanut butter and jelly combination, cracker and cheese pack, pancakes and syrup pack) is defined (§ 101.12(f)) as the sum of the reference amounts for the individual foods in the package. A problem occurs when there is a need to combine reference amounts that are not in the same units. For example, creating a "reference amount for the combined product" for pancakes and syrup would involve summing 100 g and 60 mL.

In addition, the amounts of various distinct foods packaged by the manufacturer and presented to be consumed together may be different from the reference amounts established by FDA. Thus, for products of varying densities, the number of servings would be overly influenced by the denser food. For example, even if a "reference amount for the combined product" of pancakes and syrup were created by summing the weights of the respective components to get 170 g (110 g of pancake plus 60 mL syrup (or approximately 60 g)), if 220 g of pancakes have been packaged with a packet containing 120 g of syrup, the 340 g package would list the number of servings as 2. If the same 220 g of pancakes were packaged with an additional 50 g of syrup (170 g), the 390 g package would list the number of servings as "about 2 1/2," yet the amount of pancake—the main food component of the package—would remain the same. Finally, if the component elements of the product were listed separately on the label, the number of servings of pancakes might differ from the number of servings of syrup (e.g., 2 servings of pancakes; about 3 servings of syrup).

A procedure for determining the appropriate "reference amount for the combined product" for these types of products was not adequately provided in the final rule. Therefore, FDA is modifying § 101.12(f) to provide for this procedure. It is important to note that this modification affects only products intended to be combined and consumed together and for which the combination is not listed as a reference amount in the table in § 101.12(b). All products that are not intended to be consumed together (e.g., variety packs of single- or multiserving packages of snacks or breakfast cereals) are still required to provide nutrition information for each food individually in a location clearly visible to the consumer, as specified in § 101.9(h)(2).

For products with reference amounts in compatible units, the units can be directly summed (e.g., 2 tbsp peanut butter and —— tbsp jelly). However, for products described above with reference amounts in incompatible units that cannot be directly summed (e.g., 110 g pancakes and —— mL syrup), the agency has incorporated into its regulations the approach of summing the weights of the relevant amounts of the foods that are combined to make the "reference amount for the combined product." This approach has been selected because amounts that are provided as volume measures can easily be expressed as weights and summed.

However, the opposite is not the case because weights cannot always be easily expressed as volumes. This approach has been codified in § 101.12(f)(3).

To ensure that the serving size declaration will not be improperly influenced by minor dense ingredients, and that the number of servings will be consistent for all ingredients, the agency has revised § 101.12(f)(1) to require that manufacturers derive a "reference amount for the combined product" that takes into account the ingredient that is represented as the main ingredient. Thus, for products that consist of two or more distinct foods packaged separately within the same container, intended to be consumed together, and without established reference amounts (e.g., pancakes and syrup, chips and dip), the "reference amount for the combined product" will be based on the reference amount of the ingredient that is represented as the main ingredient. Other ingredients within the container are proportioned to fit the serving size of the main ingredient.

To illustrate the use of this approach, for pancakes and syrup, the pancakes represent the main ingredient. The package contains 240 g of pancakes (4 pancakes) and 100 g of syrup for a total package weight of 340 g. The reference amount for pancakes is 110 g, and 2 pancakes, which weigh 120 g, represent the number of discrete units closest to the reference amount for pancakes. Since there are 4 pancakes in the box, the proportionate amount of syrup is 50 g or half the syrup. Thus, the "reference amount for the combined product" for this particular combination of pancakes and syrup would be 120 g (weight of 2 pancakes) plus 50 g (weight of syrup for 2 pancakes) or 170 g. Options for declaring the serving size for this type of product are discussed in comment 2 of section III. of this document.

IV. Minor Corrections to the Preamble to the Regulation

20. Several comments expressed confusion over the appropriate reference amount to be utilized when two reference amounts are provided for a product category. For example, reference amounts for the dry and prepared forms of the product were provided for pastas, rices, variety mixes, and hot cereals; and cooked and uncooked reference amounts were provided for fish products. In addition, one technical comment from a manufacturer of parfried or partially cooked, frozen fish products expressed a desire to use its own yield data to determine product specific "cooked" and "uncooked" reference amounts. The comment argued that the USDA yield data were inaccurate for many products.

With regard to fish products, in the 1990 proposed rule (56 FR 60394 at 60419), FDA provided a reference amount of 85 g for fish on a cooked basis. In one of the comments (58 FR 2229 at 2257), a seafood trade association expressed concern that its members would have great difficulty in determining the amount of uncooked seafood needed to make one reference amount of cooked seafood. They noted that seafood yield values vary greatly and depend on many uncontrollable variables such as cooking method and cooking time. The agency agreed and in the final rule, in addition to retaining the reference amount for cooked fish, 85 g, the agency used USDA yield data to estimate the amount of uncooked fish that would make 85 g of cooked fish, 110 g, and provided this value as an appropriate reference amount for uncooked fish.

With regard to all products, including fish products, that have reference amounts for more than one form of the product in the final regulation, the agency stipulated that the reference amount of a product is for the ready-to-serve or almost ready-to-serve form of the product (e.g., heat and serve, brown and serve). Unless listed separately, the "reference amount for the unprepared product" (e.g., dry mixes; concentrates; dough; batter; dry, fresh or frozen pasta) is the amount of the product needed to make the reference amount for the prepared product (58 FR 2229 at 2298, Table 2, Footnote 2).

Thus, products that are in a form for which there is an established reference amount in Table 2 are required to use the reference amount listed. This approach is intended to provide consistency for products in similar forms. Therefore, dry pasta must use the reference amount for the dry form, 55 g, and prepared pasta must use that for the prepared form, 140 g. Uncooked fish products, not covered under the voluntary labeling provisions (§ 101.45) must use the 110 g reference amount and cooked fish the 85 g reference amount.

The agency did not specifically discuss reference amount procedures for intermediate products that have reference amounts for the prepared and unprepared forms of the product, i.e. products intermediate between dry and prepared or cooked and uncooked, such as parfried frozen fish sticks and refrigerated or frozen pasta. These products should be considered similar to all other products that require further preparation. In accordance with the provisions of § 101.12(c), the manufacturer shall determine a "reference amount for the unprepared [i.e., in this case, partially prepared] product," that is, the amount required to make the reference amount for the prepared product. For example, for refrigerated pasta, the manufacturer begins with the reference amount for the prepared product, 140 g. Manufacturers then determine the amount of their unprepared product that makes that amount, as specified in § 101.12(c) and as described in comment 6 (section III, of this document). Manufacturers use the reference amount for the prepared product and their own yield data to determine the "reference amount for the unprepared [e.g., intermediate, partially prepared] product." For example, 100 g of refrigerated pasta may make 140 g of prepared pasta. The serving size is then the household measure that comes closest to the "reference amount for the unprepared product" (100 g) and is accompanied by the metric equivalent, e.g., "1/2 cup (95 g)." FDA strongly recommends that quality control records and other pertinent data be maintained to verify and document the procedure used to obtain yield factors for specific products. This supporting information is essential should regulatory officials contest the amount of product listed on the label as making the reference amount for the prepared product.

21. A comment noted that while the agency stated in the final rule that fish packed in a liquid that is not customarily consumed should declare nutrient information on the drained solids, § 101.9(b)(9), the agency failed to indicate an appropriate methodology for draining the products. The comment provided four options: tilting the can and draining for a specified time (Canadian procedure), inverting the can and using "gentle finger pressure," and two variations that involved draining in a sieve for a specified time (Codex and Association of Official Analytical Chemists (AOAC)). In considering this comment, FDA identified several additional products that require draining, such as olives and cherries in cans or jars and pickled fish, fruits, and vegetables.

The agency did not provide a methodology for draining such products. The agency believes that specifying "gentle finger pressure" is too vague to be useful, although it is probably the method actually used by consumers. The Canadian procedure could work reasonably well for all canned products, but it would be very unwieldy, and thus potentially inconsistent, for products in jars. Thus, FDA favors the sieve methods because the purpose of draining is to remove the

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liquid in a simple and reproducible manner. FDA does not consider product adherence to the sieve to be a problem because the product weight can be determined by difference: i.e., weighing the empty sieve and reweighing the sieve and product together after draining. Furthermore, analysis is done on a representative sample of the drained product and does not require retrieval of the total product. The agency uses AOAC methodology in resolving compliance issues. Therefore, draining for two minutes on a No. 8 sieve is an acceptable method for draining fish and other food products.

22. Many comments stated that FDA's failure to provide for specific clarifying terminology that could be included as part of the serving size declaration could result in unintended consumer confusion. For example, some comments noted that the unqualified label declaration for dry, condensed, or concentrated products that require further preparation (e.g., "1/2 cup" for a condensed soup or juice concentrate) may be misleading and confusing to consumers who may assume the information refers to the "as prepared" rather than the "as packaged" product. Comments also stated that not allowing clarifying phrases in serving sizes for foods containing inedible components, the label statement would be unclear and confusing. For example, pistachio nuts have a reference amount of 30 g. The household measure of the edible portion is 1/2 cup or 30 g of shelled nuts, and the household measure of the nuts "as packaged" (i.e., unshelled) is 1 cup or 60 g of unshelled nuts. The comments asserted that listing either 1/2 cup or 1 cup without additional clarification could be confusing because the consumer cannot tell whether the household measure refers to the shelled or unshelled nuts.

FDA agrees that this type of information may be useful in avoiding misinterpretation of the serving size declaration. The agency has no objections to manufacturers providing truthful and nonmisleading clarifying phrases that can be used to alert consumers to the form, physical state, drained or undrained state, inclusion or exclusion of inedible components, or similar necessary descriptions of the product for which the nutrition information is provided. The agency will monitor the kinds of phrases that are included to ensure that they remain pertinent to the declaration of the serving size for the product.

With regard to products that require further preparation, concentrated and dry soups could list the serving sizes as "1/2 cup (120 mL) concentrated soup" and "1/4 cup (50 g) dry powder soup mix," respectively. With regard to products with established reference amounts for both cooked and uncooked forms of the product (e.g., fish, pastas, grains), examples of appropriate clarifying phrases include "4 oz (112 g/about 1/2 fillet) raw fish," "2 pieces (80 g) precooked fish sticks," and "1/2 cup (53 g) dry pasta." For products with edible and inedible portions (e.g., nuts with shells, olives with pits), sample clarifying phrases include: "1/2 cup nuts without shells (30 g/about 1 cup with shells)," which clearly indicates that the shells are not included in the primary serving size declaration. This declaration is consistent with § 101.12(a)(6), which states that the serving size on the food label is based on only the edible portion of the food.

Finally, examples of clarifying phrases for drained products, such as olives and canned fish, and undrained products, such as peaches or blueberries in liquid and cranberry and pickle relishes, include: "2 pieces with liquid (135 g)" and "1/4 cup drained (32 g)." Although one comment provided examples of serving size declarations as specific numbers of whole units (e.g., 2 pieces) plus corresponding liquid (e.g., 1/4 cup), FDA believes that the use of clarifying statements such as "undrained" or "plus liquid" is sufficient. Declaring corresponding liquid would require specifying appropriate amounts per serving as well as providing for more detailed procedures for draining these products. Furthermore, such declarations are unlikely to be useful to consumers who serve the solids and liquids together.

V. References

The following reference has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Anderson, Ellen M., memo to file, July 28, 1993.

VI. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain techical amendments to serving sizes of food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96-354). The amendments are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that its final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9, effective May 8, 1994, is amended by revising paragraph (b) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(b) Except as provided in § 101.9(h)(3), all nutrient and food component quantities shall be declared in relation to a serving as defined in this section.

(1) The term "serving" or "serving size" means an amount of food customarily consumed per eating occasion by persons 4 years of age or older which is expressed in a common household measure that is appropriate to the food. When the food is specially formulated or processed for use by infants or by toddlers, a serving or serving size means an amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively.

(2) Except as provided in paragraphs (b)(3), (b)(4), and (b)(6) of this section and for products that are intended for weight control and are available only through a weight-control or weight-maintenance program, serving size declared on a product label shall be determined from the "Reference Amounts Customarily Consumed Per

Eating Occasion * * *" (reference amounts) that appear in § 101.12(b) using the procedures described below. For products that are both intended for weight control and available only through a weight-control program, a manufacturer may determine the serving size that is consistent with the meal plan of the program. Such products must bear a statement, "for sale only through the ———— program" (fill in the blank with the name of the appropriate weight-control program, e.g., Smith's Weight Control), on the principal display panel. However, the reference amounts in § 101.12(b) shall be used for purposes of evaluating whether weight-control products that are available only through a weight-control program qualify for nutrient content claims or health claims.

(i) For products in discrete units (e.g., muffins, sliced products, such as sliced bread, or individually packaged products within a multiserving package) and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., pancakes and syrup), the serving size shall be declared as follows:

(A) If a unit weighs 50 percent or less of the reference amount, the serving size shall be the number of whole units that most closely approximates the reference amount for the product category;

(B) If a unit weighs more than 50 percent, but less than 67 percent of the reference amount, the manufacturer may declare one unit or two units as the serving size;

(C) If a unit weighs 67 percent or more, but less than 200 percent of the reference amount, the serving size shall be one unit;

(D) If a unit weighs 200 percent or more of the reference amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single-eating occasion.

(E) For products that have reference amounts of 100 grams (g) (or milliliter (mL)) or larger and are individual units within a multiserving package, if a unit contains more than 150 percent but less than 200 percent of the reference amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(F) The serving size for maraschino cherries shall be expressed as 1 cherry with the parenthetical metric measure equal to the average weight of a medium size cherry.

(G) The serving size for products that naturally vary in size (e.g., pickles, shellfish, whole fish, and fillet of fish) may be the amount in ounces that most closely approximates the reference amount for the product category. Manufacturers shall adhere to the requirements in paragraph (b)(5) of this section for expressing the serving size in ounces.

(H) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., pancakes and syrup), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the reference amount for the combined product determined in § 101.12(f).

(I) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 101.9 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

(ii) For products in large discrete units that are usually divided for consumption (e.g., cake, pie, pizza, melon, cabbage), for unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., cake mix, pizza kit), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a large discrete unit usually divided for consumption (e.g., prepared cake packaged with a can of frosting), the serving size shall be the fractional slice of the ready-to-eat product (e.g., 1/12 cake, 1/8 pie, 1/4 pizza, 1/4 melon, 1/6 cabbage) that most closely approximates the reference amount for the product category, and may be the fraction of the package used to make the reference amount for the unprepared product determined in § 101.12(c) or the fraction of the large discrete unit represented as the main ingredient plus proportioned minor ingredients used to make the reference amount for the combined product determined in § 101.12(f). In expressing the fractional slice, manufacturers shall use 1/2, 1/3, 1/4, 1/5, 1/6, or smaller fractions that can be generated by further division by 2 or 3.

(iii) For nondiscrete bulk products (e.g., breakfast cereal, flour, sugar, dry mixes, concentrates, pancake mixes, macaroni and cheese kits), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a bulk product (e.g., peanut butter and jelly), the serving size shall be the amount in household measure that most closely approximates the reference amount for the product category and may be the amount of the bulk product represented as the main ingredient plus proportioned minor ingredients used to make the reference amount for the combined product determined in § 101.12(f).

(3) The serving size for meal products and main dish products as defined in § 101.13(l) and (m) that comes in single-serving containers as defined in paragraph (b)(6) of this section shall be the entire content (edible portion only) of the package. Serving size for meal products and main dish products in multiserving containers shall be based on the reference amount applicable to the product in § 101.12(b) if the product is listed in § 101.12(b). Serving size for meal products and main dish products in multiserving containers that are not listed in § 101.12(b) shall be based on the reference amount according to § 101.12(f).

(4) A variety pack, such as a package containing several varieties of single-serving units as defined in paragraph (b)(2)(i) of this section, and a product having two or more compartments with each compartment containing a different food, shall provide nutrition information for each variety or food per serving size that is derived from the reference amount in § 101.12(b) applicable for each variety or food and the procedures to convert the reference amount to serving size in paragraph (b)(2) of this section.

(5) For labeling purposes, the term "common household measure" or "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., 1/4 pizza), ounce (oz), fluid ounce (fl oz), or other common household equipment used to package food products (e.g., jar, tray). In expressing serving size in household measures, except as specified in paragraphs (b)(5)(iv), (b)(5)(v), (b)(5)(vi), and (b)(5)(vii) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate except for beverages. For beverages, a manufacturer may use fluid ounces. Cups shall be expressed in 1/4- or 1/3-cup increments, tablespoons in whole number of tablespoons for quantities less than 1/4 cup but greater than or equal to 2 tablespoons (tbsp), 1, 1 1/3, 1 1/2, or 1 2/3 tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less

than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in 1/4-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If paragraphs (b)(5)(i) and (b)(5)(ii) of this section are not applicable, ounces may be used with an appropriate visual unit of measure such as a dimension of a piece, e.g., 1 oz (28 g/about 1/2 pickle). Ounce measurements shall be expressed in 0.5 oz increments most closely approximating the reference amount.

(iv) A description of the individual container or package shall be used for single serving containers and for individually packaged products within multiserving containers (e.g., can, box, package). A description of the individual unit shall be used for other products in discrete units (e.g., piece, slice, cracker, bar).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., cake mix, pizza kit), the fraction or portion of the package may be used.

(vi) Ounces with an appropriate visual unit of measure, as described in paragraph (b)(5)(iii) of this section, may be used for products that naturally vary in size as provided for in paragraph (b)(2)(i)(G) of this section.

(vii) As provided for in § 101.9(h)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g. dry macaroni and cheese mix, cake and muffin mixes with separate ingredient packages, pancakes and syrup), nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section, or alternatively in ounces with an appropriate visual unit of measure, as described in paragraph (b)(5)(iii) of this section (e.g., declared as separate components: "3 oz dry macaroni (84 g/about 2/3 cup)" and "1 oz dry cheese mix (28 g/about 2 tbsp);" declared as a composite value: "4 oz (112 g/about 2/3 cup macaroni and 2 tbsp dry cheese mix)").

(viii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, 1 fl oz means 30 mL, and 1 oz in weight means 28 g.

(ix) When a serving size, determined from the reference amount in § 101.12(b) and the procedures described in this section, falls exactly half way between two serving sizes, e.g., 2.5 tbsp, manufacturers shall round the serving size up to the next incremental size.

(6) A product that is packaged and sold individually and that contains less than 200 percent of the applicable reference amount shall be considered to be a single-serving container, and the entire content of the product shall be labeled as one serving except for products that have reference amounts of 100 g (or mL) or larger, manufacturers may decide whether a package that contains more than 150 percent but less than 200 percent of the reference amount is 1 or 2 servings. Packages sold individually that contain 200 percent or more of the applicable reference amount may be labeled as a single-serving if the entire content of the package can reasonably be consumed at a single-eating occasion.

(7) A label statement regarding a serving shall be the serving size expressed in common household measures as set forth in paragraphs (b)(2) through (b)(6) of this section and shall be followed by the equivalent metric quantity in parenthesis (fluids in milliliters and all other foods in grams) except for single-serving containers.

(i) For a single-serving container, the parenthetical metric quantity, which will be presented as part of the net weight statement on the principal display panel, is not required except where nutrition information is required on a drained weight basis according to § 101.9(b)(9). However, if a manufacturer voluntarily provides the metric quantity on products that can be sold as single servings, then the numerical value provided as part of the serving size declaration must be identical to the metric quantity declaration provided as part of the net quantity of contents statement.

(ii) The gram or milliliter quantity equivalent to the household measure should be rounded to the nearest whole number except for quantities that are less than 5 g (mL). The gram (mL) quantity between 2 and 5 g (mL) should be rounded to the nearest 0.5 g (mL) and the g (mL) quantity less than 2 g (mL) should be expressed in 0.1-g (mL) increments.

(iii) In addition, serving size may be declared in ounce and fluid ounce, in parenthesis, following the metric measure separated by a slash where other common household measures are used as the primary unit for serving size, e.g., 1 slice (28 g/1 oz) for sliced bread. The ounce quantity equivalent to the metric quantity should be expressed in 0.1 oz increments.

(iv) If a manufacturer elects to use abbreviations for units, the following abbreviations shall be used: tbsp for tablespoon, tsp for teaspoon, g for gram, mL for milliliter, oz for ounce, and fl oz for fluid ounce.

(v) For products that only require the addition of water or another ingredient that contains insignificant amounts of nutrients in the amount added and that are prepared in such a way that there are no significant changes to the nutrient profile, the amount of the finished product may be declared in parentheses at the end of the serving size declaration (e.g., 1/2 cup (120 mL) concentrated soup (makes 1 cup prepared)).

(vi) To promote uniformity in label serving sizes in household measures declared by different manufacturers, FDA has provided a guideline entitled, "Guidelines for Determining the Gram Weight of the Household Measure." The guideline can be obtained from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(8) Determination of the number of servings per container shall be based on the serving size of the product determined by following the procedures described in this section.

(i) The number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings and random weight products. The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term "about" (e.g., about 2 servings, about 3.5 servings).

(ii) When the serving size is required to be expressed on a drained solids basis and the number of servings varies because of a natural variation in unit size (e.g., maraschino cherries, pickles), the manufacturer may state the typical number of servings per container (e.g., usually 5 servings).

(iii) For random weight products, a manufacturer may declare "varied" for the number of servings per container provided the nutrition information is based on the reference amount expressed in ounces. The manufacturer may provide the typical number of servings in parenthesis following the "varied" statement.

(iv) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 101.9 (that is, are labeled appropriately for individual sale as single-serving containers), the number of servings shall

be the number of individual packages within the total package.

(v) For packages containing several individually packaged multiserving units, the number of servings shall be determined by multiplying the number of individual multiserving units in the total package by the number of servings in each individual unit.

(9) The declaration of nutrient and food component content shall be on the basis of food as packaged or purchased with the exception of raw fish covered under § 101.42 (see 101.44), packaged single-ingredient products that consist of fish or game meat as provided for in paragraph (j)(11) of this section, and of foods that are packed or canned in water, brine, or oil but whose liquid packing medium is not customarily consumed (e.g., canned fish, maraschino cherries, pickled fruits, and pickled vegetables). Declaration of nutrient and food component content of raw fish shall follow the provisions in § 101.45. Declaration of the nutrient and food component content of foods that are packed in liquid which is not customarily consumed shall be based on the drained solids.

(10) Another column of figures may be used to declare the nutrient and food component information:

(i) Per 100 g or 100 mL, or per 1 oz or 1 fl oz of the food as packaged or purchased;

(ii) Per one unit if the serving size of a product in discrete units in a multiserving container is more than 1 unit;

(iii) Per cup popped for popcorn in a multiserving container.

(11) If a product is promoted on the label, labeling, or advertising for a use that differs in quantity by twofold or greater from the use upon which the reference amount in § 101.12(b) was based (e.g., liquid cream substitutes promoted for use with breakfast cereals), the manufacturer shall provide a second column of nutrition information based on the amount customarily consumed in the promoted use, in addition to the nutrition information per serving derived from the reference amount in § 101.12(b), except that nondiscrete bulk products that are used primarily as ingredients (e.g., flour, sweeteners, shortenings, oils), or traditionally used for multipurposes (e.g., eggs, butter, margarine), and multipurpose baking mixes are exempt from this requirement.

* * * * *

3. Section 101.12 is revised to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

(a) The general principles and factors that the Food and Drug Administration (FDA) considered in arriving at the reference amounts customarily consumed per eating occasion (reference amounts) which are set forth in paragraph (b) of this section, are that:

(1) FDA calculated the reference amounts for persons 4 years of age or older to reflect the amount of food customarily consumed per eating occasion by persons in this population group. These reference amounts are based on data set forth in appropriate national food consumption surveys.

(2) FDA calculated the reference amounts for an infant or child under 4 years of age to reflect the amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively. These reference amounts are based on data set forth in appropriate national food consumption surveys. Such reference amounts are to be used only when the food is specially formulated or processed for use by an infant or by a child under 4 years of age.

(3) An appropriate national food consumption survey includes a large sample size representative of the demographic and socioeconomic characteristics of the relevant population group and must be based on consumption data under actual conditions of use.

(4) To determine the amount of food customarily consumed per eating occasion, FDA considered the mean, median, and mode of the consumed amount per eating occasion.

(5) When survey data were insufficient, FDA took various other sources of information on serving sizes of food into consideration. These other sources of information included:

(i) Serving sizes used in dietary guidance recommendations or recommended by other authoritative systems or organizations;

(ii) Serving sizes recommended in comments;

(iii) Serving sizes used by manufacturers and grocers; and

(iv) Serving sizes used by other countries.

(6) Because they reflect the amount customarily consumed, the reference amount and, in turn, the serving size declared on the product label are based on only the edible portion of food, and not bone, seed, shell, or other inedible components.

(7) The reference amount is based on the major intended use of the food (e.g., milk as a beverage and not as an addition to cereal).

(8) The reference amounts for products that are consumed as an ingredient of other foods, but that may also be consumed in the form in which they are purchased (e.g., butter), are based on use in the form purchased.

(9) FDA sought to ensure that foods that have similar dietary usage, product characteristics, and customarily consumed amounts have a uniform reference amount.

(b) The following reference amounts shall be used as the basis for determining serving sizes for specific products:

TABLE 1.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: INFANT AND TODDLER FOODS [1,2,3,4]

Product category	Reference amount	Label statement[5]
Cereals, dry instant	15 g	——— cup (——— g)
Cereals, prepared, ready-to-serve	110 g	——— cup(s) (——— g)
Other cereal and grain products, dry ready-to-eat, e.g., ready-to-eat cereals, cookies, teething biscuits, and toasts.	7 g for infants and 20 g for toddlers for ready-to-eat cereals; 7 g for all others.	——— cup(s) (——— g) for ready-to-eat cereals; ——— piece(s) (——— g) for others
Dinners, desserts, fruits, vegetables or soups, dry mix.	15 g	——— tbsp(s) (——— g); ——— cup(s) (——— g)
Dinners, desserts, fruits, vegetables or soups, ready-to-serve, junior type.	110 g	——— cup(s) (——— g); ——— cup(s) (——— mL)
Dinners, desserts, fruits, vegetables or soups, ready-to-serve, strained type.	60 g	——— cup(s) (——— g); ——— cup(s) (——— mL)
Dinners, stews or soups for toddlers, ready-to-serve.	170 g	——— cup(s) (——— g); ——— cup(s) (——— mL)

TABLE 1.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: INFANT AND TODDLER FOODS[1,2,3,4]—Continued

Product category	Reference amount	Label statement[5]
Fruits for toddlers, ready-to-serve	125 g	——— cup(s) (——— g)
Vegetables for toddlers, ready-to- serve	70 g	——— cup(s) (——— g)
Eggs/egg yolks, ready-to-serve	55 g	——— cup(s) (——— g)
Juices, all varieties	120 mL	4 fl oz (120 mL)

[1] These values represent the amount of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry cereal) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for frozen novelties).

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4]

Product category	Reference amount	Label statement[5]
Bakery products:		
Biscuits, croissants, bagels, tortillas, soft bread sticks, soft pretzels, corn bread, hush puppies.	55 g	——— piece(s) (——— g)
Breads (excluding sweet quick type), rolls	50 g	——— piece(s) (——— g) for sliced bread and distinct pieces (e.g., rolls); 2 oz (56 g/——— inch slice) for unsliced bread
Bread sticks—see crackers		
Toaster pastries—see coffee cakes		
Brownies	40 g	——— piece(s) (——— g) for distinct pieces; fractional slice (——— g) for bulk
Cakes, heavy weight (cheese cake; pineapple upside-down cake; fruit, nut, and vegetable cakes with more than or equal to 35 percent of the finished weight as fruit, nuts, or vegetables or any of these combined)[6].	125 g	——— piece(s) (——— g) for distinct pieces (e.g., sliced or individually packaged products); ——— fractional slice (——— g) for large discrete units
Cakes, medium weight (chemically leavened cake with or without icing or filling except those classified as light weight cake; fruit, nut, and vegetable cake with less than 35 percent of the finished weight as fruit, nuts, or vegetables or any of these combined; light weight cake with icing; Boston cream pie; cupcake; eclair; cream puff)[7].	80 g	——— piece(s) (——— g) for distinct pieces (e.g., cupcake); ——— fractional slice (——— g) for large discrete units
Cakes, light weight (angel food, chiffon, or sponge cake without icing or filling)[8].	55 g	——— piece(s) (——— g) for distinct pieces (e.g., sliced or individually packaged products); ——— fractional slice (——— g) for large discrete units
Coffee cakes, crumb cakes, doughnuts, Danish, sweet rolls, sweet quick type breads, muffins, toaster pastries.	55 g	——— piece(s) (——— g) for sliced bread and distinct pieces (e.g., doughnut); 2 oz (56 g/visual unit of measure) for bulk products (e.g., unsliced bread)
Cookies	30 g	——— piece(s) (——— g)
Crackers that are usually not used as snack, melba toast, hard bread sticks, ice cream cones[9].	15 g	——— piece(s) (——— g)
Crackers that are usually used as snacks	30 g	——— piece(s) (——— g)
Croutons	7 g	——— tbsp(s) (——— g); ——— cup(s) (——— g); ——— piece(s) (——— g) for large pieces
French toast, pancakes, variety mixes	110 g prepared for french toast and pancakes; 40 g dry mix for variety mixes.	——— piece(s) (——— g); ——— cup(s) (——— g) for dry mix
Grain-based bars with or without filling or coating, e.g., breakfast bars, granola bars, rice cereal bars.	40 g	——— piece(s) (——— g)
Ice cream cones—see crackers		

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4]
Continued

Product category	Reference amount	Label statement[5]
Pies, cobblers, fruit crisps, turnovers, other pastries.	125 g	——— piece(s) (———g) for distinct pieces; ——— fractional slice (——— g) for large discrete units
Pie crust	1/6 of 8 inch crust; 1/8 of 9 inch crust	1/6 of 8 inch crust (——— g); 1/8 of 9 inch crust (——— g)
Pizza crust	55 g	——— fractional slice (——— g)
Taco shells, hard	30 g	——— shell(s) (——— g)
Waffles	85 g	——— piece(s) (——— g)
Beverages:		
Carbonated and noncarbonated beverages, wine coolers, water.	240 mL	8 fl oz (240 mL)
Coffee or tea, flavored and sweetened	240 mL prepared	8 fl oz (240 mL)
Cereal and Other Grain Products:		
Breakfast cereals (hot cereal type), hominy grits.	1 cup prepared; 40 g plain dry cereal; 55 g flavored, sweetened dry cereal.	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat, weighing less than 20 g per cup, e.g., plain puffed cereal grains.	15 g	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat weighing 20 g or more but less than 43 g per cup; high fiber cereals containing 28 g or more of fiber per 100 g.	30 g	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat, weighing 43 g or more per cup; biscuit types.	55 g	——— piece(s) (——— g) for large distinct pieces (e.g., biscuit type);——— cup(s) (——— g) for all others
Bran or wheat germ	15 g	——— tbsp(s) (——— g); ——— cup(s) (——— g)
Flours or cornmeal	30 g	——— tbsp(s) (——— g); ——— cup(s) (——— g)
Grains, e.g., rice, barley, plain	140 g prepared; 45 g dry	——— cup(s) (——— g)
Pastas, plain	140 g prepared; 55 g dry	——— cup(s) (——— g); ——— piece(s) (——— g) for large pieces (e.g., large shells or lasagna noodles) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., spaghetti)
Pastas, dry, ready-to-eat, e.g., fried canned chow mein noodles.	25 g	——— cup(s) (——— g)
Starches, e.g., cornstarch, potato starch, tapioca, etc..	10 g	——— tbsp (——— g)
Stuffing	100 g	——— cup(s) (——— g)
Dairy Products and Substitutes:		
Cheese, cottage	110 g	——— cup (——— g)
Cheese used primarily as ingredients, e.g., dry cottage cheese, ricotta cheese.	55 g	——— cup (——— g)
Cheese, grated hard, e.g., Parmesan, Romano.	5 g	——— tbsp (——— g)
Cheese, all others except those listed as separate categories—includes cream cheese and cheese spread.	30 g	——— piece(s) (——— g) for distinct pieces;——— tbsp(s) (——— g) for cream cheese and cheese spread; 1 oz (28 g/visual unit of measure) for bulk
Cheese sauce—see sauce category		
Cream or cream substitutes, fluid	15 mL	1 tbsp (15 mL)
Cream or cream substitutes, powder	2 g	——— tsp (——— g)
Cream, half & half	30 mL	2 tbsp (30 mL)
Eggnog	120 mL	1/2 cup (120 mL); 4 fl oz (120 mL)
Milk, condensed, undiluted	30 mL	2 tbsp (30 mL)
Milk, evaporated, undiluted	30 mL	2 tbsp (30 mL)
Milk, milk-based drinks, e.g., instant breakfast, meal replacement, cocoa.	240 mL	1 cup (240 mL); 8 fl oz (240 mL)
Shakes or shake substitutes, e.g., dairy shake mixes, fruit frost mixes.	240 mL	1 cup (240 mL); 8 fl oz (240 mL)
Sour cream	30 g	——— tbsp (——— g)
Yogurt	225 g	——— cup (——— g)
Desserts:		
Ice cream, ice milk, frozen yogurt, sherbet: all types, bulk and novelties (e.g., bars, sandwiches, cones).	1/2 cup-includes the volume for coatings and wafers for the novelty type varieties.	——— piece(s) (——— g) for individually wrapped or packaged products; 1/2 cup (——— g) for others
Frozen flavored and sweetened ice and pops, frozen fruit juices: all types, bulk and novelties (e.g., bars, cups).	85 g	——— piece(s) (——— g) for individually wrapped or packaged products; ——— cup(s) (——— g) for others
Sundae	1 cup	1 cup (——— g)

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Custards, gelatin or pudding	1/2 cup	——— piece(s) (——— g) for distinct unit (e.g., individually packaged products); 1/2 cup (——— g) for bulk
Dessert Toppings and Fillings:		
Cake frostings or icings	35 g	——— tbsp(s) (——— g)
Other dessert toppings, e.g., fruits, syrups, spreads, marshmallow cream, nuts, dairy and nondairy whipped toppings.	2 tbsp	2 tbsp (——— g); 2 tbsp (60 mL)
Pie fillings	85 g	——— cup(s) (——— g)
Egg and Egg Sustitutes:		
Egg mixtures, e.g., egg foo young, scrambled eggs, omelets.	110 g	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g)
Eggs (all sizes)[9]	50 g	1 large, medium, etc. (——— g)
Egg substitutes	An amount to make 1 large (50 g) egg	——— cup(s) (——— g); ——— cup(s) (——— mL)
Fats and Oils:		
Butter, margarine, oil, shortening	1 tbsp	1 tbsp (——— g); 1 tbsp (15 mL)
Butter replacement, powder	2 g	——— tsp(s) (——— g)
Dressings for salads	30 g	——— tbsp (——— g); ——— tbsp (——— mL)
Mayonnaise, sandwich spreads, mayonnaise-type dressings	15 g	——— tbsp (——— g)
Spray types	0.25 g	About ——— seconds spray (——— g)
Fish, Shellfish, Game Meats[10], and Meat or Poultry Substitutes:		
Bacon substitutes, canned anchovies,[11] anchovy pastes, caviar.	15 g	——— piece(s) (——— g) for discrete pieces; ——— tbsp(s) (——— g) for others
Dried, e.g., jerky	30 g	——— piece(s) (——— g)
Entrees with sauce, e.g., fish with cream sauce, shrimp with lobster sauce.	140 g cooked	——— cup(s) (——— g); 5 oz (140 g/visual unit of measure) if not measurable by cup
Entrees without sauce, e.g., plain or fried fish and shellfish, fish and shellfish cake.	85 g cooked; 110 g uncooked[12]	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g); ——— oz (——— g/visual unit of measure) if not measurable by cup[13]
Fish, shellfish or game meat[10], canned[11]	55 g	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g); 2 oz (56 g/——— cup) for products that are difficult to measure the g weight of cup measure (e.g., tuna); 2 oz (56 g/——— pieces) for products that naturally vary in size (e.g., sardines)
Substitute for luncheon meat, meat spreads, Canadian bacon, sausages and frankfurters.	55 g	——— piece(s) (——— g) for distinct pieces (e.g., slices, links); ——— cup(s) (——— g); 2 oz (56 g/visual unit of measure) for nondiscrete bulk product
Smoked or pickled[11] fish, shellfish, or game meat[10]; fish or shellfish spread.	55 g	——— piece(s) (——— g) for distinct pieces (e.g., slices, links) or ——— cup(s) (——— g); 2 oz (56 g/visual unit of measure) for nondiscrete bulk product
Substitutes for bacon bits—see miscellaneous category.		
Fruits and Fruit Juices:		
Candied or pickled[11]	30 g	——— piece(s) (——— g)
Dehydrated fruits—see snacks category		
Dried	40 g	——— piece(s) (——— g) for large pieces (e.g., dates, figs, prunes); ——— cup(s) (——— g) for small pieces (e.g., raisins)
Fruits for garnish or flavor, e.g., maraschino cherries[11].	4 g	1 cherry (——— g)
Fruit relishes, e.g., cranberry sauce, cranberry relish.	70 g	——— cup(s) (——— g)
Fruits used primarily as ingredients, avocado.	30 g	See footnote 13
Fruits used primarily as ingredients, others (cranberries, lemon, lime).	55 g	——— piece(s) (——— g) for large fruits; ——— cup(s) (——— g) for small fruits measurable by cup[13]
Watermelon	280 g	See footnote 13
All other fruits (except those listed as separate categories), fresh, canned, or frozen.	140 g	——— piece(s) (——— g) for large pieces (e.g., strawberries, prunes, apricots, etc.); ——— cup(s) (——— g) for small pieces (e.g., blueberries, raspberries, etc.)[13]

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Juices, nectars, fruit drinks	240 mL	8 fl oz (240 mL)
Juices used as ingredients, e.g., lemon juice, lime juice.	5 mL	1 tsp (5 mL)
Legumes:		
Bean cake (tofu)[11], tempeh	85 g	——— piece(s) (——— g) for discrete pieces; 3 oz (84 g/visual unit of measure) for bulk products
Beans, plain or in sauce	130 g for beans in sauce or canned in liquid and refried beans prepared; 90 g for others prepared; 35 g dry.	——— cup (——— g)
Miscellaneous Category:		
Baking powder, baking soda, pectin	1 g	——— tsp (——— g)
Baking decorations, e.g., colored sugars and sprinkles for cookies, cake decorations.	1 tsp or 4 g if not measurable by teaspoon	——— piece(s) (——— g) for discrete pieces;1/4 tsp (——— g)
Batter mixes, bread crumbs	30 g	——— tbsp(s) (——— g);——— cup(s) (——— g)
Cooking wine	30 mL	2 tbsp (30 mL)
Drink mixers (without alcohol)	Amount to make 240 mL drink (without ice)	——— fl oz (——— mL)
Chewing gum[9]	3 g	——— piece(s) (——— g)
Meat, poultry and fish coating mixes, dry; seasoning mixes, dry, e.g., chili seasoning mixes, pasta salad seasoning mixes.	Amount to make one reference amount of final dish.	——— tsp(s) (——— g); ——— tbsp(s) (——— g)
Salad and potato toppers, e.g., salad crunchies, salad crispins, substitutes for bacon bits.	7 g	——— tbsp(s) (——— g)
Salt, salt substitutes, seasoning salts (e.g., garlic salt).	1 g	——— tsp(s) (——— g);——— piece(s) (——— g) for discrete pieces (e.g., individually packaged products)
Spices, herbs (other than dietary supplements).	1/4 tsp or 0.5 g if not measurable by teaspoon	1/4 tsp (——— g); ——— piece(s) (——— g) if not measurable by teaspoons (e.g., bay leaf)
Mixed Dishes:		
Measurable with cup, e.g., casseroles, hash, macaroni and cheese, pot pies, spaghetti with sauce, stews, etc..	1 cup	1 cup (——— g)
Not measurable with cup, e.g., burritos, egg rolls, enchiladas, pizza, pizza rolls, quiche, all types of sandwiches.	140 g, add 55 g for products with gravy or sauce topping, e.g., enchilada with cheese sauce, crepe with white sauce[14].	——— piece(s) (——— g) for discrete pieces; ——— fractional slice (——— g) for large discrete units
Nuts and Seeds:		
Nuts, seeds, and mixtures, all types: sliced, chopped, slivered, and whole.	30 g	——— piece(s) (——— g) for large pieces (e.g., unshelled nuts);——— tbsp(s) (——— g) ;——— cup(s) (——— g) for small pieces (e.g., peanuts, sunflower seeds)
Nut and seed butters, pastes, or creams	2 tbsp	2 tbsp (——— g)
Coconut, nut and seed flours	15 g	——— tbsp(s) (——— g); ——— cup (——— g)
Potatoes and Sweet Potatoes/Yams:		
French fries, hash browns, skins, or pancakes.	70 g prepared; 85 g for frozen unprepared french fries.	——— piece(s) (——— g) for large distinct pieces (e.g., patties, skins); 2.5 oz (70 g/——— pieces) for prepared fries; 3 oz (84 g/——— pieces) for unprepared fries
Mashed, candied, stuffed, or with sauce	140 g	——— piece(s) (——— g) for discrete pieces (e.g., stuffed potato); ——— cup(s) (——— g)
Plain, fresh, canned, or frozen	110 g for fresh or frozen; 125 g for vacuum packed; 160 g for canned in liquid.	——— piece(s) (——— g) for discrete pieces;——— cup(s) (——— g) for sliced or chopped products
Salads:		
Gelatin salad	120 g	——— cup (——— g)
Pasta or potato salad	140 g	——— cup(s) (——— g)
All other salads, e.g., egg, fish, shellfish, bean, fruit, or vegetable salads.	100 g	——— cup(s) (——— g)
Sauces, Dips, Gravies and Condiments:		
Barbecue sauce, hollandaise sauce, tartar sauce, other sauces for dipping (e.g., mustard sauce, sweet and sour sauce), all dips (e.g., bean dips, dairy-based dips, salsa).	2 tbsp	2 tbsp (——— g); 2 tbsp (60 mL)
Major main entree sauces, e.g., spaghetti sauce.	125 g	——— cup (——— g); ——— cup (——— mL)

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Minor main entree sauces (e.g., pizza sauce, pesto sauce), other sauces used as toppings (e.g., gravy, white sauce, cheese sauce), cocktail sauce.	1/4 cup	1/4 cup (——— g); 1/4 cup (120 mL)
Major condiments, e.g., catsup, steak sauce, soy sauce, vinegar, teriyaki sauce, marinades.	1 tbsp	1 tbsp (——— g); 1 tbsp (15 mL)
Minor condiments, e.g., horseradish, hot sauces, mustards, worcestershire sauce.	1 tsp	1 tsp (——— g); 1 tsp (5 mL)
Snacks:		
All varieties, chips, pretzels, popcorns, extruded snacks, fruit- based snacks (e.g., fruit chips,) grain-based snack mixes.	30 g	——— cup(s) (——— g) for small pieces (e.g., popcorn) ——— piece(s) (——— g) for large pieces (e.g., large pretzels; pressed dried fruit sheet); 1 oz (28 g/visual unit of measure) for bulk products (e.g., potato chips)
Soups:		
All varieties	245 g	——— cup (——— g); ——— cup (——— mL)
Sugars and Sweets:		
Baking candies (e.g., chips)	15 g	——— piece(s) (——— g) for large pieces; ——— tbsp(s) (——— g) for small pieces; 1/2 oz (14 g/visual unit of measure) for bulk products
Hard candies, breath mints	2 g	——— piece(s) (——— g)
Hard candies, roll-type, mini-size in dispenser packages.	5 g	——— piece(s) (——— g)
Hard candies, others	15 g	——— piece(s) (——— g) for large pieces;——— tbsp(s) (——— g) for "mini-size" candies measurable by tablespoon; 1/2 oz (14 g/visual unit of measure) for bulk products
All other candies	40 g	——— piece(s) (——— g); 1 1/2 oz (42 g/visual unit of measure) for bulk products
Confectioner's sugar	30 g	——— cup (——— g)
Honey, jams, jellies, fruit butter, molasses	1 tbsp	1 tbsp (——— g); 1 tbsp (15 mL)
Marshmallows	30 g	——— cup(s) (——— g) for small pieces; ——— piece(s) (——— g) for large pieces
Sugar	4 g	——— tsp (——— g) ; ——— piece(s) (——— g) for discrete pieces (e.g., sugar cubes, individually packaged products)
Sugar substitutes	An amount equivalent to one reference amount for sugar in sweetness.	——— tsp(s) (——— g) for solids; ——— drop(s) (——— g) for liquid; ——— piece(s) (——— g) (e.g., individually packaged products)
Syrups	30 mL for syrups used primarily as an ingredient (e.g., light or dark corn syrup); 60 mL for all others.	2 tbsp (30 mL) for syrups used primarily as an ingredient; 1/4 cup (60 mL) for all others
Vegetables:		
Vegetables primarily used for garnish or flavor, e.g., pimento, parsley.	4 g	——— piece(s) (——— g); ——— tbsp(s) (——— g) for chopped products
Chili pepper, green onion	30 g	——— piece(s) (——— g)[13]; ——— tbsp(s) (——— g); ——— cup(s) (——— g) for sliced or chopped products
All other vegetables without sauce: fresh, canned, or frozen.	85 g for fresh or frozen; 95 g for vacuum packed; 130 g for canned in liquid, cream-style corn, canned or stewed tomatoes, pumpkin, or winter squash.	——— piece(s) (——— g) for large pieces (e.g., brussel sprouts); ——— cup(s) (——— g) for small pieces (e.g., cut corn, green peas); 3 oz (84 g/visual unit of measure) if not measurable by cup[13]
All other vegetables with sauce: fresh, canned, or frozen.	110 g	——— piece(s) (——— g) for large pieces (e.g., brussel sprouts); ——— cup(s) (——— g) for small pieces (e.g., cut corn, green peas); 4 oz (112 g/visual unit of measure) if not measurable by cup
Vegetable juice	240 mL	8 fl oz (240 mL)
Olives[11]	15 g	——— piece(s) (——— g); ——— tbsp(s) (——— g) for sliced products
Pickles, all types[11]	30 g	1 oz (28 g/visual unit of measure)
Pickle relishes	15 g	——— tbsp (——— g)
Vegetable pastes, e.g., tomato paste	30 g	——— tbsp (——— g)

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Vegetable sauces or purees, e.g, tomato sauce, tomato puree.	60 g	——— cup (——— g); ——— cup (——— mL)

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement columns that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

[6] Includes cakes that weigh 10 g or more per cubic inch.

[7] Includes cakes that weigh 4 g or more per cubic inch but less than 10 g per cubic inch.

[8] Includes cakes that weigh less than 4 g per cubic inch.

[9] Label serving size for ice cream cones and eggs of all sizes will be 1 unit. Label serving size of all chewing gums that weigh more than the reference amount that can reasonably be consumed at a single-eating occasion will be 1 unit.

[10] Animal products not covered under the Federal Meat Inspection Act or the Poultry Products Inspection Act, such as flesh products from deer, bison, rabbit, quail, wild turkey, geese, ostrich, etc.

[11] If packed or canned in liquid, the reference amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed (e.g., canned chopped clam in juice).

[12] The reference amount for the uncooked form does not apply to raw fish in § 101.45 or to single-ingredient products that consist of fish or game meat as provided for in § 101.9(b)(j)(11).

[13] For raw fruit, vegetables, and fish, manufacturers should follow the label statement for the serving size specified in Appendices A and B to the regulation entitled "Food Labeling; Guidelines for Voluntary Nutrition Labeling; and Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish; Definition of Substantial Compliance; Correction" (56 FR 60880 as amended 57 FR 8174, March 6, 1992).

[14] Pizza sauce is part of the pizza and is not considered to be sauce topping.

(c) If a product requires further preparation, e.g., cooking or the addition of water or other ingredients, and if paragraph (b) of this section provides a reference amount for the product in the prepared but not the unprepared form, then the reference amount for the unprepared product shall be determined using the following rules:

(1) Except as provided for in paragraph (c)(2) of this section, the reference amount for the unprepared product shall be the amount of the unprepared product required to make the reference amount for the prepared product as established in paragraph (b) of this section.

(2) For products where the entire contents of the package is used to prepare one large discrete unit usually divided for consumption, the reference amount for the unprepared product shall be the amount of the unprepared product required to make the fraction of the large discrete unit closest to the reference amount for the prepared product as established in paragraph (b) of this section.

(d) The reference amount for an imitation or substitute food or altered food, such as a "low calorie" version, shall be the same as for the food for which it is offered as a substitute.

(e) If a food is modified by incorporating air (aerated), and thereby the density of the food is lowered by 25 percent or more in weight than that of an appropriate reference regular food as described in § 101.13(j)(1)(ii)(A), and the reference amount of the regular food is in grams, the manufacturer may determine the reference amount of the aerated food by adjusting for the difference in density of the aerated food relative to the density of the appropriate reference food provided that the manufacturer will show FDA detailed protocol and records of all data that were used to determine the density-adjusted reference amount for the aerated food. The reference amount for the aerated food shall be rounded to the nearest 5-g increment. Such products shall bear a descriptive term indicating that extra air has been incorporated (e.g., whipped, aerated). The density-adjusted reference amounts described in paragraph (b) of this section may not be used for cakes except for cheese cake. The differences in the densities of different types of cakes having different degrees of air incorporation have already been taken into consideration in determining the reference amounts for cakes in § 101.12(b). In determining the difference in density of the aerated and the regular food, the manufacturer shall adhere to the following:

(1) The regular and the aerated product must be the same in size, shape, and volume. To compare the densities of products having nonsmooth surfaces (e.g., waffles), manufacturers shall use a device or method that ensures that the volumes of the regular and the aerated products are the same.

(2) Sample selections for the density measurements shall be done in accordance with the provisions in § 101.9(e).

(3) Density measurements of the regular and the aerated products shall be conducted by the same trained operator using the same methodology (e.g., the same equipment, procedures, and techniques) under the same conditions.

(4) Density measurements shall be replicated a sufficient number of times to ensure that the average of the measurements is representative of the true differences in the densities of the regular and the "aerated" products.

(f) For products that have no reference amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., peanut butter and jelly, cracker

and cheese pack, pancakes and syrup, cake and frosting), the reference amount for the combined product shall be determined using the following rules:

(1) For bulk products (e.g., peanut butter and jelly), the reference amount for the combined product shall be the reference amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units (e.g., cracker and cheese pack, pancakes and syrup, cake and frosting), the reference amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the reference amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the reference amounts are in compatible units, they shall be summed (e.g., the reference amount for equal volumes of peanut butter and jelly for which peanut butter is represented as the main ingredient would be 4 tablespoons (tbsp) (2 tbsp peanut butter plus 2 tbsp jelly). If the reference amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., 110 grams (g) pancakes plus the gram weight of the proportioned amount of syrup).

(g) The reference amounts set forth in paragraphs (b) through (f) of this section shall be used in determining whether a product meets the criteria for nutrient content claims, such as "low calorie," and for health claims. If the serving size declared on the product label differs from the reference amount, and the product meets the criteria for the claim only on the basis of the reference amount, the claim shall be followed by a statement that sets forth the basis on which the claim is made. That statement shall include the reference amount as it appears in paragraph (b) of this section followed, in parenthesis, by the amount in common household measure if the reference amount is expressed in measures other than common household measures (e.g., for a beverage, "Very low sodium, 35 mg or less per 240 mL (8 fl oz)").

(h) The Commissioner of Food and Drugs, either on his or her own initiative or in response to a petition submitted pursuant to part 10 of this chapter, may issue a proposal to establish or amend a reference amount in paragraph (b) of this section. A petition to establish or amend a reference amount shall include:

(1) Objective of the petition;

(2) A description of the product;

(3) A complete sample product label including nutrition label, using the format established by regulation;

(4) A description of the form (e.g., dry mix, frozen dough) in which the product will be marketed;

(5) The intended dietary uses of the product with the major use identified (e.g., milk as a beverage and chips as a snack);

(6) If the intended use is primarily as an ingredient in other foods, list of foods or food categories in which the product will be used as an ingredient with information on the prioritization of the use;

(7) The population group for which the product will be offered for use (e.g., infants, children under 4 years of age);

(8) The names of the most closely related products (or in the case of foods for special dietary use and imitation or substitute foods, the names of the products for which they are offered as substitutes);

(9) The suggested reference amount (the amount of edible portion of food as consumed, excluding bone, seed, shell, or other inedible components) for the population group for which the product is intended with full description of the methodology and procedures that were used to determine the suggested reference amount. In determining the reference amount, general principles and factors in paragraph (a) of this section should be followed.

(10) The suggested reference amount shall be expressed in metric units. Reference amounts for fluids shall be expressed in milliliters. Reference amounts for other foods shall be expressed in grams except when common household units such as cups, tablespoons, and teaspoons, are more appropriate or are more likely to promote uniformity in serving sizes declared on product labels. For example, common household measures would be more appropriate if products within the same category differ substantially in density, such as frozen desserts.

(i) In expressing the reference amounts in milliliters, the following rules shall be followed:

(A) For volumes greater than 30 milliliters (mL), the volume shall be expressed in multiples of 30 mL.

(B) For volumes less than 30 mL, the volume shall be expressed in milliliters equivalent to a whole number of teaspoons or 1 tbsp, i.e., 5, 10, or 15 mL.

(ii) In expressing the reference amounts in grams, the following general rules shall be followed:

(A) For quantities greater than 10 g, the quantity shall be expressed in the nearest 5-g increment.

(B) For quantities less than 10 g, exact gram weights shall be used.

(11) A petition to create a new subcategory of food with its own reference amount shall include the following additional information:

(i) Data that demonstrate that the new subcategory of food will be consumed in amounts that differ enough from the reference amount for the parent category to warrant a separate reference amount. Data must include sample size; and the mean, standard deviation, median, and modal consumed amount per eating occasion for the petitioned product and for other products in the category, excluding the petitioned product. All data must be derived from the same survey data.

(ii) Documentation supporting the difference in dietary usage and product characteristics that affect the consumption size that distinguishes the petitioned product from the rest of the products in the category.

(12) A claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter; and

(13) In conducting research to collect or process food consumption data in support of the petition, the following general guidelines should be followed.

(i) Sampled population selected should be representative of the demographic and socioeconomic characteristics of the target population group for which the food is intended.

(ii) Sample size (i.e., number of eaters) should be large enough to give reliable estimates for customarily consumed amounts.

(iii) The study protocol should identify potential biases and describe how potential biases are controlled for or, if not possible to control, how they affect interpretation of results.

(iv) The methodology used to collect or process data should be fully documented and should include: study design, sampling procedures, materials used (e.g., questionnaire, and interviewer's manual), procedures used to collect or process data, methods or procedures used to control for unbiased estimates, and procedures used to correct for nonresponse.

(14) A statement concerning the feasibility of convening associations, corporations, consumers, and other interested parties to engage in negotiated rulemaking to develop a proposed rule consistent with the

Negotiated Rulemaking Act (5 U.S.C. 561).

Dated: August 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-19471 Filed 8-12-93; 8:45 am]

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21 CFR Parts 101 and 102

[Docket No. 80N-0140]

RIN 0905-AC48

Food Labeling: Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying its regulations that require percent juice labeling for beverages that purport to contain fruit or vegetable juice and those that pertain to the common or usual names for such products. The agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons 30 days to comment on technical issues not raised in earlier comments pertaining to this rulemaking. This document addresses those comments that the agency received and corrects inconsistencies and unintended technical consequences of specific provisions in these regulations.

EFFECTIVE DATE: Section 101.30 is effective May 8, 1993; § 102.33 is effective May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5007.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993, FDA published a final rule entitled "Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages" (58 FR 2897) (hereinafter referred to as the "juice labeling final rule"). The document amended the food labeling regulations to establish in new § 101.30 (21 CFR 101.30) requirements for label declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. In that final rule, FDA also revised the existing common or usual name regulation for diluted fruit or vegetable juice beverages in § 102.33 (21 CFR 102.33). In addition, the agency revoked the common or usual name regulation for noncarbonated beverage products that contain no fruit or vegetable juice, § 102.30 (21 CFR 102.30).

That final rule was part of FDA's ongoing rulemaking on juice beverages. It also responded to the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), which amended section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) to provide that foods that purport to be beverages containing vegetable or fruit juice must bear a statement with appropriate prominence on the information panel of the label of the total percentage of such fruit or vegetable juice contained in the food.

II. Technical Issue Comments

In the **Federal Register** of January 6, 1993 (58 FR 2066), FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters, such as inconsistencies or unintended consequences of specific provisions, that were not raised in earlier comments. In order to ensure consideration of any comments, interested persons were to certify that their comments were so limited. FDA further advised that if the comments identify any technical provisions of the final rules that FDA agrees should be changed, FDA will take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the juice labeling final rule, FDA received 17 letters containing one or more comments from industry, consumers, and other interested persons. Most of the submissions requested exemption from the effective date of May 8, 1993, for 1 year, until May 8, 1994. FDA published a document in the **Federal Register** of April 7, 1993 (58 FR 18057), that proposed a 1-year exemption as requested. (FDA intends to finalize that action in a future issue of the **Federal Register**.) Seven of the submissions included technical issue comments as described in the implementation final rule. One submission requested clarification of an issue and another raised an issue that is beyond the scope of technical concerns (e.g., establishment of a minimum Brix value for an additional juice and that would require further rulemaking). FDA is responding below to the specific technical issues that the comments raised.

Because the changes FDA is making in these final rules are technical in nature and are based on a full opportunity for comment, the agency finds that further opportunity for public comment on them is unnecessary.

III. Revisions To Be Codified

A. 21 CFR 101.30—Declaration of the Percentage of Juice

1. Type Size Requirement

Section 101.30(e) (21 CFR 101.30(e)) provides for placement of the percentage of juice declaration on the information panel of the label. Section 101.30(e)(1) requires that it appear near the top of the information panel, with no other printed label information appearing above the statement except the brand name, product name, logo, or universal product code. Section 101.30(e)(2) states that it must be in easily legible boldface print or type in distinct contrast to other printed or graphic matter, in a height not less than the largest type found on the information panel except that used for the brand name, product name, logo, or universal code. These requirements are necessary to provide sufficient prominence to the percent juice declaration.

FDA received requests for a modification to § 101.30(e)(2) to include the title phrase "Nutrition Facts," appearing in the nutrition label, in the list of exceptions regarding type or print size. Otherwise, the comments stated that, the percent juice declaration will always have to be as large as that phrase. The comments contended that this situation would raise extremely difficult space problems on the label and would detract seriously from the importance of the required nutrition information. One comment pointed out that the nutrition labeling regulation, in § 101.9(d)(1)(iii) (21 CFR 101.9(d)(1)(iii)), requires that the type size for the presentation of several of the elements of the nutrition label be not

less than 8 point, and that § 101.9(d)(2) requires that "Nutrition Facts" be set in a type size larger than all other print size in the nutrition label. Thus, the comment stated that it must be in at least 9 point type although, according to examples in Appendix B to part 101 (21 CFR part 101), on typical packages, the "Nutrition Facts" title would be no smaller than 13 point type.

FDA acknowledges that it had not intended that the type size of the declaration of the percentage of juice be controlled by the type size of the "Nutrition Facts" title of the nutrition label when both appear on the information panel. Under section 2(b)(i)(A) of the 1990 amendments, FDA intended that "Nutrition Facts" be particularly prominent. Therefore, to minimize space problems on the information panel of the label and to ensure that "Nutrition Facts" has the prominence that FDA intended, FDA is modifying § 101.30(e)(2) by adding the title phrase "Nutrition Facts" to the list of exceptions.

2. Acid Correction of Brix Values

In § 101.30(h)(1), FDA specified minimum Brix values that the agency will use for enforcement purposes in calculating the labeled percentage of juice from concentrate in a juice or juice beverage. Several comments to the July 2, 1991, juice labeling proposal had asked the agency to provide for acid correction of the Brix values when the percentage of juice is based on Brix determined by refractometer. FDA did not provide for acid corrections in the juice labeling final rule, however, because it did not have sufficient information to provide for correction of Brix for all juices. Different types of acids found in juices may affect the Brix determination by refractometer differently.

Two trade associations commented that they concurred with FDA regarding the lack of information for corrections for acidity in certain juices but requested that where it has information, such as in the case of citrus juices that contain citric acid (e.g., grapefruit, orange, and tangerine juices), the agency provide for acid correction when the Brix is determined by refractometer. The comments suggested that the agency could include a footnote at the end of the table of Brix values in § 101.30(h)(1) to set out the correction.

In support of the need for the correction, the comments explained that it has been common practice in the fruit juice industry to use refractometers to measure degrees Brix and to equate the readings obtained to "total soluble solids." Refractometers and hydrometers calibrated in degrees Brix and used on sucrose solutions such as those made from cane or beet sugar give readings equivalent to the percent of sugar by weight of the solution. However, in the case of juices or beverages containing other soluble matter, such as citric acid, the reading from a refractometer is slightly less than the true total soluble solids. The comments contended that, to make up for this deficiency, the citrus industry has applied a correction to the refractometer readings based on the amount of acid present, expressed as percent by weight of anhydrous citric acid. The comments noted that Yeatman (Ref. 1) has developed a formula for correction of refractometer readings for citric acid content, based on information published in an earlier acid correction table by Stevens and Baier (Ref. 2).

The comments further pointed out that FDA's discussion in the preamble to the juice labeling final rule leaves the impression that in cases where the standard of identity provides for acid correction, and FDA has listed a value based on the standard of identity in § 101.30(h)(1), corrections would be used. For example, the standard of identity for grapefruit juice in § 146.132 (21 CFR 146.132) specifically provides for acid correction, and both the standard of identity and § 101.30(h)(1) list the same minimum Brix value for grapefruit juice from concentrate.

The comments also noted that the standard of identity for frozen concentrate for lemonade in § 146.120 (21 CFR 146.120) implies that an acid correction is made. In addition, in the case of the orange juice standards of identity in part 146 (21 CFR part 146), the regulations refer to soluble solids content and to Brix hydrometer, implying all of the soluble solids. Soluble solids include both the soluble solids from sugars (that are measured by the refractometer) as well as those soluble solids contributed by citric acid and other minor juice constituents (Ref. 2). Thus, the comment contended, because FDA equated the 11.8 percent orange juice "soluble solids" in the standard of identity for orange juice from concentrate in § 146.145 with the 11.8 degrees Brix set forth in the new regulation (§ 101.30(h)(1)), the agency implicitly recognizes the need to apply an acid correction factor if a refractometer is used to determine the Brix.

FDA has reconsidered its position on including a footnote for acid correction in § 101.30(h)(1). The agency acknowledges that acid corrections are proper for citrus juices that contain significant amounts of citric acid, such as grapefruit juice, and certain concentrated citrus juices when the Brix is determined by refractometer. As noted by the comment, FDA has incorporated such a provision in the standard of identity for grapefruit juice in § 146.132, allowing for the correction of acidity using the Yeatman formula (Ref. 1). The method for soluble solids content in citrus fruit juice by refractometer, cited in the 15th edition of the Official Methods of Analysis of the Association of Official Analytical Chemists in 983.17 (AOAC method), also provides for correcting for acidity for citrus juice by the same method as provided in § 146.132. The AOAC method is listed as "first action 1983" and not as final action and is not being specifically referenced in the technical amendments set out below. FDA notes that the AOAC method, if used, should be corrected in the last line by changing the figure 0.064 to 0.0064 in calculating the percent of anhydrous citric acid in the sample.

FDA has not provided for correction for acidity when the Brix of orange juice is determined by refractometer in the orange juice standards because the level of citric acid in the unconcentrated juices is generally low. Where the citric acid content is less than 2 percent, the correction of the Brix value determined by refractometer to obtain the total soluble solids content as measured by hydrometer is usually insignificant (Ref. 2). However, manufacturers are free to use whatever method they deem suitable to ensure that any concentrated or reconstituted orange juice products will comply with the requirements for soluble solids content prescribed by the standards of identity in part 146.

Accordingly, the agency concludes that it is reasonable to provide in § 101.30(h)(1) for a correction of citric acid in the Brix values for citrus juices (grapefruit, orange, and tangerine juices) determined by refractometer and is including a footnote in the table as requested by the comments.

3. Auxiliary Percentage Statements

Section 101.30(l) states that a beverage required to bear a percentage juice declaration on its label shall not bear any other percentage declaration that describes the juice content of the beverage in its label or in its labeling (e.g., "100 percent natural" or "100 percent pure"). However, the regulation continues, the label or labeling may bear percentage statements clearly unrelated to the juice content (e.g., "provides 100 percent of the U.S. RDA of vitamin C"). (RDA is the acronym for recommended daily allowance.)

Several comments asked whether the prohibition against the use of the "100 percent pure" statement in § 101.30(l) applies to products that are 100 percent juice. One comment noted that, for years, one State has had an administrative rule designed to reduce consumer confusion between full-strength juice and diluted juice beverages by requiring citrus products to bear either a "100 percent juice" or "100 percent pure" declaration. It also noted that Florida's Seal of Approval mark, a registered trademark of the Florida Department of Citrus, that bears the term "100% pure" as an integral part of the mark, appears on a substantial portion of the orange juice labels in the United States. It further noted that no exception appears to be provided in § 101.30 for such established trademarks. It contended that prohibition of the term "100% pure" on all such products could cause an economic hardship over and above the changes mandated by the 1990 amendments because the Florida citrus industry and label owners will lose the goodwill and consumer and trade recognition attached to the Seal of Approval mark.

FDA established the prohibition in § 101.30(l) concerning declarations that use a percentage to describe a term other than juice, such as "100 percent pure" or "100 percent natural" declarations, because these statements have the potential to mislead the consumer into believing that the product is 100 percent juice, especially when they appear on the principal display panel of the label. On the other hand, FDA agreed with those comments on the proposal that claimed that statements clearly unrelated to juice content, e.g., "provides 100 percent of U.S. RDA of vitamin C," are not misleading, and it specifically exempted such statements in § 101.30(l).

FDA notes that it has defined a "100 percent juice" product in terms of volume, i.e., as one containing 1 part juice and no water (58 FR 2915). A "100 percent juice" product may also contain nonjuice ingredients provided the added ingredients do not result in a diminution of the juice soluble solids or, in the case of an expressed juice, a change in the volume. Such nonjuice ingredients must be declared in conjunction with the 100 percent juice statement if the statement used on a label panel that does not bear an ingredient statement, except when the presence of the nonjuice ingredients is declared as part of the statement of identity of the product (§ 101.30(b)(3)).

FDA believes that it is reasonable to limit the prohibition in § 101.30(l) to juice beverages that contain less than 100 percent juice and is modifying § 101.30(l), accordingly. This modification is consistent with the agency's intent, as expressed in the July 2, 1991, juice labeling proposal, to limit the use of percentage statements such as "100 percent natural" or "100 percent pure" because they have the potential to mislead consumers to believe that the product is "100 percent juice" when the product is actually a diluted juice beverage (56 FR 30452 at 30457). This action is also consistent with FDA's conclusions in the preamble to the juice labeling final rule in which the agency stated that use of a percentage, particularly 100 percent, in conjunction with terms other than "juice," such as "pure" and "natural," on a beverage that is not full strength can be misleading, particularly where the 100 percent figure appears near the name of the product but not in close proximity to a prominent declaration of the percentage of juice (58 FR 2897 at 2903).

With respect to the use of the term "pure" in the labeling of juices, the agency stated in the preamble to the juice labeling final rule (58 FR 2897 at 2903) that comments to the July 2, 1991, juice labeling proposal (56 FR 30452) presented opinions on the word "pure," but they did not provide sufficient information on which to base a regulation. FDA concluded that while there is no specific prohibition against the use of the terms "pure" and "natural," it has discouraged the use of these terms because they are ambiguous and may be misleading. For example, "orange juice," "pure orange juice," and "100 percent pure orange juice" are identical foods, but "pure" as applied to the food implies that other identical products are "impure" or "not pure" if they do not bear the same term on their label. The term "natural" is similarly ambiguous when applied to any food except flavors and flavorings. However, the agency concluded that the juice labeling final rule was not the appropriate vehicle to consider whether terms such as "pure" and "natural" should be permitted on juice product labels. The agency continues to hold this position.

The term "natural" was also discussed in another final rule, that FDA published in the **Federal Register** of January 6, 1993 (58 FR 2302 at 2407), entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food." FDA stated that it was not undertaking rulemaking to establish a definition for "natural" at that time. The agency will maintain its current policy not to restrict the use of the term "natural" except for added color, synthetic substances, and flavors as provided in § 101.22 (21 CFR 101.22). Additionally, the agency stated that it will maintain its policy (Ref. 3) regarding the use of "natural," as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food. In addition, the agency continues to distinguish between natural and artificial flavors as outlined in § 101.22.

Thus, even though FDA is not prohibiting the use of terms such as "100 percent pure" and "100 percent natural" on "100 percent juice" products, it continues to believe that these terms are appropriately used on such products in extremely limited circumstances. Manufacturers must be certain that any use of these terms on such products is consistent with agency policy as stated above, or they risk regulatory action on the grounds that their labeling is false or misleading. FDA has particular concerns about when, if ever, such terms would be appropriately used on a 100 percent juice product that contains nonjuice ingredients.

Therefore, to clarify the intent of § 101.30(l), the agency is amending paragraph (l) by limiting the prohibition on the use of other percentage statements that describe the juice to beverages that contain less than 100 percent juice. The provision in § 101.30(l) to allow labels or labeling of 100 percent juices, as well as those of beverages that contain less than 100 percent juice, to bear percentage statements clearly unrelated to juice content (e.g., "provides 100 percent of U.S. RDA of vitamin C") remains unchanged.

B. § 102.33—Declaration of "From Concentrate" in Identity Statement

Section 102.33(g) of the common or usual name regulation for beverages requires that if one or more juices in a juice beverage is made from concentrate, the name of the juice must include a term indicating that fact, such as "from concentrate" or "reconstituted." Further, such term must be included in the name of each individual juice, or it may be stated once adjacent to the product name so that it applies to all of the juices, (e.g., "cherry juice (from concentrate) in a blend of two other juices" or "cherry juice in a blend of 2 other juices (from concentrate)"). Under § 102.33(g), the term must be in a type

size no less than one-half the height of the letters in the name of the juice.

A comment requested that § 102.33(g) be modified to include an exception from the requirement for declaration of the juice concentrate in the name of the product when a concentrated juice is added to an expressed juice of the same species to adjust the Brix. For example, addition of apple juice concentrate to expressed apple juice may be necessary to improve the palatability or to meet the U.S. Department of Agriculture grade standard for apple juice. The comment stated that, under the terms of § 102.33(g), the common or usual name of the food would be "apple juice and apple juice concentrate" because no provision is made for adjusting the Brix level of a lower Brix juice by addition of the concentrated form of the juice. On the other hand, the comment noted, the standard of identity for grapefruit juice in § 146.132(a) provides for the addition of concentrate to enhance the total solids of the juice without a requirement for including the name of the concentrated juice in the name of the finished food.

FDA agrees with the comment that when the Brix of an expressed juice is adjusted by adding a small amount of the concentrated form of that juice, declaration of the name of the concentrated juice in the name of the food is not necessary. Therefore, FDA is providing an exception in new § 102.33(g)(2) as requested. However, FDA notes that any juice concentrate added to the expressed juice would have to be declared in the ingredient statement of the label.

This has been agency policy for a number of years. It serves to distinguish products that are made from unconcentrated and undiluted single strength juices from single strength juices that are prepared by diluting concentrated juices with water, i.e., "reconstituted juices." As noted by the comment, the standard of identity for grapefruit juice in § 146.132, which dates back to January 27, 1981 (46 FR 8462), does not require declaration of the presence of concentrated grapefruit juice in the name of the food when grapefruit juice is prepared from unconcentrated, undiluted liquid extracted from mature grapefruit to which concentrated grapefruit juice is added to adjust the soluble solids content. However, the standard of identity, in § 146.132(a)(3)(i)(*b*), states that if the food is prepared from: (1) Concentrated grapefruit juice and water, and/or grapefruit juice or (2) grapefruit juice from concentrate and grapefruit juice, the name of the food is "grapefruit juice from concentrate." Thus, in the latter case, if any of the grapefruit juice concentrate used in the manufacture of the product is diluted with water, the name of the food must contain the phrase "from concentrate." FDA believes that this policy is necessary to clearly distinguish the two forms of juice and has applied it to lemon juice (§ 146.114). It also believes that it is reasonable to include the policy in the common or usual name provisions for labeling of other juices and juice beverages.

Therefore, for consistency with this existing policy, FDA is providing in § 102.33(g)(2) that if water is also added to such a single juice mixture (expressed juice and concentrated juice), the name of the juice must include the term "from concentrate" or "reconstituted," irrespective of the fact that a major portion of the juice may be expressed juice.

One comment stated that the requirement in § 102.33(g) is too broad. It stated that while the use of the term "from concentrate" is appropriate for 100 percent juice products that are made from concentrate, it is not necessary for diluted juices containing less than 100 percent juice because the common or usual name will already bear a qualifying term such as "diluted" or "drink" (e.g., "diluted grape juice beverage" or "grape juice drink"). Another comment that expressed a similar opinion suggested amending § 102.33(g) to read, "If one or more juices in a 100 percent juice beverage is made from concentrate * * *."

FDA does not agree with these comments. Consumers have a right to know when juice products are made from concentrate, i.e., when water has been added to the juice product, whether the resulting product is a 100 percent juice or not. Diluted juices may be made with expressed juices or concentrated juice. Some consumers may prefer to purchase only expressed juice products. These consumers should be able to distinguish such beverages from those that are made from concentrate in the same manner that consumers of 100 percent juices do. Therefore, FDA is not making the requested change. Moreover, in any case, such a change would be beyond the scope of this document.

IV. Other Matters

A comment requested clarification of the exemption from the total percent juice declaration requirement in § 101.30(c) for those beverages that contain minor amounts of juice for flavoring that, except for a flavor description with a fruit or vegetable name, are not labeled with fruit or vegetable juice claims. Despite the broad application of this exemption, the comment stated, the preamble to the percent juice labeling regulation in one instance narrowly refers to "juice flavored waters and seltzers" (58 FR 2898 through 2899, January 6, 1993). The comment asked that FDA state in the technical corrections document that this exemption applies to all beverage products in compliance with the terms of the regulation.

FDA acknowledges that the exemption in § 101.30(c) is not limited to flavored waters and seltzers. While these products were the subject of the comments that suggested the exemption, they were included in the preamble only as examples of the types of products that may contain minor amounts of juice (usually less than 2 percent) for flavoring purposes. The exemption from label declaration of the percentage of juice applies to any beverage that contains only minor amounts of juice for flavoring, that is labeled with a flavor description using terms such as "flavor," "flavored," or "flavoring" with a fruit or vegetable name, and that does not bear: (1) The term "juice" on the label other than in the ingredient statement; (2) an explicit vignette depicting the fruit or vegetable from which the flavor derives, such as juice exuding from a fruit or vegetable; or (3) specific physical resemblance to a juice or distinctive juice characteristic such as pulp (§ 101.30(c)).

V. References

The following references have been placed on display in the Dockets Management Branch (HFA–305) Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Yeatman, Senzel, and Springer, "Correction of Refractometer Readings for Citric Acid Content in Frozen Concentrate for Lemonade," *Journal of the Association of Official Analytical Chemists*, vol. 59, p. 368, 1976.

2. Stevens, J. W., and W. E. Baier, "Refractometric Determination of Soluble Solids in Citrus Juices," *Industrial and Engineering Chemistry*, Analytical Edition, vol. 11, pp. 447–449, 1939.

3. Raymond E. Newberry, letter to Clinton K. Davies, September 29, 1988.

VI. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical modifications to the percent juice labeling regulation in § 101.30 and the common or usual name regulation in § 102.33, according to the standard in Executive Order 12291 and

as required by the Regulatory Flexibility Act (Pub. L. 96–354). The modifications are intended to clarify certain provisions of the final rule and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Fruit juices, Oils and fats, Onions, Potatoes, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 101 and 102 are amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.30 is amended by revising paragraphs (e)(2) and (l), and by amending the table in paragraph (h)(1) by revising the entries for " grapefruit," "orange," and "tangarine" to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

* * * * *

(e) * * *

(2) In easily legible boldface print or type in distinct contrast to other printed or graphic matter, in a height not less than the largest type found on the information panel except that used for the brand name, product name, logo, universal product code, or the title phrase "Nutrition Facts" appearing in the nutrition information as required by § 101.9.

* * * * *

(h)(1) * * *

Juice	100 percent juice[1]
* * * * *	
Grapefruit	[3]10.0
* * * * *	
Orange	[3]11.8
* * * * *	
Tangerine	[3]11.8
* * * * *	

[1] Indicates Brix value unless other value specified.

* * * * *

[3] Brix values determined by refractometer for citrus juices may be corrected for citric acid.

* * * * *

(l) A beverage required to bear a percentage juice declaration on its label, that contains less than 100 percent juice, shall not bear any other percentage declaration that describes the juice content of the beverage in its label or in its labeling (e.g., "100 percent natural" or "100 percent pure"). However, the label or labeling may bear percentage statements clearly unrelated to juice content (e.g., "provides 100 percent of U.S. RDA of vitamin C").

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

3. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

4. Section 102.33 effective May 8, 1994, is amended by redesignating paragraph (g) as paragraph (g)(1) and by adding a new paragraph (g)(2) to read as follows:

§ 102.33 Beverages that contain fruit or vegetable juice.

* * * * *

(g) * * *

(2) If the juice is 100 percent single species juice consisting of juice directly expressed from a fruit or vegetable whose Brix level has been raised by the addition of juice concentrate from the same fruit or vegetable, the name of the juice need not include a statement that the juice is from concentrate. However, if water is added to this 100 percent juice mixture to adjust the Brix level, the product shall be labeled with the term "from concentrate" or "reconstituted."

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19260 Filed 8–12–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 101

[Docket Nos. 90N–0134 and 91N–0162]

RIN 0905–AD08

Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making technical amendments to the regulations that require nutrition labeling on most foods that are regulated by FDA. The agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons an opportunity to comment on technical issues not raised in earlier comments pertaining to nutrition labeling. This document addresses the comments received and corrects unintended technical consequences of the regulations.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079) (and corrected at 58 FR 17328, April 2, 1993) (hereinafter referred to as "the mandatory nutrition labeling final rule") to amend its regulations to: (1) Require nutrition labeling on most foods that are regulated by FDA; (2) revise the list of required nutrients and food components and the conditions for declaring them in nutrition labeling; (3) specify a new format for declaring nutrition information; (4) allow specified products to be exempt from nutrition

labeling; and (5) prescribe a simplified form of nutrition labeling and the circumstances in which such simplified nutrition labeling may be used. This action was taken to implement the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), which amended the Federal Food, Drug, and Cosmetic Act (the act).

II. Technical Issue Comments

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters, such as inconsistencies or unintended consequences of specific provisions, if not raised in earlier comments. In order to ensure consideration of any comments, interested persons were to certify that their comments were so limited. FDA further advised that if the comments identified any technical provisions of the final rules that FDA agrees should be changed, FDA would take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the mandatory nutrition labeling final rule, FDA received approximately 60 letters containing one or more comments from industry, consumers, and other interested persons. Thirty-seven of these submissions submitted technical issue comments as described in the implementation final rule. The other submissions raised matters that merely require clarification or that are beyond the scope of technical concerns and would require further rulemaking. FDA is responding below to the specific technical issues that the comments raised. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comment, the agency finds that further opportunity for public comment on them is unnecessary.

Following the discussion of technical issues that require modification of the mandatory nutrition labeling final rule, several concerns that merely require clarifications are discussed. Those issues that are beyond the scope of this document or that are otherwise not relevant to this rulemaking are not discussed below. To the extent that interested persons believe that these issues require changes in FDA's regulations, they should petition the agency for such a change (e.g., to make provision for the voluntary declaration of complex carbohydrate within the nutrition label).

III. Technical Corrections

A. Nutrient Declaration

1. One comment noted that the final rules governing the listing of total calories provides five methods by which calories in food may be determined. Some of these methods require the calculation of calories from quantitative information concerning macronutrients (e.g., grams (g) of fat) and established specific or general factors (e.g., 9 calories per g (cal/g) of fat). The comment pointed out that although FDA specifies the rounding rules to be applied in many situations, the agency did not specify whether only the final calorie determination should be rounded, or whether the quantitative values for macronutrients should be rounded before the calculation is performed.

FDA acknowledges its oversight in this regard. Calorie declaration should be calculated with as much precision as possible up to the point of the final rounding to provide consumers with the most accurate reflection of the caloric content of a serving of the food. Therefore, FDA is revising § 101.9(c)(1)(i) (21 CFR 101.9(c)(1)(i)) to state that where specific or general food factors are used, the factors should be applied to the actual amounts (i.e., not rounded) of food components (fat, carbohydrate, protein, or ingredients with specific food factors) present in a serving of the food.

2. As discussed in a companion document published elsewhere in this issue of the **Federal Register** pertaining to nutrient content claims, FDA and the Food Safety Inspection Service of the United States Department of Agriculture (USDA) have received and considered comments on the definition of "lean" that have convinced the two agencies to change the saturated fat criterion in the definition of this term to a maximum of 4.5 g or less of saturated fat. Related to that change, a comment has requested that the agency modify its incremental rounding rules for the declaration of saturated fat to allow 0.5 (1/2) g increments below 5 g rather than below 3 g as provided in § 101.9(c)(2)(i). The comment argued that changing the saturated fat component of the "lean" definition to 4.5 g or less without permitting companies to also label at 4.5 g would create consumer confusion and subject both FDA and food companies to needless criticism. The comment stated that required declaration of 5 g saturated fat will give the appearance of a violative product because the declared amount will exceed the criteria for the claim, leading to consumer mistrust rather than informed consumers.

FDA has given careful consideration to the potential consumer confusion, and consequent mistrust of the label, that might result were the declared amounts to exceed the criteria of the "lean" definition. As discussed in the document making technical corrections for nutrient content claims, published elsewhere in this issue of the **Federal Register**, the agency believes that it is important to minimize consumer confusion by ensuring that food is consistently labeled. The agency acknowledges that the argument made in virtually all of the comments that opposed FDA's proposal to require that all fat components be declared in half-gram increments was that the available analytical methods are not sensitive enough to provide reliable data to support label declarations that have that degree of precision. The agency notes however that several comments asserted that methodology does exist to support half-gram increment declarations.

The comments that opposed declaration of fat and fatty acids in half-gram increments were submitted in response to the proposed regulation, in which "total fat" was not explicitly defined but was considered, for compliance purposes, as the sum of all compounds with lipid characteristics that are extracted by the Association of Official Analytical Chemists methods or by other "reliable or appropriate analytical procedures" (former § 101.9(e)(2)). Such an approach allows for the use of many methods that measure different analytes. FDA was concerned by the obvious confusion caused by the lack of a precise definition of total fat. Thus, in the mandatory nutrition labeling final rule, FDA explicitly defined "total fat" as total lipid fatty acids expressed as triglycerides.

This definition of "total fat," in effect, will mean that certain previously used methods (e.g., some gravimetric procedures) will no longer be adequate for determining total fat content. Rather, for the labeling of fat and fatty acid contents, fatty acid content will have to be determined by other (e.g., chromatographic) methods, which have inherently greater precision than many

of the methods previously used to determine fat content. Based on further consideration of the comments submitted in response to the proposed rule, in light of the explicit definition of "total fat" in the final rule and the methods that must be used as a result of that definition, FDA finds that adequate methodologies do exist to determine the various fat components to half-gram increments, at least at certain levels of fat. Natural variation of fat content in foods is such that a determination of fat content in half-gram increments cannot be reliably made for all levels of fat in food, especially at higher levels of fat content.

Thus, the issue is whether determinations of fat and fatty acid contents in half-gram increments can be made at levels up to 5 g, or whether considerations of variability require that the use of half-gram increments be limited to levels of up to 3 g. Considering the reported precisions and reliabilities of methodologies likely now to be used for nutrition labeling purposes, the agency is not persuaded that there are any technical impediments to raising the half-gram increment to 5 g (Refs. 59, 60, and 61).

Comments to the proposed rule also raised the issue of increased cost involved in analyzing to half-gram increments. The agency has stated that cost, although a factor, is not a sufficient reason, in and of itself, to declare total fat, saturated fat, and poly- and monounsaturated fats in whole-gram increments. The public health benefits from decreasing dietary intakes of fat, especially saturated fat, justify the use of half-gram increments to allow consumers to differentiate among products that contain relatively low levels of fats. A product bearing a "lean" label would be such a food. Therefore, because consumer confusion will be decreased if the declared values of nutrients on labels are consistent with the definitions of nutrient content claims, and because the definition for the term "lean" is being modified to include foods with 4.5 g or less of saturated fat, FDA is revising § 101.9(c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) to require that levels of fat and components of fat below 5.0 g per serving be declared in half-gram increments and levels of 5.0 g and above be declared in gram increments.

3. A comment recommended that the declaration of polyunsaturated and monounsaturated fat not be required when fatty acid or cholesterol claims are made if the food qualifies for a "fat free" or "low fat" claim. The comment stated that this requirement in § 101.9(c)(2)(ii) and (c)(2)(iii) has the unintended technical consequence of adding little, if any, useful information to the nutrition label where space is at a premium, particularly for "fat free" foods, where the value for these subcomponents will be zero.

The agency agrees that the required disclosure of poly- and monounsaturated fat in the nutrition label of a "fat free" food serves no useful purpose because no additional information would be provided to consumers. Accordingly, the agency is modifying § 101.9(c)(2)(ii) and (c)(2)(iii) to remove the required disclosure of poly- and monounsaturated fat, respectively, when fatty acid or cholesterol claims are made on foods that meet the criteria in § 101.62(b)(1) for a "fat free" claim.

However, the comment failed to provide a sufficient basis for dropping the required disclosure of poly- and monounsaturated fat in "low fat" foods making fatty acid or cholesterol claims. Such foods can contain up to 3 g of fat per reference amount and have a wide variety of fatty acid compositions. The fatty acid composition of these foods thus can be significant. Therefore, the agency is retaining the requirement that poly- and monounsaturated fat be declared when fatty acid or cholesterol claims are made on "low fat" foods.

4. One comment objected to the incremental levels set by the agency for declaring *beta*-carotene as a percentage of vitamin A. The comment argued that, from a technical standpoint, required rounding of the percent of vitamin A present as *beta*-carotene to the nearest 10-percent increment is inconsistent with the incremental rounding at 2, 5, and 10-percent increments required for vitamins and minerals. This comment suggested that using the same rounding and incremental levels for *beta*-carotene as specified for vitamins and minerals in § 101.9(c)(8)(iii) would provide more accurate quantitative information for consumers when this substance is present at levels below 50 percent of the vitamin A.

The agency agrees that using the same incremental rounding procedures in § 101.9(c)(8)(vi) for *beta*-carotene as specified in § 101.9(c)(8)(iii) for vitamins and minerals would provide more precise information because § 101.9(c)(8)(vi) currently only provides for 10-percent increments, regardless of the percent present. Consistent incremental rounding procedures could also assist consumers by providing for consistent declaration of similar amounts. For example, under the final rules, 6 percent of the daily value (DV) of a vitamin or mineral would be declared as such, while 6 percent of vitamin A present as *beta*-carotene would have to be declared as 10 percent. To correct this situation, FDA is making a technical correction to § 101.9(c)(8)(vi) to state that the percent of vitamin A that is present as *beta*-carotene is to be declared in the same increments as provided in § 101.9(c)(8)(iii) for vitamins and minerals.

5. A comment requested clarification as to whether the declaration of percent of vitamin A present as *beta*-carotene is required to be placed in parenthesis when given, as shown in the example in Appendix C of the mandatory nutrition labeling final rule (58 FR 2079 at 2196).

FDA acknowledges that it failed to expressly provide for how the declaration of *beta*-carotene is to be presented. The agency is concerned that the information on *beta*-carotene be formatted to convey to the consumer that *beta*-carotene is a subcomponent of vitamin A. To do this, the information must be presented in one of two ways: When the vitamins and minerals are arranged in a single column, the information on *beta*-carotene is to be indented under the information on vitamin A, in the manner that subcomponents of the macronutrients are (as directed by the individual paragraphs for subcomponents in § 101.9(c)). When the vitamins are arrayed horizontally, the declaration of *beta*-carotene is to be placed in parenthesis after the declaration of vitamin A. Section 101.9(c)(8)(vi) is revised to include these provisions.

B. Format

6. Package design firms stated that a numeric kerning value (which in effect limits the proximity of one letter to another) has meaning only for a particular type setting system. Each such system has a unique numeric scale, and, as a result, a setting of -4 is meaningless for all systems other than the one that FDA used in designing its sample labels. One design firm recommended that kerning should be "tight but never touching."

The agency acknowledges its error in including a single kerning limit that would be required for all type setting systems. FDA's intent was to require sufficient space between letters to improve the legibility of the information in the nutrition label. Accordingly, in light of the lack of a consistent scale of kerning values, FDA is revising § 101.9(d)(1)(ii)(D) to delete the requirement for a -4 setting and to state that letters should never touch.

7. Several comments pointed out that the type size specifications in § 101.9(d)(1)(iii) did not address several

statements that may be declared within the nutrition label, such as the declaration of percent of vitamin A present as *beta*-carotene and the statement "Not a significant source of _____" that is required on simplified formats for some foods (see § 101.9(f)(4)). In an apparent technical conflict, the last sentence of § 101.9(c)(8)(iii) pertaining to vitamin and mineral declaration states that "Not a significant source of _____" should be in the same type size as nutrients that are indented (i.e., 8 point type), while sample labels in Appendices A and F of the final rule (58 FR 2079 at 2192 and 2201) show the statement in the same type size as the footnotes (i.e., 6 point type).

FDA acknowledges this technical error. To correct it, FDA is revising § 101.9(d)(1)(iii) to specify that 6 point type shall be used for all information contained within the nutrition label except for the heading "Nutrition Facts," which must be set in a type that is larger than all other print in the nutrition label, and the information required in § 101.9(d)(3), (d)(5), (d)(7), and (d)(8), which must be in type size no smaller than 8 point. This amendment is consistent with examples given in Appendices A, C, E, and F to the mandatory nutrition labeling final rule (58 FR 2079 at 2192), which show such statements in the same type size as the footnotes. In addition, FDA is removing the conflicting sentence from § 101.9(c)(8)(iii).

8. One comment pointed out that § 101.9(d)(7) did not provide for the inclusion in the nutrition label of nutrients that are not required to be declared by § 101.9(c) (i.e., voluntary nutrients such as potassium).

FDA agrees with the comment that § 101.9(d)(7) should be corrected to be inclusive of all nutrients that can be declared in the nutrition label, not only those that are required by § 101.9(c). Accordingly, the agency is amending § 101.9(d)(7) by changing "nutrient information for all nutrients required by paragraph (c) of this section" to "nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label."

9. A comment asked for clarification of § 101.9(d)(7)(i) which states that "The name of each nutrient specified in paragraph (c) of this section shall be given in a column * * *." The comment pointed out that a literal interpretation of the sentence would require all nutrients listed in § 101.9(c), even those that are voluntary, to be listed on each nutrition label.

The agency agrees that there is a need to amend § 101.9(d)(7)(i) to eliminate the chance that it would be misinterpreted to require that all nutrients listed in § 101.9(c) be listed on each nutrition label. FDA believes that the modification described in response to the previous comment eliminates some of the problem because it makes explicit that the listing of some nutrients is required, and that the listing of others is voluntary. FDA is amending § 101.9(d)(7)(i) by inserting the word "as" before "specified." As a result, it is now clear that the clause "as specified in paragraph (c) of this section," which is being set off by commas, is intended to provide the direction that the name of a nutrient to be used within the nutrition label is the name that is used in § 101.9(c). It is now also clear that the sentence in question is not, and was not, intended to be a requirement as to the nutrients that are to be listed in the nutrition label.

10. Numerous comments stated that § 101.9(d)(7)(ii), which requires that the percent DV be calculated by dividing the actual amount (i.e., the amount before rounding) of each nutrient by the Daily Reference Value (DRV), creates inconsistencies between the label declaration of rounded quantitative amounts of nutrients and the calculated percent DV. For example, calculating the percent DV for saturated fat by using an actual, unrounded, amount of 0.4 g can have the unintended consequence of necessitating a label declaration of 2 percent DV with a rounded quantitative declaration of 0 g. Comments were concerned about possible consumer confusion when such values are inconsistent (i.e., quantitative amounts by weight are zero, while the percent DV are more than zero).

Concerns also were raised about inconsistencies caused by dividing the actual amount of a nutrient before rounding by the DRV when the amount of the nutrient is much greater than zero. For example, for a product that contains from 5.50 to 6.49 g of saturated fat, the declared amount on the nutrition label would be 6 g. Dividing the amount before rounding by the DV for saturated fat of 20 g would result in a declaration of 28 percent DV at the lower end of the range and 32 percent at the upper end. Yet, if consumers were to divide the declared amount by the DV of 20 g, they would get a value of 30 percent. Concerns that this type of result could lead to consumer confusion and create consumer doubts about the accuracy of label values led the comments to recommend that the agency provide that the percent DV be calculated based on the declared (i.e., after rounding) amount.

FDA acknowledges that the required calculation of percent DV based on the actual (i.e., before rounding) amount has the unintended consequence of causing inconsistencies between the declared amounts and the percent DV for nutrients. The agency agrees that calculating the percent DV by dividing the rounded amounts by the DRV will eliminate inconsistencies between the two declared amounts, thereby reducing the potential for consumer confusion.

However, doing so has the disadvantage of masking some differences between products. This disadvantage is illustrated by considering products that make relative claims, such as "reduced" or "less" claims. If a manufacturer of a product that contains 13 g of total fat (20 percent of the DV) reduced the fat by 50 percent, the new product would contain 6.5 g total fat (10 percent of the DV). However, rounding rules in § 101.9(c)(2) require 6.5 g of fat to be declared as 7 g, and calculation of the percent DV based on the rounded 7 g value would require a declaration of 11 percent DV instead of 10 percent. Therefore, if the manufacturer wanted to make a claim of 50 percent less fat, consumers might question the accuracy of the label claim based on the percent DV declaration.

This issue of rounding procedures is also addressed in a companion document published elsewhere in this issue of the **Federal Register** pertaining to nutrient content claims. In both that document and this document, because there are legitimate advantages and disadvantages for using both rounded and unrounded values, the agency is providing for the use of either. In the case of calculating the percent DV of nutrients, the largest discrepancy that can appear between the percent DV declared when using an unrounded value rather than a rounded value will be 2 percent. This is the level below which the agency has stated that amounts are insignificant (e.g., § 101.9(c)(8)(iii) provides for amounts of vitamins and minerals present at less than 2 percent DV to be declared as zero on the nutrition label). Therefore, FDA does not believe that the consumer will be misled by the use of one value over the other.

Manufacturers are directed to use whichever value, the unrounded or rounded value, that will provide for the greatest amount of consistency on the food label. For example, where quantitative amounts by weight must be declared as zero, the rounded values should be used to calculate percent DV, so that both the quantitative amount by

weight and the percent DV are declared as zero. Similarly, when unrounded values support the basis for nutrient content claims, they should be used. This action will serve to prevent unnecessary consumer confusion that could result from inconsistencies on the food label.

Accordingly, FDA is modifying § 101.9(d)(7)(ii) to provide that the percent DV for all nutrients other than protein is to be calculated by dividing either the amount of the nutrient declared on the label or the actual amount of the nutrient (i.e., before rounding) by the DRV for that nutrient.

11. Comments have asserted that the footnote required by § 101.9(d)(10) that states that fat, carbohydrate, and protein furnish 9, 4, and 4 cal/g, respectively, can create consumer confusion because the regulations allow for four other methods of calculating calorie content. The comments stated that the other methods for determining calorie content are widely used, and when they are used, consumers will not be able to apply the 9, 4, and 4 general factors and obtain results that agree with the calorie declaration on the label. In addition, comments pointed out that discrepancies also will occur because of the use of rounding rules. For example, when a product contains 2 g of fat, the general factor of 9 cal/g of fat would indicate that there should be 18 calories from fat in the product. However, § 101.9(c)(1)(ii) requires that calories from fat be declared to the nearest 5-cal increment up to 50 cal. Therefore, the label of the product would declare 20 cal from fat. There was concern expressed in the comments that the lack of agreement caused by either the use of other methods for calculating calorie content or the rounding rules could lead consumers to question the accuracy of all of the nutrient values on the label.

The agency continues to believe that the public can benefit from having the caloric conversion factors on the label, and that these factors can be a useful rule-of-thumb to help consumers to better understand and use the nutrition information on the label. However, FDA is convinced on the basis of the comments that the number of food products using the general food factors to calculate calories (as provided for in § 101.9(c)(1)(i)(B)) is less than the agency had expected. Because the factors do not appear to be as applicable as the agency had anticipated when developing the final rules, FDA is persuaded that, on balance, there is no real need to make the information mandatory on nutrition labeling. The possible benefits are diminished if discrepancies caused by the use of alternative means of calculating calorie content lead to consumer confusion. Accordingly, FDA is revising § 101.9(d)(10) to make the use of this footnote voluntary.

However, the agency encourages manufacturers to include the calorie conversion information in nutrition labels whenever the general factors are used to calculate calories. FDA is not convinced that discrepancies caused by the use of rounding rules are of sufficient magnitude to affect the decision to use the footnote since in no case would the calorie declaration be rounded by more than 5 cal, and most often it will be less. Consumers are not expected to be bothered by such small differences.

FDA does not believe that the fact that this footnote was required on labels with more than 40 square inches (sq in) available to bear labeling from the time of publication of the final mandatory nutrition labeling rules until publication of this document has created a hardship for those manufacturers who have already printed labels including the information. The agency calculated the dimensions of intermediate-sized packages assuming the presence of the footnote, so that no manufacturer was required to include the footnote when there was insufficient space to do so.

As a result of this change, FDA is making conforming amendments to § 101.9(d)(1)(iii), (d)(11)(i), (f)(5), (j)(5)(ii), and (j)(13)(ii)(C) to delete the reference to § 101.9(d)(10) as "required" information. FDA is also providing in § 101.9(d)(11)(ii) for the presentation of the information described in § 101.9(d)(10).

12. Many comments requested greater flexibility in presenting the required nutrition information. The most frequent request was for permission to use a horizontal form of presentation for the nutrition label on packages that have more than 40 sq in available to bear labeling but that do not have sufficient space to place the full vertical format. Comments argued that the tabular display provided for use on packages with 40 or less sq in of available label space (see § 101.9(j)(13)(ii)(A)) is needed on packages such as pie boxes; bread wrappers and bags used for foods such as frozen vegetables and popcorn, where a seam is located in the center of the panel on which the nutrition label is to be placed; and plastic milk jugs, where indentations created to give strength to the jug prevent the use of a vertical display. Several of these comments asked whether it was permissible to position the nutrition label at a right angle to other print on the label or to split the list of macronutrients required in § 101.9(c)(2) through (c)(7) into two columns. Other comments requested additional flexibility to accommodate the shape (rather than just the size) of food packages, stating that contiguous space is not always available to permit placement of footnotes to the side of the nutrition label. A manufacturer of a fortified meal replacement product asked for guidance on how to accommodate a long list of vitamins and minerals whose declaration was mandatory because they were added to the product. The comment stated that the list of vitamins and minerals would not fit in the vertical display of the basic format, even when the footnotes were moved to the side.

FDA believes that it would not be consistent with section 2(b)(1)(A) of the 1990 amendments to provide the full flexibility sought by these comments. The agency decided in the final rule that if the nutrition label was to be readily observable and comprehensible, it must be presented in as consistent a manner as possible from label to label. Thus, it was the agency's determination that, whenever possible, the nutrition information must be presented in the vertical format shown in § 101.9(d)(12) or, when there is insufficient vertical space for the full length of required information, in a split presentation with the footnote to the side as provided for in § 101.9(d)(11) and shown in Appendix D of the mandatory nutrition labeling final rule (58 FR 2198). However, the agency did not take into account the fact that for a small, narrowly defined group of packages with more than 40 sq in of available label space, there is insufficient continuous vertical label space on the information panel to include either presentation of the nutrition label. According to the agency's calculations, the Nutrition Facts title, serving size information, and the 14 mandatory nutrients listed in § 101.9(c), when presented in accordance with § 101.9(d), require approximately 3 in of continuous vertical label space. FDA's final rule failed to make provision for those few packages with more than 40 sq in of available label space but without 3 in of continuous vertical label space on the information panel.

Therefore, to correct this inadvertent omission, the agency is modifying § 101.9(d)(11) by redesignating current § 101.9(d)(11) as § 101.9(d)(11)(i) and adding a new § 101.9(d)(11)(iii) to state that when there is insufficient continuous vertical label space (i.e., approximately 3 in) to accommodate the required components of the nutrition label up to and including the mandatory declaration of iron, the nutrition label

may be presented in a tabular display as shown. In this display, the footnote required by § 101.9(d)(9) is given to the far right of the label, and additional vitamins and minerals beyond the four that are required (i.e., vitamin A, vitamin C, calcium, and iron) are arrayed horizontally following the required vitamin and mineral declarations.

FDA is also responding to the comment about the placement of long lists of added vitamins and minerals in highly fortified products, where the package has sufficient continuous vertical space to list the required components of the nutrition label through the mandatory declaration of iron yet does not have sufficient space to list additional vitamins and minerals. FDA is providing in § 101.9(d)(11)(ii) for an additional break that will allow the continuation of the list of vitamins and minerals beyond the declaration of iron to be moved to the right, just above the footnote required by § 101.9(d)(9).

The agency advises that it does not consider labels with split columns of macronutrients (i.e., where the declarations of nutrients other than vitamins and minerals are split into two columns) to be in compliance with § 101.9. As explained in the preamble to the final rule (58 FR 2079 at 2136 and 2139), FDA believes that a consistent look to the required nutrition information on food packages will help consumers find and recognize the information for what it is—a profile of the nutrient content of the food. Consistent treatment of similar information is important for the effective use of the nutrition label by consumers. Therefore, the agency is concerned that a proliferation of display arrangements will lead to consumer confusion and retard public efforts to become familiar with and use the information.

Accordingly, the agency is limiting the possible types of display to the standard vertical display shown in § 101.9(d)(12) or the tabular display shown in § 101.9(d)(11)(iii). If nutrition information were to be split in different ways on different products, it would increase the likelihood that some parts of the nutrition information would be missed, contrary to section 2(b)(1)(A) of the 1990 amendments (which is incorporated into the act through section 403(q)(1) of the act as defining the labeling necessary to assist consumers in maintaining healthy dietary practices), thereby reducing the utility of the nutrition label. Therefore, FDA is not revising the regulation to allow the list of macronutrients to be split into two columns.

While FDA acknowledges that current regulations only require that the statement of identity and the net quantity of contents declaration be printed generally parallel to the base on which the package rests when it is displayed as it was designed to be displayed (§§ 101.3(d) and 101.105(f) (21 CFR 101.3(d) and 101.105(f)), respectively), the agency urges manufacturers to place the nutrition information in a position where consumers can easily read it while shopping. Such placement does not preclude positioning the standard vertical display so that the print is at a right angle to the base of the package. Unlike the statement of identity and the net quantity of contents declarations, which consumers should be able to read without removing the package from the shelf, reading the nutrition information almost always requires taking the package in hand. Once this is done, it requires little extra effort on the part of the consumer to rotate the package into position to read the nutrition information.

13. A few manufacturers and packers commented that the format requirements did not allow for listing of nutrition information for more than one food within a single nutrition label when the package contains an assortment of foods (e.g., individual packs of cereal in a variety of flavors). These comments asked whether this omission was a technical oversight and requested permission to use an aggregate nutrition label that would allow for inclusion of nutrition information for several different foods within one nutrition label. FDA received similar requests with respect to the current practices of declaring the nutrition information for several different flavors of ice creams or varieties of bakery items on one package with the statement of identity clearly specifying which flavor or variety was present in the particular container. In the case of the ice cream containers, the label of round containers that are used interchangeably for several different flavors includes nutrition information for each flavor, while the lid, which is the principal display panel, specifies the particular flavor in the container.

FDA acknowledges its oversight in not providing for an aggregate label display that would allow for the declaration of nutrition information for more than one product when the outer package contains a variety of foods or an assortment of foods that are intended to be eaten individually. The agency believes that one aggregate label if well executed can provide the full information in a manner that can be understood by the consumer and that minimizes the label space required for nutrition labeling. While it is concerned that the use of aggregate labels on packages that contain only one product but that may be used interchangeably for other products of the same type (e.g., round ice cream containers) may be confusing to some consumers, the agency acknowledges the practicality of using aggregate nutrition labels on these containers. In addition, the agency believes that the opportunity to compare the nutrition information on different flavors or varieties of the same product may be of interest to consumers of such products. Accordingly, FDA is adding a new paragraph, § 101.9(d)(13), to allow the use of aggregate nutrition labels on the outer labels of packages that contain two or more separately packaged foods that are intended to be eaten individually or of packages that are used interchangeably for the same type of food.

When aggregate labels are used, it is necessary to clearly identify each different food immediately under the Nutrition Facts title so that the consumer will be able to easily locate the information pertinent to each individual item. Also, both the quantitative amount by weight (i.e., g/milligram (mg) amounts) and the percent DV for each nutrient must be declared in separate columns under the name of the individual food. As discussed in the mandatory nutrition labeling final rule (58 FR 2079 at 2140), declaring more than 1 g/mg next to the nutrient name is likely to be cumbersome and confusing to consumers. The preferable alternative to minimize consumer confusion is to provide separate columns for g/mg amounts.

In all other aspects, the aggregate display must comply with the format requirements in § 101.9(d) to the maximum extent possible. An example of an aggregate label display is included in § 101.9(d)(13)(ii).

14. A few comments addressed the implications for the nutrition label of FDA's requirement in § 101.15(c)(2) (21 CFR 101.15(c)(2)) that if a label contains any representation in a second language, all required information must be given in both English and the second language. One comment requested that the definition of an intermediate-size package be increased from 40 or less sq in of available label space to 73 or less sq in when a second language is used, or that § 101.15(c)(2) be amended to not require the nutrition label to be presented in a second language. Another comment requested permission to include both languages within one

nutrition label by listing the name of the nutrient in the second language immediately after the English name (e.g., "Protein/Proteinas 2 g").

FDA advises that the options of redefining intermediate-sized packages when dual languages are used or amending § 101.15(c)(2) are beyond the scope of technical amendments. They would require full rulemaking and therefore cannot be addressed in this document. However, FDA has no objection to increasing the flexibility of the format rules to make provision for including two languages within one nutrition label (i.e., a bilingual nutrition label). Therefore, FDA is adding new § 101.9(d)(14) to specify that when nutrition labeling must appear in a second language, the nutrition information may be presented in a separate nutrition label for each language or in one nutrition label with the information in the second language following that in English. Numeric characters that are identical in the two languages need not be repeated. An example of a bilingual nutrition label is given in Appendix B of this document.

C. Dual Declaration

15. Comments pointed out an error in the serving size specified in the illustration of the dual format shown in § 101.9(e)(5) (i.e., "1/12 cup (45 g)") and suggested the serving should be revised to 1/12 cake which is the serving size currently declared on most boxes of cake mix.

The agency agrees that "1/12 cup" was an incorrect serving size for the sample label shown in § 101.9(e)(5) (58 FR 2079 at 2180). However, in its haste to correct typographical and editorial errors, the agency regretfully made a second technical error in the correction notice published on April 2, 1993, by revising the sample label to state a serving size of "1/12 cake (80 g)" (58 FR 17328 at 17330). This correction was not in accordance with regulations governing the declaration of serving size for dry product mixes. Footnote 2 to Table 2 in § 101.12(b) and (c) (21 CFR 101.12(b) and (c)) state that the reference amount for the unprepared form of a food is the amount required to make one reference amount of the prepared form. Section 101.9(b)(2)(iii) requires manufacturers to state the serving size as the household measure that most closely approximates this amount. As discussed in the document making technical corrections in the serving size regulation, published elsewhere in this issue of the **Federal Register**, the agency has determined that, for products that require further preparation before consumption, using the entire contents of a package to prepare a large discrete unit that is usually divided for consumption (e.g., a cake mix that makes a cake), the most appropriate household measure is the fraction of the package that makes a serving of the finished product. For example, if a mix makes a cake for which the serving size, as determined following the procedures specified in § 101.9(b), is one-twelfth of the cake, the serving size for the mix is one-twelfth of the package, with the metric weight of this amount expressed in parentheses. The nutrient content of the mix is then expressed, per this amount, on an "as packaged" basis. The agency has determined that a further descriptive phrase (e.g., "about 1/4 cup dry mix") would assist consumers by further clarifying the serving size declaration. The agency, also, in such cases encourages manufacturers to voluntarily provide a second column of nutrient content information for the product "as prepared." Thus, FDA is revising the serving size in the sample label given in § 101.9(e)(5) to state that the serving size for this hypothetical cake mix is "1/12 package (44 g, about 1/4 cup dry mix)."

D. Simplified Format

16. Comments pointed to a discrepancy between the preamble discussion and the codified language pertaining to the required use of the statement "Not a significant source of _____" (with the blank to be filled in by the names of nutrients present in insignificant amounts). In the preamble, FDA stated that the added statement would be required to advise consumers about the full nutritional profile of the food when claims were made as well as when nutrients are voluntarily added to a food or voluntarily declared in the nutrition label (58 FR 2079 at 2143). However, § 101.9(f)(4) only required the added statement when nutrients are added to the food or voluntarily declared in the nutrition label.

The agency acknowledges that it inadvertently failed to include in § 101.9(f)(4) that the use of claims on the label is a criterion for when the statement "Not a significant source of _____" must appear on the label. FDA continues to believe that when foods are marketed for their nutritional characteristics (as they are when claims are made), the label would be in violation of section 201(n) of the act unless consumers are advised about the full nutritional profile of the food. Accordingly, to correct this technical oversight, FDA is amending § 101.9(f)(4) to require the use of the statement "Not a significant source of _____" whenever claims are made on the label or in labeling.

E. Placement of Nutrition Label on Information Panel

17. The agency has received many comments from the food industry requesting guidance on where to locate the nutrition label, the ingredient statement, and the name and place of business of the manufacturer, packer, or distributor when there is insufficient space on the information panel for all required information. The comments stated that the type size and spacing requirements of the revised nutrition label will prevent its placement on the information panels of many foods, and they requested greater flexibility in its placement on the label.

FDA has reviewed proposed layouts that would implement the revised nutrition labeling regulations for many product labels. The agency agrees that the nutrition label under the revised regulations will often require more space than current nutrition labels, necessitating rearrangement of the required information on the food label. Section 101.9(i) specifies that the placement of the nutrition label must be in compliance with § 101.2 (21 CFR 101.2), which, in turn, specifies that the necessary information is to be on the information panel which is immediately contiguous and to the right of the principal display panel unless that panel is too small to accommodate the necessary information. In such cases, it may be moved to the next panel immediately contiguous and to the right of the information panel. Accordingly, manufacturers are currently allowed to move all required information as a unit when the previous information panel will not accommodate all such information. When all of the required information is on the information panel, § 101.2(e) specifies that there shall be no intervening material between the required information.

Section 101.2(d) also allows the required information to be split between the principal display panel and the information panel when there is insufficient space on either panel to accommodate all of it.

FDA is persuaded that increased flexibility in regard to the placement of the nutrition label would ease label overcrowding, would minimize layout problems faced by package designers, and would not hinder consumer use of the nutrition information. As a result of the graphic format requirements in § 101.9(d), the revised nutrition label format will be readily identifiable, so there is little concern that the nutrition label will be hard to locate when it

cannot be accommodated on the information panel or on the principal display panel. The only circumstance in which it may not be readily identifiable is the unusual circumstance when the required nutrition information is presented in a linear display on small or intermediate-sized packages because of severe constraints presented by the package size or shape.

On the other hand, the agency believes that it is beneficial to leave the ingredient statement (as required by § 101.4 (21 CFR 101.4)) and the name and place of business of the manufacturer, packer, or distributor (as required by § 101.5 (21 CFR 101.5)) on the information panel if there is sufficient space to accommodate them. For many years, education programs have taught consumers to look to the information panel for the ingredient statement and the manufacturer's name and place of business. In addition, the agency is concerned that because there are no graphic requirements for such information other than minimum required type size, it may be hard for consumers to locate this information if it is moved elsewhere.

Accordingly, FDA is considering the addition of a special labeling provision under § 101.9(j) to allow the nutrition label to be moved to any other panel that can be readily seen by consumers when the information panel is too small to accommodate all the necessary information. However, the agency finds that this action is beyond the scope of these technical revisions and would require proposed rulemaking. To this end, FDA is publishing elsewhere in this issue of the **Federal Register** a proposed rule to increase flexibility in the placement of the nutrition label information on packaged foods. During this rulemaking period, FDA advises that it is unlikely that the agency will take enforcement action against products that are labeled in a manner that is consistent with the proposed rule.

F. Exemptions

18. One comment from a trade association stated its belief that there was an inadvertent drafting error in that part of § 101.9(a) that would negate any exemption when a nutrition claim or any other nutrition information is included on the label or in labeling or advertising. The comment requested that the regulation be amended to negate only those exemptions for which there are statutory directives to do so. For example, section 403(q)(5)(B) of the act provides an exemption for small packages unless nutrition information is provided on the label, and sections 403(q)(5)(C) and (q)(5)(D) of the act provide exemptions for foods that contain insignificant amounts of all required nutrients and foods offered for sale by small businesses unless nutrition information was provided on the label or in labeling or advertising. The comment stated that other statutory exemptions that are not conditional (i.e., would not be negated if other nutrition information is given) include restaurant food, retail establishment food, infant formula, medical food, and food for further processing in section 403(q)(5)(A)(i) through (q)(5)(A)(v) of the act, respectively; food containing insignificant amounts of more than half the specified nutrients in section 403(q)(5)(C) of the act; food sold to restaurants in section 403(q)(5)(F) of the act; and raw agricultural commodities and fish in section 403(q)(4) of the act. Other exemptions or special labeling provisions included under § 101.9(j) (e.g., food for infants and children under 2 years of age, intermediate-sized labels, units in a multi-unit container) are nonstatutory, and the comment recommended that they not be negated by nutrition information in labeling or advertising.

FDA agrees that the negation of all exemptions when claims or other nutrition information is given on the label or in labeling or advertising is overly broad and is a technical error. To correct that error and to simplify the regulations, FDA is modifying § 101.9(a) by deleting the last sentence and § 101.9(j) by indicating the particular exemptions that are negated when claims or other nutrition information are given.

The corrections to § 101.9(j) are as follows:

a. § 101.9(j)(1) *Small business exemption*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. This proviso is already specified in § 101.9(j)(1)(i). However, FDA has made editorial changes in this section to make its wording more consistent with that previously found in § 101.9(a). FDA has changed the term "information" to "other nutrition information in any context" and added the sentence "Claims or other nutrition information subject the food to the provisions of this section." This action is consistent with section 403(q)(5)(D) of the act.

b. § 101.9(j)(2) *Food for immediate consumption* (e.g., restaurants): Exemption in § 101.9(j)(i) through (j)(iii) is modified to be contingent on no claims or other nutrition information being given on the label or in labeling or advertising, except that in § 101.9(j)(2)(iii), the exemption for foods sold for use in restaurants will be unconditional because those food containers are not seen by consumers, and there is therefore no benefit to their bearing nutrition labeling on the food labels. Because § 101.9(j)(2)(iii) exempts both foods sold and used by restaurants, with foods sold by restaurants being conditional on claims not being made and foods used by restaurants being unconditional, to reduce possible confusion and for ease of administration, FDA is breaking § 101.9(j)(2)(iii) into two separate paragraphs, § 101.9(j)(2)(iii) and (j)(2)(iv). Section 101.9(j)(2)(iii) will address foods sold in restaurants and § 101.9(j)(2)(iv) will address foods used in restaurants. Current § 101.9(j)(2)(iv) is redesignated as § 101.9(j)(2)(v).

In new § 101.9(j)(2)(iv), which addresses foods used in restaurants, FDA is adding a clause to clarify that the paragraph addresses foods that are used in restaurants but that are not served to the consumer in the package in which they are received. Packages of food that are served to consumers (e.g., individual serving size packages of salad dressings) are covered under § 101.9(j)(2)(i) and (j)(2)(ii), and their exemption is conditioned on the absence of claims or other nutrition information.

FDA does not agree with the comment that the statutory exemption for restaurant foods is unconditional. While section 403(q)(5)(A)(i) of the act does not condition this exemption on the absence of other nutrition information, section 403(r)(5)(B) of the act notably exempts food served in restaurants or other establishments in which food is served for immediate human consumption from some but not all of the provisions that apply to nutrient content claims and does not exempt such food from the health claim provisions at all. FDA has provided for the nutrition labeling of restaurant foods that make nutrient content or health claims in § 101.10 (21 CFR 101.10).

c. § 101.9(j)(3) *Ready-to-eat foods not for immediate consumption*: Exemption is contingent on no claims or other nutrition information being made on the label or in labeling or advertising. Based on its authority under sections 201(n) and 403(a) of the act, the agency is not revising this section to make the exemption unconditional. Since 1973, when FDA first promulgated regulations governing nutrition labeling, the nutritional content of a food has been considered a material fact when a nutrition claim is made, and a food is thus misleading if it fails to bear the

required nutrition information when such a claim is made.

d. § 101.9(j)(4) *Foods that contain insignificant amounts of all required nutrients*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. This is consistent with section 403(q)(5)(C) of the act.

e. § 101.9(j)(10) *Raw fruits, vegetables, and fish subject to the voluntary nutrition labeling program*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. Claims or other nutrition information will subject the food to nutrition labeling in accordance with § 101.45 (21 CFR 101.45). This conclusion is based on FDA's authority under sections 201(n) and 403(a) of the act, as discussed for paragraph (j)(3) of this section above.

f. § 101.9(j)(13)(i) *Foods in small packages*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. Even though section 403(q)(5)(B) of the act only conditions the exemption on other nutrition information present on the label, the agency is extending the conditions to other nutrition information in labeling and advertising as well based on its authority under sections 201(n) and 403(a) of the act, as discussed for paragraph (j)(3) of this section above.

The agency agrees with the comment that all of the remaining exemptions or special labeling requirements in § 101.9(j) are unconditional; that is, they will remain in effect whether or not nutrition claims or other nutrition information are provided on the label.

1. Ready-to-Eat Foods not for Immediate Consumption

19. A comment noted that the words "portioned and packaged" in the example included in § 101.9(j)(3)(v) did not agree with the preceding criteria that ready-to-eat foods that are not for immediate consumption must be "processed and prepared" primarily in the retail establishment if they are to be exempt.

The agency agrees with the comment and is amending § 101.9(j)(3)(v) to replace "portioned and packaged" with "processed and prepared." In addition, the agency is making an editorial change, modifying "sold by independent delicatessens, bakeries, and retail confectionery stores" to "sold by independent delicatessens, bakeries, or retail confectionery stores."

2. Foods for Infants and Children Less Than 4 Years of Age

20. Section 101.9(c)(7)(i) of the nutrition labeling final rule requires a statement on the nutrition label of percent of DV for protein on labels of foods intended for infants and children less than 4 years of age unless the protein quality value is less than 40 percent of the reference standard. Likewise, § 101.9(c)(8)(i) requires declaration of the percent of DV of vitamins and minerals according to the group for which the food is intended (e.g., infants or children under 4 years of age). Comments pointed out that § 101.9(c)(7)(i) and (c)(8)(i) conflict with § 101.9(j)(5)(ii) which states that nutrition labeling shall not include listings of percent of DV, including protein, vitamins, and minerals, on labels of foods represented or purported to be specifically for infants and children less than 4 years of age.

FDA agrees that the conflict in the labeling rules for foods intended for infants and children less than 4 years of age requires a technical amendment to address the declaration of percent DV of protein, vitamins, and minerals and their location on the nutrition facts panel. Accordingly, FDA is modifying § 101.9(j)(5)(ii) to state that foods, other than infant formula, represented or purported to be specifically for infants and children less than 4 years of age shall not include declarations of percent of DV for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber (see § 101.9(j)(5)(ii)(A)). Thus, the percent DV for protein, vitamins, and minerals are to be declared in accordance with § 101.9(c). Other format specifications that FDA is including are as follows:

a. Nutrient names and quantitative amounts by weight are to be presented in two separate columns (see § 101.9(j)(5)(ii)(B)) (formerly in § 101.9(j)(5)(ii)).

b. Because percent DV declarations are required on the labeling of such foods, the heading "Percent Daily Value" that is required in § 101.9(d)(6) is to be placed immediately below the quantitative information by weight for protein (see § 101.9(j)(5)(ii)(C)).

c. The declaration of percent DV for protein, and vitamins and minerals are to be declared immediately below the heading "Percent Daily Value" (see § 101.9(j)(5)(ii)(D)).

d. The footnote required in § 101.9(d)(9) is not to be included (see § 101.9(j)(5)(ii)(E) (formerly in § 101.9(j)(5)(ii)).

In response to these changes, FDA is publishing in Appendix C of this document a revised version of Appendix G that was published in the mandatory nutrition labeling final rule (58 FR 2079 at 2203 and 2204).

21. A trade association suggested that a technical correction be made to delete the word "Amount" as a column heading in the sample formats provided in Appendix G of the mandatory nutrition labeling the final rule (58 FR 2079 at 2203 and 2204) for foods for children under 2 and 4 years of age since the term is not provided for in the regulation.

FDA agrees that the term "Amount" is not required in the regulation. Furthermore, FDA notes that "Amount" is redundant with the heading "Amount Per Serving" which is a mandatory term and which appears in the example. Accordingly, in Appendix C, the term "Amount" is removed from the sample labels.

3. Foods in Small Packages

22. A number of manufacturers and a package design firm submitted design layouts for packages with less than 12 sq in of printable label area (i.e., small packages) that showed that the required nutrition information could not be accommodated in the combined 6 point and 8 point type sizes specified in § 101.9(d)(1)(iii) but could be accommodated if printed in all 6 point type. Several of these manufacturers stated that while they were not required to provide nutrition information, they wished to do so voluntarily. A grocery retailer was of the opinion that, although 6 point type is more difficult to read, consumers would be more likely to make the attempt to read such labels rather than to write a letter requesting the information. Several packaging printers, design firms, and manufacturers also stated that certain lowercase letters in 6 point type will fill in and be unreadable with the flexographic process on film surfaces. A manufacturer and a package design firm stated that in their experiences, nutrition information on small packages would be just as legible in all uppercase letters of one-sixteenth-inch minimum height as in 6 point uppercase and lowercase letters, and that all uppercase letters would reduce crowding because less vertical space would be required. A few comments also pointed out that the alternative to smaller type size is the use of the linear display, a form of presentation that will make retrieval of nutrient information more difficult for most consumers.

It was not FDA's intent to discourage manufacturers from voluntarily providing nutrition information when not required to do so. The agency agrees that more small packages will provide nutrition information if greater latitude is given in the selection of type sizes. FDA is also aware that a significant portion of food packaging is printed by

flexography. At the same time, FDA is mindful of the need to improve the legibility of nutrition information for the growing populations of older Americans and others with impaired eyesight. The conflicting need for more information on the label, while improving consumer access to the information, led to the compromise selection of 8 point type for the most important product-specific nutrient information and 6 point type for the other information.

In the mandatory nutrition labeling final rule, FDA provided several provisions designed to assist manufacturers in fitting nutrition information onto small package labels. These included the use of a linear display, specified abbreviations, and the omission of footnotes. While these same provisions apply to intermediate-sized packages when the package shape or size cannot accommodate the standard format, manufacturers of products in small packages may employ these measures in nutrition labeling their products.

FDA is persuaded, however, that an additional provision pertaining to type size on small packages would benefit the consumer by allowing nutrition information to be presented on more packages. The agency believes that allowing for smaller type size on small packages is consistent with the measures allowed in § 101.9(j)(13)(ii). It recognizes that it overlooked the need for this type of exception in the final regulations governing format requirements.

Consequently, FDA is adding new § 101.9(j)(13)(i)(B), providing for the optional use of 6 point type or all uppercase type one-sixteenth inch minimum height for packages with less than 12 sq in available to bear labeling.

23. A few comments were received from manufacturers of products that make nutrient content claims and that are packed in individual serving-size packages for service with meals in institutional food service (e.g., "low calorie" jelly, "light" cream cheese). Because of the presence of the claim, these products not only lose their exemption from nutrition labeling but are required by § 101.13 (21 CFR 101.13) to include a referral statement and possibly other accompanying information. These comments stressed the physical limitations of such packages, which often have less than 3 sq in available to bear labeling, and asked for guidance. The comments also pointed out that these foods are identical to foods sold in larger containers where nutrition labeling would be available.

The agency has been aware for many years of the special labeling needs of individual serving size packages of food served with meals in restaurants that are not intended for sale at retail. In § 101.2(c)(5), FDA allows for reduced type size on the labels of such foods. This regulation permits a type size of one thirty-second-inch in height when such packages have a total area available to bear labeling of 3 sq in or less, and it is not possible to use any larger type. The special labeling needs of these very small packages were overlooked in the final nutrition labeling regulations. Accordingly, FDA is adding to § 101.9(j)(13)(i)(B) a provision that allows compliance in accordance with § 101.2(c)(5). If, despite this provision, there are still packages for which there is insufficient area available to print all required information, the agency advises manufacturers to write to the Office of Food Labeling, FDA (HFS–150) on a case-by-case basis requesting alternative means of compliance in accordance with § 101.9(g)(9).

4. Foods in Packages With 40 or Less Square Inches of Available Area to Bear Labeling

24. One manufacturer pointed out an apparent contradiction in § 101.9(j)(13)(ii)(A) and requested clarification of whether FDA meant that package shape or label shape is the limiting factor governing use of a linear display in lieu of the tabular display for packages less than 12 sq in of surface area.

As corrected on April 2, 1993 (58 FR 17328), § 101.9(j)(13)(ii)(A) includes the provision that a tabular or linear display may be used if a product has a total surface area available to bear labeling of less than 12 sq in, or if the product has a total surface area available to bear labeling of 40 or less sq in, and the package shape or size cannot accommodate a column display. In the second sentence of paragraph (j)(13)(ii)(A) the agency provided that the linear format could be used only if the tabular display could not be accommodated. FDA inadvertently used the term "label" as the basis for determining whether the accommodation could be made. FDA meant for the package shape or size to be the determining factor, both for electing to use the tabular or linear display instead of the regular vertical column display, as well as electing the linear in lieu of the tabular display. Accordingly, FDA is modifying that sentence in § 101.9(j)(13)(ii)(A) to be consistent with the first sentence. Thus, it reads: "Nutrition information may be given in a linear fashion, only if the package shape or size will not accommodate a tabular display."

25. Several comments requested an example of a linear display that would be permitted under § 101.9(j)(13).

FDA acknowledges its oversight in not including an example of a linear display in the final regulations. The agency is therefore modifying § 101.9(j)(13)(ii)(A) to include in new paragraph (j)(13)(ii)(A)*(1)* the tabular display previously included under § 101.9(j)(13)(ii)(A) and to include the linear display in new paragraph (j)(13)(ii)(A)*(2)*. In doing so, the agency is removing the direction that any subcomponents declared be listed parenthetically after principal components. FDA has worked with the Food Safety and Inspection Service, USDA, to resolve inconsistencies between the agencies in the form of presentation for the linear display. As given in § 101.9(j)(13)(ii)(A)*(2)*, the percent DV is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients (both principal components and subcomponents) are treated similarly to minimize confusion. Additionally, to avoid a cluttered appearance, bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein." Examples are given in Appendix D of this document of presentations of the linear display that meet the requirements for the full, simplified, and shortened formats provided for in the final regulations.

Despite the continued provision for a linear display, FDA is concerned that consumers will not be able to easily understand and use nutrition information presented in a linear fashion. The interspersion of numbers and text, and the need to delineate quantitative amounts by weight from percent DV's, are complications that reduce both readability and comprehensibility of the linear format to the extent that the only justification for using the linear arrangement is a lack of available space. Therefore, FDA sees the use of a linear display as a last resort when no other arrangement can be accommodated in the available label space (e.g., when small packages would otherwise have to take advantage of the exemption allowing use of an address or telephone number in lieu of nutrition information). Consumers would be expected to be more likely to take a few extra moments to read a linear nutrition label than to write a letter or call the manufacturer. Accordingly, the final rules provided for the limited use of a

linear display only when the package label cannot accommodate any additional columnar display. FDA is not modifying this aspect of § 101.9(j)(13)(ii)(A).

26. One comment requested that additional abbreviations be allowed under § 101.9(j)(13)(ii)(B) for nutrients that, while listed in § 101.9(c) as voluntary, may be mandatory when claims are made.

As stated in the mandatory nutrition labeling final rule, while the agency is concerned about the use of abbreviations and any possible consumer confusion that they may cause, FDA believes that their use under limited and controlled conditions is preferable to overcrowding within the nutrition label (58 FR 2079 at 2155). Accordingly, the agency provided for abbreviations for those mandatory nutrients whose name exceeds 10 characters. However, in doing so, FDA overlooked the fact that voluntary nutrients do, in fact, become mandatory when claims are made about them. Therefore, to apply the same approach to all nutrients whose declaration may be required in nutrition labeling and whose name exceeds 10 characters, FDA is modifying § 101.9(j)(13)(ii)(B) to allow the following additional abbreviations on labels of packages that have a total surface area available to bear labeling of 40 or less sq in:

Calories from saturated Fat—Sat Fat Cal
Monounsaturated Fat—Monounsat Fat
Polyunsaturated Fat—Polyunsat Fat
Soluble Fiber—Sol Fiber
Insoluble Fiber—Insol Fiber
Sugar Alcohol—Sugar Alc
Other Carbohydrate—Other Carb

5. Shell Eggs

27. A package design firm pointed out that the type size requirements for nutrition information on the underside of the lid of shell eggs or on the insert (see § 101.9(j)(14)) do not state what part of the copy must be one-sixteenth inch in height, and whether the copy is to be all uppercase or uppercase and lowercase.

FDA advises that the inclusion in § 101.9(j)(14) of type size criteria for nutrition labeling on egg cartons that differs from the requirements of § 101.9(d)(1)(ii) was an oversight. Therefore, FDA is deleting the reference to one-sixteenth-inch type size in § 101.9(j)(14), thereby requiring that the nutrition label on shell eggs conform with the type size requirements of § 101.9(d).

6. Multiunit Packages

28. Section 101.9(j)(15) of the regulation, the provision on multiunit packages, requires that each of the unit containers securely enclosed within a single sleeve be labeled "This unit not labeled for retail (or individual) sale." One comment requested that a long-standing exemption from the required use of the statement "This unit not labeled for retail sale" be continued for inner tubs of margarine when they bear no labeling at all and are firmly enclosed in a sleeve or carton which bears full labeling. The comment enclosed a letter sent by FDA to the National Association of Margarine Manufacturers in 1974 granting such an exemption.

In its haste to prepare the final rules, the agency overlooked the exemption that exists for margarine tubs and some other foods when the inner units bear no labeling of any kind and are firmly enclosed in an outer carton that bears all required label information. The agency has no objection to the continuation of this exemption under those conditions and is therefore modifying § 101.9(j)(15)(iii) to provide an exemption from the required use of the statement on products that bear no labeling on the inner unit containers. Section 101.9(j)(15)(i) and (j)(15)(ii) require that the outer carton bear full nutrition labeling, and that the inner unit containers be securely enclosed within the outer retail carton, respectively. The agency advises that any labeling on the inner units (such as a statement of identity, brand name, or flavor identification) will trigger the required use of the statement "This unit not labeled for retail sale."

IV. Clarifications

A. Nutrient Declaration

29. A comment sought clarification of the statement in § 101.9(c) that no nutrients or food components other than those listed as mandatory or voluntary may be included within the nutrition label. The comment sought assurance that other nutrition information that was accurate and truthful could be placed outside of the nutrition label (i.e., elsewhere on the label or in labeling).

FDA did not intend to limit the nutrition information that could be provided on food labels to that which is required or allowed within the nutrition label. The agency has no objections to other truthful and nonmisleading nutrition information being placed outside of the nutrition label. Reference to this point is made in comment number 164 of the mandatory nutrition labeling final rule (58 FR 2079 at 2138). The agency states there that supplementary information outside of the nutrition label can help consumers to better understand the characteristics of the individual food in relation to the total diet, but that such supplementary information must be consistent with the requirements for any applicable nutrient content or health claim.

30. One comment objected to the use of 4 cal/g of soluble fiber for caloric calculations, stating that there is scientific support for a factor of 2 cal/g.

FDA believes that there is sufficient flexibility in the regulations to allow for the use of more specific factors for caloric calculation where they exist. Section 101.9(c)(1)(i) provides five methods for determining the caloric content of foods. In addition to the use of the general factor of 4 cal/g of carbohydrate, § 101.9(c)(1)(i)(A) and (c)(1)(i)(D) allow for the use of specific food factors. To establish alternate caloric values for specific food ingredients, manufacturers may submit information on the digestibility of the substance to FDA for consideration as discussed in the preamble to the final mandatory nutrition labeling rule (58 FR 2079 at 2111).

31. A comment stated that the preamble to the final rule (58 FR 2079 at 2087) limits the discussion on the use of digestibility coefficients to the declaration for total fat and omits from the discussion the use of digestibility coefficients for the corresponding declarations for saturated fat, polyunsaturated fat, and monounsaturated fat.

The agency acknowledges that limiting the preamble discussion on digestibility coefficients for long-chain fatty ingredients to total fat is an oversight and recognizes that the digestibility coefficients would also affect the calorie contribution to the specific subcategories to which the fatty acids belong.

B. Format

32. A package design firm called attention to the fact that a given point size of type will not be the same measured height for all type styles.

FDA is aware that the actual height, for example, of the lowercase "o" will vary somewhat above or below 1/16 inch in 8 point size type, depending on the particular type style selected. FDA did not intend to imply in the preamble discussion in response to comment 161 in the mandatory nutrition labeling final rule (58 FR 2079 at 2136) that type styles were to be limited to those styles that, in 8 point size, produce a lowercase "o" at least 1/16 inch in height, nor did § 101.9(d)(1)(iii) add a minimum height requirement in addition to specifying 8 point and 6 point type sizes. Based on examination of a number of type styles, FDA

concludes that variations in type height result from type style at a given point size are not large enough to materially alter legibility, and therefore no technical correction to the regulation is necessary.

33. Several comments stated that it would not be possible to fit the format into available label space if all the type specifications listed in Appendix B to part 101 were followed. The majority of comments interpreted the specifications in Appendix B to part 101 as mandatory.

FDA points out that the mandatory type requirements are listed in § 101.9(d). These requirements are fewer than the illustrative specifications shown in Appendix B to part 101. Appendix B to part 101 was included to illustrate how FDA produced the various format examples. FDA encourages manufacturers to follow the type specifications of Appendix B to part 101 when package space permits to promote consistency of appearance and thus to facilitate consumer access to the nutrition information across the food supply. However, manufacturers should take note that the following type characteristics used for illustration purposes in Appendix B to part 101 are optional and not mandatory:

a. Thirteen point type for the heading "Nutrition Facts" is optional. Section 101.9(d)(2) requires only that the heading be set in a type size larger than all other type in the nutrition label (i.e., larger than the 8 point type required for the information required in § 101.9(d)(7) and (d)(8)), and that the heading be set the full width of the nutrition label unless impractical.

b. The thickness of the rules separating the groupings of information in the label example of Appendix B to part 101 (i.e., 7 point and 3 point, respectively) is optional. Section 101.9(d) does not specify minimum sizes.

c. The use of Helvetica style type is optional. Section 101.9(d)(1)(ii)(A) requires only that the style be easy to read.

34. A trade association commented that industry members will seek acceptance of alternate labeling under § 101.9(g)(9) to allow distribution of the required nutrition information between the principal display panel and information panel or to wrap it around the package to cover two or more panels.

Nutrition information may not be interrupted by splitting it between the principal display panel and the information panel or by wrapping it around adjoining panels. In establishing the requirements for the nutrition label, the agency went to great lengths to give the format a distinctive look (e.g., through the use of a prominent heading, highlighting of key nutrient information, and enclosure of the information in a box) to facilitate consumer recognition of the label and to encourage use of the information. Consistency of appearance begins to be lost if the label can wrap around panels in an unrestrained variety of ways. Furthermore, the likelihood increases that consumers will fail to recognize that some information is on another panel not within immediate view. For this reason, FDA is taking no action at this time and will require a very compelling justification to permit such a departure under § 101.9(g)(9).

35. Several comments stated that industry should have the flexibility to use reduced leading, optionally to omit hairlines, and to use nutrient abbreviations on packages where space limitations are encountered. Package designs were submitted in support of arguments that there is no loss in legibility when leading is reduced, and the hairlines separating nutrient names omitted. One trade association stated that a 1/4 point hairline rule cannot with certainty be kept from wavering and touching the type with the high speed printers and flexible films used by many manufacturers.

For the reasons given in the preceding comment about the agency's desire to have nutrition labels maintain a consistent and distinctive format, FDA is not providing the flexibility requested. Many of the changes made in this document will help reduce space requirements (e.g., removal of required use of calorie conversion footnote). If a manufacturer finds that it is still technologically infeasible or impracticable to fit the nutrition label on a particular package, it may write to the Office of Food Labeling as directed in § 101.9(g)(9).

36. One comment from industry stated that generally accepted writing styles and recommendations of the National Bureau of Standards regarding the use of the metric system require that when a symbol follows after a number to which it refers, a space must be left between the number and the symbol (e.g., "2 g"). This contrasts with the designations used by FDA in sample labels which do not leave a space between the number and symbol (e.g., "2g"). The comment requested that FDA correct the sample labels to include the space.

FDA acknowledges that the preferred form of presenting metric values is to leave a space between a number and the symbol that refers to it. The agency did not include the space to minimize the space requirements of the nutrition label. Because of the great number of comments that the agency has received about the problems industry faces in fitting the nutrition label onto food packages, FDA does not intend to require that the space be used between numbers and symbols. However, the agency advises that it has no problem if a manufacturer decides to include the space because it wishes to do so.

C. Simplified Format

37. Comments questioned whether it is permissible to use tabular or linear displays with the simplified format. A manufacturer argued that both the tabular and linear displays will become familiar to consumers because they will be used on a number of small and intermediate-sized packages.

FDA advises that nothing in the regulations would prohibit the use of the tabular or linear displays when a product qualifies for a simplified format as long as the package shape and size meet the criteria in revised § 101.9(d)(11)(iii) or in § 101.9(j)(13)(ii) for using the tabular display. Examples of the simplified format in linear and tabular displays are given in Appendices D and Appendix E of this document, respectively.

D. Compliance

38. One comment suggested that the 120 percent compliance criteria in § 101.9(g)(5) for fat and saturated fat be applied only when declared values are greater than 1 g. It noted that as new or altered foods are developed with lower levels of total fat and saturated fat, foods containing 0.7 g of saturated fat per serving, for example, would be out of compliance when 0.5 g of saturated fat is declared.

As discussed in the preamble to the mandatory nutrition labeling final rule (58 FR 2079 at 2162), the agency is not convinced that the criteria for compliance evaluation should be changed. Any effect caused by rounding of labeled values to meet the agency's requirements in § 101.9(c) would be included in the evaluation of a "reasonable deficiency" as provided for in § 101.9(g)(6).

39. One comment expressed concern that it would be misleading to label vitamin A content in paprika, chili powder, and other capsicums (e.g., cayenne pepper) because they are used for their sensory value, and because in the amounts used in an average recipe, they would make minimal vitamin A contribution to a finished product. Furthermore, the comment argued that vitamin A-labeled capsicums would be

misleading because the vitamin A content is known to diminish throughout the shelf life of the product.

The agency is not providing the exemption for capsicums that this comment suggested because the 1990 amendments only provide for an exemption for foods that contain "insignificant amounts" of all the required nutrients. FDA has defined an "insignificant amount" of vitamins and minerals as an amount that is less than 2 percent of the Reference Daily Intake (RDI) for that nutrient per reference amount. No variations are allowed for particular categories of foods. In addition, many foods change in nutrient content over the shelf life of the product as a result of factors such as growing conditions, product transport, processing practices, and product storage. Procedures discussed in "FDA Nutrition Labeling Manual—A Guide for Developing and Using Data Bases" can be used to arrive at a label value that will meet compliance requirements over the shelf life of a product. Section 101.9(g)(8) gives directions for obtaining copies of this manual.

40. A few comments requested guidance on how to determine the amount of saturated fat to declare when "and/or" labeling is used on the ingredient statement for fats as provided for in § 101.4(b)(14) (e.g., "vegetable oil shortening (contains one or more of the following: cottonseed oil, corn oil, soybean oil)").

FDA advises that nutrition labels on products using "and/or" labeling for fats within the ingredient statement should base the declaration of saturated fat on the selection of the oil or oils with the highest saturated fat content. Section 101.9(g)(5) states that "A food with a label declaration of calories, sugars, total fat, saturated fat, cholesterol, or sodium shall be deemed to be misbranded under section 403(a) of the act if the nutrient content of the composite is greater than 20 percent in excess of the value for that nutrient declared on the label." Accordingly, to meet the compliance criteria, the amount declared on the nutrition label must always be less than 120 percent of what is found analytically in the product. There is a greater likelihood of meeting these criteria when the amount declared is equal to the highest level of saturated fat found in the types of fat or oil that may be used in the food product (i.e., that are listed in the ingredient statement).

E. Exemptions

1. Foods for Immediate Consumption

41. A comment requested clarification on the exemption under § 101.9(j)(2)(ii) for home-delivered foods, in particular whether this exemption covers home deliveries of dairy products, which could be considered "ready-to-eat," and other grocery items.

Section 101.9(j)(2)(ii) exempts foods that are served in "establishments in which food is served for immediate human consumption" and includes as an example of such foods those foods that are furnished by "food delivery systems or establishments where ready-to-eat foods are delivered to homes or offices." The agency advises that this exemption was adopted to cover food delivery systems such as meals-on-wheels programs providing meals to home-bound citizens and establishments that deliver foods for immediate consumption, such as companies delivering hot pizzas that are ready-to-eat upon receipt. The coverage of this exemption does not include home delivered grocery items such as milk, ice cream, produce, and frozen meats. Such foods are generally not purchased "for immediate consumption." They are put into refrigerators, freezers, or other storage areas for consumption at a later time.

2. Small and Intermediate-Sized Packages

42. In reference to the definitions of small and intermediate-sized packages in § 101.9(j)(13), several manufacturers and design firms requested further clarification of how to calculate the "surface area available to bear labeling."

Historically, FDA has defined package area for purposes of defining the principal display panel and in setting out exemptions and type size requirements in §§ 101.1(c) (21 CFR 101.1(c) and 101.2(c)(1), respectively. Based on these regulations, surface area calculations generally exclude tops, bottoms, flanges at tops and bottom of cans, shoulders, necks, and caps of bottles and jars, folded flaps and bottoms of boxes, and other unusable label space. However, packages that provide label information on tops, bottoms, or necks should include those areas in the calculation of space available to bear labeling.

FDA advises that bottoms of boxes should be counted as surface area available to bear labeling when normal handling of such boxes by the consumer would result in the bottom of the box being easily seen, such as in single-use frozen food boxes where directions for preparation are presented on the bottom. The bottoms of other boxes, such as boxes containing multiple servings of crackers or ready-to-eat cereal which are generally stored on end, would not be considered "available to bear labeling" since consumers do not look at the bottoms of such packages during normal handling. Likewise, the bottoms of cans and jars are not normally seen and would therefore be excluded from calculations of "space available to bear labeling."

Since §§ 101.1 and 101.2 were promulgated, many types of new packaging have come on the market. Therefore, in addition to the traditionally excluded areas, the agency advises that molded parts of containers (seen primarily with newer glass and plastic containers) that do not have a smooth surface to attach labeling generally need not be included in calculations of total surface area available to bear labeling. Also, crimps, seals, and folds of flexible plastic packages, which are not appropriate for legible labeling, and transparent "windows," which do not bear labeling, can also be excluded.

Because of the myriad shapes and sizes of food containers and the surface qualities of packaging materials used today, it is difficult to set precise guidelines to define "surface area available to bear labeling." However, the agency advises that it intends to apply a common sense interpretation to this term. If it is technologically feasible and practicable to apply a label to the surface area, and it is an area likely to be seen by the consumer under normal handling conditions, it should be considered as "area available to bear labeling."

43. Several comments inquired about whether calculations of surface area available to bear labeling may take into consideration limitations on the manufacturer's current printing and label attachment capabilities. The comments asked whether, if manufacturers' labeling practices do not allow for affixing labels over the entire available surface, the manufacturers must count areas not currently labeled, and, if so, whether they will have to purchase new equipment to add additional labeling.

The 1990 amendments are silent with respect to how the additional nutrition information required by the act is to be accommodated when manufacturers' current labeling capabilities do not allow sufficient space to accommodate nutrition labels. Based on several instances in which manufacturers have indicated an inability to meet the requirements of § 101.9 because of equipment limitations, FDA has concluded that the circumstances are unique to each individual case. Consequently, the agency has determined that the issues cannot satisfactorily be resolved by modifying the regulations and instead expects that

manufacturers desiring relief from the nutrition labeling requirements for reasons of equipment limitations or other technological considerations will address their request for relief in writing to FDA in accordance with § 101.9(g)(9).

However, FDA advises that, in light of the lack of congressional provision for exemptions based on a company's current labeling practices, and in consideration of the public health significance of mandatory nutrition labeling, only in the most compelling circumstances with extraordinary implications is the agency likely to consider providing additional exemptions or alternative means of compliance. If and when such requests are granted, the agency is likely to grant only an extended period of time for firms to come into full compliance rather than a permanent exemption or an alternative means of compliance.

44. One comment inquired whether the mandatory listing under § 101.5(c) of the manufacturer's name and address is required to be repeated under § 101.9(j)(13)(i) for packages less than 12 sq in that are not required to provide nutrition information on the label but need to provide an address or phone number where nutrition information can be obtained.

FDA has no objection to a single listing of the manufacturer's, packer's, or distributor's name and address, as long as a statement adjacent to the address makes it clear that nutrition information may be obtained by writing to that address.

3. Multiunit Containers

45. A package design firm pointed out that the type size requirement for the statement "This unit not labeled for retail sale" on the unit container of multiunit food packages (see § 101.9(j)(15)) does not state what part of the copy must be one-sixteenth inch in height, or whether the copy is to be all uppercase or uppercase and lowercase.

FDA advises that this requirement, which is identical to that in § 1.24(a)(14) (21 CFR 1.24(a)(14)) for exemptions from required label statements, is not subject to the requirements in § 101.9(d) for type size and style that pertain to information declared within the nutrition label. The statement "This unit not labeled for retail sale" may use uppercase or uppercase and lowercase letters at the manufacturer's discretion. Section 101.105(h)(2) states that "Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter 'o' or its equivalent that shall meet the minimum standards."

V. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical amendments to nutrition labeling of food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354). The modifications are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The changes in this document are technical in nature and do not affect the overall intent of the regulation.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9 effective May 8, 1994, is amended by removing the second sentence in the introductory text of paragraph (a); by revising paragraphs (c)(1)(i), (c)(2), (c)(8)(vi), (d)(1)(ii)(D), (d)(1)(iii), (d)(7), the first sentence of paragraph (d)(10) and paragraph (d)(11); by adding new paragraphs (d)(13) and (d)(14); by revising the sample label in paragraph (e)(5); by revising paragraphs (f)(4), (f)(5), (j)(1)(i), (j)(2)(i) through (j)(2)(iii); by redesignating paragraph (j)(2)(iv) as paragraph (j)(2)(v), and adding new paragraph (j)(2)(iv); by revising paragraphs (j)(3)(v), (j)(4), (j)(5)(ii), (j)(10), (j)(13)(i), (j)(13)(ii)(A) through (j)(13)(ii)(C), (j)(14), and (j)(15)(iii) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(1) * * *

(i) Caloric content may be calculated by the following methods. Where either specific or general food factors are used, the factors shall be applied to the actual amount (i.e., before rounding) of food components (e.g., fat, carbohydrate, protein, or ingredients with specific food factors) present per serving.

* * * * *

(2) "Fat, total" or "Total fat": A statement of the number of grams of total fat in a serving defined as total lipid fatty acids and expressed as triglycerides. Amounts shall be expressed to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(i) "Saturated fat," or "Saturated": A statement of the number of grams of saturated fat in a serving defined as the sum of all fatty acids containing no double bonds, except that label declaration of saturated fat content information is not required for products that contain less than 0.5 gram of total fat in a serving if no claims are made about fat or cholesterol content, and if "calories from saturated fat" is not declared. Except as provided for in paragraph (f) of this section, if a statement of the saturated fat content is not required and, as a result, not declared, the statement "Not a significant source of saturated fat" shall be placed at the bottom of the table of nutrient values in the same type size. Saturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(ii) "Polyunsaturated fat" or "Polyunsaturated" (VOLUNTARY): A statement of the number of grams of polyunsaturated fat in a serving defined as cis,cis-methylene-interrupted polyunsaturated fatty acids may be declared voluntarily, except that when monounsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a food other than one that meets the criteria in § 101.62(b)(1) for a claim for "fat free," label declaration of polyunsaturated fat is required. Polyunsaturated fat content shall be indented and expressed as grams per

serving to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(iii) "Monounsaturated fat" or "Monounsaturated" (VOLUNTARY): A statement of the number of grams of monounsaturated fat in a serving defined as cis-monounsaturated fatty acids may be declared voluntarily except that when polyunsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a food other than one that meets the criteria in § 101.62(b)(1) for a claim for "fat free," label declaration of monounsaturated fat is required. Monounsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

* * * * *

(8) * * *

(vi) A statement of the percent of vitamin A that is present as *beta*-carotene may be declared voluntarily. When the vitamins and minerals are listed in a single column, the statement shall be indented under the information on vitamin A. When vitamins and minerals are arrayed horizontally, the statement of percent shall be presented in parenthesis following the declaration of vitamin A and the percent DV of vitamin A in the food (e.g., "Percent Daily Value: Vitamin A 50 (90 percent as *beta*-carotene)"). When declared, the percentages shall be expressed in the same increments as are provided for vitamins and minerals in paragraph (c)(8)(iii) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) Letters should never touch.

(iii) Information required in paragraphs (d)(3), (d)(5), (d)(7), and (d)(8) of this section shall be in type size no smaller than 8 point. Except for the heading "Nutrition Facts," the information required in paragraphs (d)(4), (d)(6), and (d)(9) of this section and all other information contained within the nutrition label shall be in type size no smaller than 6 point. When provided, the information described in paragraph (d)(10) of this section shall also be in type no smaller than 6 point.

* * * * *

(7) Except as provided for in paragraph (j)(13) of this section, nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label, except vitamins and minerals, shall be declared as follows:

(i) The name of each nutrient, as specified in paragraph (c) of this section, shall be given in a column and followed immediately by the quantitative amount by weight for that nutrient appended with a "g" for grams or "mg" for milligrams as shown in paragraph (d)(12) of this section.

(ii) A listing of the percent of the DRV as established in paragraphs (c)(7)(iii) and (c)(9) of this section shall be given in a column aligned under the heading "% Daily Value" established in paragraph (d)(6) of this section with the percent expressed to the nearest whole percent for each nutrient declared in the column described in paragraph (d)(7)(i) of this section for which a DRV has been established, except that the percent for protein may be omitted as provided in paragraph (c)(7) of this section. The percent shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the DRV for the nutrient, except that the percent for protein shall be calculated as specified in paragraph (c)(7)(ii) of this section. The numerical value shall be followed by the symbol for percent (i.e., %).

* * * * *

(10) Caloric conversion information on a per gram basis for fat, carbohydrate, and protein may be presented beneath the information required in paragraph (d)(9) of this section, separated from that information by a hairline. * * *

(11)(i) If the space beneath the information on vitamins and minerals is not adequate to accommodate the information required in paragraph (d)(9) of this section, the information required in paragraph (d)(9) may be moved to the right of the column required in paragraph (d)(7)(ii) of this section and set off by a line that distinguishes it and sets it apart from the percent Daily Value information. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(ii) If the space beneath the mandatory declaration of iron is not adequate to accommodate any remaining vitamins and minerals to be declared or the information required in paragraph (d)(9) of this section, the remaining information may be moved to the right and set off by a line that distinguishes it and sets it apart from the nutrients and the percent DV information given to the left. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(iii) If there is not sufficient continuous vertical space (i.e., approximately 3 in) to accommodate the required components of the nutrition label up to and including the mandatory declaration of iron, the nutrition label may be presented in a tabular display as shown below.

BILLING CODE 4160-01-P

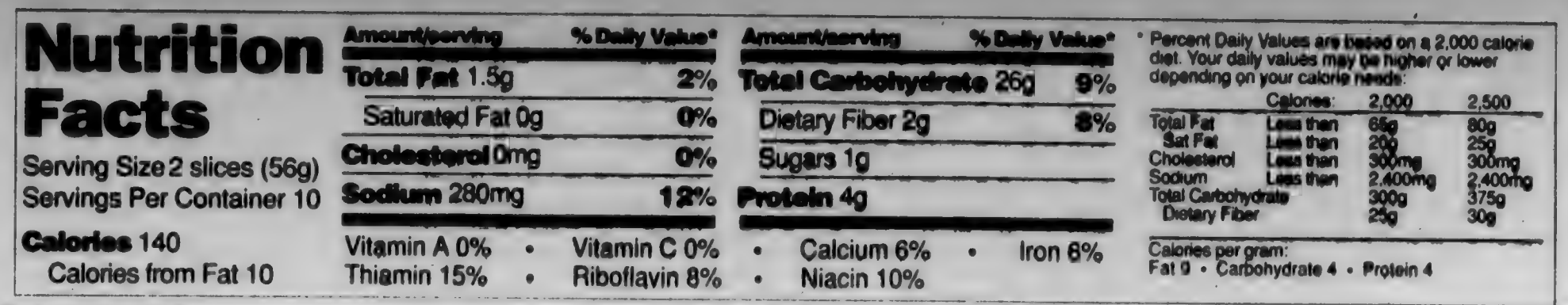

Nutrition Facts

Serving Size 2 slices (56g)
Servings Per Container 10

Calories 140
Calories from Fat 10

Amount/serving	% Daily Value*
Total Fat 1.5g	2%
Saturated Fat 0g	0%
Cholesterol 0mg	0%
Sodium 280mg	12%
Total Carbohydrate 26g	9%
Dietary Fiber 2g	8%
Sugars 1g	
Protein 4g	

Vitamin A 0% • Vitamin C 0% • Calcium 6% • Iron 6%
Thiamin 15% • Riboflavin 8% • Niacin 10%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 4160-01-C

* * * * *

(13)(i) Nutrition labels on the outer label of packages of products that contain two or more separately packaged foods that are intended to be eaten individually (e.g., variety packs of cereals or snack foods) or of packages that are used interchangeably for the same type of food (e.g., round ice cream containers) may use an aggregate display.

(ii) Aggregate displays shall comply with the format requirements of paragraph (d) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food. The following sample label illustrates an aggregate display.

BILLING CODE 4160-01-F

Nutrition Facts

	Wheat Squares Sweetened	Corn Flakes Not Sweetened	Mixed Grain Flakes Sweetened
Serving Size 1 Box	(35g)	(19g)	(27g)
Servings Per Container	1	1	1
Amount Per Serving			
Calories	**120**	**70**	**100**
Calories from Fat	0	0	0
	% Daily Value*	% Daily Value*	% Daily Value*
Total Fat	0g **0%**	0g **0%**	0g **0%**
Saturated Fat	0g **0%**	0g **0%**	0g **0%**
Cholesterol	0mg **0%**	0mg **0%**	0mg **0%**
Sodium	0mg **0%**	200mg **8%**	120mg **5%**
Potassium	125mg **4%**	25mg **1%**	30mg **1%**
Total Carbohydrate	29g **10%**	17g **6%**	24g **8%**
Dietary Fiber	3g **12%**	1g **4%**	1g **4%**
Sugars	8g	6g	13g
Protein	4g	1g	1g
Vitamin A	0%	10%	10%
Vitamin C	0%	15%	90%
Calcium	0%	0%	0%
Iron	10%	6%	20%
Thiamin	30%	15%	20%
Riboflavin	30%	15%	20%
Niacin	30%	15%	20%
Vitamin B_6	30%	15%	20%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 4160-01-C

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(14) In accordance with § 101.15(c)(2), when nutrition labeling must appear in a second language, the nutrition information may be presented in a separate nutrition label for each language or in one nutrition label with the information in the second language following that in English. Numeric characters that are identical in both languages need not be repeated (e.g., "Protein/Proteinas 2 g"). All required information must be included in both languages.

(e) * * *

(5) * * *

BILLING CODE 4160-01-F

Nutrition Facts

Serving Size 1/12 package
(44g, about 1/4 cup dry mix)
Servings Per Container 12

Amount Per Serving	Mix	Baked
Calories	190	280
Calories from Fat	45	140
	% Daily Value**	
Total Fat 5g*	**8%**	**24%**
Saturated Fat 2g	**10%**	**13%**
Cholesterol 0mg	**0%**	**23%**
Sodium 300mg	**13%**	**13%**
Total Carbohydrate 34g	**11%**	**11%**
Dietary Fiber 0g	**0%**	**0%**
Sugars 18g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	6%	8%
Iron	2%	4%

* Amount in Mix

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 4160-01-C

(f) * * *

(4) If any nutrients are declared as provided in paragraphs (f)(2)(iii), (f)(2)(iv), or (f)(3) of this section as part of the simplified format or if any nutrition claims are made on the label or in labeling, the statement "Not a significant source of ————" (with the blank filled in with the name(s) of any nutrient(s) identified in § 101.9(f) and calories from fat that are present in insignificant amounts) shall be included at the bottom of the nutrition label.

(5) Except as provided for in paragraphs (j)(5) and (j)(13) of this section, nutrient information declared in the simplified format shall be presented in the same manner as specified in paragraphs (d) or (e) of this section, except that the footnote required in paragraph (d)(9) of this section is not required. When the footnote is omitted, an asterisk shall be placed at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

(j) * * *

(1)(i) Food offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

* * * * *

(2) * * *

(i) Served in restaurants, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(ii) Served in other establishments in which food is served for immediate human consumption (e.g., institutional food service establishments, such as schools, hospitals, and cafeterias; transportation carriers, such as trains and airplanes; bakeries, delicatessens, and retail confectionery stores where there are facilities for immediate consumption on the premises; food service vendors, such as lunch wagons, ice cream shops, mall cookie counters, vending machines, and sidewalk carts where foods are generally consumed immediately where purchased or while the consumer is walking away, including similar foods sold from convenience stores; and food delivery systems or establishments where ready-to-eat foods are delivered to homes or offices), *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(iii) Sold only in such facilities, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(iv) Used only in such facilities and not served to the consumer in the package in which they are received (e.g., foods that are not packaged in individual serving containers); or

* * * * *

(3) * * *

(v) Not offered for sale outside of that establishment (e.g., ready-to-eat foods that are processed and prepared on-site and sold by independent delicatessens, bakeries, or retail confectionery stores where there are no facilities for immediate human consumption; by in-store delicatessen, bakery, or candy departments; or at self-service food bars such as salad bars), *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(4) Foods that contain insignificant amounts of all of the nutrients and food components required to be included in the declaration of nutrition information under paragraph (c) of this section, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section. An insignificant amount of a nutrient or food component shall be that amount that allows a declaration of zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it shall be an amount that allows a declaration of "less than 1 gram." Foods that are exempt under this paragraph include coffee beans (whole or ground), tea leaves, plain unsweetened instant coffee and tea, condiment-type dehydrated vegetables, flavor extracts, and food colors.

(5) * * *

(ii) Foods, other than infant formula, represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling, except that:

(A) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(B) Nutrient names and quantitative amounts by weight shall be presented in two separate columns.

(C) The heading "Percent Daily Value" required in paragraph (d)(6) of this section shall be placed immediately below the quantitative information by weight for protein;

(D) Percent of Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(E) Such labeling shall not include the footnote specified in paragraph (d)(9) of this section.

* * * * *

(10) Raw fruits, vegetables, and fish subject to section 403(q)(4) of the act, except that the labeling of such foods should adhere to guidelines in § 101.45. This exemption is contingent on the food bearing no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to nutrition labeling in accordance with § 101.45. The term "fish" includes freshwater or marine fin fish, crustaceans, and mollusks, including shellfish, amphibians, and other forms of aquatic animal life.

* * * * *

(13)(i) Foods in small packages that have a total surface area available to bear labeling of less than 12 square inches, *Provided*, That the labels for these foods bear no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(A) The manufacturer, packer, or distributor shall provide on the label of packages that qualify for and use this exemption an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information, call 1–800–123–4567").

(B) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in type size no smaller than 6 point or all uppercase type of 1/16 inches minimum

height, except that individual serving-size packages of food served with meals in restaurants, institutions, and on board passenger carriers, and not intended for sale at retail, may comply with § 101.2(c)(5).

(ii) * * *

(A) Presenting the required nutrition information in a tabular or, as provided below, linear (i.e., string) fashion rather than in vertical columns if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the label will not accommodate a tabular display.

(*1*) The following sample label illustrates the tabular display. * * *

Nutrition Facts
Serv. Size 1/3 cup (56g)
Servings about 3
Calories 80
Fat Cal. 10
*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/serving	% DV*	Amount/serving	% DV*
Total Fat 1g	**2%**	**Total Carb.** 0g	**0%**
Sat.Fat 0g	**0%**	Fiber 0g	**0%**
Cholest. 10mg	**3%**	Sugars 0g	
Sodium 200mg	**8%**	**Protein** 17g	

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 6%

(*2*) The following sample label illustrates the linear display. When nutrition information is given in a linear fashion, bolding is required only on the title "Nutrition Facts" and is allowed voluntarily for the nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

Nutrition Facts Serv size: 1 package, Amount Per Serving: **Calories** 45, Fat Cal. 10, **Total Fat** 1g (2% DV), Sat. Fat 1g (5% DV), **Cholest.** 0mg (0% DV), **Sodium** 50mg (2% DV), **Total carb.** 8g (3% DV), Fiber 1g (4% DV), Sugars 4g, **Protein** 1g, Vitamin A (8% DV), Vitamin C (8% DV), Calcium (0% DV), Iron (2 % DV). Percent Daily Values (DV) are based on a 2,000 calorie diet.

(B) Using any of the following abbreviations:
Serving size—Serv size
Servings per container—Servings
Calories from fat—Fat cal
Calories from saturated fat—Sat fat cal
Saturated fat—Sat fat
Monounsaturated fat—Monounsat fat
Polyunsaturated fat—olyunsat fat
Cholesterol—Cholest
Total carbohydrate—Total carb
Dietary fiber—Fiber
Soluble fiber—Sol fiber
Insoluble fiber—Insol fiber
Sugar alcohol—Sugar alc
Other carbohydrate—Other carb

(C) Omitting the footnote required in paragraph (d)(9) of this section and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

(14) Shell eggs packaged in a carton that has a top lid designed to conform to the shape of the eggs are exempt from outer carton label requirements where the required nutrition information is clearly presented immediately beneath the carton lid or in an insert that can be clearly seen when the carton is opened.

(15) * * *

(iii) Each unit container is labeled with the statement "This Unit Not Labeled For Retail Sale" in type size not less than 1/16-inch in height, except that this statement shall not be required when the inner unit containers bear no labeling at all. The word "individual" may be used in lieu of or immediately preceding the word "Retail" in the statement.

* * * * *

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

Note: The following appendixes will not appear in the annual Code of Federal Regulations.

BILLING CODE 4160-01-F

Appendix A: Tabular display on package with more than 40

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Appendix A:
Tabular display on package with more than 40 square inches of surface area available to bear labeling (sliced bread)

Nutrition Facts

Serving Size 2 slices (56g)
Servings Per Container 10

Calories 140
Calories from Fat 10

Amount/serving	% Daily Value*	Amount/serving	% Daily Value*
Total Fat 1.5g	**2%**	**Total Carbohydrate** 26g	**9%**
Saturated Fat 0g	**0%**	Dietary Fiber 2g	**8%**
Cholesterol 0mg	**0%**	Sugars 1g	
Sodium 280mg	**12%**	**Protein** 4g	

Vitamin A 0% • Vitamin C 0% • Calcium 6% • Iron 6%
Thiamin 15% • Riboflavin 8% • Niacin 10%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Appendix B:
Bilingual Nutrition Label

Nutrition Facts/Datos De Nutricion

Serving Size/Tamano por Racion 1 cup/1 taza (228g)
Servings Per Container/Raciones por Envase 2

Amount Per Serving/Cantidad por Racion	
Calories/Calorias 260	Calories from Fat/Calorias de Grasa 120
	% Daily Value*/ % Valor Diario*
Total Fat/Grasa Total 13g	**20%**
Saturated Fat/Grasa Saturada 5g	**25%**
Cholesterol/Colesterol 30mg	**10%**
Sodium/Sodio 660mg	**28%**
Total Carbohydrate/Carbohidrato Total 31g	**11%**
Dietary Fiber/Fibra Dietetica 0g	**0%**
Sugars/Azucares 5g	
Protein/Proteinas 5g	
Vitamin/Vitamina A 4% •	Vitamin/Vitamina C 2%
Calcium/Calcio 15% •	Iron/Hierro 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

* Los porcentajes de Valores Diarios estan basados en una dieta de 2,000 calorias. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades caloricas:

	Calories/Calorias:	2,000	2,500
Total Fat/Grasa Total	Less than/Menos de	65g	80g
Saturated Fat/Grasa Saturada	Less than/Menos de	20g	25g
Cholesterol/Colesterol	Less than/Menos de	300mg	300mg
Sodium/Sodio	Less than/Menos de	2,400mg	2,400mg
Total Carbohydrate/Carbohidratos Total		300g	375g
Dietary Fiber/Fibra Dietetica		25g	30g

Appendix C:
Format for foods for children less than 4 years of age (Fruit Dessert)

Nutrition Facts

Serving Size 1 jar (140g)

Amount Per Serving	
Calories 110	Calories from Fat 0
Total Fat	0g
Saturated Fat	0g
Cholesterol	0mg
Sodium	10mg
Total Carbohydrate	27g
Dietary Fiber	4g
Sugars	18g
Protein	0g

% Daily Value		
Protein 0%	•	Vitamin A 6%
Vitamin C 45%	•	Calcium 2%
Iron 2%		

Appendix C:
Format for same food represented to be specifically for children less than 2 years of age (Fruit Dessert)

Nutrition Facts

Serving Size 1 jar (140g)

Amount Per Serving	
Calories 110	
Total Fat	0g
Sodium	10mg
Total Carbohydrate	27g
Dietary Fiber	4g
Sugars	18g
Protein	0g

% Daily Values		
Protein 0%	•	Vitamin A 6%
Vitamin C 45%	•	Calcium 2%
Iron 2%		

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Appendix D:
Examples of Linear Display

Full Linear Display

Nutrition Facts Serv size: 1 package, Amount Per Serving: **Calories** 45, Fat Cal. 10, **Total Fat** 1g (2% DV), Sat. Fat 1g (5% DV), **Cholest.** 0mg (0% DV), **Sodium** 50mg (2% DV), **Total carb.** 8g (3% DV), Fiber 1g (4% DV), Sugars 4g, **Protein** 1g, Vitamin A (8% DV), Vitamin C (8% DV), Calcium (0% DV), Iron (2 % DV). Percent Daily Values (DV) are based on a 2,000 calorie diet.

Simplified Linear Display

Nutrition Facts Serv size: 3 pieces, Servings: 4, Amount Per Serving : **Calories** 20, **Total Fat** 0g (0% DV), **Sodium** 20mg (1% DV), **Total carb.** 5g (2% DV), Sugars 5g, **Protein** 0g, Percent Daily Value (DV) are based on a 2,000 calorie diet.

Shortened Linear Display

Nutrition Facts Serv size: 1 package, Amount Per Serving: **Calories** 40, **Total Fat** 0g (0% DV), **Sodium** 50mg (2% DV), **Total carb.** 8g (3% DV), Fiber 1g (4% DV), Sugars 4g, **Protein** 1g, Vitamin A (8% DV), Vitamin C (8% DV), Iron (2% DV), Not a significant source of calories from fat, saturated fat, cholesterol, or calcium. Percent Daily Values (DV) are based on a 2,000 calorie diet.

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Appendix E:
Simplified format in tabular display (Pickle slices)

Nutrition Facts

Serving Size 1 oz. (28g/about 12 slices)
Servings Per Container 16
Calories 20

* Percent Daily Values are based on a 2,000 calorie diet.

Amount/serving	% Daily Value*
Total Fat 0g	**0%**
Sodium 190mg	**8%**
Total Carbohydrate 5g	**2%**
Sugars 5g	
Protein 0g	

[FR Doc. 93-19259 Filed 8-12-93; 8:45 am]
BILLING CODE 4160-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 92N-0232]

Food Labeling; Placement of the Nutrition Label on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations concerning the placement of nutrition information on packaged foods. If finalized, this action will provide increased flexibility in the placement of nutrition information when the principal display and information panels cannot accommodate all of the required information. In January of 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons 30 days to comment on technical issues not raised by earlier comments. This document addresses concerns raised in comments to that document.

DATES: Written comments by October 18, 1993. The agency is proposing that any final rule that may issue, based upon this proposal, become effective on May 8, 1994, which is consistent with the effective date for the nutrition labeling regulations that FDA adopted in January 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Principal Display Panel and Information Panel

Under FDA's regulations (§ 101.1 (21 CFR 101.1)), the part of a label that is most likely to be displayed, presented, shown, or examined by a consumer under customary conditions of display for retail sale is called "the principal display panel." This panel must include the statement of identity for the product and its net weight. In addition, to provide consistency and uniformity in the presentation of label information to consumers, FDA has provided for an alternate display panel for mandatory label information that is not required to appear on the principal display panel. This alternate panel is called "the information panel" (§ 101.2 (21 CFR 101.2)).

The information panel is defined in § 101.2(a) as that part of the label that is immediately contiguous and to the right of the principal display panel. Section 101.2(a)(1) specifies that if the first panel to the right of the principal display panel is too small to accommodate the necessary information, or is otherwise unusable label space, the panel immediately contiguous and to the right of that part of the label may be used as the information panel. Accordingly, FDA's regulations direct manufacturers to move the information required to appear on the information panel as a unit when the first available information panel will not accommodate all the required information. Pursuant to § 101.2(e), all information appearing on the information panel must be presented in one place without other intervening material.

Section 101.2(b) states that the ingredient listing; name and place of business of the manufacturer, packer, or distributor; and nutrition information must appear either on the principal display panel or on the information panel, unless otherwise specified by regulation. Section 101.2(d)(1) requires that all information required to appear on the principal display panel or the information panel appear on the same panel unless there is insufficient space, in which case it may be divided between the principal display panel and information panel in accordance with §§ 101.1 and 101.2. In determining the sufficiency of the available space, under § 101.2(d)(1), any vignettes, designs, and other nonmandatory label information are not to be considered.

B. Mandatory Nutrition Labeling

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition label" (58 FR 2079) (hereinafter referred to as "the mandatory nutrition labeling final rule"), which included provisions to require nutrition labeling on most foods that are regulated by FDA and to specify a new format for declaring nutrition labeling. This action was taken, in part, to implement the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the act). Section 101.9(i) (21 CFR 101.9(i)), which was added by this final rule, states that except as provided in § 101.9(j)(13), the location of the nutrition label must be in accordance with § 101.2.

In recognizing the demands for label space made by nutrition labeling, the agency included a provision in the mandatory nutrition labeling final rule that allows nutrition information to be presented on any label panel on packages that have a total surface area available to bear labeling of 40 or less square inches (sq in), § 101.9(j)(13)(ii)(D). The flexibility provided by this provision reflects the agency's recognition that it is more important that the nutrition information be presented on the immediate package than that it be presented in any particular place. FDA expects that given the consistent appearance of the nutrition information that will be produced by the format elements that it is requiring, and the educational efforts of government, industry, and consumer organizations, consumers will know to look for and be able to recognize nutrition information, even if it is not presented to the right of the principal display panel. Section 101.9(j)(13)(ii)(D) does not make any exception, however, for the placement of nutrition information on packages of more than 40 sq in when the principal display and information panels of those packages cannot accommodate all of the required information.

In the **Federal Register** of January 6, 1993, FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as the "implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that if the comments identified any provisions of the final rule that FDA agrees should be changed, FDA would take action to modify those provisions.

Following publication of the mandatory nutrition labeling final rule, FDA received many comments from the food industry requesting guidance on where to place the required nutrition information when there is insufficient space on information panels for it, the ingredient statement, and the information identifying the manufacturer, packer, or distributor. The comments stated that the type size and spacing requirements of the revised

nutrition label will prevent its placement in compliance with current regulations, and they requested greater flexibility in the placement of the nutrition label on the product label.

FDA has reviewed layouts that would implement the new nutrition labeling regulations for many product labels. The agency agrees that the new nutrition label will often require more space than current nutrition labels, and that difficulties in fitting on the information panel all of the information that is required to appear there will result. Based on this review and its review of the comments, FDA has tentatively concluded that increased flexibility in regard to the placement of the nutrition label is necessary to ensure that the information panel is readable and not overcrowded. FDA believes that this flexibility can be achieved without in any way hindering consumer use of the nutrition information.

II. Proposed Rule

FDA is proposing to add § 101.9(j)(17) to deal with the situation in which a package has a total surface area available to bear labeling of greater than 40 sq in, but its principal display panel and information panel cannot accommodate all required information. In such circumstances, FDA is proposing to allow the nutrition label to be placed on any panel that can be readily seen by consumers. This action will provide increased flexibility to allow manufacturers to position the nutrition label to reduce crowding of required information. At the same time, as stated earlier, FDA expects that given the consistent appearance of the nutrition information that will be produced by the format elements that it is requiring, and the educational efforts of government, industry, and consumer organizations, consumers will know to look for and be able to readily recognize the nutrition label, even if it is not presented to the right of the principal display panel. Thus, FDA tentatively concludes that providing for this flexibility will not produce any loss of comprehensibility, understandability, or information for consumers.

In deciding whether the space on the principal display panel and the information panel is adequate for presentation of the nutrition label, FDA is proposing to provide that the space needed for the presentation of vignettes, designs, and other nonmandatory label information on the principal display panel can be taken into account. In permitting consideration of the space needed to present such information, this proposed rule is in contrast to the general rule for determining the space available to bear required information in § 101.2(d)(1). That provision states that in determining the sufficiency of the available space, vignettes, designs, and other nonmandatory label information on the principal display panel cannot be taken into account. The purpose of § 101.2(d)(1) is to ensure that required labeling information is prominently displayed on food labels, so that the information is easy for consumers to locate.

FDA has tentatively concluded that a different treatment of nonmandatory information on the principal display panel is appropriate in deciding where nutrition labeling is to be presented because the graphic requirements for nutrition information required by § 101.9 inherently result in a "Nutrition Facts" panel that is easy to locate regardless of where it is placed on the label. Given the demand for label space made by the nutrition information panel, FDA does not believe that it is reasonable to require that vignettes, designs, and other nonmandatory information on the principal display panel not be considered in calculating the amount of available space for determining the panel on which nutrition information should appear. To do so, could significantly affect the appearance of many packages with little gain in comprehensibility for consumers. Current industry practice almost never places the nutrition label on the principal display panel unless there is no alternative panel on the package. The agency does not believe it is necessary to change this practice inasmuch as the nutrition label will be conspicuous and easily distinguishable from other labeling information.

This proposed action requires an ancillary modification to the regulations pertaining to relative nutrient content claims (e.g., "less," "more"). Section 101.13(j)(2)(iv)(B) (21 CFR 101.13(j)(2)(iv)(B)) requires that when a relative nutrient content claim is made, clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food shall appear adjacent to the most prominent claim or on the information panel. This requirement is repeated in each regulation in part 101 (21 CFR part 101) pertaining to relative claims (i.e., "more" claims: § 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); "light" claims: § 101.56(b)(3)(ii), (c)(1)(ii)(B), (c)(2)(iii)(B), and (g); calorie claims: § 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); sodium claims: § 101.61(b)(6)(ii)(B), and (b)(7)(ii)(B); and fat, fatty acid, and cholesterol claims: § 101.62(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*)). FDA is proposing to amend these regulations to require that the comparative quantitative information be placed adjacent to the most prominent claim or to the nutrition label. Likewise, the agency is proposing to modify § 101.61(c)(2)(iii) that pertains to the placement of the statement "not a sodium free food" on foods that are not sodium free and yet whose label bears a claim of "unsalted." The agency is proposing to require that the statement be placed adjacent to the nutrition label.

FDA tentatively finds that these comparative statements and the statement about the sodium content of food provide information about the nutritional content of the food. They make most sense, and are of the greatest value to consumers, when presented in conjunction with other nutrition information about the food. Thus, because that nutrition information may or may not appear on the information panel, FDA tentatively concludes that it makes most sense to tie the location of the comparative statements and the statement on sodium content to the placement of the nutrition information rather than require that they always appear on the information panel.

The agency tentatively finds that it is appropriate to take steps to ensure that the ingredient statement (as required by § 101.4) and the name and place of business of the manufacturer, packer, or distributor (as required by § 101.5) remain on either the principal display panel or information panel. For many years, education programs have taught consumers to look to the information panel for the ingredient statement and the manufacture's name and place of business when the information is not present on the principal display panel. In addition, the agency is concerned that because there are no graphic requirements for such information, other than minimum required type size, it may be difficult for consumers to locate this information if it is moved elsewhere.

To provide for these proposed labeling provisions, FDA is proposing to revise § 101.9(i) to include a reference to the exemption for products covered by the provisions of proposed § 101.9(j)(17) from compliance with § 101.2.

FDA is also proposing to revise § 101.2(d)(1) to exclude from its coverage products that are exempt under § 101.9(j)(13) as well as § 101.9(j)(17). Because of an oversight in publishing the mandatory nutrition

labeling final rule, the agency failed to include a reference to § 101.9(j)(13) in the regulation.

FDA hopes that its proposed action will ease label crowding and design problems and encourage firms to provide more information that will be useful to consumers. The increased flexibility provided by this proposal should also ease the burden of providing nutrition information about a food when it is prepared according to package directions. Because many products undergo a substantial change in nutrient profile after preparation (e.g., cake mixes made with oil and eggs; cooked cereal made with milk), if sufficient space is available, manufacturers may voluntarily provide additional nutrition information regarding one or more methods of preparation in addition to the required "as packaged" information.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has examined the economic implications of this proposed rule amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small business where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that this proposed rule will result in positive net benefits because it will allow for increased flexibility in complying with labeling rules. Therefore, it does not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has determined that this proposed rule will not have a significant impact on small businesses.

V. Comments

Interested persons may, on or before October 18, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (5 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.2 is amended by revising paragraph (d)(1) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(d)(1) Except as provided by § 101.9(j)(13) and (j)(17), all information required to appear on the principal display panel or on the information panel pursuant to this section shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as provided by § 101.9(j)(17), any vignettes, designs, and other nonmandatory label information shall not be considered. If there is insufficient space for all of this information to appear on a single panel, it may be divided between these two panels except that the information required pursuant to any given section or part shall all appear on the same panel. A food whose label is required to bear the ingredient statement on the principal display panel may bear all other information specified in paragraph (b) of this section on the information panel.

* * * * *

3. Section 101.9 effective May 8, 1994, is amended by revising paragraph (i) and by adding new paragraph (j)(17) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(i) Except as provided in paragraphs (j)(13) and (j)(17) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

* * * * *

(j) * * *

(17) Foods in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition label. In determining the sufficiency of available space for the nutrition label, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

* * * * *

4. Section 101.13 effective May 8, 1994, is amended by revising paragraph (j)(2)(iv)(B) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(j) * * *

(2) * * *

(iv) * * *

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition label.

* * * * *

5. Section 101.54 is amended by revising paragraphs (e)(1)(iii)(B) and (e)(2)(iii)(B) to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," and "more."

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "Fiber content of white bread is 1 gram (g) per serving; (this product) 3.5 g per serving").

(2) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "the fiber content of 'X brand of product' is 2 g per 3 oz. This product contains 4.5 g per 3 oz").

6. Section 101.56 is amended by revising paragraphs (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g) to read as follows:

§ 101.56 Nutrient content claims for "light" or "lite."

* * * * *

(b) * * *

(3) * * *

(ii) Quantitative information comparing the level of calories and fat

content in the product per labeled serving size, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "lite cheesecake—200 calories, 4 gram (g) fat; regular cheesecake—300 calories, 8 g fat per serving); and

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "lite soy sauce 500 milligrams (mg) sodium per serving, regular soy sauce 1,000 mg per serving").

* * * * *

(2) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sodium per labeled serving size with that of the reference food it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "lite canned peas, 175 milligrams (mg) sodium per serving, regular canned peas 350 mg per serving.")

* * * * *

(g) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in § 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in § 101.61(b)(4), the statement "not a low sodium food," shall appear adjacent to the nutrition label and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 101.13(j)(2).

7. Section 101.60 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "calorie content has been reduced from 150 to 100 calories per serving").

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., calorie content has been reduced from 108 calories per 3 oz to 83 calories per 3 oz).

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sugar in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "sugar content has been lowered from 8 g to 6 g per serving").

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz).

8. Section 101.61 is amended by revising paragraphs (b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

* * * * *

(b) * * *

(6) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sodium in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

* * * * *

(7) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., sodium content has been reduced from 217 mg per 3 oz to 150 mg per 3 oz).

* * * * *

(c) * * *

(2) * * *

(iii) If the food is not sodium free, the statement, "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition label of the food bearing the claim.

* * * * *

9. Section 101.62 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "fat content has been reduced from 8 g to 4 g per serving").

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition label (e.g., fat content has been reduced from 7.5 g per 3 oz to 5 g per 3 oz).

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., saturated fat content has been reduced from 2.5 g per 3 oz to 1.7 g per 3 oz).

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(F) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of

the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "contains no cholesterol compared with 30 mg in one serving of butter. Contains 11 g of fat per serving.").

(2) * * *

(iii) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "cholesterol lowered from 30 mg to 5 mg per serving, contains 13 g of fat per serving").

(iv) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "cholesterol lowered from 30 mg to 5 mg per serving, contains 13 g of fat per serving").

* * * * *

(4) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label.

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "Cholesterol lowered from 55 mg to 30 mg per serving. Contains 13 g of fat per serving").

* * * * *

(5) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., Cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz).

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "cholesterol lowered from 30 mg to 22 mg per 3 oz of product.")

* * * * *

Dated: August 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19446 Filed 8–12–93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0293]

Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Food Labeling, Questions and Answers" that addresses various questions concerning the regulations that FDA issued to implement the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). The agency has received a large number of inquiries about these final rules, and it has prepared "Food Labeling, Questions and Answers" to respond generally to the most frequently asked questions. FDA believes that this document will facilitate compliance with the new rules.

DATES: Written comments by October 18, 1993.

ADDRESSES: Submit written requests for single copies of the document "Food Labeling, Questions and Answers" to the Industry Activities Staff (HFS-565), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on "Food Labeling, Questions and Answers" to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Food Labeling, Questions and Answers" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a document entitled "Food Labeling, Questions and Answers." In the **Federal Register** of January 6, 1993 (58 FR 2066 *et seq.*), FDA published final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). Subsequently, the agency received a vast number of inquiries from industry, consumers, and others concerning the interpretation of the implementing regulations. In addition to responding individually to inquiries, the Office of Food Labeling, Center for Food Safety and Applied Nutrition, FDA, has prepared the document "Food Labeling, Questions and Answers" to serve as general guidance on the nutrition labeling regulations. This document provides answers to the most frequently asked questions that the agency has received.

"Food Labeling, Questions and Answers" is intended only to be guidance to facilitate compliance with the new regulations. It does not bind the agency nor does it create or confer any rights, privileges, or benefits for or on any person. While "Food Labeling, Questions and Answers" represents the best advice of the Office of Food Labeling, it does not have the force and effect of law. The interpretations presented herein are obviously subject to the requirements of law both in the statute and in the regulations.

Interested persons may, on or before October 18, 1993, submit written comments on "Food Labeling, Questions and Answers" to the Dockets Management Branch (address above). FDA will consider these comments in determining whether revisions to the document are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 93-19258 Filed 8-12-93; 8:45 am]

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federal register

Wednesday
August 18, 1993

Part XVIII

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting and Proposed Actions Under the Guidelines for Research Involving Recombinant DNA Molecules; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 9–10, 1993. The meeting will be held at the National Institutes of Health, Shannon Building, Building 1, Wilson Hall, 3rd Floor, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. on September 9, 1993, to adjournment at approximately 5 p.m. on September 10, 1993. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–20063 Filed 8–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under the NIH guidelines for research involving recombinant DNA molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 9–10, 1993. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by September 1, 1993, will be reproduced and distributed to the RAC for consideration at its September 9–10, 1993, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Economou, Glaspy

On July 12, 1993, Drs. James S. Economou and John Glaspy of the University of California, Los Angeles, California, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Genetically Engineered Autologous Tumor Vaccines Producing Interleukin-2 for the Treatment of Metastatic Melanoma.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. O'Shaughnessy

In a letter dated September 9, 1992, a letter was received indicating the intention of Dr. Joyce A. O'Shaughnessy, National Institutes of Health, Bethesda, Maryland, to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Retroviral Mediated Transfer of the Human Multi-Drug Resistance Gene (MDR–1) into Hematopoietic Stem Cells During Autologous Transplantation After Intensive Chemotherapy for Breast Cancer.

During the December 3–4, 1992, Recombinant DNA Advisory Committee meeting, approval of the protocol was deferred until the investigators returned to the committee with the following:

(1) Data demonstrating that human CD34(+) cells can be transduced *in vitro* with the actual vector that will be used for the human clinical protocol;

(2) A description of the methods that will be used to monitor gene expression in bone marrow and tumor cells; and

(3) A description of the endpoint for determining bone marrow recovery, i.e., comparison of gene amplification and the rate of polymorphonuclear leukocyte recovery following taxol administration.

On July 14, 1993, Dr. Joyce O'Shaughnessy of the National Institutes of Health, Bethesda, Maryland, resubmitted a human gene

therapy protocol for review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Das Gupta and Cohen

In a letter dated February 26, 1993, Drs. Tapas K. Gas Gupta and Edward P. Cohen of the University of Illinois College of Medicine, Illinois, and Dr. Jon M. Richards of the University of Chicago, Chicago, Illinois, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: *Immunization of Malignant Melanoma Patients With Interleukin-2-Secreting Melanoma Cells Expressing Defined Allogeneic Histocompatibility Antigens.*

During the June 7–8, 1993, Recombinant DNA Advisory Committee meeting, approval of the protocol was deferred until the investigators returned to the committee with the following:

(1) Data demonstrating the efficiency of transduction in Mel-4 cells;

(2) Data demonstrating viability, IL–2 production, and *in vivo* murine effect of irradiated transduced cells (either 5,000 or 10,000 rads);

(3) Rationale for ethnic eligibility criteria;

(4) Complete responses to the *Points to Consider*; and

(5) RCR testing data demonstrating safety of the vector preparation.

On July 13, 1993, Drs. Tapas K. Das Gupta and Edward P. Cohen, University of Illinois at Chicago, Chicago, Illinois, resubmitted a human gene therapy protocol for formal review and approval. The revised title of this protocol is: *Pilot Study of Toxicity of Immunization of Patients with Unresetable Melanoma with IL–2 Secreting Allogeneic Human Melanoma Cells.*

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Cassileth, Podack, Sridhar, and Savaraj

In a letter dated December 22, 1992, Drs. Peter A. Cassileth and Eckhard Podack, University of Miami, Miami, Florida, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: *Phase I Study of Transfected Cancer Cells Expressing the Interleukin-2 Gene Product in Limited Stage Small-cell Lung Cancer.*

During the March 1–2, 1993, Recombinant DNA Advisory Committee meeting, approval of the protocol was deferred until the investigators returned to the committee with the following:

(1) A definition of the clinical endpoints;

(2) Clonogenic assays using irradiated tumor cells; and

(3) A revised Informed Consent document, including a statement that some patients selected for gene therapy will require a second surgical procedure to obtain material for the study.

In a letter dated July 14, 1993, Drs. Peter Cassileth, Eckhard R. Podack, Kasi Sridhar, and Niramol Savaraj of the University of Miami School of Medicine, Miami, Florida, resubmitted a human gene therapy protocol for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Kun, Sanford, Brenner, Heideman, Oldfield

On July 12, 1993, Drs. Larry E. Kun, R.A. Sanford, Malcolm Brenner, and Richard L. Heideman of St. Jude Children's Research Hospital Memphis, Tennessee, and Dr. Edward H. Oldfield of the National Institutes of Health, Bethesda, Maryland, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: *Gene Therapy for Recurrent Pediatric Brain Tumors.*

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Wong-Staal, Poeschla

In a letter dated July 14, 1993, Drs. Flossie Wong-Staal, Eric Poeschla, and David Looney of the University of California, San Diego, La Jolla, California, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Phase I Clinical Trial to Evaluate the Safety and Effects in HIV–1 Infected Humans of Autologous Lymphocytes Transduced with a Ribozyme that Cleaves HIV–1 RNA.

VII. Amendment to Appendix D–XXVII of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Greenberg, Riddell

On July 9, 1993, Drs. Philip Greenberg and Stanley R. Riddell of the Fred Hutchinson Cancer Research Center, Seattle, Washington, indicated their intention to submit a major modification to a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The current title of this protocol is: A Phase I Study of Cellular Adoptive Immunotherapy Using Genetically Modified CD8+ HIV-Specific T Cells for HIV-Seropositive Patients Undergoing Allogeneic Bone Marrow Transplant. The revised title of this protocol is: Phase I Study to Evaluate the Safety of Cellular Adoptive Immunotherapy using Genetically Modified CD8+ HIV-Specific T Cells in HIV Seropositive Individuals.

VIII. Addition to Appendix D of the NIH Guidelines Regarding Semliki Forest Virus/Dr. Temple

In a letter dated February 8, 1993, Dr. Gary F. Temple of Life Technologies, Inc., Gathersburg, Maryland, submitted a request for a reduction in physical containment from Biosafety Level 3 to Biosafety Level 2 for a Semliki Forest Virus (SFV) vector expression system.

During the June 7–8, 1993, Recombinant DNA Advisory Committee meeting, approval was deferred until the investigators returned to the Committee with the following:

(1) A product information sheet informing customers of the potential health risk of the expression system, standard methods to be used for virus inactivation, a helper virus assay to detect SFV, and a description of symptoms and procedures to be followed in the event that SFV infection occurs in a laboratory worker (including methods to prevent transfer to insect vectors and environmental spread); and

(2) SFV inactivation data.

In a letter dated February 8, 1993, Dr. Gary F. Temple of Life Technologies, Inc., Gaithersburg, Maryland, resubmitted a request for a reduction in physical containment from Biosafety Level 3 to Biosafety Level 2 for an SFV vector expression system.

IX. Amendments to Section III and Appendix F of the NIH Guidelines Regarding the Cloning of Toxin Molecules

In a letter dated July 28, 1993, Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland, requested amendments to sections III, IV, and V, and appendices C and F regarding the review process for experiments involving the cloning of toxin molecules.

X. Report on Minor Modifications to NIH-Approved Human Gene Transfer Protocols

Dr. LeRoy Walters, Chair of the Recombinant DNA Advisory Committee, will present an update on minor modifications to NIH-approved human gene transfer protocols.

XI. Working Group Report on Categories of Human Gene Transfer Experiments That Are Exempt From RAC Review/ Dr. Parkman

Dr. Robertson Parkman, Chair of the Working Group on Categorization of Protocols, will present a report on proposed categories of human gene transfer experiments that would be exempt from the RAC review process.

XII. Amendment to Appendix D of the NIH Guidelines Regarding Actions Taken Under the Guidelines

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland, requests an amendment to appendix D. Appendix D is proposed to read:

"Appendix D—Actions Taken Under the Guidelines.

"As noted in the subsection of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC. An updated list of these actions are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892."

XIII. Amendment to the Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC of the Points to Consider/ NIH Guidelines

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland, requests an amendment to the *Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC* (**Federal Register**, February 18, 1993, page 9104). This amendment will establish consistency in protocol submissions and will focus oral responses by the principal investigators. The title and section I is proposed to read:

Guidelines for the Submission of Human Gene Transfer Protocols for Review by the Recombinant DNA Advisory Committee

I. Investigator Submitted Material:

Written proposals must be submitted in the following order: (1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) IBC and IRB approvals; (4) Points to Consider—5 pages; (6) protocol—20 pages excluding appendices; (7) Informed Consent Document—approved by the IRB; (8) appendices including tables, figures, and manuscripts; and (9) CVs—2 pages in Biosketch format. When a proposal has been submitted previously, there should be a short section (≤200 words) immediately following the abstracts that summarizes the major revisions since the last review. Data provided * * *.

* * * written responses (including critical data in response to the primary reviewers' comments) must be submitted by the Principal Investigators to ORDA ≥2 weeks before the RAC meeting.

Oral Responses to the RAC. Principal Investigators must limit their oral responses to the RAC only to those questions that are raised during the meeting. Oral presentations of previously submitted material and/or critical data that was not submitted ≥2 weeks prior to the RAC meeting is prohibited.

Currently, the title and section I reads:

Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the Recombinant DNA Advisory Committee

I. Investigator Submitted Material:

"Written proposals should begin with the lay and scientific abstracts, followed by the *Points to Consider* and material provided in the body of an R01 format (section A–D). When a proposal has been submitted previously, there should be a short section (≤ 200 words) immediately following the abstracts that summarizes the major revisions since the last review. Length limitations are 4–5 pages for the *Points to Consider*, 2 pages each for CVs (Biosketch format) and 20 pages for the body of the proposal (excluding tables, figures, appendices, and manuscripts). Data provided * * *.

* * * written responses from the Principal Investigators ≥ 2 weeks before the RAC meeting.

Oral Presentations at RAC Meetings provide only a brief overview of the proposal; they should concentrate on questions raised by the reviewers before and at the meeting. Oral presentations should be ≤ 20 minutes: ≤ 10 minutes for the overview and ≤ 10 minutes for responses to the reviewers' questions.

XIV. Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/ Fleming

In a letter dated June 24, 1993, Dr. Diane O. Fleming, President of the Mid-Atlantic Biological Safety Association requests updating Appendix B: *Classification of Microorganisms on the Basis of Hazard*. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the committee to review which includes the latest taxomomy and agent risk group classifications as defined by the Centers for Disease Control.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Daryl A. Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 93–20064 Filed 8–17–93; 8:45 am]

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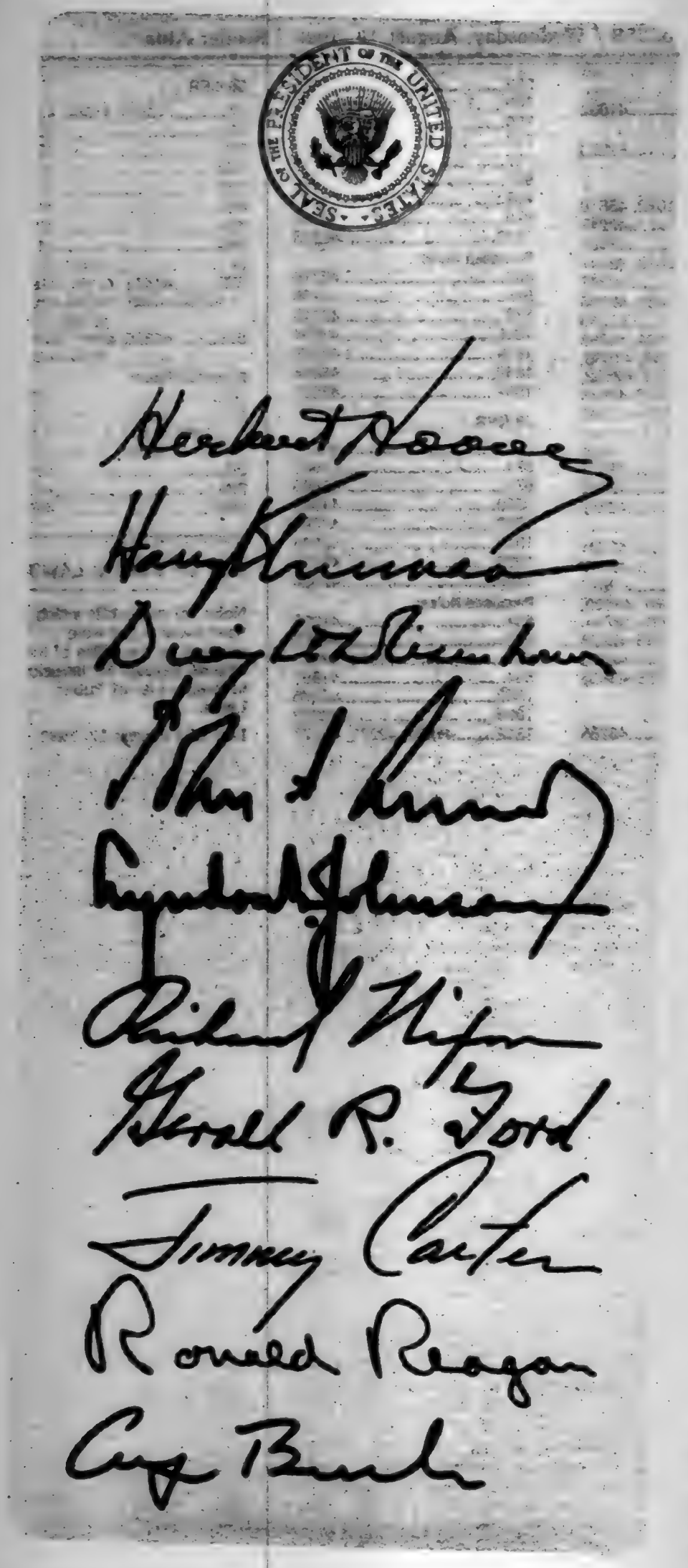

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WHO: The Office of the Federal Register.

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Title 3—

The President

Executive Order 12859 of August 16, 1993

Establishment of the Domestic Policy Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 105, 107, and 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the Domestic Policy Council ("the Council").

Sec. 2. *Membership.* The Council shall comprise the:

(a) President, who shall serve as a Chairman of the Council;

(b) Vice President;

(c) Secretary of Health and Human Services;

(d) Attorney General;

(e) Secretary of Labor;

(f) Secretary of Veterans Affairs;

(g) Secretary of the Interior;

(h) Secretary of Education;

(i) Secretary of Housing and Urban Development;

(j) Secretary of Agriculture;

(k) Secretary of Transportation;

(l) Secretary of Commerce;

(m) Secretary of Energy;

(n) Secretary of the Treasury;

(o) Administrator of the Environmental Protection Agency;

(p) Chair of the Council of Economic Advisers;

(q) Director of the Office of Management and Budget;

(r) Assistant to the President for Economic Policy;

(s) Assistant to the President for Domestic Policy;

(t) Assistant to the President and Director of the Office of National Service;

(u) Senior Advisor to the President for Policy Development;

(v) Director, Office of National Drug Control Policy;

(w) AIDS Policy Coordinator; and

(x) Such other officials of Executive departments and agencies as the President may, from time to time, designate.

Sec. 3. *Meeting of the Council.* The President, or upon his direction, the Assistant to the President for Domestic Policy ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

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Sec. 4. *Functions.* (a) The principal functions of the Council are: (1) to coordinate the domestic policy-making process; (2) to coordinate domestic policy advice to the President; (3) to ensure that domestic policy decisions and programs are consistent with the President's stated goals, and to ensure that those goals are being effectively pursued; and (4) to monitor implementation of the President's domestic policy agenda. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate domestic policy through the Council.

(c) In performing the foregoing functions, the Assistant will, when appropriate, work with the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy.

Sec. 5. *Administration.* (a) The Council may function through established or ad hoc committees, task forces or interagency groups.

(b) The Council shall have a staff to be headed by the Assistant to the President for Domestic Policy. The Council shall have such staff and other assistance as may be necessary to carry out the provisions of this order.

(c) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

William J. Clinton

THE WHITE HOUSE,
August 16, 1993.

[FR Doc. 93-20237
Filed 8-17-93; 3:48 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV–91–445]

Table Grapes Grown in Southeastern California; Final Rule Revising the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule without changes the provisions of an interim final rule that added the U.S. No. 1 Institutional grade to the minimum grade requirements under the handling regulation in effect for fresh market shipments of California table grapes. This action will aid handlers in developing new markets for table grapes.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Peter Parks, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California desert grapes subject to regulation under the marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the grape handlers and producers may be classified as small entities.

The California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the order, met on October 31, 1991, and unanimously recommended revising the minimum grade requirements in the handling regulation to include the U.S. No. 1 Institutional grade as set forth in the United States Standards for Grades of Table Grapes (European and Vinifera Type) (Standards).

Prior to implementation of the interim final rule, from April 20 through August 15 each season, table grapes had to meet the minimum grade requirements specified for U.S. No. 1 Table, as set forth in the Standards, and had to meet applicable maturity requirements. Pack, container, and container marking requirements are also in effect for fresh market shipments of table grapes.

The committee recommended adding the U.S. No. 1 Institutional grade to the minimum grade requirements in the domestic handling regulation. The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements. Individual bunches of table grapes grading U.S. No. 1 Table cannot weigh less than one-fourth pound (4 ounces). Individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces nor more than 5 ounces. Additionally, at least 95 percent of the containers in a lot of table grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack." No labelling requirements are established under the U.S. No. 1 Table grade.

The committee believes that adding the U.S. No. 1 Institutional grade to the handling regulation will promote domestic sales and exports of institutional grape packs, particularly to Canada. The committee reports an increased demand for institutional grape packs by the foodservice industry (e.g., school systems, airlines and restaurants). Due to the requirements of the current handling regulation, California table grape handlers are

prohibited from making domestic and export shipments of institutional grape packs. The Standards were amended in April 1991 to establish the U.S. No. 1 Institutional grade.

The interim final rule was issued on April 19, 1993, and published in the **Federal Register** (58 FR 21535, April 22, 1993). That rule amended § 925.304 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended May 24, 1993. No comments were received.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for table grapes under a domestic marketing order, imported table grapes must meet the same or comparable requirements, subject to concurrence by the United States Trade Representative. The Act does not authorize container, container marking, or pack requirements on imports. However, because this final rule relaxes the minimum grade requirements to add U.S. No. 1 Institutional to the domestic handling regulation, a corresponding change is needed in the table grape import regulation. Such change will be addressed in a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 925

Marketing agreements, Reporting and recordkeeping requirements, Table grapes.

For the reasons set forth in the preamble, 7 CFR part 925 is amended to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will appear in the annual Code of Federal Regulations.

2. Accordingly, the interim final rule amending the provisions of § 925.304, which was published in the **Federal Register** (58 FR 21535, April 22, 1993), is adopted as a final rule without change.

Dated: August 12, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20107 Filed 8–18–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 944

[Docket No. FV–91–452]

Table Grapes Imported Into the United States; Final Rule Revising the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule without changes the provisions of an interim final rule that added the U.S. No. 1 Institutional grade to the minimum grade requirements for imported table grapes. Prior to implementation of the interim final rule, imported table grapes had to grade at least U.S. No. 1 Table which included a requirement that individual bunches weigh at least one-fourth pound (4 ounces). This action permits grapes that meet all of the requirements of U.S. No. 1 Table except bunch size to be imported into the United States. This action should benefit table grape producers, handlers, importers, and consumers.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Peter Parks, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 70 importers of table grapes subject to regulation under this action. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the importers of table grapes may be classified as small entities.

This action is being taken because section 8e of the Act requires imported table grapes to meet the same or comparable requirements as those established under a domestic marketing order. Under this final rule, imported table grapes have to meet the same minimum grade requirements as domestically produced table grapes that are grown in southeastern California and regulated under Marketing Order No. 925 (7 CFR part 925).

Under the terms of the marketing order, from April 20 through August 15 each season, table grapes have to meet minimum grade requirements as well as applicable maturity, pack, and container requirements. Imported table grapes

have to meet the same grade and maturity requirements as are in effect for fresh market shipments of domestically-grown table grapes.

Prior to the 1993 season, domestically-grown and imported grapes had to meet the minimum grade requirements specified for U.S. No. 1 Table, as set forth in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type), hereinafter referred to as the Standards. The U.S. No. 1 Institutional grade was added to the minimum grade requirements effective April 20, 1993.

This final rule continues in effect the relaxation of the minimum grade requirement established for imported table grapes. Table grapes grading U.S. No. 1 Table consist of bunches of well developed grapes of one variety, except when designated as assorted varieties, which are fairly well colored, uniform in appearance, and free from decay, mold and other condition factors. Bunches must weigh at least one-fourth pound (4 ounces). The relaxation permitted smaller bunches of grapes to be imported into the United States by adding the U.S. No. 1 Institutional grade to the minimum grade requirements for table grape imports. The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements. Individual bunches of table grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces or more than 5 ounces. Additionally, at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional are required, under the Standards, to be marked "Institutional Pack."

The purpose of the Standards is to provide common trading terms that are standard and familiar throughout the table grape industry. Because U.S. No. 1 Table and U.S. No. 1 Institutional grade requirements are basically the same, except for bunch size, it has been determined that the criteria for the U.S. No. 1 Institutional grade include a container marking requirement to avoid buyer confusion in the marketplace. As such, imports of U.S. No. 1 Institutional grade table grapes will continue to have to meet all of the requirements of that grade as set forth in the Standards.

These table grape import requirements were contained in an interim final rule that was issued on April 19, 1993, and published in the **Federal Register** (58 FR 21536, April 22, 1993), with an effective date of April 20, 1993. That rule amended § 944.503 of the rules and regulations in effect for imported table grapes. That rule provided a 30-day comment period which ended May 24, 1993. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

List of Subjects in 7 CFR part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will appear in the annual Code of Federal Regulations.

2. Accordingly, the interim final rule amending the provisions of § 944.503, which was published in the **Federal Register** (58 FR 21536, April 22, 1993), is adopted as a final rule without change.

Dated: August 12, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20108 Filed 8–18–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 516, and 575

[93–37]

RIN 1550–AA03

Mutual Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the OTS) is adopting a regulation that implements the mutual holding company provisions of the Savings and Loan Holding Company Act. In general, the regulation establishes the procedures for obtaining regulatory approval for the formation of mutual holding companies and for the issuance of minority stock of savings association subsidiaries of mutual holding companies and ensures that mutual holding companies and their savings association subsidiaries are operated in a safe and sound manner.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Teri M. Valocchi, Counsel (Banking and Finance), (202) 906–7299, V. Gerard Comizio, Deputy Chief Counsel for Securities and Corporate Structure, (202) 906–6411, Corporate and Securities Division, Chief Counsel's Office; Donna Miller, Program Manager, Affiliates Policy, (202) 906–7488; or David A. Sjogren, Manager, Corporate Activities, Supervisory Operations, (202) 906–6739; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Competitive Equality Banking Act of 1987 (CEBA), Public Law No. 100–86, 101 Stat. 552, 557–579 (1987), amended the Savings and Loan Holding Company Act, then codified at 12 U.S.C. 1730a, to add a new subsection (s), providing for the establishment of mutual savings and loan holding companies. In the Fall of 1988, the former Federal Home Loan Bank Board (FHLBB) published an advance notice of proposed rulemaking soliciting comments regarding how the mutual holding company provisions of CEBA should be implemented. 53 FR 41343 (Oct. 21, 1988). A public hearing on mutual holding companies was held in December 1988. 53 FR 44436 (Nov. 3, 1988).

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101–73, 103 Stat. 183 (1989), transferred the CEBA mutual holding company provisions to a new statutory location, section 10(o) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a(o), and added various new provisions intended to fill in some of the gaps left by CEBA. See, *e.g.*, 12 U.S.C. 1467a (o) (4), (o)(7)–(o)(9). FIRREA also transferred jurisdiction for promulgating regulations implementing the mutual holding company statutory provisions from the FHLBB to the OTS.

In January 1991, the OTS published for comment a proposed rule, 56 FR 1126 (January 11, 1991), to implement section 10(o) of the HOLA. The proposal allowed savings associations to pursue the perceived advantages offered by the mutual holding company structure, subject to safeguards against unsafe and unsound practices and insider abuse. The proposal also used mutual-to-stock conversion regulatory standards,

procedures and forms with which the industry is already familiar.

Upon consideration of all the comments received during the public comment period, the OTS is adopting the proposal as a final rule substantially as proposed, with some modifications, described below. These modifications are based upon both the comments received and upon the OTS's experiences in reviewing mutual holding company transactions filed with OTS during the development of the mutual holding company regulations. The OTS is adopting this regulation in order to implement section 10(o) of the HOLA and also to clarify and provide guidance on a variety of issues that have arisen in the application of section 10(o).

II. Summary of Comments

The OTS received a total of 21 comment letters on the proposed rule. Those who submitted comments included five law firms (one firm submitted two comment letters), five thrift industry trade associations, six savings associations, three state thrift regulatory authorities, and an association representing the views of state regulators.

The issues identified by commenters on the proposed rule may be separated into four major groups: (1) Authority over the reorganization, chartering and regulation of mutual holding companies; (2) procedural and other requirements to be followed by mutual associations proposing to reorganize into, or be acquired by, mutual holding companies; (3) transactions designed to raise capital, particularly the issuance of minority stock, pledges of the stock of the thrift subsidiary, and subsequent conversions to stock form by mutual holding companies; and (4) restrictions on the operations of mutual holding companies.

As a general matter, most commenters approved of the approach taken in the proposed rule to the regulation of mutual holding companies. However, a number of commenters recommended revisions of specific provisions of the rule. The OTS has carefully considered all of the comments received during the public comment period. For the reasons summarized below, the OTS has revised the proposal based upon the comments received and has made other changes to clarify the requirements of the final rule.

The following is a discussion of the issues raised by the commenters and a summary of the OTS's responses to these issues.

A. Reorganization, Chartering and Regulation of Mutual Holding Companies

A number of commenters, primarily state thrift regulatory authorities, objected to the OTS's position that section 10(o) and its implementing regulations preempt state law that authorizes state-chartered thrifts to create and operate mutual holding companies under standards different from those contained in section 10(o) of the HOLA. Under the proposed rule, a mutual savings association would be authorized to reorganize to become a mutual holding company, or be acquired by a mutual holding company, only upon satisfaction of certain conditions set forth in the rule. The preamble to the proposed rule indicated that the purpose of this requirement was that the OTS rules on mutual holding companies be the exclusive means by which a savings association may reorganize into a mutual holding company. The preamble concluded that mutual holding company reorganizations by federally insured, state-chartered savings associations will not require regulatory action or approval at the state level, unless any "resulting" or "acquiree" associations, as those terms are defined in the rule, will be state-chartered, in which case a new charter will need to be obtained at the state level.[1]

Most commenters on this issue argued that the proposed regulation should not preempt otherwise applicable state law and that neither the language of section 10(o) nor Congressional intent support preemption. Several commenters based their objections on the proposal's perceived interference with the "dual banking system" under which the states and the federal government share chartering and regulatory authority, also contending that Congress' intent was merely to authorize mutual holding companies generally and not to preempt state law. Similarly, commenters criticized the proposal for limiting state participation in mutual holding company reorganizations to the chartering of a savings association subsidiary of a mutual holding company.

Upon careful review of the comments, the OTS continues to be of the view that Congress intended section 10(o) to expressly preempt state law with regard to the creation and regulation of mutual holding companies. This view, which is now expressly reflected in the final rule, is fully supported by the plain language and legislative history of section 10(o).

[1] See 56 FR at 1137.

Section 10(o)(7) of the HOLA provides that "[a] mutual holding company *shall* be chartered by the Director [of the OTS] and shall be subject to such regulations as the Director may prescribe." (emphasis added) This provision clearly states that Congress intended the OTS to have exclusive authority over the chartering, reorganization and regulation of mutual holding companies and that, therefore, state law purporting to authorize state-chartered mutual holding companies be preempted.

Further, the legislative history of section 10(o) supports federal preemption. The mutual holding company provisions of the HOLA, as originally enacted in CEBA, did not address who would charter and regulate mutual holding companies and consequently generated some uncertainty as to the mutual holding company regulatory structure.[2] This uncertainty was addressed in FIRREA, which added the language of section 10(o)(7) quoted above. The explanatory statement that accompanied the amendments when they were offered at a House Banking Committee mark-up of the FIRREA legislation stated that the amendments "would provide a clear regulatory framework for MHCs, and unquestionable regulatory authority to the [OTS] by providing that MHCs will be chartered by the [Director of the OTS] and subject to [OTS] regulation."

Federal preemption also occurs where the statutory scheme enacted by Congress has "occupied the field" or is indicative of a "dominant federal interest."[3] Congress, by setting forth a detailed statutory scheme addressing virtually all material aspects of the establishment and corporate life of a mutual holding company, has "occupied" the mutual holding company "field" and has left no room for state mutual holding company law. For example, section 10(o) sets forth the procedures for mutual holding company reorganizations (sections 10(o) (1–3)); identifies the persons having ownership rights in a mutual holding company (section 10(o)(4)); specifies permissible activities (section 10(o)(5)); describes methods of raising capital (section 10(o)(8)); designates the chartering and regulatory agency for mutual holding companies (section 10(o)(7)); and establishes procedures to be followed upon the default of a mutual holding

[2] The October 1988 advance notice of proposed rulemaking, discussed above, expressly sought comment on whether the CEBA mutual holding company provisions preempted state mutual holding company law.

[3] *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 721; *Hines* v. *Davidowitz*, 312 U.S. 52, 66 (1941).

company or its subsidiary (section 10(o)(9)).

In contrast, the provisions of section 10 of the HOLA applicable to all savings and loan holding companies (including mutual holding companies), while detailed in their treatment of the permissible activities of those companies, do not resemble the comprehensive and detailed legislative treatment of mutual holding companies contained in section 10(o). Moreover, the mutual bank holding company provisions of the Bank Holding Company Act, 12 U.S.C. 1842(g), which are generally available to state-chartered savings banks, similarly lack the detail set forth in section 10(o).

Finally, mutual holding company reorganizations constitute a category of conversion from the mutual to the stock form of organization, and, as a general matter, the federal law governing conversions by a savings association from the mutual to the stock form of organization, specifically sections 5 (i) and (p) of the HOLA, 12 U.S.C. 1464 (i) and (p), and the OTS regulations at 12 CFR part 563b, preempt state law in the area. Under section 5(i), "[n]o savings association may convert from the mutual to the stock form * * * except in accordance with the regulations of the Director [of the OTS]." Pursuant to this authority, the OTS has issued regulations that "exclusively govern" all conversions to the stock form. 12 CFR 563b.1(a). The reorganization of a mutual savings association into a mutual holding company involves a type of conversion since the reorganization results in a stockform subsidiary of the mutual holding company. Moreover, as provided in the final rule, the savings association subsidiary of a mutual holding company may issue stock to persons other than its parent company.

Despite the foregoing conclusion that section 10(o) of the HOLA preempts state law with respect to mutual holding companies, the OTS would not object if Congress undertook to provide for a state mutual holding company alternative, provided that the authority of the OTS to ensure the safe and sound operation of all types of holding companies, and their savings association subsidiaries, is not diminished.[4]

[4] This preemptive authority extends only to the chartering, reorganization and regulation of mutual holding companies and not to other traditional areas of state authority, such as state income taxation.

B. Procedural Requirements

1. Form of Mutual Holding Company Reorganization

Some commenters suggested that the final rule clarify that, in addition to the purchase-and-assumption form of reorganization suggested by section 10(o)(1) of the HOLA, mutual holding company reorganizations also may be structured in the following manner: (i) A mutual savings association charters a stock savings association subsidiary, which itself charters a stock savings association subsidiary as a second-tier subsidiary of the mutual association; (ii) the mutual association merges with and into the second-tier stock association, with the stock association surviving; and (iii) the first-tier stock association amends its charter to read in the form of a mutual holding company. Although the final rule does not specifically address this or other alternative steps to establishing a mutual holding company, the OTS believes that the suggested merger structure is consistent with the requirements of section 10(o)(1), provided the standards set forth in section 10(o) and the final rule are otherwise met. Other alternatives will be evaluated similarly and may also be found acceptable.

2. Eligibility of State-Chartered Savings Banks Under Section 10(o)

Some commenters urged that the OTS consider whether other federally insured depository institutions that are not savings associations, such as state-chartered mutual savings banks, may be allowed to reorganize into a mutual holding company. The final rule does not specifically address this issue. However, the OTS notes that under section 10(l) of the HOLA, 12 U.S.C. 1467a(l), state-chartered savings banks or cooperative banks not currently subject to regulation by the OTS may elect to be treated as savings associations for the purposes of section 10 of the HOLA, thus making the provisions of section 10(o) available to such institutions that make a section 10(l) election to "savings association" status.[5]

3. Related Agreements

A number of commenters objected to the requirement in the proposal that mutual holding companies execute regulatory capital maintenance, dividend limitation or some other form of agreement with the OTS as a condition of OTS approval of a mutual holding company reorganization. As discussed below, the OTS no longer generally requires such agreements as a matter of policy; accordingly, the requirement has been deleted from the final regulation.

[5] Regulation by OTS of an institution that makes a section 10(l) election generally is limited to regulation of its savings and loan holding company under section 10 of the HOLA, and verification that the holding company's subsidiary institution meets the Qualified Thrift Lender Test.

4. Capitalization of Mutual Holding Companies

One commenter recommended that a reorganizing association be permitted to upstream funds to the mutual holding company in amounts that exceed the proposed rule's requirement that initial capitalizations of a mutual holding company be limited to amounts permitted under OTS regulations or policies limiting capital distributions by savings associations. The OTS capital distributions regulation sets forth OTS policy on the appropriate amounts that a savings association may distribute consistent with safe and sound operations. Accordingly, the final rule makes no change to the mutual holding company capitalization limits set forth in the proposed rule.

5. Business Plans

Certain commenters objected to the requirement under the proposed rule that the failure of a reorganizing association to submit a business plan in connection with its notice of mutual holding company reorganization would give rise to a rebuttable presumption that the safety and soundness and financial resources requirements for OTS approval of a mutual holding company reorganization were not met. The commenters asserted that business plans are not required in connection with standard mutual-to-stock conversions. One suggested that business plans only be required if an association plans a material deviation from its traditional activities.

The OTS's regulations regarding the formation of savings and loan holding companies in connection with conversions to the stock form generally require that a business plan be submitted. See 12 CFR 574.6(a)(2) and 574.7(g)(2). The OTS sees no reason to deviate from these requirements in the mutual holding company context. A mutual holding company reorganization constitutes a significant change in the structure of a savings association. Thus, the requirement that a business plan be submitted in connection with a reorganization into a mutual holding company has been retained in the final regulation.

6. Membership Rights

One commenter asserted that there is no compelling reason to prohibit a mutual holding company from granting membership rights to depositors in all of its savings association subsidiaries, including those that were in stock form immediately prior to being acquired by the mutual holding company. Under the proposed rule, depositors and borrowers of such stock associations received no membership rights unless the stock association merged with a resulting or acquiree association or with an association that was in the mutual form when acquired by the mutual holding company.

In the OTS's view, when a stock association is acquired by a mutual holding company, it is neither legally required nor appropriate to grant stock association depositors ownership rights, i.e., membership, in the acquiring mutual holding company. Under section 10(o)(4) of the HOLA, membership in a mutual holding company flows from membership in the subsidiary associations of the mutual holding company that were in mutual form immediately prior to reorganizing into, or being acquired by, the mutual holding company. As a general matter, the depositors of a stock savings association have no equity or other interest in a stock association other than the ownership of their accounts; the equity owners of a stock association are its stockholders. Presumably, the mutual holding company provided appropriate compensation to the stockholders in connection with its acquisition of the stock association. Thus, the final rule remains unchanged in this respect.

7. Charter and Bylaws

Several commenters were unsure as to whether the provisions of the model mutual holding company charter contained in the proposed rule would be required for all mutual holding companies. As a general matter, the charter and bylaws of a mutual holding company should conform with the model charter and bylaws contained in the final rule. However, under section 10(o)(4)(A) of the HOLA, persons having ownership rights in a mutual savings association that proposes to reorganize into a mutual holding company must have identical ownership rights with respect to the mutual holding company.[6] Thus, the provisions of the charter and bylaws that set forth the ownership interests of a mutual holding company's members, primarily those affecting voting and distribution rights, should contain the analogous provisions in the charter and bylaws of any resulting or acquiree associations or any other association that was in mutual form when acquired by a mutual holding company in order to reflect these interests.

8. Subsequent Acquisitions of Mutual Thrifts

One commenter objected to the requirement that an acquisition of a mutual association by a mutual holding company be submitted to the acquiree mutual association's members for approval. The commenter noted that such a vote would not be required under applicable OTS regulations if the transaction involved the merger of mutual associations not in a mutual holding company structure. In the OTS's view, however, the effect upon a mutual association and its members of being acquired by a mutual holding company is no different from the effect of an initial reorganization by the association into a mutual holding company. Since section 10(o) of the HOLA and the final rule require member approval for such an initial reorganization, the OTS has imposed a similar requirement upon mutual associations that are acquired by mutual holding companies.[7] Accordingly, the requirement of the proposal has been retained in the final rule.

C. Capital Enhancement Transactions

The provisions of the proposed rule that addressed capital enhancement transactions received the largest volume of comments. Most of the commenters addressed issues arising in connection with the issuance of stock under this rule by the savings association subsidiaries of mutual holding companies.

1. Pricing of Stock

One commenter suggested that the requirement that the stock issued by a resulting or acquiree association be sold at an estimated price range within 15 percent above or 15 percent below the estimated pro forma value of the stock, adapted from the OTS mutual to stock conversion regulations, part 563b, would be unnecessary in the mutual holding company context. According to the commenter, since savings associations issuing stock under this rule have no need to sell a maximum amount of stock (unlike converting associations, which must sell all of the conversion stock offered), associations ought to have the flexibility to adjust the price or percentage of stock sold to meet market requirements. Consequently, the commenter suggested that the sole pricing requirement be that the stock must be sold at a fair price based upon an independent appraisal.

The OTS recognizes the arguments for allowing greater flexibility in stock issuances subject to this rule and, as discussed below, has decided to generally eliminate these estimated price range requirements.

2. Insider Purchase Limitations

Some commenters expressed a strong preference for higher insider purchase limits than those set forth in the proposal, arguing primarily for limits based upon the amount of an association's outstanding stock without regard to the amount held by persons other than the mutual holding company. According to the commenters, insiders would generally be more willing to invest in the stock issuances than the general public and would also be subject to increased incentives to maximize the issuer's performance, both of which would, in turn, increase interest in such investments by non-insiders. Commenters also noted that such limits would create greater compatibility with the conversion regulations and that other limitations in the proposal, such as the pricing requirements and limits on insider resales, made the purchase limits overly burdensome. Finally, the commenters recommended that limits on purchases by employee benefit plans be increased and that the issuing thrifts be allowed to reserve stock for issuance under employee stock benefit plans, as is allowed in connection with standard conversions.

The final rule maintains the insider acquisition limits as set forth in the proposal. The limits imposed by the regulation will aid in preventing insider overreaching by imposing a degree of market discipline on the pricing of the stock. Moreover, the presence of independent investors to whom management owes fiduciary duties may serve as a check on the actions of management following the issuance. As discussed in section III.D below, however, the OTS has revised the proposed rule to authorize issuing associations to reserve stock for distribution under employee benefit plans.

The proposal specifically requested comments as to whether the OTS should impose additional restrictions on stock

[6] The only exception to this rule is for mutual savings associations whose charters granted ownership rights to borrowers. See 12 CFR 575.5 and the discussion of its provisions in the preamble to the proposed rule, 56 FR at 1130.

[7] This issue was addressed in the preamble to the proposed rules. See 56 FR at 1127

issuances, such as requiring all minority stock to be sold in community or public offerings or adopting more stringent limits, or outright prohibitions, on insider purchases. Virtually all of the commenters favored decreased, not increased, restrictions on insider acquisitions and opposed any requirement that stock issuances under the rule be made through a community or public offering. The final rule does not impose additional restrictions on insider acquisitions, and, as a general rule, stock issuances under the rule should be structured as, and provide a mutual holding company's members with the opportunity to purchase stock in a manner similar to a standard conversion under 12 CFR part 563b. However, as discussed in section III.D. below, a new standard is being provided for exceptions to this general approach.

3. Limits on Resales by Insiders

Some of the commenters opposed the three year restriction on insiders of a mutual holding company or a resulting or acquiree association from reselling stock purchased in a stock issuance under this rule for a period of three years following the date of purchase. These parties contend that the one-year holding period imposed upon insider acquisitions of conversion stock under the conversion regulations would be more appropriate. As discussed in section III.E below, the final rule shortens the resale restriction period to one year.

4. Time Limits

A few commenters suggested that the requirement that stock issuances must be completed within 45 days be increased to 90 days, similar to the aggregate time period allowed under the OTS conversion regulations. The final rule essentially conforms the time period for completion of a stock offering to those in the conversion regulations, requiring that stock issuances be terminated if not completed within 90 days of either the date of OTS approval of a stock issuance application or the date on which any offering circular used in connection with a public offering of securities is declared effective by the OTS.

5. Dividend Waivers

A few commenters urged relaxation of the prohibition on a mutual holding company waiving its right to receive a dividend from its savings association subsidiary unless (i) the OTS approves the waiver or (ii) no insider or employee stock plan holds any shares to which the waiver would apply. Other commenters recommended that the OTS should issue indefinite, "evergreen" approvals of dividend waivers. As discussed in section III.G. below, the final rule changes the "prior approval" requirement to a "prior notice" requirement, revises the standard set forth in the proposal for approval of dividend waivers, and requires a resolution of the board of directors of the mutual holding company authorizing dividend waivers and reflecting consideration of the directors' fiduciary duties to the mutual members of the mutual holding company to be filed with the dividend waiver notice.

6. The Redemption or Exchange of Minority Stock in Mutual Holding Company Conversions

A number of commenters supported the ability of a thrift subsidiary to redeem or exchange stock in a mutual holding company conversion to stock form. Under the proposed regulation, a mutual holding company would be permitted to convert to stock form in accordance with the OTS regulations on the conversion of mutual savings associations at part 563b. Comments were specifically requested as to whether, in the event of such a conversion, the thrift subsidiary of the mutual holding company should be permitted to redeem or exchange any outstanding minority stock issued by the subsidiary, and, if so, how this could be accomplished in a reasonable and fair manner. Commenters on this aspect of the proposal unanimously favored permitting an exchange or redemption, with most commenters assuming that the minority shares would be exchanged on a one-for-one basis or redeemed. According to the commenters, the ability to exchange or redeem minority stock in the event of a mutual holding company conversion will increase the value of the minority stock when issued and will enhance the probability of success of the subsequent conversion.

As discussed in more detail at section III.H. below, the final rule permits, but does not require, investors in the stock of a mutual holding company's subsidiary association issued under the rule to exchange stock for mutual holding company conversion stock provided that the basis for the exchange is "reasonable and fair."

The commenters differed as to how conversion transactions involving an exchange or redemption should be structured. Some commenters recommended that the subsidiary savings association's stock be exchanged for the holding company's stock. Others recommended that the mutual holding company and the subsidiary savings association be merged, with the conversion stock being distributed to minority shareholders and thrift depositors on a "proportional basis." The final rule does not mandate a particular form of conversion transaction; thus, a mutual holding company may structure its conversion transaction in the manner it deems most appropriate, subject to review and approval by the OTS. The mutual holding company would have the burden, however, of demonstrating that the transaction selected meets all applicable regulatory requirements, including the standards for the exchange or redemption of minority stock.

7. Pledges of Thrift Subsidiary Stock

Several comments were received concerning the proposed rules for mutual holding company stock pledges of thrift subsidiary stock. The proposed rule permitted mutual holding companies to pledge as security for a loan the stock of any resulting association, acquiree association, or thrift that was in the mutual form when acquired by the mutual holding company only if (i) the proceeds of such loan are infused into the association whose stock is pledged; (ii) the mutual holding company provides notice to the OTS within 10 days of such pledge; and (iii) the mutual holding company provides immediate notice to the OTS if a payment on such loan is not made.

Several commenters recommended that the proposed rule be revised to permit the use of loan proceeds for any lawful purpose so long as the thrift whose stock was pledged is fully capitalized. It was also suggested by one commenter that mutual holding companies be permitted to pledge the stock of more than one thrift subsidiary in exchange for one larger loan, the proceeds of which would be apportioned among the thrifts whose stock secures the loan. Finally, one commenter urged that prior OTS approval be required due to strong safety and soundness considerations.

The language of section 10(o)(8), which authorizes stock pledges, requires that the transaction increase the capital of the savings association subsidiary. Accordingly, the final regulation retains the requirement that the proceeds of any loan secured by the subsidiary's stock be infused into the savings association. As discussed below, however, the final rule would permit a mutual holding company that owns more than one savings association to obtain a loan secured by the stock of more than one of their subsidiary savings associations, provided the loan proceeds are

distributed among the associations in a manner proportionate to the relative values and amount of stock pledged of each association. With respect to prior OTS approval for stock pledges, the OTS believes that the regulatory restrictions on such loans are adequate to protect the safety and soundness of the subsidiary thrift; accordingly, the proposal has not been changed in this respect.

D. Operating Restrictions

1. Dispositions of Subsidiary Savings Associations

One commenter urged that the proposal's general prohibition on a mutual holding company disposing of any of the stock of a thrift from which the holding company draws members be eliminated and that the final rule authorize a mutual holding company to dispose of such a subsidiary subject to all applicable merger and conversion rules. As discussed below, the OTS has revised the rule to authorize such dispositions.

2. Restrictions on Stock Issuances to Insiders

One commenter objected to the provision prohibiting non-thrift mutual holding company subsidiaries from issuing stock to any of the company's insiders, associates of insiders, or employee benefit plans. The proposal specifically requested comment on whether, as an alternative, the rules regarding stock issuances by the savings association subsidiaries should be expanded to apply to stock issuances by all mutual holding company subsidiaries. The commenter urged that issuances of the stock of non-savings association mutual holding company subsidiaries receive the same treatment as issuances by savings association subsidiaries. As discussed below, the OTS has decided not to restrict the issuance of stock by a non-savings association subsidiary to the holding company's insiders.

3. Indemnification

Several commenters objected to the application to mutual holding companies of the indemnification standards for federally chartered thrifts at 12 CFR 545.121, stating that mutual holding company directors and officers should be eligible for indemnification under state law. Since mutual holding companies will be chartered by the OTS, the final regulation retains the indemnification standards set forth in the proposed regulation in order to maintain a uniform indemnification standard for entities chartered by the OTS and to prevent the possibility that associations will seek to form mutual holding companies to evade the § 545.121 standards.

4. Mutual Holding Company Reports

The proposed rule required that mutual holding company insiders submit to the OTS, in addition to the reports required for all savings and loan holding companies under part 584, reports containing the information on executive compensation and insider transactions required in Items 402 and 404 (a), (b), and (d) of the SEC's Regulation S–K, 17 CFR part 229. One commenter took no objection to this provision, while another recommended that the OTS require instead the information required to be submitted under the Federal Reserve Board's Regulation O. Another inquired as to whether this information would be publicly available, and, if so, would object to such status. As discussed below, the final rule eliminates the additional reporting requirements.

5. Proxies and Proxy Statement

Several commenters objected to certain provisions governing proxy solicitations. Their objections were directed at the requirements (i) that proxies be solicited at all, since such a requirement is not present in connection with mergers of mutual associations or conversions from federal to state charters and (ii) that, as required in the preamble to the proposed rule,[8] management compensation be disclosed in the proxy materials since the information would be "irrelevant" or "immaterial" where a mutual holding company reorganization involves only a change in the form of organization and the members of the reorganizing association would not be "at risk" investors.

With respect to the first issue, the final regulation continues to require that mutual associations contemplating a reorganization into or acquisition by a mutual holding company solicit proxies from their members since section 10(o) requires that management obtain the approval of a reorganizing association's members at a meeting called for that purpose.

Further, pursuant to its authority under § 575.13 of the final rule, the OTS intends, for the present, to continue to require that management compensation be disclosed in the proxy materials soliciting mutual accountholder votes for a mutual holding company transaction.[9] The OTS believes this type of disclosure, the purpose of which is to inform members as to whether the reorganizing association's management is over-compensated relative to its performance or is otherwise manipulating the association's compensation structure to the detriment of the association, is appropriate in proxies seeking approval for these types of transactions.

First, this disclosure is similar to that required in mutual-to-stock conversion proxy solicitation materials,[10] and mutual holding company reorganizations present disclosure issues substantially similar to those presented by such conversions. In addition, the compensation of management has even greater relevance with respect to mutual holding company reorganizations in that the members are being asked to approve a fundamental and significant corporate restructuring that may simultaneously perpetuate current management, regardless of its performance, and expose the members to dilution of their equity interest in the association through, for example, stock issuances, stock pledges, dividend waivers or new activities. The members would have no right to vote on these actions.

As a final matter, the OTS staff, to ensure that accountholders receive sufficient information to vote to approve or reject a mutual holding company reorganization, now requires that the proxy solicitation materials for mutual holding company reorganizations address in detail: (1) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion; (2) whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief; (3) the fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association; (4) any compensation agreements that will be entered into by management in connection with the reorganization; and (5) whether the mutual holding

[8] 56 FR at 1136–1137.

[9] The requirement that management compensation be disclosed in a reorganizing association's proxy solicitation materials is contained in OTS Form MHC–1, Notice of Mutual Holding Company Reorganization.

[10] See OTS Form PS, 12 CFR 563b.101, Item 5, and Securities And Exchange Commission Regulation S–K, Item 402, 17 CFR 229.402. The proxy solicitation materials should comply with the SEC's recently revised compensation disclosure requirements.

company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company. This disclosure is similar to that required for merger conversions and other more complex, conversion transactions.

In addition, under certain circumstances discussed below, savings associations proposing minority stock issuances that do not conform to the general rule, i.e., structured in a manner similar to a standard conversion under 12 CFR part 563b, including the standard conversion stock purchase priorities, also must provide additional disclosure to accountholders regarding a proposed reorganization.

6. Running Proxies

One commenter suggested that the final rule make clear that running proxies held by a reorganizing association should transfer to the mutual holding company consistent with the transfer of the ownership rights of members to the mutual holding company under § 575.5. The final rule has been revised to authorize specifically the transfer of running proxies from a reorganizing mutual association to the mutual holding company.

III. Changes to the Proposed Regulation

The final rule generally adopts the provisions of the proposed rule but reflects the following changes:

A. Definitions

To achieve greater consistency throughout its regulations, the OTS has revised the definitions section of the final rule, § 575.2, to reference other regulations, primarily 12 CFR parts 563b and 574, the definitions of certain terms that are neither defined in section 10(o) of the HOLA nor are unique to the final rule.

B. Review of Mutual Holding Company Reorganizations

As noted above, the requirement in the proposed rule that a mutual holding company execute any regulatory capital maintenance, dividend limitation or other required agreement as a condition of OTS approval of a mutual holding company reorganization has been deleted from the final rule. The OTS, as a policy matter, no longer requires such agreements in connection with stock-form savings and loan holding company reorganizations or applications and believes that there is nothing inherent in the nature of mutual holding companies that would necessitate such agreements as a matter of policy. The OTS notes, however, that while these agreements generally will not be required, the OTS retains broad authority to address safety and soundness concerns by imposing appropriate conditions of approval in mutual holding company applications.[11]

C. Contents of Reorganization Plans

The OTS has revised section 575.6(h) to permit the OTS to extend the period of time within which a mutual holding company reorganization may be completed. The OTS believes that the newness of the mutual holding company structure warrants a more flexible regulatory treatment.

D. Stock Issuances by Savings Association Subsidiaries

1. General

Under the proposed rule, any approval of a mutual holding company reorganization by the OTS would be deemed to constitute approval of any stock issuance proposed in connection with the reorganization. The OTS has revised § 575.7(a) of the final rule to clarify that such an approval of a mutual holding company reorganization would constitute approval of any stock issuance only if the issuance had been specifically applied for and unless otherwise specified by the OTS.

Further, to provide for greater conformity with the conversion regulations, the OTS has revised § 575.7(b) to incorporate by reference § 563b.7, which generally imposes restrictions on the pricing and sale of securities in conversion offerings. In the final rule, the provisions of § 563b.7 generally will be applicable to stock issuances by the thrift subsidiaries of mutual holding companies unless another provision of the final rule would apply or unless a specific provision of § 563b.7 is clearly inapplicable. The OTS has also added a new § 575.7(b)(2) that provides that the limitations on the minimum and maximum amounts of the estimated price range required by § 563b.7(c) shall not apply unless the OTS determines otherwise.[12] This provision is designed to provide savings associations greater flexibility in offering and selling stock under this rule while at the same time permitting the OTS to impose a more stringent pricing requirement in appropriate circumstances.[13]

Finally, § 575.7(d) has been revised to clarify OTS policy regarding the conduct of offerings of stock pursuant to the final rule by requiring that such offerings (1) afford the mutual holding company's members the opportunity to purchase stock in the offering and (2) comply with the requirements of the OTS regulation on securities offerings, 12 CFR part 563g and, to the extent applicable, 12 CFR 563b.102.

2. Public Offering Requirements

In the proposal, the OTS expressed its intention to closely scrutinize stock issuance proposals, the stock issuance process, and secondary market activity and indicated that if potential or actual abuses appeared it would promulgate additional safeguards. Since that time, the OTS has reviewed a number of minority stock issuance proposals, particularly offerings structured as "private placements" or where purchase priorities limit meaningful participation by the mutual holding company's members in the stock issuance process.

In the OTS's view, the potential for selective enrichment of insiders at the expense of accountholders is greater in connection with a minority stock issuance structured as a private placement or otherwise designed to result in a limited distribution of stock rather than as a widely distributed public offering, even though both such issuances would be subject to the same insider purchase limitations and stock pricing requirements. This potential stems from factors such as the limited distribution of stock in the private placement, management's ability to influence significantly the identity of the purchasers of the stock, incentives for potential undervaluation of conversion stock, and insiders' status as both purchasers of stock in the offering and the persons who control the

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[11] See *Kaneb Services, Inc.* v. *Fed. Savings and Loan Ins. Corp.*, 650 F.2d 78, 83 (5th Cir. 1981).

[12] Section 563b.7(c) requires that any preliminary offering circular relating to a conversion stock offering set forth the "estimated price range." The maximum of the price range should normally be no more than 15 percent above the average of the minimum and maximum of the price range, and the minimum should be no more than 15 percent below such average.

[13] In particular, the OTS is of the view that a significant factor in decisions to purchase stock in minority stock issuances has been the ability of the issuing associations to pay high rates of dividends. This ability stems primarily from the authority of a mutual holding company to waive its right to receive dividends declared by its thrift subsidiary, thus permitting a larger amount of funds to be paid to the minority shareholders. As such, this higher dividend is more characteristic of fixed-income securities than of common stock. The OTS believes that the appraised value of the issuing association should reflect this ability to pay higher dividends; thus, the OTS generally believes that any stock issued under this rule for which the association proposes to pay dividends significantly higher than those generally offered for common stock should be valued as if it were a fixed-income security unless the association's parent mutual holding company specifically undertakes not to seek a waiver of dividends declared by the association for three years after the issuance.

activities of the thrift's mutual holding company parent.

In response to these concerns, the OTS has revised § 575.7(d) to require that stock issuances subject to the final rule generally must provide the members of the issuing association's mutual holding company parent with the opportunity to purchase stock in the issuance in a manner comparable to the procedures set forth in the OTS conversion regulations,[14] unless an alternative stock issuance structure would be more beneficial to the institution, under specified standards.

Minority stock issuances by the thrift subsidiaries of mutual holding companies present many of the same concerns as conversion stock offerings, and the purpose underlying the various procedural and transactional restrictions imposed upon both conversions and minority stock issuances is the same: to ensure that the process is fair to all concerned and not detrimental to the interests of the federal deposit insurance funds. Toward this end, the OTS has long required that stock issued in connection with a standard conversion be offered on a priority basis to the converting association's accountholders and otherwise be sold in a public offering and distributed as widely as possible. This wide distribution provides a mechanism for fair pricing, allows accountholders to participate in the conversion process, and limits the ability of any party to gain undue benefits by acquiring control of the converted institution.

In the mutual holding company context, the OTS has previously addressed these concerns by adopting regulatory standards and procedures, particularly regarding insider purchases and the pricing of the to-be-issued stock, similar to those of the conversion regulations. The OTS also requires insider benefit plans adopted in connection with minority stock issuances to undergo the same type of close scrutiny as in standard conversions and, as discussed in section II.D.5., requires the same level of disclosure for mutual holding company transactions as for merger conversions. By revising § 575.7(d) in the manner described, the OTS is establishing the mutual-to-stock conversion standards as the starting point for mutual holding company minority stock issuances.

The final rule provides two exceptions to this general standard, however. First, exceptions from the standard mutual to stock conversion standards will be permitted where the issuing association would qualify for a supervisory conversion. Second, exceptions may be granted on a case-by-case basis if the issuing association demonstrates that the non-conforming offering would be more beneficial to the association than a conforming offering considering, in the aggregate, the association's financial and managerial resources and future prospects, the effect of the issuance upon the association, the insurance risk to the federal deposit insurance fund, and the convenience and needs of the community to be served. The OTS recognizes that a public offering may not, in every case, be in the best interests of the association, the mutual holding company, the members of the mutual holding company, or the deposit insurance funds. For example, market conditions, regulatory requirements or other factors may cause a mutual association to enter into a relationship with another financial institution that can offer essential managerial and operational support and ready access to additional capital.

However, in these situations, the OTS believes it is important for converting associations to particularly highlight in the proxy materials to accountholders seeking approval of the mutual holding company reorganization the effect of such a transaction on the ability of accountholders to participate in the conversion. Thus, where the second basis for a non-conforming offering is relied upon, the final regulation requires savings associations to include in the proxy materials used to solicit accountholders' approval of the mutual holding company reorganization an additional one page disclosure statement that serves as a cover sheet and that clearly states (1) the consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and (2) any intent by the mutual holding company to waive dividends, and the implications to accountholders.

E. Contents of Stock Issuance Plans

The final rule amends the provisions of the rule governing the contents of stock issuance plans required under § 575.7(a)(1) to provide greater consistency with the requirements of the conversion regulations. First, the final rule requires that all stock be sold at a uniform price. Second, the final rule decreases the period of time for which insiders must hold any stock acquired in any offering pursuant to this rule from three years to one year after the date of purchase.

Third, the final rule adds a requirement that all stock issuance plans permit the association to make scheduled discretionary contributions to a tax-qualified employee stock benefit plan, but only if such contributions do not cause the association to fail to meet any of its regulatory capital requirements. This provision is similar to that required by the conversion regulations for all plans of conversion.

Fourth, the final rule extends the period within which stock issuances must be completed to 90 days from the date of OTS approval of the stock issuance application, unless the issuance is subject to the offering circular requirements of 12 CFR part 563g. Under those circumstances, the issuance must be completed 90 days from the date on which the offering circular is declared effective. This change will permit greater consistency with the conversion regulations. The OTS notes, however, that the 90-day period does not supersede or otherwise affect the obligations of savings associations conducting public offerings to provide, in appropriate circumstances, potential investors with updated disclosure of financial or other information at a point earlier than the expiration of the 90-day period.

Also, a statement has been added to § 575.8(a) to make clear that each of the provisions required for all stock issuances also constitutes a regulatory requirement.

F. Acquisitions and Dispositions by Mutual Holding Companies

The final rule revises § 575.10 to specifically authorize a mutual holding company to dispose of any of its savings association subsidiaries, regardless of whether the association was a resulting association, an acquiree association, or any other association that was in mutual form when acquired by the mutual holding company. However, the mutual holding company must provide notice to the OTS of the proposed disposition at least 30 days in advance. Furthermore, the transaction in which the mutual holding company disposes of the association would be subject to OTS oversight. For example, if a resulting association, an acquiree association, or any other association that was in mutual form when acquired by the mutual holding company would be "spun-off" as a separate mutual holding company, the transaction must comply with the provisions of this rule. If, however, the association would be transferred to a stock-form depository institution, the transaction must comply with the OTS conversion regulations.

[14] See 12 CFR 563b.3 (c)(2)–(c)(7).

In addition, the final rule now permits mutual holding company insiders to purchase any mutual holding company subsidiary from the mutual holding company, provided that the OTS receives notice at least 30 days prior to consummation of the proposed transaction. The OTS emphasizes, in this regard, the duty of the mutual holding company's board of directors to prevent insider abuse and to ensure that any transaction between the mutual holding company and an insider is on arms'-length terms and is in the best interests of the holding company and its members.[15]

G. Operating Restrictions

1. Stock Pledges

Section 575.11(b) has been revised to permit a mutual holding company, as discussed above, to pledge the stock of more than one savings association subsidiary as collateral for a loan, provided that the stock pledged of each association is proportionate to the proceeds of the loan infused into each subsidiary association. In this context, § 575.11(b) reflects the section 10(o) requirement that the proceeds from a pledge of a subsidiary thrift's stock be used to improve that subsidiary's capital and would allow the mutual holding company to achieve economies of scale with regard to the larger loan.

2. Dividend Waivers

The OTS has revised the § 575.11(d) restrictions on dividend waivers by mutual holding companies to replace the requirement of prior OTS approval for dividend waivers with a prior notice requirement. In addition, the standard pursuant to which the OTS would evaluate a notice by a mutual holding company to waive its right to receive dividends has been revised so that the holding company must demonstrate that the waiver would not be detrimental to the safe and sound operation of the savings association. Section 575.11(d) also has been revised to require that any dividend waiver notice include a copy of a resolution, and any supporting materials, of the board of directors of the mutual holding company in form and substance satisfactory to the OTS, concluding that the mutual holding company's waiver of its dividends from the savings association is consistent with the directors' fiduciary duties to the members of the mutual holding company.

A previously approved mutual holding company with a pending or future dividend waiver application or notice will be required to meet the new safety and soundness standards discussed above, and will be required to provide to the Regional Office a copy of a resolution of the board of directors, and any supporting materials, reflecting the board's determination that the dividend waiver will be consistent with their fiduciary duties to the mutual members of the mutual holding company. The resolution and any supporting materials must be in form and substance satisfactory to the OTS.

3. Issuance of Non-Thrift Subsidiary Stock to Insiders

Section 575.11(e) of the final rule now provides that a non-savings association subsidiary of a mutual holding company may issue stock to insiders, associates of insiders, or non-tax-qualified employee stock benefit plans of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the proposed stock issuance. The proposed rule prohibited such stock issuances under all circumstances due to concerns regarding insider abuse. Upon further review, however, the OTS has determined that the potential for abuse presented by stock issuances of this kind may be addressed through the prior notice process. Consequently, the final rule permits mutual holding company insiders to acquire the stock of non-savings association subsidiaries. As with other types of transactions between a mutual holding company, or its subsidiaries, and the holding company's insiders, the OTS expects that the mutual holding company's board of directors will ensure that the stock issuance is on arms'-length terms and is in the best interests of the mutual holding company and its members.

4. Mutual Holding Company Reports

Section 575.11(h) of the proposed rule, requiring reports on the compensation of and transactions with mutual holding company insiders, has been eliminated. The OTS decided that there was no compelling reason to impose reporting requirements upon mutual holding companies that are more detailed than those applicable to stock-form holding companies. Thus, under new section 575.11(h), formerly section 575.11(i) of the proposed rule, a mutual holding company would be subject only to the reporting requirements contained in the OTS regulations for all savings and loan holding companies, 12 CFR part 584.[16]

H. Conversion of Mutual Holding Companies

Section 575.12(a) has been revised to permit the exchange of any savings association stock issued pursuant to § 575.7 for the stock issued by a mutual holding company in connection with the holding company's conversion to the stock form provided that the holding company and the savings association demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable to all interested parties.

The broad "reasonable and fair standard" for these exchanges will allow the OTS flexibility to assess these transactions on a case-by-case basis, balancing the benefits brought by the potential for minority shareholders to become shareholders of the resulting, stock-form holding company with any potential safety and soundness concerns. The OTS will closely scrutinize each exchange proposal and retains the authority to prohibit an exchange if the mutual holding company and its thrift subsidiary are unable to demonstrate that the exchange meets the "reasonable and fair" standard.

Finally, while the final regulation does not expressly prohibit the redemption of savings association stock in connection with a mutual holding company conversion, any redemption of minority-held stock must comply with applicable OTS policy and regulations on capital distributions.

I. Procedural Requirements

1. Applications Filing Requirements

To conform with the OTS Applications Restructuring Regulation,[17] the final rule consolidates the notice and application filing requirements contained in § 575.13 (b) and (c) of the proposed rule into new § 575.13(b). In addition, the final rule now requires that applications to issue stock pursuant to § 575.7(a) must be filed in accordance with the filing requirements for mutual-to-stock conversions at § 563b.8 of the conversion regulations. Applications under § 575.7(a) are similar in form and content to conversion applications, and the OTS has determined that these applications should be reviewed in a similar manner.

2. Appeals

The proposed rule included a specific section concerning the procedures for

[15] These transactions must also comply with any applicable restrictions on affiliated transactions.

[16] A mutual holding company will also be subject to any other report required by statute or regulation, such as the reports required under sections 22 (g) and (h) of the Federal Reserve Act, 12 U.S.C. 375a and 375b, respectively, and their implementing regulations.

[17] 57 FR 14329 (April 20, 1992).

appealing the disapproval of a notice or application under this part. In the final rule, the OTS has revised this section, § 575.13(i), to incorporate by reference the general provisions for judicial review of final agency action under section 10 of the HOLA, which is set forth in HOLA section 10(j), 12 U.S.C. 1467a(j).

3. Federal Preemption

As discussed above, the OTS is of the view that Congress intended section 10(o) to expressly preempt state law with regard to the creation and regulation of mutual holding companies. Accordingly, the final rule includes a new § 575.13(i) that states that the regulation preempts state law with regard to the creation and regulation of mutual holding companies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

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The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The final rule contains a number of collections of information that have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), and are approved under OMB control number 1550–0071.

Based upon the comments received in response to the proposal, the rule has been modified and now contains several additional information collections. These collections are found in 12 CFR 575.10(b)(1), 575.10(b)(4), 575.11 (d)–(e), and 575.12(a)(2). These collections have been submitted to and approved by OMB in accordance with the Paperwork Reduction Act under OMB control number 1550–0071.

Sec. No.	Total annual burden hrs.	Avg. annual hrs. per respondent	Est. No. of respondents	Est. ann. frequency of responses
575.10(b)(1)	8	4	2	1
575.10(b)(4)	4	4	1	1
575.11(d)	108	9	12	3
575.11(e)	4	4	1	1
575.12(a)(2)	24	12	2	1

Estimated total annual reporting burden is 148 hours.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 516

Applications, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 575

Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office hereby amends subchapters A and D, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding in numerical order one new entry to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
Part 575	1550–0071
* * * * *	

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

3. The authority citation for part 516 continues to read as follows:

Authority: 12 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 1467a.

§ 516.2 [Amended]

4. Section 516.2(d)(1) is amended by adding "§ 575.3(b) or" prior to the words "part 574".

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

5. A new part 575 is added to subchapter D to read as follows:

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

Sec.
575.1 Scope.
575.2 Definitions.
575.3 Mutual holding company reorganizations.
575.4 Grounds for disapproval of reorganizations.
575.5 Membership rights.
575.6 Contents of Reorganization Plans.
575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.
575.8 Contents of Stock Issuance Plans.
575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.
575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.
575.11 Operating restrictions.
575.12 Conversion or liquidation of mutual holding companies.
575.13 Procedural requirements.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828.

§ 575.1 Scope.

The purpose of this part is to implement the mutual holding company provisions of the Savings and Loan Holding Company Act, 12 U.S.C. 1467a(o).

§ 575.2 Definitions.

As used in this part, the following definitions apply, unless specified elsewhere in this part:

(a) The terms *associate* and *tax-qualified employee stock benefit plan* have the meanings set forth in 12 CFR 563b.2.

(b) The terms *acting in concert, affiliate, company, person,* and *savings association* have the meanings set forth in § 574.2 of this subchapter.

(c) The term *acquiree association* means any savings association, other than a resulting association, that:

(1) Is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and

(2) Is in the mutual form immediately prior to such acquisition.

(d) The term *control* has the same meaning as specified in § 574.4 of this subchapter.

(e) The term *default* means any adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a mutual holding company or savings association subsidiary of a mutual holding company.

(f) The term *insider* means any officer or director of a company or of any affiliate of such company, and any person acting in concert with any such officer or director.

(g) The term *member* means any depositor or borrower of a mutual savings association that is entitled, under the charter of the savings association, to vote on matters affecting the association, and any depositor or borrower of a savings association subsidiary of a mutual holding company that is entitled, under the charter of the mutual holding company, to vote on matters affecting the mutual holding company.

(h) The term *mutual holding company* means a mutual savings and loan holding company organized under this part.

(i) The term *parent* has the same meaning as the term *parent company* specified at § 583.15 of subchapter F of this chapter.

(j) The term *Reorganization Notice* means a notice of a proposed mutual holding company reorganization that is in the form and contains the information required by the OTS.

(k) The term *Reorganization Plan* means a plan to reorganize into the mutual holding company format containing the information required by § 575.6 of this part.

(l) The term *reorganizing association* means a mutual savings association that proposes to reorganize to become a mutual holding company pursuant to this part.

(m) The term *resulting association* means a savings association in the stock form that is organized as a subsidiary of a reorganizing association to receive the substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing association upon consummation of the reorganization.

(n) The term *stock* means common or preferred stock, or any other type of equity security, including (without limitation) warrants or options to acquire common or preferred stock, or other securities that are convertible into common or preferred stock.

(o) The term *Stock Issuance Plan* means a plan providing for the issuance of stock by a savings association subsidiary of a mutual holding company submitted pursuant to § 575.7 of this part and containing the information required by § 575.8 of this part.

(p) The term *subsidiary* has the meaning specified at § 583.23 of subchapter F of this chapter.

§ 575.3 Mutual holding company reorganizations.

A mutual savings association may reorganize to become a mutual holding company, or join in a mutual holding company reorganization as an acquiree association, only upon satisfaction of the following conditions:

(a) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;

(b) A Reorganization Notice is filed with the OTS and either:

(1) The OTS has given written notice of its intent not to disapprove the proposed reorganization; or

(2) Sixty days have passed since the OTS received the Reorganization Notice and deemed it sufficient under § 516.2(c) of this chapter, and the OTS has not:

(i) Given written notice that the proposed reorganization is disapproved; or

(ii) Extended for an additional 30 days the period during which disapproval may be issued;

(c) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant to a proxy statement cleared in advance by the OTS and such Reorganization Plan is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and

(d) All necessary regulatory approvals have been obtained and all conditions specified in § 575.9(c)(5) of this part or otherwise imposed by the OTS in connection with the issuance of a notice of intent not to disapprove under § 575.3(b)(1) of this part or by the OTS in connection with the granting of the approvals specified in this paragraph have been satisfied.

§ 575.4 Grounds for disapproval of reorganizations.

(a) *Basic standards.* The OTS may disapprove a proposed mutual holding company reorganization pursuant to § 575.3(b) of this part if:

(1) Disapproval is necessary to prevent unsafe or unsound practices;

(2) The financial or managerial resources of the reorganizing association or any acquiree association warrant disapproval;

(3) The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;

(4) A stock issuance is proposed in connection with the reorganization pursuant to § 575.7 of this part that fails to meet the standards established by that section;

(5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the OTS in connection with the proposed reorganization; or

(6) The proposed reorganization would violate any provision of law, including (without limitation) § 575.3 (a) and (c) of this part (regarding board of directors and membership approval) or § 575.5(a) of this part (regarding continuity of membership rights).

(b) *Capitalization.* (1) The OTS shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be "adequately capitalized" as defined under 12 CFR part 565.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the OTS governing capital distributions by savings associations in effect at the time of the reorganization. (Issuance by the OTS of a notice of

intent not to disapprove a mutual holding company reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall also be deemed to constitute OTS approval under any regulation or written policy of the OTS governing capital distributions by savings associations, if such approval is required, of the capitalization proposal set forth in the Reorganization Notice, subject to any conditions imposed by § 575.4(d)(2) of this part.)

(c) *Presumptive disqualifiers*—(1) *Managerial resources.* The factors specified in § 574.7 (g)(1)(i)–(g)(1)(vi) of this subchapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term *acquiror* appears in § 574.7 (g)(1)(i)–(g)(1)(vi) of this subchapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in § 574.7(g)(1)(v) of this subchapter to filings under this part shall be deemed to include filings under either part 574 of this subchapter or this part.

(2) *Safety and soundness and financial resources.* Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with economical home financing or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) *Failure of the OTS to act on a Reorganization Notice within the prescribed time period.* A proposed reorganization that obtains regulatory clearance from the OTS due to the operation of § 575.3(b)(2) of this part may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the OTS's review period under § 575.3(b)(2) of this part;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 575.4(b) of this part;

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

(i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the OTS in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

(ii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with § 575.3 of this part and all other applicable laws and regulations and the Reorganization Notice;

(iii) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

(iv) No later than thirty days after the reorganization, the mutual holding company shall file with the OTS a certification stating that the mutual holding company will not deviate materially, or cause its savings association subsidiaries to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Regional Director is obtained.

§ 575.5 Membership rights.

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.* The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the same membership rights as the depositors of the association into which the acquired association is merged;

(3) Confer upon the borrowers of the resulting association who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights in the mutual holding company as were conferred upon them by the charter of the acquired association immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowings made after the acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the borrowers of the acquired association shall instead receive the same grandfathered membership rights as the borrowers of the association into which the acquired association is merged received at the time that association became a subsidiary of the mutual holding company.

(b) *Depositors and borrowers of associations in the stock form when acquired.* A mutual holding company that acquires a savings association in the stock form, other than a resulting association or an acquiree association, shall not confer any membership rights upon the depositors and borrowers of such association, unless such association is merged into an association from which the mutual holding company draws members, in which case the depositors of the stock association shall receive the same membership rights as other depositors of the association into which the stock association is merged.

§ 575.6 Contents of Reorganization Plans.

Each Reorganization Plan shall contain a complete description of all

significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the Reorganization Plan, and shall:

(a) Provide for amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company, and attach and incorporate such charter and bylaws;

(b) Provide for the organization of the resulting association, which shall be an interim federal or state savings association subsidiary of the reorganizing association, and attach and incorporate the proposed charter and bylaws of such association;

(c) Provide for amendment of the charter and bylaws of any acquiree association to read in the form of the charter and bylaws of a state or federal savings association in the stock form (as modified by § 575.9(b) of this part), and attach and incorporate such charter and bylaws;

(d) Provide that, upon consummation of the reorganization, substantially all of the assets and liabilities (including all savings accounts, demand accounts, tax and loan accounts, United States Treasury General Accounts, or United States Treasury Time Deposit Open Accounts, as defined in part 561 of this subchapter) of the reorganizing association shall be transferred to the resulting association, which shall thereupon become an operating savings association subsidiary of the mutual holding company;

(e) Provide that all assets, rights, obligations, and liabilities of whatever nature of the reorganizing association that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting association;

(f) Provide that each depositor in the reorganizing association or any acquiree association immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting association or the acquiree association, as the case may be (Appropriate modifications should be made to this provision if savings associations are being merged as a part of the reorganization);

(g) Provide that the Reorganization Plan as adopted by the boards of directors of the reorganizing association and any acquiree association may be substantively amended by those boards of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from the members of the reorganizing association and any acquiree association to vote on the Reorganization Plan and at any time thereafter with the concurrence of the OTS; and that the reorganization may be terminated by the board of directors of the reorganizing association or any acquiree association at any time prior to the meeting of the members of the association called to consider the Reorganization Plan and at any time thereafter with the concurrence of the OTS;

(h) Provide that the Reorganization Plan shall be terminated if not completed within a specified period of time (The time period shall not be more than 24 months from the date upon which the members of the reorganizing association or the date upon which the members of any acquiree association, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing or acquiree association); and

(i) Provide that the expenses incurred in connection with the reorganization shall be reasonable.

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Approval requirements.* No savings association subsidiary of a mutual holding company (including any resulting association or acquiree association) may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the association's acquisition by the mutual holding company, unless the association obtains advance approval of each such issuance from the OTS. Issuance by the OTS of a notice of intent not to disapprove a mutual holding company reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the OTS. The OTS shall approve any proposed issuance that meets each of the criteria set forth below in paragraphs (a)(1)–(a)(7) of this section.

(1) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by § 575.8 of this part.

(2) The Stock Issuance Plan is consistent with the terms of the association's charter (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.

(3) The Stock Issuance Plan would provide the association, its mutual holding company parent, and any other savings association subsidiaries of the mutual holding company with fully sufficient capital and would not be inequitable or detrimental to the association or its mutual holding company parent or to members of the mutual holding company parent.

(4) The proposed price or price range of the stock to be issued is reasonable. (The OTS shall review the reasonableness of the proposed price or price range in accordance with paragraph (b) of this section.)

(5) The aggregate amount of outstanding common stock of the association owned or controlled by persons other than the association's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the association's total outstanding common stock, unless the association was a stock association when acquired by the mutual holding company and is not a resulting association or an acquiree association, in which case the foregoing restriction shall not apply. Any amount of preferred stock may be issued by any savings association subsidiary of a mutual holding company to persons other than the association's mutual holding company, consistent with any other applicable laws and regulations.

(6) The association furnishes the information required by the OTS in connection with the proposed issuance.

(7) The proposed issuance complies with all other applicable laws and regulations.

(b) *Pricing and sale of securities.* (1) All of the provisions of § 563b.7 of this subchapter shall apply to a stock issuance applied for pursuant to this section, unless otherwise provided for in this part or clearly inapplicable, as determined by the OTS. For purposes of this paragraph (b)(1), the term *conversion* as it appears in the provisions of § 563b.7 of this subchapter shall be deemed to refer to *the stock issuance*, and the term *converted* or *converting savings association* shall be deemed to refer to the savings association undertaking the stock issuance.

(2) Unless otherwise determined by the OTS, the limitations on the minimum and maximum amounts of the estimated price range required by § 563b.7(c) of this subchapter shall not apply.

(3) To the extent the pricing materials submitted pursuant to paragraph (b)(1) of this section include any discount due to the minority status of the stock to be offered, the materials must indicate the

amount of the discount and how that amount was determined.

(c) *Related approvals.* Approval by the OTS of any stock issuance pursuant to this section shall also be deemed to constitute:

(1) Approval under § 563.1 of this subchapter of the form of stock certificate proposed to be utilized in connection with the stock issuance, provided such form was included in the application materials filed pursuant to this section; and

(2) Preliminary approval under § 552.4 of this chapter and approval under § 563.1 of this subchapter of any charter or bylaw amendment required to authorize issuance of the stock, provided such amendment was proposed in the application materials filed pursuant to this section.

(d) *Offering restrictions.* (1) No representations may be made in any manner in connection with the offer or sale of any stock issued pursuant to this section that the price, price range or any other pricing information related to such stock issuance has been approved by the OTS or that the stock has been approved or disapproved by the OTS or that the OTS has endorsed the accuracy or adequacy of any securities offering documents disseminated in connection with such stock.

(2) Unless an extension is granted by the OTS, any stock issuance approved by the OTS pursuant to this section must be completed within 90 days of—

(i) The date of such approval; or

(ii) For stock issuances subject to the offering circular requirements of part 563g of this subchapter, the date on which the offering circular was declared effective by the OTS.

(3) In the offer, sale, or purchase of stock issued pursuant to this section, no person shall:

(i) Employ any device, scheme, or artifice to defraud;

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) Prior to the completion of a stock issuance pursuant to this section, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the stock to be issued to any other person.

(5) Prior to the completion of a stock issuance pursuant to this section, no person shall make any offer, or any announcement of any offer, to purchase any stock to be issued, or knowingly acquire any stock in the issuance, in excess of the maximum purchase limitations established in the Stock Issuance Plan.

(6) All stock issuances pursuant to this section must:

(i) Comply with 12 CFR part 563g and, to the extent applicable, 12 CFR 563b.102; and

(ii) Provide that the offering be structured in a manner similar to a standard conversion under 12 CFR part 563b, including the stock purchase priorities accorded members of the issuing association's mutual holding company, unless the association would qualify for a supervisory conversion if it were to undertake a conversion under 12 CFR part 563b; or demonstrates to the satisfaction of the OTS that a non-conforming issuance would be more beneficial to the association compared to a conforming offering, considering, in the aggregate, the effect of each on the association's financial and managerial resources and future prospects, the effect of the issuance upon the association, the insurance risk to the relevant Federal deposit insurance fund, and the convenience and needs of the community to be served.

§ 575.8 Contents of Stock Issuance Plans.

(a) *Mandatory provisions.* Each of the provisions mandatory for all stock issuance plans under this paragraph shall be deemed regulatory requirements. Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance (including the information specified in § 563b.27(a) of this subchapter to the extent known), shall attach and incorporate the proposed form of stock certificate, the proposed stock order form, and any agreements or other documents defining the rights of the stockholders, and shall:

(1) Provide that the stock shall be sold at a total price equal to the estimated *pro forma* market value of such stock, based upon an independent valuation, as provided in § 575.7(b) of this part;

(2) Provide that the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the association's mutual holding company parent at the close of the proposed issuance shall be less than fifty percent of the association's total outstanding common stock (This provision may be omitted if the proposed issuance will be conducted by an association that was in the stock form when acquired by its mutual holding company parent, provided the association is not a resulting association or an acquiree association);

(3) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by any non-tax-qualified employee stock benefit plan of the association or any insider of the association and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed ten percent of the outstanding shares of common stock of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance. In calculating the number of shares held by any insider or associate under this provision or the provision in paragraph (a)(4) of this section, shares held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association that are attributable to such person shall not be counted;

(4) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by any non-tax-qualified employee stock benefit plan of the association or any insider of the association and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed ten percent of the stockholders' equity of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance;

(5) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by any one or more tax-qualified employee stock benefit plans of the association, exclusive of any stock acquired by such plans in the secondary market, shall not exceed ten percent of the outstanding shares of common stock of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance;

(6) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by any one or more tax-qualified employee stock benefit plans of the association, exclusive of any stock acquired by such plans in the secondary market, shall not exceed ten percent of the stockholders' equity of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance;

(7) Provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed thirty-five percent of the outstanding shares of common stock of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance if the association has less than $50 million in total assets prior to the issuance or twenty-five percent of such outstanding shares if the association has more than $500 million in total assets prior to the issuance. If the association has between $50 million and $500 million in total assets prior to the issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less $50 million divided by $45 million. (See example calculation set forth in § 563b.3(c)(8) of this subchapter.) In calculating the number of shares held by insiders and their associates under this provision or the provision in paragraph (a)(8) of this section, shares held by any tax-qualified or non-tax qualified employee stock benefit plan of the association that are attributable to such persons shall not be counted;

(8) Provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the association, by all non-tax-qualified employee stock benefit plans of the association, insiders of the association, and associates of insiders of the association, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed thirty-five percent of the stockholders' equity of the association held by persons other than the association's mutual holding company parent at the close of the proposed issuance if the association has less than $50 million in total assets prior to the issuance or twenty-five percent of such stockholders' equity if the association has more than $500 million in total assets prior to the issuance. If the association has between $50 million and $500 million in total assets prior to the proposed issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less $50 million divided by $45 million. (See example calculation set forth in § 563b.3(c)(8) of this subchapter.);

(9) Provide that the issuance shall be conducted in compliance with 12 CFR part 563g and, to the extent applicable, 12 CFR 563b.102;

(10) Provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with § 575.7 of this part;

(11) Provide that, if at the close of the stock issuance the association has more than thirty-five shareholders of any class of stock, the association shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a–78jj), and undertake not to deregister such stock for a period of three years thereafter;

(12) Provide that, if at the close of the stock issuance the association has more than one hundred shareholders of any class of stock, the association shall use its best efforts to:

(i) Encourage and assist a market maker to establish and maintain a market for that class of stock; and

(ii) List that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

(13) Provide that, for a period of three years following the proposed issuance, no insider of the association or his or her associates shall purchase, without the prior written approval of the OTS, any stock of the association except from a broker dealer registered with the Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any tax-qualified or non-tax-qualified employee stock benefit plan of the association even if such stock is attributable to insiders of the association or their associates;

(14) Provide that stock purchased by insiders of the association and their associates in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death of the insider or associate;

(15) Provide that, in connection with stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the association's transfer agent with respect to applicable restrictions on transfer of such stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as apply to the restricted stock;

(16) Provide that the association will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the association;

(17) Provide that, if necessary, the association's charter will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(18) Provide that the expenses incurred in connection with the issuance shall be reasonable;

(19) Provide that the Stock Issuance Plan, if proposed as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of directors of the issuing association as a result of comments from regulatory authorities or otherwise prior to approval of the Plan by the OTS, and at any time thereafter with the concurrence of the OTS; and that the Stock Issuance Plan may be terminated by the board of directors at any time prior to approval of the Plan by the OTS, and at any time thereafter with the concurrence of the OTS;

(20) Provide that, unless an extension is granted by the OTS, the Stock Issuance Plan shall be terminated if not completed within 90 days of:

(i) The date of such approval; or

(ii) For stock issuances subject to the offering circular requirements of part 563g of this subchapter, the date on which the offering circular was declared effective by the OTS; and

(21) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet any of its regulatory capital requirements.

(b) *Optional provisions.* A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s) authorized for use by the OTS. The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the association not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the OTS's approval;

(3) Provide that the association may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in § 575.7 of this part to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the association may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.

(a) *Charters and bylaws for mutual holding companies.*—(1) *Charters.* The charter of a mutual holding company shall be in the form set forth in this paragraph (a)(1) and may include any of the additional provisions permitted pursuant to paragraph (a)(2) of this section.

Charter

Section 1: Corporate title. The name of the mutual holding company hereby chartered is _____ (the "Mutual Company").

Section 2: Duration. The duration of the Mutual Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Company is to pursue any or all of the lawful objectives of a federal mutual savings and loan holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and all acts amendatory thereof and supplemental thereto, subject to the Constitution and the laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("OTS").

Section 4: Capital. The Mutual Company shall have no capital stock.

Section 5: Members. [The content of this section 5 shall be identical to the content of the parallel section in the charter of the reorganizing association, with the following exceptions: (A) Any provisions conferring membership rights upon borrowers of the reorganizing association shall be eliminated and replaced with provisions grandfathering those rights in accordance with 12 CFR 575.5; and (B) appropriate changes shall be made to indicate that membership rights in the mutual holding company derive from deposit accounts in and, to the extent of any grandfather provisions, borrowings from the resulting association. Set forth below is an example of how section 5 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 5 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 575.5.]

All holders of the savings, demand, or other authorized accounts of _____ [insert the name of the resulting association] (the "Association") are members of the Mutual Company. With respect to all questions requiring action by the members of the Mutual Company, each holder of an account in the Association shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. In addition, borrowers from the Association as of _____ [insert the date of the reorganization or any earlier date as of which new borrowings ceased to result in membership rights] shall be entitled to one vote for the period of time during which such borrowings are in existence. [The foregoing sentence should be included only if the charter of the reorganizing association confers voting rights on any borrowers.] No member, however, shall cast more than one thousand votes. Voting may be by proxy, subject to the rules and regulations of the OTS. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, subject to the rules and regulations of the OTS. All accounts shall be nonassessable.

Section 6: Directors. The Mutual Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Company's bylaws, except that the number of directors may be increased to a number greater than fifteen with the prior approval of the OTS. Each director of the Mutual Company shall be a member of the Mutual Company. Members of the Mutual Company shall elect the directors, provided that, in the event of a vacancy on the board, the board of directors may fill such vacancy, if the members of the Mutual Company fail to do so, by electing a director to serve until the next annual meeting of members. Directors shall be elected for periods of three years and until their successors are elected and qualified, except that provision shall be made for the election of approximately one-third of the board each year.

Section 7: Capital, surplus, and distribution of earnings. [The content of this section 7 shall be identical to the content of the parallel section in the charter of the reorganizing association, except for changes made to indicate that distribution rights in the mutual holding company derive from deposit accounts in the resulting association, any changes required to provide that the Director of the OTS shall be the approving authority in instances where the charter requires regulatory approval of distributions, and any other changes necessary to accommodate the mutual holding company format. Set forth below is an example of how section 7 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 7 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 575.5.]

The Mutual Company shall distribute net earnings to account holders of the Association on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the OTS, provided that the Mutual Company may establish minimum account balance requirements for account holders to be eligible for distributions of earnings.

All holders of accounts of the Association shall be entitled to equal distribution of the assets of the Mutual Company, *pro rata* to the value of their accounts in the Association, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Mutual Company.

Section 8. Amendment. Adoption of any preapproved charter amendment pursuant to § 575.9(a)(2) of the OTS's rules and regulations shall be effective upon filing the amendment with the OTS in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be submitted to and preliminarily approved by the OTS prior to submission to and approval by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective upon filing with the OTS in accordance with regulatory procedures.

By: _____

President and Chief Executive Officer of the Mutual Company

Attest: _____

Secretary of the Mutual Company

Office of Thrift Supervision

By: _____

[Title]

Attest: _____

Secretary of the Office of Thrift Supervision

Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 544.2 of this chapter regarding charter amendments and reissuances of charters (including delegations and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies

were federal mutual savings associations, except that, with respect to the pre-approved charter amendments set forth in § 544.2 of this chapter, § 544.2 (b)(1) and (b)(3) shall not apply to mutual holding companies, references to "association" in the text of the mutual capital certificate charter provision in § 544.2 (b)(4) shall be replaced with references to the "Mutual Company", and mutual holding companies changing their corporate title pursuant to § 544.2 (b)(2) shall be required to comply with § 575.9(a)(3) of this part as well as § 543.1(b) of this chapter.

(3) *Corporate title.* The corporate title of each mutual holding company shall include the term "mutual" or the abbreviation "M.H.C."

(4) *Bylaws.* The rules and regulations set forth in § 544.5 of this chapter regarding bylaws (including their content, any amendments thereto, delegations, and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies were federal mutual savings associations. The model bylaws for federal mutual savings associations set forth in the appendix to part 544 of this chapter shall also serve as the model bylaws for mutual holding companies, except that the term "association" each time it appears therein shall be replaced with the term "Mutual Company"; section 11(e) (extending leniency to borrowing members) and section 11(f) (rejection of applications for accounts or membership) shall be removed and the remaining paragraphs of section 11 redesignated accordingly; and modifications shall be made to section 18 (emergency preparedness) to eliminate provisions that have no application to an entity that does not serve as a financial depository institution.

(5) *Availability of charter and bylaws.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member upon request. Mutual holding companies shall also be subject to the provisions of § 545.131 of this chapter.

(b) *Charters and bylaws of subsidiary savings associations of mutual holding companies.* Except as specified otherwise by the OTS in any notice of intent not to disapprove a mutual holding company reorganization or in any regulation or order, each subsidiary savings association of a mutual holding company shall be subject to the same rules and regulations regarding charters and bylaws as are applicable to stock savings associations that are chartered by the OTS, 12 CFR part 552, or by the appropriate state chartering authority, as the case may be, *provided* that the charter of each resulting association, each acquiree association, and each mutual savings association that is acquired by a mutual holding company shall contain the provision set forth below:

In any situation in which the priority of the accounts of the association is in controversy, all such accounts shall, to the extent of their withdrawable value, be debts of the association having at least as high a priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(c) *Approval of charters and bylaws of mutual holding companies and their savings association subsidiaries in connection with Reorganization Plans*—(1) Issuance by the OTS of a notice of intent not to disapprove a reorganization pursuant to § 575.3(b) of this part, or failure by the OTS to disapprove such a reorganization within the time prescribed in § 575.3(b) of this part, shall be deemed to constitute:

(i) Approval pursuant to § 575.3(d) of this part and this section for the reorganizing association to amend its charter and bylaws in their entirety to read in the form of the mutual holding company charter and bylaws proposed in the Reorganization Notice (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section);

(ii) If the Reorganization Plan provides that the resulting association is to be federally chartered, approval pursuant to 12 U.S.C. 1464 (a) and (e) and §§ 552.2–1 and 552.2–2 of this chapter of the organization of the resulting association and the proposed charter and bylaws of such association (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or by paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section); and

(iii) If the Reorganization Plan provides that the acquiree association is to be federally chartered, approval pursuant to § 552.4 of this chapter of the amendment of the existing charter of the acquiree association in its entirety to read in the form of the proposed charter and bylaws of such association (as modified by any conditions imposed by the OTS in its notice of intent not to disapprove or paragraph (c)(2) of this section and subject to paragraph (c)(5) of this section).

(2) In the event the charter and bylaws of a mutual holding company and of any federally-chartered resulting association or acquiree association are approved pursuant to paragraph (c)(1) of this section due to failure of the OTS to disapprove a Reorganization Notice within the time prescribed in § 575.3(b) of this part, such approval shall be subject to the condition that such charter(s) and bylaws shall conform in every particular to the model charter(s) and bylaws for mutual holding companies and/or federal stock savings associations, as the case may be, as set forth in the OTS's regulations.

(3) Promptly after approval of the amendment of the charter of a reorganizing association to read in the form of a mutual holding company charter pursuant to paragraph (c)(1) of this section, the OTS shall issue an executed copy of such charter to the reorganizing association. Such charter shall not become effective until consummation of the Reorganization Plan, at which point in time it shall replace and nullify the charter of the reorganizing association. The charter of the reorganizing association shall be surrendered to the OTS within five days after consummation of the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the charter of the mutual holding company shall become immediately null and void and shall be returned to the OTS within five days.

(4) Promptly after approval of any federal charter for a resulting association pursuant to paragraph (c)(1) of this section or approval of the amendment of any federal charter of an acquiree association pursuant to paragraph (c)(1) of this section, the OTS shall issue an executed copy of such charter(s) to the reorganizing association and/or the acquiree association, as the case may be.

(i) Prior to consummation of the Reorganization Plan, the resulting association (whether chartered under federal or state law) shall constitute an interim savings association subsidiary of the reorganizing association and shall not accept any deposits or engage in any other business activities except for those activities necessary to consummate the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the charter of the resulting association shall immediately become null and void and, if the resulting association is federally chartered, the charter shall be returned to the OTS within five days.

(ii) Any amended charter issued to an acquiree association (whether by the OTS or the appropriate state authority) shall not become effective until consummation of the Reorganization Plan, at which point in time it shall replace and nullify the prior charter of the acquiree association. The prior charter of any federally-chartered acquiree association shall be surrendered to the OTS within five days after consummation of the Reorganization Plan. If the Reorganization Plan is terminated for any reason, the amended charter of the acquiree association shall become immediately null and void and, if the acquiree association is federally chartered, the amended charter shall be returned to the OTS within five days.

(5) Approval of the amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company and of any acquiree association to read in the form of a stock association and approval of the organization of any resulting association and of its charter and bylaws pursuant to paragraph (c)(1) of this section shall be subject to any conditions subsequent that the OTS may impose in connection therewith or with its notice of intent not to disapprove the reorganization.

§ 575.10 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) *Acquisitions*—(1) *Stock savings associations.* A mutual holding company may acquire control of a savings association that is in the stock form, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter and, if the acquisition involves a merger or transfer of assets or liabilities, approval pursuant to §§ 552.13, 563.22, and 571.5 and part 546 of this chapter, as appropriate.

(2) *Mutual savings associations.* A mutual holding company may acquire a savings association in the mutual form by merger of such association into any subsidiary savings association of such holding company from which the holding company draws members or into an interim savings association subsidiary of the mutual holding company, provided:

(i) The proposed acquisition is approved by a majority of the board of directors of the mutual association;

(ii) The proposed acquisition is submitted to the mutual association's members pursuant to a proxy statement authorized for use by the OTS and such acquisition is approved by a majority of the total votes of the association's members eligible to be cast at a meeting held at the call of the association's directors in accordance with the procedures prescribed by the association's charter and bylaws;

(iii) The necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter and §§ 552.13, 563.22, and 571.5 and part 546 of this chapter, as appropriate, and any approvals required to form an interim association, to amend the charter and bylaws of the association being acquired, and/or to amend the charter and bylaws of the mutual holding company consistent with 575.6(a) of this part; and

(iv) The approval of the members of the mutual holding company is obtained, if the OTS advises the mutual holding company in writing that such approval will be required.

(3) *Mutual holding companies.* A mutual holding company may acquire control of another mutual holding company by merging with or into such company, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter. The approval of the members of the mutual holding companies shall also be obtained if the OTS advises the mutual holding companies in writing that such approval will be required.

(4) *Stock holding companies.* A mutual holding company may acquire control of a savings and loan holding company in the stock form, provided the necessary approvals are obtained from the OTS, including (without limitation) approval pursuant to part 574 of this subchapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

(5) *Non-controlling acquisitions of savings association stock.* A mutual holding company may acquire non-controlling amounts of the stock of savings associations and savings and loan holding companies subject to the restrictions imposed by 12 U.S.C. 1467a(e) and (q) and §§ 574.8 and 584.4 of this chapter.

(6) *Other corporations.* A mutual holding company may acquire control of, and make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company only if:

(i) (A) Such corporation is engaged exclusively in activities that are permissible for mutual holding companies pursuant to § 575.11(a) of this part; or

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under § 545.74 of this chapter or by a state savings association under the law of any state where any subsidiary savings association of the mutual holding company has its home office; and

(ii) Such corporation is not controlled, directly or indirectly, by a savings association subsidiary of the mutual holding company.

(b) *Dispositions.*—(1) A mutual holding company shall provide written notice to the OTS at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 575.11(b) of this part or any transfer of all or a substantial portion of the assets or liabilities of any such association. Any such disposition shall comply with the requirements of this part or with part 563b of this subchapter, as appropriate, and with any other applicable statute or regulation including, without limitation, parts 546, 563 and 574 of this chapter.

(2) A mutual holding company may, subject to applicable laws and regulations, transfer any or all of the stock or cause or permit the transfer of any or all of the assets and liabilities of:

(i) Any subsidiary savings association that was in the stock form when acquired, provided such association is not a resulting association or an acquiree association;

(ii) Any subsidiary savings and loan holding company acquired pursuant to paragraph (a)(4) of this section; or

(iii) Any corporation other than a savings association or savings and loan holding company.

(3) A mutual holding company may, subject to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

(4) No transfer authorized by this section may be made to any insider of the mutual holding company, any associate of an insider of the mutual holding company, or any tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company unless the mutual holding company provides notice to the OTS at least 30 days prior to the effective date of the proposed transfer. This notice shall be in addition to any other application or notice required under

applicable laws or regulations, including, without limitation, this part and parts 563, 563b, 574 of this subchapter.

§ 575.11 Operating restrictions.

(a) *Activities restrictions.* A mutual holding company may engage in any business activity specified in 12 U.S.C. 1467a (c)(2)(A) or (c)(2)(C)–(c)(2)(G). In addition, the business activities of subsidiaries of mutual holding companies may include the activities specified in § 575.10(a)(6) of this part. A mutual holding company or its subsidiaries may engage in the foregoing activities only upon compliance with the procedures specified in §§ 584.2–1(c) or 584.2–2(b) of this chapter.

(b) *Pledging stock*—(1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. Any amount of the stock of such association may be pledged for this purpose. Nothing in this paragraph shall be deemed to prohibit:

(i) The payment of dividends from a subsidiary savings association to its mutual holding company parent to the extent otherwise permissible; or

(ii) A mutual holding company from pledging the stock of more than one savings association subsidiary provided that the stock pledged of each such subsidiary association is proportionate to the proceeds of the loan infused into each subsidiary association.

(2) Within ten days after any pledge of stock pursuant to paragraph (b)(1) of this section, a mutual holding company shall provide written notice to the OTS regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary savings association whose stock has been pledged.

(3) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock pursuant to paragraph (b)(1) of this section on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the Regional Director.

(c) *Restrictions on stock repurchases.* No subsidiary savings association of a mutual holding company that has any stockholders other than the association's mutual holding company shall repurchase any share of stock within three years of its date of issuance, unless the repurchase:

(1) Is part of a general repurchase made on a *pro rata* basis pursuant to an offer approved by the OTS and made to all stockholders of the association (except that the association's mutual holding company may be excluded from the repurchase with the OTS's approval);

(2) Is limited to the repurchase of qualifying shares of a director; or

(3) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the association in an amount reasonable and appropriate to fund such plan.

(d) *Restrictions on waiver of dividends.* No mutual holding company may waive its right to receive any dividend declared by a subsidiary unless either:

(1) No insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of stock in the class of stock to which the waiver would apply; or

(2) The mutual holding company provides the OTS with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend, and the OTS does not object. The OTS shall not object to a notice of intent to waive dividends if:

(i) the waiver would not be detrimental to the safe and sound operation of the savings association; and

(ii) the board of directors of the mutual holding company expressly determines that waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company. A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the OTS, together with any supporting materials relied upon by the board, concluding that the proposed dividend waiver is consistent with the board's fiduciary duties to the mutual members of the mutual holding company.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, *provided that* such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations may issue stock to such persons only in accordance with § 575.7 of this part.

(f) *Restrictions on indemnification.* The provisions of § 545.121 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

(g) *Restrictions on employment contracts.* The provisions of §§ 563.39 and 571.5 of this subchapter and any policies of the OTS thereunder shall apply to mutual holding companies in the same manner as if they were savings associations.

(h) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and parts 563e, 574, 583, and 584 of this chapter.

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) *Conversion*—(1) *Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in part 563b of this chapter.

(2) *Exchange of savings association stock.* Any stock issued pursuant to § 575.7 of this part by a subsidiary savings association of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the mutual holding company in connection with the conversion of the holding company to stock form provided that the holding company and the subsidiary savings association demonstrate to the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

(b) *Involuntary liquidation*—(1) The OTS may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the mutual holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock pursuant to § 575.11(b) of this part.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of

any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company in accordance with the charter of the mutual holding company.

(3) If the FDIC incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company, to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 546.4 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.5 and 563b.6 of this subchapter (exclusive of § 563b.6(c)(2)(iii), (d), and (e)) shall apply to all solicitations of proxies by any person in connection with any membership vote required under this part. All proxy materials utilized in connection with such solicitations shall be authorized for use by the OTS and shall be in the form and contain the information specified in § 563b.5(d) of this subchapter and Form PS, 12 CFR 563b.101, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.5(g) of this subchapter. Proxies and proxy statements shall be filed in accordance with § 563b.5(e) of this subchapter and shall be addressed to the Corporate and Securities Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.1(a) of this chapter. For purposes of this paragraph (a)(1), the term *conversion* as it appears in the provisions of part 563b of this subchapter cited above in this paragraph (a)(1) shall be deemed to refer to *the reorganization* or *the stock issuance*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to all disclosure required by Form PS, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Savings associations proposing non-conforming minority stock issuances pursuant to § 575.7(d)(6)(ii)(2) of this part must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of "running" proxies.* Whenever a mutual savings association or mutual holding company is required by this part to obtain membership approval for a transaction, the association or company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the transaction and the member does not grant a later-dated proxy to vote at the meeting at which the transaction will be considered or attend such meeting and vote in person. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a members's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications pursuant this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the OTS pursuant to this part shall be filed in accordance with § 516.1 of this chapter.

(c) *Reorganization Notices and stock issuance applications*—(1) *Contents.* Each Reorganization Notice submitted to the OTS pursuant to § 575.3(b) of this part and each application for approval of the issuance of stock submitted to the OTS pursuant to § 575.7(a) of this part shall be in the form and contain the information specified by the OTS.

(2) *Filing instructions.* Any Reorganization Notice submitted pursuant to § 575.3(b) of this part shall be filed in accordance with § 516.1 of this chapter. Any stock issuance application submitted pursuant to § 575.7(a) of this part shall be filed in accordance with § 563b.8 of this subchapter.

(3) *Public notice, agency reports, and related matters.* (i) Section 563.22 (d)(2), (d)(3), and (d)(4) of this subchapter shall apply to all mutual holding company reorganizations.

(ii) Public notice published pursuant to paragraph (c)(3)(i) of this section shall be published in a manner that is conspicuous to the average reader and shall be made substantially in the form indicated in this paragraph (c)(3)(ii). Such notice shall also be prominently posted in each office of the association for a period beginning on the date of the newspaper notice and ending on the date of the association's membership meeting.

Announcement of Filing of Notice of Mutual Savings and Loan Holding Company Reorganization

This is to inform the public that _____, located in _____, filed [intends to file] application materials with the Office of Thrift Supervision (the "OTS") on _____ [insert date] advising the OTS of its intent to reorganize into the mutual holding company format pursuant to 12 CFR part 575 ("Reorganization Notice").

This public notice will appear at approximately one-week intervals over a thirty [ten] day period beginning _____ [insert date] and ending _____ [insert date].

Anyone may submit written comments in favor of or against the proposed reorganization and in so doing may submit such information as he or she deems relevant. Such comments and information must be sent to the Regional Director at the following address: _____. Three additional copies of such comments and information must also be sent to the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Such comments and information must be submitted within thirty [ten] calendar days of the date on which this public notice was first published, as

indicated in the preceding paragraph. Up to an additional ten calendar days may be granted by the Regional Director to submit such comments and information upon a showing of good cause if a written request is received by the Regional Director within the initial thirty [ten] day period specified above. Failure to submit written comments on a timely basis objecting to the Reorganization Notice may preclude the pursuit of any administrative or judicial remedies.

You may inspect the non-confidential portion of the Reorganization Notice and non-confidential portions of all comments and information filed by the public in response to the Reorganization Notice by contacting the Regional Director or the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. If you have any questions concerning these procedures, contact the Regional Director at (____) _____ or the Information Services Division at (202) 906-_____.

(iii) Promptly after publication, the association shall file copies of each notice and a publisher's affidavit of publication in the same manner as specified in paragraph (c)(2) of this section.

(iv) If any Reorganization Notice includes an acquiree association, the publication requirements of this paragraph (c)(3) shall be fulfilled both by the reorganizing association and by the acquiree association and the first paragraph of the form of notice set forth in paragraph (c)(3)(ii) of this section shall be replaced with the following paragraph:

This is to inform the public that _____, located in _____, and _____, located in _____, filed [intend to file] application materials with the Office of Thrift Supervision (the "OTS") on _____ [insert date] advising the OTS of their intent to join together to reorganize into the mutual holding company format pursuant to 12 CFR part 575 ("Reorganization Notice").

(v) Upon receipt of a Reorganization Notice, the OTS shall notify persons whose request for announcements under § 563e.6 of this subchapter have been received in time for such notification. The OTS may also notify any other persons who might have an interest in the proposed reorganization.

(vi) Disclosure of any part of a Reorganization Notice or any comments by the public thereon shall be made only in accordance with paragraph (f) of this section.

(4) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph (c)(4) or as requested by the OTS. Within thirty (or, if an emergency exists within the meaning of § 563.22(d)(3) of this subchapter, ten) calendar days of the date of publication of the first notice required by paragraph (c)(3) (i) and (ii) of this section, or up to forty (or, if an emergency exists, twenty), calendar days after such date if within the initial period an extension is requested in writing for good cause shown, anyone may file comments in favor of or against a Reorganization Notice and in so doing may submit such information as he or she deems relevant. Comments received after the comment period, except as requested by the OTS, unverified accusations, or materials pertaining to a Reorganization Notice or public comment that the commenter is unwilling to have disclosed to the party making such submission shall not be part of the record and need not be considered by the OTS. Comments shall be filed in the manner and in the locations provided in paragraph (c)(3)(ii) of this section.

(d) *Amendments.* Any association or mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the OTS or upon the association's or mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part shall be processed in accordance with § 516.2 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the OTS of proxy solicitation materials, including forms of proxy and proxy statements, and of any other materials used in connection with the issuance of stock under § 575.7 of this part shall not be subject to the applications processing time-frames set forth in § 516.2 of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c)(4) of this section, shall be the same as set forth in § 574.6(f) of this subchapter for notices, applications, and public comments filed under part 574 of this subchapter.

(g) *Supervisory cases.* The provisions of paragraphs (c)(3), (c)(4) and (f) of this section may be waived by the OTS in connection with transactions approved, or not disapproved, by the OTS for supervisory reasons.

(h) *Appeals.* Any party aggrieved by a final action by the OTS which approves or disapproves any application or notice pursuant to this part 575 may obtain review of such action only by complying with 12 U.S.C. 1467a(j).

(i) *Federal preemption.* This part 575 preempts state law with regard to the creation and regulation of mutual holding companies.

Dated: March 15, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93-19714 Filed 8-18-93; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASW-36]

Establishment of Jet Route J-184

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Jet Route J-184 between Buckeye, AZ, and Newman, TX. Currently, J-4 is the only route between these points, and aircraft are routinely vectored between Buckeye and Newman to expedite the movement of traffic in the area and to reduce the congestion on that jet route. The new J-184 provides an alternate route to the north of J-4 and segregates en route traffic from traffic transitioning between Buckeye and Newman. This action improves traffic flow and reduces controller workload.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish J–184 between Buckeye, AZ, and Newman, TX (58 FR 15117). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes J–184 between Buckeye, AZ, and Newman, TX. Currently, J–4 is the only route between these areas, therefore, aircraft are routinely vectored in that area to expedite traffic and to reduce congestion along J–4. The J–184 provides air traffic control with an alternative to radar vectors. This action improves the flow of traffic in the area and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–184 [New]
From Buckeye, AZ; Deming, NM; to Newman, TX.

* * * * *

Issued in Washington, DC, on August 5, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20011 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 24456, Amendment No. 71–21]

Airspace Reclassification; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: This action clarifies the Airspace Reclassification final rule that was promulgated on December 17, 1991, regarding the designation of the airspace above flight level (FL) 600 as Class E airspace. The clarification is necessary to ensure that the operating rules continue as intended on September 16, 1993, the implementation date of Airspace Reclassification.

EFFECTIVE DATE: This amendment is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991 the FAA published the Airspace Reclassification final rule (56 FR 65638), which, among other things, changed the wording of many operating rules by replacing the existing terminology for airspace with the new international classes of airspace that are being adopted by the United States. These changes become effective September 16, 1993.

Discussion

Although the discussion of the final rule addressed the airspace presently referred to as the Continental Control Area which includes the airspace above FL600, part 71 was not amended to reflect that discussion with regard to the airspace above FL600. This action clarifies the intent of the FAA and is consistent with international airspace designations of airspace above FL600.

Prior to September 16, 1993, the Continental Control Area includes the airspace from 14,500 feet to infinity. The airspace reclassification rule amended the airspace designations up to and including FL600, inadvertently omitting the redesignation of the airspace above FL600. The FAA is aware that numerous aircraft operations are conducted annually in the airspace above FL600 in both civilian and military aircraft. The airspace reclassification final rule included discussion of the redesignation of the remaining continental control area that was not reclassified as Class A, Class B, Class C, or Class D airspace as Class E airspace. However, the final rule inadvertently omitted that redesignation in amending part 71. This action amends part 71 to include the redesignation of the continental control area in the airspace above FL600 as Class E airspace.

List of Subjects in 14 CFR Part 71

Airspace, Navigation (air).

The Amendment

Accordingly, 14 CFR part 71, in effect as of September 16, 1993, is amended by making the following clarification amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. app. 106(g); 14 CFR 11.69.

2. Section 71.71 is amended by revising paragraph (a) introductory text read as follows:

§71.71 Class E airspace.

* * * * *

(a) The airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous states and Alaska, extending upward from 14,500 feet MSL up to, but not including 18,000 feet MSL, and the airspace above FL600, excluding—

* * * * *

Issued in Washington, DC, on August 16, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-20079 Filed 8-18-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 93-65]

Remission or Refund of Vessel Repair Duties

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to eliminate the filing of supplemental petitions for review when seeking the remission or refund of vessel repair duties. The amended regulations provide that a party seeking remission or refund after liquidation of a vessel repair entry must file a valid protest. These amendments conform the regulations to existing case law, and will simplify the administration of the vessel repair statute by ending the confusion which has arisen as to the proper agency review procedure which a party must follow thereunder.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Carrier Rulings Branch, (202-482-6940).

SUPPLEMENTARY INFORMATION:

Background

As provided in 19 U.S.C. 1466(a), and § 4.14(a), Customs Regulations (19 CFR 4.14(a)), equipment purchases for, and repairs made to, an American vessel, while outside the United States, are dutiable at the rate of 50 percent ad valorem on their actual cost in the foreign country where they are incurred. An entry covering the applicable duties must be filed with Customs for such equipment or repairs following the arrival of the vessel in the United States. This entry would be forwarded to the appropriate Customs vessel repair liquidation unit. 19 CFR 4.14(b)(2).

Duties which may be properly assessed on equipment purchases or repairs under § 1466(a) are nevertheless subject to refund or remission if the purchases or repairs are made under the conditions set forth in § 1466(d) (19 U.S.C. 1466(d)), and § 4.14(c)(3)(i–iii), Customs Regulations (19 CFR 4.14(c)(3)(i–iii)).

Section 4.14(d), Customs Regulations (19 CFR 4.14(d)), prescribes the administrative avenue through which a party may seek remission or refund of vessel repair duties. Under this regulation, a party may file an application for relief within 60 days of arrival of the vessel, either challenging the classification of an item or a repair expense as dutiable under § 1466(a), or seeking the remission or refund of these duties under § 1466(d). If the application for relief is denied, the party may file a petition for review under § 4.14(d)(2)(i). Liquidation of the entry is suspended during both of these proceedings. If the petition for review is denied, a supplemental petition may be filed, but liquidation of the entry is no longer suspended. 19 CFR 4.14(d)(2)(iii).

Following liquidation of the entry, § 4.14(f) requires that a protest under 19 U.S.C. 1514 be filed against the decision to treat an item or a repair expense as dutiable under § 1466(a). There is, however, no equivalent directive concerning an appeal from a Customs decision to deny remission or refund of duties under § 1466(d). It was in fact Customs position that the remission or refund of vessel repair duties under § 1466(d) was not encompassed within § 1514 protest procedures and thus had to be pursued through the supplemental petition procedure.

The legal permissibility of this divergent post-liquidation appeal process, however, was overruled by the Court of International Trade in the case of *Penrod Drilling Co.* v. *United States*, 13 CIT 1005, 1010–1012 (1989). Essentially, the court held in *Penrod* that the decision by Customs to deny remission or refund under section 1466(d) constituted an official decision affecting the amount of duties chargeable, which, therefore, could only be appealed by filing a valid protest under § 1514. Consequently, the failure of the party there to timely protest Customs decision left the court with no jurisdiction to review the merits of the case.

Since the *Penrod* ruling, Customs has treated all supplemental petitions for remission or refund of duties under section 1466(d) as protests, if they are filed in a timely manner following liquidation of the related entry.

Accordingly, in light of the foregoing, Customs is amending § 4.14 (d), (e) and (f), as necessary, in order to eliminate the discredited supplemental petition procedure for vessel repairs, and to provide that Customs decisions denying remission or refund under section 1466(d) are also subject to protest under § 1514.

As already made clear, these amendments conform the regulations to existing case law, and, furthermore, they will simplify the administration of the vessel repair statute by ending the confusion which has arisen as to the proper agency review procedure which a party must follow when seeking the remission or refund of duties thereunder.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 553(b), good cause exists for dispensing with notice and public procedure, and, pursuant to 5 U.S.C. 553(d), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). These amendments do not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required thereunder.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for part 4 and the specific sectional authority for § 4.14 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * *

2. Section 4.14 is amended by removing the last two sentences of paragraph (d)(1)(v) and adding a new sentence in place thereof, by revising the last sentence, respectively, of paragraphs (d)(2)(iii), (d)(2)(iv), and (e), and by revising paragraph (f) to read as follows:

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

* * * * *

(d) * * *

(1) * * *

(v) * * * If the entry has been liquidated, reliquidation is required.

* * * * *

(2) * * *

(iii) * * * The notice will inform the party that no further suspension of liquidation will be permitted.

(iv) * * * Following notification of the Headquarters decision to the party who filed the petition, the vessel repair liquidation unit shall promptly initiate liquidation of the entry in accordance with that decision.

(e) * * * If a petition for review is filed timely, the vessel repair entry may be liquidated after the date of the notification of the decision on the petition to the party who filed the petition.

(f) Protests. Following liquidation of an entry, a protest under part 174 of this chapter may be filed against the decision to treat an item or a repair as dutiable under paragraph (a) of this section, or against the decision denying the remission or refund of vessel repair duties under paragraph (c) of this section.

* * * * *

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 2, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–20106 Filed 8–18–93; 8:45 am]

BILLING CODE 4820–02–P

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19 CFR Parts 4, 10, 12, 122, 128, 141, 148, 152, and 162

[T.D. 93–66]

Technical Corrections to the Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessary to ensure that the regulations are as accurate and up-to-date as possible. While most of the corrections address typographical and printing errors, some involve changes to regulatory language to more accurately reflect the underlying statutory language; none of the corrections involve changes in substantive legal requirements.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Regulations Branch (202) 482–6930.

SUPPLEMENTARY INFORMATION:

Background

It is Customs policy to periodically review its regulations to ensure that they are as accurate and up-to-date as possible, so that the importing and general public are aware of Customs programs, requirements, and procedures regarding import-related activities. As part of this review policy, Customs has determined that certain changes affecting sections 4, 10, 12, 122, 128, 141, 148, 152, and 162 of the Customs Regulations (19 CFR parts 4, 10, 12, 122, 128, 141, 148, 152, and 162) are necessary to correct typographical and citation-referencing errors, e.g., the statutory citation to the United States-Canada Free-Trade Agreement Implementation Act is 102 stat. 1851, not as is currently cited, 100 stat. 418, and to make certain conforming changes to the regulations, e.g., changing the country name of Dahomy to Benin for purposes of certain reciprocal trade privileges. Following is a summary of these changes:

Discussion of Changes

Part 4

1. In § 4.7a(c), the last sentence refers to "the Tariff Schedules of the United States (19 U.S.C. 1202)"—commonly referenced as the TSUS, which were replaced on January 1, 1989, by the "Harmonized Tariff Schedule of the United States"—commonly referenced as the HTSUS. Although 19 U.S.C. 3012 provides that any reference in any law to the "Tariff Schedules of the United States", "the Tariff Schedules", "such Schedules", and any other general reference that clearly refers to the old Schedules shall be treated as a reference to the Harmonized Tariff Schedule, the present tariff schedule reference is clarified by adding a reference to the HTSUS.

2. In § 4.14(b)(1) the last sentence references § 113.14(m) in the context of bond values; however, this provision does not address bond values: § 113.13 does. Accordingly, the reference is revised to read § 113.13.

3. In § 4.30(e) footnote 62a references footnote 59, which has been deleted. Accordingly, footnote 62a is deleted.

4. In § 4.39(b) footnote 75 references footnote 58, which has been deleted. Accordingly, footnote 75 is deleted.

Part 10

5. In § 10.3(c)(3), a reference to the Harmonized Tariff Schedule of the United States (HTSUS) tariff provision—9801.00.70—does not employ the appropriate HTSUS terminology. The word "subheading" should precede the tariff provision reference. (Under the former Tariff Schedules of the United States (TSUS), tariff provision references were preceded by the word "item".) When the United States changed tariff schedules, from the TSUS to the HTSUS, see, T.D. 89–1, the correct terminology was inadvertently omitted in this provision. This oversight is corrected by adding the word "subheading" preceding the tariff provision reference.

6. In § 10.41, paragraph (d) makes reference to certain parenthetical matter in paragraph (b); however, paragraph (b) is a reserved section. The parenthetical matter once found at paragraph (b) is now found at § 123.14(c). Accordingly, the reference in paragraph (d) is revised to reference § 123.14(c).

7. In § 10.53(d), reference is made to "subheading 9706.00.00 HTSUS" and "items 766.20 and the Tariff Schedules of the United States"; the latter reference should read the same as the former reference. Accordingly, the latter reference is revised to read "subheading 9706.00.00, HTSUS".

8. In § 10.59(f), Dahomy is denominated as a country entitled to certain reciprocal trade privileges; however, since 1976, that country has been recognized by the United States as Benin, entitled to the same reciprocal trade privileges. Accordingly, this section is amended to replace the country name of Dahomy with the country name of Benin.

9. In § 10.71, paragraph (e) references subheading 0101.11.00, HTSUS, whereas, it should reference subheading 0106.00.50, HTSUS, and paragraph (f) references item 100.01, TSUS, which provided for the entry of purebred cats and dogs, but this tariff provision was not carried over into the HTSUS. Accordingly, paragraph (e) is revised and paragraph (f) is deleted.

10. In § 10.84, the Automotive Products Trade Act of 1965 is incorrectly referenced in the fourth

sentence of paragraph (a)(1). This printing error is corrected.

11. In two sections of part 10, the statutory reference to the United States-Canada Free-Trade Agreement Implementation Act of 1988 is incorrectly cited as 100 stat. 418; it should read 102 stat. 1851. Accordingly, the statutory reference is corrected.

Part 12

12. In T.D. 82–145, § 12.40(f) was amended by adding the word "unlawful" before the word "abortion" to reflect the provisions of 19 U.S.C. 1305; however, a parallel provision at § 12.40(h) was not similarly changed. This oversight is corrected by adding the word "unlawful" before the word "abortion" in § 12.40(h).

Part 122

13. In § 122.1(h)(1), the colon following the text should be a semicolon to introduce the second element. Accordingly, the punctuation is changed.

Part 128

14. In § 128.11, paragraph (b)(4) provides that an application for approval of an express consignment carrier or hub facility must include a processing fee, "as set forth in paragraph (e) of this section". However, there is no paragraph (e); the processing fee provision is set forth in § 128.13. Accordingly, § 128.11(b)(4) is amended to correct this error.

Part 141

15. Certain sections of subpart F to part 141—and some sections of part 142—reference the Special Summary Steel Invoice requirement of § 141.89(b), which was recently eliminated in T.D. 93–21. Specifically, §§ 141.81, 141.82(e), 141.83(b), 141.91, and 141.92(a) in part 141 all reference this special summary invoice. To correct these now moot references, the references to this special summary invoice in §§ 141.81, 141.91, and 141.92(a) are removed from the Regulations, and § 141.82(e) is deleted. However, because three sections in part 142—§§ 142.3(a)(3), 142.6(a), and 142.16(a)—cross-reference certain paragraphs in § 141.83, only the text of § 141.83(b) is removed; the paragraph is reserved, so that the other paragraphs in § 141.83, specifically the referenced § 141.83(d), do not have to be redenominated.

16. In § 141.113, paragraph (a)(5), the reference to the tariff code identifies the wrong subchapter of the Harmonized Tariff Schedule of the United States (HTSUS), and, in paragraph (g), the reference is to Schedule 8 of the Tariff Schedules of the United States (TSUS), rather than to subchapter XIII, Chapter 98, of the Harmonized Tariff Schedule of the United States (HTSUS). Accordingly, these references are corrected.

Part 148

17. In § 148.105(b)(3), reference is made to "item numbers of the tariff schedules" (a reference to the TSUS) and not to "subheading numbers under the Harmonized Tariff Schedule of the United States (HTSUS)". Accordingly, this tariff reference is revised to reference the HTSUS.

18. In § 148.113(a), a reference is made to the "subheading 9816.00.40 HTSUS of the tariff schedules". This reference is made clearer by removing the words "of the tariff schedules".

19. In § 148.115(a)(2), a reference is made to "item[s]" of the tariff schedules. For the reason discussed at number 5 above, the word "subheading" is added in lieu of "item" and the word "schedules" is made singular to reference the HTSUS.

Part 152

20. In § 152.2 , the reference to "Customs Form 28" should read "Customs Form 29" and is revised accordingly.

Part 162

21. In § 162.1d(b), the reference "(area director in region II)" is revised to read "(area director, New York Region)".

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Inasmuch as these amendments merely correct certain typographical and printing errors in the regulations and otherwise conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(a)(2) and (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch.

List of Subjects

19 CFR Part 4

Bonds, Customs duties and inspection, Imports, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 10

Animals, Customs duties and inspection, Foreign relations, Imports, Motor vehicles, Trade agreements, U.S.-Canada Free-Trade Agreement.

19 CFR Part 12

Customs duties and inspection, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements.

19 CFR Part 122

Administrative practice and procedure, Aircraft, Airports, Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 128

Administrative practice and procedure, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Invoices, Reporting and recordkeeping.

19 CFR Part 148

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 152

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 10, 12, 122, 128, 141, 148, 152, and 162 of the Customs Regulations (19 CFR parts 4, 10, 12, 122, 128, 141, 148, 152, and 162) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

§ 4.7 [Amended]

2. In § 4.7a, paragraph (c)(1) is amended by removing the words "Tariff Schedules of the United States" in the last sentence and adding, in their place, the words "Harmonized Tariff Schedule of the United States (HTSUS)".

§ 4.14 [Amended]

3. In § 4.14, paragraph (b)(1) is amended by removing the reference "§ 113.14(m)" and adding, in its place, the reference "§ 113.13".

§ 4.30 [Amended]

4. In § 4.30, paragraph (e) is amended by removing the "62a" footnote.

§ 4.39 [Amended]

5. In § 4.39, paragraph (b) is amended by removing and reserving the "75" footnote.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

§ 10.3 [Amended]

2. In § 10.3, paragraph (c)(3) is amended by adding the word "subheadings" before both references to "9801.00.70 or 9801.00.80".

§ 10.41 [Amended]

3. In § 10.41, paragraph (d) is amended by revising the clause "except as stated in the parenthetical matter in paragraph (b) of this section," to read "except as provided at § 123.14(c),".

§ 10.53 [Amended]

4. In § 10.53, paragraph (d) is amended by removing the words "items 766.20 and Tariff Schedule of the United States" and adding, in their place, the words "subheading 9706.00.00, HTSUS".

§ 10.59 [Amended]

5. In § 10.59, paragraph (c) is amended by adding the words ", Harmonized Tariff Schedule of the United States (HTSUS)" at the end of the sentence; paragraph (f) is amended by removing "Dahomy", from the column headed "Country", and "71–215", which is adjacent to "Dahomy" in the column headed "Treasury Decision(s)", and adding, in appropriate alphabetical order, the country "Benin" and listing "71–215, 93- ", adjacent to "Benin" in the column headed "Treasury Decision(s)".

§ 10.71 [Amended]

6. In § 10.71, paragraph (e) is amended by revising the reference "0101.11.00" to read "0106.00.50", and paragraph (f) is removed.

§ 10.84 [Amended]

7. In section 10.84, the third sentence of paragraph (a)(1) is amended by adding at the end ", HTSUS"; the fourth sentence is amended by adding the word "Trade" after the words "Automotive Products" and adding the reference ", HTSUS" at the end of the sentence.

8. In § 10.84, paragraph (a)(2) is amended by removing the reference "100 Stat. 418" within the parentheses and by adding, in its place, the reference "102 Stat. 1851".

§ 10.301 [Amended]

9. In § 10.301, the first sentence is amended by removing the reference "(100 stat. 418)" and by adding, in its place, the reference "(102 stat. 1851)".

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 is revised, in part, to read as follows:

Authority: 5 U.S.C 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.40 and 12.41 also issued under 19 U.S.C. 1305;

* * * * *

§ 12.40 [Amended]

2. In § 12.40, paragraph (h) is amended by adding the word "unlawful" before the word "abortion".

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.1 [Amended]

2. In § 122.1, paragraph (h)(1) is amended by removing the colon and adding, in its place, a semicolon.

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1484, 1498, 1551, 1555, 1556, 1565, 1624.

§ 128.11 [Amended]

2. In § 128.11, paragraph (b)(4) is amended by removing the words "paragraph (e) of this section" and adding, in their place, the reference "§ 128.13".

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624;

* * * * *

§ 141.81 [Amended]

2. Section 141.81 is amended by removing the words "special summary invoice, or a".

§ 141.82 [Amended]

3. Section 141.82 is amended by removing paragraph (e).

§ 141.83 [Amended]

4. Section 141.83 is amended by removing and reserving paragraph (b).

§ 141.91 [Amended]

5. In § 141.91, the introductory paragraph is amended by removing the clause ", other than a special summary invoice,".

§ 141.92 [Amended]

6. In § 141.92, paragraph (a) is amended by removing the clause ", except a special summary invoice required by § 141.83(b),".

§ 141.113 [Amended]

7. In § 141.113, paragraph (a)(5) is amended by removing the words "United States Tariff Schedule (19 U.S.C. 1202)" and adding, in their place, the words "Harmonized Tariff Schedule of the United States (HTSUS)"; the first sentence in paragraph (g) is amended by revising the reference to "subchapter XII" to read "subchapter XIII", and the second sentence is amended by removing the words "subchapter XII" and by adding, in their place, the words "subchapter XIII".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624; the provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

§ 148.105 [Amended]

2. In § 148.105, paragraph (b)(3) is amended by removing the words "item numbers of the tariff schedules" and

adding, in their place, the words "subheadings of the HTSUS".

3. In § 148.113, paragraph (a) is amended by removing the words "of the tariff schedules."

§ 148.115 [Amended]

4. In § 148.115, paragraph (a)(2) introductory text is amended by removing the word "item" and adding, in its place, the word "subheading" and revising the word "schedules" to read "schedule".

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority citation for part 152 continues to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

* * * * *

§ 152.2 [Amended]

2. Section 152.2 is amended by revising the words "Customs Form 28" to read "Customs Form 29".

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624;

* * * * *

§ 162.1 [Amended]

2. In § 162.1d, paragraph (b) introductory text is amended by removing the words "in region II" in parentheses and adding, in their place, the words, " New York Region".

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 12, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–20105 Filed 8–18–93; 8:45 am]

BILLING CODE 4820–02–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 7

[T.D. ATF–347; Re Notice No. 770]

RIN 1512–AB07

Disclosure of Aspartame in the Labeling of Malt Beverages (92F012T)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the regulations in 27 CFR part 7, Labeling and Advertising of Malt Beverages, to require a disclosure statement for aspartame on malt beverage labels, when the product contains aspartame in accordance with regulations issued by the Food and Drug Administration.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202)927–8230.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2). vests broad authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as a delegate of the Secretary of the Treasury, to prescribe regulations which will provide the consumer with "adequate information" as to the identity and quality of malt beverages. Under this authority, labeling requirements are prescribed in title 27, Code of Federal Regulations, part 7 for malt beverages. The regulations requiring basic mandatory labeling information for alcoholic beverage products have been in effect for over 50 years.

In recent years, the Bureau has considered numerous petitions for regulation changes with respect to the labeling of ingredients in alcoholic beverages, including requests to require full ingredient labeling, partial ingredient labeling, even health warning statements for specific ingredients found in alcoholic beverages which were alleged to be a health hazard. In response to such requests, the Bureau has established a regulatory policy with respect to ingredient labeling, and the need for disclosure to consumers of the identity of specific ingredients found to be present in alcoholic beverage products when it has been determined that those ingredients pose health risks.

On October 6, 1983, ATF published a final rule (T.D. ATF–150, 48 FR 45549), rescinding the ingredient labeling regulations for alcoholic beverage products. However, mandatory label disclosure was required for alcoholic beverages containing the color additive FD&C Yellow No. 5. The Bureau found, as a result of its rulemaking effort, that there was evidence establishing that consumers of the few alcoholic beverage products containing that color additive could have adverse reactions to the ingredient. Pursuant to T.D. ATF–150, the Bureau specifically stated that it "will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitions for rulemaking under 5 U.S.C. 553(e) and 27 CFR 71.41(c)."

In that regard, ATF has published a final rule in the **Federal Register** requiring mandatory label disclosure of saccharin for alcoholic beverages containing that artificial sweetener (T.D. ATF–220; December 20, 1985, 50 FR 51851). The Bureau has also published a final rule requiring label disclosure of sulfites when present in alcoholic beverages at a level of ten or more parts per million (T.D. ATF–236; September 30, 1986, 51 FR 34706).

In determining whether there is a need to require label disclosure of specific ingredients in alcoholic beverages, ATF has traditionally utilized the expertise of the Food and Drug Administration (FDA). In 1987, FDA and ATF entered into a memorandum of understanding (52 FR 45502, November 30, 1987), to clarify the enforcement responsibilities of each agency with respect to alcoholic beverages. ATF agreed that when FDA determined that the presence of an ingredient in food products, including alcoholic beverages, posed a recognized public health problem, and that the ingredient or substance must be identified on a food product label, ATF would initiate rulemaking proceedings to promulgate labeling regulations for alcoholic beverages consistent with ATF's health policy with respect to alcoholic beverages.

Pursuant to the regulations at 21 CFR 172.804, FDA has approved the use of the additive aspartame in certain food products. In 1992, FDA issued a final rule (57 FR 3701, January 30, 1992), to allow for the addition of aspartame in malt beverages of less than 7 percent alcohol by volume and containing fruit juice (21 CFR 172.804(c)(22)). This final rule was the result of a food additive petition submitted by the Stroh Brewery Company. After evaluating the data in the petition and other relevant material, FDA concluded that the proposed food additive use was safe. FDA has not yet approved the use of aspartame in any distilled spirits or wines subject to ATF labeling regulations under the FAA Act.

The evidence considered by FDA showed a need to alert certain individuals with specific medical conditions to the presence of phenylalanine in products containing aspartame. Thus, FDA regulations require that the label of any food containing the additive aspartame shall bear the following statement: "PHENYLKETONURICS: CONTAINS PHENYLALANINE." This statement is directed towards individuals with

Phenylketonuria (PKU), an inherited disorder of the metabolism of phenylalanine, who need to carefully restrict their phenylalanine intake.

Notice of Proposed Rulemaking

On April 19, 1993, ATF published Notice No. 770 (58 FR 21130), proposing to adopt, for malt beverage products, the specific label disclosure statement required by FDA when aspartame is used in a food product. ATF proposed that any malt beverage product sweetened with aspartame in accordance with FDA regulations must be labeled with the mandatory disclosure statement, and that such statement must appear in capital letters, separate and apart from all other information.

ATF received only one comment on this proposal, from the American Medical Association (AMA). The AMA supported the proposal, noting that aspartame can cause serious health consequences in individuals suffering from phenylketonuria. The AMA stated that ATF's proposal to require a disclosure statement for aspartame on malt beverage labels would have a positive effect in preventing such adverse health consequences.

Thus, ATF is adopting the language proposed in the notice, with one minor modification. The regulatory language proposed in the notice would have required a disclosure statement when a malt beverage product was "sweetened" with aspartame in accordance with FDA regulations. This language was intended to cover future approvals by FDA of the use of aspartame in malt beverage products. However, on April 19, 1993, FDA issued a final rule (58 FR 21097), amending the food additive regulations to provide for the safe use of aspartame as a "flavor enhancer" in malt beverages containing less than 3 percent alcohol by volume. FDA determined that the addition of aspartame to such beverages, even at levels below the threshold of sweetness, resulted in a product with improved flavor qualities. Technically, such products would not be "sweetened" with aspartame, since FDA regulations make a distinction between the use of aspartame as a "sweetener" and the use of aspartame as a "flavor enhancer." In both cases, however, FDA regulations would require the mandatory disclosure statement.

The intent of Notice No. 770 was to propose a mandatory disclosure statement whenever aspartame was used in a malt beverage product. ATF did not intend to create a distinction between the use of aspartame as a "sweetener" and the use of aspartame as a "flavor enhancer." So as to avoid any inconsistencies with the terminology used by FDA, the final rule clarifies that the disclosure statement is mandatory whenever a malt beverage product "contains" aspartame. This requirement will thus apply to malt beverages "sweetened" with aspartame, as well as malt beverages containing aspartame as a "flavor enhancer."

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. The labeling requirement imposed by this final rule is the same for large and small proprietors who choose to take advantage of FDA's recent approvals of the use of aspartame in certain types of malt beverages. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and Imports, Inspection, and Labeling.

Authority and Issuance

27 CFR part 7—Labeling and Advertising of Malt Beverages, is amended as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Paragraph 1. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 7.22 is amended by adding a new paragraph (b)(7) to read as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(7) Declaration of aspartame. The following statement, in capital letters, separate and apart from all other information, when the product contains aspartame in accordance with Food and Drug Administration (FDA) regulations: "PHENYLKETONURICS: CONTAINS PHENYLALANINE."

Signed: July 29, 1993.

Stephen E. Higgins,

Director.

Approved: August 6, 1993.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–19997 Filed 8–18–93; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect a determination by the Judge Advocate General of the Navy that USS COLUMBUS (SSN 762) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 9 June 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS COLUMBUS (SSN 762) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c) pertaining to the location and arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special function and purpose of the vessel. The Judge Advocate General of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS COLUMBUS (SSN 762) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS COLUMBUS (SSN 762).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table one of § 706.2 is amended by adding the following vessel:

TABLE ONE

Vessels	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i), annex I
USS COLUMBUS	SSN 762	3.5

3. Table three of § 706.2 is amended by revising the column headings and adding the following vessel:

TABLE 3

Vessel	Number	Masthead lights, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; § 2(K) annex 1	Anchor lights, relationship of aft light to forward light in meters; § 2(K) annex 1
USS COLUMBUS	SSN 762	.....	.....	205	4.2	6.2	3.5	1.7 below.

Dated: June 9, 1993.

Approved:

D. A. Albrecht,

Acting Judge Advocate General.

[FR Doc. 93–20090 Filed 8–18–93; 8:45 am]

BILLING CODE 3810-01-P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS HURRICANE (PC 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval patrol craft. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS HURRICANE (PC 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 23(a)(ii), pertaining to display of a masthead light and a second (after) masthead light on vessels exceeding 50 meters in length; Annex I, paragraph 2(k), pertaining to the vertical distance between the forward and after anchor lights and the height of the forward anchor light above the hull; Rule 21(c), pertaining to location of the sternlight, without interfering with its special functions as a naval patrol craft. The Judge Advocate General of the Navy has also certified that the number of masthead lights displayed and the location of the other mentioned lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is

based on technical findings that the number and placement of lights on USS HURRICANE (PC 3) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table three of § 706.2 is amended by revising the column headings and adding the following ship:

TABLE THREE

Vessel	Number	Masthead lights, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; § 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters; § 2(K) annex 1
USS HURRICANE	PC 3	.....	.....	.....	.....	25.5[1]	3.0	1.1 below.

[1] Only when towing.

Dated: July 6, 1993.

Approved.

D.A. Albrecht,

Acting Judge Advocate General.

[FR Doc. 93–20098 Filed 8–18–93; 8:45 am]

BILLING CODE 3810-01-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket No. 930343–3043]

Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce announces that the National Telecommunications and Information Administration's "Manual of Regulations and Procedures for Federal Radio Frequency Management" (NTIA Manual) has been revised. This action has been taken to comply with sections 104 (a) and (b) of the National Telecommunications and Information Administration Organization Act (Act), which directs the Secretary of Commerce and NTIA to include in the NTIA Manual procedures for the public to obtain nonclassified Federal Government radio frequency spectrum management information. In addition, NTIA issues this final rule to amend 47 CFR part 300 so that reference is made to the May 1992 edition of the NTIA Manual, as revised through June 1993, rather than to the May 1989 edition; and reference is made to the Act as new authority, in addition to Executive Order 12046, for issuance of the regulations presented in the NTIA Manual.

EFFECTIVE DATE: Revisions to the NTIA Manual are effective as of August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Norbert Schroeder, Manager, Spectrum Openness Program, Office of Spectrum Management, NTIA (202–482–3999, or 202–482–1139).

SUPPLEMENTARY INFORMATION:

Background

NTIA is responsible for developing and implementing regulations regarding the Federal Government's management and use of the radio frequency spectrum; these regulations are set forth in the NTIA Manual. Sections 104 (a) and (b) of the Act (Pub. L. 102–538; 47 U.S.C. 903) require that the Secretary of Commerce and NTIA revise the NTIA Manual to include procedures for the public to obtain nonclassified Federal Government spectrum management information. The Act also requires that these revisions be published in the **Federal Register**. These revisions make changes in the existing Chapter 1 (Authority and Organization) and add a new Chapter 11 (Public Access to the Federal Spectrum Management Process) to the NTIA Manual.

Revisions to the NTIA Manual

The revisions to Chapter 1 of the NTIA Manual change the Bylaws of the Interdepartment Radio Advisory Committee (IRAC) such that all IRAC meetings are to be divided into open and closed portions. The revisions provide that attendance during the open portion of a meeting is unrestricted; however, attendance during the closed portion of a meeting is restricted to full-time officers and employees of the Federal Government and their assistants. An agenda for any given IRAC meeting may include open items only if advance arrangements have been made with the Program Manager of NTIA's Spectrum Openness Program. Discussions during the open portion of an IRAC meeting shall be limited to discussions of subjects related to the open agenda items announced for the meeting.

Detailed procedures are found in the new Chapter 11 of the NTIA Manual and are discussed below; these procedures are to be used by the public in obtaining the Federal Government spectrum management information identified in the Act. Pursuant to the Act, the Department of Commerce is improving Federal spectrum management activities regarding (1) provision of opportunities for the public to make presentations to the IRAC and receive advice from spectrum management officials in NTIA; (2) publication of major spectrum management policy proposals, with opportunity for public review and comment, and policy decisions; (3) provision of nonclassified spectrum management information to the public; and (4) consideration of requests by the public for access to those portions of the radio frequency spectrum that are allocated for Federal Government use.

Anyone who is planning to make a presentation to the IRAC or is seeking advice from spectrum management

officials in NTIA should contact the Program Manager of the Spectrum Openness Program (the Openness Program Manager) in the Spectrum Plans and Policies Directorate of NTIA's Office of Spectrum Management.[1] Members of the public who are preparing presentations to the IRAC should consider the following: (1) The IRAC advises NTIA and the Assistant Secretary for Communications and Information relative to the Federal management of the radio frequency spectrum; (2) the member-agency representatives manage, or coordinate, diverse types of radiocommunications facilities and services in their respective agencies; (3) some of these services are obtained from Government-owned facilities and some are obtained from privately-owned facilities; and (4) the IRAC awards neither grants nor contracts of any kind.

Presentations to the IRAC by the public may include (1) descriptions of developing technologies or innovative applications of existing technologies that are relevant to radio spectrum management and usage; (2) proposals for new radiocommunication services or improved approaches for spectrum management; and (3) comments on spectrum issues currently being addressed by the IRAC or NTIA. Information provided by the public during the open portions of IRAC meetings shall have no distribution restrictions. During the open portions of IRAC meetings, questions and comments by members of the public on presentations by others should be addressed to the Chairman of the IRAC.

When plans have been made for members of the public to make a presentation to the IRAC, an announcement shall be placed on the NTIA computer bulletin board (NTIA Bulletin Board) and, to the extent that Spectrum Openness Program resources permit, an announcement shall also be sent to individuals and organizations listed on NTIA's Openness Program mailing list.[2] This announcement shall (1) define the subject to be addressed; (2) indicate the scheduled date and place for the presentation; (3) provide a brief summary of the scheduled presentation; and (4) identify an individual who can answer detailed questions on the scheduled presentation. Anyone planning to attend a scheduled open portion of an IRAC meeting should contact the Openness Program Manager in advance of the meeting date to ensure that adequate seating can be made available for the meeting.

In general, nonclassified Federal radio frequency spectrum management information held by NTIA (including access to electronic databases) is available to the public. However, public access to some information is restricted by Federal law. Anyone seeking Federal spectrum management information on such topics as the status of Federal Government spectrum management activities, the Federal agencies' use of the spectrum, the location of specific documents related to spectrum management, or the status of given policies and policy developments, should contact the Openness Program Manager. Extensive information is available for direct public access on the NTIA Bulletin Board and in the NTIA Reference Room.[3] Because of the voluminous nature of some types of information, requesters may be asked to reimburse the NTIA for document copying costs.

NTIA shall provide prompt and impartial consideration to all public requests for access to those portions of the spectrum that are allocated for Federal Government use.[4] All requests shall be reviewed by NTIA, with assistance from the IRAC, to determine the likely impact on the Federal Government's existing and planned spectrum uses. The Openness Program Manager shall inform the Federal Communications Commission (FCC) when a review of an access request from the public has been initiated and shall advise the FCC of any preliminary conclusions on allocation changes that may relate to pending FCC allocation or authorization decisions. The status and the ultimate disposition of all requests shall be provided to the requester and made available to the public through announcements placed in the NTIA Reference Room, on the NTIA Bulletin Board, and to the extent Spectrum Openness Program resources permit, in mailings to individuals and organizations listed on NTIA's Openness Program mailing list.

Authorizations for operating non-Federal Government radiocommunication stations must be obtained from the FCC. Requests from the public for NTIA's views on public use of spectrum allocated for Federal Government use should be presented to the Openness Program Manager. The requests should, as appropriate, include the following information: (1) The radio frequency band or bands affected; (2) the reasons why the requirement for radio frequency spectrum use cannot be accommodated within non-Federal Government spectrum; (3) the likely impact on the radiocommunication services currently using the spectrum under consideration; (4) the radiocommunication service proposed and a functional description, including technical parameters, of the system; (5) the geographic area to be served by the proposed radiocommunication service; (6) the planned schedule for implementing the proposed radiocommunication service; (7) a description of the actions by the FCC on the request; and (8) the name, address, telephone number, and facsimile number of the individual who can be contacted for more information regarding the request.

All major nonclassified policy proposals and decisions involving Federal spectrum management shall be published in the **Federal Register**. When policy proposals are published, specific procedures shall be included for the public to submit comments to NTIA. In addition to publishing major policy proposals and decisions in the **Federal Register**, summaries of current Federal spectrum management activities that are of general interest shall be made available to the public through announcements placed in the NTIA Reference Room, on the NTIA Bulletin Board, and to the extent Spectrum Openness Program resources permit, in mailings to individuals and organizations listed on the NTIA Openness Program mailing list.

Amendments to the CFR

A final rule is promulgated that amends 47 CFR part 300, which currently refers to the May 1989 edition of the NTIA Manual. NTIA issued a new

[1] The office of the Program Manager for the Spectrum Openness Program is located in Room 4092, 14th St. and Pennsylvania Ave., NW., Washington, DC 20230. The Manager can be reached as follows: (i) (202) 482–3999 or (202) 482–1139 (for voice), (ii) (202) 482–4396 (for facsimile), and (iii) (202) 482–1199 (for the NTIA Bulletin Board).

[2] Requests for information regarding NTIA's mailing list should be directed to the Program Manager, Spectrum Openness Program.

[3] The NTIA Reference Room contains documents pertinent to a variety of telecommunications subjects, including spectrum management issues. These documents are available for review by the public. While these documents are physically located in Washington, DC, a growing number of these documents are becoming available in machine-readable form and are being placed on the NTIA Bulletin Board. This Bulletin Board is accessible globally free of charge to anyone with a personal computer connected to the public switched telephone network (the direct telephone number is (202) 482–1199. The NTIA Reference Room is located in office of the Program Manager, Spectrum Openness Program, in room 4092, 14th St. and Pennsylvania Ave., NW., Washington, DC 20230. The scheduled hours are 9:30–11:30 am and 1:30–3:30 pm, Tuesday through Thursday.

[4] In cases where the spectrum requested for use is within a band allocated for exclusive non-Government use in the National Table of Frequency Allocations, the requester will be referred to the Federal Communications Commission.

edition of the NTIA Manual in May 1992, which was revised in September 1992 and is again revised as discussed herein. This final rule amends 47 CFR 300.1 (b) to refer to the May 1992 edition of the NTIA Manual, as revised through June 1993, on file with the **Federal Register**. The final rule also refers to the National Telecommunications and Information Administration Organization Act, Public Law 102–538, codified at 47 U.S.C. 901 *et seq.*, as additional authority for the issuance of the regulations contained in the NTIA Manual.

Copies of the May 1992 edition of the NTIA Manual, as revised through June 1993, are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (stock number is 903–008–00000–8, cost is $95.00 which includes one copy of the manual and a subscription to all revisions to be issued during the three-year period starting May 1992). The revisions discussed herein will be included in the next regular distribution to subscribers of the NTIA Manual, and are available (1) in hard copy form from Norbert Schroeder, Program Manager, Spectrum Openness Program, room 4092, 14th and Pennsylvania Ave., Washington, DC 20230, (202) 482–3999 or (202) 482–1139, or (2) in electronic form from the NTIA Bulletin Board, which can be reached at (202) 482–1199.

Classification

This rule is not a major rule under E.O. 12291 because it is not a regulation that is likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The NTIA Manual and revisions thereto concern Federal management of the radio frequency spectrum, and is thus exempt from notice and comment requirements pursuant to section 553(a)(2) of the Administrative Procedure Act (APA). With respect to the technical amendments to 47 CFR part 300, pursuant to sections 553(b)(B) and (d) of the APA, the Secretary of Commerce finds for good cause that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for thirty days its implementation, because this rule makes a technical, non-substantive amendment to the regulation.

Because this rule is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act. This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act, and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 47 CFR Part 300

Incorporation by reference, Radio.

For the reasons set forth in the preamble, 47 CFR part 300 is revised as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

Authority: 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

(a) The Manual of Regulations and Procedures for Federal Radio Frequency Management (hereinafter referred to as the NTIA Manual) is issued by the Assistant Secretary of Commerce for Communications and Information, and is specifically designed to cover the Assistant Secretary's frequency management responsibilities pursuant to delegated authority under 47 U.S.C. 901 *et seq.* and Executive Order 12046 (March 27, 1978).

(b) The Federal agencies shall comply with the requirements set forth in the May 1992 edition of the NTIA Manual, as revised through June 1993, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(c) The NTIA Manual is scheduled for revision in January, May, and September of each year and notices of these changes are printed in the **Federal Register**. The complete NTIA Manual can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8. A reference copy of the NTIA Manual, including all revisions in effect, is available for use in the office of the Program Manager, Spectrum Openness Program, room 4092, 14th and Pennsylvania Ave., Washington, DC 20230. The NTIA Manual is on file in the office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC 20002.

Ronald H. Brown,

Secretary of Commerce.

[FR Doc. 93–20068 Filed 8–18–93; 8:45 am]

BILLING CODE 3510–60–P

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 081193B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve; requests for comments.

SUMMARY: NMFS announces that amounts of the reserve are apportioned to augment target categories; pollock, Pacific ocean perch, and "other red rockfish" in the Bering Sea subarea (BS); sharpchin/northern rockfish, shortraker/rougheye rockfish, sablefish, and Pacific ocean perch in the Aleutian Islands subarea (AI); and Greenland turbot in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC) of the above target species or species categories. It is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t), August 19, 1993, through 12 midnight, A.l.t., December 31, 1993. Comments must be received by September 3, 1993.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the FMP prepared by the North Pacific Fishery Management Council under

authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director of the Alaska Region, NMFS, has determined that the initial TACs specified for pollock, Pacific ocean perch, and the "other red rockfish" species category in the BS, and for the sharpchin/northern rockfish, shortraker/rougheye rockfish species categories, sablefish, and Pacific ocean perch in the AI, and Greenland turbot in the BSAI, need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest. Therefore, in accordance with § 675.20(b), NMFS apportions from the reserve to TACs for the following species: (1) For the BAS area—97,500 metric tons (mt) to pollock, 499 mt to Pacific ocean perch, 180 mt to "other red rockfish" species category; (2) for the AI area—765 mt to the sharpchin/northern species category, 165 mt to the shortraker/rougheye rockfish species category, 390 mt to sablefish, 2,085 mt to Pacific ocean perch; and (3) for the BSAI area—1,050 mt to Greenland turbot.

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category because the revised TACs are equal to or less than specifications of acceptable biological catch.

The revised apportionments of pollock to vessels catching pollock for processing by the inshore and offshore components in the BS are 781,625 mt to vessels catching pollock for processing by the offshore component and 420,875 mt to vessels catching pollock for processing by the inshore component pursuant to § 675.20(a)(2)(iii).

The revised apportionment of the AI sablefish TAC between users of trawl and combined hook-and-line and pot gear are 650 mt to trawl gear and 1,950 mt to combined hook-and-line and pot gear pursuant to § 675.24(c)(ii).

Classification

This action is taken under §§ 675.20 and 675.24 and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment as well as delaying the effective date of this action is impracticable and contrary to the public interest. NMFS expects to reach the TAC for pollock, Pacific ocean perch, and "other red rockfish" in the BS; sharpchin/northern rockfish, shortraker/rougheye rockfish, sablefish, and Pacific ocean perch in the AI; and Greenland turbot in the BSAI, within the next 30 days. Without this apportionment, U.S. groundfish fishermen would have to discard bycatches of groundfish resulting in needless economic waste of valuable fishery resources. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until September 3, 1993.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–19985 Filed 8–18–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 159
Thursday, August 19, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

FEDERAL RESERVE SYSTEM

12 CFR Part 228

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

Community Reinvestment Act

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Advance notice of proposed rulemaking; notice of public hearings.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") will hold a series of joint public hearings in cities throughout the country to receive public comments in preparation for developing new regulations, and standards for procedures assessing a financial institution's performance under the Community Reinvestment Act (CRA). President Clinton asked the regulators to work together and consult with the public, community groups, and the banking and thrift industries to make the CRA more effective. The agencies' goal is to reform CRA regulations and supervision in order to improve performance, clarify standards, and make CRA performance assessments more objective.

DATES: The public hearings are scheduled as follows:

1. August 25, 1993, 2 p.m. to 6 p.m., San Antonio, Texas (organizing agency, FRB)
2. September 8, 1993, 9 a.m. to 3 p.m., Los Angeles, California (organizing agency, OCC)
3. September 9, 1993, 9 a.m. to noon, Albuquerque, New Mexico (organizing agency, OCC)
4. September 10, 1993, 10 a.m. to 3 p.m., New York City, New York (organizing agency, FDIC)
5. September 15, 1993, 12:30 p.m. to 4:30 p.m., Henderson, North Carolina (organizing agency, FDIC)
6. September 22, 1993, 2 p.m. to 6 p.m., Chicago, Illinois (organizing agency, FRB)

ADDRESSES: The public hearings will be held at the following locations:

1. San Antonio, TX.
2. Los Angeles, CA.
3. Albuquerque, NM.
4. New York City, NY.
5. Henderson, NC—Vance-Granville Community College Gymnasium, Intersection of I–85 and Poplar Creek Road.
6. Chicago, IL

For more information on addresses of the public hearings, see comments section of SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: (San Antonio, TX and Chicago, IL hearings)—William W. Wiles, Secretary of the Board, (202) 452–3257, fax (202) 452–3819 or 3102 (to participate) or Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs (202) 452–3946, fax (202) 728–5850 or Ann Marie Bray, Staff Assistant, Division of Consumer and Community Affairs (202) 452–6470, fax (202) 728–5850 (other information) (FRB); (Los Angeles, CA and Albuquerque, NM hearings)—Barbara Cheseldine, Secretary to Deputy Comptroller for Compliance Management, (202) 874–5216, fax (202) 874–5221 (OCC); (Henderson, NC hearing)—James Pilkington, Community Affairs Officer, (404) 225–5872, fax (404) 230–6633 (FDIC); (New York City, NY hearing)—Donna Gambrell, Community Affairs Officer (212) 704–1230, fax (212) 704–1343 (FDIC); (Henderson, NC or New York City, NY hearings)—Janice Smith, Director, Office of Consumer Affairs (202) 898–6777, fax (202) 898–3522 (FDIC).

SUPPLEMENTARY INFORMATION:

Background

The Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) is intended to encourage insured depository institutions to help meet the credit needs of their entire communities, including, low- and moderate-income neighborhoods, consistent with safe and sound operation of the institutions. The CRA requires each of the agencies to use its examination authority to encourage institutions to help meet the credit needs of the entire community, and to assess, in connection with its examination, an institution's record of helping to meet the credit needs of its entire community. The agencies are required to consider this record in evaluating an application for a charter, deposit insurance, branch or other deposit facility, office relocation, merger, or holding company acquisition of an insured depository institution.

President Clinton announced a CRA reform initiative on July 15, 1993, that directs the agencies by year-end to develop CRA assessment standards that are based on measurable and objective performance. The President's initiative also calls for the agencies to develop standards that make CRA examinations less burdensome and more consistent. The agencies also must ensure that the public is provided with better information on CRA evaluations and that more effective agency sanctions are taken against financial institutions with consistently poor CRA performance.

Public Hearings

In carrying out this reform of CRA regulations and standards, the President also directed the agencies to consult with community groups, bankers, and the public. As a result, on August 2, 1993, the agencies announced the first of a series of public hearings on the CRA in a joint press release. The agencies held the initial public hearing on August 10, 1993, in Washington, DC at the OTS. The initial hearing was sponsored by the OCC. Subsequent hearings will be organized by the other agencies as well. Presiding at the hearings will be Comptroller of the Currency Eugene A. Ludwig; Federal Reserve Board Governor Lawrence

Lindsey; Acting Chairman of the Federal Deposit Insurance Corporation Andrew Hove; and Acting Director of the Office of Thrift Supervision Jonathan Fiechter.

Comments

The agencies invite testimony on any issue regarding the CRA from any interested person. The agencies invite testimony on, and are particularly interested in receiving written comments on, the following questions:

(1) In what specific ways can the CRA regulations be improved to provide increased performance, clarity and objectivity?

(2) In what specific ways, if any, have the existing 12 CRA assessment factors forced banks and thrifts to maintain unnecessary and unproductive CRA documentation? How would you suggest they be changed?

(3) What objective factors, if any, should be incorporated into CRA standards to focus community reinvestment activities on:

(a) Lending to low- and moderate-income individuals and neighborhoods, small businesses, and small farms;

(b) Investments in low- and moderate-income neighborhoods; and

(c) Provision of banking services to residents of low- and moderate-income neighborhoods?

(4) Should differences among banks and thrifts (location, corporate structure, product lines, etc.) be taken into account in the CRA performance standards? If yes, how should these differences be incorporated into the standards?

Individuals wishing to participate in these hearings by providing testimony should notify the appropriate agency by fax or telephone. Persons are invited and encouraged to submit written statements addressing their views on the CRA. Persons wishing to provide a written statement and not make oral testimony, should submit their statements to the appropriate agency.

Since each hearing will be organized by a designated agency, commenters or participants are requested to contact the agency contact for that hearing for additional details. Because addresses of the hearings have not yet been finalized, they will be announced through press releases by the agencies prior to the hearing. These addresses may also be obtained by contacting the appropriate agency contact.

Dated: August 14, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: August 16, 1993.

William W. Wiles,

Secretary of the Board, Board of Governors of the Federal Reserve System.

Dated: August 17, 1993.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: August 17, 1993.

Jonathan L. Fiechter,

Acting Director, Office of Thrift Supervision.

[FR Doc. 93-20198 Filed 8-17-93; 2:10 pm]

BILLING CODE 4810-33-P 20%, 6210-01-P 20%, 6714-01-P 20%, 6720-01-P 20%

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052-AB47

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend the regulations relating to standards of conduct for directors and employees of Farm Credit System (FCS or System) institutions, excluding the Federal Agricultural Mortgage Corporation (Farmer Mac). This action results from a reassessment of the regulations in light of the legislative changes in the Farm Credit Act of 1971 (1971 Act) made by the Agricultural Credit Act of 1987 (1987 Act) and the findings of a review required by section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The proposed rule would update the regulations to reflect statutory changes and the change in focus of FCA regulatory oversight of personnel matters. In addition, the proposed rule would enhance and clarify the regulations to ensure that they satisfy the purposes of section 514 of the 1992 Act relative to the reporting of financial information and potential conflicts of interest.

DATES: Comments should be received on or before September 20, 1993.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444, or

Dorothy J. Acosta, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Statutory Changes

The 1987 Act significantly changed the statutory framework within which the standards of conduct regulations were originally adopted. With the mandatory merger of the Federal Land Banks and the Federal Intermediate Credit Banks, the District Farm Credit Boards were abolished and section 5.6 of the 1971 Act, which set forth their powers, was repealed. That section authorized the district boards to provide for joint officers and employees for the banks in their districts and directed the FCA to promulgate rules and regulations governing conflicts of interest and political activity. In addition, the required FCA approval of salary scales and the compensation of bank chief executive officer was deleted, and the general thrust of the legislation was to move the FCA toward being a more arm's-length regulator.

II. Section 514 Review

In addition, the FCA was required by the 1992 Act to complete a review of its regulations regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of FCS institutions. The 1992 Act required that the review address whether the current regulations: (1) Are adequate to fulfill the purposes of section 514 of the 1992 Act, and such other purposes as the FCA determines to be consistent with the 1971 Act and other applicable laws, and to be otherwise necessary or appropriate; (2) require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all FCS institutions; and (3) require the disclosure or reporting of the information by all of the appropriate directors, officers, or employees of FCS institutions. The FCA was required, if determined necessary by the Board, to amend its current financial disclosure

and conflict of interest regulations to address any deficiencies in the regulations identified in this review.

A. The first question addressed in the review was whether the existing regulations are adequate to fulfill the purpose of section 514 of the 1992 Act and such other purposes as the FCA determines to be consistent with the 1971 Act and other applicable laws, and to be otherwise necessary and appropriate.

Section 514 of the 1992 Act is designed to ensure that the information reported by the directors, officers, and employees of System institutions under regulations of the FCA requiring the disclosure of financial information and the reporting of potential conflicts of interest accomplishes the following purposes: (1) Provides the stockholders of all System institutions with information to assist them in making informed decisions regarding the operation of the institutions; (2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding System obligations or institutions; and (3) provides the FCA with information necessary to allow the agency to examine and regulate all System institutions effectively and efficiently and thus enhance the safety and soundness of the Farm Credit System.

With respect to the first purpose above, FCA regulations in part 620 of this chapter currently require information to be disclosed to shareholders in the annual and quarterly reports to shareholders distributed by banks and associations, annual meeting information statements distributed by associations, and director nominee disclosures for both banks and associations. Required disclosures include: (1) Principal occupation and employment of each director and senior officer during the past 5 years; (2) any other boards on which the directors serve and the entity's principal business; (3) compensation of senior officers and directors; (4) institution policies on loans to and transactions with officers and directors; (5) transactions other than loans between the institution and such individuals; (6) loan transactions with directors and senior officers; and (7) the nature of a director's or a senior officer's involvement in certain legal proceedings. Director nominees are required to disclose this information, as applicable, in conjunction with director elections held during an institution's annual shareholder meeting. The Board considers the existing regulations generally adequate to provide information to assist stockholders in making informed decisions. Therefore, the proposed regulation would make no change in these requirements, but certain provisions of existing part 612 pertaining to internal reporting requirements would be amended to better support the shareholder disclosure requirements of part 620 of this chapter.

The second purpose of section 514, to provide investors and potential investors with information to assist them in making investment decisions, will be addressed in the larger context of a regulation governing disclosure to investors, which will be the subject of a separate rulemaking.

This rulemaking action addresses the third purpose of section 514, i.e., to provide the FCA with information to examine and regulate FCS institutions effectively and efficiently. Part 620 of this chapter requires System institutions to file with the FCA the periodic reports that are distributed to shareholders. This provides information to the FCA concerning the external disclosures of potential conflicts of interest. Part 612 currently requires institutions to develop standards of conduct policies, guidelines, and procedures. Part 612 also requires certain information concerning relationships with persons transacting business with the institution to be disclosed to the institution by directors and employees (including officers) and the reporting of violations of regulations and the institution's policies to the FCA. The examination of an institution's policies, procedures, and other documentation related to its standards of conduct program provides the basis for any necessary FCA corrective action. The Board believes that clarifying and strengthening these regulations will facilitate better understanding and application of the regulation by System personnel and more effective and efficient oversight of System institutions by the FCA.

B. The second question addressed by the review was whether the regulations currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all FCS institutions. The shareholder disclosure requirements established in part 620 of this chapter for all FCS institutions, including Farmer Mac, were determined to provide adequate information to shareholders. However, part 612, which requires reporting of conflicts of interest, does not apply to Farmer Mac. Because the nature of Farmer Mac's business is different from the business of System banks and associations, the Board will consider regulations for Farmer Mac in a separate rulemaking action.

C. The final determination to be made by the review was whether the regulations currently require the disclosure or reporting of conflicts of interest and financial information by all of the appropriate directors, officers, or employees of the FCS institutions. The determination that there are currently no FCA regulations applicable to Farmer Mac pertaining to conflicts of interest for directors and employees or the reporting of financial information necessary to support external disclosure requirements will be addressed by the Board in a separate rulemaking action.

III. Proposed Regulation

The proposed regulation would retain much of the content of the existing regulation, but would strengthen and clarify it, expanding some of its provisions and relaxing others. In restructuring the regulation, the FCA has taken into account the concerns that have been expressed over the years regarding the clarity and reasonableness of its provisions and now solicits comment on the provisions of this proposed amendment to the regulation. A summary of the major changes follows, followed by a section-by-section analysis.

A. Summary of Major Changes

1. Definition of "Conflict of Interest"

The proposed regulation continues to reach appearances of conflicts of interest, but articulates that standard as a part of the definition of "conflict of interest." The proposed definition incorporates a "reasonable person" standard with respect to the appearance of a conflict. It also clarifies that a conflict of interest involves a "financial interest" that creates or appears to create a conflict with the obligation to perform one's official duties objectively and impartially. "Financial interest" would be broadly defined to include any interest in or relationship with a person or entity involving the receiving or providing something of monetary value or other compensation.

2. Director Prohibitions

Under current regulation, directors are subject to three general prohibitions and are required to report to the Standards of Conduct Officer any matter to which the general prohibitions may apply. Directors are generally prohibited from: (1) Using information acquired as a director for personal benefit; (2) participating in deliberations on any question affecting the interest of the director, a relative of the director, or any

entity controlled by the director; and (3) obtaining special advantage or favoritism from directors, employees, or borrowers or other persons doing business with a System institution. In addition, directors are required to report annually the name and nature of the business of any entity in which the director has a financial interest or on whose board the director sits if the entity transacts business with the employing institution, an institution supervised by the employing institution, or a borrower from such institutions.

The proposed regulation would add to the three general prohibitions certain of the specific prohibitions currently applicable to employees. The Board believes that in order to achieve the purposes of section 514 of the 1992 Act, all directors and employees should be held to the same standards of conduct where the potential for conflict is the same. The Board also believes that the addition of these prohibitions and the relocation of the reporting requirements to a separate section will clear up confusion over what activities are prohibited and what activities are merely reportable. The additional prohibitions proposed by the Board include: (1) Using the director's position or information acquired as a result of the director's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any entity controlled by the director or the director's relatives, any other System institution, or any person transacting business with the institution, including borrowers and loan applicants; (2) accepting any gift, fee, or other present or deferred compensation that could reasonably be viewed as offered for the purpose influencing official action or obtaining any information; (3) knowingly acquiring property from an institution within the district that had acquired the property through foreclosure, voluntary conveyance, or similar action within the preceding 12 months; and (4) borrowing from or lending to directors, employees, or agents of the institution. The last of these prohibitions would not apply, however, to loan transactions between family members, any activities in an official capacity in connection with the business of the institution, or transactions in the ordinary course of business in accordance with the institution's standards of conduct policies. An additional prohibition is proposed stating that a director shall not violate an institution's policies and procedures governing standards of conduct.

The Board believes that each of the prohibitions proposed to be added targets the same potential for conflict that exists with employees. Certain of the prohibitions currently applicable to employees were deemed to be overly restrictive for directors and to have less potential for conflict. Such prohibitions are not proposed for directors. Such prohibitions could make it difficult to attract directors with appropriate expertise, especially outside directors. For example, the Board does not propose to prohibit directors from acting as real estate agents or brokers, acting as agents or brokers in connection with the sale and placement of insurance, or serving as an officer or director of any commercial bank, savings and loan, or other non-System financial institution. Although conflicts of interest can arise in these areas, the Board believes that such activities, if conducted within the constraints of the general prohibitions, are not so potentially harmful as to be prohibited altogether. A director engaged in those activities would, of course, have to report such activity to the institution under the existing, as well as the proposed, reporting requirements, so that potential conflicts can be monitored by the institution. For the same reason, the Board does not propose to prohibit a director from serving as an officer or director of an entity that transacts business with a System institution in the district. Nor would a director have to gain approval from the institution's board of directors in order to serve on the board of a cooperative that borrows from a bank for cooperatives. The Board requests comment on whether any of the proposed prohibitions are overly restrictive for directors and whether there are other activities that have such a potential for conflict that they should be prohibited.

The proposed regulation would clarify that directors may act on matters that affect their financial interests if the matter is one of general applicability that affects all stockholders/borrowers in a nondiscriminatory manner, but would expand the matters on which recusal is required to any matter affecting an entity controlled by a relative of the director. The proposed regulation would also clarify that the prohibition against obtaining special advantage or favoritism on behalf of the director or a related party is directed at the use of the director's office to obtain such special advantage or favoritism and would expand the scope of the prohibition to favoritism on behalf of any entity controlled by a director's relative.

3. Employee Prohibitions

For employees, current regulations set forth general prohibitions similar to those imposed on directors on: (1) Participating in any matter affecting the interests of the employee or the interests of his/her relative or controlled entity; and (2) the use of official information not generally available to the public for any reason other than the performance of official duties. In addition, current regulations impose a number of prohibitions on specific activities and prohibit certain other activities unless permitted by the institution under policies and procedures that comply with the regulation. For association employees, permissible activities are determined by the supervising bank and are subject to bank policies and procedures.

The proposed regulation would clarify that employees may act on matters that affect their financial interests if the matter is one of general applicability that affects all stockholders/borrowers in a nondiscriminatory manner, but would expand the matters on which recusal is required to any matter affecting the financial interest of an entity controlled by a relative of the employee. The proposed regulation would also extend to employees the general prohibition on obtaining or attempting to obtain favoritism or advantage currently applicable to directors, with the same expanded scope proposed in the parallel provision for directors. A new prohibition is proposed, similar to the prohibition for directors, stating that an employee shall not violate an institution's policies and procedures governing standards of conduct.

The proposed regulation would expand the prohibition on an employee's borrowing from, lending to, or becoming financially obligated with directors and employees of the employing, supervised, and supervising institutions or borrowers or loan applicants of the employing institution, to prohibit such relationships with agents of such institutions. However, the proposed regulation would create an exemption to the prohibition for transactions in the ordinary course of business between the employee and a business proprietor who is also a borrower of the institution. In this context, transactions in the ordinary course of business would include, for example, the purchase of a tractor from an implement dealer who has a rural home loan or from a borrower who has a used tractor for sale. Such transactions

would be eligible for the exemption unless the employee uses his/her position to obtain special treatment. However, this type of transaction would be required to be reported to the institution if it exceeds an amount established in the institution's policy pursuant to § 612.2165 or if it could constitute a conflict of interest because it is on more favorable terms than other transactions with similarly situated customers. In the latter case, such a transaction may violate the general prohibition against using one's office to gain an advantage. The Board expects that institutions, who are in the best position to know what is reasonable and customary for the area, would establish reporting requirements that are adequate to permit reasonable monitoring of such activity in order to preserve the integrity of and public confidence in the System. Failure to do so would constitute a violation of the regulation.

The proposed regulation would create two exemptions from the existing prohibition on an employee's acting as a real estate agent or broker. It would allow an employee with a real estate agent's or broker's license to use the license for the purpose of purchasing or selling real estate for the employee's own account. It would also exempt persons employed by the institution for the sole purpose performing appraisals from the prohibition altogether. The Board is concerned that the prohibition may serve to impede an institution's ability to employ certified or licensed appraisers. Such persons also may have a real estate agent or broker license. Although the Board recognizes that conflicts of interest can arise when an individual is engaged both in performing appraisals and acting as a real estate agent or broker, the Board believes that such matters are adequately addressed by codes of professional ethics and are subject to sufficient oversight by appraisal societies and state licensing agencies.

The prohibition on using the employee's position to solicit any fee or gratuity and the prohibition on accepting any fee or gratuity would both be revised to prohibit soliciting or accepting any gift, fee, or other present or deferred compensation.

The proposed regulation would delete the prohibition on transactions in commodities financed by any institution in the district, because the Board believes it would be too far-reaching into individual matters and there are no obvious safety and soundness concerns. The Board does not believe that an individual is likely to be able to influence the commodity markets based on information gained from employment with a System institution. However, the use of official information not available to the public for personal trading would violate this part.

The proposed regulation would restructure the provision of current regulations requiring an institution to establish policies and guidelines for certain activities. Instead of prohibiting certain activities unless the Board has adopted policies and guidelines governing them, the proposed regulation would require each institution to establish criteria for these activities in their standards of conduct policies. Associations, rather than their supervising banks, would be establishing their own policies and guidelines, subject to the supervising bank's general oversight. These activities include: (1) Business relationships with directors, employees, borrowers, loan applicants, and persons transacting business with the employing, supervising, or supervised institutions and lenders having an access or participation relationship with such institutions; (2) borrowing from the employing, supervising, or supervised institution; (3) acquiring property mortgaged to any System institution at any time within the preceding 12 months; and (4) acquiring property acquired by an institution for its operations. Directors and employees are, of course, required to comply with the institution's policies and procedures, which must be sufficient to preserve the integrity of and public confidence in the institution and the System.

4. Reporting Requirements

The proposed regulation sets forth more explicitly the various reporting requirements in a single section and adds a requirement to report any matter needed to permit the institution to comply with the shareholder disclosure requirement of part 620 of this chapter with respect to such persons. In addition, the proposed regulation would add a requirement to report the names of any relatives or entities controlled by relatives that transact business with the employing, supervising or supervised institutions. The reporting requirements are designed to permit the institution to fulfill its shareholder disclosure obligations, monitor compliance with the regulation and standards of conduct policy, and avoid conflicts of interest.

5. Standards of Conduct Policy

The Board proposes to delete specific prohibitions and requirements related to devotion of time to official duties, political activity, nepotism, exchange of gifts or favors among directors and employees, and improper use of official property currently found in § 612.2190 and §§ 612.2220 through 612.2250, respectively. In light of the statutory changes made to the 1971 Act, which changed the focus of FCA oversight of personnel matters, the Board believes that these internal corporate matters are best left to each institution's board of directors to oversee through the implementation of a standards of conduct policy meeting the requirements of the proposed regulation. The proposed regulation would require the institution to establish requirements and prohibitions sufficient to preserve the integrity of and public confidence in the institution, preserve the integrity and independence of the supervisory process, and avoid the improper use of official position, information, and property. The term "supervisory process" is used broadly and is intended to apply both to supervision of employees within an institution and bank supervision of an association. The institution would be required to address such issues as nepotism, political activities, and gifts and favors in light of these objectives.

The proposed regulation would also require the institution, through the standards of conduct policy, to provide guidance to directors and employees concerning the circumstances under which gifts may be accepted from outside sources without violating the prohibitions in §§ 612.2140(e) and 612.2150(f) against accepting any gift, fee, or other present or deferred compensation under circumstances that could reasonably be viewed as being offered to influence official action or to obtain inside information. Such guidelines might, for example, define sources and maximum values for gifts that could be accepted without being viewed as being offered to influence official action. Institutions may wish to consult the regulations of the Office of Government Ethics addressing these issues for guidance.

The proposed regulation would also require institutions' policies to define the authorities and responsibilities of the Standards of Conduct Officer and establish procedures for recusal when conflicts of interest are identified.

6. Standards of Conduct Officer

Under current regulations, a Standards of Conduct Officer is required to be designated in each bank, service organization, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). Associations are not subject to this requirement. Rather, current regulations contemplate that a Farm Credit Bank's Standards of Conduct Officer would serve the entire

district. Association directors report to the Standards of Conduct Officer through their respective boards; association employees report through their chief executive officers, who in turn report through their respective boards.

While recognizing the Farm Credit Banks' supervisory responsibilities, the Board believes that enhancing associations' accountability for sound standards of conduct programs should be encouraged. Accordingly, the proposed regulation would require that each association designate a Standards of Conduct Officer with defined authorities and responsibilities who would be the focal point for administration of the program. To minimize the burden of such a requirement, the proposed regulation would permit an association to contract with its supervisory bank to provide a Standards of Conduct Officer, but such a person would be accountable to the association's board.

7. Recordkeeping

The proposed regulation would impose a new recordkeeping requirement. All policies, procedures, guidelines, reports, and documentation of implementation of this part would be required to be retained for a period of 6 years.

8. Nomenclature and Other Technical Changes

The proposed regulation would update obsolete nomenclature and make other technical and minor substantive changes.

B. Section-by-Section Analysis

This section-by-section analysis is provided to explain proposed revisions to part 612. Although not all sections are proposed to be revised, the Board believes that republishing the entire part will aid interested parties in providing their comments.

Section 612.2130—Definitions

The proposed regulation would: (1) Revise the definition of "conflict of interest" and define "financial interest;" (2) remove the terms and definitions for "board of directors," and "interested bank, service organization, association, or institutions;" and (3) redesignate the remaining paragraphs. The term "conflict of interest" is proposed to be revised by clarifying that apparent as well as actual conflicts of interest are to be avoided and by using a reasonable person standard to determine when such a conflict exists, i.e., when a person having a financial interest in a transaction, relationship, or activity impairs or has the appearance of impairing an individual's objectivity or impartiality in the performance of official duties. The term "financial interest" would be defined to mean an interest in an activity, transaction, or property or a relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation. The term "board of directors" is proposed to be deleted because it is a common term that does not need to be defined. The term "interested bank, service organization, association, or institutions" would be deleted since it is not used in the proposed regulations.

Section 612.2135—Director and Employee Responsibilities and Conduct—Generally

The existing paragraphs of this section on general responsibility and conduct requiring the maintenance and achievement of high standards of conduct are clarified in the proposed regulations by making such standards an affirmative obligation of each director and employee of a System institution.

Section 612.2140—Directors—Prohibited Conduct

This section is proposed to be amended by revising and redesignating existing paragraphs (a)(1), (a)(2), and (a)(3) as paragraphs (b), (a), and (c), respectively, and adding new paragraphs (d) through (h). The substance of existing paragraphs (b) through (d) is proposed to be incorporated into the new § 612.2145.

New paragraph (c) is revised to clarify that it prohibits the use of the director's position to obtain favoritism. It would also expand the scope to prohibit favoritism for relatives and entities controlled by the director's relatives, other System institutions, and persons transacting business with the institution. This is in addition to the existing prohibition pertaining to obtaining favoritism for the director or an entity controlled by the director.

The effect of adding new paragraphs (d) through (h) would be to place some of the same specific prohibitions on director activities that are currently placed on activities of the employees of System institutions.

Section 612.2145—Director Reporting

This section incorporates the reporting provisions in existing § 612.2140 with the added clarification that the reporting is made to the best of his or her knowledge and after reasonable inquiry. The proposed regulation retains the requirement to identify the entities in which the director has a financial interest or on whose board the director sits if the entity: (1) Transacts business with the director's institution; (2) transacts business with any institution supervised by the director's institution; (3) transacts business with a borrower of the director's institution; or (4) transacts business with a borrower of any institution. Existing §§ 612.2140 (b), (c), and (d) would be redesignated as new §§ 612.2145 (c), (b), and (d), respectively, and would be revised to clarify the content and timing for reporting to the Standards of Conduct Officer. A new paragraph (a) would be added outlining the requirements for annual reporting to the institution and reporting to support external disclosures to shareholders on activities of senior officers and directors the institution is required to make under § 620.5(j) of this chapter. Specifically, § 620.5(j) requires disclosure of transactions and series of transactions: (1) Greater than $5,000; (2) where the purchase price, fees, or charges involved were not determined by competitive bidding; or (3) where the interest of the person arises other than solely as a result of his or her status as a stockholder of the institution and the benefit received may be considered a special or extra benefit not available to all stockholders. If a director was not involved in any activities required to be reported to support part 620 disclosures or required by the institution's standards of conduct policy or this regulation, a written, signed statement to the institution to that effect would be required.

Section 612.2150—Employees—Prohibited Conduct

Existing paragraphs (a) and (b)(5) are proposed to be deleted and existing paragraphs (c), (d), and (e) would be relocated to other sections. Existing paragraphs (b)(1) through (b)(10) are proposed to be redesignated in the same order as the prohibitions for directors and the proposed rule would add new paragraphs (c) and (i).

The new paragraph (c) would impose a prohibition on using the employee's position to obtain favoritism for the employee, any relative of the employee, any entity controlled by the employee or the employee's relatives, other System institutions, or persons transacting business with the institution, including borrowers and loan applicants. This prohibition would parallel the revised prohibition on favoritism proposed for directors. New paragraph (i) is a prohibition on violating an institution's policies and procedures governing

standards of conduct. The same prohibition is proposed for directors.

Certain of the redesignated paragraphs are also proposed to be revised to add clarity or enhance the existing prohibitions. These actions will make employee prohibitions parallel to the prohibitions for directors and ensure that directors and employees will be held to the same standards of conduct where the potential for conflict of interest is the same.

The provisions in existing § 612.2150(c) would be incorporated into the policy requirements in § 612.2165 to establish all policy provisions in a single section.

The employee reporting requirements in existing § 612.2150(d) are proposed to be incorporated into a new § 612.2155 that parallels the director reporting requirements in new § 612.2145.

Finally, the joint employee provisions in existing § 612.2150(e) are proposed to be redesignated as new § 612.2157.

Section 612.2155—Employee Reporting

A new § 612.2155 is proposed to be added, which would incorporate and revise the employee reporting provisions of existing § 612.2150(d) as new paragraph (c). New paragraphs (a), (b), and (d) would be added and parallel the reporting requirements for directors. As with director reporting, employee reporting would be made to the best of his or her knowledge and after reasonable inquiry.

Section 612.2157—Joint Employees

This proposed new section incorporates the existing provisions of § 612.2150(e), which prohibit bank officers from being employed by an association in its district and bank employees from being officers of associations in its district. The proposed new section would continue these prohibitions in order to preserve the integrity and independence of the supervisory process. The proposed regulation would also continue to permit the use of joint employees between a bank and an association in its district at lower levels so long as each institution appropriately reflects the expense of such employees in its financial statement.

The Board proposes to delete the requirement that each institution obtain a separate, independent opinion of counsel that joint employees are authorized under the 1971 Act. This provision was added, out of an abundance of caution, subsequent to passage of the 1987 Act, which deleted the express authority of the Farm Credit Banks to use joint employees. However, the use of joint employees by a bank is well established and has not been successfully challenged, notwithstanding the deletion of express authority in 1987. Therefore, the Board believes that it is no longer necessary to require legal opinions on this topic by regulation. The Board expects that the standards of conduct policy required by § 612.2165 will address potential conflicts of interest that may arise as a result of being employed by two different institutions and reporting to separate boards and management.

The Board believes that a greater regulatory concern exists with how expenses for joint employees are presented by each institution so as to not distort their financial statements. This provision is retained in the proposed regulation.

Section 612.2160—Institution Responsibilities

This new section is added to address those responsibilities required of the institution explicitly. The responsibilities are: (1) To ensure that directors and employees comply with part 612 and act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest; (2) to take appropriate steps to ensure that all its directors and employees are informed of the regulations; (3) to adopt policies and procedures governing standards of conduct; (4) to designate a Standards of Conduct Officer; and (5) to maintain all standards of conduct policies and procedures, reports, investigations, and other evidence of compliance with this part for 6 years.

Section 612.2165—Policies and Procedures

Section 612.2160 of the existing regulation is proposed to be redesignated as new § 612.2165. The existing provisions of paragraph (a) are proposed to be amended to replace and add to the minimum requirements for policy content and to streamline its provisions.

Proposed additions include identifying the types of prohibited activities, outlining authorities and responsibilities of the Standards of Conduct Officer, establishing criteria under which other activities may be approved, and establishing reporting requirements necessary to comply with § 620.5 of this chapter and monitor conflicts of interest, and establishing documentation requirements demonstrating compliance with standards of conduct decisions and board policy. The reporting requirements may include reporting thresholds and only require a transaction or series of transactions to be reported when the dollar amount of the threshold is exceeded. The existing disclosure threshold in § 620.5 is $5,000 for a transaction or a series of transactions and other non-dollar specific criteria. An institution may need to adopt a lower threshold for reporting than for disclosure in order to monitor conflicts of interest adequately.

The proposed regulation would delete the requirement that the policy delineate those relationships that may be approved by an association board without prior approval of the supervising bank. This provision would no longer be necessary if associations were responsible for administering their own standards of conduct program.

The Board believes an institution's policies and procedures should be written in sufficient detail to permit an institution to monitor potential conflicts of interest, to support the external disclosure to shareholder requirements, and to provide sufficient documentation of implementation to enable the FCA to carry out its examination and enforcement responsibilities.

Section 612.2170—Standards of Conduct Officer

The existing regulation requires banks, service organizations, and the Funding Corporation to designate a Standards of Conduct Officer and outline certain duties of the officer. The proposed regulations would require all institutions to designate such an officer and would add to the duties relocated from § 612.2180. A new provision is proposed allowing an association to contract with its Farm Credit Bank for a Standards of Conduct Officer. The Board believes this may allow an association with operational constraints, such as those a small association may encounter, to use its resources more efficiently.

Section 612.2180—Enforcement

The existing regulations require certain matters to be investigated by banks, service organizations, and the Funding Corporation. Paragraphs (a) through (d) of this section are proposed to be incorporated into either the duties of the Standards of Conduct Officer in § 612.2170 or the institution's policy requirements in § 612.2165.

Paragraph (e) of this section of the existing regulation, relating to the FCA performing investigations, would be deleted. The FCA has statutory examination authority and investigation authority for the purposes of making criminal referrals; therefore, the Board deems this paragraph unnecessary.

Section 612.2190—Devotion of Time to Official Duties

This section is proposed to be removed. This subject would be required to be addressed in the institution's policy established pursuant to § 612.2165.

Section 612.2200—[Reserved]

This section is proposed to be removed.

Section 612.2220—Political Activity

This section is proposed to be removed. This subject would be required to be addressed in the institution's policy established pursuant to § 612.2165.

Section 612.2230—Nepotism

This section is proposed to be removed. This subject would be required to be addressed in the institution's policy established pursuant to § 612.2165.

Section 612.2240—Gifts or Favors

This section is proposed to be removed. This subject would be required to be addressed in the institution's policy established pursuant to § 612.2165.

Section 612.2250—Improper Use of Official Property

This section is proposed to be removed. This subject would be required to be addressed in the institution's policy established pursuant to § 612.2165.

Section 612.2260—Standards of Conduct for Agents

Paragraph (a) would be revised, making it an affirmative responsibility for an agent to maintain high standards of honesty, integrity, and impartiality. The requirement that an association report suspected nonperformance of its agents to the supervisory bank is proposed for deletion. This deletion would parallel other proposed revisions designed to make an association responsible for its own standards of conduct program.

Section 612.2270—Prohibited Purchase of System Obligations

Amendments are proposed to update nomenclature.

Withdrawal of Proposed Rule

The Board hereby withdraws the amendment in the proposed rule, published in the **Federal Register** on October 13, 1992, at 57 FR 46819, which would have amended § 612.2180(b) by replacing the reference to § 617.7110 with a general reference to part 617. The Board proposes to incorporate the content of § 612.2180 into other sections with this proposed rule and delete § 612.2180 from part 612.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 612—STANDARDS OF CONDUCT

Sec.

612.2130 Definitions.
612.2135 Director and employee responsibilities and conduct—generally.
612.2140 Directors—prohibited conduct.
612.2145 Director reporting.
612.2150 Employees—prohibited conduct.
612.2155 Employee reporting.
612.2157 Joint employees.
612.2160 Institution responsibilities.
612.2165 Policies and procedures.
612.2170 Standards of Conduct Officer.
612.2260 Standards of conduct for agents.
612.2270 Prohibited purchase of System obligations.

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2254.

§ 612.2130 Definitions.

For purposes of this part, the following terms are defined:

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) *Business relationship* or *transacts business* means the relationship of a person (or an entity controlled by the person) with another person, which involves the purchase, sale, lease, ownership, or management of real or personal property; services as a real estate agent or broker; the sale or placement of insurance; sales barn activities; appraisal services; the borrowing or lending of money or other things of value; providing or receiving financial, professional, or other services; and any other similar transaction. The term does not include relationships or transactions associated with personal, family, or household matters.

(c) A *conflict of interest* or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects the person's ability or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(d) *Controlled entity* and *entity controlled by* mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(e) *Director* means a member of a board of directors.

(f) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(g) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution, except System institutions.

(h) *Family* means parents, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and each person having any such relationship by marriage.

(i) *Financial interest* means an interest in an activity, transaction, property, or relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

(j) *Mineral interest* means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

(k) *OFI* means other financing institutions that have established an access relationship with a Farm Credit Bank under section 1.7(b)(1)(B) of the Act.

(l) *Officer* means the salaried president, vice president, secretary, treasurer, and general counsel of each System institution, and any person not so designated who holds a similar position of authority.

(m) *Person* means individual or entity.

(n) *Relative* means any member of the family as defined in paragraph (h) of this section.

(o) *Service organization* means each service organization authorized by section 4.25 of the Act, and each unincorporated service organization

formed by one or more Farm Credit System institutions.

(p) *Standards of Conduct Officer* means the officer designated under § 612.2170 of these regulations.

(q) *Supervised institution* is a term which only applies within the context of a System bank or an employee of a System bank and refers to each association supervised by that bank.

(r) *Supervising institution* is a term which only applies within the context of an association or an employee of an association and refers to the bank that supervises that association.

(s) *System institution* and *institution* mean any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service organizations.

§ 612.2135 Director and employee responsibilities and conduct—generally.

(a) Directors and employees of all System institutions shall maintain high standards of industry, honesty, integrity, impartiality, and conduct in order to ensure the proper performance of System business and continued public confidence in the System and each of its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) To achieve these high standards of conduct, directors and employees shall observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws, regulations, rules, policy statements, instructions, and procedures of the Farm Credit Administration and System institutions and shall exercise diligence and good judgment in carrying out their duties, obligations, and responsibilities.

§ 612.2140 Directors—prohibited conduct.

A director of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, or any entity controlled by the director or a director's relatives, except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminatory way, e.g., a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution.

(c) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any entity controlled by the director or the director's relatives, any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Use the director's position or information acquired in connection with the director's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any entity controlled by the director or the director's relatives, any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(e) Accept any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution.

(f) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and which had been acquired by any such institution as a result of foreclosure or similar action.

(g) Directly or indirectly, borrow from or lend to a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution. This paragraph shall not apply to:

(1) Loan transactions between family members;

(2) Any activity in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) Transactions in the ordinary course of business between a director and a business proprietor who is also a borrower of the institution, in accordance with policy criteria established pursuant to § 612.2165.

(h) Violate an institution's policies and procedures governing standards of conduct.

§ 612.2145 Director reporting.

(a) At least annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Officer that fully discloses, to the best of his or her knowledge and after reasonable inquiry, any relationship, transaction, or activity required to be disclosed by part 620 of this chapter or required to be reported pursuant to the institution's policy established pursuant to § 612.2165. If a director was not involved in any relationship, transaction, or activity required to be reported under this section at any time during the year, the director shall file a written and signed statement to that effect with the Standards of Conduct Officer.

(b) At least annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Officer that fully discloses, to the best of his or her knowledge and after reasonable inquiry:

(1) The name of any relative or any entity controlled by a relative(s) that transacts business with the institution or any institution supervised by the institution; and

(2) The name and the nature of the business of any entity in which the director has a financial interest and any entity on whose board the director sits if such entity:

(i) Transacts business with the director's institution;

(ii) Transacts business with any institution supervised by the director's institution;

(iii) Transacts business with a borrower of the director's institution; or

(iv) Transacts business with a borrower of any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Officer.

(d) A newly elected or appointed director shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Officer within 1 month after election or appointment and thereafter shall comply with the requirements of this section.

§ 612.2150 Employees—prohibited conduct.

An employee of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interests of the employee, any relative of the employee, or any entity controlled by the employee or the employee's relatives.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of employment with a System institution.

(c) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any entity controlled by the employee or the employee's relatives, any other System institution or any person transacting business with the institution, including borrowers and loan applicants.

(d) Serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative which borrows from a bank for cooperatives. Prior to approving an employee request, the board shall determine whether the employee's proposed service as director is likely to cause the employee to violate any regulations in this part or the institution's policies, e.g., the requirements relating to devotion of time to official duties.

(e) Use the employee's position or information acquired in connection with the employee's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit for the employee, any relative of the employee, any entity controlled by the employee or the employee's relatives, any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(f) Accept any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information the employee has access to by reason of employment with a System institution.

(g) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and which had been acquired by any such institution as a result of foreclosure or similar action.

(h) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution. This paragraph shall not apply to:

(1) Loan transactions between family members;

(2) Any activity in an official capacity in connection with the employing institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) Transactions in the ordinary course of business between an employee and a business proprietor who is also a borrower of the institution, in accordance with policy criteria established pursuant to § 612.2165.

(i) Violate an institution's policies and procedures governing standards of conduct.

(j) Act as a real estate agent or broker; provided that this paragraph shall not apply to:

(1) Transactions involving the purchase or sale of real estate for the employee's own account; or

(2) Persons who are employed by the institution for the sole purpose of performing real estate appraisals.

(k) Act as an agent or broker in connection with the sale and placement of insurance; provided that this paragraph shall not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2155 Employee reporting.

(a) At least annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each employee shall file a written and signed statement with the Standards of Conduct Officer that fully discloses, to the best of his or her knowledge and after reasonable inquiry, any relationship, transaction, or activity required to be disclosed by part 620 of this chapter or required to be reported by the institution's policy established pursuant to § 612.2165. If an employee was not involved in any relationship, transaction, or activity required to be reported under this section at any time during the year, the employee shall file a written and signed statement to that effect with the Standards of Conduct Officer.

(b) At least annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each employee shall file a written and signed statement with the Standards of Conduct Officer that fully discloses, to the best of his or her knowledge and after reasonable inquiry:

(1) The name of any relative or any entity controlled by a relative(s) that transacts business with the institution or any institution supervised by the institution; and

(2) The name and the nature of the business of any entity in which the employee has a financial interest and any entity on whose board the employee sits if such entity:

(i) Transacts business with the employee's institution;

(ii) Transacts business with any institution supervised by the employee's institution;

(iii) Transacts business with a borrower of the employee's institution; or

(iv) Transacts business with a borrower of any institution supervised by the employee's institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Officer.

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Officer within 1 month after being hired and thereafter shall comply with the requirements of this section.

§ 612.2157 Joint employees.

No officer of a Farm Credit Bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank may serve as an officer of an association in its district. Farm Credit Bank employees other than officers may serve as employees other than officers of an association in its district provided each institution appropriately reflects the expense of such employees in its financial statements.

§ 612.2160 Institution responsibilities.

Each institution shall:

(a) Ensure compliance with this part by its directors and employees and act promptly to preserve the integrity of and

public confidence in the institution in any matter involving a conflict of interest, whether or not specifically addressed by this part or the policies and procedures adopted pursuant to § 612.2165;

(b) Take appropriate measures to ensure that all directors and employees are informed of the regulatory requirements;

(c) Adopt policies and procedures that will preserve the integrity of and public confidence in the institution and the System pursuant to § 612.2165;

(d) Designate a Standards of Conduct Officer pursuant to § 612.2170; and

(e) Maintain all standards of conduct policies and procedures, reports, investigations, and evidence of compliance with this part for a minimum of 6 years.

§ 612.2165 Policies and procedures.

(a) Each institution's board of directors shall issue, consistent with this part, policies and procedures governing standards of conduct for directors and employees.

(b) Board policies and procedures issued pursuant to paragraph (a) of this section shall reflect due consideration of the potential adverse impact of any activities permitted under the policies and shall at a minimum:

(1) Establish such requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution shall address such issues as the hiring of relatives, political activity, devotion of time to duty, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Officer;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that was mortgage to a System institution at any time within the preceding 12 months;

(7) Establish conditions under which employees may purchase any real or personal property of a System institution acquired by such institution for its operations;

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships, or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies;

(9) Establish procedures providing for a director's or employee's recusal from official action on any matter in which he or she is prohibited from participating under §§ 612.2140(a) or 612.2150(a);

(10) Establish documentation requirements demonstrating compliance with standards of conduct decisions and board policy;

(11) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.5 of this chapter and monitor conflicts of interest; and

(12) Establish appeal procedures available to any employee to whom any required board approval has been denied.

§ 612.2170 Standards of Conduct Officer.

(a) Each institution's board shall designate a Standards of Conduct Officer who shall:

(1) Advise directors, director candidates, and employees concerning the provisions of this part;

(2) Receive reports required by this part;

(3) Maintain records of actions taken to resolve each case reported relative to provisions of this part;

(4) Make appropriate investigations, as directed by the institution's board; and

(5) Report promptly, pursuant to part 617 of this chapter, to the institution's board and the Chief Examiner, Farm Credit Administration, all cases where:

(i) A preliminary investigation indicates that a Federal criminal statute may have been violated;

(ii) An investigation results in the removal of a director or discharge of an employee; or

(iii) A violation may have an adverse impact on continued public confidence in the System or any of its institutions.

(b) The Standards of Conduct Officer shall investigate or cause to be investigated all cases involving:

(1) Possible violations of criminal statutes;

(2) Possible violations of §§ 612.2140 and 612.2150, and applicable policies and procedures approved under § 612.2165;

(3) Complaints received against the directors and employees of such institution; and

(4) Possible violations of other provisions of this part or when the activities or suspected activities are of a sensitive nature and could affect continued public confidence in the Farm Credit System.

(c) An association board may comply with this section by contracting with the Farm Credit Bank in its district to provide a Standards of Conduct Officer.

§ 612.2260 Standards of conduct for agents.

(a) Agents of System institutions shall maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and all its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law.

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

§ 612.2270 Prohibited purchase of System obligations.

(a) No president of a System bank may purchase or otherwise acquire, directly

or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

(b) No employee whose official duties involve participation or who participates in the determination of the amounts, rates, maturities, terms, or conditions of joint, consolidated, or Systemwide obligations may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

(c) No director or employee of the Federal Farm Credit Banks Funding Corporation may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

Dated: August 12, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–20042 Filed 8–18–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–26–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require modification of the belly fairing structure. This proposal is prompted by results of fatigue testing, which revealed that rivet heads were sheared off and fatigue cracks were present in the angles at the angle attachment between the keelbeam and the belly fairing support frames. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the belly fairing structure.

DATES: Comments must be received by October 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that results of fatigue testing have revealed that rivet heads were sheared off at the angle attachment between the keelbeam and the right- and left-hand belly fairing support frames after 6,000 simulated flights; fatigue cracks were also found in the angles in the same area after 33,000 simulated flights. In addition, fatigue cracks were found in the angle attachment at the shear plates between the keelbeam and the right- and left-hand belly fairing support frames after 14,000 simulated flights. These conditions, if not corrected, could result in reduced structural integrity of the belly fairing structure. Such reduced structural integrity could lead to loss of the belly fairing and consequent damage to aircraft structure or control surfaces.

Airbus Industrie has issued Service Bulletin A320–53–1014, dated June 25, 1992, and Revision 1, dated May 26, 1993, that describe procedures for modification of the belly fairing structure. The modification involves replacement of extruded angle brackets, located where the belly fairing support frames are attached to the keelbeam, with titanium angle brackets; and fastening those angle brackets with HI-LOK pins and collars. The service bulletin also describes procedures for installing redesigned shear plates with double-row riveting. Installation of this modification would increase the structural integrity of the belly fairing structure. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 92–201–030(B), dated September 30, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the belly fairing

structure. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 288 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,045 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $337,700, or $16,885 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–26–AD.

Applicability: Model A320 series airplanes; MSN 003 through 092, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the belly fairing structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings after the effective date of this AD or within 300 days after the effective date of this AD, whichever occurs later, modify the belly fairing structure in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Revision 1, dated May 26, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–20045 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–86–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require modification or replacement of designated passenger cabin floor panels. This proposal is prompted by a report that, during manufacture, the inserts that attach the floor panels to the seat tracks and floor beams were installed using sealant rather than required adhesive. The actions specified by the proposed AD are intended to prevent loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions.

DATES: Comments must be received by October 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications - Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–86–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during manufacture of certain carbon-phenolic passenger cabin floor panels by a supplier, inserts were installed using sealant rather than required adhesive. The inserts attach the floor panels to the seat tracks and floor beams. Improper installation of these inserts reduces the shear allowable for each fastener. This condition, if not corrected, could result in loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions.

The FAA has also determined that improper installation of these inserts reduces the shear allowable to the extent that the floor panel installations do not meet the 9G forward emergency landing requirements specified in the Federal Aviation Regulations (FAR).

The FAA has reviewed and approved three McDonnell Douglas MD–11 service bulletins that involve modification or replacement of the passenger cabin floor panels:

McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993, describes procedures for the first phase of modifications of designated passenger cabin floor panels by installing thin washers on upper surface locations of certain passenger cabin floor panel inserts. The service bulletin also describes an alternative to accomplishing that modification. That alternative involves replacing designated passenger cabin floor panels. This service bulletin describes procedures for modifying floor panels located in the most critical areas.

McDonnell Douglas MD–11 Service Bulletin 53–32, dated April 30, 1993, describes procedures for accomplishing a second phase of modifications or replacements in areas that are less critical than those addressed by the service bulletin discussed previously. These modifications also entail bonding thin washers at panel insert locations in order to provide an additional load path for transfer of shear between the inserts and the floor panels.

The FAA has also reviewed and approved McDonnell Douglas MD–11 Service Bulletin 53–33, dated May 17, 1993. This service bulletin applies to certain airplanes (other than those listed in the effectivity of the two service bulletins discussed above) on which the most critical floor panel areas were modified in prior to delivery. The service bulletin describes procedures for replacement of 81 designated passenger cabin floor panels.

Accomplishment of the actions described in these service bulletins will ensure that the floor panel installations can withstand a 9g forward load in the event of an emergency landing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification or replacement of designated passenger cabin floor panels. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 32 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD. The FAA has been advised that the manufacturer plans to provide required parts and to accomplish the modification at no expense to the operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 93–NM–86–AD.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas MD–11 Service Bulletins 53–31, dated January 29, 1993; 53–32, dated April 30, 1993; and 53–33, dated May 17, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the passenger cabin floor capability to support the airplane interior inertia loads under emergency landing conditions, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993: Within one year after the effective date of this AD, modify or replace the passenger cabin floor panels designated in McDonnell Douglas MD–11 Service Bulletin 53–31, dated January 29, 1993, in accordance with that service bulletin.

(b) For airplanes listed in McDonnell Douglas MD–11 Service Bulletin 53–32, dated April 30, 1993: Within five years after the effective date of this AD, modify or replace the passenger cabin floor panels designated as Phase 2 in McDonnell Douglas MD–11 Service Bulletin 53–32, dated April 30, 1993, in accordance with that service bulletin.

(c) For airplanes listed in McDonnell Douglas MD–11 Service Bulletin 53–33, dated May 17, 1993: Within five years after the effective date of this AD, replace the 81 passenger cabin floor panels designated in McDonnell Douglas MD–11 Service Bulletin 53–33, dated May 17, 1993, in accordance with that service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-20046 Filed 8-18-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 777 Re; 92F-080P]

RIN AA07

Realignment of the Northern Boundary of the Mt. Veeder Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the revision of the northern boundary of the Mt. Veeder viticultural area to include vineyard land that is similar to land in the current Mt. Veeder viticultural area which was established on February 20, 1990, by the issuance of Treasury Decision ATF-295 [55 FR 5842]. The proposed boundary revision would add approximately 360 acres, of which 30 acres are being planted to vineyards. The proposed addition to the Mt. Veeder viticultural area is located northwest of the city of Napa in Napa County, on the eastern slope of the Mayacamas Mountains, adjacent to the current northern boundary of the viticultural area.

DATES: Written comments must be received by October 4, 1993.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 777). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6300, 650 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC. 20226, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF-60 [44 FR 56692] which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. Robin Williams for a revision of the northern boundary of the Mt. Veeder viticultural area to include vineyard land that was not included when the viticultural area was established by Treasury Decision ATF-295 on February 20, 1990.

The petitioner states that the vineyards located in the proposed extension area were planted after the viticultural area was established, and he believes the omission of this area was an oversight. The petitioner points out that the proposed addition is limited in scope and he believes that the integrity and distinctive identity of the existing Mt. Veeder viticultural area is preserved. As evidence, the petitioner has presented documentation supporting the proposed boundary revision from the original petitioner for the Mt. Veeder viticultural area, the present Chairperson of the Mt. Veeder Appellation Council, and the same experts in soil and climate who reviewed the original petition.

The proposed addition to the Mt. Veeder viticultural area is located in Napa County, California, on the eastern slope of the Mayacamas Mountains that separate Napa Valley and Sonoma Valley. Situated contiguous to the northernmost boundary of the current viticultural area, the proposed addition contains approximately 360 acres, of which 30 acres are being planted to vineyards, a project the petitioner states began in 1990.

As far as can be ascertained by the petitioner, no vineyards are situated or planned north of the proposed boundary on the eastern slope of the Mayacamas Mountains for a distance of four miles, and the likelihood of new vineyards immediately north of the new boundary is remote, due to the extreme ruggedness of terrain, the difficulty of access and a lack of appropriate soils.

Evidence That the Name of the Area Is Locally or Nationally Known

The derivation of the name "Mt. Veeder," as well as evidence of the region's local and national renown, were detailed in the Mt. Veeder viticultural area petition submitted to the Bureau of Alcohol, Tobacco and Firearms in January of 1988, and summarized in the Treasury decision for the Mt. Veeder viticultural area, published in the Federal Register on February 20, 1990.

After reviewing the evidence and consulting with the original proponents of the Mt. Veeder viticultural area, the petitioner is persuaded that the dissection of Wall Road by the current viticultural area boundary was an oversight.

The petitioner believes that the area immediately adjacent to Wall Road should be included in the Mt. Veeder viticultural area, because it shares the

viticultural area's name identification and geographical features.

A statement from long-time resident Duane Wall indicates that Wall Road in its entirety (including the northern portion that extends into the proposed addition) is recognized as being part of Mt. Veeder by those who live there and the statement indicates that such recognition existed as early as the 1920's.

An article which appeared in The Napa Daily Register of March 26, 1880, tends to support Mr. Wall's statement. The article states, "At the distance of ten or eleven miles an elevated point is reached where the views of mountain masses and ridges near at hand, and of Napa Valley with the bay and Mt. Diablo in the distance, are most charming. The wooded plateau of Howell Mountain to the northeast of Napa Valley and the great mass of Mt. Veeder with its rocky and partially wooded crest and summit and its finely varied slopes descending eastward down to Dry Creek, will particularly attract the eye." The petitioner states that, "This quote shows that Mount Veeder as a regional name was associated with the slopes descending from the crest of the Mayacamas range eastward to Dry Creek, and that Dry Creek provided the northeastern and northern boundaries of the Mount Veeder region."

Additional name evidence submitted by the petitioner shows that the Mt. Veeder area does not extend beyond Dry Creek. The petitioner states that "The LaJoya quicksilver mine (originally called the Summit mine), which operated sporadically from 1865 to 1942, is located approximately 6/10 mile north of Dry Creek, yet has never been associated with the Mount Veeder region in print."

An article published in the California Journal of Mines and Geology of January, 1949, entitled, "Quicksilver Deposits of the Oakville District, Napa County, California," clearly identifies this mine with Mount St. John, not Mt. Veeder. The article states that, "The old 1,000 by 2,400-foot Summit claim was located March 27, 1865 by M.S. Whitton, C.I. Whitton, R.I. Whitton, I.M. Whitton, W.T. Whitton, W.H. Whitton, and F.I. (?) Corning of Yountville, apparently on the summit of the mountain ridge that extends northwest from Mount St. John." Moreover, the petitioner points out that the earthquake fault that runs east/west along the southern slope of Mount St. John north of the proposed boundary is known as the Mount St. John's Fault. According to the petitioner, "The use of Mount St. John as both a landmark and the name source for features immediately north of the proposed Dry Creek boundary provides solid proof that the Mount Veeder viticultural area does not extend north of Dry Creek."

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The petitioner states that, "Special care has been taken to assure that the modified boundary maintains both the historic and geographic integrity of the Mount Veeder viticultural area."

Primary access to the proposed addition is from the Mt. Veeder viticultural area by way of Wall Road. The statement from Mr. Duane Wall shows that the northern terminus of Wall Road, which the proposed revised boundary would incorporate into the Mt. Veeder viticultural area, is served by two local organizations that encompass virtually all of Mt. Veeder; the Dry Creek-Lokoya Fire District, and the Hill and Dale Club (a local social club). That these two local organizations should independently include the full length of Wall Road in their activities and memberships suggests that the current northern boundary of the Mt. Veeder viticultural area was drawn too conservatively according to the petitioner.

The proposed expansion of the Mount Veeder viticultural area is supported by vintners and growers currently within the viticultural area. The petition contains a letter from Mr. Donald Hess and Mr. Clement Firko of The Hess Collection, the winery that led the effort to establish the Mt. Veeder viticultural area in 1988, and Ms. Ariel Rubissow, chairperson of the Mount Veeder Appellation Council. These letters reflect the general support that this proposed boundary revision has received from within the Mt. Veeder viticultural community.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

According to the petitioner, the proposed addition to the Mt. Veeder viticultural area contains the same geographical features that distinguish the viticultural area as currently established. The geographical elements of soil, climate, elevation and exposure found in the proposed addition to the Mt. Veeder viticultural area are detailed and compared to those in the current viticultural area in two reports submitted with the petition and discussed below. Both reports were prepared by the same experts who studied and reported on Mt. Veeder in the initial rulemaking. As such, the experts are already familiar with the geographic features of the present viticultural area and have the best possible background to compare and contrast the proposed addition.

The soil report on the proposed addition to the Mt. Veeder viticultural area was prepared by Eugene L. Begg. Mr. Begg has been a member of the California Soil Survey Committee since 1974 and has reviewed new and revised soil series descriptions for the National Cooperative Soil Survey since 1970. Mr. Begg's writings on soil and vegetation have been widely published. He has served as an expert consultant on a variety of soil matters in both regulatory hearings and legal cases.

The climatic overview of the proposed viticultural area addition was prepared by Michael Pechner. Since 1968, Mr. Pechner has headed Golden West Meteorology of Fairfield, California. In that capacity, he has served as staff meteorologist for KCBS Radio in San Francisco, weather consultant for KTW Television in Oakland and consulting meteorologist for Associated Press in San Francisco.

Soils

The petitioner indicates that the proposed northern extension boundary is a line of demarcation between different soil compositions and of aspect (*i.e.*, direction of the slope) and slope. A review of the supplemental information in T.D. ATF–295, indicates that the soil discussion basically focused on two points. First, it focused on the differences between the soils of the Napa Valley and the proposed Mt. Veeder area. Second, it discussed in detail the soil differences between the northeast slope towards Napa County and the southwestern slope towards Sonoma County. None of the soil discussion in the supplemental information directly applied to the northern boundary. The background information supporting the original petition does state:

> "The soils of the proposed viticultural area are much different from the deep, alluvial soils of Napa Valley proper and the Los Carneros region and are equally differentiated from the soils in Sonoma Valley and to the north by geology and composition."

(Page 18 of original petition.)

However, as noted, this reference to the "north" was not carried over into the supplemental information. Additionally, this reference to the north was included in the "Conclusion" portion of the original petition and the

more lengthy soil portion of the original petition does not clearly drew this distinction (pages 11–14 of original petition). Thus, the following soil evidence for the proposed addition is not in direct conflict with the substantive soil information in the original petition or the description in the supplemental information in T.D. ATF–295.

The soils in the proposed addition are residual upland soils from Pliocene volcanic rocks (andesite and rhyolite) and Cretaceous sedimentary rocks (sandstone and shales). All the soils in the proposed addition are mapped in the Mt. Veeder viticultural area. These soils are: Boomer-Forward-Felta complexes, from andesite and rhyolite; Hambright-Rock Outcrop, from basic volcanic rocks; and Bressa-Dibble complexes and Maymen-Los Gatos complexes, from sandstone and shales. The Boomer-Forward-Felta and Maymen-Los Gatos extend from the original viticultural area into the proposed addition.

Because the soils in the proposed addition are also mapped in the Mt. Veeder viticultural area, locations appropriate to grapes have the soils with the same moderate depth to bedrock (30 to 60 inches) and the same limited available water holding capacity (four to ten inches) as those in the current viticultural area.

In the area beyond the boundary of the proposed addition to the north and northeast, a greater degree of dissection and downcutting has entirely removed the volcanic capping of andesites and rhyolites to expose a large area of serpentine and older sandstone and shales of the Franciscan formation. The soils formed from serpentine are Henneke, while those from sandstone and shales are Bressa, Dibble, Felton, Lodo, Los Gatos, Maymen and Millsholm. The soils from sedimentary rocks are also mapped in the Mt. Veeder viticultural area and the proposed addition, but in these areas, they are formed from younger sandstone and shales of the Cretaceous formation. With the exception of one small pocket of Henneke soils located near its southwestern boundary, no serpentine soils are mapped in the current Mt. Veeder viticultural area.

Aspect and Slope

In addition to geologic differences, the current Mt. Veeder viticultural area and the proposed addition contrast sharply from land to the north and northeast in matters of aspect and slope. The aspect of the Mt. Veeder viticultural area proper and the proposed addition is generally east-to-northeasterly, far different from the generally southerly aspect of the land beyond the proposed revised boundary. The slopes to the north of the proposed revised boundary are also significantly steeper (30 percent to more than 70 percent) than those found in the current Mt. Veeder viticultural area or its proposed addition, a difference which increases the speed of runoff and associated erosion. The differences in aspect and slope in the land north of the proposed revised boundary are reflected in soils that are shallower and drier, with very different associated vegetation.

Climate

The proposed addition's upland location on the eastern slope of the Mayacamas Mountains and range of elevations within the proposed addition area are consistent with the current Mt. Veeder viticultural area. Both areas share the same characteristic cool, moist winters and warm, dry summers. Due to the similarity in location and relief, both areas also experience the same natural temperature inversion where the minimum temperature is higher than that on the floor of the Napa Valley during the summer and winter. This inversion keeps the proposed addition, as well as the currently approved Mt. Veeder viticultural area, relatively frost free during the spring, when grape vines emerge from dormancy.

The location and elevation also give the proposed addition the same rainfall profile as the current Mt. Veeder viticultural area. In describing the climate of the current Mt. Veeder viticultural area, T.D. ATF–295 states, "The region receives more rainfall than the land east, south and north of it due to the terrain forcing the moist air masses of winter storms upward as they move inland along a southeasterly path from the coast, causing condensation." This is the only climatic statement expressly concerning the northern boundary. A review of the background material in the rulemaking file on T.D. ATF–295, suggests that this comment is a very general comment about the rainfall in the proposed area and was not intended to mean that the proposed northern boundary was a specific demarcation point for a change in the rainfall pattern (pages 15–17 of original petition).

The amount of rainfall throughout the current Mt. Veeder viticultural area varies significantly (that is, 25–65 inches of winter rainfall), so rainfall was not a major distinguishing factor in drawing the original boundaries of the area. Based on isohetal maps of Napa Valley, rainfall in the proposed addition averages roughly 40 inches per year, well within the range of average annual rainfall found within the current Mt. Veeder viticultural area. Thus, the proposed boundary extension does not conflict with the previous climate data.

The predominantly eastern and northeastern exposures within the proposed addition are similar to those in the current Mt. Veeder viticultural area. Such exposures enable the proposed addition area to support the same mixed hardwood (oak, madrone, and laurels) and conifer (douglas fir and redwood) forest found in the current Mt. Veeder viticultural area at similar elevations.

In sharp contrast to the land in the proposed addition, the region immediately north of the proposed boundary, on the slopes of Mount St. John and the ridge extending northeast from Mount St. John to the main crest of the Mayacamas Mountains, has primarily southern exposures. The microclimate created by this southern exposure, distinguished by warmer temperatures and lower humidities than those found in the current Mt. Veeder viticultural area or the proposed addition, has resulted in quite different vegetation, dominated by brush and digger pine.

Summary of Geographic Features

In summary, the residual upland soils in the proposed addition are the same sedimentary and volcanic types found in the current Mt. Veeder viticultural area. The soils are characterized by their moderate depth to bedrock and limited water holding capacity. The soils in the current viticultural area and the proposed addition are differentiated from soils found to the north of the proposed boundary by geology, composition, depth and vegetation.

The climate in the proposed addition is consistent with that in the current Mt. Veeder viticultural area, with the same cool, moist winters and warm, dry summers. Due to the similarity of location and relief, the proposed addition experiences the same natural inversion as the current viticultural area, which keeps both relatively frost free during the spring, when grape vines emerge from dormancy and set their crop. The average annual rainfall in the proposed addition is likewise within the range found in the current Mt. Veeder viticultural area.

The current Mt. Veeder viticultural area and the proposed addition both have predominantly eastern and northeastern exposures, which support a mixed hardwood and conifer forest. In contrast, the land to the north of the proposed addition has a predominantly southern exposure, with a microclimate of warm temperatures and low

humidities that is reflected in very different vegetation, primarily brush and digger pine.

Public Participation-Written Comments

ATF requests comments from all interested persons. Specifically, ATF wishes to solicit comments on whether the name "Mt. Veeder" is locally or nationally known as referring to the proposed area of extension.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Any benefit derived by a small proprietor from the new options provided in this rule will be the result of the proprietor's own promotional efforts and consumer acceptance of the specific product. No new reporting, recordkeeping or other administrative requirements are imposed by this rule. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Disclosure

Copies of this notice and any written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.123 is amended by removing paragraphs (c)(1) and (c)(9) through (c)(11) and adding new paragraphs (c)(1) and (c)(9) through (c)(12) to read as follows:

§ 9.123 Mt. Veeder

* * * * *

(c) * * *

(1) Beginning at unnamed peak, elevation 1,820, on the common boundary between Napa County and Sonoma County in Section 23, Township 7 North, Range 6 West, Mount Diablo Base and Meridian on the Rutherford, Calif. U.S.G.S. map;

* * * * *

(9) Thence northwesterly along Dry Creek through Sections 3 and 4 of Township 6 North, Range 5 West, and Sections 32 and 31 of Township 7 North, Range 5 West, to the fork of Dry Creek near the center of Section 25 of Township 7 North, Range 6 West;

(10) Continuing along the northern fork of Dry Creek through Sections 25 and 24 of Township 7 North, Range 6 West, to the point at which the main channel of Dry Creek ends and divides into three tributaries;

(11) Thence following the middle tributary of Dry Creek through Sections 24 and 23 of Township 7 North, Range 6 West, to its source at the intersection with a trail indicated on the map;

(12) Thence following a straight line west approximately 1/10 mile to the top of unnamed peak, elevation 1,820, the beginning point.

Signed: August 12, 1993.

Stephen E. Higgins,

Director.

[FR Doc. 93–19998 Filed 8–18–93; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–93–054]

Drawbridge Operation Regulations; York River, Yorktown, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Virginia Department of Transportation, the Coast Guard is considering changing the regulations that govern the operation of the George P. Coleman Memorial drawbridge across York River, mile 7.0, at Yorktown, Virginia, by restricting bridge openings during the morning and evening rush hours to all vessel traffic. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before October 4, 1993.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street,

Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–93–054) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. A. Abel, Project Counsel, Legal Office.

Background and Purpose

The Virginia Department of Transportation has requested that peak morning and evening vehicular traffic period openings of the George P. Coleman Memorial drawbridge across the York River, mile 7.0, at Yorktown, Virginia, be restricted to help reduce rush hour highway traffic congestion. Currently, the Coleman Bridge opens for vessel traffic on demand. The Coast Guard is proposing to restrict the passage of vessels during rush hours by eliminating bridge openings between the hours of 6 a.m. to 8 a.m. and 3 p.m. to 6 p.m., Monday through Friday, except Federal holidays, year round. Vessels in an emergency shall pass at any time. The draw shall open on signal at all other times.

The Virginia Department of Transportation completed a study of traffic volumes at this drawbridge which showed that the weekday peak vehicular traffic occurred from 6 a.m. to 8 a.m. and 3 p.m. to 6 p.m., Monday through Friday, except Federal holidays. A traffic count was conducted on July 11, 1991, and on April 20, 1993. On July 11, 1991, 3,711 vehicles crossed the bridge during the morning rush hour and 5,882 vehicles crossed during the evening rush hour. On April 20, 1993, 4,195 vehicles crossed the bridge during the morning rush hour and 7,383 crossed during the evening rush hour. Because of the obvious increase in highway traffic between 1991 and 1993, draw openings have been causing lengthy highway traffic backups and extensive delays to motorists.

The drawlogs provided by the Virginia Department of Transportation revealed that the only vessels requiring drawbridge openings during the morning and evening rush hours were commercial and military vessels. Most recreational vessels do not require a bridge opening due to the 60-foot vertical clearance offered by the Coleman bridge.

The drawlogs also revealed that for 1992, the bridge opened on an average of 12 times per month. So far in 1993, the bridge has opened five times a month from January to mid-May. Based on these figures, the Coast Guard believes these proposed regulations will not unduly restrict commercial/military vessels passage through the bridge since they can plan their vessel transits around the restricted hours of operation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1025 is added to read as follows:

§ 117.1025 York River.

(a) The Coleman Memorial bridge, mile 7.0, at Yorktown, shall open on signal; except that from 6 a.m. to 8 a.m. and 3 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge shall remain closed to navigation. (b) The bridge shall be opened at anytime for vessels in an emergency

which presents danger to life or property.

Dated: August 9, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–20115 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93–197; FCC 93–327]

Revisions to Price Cap Rules for AT&T

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on whether the Commission should revise its rules for the price cap regulation of AT&T. The revisions under consideration could have the effect of removing price limits from some competitive services and revising Commission monitoring of AT&T service quality and network reliability. These revisions would be intended to improve the price cap plan, for example by removing unneeded regulation and targeting productivity gains to customers of standard long distance services.

EFFECTIVE DATE: Comments shall be filed on or before September 21, 1993; Reply comments shall be filed no later than October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Tariff Division, Common Carrier Bureau, (202) 632–6387.

SUPPLEMENTARY INFORMATION: On July 23, 1993, the Commission released a Notice of Proposed rulemaking (NPRM), proposing revisions to AT&T price cap plan. In this proceeding we request the submission of additional data and comment on four possible revisions to the AT&T price cap plan. These are: (1) Moving Optional Calling Plans such as ReachOut out of AT&T's Basket 1; (2) moving commercial service out of Basket 1; (3) clarifying or revising the monitoring and reporting of AT&T service quality and network reliability, including its Equipment Blockage and Failure report; and (4) revising the price cap treatment of the 800 Directory Assistance service remaining in basket 2 and the analog private line services remaining in basket 3.

This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No. 93–197 [FCC 93–327), adopted June 24, 1993. The full text of the item is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) of the Federal Communications Commission 1919 M Street, NW., Washington, DC 20554. The complete text of this NPRM may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Regulatory Flexibility Act: We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The rules at issue in this rulemaking apply only to AT&T Communications, a large corporation. The incidental effects on the interstate long distance rates and services AT&T provides to small business entities is not likely to be significant. The secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

It is ordered that AT&T shall commission and cooperate fully with a comprehensive audit of all data relating to its Equipment Blockage and Failure Indexes from its inception in 1989 to the present. The audit report shall specify the correct Index data and evaluate the reasons for any revisions to the data by AT&T, including the revisions described in this Notice, and AT&T's explanations for such revisions. The auditor shall also evaluate the basis for any changes in the method used for computing the Indexes, or any other changes AT&T has made or proposes to make that might affect the consistency and comparability of Index data from the initiation of the Index to the present. Any original and four copies of the audit report shall be filed as part of AT&T's comments in this docket.

List of Subjects in CFR part 61

Communications common carriers; Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–20007 Filed 8–18–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 159
Thursday, August 19, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 13, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Human Nutrition Information Service

Continuing Survey of Food Intakes by Individuals (CSFII)

On occasion

Individuals or households; 15,480 responses; 7,740 hours

Lori Borrud (301) 436–8485

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–20109 Filed 8–18–93; 8:45 am]

BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 93–007N]

Exemption for Retail Stores; Adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the dollar limitations currently in effect on the annual sales of meat and poultry products that can be sold by retail stores exempt from Federal inspection requirements to consumers other than household consumers, such as hotels, restaurants and similar institutions, have been adjusted to conform with price changes for meat and poultry products as indicated by the Consumer Price Index. The dollar limitation for meat products decreases from $38,300 to $37,800 for calendar year 1993 and the dollar limitation for poultry products remains at $33,100 for calendar year 1993.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–8168.

Background

Federal inspection of meat and poultry products prepared for sale or distribution in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) state that the general requirement of routine Federal inspection "* * * shall not apply to operations of types traditionally and usually conducted at retail stores * * * when conducted at any retail store * * * for sale in normal retail quantities * * * to consumers * * *."

FSIS regulations (9 CFR 303.1(d) and 381.10(d)) define retail stores that qualify for exemption from routine Federal inspection under the FMIA or PPIA. Under the regulations, for an establishment to be an exempt retail establishment depends, in part, upon the percentage and volume of its trade with consumers other than household consumers, such as hotels, restaurants and similar institutions. Accordingly, the Federal meat and poultry products inspection regulations state in terms of dollars the maximum amount of meat and poultry products which may be sold to nonhousehold consumers if the establishment is to remain an exempt retail establishment. During calendar year 1992, the maximum amount for meat products was $38,300; for poultry products, the amount was $33,100.

The Federal meat and poultry products inspection regulations (9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*)) further provide that the dollar limitation on product sales by retail stores to consumers other than household consumers will be automatically adjusted during the first quarter of each calendar year whenever the Consumer Price Index, published by the Bureau of Labor Statistics (BLS), Department of Labor, indicates a change during the previous year in the price of the same volume of product exceeding $500, upward or downward. The regulations also require that notice of the adjusted dollar limitation be published in the **Federal Register**.

The BLS Consumer Price Index for 1992 indicates an average annual price decrease in meat products of 1.4 percent and an average annual price decrease in poultry products of 0.1 percent. When rounded off to the nearest $100, the price decrease for meat products amounts to $500 and the price decrease for poultry products amounts to $33. As a percentage of the existing dollar limitation, a change of $500 is indicated for meat products only.

Accordingly, FSIS, in accordance with §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, has automatically raised the dollar limitation of permitted sales of meat products from $38,300 to $37,800 and maintained the dollar limitation of permitted sales for poultry products at $33,100.

Done at Washington, DC, on: August 13, 1993.

H. Russell Cross,

Administrator.

[FR Doc. 93–20080 Filed 8–18–93; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Swamp Ridge Timber Sale; Clearwater National Forest, Clearwater County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of an environmental impact statement.

SUMMARY: The original Notice of Intent was published in the **Federal Register** Volume 54, Number 118, page 26067 on June 21, 1989. This Notice serves to inform you of our plans to suspend further work on the Final Environmental Impact Statement for the Swamp Ridge timber sale which was to be published in September 1993. The primary reasons for suspending further work are cited below:

Ecosystem analysis for Swamp Ridge shows that the area has a unique and limited landform. This is the most mature and stable landform on the Forest and has created a unique pattern of vegetation.

The Swamp Ridge area contains an island of cedar-type old growth habitat rare on the North Fork District as well as the entire Clearwater National Forest. This island is a result of past historical catastrophic fire patterns and harvest activities on adjacent Forest Service and private lands.

The Swamp Ridge area plays a very important part in the overall role of ecosystems health in this particular region. Ecosystem analysis indicates that the Swamp Ridge area should remain unchanged when viewed in the larger landscape of the North Fork Clearwater River.

FOR FURTHER INFORMATION CONTACT: Nancy Miller, Swamp Ridge Project Coordinator, or Arthur S. Bourassa, District Ranger, North Fork Ranger District, Clearwater National Forest, P.O. Box 2139, Orofino, ID 83544, (208) 476–3775.

The responsible official is the Forest Supervisor of the Clearwater National Forest.

Dated: August 11, 1993.

Bert Kulesza,

Acting Forest Supervisor, Clearwater National Forest.

[FR Doc. 93–20094 Filed 8–18–93; 8:45 am]

BILLING CODE 3410–11–M

Oil and Gas Leasing Analysis, Helena National Forest and Deerlodge National Forest, Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher Counties; Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; revision of notice of intent to prepare an environmental impact statement.

SUMMARY: A notice of intent was published in the **Federal Register** (57 FR 56900) on Tuesday, December 1, 1992, stating that an environmental impact statement (EIS) would be prepared for the proposal to offer certain portions of the Helena and Deerlodge National Forests for oil and gas lease. Lands under consideration are located on the Helena National Forest, and that portion of the Deerlodge National Forest which is located in the Elkhorn Mountains range. That Notice of intent is revised to include the Bureau of Land Management as a joint lead agency on this project, rather than as a cooperating agency. The Bureau of Land Management participation as a joint lead agency will include the use of Bureau staff in conducting interdisciplinary analysis and preparing needed documentation.

DATE: This action is effective August 19, 1993.

ADDRESSES: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, MT. 59601; and Robert H. Lawton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. 36800, Billings, MT 59107–6800.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Environmental Analysis Team Leader, Helena National Forest, as above, or phone: (406) 499–5201.

Dated: August 11, 1993.

Thomas J. Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 93–20104 Filed 8–18–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will be held from 7 p.m. to 8:30 p.m. on September 16, 1993, at the Tongas Suite, Westmark Hotel, 51 West Egan Drive, Juneau, Alaska 99801. The purpose of this meeting is to be briefed on issues to be discussed at the forum on September 17, 1993. The Committee will convene the forum at 9 a.m. and adjourn at 5 p.m. on September 17, 1993, at the Centennial Hall, Sheffield Ballroom #3, 101 Egan Drive, Juneau, Alaska 99801. The purpose of the forum is to collect information on Federal and State civil rights enforcement efforts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rosalee Walker or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 12, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–20043 Filed 8–18–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–815, A–580–816)

Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Breck Richardson, Karin Price, or Ed Haley, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0648, 482–3782, and 482–4273, respectively.

FINAL DETERMINATIONS: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 21, 1993, the Department made its final determinations that certain hot-rolled carbon steel products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel products

(corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV) (58 FR 37125, July 9, 1993).

After publication of these determinations, respondents in these investigations, Pohang Iron and Steel Company, Ltd. and Dongkuk Steel Mill Company, Ltd., and petitioners alleged that the Department committed certain ministerial errors in calculating the final margins. In response to these allegations, the Department, on August 2, 1993, published an amended final determination to correct the alleged errors that we agree are ministerial clerical errors (58 FR 41083).

Scope of Orders

The products covered by these investigations constituted four separate "classes or kinds" of merchandise: Hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate. However, as explained below, the scope of these antidumping duty orders covers only two "classes or kinds" of merchandise (*i.e.*, cold-rolled steel and corrosion-resistant steel). The full description of the cold-rolled steel products covered by these orders is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993). The corrosion-resistant steel products covered include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Antidumping Duty Orders

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled steel and steel plate from Korea neither materially injure nor threaten to materially injure the U.S. industry. In its final determination, the International Trade Commission (ITC) found that clad plate constitutes a separate like product from corrosion-resistant steel. The ITC found no material injury or threat of injury to the U.S. industry for clad plate based on the absence of imports of clad plate from Korea. Clad plate consists of clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to hot-rolled steel, steel plate, and clad plate from Korea.

In addition, the ITC notified the Department that an industry in the United States is threatened with material injury by reason of imports of cold-rolled steel from Korea. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of cold-rolled steel from Korea, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies, therefore, all unliquidated entries or warehouse withdrawals, for consumption of cold-rolled steel from Korea made on or after the date of publication in the **Federal Register** of ITC's final affirmative determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before the date of publication in the **Federal Register** of ITC's final affirmative determination, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will also direct U.S. customs officers to assess, upon further advice by the administering authority pursuant to section 7365(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of cold-rolled steel from Korea, entered or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of ITC's final affirmative determination. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below.

The ITC also notified the Department that imports of corrosion-resistant steel from Korea materially injure the respective U.S. industries producing the like products. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of corrosion-resistant steel (except for clad plate) from Korea. These antidumping duties will be assessed on all unliquidated

entries of corrosion-resistant steel (other than clad plate) from Korea entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 7095). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Cold-Rolled Steel:	
Pohang Iron and Steel Company	14.44
All Others	14.44
Corrosion-resistant Steel:	
Pohang Iron and Steel Company	17.70
All Others	17.70

This notice constitutes the antidumping duty orders with respect to cold-rolled steel and corrosion-resistant steel from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20032 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–602–803]

Antidumping Duty Order: Certain Corrosion-Resistant Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner and Sally Craig Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

Scope of Orders

The products covered by these investigations, (i.e., certain corrosion-resistant carbon steel flat products), constitute one single "class or kind " of merchandise. The corrosion-resistant steel products covered include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of corrosion-resistant steel flat products from Australia materially injure the respective U.S. industries. In its final determination, the International Trade Commission (ITC) found that clad plate constitutes a separate like product from corrosion-resistant steel. Clad plate consists of clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. The ITC found no material injury or threat of injury to the U.S. industry for clad plate based on the absence of imports of clad plate from Australia. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to clad plate.

In accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain corrosion-resistant carbon steel flat products (other than clad plate) from Australia. These antidumping duties will be assessed on all unliquidated entries of certain corrosion-resistant carbon steel flat products from Australia entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 37079). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percentage
BHP	24.96
All Others	24.96

This notice constitutes the antidumping duty order with respect to certain corrosion-resistant carbon steel flat products from Australia pursuant to section 736(a) of the Act. Interested

parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20028 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–822, A–122–823]

Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Eric Hassman, Elizabeth Patience, Daniel Miller, or Jane Siegel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

Scope of Orders

The products covered by these investigations constituted four separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. However, as explained below, the antidumping duty orders for Canada cover only two "classes or kinds" of merchandise: corrosion-resistant steel and steel plate. The full description of the steel plate products covered by these orders is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993). The corrosion-resistant steel products covered include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Antidumping Duty Orders

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled steel and cold-rolled steel from Canada neither materially injure nor threaten to injure the U.S. industry. In its final determination, the International Trade Commission (ITC) found that clad plate constitutes a separate like product from corrosion-resistant steel. Clad plate consists of clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. The ITC also found that the absence of imports of clad plate from Canada precluded an affirmative determination of material injury or threat of injury to the U.S. industry. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to hot-rolled steel, cold-rolled steel, and clad plate.

The ITC also notified the Department that imports of corrosion-resistant steel and steel plate from Canada materially injure the respective U.S. industries. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of corrosion-resistant steel and steel plate from Canada. These antidumping duties will be assessed on all unliquidated entries of corrosion-resistant steel and steel plate from Canada entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 7095). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Corrosion-resistant Steel:	
Dofasco	10.89
Stelco	28.27
All Others	22.29
Steel Plate:	
IPSCO	1.47
Stelco	58.70
All Others	61.95

Several parties have alleged that the Department's final determinations contained ministerial errors which should be corrected. However, on July 9, 1993, the Department received a request for binational panel review of its determinations pursuant to 19 U.S.C. 1516a, and article 1904 of the United

States-Canada Free-Trade Agreement. By operation of the rule in *Zenith Electronics Corp.* v. *United States*, 844 F.2d 556 (Fed. Cir. 1989), which applies to this case through Rule 2 of the Rules of Procedure for Article 1904 Binational Panel Reviews, the Department does not have jurisdiction to correct ministerial errors at this time.

This notice constitutes the antidumping duty orders with respect to corrosion-resistant steel and steel plate from Canada, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20023 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–824]

Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Jacques and Jim Rice, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

Scope of Orders

The products covered by these investigations (i.e., certain corrosion-resistant carbon steel flat products) constitute one single "class or kind" of merchandise. The corrosion-resistant steel products covered include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Antidumping Duty Orders

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled carbon steel flat products and cold-rolled carbon steel flat products from Japan neither materially injure nor threaten to injure the U.S. industry. In its final determination, the International Trade Commission (ITC) found that clad plate constitutes a separate like product from corrosion-resistant steel. Clad plate consists of clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. The ITC found that imports of clad plate from Japan are not materially injuring, or threatening to injure materially, an industry in the United States. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to clad plate.

The ITC also notified the Department that imports of corrosion-resistant steel flat products from Japan materially injure the respective U.S. industries. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain corrosion-resistant carbon steel flat products other than clad plate from Japan. These antidumping duties will be assessed on all unliquidated entries of certain corrosion-resistant carbon steel flat products from Japan entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 37079). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percentage
Kawasaki	36.41
Nippon	36.41
All Others	36.41

This notice constitutes the antidumping duty order with respect to certain corrosion-resistant carbon steel flat products from Japan pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20037 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–803, A–423–804, A–423–805]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3003 and 482–0186, respectively.

AMENDED FINAL DETERMINATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 21, 1993, the Department made its final determination that certain cut-to-length carbon steel plate (steel plate) from Belgium is being, or is likely to be, sold in the United States at less than fair value (LTFV) (58 FR 37083, July 9, 1993).

After publication of this determination, petitioners alleged that a ministerial error was committed with respect to the calculation of profit for respondent Fabrique de Fer de Charleroi (FFC), when constructed value was used as the basis for foreign market value (FMV). (See memorandum from Richard W. Moreland to Barbara R. Stafford dated July 28, 1993). FFC submitted comments indicating that the Department's profit calculation used in the final determination did not constitute a "ministerial error" as defined by 19 CFR 353.28(d). In addition, as a result of the examination of clerical error allegations in the concurrent German investigation of Thyssen, the Department determined that there was a computer programming error which caused certain home market sales to be used twice and others to be excluded in the calculation of weighted-average home market prices. Similar programming errors affected both Belgian respondents, FFC and S.A. Forges de Clabecq (Clabecq).

We have determined that the alleged ministerial error was committed with respect to the calculation of profit for FFC, and have recalculated FFC's profit based on the class or kind of merchandise under investigation. We also corrected the computer programming errors for both FFC and Clabecq.

We have amended the final determination of steel plate to correct for these ministerial errors. With respect to FFC, the amended final margin percentage is 13.31 percent, the amended margin for Clabecq remained the same at 6.78 percent, and the amended "all others" rate changed to 6.84 percent.

Scope of Investigation and Order

The product covered by this investigation and order is certain steel plate, as fully described in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled steel and cold-rolled steel neither materially injure nor threaten to injure the U.S. industry. Therefore, we are instructing the U.S. Customs Service that any cash deposits or bonds collected with respect to hot-rolled steel and cold-rolled steel from Belgium should be released or refunded.

The ITC also notified the Department that imports of steel plate from Belgium materially injure the respective U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the FMV of the merchandise exceeds the United States price for all entries of steel plate from Belgium. These antidumping duties will be assessed on all unliquidated entries of steel plate from Belgium entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determination in the **Federal Register** (58 FR 7113). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Steel Plate:	
Clabecq	6.78
FFC	13.31
All Others	6.84

This notice constitutes the antidumping duty order with respect to steel plate from Belgium, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20024 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–817]

Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC. 20230; telephone (202) 482–3793 or telefax (202) 482–1388.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate, as fully described in Appendix I of the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37064—July 9, 1993).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended ("the Act"), the International Trade Commission ("ITC") notified the Department that imports of certain hot-rolled, cold-rolled, and corrosion-resistant carbon steel flat products from Brazil neither materially injure nor threaten to injure the U.S.

industry. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to certain hot-rolled, cold-rolled, and corrosion-resistant carbon steel flat products.

The ITC also notified the Department that imports of certain cut-to-length carbon steel plate from Brazil materially injure a U.S. industry. Therefore, in accordance with sections 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain cut-to-length carbon steel plate from Brazil. These antidumping duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Brazil entered, or withdrawn from warehouse, for consumption, on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average dumping margins listed below.

Producer/manufacturer/exporter	Weighted-average margin percentage
COSIPA	109.00
USIMINAS	42.08
All Others	75.54

This notice constitutes the antidumping duty order with respect to certain cut-to-length carbon steel plate from Brazil pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20029 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–405–802]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Finland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0108 or (202) 482–4136, respectively.

AMENDED FINAL DETERMINATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 21, 1993, the Department made its final determination that certain cut-to-length carbon steel plate (steel plate) from Finland is being, or is likely to be, sold in the United States at less than fair value (LTFV) (58 FR 37122, July 9, 1993).

After publication of this determination, and as a result of the examination of clerical error allegations in the concurrent German investigation of Thyssen, the Department determined that there was a computer programming error which caused certain home market sales to be used twice and others to be excluded in the calculation of weighted-average home market prices (see memorandum from Richard W. Moreland to Barbara R. Stafford dated July 27, 1993).

We are amending the final results of the antidumping duty investigation of steel plate to correct for this ministerial error in the calculations for Rautaruukki. The correct steel plate margin percentage for Rautaruukki and the "all others" rate is 32.80.

Scope of Investigation and Order

The product covered by this investigation and order is certain cut-to-length carbon steel plate, as fully described in Appendix I of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37064 (July 9, 1993)).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) notified the Department that imports of certain cut-to-length carbon steel plate from Finland materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain cut-to-length carbon steel plate from Finland. These antidumping duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Finland entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margin as follows:

Producer/manufacturer/exporter	Margin percentage
Rautaruukki Oy	32.80
All Others	32.80

This notice constitutes the antidumping duty order with respect to certain cut-to-length carbon steel plate from Finland pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20030 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–809]

Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Gerry Zapiain or Derek Parks, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793 or telefax (202) 482–1388.

Scope of Order

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: Cut-to-length carbon steel plate (steel plate) and corrosion-resistant carbon steel flat products (corrosion-resistant steel). However, as explained below, the antidumping duty order we are issuing for Mexico covers only one "class or kind" of merchandise, cut-to-length steel plate. The full description of steel plate products covered by this order is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of corrosion-resistant steel flat products from Mexico neither materially injure nor threaten to injure the U.S. industry. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to corrosion-resistant carbon steel flat products from Mexico.

The ITC notified the Department that imports of steel plate from Mexico materially injure the respective U.S. industries. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of steel plate from Mexico. These antidumping duties will be assessed on all unliquidated entries of steel plate entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 7095). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Cut-to-Length Carbon Steel Plate:	
AHMSA, S.A. de C.V.	49.25
All Others	49.25

This notice constitutes the antidumping duty order with respect to steel plate, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20036 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–455–802]

Antidumping Duty Order and Initiation of Changed Circumstance Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Poland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0161 or 482–0656, respectively.

Scope of Order and Review

The product covered by this order and review is certain cut-to-length carbon steel plate (steel plate), as fully described in Appendix I of the Antidumping Duty Order: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Argentine Steel), which is being published concurrently with this notice.

Period of Review

A new cash deposit rate will be calculated in the changed circumstance antidumping duty administrative review (administrative review) using a market economy analysis of sales made during the same period examined in the investigation (January 1 through June 30, 1992).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) notified the Department that imports of steel plate from Poland materially injure a U.S. industry. The ITC also notified the Department that critical circumstances do not exist with respect to the subject merchandise. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to take the following action with respect to the subject merchandise: (1) Release any bonds or other securities pertaining to, and liquidate all entries of, the subject merchandise that were entered, or withdrawn from warehouse, before February 4, 1993, for which liquidation was suspended solely as a result of this proceeding; and (2) assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value exceeds the United States price. These antidumping duties will be assessed on all unliquidated entries of steel plate from Poland entered or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margin as follows:

Manufacturer/Producer/Exporter	Margin percentage
All Exporters	61.98

This notice constitutes the antidumping duty order with respect to steel plate from Poland, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Changed Circumstance Antidumping Duty Administrative Review

In our final determination concerning steel plate from Poland, we summarized our findings that recent changes in Poland's economy indicated that, by 1992, Polish domestic prices were

market driven. Therefore, we reversed our previous determinations that Poland was a nonmarket economy country (NME), pursuant to section 771(18)(C) of the Act.

However, because of the lack of verified information and time, the Department was unable to conduct a market economy analysis for the final determination. Instead, the Department based its final determination on the NME factors of production methodology and stated its intention of recalculating a new deposit rate in an administrative review providing that the ITC issued an affirmative final injury determination with respect to steel plate from Poland, and the Department issued an antidumping duty order.

The Department has determined that the reversal of Poland's NME status is sufficient to warrant an administrative review, pursuant to 19 CFR 353.22(f) of the Department's regulations and section 751(b)(1) of the Act. We also have determined that the facts presented in this case constitute good cause for conducting a changed circumstance administrative review, pursuant to 19 CFR 353.22(f)(3) of the Department's regulations. We are hereby notifying the public of our initiation of an administrative review on steel plate from Poland.

This determination is published pursuant to section 751(b)(1) of the Act.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20035 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–803]

Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0922 or (202) 482–1769, respectively.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate, as fully described in Appendix I of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37064 (July 9, 1993)).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) notified the Department that imports of certain cut-to-length carbon steel plate from Romania materially injure a U.S. industry. The ITC also notified the Department that critical circumstances do not exist with respect to the subject merchandise. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to take the following action with respect to the subject merchandise: (1) Release any bonds or other securities pertaining to, and liquidate all entries of, the subject merchandise that were entered, or withdrawn from warehouse, before February 4, 1993, for which liquidation was suspended solely as a result of this proceeding; and (2) assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value exceeds the United States price. These antidumping duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Romania entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margin as follows:

Producer/manufacturer/exporter	Margin percentage
Metalexportimport SA	75.04
All Others	75.04

This notice constitutes the antidumping duty order with respect to certain cut-to-length carbon steel plate from Romania pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20026 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–469–803]

Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0108 or (202) 482–4136, respectively.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate, as fully described in Appendix I of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37064 (July 9, 1993)).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of certain cut-to-length carbon steel plate from Spain materially injure the U.S. industry. The ITC also notified the Department that critical circumstances do not exist with respect to the subject merchandise. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to take the following action with respect to the subject merchandise: (1) Release any bonds or other securities pertaining to, and liquidate all entries of, the subject merchandise that were entered, or withdrawn from warehouse, before February 4, 1993, for which liquidation was suspended solely as a result of this proceeding; and (2) assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value exceeds the United States price. These antidumping duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Spain entered, or withdrawn from warehouse, for

consumption on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margin as follows:

Producer/manufacturer/exporter	Margin percentage
Ensidesa	105.61
All Others	105.61

In a separate, concurrent flat-rolled steel investigation, the ITC also notified the Department that imports of certain cold-rolled steel flat products (cold-rolled steel) neither materially injure nor threaten to injure the U.S. industry. Therefore, we are instructing the U.S. Customs Service that any cash deposit or bond collected with respect to cold-rolled steel from Spain should be released or refunded.

This notice constitutes the antidumping duty order with respect to certain cut-to-length carbon steel plate from Spain pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20034 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–805]

Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0922 or (202) 482–1769, respectively.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate, as fully described in Appendix I of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37064 (July 9, 1993)).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) notified the Department that imports of certain cut-to-length carbon steel plate from Sweden materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain cut-to-length carbon steel plate from Sweden. These antidumping duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margin as follows:

Producer/manufacturer/exporter	Margin percentage
Svenskt Staal ABC	24.23
All Others	24.23

This notice constitutes the antidumping duty order with respect to certain cut-to-length carbon steel plate from Sweden pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20025 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–814]

Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Scope of Order

The product covered by this order is certain cut-to-length carbon steel plate, as fully described in Appendix I of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37064 (July 9, 1993)).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) notified the Department that imports of certain cut-to-length carbon steel plate from the United Kingdom materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain cut-to-length carbon steel plate from the United Kingdom. These antidumping duties will be assessed on all unliquidated entries of certain cut-to-length carbon steel plate from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its affirmative preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margin as follows:

Producer/manufacturer/exporter	Margin percentage
British Steel plc	109.22
All Others	109.22

This notice constitutes the antidumping duty order with respect to certain cut-to-length carbon steel plate from the United Kingdom pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20033 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–806, A–427–807, A–427–808, A–427–809]

Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Jennifer Katt, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777 and 482–0498, respectively.

AMENDED FINAL DETERMINATIONS: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 21, 1993, the Department made its final determinations that certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from France are being, or are likely to be, sold in the United States at less than fair value (LTFV) (58 FR 37125, July 9, 1993).

After publication of these determinations, respondent in these investigations, Usinor Sacilor (Usinor), and petitioners alleged that the Department committed certain ministerial errors in calculating the final margins.

We have determined that ministerial errors were committed with respect to the allegations of both Usinor and petitioners. For a detailed discussion of these errors, see the memorandum from Barbara R. Stafford to Joseph A. Spetrini dated July 23, 1993, and memorandum from Gary Taverman to Richard W. Moreland dated August 12, 1993.

We are amending the final results of the antidumping duty investigations of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate to correct these ministerial errors in the calculations for Usinor. The correct hot-rolled margin percentage for Usinor and the "all others" rate is 80.56. For cold-rolled steel, the correct margin percentage for Usinor and the "all others" category is 78.68. The correct corrosion-resistant steel margin percentage for Usinor and for the "all others" category is 39.40. For steel plate, the correct margin percentage for Usinor and the "all others" rate is 52.76.

Scope of Investigations and Order

The products covered by these investigations constituted four separate "classes or kinds" of merchandise: hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate. However, the scope of the antidumping duty order covers only the corrosion-resistant steel described below. The full description of the hot-rolled, cold-rolled, and steel plate investigated is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993).

The corrosion-resistant products subject to the Department's antidumping order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000.

Included in the order are corrosion-resistant flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled steel, cold-rolled steel, and steel plate from France neither materially injure nor threaten to injure the U.S. industries producing like products.

In its final determination, the ITC found that clad plate constitutes a separate like product from corrosion-resistant steel. Clad plate is described in the section on scope, above. The ITC also found that the imports of clad plate from France neither materially injure nor threaten to injure the U.S. industry producing the like product. Therefore, we are instructing the U.S. Customs Service to release or refund any cash

deposit or bond collected with respect to hot-rolled steel, cold-rolled steel, steel plate, or the referenced clad plate products.

The ITC also notified the Department that imports of corrosion-resistant steel, other than the referenced clad plate products, from France materially injure the U.S. industry producing the like product. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of corrosion-resistant steel, other than clad plate, from France. These antidumping duties will be assessed on all unliquidated entries of corrosion-resistant steel, other than clad plate, from France entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 7095). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Corrosion-resistant Steel producer/manufacturer/exporter	Weighted-average margin percentage
Usinor Sacilor	39.40
All Others	39.40

This notice constitutes the antidumping duty order with respect to corrosion-resistant steel from France, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20038 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–813, A–428–814, A–428–815, A–428–816]

Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Cynthia Thirumalai, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2613 and 482–4087, respectively.

AMENDED FINAL DETERMINATIONS: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 21, 1993, the Department made its final determinations that certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV) (58 FR 37136, July 9, 1993).

After publication of these determinations, two respondents in these investigations (*i.e.*, AG der Dillinger Huttenwerke (Dillinger) for steel plate, and Thyssen Stahl AG (Thyssen) for cold-rolled and corrosion-resistant steel) alleged that the Department committed certain ministerial errors in calculating their final margins. We have determined that ministerial errors were committed with respect to both Dillinger and Thyssen (see company-specific memoranda from Richard W. Moreland to Barbara R. Stafford dated July 27, 1993 (Dillinger) and July 26, 1993 (Thyssen)). For Dillinger, the Department failed to conduct an extended period of time test, as required, with respect to below-cost home market sales of products for which over 90% of sales were at prices below their cost of production. For Thyssen, the Department improperly deducted certain indirect selling expenses twice in the calculation of the United States price for sales with in-house further manufacturing. For both Dillinger and Thyssen, a computer programming error caused some home market sales to be used twice in the calculation of weighted-average home market prices and caused other sales to be excluded.

We are amending the final results of the antidumping duty investigations of cold-rolled steel, corrosion-resistant steel and steel plate to correct these ministerial errors in the calculations for Dillinger and Thyssen. The correct steel plate margin percentage for Dillinger and the "all others" category is 36.00. For cold-rolled steel, the correct margin percentage for Thyssen is 16.56, and for the "all others" category is 19.03. The correct corrosion-resistant steel margin percentage for Thyssen and for the "all others" category is 4.18.

Scope of Orders

The products covered by these investigations constituted four separate "classes or kinds" of merchandise: hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate. However, as explained below, the antidumping duty orders cover only three "classes or kinds" of merchandise (*i.e.*, cold-rolled steel, corrosion-resistant steel and steel plate). The full description of the cold-rolled steel and steel plate products covered by these orders is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993). The corrosion-resistant steel products covered include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000,

7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000.

Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Antidumping Duty Orders

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled steel from Germany neither materially injure nor threaten to injure the U.S. industry. In its final determination, the International Trade Commission (ITC) found that clad plate constitutes a separate like product from corrosion-resistant steel. The ITC found no material injury or threat of injury to the U.S. industry for clad plate based on the absence of imports of clad plate from Germany. Clad plate consists of clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Therefore, we are instructing the U.S. Customs Service to release or refund any cash deposit or bond collected with respect to hot-rolled steel and clad plate.

In addition, the ITC notified the Department that an industry in the United States is threatened with material injury by reason of imports of cold-rolled steel from Germany. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of cold-rolled steel from Germany, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies, therefore, all unliquidated entries or warehouse withdrawals, for consumption of cold-rolled steel from Germany made on or after the date of publication in the **Federal Register** of ITC's final affirmative determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before the date of publication in the **Federal Register** of ITC's final affirmative determination, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will also direct U.S. customs officers to assess, upon further advice by the administering authority pursuant to section 7365(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of cold-rolled steel from Germany, entered or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of ITC's final affirmative determination. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below.

The ITC also notified the Department that imports of corrosion-resistant steel and steel plate from Germany materially injure the respective U.S. industries producing the like products. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of corrosion-resistant steel (except for clad plate), and steel plate from Germany. These antidumping duties will be assessed on all unliquidated entries of corrosion-resistant steel (other than clad plate) and steel plate from Germany entered, or withdrawn from warehouse, for consumption on or after February 4, 1993, the date on which the Department published its preliminary determinations in the **Federal Register** (58 FR 7095). Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Cold-rolled steel producer/manufacturer/exporter	Weighted-average margin percentage
Klöckner Stahl GmbH	23.54
Thyssen Stahl AG	16.56
All Others	19.03

Corrosion-resistant steel producer/manufacturer/exporter	Weighted-average margin percentage
Thyssen Stahl AG	4.18
All Others	4.18

Steel plate producer/manufacturer/exporter	Weighted-average margin percentage
Dillinger Hüttenwerke	36.00
All Others	36.00

This notice constitutes the antidumping duty order with respect to cold-rolled steel, corrosion-resistant steel and steel plate from Germany, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20031 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A-421-803, A-421-804]

Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 and 482-1769, respectively.

FINAL DETERMINATIONS: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 21, 1993, the Department made its final determinations that certain hot-rolled carbon steel flat products (hot-rolled steel) and certain cold-rolled carbon steel flat products (cold-rolled steel) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (58 FR 37199, July 9, 1993).

After publication of these determinations, we determined that ministerial errors were committed with respect to the computer programming utilized for home market sales-below-cost of production analysis (see memorandum from Jeffery B. Denning to Lou Apple dated August 10, 1993). In each of the investigations, the Department's computer programming error caused certain home market sales to be used twice and others to be excluded in the calculation of weighted-average home market prices.

We are amending the final results of the antidumping duty investigations of hot-rolled steel and cold-rolled steel to correct these ministerial errors in the calculations for Hoogovens Groep B.V., the sole respondent in these investigations. The correct hot-rolled margin percentage for Hoogovens and the "all others" rate is 30.53. For cold-rolled steel, the correct margin percentage for Hoogovens and the "all others" category is 20.19.

Scope of Investigations and Order

The products covered by these investigations constituted two separate "classes or kinds" of merchandise: hot-rolled steel and cold-rolled steel. However, as explained below, the scope of the antidumping duty order covers one "class or kind" of merchandise. The full description of the subject merchandise is included in Appendix I to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, July 9, 1993).

Antidumping Duty Order

On August 9, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that imports of hot-rolled steel from the Netherlands neither materially injure nor threaten to injure the U.S. industry. Therefore, we are instructing the U.S. Customs Service that any cash deposit or bond collected with respect to hot-rolled steel from the Netherlands should be released or refunded.

In addition, the ITC notified the Department that an industry in the United States is threatened with material injury by reason of imports of cold-rolled steel from the Netherlands. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of cold-rolled steel from Germany, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies, therefore, all unliquidated entries or warehouse withdrawals, for consumption of cold-rolled steel from Netherlands made on or after the date of publication in the **Federal Register** of the ITC's final affirmative determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before the date of publication in the **Federal Register** of the ITC's final affirmative determination, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will also direct U.S. customs officers to assess, upon further advice by the administering authority pursuant to section 7365(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of cold-rolled steel from the Netherlands, entered or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of the ITC's final affirmative determination. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Cold-rolled steel producer/manufacturer/exporter	Weighted-average margin percentage
Hoogovens Groep, B.V.	20.19
All Others	20.19

This notice constitutes the antidumping duty order with respect to cold-rolled steel from the Netherlands, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-20027 Filed 8-17-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 081393B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee will meet on September 1, 1993, at the Airport Ramada Inn, 76 Industrial Highway, Essington, PA; telephone: (215) 521-9600. The meeting will begin at 10 a.m.

This is the Committee's Annual meeting to prepare management recommendations for summer flounder for 1994.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: August 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20072 Filed 8–18–93; 8:45 am]

BILLING CODE 3510–22–P–M

[I.D. 081393A]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Crab Plan Team (CPT) will meet on August 26, 1993, at the Fishery Observer Training Center, 707 "A" Street, Anchorage, AK; and the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Plan Teams (GABS/AIGPT) will meet on September 7, 1993, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., in room 2079, Building 4, Seattle, WA.

Crab Fishery Management Plan Team (CPT)

The CPT meeting will begin at 10 a.m. and conclude at 5 p.m. The CPT will review proposals received for changes in crab fishery management in the Bering Sea and Aleutian Islands as well as discuss research priorities and receive a presentation on the Council's comprehensive planning program for groundfish and crab fisheries. This meeting may be held by teleconference if few proposals are received. Please call before planning to attend. Contact: Brent Paine on (907) 271–2809.

Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Plan Teams (Teams)

The Teams' meeting will begin on September 7 at 1 p.m. and continue through September 10. The Teams will review available stock assessments and catch statistics and begin preparation of preliminary stock assessment documents for the 1994 season; review any proposals received for changes in groundfish management in the Gulf of Alaska and Bering Sea/Aleutian Islands; and review research priorities if time permits.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK; 99510, telephone: (907) 271–2809.

Dated: August 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20073 Filed 8–18–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 876 (P552A).

SUMMARY: On June 17, 1993, notice was published in the **Federal Register** (58 FR 33434) that a request for a scientific research permit to take marine mammals had been submitted by Mr. Michael T. Williams, University of Alaska Fairbanks, Department of Biology and Wildlife, 417 Irving Building, Fairbanks, AK 99775. This request was to tag and observe up to 100 breeding female fur seals (*Callorhinus ursinus*) during 1993 (50 each from North and South Rookeries on St. George Island, AK). Up to 500 seals of various ages and sexes (200 from South Rookery and 300 from North Rookery on St. George Island, AK), could potentially be harassed incidental to tagging and observational activities.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 13, 1993, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations (50 CFR part 215), NMFS issued the requested permit for the above activities subject to special conditions set forth therein.

Dated: August 13, 1993.

Gary Matlock,

Acting Deputy Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–20049 Filed 8–18–93; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 23 September 1993 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 13 August 1993.

Charles H. Atherton,

Secretary.

[FR Doc. 93–20103 Filed 8–18–93; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Extension of the Scoping Period for the Environmental Impact Statement on the Disposal and Reuse of Homestead AFB, FL

The United State Air Force has extended the scoping comment period for the Environmental Impact Statement on the Disposal and Reuse of Homestead AFB, Florida published in the **Federal Register** on 20 July 1993 (58 FR 38751). The scoping period has been extended to 28 Sep 93 in order to provide additional opportunity for the public to provide input on issues to be considered in the EIS. To allow the public more time to prepare comments, the public scoping meeting originally scheduled for 17 Aug 93 has been rescheduled for 14 Sep 93. The exact meeting time and location will be announced through the local news media at a later date.

The Air Force will consider comments throughout the environmental analysis process. Interested persons seeking further information concerning the disposal and reuse of Homestead AFB or wish to provide written comments on environmental issues to be considered for inclusion in the EIS should contact Lt. Col. Gary P. Baumgartel, AFCEE/

ESE, 8106 Chennault Road, Brooks AFB, TX 78235–5318

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–20142 Filed 8–18–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shippers Agents

AGENCY: Military Traffic Management Command, DOD

ACTION: Notice.

SUMMARY: 32 CFR part 619, Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shipper Agents, has been forwarded to the Federal Register for printing as a Final Rule.

This notice announces full implementation by the Military Traffic Management Command (MTMC) of the Final Rule for the Freight Carrier Qualification Program (CQP).

This notice also constitutes final notification. MTMC notified carriers in 1992, by certified letter, to comply with the freight CQP. However, there are some carriers doing business for the DOD who are not qualified. Any carrier not complying will be removed from participation in the transportation of DOD freight shipments. Carriers will be approved in the CQP only after the required documentation has been approved by Headquarters MTMC.

DATES: *Effective Date:* August 19, 1993.

Compliance Date: September 20,1993.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: Office of the Assistant Deputy Chief of Staff for Operations-Quality, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Wirtz, HQMTMC, (703) 756–1393.

SUPPLEMENTARY INFORMATION: Carriers should submit their application packages to the appropriate area command (Bayonne, NJ (Eastern Area) or Oakland, CA (Western Area)) based on the location of the carrier's headquarters. If additional applications are needed, please contact the appropriate area command:

Bayonne, NJ: (201) 823–7146, Mr. Mike Welikey or Ms. Jody Patterson.

Oakland, CA: (520) 466–3062/2908/2317, Ms. Iris Miller or Mr. Ralph Joe.

Any carrier not complying will be placed in an inactive status. The point of contact for HQ MTMC is Mr. Rick Wirtz at (703) 756–1393.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–20091 Filed 8–18–93; 8:45 am]

BILLING CODE 3710–08–M

Patents Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents. Any licenses granted shall comply with 35 USC 209 and 37 CFR part 404.

Issued patent	Title	Issued date
5,232,732	Dry Soup Mix	08/03/93

ADDRESSES: Commander, Natick Research, Development and Engineering Center, Office of Research and Technology, Kansas Street, Natick, MA 01760–5014.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans (508) 654–5296.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–20095 Filed 8–18–93; 8:45 am]

BILLING CODE 3710–08–M

Prospective Partially Exclusive Licenses

AGENCY: U.S. Army Communications-Electronics Command, DOD.

NOTICE: Notice of Prospective Partially Exclusive Licenses.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective partially exclusive licenses for U.S. Patent Numbers 4,749,966 and 4,754,237.

DATES: October 18, 1993.

ADDRESSES: Commander, U.S. Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, (908) 532–4112, E-mail anderson@doim6.monmouth-emh3.army.mil.

SUPPLEMENTARY INFORMATION: U.S. Patent Number 4,749,966, filed July 1, 1987, entitled, "Millimeter Wave Microstrip Circulator," and issued to Stern et al on June 7, 1988 and U.S. Patent Number 4,754,237, filed September 21, 1987, entitled "Switchable Millimeter Wave Microstrip Circulator," and issued to Stern et al on June 28, 1988 was assigned to the United States of America, as represented by the Secretary of the Army. Accordingly, under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army, as represented by the Army Research Laboratory, intends to grant partially exclusive licenses for the above identified U.S. Patents to Princeton Microwave Technology, Inc., 2032 Nottingham Way, Mercerville, New Jersey 08619 and Electromagnetic Applications, Inc., 300 Commercial Street, Unit 805, Boston, Massachusetts 02109.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file written objections to these prospective partially exclusive license agreements. Written objections should be directed to the address above.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–20096 Filed 8–18–93; 8:45 am]

BILLING CODE 3710–08–M

Defense Nuclear Agency (DNA)

Membership of the Defense Nuclear Agency; Performance Review Board

AGENCY: Department of Defense, Defense Nuclear Agency.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DNA PRB is on or about 1 September 1993.

FOR FURTHER INFORMATION CONTACT: D. Dial-Alfred, Workforce Effectiveness Branch (CVWE), Defense Nuclear Agency, Washington, DC 20305–1000, (703) 325–7593.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRB are set forth below. All are

DNA officials unless otherwise identified:

Dr. George W. Ullrich, Deputy Director
Dr. E. John Ainsworth, Scientific Director
Mr. Robert L. Brittigan, General Counsel
Ms. Lindsey W. Williams, Senior Advisor for Measurement and Signature Intelligence, Office of Assistance Secretary of Defense
Mr. Curtis L. Dierdorff, Director of Personnel, Defense Mapping Agency

The following DNA officials will serve as alternate members of the DNA PRB, as appropriate:

Dr. Paul H. Carew, Comptroller
Mr. Frederick S. Celec, Deputy Director for Operations
Mr. David G. Freeman, Director, Acquisition Management Office
Dr. Kent L. Goering, Chief, Structural Dynamics Division
Mr. Richard L. Gullickson, Chief, Electromagnetic Applications Division
Mr. Joseph W. LaComb, Chief, Nevada Operations Office
Dr. Don A. Linger, Director for Test
Mr. Clifton B. McFarland, Jr., Director for Shock Physics
Mrs. Joan Ma Pierre, Director for Radiation Sciences
Dr. Michael J. Shore, Chief, Weapons Effects Division
Mr. Robert C. Webb, Chief, Electronic Effects Division
Dr. Leon A. Wittwer, Chief, Atmosphere Effects Division

Dated: August 13, 1993.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19999 Filed 8–18–93; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army
Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for San Clemente Creek, Marin County Shoreline Study, Town of Corte Madera, Marin County, CA

AGENCY: U.S. Army Corps of Engineers, San Francisco District, DOD.
ACTION: Notice of intent.

SUMMARY: Proposed Action. The Corps of Engineers, San Francisco District, has been authorized by the Water Resources Development Act of 1986 (WRDA 1986), and the Committee of Public Works and Transportation of the U.S. House of Representatives, Docket No. 2252, August 8, 1984, to investigate the flood and related problems of those lands lying below the plain of mean higher high water along the San Francisco Bay shoreline in the Town of Corte Madera, Marin County, California. The Corps of Engineers has completed the Reconnaissance Study and Environmental Assessment and is proceeding to the Feasibility Study and Draft Environmental Impact Statement (DEIS) planning stage.

The Corps of Engineers, as the lead agency under the National Environmental Policy Act (NEPA), will prepare a Draft Environmental Impact Statement as part of the feasibility studies. The local sponsor, Town of Corte Madera, is the lead agency under the California Environmental Quality Act (CEQA).

ADDRESSES: San Francisco District Corps of Engineers, 211 Mail Street, San Francisco, California 94105–1905.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hyde, (415) 744–3039.

SUPPLEMENTARY INFORMATION: The Reconnaissance Study and Environmental Assessment identified seven possible project Alternatives. The conclusion of these studies was a recommendation that three Alternatives and the No Action Alternative be further investigated during the Feasibility Study and Draft Environmental Impact Statement phase of the NEPA process. These Alternatives are discussed below.

The purpose of the Draft Environmental Impact Statement and Feasibility Study is to investigate tidal and related fluvial flooding problems within the San Clemente Creek drainage ba sin in the vicinity of Corte Madera, Marin County, California.

The study area includes two residential subdivisions known as Mariner Cove and Marina Village. The subdivisions are located in the low lying areas of Corte Madera east of U.S. Highway 101 and north of Paradise Drive. These areas face a flood hazard that is caused by either an extreme rainstorm coinciding with high tides in San Francisco Bay, or by extreme storm surges and coincident high tides.

Other physical processes exacerbate the flood; damage potential in the subdivisions and adjacent areas. Subsidence of the land surface in the subdivisions is occurring due to ongoing consolidation of the underlying bay muds. Sea level rise is increasing the total height of high tides and storm surges in San Francisco Bay. Construction of the subdivisions disrupted the natural equilibrium of sediment flows between San Clemente Creek and the bay, increasing siltation of the creek channel. This siltation has restricted the creek's flood storage capacity and navigability. The combined effects of these processes expose the area to greater flood damage potential.

The Reconnaissance Study identified potential solutions to the flooding problems and determined a Federal interest in proceeding to the Feasibility Phase. The Feasibility Study will examine the following possibilities as alternative solutions:

Alternatives

—Tidal barrier with tide gate. This alternative provides an offshore barrier and tide gate. Levee raising, pump stations and/or dredging for storage would also be included as part of the plan. This alternative would provide an optimum degree of flood protection primarily by controlling tidal and fluvial flows.
—Tidal barrier with lock structure. This alternative provides an offshore barrier, navigation lock and raising levees. A navigation lock is used instead of a tide barrier. The storage capacity and navigability of San Clemente Creek would be increased. This is the locally preferred alternative. There are two interior storage choices within this alternative, one which would not pond Marta's marsh, a tidal marsh adjacent to San Clemente Creek and northward, and another which would result in periodic ponding of Marta's Marsh. This alternative would provide an optimum degree of flood protection and improve navigation in San Clemente Creek.
—Modified tide gate. This utilizes a system of floodwalls and improved levees in conjunction with a tide gate on San Clemente Creek. This alternative would provide an optimum degree of flood protection.
—The No Action alternative is the study area without a Federal project.

Environmental Issues

The Environmental Assessment prepared during the Reconnaissance identified the following environmental significant issues associated with the DEIS:

Endangered species impacts
Wetland impacts and mitigation
Water quality impacts
Aquatic resources (including dredging and disposal) impacts
Socioeconomic impacts
Navigation impacts
Transportation impacts
Air quality impacts
Recreational impacts
Esthetic impacts
Visual impacts

Scoping: The U.S. Army Corps of Engineers, San Francisco District, and

the Town of Corte Madera, with the support of the Marin County Flood Control and Water Conservation District, invite federal, state, and local agencies and members of the public to provide comments on the proposed project. A public scoping meeting has been scheduled for Thursday, September 29, 1993, in San Clemente School Mulipurpose Room, 330 Golden Hinde Passage, Town of Corte Madera, California at 7 pm. Scoping comments should clearly describe specific environmental issues or subjects which the commentor wishes to be addressed. Written comments should be mailed no later than Friday, October 15, 1993, to Ms. Linda Hyde, Corps of Engineers, San Francisco District, Environmental Branch, 211 Main Street, room 918, San Francisco, California 94105–1905.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 93–20092 Filed 8–18–93; 8:45 am]

BILLING CODE 3710–SF–M

DEPARTMENT OF ENERGY

Office of the Deputy Secretary

Contract Reform Team; Announcement of Public Meetings

AGENCY: Department of Energy (DOE).

ACTION: Notice of Public Stakeholder Meetings.

SUMMARY: As part of its Contract Reform Team initiative, DOE is planning to conduct a series of public stakeholder meetings to solicit the views and opinions of interested persons concerning DOE's current contracting policies and practices, with special emphasis on management and operating contracts, environmental restoration and management contracts, and support services contracts. The purpose of the public stakeholder meetings is to gather views, opinions, and information that may be considered by the Contract Reform Team in the development of its findings and recommendations to the Secretary of Energy on ways in which DOE could improve the award and administration of its contracts.

DATES AND ADDRESSES: Meetings will be conducted at locations on, or near, major DOE field sites and in Washington, DC. Individuals or organizations interested in participating in the public stakeholder process, but unable to attend these meetings, may submit their written views, opinions, or other information by September 30, 1993. Meeting locations, dates, and points of contact for each meeting are as follows:

Location	Date(s)	Point of contact/telephone number
Oakland, CA	Sept. 14, 1993	John Bellaurdo/510–637–1809.
Las Vegas, NV	Sept. 15, 1993	Chris West/702–295–3521.
Richland, WA	Sept. 15, 1993	Robert Larson/509–376–7272.
Idaho Falls, ID	Sept. 15, 1993	Dennis Hurtt/208–526–8101.
Chicago, IL	Sept. 16, 1993	Gary Pitchford/708–252–2420.
Washington, DC	Sept. 23, 1993	Robert Porter/202–586–6503.
Albuquerque, NM	Sept. 23, 1993	LeRoy Apodaca/505–845–5163.
Knoxville, TN	Sept. 24, 1993	Peter Dayton/615–576–0795.
Aiken, SC	Sept. 27, 1993	Rick Ford/803–725–2889.

FOR FURTHER INFORMATION CONTACT: Information concerning the specific location(s) and times for each of the public stakeholder meetings is available by contacting the point of contact listed above.

SUPPLEMENTARY INFORMATION:

1. *Background.* On May 26, 1993, Secretary of Energy Hazel R. O'Leary announced her intention to establish a Contract Reform Team, headed by the Deputy Secretary, to review the Department's contracting mechanisms and practices. The Contract Reform Team is charged with a review of a broad range of contracting issues involving the management and operation of its production facilities and national laboratories, support services, and environmental restoration activities in the face of the changing priorities of the Department. The Contract Reform Team will recommend specific administrative, financial, and legislative improvements to contracting mechanisms and practices that are intended to increase contractor accountability, stimulate competition, and simplify administration.

2. DOE is seeking public input on the following specific issues: A. Current DOE contracting policies and practices with respect to management and operating contracts; environmental restoration and management contracts, and support services contracts;

B. Recommendations for improving overall DOE contract policies and practices in areas such as basic research, applied research, defense programs and environmental restoration. DOE is interested in public comments regarding all areas of possible improvement to its contract policies and practices concerning the operation of its production and laboratory facilities. Three key issues are of particular interest:

(i) *Enhancing competition in contracting.* Changes to the current contract practices, policies, and relationships that would attract a more diverse universe of potential contractors and encourage greater contractor accountability and commitment.

(ii) *Criteria for measurement of contractor performance.* Different measurement factors (including cost effectiveness) could be used to determine the success of a contractor's performance in light of the objectives and scope of the contract, the type of contract instrument, and the organizational structure of the contractor. Because of the changing priorities in DOE's mission, new approaches to measuring contract performance may be needed to improve the operation of DOE's production and laboratory facilities.

(iii) *Performance incentives for profit and nonprofit organizations.* Because of the relationship that exists between performance measurement and performance incentives, consideration must be given to the types of incentives that could be used by DOE to motivate contractor performance. Inducements to encourage a contractor to successfully perform a contract may differ, depending on the business form of the contractor. For example, the amount of profit or fee paid under a contract may be considered sufficient motivation to bring about successful performance, when the performing party to the contract is a for-profit concern.

Conversely, not-for-profit or nonprofit organizations, because they are not paid a traditional profit or fee, may be motivated to successfully perform under a contract because of the opportunity to attract top scientific and educational talent, peer recognition and prestige, and possible collaborative efforts. Along this continuum, other possible incentive arrangements may exist that could be used to motivate successful contractor performance.

C. Recommendations for improving DOE policies and practices on specific issues under consideration by the Contract Reform Team: indirect costs; indemnification; procurement and financial management; Federal oversight of contractors; and, use of support services contracts.

3. Public stakeholder meetings will be conducted by senior officials of DOE. Participants who wish to present views, opinions, or information, generally will be limited to five minutes each. However, the exact format and amount of time available to each presenter to express their views, opinions, or information will be determined by the DOE officials conducting the meeting. In addition, if time is available after all participants have made their initial presentations, participants may be provided with another opportunity to present additional views, opinions, or information. These senior officials may, at their discretion, ask questions or make other inquiries of presenters to ensure that DOE fully understands the views, opinions, or information expressed by the presenter. Participants also may present written statements for the record at the meeting. Written statements should not exceed five double-spaced, single-sided typed pages.

4. Individuals or organizations interested in participating in the public stakeholder process, but unable to attend these meetings, may submit their written views, opinions, or other information by September 30, 1993. Written statements should not exceed five double-spaced, single-sided typed pages. Those unable to attend should consult the appropriate point of contact for the local address to which written statements should be sent.

5. A written transcript of the proceedings of each public stakeholder meeting will be taken. Written transcripts and any written statements submitted to the Department of Energy by interested members of the public will be made available for public review at the Department of Energy Public Reading Room located in Room 1E190 at 1000 Independence Avenue, SW., Washington, DC 20585, as soon as practical after conclusion of each public stakeholder meeting. Documents will be available for review between the hours of 9 a.m. and 4 p.m. on normal business days. In addition, the written transcript and any written statements submitted to the Department of Energy for an individual meeting location will be made available for public review at the Public Reading Room associated with the Department of Energy Operations Office in closest proximity to the location at which the public stakeholder meeting was held.

6. DOE does not intend to issue subsequent notices in the **Federal Register** concerning these public stakeholder meetings. DOE, however, will issue local announcements and provide other information in advance of individual public stakeholder meetings. These announcements and other information will be provided by the points of contact responsible for specific public stakeholder meetings.

Issued in Washington, DC, on August 16, 1993.

William White,

Deputy Secretary, Department of Energy.

[FR Doc. 93–20089 Filed 8–18–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–460–000, et al.]

Niagara Mohawk Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Docket No. ER93–760–000]

August 12, 1993.

Take notice that on August 6, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a letter requesting that the Commission defer consideration of its July 2, 1993 amendment to Rate Schedule No. 165 until such time as it can file a supplemental settlement regarding its agreement in principal for the rate update for New York State Electric & Gas Corporation.

Copies of this filing were served upon the Public Service Commission of the State of New York and the New York State Electric and Gas Company.

Comment date: August 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Ebensburg Power Co.

[Docket Nos. QF86–1074–004 and QF86–1074–005]

August 12, 1993.

On July 28, 1993, Ebensburg Power Company of 20 South Van Buren Avenue, P.O. Box 351, Barberton, Ohio 44203, submitted for filing an application requesting dual recertification of a facility as both a qualifying cogeneration and a small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility and small power production facility will be located in Cambria County, Pennsylvania, was previously certified as a qualifying cogeneration facility, *Babcock & Wilcox Company, Inc.*, 37 FERC ¶ 62,213 (1986). A notice of self-certification was filed on December 18, 1986 and a second notice of self-certification was filed on November 17, 1987. The facility was certified as a qualifying small power production facility on November 28, 1988, 45 FERC ¶ 62,174 (1988). The instant request for recertification is due to a change in the ownership structure of the facility.

Comment date: September 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Electric Co.

[Docket No. ER93–846–000]

August 12, 1993.

Take notice that on August 4, 1993, Pennsylvania Electric Company (PEC) tendered for filing revised copies of Supplement No. 1 in this docket.

Comment date: August 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Freehold Cogeneration Associates, L.P.

[Docket No. QF93–95–000]

August 12, 1993.

On August 10, 1993, Freehold Cogeneration Associates, L.P. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. ER93–412–000]

August 12, 1993.

Take notice that on August 9, 1933, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereafter jointly "NSP") tendered for filing a Second Amendment to its initial filing in Docket No. ER93–412–000. This Second Amendment contains a Second Revised Original Sheet No. 200 to the NSP Companies FERC Electric Tariff, Original Volume 1, and certain corrected cost support.

NSP again requests that its proposed Order 84 rate be accepted for filing effective May 1, 1993, or in the alternative August 15, 1993, and requests waiver of the Commission's notice requirements in order for the rate to be accepted for filing on the date requested.

Comment date: August 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. East Syracuse Generating Co., L.P.

[Docket No. QF91–147–001]

August 12, 1993.

On August 4, 1993, East Syracuse Generating Company, L.P. of 7475 Wisconsin Avenue, Suite 1000, Bethesda, Maryland 20814–3422, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. The instant request for recertification is due to changes in the ownership structure of the facility. No determination has been made that the submittal constitutes a complete filing.

According to the applicant the topping-cycle cogeneration facility located in the East Syracuse, New York, was previously certified as a qualifying cogeneration facility, East Syracuse Generating Company, L.P., 57 FERC ¶62,064 (1991).

Comment date: September 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Northampton Generating Co., L.P.

[Docket No. QF87–452–002]

August 12, 1993.

On August 11, 1993, Northampton Generating Company. L.P. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its small power production facility. No determination has been made that the submittal constitutes a complete filing.

Comment date. August 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Cogentrix of North Carolina, Inc.

[Docket No. QF85–147–003]

August 12, 1993.

On August 3, 1993, Cogentrix of North Carolina, Inc. of, 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273–8110 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. The instant request for recertification is due to a change in ownership and an increase in the capacity of the facility. No determination has been made that the submittal constitutes a complete filing.

According to the applicant the topping-cycle cogeneration facility located in Roxboro, North Carolina, was previously certified as a qualifying cogeneration facility, Cogentrix of North Carolina, Inc., 30 FERC ¶ 62,261 (1985). The facility was recertified on March 15, 1988, General Electric Credit Corporation, et al. (Roxboro Facility), 42 FERC ¶ 62,209 (1988). A notice of self-certification was filed on January 8, 1990 (Docket No. QF85–147–002).

Comment date: September 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Cogentrix of North Carolina, Inc.

[Docket No. QF85–145–004]

August 12, 1993.

On August 3, 1993, Cogentrix of North Carolina, Inc. of, 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273–8110 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. The instant request for recertification is due to a change in ownership and an increase in the capacity of the facility. No determination has been made that the submittal constitutes a complete filing.

According to the applicant the topping-cycle cogeneration facility located in Southport, North Carolina, was previously certified as a qualifying cogeneration facility, Cogentrix of North Carolina, Inc., 30 FERC ¶ 62,263 (1985). The facility was recertified on July 26, 1985, Cogentrix of North Carolina, Inc., 32 FERC ¶ 62,233 (1985), and on March 15, 1988, General Electric Credit Corporation, et al. (Southport Facility), 42 FERC ¶ 62,210 (1988). A notice of self-certification was filed on January 8, 1990 (Docket No. QF85–145–003).

Comment date: September 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Co.

[Docket No. ER93–623–000]

August 13, 1993.

Take notice that on August 9, 1993, Montaup Electric Company tendered an amendment to its original filing in the above named docket to place a cap of $11.65 per kilowatt per year on the price that can be charged for transmission service under the formula rate appended on the contract. The amendment was made at the request of Staff.

Comment date. August 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Idaho Power Co.

[Docket No. ER93–842–000]

August 13, 1993.

Take notice that on August 2, 1993 Idaho Power Company (IPC) tendered for filing the Agreement for Transmission and Firming Services between IPC and Portland General Electric Company. The Agreement has a term of three years and IPC has requested an effective date of this rate schedule of October 1, 1993.

Comment date: August 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Montaup Electric Co.

[Docket No. ER93–624–000]

August 13, 1993.

Take notice that on August 9, 1993, Montaup Electric Company tendered an amendment to its original filing in the above named docket to place a cap of $11.65 per kilowatt per year on the price that can be charged for transmission service under the formula rate appended to the contract. The amendment was made at the request of Staff.

Comment date: August 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power & Light Co.

[Docket No. ER93–847–000]

August 13, 1993.

Take notice that on August 6, 1993, Pennsylvania Power & Light Company (PP&L) tendered for filing as an initial rate schedules borderline service agreements with Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec) and Philadelphia Electric Company (PECO). In accordance with the Commission's recently announced policy on the filing of jurisdictional service agreements, PP&L requests the Commission to make these service agreements effective as of

Comment date: September 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

the date of filing. PP&L states that the borderline sales are based on state commission approved retail rates.

PP&L states that copies of the filing were served on Met-Ed, Penelec and PECO.

Comment date: August 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Otter Tail Power Co.

[Docket No. ER93–590–000]

August 13, 1993.

Take notice that on August 9, 1993, Otter Tail Power Company (OTP) tendered for filing on behalf of itself an amendment to its July 23, 1993, amendment to its April 28, 1993, application for changing the limit on its percentage adder in rates for transmission services and accompanying service schedules setting rates, terms, and conditions for sales affected by the change.

OTP states that copies of the amendment have been provided to the Mid-Continent Area Power Pool and to the Public Service Commissions of Minnesota, North Dakota, and South Dakota.

Comment date: August 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Northwestern Wisconsin Electric Co.

[Docket No. ER93–848–000]

August 13, 1993.

Take notice that Northwestern Wisconsin Electric Company, on behalf of Northwestern Wisconsin Company on August 9, 1993, tendered for filing the Interconnection and Facility Use Agreement between Northwestern Wisconsin Electric Company and Dairyland Power Cooperative (Service Agreement).

The Service Agreement is an initial rate schedule filing. The Service Agreement provides that the party using the spare capacity in the other party's transmission system for the purpose of transmitting power and energy to interconnected facilities should reimburse the party providing the spare transmission capacity for use of its transmission system. The Service Agreement states that the reimbursement shall be based upon a Transmission Use Charge applies to the metered energy delivered, adjusted for transformer losses. The Transmission Use Charge shall be reviewed annually and revised on May 1. Rates determined shall remain effective for the following 12 months.

Northwestern Wisconsin Electric Company requests this Service Agreement become effective September 1, 1983, and therefore, requests waiver of the Commission's notice requirements.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment date: August 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. [ER93–708–000]

August 13, 1993.

Take notice that on August 9, 1993, the New England Power Pool (NEPOOL) tendered for filing additional information request by Staff in the above-referenced docket. .

Comment date: August 27, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20065 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–624–000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

August 12, 1993.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP93–624–000]

Take notice that on August 6, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP93–624–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon direct sales service and remove the meter station formerly serving Otto Candies, Jr. Sub Drainage District No. 4 (Otto) in Des Allemandes, Lafourche Parish, Louisiana, under the authorization issued in Docket No. CP82–430 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the facilities and United's sales service to Otto at Des Allemandes, Louisiana were originally certificated in Docket No. CP71–89. It is stated that the meter station and relief valve proposed for abandonment are not currently in use. United states that no existing service to any other customer will be affected by the abandonment of these facilities. United states that Otto and United have mutually agreed to terminate the service agreement.

United states that the abandonment of the direct sales service and meter station will be accomplished without detriment or disadvantage to its other existing customer; and that its tariff does not prohibit the proposed modification of facilities.

Comment date: September 27, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP93–628–000]

Take notice that on August 9, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–628–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon a certificated sales service for Trunkline LNG Gas Company (Trunkline LNG), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Trunkline states that it was granted authority in Docket No. CP84–447–000 to provide sales service for Trunkline LNG pursuant to a sales agreement dated May 1, 1984, in file as Rate Schedule OS–3 to Trunkline's FERC Gas Tariff, Original Volume No. 2. It is stated that the parties entered into the agreement to permit Trunkline LNG to maintain its physical property and equipment at its Lake Charles, Louisiana facility when plant operations were suspended in 1983. It is indicated that under the agreement Trunkline sold to Trunkline LNG on a firm basis up to 250 Mcf per day and on an interruptible basis up to 750 Mcf per day.

Trunkline states that the LNG facilities were placed back in operation

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in 1989. Trunkline further states that neither party anticipates a need for this sales service in the future. Trunkline indicates that, in accordance with Article VI of the agreement, Trunkline and Trunkline LNG have agreed by letter dated July 20, 1993, to terminate the agreement effective August 31, 1993. Trunkline does not propose to abandon any facilities.

Comment date: September 2, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Co.

[Docket No. CP93–625–000]

Take notice that on August 6, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed a prior notice request with the Commission in Docket No. CP93–625–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a two-inch tap, meter and regulator, and approximately 1,500 feet of two-inch pipe for interruptible deliveries of natural gas for United Gas Services Company (UGSC), under United's blanket certificates issued in Docket Nos. CP82–430–000 and CP88–6–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

United progress to transport up to 800 MMBtu equivalent of natural gas per day via the proposed facilities to serve the town of Sorrento, Ascension Parish, Louisiana, under United's FERC Rate Schedule ITS. Untied States that the town of Sorrento would reimburse United for the $58,340 installation costs for the proposed facilities.

United also states that it is authorized to transport natural gas to USGS under a December 19, 1990, service agreement and that the herein proposed service would have no impact on United's curtailment plan or on United's ability to serve its other existing customers.

Comment date: September 27, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP93–629–000]

Take notice that on August 9, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–629–000 an application pursuant to Section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon an exchange service provided to ANR Pipeline Company (ANR), formerly American Louisiana Pipe Line Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it was granted authority in Docket No. CP65–382 (33 FPC 1298 (1965)) to exchange natural gas with ANR pursuant to an exchange agreement dated May 19, 1965 (Agreement) which is embodied in Rate Schedule X–5 of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Trunkline states that under the Agreement, when either Trunkline or ANR was confronted with with an emergency on its system which could be alleviated by deliveries of gas from the other's system, either party could request emergency deliveries at the interconnection points, not to exceed 100,000 Mcf per day. Trunkline states that the two emergency interconnection points authorized to be constructed in Docket No. CP65–382 are located in Elkhart County, Indiana and Tate County, Mississippi. Trunkline states that these interconnection points will be made available for transportation of gas under Section 284.222, if requested by Trunkline's customers, consequently no facilities are proposed to be abandoned by this application.

Trunkline states that by letter dated July 22, 1993, it has informed ANR of its desire to terminate the Agreement. Trunkline states that approval of its request would relieve both parties from the contractual obligations of the Agreement.

Comment date: September 2, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. OkTex Pipeline Co.

[Docket No. CP93–627–000]

Take notice that on August 6, 1993, OkTex Pipeline Company (OkTex), 1000 ONEOK Plaza, 100 West Fifth Street, Tulsa, Oklahoma 74103, filed in Docket No. CP93–627–000 an application pursuant to Section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon certain interstate facilities which it states are deteriorated and unsafe, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

OkTex proposes to abandon three pipeline segments, totalling 24,943.5 feet of 6-, 8- and 16-inch pipeline, which extend from Love, Choctaw and McCurtain Counties, Oklahoma across the Red River to Cook, Lamar and Red River Counties, Texas, respectively. OkTex states that these pipelines are deteriorating and are not in service because Lone Star Gas Company has disconnected from each of the lines and no gas flows in any of the lines. OkTex states that for safety reasons these lines should be abandoned. OkTex states that any customers which were served from the lines have disconnected and are now served by propane. OkTex states that the pipelines will be removed from their location and disposed of at an estimated salvage value of $6,332.

Comment date: September 2, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under

the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20066 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11275–001 Idaho]

H&G Power Co.; Surrender of Preliminary Permit

August 13, 1993.

Take notice that H&G Power Company, Permittee for the Morgan Creek Project No. 11275, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11275 was issued October 6, 1992, and would have expired September 30, 1995. The project would have been located on lands administered by the Bureau of Land Management, on Morgan Creek, in Custer County, Idaho.

The Permittee filed the request on August 2, 1993, and the preliminary permit for Project No. 11275 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20015 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11194–001 Oregon]

Michael L. Keiser; Surrender of Preliminary Permit

August 13, 1993.

Take notice that Michael L. Keiser, Permittee for the Cascade Ranch Project No. 11194, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 11194 was issued January 23, 1992, and would have expired December 31, 1994. The project would have been located partially on lands administered by the Bureau of Land Management on Cascade Ranch in Jackson County, Oregon.

The Permittee filed the request on August 9, 1993, and the preliminary permit for Project No. 11194 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20019 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–631–000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

August 13, 1993.

Take notice that on August 11, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP93–631–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate delivery taps to attach new residential customers of National Fuel Gas Distribution Corporation (Distribution) under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National states that it proposes to construct and operate two new residential delivery taps, both in Benzinger Township, Elk County, Pennsylvania. National further states that the total deliveries for the two new customers are estimated to be 300 Mcf annually. National says that this will have a minimal impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20016 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–632–000]

Texas Eastern Transmission Corp., Application

August 13, 1993.

Take notice that on August 11, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP93–632–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity and pregranted abandonment authorization, to lease capacity in an intrastate pipeline and to abandon the leased capacity upon expiration of the lease, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests the following authorization:

(1) A certificate of public convenience and necessity authorizing Texas Eastern to lease 125,000 dt equivalent of capacity per day in a portion of Transok, Inc. (Transok)'s intrastate pipeline system and to receive and deliver natural gas into and from the leased facilities pursuant to a capacity lease agreement between them dated September 16, 1991;

(2) Authorization that the initial leased capacity be subject to Texas Eastern's open-access blanket certificate and Order No. 636 restructured FERC Gas Tariff;

(3) Authorization for Texas Eastern to roll-in the costs of the initial lease in Texas Eastern's Access Zones ETX and ELA and to charge the initial rates proposed by Texas Eastern to recover the cost of the initial lease and the cost of the capacity leased in Arkla Energy Resources (AER)'s existing and proposed pipeline facilities;[1]

(4) Approval of the abandonment of the leased capacity upon expiration or termination of the lease agreement; and

(5) Confirmation that the lease of capacity in Transok's intrastate pipeline

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[1] Texas Eastern advises that it filed in Docket No. CP93–598–000 to lease capacity from AER.

system by Texas Eastern would not affect Transok's status as an intrastate pipeline.

Texas Eastern states that the Transok capacity lease provides for the initial lease of 125,000 million Btu of capacity in Transok's pipeline system within the State of Oklahoma by Texas Eastern and Williams Natural Gas Company (WNG) from three points of receipt on Transok's pipeline system to points of delivery on AER's Line AC and any interconnection of certain of Transok's intrastate lines with pipeline facilities of interstate pipelines. It is indicated that these points of receipt consist of (i) the interconnection of Transok's Line 7 with the pipeline facilities of Panhandle Eastern Pipe Line Company in Garfield County, Oklahoma, (ii) the interconnection of Transok's Line 1 and the pipeline facilities of WNG in McClain County, Oklahoma, and (iii) the interconnection of Transok's Line 7 and the pipeline facilities of WNG in Noble County, Oklahoma. It is also indicated that the points of delivery consist of (i) an interconnection between Transok's Line 24 and AER's Line AC near the Chandler Compressor Station in Latimer County, Oklahoma, and (ii) any interconnection of Transok's intrastate Lines 20, 21, 23, and 24 with the pipeline facilities of interstate pipelines.

It is stated that the primary term of the initial lease is for a period of twenty years beginning on the first day of the month after all necessary authorizations to implement the initial lease and the AER capacity are received and accepted by the parties and all necessary facilities on Transok's and AER's pipeline systems are constructed. It is also indicated that the initial lease continues year to year thereafter provided that Texas Eastern may terminate the initial lease, with WNG's prior consent, at the end of the fifteenth year after the commencement date by giving one year's prior written notice to Transok.

It is stated that WNG has agreed that the initial lease capacity of 125,000 million Btu's of capacity shall be leased solely by Texas Eastern with a negotiated annual lease payment of $2,965,625. It is stated that of this amount, $121,000 is for annual operating and maintenance expenses which are subject to change each year based upon changes in the GNP implicit price deflator. It is also indicated that compressor fuel to be provided by customers consists of natural gas consumed in Transok's compressor stations used to transport natural gas via the leased capacity plus a 0.3% loss allowance, but not in excess of an aggregate of 1.5% of the quantity of natural gas delivered at the points of delivery.

Texas Eastern states that natural gas supplies being transported via the Transok Capacity Lease would be delivered into pipeline capacity leased by Texas Eastern from AER and then would be made available to Texas Eastern's system via delivery points as detailed in Texas Eastern's application as filed in Docket No. CP93–598–000.

Texas Eastern proposes to roll-in the cost of the initial lease and AER capacity lease into its system costs for Access Zones ETX and ELA and to recover these costs via an initial reservation surcharge under Rate Schedule FT–1 and CDS of a maximum of $1.277 per dt equivalent per month, plus applicable compressor fuel under those leases. Texas Eastern also proposes to provide interruptible access to the Mid-Continent Basins by its interruptible customers and to charge initial IT–1 and PTI rates consisting of a maximum of $0.3010 per dt equivalent and a minimum of $0.01 per dt equivalent for such interruptible access upon actual usage.

Texas Eastern states that the Transok Capacity Lease would provide Texas Eastern's customers with access to the substantial natural gas supplies of the Anadarko Basin, the Hugoton Field, and the Rocky Mountain Area by virtue of receipt points with WNG, Panhandle, and together with the capacity leased from AER, with access to the substantial natural gas supplies of the Arkoma Basin. It is stated that this access to supplies would be available on a firm basis to all of Texas Eastern's Rate Schedule FT–1 and CDS customers which have access rights in Access Zones ETX and ELA and on an interruptible basis to all Rate Schedule IT–1 and PTI customers. It is also stated that the capacity leased from Transok and AER would be subject to Texas Eastern's Order No. 636 restructured FERC Gas Tariff, Sixth Revised Volume No. 1.

It is indicated that the proposal to make the abundant natural gas supplies of the Anadarko Basin, the Hugoton Field, the Rocky Mountain Area and the other Mid-Continent Basins available to its applicable Rate Schedule FT–1 and CDS customers on a rolled-in basis and to recover the costs of the Transok and AER capacity from those shippers at the initial rates proposed by Texas Eastern is required by the present and future public convenience and necessity. It is noted that the natural gas supplies to be accessed by the project fully support the project. It is also stated that those natural gas supplies would be available on a firm basis to all of Texas Eastern's Rate Schedule FT–1 and CDS customers having firm access rights in Access Zones ETX and ELA and on an interruptible basis to all of Texas Eastern's Rate Schedule IT–1 and PTI customers. Texas Eastern asserts that the proposal is not an incremental project proposal but a proposal to assign all of the capacity of the initial lease to Rate Schedule CDS and FT–1 customers having firm access rights in Access Zones ETX and ELA.

Texas Eastern states that its proposal would provide many benefits to all of its Rate Schedule FT–1 and CDS customers having access rights to Access Zones ETX and ELA. It is stated that it would make available abundant gas supplies at minimum economic and environmental costs. It is also stated that it would provide them with substantial diversity of reliable, long-term gas supplies, and provide them with significant flexibility with respect to the management of their natural gas supply portfolios, capacity releases, transportation paths of the Mid-Continent Basin's natural gas supplies, and in mitigating, through capacity releases, the Rate Schedules FT–1 and CDS surcharge. It is also indicated that its customers would have separate capacity release rights for their firm entitlements to the natural gas supplies in these basins and may trade these entitlements on a one-for-one basis with entitlements on other access area segments of Texas Eastern's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 3, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20017 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–56–001 and RP93–86–001; RP93–139–000 and 001]

Transwestern Pipeline Co.; Conference

August 13, 1993.

Pursuant to the Commission's order issued on July 30, 1993, in the above-captioned dockets,[1] a conference will be convened on August 27, 1993, to address concerns with, and possible settlement of, Transwestern Pipeline Company's (Transwestern) proposed volumetric surcharge. Parties should be represented by principals who have the authority to commit to a settlement.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20018 Filed 8–18–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4696–1]

Proposed Administrative Settlement Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act; In re South Macomb Disposal Authority Sites 9 & 9a

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA), notice is hereby given of a proposed administrative cost recovery settlement concerning the South Macomb Disposal Authority Sites 9 and 9a site in Macomb County, Michigan. The Agreement was proposed by U.S. EPA Region V on May 26, 1993. The settlement resolves an EPA claim under section 107 of CERCLA against the following entities in Michigan: Cities of Eastpointe, Fraser, Mt. Clemens, Roseville, Sterling Heights; Village of Romeo; Townships of Armada, Harrison, Lenox, Macomb, and Washington; Macomb County Community College, Macomb County Road Commission, Van Dyke Public Schools, Warren Consolidated Schools; Horgan Trucking, Inc., Wiegand Disposal, Inc., and Wolverine Golf Club. The settlement requires the settling parties to pay $657,138.00 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Office of Regional Counsel, 8th Floor, 111 W. Jackson Boulevard, Chicago, Illinois, 60604; and at the Macomb County Library, 16480 Hall Road, Mt. Clemens, Michigan.

DATES: Comments must be submitted on or before September 20, 1993.

ADDRESSES: A copy of the proposed settlement may be obtained by written request to the following: Michael J. McClary (CS–3T), Assistant Regional Counsel, Office of Regional Counsel, Region V, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois, 60604–3590. The proposed settlement and additional background information relating to the settlement are available for public inspection at the Office of Regional Counsel, 8th floor, 111 W. Jackson Boulevard, Chicago, Illinois; and at the Macomb County Library, 16480 Hall Road, Mt. Clemens, Michigan. Comments should reference the South Macomb Disposal Authority Sites 9 and 9a, Macomb County, Michigan and EPA Docket No. V–W–93–C–198, and should be addressed to Michael J. McClary at the address given above.

FOR FURTHER INFORMATION CONTACT: Michael J. McClary, 312–886–7163.

Dated: August 17, 1993.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 93–20191 Filed 8–18–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Ogle County for Individual Assistance.

Knox, Morgan, Scott, and Warren Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20004 Filed 8–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the

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[1] Transwestern Pipeline Company, 64 FERC ¶ 61,144 (1993).

catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The counties of Osage and Reno for Individual Assistance.

The counties of Geary, Leavenworth, Riley, and Wabaunsee for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20006 Filed 8–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Aitkin, Grant, Mahnomen, Meeker, Norman, Polk, Rice, Waseca, Steele, and Winona Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20003 Filed 8–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Schuyler County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20002 Filed 8–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Adair, Buchanan, Callaway, Clay, Clinton, Grundy, Johnson, Knox, Lafayette, Linn, Livingston, Macon, Maries, Mercer, Nodaway, Pettis, Putnam, Saline, Scotland, and Shelby Counties for Public Assistance. (Already designated for Individual Assistance.)

Benton, Henry, New Madrid, and Sullivan Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20005 Filed 8–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993:

The counties of Burke, Pembina, Rolette, and Towner for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20001 Filed 8–18–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

BB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 10, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire 100 percent of the voting shares of Citizens Savings Bank, SSB, Mooresville, North Carolina.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Rural American Bank of Greenwald, Greenwald, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. The Berthoud Bancorp, Inc., ESOP, Berthoud, Colorado; to acquire an additional 0.28 percent of the voting shares of The Berthoud Bancorp, Inc., Berthoud, Colorado, for a total of 30.68 percent, and thereby indirectly acquire The Berthoud National Bank, Berthoud, Colorado.

2. Mabrey Bancorporation, Inc., Okmulgee, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Mabrey Insurance Agency, Inc., Okmulgee, Oklahoma, and thereby indirectly acquire The Morris State Bank, Morris, Oklahoma; Citizens State Bank and Trust Company, Okmulgee, Oklahoma; and Bank of Commerce, Wetumka, Wetumka, Oklahoma; Haskell Bancorporation, Inc., Haskell, Oklahoma, and thereby indirectly acquire The First State Bank of Haskell, Haskell, Oklahoma; and Weleetka Bancorporation, Inc., Weleetka, Oklahoma, and thereby indirectly acquire Weleetka State Bank, Weleetka, Oklahoma.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Haskell Bancorp, Inc., Haskell, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Haskell, Texas.

2. First McKinney Bancshares, Inc., McKinney, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, August 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-20069 Filed 8-18-93; 8:45 am]

BILLING CODE 6210-01-F

Daniel Marcus Boyd, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Daniel Marcus Boyd, III, Lincolnton, North Carolina; to acquire an additional 4.17 percent of the voting shares of Carolina First BancShares, Inc., Lincolnton, North Carolina, for a total of 13.14 percent, and thereby indirectly acquire Lincoln Bank of North Carolina, Lincolnton, North Carolina, and Cabarrus Bank of North Carolina, Inc., Concord, North Carolina.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Vernon D. Kegley, Alfred J. Kimball, and Susan C. Pratt; acting as a voting committee of a voting trust; to control between 34 percent and 50 percent of the voting shares of Baker Boyer Bancorp, Walla Walla, Washington, and thereby indirectly acquire Baker Boyer National Bank, Walla Walla, Washington, and Bank of Commerce, Milton-Freewater, Oregon.

Board of Governors of the Federal Reserve System, August 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-20070 Filed 8-18-93; 8:45 am]

BILLING CODE 6210-01-F

CNB Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to engage *de novo* through its subsidiary Citizens Life Assurance Company, Phoenix, Arizona, in reinsuring the repayment of outstanding balances on extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Continental Bancorporation, Las Vegas, Nevada; to engage *de novo* through its subsidiary, CNB Services, Inc., Las Vegas, Nevada, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Nevada.

Board of Governors of the Federal Reserve System, August 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20071 Filed 8–18–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Finding of No Significant Impact for the Bureau of the Census Data Processing Center, Bowie, Maryland

Description of Action

The proposed action involves construction of a new Bureau of the Census Data Processing Center on a nine-acre parcel to be transferred to the General Services Administration at the University of Maryland Science and Technology Center (UMSTC), a 465-acre master-planned office park located in Bowie, Maryland. The Census Bureau project will consist of a 1–2 story, 130,000 gross square foot building with 125 surface parking spaces.

The current Census Bureau computer facility, housed in Federal Office Building 3 at the Suitland Federal Center in Suitland, Maryland, was not designed as a data processing center and is not adequate to meet the needs of modern data processing. The proposed project will provide a state-of-the-art secure computer facility capable of accommodating the modern high performance computers critical to the success of the Census Bureau's mission. The project site at UMSTC is vacant.

Finding

Pursuant to the provisions of GSA Order ADM 1095.1D, the HB, PBS P 1095.4B CHGE 1 and the Regulations issued by the Council on Environmental Quality, July 1, 1986, this is to advise you of our findings. Based on the attached Environmental Assessment, the Action described above is not considered to be a major Federal action significantly affecting the quality of the human environment. Accordingly, I am reporting a Finding of No Significant Impact (FONSI).

Basis of Finding

The Proposed Action will have no significant adverse effects on the natural environment. Location of the new Census Bureau Data Processing Center would be consistent with the Comprehensive Development Plan for the UMSTC approved by the Maryland National Capital Park and Planning Commission in 1986. Neither the natural nor the man-made environment will be threatened by the Proposed Action.

With regard to the natural environment:

—No wetlands or 100-year floodplains would be infringed upon.

—Potential siltation of surface waters during construction will be minimized by strict adherence to erosion and sedimentation control measures.

—No threatened or endangered species or critical habitat for such will be impacted by the development.

With regard to the man-made and physical environment:

—Effects on regional air quality will be negligible since impacts are simply being transferred within the same air quality region. Air quality levels in the area will not significantly change, although some localized increases may occur due to the minor increase in traffic volumes.

—Impacts on local traffic patterns will be very slight as the Census Bureau facility will actually generate less traffic than what the site was planned for. Further measures to minimize peak hour traffic generated by the new facility will be supported by encouraging carpooling to the maximum extent possible.

—Design of the new facility will minimize impacts to the aesthetic character of the adjacent Melford House (National Register of Historic Places, 1989) by emphasizing use of quality building materials and landscaping. Even though the new facility's architectural style will differ from its historic neighbor, the choice of color and materials will not be inexpensive or garish so that any perceived differences between the contemporary computer facility and the historic Melford House will be in style and not in quality.

—The site has a high probability for containing archaeological resources. A Phase I Archaeological Investigation will be performed in July/August of 1993. Depending upon the outcome of this study, additional archaeological work may be deemed necessary to mitigate any further impacts to existing cultural resources. Strict adherence to Section 106 procedures will ensure no valuable historical or archaeological resources will be lost as a result of this development.

—No displacement of businesses or residences will be required.

—As a result of past agricultural activities, additional testing of soils are currently being done to confirm the presence or absence of pesticide or herbicide residues at the project site. If levels are unacceptable, a soil remediation plan would be developed and implemented.

In summary, based upon the information and analysis included in the attached Environmental Assessment, major environmental impacts will be avoided or minimized, and unavoidable major environmental impacts can be mitigated at the proposed site. These documents provide sufficiently detailed evidence for determining that an Environmental Impact Statement is not needed. This is supported by the following Findings:

1. The Proposed Action does not create any significant environmental impacts.

2. Implementation of the Proposed Action is not environmentally controversial.

Dated: July 27, 1993.

June V. Huber,

Acting Regional Administrator, National Capital Region.

[FR Doc. 93–20022 Filed 8–18–93; 8:45 am]

BILLING CODE 6220–23–M

Finding of No Significant Impact for the Remote Delivery Site/Vehicle Maintenance Facility Naval Station, Anacostia, District of Columbia

Description of Action

The Proposed Action involves the relocation of the Executive Office of the President, Office of Administration (EOP,OA) Remote Delivery Site (RDS) and the U.S. Secret Service (USSS) Vehicle Maintenance Facility (VMF) from the Southeast Federal Center (SEFC) to an 18–acre vacant project site at Naval Station, Anacostia. The existing

and proposed sites are located within the District of Columbia and on Federally-owned property. The Department of the Navy is acting as design and construction agent for the new General Services Administration (GSA) budgeted facilities. GSA is acting as lead agency regarding environmental review of the proposed action with the Navy acting as cooperating agency.

Relocation of the RDS/VMF was necessitated by the approved 1989 SEFC Master Development Plan which proposes redevelopment of the SEFC to include 5 million gross square feet (gsf) of office space and 189,000 gsf of retail space accommodating 23,000 employees. The existing VMF building is situated in the path of a planned extension of New Jersey Avenue into the SEFC. The existing RDS building is located on the future site of the GSA Headquarters Building, authorized by Congress for construction. The existing buildings are antiquated and overcrowded. The proposed Naval Station, Anacostia site was best suited for the RDS/VMF relocation because it is proximate to a major transportation route, located in a secure installation with available land, and within a 30-minute traveling distance to the White House complex.

Construction of the new RDS and VMF buildings are proposed to be collocated at Naval Station, Anacostia due to their related functions. The proposed RDS building contains approximately 60,000 gsf for up to 30 employees and 15 inside parking spaces. EOP, OA and USSS personnel at the new RDS would continue to provide security inspections of incoming materials to the White House complex. The proposed VMF building comprises nearly 72,000 gsf of building area accommodating approximately 65 daily employees and the Canine Unit Division. USSS personnel at the new VMF would continue to provide vehicle and maintenance support for the offices of the President and Vice-President.

Finding

Our findings are made pursuant to the provisions of the National Environmental Policy Act, Council on Environmental Quality regulations issued November 19, 1978, GSA Order ACM 1095.1D, the HB, PBS P 1095.4B and OPNAVINST 5090.1A of October 2, 1990. Based on the attached Environmental Assessment, the Action described above is not considered to be a major Federal action significantly affecting the quality of the environment. Accordingly, we are jointly reporting a Finding of No Significant Impact (FONSI).

Basis of Finding

The Proposed Action would have no significant adverse effects on the natural, man-made, and physical environments. The location of the new RDS/VMF would be consistent with the Navy's Master Plan and Southwest End Sub Area Plan for Naval Station, Anacostia both approved in concept by the National Capital Planning Commission.

The impacts and applicable mitigation measures of the project are summarized below:

(1) Potential siltation of surface waters during construction will be minimized by strict adherence to erosion and sedimentation control measures. Increased stormwater runoff after construction will be accommodated by existing off-site infrastructure.

(2) The proposed action includes provisions, such as driving piles through unstable soil strata to more stable soil deposits, to reduce impacts of the poor load bearing capacity of the soils at the proposed site.

(3) The proposed action is not considered to be located within a 100-year floodplain or a delineated wetlands area and is not expected to impact as such.

(4) No threatened or endangered species or critical habitat for such are anticipated to be impacted by the development.

(5) No noise sensitive uses are significantly impacted by the proposed action. Noise impacts from National Airport overflights and adjacent HMX-1 helicopter flights on short and long-term users of the new facility are not anticipated to be significant. The proposed action also includes provisions to appropriately light pile driving equipment during pile placement so as to avoid affecting surrounding flight paths.

(6) Air quality levels in the area will not significantly change, although some localized increases may occur due to the minor increase in traffic volumes.

(7) No displacement of existing businesses, residences, or recreational uses is required.

(8) No historic structures or archaeological resources will be impacted by the proposed actions. Although the project will be visible from several sites that are listed on (or eligible for listing on) the National Register, these viewsheds are not expected to be dominated by the proposed structures.

(9) No significant impact is expected on existing utility or infrastructure capacity from the proposed development.

(10) Traffic generated by the proposed action will not decrease the roadway level of service near the site significantly. Adequate employee/visitor parking and vehicle storage parking for the VMF will be provided for on-site.

(11) The preferred site is situated upon a closed landfill primarily comprised of earth fill from subway tunneling activities and dredge materials from the Anacostia River. Hazardous substances and gases previously detected in the landfill were analyzed and evaluated to determine their impacts upon users of the site. A site-specific Focused Risk Evaluation performed by the Navy indicates that exposure to low levels of soil contaminants sampled from the property will not pose human health risks to either construction workers, trespassers, or site employees and may be used for landscaping purposes without any special precautions. In addition, no methane gases were readily detectable at the site. Due to the heterogeneous nature of landfills, the proposed action contains provisions to routinely monitor levels of methane at the site during and after construction. This monitoring, to be carried out by the Navy during construction, includes proper oversight by qualified personnel and appropriate contingency plans should any hazardous materials or gases be uncovered during the construction phase of the project.

In summary, based upon the information and analysis included in the attached EA, major environmental impacts will be avoided or minimized, and unavoidable major environmental impacts can be mitigated at the proposed site. These documents provide sufficiently detailed evidence for determining that an Environmental Impact Statement (EIS) is not needed. This is supported by the following Findings:

1. The proposed action does not create any significant environment impacts.

2. Implementation of the proposed action is not environmentally controversial.

General Services Administration (Lead Agency).

Dated: June 28, 1993.

Recommended:

Thomas M. Sherman,

Assistant Regional Administrator, Public Buildings Service.

Dated: June 30, 1993.

Approved:

June V. Huber,

Acting Regional Administrator, National Capital Region.

Department of the Navy (Cooperating Agency).

Dated: July 8, 1993.

Approved:

Kimberly B. Depaul,

Acting for Thomas J. Peeling, Special Assistant for Environmental Planning, Shore Activities Division, Deputy Chief of Naval Operations, (Logistics).

[FR Doc. 93–20039 Filed 8–18–93; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

The National Center for Infectious Diseases (NCID) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Chronic Fatigue Syndrome Research Case Definition: Meeting.

Time and Date: 8 a.m.–4:30 p.m., September 27, 1993. (A separate notice is published elsewhere in this issue of the **Federal Register** regarding a public meeting on the following day of the Chronic Fatigue Syndrome Interagency Coordinating Committee.)

Place: CDC, Auditorium A, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public for observation and comment, limited only by space available.

Purpose: To review data from population and clinical studies related to use of the chronic fatigue syndrome (CFS) research case definition to determine if the case definition can be improved. Time will be provided for scientific and invited presentations and comments from the public.

Contact Person for More Information: Ms. Dottie Knight, CFS Research Program, CDC, 1600 Clifton Road NE., mailstop A15, Atlanta, Georgia 30333, telephone 404/639–1338, FAX 404/639–3163.

Dated: August 13, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–20044 Filed 8–18–93; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Chronic Fatigue Syndrome Interagency Coordinating Committee: Public Meeting

AGENCY: Office of the Assistant Secretary for Health, DHHS.

ACTION: Notice of public meeting: Chronic Fatigue Syndrome Interagency Coordinating Committee.

SUMMARY: The Office of the Assistant Secretary for Health announces a public meeting of the Chronic Fatigue Syndrome Interagency Coordinating Committee to review research and treatment activities and priorities. During the session there will be an opportunity for interested persons to present information and views on issues related to chronic fatigue syndrome. This meeting will be held following a meeting on a related subject—chronic fatigue syndrome research case definition. (A separate notice is published elsewhere in this issue of the **Federal Register**.)

TIME AND DATE: 10 a.m.–3 p.m., September 28, 1993.

PLACE: Centers for Disease Control and Prevention, Auditorium B, 1600 Clifton Road NE., Atlanta, Georgia 30333.

STATUS: Open to the public, limited only by the space available.

CONTACT PERSONS FOR MORE INFORMATION: Ms. Nancy Carpenter and Dr. Elaine Esber, Chair, Chronic Fatigue Syndrome Interagency Committee, Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20852 Telephone (301) 402–3186.

SUPPLEMENTARY INFORMATION: The Chronic Fatigue Syndrome Interagency Coordinating Committee meets regularly to coordinate CFS research activities across the agencies of the Public Health Service, to develop complementary research programs which minimize overlap, and to identify opportunities for collaborative and coordinated efforts.

The Committee has representatives from the National Institutes of Health, the Centers for Disease Control and Prevention, and the Food and Drug Administration. The chairmanship is rotated among the members.

In order to receive comments from the public and patient groups, the Committee is convening an open public meeting. A representative from the Social Security Administration will be participating in this meeting. The public meeting will have the following purposes:

1. To provide members of the public an update on the activities of the Committee, the members will discuss their agencies' recent activities.

2. To assist the Assistant Secretary for Health and the Committee in developing agency research priorities, the Committee encourages presentations by members of the public on important issues related to chronic fatigue syndrome.

Those persons wishing to make a presentation at the meeting should submit a written request to the Committee chair listed above. The request for participation should be submitted before September 17, 1993, and should include:

a. Name, address, and telephone number of the person desiring to make a presentation;
b. Affiliation, if any; and
c. A summary of the presentation.

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest.

Presentations should be limited to 5 minutes or less. Organizations or individuals making joint presentations may make a request for additional time. Formal written statements or extensions of remarks (five copies) may be presented to the Chair on the day of the meeting for inclusion in the record of the meeting. At the discretion of the Chair and as time permits, any person in attendance may be heard.

For those unable to attend, comments may be sent to the Committee Chair at the address listed above.

Dated: August 12, 1993.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 93–20000 Filed 8–18–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Agreement Regarding Section 7 Consultation, Sufficient Progress and Historic Projects, Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River Basin, and the Draft Recovery Implementation Program Recovery Action Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Agreement regarding Section 7 Consultation, Sufficient Progress and Historic Projects, Recovery Implementation Program for the Endangered Fish Species in the Upper

Colorado River Basin (Agreement) dated March 11, 1993, and the draft Recovery Implementation Program Recovery Action Plan (RIPRAP) dated July 19, 1993. The draft Agreement identifies the framework for conducting Section 7 Endangered Species Act consultations on the impacts related to new and historic water development projects in the Upper Colorado River Basin. The RIPRAP identifies specific actions and timeframes currently believed to be necessary to recover the endangered fish in the most expeditious manner possible in the Upper Basin. It will serve as a measure of accomplishment so the Recovery Program can continue to serve as the reasonable and prudent alternative to avoid the likelihood of jeopardy to the continued existence of the endangered fish for projects undergoing Section 7 consultations. The Upper Basin is defined as the Colorado River drainage upstream of Lake Powell, with the exception of the San Juan River drainage. The Service solicits review and comment from the public on the draft Agreement and RIPRAP.

DATES: Comments on the draft Agreement and RIPRAP must be received on or before September 20, 1993.

ADDRESSES: Persons wishing to review the draft Agreement and RIPRAP may obtain copies by contacting the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; facsimile (303) 236–0027. Written comments should be sent to the address given above. Comments received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jacobsen (see above address), telephone (303) 236–8189.

SUPPLEMENTARY INFORMATION:

Background

Four native fish species that inhabit the Colorado River Basin are federally listed as endangered: the Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), bonytail chub (*Gila elegans*), and razorback sucker (*Xyrauchen texanus*). Each of these four species was once abundant in the Upper Colorado River Basin (Upper Basin); however, they have declined in numbers and are now threatened with extinction from their natural habitat. Factors accounting for the current status of these species include direct loss of habitat, changes in water flow and temperature regimes, blockage of migration routes, and interactions with introduced (nonnative) fish species. The Service has maintained since 1978 that a jeopardy situation exists in the Upper Basin and that actions must be taken to reverse the decline of endangered fish populations and habitat. The Service has described this conclusion in over 180 biological opinions on project impacts on the endangered fish in the Upper Basin issued pursuant to section 7 of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*).

In 1988, the Governors of Colorado, Utah, and Wyoming, the Secretary of the Interior, and the Administrator of the Western Area Power Administration entered into a cooperative agreement to implement the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). The purpose of the Recovery Program is to recover four endangered fish in the Upper Basin while providing for future water development to proceed in compliance with the Act, Interstate Compacts, and State law. Participants in the Recovery Program include the Service, the Bureau of Reclamation, the States of Utah, Wyoming, and Colorado, the Western Area Power Administration, and representatives of the water development interests and conservation groups. The Colorado River Energy Distributors Association is a nonvoting member of the Recovery Program. The ultimate goal of the Recovery Program is to recover and delist the endangered fishes in the Upper Basin by restoring and establishing self-sustaining populations and protecting sufficient habitat to support these populations.

The Recovery Program also outlines procedures for consultation pursuant to section 7 of the Act. Progress toward recovery of the fish has to continue to be sufficient to allow for the continued issuance of favorable biological opinions. The Service raised the issue of the ability to measure such progress to the Recovery Program participants. Discussions among the Recovery Program participants resulted in the draft Agreement, which is to clarify how section 7 consultations would be conducted on depletion impacts related to new projects and impacts associated with historic projects (existing projects requiring a new Federal action) in the Upper Basin. The Recovery Implementation Program Recovery Action Plan (RIPRAP) was developed by the Recovery Program participants using the best information available and the recovery goals established for the four endangered fish species. It identifies specific actions and timeframes currently believed to be required to recover the endangered fish in the most expeditious manner possible in the Upper Basin. The RIPRAP also will serve as a measure of accomplishment so the Recovery Program can continue to serve as the reasonable and prudent alternative to avoid the likelihood of jeopardy to the continued existence of the endangered fishes for projects undergoing section 7 consultations. The Service also intends that the Recovery Program will serve as the reasonable and prudent alternative which avoids the likely destruction or adverse modification of critical habitat. Once critical habitat for the endangered fishes is formally designated, the Recovery Program and the RIPRAP will be amended as necessary to fulfill such intent.

National Environmental Policy Act (NEPA) Compliance

A programmatic Environmental Assessment was completed on the Recovery Program in November 1987. The Environmental Assessment provides an analysis and assessment of the impacts to the environment from Recovery Program implementation. The draft Agreement and RIPRAP identifies in more detail how the Recovery Program will be carried out. Appropriate site specific NEPA compliance will be conducted on specific actions identified in the RIPRAP.

Public Comment Solicited

The Service solicits written comments on the draft Agreement and RIPRAP. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the Agreement and the RIPRAP.

Author

This notice was prepared by John Hamill, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: August 12, 1993.

John L. Spinks, Jr.,

Deputy Regional Director, Fish and Wildlife Service.

[FR Doc. 93–20093 Filed 8–18–93; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Richard Mielke, Clarkston, MI. PRT–782004.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Indianapolis, Zoo, Indianapolis, IN. PRT–781581.

The applicant requests a permit to import six pairs of wild origin Jamaican iguanas (*Cyclura collei*) from the Hope Zoo, Kingston, Jamaica, for the purpose of enhancement of propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated; August 13, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–20008 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent To Prepare an Environmental Impact Statement on the Establishment of the Silvio Conte National Fish and Wildlife Refuge Within the Four State Connecticut River Basin of New England

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an environmental impact statement (EIS) to explore the feasibility of establishing the Silvio Conte National Fish and Wildlife Refuge (Refuge) within the Connecticut River basin of the states of Connecticut, Massachusetts, Vermont, and New Hampshire. To begin this process, the Service is initiating the Connecticut River Planning Project (Project). This notice is being furnished pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

SCOPING INFORMATION: Interested parties, organizations, and individuals are encouraged to participate in this Project in order to identify and discuss the major issues, concerns, and opportunities that should be addressed in the EIS. The Service intends to hold public scoping meetings in a number of towns within the Connecticut River basin starting in September 1993. These public meetings are being held to (1) provide a brief description of the Project, (2) identify alternatives, environmental impacts and issues that should be addressed in the EIS, (3) identify other review, consultation, coordination, clearance, or permit requirements associated with the Project, and (4) describe the role of the EIS in the planning and decision-making process. The major tool used to collect public comment will be an issues workbook which will be distributed at the public scoping meetings. The dates, times, and locations for these meetings will be announced in area newspapers and through direct mailings. Those who are unable to attend one of these meetings can request a copy of the issues workbook from the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Bandolin, Project Leader, U.S. Fish and Wildlife Service, VA Medical Center, Northampton, Massachusetts 01060. Telephone (413) 582–3174.

WRITTEN COMMENTS INFORMATION: All written comments and completed workbooks should be received by February, 1994, or no later than 30 days after the last public scoping meeting is held.

SUPPLEMENTARY INFORMATION: This EIS is being prepared to fulfill requirements of the Silvio Conte National Fish and Wildlife Refuge Act of 1991 (Act), section 105. The purposes for which a Refuge would be established are: (1) To conserve, protect, and enhance the Connecticut River valley populations of Atlantic salmon, American Shad, river herring, shortnosed sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish, and wildlife;

(2) To conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge;

(3) To protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);

(4) To restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge;

(5) To fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and

(6) To provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section.

A number of alternative actions, which could be implemented to accomplish the six purposes set forth in the Act, will be presented in the EIS. It will include a No Action alternative, the Service's Proposed Action, and other reasonable courses of action. All viable alternatives, including those that may be taken by others outside the federal government, are open for consideration. No final decision will be made until such time as the public has had the opportunity to review and comment on the EIS. The environmental review of the Project will be conducted in accordance with the requirements of NEPA, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations and Service procedures for compliance with those regulations. It is estimated that a Draft EIS will be available for public review and comment by January, 1995.

Dated: August 10, 1993.

Donald Young,

Acting for Ronald E. Lambertson, Regional Director.

[FR Doc. 93–20097 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a)(formerly 25 CFR 54.8(a)) notice is hereby given that the Swan Creek Black River Confederated Ojibwa Tribes of Michigan, Inc. c/o Mr. Gerald Gould, 1312 Oakridge Apt. 212, East Lansing, Michigan 48823; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on May 04, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated August 3, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–20102 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–65–P

Bureau of Land Management

[NV–060–4191–03–7122–8661]

Reissue of a Notice of Availability of the Cortez Gold Mines Expansion Final EIS and ROD

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Final EIS, ROD and comment period.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of Interior, has prepared, by a third party contractor, a final environmental impact statement (FEIS) on the Cortez Gold Mines Expansion in Northern Nevada, and has made copies of the document available for public review. Also available is the FEIS's associated Record of Decision (ROD) approving the findings of the EIS and Cortez's Plan of Operations.

DATES: The thirty day comment period begins Friday, August 20, 1993. Comments on the FEIS and its ROD must be postmarked by September 20, 1993.

ADDRESSES: Please address written comments to: District Manager, P.O. Box 1420, Battle Mountain, NV 89820 ATTN: Cortez Project Team Leader.

FOR FURTHER INFORMATION CONTACT: Dave Davis, Cortez Team Leader at the above address, or telephone (702) 635–4000.

SUPPLEMENTARY INFORMATION: Due to a shipping problem, the Cortez Gold Mines Expansion Final EIS Notice of Availability will not be filed with the Federal Register by the Environmental Protection Agency until Friday, August 20, 1993. This is one week later than the BLM's prior NOA in the **Federal Register** dated August 11, 1993, Volume Number 58 FR, page 42742. This reissuing of the BLM's NOA is to correct the effective dates of filing comments on the FEIS and ROD.

Copies of the Cortez Gold Mines Expansion FEIS and its associated ROD approving the findings of the EIS and Cortez's Plan of Operations are available for public review and comment.

Any interested public may obtain a copy of these documents by writing the above address or calling the telephone number above and requesting a copy.

Copies of the FEIS and ROD are available for review at the following locations: Nevada State Office BLM, 850 Harvard Way, Reno, Nevada 89520; the Eureka County Library, Monroe Street, Eureka, Nevada 89316; the Elko County Library, 720 Court Street, Elko, Nevada 89801; and the Lander County Library, Highway 8 A, Battle Mountain, Nevada 89820.

As provided in CEQ regulation 40 CFR 1506.10 (b)(2), the BLM has requested from the Secretary of Interior's Office of Environmental Affairs (SOI–OEA) an exception to the required thirty day delay between the release of the FEIS and its associated ROD. The SOI–OEA has approved this exception. The ROD is part of the FEIS. The ROD approves the findings of the EIS and approves Cortez's Plan of Operations.

Dated: August 13, 1993.

James D. Currivan,

District Manager, Battle Mountain.

[FR Doc. 93–20081 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–HC–M

[CO–070–4320–01–241A]

Grand Junction District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Wednesday, September 29, 1993. The meeting will convene in the conference room at the Bureau of Land Management, Glenwood Springs Resource Area Office, 50639 Highway 6 & 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

(1) Introduction;
(2) Minutes of the previous meeting;
(3) Colorado Range Update;
(4) CCA BLM Liaison Committee;
(5) Water Depletion;
(6) Project Planning Priorities;
(7) Proposed Organization of the Grazing Advisory Board;
(8) Status of Current Range Projects;
(9) Advisory Board Project Proposals;
(10) Public Presentations;
(11) Proposed 8100 Projects;
(12) Arrangements for the next meeting.

A field tour of the area north of Rifle, Colorado will be conducted on Thursday, September 30, 1993.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506 by September 29, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 244–3076.

Tim Hartzell,

District Manager.

[FR Doc. 93–20082 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–020–01–4332–02]

Phoenix District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

DATE: September 22, 1993.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets September 22, 1993, at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona, at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

—Wild and Scenic Rivers

—Wild Burro Capture Activities

—Wilderness Management Plans

—Update on Status of Kingman Resource Management Plan

—Management of Mineral Material Sales

—BLM Management Updates

—Business From the Floor

—Comments and Statements

—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters. Those interested in presenting oral statements to the council are requested to notify the Phoenix District Managers Office, telephone (602) 780–8090 by 2 p.m., September 20, 1993.

Dated: August 11, 1993.

G.L. Cheniae,

District Manager.

[FR Doc. 93–20083 Filed 8–18–93; 8:45 am]

BILLING CODE 4320–02–M

[NV020–4320–02]

Winnemucca District Grazing Advisory Board Meeting

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and section 3. Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 1, 1993. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement,
2. District Manager's Update,
3. Update on Range Improvement Funds:
   FY93 Projects,
   FY95 Projects,
4. Advisory Board prioritize FY94 Range Improvement Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by August 30, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: August 10, 1993.

Ron Wenker,

District Manager.

[FR Doc. 93–20084 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR–943–4210–06; GP3–200; OR–45434 (WASH)]

Conveyance of Public Lands; Order Providing for Opening of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 366.75 acres of public land out of Federal ownership. This action will also open 560 acres of reconveyed lands to surface entry and mining, and 700.40 acres to mineral leasing. The minerals in 640 acres are not in Federal ownership and will not be opened to mining and mineral leasing, and 140.40 acres are within a proposed withdrawal and will remain closed to surface entry and mining.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 366.75 acres in King, Okanogan, San Juan, and Skagit Counties, Washington, from Federal ownership to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 22 N., R. 32 E.,
Sec. 16;
Sec. 36, W½NE¼, NW¼, and S½.
T. 34 N., R. 1 W.,
Sec. 16, NE¼SW¼ and S½SW¼.
T. 34 N., R. 2 W.,
Sec. 25, lots 1 and 2.

The areas described aggregate 1,340.40 acres in Lincoln and San Juan Counties.

3. At 8:30 a.m., on September 27, 1993, the W½NE¼, NW¼, and S½, Sec. 36, T. 22 N., R. 32 E., W.M., will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on September 27, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m, on September 27, 1993, the land described in paragraph 3 will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on September 27, 1993, the following described lands will be opened to applications and offers under the mineral leasing laws:

Willamette Meridian

T. 22 N., R. 32 E.,
Sec. 36, W½NE¼, NW¼, and S½.
T. 34 N., R. 1 W.,
Sec. 16, NE¼SW¼ and S½SW¼.
T. 34 N., R. 2 W.,
Sec. 25, lots 1 and 2.

Dated August 11, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–20085 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–93–M

[AZ–050–03–4210–03; AZA 25117]

Arizona; La Paz County Realty Action for the Lease of Public Land for Airport Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has received an airport lease application for the following described lands under section 302 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579, 90 statute 2763; title 43, United States Code, section 1732).

Gila and Salt River Meridian, Arizona

T. 4 N., R. 18 W.,
Sec. 19, All lands lying south of Interstate Highway 10;
Sec. 30, All
Sec. 31, All.

The area described contains approximately 1,380 acres.

DATES: Comments regarding the proposed lease of the land must be submitted by October 4, 1993 to the Acting Resource Area Manager, Joy Gilbert, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be reviewed by the State Director, and considered before a final decision to grant the lease is made.

On August 19, 1993 the public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the lease or August 19, 1994, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Acting Resource Area Manager, Joy Gilbert, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, Telephone (602) 726–6300. Detailed information concerning this action is also available for review.

SUPPLEMENTARY INFORMATION: The town of Quartzsite has submitted, to the Bureau of Land Management, an airport lease application for the above described lands.

The town of Quartzsite application is consistent with the Yuma District Resource Management Plan.

Dated: August 11, 1993.

Michael A. Taylor,

Acting District Manager.

[FR Doc. 93–20086 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–4210–05;N–N–56884]

Realty Action: Filing of Application for Conveyance of Federally-Owned Mineral Interests, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Conveyance of federally-owned mineral interests.

SUMMARY: The Morris DeLee Revocable Trust, Morris DeLee, Trustee, has applied under section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, 43 CFR Part 2720; to purchase the Federal mineral interests in the following land:

Mount Diablo Meridian, Nevada

T. 16 S., R. 48 E.,
Section 24: E½
Section 25: E½
T. 16 S., R. 49 E.,
Section 19: S½
Section 30: N½

FOR FURTHER INFORMATION CONTACT: Anna Wharton, Realty Specialist, Las Vegas District Office, 4765 W. Vegas Dr., P.O. Box 26569, Las Vegas, Nevada 89126, 702–647–5000, for more information concerning this application.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in **Federal Register**, the mineral interests described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, April 5, 1993, whichever occurs first.

Dated: August 10, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–20087 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–93–4730–12]

Colorado: Filing of Plats of Survey

August 13, 1993.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m. August 13, 1993.

This plat representing the dependent resurvey of a portion of Survey No. 332, Idaho Springs Townsite, in section 36, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 1026, was accepted June 25, 1993.

This survey was executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the west three miles of the south boundary, T. 1 S., R. 75 W., Sixth Principal Meridian, Colorado, Group No's 750 and 1034, Colorado, was accepted June 25, 1993.

The plat representing the dependent resurvey of Mineral Survey No. 17536 Calidonia Lode, a portion of Mineral Survey No. 17725, Buffalo Lode, and a portion of Mineral Survey No's 19718, Buffalo No. 2 and Pawnee Lodes, in unsurveyed T. 12 N., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 956, was accepted July 26, 1993.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 17 and 18, T. 5 N., R. 77 W., Sixth Principal Meridian, Colorado, Group 959, was accepted July 26, 1993.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of the 80th mile of the boundary between the states of Colorado and New Mexico, Group No. 1042, was accepted June 25, 1993.

This survey was executed to meet certain administrative needs of the Colorado Department of Transportation.

The following plat will be immediately placed in the open files and will be available to the public as a matter of information. Copies of this plat may be furnished to the public upon payment of the appropriate fee. This plat will be regarded as officially filed as of 10 a.m. on September 24, 1993, as provided for in 43 CFR 1813. 1–2 (BLM Manual) Section 2097—Opening Orders is required.

The plat in two sheets representing the metes-and-bounds surveys of Tracts 38A, 40, 41, 42 (A thru D), 43, 44, and 45, in unsurveyed T. 2 S., R. 75 W., Sixth Principal Meridian, Colorado,

Group No. 1034, was accepted July 26, 1993.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 93–20088 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

National Capital Region, National Capital Memorial Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, September 2, 1993, at 1 p.m., at the National Building Museum, room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
The Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The purpose of the meeting will be to review the following:

I. Area I Site Consideration

Public Law 103–32, authorizing the American Battle Monuments Commission to establish the World War II Memorial.

II. Legislative Proposals

H.J. Res. 237, to authorize the National Captive Nations Committee, Inc., to construct a memorial to honor victims of Communism.

III. Other Business

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., room 201, Washington, DC 20242.

Dated: August 12, 1993.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 93–20121 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

[Docket No. 93–18193]

Competitive Sale of Public Land

Correction

In notice document 93–18193, concerning competitive sale of public land in Section 26, Township 3 North, Range 5 East, Gila and Salt River Meridian, Maricopa County, Arizona, appearing on page 40833 in the issue of Friday, July 30, 1993, in the second column under **SUMMARY:**, beginning in the sixth line, change "$180,000 to $198,000." In the second column under **DATES:**, beginning in the eleventh line remove "(Tuesday-Friday)."

Dated: August 12, 1993.

Margaret Sibley,

Acting Deputy Commissioner.

[FR Doc. 93–20048 Filed 8–18–93; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 875–1608, FA/AS/ISS/RM, room 930B, N.S., Washington, DC 20523.

Date Submitted: August 4, 1993.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0520.

Form Number: AID 1420–17.

Type of Submission: Renewal.

Title: Information Collection Elements in the A.I.D. Acquisition Regulation (AIDAR).

Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons whether within or without the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements place on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR part 7. These are all A.I.D. unique procurement requirements which have not otherwise been submitted to OMB for approval. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information during the post-award period are based on the need to administer public funds prudently.

Annual Reporting Burden: Respondents: 2,400 annual responses: 26; average hours per response: 4.9; annual burden hours: 306,715.

Reviewer: Jeffrey Hill (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: August 4, 1993.

Bettie F. Bowles,

Chief, Mail Management Branch, Information Support Services Division.

[FR Doc. 93–20041 Filed 8–18–93; 8:45 am]

BILLING CODE 8116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32336]

Depew, Lancaster & Western Railroad Co., Inc.; Trackage Rights Exemption; Genesee & Mohawk Valley Railroad Co.

Genesee & Mohawk Valley Railroad Co. (G&MV) has agreed to grant local trackage rights to Depew, Lancaster & Western Railroad Co., Inc. (Depew) over three portions of the Batavia-Lehigh & Lower Town Industrial Trackage, a total of approximately 6.2 miles in three segments, diverging from the Chicago Line at CP 402, milepost 402.4, again at milepost 406.7, and milepost 406.9 near Batavia, in Genesee County, NY. G&MV is acquiring the line from Consolidated Rail Corporation. The trackage rights were to become effective on or after August 6, 1993.

The purpose of the trackage rights is to allow G&MV to grant its corporate affiliate, Depew, the necessary rights to provide all operations over the three involved segments of railroad, for the foreseeable future. This notice is related to a notice filed in Finance Docket No. 32335, *Mohawk, Adirondack & Northern Railroad Corp.—Trackage Rights Exemption—Genesee & Mohawk Valley Railroad Co.*, in which G&MV is granting Mohawk, another corporate affiliate, local trackage rights over other G&MV lines to be acquired.[1]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not stay the transaction.[2] Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20112 Filed 8–18–93; 8:45 am]

BILLING CODE 7035–01–M

[1] Finance Docket Nos. 32335 and 32336 are also directly related to an acquisition and operation exemption involving a short line sale and a related control exemption, which are before the Commission, respectively, in Finance Docket No. 32169, *Genesee & Mohawk Valley Railroad Co.—Acquisition and Operation Exemption—Consolidated Rail Corporation* (not printed), served and published October 28, 1992; and Finance Docket No. 32170, *David Monte Verde, Michael Thomas, Charles Riedmiller, Jeffrey Baxter, and John Herbrand and Genesee Valley Transportation Company, Inc.—Continuance in Control Exemption—Genesee & Mohawk Valley Railroad Co.* (not printed), served November 30, 1992.

[2] On August 4, 1993, the United Transportation Union (UTU) timely filed a petition to reject or revoke and for a stay in this proceeding and in Finance Docket No. 32335. The Commission did not receive the stay request in time to act upon it. The notice is not being rejected as it contains the information required for publication in the **Federal Register**, and does not appear to contain any false or misleading information. A petition to revoke and reopen is also currently pending before the Commission in Finance Docket Nos. 32169 and 32170, respectively, involving a related series of transactions and the same or similar issues. The Commission will subsequently issue a single decision resolving all pending requests for relief in Finance Docket Nos. 32335, 32336, 32169, and 32170. In that decision, the Commission will also consider all relevant arguments made in support of the stay and rejection requests.

[Finance Docket No. 32335]

Mohawk, Adirondack & Northern Railroad Corp.; Trackage Rights Exemption; Genesee & Mohawk Valley Railroad Co.

Genesee & Mohawk Valley Railroad Co. (G&MV) has agreed to grant local trackage rights to Mohawk, Adirondack & Northern Railroad Corp. (Mohawk) over approximately 9.8 miles of rail line, over two rail segments it is acquiring from Consolidated Rail Corporation: (1) The Utica Yard, approximately 1.8 miles of yard track between milepost 237.7 East and milepost 235.9 along Conrail's Chicago Line, in Oneida County, NY; and (2) a portion of the Rome Industrial Trackage, running approximately 8 miles from milepost 46 to milepost 38, which diverges from the Chicago Line at milepost 248.2, in Oneida County, NY. The trackage rights were to become effective on or after August 6, 1993.

The purpose of the trackage rights is to allow G&MV to grant its corporate affiliate, Mohawk, the necessary rights to provide all operations over the two involved segments of railroad, for the foreseeable future. This notice is related to a notice filed in Finance Docket No. 32336, *Depew, Lancaster & Western Railroad Co., Inc.—Trackage Rights Exemption—Genesee & Mohawk Valley Railroad Co.*, in which G&MV is granting Depew, another corporate affiliate, local trackage rights over other G&MV lines to be acquired.[1]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not stay the transaction.[2] Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20111 Filed 8–18–93; 8:45 am]

BILLING CODE 7035–01–M

[1] Finance Docket Nos. 32335 and 32336 are also directly related to an acquisition and operation exemption involving a short line sale and a related control exemption, which are before the Commission, respectively, in Finance Docket No. 32169, *Genesee & Mohawk Valley Railroad Co.—Acquisition and Operation Exemption—Consolidated Rail Corporation* (not printed), served and published October 28, 1992; and Finance Docket No. 32170, *David Monte Verde, Michael Thomas, Charles Riedmiller, Jeffrey Baxter, and John Herbrand and Genesee Valley Transportation Company, Inc.—Continuance in Control Exemption—Genesee & Mohawk Valley Railroad Co.* (not printed), served November 30, 1992.

[2] On August 4, 1993, the United Transportation Union (UTU) timely filed a petition to reject or revoke and for a stay in this proceeding and in Finance Docket No. 32336. The Commission did not receive the stay request in time to act upon it. The notice is not being rejected as it contains the information required for publication in the **Federal Register** and does not appear to contain any false or misleading information. A petition to revoke and reopen is also currently pending before the Commission in Finance Docket Nos. 32169 and 32170, respectively, involving a related series of transactions and the same or similar issues. The Commission will subsequently issue a single decision resolving all pending requests for relief in Finance Docket Nos. 32335, 32336, 32169, and 32170. In that decision, the Commission will also consider all relevant arguments made in support of the stay and rejection requests.

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Arctic System Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting.

Date and Time: September 9, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Patrick J. Webber, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7818.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Land/Atmosphere/Ice Interactions proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20051 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis in Chemical and Thermal Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 7 meetings:

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 9, 1993; 8:30 a.m. to 5 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Drs. Edgar O'Rear & Robert Wellek, Program Directors, Interfacial, Transport, & Separation Processes Program, (202) 357–9606.

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 10, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Drs. Stephen Traugott and Mihail Roco, Program Directors, Fluids, Particulates and Hydraulic Processes, (202) 357–9606.

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 13, 1993; 8:30 a.m. to 5 p.m.

Place: Suite 118, St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Drs. Edgar O'Rear & Robert Wellek, Program Directors, Interfacial, Transport, & Separation Processes Program, (202) 357–9606.

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 14, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Contact Person: Dr. Milton J. Linevsky, Program Director, Combustion and Thermal Plasmas Program, (202) 357–9606

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 20, 1993; 8:30 a.m. to 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Farley Fisher, Program Director, Chemical Reaction Processes Program, (202) 357–9606.

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 22, 1993.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Maria Burka, Program Director, Chemical Reaction Processes Program, (202) 357–9606.

Name: Small Business Innovation Research (SBIR) Panel.

Date and Time: September 23, 1993, 8:30 a.m. to 5 p.m.

Place: Room 113, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. George P. Peterson, Program Director, Thermal Transport and Thermal Processing Program, (202) 357–9606.

Types of Meetings: Closed.

Agenda: To review and evaluate proposals submitted to the Division of Chemical and Thermal Systems for the NSF Small Business Innovation Research (SBIR) Program.

Purpose of Meetings: To provide advice and recommendations concerning small business innovation proposals submitted to NSF for financial support.

Reason for Closing: The nominations and proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations and proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20053 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry Division, Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry.

Date and Time: September 13–14, 1993; 8 a.m. to 5 p.m.

Place: Rooms 1242 and 340B National Science Foundation, 1800 G Street, NW . Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Seymour J. Lapporte, Office of Special Projects, Chemistry Division, 1800 G Street, NW.—room 340, Washington, DC 20550, Telephone: (202) 357–7503.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications for Small Business Innovation Research in Chemistry.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20059 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting of Geological Record of Global Change.

Date and Time: September 10, 1993; 8 a.m. to 6 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John Maccini, Program Director, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7866.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Geologic Record of Global Change proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20054 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 13, 1993; 9 a.m.–4 p.m.

Place: Conference Room #1243, 1800 G St. NW., Washington DC.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St., NW., Washington DC 20550. Telephone: (202) 357–7356.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR–PHASE I Panel proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20060 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panels (EHR) in Division of Elementary, Secondary, and Informal Education, Division of Undergraduate Education, Division of Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 13–14, 1993; 8:30 a.m.–5 p.m.

Place: 1110 Vermont Avenue, NW.—rooms 500 A–D Washington DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Sara Nerlove, Program Director, SBIR Program, Division of Industrial Innovation Interface, National Science Foundation, 1800 G Street, NW.—room V502, Washington DC 20550, Telephone: (202) 653–5336.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR Proposals: Phase I, Topic 25 (Education and Human Resources) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20057 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Environmental Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: September 9, 1993; 8:30 a.m. to 5 p.m.

Place: Room 500C, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9588.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20052 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Dates and Times: September 8, 1993; 8:30 a.m. to 5 p.m., September 9, 1993; 8:30 a.m. to 5 p.m., September 21–23, 1993; 8:30 a.m. to 5 p.m., September 28, 1993; 8:30 a.m. to 5 p.m.

Place: Room 502–V, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC for all dates except September 9, 1993. For September 9, 1993: New Hampshire Suites, 22nd & L Streets NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head: Office of Special Programs in Materials, Division of Materials Research, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–9791.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Phase I proposals for the Small Business Innovation Research Program in the area of Materials Research.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20050 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Molecular and Cellular Biosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Special Emphasis Panel in Molecular and Cellular Biosciences.

Date and Time: September 13, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Brenda C. Flam, Program Manager for Special Projects, Division of Molecular & Cellular Biosciences, room 325, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–9400.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Small Business Innovation Research Program (SBIR) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20055 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Office of Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 13–14, 1993 at 8:30 a.m.

Place: September 13 in room 536 and September 14 in room 523 located at the National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Scott Borg, Program Manager for Polar Earth Sciences, Office of Polar Programs, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7894.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Earth Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20058 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science Resources Studies.

Date and Time: September 8, 1993, from 6:30 p.m. to 8 p.m.; and September 9, 1993, from 9 a.m. to 5 p.m.

Place: National Science Foundation, 1110 Vermont Avenue NW., room 500D, Washington, DC.

Type of Meeting: Open.

Contact Person: Jennifer Sue Bond, Program Director, Science and Engineering Indicators Program, Division of Science Resources Studies, room L–609, National Science Foundation, Washington, DC 20550, (202) 634–4300.

Purpose of Meeting: Advice and review discussion concerning the survey data and methodological report of the Joint NSF/NIH survey of Public Understanding of Science.

Agenda: Review draft methodology report; review data and preliminary findings; review the proposed outline of the analysis of questionnaire 2.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20061 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

Division of Atmospheric Sciences; Special Emphasis Panel—Small Business Innovation Research (SBIR) Panel for Topic 6—Atmospheric Sciences; Meeting

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel—Small Business Innovation Research Panel for Topic 6—Atmospheric Sciences.

Date: September 13 and 14, 1993.

Time: 8 a.m. to 5 p.m., Monday, Sept. 13, 1993. 8 a.m. to 5 p.m., Tuesday, Sept. 14, 1993.

Place: National Center for Atmospheric Research, Foothills Laboratory, 3450 Mitchell Lane, Building 2, room 1002, Boulder, Colorado 80307–3000.

Type of Meeting: Closed.

Agenda: Review and evaluation of Small Business Innovation Research (SBIR) proposals.

Contact: Dr. Jarvis L. Moyers, Program Director, Atmospheric Chemistry Program, Division of Atmospheric Sciences, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (202) 357–9657.

Dated: August 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20056 Filed 8–18–93; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32742; File Nos. SR–MSTC–93–03 and 93–08]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Order Approving Proposed Rule Changes Relating to Modification of Fee Schedule to Provide Discounts to Primary Users and Revisions to the Schedule of Services and Charges

August 12, 1993.

On February 3, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSTC–93–03) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] modifying its fee schedule to provide discounts to primary users of available MSTC services, and on April 30, 1993, MSTC filed with the Commission a proposed rule change (File No. SR–MSTC–93–08) pursuant to section 19(b)(1) of the Act revising its schedule of services and charges. Notice of the proposals appeared in the **Federal Register** on February 23, 1993,[2] and May 19, 1993.[3] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

The first proposed rule change (File No. SR–MSTC–93–03) revises MSTC's fee schedule to provide discounts, in the form of a two tiered fee revision, to participants who are primary users[4] of available MSTC services. Eligibility for the discount will be based on at least one year's experience as a participant in MSTC and a commitment in writing by the participant to continue to use MSTC as the primary provider of safekeeping services for a minimum period of two to three years.

The first tier of the proposed discount will be calculated based on a participant's actual annualized revenue level paid to MSTC for the previous twelve month period. A participant who produces a minimum average revenue of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31867 (February 17, 1993), 58 FR 11079.

[3] Securities Exchange Act Release No. 32296 (May 12, 1993), 58 FR 29243.

[4] A "primary user" means either: (1) A participant who uses MSTC as its sole depository or (2) a participant who is a member of more than one securities depository but who safekeeps the majority of its eligible inventory with MSTC. To document the latter, MSTC may request that participants verify the amount of business conducted at another depository.

$20,000 per month for MSTC will receive a discount of 50% off of each dollar spent in excess of their actual average annualized revenue level. Each year, the participant's actual average annualized revenue level will be revised and will remain constant for the next twelve month period.

The second tier of the proposed discount will be based on the total amount of monthly revenues MSTC receives from a participant. In order to qualify for this discount, MSTC must receive monthly revenues at a level equal to or in excess of $20,000 from a participant. At that level, a participant with a two year commitment to use MSTC as its primary custodian will receive a discount of 6% off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at that level will receive a discount of 8% off the total amount of fees the participant must pay to MSTC that month. Similarly, participants who produce monthly revenues for MSTC is excess of $50,000 and sign a two year commitment will receive a 12% discount off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at the level will receive a discount of 16% off the total amount of fees the participant must pay to MSTC that month.

The second proposed rule change (File No. SR–MSTC–93–08) revises MSTC's fee schedule based on management's review of operating expenses for 1992, projected volumes for 1993, and related costs.[5] The revisions also are designed to conform more closely MSTC's associated revenues and expenses. In general, the line item fees remain unchanged for 1993. The proposed adjustments reflect decreased costs realized due to economies of scale, multiple event processing, and increased levels of automation. Fee increases are the result of activities related to the physical handling of securities or single event processing within given assets.

II. Discussion

The Commission believes that the proposed rule changes are consistent with the requirements of section 17A(b)(3)(D) of the Act,[6] and the rules and regulations thereunder. Section 17A(b)(3)(D) requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The present rule filings were submitted in conjunction with identical proposals which became effective immediately upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[7] The purpose of these related filings was to assure that the volume discount program and the revised fee schedule, which were effective immediately upon filing with the Commission, would expire on March 4, 1994, unless approved by the Commission through the present rule filings pursuant to section 19(b)(2) of the Act. Because of the potential impact on low volume participants, the Commission believes the proposed rule changes relating to the volume discount program and the revised fee schedule should be viewed as a package. According to MSTC, the impact of the increased revenue produced as a result of the revised fee schedule, when viewed in conjunction with the discount program for primary users, is intended to be revenue neutral to MSTC.

As previously stated, no comments were received as a result of the publication of the proposed rule changes in the **Federal Register**. The Commission therefore concludes that participants consider the proposed rule changes to be an equitable allocation of fees and charges. In general, it has been the policy of the Commission not to intervene in the ratemaking of a clearing agency as long as that ratemaking results in an equitable schedule of dues, fees, and other charges among participants. Accordingly, the Commission believes that the modification to MSTC's fee schedule to provide discounts to primary users and the revisions to MSTC's schedule of services and charges are consistent with the requirements of section 17A(b)(3)(D) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule changes (File Nos. SR–MSTC–93–03 and 93–08) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

MIDWEST SECURITIES TRUST COMPANY—1993 FEE REVISION SUMMARY

Service	Current	Service	Revised
Account Maintenance:		Account Maintenance:	
First two accounts—Total Fee All Services (per acct.).	$475.00	First two accounts—Total Fee All Services (per acct.).	$575.00
All accounts Over 2—Total Fee All Services (per acct.).	$200.00	All accounts Over 2—Total Fee All Services (per acct.).	$250.00
Safekeeping:		Safekeeping:	
Position Fee	$0.58	Position Fee	$0.49
Equity Thinly Held Surcharge	$0.22	Equity Thinly Held Surcharge	$0.25
Corporate Debt Thinly Held Surcharge	$0.22	Corporate Debt Thinly Held Surcharge	$0.25
Registered Muni Thinly Held Surcharge	$0.72	Registered Muni Thinly Held Surcharge	$0.75

[5] MSTC's revised fee schedule is attached as Exhibit A.

[6] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[7] See Securities Exchange Act Release No. 31866 (February 17, 1993), 58 FR 11076, relating to the modification of MSTC's fee schedule to provide discounts to primary users. That filing replaced an identical proposal filed by MSTC pursuant to section 19(b)(3)(A) of the Act (Securities Exchange Act Release No. 31748 (January 19, 1993), 58 FR 6318) which was withdrawn by MSTC on February 2, 1993. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (February 2, 1993).

See also Securities Exchange Act Release No. 32295 (May 12, 1993), 58 FR 29240, relating to the revisions to the schedule of services and charges. That filing replaced an identical proposal filed by MSTC pursuant to section 19(b)(3)(A) of the Act (File No. SR–MSTC–93–06 (April 16, 1993)) which was withdrawn by MSTC on April 29, 1993. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (April 29, 1993).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1992).

UMI
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UMI

MIDWEST SECURITIES TRUST COMPANY—1993 FEE REVISION SUMMARY—Continued

Service	Current	Service	Revised
Dividends and Interest:		Dividends and Interest:	
Cash Dividend Credit	$1.40	Cash Dividend Credit	$1.28
Stock Dividend Credit	$16.00	Stock Dividend Credit	$8.75
Registered Muni Interest Credit	$2.10	Registered Muni Interest Credit	$1.60
Registered Corporate Bond Interest Credit	$1.40	Registered Corporate Bond Interest Credit.	$1.28
Dividend Reinvestment:		Dividend Reinvestment:	
Dividend Reinvestment	$25.00	Dividend Reinvestment	$10.00
Reorganizations:		Reorganizations:	
Full Call, Partial Call and Maturities—Registered or Bearer.	$28.00	Full Call, Partial Call and Maturities—Registered or Bearer.	No change.
Value Charge, Full Call, Partial Call and Maturities—Registered or Bearer.	$0.05/$1000	Value Charge, Full Call, Partial Call and Maturities—Registered or Bearer.	$0.15/$1000 ($250.00 maximum).
Conversion and Warrants (included in non-mandatory)..	$35.00/transaction	Conversion and Warrants°	$0.072/share ($28 minimum, $144 maximum).
Depository Delivery Instructions:		Depository Delivery Instructions:	
All DDI Items	$0.45	All DDI items	$0.54
Deposits:		Deposits:	
Regular Deposits		Regular Deposits	
		Active:°	
11:30–4:30	$1.75	11:30–4:30	$1.54
11:00–11:30	$25.00	11:00–11:30	$7.75
7:30–11:00	$2.75	7:30–11:00	$2.35
		Less Active:°°	
		11:30–4:30	$2.49
		11:00–11:30	$8.70
		7:30–11:00	$3.30
Deposit Surcharge	$0.02/1000 over $15,000	Deposit Surcharge	$0.00
Deposit Reclaim	$20.00	Deposit Reclaim	$23.00
Full Legal Deposits:		Full Legal Deposits:	
1–500	$6.50	1–500	No change.
501 and over	$4.50	501 and over	$4.30
Basic Legal Deposits:		Basic Legal Deposits:	
00:01–10:59 (same day)	$4.25	00:01–10:59 (same day)	No change.
11:00–11:30	$26.50	11:00–11:30	$9.25
11:31–24:00 time range (next day credit).	$3.25	11:31–24:00 time range (next day credit).	$2.67
		Deposit Mail Surcharge (for Agent outside NYC).	$0.90/deposit.
Reorg Deposit	$2.75	Reorg Deposit Surcharge	$3.15
Withdrawals:		Withdrawals:	
Street Request	$12.00	Street Request	$22.00
		Certificate Fees:	
		Transfer Agent fee is ≤ $3.50	$7.55/withdrawal.
		Transfer Agent fee is ≥ $3.51	$16.20/withdrawal.
Manual Pulls	$30.00	Manual Pulls	$50.00
Transfer Service:		Transfer Service:	
Transfers	$2.00	Transfers:	
		Active°	$1.81
Direct Mail	$3.35	Less Active°°	$3.46
		Direct Mail:	
		Active°	$2.82
		Less Active°°	$4.74
Check Fee (plus applicable Certificate Fee).	$2.50	Check Fee	$0.00
		Certificate Fees:	
		Transfer Agent fee is ≤ $3.50	$5.35/certificate.
		Transfer Agent fee is ≥ $3.51	$10.75/certificate.
Reclamation Transfer (plus Basic Legal Same Day Re-Deposit fee).	$2.75 $4.25	Reclamation Transfer (same as Basic Legal Same Day Re-Deposit fee).	$0.00 $4.25
Transfer Shipping	$1.24 + $0.04/$1,000	Transfer Shipping	$0.90 + $0.04/$1,000
Pledge Loan Program:		Pledge Loan Program:	
Pledge and Release movements	$0.68	Pledge and Release movements	$0.54
Underwriting Issuance:		Underwriting Issuance:	
Issuance Fee	$400.00	Single CUSIP issues, par value ≤ $1 million.	$50.00
		Single CUSIP issues, par value ≤ $3 million.	$125.00
		Single CUSIP issues, par value > $3 million.	$200.00

MIDWEST SECURITIES TRUST COMPANY—1993 FEE REVISION SUMMARY—Continued

Service	Current	Service	Revised
		Multiple CUSIP issues, par value ≤ $1 million.	$100.00
		Multiple CUSIP issues, par value ≤ $3 million.	$250.00
		Multiple CUSIP issues, par value > $3 million.	$400.00
		CD's (Certificates of Deposit)	$90.00
Position Fee	$0.45	Position Fee	$0.54
Unit Swingover:		Unit Swingover:	
Swingover Instruction	$11.00	Swingover Instruction	$9.00
Overnight Safekeeping:		Overnight Safekeeping:	
Flat fee per issue	$6.00		
Nightly fee per certificate	$0.75		
		Registered Securities	$15.00
		Bearer Securities	$26.00
Interface:		Interface:	
DTC Interface charge	$1.00	DTC Interface charge	$0.00
Participant Cash Movement:		Participant Cash Movement:	
Participant Cash Movement	$1.50	Participant Cash Movement	$0.54
Communications:		Communications:	
Leased Line Charge	$362.00	MSTC Leased Line Charge	$440.00
Leased equipment (1 CRT, 1CTL, 1PRT) from various lease terms and fees.	$variable/month	Leased equipment (1 CRT, 1CTL, 1PRT) from various lease terms and fees.	$400.00/month.
On-line Inquiry	$0.03	On-line Inquiry	$0.085
Limited Access Option:		Limited Access Option:	
Report retrieval, DOCS, Communique System only.	$100.00	Report retrieval, DOCS, Communique System only.	$100.00 plus time, character and port charge.
Inquiry, Report Retrieval, DOSC, and Communique System.	$200.00	Inquiry, Report Retrieval, DOSC, and Communique System.	$200.00 plus time, character and port charge.
Hard Copy Reports:		Hard Copy Reports:	
Hard copy reports (Activity, Net Position, P&S) plus charge for.	$10/copy +	Hard copy reports (Activity, Net Position, P&S) plus charge for.	$15/copy +.
Over 500 page count for each report	$0.028/page	Over 500 pages for all reports combined.	$0.038/page.
		All other reports	$0.038/page.
Hard Copy Input:		Hard Copy Input:	
Surcharge for all hard copy input done by MSTC on behalf of Participants.	$2.00	Surcharge for all hard copy input done by MSTC on behalf of Participants.	$7.00
Audit Confirmation Package:		Audit Confirmation Package:	
Participant requested audit confirmation	$25.00 plus shipping/ handling	Participant requested audit confirmation (request prior to audit date).	$25.00 plus shipping/ handling.
		Participant requested audit confirmation (request after audit date).	$50.00 plus shipping/ handling.
Shipping:		Shipping:	
All couriers except Brinks	Rebill plus $1.00 Midwest handling fee plus insurance	All couriers except Brinks	Rebill plus $2.00 Midwest handling fee plus insurance.
Brinks	Rebill @$9.95 per package plus $0.03/ $1000 value plus $0.18/ounce	Brinks	No change.
Shipments to Transfer Agents	Rebill @$0.04/$1000 value plus $1.24 handling fee	Shipments to Transfer Agents	Rebill @$0.04/$1000 value plus $0.90 handling fee.

Notes:
*Active—defined as issues which averaged > 2 transactions on days when transactions occurred during the month.
**Less Active—defined as issues which averaged ≤ 2 transactions on days when transactions occurred during the month.
oNon-mandatory Reorganizations will no longer include conversions.

[FR Doc. 93–20013 Filed 8–18–93; 8:45 am]
BILLING CODE 8010–01–M

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Pennsylvania Commuter Airlines, Inc. d/b/a Allegheny Commuter Airlines d/b/a USAir Express for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 93–8–20) docket 48823.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Pennsylvania Commuter Airlines, Inc. d/b/a Allegheny Commuter Airlines d/b/a USAir Express fit, willing, and able and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than August 30, 1993.

RESPONSES: Objections and answers to objections should be filed in Docket 48823 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: August 13, 1993.

Joseph F. Canny,

Deputy Assistant Secretary for Policy and Regulatory Affairs.

[FR Doc. 93–20021 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 91–233]

Regulatory Compliance Options (Maritime Regulatory Reform)

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Coast Guard is developing several initiatives aimed at providing options to operators and designers of U.S. flag commercial vessels with regard to complying with various design and inspection requirements. Such options would be equivalent alternatives to certain of the vessel design and inspection requirements now specified in titles 33 and 46 of the Code of Federal Regulations (CFR). A series of public meetings will be held to gauge public reaction to the proposed initiatives and solicit comments on practical ways to proceed with their implementation.

DATES: The first meeting will be held between 2:30 and 5 p.m. on Tuesday, August 31, 1993.

ADDRESSES: The meeting will be held at the U.S. Coast Guard Headquarters, room 2415, 2100 Second Street SW., Washington, DC 20593–0001.

Correspondence concerning the public meetings may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays. For more information, the telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Lemley, Maritime Regulatory Reform Project Director, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Telephone number (202) 267–6827.

SUPPLEMENTARY INFORMATION:

Background and Discussion

The Coast Guard traditionally provides for safety of passengers, crew, cargo, and ports, as well as pollution prevention, through a framework of regulations that apply primarily to U.S. flag vessels and, in some cases, to foreign vessels that call at U.S. ports. This framework of regulations was constructed to meet the U.S. needs and legal requirements. The body of regulations provides for acceptance of equivalent design and inspection procedures after assuring that the original regulatory intent is satisfied.

The Coast Guard is considering alternate methods for ensuring compliance with vessel design and construction requirements. These alternatives could involve self-inspection, certification, or third party oversight in lieu of Coast Guard design approval and inspection. Acceptance of a wider range of performance-based and industry consensus standards is also under consideration.

Over the past few years the percentage of foreign vessel traffic in U.S. ports has grown significantly. Ninety-six percent of the tonnage of U.S. exports and imports and 99% of the U.S. passenger international cruise business is conducted by foreign vessels. The continuing pressure on the competitive position of the U.S. "oceangoing" merchant fleet and the commercial shipbuilding industry has prompted calls for greater alignment of Coast Guard regulations with international standards in order to reduce cost disadvantages incurred by the U.S. maritime industry in the world marketplace.

Largely as a result of Coast Guard initiatives at the International Maritime Organization (IMO), the international maritime community in now more uniformly regulated and international requirements have reached substantial parity with U.S. domestic requirements. Where Coast Guard goals have been achieved through IMO instruments, the international requirements have typically been accepted and adopted by the U.S., eliminating the need for specific domestic regulations, to reduce regulatory differences between domestic and foreign vessels. However, a large array of differing domestic and international standards remains. U.S. vessel operators and designers continue to be concerned over duplications and inconsistencies among international, domestic, and classification societies design and inspection requirements and are actively seeking ways to reduce and eliminate unnecessary costs.

In addition to the changing profile of vessels calling at U.S. ports and the improvement in IMO requirements, shipping companies, Flag States, and the major classification societies are not approaching maritime safety in the same manner as they were as little as three years ago. Safety and pollution prevention concerns have acquired increased importance. There have been promising developments of auditable quality management standards, along with programs for accreditation. Coast Guard programs to assure safety and pollution prevention must adjust to the changes in these business practices. Initially these programs can not be accomplished through regulatory change, as all of the industry is not at a similar stage of development. Providing alternative ways of complying with existing regulations for those at a more advanced stage will facilitate advancements in safety and pollution prevention.

The IMO Assembly is scheduled in November 1993 to adopt a voluntary International Safety Management (ISM) Code which vessel operators and member governments will use as the

basis for vessel safety and environmental protection management programs. Use of the ISM Code should provide U.S. operators with increased compliance options.

The International Association of Classification Societies has adopted an internal member audit process to assure that members are meeting management and classification standards. The American Bureau of Shipping (ABS) has adopted a quality management program with internal and external audits to assure it is operating in accordance with its own written procedures and processes. These steps are in concert with initiatives at IMO to adopt measures in the Safety of Life at Sea (SOLAS) Convention to establish standards for classification societies acting on behalf of member governments. IMO is also considering a requirement that vessels meet the technical requirements of a classification society prior to issuance of a SOLAS safety certificate.

Another development is the International Organization for Standardization (ISO) 9000 series of quality systems standards. ISO 9000 is a voluntary standard but there is increasing reliance on use of this code in the private sector. In many cases, it can serve as one of the elements of "model" company and "model" designer programs and IMO ISM Code programs.

The Coast Guard initiatives to respond to these changes, covered under the title "Maritime Regulatory Reform," build upon the success of ongoing efforts to relieve regulatory burdens upon the industry and to improve international maritime safety.

Programs are being considered that permit options for U.S. vessel operators and the Coast Guard. Such programs would: implement the IMO ISM Code; permit U.S. Flag vessel operators to elect to use ABS to perform those design review and survey functions specified in 46 CFR and 33 CFR, with the Coast Guard issuing the certificate of inspection (COI); provide effective "targeted" Coast Guard design and inspection oversight of ABS reviews and surveys via inspections prior to COI issuance and as appropriate during the term of the COI; provide for the Coast Guard to audit the ABS quality systems, including participation on ABS design and vessel survey teams; and implement the "model" company and "model" designer concept, as well as foster other techniques that let the Coast Guard focus on critical problems and recognize quality company management.

The Coast Guard recognizes that each of these programs, of necessity, will have to be phased-in based on the ability of the ABS and the operating companies to perform their respective functions and to effect a smooth transition.

Use of alternative programs dictates maintaining Coast Guard program control and staff expertise through professional training and a strong, comprehensive oversight program to assure long term efficacy of its marine safety and environmental protection programs. Equally important, such programs will permit balancing of Flag State and Port State enforcement without reducing the safety level of U.S. vessels. This will enhance pollution prevention and port safety in the United States. Also, they will facilitate addressing vessel safety from a risk analysis basis. This, too, will enhance pollution prevention and port safety in the United States.

The Coast Guard will be hosting a number of public meetings to discuss these issues and invites comments on their implementation. Tasks being contemplated where input or active participation by the public is important include:

—Comprehensive comparison of Coast Guard/ABS/SOLAS requirements;
—Identification of the key elements of an effective oversight program;
—Examination of alternative standards;
—Identification of U.S. regulations considered unnecessary, redundant, or unnecessarily restrictive;
—Information on existing company safety programs of the type envisioned by the IMO ISM Code;
—Development of new international standards;
—Conversion to and use of performance oriented regulations; and
—Techniques to assure effective Coast Guard training and professional development.

Dated: August 13, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–19962 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD08–93–018]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 2, 1993, at the Blackthorn Pavilion, U.S. Coast Guard Base, Galveston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from: Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: July 30, 1993.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 93–20117 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD08–93–016]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given for the meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 23, 1993, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.

4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District, on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from: Mr. M. M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District, (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504)-589-4686).

Dated: July 30, 1993.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 93-20118 Filed 8-18-93; 8:45 am]

BILLING CODE 4910-14-M

[CGD08-93-017]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 2, 1993, at the Blackthorn Pavilion, U.S. Coast Guard Base, Galveston, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from: Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 30, 1993.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 93-20118 Filed 8-18-93; 8:45 am]

BILLING CODE 4910-14-M

[BS-049]

Closure of Communication Station Guam (NRV)

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The United States Coast Guard will discontinue operations from Communication Station Guam (NRV) effective September 30, 1993.

FOR FURTHER INFORMATION CONTACT:

LCDR Bob Salmon, Telecommunications Management Division (G-TTM), Office of Command, Control and Communications, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, telephone (202) 267-6837, telefax (202) 267-4106 or telex 892427 (COASTGUARDWSH). Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard will discontinue operations from Communication Station Guam on September 30, 1993 due to its consolidation with Coast Guard Section, Marianas. All services previously provided by Communication Station Guam will continue to be efficiently, effectively and safely carried out through alternate Coast Guard resources. The Coast Guard Section, Marianas will assume responsibility for VHF radiotelephone, HF radiotelephone, NAVTEX broadcast, and 2182 KHz radiotelephone calling and distress guard. Radiotelex (SITOR) and HF Morse telegraphy services will be continued via remote keying from Coast Guard Communication Master Station Pacific, San Francisco, CA (NMC).

Dated: August 11, 1993.

D.E. Ciancaglini,

Rear Admiral, U.S. Coast Guard, Chief, Office of Command, Control, and Communication.

[FR Doc. 93-20116 Filed 8-18-93; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Wilkes-Barre/Scranton International Airport, Avoca, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wilkes-Barre/Scranton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Barry Centini, Airport Director of the Luzerne and Lackawanna Counties Bi-County Board of Commissioners at the following address: Wilkes-Barre/Scranton International Airport, Avoca, Pennsylvania 18641.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Luzerne and Lackawanna Counties Bi-County Board of Commissioners under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, suite 1, Camp Hill, Pennsylvania 17011 (Tel (717)-975-3423. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wilkes-Barre/Scranton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 25, 1993, the FAA determined that the application to

impose and use the revenue from a PFC submitted by the Luzerne and Lackawanna Counties Bi-County Board of Commissioners was substantially complete within the requirements of § 158.25, of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 25, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1993

Proposed charge expiration date: April 30, 1997

Total estimated PFC revenue: $2,369,566

Brief description of proposed projects:

—Passenger Terminal Design (Impose only)
—Passenger Terminal Apron Design (Impose only)
—Design ARFF Building
—Purchase Snow Removal Equipment
—Construct Parallel Taxiway to Runway 10–28
—Construction Air Cargo Phase 1 (Impose only)
—Construction ARFF Building
—Purchase ARFF Vehicle

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTRACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Wilkes-Barre/Scranton International Airport.

Issued in Jamaica, New York on August 11, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–20009 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; King Coal Highway, Williamson to Bluefield, Various Counties, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed King Coal Highway project in the West Virginia Counties of Logan, McDowell, Mercer, Mingo, and Wyoming.

FOR FURTHER INFORMATION CONTACT:

Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 500 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone (304) 347–5329, or Mr. Ben L. Hark, West Virginia Department of Transportation, Division of Highways, Building 5, room A830, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305–0430, Telephone (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve approximately 70-miles of highway along U.S. Route 52 between U.S. Route 19 in the vicinity of Williamson, West Virginia and U.S. Route 460 in the vicinity of Bluefield, West Virginia. The proposed King Coal Highway is considered necessary to improve the economic development potential of a corridor in which the safe and efficient transportation of goods, services, and people have been inhibited by the lack of adequate access.

Alternatives under consideration include: (1) The No-Build Alternative, which consists of taking no action; and (2) the Build Alternatives, which include improving existing roadways and the construction of a divided, four-lane highway with partial control of access on various new locations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. Public meetings will be held in the study area prior to the public hearings. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held at a later date.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: August 11, 1993.

Dave Leighew,

Environment/Right-of-way Specialist.

[FR Doc. 93–20101 Filed 8–18–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Shawnee Parkway, WV 49 Near Matewan to I–77 Near Flat Top, Various Counties, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed Shawnee Parkway project in the West Virginia Counties of McDowell, Mercer, Mingo, Raleigh, and Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone (304) 347–5329, or Mr. Ben L. Hark, West Virginia Department of Transportation, Division of Highways, Building 5, room A830, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305–0430, Telephone (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct an approximately 60-mile, two-lane, scenic parkway with partial control of access on a new location between State Route 49 in the vicinity of Matewan, West Virginia and Interstate 77 in the vicinity of Flat Top, West Virginia. The Shawnee Parkway is proposed as a scenic route that would provide access to both natural and cultural resources within the corridor and aid in diversifying the regions existing economic base, which is currently dominated by the coal industry, by promoting tourism.

Alternatives under consideration include: (1) The No-Build Alternative, which consists of taking no action; (2) the Build Alternatives, which include improving existing roadways and the construction of a two-lane scenic parkway with partial control of access on various new locations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. Public meetings will be

held in the study area prior to the public hearings. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held at a later date.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: August 11, 1993.

Dave Leighow,

Environment/Right-of-way Specialist.

[FR Doc. 93–20100 Filed 8–18–93; 8:45 am]

BILLING CODE 4910-27-M

Environmental Impact Statement; Coalfields Expressway, US 460 to I–77 Near Beckley, McDowell, Raleigh, and Wyoming Counties, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed Coalfields Expressway project in the West Virginia Counties of McDowell, Raleigh, and Wyoming, and the Virginia County of Buchanan.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone (304) 347–5329, or Mr. Ben L. Hark, West Virginia Department of Transportation, Division of Highways, Building 5, room A830, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305–0430, Telephone (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct an approximately 60-mile, divided, four-lane highway with partial control of access on new and/or existing locations along State Routes 83 and 16 between U.S. Route 460 in the vicinity of Grundy, Virginia and Interstate 77 in the vicinity of Beckley, West Virginia. The proposed Coalfields Expressway is considered necessary to improve the economic development potential of a corridor in which the safe and efficient transportation of goods, services, and people have been inhibited by the lack of adequate access.

Alternatives under consideration include: (1) The No-Build Alternative, which consists of taking no action; and (2) the Build Alternatives, improving existing roadways and the construction of a divided, four-lane highway with partial control of access on various new locations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. Public meetings will be held in the study area prior to the public hearings. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held at a later date.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the addressed provided above.

Issued on: August 11, 1993.

Dave Leighow,

Environment/Right-of-way Specialist.

[FR Doc. 93–20099 Filed 8–18–93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, enforcement and other programs.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, enforcement and other programs will be held on October 13, 1993, beginning at 9:30 a.m. and ending at approximately 12:30 p.m. Questions relating to the agency's rulemaking, enforcement and other programs must be submitted in writing by October 4, 1993, to the address shown below. If sufficient time is available, questions received after the October 4 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by October 4, 1993, and the issues to be discussed will be mailed to interested persons by October 7, 1993, and will be available at the meeting. The individual, group or company asking a question does not have to be present for the question to be answered.

ADDRESSES: Questions for the October 13 NHTSA Technical Industry Meeting, to be held from 9:30 a.m. to 12:30 p.m., relating to the agency's rulemaking and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, NRM–01, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street, SW., Washington, DC 20590. The NHTSA Industry meeting will be held at the Ramada Inn, near the Detroit Metro Airport, 8270 Wickham Road, Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting from 9:30 a.m. to approximately 12:30 p.m., to answer questions from the public and the regulated industries regarding the agency's rulemaking, enforcement and other programs, on October 13th. Since NHTSA's Research and Development Office is holding a separate meeting October 12th, on its crashworthiness, crash avoidance, and data collection and analysis research programs, any comments on those programs will only be answered at the October 12th afternoon meeting and should be submitted to the Research and Development Office. The Research and Development Office will be issuing a separate **Federal Register** Notice asking for questions for the October 12th meeting. Questions on other aspects of the agency's research and development activities (i.e., related to ongoing rulemakings or highway safety issues), for the October 13th meeting should be submitted, as in the past, to the agency's Rulemaking Office. The October 12th and 13th meetings will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The purpose of these meetings is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten

cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB October 4, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–20020 Filed 8–18–93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93–01; Notice 3]

Ford Motor Company; Petition for Amendment of Temporary Exemption From Federal Motor Vehicle Safety Standards

Ford Motor Company of Dearborn, Michigan, has petitioned for an amendment of NHTSA Exemption No. 93–2 to include exemptions from paragraph S5.3.1.7 of Standard No. 108, and from paragraph S7.3 of Standard No. 208. Ford was granted Exemption No. 93–2 on March 31, 1993, on the basis that it would facilitate the development and field evaluation of low-emission motor vehicles, specifically the Ford Ecostar van. The reader is referred to Notice 2 for a full discussion of Ford's petition and the granting of its petition (58 FR 16907).

This notice of receipt of a petition is published in accordance with 49 CFR 555.7(a) and does not represent any agency judgment on the merits of the petition.

The standards from which Ford requests an additional exemption are:

1. Paragraphs S5.3.1.7 of Standard No. 108, Lamps, Reflective Devices, and Associated Equipment. Under this requirement, if a front turn signal lamp is located less than 100 mm from the lighted edge of a lower beam headlamp, the minimum luminous intensities are required to be 2.5 times that of a turn signal that is located at 100 mm or a greater distance.

The Ecostar's front turn signal lamps are located approximately 74 mm from the lighted edge of the lower beam headlamp, and are therefore subject to the 2.5 multiplier. Were the lamps located at 100 mm, they would comply with the turn signal photometrics. However, they do not, in all instances, provide a multiplier of 2.5. Grouped values exceed requirements in zones 1 and 5, "but are below the 2.5 factor for zones 2, 3, and 4 by 30% to 42%." Ford believes that an exemption would not unreasonably degrade the safety of the vehicle because "the fleet customers for these few vehicles very likely will place them in service primarily during daylight hours when the headlamps will not be activated, thus presenting no concern regarding the potential for illuminated headlamps to mask front turn signals." Ford also argues that the European Escort is routinely operated in countries where daytime use of headlamps is routine, and there has been no "indication of any problems of headlamps interfering with turn signal visibility."

2. Paragraph S7.3 of Standard No. 208, Occupant Crash Protection. The European restraint system does not have the audible seal belt reminder required by S7.3. Ford previously petitioned for exemption from this requirement, and the petition was denied. As NHTSA observed, Ford presented no reasons to justify its request. Because NHTSA routinely requires compliance with this requirement by imported grey market vehicles, the agency did not view it as burdensome to achieve.

Ford replies that it has attempted, without success, to incorporate a belt use switch into the safety belt system of the Ecostar. Since the retractor of the European Ecostar was never expected to be shipped to the U.S., a version of it with an audible reminder switch was never developed. Because the seal belt buckle assembly is mounted to the seat tracks and because that design is unique to the European Escort, Ford states that no seat belt buckle incorporating a buckle switch can be installed in the vehicle. Ford believes that most grey market vehicles are converted by installing parts used in the versions of these vehicles that are designed for export to the U.S.; however, there are no such parts available for the Ecostar since no version of the European Escort is exported.

Ford argues that an exemption would not unreasonably degrade the safety of the vehicle because "the agency's research indicates that the reminder system required by Standard 208 does not increase seat belt usage." Further, "Ecostars will be operated in business fleets by trained drivers, who will be instructed to wear seat belts."

Interested persons are invited to submit comments on the petition of Ford Motor Company described above. Comments should refer to the docket number and be submitted to Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extend practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 20, 1993.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 16, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–20114 Filed 8–18–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0014
Form Number: None
Type of Review: Revision
Title: Comptroller's Manual for Corporate Activities
Description: The Comptroller's Manual for Corporate Activities explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions and corporate expansion and structural change by existing national banks.

Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 3,650
Estimated Burden Hours Per Respondent: 7 hours, 18 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 43,155 hours
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–20075 Filed 8–18–93; 8:45 am]

BILLING CODE 4810-33-P

Public Information Collection Requirements Submitted to OMB for Review

August 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of The Currency

OMB Number: New
Form Number: None
Type of Review: New collection
Title: OCC Retiree/Benefits Data Questionnaire
Description: The OCC needs information on its retirees to audit insurance carrier bills, estimate liability for insurance premiums, and to assist retirees with their benefits problems. The affected public is OCC retirees.
Respondents: Individuals or households
Estimated Number of Respondents: 300
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Other (Triennially)
Estimated Total Recordkeeping Burden: 50 hours
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–20076 Filed 8–18–93; 8:45 am]

BILLING CODE 4810-33-P

Public Information Collection Requirements Submitted to OMB for Review

August 12, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0094
Form Number: IRS Form 1041–A
Type of Review: Revision
Title: U.S. Information Return—Trust Accumulation of Charitable Amounts
Description: Form 1041–A is used to report the information required in 26 USC 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.
Respondents: Individuals or households, businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 18,000

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—24 hours, 9 minutes
Learning about the law or the form—3 hours, 20 minutes
Preparing the form—8 hours, 32 minutes
Copying, assembling, and sending the form to the IRS—1 hour, 20 minutes

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 672,300 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–20077 Filed 8–18–93; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

August 12, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0014
Form Number: IRS Form 637
Type of Review: Extension
Title: Application for Registration (for Certain Excise Tax Transactions)
Description: This form is used to apply for excise tax registration. The registration applies to refiners or producers of gasoline and to certain manufacturers or sellers and purchasers that must register to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Gasoline producers are required by section 4101 to register with the Service before incurring any tax liability.
Respondents: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 2,000

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—8 hours, 22 minutes
Learning about the law or the form—18 minutes
Preparing and sending the form to the IRS—26 minutes

Frequency of Response: Other (one-time only)
Estimated Total Reporting/ Recordkeeping Burden: 18,240 hours
OMB Number: 1545–1201
Regulation ID Number: PS–52–88 Final (T.D. 8455)
Type of Review: Extension
Title: Election to Expense Certain Depreciable Business Assets
Description: The regulations provide rules on the election described in section 179(b)(4); of the dollar limitation among component members of a controlled group; and the proper order for deducting the carryover of disallowed deduction. The recordkeeping and reporting is necessary to monitor compliance with the section 179 rules.
Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 10,000
Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 15,000 hours
OMB Number: 1545–1277
Form Number: IRS Form 1040–TEL
Type of Review: Revision
Title: TeleFile Income Tax Return For Single Filers With No Dependents
Description: Form 1040EZ filers in Florida, Indiana, Kentucky, Michigan, Ohio, South Carolina, and West Virginia will have the option of filing Form 1040–TEL, in which they will enter their tax information on a Touch-Tone telephone. IRS will use the information collected to figure the filer's tax, and refund or balance due.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers:
Estimated Burden Hours Per Respondent/Recordkeeper
Cleveland District, Indiana, Kentucky, Michigan, West Virginia, Florida and South Carolina:
Paper—44 minutes
Voucher—13 minutes
Cincinnati District only:
Voice—26 minutes
Voucher—12 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 444,125 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–20078 Filed 8–18–93; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 159
Thursday, August 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, August 17, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

A personnel matter.

Matters relating to probable failure of certain insured banks.

Recommendation concerning an administration enforcement proceeding.

Request for a waiver of the cross-guaranty provisions of the Federal Deposit Insurance Act.

Applications of First-Citizens Bank & Trust Company, Raleigh, North Carolina, for consent to merge, under its charter and title, with Pioneer Interim Bank, successor to Pioneer Savings Bank, Inc., Rocky Mount, North Carolina, for consent to establish thirteen branch offices of Pioneer Savings Bank, Inc. as branches of the resultant bank, and for consent to participate in an optional conversion transaction.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: August 17, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–20240 Filed 8–17–93; 3:57 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 24, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–15: L. Anthony Sutin on behalf of the Tsongas Committee, Inc. (continued from meeting of August 17, 1993).
Regulations:
Notice of Proposed Rulemaking on the Personal Use of Campaign Funds.
Explanation and Justification of the Revised Rules Defining "Member" of a Membership Association (11 CFR Parts 100 and 114).
FY 1995 Budget Request.
Routine Administrative Matters.

DATE AND TIME: Tuesday, August 24, 1993 (To Convene After the Open Meeting.)

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–20232 Filed 8–17–93; 3:30 pm]

BILLING CODE 6715-01-M

federal register

Thursday
August 19, 1993

Part II

Office of Management and Budget

Cost Principles for State and Local Governments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Proposed Revisions to OMB Circular No. A–87.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular No. A–87, "Cost Principles for State and Local Governments."

An interagency task force was established in 1987 to review existing cost principles for Federal awards to State and local governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from State and local governments, and compared for consistency the provisions of other OMB cost principles covering nonprofit organizations and universities. A proposed revised Circular reflecting the results of those efforts was published on October 12, 1988, at 53 FR 40352–67. The extensive comments received on the 1988 proposed revision, discussions with interest groups, recent legislation concerning lobbying, and other related developments were considered in developing this new proposed revision.

DATES: All comments on this proposal should be in writing and must be received by October 18, 1993. Late comments will be considered to the extent practicable.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, room 10235, New Executive Office Building, Washington, DC 20503. For a copy of the current Circular, contact Office of Administration, Publication Office, room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget (telephone: 202–395–3993).

SUPPLEMENTARY INFORMATION: The proposed changes were guided by the following criteria.

—*Fairness.* Federal cost principles will consistently guide State, local, and Indian tribal governments, within statutory limitations, in determining all the reasonable direct and indirect costs they incur in conducting Federal and the Federal portion of Federal/State programs. Federal, State, local, and Indian tribal governments will treat Federal, State, local and Indian tribal programs consistently. Due consideration will be given to public perceptions of certain costs, such as advertising, public relations, and travel. Negotiations on the extent of Federal participation will be based on consideration of all costs.

—*Effectiveness, efficiency, and accountability.* Policies, principles, and regulations will support effective, efficient delivery of program services and minimize opportunities for fraud, waste, and abuse. They will stimulate the use of efficient administrative practices and the economical use of resources. State, local and Indian tribal governments will be granted the maximum discretion for managing the activities for which reimbursable costs are incurred and the manner in which reimbursements are expended.

—*Feasibility and simplicity.* Policies, principles, and regulations will be as simple as possible to: (a) minimize time and effort required for determining reimbursable costs, consistent with the need for accountability; (b) minimize confusion and opportunity for disagreements; and, (c) minimize the need for involvement of technical and policy level officials. Changes to policies, principles, and regulations will only be made to achieve significant net benefits.

—*Conformance with generally accepted accounting principles.* Policies, principles, and regulations will be consistent with generally accepted accounting principles, subject to certain additional requirements, in order to encourage State, local, and Indian tribal governments to continue to adopt good financial management practices.

Summary of Significant Changes

This proposal is based on the revisions proposed in 1988 but incorporates the comments, discussions, and other developments received or occurring since that time. The major areas of concern, all of which have been addressed in this proposal, are as follows:

A. Documentation and Procedures
B. Allowable Costs
C. Timing of Funding
D. Other Needed Changes

A. Documentation and Procedures

Certain proposed revisions address the need to limit documentation and procedures to a necessary minimum, consistent with the Federal, State, local, and Indian tribal governments' need for accountability.

1. Support for Salaries and Wages

The 1988 proposed Circular tightened documentation requirements consistent with audit recommendations to prevent abuses and improve auditability.

Some comments suggested simplification of documentation requirements. This proposal provides simplification by clarifying alternative systems for personnel activity distributions and allowing salary costs to be claimed based on estimates, so long as charges to Federal financial assistance programs based on such estimates are adjusted quarterly to reflect actual effort.

2. Submission of Cost Allocation Plans

The 1988 proposal reorganized the text of the current Circular (January 15, 1981) and incorporated long-standing requirements for cost allocation plans (CAPs) in attachments. Requirements for CAPs were previously issued by the Department of Health and Human Services, at OMB's direction. This proposal responded to Federal, State, and local requests that the Circular be made easier to use.

Comments were generally supportive, indicating that the new format facilitated administration. However, some comments suggested elimination of CAPs and/or further simplification. In response to these comments, this proposal makes the following changes: (i) encourages use of multi-year predetermined rates to reduce workload, (ii) allows use of budget data as the basis for cost projections (with an after-the-fact adjustment to reflect actual costs), and (iii) allows a two year rather than one year lag for reconciliations.

3. Documentation for CAPs

The 1988 proposal required additional documentation regarding the financial condition and operations of internal service funds and self insurance funds. This was in response to audit findings that the Federal Government was inappropriately charged when governmental units accumulated excessive retained earnings or transferred excess cash balances from internal service and self insurance funds to general funds.

In response to comments, this proposal reduces part of the 1988 documentation requirements. Listings of fund transfers are no longer required for all transfers, only for non-operating transfers.

4. Timely Approval of CAPs

The 1988 proposal provided for timely approval of CAPs by Federal agencies, but did not impose a deadline.

Some comments suggested that a deadline be imposed. This proposal does not provide a deadline because of the nature of the approval process. Approval requires negotiation between cognizant Federal agencies and governmental units. However, this proposal does call for increased use of multi-year predetermined rates, where authorized, to reduce workload and speed the review process. OMB is also committed to work with the Department of Health and Human Services and other agencies to accelerate the approval process.

B. Allowable Costs

Certain proposed revisions focus on the need to reimburse necessary and reasonable costs of administering Federal financial assistance programs, consistent with fairness and public policy concerns.

5. Interest

The 1988 proposal liberalized interest allowability as requested by State and local governments. It allowed interest paid to second parties on capital equipment acquisitions and major building renovations, including lease purchase arrangements, completed on or after the effective date of the Circular.

Some comments suggested that interest allowability also be extended to acquisitions made prior to the issue date of the final regulation. This proposal does not allow such interest because the related capital costs have already been incurred and payment of interest would in effect be retroactive. The proposal also provides for interest offsets in certain cash flow situations.

6. Depreciation and Use Allowances

The 1988 proposal clarified requirements for determining the useful life of assets, accounting for the cost of capital assets, determining allowable depreciation, and providing for Federal recovery on property disposal. These changes responded to reported abuses.

In response to comments, this proposal makes approval of changes in depreciation methods a part of CAP negotiation, rather than a separate process. The proposal does not adopt suggestions that reimbursements be based on replacement cost or accelerated depreciation. These suggestions would violate the basic principle of cost reimbursement by using estimates of future prices, rather than actual costs, and accelerated, rather than actual, depreciation.

7. State/Local Taxes

The Federal Government funds many programs and activities with State and local governments. The rates of Federal financial participation vary between programs and are generally established in law or in the agreement between the Federal Government and the governmental unit.

In September 1988, the Inspector General for the Department of Health and Human Services issued a "Report on the Effects of State Sales Tax on Federal Programs" (No. 04–87–00040). A principal question was whether there was a "need for regulatory denial of Federal financial participation (FFP) for sales tax paid by a governmental entity to itself." The report studied the effects on FFP in six States that did not exempt State agencies from the obligation to pay State sales tax. In those States during one fiscal year, sales tax paid on Federal expenditures under Federal agreements totalled approximately $54 million. Thus the "Federal Government could have saved this $54 million if sales tax generated by those States was considered unallowable for FFP." The report also studied two States that exempted State departments from sales tax, and found that "significant increases in Federal expenditures, $74.5 million, would occur if those two States were to begin taxing themselves." Based on additional analysis contained in the report, the Inspector General reached the following conclusion: "We believe that State sales tax applied to expenditures under Federal agreements is unallowable because it does not constitute actual cost to the State," but instead represents monies "paid by a governmental entity to itself."

The 1988 proposal disallowed "taxes assessed by a Governmental unit upon itself, [and] its component parts * * *" 53 FR 40361 (10/14/88). The responses to this proposal did not disagree that such taxes are self-payments. Nevertheless, some comments called for continued allowability of self-assessed taxes, contending that the proposed disallowance would be intrusive and administratively burdensome. Comments stated that user charges, such as gasoline taxes, provide benefits to Federal financial assistance programs.

During our analysis, we noted that one State had passed a law which would require each contractor involved in the highway program to pay an amount equal to five percent of the gross receipts derived from the performance of federally-funded highway contracts. Under the proposed provisions of this Circular such taxes will not be allowable.

In response to comments concerning implementation problems, this proposal allows most taxes but disallows, as a matter of government-wide policy, only sales taxes and equivalent broad-based taxes that a governmental unit assesses upon itself and/or Federal programs. The current proposal is therefore narrower than the 1988 proposal, which would have disallowed all self-assessed taxes, including user charges. Federal agencies may continue to disallow other taxes on a case by case basis, if the agency determines that the tax is an inappropriate charge to the Federal financial assistance program or if it inappropriately reduces the actual contribution by the governmental unit.

This proposal responds to other comments regarding implementation concerns by allowing alternatives to actual cost records, where identification of actual costs is not administratively feasible.

8. Lobbying

This proposal specifies restrictions against the reimbursement of lobbying costs consistent with recent legislation.

9. Costs Incurred in Appeals and Claims Against Federal Agencies

This proposal disallows costs of appeals, claims, and related actions consistent with the October 3, 1991, revision to Circular A–21, "Cost Principles for Educational Institutions."

10. Working Capital Reserves

The 1988 proposal liberalized current policy by allowing reimbursement for an amount equivalent of up to 60 days cash expenditures in order to provide for establishment of a working capital reserve in internal service funds. This proposed change responded to suggestions by governmental units that such reserves were a necessary cost of doing business.

Some comments suggested 90 days of working capital reserve. No change was made to the 60 day proposal, since comments did not provide adequate support for a longer period.

11. Capital Expenditures

The 1988 proposal liberalized treatment of capital expenditures by making such expenditures under $5,000 allowable as a current expense, if permitted by the accounting policies uniformly applied at the governmental unit. This responded to suggestions that the policy be changed to facilitate acquisition of equipment and allows use of existing systems rather than requiring two different capital accounting systems. It also was consistent with the capitalization requirements in the

Common Rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule," published at 53 FR 8034–8103 (3/11/88).

In response to comments, this proposal clarifies that only capital acquisitions of $5,000 or more treated as a direct cost to Federal programs are subject to Federal approval. This proposal provides that for indirect cost purposes the governmental unit shall use the capitalization level, up to $5,000, established by that unit. Some comments also suggested that the ceiling be raised above $5,000. This change was not made since $5,000 is consistent with other requirements, including the Common Rule.

12. Mass Severance and Back Pay

The 1988 proposal restricted the allowability of mass severance pay and back pay and provided for prior approval of deviations.

In response to comments, this proposal deletes pre-approval requirements regarding back pay. However, such back pay is still unallowable if it constitutes payment of fines and penalties.

C. Timing of Funding

Certain proposed revisions are made in recognition of the importance of cash flows and the time value of money as well as the need to follow generally accepted accounting principles.

13. Pension Costs

The 1988 proposal clarified current policy by limiting allowability of the Federal share of pension costs to the portion currently funded by governmental units. It also defined situations in which the interest component of pension cost was not reimbursable. It also required additional information on pension fund financial condition and operations.

In response to comments, this proposal provides for Federal sharing, on an amortized basis, of the costs of unfunded liabilities, net of the increased interest cost caused by late funding of the actuarially required pension plan contributions by the governmental unit.

14. Retiree Health Benefits

The 1988 proposal limited allowability of retiree health benefit costs to the amount actually paid.

In response to comments, this proposal also provides for payment on the basis of accrued costs to the extent such costs are funded.

15. Employee Leave Earned But Not Taken

The 1988 proposal limited reimbursements to actual payments for leave taken.

In response to comments, this proposal also provides for payment on the basis of accrued costs to the extent such costs are funded.

16. Insurance and Indemnification Reserves

The 1988 proposal tightened standards for self insurance programs to prevent abuses identified in Federal audits. It also limited reimbursements to actual cash payments for employee benefit related programs.

In response to comments, this proposal allows costs associated with employee benefit related programs, such as worker's compensation, to be treated either on an actual cash payment basis or on the basis of accrued cost to the extent such costs are funded and satisfy the other requirements governing insurance and indemnification reserves.

D. Other Needed Changes

Certain proposed changes were made to this Circular to reflect related changes in law, potential conflict of interest situations and to make it consistent with revisions in Circular A–21 "Cost Principles for Educational Institutions."

17. Certification on CAPs and Indirect Cost Proposals

This proposal adds a requirement for specific certification language in CAPs and indirect cost proposals (ICPs) to improve understanding by responsible governmental unit officials of the types of costs the Federal Government does not allow.

18. Additional Changes

This proposal explicitly restricts or prohibits reimbursement for alcohol, entertainment, advertising and public relations, and travel. This is consistent with law and the recent revisions in OMB Circular No. A–21, "Cost Principles for Educational Institutions."

19. Refunds of Unallowable Cost

This proposal requires unallowable costs to be refunded to the Federal Government.

20. Accounting and Consulting Services

This proposal restricts State and local governments from engaging an accounting firm to prepare indirect cost proposals and then engaging the same firm to make subsequent audits.

Judicial Review

This Circular is intended solely to improve the internal management of the Executive Branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any person.

Public Comment

Suggestions received on the revisions proposed in 1988 to the Circular were accommodated to the extent appropriate. OMB encourages comments on the revisions being proposed here and on more efficient approaches to funding indirect cost. Other alternative proposals are also encouraged.

National Performance Review

Cost principles for State and local governments are under consideration by the National Performance Review. If changes are adopted as a result of that review, this proposal will be made compatible with those changes.

John B. Arthur,

Assistant Director for Administration.

To the Heads of Executive Departments and Establishments

Subject: Cost principles for Federal financial assistance programs conducted by State, local, and Indian tribal governments

1. *Purpose.* This Circular establishes principles and standards for determining costs for Federal financial assistance programs carried out through grants, contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

2. *Authority.* This Circular is issued under the authority of 31 U.S.C. 1111, 31 U.S.C. 503, Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. *Background.* An interagency task force was established in 1987 to review existing cost principles for Federal awards to State and local governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from State and local governments, and compared for consistency the provisions of other OMB cost principles covering nonprofit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988. Extensive comments on the proposed revision, discussions with interest groups, recent legislation concerning lobbying, and related developments have been considered in this new proposed revision.

4. *Rescissions.* This Circular rescinds and supersedes Circular A–87 issued January 15, 1981.

5. *Policy.* This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances nor to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal financial assistance program. No provision for profit or other increment above cost is intended.

6. *Definitions.* Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. *Required Action.* Agencies responsible for administering programs that involve contracts, grants, and other agreements with State, local, and Indian tribal governments shall issue the appropriate regulations necessary to implement the provisions of this Circular and its Attachments.

8. *OMB Responsibilities.* OMB will review agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. *Information Contact.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202–395–3993.

10. *Termination Review Date.* OMB Circular No. A–87 will have a policy review three years from the date of issuance.

11. *Effective Date.* This Circular is effective immediately. Agencies shall issue implementing regulations required under Section 7 to meet the following effective dates.

—For costs charged directly, this revision shall be applied to all grants, contracts and other agreements awarded or amended, including continuation or renewal awards, on or after January 1, 1994.

—For costs charged indirectly and the submission of certifications, this revision shall be applied to all Cost Allocation Plans and Indirect Cost Proposals for the governmental unit's fiscal years starting on or after January 1, 1994.

Leon E. Panetta,

Director.

OMB Circular No. A–87 Cost Principles for Federal Financial Assistance Programs Conducted by State, Local and Indian Tribal Governments

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Attachment A—General Principles for Determining Allowable Costs

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A. Purpose and Scope

1. Objectives. This attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal financial assistance programs"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. No provision for profit or increment above allowable cost is intended.

2. Policy Guides. The application of these principles is based on the fundamental premises that:

a. Governmental units are responsible for the efficient and effective administration of Federal financial assistance programs through the application of sound management practices.

b. Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal financial assistance program.

c. Each governmental unit, in recognition of its own unique combination of staff, facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal financial assistance programs.

3. Application. a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal grants, cost reimbursement type contracts, and cooperative agreements (including subgrants and subcontracts) except those with: (1) Publicly-financed educational institutions subject to Office of Management and Budget Circular A–21, and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments/agencies.

b. All cost-reimbursement subgrants, subcontracts, etc are subject to these Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations

shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply subject to the provisions of A. 3. a. of this Attachment; if a subaward is to some other nonprofit organization, Circular A–122 shall apply.

c. These principles will be used in determining the appropriateness of costs proposed under fixed price arrangements with governmental units.

d. Where a contract awarded to a governmental unit incorporates a Cost Accounting Standards clause, the requirements of that clause shall apply if more restrictive than this Circular.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a grant budget, approval of the budget constitutes such approval. If the costs are covered by a State/local-wide cost allocation plan, or an indirect cost proposal approval of the plan constitutes the approval.

2. "Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

3. "Cognizant agency" means the Federal agency which, on behalf of all Federal agencies, is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular.

4. "Common rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034–8103 (3/11/88). Other common rules will be referred to by their specific titles.

5. "Cost" means cost as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

6. "Cost allocation plan" (CAP) means any of the following.

a. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or billing the allowable costs of services provided by a governmental unit on a centralized basis to its departments/agencies as described in Attachment C of this Circular.

b. "Public assistance cost allocation plan" means the documentation identifying, accumulating, and distributing the allowable costs of services provided by a public assistance agency/department in support of all Federal financial assistance programs administered or supervised by that agency/department as described in Attachment D of this Circular.

c. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

7. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which provision is made to accumulate those costs.

8. "Federal financial assistance program" means a grant, contract, or other agreement, between the Federal Government and a governmental unit, whereby the Federal Government provides funds to carry out specified programs or projects.

9. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

10. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component or subdivision thereof.

11. "Grantee department or agency" means the subdivision of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

12. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

13. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal financial assistance programs, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal financial assistance programs and be allocable thereto under these principles.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal financial assistance award and program, or other governing regulations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the governmental unit.

e. Be accorded consistent treatment. Consequently, a cost may not be assigned to a Federal financial assistance program as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal financial assistance program as an indirect cost.

f. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

g. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-supported activity in either the current or a prior period except as specifically provided by Federal law.

h. Be net of all applicable credits.

i. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness of specific costs must be scrutinized with particular care in connection with governmental units or subdivisions thereof which receive the preponderance of their support from Federal financial assistance programs from Federal agencies. The burden of proof shall be upon the governmental unit to establish that costs are reasonable. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal financial assistance program.

b. The restraints or requirements imposed by such factors as sound business practices, arms length

bargaining, Federal, State and other laws and regulations, and terms and conditions of the Federal financial assistance program.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large and the Federal government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal financial assistance program's cost.

3. Allocable costs. a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. The cost of all activities, whether incurred in meeting cost-sharing or matching requirements, donated services or in-kind contributions will receive an appropriate allocation of indirect cost. Unallowable costs which benefit from a governmental unit's indirect costs, or otherwise incurred, must receive an allocation of indirect costs by being included in (1) the allocation base(s) used to assign costs to particular cost objectives and (2) the direct cost base(s) used to compute indirect cost rates.

c. Any cost allocable to a particular Federal financial assistance program or cost objective under the principles provided for in this Circular may not be shifted to other Federal financial assistance programs to overcome fund deficiencies, avoid restrictions imposed by law or terms of the Federal financial assistance programs, or for other reasons.

d. Where an accumulation of joint costs will ultimately result in charges to a Federal financial assistance program, a cost allocation plan or indirect cost proposal will be required as prescribed in Attachments C, D, and E.

4. Applicable credits. a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal financial assistance programs as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, and scrap; income from personal or incidental services; insurance refunds or rebates; earnings or imputed earnings on reserves, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal financial assistance program either as a cost reduction or cash refund as appropriate.

b. In some instances, the amounts received from the Federal financial assistance program to finance activities or service operations of the governmental unit or the acquisition of capital items should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal financial assistance programs.

c. Program income, as defined in the Common Rule or other applicable regulations, shall be treated appropriately in accordance with the provisions of the Common Rule or other applicable regulations.

D. Composition of Cost

1. Total cost. The total cost of a Federal financial assistance program is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal financial assistance program or other final cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs charged to Federal financial assistance programs are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to federally-supported or other programs against which costs are finally assigned. Direct costs may also be charged to cost objectives (such as indirect cost centers or internal service activities) used for the accumulation of costs pending distribution in due course to Federal financial assistance programs and other final cost objectives.

2. Application. Typical direct costs chargeable to Federal financial assistance programs are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those programs.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the program.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefiting cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost proposals are contained in Attachments C, D, and E.

3. Limitation on indirect costs. a. Federal financial assistance programs may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that provide assistance of this type will establish procedures that will assure that the amount actually allowed for indirect costs does not exceed the maximum allowable under the statutory limitation applicable to the Federal financial assistance program or the amount otherwise allowable under this Circular, whichever is smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Circular, the amount not recoverable as indirect costs under one Federal financial assistance program may not be shifted to another Federal financial assistance program, unless specifically authorized by Federal legislation.

4. Accounting and consulting services. To avoid a potential conflict of interest State and local governments shall not engage the same accounting/consulting firm to prepare indirect cost proposals/cost allocation plans and to make subsequent audits in accordance with the provisions of Circular A–128, "Audits of State and Local Governments."

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rata share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. The services covered by this Section do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications

Each Cost Allocation Plan or Indirect Cost Proposal required by Attachments C, D, and E must comply with the following.

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C, D, and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal.

2. No cost allocation plan or indirect cost rate shall be binding upon the Federal Government if the most recent required proposal from the governmental unit has not been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate, and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect cost or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that has been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Attachment B—Selected Items of Cost

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19. Equipment and Other Capital Expenditures
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21. Fund Raising, and Investment Management Costs
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23. General Government Expenses
24. Idle Facilities and Idle Capacity
25. Insurance and indemnification
26. Interest
27. Lobbying
28. Maintenance, Operations and Repairs
29. Materials and Supplies
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41. Travel Costs
42. Underrecovery of Costs Under Federal Agreements

Sections 1 through 42 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal financial assistance programs and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems is allowable.

2. *Advertising and public relations costs.* a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under the Federal financial assistance program, when considered in conjunction with all other recruitment costs;

(2) The procurement of goods and services for the performance of the Federal financial assistance program;

(3) The disposal of scrap or surplus materials acquired in the performance of the Federal financial assistance program except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal financial assistance program.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal financial assistance program are allowable as direct costs;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal financial assistance program are allowable as direct costs; or

(3) Costs of conducting general liaison with news media and government

public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notices of contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d. above;

(2) Costs of conventions, meetings, or other events related to other activities of the government unit including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by Federal law or as an indirect cost where allocable to a Federal financial assistance program.

4. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

5. *Audit service.* The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act as implemented by Circular A–128 "Audits of State and Local Governments." Generally, the percentage of costs charged to Federal financial assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

6. *Automatic data processing.* The cost of data processing services is allowable (but see section 19, Equipment and Other Capital Expenditures). The costs associated with the development/testing of automated system must be accumulated and amortized over the expected life of the system.

7. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

8. *Bonding costs.* Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. *Communications.* Costs of telephone, mail, messenger and similar communication services are allowable.

11. *Compensation for personal services.* a. General. Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal financial assistance programs, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with governmental unit laws and rules and meets Federal merit system or other requirements where applicable; and

(3) Is determined and supported as provided in subsection h. below.

b. Reasonableness. Compensation for employees engaged in Federal financial assistance program activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal financial assistance program activities are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personal compensation.

d. Fringe benefits. (1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave and the like, are allowable if: (a) they are provided under established written leave policies; and (b) the costs are equitably allocated to all related activities, including Federal financial assistance programs; and (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses a cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the period the payment is made. However, payments in excess of amounts earned on Federal financial assistance programs are unallowable.

(4) When a governmental unit uses the accrual basis of accounting, the cost of leave to the extent it is funded is allowable at the time the governmental unit becomes liable for payment of the leave earned, whether or not it is used within that accounting period, subject to the following:

(i) The accrued amount earned must be net of lost leave (e. g., leave lost due to accumulation ceiling).

(ii) Adjustments to the value of accrued leave balances resulting from salary increases or other causes are only allowable where the governmental unit maintains a fully funded leave system which satisfies the requirements of Section 25. C., self insurance reserves.

(iii) The accrual basis may only be used for those types of leave for which a firm liability exists when the leave is earned.

(iv) Interest earnings will be added to the accrued leave fund.

(5) Where a governmental unit converts from the cash to the accrual basis, the cost of leave previously earned but not recognized for accounting purposes shall be handled as follows:

(i) The cost allowed for the current accounting period shall be the greater of the cash leave payments or the net

amount earned for the period (see (4) (i) above). However, cash payments for any leave the Federal Government has previously paid on the accrual basis are not allowable.

(ii) Where cash payments exceed the net amount earned, excess cash payments will reduce the balance of unrecognized leave.

(iii) This process will be used for each subsequent accounting period for each type of leave where a conversion has occurred until the initial liability is eliminated.

(6) Fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (but see section 25, Insurance and Indemnification); pension plan costs (see subsection e. below); and the like are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal financial assistance programs and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal financial assistance programs and other activities.

e. Pension plan costs. Pension costs which are incurred in accordance with established written policies of the governmental unit and which meet the following conditions are allowable.

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation do not discriminate against Federal financial assistance programs.

(3) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP). Once a governmental unit has selected a method for determining the cost of a pension plan, it shall continue to use that method until a change is permitted by GAAP and agreed to by the cognizant agency.

(4) For pension plans using an acceptable actuarial cost method as defined by GAAP:

(i) The Federal Government will contribute at the rate the governmental unit contributes, or the actuarially determined rate, whichever is less, if such costs are funded for all plan participants within six months after the end of the governmental unit's fiscal year. Costs funded after the six month period, except for related interest, are normally allowable in the year funded. Amounts funded by the governmental unit in excess of the actuarially determined rate (including any interest earned therein) may be used as the governmental unit's contribution in future periods.

(ii) Interest costs caused by a failure to fund in accordance with actuarial estimates are unallowable.

(iii) Exceptions to the provisions of subparagraphs (a) and (b) may be granted to a local government or an Indian tribal government by the cognizant agency for delays resting solely within the control of a State pension program, with respect to a local government or Indian tribal government participating therein (or a similar situation concerning other differing levels of government.

(iv) Interest adjustments in current or future years caused by any delays in funding a reasonable estimate of the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable, are unallowable.

(5) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries. When a governmental unit converts to an acceptable actuarial cost method as defined by GAAP and funds pension costs in accordance with this plan, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years consistent with GAAP, except that the interest component attributable to the unfunded liability is unallowable. If no such GAAP period exists, the cost should be amortized over a period negotiated with the cognizant agency.

(6) If individual groups of employees, departments, or agencies of the governmental unit experience significantly different actuarial gains and losses or experience different levels of benefit accrual (e.g., police or fire departments that permit earlier retirements, or programs which employ either an atypical number of short term employees or a class of employees whose ages or other actuarially significant characteristics differ substantially from the norm), the governmental unit shall recognize those differences by use of separate allocations or other techniques which result in a reasonable allocation.

(7) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health and other benefits. Post-retirement benefits refers to costs of health insurance or health services and other benefits not included in a pension plan covered by paragraph e. above for retirees and their spouses, dependents, and survivors which are incurred in accordance with established written polices of the governmental unit. Such post-retirement benefits which meet the following conditions are allowable.

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation and funding do not discriminate against Federal financial assistance programs.

(3) The cost assigned to each fiscal year is determined in accordance with GAAP. Once a governmental unit selects a method for determining costs, it shall continue to use that method until a change is permitted by GAAP and agreed to by the cognizant agency.

(4) The cost may be computed using either the pay-as-you-go cost method or an acceptable actuarial cost method.

(5) Post-retirement benefit costs computed using an acceptable actuarial cost method must be funded to be allowable.

(i) To be allowable in the current year, the costs of post-retirement benefits must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain an irrevocable trust fund for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries

(ii) The Federal Government will contribute at the rate the governmental unit contributes, or an acceptable actuarially determined rate, whichever is less. The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of the governmental unit's fiscal year. Costs funded after the six month period, except for related interest, are normally allowable in the year funded.

(iii) Interest adjustments in current or future years, caused by delays in funding a reasonable estimate of the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable, are unallowable.

(6) Conversions from a pay-as-you-go method to an acceptable actuarial method shall be treated in accordance with GAAP and the initial unfunded liability attributable to prior years shall be allowable if funded and amortized over a period of years consistent with GAAP or, if no such GAAP period exists, over a period negotiated with the cognizant agency. However, if GAAP requires a conversion and the governmental unit does not convert as required, any interest costs associated

with the initial unfunded liability in a subsequent conversion are unallowable.

(7) If individual groups of employees, departments, or agencies, of the governmental unit experience significantly different levels of benefit accrual (e.g., police or fire departments which accrue benefits at rates different from other departments), the governmental unit shall recognize those differences by use of separate allocations or other techniques which result in a reasonable allocation.

(8) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay. (1) Payments in addition to regular salaries and wages, made to workers whose employment is being terminated, are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Actual severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit. However, if individual departments or agencies of the governmental unit experience significantly different levels of turnover, the governmental unit shall recognize those differences by use of separate allocations or other techniques which result in a reasonable allocation.

(3) Abnormal or mass severance pay will be considered on a case by case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. (1) Charges to Federal financial assistance programs for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal financial assistance program or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared on at least a quarterly basis and will be signed by the employee and a supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in paragraph (5) below unless a statistical sampling system (See paragraph (6) below) or other substitute system has been approved by the cognizant Federal agency as a part of the Cost Allocation Plan. Such documentary support will be required where employees work on:

(i) More than one Federal program,

(ii) A Federal program and a non-Federal program,

(iii) An indirect cost activity and a direct cost activity,

(iv) Two or more indirect activities which are allocated using different allocation bases, or

(v) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards.

(i) They must reflect an after-the-fact distribution of the actual activity of each employee.

(ii) They must account for the total activity for which each employee is compensated.

(iii) They must be prepared at least monthly and must coincide with one or more pay periods, and

(iv) They must be signed by the employee and a responsible supervisory official who has first hand knowledge of the activities performed by the employee.

(v) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal financial assistance programs but may be used for interim accounting purposes, provided that:

(a) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(b) At least quarterly adjustments are made to the accounting records and costs charged to Federal financial assistance programs to reflect the results of the activity actually performed; and

(c) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal financial assistance programs may be used in place of activity reports when approved as part of the cost allocation plan. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(i) Substitute systems which use sampling methods (primarily for AFDC, Medicaid and other public assistance programs) must meet acceptable statistical sampling standards including:

(a) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results;

(b) The entire time period involved must be covered by the sample; and

(c) The results must be statistically valid and applied to the period being sampled.

(ii) Less than full compliance with the statistical sampling standards noted in paragraph (a) above may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal financial assistance programs will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal financial assistance programs than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal financial assistance programs must be supported in the same manner as those claimed as allowable costs under Federal financial assistance programs.

i. Donated services. (1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. *Contingencies.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance

reserves (see subsection 23.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. *Contributions and donations.* Contributions and donations, including cash, property and services, by governmental units to others, regardless of recipient, are unallowable.

14. *Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.* a. Definitions.

(1) "Conviction," as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) "Costs" include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the governmental unit to assist it; costs of elected and appointed officials, employees, and other staff; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) "Fraud," as used herein, means (i) acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., 3729–3731, or the Anti-kickback Act, 41 U.S.C., 51 and 54.

(4) "Penalty" does not include restitution, reimbursement, or compensatory damages.

(5) "Proceeding" includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local, Indian tribal, or foreign government, are not allowable if the proceeding (1) Relates to a violation of, or failure to comply with, a Federal, State, local, Indian tribal, or foreign statute or regulation, by the governmental unit (including its agents and employees); and (2) results in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of governmental unit liability.

(iii) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(iv) A final decision by an appropriate Federal official to debar or suspend the governmental unit, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(v) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (i), (ii), (iii) or (iv) of b.(1) above.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in b.(1) above.

c. If a proceeding referred to in paragraph b. is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the governmental unit and the Federal Government, then the costs incurred by the governmental unit in connection with such proceedings that are otherwise not allowable under paragraph b. may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in paragraph b. is commenced by a State, local, Indian tribal, or foreign government, the authorized Federal official may allow the costs incurred by the governmental unit for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) A specific term or condition of a Federal financial assistance program, or (2) specific written direction of an authorized Federal official.

e. Costs incurred in connection with proceedings described in paragraph b., but which are not made unallowable by that paragraph, may be allowed by the Federal Government but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the Federal financial assistance program;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under paragraph c. has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the governmental unit in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), including the cost of all relief necessary to make such employee whole, where the government unit was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against claims or appeals, or the prosecution of claims or appeals against the Federal Government or governmental unit, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs which may be unallowable under this section, including directly associated costs, shall be segregated and accounted for by the governmental unit separately. During the pendency of any proceeding covered by paragraphs b. and f. of this section, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the governmental unit to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

15. *Depreciation and use allowance.* a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g.,

buildings, office equipment, computer equipment, etc.) except as provided in subsection f. below. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on a State, local, or Tribal-wide basis.

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The acquisition cost of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a statutory matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-third percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. The straight line method will be used when depreciation is proposed. Depreciation methods once used shall not be changed unless approved in the cost allocation plan. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset; and the combination of use allowances and depreciation applicable to the asset must not exceed the total acquisition cost of the asset. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. No depreciation or use charge may be allowed on any assets that have been fully depreciated except in unusual circumstances and with prior approval of the cognizant Federal agency.

g. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. *Disbursing service.* The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. *Equipment and other capital expenditures.* a. The cost of facilities, equipment and other capital assets, and repairs which materially increase the value or useful life of capital assets are unallowable as a direct cost except when specifically approved by the Federal awarding agency or otherwise expressly provided in the awarding agency's regulations, or the terms and conditions of the Federal financial assistance program.

b. As used in this paragraph the following terms have the meanings as set forth below:

(1) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit, or (b) $5000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (i) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (ii) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(2) "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as allowable taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the governmental unit's regular written accounting practices.

c. Notwithstanding the provisions of subsections a. and b., items of equipment with an acquisition cost of less than $5000 are considered to be supplies allowable as direct costs of Federal awards without specific awarding agency approval. However, such Federal direct cost may not be

included in any cost allocation base unless similar capital expenditures of the governmental unit are also included in that base.

d. When assets acquired with Federal grant funds are no longer needed, disposition of the assets shall be handled in accordance with the provisions of the Common Rule or other applicable regulations.

e. When replacing equipment purchased in whole or in part with Federal funds, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. Capital acquisitions treated as a direct cost will be subject to the approval requirements of subparagraph 19.a. above.

f. The cost of equipment and other capital expenditures should be recovered through use allowances or depreciation on buildings, capital improvements and equipment (see section 15). The total acquisition costs are not allowable as indirect costs during the period acquired. See also section 38 for allowability of rental costs for buildings and equipment.

20. *Fines and penalties.* Cost of fines, penalties, damages and other settlements, resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal financial assistance program or written instructions by the awarding agency authorizing in advance such payments.

21. *Fund raising, and investment management costs.* a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in paragraph c.3.(b) of Attachment A.

22. *Gains and losses on disposition of depreciable property or other capital assets.* a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions.

(i) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under section 15 and 19.

(ii) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(iii) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.

b. If a substantial relocation of Federal programs occurs from a facility the Federal Government helped to finance to another facility prior to the expiration of the useful life of the financed facility, the governmental unit will credit Federal programs for their share of the fair market value of the financed facility at the time of the relocation. The Federal share of the credit will be the same as the percentage of the costs of the facility reimbursed under Federal programs up to the date of the relocation, including interest, depreciation/use allowances and amortization of other financing expenses. A substantial relocation will be considered to have occurred if federally supported program activities occupying 20% or more of the space of the facility are relocated to other facilities.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a. or included in the fair market value used in any adjustment resulting from a relocation of Federal programs covered in subsection b. above shall be excluded in computing Federal assistance program costs.

23. *General government expenses.* a. The general costs of government are unallowable (but see section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, Tribal councils or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of the non-prosecutorial legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments, the portion of salaries and expenses directly attributable to managing and operating programs by the chief executive and his staff is allowable. The allowable portion shall be determined by the Federal cognizant agency and the Indian government representatives on a reasonable basis.

24. *Idle facilities and idle capacity.* a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were

necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

25. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the Federal financial assistance program agreement are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with general governmental unit policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for certain self-insurance programs are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage, and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate.

(2) Earnings of investment income on reserves must be credited to those reserves. If reserves are not invested imputed earnings will be credited to the reserves at the governmental unit's investment rate.

(3) Contributions to reserves must be based on sound actuarial principles using the most likely assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance etc. Reserve levels related to employee related coverages will normally be limited to the value of (i) submitted and adjudicated but not paid, (ii) submitted but not adjudicated, and (iii) incurred but not submitted. Reserve amounts related to non-employee related coverages will be based on historical experience. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund) refunds shall be made to the Federal Government for its share of funds transferred, including interest.

d. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal financial assistance program agreement or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Federal participation will be through future, actuarially sound contributions. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. Actual claims paid to or on behalf of employees or former employees for workers compensation, unemployment compensation, severance pay, and similar employee benefits (e.g. paragraph 11.f. for post retirement health benefits), are allowable in the year of payment provided (i) the governmental unit follows a consistent costing policy and (ii) they are allocated as a general administrative expense to all activities of the governmental unit. However, if individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by use of separate allocations or other techniques resulting in a reasonable allocation.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal financial assistance program except as provided in d. above.

26. *Interest.* a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. below or authorized by Federal legislation.

b. Financing costs (including interest) associated with the otherwise allowable costs of the acquisition, construction or fabrication of buildings acquired or completed on or after October 1, 1980, major building reconstruction and remodeling completed on or after January 1, 1994, and capital equipment acquired or completed on or after January 1, 1994 are allowable subject to the following conditions:

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal financial assistance programs;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements would be excluded.

(4) Any Federal construction funds awarded for any parts of a facility constructed with borrowed funds are used to reduce the amount for which interest is charged. See also paragraph

15. c. above regarding basis for depreciation.

(5) Wherever Federal cash payments (interest, depreciation, use allowances, and contributions) exceed governmental unit cash payments (interest and principal) attributable to that portion of the property used for Federal financial assistance programs, interest imputed on the total excess cash flow at the loan rate will be offset against allowable interest for the period.

(6) In the case of capital leases, the governmental unit must document as part of the decision process that interest costs are reasonable and that capital leasing is the most economical option.

27. *Lobbying.* The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, and loans shall be governed by the 29 agency Common Rule, "New Restrictions on Lobbying" published at 55 FR 6736 (2/26/90), including definitions, and the Office of Management and Budget Government-wide guidance and notices published at 54 FR 52306 (12/20/89), 55 FR 24540 (6/15/90), and 57 FR 1772 (1/15/92) respectively.

28. *Maintenance, operations and repairs.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations and the like are allowable to the extent that they (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition (2) do not add to the permanent value of property or appreciably prolong its intended life and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures. (See section 15, Depreciation and Use Allowances and section 19, Equipment and Other Capital Expenditures).

29. *Materials and supplies.* The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of materials costs.

30. *Memberships, subscriptions and professional activities.* a. Costs of the governmental unit's memberships in business, technical and professional organizations are allowable.

b. Costs of the governmental units's subscriptions to business, professional and technical periodicals are allowable.

c. Costs of technical meetings and conferences, including meals, transportation, rental of meeting facilities and other incidental costs are allowable. Adequate records must be maintained to document that the primary purpose of the meeting was for dissemination of technical information or to otherwise promote the objectives of Federal financial assistance programs.

d. Costs of membership in civic, community, and social organizations, or organizations substantially engaged in lobbying activities are unallowable.

31. *Motor pools.* The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

32. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. *Professional service costs.* a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to Section 14 and to Subsections b., c., and d. of this Section, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. In determining the allowability of costs for services from individuals other than officers or employees of the governmental unit, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant.

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

(3) The past pattern of such costs particularly in the years prior to participation in a Federal financial assistance program.

(4) The impact of Federal financial assistance programs on the governmental unit's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal financial assistance program work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal financial assistance programs.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualification of the individual or concern rendering the service and the customary fees charged, especially on activities other than Federal financial assistance programs.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subsection b. above, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

34. *Proposal costs.* Costs of preparing proposals for potential Federal financial assistance program agreements are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit.

35. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. *Rearrangements and alterations.* Costs incurred fot ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal financial assistance program are allowable with the prior approval of the Federal awarding agency.

37. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal financial assistance programs, fair wear and tear excepted, are allowable.

38. *Rental costs.* a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life

expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under generally accepted accounting principles are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed; e.g., depreciation or use allowance, maintenance, taxes, insurance but excluding any unallowable costs. Wherever GAAP does not apply, the provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in Section 26.

39. *Taxes.* Taxes which the governmental unit is legally required to pay are allowable except for general sales taxes (and equivalent broad based taxes) assessed by a governmental unit upon itself, its component parts (including State colleges, universities, and hospitals) or other political subdivisions and or Federal programs. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees providing a benefit to the Federal Government are allowable. This does not restrict the authority of Federal agencies to identify other taxes where Federal participation is inappropriate. Where the identification of the amount of such taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. *Training.* The cost of training customarily provided for employee development is allowable.

41. *Travel costs.* a. *General.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal financial assistance programs, are allowable with the prior approval of a grantor agency.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of a governmental unit policy and the amounts claimed under Federal awards represent reasonable and allocable costs. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal financial assistance programs (41 U.S.C. 420).

c. *Commercial air travel.* Airfare costs in excess of the lowest available commercial discount airfare, Federal Government contract airfare (where authorized and available), or customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; greatly increase the duration of the flight; result in increased cost that would offset transportation savings; or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of discount airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in section c. above.

42. *Underrecovery of costs under Federal agreements.* Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

Attachment C—State/Local-Wide Central Service Cost Allocation Plans

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A. *General.* 1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported programs are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on

a reasonable and consistent basis. The Central Service Cost Allocation Plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal financial assistance programs.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. *Definitions.* 1. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating, or developing billing rates based on, the allowable costs of services provided by a governmental unit on a centralized basis to its departments/agencies. The costs of these services may be either billed or allocated to users.

2. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee for service or similar basis, and the billings are included in the accounting records of the benefitted agencies. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

3. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee for service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

4. "Agency or operating agency" means an organizational unit or subdivision within a governmental unit that is responsible for the performance or administration of programs or activities of the governmental unit.

C. *Scope of the Central Service Cost Allocation Plans.* The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal financial assistance programs and will be documented as described in Section F below. Costs of central services omitted from the plan will not be reimbursed.

D. *Submission Requirements.* 1. All States will submit a plan to the Department of Health and Human Services for each year in which they claim central service costs under Federal financial assistance programs. The plan should include (i) a projection of the next year's cost (based either on actual costs for the most recently completed year or the executive budget for the coming year), and (ii) a reconciliation of actual costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Local governments that have been designated as "major local governments" by the Office of Management and Budget are also required to submit a plan to their cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared (and when required, submitted) within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. *Documentation Requirements for Submitted Plans.* The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal programs. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: An organization chart showing all operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and a certification (see subsection E. 4) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal financial assistance programs and between Federal and non-Federal programs.

2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service*; an identification of the unit rendering the service and the operating agencies receiving the service; the items of expense included in the cost of the service; the method used to distribute the cost of the service to benefitted agencies; and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits are treated as allocated (rather than billed) central services, documentation discussed in paragraphs 3.b. and c. below shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund, the plan shall include: A brief description of each service; a fund balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; revenues/expenditures statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (that is cash transfers made for purposes other than normal purchases and sales) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and a schedule comparing the full revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service,

including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rates), a schedule showing the full "imputed" revenues associated with these users shall be provided. Expenditures shall be broken out by cost category (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: The fund balance sheet; a statement/schedule showing fund income (contributions, earnings, etc.) and fund outlays including a summary of billings and claims paid by agency; a listing of all transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, worker's compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and a description of the procedures used to charge or allocate fund contributions to benefiting activities. Reserve levels in excess of claims (i) submitted and adjudicated but not paid, (ii) submitted but not adjudicated, and (iii) incurred but not submitted must be identified and justified.

d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to State/local employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefiting activities. In addition, for pension and post retirement health insurance plans, the following information shall be provided: The governmental unit's funding policies, e.g., legislative bills, trust agreements, state-mandated contribution rules if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report and a schedule from the activity showing the value of the interest cost associated with late funding (see Sections 11.e. and f.).

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and the cost principles applicable to those agreements.

(2) This proposal does not include any costs which are unallowable under applicable cost principles, such as (without limitation): advertising and public relations costs, entertainment costs, fines and penalties, lobbying costs, and defense and prosecution of criminal and civil proceedings.

(3) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare under penalty of perjury that the foregoing is true and correct.

Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

F. *Negotiation and Approval of Central Service Plans.* 1. All proposed Central Service Cost Allocation Plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening only at the option of the cognizant agency, and then only if: (a) The agreement is subsequently found to violate a statute; (b) the information provided by the governmental unit upon which the cognizant agency relied during the plan review and negotiation process is later found to be materially incomplete or inaccurate; or (c) the cognizant agency was not made aware that major changes in accounting practices occurred during the effective period of the agreement. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that (a) are unallowable as (i) specified by law or regulation, (ii) identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards; or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. *Other Policies.* 1. Use of proprietary fund accounts for internal services. Internal service activities must be accounted for and reported in individual proprietary fund accounts in order to properly account for revenues, expenses, and profit or loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenditures for normal operating purposes is considered reasonable.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. A carry-forward adjustment is not permitted, however, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal programs should normally reflect only allowable costs as defined by the circular, including an estimate of the allocable central service costs.

Individual billing rates will be reviewed and adjusted to actual costs at least annually. Adjustments related to the elimination of unallowable costs will be made and returned to the Federal Government immediately. Other adjustments, at the option of the cognizant agency, will be made (1) for major differences. In these cases, the State or local government and the Federal Government may agree to an immediate cash recovery or an agreed to repayment plan that includes the payment of interest, (2) adjustments to future billing rates, or (3) an adjustment through allocated central services where the total adjustment is the lesser of either $50,000 or 5% of the annual operating cost of the billing rate involved. It is the governmental units responsibility to document the amount of the adjustment. If the governmental unit does not compute the Federal share of the adjustment a ratio of total Federal revenues to the total Federal/ Governmental unit revenues will be used for this purpose.

5. Records retention. All Central Service Cost Allocation Plans and related documentation used as a basis for claiming costs under Federal financial assistance programs must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. Accounting/consulting services. To avoid a potential conflict of interest State and local governments shall not engage the same accounting/consulting firm to prepare indirect cost proposals/ cost allocation plans and to make subsequent audits in accordance with the provisions of Circular A–128, "Audits of State and Local Governments."

8. OMB assistance. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance as required to resolve such problems in a timely manner.

Circular A–87 Attachment D—Public Assistance Cost Allocation Plans

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A. General
B. Definitions
1. State public assistance agency
2. Public Assistance Cost Allocation Plan
3. State public assistance agency costs
C. Policy
D. Submission, Documentation and Approval of Public Assistance Cost Allocation Plans
E. Review of Implementation of Approved Plans

A. *General.* 1. Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid for Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services.

2. An interim guide has also been developed by the Department of Health and Human Services entitled "A Guide for State and Local Government Public Assistance Agencies/Departments—Procedures for the Preparation and Submission of Cost Allocation Plans". A copy of this guide may be obtained from HHS.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that (a) are unallowable as (i) specified by law or regulation, (ii) identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal financial assistance programs; or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

B. *Definitions.* 1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified by subpart E of 45 CFR part 95. For the purpose of this Attachment, these programs include all programs administered by that State public assistance agency.

2. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring, and allocating all "State public assistance agency costs" (as defined in paragraph 3. below) to all of the programs administered or supervised by the State agency.

3. "State public assistance agency costs" mean all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. *Policy.* State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate and approve, public assistance cost allocation plans in accordance with subpart E of 45 CFR part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of subpart E of 45 CFR part 95.

D. *Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.* 1. A currently approved public assistance cost allocation plan will continue in effect until the occurrence of an event that would make the current plan outdated. At that time, the State public assistance agency is required to promptly develop and submit an amendment to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subpart E, affected Federal agencies will review all new plans and plan amendments and provide comments as appropriate to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

3. Each public assistance cost allocation plan or proposed amendment will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan or proposed amendment submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish allocations or billings for [identify period covered by plan] are allowable in accordance with the Federal agreement(s) to which they apply the cost principles applicable to those agreements.

(2) This proposal does not include any costs which are unallowable under applicable cost principles, such as (without limitation): advertising and public relations costs, entertainment costs, fines and penalties, lobbying costs, and defense and prosecution of criminal and civil proceedings.

(3) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare under penalty of perjury that the foregoing is true and correct.

Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

E. *Review of Implementation of Approved Plans.* 1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, audits under OMB Circular A–128, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance as required to resolve such problems in a timely manner.

Attachment E Circular A–87—State and Local Indirect Cost Rate Proposals

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1. General
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5. Collections of Unallowable Cost
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A. *General.* 1. Indirect costs are those that have been incurred for common or joint purposes benefiting more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal financial assistance programs and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal financial assistance program as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal financial assistance program as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit performing Federal financial assistance programs and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal financial assistance programs by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal financial assistance programs. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of State and local agencies and Indian tribal governments, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. *Definitions.* 1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal financial assistance programs. The direct cost base selected should result in each program bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a

specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal financial assistance programs pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the grantee department or agency's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. *Allocation of Indirect Costs and Determination of Indirect Cost Rates.*

1. General. a. Where a grantee department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in paragraph 2. below.

b. Where a grantee department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in paragraphs 2, 3 and 4 below.

2. Simplified Method. a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) classifying the grantee agency's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal financial assistance programs. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a grantee department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be, (1) total direct costs (excluding capital expenditures and other distorting items, such as flow-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method. a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the grantee department or agency. In general, any cost element or related factor associated with the agency's activities is potentially adaptable for use as an allocation base provided that: (i) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like); and (ii) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph 4 below, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal financial assistance programs included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be, (1) total direct costs (excluding capital expenditures and other distorting items such as flow-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates. a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program

or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used or any combination thereof. When a particular program(s) is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that program(s). The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (i) the rate differs significantly from the rate which would have been developed under paragraphs 2. and 3. above, and (ii) the programs to which the rate would apply are material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs on Federal financial assistance programs. Where such restrictions exist, it may be necessary to develop a special rate for the affected program. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. *Submission and Documentation of Proposals.*

1. Submission of Indirect Cost Proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal financial assistance programs must prepare an indirect cost proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule or other applicable regulations.

b. State and local grantee agencies for which cognizance assignments have been designated must submit their indirect cost proposals to their cognizant agency. OMB will periodically publish lists of State and local agencies identifying the appropriate Federal cognizant agencies. The cognizant agency for all grantee agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, grantee agencies must develop indirect cost proposals in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These grantee agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipients plan.

c. All Indian tribal governments desiring reimbursement of indirect costs must submit their indirect cost proposals to the Department of Interior (their cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest available central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data cross-referenced and reconciled to the financial data noted in paragraph b. below. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required Certification. Each indirect cost proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(2) This proposal does not include any costs which are unallowable under applicable cost principles, such as (without limitation): Advertising and public relations costs, entertainment costs, fines and penalties, lobbying costs, and defense and prosecution of criminal and civil proceedings.

(3) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare under penalty of perjury that the foregoing is true and correct.

Governmental Unit:_____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

E. *Negotiation and Approval of Rates.*

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where there is reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged where appropriate.

3. The results of each negotiation shall be formalized in a written

agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening, only at the option of the cognizant agency, and then only if: (i) The agreement is subsequently found to violate a statute; (ii) the information provided by the governmental unit upon which the cognizant agency relied during the proposal review and negotiation process is later found to be materially incomplete or inaccurate; or (iii) the cognizant agency was not made aware of major changes in accounting practices that occurred during the effective period of the agreement. The agreed upon rates will be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable as (i) specified by law or regulation, (ii) identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards; or (b) are unallowable because they are clearly not allocable to Federal awards, a refund shall be made. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies. 1. Fringe Benefit Rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the grantee agency should so advise the cognizant agency.

2. Billed Services Provided by the Grantee Agency. In some cases, grantee agencies provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the grantee agency should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates. In certain situations, a grantee agency, because of the nature of its programs, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases a narrative cost allocation methodology should be developed, documented, maintained for audit or submitted, as appropriate, to the cognizant agency for review, negotiation and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. Collection of Unallowable Costs and Erroneous Payments. Cost specifically identified as unallowable and charged to the government either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. OMB Assistance. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance as required to resolve such problems in a timely manner.

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Thursday
August 19, 1993

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 318, 381, and 391
Accreditation Fees, Standards, and Procedures for FSIS Accredited Laboratories; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318, 381, and 391

[Docket No. 92-002P]

RIN 0583-AB49

Accreditation Fees, Standards, and Procedures for FSIS Accredited Laboratories

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry inspection regulations to establish user fees and adjust the standards and procedures for the accreditation of non-Federal analytical chemistry laboratories. The Agency's Accredited Laboratory Program qualifies private laboratory facilities to conduct analysis of official meat and poultry samples. These laboratory facilities provide the Agency and the regulated industry with an alternative to reliance on FSIS's own laboratories and often permit more timely analytical results than would otherwise be possible. The accredited laboratories analyze the meat and poultry samples for moisture, protein, fat, and salt content and/or certain chemical residues. The establishment of user fees, which would cover the costs of the FSIS Accredited Laboratory Program, is mandated by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Bill), as amended. The proposed adjustments to the program standards would be made to more accurately reflect the performance of participating laboratories. The changes proposed in some administrative procedures would enhance management control of the program.

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: Send written comments to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Oral comments, as provided by the Poultry Products Inspection Act should be presented to: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, (202) 720-3367, (on the accreditation fee provisions of the proposal); or to Dr. Jess Rajan, Chief, Quality Systems Branch, Chemistry Division, (202) 205-0679, (on all other aspects of the proposal).

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700, for information related to accreditation fees; Dr. Jess Rajan, Food Safety and Inspection Service, U.S. Department of Agriculture, room 516-A, Annex Building, 300 12th Street, SW., Washington, DC 20250-3700, (202) 205-0679, for information on all other aspects of the proposal.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring opportunity for oral presentation of views, as provided under the poultry Products Inspection Act, must make such request to Dr. Rajan or Mr. West so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Executive Order 12291

The Administrator, FSIS, has determined that this proposed rule is not a major rule under Executive Order 12291. It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this rule is adopted, all State and local laws, regulations, or policies except those that are consistent with the proposed rule are preempted. This proposed rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the implementation of its provisions.

Effect on Small Entities

Most of the entities accredited by FSIS that would be affected by this proposal are large independent laboratories or official meat packing establishments or States that own or operate accredited laboratories.

There are currently approximately 220 laboratories in the FSIS accredited laboratory program. About three quarters of these are large entities, with respect to the volume of business, or part of such entities as large business corporations, State universities, or State governments. These laboratories provide analytical services to large and small establishments for analysis of official samples.

Participation in the Agency's Accredited Laboratory Program (ALP) is voluntary. The principal burdens of the proposed rulemaking on laboratories would be the fee charged for FSIS accreditation ($3,500 per accreditation, of which a laboratory may have more than one) and the minimal billing and accounting costs.

Some large laboratories have multiple accreditations for food chemistry and chemical residues, while many small laboratories are accredited only for food chemistry. Thus, smaller laboratories would be expected to pay smaller amounts of accreditation fees than large laboratories. Balanced against these costs would be the revenue from analyzing official samples, which would be greater because firms could be expected to pass much of the costs of obtaining accreditation to clients, and the enhancement of income from other services provided by the laboratories because of their status as "accredited by FSIS." As a result, the net effect of this rulemaking on both small and large laboratories would not be significant. The user-fee cost increments for having official samples analyzed by accredited laboratories would likely be passed on to the establishments doing business with accredited laboratories. Establishments using the laboratories would continue to benefit from the earlier marketing of product released from official retention. Overall benefits to the meat and poultry industry, including both small and large establishments, from using accredited laboratories would not change significantly.

As many as 20 small laboratories that do very little analysis (15 or fewer analyses a year) of official samples may choose to discontinue participating in the ALP. (It is expected that a decision to participate would be based on a calculation of the benefits to the costs for the firm and would be made after a

determination whether the resulting loss of business from not participating in the ALP would be significant. For example—and there are a number of these—a laboratory performing less than 10 analyses per year on official samples may decide that further participation in the ALP is not justified.) As a result, small official establishments doing business with these laboratories would have to seek other facilities for the analysis of official samples. However, there would be relatively few instances of this for small establishments because, by their nature, small establishments rely primarily on FSIS laboratories and seek little assistance from accredited laboratories for the analysis of official samples.

If some of these small accredited laboratories were no longer available, the establishments could, and likely would, have samples tested by other accredited laboratories, such as those operated by States. The Agency is unaware of any cases in which such alternate arrangements could not be made. The affected establishments would still be able to exercise the option of having samples tested at their own expense so that product found to be in compliance with Federal regulations could be released into commerce sooner than it could if the establishments had had samples mailed to and analyzed by FSIS laboratories.

Besides the user-fee provisions, the proposed rulemaking contains adjustments to the accreditation procedures and performance standards. For example, some unit names and addresses and some operational procedures would be changed to conform with Agency practice. Also, the statistical evaluation criteria for determining the effectiveness and consistency of laboratory analytical processes would be adjusted on the basis of comparison data accumulated and analyzed. The Agency is thereby seeking to provide, through the proposed rulemaking, a more equitable and efficient way of determining the qualifications of laboratories to continue in the program. The proposed changes would, by way of providing clearer explanations of the requirements for participation in the program as well as providing more accurate and up-to-date performance criteria, reduce the need for administrative consultations, and increase operational efficiencies in both laboratories and the Agency. The cost savings of such improved efficiencies would be small in most cases, however.

FSIS estimates that approximately 50 percent of small laboratories currently in the program would continue to participate but that, for the reasons given above, the effects of the rulemaking on them and on the establishments they serve would not be significant. Therefore, the Agency has determined that the effects of the proposed rulemaking on small entities continuing to participate in the accredited laboratory program would not be significant for a substantial number of them.

Paperwork Requirements

This proposed rule would impose a minimal paperwork burden associated with accounting and payment of bills presented by FSIS to laboratories participating in the ALP. This burden is estimated at about one-half staff hour per laboratory per year. In addition, the Agency has prepared a new form, updating an existing form, to be used by participating laboratories to report the results of food chemistry check sample analyses. The burden estimate for collecting and recording the information on the form and mailing it to FSIS is one-half staff hour per laboratory per set of check samples. Under current Agency policies, 6 food chemistry check sample sets per year are required of the laboratories. About 186 laboratories in the ALP are expected to be accredited for food chemistry analysis.

Information concerning the new form and the burden associated with the user fee provisions of the proposed regulations is being submitted to OMB. Other paperwork requirements under the existing FSIS accredited laboratory regulations and not affected by this proposal have already been approved under OMB 05830015.

Background

To assure compliance with regulations promulgated under the Federal Meat Inspection Act (FMIA—21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (PPIA—21 U.S.C. 451 et seq.), samples of meat and poultry products are tested periodically to determine protein, moisture, fat, and salt content. Analyses are also conducted to determine the presence of any violative concentrations of drug or other chemical residues.

When FSIS finds that product is not in compliance, the Agency is required to take appropriate action against the processor of the product. Depending on the type of product and the severity of the noncompliance, such action may range from product reprocessing to litigation proceedings. Because of the critical nature of such testing, it is necessary for FSIS laboratories to maintain a high degree of integrity.

Until the 1960's, samples were analyzed principally by Agency laboratories. Then, in response to the meat and poultry industry's need for more rapid analytical results on official test samples than the Agency could provide, and for more laboratories to carry out the analyses, FSIS developed programs for recognizing the analytical capabilities of non-Federal chemistry laboratories. Such laboratories were designated as "certified," or "recognized," depending on the type of analysis they performed.

During the 1980's, the Agency developed new standards and procedures and sought to consolidate the programs for the certified and recognized laboratories. Eventually, on February 19, 1987, the current FSIS ALP (52 FR 2185; 9 CFR 318.21, 381.153) went into effect. Laboratories are accredited by FSIS to perform food chemistry analysis of meat and poultry product samples for such components as protein, fat, and added water; laboratories are also accredited by FSIS to perform analysis of meat and poultry product samples for residues of certain classes of chemical compounds. An accreditation is a formal determination by FSIS that a laboratory is qualified to analyze official meat and poultry samples for the presence and amount of all four food chemistry analytes (protein, moisture, fat, and salt) or for the presence and amount of one of several classes of chemical residue. Accreditations are granted separately for the food chemistry analysis of official samples and for the analysis of such samples for any one of the several classes of chemical residues. A laboratory may hold more than one accreditation.

The reasons for the separate accreditations for food chemistry and for each of the several classes of chemical residue are that there is a need for analytical capabilities in particular areas of chemistry to be located at individual laboratories and that there are regulatory requirements that are special to certain classes of product. Thus, for example, because cooked sausages have certain food chemistry requirements, samples of the products are sent to single laboratories for all the types of food chemistry analysis required for a given sample of such product. Laboratory accreditations for chemical residue analysis are based on the unique analytical requirements for each class of compound, and on the fact that the Agency targets individual compounds in its national monitoring program for residues.

To become accredited, a laboratory must, among other things, be staffed with people qualified to perform or supervise the analyses for which

accreditation is sought, allow inspection of the laboratory by FSIS officials, and not be or have any individual or entity responsibly connected with it be convicted of or have charges pending against it or such individual or entity for certain violations of law, including felony convictions associated with meat and poultry inspection under the FMIA and PPIA. Further, it must meet FSIS standards of performance, as demonstrated by its results in the analysis of "check samples" provided to it by the Agency and by its ongoing record of performance in the analysis of (its portion of divided or "split") official samples. FSIS has established statistical measures for evaluating a laboratory's ability to meet FSIS standards of performance. If, after accreditation, a laboratory falls into probationary status because of poor performance, the Agency evaluates the laboratory to determine whether the laboratory's accreditation should be continued.

To maintain its accreditation, the laboratory must, among other things, correctly identify and quantify the substances of interest (such as chemical residues or food components) in the check samples and split samples and must meet the minimal acceptable levels for quality assurance and quality control recoveries established for such a substance. In addition, the Agency observes the results of the laboratory's analysis of official samples over time, evaluating the performance characteristics of the laboratory from a statistical viewpoint, in a manner similar to that used with check samples.

A processor whose sample is to be analyzed generally has the option of using either an FSIS laboratory or an accredited laboratory. The cost of FSIS analysis is borne by the Government, while the cost of non-Federal analysis is borne by the processor. Due to the limited number of FSIS laboratories and their heavy workload, many processors prefer to use the non-Federal laboratories either for convenience of location or to obtain test results more quickly. Some non-Federal laboratories are separate entities, while other are located in and owned by official establishments.

Funding for the FSIS ALP is currently provided through the Agency's annual appropriations from Congress. This funding covers the Agency's expenses in administering the program, including the cost of personnel and other resources, laboratory and statistical analysis, other evaluative work, and reporting.

In March 1989, the U.S. General Accounting Office (GAO) prepared a report for the Chairman of the Committee on Science, Space and Technology titled "Laboratory Accreditation: Requirements Vary Throughout the Federal Government" (GAO/RCED–89–102). The GAO report was a general survey of the 20 programs identified as meeting the definition of an accredited laboratory program given in a 1984 study by the National Bureau of Standards (now, the National Institute of Standards and Technology). The report recommended that Federal accreditation programs charge user fees as a means of obtaining additional revenue for Government operations.[1]

Additionally, a 1991 audit report by the USDA Office of Inspector General (OIG) indicated the FSIS ALP was no longer cost-effective. The report recommended that FSIS review its authority to charge user fees to reduce Federal expenditures for the ALP.

In 1991, section 1327 (7 U.S.C. 138f) of the Food, Agriculture, Conservation, and Trade Act 1990 (Pub. L. 101–624), known as the 1990 Farm Bill, was amended to require USDA to charge a nonrefundable accreditation fee for laboratories seeking accreditation by the Secretary under the authority of the Federal Meat Inspection Act (FMIA—21 U.S.C. 601, et seq.) or the Poultry Products Inspection Act (PPIA—21 U.S.C. 451, et seq.). The fee established is required to be an amount that will offset the cost of the ALP administered under the authority of the FMIA and PPIA. All fees collected by the Secretary of Agriculture are to be credited to an account from which the expenses of the laboratory accreditation program are paid. The funds accrued would be used to offset the costs of operating the FSIS laboratory accreditation program, provided that appropriations for the programs have been authorized by Congress.

1. User Fees

Before the enactment of the 1990 Farm Bill and the subsequent amendments, the FSIS laboratory accreditation program, administered under the authority of the FMIA and PPIA, was financed by annual appropriations from Congress. Because nonrefundable accreditation fees are now mandated by statute (7 U.S.C. 138f), public funding of this laboratory accreditation program is proposed to cease at the end of fiscal year 1993, that is, on midnight September 30, 1993. Thus, FSIS is now required to establish fees to recover the full costs of the program.

To establish a fee structure for the FSIS laboratory accreditation program, a cost analysis was performed to determine what the current costs of this program are and to determine what the estimated costs associated with the coming year's activities and services would be for the program. The analysis included a review of the staffing and other operating costs to FSIS to administer and maintain the current laboratory accreditation program.

A copy of the cost analysis is on file with the FSIS Hearing Clerk and may be requested free of charge from the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

Program information on the number and types of accreditation was compiled along with the criteria used by the ALP to grant and maintain accreditation. It was determined that the accreditation and on-site review processes for each discipline, i.e., food chemistry, polychlorinated biphenyls, chlorinated hydrocarbons, etc., were essentially the same, with minimal variations in the number of check and split samples taken for the interlaboratory analysis. It was decided, therefore, to apply the total costs of operating the program to the total number of accreditations granted to establish an annual average cost of granting and maintaining a single laboratory accreditation.

Consideration was also given to establishing a separate rate for on-site reviews. Most of the on-site reviews are conducted by our three Technical Support Laboratories in Athens, Georgia, St. Louis, Missouri, and Alameda, California. Each of these Federal laboratories conducts reviews of the accredited laboratories within its assigned geographical area of coverage. To keep travel costs to a minimum, an average of three accredited laboratories is usually reviewed in a single trip and would include a mixture of new laboratories seeking accreditation, as well as on-going evaluation of laboratories currently under the program. It was decided, therefore, to simplify the recordkeeping and billing process by including the average cost of on-site reviews with the annual average cost of granting and maintaining accreditation. If a laboratory requested a special on-site inspection, then that laboratory would pay FSIS the actual cost of reasonable travel and other expenses necessary to perform the unscheduled or nonroutine on-site inspection.

[1] Copies of the GAO report on laboratory accreditation are available from the office of the Hearing Clerk, room 3171 South Agriculture Building, Washington, DC 20250.

Although it is anticipated that approximately 50 percent of the small laboratories would choose to discontinue participation in the Accredited Laboratory Program, we estimate that this loss would be offset by (1) a proportionate reduction in the variable costs of operating the program, or (2) new accreditations anticipated during the coming year. Therefore, we estimate the number of accreditations and the cost of operating the program would not change significantly under the user fee program.

The fee to be charged for these services has been determined by an analysis of the fixed and variable costs of these services, by anticipated costs due to an increase in the salaries of Federal employees during fiscal year 1993, and by other increases affecting Federal employees, such as costs for benefits. These total costs were divided by the number of accreditations to establish an annual average cost of granting and maintaining a single laboratory accreditation. That cost was calculated to be $3,500 per year. A copy of the cost analysis is on file with the FSIS Hearing Clerk and may be requested free of charge from the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 12th St. and Independence Ave., SW., Washington, DC 20250.

To all accredited laboratories of record on the effective date of the proposed amendments, FSIS would issue bills (Form AD–496, Bill for Collection) for the annual average cost per accreditation. Laboratories that enter the program after the effective date of the regulation would be billed on the anniversary date of their application. Laboratories that lose their accreditation because of performance considerations and wish to reapply following the mandatory waiting period, would be required to pay a new accreditation fee on the date of their application, commensurate with the number of new accreditations requested. Annual fees thereafter would be billed on the anniversary date of each accreditation. A copy of each bill would be forwarded to the National Finance Center, USDA, to record the account receivable in the records for the Agency. Payment of the bill, by money order, check, or bank draft, is due immediately and is to be forwarded with a copy of the bill to the address shown on the bill.

Laboratories that wish to become accredited for the first time would have to submit their request in writing, identifying the specific accreditation(s) they seek. The laboratory would send to FSIS fees commensurate with the accreditation(s) sought along with its written application. Should an applying laboratory be unable to successfully analyze the initial set of accreditation check samples that it is required to analyze under the regulations, it would have an opportunity to analyze a second set of accreditation check samples to demonstrate analytical proficiency. If it failed to successfully analyze either of these sets of check samples, the laboratory would be required to wait the mandatory time period—60 days—before reapplying for accreditation. The Agency considers this amount of time to be necessary and adequate for a laboratory to make the changes necessary to correct its performance. At that time, the laboratory would again be required to apply for accreditation in the same manner as it did initially.

Each year, the fee for laboratory accreditation and maintenance of accreditation would be reviewed and a cost analysis performed to determine whether or not the current nonrefundable accreditation fee established would be adequate to recover the costs of providing the accreditation service for the next year. If it is not, a new fee would be established. This procedure is similar to the one followed by the Agency in establishing fees for voluntary inspection services.

The proposed amendments, in providing for user-fee financing of the ALP, represent a significant departure from the existing program, which is financed entirely by appropriations. Because a number of laboratories might choose to leave the program after the user fee provisions took effect and there would be a different group of accredited laboratories, the Agency would have to begin assembling new comparison data to evaluate laboratory performance. The Agency uses the cumulative summation (CUSUM) statistical method in making the evaluations of the ability of laboratories to maintain satisfactory performance and several kinds of CUSUM values are used as performance criteria. On the date that the user-fee funded accreditation program goes into effect, the agency would set all CUSUM values at zero. The Agency would then begin to evaluate all laboratories according to the criteria established by this proposal and the criteria that are not being changed that are already currently in the regulations. The resetting of CUSUM values to zero would assure that laboratories demonstrating acceptable performance, and hence, that are accredited, would be evaluated in the revised program on the basis of the same numerical criteria.

2. Standardizing Values

A. Overview

FSIS uses analytical results obtained from FSIS and accredited laboratories on split samples and check samples to evaluate a laboratory's performance with respect to standards that were developed for the present regulation in the late 1970s. Split samples are splits of randomly selected official samples that are analyzed by an accredited laboratory and an FSIS laboratory. These are prepared at the establishment by an inspector. The inspector sends one part of the split sample to the designated accredited laboratory, and the other part he/she sends to an FSIS laboratory for analysis. Check samples are prepared from a large master sample at a central location and sent to the accredited laboratories.

The Agency's evaluation of a laboratory is based on the difference of a result obtained by that laboratory for a sample and the mean of results obtained by laboratories that analyzed the same sample. The evaluation is based on statistical summaries of these differences over many samples. These statistical summaries are compared to predetermined limits, to judge whether a laboratory is performing acceptably. These limits were established taking into consideration the expected variability of results within and between laboratories, based on data that were collected by the Agency in the late 1970's, as was discussed in the preamble to the present regulation.

In order for the Agency to use predetermined limits, it is necessary to establish beforehand the expected variation of the difference between an individual result and a mean. However, the expected variation of this difference depends upon the number of laboratories that are used in the computation of the mean, and this number could vary from sample to sample. In order to derive a meaningful statistical summary of performance by a laboratory over many samples that have differences that have different expected variations, it is necessary to make mathematical adjustments to the computed differences so that the results would have equal expected variation. Thus, in actuality, the Agency summarizes these mathematically adjusted differences, which in turn, enables the Agency to use predetermined limits as a performance standard.

More specifically, the mathematically adjusted differences discussed above are mathematically equivalent to the "standardized differences" defined in the present regulations. The calculation

of these standardized differences involves the use of values, which the Agency has termed in the present regulations as "standardizing values".

The present definition of standardized difference in the regulations (9 CFR 318.21 and 381.153) is defined as a difference of an accredited and an FSIS laboratories results divided by the standardizing value. The standardizing values were determined from data collected in the 1970's and were set equal to the square root of the expected variance of a difference between two results. The term "expected variance" is a statistical term and refers to a measure of expected variability of results about a mean value. These standardizing values are given in Table A below. The derivation of these was explained in the preamble to the present regulations and an accompanying technical addendum.

The standardized difference is computed as the difference between an individual result and the "comparison mean", which is the average result for the sample and is defined in the present regulations, divided by a mathematically derived number. This number is a mathematical adjustment applied to the standardizing value, so that the divisor corresponds to the square root of the expected variance of the difference in the numerator. This calculation is statistically equivalent to the calculation that would be made on the basis of the present definitions of standardizing value and standardized difference. With the mathematical adjustment of the standardizing values, comparisons for both split and check samples are divided by divisors equal to the square root of the expected variance of the numerator, so that the quotient, i.e. the standardized difference, would have numerator and denominator with the same expected variance. The specific formula for calculation was provided to all accredited laboratories, and to all other interested individuals upon request.

B. Changes in Definitions

The discussion in this section applies only to Food Chemistry samples. In section C, there will be discussion of needed changes for Chemical Residues samples, in order to make the definitions and calculations the same for the two types of samples.

An apparent ambiguity in the calculations for the current regulation resulted in part because the mathematical adjustment used a formula that was unfamiliar to many users, though correct. Many people thought the standardizing value corresponded to the expected standard deviation of an individual result on a sample from a theoretical mean, instead of the expected standard deviation of a difference of two results as is the case, as explained above. Hence, they were initially confused about the formula that was used.

To eliminate this confusion and to make the calculation of the standardized differences between split and check samples identical in form, the present definition of "standard difference" and "standardizing values" will be changed in the proposed regulation, and an additional definition, "standardizing constant", will be added. These changes will be statistically equivalent to the present definitions. In addition, to make clearer the calculation procedures that are being performed, it is being proposed that the definition of "comparison mean" be modified to spell out exactly how the calculations for the comparison mean is performed.

Specifically, the new proposed definition of "standardizing value" would correspond to the expected standard deviation of laboratory results on a sample from a true mean value, instead of an expected standard deviation of a difference between two individual results. As before, a mathematical adjustment would be made for calculating the standard deviation of a difference, but now the equation would take on the expected form. That is to say, the mathematical formula for this adjustment is $(1-1/N)^{0.5}$ SV, where SV is the standardizing value and N is the number of laboratories' results used in the calculation of the comparison mean. The result of this mathematical adjustment to the standardizing values would be called the "standardizing constant." The difference between an individual result and the comparison mean would be divided by the standardizing constant, and the resulting answer would be termed the standardized difference.

The above formula for the mathematical adjustment applies when a single analysis is made on a sample by each laboratory. In the program under the present regulation, FSIS laboratories perform the analysis on a sample only once, and it was assumed that the accredited laboratories did so also. However, for the program under the proposed regulation, the Agency is contemplating that the FSIS Laboratories will analyze some samples more than once, either by the same laboratory or another FSIS Laboratory. In the case that the same laboratory analyzes the same sample more than once, the above formula would not apply. It would be unfair to the Accredited Laboratories to use the above formula because the results analyzed by the same laboratory are correlated and therefore the above formula, if applied in its written form, would underestimate the actual expected standard deviation that would be appropriate, as described above. Thus when an FSIS laboratory analyzes a sample more than once, the average result for this laboratory would be computed first and then this average would be compared with the result comparison mean, which would equal the average of the Accredited Laboratory result and the average FSIS laboratory result. The formula for the standardizing constant will take into account these calculation procedures, the assumed correlation of results on the same sample from the same laboratory, and the number of laboratories analyzing the sample.

The present definition of comparison mean is "the average of the results obtained by all laboratories performing an analysis upon homogeneous samples of material". In practice, the results that had a "large deviation measure" greater than zero, as defined in the present regulation, were not included in the calculations. Also, the median was used instead of the mean. The existence of a non-zero large deviation indicates a result with a large deviation from the mean or median value, specifically, the standardized difference for that result was greater than 2.5 in absolute value. Based on data analysis presented in a technical addendum to the present regulation, and statistical theory, such a result is not a common occurrence if the laboratory is performing acceptably. The particular result may not be a representative value of the content of the sample because of a laboratory error in the analysis, and thus was left out of the calculation. The median value was computed again with the non-zero large deviation values omitted. The process was repeated until there were no longer any results with non-zero large deviations. The median was used from the beginning of the program instead of the mean because it is a less sensitive to outlier values, particular for check samples with only a few results. However, the mathematical formulas are exactly correct when the mean is used, and therefore the mean will be used in the future, instead of the median. It is proposed that the definition be revised to read as follows "the average, for a sample, of all accredited and FSIS laboratories' average results, each of which has a large deviation measure of zero, except when only two laboratories perform the analysis. In the latter case, the comparison mean is the average of

the two laboratories average results * * *".

Thus, to help clarify the calculation procedures, three definitions would be changed and a new definition added. None of these changes or the addition would be expected to have any significant effect on the actual procedures of assessing laboratory performance in comparison to what is done under the present regulation.

C. Chemical Residue Changes

The proposed definitions described in the above section for Food Chemistry are being proposed to be used for Chemical Residue samples as well. This will involve some changes in the way calculations are being performed at present. Specifically, presently, the calculation for standardized difference involves dividing by the appropriate numbers in table 2 of the present regulation, without a mathematical adjustment. However, it is being proposed that the mathematical adjustment discussed above be incorporated for Chemical Residues as it is for Food Chemistry. As a result, the column in table 2 of the present regulation headed by "standardizing values for split sample computations" is being proposed to be eliminated.

D. Changes in Standardizing Values [2] (Food Chemistry)

As stated above, it is proposed that standardizing values be numbers which correspond to the square root of the expected variance of laboratory results on a sample. The standardizing values in the current regulation were derived from check sample data collected in the late 1970's over a period of time from eight FSIS or contract laboratories and corresponded to the square root of the expected variance of a difference between two results. It is a mathematical fact that the expected standard deviation of a difference of two results is equal to the square root of 2 times the common expected standard deviation of the individual results from a true mean value for the sample. This relationship is important to keep in mind when comparing the standardizing values that are presently in use, and the ones that are going to be proposed. If no changes were to be made, except for the mathematical equivalent definitional changes discussed in section B, then the proposed standardizing values would be a factor of a square root of 2 lower than the present standardizing values. For example, if the present standardizing value is 0.80, and no change was being made, then the proposed standardizing value would be 0.57.

Therefore, for comparing standardizing values between those in the present regulation and the proposal, it would be necessary to divide the present standardizing values by the square root of 2. The results of this division are presented in table B, and are called equivalent standardizing values by the Agency. If these equivalent standardizing values are equal to the proposed standardizing values in Table C, then the standardizing values of the current regulation and this proposal would be called equivalent by the Agency. When this occurs, there would be no mathematical change in the procedure evaluating laboratory performance between the present and proposed regulation.

The data collected in the 1970's represented what FSIS believed would be expected to occur under normal operating conditions. The results derived from the data were thought to represent acceptable performance parameters for the industry. Thus, the standardizing values, which the Agency went on to establish, were considered appropriate for use in establishing performance criteria.

Since the Accredited Laboratory regulation went into effect, FSIS has examined additional data from the check sample program. Standard deviations were calculated from results of analyzing 141 sets of check samples collected over the first 3½ years. There were approximately 40 to 90 results per set. In comparing the results of these calculations with the standardizing values of the present regulation, some changes are justified. In addition, preliminary analysis of split sample data from the last 3 years indicate that the proposed standardizing values are appropriate for split samples.

Changes in the mathematical formula for calculating the standardized values are kept at a minimum. Data analysis indicated the need for a change in the mathematical formula for salt, where it was noticed that the standard deviation increases with salt content of the samples. In particular, for dry salami and pepperoni products with salt content equal to or greater than 4.0 percent, the standard deviations were significantly larger than for other products. Presently, the standardizing value for salt is a constant, but in the proposed regulation, the formula to be used to calculate the standardizing value will use the comparison mean, as described below.

It was further observed that the standardizing values for the cured pork and canned ham product classes were similar in value. As a result, it is proposed that these two product classes be combined into one product class under the title "cured pork/ham".

More specifically, the following changes are being proposed.

(1) Salt: Instead of using the present standardizing value of 0.18, which has an equivalent standardizing value of 0.127, the proposed formula for calculating a standardizing value is: if the comparison mean for the sample, X, is less than 1.0 percent, then the proposed standardizing value would be 0.127, otherwise the formula would be $SV = 0.127\ X^{0.25}$, except when the salt content is equal to or greater than 4.0 percent for dry salami or pepperoni products. In this later case, then the standardizing value would be 0.22.

(2) Fat: The standardizing value would be changed from $SV = K\ X^{0.65}$, where K is a constant, depending on the product class in the current regulation and X is the comparison mean for the sample, to: $SV = C\ X^{0.25}$, where C is a constant, depending on the product class in the proposal and whether or not the comparison mean is less than 12.5 percent.

(3) Moisture: For cured pork, the present standardizing value is 0.90, which has an equivalent standardizing value of 0.64. The proposed standardizing value would be lowered to 0.50. For canned ham, the present standardizing value is 0.65, which has an equivalent standardizing value of 0.46. The proposed standardizing value would be increased in comparison to the present equivalent standardizing value to 0.50. For the other product classes the standardizing values of the present and proposed regulation would remain equivalent.

(4) Protein: The present formula for calculating the standardizing values is $SV = 0.069X^{0.65}$, which has an equivalent standardizing value of $0.049X^{0.65}$. For the proposed standardizing values, the formula would be $0.060X^{0.65}$, which represents an increase of approximately 20 percent from the equivalent standardizing values in the present regulation.

The data used in the analyses for the present regulations and for the proposed amendments of the regulations were derived from the analysis of red meat samples. The present standardizing values for poultry product were set to equal those for the "other" category, with the exception of fat, the standardizing value for which, for

[2] A paper on the derivation of the standardizing values prepared by FSIS, and supporting data, are available from the office of the Hearing Clerk, room 3171 South Agriculture Building, Washington, DC 20250.

poultry, was inadvertently set at 0.12, instead of 0.11, during the development of the tables for the present regulations. The correct value has been used in the development of the tables in the proposed amendments of 9 CFR 318.21 and 381.153. On the tables A, B, and C below, this is reflected in the row label for the product class "other/poultry."

The proposed standardizing values would more accurately reflect the variability of laboratory results see in the ALP. FSIS believes that these changes would result in a more equitable procedure for analyzing laboratory performance for monitoring laboratory performance.

TABLE A.—STANDARDIZING VALUES

Product class	Moisture	Protein[1]	Fat[2]	Salt
Cured Pork	0.90	0.069	0.13	0.18
Canned Ham	0.65	0.069	0.16	0.18
Ground Beef	1.00	0.069	0.15	0.18
Other/Poultry	0.80	0.069	0.11	0.18

[1] To obtain the standardizing value for a sample, when the comparison mean of the sample, X, is less than 1.0 percent, the standardizing value equals 0.127, otherwise the appropriate entry is multiplied by $X^{0.25}$, when the salt content is equal to or greater than 4.0 percent for dry salami and pepperoni products, then the standardizing value is equal to 0.22.

[2] To obtain the standardizing value for a sample, the appropriate entry in this column is multiplied by $X^{0.65}$, where X is the comparison mean of the sample.

TABLE B.—STANDARDIZING VALUES DIVIDED BY 1.414

Product class	Moisture	Protein[1]	Fat[2]	Salt
Cured Pork	0.64	0.049	0.092	0.127
Canned Ham	0.46	0.049	0.113	0.127
Ground Beef	0.71	0.049	0.106	0.127
Other/Poultry	0.57	0.049	0.078	0.127

[1] To obtain the standardizing value for a sample, the appropriate entry in this column is multiplied by $X^{0.65}$, where X is the comparison mean of the sample.

TABLE C.—PROPOSED STANDARDIZING VALUES

Product class	Moisture	Protein[1]	Fat[2]	Salt[3]
Cured Pork	0.50	0.060	0.26 (0.30)	0.127
Canned Ham	0.50	0.060	0.26 (0.30)	0.127
Ground Beef	0.71	0.060	(0.35)	0.127
Other/Poultry	0.57	0.060	0.26 (0.30)	0.127

[1] To obtain the standardizing value for a sample the appropriate entry in this column is multiplied by $X^{0.65}$ where X is the comparison mean of the sample.

[2] To obtain the standardizing value for a sample, the appropriate entry in this column is multiplied by $X^{0.25}$, where the X is the comparison mean of the sample. The appropriate entry is equal to the value in parentheses when X is equal to or greater than 12.5 percent, otherwise it is equal to 0.26.

[3] To obtain the standardizing value for a sample, when the comparison mean of the sample, X, is less than 1.0 percent, the standardizing value equals 0.127, otherwise the appropriate entry is multiplied by $X^{0.25}$, when the salt content is equal to or greater than 4.0 percent for dry salami and pepperoni products, then the standardizing value is equal to 0.22.

3. Definitions and Other Changes

In addition to the provisions for user fees and new CUSUM values, other changes would be made to the ALP regulations at 9 CFR 318.21 (for analysis of meat samples) and 9 CFR 381.153 (for analysis of poultry samples). Most of the changes to be made would be the same in both sections. However, the definitions of "accreditation" and "official sample" and the tables giving standardizing values for food chemistry ("Table 1") would be different in each section. In particular, the definition of accreditation, which is new and is provided as a basis for charging accreditation fees, would permit a laboratory to be accredited simultaneously for analysis of meat, meat food, and poultry product samples whenever the laboratory receives an accreditation.

Other definitions in the existing rules would be revised the same way in both sections to reflect changes that have taken place in or are planned for the ALP. Besides the changes in the definitions, new provisions would be added to the existing regulations to implement fee charges for accreditation services, to specify the consequences of failure to pay fees, to update addresses and reporting procedures, to update performance criteria, and to state the requirements for maintaining accreditation under the user-fee funded program.

A. Definitions

The following definitions would be amended, added, or deleted to Sections 318.21 and 381.153 as noted:

Accreditation—In the current regulation, there is no definition of accreditation. Because fees would be charged to laboratories on a per-accreditation basis, FSIS proposes to define the term.

Accredited Laboratory Coordinator—The definition in the current rule would be deleted because the functions of the coordinator under the new rule would be carried out by the Quality Systems

Branch of the Chemistry Division, rather than by a specially designated person.

AOAC Methods—This definition would be amended to reflect a new name for the methods standardizing organization and the new edition of its publication. The Association of Official Analytical Chemists has changed its name to AOAC International. This change would be recorded and the edition and year of the "Official Methods and Analyses" would also be updated. Footnote 1 would be revised to reflect these changes.

Comparison Mean—the proposed definition explicitly describes the calculation procedures used in deriving this quantity.

Correct Chemical Residue Identification—The existing definition was incorrectly worded as an operational instruction rather than as a definition. The proposed definition would be worded as a definition and would reflect a change in the method of determining what constitutes a correct identification. The method used in determining the correctness of a laboratory's identification of a chemical residue would be changed from what is now done, that is, using only FSIS laboratory results, to using the data from all reporting laboratories. The Agency believes that the proposed definition provides a more reliable statistical estimate of concentrations of a chemical residue in a sample.

CUSUM—For all CUSUM definitions, the term "comparison mean" would be used instead of references to results obtained by FSIS laboratories.

Interlaboratory accreditation maintenance check sample—An operational statement that discussed when laboratories accredited to perform food chemistry or chemical residue analysis would receive a check sample was inadvertently included in the existing definition. It would be removed.

Minimum proficiency level—The word "level" in the definition would be changed to "concentration" to provide a more accurate and unambiguous statement than the existing one for those experienced in the discipline of residue analysis. In addition, what "CV" represents would be stated in the definition.

Official Sample—The definition would be revised for the sake of accuracy. The status of an official sample as "official" is not determined simply by its being submitted to a designated laboratory but by the manner and purpose of its collection. Thus, the definition would include language designating the personnel authorized to collect official samples that is appropriate for 9 CFR 318.21 or 9 CFR 381.153.

Refusal of Accreditation—A definition of this term would be added for the purpose of distinguishing the action indicated by it from suspension, probation, or revocation of accreditation.

Revocation of Accreditation—A definition of this term would be added for the purpose of distinguishing the action indication by it from refusal, probation, or suspension of accreditation.

Standardizing Constant—A definition of this term would be added to help make the calculation procedures of "standardized difference" understandable.

Standardized Difference—The definition of this term would be revised to more accurately reflect the procedures for computing standardizing values.

Standardizing Value—The definition of this term would be revised to help make understandable the concept of the standardizing value.

Suspension of Accreditation—A definition would be added to distinguish the action indicated by the term from "revocation of accreditation" and "refusal of accreditation," and to show how, in general, a suspension of accreditation would be terminated.

Systematic Laboratory Difference—The word "difference" in the text of the current definition would be changed to "relationship" to eliminate the tautology; the word homogeneous would be deleted because it has been found to be superfluous; and the term "comparison mean" would be substituted for the term "another laboratory's result" to make the definition consistent with the rest of the regulation.

Variance—The Agency would add the definition of this statistical term because it is used in defining other quantities in the proposed regulation.

B. Other Changes to the Rule

In addition to new and revised definitions, certain other changes would be introduced in the regulations at 9 CFR 318.21 and 9 CFR 381.153. They include correction of office names and mailing addresses, reducing the waiting period for reapplying after refusal or revocation of accreditation instituting fee service requirements, limiting the types of laboratory records that could be copied by Agency officials on an onsite visit, the use of more accurate scientific terminology for some procedures, and revocation of accreditation for failure to pay user fees. The specific changes, with references to the paragraphs affected, are explained as follows:

As mentioned previously, the entries in Table 1, which is presented at the conclusion of the definitions, would be changed to show the new standardizing values that have been calculated on the basis of recently available data. In Table 2, which is the same for both 9 CFR 318.21 and 9 CFR 381.153, the separate columns of standardizing values for check samples and split samples would be eliminated because the proposed standardizing values are appropriate for both kinds of sample. Also, the names of certain classes of chemical residues, listed in Table 2, would be changed. "Sulfa drugs" would be changed to "sulfonamides" because the latter term is more specific and more accurately reflects the compounds analyzed under the program. "Nitrosamine" would be changed to "volatile nitrosamine" for a similar reason. In addition, "ipronidazole" would be deleted from the listing because it was erroneously included when the existing regulation was promulgated.

(b)(1)—Footnote #2 concerning the accreditation of laboratories formerly designated as certified laboratories by the Agency would be eliminated because there are no longer any "certified" laboratories as such.

(b)(1)—The term "operator" would be replaced by "manager" because use of the latter term conforms with current usage in laboratory management. The address would be updated to ensure that mail from users of the regulation is delivered to the right place.

(b)(1)—The waiting time period for laboratories to reapply when accreditation has been refused or revoked under the circumstances described in paragraphs (d)(1) and (d)(2), and (g)(1) and (g)(2) of the regulations would be reduced from a minimum of 6 months to 60 days because the Agency considers the reduced interval sufficient for laboratories to make the changes necessary to meet accreditation standards.

(b)(1)—Paragraphs (i), (ii), (iii), and (iv) would be added to provide for funding of laboratory accreditation by user fees. Paragraph (iv) would provide for termination of accreditation without further procedure for failure to pay accreditation fees. Also, a new paragraph (b)(1)(v) would be added to cover laboratories already accredited when the proposed fee-based program and regulations go into effect.

(b)(1)—The last sentence in the current paragraph (b)(1) would be deleted because it would be redundant

in view of the proposed user fee provisions.

(b)(2)(ii)—The waiting time between the first and second sets of accreditation check samples would be specified. The Agency considers a minimal waiting time to be necessary for laboratories to make any changes in personnel, facilities, or operating procedures to enable them to comply with ALP standards. The time that would be specified is considered sufficient for this purpose. Footnote 3 would be renumbered as footnote 2 because of the deletion of the current footnote 2, and subsequent footnotes would be renumbered as a result.

(b)(2)(ii)—The waiting time between refusal of accreditation by FSIS and reapplication for accreditation by the laboratory would be specified. The Agency considers the proposed waiting time to be necessary and adequate for laboratories to make changes that would enable them to comply with ALP standards.

(b)(2)(ii)—The fee requirement for reapplying for accreditation when accreditation has been refused or revoked would be included.

(b)(2)(ii)(C)—Footnote 4 would be renumbered as footnote 3.

(b)(2)(iv)—A provision would be added to require a laboratory to pay accreditation fees in order to become accredited.

(b)(3)(i)—The address to which analytical results would be reported to FSIS would be updated.

(b)(3)(vi)—The name and address of the office to which reports are submitted would be updated.

(b)(3)(vii)—Copying of records during an onsite laboratory review would be limited to records pertaining to the laboratory's participation in the Accredited Laboratory records only. The purpose of this provision to narrow the scope of records review in the interest of administrative efficiency.

(b)(3)(viii)—Footnote 5 (renumbered as footnote 4) would be changed to reflect the new name and address of AOAC International (formerly, the Association of Official Analytical Chemists).

(b)(3)(ix)—The word "levels" would be changed to "limits" for the sake of accuracy, and footnote 6 would be renumbered as footnote 5.

(b)(3)(ix)(C)—Footnote 4 would be renumbered as footnote 6 and its text would be changed to read "*See* footnote 3," to make it more consistent in format than it now is with other footnotes in the regulations.

(b)(3)(x)(C)—The criteria for regaining accreditation after a laboratory has been placed on probation would be specified.

(b)(3)(xi)—Analytical results would be reported in accordance with instructions from ALP officials. References to the Accredited Laboratory Coordinator would be deleted because the functions of this person would be performed by the Accredited Laboratory Committee.

(b)(3)(xii)—A provision would be added to require a laboratory to pay the required accreditation fee in order to maintain its accreditation.

(c)(1)—Footnote 7 concerning the accreditation of laboratories formerly designated as recognized laboratories by the Agency would be eliminated because there are no longer any "recognized" laboratories as such. All subsequent footnotes in § 318.21 and § 381.153 would be renumbered in sequence, where they occur. Also, all footnote texts that cross-reference other footnotes would be revised to reflect the renumbering.

(c)(1)—The term "operator" would be replaced by "manager" because use of the latter term conforms with current usage in laboratory management. The address would be updated to ensure that mail from users of the regulation is delivered to the right place.

(c)(1)—The waiting time period for laboratories to reapply when accreditation has been refused or revoked under the circumstances described in paragraphs (d)(1) and (d)(2), and (g)(1) and (g)(2) of the regulations would be reduced from a minimum of 6 months to 60 days because the Agency considers the reduced interval sufficient for laboratories to make the changes necessary to meet accreditation.

(c)(1)—Paragraphs (i), (ii), (iii), and (iv) would be added to provide for funding of laboratory accreditation by user fees. Paragraph (iv) would provide for termination of accreditation without further procedure for failure to pay accreditation fees. Also, a new paragraph (c)(v) would be added to cover laboratories already accredited when the proposed fee-based program and regulations go into effect.

(c)(1)—The last sentence in the current paragraph (c)(1) would be deleted because it would be redundant in view of the proposed user fee provisions.

(c)(2)(ii)—The waiting time between the first and second sets of accreditation check samples would be specified. The Agency considers a minimal waiting time to be necessary for laboratories to make changes in personnel, facilities, or operating procedures to enable them to comply with ALP standards. The time that would be specified is considered sufficient for this purpose.

(c)(2)(ii)—The waiting period between refusal of accreditation by FSIS and reapplication for accreditation by the laboratory would be specified.

(c)(2)(ii)—The fee requirement for reapplying for accreditation when accreditation has been refused or revoked would be included. The Agency considers the proposed waiting time to be necessary and adequate for laboratories to make changes that would enable them to comply with ALP standards.

(C)(2)(iv)—A provision would be added to require a laboratory to pay accreditation fees in order to become accredited.

(c)(3)(i)—Deleted and Reserved. The existing requirement would be deleted because it is no longer applicable. The paragraph would be reserved. Reporting of analytical results would be carried out in accordance with the proposed (c)(3)(xi).

(c)(3)(vi)—The address would be updated.

(c)(3)(vii)—Copying of records during an onsite laboratory review would be limited to records pertaining to the laboratory's participation in the Accredited Laboratory Program. The purpose of this provision would be to narrow the scope of records review in the interest of administrative efficiency.

(c)(3)(ix)—The word "levels" would be changed to "limits" for the sake of accuracy.

(c)(3)(x)(C)—The criteria for regaining accreditation after a laboratory has been placed on probation would be specified.

(c)(3)(xi)—Because, under the proposal, analytical results would be reported to the FSIS Eastern Laboratory or otherwise in accordance with instructions from ALP officials, references to the Accredited Laboratory Coordinator would be deleted, and the new address to which results would be sent would be provided. Also, to correct an error in the regulation, the words "food chemistry" would be deleted.

(c)(3)(xiv)—A provision would be added to require a laboratory to pay the required accreditation fee in order to maintain its accreditation.

(g)(1)—This section would be revised to explain more accurately the criteria for determining when a laboratory failing to meet the requirements of (b)(3) would be placed on probation rather than have its accreditation revoked.

(g)(2)—This section would be revised to explain more accurately the criteria for determining when a laboratory failing to meet the requirements of (c)(3) is placed on probation rather than having its accreditation revoked.

(g)(3)(ii)—The requirement that accreditation be revoked for substituting

another laboratory's results would be tightened. Under the current regulations, a laboratory's accreditation is revoked when it is found that a result from a non-accredited laboratory has been substituted for a laboratory's own result. The proposed regulations would stipulate that a substitution of a result from *any* other laboratory would result in revocation of accreditation.

In summary, acting on a Congressional mandate through amendments to the 1990 Farm Bill, FSIS is planning to charge fees to participants in its voluntary ALP. The Agency is proposing changes to the regulations that are necessary to implement the fee-based program. After reviewing and analyzing the costs associated with the program, the Agency has decided that a fee of $3500 per accreditation should be charged to each participating laboratory. The costs associated with the program would be reviewed each year to determine if the fee should be adjusted.

FSIS is also proposing to amend the regulations to change the standardizing values used as criteria of laboratory performance in the analysis of official meat and poultry samples in order to improve the equitability and efficiency of the Agency's laboratory performance monitoring.

List of Subjects

9 CFR Part 318

Meat inspection, Accreditation of chemistry laboratories.

9 CFR Part 381

Poultry products inspection, Accreditation of chemistry laboratories.

9 CFR Part 391

Fees and charges for inspection services, Laboratory accreditation fees.

The Proposal

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 318, 381, and 391 to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would be revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Paragraph (a) of § 318.21 would be amended by removing the definition for "Accredited Laboratory Coordinator"; by revising the definitions for "AOAC Methods," "Comparison Mean," "Correct Chemical Residue Identification," "CUSUM," "Interlaboratory Accreditation Maintenance Check Sample," "Minimum Proficiency Level," "Official Sample" "Standardized Difference," "Standardizing Value," and "Systematic Laboratory Difference"; by adding, in alphabetical order, new definitions for "Accreditation," "Refusal of Accreditation," "Revocation of Accreditation," "Standardizing Constant," "Suspension of Accreditation," and "Variance"; and by revising Tables 1 and 2, to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

(a) * * *

Accreditation—Determination by FSIS that a laboratory is qualified to analyze official samples of product subject to regulations in this subchapter and part 381 of this chapter for the presence and amount of all four chemistry analytes (protein, moisture, fat, and salt); or a determination by FSIS that a laboratory is qualified to analyze official samples of product subject to regulations in this subchapter and part 381 of this chapter for the presence and amount of one of several classes of chemical residue, in accordance with the requirements of the Accredited Laboratory Program. Accreditations are granted separately for the food chemistry analysis of official samples and for the analysis of such samples for any one of the several classes of chemical residue. A laboratory may hold more than one accreditation.

* * * * *

AOAC methods—Methods of chemical analysis, section 24.001 through 24.071, AOAC International; in the "Official Methods of Analysis of AOAC International," 15th edition 1990; published by AOAC International, 2200 Wilson Boulevard, suite 400, Arlington, VA 22207. This publication is incorporated by reference and was originally approved by the Director, Office of the Federal Register, on February 19, 1987.[1]

* * * * *

Comparison Mean—The average, for a sample, of all accredited and FSIS laboratories' average results, each of which has a large deviation measure of zero, except when only two laboratories perform the analysis. In the latter case, the comparison mean is the average of the two laboratories' results. For food chemistry, a result for a laboratory is the obtained analytical value; for chemical residues, a result is the logarithmic transformation of the obtained analytical value.

Correct chemical residue identification—Correct identification by a laboratory of a chemical residue whose concentration, in a sample, is equal to or greater than the minimum reporting level for that residue, as determined by the median of all positive analytical values obtained by laboratories analyzing the sample. Failure of a laboratory to report the presence of such a chemical residue is considered a misidentification. In addition, reporting the presence of a residue at a level equal to or above the minimum reporting level that is not reported by 90 percent or more of all other laboratories analyzing the sample, is considered a misidentification.

CUSUM—A class of statistical procedures for assessing whether or not a process is "in control". Each CUSUM value is constructed by accumulating incremental values obtained from observed results of the process, and then determined to either exceed or fall within acceptable limits for that process. The initial CUSUM values for each laboratory whose application for accreditation is accepted are set at zero. The four CUSUM procedures are:

(1) Positive systematic laboratory difference CUSUM (CUSUM–P)—monitors how consistently an accredited laboratory gets numerically greater results than the comparison mean;

(2) Negative systematic laboratory difference CUSUM (CUSUM–N)—monitors how consistently an accredited laboratory gets numerically smaller results than the comparison mean;

(3) Variability CUSUM (CUSUM–V)—monitors the average "total discrepancy" (i.e., the combination of the random fluctuations and systematic differences) between an accredited laboratory's results and the comparison mean;

(4) Individual large discrepancy CUSUM (CUSUM–D)—monitors the magnitude and frequency of large differences between the results of an accredited laboratory and the comparison mean.

* * * * *

Interlaboratory accreditation maintenance check sample—A sample prepared and sent by an FSIS laboratory to a non-Federal laboratory to assist in determining if acceptable levels of analytical capability are being maintained by the accredited laboratory.

* * * * *

Minimum proficiency level—The minimum concentration of a residue at which an analytical result will be used

[1] Copies of this publication are on file with the Director, Office of the Federal Register, and may be purchased from AOAC International at the address indicated.

to assess a laboratory's quantification capability. This concentration is an estimate of the smallest concentration for which the average coefficient of variation (CV) for reproducibility (i.e., combined within and between laboratory variability) does not exceed 20 percent. (See Table 2)

* * * * *

Official Sample—A sample selected by FSIS personnel in accordance with FSIS procedures for regulatory use.

* * * * *

Refusal of Accreditation—An action taken when a laboratory which is applying for accreditation is denied the accreditation.

* * * * *

Revocation of Accreditation—An action taken against a laboratory which removes its right to analyze official samples.

* * * * *

Standardizing Constant—The number which is the result of a mathematical adjustment to the "standardized value." Specifically, the number equals the square root of the expected variance of the difference between the accredited or applying laboratory's result and the comparison mean on a sample, taking into consideration the standardizing value, the correlation and number of repeated results by a laboratory on a sample, and the number of laboratories that analyzed the sample.

Standardized Difference—The quotient of the difference between a laboratory's result on a sample and the comparison mean of the sample divided by the standardizing constant.

Standardizing Value—A number representing the performance standard deviation of an individual result (see Tables 1 and 2 and footnotes to the Tables for determining exact procedures for calculation).

Suspension of Accreditation—Action taken against a laboratory which temporarily removes its right to analyze official samples. Suspension of accreditation ends when accreditation is either fully restored or revoked.

Systematic laboratory difference—A comparison of one laboratory's results with the comparison means on samples that shows, on average, a consistent relationship. A laboratory that is reporting, on average, numerically greater results than the comparison mean has a positive systematic laboratory difference and, conversely, numerically smaller results indicate negative systematic values.

* * * * *

Variance—The expected average of the squared differences of sample results from a true sample mean.

TABLE 1.—STANDARDIZING VALUES FOR FOOD CHEMISTRY

[By product class and analyte]

Product class	Moisture	Protein[1]	Fat[2]	Salt[3]
Cured Pork/Canned Ham	0.50	0.060	0.26 (0.30)	0.127
Ground Beef	0.71	0.060	(0.35)	0.127
Other	0.57	0.060	0.26 (0.30)	0.127

[1] To obtain the standardizing value for a sample the appropriate entry in this column is multiplied by $X^{0.63}$ where X is the comparison mean of the sample.

[2] To obtain the standardizing value for a sample, the appropriate entry in this column is multiplied by $X^{0.25}$. The appropriate entry is equal to the value in parentheses when X is equal to or greater than 12.5 percent, otherwise it is equal to 0.26.

[3] To obtain the standardizing value for a sample, when the comparison mean of the sample, X, is less than 1.0 percent, the standardizing value equals 0.127, otherwise the appropriate entry is multiplied by $X^{0.25}$. When X is equal to or greater than 4.0 percent for dry salami and pepperoni products, the standardizing value equals 0.22.

TABLE 2.—MINIMUM PROFICIENCY LEVELS, PERCENT EXPECTED RECOVERIES (QC), AND STANDARDIZING VALUES FOR CHEMICAL RESIDUES

Class of residues	Minimum proficiency level	Percent expected recovery (QC)	Standardizing value
Chlorinated Hydrocarbons:[1]			
Aldrin	0.10 ppm	80–110	0.20
Benzene Hexachloride	0.10 ppm	80–110	0.20
Chlordane	0.30 ppm	80–110	0.20
Dieldrin	0.10 ppm	80–110	0.20
DDT	0.15 ppm	80–110	0.20
DDE	0.10 ppm	80–110	0.20
TDE	0.15 ppm	80–110	0.20
Endrin	0.10 ppm	80–110	0.20
Heptachlor	0.10 ppm	80–110	0.20
Heptachlor Epoxide	0.10 ppm	80–110	0.20
Lindane	0.10 ppm	80–110	0.20
Methoxychlor	0.50 ppm	80–110	0.20
Toxaphene	1.00ppm	80–110	0.20
Hexachlorobenzene	0.10 ppm	80–110	0.20
Mirex	0.10 ppm	80–110	0.20
Nonachlor	0.15 ppm	80–110	0.20
Polychlorinated Biphenyls	0.50 ppm	80–110	0.20
Arsenic	0.20 ppm	90–105	0.25
Sulfonamides	0.08 ppm	70–120	0.25
Volatile Nitrosamine[3]	5 ppb	70–110	0.25

[1] Laboratory statistics are computed over all results (excluding PCB results), and for specific chemical residues.

[2] Laboratory statistics are only computed for specific chemical residues.
[3] The standardizing value of all initial accreditation and probationary check samples computations is 0.15.

3. Paragraph (b)(1) of § 318.21 would be revised to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(b) * * *

(1) *Applying for accreditation.* Application for accreditation shall be made in writing by the owner or manager of a non-Federal analytical laboratory and sent to the Accredited Laboratory Program, room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street SW., Washington, DC, 20250–3700, and shall specify the kinds of accreditation that are wanted by the owner or manager of the laboratory. A laboratory whose accreditation has been refused or revoked may reapply for accreditation after 60 days from the effective date of that action, and must provide written documentation specifying what corrections were made.

(i) At the time that an Application for Accreditation is filed with the Accredited Laboratory Program, FSIS, and annually thereafter on the anniversary date of each accreditation, the management of a laboratory shall reimburse the program at the rate specified in 9 CFR 391.5 for the cost of each accreditation.

(ii) Simultaneously with the initial application, the management of a laboratory shall forward a bank draft or money order in the amount specified in 9 CFR 391.5 made payable to the U.S. Department of Agriculture along with the completed application. The fee(s) paid shall be nonrefundable and shall be credited to the account from which the expenses of the laboratory accreditation program are paid.

(iii) Annually on the anniversary date of each accreditation, FSIS will issue a bill in the amount specified in 9 CFR 391.5.

(iv) Bills are payable upon receipt and become delinquent 30 days from the date of the bill. Accreditation will be terminated without further procedure for having a delinquent account.

(v) The accreditation of a laboratory that was accredited by FSIS on or before the effective date of this section and was not on probation and whose accreditation on that date was not in suspension or revocation shall be continued, provided that such laboratory reapply for accreditation in accordance with the provisions of this paragraph (b)(1) within 30 days of the effective date of this section, and that the reapplication be accepted by the Agency. The CUSUM values for such laboratory will be reset at zero upon acceptance of its reapplication. The accreditation of a laboratory that is on probation shall be continued, provided that the laboratory reapply for accreditation within 60 days of the effective date of this section, that the reapplication be accepted by the Agency, and that the laboratory satisfy the terms of the probation.

* * * * *

4. Paragraphs (b)(2)(ii) introductory text, (b)(3)(i), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix) introductory text, (b)(3)(x)(C), (b)(3)(xi) of § 318.21 would be revised; and new paragraphs (b)(2)(iv) and (b)(3)(xii) would be added to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(b) * * *

(2) * * *

(ii) Demonstrate acceptable levels of systematic laboratory difference, variability, and individual large deviations in the analyses of moisture, protein, fat, and salt content using AOAC methods. An applying laboratory will successfully demonstrate these capabilities if its moisture, protein, fat, and salt results from a 36 check sample accreditation study each satisfy the criteria presented below.[2] If the laboratory's analysis of an analyte (or analytes) from the first set of 36 check samples does not meet the criteria for obtaining accreditation, a second set of 36 check samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. The second set of samples shall be analyzed for only the analyte(s) for which unacceptable initial results had been obtained by the laboratory. If the results of the second set of samples do not meet the accreditation criteria, the laboratory may reapply after a 60-day waiting period, commencing from the date of refusal of accreditation by FSIS. At that time, a new application, all fees, and all documents required for accreditation must be submitted.

* * * * *

(iv) Pay the accreditation fee by the date required.

(3) * * *

(i) Report analytical results of the moisture, protein, fat, and salt content of official samples, weekly, on designated forms to the FSIS Eastern Laboratory, College Station Road, P.O. Box 6085, Athens, GA 30604, unless otherwise directed by the Quality Systems Branch, FSIS Chemistry Division.

* * * * *

(vi) Inform the Accredited Laboratory Program, room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250–3700, by certified or registered mail, within 30 days, when there is any change in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity.

(vii) Permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records during normal business hours, and to copy any records pertaining to the laboratory's participation in the Accredited Laboratory Program.

* * * * *

(ix) Demonstrate that acceptable limits of systematic laboratory difference, variability, and individual large deviations are being maintained in the analyses of moisture, protein, fat, and salt content. An accredited laboratory will successfully demonstrate the maintenance of these capabilities if its moisture, protein, fat, and salt results from split samples and/or interlaboratory accreditation maintenance check samples each satisfy the criteria presented below.[3]

* * * * *

(x) * * *

(C) Satisfy criteria for check samples specified in (b)(2)(ii) (A), (B), and (C) of this section.

(xi) Expeditiously report analytical results of official samples to the FSIS Eastern Laboratory, College Station Road, P.O. Box 6085, Athens, GA 30604, unless otherwise directed by the Quality Systems Branch, FSIS Chemistry Division. The Federal inspector at any establishment may assign the analysis of official samples to an FSIS laboratory if, in the inspector's judgment, there are delays in receiving test results on official samples from an accredited laboratory.

[2] All statistical computations are rounded to the nearest tenth, except where otherwise noted.

[3] All statistical computations are rounded to the nearest tenth, except where otherwise noted.

(xii) Pay the required accreditation fee when it is due.

* * * * *

5. Footnote 4 to paragraph (b)(2)(ii)(C) of § 318.21 would be renumbered as footnote 3; and footnote 5 to paragraph (b)(3)(viii) of § 318.21 would be renumbered as footnote 4 and revised to read as follows:

[4] Copies of the "Official Methods of Analysis of AOAC International," 15th edition, 1990, are on file with the Director, Office of the Federal Register, and may be purchased from AOAC International, 2200 Wilson Boulevard, Suite 400, Arlington, VA 22201.

6. Footnote 4 to § 318.21(b)(3)(ix)(C) introductory text would be renumbered as footnote 6 and revised to read as follows:

[6] See footnote 5.

7. Paragraph (c)(1) of § 318.21 would be revised to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(c) * * *

(1) *Applying for accreditation.* Application for accreditation shall be made in writing by the owner or manager of the non-Federal analytical laboratory and sent to the Accredited Laboratory Program, room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250–3700, and shall specify the kinds of accreditation that are wanted by the owner or manager of the laboratory. A laboratory whose accreditation has been refused or withdrawn may reapply for accreditation after 60 days from the effective date of that action, and must provide written documentation specifying what corrections were made.

(i) At the time that an Application for Accreditation is filed with the Accredited Laboratory Program, FSIS, and annually thereafter on the anniversary date of each accreditation, the management of a laboratory shall reimburse the program at the rate specified in 9 CFR 391.5 for the cost of each accreditation.

(ii) Simultaneously with the initial application, the management of a laboratory shall forward a bank draft or money order in the amount specified in 9 CFR 391.5 made payable to the U.S. Department of Agriculture along with the completed application. The fee(s) paid shall be nonrefundable and shall be credited to the account from which the expenses of the laboratory accreditation program are paid.

(iii) Annually on the anniversary date of each accreditation, FSIS will issue a bill in the amount specified in 9 CFR 391.5.

(iv) Bills are payable upon receipt and become delinquent 30 days from the date of the bill. Accreditation will be terminated without further procedure for having a delinquent account.

(v) The accreditation of a laboratory that was accredited by FSIS on or before the effective date of this section and was not on probation and whose accreditation on that date was not in suspension or revocation shall be continued provided that such laboratory reapply for accreditation in accordance with the provisions of this paragraph (c)(1), within 30 days of the effective date of this section, and that the reapplication be accepted by the Agency. The CUSUM values for such laboratory will be reset at ZERO upon acceptance of its reapplication. The accreditation of a laboratory that is on probation shall be continued, provided that the laboratory reapply for accreditation within 60 days of the effective date of this section, that the reapplication be accepted by the Agency, and that the laboratory satisfy the terms of the probation.

* * * * *

8. Paragraph (c)(2)(ii) introductory text of § 318.21 would be revised and a new paragraph (c)(2)(iv) would be added to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(c) * * *

(2) * * *

(ii) Demonstrate acceptable limits of systematic laboratory difference, variability, individual large deviations, recoveries, and proper identification in the analysis of the class of chemical residues for which application was made, using FSIS approved procedures. An applying laboratory will successfully demonstrate these capabilities if its analytical results for each specific chemical residue provided in a check sample accreditation study containing a minimum of 14 samples satisfy the criteria presented below.[7] In addition, if the laboratory is requesting accreditation for the analysis of chlorinated hydrocarbons, all analytical results for the residue class must collectively satisfy the criteria. [Conformance to criteria (A), (B), (C), (D), (E), and (F) will only be determined when six or more analytical results with associated comparison means at or above the logarithm of the minimum proficiency level are available.] If the results of the first set of check samples do not meet these criteria for obtaining accreditation, a second set of at least 14 samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. If the results of the second set of samples do not meet accreditation criteria, the laboratory may reapply after a 60-day waiting period, commencing from the date of refusal of accreditation by FSIS. At that time, a new application, all fees, and all documents required for accreditation must be resubmitted.

* * * * *

(iv) Pay the accreditation fee by the date required.

* * * * *

9. Footnote 9 to paragraph (c)(2)(ii)(C) of § 318.21 would be renumbered as footnote 8; footnotes 10 and 11 to § 318.21(c)(3)(ix) introductory text of § 318.21 would be renumbered as footnotes 9 and 10, respectively; and footnote 12 to § 318.21 (c)(3)(ix)(A)(*1*) introductory text would be renumbered as footnote 11.

10. Footnote 13 to § 318.21(c)(3)(ix)(A)(*2*)introductory text would be renumbered as footnote 12 and revised to read:

[12] See footnote 11.

11. Footnote 14 to § 318.21 (c)(3)(ix)(B) introductory text would be renumbered as footnote 13 and footnote 15 to paragraph (c)(3)(ix)(C) introductory text would be renumbered as footnote 14.

12. Footnote 16 to § 318.21 (c)(3)(xiii)(A)(*1*) introductory text would be renumbered as footnote 15 and footnote 17 to paragraph (c)(3)(xiii)(A)(*2*) introductory text would be renumbered as footnote 16; and the text of each of these footnotes would be revised to read "See footnote 11."

13. Footnote 18 to § 318.21(c)(3)(xiii)(B) introductory text would be renumbered as footnote 17 and the text of this footnote would be revised to read "*See* footnote 13."

14. Footnote 19 to § 318.21(c)(3)(xiii)(C) introductory text would be renumbered as footnote 18.

15. Paragraph (c)(3)(i) of § 318.21 would be removed and reserved.

16. Paragraphs (c)(3)(vi), (c)(3)(vii), (c)(3)(ix) introductory text, (c)(3)(x)(C), and (c)(3)(xi) of § 318.21 would be revised and a new paragraph (c)(3)(xiv) added to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(c) * * *

[7] All statistical computation are rounded to the nearest tenth, except where otherwise noted.

(3) * * *

(vi) Inform the Accredited Laboratory Program, Room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250–3700, by certified or registered mail, within 30 days of any change in the laboratory's ownership, officers, directors, supervisory personnel, or any other responsibly connected individual or entity.

(vii) Permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records during normal business hours, and to copy any records pertaining to the laboratory's participation in the Accredited Laboratory Program.

* * * * *

(ix) Demonstrate that acceptable limits of systematic laboratory difference, variability, and individual large deviations are being maintained in the analysis of samples, in the chemical residue class for which accreditation was granted. A laboratory will successfully demonstrate the maintenance of these capabilities if its analytical results for each specific chemical residue found in split samples and interlaboratory accreditation maintenance check samples satisfy the criteria presented below.[9, 10] In addition, if the laboratory is accredited for the analysis of chlorinated hydrocarbons, all analytical results for the residue class must collectively satisfy the criteria.

* * * * *

(x) * * *

(C) Satisfy criteria for check samples as specified in (c)(2)(ii) (A), (B), (C), (E), and (F).

(xi) Expeditiously report analytical results of official samples to the FSIS Eastern Laboratory, College Station Road, P.O. Box 6085, Athens, GA 30604, unless otherwise directed by the Quality Systems Branch, FSIS Chemistry Division. The Federal inspector at any establishment may assign the analysis of official samples to an FSIS laboratory if, in the judgment of the inspector, there are delays in receiving test results on official samples from an accredited laboratory.

* * * * *

(xiv) Pay the accreditation fee when it is due.

* * * * *

17. Paragraphs (g)(1), (g)(2), (g)(3)(ii) of § 318.21 would be revised to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(g) * * *

(1) An accredited laboratory which is accredited to perform analysis under paragraph (b) of this section shall have its accreditation revoked for failure to meet any of the requirements of paragraph (b)(3) of this section except for the following circumstances. If the accredited laboratory fails to meet the criteria for reporting the analytical results on interlaboratory accreditation maintenance check samples as set forth in paragraph (b)(3)(v) of this section or if, at any time, the CUSUM results from the analysis of such check samples and split samples have not satisfied the criteria specified in paragraph (b)(3)(ix) of this section and there have been, during the previous 12 months, no other occasions on which such CUSUM results have not satisfied such criteria, the laboratory shall be placed on probation; but if there have been such other occasions during those 12 months, the laboratory's accreditation will be revoked.

(2) An accredited laboratory which is accredited to perform analysis for a class of chemical residues under paragraph (c) of this section shall have the accreditation to perform this analysis revoked if it fails to meet any of the requirements in paragraph (c)(3) of this section except for the following circumstances. If the accredited laboratory fails to meet any of the criteria set forth in paragraphs (c)(3)(v), (c)(3)(ix), and (c)(3)(xiii) of this section and it has not so failed during the 12 months preceding its failure to meet the criteria, it shall be placed on probation, but if it has so failed at any time during those 12 months, its accreditation will be revoked.

(3) * * *

(ii) Substituted any analytical result from any other laboratory for its own.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

18. The authority citation for part 381 would be revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

19. Paragraph (a) of § 381.153 would be amended by removing the definitions for "Accredited Laboratory Coordinator"; by revising the definitions for "AOAC Methods," "Comparison Mean," "Correct Chemical Residue Identification," "CUSUM," "Interlaboratory Accreditation Maintenance Check Sample," "Minimum Proficiency Level," "Official Sample," "Standardized Difference," "Standardizing Value," and "Systematic Laboratory Difference"; by adding, in alphabetical order, new definitions for "Accreditation," "Refusal of Accreditation," "Revocation of Accreditation," "Standardizing Constant," "Suspension of Accreditation," and "Variance"; and by revising Tables 1 and 2 to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

(a) * * *

Accreditation—Determination by FSIS that a laboratory is qualified to analyze official samples of product subject to regulations in this subchapter and subchapter A of this chapter for the presence and amount of all four food chemistry analytes (protein, moisture, fat, and salt); or a determination by FSIS that a laboratory is qualified to analyze official samples of product subject to regulations in this subchapter and subchapter A of this chapter for the presence and amount of one of several classes of chemical residue, in accordance with the requirements of the Accredited Laboratory Program. Accreditations are granted separately for the food chemistry analysis of official samples and for the analysis of such samples for any one of the several classes of chemical residue. A laboratory may hold more than one accreditation.

* * * * *

AOAC methods—Methods of chemical analysis, section 24.001 through 24.071, AOAC International; in the "Official Methods of Analysis of AOAC International," 15th edition 1990; published by AOAC International, 2200 Wilson Boulevard, suite 400, Arlington, VA 22207. This publication is incorporated by reference and was originally approved by the Director, Office of the Federal Register, on February 19, 1987.[1]

* * * * *

Comparison Mean—The average, for a sample, of all accredited and FSIS laboratories' average results, each of which has a large deviation measure of zero, except when only two laboratories

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[9] All statistical computations are rounded to the nearest tenth, except where otherwise noted.

[10] An analytical result will only be used in the statistical evaluation of the laboratory if the associated comparison mean is equal to or greater than the logarithm of the minimum proficiency level for the residue.

[1] Copies of this publication are on file with the Director, Office of the Federal Register, and may be purchased from AOAC International at the address indicated.

perform the analysis. In the latter case, the comparison mean is the average of the two laboratories' results. For food chemistry, a result for a laboratory is the obtained analytical value; for chemical residues, a result is the logarithmic transformation of the obtained analytical value.

Correct chemical residue identification—Correct identification by a laboratory of a chemical residue whose concentration, in a sample, is equal to or greater than the minimum reporting level for that residue, as determined by the median of all positive analytical values obtained by laboratories analyzing the sample. Failure of a laboratory to report the presence of such a chemical residue is considered a misidentification. In addition, reporting the presence of a residue at a level equal to or above the minimum reporting level that is not reported by 90 percent or more of all other laboratories analyzing the sample, is considered a misidentification.

CUSUM—A class of statistical procedures for assessing whether or not a process is "in control". Each CUSUM value is constructed by accumulating incremental values obtained from observed results of the process, and then determined to either exceed or fall within acceptable limits for that process. The initial CUSUM values for each laboratory whose application for accreditation is accepted are set at zero. The four CUSUM procedures are:

(1) Positive systematic laboratory difference CUSUM (CUSUM–P)—monitors how consistently an accredited laboratory gets numerically greater results than the comparison mean;

(2) Negative systematic laboratory difference CUSUM (CUSUM–N)—monitors how consistently an accredited laboratory gets numerically smaller results than the comparison mean;

(3) Variability CUSUM (CUSUM–V)—monitors the average "total discrepancy" (i.e., the combination of the random fluctuations and systematic differences) between an accredited laboratory's results and the comparison mean;

(4) Individual large discrepancy CUSUM (CUSUM–D)—monitors the magnitude and frequency of large differences between the results of an accredited laboratory and the comparison mean.

* * * * *

Interlaboratory accreditation maintenance check sample—A sample prepared and sent by an FSIS laboratory to a non-Federal laboratory to assist in determining if acceptable levels of analytical capability are maintained by the accredited laboratory.

* * * * *

Minimum proficiency level—the minimum concentration of a residue at which an analytical result will be used to assess a laboratory's quantification capability. This concentration is an estimate of the smallest concentration for which the average coefficient of variation (CV) for reproducibility (i.e., combined within and between laboratory variability) does not exceed 20 percent. (See Table 2)

* * * * *

Official Sample—A sample selected by an inspector or inspection service employee in accordance with FSIS procedures for regulatory use.

* * * * *

Refusal of Accreditation—An action taken when a laboratory which is applying for accreditation is denied the accreditation.

* * * * *

Revocation of Accreditation—An action taken against a laboratory which removes its right to analyze official samples.

* * * * *

Standardizing Constant—The number which is the result of a mathematical adjustment to the "standardized value." Specifically, the number equals the square root of the expected variance of the difference between the accredited or applying laboratory's result and the comparison mean on a sample, taking into consideration the standardizing value, the correlation and number of repeated results by a laboratory on a sample, and the number of laboratories that analyzed the sample.

Standardized Difference—The quotient of the difference between a laboratory's result on a sample and the comparison mean of the sample divided by the standardizing constant.

Standardizing Value—A number representing the performance standard deviation of an individual result (see Tables 1 and 2 and footnotes to the Tables for determining exact procedures for calculation).

Suspension of Accreditation—Action taken against a laboratory which temporarily removes its right to analyze official samples. Suspension of accreditation ends when accreditation is either fully restored or revoked.

Systematic laboratory difference—A comparison of one laboratory's results with the comparison means on samples that shows, on average, a consistent relationship. A laboratory that is reporting, on average, numerically greater results than the comparison mean has a positive systematic laboratory difference and, conversely, numerically smaller results indicate negative systematic values.

* * * * *

Variance—The expected average of the squared differences of sample results from a true sample mean.

TABLE 1.—STANDARDIZING VALUES FOR FOOD CHEMISTRY

[By product class and analyte]

Moisture	Protein [1]	Fat [2]	Salt [3]
0.57	0.060	0.26 (0.30)	0.127

[1] To obtain the standardizing value for a sample the appropriate entry in this column is multiplied by $X^{0.63}$ where X is the comparison mean of the sample.

[2] To obtain the standardizing value for a sample, the appropriate entry in this column is multiplied by $X^{0.23}$. The appropriate entry is equal to the value in parentheses when X is equal to or greater than 12.5 percent, otherwise it is equal to 0.26.

[3] To obtain the standardizing value for a sample, when the comparison mean of the sample, X, is less than 1.0 percent, the standardizing value equals 0.127, otherwise the appropriate entry is multiplied by $X^{0.25}$. When X is equal to or greater than 4.0 percent for dry salami and pepperoni products, the standardizing value equals 0.22.

TABLE 2.—MINIMUM PROFICIENCY LEVELS, PERCENT EXPECTED RECOVERIES (QC), AND STANDARDIZING VALUES FOR CHEMICAL RESIDUES

Class of residues	Minimum proficiency level	Percent expected recovery (QC)	Standardizing value
Chlorinated Hydrocarbons: [1]			
Aldrin	0.10 ppm	80–110	0.20
Benzene Hexachloride	0.10 ppm	80–110	0.20
Chlordane	0.30 ppm	80–110	0.20

TABLE 2.—MINIMUM PROFICIENCY LEVELS, PERCENT EXPECTED RECOVERIES (QC), AND STANDARDIZING VALUES FOR CHEMICAL RESIDUES—Continued

Class of residues	Minimum proficiency level	Percent expected recovery (QC)	Standardizing value
Dieldrin	0.10 ppm	80–110	0.20
DDT	0.15 ppm	80–110	0.20
DDE	0.10 ppm	80–110	0.20
TDE	0.15 ppm	80–110	0.20
Endrin	0.10 ppm	80–110	0.20
Heptachlor	0.10 ppm	80–110	0.20
Heptachlor Epoxide	0.10 ppm	80–110	0.20
Lindane	0.10 ppm	80–110	0.20
Methoxychlor	0.50 ppm	80–110	0.20
Toxaphene	1.00 ppm	80–110	0.20
Hexachlorobenzene	0.10 ppm	80–110	0.20
Mirex	0.10 ppm	80–110	0.20
Nonachlor	0.15 ppm	80–110	0.20
Polychlorinated Biphenyls	0.50 ppm	80–110	0.20
Arsenic [1]	0.20 ppm	90–105	0.25
Sulfonamides [2]	0.08 ppm	70–120	0.25
Volatile Nitrosamine [3]	5 ppb	70–110	0.25

[1] Laboratory statistics are computed over all results (excluding PCB results), and for specific chemical residues.
[2] Laboratory statistics are only computed for specific chemical residues.
[3] The standardizing value of all initial accreditation and probationary check samples computations is 0.15.

20. Paragraph (b)(1) of § 381.153 would be revised to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

* * * * *

(b) * * *

(1) *Applying for accreditation.* Application for accreditation shall be made in writing by the owner or manager of a non-Federal analytical laboratory and sent to the Accredited Laboratory Program, Room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street SW., Washington, DC, 20250–3700, and shall specify the kinds of accreditation that are wanted by the owner or manager of the laboratory. A laboratory whose accreditation has been refused or revoked may reapply for accreditation after 60 days from the effective date of that action, and must provide written documentation specifying what corrections were made.

(i) At the time that an Application for Accreditation is filed with the Accredited Laboratory Program, FSIS, and annually thereafter on the anniversary date of each accreditation, the management of a laboratory shall reimburse the program at the rate specified in 9 CFR 391.5 for the cost of each accreditation.

(ii) Simultaneously with the initial application, the management of a laboratory shall forward a bank draft or money order in the amount specified in 9 CFR 391.5 made payable to the U.S. Department of Agriculture along with the completed application. The fee(s) paid shall be nonrefundable and shall be credited to the account from which the expenses of the laboratory accreditation program are paid.

(iii) Annually on the anniversary date of each accreditation, FSIS will issue a bill in the amount specified in 9 CFR 391.5.

(iv) Bills are payable upon receipt and become delinquent 30 days from the date of the bill. Accreditation will be terminated without further procedure for having a delinquent account.

(v) The accreditation of a laboratory that was accredited by FSIS on or before the effective date of this section and was not on probation and whose accreditation on that date was not in suspension or revocation shall be continued, provided that such laboratory reapply for accreditation in accordance with the provision of this paragraph (b)(1), within 30 days of the effective date of this section, and that the reapplication be accepted by the Agency. The CUSUM values for such laboratory will be reset at zero upon acceptance of its reapplication. The accreditation of a laboratory that is on probation shall be continued, provided that the laboratory reapply for accreditation within 60 days of the effective date of this section, that the reapplication be accepted by the Agency, and that the laboratory satisfy the terms of the probation.

* * * * *

21. Paragraphs (b)(2)(ii) introductory text, (b)(3)(i), (b)(3)(vi), (b)(3)(vii), (b)(3)(ix) introductory text, (b)(3)(x)(C), (b)(3)(xi) of § 381.153 would be revised; and new paragraphs (b)(2)(iv) and (b)(3)(xii) would be added to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

* * * * *

(b) * * *

(2) * * *

(ii) Demonstrate acceptable levels of systematic laboratory difference, variability, and individual large deviations in the analyses of moisture, protein, fat, and salt content using AOAC methods. An applying laboratory will successfully demonstrate these capabilities if its moisture, protein, fat, and salt results from a 36 check sample accreditation study each satisfy the criteria presented below.[2] If the laboratory's analysis of an analyte (or analytes) from the first set of 36 check samples does not meet the criteria for obtaining accreditation, a second set of 36 check samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. The second set of samples shall be analyzed for only the analyte(s) for which unacceptable initial results had been obtained by the laboratory. If the results of the second set of samples do not meet the accreditation criteria, the laboratory may reapply after a 60-day waiting period, commencing from the date of refusal of accreditation by FSIS. At that time, a new application, all fees, and all documents required for accreditation must be submitted.

[2] All statistical computations are rounded to the nearest tenth, except where otherwise noted.

* * * * *

(iv) Pay the accreditation fee by the date required.

(3) * * *

(i) Report analytical results of the moisture, protein, fat, and salt content of official samples, weekly, on designated forms to the FSIS Eastern Laboratory, College Station Road, P.O. Box 6085, Athens, GA 30604, unless otherwise directed by the Quality Systems Branch, FSIS Chemistry Division.

* * * * *

(vi) Inform the Accredited Laboratory Program, Room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250–3700, by certified or registered mail, within 30 days of any change in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity.

(vii) Permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records during normal business hours, and to copy any records pertaining to the laboratory's participation in the Accredited Laboratory Program.

* * * * *

(ix) Demonstrate that acceptable limits of systematic laboratory difference, variability, and individual large deviations are being maintained in the analyses of moisture, protein, fat, and salt content. An accredited laboratory will successfully demonstrate the maintenance of these capabilities if its moisture, protein, fat, and salt results from split samples and/or interlaboratory accreditation maintenance check samples each satisfy the criteria presented below.[8]

* * * * *

(x) * * *

(C) Satisfy criteria for check samples specified in paragraphs (b)(2)(ii) (A), (B), and (C) of this section.

(xi) Expeditiously report analytical results of official samples to the FSIS Eastern Laboratory, College Station Road, P.O. Box 6085, Athens, GA 30604, unless otherwise directed by the Quality Sytems Branch, FSIS Chemistry Division. The Federal inspector at any establishment may assign the analysis of official samples to an FSIS laboratory if, in the inspector's judgment, there are delays in receiving test results on official samples from an accredited laboratory.

[8] All statistical computations are rounded to the nearest tenth, except where otherwise noted.

(xii) Pay the required accreditation fee when it is due. * * *

22. Footnote 4 to paragraph (b)(2)(ii)(C) of § 381.153 would be renumbered as footnote 3; and footnote 5 to paragraph (b)(3)(viii) of § 381.153 would be renumbered as footnote 4 and revised to read as follows:

[4] Copies of the "Official Methods of Analysis of AOAC International," 15th edition, 1990, are on file with the Director, Office of the Federal Register, and may be purchased from AOAC International, 2200 Wilson Boulevard, suite 400, Arlington, VA 22201.

23. Footnote 4 to § 381.153 (b)(3)(ix)(C) introductory text would be renumbered as footnote 6 and revised to read as follows:

[6] See footnote 3.

24. Paragraph (c)(1) of § 381.153 would be revised to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

* * * * *

(c) * * *

(1) *Applying for accreditation.* Application for accreditation shall be made in writing by the owner or manager of the non-Federal analytical laboratory and sent to the Accredited Laboratory Program, room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC, 20250–3700, and shall specify the kinds of accreditation that are wanted by the owner or manager of the laboratory. A laboratory whose accreditation has been refused or withdrawn may reapply for accreditation after 60 days from the effective date of that action, and must provide written documentation specifying what corrections were made.

(i) At the time that an Application for Accreditation is filed with the Accredited Laboratory Program, FSIS, and annually thereafter on the anniversary date of each accreditation, the management of a laboratory shall reimburse the program at the rate specified in 9 CFR 391.5 for the cost of each accreditation.

(ii) Simultaneously with the initial application, the management of a laboratory shall forward a bank draft or money order in the amount specified in 9 CFR 391.5 made payable to the U.S. Department of Agriculture along with the completed application. The fee(s) paid shall be nonrefundable and shall be credited to the account from which the expenses of the laboratory accreditation program are paid.

(iii) Annually on the anniversary date of each accreditation, FSIS will issue a bill in the amount specified in 9 CFR 391.5.

(iv) Bills are payable upon receipt and become delinquent 30 days from the date of the bill. Accreditation will be terminated without further procedure for having a delinquent account.

(v) The accreditation of a laboratory that was accredited by FSIS on or before the effective date of this section and was not on probation and whose accreditation on that date was not in suspension or revocation shall be continued, provided that such laboratory reapply for accreditation in accordance with the provisions of this paragraph (c)(1), within 30 days of the effective date of this section, and that the reapplication be accepted by the Agency. The CUSUM values for such laboratory will be reset at zero upon acceptance of its reapplication. The accreditation of a laboratory that is on probation shall be continued, provided that the laboratory reapply for accreditation within 60 days of the effective date of this section, that the reapplication be accepted by the Agency, and that the laboratory satisfy the terms of the probation.

* * * * *

25. Paragraph (c)(2)(ii) introductory text of § 381.153 would be revised and a new paragraph (c)(2)(iv) would be added to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

* * * * *

(c) * * *

(2) * * *

(ii) Demonstrate acceptable limits of systematic laboratory difference, variability, individual large deviations, recoveries, and proper identification in the analysis of the class of chemical residues for which application was made, using FSIS approved procedures. An applying laboratory will successfully demonstrate these capabilities if its analytical results for each specific chemical residue provided in a check sample accreditation study containing a minimum of 14 samples satisfy the criteria presented below.[7] In addition, if the laboratory is requesting accreditation for the analysis of chlorinated hydrocarbons, all analytical results for the residue class must collectively satisfy the criteria. [Conformance to criteria (A), (B), (C), (D), (E), and (F) will only be determined when six or more analytical results with associated comparison means at or above the logarithm of the minimum proficiency level are available.] If the

[7] All statistical computations are rounded to the nearest tenth, unless otherwise noted.

results of the first set of check samples do not meet these criteria for obtaining accreditation, a second set of at least 14 samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. If the results of the second set of samples do not meet accreditation criteria, the laboratory may reapply after a 60-day waiting period, commencing from the date of refusal of accreditation by FSIS. At that time, a new application, all fees, and all documents required for accreditation must be resubmitted.

* * * * *

(iv) Pay the accreditation fee by the date required.

* * * * *

26. Footnote 9 to paragraph (c)(2)(ii)(C) of § 381.153 would be renumbered as footnote 8; footnotes 10 and 11 to § 381.153 (c)(3)(ix) introductory text would be renumbered as footnotes 9 and 10, respectively; and footnote 12 to § 381.153 (c)(3)(ix)(A)(*1*) introductory text would be renumbered as footnote 11.

27. Footnote 13 to § 381.153 (c)(3)(ix)(A)(*2*) introductory text would be renumbered as footnote 12 and revised to read:

[12] See footnote 11.

28. Footnote 14 to § 381.153 (c)(3)(ix)(B) introductory text would be renumbered as footnote 13 and footnote 15 to paragraph (c)(3)(ix)(C) introductory text of § 381.153 would be renumbered as footnote 14.

29. Footnote 16 to § 381.153 (c)(3)(xiii)(A)(*1*) introductory text would be renumbered as footnote 15 and footnote 17 to paragraph (c)(3)(xiii)(A)(*2*) introductory text would be renumbered as footnote 16; and the text of each of these footnotes would be revised to read "See footnote 11."

30. Footnote 18 to § 381.153 (c)(3)(xiii)(B) introductory text would be renumbered as footnote 17 and the text of this footnote would be revised to read "See footnote 13."

31. Footnote 19 to § 381.153 (c)(2)(xiii)(C) would be renumbered as footnote 18.

32. Paragraph (c)(3)(i) of § 381.153 would be removed and reserved.

33. Paragraphs (c)(3)(vi), (c)(3)(vii), (c)(3)(ix) introductory text, (c)(3)(x)(C), and (c)(3)(xi) of § 381.153 would be revised and a new paragraph (c)(3)(xiv) added revised to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

* * * * *

(c) * * *

(3) * * *

(vi) Inform the Accredited Laboratory Program, room 516–A, Annex Building, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250–3700, by certified or registered mail, within 30 days when there is any change in the laboratory's ownership, officers, directors, supervisory personnel, or any other responsibly connected individual or entity.

(vii) Permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records during normal business hours, and to copy any records pertaining to the laboratory's participation in the Accredited Laboratory Program.

* * * * *

(ix) Demonstrate that acceptable limits of systematic laboratory difference, variability, and individual large deviations are being maintained in the analysis of samples, in the chemical residue class for which accreditation was granted. A laboratory will successfully demonstrate the maintenance of these capabilities if its analytical results for each specific chemical residue found in split samples and interlaboratory accreditation maintenance check samples satisfy the criteria presented below.[9, 10] In addition, if the laboratory is accredited for the analysis of chlorinated hydrocarbons, all analytical results for the residue class must collectively satisfy the criteria.

* * * * *

(x) * * *

(C) Satisfy criteria for check samples as specified in paragraphs (c)(2)(ii) (A), (B), (C), (D), (E), and (F) of this section.

(xi) Expeditiously report analytical results of official samples to the FSIS Eastern Laboratory, College Station Road, P.O. Box 6085, Athens, GA 30604, unless otherwise directed by the Quality Systems Branch, FSIS Chemistry Division. The Federal inspector at any establishment may assign the analysis of official samples to an FSIS laboratory if, in the judgment of the inspector, there are delays in receiving test results on official samples from an accredited laboratory.

* * * * *

[9] All statistical computations are rounded to the nearest tenth, except where otherwise noted.

[10] An analytical result will only be used in the statistical evaluation of the laboratory if the associated comparison mean is equal to or greater than the logarithm of the minimum proficiency level for the residue.

(xiv) Pay the accreditation fee when it is due.

* * * * *

34. Paragraphs (g)(1), (g)(2), (g)(3)(ii) of § 381.153 would be revised to read as follows:

§ 381.153 Accreditation of chemistry laboratories.

* * * * *

(g) * * *

(1) An accredited laboratory which is accredited to perform analysis under paragraph (b) of this section shall have its accreditation revoked for failure to meet any of the requirements of paragraph (b)(3) of this section except for the following circumstances. If the accredited laboratory fails to meet the criteria for reporting the analytical results on interlaboratory accreditation maintenance check samples as set forth in paragraph (b)(3)(v) of this section or if, at any time, the CUSUM results from the analysis of such check samples and split samples have not satisfied the criteria specified in paragraph (b)(3)(ix) of this section and there have been, during the previous 12 months, no other occasions on which such CUSUM results have not satisfied such criteria, the laboratory shall be placed on probation; but if there have been such other occasions during those 12 months, the laboratory's accreditation will be revoked.

(2) An accredited laboratory which is accredited to perform analysis for a class of chemical residues under paragraph (c) of this section shall have the accreditation to perform this analysis revoked if it fails to meet any of the requirements in paragraph (c)(3) of this section except for the following circumstances. If the accredited laboratory fails to meet any of the criteria set forth in paragraphs (c)(3)(v), (c)(3)(ix), and (c)(3)(xiii) of this section and it has not so failed during the 12 months preceding its failure to meet the criteria, it shall be placed on probation, but if it has so failed at any time during those 12 months, its accreditation will be revoked.

(3) * * *

(ii) Substituted any analytical result from any other laboratory for its own.

* * * * *

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES AND LABORATORY ACCREDITATION

35. The part heading would be revised to read as shown above.

36. The authority citation for § 391.5 would be revised to read as follows:

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Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622, 1624; 21 U.S.C. 460 et seq.; 21 U.S.C. 601–695.

37. Part 391 would be amended by adding a new § 391.5 to read as follows:

§ 391.5 Laboratory Accreditation Fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be $3,500 per accreditation.

(b) Laboratories that request special onsite inspections shall pay FSIS the actual cost of reasonable travel and other expenses necessary to perform the unscheduled or non-routine onsite inspections.

Done at Washington, DC, on August 4, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19961 Filed 8–18–93; 8:45 am]

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H.R. 2667/P.L. 103–75

Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 (Aug. 12, 1993; 107 Stat. 739; 13 pages)

S. 1273/P.L. 103–76

Depository Institutions Disaster Relief Act of 1993 (Aug. 12, 1993; 107 Stat. 752; 4 pages)

H.R. 631/P.L. 103–77

Colorado Wilderness Act of 1993 (Aug. 13, 1993; 107 Stat. 756; 11 pages)

H.R. 798/P.L. 103–78

To amend title 38, United States Code, to codify the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans as such rates took effect on December 1, 1992. (Aug. 13, 1993; 107 Stat. 767; 3 pages)

H.R. 2034/P.L. 103–79

To authorize major medical facility construction projects for the Department of Veterans Affairs for fiscal year 1994, and for other purposes. (Aug. 13, 1993; 107 Stat. 770; 3 pages)

H.R. 2900/P.L. 103–80

Nutrition Labeling and Education Act Amendments of 1993 (Aug. 13, 1993; 107 Stat. 773; 7 pages)

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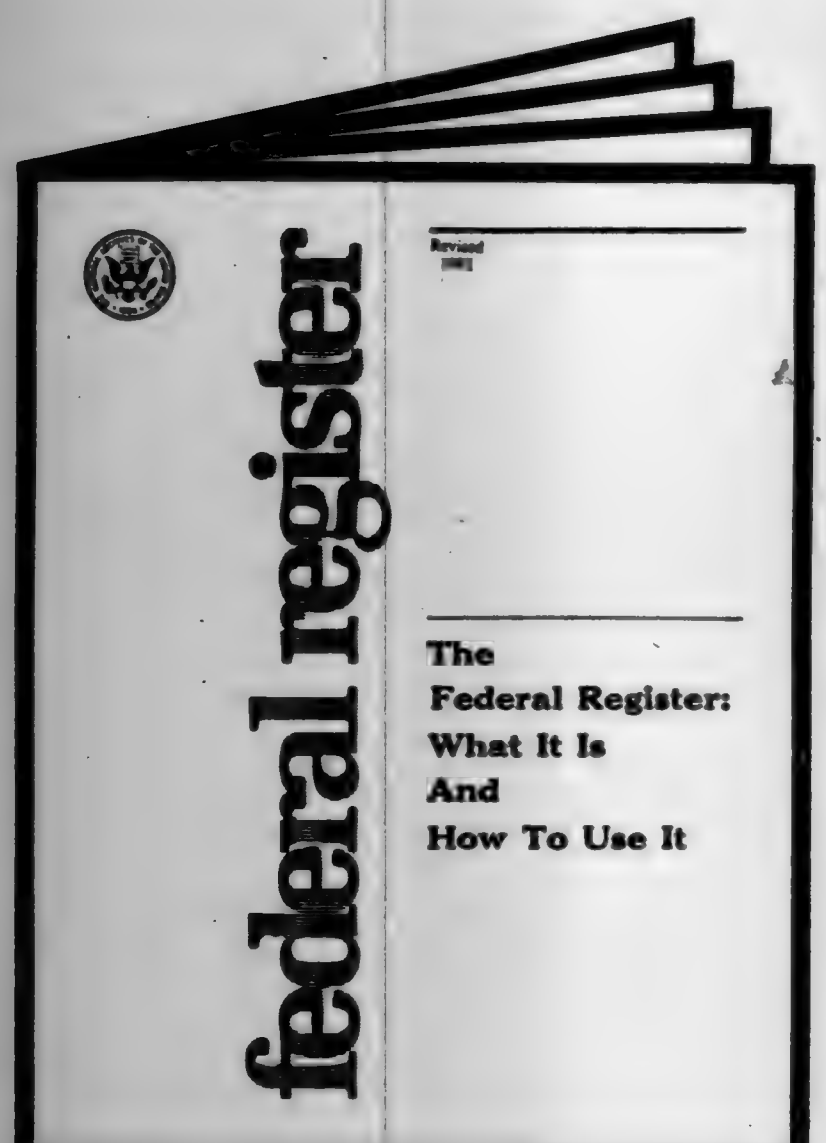

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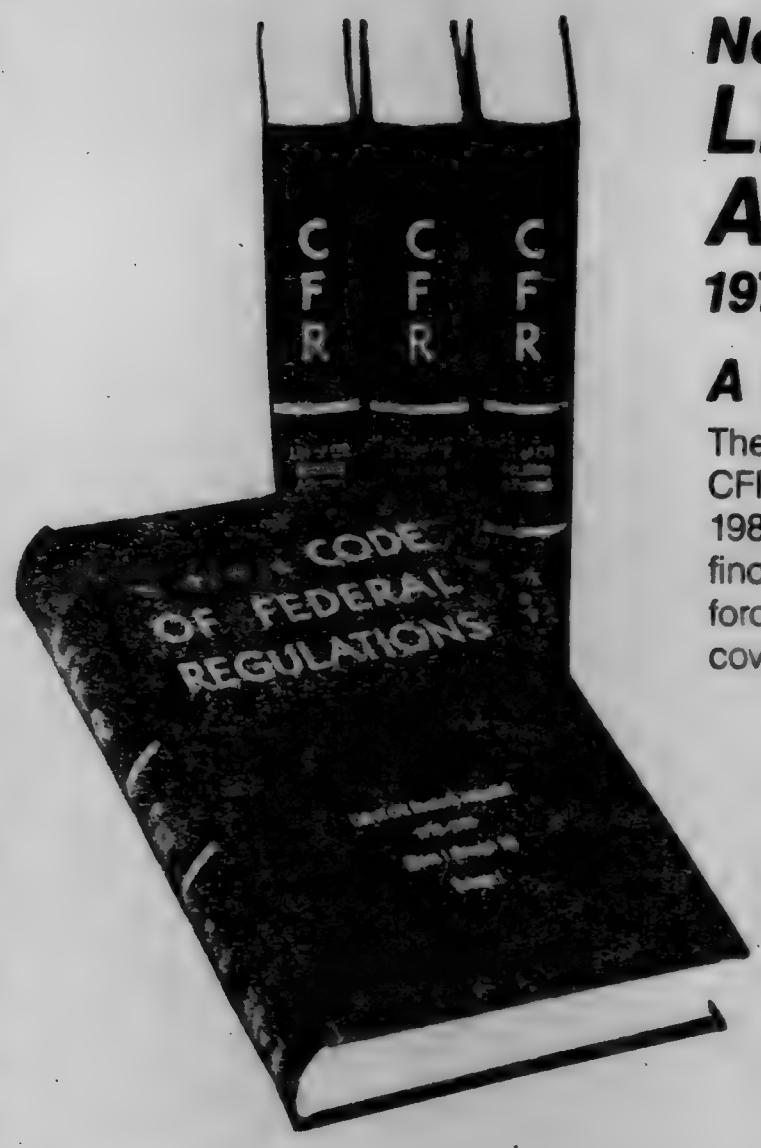

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1973-1985

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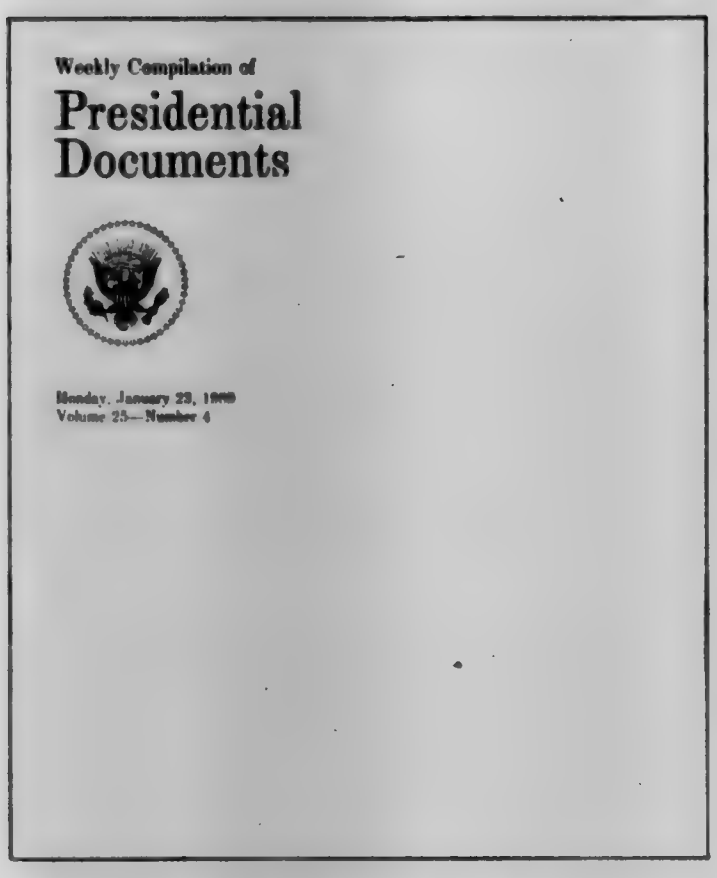

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1910, 1930, and 1944

RIN 0575–AA67

Processing Preapplications for Rural Rental Housing (RRH) Assistance

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the processing of preapplications for Rural Rental Housing (RRH) assistance. This action is necessary to streamline and strengthen the manner in which preapplications are processed, provide priority for development of RRH complexes in areas of need, establish guidelines for development of new units in areas with existing subsidized housing, clarify when preference will be given for donated land, and implement provisions of the Housing and Community Development Act of 1992. The intended effect is to improve credit quality and make our regulations more responsive to the prudent development of RRH complexes in rural America.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Chief, or Linda J. Armour, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5337—South Agriculture Building, Washington, DC. 20250, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

This final rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or be controversial. The net result is to provide better service to rural communities.

Implementation Proposal

The subject rule includes changes to the manner in which preapplications are processed, including points available under the priority point system, and equity required form applicants. As indicated in the proposed rule, all preapplications on hand, where an AD–622 has not been issued requesting a formal application, are subject to the contents of the final rule. All preapplications will be rerated based upon the priority point system in the final rule without regard to previous priority processing score or ranking; site locations will be reassessed; new loans in areas with existing FmHA complexes will be reevaluated; and equity contributions will be increased from 3 to 5 percent. There is no "phase-in" period for existing preapplications. FmHA recognizes this action will have an impact on preapplications which are in process. A more detailed discussion of the Implementation Proposal contained in the proposed rule is included in the "Discussion of Comments" section.

Discussion of Comments

A proposed rule was published in the October 31, 1991, issue of the **Federal Register** (56 FR 56032). A sixty-day comment period, ending December 30, 1991, was provided on the proposed rule. During the comment period, 83 comments were received. The commentors represented a wide range of interests and included developers, builders, attorneys, legal services, bankers, FmHA personnel, packagers, market analysts, consultants, mayors, other elected officials, management companies, and advocacy groups representing developers, builders, nonprofits, the elderly, etc. Many of the comments were extremely lengthy, often times exceeding the length of the entire proposed rule.

Many comments were duplicative. Eleven commentors merely sent a photocopy of another individual's comments with a cover letter stating that they supported the attached comments. These twelve comments were considered as one.

Several comments were received after the comment period. As indicated in the proposed rule, comments had to be submitted on or before December 30, 1991. Due to the holiday season, comments received within one week of December 30th were considered. A total of 91 comments were considered in developing this final rule. Comments were concentrated around approximately thirty areas of the proposed rule and are discussed below by section number or title.

Section 1944.213(f) New Loans in Areas With FmHA or HUD Rental Housing Loans

Approximately forty-five comments were received on this section. Commentors either strongly supported the proposed language or strongly opposed same, with the majority supporting the proposed language with minor changes and clarifications. Most thought the intent of the proposed language was in the best interests of all persons involved with the Section 515 program and a prudent loan underwriting practice. Several of the recommended changes have been incorporated into the final language. The following is an overview of the comments.

Several commentors objected to the premise that FmHA can reject a loan proposal because there is another proposal in the market area. The proposed language does not provide that a preapplication would be rejected for this reason. It provided that another preapplication could not proceed in this case. The preapplication would be retained until the conditions of this section had been met, or returned if processing levels would not permit retaining the preapplication. A new subparagraph has been added to clarify this point.

Many commentors felt that "same general market area," "fully rented up," "vacancy problems," and references to the need for Rental Assistance (RA) and not additional units needed clarification. FmHA concurs and has clarified the terminology.

Several commentors pointed out that some vacancy problems are the result of non-market type conditions. Such non-market type conditions are the result of poor management, inadequate existing units, etc. FmHA recognizes that non-market type conditions exist which affect vacancies, and partially agrees that some discretion is needed in unusual circumstances. As suggested, flexibility has been added to the final rule to exclude certain type cases, and an exception paragraph added.

Several commentors strongly objected to input from the Department of Housing and Urban Development (HUD). An element of distrust was clearly evident in the comments and several compared FmHA and HUD to McDonalds and Burger King competing and/or protecting themselves in a given market. FmHA flatly rejects such comments. FmHA and HUD are sister Agencies charged with a similar mission—to provide assistance in developing decent, safe and sanitary housing.

The two government agencies must work together and not apart in providing housing assistance. FmHA took the lead role in June 1991 in developing a Memorandum of Understanding with HUD, part of which was to cooperate in determining market feasibility. Overall, we believe the process has been successful, with neither Agency having the power to overrule the other. In several cases, FmHA has not accepted HUD's objection to construction of a new FmHA complex and vice-versa. The process by which FmHA cooperates with HUD in determining market feasibility is also discussed later in this final rule.

Several commentors suggested that this section be expanded beyond FmHA and HUD and include other lenders which provide assistance in developing low income housing such as a State or local agency. FmHA agrees and has clarified this point.

Several commentors objected to the provision that FmHA would not consider financing new units in a market area where there is not a need for additional housing but a need exists for additional housing subsidies. In such an area, a need exists for Section 8 or similar type vouchers. The purpose of the Section 515 program is to construct new housing or purchase and substantially rehabilitate existing structures. In conjunction with the Section 515 program, the Section 521 program provides a deeper subsidy to those tenants needing further subsidy. Building new housing in an area where the existing FmHA housing is available merely to get additional housing subsidies is not the intent of the program. Further the overall integrity of the program is undermined when existing FmHA projects are experiencing vacancy problems while the Agency is financing new housing in the same area. The vacancy problems of the existing project are then further compounded together with the Agency's ability to service its existing debt.

Several commentors suggested that FmHA process other preapplications in a given market area until one of the applicants is authorized an AD–622 inviting a formal application. FmHA concurs with these comments and has incorporated the changes.

Several commentors did not support the provision that if a Special Market Rate Rent (SMR) is pending or in effect, that another project could not be built in that market. The overwhelming sense was that existing borrowers will request SMRs to manipulate the market and keep other developers out of the area. An SMR is a necessary and undisputed servicing tool. If someone applies for an SMR, the Agency reviews same, and if determined inappropriate, would be rejected. An applicant would not be adversely affected. The proposed language is intended to preclude FmHA from authorizing a new proposal while considering the merits of an SMR request. Therefore, these comments were not adopted. Comments recommending that the need for the SMR still be evident had merit and the final rule was revised accordingly.

Several commentors recommended that the proposed policy be limited to loan requests of the same type. For example, if an SMR exists on an existing FmHA family project, a proposal for an elderly complex should not be deferred. FmHA seriously considered such comments, however, did not fully incorporate same into the final rule. Determining market demand is not an exact science. When new apartments are developed, the housing units vacated by the prospective tenants are generally not restricted to occupancy by the same type occupant. For example, if a senior citizen sells a house to move into an FmHA elderly complex, this frees up a housing unit in the market area. The occupancy of that house is not restricted to another elderly individual. People of all walks of life could generally fill any vacated units. The elderly can occupy a family complex, and if an elderly complex has extended vacancies, ineligible elderly households can be allowed to occupy these units. Some flexibility has been added to the final rule, and as suggested, an exception has been added for group homes for the handicapped.

Sections 1944.215 (r)(1), (r)(2), and (r)(3) Location of Housing

Approximately 50 comments were received on this area. The overwhelming majority of commentors did not support the proposed alternative to require certain essential services in the community in which the housing is proposed. While several commentors supported the proposal, many compelling reasons were provided not to require services. As such, the contents of the proposed rule were not adopted.

Section 1944.215(r)(4) Donated Land

Approximately 20 comments were received on this area. Several were confused over the intent of the provision while others clearly knew, through experience, the reason for the revised language. FmHA has become aware of several instances where the existing language has been abused. For example, we are aware of a situation where a developer, owning a site, created a nonprofit organization and deeded the site to the nonprofit. The nonprofit in turn donated the site back to the developer in order for his preapplication to receive five extra priority points. In another case, we have heard allegations of developers paying landowners to donate their land to a community or nonprofit group with the provision the site be donated to the developer. The landowner would receive funds for the purchase, and then a charitable donation to claim on their income taxes. The applicant would receive additional priority points. These examples are clearly aimed at circumventing the intent of the priority point system and cause harm to the integrity of the Section 515 program.

Several commentors recommended that the provisions do not eliminate the preference that a nonprofit or public body would receive if they owned the land and donated it to reduce loan costs. These comments were incorporated into the final rule.

Several commentors wanted clarification of subparagraph (ii). We have clarified same and include an example to avoid confusion.

Several commentors recommended that a private individual be allowed to donate land for philanthropic reasons. The provision for preference for donated

sites was taken from the Housing Act of 1949, as amended. The provision did not provide for private donation. We see no compelling reason to do so.

One commentor suggested that a length of ownership provision be included. FmHA partially agrees to avoid abuse of the provisions, however, has included an exception in unusual circumstances.

Several commentors asked that "preference" be clarified. The final rule includes a clarification.

Sections 1944.215(r)(5), (r)(6), and (r)(7) Noncontiguous Rental Sites and Rehabilitation

Approximately 10 comments were received on this area. One commentor praised the section claiming it was an excellent idea, long overdue. Others thought the provision should be deleted. One commentor asked why we included it in the proposed rule, since there was no change from the existing language. The latter comment was on target since this section already existed verbatim in current FmHA regulations. It was included at the request of the **Federal Register** since there was a discrepancy in the numbering of this section in the **Federal Register**. However, the commentors did raise some valid questions and concerns.

One commentor did not feel FmHA should finance rehabilitation of existing structures due to excessive costs. The area of cost is being addressed in another rulemaking action which was published for proposed rule on June 19, 1992. One commentor asked if this passage only permits rehabilitation loans in downtown locations. The answer is no. One commentor asked if the requirement that applications be processed "as expeditiously as possible" was meant to override the priority point system. The answer is no, and this language has been removed to avoid this confusion. Three commentors expressed concern over the provisions requiring the community to have a comprehensive strategy. We believe a comprehensive strategy is necessary to ensure the viability of the downtown area and proposed housing.

Section 1944.231 Processing Preapplications (Opening Paragraph)

Six comments were received on this paragraph. Several commentors suggested that the State Director be required, rather than encouraged, to cooperate with similar lenders within their jurisdiction. FmHA concurs and has included this requirement in the final rule.

Several commentors voiced concern over provisions of FmHA's cooperation with HUD. As mentioned in the proposed rule, the guidance on cooperation with HUD was contained in Exhibit K which was not published in the **Federal Register** but available upon request. No one, except HUD, requested the Exhibit during the comment period. FmHA questions the validity of such comments and has addressed same to the extent applicable. Most concerns were generally covered in Exhibit K.

Section 1944.231(a) Definitions

Approximately 15 comments were received on this area. Commentors were generally pleased over the inclusion of definitions of complete preapplication, rating, ranking, etc.

Several commentors had concerns over Exhibit A–7 and different interpretations of items necessary for a complete preapplication. Comments were also made relative to different states and/or districts having their own interpretations and/or versions of Exhibit A–7. Since Exhibit A–7 was not proposed for comment, we are not making modifications to same.

Several commentors raised concern over preapplications which require National Office review taking more time to develop since the environmental review is required at the preapplication stage. For cases that do not require National Office review, the environmental review is not required until the application stage. FmHA seriously considered such comments. National Office review is required for all loans over $1.5 million, congregate and cooperative housing, group homes, and substantial rehabilitation proposals. The purpose of these reviews is to assist states with complex and nontypical loan requests. Approximately ten percent of all loans require National Office review, representing a small portion of the loan portfolio each year. Often, a State does not have any experience with the type of loan proposal submitted. As such, the National Office is often able to provide valuable guidance and oversight. Since these loan proposals are generally reviewed only once at the National Office, having the environmental review completed at the preapplication state allows us to review all of the important aspects of the loan proposals at one time. This precludes resubmission of the casefile for a second review at the application stage. In summary, we believe the National Office review for complex cases is critical, and while the environmental requirements at the preapplication state may require more time to develop, they ultimately require less time than submitting the case twice to Washington.

Section 1944.231(b) Actions by the Applicant

Four comments were received on this area. Comments centered around applicants submitting loan requests within the funding constraints of the district and/or state. Commentors suggested that this language be removed because some districts may not use their funds and states may access funds from the National Office reserve. FmHA does not support these comments. Applicants should submit loan requests within the funding constraints of the state/district in which they apply. Submitting a $5 million preapplication in a state with a $1.75 million dollar allocation would not be practical since the applicant would spend considerable money for a loan request that will never be funded. The Agency publishes extensive guidance to field offices on allocations and access to funds. This guidance is published by Notice in the **Federal Register** each year. States are allowed to pool funds and given discretion in allocating funds to districts. Since the Agency utilizes 100 percent of its Section 515 funds each year and consistently maintains a backlog of unfunded preapplications, we believe the guidance in the proposed rule is prudent. With regard to National Office reserve funds, these monies are extremely limited and access to same is not ensured or guaranteed. No changes have been made to this section.

Comments were also received regarding the requirement in Exhibit A–7 for the A–95 clearinghouse process. Each State clearinghouse determines at which level they require the A–95 process to be completed. Some commentors believe this is discriminatory because an individual state clearinghouse can set a limit and preapplications below that level would be considered complete sooner than preapplications above that level. FmHA does not believe it should interfere in an individual state's right to establish what they believe is an acceptable limit for their A–95 process. This is a problem between the commentors and their respective state agencies.

Section 1944.231(c) Initial Actions by the District Office

Approximately 30 comments were received on this area. A commentor mentioned conflicts between this section and 7 CFR part 1910, subpart A (FmHA Instruction 1910–A). As mentioned in the proposed rule, upon publication of this final rule, the Section 515 program will be deleted from FmHA Instruction 1910–A. Therefore, no conflicts will exist between the two

regulations and all guidance on processing loan requests will be contained in subpart E of part 1944.

Several commentors recommended that preapplications be date and time stamped upon receipt and then again, when they are considered complete. FmHA concurs and has revised the regulation accordingly.

Several commentors suggested that FmHA not return incomplete applications if the material missing is minor. To avoid unnecessary costs and time, we concur and have included guidance in this regard.

Several commentors questioned the language on the MISTR system claiming it was not current and a waste of time. FmHA is revising the tracking system on application processing which will necessitate and validate such data in the future.

Several commentors recommended that language be included to require FmHA to review preapplications for completeness in the order received to ensure equal treatment of applicants. FmHA agrees and has included such language.

Several commentors recommended that the order of subparagraphs under paragraph (c) be revised to avoid duplication or unnecessary processing steps. For example, the subparagraph on cooperation with HUD was proposed prior to the subparagraph on returning low ranking preapplications. Why check with HUD if the preapplication will be returned? FmHA agrees and has organized the subparagraphs in a more logical order.

Several commentors suggested that the language which states that the District Director should record the priority points on Form FmHA 1905–11, "Application and Processing Card—Association," should be revised to require that the point score be recorded. FmHA agrees and has incorporated this comment.

Several commentors recommended that State Offices be required to distribute a list of pending preapplications monthly, instead of quarterly mentioned in the proposed rule. The proposed rule stated such a list would be distributed at least quarterly. FmHA believes a more frequent distribution would be unnecessary and burdensome on the Agency in states with small allocations or low activity. In states with a larger allocation, a more frequent list would be appropriate. We believe the proposed language is appropriate providing the states the discretion to distribute more timely updates as necessary.

Several commentors suggested longer timeframes for review, several suggested shorter timeframes, others want specific and not "general" timeframes, and others want specific timeframes on every aspect of loan processing. FmHA is responsible for administering many loan and grant programs involving housing and farms. Publishing timeframes which may or may not be able to be met would not be prudent. FmHA traditionally obligates 100 percent of its Section 515 allocation each year and has done so several months before the end of the fiscal year. This indicates that loans and funds are used expeditiously. FmHA believes the general timeframes included in the proposed rule are reasonable and realistic.

Several commentors recommended that FmHA include guidance on what effect a change in a preapplication has on the date of the preapplication. For example, does the date of the preapplication change if the applicant changes sites or reduces the size or type of the loan proposal. Many commentors included examples of how applicants submit a flawed loan proposal and then change it later. The applicant's intent is to ensure they have the earliest date of preapplication for ranking purposes. After submission, the applicant then changes the site or size of the proposal for various reasons. A common example was to submit a preapplication which would not require an A–95 review, then after establishing the date of preapplication, increasing the size of the proposal. This would allow the A–95 review time to run concomitant to the processing of the loan request, rather than waiting for the review to be completed prior to submitting the preapplication as is required for loan proposals exceeding the state's threshold for the A–95 review process. In addition, several commentors raised questions about site selection and how it affects loan eligibility and the date of preapplication. FmHA agrees that guidance should be provided and has included same in the final rule.

A few comments were received expressing concern over FmHA returning low ranking preapplications which have little to no chance of funding. Several commentors were concerned that statistical data will not reflect the true demand for Section 515 assistance. While these comments may have some merit, preapplications require a considerable amount of time, effort, and resources for the Agency to review. FmHA personnel resources are limited and have been reduced, requiring the Agency to utilize its staff as efficiently as possible. Reviewing and analyzing loan requests which will not be funded for four years is not time well spent. This time could better be utilized on loan requests which will be funded and servicing our existing portfolio. At the current time, the Agency allows States to authorize loan applications up to 150% of its allocation. The proposed rule allowed offices to retain preapplications that will likely be authorized for funding within the next 24 months. In essence, the Agency is actively working on loan requests which will be funded within the next three and one-half years. Spending time and effort on proposals beyond that time is not cost and time efficient. No changes were made.

Section 1944.231(d) Priority Point System (Opening Paragraph)

Approximately ten comments were received on this section. Several complimented the section applauding FmHA's efforts to meet its statutory mandate to give preference for loan requests in areas with high percentage of substandard housing and very-low incomes. Some commentors thought the section should be eliminated because it does not necessarily direct housing where it is needed. As previously mentioned, this section was originally developed to meet the statutory requirement that the Agency give preference to loan requests in certain areas. We agree that in some high point areas that there is not a demand for housing. In these areas, the market study should not reflect a demand and/or need for housing, and the loan request either not submitted or rejected.

Several commentors recommended that FmHA include other items in the point system to direct housing to areas where there is a need. One comment was to use employment centers and/or unemployment rates. Prior to developing the proposed rule, FmHA seriously considered other areas to include in the point system. Employment was one of those considered. However, having a high or low unemployment rate does not necessarily translate in housing needs. The point system is only one portion of the loan underwriting process. As previously mentioned, a market study must still reflect a need and demand for the housing. The market study discusses employment trends and relates same to housing needs.

Two commentors discussed treatment of scattered site proposals. One favored the proposal, one did not. The one who did support the proposed language objected to awarding points based upon the location of the majority of the units. The commentor believes it is unfair, and suggested that FmHA "average" the point scores. Prior to developing the

proposed rule, FmHA had several instances where this was an issue. Scattered site proposals are very unusual and generally done in areas where less than 6 units are needed in a community. A need is there, however, a developer generally finds it financially unfeasible to construct the needed housing. By combining one or more of these proposals, a single proposal can become feasible. By averaging the combined point scores, the project generally does not point high enough for further consideration. When the majority of the units are in one location, FmHA believes it is prudent to recognize the point score in this location. FmHA is a rural lender, and this policy helps provide a small incentive to develop housing in such rural communities where only a handful of units are needed. To preclude abuse of this provision, a limit on total project size is included. Where split projects are greater than the average size project in the state, the points will be averaged.

Several commentors suggested that FmHA use "Qualified Census Tract" data instead of County data when determining point scores. For consistency, FmHA elects to continue county data. In addition, we have developed "place" data for states to utilize. Where a state desires to use data from a different source throughout the state, the State Director may request consideration from the National Office.

Section 1944.231(d)(1) Points for Substandard Housing

Approximately 20 comments were received on this section. Most favored the section. Some thought its use should be eliminated. Again, the statute requires FmHA to give preference to loan requests in areas with high instances of substandard housing. We believe this section is necessary and meets statutory intent. Because of the nationwide reduction in substandard housing, thresholds to receive priority points for this purpose have been lowered.

The majority of comments were centered on use of non-county data. Many wanted clarification of when this authority can be used and does it apply to a single location or the entire state. This has been clarified in the final rule. In addition, the Agency has clarified its position on communities in which there are pockets of need, however, use of county statistical data produces a low point preapplication. Where place data percentages vary by more than 10 from county data percentages, the State Director may authorize use of data for that specific place in addition to County data.

Section 1944.231(d)(2) Points for Lowest Incomes

Approximately 25 comments were received on this section. Many were duplicative of the comments received on § 1944.231(d)(2). Where duplicative, the responses for the aforementioned section apply.

Several commentors applauded the additional points given in this area and reduction of median income from 70 to 60 percent. One commentor suggested using 50 percent of median income, several preferred the 70 or higher percentage. FmHA felt 50 percent was too low, and believes that 60 percent is also consistent with Low Income Housing Tax Credits (LIHTC) which are often used in conjunction with the Section 515 program.

One commentor suggested that points be in increments of 5 rather than 10. This would also be consistent with the points for substandard housing. FmHA agrees and has revised the regulation accordingly.

Section 1944.231(d)(3) Distance From Ineligible Area

Approximately 45 comments were received on this section. Section 707(f) of the Housing and Community Development Act of 1992 specifically addressed the contents of the proposed rule on this section. Section 707(f) stated that preference may only be given for projects 20 or more miles from an urban area therefore negating our ability to consider the majority of the comments. FmHA appreciated the time and effort put into these comments. There were three comments which are not affected by the new statute and may be addressed.

Several commentors suggested that the reference to "map" mileage be deleted since maps vary and do not always reflect the mileage between the site and ineligibility line. FmHA agrees and has removed the reference.

Several commentors recommended that scattered sites receive points based upon the farthest site from the ineligible line. The guidance already provided in § 1944.231(d) has been expanded to clarify how mileage is treated. For consistency, we believe mileage points should be awarded based upon the location of the majority of the units.

Also clarified in the final rule is that points for mileage are granted regardless of state boundary lines.

Section 1944.231(d)(4) Points for Essential Services

Approximately 50 comments were received on this section. Again, section 707(f) specifically addressed the contents of the proposed rule on this section. Section 707(f) states that "* * * the Secretary may not provide any preference for any projects based upon the availability of any particular essential service," therefore negating our ability to consider the majority of the comments. FmHA appreciated the time and effort put into these comments. This section has been deleted from the final rule.

Section 1944.231(d)(5) Points for Private Rental Assistance

Approximately 60 comments were received on this section. By an almost 2 to 1 majority, most commentors favored elimination of points for private rental assistance. FmHA concurs with the majority of commentors and has deleted this section from the final rule.

Section 1944.231(d)(6) Points for Donated Land

Approximately five comments were received on this section. Half the commentors thought the points should be eliminated. One wanted more points for donated land, one thought the number of points was appropriate, and one thought that the developer should be able to donate land to receive extra points. Points are awarded for donated land in response to statutory language which provides, like other sections of the priority point system, that the Agency provide preference for donated land. The statute outlines who may receive preference and does not refer to the applicant/developer. Without any compelling argument to the contrary, we believe that five points is adequate recognition for the donation of land. No changes have been made to this section.

Points for "Like" Projects (Current § 1944.231(a)(5)(iv))

In its proposed rule, FmHA proposed elimination of priority points for "like" and "unlike" proposals. FmHA proposed this change as we believed that the market should dictate if housing is needed, not whether there is existing subsidized housing, regardless of type, in the market area. Approximately 20 comments were received on this portion of the proposed rule. Comments were mixed. Those who supported elimination cited reasons such as the market study should reflect the need of the community, whether or not subsidized housing is present is no indication of need, the policy actually works against towns with subsidized housing which are in need of more housing, etc. Of those who supported the current language, the overwhelming sense was that if a community does not have subsidized housing, this section

provides an incentive to locate such housing in that community. FmHA believes the arguments to eliminate points for "like" projects outweigh those against, therefore this section is eliminated as proposed.

Points for Elderly Projects (Current § 1944.231(a)(5)(vi))

In its proposed rule, FmHA proposed elimination of priority points for elderly projects. FmHA proposed this change as we believed that the market should dictate what type of housing is needed, not the priority point system. Approximately 25 comments were received on this portion of the proposed rule. Comments were mixed, with strong arguments on both sides. Those who supported FmHA's proposed rule agreed that the market should dictate the type of housing needed in the area. Some felt that FmHA was arbitrary and capricious in ever giving points in this area citing that the Agency had failed to ensure an adequate stock of units available for families, especially larger families in need of 3 bedroom and larger units. Several commentors further commented that in their states, housing studies had clearly reflected a need for family, not elderly housing. Of those who supported including points for elderly projects, they felt that this incentive was a proactive approach on the part of the Agency to recognize our aging society and need for housing for the elderly. Not providing an incentive would be inadequate and irresponsible planning for the future. They cited how elderly projects have proven to be a deterrent against premature illness, isolation and poverty. They cited successes of elderly housing in their respective states. Arguments were compelling on both sides. The Agency needs to ensure that both types of housing are provided. We continue to believe that our existing point system of granting extra points for elderly housing in fact does provide an added inducement for an applicant to build elderly housing. In such a highly competitive program, the extra points for elderly housing helps ensure a developer that his/her proposal will be the highest rated and ranked proposal in the market area. Again, we believe the market should dictate the type of housing to be built, not the priority point system. Therefore, as proposed, points for elderly housing are removed.

Section 1944.231(e) Determining Eligibility and Feasibility

Approximately 10 comments were received on this section. Several commentors recommended elimination of State Architect review at eligibility and feasibility stage. This language has been clarified to require review when appropriate.

Several comments were received on the language that only preapplications which will likely be funded in the next 24 months will be reviewed for eligibility and feasibility. Several recommended 12 months, several suggested longer or no timeframe. This provision has already been addressed.

Several commentors again raised concern with comments from HUD or similar lenders. These comments will be addressed later.

One commentor suggested that eligibility and feasibility determinations be done in date order based upon the date of complete preapplication. FmHA agrees and has also included language that preapplications should be reviewed in point score and date of complete preapplication order. Point score should also be considered since it would be inconsistent with the intent of the point system to review applications with a lower priority when ones with a higher priority point score are on hand.

One commentor suggested that if the eligibility and feasibility review could not be completed in 45 days, that FmHA should inform the applicant of the proposed timeframe. FmHA agrees and has included language to address this issue.

Section 1944.231(f) Large Dollar Amount Loan Requests

Approximately 10 comments were received on this section. Many commentors were confused over the statement that a preapplication will not be rejected based soley upon dollar amount, and statement that an AD–622 will not be issued in these cases. The reference to rejecting the preapplication has been deleted to avoid confusion.

Several commentors recommended that FmHA retain high dollar amount loan requests and give the applicant the opportunity to reduce the size of the proposal. While the comment has merit, Section 515 is a complex program which consistently has more loan requests than available funds. FmHA believes that applicants need to be informed and realistic about loan requests. It behooves any credible applicant to determine the resources available to fund their proposal. Comments that suggested FmHA should entertain loan requests consistent with the market needs and not available resources are similarly unrealistic and without merit.

Several commentors addressed the 150 percent limitation for issuing AD–622s. One commentor suggested that the 150 percent limit be eliminated and a reference made to subpart L of part 1940. FmHA agrees since the percentage may change as resources become available. Several commentors suggested that Districts be authorized to issue AD–622s up to 200 percent of their allocation. If this comment were incorporated, FmHA would be inviting twice as many applications as it could ever fund. We believe it would be unfair to ask an applicant to spend time and money to develop an application when it may take two years to fund and then may have to be updated all over again.

Several commentors suggested that access to National Office reserves or year-end pool should be considered. National Office reserves are extremely limited and generally for specific purposes, i.e. targeting programs, equity loans, etc. The year end pool has generally included less than 3 percent of our annual allocation. With such limited resources, it would be impractical to consider potential access to such funds for every loan request. We believe the proposed rule, which codifies policy issuances which have successfully been in effect for several years, is practical and beneficial to applicants.

1944.231(g) Effect of Appeals. (1944.231(h) in Final Rule)

Approximately 10 comments were received on this section. Several agreed with the proposed revisions while others objected. Comments were extremely varied. One commentor suggested that if a preapplication is rejected, to just move ahead with the next preapplication regardless of type or market. We disagree because if the second (nonselected) applicant is in the same market and has the same type proposal, if the rejected applicant prevails, they would be adversely harmed because the second applicant would have captured the market.

Several commentors expressed concern that while an appeal was pending a potentially lower ranked proposal could be authorized and could potentially utilize all the available funds. FmHA recognizes this concern. However, the alternative would be to stop processing all other loan requests. We believe this alternative, which was suggested by several commentors, is even less practical. In these instances, a rejected preapplication could virtually stop loan processing and result in a State and/or District losing its available funding. The risks to all applicants, and fact that processing could stop for several months pending the outcome of an appeal, makes this alternative impractical. Several commentors suggested that loan funds be held for

rejected applicants in case they prevail in an appeal. Funds are not held for eligible applicants. Therefore, rejected applicants would be assured funding while eligible applicants could not. We believe this alternative is also unfair and impractical.

The proposed language codifies policy guidance which has been in effect since 1989. The policy has worked well protecting the rejected applicant and other applicants as well. The comments opposing the policy generally imply that the provisions encourage FmHA employees to reject loans for improper reasons. We know of no basis for such a comment. We believe our field staff are professionals and are only rejecting loan requests when merited and consistent with policy and regulations. If one is found abusing the regulations, this can be dealt with on an individual case basis without needing to add further complexity to program regulations.

Section 1944.231(h) Ranking. (1944.231(i) in Final Rule)

Several commentors suggested that guidance be provided on states that change from District to State allocations and/or vica versa. FmHA agrees that guidance should be provided, however, such changes are not common. As such, we believe it would be more appropriate to include this in an Administrative Notice or guidance that is published on funding allocations each year. We will consider providing such guidance in the future.

Several commentors suggested that guidance be provided in ranking preapplications for states which have centralized processing of their Section 515 program. FmHA concurs and has included two new sections to address this area.

Several commentors suggested that states establish specific cut-off dates for ranking and issuing AD–622s. While these comments have some merit, Section 515 allocations vary widely by state and/or district. As such, we do not believe it would be appropriate to establish specific dates in a national regulation. The regulations provide for a continuous process which has worked successfully to ensure full utilization of our allocation. Should a state desire to establish cut-off dates, the regulations do not preclude states from doing so.

Several commentors requested clarification on the paragraphs that deal with the status of preapplications which have been forwarded to the State and/or National Office for review. We have clarified that when a preapplication is submitted for authorization to issue an AD–622 inviting a formal application, it is in a protected status. This would preclude having to call back a preapplication just because another preapplication with a higher ranking has just been put on the ranking list.

Several commentors recommended that all preapplications which are ranked be removed from further competition from any new preapplications. The purpose of the priority point system was to establish a reasonable, statutorily based, preference for projects in rural areas with high levels of substandard housing and very low income. This recommendation would basically run contrary to the priority point system and FmHA's mandate to provide preference in the aforementioned areas, and has not been adopted.

Several commentors asked for guidance on how to handle absolute ties in ranking. FmHA agrees and has included guidance in the regulations to handle such situations. Similar to the manner in which FmHA will sell an inventory property where more than one offer is received on the same day, names will be randomly selected.

Several comments were received on nonprofit preference. Several supported the provisions, while others did not. For those who supported the provision they cited reasons such as a nonprofit's lack of financial resources which often preclude them from filing a preapplication. The preference complimented the Nonprofit Set Aside of Section 515 funds. And nonprofits who were not receiving tax credits cost the Federal Government less to develop the needed housing. Those who did not support the preference felt that the Nonprofit Set Aside of Section 515 funds was sufficient incentive for nonprofits to participate in the program. Others felt that FmHA was unfairly treating applicants differently. FmHA believes that providing nonprofits, public bodies and Indian Tribes preference when tax credits are not involved is consistent with the intent of the statute and reduces federal outlays when tax credits are not involved. As such, the nonprofit preference is still provided, however, the regulations has been expanded to cite certain conditions upon which the preference is granted.

Several commentors were confused over why preapplications which were ranked but could not be considered for funding within 12 months would be returned to the applicant, when preapplications not on the ranking list were only returned if they could not be considered for funding within the next 24 months. This oversight has been corrected.

Section 1944.231(i) Information. (1944.231(k) in Final Rule)

Approximately 10 comments were received on this section. One commentor recommended that FmHA clarify that a copy of the AD–622 be sent to the State Agency administering tax credits. FmHA has clarified the final rule including additional information that should be sent to the State Agency to comply with the Housing and Community Development Act of 1992.

One commentor recommended that the paragraph which requires an application be submitted within a specific timeframe include a general timeframe allowance. The final rule has been amended accordingly. In addition, this commentor and several others recommended that some leeway be provided in case the applicant cannot submit the formal application within the specified timeframe for unforeseen reasons. Several commentors recommended that the amount specified in the AD–622 be an approximate amount since final plans are not fully developed. FmHA concurs and has implemented these suggestions.

Several commentors felt that changes in applications should not warrant documentation of FmHA approval. FmHA disagrees. While minor changes should not affect FmHA's decision, the changes mentioned in the proposed language are significant and the applicant should be aware the changes in the size, scope, etc., of the proposal may warrant their previous AD–622 invalid.

Section 1944.231(k) General Information. (1944.231(l) in Final Rule)

Four comments were received. One commentor applauded placing this information in subpart E of part 1944 and removing references to multi-family housing loans in subpart A of part 1910.

One commentor suggested that Form FmHA 410–9, "Statement Required by the Privacy Act," be signed by all applicants regardless of whether they are individuals or an entity. Form 410–9 is required only for individuals. The form is currently under review for possible revision. This will be considered at that time.

Section 1944.232 Rental Assistance From Sources Other Than FmHA

Few comments were received on this section. Since FmHA will still consider accepting private, nonfederal, rental subsidies, without consideration for priority points, this provision has been modified to remove references to the priority point system.

Cooperation With the Department of Housing and Urban Development (HUD)

As mentioned in other sections of this proposed rule, particularly comments of § 1944.213(f), a significant number of comments were received regarding our efforts to cooperate with HUD. The language was included in the proposed rule to comply with 7 CFR 3015.305, but more importantly, because it makes sense for two Federal Agencies, which provide similar type housing, to coordinate allocations of assistance and to ensure that our assistance does not overlap or conflict with each other. Many negative comments were received. We find this particularly alarming when the vast majority of our efforts to cooperate with HUD, and steps to accomplish same, were contained in Exhibit K of this subpart. Exhibit K was not published in the **Federal Register** but was available upon request. No one, except HUD, requested a copy of Exhibit K, making the validity of the comments questionable.

Several commentors referred to HUD complexes which contain a large number of nonmarketable efficiency units or units which are considered below standard because they lack such amenities as air conditioning (in areas where air conditioning is necessary), carpeting, individual bathrooms, etc. Other commentors expressed concern over the two Agencies trying to protect their own markets/apartments by questioning the marketability of any proposed complex in an area where the respective Agency has units financed or proposed. As cited in the proposed regulations and Exhibit K, FmHA solicits comments from HUD, not an eligibility or feasibility determination. When FmHA receives comments from HUD, they are considered along with the market study, FmHA history in the market area, etc. FmHA (and HUD) have the authority to proceed in a given market even if HUD (or FmHA) objects to the proposed housing. This has occurred in several markets. We believe the system is necessary and has worked successfully. Therefore, the proposed language remains. Exhibit K was modified slightly to incorporate comments on situations where HUD comments are not received in a timely manner.

Implementation Proposal

Approximately 15 comments were received on this section, and again comments were mixed with arguments on both sides of the issue. Those who supported the implementation proposal recognized that it would affect preapplications on hand with FmHA, however, felt that the proposal was fair and the only way to implement the final regulations. Those who opposed the implementation proposal felt it would be unfair to those who were submitting preapplications, FmHA published the proposed rule on the priority point system well over a year ago. Prior to its publication, its contents were not kept a secret, with FmHA announcing its proposals prior to publication. Many individuals and advocacy groups had input into the proposed rule. In addition, the Housing and Community Development Act of 1992 contained language specifically addressing various sections of the proposed rule. We have seen and heard of many cases where consultants/packagers have developed loan requests based upon the proposed point system for some time. In brief, we believe the proposed point system has been readily available and known to those who are developing preapplications so that it should not come as a surprise or adversely affect applicants. As indicated in the proposed rule, all preapplications, where an AD–622 has not been issued inviting a formal application will be subject to the provisions of this final rule.

Other Comments

Several comments were submitted that did not specifically fall under the provisions of the proposed rule; therefore, were not included in this final rule. Several commentors wanted more guidance on site selection. Several discussed the Agency's consideration of contracting for market studies, which will be covered in another final rule. Several commentors suggested that FmHA needs more Rental Assistance (RA); however, RA is provided by appropriation and cannot be created through the rulemaking process. Several comments were received on another proposed rule which proposed placing a limit on the number of Section 515 preapplications a developer can submit; these comments will be considered in the final rule to that regulation. One commentor recommended that the Agency establish discretionary priority points to allow the State more flexibility; however, we believe such discretionary points would be too subjective and not provide the applicant nor FmHA with a consistent approach to prioritize loan requests. Several commentors recommended that priority points be awarded to nonprofits; however, since the Agency provides a preference for nonprofit applicants and has a set-aside of funds for nonprofits, we believe the Agency has provided incentives to encourage nonprofit participation. In addition, we believe that additional priority points for applicant types would be inconsistent with the intent of the priority point system.

Other Areas Included in the Final Rule

This final rulemaking document also contains certain provisions from the Housing and Community Development Act of 1992 (herein referred to as the Act) as follows:

Section 707(c)—Equity Contribution. The Act increases the equity contribution required from applicants who will be receiving benefits from the LIHTC program pursuant to section 42 of the Internal Revenue Code of 1986 from 3 percent to 5 percent.

Section 707(d)—Cooperation with State agencies administering LIHTC. A portion of Section 707(d) of the Act requires that uniform procedures be established for identifying and sharing information with the relevant housing credit agency for projects that are allocated LIHTC pursuant to section 42(h) of the Internal Revenue Code of 1986. Exhibit A–10 has been revised, and a model Memorandum of Understanding has been added, to establish uniform procedures for sharing information.

Section 707(f)—Essential Services. The Act prohibits the Agency from providing preference for projects with essential services. Providing priority points for essential services was included in the proposed rule. As a result of the Act, this section was eliminated. The Act required regulations to be promulgated to implement this mandate within 45 days of enactment.

Section 707(f)—Geographic Location. The Act provides the authority for the Agency to provide preference to projects which are located 20 or more miles from an urban area. The proposed rule included a graduated scale of priority points for projects located 20 or more miles away from an urban area with the maximum number of points awarded to projects 75 or more miles from an urban area. To comply with the Act, the graduated scale was removed with priority points given for projects located 20 or more miles from an urban area. The Act required regulations to be promulgated to implement this mandate within 45 days of enactment.

Although not required by the Act, § 1944.222(a) of subpart E of part 1944 regarding appraisals was revised to comply with the Uniform Standards of Professional Practice by increasing the threshold for completing a multi-family type appraisal from four to five units.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments (Rental Assistance).

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, programs 10.415 Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments (Rental Assistance) are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1904, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Pub. L. 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

This final rule has been reviewed with regard to the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). It has been determined that this rule does not involve changes to the information collection requirements previously cleared by the Office of Management and Budget under OMB Control number 0575–0047.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.1 [Amended]

2. The introductory text of § 1910.1 is amended by removing the words "Rural Rental Housing (RRH), Rural Cooperative Housing (RCH)," and the word "insured" in the first sentence and by adding the words "and Debt Settlement" before the words "Programs for Delinquent" in the last sentence.

§ 1910.3 [Amended]

3. Section 1910.3 is amended in paragraph (a)(3) by removing the words "RRH and" and in paragraph (a)(4)(ii) by removing the words "rental housing or".

§ 1910.4 [Amended]

4. Section 1910.4 is amended in paragraph (i) in the first sentence by removing the words "RRH and", in the third sentence by revising the word "RH" to read "SFH and LH", in the fourth sentence by removing the words "RRH and" and the words "(RRH preapplications must also be ranked)" and in the fifth sentence by removing the words "ranking or", and in paragraph (k) in the fourth sentence by removing the words "RRH, RCH,".

PART 1930—GENERAL

5. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

6. Exhibit C of subpart C is amended by revising paragraph IX B 2 to read as follows:

Exhibit C of Subpart C—Rental and Occupancy Charge and/or Utility Allowance Changes

* * * * *

IX Special Servicing Market Rate Rent (SMR) Change

* * * * *

B * * *

2 While a request for an SMR is pending or an SMR is in effect, requests to develop new FmHA units in the area will be handled in accordance with § 1944.213(f) of subpart E of part 1944 of this chapter.

* * * * *

PART 1944—HOUSING

7. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

§ 1944.205 [Amended]

8. Section 1944.205 is amended in the definition of Maximum debt limit (MDL) by revising the words "lesser of appraised value or total development cost multiplied by 97 percent for a limited profit operation or 102 percent for a nonprofit operation" to read "appraised value or total development cost, whichever is less, multiplied by 95, 97, or 102 percent in accordance with § 1944.213(b) of this subpart".

§ 1944.211 [Amended]

9. Section 1944.211 is amended in paragraph (a)(4) by removing the words "3 percent" and by revising the reference "§ 1944.213(a)(2)" to read "§ 1944.213(b)".

10. Section 1944.213 is amended by redesignating paragraphs (c)(5) through (c)(11) as (c)(6) through (c)(12) respectively; by revising paragraph (b) and newly redesignated (c)(11); and by adding a new paragraph (c)(5) and paragraph (f) to read as follows:

§ 1944.213 Limitations.

* * * * *

(b) *State Director's loan limitation.* The amount of the RRH loan(s) on each project (including principal and interest on all existing and proposed loans) is limited to the maximum amount of the State Director's loan approval authority unless the National Office provides

prior written authorization. To request authorization, the State Director must submit the preapplication and all information required in § 1944.231(k) of this subpart to the National Office, Attention: Multi-Family Housing Processing Division (MFHPD). This must be done before Form AD–622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan has been determined eligible and/or feasible. Each loan will also be subject to the following additional requirements:

(1) For all applicants, including its members, who will be receiving any benefits from Low Income Housing Tax Credits (LIHTC), the amount of the RRH loan(s) will be limited to no more than 95 percent of the development cost or 95 percent of the security value, whichever is less.

(2) For all applicants, including its members, not receiving any benefits from LIHTC, who are comprised solely of nonprofits, consumer cooperatives, State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(v) of this subpart. Grants made in accordance with § 1944.212(q) of this subpart are not included in the preceding limitations.

(3) For all other applicants, including its members, not receiving any benefits from LIHTC, the amount of the RRH loan(s) will be limited to no more than 97 percent of the development cost or 97 percent of the security value, whichever is less.

(4) For equity loans to avert prepayment, the amount of the RRH equity loan will be limited to no more than the difference between 90 percent of current value of the project as appraised as conventional unsubsidized housing and current unpaid balance(s).

(5) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (b)1), (2), and (3) of this section. However, Predetermined Amortization Schedule System (PASS) loans closed with multiple advances may exceed that amount when an additional amount is permitted to allow interest to be capitalized to the first of the following month.

(6) All applicants must agree in writing to provide funds from their own resources to pay any cost for completing planned construction after the MDL is reached.

(c) * * *

(5) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables, and chairs, etc.

* * * * *

(11) Compensation to an applicant for value of land contributed in excess of the initial contribution as required by paragraph (b) of this section.

* * * * *

(f) *New loans in areas with FmHA, the Department of Housing and Urban Development (HUD), or similar type rental housing assistance.*—(1) *Definitions.* As used in this paragraph only.

(i) *Similar type rental housing assistance.* Housing assistance provided by a Federal, State or local agency or other entity which provides very-low or low income housing assistance. Vouchers or tenant-based Section 8 assistance are not considered similar rental housing assistance. The State Director will determine if similar type rental housing assistance is available within his/her jurisdiction and will coordinate efforts under this paragraph.

(ii) *Market area.* See Exhibit A–8 of this subpart. When a difference in opinion exists in the market area determined by FmHA personnel, the applicant, market analyst, HUD, or similar type rental housing provider, for the purposes of this paragraph, the market area established by FmHA personnel will prevail.

(2) *Applicability.* A request for an RRH/RCH loan to develop additional housing units (regardless of type) in the same market area with an FmHA, HUD or similar rental housing assistance project will *not* be determined eligible/feasible, authorized, or approved when any of the following conditions exist:

(i) Another RRH/RCH preapplication in the same market area has been issued an AD–622 inviting a formal application; or

(ii) A previously authorized/approved FmHA, HUD or similar type rental housing assistance project in the same market area has not been completed or reached its projected occupancy level. For example, a recently completed FmHA project is 85 percent occupied, reflecting a 15 percent vacancy. The Form FmHA 1930–7, "Multiple Family Housing Project Budget," approved when this loan was obligated indicated a proposed vacancy rate of 10 percent. In this case, another project could not be authorized until the recently completed project reached and sustained a 90 percent occupancy level; or

(iii) An existing FmHA, HUD or similar type rental housing assistance project in the same market area is experiencing high vacancies. The State Director, without authority to redelegate, will determine a reasonable vacancy rate for this purpose on a state, district or regional basis. Generally, a high vacancy rate would be in the 5 to 10 percent range. For the purpose of this paragraph, a high vacancy rate due to documented mismanagement will not be considered as a reason to defer processing a viable loan request provided there is an adequate market for the existing and proposed units. In addition, substandard units or excessive nonmarketable efficiency apartments would not be a reason to defer a viable loan request; or

(iv) A request for a Servicing Market Rate Rent (SMR), or similar servicing tool, as defined in Subpart C of Part 1930 of this chapter in the same market is pending, or in effect and still needed; or

(v) The need in the market area is for additional rental assistance (RA) or similar subsidy and not for additional housing units. This can be evidenced by similar rental housing in the market area in which tenants are experiencing rent overburden; existing projects in the market area which are experiencing vacancies due to lack of RA, Section 8 or similar subsidy; high vacancies in conventionally financed apartments or other circumstances where the market needs affordable housing but not additional housing.

(3) *Status.* When a loan proposal/project exists in the market area which meets any of the criteria established in paragraph (f)(2) of this section, a preapplication submitted to FmHA for the same market area will be processed in accordance with this paragraph and § 1944.231 of this subpart. If the priority point score is sufficient to warrant review, a preliminary determination of eligibility and feasibility will be made. If the preapplication does not appear eligible and/or feasible, the proposal will be rejected and the applicant provided appeal rights in accordance with subpart B of part 1900 of this chapter. If the proposal appears eligible and feasible, however, does not meet the requirements of paragraph (f)(2) of this section, the applicant will be informed that the preapplication appears eligible and feasible, however, further processing is deferred until such time as the conditions of paragraph (f)(2) of this section are not applicable. These preapplications may be kept on hand subject to the same time restrictions contained in § 1944.231(c) of this subpart.

(4) *Exceptions.*—(i) *Categorical.* A group home for persons with disabilities is exempt from the provisions of paragraph (f)(2) of this section when existing housing in the market area is not available or insufficient for their needs.

(ii) *Other.* In unusual circumstances where there is a compelling need for additional housing in a market area, the State Director may request an exception to the provisions of paragraph (f)(2) of this section, to the Assistant Administrator, Housing. Circumstances in which an exception would be considered include, but are not limited to: A colonia, or market area which is located within a county, designated under the Rural Housing Targeted Set Aside (RHTSA) defined in Exhibit C to subpart L to part 1940 of this chapter; a market area where an applicant/borrower is only constructing a small fraction of the units (generally less than 25 percent) proposed by the original market analysis; or a market area which is in need of housing as the result of a natural disaster which destroyed existing similar rental housing units. The State Director will submit a request for exception to the Assistant Administrator, Housing, with clear documentation to support the request. The Assistant Administrator, Housing, may authorize an exception at the request of the State Director or Director, MFH/PD.

11. Section 1944.215 is amended by revising the introductory text of paragraph (n), and paragraphs (r)(2), (r)(4), and (r)(7) to read as follows:

§ 1944.215 Special conditions.

* * * * *

(n) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. For equity loans to avert prepayment, the rate of return and equity position may be set in accordance with § 1965.213 of subpart E of part 1965 of this chapter. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required contribution in § 1944.213(b) of this subpart and a return allowed on the excess investment if:

* * * * *

(r) * * *

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status, physical or mental disability, or familial status, thereby opening up nonsegregated housing opportunities for minorities.

* * * * *

(4) In order to provide housing at the lowest cost possible, priority points in accordance with § 1944.231 of this subpart will be given to loan requests in which specific tracts of land will be donated by States, units of local government, public bodies, and nonprofit organizations, provided the following conditions are met:

(i) The land is suitable for the proposed housing and meets all FmHA site criteria; and

(ii) Site development costs of the donated site do not exceed the cost of purchasing an alternative site and the site development costs for the alternative site. For example, if the site development costs of the donated site are $50,000 and purchasing an alternative site would cost $20,000 and $15,000 to develop, donation of the site would not be cost effective or qualify for additional priority points; and

(iii) Due to no land cost, the overall cost of the project has been reduced compared to similar type projects; and

(iv) The donor of the site has owned the site for at least 1 year. The State Director may waive the 1-year restriction when it is clearly documented that the donation of the land was not intended to circumvent the provisions of this paragraph; and

(v) A return on investment is not paid to the borrower for the value of the donated land nor is the value of the land considered as part of the borrower's contribution; and

(vi) There is no identity of interest between the donor of site (including any members of the donor entity) and the applicant for the loan (including any members of the applicant entity); or

(vii) In cases where there is an identity of interest between the donor of the site (including any members of the donor entity) and the applicant for the loan (including any members of the applicant entity), the applicant meets the requirements of § 1944.231(i)(6) of this subpart.

* * * * *

(7) The property for which a loan is made must be located in a rural area as defined in § 1944.10 of subpart A of part 1944 of this chapter. However, if the area where the site is located has changed from rural to nonrural in accordance with the most current official census figures, preapplications received before the date the area was determined nonrural will be processed as expeditiously as possible and loans closed if the applicants are otherwise eligible. Such loans must still be eligible and feasible, and processed in accordance with § 1944.231 of this subpart, including rating and ranking for potential authorization.

* * * * *

12. Section 1944.222 is amended in paragraph (a) by revising in the third sentence the words "two or less" to read "less than five rental" and by revising in the fourth sentence the words "more than two" to read "five or more rental" and the words "subpart B of part 1922 of this chapter (available in any FmHA office)" to read "FmHA Instruction 1922–B (available in any State or District Office)" and in paragraph (h) by revising the words "Part 1807 of this chapter (FmHA Instruction 427.1)" to read "Subpart B of Part 1927 of this chapter".

13. Section 1944.231 is revised to read as follows:

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that program intent is achieved and loan funds are utilized expeditiously and prudently. A preapplication is used to determine the applicant's eligibility, project feasibility, and potential priority for loan funds, thereby eliminating proposals which have little to no chance of success or funding. The State Director is responsible to coordinate efforts with HUD in accordance with Exhibit K of this subpart (available in any FmHA) office) to determine if HUD is considering a similar request for funding or has funded a similar proposal. This will ensure coordination between the two Federal agencies as required in 7 CFR 3015 304 so that Federal assistance does not overlap or conflict. The State Director will establish this relationship with similar lenders such as State Housing Authorities in his/her jurisdiction. The State Director is also responsible for providing the State agency responsible for administering LIHTC with information on projects that are allocated LIHTC, in accordance with Exhibit A–10 of this subpart. Paragraphs (a), (c)(5), (c)(6), (c)(7), (d), and (e) of this section do not apply to RCH preapplications.

(a) *Definitions.* As used in this section only.

Complete preapplication. A preapplication consists of SF 424.2 and all additional information and materials outlined in Exhibit A–7 of this subpart. A preapplication lacking any of the aforementioned information will be considered incomplete.

Date of complete preapplication. The date a preapplication is considered complete.

Date of receipt. The date a preapplication is received by FmHA.

District Director. FmHA District Director or other FmHA staff member designated by the State Director to be responsible for processing loan requests.

District Office FmHA District Office or other place designated by the FmHA State Director where loan requests are processed.

Ranking. The process of listing complete preapplications which have been reviewed for eligibility and feasibility in priority point score order.

Rating. The process of assigning a priority point score to a complete preapplication.

(b) *Actions by the applicant.* Submit a complete preapplication, utilizing Exhibit A–7 of this subpart as a guide, to the District Office. Label all materials. Ensure that all information is clear, concise, and provides FmHA full and convincing documentation to support the proposal based upon the eligibility criteria and loan purposes contained in §§ 1944.211, 1944.212, and 1944.213 of this subpart. Submit proposals which meet the needs of the proposed market area and fall within funding constraints of the district and/or State.

(c) *Initial actions by District Director.* (1) The District Director will handle initial inquiries and provide basic information about the program. He/she should provide a preapplication (SF 424.2), other appropriate forms, and a copy of Exhibit A–7 of this subpart to applicants. The District Director may assist the applicant in completing SF 424.2 and the information required in Exhibit A–7 of this subpart to the extent practicable. The District Director should advise the applicant not to develop a complete application unless so notified by FmHA.

(2) Upon receipt, the date the preapplication is received will be annotated on the SF 424.2 to establish the "date of receipt" defined in paragraph (a) of this section. When multiple preapplications are received on the same day, they will be considered to be received at the same time, and will be handled in accordance with paragraph (c)(5) of this section.

(3) The District Director will review preapplications in the order received to ensure they are complete, accurate, and include all information required in Exhibit A–7 of this subpart. This action should generally be completed within 15 days of receipt of the preapplication. Complete preapplications will be stamped with the date they are considered complete. The date-stamp will reflect the "date of complete preapplication" defined in paragraph (a) of this section. Preapplications which do not contain all required information should be returned to the applicant with a letter informing them of the missing items. If minor items are missing or incomplete, the applicant may be given a reasonable timeframe to submit the information before the preapplication is returned. Incomplete preapplications will not be rated or ranked in accordance with this section, or recorded on processing cards/tracking systems.

(4) The District Director should check the automated FmHA tracking system to see if the applicant has pending preapplications in other districts or States.

(5) The District Director will rate the complete preapplication in accordance with the priority point system outlined in paragraph (d) of this section. The District Director will record the priority points earned, and any annotation made in accordance with paragraphs (c)(5)(i) and (ii) of this section, on Form FmHA 1905–11, "Application and Processing Card Association", after the applicant's name, and other FmHA tracking systems, as applicable. The priority point score, and any annotation, will be utilized for ranking purposes. In the event multiple preapplications of the same priority point score are received on the same day, they will be considered to be received at the same time. The order of receipt will be determined by the type of applicant and by random drawing(s) if necessary, as follows:

(i) *Preapplications from public/nonprofit entities meeting the requirements of paragraph (i)(6) of this section.* A preapplication in this category will be considered to be received first and will be annotated with a #1 after the date of receipt. If there are multiple preapplications in this category, these names will be placed in a receptacle, drawn at random, and annotated #1, #2, #3, and so on until all names are drawn.

(ii) *Preapplications from applicants not meeting the requirements of paragraph (i)(6) of this section.* A preapplication in this category will be numbered with the next sequential number after all preapplications numbered in accordance with paragraph (c)(5)(i) of this section. If there are multiple preapplications in this category, these names will be placed in a receptacle, drawn at random, and annotated sequentially starting with the next available number after any preapplications numbered in accordance with paragraph (c)(5)(i) of this section. For example, four same-point preapplications are received on the same date; two from public/nonprofit applicants meeting the requirements of paragraph (i)(6) of this section and two from applicants not meeting those requirements. The names of the two public/nonprofit applicants will be placed in a receptacle, drawn at random, and annotated with a #1 and #2. The names of the two remaining same-score preapplications will then be placed in a receptacle, drawn at random, and numbered 3 and 4, respectively. If all four preapplications were from the same-type applicant, all four names would be placed in the same receptacle, drawn sequentially, and annotated with #1, #2, #3, and #4.

(6) The District Director will compare the rated preapplications with other rated preapplications on hand. In States where funds are not allocated by Districts, the District Director will contact the State Office to ascertain the rating of the preapplication in relation to other preapplications in the State. When funds are not allocated to districts, the State Office should distribute a list of pending preapplications at least quarterly to each District Office. The State Director is reminded that, in accordance with Exhibit A–10 of this subpart, information on preapplications will be provided to the State agency that administers LIHTC.

(7) Preapplications with an exceptionally low priority rating, compared with other preapplications, which are not likely to be issued an AD–622 inviting a formal application within the next 24 months will be returned to the applicant indicating that further review of the preapplication is impractical. The applicant will be informed of the priority point score, and clearly informed that an eligibility and feasibility review was not made. Review rights, for assignment of the point score only, should be provided to the applicant in accordance with subpart B of part 1900 of this chapter.

(8) For preapplications with a priority point score that indicates that the proposal may be issued an AD–622 inviting a formal application within the next 24 months, the District Director will notify the State Director of the pending preapplication and request that status of pending and funded proposals in the same market by HUD (and similar lenders, if applicable), in accordance with Exhibit K of this subpart (available in any FmHA office).

(d) *Priority point system.* All *complete* preapplications (except RCH) received in the District Office will be rated in accordance with the following point

system. In cases where the preapplication covers development of units on sites in different locations, points will be awarded based upon the county in which the majority of the units will be developed. In cases where an equal number of units are being developed in different locations, the points awarded will be for the county with the higher point score if the total project size does not exceed the State average. If the project size exceeds the State average, the priority points will be averaged. The process of rating a preapplication does not reserve funding or ensure continued processing.

(1) *Projects in counties having a high percentage of substandard housing.* For this purpose, each State will use county or place data based upon the latest published census obtained from the National Office. The State Director may request authority from the National Office to utilize other state-wide data when it is available, reliable, and determined to be in the best interest of the Agency. When county data is used, the Agency recognizes that pockets of need may exist in some counties which have a low priority point score. In cases where reliable data is available on substandard housing in communities within a county, and the community substandard housing percentage is at least 10 higher than the county substandard housing percentage, the State Director may authorize use of local data for that specific community. For example, County A consists of 10 communities. County A has substandard housing of 5 percent, however, Community B in County A has substandard housing of 30 percent. The State Director may authorize use of Community B data, in addition to County A data. The State Director may establish a higher state-wide threshold than 10. When the State Director authorizes use of data for a specific community and/or establishes a higher threshold, the name of such community and/or threshold will be published in a State Supplement. The following chart will be utilized. If the State average of substandard housing is 5 percent or more, use Chart A. If the State average is less than 5 percent, use Chart B Up to 40 points will be distributed as follows:

A	B	Points
17% and above .	10% and above .	40
15–16	9	35
13–14	8	30
11–12	7	25
9–10	6	20
7–8	5	15
5–6	4	10
3–4	3	5
0–2	0–2	0

(2) *Projects in counties having the lowest median rural household income.* For this purpose, each State will use county or place data based upon the latest published census obtained from the National Office. The State Director may request authority from the National Office to utilize other state-wide data when it is available, reliable, and determined to be in the best interest of the Agency. When county data is used, the Agency recognizes that pockets of need may exist in some counties which have a low priority point score. In cases where reliable data is available on median incomes in communities within a county, and the community median income percentage is at least 10 lower than the county median income percentage, the State Director may authorize use of local data for that specific community. For example, County A consists of 10 communities. County A has a median rural income of 90 percent of the State median rural income; however, Community B in County A has a median rural income of 40 percent of the State median rural income. The State Director may authorize use of Community B data, in addition to County A data. The State Director may establish a higher state-wide threshold than 10 When the State Director authorizes use of data for a specific community and/or establishes a higher threshold, the name of such community and/or threshold will be published in a State Supplement. Up to 40 points will be distributed as follows.

	Points
Less than 60% of State median rural income	40
60–64	30
65–69	25
70–74	20
75–79	15
80–84	10
85–89	5
90 and above	0

(3) *Projects which will serve the needs of rural communities located at least 20 miles from the FmHA eligibility line around urban areas (regardless of State boundaries) considered ineligible for FmHA housing loans as determined by § 1944.10 of subpart A of part 1944 of this chapter.* Twenty-five points will be granted for complexes which are at least 20 miles from an ineligible area line over normally travelled roads. Mileage will not be rounded up or down to the nearest whole mile. In cases where the preapplication covers development of units on sites in different locations, points will be awarded based upon the location of the site in which the majority of the units will be developed. In cases of equal number of units in different locations, the distances will be averaged:

20.0 or more miles—25 points
Less than 20.0 miles—0 points

(4) *Projects in which a specific tract of land will be donated in accordance with § 1944.215 (r)(4) of this subpart.* Five points will be distributed as follows:

Complexes with donated land—5 points
Complexes without donated land—0 points

(e) *Determining eligibility and feasibility.* After rating the preapplication, if the priority processing point score is sufficient to potentially authorize issuance of an AD–622 inviting a formal application within the next 24 months (except for RCH preapplications), the District Director will review the proposal to determine eligibility, feasibility, and compliance with loan purposes, policies, and regulations. Eligibility/feasibility reviews will be completed in priority point score order. Where a tie in priority point score exists, the order of review will be determined in accordance with paragraph (c)(5) of this section.

(1) The feasibility determination will include a review of HUD's (and similar lender's, if applicable) feedback on the market area in accordance with Exhibit K of this subpart (available in any FmHA office), and § 1944.213(f) of this subpart.

(2) The eligibility determination will include analysis of a current (within 6 months) credit report(s), ordered in accordance with Subpart B of Part 1910 of this chapter for individual credit reports and

Subpart C of Part 1910 of this chapter for commercial credit reports, as follows:

(i) Individual applicant(s)·

(A) An individual credit report for each individual applicant, including co-applicant(s).

(B) If an applicant and co-applicant are married, a joint report will be ordered.

(ii) For-profit partnerships and corporations:

(A) Newly formed:

(*1*) An individual report for each general partner or principal who is an individual.

(*2*) A commercial report for each general partner or principal that is an organization.

(B) Established:

(1) A commercial report for the partnership or corporation.

(2) Individual and/or commercial reports for each general partner or principal as deemed necessary to make a credit determination.

(iii) Nonprofit organizations or public bodies:

(A) A credit report will not be requested for newly formed nonprofit organizations, or for public bodies, unless deemed necessary by the State Director.

(B) A commercial credit report may be ordered for an established nonprofit organization at the discretion of the State Director.

(C) The credit report fee may be waived for nonprofit organizations.

(3) A determination of eligibility and feasibility will generally be made within 45 days of receipt of a complete preapplication. In cases where the review cannot be completed within 45 days, the District Director should inform the applicant when the review will be completed. If applicable, the review will include an evaluation of the proposal by the State Office Architect, who will advise the loan approval official of the acceptability of the proposed development and/or site feasibility.

(4) In cases where the proposal does not meet FmHA requirements, the District Director will notify the applicant in writing of the specific reasons why the request was not favorably considered. Appeal rights will be provided in accordance with subpart B of part 1900 of this chapter. The case file, processing card, and other FmHA tracking systems will indicate the date the preapplication was determined eligible/feasible or rejected.

(f) *Large dollar amount loan requests.* When a preapplication is received of a large dollar amount which exceeds a district and/or State allocation, the following guidance will be followed. An AD–622 inviting a formal application will not be issued for a loan proposal which exceeds a State allocation; or district allocation except as indicated below.

(1) In States that do not allocate by district, if a loan request is received which exceeds the State allocation, the proposal should be given a cursory eligibility and feasibility review. If the preapplication appears to meet FmHA requirements, the applicant should be notified that the proposal appears eligible and feasible; however, FmHA does not have the resources to fund the proposal. Also, if the priority point score is low, the applicant should also be informed that the proposal lacks priority for funds even if reduced in size and/or scope. The proposal should be returned to the applicant, and review rights provided in accordance with subpart B of part 1900 of this chapter. FmHA may suggest ways to reduce the size and/or scope of the proposal if the priority point score so warrants.

(2) In States where funds are allocated by district, if a loan request is received in the district which exceeds the district allocation, the proposal should be given a cursory eligibility and feasibility review. If the preapplication appears to meet FmHA requirements, the District Director should discuss the size of the loan request with the State Office. If the priority points warrant, the State Director may authorize the district to exceed its limitation for issuing AD–622's provided the State will remain within its limitation or National Office authorization is obtained and the State can provide the additional funds for the proposal. If the State cannot authorize the district to exceed its limitation, the applicant should be notified that the proposal appears eligible and feasible; however, FmHA does not have the resources to fund the proposal. Also, if the priority point score is low, the applicant should also be informed that the proposal lacks priority for funds even if reduced in size and/or scope. The proposal should be returned to the applicant, and review rights provided in accordance with subpart B of part 1900 of this chapter. FmHA may suggest ways to reduce the size and/or scope of the proposal if the priority point score so warrants. Limitations for issuance of an AD–622 are contained in Exhibit A of subpart L of part 1940 of this chapter (available in any State Office).

(g) *Changes in preapplications.* If the applicant changes their loan request in any manner which affects its rating or ranking, i.e., applicant type, size (number of units) or type (family, elderly, congregate, etc.), the date of the complete preapplication will be changed to the date the revision is received by FmHA. A change in site will be treated as follows:

(1) If the applicant changes the site for reasons other than rejection by FmHA, the date of complete preapplication will be changed to the date the new site option is received by FmHA.

(2) If the site is rejected by FmHA, the applicant will be given appeal rights for rejection of the site in accordance with subpart B of part 1900 of this chapter. When the rejection covers the site and other eligibility/feasibility issues, paragraph (h) of this section will apply. When the rejection covers the site only, and not eligibility/feasibility issues, the date of complete preapplication will be affected as follows:

(i) The applicant may submit a new site option within 30 days from the date of the site rejection letter with no change in the date of complete preapplication. If the applicant appealed the site rejection, submission of the new site option will be accompanied by a copy of their letter to the National Appeals Staff withdrawing their appeal request on the site rejection.

(ii) In cases where the applicant does not submit a new site option within 30 days, and prevails in an appeal, the date of complete preapplication will not change.

(iii) In cases where the applicant does not submit a new site option within 30 days, and does not prevail in an appeal, the preapplication will be considered incomplete since the applicant no longer has a site. The date of complete preapplication will change to the date the applicant submits a new site option.

(h) *Effect of appeals on processing preapplications.* When a preapplication for assistance is denied, and/or site is denied, appeal rights in accordance with subpart B of part 1900 of this chapter will be provided to the applicant. Processing of other preapplications may continue; however, an AD-622 may not be issued on any other preapplication in the same market area meeting both of the following conditions until the pending appeal has been concluded. If one, but not both, of the following conditions exist, other preapplications in the same market area may continue to be processed, and an AD–622 may be issued, regardless of the pending appeal.

(1) Is similar in type (family, elderly, congregate, etc.).

(2) Has a lower priority point score; or has an equal score with the same or later preapplication date.

(i) *Ranking for potential funding.* Preapplications for RCH assistance will be processed in accordance with paragraph (i)(5) of this section. All other complete preapplications which have been reviewed for eligibility, feasibility and have sufficient points in the priority processing system will be ranked for potential funding in accordance with this section.

Ranking of a preapplication does not assure funding or loan approval. Ranking provides the vehicle for FmHA to assure that loan funds are used to meet program objectives, and precludes development of costly applications when there are no reasonable prospects for funding the proposal. Ranking and issuance of a favorable AD–622, requesting a formal application, will be handled as follows:

(1) In States without centralized loan processing that allocate funds to districts (except for RCH preapplications)

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the District Director will review the list, and select the highest ranking preapplication(s) for continued processing.

(ii) If two (or more) preapplications have the same ranking, the one from an entity meeting the requirements of paragraph (i)(6) of this section will be considered to have the highest ranking If neither is from an entity which meets the requirements of paragraph (i)(6) of this section, the preapplication with the earliest date of complete preapplication will be considered to have the highest ranking If two (or more) preapplications from an entity meeting the requirements of paragraph (i)(6) of this section have the same ranking, the one with the earliest date of complete preapplication will be onsidered to have the highest ranking.

(iii) Regardless of point score, preapplications which have been rated, but have not been reviewed for eligibility and feasibility will not be ranked or have an effect on the ranking process.

(iv) Selected preapplications which are within the District Director's loan approval authority will be forwarded to the State Office for authorization to issue an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application.

(v) Selected preapplications which are not within the District Director's loan approval authority will be forwarded to the State Office for further review prior to notification and if applicable, submission to the National Office The date forwarded to the State Office will be annotated on Form FmHA 1905–11.

(vi) When preapplications are forwarded from the District Office to request authorization to issue an AD–622, other preapplications which are placed on the ranking list after the forwarding date (even if they have a higher priority point score) will have no affect on the ranking of the forwarded preapplication.

(vii) All preapplications will remain on the ranking list until an AD–622 authorizing a formal application is issued, or the preapplication is denied

(viii) When ranking and processing levels do not permit issuance of an AD–622 requesting a formal application, the District Director will notify the applicant, by an AD–622, of their eligibility/feasibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be retained on the ranking list, and only one such AD–622 need be issued. These applicants should also be advised that their preapplications will be retained and considered for future funding based upon its ranking.

(ix) If processing levels do not permit issuance of an AD–622 requesting a formal application within 1 year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated. A specific timeframe (generally 30 days) will be provided If the priority point score also becomes so low that processing levels would not permit authorization of a formal application within the next 24 months, the preapplication will be returned to the applicant with a letter indicating that it has been withdrawn based upon its relative ranking with other preapplications on file Review rights, for assignment of the priority points only, will be provided in accordance with subpart B of part 1900 of this chapter.

(2) In States without centralized loan processing that do not allocate funds to districts (except for RCH preapplications)

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the State Director will review the list, and select the highest ranking preapplication(s) for continued processing.

(ii) If two (or more) preapplications have the same ranking, the one from an entity meeting the requirements of paragraph (i)(6) of this section will be considered to have the highest ranking If neither is from an entity which meets the requirements of paragraph (i)(6) of this section, the preapplication with the earliest date of complete preapplication will be considered to have the highest ranking. If two (or more) preapplications from an entity meeting the requirements of paragraph (i)(6) of this section have the same ranking, the one with the earliest date of complete preapplication will be considered to have the highest ranking.

(iii) Regardless of point score, preapplications which have been rated, but have not been reviewed for eligibility and feasibility will not be ranked or have an effect on the ranking process.

(iv) Selected preapplications which are within the State Director s loan approval authority will be issued an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application.

(v) Selected preapplications which are not within the State Director s loan approval authority will be forwarded to the National Office for further review prior to notification. The date forwarded to the National Office will be annotated on Form FmHA 1905–11.

(vi) When preapplications are forwarded from the State Office to request authorization to issue an AD–622 other preapplications which are placed on the ranking list after the forwarding date (even if they have a higher priority point score) will have no affect on the ranking of the forwarded preapplication

(vii) All preapplications will remain on the ranking list until an AD–622 authorizing a formal application is issued, or the preapplication is denied.

(viii) When ranking and processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will notify the applicant, by an AD–622 of their eligibility/ feasibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time These preapplications will be retained on the ranking list, and only one such AD–622 need be issued These applicants should also be advised that their preapplications will be retained and considered for future funding based upon its ranking

(ix) If processing levels do not permit issuance of an AD–622 requesting a formal application within 1 year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated A specific timeframe (generally 30 days) will be provided If the priority point score also becomes so low that processing levels would not permit authorization of a formal application within the next 24 months, the preapplication will be returned to the applicant with a letter indicating that it has been withdrawn based upon its relative ranking with other preapplications on file Review rights, for assignment of the priority points only, will be provided in accordance with subpart B of part 1900 of this chapter.

(3) In States with centralized loan processing that allocate funds by district (except for RCH preapplications)

(i) The State will maintain ranking lists by district. Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically by district from highest to lowest based upon points received in the priority processing system. When processing levels permit, based upon the district allocation, the State Director will review the list, and select the highest ranking preapplication(s) for continued processing.

(ii) If two (or more) preapplications have the same ranking, the one from an entity meeting the requirements of paragraph (i)(6) of this section will be considered to have the highest ranking. If neither is from an entity which meets the requirements of paragraph (i)(6) of this section, the preapplication with the earliest date of complete preapplication will be considered to have the highest ranking. If two (or more) preapplications from an entity meeting the requirements of paragraph (i)(6) of this section have the same ranking, the one with the earliest date of complete preapplication will be considered to have the highest ranking.

(iii) Regardless of point score, preapplications which have been rated, but have not been reviewed for eligibility and feasibility will not be ranked or have an effect on the ranking process.

(iv) Selected preapplications which are within the State Director s loan approval authority will be issued an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application

(v) Selected preapplications which are not within the State Director s loan approval authority will be forwarded to the National Office for further review prior to notification The date forwarded to the National Office will be annotated on Form FmHA 1905–11.

(vi) When preapplications are forwarded from the State Office to request authorization to issue an AD–622, other preapplications which are placed on the district s ranking list after the forwarding date (even if they have a higher priority point score) will have no affect on the ranking of the forwarded preapplication.

(vii) All preapplications will remain on the ranking list until an AD–622 authorizing a formal application is issued or the preapplication is denied.

(viii) When ranking and processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will notify the applicant, by an AD–622, of their eligibility/ feasibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be retained on the ranking list, and only one such AD–622 need be issued. These applicants should also be advised that their preapplications will be retained and considered for future funding based upon its ranking.

(ix) If processing levels do not permit issuance of an AD–622 requesting a formal application within 1 year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated. A specific timeframe (generally 30 days) will be provided. If the priority point score also becomes so low that processing levels would not permit authorization of a formal application within the next 24 months, the preapplication will be returned to the applicant with a letter indicating that it has been withdrawn based upon its relative ranking with other preapplications on file. Review rights, for assignment of the priority points only, will be provided in accordance with subpart B of part 1900 of this chapter.

(4) In States with centralized loan processing that do not allocate funds by district (except for RCH preapplications):

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the State Director will review the list, and select the highest ranking preapplication(s) for continued processing.

(ii) If two (or more) preapplications have the same ranking, the one from an entity meeting the requirements of paragraph (i)(6) of this section will be considered to have the highest ranking If neither is from an entity which meets the requirements of paragraph (i)(6) of this section, the preapplication with the earliest date of complete preapplication will be considered to have the highest ranking. If two (or more) preapplications from an entity meeting the requirements of paragraph (i)(6) of this section have the same ranking, the one with the earliest date of complete preapplication will be considered to have the highest ranking

(iii) Regardless of point score preapplications which have been rated, but have not been reviewed for eligibility and feasibility will not be ranked or have an effect on the ranking process.

(iv) Selected preapplications which are within the State Director's loan approval authority will be issued an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application

(v) Selected preapplications which are not within the State Director s loan approval authority will be forwarded to the National Office for further review prior to notification The date forwarded to the National Office will be annotated on Form FmHA 1905–11.

(vi) When preapplications are forwarded from the State Office to request authorization to issue an AD–622, other preapplications which are placed on the ranking list after the forwarding date (even if they have a higher priority point score) will have no affect on the ranking of the forwarded preapplication

(vii) All preapplications will remain on the ranking list until an AD–622 authorizing a formal application is issued or the preapplication is denied

(viii) When ranking and processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will notify the applicant, by an AD–622, of their eligibility/ feasibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time These preapplications will be retained on the ranking list, and only one such AD–622 need be issued. These applicants should also be advised that their preapplications will be retained and considered for future funding based upon its ranking.

(ix) If processing levels do not permit issuance of an AD–622 requesting a formal application within 1 year of placement on the ranking list, the applicant will be notified in writing that their preapplication must be updated A specific timeframe (generally 30 days) will be provided If the priority point score also becomes so low that processing levels would not permit authorization of a formal application within the next 24 months, the preapplication will be returned to the applicant with a letter indicating that it has been withdrawn based upon its relative ranking with other preapplications on file Review rights for assignment of the priority points only, will be provided in accordance with subpart B of part 1900 of this chapter.

(5) RCH preapplications:

(i) The State Director will contact the National Office to determine if sufficient funds are available for the RCH preapplication Preapplications for RCH assistance will be processed in the order in which a complete preapplication as defined in paragraph (a) of this section was received

(ii) All preapplications for RCH assistance will be reviewed for eligibility and feasibility at the district and/or State level In cases where the proposal is not eligible and/or feasible, the proposal will be rejected and appeal rights provided in accordance with Subpart B of Part 1900 of this chapter. Proposals which appear eligible and feasible will be forwarded to the National Office for review and authorization in accordance with paragraph (k) of this section

(iii) If authorized by the National Office the State Director will issue an AD–622 which will notify the applicant of eligibility and feasibility and request a formal application

(iv) When processing levels do not permit issuance of an AD–622 requesting a formal application, the State Director will request the District Director to notify the applicant, by an AD–622, of their eligibility/feasibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time These preapplications will be retained, however only one such AD–622 need be issued Applicants should also be advised that their preapplications will be retained and onsidered for future funding If processing levels do not permit issuance of an AD–622 requesting a formal application within 24 months the applicant will be notified in writing that their preapplication must be updated A specific timeframe (generally 30 days) will be provided

(6) *Nonprofit/public body preference* Preference in rating/ranking preapplications provided to an entity that meets all of the following conditions:

(i) Is a local nonprofit organization, public body or Indian Tribe whose principal purposes include the planning, development, and management of low-income housing;

(ii) Is exempt from Federal income taxes under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code

(iii) Is not wholly or partially owned or ontrolled with/by a for-profit or limited-profit type entity;

(iv) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity,

(v) Is not :o-venturing with another entity; and

(vi) The entity and/or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(j) *Actions after an AD–622 is issued requesting a formal application (except for RCH)* (1) After issuance of the AD–622, the preapplication will be removed from the ranking list The priority point score is no longer utilized or has any significance Applications will be processed, approved, and funded on a first-come-first-served basis.

(2) A copy of the AD–622 and related information in accordance with Exhibit A–10 of this subpart, will be forwarded to the State Agency when the applicant is seeking LIHTC.

(3) The District Director will establish specific deadlines for developing the proposal to avoid unreasonable delays by applicants not prepared to proceed Extensions may be granted if the District Director determines they are reasonable and will not unnecessarily delay processing of other loan requests The following paragraphs should be contained on, or attached by reference to Form AD–622, as appropriate

(i) "The action herein is based upon representations made in your preapplication Any changes therein, including but not limited to changes in complex cost, size or scope of complex, rental rates or subsidy costs to FmHA, scope of services, sources of funds etc., may adversely affect this decision and must be reported to and approved by FmHA in writing Any changes not approved by FmHA will be cause for FmHA to discontinue processing your request for services All applicants requesting changes will be required to give full justification for each change and, if FmHA approval is not given, written reasons will be given with a 30-day negotiation period to resolve the differences."

(ii) "This action should not be misconstrued as a reservation of funds, the availability of funds or loan approval."

(iii) "Loan processing will continue based upon a loan not to exceed the amount specified on this Form AD–622 "

(iv) "If a complete application has not been submitted to FmHA by the date specified on this Form AD–622 FmHA reserves the right to discontinue processing your loan request within 30 days written notice If a longer timeframe to develop your application is necessary, you should submit a request in writing with specific reasons why a longer timeframe is required with a projected date to accomplish such action Failure to submit a complete application, or request a longer timeframe, will be considered a lack of interest on your part and a request to withdraw the preapplication Continued processing will require a new preapplication which must be rated and ranked without regard to previous processing priority."

(v) In cases which do not require National Office review, the following statement must be added: "You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered or which would have an adverse affect on the environment. Satisfactory completion of the environmental review process in accordance with subpart G of part 1940 of this chapter must occur prior to loan approval The issuance of this review action does not constitute site approval."

(k) *Information to be contained in preapplication case file* At a minimum the following information will be contained in the case file before submission to the State or National Office for authorization

(1) Form SF 424 2

(2) All information outlined in Exhibit A–7 of this subpart

(3) The District Director s comments on eligibility and his/her recommendations, and in cases reviewed by the State Director, his/her comments on eligibility and recommendations

(4) Comments and recommendations concerning the proposed complex site resulting from an on-site visit to determine its overall desirability and conformance with the site location requirements outlined in § 1944.215(r) of this subpart

(5) A current copy of Form FmHA 1905–11.

(6) The following information when the loan request exceeds the State Director's approval authority, National Office authorization is required, or when appropriate State Offices will forward such files to the National Office Attention: MFH/PD

(i) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class I Action", or Exhibit H of subpart G of part 1940 of this chapter, signed by all required parties, dependent on whether the assessment is a Class I or Class II action A copy of the published "Finding of No Significant Impact" (or affidavit from the publisher) will also be included together with any comments and consideration of same

(ii) The schematic or preliminary drawings and specification together with the architectural comments and recommendations of the State Architect

(l) *General guidance on processing requests for Multi-Family Housing (MFH) assistance.* (1) Equal Credit Opportunity Act (ECOA)

(i) *Act* The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race

color, religion national origin, sex, marital status age (provided the applicant has the capacity to enter into a binding contract) because all or part of the applicant s income is derived from any public assistance program or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act The Federal agency that administers compliance with this law is the Federal Trade Commission Equal Credit Opportunity, Washington DC 20580

(ii) The ECOA paragraph set forth in paragraph (l)(1)(i) of this section will be included in all written notifications of adverse actions

(2) Form FmHA 410–9 "Statement Required by the Privacy Act," is required by all applicants who are individuals A preapplication/ application will not be considered complete without this form

(3) Form FmHA 410–7, "Notification to Applicant on Use of Financial Information from Financial Institution," will be provided by FmHA within 3 business days of receipt of a complete preapplication

(4) All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

(5) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 residential units, the booklet entitled "Settlement Costs," will be given or sent to the applicant within 3 business days after receipt of a complete preapplication The booklet will include Form FmHA 440–58 "Estimate of Settlement Costs " A record of the date and method of delivery of the booklet and form will be placed in the case file

(6) A preapplication/application for MFH assistance may be withdrawn upon written request of an applicant at any time FmHA may withdraw a preapplication/application for failure of an applicant to provide necessary information to process a request for assistance provided the applicant fails to respond to a written request which provides the applicant with a reasonable time period to submit the information The letter informing the applicant of the necessary information will contain the following, or essentially similar, statement· "If you fail to provide FmHA with this information within _____ days from the date of this letter, we will assume this lack of response on your part to be an indication that you wish to have your application withdrawn Continued processing will require a new preapplication which must be rated and ranked without regard to previous processing priority." If the applicant fails to respond to the request within the specified timeframe a letter will then be sent to the applicant, with review rights given in accordance with subpart B of part 1900 of this chapter, indicating their preapplication has been withdrawn Both letters will be sent by certified mail, return receipt requested

(7) If a loan is refused because of information obtained from a credit report, FmHA will advise the applicant of the reason for the rejection including:

(i) The specific information given in the credit report that led to the rejection (e g., delinquent obligations tax liens, or judgments)

(ii) The name and address of the credit reporting company.

(iii) A statement advising that a copy of the credit report may be obtained from FmHA if requested by the applicant, but that any dispute regarding the accuracy of the information in the credit report must be resolved between the credit reporting company and the applicant

14 Section 1944.232 is revised to read as follows

§ 1944.232 Rental Assistance (RA) from sources other than FmHA.

RA from sources other than FmHA may be used in new or existing RRH projects upon National Office authorization FmHA will consider authorizing such private RA (PRA) proposals which offer RA in the same general dollar amount and terms in which FmHA RA is calculated and granted PRA proposals will be in the form of a memorandum of understanding (MOU) between the provider and FmHA

(a) *Provisions of MOU.* FmHA may consider entering into an MOU with other providers of RA such as State or local public entities, profit or nonprofit organizations, individuals, or other providers acceptable to FmHA The MOU will be executed between FmHA and the provider prior to the appropriate official issuing an AD–622 for new projects At a minimum, the MOU must contain the following provisions.

(1) Reason for providing PRA and its intended purpose

(2) The length of time PRA will be provided

(3) Actions to be taken at the end of the PRA proposal to minimize impact on tenants losing PRA and avoid displacement

(4) A copy of the proposed PRA agreement, which is the instrument of agreement involving the tenant owner, and provider of assistance FmHA will not be a party to the PRA agreement nor have any responsibilities under the agreement The PRA agreement must state that·

(i) The payments should be paid directly to the tenants or a separate project operating account for this purpose The tenants must be advised of the amount and source of the assistance through the lease or a supplement to the lease

(ii) Sufficient funds will be set aside in a way that assures availability of PRA for the life of the PRA agreement, which must be for a minimum of 5 years The method of supplying the funds must be clearly set forth and acceptable to FmHA

(b) *Documentation* (1) Documentation must be provided that the PRA is needed in the market area

(2) The provider must provide FmHA with reasonable assurances that tenants receiving the PRA will not be displaced when the PRA expires

(3) In accordance with § 1944.215(w)(2)(ii) of this subpart, it must be demonstrated that for the term of the loan remaining after PRA is no longer available an adequate rental market exists for the project without the assistance

(4) For complexes with LIHTC, if the PRA term is less than the LIHTC compliance periods the marketability of the PRA units must be further demonstrated by either:

(i) Demonstrating that there are sufficient households within the LIHTC income limits to support the units without rent overburden· or

(ii) The applicant s certification that the targeted percentage of LIHTC units (not the minimum set-aside option) does not include the PRA units so that the units will be marketable to households in all FmHA income ranges

(c) *Review and recommendations* The documentation the MOU, and the PRA agreement will be submitted to the District Director for review. If acceptable the District Director will submit the proposal for similar review to the State Office and submission to the National Office Proposals forwarded to the National Office will contain the recommendations of the District and State Director.

15 Section 1944 235 is amended in paragraph (c)(1)(iv) in the first sentence by revising the reference "§ 1944 213(b)(2)" to read "§ 1944.213(b)" and in the second sentence by adding the words "of this subpart" after the words '1944 213 (d)

16. Section 1944.237 is amended by revising paragraphs (c)(1), (c)(2), and (d)(2) to read as follows:

§ 1944.237 Subsequent loans.

* * * * *

(c) * * *

(1) If the applicant/borrower provided an initial investment greater than required under the initial FmHA loan, the excess may be credited toward the required amount of the initial investment of the subsequent loan per § 1944.213 (b) of this subpart; the applicant/borrower should only be required to put up additional funds for this purpose if needed. The same applies to initial Operating and Maintenance (O and M) requirements.

(2) If the initial investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional respective amounts to cover the subsequent loan. The 2 percent O and M amounts can be in the form of cash or an irrevocable letter of credit as described in § 1944.211(a)(6) of this subpart. The required amount of the initial investment is described in § 1944.213(b) of this subpart.

(d) * * *

(2) The applicant/borrower must provide the initial investment per § 1944.213(b) of this subpart unless it provided more than the required initial investment when the loan was made. When the applicant/borrower has more than the required amount invested in the initial loan, the excess may be credited toward the required investment for the subsequent loan. The applicant/borrower should be required to contribute additional funds only if needed. The applicant/borrower will not be given consideration for any increased equity or value that the property may have since the date of the initial FmHA loan.

* * * * *

§ 1944.250 [Amended]

17. Section 1944.250 is amended in the second sentence by revising the words "40 minutes" to read "40 hours".

18. Exhibit A–10 of Subpart E is revised to read as follows:

Exhibit A–10 of Subpart E—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance With Low-Income Housing Tax Credits

I. Purpose

FmHA administers a loan program authorized by Section 515 of the Housing Act of 1949, which provides financing for housing for very low- and low-income tenants in rural areas. As an incentive for developers to participate in the program, the Internal Revenue Service (IRS), in Section 42 of the Internal Revenue Code, provides tax credits, which are administered through State or local housing credit agencies. The purpose of this exhibit is to provide a model for FmHA State Directors when developing a Memorandum of Understanding (MOU) with the State agency to establish procedures for sharing information on project cost and reservation of tax credits in compliance with Section 42 of the Internal Revenue Code.

II. Administrative Process

A. State Directors may enter into an MOU with the State agency involved in the allocation of tax credits as set forth in Section 42 of the Internal Revenue Code. In entering into such MOUs, the State Director should be guided by the following:

1. The State Director will establish procedures, in consultation with the State agency, for sharing information on project costs and other factors as appropriate. The information outlined in Attachment A to this exhibit (available in any FmHA office) should be used to develop the minimum information shared with the tax credit agency.

2. The State Director will implement procedures to enhance communications between the two agencies to ensure a better understanding and evaluation of the information being shared.

B. Attachment A to this exhibit (available in any FmHA office) serves as the model MOU between FmHA and State agencies. An MOU based on the model may be executed and used without further review if the terms and conditions conform substantially to the model. If the scope of the document is expanded, concurrence of the National Office must be obtained prior to execution.

Dated: July 30, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–19898 Filed 8–19–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–2]

Establishment of Reporting Point; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a reporting point at Marfa, TX. Marfa is currently depicted as a reporting point on FAA charts, but has not yet been designated as a Domestic Low Altitude Reporting Point. Adding the Marfa, TX, reporting point will facilitate air traffic control's coordination of flights crossing the U.S. border with other traffic.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a reporting point at Marfa, TX. Marfa is currently depicted as a reporting point on FAA charts, but has not yet been designated as a Domestic Low Altitude Reporting Point in part 71. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic low altitude reporting points are published in paragraph 7001 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993. The domestic low altitude reporting point listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic Low Altitude Reporting Points, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 7001—Domestic Low Altitude Reporting Points

* * * * *

Marfa, TX [New]

* * * * *

Issued in Washington, DC, on August 6, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20010 Filed 8–19–93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27395; Amdt. No. 1558]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Incorporation by reference, Standard instrument.

Issued in Washington, DC on July 30, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
07/15/93	GA	Swainsboro	Emanuel County	3/3813	NDB RWY 13 ORIG.
07/15/93	GA	Swainsboro	Emanuel County	3/3815	VOR/DME–A AMDT 2.
07/16/93	FL	St. Petersburg-Clearwater	St. Petersburg-Clearwater Intl	3/3858	ILS RWY 17L AMDT 19A.
07/16/93	FL	St. Petersburg-Clearwater	St. Petersburg-Clearwater Intl	3/3859	NDB RWY 17L AMDT 20A.
07/16/93	FL	St. Petersburg-Clearwater	St. Petersburg-Clearwater Intl	3/3860	VOR RWY 17L AMDT 11A.
07/16/93	NY	White Plains	Westchester County	3/3853	NDB RWY 16 AMDT 19.
07/16/93	NY	White Plains	Westchester County	3/3854	ILS RWY 16 AMDT 21.
07/20/93	ND	Bismarck	Bismarck Muni	3/3921	ILS RWY 13 AMDT 2.
07/22/93	KS	Fort Leavenworth	Sherman AAF	3/4003	VOR–A, AMDT 3.
07/22/93	KS	Fort Leavenworth	Sherman AAF	3/4004	NDB RWY 33, AMDT 3.
07/22/93	KS	Windfield/Arkansas	Strother Field	3/3979	ILS RWY 35 AMDT 3.
07/22/93	KS	Windfield/Arkansas	Strother Field	3/3980	NDB RWY 35 AMDT 3.
07/22/93	KS	Windfield/Arkansas	Strother Field	3/3981	VOR RWY 35 ORIG.
07/22/93	MA	Boston	General Edward Lawrence Logan Intl.	3/4023	ILS–2 RWY 22L ORIG.
07/22/93	NC	Southern Pines	Moore County	3/3974	VOR–A AMDT 3.
07/22/93	OK	Ponca City	Ponca City Muni	3/3978	NDB RWY 17 AMDT 3.
07/22/93	OK	Ponca City	Ponca City Muni	3/3982	NDB RWY 35 AMDT 2.
07/22/93	OK	Ponca City	Ponca City Muni	3/3984	ILS RWY 17 ORIG.
07/22/93	TX	Yoakum	Yoakum Muni	3/4007	NDB RWY 31, AMDT 1.
07/26/93	TX	Alice	Alice Intl	3/4117	LOC RWY 31 AMDT 5.
07/27/93	FL	St. Petersburg-Clearwater	St. Petersburg-Clearwater Intl	3/4105	LOC BC RWY 35R AMDT 14.
07/27/93	GA	Greensboro	Green County Airpark	3/4135	NDB–A, ORIG.

[FR Doc. 93–20184 Filed 8–19–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27394; Amdt. No. 1557]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationships between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on July 30, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 16, 1993*

Sitka, AK, Sitka, LDA/DME RWY 11, Amdt. 12
Panama City, FL, Panama City-Bay County, ILS RWY 14, Amdt. 15
Galesburg, IL, Galesburg Muni, VOR RWY 2, Amdt. 6
Galesburg, IL, Galesburg Muni, VOR RWY 20, Amdt. 6
Galesburg, IL, Galesburg Muni, ILS RWY 2, Amdt. 9
Kewanee, IL, Kewanee Muni, NDB RWY 1, Amdt. 6
Kewanee, IL, Kewanee Muni, NDB RWY 9, Amdt. 6
Lacon, IL, Marshall County, VOR RWY 13, Amdt. 1
Peru, IL, Illinois Valley Rgnl-Walter A Duncan Field, LOC RWY 36, Amdt. 2
Peru, IL, Illinois Valley Rgnl-Walter A Duncan Field, NDB RWY 18, Amdt. 3
Pontiac, IL, Pontiac Muni, VOR RWY 24, Orig.
Westminster, MD, Carroll Cny RG/Jack B Poage Fl, VOR–A, Orig.
Natchez, MS, Hardy-Anders Field Natchez Adams County, LOC RWY 17, Amdt. 4, CANCELLED
Wahpeton, ND, Harry Stern, NDB RWY 33, Amdt. 4
Georgetown, OH, Brown County, NDB RWY 17, Orig.
Stillwater, OK, Stillwater Muni, NDB RWY 17, Orig.
Stillwater, OK, Stillwater Muni, ILS RWY 17, Orig.
Morristown, TN, Moore-Murrell, SDF RWY 5, Amdt. 4
Morristown, TN, Moore-Murrell, NDB RWY 5, Amdt. 4
Melfa, VA, Accomack County, NDB RWY 3, Amdt. 8
Rock Springs, WY, Rock Springs-Sweetwater County, VOR–B, Amdt. 4
Rock Springs, WY, Rock Springs-Sweetwater County, VOR/DME RWY 9, Amdt. 2
Rock Springs, WY, Rock Springs-Sweetwater County, VOR/DME RWY 27, Amdt. 2
Rock Springs, WY, Rock Springs-Sweetwater County, NDB–C, Amdt. 2
Rock Springs, WY, Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt. 5

** * * Effective August 19, 1993*

Commerce, TX, Commerce Muni, VOR/DME–A, Amdt. 2
Dallas-Fort Worth, TX, Dallas/Fort Worth International, Converging ILS RWY 36R, Orig.
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 36R, Orig.
Paris, TX, Cox FLD, VOR/DME RWY 35. Amdt. 10

* * * *Effective July 23, 1993*

Blackwell, OK, Blackwell-Tonkawa Muni, VOR–A, Amdt. 3

* * * *Effective July 22, 1993*

Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Amdt. 7
Tarboro, NC, Tarboro-Edgecombe, VOR/DME RWY 27, Amdt. 1

* * * *Effective June 24, 1993*

Raleigh-Durham, NC, Raleigh-Durham International, NDB RWY 5R, Amdt. 20
Raleigh-Durham, NC, Raleigh-Durham International, NDB RWY 23L, Amdt. 4

[FR Doc. 93–20183 Filed 8–19–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920670–3067]

RIN 0651–AA57

Changes in Procedures for Revival of Patent Applications and Reinstatement of Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to: Modify the petition requirements for reviving abandoned applications; extend the provisions for revival under the unintentional standard to applications abandoned under § 1.53(d); modify the requirements for a petition to accept late payment of a maintenance fee filed more than six months after expiration of a patent; modify the requirements for a petition to accept unavoidably delayed payment of a maintenance fee; and provide for reinstatement of a patent where the delay in timely payment of a maintenance fee was unintentional. The Office is also establishing the amount for the surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unintentional.

EFFECTIVE DATE: September 20, 1993. These rules will be applicable to all papers filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305–9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the **Federal Register** (57 FR 41899) on September 14, 1992, and in the Patent and Trademark Office Official Gazette (1143 Off. Gaz. Pat. Office 8) on October 6, 1992, the Office proposed to amend §§ 1.17, 1.137, 1.155, 1.316, 1.317 and 1.378. In an Interim Rule published in the **Federal Register** (57 FR 56448) on November 30, 1992, and in the Patent and Trademark Office Official Gazette (1145 Off. Gaz. Pat. Office 339) on December 8, 1992, the Office, pursuant to Public Law 102–444 enacted October 23, 1992, established interim rules for reinstatement of a patent where the delay in timely payment of a maintenance fee was unintentional. The Office also established the amount for the surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment was shown to the satisfaction of the Commissioner to have been unintentional. No oral hearing was held.

Discussion of Specific Sections To Be Changed or Added

(1) Post Issuance Fees (Section 1.20)

Section 1.20(i) is amended to add a $1,500 surcharge fee for accepting the unintentionally delayed payment of a maintenance fee.

(2) Unavoidable or Unintentional Abandonment of an Application

Sections 1.137, 1.155, 1.316 and 1.317 each provide for petitions to the Commissioner for relief from failure to timely comply with a requirement of the Office. Section 1.137 provides for petitions to revive patent applications abandoned for failure to prosecute where the delay in prosecution was unavoidable (§ 1.137(a)) or the delay was unintentional (§ 1.137(b)). Section 1.155 provides for petitions for acceptance of late payment of issue fees in applications for design patents as though no abandonment had ever occurred where the delay in payment was unavoidable (§ 1.155(b)) or unintentional (§ 1.155(c)). Section 1.316 provides for petitions for acceptance of late payment of issue fees in applications for patent as though no abandonment had ever occurred where the delay in payment was unavoidable (§ 1.316(b)) or unintentional (§ 1.316(c)). Section 1.317 provides for acceptance of late payment of the balance of issue fees in patents as though no lapse had ever occurred where the delay in payment was unavoidable (§ 1.317(b)) or unintentional (§ 1.317(c)).

In order to obtain relief under the unavoidable standard in the above-noted sections, the regulations continue to require the filing of a terminal disclaimer if the petition is filed more than six months after the date of abandonment. See §§ 1.137(c), 1.155(d), 1.316(d) and 1.317(d). The terminal disclaimer must disclaim a period equivalent to the period of abandonment. The period of abandonment is considered to be the number of months lapsed from the date of abandonment until the date of filing of a grantable petition.

Sections 1.137(c), 1.155(d) and 1.316(d) are amended to reflect the current practice that a terminal disclaimer filed for the purpose of reviving an application also applies to a patent granted on any continuing application entitled to the benefit of the filing date of the subject application under 35 U.S.C. 120.

Applicants may petition under the provisions of § 1.183 for a waiver of the requirement that a period equivalent to the period of abandonment be disclaimed if it can be shown that an extraordinary situation exists in which justice requires waiver of this requirement.

If petitions under the above-noted sections were not grantable because of insufficient evidence or petitioner's failure to comply with certain requirements, the Office dismissed the petitions. The dismissal indicated any missing items and warned petitioners that any renewed petition seeking reconsideration must be filed promptly. While the promptness requirement was not precisely defined, § 1.181(f) requires the filing of petitions within two months from an action complained of in order to avoid possible dismissal of the petition on the grounds that it was not timely filed. The above-noted sections are being amended to specify a two-month period or such time as may be set in the dismissal as being the appropriate deadline for requesting reconsideration. In those situations where petitioners require more time to gather additional evidence or items needed for reconsideration, an extension of time of up to four months may be obtained under the provisions of § 1.136(a). The filing of a renewed petition within the period specified in the decision or within the extended period permitted under § 1.136 will satisfy the promptness requirement of petitions under the unavoidable standard.

Upon failure to timely file a renewed petition under the unavoidable standard, the Office will require a showing of unavoidable delay for the entire period of abandonment. To be

entitled to relief under the unavoidable standard, petitioner must be able to show unavoidable delay from a time prior to abandonment to the filing of a grantable petition. *In re Application of Takao*, 17 USPQ2d 1155 (Comm'r Pat. 1990). Upon failure to timely file a renewed petition under the unintentional standard (see §§ 1.137(d), 1.155(e), 1.316(e) and 1.317(e)), petitioner may be subject to a loss of the right to proceed under the unintentional standard if more than one year lapsed between the date of abandonment and the date the renewed petition is filed.

The unintentional provisions specified in § 1.137(b) will apply to applications abandoned under § 1.53(d). Effective November 5, 1990, the Commissioner waived, under § 1.183, the exception specified in § 1.137(b) as to applicability of petitions under the unintentional standards to applications abandoned under § 1.53(d). See "Petitions to Revive Patent Applications Waiver of Provisions of 37 CFR § 1.137(b)", 1121 Off. Gaz. Pat. Office 6 (December 4, 1990). Section 1.137(b) is amended to incorporate this new practice into the regulations.

The Office is amending § 1.137(b) to clearly require applicant to state that the delay was unintentional, rather than the abandonment was unintentional. The Office has withdrawn its proposal that would have amended the rules of practice to require a terminal disclaimer if a grantable petition to reinstate an abandoned application was not filed within six months from the date of abandonment. The terminal disclaimer proposal was withdrawn because of the burden that such a requirement would impose on applicants and the Office and because it is unnecessary to achieve its intended purpose. The Office had suggested the terminal disclaimer proposal to ensure that any petition to revive was promptly filed. However, the proposed terminal disclaimer requirement is unnecessary to ensure prompt filing of the petition to revive since the first sentence of § 1.137(b) states that an application may be revived if the delay was unintentional. Accordingly, the specific requirements for the unintentional petition to revive have been amended to correspond to the existing rule provision that revival is available if the delay was unintentional, not just that the abandonment was unintentional. A person seeking revival should not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned up until the petition to revive was actually filed, was unintentional. For example, a statement that the delay was unintentional would not be proper when applicant becomes aware of an abandonment and then intentionally delays filing a petition to revive the application under § 1.137.

The Office adopted a policy wherein, under certain strictly limited conditions, the one-year period for requesting revival of an unintentionally abandoned application could be waived. Accordingly, the prohibition against requests for waiver found in § § 1.137(b), 1.155(c), 1.316(c) and 1.317(c) has been deleted. See "Petitions Under 37 CFR 1.183 to Waive the One Year Time Period Requirement in 37 CFR 1.137(b), 1.155(c) and 1.316(c)" at 1059 Off. Gaz. Pat. Office 4 (October 1, 1985). However, applicants are cautioned that waiver of the one-year deadline under the unintentional standard will continue to be subject to strictly limited conditions.

(3) Issue and Term of Design Patents (Section 1.155)

Section 1.155 is amended to be consistent with the changes to § 1.137. Paragraph (b) of § 1.155 is further modified to correct a typographical error. In the reference to the fee in § 1.17(l), the letter (l) should have appeared instead of the numeral (1).

(4) Application Abandoned for Failure To Pay Issue Fee (Section 1.316)

Section 1.316 is amended to be consistent with the changes to § 1.137. Paragraph (b) of § 1.316 is further modified to correct a typographical error. In the reference to the fee in § 1.17(l), the letter (l) should have appeared instead of the numeral (1).

(5) Lapsed Patents; Delayed Payment of Balance of Issue Fee (Section 1.317)

Section 1.317 contains a provision regarding issue fees paid prior to October 1, 1982. Prior to that date, the Office charged an initial base issue fee and, depending on the size of the specification and drawings printed, billed applicants for a balance of issue fee due. Subsequent to October 1, 1982, all applicants were required to pay the same issue fee regardless of the size of the specification and drawings. Reference to the date in § 1.317 is being deleted at this point in time since it is no longer relevant to pending applications. However, practice under this section continues to be relevant when a fee change becomes effective before payment is received.

In order to satisfy the requirement of 35 U.S.C. 151, the Office mails out a Notice of Allowance which specifies the sum of the issue fee due. When the issue fee amount is changed, the sum specified on the Notice of Allowance is at times different from that required at the time payment is actually received in the Office. If applicants submit issue fee payments in the amount specified on the Notice of Allowance after the effective date of a fee increase, then a balance of issue fee is due. The Office will accept payment of the amount specified on the Notice of Allowance and process the application into a patent. In accordance with 35 U.S.C. 151 and 37 CFR 1.317, a notice is sent to applicants requesting payment of the balance of the issue fee due (the difference between the fee due at time of receipt of payment in the Office and the fee specified on the Notice of Allowance) and setting a three-month period for payment. See *In re Mills*, 12 USPQ2d 1847 (Comm'r Pat. 1989). Failure to pay the balance of the issue fee within the specified three-month period will result in lapse of the patent. Therefore, the reference to October 1, 1982, in § 1.317 is being replaced by language specifying the consequences of failure to pay the issue fee due at the time payment is made.

Section 1.317 is amended to be consistent with the changes in § 1.137. Paragraph (b) of § 1.137 is further modified to correct a typographical error. In the reference to the fee in § 1.17(l), the letter (l) should have appeared instead of the numeral (1).

(6) Delayed Payment of a Maintenance Fee (Section 1.378)

Public Law 102–444 amends subsection 41(c)(1) of title 35, United States Code, to permit the Commissioner to accept late payment of any maintenance fee filed within twenty-four months after the six-month grace period, if the delay in payment is shown to the satisfaction of the Commissioner to have been unintentional. In order to implement Public Law 102–444, paragraphs (a) and (c) of § 1.378 are amended to permit the filing of a petition to accept late payment of a maintenance fee, where the delay in payment was unintentional.

In addition to the timeliness deadline set forth in the preceding paragraph, a petition filed under the unintentional standard of § 1.378(c) would have to include the required maintenance fee set forth in § 1.20 (e) through (g), the surcharge for an unintentionally expired patent as set forth in § 1.20(i)(2), and a statement that the delay in payment of the maintenance fee was unintentional.

A person seeking reinstatement of an expired patent should not make a statement that the delay in payment of the maintenance fee was unintentional unless the entire delay, including the

delay from the date it was discovered that the maintenance fee was not paid timely up until the maintenance fee was actually paid, was unintentional. For example, a statement that the delay in payment of the maintenance fee was unintentional would not be proper when patentee becomes aware of an unintentional failure to timely pay the maintenance fee and then intentionally delays filing a petition for reinstatement of the patent under § 1.378.

Petitions to accept delayed payment of a maintenance fee in an expired patent, prior to enactment of Public Law 102–444, required a showing of unavoidable delay. In the case of petitions filed more than six months after expiration of a patent, former § 1.378(c) further required a showing that the failure to timely pay the maintenance fee was beyond the control of the patentee. The Office had determined that the "beyond the control" standard did not find adequate support in the relevant statute (35 U.S.C. 41(c)) or in the legislative history of Public Law 97–247. See "Acceptance of Delayed Payment of Maintenance Fees in Expired Patents", 1115 Off. Gaz. Pat. Office 18 (June 12, 1990). Therefore, former § 1.378(c) has been deleted in its entirety to be replaced by the unintentional delay provisions discussed above. Additionally, § 1.378(b) is amended to provide that the unavoidable delay provisions are available at any time following expiration of a patent for failure to pay a maintenance fee.

Furthermore, the practice of accepting late payment of maintenance fees is modified to be more analogous to the practice of reviving abandoned applications and accepting late payment of issue fees. Additionally, the public interest is best served by prompt reinstatement of a patent in which there was an unavoidable or unintentional delay in the timely payment of the maintenance fee.

The requirements for a petition to accept late payment of a maintenance fee, where the delay was unavoidable, are outlined in paragraph (b) of § 1.378. In addition to the maintenance fee and surcharge previously required, paragraph (b) is amended to require prompt filing of a petition after the patentee is notified, or otherwise becomes aware, of the expiration of the patent.

Response to Comments on the Rules

Four comments were received.

Comment 1: One comment questioned the time limits in proposed § 1.378(c)(5).

Reply: The proposed time limits will not be adopted because Public Law 102–444 sets the time limit for filing a petition to accept the delayed payment of a maintenance fee at twenty-four months after the six-month grace period provided in 35 U.S.C. 41(c).

Comment 2: One comment questioned the proposed terminal disclaimer requirement for petitions to revive an abandoned application under the unintentional standard.

Reply: The proposed terminal disclaimer requirement for petitions to revive an abandoned application under the unintentional standard will not be adopted. First, it has been determined that the proposed terminal disclaimer requirement would have created an unduly complex procedure for both the applicant and the Office. Second, the terminal disclaimer requirement is unnecessary to address a delay in filing a petition for unintentional abandonment since § 1.137(b) already indicates that the application may be revived if the delay was unintentional. If a delay in filing a petition was intentional, the petition would be denied. Third, the requirements for a petition have been amended to add the requirement for a statement that the delay in responding was unintentional so as to be consistent with the requirements of the first sentence of § 1.137(b). Finally, applicants are cautioned against intentionally delaying the filing of a petition to revive an abandoned application because it may preclude any revival from an abandoned status. Applicants have delayed filing a petition under the unintentional standard until after expiration of the one-year period because of a miscalculation of the one-year period. This miscalculation resulted in the applicant being unable to show that the delay was unavoidable. *In re Application of S,* 8 USPQ2d 1630 (Comm'r Pat. 1988).

Comment 3: One comment questioned whether Public Law 102–444 and therefore 37 CFR 1.378(c) were applicable to patents that had expired prior to October 23, 1992, for failure to timely pay the required maintenance fee.

Reply: Section 1.378 has been established in accordance with the statutory mandate. Public Law 102–444 and 37 CFR 1.378(c) are effective as to any patent that would be covered by the literal language of the sections. Public Law 102–444 and interim rule 37 CFR 1.378(c) were effective October 23, 1992. Since Public Law 102–444 provides up to a twenty-four month period after the six-month grace period provided in 35 U.S.C. 41(c) to seek reinstatement of an expired patent where the delay was unintentional, any patent that expired on or after October 23, 1990, for failure to timely pay a maintenance fee is eligible for relief under 37 CFR 1.378(c). However, it should be noted that a petition to reinstate an unintentionally expired patent, the required maintenance fee, and the unintentional surcharge (37 CFR 1.20(i)(2)) must be filed within twenty-four months after the six-month grace period to be eligible for relief under the new unintentional provision.

Comment 4: One comment protested that the $1,500 surcharge established in § 1.20(i)(2) was too high.

Reply: The $1,500 surcharge established in § 1.20(i)(2) is proper. The amount of $1,500 was determined by considering: (1) The $1,170 petition fee for reinstating an unintentionally abandoned patent application, (2) the relationship imposed by statute between the $1,170 petition fee for reinstating an unintentionally abandoned patent application and the $110 petition fee for reinstating an unavoidably abandoned patent application, and (3) the $620 surcharge for reinstating an unavoidably expired patent. Additionally, the Office noted in its original request for comments on the desirability of permitting acceptance of unintentionally delayed payment of maintenance fees (see 1089 Off. Gaz. Pat. Office 55, April 26, 1988) that the surcharge to accept an unintentionally delayed payment of a maintenance fee would be substantially higher than the surcharge to accept an unavoidably delayed payment of a maintenance fee. Not only was there no comment adverse to the suggestion of a higher fee, one comment suggested that the surcharge to accept an unintentionally delayed payment of a maintenance fee be set extremely high so that the Office could be assured that the late payment was, in fact, unintentional. The Office, after taking all of the above into consideration, determined that $1,500 was an appropriate amount to charge as the surcharge to accept an unintentionally delayed payment of a maintenance fee.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities

(Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to incorporate Public Law 102–444 into the regulations and will give relief to many small entities that do not now have a mechanism to reinstate their expired patent.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain a collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., which have previously been approved by the Office of Management and Budget under Control Nos. 0651–0016 and 0651–0031. The public reporting burden for these collections of information for abandoned applications and delayed maintenance fees is estimated to average 1.0 hour each, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burden, to Jeffrey V. Nase, Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Project 0651–0011 and 0651–0016).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, part 1 of title 37 of the Code of Federal Regulations is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.20 is amended by revising paragraph (i) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been—

(1) unavoidable	$620.00
(2) unintentional	$1,500.00

* * * * *

3. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application.

(a) An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by:

(1) A proposed response to continue prosecution of that application, or the filing of a continuing application, unless either has been previously filed;

(2) The petition fee as set forth in § 1.17(l); and

(3) A showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) An application unintentionally abandoned for failure to prosecute may be revived as a pending application if the delay was unintentional. A petition to revive an unintentionally abandoned application must be:

(1) Accompanied by a proposed response to continue prosecution of that application, or the filing of a continuing application, unless either has been previously filed;

(2) Accompanied by the petition fee as set forth in § 1.17(m);

(3) Accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date on which the application became abandoned.

(c) Any petition pursuant to paragraph (a) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

(d) Any request for reconsideration or review of a decision refusing to revive an application upon petition filed pursuant to paragraphs (a) or (b) of this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision.

(e) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (b)(4)(ii) and the time period set forth in paragraph (d) of this section may be extended under the provisions of § 1.136.

4. Section 1.155 is amended by revising paragraphs (b) through (d) and adding paragraphs (e) and (f) to read as follows:

§ 1.155 Issue and term of design patents.

* * * * *

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by:

(1) The issue fee, unless it has been previously submitted;

(2) The fee for delayed payment (§ 1.17(1)); and

(3) A showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be:

(1) Accompanied by the issue fee, unless it had been previously submitted;

(2) Accompanied by the fee for unintentionally delayed payment (§ 1.17(m));

(3) Accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the application became abandoned.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) of this section and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.

5. Section 1.316 is amended by revising paragraphs (b) through (d) and adding paragraphs (e) and (f) to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

* * * * *

(b) The Commissioner may accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by:

(1) The issue fee, unless it has been previously submitted;

(2) The fee for delayed payment (§ 1.17(l)); and

(3) A showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the issue fee later than three months after the mailing of the notice of allowance as though no abandonment had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be:

(1) Accompanied by the issue fee, unless it has been previously submitted;

(2) Accompanied by the fee for unintentionally delayed payment (§ 1.17(m));

(3) Accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the application became abandoned.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) of this section and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.

6. Section 1.317 is revised to read as follows:

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) If the issue fee paid is the amount specified in the Notice of Allowance, but a higher amount is required at the time the issue fee is paid, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three-month period.

(b) The Commissioner may accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the lapse, and must be accompanied by:

(1) The remaining balance of the issue fee, unless it has been previously submitted;

(2) The fee for delayed payment (§ 1.17(l)); and

(3) A showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(c) The Commissioner may, upon petition, accept the payment of the remaining balance of the issue fee later than three months after the mailing of the notice thereof as though no lapse had ever occurred if the delay in payment was unintentional. The petition to accept the delayed payment must be:

(1) Accompanied by the remaining balance of the issue fee, unless it has been previously submitted;

(2) Accompanied by the fee for unintentionally delayed payment (§ 1.17(m));

(3) Accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay in payment was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the patent lapsed; or

(ii) Within three months of the date of the first decision on a petition under paragraph (b) of this section which was filed within one year of the date on which the patent lapsed.

(d) Any petition pursuant to paragraph (b) of this section not filed within six months of the date of lapse of the patent, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of the patent equivalent to the period of lapse of the patent.

(e) Any request for reconsideration or review of a decision refusing to accept the delayed payment upon petition filed pursuant to paragraphs (b) or (c) of this section, to be considered timely, must be filed within two months of the decision refusing to accept the delayed payment or within such time as set in the decision.

(f) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (c)(4)(ii) and the time period set forth in paragraph (e) of this section may be extended under the provisions of § 1.136.

7. Section 1.378, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

(1) The required maintenance fee set forth in § 1.20 (e) through (g);

(2) The surcharge set forth in § 1.20(i)(1); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

(1) The required maintenance fee set forth in § 1.20 (e) through (g);

(2) The surcharge set forth in § 1.20(i)(2); and

(3) A statement that the delay in payment of the maintenance fee was unintentional.

* * * * *

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Dated: August 11, 1993.

Michael K. Kirk,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300287A; FRL–4635–4]

RIN 2070–AB78

Boric Acid and its Salts, Borax (Sodium Borate Decahydrate), Disodium Octaborate Tetrahydrate, Boric Oxide (Boric Anhydride), Sodium Borate and Sodium Metaborate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes exemptions from the requirement of a tolerance for residues of boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate, and sodium metaborate, in or on raw agricultural commodities when used as an active ingredient in insecticides, herbicides, or fungicides preharvest or postharvest in accordance with good agricultural practices. This regulation was requested by Bushwacker Associates, Galveston, TX. The tolerance exemptions supersede the tolerances for boron established under 40 CFR 180.271; therefore, the document also removes § 180.271.

EFFECTIVE DATE: This regulation becomes effective August 20, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300287A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM 14), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 30, 1993 (58 FR 34972), EPA issued a proposed rule that gave notice that Bushwacker Associates,

Inc., Division of Bethurum Research & Development, Inc., P.O. Box 3436, Galveston, TX, had submitted a pesticide petition, (PP) 2F4132, to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for residues of boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate, and sodium metaborate in or on raw agricultural commodities when used as an active ingredient in insecticides, herbicides, or fungicides preharvest or postharvest in accordance with good agricultural practices.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemptions will protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 9, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.271 [Removed]

2. In subpart C, § 180.271 *Boron; tolerances for residues* is removed.

3. In subpart D, by adding new § 180.1121, to read as follows:

§ 180.1121 Boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate and sodium metaborate; exemptions from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate and sodium metaborate, in or on raw agricultural commodities when used as an active ingredient in insecticides, herbicides, or fungicides preharvest or postharvest in accordance with good agricultural practices.

[FR Doc. 93-20199 Filed 8-19-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 315 and 331

[Docket No. R-138]

RIN 2133-AA91

Agency Agreements and Appointment of Agents; Authority and Responsibility of the Operator To Undertake To Decommission and Deliver Ships to Reserve Fleets

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The National Shipping Authority (NSA) of the Maritime Administration (MARAD) is issuing this final rule to revise its regulations on Agency Agreements by expanding their scope to include the appointment of Agents as Ship Managers and to incorporate therein other regulatory provisions that have been removed in other rulemaking actions or are being removed by this rulemaking. This rulemaking states MARAD's policy and procedure for appointing Agents and administering Service Agreements and Ship Manager Contracts. The change in the citizenship requirements that was proposed in the Notice of Proposed Rulemaking (NPRM) is not being adopted.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Tim Roark, Chief, Division of Marine Acquisition, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, Tel. (202) 366-1943.

SUPPLEMENTARY INFORMATION: The NSA is a continuing entity within MARAD, and the Maritime Administrator serves as the Director. In peacetime, the authority of the Director is delegated to the Associate Administrators, respectively, for Shipbuilding and Ship Operations, and for Marketing. NSA regulations are published at 46 CFR parts 315 through 340, and 345 through 347. These regulations govern the appointment and activities of General Agents, Berth Agents, Ship Managers and Federal Port Controllers in emergency ship operation and other related activities, as well as in the control and utilization of ports during national emergencies.

The existing regulations at 46 CFR part 315 set forth the terms of Agency Agreements (Service Agreements), either in the form of a General Agency Agreement or a Berth Agency Agreement, between the United States, acting by and through the Director,

NSA, and private business organizations. Under these Agreements, the private organizations act as either General Agent or Berth Agent. Part 316, which prescribed requirements for an applicant to become a General Agent or Berth Agent, and Part 319, which defined the duties of Berth Agents and General Agents, have been removed by another rulemaking action of the Department of Transportation (57 FR 60725; December 22, 1992). Part 331, which sets forth the responsibilities of an operator (Agent) to strip and deactivate MARAD-owned ships preparatory to permanent layup in the National Defense Reserve Fleet (NDRF) is being removed by this rulemaking. Pertinent subject matter that appeared in former parts 316, 319 and 331 are being merged into this revised Part 315.

NPRM and Comments

On February 19, 1993, MARAD published a notice of proposed rulemaking (NPRM), at 58 FR 9135, that proposed to formalize its revised procedure for appointing Agents and administering Service Agreements and Ship Manager Contracts. Pursuant to a Service Agreement, the United States appoints a General Agent, as its Agent, and not as an independent contractor, to manage and conduct the business of one or more vessels, of which the Government is owner or owner *pro hac vice*, as may, from time to time, be assigned to the General Agent for urgent and compelling reasons. A Berth Agent must meet the same criteria to conduct the shoreside business of vessels assigned to a General Agent, at one or more specified locations, while operating in one or more specific services or trades under the terms of a Service Agreement. Pursuant to a Ship Manager Contract, the United States appoints a Ship Manager, as its Agent, for purposes of operating one or more vessels of which the Government is owner or owner *pro hac vice*, and as an independent contractor in some limited areas of vessel management, e.g., in accomplishing vessel repairs.

These agreements incorporate pertinent clauses contained in the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Transportation Acquisition Regulation (48 FR chapter 12). MARAD has also adopted an Application for Appointment as General Agent, which is included in the procedures referred to in section 315 of the NPRM with respect to the appointment of Agents.

The NPRM also proposed to change MARAD's longstanding policy that only United States citizens, within the meaning of 46 App. U.S.C. 802 ("section 2"), may be appointed as Agents. This would have allowed a U.S. corporation that is foreign-controlled (more than 50 percent foreign ownership) to be appointed as an Agent. It would have eliminated the ownership requirement for being a section 2 Citizen of the United States, applicable to corporations partnerships and other entities. That is a requirement that a controlling interest be owned by Citizens of the United States (a majority interest, 75 percent where a vessel is being operated in the coastwise trade).

MARAD received 13 comments on the NPRM. The commenters are ship operators which now operate vessels in the Ready Reserve Fleet component of the NDRF, as General Agents and/or Ship Managers, trade associations and/or others representing U.S.-flag operators, maritime labor organizations and a foreign-owned vessel operator. These commenters have commented only on the issue of MARAD's proposed change of policy that would no longer require Agents to be section 2 U.S. citizens. All of the commenters, except the foreign-owned vessel operator, expressed strong opposition to this proposed change of policy, which according to a commenter, "would permit foreign shipping companies to set up 'Shell' U.S. corporations to manage ships owned by the Maritime Administration, just as the Paris, France, based Van Ommeren Tankers and the Danish company, Maersk manage ships for the U.S. Navy's Military Sealift Command."

The common thread of all comments in opposition was that the proposed policy change is totally inconsistent with the Department's previously pronounced intent to submit a major maritime revitalization package intended to strengthen the U.S.-flag fleet for economic as well as national defense purposes.

Commenters criticized MARAD's failure to state in the NPRM discussion any justification for the proposed policy change other than that it would harmonize with the policy of the Department of Defense (DOD), and failure to allege that the Government will derive any cost benefits from the proposed policy change or that competent U.S. Citizen vessel operators are not available to accept assignment of vessels as agents. In fact, it was stated that U.S. operators have proved their capability and have offered to operate additional RRF vessels at a time when competition among U.S. citizen operators "is so keen that the addition of U.S. subsidiaries of foreign corporations would not lower the cost, unless, of course, the new competitors were subsidized directly or indirectly." It was argued that U.S operators need the work, which work was referred to by a commenter as "a U.S taxpayer government-supported national defense program."

It was further stated, "For a U.S. Government agency to propose opening it up to foreign bidders at a time when U.S. shipping companies need more work, not less, is truly to stand common sense on its head." A commenter accused MARAD of "busily assisting foreign companies in the operation of and management of U.S. Government owned ships while the U.S.-flag merchant marine is dying." Another criticism was that this proposed change in the citizenship requirement "has the further effect of sending defense-related funds, which flow to the ship managers/agents, outside the United States."

Commenters also questioned the wisdom of relying on vessel operators "that are controlled by foreign governments, who at any given time may be unsympathetic or even antagonistic to U.S. policy in time of national emergency." One commenter stated that it was certain that "the United States Department of Defense drew considerable comfort from the knowledge that during Operation Desert Shield and Desert Storm the entire National Defense Reserve Fleet and Ready Reserve Fleet were in the hands of American companies and American crews." Accordingly, it is the belief of these commenters that if any harmonizing of Federal Agency policy is necessary, the interests of our Merchant Marine and the national defense dictate that DOD harmonize its policy with MARAD's existing policy.

One commenter stated that funds received by U.S. operators under MARAD's Ship Management Program help achieve the same objectives in support of the Merchant Marine as statutory promotional programs, i.e., the Jones Act (46 App. U.S.C. 883) and the cargo preference program (46 App. U.S.C 1241).

The only commenter supporting the proposed change in MARAD policy, a noncitizen vessel operator, states that MARAD "is vested with sufficient discretion to ensure that applicants for NDRF agency positions are qualified from a national security perspective. The deletion of the section 2 citizenship requirement will broaden the pool of applicants * * *." This rationale is countered by a comment that "the whole point of having a National Defense Reserve Fleet is to insure that the United States can support its military in time of war or national emergency. Why then allow the ships to

be managed by non-citizens whose interests may not be the same as that of the United States. This proposed action seems at cross purposes with the very reason for having a National Defense Reserve Fleet."

MARAD has carefully considered each of the comments received. It has concluded that the arguments against the proposed change in policy to allow noncitizens to become General Agents and Ship Managers of NDRF vessels are persuasive, especially in light of the current severe plight of the U.S. maritime industry, and that no compelling reason exists, at this time, to initiate this policy change. It is undisputed that U.S. citizen vessel operators have the requisite capability and vessel operational capacity to act as Agents. Also, MARAD is unaware of any significant cost benefit realized by the DOD in utilizing noncitizen vessel operators. We believe that there could be some potential risk to the national interest from relying on noncitizen operators whose governments may not be totally sympathetic to the position of the United States in time of war or national emergency, which is sufficient to militate against adoption of the policy change proposed in the NPRM.

Accordingly, MARAD is not adopting in this final rule the proposed policy change that would have allowed noncitizen Agents to operate NDRF vessels. The requisite section 2 U.S. citizen requirement has been retained and clarified to conform to that recently articulated in 46 CFR part 221.

Rulemaking Analyses and Notice

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule.

It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies, and it is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 25, 1979). Since the magnitude of the economic impact will be minimal, further regulatory evaluation is unnecessary.

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federal implication to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

MARAD certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that there is no environmental impact and that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirements that require approval by the Office of Management and Budget pursuant to provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 46 CFR Part 315

Government contracts, Vessels.

Accordingly, MARAD hereby removes 46 CFR part 331 and revises 46 CFR part 315 to read as follows:

PART 315—AGENCY AGREEMENTS AND APPPOINTMENT OF AGENTS

Sec.

315.1 Purpose.
315.3 Definitions.
315.5 Appointment of agents.
315.7 Administration of agency agreements.
315.9 Duties of Agents.
315.11 Vessel deactivation procedures.

Authority: 50 U.S. C. App. 1744; 49 CFR 1.66.

§ 315.1 Purpose.

This part summarizes the procedures governing the award and administration of Agency Agreements in the form of Service Agreements and Ship Manager Contracts entered into between the United States of America, acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration (MARAD), Department of Transportation, and Agents which will manage or otherwise conduct the business of one or more vessels owned, controlled or time-chartered by the United States, which vessel(s) may be assigned to Agents from time to time pursuant to the specific provisions of a Service Agreement or Ship Manager Contract.

§ 315.3 Definitions.

(a) *Agent* includes a General Agent, Berth Agent and Ship Manager, designated as such under a standard form of Service Agreement or Ship Manager Contract to manage and conduct the business of vessels of which the United States is owner, owner *pro hac vice* or time charterer.

(b) *Citizen of the United States* means a person (including receivers, trustees and successors or assignees of such Persons as provided in 46 App. U.S.C. 803), including any Person (stockholder, partner or other entity) who has a controlling interest in such person, any person whose stock or equity is being relied upon to establish the requisite U. S. citizen ownership, and any parent corporation, partnership or other entity of such Person at all tiers of ownership, who, in both form and substance at each tier of ownership, satisfies the following requirements—

(1) An individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the controlling interest of which is owned by and vested in Citizens of the United States and whose president or chief executive officer, chairman of the board of directors and all officers authorized to act in the absence or disability of such persons are Citizens of the United States, and no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens;

(3) A partnership organized under the laws of the United States or of a State, if all general partners are Citizens of the United States and a controlling interest in the partnership is owned by Citizens of the United States;

(4) An association organized under the laws of the United States or of a State, whose president or other chief executive officer, chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States, no more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are noncitizens, and a controlling interest in which is vested in Citizens of the United States;

(5) A joint venture, if it is not determined by the Maritime Administrator to be in effect an association or partnership, which is

organized under the laws of the United States or of a State, if each conventurer is a Citizen of the United States. If a joint venture is in effect an association, it will be treated as is an association under paragraph (b)(4) of this section, or, if it is in effect a partnership, will be treated as is a partnership under paragraph (b)(3) of this section.

(c) *Director, National Shipping Authority, or Director* means the Maritime Administrator. It also means the Associate Administrator for Shipbuilding and Ship Operations, or the Associate Administrator for Marketing, respectively, when the NSA is operating under authority delegated by the Maritime Administrator.

(d) *NDRF* means a National Defense Reserve Fleet site.

(e) *United States* means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the northern Mariana Islands and any other territory or possession of the United States.

§ 315.5 Appointment of agents.

(a) *Eligibility.* The Director shall restrict the appointment as Agent to qualified applicants. Each applicant shall establish that eligibility according to procedures that may be obtained from MARAD and shall:

(1) Be a Citizen of the United States, as defined in § 315.3(b) of this part;

(2) Demonstrate the necessary ability, experience and resources as an operator of vessels or ports, or shoreside husbander of vessels; and

(3) Continue to meet all such requirements throughout the term of the appointment.

(b) *Procedures.* Information about procedures for appointment as General Agent, Berth Agent or Ship Manager may be obtained from, and inquiries and other written communications shall be submitted to, the Maritime Administration, Attn: Office of Acquisition, MAR–383, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, tel. (202)366–1943. Inquiries should be made during normal business hours.

(c) *Approval.* After final approval of an Agent by MARAD, the contracting office shall transmit the Service Agreement or Ship Manager contract to the Agent for execution and return to MARAD.

(d) *Agreements.* The standard text of the Service Agreement and Ship Manager Contract may be obtained from the Office of Acquisition at the address appearing in paragraph (b) of this section, by mail or in person during normal business hours.

§ 315.7 Administration of agency agreements.

(a) *Amendments.* The MARAD contracting office shall prepare modifications to all Service Agreements and Ship Manager Contracts that are required due to changes in the Federal Acquisition Regulation or Transportation Acquisition Regulation, or changes in MARAD policy or procedure.

(b) *Annual review of General Agent representations and certifications.* The contracting office shall require that each General Agent certify annually that all representations and certifications incorporated in a Service Agreement are current, complete and accurate, or provide new representations and certifications.

§ 315.9 Duties of agents.

The Agent shall perform all duties prescribed in the Service Agreement or Ship Manager Contract and shall be guided by such directions, orders or regulations as may be issued by MARAD.

§ 315.11 Vessel deactivation procedure.

When an Agent is responsible as vessel operator to decommission and deliver a vessel to the NDRF, that Agent shall observe all the procedures and requirements prescribed by MARAD contained in instructions which may be obtained from the MARAD Division of Reserve Fleet (MAR–743) at the address specified in § 315.5(b) of this part. Tel. (202) 366–5752.

By Order of the Director, National Shipping Authority.

Dated: August 17, 1993.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 93–20173 Filed 8–19–93; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Petition No. P2–92; Docket No. 92–42]

Actions To Adjust or Meet Conditions Unfavorable To Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Amended rule.

SUMMARY: The Federal Maritime Commission amends the final rule, issued in this proceeding pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, to extend for 60 days the suspension of the effective date of sanctions imposed on Korean, non-U.S. citizen, owned or controlled ocean freight forwarders and non-vessel-operating common carriers.

EFFECTIVE DATES: This rule amendment is effective August 20, 1993, except §§ 586.4(b), (c), and (d) are effective November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Section 19 of the Merchant Marine Act, 1920, 46 U.S.G. app. 876, as amended by Public Law No. 101–595, 104 Stat. 2979 ("Section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of Section 19 directs the Commission—

> [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

46 U.S.C. app. 876(1)(b).

On November 13, 1992 the Commission issued a final rule in this proceeding in response to a petition for relief ("Petition") filed pursuant to Section 19 by Direct Container Line, Inc. ("DCL") alleging conditions unfavorable to shipping in the United States-Korea trade ("Trade"). DCL, a California corporation operating as a non-vessel-operating common carrier ("NVOCC") in the outbound Trade, had averred that it has been prevented by Korean law from establishing a branch office in Korea and from operating in the inbound Trade. The final rule, published at 57 FR 54311 (November 18, 1992), found that conditions unfavorable to shipping did exist in the Trade as a result of the Korean Maritime Transportation Business Act ("Korean Act"), a statute of the Republic of Korea ("ROK").

In order to meet or adjust the unfavorable conditions found, the final rule imposes sanctions on certain Korean-owned entities operating in the Trade. The final rule provides that the license of any FMC-licensed ocean freight forwarder which is majority

owned by Korean nationals, non-U.S. citizens will be suspended; suspends the tariffs of 54 named Korean-owned NVOCCs and prohibits the payment by ocean common carriers of freight forwarder compensation or brokerage on shipments from Korea to the United States.[1]

The final rule makes the sanctions effective on September 1, 1993, unless the Commission, by further action, withdraws the rule or establishes some other effective date. In order to assess the situation in the Trade prior to effectiveness of the sanctions, interested parties were invited to file comments on or before July 31, 1993.

Actions taken by the ROK in March and June of this year may have substantially fulfilled the ROK's commitments to—

take all necessary measures, including amendment of existing law, to eliminate nationality-based restrictions, so as to allow U.S. forwarding and consolidating entities to set up their own companies or operations for the conduct of direct business activities in Korea by no later than June 30, 1993.

Agreed Minutes of Bilateral Maritime Talks, August 6, 1992. However, in order to fully assess the impact of any legislative and regulatory changes made, and any comments which have or may have been filed, but not yet received by the Commission,[2] we find it necessary to provide additional time for consideration of such changes or comments. We therefore amend the rule by delaying the effective date of the sanctions for an additional 60 days, *i.e.*, to November 1, 1993.

[1] The Commission recognized, however, that bilateral maritime talks between the United States and the ROK held in Washington on August 5–6, 1992, had, in fact, resulted in the assurance that these issues of access by NVOCCs and freight forwarders to the Trade might be substantially resolved by ROK action.

[2] A Request for Discontinuance of this proceeding, based on the actions taken by the ROK to fulfill commitments made in the August 1992 bilateral maritime talks, was filed by the Korean International Freight Forwarders Association on June 8, 1993. DCL filed a Reply to this Request. The Commission has also received a letter from the Acting Maritime Administrator reporting positively on the ROK actions. These filings have been treated as comments filed within the comment period established on publication of the final rule and will be acted upon, along with any other comments received, in further action relating to this rule.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

Therefore, part 586 of title 46 of the Code of Federal Regulations is amended as follows:

PART 586—[AMENDED]

1. The authority citation for part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876 (5) through 12; 46 CFR part 585; Reorganization Plan No. 7 of 1961; 26 FR 7315 (August 12, 1961).

2. Section 586.4(e) is revised to read as follows:

§ 586.4 Conditions unfavorable to shipping in the United States/Korea Trade ("Trade")—Maritime-related services.

* * * * *

(e) *Effective Date.* This section is effective on December 18, 1992, except that §§ 586.4 (b), (c) and (d) are effective November 1, 1993.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–20120 Filed 8–19–93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–3068; I.D. 081793A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for the pelagic shelf rockfish species category in the Central Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to fully utilize the 1993 total allowable catch (TAC) for the pelagic shelf rockfish species category in this area.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), August 18, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The directed fishery for the pelagic shelf rockfish species category in the Central Regulatory Area was prohibited from 12 noon, A.l.t., August 4, 1993, through 12 midnight, A.l.t., December 31, 1993, under § 672.20(c)(2)(ii) (58 FR 42255, August 9, 1993).

The Director of the Alaska Region, NMFS, has determined that 2,736 metric tons remain in the 1993 TAC for pelagic shelf rockfish species in this area as of July 31, 1993. Therefore, NMFS is rescinding the August 4, 1993, closure and is re-opening directed fishing for the pelagic shelf rockfish species category in the Central Regulatory Area effective from 12 noon, A.l.t., August 18, 1993, until 12 midnight, A.l.t., December 31, 1993.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20222 Filed 8–17–93; 3:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 160
Friday, August 20, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

Long-Range Financial Forecasts of Electric Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its pre-loan regulations for electric loans to clarify and revise the requirement that borrowers submit to REA a long-range financial forecast as part of an application for a loan, loan guarantee, or lien accommodation. This proposed rule is intended to strengthen credit practices and to assist borrowers in preparing, and REA staff in reviewing loan applications.

DATES: Written comments must be received by REA or carry a postmark or equivalent by September 20, 1993.

ADDRESSES: Written comments should be addressed to Sue Arnold, Management Analyst, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230-S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Management Analyst, U.S. Department of Agriculture, Rural Electrification Administration, room 2230-S, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this proposed rule.

National Environmental Policy Act Certification

The Administrator of REA has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loan and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this proposed rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control number 0572–0032.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, Room 3201, NEOB, Washington, DC 20503.

Background

REA makes loans and loan guarantees to electric systems to provide and improve electric service in rural areas, as authorized by the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.* (RE Act). On January 9, 1992, at 57 FR 1044, REA published a final rule to add 7 CFR Part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. Subpart G of part 1710 codifies the long-standing requirement that all borrowers prepare a long-range financial forecast acceptable to REA as part of an application for a loan or loan guarantee. On March 5, 1993, at 58 FR 12552, REA published a proposed rule governing accommodations and subordinations of the government's lien on borrowers' systems. Under this regulation, a long-range financial forecast will also be required as part of certain applications for a lien accommodation or subordination.

According to the terms of the RE Act and REA regulations, REA may make a loan only if the Administrator of REA determines that the security therefor is reasonably adequate and such loan will be repaid within the time agreed. OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables, requires that Federal Agencies prescreen loan applications in order to determine the credit worthiness of the applicant and to prevent future delinquencies. A valid determination of an applicant's credit worthiness cannot be made without a long-range financial forecast from the borrower.

REA is proposing to clarify requirements for this forecast. Under the current rule, the forecast must include a full explanation of the assumptions, supporting data, and analysis used (§ 1710.300(c)(4)). The proposed rule will revise this paragraph to clearly set out the items that REA considers necessary components of a "full explanation." The first item, proposed subparagraph (i), the methodology used for the projections, is part of the existing rule. The identification of the organization that prepared the forecast and the software used, and the sources of significant data inputs, proposed in subparagraphs (ii) and (iii), respectively, are similar to the kinds of disclosures that appear on historical financial statements. REA believes that this information is necessary to the Agency in evaluating any inadvertent biases in the forecast or any errors inherent in a computer algorithm.

Subparagraph (iv) will provide that the borrower include a statement addressing the expected useful life of the facilities to be financed by the proposed loan. Paragraph 1710.115(b) of the existing rule states that REA loans must generally be repaid with interest within a period, up to 35 years, that approximates the useful life of these facilities. In order to determine the composite useful life of these facilities, § 1710.115(b) requires that the borrower submit its proposed depreciation rates for these facilities as part of its loan application. The proposed new § 1710.300(c)(4)(iv) is simply intended to set forth the specific loan application document and format for this information. According to this paragraph, the borrower must either (1) certify that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or (2) submit a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. Loan maturity will be based on the weighted average of these useful lives.

Since most loans are based on a two-year construction work plan, and since exact useful life is difficult to predict, REA will generally add two years to the composite average useful life in order to compute loan maturity. In other words, if the weighted average useful life of the facilities is 33 years, the maximum allowable maturity for the loan will be 35 years.

The provisions in proposed subparagraphs (v), (vi), and (vii) requiring reconciliation of apparent discrepancies or variations in information provided by the borrower in different documents, and between the borrower's historical and projected trends are intended to require that the borrower present to REA comprehensive and consistent information in order to demonstrate that its system is viable and that the proposed loan is financially feasible.

REA is further proposing to clarify and revise the provisions for sensitivity analysis and analysis of alternative scenarios in § 1710.300(d). Under the proposed amendment, all forecasts will show as a base case scenario the borrower's estimation of its most probable financial scenario. Since unforeseen events often occur, certain forecasts will show, in addition, a range of less optimistic assumptions for major variables. The proposed amendment will retain the current provisions requiring sensitivity analysis for power supply loans that exceed the smaller of 10 percent of the borrower's total utility plant or $25 million.

In order to simplify the requirement for distribution borrowers, REA is proposing to amend the existing regulation to require sensitivity analysis for forecasts used in support of loans or loan guarantees that exceed 10 percent of the borrower's net utility plant and if the borrower fails to meet certain tests of financial strength. The tests of financial strength in terms of equity as a percentage of total assets, Times Interest Earned Ratio (TIER), and Debt Service Coverage (DSC) are the same as the criteria that REA proposed in 7 CFR 1717.854 for determining a borrower's eligibility for advance approval of a lien accommodation. REA believes the proposed amendment will require sensitivity analyses only where such analysis is necessary to a determination of loan feasibility. Distribution borrowers shall coordinate in advance with the REA General Field Representative so that agreement can be reached on major aspects of the economic studies. The proposed rule will further clarify the requirement by listing examples of the kind of analysis that may be required.

REA may require additional analyses in cases where a borrower faces certain specific risks. Examples of such risks include potential loss of a large load or annexation of a portion of a borrower's service territory.

On the effective date of this regulation the following REA bulletins concerning financial forecasting and planning will be rescinded:

105–4, Financial Management

105–5, Financial Forecast—Electric Distribution Systems

105–7, Long-Range System and Financial Planning—Power Supply Borrowers

In addition, REA proposes rescission of REA Bulletin 5–1, Joint Use of Facilities for Telephone and Electric Service. This bulletin, issued in 1954, and last revised in 1972, deals with agreements between electric and telephone borrowers and with other utilities for joint use of poles. The information in the bulletin is obsolete, and REA believes guidance from REA in this area is unnecessary in today's technological and regulatory environment. In the future, borrowers need submit joint use agreements to REA only at REA request.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated, REA proposes to amend 7 CFR chapter XVII, part 1710, as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Public Law 99–591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Section 1710.300 is amended by revising paragraph (c)(4) and the introductory text of paragraph (d), adding the word "and" at the end of paragraph (d)(3), removing the words "; and" at the end of paragraph (d)(4) and adding in their place a period, removing paragraph (d)(5), and revising paragraphs (e), and (f), and adding paragraph (g) to read as follows:

§ 1710.300 General.

* * * * *

(c) * * *

(4) A full explanation of the assumptions, supporting data, and analysis used in the forecast, including:

(i) The date of the REA approved Power Requirements Study used for load and KWh projections, and the methodology used to project rates, revenue, power costs, operating expenses, plant additions, and other factors having a material effect on the financial statements and on financial ratios such as equity, TIER, and DSC;

(ii) The name of the organization that prepared the forecast, if the forecast was not prepared by the borrower, and the name, version, and release of any software program(s) used;

(iii) The sources of all data and assumptions for major variables not directly produced by the borrower that materially affect the financial forecast. Some examples of such inputs include future cost projections for purchased power provided by a power supplier, and load projections from large industrial customers;

(iv) Information on the borrower's proposed depreciation rates for the plant additions to be financed by the proposed loan for use by REA in determining loan maturity, as required by § 1710.115(b). This information must provide a certification that the proposed depreciation rates fall within the ranges deemed appropriate by REA, as set forth in Bulletin 183-1, or its successor, and either:

(A) If at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, a certification so stating; or

(B) If more than 10 percent of the loan funds are for facilities with a useful life of less than 33 years, a schedule of proposed depreciation rates for those facilities that have a useful life of less than 33 years;

(v) A reconciliation of any apparent inconsistencies or differences between the projections shown in the financial forecast and projections contained in other documents submitted by the borrower to REA;

(vi) A reconciliation of any apparent inconsistencies or differences between the projections shown in the financial forecast and the borrower's history as shown on its year-end Financial and Statistical Reports or other documents submitted to REA. This historical comparison must cover a period of not less than three years prior to the loan application;

(vii) A statement of the borrower's current policy on retirement of capital credits, and a discussion of any differences between this policy and the assumptions used for projected retirements; and

(viii) Any other information considered by the borrower or by REA to be relevant.

* * * * *

(d) The following plans, studies, and assumptions shall be used in developing the financial forecast and may be cross-referenced as appropriate:

* * * * *

(e)(1) The financial forecast shall show, as a base case, the most probable scenario, based on actual plans of the borrower and most realistic assumptions about the technological, business, and regulatory environment.

(2) For power supply borrowers, in addition to the base case, the forecast shall show a reasonable range of assumptions for the major variables to test the sensitivity of the results to changes in assumptions, if the financial forecast is used in support of a loan or loan guarantee request that exceeds the smaller of 10 percent of the borrower's total utility plant, or $25 million.

(3) For distribution borrowers, in addition to the base case, a forecast used in support of a loan or loan guarantee exceeding 10 percent of the borrower's net utility plant shall show a reasonable range of assumptions for the major variables to test the sensitivity of the results to changes in assumptions, unless the borrower meets the conditions set forth in paragraph (e)(3)(i) or (ii) of this section:

(i) The ratio of the borrower's equity, less deferred debits (expenses), to total assets is at least 40 percent at the time of the loan application, and is not less than 37 percent after taking into account the effect of the proposed loan, and the borrower has achieved a TIER of at least 1.5 and a DSC of at least 1.25 in each of the 3 calendar years immediately preceding the loan application; or

(ii) The ratio of the borrower's equity, less deferred debits (expenses), to total assets is at least 35 percent at the time of the loan application, and is not less than 32 percent after taking into account the effect of the proposed loan, and the borrower has achieved an operating TIER (OTIER) of at least 1.5 and an operating DSC (ODSC) of at least 1.25 in each of the 3 calendar years immediately preceding the request for a loan. For the purpose of this paragraph, ODSC and OTIER shall be calculated as follows:

$$ODSC = \frac{A+B+C}{D}$$

and

$$OTIER = \frac{B+C}{B}$$

where:

A = Depreciation and Amortization Expense, which equals Part A Line 12 of REA Form 7;

B = Interest on Long-term Debt, which equals Part A Line 15 of REA Form 7, except that Interest on Long-Term Debt shall be increased by 1/3 of the amount, if any, by which Rentals of Restricted Property (Part M, Line 3 of REA Form 7) exceed 2 percent of Total Margins and Equities (Part C, Line 33 of REA Form 7);

C = Patronage Capital and Operating Margins, which equals Part A, Line 20 of REA Form 7; and

D = Debt Service Billed (REA + Other) which equals all interest and principal billed during the calendar year plus 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7) exceeds 2 percent of Total Margins and Equities (Part C, Line 33 of REA Form 7).

(4) REA may, on a case by case basis, require additional sensitivity analysis or other information or tests if REA determines that such analyses are necessary to make a determination of the feasibility or security of the proposed loan.

(f) The financial forecast shall use the accrual method, as approved by REA, for analyzing costs and revenues, and, as applicable, compare the economic results of the alternatives on a present value basis.

(g) REA may obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports may also be reviewed for parties that are or are proposed to be joint owners of a project with a borrower, or for parties that are or are proposed to be large consumers of a borrower.

3. Section 1710.301 is amended by removing the word "and" at the end of paragraph (b)(2), removing the period at the end of paragraph (b)(3) and adding in its place the words "; and", and adding a new paragraph (b)(4) to read as follows:

§ 1710.301 Financial forecasts—distribution borrowers.

* * * * *

(b) * * *

(4) Include sensitivity analysis if required by REA pursuant to § 1710.300(e)(3). The borrower shall coordinate in advance with REA concerning the scope of the sensitivity analysis and the variables to be tested. Examples of sensitivity analysis that might be used are:

(i) Effects of a 100 to 200 basis point increase in the financing interest rate;

(ii) Effects of power costs 10 percent above the cost projected in each year of the base case scenario;

(iii) Effects of a 50 percent reduction in the annual rate of projected load growth;

(iv) Effects of loss of a large load;

(v) Effects of annexation of a portion of the borrower's service area; and

(vi) Effects of a 20 percent or more increase in construction costs.

Dated: August 9, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–20110 Filed 8–19–93; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–86, Notice No. SC–93–4–NM]

Special Conditions: Airbus Industrie Model A330 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus Industrie Model A330 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

DATES: Comments must be received on or before October 4, 1993.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–86, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM–86. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797, facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–86." The postcard will be date stamped and returned to the commenter.

Background

Special conditions are prescribed under the provisions of § 21.16 of the FAR when the applicable regulations for type certification do not contain adequate or appropriate standards because of novel or unusual design features. The new Airbus Model A330 incorporates a number of such design features.

Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, has applied for French type certification of their Model A330 by the French Direction General de l'Aviation Civile (DGAC) in accordance with existing European standards and for U.S. type certification under the provisions of a bilateral agreement between the governments of the U.S. and France.

The bilateral agreement was reached in 1973 to facilitate French acceptance of aeronautical products exported from this country and of such products imported from France. It provides, in part, for U.S. acceptance of certification by the DGAC that a product, in this case the Model A330, complies with the applicable U.S. laws, regulations and requirements (the U.S. type certification standards). Alternatively, the bilateral agreement provides for U.S. acceptance of certification by the DGAC that the product complies with the applicable French laws, regulations and requirements (the French type certification standards) plus any additional requirements the U.S. finds necessary to ensure that the product meets a level of safety equivalent to that provided by the U.S. type certification standards.

The type certification standards of both the U.S. and France are amended from time to time to impose more stringent standards and to reflect the advancing state of the art in aircraft technology. As provided in the bilateral agreement, the type certification standards of the importing country used (in this case the U.S.) are those in effect on the reference date (reference date is defined as "the date of the airworthiness laws, regulations, and requirements applied to the certification of the product in the exporting state) for the type certification basis of the exporting country (France). The reference date for the French type certification basis is June 15, 1988, and is therefore the date that establishes the U.S. type certification standards.

The DGAC has elected to certify that the Model A330 complies with the French type certification standards plus any additional requirements identified by the FAA. Based on the above reference date, the DGAC has advised that the French type certification standards include Joint Airworthiness Requirements-25 (JAR–25) with Changes 1 through 12 thereto, and Joint Airworthiness Requirements-All Weather Operations (JAR–AWO). In addition, Airbus has elected to comply with certain portions of JAR–25 as further amended by Change 13.

Joint Airworthiness Requirements-25 is a document developed jointly and accepted by the airworthiness authorities of various European countries, including France, for type certification of transport category airplanes. It is similar to part 25 of the FAR; however, there are certain specified differences in the requirements of the two documents.

Based on this same reference date, the U.S. type certification standards are part 25 of the FAR, as Amended by Amendments 25–1 through 25–63 thereto, and the special conditions proposed in this notice. (As noted above, special conditions are prescribed under the provision of § 21.16 when the applicable regulations for type certification do not contain adequate or appropriate safety standards because of a novel or unusual design feature.) Airbus has elected to comply with portions of part 25 amended by Amendments 25–64 applicable to passenger seats. In addition, Airbus has also elected to comply with the sections of part 25 amended by Amendments 25–65, 25–66 and 25–77.

Special conditions are also prescribed by the DGAC when JAR–25 does not contain adequate or appropriate safety standards. In order to preclude confusion with the special conditions proposed in this notice, those special conditions will be referred to herein as the "French special conditions."

Because the DGAC has elected to certify that the Model A330 complies with the French type certification standards, the FAA will make a comparison of the French type certification basis and the U.S. type certification standards described above. Based on this comparison, the FAA will prescribe any additional requirements that are necessary to ensure that the Model A330 meets a level of safety equivalent to that provided by the U.S. type certification standards. The U.S. type certification basis for the Model A330 will, therefore, consist of the French type certification basis, these additional requirements, and the special conditions proposed in this notice.

Noise certification is beyond the scope of the bilateral agreement; however, French test data are accepted by separate arrangement. The French noise certification basis is their "Arrete" (order) dated November 26, 1991 (ICAO Annex 16). The U.S. noise certification basis for the Model A330 is part 36 of the FAR, as amended by Amendments 36–1 through 36–18 and subsequent amendments adopted prior to the date on which the U.S. type certificate is issued. French noise certification test data will be reviewed by the FAA for compliance with the U.S. noise certification basis. In addition to compliance with part 36, the statutory provisions of Public Law 92–574, "Noise Control Act of 1972," require that the FAA issue a finding of regulatory adequacy pursuant to section 611 of the Act.

The Model A330 must also comply with the fuel venting and exhaust emission requirements of part 34 of the FAR, including any amendments in effect on the date the type certificate is issued. Emission requirements are also beyond the scope of the bilateral agreement; however, certification of compliance by the DGAC will be accepted by separate arrangement.

A330 Design Features

General

The Model A330 airplane presented for U.S. type certification is a two engine, transport category airplane designed to serve high growth, high density regional routes but with the capability to operate on extended range international routes. There exists a high level of commonality between the Model A330 and the previously type certificated Model A340. The airframes of the two models are largely the same and line replaceable unit commonality is about 90 percent. The Model A330 is powered by General Electric CF6–80E1, Pratt & Whitney PW4000, or Rolls-Royce Trent 700 engines. The basic thrust ratings on these engines are 67,500 lbs., 64,000 lbs. and 67,500 lbs. respectively. The airplane has a seating capacity in a typical two class configuration of 335 and a range of 4500 nautical miles. The maximum takeoff weight is 467,400 lbs. The maximum landing weight is 383,600 lbs. The maximum operating altitude is 41,000 ft.

The structure of the A330 is generally of conventional design and construction, but with considerable use of composite materials. Elements of the primary structure (the fin and horizontal tail) are constructed of composites, as well as components such as flaps, spoilers, ailerons, and engine cowls. The composite horizontal tail is also an integral fuel tank, both inboard and outboard of the fuselage contour. The structural design also makes use of a speed limiting system, and the electronic flight control system provides the potential for a wide range of structural and system interactions.

The Model A330 utilizes fly-by-wire (FBW) flight controls for the elevators, ailerons, spoilers, tailplane trim, slats and flaps, speed brakes, trim in yaw, and engine control. The aerodynamic surfaces are positions relative to the pilot's command by electronic signals sent via airplane wiring from the flight control computers to hydraulic actuators. Conventional mechanical control is provided for the rudder and tailplane trim hydraulic actuators. Should a short-term interrupt occur in the electronic flight controls, flight could be maintained for a period of time through the use of mechanical control of rudder and tailplane trim.

Hydraulic power to the flight control system is simultaneously provided by three independent hydraulic systems. Functions are shared among these systems in order to ensure airplane control in the event of loss of one or two systems. The three systems are pressurized by variable displacement pumps driven by the engine accessory gearbox. In addition, the systems can be powered by electrically driven pumps.

Normal electrical power is supplied by two constant frequency generators, one on each engine. An auxiliary power unit (APU)-driven electrical generator is also available. Two batteries and a hydraulically driven constant speed motor generator (CSMG) provide an alternative source of electrical power for the continuous operation of the A330 fly-by-wire flight controls. The CSMG is powered by the green hydraulic circuit which is powered by the hydraulic pumps of engine(s) one and/or two. The CSMG can also be powered by the ram air turbine (RAT) which is automatically deployed in case of loss of the green hydraulic power. Deployment of the RAT may also be selected manually by pushing an electrical switch.

The engine control system consists of a dual channel full authority digital engine control (FADEC). Each FADEC interfaces with various airplane computer systems. The FADEC provides gas generator control, engine limit protection, power management, thrust reverser control, and engine parameter inputs for the flight deck displays. In addition to control of the engines from the flight deck through changes in power lever position, an autothrust mode is provided that commands thrust changes directly to the FADEC without a corresponding change in power lever position. In this mode of operation, the position of the power lever sets the upper limit for thrust, except when alpha floor is reached. Alpha floor is a design feature in the airplane whereby, upon reaching a specific angle of attack, the engines are automatically commanded to full thrust, regardless of lever position, to provide high angle-of-attack (AOA) protection. The autothrust mode can be disengaged by pushing a button on the power lever. The engine FADEC and associated airplane related systems form the complete propulsion control system.

Pitch and roll control inputs are made through flight deck side-stick controllers mounted on the lateral consoles of the pilot and copilot positions, in place of central control columns. The flight instruments are displayed on six cathode ray tube (CRT) displays. Two CRT's are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two CRT's are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The proposed type design of the A330 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards and therefore special conditions are considered necessary in the following areas:

Systems

1. Operation Without Normal Electrical Power

In the A330, a source of electrical power is required by the electronic flight control system. Service experience with traditional airplane designs has shown that the loss of electrical power generated by the airplane's engines is not extremely improbable. The electrical power system of the A330 must therefore be designed with standby or emergency electrical sources of sufficient reliability and capacity to power essential loads in the event of the loss of normally generated electrical power. The need for electrical power for electronic flight controls was not envisioned by part 25 since in traditional designs, cables and hydraulics are utilized for the flight control system. Therefore, Special Condition No. 1 is proposed.

2. Electronic Flight Control System (EFCS) Failure and Mode Annunciation

The A330 flight control system architecture utilizes redundant elements, as well as alternative operational modes, to deal with losses of equipment and/or signal interfaces.

Existing part 25 has been considered adequate for stability and automatic flight systems in traditional airplane designs because those designs did not have submodes of operation (they are either on or off), the airplane handling qualities were adequate with the systems either on or off, and the systems were not actively participating in load relieving functions. These rules are not sufficient for the A330 because they do not address differences in handling qualities and levels of envelope protection between submodes of operation and because elements of the automatic system must remain active in order to maintain safe flight and landing. Therefore, Special Condition No. 2 is proposed.

3. Command Signal Integrity

Command and control of the control surfaces will be achieved by fly-by-wire systems that will utilize electronic interfaces (AC, DC, or digital data buses). These interfaces involve not only the commands to the control surfaces, but all the control feedback and sensor input signals as well. These signal paths, as well as the digital electronics that manage them, can be susceptible to spurious signals that may cause unacceptable or unwanted control responses. These spurious signals may originate from electromagnetic or electrostatic sources, or from failures of subsystems in the control loop. Therefore, special designs are needed to maintain the integrity of the fly-by-wire interfaces to an immunity level equivalent to that of traditional hydro-mechanical designs. In addition, similar to the conventional steel cable controls, routing of wire bundles must provide separation and redundancy to ensure maximum protection from damage due to a common cause. Therefore, Special Condition No. 3 is proposed.

4. Protection From Lightning and Unwanted Effects of High Intensity Radiated Fields (HIRF) and Radio Frequency (RF) Energy

The use of fly-by-wire designs to command and control engines and flight control surfaces increases the airplane's susceptibility to lightning and HIRF sources external to the airplane. The airworthiness regulations do not provide adequate requirements for protection from lightning and unwanted effects of HIRF.

Lightning interaction with an airplane can result in numerous problems. Physical damage (direct effects) can result from a lightning attachment to the airplane. Such damage is characterized by burning, eroding, and blasting, and is the consequence of either the extreme heat loading and accompanying acoustic shock wave, or deforming by magnetic forces from the high current component of lightning. An additional effect (indirect) results from the fast changing electrical and magnetic fields produced by the high currents of a direct or near strike. These fields can couple voltage transients into the airplane wiring and subsequently reach the electrical and electronic systems within.

High intensity radiated fields also have the potential to cause adverse and potentially hazardous effects on fly-by-wire systems if design measures are not taken to ensure the immunity of such systems. This is particularly true with the trend toward increased power levels from ground based transmitters and the advent of space and satellite communications.

The A330 is being designed with only electrical interfaces between crew inputs and: (1) The elevator, aileron, spoiler flight control surfaces and, (2) the engines. These interfaces, and the interconnection among the electronic subsystems controlling these functions, can be susceptible to disruption of both command/response signals and the operational mode logic as a result of electrical and magnetic interference. Traditional airplane designs have utilized mechanical means to connect the primary flight controls and the engine to the flight deck. This traditional design results in control paths that are substantially immune to the effects of lightning strike and effects of HIRF. A special condition is required to ensure that critical and essential systems be designed and installed to preclude component damage and system upset or malfunction due to both the direct and indirect effects of lightning, and the unwanted effects of HIRF. Therefore, Special Condition No. 4 is proposed.

Airframe

1. Interaction of Systems and Structures

The airplane has a full time electronic flight control system in the pitch, yaw, and roll axes and automatic trim of the horizontal stabilizer. These systems can directly, or as a result of failure or malfunction, affect structural performance. This degree of system and structures interaction was not envisioned by the structural design regulations for transport airplanes contained in part 25. To provide comprehensive criteria in which the structural design safety margins are dependent on systems reliability, Special Condition No. 5 is proposed.

2. Structural Design Speed With a Speed Protection System

The structural design dive speed is established in order to provide structural integrity during inadvertent overspeed above the maximum operating speed. The A330 has an overspeed protection systems as well as protection against extreme attitudes (pitch and roll) and stall. These systems provide for automatic protection against inadvertent upset and subsequent overspeed which was not envisioned by § 25.335(b). That section provides criteria for establishing the structural design dive speed which accounts for inadvertent upsets and inadvertent overspeeds which could result from pilot inattention. This is provided by assuming that the airplane is in a prescribed dive condition for a specified time that includes pilot recognition and reaction time. These criteria do not take into account systems which automatically protect against inadvertent upsets and which automatically initiate recovery. Therefore, to establish appropriate criteria for determining an adequate structural design dive speed with speed protection, Special Condition No. 6 is proposed.

3. Design Maneuver Requirements

In a conventional airplane, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. In the A330,

the pilot provides only one of several inputs to the control surfaces, and it is possible that the pilot control displacements specified in §§ 25.331(c)(1), 349(a), and 351 of the FAR may not result in the maximum displacement and rates of displacement of the elevator. The intent of these noted rules may not be satisfied if literally applied. Because of certain bank angle and roll rate limits provided by the electronic flight control system, it may not be possible to obtain full aileron deflections at the design maneuvering speed (V_A). On the other hand, the flight control system may, under some conditions, produce higher aileron spoiler or elevator deflections than the pilot input is capable of providing. Therefore, Special Condition No. 7 is proposed.

4. Limit Pilot Control Forces

The pilot effort loads in § 25.397(c) for the cockpit pitch and roll controls are based on a two-handed effort with conventional controls. In the A330, the cockpit pitch and roll controls are designed for a one-handed operation. Therefore, to provide structural design pilot effort loads for the side stick controllers, Special Condition No. 8 is proposed.

5. Tailtank Emergency Landing Loads

The A330 carries fuel in the horizontal tail. Since the horizontal tailtank is located to the rear and above the fuselage, the failure of this tank in an emergency landing could result in fuel spillage on, and adjacent to, the rear fuselage and rear emergency exits. Section 25.963(d) provides structural design criteria for fuel tanks that could become a hazard from spillage in an emergency landing, however, this applies only to tanks inside the fuselage contour. Therefore, to provide emergency landing design load factors for the tail tank, Special Condition No. 9 is proposed.

6. Limit Engine Torque Loads

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned by § 25.361(b) when the engine seizure requirement was first adopted. Engines have grown much larger and are now designed with large bypass fans capable of producing much higher torque loads if they become jammed.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines as used in the A330 are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines. The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the Airbus A330 type designs.

The proposed criteria distinguish between the more common seizure events and those rare seizure events resulting from structural failures. For these more rare but severe seizure events, the proposed criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher factor of safety for those structures. To provide appropriate structural design criteria for the engine torque on the A330, Special Condition No. 10 is proposed.

Flight Characteristics

The A330 will employ an EFCS which has no direct coupling from controllers to surfaces in pitch and roll; it has response-command control laws in these axes for primary operating modes, and it has designated back-up control laws that are utilized when the normal operating state is unavailable. With fully augmented airplanes like the A330, almost all the flying qualities characteristics are independent of each other, and individual characteristics cannot, therefore, be used as predictors of acceptable flying qualities in other areas.

1. Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases

The technology of the A330 EFCS has outpaced existing regulations (written essentially for unaugmented airplanes with provisions for limited ON/OFF augmentation). The existing regulations assume that the pilot receives immediate direct feedback in response to control inputs, but this is not the case for an EFCS airplane. Interpretive material for § 25.672(c) and related subpart B requirements of the FAR need to be provided to aid in evaluating EFCS failure cases. Therefore, Special Condition No. 11 is proposed.

2. Longitudinal Stability

The A330 and similar airplanes with command-type control systems lacking airspeed or angle of attack (AOA) feedback will not pass the current part 25 demonstration for "static longitudinal stability," even though the basic airframe may have constant Mach gust stability. In the "normal" flight regime, these airplanes have short-term flight path stability, tending to hold zero pitch rate or 1-g normal to the flight path when stick force is zeroed at a new speed away from initial trim. Benefits for such a command-control system are quick, accurate pitch response, minimization of pitch overshoots, and lack of transients associated with gear/flap/speed brake extension and thrust changes. Pilot adaptation and pilot ratings have been favorable for airplanes of this type for most of the flight envelope and flight phases. Because the A330 does no meet the part 25 requirements for static longitudinal stability, and since the pitch damping is also defined by the control laws, the simple requirement for "heavy damping" may not be appropriate for this design. Therefore, Special Condition No. 11 is proposed.

3. Lateral-Directional Stability

Because of the A330 roll axis design feature in which aileron force commands roll rate, a stabilized constant heading sideslip will result in zero aileron forces, which does not comply with § 25.177 of the FAR. This condition will exist for bank angles up to 33°. Therefore, Special Condition No. 11 is proposed.

4. Control Surface Awareness

With a response-command type flight control system and no direct coupling from cockpit controller to control surface, the pilot is not aware of actual surface position utilized to fulfill the requested demand. Some unusual flight condition, arising from atmospheric conditions and/or airplane or engine failures, may result in full or near-full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or auto-flight system control of the airplane might be inadvertently constrained in such a manner to cause an unsatisfactory stability or performance characteristic. Therefore, Special Condition No. 11 is proposed.

Flight Envelope Protection

1. General Limiting Requirements

The manufacturer has elected to develop extensive flight envelope protection features integral to the basic EFCS design. Envelope protection parameters include AOA, normal load factor, bank angle, pitch angle, and speed. To accomplish this envelope limiting, a significant change (or multiple changes) occurs in the EFCS control laws as the limit is approached, or exceeded. When EFCS failure states occur, envelope protection features can likewise either be modified or, in some cases, eliminated. The current regulations were not written with comprehensive envelope-limiting systems in mind. Therefore, Special Condition No. 12 is proposed.

2. Angle-of-Attack Limiting

The A330 design incorporates a low speed protection feature (alpha limit) which cannot be overridden by the flightcrew. When operating normally, the low speed protection system limits the ability to demonstrate steady speeds lower than, essentially, 1.06 times the 1-g stall speed (V_{SIG}), i.e., at coefficients of lift (C_L) less than the maximum aerodynamic coefficient of lift (C_{LMAX}). Airbus Industrie believes that the strict application of § 25.103 of the FAR will impose a takeoff and landing performance penalty on the A330 in comparison with conventional-control airplanes.

Stalling speed (V_S) is defined as $V_S = V_{CLMAX}/\sqrt{N_{NZ}}$, where N_{NZ} is the normal flight path load factor. The speed is determined from the certification stalling maneuver with all aspects of the EFCS operating normally, except auto thrust is disengaged or overridden and a higher than production AOA limit is set so that aerodynamic C_{LMAX} can be achieved. The flight characteristic at the AOA for C_{LMAX} must be suitable in the traditional sense at forward and aft center of gravity (CG) in straight and turning flight at IDLE power. Although for a normal EFCS and a steady full aft stick, this AOA for C_{LMAX} cannot be achieved, the AOA can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

A re-definition of the stalling reference speed for the A340 will have impact on various performance and flying qualities requirements currently prescribed in part 25. Areas of re-evaluation are principally: (1) Factors for trim speed and speed range requirements for flying qualities tests, and (2) the operating speed selection for performance conditions and tests. Therefore, Special Condition No. 12 is proposed.

3. Normal Load Factor (g) Limiting

The A330 flight control design incorporates normal load factor limiting on a full-time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The limiting feature is active in all normal and some alternate flight control modes and cannot be overridden by the pilot. This feature is unique in that traditional airplanes are limited in the pitch axis only by the elevator surface position limit, which is normally sized for adequate controllability and maneuverability but which may allow limit structural design values to be exceeded. Therefore, Special Condition No. 12 is proposed.

4. High-Speed Limiting

The longitudinal control law design of the A330 incorporates an overspeed protection system in the normal mode; this would prevent the pilot from inadvertently or intentionally exceeding a speed equivalent to the maximum speed for stability characteristics (V_{FC}) or attaining the maximum demonstrated flight diving speed (V_{DF}). The regulations do not contain requirements for a high speed limiter which might preclude or modify flying qualities assessments in the overspeed region. Therefore, Special Condition No. 12 is proposed.

5. Pitch and Roll Limiting

Airbus Industrie proposes to implement pitch and roll attitude limiting via the EFCS normal modes that will prevent the pilot from commanding pitch attitudes greater than approximately +35° and −15° body attitude and roll angles greater than ±65°. In addition, positive, artificial spiral stability is introduced for roll angles greater than 33° for speeds below the maximum operating limit speed (V_{MO}) or the maximum operating limit Mach (M_{MO}) and 0° for speeds above V_{MO}/M_{MO}. At speeds greater than V_{MO} and up to V_{DF}, maximum aileron force will command only 40° maximum bank. Conventional airplanes are not limited in pitch and roll. While limits may provide certain benefits such as protection from upsets, these limits should not restrict normal and emergency maneuvering. Therefore, Special Condition No. 12 is proposed.

Side Stick Controllers

1. Pilot Strength

The A330 design incorporates side stick controllers for pitch and roll in lieu of conventional wheel controls. The temporary and prolonged force requirements of § 25.143(c), and related flying qualities force requirements in other paragraphs, are valid for wheel control only. Appropriate force requirements must be established for side stick controllers. Therefore, Special Condition No. 13 is proposed.

2. Controller Coupling

The side stick controllers are not mechanically interconnected, as in conventional airplanes; instead, electronic coupling is used to meet the requirements of § 25.671 of the FAR. Therefore, Special Condition No. 13 is proposed.

3. Pilot Control

Side stick controllers for A330 pitch and roll are a relatively new controlling method for transport airplanes. The regulations do not address these types of airplane controlling devices. Therefore, Special Condition No. 13 is proposed.

4. Autopilot Quick-Release Control Location

The A330 autopilot quick-release is located on the side stick controllers. Since the A330 do not have a yoke, the A330 cannot literally comply with the regulations. Therefore, Special Condition No. 13 is proposed.

Airplane Flight Manual

The A330 flight manual performance section will eliminate traditional performance charts and replace them with reference to a computer-based, first principles calculation method, and corresponding data files which will yield the same information. The computer program proposal is ground-based, and not related to onboard processing or up-linking. This proposal requires a different interpretation of the relevant regulations (particularly § 25.1587(b)) since the required performance information would not be in a directly usable form in the airplane flight manual (AFM) itself. Therefore, Special Condition No. 14 is proposed.

Special conditions may be issued and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in

accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and effects only the manufacturer who applied to the FAA for approval of these features on the airplanes.

List of Subject in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Industrie Model A330 series airplanes.

1. Operations Without Normal Electrical Power

In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Discussion: The Electronic Flight Control System installations establish the criticality of the electrical power generation and distribution systems, since the loss of all electrical power may be catastrophic to the aircraft.

The A330 fly-by-wire control system requires a continuous source of electrical power in order to maintain the flight control system. The current § 25.1351(d), "Operation Without Normal Electrical Power," requires safe operation in visual flight rules (VFR) conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control while the crew took time to sort out the electrical failure and was able to re-establish some of the electrical power generation capability.

In order to maintain the same level of safety associated with traditional designs, the A330 design must not be time limited in its operation without the normal source of engine generated electrical power. It should be noted that service experience has shown that the loss of all electrical power which is generated by the airplane's engines is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing with the use of its emergency electrical power systems (batteries, auxiliary power unit, hydraulic motor driven generator, etc.). This emergency electrical power system must be able to power loads that are essential for continued safe flight and landing. Also, the availability of emergency electrical power sources, including any credit taken for APU start reliability, must be validated in a manner acceptable to the FAA.

The emergency electrical power system must be designed to supply:

—Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system;
—Electrical power required for continued safe-flight and landing;
—Electrical power required to restart the engines.

For compliance purposes:

1. A test demonstration of the loss of normal engine generated power is to be established such that:

a. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

b. After the unrestorable loss of the source of normal electrical power, the airplane engines must be capable of being restarted and operations continued in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbojet transport category airplanes will not have to remain in IMC for more than 30 minutes after experiencing the loss of normal electrical power).

c. After 30 minutes of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight and landing in VMC conditions. The length of time in VMC conditions must be computed based on the maximum flight duration capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

2. Since the availability of the emergency electrical power system operation is necessary for safe flight, this system must be available before each flight.

3. The emergency electrical power system must be shown to be satisfactorily operational in all flight regimes.

2. Electronic Flight Control System (EFCS) Failures and Mode Annunciation

(a) In lieu of compliance with § 25.672(c) of the FAR, it must be shown that after any single failure or combination of failures of the flight control system that are not shown to be extremely improbable—

(1) The airplane has the following characteristics:

(i) Suitable handling qualities (Refer to proposed FAA Special Condition No. 11, entitled "Flight Characteristics," paragraph (a) "Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure causes."

(ii) Structural margins as identified by proposed FAA Special Condition No. 5, entitled "Interaction of Systems and Structures."

(2) The airplane has suitable handling qualities for continued safe-flight and landing.

(b) In addition to § 25.672 of the FAR—

(1) If the design of the electronic flight control or any other automatic or power-operated system has submodes of operation that significantly change or degrade the flight or operating characteristics of the airplane, a means must be provided to indicate to the crew the current submode of operation. Crew procedures must be available to ensue safe and proper operation for the annunciated flight control submode; and

(2) The electronically signalled flight control system (including its electrical or hydraulic power supplies), must be designed so that its total loss is shown to be extremely improbable if its loss would prevent continued safe flight and landing.

Discussion: The A330 flight control system requires the use of electronics in order to maintain safe flight and landing. To achieve this level of availability, the system architecture utilizes redundant elements as well as alternative operational modes to deal with losses of equipment and/or signal

interfaces. For the case of temporary loss of the electronics, short term safe-flight is anticipated to be maintained through the use of mechanical control of the rudder and pitch trim. §§ 25.671 and 25.672 in subpart D "Design and Construction," are the pertinent rules covering flight control system. Section 25.672 contains the design guidelines for automatic and power-operated systems of the aerodynamic control surfaces. This regulation, in essence, states that the design must; (a) Provide a warning for failures in the system which could result in an unsafe condition which requires crew attention (i.e., a "red" condition of § 25.1322); (b) allow for crew counteraction of failures specified in § 25.671(c) either by deactivation or overriding the control movement in a normal sense; (c) that single failures of the system do not impair the handling qualities below a level needed to permit continued safe flight and landing after control system malfunctions associated with: (1) All single failures excluding jams, (2) combinations of failures not shown to be extremely improbable excluding jams, and (3) jams in any control position which can be encountered in flight; and (d) the airplane be controllable if all engines fail.

These rules have been considered adequate for stability and automatic flight systems in traditional aircraft designs since those designs did not have submodes of operation (they are either on or off), the aircraft handling qualities were adequate with the systems either on or off, and the systems were not actively participating in load relieving functions. However, with the A330, elements of the automatic system must remain on in order to maintain safe-flight and landing. Therefore, in order to maintain the level of safety provided for by the regulations for these novel and unusual features, special conditions are necessary.

Suitable handling qualities, for the purpose of this special condition are those determined from compliance with Special Condition No. 11(a).

Note that Special Condition No. 11(a) is also proposed in lieu of § 25.672(c).

3. Command Signal Integrity

In addition to compliance with § 25.671 of the FAR, it must be shown that the Electronic Flight Control System (EFCS) signals cannot be altered unintentionally, or that the altered signal characteristics are such that:

(a) Stable gain and phase margins will be maintained for all aerodynamically closed loop flight control systems.

(b) The control authority characteristics will not be degraded to a level that will prevent continued safe-flight and landing.

Failures which would otherwise prevent the airplane from continued safe flight and landing need not be considered, provided they are extremely improbable.

Discussion: The A330 will be using fly-by-wire (FBW) as a means to command and control flight control surface actuators. In the FBW design being presented, command and control of the control surfaces will be achieved by electronic interfaces (AC, DC, or digital data buses). These interfaces involve not only the direct commands to the control surfaces, but all the feedbacks and sensor signals as well.

In fly-by-wire systems, the occurrence of spurious signals coupling into the command signal loop may lead to unacceptable system response, with consequent flight hazards. Malfunctions could cause system instabilities, loss of function or freeze-up of the control actuator. It is imperative that the command signal remain continuous within the sampling interval and no command signal discontinuities shall be observed when sampling successive finite time intervals.

The current regulations, which primarily address hydro-mechanical flight control systems, §§ 25.671 and 25.672, make no specific or implied reference that command and control signals remain unaltered from internal or external interferences. Present designs feature steel cables and pushrods as a means to control hydraulic surface actuators. These designs are inherently immune to electromagnetic spurious signals, unlike the FBW designs which may exhibit a safe degree of immunity only after special attention.

It should be noted:

—The proposed wording "signals cannot be altered unintentionally" is used in the Special Condition to emphasize the need for design measures to protect the FBW control system from the effects of electromagnetic interference (EMI and RF), fluctuations in electrical power, accidental damaged caused by uncontained rotary machinery debris (engine burst is addressed in § 25.903d), environmental factors such as temperature, local fires, and any other spurious signals or disruptions that affect the command signals as they are being transmitted from their source of origin to the Power Control Actuators.

—Again margin is the minimum change in loop gain, at nominal phase, which results in an instability beyond that allowed as a residual oscillation.

—A phase margin is the minimum change in phase, at a nominal loop gain, which results in an instability.

—"Control authority characteristics" refers to the ability of the aerodynamic control surfaces to move the airplane.

—"Aerodynamically closed loop" are those elements (electrical signals, cables, bellcranks, etc.) which connect sensors and command signals to the Power Control Actuator that moves the aerodynamic control surface (aileron, spoiler, stabilizer, etc.).

4. Protection From Lighting and Unwanted Effects of High Intensity Radiated Fields (HIRF) and Radio Frequency (RF) Energy

(a) In the absence of specific requirements for protection from the unwanted effects of HIRF, the following apply:

Each airplane system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

Discussion: The Airbus A330 airplanes will utilize electrical and electronic systems which perform critical functions. These systems include the electronic displays, integrated avionics computer, electronic engine control, engine overspeed/overtemperature protection, etc. The existing airworthiness regulations do not contain adequate or appropriate safety standards for the protection from the effects of HIRF which are external to the airplane.

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of HIRF energy from ground-based and airborne transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, the immunity of the airplane to HIRF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

For the purpose of this special condition, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

At this time the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service. Therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the critical systems, as installed in the airplane, are protected from the external HIRF threat environment defined in the following table:

Frequency	Field strength (V/m)	
	Peak	Average
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz–1 GHz	4020	935
1 GHz–2 GHz	7850	1750
2 GHz–4 GHz	6000	1150
4 GHz–6 GHz	6900	310
6 GHz–8 GHz	3600	666
8 GHz–12 GHz	5100	1270
12 GHz–18 GHz	3500	551
18 GHz–40 GHz	2400	750

or,

(2) The applicant may demonstrate by a laboratory test that the critical system elements and their associated wiring harnesses can withstand a peak electromagnetic field strength of 100 volts per meter, without the benefit of airplane structure shielding, in the frequency range of 10 KHz to 18 GHz.

Compliance Method:

This paragraph describes an acceptable method of showing compliance with the HIRF energy protection requirements.

(1) Compliance Plan: The applicant should present a plan for the cognizant airworthiness authority approval, outlining how compliance with the HIRF energy protection requirements will be attained. This plan should also propose pass/fail criteria for the operation of critical systems in the HIRF environment.

(2) System Criticality: A hazard analysis should be performed by the applicant for approval by the cognizant airworthiness authority to identify electrical and/or electronic systems which perform critical functions. These systems are candidates for the application of HIRF energy protection requirements.

(3) Compliance Verification: Compliance with the HIRF energy protection requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof as acceptable to cognizant airworthiness authority. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition.

(4) Pass/Fail Criteria: Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to the required electromagnetic fields. Deviations from system specification may be acceptable depending on an independent assessment of the deviations for each application.

(5) Test Methods and Procedures: RTCA documents DO–160C, Section 20, provides information on acceptable test procedures. In addition, the following information on modulation is presented to supplement that found in DO–160C.

Equipment and subsystem radiated susceptibility qualification tests should be conducted by slowly scanning the entire frequency spectrum with an unmodulated signal which produces the required average electric field strength at the equipment under test (EUT) and its wiring. A peak level detector should be used to monitor the peak values of the signal and these values should be recorded at each test point. The EUT should not be damaged by this test and should operate normally for frequencies below 400 MHz. Deviations from normal operation for test frequencies above 400 MHz should be recorded. The test should be repeated with an appropriate modulation applied to the test signal. At each test point, the amplitude of the RF test signal should be adjusted to the peak values recorded during the unmodulated test. The modulation should be selected as the signal most likely to disrupt the operation of the equipment under test based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for CRT displays may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1KHz sine wave with 80% depth of modulation in the frequency range form 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation of the EUT, several different modulating signals with various waveforms and frequencies should be applied.

Modern laboratory equipment may not be able to continually scan the spectrum in the manner of older analog equipment. These units will only generate discrete test frequencies. For such equipment, the number of test points and the dwell time at each test point must be specified. For each decade of the frequency spectrum (a ten times increase in frequency, i.e., 10 KHz to 100 KHz) there should be at least 25 test points, and for the decades from 10 MHz to 100 MHz, and 100 MHz to 1 GHz, there should be a minimum of 180 test points each. The dwell time at each test point should be at least 0.5 second.

(6) Data Submittal: An accomplishment report should be submitted to the cognizant airworthiness authority showing fulfillment of the HIRF energy protection requirements. This report should contain test results, analysis, and other pertinent data.

(7) Maintenance Requirements: The applicant (manufacturer) must provide maintenance requirements to assure the continued airworthiness of the installed system(s)".

(b) In addition to compliance with the requirements of §§ 25.581 and 25.954 of the Far concerning lightning protection:

(1) Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(2) Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning. For the purpose of these special conditions, the following definitions apply:

Critical Functions: Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions: Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Discussion: Lightning interaction with an airplane can result in numerous problems. Physical damage (direct effects) can result from a lightning attachment to the airplane. Such damage is characterized by burning,

eroding, and blasting, and is the consequence of either the extreme heat loading and accompanying acoustic shock wave or deforming by magnetic forces from the high current component of lightning. An additional effect (indirect effect) results from the fast changing electrical and magnetic fields produced by the high currents of a direct strike. These fields can couple voltage transients into the airplane wiring and subsequently reach the electrical and electronic systems within.

The A330 is being designed with electrical and electronic systems which perform critical and essential functions. These systems may be susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions will be needed which require that systems performing critical and essential functions, including all dispatchable states, be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning. To provide a means of compliance to these proposed special conditions, a clarification of the threat definition for lightning is needed.

The following "threat definition", based on FAA Advisory Circular (AC) 20–136, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition:

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the systems installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke (Severe Strike—Component A, or Restrike—Component D) This external threat needs to be evaluated to obtain the resultant internal threat and the verify that the level is sufficiently below the equipment "hardness" level; then

2. Multiple Stroke Flash: (½ component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and,

3. Multiple Burst: (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. The individual "Multiple Burst" Component H waveform is defined below. The following current waveforms constitute the "Severe Strike" (Component A), "Restrike/Swept/Stroke" (Component D), "Multiple Stroke" (½ Component D), and the Multiple Burst" (Component H). These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes,

Burst (component H)		Severe stroke (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple
I_o(a)	=	218,810	109,405	54,703	10,572
a(s^{-1})	=	11,354	22,708	22,708	187,191
b(s^{-1})	=	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:					
i_{peak}	=	200KA	100KA	50KA	10KA
$(di/dt)_{max}$ (A/S)					
@t = 0+sec	=	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2×10^{11}
di/dt (A/S)	=	1.0×10^{11}	1.0×10^{11}	0.5×10^{11}	
		@t=.5 μs	@t=.25 μs	@t=.25 μs	
Action Integral (A^2s)	=	2.0×10^6	$.25 \times 10^6$	$.0625 \times 10^6$	

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5. Interaction of Systems and Structures

(a) *General.* For an airplane equipped with flight control systems, load alleviation systems or flutter control systems, which directly or as a result of a failure or malfunction affect its structural performance, the influence of these systems and their failure conditions shall be taken into account in showing compliance with subparts C and D of part 25 of the Federal Aviation Regulations (FAR).

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the systems from all the deterministic limit conditions specified in subpart C, taking into account any special behavior of such systems or associated functions or any effect on the structural performance of the airplane which may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of Part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure the behavior of the systems presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that make it impossible to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety, related to the probability of occurrence of the failure. These loads should be considered as ultimate loads for this evaluation. The factor of safety is defined as follows:

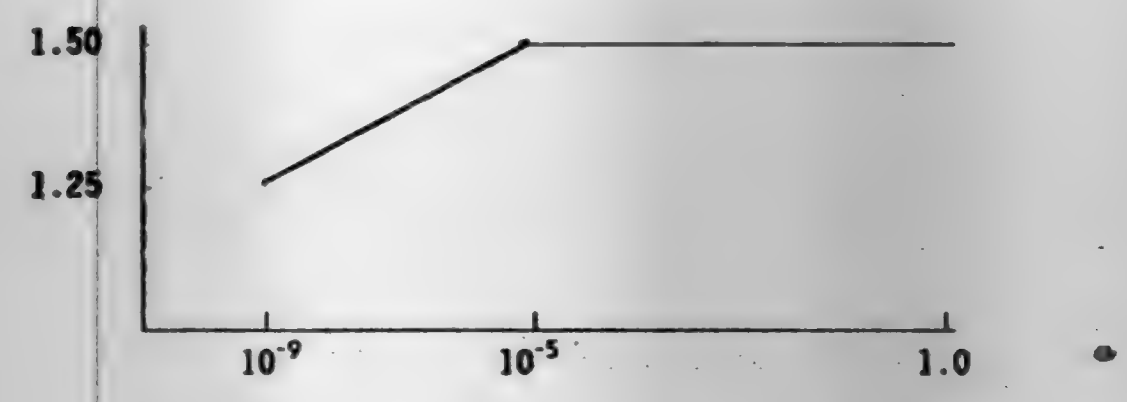

(i) The loads must also be used in the damage tolerance evaluation required by § 25.571(b) if the failure condition is probable. The loads may be considered as ultimate loads for the damage tolerant evaluation.

(ii) Freedom from flutter and divergence must be shown at speeds up to V_D or 1.15 V_C, whichever is greater. However, at altitudes where the speed is limited by Mach number, compliance need be shown only up to M_D, as defined by § 25.335(b). For failure conditions which result in speed increases beyond V_c/M_c, freedom from flutter and divergence must be shown at increased speeds, so that the above margins are maintained.

(iii) Notwithstanding subparagraph (1) of this paragraph, failures of the system which result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in permanent deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane, in the failed configuration and considering any appropriate flight limitations, the following apply:

(i) Static and residual strength must be determined for loads induced by the failure condition if the loads could continue to the end of the flight. These loads must be combined with the deterministic limit load conditions specified in subpart C.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph multiplied by a safety factor depending on the probability of being in this failure state. The factor of safety is defined as follows:

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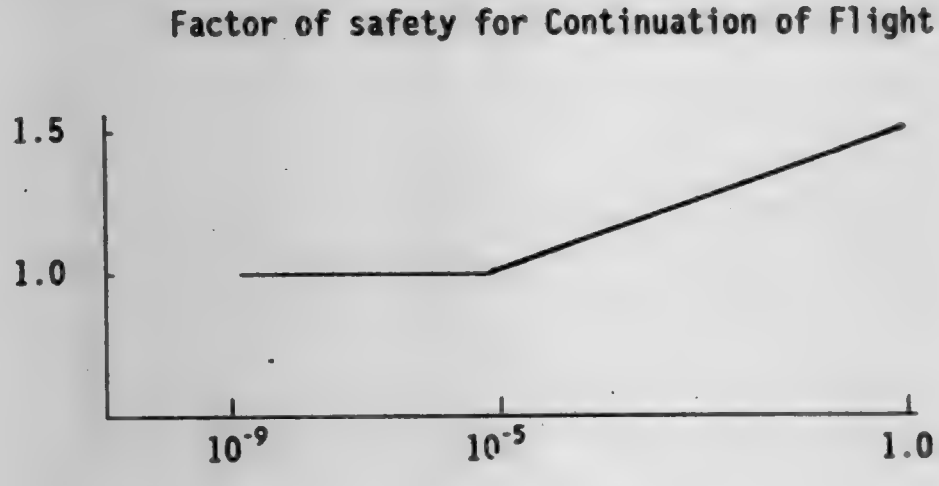

Q_j — Probability of being in failure state j

$Q_j = T_j * P_j$ where:

T_j = Average time spent in failure condition

P_j = Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3} per flight hour then a safety factor of 1.5 must be used.

(iii) For residual strength substantiation as defined in § 25.571(b), for structures also affected by failure of the system and with damage in combination with the system failure, a reduction factor may be applied to the residual strength loads of § 25.571(b). However, the residual strength level must be less than the 1-g flight load combined with the loads introduced by the failure condition plus two-thirds of the load increments of the conditions specified in § 25.571(b) in both positive and negative directions (if appropriate). The reduction factor is defined as follows:

Residual Strength Reduction Factor

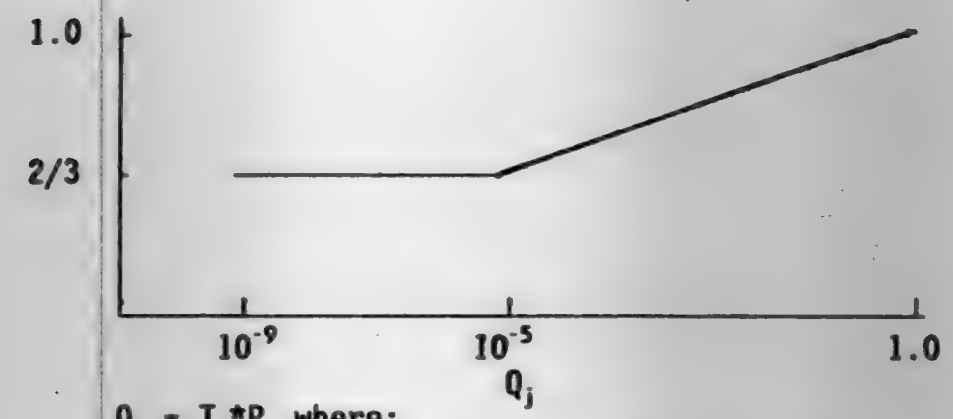

$Q_j = T_j * P_j$ where:

T_j = Average time spent in failure condition

P_j = Probability of occurrence of failure mode

Note: f P_j is greater than 10^{-3} per flight hour then a safety factor of 1.0 must be used.

(iv) Freedom from flutter and divergence must be shown up to a speed determined by the following figure:

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Flutter clearance speed

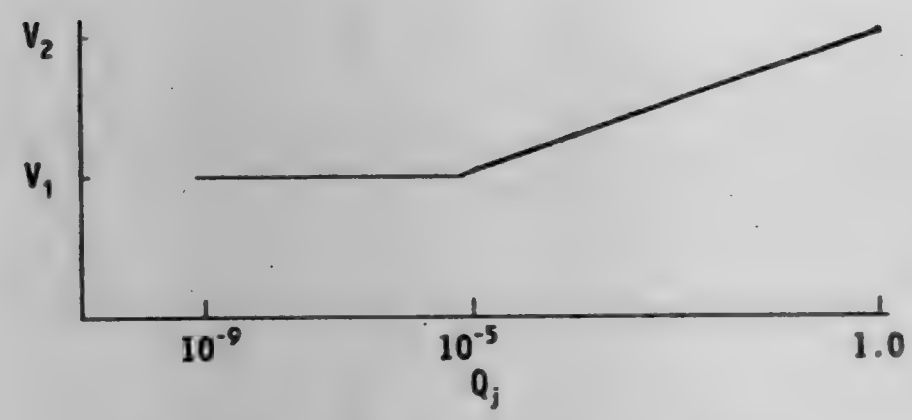

V_1 = V_D or 1.15 V_C whichever is greater.

V_2 = Flutter clearance speed required for normal (unfailed) conditions by § 25.629.

Q_j = T_j*P_j where:

T_j = Average time spent in failure condition

P_j = Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3}, then the flutter clearance speed must not be less than V_2.

(v) Freedom from flutter and divergence must also be shown up to V_1 in the above figure, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(vi) If the time likely to be spent in the failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit is not higher than the prescribed value of the current requirement.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) Before flight, the system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level as intended in paragraph (b) of this special condition. The crew must be made aware of these failures, if they exist, before flight.

(2) An evaluation must be made of the necessity to signal, during the flight, the existence of any failure condition which could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations. The assessment of the need for such signals must be carried out in a manner consistent with the approved general warning philosophy for the airplane.

(3) During flight, any failure condition, not shown to be extremely improbable, in which the safety factor existing between the airplane strength capability and loads induced by the deterministic limit conditions of subpart C of part 25 is reduced to 1.3 or less must be signaled to the crew if appropriate procedures and limitations can be provided so that the crew can take action to minimize the associated reduction in airworthiness during the remainder of the flight.

(e) *Dispatch with failure conditions.* If the airplane is to be knowingly dispatched in a system failure condition that reduces the structural performance, then operational limitations must be provided whose effects combined with those of the failure condition allow the airplane to meet the structural requirements as described in paragraph (b) of this special condition. Subsequent system failures must also be considered.

Discussion: This special condition is intended to be applicable to flight controls, load alleviation systems and flutter control systems. The criteria provided by the special condition only address the direct structural consequences of the systems responses and performances and therefore cannot be considered in isolation but should be included into the overall safety evaluation of the airplane. The presentation of these criteria may in some instances duplicate standards already established for this evaluation. The criteria are applicable to structure,

the failure of which could prevent continued safe flight and landing.

The following definitions are applicable to this special condition.

1. Structural performance: Capability of the airplane to meet the requirements of part 25.

2. Flight limitations: Limitations which can be applied to the airplane flight conditions following an inflight occurrence and which are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

3. Operational limitations: Limitations, including flight limitations, which can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

4. Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1.

5. Failure condition: The term failure condition is defined in AC 25.1309–1, however this special condition applies only to system failure conditions which have a direct impact on the structural performance of the airplane (e.g., failure conditions which induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

6. Design Dive Speed

In lieu of compliance with § 25.335(b)(1) of the FAR, if the flight control system includes functions which act automatically to initiate recovery before the end of the 20 second period specified in § 25.335(b)(1) the greater of the speeds resulting from the following conditions may be used:

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at load factor of 1.5g (0.5g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data are used. Power, as specified in § 25.175(b)(1)(iv) of the FAR, is assumed until recovery is made, at which time power reduction and the use of pilot controlled drug devices may be assumed.

(b) From a speed below V_C/M_C, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). The pilots controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated.

(c) Recovery may be initiated three seconds after operation of high speed warning system by application of a load of 1.5g (0.5g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

Discussion: This special condition relates to the structural design dive speed which is established at a sufficient margin above the operating speed to provide structural integrity in the event of inadvertent overspeed conditions. This special condition establishes criteria for determining the minimum value of the design dive speed taking into account the automatic operation of speed protection systems.

7. Design Maneuver Requirements

(a) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A1 within the maneuvering envelope of § 25.333(b)) and, except as limited by pilot effort in accordance with Special Condition No. 8 concerning pilot effort forces, the cockpit pitching control device is suddenly moved to obtain extreme positive pitching acceleration (nose up). In defining the tail load condition, the response of the airplane must be taken into account. Airplane loads which occur subsequent to the point at which the normal acceleration at the center of gravity exceeds the maximum positive limit maneuvering factor, n, need not be considered.

(b) In addition to the requirements of § 25.331(c), it must be established that pitch maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(c) In lieu of compliance with § 25.349(a) of the FAR, the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(1) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(2) At V_A, sudden deflection of the cockpit roll control up to the limits is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(3) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate or roll not less than that obtained in paragraph (2).

(4) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than one third of that obtained in paragraph (2) of this paragraph.

(5) It must also be established that roll maneuver loads induced by the system itself (i.e. abrupt changes in orders made possible rather than mechanical combination of different inputs) are acceptably accounted for.

(d) In lieu of compliance with § 25.351, the airplane must be designed for loads resulting from the conditions specified in sub-paragraphs (a) and (b) of this paragraph. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational or conservative manner considering the principal masses furnishing the reacting inertia forces. Physical limitations of the aircraft from the cockpit yaw control device to the control surface deflection, such as control stop position, maximum power and displacement rate of the servo controls, and control law limiters may be taken into account.

(1) Maneuvering. At speeds from V_{MC} to V_D, the following maneuvers must be considered. In computing the tail loads, the yawing velocity may be assumed to be zero:

(i) With the airplane in unaccelerated flight at zero yaw, it is assumed that the cockpit yaw control device (pedal) is suddenly displaced (with critical rate) to the maximum deflection, as limited by the stops.

(ii) With the cockpit yaw control device (pedal) deflected as specified in sub-paragraph (1) of this paragraph, it is assumed that the airplane yaws to the

resulting side slip angle (beyond the static side slip angle).

(iii) With the airplane yawed to the static sideslip angle with the cockpit yaw control deflected as in sub-paragraph (1) of this paragraph, it is assumed that the cockpit yaw control device is returned to neutral.

8. Limit Pilot Forces

For airplanes equipped with stick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows:

(a) For all components between and including the handle and its control stops.

Pitch	Roll
Nose Up 200 lbf	Nose left 100 lbf.
Nose Up 200 lbf	Nose right 100 lbf.

(b) For all other components of the side stick control assembly, but excluding the internal components of the electrical sensor assemblies, to avoid damage as a result of an in-flight JAM.

Pitch	Roll
Nose Up 125 lbf	Nose left 50 lbf.
Nose down 125 lbf	Nose right 50 lbf.

9. Tailplane Tank Emergency Landing Loads

In addition to the requirements of § 25.963(d), the following applies;

(a) The tailplane tank in the horizontal stabilizer must be able to resist rupture and to retain fuel, under the inertia forces prescribed for the emergency landing conditions in § 25.561.

(b) For the side load condition the quantity of fuel need not exceed 85% when determining pressure loads outside the fuselage contour for the 3g lateral direction.

10. Limit Engine Torque

In lieu of § 25.361(b) the following special condition is proposed:

For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(a) The maximum limit torque load imposed by;

(1) Sudden deceleration due to a malfunction which could result in a temporary loss of power or thrust capability, and could cause a shut down due to vibrations, and

(2) The maximum acceleration of the engine.

(b) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure including fan blade failure.

(c) The load condition defined in paragraph (b) of this special condition is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the wing and fuselage structure.

11. Flight Characteristics

(a) *Flight Characteristic Compliance Determination by Handling Qualities Rating System for EFCS Failure Cases.* In lieu of compliance with § 25.672(c) and affected paragraphs of subpart B of the FAR, a handling qualities rating system will be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

(1) Satisfactory: Full performance criteria can be met with routine pilot effort and attention;

(2) Adequate: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

(3) Controllable: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration so that the handling qualities are at least adequate.

Handling qualities will be allowed to progressively vary with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

(b) *Longitudinal Stability.* In lieu of compliance with the requirements of §§ 25.171, 25.173, 25.175, and 25.181(a) of the FAR, the airplane must be shown to have suitable dynamic and static longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(c) *Lateral-Directional Stability.*

(1) In lieu of compliance with § 25.171 of the FAR, the airplane must be shown to have suitable static lateral-directional stability in any condition normally encountered in service, including the effects of atmospheric disturbance.

(2) In lieu of compliance with §§ 25.177(b) and 25.177(c), the following applies: In straight, steady, sideslip (unaccelerated forward slips) the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased deflection must produce increased angles of sideslip. Unless the airplane has suitable sideslip indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

(d) *Control Surface Awareness.* In addition to compliance with §§ 25.143, 25.671, and 25.672 of the FAR, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and/or continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

12. Flight Envelope Protection

In the absence of specific requirements for flight envelope protection, the following apply:

(a) *General Limiting Requirements.*

(1) *Normal Operation.*

(i) Onset characteristics of each envelop protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or altitude as needed.

(ii) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with:

(A) Airplane structural limits;

(B) Required safe and controllable maneuvering of the airplane; and

(C) Margin to critical conditions.

Unsafe flight characteristics/conditions must not result if dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.

(iii) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.

(iv) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

(2) *Failure States.* Electronic flight control system (including sensor) failures must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The flightcrew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

(3) *Abnormal Attitudes.* In case of abnormal attitude or excursion of any other flight parameters outside the protected flight boundaries, the operation of the EFCS, including the automatic protection functions, must not hinder airplane recovery.

(b) *Angle-of-Attack Limiting.*

(1) *Part 1, § 1.2, Abbreviations and Symbols.*

(i) In lieu of the definition of V_S in § 1.2, the following applies in subparts B, E, F, and G of part 25 of the FAR: "V_{SR} means the reference stalling speed."

(ii) In lieu of the definition of V_{SO} given in § 1.2, the following applies: "V_{SRO} means the reference stalling speed in the landing configuration."

(iii) In lieu of the definition of V_{S1} given in § 1.2, the following applies: "V_{SR1} means the reference stalling speed in a specific configuration."

(iv) In addition to the definitions given, the following also apply:

"V_{REF} means the steady landing approach speed."

"V_{REFTO} means final takeoff speed."

"V_{SW} means the speed at which onset of natural or artificial stall warning occurs."

(2) *Part 25—Airworthinness Standards: Transport Category Airplanes.*

(i) In lieu of compliance with § 25.21(b), the following applies: "The flying qualities will be evaluated at speeds based upon the forward CG stalling speed."

(ii) In lieu of compliance with § 25.103(a), the following applies: "V_{SR} is a calibrated airspeed as defined in paragraph (c) of this section. V_{SR} is determined with—"

(iii) In lieu of compliance with § 25.103(a)(1), the following applies: "Stalling speed may be determined at not greater than IDLE thrust.

(Note: automatic go-around thrust application feature must be disengaged)."

(iv) In lieu of compliance with § 25.103(a)(1), the following applies: "Engines idling, or, if that resultant thrust causes an appreciable decrease in stalling speed, not more than zero thrust at the stall speed;"

(v) Compliance with § 25.103(a)(2) is not required.

(vi) In lieu of compliance with § 25.103(a)(3), the following applies: "The airplane in other respects (such as flaps and landing gear) in the condition existing in the test in which V_{SR} is being used;"

(vii) In lieu of compliance with § 25.103(a)(4), renumber the old § 25.103(a)(3) and change "V_S" to "V_{SR}."

(viii) In lieu of compliance with § 25.103(a)(5), the following applies: "The center of gravity position that results in the highest value of reference stall speed; and"

(ix) In addition to compliance with § 25.103(a)(5), the following also applies: "The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.13 V_{SR} and not greater than 1.30V_{SR}."

(x) In lieu of compliance with § 25.103(b), the following applies: "Starting from the stabilized trim condition, apply elevator control to decelerate the airplane so that the speed reduction does not exceed one knot per second."

(xi) Compliance with § 25.103 (b)(1) and (b)(2) is not required.

(xii) In lieu of compliance with § 25.103(c), the following applies: "The reference stall speed, V_{SR}, may not be less than a 1-g stall speed, which is a calibrated airspeed determined in the stalling maneuver and expressed as: $V_{SR}=V_{CLMAX}/\sqrt{n_{ZW}}$ where $-V_{CLMAX}$=Speed occurring when lift coefficient is first a maximum; and n_{ZW}=Flight path normal load factor (not greater than 1.0) at V_{CLMAX}.

(xiii) In lieu of compliance with § 25.107(b)(1), the following applies: "1.13V_{SR} for—"

(xiv) in lieu of compliance with § 25.107(b)(2), the following applies: "1.08V_{SR}."

(xv) In addition to compliance with §§ 25.107(c)(3), the following also applies: "A speed that provides the maneuvering capability specified in § 25.143(f)."

(xvi) In addition to compliance with § 25.107(f), the following also applies: "V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(c), but may not be less than—

(A) 1.18V_{SR}; and

(B) A speed which provides the maneuvering capability specified in § 25.143(f)."

Note: Unless AOA protection system production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight test settings for features such as Alpha floor and stall warning should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

(xvii) In lieu of compliance with § 25.111(a) the following applies: "V_{FTO} is reached."

(xviii) In lieu of compliance with § 25.119(b), the following applies: "A climb speed of not more than V_{REF}."

(xix) In lieu of compliance with § 25.121(c) the following applies: "For four-engine airplanes, at V_{FTO} and with—"

(xx) In lieu of compliance with § 25.121(d) the following applies: "In a configuration corresponding to the normal all-engines-operating procedure in which V_{SR} this configuration does not exceed 110 percent of the V_{SR} for the related all-engines-operating landing configuration, the steady gradient of climb may not be less than 2.1 percent for two-engine airplanes, 2.4 percent for three-engine airplanes, and 2.7 percent for four-engine airplanes, with—"

(xxi) In lieu of compliance with § 25.121(d)(3), the following applies: "but not more than 1.4V_{SR}; and" In addition to compliance with § 25.121(d), the following also applies: "Landing gear retracted."

(xxii) In lieu of compliance with § 25.121(a)(2), the following applies: "A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height. V_{REF} may not be less than:

(A) 1.23 V_{SRO}, and

(B) a speed that provides the maneuvering capability specified in § 25.143(f)."

(xxiii) In addition to compliance with the requirements of § 25.143, the following also apply: "The manuevering capabilities in a constant speed coordinated turn, as specified in the following table, must be free of stall warning, alpha floor, or other characteristics that might interfere with normal maneuvering. "The airplane must be shown to have suitable flight-path stability and control characteristics both in normal flight and when wind shear is encountered in a takeoff or landing configuration. This may be

shown by an appropriate combination of simulating and flight test."

Note: Suitable characteristics are those no worse than conventionally controlled aircraft in similar conditions.

(xxiv) In addition to the requirements to § 25.143, the following also applies: "Operation of automatic features (such as significant EFCS stability or control changes) must not adversely affect normal flight operations, including during expected levels of atmospheric disturbance."

Configuration	Speed	Maneuvering bank angle	Trust representative of
Takeoff	V_2	30° (stall warning) 25° (alpha floor)	Asymmetric Wat-Limited.[1]
Takeoff	[2] V_2+XX	40°	All-Engines-Operating Climb.[3]
Enroute	V_{FTO}	40°	Asymmetric Wat-Limited.
Landing	V_{REF}	40°	Symmetric for −3° Flight Path Angel.

[1] A combination of Weight, Altitude and Temperature (WAT) such that the thrust or power setting produces the minimum climb gradient specified in 25.121 for the flight condition.

[2] Airspeed approved for all-engines-operating initial climb.

[3] That thrust or power setting which, in the event of failure of the critical engine and without any crew action to adjust the thrust or power of the remaining engines, would result in the trust or power specified for the takeoff condition at V_2, or any lesser thrust or power setting that is used for all-engines-operating initial climb procedures.

(xxv) In lieu of compliance with § 25.145 (a), and (a)(1), the following applies: "It must be possible at any speed between the trim speed prescribed in § 25.103(a)(6) and the minimum speed obtained in conducting a stalling maneuver to pitch the nose downward so that the acceleration to this selected trim speed is prompt with—

(A) The airplane trimmed at the speed prescribed in § 25.103(a)(6);"

(xxvi) In lieu of the speeds given in the following Part 25 regulations, comply with speeds as follows:

§ 25.145(b)(1)–(4), $1.3V_{SR1}$, in lieu of $1.4V_{S1}$.

§ 25.145(b)(1), 30 percent, on lieu of 40 percent.

§ 25.145(b)(1), reference stall speed, in lieu of stalling speed.

§ 25.145(b)(6), $1.3V_{SR1}$, in lieu of $1.4V_{S1}$.

§ 25.145(b)(6), V_{SW}, in lieu of $1.1V_{S1}$.

§ 25.145(b)(6), $1.6V_{SR1}$, in lieu of $1.7V_{S1}$.

§ 25.145(c) $1.08V_{SR1}$, in lieu of $1.1V_{S1}$.

§ 25.145(c) $1.13V_{SR1}$, in lieu of $1.2V_{S1}$.

§§ 25.147(a), (a)(2), (c), (d), $1.3V_{S1}$, in lieu of $1.4V_{S1}$.

§ 25.149(c), $1.13V_{SR}$, in lieu of $1.2V_{SR1}$.

§§ 25.161(b), (c)1), (c)(2), (c)(3), (d), $1.3V_{S1}$, in lieu of $1.4V_{S1}$.

§ 25.161(e)(3), $0.013V_{SRO}^2$, in lieu of $0.013VSO^2$.

§§ 25.175(a)(2), (b)(1), (b)(2), (b)(3), (c)(4), $1.3V_{SR1}$, in lieu of $1.4V_{S1}$.

§ 25.175(b)(2)(ii), $(V_{MO}+1.3V_{S1})/2$, in lieu of $(V_{MO}+1.4V_{S1})/2$.

§ 25.175(c), V_{SW} and $1.7V_{S1}$, in lieu of $1.1V_{S1}$ and $1.8V_{S1}$.

§ 25.175(d), V_{SW} and $1.7V_{SRO}$ in lieu of $1.1V_{SO}$ and $1.3V_{SO}$.

§ 25.175(d)(5), $1.3V_{SRO}$ in lieu of $1.4V_{SO}$.

Note: The stability requirements of §§ 25.173 and 25.175 are further amended by the Special Condition associated with longitudinal stability.

§§ 25.177(a), (b)(1), $1.13V_{SR1}$ in lieu of $1.2V_{S1}$.

§ 25.181(a), (b) $1.13V_{SR}$ in lieu of $1.2V_S$.

§ 25.201(a)(2), $1.5V_{SR1}$ in lieu of $1.6V_{S1}$ and, V_{SR1} in lieu of V_{S1}, and reference stall speeds in lieu of stalling speed.

(xxvii) In lieu of compliance with § 25.207(a), the following applies: "With the AOA limiter operating normally, stall warning is not required. For failure states with the AOA limiter inoperative, sufficient stall warning margin must be provided in the following straight and turning flight conditions:

(A) Stall-free characteristics must be shown in power-off, straight ahead stall approaches to a speed five percent (but not less than five knots) below V_{SW}.

(B) Stall-free characteristics must be shown in turning flight stall approaches, at entry rates up to three knots per second, when recovery is initiated not less than one second after the onset of stall warning."

(xxviii) The requirements of § 25.207(c) are not applicable.

(xxix) In lieu of compliance with the requirements of §§ 25.233(a) and 25.237(a), (b)(1), and (b)(2), the following applies: "$0.2V_{SRO}$ in lieu of $0.2V_{SO}$."

(xxx) In lieu of the requirements of § 25.735(f)(2), the following applies: "$KE=0.0443(WV^{22}/N$"; Change the V definition to read: "$V=V_{REF}/1.3$" and; "V_{REF}=Airplane reference landing speed, in knots, at the maximum design landing weight and the lowest authorized landing flap setting for that weight at sea level; and"

(xxxi) In lieu of compliance with § 25.735(g), the following applies: "The minimum speed rating of each main wheel-brake assembly (that is, the initial speed used in the dynamometer tests) may not be more than the V used in the determination of kinetic energy in accordance with paragraph (f) of this section assuming * * *"

(xxxii) In lieu of the speeds given in the following Part 25 regulations, comply with speeds as follows:

§ 25.773(b)(1)(i), $1.5V_{SR1}$ in lieu of $1.6V_{S1}$.

§ 25.1001(c)(1) and (c)(3), $1.3V_{SR1}$ in lieu of $1.4V_{S1}$.

§ 25.1323(c)(1), $1.23V_{SR1}$ in lieu of $1.3V_{S1}$.

§ 25.1323(c)(2), $1.23V_{SRO}$ in lieu of $1.3V_{SRO}$.

§ 25.1325(e), $1.23V_{SRO}$ in lieu of $1.3V_{SO}$, and $1.7V_{SR1}$ in lieu of $1.8V_{S1}$.

(3) *Part 36—Noise Standards: Aircraft Type and Airworthiness Certification.*

Note: It has been determined that the following is equivalent for the purposes of FAR part 36 certification.

(i) In lieu of the requirements of Appendix C, Sec. C36.9(e)(1), the following applies: "Change $1.30V_S$+10 knots to V_{REF}+10 knots."

(c) *Normal Load Factor (g) Limiting.* In addition to compliance with the requirements of § 25.143, the following apply:

(1) The positive limiting load factor must not be less than 2.5g (2.0g with high-lift devices extended) for the EFCS normal state.

(2) The negative limiting load factor must be equal to or more negative than minus 0.5g (0.0g with high lift devices extended) for the EFCS normal state.

Discussion: This allows an incremental plus or minus 1.5g for maneuvering flaps up, and plus or minus 1.0g flaps extended. This Special Condition does not impose an upper bound for the limiter, nor does it require that the limiter exist. If the limit is set at a value beyond the structural design limit maneuvering load factor "n" of §§ 25.333(b) and 25.337 (b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to

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inadvertently exceeding the structural limit.

(d) *High-Speed Limiting.* In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the high-speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to overspeed warning."

(e) *Pitch and Roll Limiting.* In addition to compliance with the requirements of § 25.143 of the FAR, the following applies: "Operation of the pitch and roll limiter must not:

(1) Impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engine takeoff, plus a suitable margin to allow for satisfactory speed control.

(2) Restrict or prevent attainment of roll angles up to 65 degrees or pitch attitudes necessary for emergency maneuvering."

13. Side Stick Controllers

(a) *Pilot Strength.* In lieu of the "strength of pilots" limits of § 25.143(c) for pitch and roll, and in lieu of specific pitch force requirements of §§ 25.145(b) and 25.175(d), the following applies: "It must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal."

(b) *Controller Coupling.* In the absence of specific requirements for controller coupling, the following applies: "The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of controller status must not be confusing to the flightcrew."

(c) *Pilot Control.* In the absence of specific requirements for side stick controllers, the following applies: "It must be shown by flight tests that the use of sidestick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence."

(d) *Autopilot Quick-Release Control Location.* In lieu of compliance with § 25.1329(d) of the FAR, quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flightcrew.

14. Computerized Airplane Flight Manual (AFM) Performance Information

In the absence of specific requirements for computerized AFM performance information, the following apply: If computerized AFM performance information is used for the purpose of compliance with § 25.1587(b) of the FAR then it must be shown that such information will:

(a) Provide at least the same level of accuracy as traditional paper AFM charts.

(b) Have an availability and ease of use equivalent to that provided by paper AFM charts.

(c) Be protected from inadvertent or deliberate alteration outside of an FAA approved revision process.

Discussion:

1. General Requirements.

a. Official Reference.

(1) The conventional hardcopy portion of the AFM shall contain appropriate references about applicability of the FAA-approved AFM software application. Each change to FAA-approved AFM software will lead to a revision of this reference (see paragraph 3.d.).

(2) The AFM should contain a statement similar to the following:

"Generation of FAA-approved performance information may be accomplished only by use of the FAA-approved AFM software application. Any modification to the FAA-approved AFM software application and/or subsequent alteration to the generated output will cancel the approval of the information, unless this change was approved by the appropriate airworthiness authority. This will be applicable independently of the printed approval status on the generated output."

b. Approved and Unapproved Information.

(1) Approved performance information must be clearly identified and segregated from unapproved information that may be presented. Therefore, the approval status of generated output must be clearly indicated on the screen and printed on each printout page of any calculated results. If the program is capable of being used for calculations to more than one certification basis (i.e., FAA rules vs. JAA rules), the certification basis being used must be identified and included on generated output.

c. Software Usage Aspects. Airbus Industrie shall substantiate that the A330 computerized AFM is designed to:

(1) Provide generated output that contains all the information required by part 25 of the FAR in the conventional AFM that is replaced or supplemented by the computerized AFM. This includes all relevant information (e.g., variables used for a specific condition) to determine operating condition and applicability of the generated output. Further, the total AFM performance presentation (hardcopy plus software) to the air carrier must be such to allow that carrier to comply with the FAR;

(2) Provide equivalent or conservative results to that obtained by direct use of a first principles calculation utilizing certified baseline parameters (e.g., lift, drag, thrust);

(3) Provide two-way performance interrogation (ability to switch independent and dependent variables), as appropriate;

(4) Preclude calculations that generate FAA-approved results by:

(i) Extrapolation of data outside of performance bounds approved by the FAA and the manufacturer, and;

(ii) Use of unapproved methods.

A note must be added to the AFM performance section, where reference is made to computerized performance, to read essentially as follows:

"The various gross weight, operational, and environmental limitations provided in the limitations section of this AFM take precedence over what otherwise may be listed as approved performance results from the computerized output."

(5) Provide at least the standard of transparency (e.g., understanding of performance relations and limitations) and accessibility of the data (e.g., usage time to generate a result) that is available by use of conventional AFM presentation;

(6) Prevent mistakes or misunderstanding by a skilled user during data input and interpretation of output. Emphasis should be placed upon ease of use. If multiple screens are required to fully enter input data, it should be possible to access entries on previous screens and review, or correct, input data prior to final program execution.

2. Computerized Airplane Flight Manual Contents.

a. Performance Section.

(1) The computerized portion of the A340 AFM may include the information and capability that is required to generate all FAA-approved performance data.

(2) Independent of, and in addition to performance presented in the computerized portion of the A330 AFM, the following information, as a minimum, shall be presented in conventional form in the hard copy AFM, unless this information is available to the flightcrew aboard the

airplane from an FAA approved source intended for this purpose (e.g., Flightcrew Operating Manual):

(i) Stalling Speeds (calibrated airspeed);

(ii) Alternate Static Source Position Error Calibrations (if corrections are significant);

(iii) Stabilizer Trim Setting for Takeoff;

(iv) Engine Thrust Settings for Takeoff, Maximum Continuous, and Go-Around Ratings;

(v) V_{2MIN} Speeds (indicated airspeed);

(vi) One-Engine-Inoperative En Route Flight Path Gradients;

(vii) Two-Engines-Inoperative En Route Flight Path Gradients, if applicable;

(viii) Approach/Landing Climb Weight Limits;

(ix) Reference Landing Speeds (indicated airspeed);

(x) Landing Field Lengths;

(xi) Configuration Deviation List;

(xii) Noise Characteristics.

Note: This does not preclude calculation of information by the FAA-approved computerized AFM and subsequent inclusion of the output as a permanent part of the hardcopy AFM.

(3) Configuration Deviation List (CDL) and Master Minimum Equipment List (MMEL) effects on performance may be included if they are FAA-approved and applications are clearly identified on the generated output.

(4) Although it is intended that the output from computations should be usable without adjustment, corrective factors through hard copy AFM instructions may be acceptable in the following cases:

(i) CDL and MMEL information;

(ii) Urgent temporary FAA-approved revisions made necessary for safety reasons;

(iii) Any case where the appropriate data are not available from the computer and it is clear to the user that hard copy corrective factors must be applied. In these cases, the official reference as indicated under paragraph 1.a.(1) must be changed accordingly.

(5) Supplementary performance information may be included in accordance with paragraph 1.b. (e.g., runways contaminated with standing water, slush, snow, or ice).

(6) The manufacturer must request FAA-approval of supplementary computerized AFM applications (e.g., Optimized Runway Performance). This supplementary software application will not be required by the FAA for Type Certification.

3. Software Integrity, Development, and Documentation Requirements.

a. Software Integrity.

(1) The computation of hazardously misleading primary information such as takeoff speeds schedules, landing approach reference speeds, engine thrust, engine limit data or other related airplane performance data, should be improbable. The AFM software application shall, as far as practicable, be designed to be protected from inadvertent, or unauthorized, deliberate alterations.

(2) The level of integrity established for the computerized AFM is the basis for the software development process and should be addressed in the plan for software aspects of certification (see paragraph 3.b.).

(3) Each part of the FAA-approved AFM software application (e.g., program, data) should bear a unique notation, a unique date and/or revision number.

(4) A means to check the original status of programs and data to avoid undetected failures should be provided (e.g., a checksum routine, tabular data to verify a check case, or provisions for a line-by-line file comparison).

(5) No unapproved software may be used to process data identified as "FAA-approved," unless the use of these software elements is agreed to by the FAA. Operating systems (e.g., DOS or equivalent software) will not be approved, but will have to be specified and agreement obtained.

(6) If unapproved software is an integral part of the software delivery, it must be justified that there is no interference between approved and unapproved parts that would jeopardize correct functioning of the FAA-approved AFM software application.

b. Software Development.

(1) The manufacturer must propose the software development process in the plan for software aspects of certification, documenting the methods, parameters, and allowable range of conditions contained in the computerized portion of the AFM. The results obtained from the computerized portion of the AFM must be shown to meet all applicable part 25 requirements. This compliance may be shown using substantiation documentation, demonstrations, or other means mutually agreed upon by the FAA and the manufacturer. The software development process described in AC–115A (RTCA DO–178A) is valid, in general, for developing either airborne or ground-based software, and is an acceptable approach for developing software for the computerized AFM. Some of the specific guidance provided in AC 20–115A, however, may not apply to the computerized AFM.

(2) The manufacturer must submit a description of the computerized portion of the AFM and the plan for software aspects of certification to the FAA for review early in the certification process. This plan must propose the schedule and means by which compliance with the requirements will be achieved, and the means by which certification data and supporting records will be made available for review.

c. Hardware and Software Environment. The AFM software application may be FAA-approved independent of the hardware and software environment in which it is installed (e.g., the development of computerized AFM software application to be run in a commercial-off-the-shelf hardware and software environment). The manufacturer must provide for below items (1), plus either item (2) or (3), as appropriate:

(1) A mechanism, such as an installation utility function or test set, that verifies the proper functioning of the AFM software application in the target software and hardware environment;

(2) If the computerized portion of the AFM is intended for a commercial-off-the-shelf hardware and software environment, installation information that describes the minimum requirements, including limitations and constraints, for the software and hardware environment;

(3) If the computerized portion of the AFM is intended for a specific hardware/software system, installation information that describes the specific hardware and software environment in which the AFM software application must be installed. Additionally, the manufacturer should provide a configuration management scheme that ensures the hardware and software environment that will be used in service is identical to the environment specified in the FAA-approved installation data.

d. Revisions to A330 AFM Software Application.

(1) Revisions to the FAA-approved computerized portion of the AFM must be submitted for evaluation and FAA-approval in accordance with software development methodology established in paragraph 3.b. A log of FAA-approved AFM software application parts must be furnished by the manufacturer. For historical purposes, records should be maintained by the manufacturer, which will permit the reproduction of the computerized AFM for any past approved revision level.

(2) The manufacturer must submit a description of the proposed changes and an updated plan for software aspects of

certification In addition, the manufacturer must

(i) Re-assess the software integrity level (paragraph 3.a.) of the revised computerized AFM,

(ii) Demonstrate that the revisions do not affect any of the unrevised portions of the computerized AFM; and

(iii) Demonstrate that the revisions are compatible with the hardware and software environment intended for the AFM software application

(3) When revisions are incorporated, a means (e.g., document) of indicating those parts of the software that have been changed must be provided.

(4) Each revised software element must be identified in the same manner as the original with the exception of the new date and/or revision notation (see 3.a.(3))

e. Submittal and FAA-Approval of Software.

(1) The manufacturer will be considered the responsible party for all matters pertaining to AFM application software, including submitting for, and obtaining FAA-approval.

(2) Data structures and calculation models shall be discussed between the manufacturer and the FAA, and agreement obtained.

(3) The manufacturer is responsible for ensuring that the FAA certification office is provided with the equipment specification to use the computer files and any required initial instruction on use of the computer program.

(4) The FAA may require assessment of program details and data structures as deemed necessary to allow judgement about software integrity. Any hardware environment required to accomplish this which is not readily available to the FAA shall be provided by the manufacturer.

(f) Documentation Requirements. Documentation containing the following information shall be provided to the FAA for agreement before FAA-approval is granted.

(1) Approval Plan that describes the software aspects of certification, including an outline of the desired applications, design objectives for software and data integrity, and a statement to the effect of impact on flight safety.

(2) Software Development Plan, including methods to provide the design objectives.

(3) Software Descriptions, including substantiation that program structures and calculation models are appropriate to their intended function.

(4) Data Conformity Document, including substantiation for data conformity of airplane performance characteristics (e.g., tested performance data) and the developed software (e.g., FAA-approved data files) and/or generated output.

(5) Operating Instructions, that include all information for proper use of the AFM software, including installation instructions and identification of suitable hardware and software environment.

(6) Software Configuration Reference, including a log of approved software elements.

4. Provisions for FAA Post Certification Access to Computerized portion of AFM. In the plan for software aspects of certification, the manufacturer must propose which components of the computerized AFM will be submitted to the FAA. In cases where the AFM software application can be installed on FAA equipment, then only the AFM software application, which includes the installation data and operating guide need be provided. However, if the AFM software application requires a hardware and software environment that is not available to the FAA, then the manufacturer must also provide to the appropriate FAA certification office, access to the necessary components for the hardware and software environment.

Issued in Renton, Washington, on August 10, 1993

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32748; File No. S7–24–93]

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Concept release, request for comments.

SUMMARY: The Securities and Exchange Commission (the "Commission") solicits comment on a number of questions regarding the treatment of foreign equity securities under the "ready market" provisions of the net capital rule, Rule 15c3–1, under the Securities Exchange Act of 1934 ("Exchange Act"). Following receipt of public comments, the Commission will determine whether proposed rulemaking or other action is appropriate In the interim, the Commission is authorizing the Division of Market Regulation ("Division") to issue a no-action letter as to relief to be accorded foreign equity securities under the ready market provisions. The Commission seeks comment on whether this treatment should be revised.

DATES: Comments should be received on or before October 16, 1993

ADDRESSES: People wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW , Washington, DC 20549 All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, (202) 272–2904, Michael P. Jamroz, Branch Chief, (202) 272–2372, or Timothy H. Thompson, Staff Attorney, (202) 272–2398.

SUPPLEMENTARY INFORMATION:

I. Introduction

In determining a broker-dealer's net capital under Rule 15c3–1 of the Securities Exchange Act of 1934, the net capital rule ("Rule"), the broker-dealer deducts from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables, and certain percentage deductions related to the securities and commodity positions that it carries. Paragraph (c)(2)(vii) of the Rule requires a 100% deduction for securities held by the broker-dealer for which there is no "ready market" as defined in paragraph (c)(11) of the Rule.

Paragraph (c)(11) defines a ready market to "include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom." [1]

Generally, for domestic equity securities, the Rule has recognized as liquid those securities which are traded

[1] The Rule also deems a ready market to exist where securities have been accepted as collateral by a bank where the broker-dealer can demonstrate that the excess of the market value of the securities over the amount of the loan is sufficient to make the loan acceptable as a fully secured loan to banks regularly making secured loans to brokers and dealers.

on the United States securities exchanges, NASDAQ securities, and certain other OTC securities where the broker-dealer can demonstrate that there are independent market makers for the security who quote the securities in an inter-dealer network.[2]

With respect to foreign securities, in December 1975, the Division of Market Regulation ("Division") issued an interpretive letter deeming a "ready market" to exist in certain circumstances.[3] Specifically, as described in that letter, only foreign equity securities that were publicly issued in a principal securities market and were listed on one of the principal exchanges in the major money markets outside the United States were deemed to have ready markets and receive haircuts similar to comparable United States securities traded on United States markets. The 12 exchanges in 11 countries which the Division recognized as being "principal exchanges in the major money markets" are: Amsterdam, Brussels, Frankfurt, Johannesburg, London, Luxembourg, Montreal, Paris, Sydney, Tokyo, Toronto, and Zurich.

II. Concerns With the 1975 Approach

The Securities Industry Association ("SIA") has requested that the Commission adopt the FT--Actuaries World Indexes ("FT–A World Indexes")[4] as a ready market test for foreign equity securities.[5] The SIA believes this treatment will more accurately reflect the liquidity of foreign securities in today s markets. The SIA suggests that the Division's current ready market interpretation could hinder U.S. broker-dealers in the global marketplace for securities.

The FT-Actuaries World Indexes are indices on exchanges from 24 countries[6] and are jointly compiled by The Financial Times Limited, Goldman, Sachs & Co. and County NatWest/Wood Mackenzie (together, the "Consortium") in conjunction with The Institute of Actuaries and the Faculty of Actuaries.[7]

The Consortium generally attempts to include the largest, most liquid exchanges in its indexes so long as they meet certain standards for data dissemination and international interest. In determining which issues to include from a particular exchange, the Consortium subjects the issues listed on the exchange to five tests to screen out any small capitalization, illiquid, or restricted ownership stock. The Consortium also considers the economic sectoral make-up of a market before determining which individual stocks to include.

In an earlier letter, the Capital Committee of the SIA stated that "the interpretation of 'ready market' contained in the 1975 letter . . . no longer accurately assesses the liquidity of foreign securities and results, in some cases, in onerous haircuts on securities that trade in what are in fact demonstrably liquid markets."[8] The Capital Committee argued that since 1975 "new foreign securities markets have been established and the volume of trading in foreign securities by U.S. broker-dealers has increased significantly."

An objective approach that recognizes the most liquid individual securities from a large number of markets may be preferable to recognizing the stocks listed on particular exchanges in total for a number of reasons. First the process of recognizing ready markets can raise sensitive perception concerns for foreign markets. The use of an objective approach which recognizes some securities from virtually all developed markets would solve most of these concerns. It also would, in the case of the SIA proposal, shift responsibility to a credible group which compiles a widely-followed index. Moreover, it would avoid the difficulties inherent in a case-by-case determination by the Commission of ready market status; reliance would be placed on the objective determination of the index compilers. Second, the objective approach would eliminate the incongruity of giving capital value to illiquid securities listed on a recognized exchange while giving no value to world class securities which are traded on exchanges not now recognized.

III. Questions for Comment

The Commission seeks comment on whether it would be advisable for the Commission to recognize privately prepared indexes for ready market purposes. The Commission also seeks comment on whether the advantage of having a system where the most liquid securities generally are considered to be readily marketable outweighs problems that may arise from the Commission adopting this role. Finally, the Commission seeks recommendations on alternative approaches.

By the Commission

Dated: August 16, 1993

Margaret H. McFarland,

Deputy Secretary.

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[2] If a broker-dealer holds a large position of a particular security measured in relation to the normal trading volume in that security (a blockage), the broker-dealer has the burden of proof of showing to its designated examining authority that the amount in excess of a certain trading volume has a ready market. Otherwise he must take a 100% haircut on the excess amount. The aggregate of the most recent four week inter-dealer trading volume in the security is treated as readily marketable by the broker-dealer. *See* letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to Edward Kwalwasser, Esq., Senior Vice President, New York Stock Exchange Inc., and Thomas R. Casesila, Vice President, National Association of Securities Dealers, Inc., dated October 5, 1987.

[3] Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, to Anthony M. O'Connor, Co-Chairman, International Committee, SIA, dated December 29, 1975.

[4] The markets represented in the FT–A World Indexes and the number of securities from each market (in parentheses) are: 1 Austria (16), 2. Belgium (42), 3. Denmark (33), 4. Finland (23), 5. France (98), 6. Germany (62), 7. Ireland (15), 8. Italy (73), 9. Netherlands (24), 10. Norway (22), 11 Spain (46), 12. Sweden (36), 13. Switzerland (55), 14. United Kingdom (219), 15. Canada (108), 16. United States (519), 17. Australia (68), 18. Hong Kong (55), 19. Japan (470), 20. Malaysia (69), 21. New Zealand (13), 22. Singapore (38), 23. Mexico (18), and 24. South Africa (60). As of Friday, June 4, 1993. Source: Financial Times.

[5] Letter from Dominic Carone, Chairman, Capital Committee, SIA, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, dated October 8, 1992. By letter dated August 13, 1993, the Division took a no-action position in which it stated that broker-dealers may treat foreign equity securities listed on the FT–A World Indexes as having a ready market for purposes of Rule 15c3–1 of the Exchange Act. That letter withdrew the applicability of all prior staff opinions relating to the ready marketability of foreign equity securities, including the 1975 letter referred to in footnote 3.

[6] All U S. securities would continue to be considered readily marketable if they are quoted on an established securities market. Of the 2,184 equities on the FT–A World Indexes as of June 4, 1993, 519 are U.S. securities.

[7] The Faculty of Actuaries and the Institute of Actuaries are two professional actuarial societies based in the United Kingdom. These societies have participated in the development and calculation of indexes on the UK market since 1929.

[8] *See supra*, note 5.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Aminorex Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place aminorex into Schedule I of the Controlled Substances Act (CSA) This proposed action by the DEA Administrator is based on data gathered and reviewed by the DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal

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sanctions of Schedule I on the manufacture, distribution, and possession of aminorex.

DATES: Comments must be submitted on or before September 20, 1993.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183

SUPPLEMENTARY INFORMATION: On September 21, 1992, the Administrator of the DEA published a final rule in the **Federal Register** (57 FR 43399) amending § 1308.11(g) of title 21 of the Code of Federal Regulations to temporarily place aminorex into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U S C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Administrator that the temporary scheduling of aminorex was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S C. 811(h)(2)) requires that the temporary scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of aminorex which would expire on September 21, 1993, may be extended to March 21, 1994. This extension is being ordered by the DEA Administrator in a separate action.

The DEA has gathered and reviewed the available information regarding the actual abuse and the relative potential for abuse for aminorex. The DEA, in conjunction with the National Institute on Drug Abuse (NIDA), has provided for the synthesis and biological testing of aminorex. The Administrator has submitted data which the DEA has gathered regarding aminorex to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Administrator also requested a scientific and medical evaluation and a scheduling recommendation for aminorex from the Assistant Secretary for Health.

Aminorex, also called aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihyhro-5-phenyl-2-oxazolamine, is a phenethylamine in which the side chain has been cyclized into a substituted oxazoline. In the mid 1960's, it was marketed as an anorectic agent in Austria, West Germany, and Switzerland but was withdrawn from the European market when it became apparent that aminorex administration was associated with a high risk of fatal pulmonary hypertension. The Food and Drug Administration (FDA) has notified the DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug, and Cosmetic Act for aminorex. A search of the scientific and medical literature revealed no indications of current medical use of aminorex in the United States.

Aminorex is chemically and pharmacologically similar to amphetamine methamphetamine, and *cis*-4-methylaminorex, all of which are controlled substances with high abuse potential. Like most central nervous system (CNS) stimulants, aminorex produces acute locomotor stimulation in rodents. In drug discrimination studies, aminorex fully substitutes for amphetamine in rats and monkeys and for cocaine in rats. The reinforcing effects of aminorex were evaluated in rhesus monkeys and baboons. Aminorex is self-administered in both experimental paradigms. Collectively, these data indicate that aminorex has an abuse liability and dependence profile similar to other potent controlled CNS stimulants.

The earliest confirmed trafficking of aminorex was in Florida in 1989. Since that time, forensic laboratories have identified aminorex in more than 70 exhibits submitted by law enforcement personnel in Florida, New Jersey, Michigan, Minnesota, Missouri, Pennsylvania, and South Carolina. Clandestine laboratories engaged in the synthesis of aminorex have been discovered in Florida, Pennsylvania, and South Carolina.

Aminorex is orally active but the most common route of administration is via nasal insufflation. It is usually sold as amphetamine or methamphetamine. There has been one death in 1990 associated with aminorex abuse in the United States. Abuse of aminorex produces the same public health risks as those associated with other clandestinely produced stimulants such as methamphetamine with the additional risk factor of pulmonary hypertension.

The DEA Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S C. 811(c), believes that sufficient data exists to propose and to support that aminorex be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U S C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluation and scheduling recommendation of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections, or requests for a hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention. DEA Federal Register Representative. In the event that comments, objections, or requests for a hearing raise one or more issues which the Administrator finds warrants a hearing, the Administrator shall order a public hearing by notice of the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Administrator of the DEA hereby certifies that proposed placement of aminorex into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U S C. 601 *et-seq* This action involves the control of a substance with no currently accepted medical use or manufacture in the United States.

This proposed rulemaking is not a major rule for the purposes of Executive Order 12291 (46 FR 13193) of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to provisions of Executive Order 12291. Accordingly, this drug scheduling action is not subject to the provisions of Executive Order 12778 which are contingent on review by OMB.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1 The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by adding paragraph (f)(6) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(6) Aminorex (Some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine) its salts, optical isomers, and salts of optical isomers . . . 1585.

3 Section 1308.11 is further amended by removing and reserving paragraph (g)(4).

Dated: August 16, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–20159 Filed 8–19–93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG01

Confidentiality of Healthcare Quality Assurance Reviews

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations which govern the confidentiality of documents produced in VA healthcare quality assurance programs. These regulations specify and provide for the limited disclosure of those quality assurance documents which are confidential under the provisions of the Department of Veterans Affairs Health-Care Personnel Act of 1991.

DATES: Comments must be received on or before September 20 1993 Comments will be available for public inspection until September 30, 1993 It is proposed to make these amendments effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed amendments to: Secretary of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 170 at the above address, between the hours of 8 a.m. and 4:30 p m. Monday through Friday (except holidays), until September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Galen L. Barbour, M.D. Associate CMD for Quality Management (15), 810 Vermont Avenue NW., Washington, DC 20420

SUPPLEMENTARY INFORMATION: This revision of the regulations in 38 CFR part 17 applies to healthcare quality assurance records and documents created after the date on which the revision is published in final form. The previous regulations are still applicable to records and documents created prior to that date and remain protected by 38 U.S C. 5705 (formerly 38 U.S C. 3305), Confidentiality of Medical Quality-Assurance Records. Records generated for reviews which are initiated prior to the effective date of this revision and are in accordance with the previous regulations are protected by the previous regulations even if the records are completed after the effective date of this revision.

This revision is necessary to update the previous regulations which were published in 1982. Much of the language in those regulations no longer reflects the practice and terminology of quality assurance.

These revised regulations describe the conditions determining the confidentiality of documents produced in quality assurance programs. They do not specify the quality assurance program requirements for VA medical facilities; the rapidly changing environment to which quality assurance programs respond requires that policy guidance on this subject be presented in a more flexible and readily modifiable format. Consequently the Veterans Health Administration (VHA) will publish a policy document delineating the specific quality assurance requirements for VA medical facilities and the oversight responsibilities of VHA regarding these requirements prior to the final publication of these regulations.

The revised regulations allow confidential information concerning a provider to be seen by that provider for educational and quality improvement purposes. To protect the integrity of the peer review process, the identities of the peer reviewers involved in the creation of the data will not be disclosed to the provider, to the extent practicable. We believe these changes will permit a flow of information conducive to continuous quality improvement by making information on their practice readily available to clinicians.

Confidential information concerning the number of cases treated and procedures performed by individual providers will no longer be protected by 38 U.S C. 5705 and these regulations. Consequently, 38 U.S C. 5705 no longer constitutes a bar to VA facilities placing this information in a practitioner's credentialing and privileging folder. Since this information is important to the evaluation of a practitioner's request for renewal of clinical privileges, making it more readily available should increase the effectiveness of that process.

The classes of systematic healthcare reviews and the specific examples of programs and activities cited in § 17.501(a) are included to provide guidance to VA facilities in classifying their review documents to simplify coverage under these regulations. Documents from other systematic healthcare quality assurance reviews which meet the criteria in § 17.501 (b) and (c) are also confidential.

It is expected that VA facilities will indicate on all confidential review documents created after the publication of these regulations that the document is confidential under 38 U.S C. 5705 and these regulations and also will designate the specific program or activity within which the review is included. The program and activity names used should be from the policy documents described in § 17.501(b). However, it is not necessary for the facility to have taken these steps for a document which meets the criteria in § 17.501 to be confidential and privileged.

These regulations recognize that there are two types of external reviews of care conducted by VA Central Office and the Regions. One type generates documents which are made confidential and privileged by 38 U.S C. 5705 while the documents resulting from the second type of external review are not protected

by that statute. Sections 17.501(a)(2), 17.501(a)(3) and 17.501(g)(9) clarify existing agency procedures in this respect.

This revision does not address the filing of confidential quality assurance documents by individual identifiers. This change from the previous regulations does not mean that it is now legal to file documents in this manner. Guidelines will be provided to the field when this issue is resolved.

The revised regulations no longer specify the manner in which VA facilities will maintain and protect records containing information protected by 38 U.S.C. 5705. However, all VA facilities are expected to provide the level of protection reasonably necessary to ensure that access to and disclosure of all records containing information protected by 38 U.S.C. 5705 will occur only as authorized by the statute and implementing regulations.

Under these regulations, quality assurance investigations may be initiated as needed by facilities as focused reviews. Records and documents relating to quality assurance investigations will be confidential and privileged if they meet the criteria in § 17.501 (b) and (c).

As in the past, information and records derived from patient medical records or facility administrative records, which are not protected by 38 U.S.C. 5705 and these regulations, may be sent or communicated to a third party payor who has asked for this information in response to a VA request for reimbursement based on Public Law 99–272 and Public Law 101–508. Reviews conducted at the request of the third party payor do not generate records protected by 38 U.S.C. 5705 and these regulations since the reviews are not undertaken as part of the VA's quality assurance program. Compliance with applicable patient record confidentiality statutes is, of course, necessary.

The Secretary hereby certifies that this proposed regulatory amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reasons for this certification are that the proposed regulatory amendment is for the express purpose of implementing 38 U.S.C. 5705 which protects particular records generated by the VA medical quality assurance program; affects only confidential VA records; and imposes no regulatory burdens on small entities. Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is therefore exempt from the initial and final regulatory-flexibility analyses requirements of sections 603 and 604. In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistant Number.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: April 14, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for Part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 5705.

2. Sections 17.500 and 17.501 and the undesignated centerheading preceding § 17.500 are revised; § 17.502 is added; §§ 17.503 through 17.510 are revised; § 17.511 is added; and §§ 17.512 through 17.541 are removed as follows:

Confidentiality of Healthcare Quality Assurance Review Records

§ 17.500 General.

(a) Section 5705, title 38, United States Code was enacted to protect the integrity of the VA's medical quality assurance program by making confidential and privileged certain records and documents generated by this program and information contained therein. Disclosure of quality assurance records and documents made confidential and privileged by 38 U.S.C. 5705 and the regulations in § § 17.500 through 17.511 may only be made in accordance with the provisions of 38 U.S.C. 5705 and those sections.

(b) The purpose of the regulations in § § 17.500 through 17.511 is to specify and provide for the limited disclosure of those quality assurance documents which are confidential under the provisions of 38 U.S.C. 5705.

(c) For purposes of the regulations in § § 17.500 through 17.511, the VA's medical quality assurance program consists of systematic healthcare reviews carried out by or for VA for the purpose of improving the quality of medical care or improving the utilization of healthcare resources in VA medical facilities. These review activities may involve continuous or periodic data collection and may relate to either the structure, process, or outcome of health care provided in the VA.

(d) Nothing in the regulations in §§ 17.500 through 17.511 shall be construed as authority to withhold any record or document from a committee or subcommittee of either House of Congress or any joint committee or subcommittee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

(e) The regulations in §§ 17.500 through 17.511 do not waive the sovereign immunity of the United States, and do not waive the confidentiality provisions and disclosure restrictions of 38 U.S.C. 5705.

(Authority: 38 U.S.C. 5705)

§ 17.501 Confidential and privileged documents.

(a) Documents and parts of documents are considered confidential and privileged if they were produced by or for the VA in the process of conducting systematic healthcare reviews for the purpose of improving the quality of health care or improving the utilization of healthcare resources in VA healthcare facilities and meet the criteria in paragraphs (b) and (c) of this section. The four classes of healthcare quality assurance reviews with examples are:

(1) Monitoring and evaluation reviews conducted by a facility

(i) Medical records reviews

(ii) Drug usage evaluations

(iii) Blood usage reviews

(iv) Surgical case/invasive procedure reviews

(v) Service and program monitoring including monitoring performed by several services working together

(vi) Mortality and morbidity reviews

(vii) Infection control review and surveillance

(viii) Occurrence screening

(ix) Tort claims peer reviews (except reviews performed to satisfy the requirements of a governmental body or

a professional health care organization which is licensing practitioners or monitoring their professional performance)

(x) Admission and continued stay reviews

(xi) Diagnostic studies utilization reviews

(xii) Reports of special incidents forms (VA Form 10–2633 or similar forms) and follow-up documents unless developed during or as a result of a Board of Investigation;

(2) Focused reviews, which address specific issues in detail

(i) Facility focused reviews

(ii) VA Central Office or Regional focused reviews which are designated by the reviewing office at the outset of the review as protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511;

(3) VA Central Office or Regional general oversight reviews to assess facility compliance with VA program requirements if the reviews are designated by the reviewing office at the outset of the review as protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511; and

(4) Contracted external reviews of care, specifically designated in the contract or agreement as reviews protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511.

(b) The Under Secretary for Health, Regional Director or facility Director will describe in advance in writing those quality assurance activities included under the classes of healthcare quality assurance reviews listed in paragraph (a) of this section. Only documents and parts of documents resulting from those activities which have been so described are protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511. If an activity is not described in a VA Central Office or Regional policy document, this requirement may be satisfied at the facility level by description in advance of the activity and its designation as protected in the facility quality assurance plan.

(c) Documents and parts of documents generated by activities which meet the criteria in paragraphs (a) and (b) of this section shall be confidential and privileged only if they:

(1) Identify, either implicitly or explicitly, individual practitioners, patients or reviewers except as provided in paragraph (g)(6) of this section; or

(2) Contain discussions relating to the quality of VA medical care or utilization of VA medical resources by healthcare evaluators during the course of a review of quality assurance information or data, even if they do not identify practitioners, patients, or reviewers; or

(3) Consist of individual committee, service, or study team minutes, notes, reports, memoranda, or other documents either produced by healthcare evaluators in deliberating on the findings of healthcare reviews, or prepared for purposes of discussion or consideration by healthcare evaluators during a quality assurance review; or

(4) Are memoranda, letters, or other documents from the medical facility to the Regional Director or VA Central Office which contain information generated by a quality assurance activity meeting the criteria in § 17.501(a) and (b); or

(5) Are memoranda, letters, or other documents produced by the Regional Director or VA Central Office which either respond to or contain information generated by a quality assurance activity meeting the criteria in § 17.501(a) and (b).

(d) Documents which meet the criteria in paragraphs (a) through (c) of this section are confidential and privileged whether they are produced at the medical facility, Regional or VA Central Office levels, or by external contractors performing healthcare quality assurance reviews.

(e) Documents which are confidential and privileged may be in written, computer, electronic, photographic or any other form.

(f) Documents which contain confidential and privileged material in one part, but not in others, such as Clinical Executive Board minutes, should be filed and maintained as if the entire document was protected by 38 U.S.C. 5705. This is not required if the confidential and privileged material is deleted.

(g) The following records and documents and parts of records and documents are not confidential even if they meet the criteria in paragraphs (a) through (c) of this section:

(1) Statistical information regarding VA healthcare programs or activities that does not implicitly or explicitly identify individual VA patients or VA employees or individuals involved in the quality assurance process;

(2) Summary documents or records which only identify study topics, the period of time covered by the study, criteria, norms, and major overall findings, but which do not identify individual healthcare practitioners, even by implication;

(3) The contents of Credentialing and Privileging folders as described in VACO policy documents (38 U.S.C. 5705-protected records shall not be filed in Credentialing and Privileging folders.);

(4) Records and documents developed during or as a result of Boards of Investigations except quality assurance investigations;

(5) Completed patient satisfaction survey questionnaires and findings from patient satisfaction surveys;

(6) Records and documents which only indicate the number of patients treated by a practitioner, either by diagnosis or in aggregate, or number of procedures performed by a practitioner, either by procedure or in aggregate;

(7) Records and documents developed during or as a result of reviews performed to satisfy the requirements of a governmental body or a professional healthcare organization which is licensing practitioners or monitoring their professional performance, e.g., National Practitioner Data Bank, Federation of State Medical Boards, and National Council of State Boards of Nursing;

(8) Documents and reports developed during or as a result of site visits by the Office of the Medical Inspector except to the extent that the documents and reports contain information that result from activities described in paragraphs (a) and (b) of this section that are produced by or for VA by other than the Office of Medical Inspector;

(9) External reviews conducted by VA Central Office or a Region other than those designated by the reviewing office under paragraph (a)(2) or (a)(3) of this section as protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511;

(10) Documents and reports of Professional Standards Boards, Credentialing Committees, Executive Committees of Medical Staff, and similar bodies, insofar as the documents relate to the credentialing and privileging of practitioners;

(11) Documents and reports developed during or as a result of data validation activities;

(12) Documents and reports developed during or as a result of occupational health monitoring;

(13) Documents and reports developed during or as a result of safety monitoring not directly related to the care of specified, individual patients;

(14) Documents and reports developed during or as a result of resource management activities not directly related to the care of specified, individual patients; and

(15) Information and records derived from patient medical records or facility administrative records, which are not protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511,

may be sent or communicated to a third party payor who has asked for this information in response to a VA request for reimbursement based on Public Law 99–272 and Public Law 101–508. Reviews conducted at the request of the third party payor do not generate records protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 since the reviews are not undertaken as part of the VA's quality assurance program.

(Authority: 38 U.S.C. 5705)

§ 17.502 Applicability of other statutes.

(a) Disclosure of quality assurance records and documents which are not confidential and privileged under 38 U.S.C. 5705 and these confidentiality regulations in §§ 17.500 through 17.511 will be governed by the provisions of the Freedom of Information Act, and, if applicable, the Privacy Act and any other VA or federal confidentiality statutes.

(b) When included in a quality assurance review, confidential records protected by other confidentiality statutes such as 5 U.S.C. 552a (the Privacy Act), 38 U.S.C. 7332 (drug and alcohol abuse, sickle cell anemia, HIV infection), and 38 U.S.C. 5701 (veterans' names and addresses) retain whatever confidentiality protection they have under these laws and applicable regulations and will be handled accordingly. To the extent that information protected by 38 U.S.C. 5701 or 7332 or the Privacy Act is incorporated into quality assurance records, the information in the quality assurance records is still protected by these statutes.

(Authority: 38 U.S.C. 5705)

§ 17.503 Improper disclosure.

(a) Improper disclosure is the disclosure of confidential and privileged healthcare quality assurance review records or documents (or information contained therein), as defined in § 17.501, to any person who is not authorized access to the records or documents under the statute and the regulations in §§ 17.500 through 17.511.

(b) "Disclosure" means the communication, transmission, or conveyance in any way of any confidential and privileged quality assurance records or documents or information contained in them to any individual or organization in any form by any means.

(Authority: 38 U.S.C. 5705)

§ 17.504 Disclosure methods.

(a) Disclosure of confidential and privileged quality assurance records and documents or the information contained therein outside VA, where permitted by the statute and the regulations in §§ 17.500 through 17.511, will always be by copies, abstracts, summaries, or similar records or documents prepared by the Department of Veterans Affairs and released to the requestor. The original confidential and privileged quality assurance records and documents will not be removed from the VA facility by any person, VA employee or otherwise, except in accordance with § 17.508(c) or where otherwise legally required.

(b) Disclosure of confidential and privileged quality assurance records and documents to authorized individuals under either §§ 17.508 or 17.509 shall bear the following statement: "These documents or records (or information contained herein) are confidential and privileged under the provisions of 38 U.S.C. 5705, which provide for fines up to $20,000 for unauthorized disclosures thereof, and the implementing regulations. This material shall not be disclosed to anyone without authorization as provided for by that law or these regulations."

(Authority: 38 U.S.C. 5705)

§ 17.505 Disclosure authorities.

The VA medical facility Director, Regional Director, Under Secretary for Health or their designees are authorized to disclose any confidential and privileged quality assurance records or documents under their control to other agencies, organizations, or individuals where 38 U.S.C. 5705 or the regulations in §§ 17.500 through 17.511 expressly provide for disclosure.

(Authority: 38 U.S.C. 5705)

§ 17.506 Appeal of decision by Veterans Health Administration to deny disclosure.

When a request for records or documents subject to the regulations in §§ 17.500 through 17.511 is denied in whole or in part by the VA medical facility director, Regional Director or Under Secretary for Health, the VA official denying the request in whole or in part will notify the requestor in writing of the right to appeal this decision to the General Counsel of the Department of Veterans Affairs within 60 days of the date of the denial letter. The final Department decision will be made by the General Counsel or the Deputy General Counsel.

(Authority: 38 U.S.C. 5705)

§ 17.507 Employee responsibilities.

(a) All VA employees and other individuals who have access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 will treat the findings, views, and actions relating to quality assurance in a confidential manner.

(b) All individuals who have had access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 will not disclose such records or information therein to any person or organization after voluntary or involuntary termination of their relationship to the VA.

(Authority: 38 U.S.C. 5705)

§ 17.508 Access to quality assurance records and documents within the agency.

(a) Access to confidential and privileged quality assurance records and documents within the Department pursuant to this section is restricted to VA employees (including consultants and contractors of VA) who have a need for such information to perform their government duties or contractual responsibilities and who are authorized access by the VA medical facility Director, Regional Director, the Under Secretary for Health or their designees or by the regulations in §§ 17.500 through 17.511.

(b) To foster continuous quality improvement, practitioners on VA rolls, whether paid or not, will have access to confidential and privileged quality assurance records and documents relating to evaluation of the care they provided.

(c) Any quality assurance record or document, whether confidential and privileged or not, may be provided to the General Counsel or any attorney within the Office of General Counsel, wherever located. These documents may also be provided to a Department of Justice (DOJ) attorney who is investigating a claim or potential claim against the VA or who is preparing for litigation involving the VA. If necessary, such a record or document may be removed from the VA medical facility to the site where the General Counsel or any attorney within the Office of General Counsel or the DOJ attorney is conducting an investigation or preparing for litigation.

(d) Any quality assurance record or document, or the information contained therein, whether confidential and privileged or not, will be provided to the Department of Veterans Affairs Office of Inspector General upon request. A written request is not required.

(e) To the extent practicable, documents accessed under paragraph (b) of this section will not include the identity of peer reviewers. Reasonable

efforts will be made to edit documents so as to protect the identities of reviewers, but the inability to completely do so will not bar access under paragraph (b).

(f) No individual shall be permitted access to confidential and privileged quality assurance records and documents identified in § 17.501 unless such individual has been informed of the penalties for unauthorized disclosure. Any misuse of confidential and privileged quality assurance records or documents shall be reported to the appropriate VHA official, e.g., Service Chief, Medical Center Director.

(g) In general, confidential and privileged quality assurance records and documents will be maintained for a minimum of 3 years and may be held longer if needed for research studies or quality assurance or legal purposes.

(Authority: 38 U.S.C. 5705)

§ 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests.

(a) Requests for confidential and privileged quality assurance records and documents from organizations or individuals outside VA must be made to the Department and must specify the nature and content of the information requested, to whom the information should be transmitted or disclosed, and the purpose listed in paragraphs (b) through (k) of this section for which the information requested will be used. In addition, the requestor will specify to the extent possible the beginning and final dates of the period for which disclosure or access is requested. The request must be in writing and signed by the requestor. Except as specified in paragraphs (b) and (c) of this section, these requests should be forwarded to the Director of the facility in possession of the records or documents for response. The procedures outlined in 38 CFR 1.500 through 1.584 will be followed where applicable.

(b) Disclosure shall be made to Federal agencies upon their written request to permit VA's participation in healthcare programs including healthcare delivery and evaluation research, planning, and related activities with the requesting agencies. Any Federal agency may apply to the Under Secretary for Health for approval. If the VA decides to participate in the healthcare program with the requestor, the requesting agency will enter into an agreement with VA to ensure that the agency and its staff will ensure the confidentiality of any quality assurance records or documents shared with the agency.

(c) Qualified persons or organizations, including academic institutions, engaged in health care program activities shall, upon request to and approval by the Under Secretary for Health, Regional Director, medical facility Director, or their designees have access to confidential and privileged medical quality assurance records and documents to permit VA participation in a healthcare program activity with the requestor, provided that no records or documents are removed from the VA facility in possession of the records.

(d) When a request under paragraphs (b) or (c) of this section concerns access for research purposes, the request, together with the research plan or protocol, shall first be submitted to and approved by an appropriate VA medical facility Research and Development Committee and then approved by the Director of the VA medical facility. The VA medical facility staff together with the qualified person(s) conducting the research shall be responsible for the preservation of the anonymity of the patients, clients, and providers and shall not disseminate any records or documents which identify such individuals directly or indirectly without the individual's consent. This applies to the handling of data or information as well as reporting or publication of findings. These requirements are in addition to other applicable protections for the research.

(e) Individually identified patient medical record information which is protected by another statute as provided in § 17.502 may not be disclosed to a non-VA person or organization, including disclosures for research purposes under paragraph (d), except as provided in that statute.

(f) Under paragraph (b), the Under Secretary for Health or designee or under paragraph (c), the Under Secretary for Health, Regional Director, medical facility Director, or their designees may approve a written request if it meets the following criteria:

(1) Participation by VA will benefit VA patient care; or

(2) Participation by VA will enhance VA medical research; or

(3) Participation by VA will enhance VA health services research; or

(4) Participation by VA will enhance VA healthcare planning or program development activities; or

(5) Participation by VA will enhance related VA healthcare program activities; and

(6) Access to the record by the requestor is required for VA to participate in a healthcare program with the requestor.

(g) Protected quality assurance records or documents, including records pertaining to a specific individual, will for purposes authorized under law be disclosed to a civil or criminal law enforcement governmental agency or instrumentality charged under applicable law with the protection of public health or safety, including state licensing and disciplinary agencies, if a written request for such records or documents is received from an official of such an organization. The request must state the purpose authorized by law for which the records will be used. The Under Secretary for Health, Regional Director, medical facility Director, or their designees will determine the extent to which the information is disclosable.

(h) Federal agencies charged with protecting the public health and welfare, Federal and private agencies which engage in various monitoring and quality control activities, agencies responsible for licensure of individual health care facilities or programs, and similar organizations will be provided confidential and privileged quality assurance records and documents if a written request for such records or documents is received from an official of such an organization. The request must state the purpose for which the records will be used. The Under Secretary for Health, Regional Director, medical facility Director, or their designees will determine the extent to which the information is disclosable.

(i) JCAHO (Joint Commission on Accreditation of Healthcare Organizations) survey teams and similar national accreditation agencies or boards and other organizations requested by VA to assess the effectiveness of quality assurance program activities or to consult regarding these programs are entitled to disclosure of confidential and privileged quality assurance documents with the following qualifications:

(1) Accreditation agencies which are charged with assessing all aspects of medical facility patient care, e.g., JCAHO, may have access to all confidential and privileged quality assurance records and documents.

(2) Accreditation agencies charged with more narrowly focused review (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to such confidential and privileged records and documents as are relevant to their respective focus.

(j) Confidential and privileged quality assurance records and documents shall be released to both VA and non-VA healthcare personnel upon request to the extent necessary to meet a medical

emergency affecting the health or safety of any individual.

(k) Confidential and privileged quality assurance records and documents shall be released to the General Accounting Office if such records or documents pertain to any matter within its jurisdiction.

(l) For any disclosure made under paragraphs (a) through (i) of this section, the name of and other identifying information regarding any individual VA patient, employee or other individual associated with VA shall be deleted from any confidential and privileged quality assurance record or document before any disclosure under these quality assurance regulations in §§ 517.500 through 517.511 is made, if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

(m) Disclosure of the confidential and privileged quality assurance records and documents identified in § 17.501 will not be made to any individual or agency until that individual or agency has been informed of the penalties for unauthorized disclosure or redisclosure.

(Authority: 38 U.S.C. 5705)

§ 17.510 Redisclosure.

No person or entity to whom a quality assurance record or document has been disclosed under §§ 17.508 or 17.509 shall make further disclosure of such record or document except as provided for in 38 U.S.C. 5705 and the regulations in §§ 517.500 through 517.511.

(Authority: 38 U.S.C. 5705)

§ 17.511 Penalties for violations.

Any person who knows that a document or record is a confidential and privileged quality assurance document or record described in §§ 517.500 through 517.511 and willfully discloses such confidential and privileged quality assurance record or document or information contained therein, except as authorized by 38 U.S.C. § 5705 or the regulations in §§ 517.500 through 517.511, shall be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of each subsequent offense.

(Authority: 38 U.S.C. 5705)

[FR Doc. 93–20131 Filed 8–19–93; 8:45 am]
BILLING CODE 8320–01–U

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–180 (Sub-No. 2)]

Rulemaking—Payment of Discounts by Motor Carriers of Property to the Non Payer of Freight Charges

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking; revocation of decision extending comment due date; new due date established.

SUMMARY: By notice served June 4, 1993 (58 FR 32340, June 9, 1993), the Commission instituted this proceeding to determine whether off-bill discounting where it does or may result in a misrepresentation of shipping charges should be found to be an unreasonable practice or unlawful. Written comments were sought by August 9, 1993. By letters filed July 27, 1993, the National Small Shipments Traffic Conference and the National Industrial Transportation League requested an extension of the comment due date until after Congress has completed its consideration of pending undercharge bills that include provisions relating to off-bill discounting. By notice served August 2, 1993 (58 FR 41684, August 5, 1993), the Secretary granted the requested extension. The Commission, on our own motion, is revoking the extension request and establishing a new comment due date.

DATES: This action is effective on August 20, 1993. Comments must be received by September 3, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 180 (Sub-No. 2) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher (202) 927–5160 or Ronald A. Hall (202) 927–5595 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission is taking this action because the basis for the extension request is in direct contradiction to the Commission's testimony given before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation on June 15, 1993. The sole reason given to justify an extension was to permit Congress time to legislate an off-bill discount prohibition. However, in our testimony the Commission stated (emphasis added):

The Commission recently issued a Notice of Proposed Rulemaking requesting comments on off-bill discounting. Our notice focuses on misrepresentation rather than on every day businesses [sic] practices that do not involve a failure to disclose. Ex Parte No. MC–180 (Sub-No. 2), *Rulemaking—Payment of Discounts by Motor Carrier [sic] of Property to the Non Payer of Freight Charges* (served June 7, 1993). Comments are due later this summer. *We oppose any legislation to prohibit off-bill discounting.* At this time, no link between off-bill discounting and the undercharge problem has been established, so a prohibition provision is inappropriate, in our view. At a minimum, a prohibition should be limited to failure to disclose the existence of a payment to a third party. *We urge Congress to await the outcome of the Commission's rulemaking proceeding, which could be completed within 90 days.*

Accordingly, as the primary agency with jurisdiction over the practice of off-bill discounting, we requested that Congress take no action until we have had an opportunity to review the comments and complete our rulemaking. Because the public has been on notice since June 4 that comments would be due August 9, we believe that a new due date of September 3, 1993 provides sufficient time for interested persons to comment.

Decided: August 16, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Chairman McDonald and Vice Chairman Simmons dissented.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 93–20178 Filed 8–19–93; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic And Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment and request for comments.

SUMMARY: NMFS issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted

Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery for Secretarial approval and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendment 5 must be received on or before October 15, 1993.

ADDRESSES: Send comments to Mr. Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, Massachusetts 01930–3799. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of Amendment 5, the environmental assessment, and the regulatory impact review may be obtained from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires each regional fishery management council to submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires the Secretary, upon receiving the plan or amendment, to immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or plan amendment.

The proposed amendment would allow two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota.

Regulations proposed by the Council to implement this amendment are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 et seq.

Dated: August 17, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20221 Filed 8–17–93; 3:54 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 160
Friday, August 20, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

United States Warehouse Act User Fees

AGENCY: Agricultural Stabilization and Conservation Service, USDA.
ACTION: Notice requesting comments.

SUMMARY: In 1981, the United States Warehouse Act (USWA) was amended directing the Secretary to charge, assess, and cause to be collected reasonable fees for licensing and examining warehouses. Fees were set in 1981, and adjusted in 1985. No adjustments have been made since then.

A shortfall of funds will occur in the user fee account by the beginning of fiscal year 1995. The Agricultural Stabilization and Conservation Service (ASCS) is requesting comments from interested parties to help determine what changes should be undertaken to correct the shortfall.

DATES: Comments must be received on or before October 19, 1993 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Licensing Authority Division, U.S. Department of Agriculture (USDA), ASCS, P.O. Box 2415, room 5962–S, Washington, DC 20013–2415, FAX 202–690–0014.

FOR FURTHER INFORMATION CONTACT: Lynda Moore or Bill March, Agricultural Marketing Specialists, ASCS, USDA, telephone 202–720–2121.

SUPPLEMENTARY INFORMATION:

Background

The USWA program administered by ASCS is a voluntary licensing and inspection program for agricultural commodity warehouses. The primary objectives of the USWA are to protect those who store commodities in public warehouses; assure the integrity of warehouse receipts as documents of title to be used as collateral; and set, regulate, and maintain superior standards for sound warehouse operations. The USWA has served the industry well for over 75 years.

The USWA requires stringent financial and bonding requirements; complete and accurate position records; reasonable charges for services; nondiscrimination; and prenumbered, controlled warehouse receipts. ASCS' regulation and supervision of licensees has centered around unannounced warehouse examinations. Examinations include physical inventories to determine if the quantity and quality of the stocks on hand are adequate to meet the obligations as reflected in the warehouseman's records; inspection of overall warehouse sanitation; checking equipment such as safety/fire, and scales; and surveying for compliance with all other USWA requirements.

The cost of this program is very small in comparison to the value of the security this program offers all depositors who have billions of dollars of commodities in store in licensed warehouses. Unless changes are made, this USWA program will have to be curtailed during late fiscal year 1994, and certainly in fiscal year 1995. This would significantly affect the industry and depositors. The warehouse capacity that is currently licensed under the USWA represents about $30 billion worth of commodities in which producers and lenders have a vested interest.

The USWA states that fees collected shall cover as nearly as practicable the costs of services and licenses, as well as administrative and supervisory costs. The USWA mandates fee collection to self-sustain the Federal warehouse licensing and examination programs. By fiscal year 1995, the annual cost of the warehouse examination program is expected to be approximately $3.2 million, with fee collections of $1.6 million. Fees will be statutorily required to increase by 100 percent without other adjustments. We are requesting comments from interested parties to help determine what other possible alternatives, (such as cost cutting ideas, fewer examinations, etc.) could be taken to correct this shortfall and to keep this program operating.

Signed at Washington, DC on August 16, 1993.

Bruce R. Weber,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–20215 Filed 8–19–93; 8:45 am]
BILLING CODE 3410–05–P

Commodity Credit Corporation

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.
ACTION: Notice requesting comments.

SUMMARY: The upland cotton user marketing certificate program has recently been the focus of attention. Concerns have been raised about its cost and the way in which it has been administered, particularly in regards to the introduction each spring of both current and forward certificate payments. CCC requests comments of interested persons to address some of these concerns.

DATES: Comments must be received on or before September 20, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, FRAD, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The cotton user marketing certificate program was intended to assure the competitiveness of U.S. cotton in domestic and export markets. Since U.S. textile mills must compete with foreign mills who have access to cotton on the world market, Congress provided for user marketing certificate payments on all U.S.-grown, domestically-used upland cotton. To assure the competitiveness of U.S.-grown cotton in the world raw cotton trade, Congress also provided for certificate payments to exporters of U.S. cotton.

Section 103B(a)(5)(E) of the Agricultural Act of 1949, as amended,

authorizes the issuance of marketing certificates or cash payments to domestic users for documented purchases and to exporters for export sales made in the week following a consecutive 4-week period in which (1) the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, cost, insurance and freight northern Europe (U.S. Northern Europe price or USNE price) exceeds the Northern Europe (NE) price by more than 1.25 cents per pound, and (2) the adjusted world price does not exceed 130 percent of the current crop year loan level for the base quality of upland cotton, as determined by the Secretary. The value of the marketing certificate or cash payments is equal to the difference in the fourth week of the consecutive 4-week period between the USNE price and the NE price, minus 1.25 cents.

Regulations contained in 7 CFR part 1427, subpart—Upland Cotton User Marketing Certificate Program Regulations, currently accommodate the situation each spring through August 1 when two sets of quotations—one set for current-crop cotton and one set for forward-crop cotton—become available. During this period, a current payment rate and a forward payment rate may be triggered. Domestic users consuming cotton and exporters entering into contracts to deliver cotton before September 30 earn the current payment rate. Exporters entering into contracts to deliver cotton after September 30 earn the forward payment rate.

The User Marketing Certificate Program has been in effect since August 1991. In the spring of 1992, the first forward certificate rate was 5.5 cents per pound, the highest since the program began. During the week that rate was in effect, 2.1 million running bales of upland cotton, or about 45 percent of the approximately 4.9 million bales currently expected to be shipped for the 1992 marketing year, were contracted by exporters. Payment rates in subsequent weeks dropped below 5.5 cents and did not exceed that level until the first week a forward payment rate triggered in the spring of 1993 when the payment rate was 6.63 cents—a record high. During the week the 6.63-cent payment rate was in effect, 5.1 million running bales, or about 90 percent of the 5.95 million bales currently estimated to be shipped for the 1993 marketing year, were contracted. The forward payment rate dropped to 0.57 cents the following week and remained below 1 cent for 11 weeks. Many of the contracts made by exporters during the weeks in which the 6.63-cent rate applied were to the exporters' own foreign affiliates, and the final destination of the cotton was listed as unknown.

On August 12, 1993, CCC published an interim rule that amended the user marketing certificate regulations to (1) revise the formula for determining liquidated damages when shipment of cotton on an original export contract or on a replacement contract is not completed, or when a replacement contract is not designated by the exporter within an established timeframe, and (2) revise the procedure for establishing the payment rate for U.S. upland cotton shipped under an optional origin contract. Although these provisions improve some aspects of program administration, concerns about the program remain.

Clearly, the user marketing certificate program as it currently operates is distorting normal ways of doing business in international cotton markets. An examination of forward-contracting patterns by exporters prior to 1991 confirms this. The eligibility for payment of exporters' contracts with their foreign affiliates to ship cotton to unknown destinations has contributed to heavy contracting activity during the first week a forward payment rate is in effect. To compete, exporters try to lock in the highest payment rate possible and may legitimately do so under the existing program rules and the terms of the user agreement between the exporters and CCC.

However, such practices disadvantage the small-scale cotton exporter who, not having foreign affiliates, may not be able to arrange sales so far in advance. Such practices may also disadvantage domestic users who, though themselves ineligible for the forward payment rate, nonetheless must compete with foreign users of U.S. cotton who have obtained U.S. cotton at lower prices made possible by the high forward payment rates earned by U.S. exporters. To the extent that the program costs more than it should to export a given amount of cotton, taxpayers bear an unwarranted burden.

CCC invites interested persons to submit written comments on the user marketing certificate program. Comments are specifically invited on the following concerns:

(1) How to make the program equitable to exporters with and without foreign affiliates, to domestic textile mills, and to other members of the U.S. cotton industry;

(2) How best to meet the legislative objectives of the program as they relate to U.S. cotton competitiveness;

(3) How to assure that export contracts considered eligible to lock in rates in advance under the program represent actual sales and how to institute appropriate measures that discourage program abuse but do not unduly penalize exporters if they are unable to ship cotton due to unforseen and unavoidable circumstances;

(4) How to operate a program that interferes as little as possible with normal cotton marketing practices, that does not overly influence or dominate decision-making in the cotton market, that will not result in cotton price distortions, and that will not commit federal funds unnecessarily to the competitiveness program; and

(5) How to accomplish the above objectives in a way that is not administratively burdensome.

Comments must be received by September 20, 1993, in order to be assured of consideration.

Signed at Washington, DC, on August 16, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–20216 Filed 8–19–93; 8:45 am]

BILLING CODE 3410-05-P

Forest Service

Exempt Decision for Flying Bugs Salvage Timber Sale From Appeal, Okanogan National Forest, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Flying Bugs Salvage Timber Sale in the Falls Creek drainage on the Winthrop Ranger District of the Okanogan National Forest is exempted from appeal. This confirms with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Sam Gehr, Forest Supervisor, Okanogan National Forest, 1240 South Second Avenue, P.O. Box 950, Okanogan, Washington 98840, phone (509) 826–3275.

SUPPLEMENTARY INFORMATION: The Falls Creek drainage on the Okanogan National Forest is experiencing a mountain pine beetle infestation. Approximately 155 acres of this area has been analyzed in the Flying Bugs Salvage Timber Sale. The Okanogan National Forest Land and Resource Management Plan designates this area as Management Area (MA) 25. The management goal for MA 25 is to

intensively manage the timber and range resources.

In October 1992, the District Ranger of the Winthrop Ranger District, proposed the salvage harvest of the insect-infested timber. In the fall and winter of 1992 and 1993, an interdisciplinary team (IDT) surveyed the affected area to assess the damage to the resources that had occurred. The IDT identified the need to salvage the timber in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 8 inches in diameter with relatively little defect.

The environmental analysis and the initial scoping for this project began in November of 1992. After press releases and contacts with individuals and State and Federal agencies, the following issues were identified:

—Harvest would have to be done immediately or the timber would lose its commercial value.
—A sensitive plant exists within the sale area boundary which needs protection.
—A Goshawk nest in the sale area needs protection.
—There is dwarf mistletoe in much of the Douglas fir overstory.
—Could prescribed fire be used to solve the beetle infestation problem?
—Fuels generated by this sale will need to be treated.
—Falls Creek drainage is a mule deer fawning area and logging will need to be restricted to protect fawning.

The IDT developed three alternatives to analyze, including the No-Action Alternative. The salvage fit within a category of action that may be categorically excluded from documentation in an environmental impact statement or an environmental assessment (Forest Service Handbook 1909.15, section 31.2).

This sale will produce about 700,000 board feet of sawlogs and about 200,000 board feet of lodgepole pulpwood. No new road construction would be necessary to implement the project. All yarding would be done by helicopter. The harvest prescription would be a salvage cut removing lodgepole pine trees only. Fuels will be treated by yarding trees with tops attached in all of the sale units. Regeneration will be accomplished by a combination of planting of Douglas fir and ponderosa pine and natural regeneration of lodgepole pine and Douglas fir.

This sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost and resource damage. This salvage is important to forest rehabilitation and recovery in the Falls Creek drainage and meeting Desired Future Conditions. The severity of damage to stand requires immediate action to initiate stand recovery. Based upon the analysis for this Flying Bugs Salvage, I have determined that good cause exist to exempt this salvage timber sale from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Flying Bugs Salvage Timber Sale may be signed by the Winthrop District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: August 13, 1993.

Jerry L. Monesmith,

Acting Deputy Regional Forester.

[FR Doc. 93–20147 Filed 8–19–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Amendment to Countervailing Duty Order: Certain Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Kristin M. Heim, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3798.

Amendment to Countervailing Duty Order

On August 12, 1993, the Department of Commerce (the Department) issued its Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations of Certain Steel Products from Germany, which is scheduled to be published in the **Federal Register** on August 17, 1993. This notice serves to amend the order with respect to certain cold-rolled carbon steel flat products only.

In the orders issued on August 12, 1993, the Department incorrectly stated that the International Trade Commission (ITC) had determined that imports of certain cold-rolled carbon steel flat products are materially injuring a U.S. industry. In fact, in its August 9, 1993 report, the ITC determined, pursuant to section 705(b)(1)(A)(ii) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1671d(b)(1)(A)(ii), that a U.S. industry is threatened with material injury. Next, pursuant to 705(b)(4)(B) of the Tariff Act (19 U.S.C. § 1671d(b)(4)(B)), the ITC examined whether material injury would have been found but for the suspension of liquidation of the merchandise. The ITC determined that such was not the case.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 706(b)(2) applies. Therefore, all entries of certain cold-rolled carbon steel flat products from Germany, entered or withdrawn from warehouse, for consumption, made on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for August 18, 1993), will be liable for the assessment of countervailing duties. See, Countervailing Duty Order: Sulfanilic Acid from India, 58 FR 12026 (March 2, 1993).

The Department will direct the U.S. Customs Service to terminate the suspension of liquidation for the entries of certain cold-rolled carbon steel flat products from Germany, entered or withdrawn from warehouse, for consumption, before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for August 18, 1993), and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to those entries. For entries on or after that date, the U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 0.85 percent *ad valorem*.

In accordance with section 706 of the Act (19 U.S.C. § 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cold-rolled carbon steel flat products from Germany. In accordance with section 706(b)(2), these countervailing duties will be assessed

on all unliquidated entries of certain cold-rolled carbon steel flat products from Germany which were entered, or withdrawn from warehouse, for consumption, on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**.

This notice constitutes a countervailing duty order with respect to certain cold-rolled carbon steel flat products from Germany pursuant to section 706(a) of the Act (19 U.S.C. § 1671e(a)). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this order constitutes the following separate "class or kind" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers—

7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000.

Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

This notice is published in accordance with section 706(a) of the Act (19 U.S.C. 1671e(a)) and 19 CFR 355.21.

Dated: August 16, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20315 Filed 8–19–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Amendment of scientific research permit No. 760 (P492).

SUMMARY: Notice is hereby given that on August 13, 1993, Permit No. 760, issued to Dr. Graham A. J. Worthy, Assistant Professor of Marine Mammalogy, Department of Marine Biology, Texas A & M University at Galveston, 4700 Avenue U, Galveston, TX 77551–5923, on December 20, 1991, (56 FR 67288), was amended to authorize, for the purpose of scientific research, the import of cetacean blood samples collected in a legal manner in the waters of the country of origin.

ADDRESSES: The amended permit and related documents are available for review, by appointment, in the following offices.

Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141).

SUPPLEMENTARY INFORMATION: The subject permit amendment was issued pursuant to the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: August 13, 1993.

Gary Matlock,

Acting Deputy Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–20148 Filed 8–19–93; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Request for Comments on Patent Law Harmonization

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings and request for public comments.

SUMMARY: The Patent and Trademark Office will hold a series of public hearings and is seeking written comments to obtain views of the public on the effort to harmonize the patent laws of the world and the consequent changes to United States patent law. The public hearings will be held to receive views of the public on specific topics. Written comments may be offered on these topics or on any aspect of the harmonization effort.

DATES: Public hearings will be held at 9 a.m. on October 7, 1993, and at 9 a.m. and 1:30 p.m. on October 8, 1993. Requests to present oral testimony at the public hearings held on October 7 and 8, 1993, should be received on or before October 1, 1993, together with an indication of the hearing or hearings at which testimony will be offered. Any written comments by those persons offering testimony at the hearings and related to that testimony should be submitted on or before October 1, 1993. Other written comments are due by October 29, 1993.

ADDRESSES: Persons wishing to offer written comments on the topics to be discussed at the hearings or on any aspect of patent law harmonization should address those comments to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231, marked to the attention of Mr. Lee Schroeder. The hearings will be held in Marriott's Crystal Forum, a part of the Crystal City Marriott Hotel located in The Underground, 1999 Jefferson Davis Highway, Arlington, Virginia. Persons wishing to speak at the

hearings must notify Mr. Lee Schroeder, in writing to his attention at Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231, or by telephone (703) 305–9300 or by telefax at (703) 305–8885, in order to be placed on a list of speakers for any of the three hearings. Written comments and transcripts of the hearings will be available for public inspection in room 902 of Crystal Part II, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Schroeder by telephone at (703) 305–9300, by telefax at (703) 305–8885 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

1. Background

In an effort to improve the patent laws of the countries of the world including the United States, as well as to harmonize some of the salient provisions of those laws, the World Intellectual Property Organization (WIPO) convened a series of meetings of experts beginning in 1985. In 1991, the first session of a diplomatic conference was held to advance the conclusion of the Treaty Supplementing the Paris Convention as far as Patents are Concerned ("the Treaty") which evolved from those meetings. A second and concluding session of the diplomatic conference was scheduled for July 1993, but was deferred at the request of the United States.

Various provisions of the Treaty are supported by many interests in the United States. Some of the provisions of the Treaty, however, are opposed by some interests in the United States. In addition, some provisions will require choices to be made in their implementation.

To determine the nature and extent of the support or opposition to the various provisions of the Treaty and to obtain guidance on the choices that would have to be made to accompany the implementation of some of the provisions, public expression of views will be sought. Such public expression of views may take the form of written comments submitted to the Commissioner of Patents and Trademarks or may take the form of public commentary offered at a series of public hearings that will be held for receiving oral comments on specific topics.

Written comments may be offered on any aspect of the Treaty or its implementation or may be directed to the topics which will be the subjects of the public hearings.

2. Topics of the Hearings

Public hearings will be held to receive comments on specific topics as follows:

Hearing #1 (9 a.m. on Thursday, October 7, 1993)—(First-to-file)

The Treaty calls for awarding patents to the first inventor to file a patent application for a given invention (Article 9). The Treaty also mentions a prior user right (Article 20).

Topics to be addressed at the hearing are:

(i) Procedure for awarding patents (first-to-file or first-to-invent); and

(ii) Nature of a prior-user right, if any, to accompany a first-to-file system.

Hearing #2 (9 a.m. on Friday, October 8, 1993)—(Prior art)

The Treaty provides that everything made available to the public anywhere prior to the filing date of an application, or priority date if one is claimed, is prior art for that application (Article 11). Patent applications are prior art, at least for novelty purposes, as of their filing date, or priority date if one is claimed, and for non-obviousness purposes optionally as of the same date or as of their publication date (Article 13). The Treaty also provides a grace period for disclosures directly or indirectly emanating from the inventor (Article 12), but does not address certain variations contained in United States law (experimental use and secret use or sale).

The topics to be addressed at the hearing are:

(i) The inclusion of foreign public use, display or oral disclosure as prior art;

(ii) Prior art effect of certain patent applications and their effective dates for novelty and non-obviousness purposes (and the impact on *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966), 424 F.2d 1108, 165 USPQ 255 (CCPA 1970)); and

(iii) The accommodation of existing equitable variations to existing statutory bars (experimental use and secret use or sale).

Hearing #3 (1:30 p.m. on Friday, October 8, 1993)—(Procedural changes)

The Treaty requires publication of applications 18 or at the latest 24 months after filing (Article 15) and provides compensation for uses of inventions claimed in both the published application and the resulting patent (Article 23). The Treaty calls for the term of protection of a patent to be measured from the filing date of the application (Article 22(2)(b)).

The topics to be addressed at the hearing are:

(i) Publication of applications 18/24 months after filing;

(ii) Protection offered between publication and patenting; and

(iii) Measuring the term of protection from the filing date of the application.

3. Treaty Text Related to Topics of the Hearings

WIPO document PLT/DC/69 entitled "Observations of the International Bureau Following the First Part of the Diplomatic Conference" contains the provisions of the Treaty ("Basic Proposal") and the Observations of the WIPO International Bureau on past understandings and possible future accommodations. Extracts of that document related to the topics of the hearings follow. See **FOR FURTHER INFORMATION CONTACT** above to obtain the complete document.

Article 9

[Basic Proposal]

Article 9—Right to a Patent

(1) [Right of Inventor] The right to a patent shall belong to the inventor. Any Contracting Party shall be free to determine the circumstances under which the right to the patent shall belong to the employer of the inventor or to the person who commissioned the work of the inventor which resulted in the invention.

(2) [Right Where Several Inventors Independently Made the Same Invention] Where two or more inventors independently have made the same invention, the right to a patent for that invention shall belong,

(i) where only one application is filed in respect of that invention, to the applicant, as long as the application is not withdrawn or abandoned, is not considered withdrawn or abandoned, or is not rejected, or

(ii) where two or more applications are filed in respect of that invention, to the applicant whose application has the earliest filing date or, where priority is claimed, the earliest priority date, as long as the said application is not withdrawn or abandoned, is not considered withdrawn or abandoned, or is not rejected.

[Observations]

9.A With respect to Article 9, it is suggested that paragraph (1) should remain as in the basic proposal, subject to (i) adding the words "or his successor in title" at the end of the first sentence and (ii) inserting the words "and the extent to which" after the words "under which" in the second sentence. Moreover, the following note should be included in the Records:

"It was understood that nothing in Article 9(1) should be interpreted as derogating in any way from the provisions of Article 6."

9.B As far as Article 9(2) is concerned, it appears, on the basis of the statements made in the first part of the Diplomatic Conference, that all prospective Contracting Parties other than the United States of America will insist on the mandatory character of the first-to-file system as a condition sine quo non for the adoption of the Treaty.

It is therefore suggested that Article 9(2) should remain as in the basic proposal.

Article 11

[Basic Proposal]

Article 11—Conditions of Patentability

(1) [Patentability] In order to be patentable, an invention shall be novel, shall involve an inventive step (shall be non-obvious) and shall be, at the option of the Contracting Party, either useful or industrially applicable.

(2) [Novelty] (a) An invention shall be considered novel if it does not form part of the prior art. For the determination of novelty, items of prior art may only be taken into account individually.

(b) The prior art shall consist of everything which, before the filing date or, where priority is claimed, the priority date of the application claiming the invention, has been made available to the public anywhere in the world.

[(c) Notwithstanding subparagraph (b), any Contracting Party shall be free to exclude from the prior art matter made available to the public, by oral communication, by display or through use, in a place or space which is not under its sovereignty or, in the case of an intergovernmental organization, under the sovereignty of one of its member States.]

(3) [Inventive Step (Non-Obviousness)] An invention shall be considered to involve an inventive step (be non-obvious) if, having regard to the prior art as defined in paragraph (2), it would not have been obvious to a person skilled in the art at the filing date or, where priority is claimed, the priority date of the application claiming the invention.

[Observations]

11.A It is suggested that Article 11 should remain as in the basic proposal, subject to Observations 11.B to 11.E.

11.B Ad Article 11(2)(b). It is suggested that the meaning of the word "available" be clarified either by adding to it the words "and effectively accessible" or by stating the following in the Records of the Diplomatic Conference:

"With respect to Article 11(2)(b), it was agreed that a document that has been produced only in a single copy or a very limited number of copies is to be considered as having been made available to the public only where at least one copy has been put in a place open to the public and has been catalogued or indexed, and the catalogue or index is accessible to the public."

11.C Ad Article 11(2)(c). It seems that the freedom allowed by this subparagraph is needed for the acceptance of the Treaty by several countries, including the United States of America. Since the matter is not of primary importance, it is suggested that, despite the fact that a majority was for the omission of this subparagraph during the first part of the Diplomatic Conference, the subparagraph be inserted in the basic proposal and the square brackets around it be removed.

11.D Ad proposal for new Article 9*bis*. It is suggested to reflect the contents of Article 9*bis*(1) as proposed by the Delegation of the United States of America (see document PLT/DC/INF/5, paragraph 11.07) in a note in the Records of the Diplomatic Conference so that there would be no doubt that the United States of America could maintain the corresponding provisions in its law. Since the proposed Article 9*bis*(1)(i) seems to aim only at regulating the consequences of acts having occurred on the territory of the Contracting Party which determines the said consequences, the note should reflect this by containing the words "in the territory of the Contracting Party." Thus, such a note could read as follows:

"It was understood that Article 11 did not affect the freedom of a Contracting Party to provide for a loss of right to file an application where

(i) the inventor, his successor-in-title or the applicant had placed on sale or secretly used the invention in the territory of the Contracting Party more than 12 months preceding the filing date or, where priority is claimed, the priority date of the application even if the invention was not, by virtue of being so placed on sale or secretly used, made available to the public; or

(ii) the applicant had filed in respect of the invention an application for an industrial property title outside the Contracting Party in violation of the national security provisions of the Contracting Party."

11.E As regards paragraph (2) of the proposed Article 9*bis*, this provision would amount to an option to extend the grace period beyond 12 months for the special case of public experimental use. Such an extension of the grace period would be contrary to the basic principle according to which the establishment of a grace period always has been considered a matter requiring a uniform solution in all Contracting Parties. If, for example, the Treaty would prescribe a minimum term for the grace period with an option for Contracting Parties to provide for a longer term, applicants intending to file applications in several countries could rely only on the shortest term existing in any of those countries, and third parties would have to take into account the various terms in order to ascertain whether a disclosure would have the benefit of the grace period. It is therefore believed that the proposed extension should not be allowed.

Article 12

[Basic Proposal]

Article 12—Disclosures Not Affecting Patentability (Grace Period)

(1) [Circumstances of Disclosure Not Affecting Patentability] Disclosure of information which otherwise would affect the patentability of an invention claimed in the application shall not affect the patentability of that invention where the information was disclosed, during the 12 months preceding the filing date or, where priority is claimed, the priority date of the application,

(i) by the inventor,

(ii) by an Office and the information was contained

(a) in another application filed by the inventor and should not have been disclosed by the Office, or

(b) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information direct or indirectly from the inventor, or

(iii) by a third party which obtained the information direct or indirectly from the inventor.

(2) ["Inventor"] For the purposes of paragraph (1), "inventor" also means any person who, at the filing date of the application, had the right to the patent.

(3) [No Time Limit for Invoking Grace Period] The effects of paragraph (1) may be invoked at any time.

(4) [Evidence] Where the applicability of paragraph (1) is contested, the party invoking the effects of that paragraph shall have the burden of proving, or of making the conclusion likely, that the conditions of that paragraph are fulfilled.

[Observations]

12.A It is suggested that Article 12 should remain as in the basic proposal, subject to Observations 12.B to 12.D.

12.B Ad Article 12(1). It would seem that the term "during" needs to be clarified in respect of the cases referred to under (ii). An application filed by the inventor or by a third party may have a prior art effect under Article publication but on its filing or priority date. In such a case, Article 12(1) applies if the filing or priority date of the said application fell during the 12 months (although its publication occurred after the 12-month period) preceding the filing or priority date of the application to which the grace

period is to be applied. Therefore, in order to cover these cases, it is suggested that, instead of "during," the words "during, or with effect under Article 13 on a date during," be used.

12.C Ad Article 12(2). It would seem that the case where a person had the right to a patent only before the filing date but no longer at the filing date (for example, the case of an assignment of that right) should be covered. Consequently, it is suggested that the words "or before" be inserted after the word "at."

12.D Proposal for a new Article 9*bis*(2). See Observation 11.D, above.

Article 13

[Basic Proposal]

Article 13—Prior Art Effect of Certain Applications

(1) [Principle of "Whole Contents"] (a) Subject to subparagraph (b), the whole contents of an application ("the former application") as filed in, or with effect for, a Contracting Party shall, for the purpose of determining the novelty of an invention claimed in another application filed in, or with effect for, that Contracting Party, be considered as prior art from the filing date of the former application on condition that the former application or the patent granted thereon is published subsequently by the authority competent for the publication of that application or patent. Any Contracting Party may consider the whole contents of the former application to be prior art also for the purpose of determining whether the invention satisfies the requirement of inventive step (non-obviousness).

(b) Where the former application referred to in subparagraph (a) claims the priority of an earlier application for a patent, utility model or other title protecting an invention, matter that is contained in both the former application and such earlier application shall be considered as prior art in accordance with subparagraph (a) from the priority date of the former application.

(c) For the purposes of subparagraph (a), the "whole contents" of an application consists of the description and any drawings, as well as the claims, but not the abstract.

(2) [Applications No Longer Pending] Where the former application referred to in paragraph (1)(a) has been published in spite of the fact that, before the date of its publication, it was withdrawn or abandoned, was considered withdrawn or abandoned, or was rejected, it shall not be considered as prior art for the purposes of paragraph (1)(a).

(3) [International Applications Under the PCT] As regards international applications filed under the Patent Cooperation Treaty, any Contracting Party may provide that paragraph (1) shall apply only if the acts referred to in Article 22 or, where applicable, Article 39(1) of that Treaty have been performed.

(4) [Self-Collision] [(a)] Paragraph (1) shall not apply when the applicant of, or the inventor identified in, the former application, and the applicant of, or the inventor identified in, the application under examination, is one and the same person.

[(b) Any Contracting Party that considers the whole contents of the former application to be prior art only for the purpose of determining the novelty of the invention shall be free not to apply subparagraph (a).]

[Observations]

13.A It is suggested that Article 13 should remain as in the basic proposal, subject to Observations 13.B to 13.D.

13.B Ad Article 13(1)(a). As regards the last sentence, it seems that the option provided for would be needed by one country, namely by the United States of America. The option, if chosen by the United States of America, would have the effect that an applicant, for example, a foreign applicant, whose invention, although new, is obvious (that is, it does not have an inventive step) when compared with the invention of another applicant who filed an earlier application, or who has the benefit of an earlier priority date, could not obtain a patent in the United States of America, whereas he could obtain a patent in all other countries (because in those countries the earlier application is not taken into consideration in determining nonobviousness). In this connection, it should be noted that the applicant with the earlier filing or priority date may well be a foreigner, in which case *he* (the foreigner) would have the advantage of the system prevailing in the United States of America. It should also be noted that the United States of America would, if the first sentence of Article 13(1) remains as proposed (and the Delegation of the United States of America raised no objection to it), be obliged to abandon the "Hilmer doctrine" (i.e., the doctrine according to which the prior art effect starts on the filing date but not on the priority date), and, as it is well known, thereby make an important concession. The advantages obtained through that concession by foreign applicants in the United States of America would be far more important than the limitation of the prior art effect to the requirement of novelty, a limitation which—depending on the circumstances and as already stated—may well be a disadvantage for a foreign applicant and which could endanger the acceptance of this Article by the United States of America and, thereby, the generally much desired abandonment of the "Hilmer doctrine." Thus, despite the opinions expressed in the first part of the Diplomatic Conference, it is suggested that the last sentence of Article 13(1)(a) be maintained.

13.C Ad possible new Article 13(1)(d). It is suggested that a new subparagraph be added to Article 13(1) and that it should read as follows:

"(d) Any Contracting Party may consider an application for a utility model filed in, or with effect for, that Contracting Party as prior art in accordance with paragraph (a)."

13.D Ad Article 13(4) and possible new Article 13(5). A provision excluding self-collision is needed in the United States of America, Japan and some other countries, whereas European countries, mainly because they provide for the possibility of claiming internal priority, do not need it. However, foreign applicants in Europe would be interested in having a provision excluding self-collision. A possible solution would be the inclusion of a mandatory provision against self-collision, as a safeguard for foreign applicants in all countries. The fact that European countries feel that such a provision is not needed does not mean that such a provision would be disadvantageous for them.

The same consideration applies to the prohibition of double patenting (see proposal of the United States of America concerning a new paragraph (5) of Article 13, document PLT/DC/INF/5, paragraph 13.07). Thus, the mandatory exclusion of self-collision could be combined with a mandatory prohibition of double-patenting. Consequently, it is suggested that Article 13(4) read as follows:

"(4) [Self-Collision] Paragraph (1) shall not apply when the applicant of, or the inventor identified in, the former application, and the applicant of, or the inventor identified in, the application under examination, is one and the same person, provided that only one patent may be validly granted by the same Office for the same invention."

One could, however, slightly modify the suggested text in the following respects:

(i) the words "or the inventor identified in" (in both places where they appear) could be deleted, in particular, in order not to grant the benefit of the provision excluding self-collision in cases where inventors change employers;

(ii) the words "at the filing date of the application under examination" could be added before the words "one and the same person" in order not to grant the benefit of the provision excluding self-collision in cases where the applicants were not originally the same but became the same as a consequence of the assignment of one of the applications.

Article 15

[Basic Proposal]

Article 15—Publication of Application

(1) [Requirement to Publish the Application] (a) Subject to paragraphs (2) to (4), the Office shall publish the application as soon as possible after the expiration of 18 months from the filing date or, where priority is claimed, the priority date.

(b) Notwithstanding subparagraph (a), any Contracting Party that, at the time of depositing its instrument of ratification of, or accession to, this Treaty, does not provide for the publication of applications as provided in subparagraph (a) may notify the Director General at the said time that it reserves the right to publish applications as soon as possible after the expiration of 24 months, rather than 18 months, from the filing date or, where priority is claimed, the priority date.

(2) [Earlier Publication at Applicant's Request] If, before the expiration of the time limit referred to in paragraph (1), the applicant requests that the application be published, the Office shall, without delay after the receipt of the request, publish the application.

(3) [National Security] Any Contracting Party shall be free not to publish an application for reasons of national security.

(4) [Circumstances in Which Publication May Not Take Place] (a) No application may be published if it is withdrawn or abandoned or is considered withdrawn or abandoned

(i) earlier than two months before the expiration of the time limit applicable under paragraph (1) or,

(ii) where the Office completes the technical preparations for publication later than two months before the expiration of the time limit applicable under paragraph (1), prior to the completion of such preparations.

(b) No application may be published if it has been rejected.

[Observations]

15.A It is suggested that Article 15 and Rule 8 should remain as in the basic proposal, subject to Observations 15.B and 15.C.

15.B Ad Article 15(4). In the light of the suggested drafting changes (see document PLT/DC/INF/5, paragraphs 15.05 and 15.06), it is suggested that this provision read as follows:

"(4) [Circumstances in Which Publication May Not Take Place] No application that has ceased to be pending shall be published, provided that, if the application ceased to be pending after the expiration of 16 months (where paragraph (1)(a) applies) or 22 months (where paragraph (1)(b) applies) from the filing date or, where priority is claimed, the priority date, it may be published if the Office, for all practical purposes, can no longer withhold publication of the application because the technical preparations for publication have been completed."

Article 20

[Basic Proposal]

Article 20—Prior User

(1) [Right of Prior User]

Alternative A—Any Contracting Party may provide that, notwithstanding Article 19,

Alternative B—Notwithstanding Article 19,

a patent shall have no effect against any person (hereinafter referred to as "the prior user") who, in good faith, for the purposes of his enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within the territory where the patent produces its effect, was using the invention or was making effective and serious preparations for such use; any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) [Successor-in-Title of the Prior User] The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

[Observations]

20.A With regard to Article 20, it would seem that a provision such as Alternative B of the basic proposal, which would oblige Contracting Parties to provide for prior users' rights, would not, under the present circumstances, be acceptable in the United States of America and could endanger the successful adoption of the Treaty or at least its acceptance by that country.

20.B It remains to be considered whether or not an optional provision on prior users' rights should be included in the Treaty. Such an optional provision would have been indispensable if Article 19 (Rights Conferred by the Patent) had been maintained, since otherwise a Contracting Party would be prevented from providing for prior users' rights. With the removal of Article 19, which was decided by the Assembly of the Paris Union, Article 20 is no longer needed by those Contracting Parties which want to (continue to) provide for prior users' rights. On the other hand, the existence in the Treaty of an optional Article would entail an obligation for any Contracting Party providing for prior users' rights to comply with the substance of the Article and might prevent a country wishing at a later stage to introduce provisions on prior users' rights in its legislation from doing so if the substance of the Article is not acceptable to it. Therefore, even the presence of an optional Article in the Treaty may endanger the success of the Patent Law Treaty, unless such Article would only mention the possibility of a prior user's right without any indication of the conditions and scope of such a right.

20.C In conclusion, it is suggested not to include any Article on prior users' rights in the Treaty. In any case, it should be noted, firstly, that leaving the matter entirely to national laws appears to be reasonable since the beneficiaries of a prior user right are, in the vast majority of cases, only residents of the territory of the Contracting Party in question, and, secondly, that it will always be possible, if the position of the United States of America on prior users' rights moves at a later stage towards the solutions preferred by most other prospective Contracting Parties, to conclude a Protocol on the matter under Article 32.

Article 22

[Basic Proposal]

Article 22—Term of Patents

Alternative A—Note: No article on the term of patents.

Alternative B—(1) [Minimum Duration of Protection] [Omitted]

(2) [Starting Date of Term] (a) The starting date of the term of a patent shall be the filing date of the application on which the patent is granted, whether or not the application claims the priority of another application.

(b) Notwithstanding subparagraph (a), where an application ("the subsequent application") invokes one or more earlier applications without claiming the priority of any of those earlier applications, the starting date of the term of the patent granted on the subsequent application shall be the filing date of the earliest-filed

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application invoked in the subsequent application.

[Observations]

22.A The basic proposal of Article 22 contains two Alternatives: Alternative A eliminates the totality of the Article, Alternative B has two paragraphs, but the Assembly of the Paris Union agreed that paragraph (1) of that Alternative should be removed.

22.B Thus, first one will have to decide which of the Alternatives is followed.

22.C If Alternative A is followed, not only paragraph (1) but also paragraph (2), that is, the whole Article, is eliminated.

22.D If Alternative B is followed, it is suggested that what is paragraph (2) in that Alternative have the following wording:

"(1) [Starting Date of Term] Subject to paragraph (2), no Contracting Party shall count the term of a patent from a date other than the filing date of the application on which the patent is granted.

(2) [Subsequent Application Not Claiming Priority] Where an application ("the subsequent application") invokes one or more earlier applications without claiming the priority of any of those earlier applications, the starting date of the term of the patent granted on the subsequent application shall be the filing date of the earliest-filed application invoked in the subsequent application."

Article 23

[Basic Proposal]

Article 23—Enforcement Of Right

(1) [Enforcement Based on Patents] The owner of the patent shall have at least the right

(i) to obtain an injunction to restrain the performance or the likely performance, by any person without his authorization, of any of the acts referred to in Article 19 (1), (2) and (4),

(ii) to obtain damages, adequate under the circumstances, from any person who, without his authorization, performed any of the acts referred to in Article 19 (1), (2) and (4), where the said person was or should have been aware of the patent.

(2) [Enforcement Based on Published Applications] (a) The applicant shall at least have the right to obtain reasonable compensation from any person who, without his authorization, performed any of the acts referred to in Article 19 (1), (2), and (4) in relation to any invention, claimed in the published application, as if a patent had been granted for that invention, provided that the said person, at the time of the performance of the act, had

(i) actual knowledge that the invention that he was using was the subject matter of a published application, or

(ii) received written notice that the invention that he was using was the subject matter of a published application, such application being identified in the said notice by its serial number.

(b) Any Contracting Party may provide that, with respect to the compensation referred to in subparagraph (a), an action may not be initiated or a decision may not be made until after the grant of patent on the published application, provided that, if an action may be initiated only after the grant of patent, the owner of the patent shall have reasonable time to initiate such action.

(c) For the purposes of subparagraphs (a) and (b), the extent of the protection shall be determined by the claims as appearing in the published application. However, if the claims are amended after the initial publication of the application, the extent of the protection shall be determined by the amended claims in respect of the period following their publication. Furthermore, if the claims of the patent as granted or as changed after its grant have a narrower scope than the claims in the application, the extent of the protection shall be determined by the claims with the narrower scope.

[Observations]

23.A It is suggested that Article 23 should remain as in the basic proposal, subject to Observations 23.B to 23.E.

23.B Ad Article 23 (1) and (2)(a). In view of the removal of Article 19 by the Assembly of the Paris Union, the words "acts referred to in Article 19 (1), (2) and (4)" should be replaced, in paragraphs (1) (i) and (ii) and (2)(a) of Article 23, by the words "acts requiring such authorization." Furthermore, the expression "without his authorization" is replaced by the expressions "without the owner's authorization" (in paragraph (1) (i) and (ii)) or "without the applicant's authorization" (in paragraph (2)(a)).

23.C Ad Article 23(1)(ii). It is suggested to replace the words "was or should have been aware of the patent" by the words "had actual knowledge, or should have been aware, of the patent" and to add to following proviso at the end:

"; however, any Contracting Party may, where the subject matter of the patent concerns a process and the act performed by the said person relates to a product directly resulting from the use of the patented process, limit the availability of damages to such acts performed after the person has received written notice that such acts were covered by a patent, such patent being identified in the said notice by its number."

23.D Ad Article 23(2)(a). It is suggested to insert, after the word "performed" in the third line, the words ", in the period between the publication of the application and the grant of the patent thereon."

23.E Ad Article 23(2)(c). It is suggested that this subparagraph should read as follows:

"For the purposes of subparagraphs (a) and (b), the extent of the protection shall be determined by the elements covered both by the claims in the published application and by the claims in the patent."

Dated: August 13, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93–20205 Filed 8–19–93; 8:45 am]

BILLING CODE 3510–16–M

Committee For Purchase From People Who Are Blind or Severely Disabled

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 20, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to

procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Insulation Tape, Electrical
5970–00–150–2009
Nonprofit Agency:
Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.

Bag, Paper
8105–00–NIB–1021
(Requirements for the Central Region of the Defense Commissary Agency only)
Nonprofit Agency:
Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina; Lions Club Industries, Inc., Durham, North Carolina

Services

Grounds Maintenance
Marine Corps Air Station
Buildings 80, 154, 155 and 2000
Cherry Point, North Carolina
Nonprofit Agency:
Craven Evaluation and Training Center, New Bern, North Carolina.

Janitorial/Custodial
Federal Building, U.S. Post Office and Courthouse
Batesville, Arkansas
Nonprofit Agency
The Community School, Inc., Batesville, Arkansas.

Janitorial/Grounds Maintenance
U.S. Border Support Building No. CA0501BB
16 Heffernan Street
Calexico, California
Nonprofit Agency:
Association for Retarded Citizens of Imperial Valley, El Centro, California

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–20213 Filed 8–19–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 20, 1993.

ADDRESS: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 25 and July 2, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notices (58 FR 34425 and 35916) of proposed additions to the Procurement List. After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the services, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Commissary Shelf Stocking, Custodial and Warehousing
Barksdale Air Force Base, Louisiana

Declassification/Demilitarization of Classified Military Hardware
Robins Air Force Base, Georgia

Food Service Attendant
Portland Air National Guard Base, Portland, Oregon

Janitorial/Custodial
Auke Bay Station Post Office, 11899 Glacier Highway, Auke Bay, Alaska

Janitorial/Custodial
Armed Forces Reserve Center, Los Alamitos, California

Janitorial/Custodial, Naval and Marine Corps Reserve Center, 615 Kenhorst Boulevard, Reading, Pennsylvania

Janitorial and Related Services
Federal Building, U.S. Post Office and Courthouse, 301 West Commerce Street, Aberdeen, Mississippi

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–20212 Filed 8–19–93; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Request for Family Member Educational Information; AF Form 1466A; OMB Control Number 0701–0122
Type of Request: Reinstatement
Number of Respondents: 48,300
Responses per Respondent: 1
Annual Responses: 48,300
Average Burden per Response: 15 minutes
Annual Burden Hours: 12,075
Needs and Uses: This collection obtains family information needed to evaluate and document the need of military family members for special medical and educational services. Information

is collected prior to assignments. Data is utilized to ensure medical and educational needs can be met at new assignment location.

Affected Public: Individuals or households, State or local governments, Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 17, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–20163 Filed 8–19–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of an Altered System of Records for the Investigative Files of the Office of the Inspector General (18–10–0001).

SUMMARY: The Department of Education (ED) hereby publishes notice of two types of alterations to its system of records known as the Investigative Files of the Inspector General ED/OIG, as required by the Privacy Act of 1974. First, ED publishes elsewhere in this **Federal Register** final regulations amending the exemptions applicable to this system of records, and the system notice is revised to reflect the new exemptions adopted and related notification and access procedures that follow from the new exemptions. Second, the Inspector General proposes to alter the system of records by expanding the type of information maintained to include complaints and allegations about ED programs, operations and recipients of Federal funds under ED programs that may give rise to an OIG investigation but have not yet done so.

DATES: Comments on the additional exemptions have already been received and responded to in connection with the final regulations, including comments from the Office of Management and Budget (OMB). The Department filed a report on the altered system of records with the Chairman on Governmental Affairs, United States Senate and the Chairman, Committee on Governmental Operations, House of Representatives on August 16, 1993. This altered system of records will become effective after the 60-day period for OMB review of the system expires on October 15, 1993, unless OMB gives specific notice within the 60 days that the amendments are not approved for implementation or requests additional time for its review.

FOR FURTHER INFORMATION CONTACT: Dianne G. Van Riper, U.S. Department of Education, room 4106, Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–1510. Telephone: (202) 205–8762. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), ED hereby publishes notice of three types of alterations to its system of records known as the Investigative Files of the Inspector General ED/OIG. First, the system notice is amended to incorporate additional exemptions authorized by the Privacy Act for law enforcement records under sections 552a (j)(2) and (k)(2) by adding those exemptions in that portion of the notice entitled "Systems Exempted from Certain Provisions of the Act." The basis and rationale for the adoption of these exemptions are discussed fully in the notice of proposed rulemaking concerning those exemptions (57 FR 59860) and in the preamble to the final regulations published elsewhere in this **Federal Register**.

Second, the Inspector General has decided to expand the type of information maintained in this system of records to include complaints and allegations about ED programs, operations, and recipients of Federal funds under ED programs that may give rise to an Office of Inspector General (OIG) investigation but have not yet done so. This is reflected in the altered system notice by language about complaints added to the sections of the system notice entitled "Categories of records in the system" and "Purposes."

OIG Investigation Services receives numerous letters and telephone calls citing allegations of wrongdoing concerning ED programs, operations, and recipients of ED-administered program funds, which may give rise to the opening of an inquiry or investigation or be referred elsewhere That information has until now been retained in general complaint files that are not accessible by an individual identifier, within the meaning of the Privacy Act. OIG intends to reorganize those complaints so that they will be accessible by an individual identifier, if appropriate, and to incorporate that information into the Investigative Files ED/OIG. The purpose of these actions is to better track the complaints to spot patterns and repeated complaints from a number of sources that may dictate the opening of an investigation and to better track the disposition of other complaints. This will enhance the ability of OIG to carry out its statutory mandate to conduct investigations to combat fraud, waste, and abuse in ED programs and operations in accordance with the Inspector General Act of 1978, 5 U.S.C. Appendix 3, 4(a). This notice is being published in its entirety.

Dated: August 16, 1993.

James B. Thomas, Jr.,

Inspector General.

The Inspector General of the U.S. Department of Education publishes notice of an amended system of records to read as follows:

18–10–0001

SYSTEM NAME:

Investigative Files of the Inspector General ED/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, room 4004, Switzer Building, 330 C Street SW., Washington, DC 20202–1500

Office of Inspector General, U.S. Department of Education, room 512, PO Box 2142, Boston, MA 02106

Office of Inspector General, U.S. Department of Education, room 3739, 26 Federal Plaza, New York, NY 10278

Office of Inspector General, U.S. Department of Education, room 16120, 3535 Market Street, Philadelphia, PA 19104

Office of Inspector General, U.S. Department of Education, PO Box 1598, Atlanta, GA 30301

Office of Inspector General, U.S. Department of Education, room 700

G, 401 South State Street, Chicago, IL 60605
Office of Inspector General, U.S. Department of Education, room 2130, 1200 Main Tower, Dallas, TX 75202
Office of Inspector General, U.S. Department of Education, 9th Floor, 10220 North Executive Hills Blvd., Kansas City, MO 64190
Office of Inspector General, U.S. Department of Education, suite 210, 1244 Speer Blvd., Denver, CO 80204
Office of Inspector General, U.S. Department of Education, room 105, 50 United Nations Plaza, San Francisco, CA 94102

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include current and former ED employees and individuals who have any relationship to financial assistance or other educational programs administered by the Department of Education, or to management concerns of the Department, including but not limited to: Grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaint and investigation files pertaining to alleged violations of criminal laws, fraud, waste, and abuse with respect to administration of Department programs and operations; and violations of employee Standards of Conduct as set out in 34 CFR part 73.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3) and 5 U.S.C. 301.

PURPOSES:

Pursuant to the Inspector General Act, the system is maintained for the purposes of (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding ED programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) Documenting the outcome of OIG investigations; (3) Maintaining a record of the activities which were the subject of investigations; (4) Maintaining a record of complaints and allegations received relative to Department of Education programs and operations, documenting the outcome of OIG reviews of such complaints and allegations; (5) Reporting investigative findings to other ED components for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; (6) Coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG; and (7) Acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act, 5 U.S.C. Appendix 3, section 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

(a) *Disclosure for use by other law enforcement agencies.* In the event that any records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of criminal or civil law or regulation, ED/OIG may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(b) *Disclosure to public and private entities to obtain information relevant to ED/OIG functions and duties.* ED/OIG may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to an ED/OIG investigation, audit, inspection or other inquiry.

(c) *Disclosure for use in employment, employee benefit, security clearance, and contracting decisions.*—(1) *For decisions by ED.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an ED decision concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

(2) *For decisions by other public agencies and professional licensing organizations.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional licensing organization, in connection with the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

ED/OIG may disclose to those agencies and professional licensing organizations the fact that this system of records contains information relevant to the hiring of an employee or issuance of a security clearance so that the agency or professional licensing organization may make a request for the information supported by the consent of the individual.

ED/OIG may make no disclosure under this paragraph ((c)(2)) unless the Inspector General or his or her designee determines that the information is sufficiently reliable to support a referral to another office within ED or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

(d) *Disclosure to public and private sources in connection with the Higher Education Act of 1965, as amended ("HEA").* ED/OIG may disclose information from this system of records as a routine use to any accrediting agency which is or was recognized by the Secretary of Education pursuant to the HEA; to any guaranty agency which is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency which is or was charged with licensing or legally authorizing the operation of any educational institution or school which was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(e) *Litigation disclosure.*—(1) *Disclosure to the Department of Justice* If ED determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED/OIG may disclose those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the

litigation, or has an interest in the litigation:

(i) ED, or any component of the Department;

(ii) Any employee of ED in his or her official capacity;

(iii) Any employee of ED in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) The United States, where ED determines that the litigation is likely to affect the Department or any of its components.

(2) *Other disclosure.* If ED determines that disclosure of certain records to a court, adjudicative body before which ED is authorized to appear, individual or entity designated by ED or, otherwise, empowered to resolve disputes, counsel or other representative, or potential witness is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED/OIG may disclose those records as a routine use to the court, adjudicative body, individual or entity, counsel or other representative, or witness. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) ED, or any component of the Department;

(ii) Any employee of ED in his or her official capacity;

(iii) Any employee of ED in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) The United States, where ED determines that the litigation is likely to affect the Department or any of its components.

(f) *Disclosure to contractors and consultants.* ED/OIG may disclose information from this system of records as a routine use to a private firm with which ED/OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(g) *Disclosure to the Department of Justice.* ED/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

(h) *Congressional member disclosure.* ED/OIG may disclose information from this system of records as a routine use from the record of an individual in response to an inquiry from the Member of Congress made at the written request of that individual; however the Member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on index cards, investigative reports, microcomputer disks, computer mainframe files and computer-printed listings.

RETRIEVABILITY:

The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names of individuals, companies and organizations.

SAFEGUARDS:

Access is restricted to authorized staff members of the Office of Inspector General and other officials of the Education Department on a need-to-know basis as determined by the Inspector General. Written documents and computer disks are maintained in secure rooms, in security-type safes or in bar-lock file cabinets with manipulation-proof combination locks. Computer mainframe files are on-line in guarded, combination-locked computer rooms.

RETENTION AND DISPOSAL:

Investigative files are retained for ten years after completion of the investigation and/or actions based thereon, and records of complaints and allegations will be maintained for five years after receipt. Paper and computer indices are retained permanently. The records control schedule and disposal standards may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Inspector General for Investigation Services, U.S. Department of Education, Room 4106, Switzer Building, 330 C Street, SW, Washington D.C. 20202–1530.

NOTIFICATION PROCEDURES:

See "Systems Exempted," below. As provided in 34 CFR 5b.11(f), the notification procedures are not applicable to criminal investigative files except at the discretion of the Inspector General. The notification procedures are applicable to noncriminal files only under the conditions set forth by 34 CFR 5b.11(f)(2). To the extent these procedures apply to the ED/OIG Investigative Files, they are governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Not applicable. See "Systems Exempted," below.

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State and local government records; interviews of witnesses; documents and other material furnished by nongovernmental sources. Sources may include confidential sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has by regulations exempted the Investigative Files of the Inspector General ED/OIG from the following provisions of the Privacy Act:

(a) *Pursuant to 5 U.S.C. 552a(j)(2):*

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of a record.

(2) 5 U.S.C. 552a(c)(4), regarding notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(3) 5 U.S.C. 552a(d) (1) through (4) and (f), regarding notification or access to records and correction or amendment of records.

(4) 5 U.S.C. 552a(e)(1), regarding maintaining only relevant and necessary information.

(5) 5 U.S.C. 552a(e)(2), regarding collection of information from the subject individual.

(6) 5 U.S.C. 552a(e)(3), regarding notice to individuals asked to provide a record to the Department.

(7) 5 U.S.C. 552a(e)(4) (G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(8) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(9) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(10) 5 U.S.C. 552a(g), regarding civil remedies for violation of the Privacy Act.

(b) *Pursuant to 5 U.S.C. 552a(k)(2):*

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d) (1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e)(1), regarding the requirement to maintain only relevant and necessary information.

(4) 5 U.S.C. 552a(e)(4) (G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

These exemptions are stated in 34 CFR 5b.11.

[FR Doc. 93–20143 Filed 8–19–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Floodplain Statement of Findings for the Umatilla Hatchery Satellite Facilities

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for the Umatilla Hatchery Satellite Facilities prepared in accordance with 10 CFR part 1022. BPA proposes to construct hatchery support facilities in floodplains located in Umatilla County, Oregon. The purposes of this project are: (1) To increase survival of returning adult fish captured as broodstock for the Umatilla Hatchery; (2) to increase survival of juvenile salmonids reared to the Umatilla Hatchery by acclimating them to the waters of the Umatilla River and then providing the juveniles the opportunity to voluntarily leave the acclimation facilities when they are ready to migrate; and (3) to improve access conditions at a direct release site. BPA prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. On the basis of the floodplain assessment, BPA has determined that there is no practicable alternative to the proposed activity and that the proposed action has been designed to minimize potential harm to or within the floodplain. This action is categorically excluded under DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021). BPA will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Roy B. Fox-PG, Bonneville Power Administration, P.O. Box 3621, Portland Oregon 97208 (503) 230–4261, Fax (503) 230–3752.

For further information on general DOE floodplain/wetlands environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings prepared in accordance with 10 CFR part 1022. A Notice of Floodplain Involvement was published in the **Federal Register** on May 25, 1993 (58 FR 30044). A floodplain assessment was prepared and distributed in accordance with 10 CFR part 1022. BPA is proposing to construct hatchery support facilities, including an adult holding facility and four juvenile acclimation facilities, and improve a road for direct release of juveniles all located within the floodplains of the South Fork Walla Walla River and in the Umatilla River in Umatilla County, Oregon. The proposed facilities are to be located in the floodplain because they are water-dependent actions that cannot be located elsewhere. Alternatives to the proposed action are: (1) No action (continue the current policy of direct release at the proposed sites); (2) discontinue the Umatilla Hatchery Program; and (3) locate the facilities on lands with well water. Neither the no action or discontinuance of the hatchery program would satisfy regional fishery management objectives of restoring and improving the status of salmonid populations in the Columbia River Basin and developing more ecologically responsible methods for release of hatchery-reared fish. Thus, they were dropped from further consideration. The alternative based on wells was investigated but was also dropped from further consideration when chemical and temperature problems affecting water quality were discovered.

The proposed action conforms to applicable State or local floodplain protection standards and is not expected to increase flood or safety risks.

The steps taken to avoid or minimize potential harm to or within the affected floodplain included: (1) Keeping the size of the development and resulting disturbance to a minimum; (2) fencing the property in such a manners as to insure protection of the riparian zone; (3) siting the ponds and support facilities well back of the top of the bank at each location; and (4) scheduling construction for the fall and winter months when the threat of flooding due to storm water pollution is lowest. This action is categorically excluded under DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

BPA will endeavor to allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

Issued in Portland, Oregon on August 9, 1993.

Randall W. Hardy,

Administrator, Bonneville Power Administration.

[FR Doc. 93–20207 Filed 8–19–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review By the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually, (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract

describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 20, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–581.
3. 1902–0130.
4. Management and Procurement Reporting and Recordkeeping Requirements.
5. Extension.
6. Other, as specified.
7. Mandatory.
8. Businesses or other for-profit; Small businesses or organizations.
9. 155 respondents.
10. 11 responses.
11. 3 hours per response.
12. 8,215 hours (includes 3,100 hours for recordkeeping).
13. This information is used by the Commission to determine if potential contractors meet the Federal Government's requirements, including price for the acquisition of supplies and services. The information supplied is considered necessary to obtain the benefits of the awarded contract. The Commission monitors contract progress to assure all terms are met upon contract closeout.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, August 16, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–20208 Filed 8–19–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG93–63–000]

Tenpeak Corp.; Application for Commission Determination of Exempt Wholesale Generator Status

August 13, 1993

On August 9, 1993, Tenpeak Corporation of 81 Wyman Street, Waltham, MA 02254–9046, filed with the Federal Energy Regulatory Commission an application for a new determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The facility will be built in the Apex area of Clark County, Nevada within approximately five miles of the Harry Allen Substation, a substation owned and maintained by Nevada Power Company. The facility will consist of two combustion turbines with a combined capacity of 75 MWs (net of station use) at site conditions of 2000' elevation and 110° Fahrenheit. The facility will use natural gas as its primary fuel. A 138 KV (A.C.) transmission line will interconnect the facility with the System of Nevada Power Company. The transmission line will be built, owned and maintained by Tenpeak Corporation and, accordingly, will be part of the facility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 3, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20175 Filed 8–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–614–000]

Texas Eastern Transmission Corp.; Request Under Blanket Authorization

August 16, 1993

Take notice that on August 3, 1993, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–614–000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to construct a new delivery point to enable Texas Eastern to deliver natural gas to Rutgers University (Rutgers) under the certificate issued in Docket No. CP82–535–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that Rutgers has requested that Texas Eastern install dual 2-inch diameter hot taps and appurtenant facilities on each of Texas Eastern's 20-inch diameter Line Nos. 1 and 2 in Middlesex County, New Jersey. Texas Eastern indicates that the cost of the proposed hot taps will be approximately $44,500 and that Rutgers will pay all of such costs. Texas Eastern further states that after receipt of the authorization requested in the instant application, it will render interruptible transportation service for Rutgers under Texas Eastern's Rate Schedule IT–1. Texas Eastern states that peak and average day deliveries at the proposed delivery point will be 6,600 dekatherms per day. It is indicated by Texas Eastern that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice of the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20135 Filed 8–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93-34-000]

Transwestern Pipeline Co.; Informal Settlement Conference

August 16, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on August 25, 26, and 27, 1993, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 North Capitol Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Kenneth M. Ende at (202) 208-0583 or Kathleen M. Dias at (202) 208-0524.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20134 Filed 8-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2212-000]

Weyerhaeuser Paper Co.; Authorization for Continued Project Operation

August 16, 1993.

On July 29, 1991, Weyerhaeuser Paper Company, licensee for the Rothschild Project No. 2212, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2212 is located on the Wisconsin River in Marathon County, Wisconsin.

The license for Project No. 2212 was issued for a period ending July 31 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2212 is issued to Weyerhaeuser Paper Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Weyerhaeuser Paper Company is authorized to continue operation of the Rothschild Project No. 2212 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20136 Filed 8-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-640-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

August 16, 1993.

Take notice that on August 12, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93-640-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim and in place approximately 5.9 miles of 8-inch lateral pipeline and appurtenant facilities located in Bourbon County, Kansas and Vernon County, Missouri, and the transportation of gas through said facilities under WNG's blanket certificate issued in Docket No. CP82-479-00 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it had requested authorization to abandon this pipeline in Docket No. CP93-507-000 wherein WNG had planned to reclaim approximately 4.1 miles of pipeline and to abandon in place approximately 1.8 miles of pipelines. WNG asserts that after excavation of the pipeline began, vast quantities of large rock were produced. WNG further asserts that to reclaim the old pipeline would require considerable amounts of fill to be brought in and the clearing of additional right-of-way.

WNG now proposes to reclaim a total of approximately 500 feet of pipeline and to abandon in place approximately 5.8 miles of pipeline to avoid additional environmental disturbance.

WNG estimates the cost to reclaim these facilities to be approximately $10,096, with an estimated salvage value of $375.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20133 Filed 8-19-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-82-NG]

Vesta Energy Co.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vesta Energy Company blanket authorization to import up to 100 billion cubic feet (Bcf) of natural gas from Canada and to export up to 100 Bcf of natural gas to Canada over a two-year term beginning on the date of the first delivery of either imports or exports.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 17, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–20206 Filed 8–19–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of June 28 Through July 2, 1993

During the week of June 28 through July 2, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Estate of John S. Hyatt, 6/29/93, LFA–0302

Eric Hyatt filed an Appeal from a determination issued to him on May 26, 1993 by the Oak Ridge Field Office of the Department of Energy (Oak Ridge) which denied a request for information he had filed under the Freedom of Information Act (FOIA). The request sought records relating to the late John S. Hyatt, a contractor employee at Oak Ridge during the 1940s and 1950s. Oak Ridge stated that it did not possess any responsive documents, and the Appeal challenged the adequacy of the search. In considering the Appeal, the DOE found that Oak Ridge followed procedures which were reasonably calculated to uncover the material sought. Accordingly, the Appeal was denied.

OXY USA Inc., 6/29/93, LFA–0300

OXY USA Inc. (OXY) filed an Appeal from a partial denial by the Economic Regulatory Administration (ERA) of a request for information submitted under the Freedom of Information Act (FOIA). In response to OXY's request, the ERA had released certain responsive documents, but withheld 15 responsive documents in their entirety and one document in part pursuant to 5 U.S.C. 552(b)(5) (Exemption 5). These documents related to DOE Interpretation 1980–43. In considering the Appeal, the DOE found that: (i) The documents withheld by the ERA were exempt from disclosure under the Exemption 5 deliberative process privilege; and (ii) the ERA properly determined that five of the documents were within the scope of the attorney work-product privilege of Exemption 5. However, one of the documents withheld under the deliberative process privilege and the five attorney work-product documents contained reasonably segregable material that was not released to the appellant. Accordingly, the matter was remanded to the ERA with instructions to issue a new determination regarding these six documents, either releasing additional material or explaining in detail the reasons for their withholding. In all other respects, the Appeal was denied.

Refund Applications

Enron Corp./ Carpenter Enterprises, Ltd., 7/2/93, RF340–51

The DOE issued a Decision and Order concerning a refund application that several former shareholders of Carpenter Enterprises, Ltd. (CEL) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that CEL, a dissolved corporation, was a reseller that purchased Enron product on a regular basis in 1980. Accordingly, the DOE granted CEL a small claims refund of $10,352 based on its total purchases from Enron, and distributed 76% of the refund to seven separate CEL shareholders according to their share of stock in CEL at its dissolution.

Shell Oil Company/Mcmickle & Edwards, 7/1/93, RF315–10279

The DOE issued a Decision and Order granting an Application filed in the Shell Oil Company special refund proceeding on behalf of the filing service McMickle & Edwards (M&E). As a result of its mishandling of a refund issued to Gencarelli Oil Co., Inc. (GOC) in 1990, M&E was ordered to return to the DOE the GOC refund plus interest (a total of $5,896). It was later determined that although M&E's actions were improper, the firm had eventually disbursed the GOC refund to the appropriate recipient. M&E argued in the present case that its conduct had thus proven harmless and that it would be inequitable for the DOE to retain the firm's remitted funds. The DOE found that M&E's arguments for the return of the funds revealed the firm's lack of appreciation for the significance of its mishandling of the GOC refund. The DOE therefore determined that if M&E shows similar misconduct in its handling of another Subpart V refund claim, the firm will be disqualified from representing petitioners in all proceedings before the DOE. Nevertheless, the DOE found that M&E had already been appropriately sanctioned for its mishandling of the GOC refund claim and that for the DOE to retain the remitted funds and thereby effectively fine M&E for its misconduct in this case, would be inequitable under the circumstances. Accordingly, M&E's application was approved for $5,896.

Texaco Inc./Haleakala Dairy, 7/1/93, RR321–78

The controller of Haleakala Dairy filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that had been filed on the firm's behalf in the Texaco refund proceeding by two different filing services. The controller had signed both applications, and in the second application had certified that he had not previously filed, or authorized the filing of, a refund application in the Texaco proceeding. In support of the motion, the controller stated that he thought that the filings were for two separate refund claims. In considering the motion, the DOE found that the statement of the firm's controller was not credible. Accordingly, the DOE reaffirmed the denial of the firm's refund claim on equitable grounds and denied the Motion for Reconsideration.

Texaco Inc./Robinson's Texaco, 7/1/93, RR321–36

The widow of Wilfred Robinson, the owner of Robinson's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that Mr. Robinson had filed in the Texaco refund proceeding. Mrs. Robinson stated that her husband had signed the second application, and certified that no other application had been filed, because he believed that this was necessary to supplement his refund claim. In considering the Motion, the DOE rejected the argument by the movant's representative that the denial deprived her of property in violation of the 5th Amendment to the U.S. Constitution. However, the DOE granted the Motion, finding that Mr. Robinson erroneously filed the second application because he was confused. Because Mr. Robinson had not explained how he derived his estimates of purchase volumes, the refund was based on purchase figures obtained from Texaco for the period from March 1973 through December 1977, and estimates based on those figures for the period from January 1978

through January 1981. The total amount of the refund granted by the DOE was $1,149.

Texaco Inc./Sam Bodie & Sons Texaco, 6/29/93, RR321–4

Mrs. Sam Bodie filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that she had filed in the Texaco refund proceeding. The first of those applications had been forwarded to the Office of Hearings and Appeals by Federal Refunds, Inc. (FRI). In the second application, Mrs. Bodie had certified that she had not previously filed, or authorized the filing of, a refund application in the Texaco proceeding. In the motion, Mrs. Bodie denied that she had signed two applications and that she had authorized FRI to file an application on her behalf. In considering the motion, the DOE found that the signatures on the two applications, as well as a form recertifying the application submitted by FRI, were identical, and noted that in a later submission Mrs. Bodie did not expressly deny that she had signed the three documents. In view of these factors, the DOE affirmed the denial of Mrs. Bodie's refund claim on equitable grounds and denied the Motion for Reconsideration.

Texaco Inc./SMO Inc., 6/30/93, RF321–17025

The DOE issued a Decision and Order concerning an Application for Refund filed by SMO, Inc. (SMO) in the Texaco Inc. special refund proceeding. The applicant sought a refund equal to its cumulative motor gasoline cost banks at the end of the banking period and its full allocable share for purchases of Texaco gasoline made after the end of the banking period. In support of its claim of injury above the medium-range presumption level, the firm submitted information showing its cumulative banked gasoline costs and a competitive disadvantage analysis for its purchases of regular, premium and unleaded gasoline from Texaco. The total refund amount granted in this Decision and Order was $180,607 ($132,858 principal and $47,749 interest).

Texaco Inc./Tony's Texaco Auto Service; Westside Fuel Company; Bickham & Wheeler, Texaco Consignee, 7/2/93, RF321–11189; RF321–16351; RF321–17374

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants was a reseller or consignee whose allocable share is greater than $10,000. One applicant, John Kelly Bickham, filing on behalf of Bickham & Wheeler, Texaco Consignee (B&W), claimed the right to a refund based upon all gallons purchased by the consigneeship during the refund period. Mr. Bickham argued that the agreement by which he purchased his partner's interest in B&W transferred his partner's right to a refund to him. The DOE determined that the purchase agreement did not include language that would transfer the right of a refund from one partner to the other. Since B&W was operated as an equal partnership during the first portion of the refund period, Mr. Bickham was granted a 50% share of B&W's refund until the effective date of purchase. After that date, Mr. Bickham was eligible for 100% of B&W's refund. The sum of the refunds granted in this Decision is $49,073 ($36,099 principal plus $12,974 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Appliance Service Co. et al	RF272–91413	07/01/93
Atlantic Richfield Company/Conlon's ARCO et al	RF304–13922	07/01/93
Atlantic Richfield Company/Ruby's ARCO	RF304–13417	06/28/93
D&D Bay Village ARCO	RF304–13542	
Candler County School District et al	RF272–81283	06/28/93
City of Dover et al	RF272–94161	07/01/93
City of Galesburg, Illinois et al	RF272–85010	07/02/93
Comstock Public Schools et al	RF272–80217	06/28/93
Gulf Oil Corporation/Bowden Brothers et al	RF300–13524	07/02/93
Gulf Oil Corporation/Central Gulf Service	RF300–14387	06/30/93
Gulf Oil Corporation/D&A Gulf Center et al	RF300–19060	06/30/93
Gulf Oil Corporation/Mid Louisiana Gas Co. et al	RF300–19708	06/30/93
Gulf Oil Corporation/Thompson's Gulf #2	RF300–21746	07/02/93
Gulf Oil Corporation/Union Paving Company	RF300–13737	07/02/93
Gulf Oil Corporation/Whitey's Service Center	RF300–18122	06/30/93
Rumson-Fair Haven Regional High School et al	RF272–81200	07/02/93
Shell Oil Company/Copeland's Del Cerro Shell et al	RF315–5000	06/29/93
Shell Oil Company/Torode Oil Company et al	RF315–557	07/02/93
Texaco Inc./Big Daddy's Texaco et al	RF321–12656	06/29/93
Texaco Inc./ Hi Land Dairy et al	RF321–15540	06/28/93
Texaco Inc./Home Fuel Service et al	RF321–6534	07/02/93
Texaco Inc./ Jim's Texaco et al	RF321–1631	07/02/93
Texaco Inc./ St. Michael Texaco et al	RF321–6578	06/29/93
Texaco Inc./Stuckey's of Tallulah Falls et al	RF321–13688	06/29/93
Texaco Inc./Thorson Texaco et al	RF321–16978	07/02/93
Texaco Inc./United Illuminating Co.	RF321–1897	07/01/93
Texaco Inc./William J. Halder, Inc.	RF321–14679	07/02/93
The Halder Company	RF321–14680	.....
Kelly Oil Company	RF321–14768	.....
Timber Lake Sch. Dist. No. 20–3 et al	RF272–80616	06/29/93
Two-Way Trucking, Inc. et al	RF272–65881	07/01/93
Van M. Watkins	RC272–205	07/02/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Ashland School District	RF272–88287
Calipatria Unified	RF272–79342
Calumet Public School District 132.	RF272–89306
Cedar County Cooperative	RF272–86955
Center-Point Urbana Community School District.	RF272–79331
City of Baxter Springs	RF272–88226
City of Beaver Falls	RF272–88228
City of Beckley	RF272–88229
City of Belle Plaine	RF272–88232
City of Benton Harbor	RF272–88236
City of Berryville	RF272–88235
City of Bonners Ferry	RF272–88239
City of Clarkston	RF272–88297
City of Claxton	RF272–88298
City of Washington	RF272–89340
Crespo Texaco Service Station.	RF321–12063
Delbert Brown	RF272–93481
Dunes Center Service, Inc	RF321–18680
Durr Brothers Texaco	RF321–14445
G.W. Townsend Lease Service.	RF272–89395
Garrison Fuel Oil of L.I., Inc	RF272–92353
Gramco, Inc	RF272–91425
Hardin County	RF272–89362
Hull Forest Products, Inc	RF272–91762
Legget Independent School District.	RF272–88253
Linden Board of Education	RF272–88250
Los Nietos Elementary	RF272–88247
Martinez Texaco	RF321–4903
Mesa Construction Co., Inc	RF272–91784
Metzger Dairies, Inc	RF272–91597
Mid-Del Schools	RF272–81497
Monroe Pulpwood Company	RF272–86063
New Hope Solebury School District.	RF272–83613
Panhandle Independent School District.	RF272–86714
Pawling Central School	RF272–88245
Puritan/Churchill Chemical Co	RF272–86461
Rice Lake Area School District	RF272–81748
The Haas Tailoring Co	RF272–91452
The Wackenhut Corp	RF272–91434
Town of Boothbay Harbor	RF272–88241
Town of Wadesboro	RF272–93928
Wagner Texaco	RF321–18650
Wenczel Tile Co	RF272–92307

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 13, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–20209 Filed 8–19–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of July 5 Through July 9, 1993

During the week of July 5 through July 9, 1993, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Bath Iron Works Corporation, 7/7/93 RF272–50171 RD272–50171

The DOE issued a Decision and Order granting an Application for Refund filed by Bath Iron Works Corporation, a shipbuilder, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, because of the relative elasticities of supply and demand, nearly every industry passes through a portion of its cost increases. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $7,190.

Texaco Inc./Treese's Texaco & Grocery, 7/9/93 RF321–16935

The DOE issued a Decision and Order denying an Application for Refund filed by Don W. and Carol Treese in the Texaco Inc. Subpart V special refund proceeding on behalf of Treese's Texaco & Grocery. The Treeses were unable to satisfactorily document the period during which they operated their outlet. Their Application also lacked purchase volume information. Therefore, there was no basis on which the DOE could grant a refund to the Treeses. Since the Application for Refund for Treese's Texaco & Grocery did not meet the criteria set forth in the Decision and Order implementing the Texaco subpart V special refund proceeding, it was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Hurst Arco et al	RF304–13395	07/07/93
Atlantic Richfield Company/J&H Fuel Service	RF304–13607	07/07/93
Atlantic Richfield Company/Joe's Arco et al	RF304–13765	07/09/93
Atlantic Richfield Company/Sahara Oil Co., Inc	RF304–6234	07/07/93
Cavalier Public School District 6 et al	RF272–81359	07/07/93
Crescent Refining & Oil Co./City of Pasadena	RF347–7	07/09/93
Crescent Refining & Oil Co./Defense Fuel Supply Center	RF347–6	07/08/93

Essex Industrial Chemicals, Inc	RF272–75517	07/07/93
Gulf Oil Corporation/Ashton Company	RF300–18161	07/07/93
Gulf Oil Corporation/Fairfield Gulf	RF300–19420	07/09/93
Fairfield Gulf RF300–21747.		
Gulf Oil Corporation/Fuels, Inc	RF300–17358	07/07/93
Gulf Oil Corporation/Midway Gulf et al	RR300–134	07/07/93
Jenkins-Simmons Transportation Co., Inc. et al	RF272–81503	07/07/93
Milton R. Anderson et al	RF272–93909	07/09/93
Mount Clemens Rose Garden et al	RF272–77403	07/09/93
Peoria Park District et al	RF272–81212	07/07/93
Saratoga Union School District et al	RF272–82444	07/08/93
Selinsgrove Area School Dist. et al	RF272–80890	07/08/93
Texaco Inc./Al Degler Texaco Service et al	RF321–10660	07/07/93
Texaco Inc./By Pass Truck Stop et al	RF321–14181	07/08/93
Texaco Inc./Chris Texaco et al	RF321–7058	07/08/93
Texaco Inc./Glynn's Bowleg's Texaco et al	RF321–3061	07/08/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Agar's Texaco	RF321–12044
Bobby Keith Auto Service	RF321–12620
Borg Warner Chemicals, Inc	RF321–127
Brookshire Gulf	RF300–15711
Brookshire Gulf Self Service	RF300–15811
Centralia Twp. High School District 200.	RF272–79226
College Greens Texaco	RF321–19305
Cooper Jarrett, Inc	RF321–17444
Fitzpatrick Oil Company	RF315–308
Haycock Texaco	RF321–14363
Holway Oil Company	RF321–16245
Jackson Arco	RF304–13749
James K. Haddock	RF321–16342
Jerry's Texaco	RF321–19520
Katy Gulf Service	RF300–15747
Lee Plaza Texaco	RF321–17924
Manchester Texaco	RF321–14365
Northern Ozaukee School District.	RF272–81773
South Pekin School District 137.	RF272–81718
Valley Public Schools	RF272–81779
Vienna High School District 13–3.	RF272–81760
Winston Salem Forsyth Board of Education.	RF300–21400

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 13, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–20214 Filed 8–19–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4696–3]

National Primary Ambient Air Quality Standards for Sulfur Oxides

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Extension of public comment period.

SUMMARY: On April 30, 1993, the EPA announced the availability of two documents: (1) The Supplement to the Secondary Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatics; and (2) Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum. In that same notice, the EPA also announced that public comments on the two documents must be submitted 30 calendar days following the publication date of the notice.

This notice extends the public comment period for both documents. This action is being taken in response to public requests for more time to prepare comments on these documents.

DATES: Written comments on these documents must be received by September 30, 1993.

ADDRESSES: Members of the public who would like to comment on the criteria document supplement may do so by submitting their written comments to Dr. Dennis J. Kotchmar, U.S. Environmental Protection Agency, MD–52, Research Triangle Park, N.C. 27711. Written comments on the staff paper supplement should be submitted to Mr. John H. Haines, U.S. Environmental Protection Agency, MD–12, Research Triangle Park, N.C. 27711.

FOR FURTHER INFORMATION CONTACT: For further information on the criteria document supplement, contact Dr. Kotchmar at the above address or by telephone (919) 541–4158. For information on the staff paper supplement, contact Mr. Haines at the above address or by telephone (919) 541–5533.

Dated: August 12, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–20198 Filed 8–19–93; 8:45 am]

BILLING CODE 6560–40–P

[ER–FRL–4623–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed August 9, 1993 Through August 13, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930273, Draft EIS, AFS, AK, Main Bay Salmon Hatchery Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Prince William Sound, Chugach National Forest, Glacier Ranger District, AK, Due: October 4, 1993, Contact: John Dorio (907) 783–3242.

EIS No. 930274, Final EIS, GSA, CA, Calexico East Border Station Construction and Road Construction, CA–7 between the New Port of Entry and CA–98 that borders the United

States and Mexico, Funding and Right-of-Way Permit, City of Calexico, Imperial County, CA, Due: September 20, 1993, Contact: Alan Campbell (415) 744–5252.

EIS No. 930275, Draft EIS, FHW, OR, Sunrise Transportation Corridor Improvement, OR–212/224 from I–205 to US 26, Funding, Right-of-Way, COE Section 404 and NPDES Permits, Clackamas County, OR, Due: October 4, 1993, Contact: Robert G. Clour (503) 399–5749.

EIS No. 930276, Draft EIS, FHW, WV, US 52 (Tolsia Highway) Transportation Improvement, Kenova to Nolan (I–64 to US 119), Funding, Wayne and Mingo Counties, WV, Due: October 15, 1993, Contact: Billy R. Higginbotham (304) 347–5928.

EIS No. 930277, Draft EIS, AFS, ID, Fourmile Timber Sale, Timber Harvesting and Road Construction, Payette National Forest, New Meadow Ranger District, Adam County, ID, Due: October 4, 1993, Contact: Mike Balboni (208) 634–0629.

EIS No. 930278, Draft EIS, AFS, ID, Freight Landing Timber Sale, Timber Harvesting and Road Construction/ Reconstruction, Payette National Forest, McCall Ranger District, Idaho County, ID, Due: October 4, 1993, Contact: Mike Balboni (208) 634–0629.

EIS No. 930279, Final EIS, BLM, NV, Cortez Gold Mines Expansion Project, Construction and Operation, Mining Plan of Operations, Right-of-Way Permits, Special-Use Permit, NPDES and Section 404 Permits, Crescent Valley, south of Battle Mountain District, Lander and Eureka Counties, NV, Due: September 20, 1993, Contact: Dave Davis (702) 635–4000.

EIS No. 930280, Draft EIS, AFS, OR, ID, Snake River Recreation Wild and Scenic River Management Plan, Implementation, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest and Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce, Idaho and Adams Counties, ID, Due: November 22, 1993, Contact: Woody Fine (509) 758–0616.

EIS No. 930281, Draft EIS, BPA, WA, Tenaska-Washington II Generation Electric Power Plant Construction, Operation and NPDES Permit, Pierce County, WA, Due: October 4, 1993, Contact: Carol M. Borgstrom (800) 622–4520.

EIS No. 930282, Draft Supplement, FHW, VA, VA–234 Bypass Corridor Transportation Improvement from VA–619 at Independent Hill to US 15 at Woolsey, Funding, City of Manassas, Prince William County, VA, Due: October 4, 1993, Contact: Earl T. Robb (804) 786–4559.

EIS No. 930283, Draft EIS, FHW, DE, US 301 Corridor Transportation Improvement between Maryland/ Delaware State Line west of Middletown to I–95 near Newark, Funding, Right-of-Way, COE Section 10 and 404 Permits, New Castle County, DE, Due: October 8, 1993, Contact: John Gilbert (302) 734–5323.

EIS No. 930284, Draft EIS, FHW, ND, ND–57 Improvements, US 281 to ND–20, Funding, Right-of-Way, NPDES and COE Section 404 Permit, October 8, 1993, Contact: George A. Jensen (701) 250–4204.

EIS No. 930285, Draft EIS, FHW, NB, South Locust Street (also known as Old Highway 281) Transportation Improvements, I–80 to the Grand Island and north of US 34, Funding and COE Section 404 Permit, Hall County, NB, Due: October 4, 1993, Contact: Phillip E. Barnes (402) 437–5521.

EIS No. 930286, Draft EIS, FHW, PA, WV, Mon/Fayette Transportation Improvement Project, I–68 in Monongalia Co., WV to PA–6119 (Formerly the Chadville Demonstration Project), Funding and COE Section 404 Permit, Monongalia County, WV and Fayette County, PA, Due: October 4, 1993, Contact: Daniel W. Johnson (717) 782–2276.

EIS No. 930287, Final EIS, FHW, CA, CA–168 Freeway Transportation Project, Construction, CA–168 between CA–180 and Temperance Avenue, Funding and Section 404 Permit, City of Fresno, Fresno County, CA, Due: September 20, 1993, Contact: Leonard E. Brown (916) 551–1140.

Amended Notices

EIS No. 930253, Draft EIS, AFS, ID, Sunshine Timber Sale, Implementation, Salmon National Forest, Cobalt Ranger District, Big Deer Creek, Lemhi County, ID, Due: September 20, 1993, Contact: Barbara A. Levesque (208) 756–2240. Published FR 8–6–93—Due Date Correction.

Dated: August 17, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities

[FR Doc. 93–20218 Filed 8–19–93; 8:45 am]

BILLING CODE: 6560–50–U

[ER–FRL–4623–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 2, 1993 Through August 6, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–MMS–G02002–00 Rating LO, 1994 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 147 (March 1994) and 150 (August 1994), Lease Offering, AL, MS, LA and TX.

Summary: EPA had no specific objections to lease sales 147 and 150 provided mitigation measures proposed as lease stipulations were to be applied.

EPA recommended the selection of Alternative B (offer for lease all unleased blocks with the exception of blocks on or near biologically sensitive areas) as the environmentally preferred alternative.

ERP No. D–SCS–K36109–00 Rating EC2, Kagman Watershed Plan, Flood Prevention and Watershed Protection, Funding and COE Section 404 Permit, Saipan, Commonwealth of the Northern Mariana Islands.

Summary: EPA expressed environmental concerns because the range of alternatives assessed in the Draft EIS were narrow and because the discussions of wetland mitigation measures and pesticide runoff were not clearly developed.

ERP No. D–USN–E11023–NC Rating EC2, Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC.

Summary: EPA expressed environmental concerns associated with each of the discharge options and requested additional discussion of environmental impacts.

ERP No. DS–DOE–G03018–00 Rating EC2, Strategic Petroleum Reserve Expansion Plan, Implementation and Site Selection, Additional Information, Brazoria and Jefferson Counties, TX; Iberia and St. Mary Parishes, LA or Perry County, MS with Associated

Pipeline and Terminals located in several counties and parishes of TX, LA, MS and AL.

Summary: EPA expressed environmental concerns with loss of wetlands, possible contamination of underground sources of drinking water, two endangered or threatened species and probable abandonment of many UIC wells. EPA recommended that the Department of Energy select the Big Hill, Texas and Weeks Island, Louisiana sites as the preferred alternatives since they meet the requirements of the proposed action with the least adverse environmental impacts.

Dated: August 17, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–20219 Filed 8–19–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 12, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None

Title: Annual Employment Report—MVPD (Multiple Video Program Distributors)

Form Number: FCC Form 395–M

Action: New collection

Respondents: Business or other for-profit (including small businesses)

Frequency of Response: Annual reporting requirement

Estimated Annual Burden: 2,300 responses; 0.68 hours average burden per response; 1,564 hours total annual burden

Needs and Uses: Section 22(e) of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) amends the definition of "cable operator" for EEO purposes to include program packages of multiple video program distributors (MVPD) using owned or leased transport facilities in the multipoint distribution service (MDS), multichannel, multipoint distribution service (MMDS), direct broadcast satellite (DBS), television receive only (TVRO) and video dialtone facilities to provide multiple channels of video programming. To implement the EEO reporting requirements for these units, the Commission developed in MVPD Annual Employment Report (FCC Form 395–M) pursuant to the 1992 Cable Act and a Report and Order adopted on 6/24/93 in MM Docket No. 92–261. The MVPD Annual Employment Report (FCC Form 395–M) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color and/or national origin in nine major job categories. The FCC Form 395–M contains a grid which collects data on full and part-time employees, collects hiring and promotion data for senior upper-level job categories, and a list of job titles within each of the 15 job categories. MVPD units may submit computer-generated lists of job titles which are currently maintained for internal recordkeeping purposes. Every MVPD unit with 6 or more full-time employees must file annually a complete FCC Form 395–M. However, MVPD units with 5 or fewer full-time employees must only file Sections I, II and IX of the FCC Form 395–M and thereafter need not file again unless its employment increases. In addition, MVPD units with 6 or more full-time employees will file a Supplemental Investigation Sheet once every 5 years. The data is used by FCC Staff to monitor a MVPD unit's efforts to afford equal employment opportunity in employment. The data is also used to assess industry trends.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–20122 Filed 8–19–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise

Form Number: FCC Form 394

Action: New collection

Respondents: State or local governments and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 1,000 responses; 5 hours average burden per response; 5,000 hours total annual burden

Needs and Uses: Section 617 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 provides, with certain exceptions, that no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator. On 6/24/93, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–264, Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions. This Report and Order, among other things, adopts standardized FCC Form 394 to be used in connection with transfer requests for cable systems owned for three years or more. A copy of FCC Form 394 is attached as Appendix B in the Report and Order. The data are used by the local franchising authority to restrict profiteering transactions and other transfers that are likely to adversely affect cable rates and service in the franchise area.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–20123 Filed 8–19–93; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 16, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0095
Title: Annual Employment Report—Cable Television
Form Number: FCC Number 395–A and FCC Form 395–AS
Action: Revision of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: Annual reporting requirement
Estimated Annual Burden: 2,270 responses; 2.19 hours average burden per response; 4,928 hours total annual burden
Needs and Uses: The Annual Employment Report (FCC Form 395–A) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color and/or national origin in nine major job categories. Every cable entity with 6 or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having 6 or more full-time employees must file annually a complete FCC Form 395–A. However, cable entities with 5 or fewer full-time employees must only file Sections I, II and IX of the FCC Form 395–A and thereafter need not file again unless its employment increases. In addition, cable entities with 6 or more full-time employees will file a Supplemental Investigation Sheet once every 5 years. On 6/24/93, the Commission adopted a Report and Order in MM Docket No. 92–261, Implementation of Section 22 of the Cable Television Consumer Protection Act of 1992: Equal Employment Opportunities, which adopted reporting requirements different from and less burdensome than those proposed in the Notice of Proposed Rulemaking adopted in December 1992. The revised form will maintain the current grid which collects data on full and part-time employees in the aggregate; collect hiring and promotion data for the six new job categories (senior upper-level job categories), and will revise the proposed job titles form so that cable operators may list job titles in any order within each of the 15 job categories and may, if they so choose, submit computer-generated lists of job titles which are currently maintained for internal recordkeeping purposes. In addition, we have eliminated the request for employee breakdown information on the Supplemental Investigation Sheet (FCC Form 395–AS). The data is used by FCC staff to monitor a cable unit's efforts to afford equal employment opportunity in employment. The data is also used to assess industry trends.

Federal Communications Commission
William F. Caton,
Acting Secretary.
[FR Doc. 93–20165 Filed 8–19–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 16, 1993.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Brown, Cass, Fulton, and Mason Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,
Deputy Associate Director, State and Local Programs and Support.
[FR Doc. 93–20170 Filed 8–19–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 16, 1993.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Pawnee and Rice Counties for Individual Assistance and Public Assistance.
Harvey County for Public Assistance. (Already designated for Individual Assistance.)
Shawnee County for Individual Assistance and Public Assistance. (The Townships of Tecumseh, Soldier, Menoken, Silver Lake, Rossville, and Dover already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,
Deputy Associate Director, State and Local Programs and Support.
[FR Doc. 93–20171 Filed 8–19–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT:
Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Maries County for Individual Assistance. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20168 Filed 8–19–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–998–DR

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT:
Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Custer County for Individual Assistance and Public Assistance.

Dawson County for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate director, State and Local Programs and Support.

[FR Doc. 93–20169 Filed 8–19–93; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the revision of Chapter KD, the Regional Offices of the Administration for Children and Families. Chapter KD.20 Functions, paragraphs A and B are amended in order to allow the Regional Administrator to place the management and coordination of internal systems as well as office automation systems and state systems projects for ACF programs in any office within the ACF regional offices—Office of the Regional Administrator (KD1A–KDXA), Office of Financial Operations (KD1B–XB), Office of Family Security (KD1C–XC) or Office of Family Supportive Services (KD1D–XD). The change is as follows: Amend Chapter KD.20 Functions. to delete paragraphs A and B in its entirety and replace it with the following:

KD.20 Functions. A. The Office of the Regional Administrator is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families. The Regional Administrator receives day-to-day operational guidance from the Deputy Assistant Secretary for Program Operations. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations; the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. It oversees the management and coordination of internal automated systems in support of ACF functions, and the development, implementation and monitoring of State systems projects. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, an administrative staff assists the Regional Administrator and Deputy Regional Administrator in providing day-to-day support for regional administrative functions, including budget, employee relations, and human resource development activities. The Staff develops and implements the regional planning process. It tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives. The Staff coordinates public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director. It assists the Regional Administrator in management of cross-cutting initiatives and activities among the regional components.

B. The Office of Financial Operations is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office provides centralized management and technical administration of formula, entitlement, and discretionary grants for ACF programs in the region. It assists state, county, city or town, and tribal governments in the interpretation of federal financial management regulations, policies, guidelines and procedures, and ensures adherence to them. It establishes regional financial management priorities; and it reviews cost allocation plans. The Office

represents the Regional Administrator to the ACF Office of Financial Management on all financial matters.

The Office provides financial management services for ACF formula, entitlement and discretionary grants in the region. It reviews cost estimates and reports for ACF entitlement and formula grant programs, and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to (1) approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs, and (2) approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

[FR Doc. 93–20132 Filed 8–19–93; 8:45 am]

BILLING CODE 4184-01-M

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation—Technology Assessment Task Force; Meeting

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

PURPOSE: This notice announces a public meeting of the Technology Assessment Task Force of the National Advisory Council for Health Care Policy, Research, and Evaluation. Section 904(d) of the Public Health Service (PHS) Act as amended by section 4 of Public Law 102–410, the Agency for Health Care Policy and Research Reauthorization Act of 1992, requires the Administrator, Agency for Health Care Policy and Research (AHCPR), to develop criteria for determining the priority of technology assessments performed by AHCPR and to publish the methodology for establishing technology assessment priorities. This public meeting is being held for interested parties to provide recommendations to the Task Force on setting priorities for health care technology assessments. This announcement is in accordance with section 10(a) of the Federal Advisory Committee Act.

DATES: The meeting, open to the public, will be on September 22, 1993, from 10 a.m. to 3 p.m.

ADDRESSES: The meeting will be at the Arlington Renaissance Hotel, 950 North Stafford Street (Ballston Metro Station), Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council, Agency for Health Care Policy and Research, Suite 603, 2101 East Jefferson Street, Rockville, Maryland 20852, (301) 594–1459.

SUPPLEMENTARY INFORMATION:

I. Background

Section 921 of the PHS Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, AHCPR, on matters related to enhancement of the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

Section 904(d) of the PHS Act (42 U.S.C. 299a–2) requires the Administrator to develop criteria for determining the priority of assessments performed by AHCPR and to publish the methodology for establishing health care technology assessment priorities. To advise the Administrator on establishing health care technology priorities, the Council has directed the Technology Assessment Task Force to convene a public meeting for interested parties to provide recommendations to the Task Force on setting priorities for health care technology assessments.

Council members participating on the Task Force include: F. Marian Bishop, Ph.D., MSPH; Joseph T. Curti, M.D.; William S. Kiser, M.D.; Louis F. Rossiter, Ph.D.; and Donald E. Wilson, M.D.

II. Agenda

The meeting of the Technology Assessment Task Force will hear oral presentations and accept written comments from any interested parties on developing a methodology for setting health care technology assessment priorities. Participants may make oral presentations of no more than 5 minutes. Persons wishing to make an oral statement should contact the Executive Secretary of the Council at the phone number above in order to schedule time for participation.

The Technology Assessment Task Force will make a preliminary report to the Council at the meeting scheduled for September 23–24, 1993.

Agenda items are subject to change as priorities dictate.

Dated: August 13, 1993.

Richard J. Greene,

Acting Administrator.

[FR Doc. 93–20125 Filed 8–19–93; 8:45 am]

BILLING CODE 4160-90-U

Agency for Toxic Substances and Disease Registry

Workshop To Assist in Evaluating the Public Health Implications of Human Exposure to Wastes Contaminated by Polychlorinated Biphenyls (PCBs): Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Workshop To Assist in Evaluating the Public Health Implications of Human Exposure to Wastes Contaminated by PCBs.

Time and Dates: 8:30 a.m.–9 p.m., September 13–14, 1993.

Place: Indiana Memorial Union Conference Center, Indiana Memorial Union, 900 E. 7th Street, Bloomington, Indiana 47405.

Status: Open to the public, limited only by the space available.

Purpose: The workshop will focus on the evaluation of the public health implications of wastes containing PCBs.

Matters to be Considered: Participants will be divided into three panels: PCB Health Panel; PCB Incineration Panel; and the PCB Non-Incineration Remedial Technologies Panel. Each panel will address existing information, data, and case histories that need to be considered for assessing public health implications of PCB-contaminated wastes and will identify significant information needs.

Contact Person for More Information: Candy Davis, Division of Health Assessment and Consultation, ATSDR, Mailstop E32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0610.

Dated: August 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 93–20153 Filed 8–19–93; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control and Prevention

[Program Announcement Number 359]

Demonstration Project Grant To Reduce Hospitalizations Due to Diarrheal Disease in Children

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for one demonstration project grant to help prevent hospitalizations due to diarrheal disease in children. Funds were designated for this program in Senate Report 102–397, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill, 1993. The demonstration project will include documentation of the annual incidence of diarrheal hospitalizations, development of an educational package, delivery of oral rehydration solutions as part of a postnatal discharge package, follow-up educational visits to mothers, and evaluation of the success of the project.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of maternal and infant health, and immunization and infectious diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended, and section 317(k)(3) of the Public Health Service Act [42 U.S.C. 247b (k)(3)].

Eligible Applicants

Eligible applicants are the official public health agencies of states in the Lower Mississippi Delta region. The Lower Mississippi Delta Development Commission define these states as Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. Competition for this grant is limited to these states since Congress, through Senate Committee Report 102–397, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill 1993, directed CDC to develop one demonstration project for improving child survival in the Mississippi Delta. No other applications will be accepted.

Availability of Funds

Approximately $250,000 is available in FY 1993 to fund one grant. It is expected that the award will begin on or about September 30, 1993, and will be for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this project is to provide assistance in developing a demonstration project to prevent hospitalizations due to diarrhea in children and to determine intervention strategies most likely to have impact on these events.

Program Requirements

This grant provides for a demonstration project to ascertain the effectiveness of education of mothers in the use of oral rehydration solutions, and the feasibility of providing these solutions to economically deprived mothers in an effort to reduce hospitalizations in counties of the recipient state. This project will serve as a prototype program to demonstrate usefulness in the United States. Success of the project depends upon the ability of the grantee to develop and carry out provisions of the grant. Grantees must meet the following requirements:

1. Access medical records from selected counties, and ascertain and document the number of hospitalizations per year due to diarrhea in children 5 years of age or younger.
2. Involve local health units in selected counties in the planning and execution of the demonstration project.
3. Develop an educational package to teach mothers the effects and potential severe outcomes of diarrhea and the rationale for, and proper use of oral rehydration solutions.
4. Prepare and provide a postnatal discharge package which includes a supply of oral rehydration solution and instructions for use of this solution.
5. Develop a plan for follow-up educational and evaluation visits to mothers.
6. Evaluate and document success of the project, including determination of positive and negative factors regarding the use of oral rehydration solutions to decrease the number of hospitalizations due to diarrhea.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. The applicant's understanding of the purpose of the proposed activity, the feasibility of accomplishing the outcomes described, and ability to accomplish specific recipient activities: Access all hospital records in their state and demonstrate ability to identify two or more counties located in the Lower Mississippi Delta region which have an aggregate total of 4000 or more live births per year and 400 or more hospitalizations for diarrhea per year in children 5-years-of-age or younger in order to provide an adequate sample size necessary to assess success of the project; to develop and administer an educational package to mothers; to provide oral rehydration solutions as part of postnatal discharge packages; and to provide for follow-up educational and evaluative visits after hospital discharge. (20 points)

B. The existence within the applicant's state of local health units in each county which integrate services of the Women/Infants/Children (WIC) program, child health, immunizations, child care coordination, prenatal care, home visiting, and school-based clinic programs through which adolescent mothers can be served; and a system which links Medicaid data with the state public health data system through which evaluation of the project can be performed. (20 points)

C. The extent to which background information and other data demonstrate the need for this project; that the applicant has appropriate organizational structure, administrative support, ability to access appropriate target populations; and the extent to which the plans and objectives are specific, measurable, and time-phased. (20 points)

D. The qualifications, including training and experience, of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities. (20 points)

E. The applicant's ability to evaluate and document the success of the project, including determination of positive and negative factors regarding the use of oral rehydration solutions to decrease the number of hospitalizations due to diarrhea. (20 points)

F. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds. (not weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than

federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 314, Atlanta, Georgia 30305. The due date for state process recommendations is 30 days after the application deadline date for new and competing continuation awards. (The appropriation for this financial assistance award was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within FY 1993.)

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants on July 6, 1993.

Where To Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6803. Programmatic technical assistance may be obtained from G. William Gary, M.P.H., Dr.P.H., or Roger I. Glass, M.D., Ph.D., Respiratory and Enteric Viruses Branch, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–17, Atlanta, Georgia 30333, telephone (404) 639–3595, or (404) 639–3577.

Please refer to Announcement Number 359 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 783–3238.

Dated: August 12, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–20150 Filed 8–19–93; 8:45 am]

BILLING CODE 4160–18–P

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Preventing Risk Behaviors Among School Students: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Preventing Risk Behaviors Among School Students.

Time and Dates: 8:30 a.m.–5 p.m., September 13–14, 1993.

Place: Georgetown University Conference Center, 3800 Reservoir Avenue, NW., Washington, DC 20057.

Status: Open to the public, limited only by the space available.

Purpose: The subcommittee will review CDC's HIV prevention activities focusing on school-aged populations with special emphasis on programs delivered through the Nation's schools, but also including programs addressing youth in high-risk situations and college/university students.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: August 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–20151 Filed 8–19–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., September 21, 1993.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will meet to discuss issues related to state and community statistics and to develop a work plan for the coming year.

Contact Person for More Information: Substnative program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–20154 Filed 8–19–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Long-Term Care Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Times and Dates: 9 a.m.–5 p.m., September 20, 1993.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will conduct a working session in the morning and discuss several supply side data sources on long-term health care services in the afternoon.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–20152 Filed 8–19–93; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Outpatient Early Intervention Services With Respect to HIV Disease

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Advance notice of application deadline for HIV Early Intervention Services grant applications for Fiscal Year 1994.

SUMMARY: The Health Resources and Services Administration's Bureau of Primary Health Care (BPHC) will provide funding for approximately 40 competing continuation and/or new grants during Fiscal Year 1994 to provide outpatient early intervention services with respect to human immunodeficiency virus (HIV) disease. The purpose of this announcement is to give early notice to potential applicants of the application deadline date of October 1, 1993, for grants with a January 1, 1994 budget start date.

FOR FURTHER INFORMATION CONTACT: For grant information, potential applicants may contact the Grants Management Officer, Ms. Alice Thomas, Bureau of Primary Health Care, Health Resources and Services Administration, 12100 Parklawn Dr., Rockville, Maryland 20857, (301) 443–5902. For general program information and technical assistance, contact Enrique Fernandez, M.D., HIV Program Director, Division of Programs for Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, room 9–12, Rockville, Maryland 20857, (301) 443–8113.

SUPPLEMENTARY INFORMATION: A notice of Availability of Funds for this program for this cycle will be published in the **Federal Register** announcing program provisions, requirements, and evaluation criteria.

Dated: August 16, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–20167 Filed 8–19–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on September 10 1993, in the Board Room of the National Library of Medicine, Building 38A, 8600 Rockville Pike, Bethesda, Maryland, which was published in the **Federal Register** on August 6, 1993 (58 FR 42082).

This committee was to have met in open session from 9 a.m. to 5 p.m. on September 10, but has been changed to 9 a.m. to 3 p.m. on September 8.

The committee was to have met in closed session from 3 p.m. to 5 p.m. on September 10, but has been changed to two closed sessions on September 7 and 8, as indicated below:

September 7: 7 to 9 p.m., Bethesda Hyatt Hotel, 1 Bethesda Metro Center, Bethesda, Maryland.

September 8: 3 to 5 p.m., Board Room, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

Dated: August 16, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–20217 Filed 8–19–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 6, 1993.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Importation and Shipment of Etiologic Agents—0920–0199—This data collection is the application for a permit to import or transfer agents or vectors of human diseases. The importer provides information on methods of transportation and proposed uses of materials imported. In the interstate shipment of these vectors, carriers must report the discovery of damaged packages and the sender must report any lost shipments. Respondents: State or local governments, Businesses or other for-profit; Number of Respondents: 1,052; Number of Responses per Respondent: 1; Average Burden per Response: .320 hours; Estimated Annual Burden: 337 hours.

2. 1933–94–95 Flouidation Census—0920–0195—These Census data will provide information based on national and individual State data and are used to determine priorities for programs and initiatives. The Census is intended to be a working or reference document to provide beneficial data to the Centers for Disease Control and other public and private entities interested in water fluoridation programs. Respondents: State or local governments; Number of Respondents: 59; Number of Responses per Respondent: 1; Average Burden per Response: 8 hours; Estimated Annual Burden: 472 hours.

3. National Disease Surveillance Program—II. Disease Summaries—0920–0004—Surveillance data are essential to measure trends in disease incidence and evaluate effectiveness of prevention efforts. State and territorial health departments compile these summaries from data collected during disease investigations and from data furnished by local health departments. Respondents: State or local governments; Number of Respondents: 150; Number of Responses per Respondent: 198.6; Average Burden per Response: .176 hours; Estimated Annual Burden: 5,256 hours.

4. Reporting Requirements for Federal Maternal and Child Health Set-Aside Programs—42 CFR part 51(a)—NPRM—This NPRM adds a new section to the existing MCH regulations to implement amendments to 42 U.S.C. 706(a)(3) made by OBRA 1989 (P.L. 101–239) to require information from SPRANS and CISS projects to be reported annually to Congress on numbers of persons served or trained, evaluations performed, and Healthy Children 2000 objectives addressed. This submission includes the associated reporting forms to be used by grantees to fulfill the reporting requirements as shown in 42 CFR 51a.8. (Note: Each annual report carries an estimated burden of 4 hours for the projected 580 respondents. When the rule becomes final, total annual burden is estimated at 2,320 hours). Respondents: State or local governments, Businesses or other for-profit; Non-profit institutions, Small businesses or organizations; Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 1 hour.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 16, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–20067 Filed 8–19–93; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is hereby given that subchapter S4E, the Office of Systems Operations, is being amended to reflect the realignment of division functions in the Office of Computer Processing Operations (S4EA). The changes are as follows:

Section S4E.10 *The Office of Systems Operations*—(Organization):

D. The Office of Computer Processing Operations (S4EA).

Retitle:

1. The Division of Production Systems Operations (S4EA1) to: "Division of Computer Facilities and Support (S4EA1)."

Section S4E.20 *The Office of Systems Operations*—(Functions):

D. The Office of Computer Processing Operations (S4EA).

Amend to read as follows:

The Office of Computer Processing Operations (OCPO) (S4EA) plans, directs and manages data processing operations in support of social insurance and income maintenance programs, software testing, statistical and administrative information systems. OCPO manages a complex data processing facility of mainframe computers and related equipment, processes programmatic and management information workload data in conjunction with the Office of Systems Requirements (OSR), the Office of Systems Design and Development (OSDD) and the Office of Information Management. It designs, develops, implements and provides operating systems software and operational standards for SSA's programmatic and management information automation data processing (ADP) equipment. OCPO manages various procured software products for the data processing facility, data base and operations software support. OCPO conducts operational/technical evaluations of operations in the data processing facility and advises the Associate Commissioner for Systems Operations and other SSA officials on operational/technical matters concerning computer operations. OCPO serves as liaison with other SSA officials on technical matters concerning data processing facility operations. It serves as liaison with other SSA components, Federal and non-Federal agencies and other organizations on operational data processing matters. OCPO reviews and approves technical and operational systems priorities among program areas to ensure maximum use of Office of Systems Operations (OSO) resources. OCPO coordinates the resolution of operational problems identified by OSR and the customers of OSO's computer systems.

Retitle:

1. The Division of Production Systems Operations (S4EA1) to: "Division of Computer Facilities and Support (S4EA1)."

Delete:

a. In its entirety.

Add:

a. Provides all computer hardware-related support for OSO and coordinates the installation of all major hardware and software. Plans and coordinates all computer systems installations and relocations. Provides technical evaluation support for the procurement, acceptance, testing, installation and implementation of equipment and software.

Delete:

b. In its entirety.

Add:

b. Plans and coordinates computer facility environmental systems requirements. Provides computer facilities support for all Agency computer processing centers.

Delete:

c. In its entirety.

Add:

c. Monitors problem determination and resolution flow for all software, hardware and environmental failures that occur in the National Computer Center (NCC) and other Agency data processing centers.

Add:

d. Serves as focal point for all user systems problems, questions, complaints and corrective actions regarding the full range of production services. Establishes quality standards for selected operations areas and provides enforcement of the standards. Measures operations performance in providing timely output services as delineated in the User Service Agreements.

Add:

e. Provides operational status and workload information to field offices and payment centers using the SSA telecommunications network. Provides statistical analyses of, and reports on, operations performance at meeting both user and computer center management service objectives.

2. The Division of Computer Operations Production Control (S4EA2).

Delete:

a. In its entirety.

Add:

a. Manages and processes all of SSA's program/mission-oriented and management information batch and online batch production workloads and administers effective resource utilization.

Delete:

d. In its entirety.

Add:

d. Manages all incoming and end-deliverable products of data processing operations within both the test and production environments. Responsible for the operations and control of the print and punch products produced in the NCC. Ensures the quality, timeliness and accurate delivery of all distributed information, including transmitted data.

Delete:

e. In its entirety.

Add:

e. Provides a centralized contact for the management of all storage media resources in the NCC and Program Service Centers. Manages DASD resources to maintain the integrity, reliability and performance of state-of-the-art storage technology. Responsible for DASD backup and recovery operations. Advises senior management of all aspects of storage media management.

Add:

f. Represents OSO and Systems in the preparation and revision of Service Level Agreements between Systems and its users.

3. The Division of Operational Support Software (S4EA3).

Delete: "utility software" in Line 3.

Add: "locally prepared subroutines"

Delete:

b. In its entirety.

Add:

b. Designs, develops, implements and maintains production control ADP: systems which supervise media library controls and automates the scheduling of the production workload.

Delete:

c. In its entirety.

Add:

c. Directs the analysis, evaluation, selection, implementation and maintenance of a wide variety of vendor proprietary and locally provided utility software to support the programmatic production and management information workloads of the central and remote data centers.

Delete:

d. In its entirety.

Add:

d. Supports other SSA components with user liaison, systems development, technical and operational problem resolution.

Dated: July 26, 1993.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 93–20126 Filed 8–19–93; 8:45 am]

BILLING CODE 4190–29–M

Substance Abuse and Mental Health Services Administration

Cooperative Agreements for Mental Health Services for Cuban Entrants

ACTION: Request for applications.

Introduction

The Center for Mental Health Services (CMHS) announces that new and competing renewal applications are being accepted to provide community-based halfway house mental health services for Cuban entrants in the United States (as defined by Public Law 96–422, Section 501(e)) who have serious psychiatric conditions which may be complicated by a secondary diagnosis of substance abuse disorders, developmental disabilities, or a combination thereof. Funds will be awarded through a cooperative agreement mechanism that will authorize the Federal Government to be an active participant in this system of transition from detention to independent living. This active participation is substantial, as significant coordination is needed at the federal level due to the multi-agency involvement with the Mariel Cuban population. This may include significant technical assistance, formal program review, and federal approval for admissions and discharges (see Role of Federal Staff in Cooperative Agreements).

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0; or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone Number: 202–783–3238).

Program Description

Background

In October 1980 nearly 125,000 Cubans arrived on the South Florida shores from the Cuban Port of Mariel. Many of the Cubans came with criminal backgrounds and pre-existing psychiatric problems. An inpatient mental health treatment facility was established at St. Elizabeths Hospital (SEH) in October 1980, by the Immigration and Naturalization Service and the Public Health Service (INS/PHS Evaluation Facility), and has continuously operated since that time. Once stabilized, patients are generally discharged to community-based halfway house programs. The community-based halfway house program was developed to facilitate the community adjustment of Mariel Cuban entrants who were mentally and/or developmentally disabled, and who also often had criminal and/or antisocial histories and substance abuse problems. The long-term goal of this program is to maximize the potential for success for Mariel Cuban entrants as they progress from a secured detention site to independent community living. During the first year there were 2 community-based sites with a bed capacity of 88. This increased in 1984 to a maximum of 7 sites, with 243 beds. In 1989, a substance abuse treatment component was added to the outplacement programs. The program is operated by the Refugee Mental Health Branch (RMHB) of the Center for Mental Health Services; funding is provided through an interagency agreement with the Department of Justice. (Prior to October 1992, the program was located within the National Institute of Mental Health.)

These Cuban entrants, currently in Federal custody, carry a range of diagnoses involving substance abuse/dependency, major mental illness (stabilized), and/or developmental disability. Entrants needing treatment cover a wide range of psychiatric diagnostic categories and treatment histories. Most have extensive histories of institutional care in both Cuba and the United States. Applications are particularly sought that address the special needs of entrants with multiple diagnoses (e.g., those with a primary diagnosis of mental illness accompanied by developmental disabilities, severe personality, minor psychosexual, or substance abuse disorders; and entrants with a history of criminal involvement). In addition, this population has a high frequency of acute and chronic medical conditions.

Treatment Settings

The treatment setting of choice for many of these individuals is a structured halfway house. It is currently anticipated that approximately 80 to 85 halfway house beds will be needed to provide an average of 180 days of service to approximately 130 clients per year. However, other levels of treatment, such as transitional apartments (with counselor supervision and medical follow-up) or day programs, are sometimes appropriate and may be supported under this RFA. Use of community resources such as vocational rehabilitation, job skills training programs, and educational activities may also be supported. The following represents current estimates of the specific types of placements needed:

- Community-based residential treatment for clients with psychiatric/dual diagnosis treatment needs (30–40 beds);
- Community-based residential treatment for long-term care clients (neuropsychiatrically impaired, chronically mentally ill, etc.) (45–50 beds).

The number of beds needed in each category will vary depending on the demand from the various detention

sites. During the pre-award site visits, applicants must demonstrate that they can accommodate these changing needs over time.

Project Requirements

Goals and Objectives

As noted above, the long-term goal of this program is to maximize the potential for success for Mariel Cuban entrants as they progress from a secured detention site to independent community living. This is especially important since there is no organized follow-up at the independent living stage; at that point they are only tracked on an annual basis by INS. Applicants must present an organizational philosophy, as well as specific goals and objectives, conceptually consistent with this long-term goal. The goals and objectives should be specific enough that their attainment can be collaboratively monitored via vendor quality assurance/utilization review activities and RMHB site visits.

Project Description

The applicant's proposed programs should be fully described in the application. At a minimum, the application must address the following:

- Mental health services including medical responsibility for each entrant which must be vested in an appropriately licensed physician (need not be full time). When the physician is not a psychiatrist, psychiatric consultants must be available to that physician, and other staff, not less than once per week. Each patient must also have an individualized treatment plan that includes individual psychotherapy and/or counseling on a regularly scheduled basis, if required by the plan.
- Behavior management program including an appropriately credentialed clinician with specialized training/education in behavior management who is responsible for program development and implementation in behavior management and who provides supervision or consultation to the clinicians involved in the behavior modification of impulse control.
- An integrated medical records system, including, but not limited to, information concerning the following:

—Relevant psychosocial history and functioning, criminal history, and psychiatric history;
—Diagnosis (DSM III–R; five axes);
—Treatment plan with both long- and short-term goals;
—Current medication use, including noticeable side effects;
—Signed and dated progress notes made on a regular basis, with particular emphasis on treatment planning; and
—Discharge summary, including the follow-up plan and summary.

- Treatment component addressing the substance abuse needs of clients with mental illness implemented by appropriately credentialed or certified staff.
- Prevocational/vocational training, rehabilitation, and job placement appropriate to the program goals, the entrant's degree of emotional and/or intellectual impairment, and the entrant's treatment goals;
- A crisis management plan that includes measures, within the program and the local community, for managing the care of patients who are severely noncompliant either psychiatrically or behaviorally;
- Quality assurance/utilization review and evaluation plans to document attainment of both program goals and objectives as well as individual client goals; and
- Availability of sufficient bilingual and bicultural staff to accomplish program goals.

In addition, the program description should include the following:

- The relationship of this program to other existing community programs including plan for the use of community resources;
- Admission criteria and exclusion factors;
- Examples of daily treatment and activity schedules;
- A plan for provision of routine health care as well as for disposition of medical and psychiatric emergencies beyond the capability of the facility;
- A plan for the routine treatment of HIV/AIDS;
- A plan for training in activities of daily living; and
- A plan for the provision of nutritional meals for entrants, including special diets as needed.

Facilities

The following requirements should be addressed regarding the facility site:

- Evidence that the proposed facility will obtain, prior to the award, all required licenses, certifications, zoning permits, and for other operating permits;
- A description of security arrangements;
- A complete description of living and treatment facilities, including schematic drawings; and
- A description of the community, to include the readily available hospital services (medical and psychiatric), public transportation services, adequate recreational facilities, and resources to respond to crises beyond the internal control of program staff.

Program Administration

The following program administration issues must be addressed in the proposal:

- Evidence of historical and current capability and experience with multicultural services;
- Lines of authority with clear delineation of staff roles and responsibilities;
- A 30-day phase-in program implementation plan;
- The proposed staffing pattern with a 2 week schedule and position descriptions for all key staff, including minimum qualifications;
- Assurance of availability of special staff, as appropriate, to the proposed program, e.g., psychiatrists, psychologists, nurses, social workers, recreational, and occupational staff (include resumes detailing the education and experience of professional persons and summaries of the qualifications of key personnel that demonstrate their suitability); and
- A statement of the relationship between the proposed staff and the existing staffing pattern.

Eligibility

Applications may be submitted by public organizations, such as units of State or local governments, and by private nonprofit and for-profit organizations such as universities, colleges, hospitals, and community-based organizations.

Availability of Funds

Contingent upon congressional appropriations and funding levels made available through an interagency agreement with DOJ, it is anticipated that approximately $2.4 million will be available to support two or more awards under this RFA in Fiscal Year 1994.

Period of Support

Support may be requested for an initial period of up to 5 years. Annual awards will be made subject to continued availability of funds and satisfactory implementation of the proposed program.

Special Requirements

Letter of Intent

Organizations planning to submit an application in response to this announcement are requested to submit a letter of intent at least 30 days prior to the receipt date. Such notification is used by the Center for Mental Health Services for review and program planning. This letter is voluntary and does not obligate the person/organization to submit an application.

In addition, the letter should be no longer than one page and should succinctly indicate:

—The number and title of the RFA;
—The name of the potential applicant organization, city and state;
—The name and affiliation of the proposed project director, i.e., the individual who will be assigned to coordinate the development and conduct of the project; and
—The overall scope of the proposed project, including a brief description of the likely goals and objectives.

Letters of intent should be directed to: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 18C–07, Rockville, MD 20857, ATTN: RMH/ Letter of Intent.

Single State Agency Coordination

Coordination with the Single State Agency (SSA) for alcohol, other drug abuse, and mental health is encouraged to ensure communication, reduce duplication, and facilitate continuity. The application must include a copy of a letter sent to the SSA briefly describing the grant application. A list of SSAs can be found in the grant application kit. If the target population falls within the jurisdiction of more than one State, all representative SSAs should be involved.

Intergovernmental Review (E.O. 12372)

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications(s), and to receive any necessary instructions on State applicable procedures. A current listing of SPOCs is included in the application kit.

The SPOC should send any State process recommendations to the following address: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 18C–07 Rockville, MD 20857, ATTN: SPOC.

The due date for State process recommendations is no later than 60 days after the deadline date for the receipt of applications.

The CMHS does not guarantee to accommodate or explain SPOC comments received after the 60-day cut-off.

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be impacted no later than the pertinent receipt date for applications. The PHSIS consists of the following information:

a. A copy of the face page of the application (Standard Form 424).

b. A summary of the project, not to exceed one page, which provides:

1. A description of the population to be served.

2. A summary of the services to be provided.

3. A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Role of Federal Staff in Cooperative Agreements

The Cooperative Agreement mechanism includes substantial postaward Federal programmatic participation in the conduct of the project. It is anticipated that CMHS staff participation in this program will be substantial. Such involvement may include, but is not limited to:

- Consulting and participating in the redesign or modification of the program;
- Providing extensive technical assistance (e.g. support services for training, evaluation, and data collection);
- Arranging meetings designed to support activities of the individual cooperative agreement awardees;
- Scheduling and assisting the awardee in the selection of appropriate entrants for the project (in concert with the Immigration and Naturalization Service);
- Responding to requests for consultation from the awardee regarding program or individual entrant's conduct;
- Providing the Department of Justice timely written reports containing observations and recommendations, based on site visits to the facilities;
- Renegotiating the budget proportionately, should the projected quota of Cuban entrants with mental illness and/or developmental disabilities fall below expectations, or funding level is reduced;
- Arranging for an annual program review and providing feedback and support for corrective action;
- Providing all liaison communication between the RMHB and other involved governmental agencies/ departments;
- Monitoring and ensuring compliance with the RMHB Operational Guidelines; and
- If applicable, negotiating a fixed daily rate for housing.

Role of Grantee in Cooperative Agreements

The grantee is expected to participate/ cooperate fully with CMHS staff in the implementation and evaluation of the project. Activities include compliance with all aspects of the terms and conditions for the cooperative agreement, cooperation with guidance provided by and requests from CMHS staff, response to all requests for client interviews and admissions, and functional knowledge of, and compliance with, all applicable RMHB Operational Guidelines (a copy may be requested from RMHB program staff listed under the "Contacts" section of this RFA).

Confidentiality

Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR part 2) are applicable to any information about alcohol and other drug abuse patients obtained by a Federally-funded program, as defined in the regulations. This means that all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR part 2.

Inclusion of Adequate Representation of Women

The CMHS urges applicants to give added attention (where feasible and appropriate) to the inclusion of women in the program. If they are not included, a clear rationale for exclusion should be provided. Gender differences should be described and addressed in the application.

Approximately 5% of the Mariel clients in the Halfway houses are female. These women may have been subject to past abuses that introduce great cultural stigma and require special treatment orientation and goals. Other special issues include birth control, family planning, gynecological issues.

special discharge needs that may involve children, etc.

Evaluation

All program activities and reporting must be performed in accordance with the RMHB Operational Guidelines. A copy of these Operational Guidelines may be obtained from the program contact listed below.

Participant Protection

Applicants and awardees are expected to develop and implement appropriate procedures to address confidentiality and other ethical issues pertinent to the protection of participants in proposed projects, including agreement to maintain the confidentiality of alcohol and drug abuse client data in accordance with 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." Compliance with all local and/or state regulations is also required.

Application Procedures

All applicants should use application form PHS 5161–1 (Rev. July, 1992), which contains Standard Form 424 (face page). The following information should be typed in item 10 on the face page of the application form:

SM93–10 MH Services for Cuban Entrants

Grant application kits (including Form PHS 5161–1, with Standard Form 424, Operational Guidelines, and complete application procedures) may be obtained from: Grants Management Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 15–81, Rockville, MD 20857, Telephone: (301) 443–4456.

Applicants must submit an original copy signed by the authorized official of the applicant organization, with the appropriate appendices and two additional, legible copies of the application and all appendices to the following address: Center for Mental Health Services Programs, Division of Research Grants, NIH, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, MD 20892.

- If an overnight carrier or express mail is used, the Zip Code is 20816.

Only one application seeking support for the same programmatic activities may be submitted to SAMHSA, and that same application may be submitted in response to only one SAMHSA Program Announcement or Request for Applications.

Application Receipt and Review Schedule

The schedule for receipt and review of applications under this announcement is as follows:

Receipt date	IRG review	Earliest start date
Oct. 22, 1993	Nov. 1993	Jan. 1, 1994

The DRG system requires that applications must be received by the published application receipt date. However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier (private metered postmarks are not acceptable as proof of timely mailing) and the proof-of-mailing date is not later than one week prior to the deadline date. If a receipt date falls on a weekend, it will be extended to the following Monday; if a date falls on a holiday, it will be extended to the following work day.

Consequences of Late Submission

Applications received after the above receipt date will not be accepted and will be returned to the applicant without review.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

- It is received after the specified receipt date;
- It is incomplete;
- It is illegible;
- It exceeds the specified page limits (25 pages);
- It does not conform to instructions for format, which include that it be typed single-spaced, using standard size black type not smaller than 15 characters per 1 inch or 2.5 centimeters, one column per page, with conventional border margins (1 inch or 2.5 centimeters), on only one side of standard size 8½ x 11 paper that can be photocopied;
- It is non-responsive to the announcement; and/or
- The material presented is insufficient to permit an adequate review (e.g., an incomplete or clearly inadequate evaluation plan).

Returned applications may not be resubmitted for the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Notification of the IRG recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications will undergo a second level of review by the appropriate advisory council, once established, whose review may be based on policy considerations as well as technical merit. Applications may be considered for funding only if the advisory council concurs with the IRG recommendation for approval.

Review Criteria

The following weighted criteria will be applied using a total of 100 points:

A. Quality, adequacy, and feasibility for proposed program services (35 points)

1. Evidence of the ability to design, develop, and implement a culturally responsive/culturally appropriate/gender sensitive project.
2. Demonstration of an understanding and knowledge of the overall project and scope of services, as it relates to this unique population.
3. Inclusion of a feasible quality assurance plan for documenting, monitoring, and assessing the quality of services supplied by the project.

B. Quality, adequacy, and feasibility of proposed organizational design and staffing plans (25 points):

1. Evidence of historical and current capability and experience of the applicant organization.
2. Adequacy of the management plan as evidenced by the appropriateness of staff roles, responsibilities, and lines of authority.
3. Appropriateness and feasibility of program implementation plan, including assurance that the legal and operating requirements necessary for program implementation will be met.
4. Appropriate qualifications (including training, education, and experience) of the project director and other key personnel.
5. Demonstration of the quality and adequacy of proposed staffing pattern and feasibility of recruiting bilingual/bicultural staff.

C. Adequacy of available resources (e.g., facilities, equipment) (20 points).

D. Reasonableness and justification of the proposed budget (20 points).

Award Decision Criteria

Applications recommended for approval by the Initial Review Group

and the appropriate advisory council, if established, will be considered for funding on the basis of their overall technical merit as determined through the review process. Additional award criteria may include:

- Availability of funds
- Financial evaluation to establish the ability of the applicant organizations to provide adequate stewardship of Federal funds
- Results of a Federal pre-award site visit.

Terms and Conditions of Support

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs which can be specifically identified with the project and allowable indirect costs. In order to recover allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, applicants should contact the appropriate office of the DHHS Division of Cost Allocations referenced in the list of "Offices Negotiating Indirect Cost Rates," included in the application kit. While for-profit organizations are eligible to apply, they may not receive a profit fee. Grant funds cannot be used to supplant current funding for existing activities.

Allowable Items of Expenditure

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out service activities under the approved project (at acceptable government rates);
- Supplies, communications, and rental of equipment and space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support approved project activities.

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period, or cover nonprogrammatic activities.

It is expected that cost per client per day will be in the range of $65 to $85, depending on program size and intensity, and the reasonable and standard cost of care in similar programs in the local area. Historically, the awards have been granted based on calendar year, but this may vary.

Alterations and Renovations

Costs for alterations and renovations (A&R) will be allowable only where such alterations and renovations are necessary for the success of the program. However, as subject to the PHS Grants Policy Statement, the maximum amount of funds budgeted or used for A&R under a single grant during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of $150,000, or 25 percent of the total funds reasonably expected to be awarded by PHS for direct costs for such a 3-year period. (The maximum amount of PHS grant funds that may be applied to any single A&R project is $150,000.) Construction costs are not allowed.

Interim and final progress reports and financial status and expenditure reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Contacts for Additional Information

Questions concerning program issues may be directed to: Carol R. Coley, M.S., Refugee Mental Health Branch, Center for Mental Health Services, 5600 Fishers Lane, room 18–49, Rockville, MD 20857, (301) 443–2130.

Questions regarding grants management issues may be directed to: Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, room 15–81, Rockville, MD 20857, (301) 443–4456.

Authority and Regulations

Cooperative agreements awarded under this RFA are authorized under section 501(c) of the Refugee Education Assistance Act of 1980 and the inter-agency agreement between the Department of Justice and the Public Health Service.

Federal regulations in title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, FAR 31.2 and 31.1, and OMB Circulars A–110, A–128, and A–133, as applicable.

Grants must be administered in accordance with the PHS Grants Policy Statement (Updated September 1, 1991).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.120.

Dated: August 16, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–20124 Filed 8–19–93; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–45]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and

unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Corps of Engineers:* Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE-MC, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1753; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; *Dept. of Transportation:* Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; *Dept. of Energy:* Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586-1191; (These are not toll-free numbers).

Dated: August 13, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 8/20/93

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox AL 36726-
Landholding Agency: COE
Property Number: 319011549
Status: Unutilized
Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use - lock tender's dwelling.

Bldg. TU-21
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011552
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use - lock tender's dwelling.

Bldg. TU-23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011553
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use - lock tender's dwelling.

Bldg. TU-24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011554
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use - lock tender's dwelling.

Colorado

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205-
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use - storage, office, rehab
GSA Number: 7-GR-CO-468-D

Florida

Bldg. CN-3
1651 S. Franklin Lock Road
Alva Co: Lee FL 33920-
Landholding Agency: COE
Property Number: 319130006
Status: Unutilized
Comment: 1500 sq. ft., 1 story concrete block residence, off-site use only

Bldg. CN-43
Port Mayaca Lock and Spillway
Okeechobee Waterway
Port Mayaca Co: Martin FL 33438-
Location: Located approx. 9 mi n/o Canal Pt. at the intersection of US 441 and SR 76
Landholding Agency: COE
Property Number: 319210004
Status: Unutilized
Comment: 1700 sq. ft., 1 story concrete block/ stucco structure, possible asbestos, off-site use only

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401-8772
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only

Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401-8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only

Iowa

LeMars Communication Site
NW1/4 Section 18, T92N, R44W
LeMars Co: Plymouth IA 51031-
Landholding Agency: GSA
Property Number: 549310007
Status: Excess
Comment: 144 sq. ft., 1-story metal shed with 5.79 acres, most recent use - radio relay station
GSA Number: 7-B-IA-471-A

Kansas

Federal Building
412-418 South Main St.
Wichita Co: Sedgwick KS 67202-
Landholding Agency: GSA

Property Number: 549320005
Status: Excess
Comment: 35,000 sq. ft., 2-story steel/concrete bldg., scheduled to be vacated 9/93, presence of asbestos
GSA Number: 7-G-KS-0512

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273-
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Utility Bldg, Nolin River Lake
Moutardier Recreation Site Co: Edmonson KY
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only

Massachusetts

Lowell Federal Building
50 Kearny Square
Lowell Co: Middlesex MA 01854-
Landholding Agency: GSA
Property Number: 549320003
Status: Excess
Comment: 40,283 sq. ft., 3-story concrete and steel bldg., most recent use - storage/office and medical clinic
GSA Number: 2-G-MA-778

New York

(P) Form. Alex. Bay CG Station
Landon Road, Wellesley Island
Alexandria Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549310006
Status: Excess
Comment: 2500 sq. ft. 2-story wood bldg., 5 acres of land
GSA Number: 2-GR-NY-0730A-000Z

North Carolina

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923-
Landholding Agency: DOT
Property Number: 879120083
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall

Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923-
Landholding Agency: DOT
Property Number: 879120084
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall

Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923-
Landholding Agency: DOT
Property Number: 879120085
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768-9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with 1/2 acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Oklahoma

Govt. Quarters #1
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply Co: Woodward OK 73841-0248
Landholding Agency: COE
Property Number: 319330001
Status: Excess
Comment: 1568 sq. ft., 1-story steel frame, most recent use - residential, off-site use only

Govt. Quarters #2
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply Co: Woodward OK 73841-0248
Landholding Agency: COE
Property Number: 319330002
Status: Excess
Comment: 1568 sq. ft., 1-story wood frame, most recent use - residential, off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242-
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

South Carolina

Bldg. 1
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821-
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011544
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use - storage.

Bldg. 2
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821-
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011545
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use - storage.

Bldg. 3
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821-
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011546
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use - storage.

Bldg. 4
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821-
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011547
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use - storage.

Bldg. 5
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC
Location: 1/2 mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use - storage.

Texas

Cabin, Texoma Lake
Lot 100, Tract 673, Mill Creek Estates Co: Grayson TX
Landholding Agency: COE
Property Number: 319330003
Status: Excess
Comment: 975 sq. ft., 1-story wood frame with asbestos and masonite wall, most recent use - residential, off-site use only

House, Texoma Lake
Lot 102, Tract 669, Mill Creek Estates Co: Grayson TX
Landholding Agency: COE
Property Number: 319330004
Status: Excess
Comment: 1296 sq. ft., 1-story brick veneer, most recent use - residential, off-site use only

Virginia

Housing
Rt. 637 - Gwynnville Road
Gwynn Island Co: Mathews VA 23066-
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence

Washington

Residence - Tract 1500-1
LSRFWCP Area, Hwy 12
Walla Walla Co: Walla Walla WA 99362-
Landholding Agency: COE
Property Number: 319320006
Status: Excess
Comment: 1176 sq. ft., 1-story frame residence, need roadway easement, off-site use only

Cochran Residence
2108 NE 54th Street
Vancouver Co: Clark WA 98663-
Landholding Agency: Energy
Property Number: 419310001
Status: Unutilized
Comment: 1472 sq. ft., 1 1/2 story wood frame residence, presence of asbestos, off-site use only

Avery Residence
2012 NE 54th Street

Vancouver Co: Clark WA 98663-
Landholding Agency: Energy
Property Number: 419310002
Status: Unutilized
Comment: 1354 sq. ft., 1 1/2 story wood frame residence, presence of asbestos, scheduled to be vacated 4/93, off-site use only

Stone Residence
5801 NE 17th Avenue
Vancouver Co: Clark WA 98665-
Landholding Agency: Energy
Property Number: 419320004
Status: Excess
Comment: 1248 sq. ft., 1 story residence, double wide mobile home, off-site removal only.

Vancouver Substations
Vancouver Co: Clark WA 98661-
Landholding Agency: GSA
Property Number: 549240004
Status: Excess
Comment: 7 electrical control houses and transmission line corridors, access restrictions, high voltage present, minor contamination
GSA Number: 9-B-WA-1019 - 1028

West Virginia

House - Stonewall Jackson Lake
Entrance to State Park off Route 19
Roanoke Bay Co: Lewis WV 26452-
Landholding Agency: COE
Property Number: 319320007
Status: Excess
Comment: 2367 sq. ft., 1-story frame residence, off-site use only

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911-
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911-
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131-
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911-
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180-
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130-
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140-
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414-
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923-9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923-9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923-9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923-9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923-9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958-9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482-9404

Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1 - 0.15 acre, Parcel 2 - 0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9-GR(6)-CA-694A

Dixon Relay Station
7514 Radio Road
Dixon Co: Solano CA 95620-9653
Landholding Agency: GSA
Property Number: 549320002
Status: Excess
Comment: 787.53 acres with 7 bldgs., most recent use - transmitter site.
GSA Number: 9-Z-CA-1162B

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565-9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Indiana

Portion of Tract 1219
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319310002
Status: Unutilized
Comment: 0.88 acre, potential utilities

Portion of Tract No. 1220
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319310003
Status: Unutilized
Comment: 0.30 acre, potential utilities

Portion of Tract No. 1207
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319310004
Status: Unutilized
Comment: 0.28 acre, potential utilities

Portion of Tract No. 116
Huntington Lake
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319320001
Status: Excess
Comment: 3.41 acres with road easement

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use - recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211-
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709-10 and 2710-2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 2 1/2 miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708-1 and 2709-1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 2 1/2 miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 4 1/2 miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 6 1/2 miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 3 1/2 miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4 1/2 miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 6 1/2 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038-
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 1/2 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 1/2 miles east of Eddyville, KY.
Landholding Agency: COE

Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 5 1/2 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 7 1/2 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 308, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400-1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 6 1/2 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500-2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055-
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212-
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212-
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4 1/2 miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619-B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4 1/2 miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403-B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038-
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241-B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215-B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract N-819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601-
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use - hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008-0305
Landholding Agency: COE
Property Number: 319320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036-9999
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103-
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir

Haughton Co: Caddo LA 71037-9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442-
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760-
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 99
Leech Lake
Benedict Co: Hubbard MN 56641-
Location: 1 mile from city of Federal Dam, Mn.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease - expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease - expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease - expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901-0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease - expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901-0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use - wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use - wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903-0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901-0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390-10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903-0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use - wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901-0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901-0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902-0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use - wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901-0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use - wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355-
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Montana

120 acres, Fort Peck Lake Proj Co: McCone MT
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Landholding Agency: COE

Property Number: 319220005
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain
GSA Number: 7-D-MT-4137-FF

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931-0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Unutilized
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA Number: 2-GR-OH-433B

Oklahoma

Parcel 7
Fort Gibson Lake
Section 6 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Surplus
Comment: 16.31 acres; potential utilities; most recent use - recreational and development.
GSA Number: 7-D-OK-0442E-0001

Parcel 14
Fort Gibson Lake
Section 20 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Surplus
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use - recreational.
GSA Number: 7-D-OK-0442E-0002

Parcel 15
Fort Gibson Lake
Section 22 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010871
Status: Surplus
Comment: 7.51 acres; potential utilities; most recent use - recreational.
GSA Number: 7-D-OK-0442E-0003

Parcel 28
Fort Gibson Lake
Section 35 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Surplus
Comment: 36.59 acres; potential utilities; most recent use - recreational.
GSA Number: 7-D-OK-0442E-0005

Parcel 75
Fort Gibson Lake
Section 16 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Surplus
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use - recreational.
GSA Number: 7-D-OK-0442E-0009

Parcel 88
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Surplus
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use - recreational.
GSA Number: 7-D-OK-0442E-0010

Parcel 89
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Surplus
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use - recreational.
GSA Number: 7-D-OK-0442E-0011

Parcel 95
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Surplus
Comment: 8 acres; potential utilities; most recent use - recreational
GSA Number: 7-D-OK-0442E-0012

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Surplus
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7-D-OK-0442E-0006

Parcel No. 49
Fort Gibson Lake
Section 15 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Surplus
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7-D-OK-0442E-0007

Parcel No. 61
Fort Gibson Lake
Section 13 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Surplus
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use - recreation.
GSA Number: 7-D-OK-0442E-0008

Parcel No. 99
Fort Gibson Lake
Section 21 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Surplus
Comment: 5 acres; small creek on land; most recent use - recreation.
GSA Number: 7-D-OK-0442E-0013

Parcel No. 102
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use - recreation.
GSA Number: 7-D-OK-0442E-0014

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242-9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150-
Location: I-79 North, I-80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
(See County) Co: Armstrong PA 03051-
Location: Left bank - 55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized.
Comment: 7.89 acres; potential for utilities.

South Dakota

Ree Heights Communication Site
2 miles south of Ree Heights Co: Hand SD 57371-
Landholding Agency: GSA
Property Number: 549310015
Status: Excess
Comment: approx. 4.24 acres divided into 2 parcels with radio towers and equipment sheds
GSA Number: 7-B-SD-512

Land - 1.28 acre
Arlington Co: Brookings SD 57212-
Landholding Agency: GSA
Property Number: 549320004
Status: Excess
Comment: 1.28 acre of land with 120 sq. ft. metal bldg., most recent use - radio equipment housing
GSA Number: 7-B-SD-495-A

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 2 1/2 miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002-2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 3 1/2 miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015-
Location: 1/2 mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130-
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130-
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130-
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601,2602,2603,2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562-
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130-
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130-
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 2 1/2 miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050-
Location: 1 1/2 miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050-
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015-
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015-
Location: 2 1/2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028-
Location: 4 1/2 miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142-
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 1 1/2 miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058-
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K-1191, K-1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074-
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use - recreation

Tract A-102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use - hunting, subject to existing easements

Tract A-120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use - hunting, subject to existing easements

Tracts A-20, A-21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use - recreation, subject to existing easements

Tract D-185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570-
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use - hunting, subject to existing easements

Texas

Parcel #222
Lake Texoma
(See County) Co: Grayson TX
Location: C. Meyerheim survey A-829 J. Hamilton survey A-529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use - recreation

Tract F-516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902-3085
Landholding Agency: GSA
Property Number: 319120002

Status: Unutilized
Comment: 2.13 acres, potential limited utilities
GSA Number: 7-D-TX-0968-A

Parcel No. 201
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320007
Status: Excess
Comment: 8.07 acres, most recent use - low density recreation, upland timber wildlife hatitat
GSA Number: 7-D-OK-0507-H

Parcel No. 203
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320008
Status: Excess
Comment: 62.36 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Parcel No. 205
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320009
Status: Excess
Comment: 11.18 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Parcel No. 209
Lake Texoma Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320010
Status: Excess
Comment: 12.67 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Washington

Portion of Tract 905
Lower Monumental Lock & Dam
1/2 mi SE of Lyons Ferry Marina Co: Whitman WA
Landholding Agency: COE
Property Number: 319320005
Status: Excess
Comment: 3.788 acres with encroaching private well

Suitable/Unavailable Properties

Buildings (by State)

Arkansas

10 Houses
Hot Springs National Park
Hot Springs Co: Garland AR 71902-
Location: Linn St., Bower, McKinley, Grand, Conway Terrace, Akin, Old Crabtree Cemetary Rd., and Avenue Street
Landholding Agency: GSA
Property Number: 549310012
Status: Excess
Comment: 454 to 3334 sq. ft., 1 and 2 story residences, need major rehab, off-site use only
GSA Number: 7-I-AR-0415-Z

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706-
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Florida

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471-
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use - residence; secured with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471-
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use - residence; secured with alternate access.

Bldg. SF-83
Moore Haven Lock & Dam
Ockeechobee Waterway
Moore Haven Co: Glades FL 33471-
Landholding Agency: COE
Property Number: 319310006
Status: Unutilized
Comment: 1441 sq. ft., 1-story frame residence, average condition, restricted access

Georgia

Lot 3
Lake Forrest Subdivision
Woodframe House
Hartwell Co: Hartwell GA
Landholding Agency: COE
Property Number: 319110026
Status: Excess
Comment: 896 sq. ft.; 2 story wood frame residence; off-site removal only.

Guam

Bldg. 99, Loran Station - C
Barrigada GU 96913-
Landholding Agency: DOT
Property Number: 879220002
Status: Excess
Comment: 3960 sq. ft. concrete block transmitting station with tower

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner ID 83856-
Location: 3 1/2 miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft.; 3 story log construction with wood frame; off- site removal only; needs rehab.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use - residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame most recent use - residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use - residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use - residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use - residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941-9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use - residence.

Indiana

Cagles Mill Lake
Cagles Mill Lake Dam
Poland Co: Putnam IN 47868-
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.
Landholding Agency: COE
Property Number: 319011046
Status: Unutilized

Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Dwelling #2
Cagles Mill Lake
Poland Co: Putnam IN 47868-
Location: 5 miles west of Polano on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057-
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057-
Location: SR 421 north from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1060 sq. ft.; 2 story wood frame; needs rehab.

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008-
Location: Take I-71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008-
Location: Take I-71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Maine

31 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: GSA
Property Number: 189310052
Status: Surplus
Comment: 2916-7097 sq. ft., 1-2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA Number: 2-D-ME-526G

Mount Desert Rock Light
U. S. Coast Guard
Southwest Harbor Co: Hancock ME 04679-
Landholding Agency: DOT
Property Number: 879240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME
Landholding Agency: DOT
Property Number: 879240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576-
Landholding Agency: DOT
Property Number: 879240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling

Maryland

Chesapeake Bay Hydraulic Model
Matapeake Co: Queen Annes MD 21666-
Landholding Agency: GSA
Property Number: 549040007
Status: Excess
Comment: 617280 sq. ft., 1 story metal bldg., ceiling height over 40 ft., lease restriction, Corps will maintain an antenna on property
GSA Number: 4-D-MD-578

Massachusetts

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966-
Landholding Agency: DOT
Property Number: 879240024
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966-
Landholding Agency: DOT
Property Number: 879240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623-
Landholding Agency: GSA
Property Number: 549230007
Status: Excess
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2-U-MN-503-E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623-
Landholding Agency: GSA
Property Number: 549230008
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2-U-MN-503-E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623-
Landholding Agency: GSA
Property Number: 549230009
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2-U-MN-503-E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623-
Landholding Agency: GSA
Property Number: 549230010
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2-U-MN-503-E

New Mexico

Indian School of Prac. Nursing
1015 Indian School Road, NW
Albuquerque NM 87104-
Landholding Agency: GSA
Property Number: 549140004
Status: Excess
Comment: 21635 sq. ft., 2 story plus basement, brick & masonry frame on 1.68 acres of improved land.
GSA Number: 7-F-NM-509B

Former Post Office
4th & Mitchell
Clovis Co: Curry NM 88101-
Landholding Agency: GSA
Property Number: 549230005
Status: Excess
Comment: 9225 sq. ft., 2 story concrete, brick & steel structure, good condition, pres. of asbestos, listed on Natl Register of Historic Places, most recent use - public library.
GSA Number: 7-GR-NM-478

Bldg. 1 and 4
U.S. Navy Reserve Center
512 N 12th Street
Carlsbad Co: Eddy NM 88220-3046
Landholding Agency: GSA
Property Number: 779040001
Status: Excess
Comment: 2460 sq. ft., one story, frame/concrete block bldg., most recent use - office, presence of asbestos, and 152 sq. ft. metal storage shed on 1.03 acres.
GSA Number: 7-N-NM-0555

New York

Former Damtender's House
East Sidney Lake
Franklin Co: Delaware NY 13775-
Location: Located on the corner of Triverfold Rd. and County Rd. 44
Landholding Agency: GSA
Property Number: 319210007
Status: Surplus
Comment: 1605 sq. ft., 2 story wood frame residence with 1 acre of land, asbestos shingle siding
GSA Number: 2-D-NY-814

North Carolina

Federal Building
301 East King Street
Kinston Co: Lenoir NC 28501-
Landholding Agency: GSA
Property Number: 549230011
Status: Excess
Comment: 3950 sq. ft., 2-story building
GSA Number: 4-G-NC-706

Portion VA Reservation

Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use - educational facility
GSA Number: 4-GR-NC-481B

Tennessee

Transiet Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 54
Celina Co: Clay TN 38551-
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements

Texas

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014815
Status: Unutilized
Comment: 94606 sq. ft.; 1 story wood, masonry, and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014816
Status: Excess
Comment: 1350 sq. ft.; 1 story structured clay tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014817
Status: Excess
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use - guard house.
GSA Number: 7-D-TX-879A

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014818
Status: Excess
Comment: 5028 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014819
Status: Excess
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014820
Status: Excess
Comment: 9560 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014821
Status: Excess
Comment: 1258 sq. ft.; 1 story structured clay tile and metal frame; subject to pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014822
Status: Excess
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014824
Status: Excess
Comment: 171 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab; most recent use - watch tower.
GSA Number: 7-D-TX-879A

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014825
Status: Excess
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014826
Status: Excess
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014827
Status: Excess
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014828
Status: Excess
Comment: 244 sq. ft.; 1 story wood, hollow tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014829
Status: Excess
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use - fire house.
GSA Number: 7-D-TX-879A

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014830
Status: Excess
Comment: 354 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-897A

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014831
Status: Excess
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014832
Status: Excess
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use - guard house.
GSA Number: 7-D-TX-879A

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014833
Status: Excess
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7-D-TX-879A

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014834
Status: Excess
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use - control tower.
GSA Number: 7-D-TX-879A

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014835
Status: Excess
Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

GSA Number: 7-D-TX-879A
Marine Corps Reserve Center
208 South F Street
Harlingen Co: Cameron TX 78550-6475
Landholding Agency: GSA
Property Number: 549240002
Status: Excess
Comment: 4 Bldgs. and 0.82 acres of land; most recent use of bldgs - administration (4708 sq. ft. brick); carport/storage (1782/2800 sq. ft. wood); storage (4256 sq. ft. tin).
GSA Number: 7-N-TX-1032
Del Rio Federal Building
Main at Broadway
Del Rio Co: Val Verde TX 78840-
Landholding Agency: GSA
Property Number: 549310001
Status: Excess
Comment: 15600 sq. ft., 3 story plus basement, masonry frame, most recent use - offices and courthouse.
GSA Number: 7-G-TX-1034
Brownsville Urban System
(Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520-
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks

Virginia

Tract HH 3331-E
John H. Kerr Reservoir
Woodframe House
South Boston Co: Halifax VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115-
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Land (by State)

California

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252-0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.
Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620-9653
Location: Approximately .16 miles southeast of Dixon, CA.
Landholding Agency: GSA
Property Number: 549010042
Status: Excess
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9-2-CA-1162-A
Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215-
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9-2-CA-1308
.4075 acres
Ocotillo Wells
Borrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Comment: unimproved land, surrounding land - desert
GSA Number: 9-F-CA-1327
Remote Transmitter
Section 35
Red Bluff Co: Tehema CA 96080-
Landholding Agency: DOT
Property Number: 879010010
Status: Unutilized
Comment: 4 acres, paved road, current use - storage

Colorado

Portion/Curecanti Substation
Cimarron Co: Montrose CO 81220-
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: GSA
Property Number: 419030009
Status: Surplus
Comment: 36.39 acres, easement restrictions
GSA Number: 7-B-CO-624
Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood Co: Jefferson CO 80215-
Landholding Agency: GSA
Property Number: 549120007
Status: Surplus
Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions
GSA Number: 7-G-CO-441-Q

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409-
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously leased by non-profit for homeless assistance use
GSA Number: 4-GR-FL-682A
Outlying Field Kings
NW Corner of SR 267A & SR 186 Co: Escambia FL 32534-
Landholding Agency: GSA
Property Number: 549310013
Status: Excess
Comment: 160 acres, easement restrictions, small portion environmentally protected
GSA Number: 4-GR(1)-FL-737
0.25 acre
Hickory Lane
Holiday Co: Pasco FL
Landholding Agency: GSA
Property Number: 549310014
Status: Excess
Comment: 0.25 acre, small triangular tract of land with 48 sq. ft. tin bldg., possible access restrictions
GSA Number: 4-G-FL-968
Parcel A & B
U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet Co: Palm Beach FL 33420-
Location: Township 40 south, range 43 east.
Landholding Agency: DOT
Property Number: 879010009
Status: Unutilized
Comment: 56.61 acres, area is uncleared, vegetation growth is heavy, no utilities

Georgia

Tracts 3, 16 and 33
Fort Gillem
GA Hwy 42
Forest Park Co: Clayton GA 30051-
Landholding Agency: GSA
Property Number: 219014293
Status: Excess
Comment: 11.19 acres, narrow strip of land, most recent use - railroad spur, access limitation
GSA Number: 4-D-GA-585-B
E. O. Tract A
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use - forest and wildlife reserve.
E. O. Tract B
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use - forest and wildlife reserve.
E. O. Tract F
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia GA
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use - forest and wildlife reserve.
E. O. Tract E
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia GA
Location: Approximately 1 1/2 miles east of GA 104 and Keg Creek Road Intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use - forest reserve and wildlife management.

E. O. Tract G
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use - forest and wildlife reserve.

E. O. Tract I
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use - forest and wildlife reserve.

Idaho

Paul Substation
North Main St. or Lots 11, 12
Paul Co: Minidoka ID 83347-
Landholding Agency: Energy
Property Number: 419320006
Status: Unutilized
Comment: Approx. 6250 sq. ft., most recent use - substation for electrical power.

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801-
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Comment: 48.42 acres, former railroad right-of-way
GSA Number: 9-GR(2)-ID-421C

Indiana

Portion, Cannelton Locks & Dam
Adjacent to Middle Creek Boat Launching Ramp Co: Floyd IN
Landholding Agency: GSA
Property Number: 549240008
Status: Excess
Comment: 28.65 acres with pumphouse, no utilities, periodic flooding
GSA Number: 2-D-IN-569-C

Iowa

C BAR J Ranch
1/4 mile south of River Rd. on Stagecoach Rd.
Ames Co: Story IA
Landholding Agency: GSA
Property Number: 159230002
Status: Unutilized
Comment: 24.5 acres w/bldgs.--animal, shops, barn, storage; wood and metal frames; potential utils.; limestone quarry approx 3/4 mi. north, perform some blasting; fenced area w/locked gate.
GSA Number: 7-A-IA-493

Kentucky

Carr Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use - drainage area for bank stabilization for adjacent cemetary.

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham Co: Plymouth MA 02043-
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use - parking lot
GSA Number: 2-GR-MA-591B

Montana

0.01 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp. 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220002
Status: Excess
Comment: 0.01 acre, small triangular parcel, rough/steep terrain.

0.05 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220003
Status: Excess
Comment: 0.05 acre, narrow strip next to highway, steep/rough terrain
GSA Number: 7-D-MT-4137-FF

122.60 acres
Fort Peck Lake Project Co: McCone MT
Location: Twp 26 north, RNG 42 east, Section 4, Lot 3, SW/4NE/4SE/4NW/4
Landholding Agency: COE
Property Number: 319220004
Status: Excess
Comment: 122.60 acres, rough & rugged terrain, grazing allotment administered by Bureau of Land Management
GSA Number: 7-D-MT-4137-FF

New Mexico

Western Perimeter Tract
Los Alamos Co: Los Alamos NM
Landholding Agency: GSA
Property Number: 549310010
Status: Surplus
Comment: 194 acres, potential utilities, open area, no roadways through property
GSA Number: 7-B-NM-504-G, 7-GR(1)-NM-504-L

North Dakota

US Army Reserve Center
SE intersection of US 83 & County Road 10A
Minot Co: Ward ND 58701-
Landholding Agency: GSA
Property Number: 549240001
Status: Excess
Comment: 5 acres; most recent use - agricultural
GSA Number: 7-D-ND-0492

Ohio

Portion, VA Hospital Reservat.
Union Co: Ross OH 45601-
Landholding Agency: GSA
Property Number: 549310002
Status: Surplus
Comment: 19.98 acres, no known utility potential, ravine and heavily forested, hospital restrictions, most recent use - biologi- cal sampling station for educational use.
GSA Number: 2-GR(1)-OH-452-E

Oklahoma

Parcel No. 100/GSA No. 13
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK -
Location: 1 mile northeast of Enos
Landholding Agency: GSA
Property Number: 319010440
Status: Excess
Comment: 11.77 acres; most recent use - recreation
GSA Number: 7-D-OK-507-H

Parcel No. 44/GSA No. 4
Lake Texoma
Section 15, T5S, R7E Co: Johnston OK
Location: About 1/2 miles southeast of Bee
Landholding Agency: GSA
Property Number: 319010475
Status: Excess
Comment: 14.98 acres, no utilities, most recent use - recreation
GSA Number: 7-D-OK-507-H

Parcel No. 46/GSA No. 5
Lake Texoma
Section 15 and Section 16, T5S, R7E Co: Johnston OK
Location: About 1 mile southwest of Bee
Landholding Agency: GSA
Property Number: 319010477
Status: Excess
Comment: 23.91 acres, no utilities, most recent use - recreation
GSA Number: 7-D-OK-507-H

Parcel No. 13/GSA No. 1
Lake Texoma
Section 7, T7S, R8E Co: Bryan OK
Location: Approximately 2 miles south of Mead, OK.
Landholding Agency: GSA
Property Number: 319011345
Status: Excess
Comment: 26.76 acres, most recent use - recreation
GSA Number: 7-D-OK-507-H

Parcel No. 21/GSA No. 2
Lake Texoma
Section 3 T7S, R7E Co: Bryan OK
Location: Approximately 5 miles southwest of Mead, OK.
Landholding Agency: GSA
Property Number: 319011352
Status: Excess
Comment: 41.16 acres, most recent use - recreation
GSA Number: 7-D-OK-507-H

Parcel No. 23/GSA No. 3
Lake Texoma
Section 34, T7S, R7E Co: Bryan OK
Location: Approximately 3 1/2 miles west of Mead, OK.
Landholding Agency: GSA
Property Number: 319011354
Status: Excess
Comment: 9 acres, most recent use - recreation
GSA Number: 7-D-OK-507-H

45 acre parcel, Sardis Lake
SE1/4 NE1/4 Section 4, T 2 N, R 18 E Co: Pushmataha OK 74521-
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: approx. 45 acres, most recent use - fish and wildlife conservation

Parcel No. 54/GSA No. 6

Lake Texoma Co: Marshall OK 73439-
Location: Section 17, 3 1/2 miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess
Comment: 5.05 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 63/GSA No. 8
Lake Texoma Co: Marshall OK 73439-
Location: Section 19, 3 1/2 miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess
Comment: 40.32 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 66/GSA No. 9
Lake Texoma Co: Marshall OK 73439-
Location: Sections 12 and 13, 2 1/2 miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009
Status: Excess
Comment: 14.05 acres, potential utilities, most recent use - low density recreation/ natural gas well and pipelines.
GSA Number: 7-D-OK-0507-H

Parcel No. 78/GSA No. 11
Lake Texoma Co: Marshall OK 73439-
Location: Section 24, 1 mile east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess
Comment: 30.28 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 86/GSA No. 12
Lake Texoma Co: Marshall OK 73439-
Location: Section 1824, 3 1/2 miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess
Comment: 13 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 125/GSA No. 14
Lake Texoma Co: Marshall OK 73439-
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess
Comment: 11.24 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 150/GSA No. 15
Lake Texoma Co: Marshall OK 73439-
Location: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess
Comment: 12.64 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 164/GSA No. 16
Lake Texoma Co: Love OK 73441-
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 165/GSA No. 17
Lake Texoma Co: Love OK 73441-
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 166/GSA No. 18
Lake Texoma Co: Love OK 73441-
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use - low density recreation.
GSA Number: 7-D-OK-0507-H

Parcel No. 68/GSA No. 10
Lake Texoma, Sect. 11 T6S, R6E
Cumberland Co: Marshall OK
Landholding Agency: GSA
Property Number: 549240010
Status: Excess
Comment: 29.76 acres, most recent use - recreation
GSA Number: 7-D-OK-507-H

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use - free campground

Portion of Tract 1037
Blue Marsh Lake
On PA Route 183
Bernville Co: Berks PA
Landholding Agency: GSA
Property Number: 549240011
Status: Excess
Comment: Approx. 32.45 acres, 5.72 acre flowage easement and .04 acre roadway easement
GSA Number: 4-D-PA-0765

South Carolina

E. O. Tract J
J. Strom Thurmond Dam and Reservoir
(See County) Co: McCormick SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres; potential utilities; most recent use - forest and wildlife reserve.

E. O. Tract C
J. Strom Thurmond Dam and Reservoir
(See County) Co: McCormick SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres; potential utilities; most recent use - forest and wildlife reserve.

South Dakota

Por. of Pactola Dist. Ad. Site
803 Soo San Drive
Rapid City Co: Pennington SD 57702-
Landholding Agency: GSA
Property Number: 159130003
Status: Excess
Comment: 3.36 acres, potential utilities
GSA Number: 7-A-SD-511

Texas

Part of Tract A-10
(See County) Co: Tarrant TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 319010390
Status: Excess
Comment: 0.29 acres; most recent use - parking lot.

Part of Tract 340
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use - recreation

Parcel #185/GSA No. 19
Lake Texoma Co: Cooke TX
Location: Robert Firinash survey A-368
Landholding Agency: GSA
Property Number: 319010405
Status: Excess
Comment: 31.64 acres, most recent use - recreation
GSA Number: 7-D-OK-507-H

Parts of Tracts
B-143, B-144, B-146, B-148, B-179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067-
Location: Along State Hwy 121
Landholding Agency: GSA
Property Number: 319140015
Status: Underutilized
Comment: 101.78 acres in 3 parcels, most recent use - wildlife and low density recreation
GSA Number: 7-D-TX-0510K

Washington

Land
Goodnoe Hills Substation & Wind Study Site
Co: Klickitat WA 98620-
Location: 15 mi SE of Goldendale on S side of St. Hwy. 122
Landholding Agency: GSA
Property Number: 549210005
Status: Excess
Comment: 123 acres w/ a 20'x20' visitors center and a 6'x6' substation bldg. which has secured areas.
GSA Number: 9-B-WA-1017

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329-
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions

Suitable/To Be Excessed

Buildings (by State)

Arizona

Control Bldg.

U.S. 666
Cochise Co: Cochise AZ 85606-
Landholding Agency: Energy
Property Number: 419320005
Status: Excess
Comment: 800 sq. ft., masonry frame, no utilities, presence of PCB's & asbestos, most recent use - control bldg for electrical substation.

Warehouse & Service Bldg.
University Road
Mesa Co: Maricopa AZ 85201-
Landholding Agency: Energy
Property Number: 419320007
Status: Excess
Comment: 368 & 600 sq. ft., 1 story steel & masonry frame, no utilities, presence of PCB's & asbestos, most recent use- storage/ service for electrical substation.

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713-
Landholding Agency: DOT
Property Number: 879310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783-
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401-
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized
Comment: 2340 sq. ft., 1 story concrete block, most recent use - communications station

Bldg. #2 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401-
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2050 sq. ft., 1 story concrete block, most recent use - communications station

Land (by State)

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke IN 47872-
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Excess
Comment: 2.68 acres; narrow triangular shaped area of land.

Tracts 903, 905, 905-C
Patoka Lake Project
Taswell Co: Crawford IN 47527-
Location: From French Lick, IN, take SR 145S for 10 miles. to intersection with SR 164, property lies east and adjacent to highway 145.
Landholding Agency: COE
Property Number: 319030003
Status: Excess
Comment: 22.35 acres; limited utilities.

Tracts 142-A, 143
Patoka Lake Project
Dubois Co: Dubois IN 47527-9661
Location: From French Lick, IN take SR 145 S. for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for 1/4 mile to property.
Landholding Agency: COE
Property Number: 319030004
Status: Excess
Comment: 21.30 acres; limited utilities; subject to periodic flooding

Tract 142-B
Patoka Lake Project
Dubois Co: Dubois IN 47527-9661
Location: From French Lick, IN take SR 145 S for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for 1/4 miles to property.
Landholding Agency: COE
Property Number: 319030005
Status: Excess
Comment: 4.74 acres; limited utilities; subject to periodic flooding.

Tract 601
Patoka Lake Project
French Lick Co: Orange IN 47527-
Location: IN. State Highway 145 south to Jordan Branch Road, Property abuts east right-of-way for Jordan Road.
Landholding Agency: COE
Property Number: 319030006
Status: Excess
Comment: 0.41 acre; limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26
(See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use - recreation and leased cottage sites.

Parcel #2
Fall River Lake
Section 25 and 26
(See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use - recreation

Parcel #3
Fall River Lake
Section 26
(See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use - recreation.

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Kentucky

Tract B - Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095-
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use - recreational, possible periodic flooding

Tract A - Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095-
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use - recreational, possible periodic flooding

Tract C - Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095-
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use - recreational, possible periodic flooding

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540-0155
Location: Portion of tracts B-200, B-248, B-251, B-204, B-247, B-200 and B-256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales Road
Monson Co: Hampden MA 01057-
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester MA 01540-0500
Location: Portion of Tract A-108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987-2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Michigan

U.S. Coast Guard - Air Station
Traverse City Co: Grand Traverse MI 49684-
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use - helo landings

Ohio

Middleport Public Access Site
Gallipolis Locks & Dam
Middleport Co: Meigs OH 45760-
Landholding Agency: COE
Property Number: 319230001
Status: Underutilized
Comment: approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities

Oklahoma

Parcel No. 7
Kaw Lake
Section 27
(See County) Co: Kay OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use - recreation.

Pennsylvania

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046-0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use - baseball field

South Carolina

Land - U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401-
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Comment: 55 acres (88 acres submerged) tidal marshland, potential utilities

Tennessee

Tract D-456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015-
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J-957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.

Tract J-936
Whitney Lake
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Tract F-516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902-3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities
GSA Number: 7-D-TX-0960-A

Part of Tract 102 Segment 1
Bardwell Dam Road
Ennis Co: Ellis TX 75119-
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: approx. 6.38 acres
GSA Number: 7-D-TX-738-D

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use - farm land.

Part of Tract E-434
FM Hwy 720 (Lewisville Lake)
Little Elm Co: Denton TX 75068-
Landholding Agency: COE
Property Number: 319310005
Status: Unutilized
Comment: 0.375 acre, frontage on paved highway
GSA Number: 7-D-TX-510-L

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542-
Landholding Agency: DOT
Property Number: 879120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542-
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542-
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542-
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542-
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway

Alaska

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone Secured Area

Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone Secured Area Within 2000 ft. of flammable or explosive material

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone Secured Area Other
Comment: Extensive deterioration

Bldg. 94
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: Secured Area Other
Comment: Extensive deterioration

Bldg. 85
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210130
Status: Excess
Reason: Secured Area Other
Comment: Extensive deterioration

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured Area Within airport runway clear zone
GSA Number: U-ALAS-655A

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619-5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured Area Within airport runway clear zone Within 2000 ft. of flammable or explosive material

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310014
Status: Unutilized
Reason: Secured Area

Bldg. S-3
U.S. Coast Guard Support Center

Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310015
Status: Unutilized
Reason: Secured Area

Bldg. S-16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310016
Status: Unutilized
Reason: Secured Area

Bldg. 82
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310017
Status: Unutilized
Reason: Secured Area

Bldg. 86
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310018
Status: Unutilized
Reason: Secured Area

Bldg. 98
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310019
Status: Unutilized
Reason: Secured Area

Bldg. 524A
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310020
Status: Unutilized
Reason. Within airport runway clear zone Secured Area

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619-5014
Landholding Agency: DOT
Property Number: 879310021
Status: Unutilized
Reason: Within airport runway clear zone Secured Area

Housing Ketchikan (Naushon UPH
3615 Baranof Avenue
Ketchikan Co: Ketchikan AK 99801-
Landholding Agency: DOT
Property Number: 879320005
Status: Unutilized
Reason. Other
Comment: Extensive Deterioration

Old Petersburg Moorings
Cannery Wharf
Petersburg AK 99833-
Landholding Agency: DOT
Property Number: 879330002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

California

5 bungalows
125 South Grand Avenue
Pasadena Co: Los Angeles CA 91105-
Landholding Agency: GSA
Property Number: 549230012
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 10, USCG Support Center
Coast Guard Island
Alameda Co: Alameda CA 94501-5100
Landholding Agency: DOT
Property Number: 879210134
Status: Excess
Reason: Secured Area

Bldg. 20
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731-
Landholding Agency: DOT
Property Number: 879320021
Status: Unutilized
Reason: Secured Area

Bldg. 22
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731-
Landholding Agency: DOT
Property Number: 879320022
Status: Unutilized
Reason: Secured Area

Bldg. 23
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731-
Landholding Agency: DOT
Property Number: 879320023
Status: Unutilized
Reason: Secured Area

Colorado

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223-
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental
Comment: contamination

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512-
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway

Florida

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050-
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured Area Floodway

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040-
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway Secured Area

LORAN "A" Station
Radio Beacon Hobe Sound
Jupiter Island Co: Martin FL
Landholding Agency: DOT
Property Number: 879230003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Fuel Facility, Coast Guard
Miami Air Station, OPA Locka Airport
OPA Locka Co: Dade FL 33054-2397
Landholding Agency: DOT
Property Number: 879240004
Status: Unutilized
Reason: Secured Area

Pyro & Paint Locker Bldgs.
Key West Co: Monroe FL 33040-
Landholding Agency: DOT
Property Number: 879240017
Status: Unutilized
Reason: Floodway Secured Area

Cosgrove Shoal Light
(offshore) Straits of Florida Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320007
Status: Unutilized
Reason: Floodway Other
Comment: Extensive deterioration

Smith Shoal Light
(offshore) Straits of Florida Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320008
Status: Unutilized
Reason: Floodway Other
Comment: Extensive deterioration

Pulaski Shoal Light
(offshore) Gulf of Mexico Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320009
Status: Unutilized
Reason: Floodway Other
Comment: Extensive deterioration

Hawaii

Bathhouse - Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821-
Landholding Agency: DOT
Property Number: 879240033
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Maint. Shop - Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821-
Landholding Agency: DOT
Property Number: 879240034
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 879310005
Status: Excess
Reason: Secured Area

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008-
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601-9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized

Reason: Other
Comment: Coal Storage

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601-9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057-
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Tract 111 - Building
Martins Fork Lake
Smith Co: Harlan KY 40867-
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Floodway

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville Co: Henry KY 40057-
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273-
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway

Louisiana

Transmitter Hut #1
U.S. Coast Guard Communications Station
Belle Chasse Co: Orleans Parish LA 70037-
Landholding Agency: DOT
Property Number: 879320006
Status: Unutilized
Reason: Secured Area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679-5000
Landholding Agency: DOT
Property Number: 879240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679-5000
Landholding Agency: DOT
Property Number: 879240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679-5000
Landholding Agency: DOT
Property Number: 879240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679-5000
Landholding Agency: DOT
Property Number: 879240008
Status: Unutilized
Reason: Floodway

Herron Neck Light
U.S. Coast Guard
Vinalhaven Co: Knox ME 04841-
Landholding Agency: DOT
Property Number: 879240028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Burnt Coat Harbor Light
U.S. Coast Guard
Swans Island Co: Hancock ME 04685-
Landholding Agency: DOT
Property Number: 879240030
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530-
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841-
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562-
Landholding Agency: DOT
Property Number: 879320024
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203-
Landholding Agency: DOT
Property Number: 879240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930-
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway Secured Area

Michigan

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684-3585
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Montana

Sioux Pass Radio Relay Tower
17 Miles South of Culbertson Co: Richland MT 57212-
Landholding Agency: GSA
Property Number: 549320012
Status: Excess
Reason: Other
Comment: No public access
GSA Number: 7-B-SD-495-A

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732-5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

New York

Knolls Atomic Power Lab
Niskayuna Co: Schenectady NY 12303-
Landholding Agency: Energy
Property Number: 419320008
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477-
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 605, USCG Station
Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240010
Status: Excess
Reason: Secured Area

Bldg. 606, USCG Station

Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240011
Status: Excess
Reason: Secured Area

Bldg. 607, USCG Station
Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240012
Status: Excess
Reason: Secured Area

Bldg. 606, Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240021
Status: Unutilized
Reason: Secured Area Other
Comment: Extensive deterioration

Bldg. 605, Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240022
Status: Unutilized
Reason: Secured Area Other
Comment: Extensive deterioration

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743-
Landholding Agency: DOT
Property Number: 879310003
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004-
Landholding Agency: DOT
Property Number: 879320025
Status: Unutilized
Reason: Secured Area

North Carolina

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902-0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902-0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area

Bldg. 21, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320010
Status: Unutilized
Reason: Floodway Secured Area

Bldg. 22, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320011
Status: Unutilized
Reason: Floodway Secured Area

Bldg. 25, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320012
Status: Unutilized
Reason: Floodway Secured Area

Bldg. 27, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320013
Status: Unutilized
Reason: Floodway Secured Area

Bldg. 32, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320014
Status: Unutilized
Reason: Floodway Secured Area

Bldg. 67, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320016
Status: Unutilized
Reason: Secured Area

Bldg. 69, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320017
Status: Unutilized
Reason: Secured Area

Bldg. 71, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320018
Status: Unutilized
Reason: Secured Area

Bldg. 73, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909-5006
Landholding Agency: DOT
Property Number: 879320019
Status: Unutilized
Reason. Secured Area

Ohio

William H. Harsha Lake Bldg.
3782 Williamsburg-Bantam Road
Batavia Co: Clermont OH 45106-
Landholding Agency: COE
Property Number: 319240011
Status: Unutilized
Reason. Other
Comment: Structural damage

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604-
Landholding Agency: DOT
Property Number: 879310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604-
Landholding Agency: DOT
Property Number: 879330001
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882-
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

South Dakota

Booster Station
Tract #1, Mapleton Township Co: Minnehaha SD 57101-
Landholding Agency: GSA
Property Number: 549230006
Status: Excess
Reason: Other
Comment: Extensive deterioration
GSA Number: 7-I-SD-480-A

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030-
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562-
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351-
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason. Other
Comment: water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351-
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason. Other
Comment: water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351-
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason. Other
Comment: water treatment plant

Texas

Bldg. 14

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070-
Landholding Agency: GSA
Property Number: 219014823
Status: Excess
Reason: Other
Comment: Pump house
GSA Number: 7-D-TX-879A

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553-3001
Landholding Agency: DOT
Property Number: 879310012
Status: Unutilized
Reason: Secured Area

Paint Locker/Flammable Storage
U.S. Coast Guard
Galveston Co: Galveston TX 77553-3001
Landholding Agency: DOT
Property Number: 879310013
Status: Unutilized
Reason: Secured Area

3 Storage Bldgs.
USCG Corpus Christi Group Detachment
Corpus Christi Co: Nueces TX 78407-
Landholding Agency: DOT
Property Number: 879320015
Status: Unutilized
Reason: Floodway Secured Area

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401-5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway

Virginia

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690-
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area

Damage Control Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361-510
Landholding Agency: DOT
Property Number: 879240013
Status: Unutilized
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361-510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured Area

Storage Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361-510
Landholding Agency: DOT
Property Number: 879240015
Status: Unutilized
Reason: Secured Area

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520-
Landholding Agency: DOT
Property Number: 879310004
Status: Unutilized
Reason: Secured Area

West Virginia

Mary Conrad Roadside Park Bldg
Brownsville Road
Weston Co: Lewis WV 26452-9677
Landholding Agency: COE
Property Number: 319240012
Status: Underutilized
Reason: Floodway

Bldg. 10
Morgantown Energy Tech. Center
3610 Collins Ferry Road
Morgantown Co: Monongalia WV 26505-
Landholding Agency: Energy
Property Number: 419320009
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Land (by State)

Alaska

Nike Site, Tract 104
Jig Battery "D"
Eielson Defense Area
Fairbanks Co: Fairbanks AK 99701-
Landholding Agency: GSA
Property Number: 549120001
Status: Excess
Reason: Other
Comment: Property is landlocked
GSA Number: 9-D-AK-506-AD

Arizona

Portion, Gila River
Buckeye Co: Maricopa AZ 85337-
Landholding Agency: GSA
Property Number: 549240005
Status: Excess
Reason: Floodway
GSA Number: 9-GR-AZ-533

California

Portion, Travis AFB
6 miles southeast of Vacaville
Travis AFB Co: Solano CA 94535-
Landholding Agency: GSA
Property Number: 549220012
Status: Surplus
Reason: Floodway
GSA Number: 9-D-CA-499L

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376-
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9-I-CA-1325

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatement Plant
GSA Number: 9-G-CA-580C

Portion of Lot 7
Former State of California Land/Stockpile
Yreka Co: Siskiyou CA
Landholding Agency: GSA
Property Number: 549330006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9-G-CA-956A

Illinois

1.6 acres of land
Rock Island Arsenal
South Shore Mississippi River Moline Pool
Moline Co: Rock Island IL 61299-
Landholding Agency: GSA
Property Number: 549310009
Status: Excess
Reason: Floodway
GSA Number: 2-D-IL-620-B

Indiana

Portion of Tract No. 1224
Salamonie Lake
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319310001
Status: Unutilized
Reason: Other
Comment: Landlocked

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211-
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway

Tract AA-2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519-
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason. Floodway

Tract AA-2726
Wolf Creek Dam and Lake Cumberland
KY HWY 80 to Route 769
Burnside Co: Pulaski KY 42519-
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038-
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380-
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270-
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273-

Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288-
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275-
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210-
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144-
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway

E. C. Clements Job Corps Cntr.
1 Mile East of Morganfield, Ky.
Morganfield Co: Union KY 42437-
Landholding Agency: GSA
Property Number: 549120002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Within airport runway clear zone
GSA Number: 4-L-KY-432-E

Artemus Site
Across Cumberland River Bridge
Artemus Co: Knox KY
Landholding Agency: GSA
Property Number: 549320001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Floodway
GSA Number: 4-Z-KY-602

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster LA
Landholding Agency: GSA
Property Number: 219013923
Status: Excess
Reason: Other
Comment: Barrow pit, predominately under water
GSA Number: 7-D-LA-0435D

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198-
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442-
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: highway right of way

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901-0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No.230
St. Francis Basin Project
2 1/2 miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway

Union Lake
Sec 7, Twshp 42 north, Ranger West
Beaufort Co: Franklin MO
Landholding Agency: COE
Property Number: 319240008
Status: Unutilized
Reason: Floodway

Montana

Sherryl Tap Point Site
3 miles south of Drummond, MT Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 7-B-MT-0598

North Carolina

Land
Atlantic Intracoastal Waterway
(See County) Co: Corrituck NC
Location: Near old Coinjack Bridge
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reason. Floodway

Ohio

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville Co: Jefferson OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836-
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: GSA
Property Number: 319011607
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9-D-OR-708

Reedsport Substation
North 22nd Street
Reedsport Co: Douglas OR 97467-
Landholding Agency: GSA
Property Number: 549310003
Status: Excess
Reason. Other
Comment: Inaccessible
GSA Number: 9-B-OR-701

Pennsylvania

Land
Raystown Lake
Huntingdon Co: Huntingdon PA
Location: Downstream of Raystown Lake.
Landholding Agency: COE
Property Number: 219040420
Status: Excess
Reason: Other
Comment: Property Landlocked

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway

Lock and Dam #3
Monongahela River
Elizabeth Co: Allegheny PA 15037-0455
Landholding Agency: COE
Property Number: 319240014
Status: Unutilized
Reason: Floodway

Puerto Rico

El Corcho Tract
Naval Station Roosevelt Roads
Naguabo PR 00718-
Landholding Agency: GSA
Property Number: 549320011
Status: Excess
Reason: Floodway
GSA Number: N-PR-487

Puntas Figueras (2)

Naval Station Roosevelt Roads
Ceiba PR 00735-
Landholding Agency: GSA
Property Number: 549320013
Status: Excess
Reason: Floodway
GSA Number: N-PR-488A

South Carolina

Land - 2.66 acres
Port Royal Co: Beaufort SC 29902-6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway

Tennessee

McClure Bend
Cordell Hull Dam and Reservoir
Carthage Co: Smith TN 37030-
Location: Highway 85 to McClure Bend Road.
Landholding Agency: COE
Property Number: 219040412
Status: Underutilized
Reason: Floodway

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562-
Location: Tracts 800, 802-806, 835-837, 900-902, 1000-1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015-
Location: Tracts E-513, E-512-1 and E-512-2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058-
Location. U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason. Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location. Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason. Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551-
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason. Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551-
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551-
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030-
Location. Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562-
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562-
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030-
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214-
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167-
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167-
Location. Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167-
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214-
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized

Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030-
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562-
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville - Alvin Yourk Road
Granville Co: Jackson TN 38564-
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562-
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030-
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087-
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway

Tract A-142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138-
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105-1, 105-2 & 118
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway

Part of Tract 201-3
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway

Tract 702-3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530-9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530-9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway

Virginia

0.07 Acre, Dismal Swamp Canal
West of U.S. Rt. 17
Chesapeake VA
Landholding Agency: COE
Property Number: 319210012
Status: Unutilized
Reason: Other
Comment: Inaccessible

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505-
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126-
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 93–20012 Filed 8–19–93; 8:45 am]

Billing Code 4310–39–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–03–4370–03]

Hearing To Discuss the Use of Helicopters and Motorized Vehicles To Gather Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses during FY 94.

SUMMARY: In accordance with Public Law 92–195, as amended by Public Law 94–579 and Public Law 95–514, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Ely District during FY 94.

The hearing will convene at 2 p.m. on Friday, October 1, 1993, in the Conference Room of the Ely District BLM Office, 702 North Industrial Way, Ely, Nevada.

The hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Robert E. Brown, Ely District Wild Horse Specialist, by October 1, 1993. Written statements must be received by this date also.

DATES: October 1, 1993.

ADDRESSES: Bureau of Land Management, HC 33 Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Robert E. Brown at (702) 289–4865.

Dated: August 9, 1993.

Kenneth G. Walker,

District Manager.

[FR Doc. 93–20127 Filed 8–19–93; 8:45 am]

BILLING CODE 4310–HC–M

[AK–040–03–4230–05; AA–72027–P]

Realty Action; Classification and Sale for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Anchorage District.

ACTION: Notice of Realty Action, Recreation and Public Purposes Classification and Sale of Public Land—Anchorage, Alaska.

SUMMARY: The following land has been found suitable for classification and direct sale to the Rabbit Creek Lions Club under the provisions of the Act of June 14, 1926 (43 U.S.C. 869 et seq., as amended), commonly referred to as the "Recreation and Public Purposes Act," and under the Alaska Land Status

Technical Corrections Act of 1992 (P.L. 102–415, Sec. 7, of October 14, 1992). The Rabbit Creek Lions Club proposes to use the land for a community center. The legal description of the subject land is Seward Meridian, T. 12 N., R. 3 W., Sec. 33, Lot 253 and contains approximately .93 acre.

FOR FURTHER INFORMATION CONTACT: Lorri Denton, Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, 907–267–1244.

SUPPLEMENTARY INFORMATION: The purpose of the classification and sale of these lands is for the Rabbit Creek Lions Club's use of the site for a community center, which is in the public interest. The land is not required for any Federal purpose. This action is consistent with Federal, state and local planning and zoning.

The land described is, upon publication in the **Federal Register**, segregated under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever comes first.

This land will be offered by direct sale to the Rabbit Creek Lions Club for Fair Market Value which is $17,920.00. The land will not be offered for sale until at least 60 days after this notice.

There are improvements on this property consisting of a two-story structure currently being operated as the Rabbit Creek Lions Club, a water well, and a sewage system which includes holding tanks. These improvements were not considered in determining the purchase price of the property in accordance with Public Law 102–415.

The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior, all valid existing rights-of-way and easements, and the following terms, conditions and reservations to the United States:

Terms and Conditions: 1. All patents under the act shall revert upon a finding, after notice and opportunity for a hearing, that, without the approval of the authorized officer:

a: The patentee or its approved successor attempts to transfer title to or control over the lands to another;

b: The lands have been devoted to a use other than that for which the lands were conveyed;

c: The lands have not been used for the purpose for which they were conveyed for a five-year period; or

d: The patentee has failed to follow the approved development plan or management plan.

2. The Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits his agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex or national origin. (43 CFR 2741.9) Reservations:

1. The reservation to the United States of a right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

Subject to: 1. Subject to State of Alaska Federal Aid Highway right-of-way AA–66502.

2. Subject to Chugach Electric Association Right-of-Way A–18344.

Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Anchorage District Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a community center. Comments on the classification are restricted to whether the land is physically suited for a community center, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a community center.

For a period of 45 days following the publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Anchorage District, at the above address. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

Dated: August 9, 1993.

Richard J. Vernimen,

Anchorage District Office.

[FR Doc. 93–20128 Filed 8–19–93; 8:45 am]

BILLING CODE 4310–JA–P

[CA–942–5700–10]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 2 S., R. 26 E.—Dependent resurvey and metes-and-bounds survey of Tracts 42 through 46, (Group 1127) accepted April 5, 1993, to meet certain administrative needs of the US Forest Service, Inyo National Forest.

T. 43 N., R. 1 E.—Dependent resurvey, and metes-and-bounds survey, (Group 1142) accepted April 7, 1993, to meet certain administrative needs of the US Forest Service, Klamath National Forest.

T. 12 N., R. 19 E.—Supplemental plat of section 22, accepted May 7, 1993, to meet certain administrative needs of the BLM, Nevada State Office and California State Office.

T. 11 N., R. 9 E.—Supplemental plat of the E½ of the SW¼, and the W½ of the SE¼ of section 12, accepted May 13, 1993, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 18 N., R. 10 E.—Corrective dependent resurvey and dependent resurvey, (Group 1097) accepted June 8, 1993, to meet certain administrative needs of the US Forest Service, Tahoe National Forest.

San Bernardino Meridian, California

T. 3 S., R. 14 E.—Dependent resurvey, retracement and dependent resurvey, and metes-and-bounds survey, (Group 1169) accepted July 23, 1993, to meet certain administrative needs of the BLM, California Desert District, Palm Springs/S Coast Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: August 13, 1993.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 93-20162 Filed 8-19-93; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-4210-06; GP3-335; ORE-012693]

Proposed Modification of Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to modify the existing withdrawal made by Public Land Order No. 5490 and as amended by Public Land Order No. 5542 to amend the segregative effect and to establish an expiration date. The lands would be opened to surface entry, except for agricultural entry. The lands are already open to mining and mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 18, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O Box 2965, Portland, Oregon 97208-2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503-280-7162.

SUPPLEMENTARY INFORMATION: On July 23, 1993, a petition was approved allowing the Bureau of Land Management to file an application to modify Public Land Order No. 5490 and as amended by Public Land Order No. 5542 to amend the segregative effect and establish an expiration date for the withdrawal as to the following described lands:

Willamette Meridian

All public lands in and west of Range 8 East and all lands within that area which hereinafter become public lands, except revested Oregon and California Railroad rant lands and reconveyed Coos Bay Wagon Road Grant lands.

The areas described aggregate approximately 243,000 acres in Benton, Clackamas, Clastsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

The purpose of the existing withdrawal is for multiple use management, including sustained yield of forest resources in connection with intermingled revested Oregon and California Railroad Grant lands and reconveyed Coos Bay Wagon Road Grant Lands. No change is proposed in the purpose of the withdrawal.

The proposed modification would reduce and clarify the surface segregation by opening the lands to discretionary disposition under all of the general land laws, except the agricultural land laws (43 U.S.C. 321-323, as amended, and 25 U.S.C. 334). No mineral segregation is involved in the existing withdrawal or proposed modification. The proposed modification would also establish a 20-year expiration date for the withdrawal with an opportunity to extend the withdrawal, if justified, before it expires.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal modification may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity or a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal modification must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: August 4, 1993.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-20161 Filed 8-19-93, 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, September 22, 1993, in the Environmental Education Center, Barataria Preserve Unit, Jean Lafitte National Historical Park and Preserve, 7400 Highway 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan update
—Update on the Atchafalaya and Jazz Studies
—New facility openings
—Chalmette Waterline and Beauregard House
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, Telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: August 11, 1993.

Mary R. Bradford,

Acting Regional Director, Southwest Region.

[FR Doc. 93-20192 Filed 8-19-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32295]

Richard J. Corman; Continuance in Control Exemption; R.J. Corman Railroad Company/Western Ohio Line

Richard J. Corman (Corman), a noncarrier, has filed a notice of exemption to continue in control of R. J. Corman Railroad Company/Western Ohio Line (RJCW), upon RJCW becoming a class III rail carrier.

RJCW, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32294, *R. J. Corman Railroad Company/Western Ohio Line—Acquisition and Operation Exemption—Certain Lines or Norfolk and Western Railway Company*, to acquire (by purchase, lease, or assignment of certain trackage and other rights) and operate a total of 51.5 miles of rail line owned by N&W and the West Ohio Rail Authority (WORA) in Ohio.[1] RJCW also seeks to acquire incidental overhead trackage rights on N&W's line between milepost SP 95.0-NW and N&W's yard in Lima (milepost SP 90.5).

Corman also controls, through stock ownership, two nonconnecting class III rail carriers: (1) R.J. Corman Railroad Corporation (RJRC), which owns and operates approximately 20 miles of rail line from Bardstown Junction to Wickland, KY; and (2) R.J. Corman Railroad Company/Memphis Line (RJML), which owns and operates approximately 72 miles of rail line from Zinc, TN, to Memphis Junction, KY, including a branch line between Russellville and Lewisburg, KY. RJML also owns or operates 49 miles of rail line from Warwick, OH to Uhrichville, OH (operating under the trade name of R.J. Corman Railroad Company/Cleveland Line).

Corman indicates that: (a) The rail line to be leased and operated by RJCW will not connect with any other rail line in Corman's corporate family; (b) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (c) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Sheys, Oppenheimer, Wolff & Donnelly, 1020 Nineteenth St., NW., Suite 400, Washington, DC 20036.

Decided: August 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 93–20179 Filed 8–19–93; 8:45 am]

BILLING CODE 7035–01–M

[1] RJCW seeks to acquire and operate N&W lines between: (1) Milepost SP 95.0-NW, at Lima, OH, and milepost SP 120.0 west of St. Marys, OH (which rail line will be purchased); and (2) between milepost SM 120.0 and milepost SP 136.3, near the Ohio-Indiana Border (which rail line will be leased). RJCW will also acquire and operate a connecting line owned by WORA between N&W milepost SM-0.1 at St. Marys and former N&W milepost SM 10.1 at Minster, OH, by: (1) Assignment of N&W's trackage rights to operate between mileposts SM-0.1 and SM 1.0 (and whatever rights WORA has in the railroad-related assets on this line segment); and (2) lease of WORA's ownership rights in this connecting line.

WORA acquired the line segment between mileeposts SM-0.1 and SM 1.0 as part of a proposal to retain rail service over the entire length of N&W's Minster Branch between St. Marys and Minster, allowing N&W to retain trackage rights. See Finance Docket No. 31713, *The West Ohio Rail Authority—Acq. Exempt.—Norfolk and West Ry. Co's Minster Branch* (not printed), served September 11, 1990. WORA acquired the line segment between mileposts SM 1.0 and former N&W milepost SM 10.1 pursuant to a certificate of interim trail use (CITU) issued on February 26, 1990, in Docket No. AB-290 (Sub-No. 68, *Norfolk & West- Ry. Co.—Aband.—Between St Marys and Minster in Auglaize County, OH.* WORA has requested that the CITU be vacated to permit RJCW to reinstate service over this line segment. N&W has concurred in the proposal. Commission action on the petition to vacate is pending.

[Finance Docket No. 32294]

R.J. Corman Railroad Co. Western Ohio Line; Acquisition and Operation Exemption; Certain Lines of the Norfolk and Western Railway Co.

R.J. Corman Railroad Company/Western Ohio Line (RJCW), a noncarrier, has filed a notice of exemption to acquire and operate the lines of the Norfolk & Western Railway Company (N&W) between: (1) Milepost SP 95.0–NW, at Lima, OH, and milepost SP 120.0 west of St. Marys, OH (which rail line will be purchased); and (2) between milepost SM 120.0 and milepost SP 136.3, near the Ohio-Indiana Border (which rail line will be leased). RJCW will also acquire and operate a connecting line owned by the West Ohio Rail Authority (WORA) between N&W milepost SM–0.1 at St. Marys and former N&W milepost SM 10.1 at Minster, OH, by: (1) Assignment of N&W's trackage rights to operate between mileposts SM–0.1 and SM 1 0[1] (and whatever rights WORA has in the railroad related assets on this line segment); and (2 lease of WORA's ownership rights in this connecting line.[2] Finally, N&W has agreed to grant incidental overhead trackage rights to RJCW over N&W's line between milepost SP 95.0–NW and milepost SP 90.5 at N&W's yard in Lima. All these line segments connect and constitute a total of approximately 51.5 route miles in Allen, Auglaize, and Mercer Counties, OH. RJCW expects to become a class III carrier upon consummation of the above-described transactions.[3] The parties expected to consummate these transactions on or after July 30, 1993, the effective date of this notice.[4]

Any comments must be filed with the Commission and served on Kevin M. Sheys, Oppenheimer, Wolff & Donnelly, 1020 Nineteenth Street, NW., suite 400, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 93–20180 Filed 8–19–93; 8:45 am]

BILLING CODE 7035–01–M

[1] WORA acquired this line segment as part of a proposal to retain rail service over the entire length of N&W's Minster Branch between St. Marys and Minster, allowing N&W to retain trackage rights. *See* Finance Docket No. 31713, *The West Ohio Rail Authority—Acq. Exempt.—Norfolk and West Ry Co's Minster Branch* (not printed), served September 11, 1990.

[2] WORA acquired the line segment between mileposts SM 1.0 and former N&W milepost SM 10.1 pursuant to a certificate of interim trail use (CITU) issued on February 26, 1990, in Docket No. AB–290 (Sub-No. 68), *Norfolk & West. Ry. Co.—Aband —Between St Marys and Minster in Auglaize Country, OH.* WORA has requested that the CITU be vacated to permit RJCW to reinstate service over this line segment. N&W has concurred in the proposal. Commission action on the petition to vacate is pending.

[3] Richard J. Corman has concurrently filed a notice of exemption in Finance Docket No. 32295 to continue in control of RJCW when it becomes a carrier.

[4] The parties will not, however, be able to consummate the lease of the line subject to the CITU unless and until the CITU is vacated.

[Docket No. AB-33 (Sub-No. 81X)]

Union Pacific Railroad Co.; Abandonment Exemption; in Saunders and Butler Counties, NE

Union Pacific Railroad Company has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a line of railroad on a portion of the Stromsburg Subdivision from milepost 0.11 near Valparaiso, NE to milepost 12.5 near Brainerd, NE, a distance of approximately 12.61 miles in Saunders and Butler Counties, NE.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies); 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer); 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 19, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by August 30, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 9, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Joseph D. Anthofer and Jeanna L. Regier, Union Pacific Railroad Company, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 25, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 11, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 93-20181 Filed 8-19-93; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[Docket No. AB-33 (Sub-No. 82X)]

Union Pacific Railroad Co.; Abandonment Exemption; in Morgan and Weld Counties, CO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon and discontinue service over a 41.22-mile portion of its Julesburg Subdivision between milepost 98.78 near Fort Morgan and milepost 140.0 near Monfort, in Morgan and Weld Counties, CO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 19, 1993, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by August 30, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 9, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

[1] UP states that the planned date of consummation for this transaction is on or about September 10, 1993. However, under Commission rules consummation in this matter cannot take place until on or after September 19, 1993. See 49 CFR 1152.50(d)(2).

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

The Commission has received comments on this matter from a number of interested parties, including at least one request for a stay of the effective date of the exemption. These requests will be addressed in a separate decision.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

applicant's representative: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 25, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 9, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 93–20182 Filed 8–19–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Establishment of the 1993 Aggregate Production Quota for Noroxymorphone

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final notice of an established 1993 aggregate production quota for Noroxymorphone.

SUMMARY: This notice establishes the 1993 aggregate production quota for Noroxymorphone, a Schedule II controlled substance.

EFFECTIVE DATES: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA, by § 0.100 of title 28 of the Code of Federal Regulations.

On May 11, 1993, a notice proposing to establish a 1993 aggregate production quota for noroxymorphone was published in the **Federal Register** (58 FR 27751). All interested persons were invited to comment on or object to the proposal on, or before, June 10, 1993. No comments or objections were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international comments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA, hereby, orders that the 1993 aggregate production quota for noroxymorphone, expressed in grams of anhydrous base, be established as follows:

Basic class: Noroxymorphone.
1993 aggregate production quota (grams): 150,000.

Dated: July 6, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–20155 Filed 8–19–93; 8:45 am]

BILLING CODE 4410-09-M

John Dallas Bunch III, M.D.; Revocation of Registration

On April 20, 1993, the Director of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John Dallas Bunch III, M.D. (Dr. Bunch), The Plains Clinic, Lawson House Main Street, The Plains, Virginia 22171, proposing to revoke his DEA Certificate of Registration, BB0401644, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Bunch's lack of authorization to handle controlled substances in the Commonwealth of Virginia. 21 U.S.C. 824(a)(3). The Order to Show Cause also alleged that Dr Bunch's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

The Order to Show Cause was served on Dr. Bunch by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Bunch and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), John Dallas Bunch III, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Bunch's medical license was revoked by the Commonwealth of Virginia, Department of Health Professionals, Board of Medicine, effective October 24, 1991. This revocation was based upon a finding that Dr. Bunch prescribed Percodan, a Schedule II controlled substance, and Lorcet Plus TB, a Schedule III controlled substance, to an individual without a legitimate medical reason and outside the scope of his professional practice between March 11, 1989 and November 9, 1989. In addition, Dr. Bunch purchased and obtained by means of fraudulent prescriptions, Demerol, a Schedule II controlled substance, for his own personal use without a legitimate medical reason between April 30, 1990 and March 10, 1991. On or about June 4, 1990, Dr. Bunch purchased Demerol and morphine, a Schedule II controlled substance, but failed to keep any records of receipt or dispensing for such controlled substances. These same controlled substances were stolen or lost on or about June 8, 1990, but Dr. Bunch failed to report such loss or theft to the DEA.

As a result of the Board of Medicine's action, Dr. Bunch is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the Commonwealth of Virginia.

The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. See 21 U.S.C.

823(f). The Administrator and his predecessors have consistently so held. See *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since Dr. Bunch lacks State authorization to handle controlled substances, it is not necessary for the Administrator to decide the issue of whether Dr. Bunch's continued registration is inconsistent with the public interest at this time.

No evidence of explanation or mitigating circumstances has been offered by Dr. Bunch. Therefore, the Administrator concludes that Dr. Bunch's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BB0401644, previously issued to John Dallas Bunch III, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 20, 1993.

Dated: August 13, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–20156 Filed 8–19–93; 8:45 am]

BILLING CODE [illegible]

[Docket No. 92–45]

Landry Pharmaceutical, Inc.; Revocation of Registration

On March 19, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Landry Pharmaceutical, Inc. (Respondent), proposing to revoke the firm's DEA Certificate of Registration, PL0048240, under 21 U.S.C. 824(a)(4) and deny any pending applications for registration as a distributor under 21 U.S.C. 823(e). The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest on grounds that a DEA investigation completed in January 1992, indicated that the Respondent failed to keep adequate inventory records; the Respondent previously received two letters of admonition from the DEA for the same recordkeeping violation in 1986, and in 1989; on January 7, 1992, Mr Robert Landry, President of the Respondent firm, admitted to DEA Investigators that he consumed Orahist, a Schedule V controlled substance, upon the registered location, without any authority; on January 3, 1992, Mr. Landry admitted to DEA investigators that "me and the boys would take a swig" of Orahist; the Respondent failed to comply with a previous DEA Memorandum of Understanding requiring that the firm correct its inventory recordkeeping deficiencies; the Respondent allowed a one ounce bottle of Orahist to be stored outside the security cage on an office desk in violation of 21 CFR 1301.72(b)(4); and the Respondent failed to produce records of a separate inventory for out-of-date controlled substances.

Respondent, by counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Houston, Texas on September 22, 1992.

On March 8, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge found that it is not in the public interest to have Mr. Landry continue with his poor recordkeeping practices, but that it would not be inconsistent with the public interest to afford Mr. Landry one more chance. Judge Tenney recommended that the Respondent's registration be conditioned for a period of one year. The Government filed exceptions in response to Judge Tenney's opinion. On April 9, 1993, the administrative law judge transmitted the record to the Administrator.

The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

As background, the administrative law judge found that Respondent Landry Pharmaceutical, Inc. is registered as a distributor in Schedules III and V and holds DEA registration number PL0048240. The firm's President and founder, Robert Landry has been in the pharmaceutical business for 42 years. Mr Landry attended Texas A & M pre-veterinary program, served in the United States Marine Corps, and subsequently attended the University of Texas. He received about five years training in biology and pharmacology. In his present business, he calls on physicians to get them to prescribe drugs which his firm carries. The firm carries two controlled substances; Febridyne, and an expectorant with codeine, Orahist.

The administrative law judge found that DEA Investigators conducted a cyclic investigation and accountability audit of the Respondent on December 30, 1991. The audit showed substantial overages and shortages of controlled substances. At that time, the Respondent failed to produce appropriate controlled substance records for transactions during the audit period. He also had no completed biennial inventory in violation of 21 CFR 1304.13; no records for out-of-date controlled substances in violation of 21 U.S.C. 827(b); no records for controlled substance samples in violation of 21 CFR 1304.21(a); and no records for returned controlled substances in violation of 21 CFR 1304.21(a). The Respondent did produce "secondary records" in support of his recordkeeping system which the administrative law judge found to be messy and largely incomprehensible.

The administrative law judge further found that although Respondent allowed a one ounce bottle of Orahist to be on an office desk outside the security cage, any violation of regulation was "de minimis". Regarding the January 3, 1992, alleged admission of Mr. Landry that "me and the boys would take a swig" of Orahist and the January 7, 1992, alleged admission of Mr. Landry that he consumed Orahist expectorant, the administrative law judge found that Mr. Landry's argument that he was joking was "equally credible" to the Government's version of the episodes.

The administrative law judge found that previously DEA had written to the Respondent in August 1986, regarding his recordkeeping violations such as failure to maintain complete and accurate records in violation of 21 CFR 1304.16; and that DEA had written to the Respondent again in March 1989, regarding his recordkeeping violations such as a failure to take a biennial inventory and failure to maintain complete and accurate records in violation of 21 CFR 1304.13 and 1304.21(a).

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a)(4), or deny any application under 21 U.S.C. 823(e), if he determines that the registrant has committed such acts as would render his registration under 21 U.S.C. 823 inconsistent with the public interest.

Pursuant to 21 U.S.C. 823(e), "[i]n determining the public interest, the following factors will be considered.

(1) Maintenance of effective controls against diversion of particular

controlled substances into other than legitimate medical, scientific and industrial channels;

(2) Compliance with applicable State and local law;

(3) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) Past experience in the distribution of controlled substances;

(5) Such other factors as may be relevant to and consistent with the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on anyone or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwartz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that the Government established a prima facie case for revocation under 21 U.S.C. 823(e) (1), (4), and (5) because of the Respondent's inventory and recordkeeping violations. The administrative law judge considered the fact that the prior letters of admonition from the DEA, viewed in context with the most recent audit, indicated that the Respondent had not maintained effective controls against diversion. The administrative law judge considered the Respondent's argument that it was not demonstrated that any controlled substances had been unlawfully distributed, and that the firm's recordkeeping problems could be rectified.

The administrative law judge also found that the Government's prior admonitions did not go unaddressed by Mr. Landry; on both occasions he represented that he had taken corrective measures. Finally, the administrative law judge found it worthy to note that Mr. Landry, who ran the business entirely on his own, had been ill and that two noted physicians had testified affirmatively on Mr. Landry's behalf.

After considering all of the evidence, the administrative law judge found that the Respondent's continued poor recordkeeping was not in the public interest, however, it was not necessarily in the public interest to revoke the Respondent's registration and take away Mr Landry's livelihood. Judge Tenney recommended that the Respondent's continued registration be conditioned for a one-year period in which the Respondent's records would be subject to quarterly checks by the DEA.

The Government filed a single exception to the administrative law judge's recommended ruling in which it opposed the recommendation that a conditional registration be granted to the Respondent. The Government asserted that the agency had given the Respondent more than adequate opportunity over the past ten years to correct his business problems; that the Respondent had simply paid "lip service" to the agency's concerns; and any conditional registration, as proposed, would be a burden to the agency.

The Administrator adopts the recommended findings of fact, and conclusions of law of the administrative law judge in their entirety, with the following exception. In view of the fact that the Respondent has had since 1986 to bring his firm's records into regulatory compliance, yet still failed to institute any new procedures to accomplish this, the Administrator declines to adopt the administrative law judge's recommendation that the Respondent be given another chance.

Based on the foregoing, the Administrator finds that Landry Pharmaceutical, Inc.'s continued registration is inconsistent with the public interest. Accordingly, the administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA certificate of Registration, PL0048240, previously issued to Landry Pharmaceutical, Inc., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective September 20, 1993.

Dated: August 13, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–20158 Filed 8–19–93; 8:45 am]

BILLING CODE 4410-09-M

Gary A. Williamson, D.D.S.; Revocation of Registration

On March 18, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gary A. Williamson, D.D.S., of 1325 18th Street, NW., suite 207, Washington, DC 20036, proposing to revoke his DEA Certificate of Registration, AW2909995, and deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Dr. Williamson's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was served on Dr. Williamson on March 26, 1993. More than thirty days have passed since the Order to Show Cause was received by Dr. Williamson. The Drug Enforcement Administration has received no response from Dr. Williamson or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Williamson has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e), the Administrator enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that in November 1990, DEA received a complaint regarding Respondent from the District of Columbia Department of Consumer and Regulatory Affairs, Pharmaceutical and Medical Devices Control Division. The complaint alleged that Dr. Williamson prescribed and obtained controlled substances by the use of fraud, misrepresentation, and subterfuge. The subsequent DEA investigation of Dr. Williamson revealed that, during the period of March 1989 through April 1990, Dr. Williamson obtained Percodan, a Schedule II controlled substance, by writing prescriptions in the names of several patients and then having staff members fill the prescriptions and return the Percodan to him. Dr. Williamson also ordered and received five pints of Hycodan syrup, a Schedule III controlled substance, from a drug wholesaler without maintaining either the records of receipt of the order, nor records of the dispensation of the controlled substance. In addition, in 1989 and 1990, Dr. Williamson drank Hycodan syrup and liquid Valium, a Schedule IV controlled substance, at his office during a period in which he was attending to patients.

Based upon these matters, the District of Columbia Board of Dentistry revoked Dr. Williamson's license to practice dentistry on December 12, 1992. On January 21, 1993, the District of Columbia, Department of Consumer and Regulatory Affairs issued a notice of intent to revoke Dr. Williamson's registration to dispense controlled substances. The notice provided a right to request a hearing in the matter by filing a written request within thirty days after service of the notice. Dr. Williamson did not respond to the notice.

The Administrator finds that as of December 12, 1992, Dr. Williamson's license to practice dentistry in the District of Columbia has been revoked,

and as a result, he is unable to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr Williamson's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AW2909995, previously issued to Gary A. Williamson, D.D.S be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 20, 1993.

Dated: August 13, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-20157 Filed 8-19-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 219-5095). Comments and questions about the items on this list should be directed to Mr Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr Mills of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics
Unemployment Insurance Data Base Survey
1220-0080
On Occasion (every 7 to 10 years)
State governments
52 respondents; 24 hours per response: 1,248 total hours, 1 form

The Unemployment Insurance (UI) Data Base Survey describes the development of UI statistics, determine adherence to standard labor force concepts, and identify problems with the data and its development. The UI statistics are essential elements in the Local Area Unemployment Statistics and Mass Layoff Statistics programs. This information, not available elsewhere, will be the basis of UI data improvement and quality control efforts.

Revision

Bureau of Labor Statistics
Cognitive and Psychological Research
1220-0141
One-time only
Individuals
2,000 respondents; 1 hour per response; 2,000 total hours

The proposed laboratory research will be conducted from FY 1994 through FY 1996 to enhance data quality in the Bureau of Labor Statistics' surveys. Improvements will be made by examining psychological and cognitive aspects of BLS's data collection process including questionnaire design, interviewing procedures, and administration technology.

Revision

Pension and Welfare Benefits Administration
Suspension of Benefits Regulation
1210-0048
Businesses or other for-profit; Small businesses or organizations.

As the result of the February 21, 1990, Supreme Court Decision 110 S. Ct. 929, 58 U.S.L.W. 4200, PWBA is no longer seeking OMB clearance for those paperwork activities involving the employer and the third party (employee) disclosure requirements contained in 29 CFR 2530.203-3.

Revision

Bureau of Labor Statistics
Point of Purchase Survey
1220-0044
Individuals or households

Form number	Respondents	Frequency	Average time per response
Regular interview:			
CPP 1 and CPP 2A	2,473	Annual	76 minutes.
CPP 1 and CPP 2B	2,473	Annual	76 minutes.
Reinterview:			
CPP 1 and CPP 2A	272	Annual	15 minutes.

Form number	Respondents	Frequency	Average time per response
CPP 1 and CPP 2B 6,400 total hours	272	Annual	15 minutes.

Based on data obtained from the Point of Purchase Survey, the Bureau of Labor Statistics has implemented a systematic statistical process that updates each year the outlet samples for one fifth of the 88 urban areas that are being priced for the Consumer Price Index (CPI). This methodology, over a 5-year cycle, ensures the outlet samples, from which price changes are compiled for the CPI, are kept current and continue to properly represent the places in which consumers are purchasing goods and services.

Signed at Washington, DC, this 12th day of August, 1993.

Kenneth A. Mills,

Departmental Clearance Officer

[FR Doc. 93–20189 Filed 8–19–93; 8:45 am]

BILLING CODE 4510-24-P

Employment and Training Administration

Emergency Unemployment Compensation (EUC) Program; Changes in EUC Benefit Period Durations

This notice announces recent changes in benefit period durations under the Emergency Unemployment Compensation (EUC) Program in eight States.

Background

Due to reductions in unemployment levels, the following changes have occurred in States since publication of the last notice:

- June 13, 1993—Montana and New Jersey decreased to 20 weeks.
- June 20, 1993—Pennsylvania decreased to 20 weeks.
- June 27, 1993—Maine and Washington decreased to 20 weeks.
- July 4, 1993—Idaho decreased to 20 weeks.
- July 11, 1993—Oregon decreased to 20 weeks.
- August 8, 1993—Vermont decreased to 20 weeks.

Claimants filing initial claims for EUC benefits on or after the above dates in the States cited are entitled to benefits for up to the number of weeks indicated. Claimants who filed initial claims which were effective for a week beginning prior to the cited dates are eligible to collect the entire entitlement in effect prior to these changes.

In addition, Public Law 102–164 permits the Governor of a State to elect to trigger off an Extended Benefit Period in order to provide payment of EUC benefits to individuals who have exhausted their rights to regular compensation under State law. Since the publication of the last notice, in accordance with Section 101(e) of Public Law 102–164, the Governors of Connecticut and Oregon have elected to trigger off Extended Benefits and instead pay EUC benefits.

Information for Claimants

The duration of benefits payable in the Emergency Unemployment Compensation Period, and the terms and conditions on which they are payable, are governed by the Act and the operating instructions issued to the States by the U.S. Department of Labor. The State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EUC benefits (20 CFR 615.13(c)).

Persons who believe they may be entitled to EUC benefits, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on August 13, 1993

Carolyn M. Golding,

Acting Assistant Secretary of Labor

[FR Doc. 93–20190 Filed 8–19–93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their dates of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related

Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Alabama
AL930017 (Aug. 20, 1993)
Georgia
GA930081 (Aug. 20, 1993)
Pennsylvania
PA930038 (Aug. 20, 1993)
PA930039 (Aug. 20, 1993)
Vermont
VT930015 (Aug. 20, 1993)
VT930016 (Aug. 20, 1993)
VT930017 (Aug. 20, 1993)
VT930018 (Aug. 20, 1993)
VT930019 (Aug. 20, 1993)
VT930020 (Aug. 20, 1993)
VT930021 (Aug. 20, 1993)
VT930022 (Aug. 20, 1993)
VT930023 (Aug. 20, 1993)
VT930024 (Aug. 20, 1993)

Volume II

Missouri
MO930016 (Aug. 20, 1993)
MO930017 (Aug. 20, 1993)
Texas
TX930082 (Aug. 20, 1993)
TX930083 (Aug. 20, 1993)
TX930084 (Aug. 20, 1993)

Volume III

California
CA930027 (Aug. 20, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama
AL930004 (Feb. 19, 1993)
Florida
FL930001 (Feb. 19, 1993)
FL930009 (Feb. 19, 1993)
FL930014 (Feb. 19, 1993)
FL930015 (Feb. 19, 1993)
FL930035 (Feb. 19, 1993)
FL930036 (Feb. 19, 1993)
FL930037 (Feb. 19, 1993)
FL930038 (Feb. 19, 1993)
FL930039 (Feb. 19, 1993)
FL930040 (Feb. 19, 1993)
FL930042 (Feb. 19, 1993)
FL930043 (Feb. 19, 1993)
FL930044 (Feb. 19, 1993)
Georgia
GA930003 (Feb. 19, 1993)
GA930004 (Feb. 19, 1993)
GA930022 (Feb. 19, 1993)
GA930031 (Feb. 19, 1993)
GA930032 (Feb. 19, 1993)
GA930037 (Feb. 19, 1993)
GA930040 (Feb. 19, 1993)
GA930050 (Jun. 04, 1993)
GA930065 (Jun. 04, 1993)
GA930073 (Jun. 04, 1993)
GA930080 (Jul. 09, 1993)
Maryland
MD930040 (Jul. 16, 1993)
New York
NY930002 (Feb. 19, 1993)
NY930003 (Feb. 19, 1993)
NY930006 (Feb. 19, 1993)
Pennsylvania
PA930014 (Feb. 19, 1993)
Virginia
VA930018 (Feb. 19, 1993)
Vermont
VT930006 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)

Volume II

Iowa
IA930010 (Feb. 19, 1993)
Indiana
IN930006 (Feb. 19, 1993)
Kansas
KS930005 (Feb. 19, 1993)
KS930006 (Feb. 19, 1993)
KS930009 (Feb. 19, 1993)
KS930011 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930013 (Feb. 19, 1993)
KS930015 (Feb. 19, 1993)
KS930016 (Feb. 19, 1993)
KS930018 (Feb. 26, 1993)
KS930019 (Feb. 26, 1993)
KS930020 (Feb. 26, 1993)
KS930021 (May 07, 1993)
KS930022 (May 28, 1993)
KS930023 (Jul. 02, 1993)
KS930025 (Jul. 02, 1993)
KS930026 (Jul. 26, 1993)
New Mexico
NM930001 (Feb. 19, 1993)
NM930002 (Feb. 19, 1993)
Texas
TX930031 (Feb. 19, 1993)
Wisconsin
WI930001 (Feb. 19, 1993)
WI930003 (Feb. 19, 1993)
WI930005 (Feb. 19, 1993)
WI930011 (Feb. 19, 1993)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1), which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of August 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–19942 Filed 8–19–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–067]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 42349, NOTICE NUMBER 93–064, AUGUST 9, 1993.

PREVIOUSLY ANNOUNCED DATES OF MEETING: September 1, 1993, 9 a.m. to 5 p.m; and September 2, 1993, 8:30 a.m. to noon.

Meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia K. Kraemer, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0791.

Dated: August 16, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–20130 Filed 8–19–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–066]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: September 16, 1993, 9 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters, NASA Auditorium, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overall Vision for the Committee
—Emerging Issues for Small Disadvantaged Business and NASA Priorities for 1993
—Report from Committee Working Groups on Disable Business
—Invitation for Suggestions by Individuals in Attendance

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

August 13, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–20129 Filed 8–19–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Letter; Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators From Plant Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or, (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest of the industry, or changes to NRC administrative procedures.

This draft generic letter addresses the implementation of a line-item technical specifications improvement to remove accelerated testing and special reporting requirements for emergency diesel generators from plant technical specifications. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 246 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the Public Document Rooms under accession number 9308110339. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires September 30, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Om Chopra, NRR (301) 504–3265. Tom Dunning, NRR (301) 504–1189.

SUPPLEMENTARY INFORMATION:

To: All holders of operating licenses for nuclear power reactors

Subject: Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators from Plant Technical Specifications (generic letter 93–)

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to advise licensees that they may request a license amendment to remove accelerated testing and special reporting requirements for emergency diesel generators (EDGs) from plant technical specifications (TS). The NRC developed this line-item TS improvement in response to the Commission decision on SECY–93–044, "Resolution of Generic Safety Issue B–56, 'Diesel Generator Reliability'." Enclosure 1 is the guidance on preparing the amendment request and Enclosure 2 is the model TS for this change.

In Option 4 of SCY–93–044, the staff recommends that licensees adopt the accelerated testing provisions of the improved Standard Technical Specifications with an option to relocate accelerated testing requirements for EDGs from the TS to the maintenance program after the maintenance rule goes into effect. However, after further consideration, the staff has concluded that it is not necessary to await the effective date of the maintenance rule to remove the associated TS requirements. Licensees may now implement the

provisions of the maintenance rule for EDGs, including staff guidance, which will provide a program to assure EDG performance.

Licensees may request the removal of the TS provisions for accelerated testing and special reporting requirements for EDGs at this time. However, when requesting this license amendment, licensees must commit to implement within the next 90 days a maintenance program for monitoring and maintaining EDG performance consistent with the provisions of § 50.65 of title 10 of the Code of Federal Regulations (10 CFR 50.65), "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and the guidance of Regulatory Guide (RG) 1.160, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants." The NRC staff developed RG 1.160 to provide guidance for complying with the provisions of 10 CFR 50.65.

Licensees that plan to adopt this line-item TS improvement are encouraged to proposed TS changes that are consistent with the enclosed guidance in Enclosures 1 and 2. NRC project managers will perform the review to assure that the amendment requests conform to this guidance.

Licensee action to propose TS changes under the guidance of this generic letter is voluntary. Therefore, such action is not a backfit under the provisions of 10 CFR 50.109. As such, the staff will not perform a backfit analysis.

Enclosures:

1. Guidance on Preparing the Amendment Request
2. Model TS for Change

Enclosure 1—Guidance for Implementing a Line-Item Technical Specification (TS) Improvement To Remove Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators (EDGs) From Plant Technical Specifications

Background

As part of the resolution of Generic Safety Issue (GSI) B–56, "Diesel Generator Reliability," the staff of the U.S. Nuclear Regulatory Commission (NRC) recommended Option 4 in SECY–93–044, "Resolution of Generic Safety Issue B–56, 'Diesel Generator Reliability'." The Commission approved Option 4 on March 25, 1993. In Option 4, the NRC staff recommends that licensees adopt the accelerated testing provisions of the improved Standard Technical Specifications[1] (STS) with an option to relocate accelerated testing requirements for the EDGs from the TS to the maintenance program when the maintenance rule goes into effect in 1996. However, after further consideration, the staff has concluded that it is not necessary to await the effective date of the maintenance rule to remove the associated TS requirements. Licensees may now implement the provisions of the maintenance rule for EDGs, including staff guidance, which will provide a program to assure EDG performance. The elements of this program will include the performance of a detailed root cause analysis of EDG failures, effective corrective actions taken in response to EDG failures, and implementation of EDG preventive maintenance consistent with the maintenance rule. The staff has concluded that licensees may also propose TS changes to remove special reporting requirements for EDGs from their plant TS. Licensees would continue to comply with the provisions of 10 CFR 50.72 and 50.73 to notify NRC and report EDG failures.

The staff approval of this option would be contingent upon a licensee commitment to implement within 90 days a maintenance program for monitoring and maintaining EDG performance in accordance with the provisions of 10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and the guidance contained in Regulatory Guide (RG) 1.160, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants."

Discussion

The NRC staff developed RG 1.160 to provide flexibility for licensees to structure their maintenance program based on the risk significance of the structures, systems, and components that are within the scope of the maintenance rule. This guide endorses the Nuclear Utility Management and Resources Council (NUMARC) 93–01, "Industry Guidelines for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," which gives methods acceptable to the NRC staff for complying with the provisions of 10 CFR 50.65. This guide, which offers guidance that licensees could follow to assure EDG performance, states that "The emergency diesel generator reliability performance criteria or goals selected for implementing the intent of 10 CFR 50.63 for coping with station blackout could be monitored through the use of the triggers[2] and the monitoring methods described in Appendix D of NUMARC 87–00, Revision 1, "Guidelines and Technical Bases for NUMARC Initiatives Addressing Station Blackout at LWRs," August 1991 (except for triggers and testing for "problem diesels" as described in paragraph D.2.4.4 of NUMARC 87–00, which will be addressed separately by the NRC). An acceptable unavailability goal could be to have fewer hours unavailable (on a rolling 1-year basis) than the number of hours established as acceptable by the licensee."

The NRC staff finds that licensees' commitments to implement a maintenance program for monitoring and maintaining EDG performance in accordance with the provisions of the maintenance rule and consistent with the guidance of RG 1.160 would provide a basis for the staff to approve licensees' requests to remove the accelerated testing and special reporting requirements for EDGs from their plant TS. Licensees must commit to implementing within 90 days, of the issuance of the license amendment, the provisions of 10 CFR 50.65 and guidance of RG 1.160 for EDGs when requesting the removal of the EDG accelerated testing and special reporting requirements from their plant TS. These actions are intended to close the matter of triggers and testing for "problem diesels."

Enclosure 2 includes model EDG technical specifications which address these TS changes.

Enclosure 2—Model Standard Technical Specifications for Removing Accelerated Testing and Special Reporting Requirements for EDGs

Revisions to TS 4.8.1.1.2

4.8.1.1.2 Each diesel generator shall be demonstrated OPERABLE:

a. At least once per 31 days on a staggered test basis by: 1) through 7) no change.

(Removes the reference to TS Table 4.8.1.1.2–1 for the test schedule.)

[1] NUREG–1430 through NUREG–1434: "Standard Technical Specifications, Babcock and Wilcox Plants; Westinghouse Plants; Combustion Engineering Plants; General Electric Plants, BWR/4; and General Electric Plants, BWR/6," respectively

[2] The triggers are intended to indicate when emergency diesel generator performance problems exist such that additional monitoring or corrective action is necessary. It is recognized that it is not practical to demonstrate by statistical analysis that conformance to the trigger values will ensure the attainment of high reliability, with a reasonable degree of confidence, of individual EDG units.

Revisions to Table 4.8.1.1.2–1

Table 4.8.1.1.2–1—Diesel Generator Test Schedule

(Not used)

(Removes accelerated testing requirements for EDG's which were based on the number of failures in the last 20 and 100 valid tests.)

Revisions to TS 4.8.1.1.3, "Reports"

4.8.1.1.3 *Reports* (Not used)
(10 CFR 50.72 and 50.73 address the remaining regulatory requirements for licensees to notify NRC and report EDG failures.)

Dated at Rockville, Maryland, this 13th day of August 1993.

For the Nuclear Regulatory Commission.

Richard J. Kiessel,

Acting Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–20166 Filed 8–19–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Georgia, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date, with respect to the Republic of Georgia, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" would enter into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Georgia. An exchange of diplomatic notes with the Republic of Georgia in accordance with Article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and the Republic of Georgia," took place in Tbilisi, Georgia on August 13, 1993. Accordingly, the Agreement became effective on August 13, 1993, with respect to the Republic of Georgia, and nondiscriminatory treatment is extended to products of the Republic of Georgia as of August 13, 1993 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1992.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–20177 Filed 8–19–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Application to Withdraw From Listing and Registration; (California Energy Company, Inc., Common Stock, $0.0675 Par Value; Preferred Share Purchase Rights) File No. 1–9874

August 16, 1993.

California Energy Company, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock and preferred share purchase rights are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and preferred share purchase rights commenced trading on the NYSE at the opening of business on August 12, 1993 and concurrently therewith such securities were suspended from trading on the Amex.

In making the decision to withdraw its common stock and preferred share purchase rights from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and preferred share purchase rights and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before September 7, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–20195 Filed 8–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19627; 812–8064]

GNA Investors Trust, et al.; Application for Exemption

August 13, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: GNA Investors Trust (the "Trust"), GNA Capital Management, Inc. (the "Adviser"), and GNA Securities, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1 thereunder .

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on August 21, 1992, and amended on April 7, 1993, June 25, 1993, and July 16, 1993. By letter dated August 13, 1993, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, suite 5600, Two Union Square, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust that currently offers its shares to the public in one series, the U.S. Government Securities Fund. The Trust is in the process of creating four other series, and may in the future create additional series. Upon the commencement of the public offering of shares of a new series of the Trust, the Trust contemplates that it will change its name to "Investors Trust" and the name of its existing series to "Investors Trust Government Fund."

2. The Adviser, a wholly owned subsidiary of GNA Corporation ("GNA"), is a registered investment adviser. Pursuant to its advisory agreement with the Trust, the Adviser manages, supervises, and conducts the affairs of the Trust. Weiss, Peck & Greer Advisers, Inc., acts as portfolio manager of the existing series of the Trust under a sub-advisory contract with the Adviser.

3. The Distributor, a wholly owned subsidiary of GNA, acts as principal underwriter for the shares of the existing series. Applicants anticipate that a newly formed, wholly owned subsidiary of GNA will replace the Distributor as principal underwriter for shares of the Trust's series in the future. At such time, the new entity would be deemed to be the Distributor for purposes of the requested order.

4. Applicants request relief on behalf of themselves, any existing or future portfolio series of the Trust, and any open-end management investment companies, or series thereof, to be established in the future whose investment adviser is the Adviser or an entity that is controlling, controlled by, or under common control with the Adviser, or whose principal underwriter is the Distributor or an entity that is controlling, controlled by, or under common control with the Distributor, and that are in the same "group of investment companies" as defined in rule 11a–3 under the Act (collectively, the "Funds").

5. Pursuant to an order issued in 1987 (the "Prior Order"),[1] the Trust may impose a CDSC on certain redemptions of its shares. Any order granting the requested relief will supersede and replace that order in its entirety.

6. Applicants propose to establish a plan pursuant to which the Funds may offer four classes of shares, as described below. The Funds also may offer other classes of shares, each class in connection with 12b–1 plans, shareholder services plans, or CDSCs, that may differ from the other classes, or with no distribution or service plans or payments.

7. Class A shares would be sold at net asset value plus a front-end sales load of up to 5.0 percent, subject to reductions for larger purchases, under a quantity discount, a right of accumulation, or a letter of intent. For sales over $1 million, no front-end sales load would be charged, but rather such shares would be subject to a CDSC, as described below. The Class A shares would be subject to a 12b–1 plan providing for a fee at an initial annual rate of up to .25 percent of a Fund's average daily net assets represented by Class A shares.

8. Shares of the existing series will be designated as Class B shares. Class B shares currently are offered subject to a CDSC, as described below, and a 12b–1 plan. Under the applicable 12b–1 plan, Class B shares will be subject to a distribution fee at an annual rate of .75 percent of the average daily net assets of the series and a shareholder servicing fee of up to .25 percent of the average daily net assets of the Class B shares.

9. The Funds may adopt a conversion feature with respect to Class B shares pursuant to which they automatically will convert to Class A shares after a certain specified number of years on the basis of the relative net asset value per share of each class and will, as a result, be subject to the lower fee under the 12b–1 fee for the Class A shares. Such number of years will be the same for all Class B shares of a Fund. Class B shares, except for those purchased through the reinvestment of dividends and other distributions, will convert to Class A shares on the first business day of the month in which the specified anniversary of the issuance of the Class B shares occurs. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also will be Class B shares, but will be considered held in a separate sub-account. Each time any Class B shares in the shareholder's account, other than those in the sub-account, convert to Class A, a *pro rata* portion of the shares in the sub-account also will convert to Class A shares. Redemption requests placed by a shareholder who owns both Class A and Class B shares of a Fund will be satisfied first by redeeming the Class A shares, unless the shareholder has made a specific election to redeem the Class B shares.

10. The Funds reserve the right to adopt a conversion feature with respect to other classes in accordance with the representations and conditions set forth in the application with respect to the Class B shares.

11. Class C shares would be sold at net asset value without the imposition of a sales load, CDSC, distribution fee, or service fee. Such shares would be offered for purchase by, and for the account of, industrial corporations, banks, trust companies, savings and loan associations, broker-dealers, insurance companies, pension plans, charitable foundations, and similar institutional investors.

12. Class D shares would be sold at net asset value without a front-end sales load, but subject to a CDSC, as described below, and a 12b–1 plan. Under the applicable 12b–1 plan, Class D shares will be subject to a distribution fee at an annual rate of .75 percent of the average daily net assets of Class D shares and to a service fee at an annual rate of up to .25 percent of the average daily net asset value of Class D shares.

13. The provision of distribution and administrative services under a 12b–1 plan or shareholder services plan will augment and not duplicate services provided under any other such plan, advisory contract, or any other service contract. Applicants in all cases will comply with article III, section 26 of the

[1] Investment Company Act Release Nos. 15619 (Mar. 11, 1987) (notice) and 15672 (Apr. 8, 1987) (order).

NASD's Rules of Fair Practice as it relates to the maximum amount of asset-based sales charges that may be imposed, when and in the form such provisions become effective, and for as long as they remain in effect.

14. Each class of shares in a Fund will bear *pro rata* with every other class of shares of the Fund all expenses, other than expenses which the trustees of the Trust determine should be allocated or charged on a class basis ("Class Expenses"). Because shares of a particular class would bear Class Expenses that differ from Class Expenses of other classes of shares of the same Fund, the net income of, and the dividends payable with respect to, each particular class generally would differ from the net income of, and the dividends payable with respect to, the other classes. To the extent that a Fund had undistributed net income, the net asset value of the various classes would also differ because of the differing Class Expenses.

15. If a Fund adopts an exchange privilege, shares of each class of the Fund will be exchanged only for shares of the same available class of another Fund. Such exchange may be made at any time on the basis of the relative net asset value of the respective shares to be exchanged. All exchanges will be effected in accordance with the provisions of rule 11a-3 under the Act.

16. The Funds may assess a CDSC with respect to Class A shares sold without a front-end sales load, Class B shares, Class D shares, and future classes. Class A shares sold without a front-end sales load and Class D shares will be subject to a 1 percent CDSC on shares redeemed within one year of purchase. Class B shares currently are and will be subject to a CDSC of 5 percent on shares redeemed within one year after initial purchase. The CDSC declines by 1 percent per year over a five-year period.

17. The CDSC will be calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or lower percentage of the net asset value of the shares at the time of redemption. The amount of the CDSC to be imposed will depend on the number of years following the purchase of the shares being redeemed, as set forth in each Fund's prospectus. The CDSC will comply with the requirements of section 26(d) of the Rules of Fair Practice of the NASD, as amended.

18. No CDSC will be imposed on shares issued prior to any order granting the requested relief, except to the extent that such CDSC was permitted by the Prior Order. Any changes in the CDSC period or the CDSC percentage will not affect shares that have already been issued. No CDSC will be imposed on redemptions of shares made after the CDSC period, shares derived from the reinvestment of dividends or capital gains distributions, or from an amount representing an increase in the value of shares due to capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares held for a period longer then CDSC period, and then of shares derived from reinvestment of dividends and capital gain distributions and of shares representing capital appreciation. This will result in the charge, if any, being imposed at the lowest possible rate.

19. The Funds propose to waive the CDSC on redemptions of shares (a) made following the death of a shareholder, (b) to the extent that the redemption represents a minimum required distribution from an individual retirement account processed under a systematic withdrawal plan, and (c) effected pursuant to a Fund's right to redeem a shareholder's account involuntarily if the aggregate net asset value of the shares held in the account is less than a minimum amount stated in the Fund's prospectus. If a Fund waives or reduces the CDSC, such action will be uniformly applied to all offerees in the class specified.

20. If the trustees determine not to waive or reduce the CDSC, the disclosure in the Fund's prospectus will be appropriately revised. The termination of any waiver or reduction of a CDSC will not affect shares purchased prior to such change.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed multi-class system might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants believe that the proposal does not involve borrowings, affect any Fund's existing assets or reserves, or increase the speculative character of any shares in a Fund. They contend that mutuality of risk with respect to all shares of a Fund will be preserved because all shares will be redeemable at all times, no class of shares will have any distribution or liquidation preference with respect to particular assets, and no class will be protected by any special reserve or other account.

2. Applicants assert that the proposed arrangement would not induce shareholders to invest in risky securities to the detriment of other shareholders. The proposed multi-class system would not enable insiders to manipulate the expenses and profits among the various classes of shares because no Fund will be organized in a pyramid fashion. Applicants further assert that the concerns that complex capital structures may facilitate control without equity or other investment would not be present under the proposed multi-class system.

3. Applicants contend that the issues present in capital structures that prompted the SEC to recommend the adoption of section 18 (*i.e.*, funded debt, preference stocks, and convertible securities) are not present in the proposed arrangement. No class of fund shares would have a claim of priority on earnings, a preferential lien on the Fund's assets in case of liquidation or dissolution, or any right to require that lapsed dividends be paid before any dividends are declared on the other classes of shares.

4. Applicants believe that the proposal will enable them to meet competitive demands better, and will permit each Fund to facilitate the distribution of its securities without assuming excessive costs. Applicants contend that the Funds will be able to provide distribution and administrative alternatives tailored to the needs of particular customers, and will be able to match more closely the actual cost incurred by a Fund with the fees charged for providing the services.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Funds, and be identical in all respects, except as set forth below. The only differences between the classes of shares of the Funds will relate solely to: (i) The impact of the disproportionate payments made under the 12b-1 plans and related agreements and shareholder services plans and related agreements and any Class Expenses, which are limited to transfer agency fees, printing and postage expenses relating to preparing and distributing materials to shareholders and investors (such as shareholder reports, prospectuses and proxies), blue sky and SEC registration expenses, administrative and support personnel salaries and expenses, litigation or other legal expenses relating to solely the class, and trustees fees incurred as a result of issues

relating solely to one class, and any other incremental expenses subsequently identified that should be properly allocated or charged to one class which shall be approved by the SEC pursuant to an amended order; (ii) the fact that the classes will vote separately with respect to the Fund's 12b-1 plan and shareholder services plan, except as provided in condition 17 below; (iii) the different exchange privileges of the classes; (iv) the fact that only certain classes will have a conversion feature; and (v) the designation of each class of shares of a Fund.

2. The trustees of the Trust, including a majority of the independent trustees, will approve the offering of different classes of shares (the "Multi-Class System"). The minutes of the meetings of the trustees of the Trust regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of the Trust and its shareholders.

3. The initial determination of the Class Expenses that will be allocated or charged to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Trust including a majority of the trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts of such expenses and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor of each Fund will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b-1(b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need enjoy the voting rights specified in rule 12b-1.

6. The trustees will receive quarterly and annual statements concerning the amounts expended under the 12b-1 plans and related agreements and shareholder services plans and related agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by each Fund with respect to a class of shares of a Fund will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Fund, except that each particular class will bear exclusively those Class Expenses attributable to it.

8. The methodology and procedures for calculating the net asset value and dividend and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, a copy of which has been provided to the SEC, which provides that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render, at least annually, a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Trust, which the Trust agrees to provide, will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or a regional officer of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

10. Each prospectus pursuant to which one or more classes of a Fund are offered will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing the shares may receive different compensation with respect to one particular class of shares over another class in the same Fund.

11. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling the Trust's shares to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trust with respect to the Multi-Class System will be set forth in guidelines to be furnished to the trustees.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to

each class of the Fund in every prospectus, regardless of whether all classes of the Fund are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of the Fund in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of a Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of such Fund. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will separately present this information for each class of shares.

14. In administering the CDSC, applicants will comply with proposed rule 6c–10 under the Investment Company Act, Investment Company Act Release No. 16619 (November 2, 1988) as such rule is currently proposed and as it may be reproposed, adopted, or amended.

15. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to 12b-1 plans or shareholder services plans in reliance on the exemptive order.

16. Any class of shares ("Purchase Class") with a conversion feature will convert into another class ("Target Class") shares on the basis of the relative net asset value of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a Fund implements any amendment to a rule 12b-1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b-1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20197 Filed 8–19–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–25866]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 13, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 7, 1993, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–5854)

Indiana Michigan Power Company ("Indiana Michigan"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a) and 10 of the Act to their application-declaration filed under sections 9(a) and 10 of the Act.

By order dated July 21, 1976 (HCAR No. 19620) ("1976 Order"), Indiana Michigan was authorized to enter into an agreement of sale ("Agreement") with the City of Lawrenceburg, Indiana ("City"), concerning the financing of pollution control facilities ("Facilities") at Indiana Michigan's Tanners Creek Generating Plant. Under the Agreement, the City issues and sells one or more series of its pollution control revenue bonds ("Revenue Bonds"). The proceeds from the sales are deposited by the City with the trustee ("Trustee") under the indenture ("Indenture") entered into between the City and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds are then applied to the payment of the costs of construction of the Facilities, or, in the case of proceeds from the sale of refunding bonds, to the payment of principal, premium (if any) and/or interest on Revenue Bonds to be refunded. Indiana Michigan conveyed an undivided interest in a portion of the Facilities to the City, which the City sold to Indiana Michigan under an installment sales arrangement requiring Indiana Michigan to pay as the purchase price semi-annual installments in such

an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the City to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the 1976 Order with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of the Revenue Bonds to be issued and sold by the City.

The City has issued and sold four series of Revenue Bonds, Series A through D. Pursuant to the 1976 Order and orders dated May 5, 1977, and November 8, 1977 (HCAR Nos. 20021 and 20249), the Commission authorized the sales of Revenue Bonds in the principal amounts of $25 million (Series A), $40 million (Series B) and $12 million (Series C), respectively. By order dated March 20, 1992 (HCAR No. 25496), the City issued and sold $25 million principal amount of refunding bonds ("Refunding Bonds"), Series D, the proceeds of which were used to refund its Series A Revenue Bonds.

Indiana Michigan now proposes that, through June 30, 1994, the City issue and sell Series E Refunding Bonds in the aggregate principal amount of $52 million, the net proceeds from the sale of which will be used to provide for the principal payment required for the refunding prior to their stated maturity of: (1) $40 million principal amount of the Series B Revenue Bonds, bearing interest at 7% and maturing on May 1, 2006; and (2) $12 million principal amount of the Series C Revenue Bonds, bearing interest at 6⅞% and maturing on May 1, 2006. The Series E Refunding Bonds will be issued pursuant to the Indenture as supplemented by a fourth supplemental indenture, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance.

Indiana Michigan states that it will not agree, without further order of the Commission, to the issuance of any Series E Refunding Bonds by the City if any such Refunding Bond has: (1) A stated maturity of more than 30 years; (2) a rate of interest in excess of 6½% per annum; (3) a discount from the initial public offering price in excess of 5% of the principal amount thereof; or (4) an initial public offering price of less than 95% of the principal amount thereof.

The Series E Refunding Bonds may be subject to mandatory redemption under circumstances and terms specified at the time of pricing, and, if it is deemed advisable, may also include a sinking fund provision. In addition, the Series E Refunding Bonds may not, if it is deemed advisable, be redeemable at the option of the City in whole or in part at any time for a period to be determined at the time of pricing the Series E Refunding Bonds. Indiana Michigan also proposes to provide some form of credit enhancement for the Series E Refunding Bonds, such as a letter of credit, surety bond or bond insurance, and pay a fee in connection therewith. It is contemplated that the Series E Refunding Bonds will be sold by the City pursuant to arrangements with Goldman, Sachs & Co.

The Southern Company (70–8227)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, has filed a declaration under sections 12(b) and 12(f) of the Act and Rule 45 thereunder.

Southern proposes to guarantee the lease obligations of its subsidiary company, Southern Electric International, Inc. ("SEI"). SEI has entered into a lease agreement ("Lease") with The Mutual Life Insurance Company of New York ("Lessor"), a nonassociate company, for the lease of two floors in an office building located at 900 Ashwood Parkway in Atlanta, Georgia. The term of the Lease will commence in two phases, phase 1 and phase 2, which have target commencement dates of September 1, 1993 and February 1, 1994, respectively. The initial Lease term shall be for seven years from the midpoint of the two actual commencement dates as determined by the commencement date agreement with SEI having the right to extend the term for two five year extension periods. SEI also has the option to cancel the Lease 66 months and 72 months after such midpoint of the Lease commencement dates.

As a condition to entering into the transaction, Lessor is requiring the guaranty by Southern of the obligations of SEI through the 66th month of the Lease, as well as any unamortized tenant improvement costs financed under the Lease. The rent payable by SEI under the terms of the Lease is composed of two components, a base annual rental component and an additional rental component. The base annual rental initially is $15 per leased square foot per annum (approximately $768,900 assuming rental of 51,260 square feet), with an escalation of $0.50 per lease square foot per annum to the base rental rate. The additional rental component of the Lease consists of reimbursement to the Lessor for increases in operating expenses and taxes over and above actual operating expenses and taxes for the base year 1993.

SEI is also entitled to use up to $1,063,645 of Lessor's funds, and repay such funds over the initial Lease term, as a part of the base annual rental, for the purpose of generally improving the leased premises or otherwise paying for bills with respect to relocation expenses and design fees.

AEP Generating Company (70–8237)

AEP Generating Company ("Generating"), One Riverside Plaza, Columbus, Ohio 43215, an electric public-utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration under section 12(c) of the Act and Rule 46 thereunder.

Generating proposes, through December 31, 1997, to declare and pay to AEP: (1) Dividends up to the full amount of its retained earnings; and (2) additional dividends ("Additional Dividends") up to $16 million out of other paid-in capital. Generating seeks authority to pay such Additional Dividends.

Pursuant to § 1701.33 of the Ohio Revised Code, the relevant state law applicable to Generating, the directors may declare dividends out of surplus. Surplus is defined to be the excess of a corporation's assets over its liabilities plus stated capital. As of March 31, 1993, Generating had a surplus of $74,967,000, the excess of $611,514,000 in assets over the sum of $535,547,000 in liabilities and $1,000,000 in stated capital.

Southwestern Electric Power Company (70–8243)

Southwestern Electric Power Company ("SEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, an electric public-utility subsidiary company of Central and Southwest Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

SEPCO proposes to sell 944 utility poles located in Cado Parish, Louisiana to Bell South Telecommunications, Inc. ("BST") for $248,500. The 944 utility poles will not be removed from their present locations. The proposed sale will be made pursuant to an allocation agreement between SEPCO and BST which provides for the maintenance of equalization in the number of pole contracts between the companies in areas serviced by both. SEPCO anticipates that the proceeds from the proposed sale will be added to SEPCO's general operating funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20138 Filed 8–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19625; 811–3554]

Washington Square Cash Fund, Inc.; Application

August 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Washington Square Cash Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Minnesota corporation and an open-end, diversified, management investment company. On August 26, 1982, applicant registered under the Act and filed a registration statement pursuant to section 8(b) under the Act. On that same date, applicant registered an unlimited number of shares under the Securities Act of 1933. Applicant's registration statement became effective and applicant's initial public offering of its securities commenced on January 12, 1983.

2. On December 16, 1992, applicant's board of directors found that applicant's liquidation and dissolution would be in the best interest of applicant and its shareholders and unanimously approved the plan to liquidate and dissolve applicant pursuant to Minnesota law (the "Plan"). As stated in applicant's Proxy Statement, dated February 19, 1993, the following are some of the factors that influenced the board of directors' finding: (a) During the fiscal years ended September 30, 1991 through September 30, 1992, applicant's assets have declined approximately 81%, and in the opinion of Washington Square Capital, Inc., applicant's investment adviser, its performance was suffering; (b) Northwestern National Life Insurance Company and its affiliates, who own 75% of the applicant's shares, had expressed an intent to close their accounts; and (c) further diminution of applicant's asset base would make it more difficult for applicant to comply with the diversification requirements of rule 2a–7 under the Act.

3. Applicant filed with the SEC on February 9, 1993, preliminary proxy materials for the shareholders meeting to approve the Plan. The proxy materials were distributed to applicant's shareholders on or about February 22, 1993.

4. On March 17, 1993, a majority of the outstanding voting securities of applicant approved the Plan, by a vote of 3,069,883.368 for and 0 against (with 8,910,952 abstentions). Pursuant to the Plan, applicant was required to (a) Cease carrying on its business to the extent necessary for the winding up of applicant; (b) collect or make provision for the collection of all debts due or owing to applicant; (c) pay or make provision for the payment of all debts, obligations and liabilities of the applicant; (d) sell, lease, transfer or otherwise dispose of all or substantially all of the remaining property and assets of applicant; (e) distribute all remaining property to shareholders of applicant; and (f) dissolve following performance of the foregoing actions.

5. On April 16, 1993, applicant completed the liquidation of all its property and distributed *pro rata* to all its shareholders the resulting proceeds (the "Final Distribution"). The aggregate amount of the Final Distribution paid to applicant's shareholders was $10,762,607.73.

6. The expenses associated with the liquidation of applicant are expected to aggregate as follows; $3,000 (legal); $2,230 (printing and mailing of proxy materials and other shareholder communications); $150 (accounting service fees); and $195 (filing fees). Applicant's investment adviser has paid all such expenses accrued to date and will pay any other future expenses of the liquidation.

7. At the time of filing the application, applicant had no assets, outstanding debts or liabilities, and applicant represents that it will not acquire or invest assets in securities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to file Articles of Dissolution with the State of Minnesota to terminate its existence as a Minnesota corporation as soon as practicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20137 Filed 8–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19626; 812–8354]

Zapata Corp.; Application

August 13, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Zapata Corporation.

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 6(e) from all provisions of the Act except sections 9, 17(a), 17(d), 17(e), 17(f) (as modified), and 36 through 53, and the rules thereunder.[1]

SUMMARY OF APPLICATION: Applicant seeks a conditional order exempting it from all provisions of the Act except sections 9, 17(a), 17(d), 17(e), and 36

[1] In the alternative, applicant requested an order under section 3(b)(2) of the Act declaring that applicant is not an investment company. The Commission proposes to grant an order, however, pursuant to sections 6(c) and 6(e).

through 53, and the rules thereunder. Applicant will also comply with section 17(f) and the rules thereunder, subject to certain exceptions. The requested relief would exempt applicant until such time as it would no longer be considered an investment company, or until July 1, 1994, whichever period is shorter. On June 14, 1993, a temporary order was issued pursuant to section 3(b)(2) of the Act exempting applicant from all provisions of the Act for a period of 90 days from the date thereof.[2]

FILING DATE: The application was filed on April 16, 1993, and amended on June 11, 1993, July 20, 1993, August 6, 1993, and August 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Riverway, Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware corporation organized in 1954, has been primarily engaged in offshore drilling in foreign and domestic waters throughout most of its existence. Such operations originally were conducted by applicant directly, and later were conducted through Zapata Off-Shore Company, a wholly owned subsidiary. During applicant's 38-year history, it has engaged in a variety of other businesses through wholly owned subsidiaries, including onshore and offshore construction, marine services, shipping, dredging, copper mining, coal mining, and tuna fishing and canning.

2. Since 1972, applicant has been engaged in oil and gas exploration and production in the United States and Bolivia through a wholly owned subsidiary, Zapata Exploration Company, concentrating primarily on the production of natural gas. In its oil and gas operations, applicant generally has participated with others in acquiring acreage, gathering and evaluating geophysical, geologic, stratigraphic and engineering data, drilling exploration wells, and developing and bringing into production any acreage successfully explored. These development projects were completed by the end of fiscal 1988. Since that time, applicant's principal oil and gas activities in the United States have involved participation in the development of existing gas properties and the production and sale of gas from producing properties. During fiscal 1992, approximately 28 percent of applicant's revenues were derived from its oil and gas exploration and production operations.

3. In November 1992, applicant acquired all of the outstanding common stock of Cimarron Gas Holding Company ("Cimarron"). Through Cimarron and its subsidiaries, applicant is engaged in the business of trading and marketing natural gas liquids, as well as gathering, treating and processing natural gas and its constituent products.

4. Through Zapata Haynie Corporation, another wholly owned subsidiary, applicant also conducts marine protein operations, consisting of menhaden fishing and the processing thereof into fish meal, fish oil, and fish solubles in the United States. During fiscal 1992, these activities accounted for approximately 72 percent of applicant's revenues.

5. Applicant's financial position was adversely affected by the downturn in the offshore drilling industry that began in the early 1980s and worsened noticeably in 1986. In the belief that conditions in the offshore drilling industry would improve significantly in the near future, applicant restructured its bank credit agreements in December 1987 to defer the payment of substantial amounts of principal and interest until December 31, 1990. This anticipated improvement did not occur, and applicant's financial performance continued to be adversely affected by the ongoing depression in the offshore drilling industry and also by weak prices for natural gas and low fish catch in its marine protein division. During 1990, it became apparent to applicant that it would not have sufficient cash flow from operations to service its debt obligations under the 1987 restructuring agreement.

6. In 1990, applicant began negotiations with its bank lenders to substantially reduce its bank indebtedness, anticipating that, in the absence of such a reduction, it would have to file for bankruptcy protection. These lenders indicated that if a sizeable portion of the debt were repaid in cash, they would be willing to agree to an arrangement in which a portion of their debt would be exchanged for applicant's common stock and the balance continued on renegotiated terms. This agreement was conditioned upon, among other things, a significant reduction in applicant's outstanding subordinated indebtedness. Determining that the most feasible way to reduce the subordinated indebtedness was through a cash tender offer, applicant began to explore the possibility of selling its offshore drilling rigs to raise the funds needed for the tender offer for the subordinated debt and the cash payment to the bank lenders.

7. Applicant was successful in implementing a comprehensive financial restructuring along the lines outlined above. As part of this restructuring, applicant sold its offshore drilling rigs for cash to Arethusa (Off-Shore) Limited ("Arethusa"). In connection with this sale, applicant was required to purchase 1,750,000 shares of the common stock of Arethusa, which currently represent approximately 8 percent of the outstanding common stock of Arethusa.

8. In January 1992, applicant sold its 35 percent interest in Zapata Gulf Marine Corporation ("ZGMC"), which operated boats that serviced companies engaged in offshore oil and gas exploration, production and construction, to Tidewater Inc. ("Tidewater"). Pursuant to this transaction, applicant's interest in ZGMC was converted into 8,258,220 shares of the common stock of Tidewater, which represented approximately 16 percent of the outstanding common stock of Tidewater. In addition, applicant received revocable proxies from certain other former stockholders of ZGMC, so that applicant had the right to vote an aggregate of 20 percent of the outstanding shares of common stock of Tidewater. Although Tidewater's common stock is publicly traded, applicant has been an "affiliate" of Tidewater for purposes of Rule 144

[2] Investment Company Act Release No. 19524 (June 14, 1993).

under the Securities Act of 1933 and therefore has been subject to certain restrictions on the disposal of its shares. Applicant, however, does have certain registration rights with respect to the Tidewater shares.

9. On March 12, 1993, applicant entered into a letter of intent with the following entities: Energy Industries, Inc., Cormar Rental Co., Cormar Industries Co. and Enerquip, Inc. (collectively, "Holt Energy"). Pursuant to the letter of intent, applicant proposes to acquire all of the assets of Holt Energy, one of the largest companies engaged in the gas compression business, for a total purchase price of $87.5 million. This payment will consist of approximately $74 million in cash and up to 13.5 million shares of applicant's common stock. A definitive acquisition agreement was executed on August 5, 1993. The acquisition currently is expected to close on September 30, 1993.

10. In connection with the proposed acquisition of Holt Energy, applicant sold 3,458,220, or approximately 40 percent, of its Tidewater shares pursuant to a registered public offering on June 23, 1993. The proceeds of the sale are being held in a commercial bank account and invested in (a) direct obligations of, or obligations guaranteed by, the United States or any agency thereof or (b) time deposits (including certificates of deposit) issued by any bank or trust company having capital and surplus aggregating at least $100 million, pending their use in connection with the proposed acquisition. The remaining 4,800,000 Tidewater shares held by Zapata represent approximately 9 percent of the outstanding common stock of Tidewater.

11. On April 16, 1993, applicant refinanced the bank debt remaining after the 1990 financial restructuring by entering into a Second Amended and Restated Master Restructuring Agreement with Norex Drilling Ltd. ("Norex"). In the refinancing, a portion of the debt was exchanged for approximately 14.4 million shares of applicant's common stock (approximately 10 percent of the outstanding shares) and 17.5 million shares of a new series of applicant's preference stock, which together give Norex and its affiliates approximately 20 percent of the voting power of applicant's outstanding capital stock. The remaining debt is represented by two loans. One, in the principal amount of $32 million, is secured by a first lien on 4,126,923 Tidewater shares. The second, in the principal amount of $50 million, is secured by a second lien on the 4,126,923 Tidewater shares and a first lien on applicant's other investment securities (which consist primarily of the Arethusa shares and promissory notes received in the sale of applicant's operating businesses or assets) and the stock of applicant's wholly owned subsidiaries, among other collateral. The preference stock issued to Norex is exchangeable into a total of 673,077 Tidewater shares.

12. On August 5, 1993, applicant sold 800,000 of the Arethusa shares pursuant to a registered public offering. The remaining Arethusa shares are subject to the over-allotment option granted in connection with the offering, which is exercisable for a 30-day period. Upon receipt, the proceeds of this sale will be held and invested in the same manner as the proceeds of the recent sale of the Tidewater shares, pending investment in applicant's operating businesses.

13. On June 29, 1993, a letter of intent was entered into between Cimarron and Stellar Energy Corporation, Stellar Gas Company, Stellar Pipeline Company, Kodiak Compression, Inc. and Stellar Transmission Company (collectively, "Stellar"), pursuant to which Cimarron proposes to acquire all of the outstanding capital stock of Stellar for a purchase price of $16 million. Stellar is engaged in the business of natural gas marketing, gathering and processing. This transaction is expected to close by the end of September 1993.

14. Applicant's securities and similar investments are subject to the custodial arrangements described below. The Tidewater shares that are pledged to Norex to secure the loans from Norex are held on behalf of Norex by Chase Manhattan Bank, N.A. in its vault in London. The remaining Tidewater shares are subject to and reserved for exchange for applicant's preference stock. Applicant's Arethusa shares currently are temporarily being held, together with those of the other selling shareholders, pursuant to arrangements customary in public offerings involving selling shareholders, solely for purposes of assuring timely delivery of the shares at the closing of the offering. Upon the termination of the over-allotment option granted in connection with the offering, any shares not sold will be pledged to Norex as collateral for the $50 million loan, and will be held on behalf of Norex by Applebee, Spurling, & Kempe ("AS&K"), a Bermuda law firm. The stock of applicant's wholly owned subsidiaries and certain other securities, consisting primarily of promissory notes received in the sale of operating businesses or assets, are pledged to Norex and held in a vault on behalf of Norex by AS&K to perfect Norex's security interest. Investments made with the proceeds of the sale of the Tidewater shares are held in commercial banks for applicant's account.

15. As a condition to the granting of the requested order, applicant will change its custodial arrangements with respect to all of its securities (other than the Arethusa shares held in connection with the public offering and the shares held by AS&K on behalf of Norex) to bring such arrangements into compliance with the self-custody requirements of rule 17f–2. Such changes will be implemented as promptly as practicable, and in any event no later than August 31, 1993. In addition, if, during the period in which the requested order is in effect, any of the securities pledged to Norex are released from such pledge, applicant will cause the released securities to be held in accordance with rule 17f–2.

Applicant's Legal Conclusions

1. Section 3(a)(3) provides that a company is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items on an unconsolidated basis).

2. As of August 4, 1993, investment securities represented approximately 45% of applicant's total assets, exclusive of Government securities and cash items, on an unconsolidated basis. Applicant therefore is a *prima facie* investment company under section 3(a)(3) of the Act. Adjusting the data to give effect to the proposed acquisition of Holt Energy, investment securities would constitute approximately 33 percent of applicant's total assets. Further adjusting the data to give effect to the proposed acquisition of Stellar, investment securities would constitute approximately 32 percent of applicant's total assets if the purchase price were financed from cash on hand or borrowings at the parent level. Thus, if these acquisitions are effected, applicant would no longer be a *prima facie* investment company, since such percentages are below the 40 percent threshold of section 3(a)(3).

3. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction from any provisions of the Act, or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act.

4. Section 6(e) permits the Commission to require companies exempted by rule, regulation or order from the registration requirements of the Act to comply with certain specified provisions thereof as though the company were a registered investment company.

5. Applicant contends that the issuance of an order pursuant to sections 6(c) and 6(e) is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes of the Act. Absent an exemptive order, the uncertainty of applicant's status under the Act might impair applicant's ability to complete the acquisition of Holt Energy and Stellar. The grant of the requested order, however, would remove such uncertainty and enable applicant to proceed with the acquisitions, following which applicant would no longer be a prima facie investment company under the Act.

6. Because applicant, and certain other persons in their transactions and relations with applicant, would be subject to sections 9, 17(a), 17(d), 17(e), and 36 through 53 of the Act as if applicant were a registered investment company, the interests of investors would be adequately protected during the effective period of the requested order.

7. Applicant does not believe that the limited exemption from section 17(f) for the current custodial arrangements for securities pledged to Norex represents any material risk to its investors. Norex has a duty to keep the shares in safe custody and treat them substantially as it would its own property. Applicant's securities that are not pledged to Norex, as well as those securities released by Norex in the future, will be held in accordance with the self-custody provisions of rule 17f–2.

Applicant's Conditions

1. During the period applicant is exempted from registration under the Act, applicant will not purchase additional investment securities (as defined in section 3(a)) other than (i) high quality short-term debt securities or debt-like securities (such as auction-rate preferred stock) that are consistent with the goal of preserving capital, or (ii) equity investments in connection with possible eventual acquisitions (as evidenced by a resolution approved by applicant's board of directors) or at least a majority interest in non-investment companies; provided, however, that this undertaking will not prohibit applicant from receiving the 83,334 additional shares of Arethusa common stock that it has already contracted to receive.

2. While any exemptive order is in effect, applicant will disclose in its reports on Forms 10–K and 10–Q and its annual reports to shareholders that such an exemptive order has been granted pursuant to section 6(c) and 6(e) and that applicant and certain other persons in their transactions and relations with applicant, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), and 36 through 53 of the Act as if applicant were a registered investment company, subject to the limited exemption provided from section 17(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20139 Filed 8–19–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 1848]

Privacy Act of 1974; Adoption of a New System of Records

Notice is hereby given that the system of records known as the "Procurement Career Management Information System" (STATE–58) published in the **Federal Register** on June 10, 1993, (58 FR 32560) is adopted as final effective August 10, 1993.

Dated: August 10, 1993.

For the Secretary of State.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

[FR Doc. 93–20040 Filed 8–19–93; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–38]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 16, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 13, 1993.

Mardi R. Thompson,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26552
Petitioner: United Parcel Service
Sections of the FAR Affected: 14 CFR Part 121 Appendix H
Description of Relief Sought: To extend Exemption No. 5366 to allow United Parcel Service (UPS) to continue to conduct training and checking in UPS simulators that do not meet all the visual requirements necessary for them to be qualified as Phase III simulators.

Docket No.: 27222
Petitioner: Executive Fliteways, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b) (6) and (7)

Description of Relief Sought: To amend Exemption No. 5675 to relieve Executive Fliteways, Inc. from the requirement to not exceed a 30-minute VHF communications gap when operating at the aircraft's normal enroute operating altitude (Condition No. 4 of Exemption No. 5675).

Docket No.: 27341
Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR 121.417(c)(2)(i)(A)
Description of Relief Sought: To permit United Airlines to train flight attendants with exit drills in the emergency mode of operation only and not in the normal mode.

Dispositions of Petitions

Docket No.: 24541
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 91.611
Description of Relief Sought/ Disposition: To extend Exemption No. 4467 to allow the Boeing Commercial Airplane Group to continue to conduct ferry flights with one engine inoperative on its Boeing-manufactures 707, 720, 727, or 747 turbine-engine-powered transport category airplanes without obtaining a special flight permit. *Grant, July 29, 1993, Exemption No. 4467D*

Docket No.: 26865
Petitioner: Mr. William Keil
Sections of the FAR Affected: 14 CFR 121.417(d)
Description of Relief Sought/ Disposition: To extend Exemption No. 5477, issued to the member air carriers of the Air Transport Association of America, which extends the compliance date for training required by § 121.417(c). *Grant, July 29, 1993, Exemption No. 5477A*

Docket No.: 27075
Petitioner: Precision Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123, 93.125, 93.129, and 93 subpart K
Description of Relief Sought/ Disposition: To allow Precision Airlines, Inc. to conduct Separate Access Landing System (SALS) commuter operations at Washington National Airport (DCA), without interfering with major turbojet runway use, using the short takeoff and landing (STOL) characteristics of the Dornier 228 aircraft equipped with Global Positioning System (GPS) and Loran equipment. *Denial, August 10, 1993. Exemption No. 5707*

Docket No.: 27223
Petitioner: Ralph J. Diana
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2) and the appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Ralph J. Diana to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. *Grant, July 29, 1993, Exemption No. 5693*

Docket No.: 27242
Petitioner: Top Flight International
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2) and the appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Top Flight International to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. *Grant, August 4, 1993, Exemption No. 5705*

Docket No.: 27263
Petitioner: Southern Air Transport
Sections of the FAR Affected: 14 CFR 121 Appendix H
Description of Relief Sought/ Disposition: To extend Exemption No. 5645 to allow Southern Air Transport (SAT) to continue to use CAE, Inc. instructors in SAT's approved advanced simulator training program (ASTP) to conduct initial cadre B–747 pilot and FE initial or transition training in an approved simulator using SAT's approved ASTP, without those instructors being employed by the airline for at least 1 year in the capacity of an instructor, PIC, or FE of an airplane of the same type in which they are instructing, subject to certain conditions and limitations. *Grant, July 29, 1993, Exemption No. 5645A*

Docket No.: 27306
Petitioner: Nockair Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.43(a) and (b)
Description of Relief Sought/ Disposition: To permit Nockair to utilize its helicopters to perform aerial trapeze acts, without using an approved external load attachment or a quick release device for carrying a person on a trapeze bar. *Grant, August 12, 1993, Exemption No. 5708*

Docket No.: 27310
Petitioner: Purdue University
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2) and the appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Purdue University to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. *Grant, August 4, 1993, Exemption No. 5706*

Limited Resources

Docket No.: 27391
Petitioner: Mr. Richard B. Miller
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to act as a pilot in air carrier service after his 60th birthday.

Docket No.: 32207
Petitioner: Mr. R.M. Weseen
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to engage in air carrier service beyond his 60th birthday.

[FR Doc. 93–20186 Filed 8–19–93; 8:45 am]
BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue a Passenger Facility Charge (PFC) at Corpus Christi International Airport, Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Corpus Christi International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76103–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to George D. Hext of Corpus Christi International Airport at the following address: Department of Aviation, Corpus Christi International Airport, 1000 International Drive, Corpus Christi, Texas 78406.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Corpus Christi International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Corpus Christi International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 6, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Corpus Christi International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: September 1, 1993
Proposed charge expiration date: October 31, 1998
Total estimated PFC revenue: $7,125,000.00

Brief description of proposed project(s):

Projects To Impose and Use PFC's

Guidance Signs and Markings
Automatic Switchgear and Primary Service Upgrade
High Intensity Runway Lighting for Runway 17–35
Commercial Apron Lighting
Commercial Apron Rigid Pavement Reconstruction
West Apron Improvements
Runway 13–31 Pavement Reconstruction
Taxiway L & M Lighting
Cargo Building
Equipment Storage Facility and Storage Yard
ARFF Facility, Communications, Training Center and Burn Pit Relocation
Terminal Reconstruction
Landside Roadway Reconstruction
Loop Road Relocation

Proposed class or classes of air carriers to be exempted from collecting PFC's:

FAR part 135 air charter operators who operate aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports notice located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Corpus Christi International Airport.

Issued in Fort Worth, Texas, on August 9, 1993.

John M. Dempsey,
Manager, Airports Division.

[FR Doc. 93–20187 Filed 8–19–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Commissioner's Advisory Group meeting.

SUMMARY: There will be a meeting of the Commissioner's Advisory Group on September 1, 1993. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC.

The meeting will begin at 8:30 a.m. on Wednesday, September 1.

The agenda will include the following topics:

Wednesday, September 1, 1993

Reinventing the IRS
Market Segment Specialization Program (MSSP)
Taxpayer Compliance Measurement Program (TCMP)
Implementation Plan for New Tax Bill
Filing W–4's Electronically
Federal Tax Deposit Simplification
Program for Employer Offset Education
Non-Filer Program
Penalty Handbook
Advance Pricing Agreement and 482 Transfer Pricing
Voluntary Compliance Resolution (VCR) Program

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Page Richardson, Program Analyst, no later than August 25, 1993. Ms. Richardson can be reached on (202) 622–3074 (6440) (not toll-free).

If you would like to have the committee consider a written statement, please call or write: Ms. Page Richardson, Executive Secretariat, C:ES, room 3308, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Page Richardson, Program Analyst (202) 622–3074 (6440) (Not toll-free).

John C. Stocker,
Assistant to the Deputy Commissioner.

[FR Doc. 93–20188 Filed 8–19–93; 8:45 am]
BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 58, No. 160
Friday, August 20, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Wednesday, August 25, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. FHLBank System Reports
   A. Monthly Financial Report
   B. Monthly Membership Report
   C. First Half 1993 AHP Progress Report
2. Proposed Rule on Advances to Capital Deficient Members and Other Matters
3. Community Support Advance Notice of Proposed Rulemaking
4. Downey Savings Bank—Low-Income Housing Fund, FHLBank of San Francisco
5. Report on the Proposed Revision to the Finance Board's Private Sector Adjustment Factor ("PSAF") Methodology

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the July Board Minutes
2. System 2000
3. FHLBank System First Half 1993 Budget-to-Actual Performance
4. FHLBank System Leverage Ratio—Briefing on Transition from 12:1 Leverage Rule to 20:1 Leverage Rule
5. Legislative Strategy Update
6. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(2) and (9)(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–20248 Filed 8–17–93; 4:32 pm]

BILLING CODE 6725–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, August 31, 1993, in Indianapolis, Indiana. The meeting is open to the public and will be held at the Westin Hotel, 50 South Capitol Avenue, in the Capitol 3 Ballroom. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 30, 1993, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

August 31–9:00 a.m. (Open)

1. Minutes of the Previous Meeting, August 2–3, 1993.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Postal Rate Commission 1994 Budget. (Chairman Mackie)
4. Tentative FY 1995 Budget Request to Congress. (M. Richard Porras, Controller)
5. Additional Space for the National Postal Museum. (Dennis E. Wamsley, Manager, Realty Asset Management)
6. Report on the Greater Indiana Customer Services District. (Thomas Skolak, District Manager, Greater Indiana District)
7. Capital Investment. (Stephen E. Miller, Vice President, Operations Support)
   a. Funding for Small Parcel and Bundle Sorters.
8. Tentative Agenda for the October 4–5, 1993, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 93–20307 Filed 8–18–93; 2:19 pm]

BILLING CODE 7710–12–M

VOL 58 ISS 160 AG 20 1993 UMI

Corrections

Federal Register
Vol. 58, No. 160
Friday, August 20, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Exemptions for Certain Exchange-Traded Futures and Options Contracts

Correction

In notice document 93-19531 beginning on page 43414 in the issue of Monday, August 16, 1993, on page 43414, in the first column, under **DATES**, in the third line, "November 5, 1993" should read "October 15, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership; Notice

Correction

In notice document 93-17390 beginning on page 39198 in the issue of Thursday, July 22, 1993 make the following correction:

On page 39200, in the second column, in the seventh line from the bottom, "Mr. James L. Flynn, III," should read "Mr. James L. Flinn, III,".

BILLING CODE 1505-01-D

Federal Register

Friday
August 20, 1993

Part II

Department of Defense

Department of the Army

32 CFR Part 619
Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shippers Agents; Final Rule

VOL 58 ISS 160 AG 20 1993 UMI

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shipper Agents

AGENCY: Military Traffic Management Command.

ACTION: Final Rule.

SUMMARY: The Department of the Army announces a revision of 32 CFR part 619, Program for Qualifying DOD Freight Motor Carriers; Qualification Criteria. This final rule establishes the following changes:

a. Changes the name of 32 CFR part 619 to: Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, and Shipper Agents.

b. Financial statements must reflect a 1 to 1 ratio (liquid assets—current liabilities).

c. Allows for MTMC to accept self-insurance, provided it meets DOD minimum requirements, and is approved by the Interstate Commerce Commission (ICC).

d. Adds qualification standards for Surface Freight Forwarders, and shipper agents.

e. Additional requirements and standards for carriers wishing to handle shipments of hazardous or secret materials, sensitive weapons and munitions; and shipments which require transportation Protective Service (TPS).

f. Modifies the cargo insurance requirements for carriers or perishable subsistence and bulk fuel.

g. Establishes a Basic Agreement between the Military Traffic Management Command and motor carriers who: Handle shipments requiring a TPS; shipments of hazardous materials (other than Class A and B explosives); and handle shipments of class A and B explosives.

DATES: *Effective Date:* This final rule is effective August 20, 1993.

Compliance Date: Carriers will have until September 20, 1993 to comply with its requirements.

ADDRESSES: Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Wirtz, (703) 756–1393.

SUPPLEMENTARY INFORMATION: Basic information on the Carrier qualification Program was previously published in the **Federal Register**, 53 FR 17970, 54 FR 27667, 55 FR 7361, 55 FR 52976, 56 FR 45895 and 57 FR 11376.

This announces full implementation by the Military Traffic Management Command (MTMC) of the Final Rule for the Freight Carrier Qualification Program (CQP). This will constitute final notification. MTMC notified carriers in 1992, by certified letter, to comply with the freight CQP. However, there are some carriers doing business for the DOD who are not qualified. Carriers will have 30 days from the date of publication of this Final Rule in the **Federal Register** to submit their packages. Any carrier not complying will be removed from participation in the transportation of DOD freight shipments. Carriers will be approved in the CQP only after the required documentation has been approved by Headquarters MTMC. Any carrier not complying will be placed in an inactive status.

Carriers should submit their application packages to the appropriate area command (Bayonne, NJ (Eastern Area) or Oakland, CA (Western Area) based on the location of the carrier's headquarters. If additional applications are needed, please contact the appropriate area command:

Bayonne, NJ: (201) 823–7146, Mr. Mike Welikey or Ms. Jody Patterson.
Oakland, CA: (520) 466–3062/2908/2317, Ms. Iris Miller or Mr. Ralph Joe.
HQMTMC, VA: (703) 756–1393, Mr. Rick Wirtz.

Comments and Responses

Comment: The majority of commenters objected to the performance bond, § 619.7 of the proposed rule.

Response: When MTMC implemented the Carrier Qualification Program 1 January 1992, experience indicated that small carriers, who were providing satisfactory service to the DOD, were having problems with the requirement to purchase a $100,000 performance bond. Consequently, in September 1991, the bond requirement was suspended for further review. We evaluated the issue and have developed a sliding scale bond that we believe would be reasonable for all carriers. The purpose of the performance bond is to protect the DOD against excess reprocurement costs incurred in the onward movement of frustrated or abandoned shipments due to carrier nonperformance or bankruptcy.

Comment: One comment indicated that the bond requirement should be uniform for all carriers. The fact that they have been doing business with DOD for three years does not prove that they are better qualified to handle traffic than a new carrier.

Response: A carrier doing business with DOD for three years or more, has an established track record. Basing the amount of the bond on areas served (new carriers) is logical, the more volume of traffic, the greater the risk. Local drayage and commercial zone carrier movements are usually done under contract (short distance moves), and are handled by the local transportation office. Therefore, they are exempt from the bond requirement.

Comment: Commenter indicated that obtaining the bond involves a considerable expense for bulk fuel carriers. Further, asks if the command has experienced service failures, theft and/or misappropriation of property? In addition, commenter objects to the amount of cargo insurance for bulk fuel carriers.

Response: In talking with surety companies who furnish performance bonds, we were advised that if a company was financially stable, the cost would be approximately $28 per thousand. MTMC wants to establish policy to deal with those carriers who are financially stable and are willing to make a commitment to quality service. DOD has experienced situations where a motor carrier has declared bankruptcy, and abandoned or frustrated DOD shipments. When this happens, DOD must obtain transportation services at considerable additional expense in order to deliver the shipment to destination. The requirement for cargo insurance previously was $150,000 for bulk fuel carriers. MTMC lowered the requirement to $25,000 cargo insurance and bond. Industry normally uses 12,000 gallon tank trucks and based on the price of fuel it is felt that the $15,000 cargo insurance requirement is reasonable.

1. Performance Bond. The performance bond is established to protect the interest of the DOD. It provides a source of funds that can be used to pay for reprocurement costs associated with those instances where a carrier frustrates or abandons DOD freight. The amount of the bond a carrier needs to obtain is dependent on the risk associated to the DOD. However, the bond amount will never exceed $100,000. Two different systems are used for risk evaluation. Which system is used will be determined when the carrier is asked to qualify for the bond.

a. All Carriers

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a performance bond in the amount of 2.5% of their total DOD revenue, taken from the Freight Information Systems

Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a performance bond based on their proposed area of service. Areas of service will be computed as both origins and destinations served, that is, 1 state (including intrastate) $25,000, 2 to 3 states—$50,000, and 4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent of revenue.

The rationale for this risk evaluation is to protect the interest of DOD while reducing the financial burden for small established carriers to do business with DOD.

b. Local drayage and commercial zone carriers are exempt from the bond requirement.

c. Surface Freight Forwarders and Shipper Agents. Due to the volume of traffic handled by these two modes and the area normally serviced the bond amount is set at $100,000.

2. Insurance. Insurance underwriters must be rated in the Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. Additionally, MTMC will accept self-insurance for those carriers who were self-insured with the Interstate Commerce Commission (ICC) as of January 1, 1991. Self-insurance will be accepted only upon receipt of a Service Order from the ICC granting the self-insurance.

3. Requirements and standards are already in place for carriers who wish to handle hazardous or secret materials, and sensitive weapons and munitions; therefore, they were originally exempted from the initial program. However, in order to streamline and standardize procedures, these carriers will now be brought under the basic Carrier Qualification Program, to include additional requirements for consideration to participate in freight shipments which have higher requirements than those for general commodities.

The Directorate of Personal Property maintains its own separate and unique requirements for carriers wishing to participate in household shipments; therefore, this program is excluded from the freight Carrier Qualification program. Further, a carrier who is qualified under one program will not automatically qualify to participate in both programs. Additionally, the requirements of one program may not be used to qualify for another program, e.g., any criteria used to qualify under the freight program cannot be used to qualify under the Personal Property Program.

A carrier who wants to participate in more than one freight program, i.e., motor carrier, shipper agent, exempt surface freight forwarder, will be required to meet criteria established for that program. For example, a company who offers service as a motor common carrier and also wants to participate as an exempt surface freight forwarder will have to meet both programs requirements and execute all applicable agreements. There is one exception to this policy. Motor carriers wishing to handle various types of commodities which require qualification, i.e., general commodities, hazardous materials, and class A and B explosives need only qualify once. However, they will be required to meet the requirements of the most stringent program. They will also be required to execute agreements for each program.

Criteria for handling shipments which require a transportation Protective Service (TPS) and hazardous materials: Carriers must have one year of general experience which demonstrates satisfactory service in the movement of freight shipments. Carrier must submit to MTMC for review, a copy of its security and/or safety procedures and/or guidance which it provides to employees handling a TPS or hazardous shipment. Carriers may also be subject to convert surveillance by a government employee or government contractor employee. Carrier may be required to submit to a corporate and/or terminal inspection.

Executive Order 12219

This rule has been reviewed under Executive Order 12219 and the Secretary of the Army has classified this action as nonmajor. The effect of the rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities. The objective of the program is to ensure that DOD obtains safe, dependable, and reliable transportation services. The requirements are not designed to preclude participation by small businesses. Rather, they are part of a mechanism designed to ensure that traffic offered to small businesses does not exceed their capabilities. The program's reporting and record keeping requirements are essentially administrative in nature and do not demand significant expenditures of resources such as personnel, computer equipment, or software. No professional or technical training is necessary to comply with these requirements. Alternatives to facilitate entry of small businesses have been identified and implemented.

Paperwork Reduction Act

This rule has been approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 619

Common carriers, Freight, Motor carriers, Safety, Shipping, Trucks.

Accordingly 32 CFR part 619, is revised to read as follows:

PART 619—PROGRAM FOR QUALIFYING DOD FREIGHT MOTOR CARRIERS, EXEMPT SURFACE FREIGHT FORWARDERS, AND SHIPPER AGENTS

Sec.

619.1 Introduction
619.2 Safety ratings.
619.3 Operating authorities.
619.4 Insurance—Public Liability and Cargo.
619.5 Financial records.
619.6 Information.
619.7 Performance Bond.
619.8 Basic agreement.

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Appendix A to Part 619—Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval To Transport General Commodities for the Department of Defense

Appendix B to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Ammunition and Explosives, Class A and B for and on Behalf of the U.S. Department of Defense

Appendix C to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Hazardous Material Other Than Class A and B Explosives for and on Behalf of the U.S. Department of Defense

Appendix D to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense

Appendix E to Part 619—Agreement Between the Military Traffic Management Command Surface Freight Forwarders Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

Appendix F to Part 619—Agreement Between the Military Traffic Management Command and Shipper Agents Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

Authority: 49 U.S.C. 1801–1813, 2503, 2505, and 2509

§ 619.1 Introduction.

Carriers, surface freight forwarders, and shipper agents interested in qualifying or remaining qualified will submit data described in §§ 619.2 through 619.6 to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the location of the carrier's headquarters. The area command will schedule a meeting with the carrier, if necessary, to clarify any qualification elements and also receive guidance on how to do business with the Department of Defense. The area command will then evaluate the data to determine whether the carrier has the equipment, facilities, personnel and finances necessary to handle the carrier's proposed scope of operations. The area commands will then forward the application to HQMTMC for approval. If the carrier is approved and signs the agreement, HQMTMC will then accept (or in the case of existing carriers, continue to accept) tenders, tariffs or similar rate submissions. Carriers that are disapproved will be notified of the reasons for disapproval and may reapply for approval once the problems have been corrected.

§ 619.2 Safety ratings.

(a) Carrier will not have an "unsatisfactory" rating with the Federal Highway Administration, Department of Transportation and if it is an intrastate motor carrier, with the appropriate state agency.

(b) Carriers with "conditional" or "insufficient information" ratings may be used to transport DOD general commodities provided that such carriers certify in writing that they are now in full compliance with Department of Transportation safety requirements.

(c) Carriers transporting hazardous, secret materials or sensitive weapons and munitions, or any shipment, regardless of commodity, which requires a Transportation Protective Service (TPS) will not be used if the safety rating is less than satisfactory

§ 619.3 Operating authorities.

Carriers will submit copies of all certificates authorizing operations as a common carrier (interstate and intrastate) needed to transport DOD traffic.

§ 619.4 Insurance—public liability and cargo.

(a) Public Liability. Motor carriers, surface freight forwarders, and shipper agents will submit proof of their public liability insurance to MTMC on a certificate of insurance form issued by the insurance company. Expiration dates will not be reflected on the certificate, the policy must be continuous until cancelled. However, the deductible portion will be shown on the certificate. The insurance underwriters must be rated in Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, listing of surety companies. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, Attn: MT–INFF, will be notified, in writing, 30 days in advance of any change or cancellation. The public liability requirements are specified in 49 CFR 387.9. Surface freight forwarders and shipper agents will submit proof of $1 million public liability (death and bodily injury, property damage, and environment restoration).

(b) Cargo. Motor common carriers, surface freight forwarders, and shipper agents will be required to have their insurance company provide proof of cargo insurance to MTMC on a certificate of insurance form. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies or specifically approved by HQMTMC. DOD's minimum cargo insurance requirements are as listed below:

(1) Motor common carriers, including classes A and B explosives, but excluding perishables and bulk fuel—$150,000 per shipment.

(2) Automobile transporters or carriers which move vehicles in haul-away/drive-away service—$20,000 per vehicle transported

(3) Perishable carriers—$80,000 per shipment.

(4) Bulk fuel—$25,000 per shipment.

(5) Surface freight forwarders and shipper agents—$250,000 per shipment

§ 619.5 Financial records.

(a) Motor carriers must furnish financial statements certified by the company Chief Executive Officer, President or Owner. These financial statements must include company certified balance sheets and income statements for the last 3 taxable years. Motor carriers in existence less than 3 years, but more than 12 months, must provide company certified copies of all balance sheets and income statements from the date business was commenced. Carriers in business less than 12 months must provide a company certified balance sheet showing all assets and liabilities. Motor carriers must furnish financial data at MTMC's discretion when considered necessary to assure satisfactory performance and avoidance of motor carrier financial problems. This financial data includes, but is not limited to the following:

(1) Company certified financial statements

(2) CPA review (including footnotes) of financial statements.

(3) CPA audit and opinion (including footnotes) of financial statements.

(4) Financial statements must reflect a 1 to 1 ratio (liquid assets—current liabilities).

(b) All carriers must also state the extent of their financial interests in other transportation companies or their affiliation with any person or firm holding interests in other transportation companies to include.

(1) Majority or minority ownership

(2) Familiar relationships.

(3) Voting of securities.

(4) Common directors, officers and/or stockholders.

(5) Voting trusts.

(6) Holding trusts.

(7) Associated companies.

(8) Contract or department relationships.

(c) This information will be used to determine if common financial and administrative control exists with other companies, or if individuals or associated companies are affiliated with those who have been debarred by the Government.

§ 619.6 Information.

Motor carriers, surface freight forwarders and shipper agents will provide HQMTMC the following information:

(a) A listing of company's officers with their title.

(b) A listing of the company's owners and the percentage of ownership of each.

(c) Company background and history, including the year the company was formed.

(d) A list, by type and quantity, of all owned and/or leased equipment. MTMC will not approve any motor carrier that does not own and/or have permanent leases for equipment.

(e) The number of personnel employed, to include company drivers and number of drivers under lease. A motor carrier must be able to show it has a minimum personnel force in order to operate effectively.

(f) A list of terminal locations including the street address and telephone numbers, and descriptions of the terminal facilities.

(g) Three reference letters from shippers served during the previous 12 months.

(h) Proposed services by type of service, traffic lane, or geographical area. MTMC will review equipment inventories and permanent lease agreements in relationship to proposed service. In those instances where a carrier's equipment inventory indicates they cannot provide the proposed service, MTMC will request a meeting with the carrier to review proposed service.

(i) Copies of driver hiring, screening, and training procedures.

(j) Disadvantaged (minority) and women-owned business certification (if applicable).

(k) In addition to information contained in paragraphs (a) through (h) and (j) of this section, exempt surface freight forwarders and shipper agents must furnish a listing of carriers which they have a contract with and intend to use in the movement of government shipments. Information must include the complete company names, company officials to include their position and title, home office addresses, telephone numbers, 24 hour emergency point of contact for shipment status, and ICC operating authority number of each carrier.

§ 619.7 Performance bond.

(a) Motor carriers. (1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5% of their total DOD revenue, taken from the freight Information System Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer (computed as both origins and destinations served), that is, I state (including intrastate)—$25,000, 2 to 3 states—$50,000, and 4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent revenue.

(b) Bulk fuel carriers and perishable carriers will be required to submit a $25,000 Performance Bond.

(c) Local drayage and commercial zone carriers are exempt from the bond requirement.

(d) Surface Freight Forwarders and Shipper Agents. Due to the volume of traffic handled by these two modes and the area normally serviced the bond amount is set at $100,000.

(e) All carriers must submit a letter of intent to file a bond from a surety company with initial application. Upon HQMTMC approval, carriers will provide HQMTMC with a Performance Bond. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The sum of the bond shall be as determined by § 619.7 (a) through (c). The bond must be continuous until cancelled. HQMTMC will be notified, in writing, 30 days in advance of any change or cancellation. The Performance Bond secures performance and fulfillment of carrier obligations to deliver DOD freight. It will cover any instance where a carrier cannot or will not deliver DOD freight tendered to them to final destination. This includes default, abandoned shipments, and bankruptcy by the carrier. The bond will not be utilized for operational problems such as late pickup or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo.

§ 619.8 Basic agreement.

Motor carriers, surface freight forwarders and shipper agents meeting the qualification requirements of §§ 619.1 through 619.7 will be required to sign the appropriate Basic Agreement in the appendices to this part.

Appendix A to Part 619—Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval to Transport General Commodities for the Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of

_____,

(Name of Company, Typed or Legibly Printed),

hereinafter called the carrier, as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD general commodity freight administered by the Directorate of Inland Traffic, MTMC (except used household goods). Noncompliance by the carrier with any provision of this Agreement may result in MTMC taking action against the carrier under the Carrier Performance Program, governed by MTMC Regulation 15–1, and revoking approval to participate in this traffic. If the carrier's approval is revoked, the carrier may be disqualified from further participation in any DOD freight Traffic.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service (TPS) until it has served DOD in an approved status for 12 continuous months. Prior to being allowed to handle shipments which require a TPS or classes A & B explosives, the carrier must first meet any additional requirements in effect at the time.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a

MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe, proper, and lawful operation of motor vehicles, to include Title 49 Code of Federal Regulations (CFR) 386–397. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be involved in brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in title 49 of the Code of Federal Regulations (CFR) 5387.9. Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier agrees to provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policy holder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of surety companies. Public liability insurance Interstate Carriers.

(1) The carrier agrees to also file with MTMC proof of: $750,000 per vehicle for property (excluding hazardous) and $1,000,000 per vehicle for oil, hazardous wastes, hazardous materials and hazardous substances defined in 49 Code of Federal Regulations (CFR) 5171.8 and listed in 49 CFR 5172.101.

(2) Public liability insurance Intrastate Carriers—Public Liability Insurance shall be that as required by the state, except that for deregulated states, public liability shall be the same as that required of interstate carriers.

(3) Cargo insurance. Cargo insurance in the minimum of $150,000 for loss and damage of government freight per vehicle and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) must be maintained. Perishable carriers will maintain, as a minimum, cargo insurance in the amount of $80,000 and bulk petroleum carriers will maintain $25,000.

b. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service for the carrier. Changes, renewals, and cancellation notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD re-procurement costs as a result of carrier default, abandoned shipments, or bankruptcy. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until cancelled. MTMC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond will be determined as follows.

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5% of their total DOD revenue, taken from the Freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed as both origins and destinations served.

1 state (including intrastate)—$25,000;
2 to 3 states—$50,000; and
4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent revenue.

c. Bulk fuel carriers and Perishable carriers will be required to submit a $25,000 Performance Bond.

d. Local drayage and commercial zone carriers are exempt from the bond requirement.

e. If carrier has secured the Performance Bond as a result of qualifying under Ammunition and Explosive, Classes A and B program or hazardous materials (other than ammunition and explosives, classes A and B) program no additional Performance Bond is required.

7. Safety.

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and, if it is an intrastate motor carrier, with the appropriate state agency. The carrier further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees. The inspection may include in-transit surveillance of vehicles and drivers. The carrier agrees to provide evidence that fulfills the requirement set forth in 49 Code of Federal Regulation parts 390 thru 396. Inspection of carrier equipment, drivers' records, route plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier agrees to have in place a company-wide safety management program. Carrier safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives.

c. The carrier agrees to notify, within 24 hours, the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent accident details. When requested, carrier agrees to furnish MTMC a copy of accident reports submitted to the Department of Transportation on Form MCS 50–T (Property).

8. Drivers Requirement.

a. The carrier agrees to ensure that any driver used by the carrier to transport DOD freight possesses a valid commercial driver's license (in compliance with Federal Commercial Motor Vehicle Safety Act of 1986) issued by his or her state of domicile. Drivers must have, at a minimum, 1 year of driving experience driving equipment similar to that used to transport DOD freight, or have proof of graduation from an accredited trade truck motor driving school, operating the aforementioned equipment.

b. The carrier agrees to further ensure that driver carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading.

9. Equipment. The carrier is prohibited from using trip-leased equipment or drivers, except upon prior approval from MTMC Leases of less than 30 days are considered trip-leases. In order to trip-lease, a carrier must apply for approval under MTMC's trip-lease program.

10. Shipment. The carrier agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the carrier agrees to not divulge any

information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. The carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government, and be bound by all terms stated on the SF1103, Government Bill of Lading, regardless of the type of bill of lading tendered.

b. The carrier agrees to comply with the documentation prelodge procedures in effect at Military Ocean Terminals or the installation, when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier agrees to comply with the preparation and filing instructions in applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier agrees to provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carriers.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MNC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.

b. Carrier agrees to publish guaranteed through rates for at least 30 days. These rates must be filed with MTMC, HQ, Eastern Area, ATTN: MTE-IN, Bayonne, New Jersey 07002–5302. The carrier must publish all rates, charges, and accessorial services on a MTMC approved form, and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

15. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be re-qualified.

16. General Provisions. The carrier agrees to possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN–FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____

(Typed Name and Title of Carrier Official)

verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of

_____

(Typed Name of Carrier and MC Number)

agree to comply with the terms and conditions contained herein.

_____

Signature of Carrier Official and Title

_____

Date

Carrier Address _____

Telephone number _____

24 hr Emergency Number (_____, _____)

Interstate Operating Authority Certificate Number—MC _____

Intrastate Operating Authority _____

Certificate Number(s) (Include _____

Issuing State—for example _____

PA—#12345)

Military Traffic Management Command Acknowledgment/Acceptance

Signature and Title _____

Date Approved: _____

Appendix B to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Ammunition and Explosives, Class A and B for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of

_____

(Name of Company, Typed or Legibly Printed),

(hereinafter called the carrier), as a prerequisite for approval to transport ammunition and explosives, class A and B, for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD class A and B ammunition and explosives shipments administered by the Directorate of Inland Traffic, MTMC. Further, the carrier must also be a party to and in full compliance with requirements contained in the Agreement governing shipments which require a Transportation Protective Service (TPS). Noncompliance by the carrier with

any provision of this or any other Agreement it is a party to will be sufficient grounds for immediate revocation of the carrier's approval to participate in the movement of class A and B ammunition and explosives. The carrier may also be subject to further action under the Carrier Performance Program, governed by MTMC Regulation 15–1, which could result in nationwide disqualification on all DOD freight shipments.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, or disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe transportation and storage of ammunition and explosives to include Title 49 Code of Federal Regulations (CFR) 177 and 386 through 397. Provisions for exempt intracity operations as defined in 49 CFR will not apply to the transportation of explosives for the DOD. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations which is not restricted against the handling and transport of hazardous materials or ammunition and explosives, class A and B. Any carrier found to be, in fact, involved in the brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in Title 49 of the Code of Federal Regulations (CFR) 5387.9 Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with Sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN-FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies.

b. The carrier agrees to also file with MTMC proof of:

(1) Public liability insurance. Interstate and Intrastate carriers $5,000,000 per vehicle.

(2) Cargo insurance. Cargo insurance in the minimum of $150,000 for loss and damage of government freight per vehicle.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. Changes, renewals, and cancellations notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN-FF. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD re-procurement costs as a result of carrier default, abandoned shipments, or bankruptcy. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until cancelled. MTMC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond will be determined as follows.

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5% of their total DOD revenue taken from the Freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers-and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed as both origins and destinations served.

1 state (including intrastate)—$25,000;
2 to 3 states—$50,000; and
4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent of revenue.

c. If carrier has secured the Performance Bond as a result of qualifying under the general commodity program or hazardous materials (other than ammunition and explosives, classes A and B) program, no additional Performance Bond is required.

7. Safety and Security.

a. A "satisfactory" safety rating will be maintained with the Federal Highway Administration, Department of Transportation and/or with the appropriate state agency or commission in the case of intrastate. Safety ratings which are "unsatisfactory," "conditional", "insufficient information", or "not rated" will not be accepted. The carrier further agrees to permit unannounced safety and security inspections of its facilities, terminals, equipment and operational procedures by DOD civilian or military personnel, or DOD contract employees. Inspection of carrier equipment, drivers' records, route plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Carrier agrees to furnish, on request, driver's Social Security Numbers to verify their security clearances and allow for inspection of carrier/driver records.

b. Carrier agrees to have in place a company-wide safety and security management program which includes specific on-going safety and security programs for each terminal location. Individual terminal programs will encompass planning and execution of safety and security in routine operations, to include emergency responders and planners, and with the local police and fire authority. Carrier programs will incorporate compliance with all applicable Federal, State, and local statutes or requirements. Conformance with other safety standards, such as NFPA Code 498, will be accomplished as much as possible, with compensating measures for deviations. Safety and security programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier agrees to notify, within a reasonable period of time, the consignor and consignee named by the Government Bill of Lading (GBL) of cargo loss, damage, or unusual delay. Carrier also agrees to notify the consignor and the consignee named on the GBL immediately by telephone of an accident, incident or significant delay. The information to be reported will include origin/destination, GBL number, shipping paper information, time and place of occurrence and other pertinent accident

details. Carrier agrees to notify the MTMC area command annotated on the GBL and the Army Operations Center (AOC), within one half (1/2) hour after notification of the consignor and consignee, and provide status updates as required. The MTMC HOTLINE and AOC telephone numbers are as follows:

—Eastern Area: 800–524–0331; New Jersey only: 800–624–1361
—Western Area: 800–331–1822; California only: 800–348–4639
—AOC: 703–687–0213

When requested, Carrier agrees to furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property) or MCS 50–B (Passengers) when DOD classes A and B explosives movements are involved.

d. Carrier agrees to provide the driver(s) transporting protected commodities an emergency telephone number (indicated on the last page of this Agreement) which, when used at any time (24 hours a day, 7 days a week), will reach a qualified carrier representative who will be able to provide information and assistance. MTMC will be immediately notified if this telephone number should be changed. Carrier also agrees to equip the vehicle transporting the material with communications equipment (CB radio, mobile phone, etc.) capable of being used to obtain assistance in an emergency.

e. Carrier agrees to provide the appropriate Transportation Protective Service (TPS) when requested by a DOD shipper. Carrier further agrees to comply with, and meet, all criteria for TPS as set forth in the Agreement governing the transportation of shipments requiring a TPS and also defined in the MTMC Freight Rules Publication No. IA (MFTRP No. 1A) and reissues thereto.

f. Carrier agrees to execute a DD Form 4415 (Certificate Pertaining to Foreign Interests) as a precondition to providing any TPS for the DOD. Only one DD Form 4415 must be executed by a carrier regardless of the number or type of TPS provided.

g. All copies of the Signature and Tally Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection (DD Form 626), will be transferred from driver to driver throughout the entire movement of classes A and B explosives shipments. All drivers transporting such shipments must sign the DD Form 1907 and follow the instructions shown on the DD Form 836. Furnishing of the Signature and Tally Record is an integral part of a TPS to be provided by the carrier. Carrier must ensure that each person responsible for the proper handling of the shipment signs the Signature and Tally Record at the time he/she assumes responsibility. All drivers transporting such shipment must sign the Signature and Tally Record. When used with Dual Driver (DD), both drivers are required to sign the Signature and Tally Record upon original receipt.

8. Driver Requirements.

a. Carrier agrees to comply with all driver requirements contained in paragraph 7 of the Agreement Between the military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

b. Carrier agrees that newly employed drivers will not be allowed to transport class A and B explosives until after background checks required by 49 CFR 391.23 have been successfully completed.

c. Carrier agrees that no driver disqualified under 49 CFR 391.15 will be permitted to operate any vehicle transporting class A and B explosives.

d. The driver of a motor vehicle transporting class A and B explosives must undergo a physical examination and must be certified physically qualified to drive a commercial motor vehicle in accordance with 49 CFR part 391.43. Carrier agrees to have driver screening programs in place to ensure that the provisions of this paragraph are met.

9. Equipment. Carrier agrees to comply with all equipment requirements contained in paragraph 8 of the Agreement Between the Military Traffic Management Command and Motor Common carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

10. Shipment.

a. Carrier agrees to ensure that the shipper-provided placards are displayed in accordance with the general requirements found in 49 CFR 172.504.

b. Carrier is responsible for shipments from origin to ultimate destination. The carrier also remains responsible for shipments placed in a safe haven or refuge location. Carrier agrees not to disclose any information to unauthorized persons concerning the nature, kind, quantity, destination, consignee or routing of any protected commodities shipment tendered to it. The carrier further agrees to provide, at no additional cost to the Government, the status of any shipment within 24 hours after an inquiry is made.

c. Carrier agrees to comply with all shipment requirements contained in paragraph 9 of the Agreement Between the military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

d. When requested by the shipper for reasons of security, carrier agrees to cover the shipment with a carrier-provided tarpaulin. Protective tarping is an accessorial service.

11. Documentation.

a. The carrier agrees to accept GBLs on which freight charges will be paid by the Government, and bound by all terms stated on the SF1103, Government Bill of Lading.

b. The carrier will comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier agrees to provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carriers.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this Agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.

b. The carrier's rates must be on file with MTMC, HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The carrier must publish all rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

15. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or

disqualified for 6 months or more, it will have to be re-qualified.

16. General Provisions. The carrier must possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with the MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN-FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____

(Typed Name and Title of Carrier Official) verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of _____

(Typed Name of Carrier and MC Number) agree to comply with the terms and conditions contained herein.

Signature of Carrier Official and Title _____

Date _____

Carrier Address _____

Telephone Number _____

24 HR Emergency Number _____

Interstate Operating Authority Certificate Number—MC _____

Intrastate Operating Authority _____

_____ _____

Certificate Number(s) (Include Issuing State—for example _____ _____

_____

PA—$12345)_____ _____ _____

Military Traffic Management Command Acknowledgment/Acceptance

Signature and Title _____

Date Approved: _____

Appendix C to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Hazardous Material Other Than Class A and B Explosives for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____

(Name of Company, Typed or Legibly Printed),

(hereinafter called the carrier), as a prerequisite for approval to transport hazardous materials, (other than Class A & B Explosives), as defined in 49 Code of Federal Regulations (CFR) 172.3. Hazardous commodities in bulk include, but not limited to, such items as gasoline, kerosene, lubricating oil, turbine fuel, diesel fuel and fuel oil, for the account of the DOD and the Military Traffic Management Command (MTMC) (herein called the Government), agrees to comply with all requirements, terms and conditions as set forth in this Agreement. If the carrier wishes to participate in DOD traffic which requires a protective service, the carrier must also be a party to and in full compliance with requirements contained in the Agreement governing shipments which require a Transportation Protective Service (TPS). Noncompliance by the carrier with any provision of this or any other Agreement it is a party to will be sufficient grounds for immediate revocation of the carrier's approval to participate in the movement of hazardous materials. The carrier may also be subject to further action under the carrier Performance Program, governed by MTMC Regulation 15–1, which could result in nationwide disqualification on all DOD freight shipments.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at anytime upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a TPS until it has served DOD in an approved status for 12 continuous months. Prior to being allowed to handle shipments which require a TPS or class A & B explosives, the carrier must first meet any additional requirements in effect at the time.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe, proper, and lawful operation of motor vehicles to include Title 49 Code of Federal Regulations (CFR) 386–397. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations which is not restricted against the handling and transport of hazardous materials as defined in 49 CFR 172.3. Any carrier found to be, involved in brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in Title 49 of the Federal Code of Federal Regulations (CFR) 5387.9 Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with Sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies.

b. The carrier agrees to also file with MTMC proof of:

(1) Interstate Public Liability. Carrier will ensure that its insurance company(s) file with MTMC proof of public liability and property damage insurance for the transportation of hazardous commodities in

the minimum amounts prescribed in 49 CFR 387.9.

(2) Intrastate Public Liability. Carrier will ensure that its insurance company(s) file with MTMC proof of insurance which meets the state requirements for public liability and property damage for the transportation of hazardous materials.

(3) Cargo Insurance. Carrier will also file with MTMC proof of $150,000 per incident minimum cargo insurance for loss and damage of Government freight other than bulk fuel which is set at $25,000.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect of until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. Changes, renewals, and cancellation notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD reprocurement costs as a result of carrier default, abandoned shipments, or bankruptcy by the carrier. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until cancelled. POC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond shall be determined as follows.

(1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a performance bond in the amount of 2.5% of their total DOD revenue, taken from the Freight Information Systems Report (FINS), for the previous 12 months, not to exceed $100,000 and not less than $25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed at both origins and destinations serve

1 state (including intrastate)—$25,000;
2 to 3 states—$50,000; and
4 or more states—$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent of revenue.

c. Bulk fuel carriers will be required to submit a $25,000 Performance Bond.

d. Local drayage and commercial zone carriers are exempt from the bond requirement.

e. If carrier has secured the Performance Bond as a result of qualifying under the general commodity program or class A and B program, no additional Performance Bond is required.

7. Safety and Security.

a. A "satisfactory" safety rating will be maintained with the Federal Highway Administration, Department of Transportation and/or with the appropriate state agency or commission in the case of intrastate. Safety ratings which are "unsatisfactory," "conditional", "insufficient information", or "not rated" will not be accepted. The carrier further agrees to permit unannounced safety and security inspections of its facilities, terminals, equipment and operational procedures by DOD civilian or military personnel, or DOD contract employees. These inspections may include transit surveillance of vehicles and drivers. The carrier agrees to provide evidence that fulfills the requirement set forth in 49 Code of Federal Regulation Parts 390 through 396. Inspection of carrier equipment, drivers' records, route-plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Carrier agrees to furnish, on request, driver's social security Numbers to verify their security clearances and allow for inspection of carrier/driver records.

b. Carrier agrees to have in place a company-wide safety and security management program which includes specific on-going safety and security programs for each terminal location. Individual terminal programs will encompass planning and execution for safety and security in routine operations, to include emergency responders and planners, and with the local police and fire authority. Carrier programs will incorporate compliance with all applicable Federal, State, and local statutes or requirements. Conformance with other safety standards, such as NFPA Code 498, will be accomplished as much as possible, with compensating measures for deviations. Safety and security programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier agrees to notify, within a reasonable period of time, the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Carrier also agrees to notify the consignor and the consignee named on the GBL immediately by telephone of an accident, incident or significant delay. The information to be reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence and other pertinent accident details. Carrier agrees to notify the MTMC area command annotated on the GBL and the Defense Logistics Agency (DLA), within one half (1/2) hour after notification of the consignor and consignee, and provide status updates as required. The MTMC HOTLINE telephone numbers are as follows:

—Eastern Area: 800–524–0331; New Jersey only: 800–624–1361
—Western Area: 800–331–1822; California only: 800–348–4639
—DLA: 800–851–8061

When requested, carrier agrees to furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

d. Carrier agrees to provide the driver(s) transporting hazardous commodities an emergency telephone number (indicated on the last page of this Agreement) which, when used at any time (24 hours a day, 7 days a week), will reach a qualified carrier representative who will be able to provide information and assistance. MTMC will be immediately notified if this telephone number should be changed.

e. Carriers approved to transport DOD hazardous materials requiring TPS agree that no driver disqualified under 49 CFR 391.15 will be permitted to operate any vehicle transporting such commodities.

f. Carriers approved to transport DOD hazardous materials agree to ensure that drivers of a motor vehicle transporting such commodities must undergo a physical examination and must be certified physically qualified to drive a commercial motor vehicle in accordance with 49 CFR 391.43. Carrier also agrees to have driver screening programs in place to ensure that the provisions of this paragraph are met.

8. Drivers Requirements.

a. Carrier agrees to ensure that the driver(s) employed to transport hazardous materials have a minimum of one year of general commodities driving experience (using similar equipment) prior to transporting hazardous commodities, and that its drivers are trained and competent in the movement of these commodities to include an understanding of the following: 49 CFR part 397; instructions on procedures to be followed in the event of a delay; nature of the materials being transported; precautions to be taken in an emergency; written route plans; and shipping paper entries. The carrier will certify that the driver is trained and competent in the movement of hazardous commodities, and proof of certification must be carried in the vehicle of the unit transporting these commodities.

b. The carrier agrees to further ensure that driver(s) carry a valid commercial motor vehicle operator's license issued by his/her state of domicile, a certificate of physical examination issued during the preceding 24 months, and an employee record card, or similar document, one of which must contain the driver's photograph. The driver(s) must be 21 years of age. The driver(s) must carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading (GBL)

9. Equipment.

a. Trip-leased equipment, with or without drivers, will not be used to transport

hazardous materials for the account of the DOD. Exceptions for the use of intermittent or occasional drivers in 49 CFR 391.63 will not apply to any DOD movement. Any equipment, with or without drivers, leased to augment carrier-owned equipment will be on a not less than 90-day noncancellable basis.

b. A copy of the equipment lease agreement must be carried in the vehicle of the unit transporting these commodities. (Facsimile, Xerox, or otherwise reproduced copies, are not acceptable.) Interchange agreements which originate at origin will be considered trip leases and will not be accepted. The lease must be complete at time of pick up and should require no further information to be completed by the driver. Failure to comply with this requirement or attempted abuse of this requirement could result in the carrier's participation in this type traffic to be immediately revoked and up to a nationwide disqualification on all DOD freight shipments should further action under the Carrier Performance Program be deemed appropriate.

c. Carriers approved to transport DOD hazardous materials requiring TPS agree to comply with all equipment requirements contained in paragraph 8 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

10. Shipment.

a. Carrier is responsible for shipments from origin to ultimate destination. The carrier also remains responsible for shipments placed in a safe haven or refuge location. Carrier agrees not to disclose any information to unauthorized persons concerning the nature, kind, quantity, destination, consignee or routing of any hazardous material shipment tendered to it. The carrier further agrees to provide, at no additional cost to the 71 Government, the status of any shipment within 24 hours after an inquiry is made.

b. Carrier agrees to ensure that shipper-provided placards are displayed in accordance with the general requirements found in 49 CFR 172.504 for the transportation of hazardous materials. The carrier further agrees to conform to the requirements found in 49 CFR 177.825 pertaining to the transportation of radioactive materials on designated routes of radioactive materials for which placarding is required. Carrier also agrees to route all other shipments of hazardous commodities in accordance with the provisions of 49 CFR 397.9.

c. When requested by the shipper for reasons of security, carrier agrees to cover the shipment with a carrier-provided tarpaulin. Protective tarping is an accessorial service.

d. Carriers approved to transport DOD hazardous materials requiring TPS agree to comply with all shipment requirements contained in paragraph 9 of the Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense.

11. Documentation.

a. The carrier agrees to accept GBLs and CBLs on which 73 freight charges will be paid by the Government, and bound by all terms stated on the SF1103, Government Bill of Lading, regardless of the type of bill of lading tendered.

b. The carrier agrees to comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal or the installation prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier will provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to-do so is grounds to discontinue use of the carriers.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the standard Tender of Freight services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or nonuse until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.

b. The carrier's rates must be on file with MTMC, HQ, Eastern Area, ATTN: MTE–IN, Bayonne, New Jersey 07002–5302. The agent must publish all rates, charges, and accessorial services on a "Department of Defense standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

15. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of jading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be requalified.

16. General Provisions. The carrier agrees to possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocations of carriers approval and their participation in movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN–FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____

(Typed Name and Title of Carrier Official),

verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of _____

(Typed Name of Carrier and MC Number)

agree to comply with the terms and conditions contained herein.

Signature of Carrier Official and Title _____

Date _____

Carrier Address _____

Telephone Number _____ _____

24 Hr Emergency Number _____ _____

Interstate Operating Authority Certificate Number—MC _____

Intrastate Operating Authority _____ Certificate Number(s) (Include Issuing State—for example _____ _____ PAI—#12345) _____ _____

Military Traffic Management Command Acknowledgment/Acceptance Signature and Title _____

Date Approved: _____

Appendix D to Part 619—Agreement Between the Military Traffic Management Command and Motor Common Carriers Governing the Transportation of Shipments Which Require a Transportation Protective Service (TPS) for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____

(Name of Company, Typed or Legibly Printed),

(hereinafter called the carrier), as a prerequisite for approval to transport classified materials, protected and sensitive material, weapons and ammunition, munitions or other hazardous material as defined in 49 Code of Federal Regulations (CFR) 172.3 which are designated sensitive by the U. S. Department of Defense (DOD), (hereinafter referred to as "protected commodities"), which require a Transportation Protective Service (TPS) for the account of the DOD and the Military Traffic Management Command (MTMC) (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. Carrier further acknowledges that it is in full compliance with the basic qualification standards either for general commodities, hazardous materials (other than class A and B explosives), or class A and B ammunition and explosives, has executed the appropriate MTMC agreement, and is required to maintain and will maintain in a current status, all basic requirements, in addition to requirements established by this Agreement. Noncompliance by the carrier with any provision of this Agreement will be sufficient grounds for immediate revocation of the carrier's approval to participate in the movement of protected commodities which require a TPS. The carrier may also be subject to further action under the Carrier Performance Program as set forth in MTMC Regulation 15–1, Transportation and Travel, Procedure for Disqualifying and Placing Carriers in Non-Use, which could result in nationwide disqualification on all DOD freight shipments.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. Carrier agrees to execute a DD Form 4415 (Certificate Pertaining to Foreign Interests) as a precondition to providing any TPS for the DOD. Only one DD Form 4415 must be executed by a carrier regardless of the number or type of TPS provided.

e. Carrier agrees to allow a National Agency Check (NAC) on all management and operational personnel involved in the performance of Dual Driver Protective Service with National Agency Checks (DN). The results of the NAC must be favorable as determined by MTMC under DOD criteria as a precondition to the carrier providing Satellite Monitoring (SM) with DN. Management personnel include: owners (including partnership where applicable), principal deputies, board members (where applicable), and company managers responsible for liaison with DOD operations. Operational personnel include: drivers, handlers, and terminal and security personnel hired permanently or temporarily by the company to protect the DOD cargo under SM with DN.

f. Carrier providing Protective Security Service (PS) and/or Security Escort Vehicle Service (SE) accompanying a PS shipment must have been cleared by the Defense Investigative Service (DIS) under the DOD Industrial Security Program.

3. Lawful Performance. Carrier agrees it will comply with all rules, regulations and requirements set forth in any and all agreements which may be applicable to the shipment/commodity transported requiring a TPS.

4. Agreements. When applicable, carrier agrees to execute a separate agreement with MTMC governing the transportation of hazardous materials, ammunition and explosives, or Class A and B explosives, as defined in 49 CFR part 173.

5. Security.

a. Carrier agrees to designate a "qualified carrier representative" when handling shipments requiring a TPS. This representative will be employed by the carrier, or the terminal involved, aware of the sensitivity of the shipment, knowledgeable of the safety, security and emergency procedures to be followed, authorized and capable of moving a transportation conveyance and, when providing PS, cleared by DIS.

b. Carrier agrees to ensure that trailers containing protected commodities are always connected to tractors during shipment-except when stopped at a DOD activity for loading or unloading, a carrier's terminal for servicing, a carrier-designated point where driver(s) or qualified carrier representative maintains continuous surveillance over the shipment, or a qualified safe haven-or refuge location.

c. When requested by the shipper for reasons of security, carrier agrees to cover the shipment with a carrier-provided tarpaulin. Protective tarping for security reasons is an accessorial service.

6. Safety.

a. A "satisfactory" safety rating will be maintained with the Federal Highway Administration, Department of Transportation and/or with the appropriate state agency or commission in the case of intrastate transport. Safety ratings which are "unsatisfactory," "conditional," "insufficient information," or "not rated" will not be accepted.

b. Carrier agrees to notify the consignor and the consignee named on the GBL immediately by telephone of an accident, incident or significant delay. The information to be reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence and other pertinent accident details. Carrier will notify the MTMC area command annotated on the GBL within one half (1/2) hour after notification of the consignor and consignee, and provide status updates as required. The MTMC HOTLINE telephone numbers are as follows:

—Eastern Area: 800–524–0331; New Jersey only: 800–624–1361

—Western Area: 800–331–1822; California only: 800–348–4639 When requested, carrier will furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

c. Carrier agrees to provide the driver(s) transporting protected commodities an emergency telephone number (indicated on the last page of this Agreement) which, when used at any time (24 hours a day, 7 days a week), will reach a qualified carrier representative who will be able to provide information and assistance. MTMC will be immediately notified if this telephone number should be changed. Carrier also agrees to equip the vehicle transporting the material with communications equipment (CB radio, mobile phone, etc.) capable of

being used to obtain assistance in an emergency.

7. Driver Requirements. a. Carrier agrees to ensure that the driver(s) employed to transport protected commodities requiring a TPS be 21 years of age and have a minimum of one year of experience driving tractor/trailer equipment under various driving conditions.

b. Carrier agrees to ensure that the driver(s) employed to transport protected commodities requiring a TPS carry a valid motor vehicle operator's license issued by his/her state of domicile, a certificate of physical examination issued during the preceding 24 months, and an employee record card, or similar document, one of which must contain the driver's photograph.

c. Carrier agrees to ensure driver(s) will carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading (GBL). The driver identification requirements for those carriers cleared to handle SECRET shipments will be in accordance with Paragraph 5–410 of the DOD Industrial Security Manual (DOD 5220.22–M) and Paragraph 11a(10) of the Carrier Supplement to the DOD Industrial Security Manual (DOD 5220.22–C).

8. Equipment. a.Trip-leased equipment, with or without drivers, will not be used to transport protected commodities for the account of the DOD. Exceptions for the use of intermittent or occasional drivers in 49 CFR 391.63 will not apply to any DOD movement. Any equipment, with or without drivers, leased to augment carrier-owned equipment will be on a not less than 90-day noncancellable basis.

b. A copy of the equipment lease agreement must be carried in the vehicle of the unit transporting these commodities. (Facsimile, Xerox, or otherwise reproduced copies, are not acceptable.) Interchange agreements which originate at origin will not be accepted. The lease must be complete at time of pick up and should require no further information to be completed by the driver. Failure to comply with this requirement or attempted abuse of this requirement could result in the carrier's participation in this type traffic to be immediately revoked and up to nationwide disqualification on all DOD freight shipments should further action under the Carrier Performance Program be deemed appropriate.

9. Shipment. a. Carrier agrees to provide the appropriate TPS when requested by a DOD shipper. Carrier further agrees to perform the TPS as defined in the applicable Military Traffic Management Command Freight Traffic Rules Publication (MFTRP No. 1A) or reissues thereto. A TPS is any one of the following services or any combination thereof:

—DOD Constant Surveillance Service (CS)
—Dual Driver Protective Service (DD)
—Dual Driver w/National Agency Check Protective Service (DN)
—Motor Surveillance Service (MS)
—Protective Security Service (PS)
—DTTS Satellite Motor Surveillance Service (SM)
—Security Escort Vehicle Service (SE)

b. Carrier agrees that all shipments of protected commodities D14 and/or PS will only be moved in direct single line-haul service. Transportation involving an interchange service may be used, however, if the shipment is under DD or CS.

c. Carrier agrees to provide exclusive use of vehicle or dromedary service for all shipments requiring SM with DN and/or PS. The motor vehicle or dromedary furnished will be devoted exclusively to the transportation of the tendered shipment without seal or lock breakage, and without transfer of jading for the convenience of the carrier.

d. Carrier agrees to maintain an Signature and Tally Record (ST) (DD Form 1907) for all shipments of protected commodities requiring a TPS. Furnishing of the ST is an integral part of a TPS to be provided by the carrier. Carrier agrees to ensure that each person responsible for the proper handling of the shipment signs the ST at the time he/she assumes responsibility. All drivers transporting such shipment must sign the ST. When used with DD, both drivers are required to sign the ST upon original receipt.

e. Carrier agrees to be responsible for shipments from origin to ultimate destination. The carrier also remains responsible for shipments placed in a safe haven or refuge location. Carrier agrees not to disclose any information to unauthorized persons concerning the nature, kind, quantity, destination, consignee or routing of any protected commodities shipment tendered to it. The carrier further agrees to provide, at no additional cost to the Government, the status of any shipment within 24 hours after an inquiry is made.

10. Carrier Performance. Carrier agrees that carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/ tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be requalified.

11. Terms of the Agreement. a. The terms of this Agreement will be applicable to each shipment.

b. This agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

12. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

13. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, ATTN: MTIN-FF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

14. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, _____(Typed Name and Title of Carrier Official), verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of _____ (Typed Name of Carrier and MC Number) agree to comply with the terms and conditions contained herein.

Signature of Carrier Official and Title _____

_____

Date _____
Carrier Address _____
Telephone Number _____
24 Hr Emergency Number _____
Interstate Operating Authority Certificate Number-MC _____
Intrastate Operating Authority Certificate Number(s) (Include) _____

Issuing State—for example—PA—#12345)

Military Traffic Management Command Acknowledgment/Acceptance Signature and Title _____
Date Approved: _____

Appendix E to Part 619—Agreement Between the Military Traffic Management Command Surface Freight Forwarders Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____, (Name of Forwarder, Typed or Legibly Printed) hereinafter referred to as the forwarder, as a prerequisite for consideration for participation in the transport of general commodities as an exempt surface freight forwarder, for the U.S. Department of Defense (DOD), agree to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of the forwarder's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, a surface freight forwarder is defined as a person or company who acts as a common carrier, that is, a carrier which holds itself out to the general public to provide transportation of property for compensation, assembles and consolidates less-than-truckload freight, as defined in the Instruction for preparation of Department of Defense Standard Tender of Freight Services, MT Form 364–4 (and revisions thereto), Part II, and uses for the whole or any part of the line-haul transportation the services of regulated motor or rail carriers, breaks bulk, and delivers the less-than truckload freight holding out in its own name and under its own responsibility a through transportation service from point of receipt to destination. Forwarders may participate in truckload movements under extraordinary circumstances, but not on a regular basis nor as their main business.

2. Approval and Revocation. a. Forwarder understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include personnel, facilities, carriers with adequate equipment, and finances to handle the traffic anticipated by DOD/MTMC under the forwarder's proposed scope of operations in accordance with the service requirements of the shipper.

b. The forwarder understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The forwarder further understands that it will not be authorized to participate in any traffic which requires a Transportation Protective Service.

c. In addition to the initial evaluation, the forwarder agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The forwarder agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance. a. Forwarder agrees to comply with all applicable federal, state, municipal and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government.

b. The forwarder agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president/vice president's name, operating authority number, corporate office address, telephone number and a designated 24-hour on-call point of contact in the event of an accident or emergency situation. MTMC can direct forwarder not to use specific carriers in the movement of DOD freight shipments.

c. The forwarder further agrees and certifies that it will not use any carrier which has been debarred, suspended by the Government or which has been placed in non-use or disqualified by MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. Operations. The forwarder agrees and certifies that it is operating as a forwarder as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed, Articles of Incorporation, listing all the officers of the corporation are attached and certified to be true, correct and current.

5. Insurance. a. The forwarder agrees to maintain a minimum of $1,000,000 public liability insurance and $250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be on file with MTMC, ATTN: MTIN–FF, prior to any performance of service by the forwarder.

b. The insurance, carried in the name of the forwarder, will be in force at all times while this Agreement is in effect or until such time as the forwarder cancels all tenders. The forwarder agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTIN–FF, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate.

c. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. self-Insurance will not be accepted.

6. Performance Bond. Forwarder agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the forwarder's obligation. It will cover default, abandoned shipments, bankruptcy and reprocurement costs. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal service, Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by MTMC and will be continuous until cancelled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application. Upon MTMC approval forwarder agrees to submit the performance bond before the Tender of Service will be accepted.

7. Safety. a. The forwarder agrees not to use any carrier that has an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the Government Bills of Lading unless consignee or consignor directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. The forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movements of any shipment tendered to it.

d. The forwarder agrees to notify within 24 hours, the consignor and consignee named by the Government bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/ destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent details. Upon request, the forwarder agrees to ensure MTMC is furnished a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

e. The forwarder agrees to have in place a company-wide safety management program. Forwarder safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The forwarder further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. Reserved.

9. Equipment. The forwarder agrees to ensure equipment is spotted for loading at the time and place requested. The Government reserves the right to reject the utilization of any equipment placed for loading by the forwarder if it does not, upon inspection, meet specifications and requirements for the particular shipment involved (size, cube, cleanliness, mechanical condition, etc.).

10. Shipment. The Forwarder agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation. a. Forwarder agrees to accept Government Bills of Lading on which freight charges will be paid by the

Government, and will be bound by all terms and conditions stated thereon.

b. The forwarder agrees to comply with the provisions of documentation prelodging in effect at Military Ocean Terminals which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to arrival of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignees to furnish certain data at least 24-hours in advance of cargo arrival at the terminal.

12. Loss & Damage. The forwarder agrees to be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. Forwarder agrees to settle promptly, claims for loss or damage. The forwarder also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender of Service. a. The forwarder agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Forwarder understands that MTMC will reject tenders not in compliance with these instructions.

b. Forwarder agrees to publish a street address where the company office is located in lieu of a post office box number. The Military Traffic Management Command must be advised of any change in address. Failure to do so is grounds to discontinue the use of the forwarder.

c. Forwarder understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing forwarder will be advised when tenders are removed under these circumstances.

14. Rates. a. Forwarder agrees to transport Government shipments at its lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the Government bill of lading.

b. The forwarder agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with MTMC HQ, Eastern Area, ATTN: MTE-IN, Bayonne, New Jersey 07002–5302. The forwarder must publish all rates, charges, and accessorial services on a "Department of Defense standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The forwarder agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the forwarder.

d. The Government reserves the right to pursue administrative claims directly with forwarders under the Interstate Commerce Act or other authorities.

15. Carrier Performance. a. Forwarder agrees that its performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The forwarder fully understands its obligation to remain current in its knowledge of service standards. The forwarder accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR– . If a forwarder is removed or disqualified for 6 months or more, it will have to be re-qualified.

b. Failure or nonperformance by the forwarder with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the forwarder for unsatisfactory service until such time as the forwarder establishes to the satisfaction of DOD that the operating or other deficiency(s) has been corrected.

16. General Provisions. That the forwarder must have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the forwarder. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement. a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by the Military Traffic Management Command, until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The forwarder agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and forwarder name. Forwarder understands that failure to notify MTMC shall be grounds for immediate revocation of the forwarder's approval and their participation in the movement of DOD freight.

18. Additional specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquires. Inquiries may be referred to Commander, Military Traffic Management Command, Attention: MTIN-FF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Forwarder Acknowledgment and Acceptance. a. The undersigned forwarder official, by affixing signature hereto, states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Any information found to be falsely represented in the Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the forwarder, the affiliated companies, division and entities.

Forwarder's Acknowledgment/Acceptance

I, _____(Typed Name and Title or Forwarder Official) verify under penalty of perjury under the laws of the United States of America, that the information contained in the forwarder qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information, know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of _____of, _____ agree (Type Name of Forwarder) agree to comply with the terms and conditions contained herein.

Signature of Forwarder Official and Title _____ _____

_____

Date _____

Forwarder Address _____

Telephone Number (_____)

24 Hr Emergency Number (_____)

Military Traffic Management Command Acknowledgement/Acceptance Signature and Title _____

Date Approved: _____

Appendix F—Agreement Between the Military Management Traffic Command and Shipper Agents Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____, (Name of Shipper Agent, Typed or Legibly Printed), a shipper agent, hereinafter referred to as the agent, as a prerequisite for consideration for participation in the transport of general commodities as an exempt shipper agent, for the U.S. Department of Defense (DOD), agree to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this

Agreement will be sufficient grounds for immediate revocation of the agent's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, an exempt shipper agent is defined as a person or company who for compensation provides a service by acting as an intermodal intermediary handling truck or container load shipments. The agent also handles drayage on both ends of the movement and other services performed in a terminal area. The agent may not act in its capacity as a broker when charged with the responsibility of moving DOD freight shipments.

2. Approval and Revocation. a. Agent understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resource include personnel, facilities, carriers with adequate equipment, and finances to handle the traffic anticipated by DOD/MTMC under the agent's proposed scope of operations in accordance with the service requirements of the shipper.

b. The agent understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The agent further understands that it will not be authorized to participate in any traffic which requires a Transportation Protective Service.

c. In addition to the initial evaluation, the agent agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The agent agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance. a. The agent agrees to comply with all applicable federal, state, municipal and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government.

b. The agent agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president/vice president's name, operating authority number, corporate office address, telephone number and a designated 24-hour on-call point of contact in the event of an accident or emergency situation. MTMC can direct agent not to use specific carriers in the movement of DOD freight shipments.

c. The agent further agrees and certifies that it will not use any carrier which has been debarred, suspended by the Government or which has been placed in non-use or disqualified by MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. Operations. The agent agrees and certifies that it is operating as a shipper agent as defined herein. If incorporated, evidence of incorporation, beeding the official seal of the state in which filed, Articles of Incorporation, listing all the officers of the corporation are attached and certified to be true, correct and current.

5. Insurance. a. The agent agrees to maintain a minimum of $1,000,000 public liability insurance and $250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be on file with MTMC, ATTN: MTIN–FF, prior to any performance of service by the agent.

b. The insurance must be carried in the name of the agent and will be in force at all times while this Agreement is in effect or until such time as the agent cancels all tenders. The agent agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. Changes, renewal and cancellation notices must also be sent to MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF. The Government will be given 30 days notice prior to any cancellation or material changes in insurance coverages.

c. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service. Treasury Department Circular 570, Listing of Surety Companies. Self-Insurance will not be accepted.

6. Performance Bond. Agent agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the agent's obligation. It will cover default, abandoned shipments, bankruptcy and re-procurement costs. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by MTMC and will be Continuous until cancelled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application. Upon MTMC approval agent will submit the Performance Bond before the Tender of Service will be accepted.

7. Safety. a. The agent agrees not to use any carrier that has an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the Government Bills of Lading unless consignee or consignor directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. The agent agrees not to divulge any information to unauthorized persons concerning the nature and movements of any shipment tendered to it.

d. The agent agrees to notify the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent details. Upon request, the agent agrees to ensure MTMC is furnished a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

e. The agent agrees to have in place a company-wide safety Management program. Agent safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The agent further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. Reserved.

9. Equipment. The agent agrees to ensure equipment is spotted or loading at the time and place requested. The Government reserves the right to reject the utilization of any equipment placed for loading by the agent if it does not, upon inspection, meet specifications and requirements for the particular shipment involved (size, cube, cleanliness, mechanical condition, etc.).

10. Shipment. The agent agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the agent agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation. a. Agent agrees to accept Government bills of lading on which freight charges will be paid by the Government, and will be bound by all terms and conditions stated thereon.

b. The agent agrees to comply with the provisions of documentation prelodging in effect at Military Ocean Terminals which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to arrival of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignees to furnish certain data at least 24-hours in advance of cargo arrival at the terminal.

12. Loss & Damage. The agent agrees to be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. Agent agrees to settle promptly, claims for loss or damage. The agent also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender. a. The agent agrees to comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. The agent understands that MTMC will reject tenders not in compliance with these instructions.

b. Agent agrees to publish a street address where the company office is located in lieu of a post office box number. The Military

Traffic Management Command must be advised of any change in address. Failure to do so is grounds to discontinue the use of the agent.

c. Agent understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication MFTRP No. 1A, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing agent will be advised when tenders are removed under these circumstances.

14. Rates. a. Agent agrees to transport Government shipments at its lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the Government bill of lading.

b. The agent agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with MTMC, HQ, Eastern Area, ATTN: MTE-IN, Bayonne, New Jersey 07002–5302. The agent must publish all rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services", MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The agent agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the agent.

d. The Government reserves the right to pursue administrative claims directly with agents under the Interstate Commerce Act or other authorities.

15. Carrier Performance. a. Agent agrees that its performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The agent fully understands its obligation to remain current in its knowledge of service standards. The agent accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the agent for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15–1, and Army Regulation 55–355, DTMR. If an agent is removed or disqualified for 6 months or more, it will have to be re-qualified.

b. Failure or nonperformance by the agent with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the agent for unsatisfactory service until such time as the agent establishes to the satisfaction of DOD that the operating or other deficiency(s) has been corrected.

16. General Provisions. That the agent must agree to have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the agent. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement. a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by the Military Traffic Management Command, until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries may be referred to Commander, Military Traffic Management Command, Attention: MTIN-FF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Agent Acknowledgment and Acceptance. a. The undersigned official, by affixing signature hereto, states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Any information found to be falsely represented in the Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the agent, the affiliated companies, division and entities.

Agent's Acknowledgment/Acceptance

I, _____, (Typed Name and Title of Agent Official), verify under penalty of perjury under the laws of the United States of America, that the information contained in the agent qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further I understand the requirements of this Agreement and on behalf of _____, (Typed Name of Agent), agree to comply with the terms and conditions contained herein.

Signature of Agent Official and Title _____

_____

Date _____

Address _____

Telephone Number (_____)

24 Hr Emergency Number (_____)

Military Traffic Management Command Acknowledgment/Acceptance Signature and Title _____

Date Approved: _____

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–19933 Filed 8–19–93; 8:45 am]

BILLING CODE 3710-08-P

federal register

Friday
August 20, 1993

Part III

Department of Education

34 CFR Part 5b
Privacy Act of 1974; Implementation; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 5b

RIN 1801–AA06

Privacy Act Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations implementing the Privacy Act of 1974 (the Act), 5 U.S.C. 552a. These amendments are needed to modify existing Department regulations (34 CFR 5b.11) exempting the system of records known as the Investigative Files of the Inspector General ED/OIG (System No. 18–10–0001) from certain provisions of the Act and corresponding departmental regulations.

EFFECTIVE DATE: These regulations take effect August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne G. Van Riper, U.S. Department of Education, 400 Maryland Avenue SW, room 4115 Switzer Building, Washington, DC 20202–1510. Telephone: (202) 205–8762. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations add exemptions authorized by the Act, 5 U.S.C. 552a(j)(2), to those that are currently in place for the ED/OIG Investigative Files system of records under the "(j)(2)" exemption. In addition, the regulations add exemptions authorized by the Act, 5 U.S.C. 552a(k)(2), for those investigatory materials in the system that may be deemed to relate primarily to civil and administrative law enforcement (the "(k)(2)" exemptions).

On December 16, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for the Privacy Act Regulations in the **Federal Register** (57 FR 59860).

As required by the Privacy Act, the Secretary includes the reasons why the exemptions are being adopted for this system of records as follows:

A. Exemptions Pursuant to (j)(2)

The Secretary has determined that the OIG Investigative Files should be exempt from the following provisions of the Privacy Act and corresponding departmental regulations, in addition to the exemptions already in place. These exemptions are necessary and appropriate to maintain the integrity and confidentiality of criminal investigations.

1. Expansion of the (j)(2) Exemption

Expansion of the (j)(2) exemption to cover the following Privacy Act provisions is being proposed for the following reasons:

(a) 5 U.S.C. 552a(c)(4), *duty to inform outside parties of correction of and notation of dispute about information in system in accordance with subsection (d) of the Privacy Act:* Since this system of records is already exempted from the access provisions of subsection (d) of the Privacy Act, this section is not properly applicable.

(b) 5 U.S.C. 552a(e)(1), *duty to maintain in agency records only "relevant and necessary" information about an individual:* This provision is inappropriate for criminal investigations, because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (e.g., the fraudulent use of Social Security Numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(c) 5 U.S.C. 552a(e)(2), *collection of information from the subject individual:* The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in criminal investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. Often it is necessary to conduct an investigation so that the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thereby thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also in some cases preclude an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with the evidence or information.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard, and it is impossible to adequately define the term so that individual OIG investigators can consistently apply it to the many fact patterns presented in OIG investigations.

(d) 5 U.S.C. 552a(e)(3), *Privacy Act notice in the collection of information from individuals; deletion of inappropriate qualifying language:* As the regulations currently read, OIG investigators are exempt from giving notice (containing the authority for information collection, principal purpose, routine uses, and effect of refusal to provide information) to those from whom it collects information in the conduct of criminal investigations, but only "to the extent these requirements would prejudice the conduct of the investigation." Thus, the Department's regulations already recognize that as a general rule this exemption is necessary and appropriate for OIG investigative files.

It is ill-advised and impractical to have regulatory language that could be read as requiring investigative personnel to make a case-by-case determination as to whether in fact giving a Privacy Act notice will have a prejudicial effect on the investigation each time they interview a witness or collect documents. This is a determination that cannot always be made accurately in advance of an interview or request for documents, and the Privacy Act does not require such an impractical case-by-case assessment for the exemption to apply.

(e) 5 U.S.C. 552a(e)(4)(I), *duty to publish notice of the categories of sources of records in the system:* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(f) 5 U.S.C. 552a(e)(5), *duty to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness:* Much the same rationale is

applicable to this proposed exemption as that set out previously in item (b) (duty to maintain in agency records only "relevant and necessary" information about an individual). While the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in a criminal investigation to determine with certainty that all the information collected is accurate, relevant, timely and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination by OIG to refer the matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial (if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

(g) 5 U.S.C. 552a(e)(8), *duty to make reasonable efforts to serve notice on an individual when any record on such individual is made available under compulsory legal process when such process becomes a matter of public record:* Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal techniques, procedures, or evidence.

(h) 5 U.S.C. 552a(g), *exemption from civil remedies:* Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the ED/OIG Investigative Files to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file, and a Privacy Act lawsuit could therefore become a ready strategic weapon used to impede OIG investigations. Furthermore, since, under the current and proposed regulations, the system would be exempt from many of the Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

This exemption in no way detracts from OIG's commitment to meet all its legal obligations under the Privacy Act.

B. Exemptions Pursuant to (k)(2)

Since the Inspector General Act requires the OIG to uncover not only fraud but also waste and abuse, some of the records in the ED/OIG Investigative Files pertain to individuals investigated primarily for non-criminal violations for purposes of civil or administrative action or both. Accordingly, the Secretary has determined that the ED/OIG Investigative Files should also be subject to the exemptions authorized under (k)(2) to the extent that the system contains investigatory material compiled primarily for purposes not within the scope of the (j)(2) exemption. The system would thus be exempt from §§ 552a (c)(3), (d) (1) through (4), (e)(1), (e)(4) (G), (H) and (I), and (f), and corresponding Department regulations.

The Secretary proposed to adopt these exemptions for the following reasons:

(a) 5 U.S.C. 552a(c)(3), *duty to grant access to an accounting of disclosures of a record:* Granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure of a record and the identity of the recipient, could alert the subject of a civil investigation to its existence and nature and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This could seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; and lead to suppression, alteration, or destruction of evidence.

(b) 5 U.S.C. 552a(d) (1) through (4) and (f), *duty to provide access to records, make corrections and amendments to records, and to notify individuals of existence of records upon their request:* Providing individuals with access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing the access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy the Government's civil claims growing out of the investigation.

(c) 5 U.S.C. 552a(e)(1), *duty to maintain in agency records only "relevant and necessary information about an individual":* The rationale for this exemption is the same as that stated previously with respect to the criminal law enforcement investigations under (j)(2) of the Privacy Act, and that explanation is incorporated herein by reference.

(d) 5 U.S.C. 552a(e)(4) (G) and (H), *duty to publish notice of notification, access, amendment, and correction procedures for the system of records:* There is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(e) 5 U.S.C. 552a(e)(4) (I), *duty to publish notice of the categories of sources of records in the system:* The rationale for this exemption is the same as that stated previously with respect to criminal investigations under (j)(2) of the Privacy Act, and that explanation is incorporated herein by reference.

Section 5b.11 is being published in its entirety. However, only those paragraphs discussed in this preamble contain substantive changes. Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulations. An analysis of the comments follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: An organization of universities commented that the exemptions, though authorized by the Privacy Act under 5 U.S.C. 552a(j)(2) and (k)(2), should not be adopted because they constitute a "march to secrecy" of government files, and that

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individuals are insufficiently protected against false accusations and inaccurate information, notwithstanding the due process afforded individuals if any Office of Inspector General (OIG) investigation results in a criminal, civil, or administrative proceeding. The commenter also maintained that the Secretary had made no showing of a compelling case for the proposed exemptions.

Discussion: The Secretary disagrees. As more fully explained in the preamble, the system of records at issue contains sensitive material gathered in the course of criminal and civil investigations, and it would seriously interfere with the OIG's mission to combat fraud, waste, and abuse to allow targets of those investigations to have access to those records. This circumstance presents a compelling case for (j)(2) and (k)(2) exemptions for the ED/OIG Investigative Files.

Furthermore, this system of records has been maintained responsibly for over a decade with many of the (j)(2) exemptions authorized by law and, in particular, has been exempt from those Privacy Act requirements relating to access to records and correction or amendment of records. See 34 CFR 5b.11(b) (ii) and (iii). Therefore, while the regulations do expand the number of exemptions applicable to the OIG Investigative Files, it is the Secretary's judgment that they do not increase the potential for the abuses cited by the commenter.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 5b

Administrative practice and procedures, Education Department, Privacy.

Dated: August 16, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends part 5b of title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for Part 5b continues to read as follows:

Authority: 5 U.S.C. 301 and 5 U.S.C. 552a, unless otherwise noted.

2. Section 5b.11 is revised to read as follows:

§ 5b.11 Exempt systems.

(a) *General policy.* The Act permits an agency to exempt certain types of systems of records from some of the Act's requirements. It is the policy of the Department to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted under (j)(2).* The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) system of records from the following provisions of 5 U.S.C. 552a and this part:

(1) 5 U.S.C. 552a(c)(3) and § 5b.9(a)(1) and (c)(3) of this part, regarding access to an accounting of disclosures of a record.

(2) 5 U.S.C. 552a(c)(4) and §§ 5b.7(c) and 5b.8(b) of this part, regarding notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(3) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification or access to records and correction or amendment of records.

(4) 5 U.S.C. 552a(e)(1) and § 5b.4(a)(1) of this part, regarding maintaining only relevant and necessary information.

(5) 5 U.S.C. 552a(e)(2) and § 5b.4(a)(2) of this part, regarding collection of information from the subject individual.

(6) 5 U.S.C. 552a(e)(3) and § 5b.4(a)(3) of this part, regarding notice to individuals asked to provide information to the Department.

(7) 5 U.S.C. 552a(e)(4) (G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(8) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(9) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(10) 5 U.S.C. 552a(g), regarding civil remedies for violation of the Privacy Act.

(c) *Specific systems of records exempted under (k)(2).* (1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) from the following provisions of 5 U.S.C. 552a and this part to the extent that the system of records consists of investigatory material compiled for law enforcement purposes:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(1) and § 5b.4(a)(1) of this part, regarding the requirement to maintain only relevant and necessary information.

(iv) 5 U.S.C. 552a(e)(4) (G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(2) The Department exempts the Complaint Files and Log, Office for Civil Rights (18–08–0002) from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4) (G) and (H), regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

(d) *Specific systems of records exempted under (k)(5).* (1) The Department exempts the Investigatory Material Compiled for Personnel Security and Suitability Purposes (18–10–0002) system of records from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U.S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4) (G) and (H), regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

(2) The Department exempts the Suitability for Employment Records (18–11–0020) from the following provisions of 5 U.S.C. 552a and this part:

(i) 5 U S.C. 552a(c)(3) and § 5b.9(c)(3) of this part, regarding access to an accounting of disclosures of records.

(ii) 5 U.S.C. 552a(d) (1) through (4) and (f) and §§ 5b.5(a)(1) and (c), 5b.7, and 5b.8 of this part, regarding notification of and access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4) (G) and (H), regarding inclusion of information in the system notice about procedures for notification, access, and correction of records.

(e) *Basis for exemptions taken under (j)(2), (k)(2), and (k)(5).* The reason the Department took each exemption described in this section is stated in the preamble for the final rulemaking document under which the exemption was promulgated. These final rulemaking documents were published in the **Federal Register** and may be obtained from the Department of Education by mailing a request to the following address: U.S. Department of Education, Privacy Act Officer, Information Management Branch, Washington, DC 20202–4753.

(f) *Notification of or access to records in exempt systems of records.* (1) If a system of records is exempt under this section, an individual may nonetheless request notification of or access to a record in that system. An individual shall make requests for notification of or access to a record in an exempt system or records in accordance with the procedures of § 5b.5 of this part.

(2) An individual will be granted notification of or access to a record in an exempt system but only to the extent that notification or access would not reveal the identity of a source who furnished the record to the Department under an express promise, and, prior to September 27, 1975, an implied promise, that his identity would be held in confidence if—

(i) The record is in a system of records or that portion of a system of records that is exempt under subsection (k)(2), but not under subsection (j)(2), of the Act and the individual has been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which he or she would otherwise be eligible; or

(ii) The record is in a system of records that is exempt under subsection (k)(5) of the Act.

(3) If an individual is not granted notification of or access to a record in a system of records exempt under subsections (k)(2) (but not under subsection (j)(2)) and (k)(5) of the Act in accordance with this paragraph, he or she will be informed that the identity of a confidential source would be revealed if notification of or access to the record were granted to the individual.

(g) *Discretionary actions by the responsible Department official.* Unless disclosure of a record to the general public is otherwise prohibited by law, the responsible Department official may, in his or her discretion, grant notification of or access to a record in a system of records that is exempt under this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his or her discretion to grant notification of or access to any other record in a system of records that is exempt under this section.

[FR Doc. 93–20144 Filed 8–19–93; 8:45 am]

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Friday
August 20, 1993

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 503

Central Office, Regional Offices, Institutions, and Staff Training Centers; List of Institutions; Rule and Notice

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 503

Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending the listing of its Central Office, Regional Offices, Institutions, and Staff Training Centers in order to designate new United States Penitentiaries at Allenwood, Pennsylvania, and at Florence, Colorado; to designate a new Metropolitan Detention Center at Brooklyn, New York; to redesignate the Low and Medium Security Correctional Institutions at Allenwood as Federal Correctional Institutions; to rename Federal Correctional Institution, Pleasanton as Federal Correctional Institution, Dublin; to remove Federal Prison Camp, Homestead; to note a change in address for the North Central Regional Office; and to correct the Regional Office listing for the Federal Correctional Institution at Estill, South Carolina.

EFFECTIVE DATE: August 20, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its listing of Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers which was last amended in the **Federal Register** on November 12, 1992 (57 FR 53821).

This listing is being amended to reflect the opening of new facilities and the closing of the former facility at Homestead, Florida. This amendment also makes necessary changes in the name, category, or address of existing facilities. Finally, this amendment correctly lists the Federal Correctional Institution at Estill, South Carolina, under the Mid-Atlantic Regional Office. This institution had previously been listed incorrectly under the South East Regional Office.

Because this rule deals with agency organization and imposes no restrictions upon inmates, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 503

Agency organization and functions.

Patrick R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), subchapter A of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

1. The authority citation for 28 CFR part 503 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4003, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 503.2, paragraph (a) is revised, paragraphs (b) (1) through (8) are redesignated as (b) (3) through (10), paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c), and new paragraphs (b)(1), (b)(2), and (d) are added to read as follows:

§ 503.2 Bureau of Prisons Northeast Regional Office.

* * * * *

(a) United States Penitentiaries (USP):

(1) USP Allenwood, White Deer, Pennsylvania 17887;

(2) USP Lewisburg, Pennsylvania 17837.

(b) * * *

(1) FCI Allenwood (Low Security), P.O. Box 1500, White Deer, Pennsylvania 17887;

(2) FCI Allenwood (Medium Security), P.O. Box 2500, White Deer, Pennsylvania 17887;

* * * * *

(d) Metropolitan Detention Center (MDC), Brooklyn, New York 11232.

3. In § 503.3, paragraphs (b) (3) through (6) are redesignated as (b) (4) through (7), and a new paragraph (b)(3) is added to read as follows:

§ 503.3 Bureau of Prisons Mid-Atlantic Regional Office.

* * * * *

(b) * * *

(3) FCI Estill, South Carolina 29918;

* * * * *

§ 503.4 [Amended]

4. In § 503.4, paragraphs (b)(1) and (c)(2) are removed, and paragraphs (b) (2) through (5) and (c) (3) through (5) are redesignated as paragraphs (b) (1) through (4) and (c) (2) through (4).

5. In § 503.5, the introductory text is revised, paragraphs (a) (1) and (2) are redesignated as (a) (2) and (3), and a new paragraph (a)(1) is added to read as follows:

§ 503.5 Bureau of Prisons North Central Regional Office.

The Bureau of Prisons North Central Regional Office is located at Gateway Complex, Inc., Tower II, 8th Floor, 4th and State Avenue, Kansas City, Kansas 66101–2492. The following institutions are located within this region.

(a) * * *

(1) USP Florence, Colorado 81292;

* * * * *

6. In § 503.7, paragraph (b)(3) is removed, paragraphs (b) (1) and (2) are redesignated as paragraphs (b) (2) and (3), and a new paragraph (b)(1) is added to read as follows:

§ 503.7 Bureau of Prisons Western Regional Office.

* * * * *

(b) * * *

(1) FCI Dublin, California, 94568;

* * * * *

[FR Doc. 93–20211 Filed 8–19–93; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is publishing a consolidated listing of its institutions.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 307–3062.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 *et seq.*) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the **Federal Register** on August 19, 1992 (57 FR 37664).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(q), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Allenwood, Pennsylvania;
(2) Atlanta, Georgia;
(3) Florence, Colorado;
(4) Leavenworth, Kansas;
(5) Lewisburg, Pennsylvania;
(6) Lompoc, California;
(7) Marion, Illinois; and
(8) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Allenwood, Pennsylvania (Low Security);
(2) Allenwood, Pennsylvania (Medium Security);
(3) Ashland, Kentucky;
(4) Bastrop, Texas;
(5) Big Spring, Texas;
(6) Butner, North Carolina;
(7) Danbury, Connecticut;
(8) El Reno, Oklahoma;
(9) Englewood, Colorado;
(10) Estill, South Carolina;
(11) Fairton, New Jersey;
(12) Florence, Colorado;
(13) Fort Dix, New Jersey;
(14) Fort Worth, Texas;
(15) Jesup, Georgia;
(16) La Tuna, Texas;
(17) Loretto, Pennsylvania;
(18) Lompoc, California;
(19) Manchester, Kentucky;
(20) Marianna, Florida;
(21) McKean, Pennsylvania;
(22) Memphis, Tennessee;
(23) Milan, Michigan;
(24) Morgantown, West Virginia;
(25) Oakdale, Louisiana (formerly Oakdale I);
(26) Otisville, New York;
(27) Oxford, Wisconsin;
(28) Petersburg, Virginia;
(29) Phoenix, Arizona;
(30) Dublin, California;
(31) Ray Brook, New York;
(32) Safford, Arizona;
(33) Sandstone, Minnesota;
(34) Schuylkill, Pennsylvania;
(35) Seagoville, Texas;
(36) Sheridan, Oregon;
(37) Talladega, Alabama;
(38) Tallahassee, Florida;
(39) Terminal Island, California;
(40) Texarkana, Texas;
(41) Three Rivers, Texas; and
(42) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin Air Force Base, Florida;
(7) Ft. Bliss, El Paso, Texas;
(8) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
(9) Millington, Tennessee;
(10) Nellis Air Force Base, Las Vegas, Nevada;
(11) Pensacola, Saufley Field, Florida;
(12) Seymour-Johnson Air Force Base, North Carolina;
(13) Tyndall Air Force Base, Panama City, Florida; and
(14) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations house inmates who are primarily pre-trial detainees and are designated as:

Metropolitan Correctional Centers:
(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

Metropolitan Detention Centers:
(1) Brooklyn, New York;
(2) Guaynabo, Puerto Rico; and
(3) Los Angeles, California.

Federal Detention Center:
(1) Oakdale, Louisiana (formerly Oakdale II).

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institutions at the following locations are designated as Federal Medical Centers:

(1) Carville, Louisiana;
(2) Lexington, Kentucky; and
(3) Rochester, Minnesota.

Patrick R. Kane,

Acting Director, Federal Bureau of Prisons.

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Part V

The President

Proclamation 6586—Women's Equality Day, 1993

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The President

Proclamation 6586 of August 18, 1993

Women's Equality Day, 1993

By the President of the United States of America

A Proclamation

On August 26, 1993, we celebrate the 73rd anniversary of the ratification of the Nineteenth Amendment to the Constitution. In declaring that the right to vote shall not be denied or abridged on account of sex, the Nineteenth Amendment guaranteed for women the most cherished prerogative of American citizenship.

Since America was founded, women have demonstrated an active interest in shaping the practice of democratic government. But it was not until the passage of the Nineteenth Amendment that women's myriad contributions to the social, cultural, and economic life of our Nation began to receive the full acknowledgment they deserved. As women's voices continue to gain strength in the political arena, female elected officials at every level of government bring crucial insight to the decision-making process.

The struggle for true equality among the sexes has not been limited to the public sphere. Broadening the franchise fundamentally changed our understanding of equal opportunity, helping to encourage shared responsibility in the home and personal growth in the work place. Today, more and more women are leading the way through advancements in law, science, business, and the arts. As we approach the 21st century, women's unfailing strength and wisdom remain integral to ensuring the lasting prosperity of our Nation.

Each year, we observe August 26 as "Women's Equality Day," to honor the infinite sacrifices and contributions that women have made to the United States. On this occasion we reaffirm our national commitment to the distinctly American promise of guaranteed equality for all our people.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of August, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

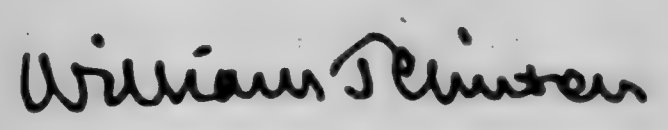

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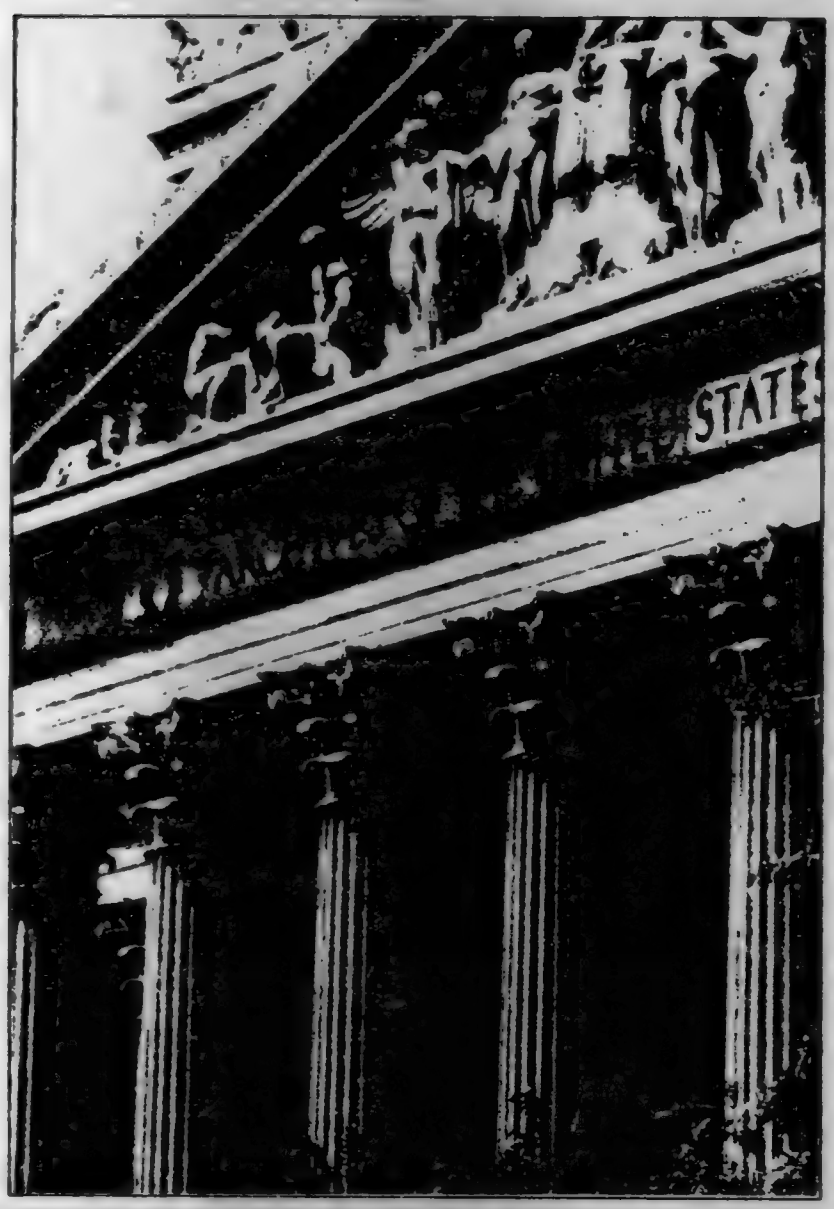

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 161
Monday, August 23, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150–AE68

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations that provide that NRC will publish fee adjustments concurrent with notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra I. Schoenmann, Division of Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–8774.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. Effective October 1, 1993, OPM will increase the rate it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for material access authorizations and personnel security clearances are determined by the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect the OPM rate increase. OPM is increasing the rate it charges for background investigations by approximately 25 percent. NRC is passing this additional cost to licensees. These changes comply with current regulations that provide that NRC will publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by OPM for conducting the investigations.

This amendment deals solely with agency practice and procedures of a minor and administrative nature. Previous publications of this rule advised that, from time to time, the agency would publish revisions of the rule to accommodate adjustments in the fee schedule. Since the public had the opportunity to comment on this aspect of parts 11 and 25 as a proposed rule, it is not considered that any further benefit would accrue from additional public comment at this time. Under the circumstances, the NRC, for good cause, finds that the notice and comment provisions of the Administrative Procedure Act are unnecessary pursuant to 5 U.S.C. 553 (b)(B).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0046 and 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Sandra I. Schoenmann, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–8774.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required because this amendment does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15 paragraph (e)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC–U requiring full field investigation	$3,600

ii. NRC–U requiring full field investigation (expedited processing)..... $4,300
iii. NRC–U based on certification of comparable full field background investigation..... [1] $0
iv. NRC–U or R renewal..... [1] $67
v. NRC–R..... [1] $67
vi. NRC–R based on certification of comparable investigation..... [2] $0

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

4. Appendix A to part 25 is revised to read as follows:

Appendix A to Part 25—Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	[1] $67
Reinstatement of "L" Access Authorization	[1] 67
Extension or Transfer of "L" Access Authorization	[1] 67
Initial "Q" Access Authorization	3,800
Initial "Q" Access Authorization (expedited processing)	4,300
Reinstatement of "Q" Access Authorization	[2] 3,800
Reinstatement of "Q" Access Authorization (expedited processing)	[2] 4,300
Extension or Transfer of "Q"	[2] 3,800
Extension or Transfer of "Q" (expedited processing)	[2] 4,300

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $3,800 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, Maryland this 10th day of August, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–20281 Filed 8–20–93; 8:45 am]

BILLING CODE 7590–01–P

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $3,800 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check and Credit investigation is necessary, a fee of $67.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC, based on its review of available data, a fee of $3,800 will be assessed prior to the conduct of the investigation.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its delegation of authority to grant general loan approval authority to various field offices for direct and guaranteed business loans, for loans to State and Local Development Companies, and for guaranties of section 503 and section 504 debentures issued by certified development companies. The amendment allows designated field officials to approve or decline certain loans and guaranties without regard to project cost limitations.

EFFECTIVE DATE: This rule is effective August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, (202) 205–6490.

SUPPLEMENTARY INFORMATION: SBA sets forth the delegation of authority, in 13 CFR 101.3–2, for direct and guaranty business loan approval, for the approval of loans to State and Local Development Companies, for the approval of guaranties of section 503 and section 504 debentures issued by certified development companies, and for approval of guaranties of sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts by officials in SBA regional, district, or branch offices. SBA is amending this rule for the purpose of simplification, consistency and efficiency.

This action eliminates the restrictions, based upon total project cost, which are placed upon certain field officers in the exercise of their delegated authority to approve or deny section 7(a)(13) loans and sections 503/504 debenture guaranties under parts I(C) and III(A) of 13 CFR 101.3–2. The dollar amounts which field officers are authorized to commit are unchanged by this final rule.

Prior to the promulgation of this final rule, undesirable inconsistencies existed between the section 7(a) general business loan program and the sections 503/504 debenture guaranty program with regard to the amounts and definitions of "project cost" limitations contained in parts I(C) and III(A) of 13 CFR 101.3–2. This final rule eliminates such inconsistencies.

Further, over the past several years, delays in processing have become problematic due to an increased volume of activity and reduced levels of staffing. This final rule is designed to reduce such delays by eliminating the time consuming process involved in the referral, by District Office personnel, of section 7(a)(13) loan and sections 503/504 debenture guaranty applications to the Regional Office if the total project cost exceeds a specified amount. This rule allows certain designated field officers to approve or deny such loan or debenture guaranty applications without regard to total project cost. However, the total project cost will continue to be reviewed by the designated field officers to determine an applicant's eligibility for such loans and debenture guaranties. Furthermore, the dollar amounts which the designated field officers are authorized to commit remain unchanged.

Because this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for the purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Executive Order.

Finally, SBA certifies that these changes will not impose an annual record-keeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations (Government Agencies), Investigations, Organization and functions (Government Agencies), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 101 of title 13, Code of Federal Regulations is amended as follows:

PART 101—ADMINISTRATION

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2, is amended by revising paragraph 2, of *Section C*, of part I thereof to read as follows:

§ 101.3–2 Delegations of authority to conduct program activities in field offices.

* * * * *

PART I—FINANCING PROGRAM

* * * * *

Section C—Section 7(a)(13) Loan Approval Authority

* * * * *

2. Loans to Local Development Company (SBI Act). To approve or decline loans to a local development company not exceeding the following amounts (SBA share) for each small business concern being assisted:

(1) Regional Administrator—$1,000,000
(2) Assistant Regional Administrator/F&I—$1,000,000
(3) District Director—$1,000,000
(4) Deputy District Director—$1,000,000
(5) Assistant District Director/F&I—$1,000,000
(6) Chief, Financing, D/O—$1,000,000
(7) Branch Manager—$750,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline loans to local development companies for any individual SBA employee of a regional, district, or branch office, based on education, training or experience, by published notice in the **Federal Register**.

* * * * *

3. Section 101.3–2 is further amended by revising *Section A* of part III thereof to read as follows:

PART III—OTHER FINANCIAL AND GUARANTY PROGRAMS

Section A—Section 503/504 Debenture Guaranty Approval Authority (Small Business Investment Act)

1. Section 503/504 Certified Development Company Debenture Guaranty Approval Authority (SBI Act). To approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies not exceeding the following amount (SBA share) for each small business being assisted:

(1) Regional Administrator—$1,000,000
(2) ARA/F&I—$1,000,000
(3) District Director—$1,000,000
(4) Deputy District Director—$1,000,000
(5) ADD/F&I—$1,000,000
(6) Branch Managers—$750,000
(7) Chief, Financing, D/O—$750,000
(8) Assistant Branch Managers/F&I—$500,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies for any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, by published notice in the **Federal Register**.

* * * * *

Dated: August 11, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20284 Filed 8–20–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–02; Amendment 39–8656, AD 93–15–11]

Airworthiness Directives; Allied-Signal Inc., Garrett Engine Division, TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allied-Signal Inc., Garrett Engine Division, TPE331 series turboprop engines. This action supersedes priority letter AD 92–26–07 that currently requires inspecting propeller-pitch control (PPC) gaskets to determine if the gaskets incorporate internal metal reinforcement, and replacing unreinforced gaskets with metal reinforced gaskets. This action also makes the AD applicable to military type certificated engines not included in the priority letter AD, and includes the applicable Allied-Signal Inc., Garrett Engine Division, alert service bulletins for those engines. This amendment is prompted by the need to add these additional engines to the AD applicability statement. The actions specified by this AD are intended to prevent a sudden loss of propeller control during application of thrust reverse that may cause asymmetric thrust and loss of aircraft control.

DATES: Effective September 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Allied Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 16, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–26–07, applicable to Allied-Signal Inc., Garrett Engine Division, TPE331 series turboprop engines, which requires inspecting propeller pitch control (PPC) gaskets to determine if the gaskets incorporate internal metal reinforcement, and replacing unreinforced gaskets with metal reinforced gaskets. That action was prompted by reports of two failures of the PPC gasket. The gasket failures resulted in a sudden loss of engine oil and loss of propeller control. One of the two incidents occurred during application of thrust reverse after landing. The FAA has determined that PPC gaskets that do not have internal metal reinforcement may develop sudden, severe leakage at the propeller oil supply port. PPC gasket Part Number (P/N) 865664–4, available since May 11, 1992, and PPC gasket P/N 3105685–1, available since June 27, 1992, were manufactured without this reinforcement. That condition, if not corrected, could result in a sudden loss of propeller control during application of thrust reverse that may cause asymmetric thrust and loss of aircraft control.

Since the issuance of that priority letter AD, the FAA has determined that is necessary to make the AD applicable to military type certificated engines not included in the priority letter AD. This final rule has been changed accordingly, and, in addition, includes references to the applicable alert service bulletins (ASB) for these military type certificated engines.

In addition, the FAA has determined that additional metal reinforced PPC gaskets other than PPC gasket P/N 865664–5 are considered acceptable for installation. The compliance paragraphs that require replacement of unreinforced gaskets with metal reinforced gaskets have therefore been changed to allow installation of a serviceable metal reinforced PPC gasket in accordance with the applicable Allied-Signal Inc., Garrett Engine Division, Light Maintenance Manual, which provides further details on acceptable PPC gaskets.

The FAA has reviewed and approved the technical contents of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TPE331–A72–0857, dated October 29, 1992; ASB No. TPE331–A72–0858, dated October 29, 1992; ASB No. TPE331–A72–7092, dated October 29, 1992; ASB No. TPE331–A72–7093, dated October 29, 1992; and ASB No. TPE331–A72–7519, dated October 30, 1992. All of these ASB's describe procedures for inspecting PPC gaskets to determine if the gaskets incorporate internal metal reinforcement.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 92–26–07 to require inspecting PPC gaskets to determine if the gaskets incorporate internal metal reinforcement and replacing unreinforced gaskets with serviceable metal reinforced gaskets. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–02." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354 (a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–15–11 Allied-Signal Inc., Garrett Engine Division: Amendment 39–8656. Docket No. 93–ANE–02.

Applicability: Allied-Signal Inc., Garrett Engine Division, Model TPE331–47A, –55B, and –61A turboprop engines; and TPE331–1, –2, –3, –5, –6, –8, –10, –11, –12, –14A, –14B, –15AW, –25, and –43 series turboprop engines installed on but not limited to Mitsubishi MU–2B Series (MU–2 series) Solitaire/Marquise; Construcciones Aeronauticas, S.A. (CASA) C–212 series; British Aerospace (BAe) Jetstream 3101 and 3201 (31 and 32) series; Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series); Prop-Jets, Inc. Model 400; Cessna Model 441 (Conquest); Twin Commander 680, 690, 695 (Jetprop Commander); Rockwell Commander S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Dornier 228 series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Pilatus PC–6 series (Fairchild Porter, Peacemaker); Piper Model PA–42–1000 (Cheyenne 400 LS); De Havilland Model DH 104 Dove series; Grumman Model TS–2A; Grumman American Model G–164C; and Schweitzer Model G–164 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a sudden loss of propeller control during application of thrust reverse that may cause asymmetric thrust and loss of aircraft control, accomplish the following:

(a) Within the next 10 hours time in service (TIS) after the effective date of this AD, for Allied-Signal Inc., Garrett Engine Division, Model TPE331–47A, –55B, and –61A turboprop engines; and Model TPE331–1, –2, –3, –5, –6, –8, –10, –11, –12, –25, and –43 series turboprop engines that have had a new propeller pitch control (PPC) gasket, Part Number (P/N) 865664–4, installed after May 10, 1992, accomplish the following:

(1) Inspect PPC gaskets in accordance with the applicable Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB): No. TPE331–A72–0857, dated October 29, 1992; or ASB No. TPE331–A72–0858, dated October 29, 1992, to determine if the gaskets incorporate internal metal reinforcement.

(2) Prior to further flight, replace unreinforced gaskets with serviceable metal reinforced gaskets in accordance with the applicable Allied-Signal Aerospace Company, Garrett Engine Division, Light Maintenance Manual.

(b) Within the next 10 hours TIS after the effective date of this AD, for Allied-Signal Inc., Garrett Engine Division, TPE331–14A, –14B, and –15AW turboprop engines that have had a new PPC gasket, P/N 3105685–1, installed after June 26, 1992, accomplish the following:

(1) Inspect PPC gaskets in accordance with the applicable Allied-Signal Aerospace Company, Garrett Engine Division, ASB: No. TPE331–A72–7092, dated October 29, 1992; ASB No. TPE331–A72–7093, dated October 29, 1992; or ASB No. TPE331–A72–7519, dated October 30, 1992, to determine if the gaskets incorporate internal metal reinforcement.

(2) Prior to further flight, replace unreinforced gaskets with serviceable metal reinforced gaskets in accordance with the applicable Allied-Signal Aerospace Company, Garrett Engine Division, Light Maintenance Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, and replacement, if necessary, shall be done in accordance with the following Allied-Signal Aerospace Company, Garrett Engine Division, alert service bulletins:

Document No.	Page	Revision	Date
TPE331–A72–7092	1–6	Original ...	Oct. 29, 1992.
Total Pages: 6.			
TPE331–A72–0857	1–12	Original ...	Oct. 29, 1992.
Total Pages: 12.			
TPE331–A72–0858	1–6	Original ...	Oct. 29, 1992.
Total Pages: 6.			
TPE331–A72–7093	1–6	Original ...	Oct. 29, 1992.
Total Pages: 6.			
TPE331–A72–7519	1–6	Original ...	Oct. 30, 1992.
Total Pages: 6.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes priority letter AD 92–26–07, issued December 16, 1992.

(g) This amendment becomes effective on September 7, 1993.

Issued in Burlington, Massachusetts, on July 30, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–20264 Filed 8–20–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–30; Amendment 39–8655; AD 93–15–09]

Airworthiness Directives; Rolls-Royce plc Dart Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc Dart series turboprop engines. This action requires a one-time visual inspection of the servo fuel pipe for deterioration, damage, and leakage; and replacement, if necessary, with a serviceable servo fuel pipe. This amendment is prompted by a report of a servo fuel pipe failure, and three additional reports of fuel leakage from the servo fuel pipe found during routine inspections. The actions specified in this AD are intended to prevent failure of the servo fuel pipe, which could result in a loss of engine power, inflight engine shutdown, or engine fire.

DATES: Effective September 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–30, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (R–R) Dart series turboprop

engines. The CAA received a report of a failed servo fuel pipe on the R–R Dart Mk. 542 engine. The servo fuel pipe connects the fuel pump with the fuel control unit. The CAA received three additional reports of fuel leakage from the servo fuel pipe of R–R Dart Mk. 542 engines during routine inspections. Initial indications show that loss of servo fuel pipe integrity was due to cracking of the rubber hose associated with deterioration and damage, particularly at the pipe clip and identification tag locations. This condition, if not corrected, could result in failure of the servo fuel pipe, possibly causing a loss of engine power, inflight engine shutdown, or engine fire.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Rolls-Royce has issued Rolls-Royce Aero Engine Alert Service Bulletin (ASB) No. Da73–A86, dated March 5, 1993, that specifies a one-time visual inspection of the servo fuel pipe for deterioration, damage, and leakage; and replacement, if necessary, with a serviceable servo fuel pipe. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these R–R Dart series turboprop engines in the United Kingdom.

Since an unsafe condition has been identified that is likely to exist or develop on other R–R Dart series turboprop engines of the same type design registered in the United States, this AD is being issued to prevent failure of the servo fuel pipe, which could result in a loss of engine power, inflight engine shutdown, or engine fire. This AD requires a one-time visual inspection of the servo fuel pipe for deterioration, damage, and leakage; and replacement, if necessary, with a serviceable servo fuel pipe. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–30." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–15–09 Rolls-Royce, plc: Amendment 39–8655. Docket 93–ANE–30.

Applicability: Rolls-Royce, plc (R–R) Dart series turboprop engines: Mk. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 532, 533, 534, 535, 536, 542, 543, 550, and 552. These engines are installed on but not limited to Convair 600/640, Fokker F27/F227, Grumman Gulfstream 1, Hawker Siddeley 748, and Vickers Viscount aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the servo fuel pipe, which could result in a loss of engine power, inflight engine shutdown, or engine fire, accomplish the following:

(a) Within 30 days after the effective date of this AD, visually inspect the servo fuel pipe, Part Number (P/N) RK18596A, RK18668A, or RU21444A, using the criteria contained in the Appendix of Rolls-Royce Aero Engine ASB No. Da73–A86, dated March 5, 1993.

(b) Replace any servo fuel pipe which does not meet the acceptance criteria contained in the Appendix of Rolls-Royce Aero Engine Alert Service Bulletin (ASB) No. Da73–A86, dated March 5, 1993, with a serviceable part, prior to further flight.

(c) For engines not in service on the effective date of this AD, accomplish the

actions of paragraphs (a) and (b) of this AD prior to entry into service.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection shall be done in accordance with the following Rolls-Royce Aero Engine Alert Service Bulletin:

Document No.	Pages	Date
Da73–A86	1–3	Mar. 5, 1993.
Appendix	1	Mar. 5, 1993.
Total pages: 4.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 7, 1993.

Issued in Burlington, Massachusetts, on August 2, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–20266 Filed 8–20–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ANE–54; Amendment 39–8659; AD 93–16–02]

Airworthiness Directives; Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Hamilton Standard Model 14RF–9 propellers, that currently requires inspections for tooth wear, and replacement, if necessary, of propeller control unit (PCU) servo ballscrew internal spline (BIS) assemblies. This amendment requires inspections for tooth wear in additional propeller models, and decreases the interval between repetitive inspections for Hamilton Standard Model 14RF–9 propellers. This amendment is prompted by a recent aircraft incident, design similarities between the additional propeller models and the Hamilton Standard 14RF–9 propellers, and by inspection data received since the publication of the current AD. The actions specified by this AD are intended to prevent the inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

DATES: Effective September 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–54, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On April 10, 1992, the Federal Aviation Administration (FAA) issued AD 92–08–03, Amendment 39–8214 (57 FR 13641, April 17, 1992), to require initial and repetitive inspections for wear of the propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth on Hamilton Standard Model 14RF–9 propellers, and replacement, if necessary, of PCU servo BIS assemblies. That action was prompted by a report that the crew of an Embraer EMB–120 aircraft was unable to fully feather the propeller. Subsequent inspection of the PCU servo BIS assembly revealed excessively worn spline teeth. In three incidents, difficulties were reported in feathering and controlling the propeller blade angle on other Embraer EMB–120 aircraft. All of the aircraft were found to have excessively worn PCU servo BIS teeth. That condition, if not corrected, can result in the inability to control the propeller blade angle.

Since the issuance of that AD, the FAA has received a report of an incident where the crew experienced difficulties in feathering and controlling the propeller blade angle on a Dehavilland DHC–8–100 series aircraft. The propellers on the incident aircraft had less than 900 hours TIS since the last inspection. The propeller blade configuration and control system on the Dehavilland DHC–8–100 series aircraft have similar characteristics to that on the Embraer EMB–120 series aircraft. In addition, the FAA received data through the reporting requirements of AD 92–08–03 on ballscrew inspections of the Hamilton Standard Model 14RF–9 propellers. The FAA has determined that the repetitive inspection interval of 900 hours time in service (TIS) between inspections must be reduced to 500 hours TIS.

The FAA has reviewed and approved the technical contents of the following Hamilton Standard Alert Service Bulletins (ASB): 14RF–9–61–A53, Revision 3, dated July 28, 1993; 14RF–19–61–A25, Revision 2, dated July 28, 1993; 14RF–21–61–A38, Revision 2, dated July 28, 1993; 14SF–61–A59, Revision 2, dated July 28, 1993; 247F–61–A3, Revision 1, dated July 28, 1993; and 6/5500/F–61–A11, Revision 2, dated July 28, 1993. All of these ASB's describe procedures for inspection of the PCU servo BIS for tooth wear, and replacement, if necessary, of PCU servo BIS assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes AD 92–08–03 to require initial and repetitive inspections of the PCU servo BIS teeth for wear, and replacement, if necessary, of PCU servo BIS assemblies. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements

affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ANE-54." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [AMENDED]

2. Section 39.13 is amended by removing Amendment 39-39-8214 (57 FR 13641, April 17, 1992), and by adding a new airworthiness directive, Amendment 39-8659, to read as follows:

93-16-02 Hamilton Standard: Amendment 39-8659. Docket 92-ANE-54. Supersedes AD 92-08-03, Amendment 39-8214.

Applicability: Hamilton Standard Models 14RF-9, 14RF-19, 14RF-21, and 14RF-23; 247F; 14SF-5, 14SF-7, 14SF-11, 14SFL11, 14SF-15, 14SF-17, 14SF-19, and 14SF-23; and Hamilton Standard/British Aerospace 6/5500/F propellers installed on but not limited to Embraer EMB-120 and EMB-120RT; SAAB-SCANIA SF340B; Aerospatiale ATR42-100, ATR42-300, ATR42-320, ATR72, ATR72-210; DeHavilland DHC-8-100 series, DHC-8-300; Construcciones Aeronauticas SA (CASA) CN-235 and CN-235-100; Canadair CL215T and CL415; and British Aerospace ATP airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly, accomplish the following:

(a) Inspect the propeller control unit (PCU) servo ballscrew internal spline (BIS) assembly for tooth wear in accordance with the Accomplishment Instructions of the following Hamilton Standard Alert Service Bulletins (ASB), all dated July 28, 1993, as applicable: No. 14RF-9-61-A53, Revision 3; No. 14RF-19-61-A25, Revision 2; No. 14RF-21-61-A38, Revision 2; No. 247F-61-A3, Revision 1; No. 14SF-61-A59, Revision 2; and No. 6/5500/F-61-A11, Revision 2; as follows:

(1) For a PCU with unknown time in service (TIS) on the effective date of this AD, inspect within 200 hours TIS after the effective date of this AD.

(2) For a PCU with 1,800 or more hours TIS on the effective date of this AD, which has not been inspected, or which has been inspected more than 500 hours prior to the effective date of this AD, in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, inspect within 200 hours TIS after the effective date of this AD.

(3) For a PCU with 1,800 or more hours TIS on the effective date of this AD, that has had a new servo ballscrew quill installed prior to the effective date of this AD, regardless of time accumulated since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, inspect within 300 hours TIS after the effective date of this AD.

(4) For a PCU with 1,800 or more hours TIS on the effective date of this AD, which has been inspected within the previous 500 hours TIS in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, inspect prior to accumulating 300 hours TIS after the effective date of this AD, or within 500 hours TIS since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, whichever occurs later.

(5) For a PCU with less than 1,800 hours TIS on the effective date of this AD, inspect prior to accumulating 1,800 hours TIS, or within 300 hours TIS after the effective date of this AD, whichever occurs later.

(6) Thereafter, inspect at intervals not to exceed 500 hours TIS since the last inspection required by this AD.

(7) If PCU servo BIS teeth are worn beyond the limits specified in the Accomplishment Instructions of the applicable Hamilton Standard ASB's listed in paragraph (a) of this AD, prior to further flight, replace the PCU with a serviceable assembly in accordance with the Accomplishment Instructions of the applicable Hamilton Standard ASB's listed in paragraph (a) of this AD, and thereafter inspect in accordance with paragraphs (a)(6) and (a)(7) of this AD.

(b) Report the results of the initial and repetitive inspections required by paragraph (a) of this AD by utilizing Appendix 1, "Ballscrew Inspection Data," within 72 hours of the inspection to the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803-5299; Telex Number 949301 FAAANE BURL; fax (617) 238-7199. The reporting requirements of this AD terminate on December 31, 1994. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 3120-0056.

Appendix 1. Ballscrew Inspection Data

The following information must be reported and sent as soon as possible but no later than 72 hours after inspection to:

Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, Fax: (617) 238–7199.

Operator/Repair Station _____
Date of Inspection _____
PCU Part Number _____
PCU Serial Number _____
Aircraft Model _____
Aircraft Serial Number _____
Position:
Left Engine _____
Right Engine _____
(please check)
(please circle):
Estimated Time On PCU
Actual Time On PCU
Time Since New (Hours) _____
Time Since Last Ballscrew Inspection/Repair (Hours) _____
Inspection:
Accepted _____
*Rejected _____
*Please indicate in comments if unit was rejected as part of the functional check.
No. of left side teeth with steps _____
No. of right side teeth with steps _____
Comments: _____
(Cont. Alt. 4) _____

(c) The inspections, and replacement, if necessary, shall be done in accordance with the following Hamilton Standard Alert Service Bulletins:

Document No.	Pages	Rev.	Date
14RF–9–61–A53. Total pages: 16	1–16	3	July 28, 1993.
14RF–19–61–A25. Total pages: 16	1–16	2	July 28, 1993.
14RF–21–61–A38. Total pages: 16	1–16	2	July 28, 1993.
14SF–61–A59 Total pages: 16	1–16	2	July 28, 1993.
247F–61–A3 Total pages: 16	1–16	1	July 28, 1993.
6/5500/F–61–A11. Total pages: 17	1–17	2	July 28, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on September 7, 1993.

Issued in Burlington, Massachusetts, on August 13, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–20186 Filed 8–20–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 93–67]

Addition of Douglas Municipal Airport to List of Designated Landing Locations for Private Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Douglas Municipal Airport, Douglas, Arizona, to the list of designated airports at which private aircraft, arriving in the Continental U.S. via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast, from certain locations in the southern portion of the Western Hemisphere, must land for Customs processing. This amendment is made to improve the effectiveness of Customs enforcement efforts to combat the smuggling of drugs by air into the United States, as Douglas is adjacent to the Southwest Border of the U.S. and is on a regularly traveled flight path, and to improve service to the community, by relieving congestion at the Bisbee-Douglas International Airport, also located in Douglas, Arizona.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Joe O'Gorman, Office of Inspection and Control, (202) 927–0543.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1993, Customs published a notice of proposed rulemaking in the **Federal Register** (58 FR 19366) that solicited comments concerning a proposal to amend § 122.24(b), Customs Regulations (19 CFR 122.24(b)), by adding Douglas Municipal Airport, Douglas, Arizona, to the list of designated airports at which private aircraft, arriving in the Continental U.S. via the U.S./Mexican border, the Pacific Coast, the Gulf of Mexico, or the Atlantic Coast, from certain locations in the southern portion of the Western Hemisphere, must land for Customs processing. Based on requests from community officials from Douglas, Arizona, Customs had determined that the addition of Douglas Municipal Airport to the list of designated landing sites for subject aircraft would improve the effectiveness of Customs drug-enforcement programs relative to private aircraft arrivals, as Douglas is adjacent to the Southwest Border of the U.S. and on a regularly traveled flight path, and would enhance the efficiency of the Customs Service, as the airport is close to the normal work location for inspection personnel assigned in the Port of Douglas area.

Although notice of the proposed designation was not required to be published in the **Federal Register**, comments were solicited from interested parties concerning whether or not the Douglas Municipal Airport should be designated as an airport for the landing of private aircraft. The public comment period for the proposed amendment closed June 14, 1993, and no comments were received. After further consideration of the matter, Customs has decided to proceed with the final amendment as proposed.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12291

Although a notice of proposed rulemaking was published soliciting public comments on this action expanding the list of designated airports at which certain private aircraft may land for Customs processing, this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because the subject matter constitutes both a matter relating to agency organization and management and a matter relating to public benefits. Since the action is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Further, as the amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch.

List of Subjects in 19 CFR Part 122

Air transportation, Aircraft, Airports, Customs duties and inspection, Drug traffic control, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons stated above, part 122 of the Customs Regulations (19 CFR part 101), is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.24 [Amended]

2. In § 122.24, the chart in paragraph (b) is amended by adding, in appropriate alphabetical order, "Douglas, Ariz." in the column headed "Location" and, on the same line, "Douglas Municipal Airport" in the column headed "Name".

Approved: August 9, 1993.

Samuel H. Banks,

Acting Commissioner of Customs.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93-20287 Filed 8-20-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960—None Assigned

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which the adult mental disorders listings in part A of appendix 1 to subpart P of part 404 will no longer be effective from August 28, 1993, to August 28, 1994. We have made no revisions in the medical criteria in those listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments received on a Notice of Proposed Rulemaking (NPRM) to update the medical criteria in those listings. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This regulation is effective August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick,, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758.

SUPPLEMENTARY INFORMATION:

Regulations containing the adult mental disorders listings (50 FR 35038, August 28, 1985) included a provision that those listings would no longer be effective on August 28, 1988, unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. The Secretary extended that date to August 28, 1990 (53 FR 29878, August 9, 1988), to give us more time to determine what revisions were necessary. On October 13, 1988, we announced (53 FR 40135) a public meeting, which we held in Baltimore, Maryland on November 9–10, 1988, to receive testimony about possible necessary revisions.

On August 28, 1990, the Secretary again extended the date on which the listings would no longer be effective to August 28, 1991 (55 FR 35286). On July 18, 1991, we published an NPRM (56 FR 33130) that included proposed revisions to the adult mental disorders listings. Because those listings would no longer have been effective on August 28, 1991, the Secretary published a final regulation (56 FR 40780, August 16, 1991) to extend that date for another year, to August 28, 1992.

The NPRM public comment period closed September 16, 1991. We received over 120 letters which offered almost 600 separate comments. Because of complex issues these comments raised, preparing the final regulations has taken longer than we expected. On June 8, 1992 (57 FR 24186), the Secretary again extended the date on which the listings would no longer be effective for another year, to August 28, 1993. To ensure sufficient time to complete our necessary action to have final regulations published, we are again extending that date for another year, to August 28, 1994.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act NPRM and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of NPRM and public comment procedures on this regulation because it only extends the date on which the adult mental disorders listings will no longer be effective and makes no substantive changes to those listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, we have determined that use of public comment procedures is unnecessary under the Administrative Procedure Act.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: June 17, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 23, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising the last sentence of the sixth paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

* * * The mental disorders listings in part A (12.00) will no longer be effective on August 28, 1994, unless extended by the Secretary or revised and promulgated again.

3. Part A of appendix 1 [Listing of Impairments] to subpart P is amended by revising the first paragraph of 12.00 Mental Disorders to read as follows:

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1994, unless extended by the Secretary or revised and promulgated again.

* * * * *

[FR Doc. 93–20283 Filed 8–20–93; 8:45 am]

BILLING CODE 4190–29–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 517

RIN 3141–AA05

Freedom of Information Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The purpose of these regulations is to describe the procedures the Commission is adopting pursuant to the Freedom of Information Act. Under the Freedom of Information Act, federal agencies must publish, in the **Federal Register**, procedures by which the public may obtain access to information compiled, created, and maintained by the agency. These regulations provide such procedures.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress enacted the Freedom of Information Act of 1967 (FOIA), 5 U.S.C. 552, in an effort to afford greater public access to government records. The FOIA requires federal agencies to disclose all government records requested by members of the public, except those records meeting one or more of the FOIA's nine exemptions. The FOIA places the burden on federal agencies to justify denial of access to records. It also provides rights of appeal and of judicial review of adverse agency decisions regarding access to records.

Freedom of Information Act Procedures

The purpose of these regulations is to inform the public of the procedures and policies the Commission is adopting pursuant to the FOIA. On Tuesday November 24, 1992, the Commission published proposed FOIA regulations in the **Federal Register** (57 FR 55212). In the preamble to the proposed rule, the Commission provided a discussion of the rule's provisions and invited the public to comment on the form and content of the regulations. Comments received and the Commissions responses to those comments are summarized below.

General Comments

Guidance on FOIA

The Commission recommends use of the "Freedom of Information Act Guide and Privacy Act Overview" written by the U.S. Department of Justice, to aid the public in understanding FOIA. This book contains guidance and caselaw interpreting FOIA, the nine FOIA exemptions and a discussion of issues related to confidential commercial information. The book is for sale by the Superintendent of Documents, U.S. Government Printing Office, in Washington, DC.

Interpretation of 25 U.S.C. 2716

One commenter questioned the Commission's interpretation of 25 U.S.C. 2716(a) regarding the confidential treatment of information received under the Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 et seq. The Commenter suggested that a strict reading of the IGRA authorizes the Commission only to disclose information about possible violations to law enforcement officials. In this commenter's view, all other information received pursuant to the IGRA is confidential under section 2716(a) of the Act.

The Commission disagrees with the commenter's interpretation of section 2716(a) of the IGRA. Section 552(b)(3) of the FOIA provides, in pertinent part, that agencies need not comply with the FOIA's disclosure requirements regarding matters "* * * specifically exempted from disclosure by statute, * * * provided that such statute * * * requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue[.]" Title 25 U.S.C. 2716(a) of the IGRA requires the Commission to "preserve any and all information received pursuant to [the IGRA] as confidential pursuant to [§§ 552 (b)(4) and (b)(7) of the FOIA]." These provisions of the FOIA exempt from mandatory disclosure trade secrets and commercial or financial information (sec. 552(b)(4)), and investigatory records (subject to certain limitations) (sec. 552(b)(7)).

The Commission interprets section 2716(a) of the IGRA to remove from the Commission the discretion it would otherwise have to disclose information that falls within the cited exemptions of the FOIA. The Commission does not interpret, however, the IGRA to make all information the Commission receives exempt from disclosure.

To deny public access to all records received under the IGRA would frustrate the purposes of FOIA. The basic purpose of FOIA is to provide greater public access to government records. The underlying theme of FOIA is mandatory disclosure of federal agency records. The Supreme Court, in a leading FOIA case, found "[t]he basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB* v. *Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The Commission believes its interpretation of section 2716(a) of the IGRA clearly follows the purposes of FOIA without sacrificing the privacy interests of Indian gaming operations. In the view of the Commission, section 2716(a) removes the Commission's discretion to disclose information falling under exemptions (b)(4) and (b)(7) of the FOIA, but does not make all information received under the IGRA exempt from disclosure.

Notice of Submitters of Information

One commenter argued that the Commission should be required to provide a submitter of information with notice of any FOIA request concerning the information submitted.

The Commission disagrees with this commenter. Under FOIA, federal agencies are not required to provide notice to submitters of information when that information is requested.

Pursuant to Executive Order 12600, however, federal agencies are required to provide notice to submitters of information that is arguably confidential commercial information. This requirement is implemented in § 517.5 (discussed below). The Commission believes that the commenter's interpretation is without legal foundation and would unduly burden the Commission by requiring the Commission to provide notice to submitters of information each time a request is made under FOIA.

Section 517.2—Definitions

The Commission has revised the definitions section to alphabetize the defined terms.

Duplication

One commenter suggested inserting commas around the phrase "* * * among other things * * *" in the definition of *duplication*. The Commission agrees and has revised section § 517.2(d) accordingly.

Non-Commercial Scientific Institution

One commenter suggested including a definition of "commercial" since that term is used in the definition of *non-commercial scientific institution*. The Commission has revised § 517.2 to refer to the definition of *commercial* as that term is used in the definition of *commercial-use requester*.

Requester

One commenter suggested revising the definition of *requester* to include the term "entity.'

The Commission disagrees with the commenter. The current definition includes a description of all types of entities and therefore need not be revised to include the term "entity." The Commission has, however, revised the definition to include Indian tribes within the definition of *reqester*.

Requests for Records—§ 517.3

One commenter suggested revising § 517.3(a), Form of requests, to include the italicized language:

"[I]f a waiver or reduction of fees seems appropriate, *a statement of* the reasons for such waiver or reduction."

The Commission disagrees. The italicized language is redundant and thus unnecessary. The Commission believes that the section clearly describes the information necessary in FOIA requests, including information necessary for fee waivers or reductions.

Disclosure of Requested Records

One commenter suggested revising § 517.4(a)(3), Disclosure of requested, records, to follow the language of the FOIA.

The Commission agrees and has revised that section to include the italicized language.

"[R]ecords specifically exempted from disclosure by statute *(other than 5 U.S.C. § 552(b))* provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue * * *[.]"

The same commenter suggested omitting § 517.4(c) because it gives the FOIA Officer discretion concerning disclosure under the nine FOIA exemptions.

The Commission disagrees with the commenter. The basic theme throughout the FOIA is mandatory *disclosure*. This objective, set forth in 5 U.S.C. 552(a), places a general obligation on federal agencies to make information available to the public. Title 5 U.S.C. 552(b), on the other hand, lists nine exemptions and states that the information contained in the exemptions is not subject to the mandatory disclosure provisions under subsection (a). In *Chrysler* v. *Brown*, 441 U.S. 281, 292 (1979), a leading FOIA case, the Supreme Court interpreted the language in subsection (b). The Court found that "[b]y its terms, subsection (b) [the exemptions] demarcates the agency's obligation to disclose; it does not foreclose disclosure." The Court went further to say that "Congress did not design the FOIA exemptions to be mandatory bars to disclosure." Also, the Department of Justice guidelines explain that the nine FOIA exemptions are discretionary, and not mandatory.

The Commission, therefore, has not omitted § 517.4(c). As previously noted, however, section 2716(a) of the IGRA, in conjunction with section 552(b)(3) of FOIA, removes from the Commission the discretion it would otherwise have to disclose information falling within the exemptions contained in sections 552 (b)(4) and (b)(7).

Confidential Commercial Information

The Commission received several comments regarding § 517.5, Confidential commercial information. In drafting this section of the regulations, the Commission closely followed Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, issued in March 1987. (3 CFR 235 (1987)). The Executive Order recognizes that submitters of arguably confidential commercial information have certain rights regarding that information. The Executive Order, therefore, requires federal agencies to give notice to submitters of such information whenever it is determined that disclosure may be necessary. Submitters are then given an opportunity to object to disclosure of the requested material. The agency must then consider the submitter's objections and determine whether disclosure is required. If the agency determines that disclosure is required, the agency must notify the submitter that the objection has not been sustained.

Two commenters found the section on confidential commercial information excessive in that it places an affirmative burden on submitters of commercial information to designate information as confidential or risk loss of confidential status.

Under Executive Order 12600, agencies are required to give notice of a request for arguably confidential commercial information under two circumstances: when a submitter has designated such information as confidential, or when the agency determines that it may be required to disclose records that could reasonably be expected to cause the submitter substantial competitive harm but are not exempt from disclosure by § 552(b)(4).

Although the Commission's regulation offers submitters of information the opportunity to designate commercial information as confidential, failure to do so would not result in a loss of the information's confidential status. The Commission must also notify submitters of arguably confidential commercial information when the Commission has reason to believe that it may be required to disclose such information.

One commenter suggested omitting the language in § 517.5(b) concerning the expiration of the designation of information after a 10-year period.

The Commission believes that 10 years is a sufficient period of time during which confidential commercial information remain designated as confidential. Executive Order 12600 requires agencies to provide notice to submitters of information received prior to 1988 whenever the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information. The Commission believes that the 10 year limit should also apply to information submitted after January 1, 1988. The Commission notes that the expiration of the designation does not result in the loss of confidential status. The Commission is still required to notify submitters of information when the Commission has reason to believe that it may be required to the disclose records.

This commenter also suggested omitting the word "obviously" from § 517.5(f)(5) where it modifies the word "frivolous." The Commission disagrees with the commenter's suggestions concerning §§ 517.5 (b) and (f)(5). The Commission drafted the sections in accordance with § 8(f) of Executive Order 12600, which contains the word "obviously."

Another commenter suggested that the Commission list certain types of information assumed to be confidential and therefore subject to nondisclosure.

In the preamble to the proposed regulation, the Commission listed certain types of information believed to be exempt from disclosure. (57 FR 55212 (November 24, 1993)). Although the Commission believes it would be inappropriate to put the list in the regulations, the Commission has compiled a more complete list of information it believes would be exempt from disclosure. This list includes, but is not limited to, certain information contained in audit reports, background investigations, management contracts, independent and internal audit reports, business plans, market studies, income projections, contracts relating to the purchase of goods and services, and copies of internal accounting records.

The same commenter also questioned whether submitters of confidential information would be required to designate information previously submitted to the Commission by designating and resubmitting the information.

The Commission believes that submitters of commercial information who wish to be notified in the event of a possible disclosure may designate and resubmit information previously submitted.

Also, the same commenter suggested that §§ 517.5 (c) and (f) be revised to clarify the time limits for objecting to disclosure and providing notice of a final determination regarding disclosure. The commenter expressed concern that the 10-day initial determination period under § 517.6(a) is insufficient in circumstances involving confidential commercial information.

The Commission disagrees with the commenter. The Executive Order requires submitters of information to designate information as confidential upon submission, or a reasonable time thereafter. The Executive Order also requires the Commission to afford the submitter a reasonable period of time to object to disclosure. The Commission believes that to impose time limits on these provisions would burden not only the Commission but also submitters of information. Again, the Commission notes that it has a duty under Executive Order 12600 and also under the IGRA to withhold information falling within the FOIA exemptions governing trade secrets and commercial or financial information. The Commission notes, however, that in instances where the issue of confidential commercial information arises, the Commission will extend the 10-day initial determination period. This will allow time to comply with the procedures under § 517.6. One commenter also questioned whether the Commission should provide the submitter of confidential commercial information with an opportunity to appeal an adverse determination regarding disclosure.

The procedures set forth under FOIA and Executive Order 12600 do not provide submitters of confidential commercial information with an administrative appeal of an adverse agency determination. Several courts have held that an agency's procedures for resolving a submitter's claim of confidentiality are not inadequate simply because they do not afford the submitter a right to an evidentiary hearing. The Commission believes the procedures provided in the regulations, namely, notice to a submitter, an opportunity to object, careful consideration by the Commission of objections, and notice of the Commission's determination, are adequate procedures under FOIA and Executive Order 12600.

Fees

One commenter suggested revising the last sentence of § 517.8(d), Types of requesters, to read, "Specific levels of fees are prescribed below for each of these categories."

The Commission agrees and has made the suggested revision.

The same commenter suggested revising the last sentence of § 517.8(e), Charges for unsuccessful searches, to include the italicized language:

> "However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, *and that the requester may be charged,* fees may be charged."

The Commission disagrees with the suggested revision. The OMB Guideline regarding fee schedules published in the **Federal Register** in March 1987 (52 FR 10012), provides that agencies are entitled to charge requesters for unsuccessful searches. The Commission believes that notice to a requester of the estimated cost of the search time and that the requested records may not exist or may be withheld as exempt, is sufficient notice that a requester may be charged for an unsuccessful search.

The Commission notes that in most instances where search charges are likely to exceed $25, the FOIA Officer will notify the requester of the estimated cost unless the requester has indicated in advance a willingness to pay fees as high as those estimated by the FOIA Officer.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 et seq. The information collection requirements have been assigned the OMB control number 3141–0005. The information collection requirements have been approved for use through January 31, 1995.

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the NIGC has certified to OMB that this rule meets the applicable standards provided in §§ 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 Fed. Reg. 55195, October 25, 1991.

List of Subjects in 25 CFR Part 517

Gaming, Indian lands, Reporting and recordkeeping requirements, Administrative practice and procedure.

Dated: August 16, 1993.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

For the reasons set forth in the preamble, chapter III, title 25 of the Code of Federal Regulations is proposed to be amended by adding a new part 517 to subchapter A.

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

517.1 Purpose and scope.
517.2 Definitions.
517.3 Requests for records.
517.4 Disclosure of requested records.
517.5 Confidential commercial information.
517.6 Response to requests for records.
517.7 Appeals.
517.8 Fees.

Authority: 5 U.S.C. 552.

§ 517.1 Purpose and scope.

This part contains the regulations of the National Indian Gaming Commission implementing the Freedom of Information Act (FOIA). These regulations provide procedures by which members of the public may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records.

§ 517.2 Definitions.

(a) *Commercial-use requester* means requesters seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* means those expenditures by the Commission actually incurred in searching for and duplicating records to respond to a FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of and heating or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a document necessary to fulfill a FOIA request. Such copies can take the form of, among other things, paper copy, microform, audio-visual materials, or machine-readable documentation. The copies provided shall be in a form that is reasonably usable by requesters.

(e) *Educational institution* refers to a preschool, a public or private elementary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is used in § 517.2(a), commercial-use requester, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(i) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(j) *Review* refers to the process of examining a record, in response to a FOIA request, to determine whether any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing of any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. *Review* does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(k) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document. The Commission shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(l) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(m) *Working day* means a federal workday that does not include Saturdays, Sundays or federal holidays.

§ 517.3 Requests for records.

(a) *Form of requests.* Requests for records made pursuant to the FOIA may be in writing, specifically invoke the Act, and be addressed to the FOIA Officer, Suite 250, 1850 M St., NW., Washington, DC 20036–5803. Requests may also be made in person at the same address, where records will be available for inspection on the premises. Requests for records shall describe the records requested with enough specificity to enable Commission employees to locate the information requested with a reasonable amount of effort. Requests shall also include a statement of the maximum amount of fees the requester is willing to pay to obtain the requested information, or if a waiver or reduction of fees seems appropriate, the reasons for such waiver or reduction.

(b) *Types of records not available.* The FOIA does not require the Commission to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or disposed of.

§ 517.4 Disclosure of requested records.

(a) The FOIA Officer shall make requested records available to the public to the greatest extent possible in keeping with the FOIA, except that the following records are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign

policy and which are, in fact, properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Commission;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. § 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to particular types of matters to be withheld;

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a recorded or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(b) If a requested record contains exempted material along with nonexempted material, all reasonable segregable nonexempt material shall be disclosed.

(c) The FOIA Officer may disclose requested information falling within the exemptions of paragraphs (a)(1)–(a)(3), (a)(5), (a)(6), (a)(8) and (a)(9) of this section, if to do so would further the purposes and policies of the FOIA and the IGRA. The FOIA Officer shall not disclose requested information falling within the exemptions of paragraphs (a)(4) and (a)(7) of this section.

§ 517.5. Confidential commercial information.

(a) *Notice to submitters.* The Commission shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the Commission, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The Commission shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The Commission shall afford a submitter a reasonable period of time to provide the Commission with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitters claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specified disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* When a requester brings suit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the

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FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

§ 517.6 Response to requests for records.

(a) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and shall so notify the requester within ten (10) working days after receipt of the request. This 10-day period may be extended ten (10) additional working days if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (a)(1) of this section, he or she shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made.

(3) If no initial determination has been made at the end of the 10-day period provided in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(4) If the FOIA Officer determines that another agency is responsible for responding to a request or part thereof, the FOIA Officer shall refer such request to the appropriate agency. The FOIA Officer shall inform the requester of the referral and of the name and address of the agency or agencies to which the request has been referred.

(b) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, he or she shall:

(1) Provide copies of the requested records; or

(2) Notify the requester of his or her decision, including a brief statement of when and how the records will be provided. Requested records shall then be promptly made available.

(c) *Denial of requests.* When the FOIA Officer determines that access to requested records should be denied, he or she shall notify the requester of the denial, the grounds for withholding the records, and the procedures for appeal of the denial.

§ 517.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.*

(1) *Time for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access or after the time limit for response by the FOIA Officer has expired.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial to have been in error. The appeal shall be addressed to the Freedom of Information Act Appeals Officer, National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination and the right of the requester to obtain judicial review in the appropriate federal district court.

§ 517.8 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Copies.* The Commission shall charge $0.10 per page for copies of documents up to 8½" x 14". For copies prepared by computer, the Commission will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the Commission shall charge the actual costs of producing the documents.

(2) *Searches.* (i) *Manual searches.* Whenever feasible, the Commission will charge at the salary rate (basic pay plus a percent for benefits) of the employee or employees performing the search. However, where a homogenous class of personnel is used exclusively in a search (e.g. all administrative/clerical or all professional/executive), the Commission shall charge $12.50 per hour for clerical time and $30.00 per hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The Commission will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. The Commission is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the Commission analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraphs (b) of this section where it is

determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government;

(2) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to public understanding;

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) *The existence and magnitude of commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. These terms are defined in § 517.2. Specific levels of fees are prescribed below for each of these categories.

(1) *Commercial-use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the above categories fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds $15.00, *except that* the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer will determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Charges for unsuccessful searches.* Ordinarily, no charge will be assessed when requested records are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting on the 31st day following the day on which the bill was sent to the requester. A fee received by the FOIA Officer, even if not processed, will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982 and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* A requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the Commission reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the Commission may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed $250. When payment is required in advance of the processing of a request, the time limits prescribed in § 517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed $25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than $25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requesting party an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

[FR Doc. 93–20146 Filed 8–20–93; 8:45 am]
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8476]

RIN 1545–AR05

Arbitrage Restrictions on Tax-Exempt Bonds; Corrections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains technical corrections to Treasury Decision 8476, which was published in the **Federal Register** for Friday, June 18, 1993 (58 FR 33510). The final regulations relate to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments under section 103 of the Internal Revenue Code.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Scott R. Lilienthal or William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these technical corrections provide guidance under section 148 relating to restrictions on the use of proceeds of tax-exempt State and local bonds to acquire higher yielding

investments, and also provide related guidance under sections 103, 149, and 150 relating to tax-exempt bonds.

Need for Correction

As published, T.D. 8476 contains certain technical errors and ambiguities which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8476), which was the subject of FR Doc. 93–14092, is corrected as follows:

§ 1.103–8 [Corrected]

Paragraph 1. On page 33515, column 2, in 1.103–8, paragraph (a)(5)(i), the second sentence is corrected to read as follows:

"In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under this section if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility, and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(*a*) An official intent for the facility is adopted under § 1.150–2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(*b*) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted."

§ 1.103–15AT [Removed]

Par. 2. On page 33515, column 3, the second line of instructional paragraph 3, the language "1.103–15, and" is removed, and the language "1.103–15, 1.103–15AT, and" is added in its place.

§ 1.148–1 [Corrected]

Par. 3. On page 33519, column 2, under § 1.148–1, paragraph (b), in the definition of *Sale proceeds*, a second sentence is added to read as follows:

"Sale proceeds also include, but are not limited to, amounts derived from the sale of a right that is associated with a bond, and that is described in § 1.148–4(b)(4)."

Par. 4. On page 33520, column 1, under § 1.148–1, the first and second lines of paragraph (c)(4)(i)(B)(*2*), the language "For the portion of an issue that is to be used to finance capital projects, if" is removed, and the language "For the portion of an issue (including a refunding issue) that is to be used to finance or refinance capital projects, if" is added in its place.

§ 1.148–2 [Corrected]

Par. 5. On page 33521, column 2, under § 1.148–2(e)(4)(i), the third and fourth lines from the bottom of the paragraph, the language "This paragraph (e)(4)" is removed, and the language "Except as provided in paragraph (e)(4)(iv) of this section, this paragraph (e)(4)" is added in its place.

Par. 6. On page 33521, column 3, under § 1.148–2, paragraph (e)(4)(iv) is added immediately after paragraph (e)(4)(iii) to read as follows:

"(iv) *Amounts re-loaned for qualified mortgage loans.* The temporary period under this paragraph (e)(4) for proceeds from the sale, prepayment, or repayment of any qualified mortgage loan that are reasonably expected to be used to make or finance new qualified mortgage loans is 3 years."

§ 1.148–3 [Corrected]

Par. 7. On page 33523, column 2, under § 1.148–3, paragraph (h)(4), the last two lines of the paragraph, the language *"each spending period for computation date"* is removed, and the language *"each spending period* for *computation date"* is added in its place.

§ 1.148–4 [Corrected]

Par. 8. On page 33526, column 3, under § 1.148–4, the second line of paragraph (d), the language *"issue to fixed yield issue.* As of the first" is removed and the language *"issue to fixed yield issue.* For purposes of determining yield under this section, as of the first" is added in its place.

Par. 9. On page 33528, column 1, under § 1.148–4, the last line of paragraph (g), the language "computed over the term of the issue" is removed, and the language "computed over the term of the issue, and paragraph (d) of this section does not apply to the issue" is added in its place.

Par. 10. On page 33529, column 2, under § 1.148–4, the third and fourth lines of paragraph (h)(4)(ii)(B), the language "for purposes of § 1.148–3," is removed, and the language "for purposes of determining yield on the hedged bonds for purposes of § 1.148–3," is added in its place.

Par. 11. On page 33529, column 2, under § 1.148–4, the first and second lines of paragraph (h)(4)(ii)(C), the language "If the swap is terminated" is removed, and the language "For purposes of determining yield on the hedged bonds for purposes of § 1.148–3, if the swap is terminated" is added in its place; and in the sixth and seventh lines of that same paragraph (h)(4)(ii)(C), the language ", for purposes of § 1.148–3," is removed.

§ 1.148–5 [Corrected]

Par. 12. On page 33530, column 3, under § 1.148–5, the last two lines of paragraph (c)(3)(i)(A), the language "paragraphs § 1.148–2(e)(2), (e)(3), (e)(4), or (e)(6) of this section, respectively;" is removed, and the language "§ 1.148–2(e)(2), (e)(3), (e)(4), or (e)(6), respectively;" is added in its place.

Par. 13. On page 33530, column 3, under § 1.148–5, the second and third lines of paragraph (c)(3)(i)(E), the language "in a fund that," is removed, and the language "in a reasonably required reserve or replacement fund or in a fund that," is added in its place.

Par. 14. On page 33530, column 3, under § 1.148–5, the fourth line of paragraph (c)(3)(i)(E)(*2*), the language "debt service on the issue (e.g., a reserve" is removed, and the language "debt service on the issue other than in connection with reductions in the amount required to be in that fund (e.g., a reserve" is added in its place.

§ 1.148–6 [Corrected]

Par. 15. On page 33532, column 3, under § 1.148–6, the fourth line of paragraph (b)(2)(i)(B)(*1*), the word "paragraphs" is removed.

Par. 16. On page 33533, column 3, under § 1.148–6, the first line of paragraph (d)(3)(ii)(A)(*1*), the language "Any qualified administrative costs" is removed, and the language "Any issuance costs of the issue or any qualified administrative costs" is added in its place.

Par. 17. On page 33533, column 3, under § 1.148–6, paragraph (d)(3)(ii)(A)(*4*), line 2, the language "sections 1.148–3" is removed, and the language "§§ 1.148–3" is added in its place.

§ 1.148–7 [Corrected]

Par. 18. On page 33537, column 2, under § 1.148–7, the last line of paragraph (f)(2), the language "based on actual facts." is removed, and the language "based on actual facts, except that this election does not apply for purposes of determining whether an issue is a construction issue under paragraph (f)(1) of this section if the 1½ percent penalty election is made under paragraph (k) of this section." is added in its place.

Par. 19. On page 33539, column 2, under § 1.148–7, the second line in paragraph (k)(1)(i), the language "paragraph ( )" is removed, and the

language "paragraph (l)" is added in its place.

§ 1.148–9 [Corrected]

Par. 20. On page 33542, column 1, under § 1.148–9, the sixteenth through nineteenth lines of paragraph (c)(2)(i), the language "If, however, the prior issue has unspent proceeds, these allocations must be ratable both between sources for" is removed, and the language "During the period that the prior issue has unspent proceeds, however, these allocations must be ratable (with reasonable adjustments for rounding) both between sources for" is added in its place.

Par. 21. On page 33542, column 1, under § 1.148–9, the last three lines of paragraph (c)(2)(ii)(A), the language "the earliest expenditures from the mixed escrow" is removed, and the language "the earliest maturing investments in the mixed escrow" is added in its place.

Par. 22. On page 33543, column 1, under § 1.148–9, the next to the last line of paragraph (h)(1)(iv), the language "required reserve fund under section" is removed, and the language "required reserve or replacement fund under section" is added in its place.

§ 1.148–10 [Corrected]

Par. 23. On page 33545, column 1, under § 1.148–10, the first three lines of paragraph (c)(2)(vi), the language "allocable to expenditures for the governmental purpose" is removed, and the language "that will be used or maintained for the governmental purpose" is added in its place.

Par. 24. On page 33545, column 1, under § 1.148–10, the first and second lines of paragraph (c)(2)(viii), the language "in a sinking fund for" is removed, and the language "that will be used or maintained for the governmental purpose of" is added in its place.

§ 1.148–11 [Corrected]

Par. 25. On page 33547, column 2, under § 1.148–11, the seventh through ninth lines of paragraph (c)(2), the language "in connection with the issuance of a refunding issue issued during that period" is removed.

Par. 26. On page 33547, column 3, under § 1.148–11, the last line of paragraph (e), the language "on which the original bond was issued)." is removed, and the language "on which the original bond was issued), but only if § 1.148–2(d)(2)(iv) is applied by substituting *1 and one-half percentage points* for *2 percentage points*." is added in its place.

§ 1.149(d)–1 [Corrected]

Par. 27. On page 33548, column 3, under § 1.149(d)–1, the last line of paragraph (d)(1), the word "apply." is removed, and the language "apply, except that the limitation in § 1.148–9(h)(5) is disregarded." is added in its place.

§ 1.149(g)–1 [Corrected]

§ 1.150–0 [Removed]

Par. 28. On page 33549, column 2, under § 1.149(g)–1, immediately following paragraph (d), a new instructional paragraph is added to read as follows:

"Par. 9a. Section 1.150–0 is removed."

§ 1.150–1 [Corrected]

Par. 29. On page 33550, column 1, under § 1.150–1, paragraph (b), the second sentence in the definition of *Tax-exempt bond*, is corrected to read as follows:

"For purposes of section 148, tax-exempt bond includes:

(1) An interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest is interest that is excludable from gross income under section 103; and

(2) A certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR part 344."

Par. 30. On page 33550, column 1, under § 1.150–1, seventh line of paragraph (c)(1)(i), the language "treated and sold" is removed, and the language "treated as sold" is added in its place.

§ 1.150–2 [Corrected]

Par. 31. On page 33552, column 3, under § 1.150–2, fifth line from the bottom of paragraph (g)(1), the language "obligation to reimburse an original" is removed, and the language "obligation or to reimburse an original" is added in its place.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20176 Filed 8–18–93; 9:49 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, submitted March 19, 1993, pertains to proposed legislative changes. One change would clarify that the time period for raising deficiencies in a mining permit pertains to non-coal permits only. A second change would specify the persons to be notified of pending coal mine permit applications. The proposed amendment revises the Wyoming program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal rules.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78684). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15 and 950.16.

II. Submission of Amendment

On March 19, 1993, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. WY–23–01). Wyoming proposes to amend the following Department of Environmental Quality (DEQ), Land Quality Division (LQD) statutes of the Environmental Quality Act, by enacting legislation in

response to the required Program Amendment 30 CFR 950.16(o), to clarify that a limited period of time for raising deficiencies in a mining permit application does not apply to coal mining permit applications. A State initiative also proposes changes to Enrolled Act No. 31 which specifies persons to be notified of pending mining permit applications.

OSM published a notice in the April 6, 1993, **Federal Register** (58 FR 17811) announcing receipt of the proposed amendment and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (Administrative Record No. WY–23–10). The public comment period closed on May 6, 1993. A public hearing was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Wyoming on March 19, 1993.

1. Time Limits for Raising Deficiencies

Wyoming proposes to amend its State statute at W.S. 35–11–406(h) by adding the phrase "for non-coal permits" to clarify that the 150-day time limit for raising deficiencies in an application does not apply to coal permit applications.

Wyoming proposed changes in response to a required program amendment at 30 CFR 950.16(o) that was placed on its program in the July 8, 1992, final **Federal Register** notice (57 FR 30121). In that rulemaking action, OSM did not agree with Wyoming's proposed revision of subsection W.S. 35–11–406(h) that, after a 150-day technical review period, would not allow the administrator to raise any item not previously specified as being deficient unless the applicant, in subsequent revisions, significantly modifies the application after a 150-day technical review period . OSM found that the proposed language could potentially prevent the administrator from considering new deficiencies identified as a result of a prolonged technical review, or during the public review process. Thus, Wyoming's program would be less stringent than SMCRA requirements at section 510(b), that require the regulatory authority to find an application accurate and complete, that it meet all requirements of the Act and State program, and that the applicant has demonstrated that reclamation required by the Act and State program can be accomplished. Wyoming must retain authority to require, at any time prior to permit approval, that the applicant correct any deficiencies.

Wyoming has elected to remedy the deficiency by adding the phrase "for non-coal permits." The will clarify that the 150-day time period for raising deficiencies does not apply to coal mining permits.

The Director is approving Wyoming's proposed change to W.S. 35–11–406(h) as being consistent with and no less effective than the Federal program requirements that place no time limit for a deficiency to be raised concerning coal mining permit applications. The required amendment at 30 CFR 950.16(o) will be removed.

2. Notification of Pending Mining Permit Applications

Wyoming proposes to amend W.S. 35–11–406(j) by modifying the subsection to more clearly specify the persons to be notified of a mining permit application in the locality of the proposed mining operation. Specifically, a copy of the application notice is to be mailed within five days after the first publication, to "all surface owners of record of the land within the permit area, to surface owners of record of immediately adjacent lands, to any surface owners within one-half (½) mile of the proposed mining site and to the operator of any oil and gas well within the permit area or, if there is no oil and gas well, to the lessee of record of any oil and gas lease within the permit area."

Section 507(b)(6) of SMCRA specifies that the permit application shall contain, among other things, a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection. No specific identification of, or requirement for, mailing the application to specific individuals is required by the Federal program.

Although Wyoming's proposed change has no direct Federal program counterpart in terms of identifying persons that a permit application should be sent to, the State's desire to do so is in accordance with Federal program requirements.

The Director is approving Wyoming's proposed modification at W.S. 35–11–406(j), to specify the persons to be notified of a mining permit application in the locality of the proposed mining operation, as being consistent with and no less effective than the Federal Program requirements for public notification.

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received. A public hearing was not held because no one requested an opportunity to testify.

2. Federal Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Wyoming program.

The Geological Survey responded that no geologic factors are involved and had no suggestions to make (Administrative Record No. WY–23–04).

The Mine Safety and Health Administration (Denver, Colorado) responded that the proposed amendment appears to be relevant and satisfactory (Administrative Record No. WY–23–05).

The U.S. Forest Service, Rocky Mountain Region had no comments or concerns with the proposed rule change (Administrative Record No. WY–23–06).

The U.S. Army Corps of Engineers responded that there are no issues involved for which the Corps has responsibility for review, and referred OSM to their letter dated April 5, 1993. That letter provided the Corps' position that they would review only those amendments concerning coal mine waste impoundment structures in order to eliminate unnecessary work efforts of both agencies (Administrative Record No. WY–23–07).

The U.S. Department of Agriculture's Soil Conservation Service had no comment on the information provided for review (Administrative Record No. WY–23–08).

The Bureau of Mines, Division of Environmental Technology reviewed the amendment and had no comment (Administrative Record No. WY–23–09).

The Bureau of Land Management (Cheyenne, Wyoming) commented that the proposed changes appear to be technical adjustments to DEQ policies and programs to bring them into line with OSM regulations, and that it did not appear that the changes would affect Bureau programs (Administrative Record No. WY–23–11).

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and ACHP for comment. Neither agency responded with any comments.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.) By letter dated March 30, 1993, (Administrative Record No. WY–23–03) the OSM requested that EPA review and concur, if appropriate, with Wyoming's proposed amendment. No response was received from the EPA, and their concurrence was not required on the proposed amendment, since it did not address any requirements that would impact the Clean Water or Clean Air Acts.

V. Director's Decision

Based on the above findings, the Director approves Wyoming's proposed program amendment as submitted March 19, 1993.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. The Director is approving these statutes with the provision that they will be fully promulgated in a form identical to that submitted to and reviewed by OSM. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 950 of the Code of Federal Regulations is amended as set forth below.

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

2. Section 950.15 is amended by adding paragraph (o) to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(o) The following amendment to the Wyoming permanent regulatory program, as submitted to OSM on March 19, 1993, is approved effective August 23, 1993. W.S. 35–11–406(h) clarifying that the 150-day time period for raising deficiencies apply only to non-coal permits; W.S. 35–11–406(j) that specifies the persons to be notified of a pending permit application within the locality of the proposed mine site.

§ 950.16 [Amended]

3. Section 950.16 is amended to remove and reserve paragraph (o).

[FR Doc. 93–20293 Filed 8–20–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International

Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS TEMPEST (PC 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval patrol craft. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS TEMPEST (PC 2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 23(a)(ii), pertaining to display of a masthead light and a second (after) masthead light on vessels exceeding 50 meters in length; Annex I, paragraph 2(k), pertaining to the vertical distance between the forward and after anchor lights and the height of the forward anchor light above the hull; Rule 21(c), pertaining to location of the sternlight, without interfering with its special functions as a naval patrol craft. The Judge Advocate General of the Navy has also certified that the number of masthead lights displayed and the location of the other mentioned lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the number and placement of lights on USS TEMPEST (PC 2) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by revising the column headings and adding the following vessel:

TABLE THREE

Vessel	Number	Masthead lights, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b) annex 1	Stern light, distance forward of stem in meters; rule 21(c)	Forward anchor light, height above hull in meters; § 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters; § 2(K) annex 1
USS TEMPEST	PC 2					[1]25.5	3.0	1.1 below.

[1] Only when towing.

Dated: July 6, 1993.
Approved:
D. A. Albrecht,
Acting Judge Advocate General.
[FR Doc. 93–20381 Filed 8–20–93; 8:45 am]
BILLING CODE 3810–AE–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI13–01–5751; FRL–4697–2]

Approval and Promulgation of Implementation Plans; Michigan State Implementation Plan; Withdrawal; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule; withdrawal.

SUMMARY: In a June 24, 1993, (58 FR 34227) notice of final rulemaking, USEPA was taking action to approve a revision to Michigan's State Implementation Plan (SIP). USEPA's action was based upon a revision request which was submitted by the State to satisfy the requirements of Section 174 of the Clean Air Act, as amended. Section 174 requires the State to establish and certify an organization which will review and update, as necessary, planning procedures adopted before November 15, 1990, and which will determine the agency or agencies that will be responsible for developing, adopting, and implementing each element of the revised SIP.

Today USEPA is withdrawing its final rulemaking due to adverse public comment. This comment will be the addressed in a future rulemaking action.

EFFECTIVE DATE: August 23, 1993.

ADDRESSES: Copies of the SIP revision, pubic comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Michael G. Leslie at (312) 353–6680, before visiting the Region 5 Office).

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Ozone.

Dated: August 9, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–20381 Filed 8–20–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436, and 440

[MB–001–N]

RIN 0938–AA58

Medicaid Program; Eligibility and Coverage Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of delay of effective dates and compliance dates.

SUMMARY: This notice delays by an additional 6 months the effective dates of the final rule with comment period on Medicaid Eligibility and Coverage Requirements published January 19, 1993, in the **Federal Register** (58 FR 4908). It also extends the compliance dates for this rule in light of the delay in the effective dates.

DATES: Effective August 18, 1993, the Effective and Compliance Dates are delayed as follows:

Effective Dates: These regulations are effective on February 18, 1994, except for §§ 435.604, 435.606, 436.604, and 436.606, which are effective April 19, 1994.

Compliance Dates: We will not hold a State out of compliance with the requirements of this final rule if the State submits preprinted plan amendments and required attachments by April 19, 1994, for all provisions other than §§ 435.604, 435.606, 436.604, and 436.606. States must comply with §§ 435.604, 435.606, 436.604, and 436.606, and submit preprinted plan amendments and required attachments for these sections, by the latest of: (1) July 19, 1994; (2) the first month of the second quarter of the fiscal year in which appropriations apply following January 1, 1994, or later when State legislation is needed to appropriate funds to implement the provisions of these sections; or (3) the first month of the second calendar quarter following the end of the State legislative session that convenes January 1, 1994, or later when authorizing legislation is needed to implement the provisions of these sections.

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (410) 966–4451.

SUPPLEMENTARY INFORMATION: On January 19, 1993, we published in the **Federal Register** a final rule with comment period that amends the requirements for coverage of certain groups of individuals under Medicaid and the requirements for determining Medicaid eligibility. Because the new administration wanted to fully review the policies in these regulations, on February 19, 1993, we published a notice in the **Federal Register** (58 FR 9120) delaying the effective dates and compliance dates of the final rule with comment period for 6 months. Because this review is not complete, we are extending the effective dates of the rule an additional 6 months. We also have extended the compliance dates for all provisions other than §§ 435.604, 435.606, 436.604, and 436.606 for an additional 6 months. For §§ 435.604, 435.606, 436.604, and 436.606, we have extended the compliance dates to July 19, 1994, or to a date that allows time for State legislature sessions to convene if appropriations or authorizing legislation is needed.

These regulations incorporate into the Medicaid regulations substantive changes made in the composition of eligibility groups of individuals and in the criteria used to determine their financial eligibility under Medicaid. The substantive changes were initially made by the Omnibus Budget Reconciliation Act of 1981 (OBRA '81), Public Law 97–35 and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, and further amended by the Deficit Reduction Act of 1984 (DRA), Public Law 98–369; the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272; the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509; the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93; the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203; the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360; the Family Support Act of 1988, Public Law 100–485; the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239; and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508. In addition, the document contains changes made as a result of administrative decisions to improve program administration and efficiency.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Program)

Dated: August 6, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 16, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–20277 Filed 8–18–93; 10:00 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 61

[CC Docket No. 93–36; FCC 93–401]

Tariff Filing Requirements for Nondominant Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order adopts significantly streamlined federal tariffing requirements for domestic nondominant common carriers. The Order allows nondominant common carriers to file their interstate tariffs on not less than one day notice. The Order permits nondominant carriers to state in their tariffs either a fixed rate or a reasonable range of rates. The Order also requires nonodominant carriers to file their tariffs and tariff revisions on three and one half inch floppy diskettes and gives nondominant carriers added flexibility in formatting their tariff filings. These rules are necessary in the wake of a recent court decision which found the Commission's forbearance rules unlawful. As a result of that decision, all nondominant common carriers are required to file tariffs for their interstate common carrier communications services. The rules are designed to ease the existing tariff filing requirements for domestic nondominant common carriers.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Lampert (202) 632–6365 or Daniel Gonzalesz, Common Carrier Bureau, Policy and Program Planning Division, (202) 632–1299.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in CC Docket No. 93–36, adopted August 16, 1993 and released August 18, 1993. The Notice of Proposed Rulemaking (Notice) initiating this proceeding may be found at 58 FR 17813 (April 6, 1993).

The complete text of this Memorandum Opinion and Order is available for inspection and copying

during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 1919 M Street NW., room 246, Washington, DC 20554.

OMB Review

The following collection of information contained in the final rule has been approved by Office of Management and Budget (OMB).

Title: Tariff Filing Requirements for Nondominant Common Carriers.

OMB Control Number: 3060–0540.

Action: Final Rule.

Respondents and Frequency of Responses: The number of respondents is estimated at 5000, and the frequency of response is estimated at 1 per year.

Estimated Annual Burden: The total annual burden is estimated at 202,500 hours. This figure was calculated by multiplying the total annual responses, 5000, by the hours per response, 40.5. This estimate is the same as contained in the Commission's request to OMB which accompanied the NPRM.

Needs and Uses

1. In 1983, the FCC determined that certain domestic nondominant carriers should be permitted to "forbear" from filing tariffs pursuant to section 203 of the Communications Act. Fourth Report and Order, 95 FCC 2d 554 (1983). In adopting "forbearance," the Commission concluded that mandatory tariff regulation of nondominant carriers, which by definition lack market power, was inconsistent with the statutory purposes of section 1 of the Communications Act because it inhibits price competition, service innovation entry into the market by competitive carriers, and the ability of carriers to respond quickly to market trends.

2. On November 13, 1992 the U.S. Court of Appeals for the District of Columbia Circuit invalidated the Commission's longstanding forbearance rules. *AT&T* v. *FCC*, 978 F.2d 727 (D.C. Cir. 1992). The court held that section 203 did not authorize the FCC to permit carriers to offer common carrier services without filing tariffs. As a result of the court's decision, nondominant carriers are now obligated pursuant to section 203 to file tariffs with the Commission. Part 61 implements the provision of section 203 of the Communications Act.

3. This Memorandum Opinion and Order modifies the Commission's tariffing rules to reduce the burdens of tariff filings for domestic nondominant carriers. Specifically, we significantly streamline the tariff filing requirements for nondominant carriers by reducing the required notice period and affording nondominant carriers added flexibility regarding the content and form of their tariff filings. The Commission will also allow nondominant carriers to state in their tariffs either a fixed rate or a reasonable range of rates to reduce the instances of carriers having to re-file tariffs. Such action is premised upon the consistent conclusion of the Commission over the past ten years that minimal tariff regulation of nondominant common carriers serves the public interest by encouraging the development of an advanced telecommunications network, increasing competition in the telecommunications marketplace, and promoting consumer choice for telecommunication services.

4. The information required pursuant to the tariffing rules adopted by the Commission will be used by the Tariff Division of the FCC's Common Carrier Bureau when it evaluates the tariff filings of nondominant common carriers under the Communications Act. Collection of this information will ensure compliance with section 203 of the Act.

5. The Commission will require that nondominant carriers comply with the tariff requirements by filing tariffs on a computer diskette. Sections 61.20 through 61.23 of the Commission's rules set forth the applicable procedure for nondominant carriers to file tariffs.

6. Forty-four comments and 25 reply-comments were filed in this proceeding. Appendix A of the document lists the names of the parties filing comments and reply comments in this proceeding. The Commission carefully considered the comments and reply comments and has amended its rules in response to the record developed.

7. The collection of information provided for in §§ 61.20 through 61.23 of the Commission's rules is essential to the mission of the FCC and is intended to ensure compliance with section 203 of the Communications Act. Generally, carriers determine the frequency of filing tariffs since tariffs are carrier-initiated. The rules adopted here are designed to reduce the frequency of tariff filings by allowing carriers to submit tariffs that contain either a fixed rate or a reasonable range of rates. Pursuant to § 61.20 of our rules, nondominant carriers are required to file three floppy diskettes containing their tariff to be disseminated as follows: one diskette to the Secretary's Office, one to the Commission's copy contractor; and one to the Tariff Division. Multiple diskette copies are needed to maintain the Commission's public reference room and to provide working copies to staff members.

8. The information to be furnished by carriers pursuant to §§ 61.20 through 61.23 has been significantly streamlined under section 203 of the Communications Act. The Commission estimates that the total annual reporting and recordkeeping burden that will result from each collection of information is the same as that reported to OMB with the Commission's Notice.

Analysis of the Memorandum Opinion and Order

9. This Memorandum Opinion and Order adopts rule changes to ease the tariff filing requirements for domestic nondominant common carriers. On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission's long-standing "forbearance" rules under which nondominant carriers—carriers lacking market power—were permitted to refrain from filing tariffs. As a result of the court's decision, nondominant carriers are now obligated to file tariffs with the Commission.

10. On the basis of the extensive record developed in response to the Notice, the Commission reaffirms its policy findings, adopted nearly a decade ago in Competitive Carrier, and concludes that tariff regulation of nondominant carriers is not only unnecessary to ensure just and reasonable rates, but is actually counterproductive since it can inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends. Based on these policy findings, the Commission concludes that the public interest is served by significantly streamlining, consistent with our statutory obligations, tariff regulation of all domestic nondominant carriers. This action is taken pursuant to sections 1, 4(i), 4(j), 201–205, and 403 of the Communications Act, as amended: 47 U.S.C. 154(i), 154(j), 201–205, and 403.

11. First, the Memorandum Opinion and Order reduces the notice period applicable to nondominant carriers from 14 days to 1 day. The Order finds that the costs of retaining the existing 14 day notice period exceed any benefits that might exist. The Commission concludes that the 14 day notice inhibits price competition and delays the availability of new services and price reductions to consumers. It further concludes that because nondominant carriers lack market power, advance scrutiny of their interstate tariffs is unnecessary to protect the public's interest in just and reasonable tariffs under the

Communications Act. The Order states that competition substantially reduces the likelihood that unlawful tariffs will be filed. In addition, the Order concludes that, pursuant to section 203(b)(2) of the Communications Act, the Commission may lawfully amend the notice period for nondominant carrier tariff filings.

12. The Order further reduces the tariff filing burdens on nondominant carriers by permitting nondominant carriers to file interstate tariffs that contain only the information required under section 203 of the Communications Act. The Order concludes that amending the Commission's rules to permit carriers to submit tariffs that contain either a fixed rate or a reasonable range of rates will significantly reduce the costs and administrative burdens associated with filing tariffs and tariff revisions. The Order concludes that affording such flexibility will promote competition by allowing carriers to respond immediately to changed market conditions. The order also concludes that the public will benefit from the resulting decreased costs and increased competition. Finally, the Order finds that the Commission has sufficient legal authority pursuant to section 203 of the Communications Act to afford nondominant carriers flexibility in stating tariff rate information.

13. In order to facilitate the processing, storage, and availability of the interstate tariffs of nondominant carriers, the Order requires nondominant carriers to file tariffs and updates on three and one-half inch floppy diskettes, formatted in an IBM compatible form using IBM DOS 5.0 and WordPerfect 5.1, that contain the complete tariff. The Order also gives carriers flexibility in indicating material that is new or changed. Carriers are required to indicate in their tariffs, in whatever way they prefer, what new or changed material is present.

14. The Order eliminates the requirement that carriers file a formal transmittal letter. The cover letter accompanying tariff filings may be in the form of the carrier's choice. Cover letters must be 8½ by 11 inches in size (21.5 cm × 27.9 cm), identify the carrier, briefly explain the nature of the filing, and indicate the date and method of filing of the original cover letter.

15. The Order also allows carriers to state, in any form, the tariff charges and the classifications, practices, and regulations affecting such charges required under section 203(a) of the Act. The Memorandum Opinion and Order finds that modification of existing tariff form requirements is in the public interest since it would reduce the administrative burdens upon both the Commission and carriers. The Order concludes that reducing these burdens will promote innovation, speed introduction of new service offerings, ensure a predictable regulatory environment, and generally bring consumers diverse service offerings at lower costs. In addition, the Order finds that the Commission has sufficient legal authority under sections 203 and 4(i) of the Act to modify existing tariff form requirements.

16. Finally, the Order adopts new rules governing how a nondominant carrier tariff filing is made. The Commission adopts the following tariff filing rules:

17. Nondominant carriers must send a paper copy of the cover letter, fee form, and fee to the Mellon Bank.

18. Carriers must file with the Secretary of the Commission a copy of the cover letter and tariff filing on diskette. The copy is for the Commission's official records and will not be generally available to the public.

19. Carriers must also send a paper copy of the cover letter and one diskette to the Public Reference Room. This copy will be available for public reference.

20. Carriers updating tariffs already on file shall file a paper copy of the cover letter and diskette containing the complete tariff, with the new or changed material inserted.

Paperwork Reduction

21. Public reporting burden for this collection of information is estimated to average 40.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060–0540), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0540), Washington, DC 20503.

Ordering Clauses

22. Accordingly, *It Is So Ordered That*, pursuant to sections 1, 4(i), 4(j), 201–205 and 403 of the Communications Act, As amended: 47 U.S.C. 154(i), 154(j), 201–205, and 403, the Memorandum Opinion And Order Is Adopted amending §§ 43.54, 61.20, 61.21, 61.22, 61.23 of the Commission's rules, 47 CFR 43.54, 63.20, 61.21, 61.22, and 61.23 as indicated below is effective upon publication in the **Federal Register**.[1]

23. *It Is Further Ordered That*, the Secretary shall send a copy of Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–453, 94 Stat. 1164, 5 U.S.C. 601 *et seq. (1981)*.

List of Subjects

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 61

Communications common carriers, Nondominant communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 43, is amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by revising paragraph (a) introductory text to read as follows:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier engaged in domestic or foreign communications, or both, which has not been classified as non-dominant pursuant to § 61.3 of this chapter, and which enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point, must file with the Commission,

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[1] The publication of a rule may be made less than 30 days from publication in the **Federal Register** where good cause exists. See 5 U.S.C. 553(d)(3). In order to end as expeditiously as possible the regulatory and marketplace uncertainty resulting from the U.S. Court of Appeals' decision overturning our permissive detariffing rules, we adopt new requirements contained herein and find good cause to make this order effective upon publication in the **Federal Register**.

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within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

* * * * *

Title 47 of the Code of Federal Regulations, part 61, is amended as follows:

1. The authority citation for part 61 is revised to read as follows:

Authority: Sections 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended 47 U.S.C. secs. 151, 154(i), 154(j), 201–205, and 403 unless otherwise noted.

2. Two undesignated centerheadings and §§ 61.20 and 61.21 are added to read as follows:

GENERAL RULES

General Rules for Domestic Nondominant Carriers

§ 61.20 Method of filing publications.

(a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which the publication is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one diskette containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a) of this section.

§ 61.21 Cover letters.

(a) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8½ by 11 inches (21.6 cm x 27.9 cm) in size. All cover letters should briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter as required by § 61.20(b).

(b) A separate cover letter may accompany each publication, or an issuing carrier may file as many publications as desired with one cover letter. **Note:** If a receipt for accompanying publication is desired, the cover letter must be sent in duplicate. One copy showing the date of the receipt by the Commission will then be returned to the sender.

3. An undesignated center heading and §§ 61.22 and 61.23 are added to read as follows:

Specific Rules for Domestic Nondominant Carriers

§ 61.22 Composition of tariffs.

(a) The tariff must be submitted on a 3½ inch (8.89 cm) diskette, formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette must be submitted in "read only" mode. The diskette must be clearly labelled with the carrier's name, Tariff Number, and the date of submission. The cover letter must be submitted on 8½ by 11 inch (21.6 cm x 27.9 cm) paper, and must be plainly printed in black ink.

(b) The tariff must contain the carrier's name, and the information required by section 203(c) of the Act. Rates may be expressed in a manner of the carriers choosing and may include a reasonable range of ranges.

(c) Changes to a tariff must be made by refiling the entire tariff on a new diskette, with the changed material included. The carrier must indicate in the tariff what changes have been made.

(d) Domestic nondominant carriers subject to the provision of this section are not subject to the tariff filing requirements of § 61.54.

§ 61.23 Notice requirements.

(a) Every proposed tariff filing must bear an effective date and, except as otherwise provided by regulation, special permission, or Commission order, must be made on at least the number of days notice specified in this section.

(b) Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date. In computing the notice period required, all days including Sundays and holidays must be counted.

(c) Tariff filings of domestic nondominant carriers must be made on at least one day notice.

4. The undesignated centerheading "General Rules" preceding § 61.32 is removed.

[FR Doc. 93–20307 Filed 8–20–93; 8:45 am]
BILLING CODE 8172–01–M

47 CFR Part 63

[FCC 93–204]

Extension of Lines and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules which set forth requirements for filing applications to extend lines of communication under Section 214 of the Communications Act of 1934, as amended, to delete all references to "voice" and "record" carriers in the applicable regulatory provision and increase the number of international circuits that may be requested in applications processed under that provision to 60 64-Kbps circuits; increase the monetary limits set forth in another provision to $2,000,000 for construction costs and $500,000 for annual rental costs in domestic applications; and specify that an applicant for international service need not submit, as part of its Section 214 application, proposed tariff charges and regulations required by agency regulation.

This action is necessary to update regulations which have limited effect because of changed circumstances and, where necessary, to eliminate regulations which are no longer required. The intended effect of this action is to further streamline the process for carriers seeking authority to acquire additional facilities for service to points previously authorized and to reduce the regulatory burden on the Commission.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: John M. Coles, Attorney, Common Carrier Bureau, (202) 632–7265.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Public reporting burden for the collection of information is estimated to average 12.98 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060–0149), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0149), Washington, DC 20503.

Summary of Decision

The order amends the "informal" filing requirements of § 63.03(a) of the Commission's Rules under which applications are deemed to be granted by the Commission on the 21st day after the public notice date unless the Commission notifies the applicant to the contrary. The purpose of the rule is to streamline the process for carriers seeking authority to supplement existing facilities for service to points previously authorized and to reduce the regulatory burden on the Commission. In its present version, § 63.03(a)(5) excludes from these "informal" procedures applications which request in excess of 16 international voice-grade circuits for voice carriers or 6 voice-grade circuits for record carriers. Section 63.03(a)(6) excludes those applications involving domestic channels where the construction or acquisition cost exceeds $1,000,000 or where the annual rental exceeds $200,000.

The Order amends § 63.03(a)(5) to delete all references to "voice" and "record" carriers and increase the number of international circuits that may be processed under the "informal" procedures of § 63.03 from 16 voice-grade circuits to 60 64-Kilobit per second (Kbps) circuits. There is no longer any basis for the dichotomy between voice and record carriers in light of the Commission's decision that removal of all restriction on service offerings would not irreparably harm any party. With respect to the increase in the number of circuits, the circuit limits specified in § 63.03(a)(5) have been increased in the past based on the need to reduce burdens on both carriers and the Commission. The Order concludes that a significant number of additional applications would qualify for treatment under the informal procedures of § 63.03(a) and that an increase in the current circuit limitations would remove the need for any further increase in the number of circuits in the near future.

The Order also increases the monetary limitations for domestic circuits set forth in § 63.03(a)(6) from $1,000,000 to $2,000,000 for construction or acquisition costs and from $200,000 to $500,000 for annual rental costs. The history of § 63.03(a)(6) demonstrates that it has been amended several times to take into account economic factors such as the present and continuing high demand for service, the increasing magnitude of general construction programs and increases in the rate of inflation. Previous amendments have also recognized that the Commission has been confronted with greater regulatory burdens attributable to increases in the number of applications filed. The Order concludes that those same factors also justify these further amendments.

The Order further removes from international applications the requirement contained in Section 63.01(o) of the Commission's rules that an applicant submit, as part of a Section 214 application, proposed tariff charges and regulations. The inclusion of a sample tariff with an international Section 214 application is both burdensome and unnecessary. In those instances where an applicant for international service is requesting to serve a foreign location for the first time, the applicant typically will not have all of the information necessary to formulate proposed tariff charges and regulations since, under existing Commission policy, an applicant need not have an operating agreement at the time a Section 214 application is filed. The terms and conditions of an operating agreement, particularly with respect to accounting rates, have a bearing on proposed charges and regulations. In those instances where an applicant for international service files a Section 214 application to supplement existing facilities to a country it is already authorized to serve, a sample tariff is unnecessary because the applicant will already have a tariff in effect. In any event, an applicant must file a tariff pursuant to part 61 of the Commission's Rules after it receives a Section 214 authorization and before it implements service. The tariff will be subject to review under the Communications Act.

The FCC has not published a notice of proposed rulemaking on the amendments to section 63.03 (a)(5), (a)(6) and § 63.01(o), as allowed by 5 U.S.C. 553(b)(B) when the agency determines, for good cause, that it is unnecessary to publish a proposed rule and obtain comments from interested persons.

The FCC has determined that publication of a proposed rule is unnecessary because these rule amendments effectuate relatively minor changes in its rules and are unlikely to generate comment or opposition from the public.

List of Subjects in 47 CFR Part 63

Communications common carriers, Telegraph, Telephone.

William F. Caton,

Acting Secretary.

Rule Changes

Part 63 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 201–205, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218 and 403, unless otherwise noted.

2. Section 63.01 is amended by revising paragraph (o) to read as follows:

§ 63.01 Contents of applications.

* * * * *

(o) Proposed tariff charges and regulations for domestic applications;

* * * * *

3. Section 63.03 is amended by revising paragraphs (a)(5), (a)(6), and (d) to read as follows:

§ 63.03 Special provisions relating to small projects for supplementing of facilities.

(a) * * *

(5) International channels exceeding 60 64-kilobit per second circuits; or

(6) Domestic channels where the construction or acquisition cost exceeds $2,000,000 or where the annual rental exceeds $500,000.

* * * * *

(d) Such supplementing of facilities shall be deemed to have been authorized by the Commission effective as of the 21st day following the date the application appears on public notice unless on or before the 21st day the Commission shall notify the applicant

to the contrary. Where supplemental facilities are authorized under this section, they shall be considered subject to the same terms and conditions, if any, that the Commission has imposed upon a prior authorization which is being supplemented.

* * * * *

[FR Doc. 93-20242 Filed 8-20-93; 8:45 am]
BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833

Interim Change to the NASA FAR Supplement Reflecting the Discontinuance of the NASA Board of Contract Appeals (NASA BCA) and its Merger with the Armed Services Board of Contract Appeals (ASBCA)

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA has revised the NASA FAR Supplement to reflect that the NASA BCA no longer exists as a separate entity and that its functions are now accomplished by the ASBCA.

DATES: This interim rule is effective upon publication. Comments are due no later than September 22, 1993.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, Telephone: (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

The Contract Disputes Act of 1978 (CDA) provides for the establishment of an agency Board of Contract Appeals within a Federal agency when the agency head determines that the volume of contract claims under the CDA justifies a full-time Board (41 U.S.C. 607(a)(1)). Pursuant to this authority, NASA established the NASA BCA. The continuation of an agency Board is dependent upon the discretion of agency head as 41 U.S.C. 607(c) provides that: "[I]f the volume of contract claims is not sufficient to justify an agency board under subsection (a) of this section or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency." Under this authority, the Administrator of NASA has determined that he no longer considers it appropriate for NASA to maintain a separate Board. This determination was made in a Memorandum of Agreement (MOA) signed by the NASA Administrator and the Under Secretary of Defense (Acquisition). In this MOA, effective July 12, 1993, the NASA BCA was discontinued as a separate entity and its functions were assumed by the ASBCA. This change is issued as an interim rule with immediate implementation to reflect the changes made in the MOA as authorized by the CDA.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1833

Government Procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1833 is amended as follows:

1. The authority citation for 48 CFR part 1833 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.211, 1833.211-70 [Revised]

2. Sections 1833.211 and 1833.211-70 are revised to read as follows:

18-33.211 Contracting officer's decision.

The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing and determining disputes arising under or related to NASA contracts. Accordingly, when final decision letters are prepared, contracting officers shall alter the paragraph at FAR 33.211(a)(4)(v) to include the following:

(a) The Board's mailing address: Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208.

(b) A notification that the Board's operating procedures appear in part 48, Code of Federal Regulations, chapter 2, appendix A.

18-33.211-70 Contracts awarded before March 1, 1979.

Under contracts awarded before the effective date of the Contract Disputes Act of 1978 (March 1, 1979), the contractor may elect to proceed either under the Act or under the Disputes clause in the contract. Final decision letters regarding disputes under contracts awarded before that date shall be prepared in accordance with FAR 33.211(a)(4) except that contracting officers shall alter the paragraph at FAR 33.211(a)(4)(v) to read as follows:

This is the final decision of the contracting officer. Since your contract was awarded before the effective date of the Contract Disputes Act of 1978 (March 1, 1979), you may appeal this decision by following the procedures of either the Disputes clause at Federal Acquisition Regulation (FAR) 52.233-1, or the Disputes clause (dated September 1962) in your contract. If you decide to appeal under FAR 52.233-1, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208, and provide a copy to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. For appeals under this clause, you may elect to proceed under the Board's small claims procedure (for claims of $10,000 or less) or its accelerated procedure (for claims of $50,000 or less). In lieu of appealing to the Board, you may bring an action directly in the U.S. Claims Court within 12 months of the date you receive this decision.

If you elect to appeal under the Disputes clause (dated September 1962) of your contract, you must, within 30 days from the date you receive this decision, mail or otherwise furnish to the contracting officer a written appeal or notice addressed to the Armed Services Board of Contract Appeals. The appeal or notice shall indicate that an appeal is intended, reference this decision, and identify the contract by

number. For appeals under this clause, you may elect to proceed under the Board's optional accelerated procedure (for claims of $25,000 or less).

For additional information, see the procedures of the Armed Services Board of Contract Appeals, which appear in part 48, Code of Federal Regulations, chapter 2, appendix A.

[FR Doc. 93–20194 Filed 8–20–93; 8:45 am]
BILLING CODE 7510–01–M

48 CFR Parts 1837 and 1852

Changes to NASA FAR Supplement Coverage on Pension Portability

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS). The modifications do not change NASA's fundamental policy not to require pension portability provisions in its contracts. However, in those cases where it is appropriate, these changes allow Center Procurement Officers to authorize its use if they utilize the clause provided. Under current rules, the use of any pension portability provision must be approved by the Assistant Administrator for Procurement.

EFFECTIVE DATE: This rule shall take effect August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Guenther, Acting Director, Contract Pricing and Finance Division (Code HC), Telephone: (202) 358–0003.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1992, a proposed rule to amend the NFS to allow Center Procurement Officers to authorize the inclusion of pension portability requirements in solicitations, contracts, or contract modifications for additional work was published in the **Federal Register** for comment (57 FR 47602). No public comments were received.

Currently, in those cases where use of a pension portability provision is appropriate, a Center must create one and send it to the Assistant Administrator for Procurement for approval. This new coverage provides standard language and authorizes the Center Procurement Officer to authorize its use.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most of the changes impact internal procedures. The clause created is intended to standardize contract provisions which have been created on a case-by-case basis in the past. However, for the clause to make any sense, all the coverage needs to be published. This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1837 and 1852

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1837 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1837 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1837—SERVICE CONTRACTING

2. Part 1837 is amended by revising sections 1837.110 and 1837.170 to read as follows:

1837.110 Solicitation provisions and contract clauses.

When the procurement officer determines, in accordance with the requirements of 1837.170, to use a pension portability clause in a solicitation, contract or negotiated contract modification for additional work, he/she shall use a clause substantially the same as the one at 1852.237–71. The approval of the Associate Administrator for Procurement (Code HC) shall be obtained before using any other clause.

* * * * *

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, the inclusion of pension portability requirements in a solicitation, contract, or contract modification for additional work may be used under the following conditions:

(1) Only defined contribution plans, or multiparty defined benefit plans operated under a collective bargaining agreement where the plan follows the employee instead of the employer, shall be permitted in the portability provisions;

(2) At a minimum, vesting shall be 100 percent at contract completion or termination (for purposes of this requirement, contract completion does not include option periods). The procurement officer may authorize vesting requirements earlier than contract completion or termination where appropriate;

(3) There is a clear description of the plan, including coverage regarding service, pay, liabilities, vesting, termination, and benefits from prior contracts, as appropriate; and

(4) The procurement officer has made a written determination that such a provision is in the Government's best interest, including the facts supporting that determination.

(b) A copy of the written determination shall be sent to the Associate Administrator for Procurement (Code HC) within 30 days of its signature.

2. Part 1852 is amended by adding section 1852.237–71 to read as follows:

1852.237–71 Pension portability.

As prescribed at 1837.110, insert the following clause:

Pension Portability (July 1993)

In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(a) Comply with all applicable Government laws and regulations;

(b) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement where the plan follows the employee, not the employer;

(c) Provide for 100 percent employee vesting not later than the earliest of *, contract completion or contract termination; and

(d) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(End of Clause)

[FR Doc. 93–20193 Filed 8–20–93; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR PART 390

RIN 2125–AD15

Federal Motor Carrier Safety Regulations; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

* In accordance with 1837.170(b), a period of time (e.g., one year) may be used.

SUMMARY: This document corrects the mailing addresses for the FHWA regional motor carrier offices in regions one, three, four, eight, and ten to accurately indicate the motor carrier office room numbers in regions one, four, and eight, and to reflect the office relocation addresses for regions three and ten.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Larry G. Slade, Federal Highway Administration, Office of Motor Carrier Standards (202) 366–5721, or Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0834. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In title 49, Code of Federal Regulations, § 390.27 was amended by a final rule published in the Federal Register on Wednesday, November 23, 1988, at 53 FR 47543. This rule included changes of locations of regional motor carrier safety offices that were not incorporated in the final rule that was published in the Federal Register on Thursday, May 19, 1988, at 53 FR 18042. This amendment corrects § 390.27 to reflect the current addresses for the regional motor carrier safety offices in regions one (Albany, New York), four (Atlanta, Georgia), and eight (Lakewood, Colorado), and office relocation addresses in regions three (Baltimore, Maryland) and ten (Portland, Oregon).

Rulemaking Analyses and Notices

Since this amendment merely reflects changes in the addresses of certain FHWA offices that have already taken place, the FHWA has determined that prior notice and opportunity for public comment on this action are unnecessary and that the changes made by this document may be made effective in less than 30 days after the date of publication in the Federal Register. Furthermore, due to the technical nature of this amendment, the FHWA has determined that prior notice and opportunity for public comment are not required under the Department of Transportation's Regulatory Policies and Procedures, as it is not anticipated that such action will result in the receipt of useful information.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this final rule makes only those technical changes to current regulatory language discussed above, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, and since this final rule makes only those technical changes to current regulatory language discussed above, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service publishes the Unified Agenda in April and October of each year. The RIN contained in each heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highways and roads, motor carriers, motor vehicle safety.

Issued on: August 13, 1993.

Rodney E. Slater,

Federal Highway Administrator.

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.27 is amended by revising the entries for Regions 1, 3, 4, and 10 to read as follows:

§ 390.27 Locations of regional motor carrier safety offices.

Region No.	Territory included	Location of regional office
1	Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands. That part of Canada east of Highways 19 and 6 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border.	Leo W. O'Brien Federal Office Building, room 737, Albany, NY 12207–2334.
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	City Crescent Building, 410 South Howard Street, suite 4000, Baltimore, MD 21201–2619.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	1720 Peachtree Road, NW., suite 200, Atlanta, GA 30367–2349.

Region No.	Territory included	Location of regional office
•	• • •	• • •
8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. That part of Canada west of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line due north to the Canadian border, and east of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border.	555 Zang Street, room 190, Lakewood, CO 80228–1014.
•	• • •	• • •
10	Alaska, Idaho, Oregon and Washington. That part of Canada west of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border, and all the Province of British Columbia.	KOIN Center, suite 600, 222 SW Columbia Street, Portland, OR 97201–2491.

[FR Doc. 93–20249 Filed 8–20–93; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 081893A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 19, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed be regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1993 initial specifications of groundfish (58 FR 8703, February 17, 1993) as 11,815 metric tons (mt). The directed fishery was prohibited on April 22, 1993 (58 FR 21951, April 26, 1993). That prohibition was rescinded on August 9, 1993 (58 FR 42031, August 6, 1993), upon determination that the 1993 TAC for Pacific ocean perch in the AI had not been reached..

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 11,315 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the AI, effective from 12 noon, A.l.t., August 19, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20316 Filed 8–18–93; 4:09 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 161
Monday, August 23, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM-35-8]

The Amersham Corporation; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioner's request, a petition for rulemaking (PRM–35–8) filed by Amersham Corporation. By a letter dated November 14, 1988, the petitioner requested that the NRC amend 10 CFR 35.400 to include iridium-192 wire for interstitial treatment of cancer. The NRC published a **Federal Register** notice on May 5, 1989 (54 FR 19378) announcing the receipt of the petition. Recently, in another letter dated March 23, 1993, the petitioner requested that the petition be withdrawn because of changes in market conditions and in the petitioner's emphasis on other products.

ADDRESSES: A copy of the petitioner's letter requesting the withdrawal of the petition is available for public inspection, or copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Single copies of the petitioner's letter may be obtained free of charge by writing to the Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

Dated at Rockville, Maryland, this 11th day of August, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–20280 Filed 8–20–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–97–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Model 727 series airplanes, that currently requires repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary. This action would add an inspection of the positional plates installed on certain airplanes, and replacement, if necessary; reduce the compliance time for the initial inspection; and cite the latest revision to the service bulletin as the appropriate service information source. This proposal is prompted by a report that certain positional plates may not stop rotation of the roller bearing bolts. The actions specified by the proposed AD are intended to prevent jamming of the affected slat or separation of the slat from the airplane.

DATES: Comments must be received by October 18, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–97–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–97–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On August 14, 1990, the FAA issued AD 90–18–02, Amendment 39–6708 (55 FR 34699, August 24, 1990), to require

repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary. That action was prompted by reports of broken slat track roller bearing bolts. The requirements of that AD are intended to prevent jamming of the affected slat or separation of the slat from the airplane.

Since the issuance of that AD, the FAA has received a report that positional plates installed in accordance with the original issue, Revision 1, or Revision 2 of Boeing Service Bulletin 727–57–0172 may not stop rotation of the roller bearing bolt. In addition, results of a structural analysis have revealed that the appropriate threshold life for these bolts is 8,000 flight cycles. Rotation of the roller bearing bolt could result in cracking of the bolt. This condition, if not corrected, could result in jamming of the affected slat or separation of the slat from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992, that describes procedures for a one-time inspection of the positional plates installed on certain Model 727 series airplanes, and replacement, if necessary. This inspection involves measuring the gap between the positional plate and the roller bolt head on the slat track and, if the gap is outside the limit specified in the service bulletin, replacing the positional plate with a new positional plate.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–18–02 to require a one-time inspection of the positional plates installed on certain airplanes, and replacement, if necessary. In addition, this AD would reduce the compliance time for the initial inspection of these roller bearing bolts from 12,000 to 8,000 flight cycles based on the results of the structural analysis described previously, and would cite the latest revision to the service bulletin as the appropriate service information source. This AD would also continue to require repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,036,530, or $990 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6708 (55 FR 34699, August 24, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93–NM–97–AD. Supersedes AD 90–18–02, Amendment 39–6708.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the roller bearing bolts and subsequent jamming of the affected slat or separation of the slat from the airplane, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight cycles, or within 2,500 flight cycles after September 30, 1990 (the effective date of AD 90–18–02, Amendment 39–6708), whichever occurs later: Accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989; Revision 2, dated June 27, 1991; or Revision 3, dated March 19, 1992. After the effective date of this AD, the inspection shall be accomplished only in accordance with Revision 3 of the service bulletin. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(1) For airplanes equipped with roller bearing bolts made from CRES material: Perform a fluorescent particle inspection of the slat track roller bearing bolts to detect cracks.

(2) For airplanes equipped with roller bearing bolts not made from CRES material: Perform a magnetic particle inspection of the slat track roller bearing bolts to detect cracks.

(b) Prior to the accumulation of 8,000 total flight cycles, or within 2,500 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 2,500 flight cycles prior to the effective date of this AD: Accomplish paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992. Repeat this inspection thereafter at intervals not to exceed 5,000 flight cycles.

(1) For airplanes equipped with roller bearing bolts made from CRES material: Perform a fluorescent particle inspection of the slat track roller bearing bolts to detect cracks.

(2) For airplanes equipped with roller bearing bolts not made from CRES material: Perform a magnetic particle inspection of the slat track roller bearing bolts to detect cracks.

(c) If any cracked bolt is found during any inspection required by this AD, prior to further flight, replace the cracked bolt with a serviceable bolt and inspect the associated roller to detect seizure, in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989, Revision 2, dated June 27, 1991, or Revision 3, dated March 19, 1992. If the roller is seized or does not turn smoothly, prior to further flight, replace the defective roller with a serviceable roller in accordance with the service bulletin.

(d) For airplanes having positional plates installed in accordance with Boeing Service Bulletin 727–57–0172, dated September 6, 1985, Revision 1, dated October 12, 1989, or Revision 2, dated June 27, 1991: Prior to the accumulation of 5,000 flight cycles since modification, or within 2,500 flight cycles after the effective date of this AD, whichever occurs later, measure the gap between the roller bolt head and the positional plate in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992.

(1) If the gap measures 0.020 inch or less, no further action is required by this AD.

(2) If the gap measures more than 0.020 inch, prior to further flight, replace the positional plate with a new positional plate in accordance with Figure 3 of the service bulletin.

(e) Modification of the bolts and slat tracks in accordance with Boeing Service Bulletin 727-57-0172, Revision 3, dated March 19, 1992, constitutes terminating action for the actions required by paragraphs (a), (b), and (d) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-20297 Filed 08-20-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-125-AD]

Airworthiness Directives; Boeing Model 747-200B, -200C, -300, -400, and -400D Series Airplanes Equipped With Passenger Oxygen System Reservoir Mask Assemblies, Boeing Part Numbers 10-60137-152 Through -165

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-200B, -200C, -300, -400, and -400D series airplanes. This proposal would require revision of the FAA-approved maintenance program to require unrestricted opening of the passenger service unit (PSU) door during functional testing of the passenger oxygen system; an inspection to detect leaks in certain passenger oxygen system reservoir bags; and replacement of damaged mask assemblies. This proposal is prompted by reports that the passenger oxygen mask reservoir bags became overpressurized and split at the seams, resulting in failure of the bags. The actions specified by the proposed AD are intended to ensure the delivery of emergency oxygen through the passenger oxygen system reservoir mask assemblies.

DATES: Comments must be received by October 18, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-128-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2674; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-128-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-128-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has recently received numerous reports that certain passenger oxygen mask reservoir bags became overpressurized and split at the seams, resulting in failure of the bags. These bags are installed on certain in-service Boeing Model 747-200B, -200C, -300, -400, and -400D series airplanes. During functional testing prior to delivery, these oxygen masks became overpressurized when the passenger service unit (PSU) doors were restrained from opening. (At present, the Boeing maintenance manual procedures restrict the PSU door from opening during the oxygen functional test. However, Boeing has recommended discontinuing the practice of restraining the PSU doors on the affected airplanes.) Based upon inspection of airplanes in production, the manufacturer advises that approximately 10 to 15 percent of the masks will exhibit leaks. (The manufacturer has already inspected the mask assemblies on certain in-service airplanes.) This condition, if not corrected, could result in a lack of emergency oxygen delivered through the passenger oxygen system reservoir mask assemblies.

The FAA has reviewed and approved Boeing Telex M-7240-93-1411, dated July 20, 1993, that describes procedures for performance of a one-time visual inspection to detect leaks in passenger oxygen system reservoir bags, having Boeing part numbers 10-60137-152 through -165 inclusive. The telex also contains procedures for the replacement of damaged mask assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747-200B, -200C, -300, -400, and -400D series airplanes of the same type design, equipped with the subject passenger oxygen system reservoir mask assemblies, the proposed AD would require revision of the FAA-approved maintenance program to require

unrestricted opening of the PSU door during functional testing of the passenger oxygen system.

The proposed AD would also require a one-time visual inspection to detect leaks in the subject passenger oxygen system reservoir bags on certain airplanes. Mask assemblies that do not inflate properly would be required to be marked and replaced prior to further flight. The actions would be required to be accomplished in accordance with the telex described previously.

There are approximately 160 Boeing Model 747–200B, –200C, –300, –400, and –400D series airplanes of the affected design in the worldwide fleet. The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 35 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $48,125, or $1,925 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–128–AD.

Applicability: Model 747–200B, –200C, –300, –400, and –400D series airplanes equipped with passenger oxygen system reservoir mask assemblies, having Boeing part numbers 10–60137–152 through –165 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the delivery of emergency oxygen through the passenger oxygen system reservoir mask assemblies, accomplish the following:

(a) For all airplanes: Within 45 days after the effective date of this AD, revise the FAA-approved maintenance program to require unrestricted opening of the passenger service unit (PSU) door during functional testing of the passenger oxygen system.

(b) For airplanes listed in Boeing Telex M–7240–93–1411, dated July 20, 1993: Within 45 days after the effective date of this AD, after accomplishing the requirements of paragraph (a) of this AD, perform a one-time visual inspection to detect leaks in the passenger oxygen system reservoir bags, in accordance with Boeing Telex M–7240–93–1411, dated July 20, 1993.

(1) If the masks inflate properly: No further action is required by this AD.

(2) If any mask does not inflate properly: Prior to further flight, mark the mask assembly and replace it with a new or serviceable mask assembly, in accordance with the telex.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–20298 Filed 8–20–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 92–ACE–1]

Proposed Alteration and Establishment of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 11, 1992 (57 FR 20067). The NPRM proposed to alter the descriptions of several VOR Federal airways in Kansas and establish one airway in Oklahoma. The airways are in areas of limited radar coverage. However, the FAA discovered navigational problems with portions of the proposal, requiring additional evaluation before proceeding with any proposal.

DATES: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION: On May 11, 1992, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to alter the descriptions of several VOR Federal airways in Kansas and establish one airway in Oklahoma (57 FR 20067). This action was proposed to benefit air operations by aligning airways in areas of continuous radar coverage. The FAA discovered navigational problems with portions of the proposal and has decided to withdraw this notice at this time.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 92–ACE–1, as

published in the Federal Register on May 11, 1992 (57 FR 20067), is hereby withdrawn.

Authority: 49 U.S.C app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 398; 49 U.S.C 106(g), 14 CFR 11.69.

Issued in Washington, DC, on August 12, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20289 Filed 8–20–93; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Prohibition on Insider Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend its regulations in order to implement Section 214 of the Futures Trading Practices Act of 1992 ("FTPA"). Section 214 of the FTPA makes it a felony for employees and governing members of self-regulatory organizations ("SROs") to disclose or trade on inside information in violation of a Commission regulation and for tippees of such insiders to trade on inside information so disclosed. In general, the proposed amendments would prohibit any employee, member of the governing board, or member of any committee of an SRO from trading commodity interests based on material, non-public information or disclosing such information for a purpose inconsistent with the person's official duties. The proposed amendments also would prohibit any person from trading commodity interests for his account on the basis of material, non-public information which the individual knew was obtained from an employee, member of the governing board, or member of any committee of an SRO in violation of the rule's prohibition on disclosing such information. In addition, the proposed amendments would require SROs to maintain in effect rules which prohibit persons within their jurisdictions from trading on the basis of material, non-public information obtained from SRO insiders. Finally, the proposed amendments would modify the regulation's definitions of "material information" and "linked exchange."

DATES: Comments on proposed amendments to Regulation 1.59 must be received on or before September 22, 1993.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Patterson, Special Counsel, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 214 of the FTPA amends Section 9 of the Commodity Exchange Act ("Act") Pub. L. No. 102–546, 106 Stat. 3590 (1992), 7 U.S.C. 13, by creating a felony prohibition on certain activities of futures industry insiders and their tippees. In particular, Section 214 makes it a felony for any person who is an employee of, a member of the governing board of, or a member of any committee of a board of trade, a contract market, or a registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly (1) to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee or member or (2) to disclose for any purpose inconsistent with the performance of such person's official duties any material, non-public information obtained through special access related to the performance of such duties. Section 214 also makes it a felony for any person willfully and knowingly to trade in futures or options for such person's own account, or for or on behalf of any account, on the basis of any material, non-public information that such person knows was obtained in violation of the aforementioned insider disclosure prohibition.[1]

Section 214 further mandates that the Commission issue regulations to implement the section not later than 360 days from the date of enactment of the FTPA. The amendments to Commission Regulation 1.59 which the Commission is now proposing are intended to fulfill this requirement.

[1] Under the terms of section 214, any violation of the section's prohibitions is punishable by a fine of not more than $500,000 plus any profits realized through the particular violation, or imprisonment for not more than five years, or both, together with the costs of prosecution.

II. Existing Commission Regulation 1.59

Commission Regulation 1.59 is the Commission rule that currently addresses activities of SRO employees and governing members who possess material, non-public information. The current regulation directly prohibits any SRO employee from disclosing "any material, non-public information which such employee obtains as a result of his or her employment at the [SRO] where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest."[2] The current regulation also contains requirements that SROs maintain in effect rules prohibiting certain trading by SRO employees in possession of material, non-public information.[3] In addition, the regulation prohibits use and disclosure of material, non-public information by governing members for any purpose other than the performance of their official duties as governing members.[4] Both the prohibitions which the SROs are required to maintain in effect under existing Regulation 1.59 and the regulation's existing prohibition on disclosures by SRO employees parallel, but are not identical to, the prohibitions of section 214 of the FTPA.

Regulation 1.59, in its existing form, has been in effect since March of 1988.[5] The portion of the regulation addressing activities of SRO employees became effective in June 1987.[6] The regulation was the result of an extended rulemaking process and SROs have promulgated and maintained in effect the rules necessary to comply with the regulation.[7] Thus, since the adoption of Regulation 1.59, the Commission and the SROs have had in place a substantial regulatory framework which addresses the types of activity prohibited by section 214 of the FTPA. Accordingly, with limited exceptions, the Commission is amending Regulation 1.59 only so as to effectuate the felony standard of the statute and to add a tippee provision to Commission and SRO rules. The few other amendments being proposed address certain industry

[2] Existing paragraph (b)(1) of Regulation 1.59.

[3] Existing paragraph (b)(2) of Regulation 1.59. Paragraph (b)(2) permits SROs to adopt rules which permit certain exemptions from these prohibitions to be granted on a case-by-case basis. Any such exemptive rule must be approved by the Commission.

[4] Existing paragraph (c) of Regulation 1.59.

[5] 52 FR 46974 (December 27, 1987).

[6] 51 FR 44866 (December 12, 1986).

[7] See 45 FR 84084 (December 22, 1980); 47 FR 7300 (February 18, 1982); 50 FR 24533 (June 11, 1985); 51 FR 44866; 52 FR 32566 (August 28, 1987); 52 FR 46974.

developments that have occurred since Regulation 1.59 was revised last.

III. Proposed Amendments to Regulation 1.59

A. Overview

The Commission is proposing to amend Regulation 1.59 in four respects. First, the Commission proposes to create a new paragraph (e) of Regulation 1.59. This paragraph would contain all the direct prohibitions on insider and tippee activity necessary to effectuate section 214 of the FTPA. Second, the Commission proposes to add to Regulation 1.59 a new paragraph (d) which would require SROs to adopt rules prohibiting persons within their disciplinary jurisdiction from trading on inside information disclosed by SRO employees or governing board or committee members. This new SRO rulemaking requirement would parallel the new tippee liability provision contained in section 214 of the FTPA. Third, because paragraph (e) would now contain a direct prohibition on disclosures of inside information by SRO employees, the Commission would move the text of current paragraph (b)'s direct prohibition on disclosures of inside information by SRO employees into an existing requirement that SROs promulgate rules prohibiting SRO employees from making such disclosures. As a result of this revision, paragraph (b) would contain only requirements directing SROs to maintain in effect rules governing conduct of SRO employees possessing inside information. Fourth, the Commission proposes to amend several of the definitions in paragraph (a) of the existing regulation. These amendments, which revise the definitions of the terms "material information" and "linked exchange," would take into account several recent developments in the futures industry.

The proposed revisions to Regulation 1.59 are summarized in the following table:

Old section No.	New section No.	Disposition
(a)	(a)	Unchanged.
(1)	(1)	Unchanged.
(2)	(2)	Unchanged.
(3)	(3)	Revised.
(4)	(4)	Unchanged.
(5)	(5)	Revised.
(6)	(6)	Unchanged.
(7)	(7)	Unchanged.
(8)	(8)	
(b)	(b)	Retitled.
(1)		Deleted.
(2)(i)	(1)	Unchanged.
(A)	(i)	Unchanged.
(B)	(ii)	Revised.
(ii)	(2)	Unchanged.
(A)	(i)	Unchanged.
(B)	(ii)	Unchanged.
(c)	(c)	Retitled.
	(d)	New.
	(e)	New.

B. Specific Proposed Amendments

1. New Paragraph (e)—Prohibitions on Insider Trading

New paragraph (e) would contain the prohibitory language necessary to effectuate section 214 of the FTPA. In particular, paragraph (e)(1) would provide that "no person who is an employee of, a member of a governing board of, or a member of any committee of [an SRO] shall: (i) Trade for such person's own account or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information obtained through special access[8] related to the performance of such person's official duties as an employee or member, or (ii) disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member any material, non-public information obtained through special access related to the performance of such duties." Paragraph (e)(2) would provide that "no person shall trade for such person's won account, or for or on behalf of any account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (e)(1) from an employee of, a member of the governing board of, or a member of any committee of [an SRO]."

The language of proposed paragraph (e) tracks very closely the language of the statute. The language varies in certain respects, however. First, the Commission is proposing to omit from the regulation the words "willfully" and "knowingly" which modify the prohibitions in the statute. The paragraph (e) prohibitions, as proposed, would be similar in scope to the regulation's existing non-felony prohibition on employee disclosures of inside information.

The Commission believes that to the extent the rule imposes a duty subject to civil as opposed to criminal liability, the regulation's existing standard of culpability should be maintained. The legal and policy reasons which supported such a standard when existing Regulation 1.59 was promulgated continue to apply.[9] For a case to be brought criminally, the willful and knowing standard would be required to be met; the words "willfully" and "knowingly" in section 214 are necessary elements for a felony standard.

Second, where the statute refers to employees and members of governing boards of and committees of boards of trade, contract markets, and registered futures associations, the Commission is proposing to substitute references to employees and members of governing boards of and committees of self-regulatory organizations. The term "self-regulatory organization" includes not only boards of trade, contract markets, and registered futures associations, but also clearing organizations.[10] This term is currently used in existing Regulation 1.59 to make clear that employees and governing members of a contract market's clearing organization are covered by the regulation. Employees and governing members of clearing organizations have the same degree of access to material, non-public information as do employees and governing members of contract markets.

Third, the Commission is proposing to replace the statute's references to trading "in contracts for future delivery or options thereon" with references to trading "in commodity interests." The term "commodity interest" includes not only commodity futures and options traded on contract markets, but also commodity futures and options traded on linked exchanges and cash commodities traded on contract markets. The term is used in existing Regulation 1.59. The felony standard of the statute, of course, would not be affected by the use of the term "commodity interest" in the regulation.

[8] The Commission believes that an SRO employee or governing member would have "special access" to material, non-public information when that person has an opportunity to obtain knowledge of such information not afforded to persons who are not employees or governing members.

[9] See 50 FR 24533.

[10] Paragraph (a)(1) of Regulation 1.59 provides that self-regulatory organization means "self-regulatory organization," as defined in Commission regulation 1.3(ee), and includes the term "clearing organization," as defined in Commission regulation 1.3(d). Regulation 1.3(ee) defines the term "self-regulatory organization" as a contract market, as defined in Regulation 1.3(h) or a registered futures association under section 17 of the Act. Regulation 1.3(h) defines the term "contract market" as a board of trade designated by the Commission as a contract market under the Act or in accordance with part 33 of the Commission's regulations. Regulation 1.3(d) provides that the term "clearing organization" means "the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any contract market."

2. New Paragraph (d)—Tippee Liability; SRO Rules

The Commission is proposing to create a new paragraph (d), entitled "Tippee liability; Self-regulatory organization rules," directing SROs to adopt rules prohibiting tippees of SRO insiders from trading on inside information. In particular, the new paragraph would require each SRO to maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association). Such rules must provide that no member of, employee of a member of, employee of, member of the governing board of, member of any committee of, or other person within the disciplinary jurisdiction of an SRO, may trade for such person's own account, or for or on behalf of any account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of newly renumbered paragraph (b)(1) or existing paragraph (c) of Regulation 1.59 from an employee of, a member of the governing board of, or a member of any committee of an SRO.[11] The Commission believes that such a requirement would be consistent with the intent of Congress to prohibit trading by tippees of SRO insiders. Such a requirement also would be consistent with the scheme of the existing regulation which is based on the principle that SROs have a duty to the public and to their members to prevent misuse of material, non-public information.[12]

The Commission notes that due to the new paragraph's cross-references to the regulation's existing provisions regarding disclosures by SRO employees and governing members, the substance of the tippee conduct to be prohibited by SRO rule would not be identical to that of the new tippee liability provision required by the statute and contained in new paragraph (e). Under this formulation, however, the regulation's SRO requirements would be internally consistent. Moreover, this construction would allow the SROs to avoid changing their existing rules regarding disclosures by employees and governing members.[13] Any criminal violation, of course, would be governed by the terms of the statute. The Commission particularly requests comment on its approach to this provision.

3. Amendments to Paragraph (b)—Activities of SRO Employees; SRO Rules

As noted above, the Commission is proposing several amendments to paragraph (b) of Regulation 1.59 for purposes of restructuring and clarifying that paragraph. First, the Commission proposes to delete existing paragraph (b)(1), which contains the Commission's current prohibition on disclosures of inside information by SRO employees. This prohibition would be deleted in favor of the new prohibition on employee disclosures required by the statute and included in new paragraph (e).

Second, the Commission would amend paragraph (b)(2)(i)(B), which requires SROs to adopt rules that prohibit disclosures of material, non-public information by SRO employees. The existing language of paragraph (b)(2)(i)(B) incorporates the paragraph (b)(1) prohibition by reference. Because the Commission is proposing to delete that prohibition, the Commission is also proposing to delete the cross-reference to paragraph (b)(1). In place of the cross-reference, the Commission would insert the text of the existing paragraph (b)(1) prohibition into the SRO requirement. This amendment would preserve the Commission's original intent to require SROs to adopt rules that, at a minimum, prohibit SRO employees from disclosing to other persons material, non-public information obtained as a result of SRO employment.[14]

Third, the Commission would amend paragraph (b)(2)(i)(A), which requires SROs to adopt rules that prohibit certain trading by SRO employees where the employee has access to inside information, by adding a reference to "linked exchanges."[15] The addition of the term "linked exchanges" would make clear that SRO rules must prohibit SRO employees from trading in commodity interests traded on or cleared by linked exchanges where the employee has access to material, non-public information.

The foregoing substantive amendments would necessitate several non-substantive revisions. The words "Self-regulatory organization rules" would be added to the title of revised paragraph (b) for ease of reference.[16] In addition, the provisions of paragraph (b) which remained after the deletion of existing paragraph (b)(1) would be renumbered to reflect the proposed amendments.

4. Amendments to Paragraph (a)—Definitions

Existing paragraph (a) of Regulation 1.59 defines certain terms used in the regulation. Among these terms are "linked exchange" and "material information." The Commission is proposing to revise these two definitions in order to take into account several recent developments in the futures industry. These developments are: the cross-margining of futures and non-futures positions cleared by various clearing organizations,[17] the acceptance of additional types of assets as performance bond margin by certain futures clearing organizations,[18] and the cross-exchange trading of products of foreign exchanges through electronic means.[19] The proposed amendments to paragraph (a) are not intended to bring securities exchanges or foreign

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[11] Renumbered paragraph (b)(1) (existing paragraph (b)(2)(i)) provides in pertinent part that such SRO must maintain in effect rules that, at a minimum, prohibit:

Employees of the self-regulatory organization from trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization, in any related commodity interest, and in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization where the employee has access to material non-public information concerning such commodity interest.

Existing paragraph (c) requires that each SRO adopt rules providing that:

No member of such self-regulatory organization governing board or of a committee of such self-regulatory organization shall use or disclose, for any purpose other than the performance of such member's official duties as a governing board or committee member, material, non-public information obtained as a result of such member's participation on any committee or governing board of such self-regulatory organization.

[12] 50 FR 24335

[13] Independent of the reauthorization legislation, SROs have the authority to adopt, broader rules to address conduct in this area.

[14] 50 FR 24335.

[15] "Linked exchange" is defined in paragraph (a)(5) of Regulation 1.59 and is discussed below.

[16] The same language would be added to the title of paragraph (c). The text of paragraph (c), which concerns SRO rules regarding the use and disclosure of inside information by SRO governing members, would not be amended.

[17] In cross-margining programs, certain intermarket positions with offsetting risk characteristics are margined together as a single portfolio. Because the related intermarket positions are essentially offsetting and therefore may effectively serve as margin collateral for one another, the margin requirement for the combined position may be lower than if each were margined separately. To date, the Commission has approved a number of cross-margining arrangements between the Options Clearing Corporation ("OCC") and various futures clearing organizations. These programs afford cross-margining treatment both to proprietary, *i.e.*, non-customer, positions and to the positions of certain participating market professionals.

[18] For example, the Chicago Mercantile Exchange ("CME") accepts certain stocks and mutual fund shares as margin from its clearingmembers.

[19] For example, CME has entered into an arrangement for cross-exchange trading of products with the Marche' a Terme International de France ("MATIF") through the Globex electronic trading system.

exchanges within the Commission's regulatory authority. Rather, the proposed amendments merely would recognize that SRO employees and governing members may have access to information with respect to certain products and actions of such exchanges just as they do to information regarding futures products and that, therefore, comparable regulatory coverage concerning their actions in this regard is appropriate.

The Commission requests comment concerning the appropriateness of modifying the Regulation 1.59 definitions to take into account recent industry developments. In particular, the Commission requests commenters to address the proposed modifications to the definition of "linked exchange" and the proposed addition to the definition of "material information" of a reference to "property deposited as margin."

a. *Amendments to paragraph (a)(5)—"linked exchange".* The term "linked exchange" is defined in existing paragraph (a)(5) as "any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a contract market in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market."[20] At the time this definition was drafted, the only type of linkage in place was a mutual offset system of the type described in the definition. Since that time, there have been other types of linkages established. The Commission is proposing to modify the definition of "linked exchange" to address these new situations.

First, the Commission proposes to add: "any board of trade, exchange, or market outside the United States, its territories or possessions, the products of which are listed on a United States contract market or a trading facility thereof." This new language would include within the definition of "linked exchange" a foreign exchange such as MATIF, the products of which are available for trading by CME members through the Globex electronic trading system.

As a result of this change and the fact that, as discussed further below, references to "linked exchanges" would be added to the definition of "material information" through this rulemaking, the definition of "material information" would encompass regulatory actions of foreign exchanges with products listed on U.S. trading facilities. Similarly, "material information" would include information regarding the positions and financial condition, *etc.*, of members of such foreign exchange. This modification of the term "linked exchange" also would result in a prohibition on SRO employee, SRO governing member, and tippee trading on inside information in futures and futures options listed on a foreign exchange falling within the definition because a futures product traded on a "linked exchange" is a "commodity interest" which such individuals would be prohibited from trading under new paragraph (e) of this regulation.[21]

Second, "linked exchange" would be amended to include "any securities exchange, the products of which are held as margin in a commodity account or cleared by a securities clearing organization pursuant to a cross-margining arrangement." This new language would encompass a securities exchange, such as the New York Stock Exchange ("NYSE"), the products of which are deposited as margin against futures positions, or a securities option exchange, such as the Chicago Board Options Exchange ("CBOE"), the products of which are held pursuant to a cross-margining arrangement. Again, this revision, in turn, would modify the "material information" definition to include information concerning regulatory actions of such exchanges or information related to their members. This particular revision would not broaden the application of the actual trading prohibitions in the existing regulatory language or in the new prohibitions required by the statute to cover additional markets. Trading in securities products would not be affected because the term "commodity interest" does not include securities products and, therefore, the trading prohibitions of new paragraph (e) would not apply to such products.[22]

Third, the Commission would include in the definition of "linked exchange" clearing organizations of the exchanges listed in the definition. Thus, for example, OCC, which clears CBOE options held in cross-margining accounts, would fall within the definition of "linked exchange." As a result of this addition, information related to clearing organizations of the foreign exchanges and securities exchanges and their members mentioned above would become "material" within the meaning of paragraph (a)(3), as would information related to their members. Due to the definition of "commodity interest" discussed above, the scope of the regulation's trading prohibitions would be modified as a result of this amendment only to the extent that such a clearing organization cleared for a foreign exchange with a trading link to a U.S. exchange. The Commission believes that there is no reason to distinguish between a linked exchange and its clearing organization for purposes of this regulation.

b. *Amendments to paragraph (a)(3)—"material information."* The term "material information" is defined in existing paragraph (a)(3) as "information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market." The paragraph sets forth a non-exclusive list of information which would be considered "material": "information relating to present or anticipated cash, futures, or option positions, trading strategies, the financial condition of members of self-regulatory organizations or their customers or option customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization."

The Commission is now proposing to add to this list a reference to property deposited as margin by members. This addition is intended to make clear that information regarding a member's

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[20] The term "linked exchange" is used in the existing regulation in the definitions of the terms "commodity interest" and "related commodity interest." The term "commodity interest" is defined as "any commodity futures or commodity option contract traded on or subject to the rules of a contract market or linked exchange, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market." (Existing paragraph (a)(6) of Regulation 1.59.) The term "related commodity interest" refers to a commodity interest traded on a contract market or linked exchange with respect to which an employing SRO has afforded special margin treatment between that commodity interest and one traded on the SRO. (Existing paragraph (a)(7) of Regulation 1.59.) The Commission notes that the reference to "special margin treatment" in the definition of "related commodity interest" would encompass, for example, intercommodity spread treatment under the Standard Portfolio Analysis of Risk ("SPAN") margining system, insofar as such spread treatment was with respect to trading activity on more than one board of trade.

[21] The Commission notes that, under the CME–MATIF cross-exchange access arrangement, employees of MATIF potentially could have access to some types of material, non-public information based on Globex trading activity in CME contracts. MATIF has represented that its employees would be prohibited from disclosing any such information to other parties by French professional secrecy laws. In addition, any MATIF employee handling information with respect to CME trading could be prohibited by MATIF itself from trading CME contracts. *See* September 3, 1992 letter to Andrea M. Corcoran, Director, Division of Trading and Markets, from Patrick Stephan, General Counsel, MATIF.

[22] Of course, there is not need for the Commission to regulate trading in securities products based on inside information because the U.S. securities laws regulate such activity.

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deposits of certain property as margin, in particular his deposits of stock, would be considered "material." Thus, for example, as a result of this proposed amendment, an exchange employee would be prohibited from trading in stock index futures based on knowledge, obtained through his position at the exchange, that a large number of clearing members had deposited a substantial number of shares of a particular stock as margin and that the stock price was likely to fall because those positions were being liquidated. The Commission invites comment regarding the likelihood that an SRO employee or governing member possessing such material information would be able to profit from trading stock index futures based on it. In addition, the Commission invites comment on the implications of this proposed revision with regard to other collateral eligible for deposit as margin, *e.g.*, Treasury securities.

As mentioned above, the Commission also proposes to incorporate references to "linked exchanges" into the "material information" definition. The addition of these references would clarify that information regarding members of linked exchanges is included in the definition. For example, the term "material information" would include information regarding stock index option positions of a broker/dealer member of OCC participating in a cross-margining program. In addition, the definition of "material information" would include information relating to regulatory actions or proposed regulatory actions of a linked exchange. Thus, for example, information that a linked exchange was intending to liquidate a clearing member's positions would be considered "material."

IV. Request for Comment

The Commission believes that the proposed amendments to Regulation 1.59 meet the statutory directives of section 214 of the FTPA. The Commission invites interested persons to comment on this general assessment, as well as on specific aspects of the proposed amendments.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed amendments would affect SROs, including registered futures associations, and individuals who (i) are employed by SROs, (ii) serve on governing boards of and committees of SROs, or (iii) obtain material, non-public information from SRO insiders. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982). Furthermore, the Acting Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals effecting registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 58 FR 13565, 13569 (March 12, 1993).

The Commission does not believe that the proposed amendments would have a significant economic impact on SRO employees or governing members. The proposed amendments would prohibit SRO employees and governing members from trading on material non-public information. The trading to be prohibited under the proposed amendments is essentially the same as that prohibited under SRO rules promulgated pursuant to existing Regulation 1.59. Accordingly, the individual employees and governing members affected by the rule should not be precluded from trading activity which is permitted currently.

Moreover, the Commission does not believe that the proposed amendments would have a significant economic impact on persons to whom inside information is disclosed. The proposed amendments would prohibit tippees from trading on material, non-public information disclosed by SRO employees and governing members. Such disclosures by SRO insiders already are prohibited by existing SRO rules promulgated pursuant to Regulation 1.59. Accordingly, potential tippees currently should not have access to material, non-public information related to SROs.

Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes the proposed amendments to Regulation 1.59 would not impose a paperwork burden on self-regulatory organizations.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Registered futures associations, Members of contract markets, Self-regulatory organization employees, Self-regulatory organization governing board and committee members.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, Sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b), the Commission hereby proposes to amend title 17, chapter I, part 1 of the Code of Federal Regulations by amending existing Regulation 1.59 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, unless otherwise noted.

2. Section 1.59 is revised to read as follows:

§ 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means "self-regulatory organization," as defined in Commission regulation 1.3(ee), and includes the term "clearing organization," as defined in Commission regulation 1.3(d).

(2) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization.

(3) *Material information* means information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market. As used in this section, "material information" includes, but is not limited to, information relating to present or anticipated cash, futures, or option positions, trading strategies, the financial condition of or property deposited as margin by members of self-regulatory organizations or members of linked exchanges or their customers or

option customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization or a linked exchange.

(4) *Non-public information* means information which has not been disseminated in a manner which makes it generally available to the trading public through recognized channels of distribution.

(5) *Linked exchange* means: (i) Any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a contract market in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market; (ii) Any board of trade, exchange or market outside the United States, its territories or possessions, the products of which are listed on a United States contract market or a trading facility thereof; (iii) Any securities exchange, the products of which are held as margin in a commodity account or cleared by a securities clearing organization pursuant to a cross-margining arrangement with a futures clearing organization; or (iv) Any clearing organization which clears the products of any of the foregoing markets.

(6) *Commodity interest* means any commodity futures or commodity option contract traded on or subject to the rules of a contract market or linked exchange, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market.

(7) *Related commodity interest* means any commodity interest which is traded on or subject to the rules of a contract market, linked exchange, or other board of trade, exchange or market, other than the self-regulatory organization by which a person is employed, and with respect to which:

(i) Such employing self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing self-regulatory organization; or

(ii) Such other self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material, nonpublic information.

(8) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within regulation 4.10(d), and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which regulation 4.5 makes available relief from regulation as a commodity pool operator, *i.e.*, registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans.

(b) *Employees of self-regulatory organizations; self-regulatory organization rules.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization from trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization, in any related commodity interest, in any commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization, and in any commodity interest traded on or cleared by a linked exchange where the employee has access to material non-public information concerning such commodity interest; and

(ii) Employees of the self-regulatory organization from disclosing to any other person any material, non-public information which such employee obtains as a result of his or her employment at the self-regulatory organization where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest; *Provided, however,* That such rules shall not prohibit disclosures made in the course of an employee's duties, or disclosures made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the Federal or state government acting in his or her official capacity.

(2) Each self-regulatory organization may adopt rules, which must be submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association), which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (b)(1)(i) of this section may be granted; such exemptions are to be administered by the self-regulatory organization on a case-by-case basis. Specifically, such circumstances may include:

(i) Participation by an employee in pooled investment vehicles where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicles; and

(ii) Trading by an employee under circumstances enumerated by the self-regulatory organization in rules which the self-regulatory organization determines are not contrary to the purposes of this section, the Commodity Exchange Act, the public interest, or just and equitable principles of trade.

(c) *Members of self-regulatory organization governing boards and committees; self-regulatory organization rules.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) which provide that no member of such self-regulatory organization governing board or of a committee of such self-regulatory organization shall use or disclose, for any purpose other than the performance of such member's official duties as a governing board or committee member, material, non-public information obtained as a result of such member's participation on any committee or governing board of such self-regulatory organization.

(d) *Tippee liability; self-regulatory organization rules.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) which provide that no member of, employee of a member of, employee of, member of the governing board of, member of any committee of a self-regulatory organization, or other person within its jurisdiction may trade for such person's own account, or for or on behalf of any account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of a self-regulatory organization rule promulgated pursuant to paragraph (b)(1) or paragraph (c) of this section from an employee of, a member of the governing board of, or a member of any committee of a self-regulatory organization.

(e) *Prohibited conduct.* (1) No person who is an employee of, a member of the governing board of, or a member of any

committee of a self-regulatory organization shall:

(i) Trade for such person's own account, or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee or member; or

(ii) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member any material, non-public information obtained through special access related to the performance of such duties.

(2) No person shall trade for such person's own account, or for or on behalf of any account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (e)(1) of this section from an employee of, a member of the governing board of, or a member of any committee of a self-regulatory organization.

Issued in Washington, DC, on August 18, 1993 by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93-20398 Filed 8-20-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

Copyright/Trademark/Trade Name Protection; Disclosure of Information

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to allow Customs to disclose to intellectual property rights owners sample merchandise and certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of registered copyright, trademark, or trade name rights. The disclosure of such information would enable concerned intellectual property rights owners to more expeditiously proceed to enforce their property rights by means of instituting appropriate judicial remedies against the parties identified as involved with infringing particular property rights.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC. 20229. Comments submitted may be inspected at Franklin Court, 1099 14th Street, NW.—suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy P. Trainer, Intellectual Property Rights Branch (202) 482-6960.

SUPPLEMENTARY INFORMATION:

Background

Under the present regulatory framework, intellectual property rights (IPR) owners are not immediately provided with sufficient information to pursue private remedial actions in a court of law against persons importing infringing merchandise; they must wait until all administrative actions have been completed or file Freedom of Information Act requests to obtain the information necessary to institute legal proceedings against infringing parties, which can be a very lengthy process and allows infringers to continue their import practices. This is because, historically, it has been Customs policy not to release information of a confidential business nature from entry documents to others than the parties in interest. See, for example, T.D. 32016, 21 Treas. Dec. 552 (1911) (no information of a confidential nature should be furnished to any persons not parties in interest, that is, parties having a direct interest in the transactions, or their attorneys, and access to official records should not be permitted except by a person entitled to such privilege). The Customs Regulations implementing this policy are generally contained in 19 CFR part 103.

Notwithstanding this general policy of nondisclosure of confidential business information, certain Customs transactions present issues that require disclosure of certain party identification information, normally treated as confidential information, to individuals who have certain rights at risk. One such area of Customs transactions concerns the private enforcement of protected IPRs where imported merchandise is seized because it appears to infringe copyright, trademark, or trade name laws.

Currently, such trademark counterfeit/copyright infringing merchandise information as is provided to IPR owners is dependent on the nature of the IPR involved, *i.e.*, whether the IPR concern trademark or copyright interests, and whether Customs has merely detained or actually seized the merchandise imported. As regards counterfeit trademark merchandise, § 133.23a(c), Customs Regulations (19 CFR 133.23a(c)), provides that the owner of a trademark shall be notified when imported merchandise is seized for violation of the trademark laws and informed of the quantity of the article seized. Whereas in the area of copyrights, § 133.43(b), Customs Regulations (19 CFR 133.43(b)), provides that copyright owners shall be furnished with a sample of imported articles suspected of being an infringing copy or phonorecord of a recorded copyrighted work, together with notice that the imported article will be released to the importer absent some affirmative action on the part of the copyright owner, if the importer denies that the imported merchandise infringes any copyrighted articles.

This disparity in the amount and type of information and when it is disclosed to IPR owners is the result of statutory interpretation differences. The copyright procedure—allowing Customs officers to provide samples to copyright owners in cases on suspicion of copyright infringement—arises from Customs interpretation of 17 U.S.C. 602(b), which provides that Customs will notify copyright owners of the importation of articles which appear to infringe (suspected of infringing). The trademark procedure—requiring notification to trademark owners upon seizure of infringing merchandise—is based on section 526(e), Tariff Act of 1930 (19 U.S.C. 1526(e)), which provides that Customs will notify trademark owners when there has been a seizure. Thus, the statutory language of these two provisions has been interpreted to require different notifications to different IPR owners at different times and in disparate amounts.

Regarding the trademark procedure, while section 526(e) states that "Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, * * *", the statute is otherwise silent regarding what information the trademark owner is to be provided relating to the seized merchandise. Customs believes that section 526(e) may be reasonably interpreted to permit Customs to provide greater information than is presently available to trademark owners. Accordingly, Customs proposes to provide more identifying information to trademark owners concerning counterfeit imported merchandise seized for infringing such property rights; the trademark owner will be provided with the names and addresses of the importer, exporter, and the manufacturer, if available, the quantity

of seized merchandise, and a sample. Further, when Customs detains merchandise for bearing a mark which is suspected of infringing, Customs proposes to give trademark owners a sample, the quantity of suspected infringing goods, and the name and address of the manufacturer.

Regarding copyrights, in the Historical Note following section 602 of the Copyright Laws (17 U.S.C. 602), it states that "[t]he subsection would authorize the establishment of a procedure under which copyright owners could arrange for the Customs Service to notify them whenever articles appearing to infringe their works are imported." Since Customs has a procedure to provide samples when an article appears to infringe, we believe that this background supports our proposal to also provide the copyright owner with the name and address of the manufacturer, and the quantity of the suspected goods, at the time of initial notification in cases where articles appear to infringe. In cases where Customs makes a determination of copyright infringement, it will provide the copyright owner with a sample of the infringing item, the quantity of the suspected goods, and the names and addresses of the importer, exporter, and manufacturer.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th Street, NW.—suite 4000, Washington, DC.

The Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The amendments more fully carry out the intent of the law and confer a benefit on intellectual property right owners in the enforcement of such rights. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects 19 CFR Part 133

Copyright, Counterfeit goods, Customs duties and inspection, Reporting and recordkeeping requirements, Restricted merchandise, Trademarks, Trade names.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 133, Customs Regulations (19 CFR part 133), as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 is revised to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1526, 1624; 31 U.S.C. 9701.

2. It is proposed to amend § 133.22 by revising the section heading and by revising the heading and adding a new first sentence to the introductory text of paragraph (b) to read as follows:

§ 133.22 Procedure on detention of articles subject to restriction.

* * * * *

(b) *Notice of detention and disclosure of information.* When merchandise is detained, Customs officers may provide trademark owners with a sample of the item bearing a suspected mark in order to obtain assistance in determining whether the item bears an infringing mark, the quantity involved, and the name and address of the manufacturer, if the information is available. * * *

* * * * *

3. It is proposed to amend § 133.23a by revising the first sentence in paragraph (c) to read as follows:

§ 133.23a Articles bearing counterfeit trademarks.

* * * * *

(c) *Notice to trademark owner.* Upon seizure of infringing merchandise, the owner of the trademark shall be notified of the names and addresses of the importer, exporter, and the manufacturer, if the information is available, and the quantity of the articles seized, and a sample of the infringing item. * * *

4. It is proposed to amend § 133.42 by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

§ 133.42 Infringing copies or phonorecords.

* * * * *

(d) *Disclosure.* Customs officers may disclose the names and addresses of the exporter, importer, and manufacturer, if available, quantity of articles found to infringe and seized under this section and may provide a sample of the infringing article to the copyright owner.

* * * * *

5. It is proposed to amend § 133.43 by revising the introductory text of paragraph (b) to read as follows:

§ 133.43 Procedure on suspicion of infringing copies.

* * * * *

(b) *Notice to copyright owner.* If the importer of the suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the district director shall furnish the copyright owner the name and address of the manufacturer, a sample of the imported article, and the quantity of the suspected infringing articles, together with notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the district director:

* * * * *

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 9, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93-20288 Filed 8-20-93; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Arkansas

permanent regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for Arkansas' proposed amendment pertain to Arkansas' authority to implement regulations for the small operator assistance program (SOAP), the costs related to gathering information for a permit application that can be funded under the program, and the liability of the permit applicant for reimbursement of the cost of services under the program if the operator exceeds the allowable (actual and attributed) production within 12 months of permit issuance. The amendment is intended to revise the Arkansas program to be consistent with the corresponding Federal standards.

This document sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t., September 7, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

Arkansas Department of Pollution Control & Ecology, Surface Mining & Reclamation Division, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas' program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Proposed Amendment

By letter dated March 31, 1993 (Administrative Record No. AR–496), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas, at its own initiative, submitted the proposed amendment to make its statutes consistent with sections 507 (c) and (h) of SMCRA, as revised by the Energy Policy Act of 1992 (Pub. L. 102–486). Arkansas proposed to amend the Arkansas Surface Coal Mining and Reclamation Act of 1979 relating to financial assistance under its small operators assistance program (SOAP). The amendment (1) redefined "small operator" to include those operators producing up to 300,000 tons of coal during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit, and (2) expanded the permitting activities eligible for payment under SOAP to include not only the determination of probable hydrologic consequences and statement of the result of test drillings or core samples, but also the development of cross-section maps and plans, collection of archaeological information, pre-blast surveys, and collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values.

OSM published a notice in the April 22, 1993, **Federal Register** (58 FR 16634) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. AR–500). The public comment period ended May 25, 1993.

During its review of the amendment, OSM identified concerns relating to the authority to implement regulations for SOAP, the costs related to gathering information for a permit application that can be funded under the program, and the liability of the permit applicant for reimbursement of the cost of services if the operator exceeds the allowable (actual and attributed) production within 12 months of permit issuance. OSM notified Arkansas of the concerns by letter dated June 23, 1993 (Administrative Record No. AR–507).

Arkansas responded in a letter dated July 22, 1993, by submitting additional explanatory information and a revised amendment to address the concerns identified above (Administrative Record No. AR–505).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rules does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior had determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–20294 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Montana's proposed statutes pertain to the definition of "prospecting." The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., September 22, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Montana program, the proposed amendment and revision, and all written comments received in response to this publication will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed revised amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Caper, WY 82601–1918, Telephone: (307) 261–5776.

Gary Amestoy, Administrator, Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444–2074.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Proposed Amendment

By letter dated October 19, 1992, (Administrative Record No. MT–9–1) Montana submitted a proposed amendment to its permanent program pursuant to SMCRA. Montana submitted the proposed amendment in response to a May 11, 1990, letter that OSM sent to Montana in accordance with 30 CFR 732.17(c). The provision of the Montana program that Montana proposes to amend is Montana Code Annotated (MCA) Section 82–4–203(26) [statutory definition of "prospecting"].

OSM published a notice in the December 14, 1992, **Federal Register** (57 FR 59020) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. MT–9–8). The public comment period ended January 13, 1993.

During its review of the amendment, OSM identified concerns relating to the proposed revision of MCA 82–4–203(26). OSM notified Montana of the concerns by letter dated February 3, 1993, (Administrative Record No. MT–9–11). Montana responded in a letter dated July 28, 1993, by submitting a revised proposed definition at MCA 82–4–203(26) (Administrative Record No. MT–9–13).

Under MCA 82–4–203(26) as proposed on October 19, 1992, (Administrative Record No. MT–9–1), the gathering of surface and subsurface geologic, physical, and chemical data (for determining the quantity and quality of coal and overburden) would have been included within the definition of "prospecting" only if it were conducted on lands designated unsuitable for coal mining; the gathering of environmental data would also have been included only if conducted on lands designated unsuitable for coal mining. Montana has now revised proposed MCA 82–4–203(26) (Administrative Record No. MT–9–13) so that the definition would include the gathering of overburden quantity and quality data, and environmental data, on all lands (not just on lands designated unsuitable for coal mining).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment

in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93-20295 Filed 8-20-93; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is a separation of Wyoming's coal rules from its rules regulating non-coal mining, thus creating two separate sets of rules. The coal program rules are the content of this proposed amendment. Revisions to some rules are proposed that are intended by Wyoming to be editorial rather than substantive.

This notice sets forth the times and locations that the Wyoming program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. September 22, 1993. If requested, a public hearing on the proposed amendment will be held on September 17, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 7, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, Room 2128; Casper, WY; 82601-1918. Telephone: (307) 261-5776.

Dennis Hemmer, Director; Wyoming Department of Environmental Quality; Herschler Building, Fourth Floor West; 122 West 25th Street; Cheyenne, Wyoming; 82002. Telephone: (307) 777-7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett; Telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1990 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Discussion of Proposed Amendment

By letters dated December 15, 1992 and August 6, 1993 (Administrative Record Nos. WY-20-01 and WY-20-03), Wyoming submitted a recodification of its rules as a proposed amendment to its permanent program pursuant to SMCRA. The proposed amendment is a separation of Wyoming's coal rules from its rules regulating non-coal mining, thus creating two separate sets of rules. Only the coal program rules are the subject of this amendment. Wyoming proposes that the many editorial changes required were to correct references and make transitions and that no substantive changes were intended.

The amendment package includes (1) Reorganized Coal Rules; (2) Citations Index; (3) Side by Side Comparison of the 1989 and reorganized rules; and (4) Table summarizing all rules which have been filed with the Wyoming Secretary of State since the 1989 rules were printed, and whether the rule has been approved by OSM.

Wyoming submitted the proposed amendment on its own initiative as part of a State effort to eliminate the confusion that was inherent in regulatory rules that applied to two separate and distinct programs, i.e., the regulation of coal and non-coal mining operations. The recodification results from the direction given by the Governor's Regulatory Reform Task Force. The proposed reorganized rule package is intended to facilitate better understanding of and compliance with Wyoming's statutes and rules, and with SMCRA.

The rules of the surface coal mining program, together with rules applicable only to non-coal mining, are currently codified as the Land Quality Division rules Chapters I through XXV (plus Appendix A). The proposal would recodify the revised rules of the surface coal mining program as Chapters I through XX (plus Appendix A and B). OSM notes that Appendix B has not yet been approved by OSM, and hence is not considered to be part of this proposed amendment to the approved Wyoming program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program. Review of the proposal should be directed to the recodification of the reorganized rules and the associated revisions (asserted by Wyoming to be editorial), rather than to the existing substance of the rules.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. September 7, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–20296 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

Privacy Act of 1974; Proposed Rule Exempting System of Records From Certain Provisions

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to exempt the new system of records entitled Internal Security Management Information System (ISMIS)—Treasury/IRS 60.011 from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

DATES: Comments must be received no later than September 22, 1993.

ADDRESSES: Please submit comments to the Director, Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Phyllis DePiazza, Team Manager, FOI/Privacy Section, Office of Disclosure, Internal Revenue Service at (202) 622–6240.

SUPPLEMENTARY INFORMATION: The development of the Internal Security Management Information System (ISMIS) was precipitated by the need for better resource management and greater continuity in case management. This system enables management to effectively track investigative cases and assists in determining budget and staffing requirements within Internal Security by drawing from data currently maintained in the following Inspection systems of records: Assault and Threat Investigation Files—Treasury/IRS 60.001, Bribery Investigation Files—Treasury/IRS 60.002, Conduct Investigation Files—Treasury/IRS 60.003, Disclosure Investigation Files—

Treasury/IRS 60.004, Enrollee Applicant Investigation Files—Treasury/IRS 60.005, Enrollee Charge Investigation Files—Treasury/IRS 60.006, Miscellaneous Information Files—Treasury/IRS 60.007, Security, Background and Character Investigation Files—Treasury/IRS 60.008, Special Inquiry Investigation Files—Treasury/IRS 60.009, and Tort Investigation Files—Treasury/IRS 60.010.

There is the possibility that other data bases will be included in future enhancements of ISMIS.

ISMIS consolidates the information into a data base providing more effective management of Internal Security resources, programs, and budget and staff requirements for the benefit of the Department of the Treasury, the Congress, and IRS officials.

Pursuant to the Privacy Act of 1974, the Department of the Treasury is publishing separately the Notice of a new Treasury/IRS system of records, to be maintained by the IRS.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Office of the Chief Inspector has as its principal function activities pertaining to the enforcement of criminal laws.

To the extent the exemption under 5 U.S.C. 552a(j)(2) does not apply to the above-named system, then exemption under 5 U.S.C. 552a(k)(2), relating to investigatory material compiled for law enforcement purposes, is hereby claimed for this system.

The Department of the Treasury is hereby giving notice of a proposed rule to exempt this Treasury/IRS system of records described above from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and the authority of 31 CFR 1.23(c). The reason for exempting this system of records from this provision of 5 U.S.C. 552a is set forth in the rule itself.

As required by Executive Order 12291, it has been determined that this proposed rule is not a "major" rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of subpart C is amended by adding the following text under the heading THE INTERNAL REVENUE SERVICE.

(b) * * *
(1) * * *

Name of system	No.
* * * * *	
Internal Security Management Information System (ISMIS)	60.011
* * * * *	

* * * * *

Approved: July 15, 1993.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 93–20291 Filed 8–20–93; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 73 and 78

[FRL–4696–6]

Acid Rain Allowance Allocations and Reserves; Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice of petition for administrative review.

SUMMARY: Southern Illinois Power Cooperative (SIPC) filed a petition for administrative review dated May 14, 1993 with the Environmental Protection Agency's (EPA's) Environmental Appeals Board (EAB) concerning EPA's allocation of sulfur dioxide emission allowances to SIPC's Marion Power Station Units 1, 2, and 3 in the final rule, "Acid Rain Allowance Allocations and Reserves," 58 FR 15634, 15662 (March 23, 1993). This action fulfills the requirements of 40 CFR 78.9 (promulgated at 58 FR 3763 (January 11, 1993)) to the extent that such requirements apply to SIPC's filing.

ADDRESSES: All submissions in this matter shall reference petitioner's name and "Appeal Number: CAA 93–1." Submissions by mail shall be sent to: U.S. Environmental Protection Agency, Environmental Appeals Board (MC–1103B), 401 M St., SW., Washington, DC 20460.

Submissions by hand delivery shall be made during business hours at: U.S. Environmental Protection Agency, Environmental Appeals Board, Westory Building, 607 14th St., NW., suite 500, Washington, DC 20005.

Documents filed in this matter are available for examination at the EAB's 14th Street offices during business hours, which are 8 a.m. to 5 p.m., excluding weekends and federal holidays.

FOR FURTHER INFORMATION CONTACT: Eurika Stubbs, Clerk of the Board, (202) 501–7060, concerning EAB filings and procedures, or Jon Averback, Office of General Counsel, (202) 260–7718, concerning other aspects of this matter.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act (CAA or Act) directs EPA to establish an acid rain control program to reduce the impacts of acidic deposition. 42 U.S.C. 7651–7651o. One of the purposes of CAA Title IV is to reduce annual nationwide emissions of sulfur dioxide, a precursor of acid rain, by ten million tons from 1980 levels. 42 U.S.C. 7651(b). To accomplish this purpose, the Act directs EPA to allocate a limited number of sulfur dioxide emissions allowances to most sulfur dioxide emitting electricity generating utility units (affected sources). Each allowance authorizes an affected source to emit up to one ton of sulfur dioxide in a year and may be transferred to other affected sources or third parties. Holding allowances does not supersede or otherwise relieve affected sources from other requirements under the Act. 42 U.S.C. 7651b.

The Agency has promulgated several of the implementing regulations for CAA Title IV. The permitting, emissions monitoring and administrative appeals provisions, as well the allowance provisions for the 1995 to 1999 phase ("Phase I") of sulfur dioxide emission reductions, were promulgated on January 11, 1993. 58 FR 3590. On March 23, 1993, EPA published a final rule, "Acid Rain Allowance Allocations and Reserves," 58 FR 15634, which implemented additional provisions of CAA Title IV. One portion of this rule contained allowance allocations for the years 2000 and thereafter for affected

sources ("Phase II"). 40 CFR 73.10 (promulgated at 58 FR 15650–702).

On May 14, 1993, SIPC filed with the EAB a petition for review of that portion of 40 CFR 73.10 containing the Phase II allowance allocations to three generating units, Marion Power Station Units 1, 2, and 3. 58 FR 15662. On July 2, 1993, counsel for EPA filed a motion to dismiss the petition due to lack of jurisdiction under the administrative appeal provisions, 40 CFR part 78 (promulgated at 58 FR 3760–3766), and the CAA. In its motion, EPA argued that the EAB lacks jurisdiction to review final agency action of the Administrator, including the Administrator's final action promulgating the nationally applicable allowance regulations. The Agency also asserted that jurisdiction exists instead, if anywhere, in the United States Court of Appeals for the District of Columbia Circuit. SIPC filed a response to the motion on July 29, 1993.

This notice is intended to fulfill any duty that the Agency may have to provide notice to the public under 40 CFR 78.9, to the extent such duty exists. Publication of this notice is not an acknowledgement by the Agency that the EAB has jurisdiction over this matter or that the SIPC filing is within the scope of part 78.

Dated: August 12, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–20299 Filed 8–20–93; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–225; FCC 93–370]

Modulation Levels: AM, FM and TV Aural

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission initiates a comprehensive inquiry on broadcast station aural modulation measurement. The effect of aural modulation on adjacent channel interference levels also is discussed, as well as the possibility of substituting appropriate emission standards in lieu of current aural modulation limits. This action is necessary to resolve disputes over the operation of contemporary aural modulation monitors and to investigate new and potentially more appropriate methods of controlling adjacent channel interference due to overmodulation. The intended effect of this action is to update the Commission's broadcast technical rules to more accurately reflect state-of-the-art modulation and emission measurement capability.

DATES: Comments are due on November 5, 1993. Reply comments are due on December 15, 1993.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, Engineering Policy Branch, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 93–225 adopted July 23, 1993, and released on August 12, 1993. The complete text of the Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC, and may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M St., NW., Washington, DC 20037.

Synopsis of Notice of Inquiry

1. In this Notice of Inquiry, the Commission seeks comments on two basic issues: (1) What should be the definition of overmodulation (including whether new emission limitations should be adopted in lieu of an overmodulation standard); and (2) What methods or procedures are necessary to implement any proposed limits on modulation levels.

2. Section 73.1570 of the Commission's Rules defines modulation limits for the various types of broadcast stations and states that these limitations must not be exceeded by "peaks of frequent reoccurrence." No definition of this phrase is given in the rule. Should this rule remain unchanged, or should it be modified or interpreted with more specificity? In particular, should consideration be given to the amplitude of the modulation peaks beyond 100%, to the time duration of such peaks, or to the number of peaks within a given span of time? Theory tells us that peaks of very short duration results from high bandwidth baseband signals and can result in excessive sidebands for reasons other than overmodulation. Are there other relevant modulation parameters which should be considered as well? The Commission requests that commenters consider submitting empirical of theoretical data to support their views in this area.

3. The Commission also wishes to examine a different approach to resolving the overmodulation issue. Namely, should specific limits on modulation *per se* be eliminated and replaced with a new emission limitation (or standard) designed to prevent harmful adjacent channel interference? Traditionally, emission limitations have taken the form of "step-function" formulas relating transmitter output power to transmitter bandwidth, with permissible power dropping in steps as the bandwidth increases. These "step function" limitations, however, were developed decades ago, are extremely simplistic approximations of signal envelopes and, for this reason, do not afford adequate adjacent channel protection. However, in recent years more sophisticated versions of these limits have been developed which use continuous power "roll-off" formulas derived from Bessel function analysis. These newer emission standards provide a readily quantifiable degree of adjacent channel protection. It may be possible to develop analogous formulas for FM and TV aural signals which could replace the current modulation limits and avoid the definitional problems inherent in the current regulations.

4. Several years ago the Commission, in MM Docket No. 88–376, adopted a new emission limitation for AM broadcast stations. This new emission standard is intended to reduce levels of adjacent channel interference in the AM service while giving licensees considerable flexibility in program audio signal processing. While modulation limits in the AM service were retained, their practical function is to limit the average transmitter output power. The new emission limit is controlling with respect to limiting interference caused by excessive sidebands.

5. Inasmuch as a station's total power output does not change with modulation in the case of FM and TV aural transmitters, it is possible that appropriate emission limitations could be developed for those stations which could render specific limits on modulation unnecessary. The rationale for this approach would be that the interference potential of these transmitters is determined by their occupied bandwidth. Therefore, a carefully defined limit on occupied bandwidth could be effective in preventing interference and give licensees more flexibility in audio processing as well as the use of multiplexed subcarriers.

6. However, signals broadcast by FM and TV aural transmitters are much more complex than those typically transmitted by AM stations or stations in many other radio services. The

Commission seeks comment on whether anyone has developed mathematical models for FM or TV aural multiplex signals. Should there be uncertainties or disagreement over how such a task should be approached, an empirical approach may provide the solution. Radiated emissions of FM and TV aural transmitters transmitting different kinds of programming and multiplexed subcarriers could be measured using spectrum analyzers to develop an emission profile that would accommodate all current transmission system configurations not deemed to cause more than the normally expected amount of adjacent channel interference. Comment is requested on the desirability of developing more precise emission limitations for FM and TV aural transmitters, and whether an analytic or empirical approach would be preferable.

7. In MM Docket No. 81–698, the Commission deleted the requirement that the modulation monitoring equipment used by each station be FCC-type approved. This deregulatory action was meant to provide licensees with some flexibility in achieving compliance with modulation limits and to eliminate a burden (equipment authorization) on equipment suppliers and the Commission. It was not meant to excuse licensees from using whatever means were necessary to ensure compliance with the modulation limits. This will continue to be the case if the current modulation limits are retained or revised (i.e., the Commission does not expect to type approve monitoring equipment or specify what type of equipment licensees should employ to maintain their compliance with any modulation limits that may emerge from this rulemaking).

8. It is possible that the equipment needed to determine compliance with emission limitations may be more expensive than that used to make traditional modulation measurements. The Commission seeks information on what equipment would be required, its costs, and the skills needed to operate it properly. If the emission limitation approach is adopted, what devices (other than spectrum analyzers) would be suitable for detecting excessive bandwidth? It should be noted that even the use of such devices may not eliminate some of the problems facing the current generation of modulation monitors, because a limit may be necessary on the time duration and recurrence rate of peak tolerable out-of-band power. Lastly, if the Commission adopts new emission limitations, should it continue to allow the use of conventional modulation monitors as an alternative?

9. In this proceeding the Commission seeks to obtain information that will enable it to set meaningful modulation limits on peak amplitude, peak duration, peak recurrence rates and the time interval over which the peaks are to be counted. Finally, the Commission seeks to examine an alternative concept—that emission limitations can replace modulation limitations. The Commission seeks information on this concept's application to modulation, modulation measurement, the control of interference and its implications for broadcasters, equipment manufacturers and the Commission's enforcement efforts.

Procedural Matters

10. This Notice of Inquiry is issued pursuant to authority contained in sections 4(i), 303 and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 5, 1993, and reply comments on or before December 15, 1993. All relevant and timely filed comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. For further information contact James E. McNally, Jr., Engineering Policy Branch, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission, Washington, DC 20554, telephone (202) 632–9660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–20243 Filed 8–20–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[GC Docket No. 92–52; FCC 93–363]

Reexamination of the Policy Statement on Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations concerning procedures on transfer and assignment applications to require that successful applicants in comparative broadcast hearings hold their stations for at least three years, instead of the current one-year requirement. The intended effect of this proposal is to extend the public interest benefits of the comparative process and to discourage potential abuse of the comparative process.

DATES: Comments must be filed on or before September 13, 1993; reply comments must be filed on or before September 18, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 632–7220.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed rulemaking, GC Docket No. 92–52, adopted on July 19, 1993, and released _____. The full text of the further notice of proposed rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., suite 140, 2100 M Street NW., Washington, DC 20037.

Summary of Further Notice of Proposed Rule Making

1. In this notice, the Commission invites comment on whether to amend 47 CFR 73.3597(a)(1) to require that successful applicants in comparative broadcast proceedings operate their stations for three years before they would become eligible to transfer them. This action would supersede the current requirement that stations acquired in comparative hearings be held for one year.

2. In *Reexamination of the Policy Statement on Comparative Broadcast Hearings*, 57 FR 14683 (Apr. 22, 1992), the Commission proposed to award a comparative preference to applicants proposing to own and operate their

stations for at least three years. The commenters uniformly supported the proposal to foster service continuity. Moreover, several commenters favored the alternative of amending the one-year rule to apply a longer restriction to all successful applicants in comparative proceedings. The Commission agrees with these parties that a longer mandatory holding period would significantly enhance the public interest benefits of the comparative process and at the same time protect it from abuse. The Commission seeks comments on this proposal.

3. The Commission also seeks comments on several subsidiary questions: (1) Whether three years remains the relevant period for purposes of service continuity, although broadcast license terms are now longer than three years; (2) whether the holding requirement should apply to stations granted pursuant to settlements in comparative proceedings; (3) whether and how the reporting requirements of 47 CFR 73.1620(g) should be amended in light of any modification in the required holding period; (4) whether an increase in the holding period would apply to all existing and future authorizations obtained through the comparative process; and (5) whether the Commission should initiate a proceeding to inquire whether service continuity requirements should be imposed with respect to facilities acquired other than through the comparative process.

Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis is set forth at 57 FR 14683, 14684 (Apr. 22, 1992).

List of Subjects in 47 CFR Part 73

Administrative practice and procedure, Radio broadcasting, Telecommunications, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–20236 Filed 8–20–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–93–24]

RIN 2125–AC74

Parts and Accessories for Safe Operation; Intermodal Cargo Containers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA is considering proposing changes to the Federal Motor Carrier Safety Regulations (FMCSRs) concerning the safe transportation of intermodal cargo containers on commercial motor vehicles (CMVs).

Field observations by the FHWA, as well as discussions with intermodal cargo container industry officials, representatives of the trucking industry, steamship operators, and others, indicate that there appear to be substantial differences between the regulatory requirements of the FMCSRs, several States' cargo securement regulations, and industry practices. Some cargo containers with integral securement devices (apertures on the corners/edges of the container to accommodate twistlocks, locking pins, hooks, etc.) are transported on CMVs which do not have such securement devices and therefore do not comply with the Federal regulations. Moreover, several States allow the transportation of intermodal cargo containers on CMVs with securement systems other than those specified in the FMCSRs.

The FHWA is requesting comments from interested parties. The FHWA is particularly interested in obtaining information concerning advances in intermodal cargo container securement technology and practices.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–24, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All answers to questions should refer to the appropriate question number and all comments on specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 30, 1969, the FHWA published a notice of proposed rulemaking (NPRM) (34 FR 15255, Docket MC–12, Notice No. 69–17), addressing the safe loading of commercial motor vehicles. The NPRM was issued in response to petitions by the former Steel Carriers' Conference of the American Trucking Associations (ATA) and the Aluminum Association. The NPRM proposed to amend what was then § 393.85 by specifying the means of securing iron and steel articles transported by commercial motor vehicle. The NPRM, noting that the securing of cargos other than metal articles also presented problems for the safety of motor vehicle operations, opened the entire area of safe loading for consideration and possible rulemaking. The NPRM did not discuss or consider a special rule for intermodal cargo containers, presently defined in § 393.100(e) of the FMCSRs.

The FHWA published a final rule on this issue on September 23, 1971 (36 FR 18862, Docket MC–12, Notice No. 71–28). The amendments to § 393.85 of the FMCSRs were to become effective January 1, 1973.

Subsequently, on October 22, 1971, the Truck Trailer Manufacturers' Association (TTMA) petitioned for reconsideration of the final rule. The TTMA requested that intermodal cargo containers be temporarily exempted from the new securement rules. The TTMA argued that certain requirements in the September 23, 1971, final rule (i.e., § 393.85(e)(4), Strength capability of the front structure; and § 393.85(c)(1), Tiedown assemblies) would prevent containers from being transported on conventional highway container chassis. In support of its petition, the TTMA pointed out that during the period when the FHWA was issuing these regulations, the same issues were being discussed, in Geneva, by the Economic Commission of Europe, and, in London,

by the International Maritime Organization.

Sea-Land Service, Inc., also petitioned for reconsideration of the final rule on October 28, 1971. Sea-Land Service, Inc., requested that intermodal cargo containers be temporarily exempted from the new securement rules, and, as justification for its petition, stated, "Certain portions of the regulations * * * conflict with the container standards both domestically and internationally. This, despite proven safe experience with existing design materials."

In response to these petitions, the FHWA published a notice of reconsideration in the **Federal Register** on June 27, 1972 (37 FR 12640, Docket No. MC–12, Notice No. 72–7) which amended the October 28, 1971 final rule. The preamble stated:

> Sea Land Service, Inc., and the Truck Trailer Manufacturers Association have petitioned for the addition of special rules for containers moving in intermodal service, arguing that the pending rules are unsuitable for intermodal containers. The Director [of the Bureau of Motor Carrier Safety] notes that, until these petitions were received, no participant in the rulemaking proceeding mentioned special problems of securing intermodal containers. As a general rule, the interests of orderly procedure would require that petitions for reconsideration raising new issues should be treated as petitions for rulemaking, and the petitioners should be required to abide by the outcome of further rulemaking proceedings dealing with their special problems. Because of the traditional interest of the Department in facilitation of intermodal transportation, however, the Director has decided to make an exception to this general rule in this instance. A special provision dealing with the securement of intermodal containers has been added to § 393.85 and will be found in paragraph (c)(6) of that section.

Section 393.85(c)(6) included most of the requirements now codified at § 393.100(e). However, the June 27, 1972, notice of reconsideration allowed one-half inch of maximum vertical movement between the container and the chassis, whereas the current regulation allows one inch vertical movement of the container on the chassis. These amendments were to become effective July 1, 1973.

On June 20, 1973, the FHWA delayed the effective date of the Safe Loading Rules (§ 393.85) to October 1, 1973 (38 FR 16072), and also published an NPRM (38 FR 16080) to add a new subpart to the FMCSRs, Subpart I—Protection Against Shifting or Falling Cargo. The NPRM also proposed to redesignate the special rule for intermodal cargo containers in § 393.85(c)(6) as § 393.100(e).

The FHWA issued a final rule on August 31, 1973 (38 FR 23520, Docket MC–12, Notice No. 73–21), revising the rules pertaining to the safe loading of commercial motor vehicles. Several commenters to the NPRM were concerned about the transportation of intermodal cargo containers, but only one commenter suggested that the special rule be eliminated. That commenter, the TTMA, suggested that the special provisions for intermodal cargo containers in § 393.100(e) be eliminated because the safe loading of those containers could be accomplished under the general provisions of § 393.100(d). The FHWA stated in its response to the TTMA's comments,

> [t]he Bureau [Bureau of Motor Carrier Safety] has concluded * * * that the loading and securement of intermodal containers present special problems which should be dealt with in specific rules applicable to those containers.

All other comments dealt with the allowable movement of the container on the chassis.

In a joint letter dated October 19, 1989, the International Institute of Container Lessors (Institute) and the Atlantic Coast Stevedores (ACS) requested the FHWA to issue an interpretation of 49 CFR 393.100(e) addressing the practice of carrying of intermodal cargo containers on vehicles lacking the integral securement devices (twistlocks, locking pins, etc.) designed to secure containers to vehicles. The Institute and the ACS stated:

> Transport of intermodal containers without adequate securement to highway vehicles is increasingly prevalent in the United States as ocean carriers and truckers look for means to cut corners, often at the price of safety. Such carriers treat intermodal containers as just another piece of cargo, ignoring the fact that intermodal containers are specifically designed to be secured to appropriate vehicles by integral (i.e., specifically designed) securement devices.

The Institute and the ACS further argued:

> To the extent someone may claim that intermodal containers may be transported on flatbed trailers or other equipment without the use of integral securement devices providing that the general rules governing the securement of cargo are followed, the Institute and the ACS believe that such an assertion would be wrong legally and as a matter of public safety policy. The notion that the general securement rules may be applied to the transportation of intermodal containers is not only at odds with the terms and purposes of Section 393.100(e) to set forth the exclusive means of securing intermodal containers for highway transportation, but does not serve the best interests of highway safety.

A copy of this letter is included in FHWA Docket No. MC–93–24.

In an interpretation issued on November 21, 1989, the FHWA advised that "[the] Special rule for intermodal cargo containers, requires that such containers must be fastened to the chassis of the transporting motor vehicle in such a manner that the securement devices of the container cannot be unintentionally unfastened."

The interpretation also pointed out that the special rule [49 CFR 393.100(e)] limited the movement of the secured container in any direction under specific accelerations. The interpretation concluded that these very strict requirements precluded the use of any vehicle other than a trailer chassis specifically designed for transporting these cargo containers. A copy of this interpretation is included in FHWA Docket No. MC–93–24.

Shortly after the FHWA issued the above interpretation, four motor carriers, one ocean carrier, and one stevedoring company contacted the FHWA. These companies claimed to have been transporting intermodal cargo containers on vehicles not equipped with integral securement devices (twistlocks) for years without any problems. One of the motor carriers stated, "We move many different commodities including building materials of all kinds as well as watermelons and produce and find containers to present the least amount of problems as far as safety and securing them to the trailer is concerned." This motor carrier further requested that the FHWA take action to have § 393.100(e) repealed. At least three other motor carriers and one ocean carrier have echoed that request.

On January 23, 1990, the FHWA modified its position based on new information. At the time the November interpretation was written, the FHWA was not aware of any flatbed trailers or lowboy trailers equipped with integral latching devices. However, the FHWA learned that one manufacturer was offering a flatbed trailer equipped with these devices. The FHWA stated that, "if a vehicle [flatbed trailer] had such integral latching devices, it may be used [for transporting intermodal containers]." At the same time, the FHWA stated that,

> In analyzing the available information, we have concluded that the rule should be subjected to a thorough review. We have further concluded that, during this review process, the FHWA should refrain from the enforcement of this requirement of the Federal Motor Carrier Safety Regulations (§ 393.100(e)) and allow the transportation of intermodal cargo containers on flatbed

trailers and lowboy trailers, if the following securement standards are observed by the motor carrier:

1. All lower corners of the intermodal container must be secured by chains, hooks, cables or other devices that will not permit the container to exceed the movement standards set out under 49 CFR 393.100(e); and

2. If the container is being transported by a lowboy, the entire container must be resting upon the trailer, or the entire length of the container must be supported by a structure sufficient to support the weight of the intermodal cargo container and that support structure must be independently secured to the trailer; and

3. In all instances, the loaded motor vehicle shall conform to the legal size and weight limits, including the bridge weight formula rules (Title 23, 658.17 . . .).

A copy of this interpretation is included in FHWA Docket No. MC–93–24.

In February 1990, a representative of the Intermodal Tank Container Association (ITCA) briefed FHWA officials on safety issues concerning the movement of intermodal cargo tanks on the highways. The ITCA repeated its concerns in a letter to the Secretary of Transportation dated February 10, 1990. The ITCA argued that loaded tank containers are being transported in "an unsafe manner on straight frame flatbed trailers and on dropframe trailers using inadequate restraint." The Association claimed that chains, cables, load binders and other detachable securing devices have not been proven to be truly reliable restraint mechanisms, "because they do not act simultaneously to restrain a container but often act sequentially, * * * this sequential imparting of restraint can cause a 'zipper' type of failure." That is, in a severe curve or turn, the tiedown with the most tension fails, throwing an increased strain on the next tightest which in turn fails, increasing the strain on the next tiedown, and so on. The failure usually proceeds from front to rear. The ITCA believes that the FHWA should make the use of twistlocks mandatory for the carriage of all loaded intermodal tank containers because "the liquid product inside of a tank container shell will itself respond to vehicular motions and induce its own dynamic force through liquid surge." Twistlocks are built with a locking cone and a thrust collar. The thrust collar "[f]ills the bottom aperture of the bottom corner fitting on each corner of the container base and thus restricts longitudinal and lateral movement of the container. * * *" (ITCA). According to the ITCA, the movement of the container does not exceed the operating clearances between the thrust collar and the bottom aperture of the container, which is usually about one-half inch longitudinally or laterally. A copy of the this letter is included in FHWA Docket No. MC–93–24.

Issues Presented

The FHWA is concerned about several issues presented by various segments of the industry. If, as stated by ocean carriers and truckers, § 393.100(e) serves no useful purpose, then it should be removed from the regulations. On the other hand, if there is a positive safety benefit in retaining these regulations as written, or in an amended form, they should then be retained or amended as appropriate. In addition, there are States whose regulations concerning intermodal cargo container securement permit the use of trailers without integral latching devices. See, for example, Title 13 California Code of Regulations, Article 9, Sections 1400–1402, Detachable Freight Vans or Tank Containers—Loading, Securement, and Transportation (13 CCR 1400–1402).

The FHWA requests comments on these issues, along with safety data or other information in support of the commenter's position. In addition, the FHWA requests commenters' responses to the following questions:

1. Are the Federal Motor Carrier Safety Regulations covering protection against shifting or falling cargo (§§ 393.100 through 393.104) adequate to ensure the safe transportation of intermodal containers if twistlocks (or other devices designed specifically for use with intermodal containers) are not used? Please compare the nature and frequency of accidents and incidents involving intermodal containers equipped with twistlocks (or other devices) and containers fastened or secured by other methods.

2. Are there certain types of integral latching devices (e.g., twistlocks) which, while satisfying the letter of the regulation, are not adequate to properly secure loaded containers? Can these inadequacies be overcome through the use of additional devices, through prudent location of the devices, or through other means?

3. Should the FHWA set minimum design or performance standards for twistlocks or other devices designed specifically for use with intermodal containers (i.e., size, strength, acceptable wear, etc.), or should the FHWA incorporate certain industry standards by reference? Please provide copies of standards for these devices.

4. Should the transportation of all intermodal containers be limited to vehicles that are equipped with twistlocks or similar devices? Should a differentiation be made between laden and empty containers?

5. Should vehicles that are not equipped with twistlocks be allowed to transport empty containers, but not laden ones?

6. In addition to the method of securing the containers to the trailer, is there a need for safety standards concerning the positioning of the container on the chassis or trailer (e.g., all four corners of the container must rest on the surface of the trailer; or container overhang is limited to a maximum of 6 feet at the front and rear of the trailer, etc.)? Should these standards be different for specific types of containers (e.g. for liquid cargo)?

7. In States that allow intermodal containers to be transported on vehicles other than intermodal chassis, are there restrictions on their transport? If so, what are these restrictions?

8. What has been the industry experience in using vehicles other than intermodal chassis, e.g., flatbeds, lowboys, etc.? How often do containers carried on flatbeds or lowboys not equipped with twistlocks become separated from the trailer when alternative securement methods are used? Please provide details on the nature and frequency of these incidents. The FHWA is particularly interested in incident rates (i.e., incidents per million vehicle miles traveled).

9. Should loaded intermodal liquid cargo tanks be restricted to drop neck chassis (single or double drop), or lowboys (single or double drop)?

10. Should loaded intermodal liquid cargo tanks be restricted to vehicles equipped with integral latching devices (twistlocks) and having a low center of gravity?

11. What informational and guidance materials would be useful to motor carriers to assist them in evaluating whether intermodal cargo container securement devices and systems are sufficient in design, use, and number and in proper working order? Please provide sources, examples of guidance materials, etc.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and

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interested persons should continue to examine the docket for new material.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the economic impact of potential changes to the regulatory requirements concerning the safe transportation of intermodal cargo containers on CMVs.

Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with various alternative requirements. Comments, information, and data are solicited on the economic impact of potential changes.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these impacts.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulation Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight transportation, Highway safety, Highways and roads, Motor carriers, and Motor vehicle safety.

Authority: 49 U.S.C. 3102; 23 U.S.C. 315; 49 CFR 1.48

Issued on: August 16, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–20250 Filed 8–20–93; 8:45 am]

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Notices

Federal Register
Vol. 58, No. 161
Monday, August 23, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of the Cub Creek Fire Salvage Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.
ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from wildfire on the Cub Creek Fire area, Lowman Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Dautis Pearson or Mark Sigrist Lowman Ranger District, Boise National Forest, HC 77 Box 3020 Lowman, ID 83637, Telephone: 208–259–3361.

SUPPLEMENTARY INFORMATION: The Cub Creek wildfire killed 2,600 acres of Douglas-fir, subalpine fir, lodgepole pine, and Englemann spruce. This area is in the Cub and Bear Valley Creek Drainages which provide rearing and spawning habitat for the Snake River Spring/Summer Chinook Salmon, a threatened species.

As part of the effort to recover and rehabilitate natural resources damaged by wildfire, Lowman Ranger District personnel have developed a proposal to harvest fire killed timber, rehabilitate fire damaged watersheds and reforest damaged acres.

The Forest Service has completed the Cub Creek Salvage Project Environmental Assessment (EA), identified issues, developed alternatives, received a Biological Opinion from National Marine Fisheries, concurrence from Fish and Wildlife Service and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Cub Creek Fire Salvage Project EA is located about 15 miles north of Lowman, Idaho. The Forest will salvage fire killed trees in the 2,600 acre Cub Creek Fire area. This project will recover approximately 2–4 million board feet (MMBF) on 1,000 acres. Mechanized harvesters will be used on all ground with 35 percent or less and the remainder of the area would be helicopter harvest. Approximately 1200 acres would be rehabilitated by planting with lodgepole pine and Douglas-fir to increase the sites' timber productivity, resilience and diversity of forest stands. Natural regeneration will be used to reforest small areas (less than five acres in size).

Two existing helicopter landings will be used. No new roads will be constructed. Approximately five miles of spur roads will be closed. The 2,600 acre analysis area includes 1500 acres of the Whitehawk Mountain IRA and 400 acres in the Elk Creek IRA. Of the 1900 acres approximately 750 acres would be harvested. This project is not within areas considered for wilderness in the Forest Plan, nor within areas recommended for wilderness in the recent legislative proposal entitled "Idaho Wilderness, Sustainable Forests and Communities Act of 1993."

Management direction for the Bear Valley Management Area is established in the Boise National Forest Land and Resource Mmanagement Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, fisheries, wildlife, visual, and other onsite resources. The proposed action for the Cub Creek Fire Salvage Project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Through the timber salvage operations Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by wildlife.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Cub Creek Fire project may be implemented after publication in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of an appeal (delays of up to 150 days are possible) the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable fire salvage is $350,000. Of this, approximately $93,750 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Cub Creek Fire Salvage Project, Lowman Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: August 17, 1993.

Robert C. Joslin,
Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93–20276 Filed 8–20–93; 8:45 am]
BILLING CODE 3410–11–M

Exemption from Appeal, Twelvemile Timber Salvage Project, Manti-La Sal National Forest, Utah

AGENCY: Forest Service, USDA.
ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities, to recover and rehabilitate natural resources from an Engelmann spruce bark beetle epidemic, on the Twelvemile Timber Salvage project, Sanpete Ranger District, Manti-La Sal National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective August 23, 1993.

FOR FURTHER INFORMATION CONTACT: A. J. Frandsen, Ecosystems Branch Chief, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 80451, Telephone: (801) 673–2817.

SUPPLEMENTARY INFORMATION: A six-year period of drought conditions in Utah began in 1986. Reduced soil moisture caused stress conditions in all trees throughout the Wasatch Plateau. Populations of Engelmann spruce bark beetles grew from endemic to epidemic

numbers in 1989. A 300 acre Timber Management Emphasis Unit and an adjacent 150 acres with scattered timber sites in the Twelvemile Flat area were attacked by the Engelmann spruce bark beetles. This area is located on the National Forest about 17 miles east of Mayfield, Utah.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Sanpete Ranger District and Manti Timber Zone personnel have developed a proposal to harvest the dead, dying and insect-infested timber and reforest under-stocked timber sites. The Forest Service has completed the Twelvemile Timber Salvage Environmental Assessment (EA), which identifies issues, develops alternatives, and analyzes the effects of implementing timber salvage and other recovery activities on the Twelvemile Flat area.

The analysis area for the Twelvemile Timber Salvage EA is located 17 miles east of Mayfield, Utah. The Forest will salvage harvest dead Engelmann spruce trees throughout the 450 acre project area and recover approximately 4.00 million board feet (MMBF) of timber. The project will harvest only dead, dying, and insect-infested Engelmann spruce trees with rubber-tired skidders and tractors. Live subalpine fir, limber pine and other tree species will not be harvested. Harvesting will not occur in Twelvemile Flat Campground or on slopes exceeding 40%.

Approximately 245 acres of cutover areas will be replanted with Engelmann spruce seedlings. About 2.2 miles of temporary work roads will be needed for access. Following logging operations these roads will be obliterated and revegetated with a non-sod forming grass seed mixture or spruce seedlings. Log landings will be revegetated in a similar manner. A 2.0 mile section of the Ferron-Mayfield Road (Forest Development Road No. 50022) will be reconstructed and graveled. An additional 3.8 miles would be graveled as necessary.

Management direction for the project area is established in the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan) of 1986. The Forest Plan provides for maintaining healthy timber stands and the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual quality, and other affected resources. The proposed action for the Twelvemile Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

An interdisciplinary team along with Manti-La Sal Forest and Sanpete District Foresters have analyzed the insect-damaged timber stands. They have found that salvage timber sales would be an economical and practical means to rehabilitate the damaged area. This salvage project would: (1) Recover valuable timber that would otherwise deteriorate, (2) remove dead trees that would increase fuel loading and wildfire risks, and (3) reforest those areas that have been left under-stocked because of the spruce beetle epidemic. It is extremely important to remove the dead, dying, and insect-infested timber before it deteriorates and loses it's economic value. Through the timber salvage operations, Knutson-Vanderburg (K–V) funds can be generated to use in restoring forest resources that have been damaged by the insect epidemic. The Forest Supervisor has determined through scoping and environmental analysis that there is justification to expedite this project.

The decision for the Twelvemile Timber Salvage project may be implemented after publication in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of an appeal (delays of 150 days or more are possible), it is possible that the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead, dying, and insect-infested timber is $460,000. Of this amount approximately $115,000 would be returned to the local county from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to two-thirds of this value and potentially make the salvage sale unattractive to timber purchasers. This delay would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Twelvemile Salvage Project, Sanpete Ranger District, Manti-La Sal National Forest, from appeal. The Twelvemile Salvage project EA discloses the effects of the proposed action on the environment and addresses issues resulting from the proposal.

Dated: August 17, 1993.

Robert D. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93–20275 Filed 8–20–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held September 9, 1993, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials processing and related technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 6, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–20325 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 41–93]

Proposed Foreign-Trade Zone—Ventura County, California (Port Hueneme Customs Port of Entry); Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor

Commissioners, Oxnard Harbor District, (also known as the Port of Hueneme), requesting authority to establish a general-purpose foreign-trade zone at sites in Port Hueneme and Oxnard, California, within the Port Hueneme Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 10, 1993. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed foreign-trade zone would consist of 3 sites (807 acres), with Site 1 located in the City of Port Hueneme and Sites 2 and 3 located in the City of Oxnard. *Site 1* (Seaport site—738 acres) consists of 2 parcels: The Port of Hueneme terminal complex (61 acres), 105 Port Hueneme Road, Port Hueneme (owned and operated by the Oxnard Harbor District), and an industrial area (677 acres) within the 1,615-acre U.S. Naval Construction Battalion Center, 105 Port Hueneme Road, Port Hueneme. Mazda Motor of America, Inc., operates a vehicle storage, distribution and processing facility on a 60-acre parcel within Site 1. *Site 2* (South Oxnard Industrial Park—47 acres) consists of 2 parcels: BMW tract (21 acres), 5650 Arcturus Road, Oxnard; and, Wallenius Lines, North America tract (26 acres), 5601 Edison Road, Oxnard. Both will be used for vehicle processing and storage activity. *Site 3* (Terminal Freezers site—22 acres) is located at 908 E. 3rd Street, Oxnard. Terminal Freezers, Inc., owns and operates the public multi-user cold-storage distribution facility which currently serves as a bonded warehouse with Customs and USDA inspection services available on site.

The application contains evidence of the need for zone services in the Port Hueneme/Oxnard area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as automobiles, agricultural products, machinery, lumber, woodpulp, pipes and marine vessels. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 14, 1993, at 10:00 a.m., Port Hueneme City Council Chambers, 250 North Ventura Road, Port Hueneme, California.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 8, 1993).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Administrative Offices, Port of Hueneme/ Oxnard Harbor District, 105 Port Hueneme Road, Port Hueneme, California 93041

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 10, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–20320 Filed 8–20–93; 8:45 am]

BILLING CODE 3510-DS-P

[Docket 42–93]

Proposed Foreign-Trade Zone—Los Angeles, California; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, California, requesting authority to establish a general-purpose foreign-trade zone in Los Angeles, California, within and adjacent to the Los Angeles/ Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 11, 1993. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed zone would be the third general-purpose zone in the Los Angeles/Long Beach Customs port of entry area. The existing zones are: *FTZ 50* in Long Beach (sites also in Ontario and Santa Ana) (Grantee: Board of Harbor Commissioners of the City of Long Beach, Board Order 147, 44 FR 55919, 9/28/79); and, *FTZ 191* in Palmdale (Grantee: City of Palmdale, Board Order 628, 58 FR 6614, 2/1/93).

The proposed zone (WORLDPORT LA Foreign-Trade Zone) would consist of 3 sites (3,428 acres), with Sites 1 and 2 located in the County of Los Angeles and Site 3 located in the County of Kern. *Site 1* (2,783 acres) is located at the Port of Los Angeles Harbor, 425 South Palos Verdes Street, San Pedro, and is within the Wilmington/San Pedro Enterprise Zone and the Los Angeles Revitalization Zone designated by the State of California. *Site 2* (3 acres) is located at Los Angeles International Airport (LAX), owned and operated by the Department of Airports of the City of Los Angeles. *Site 3* (642 acres) is located on Santa Fe Highway at 7th Standard Road in Kern County, adjacent to the City of Bakersfield. The site is under purchase contract by Sierra West Products for development as the International Trade & Transportation Center.

The application contains evidence of the need for additional zone services in the Los Angeles area. Several firms have indicated an interest in using zone procedures within the proposed project for warehousing/distribution of such items as automobiles and trucks, electronics/electronic equipment, industrial machinery, ceramics, toys, and frozen/cooler commodities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 15, 1993, at 9:00 a.m., in the Board of Harbor Commissioners' Hearing Room, 425 South Palos Verdes Street, San Pedro, California.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 8, 1993).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the District Director, U.S. Customs Service, 300 South Ferry Street, Room 1001, Terminal Island, San Pedro, CA 90731

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th &

Pennsylvania Avenue NW., Washington, DC 20230.

Dated: August 11, 1993.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93-20321 Filed 8-20-93; 8:45 am]
BILLING CODE 3510-DS-P

[Docket 40-93]

Foreign-Trade Zone 93—Raleigh/Durham North Carolina; Application for Subzone Merck Pharmaceutical Plant, Wilson, North Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck & Co., Inc. (Merck), in Wilson, North Carolina, adjacent to the Durham Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 9, 1993.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort. (Applications for subzone status are also being submitted for seven other Merck facilities.)

Merck's Wilson plant (225 acres, 257,576 sq. ft., 7 bldgs.) is located at 4633 Merck Road, near the intersection of I-95 and U.S. Hwy. 264, in the town of Wilson (Wilson County), North Carolina, some 40 miles east of Durham.

The facility (270 employees) is used to produce a range of patented prescription products and to perform granulation and tableting operations for U.S. promotional sample packages. The finished products include "Prinivil", "Prinzide", "Vaseretic" and "Vasotec" (ACE inhibitors for hypertension), "Sinemet" (treatment of Parkinson's Disease), "Prilosec" (anti-ulcer preparation), "Mevacor" (cholesterol lowering agent), and "Proscar" (treatment of prostate enlargement). Finished products are then shipped to Merck's West Point, Pennsylvania, facility (application pending FTZ Board approval, FTZ Doc. 29-93, 58 FR 38749, 7/20/93) for U.S. distribution.

At the outset, the production of "Proscar" would account for a substantial portion of the savings from zone procedures. Its main active ingredient, finasteride, is foreign-sourced and constitutes between 5 and 15 percent of the finished product's value. The company also may purchase from abroad active ingredients for other Merck products (listed above) and items in the following general product categories: Gums, starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products.

Zone procedures would exempt Merck from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%). The duty rates on foreign-sourced items range from duty-free to 23.5 percent. For example, "Proscar" is dutiable at 6.3 percent, while its active ingredient, finasteride, has a duty rate of 7.9 percent. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 8, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, Durham, North Carolina, U.S. Customs Service, Southeast Region, 120 Southcenter Court, suite 500, Morrisville, North Carolina 27560

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: August 10, 1993.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93-20319 Filed 8-20-93; 8:45 am]
BILLING CODE 3510-DS-P

[Docket No. 39-93]

Foreign-Trade Zone 61—San Juan, Puerto Rico, Application for Subzone Merck Sharp & Dohme Pharmaceutical Plant, Arecibo, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck Sharp & Dohme Química de Puerto Rico, Inc. (MSD), a wholly-owned subsidiary of Merck & Co., Inc. (Merck), in Arecibo, Puerto Rico, adjacent to the San Juan Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 9, 1993.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort. (Applications for subzone status are also being submitted for seven other Merck facilities.)

Merck's MSD plant in Arecibo (18 acres, 150,000 sq. ft., 3 bldgs.) is located at Km. 60 on Road PR-2, in the municipality of Arecibo, Puerto Rico, some 35 miles west of San Juan.

The facility (currently 80 employees, 225 at full production) was recently purchased from A.H. Robbins and is currently under renovation. The principal product manufactured will be "Proscar", a treatment for prostate enlargement, and its intermediates. "Prilosec" (anti-ulcer preparation), "Vasotec" (ACE inhibitor for hypertension), and "Mevacor" and "Zocor" (cholesterol lowering agents) also may be produced at the plant. Finished products are then shipped to Merck's West Point, Pennsylvania, facility (application pending FTZ Board

approval, FTZ Doc. 29–93, 58 FR 38749, 7/20/93) for U.S. distribution.

At the outset, the production of "Proscar" would account for a substantial portion of the savings from zone procedures. Its main active ingredient, finasteride, is foreign-sourced and constitutes between 5 and 15 percent of the finished product's value. The company also may purchase from abroad active ingredients for other Merck products (listed above) and items in the following general product categories: gums, starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products.

Zone procedures would exempt MSD from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%). The duty rates on foreign-sourced items range from duty-free to 23.5 percent. For example, "Proscar" is dutiable at 6.3 percent, while its active ingredient, finasteride, has a duty rate of 7.9 percent. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period November 8, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Federal Building, Room G–55, Chardon Avenue, Hato Rey, San Juan, Puerto Rico 00918

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 10, 1993.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 93–20317 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–427–812]

Postponement of Preliminary Determination of Sales at Less Than Fair Value: Certain Calcium Aluminate Cement and Cement Clinker From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Cunningham, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4207.

POSTPONEMENT: On August 6, 1993, Lehigh Portland Cement Company, petitioner in this investigation, requested that the Department postpone the preliminary determination in the antidumping duty investigation of certain calcium aluminate cement and cement clinker from France in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(c)(1)). The additional time would provide an opportunity for the Department to analyze information concerning calcium aluminate clinker produced for sale as calcium aluminate flux, which the Department recently determined to be a separate class or kind of merchandise. We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determination until no later than October 27, 1993.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: August 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20314 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–809, A–583–821]

Postponement of Final Antidumping Duty Determinations: Certain Forged Stainless Steel Flanges From India and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Pamela Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230, at (202) 482–1756 or (202) 482–1174.

POSTPONEMENT: On August 2, 1993, Ta Chen Stainless Pipe Co., Ltd., a respondent in the antidumping duty investigation of certain forged stainless steel flanges (flanges) from Taiwan, requested that the Department postpone the final determination in accordance with section 735(a)(2)(A) of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1673d(a)(2)(A)). In addition, on August 6, 1993, Akai Impex Ltd., a respondent in the antidumping duty investigation of flanges from India, requested that the Department postpone the final determination to 135 days after the publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act.

Because respondents account for a significant portion of the exports of the subject merchandise, and we find no compelling reasons to deny the requests, we are, accordingly, postponing the date of the final determinations until December 20, 1993, in both of the above-referenced investigations. Because the 135th day will be December 18, 1993, the final determinations will be made on December 20, 1993, the first working day after December 18, 1993.

This notice is published pursuant to section 735(d) of the Act and (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: August 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20322 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–707]

Granular Polytetrafluoroethylene Resin From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by a respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Japan. The review covers one manufacturer/exporter for the period August 1, 1991, through July 31, 1992. As a result of the review, the Department has preliminarily determined that dumping margins exist for the respondent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1992, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 36063) of the antidumping duty order on granular PTFE resin from Japan (53 FR 32287). Respondent Daikin Industries, Ltd. (Daikin), requested an administrative review in accordance with 19 CFR 353.22(a)(1)(1993). On September 28, 1992, the Department published a notice of initiation of this review (57 FR 44551), which covers the period August 1, 1991, through July 31, 1992. The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The antidumping duty order covers granular PTFE resins, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and customs purposes only. The written description of scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Daikin, for the period August 1, 1991, through July 31, 1992.

United States Price

In calculating U.S. price, the Department used purchase price (PP) as defined in section 772(b) of the Tariff Act. All sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation. For such sales we typically determine that PP is the most appropriate determinant of the U.S. price when:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent;
2. Direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937, 21945 (May 26, 1992).

Daikin's sales satisfy the criteria listed above. Therefore, in this case, we regard the routine selling functions of the exporter as merely having been relocated from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

We based PP on the packed, delivered price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duty, U.S. harbor fees and merchandise processing fees, inland insurance and post-shipment price decreases.

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade (CIT) in *Zenith Electronics Corporation* v. *United States*, Appeals 92–1043, –1044, –1045, –1046 (Fed. Cir. March 19, 1993), ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to foreign market value (FMV) for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our method of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

Foreign Market Value

Based on a comparison of the volume and value of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773 of the Tariff Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market.

In the less-than-fair-value (LTFV) investigation, petitioner alleged that Daikin made home market sales below the cost of production (COP). We considered the allegation sufficient to warrant an investigation of possible home market sales below cost. Because Daikin did not provide information on sales or production costs in response to the Department's questionnaire in the investigation, the Department determined Daikin's dumping margin using the best information available. In the absence of information demonstrating that Daikin's home market sales were not below cost, the Department made the adverse assumption that all home market sales were below cost. Based on the Department's presumption that all sales were below cost in the LTFV investigation, which is the most recently completed segment of this case, we determined to conduct an investigation of possible home market sales below cost in this review.

In response to the Department's request for information, Daikin provided

information on its cost of producing granular PTFE resin. Therefore, we were able to analyze Daikin's home market sales prices to determine whether they were below the COP. In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales have been made in substantial quantities over an extended period of time, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

We calculated COP as the sum of Daikin's reported materials, labor, factory overhead, and general expenses.

We compared COP to home market prices, net of movement charges, price adjustments, and discounts.

When less than 10 percent of the home market sales of a particular type of resin were at prices below the COP, we did not disregard any sales of that type. When 10 percent or more, but not more than 90 percent of the home market sales of a particular type were determined to be below-cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below-cost home market sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular type were made below cost over an extended period of time, we disregarded all home market sales of that type from our calculation of FMV.

To determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular type to the number of months in which that type was sold. If the type was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that type in each month sold. If a type was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the type was sold.

Since Daikin has not submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," as required by section 773(b)(2) of the Tariff Act, we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. As a result of our investigation, we disregarded below-cost sales over an extended period of time. The Department calculated FMV on a monthly weighted-average basis. We compared sales of identical merchandise in the United States and Japan. We disregarded home market sample sales as being outside the ordinary course of trade.

Where applicable, we made deductions for inland freight, discounts, and post-shipment price adjustments. To adjust for differences in circumstances of sale, we first deducted direct selling expenses incurred in the home market for credit, replacement of defective merchandise, and provision of sample merchandise. We then added direct selling expenses incurred in the United States for replacement of defective merchandise, credit, and commissions. Where applicable, we offset U.S. commissions by deducting home market indirect selling expenses from FMV in an amount not exceeding those commissions.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from FMV and added U.S. packing costs. We also added the actual home market consumption tax to FMV.

Preliminary Results of Review

As a result of our comparison of U.S. price with FMV, we preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Daikin Industries	08/01/91–07/31/92	10.53
All others[1]	.....	91.74

[1] Applies to firms not having individual rates; that is, firms not covered by this or any previous segment of the proceeding.

Interested parties may submit written comments on these preliminary results. Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held on August 17, 1993. Case briefs and other written comments from interested parties may be submitted not later than August 6, 1993. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than August 13, 1993. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above.

The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 91.74 percent. On May 25, 1993, the CIT (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 91.74 percent, the "all others" rate established in the final

notice of LTFV investigation by the Department (53 FR 25191, July 5, 1988).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-20327 Filed 8-20-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 9, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on industrial belts and components thereof, whether cured or uncured (industrial belts), from Japan. This review covers one manufacturer/exporter and the period June 1, 1990 through May 31, 1991.

The Department gave interested parties the opportunity to comment on its preliminary results. Based upon our analysis of the comments received, the Department has not changed the margin from that presented in the preliminary results.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone number (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1992, the Department published in the **Federal Register** (57 FR 8297) the preliminary results of its administrative review of the antidumping duty order on industrial belts from Japan (June 14, 1989, 54 FR 25314, amended August 4, 1989, 54 FR 32104). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Japan. These products include V-belts, synchronous belts, and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links. This review excludes conveyor belts and automotive belts, as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the period of review the merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings, 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one Japanese manufacturer and exporter of industrial belts to the United States, Mitsuboshi Belting Limited (MBL), and the period June 1, 1990 through May 31, 1991.

Analysis of the Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results of this administrative review. A case brief was received from MBL, and a rebuttal brief was received from the petitioner, the Gates Rubber Company. The Department did not receive a request for a hearing.

Comment: MBL acknowledges that the Department's resort to best information available (BIA) is authorized under the antidumping statute since MBL did not respond to the Department's questionnaire.

MBL argues, however, that the Department should use information obtained in the first review as BIA instead of the rate from the results of the original less-than-fair-value (LTFV) investigation. MBL contends that the Department is required to use the most recent information available in deciding upon a BIA rate. According to MBL the information from the first administrative review is the most probative evidence of the current margin because the LTFV margin was based solely on information provided by petitioner for the period October 1986 through March 1988.

Petitioner argues that the Department should not change its preliminary decision to resort to the LTFV margin from the original investigation as BIA. Petitioner states that MBL has provided no authority for the proposition that the Department should use as BIA the margin from the preliminary results in the first administrative review. In addition, petitioner notes that in the absence of any request for review, 19 CFR 353.22(e) provides that the assessment will take place at the rate equal to the cash deposit. Petitioner argues that if a respondent requests a review but then refuses to participate by answering the Department's questionnaire, as in this instance, then there is no basis to distinguish this situation from one where no review is requested at all.

Department's position: Section 776(c) of the Tariff Act requires us to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide information requested (19 CFR 353.37(b)). When a respondent refuses to cooperate with the Department, it is our policy to assign as a dumping margin to that respondent, as BIA, the higher of: (1) The highest rate found for any firm in the original LTFV investigation or previous administrative review, or (2) the highest rate found in the current review (*Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28379 (June 24, 1992); *Allied-Signal Aerospace Co. v. United States*, Slip Op. 93-1049 (Fed.

Cir. June 22, 1993); and *Krupp Stahl AG* v. *United States*, Slip Op. 93–84 (CIT May 26, 1993)). Because MBL refused to respond to the Department's questionnaire, it was reasonable for the Department to assign to MBL, as BIA, a rate of 93.16 percent, the highest rate found for any firm in the original LTFV investigation.

Final Results of the Review

As a result of this administrative review, the Department determines that the following dumping margin exists for the period June 1, 1990 through May 31, 1991:

Manufacturer/exporter	Dumping margin (percent)
Mitsuboshi Belting Limited	93.16

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and the foreign market value may vary from the percentage stated above. the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption, on or after the publication date, as provided by section 751(a)(1) of the Tariff Act:

(1) For subject merchandise exported by Mitsuboshi Belting Ltd., a cash deposit of 93.16 percent;

(2) For subject merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or in the original LTFV investigation, a cash deposit based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) For subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final result or determination, a cash deposit based upon the most recently published company-specific rate for that manufacturer; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 93.16 percent, the "all other" rate established in the LTFV final determination, as discussed below.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip. Op. 93–83, decided that once an "all other" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all other" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20330 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–030]

Large Power Transformers From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 10, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from France. These final results of review cover one manufacturer/exporter of this merchandise for the period from June 1, 1991, through May 31, 1992. The review indicates that no shipments of the subject merchandise took place during the review period. Although we gave interested parties an opportunity to comment on the preliminary results, no comments were received by the Department.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on large power transformers from France in the **Federal Register** (57 FR 53467). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on April 3, 1991 (56 FR 13818).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

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The review covers one manufacturer/exporter of transformers, Jeumont-Schneider Transformateurs (JST), and the period June 1, 1991, through May 31, 1992.

Final Results of Review

Although we gave interested parties an opportunity to comment on the preliminary results, no comments were received by the Department. JST reported, and the Department verified through the Customs Service, that JST made no shipments to the United States during the period of review. Because JST was not covered in a previous review of this finding, and had no shipments during this review, we are continuing to treat JST as an "all other manufacturer or exporter" for cash deposit purposes as set forth below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79 and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of this review will be 24 percent, the "new shipper" rate established in the first notice of final results of administrative review published by the Department (47 FR 10268, March 10, 1982).

The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20328 Filed 8–20–93; 8:45 am]
BILLING CODE 3510-DS-P

[A–588–032]

Large Power Transformers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 10, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from Japan. These final results of review cover one manufacturer/exporter of this merchandise for the period from June 1, 1991, through May 31, 1992. The review indicates that no shipments of the subject merchandise took place during the review period. Although we gave interested parties an opportunity to comment on the preliminary results, no comments were received by the Department.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (37 FR 11773, June 14, 1972) on large power transformers from Japan in the **Federal Register** (57 FR 53468). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS

item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Fuji Electric Co., Ltd. (Fuji), and the period June 1, 1991, through May 31, 1992.

Final Results of Review

Although we gave interested parties an opportunity to comment on the preliminary results, no comments were received by the Department. Since Fuji reported, and the Department verified through the Customs Service, that Fuji made no shipments to the United States during the period of review, a cash deposit rate of 5.90 percent will remain in effect for Fuji, Fuji's rate in the final results of the last review period in which Fuji made shipments.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

On May 25, 1993, Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of this review will be 10.63 percent, the "new shipper" rate established in the first notice of final results of administrative review published by the Department (48 FR 26498, June 8, 1983).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20329 Filed 8–20–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–357–804]

Silicon Metal From Argentina; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and termination in part.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on silicon metal from Argentina. The review covers exports of this merchandise to the United States by two manufacturers/exporters during the period March 29, 1991 through August 31, 1992. Although we initiated a review for one other manufacturer/exporter, we are terminating this review because the request was withdrawn.

As a result of this review, the Department has preliminary determined to assess antidumping duties equal to the differences between United States price (USP) and foreign market value (FMV).

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3019/5253.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1991, the Department published in the **Federal Register** (56 FR 48779) the antidumping duty order on silicon metal from Argentina. On October 22, 1992, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order on Electrometalurgica (Andina), Silarsa, and Propulsora Siderugica, for the period March 29, 1991 through August 31, 1992 (57 FR 48201). Since Propulsora Siderugica withdrew its request for review in a timely manner, we are terminating our review of that manufacturer/exporter. The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The product covered by this review is silicon metal. During the fair-value investigation, the silicon metal was described as containing at least 96.00, but less than 99.99 percent silicon by weight. In response to a request by petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China (PRC), the Department determined that material with a higher

aluminum content containing between 89 and 96 percent silicon by weight is the same class or kind of merchandise as silicon metal described in the fair-value investigation. Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information available (BIA) is appropriate for Silarsa. The Department's regulations provide that we may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). For purposes of this first administrative review, we have assigned to Silarsa, as BIA, the highest rate of any company from the less-than-fair-value (LTFV) investigation because Silarsa refused to respond to the Department's cost questionnaire.

U.S. Price

We based USP on purchase price (PP) in accordance with section 772(b) of the Tariff Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States. We calculated PP based on packed f.o.b. and c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, labor at port, customs' fees, and Argentina export duties, in accordance with section 772(d)(2) of the Tariff Act. We increased PP for taxes rebated and taxes uncollected by reason of exportation, in accordance with section 772(d)(1)(C) of the Tariff Act.

Foreign Market Value

To calculate FMV, the Department used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate. We compared U.S. sales with sales of such or similar merchandise in the home market because the home market was viable. Home market prices were based on the packed, ex-factory, or delivered prices to unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in credit expenses, and differences in packing.

The United States Court of Appeals for the Federal Circuit, in affirming the decision in *Zenith Electronics Corp.* v. *United States*, 92–1043, –1044, –1045, –1046 (Fed. Cir., March 19, 1993), ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to USP to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to FMV for the differences in taxes. Therefore, we will no longer calculate a hypothetical tax on the U.S. product, but, for the time being, will add to the USP the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to the USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USP net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rule-making process as soon as possible.

Since we found sales below cost in the case of *Andina* in the LTFV investigation, we initiated a cost investigation in this review. We determined that all home market sales of silicon metal were made above the cost of production. As a result, we did not disregard any contemporaneous home market sales of silicon metal in our analysis.

For this review an interested party alleged that Silarsa had made home market sales below cost of silicon metal, and we determined that a cost investigation was warranted. However, because Silarsa failed to respond to our cost questionnaire, we have used BIA for Silarsa (see *Best Information Available* above).

In accordance with section 773(a)(2) of the Tariff Act, we used CV as the basis for FMV when there were no sales of such or similar merchandise for comparison in the home market.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit, and packing. We also included:

(1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater;

(2) Actual profit or the statutory minimum of 8 percent of materials, fabrication costs, and general expenses, whichever was greater; and

(3) Packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period March 29, 1991 through August 31, 1992 to be:

Manufacturer/Exporter	Margin (percent)
Andina	1.06
Silarsa	8.65

Case briefs and/or written comments from interested parties may be submitted no later than 30 days from the date of publication of this notice. Rebuttal briefs and rebuttals to written comments may be filed no later than 37 days from the date of the publication of this notice.

Within 10 days of the date of the publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing.

The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

The Department will determine, and the Customs Service will assess, antidumping duties equal to the differences between USP and FMV on all appropriate entries. The Department will issue appraisement instructions directly to Customs upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse,

for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this review;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be the "all others" rate established in the LTFV investigation.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip. Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip. Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumpting duty orders. Therefore, the "all others" rate for this order is 8.65 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20323 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–003]

Certain Small Business Telephone Systems and Subassemblies Thereof From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 17, 1993, the Department of Commerce published the preliminary results of its 1991–92 administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof from Korea. The review covers two manufacturers/ exporters of this merchandise to the United States, Samsung Electronics Co., Ltd., and Goldstar Telecommunication Co., Ltd., and the period February 1, 1991 through January 31, 1992.

We gave interested parties the opportunity to comment on these results. Based on our analysis of the comments received, we have adjusted the margins for both companies.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael R. Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 8738) the preliminary results of its administrative review of the antidumping duty order (55 FR 4215, February 7, 1990) on certain small business telephone systems and parts thereof (SBTS) from Korea. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this review are SBTS, currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, 8504.40.0015.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the order. The written description remains dispositive.

SBTS are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24

volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this order:

(1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions;

(2) Telephone answering machines or facsimile machines integrated with telephone sets; and

(3) Adjunct software used on external data processing equipment.

The review covers two manufacturers/exporters of this merchandise to the United States, Samsung Electronics Co., Ltd. (Samsung), and Goldstar Telecommunication Co., Ltd. (Goldstar), and the period February 1, 1991 through January 31, 1992.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22(c) of the Department's regulations. We received comments from both respondents.

Comments Received From Samsung

Comment 1: Samsung alleges that the Department incorrectly compared sales at different levels of trade. Samsung states that, although its U.S. sales are made exclusively to distributors, the Department compared those U.S. sales with foreign market values (FMVs) based on sales to distributors and end-users. Samsung notes that, according to § 353.58 of the Department's regulations, the Department is required to "calculate foreign market value and United States price based on sales at the same commercial level of trade" unless "sales at the same commercial level of trade are insufficient in number to permit an adequate comparison." Accordingly, Samsung contends that no comparisons of U.S. sales to distributors with home market sales to end-users should be made in this case unless the Department first finds inadequate home market sales to distributors. Samsung suggests that the Department correct this problem by removing from the home market pool of sales all sales made to end-users.

Department's Position: We agree with Samsung that for the preliminary results the Department incorrectly calculated FMV by combining sales to distributors and end-users. We disagree, however, that it is necessary or appropriate to disregard all end-user sales in our analysis.

For these final results we calculated monthly FMVs for each model at each level of trade. After identifying the identical or most similar model, we compared U.S. sales to sales of that model in the home market which occurred at the same level of trade as the U.S. model. If no sales of the identical or most similar model occurred at the same level of trade as the U.S. model, we made our comparison to sales of that model at the other level of trade. If there were no sales of identical or similar merchandise in the home market, we used constructed value (CV) as the basis for FMV.

Comment 2: Samsung argues that the Department should not include rebates and discounts in the calculation of CV. Samsung argues that rebates and discounts should be considered adjustments to price rather than selling expenses and therefore should be excluded from the calculation of CV. Samsung further argues that rebates and discounts, which are included in the general expenses figure used to calculate CV, should be removed from the CV calculation before the calculation of profit to ensure that the profit is not overstated.

Department's Position: We agree and have removed rebates and discounts from general expenses, which in turn reduces the profit included in CV.

Comment 3: Samsung asks that the Department to correct a number of clerical errors committed while calculating the weighted-average dumping margin. Samsung contends that the Department made two errors in the application of the value added tax (VAT) adjustment. First, Samsung notes that the Department incorrectly performed a VAT adjustment on sales being compared to CV. Samsung contends that no VAT adjustment should be performed for CV-based FMV because "section 773(e) of the Act does not provide for the addition of any tax to CV." Second, Samsung states that the Department incorrectly performed its VAT adjustment by using a VAT-inclusive U.S. price as the basis for the calculation of the home market VAT adjustment, thus resulting in an overstated VAT amount to be added to FMV.

Samsung also contends that the Department should correct clerical errors which resulted in the application of best information available (BIA) for a number of U.S. sales. Samsung notes that the date used to divide sales being compared to the semi-annual CVs submitted by Samsung is inaccurate and should be corrected for these final results. Samsung also contends that the Department erroneously assigned BIA to sales which occurred before the period of review (POR) but which were submitted for this review in accordance with the Department's questionnaire instructions. Samsung states that these sales were analyzed during the first review and were liquidated after the conclusion of that review. Finally, Samsung asks the Department to correct a typographical error regarding the model number of a U.S. sale. According to Samsung, this error prevented the Department from matching this model to a contemporaneous home market sale.

Department's Position: We have corrected the clerical errors noted by Samsung for these final results. We have also changed the adjustments for VAT taxes to conform to the Court of Appeals decision in *Zenith Electronics Corporation* v. *United States, Slip Op. 92–1043, –1044, –1045, –1046.* (See comment 4.)

Comments Received from Goldstar

Comment 4: Goldstar argues that the Department's use of net U.S. price as the tax base for calculating the VAT amount is erroneous. Goldstar claims that, according to *Television Receivers, Monochrome and Color, from Japan* (58 FR 11211), the Department should calculate the VAT adjustment using the tax base that is analogous to the tax base used in the home market. Goldstar argues that according to the results reached in other cases (See *Determination on Remand of Final Results of Antidumping Duty Administrative Review Pursuant to Court Remand, Color Television Receivers from Korea (Daewoo Elec. Co., Ltd.* v. *United States, Consolidated Court No. 85–01–00140, April 6, 1990)),* the Department should use the delivered invoice price to the unrelated customer in the United States as the tax base to calculate the VAT adjustment to U.S. price.

Department's Position: On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade (CIT) in *Zenith Electronics Corporation* v. *United States,* Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a

circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

Comment 5: Goldstar claims that the Department neglected to include U.S. commissions in the offset to FMV. Goldstar states that while it incurs commission expenses on certain U.S. sales, it does not incur commission expenses on home market sales. Therefore, Goldstar argues that in accordance with 19 CFR 353.56(b), the Department is required to include U.S. commissions in the offset to FMV.

Department's Position: Goldstar incurs commission expenses in the U.S. market, but none in the home market. Therefore, in accordance with 19 CFR 353.56(b), we made an adjustment for home market indirect selling expenses not greater than the total of indirect selling expenses and commission expenses deducted from the U.S. price. For these final results, we added U.S. commission expenses to U.S. indirect selling expenses for the purpose of creating the exporter's sales price cap applied to the pool of home market indirect selling expenses.

Comment 6: Goldstar alleges that, for the preliminary results, the Department improperly classified installation expenses on U.S. sales as direct expenses. Goldstar contends that installation expenses consist of supervisory labor expenses incurred to support the provision of installation services. Goldstar states that, since this expense does not vary directly with sales, and is distinguishable from the variable labor expenses which it reported to the Department on a transaction-specific basis, it should be classified as an indirect selling expense.

Department's Position: Due to the fact that Goldstar's fixed supervisory labor expenses do not vary directly with sales, and were reported separately from its directly related variable labor expenses, we are satisfied that these expenses are indirectly related to sales and have reclassified them as such for these final results.

Comment 7: Goldstar contends that, for the preliminary results, the Department improperly classified U.S. technical service expenses as direct selling expenses. Goldstar argues that U.S. technical service expenses are for technical service personnel and facilities which are responsible for performing after-sales trouble-shooting and similar support to ensure customer satisfaction with product performance. Accordingly, Goldstar argues, these expenses should be classified as indirect selling expenses.

Department's Position: We disagree. Technical service expenses may be directly or indirectly related to the subject merchandise. Goldstar did not segregate its direct technical service expenses from its indirect technical service expenses. Furthermore, Goldstar has failed to support its claim that all technical service expenses incurred during the POR are indirect. We know that certain technical service expenses associated with after-sales trouble-shooting are by their nature variable expenses that are directly related to sales. Consistent with the reasoning of the CIT in *Timken* v. *United States*, 673 F. Supp. 495 (CIT 1987), the Department recognizes that respondents benefit when U.S. selling expenses are classified as indirect expenses. In order for the Department to be assured that it will be provided the information necessary to judge whether expenses are properly direct or indirect, it is incumbent upon the respondent to show that U.S. selling expenses are indirect. Therefore, we have continued to classify all U.S. technical service expenses as direct selling expenses for these final results.

Comment 8: Goldstar argues that the Department should either exclude from its dumping margin calculations any transactions for which the statutory U.S. price is negative, or at the least set the U.S. price equal to zero. Goldstar further argues that, if the Department decides not to delete statutory U.S. prices which are negative or set them to zero, it should at the very least exclude from its margin calculation U.S. sales for which the invoice price is zero or negative. Goldstar contends that these transactions, which represent returns or cancellations, are not sales in the ordinary course of business and are routinely excluded from the Department's dumping margin calculations.

Department's Position: We have removed from our analysis any U.S. transactions which have a quantity of zero or less, or a price of less than zero, as these transactions represent returns or cancellations. However, the fact that a U.S. sale has a zero price is not sufficient to warrant its removal from our analysis. The statute and the regulations require the Department to analyze all sales within the POR. *See Final Results of Antidumping Duty Administrative Review; Portable Electric Typewriters from Japan*, (56 FR 124079 (April 5, 1991)), *Final Results of Antidumping Duty Administrative Review; Color Television Receivers from the Republic of Korea*, (56 FR 12709 (March 27, 1991)), *Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip from Canada*, (55 FR 31417 (August 2, 1990)). Consequently, all U.S. zero price sales have been included for the final margin calculation. *See Final Results of Antidumping Duty Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, (56 FR 31713 (July 11, 1991)), *Final Results of Antidumping Duty Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.* (57 FR 28394, 28395 (June 24, 1992)).

Comment 9: Goldstar notes that, because there was no review of its exports in the period prior to this 1991–92 POR, entries of subject merchandise by Goldstar prior to this POR have already been liquidated at the cash deposit rate of 14.75 percent. Goldstar further notes that these prior period liquidations include a large volume of covered merchandise that although entered during the previous period, was sold during the 1991–92 POR, and therefore analyzed in this review. Goldstar requests that the Department liquidate all entries made during the 1991–92 POR at the percentage margin established in these final results. Goldstar requests that, if the Department prefers an alternative liquidation procedure, it allow Goldstar the opportunity to submit comments for consideration before a decision on liquidation is made.

Department's Position: As Goldstar notes, many sales analyzed during this 1991–92 POR involved merchandise which was entered during the previous 1990–91 POR in which Goldstar was not reviewed. These entries have already been liquidated and will not be affected

by the results of this review. We will divide the total dumping margins for the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess antidumping duties on all entries subject to this order during the 1991–92 review period by applying the resulting percentage to the entered customs values of those subject entries. While the Department is aware that the entered value of sales made during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate results in the closest approximation of antidumping duties which would have been determined if the Department had been able to review sales of merchandise from entries during the POR.

Comment 10: Goldstar requests that the Department correct the following clerical errors. First, Goldstar notes that the Department neglected to adjust FMV for home market annual rebates. Second, Goldstar alleges that the Department failed to deduct export packing expenses from U.S. price in its calculation of profit on sales that were further processed in the United States. Third, Goldstar maintains that, since the Department did not successfully merge OEM system sales to CV, it improperly used the unadjusted CV reported on the U.S. sales tape as the basis for FMV. Finally, Goldstar states that the Department incorrectly performed its VAT adjustment by using a VAT-inclusive U.S. price as the basis for the calculation of the home market VAT adjustment, thus resulting in an overstated VAT amount to be added to FMV.

Department's Position: We have corrected the clerical errors noted by Goldstar for these final results. We have also changed the adjustments for VAT taxes to conform to the Court of Appeals decision in *Zenith Electronics Corporation* v. *United States, Slip Op. 92–1043, –1044, –1045, –1046.* (See comment 4.)

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the period February 1, 1991 through January 31, 1992:

Manufacturer/exporter	Margin (percent)
Samsung Electronics Co., Ltd.	0.03
Goldstar Telecommunication Co., Ltd.	2.00

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for the reviewed companies will be the rates as listed above (in accordance with 19 CFR 353.6, Samsung's de minimis weighted-average dumping margin will be disregarded for cash deposit purposes);

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 13.90 percent. On May 25, 1993, the CIT in *Floral Trade Council* v. *United States,* Slip Op. 93–79 and *Federal Mogul Corporation* v. *United States,* Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 13.90 percent, the "all others" rate established in the amended final notice of the LTFV investigation by the Department (55 FR 4215, February 7, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20331 Filed 8–20–93; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90–4A007.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the United States Surimi Commission ("USSC") on August 22, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on August 30, 1990 (55 FR 35445).

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration,

(202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Section 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) (15 U.S.C. 4015) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90–00007, was issued to the United States Surimi Commission ("USSC") on August 22, 1990 (55 FR 35445, August 30, 1990) and previously amended on December 12, 1990 (55 FR 53031, December 26, 1990), June 11, 1991 (56 FR 27946, June 18, 1991), and May 22, 1992 (57 FR 23078, June 1, 1992).

USSC's Export Trade Certificate of Review has been amended to add Alaska Ocean Seafoods of Anacortes, WA (controlling entity: Jeff Hendricks, Anacortes, WA) as "Member" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2 (1)). CORRECTION: The name of the company to be added as a member of USSC as listed in the original Federal Register Notice (58 FR 29388, May 20, 1993) was submitted incorrectly. The correct company name to be added as a USSC member should be "Alaska Ocean Seafood Limited Partnership" instead of "Alaska Ocean Seafoods."

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 12, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–20316 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–DR–M

Technology Administration

Public Meeting on Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

AGENCY: Office of Technology Commercialization, Technology Administration.

ACTION: Invitation to public meeting.

SUMMARY: The Technology Administration invites interested members of the public to attend and participate in a review of regulations dealing with patent rights in inventions made with Federal funding by nonprofit organizations and small business firms.

DATE AND TIME: The meeting will be held on September 30 starting at 2 p.m. and lasting for about two hours.

ADDRESSES: The meeting will be held in room 4830 of the Department of Commerce (Herbert Hoover Building) at 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Paugh, Director, Office of Technology Commercialization, U.S. Department of Commerce, room 4418, Herbert Hoover Building, Washington, DC 20230, or by telephone at (202) 482–2100.

SUPPLEMENTARY INFORMATION: The Bayh-Dole Act, Public Law 96–517 (1980), as amended by Public Law 98–620 (1984), gives small businesses and nonprofit organizations (including universities) certain rights related to inventions they develop under funding agreements with the Federal government. The Act addresses the special needs of nonprofit organizations (including universities) and small businesses in dealing with patent issues arising from government contracts, and promotes the private sector commercialization of government-funded inventions. Specifically, the Act gives nonprofit organizations and small businesses the first right to elect title to inventions, subject to certain restrictions.

Regulations implementing the 1984 amendments to the Act were issued by the Department of Commerce on March 18, 1987 (at 37 CFR part 401). Enough time has now passed to make it desirable to review the regulations for possible revisions. Several sections have been the subject of comment and discussion. One is the requirement of 37 CFR 401.14(k)(4) that nonprofit organizations give preference to small business in their licensing. A second relates to the domestic manufacturing requirement (37 CFR 401.14(i)) which applies to an exclusive patent license entered into by a nonprofit organization or small business. Finally, there is the "exceptional circumstances" authority (37 CFR 401.3) which allows a Federal agency to limit the ownership rights of nonprofit organizations or small businesses if the agency decides that such restriction will better promote commercialization of an invention. Comments on these and any other subjects relating to 37 CFR part 401 are encouraged.

Dated: August 16, 1993.

Mary L. Good,

Under Secretary for Technology.

[FR Doc. 93–20313 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–18–M

National Oceanic and Atmospheric Administration

[I.D.061793C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of rescheduled meeting.

SUMMARY: A public meeting of the Western Pacific Fishery Management Council's Vessel Monitoring System Committee, which was previously published in the **Federal Register** at 58 FR 42946, on August 12, 1993, was rescheduled due to the threat of dangerous weather conditions. The rescheduled date and time is noted below; all other information originally published, remains unchanged.

Rescheduled Date and Time

The Committee will hold its meeting on August 23, 1993 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: August 17, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20251 Filed 8–20–93; 8:45 am]

BILLING CODE 3510–22–F

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit No. 682 (P444).

SUMMARY: Notice is hereby given that on August 17, 1993, Permit No. 682, issued to The Center for Coastal Studies, Box 826, Provincetown, MA 02657, on October 19, 1989 (54 FR 43844), was modified to increase the number of northern right whales to potentially be harassed to up to 100 annually.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

SUPPLEMENTARY INFORMATION: The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222). Issuance of this modification, as required by the Endangered Species Act of 1973, is based on the finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This modification was also issued in accordance with and is subject to parts 220–222 of the National Marine Fisheries Service regulations governing endangered fish and wildlife permits.

Dated: August 17, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–20273 Filed 8–20–93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 13, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 341/641 is being increased by application of swing, reducing the limit for Category 352 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53887, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 13, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 16, 1993, you are directed to amend the directive dated November 6, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted twelve-month limit [1]
341/641	240,685 dozen.
352	233,566 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20324 Filed 8–20–93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 17, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased by application of swing, reducing the limit for Category 352 to account for the increase. As a result, the limit for Categories 340/640, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53887, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 24, 1993, you are directed to amend the directive dated November 6, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted twelve-month limit [1]
340/640	291,356 dozen.
352	195,503 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20326 Filed 8–20–93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Meeting

AGENCY: DOD.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1500, Wednesday, September 1, 1993.

ADDRESSES: The meeting will be held at The Harvey Hotel, Irving, TX.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1993.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–20247 Filed 8–20–93; 8:45 am]

BILLING CODE 3810-04-M

DoD Government-Industry Technical Data Committee; Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition), DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The next committee meetings are scheduled for September 14 and 15, 1993, from 9:30 a.m. to 4 p.m. at the Herman Lay Room, The U.S. Chamber of Commerce, 1615 "H" Street, NW., Washington, DC 20062–2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: August 17, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–20246 Filed 8–20–93; 8:45 am]

BILLING CODE 3810-04-M

Department of the Army

Corps of Engineers

Correction to Notice of Intent; Big Sunflower River Basin Project

AGENCY: U.S. Army Publications and Printing Command, DOD.

ACTION: Notice.

SUMMARY: This notice is to correct an error in paragraph 4 of the Corps of Engineers, Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Mississippi Delta, Mississippi Flood Control Study, 58 FR 36189. A draft Feasibility Report including the draft Supplemental EIS will be available for review by the general public in 1998 and not 1988 as was printed.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–20220 Filed 8–20–93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

[Docket EA–78–A]

Application for Electricity Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of continuance to process application.

SUMMARY: Minnesota Power & Light Company (MP&L) has requested that its application to the Department of Energy (DOE) to amend the electricity export authorization contained in Docket PP–78EA be continued.

DATES: Comments, protests or requests to intervene must be submitted on or before September 22, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number EA–78–A should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Officer), 202–586–4708 or Lise Howe (Program Attorney), 202–586–2900.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On August 8, 1991, MP&L applied to amend the order contained in Docket No. PP–78EA authorizing the export of electrical energy to Canada. Notice of that application was published in the **Federal Register** on September 23, 1991, (56 FR 47945). In January 1992, MP&L requested that the DOE temporarily suspend consideration of the application due to legal concerns regarding possible dual ownership of the international transmission facility and future permitting responsibilities. The DOE agreed to this request.

On July 12, 1993, MP&L resubmitted its application to amend its export authorization. As part of its application, MP&L supplied a copy of a proposed Interconnection Agreement between MP&L and Ontario Hydro. The agreement will provide for the seasonal exchange of 150 megawatts (MW) of electrical power. Ontario Hydro will make 150 MW available to MP&L at all times during the summer season and MP&L will make 150 MW available to Ontario Hydro at all times during the winter season. MP&L's request to amend the export authorization is occasioned by this proposed Interconnection Agreement. This application was filed in conjunction with MP&L's application to amend its Presidential permit.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with § 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with Deborah A. Amberg, Attorney, Minnesota Power, 30 West Superior Street, Duluth, Minnesota 55802.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action will impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 93–20309 Filed 8–20–93; 8:45 am]

BILLING CODE 6450–01–P

[Docket PP–78–1]

Application To Amend Presidential Permit

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of amended application.

SUMMARY: Minnesota Power & Light Company (MP&L) has revised its application to the Department of Energy (DOE) to amend Presidential Permit PP–78 in order to add phase-shifting transformers and other transmission facilities to the permitted facility.

DATES: Comments, protests or requests to intervene must be submitted on or before September 22, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP–78–1 should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Officer), 202–586–4708 or Lise Howe (Program Attorney), 202–586–2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038.

On August 8, 1991, MP&L applied to the Office of Fossil Energy of the Department of Energy (DOE) to amend the Presidential permit issued by the DOE on November 29, 1984, in Docket No. PP–78. Notice of that application was published in the **Federal Register** on September 23, 1991, (56 FR 47945). The facilities previously authorized by Presidential Permit PP–78 consist of one 115-kilovolt (kV) transmission line that crosses the U.S.-Canadian international border at International Falls, Minnesota, and extends approximately 8 miles south, terminating at the International Falls Substation.

In January 1992 MP&L requested that the DOE temporarily suspend consideration of the application due to legal concerns regarding possible dual ownership of the international facility and future permitting responsibilities. The DOE agreed to that request. During the delay, MP&L designed an alternative modification to the existing facilities which incorporates a double-circuited

crossing of the international boundary. The revised design and subsequent agreements between MP&L and the Boise Cascade Company have also addressed the ownership concerns.

On July 12, 1993, MP&L submitted a revised application for the amendment of Presidential Permit PP–78. The original application for amendment proposed that MP&L would construct conventional phase-shifting equipment at the International Falls Substation and add a second set of conductors on the vacant cross-arms on the double-circuit towers supporting the existing 115–kV international transmission line. MP&L also proposed to add approximately 2.3 acres to the International Falls Substation to house the phase-shifting equipment.

In the modified application, MP&L also proposes to dismantle 0.1 miles of the existing single-circuit 115–kV international transmission line which crosses the Rainy River. It will be replaced, on the same center line and over the same distance, by two, 115–kV circuits which will occupy the same support structures. To accomplish this, one existing support structure on the Minnesota side of the river will be replaced. One of the two 115–kV circuits crossing the Rainy River will be owned and operated by MP&L. The second circuit will be owned by the Boise Cascade Company and is the subject of a separate Presidential permit application.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with § 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 285.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests should be filed directly with Deborah A. Amberg, Attorney, Minnesota Power, 30 West Superior Street, Duluth, Minnesota 55802.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; or that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this amended application after a determination is made by the DOE that the proposed amendment will not adversely impact the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process including members of the public, state governments, and the federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on August 17, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 93–20308 Filed 8–20–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–057]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Consolidated Industries Corp.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–057) granting a Waiver to Consolidated Industries Corp. (Consolidated Industries) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Consolidated its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its MBA series of furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency, and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Consolidated has been granted a Waiver for its MBA series of furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, August 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: The Consolidated Industries Corp. (Case No. F–057)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA),

Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Consolidated Industries filed a "Petition for Waiver," dated April 7, 1993, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 24, 1993, Consolidated Industries petition and solicited comments, data, and information respecting the petition. 58 FR 34249. Consolidated Industries also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on June 16, 1993. 58 FR 34249, June 24, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Trade Commission (FTC) concerning the Consolidated Industries Petition. The FTC did not have any objections to the issuance of the waiver to Consolidated Industries.

Assertions and Determinations

Consolidated Industries' Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Consolidated Industries requests the allowance to test using a 30-second blower time delay when testing its MBA series of furnaces. Consolidated Industries states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.8 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Consolidated Industries indicates that it is unable to take advantage of any of these exceptions for its MBA series of furnaces.

Since the blower controls incorporated on the Consolidated Industries furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Consolidated Industries MBA series furnaces. Accordingly, with regard to testing the MBA series furnaces, today's Decision and Order exempts Consolidated Industries from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Consolidated Industries Corp. (Case No. F–057) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Consolidated Industries Corp., shall be permitted to test its MBA series of furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test, and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Consolidated Industries Corp. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the MBA series of furnaces manufactured by Consolidated Industries Corp.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective August 23, 1993, this Waiver supersedes the Interim Waiver granted the Consolidated Industries Corp. on June 16, 1993. 58 FR 34249, June 24, 1993 (Case No. F–057).

Issued in Washington, DC, August 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–20310 Filed 8–20–93; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F–056]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to York International

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–056) granting a Waiver to York International (York) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting York its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, York has been granted a Waiver for its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, August 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: The York International (Case No. F–056).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

York filed a "Petition for Waiver," dated March 24, 1993, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 23, 1993, York's petition and solicited comments, data, and information respecting the petition. 58 FR 34043. York also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on June 16, 1993. 58 FR 34043, June 23, 1993.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC) concerning the York Petition. The FTC did not have any objections to the issuance of the waiver to York.

Assertions and Determinations

York's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. York requests the allowance to test using a 30-second blower time delay when testing its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces. York states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. York indicates that it is unable to take advantage of any of these exceptions for its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces.

Since the blower controls incorporated on the York residential

furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the York P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces. Accordingly, with regard to testing the P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces, today's Decision and Order exempts York from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by York International (Case No. F–056) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, York International shall be permitted to test its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, York International shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the P1UH, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces manufactured by York International.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective [Insert Date of Issuance], this Waiver supersedes the Interim Waiver granted the York International on June 16, 1993. 58 FR 34043, June 23, 1993 (Case No. F–056).

Issued in Washington, DC, August 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–20311 Filed 8–20–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–855–000, et al.]

The Washington Water Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 16, 1993.

Take notice that the following filings have been made with the Commission:

1. The Washington Water Power Company

[Docket No. ER93–855–000]

Take notice that on August 10, 1993, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 corrections to the Fourth Revision to Rate Schedule No. 62. This tariff applies only to borderline transmission service provided by WWP to the Bonneville Power Administration (Bonneville) under the terms of the WWP/Bonneville General Transfer Agreement.

A copy of this filing has been served upon Bonneville.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc. Kansas Gas and Electric Company

[Docket No. ER93–849–000]

Take notice that on August 10, 1993, Western Resources, Inc. (WRI) tendered for filing a Participation Power Agreement between its wholly-owned subsidiary, Kansas Gas and Electric Company (KG&E) and Midwest Energy, Inc. (MWE). WRI also filed a Transmission Agreement between WRI and MWE which will provide for the firm transmission requirements of the power and associated energy. WRI states that the proposed sale will support MWE's long-term power supply responsibilities and will benefit both companies' customers by maximizing operational efficiency.

Copies of the filing were served on MWE and the Kansas Corporation Commission.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER93–854–000]

Take notice that on August 11, 1993, Southern California Edison Company (Edison) tendered for filing the following letter agreement with the City of Vernon, Commission Rate Schedule No. 154:

Purchase of Replacement Capacity in 1993 by the City of Vernon From Southern California Edison Company for Vernon City Capacity Resources

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Oklahoma

[Docket No. ER93–435–000]

Take notice that on August 9, 1993, Public Service Company of Oklahoma (PSO) tendered for filing additional data in support of certain agreements

between PSO and the City of Collinsville (City) filed in Docket No. ER93–435–000 on March 8, 1993.

Copies of the filing have been sent to the City and the Oklahoma Corporation Commission.

Comment date: August 30, 1993, in accordance with Standard Paragraph E end of this notice.

5. Southern California Edison Company

[Docket No. ER93–851–000]

Take notice that on August 10, 1993, Southern California Edison Company (Edison) tendered for filing the following supplemental agreement to the 1990 Integrated Operations Agreements (1990 IOA), Commission Rate Schedule No. 246, and the related firm transmission service agreement for the City of Anaheim (Anaheim):

Supplemental Agreement Between Southern California Edison Company and the City of Anaheim for the Integration of a Portion of Anaheim's Entitlement in San Juan Unit 4

Edison–Anaheim San Juan Unit 4 Firm Transmission Service Agreement Between Southern California Edison Company and the City of Anaheim

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Company

[Docket No. ER93–747–000]

Take notice that on August 12, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an amendment to its original filing of a Letter Agreement Between Bonneville Power Administration and The Montana Power Company. This amended filing provides additional information requested by Commission Staff.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Grayling Generating Station Limited Partnership

[Docket No. ER93–736–000]

Take notice that Grayling Generating Station Limited Partnership (Grayling), a Michigan limited partnership, on August 12, 1993, tendered for filing, an amendment to its filing in this docket of proposed Supplement No. 9 to Rate Schedule FERC No. 1, applicable to the sale of energy and capacity to Consumers Power Company (Consumers) from a biomass waste wood generating facility located in Crawford County, Michigan.

This amendment contains an amendment to the Power Purchase Agreement between Consumers Power Company and Grayling Generating Station Limited Partnership to reflect the payment for capacity on the basis of delivered energy.

Grayling also is requesting that the sixty-day notice period under 18 CFR 35.3 be waived.

Copies of this filing have been served on Consumers Power Company.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER93–856–000]

Take notice that on August 11, 1993, Southwestern Electric Power Company (SWEPCO) tendered for filing Amendment No. 1 to the Restated and Amended Interconnection Agreement between SWEPCO and Gulf States Utilities Company (GSU). The Amendment clarifies the rights of the parties to use of the Interconnection between SWEPCO and GSU and provides for certain energy purchases to be made by GSU from SWEPCO.

SWEPCO requests that Amendment No. 1 become effective on the date of consummation of GSU's proposed merger with Entergy Corporation.

Copies of the filing have been served on GSU and the Public Utility Commission of Texas.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power Company

[Docket No. ER93–772–000]

Take notice that on August 11, 1993, The Washington Water Power Company (WWP), tendered a request with the Federal Energy Regulatory Commission to terminate Docket No. ER93–772–000. WWP states that the subject docket, which involves two agreements with Modern Electric Company (Modern), is unnecessary because the Commission has accepted for filing all rates associated with the contracts in prior dockets. Docket No. EC93–20–000, which pertains to the sale of certain substation and distribution facilities by WWP to Modern pursuant to the two agreements, is unaffected by this request.

A copy of the filing was served upon Modern.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER93–814–000]

Take notice that on August 11, 1993, The Washington Water Power Company tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Certificate of Concurrence in the 1993–1994 Operating Procedures under the Pacific Northwest Coordination Agreement filed by Puget Sound Power & Light Company (Puget) by letter dated July 26, 1993.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER93–739–000]

Take notice that on August 11, 1993, Entergy Services, Inc. (Entergy Services), on behalf of Louisiana Power & Light Company (LP&L), filed Amendment No. 1 to Transmission Service Agreement between LP&L and Southwestern Electric Power Company (SWEPCO) (Amendment No. 1). The purpose of Amendment No. 1 is to extend the term of the Transmission Agreement between LP&L and SWEPCO (the Agreement) by three years, i.e., until December 31, 1997. Pursuant to the Agreement, LP&L will provide transmission and distribution services to SWEPCO. Entergy filed the Agreement with the Commission on June 29, 1993.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Pennsylvania Power & Light Company

[Docket No. ER93–853–000]

Take notice that on August 10, 1993, Pennsylvania Power & Light Company (PP&L), tendered for filing a Sixth Supplement, (Sixth Supplemental Agreement), to the Capacity and Energy Sales Agreement (Agreement), dated January 28, 1988, as supplemented between PP&L and Baltimore Gas and Electric Company (BG&E), which is on file with the Commission as PP&L's Rate Schedule FERC No. 92. The Sixth Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission

on May 11, 1993, in Docket No. ER93–508–000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1993.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power & Light Company

[Docket No. ER93–852–000]

Take notice that Pennsylvania Power & Light Company (PP&L) on August 10, 1993, tendered for filing a Third Supplement, dated as of August 2, 1993, (Third Supplemental Agreement), to the Capacity Credit Sales Agreement, dated June 5, 1991, between PP&L and Baltimore Gas and Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 105. The Third Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 11, 1993, in Docket No. ER93–508–000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1993.

PP&L states that a copy of its filing was served on BG&E, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20252 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–645–000]

ANR Pipeline Co.; Request Under Blanket Authorization

August 17, 1993.

Take notice that on August 13, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–645–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of interconnection with Indiana Gas Company (IGC), an existing customer, under the blanket certificate issued in Docket No. CP92–480, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that it proposes to construct and operate an interconnection with IGC, known as the Dunkirk Interconnection, in Jay County, Indiana as requested by IGC, an existing customer. ANR indicates that the facilities consist of a tap and associated facilities and estimates that the facilities would cost $585,000.

ANR states that the peak day quantity of gas to be delivered through these facilities is approximately 16,000 dt equivalent of natural gas which would be within the certificated entitlements of IGC. ANR also states the construction of the facilities would have no adverse impact on the peak day and annual entitlements of any of ANR's customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20253 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–43–000]

Citizens Utilities Co.; Amended Application

August 17, 1993.

Take notice that on August 13, 1993, Citizens Utilities Company (Citizens) filed an amendment to its application in Docket No. ES93–43–000 under Section 204 of the Federal Power Act. Citizens is amending its application to request authorization to issue the proposed securities through November 30, 1995 and to note that it will seek further Commission authorization to issue common stock if convertible debt securities are issued.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20255 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–168–000]

LFC Gas Co. v. Northwest Pipeline Corp.; Complaint

August 17, 1993

Take notice that on August 10, 1993, LFC Gas Company (LFC) filed a complaint and seeks relief from unlawful and unduly discriminatory treatment by Northwest Pipeline Corporation (Northwest) in violation of section 4 of the Natural Gas Act, and Northwest's own TF–1 tariff.

LFC states that Northwest has denied LFC's request to receive transportation service which LFC is entitled to receive under the terms of Northwest's Rate Schedule TF–1 by imposing on LFC requirements which, Northwest concedes, are not contained in Rate Schedule TF–1. LFC states that Northwest's rejection of LFC's election of TF–1 (Small Customer) service is contrary to the terms of the pipeline's tariff and is unduly discriminatory.

LFC requests that the Commission find that, by denying TF–1 (Small Customer) service to LFC, Northwest is in violation of the Natural Gas Act, the Commission's regulations, and its own tariff.

LFC requests the Commission to order Northwest to (a) accept LFC's election of TF–1 (Small Customer) service and (b) provide TF–1 (Small Customer) service to LFC under the terms of Rate Schedule TF–1 filed by Northwest on May 28, 1992 in Docket No. RS92–69–000 as of the effective date of Northwest's restructured services.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 16, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20261 Filed 8–20–93, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–229–000; Docket No. RP92–166–000 (not consolidated)]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

August 17, 1993.

Take notice that an informal settlement conference will be convened in Docket No. RP91–229–000 beginning Wednesday, August 25, 1993, at 1 p.m., and continuing through Thursday, August 26, 1993, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of that docket.

Take further notice that an informal settlement conference will be convened in Docket No. RP92–166–000 immediately following the close of the conference in Docket No. RP91–229–000, for the purpose of discussing possible settlement of the issues in that docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20259 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–638–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

August 17, 1993.

Take notice that on August 12, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP93–638–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point consisting of a tie-in assembly to accommodate the delivery of natural gas to Kinder Gas Processing Corporation (Kinder), an end-user, under the authorization issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it has entered into a gas transportation agreement with Kinder to establish a new delivery point so as to transport up to 2,550 Dekatherms per day of natural gas on an interruptible basis pursuant to Tennessee's Rate Schedule IT. In order to establish this delivery point, Tennessee seeks authorization to install, own and operate a tie-in assembly at M.P. 505B–101+0.00 on its existing right-of-way in Allen Parish, Louisiana. It is stated that the estimated cost of $8,000 will be borne by Kinder.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20254 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–119–033]

Tennessee Gas Pipeline Co.; Report of Refunds

August 17, 1993.

Take notice that Tennessee Gas Pipeline Company (Tennessee) on July 26, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's orders issued April 10, 1992 and June 25, 1992, in Docket Nos. RP86–119, et al. The refund report reflects refunds due pursuant to the Stipulation and Agreement filed on June 25, 1991 and as modified on May 7, 1992 in Docket Nos. RP86–119, et al.

Tennessee states that on July 25, 1993, Tennessee refunded $22,978,527.00, including interest, to Columbia Gas Transmission Corporation (Columbia). Tennessee is required to refund to its customers the accumulated value of take-or-pay demand costs pursuant to the Stipulation and Agreement. This refund amount represents the second installment of refunds owed Columbia and reflects one half of the remaining refund balance.

Tennessee will serve a copy of this report on Columbia and affected State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's rules and regulations. All such protests should be filed on or before August 24, 1993. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20257 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–6–17–001]

Texas Eastern Transmission Corp.; Compliance Filing

August 17, 1993.

Take notice that on August 12, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed in compliance with a letter order dated July 28, 1993, in Docket No. TM93–6–17–000, additional workpapers and the information to satisfy intervenors' concerns regarding the proposed changes in total electric power costs (EPC) expenses, and for the changes in EPC expenses for individual compressor stations.

Texas Eastern states that since the implementation of Order No. 636 on its system, its customers have significantly influenced the flow of gas on its system based upon nominations for transportation paths. Texas Eastern states that the increases proposed in EPC costs on its system are related to the changes in utilization of its system as a result of the pathing of gas by its customers.

Texas Eastern states that copies of its filing have been served on all firm customers, current interruptible shippers and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20262 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–46–000]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

August 17, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation, (TGPL) on June 14, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with Section 4 of TGPL's Rate Schedule FT–NT, approved by the Commission's "Order Approving Contested Partial Settlement As Modified" issued November 21, 1991, "Order on Rehearing and Clarification" issued May 21, 1992, and "Order Granting Reconsideration" issued October 21, 1992 in Texas Gas' Docket Nos. RP90–104, et al.

TGPL states that on June 11, 1993, it refunded $1,045,161.29, inclusive of principal and interest, to each FT–NT customer, their proportionate share of the amount received from Texas Gas Transmission Corporation during the period November 1, 1991 through October 31, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20256 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–169–000]

Transcontinental Gas Pipe Line Corp.; Motion for Waivers and Request for Interim Authority on an Expedited Basis

August 17, 1993.

Take notice that on August 11, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing a motion for authorization for waiver of § 284.223(f)(1)(ii) of the Commission's regulations and authorization to waiver a provision of its FERC Gas Tariff to the extent necessary to enable TGPL to convert all firm transportation agreements for which service is rendered under section 311 of the Natural Gas Policy Act of 1978 and subpart B of part 284 of the regulations, to service under TGPL's blanket transportation certificate and subpart G of part 284.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before August 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20263 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–167–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

August 17, 1993.

Take notice that on August 10, 1993, Trunkline Gas Company (Trunkline), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, which are proposed to become effective September 1, 1993:

First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 241
Original Sheet No. 241A
Original Sheet No. 241B
Original Sheet No. 241C
Original Sheet No. 241D
Original Sheet No. 241E
Original Sheet No. 241F
Original Sheet No. 241G

Trunkline states that this filing is made pursuant to Section 27.3 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1, and as a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission

(Commission) promulgated thereunder to implement the recovery of certain stranded costs by means of surcharges applicable to Rate Schedules FT, EFT, QNT, SST and IT.

Trunkline states that encompassed by its filing are the costs which Trunkline currently projects it will incur during the remaining term of its transportation agreements with ANR Pipeline Company (ANR) under ANR's Rate Schedule FTS and Stingray Pipeline Company (Stingray), included in Stingray's Rate Schedule T-1, totalling $11,875,320. Trunkline also states its customers declined to accept assignment of these contracts and that it has been unable to secure consents from either ANR or Stingray for the earlier termination of the contracts.

Trunkline states that the costs encompassed by this filing are fully eligible for recovery as transition costs and that its filing is consistent with the requirements of Order No. 636, Section 27.3 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1 (Treatment of Other Transition Costs) and the Commission's July 30, 1993 Order On Compliance Filing And Granting And Denying Rehearing in Part, 64 FERC 61,141 (1993).

Trunkline states that copies of the filing has been served on all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20260 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–183–049, RP93–170–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 17, 1993.

Take notice that on August 13, 1993, Williams Natural Gas Company (WNG), tendered for filing certain revised tariff sheets to its FERC Gas Tariff, with proposed effective date of the tariff sheets is September 12, 1993:

Second Revised Volume No. 1

First Revised Sheet Nos. 1, 7, 8 and 9

First Revised Volume No. 1

Second Revised Sheet No. 1
Third Revised Sheet Nos. 7, 7A and 8

WNG states that its initial refund report of the calculations of refunds for the Docket No. RP89–183 period and for the Docket No. RP91–152 period, and the application or distribution of those refunds, is being made pursuant to Article II, Section 10 of the Stipulation and Agreement dated November 24, 1992, approved by Commission Order dated March 12, 1993.

WNG states that copies of the filing were served upon each of WNG's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before August 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20258 Filed 8–20–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4695–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 22, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES)/ Compliance Assessment (EPA ICR No. 1427.04; OMB Control No. 2040–0110).

Abstract: This ICR is an extension of an existing information collection as part of the National Pollutant Discharge Elimination System (NPDES) and the compliance assessment requirements of the State Sludge Management Program. The NPDES and compliance assessment requirements are established under the Clean Water Act, as amended, and promulgated at 40 CFR parts 122 through 125 and 40 CFR part 501, respectively. The information gathered by these requirements is used by the EPA, industry, States, and local governments to regulate discharges into waters of the United States under NPDES and to regulate sewage sludge use and disposal activities under the Sewage Sludge Management program.

Following approval of this ICR, permittees must continue to perform information collection activities that include the preparation and submission of: (1) Compliance schedule reports, (2) noncompliance reports, (3) alternate level reports, and (4) responses to CWA Section 308 letters requesting information related to spills. Permittees must also perform recordkeeping of monitoring data, and where applicable, storm water inspection data. The Agency will use this information to determine if the permitee is in compliance with its permit and to determine if any noncompliance poses a threat to human health and the environment. Upon submission of the compliance data from major permittees, the Agency enters the data into the Permit Compliance System (PCS) data bases.

Burden Statement: Public reporting burden for this collection of information is estimated to average 3.2 hours per

response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the information. Public recordkeeping is estimated to average 2.3 hours per recordkeeper including time to process, store and maintain records.

Respondents: Owners/operators of facilities subject to the NPDES and Sewage Sludge Management programs; States with delegated authority to administer the NPDES program.

Estimated No. of Respondents: 22,700 reporters; 173,000 recordkeepers.

Estimated Number of Responses Per Respondent: 1.25.

Frequency of Collection: Variable, as needed.

Estimated Total Annual Burden on Respondents: 494,311 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M. St. SW., Washington, DC 20460,

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: August 17, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–20301 Filed 8–20–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4696–5]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors Science Applications International Corporation and TechLaw, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: Request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractors, Science Applications International Corporation (hereinafter "SAIC") of San Diego, California, and TechLaw, Inc. (hereinafter "TechLaw") of Lakewood, Colorado, cost recovery support documentation for the Superfund sites: (See Attachment). This disclosure includes Confidential Business Information (CBI) which has been submitted to EPA Region 10, Hazardous Waste Division, Program Management Branch. SAIC's principal office is located at 10260 Campus Point Drive, San Diego, California 92121; TechLaw's office is located at 12600 West Colfax Avenue, suite C310, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Davidson, Program Management Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1088.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into TES contract No. 68–W9–0008 with SAIC, and CEAT contract No. 68–W0–0001 with TechLaw, for management of these records. EPA Region 10 has determined that disclosure of CBI to SAIC and TechLaw employees is necessary in order that they may carry out the work requested under those contracts with EPA. The contracts comply with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 10 will require that each SAIC and TechLaw employee working on cost recovery work sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information and any abstracts or extracts therefrom, (a) upon completion of the contracts, (b) upon request of the EPA, or (c) whenever the information is no longer required by SAIC and TechLaw for performance of work requested under those contracts. These non disclosure statements shall be maintained on file with the EPA Region 10 Project Officer for SAIC, and the EPA Region 10 Project Contact for TechLaw. SAIC and TechLaw employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to the Environmental Protection Agency, Region 10, Sharon Eng, mail stop HW–113, 1200 Sixth Avenue, Seattle, Washington 98101.

Gerald A. Emison,

Acting Regional Administrator.

Attachment

Alaska Battery Enterprises
ALCOA (Vancouver Smelter)
Allied Plating, Inc.
American Crossarm and Conduit Co.
Arctic Surplus
Blackbird Mine
Bunker Hill Mining and Metallurg
Centralia Municipal Landfill
Colbert Landfill
Com. Bay, South Tacoma Channel
Com. Bay, Near Shore/Tide Flats
Cumberland Capacitors
Deaconess Hospital
Drexler-Ramcor
East Multnomah County Groundwater
Eastern Michaud Flats Contamin.
Erickson's Hardwood
FMC Corp. (Yakima Pit)
Frontier Hard Chrome, Inc. General Electric (Spokane Shop)
Gould, Inc.
Greenacres Landfill
Harbor Island (Lead)
Hidden Valley Landfill (Thun. Field)
Joseph Forest Products
Kaiser Aluminum Mead Works
Kerr-McGee Chemical (Soda Springs)
Lakewood Site
Maple Valley Capacitors
Martin-Marietta Aluminum Co.
McCormick and Baxter
Mica Landfill
Midway Landfill
Monsanto Chemical (Soda Springs)
Moses Lake Wellfield Contamination
North Market Street (AKA TOSCO)
Northside Landfill
Northwest Transformer (S Harkness)
Northwest Pipe and Casing
Northwest Transformer
Old Inland Pit
Pacific Sound Resources
Pacific Hide and Fur Recycling Co.
Pacific Car and Foundry Co.
Paris Woolen Mill
Pasco Sanitary Landfill
Pesticide Lab (Yakima)
Queen City Farms
Seattle Mun. Landfill (Kent Hghlnds)
Silver Mountain Mine
Spokane Junkyard and Assoc. Prop.
Teledyne Wah Chang
Toppenish Onion Field
Triumph Mine Tailings Piles
Tulalip Landfill
Union Pacific RR Tie Treatment
Union Pacific Railroad Co.
United Chrome Products, Inc.
Vancouver Water Station #4 Cont.
Vancouver Water Station #1 Cont.
West Valley Highway
Western Processing Co., Inc.
Wyckoff Co./Eagle Harbor

Yakima Plating Co.

[FR Doc. 93–20302 Filed 8–20–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4636–6]

Transfer of Data to the Food and Drug Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to the Food and Drug Administration, Center for Drug Evaluation and Research.

SUMMARY: EPA intends to transfer confidential business information (CBI) collected from the pharmaceutical industry to the Food and Drug Administration (FDA). Transfer of the information will enable the FDA to develop a list of potential process supplement applications which could be subject to expedited review by FDA. The information being transferred was collected under authority of section 308 of the Clean Water Act and section 114 of the Clean Air Act. Interested persons may submit comments on this intended transfer of information to the address shown below. EPA will not transfer data until 10 days after publication of this notice.

DATES: Comments on the transfer of data are due as soon as possible, but no later than September 2, 1993.

ADDRESSES: Comments may be sent to Dr. Frank Hund, Engineering and Analysis Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Hund at (202) 260–7182.

SUPPLEMENTARY INFORMATION: 40 CFR 2.209 authorizes EPA to disclose to another Federal agency information that might otherwise be entitled to confidential treatment in certain circumstances.

Pursuant to 40 CFR 2.209(c), the Associate Commissioner for Regulatory Affairs and Environmental Assessment Officer of the FDA submitted written requests for the information described below; in the requests, the FDA agrees not to further disclose confidential information received from the EPA to parties outside of the FDA without prior written authorization by EPA General Counsel. EPA will notify the FDA in transmitting the information that the information is entitled to confidential treatment, and that further disclosure of the information may be a violation of 18 U.S.C. 1905.

The information that will be transferred is the data submitted to EPA in response to sections 1, 2, 3a, and 5 of Part A of EPA's September 1991 pharmaceutical industry survey. The survey was sent to 244 pharmaceutical facilities, and sections 1, 2, 3a, and 5 requested them to provide technical information. The technical information includes data and information regarding production processes, wastewater generation, and treatment practices. No information from Part B or C of the survey will be transferred.

EPA, in developing effluent limitations guidelines and standards for the pharmaceutical industry, is working with the FDA to explore the potential for manufacturers to make process changes that would minimize the generation of pollutants (e.g., by reducing the use of solvents). One of the barriers to making process changes is the time required by FDA to review supplement applications, which must be submitted by pharmaceutical manufacturers seeking approval for changes in the manufacturing process of a pharmaceutical product which has received previous approval by FDA. FDA intends to analyze the information collected from the questionnaire responses in order to develop a list of processes for which supplement applications could receive expedited review by FDA.

Many companies claimed that their responses should be considered confidential business information. EPA has determined that the transfer described above is necessary to enable the FDA to perform its work in developing expedited reviews of supplements for changes in certain manufacturing processes of the pharmaceutical industry.

Dated: August 12, 1993.

James A. Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 93–20303 Filed 8–20–93; 8:45 am]

BILLING CODE [illegible]

FEDERAL MARITIME COMMISSION

[Docket No. 93–17]

Bordelon Brothers Towing Company; Possible Violations of Section 2 of the Intercoastal Shipping Act, 1933; Order of Investigation

This proceeding is instituted pursuant to section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844.

Bordelon Brothers Towing Company ("Bordelon") has a tariff on file at the Federal Maritime Commission ("Commission") and operates between United States South Atlantic and Gulf ports and ports in Puerto Rico and the United States Virgin Islands.

Section 2 of the 1933 Act prohibits a common carrier by water from transporting cargo in intercoastal commerce of the United States without having a tariff on file at the Commission, and from charging a greater, less, or different rate for transporting property than that provided for in its tariff. Bordelon appears to have violated the 1933 Act from January 6, 1990 through March 27, 1990 by transporting shipments without having a tariff on file at the Commission and from May 30, 1990 through July 9, 1990 by charging less than the tariff rate on shipments transported after the tariff had been filed.

Now therefore it is ordered, That pursuant to section 2 of the 1993 Act, an investigation is hereby instituted to determine:

1. Whether Bordelon violated section 2 of the 1933 Act by transporting property in U.S. intercoastal commerce without having a tariff on file at the Commission;

2. Whether Bordelon violated section 2 of the 1933 Act by charging a rate for ocean transportation which was less than the applicable rate contained in its tariff;

3. Whether, in the event Bordelon violated section 2 of the 1933 Act, civil penalties should be assessed against Bordelon and, if so, the amount of such penalties.

It is further ordered, That a public hearing will be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The Hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute resolution, and upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That Bordelon Brothers Towing Company be named a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, and comply with subpart H of the Commission's Rules of Practice and Procedure, 46 CFR 502.111–119, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall by issued by August 16, 1994, and the final decision of the Commission shall be issued by December 14, 1994.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–20223 Filed 8–20–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93E–0068]

Determination of Regulatory Review Period for Purposes of Patent Extension; Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use). Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use) is used for the further manufacturing of Antihemophilic Factor (Recombinant) which is indicated for use in hemophilia A (classical hemophilia) patients for the prevention and control of hemorrhagic episodes and for perioperative management of such patients. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use) (U.S. Patent No. 4,757,006) from the Genetics Institute, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 19, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use) represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use) is 2,087 days. Of this time, 1,121 days occurred during the testing phase of the regulatory review period, while 966 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: March 27, 1987. The applicant claims February 25, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 27, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 351 of the Public Health Service Act*: April 20, 1990. The applicant claims April 6, 1990, as the date the product license application (PLA) for Antihemophilic Factor Concentrate (Recombinant) (For Further Manufacturing Use) (PLA 90–0380) was initially submitted. However, FDA records indicate that PLA 90–0380 was initially submitted on April 20, 1990.

3. *The date the application was approved*: December 10, 1992. FDA has verified the applicant's claim that PLA 90–0380 was approved on December 10, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 516 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 22, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 21, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–20233 Filed 8–20–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0145]

Determination of Regulatory Review Period for Purposes of Patent Extension; MANOPLAX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MANOPLAX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MANOPLAX®. MANOPLAX® (flosequinan) is indicated for the management of congestive heart failure in certain specified patients not responding adequately to diuretics (with or without digitalis). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MANOPLAX® (U.S. Patent No. 4,552,884) from The Boots Co. PLC, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 12, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MANOPLAX® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MANOPLAX® is 2,924 days. Of this time, 2,102 days occurred during the testing phase of the regulatory review period, while 822 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: December 30, 1984. FDA has verified the applicant's claim that December 30, 1984, was the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: October 1, 1990. FDA has verified the applicant's claim that October 1, 1990, was the date the new drug application (NDA) for MANOPLAX® (NDA 19–960) was initially submitted.

3. *The date the application was approved*: December 30, 1992. FDA has verified the applicant's claim that NDA 19–960 was approved on December 30, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,456 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 22, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 21, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management

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Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93-20234 Filed 8-20-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93E-0145]

Determination of Regulatory Review Period for Purposes of Patent Extension; PAXIL®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PAXIL® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PAXIL®. PAXIL® (paroxetine hydrochloride) is indicated for the treatment of depression. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PAXIL® (U.S. Patent No. 4,721,723) from Beecham Group p.l.c., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 13, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PAXIL® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PAXIL® is 3,267 days. Of this time, 2,132 days occurred during the testing phase of the regulatory review period, while 1,135 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* January 21, 1984. The applicant claims January 22, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 21, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* November 21, 1989. The applicant claims November 29, 1989, as the date the new drug application (NDA) for PAXIL® (NDA 20-031) was initially submitted. However, FDA records indicate that NDA 20-031 was initially submitted on November 21, 1989.

3. *The date the application was approved:* December 29, 1992. FDA has verified the applicant's claim that NDA 20-031 was approved on December 29, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 702 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 22, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 21, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93-20235 Filed 8-20-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1993.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 21, 1993, 9 a.m.–5 p.m.; September 22, 1993, 9 a.m.–5 p.m.; September 23, 1993, 9 a.m.–12 p.m.

Place: Parklawn Building, Conference Rooms I & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The first day of the meeting, September 21, will consist of a meeting of one of the Commission's Working Subcommittees. The second day of the meeting will consist of the full Commission commencing at 9 a.m. on Wednesday, September 22 until 2:45 p.m., and from 9 a.m. to 12 p.m. on Thursday, September 23. Agenda items will include, but not be limited to, the report of the Institute of Medicine's Section 313 Study Committee on the results of their study on vaccines other than pertussis and rubella covered under the Program, routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee (NVAC), and reports from the ACCV Subcommittees. The second day of the meeting, September 22, will also consist of simultaneous meetings of two of the Commission's Working Subcommittees.

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines.

Time: September 21, 1993, 9 a.m.–5 p.m.

Place: Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioners' attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and procedures used by the various parties involved in the VICP.

Agenda: The Subcommittee will examine the following petitioners' attorneys issues: (1) The timing of the award of petitioners' attorneys fees; (2) expert witness compensation—both the equity of payments (Federal government compensation versus petitioners' compensation) and the timing of payments; and (3) the adequacy of petitioners' attorneys compensation: $30,000 cap for pre-1988 claims, adequacy of hourly rates, and the method of calculating payment for both pre-1988 and post-1988 fee petitions. Each of these issues will be addressed by one of three separate panels, each comprised of 3 or 4 attorneys (2–3 petitioners' attorneys, plus one attorney from the Department of Justice (DOJ)). Members of each panel will be asked to briefly clarify the issue they are to address and to then focus primarily on possible solutions to the perceived problem(s).

In addition to these three main issues, three additional petitioners' attorneys issues have been raised, each of which either has been resolved or is likely to be resolved by September by either legislative or judicial action. These issues are: (1) the "Euler" step; (2) petitioners' attorneys receiving fees if petitioner elects to reject judgment; and (3) recovery of prior civil action costs (also to be addressed, in part, by panel #3 above). At the September SOP meeting, an update will be provided on the current status of these three issues.

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Time: September 22, 1993, 3 p.m.–5 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee reviews quarterly, with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund.

If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full Commission and, if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will discuss and review the status of funding and spending on pre-1988 awards and the status of the Trust Fund.

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Time: September 22, 1993, 3 p.m.–5 p.m.

Place: Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Court of Federal Claims, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Subcommittee will review the findings of the report of the Institute of Medicine's Section 313 Study Committee.

Public comment will be permitted at the respective subcommittee meetings on September 21 following each panel presentation, and before they adjourn in the evening; on September 22 before they adjourn in the evening; before noon and at the end of the full Commission meeting on September 22; and also before noon and before they adjourn at noon on the second day on September 23. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew B. Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 702, 6001 Montrose Road, Rockville, MD 20852; Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room I, before 10 a.m. on September 21, in Conference Rooms H & I before 10 a.m. on September 22 and 23. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Matthew B. Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, 6001 Montrose Road, room 702, Rockville, Maryland 20852; Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: August 17, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–20290 Filed 8–20–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Publication of a Notice on a Finding of No Significant Impact for an Incidental Take Permit for the Proposed Canyon Ridge Phase A and B Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an environmental assessment for issuance of a section 10(a)(1)(B) permit for the incidental take of the federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during construction of a 148.04 acre mixed residential/commercial development known as Canyon Ridge Subdivision in Austin, Travis County, Texas.

PROPOSED ACTION: The proposed action is the issuance of a permit under section 10(a) of the Endangered Species Act to authorize the incidental take of the endangered golden-cheeked warbler.

The Applicant plans to build a commercial and residential development on the northwest side of Austin near the intersection of Ranch to Market Road 2222 and Jester Boulevard in Travis County, Texas. The development will occupy approximately 5.43 acres of existing development and 54.14 acres of new development with the remaining 85.07 acres proposed as parkland and conservation areas, and 8.83 acres right-of-way on FM 2222. These activities will permanently eliminate about 104.3 acres of occupied and/or potential endangered species habitat.

A habitat conservation plan has been developed as mitigation for the incidental taking of the golden-cheeked warbler. The Applicant proposes to mitigate the incidental take via dedicating 85.07 acres for open space, conducting golden-cheeked warbler monitoring studies, establishing an escrow fund of $40,000 to fund a golden-cheeked warbler population study in the Bull Creek area, and constructing and maintaining a fence between the proposed development and the areas of open space set aside for the golden-cheeked warbler. Details of the mitigation are provided in the Canyon Ridge Habitat Conservation Plan. Guarantees for implementation are provided in the Agreement and the Management Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

ALTERNATIVES CONSIDERED:

1. Relocate the project to an alternative location;
2. Redesign the development on the subject property;
3. Wait for the completion of the Balcones Canyonlands Conservation Plan section 10(a) permit; and
4. No Action.

DETERMINATION: Based upon information contained in the attached Environmental Assessment and the habitat conservation plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not required. It is my decision to approve the issuance of the section 10(a)(1)(B) permit for the construction of the 148.04 acre mixed residential/commercial development known as Canyon Ridge Subdivision in Austin, Travis County, Texas.

Dated: August 16, 1993.

John G. Rogers,

Regional Director.

[FR Doc. 93–20274 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Monitoring Committee Meeting

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Monitoring Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the Committee meeting including: Detection and monitoring needs for nonindigenous species, scope and function of a nonindigenous information system, and coordination.

DATES: The Monitoring Committee will meet from 9 a.m. to 3 p.m. on Thursday, September 9, 1993.

ADDRESSES: The Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Building, room 200A, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 at (904) 378–8181.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Monitoring Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 N. Fairfax Drive, Arlington, Virginia 22203 and the Monitoring Committee Chairman, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 17, 1993.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–20272 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NM–921–09–4120–01]

Draft Data Adequacy Standards for Coal Leasing in Oklahoma

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Draft Data Adequacy Standards for Federal coal leasing in Oklahoma.

SUMMARY: Draft Data Adequacy Standards developed for competitive coal leasing in Oklahoma are available upon request beginning Friday, August 20, 1993. Copies are also being made available in public libraries in Tulsa, McAlester, Poteau and Wilburton, OK, Fort Smith, AR, and the BLM offices in Oklahoma City (Moore) and Tulsa, OK. There will be a 15-day public comment period.

DATES: Public comments on the draft Data Adequacy Standards are requested by Tuesday, September 7, 1993. Comments should be sent to Jim Olsen at the address shown below.

ADDRESSES: Copies of the draft Data Adequacy Standards may be obtained from Jim Olsen or Ed Roberson, Bureau of Land Management, New Mexico State Office, Branch of Solid and Fluid Minerals (NM 921), PO Box 27115, Santa Fe, NM 87502–0115, telephone (505) 438–7500. Copies will be available at the following locations: (1) Buckley

Public Library, 408 Dewey Avenue, Poteau, OK 74501; (2) McAlester Public Library, 401 North Second, McAlester, OK 75401; (3) Tulsa Central Library, 400 Civic Center, Tulsa, OK 74101; (4) Wilburton Public Library, 208 N. Central, Wilburton, OK 74578; (5) Fort Smith Public Library, 61 South 8th Street, Ft. Smith, AR 72901; (6) Oklahoma Resource Area Office, BLM, 221 North Service Road, Moore, OK 73160–4946; and (7) Tulsa District Office, BLM, 9522–H E. 47th Place, Tulsa, OK 74145.

FOR FURTHER INFORMATION CONTACT: Jim Olsen or Ed Roberson at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The draft Data Adequacy Standards spell out levels of multi-discipline resource data to be acquired prior to the competitive leasing of Federal coal tracts through the lease by application process. Data standards are proposed for geology, hydrology, soils, paleontology, cultural, vegetation, wildlife, air, socioeconomics and land use disciplines for the Federal coal areas in Oklahoma.

The standards were developed by a multi-disciplinary task force of staff and students from the University of Tulsa and staff of the Bureau of Land Management. The Oklahoma Resource Management Plan, which is currently being developed, will identify areas suitable for further consideration for leasing. Industry will be applying for coal lease tracts in the areas identified as suitable. The standards will be applied to those tracts applied for by industry.

After the close of the comment period, the task force will analyze any comments received and determine whether to revise or finalize the draft standards. The final standards will be available upon request.

Dated: August 12, 1993.

Edwin L. Roberson,

Acting Deputy State Director for Lands and Minerals.

[FR Doc. 93–20244 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–FB–M

[AK–932–4214–10–P; AA–58747]

Order Providing for Opening of Land Subject to Section 24 of the Federal Power Act; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this order is to open for selection by the State of Alaska, approximately 5,914 acres of public land reserved for the Federal Energy Regulatory Commission (FERC) Power Project No. 8221, if such land is otherwise available.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act (FPA) of June 10, 1920, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by FERC in DVAK–147–Alaska, it is ordered as follows:

Subject to valid existing rights, at 8 a.m. Alaska Standard Time, on August 23, 1993, the following described land is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), subject to the provisions of section 24 of the FPA: That land reserved for the FERC Power Project No. 8221 (Bradley Lake Hydroelectric Water Power Project), located within:

Seward Meridian

T. 4 S., R. 9 W.,
  Secs. 29, 30, and 31.
T. 4 S., R. 10 W.,
  Secs. 35 and 36.
T. 5 S., R. 8 W.,
  Secs. 19, 20, 29, 30, and 31.
T. 5 S., R. 9 W.,
  Sec. 3;
  Secs. 6 through 11, inclusive;
  Secs. 14 through 18, inclusive; and
  Secs. 22 through 26, inclusive.
T. 5 S., R. 10 W.,
  Secs. 1, 2, and 3; and
  Secs. 9 through 14, inclusive.
T. 6 S., R. 8 W.,
  Sec. 6.

The area affected by this order contains approximately 5,914 acres.

The State of Alaska applications for selection made under section 6(b) of the Alaska Statehood Act and under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), become effective without further action by the State upon publication of this order in the **Federal Register**, if such land is otherwise available. Any of the land not conveyed to the State will be subject to the terms and conditions of the FERC Power Project No. 8221, and any other withdrawal of record.

The land described herein has been and will continue to be subject to the provisions of the FERC Power Project No. 8221, pursuant to the authority set forth in section 24 of the FPA, as amended, 16 U.S.C. 818 (1988).

Dated: August 11, 1993.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 93–20230 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Solicitation of Nominations for the Manzanar National Historic Site Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of nomination solicitation.

SUMMARY: The Secretary of the Interior is soliciting nominations to serve on the Manzanar National Historic Site Advisory Commission. The purpose of the Commission is to meet and consult with the Secretary of the Interior or his designee with respect to the development, management, and interpretation of the Site, including the preparation of a General Management Plan.

DATES: Nominations should be submitted by September 22, 1993.

ADDRESSES: Nominations should be sent to Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Mallory Smith, Office of Public Affairs, National Park Service, 415/744–3929. A copy of the Commission's charter is available upon request.

SUPPLEMENTARY INFORMATION: Section 105 of Public Law 102–248 established within the Department of the Interior the Manzanar National Historic Site Advisory Commission to consist of 11 members appointed by the Secretary of the Interior to include former internees of the Manzanar relocation camp, local residents, representatives of Native American groups, and members of the general public. Appointments will be for 2-year terms. Through this notice, the Secretary is soliciting nominations from interested organizations or individuals for any of the appointments. All nominations should indicate for which category(s) the nominee is to be considered, and be accompanied by complete biographical and professional information, including home and business addresses and telephone numbers for each person recommended.

Dated: August 10, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–20241 Filed 8–20–93; 8:45 am]

BILLING CODE 4310–70–M

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DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 10, 1993, a proposed consent decree in *United States* v. *Jack Colbert, et al.*, 87 Civ. 4789 (MGC), was lodged with the United States District Court for the Southern District of New York. The decree resolves claims of the United States against defendants Jack Colbert, Charles Colbert, Signo Trading International, Ltd., SCI Equipment & Technology, Ltd., Mount Vernon Trade Group, Ltd., and Northeast By-Products Recycling Corp. ("Settling Defendants") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Signo Trading Site, 11 Hartford Avenue, Mount Vernon, New York (the "Site"). In the proposed consent decree the Settling Defendants agree to pay the United States $22,500.00 in settlement of the United States' claims for response costs incurred by the Environmental Protection Agency at the Site, and for treble damages.

The proposed decree may be examined at the Office of the United States Attorney, One Saint Andrews Plaza , New York, New York; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street NW., Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jack Colbert, et al.*, (DOJ Reference No. 90–11–3–244).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–20228 Filed 8–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Geoffrey B. Campbell d/b/a/ Clarion Muffler Center, Inc.*, Civil Action No. 92–2363, was lodged on August 12, 1993 with the United States District Court for the Western District of Pennsylvania. The consent decree settles an action brought under the Section 203(a)(3)(B) of the Clean Air Act (the "Act"), 42 U.S.C. 7522(a)(3)(B). The Complaint alleges that the defendant removed or rendered inoperative catalytic converters on five occasions, in violation of the Act. Pursuant to the consent decree, defendant has agreed to pay a civil penalty of $4,000.00 and to take certain steps to remedy the five violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Geoffrey B. Campbell d/b/a/ Clarion Muffler Center, Inc.*, DOJ Ref. #90–5–2–1–1756.

The proposed consent decree may be examined at the office of the United States Attorney, 633 U.S. Post Office and Courthouse, Pittsburgh, PA 15219; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–20226 Filed 8–20–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Departmental policy, 42 U.S.C. 9622(i), notice is hereby given that a proposed consent decree in *United States* v. *DiBiase Salem Realty Trust, et al.*, Civil Action No. 91–11028–MA, was lodged on *August 11th*, 1993 with the United States District Court of Massachusetts. The Consent Decree resolves certain claims of the United States against defendant South Essex Sewerage District ("SESD") under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607 in connection with the Salem Acres Superfund Site, a 234.5-acre parcel located approximately one quarter mile west of Route 107 in Salem, Massachusetts. Under the settlement reflected in the Consent Decree, the defendant will pay past removal costs of $1,822,775.00 to the United States.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *DiBiase Salem Realty Trust, et al.*, D.J. Ref. No. 90–11–3–744. The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 John W. McCormack Federal Bldg., U.S. P.O. & Courthouse, Boston, Massachusetts 02109, the Region I Office of the United States Environmental Protection Agency, Office of Regional Counsel, 1 Congress Street, 10th Floor, Boston, Massachusetts and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 93–20229 Filed 8–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that proposed partial consent decrees in *United States* v. *Environmental Waste Control, Inc.*, Civil Action No. S87–55, was lodged on August 11, 1993, with the United States District Court for the Northern District of Indiana. The consent decrees resolve the United States' proofs of claim in bankruptcy against James A. Wilkins and Stephen W. Shambaugh (collectively, the "Debtors") with respect to their liability under a judgment entered against them by the United States District Court for the

Northern District of Indiana for violations of the Resource Conservation and Recovery Act at the Four County Landfill in Fulton County, Indiana. Under the proposed consent decrees, the Debtors will pay the United States approximately $300,000, which represents virtually all of the nonexempt assets in the Debtors' bankruptcy estates. The Debtors also waive any right to discharge of the United States' claims for response costs incurred in the future under the Comprehensive Environmental Response, Compensation and Liability Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Environmental Waste Control, Inc.*, DOJ Ref. Nos. 90–7–1–389C and 90–11–3–531.

The proposed consent decrees may be examined at: The office of the United States Attorney, 1001 Main Street, suite A, Dyer, Indiana 46311; the Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting copies, please refer to the referenced case and enclose a check in the amount of $15.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–20224 Filed 8–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Reilly Industries, Inc.*, Civil Action No. IP–93–1045–C, was lodged on August 10, 1993 with the United States District Court for the Southern District of Indiana.

The Consent Decree is a Remedial Design/Remedial Action decree requiring the defendant to implement a ground water operable unit remedy pursuant to section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606. The Reilly Tar and Chemical Superfund Site ("Site") includes, but is not limited to, the associated real property and buildings located on approximately 120 acres located at 1500 South Tibbs Avenue, in Indianapolis, Indiana. Reilly will also pay the United States for unreimbursed past costs at the Site, pursuant to section 107(a) of CERCLA, 42 U.S.C. 107(a).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Reilly Industries, Inc.*, DOJ Ref. #90–11–3–1028.

The proposed consent decree may be examined at the office of the United States Attorney, United States Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204; the Region V Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $21.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–20227 Filed 8–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Residual Technologies, Inc.*, Civil Action No. 92–C–253–E, was lodged on August 4, 1993 with the United States District Court for the Northern District of Oklahoma. The consent decree settles alleged violations of the Underground Injection Control ("UIC") regulations promulgated under the Safe Drinking Water Act ("SDWA") resulting from injection into a hazardous waste disposal well in Tulsa, Oklahoma. Pursuant to the decree, Residual Technologies Inc. has agreed to pay a civil penalty of $300,000 and perform certain injunctive relief, including monitoring the hazardous waste injection well.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Residual Technologies, Inc., DOJ Ref.* #90–5–1–1–3330.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Oklahoma, 3900 Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 524–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–20225 filed 8–20–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

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DATES: Comments on this information collection must be submitted on or before September 22, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application instructions for Participants, Summer Seminars for College Teachers Program.

Form Number: 3136–0096.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: College faculty and independent humanities scholars.

Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 4,902.

Frequency of Response: Once.

Estimated Hours for Respondents To Provide Information: 2.79 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 13,731.5 hours.

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application instructions for Directors, Summer Seminars for College Teachers Program.

Form Number: 3136–0093.

Frequency of Collection: Collection occurs once yearly, according to individual program deadline.

Respondents: Humanities research institutions and their faculty.

Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 560.

Frequency of Response: Once.

Estimated Hours for Respondents To Provide Information: 2.75 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 1,566.5 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–20245 Filed 8–20–93; 8:45 am]

BILLING CODE 7536–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory Panel (Arts in Education Section) to the National Council on the Arts will be held on September 8, 1993 from 8:45 a.m. to 5 p.m. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:45 a.m. to 9:15 a.m. for opening remarks and 4 p.m. to 5 p.m. for policy discussion.

The remaining portion of this meeting from 9:15 a.m. to 4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 18, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–20332 Filed 8–20–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory Panel (Literature Section) to the National Council on the Arts will be held on September 9, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductions.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 18, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–20333 Filed 8–20–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336; License Nos. DPR–21, DPR–65]

Northeast Utilities, Millstone Nuclear Power Station; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated July 30, 1993, Donald W. Del Core, Sr. (Petitioner), has requested that the Executive Director for Operations take accelerated enforcement action for willful violation of the employee protection provisions of 10 CFR 50.7. As grounds for this request, the Petitioner asserts: (1) His termination from the Millstone Nuclear Power Station was directed by an NU corporate officer and therefore comprises a Severity Level I violation, and that two other corporate officers apparently provided input regarding his termination, affording a basis for enforcement of 10 CFR 50.5 for apparent deliberate misconduct, and also for referral to the Department of Justice; (2) a report released by the Office of the Inspector General indicates that there was a pattern of complaints of retaliation at Millstone, demonstrating that repeated violations occurred; (3) a significant number of NU employees have contacted him, rather than the NRC or NU, claiming that they have been retaliated against for raising safety concerns, indicating that a "chilling effect" has been created at the Millstone Nuclear Station as a result of the NRC's failure to take enforcement action.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Personnel. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Documents Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 16th date of August 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 93–20279 Filed 8–20–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Office of Management and Budget.

ACTION: Notice of transmittal of Sequestration Update Report to the President and Congress.

SUMMARY: Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Arthur W. Stigile, Budget Analysis Branch—202/395–4521.

Dated: August 16, 1993.

James C. Murr,

Associate Director for Legislative Reference and Administration.

[FR Doc. 93–20145 Filed 8–20–93; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32749; File No. SR–MCC–93–1]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving a Proposed Rule Change To Amend Various By-Laws Including Adding Public Members to MCC's Nominating Committee

August 16, 1993.

On February 25, 1993, Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR–MCC–93–1) to amend MCC's by-laws. The Commission published notice of this proposal in the **Federal Register** on May 3, 1993.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends various provisions of MCC's by-laws to accomplish the following:

(1) Move the annual meeting of the stockholders from the third Tuesday in January to the second Tuesday in April;

(2) Provide that the chairman, not the president, may call special meetings of the stockholders and of the board of directors and may vote the securities of other corporations owned by MCC;

(3) Provide that the term of any board vacancy that is filled by the board runs until the next annual meeting, not until the end of the unexpired term; and

(4) Increase the size of the nominating committee from three to five members of which two must be unaffiliated with any broker or dealer in securities and will be appointed annually by the board.

II. Discussion

The Commission believes that MCC's proposal is consistent with the Act and in particular with section 17A(b)(3) (C) and (F) thereunder.[3] Section 17A(b)(3)(C) requires that the rules of a clearing agency assure a fair representation of its shareholders, members, and participants in the administration of its affairs. The addition of two members who are unaffiliated with any broker or dealer in securities to MCC's nominating committee should help to ensure that the representation of the committee is fair and should provide a fresh perspective to the deliberations and decision making of that body.

The other changes make MCC's by-laws more consistent with those of the Midwest Stock Exchange ("MSE") and thereby should facilitate the overall operation of MCC. Thus, these conforming changes should promote the prompt and accurate clearance and settlement of securities transactions in keeping with MCC's responsibilities under section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MCC–93–1) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20238 Filed 8–20–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32210 (April 26, 1993), 58 FR 26371.

[3] 15 U.S.C. 78q–1(b)(3) (C) and (F) (1988).

[4] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34-32747; File No. SR-NSCC-93-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Establishment of a Program Relating to Comparison Procedures for Municipal Securities Transactions

August 13, 1993.

On January 6, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-93-02) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to implement the first phase of the Fixed Income Transaction System ("FITS") which makes certain changes to the comparison procedures for municipal securities transactions. Notice of the proposal was published in the Federal Register on March 12, 1993.[2] No comment letters were received. This order approves NSCC's proposal.

I. Description

FITS comparison procedures for municipal securities transactions are designed to achieve higher rates of trade comparison at earlier points in the municipal securities comparison process. Under FITS, original trade input must be submitted by 2 a.m. on the business day after the trade date ("T+1") which NSCC considers the end of the trade date ("T"), as opposed to 1:00 p.m. on T+1 as required under the former system.[3] Earlier submission will allow NSCC to produce contract reports by the morning of T+1. Participants will then be able to begin submitting adjustments on T+1.

One of the most important aspects of FITS is that it gives NSCC the ability to compare trade information on new issue municipal transactions when the parties to a transaction submit the trade information in different formats. Submission of original input for new issue transactions may specify either (1) a dollar price or a price-to-yield and concession, if any, ("when-issue format") or (2) a final settlement price with a settlement date ("final monies format").[4] NSCC's former system would accept only submissions in when-issued format because it could not accommodate submissions in final monies format.

FITS enables NSCC to accept original trade input for new issue municipal securities transactions that are to settle on the initial settlement date (also known as the syndicate takedown date) or a specified number of days thereafter up to two business days before the initial settlement date ("ISD-2"). With the former system, original trade input for such transactions was accepted only up to five business days before the initial settlement date ("ISD-5"). This should increase the number of new issue transactions compared through NSCC.[5]

It is critical that NSCC be advised of the initial settlement date of a new issue transaction as soon as possible because FITS needs the settlement date in order to compute final monies for those transactions submitted in a when-issued format.[6] NSCC will use an agent to monitor settlement dates for new municipal issues.[7] When NSCC is informed of an initial settlement date for a new issue, either by its agent or by the lead underwriter for the issue, or when NSCC is able to confirm an initial settlement date with its agent, NSCC will calculate a final settlement price for all related submissions that specify a dollar price or a price-to-yield. New issue submissions then will be compared on the basis of these final settlement prices.

Parties to a trade can extend the settlement date beyond the initial settlement date up to a maximum of fifteen business days ("ISD+15") by submitting the transaction in a price-to-yield or dollar price format and by providing the number of additional business days required beyond the initial settlement date. The settlement date also can be extended by submitting the transaction in a final monies format and by providing the actual settlement date needed as well as the number of business days required beyond the initial settlement date. By having the additional number of business days required, NSCC can adjust the settlement date in the event the initial settlement date changes.

Under the proposal, NSCC will treat as a regular way transaction original trade input that is submitted between ISD-2 and ISD-5 with a final settlement price but without a final settlement date. Regular way transactions will continue to be accepted in final monies format only. Regular way submissions, unless they specify shortened or extended settlement periods, will not require submission of a settlement date because they will settle in the usual five business day settlement cycle. Participants can shorten the settlement period, but the participants must submit the actual settlement date needed, and the settlement period cannot be shortened to less than two business days. To extend regular way settlement beyond the standard five business days, participants must submit the actual settlement date required and the number of additional business days required beyond the standard settlement date.

Only syndicate managers for municipal issues may submit syndicate takedown trades for comparison. Consequently, many incorrect new issue submissions occur because syndicate members submit new issue buy transactions against syndicate managers but do not indicate that the trades are syndicate takedown transactions.[8] The

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31960 (March 8, 1993), 58 FR 13656.

[3] Procedure II, Section D(1)(a) of NSCC's Rules and Procedures gives NSCC the discretion to set the cutoff time for original trade input for municipal securities. Upon implementation of FITS, NSCC will set the cutoff time at 2 a.m. E.S.T. on T+1 with a desire to move toward a cutoff time of midnight on T+1. For purposes of trade input at NSCC, trade input at NSCC, trade date extends to 2:00 a.m. on T+1. For example, if a trade in a municipal security occurs on Monday, under FITS the trade input must be submitted to NSCC by 2:00 a.m. on Tuesday. In the former system, the trade input would not have been required to be submitted to NSCC until 1:00 p.m. on Tuesday.

[4] A final settlement price submission must be accompanied by a settlement date for the issue.

[5] Any uncompared new issue transaction that remains unresolved at the open of business on the day prior to the syndicate takedown date will be dropped. This means that some new issue transactions may not be able to be put through the entire range of available trade resolution procedures prior to being dropped. In the extreme case, new issue submissions made on the second day prior to the takedown date that do not compare will be dropped without any opportunity for resolution. These unresolved trades will be reported on a separate unresolved trade report and any trade dropped without the opportunity for resolution may be resubmitted after the takedown date.

[6] The Municipal Securities Rulemaking Board ("MSRB") recently amended MSRB Rule G-12(b) to help ensure that NSCC will be informed of the settlement date as soon as it is known. That rule now requires the managing underwriter in a new issue of municipal securities that is to be compared through the automated comparison facilities of a registered clearing agency to provide the registered clearing agency with notice of the settlement date for the issue as soon as it is known and thereafter to provide the registered clearing agency with immediate notice of any change in the settlement date. Securities Exchange Act Release No. 32594 (July 7, 1993), 58 FR 37084 [File No. SR-MSRB-93-03] (order approving amendment to MSRB Rule G-12(b)).

[7] NSCC used Kenny Information Systems ("KIS") as its agent in the former system and will continue to use KIS for FITS. NSCC has established procedures to resolve problems that occur as a result of receiving an incorrect settlement date (*i.e.*, an initial settlement date that is postponed). NSCC Rules and Procedures, Procedure II, Section E(2)(g).

[8] Pursuant to NSCC procedures, a submission of a syndicate takedown trade by the syndicate manager results in a compared trade which is reported to the syndicate manager and the syndicate member. Should either the syndicate manager or the syndicate member not agree with the terms as reported to them, they may delete the trade.

syndicate members' submissions are actually duplicates which are not recognized as syndicate takedown submissions and which result in uncompared submissions and advisories against the syndicate managers. To resolve this problem, for the two days following the syndicate takedown submission, NSCC will reject as a possible duplication of the syndicate takedown submission any buy side submission.[9] In addition, FITS will reject syndicate takedown submissions against brokers' brokers.[10]

Transactions sometimes are submitted with different trade dates but are identical for all other matching criteria. As long as the trade dates are within two business days of each other, FITS will match the trade, and NSCC will report them as compared.[11] Participants will be advised if their submission was matched with an unlike trade date submission and can delete the trade on the day it is reported to them as compared. NSCC will use the first submitted trade date as the contractual trade date, but each participant will receive on its matched trade report the trade date it submitted.

An additional nonmandatory feature of FITS that should further improve comparison rates is exact quantity summarization. At the election of participants, municipal securities transactions will be compared when net buy side and net sell side aggregate principal amounts can be matched for a particular issue as long as the transactions would have been compared had such buy side and sell side principal amounts each been specified in a single submission.[12] Before a transaction is matched on a summarized basis, all prior matching attempts must have failed, all other matching criteria must be identical, net quantities on both sides of the transactions must equal, and both participants must have opted for exact quantity summarization for all of their municipal securities transactions. Because FITS will report these new issue municipal securities submissions as compared even when they are not identical, any such compared new issue municipal securities transaction may be deleted by a participant on the day it is reported to the participant as compared as with the "within two days" comparison feature.

Also, NSCC will not reject a trade if it cannot verify through its agent a submitted new issue settlement date. NSCC will report the transaction as a "memo uncompared/advisory." NSCC will inform its agent of the submitted new issue settlement date, and the agent will attempt to verify the submitted date. If the agent is able to verify the date within two business days, NSCC will drop the memo designation and process the transactions according to normal procedures. If a memo item remains unverified after two days, the transaction will be dropped and must be resubmitted. Participants also will have the option to delete their memo uncompared/advisory items.

Finally, it should be noted that NSCC will perform different trade date matching and exact quantity summarization matching only after all attempts to match exactly have failed. Furthermore, a trade will only be rejected as a possible duplicate submission after all other attempts to match the trade, including different trade date and summarization matching, have failed.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[13] The Commission believes that FITS will promote the prompt and accurate clearance and settlement of municipal securities transactions in several ways.

Advancing the trade input time for municipal securities transactions produces several benefits in the clearance and settlement of municipal securities transactions. NSCC can compare trade sooner and, therefore, can produce contract reports at an earlier time. Consequently, parties will know their positions and can begin to resolve trade discrepancies at an earlier time.

As a result of its ability to compare trades when the trade information is submitted in different formats (*i.e.*, when-issued or final monies) and its capacity to accept original trade input as late as ISD–2, the number of new issue municipal securities transactions processed through NSCC's centralized and highly automated clearance and settlement facilities should be significantly increased. By reducing the possibility of duplicate trades being reported against the syndicate manager by syndicate members, by matching submissions with different trade dates if the trade dates are within two days of each other, and by providing matching by exact quantity summarization at the election of participants, the proposal should help decrease the number of uncompared trade submissions and should help improve the comparison rates of new issue municipal securities as well as provide comparison at an earlier time for all municipal securities transactions submitted for comparison through an automated comparison system of a registered clearing agency.[14]

In a report to the Chairman of the Commission submitted in May of 1992, the Bachman Task Force stated that a shorter settlement cycle will reduce risk in the clearance and settlement system and recommended that steps be taken to reduce the settlement cycle from five business days to three business days.[15] Early trade comparison has been identified as a prerequisite to shortening the settlement cycle in the United States clearance and settlement system.[16] FITS should significantly improve the comparison rate for when-issued transactions in municipal securities and should facilitate moving from a five business day settlement cycle to a three business day settlement cycle if municipal securities should be included in this effort.[17]

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[9] Both the syndicate manager and syndicate member will be informed that the submission was rejected as a possible duplicate syndicate takedown submission on their trade comparison reports. If a transaction is incorrectly dropped as a duplicate, the parties may resubmit the trade after the two day period.

[10] Brokers' brokers by their nature do not take positions in securities; therefore, they will not be members of a syndicate. Consequently, FITS will reject syndicate takedown submissions against brokers' brokers, and any submission rejected for this reason will be noted on the trade comparison reports.

[11] This is possible because all transactions during the new issue period settle on the syndicate takedown date.

[12] An easier way to understand the concept of exact quantity summarization is by example. Broker S reports to NSCC that it sold 100 municipal securities to Broker B. Broker B reports twice to NSCC that it bought 50 municipal securities from Broker S. If the buy side had made one submission, the buy side principal amount would have equaled the sell side principal amount; therefore, these trades would be reported as compared.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] Stock Clearing Corporation of Philadelphia and Midwest Clearing Corporation will each have an interface with NSCC to enable their respective members to have access to FITS.

[15] The Bachman Task Force on Clearance and Settlement Reform in U.S. Securities Markets, Report Submitted to the Chairman of the U.S. Securities and Exchange Commission (May 1992), Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812.

[16] Securities and Exchange Commission Release Nos. 33–6976, 34–31904, IC–19282 (March 1, 1993), 58 FR 11806 [File No. S7–5–93] (notice of proposed rulemaking and request for comments on proposed Exchange Act Rule 15c6–1 which will establish three business days instead of five business days as the standard settlement period for broker-dealer transactions. Although proposed Rule 15c6–1 would not apply to municipal securities, the Commission requested comment on the most appropriate way and a reasonable timeframe for bringing municipal securities within the scope of the rule.)

[17] The comparison rate for when-issued municipal securities is less than thirty-five percent

Continued

Furthermore, implementation of FITS will allow the MSRB to proceed with its proposal to amend MSRB Rule G–12(f)(i), which relates to automated comparison of inter-dealer transactions.[18] MSRB's proposal will eliminate the exemption in Rule G–12(f)(i) that allows a municipal securities transaction to be compared outside of the facilities of a registered clearing agency if both parties to the transaction are not members in a registered clearing agency. By requiring all transactions eligible for automated comparison be submitted to a registered clearing agency, much of the time consuming and expensive manual processing can be eliminated resulting in substantial efficiencies and cost savings in the municipal securities market. The use of an automated comparison system also should improve trade comparison rates and increase the number of transactions settled within the standard comparison cycle. The MSRB has informed the Commission that it believes a smooth implementation of the amendment to Rule G–12(f)(i) can best be accomplished after the industry has adjusted to FITS.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–NSCC–93–02) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20239 Filed 8–20–93; 8:45 am]

BILLING CODE 8010–01–M

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whereas the comparison rate for regular way municipal securities transactions is seventy-eight percent and for equity securities is greater than ninety-eight percent. Telephone conversation between John Fitzgerald, Vice President of Marketing, NSCC, and Peter R. Geraghty, Attorney, Division of Market Regulation, Commission (August 11, 1993).

[18] Securities Exchange Act Release No. 32262 (May 4, 1993), FR [File No. SR–MSRB–93–06] (notice of filing of proposed rule change).

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–28; Notice 2]

Ford Motor Co.; Grant of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan, determined that some of its vehicles fail to comply with the labeling requirements of 49 CFR 571.105, Federal Motor Vehicle Safety Standard (FMVSS) No. 105, "Hydraulic Brake Systems," and filed an appropriate report pursuant to 49 CFR part 573, Defect and Noncompliance Reporting. Ford also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 27, 1993, and an opportunity afforded for comment (58 FR 25699). This notice grants that petition.

From May 9, 1989, through March 18, 1993, Ford manufactured approximately 16,800 F53 Basic Chassis incomplete vehicles which, when completed by manufacturers other than Ford, may not meet the brake fluid warning label requirements of Standard No. 105. The brake fluid warning label required by Standard No. 105 is present, but may not be "located so as to be visible by direct view" as required. In the incomplete vehicle manual provided with the noncompliant vehicles, Ford indicated that the vehicles, when completed, would conform to Standard No. 105 provided no alterations or modifications were made to the brake system reservoir labeling.

Paragraph S5.4.3 Standard No. 105, *Reservoir labeling* states that

> [e]ach vehicle shall have a brake fluid warning statement that reads as follows, in letters at least one-eighth of an inch high; "WARNING, Clean filler cap before removing. Use only _____ fluid from a sealed container," (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g. "DOT 3"). The lettering shall be * * * (b) [l]ocated so as to be visible by direct view, either on or within four inches of the brake fluid reservoir filler plug or cap . . . .

On the noncompliant vehicles, the lettering is embossed on the top surface of the master cylinder-mounted reservoir and also on the reservoir cap. When installed in the chassis, the reservoir is located approximately four inches below the vehicle floor in the area just forward of the driver's seat. The master cylinder/reservoir assembly is serviceable through the left front wheel-well area, but neither the statement on the cap, nor the statement on the top surface of the reservoir is visible, in its entirety, by direct view. However, the information provided on both the reservoir and the cap is correct. Further, the correct information also is provided in the owner's manual which accompanies each chassis and in Ford's service manuals.

Ford supported its petition for inconsequential noncompliance with the following:

> It is important to note that the master cylinder reservoir on the Ford chassis is sufficiently transparent to allow the brake fluid level to be checked without removal of the cap. Consequently, the only time the cap should need to be removed is when it is necessary to add brake fluid which should not occur in normal service because (1), as required by FMVSS No. 105, the reservoir capacity is sufficient to operate the brakes from a new lining, fully retracted position, to be a fully worn, fully applied position, and (2), the fluid is not consumed in use. Rather, it should be necessary to add brake fluid only when the system is being bled to evacuate air during service to replace worn brake system components, or if a leak should occur, which requires repair to the system and bleeding to evacuate air. These kinds of brake system service are of the type likely to be performed only by trained and experienced personnel familiar with proper brake system servicing procedures, and [with] the need to use the correct type of brake fluid and avoid contamination.
>
> Further increasing the likelihood that servicing the brake system in these vehicles will only be performed by knowledgeable personnel is the construction of the vehicle and location of the master cylinder and reservoir. The master cylinder and brake fluid reservoir must be serviced via the left front wheel-well either by turning the front wheels all the way to the left to create access, or by raising the vehicle on a hoist.
>
> Ford believes that the likelihood that only trained personnel will be servicing the brake system, along with the less frequent need to remove the brake reservoir cap in these chassis because of the transparent reservoir, reduces considerably the likelihood that contaminants or incorrect brake fluid will be introduced into the brake system. With respect to the potential for brake fluid contamination, we find merit and submit the argument included in the [General Motors] petition [Docket No. 92–56] regarding the anomalous nature of this part of the warning statement concerning contamination, which in the practical sense is unnecessary if the area around the cap is clean, and may not be visible or may be illegible if the cap area is dirty.
>
> This anomaly notwithstanding, Ford believes, based on the above information, that the ability to directly view the part of the warning statement addressing contamination

in these chassis is somewhat less critical than in some other vehicles. With respect to usage of the proper type of brake fluid, adding fluid is not possible without removing the cap, and once the cap is removed, the statement on the cap is in fact "visible by direct view" by whomever removes the cap. We therefore believe that the likelihood of using incorrect brake fluid in these vehicles, particularly considering they are most likely to be serviced by knowledgeable personnel, is minimal, and noncompliance related to the part of the warning statement addressing the use of the proper brake fluid is especially inconsequential to motor vehicle safety.

In summary, in spite of the fact that the brake fluid reservoir warning statement on the affected Ford chassis may not be "visible by direct view," in entirety, as required by FMVSS No. 105, Ford does not believe there is a risk that contaminants would be introduced into the brake fluid reservoir, nor that incorrect fluid would be added. In addition, we are aware of no complaints, accidents, or injuries related to the brake fluid reservoir statement not being "visible by direct view."

No comments were received on the petition.

Ford has attempted to minimize the effects of the noncompliance by stating that "once the cap is removed, the statement on the cap is in fact 'visible by direct view'" by the person removing the cap. Clearly, the warning to clean the cap before removing is of such a nature that it must be read before the cap is removed, and compliance with S5.4.3 must be judged with the filler cap in place.

It is not critical that the advisory to use DOT 3 brake fluid be read before the cap is removed. Further, the effects of Ford's failure to comply with this requirement of S5.4.3 appear to present only minimal safety problems. There remains to be considered the effect upon safety of the fact that the advisory to clean the filler cap before removing cannot be read until after the cap has been removed. Ford had made a plausible argument that the configuration of the motor home and chassis, and its servicing, are so complex that brake fluid replacement ordinarily will be performed by trained personnel who are familiar with the necessity to avoid contamination of the fluid. Further, the information contained on the filler cap is also available in the operator and service manuals which accompany each chassis.

Ford has also asked the agency to consider its petition in light of the petition made by General Motors on a substantially similar noncompliance. NHTSA has done so, and notes that it granted GM's petition on February 19, 1993 (58 FR 9236).

Accordingly, for the reasons stated above, the agency finds that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: August 17, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–20312 Filed 8–20–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Birmingham Federal Savings Bank, Birmingham, AL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Birmingham Federal Savings Bank, Birmingham, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 6, 1993.

Dated: August 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–20267 Filed 8–20–93; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings & Loan Association of Russell County, FA, Phenix City, AL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings & Loan Association of Russell County, FA, Phenix City, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 21, 1993.

Dated: August 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–20268 Filed 8–20–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–40: OTS No. 2568]

First Federal Bank for Savings, Starkville, MS, Approval of Conversion Application

Notice is hereby given that on August 13, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Bank for Savings, Starkville, Mississippi for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–20269 Filed 8–20–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–39: OTS No. 2547]

First Federal Savings & Loan Association of the Palm Beaches, West Palm Beach, FL; Approval of Conversion Application

Notice is hereby given that on July 9, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of the Palm Beaches, West Palm Beach, Florida to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street NE., Atlanta, Georgia 30348–5217.

Dated: August 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–20270 Filed 8–20–93; 8:45 am]

BILLING CODE 6720–01–M

[AC-41; OTS No. 3748]

Tri-County Federal Savings & Loan Association, Torrington, WY; Approval of Conversion Application

Notice is hereby given that on August 13, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Tri-County Federal Savings and Loan Association, Torrington, Wyoming to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Drive, suite 400, San Francisco, California 94120.

Dated: August 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93-20271 Filed 8-20-93; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 22, 1993.

Dated: August 12, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, VA Form 21-8416b.

2. The form is used to report expenses incurred by a beneficiary incident to recovery of benefits resulting from an award of compensation for injury or death. The information will be used to determined the correct rate of income-based VA benefits.

3. Individuals or households.

4. 7,500 hours.

5. 45 minutes.

6. On occasion.

7. 10,000 respondents.

[FR Doc. 93-20278 Filed 8-20-93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 161
Monday, August 23, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on August 12, 1993 (58 FR 43015) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for August 12, 1993. This notice is to amend the agenda to add an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for August 12, 1993, is amended by adding the following item to the open session:

OPEN SESSION

B. New Business

2. Other

a. Sole Source Contract for IRM Operations.

Dated: August 19, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–20493 Filed 8–19–93; 3:12 pm]

BILLING CODE 6705–01–P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 23, 1993.

Closed meetings will be held on Wednesday, August 25, 1993, at 10:00 a.m. and on Thursday, August 26, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 25, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Formal order of investigation.
Regulatory matters regarding financial institutions.
Opinion.
Settlement of injunctive action.
Settlement of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, August 26, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Formal order of investigation.
Settlement of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: August 19, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20422 Filed 8–19–93; 12:58 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 161
Monday, August 23, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

Correction

In notice document 93-18881 appearing on page 42056 in the issue of Friday, August 6, 1993, in the second column, under **DATES**, in the first line, "a.m." should read "9 a.m.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-062-F]
RIN 0938-AF99

Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals

Correction

In rule document 93-19246 beginning on page 43156 in the issue of Friday, August 13, 1993, make the following corrections.

§ 433.68 [Corrected]

1. On page 43181, in the second column, in § 433.68 (e)(1)(i)(C)(iii), in the second line, " [publication date of this final rule]," should read "August 13, 1993".

2. On the same page, in the second column, in § 433.68 (e)(1)(iii)(B)(*8*)(iv), in the second line, "[publication date of this final rule]," should read "August 13, 1993".

3. On page 43182, in the first column, in § 433.68 (f)(3)(i), in the fourth line, "[30 days after date of publication of this final rule], should read "September 13, 1993".

4. On the same page, in the first column, in § 433.68 (f)(3)(ii), in the first line, "[publication date of this final rule]", should read "August 13, 1993", in the same paragraph, in the second and third lines from the bottom of the page, "[30 days after date of publication of this final rule]", should read "September 13, 1993". In the the second column in the same paragraph, in the first and second lines, "[30 days after date of publication of this final rule]", should read "September 13, 1993".

§ 433.72 [Corrected]

5. On the same page, in the second column, in § 433.72 (c)(1) in the third line, and in (c)(2), in the second line, "[publication date of this final rule]", should read "August 13, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6990

[OR-943-4210-06; GP3-230; OR-48136

Withdrawal of National Forest System Lands to Protect the Rehabilitation Work on the White King and Lucky Lass Uranium Mines; Oregon

Correction

In rule document 93-19012 appearing on page 42245 in the issue of Monday, August 9, 1993 in the second column, in the land description, under T. 37 S., in the first line, "NE¼NE¼." should read "NW ¼NE¼."

BILLING CODE 1505-01-D

VOL 58 ISS 161 AG 23 1993 UMI

Federal Register

Monday
August 23, 1993

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Proposed Rule

UMI VOL 58 ISS 161 AUG 23 1993 UMI

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–501]

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed Rule and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended, requires the Department of Energy (DOE or the Department) to administer an energy conservation program for certain major household appliances and commercial equipments. Among other program elements, the Act requires that standard methods of testing be prescribed for each covered product. The purpose of today's notice of proposed rulemaking is to update references, request data, comments, and information on proposed amendments to the furnaces and boilers, vented home heating equipment, and pool heater test procedures.

DATES: Written comments in response to this document must be received by November 22, 1993.

Oral views, data, and arguments may be presented at the public hearing to be held on Monday, September 20, 1993. Requests to speak at the hearing must be received by the Department no later than 5 p.m., Friday, September 10, 1993. Ten (10) Copies of statements to be given at the public hearing must be received by the Department no later than 5 p.m., Wednesday, September 15, 1993.

ADDRESSES: Written comments and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters," (Docket No. EE–RM–93–501), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0561.

The hearing will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, D.C.

Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Furnaces, Vented Home Heating Equipment, and Pool Heaters Test Procedures," (Docket No. EE–RM–93–501), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read and/or photocopied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section VIII of the "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, the National Appliance Energy Conservation Act of 1987, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357 and the Energy Policy Act of 1992, Public Law 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The 13 consumer household products currently subject to this Program (often referred to hereafter as "covered products") include furnaces/boilers, vented home heating equipment, and pool heaters, the subject of today's document.

Under the Act, the Program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (formerly the National Bureau of Standards), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and must not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by, the product except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2). Test procedures appear at 10 Code of Federal Regulations, part 430, subpart B.

However, the 180-day period referred to in section 323(c)(2) may be extended for a period of up to an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) would impose undue burden. Section 323(c)(3). Labeling requirements for major household appliances are administered by the Federal Trade Commission.

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured energy use of a covered product, DOE is required to amend the related energy conservation standard accordingly. In determining the amended standard, DOE is required to measure the energy efficiency or energy use of representative samples of covered products which minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the amended standard. Section 323(e)(2).

B. Background

Today's document proposes to modify the test procedures for furnaces and boilers, vented home heating equipment, and pool heaters as follows: (1) DOE proposes to modify the test procedure for furnaces and boilers to incorporate waivers previously granted and to include test procedures for new product designs. The revised American

[1] Part B of title III of Energy Policy and Conservation Act, as amended, is referred to in this final rule as the "Act". Part B of Title III is codified at 42 U.S.C. 6291–6309.

National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 will be referenced, and test procedures will be included for atmospheric furnaces with burner air inlet dampers or flue dampers, jacket loss measurement for downflow furnaces, and electro-mechanical stack dampers with delayed opening and power vented units employing post purge during the off-cycle. Additionally, today's document establishes a minimum required blower delay time between the ignition of the burner and the starting of the circulation air blower, a maximum on-time for the circulation air blower after the burner shut-off, and other corrections and technical revisions to those sections of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 incorporated into the DOE test procedure. Today's document also modifies the Energy Factor Descriptor to include the useful heat generated by the electrical consumption and establishes an additional new annual efficiency descriptor that includes the auxiliary electrical energy consumption of appliances when installed indoors and that could be used in determining the energy rating of mobile home furnaces. (2) DOE proposes to modify the test procedure for vented home heating equipment by establishing an additional new annual efficiency descriptor that includes the auxiliary electrical energy consumption in determining the energy rating of the appliance, and by including modified calculation procedures for the weighted average steady-state efficiency and Annual Fuel Utilization Efficiency for manually controlled heaters. (3) DOE proposes to modify the test procedure for pool heaters by establishing an additional new annual efficiency descriptor that includes the auxiliary electrical energy consumption in determining the energy rating of pool heaters.

The above modifications of the test procedures for furnaces and boilers, vented home heating equipment, and pool heaters will not change the related existing energy conservation standards for these appliances. However, the Department has determined that additional new energy descriptors may need to be made available when it is found that the existing descriptors do not account for all of the energy or all types of energy consumed by an appliance. Not having these new energy descriptors would result in the analyses for energy conservation standards being incomplete and could lead to standards which could be met by utilizing unaccounted for energy that might satisfy an energy descriptor but result in little or no total energy savings. Examples of unaccounted for energy are the pilot light energy of a pool heater which is not accounted for by the current energy descriptor of thermal efficiency or the electrical energy of a furnace or vented home heating equipment which is not accounted for by the current energy descriptor of Annual Fuel Utilization Efficiency. Accordingly, the Department is proposing in today's document to include new energy descriptors for vented home heating equipment, furnaces, and pool heaters.

II. Discussion

A. Furnace Test Procedure

On March 28, 1984, the Department published in the **Federal Register** a final rule amending the test procedures for furnaces, vented home heating equipment, and unvented home heating equipment. (Hereafter referred to as the 1984 Final Rule.) 49 FR 12148.

The 1984 Final Rule referenced the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1982 entitled "Methods of Testing for Heating Seasonal Efficiency of Central Furnaces and Boilers." In addition, it prescribed test procedures for furnaces and boilers that were not covered adequately by the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1982. The 1984 Final rule included provisions for modulating furnaces and boilers, condensing furnaces and boilers, units with thermal stack dampers, and other technical revisions (including oversize factors of furnaces and boilers, furnaces without draft relief or direct exhaust system, hot water boiler specifications on minimum return inlet water temperature and minimum water temperature rise, pump delay boiler controls, improved method for the determination of the steady state stack to flue mass flow factor for furnaces and boilers, and option of an assigned jacket loss value in lieu of actual measurement). Subsequently, the Standards Project Committee 103 of American Society of Heating, Refrigerating, and Air-Conditioning Engineers revised the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1982 to include DOE 1984 amendments that were not covered adequately by the Standard. The resulting Standard, "Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers," was designated American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988.

Since 1984, through cooperative efforts with the furnace industry and through DOE test procedure waiver process, DOE has became aware of several additional furnace test procedure issues. DOE proposes to amend the furnace test procedure to address these issues:

1. American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988

American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 which revised the earlier 1982 standard, is being referenced in Appendix N to subpart B of part 430 with certain exceptions in the present DOE proposed test procedure for furnaces. One exception concerns furnaces and boilers that include small air passages in the flue that serve a utility other than for draft relief (see section 3.9 of the 1984 furnace test procedure and sections 8.2.1.2.2 and 8.3.1.2.1 of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988). In DOE test procedure, the criterion for considering these units as direct exhaust systems is that air flow through the air passages shall not be in excess of 10 percent of the maximum steady-state total flue flow. In the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988, the criterion is that the area of the passage opening shall not be more than 10 percent of the cross-sectional area of the stack. The Department recognizes the difficulty and accuracy problems involved in the measurement of the air flow rate through the small air passage under the existing test procedure and is proposing to use the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 criterion.

The 1984 Final Rule and the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 also differ

with regard to the calculation procedure for units with an electro-mechanical stack damper. An error in the calculation procedure for the stack damper in American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 (discovered by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard Project Committee 103 after the standard was published) results in an overstated Annual Fuel Utilization Efficiency value. DOE is proposing to adopt a corrected calculation procedure. See Appendix N to Subpart B of part 430, Section 7.6, and 10.7.

A third difference between DOE current furnace test procedure and the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 concerns air circulation blower delay, both during the heat-up test (delay in starting after burner ignition) and during the cool-down test (delay in stopping after burner shut-off). During the heat-up test, the DOE test procedure requires a blower time delay of 1.5 minutes with two exceptions. The American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 added a third exception: if the furnace is designed to operate with an unvarying time delay, the delay shall be as designed. During the cool-down test, the DOE test procedure allows a 3-minute (1.5 minutes for condensing furnaces) delay in blower shut-off or until the supply air temperature drops below 40°F above the inlet air temperature, whichever results in the longer blower on time. The American National Standards Institute/American Society of Heating, Refrigerating, and Air- Conditioning Engineers Standard 103–1988 added the additional exception that for furnaces without adjustable fan control, the delay shall be as designed.

DOE is modifying both of these added exceptions in American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 in the proposed test procedure. See appendix N to subpart B of part 430, sections 8.4, and 8.7.

2. Furnaces and Boilers With Small Air Passage in the Flue

The Department's current test procedure prescribes the ratio of the air flow rate through the small air passage to the flue gas rate through the stack (10 percent) as the criterion in determining whether the unit is tested as a direct exhaust system. The American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 specifies the area ratio (10 percent) as the criterion. DOE recognizes the difficulty involved in measuring the air flow rate through the small passage, and is proposing to adopt the area ratio of 10 percent (tested and accepted by the National Institute of Standards and Technology) as the appropriate criterion.

3. Electro-mechanical Stack Dampers

The DOE current test procedure for furnaces evaluates the effectiveness of a stack damper by comparing the area of the damper plate to the area of the stack, assuming instantaneous damper closing and without time delay after the burner is shut off. DOE realizes, however, that this simplified evaluation method likely results in overstatements of efficiency (this has been verified by National Institute of Standards and Technology experimentally). The calculation procedure in the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 accounts for the time delay and specifies the finite length of time it takes for the damper to close. DOE is proposing to adopt this method for units with electro-mechanical stack dampers. See appendix N to subpart B of part 430, sections 7.6, and 10.7.

There was, however, an error as mentioned previously in the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 calculation procedure. In the procedure, a stack damper effectiveness factor D_o (defined as the ratio of the off-cycle sensible loss with the damper in operation to the off-cycle sensible loss without the damper) was used to calculate the stack gas draft factor D_t. The stack gas temperature measured with the damper open was used incorrectly in the numerator for the stack damper effectiveness D_o. This can result in an overstatement of the Annual Fuel Utilization Efficiency by 1 to 2 percentage points for a damper with a large leakage area and long delay time. The correct temperature should have been the calculated temperature with the damper in operation (determined by National Institute of Standards and Technology). The American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 procedure also simplifies the calculation incorrectly by applying the factor D_o to both the off-cycle sensible loss and off-cycle infiltration loss.[2] This simplification can result in an understatement of the Annual Fuel Utilization Efficiency by 0.2 to 1 percentage point, depending on the damper leakage area and delay time. The correct procedure is the application of a separate stack damper effectiveness factor for infiltration loss, defined the same way as the factor D_o for sensible loss, to the off-cycle infiltration loss calculation. DOE has included the corrected procedure to American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 in this document. See appendix N to subpart B of part 430, section 10.7.

Both DOE current test procedure and the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 require geometrical measurements for the stack damper to be the cross-sectional area of the stack and the net area of the damper (area of damper minus any cut-out or holes). However, since there are dampers that when closed will permit air to leak around the edge and shaft of the damper, this leakage area should be included as part of the data required. DOE has included this requirement in today's proposal. See appendix N to subpart B of part 430, section 7.6.

4. Thermal Stack Damper

The 1984 Final Rule has no provision for direct measurement of off-cycle heat losses by measuring the concentration of a tracer gas in the flue and in the stack during an appropriate off-cycle period. The procedure for thermal stack dampers is not included in the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988. The wide variation of performance of thermal stack dampers (such as sluggish closing time and variable leakage rate) requires a continuous measurement of the tracer gas concentration over the entire off-cycle period (or discrete time measurements with small time steps). This, however, would introduce significant measurement errors in the beginning of the off-cycle period (when losses are the greatest) because of the rapid decrease in stack gas flow rate and temperature and slow response of tracer gas sensors and analyzers. Therefore,

[2] "The Effect of a Time-Delayed Stack Damper on Off-Cycle Heat Losses for Residential Heating Equipment," American Society of Heating, Refrigerating, and Air-conditioning Engineers Transactions 1983, V.89.

DOE will continue to reserve the provision for thermal stack dampers pending development of testing details and a calculation procedure as discussed in the 1984 Final Rule. See 49 FR 12148, March 28, 1984, and appendix N to subpart B of part 430, section 10.28.

5. Air Circulation Blower Delay at Burner Ignition

The current furnace test procedure requires a 1.5-minute delay between the ignition of the burner and the start-up of the blower. Since 1984, numerous manufacturers have requested, and DOE has granted, waivers from this requirement to accommodate the unvarying time delay designed into their units. The manufacturers' waivers include: Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 18226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, and 57 FR 39193, August 28, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and Consolidated Industries Corporation, 57 FR 22220, May 27, 1992. The DOE granting of the waivers permitted those manufacturers to test units with blowers having unvarying time delay designed into them. Today's document incorporates this test provision for all furnaces and boilers. See appendix N to subpart B of part 430, section 8.7.

Because the designed delay time varies among units, DOE is proposing a specified minimum blower delay time of 20 seconds during the heat-up test if the designed unvarying delay time is less than 20 seconds. A cold draft would be created in the occupied zone if the blower is started too early. The Department's objective is to adopt a provision that allows all furnaces designed to operate with unvarying time delay to be rated in a manner that provides for a reasonable level of occupant comfort. Therefore, DOE is proposing a modification of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 (Section 9.6.1) to require a minimum blower delay of 20 seconds during the flue or stack gas temperature measurement portion of the heat-up test for furnaces designed with unvarying time delay. This requirement also would apply to the newer type of design for fan control where the time delay is adjustable by dip switch or jumper terminals. If the maximum time delay that can be selected is less than 20 seconds, the control would be bypassed and the blower started manually 20 seconds after the burner ignition for the heat-up test.

6. Air Circulation Blower Delay at Burner Shut-off

During the cool-down test, the current furnace test procedure allows a 3-minute (1.5-minute for condensing furnaces) delay in blower shut-off or until the supply air temperature drops below 40°F above the inlet air temperature, whichever results in the longer blower on time. American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 provides an additional exception (section 9.5.1.2.2) that for a furnace without adjustable fan control, the delay shall be as designed. Therefore, to increase the Annual Fuel Utilization Efficiency value (which does not include auxiliary electrical energy consumption in its calculation), some furnaces could be designed with unvarying blower time delay longer than 3 minutes and less than 40°F temperature difference, resulting in a cold draft in the occupied zone.[3]

Again, DOE objective is to adopt a provision that allows all furnaces designed to operate with unvarying time delay to be rated in a manner that provides for a reasonable level of occupant comfort. Therefore, DOE is proposing a modification of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 (Section 9.5.1.2.2) to require furnaces with unvarying time delay that do not allow for the blower delay time specified (3 minutes for non-condensing or 1.5 minutes for condensing furnaces or until the supply air temperature drops to a temperature of 40°F above the inlet air temperature, whichever gives the longer blower on time) to be tested with the fan control bypassed and the blower manually controlled to give the delay time specified during the cool-down test. This requirement also would apply to the newer type of fan control designs where the adjustment is by dip switches or jumper terminals and the range of adjustment does not allow for the delay time specified. See appendix N to subpart B of part 430, section 8.4.

The Department also is proposing an exception to the delay time requirement, specified above, for blower start-up and shut-off of furnaces that employ a single motor to drive the power burner and the blower. In that case, the power burner and the blower would be started and stopped at the same time. The current furnace test procedure includes this type of exception for burner and blower start-up during the heat-up test.

7. Burner Box Inlet Damper and Flue Damper

For non direct vent furnaces with power burners, a value of 0.4 for the theoretical off-cycle flue draft factor (D_f) is assigned for use in the computation for off-cycle sensible and infiltration losses. For non direct vent units with atmospheric burners, the existing test procedure and the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 assign a D_f value of 1.0 and no test measurement for this factor is allowed. However, optional tracer gas procedure to determine a possible lower D_f value is allowed for direct vent units and power burner units. Since D_f is a factor in the calculation for off-cycle losses, a smaller D_f will decrease the calculated losses and thus increase the Annual Fuel Utilization Efficiency.

On August 1, 1989, Lennox Industries (Lennox) filed a "Petition for Waiver" and an "Application for Interim Waiver" seeking DOE approval to use the existing optional tracer gas method to determine a lower than assigned D_f value for its G20 and G20R series of

[3] In addition, the electrical energy consumed in running the blower for a longer time may be more than the heat energy recovered from the furnace heat exchangers. This will be true especially if the source energy used to generate the electricity is considered rather than the electrical energy at the building site.

atmospheric furnaces.[4] The design of these units included an integral draft diverter and an electro-mechanical burner box inlet damper which closes off the combustion air inlet to the heat exchanger during the off-cycle. Lennox stated that restriction to the air flow through the heat exchanger by the closed damper during the off-cycle caused the draft factor D_F to be less than 1.0, resulting in reduced off-cycle losses. Lennox claimed that absent an alternative test method for D_F the assigned value of 1.0 would result in a lower Annual Fuel Utilization Efficiency value and an unfair rating for its G20 and G20R series of atmospheric furnaces.

The optional tracer gas method requested by Lennox specified that for a unit with an integral draft diverter for draft relief, the cool-down test and the tracer gas test (which is conducted during the cool-down test) be conducted with the diverter sealed and the stack restricted.

Several comments argued that if the tracer gas method was used, the test should be conducted with the diverter open as this is the way the furnace would operate in field installations.[5] If the diverter was kept open during the test, aspiration by draft relief air flowing through the diverter opening into the stack could increase the air flow through the heat exchanger thereby reducing the inlet damper effectiveness and increasing the value of D_F. A sealed diverter would prevent this aspiration motion from happening, resulting in a lower D_F value. Another view held that for some atmospheric furnaces, the D_F value was found to be less than 1.0 when tested by the tracer gas method even when there was no inlet damper. This would automatically result in an increase in furnace Annual Fuel Utilization Efficiency caused solely by utilizing testing to obtain D_F and not by installation of an inlet damper.

The comments raised questions on the potential effect on industry product design and manufacturing. Therefore, DOE directed the National Institute of Standards and Technology to conduct efficiency tests of a Lennox G20 furnace using tracer gas tests to determine D_F. The test results showed that the Lennox furnace had lower off-cycle losses and a higher Annual Fuel Utilization Efficiency value when the inlet damper was operating as designed than when the inlet damper was held open during the off-cycle. National Institute of Standards and Technology also found air-flow entering the heat exchanger through the diverter opening when testing was conducted with the diverter open during cool-down. This air-flow went down one section of the clamshell heat exchanger and came up another section of the clamshell heat exchanger into the stack. Therefore, an open diverter provided a second air passage (in addition to the one through the closed burner box inlet port) for the cold air to enter and cool down the heat exchanger.

Based on the test results and the comments received regarding methods to test the draft factor, DOE developed a modified version of the existing tracer gas test method to obtain an off-cycle loss factor (K_L) that can be used to calculate the off-cycle losses of the Lennox furnace. The modified method has two requirements: (1) That the tracer gas test be performed with the draft diverter open; and (2) that the test be performed with the inlet damper open as well as closed to obtain a ratio of the two off-cycle losses during the off-cycle (loss with inlet damper closed to loss with inlet damper open) for use as the off-cycle loss factor. The latter requirement ensures that only the relative improvement in the D_F value is allowed.

During testing, National Institute of Standards and Technology found the tracer gas test, as specified in the current optional method, difficult to perform in the heat exchanger as was calculating an integrated off-cycle loss. National Institute of Standards and Technology reported that a continuous measurement of the tracer gas concentration over the entire off-cycle period was difficult to perform accurately due to the rapidly changing nature of the gas flow at the beginning of the off-cycle. National Institute of Standards and Technology also found that measurements conducted in the heat exchanger and in the test stack gave similar results in the off-cycle loss value. In addition, the ratio of the losses calculated over the entire off-cycle period was close to the ratio calculated by using the integrated losses over a 1-minute interval beginning 5 minutes into the off-cycle where the rate of change of the gas flow was more stable. This is the same rationale used in the current optional procedure where measurement of the tracer gas at between 5 to 6 minutes into the off-cycle is used to compute the D_F value. Therefore, the modified method requires: (1) That the tracer gas be injected and sampled in the stack instead of in the heat exchanger; and (2) that the 1-minute (between minutes 5 and 6 into the off-cycle) integrated values of the two off-cycle losses (measured with the inlet damper closed and open during the off-cycle) be used to calculate the off-cycle loss factor. The Department specified the modified tracer gas procedure in its December 1990 Decision and Order granting Lennox a waiver for its G20 and G20R series furnaces.[6]

The Department is including the modified procedure in today's proposal for the measurement of an off-cycle loss factor K_L for atmospheric furnaces requiring draft relief and designed with an electro-mechanical burner box inlet damper or an electro-mechanical flue damper installed upstream of the draft relief device. See appendix N to subpart B of part 430, sections 7.5, 8.9, and 10.16.

A large portion of the off-cycle losses occur in the first minute after the burner shuts off, and a slow closing damper will lose most of its effectiveness. Therefore, DOE also is proposing that the method be applicable only when the damper closes completely within 10 seconds after the burner shuts off.

The Department also is proposing revisions to Table 6 in American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 for system numbers because of the inclusion of the tracer gas procedure for atmospheric furnaces with inlet or flue dampers in today's proposed test procedure. These revisions consist of adding burner inlet damper or flue damper characteristics, D_F and D_S values, and are found in proposed table 1 of appendix N to subpart B of part 430, section 7.3.

8. Power Vented Systems Employing Post Purge After Burner Shut-Off

The current test procedure and the American National Standards Institute/ American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 allow the optional tracer gas test method to be used to determine off-cycle power burner draft factor (D_P) for power vented burners. The procedure specifies that between 5 to 6 minutes into the cool-down period, a one-time measurement

[4] DOE published the Lennox petition in the Federal Register and solicited comments, data, and information respecting the petition and granted the requested interim Waiver in its entirety. (54 FR 50525, December 7, 1989).

[5] Comments on the petition were received from manufacturers, trade associations, State government agencies, public interest groups, and utility companies. A complete list and a summary of the comments received are included in the DOE Decision and Order of December 5, 1990 (55 FR 50224, December 5, 1990).

[6] A detailed discussion of the NIST test results and the rationale for adopting a modified (tracer gas test procedure is included in the DOE December 1990 Decision and Order). (55 FR 50224, December 5, 1990).

be made on the concentration of the tracer gas in the flue gas and of the gas temperature, and the measured data used to calculate the off-cycle flue gas flow rate and the power burner draft factor D_P.

The assumption used to derive the calculation procedure is that the flue gas temperature decreases exponentially and smoothly by natural convective flow starting when the burner is shut off. In order to vent combustion product residue in the heat exchanger of some furnaces or boilers, the combustion blower (forced or induced draft) continues to run for a short period of time after the burner is shut off. This action is referred to as post purge. For a short post-purge period (less than 5 seconds), the additional loss caused by the forced convective flow of the flue gas is so small that it is considered negligible. When this post-purge period is long, as is the design of some units, the additional losses are large. However, such additional losses are not reflected in the current procedure. Actually, the longer the post-purge period, the smaller the calculated losses by the current tracer gas method. The off-cycle flue gas temperature $T_{P,OFF}$ measured between 5 to 6 minutes into the off-cycle decreases faster with longer post purge because of the additional cool-down effect of the forced air flow during post purge. The net effect is that units with long post-purge time receive an Annual Fuel Utilization Efficiency rating that is higher than it should be.

To correct this deficiency in the current test procedure, DOE directed National Institute of Standards and Technology to conduct tests on a power vented furnace employing post purge and to develop a correction procedure to the current tracer gas method. The test results [7] indicated that during the post-purge period, flue gas temperature decreased in an approximately linear fashion and that the mass flow rate increased from its steady-state value because the decreasing temperature increased the flue gas density. The flue gas temperature resumes the exponential decreasing pattern after the post-purge period.

Based on the test results, DOE is proposing to modify the test procedure by separating the calculations into two parts. During the post-purge period, the flue gas temperature is assumed to decrease linearly, and the volume flow rate of the combustion blower is assumed constant and equal to the value when the burner is on. The density of the flue gas is assumed to follow the Ideal Gas Law in the calculation for the mass flow rate of the flue gas. Based on these assumptions, the off-cycle losses can be determined analytically. In this way, the losses during the post-purge period can be determined by taking the flue gas temperature data at the beginning and end of the post-purge period. The first temperature is the same as the steady-state temperature, therefore, only one additional temperature is required. During the remaining period of the off-cycle (after post purge), the current tracer gas test and calculation procedures are used. The modification would require the tracer gas concentration and temperature data to be taken between 5 to 6 minutes following the end of the post-purge period. The off-cycle time for this part of the calculation is equal to the regular average burner off-time (13.3 minutes for single stage furnace, 33.26 minutes for single stage boiler, 10 minutes for modulating furnaces and 15 minutes for modulating boilers) minus the length of the post-purge period. The D_P value determined by the tracer gas method is used to calculate the off-cycle losses in percent of energy input during this period (after post purge). The losses from the two periods are totaled to arrive at the Annual Fuel Utilization Efficiency value. See appendix N to subpart B of part 430, sections 10.8, 10.10.2, and 10.11.2.

Therefore, DOE is proposing to revise the current test procedure to require that the length of the post-purge period t_P and the flue gas temperature at end of the post-purge period to be recorded. See appendix N to subpart B of part 430, sections 8.2, and 8.5.

9. Jacket Loss Test and Insulation Requirement for Downflow Furnaces

Neither the current DOE test procedure nor the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 specify a jacket loss test for downflow furnaces. In its certification program, the Gas Appliance Manufacturers Association requires that when conducting a jacket loss test on downflow furnaces, if the manufacturer has not supplied the internal section of vent pipe connecting the flue collar to the top of the unit to be tested, the appropriate piece of uninsulated vent pipe shall be installed by the testing facility. The Department accepts this approach and has included it in today's proposal. See appendix N to subpart B of part 430, section 6.4.

10. Blower Compartment Heat Loss During Jacket Loss Test

The current DOE test procedure and the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 do not specify whether the furnace air circulation blower compartment is considered part of the cabinet or part of the duct system. In 1990, SPC 103 recommended that the blower compartment be considered as part of the duct system and that no temperatures be recorded during the jacket loss test. DOE agrees with that specification and has included it in today's proposal. See appendix N to subpart B of part 430, section 7.2.

11. Sealing of Ventilation Openings During Jacket Loss Test

Neither the DOE test procedure nor the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 specifies a procedure for dealing with the heat loss of air flowing from the louvered ventilation opening on the top, front, or sides of the unit cabinet during the jacket loss test. Therefore, the heat loss is unaccounted for during the test. The measurement of this convective heat loss is difficult to perform with the current flow measurement technique because of the low air-flow rate and temperature difference. DOE believes, however, that heat loss by convective air flow through the ventilation openings may be significant. This heat loss can be reduced to a minimum during the jacket loss test by taping or sealing with aluminum tape those ventilation openings from which the ventilation air exits from the cabinet. DOE is proposing that such taped areas be divided into the normal 36 square inch grids and that thermocouples be installed in each square, over the tapes if necessary, to measure the temperatures over the taped area. A smoke test during a short steady-state test may be used to determine the openings where the ventilation air exits from the cabinet. This would prevent the blocking of the louvered openings where combustion air enters. The taping also would apply to downflow furnaces. No taping of louvers in the jacket would be required for other parts of the test procedure, and the tapes would be removed after the completion of the jacket loss test. DOE is proposing the above sealing procedure in today's document. See appendix N to subpart B of part 430, section 7.2.

[7] National Institute of Standards and Technology Interagency Report 4908, August 1992.

12. Insulation Requirement for Units With Draft Diverter

Both the current DOE test procedure and the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 require the insulation of an integral draft diverter with a minimum of R–7 insulation material for the cool-down and heat-up tests. In 1991, ETL Testing Laboratories, Inc. suggested that when testing units with integral draft diverters, which are mounted in an exposed position (not inside the overall cabinet), the diverters should be considered part of the vent pipe and be insulated to reduce heat loss (as is the test stack) before starting any test including the jacket loss test and the steady-state test. ETL Testing Laboratories, Inc. uses this process when testing furnaces for the Gas Appliance Manufacturers Association efficiency rating certification program. DOE agrees with ETL Testing Laboratories, Inc.'s recommendation and is proposing such a provision in today's document. See appendix N to subpart B of part 430, sections 6.2, 6.5, and 6.6.

13. Insulation Requirement for Flue Collector Box

Both the DOE test procedure and American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 require that the draft diverter and the flue gas collection box for units with integral draft diverter be insulated with no less than R–7 insulation material before the start of the cool-down test. This is to reduce heat loss and to obtain a more accurate flue gas temperature at the test plane, where the flue gas temperature is measured during cool-down and heat-up test.

This requirement is not specified for the flue collector box in units with power burners. The Department, however, believes that the same insulation requirement on the flue collector box should apply since the test plane for temperature measurement for power burner units is the same as for units with draft diverter. Therefore, DOE is proposing the same insulation requirement (during cool-down and heat-up tests but not during jacket loss and steady-state tests) on flue collector box for power burner units. See appendix N to subpart B of part 430, section 6.3.

14. Piping Arrangement for Hot Water Boilers

Based on data provided by the Hydronic Institute to Standard Project Committee 103, an error was identified in the schematic figure for piping arrangement for hot water boilers in the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 (Figure 6) and in the DOE test procedure. The error was in the recirculation line which was shown as connected to the return side of constant head tank instead of connection to the supply side of the tank. DOE concurs with the Hydronic Institute and is including the revised schematic for hot water boilers in today's proposed amendments. See appendix N to subpart B of part 430, section 6.7.

15. Minimum Value for D_P and D_F

The current test procedure allows the minimum value for D_P and D_F to equal 0.0 on units where no air flows through the combustion chamber and heat exchanger when the burner is off. American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 sets the minimum value at 0.00001. Current measurement techniques preclude an accurate tracer gas test on units with a low off-cycle air flow rate. Therefore, it is very difficult to verify an "absolutely no air-flow" condition (this has been confirmed by National Institute of Standards and Technology). Accordingly, DOE proposes that a value of 0.05 for D_P be assigned for any units whose D_P value, when measured by the optional tracer gas method, is less than 0.10. See appendix N to subpart B of part 430, sections 7.4.3, 8.8.3, 8.10, and 10.15.

16. Maintaining Draft During Off-Cycle

American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 requires that a draft be maintained in the flue pipe for furnaces and boilers with oil-fueled or power gas burners. The Department proposes to clarify this requirement by specifying that it applies only to oil-fueled or power gas burners that employ barometric dampers for draft control. See appendix N to subpart B of part 430, sections 6.8, 8.3, and 8.6.

17. Test Requirements for Modulating Units

The DOE current test procedure requires that testing and calculation procedures for cyclic tests (cool-down and heat-up) be conducted at both the maximum and the reduced input rates for units with two-stage modulating controls and at the reduced input rate for units with step modulating controls. American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 specifies the same calculation procedures but is unclear (in sections 11.4 and 11.5) as to the type of tests to be performed and the test results to be used in the calculations that follow. The SPC 103 has recommended limiting values for the terms T_c, $Effy_{ss,M}$ and $Q_{out,M}$ and the conditions under which these limits apply, DOE today is proposing such recommendations to the applicable sections. See appendix N to subpart B of part 430, sections 10.13, and 10.14.

The Department also is proposing to clarify the requirement for determining the draft factors D_P and D_F for units with modulating control. To be consistent with other cyclic test requirements, DOE proposes that the optional tracer gas procedure be conducted at both the maximum and the reduced input rates for units with two-stage controls and at the reduced input rate for units with step modulating controls. See appendix N to subpart B of part 430, section 8.8.4.

18. On-cycle Time Constant and Off-cycle Time Constant

In the current calculation procedure, both the on-cycle and off-cycle time constants use equations involving the logarithm of measured temperature difference at two specified time intervals. In testing some units, it is possible that the two temperatures will be close enough to cause a negative argument in the logarithm function and subsequent computation failure. To prevent this occurrence, the SPC 103 recommended a correction procedure specifying that when the temperatures difference is negative, the difference between the two temperatures be set to equal 0.1. DOE agrees with the correction procedure and is proposing it in today's document. See appendix N to subpart B of part 430, sections 10.3, and 10.4.

19. Multiplication Factor for Jacket Loss for Finned Tube Boilers for Isolated Combustion System

The Standard Project Committee 103 recommended the addition of the value C_J=0.5 as the multiplication factor jacket loss for finned tube boilers for Isolated Combustion System applications. This is consistent with the values of C_J assigned for other systems when installed as outdoor systems and as Isolated Combustion system. DOE

accepts the recommendation and is including it in today's proposal. See appendix N to subpart B of part 430, section 10.12.1.2.

20. Water Pump Energy Consumption

For hot water boilers, American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 assigns a constant value for water pump power (BE=0.13 KW) and no test measurement is required or allowed. This value is based on the average power consumption of water pumps shipped with boilers in 1978. To increase the accuracy of the energy descriptors, annual efficiency descriptors, and energy factor, which include electrical energy consumption and to capture the variability in pump efficiencies available for use with boilers, DOE today is proposing a test method which requires measuring the power consumption of the water pump used with the hot water boiler. This power consumption is used in the calculation of the energy descriptors, annual efficiency descriptors, and energy factor. See appendix N to subpart B of part 430, section 8.1.1.

21. Energy Factor

The current DOE test procedure includes a procedure for computing the annual auxiliary electrical energy consumption of fossil-fuel furnaces and boilers and an energy factor which includes both the fossil fuel and the auxiliary electrical energy consumption of the appliances. Specifically, "energy factor" is defined in the DOE test procedure as the ratio of the annual output of energy delivered to the heated space by fossil fuel to the total annual energy input to the appliance including auxiliary electrical energy.

Appendix B of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 defines "energy factor" in equation (1). Equation (1) is defined for an energy factor term which gives credit for the electrical energy that is recovered as usable heat such as from a blower motor in the circulating air stream. In addition, a factor F, representing the ratio of the heat energy required to generate the electricity consumed to the useful heat energy delivered at the appliance by the electricity is applied to the auxiliary electrical consumption to reflect the efficiency of all energy used to run the appliance. DOE considers equation (1) in American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 to be appropriate for describing the energy factor of the appliance when both fossil fuel and auxiliary electrical energy consumption are considered together. Therefore, DOE proposes to adopt equation (1) in Appendix B of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 and the accompanying procedure in Appendix C for isolated combustion systems as the energy factor. Three slight modifications are included in the procedure presented here. Those are: American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 equation (1) is corrected—divide Annual Fuel Utilization Efficiency term by 100 and multiply the right side of the equation by 100, the extra energy consumed by the combustion blower during post-purge is included in the calculation, and the energy consumed by the electrical intermittent or interrupted ignition device, if employed, is also included in the calculation of the energy factor. See appendix N to subpart B of part 430, Sections 10.19 and 10.21.

22. Annual Efficiency Descriptor

Since Annual Fuel Utilization Efficiency is defined in the Act in terms of an isolated combustion system, DOE believes that an additional energy descriptor, comparable to Energy Factor, is needed for those furnaces and boilers which are primarily installed indoors. For example, practically all mobile home furnaces are installed indoors and there are steps that could be taken to obtain a higher Annual Fuel Utilization Efficiency or Energy Factor, such as adding jacket insulation, which would have no impact on the actual efficiency of a furnace installed indoors. Because of the above, the Department proposes an additional new energy descriptor, annual efficiency descriptor, for those classes of furnaces which are installed indoors. See appendix N to subpart B of part 430, sections 10.20 to 10.26.

DOE proposes to adopt equation (1) in Appendix B of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 and the accompanying procedure in Appendix C for indoor installations as the Annual Efficiency. Again three slight modifications are included in the procedure presented here. Those are: American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 equation (1) is corrected—divide Annual Fuel Utilization Efficiency term by 100 and multiply the right side of the equation by 100, the extra energy consumed by the combustion blower during post-purge is included in the calculation, and the energy consumed by the electrical intermittent or interrupted ignition device, if employed, is also included in the calculation of Annual Efficiency.

The calculation of annual efficiency descriptor involves the determination of the heating seasonal efficiency and the Annual Fuel Utilization Efficiency based on an outdoor installation for all weatherized furnaces or boilers and based on an indoor installation for all non-weatherized furnaces or boilers. This is different from the existing requirement for non-weatherized furnaces where heating seasonal efficiency and Annual Fuel Utilization Efficiency are calculated on the basis of installation as an Isolated Combustion System. In today's proposal, the Annual Fuel Utilization Efficiency for non-weatherized furnaces is still based on an Isolated Combustion System system. Since the indoor values of the heating seasonal efficiency and Annual Fuel Utilization Efficiency need to be calculated and used to determine the AE, two sets of values for heating seasonal efficiency and the Annual Fuel Utilization Efficiency (one for the rating of the system based on Annual Fuel Utilization Efficiency (Isolated Combustion System) and the other for the annual efficiency descriptor (indoor system) need to be calculated. DOE believes that, with the calculation procedure computerized,[e] the effort involved in computing the two sets of values is insignificant since the same test data are used in the calculation and no additional test is required. Specifically, the only changes between the two computer runs are the indices (codes) which specify the installation location and the system number.

The major difference between the Annual Fuel Utilization Efficiency and the Annual Efficiency will be the inclusion of the auxiliary electrical energy in the calculation for the annual efficiency term and the application of the F factor (the ratio of the energy consumed at the source of electrical generation to the electrical energy delivered at the furnace or boiler) to the electrical energy term in the denominator. Because of this, the value of the Annual Efficiency will be noticeably smaller than the corresponding Annual Fuel Utilization

[e] National Institute of Standards and Technology Annual Fuel Utilization Efficiency-BF version 4.0 computer program.

Efficiency value, which includes only fossil fuel energy in its calculation.

23. Other Minor Modifications to American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988

DOE also is proposing to adopt corrections and clarifications of several typographical errors and inconsistencies identified by Standard Project Committee 103 following publication of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988. The following are the listing of these modifications, referring to section numbers of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988:

1. Section 8.8.2.2.—Delete the two words "flue or" in the first line.
2. Section 9.7.3.—Delete the phrase "if draft is not maintained during the cool-down" in the second sentence.
3. Section 10.—Revise the definitions for the variables M_C and Q_C to: M_C=Mass of condensate, lb Q_C=fuel energy input during entire (3 or 6 cycles) cyclic condensate collection test, Btu
4. Section 11.2.4.—Delete the three words "oil or power" in the first sentence of the second paragraph. Also, replace the third paragraph with "For direct exhaust gas or oil furnaces and boilers, S/F=1."
5. Section 11.2.6.—Add missing right closing bracket in Table 7 for L_{ss}.
6. Section 11.2.9.9.—Correct the definitions for D_F for different systems to be consistent with the tabulated values of System No. versus D_F in Table 6. Also, correct the constant term 0.75 in the definition for D_S to 0.79 for systems 4 and 8.
7. Section 11.2.9.14.—Correct the section numbers which were referenced in the definitions for $\psi_{F,O,X}$ (corrected from 11.2.9.5. to 11.2.9.7.) and $\psi_{F,O,X}$ (corrected from 11.2.9.7. to 11.2.9.5.).
8. Section 11.2.9.16.—Change the system numbers from 9–12 to 9–10.
9. Section 11.2.10.6.—Correct the referenced section number in the definition for the variable F6 from 11.2.9.18. to 11.2.9.19.
10. Sections 11.4.8.5., 11.4.8.8., and 11.4.8.10.—Set the minimum default values for the terms T_C (if $T_C<0$, set $T_C=0$), $Effy_{SS,M}$ (if $Q_{OUT,R}>DHR$, set $Effy_{SS,M}=Effy_{SS,R}$), and $Q_{OUT,M}$ (IF $Q_{OUT,R}>DHR$, $Q_{OUT,M}=Q_{OUT,R}$) as recommended by American Society of Heating, Refrigerating, and Air-conditioning Engineers Standard Project Committee 103.
11. Section 11.7.2.—Delete equation $D_S=(D_O)(D_P)$ for system number 8 and substitute $D_S=[(0.79+D_P)/1.4]\ (D_O)$.
12. Appendix E of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988—Correct the typographical errors in the defining equations for the variables F5, F6, and F8 where a constant term "+ 28" was missing from a term in the denominator of the equations as they appeared in Appendix E. See Section 10.27 and Table 2 of the proposed test procedure for details of the corrected terms of the equations.

B. Vented Home Heating Equipment Test Procedure

The Department published the test procedure for vented home heating equipment on May 2, 1978. 43 FR 20182. DOE amended this test procedure on March 28, 1984. 49 FR 12169, to include a simplified procedure for heaters with modulating controls, manually controlled vented heaters, vented heaters equipped with thermal stack dampers, and floor furnaces. 43 FR 20182.

DOE today proposes to amend the vented heating equipment test procedure: (1) To establish an annual efficiency descriptor to account for the auxiliary electrical energy consumed by the fan or blower in addition to the fossil fuel consumed; (2) to revise the calculation procedure for Annual Fuel Utilization Efficiency; and (3) to revise the calculation procedure for weighted average steady-state efficiency for manually controlled heaters with various input rates.

1. Annual Efficiency Descriptor

DOE determined that an additional new energy descriptor is needed to adequately address the energy used by some of the design options considered for energy standard level evaluation because the current energy descriptor, Annual Fuel Utilization Efficiency, does not include electrical consumption. For example, design options, such as adding an induced draft fan, improve thermal efficiency but, at the same time, add electrical consumption which unless accounted for in the energy descriptor could lead to higher Annual Fuel Utilization Efficiency with little or no net energy savings. Therefore, the Department is proposing a new energy descriptor, Annual Efficiency (AE). See appendix O to subpart B of part 430, section 4.6.

The Department's current test procedure for vented home heating equipment prescribes the calculation of the Annual Fuel Utilization Efficiency based on the energy consumption of fossil fuel only. Since auxiliary electrical energy is consumed by the appliances for the operation of the fan or blower, DOE believes a more appropriate term for evaluating the efficiency of the appliances would include both the fossil fuel and the auxiliary electrical energy consumption of the appliances.

American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988, appendix B and appendix C, includes calculations for energy factor which uses both the fossil fuel and the auxiliary electrical energy consumed by the appliance. It also gives credit for the electrical energy that is recovered as usable heat as is the case of a blower motor that is in the circulating air stream. In addition, a factor F, representing the ratio of the heat energy required to generate the electricity consumed to the useful heat energy delivered at the appliance by the electricity, is applied to the auxiliary electrical consumption to reflect the true amount of energy used to run the blower or pump. The resulting formula is designated as equation (1) in Appendix B of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 which DOE considers the appropriate term to describe the Annual Efficiency of the appliance when both fossil fuel and auxiliary electrical energy consumption are considered together.

Therefore, DOE proposes to adopt equation (1) in Appendix B of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 and the accompanying procedure in Appendix C of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 as the basis of a new rating term called Annual Efficiency for vented home heating equipment. The Department's proposal includes some modifications to the calculation procedure contained in Appendix B and Appendix C of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988. The DOE test procedure for vented home heating equipment does not require the recording of the blower on-time and off-time; therefore, the

operating time of the blower and the burner are assumed to be the same as the burner. This results in a simpler procedure than the one developed for the furnace test procedure discussed previously. The complete calculation procedure for the Annual Efficiency of vented home heating equipment is included in this document and may be found in appendix O to subpart B of part 430.

2. Pilot Light Energy Consumption

On September 21, 1990, Appalachian Stove and Fabricators, Inc. (Appalachian) and Valor Incorporated (Valor) each filed a "Petition for Waiver" requesting that DOE grant a waiver from the DOE vented home heating equipment test procedure regarding (a) pilot light energy consumption and (b) average weighted steady-state efficiency for their manually controlled vented home heaters.

With regard to the pilot light energy consumption, the current DOE test procedure requires the measurement of energy input to the pilot light (Q_P) and the use of this data in the calculation of Annual Fuel Utilization Efficiency for the energy consumed by the pilot light when the heater is not in operation. Each petition cites a vented heater (Appalachian's AGS–44 model and Valor's model VN–32, respectively) fitted with a piezo igniter which fires a transient pilot for smooth and safe ignition of the main burner. The user manually operates the pilot light, the igniter, and the main burner. The pilot light, which remains on during the operation of the heater at all (three) settings of operation, is automatically turned off when the heater's control knob is set to the "OFF" position. Operation of these units, according to the manufacturers' instructions, results in lower energy consumption and higher Annual Fuel Utilization Efficiency than calculated by the current DOE test procedure. Since the current DOE test procedure does not address this issue, the manufacturers each requested that the term involving the pilot energy consumption (Q_P) be deleted in the calculation of Annual Fuel Utilization Efficiency, resulting in an Annual Fuel Utilization Efficiency which is equal to the heating seasonal efficiency of the heater.

DOE granted the petitions, excluding the pilot light energy input term in the calculation of Annual Fuel Utilization Efficiency, subject to the heater having an easy-to-read label near the control knob instructing the user to turn the valve to the OFF position when the heater is not in use.[9]

Having made the above determination, DOE today is proposing to amend the test procedure accordingly for vented home heating equipment. See appendix O to subpart B of part 430, section 3.5.

3. Weighted Average Steady-State Efficiency

Appalachian and Valor also requested waivers from the current DOE test procedure for manually controlled vented heaters with various input rates where the weighted average steady-state efficiency is determined at 50 percent ±5 percent of the maximum fuel input rate.[10] The manufacturers each stated that the manual controls on their respective heaters give three fixed gas rates with the minimum rate at 65.3 percent of the maximum rate. This precluded testing units at the 50 percent ±5 percent rate as specified in the DOE test procedure. The manufacturers each requested approval for an alternate test procedure to determine the steady-state efficiency based on a weighted average of efficiencies obtained at the three fixed input settings.

The Department denied use of an alternate test procedure based on a weighted average of three different firing rates.[11] Instead, DOE required that the steady-state efficiency of the heaters be measured at their minimum fuel input rate of 65.3 percent of their maximum input rate. This minimum fuel input rate is closest to the 50 percent ±5 percent at which other manually controlled vented heaters are being rated. DOE believed that any other method would result in an unjustified higher Annual Fuel Utilization Efficiency that would be unfair to other manufacturers of similar heaters because relatively higher firing rates would generally result in higher burner efficiencies.

Accordingly, DOE is proposing today that calculation of the weighted average steady-state efficiency for manually controlled vented heaters use a minimum fuel input rate no higher than two-thirds of the maximum fuel input rate of the heater. See appendix O to subpart B of part 430, section 4.2.4.

C. Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

The Department published the pool heater test procedure on February 7, 1989, 54 FR 6076, referencing American National Standards Institute Standard Z21.56–1986 for gas-fired pool heaters. DOE today proposes to amend the pool heater test procedure to include an annual efficiency descriptor which accounts for the auxiliary electrical energy consumed by the fan or pump in addition to the fossil fuel consumed and to reference the latest version of American National Standard Institute Standard, Z21.56–1990, recognizing that the sections referenced by the DOE pool heater test procedure have not changed.

1. Annual Efficiency Descriptor

DOE determined that an additional new energy descriptor is needed to adequately address the energy used by some of the design options considered for standard level evaluation because the current energy descriptor thermal efficiency does not include pilot light usage or electrical consumption. For example, to consider electronic ignition, the savings in pilot light gas consumption would have to be accounted for in the descriptor. Furthermore, design options, such as fan assisted combustion, improve thermal efficiency but, at the same time, add electrical usage which, unless accounted for in the energy descriptor, could lead to higher thermal efficiency with little or no net energy savings. Therefore, the Department is proposing a new energy descriptor, Annual Efficiency. See appendix P to subpart B of part 430, section 4.1.

The current test procedure for pool heaters prescribes a calculation of the thermal efficiency which is based on the energy consumption of fossil fuel only. Since auxiliary electrical energy is consumed by the heaters for the operation of the fan or pump, DOE believes a more appropriate term for evaluating the efficiency of the heaters would be one which includes both the fossil fuel and the auxiliary electrical energy consumption of the heaters. Specifically, this Annual Efficiency is defined as the ratio of the annual output of energy delivered to the heated pool water by fossil fuel to the total annual energy input to the heater including auxiliary electrical energy.

The annual output of energy delivered to the pool water would be the thermal efficiency of the heater multiplied by the average annual fossil fuel energy used by the pool heater minus the energy used by the continuous pilot light (if used) during the average non-pool season hours. The total annual energy input to the heater, including auxiliary electrical energy, would be the average annual fossil fuel energy to the pool heater plus the average annual

[9] 56 FR 51711 and 56 FR 51714, October 15, 1991.
[10] Appendix O to subpart B of part 430.
[11] 56 FR 51711 and 56 FR 51714, October 15, 1991.

auxiliary electrical energy consumption for the pool heater.

The latter term (auxiliary electrical energy) is multiplied by a factor F which represents the ratio of the heat energy required to generate the electricity consumed to the useful heat energy delivered at the pool heater by the electricity to reflect the true amount of energy used to run the auxiliary electrical equipment. The average season of use of the pool in hours per year and the average burner operating hours during the pool season will be obtained from survey data on the Nation's use of heated pools. At the present time, season of use is assumed to be 4,464 hours per year, and the burner on-time per year is assumed to be 104 hours. These values are based on limited survey data available as of February 15, 1991.[12] DOE, today, proposes to adopt this annual efficiency descriptor using the F=3.37, the survey data on pool season, and burner operating hours.

III. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974 (Public Law 93–275), a copy of this document has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

Since test procedures are used to standardize the measurement of energy usage, and will not affect the quality or distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the Program is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. This Rulemaking, which amends existing part 430 of title 10, will not change the environmental effect of such regulation, and is an item which is "categorically excluded" (A5) by the Department of Energy regulations on National Environmental Policy Act Implementing Procedures (10 CFR part 1021) (57 FR 15122, 15152, April 24, 1992) (Appendix A to subpart D of part 1021, Categorical Exclusion A5.). Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

[12] Berkeley Solar Group and Xenergy, 1990. OP. Cit. P 8–9 and California Energy Commission. Electricity Report #8, California Energy Commission, Forecasting Division, Sacramento, California, as cited in the BGS/Xenergy Report.

IV. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this document to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (Public Law 96–345) (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis and that it be published at the time the proposed rule is published. This requirement (which appears in 5 U.S.C. 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of furnaces and/boilers, vented home heating equipment, and pool heaters. As previously discussed, the test procedures would not have significant economic impact, but rather, would provide common testing methods. Therefore, DOE certifies that the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VI. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

DOE has identified a substantial direct effect that today's proposed rule would have on State governments. It would initially preempt inconsistent State regulations. However, DOE has concluded that such effect is not sufficient to warrant preparation of a federalism assessment for the following reason: the Act provided for subsequent State petitions for exemption. Thus, a determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will then be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

VII. Review Under Section 32 of the Federal Energy Administration Authorization Act

The test procedures proposed today incorporate the commercial standards to measure the efficiency and capacity of furnaces and/boilers, vented home heating equipment, and pool heaters. The commercial standards are American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 and American National Standards Institute Standard Z21.56–1990.

Pursuant to section 301 of the Department of Energy Organization Act (Public Law 95–91), DOE is required to comply with section 32 of the Federal Energy Authorization Act, as amended by section 9 of the Federal Energy Administration Authorization Act of 1977 (Public Law 95–70).

The findings required of DOE by section 32 of the Act serve to alert the public and DOE regarding the use and background of commercial standards in a proposal and through the rulemaking process. They allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a proposed rulemaking.

DOE has evaluated American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1988 and American National Standards Institute Standard Z21.56–1990 with regard to compliance with section 32(b) of the Act. The Department is unable to conclude whether these standards fully complied with the requirements of section 32(b) of the Act, i.e., that they are developed in a manner which fully provided for public participation, comment, and review.

As required by section 32(c) of the Act, DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to prescribing final test procedures.

VIII. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the proposed test procedures set forth in

this document to the address indicated at the beginning of the document.

Comments should be identified both on the envelope and on the documents as "Furnaces, Vented Home Heating Equipment and Pool Heaters Test Procedures," (Docket No. EE–RM–93–501), Ten (10) copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All submittals received by the date specified at the beginning of this document will be considered by DOE before final action is taken on the proposed amendments.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and eight copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this document. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed test procedures, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this document. Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Furnaces, Vented Home Heating Equipment, and Pool Heaters Test Procedures," (Docket No. EE–RM–93–501), both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of group or class of persons that have such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of the statement prior to the hearing as indicated at the beginning of this document. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who made oral presentations, as well as employees of the U.S. Government who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statement to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this document. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues for Public Comment

DOE is interested in receiving comments and data concerning the accuracy and workability of these test procedures. Also, DOE welcomes discussion on improvements or alternatives to these approaches. In particular, DOE is interested in gathering comments on the following:

- The appropriateness of a new efficiency descriptor—annual efficiency descriptor—for vented home heating equipment that includes both the fossil-fuel and auxiliary electrical energy consumption;
- The appropriateness of a new efficiency descriptor—annual efficiency descriptor—for pool heaters that includes burner and pilot light usage fossil fuel and auxiliary electrical energy consumption;
- The appropriateness of a new efficiency descriptor—annual efficiency descriptor—for furnaces that includes both fossil fuel and auxiliary electrical energy for indoor installations;
- The appropriateness of a modified efficiency descriptor—energy factor—for isolated combustion installations; and
- The appropriateness of a test procedure for furnaces and boilers based

on an input/output method as opposed to the current and proposed method which measures losses only.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, July 23, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of chapter II of title 10, of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 is amended by adding definitions for terms "Annual Efficiency" and "Mobile Home Furnace" in alphabetical order, to read as follows:

§ 430.2 Definitions.

* * * * *

Annual Efficiency means the efficiency descriptor for fossil-fueled heating appliances that takes into account the energy consumed and the useful heat produced by the appliances from both the fossil fuel and the auxiliary electrical energy to the appliances, including a multiplication factor which represents the ratio of the energy consumed at the source of electricity generation (power plant) to the electrical energy delivered at the appliances (site), and that is calculated based on indoor installation for non-weatherized units and outdoor installation for weatherized units.

* * * * *

Mobile Home Furnace a direct vent furnace that is installed indoors and designed for use only in mobile homes.

* * * * *

3. Section 430.22 is amended as follows:

A. In § 430.22 (n)(1)(i), revise the words "Section 4.8 or 4.10" to read "Section 10.19.2 or 10.20.4" and in 430.22(n)(1)(ii), revise the words "Section 4.9" to read "Section 10.19.3" and revise the words "Section 4" to read "Section 10".

B. In § 430.22 (n)(2), revise the words "Section 4.6" to read "Sections 10.12.2, 10.13.6, and 10.14.2" and revise the words "Section 4.1 of Appendix N of this subpart" to read "Section 11.1 of ANSI/ASHRAE Standard 103–1988".

C. In § 430.22 (n)(3)(i), revise the words "Section 4.11 or 4.13" to read "Section 10.22.2 or 10.22.4" and in 430.22(n)(3)(ii), revise the words "Section 4.12" to read "Section 10.19.6.3".

D. In § 430.22 (n)(4), revise the words "Section 4.14" to read "Section 10.19".

E. In § 430.22, add paragraph (n)(6), revise paragraphs (o)(2), (o)(3), and (p)(1) and add paragraph (p)(3) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(n) Furnaces

* * * * *

(6) The annual efficiency for furnaces, expressed in percent, is the ratio of the sum of the annual fossil fuel output of useful energy plus the auxiliary electrical energy recovered as useful heat, to the sum of the annual energy input to the furnace (fossil fuel) plus the energy required to generate the auxiliary electrical energy delivered at the furnace, determined according to section 10.23 and 10.25 of appendix N of this subpart.

(o) Vented Home Heating Equipment

* * * * *

(2) The estimated annual operating cost for vented home heating equipment is the sum of:

(i) The product of the average annual fuel energy consumption, in Btu's per year for natural gas, propane, or oil fueled vented home heating equipment, determined according to section 4.6.2 of appendix O of this subpart, and the representative average unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 4.6.4 of Appendix O of this subpart, and the representative average unit cost in dollars per kilowatt-hours as provided pursuant to section 323(b)(2) of the Act, the resulting sum then being rounded off to the nearest dollar per year.

(3) The annual efficiency for vented home heating equipment, expressed in percent, is the ratio of the sum of the annual fossil fuel output of useful energy plus the auxiliary electrical energy recovered as useful heat to the sum of the annual energy input to the vented home heater (fossil fuel) plus the energy required to generate the auxiliary electrical energy delivered at the vented home heater determined according to section 4.6 of Appendix O of this subpart.

* * * * *

(p) Pool Heaters

(1) The estimated annual operating cost for pool heaters is the sum of:

(i) The product of the average annual fuel energy consumption, in Btu's per year of gas, or oil fueled pool heaters, determined according to section 4.2 of Appendix P of this subpart, and the representative average unit cost in dollars per Btu for gas or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act, plus

(ii) The product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 4.3 of Appendix P of this subpart, and the representative average unit cost in dollars per kilowatt-hours as provided pursuant to section 323(b)(2) of the Act, the resulting sum then being rounded off to the nearest dollar per year.

* * * * *

(3) The annual efficiency for pool heaters, expressed in percent, is the ratio of the annual fossil fuel output of useful energy, to the sum of the annual energy input to the pool heater (fossil fuel) plus the energy required to generate the auxiliary electrical energy delivered at the pool heater, determined according to section 4.1 of appendix P of this subpart.

* * * * *

4. Appendix N to subpart B of part 430 is revised to read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

1. *Scope.* The scope of this appendix shall be as specified in section 2.0 of ANSI/ASHRAE Standard 103–1988.

2. *Definitions.* Definitions shall include the definitions specified in section 3.0 of ANSI/ASHRAE Standard 103–1988 and the following additional definitions:

2.1 *Annual efficiency* means the ratio of annual output energy to annual input energy which includes both fossil fuel and auxiliary electrical energy. The annual output energy includes the auxiliary electrical energy recovered as useful heat. The annual input energy includes any non-heating season pilot input loss and a multiplication factor to the auxiliary electrical energy input at the appliances which represents the ratio of the energy consumed at the source of electricity generation to the electrical energy delivered at the appliances.

2.2 *ANSI/ASHRAE Standard 103–1988* means the test standard published in 1988 by ASHRAE, approved by ANSI on August 28,

1988, and entitled "Methods of Testing for AFUE of Residential Central Furnaces and Boilers."

2.3 *ASHRAE* means the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.

2.4 *Inlet damper* means a type of electro-mechanical damper upstream of the burner combustion air inlet that is an integral part of the burner and which is designed to automatically open the air flow passage to the burner box combustion air inlet when the burner is on and to automatically close off the air passage and restrict the air flow through the heat exchanger when the burner is off.

2.5 *Post purge* means the design that permits the continued operation of the combustion blower in a power vented unit, power burner unit, or forced draft unit for a period of time after the main burner is shut off for the purpose of venting of residue flue gases in the heat exchanger and the venting system.

2.6 *Thermal stack damper* means a type of stack damper which is dependent for operation exclusively upon the direct conversion of thermal energy of the stack gases to open the damper.

3.0 *Classifications.* The classifications shall be as specified in section 4.0 of ANSI/ASHRAE Standard 103–1988. Substitute sections 3.1, 3.1.1, 3.1.2, 3.1.3 and 3.1.4 of this appendix for sections 4.8, 4.8.1, and 4.8.2. of ANSI/ASHRAE Standard 103–1988.

3.1 *Off-Cycle Devices.*

3.1.1 *Stack damper.*

3.1.2 *Electro-mechanical inlet damper.*

3.1.3 *Electro-mechanical flue damper.*

3.1.4 *None.*

4. *Requirements.* Requirements shall be as specified in section 5.0 of ANSI/ASHRAE Standard 103–1988.

5. *Instruments.* Instruments shall be as specified in section 6.0 of ANSI/ASHRAE Standard 103–1988.

6. *Apparatus.* The apparatus used in conjunction with the furnace or boiler during the testing shall be as specified in section 7.0 of ANSI/ASHRAE Standard 103–1988. Substitute sections 6.1, 6.2, 6.3, 6.5, 6.6 and 6.7 of this appendix, respectively, for figure 1 of sections 7.2.1.1, 7.2.2.1, 7.2.2.2, 7.2.3.1, 7.3.2.1, 7.3.2.2, 7.3.3.1 and 7.3.1, and figure 6 is substituted with figure 1 of this appendix, supplement sections 7.2.2.3 and 7.3.2.3 with additional specifications as described in section 6.8 of this appendix, and section 6.4 of this appendix which supplements the apparatus section of ANSI/ASHRAE Standard 103–1988:

6.1 Gravity central furnaces. Note 2 in figure 1 of section 7.2.1.1 of ANSI/ASHRAE Standard 103–1988 is replaced with the following: Note # 2. 2" insulation (optional) with K=0.27 Btu•in./(hr•ft ^{2}•°F).

6.2 The following paragraphs supplement the requirements specified in sections 7.2.2.1 and 7.3.2.1 of ANSI/ASHRAE Standard 103–1988:

For units equipped with integral draft diverters which are mounted in an exposed position (not inside the overall unit cabinet), cover the diverter boxes (excluding any openings through which draft relief air flows) before the beginning of any test (including jacket loss test) with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil. For units equipped with integral draft diverters which are enclosed within the overall unit cabinet, insulate the draft diverter box with insulation described above before the cool-down and the heat-up tests described in sections 9.5 and 9.6 of ANSI/ASHRAE Standard 103–1988, respectively. Do not apply the insulation for the jacket loss test (if conducted) described in section 8.6 of ANSI/ASHRAE Standard 103–1988 and the steady-state test described in section 9.1 of ANSI/ASHRAE Standard 103–1988.

For furnaces equipped with draft hood and an electro-mechanical burner box inlet damper or an electro-mechanical flue damper, cover the 5-ft test stack with insulation having R-value of not less than 7 and an outer layer of aluminum foil before conducting the tracer gas measurement for the determination of the off-cycle loss factor K_1 described in section 8.9 of this appendix.

6.3 The following paragraph supplements the requirements specified in sections 7.2.2.2 and 7.3.2.2 of ANSI/ASHRAE Standard 103–1988:

For units with power burners, cover the flue collection box with insulation having R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests described in sections 9.5 and 9.6 of ANSI/ASHRAE Standard 103–1988, respectively. However, do not apply the insulation for the jacket loss test (if conducted) described in section 7.3 of ANSI/ASHRAE Standard 103–1988 and the steady-state test described in section 9.1 of ANSI/ASHRAE Standard 103–1988. For power vented units, insulate the shroud surrounding the blower impeller with insulation having an R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil before the cool-down and the heat-up tests. Do not apply the insulation for the jacket loss test (if conducted) and the steady-state test. Do not insulate the blower motor or block the air flow openings whose purpose is for cooling of the combustion blower motor or bearings.

6.4 Down flow furnaces. Install the internal section of vent pipe the same size as the flue collar for connecting the flue collar to the top of the unit if not supplied by the manufacturer. Do not insulate the internal vent pipe during the jacket loss test (if conducted) described in section 8.6 of ANSI/ASHRAE Standard 103–1988 and the steady-state test described in section 9.1 of ANSI/ASHRAE Standard 103–1988. Insulate the internal vent pipe before the cool-down and heat-up tests described in sections 9.5 and 9.6, respectively, of ANSI/ASHRAE Standard 103–1988 with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil. If the vent pipe is surrounded by a metal jacket, insulate the metal jacket with insulation as described for the vent pipe above. Install a 5-ft test stack of the same cross sectional area or perimeter as the vent pipe above the top of the furnace. Tape or seal around the junction connecting the vent pipe and the 5-ft test stack. Insulate the 5-ft test stack with not less than R–7 insulation and an outer layer of aluminum foil. See figure 2 of this appendix.

6.5 The following paragraphs supplement the requirements specified in section 7.2.3.1 of ANSI/ASHRAE Standard 103–1988:

For units with an integral draft diverter, cover the five feet of stack with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil. For units with draft hoods, insulate the flue pipe between the outlet of the furnace and the draft hood with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil.

For units with integral draft diverters which are mounted in an exposed position (not inside the overall unit cabinet), cover the diverter boxes (excluding any openings through which draft relief air flows) before the beginning of any test (including jacket loss test) with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil. For units equipped with integral draft diverters which are enclosed within the overall unit cabinet, insulate the draft diverter box with insulation described above before the cool-down and the heat-up tests described in sections 9.5 and 9.6 of ANSI/ASHRAE Standard 103–1988, respectively. Do not apply the insulation for the jacket loss test (if conducted) described in section 8.6 of ASHRAE Standard 103–1988 and the steady-state test described in section 9.1 of ANSI/ASHRAE Standard 103–1988.

6.6 The following paragraph supplements the requirements specified in section 7.3.3.1 of ANSI/ASHRAE Standard 103–1988:

For units with an integral draft diverter, cover the five feet of stack with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil. For units with draft hoods, insulate the flue pipe between the outlet of the furnace and the draft hood with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil.

For units with integral draft diverters which are mounted in an exposed position (not inside the overall unit cabinet), cover the diverter boxes (excluding any openings through which draft relief air flows) before the beginning of any test (including jacket loss test) with insulation having R-value of not less than 7 hr•ft ^{2}•°F/Btu and an outer layer of aluminum foil. For units equipped with integral draft diverters which are enclosed within the overall unit cabinet, insulate the draft diverter box with insulation described above before the cool-down and the heat-up tests described in sections 9.5 and 9.6 of ANSI/ASHRAE Standard 103–1988, respectively. Do not apply the insulation for the jacket loss test (if conducted) described in section 8.6 of ANSI/ASHRAE Standard 103–1988 and the steady-state test described in section 9.1 of ANSI/ASHRAE Standard 103–1988.

6.7 *Piping.* Substitute the following paragraph for section 7.3.1 of ANSI/ASHRAE Standard 103–1988:

See figure 1 of this appendix and figures 7, 8, and 9 of ANSI/ASHRAE Standard 103–1988 for typical piping arrangements for hot water and steam boilers including electric boilers.

6.8 Oil-fueled or power gas forced air central furnaces or oil-fueled or power gas

low pressure and hot water boilers. The following paragraph supplements the requirements specified in sections 7.2.2.3 and 7.3.2.3 of ANSI/ASHRAE Standard 103–1988:

Adjustment of draft is to be done only on units with barometric draft control.

7. *Testing conditions.* The testing conditions shall be as specified in section 8.0 of ANSI/ASHRAE Standard 103–1988 with the exception of sections 8.2.1.5.2, 8.6.1.1, Table 6, and sections 8.8.2.1, 8.8.2.2, 8.8.3 and 8.8.4.1 which are revised as described in sections 7.1, 7.2, 7.3, 7.4.1, 7.4.2, 7.4.3 and 7.5 of this appendix, respectively, and the inclusion of additional test conditions as described in section 7.5 of this appendix.

7.1 The following paragraph supplements the requirement specified in section 8.2.1.5.2 of ANSI/ASHRAE Standard 103–1988:

For units which employ a draft hood and equipped with an electro-mechanical burner inlet damper or an electro-mechanical flue damper upstream of the draft hood, install an additional thermocouple grid in a horizontal plane in the 5-ft test stack described in section 7.2.2.1 of ANSI/ASHRAE Standard 103–1988 and in section 6.2 of this appendix, located one foot from the test stack inlet (use figures 3A and 3B of ANSI/ASHRAE Standard 103–1988 for reference in the installation of the thermocouple grid in the test stack).

7.2 The following paragraphs supplement the requirements specified in section 8.6.1.1 of ANSI/ASHRAE Standard 103–1988:

For forced air central furnaces, the circulating air blower compartment is considered as part of the duct system and no surface temperature measurement of the blower compartment needs to be recorded for the purpose of this test.

For units with ventilation air openings on the top, front, or sides of the unit, those openings from which the ventilation air exits from the cabinet shall be taped or sealed with aluminum tape during this test. A smoke test during a steady-state test may be used to determine the openings where the ventilation air exits from the cabinet. On the taped openings, subdivide the area into the normal 36 sq. in. grids as in section 8.6.1.1 of ANSI/ASHRAE Standard 103–1988 and measure the surface temperatures in each grid with a surface thermocouple. Install the thermocouple over the aluminum tape if necessary.

For down flow furnaces, measure all cabinet surface temperatures of the heat exchanger and combustion section, including the bottom around the outlet duct and the burner door, using the 36 sq. in. thermocouple grid described in section 8.6.1.1 of ANSI/ASHRAE Standard 103–1988. If the burner door is louvered to allow for combustion air to enter, measure temperatures on the metal strips between the louvers using the normal 36 sq. in. grid. The cabinet surface temperatures around the blower section do not need to be measured (see figure 2), and the taping of the ventilation air openings shall be as described above.

7.3 *System Numbers.* Substitute table 1 of this appendix for Table 6 of ANSI/ASHRAE Standard 103–1988.

7.4 Optional tracer gas method for determining draft factors D_P, D_T, and D_S for systems equipped with power burners or direct vent.

7.4.1 The following paragraph supplements the requirements specified in section 8.8.2.1 of ANSI/ASHRAE Standard 103–1988:

For units with step modulating controls, the optional tracer gas procedure shall be conducted during the cool-down test described in section 9.7 of ANSI/ASHRAE Standard 103–1988 at the reduced input rate only. For units with two stage modulating controls, if the optional tracer gas procedure is conducted during the cool-down test described in section 9.7 of ANSI/ASHRAE Standard 103–1988 at the reduced input rate, it shall also be conducted at the maximum input rate, and vice versa.

7.4.2 Substitute the words "On systems for which the stack damper is to be closed during the cool-down test . . ." for the first sentence of section 8.8.2.2 of ANSI/ASHRAE Standard 103–1988 and remove the words "flue or" in the first line of section 8.8.2.2 of ANSI/ASHRAE Standard 103–1988.

7.4.3 The value *0.00001* at the end of section 8.8.3 of ANSI/ASHRAE Standard 103–1988 is substituted with the value *0.05*.

7.5 Method for determining off-cycle loss factor K_L for atmospheric systems with an integral draft diverter or draft hood and equipped with either an electro-mechanical inlet damper or with an electro-mechanical flue damper upstream of the draft diverter or draft hood that restricts the flow through the heat exchanger in the off-cycle. The following paragraph is an additional subsection under section 8.8 of ANSI/ASHRAE Standard 103–1988. The method shall apply only if the electro-mechanical damper (inlet damper or flue damper) closes completely within 10 seconds after the burner shuts off. Determine K_L (the ratio of off-cycle sensible heat loss tested with the electro-mechanical damper (inlet damper or flue damper) closed during the off-cycle to the off-cycle sensible heat loss tested with the electro-mechanical damper held open during the off-cycle) during two additional 10-minute duration cool-down tests. Conduct these two additional cool-down tests after the cool-down and heat-up tests described in sections 9.5 and 9.6 of ANSI/ASHRAE Standard 103–1988 are completed. During a short burner off period before the two additional cool-down tests but after the completion of the heat-up test, cover the 5-ft test stack with insulation on units equipped with draft hood as described in section 6.2 of this appendix, and, on units equipped with integral draft diverter, remove the blocking over the draft relief opening and the restriction over the test stack outlet but keep the insulation over the rest of the draft diverter surface on (see section 9.1.4 of ANSI/ASHRAE Standard 103–1988). Conduct the first additional cool-down test by first running the unit until steady-state conditions are reached (see section 9.1.2.1 of ANSI/ASHRAE Standard 103–1988) and then shutting the unit off with the electro-mechanical damper adjusted or bypassed so that the damper is held open during the resulting cool-down period. After the cool-down period, conduct the second additional cool-down test by again running the unit until steady-state conditions are reached and then shutting the unit off but with the electro-mechanical damper operating as designed during the resulting cool-down period. Measure the stack gas mass flow rate ($M_{s,cov}$) and the stack gas temperature during the two additional cool-down periods described above at between 5 and 6 minutes into the cool-down period using tracer gas as described in section 8.9 of this appendix and compute the off-cycle sensible heat losses over this one minute interval and the loss factor K_L with the calculation procedures as described in section 10.16 of this appendix.

7.6 The following paragraph supplements the requirements as specified in section 8.8.4.1 of ANSI/ASHRAE Standard 103–1988:

Note that the area A_S is the cross sectional area of the flue pipe, not the area inside any ring that is attached to the inside of the flue pipe. Measure the area of any holes or cut outs in the stack damper plate, $A_{O.D.}$, and either measure or obtain from the manufacturer of the stack damper leakage area, $A_{O.L.}$, at the damper shaft and around the damper edge when the damper is at the closed position. Both areas shall be measured at the plane of the damper.

8.0 *Test procedure.* Testing and measurements shall be as specified in section 9.0 of ANSI/ASHRAE Standard 103–1988 with the exception of sections 9.5.1.1 and 9.5.1.2.1 which are substituted by sections 8.2 and 8.4 of this appendix, respectively, and sections 9.1.2., 9.1.2.2.1, 9.1.2.2.2, 9.1.2.3.1, 9.5.1.2, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, 9.5.2.3, 9.6.1, 9.7 and 9.10 are replaced by sections 8.1, 8.3, 8.5, 8.6, 8.7 and 8.8 of this appendix, respectively, and the inclusion of the additional procedures in sections 8.9, 8.9.1 to 8.9.7 and 8.11 of this appendix, as follows:

8.1 *Steady-State Condition and Requirements.*

8.1.1 In sections 9.1.2.2.1 and 9.1.2.2.2 of ANSI/ASHRAE Standard 103–1988, in the sentence ". . . measure the steady-state electric power to the *power burner* on units so equipped.", substitute the word *burner* for the phrase *power burner*. Also in sections 9.1.2.2.1 and 9.1.2.2.2 of ANSI/ASHRAE Standard 103–1988, substitute the following for the last sentence "For hot water boilers, use a steady-state water pump power of 0.13 kW.":

"For hot water boilers, measure the steady-state electrical power to the water pump the same way as for the air blowers for furnaces. *See section 7.7, Fig. 11 of ANSI/ASHRAE Standard 103–1988.*"

8.1.2 The following paragraph supplements the requirement specified in sections 9.1.2.2.1 and 9.1.2.2.2 of ANSI/ASHRAE Standard 103–1988:

For burners equipped with an intermittent or interrupted ignition device (electric spark ignition, glow coil, or hot surface, etc.) also measure the total electric power to the burner when the device is on, PE_T. Measure and record the length of the time interval when the interrupted ignition device is on, t_{IG} with a stop watch.

8.1.3 The following paragraph supplements the requirement specified in

section 9.1.2.3.1 of ANSI/ASHRAE Standard 103–1988:

On units employing draft hood, secure a sample of the stack gases at either a horizontal plane in the stack 12 in. downstream of the draft hood or in a horizontal plane 6 in. from the top of the test stack. Make sure that there are no holes or air leaks in the section of the stack from the draft hood up to the location where the stack gas is sampled. Determine the concentration by volume of carbon dioxide (CO_2,s) present in dry stack gas. Use figures 3A and 3B (test stack for units with draft diverter) as reference for the location of CO_2 measurement.

8.2 Gas- and oil-fueled gravity and forced air central furnaces without stack dampers—cool-down test. The following paragraphs are in place of the requirements specified in section 9.5.1.1 of ANSI/ASHRAE Standard 103–1988:

Turn off the main burner after steady-state testing is completed and measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ANSI/ASHRAE Standard 103–1988 at 1.5 ($T_{F,OFF}(t_3)$) and 9 minutes ($T_{F,OFF}(t_4)$) after burner shuts off. An integral draft diverter shall remain blocked, insulated, and the stack restriction shall remain in place. On atmospheric systems with an integral draft diverter or draft hood and equipped with either an electro-mechanical inlet damper or an electro-mechanical flue damper which closes within 10 seconds after the burner shuts off to restrict the flow through the heat exchanger in the off-cycle, bypass or adjust the control for the electro-mechanical damper so that the damper remains open during the cool-down test.

For furnaces that employ post purge, measure the length of the post purge period with a stopwatch. The time from burner off to combustion blower off (electrically de-energized) shall be recorded as t_p. Measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ANSI/ASHRAE Standard 103–1988 at the end of post purge period t_p ($T_{F,OFF}(t_p)$) and at the time ($1.5+t_p$) minutes ($T_{F,OFF}(t_3)$) and ($9.0+t_p$) minutes ($T_{F,OFF}(t_4)$) after the main burner shuts off. For the cases where the measured t_p is less than or equal to 5 seconds, it shall be tested as if there was no post purge.

8.3 In section 9.5.1.2 of ANSI/ASHRAE Standard 103–1988, substitute the following sentence for the sentence "For oil-fueled or power gas burner furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gage of the average steady-state draft.":

"For oil-fueled or power gas burner furnaces employing barometric dampers for draft control, maintain the draft in the flue pipe within ±0.01 in. of water gage of the average steady-state draft."

8.4 *Gas- and oil-fueled gravity and forced air central furnaces without stack dampers—cool-down test.* The following paragraph is in place of the requirements specified in sections 9.5.1.2.1 and 9.5.1.2.2 of ANSI/ASHRAE Standard 103–1988:

For a furnace with adjustable fan control, this time delay will be 1.5-minute for condensing furnaces. For non-condensing furnaces with adjustable fan control, this delay shall be 3.0-minute or until the supply air temperature drops to a value of 40°F above the inlet air temperature whichever results in the longest fan on-time.

For a furnace without adjustable fan control or with the type of adjustable fan control whose range of adjustment does not allow for the delay times specified in the above paragraph, the control shall be bypassed and the fan manually controlled to give the delay times specified in the above paragraph.

For a furnace which employs a single motor to drive the power burner and the indoor air circulating blower, the power burner and indoor air circulating blower shall be stopped together.

For a power burner employing post purge where the post purge period is controlled by the fan control during the cool-down period, the fan control shall be adjusted to give a time as specified above and the combustion blower and the fan shall be stopped together as designed.

8.5 *Gas- and oil-fueled boilers without stack dampers.* The following paragraph supplements the requirements specified in section 9.5.2.1 of ANSI/ASHRAE Standard 103–1988:

For boilers that employ post purge, measure the length of the post purge period with a stopwatch. The time from burner off to combustion blower off (electrically de-energized) shall be recorded as t_p. Measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ANSI/ASHRAE Standard 103–1988 at the end of post purge period t_p ($T_{F,OFF}(t_p)$) and at the time ($3.75 + t_p$) minutes ($T_{F,OFF}(t_3)$) and ($22.5 + t_p$) minutes ($T_{F,OFF}(t_4)$) after the main burner shuts off. For the cases where the measured t_p is less than or equal to 5 seconds, it shall be tested as if there was no post purge.

8.6 In section 9.5.2.3 of ANSI/ASHRAE Standard 103–1988, substitute the following for the sentence "For oil-fueled or power gas burner units not equipped with stack dampers, maintain the draft in the flue within the same ranges specified in section 9.5.1.2.":

"For oil-fueled or power gas burner units employing barometric dampers for draft control and not equipped with stack dampers, maintain the draft in the flue within the same ranges specified in section 9.5.1.2."

8.7 The following paragraph supplements the requirements specified in section 9.6.1 of ANSI/ASHRAE Standard 103–1988:

For a unit designed to operate with an unvarying time delay (case 3 described in section 9.6.1 of ANSI/ASHRAE Standard 103–1988), the unit shall operate as designed except that the time delay shall be not less than 20-second. If the delay is less than 20 seconds, the blower control shall be bypassed and the blower started manually 20 seconds after the burner starts up. If the time delay is adjustable by dip switch or jumper terminals, select the time delay closest to the 1.5-minute specified except when the maximum time delay that can be selected is less than 20 seconds in which case the blower control shall be bypassed and the blower started manually 20 seconds after the burner starts up.

8.8 Optional tracer gas test procedures for determining draft factors for D_p, D_T, and D_S for systems equipped with power burners or direct vent and not equipped with stack dampers. The following are deletions and additions to sections 9.7 and 9.7.3 of ANSI/ASHRAE Standard 103–1988:

8.8.1 In section 9.7.3 of ANSI/ASHRAE Standard 103–1988, the sentence "At the same time, if draft is not maintained during the cool-down, measure the flue gas temperature, $T_{F,OFF}$, using the thermocouple grid described in section 7.6." is replaced with: At the same time, measure the flue gas temperature, $T_{F,OFF}$, using the thermocouple grid described in 7.6.

8.8.2 The following paragraph supplements the requirements specified in section 9.7.3 of ANSI/ASHRAE Standard 103–1988:

For systems employing post purge with post purge time period t_p (see sections 8.2 and 8.5 of this appendix), measure the percent volumetric concentration of the tracer gas present in the diluted flue gas sample, C_T, at between ($5+t_p$) and ($6+t_p$) minutes after the burner shuts off. During the same time period, measure the flue gas temperature, $T_{F,OFF}$, using the thermocouple grid described in section 7.6 of ANSI/ASHRAE Standard 103–1988.

8.8.3 Substitute the value 0.05 for the value 0.00001 at the end of the paragraph in section 9.7.4 of ANSI/ASHRAE Standard 103–1988.

8.8.4 For units with two stage modulating controls the optional tracer gas test shall be conducted at both the maximum and the reduced inputs. For units with step modulating controls, the optional tracer gas test shall be conducted at the reduced input only.

8.9 Tracer gas test procedures for determining off-cycle loss factor K_L for atmospheric systems with integral draft diverter or draft hood and equipped with either an electro-mechanical inlet damper or an electro-mechanical flue damper that restricts the flow through the heat exchanger in the off-cycle.

8.9.1 The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered. Obtain the concentration of tracer gas present in the flue gas sample (C_T) using an analyzer or instrument with accuracy of ±2 percent in the measured value. Determine the temperature of the tracer gas entering the flow meter (T_T) and the barometric pressure (P_B).

8.9.2 After the completion of the heat-up test in section 9.6 of ANSI/ASHRAE Standard 103–1988, turn the burner off. On units equipped with an integral draft diverter, remove the blocking over the draft diverter and the restriction in the test stack that are installed during the steady-state test (in preparation for the cool-down test) in section 9.1.4 of ANSI/ASHRAE Standard 103–1988. Do not remove the insulation covering the draft diverter surfaces. On units

equipped with draft hood, cover the 5-ft test stack with insulation material with R-value of no less than 7 hr-ft²-°F/Btu and an outer layer of aluminum foil as described in section 6.2 of this appendix. In the mean time, sample and feed the ambient air to the tracer gas analyzer and record the background concentration C_{TB} of the tracer gas to be used for the test (one data point is usually sufficient).

8.9.3 Turn the burner on until steady-state conditions are again achieved as specified in section 9.1.2.1 of ANSI/ASHRAE Standard 103–1988. Turn the burner off for a 10-minute cool-down period. Adjust or bypass the electro-mechanical damper (inlet damper or flue damper) so that it remains open during this cool-down period. Within one minute after the unit is shut off to start this cool-down test, begin feeding a tracer gas with a known, certified concentration C_{TM} at a constant flow rate V_T into the lower part of the test stack just above the test plane where the stack thermocouple grid is located (see section 8.2.1.5.1 of ANSI/ASHRAE Standard 103–1988). Periodically measure the value of V_T with an instantaneously reading flow meter having an accuracy of ±3 percent of the quantity measured and maintain that value of tracer gas flow rate at less than one percent of the air flow rate through the test stack.

8.9.4 Within one minute after the tracer gas flow is started, connect the tracer gas sampling line to the sampling probe located at a plane inside and 6 in. below the top exit of the test stack. Measure the transport delay time which is equal to the time between the connecting of the sampling line and the initial response of the tracer gas analyzer. Add to this transport time the time required for the analyzer to reach 90 percent of its steady-state value as specified in the analyzer's operation manual. The sum of these two values is the tracer gas sample delay time needed to match the concentration measurement to the temperature measurement in the off-period loss calculation. Make sure that a well mixed sample is collected by using a multi-hole sampling probe as recommended in Appendix D, section B of ANSI/ASHRAE Standard 103–1988. Return the sample gas (after exiting the gas analyzer) to the top of the test stack downstream of the plane of collection.

8.9.5 At 5 minutes after the unit is shut off to start the cool-down test, measure and record the percent volumetric concentration of tracer gas present in the stack gas sample, C_T, at the location specified in section 8.9.4 of this appendix. At the same time, measure the stack gas temperature, $T_{S,OFF}$, using the thermocouple grid in the test plane (see section 8.2.1.5.1 of ANSI/ASHRAE Standard 103–1988). The data measurement and recording should be done at a time interval, Δt, of 5 seconds for the next 2 to 3 minutes. The exact length of time required for the tracer gas data measurement is equal to the tracer gas sample delay time (see section 8.9.4 of this appendix) plus 1 minute. (Even though only one minute of tracer gas data are required for the computation of the off-cycle loss, the longer time is needed to take into account the time delay between the concentration data and the temperature data.) Stop the tracer gas injection and sampling after the required data are measured and recorded. Disconnect the tracer gas sampling line from the sample probe and sample the ambient air to clear the line.

8.9.6 At the end of the 10-minute cool-down period, turn on the burner until steady-state conditions are again achieved as specified in section 9.1.2.1 of ANSI/ASHRAE Standard 103–1988. Turn the burner off for another 10-minute cool-down period. Let the electro-mechanical damper (inlet damper or, flue damper) close the way it is designed to. Repeat the test steps of sections 8.9.3 through 8.9.5 of this appendix except that the electro-mechanical damper is to remain closed. Note that the tracer gas feeding rate, V_T, may have to be adjusted to a lower rate to keep the sample concentration within the range of the gas analyzer used.

8.9.7 The rate of the stack gas flow through the stack, the off-cycle sensible loss rate, and the loss factor K_L are calculated by the equations in section 10.16 of this appendix.

8.10 Substitute the value 0.05 for the value 0.00001 in the first sentence of section 9.10 of ANSI/ASHRAE Standard 103–1988.

8.11 *Direct measurement of off-cycle losses testing method.*

9. *Nomenclature.* Nomenclature shall include the nomenclature specified in section 10.0 of ANSI/ASHRAE Standard 103–1988 with the exception of the variables M_C,PE and Q_C which are revised in this appendix and the following additional variables:

AE=Annual Efficiency, percent

A_O=minimum opening area (including leakage) of stack damper when closed, in²
$=A_{O,D}\cos\Omega+A_{O,L}$

$A_{O,D}$=open area (holes and cut-outs) in stack damper plate, in²

$A_{O,L}$=leakage area around stack damper shaft and damper edges, in²

C_{TB}=concentration by volume of the tracer gas in the background, percent

D_{OI}=infiltration correction factor for stack damper effectiveness

K_L=off-cycle loss factor for atmospheric burner with burner inlet damper or with flue damper upstream of the integral draft diverter or draft hood

M_C=mass of condensate, lb

PE=electrical power to burner under steady-state operation, kW

PE_T=total electrical power to burner when the electrical intermittent or interrupted ignition device if employed is on, kW

PE_{IG}=PE_T-PE, electrical power to the electrical intermittent or interrupted ignition device, kW

Q_C=fuel energy input during entire (3 or 6 test cycles) cyclic condensate collection test, Btu

$q_{S,OFF}$=off-cycle sensible loss rate, Btu/min.

$Q_{S,OFF}$=1 minute sum of the measured $q_{S,OFF}$•Δt, where Δt is defined below, Btu

t_{DELAY}=delay time, sum of tracer gas analyzer response time to reach 90 percent of the steady state value and the gas transport time delay, minutes

t_{IG}=electrical intermittent or interrupted ignition device on-time, minutes

t_P=power burner post purge time period, minutes

$T_{F,OFF}(t_P)$=off-cycle flue gas temperature at the end of power burner post purge period, °F

y_{IG}=ratio of electrical intermittent or interrupted ignition device on-time to average burner on-time

y_P=ratio of power burner combustion blower on-time to average burner on-time

Δt=time interval between each measurement of temperature or tracer gas concentration, seconds

10. *Calculation of derived results from test measurements.* Calculations shall be as specified in section 11.0 of ANSI/ASHRAE Standard 103–1988 with the exception of sections 11.2.4, Table 7 (of section 11.2.6), 11.2.9.4, 11.2.9.6, 11.2.9.9, 11.2.9.14, 11.2.9.16, 11.2.9.19, 11.2.9.20, 11.2.10.6, 11.2.10.8, 11.2.11, 11.2.12, 11.3.12, 11.4.8.1.2, 11.4.8.5, 11.4.8.8, 11.4.8.10, 11.4.12, 11.5.12, 11.6.4, 11.7.1, 11.7.2, 11.2.9.18, 11.4, 11.5 and Appendix E which are substituted, and the inclusion of additional calculations in sections 10.16, 10.17, 10.18, 10.19 and 10.21 of this appendix, as follows:

10.1 Remove the words "oil or power" in the first sentence of the second paragraph of section 11.2.4 of ANSI/ASHRAE Standard 103–1988 and the beginning of the sentence is substituted by "For gas furnaces and boilers requiring draft relief:". The first sentence in the fourth paragraph of section 11.2.4 (14th line from the beginning of the section) of ANSI/ASHRAE Standard 103–1988 is substituted by "For oil or gas power furnaces and boilers tested with barometric dampers but not marketed and sold with attached barometric dampers, S/F shall be 1.4". The sentence in the third paragraph of section 11.2.4 of ANSI/ASHRAE Standard 103–1988, "For gas furnaces and boilers not requiring draft relief: S/F=1" is substituted by "For direct exhaust gas and oil furnaces and boilers: S/F=1".

10.2 *Table 7.* A right closing bracelet is added at the end of the equation defining $L_{n,SS}$ in Table 7 of section 11.2.6 of ANSI/ASHRAE Standard 103–1988.

10.3 *On-cycle time constant.* The following calculations procedures supplement the procedures specified in section 11.2.9.4 of ANSI/ASHRAE Standard 103–1988:

If $T_{F,ON}(t_1) \geq T_{F,SS}$, use $T_{F,ON}(t_1)=T_{F,SS}-0.2$
If $T_{F,ON}(t_2) \geq T_{F,SS}$, use $T_{F,ON}(t_2)=T_{F,SS}-0.1$
If $T_{F,ON}(t_1) \geq T_{F,ON}(t_2)$, use
$T_{F,ON}(t_1)=T_{F,ON}(t_2)-0.1$

10.4 *Off-cycle time constant.* The following calculation procedures supplement the procedures specified in section 11.2.9.6 of ANSI/ASHRAE Standard 103–1988:

If $T_{F,OFF}(t_4) \leq T_{F,OFF}(t_3)$, use
$T_{F,OFF}(t_4)=T_{F,OFF}(t_3)+0.1$
If $T_{F,OFF}(t_3) \leq T_{F,OFF}(t_5)$, use
$T_{F,OFF}(t_3)=T_{F,OFF}(t_5)+0.2$
If $T_{F,OFF}(t_3) \leq T_{F,OFF}(t_4)$, use
$T_{F,OFF}(t_3)=T_{F,OFF}(t_4)+0.1$

For furnaces or boilers employing post purge with post purge period t_P (see sections 8.2 and 8.5 of this appendix), the time t_3, t_4, and t_5 are defined as:

For furnaces:

t_3=(t_p+1.5) minutes
t_4=(t_p+9.0) minutes
t_5=infinity.

For boilers:

t_3=(t_p+3.75) minutes
t_4=(t_p+22.5) minutes
t_5=45 minutes

where:

t_p=is as defined in 8.2 (furnaces) and 8.5 (boilers) of this appendix

10.5 Substitute the following for the definitions of D_F in section 11.2.9.9 of ANSI/ASHRAE Standard 103–1988:

D_F=off-cycle flue gas draft factor equal to:
=1.0 for units with atmospheric burners, systems 1, 5, 9 (except direct vent and atmospheric burners with either electro-mechanical inlet dampers or flue dampers).
=0.4 or D_P for units with power burners, systems 2, 3, 4, 6, 8, 10.
=1.0 or D_P for direct vent units with atmospheric burners, system 9 (direct vent only).
=1.0 or D_P for atmospheric burners with either electro-mechanical inlet dampers or flue dampers, system 1, and system 9 with units employing isolated combustion.
=0.05 for units complying with section 7.4.3 of this appendix.

In the same section (11.2.9.9), the definitions for D_S° for systems 4 and 8 is revised to read as:

D_S°=0.85 or [(0.79+D_P)/1.4] for systems 4 and 8.

10.6.1 The definitions for $\psi_{F,O,X}$ and $\theta_{F,O,X}$ in section 11.2.9.14 of ANSI/ASHRAE Standard 103–1988 are revised to read as:

$\psi_{F,O,X}$=as defined in section 11.2.9.7 of ANSI/ASHRAE Standard 103–1988

$\theta_{F,O,X}$=as defined in section 11.2.9.5 of ANSI/ASHRAE Standard 103–1988

10.6.2 The phrase "9–12" in the eighth line of section 11.2.9.16 of ANSI/ASHRAE Standard 103–1988 is deleted and the beginning of the sentence is revised to read "For systems numbered 9–10:".

10.7 *Determine the off-cycle stack gas draft factor, D_S.* The following calculation procedures are in place of section 11.2.9.18 of ANSI/ASHRAE Standard 103–1988:

Determine the off-cycle stack gas draft factor, D_S, defined as:

D_S=1.0 for systems 1 and 2.
=0.4 or D_P for direct exhaust system with power burners, system 3.
=0.85 or [(0.79+D_P)/1.4] for system 4.
=D_O for systems 5 and 6.
=0.85D_O or [(0.79+D_P)/1.4]D_O for system 8.

where:

D_P=as defined in section 11.2.9.9 of ANSI/ASHRAE Standard 103–1988.

D_O=stack damper effectiveness factor defined as follows:

Stack damper effectiveness factor. For systems 5, 6, or 8, calculate the stack damper effectiveness factor, D_O, defined as:

$$D_O = \frac{\sum_{j=1}^{n} D_{S,j}\left[\left(100-\psi_{S,\infty,j}\right)\left(G1_j\right)\left(G2_j\right)+\psi_{S,\infty,j}\left(G3_j\right)\left(G4_j\right)\right]_j \cdot \left(h_j\right)}{\sum_{j=1}^{n}\left[\left(100-\psi_{S,\infty}\right)(G1)(G2)+\psi_{S,\infty}(G3)(G4)\right]_j \cdot \left(h_j\right)}$$

Infiltration correction factor for stack damper effectiveness. For systems 5, 6, or 8, calculate the infiltration correction factor D_{OI}, defined as:

$$D_{OI} = \frac{\sum_{j=1}^{n} D_{S,j}\left[\left(100-\psi_{S,\infty,j}\right)\left(G2_j\right)+\left(\psi_{S,\infty,j}\right)\left(G4_j\right)\right]_j \cdot \left(h_j\right)}{\sum_{j=1}^{n}\left[\left(100-\psi_{S,\infty}\right)(G2)+\left(\psi_{S,\infty}\right)(G4)\right]_j \cdot \left(h_j\right)}$$

where:

h_j=dimensionless time increment given by h_j=1/n.

n=100, number of segments between t/t_{OFF}=0 to t/t_{OFF}=1.0

$\psi_{S,\infty}$=$\psi_{S,\infty,X}$ as defined in section 11.2.9.9 of ANSI/ASHRAE Standard 103–1988

$G1=\psi_{-S,O}\cdot\exp(-t/t_{OFF})=\psi_{S,O}\cdot\exp(-(t_{OFF}/t_{OFF})(t/t_{OFF}))$

$G2=(G1+28)^{0.56}/(G1+630)^{1.19}$

$G3=G1+100$

$G4=(G1+128)^{0.56}/(G1+630)^{1.19}$

$\psi_{S,O}$=as defined in section 11.2.9.17 of ANSI/ASHRAE Standard 103–1988

$\psi_{S,\infty,j}=(D_F)(\psi_{F,\infty})/[(S/F)(D_{S,j})(D_S°)]$ for $(S/F)(D_{S,j})(D_S°)>D_F$
=$\psi_{F,\infty}$ for $(S/F)(D_{S,j})(D_S°)\leq D_F$

$\psi_{F,\infty}$=as defined in section 11.2.9.16 of ANSI/ASHRAE Standard 103–1988

$G1_j=\psi_{S,O,j}\cdot\exp(-(t_{OFF}/\tau_{OFF})(t/t_{OFF}))$

$G2_j=(G1_j+28)^{0.56}/(G1_j+630)^{1.19}$

$G3_j=G1_j+100$

$G4_j=(G1_j+128)^{0.56}/(G1_j+630)^{1.19}$

$\psi_{S,O,j}=(D_F)(\psi_{F,O})/[(S/F)(D_{S,j})(D_S°)]$ for $(S/F)(D_{S,j})(D_S°)>D_F$
=$\psi_{F,O}$ for $(S/F)(D_{S,j})(D_S°)\leq D_F$

$\psi_{F,O}$=as defined in section 11.2.9.15 of ANSI/ASHRAE Standard 103–1988

Values of $D_{S,j}$ during the summation:

$D_{S,j}$=1.0 when $0\leq t<t_s$

$D_{S,j}$=D_S' when $t_s\leq t<t_e$

$D_{S,j}$=D_F when $t_e\leq t\leq t_{OFF}$

where:

$t=jh_jt_{OFF}$

and

$$D_S' = \sqrt{5\Big/\left[5+\frac{2.6\left[\left(A_D/A_S\right)\sin\left[\left(\pi/2-\Omega\right)\tilde{t}\right]\right]^{1.58}}{\left[1-\left(A_D/A_S\right)\sin\left[\left(\pi/2-\Omega\right)\tilde{t}\right]\right]^{2}}\right]}$$

where:

$\bar{t}=(t-t_s)/(t_e-t_s)$ when $0 \le \bar{t} \le 1$

t_s=time when damper start to close

t_e=time when damper finishing closing, or=t_s+t_d, when t_d=the duration of closing.

$D_E=(A_O/A_S)\cdot\{5/[5(A_O/A_S)^2+2.6(1-A_O/A_S)^{1.58}]\}^{1/2}$

where:

A_S=cross-sectional area of the stack, in^2, (see section 8.8.4 of ANSI/ASHRAE Standard 103–1988)

A_D=net area of the damper plate, in^2, (see section 8.8.4 of ANSI/ASHRAE Standard 103–1988)

A_O=minimum opening (including leakage) area of the damper when closed, $=A_{O,D}COS\Omega+A_{O,L}$, in^2

$A_{O,D}$=holes and cut-outs in damper plate as defined in 7.6 of this appendix

$A_{O,L}$=leakage area around damper shaft and edges as defined in 7.6 of this appendix

Ω=the angle the damper makes when closed, with a plane perpendicular to the axis of the stack (see section 8.8.4 of ANSI/ASHRAE Standard 103–1988), radians

10.8 *Off-cycle heat loss integration factors.* The following paragraphs are modifications to sections 11.2.9.19 and 11.2.9.20 of ANSI/ASHRAE Standard 103–1988:

10.8.1 *Off-cycle sensible heat loss integration factors.* The following paragraphs supplement the calculation procedures specified in section 11.2.9.19 of ANSI/ASHRAE Standard 103–1988:

For systems numbered 2, 3, and 4 which employ post purge after the burner is shut off, determine off-cycle sensible heat loss integration factors, F3 and F4, from Figures 14 and 15 of ANSI/ASHRAE Standard 103–1988, respectively, using values of $\Psi_{F,O}$ defined in 11.2.9.15 of ANSI/ASHRAE Standard 103–1988, and a modified R_{OFF} defined as:

$R_{OFF}=(t_{OFF}-t_P)/\tau_{OFF}$

where:

t_{OFF}=as defined in section 11.2.9.12 of ANSI/ASHRAE Standard (ANSI/ASHRAE) 103–1988

t_P=as defined in section 8.2 (furnaces) or 8.5 (boilers) of this appendix

τ_{OFF}=as defined in section 11.2.9.6 of ANSI/ASHRAE Standard 103–1988

For system number 10 which employs post purge after the burner is shut off, determine off-cycle sensible heat loss integration factors, F5 and F6, from Figures 16 and 17 of ANSI/ASHRAE Standard 103–1988, respectively, using values of $\Psi_{F,O}$ defined in section 11.2.9.15 of ANSI/ASHRAE Standard 103–1988, and the modified R_{OFF} defined above.

10.8.2 *Off-cycle infiltration heat loss integration factors.* The following paragraphs supplement the calculation procedures specified in section 11.2.9.20 of ANSI/ASHRAE Standard 103–1988:

For system numbered 2 and 4 which employ post purge after the burner is shut off, determine off-cycle infiltration heat loss integration factors, F7 and F8, from figures 18 and 19 of ANSI/ASHRAE Standard 103–1988, respectively, using values of $\Psi_{S,O}$ defined in section 11.2.9.17 of ANSI/ASHRAE Standard 103–1988, and a modified R_{OFF} defined in section 10.8 of this appendix.

For system number 3 which employs post purge after the burner is shut off, determine off-cycle infiltration heat loss integration factors, F7 and F8, from Figures 18 and 19 of ANSI/ASHRAE Standard 103–1988, respectively, using values of $\Psi_{F,O}$ defined in 11.2.9.15 of ANSI/ASHRAE Standard 103–1988, and a modified R_{OFF} defined in section 10.8 of this appendix.

10.9 Multiplication factor for infiltration loss during burner off-cycle. The following paragraphs are in place of the calculation procedure specified in section 11.2.10.4 of ANSI/ASHRAE Standard 103–1988:

Calculate a multiplication factor for infiltration loss during burner off-cycle $K_{I,OFF}$, defined as:

For systems numbered 1, 2 and 4:

$$K_{I,OFF}=\frac{(T_{S,SS}-T_{RA}+530)^{1.19}(K_{I,ON})(D_S)}{(T_{S,SS}-T_{RA}+70-T_{OA})^{0.56}}$$

For systems numbered 5–8:

$$K_{I,OFF}=\frac{(T_{S,SS}-T_{RA}+530)^{1.19}(K_{I,ON})(D_S)}{(T_{S,SS}-T_{RA}+70-T_{OA})^{0.56}}\cdot\left(\frac{D_{OI}}{D_O}\right)$$

For system number 3:

$$K_{I,OFF}=\frac{(T_{F,SS}-T_{RA}+530)^{1.19}(K_{I,ON})(D_S)}{(T_{F,SS}-T_{RA}+70-T_{OA})^{0.56}}$$

where:

$T_{S,SS}$=as defined in section 11.2.9.3 of ANSI/ASHRAE Standard 103–1988

$T_{F,SS}$=as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988

530=as defined in section 11.2.10.3 of ANSI/ASHRAE Standard 103–1988

T_{OA}=as defined in section 11.2.8.4 of ANSI/ASHRAE Standard 103–1988

$K_{I,ON}$=as defined in section 11.2.9.2 of ANSI/ASHRAE Standard 103–1988

D_S=as defined in section 10.7 of this appendix

D_O=as defined in section 10.7 of this appendix

D_{OI}=as defined in section 10.7 of this appendix

70=as defined in section 11.2.10.1 of ANSI/ASHRAE Standard 103–1988

T_{RA}=as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988

For system numbers 9 and 10:

$K_{I,OFF}=0$

10.10 *Off-cycle sensible heat loss.* The following are revision and additions to the calculation procedures specified in section 11.2.10.6 of ANSI/ASHRAE Standard 103–1988:

10.10.1 The definition for F6 in section 11.2.10.6 of ANSI/ASHRAE Standard 103–1988 is revised to read as "and F6=as defined in section 11.2.9.19."

10.10.2 The following paragraphs are additions to the calculation procedures as specified in section 11.2.10.6 of ANSI/ASHRAE Standard 103–1988:

For furnaces or boilers employing post purge after the burner is shut off, calculate

the off-cycle sensible heat loss of the system, $L_{S,OFF}$, expressed in percent and defined as:

$L_{S,OFF}=L_{S,OFF1}+L_{S,OFF2}$

Where $L_{S,OFF1}$, the off-cycle sensible heat loss during the post purge period, is defined as:

$$L_{S,OFF1}=100\cdot C_P\cdot M_{F,ON}\cdot t_P\cdot\left(T_{F,SS}+460\right)\cdot\left[1/\left(t_{ON}\cdot Q_{IN}\cdot 60\right)\right]\cdot\left[1+\frac{T_{RA}+460}{C_{TS}\left[T_{F,SS}-T_{F,OFF}\left(t_P\right)\right]}\cdot\ln\left[\frac{T_{RA}+460+C_{TS}\cdot\left[T_{F,OFF}\left(t_P\right)-T_{RA}\right]}{T_{RA}+460+C_{TS}\cdot\left[T_{F,SS}-T_{RA}\right]}\right]\right]$$

where:

$C_{TS}=C_{T,OFF}$ for systems numbered 2, 3 and 4

$=(C_S')(C_{T,OFF})$ for system number 10

$C_{T,OFF}$=as defined in section 11.2.9.14 of ANSI/ASHRAE Standard 103–1988

C_S'=as defined in section 11.2.9.15 of ANSI/ASHRAE Standard 103–1988

and where $L_{S,OFF2}$, the off-cycle sensible heat loss after the post purge period, is defined as:

For systems numbered 2, 3 and 4:

$L_{S,OFF2}=(K_{S,OFF})[(t_{OFF}-t_P)/t_{ON}]+[(F3)+(\psi_{F,\infty})(F4)]$

For system number 10:

$L_{S,OFF2}=(K_{S,OFF})[(t_{OFF}-t_P)/t_{ON}]+[(F5)+(\psi_{F,\infty})(F6)]$

where:

100=conversion factor to express a decimal as a percent

C_P=as defined in section 11.2.9.1 of ANSI/ASHRAE Standard 103–1988

$M_{F,ON}$=rate of flue gas mass flow during the on period, as defined in section 11.6.1 of ANSI/ASHRAE Standard 103–1988

t_P=length of post purge time, as defined in sections 8.2 and 8.5 of this appendix

$T_{F,SS}$=as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988

Q_{IN}=as defined in section 11.2.8.1 of ANSI/ASHRAE Standard 103–1988

60=conversion factor, hour to minute

460=conversion factor, °F to °R

T_{RA}=as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988

$T_{F,OFF}(t_P)$=off-cycle flue gas temperature at the end of power burner post purge period (see section 8.2 or 8.5 of this appendix), °F

F3, F4, F5 and F6=as defined in section 10.8.1 of this appendix for units with post purge, and in section 11.2.9.19 of ANSI/ASHRAE Standard 103–1988 for units without post purge

10.11 *Off-cycle infiltration heat loss.* The following paragraphs are revisions and additions to the calculation procedures specified in section 11.2.10.8 of ANSI/ASHRAE Standard 103–1988:

10.11.1 The equation defining $K_{I,OFF}$ and F7, F8 are revised to read as:

$K_{I,OFF}$=as defined in section 10.9 of this appendix

F7, F8=as defined in section 11.2.9.20 of ANSI/ASHRAE Standard 103–1988 for units without post purge

10.11.2 The following paragraphs supplement the calculation procedures specified in section 11.2.10.9 of ANSI/ASHRAE Standard 103–1988:

For furnaces or boilers employing post purge after the burner is shut off, calculate the off-cycle infiltration heat loss of the system, $L_{I,OFF}$, expressed in percent and defined as:

$L_{I,OFF}=L_{I,OFF1}+L_{I,OFF2}$

Where $L_{I,OFF1}$, the off-cycle infiltration heat loss during the post purge period, is defined as, for systems numbered 2, 3, and 4:

$$L_{I,OFF1}=100\cdot C_P\cdot M_{F,ON}\cdot t_P\cdot\left(T_{F,SS}+460\right)\cdot\left[\frac{70-T_{OA}}{C_{T,OFF}\left[T_{F,SS}-T_{F,OFF}\left(t_P\right)\right]}\right]\cdot\ln\left[\frac{T_{RA}+460+C_{T,OFF}\cdot\left[T_{F,SS}-T_{RA}\right]}{T_{RA}+460+C_{T,OFF}\cdot\left[T_{F,OFF}\left(t_P\right)-T_{RA}\right]}\right]\cdot\left[\frac{1}{\left(t_{ON}\cdot Q_{IN}\cdot 60\right)}\right]$$

and

$L_{I,OFF2}$, the off-cycle infiltration heat loss after the post purge period, is defined as:

For system numbered 2 and 4:

$L_{I,OFF2}=(K_{I,OFF})(70-T_{OA})[(t_{OFF}-t_P)/t_{ON}]*[(F7)+(\psi_{S,\infty})(F8)]$

For system number 3:

$L_{I,OFF2}=(K_{I,OFF})(70-T_{OA})[(t_{OFF}-t_P)/t_{ON}]*[(F7)+(\psi_{F,\infty})(F8)]$

where:

100=conversion factor to express a decimal as a percent

C_P=as defined in section 11.2.9.1 of ANSI/ASHRAE Standard 103–1988

$M_{F,ON}$=rate of flue gas mass flow during the on period, as defined in section 11.6.1 of ANSI/ASHRAE Standard 103–1988

t_P=length of post purge time, as defined in 8.2 and 8.5 of this appendix

$T_{F,SS}$=as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988

460=conversion factor, °F to °R

70=assumed average indoor air temperature, as defined in section 11.2.10.1 of ANSI/ASHRAE Standard 103–1988, °F

T_{OA}=national average outdoor air temperature, as defined in section 11.2.8.4 of ANSI/ASHRAE Standard 103–1988, °F

T_{RA}=as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988

$C_{T,OFF}$=as defined in section 11.2.9.14 of ANSI/ASHRAE Standard 103–1988

$T_{F,OFF}(t_P)$=off-cycle flue gas temperature at the end of power burner post purge period (see section 8.2 or 8.5 of this appendix), °F

F7 and F8=as defined in section 10.8.2 of this appendix for power burners with post purge

Q_{IN}=as defined in section 11.2.8.1 of ANSI/ASHRAE Standard 103–1988

60=conversion factor, hour to minute

For system number 10:

$L_{I,OFF1}=0$

$L_{I,OFF2}=0$

10.12 *Heating seasonal efficiency and AFUE.* The following paragraphs supplement the calculation procedures as specified in sections 11.2.11 and 11.2 12 of ANSI/ASHRAE Standard 103–1988:

10.12.1 *Heating seasonal efficiency.*

10.12.1.1 For furnaces or boilers employing post purge after the burner is shut off, the definitions for $L_{S,OFF}$ and $L_{I,OFF}$ are replaced with the following in section 11.2.11 of ANSI/ASHRAE Standard 103–1988:

$L_{S,OFF}$=as defined in section 10.10 of this appendix

$L_{I,OFF}$=as defined in section 10.11 of this appendix

10.12.1.2 The following supplements the definition for the listed value of the jacket loss factor C_J in section 11.2.11 (and also referenced in section 11.3.11.3) of ANSI/ASHRAE Standard 103–1988:

C_J=0.5 for finned tube boilers intended to be installed in ICS applications

10.12.2 *Annual fuel utilization efficiency.* The AFUE is as defined in sections 11.2.12 (non-condensing systems) and 11.3.12 (condensing systems) of ANSI/ASHRAE Standard 103–1988, except with the following revision to the definition for the term $Effy_{HS}$ in the defining equation for AFUE:

$Effy_{HS}$=heating seasonal efficiency as defined in sections 11.2.11 (non-condensing systems) and 11.3.11 (condensing systems) of ANSI/ASHRAE Standard 103–1988 and sections 10.12.1.1 and 10.12.1.2 of this appendix and is based on the assumption that all weatherized warm air furnaces or boilers are located out-of-doors; warm air furnaces which are not weatherized are installed as ICS; and boilers which are not weatherized are installed indoors.

10.13 *Heating seasonal efficiency, steady-state efficiency, and AFUE for non-condensing modulating gas or oil furnaces and boilers.* The following paragraph is in place of the requirements specified in section 11.4 of ANSI/ASHRAE Standard 103–1988:

Heating Seasonal Efficiency, Steady-State Efficiency, and AFUE for Non-Condensing Modulating Gas or Oil Furnaces and Boilers. Perform the following calculations to determine the steady-state and heating seasonal efficiency, $Effy_{SS}$ and $Effy_{HS}$, and AFUE, of a gas or oil, furnace or boiler, non-condensing, and modulating. The calculations in sections 11.4.1 through 11.4.8.10 of ANSI/ASHRAE Standard 103–1988 need to be completed at both the maximum and reduced input rates for both two stage and step-modulating controls. The calculations in section 11.4.9 and 11.4.10 of ANSI/ASHRAE Standard 103–1988 need to be completed at the reduced input rate for units with step modulating controls, and at both maximum and reduced input rates for units with two stage controls. Use the calculation procedure specified in section 11.2 of ANSI/ASHRAE Standard 103–1988 including the revisions to section 11.2 as specified in sections 10.1 to 10.12 of this appendix, and the modifications as specified in sections 11.4.1 through 11.4.12 of ANSI/ASHRAE Standard 103–1988.

10.13.1 The definition for $Effy_{SS,R}$ in section 11.4.8.1.2 of ANSI/ASHRAE Standard 103–1988 is revised to read as "$Effy_{SS,R}$ = as defined in section 11.4.7 of ANSI/ASHRAE Standard 103–1988."

10.13.2 *Balance point temperature.* The following calculation procedure supplements the procedures specified in section 11.4.8.5 of ANSI/ASHRAE Standard 103–1988:

If $T_c < 0$, use T_c=0.

10.13.3 *Average steady-state efficiency for the modulating mode for furnaces and boilers equipped with step-modulating controls.* The following calculation procedures supplement the procedures specified in section 11.4.8.8 of ANSI/ASHRAE Standard 103–1988:

If $Q_{OUT,R}$ > DHR, $Effy_{SS,M}$=$Effy_{SS,R}$

10.13.4 *Average heat output rate for the modulating mode for furnaces and boilers equipped with the step-modulating controls.* The following calculation procedures supplement the procedures specified in section 11.4.8.10 of ANSI/ASHRAE Standard 103–1988:

If $Q_{OUT,R}$ > DHR, $Q_{OUT,M}$=$Q_{OUT,R}$

10.13.5 *Average part load efficiency.* The following supplements the definition for the listed value of the jacket loss factor C_J in sections 11.4.9.2.3. and 11.4.11.1 (and referenced in section 11.4.11.2) of ANSI/ASHRAE Standard 103–1988:

C_J=0.5 for finned tube boilers intended to be installed in Isolated Combustion System applications

=1.0 for finned tube boilers intended to be installed outdoors

10.13.6 *Annual fuel utilization efficiency.* The AFUE is as defined in section 11.4.12 of ANSI/ASHRAE Standard 103–1988, except with the following revision to the definition for the term $Effy_{HS}$ in the defining equation for AFUE:

$Effy_{HS}$=heating seasonal efficiency as defined in section 11.4.11 of ANSI/ASHRAE Standard 103–1988 and sections 10.12.1.1 and 10.12.1.2 of this appendix and is based on the assumption that all weatherized warm air furnaces or boilers are located out-of-doors; warm air furnaces which are not weatherized are installed as ICS; and boilers which are not weatherized are installed indoors.

10.14 *Heating Seasonal Efficiency, Steady-State Efficiency, and AFUE for Condensing Modulating Gas or Oil Furnaces and Boilers.* The following paragraph is in place of the requirements specified in section 11.5 of ANSI/ASHRAE Standard 103–1988:

Heating Seasonal Efficiency, Steady-State Efficiency, and AFUE for Condensing Modulating Gas or Oil Furnaces and Boilers. Perform the following calculations to determine the steady-state and heating seasonal efficiency, $Effy_{SS}$ and $Effy_{HS}$, and AFUE, of a gas or oil, furnace or boiler, condensing and modulating. The calculations in sections 11.5.1 through 11.5.8.10 need to be completed at both the maximum and reduced input rates for both two stage and step-modulating controls. The calculations in sections 11.5.9 and 11.5.10 need to be completed at the reduced input rate for units with step modulating controls, and at both maximum and reduced input rates for units with two stage controls. Use the calculation procedure specified in section 11.3 and 11.4 of ANSI/ASHRAE Standard 103–1988 including the revisions to section 11.4 as specified in sections 10.13.1 to 10.13.4 of this appendix, and the modifications as specified in sections 11.5.1 through 11.5.12 of ANSI/ASHRAE Standard 103–1988.

10.14.1 *Average part load efficiency.* The following supplements the definition for the listed value of the jacket loss factor C_J in section 11.5.11.1 (and referenced in section 11.5.11.2) of ANSI/ASHRAE Standard 103-1988:

C_J=0.5 for finned tube boilers intended to be installed in Isolated Combustion System applications

10.14.2 *Annual fuel utilization efficiency.* The AFUE is as defined in section 11.5.12 of ANSI/ASHRAE Standard 103–1988, except with the following revision to the definition for the term $Effy_{HS}$ in the defining equation for AFUE:

$Effy_{HS}$=heating seasonal efficiency as defined in section 11.5.11 of ANSI/ASHRAE Standard 103–1988 and sections 10.12.1.1 and 10.12.1.2 of this appendix and is based on the assumption that all weatherized warm air furnaces or boilers are located out-of-doors; warm air furnaces which are not weatherized are installed as ICS, and boilers which are not weatherized are installed indoors.

10.15 *Optional tracer gas procedure for determination of D_P for furnaces or boilers employing a power burner or direct vent.* The following supplements the calculation procedures specified in section 11.6.4 of ANSI/ASHRAE Standard 103–1988:

If the measured D_P above is less than 0.1, then use D_P=0.05 as if there is no chance of flow through the unit during the off-cycle, as specified in section 8.8.3 of this appendix.

10.16 Tracer gas procedure for determining the off-cycle loss factor K_L for atmospheric furnaces or boilers with integral draft diverter or draft hood and equipped with an electro-mechanical inlet damper or an electro-mechanical flue damper that restricts the flow through the heat exchanger during the off-cycle. Calculate the off-cycle loss factor, K_L, defined as the ratio of the off-cycle sensible heat loss with the electro-mechanical damper closed during the off-cycle to the off-cycle sensible heat loss with the electro-mechanical damper held open during the off-cycle:

K_L=($Q_{S,OFF}$ with damper closed) / ($Q_{S,OFF}$ with damper open)

where:

$$Q_{S,OFF} = \sum_{t=5}^{6}\left[\left(q_{S,OFF}\right)\cdot\left(\frac{\Delta t}{60}\right)\right]$$

=one minute sum-total of the measured $q_{S,OFF}$ • Δt (Δt=time-step in seconds when data are recorded) over a one minute interval starting at five minutes into the cool-down period

Δt=time interval between measurement as defined in 8.9.5 of this appendix, seconds

1/60=unit conversion factor to convert time in second to minute

$q_{S,OFF}$=C_P • $m_{S,OFF}$ • ($T_{S,OFF}$ − $T_{R,A}$)

where:

$q_{S,OFF}$=off-cycle sensible loss rate, Btu/min
C_P=specific heat capacity of air, as defined in section 11.2.9.1 of ANSI/ASHRAE Standard 103–1988, Btu/lb • °F
$T_{S,OFF}$=measured stack temperature at time t as defined in section 8.9.5 of this appendix, °F
T_{RA}=room temperature as defined in section 11.2.5 of ANSI/ASHRAE Standard 103–1988, °F

$$m_{S,OFF}=[(C_{Tm}-C_T)/(C_T-C_{TB})] \bullet \rho_F \bullet V_T$$

where:

$m_{S,OFF}$=mass flow rate at time t of the stack gas during the off-cycle, lb/min
C_{Tm}=concentration by volume of measurable tracer gas in a certified standard tracer gas mixture, percent
C_T=concentration by volume of tracer gas present in the stack gas sample, measured at time $t+t_{DELAY}$, in accordance with section 8.9.5 of this appendix, percent
t_{DELAY}=tracer gas sample delay time as defined in section 8.9.4 of this appendix, seconds
C_{TB}=room background concentration by volume of the racer gas used as defined in section 8.9.2 of this appendix, percent
V_T=flow rate of tracer gas into the stack measured in accordance with section 8.9.3 of this appendix, ft^3/min
ρ_F=density of gas as defined in section 11.6.2 of ANSI/ASHRAE Standard 103–1988,lb/ft^3

10.17 *Optional procedure for determining off-cycle draft factors for furnaces or boilers employing a power burner or direct vent.* The following are revisions to sections 11.7.1 and 11.7.2 of ANSI/ASHRAE Standard 103–1988:

10.17.1 Add the word "factor" to the first sentence in section 11.7.1 of ANSI/ASHRAE Standard 103–1988 so that the beginning of the sentence read:

Calculate the off-cycle draft factor for flue gas flow, D_F, defined as:

10.17.2 The equation for D_S for system number 8 in section 11.7.2 of ANSI/ASHRAE Standard 103–1988, $D_S=(D_O)(D_P)$, is replaced with $D_S=[(0.79+D_P)/1.4](D_O)$.

10.18 Procedure for determining off-cycle draft factors for atmospheric furnaces or boilers with integral draft diverter or draft hood and equipped with either an electro-mechanical inlet damper or an electro-mechanical flue damper that restricts the flow through the heat exchanger in the off-cycle.

For atmospheric furnaces with an integral draft diverter or draft hood and equipped with either an electro-mechanical inlet damper or an electro-mechanical flue damper, and installed as an indoor system or an ICS, the System Number and the draft factor D_P are defined as:

System Number=1 for indoor system
=9 for ICS system

and

$D_P=K_L$

where:

K_L=off-cycle loss factor, as defined in section 10.16 of this appendix.

10.19 *National Average Burner Operating Hours, Average Annual Fuel Energy Consumption and Average Annual Auxiliary Electrical Energy Consumption for Gas or Oil Furnaces and Boilers.* The following sections 10.19.1 thru 10.19.3 are in place of sections 1 thru 3 of Appendix C of ANSI/ASHRAE Standard 103–1988:

10.19.1 *National average number of burner operating hours.*

For furnaces and boilers equipped with single stage controls, the national average number of burner operating hours is defined as:

$$BOH_{SS}=2080(0.77)(A)(DHR)-2080(B)$$

where:

2080=national average heating load hours
0.77=adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system
DHR=typical design heating requirements as listed in Table 8 (in unit of kBtu/h) of ANSI/ASHRAE Standard 103–1988, using the proper value of Q_{OUT} defined in Section 11.2.8.1 of ANSI/ASHRAE Standard 103–1988

$$A=100000/[341300(y_P \bullet PE + y_{IG} \bullet PE_{IG} + y \bullet BE)+(Q_{IN}-Q_P) \bullet Effy_{HS}]$$

$$B=2Q_P(Effy_{HS})(A)/100000$$

100000=factor that accounts for percent and kBtu
PE=burner electrical input rate at full-load steady-state operation
y_P=ratio of induced or forced draft blower on-time to average burner on-time, as follows:
1 for units without post purge
$1+(t_P/3.87)$ for single stage furnaces with post purge
$1+(t_P/10)$ for two-stage and step modulating furnaces with post purge
$1+(t_P/9.68)$ for single stage boilers with post purge
$1+(t_P/15)$ for two stage and step modulating boilers with post purge
PE_T=total electrical power to burner equipped with intermittent or interrupted ignition device when the device is on, as defined in Section 8.1.1 of this appendix
$PE_{IG}=PE_T-PE$, electrical input rate to the intermittent or interrupted ignition device on burner (if employed)
y_{IG}=ratio of burner intermittent or interrupted ignition device on time to average burner on-time, as follows:
=0 for burners not equipped with IID
$=(t_{IG}/3.87)$ for single stage furnaces
$=(t_{IG}/10)$ for two-stage and step modulating furnaces
$=(t_{IG}/9.68)$ for single stage boilers
$=(t_{IG}/15)$ for two stage and step modulating boilers
t_{IG}=on-time of the burner intermittent or interrupted ignition device, as defined in Section 8.1.1 of this appendix
t_P=post purge time as defined in Sections 8.2 and 8.5 of this appendix
y=ratio of blower or pump on-time to average burner on-time, as follows:
1, for furnaces without fan delay
1, for boilers without a pump delay
$1+(t^+-t^-)/3.87$, for single stage furnaces with fan delay
$1+(t^+-t^-)/10$, for two-stage and step modulating furnaces with fan delay
$1+(t^+/9.68)$, for single stage boilers with pump delay
$1+(t^+/15)$, for two stage and step modulating boilers with pump delay
BE=circulating air fan or water pump electrical energy input rate at full load steady-state operation
Q_{IN}=as defined in section 11.2.8.1 of ANSI/ASHRAE Standard 103–1988
Q_P=as defined in section 11.2.11 of ANSI/ASHRAE Standard 103–1988
$Effy_{HS}$=as defined in section 11.2.11 or 11.3.11.3 of ANSI/ASHRAE Standard 103–1988 and section 10.12.2 of this appendix, percent, and calculated on the basis of:
=indoor installation, for non-weatherized boilers
=ICS installation, for non-weatherized warm air furnaces
=outdoor installation, for furnaces and boilers that are weatherized
2=ratio of the average length of the heating season in hours to the average heating load hours
t^+=as defined in sections 9.5.1.2 and 9.5.2.1 of ANSI/ASHRAE Standard 103–1988
t^-=as defined in section 9.6.1 of ANSI/ASHRAE Standard 103–1988

For furnaces and boilers equipped with two stage or step modulating controls the average annual energy used during the heating season, E_M, is defined as:

$$E_M=(Q_{in}-Q_P)(BOH_{SS})+(8760-4600)(Q_P)$$

where:

Q_{IN}=as defined in section 11.4.8.1.1 of ANSI/ASHRAE Standard 103–1988
Q_P=as defined in section 11.4.12 of ANSI/ASHRAE Standard 103–1988
BOH_{SS}=as defined above, in which the weighted $Effy_{HS}$ as defined in section 11.4.11.3 or 11.5.11.3 of ANSI/ASHRAE Standard 103–1988 and section 10.13.6 or 10.14.2 of this appendix is used for calculating the values of A and B, the term DHR is based on the proper value of Q_{OUT} defined in section 11.4.8.1.1 of ANSI/ASHRAE Standard 103–1988, and the term $(y_PPE+y_{IG}PE_{IG}+yBE)$ in the factor A is increased by the factor R, which is defined as:
R=2.3 for two stage controls
=2.3 for step modulating controls when the ratio of minimum-to-maximum output is greater than or equal to 0.5
=3.0 for step modulating controls when the ratio of minimum-to-maximum output is less than 0.5

$$A=100000/[341300(y_PPE+y_{IG}PE_{IG}+yBE)(R)+(Q_{IN}-Q_P)(Effy_{HS})]$$

$Effy_{HS}$=as defined in section 11.4.11.3 or 11.5.11.3 of ANSI/ASHRAE Standard 103–1988, and calculated on the basis of:
=indoor installation, for non-weatherized boilers
=ICS installation, for non-weatherized warm air furnaces
=outdoor installation, for furnaces and boilers that are weatherized
8760=total number of hours per year
4600=as defined in section 11.4.12 of ANSI/ASHRAE Standard 103–1988

For furnaces and boilers equipped with two stage or step modulating controls the national average number of burner operating

hours at the reduced operating mode is defined as:

$BOH_R = X_R E_M / Q_{IN,R}$

where:

X_R=as defined in section 11.4.8.7 of ANSI/ASHRAE Standard 103–1988

E_M=as defined above

$Q_{IN,R}$=as defined in section 11.4.8.1.2 of ANSI/ASHRAE Standard 103–1988.

For furnaces and boilers equipped with two stage controls the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$BOH_H = X_H E_M / Q_{IN}$

where:

X_H=as defined in section 11.4.8.6 of ANSI/ASHRAE Standard 103–1988

E_M=as defined above

Q_{IN}=as defined in section 11.4.8.1.1 of ANSI/ASHRAE Standard 103–1988

For furnaces and boilers equipped with step modulating controls the national average number of burner operating hours at the modulating operating mode (BOH_M) is defined as:

$BOH_M = X_H E_M / Q_{IN,M}$

where:

X_H=as defined in section 11.4.8.6 of ANSI/ASHRAE Standard 103–1988

E_M=as defined above

$Q_{IN,M} = Q_{OUT,M} / (Effy_{SS,M}/100)$

$Q_{OUT,M}$=as defined in section 11.4.8.10 of ANSI/ASHRAE Standard 103–1988 and section 10.13.4 of this appendix

$Effy_{SS,M}$=as defined in section 11.4.8.8 of ANSI/ASHRAE Standard 103–1988 and section 10.13.3 of this appendix, percent

100=factor that accounts for percent

10.19.2 *Average annual fuel energy for gas or oil fueled furnaces or boilers.*

For furnaces or boilers equipped with single stage controls the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$E_F = BOH_{SS}(Q_{IN} - Q_P) + 8760(Q_P)$

where:

BOH_{SS}=as defined in section 10.19.1 of this appendix

Q_{IN}=as defined in section 11.2.8.1 of ANSI/ASHRAE Standard 103–1988

Q_P=as defined in section 11.2.11 of ANSI/ASHRAE Standard 103–1988

8760=as defined in section 10.19.1 of this appendix

For furnaces or boilers equipped with either two stage or step modulating controls E_F is defined as:

$E_F = E_M + 4600(Q_P)$

where:

E_M=as defined in section 10.19.1 of this appendix

4600=as defined in section 11.4.12 of ANSI/ASHRAE Standard 103–1988

Q_P=as defined in section 11.2.11 of ANSI/ASHRAE Standard 103–1988

10.19.3 *Average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers.* For furnaces or boilers equipped with single stage controls the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$E_{AE} = BOH_{SS}(y_P PE + y_{IG} PE_{IG} + yBE)$

where:

BOH_{SS}=as defined in section 10.19.1 of this appendix

PE=as defined in section 9.1.2.2 of ANSI/ASHRAE Standard 103–1988

y_P=as defined in section 10.19.1 of this appendix

y_{IG}=as defined in section 10.19.1 of this appendix

PE_{IG}=as defined in section 10.19.1 of this appendix

y=as defined in section 10.19.1 of this appendix

BE=as defined in section 9.1.2.2 of ANSI/ASHRAE Standard 103–1988

For furnaces or boilers equipped with two stage controls E_{AE} is defined as:

$E_{AE} = BOH_R(y_P PE_R + y_{IG} PE_{IG} + yBE_R) + BOH_H(y_P PE_H + y_{IG} PE_{IG} + yBE_H)$

where:

BOH_R=as defined in section 10.19.1 of this appendix

y_P=as defined in section 10.19.1 of this appendix

PE_R=as defined in section 9.1.2.2 and measured at the reduced fuel input rate, of ANSI/ASHRAE Standard 103–1988

y_{IG}=as defined in section 10.19.1 of this appendix

PE_{IG}=as defined in section 10.19.1 of this appendix

y=as defined in section 10.19.1 of this appendix

BE_R=as defined in section 9.1.2.2 and measured at the reduced fuel input rate, of ANSI/ASHRAE Standard 103–1988

BOH_H=as defined in section 10.19.1 of this appendix

PE_H=as defined in section 9.1.2.2 and measured at the maximum fuel input rate, of ANSI/ASHRAE Standard 103–1988

BE_H=as defined in section 9.1.2.2 and measured at the maximum fuel input rate, of ANSI/ASHRAE Standard 103–1988

For furnaces or boilers equipped with step modulating controls E_{AE} is defined as:

$E_{AE} = BOH_R(y_P PE_R + y_{IG} PE_{IG} + yBE_R) + BOH_H(y_P PE_H + y_{IG} PE_{IG} + yBE_H)$

where:

BOH_R=as defined in section 10.19.1 of this appendix

y_P=as defined in section 10.19.1 of this appendix

PE_R=as defined above

y_{IG}=as defined in section 10.19.1 of this appendix

PE_{IG}=as defined in section 10.19.1 of this appendix

y=as defined in section 10.19.1 of this appendix

BE_R=as defined above

BOH_M=as defined in section 10.19.1 of this appendix

PE_H=as defined above

BE_H=as defined above

10.20 *Average annual electric energy consumption for electric furnaces or boilers.* For electric furnaces and boilers the average annual energy consumption (E_E) is expressed in kilowatt-hours and defined as:

$E_E = 100(2080)(0.77)(DHR) / 3.413\ (AFUE)$

where:

100=to express a percent as a decimal

2080=as defined in section 10.19.1 of this appendix

0.77=as defined in section 10.19.1 of this appendix

DHR=as defined in section 10.19.1 of this appendix

3.413=conversion to express energy in terms of watt-hours instead of Btu

AFUE=as defined in section 11.1 of ANSI/ASHRAE Standard 103–1988, percent

10.21 Energy Factor.

10.21.1 *Energy factor for gas or oil furnaces and boilers.* The energy factor for gas or oil furnaces and boilers is defined as the ratio of the sum of the useful annual fossil fuel energy delivered to the building space as heat and the auxiliary electrical energy that is recovered as usable heat, to the sum of the annual fossil fuel energy consumption and the energy needed at the power plant to generate the auxiliary electrical energy consumed by the appliance. The above definition of energy factor is based upon the term named as seasonal efficiency energy factor and defined as equation (1) in appendix B of ANSI/ASHRAE Standard 103–1988, using the average burner operating hours, average annual fuel energy for gas or oil fueled furnaces or boilers (E_F), average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers (E_{AE}), as defined in sections 10.19, 10.19.1, 10.19.2, and section 10.19.3, respectively, of this appendix. The following paragraphs specify the procedure for the calculation of EF and is in place of Appendix B of ANSI/ASHRAE Standard 103–1988, and include a correction of a syntax error contained in equation (1) of appendix B of ANSI/ASHRAE Standard 103–1988. The energy factor which incorporates fossil fuels and electrical energy as described in section 10.19 of this appendix, is defined as, in percent:

$$EF = \frac{E_F\ AFUE/100 + 3413\ y\ BEBOH}{E_F + 3413\ F\ E_{AE}} \times 100$$

where:
100=factor that accounts for percent
E_F=average annual fuel consumption as defined in 10.19.2 of this appendix.
E_{AE}=as defined in section 10.19.3 of this appendix.
AFUE=AFUE as defined in sections 11.2.12, 11.3.12, 11.4.12 and 11.5.12 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of:
=indoor installation, for non-weatherized boilers
=ICS installation, for non-weatherized warm air furnaces
=outdoor installation, for furnaces and boilers that are weatherized
y=as defined 10.19.1 of this appendix
BEBOH=$(BE)(BOH_{SS})$ for units with single stage controls
=$(BE_R)(BOH_R) + (BE_H)(BOH_H)$ for units with two stage controls
=$(BE_R)(BOH_R) + (BE_H)(BOH_M)$ for units with step modulating controls
BOH_{SS}=as defined in section 10.19.1 of this appendix
BOH_R=as defined in section 10.19.1 of this appendix
BOH_H=as defined in section 10.19.1 of this appendix
BOH_M=as defined in section 10.19.1 of this appendix
BE=as defined in section 10.19.1 of this appendix
BE_R=as defined in section 10.19.1 of this appendix
BE_H=as defined in section 10.19.1 of this appendix
F=ratio of the energy consumed at the source of electrical generation to the electrical energy delivered at the furnace or boiler,=3.37
3413=conversion factor from kilowatt to Btu/h

10.21.2 *Energy factor for electric furnaces and boilers.* The energy factor for electric furnaces and boilers is defined as:

EF=AFUE

where:
AFUE=AFUE as defined in section 11.1 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of:
=indoor installation, for nonweatherized boilers
=ICS installation, for non-weatherized warm air furnaces
=outdoor installation, for furnaces and boilers that are weatherized

10.22 Average Annual Energy Consumption for Furnaces and Boilers Located in a Different Geographic Region of the United States and in Buildings with Different Design Heating Requirements.

10.22.1 The following legend is added to Fig. C–1 of ANSI/ASHRAE Standard 103–1988:

Alaska—3500 HLH
Hawaii and Territories—0 HLH

10.22.2 *Average annual fuel energy consumption for gas or oil fueled furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil fueled furnaces and boilers the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$E_{FR}=[(E_F-8760\ Q_F)\ HLH / 2080]+8760\ Q_F$

where:
E_F=as defined in section 10.19.2 of this appendix
8760=as defined in section 10.19.1 of this appendix
Q_F=as defined in section 11.2.11 of ANSI/ASHRAE Standard 103–1988
HLH=heating load hours for a specific geographic region determined from the heating load hour map in Figure C–1 of ANSI/ASHRAE Standard 103–1988 and in section 10.22.1 of this appendix
2080=as defined in section 10.19.1 of this appendix

10.22.3 *Average annual auxiliary electrical energy consumption for gas or oil fueled furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil fueled furnaces and boilers the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$E_{AER}=E_{AE}HLH / 2080$

where:
E_{AE}=as defined in section 10.19.3 of this appendix
HLH=as defined in section 10.22.2 of this appendix
2080=as defined in section 10.19.1 of this appendix

10.22.4 *Average annual electric energy consumption for electric furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For electric furnaces and boilers the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$E_{ER}=100(0.77)(DHR)(HLH)/3.413\ AFUE$

where:
100 = as defined in section 10.20 of this appendix
0.77 = as defined in section 10.19.1 of this appendix
DHR = as defined in section 10.19.1 of this appendix
HLH = as defined in section 10.22.2 of this appendix
3.413 = as defined in section 10.20 of this appendix
AFUE = as defined in section 11.1 of ANSI/ASHRAE Standard 103–1988, percent

10.23 *Annual Efficiency for Gas or Oil Furnaces and Boilers other than Mobile Home Furnaces.* The Annual Efficiency is defined as the ratio of the sum of the useful annual fossil fuel energy delivered to the building space as heat and the auxiliary electrical energy that is recovered as usable heat, to the sum of the annual fossil fuel energy consumption and the energy needed at the power plant to generate the auxiliary electrical energy consumed by the appliance. (The equation defining Annual Efficiency is in section 10.23.4 of this appendix.) The above definition of Annual Efficiency is based upon the term named as seasonal efficiency, energy factor, and defined as equation (1) in appendix B of ANSI/ASHRAE Standard 103–1988, using the average burner operating hours, average annual fuel energy for gas or oil fueled furnaces or boilers (E_F), average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers (E_{AE}), as defined in Appendix C of ANSI/ASHRAE Standard 103–1988. The definition of Annual Efficiency is comparable to the energy factor defined in section 10.21 of this appendix, with the exception that for non-weatherized furnaces, Annual Efficiency is calculated on the basis of indoor installation. The following paragraphs specify the procedure for the calculation of Annual Efficiency and are in place of appendix B and appendix C of ANSI/ASHRAE Standard 103–1988, and include a correction of a syntax error contained in equation (1) of appendix B of ANSI/ASHRAE Standard 103–1988.

10.23.1 *National average number of burner operating hours.* Same as in section 10.19.1 of this appendix except the term $Effy_{HS}$ used in the calculations for the burner operating hours is defined as:

For furnaces and boilers equipped with single stage control:
$Effy_{HS}$=as defined in section 11.2.11 or 11.3.11.3 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of:
=indoor installation, for non-weatherized units with system number 1, 2, 3, 4, 5, 6, or 8 that use indoor combustion air, and for direct vent units with system number 9 or 10
=outdoor installation, for units with system number 9 or 10 that are weatherized

For furnaces and boilers equipped with two stage or step modulating controls:
$Effy_{HS}$=as defined in section 11.4.11.3 or 11.5.11.3 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of:
= indoor installation, for non-weatherized units with system number 1, 2, 3, 4, 5, 6, or 8 that use indoor combustion air, and for direct vent units with system number 9 or 10
= outdoor installation, for units with system number 9 or 10 that are weatherized

10.23.2 *Average annual fuel energy for gas or oil fueled furnaces or boilers.* Same as in section 10.19.2 of this appendix except that the burner operating hours is computed as defined in section 10.23.1 of this appendix.

10.23.3 *Average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers.* Same as in section 10.19.3 of this appendix except that the burner operating hours is calculated as defined in section 10.23.1 of this appendix.

10.23.4 An Annual Efficiency which incorporates fossil fuels and electrical energy as described in sections 10.23.2 and 10.23.3 of this appendix, is defined as, in percent:

$$AE = \frac{E_F\ AFUE^*/100 + 3413\ y\ BEBOH}{E_F + 3413\ F\ E_{AE}} \times 100$$

where:

100=factor that accounts for percent
E_F=average annual fuel consumption as defined in section 10.23.2 of this appendix.
E_{AE}=as defined in section 10.23.3 of this appendix.
AFUE*=AFUE as defined in sections 11.2.12, 11.3.12, 11.4.12 and in section 11.5.12 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of:
=indoor installation, for non-weatherized units with system number 1, 2, 3, 4, 5, 6, or 8 that use indoor combustion air, and for direct vent units with system number 9 or 10
=outdoor installation, for units with system number 9 or 10 that are weatherized
y=as defined in section 10.19.1 of this appendix
BEBOH=(BE)(BOH_{SS}) for units with single stage controls
=(BE_R)(BOH_R) + (BE_H)(BOH_H) for units with two stage controls
=(BE_R)(BOH_R) + (BE_H)(BOH_M) for units with step modulating controls
BOH_{SS}=as defined in section 10.23.1 of this appendix
BOH_R=as defined in section 10.23.1 of this appendix
BOH_H=as defined in section 10.23.1 of this appendix
BOH_M=as defined in section 10.23.1 of this appendix
BE=as defined in section 10.19.1 of this appendix
BE_R=as defined in section 10.19.1 of this appendix
BE_H=as defined in section 10.19.1 of this appendix
F=as defined in section 10.21.1 of this appendix
3413=conversion factor from kilowatt to Btu/h

10.24 *Annual efficiency for electric furnaces and boilers.* The Annual Efficiency for electric furnaces and boilers is defined as:

AE=AFUE*

where:

AFUE*=AFUE as defined in section 11.1 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of:
=indoor installation, for non-weatherized warm air furnaces and boilers
=outdoor installation, for furnaces and boilers that are weatherized

10.25 *Annual efficiency for mobile home furnaces.* The Annual Efficiency for mobile home furnaces, is defined as the ratio of the sum of the useful annual fossil fuel energy delivered to the building space as heat and the auxiliary electrical energy that is recovered as usable heat, to the sum of the annual fossil fuel energy consumption and the energy needed at the power plant to generate the auxiliary electrical energy consumed by the appliance. The above definition of Annual Efficiency is the same as the Annual Efficiency defined and calculated in section 10.23 of this appendix, except that Annual Efficiency for mobile home furnaces is limited to those systems specifically designed for mobile homes and are installed indoors and use outside air for combustion.

10.25.1 *National average number of burner operating hours for mobile home furnaces.* Same as in section 10.19.1 of this appendix, except that the value of $Effy_{SS}$ in the calculation of the burner operating hours is calculated on the basis of a direct vent unit with system number 9 or 10 and installed indoors.

10.25.2 *Average annual fuel energy for mobile home furnaces.* Same as in section 10.23.2 of this appendix except that the burner operating hours is calculated as specified in section 10.25.1 of this appendix.

10.25.3 *Average annual auxiliary electrical energy consumption for mobile home furnaces.* Same as in section 10.23.3 of this appendix except that the burner operating hours is calculated as specified in section 10.25.1 of this appendix.

10.25.4 *Annual efficiency for mobile home furnaces.* The Annual Efficiency for mobile home furnaces, which incorporates fossil fuels and electrical energy as described in section 10.25 of this appendix, is defined as, in percent:

where:

$$AE = \frac{E_F\ AFUE^*/100 + 3413\ y\ BEBOH}{E_F + 3413\ F\ E_{AE}} \times 100$$

100=factor that accounts for percent
E_F=average annual fuel consumption as defined in section 10.25.2 of this appendix.
E_{AE}=as defined in section 10.25.3 of this appendix.
AFUE*=AFUE as defined in sections 11.2.12, 11.3.12, 11.4.12 and 11.5.12 of ANSI/ASHRAE Standard 103–1988, percent, and calculated on the basis of a direct vent unit with system number 9 or 10 and installed indoors
y=as defined in section 10.19.1 of this appendix
BEBOH=(BE)(BOH_{SS}) for units with single stage controls
=(BE_R)(BOH_R)+(BE_H)(BOH_H) for units with two stage controls
=(BE_R)(BOH_R)+(BE_M)(BOH_M) for units with step modulating controls
BOH_{SS}=as defined in section 10.24.1 of this appendix
BOH_R=as defined in section 10.24.1 of this appendix
BOH_H=as defined in section 10.24.1 of this appendix
BOH_M=as defined in section 10.24.1 of this appendix
BE=as defined in section 10.19.1 of this appendix
BE_R=as defined in section 10.19.1 of this appendix
BE_H=as defined in section 10.19.1 of this appendix
F=as defined in section 10.21.1 of this appendix
3413=conversion factor from kilowatt to Btu/h

10.26 *Calculation of sales weighted average annual energy consumption for mobile home furnaces.* In order to reflect the distribution of mobile homes to geographical regions with average HLH_{MHF} value different from 2080, adjust the annual fossil fuel and auxiliary electrical energy consumption values for mobile home furnaces using the following adjustment calculations.

10.26.1 For mobile home furnaces the sales weighted average annual fossil fuel energy consumption is expressed in Btu per year and defined as:

$E_{F,MHF}=(E_F - 8760\ Q_P)\ HLH_{MHF} / 2080 + 8760\ Q_P$

where:

E_F=as defined in section 10.25.2 of this appendix
8760=as defined in section 10.19.1 of this appendix
Q_P=as defined in section 11.2.11 of ANSI/ASHRAE Standard 103–1988
HLH_{MHF}=1880, sales weighted average heating load hours for mobile home furnaces
2080=as defined in section 10.19.1 of this appendix

10.26.2 For mobile home furnaces the sales weighted average annual auxiliary electrical energy consumption is expressed in kilowatt-hours and defined as:

$E_{AE,MHF}=(E_{AE})\ (HLH_{MHF})$ / 2080

where:

E_{AE}=as defined in section 10.25.3 of this appendix

HLH_{MHP}=as defined in section 10.26.1 of this appendix

2080=as defined in section 10.19.1 of this appendix

10.27 The functions F5, F6, and F8 in Appendix E of ANSI/ASHRAE Standard 103–1988 contain typographical errors in the equations as they appear in the ANSI/ASHRAE Standard 103–1988. The following term is substituted for $[\psi_{F,O}*\exp(-t/\tau_{OFF})]^{0.56}$ (in F5 and F6) or $[\psi_{s,O}*\exp(-t/\tau_{OFF})]^{0.56}$ (in F8) where the term (+ 2δ) is missing. The substituted term is:

$[\psi_{F,O}*\exp(-t/\tau_{OFF}) + 2\delta)]^{0.56}$ (in F5 and F6)

or

$[\psi_{s,O}*\exp(-t/\tau_{OFF}) + 2\delta)]^{0.56}$ (in F8).

The complete corrected equations for F5, F6 and F8 are presented in Table 2 of this appendix for information only.

10.28 *Direct determination of off-cycle losses for furnaces and boilers equipped with thermal stack dampers.*

Table 1 System Numbers

Locate the column where all the characteristics are applicable to the unit under test

Characteristic	1	2	3	4	5	6	8	9	10
Indoor Combustion Air	X	X	X	X	X	X	X		
Outdoor, Direct Vent or Isolated Combustion System								X	X
Direct Exhaust			X					(May or may not be present. Does not affect the results.)	
Draft Hood or Draft Diverter	X	X			X	X			
Barometric Draft Control				X			X		
Electrical/Mechanical Stack Damper					X	X	X		
Atmospheric Burner	X				X			X	
Power Burner		X	X	X		X	X		X
Burner Inlet Damper or Flue Damper**	X	X	X	X				X	X
D_r	1 or D_p‡	0.4 or D_p	0.4 or D_p	0.4 or D_p	1	0.4 or D_p	0.4 or D_p	1 or D_r##	0.4 or D_r
D_s	1	1	D_r	0.85 or $\frac{0.79+D_p}{1.4}$	D_o	D_o	$0.85D_o$ or $\frac{(0.79+D_r)D_o}{1.4}$		
S/F	*	*	1	1.4 or test#	*	*	1.4 or test#		

* = Calculated from CO_2 values.

‡ = For atmospheric burner w/burner inlet damper or flue damper which closes within 10 seconds after the burner shuts off.

= For direct vent, or atmospheric burner w/burner inlet damper or flue damper which closes within 10 seconds after the burner shuts off.

** = Power burner may or may not have an electro-mechanical inlet or flue damper.

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$F8(\psi_{s,o}, t$

$F6(\psi_{F,o},$

$F5(\psi_{F,o},$

TABLE 2.—FORMULAS FOR THE FUNCTIONS F5, F6, AND F8

$$F5\left(\psi_{F,0}, t_{OFF}/\tau_{OFF}\right) = \frac{1}{t_{OFF}/\tau_{OFF}} \int_0^{\frac{t_{OFF}}{\tau_{OFF}}} \left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 28\right)^{0.56} \frac{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}}\right)}{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 530\right)^{1.19}} d\frac{t}{\tau_{OFF}}$$

$$F6\left(\psi_{F,0}, t_{OFF}/\tau_{OFF}\right) = \frac{1}{100\left(t_{OFF}/\tau_{OFF}\right)} \int_0^{\frac{t_{OFF}}{\tau_{OFF}}} \left[\frac{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 128\right)^{0.56} \left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 100\right)}{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 630\right)^{1.19}} - \frac{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 28\right)^{0.56} \psi_{F,0} e^{-\frac{t}{\tau_{OFF}}}}{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 530\right)^{1.19}}\right] d\frac{t}{\tau_{OFF}}$$

$$F8\left(\psi_{S,0}, t_{OFF}/\tau_{OFF}\right) = \frac{1}{100\left(t_{OFF}/\tau_{OFF}\right)} \int_0^{\frac{t_{OFF}}{\tau_{OFF}}} \left[\frac{\left(\psi_{S,0} e^{-\frac{t}{\tau_{OFF}}} + 128\right)^{0.56}}{\left(\psi_{F,0} e^{-\frac{t}{\tau_{OFF}}} + 630\right)^{1.19}} - \frac{\left(\psi_{S,0} e^{-\frac{t}{\tau_{OFF}}} + 28\right)^{0.56}}{\left(\psi_{S,0} e^{-\frac{t}{\tau_{OFF}}} + 530\right)^{1.19}}\right] d\frac{t}{\tau_{OFF}}$$

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** = Power burner may or may not have an electro-mechanical timer or time damper.

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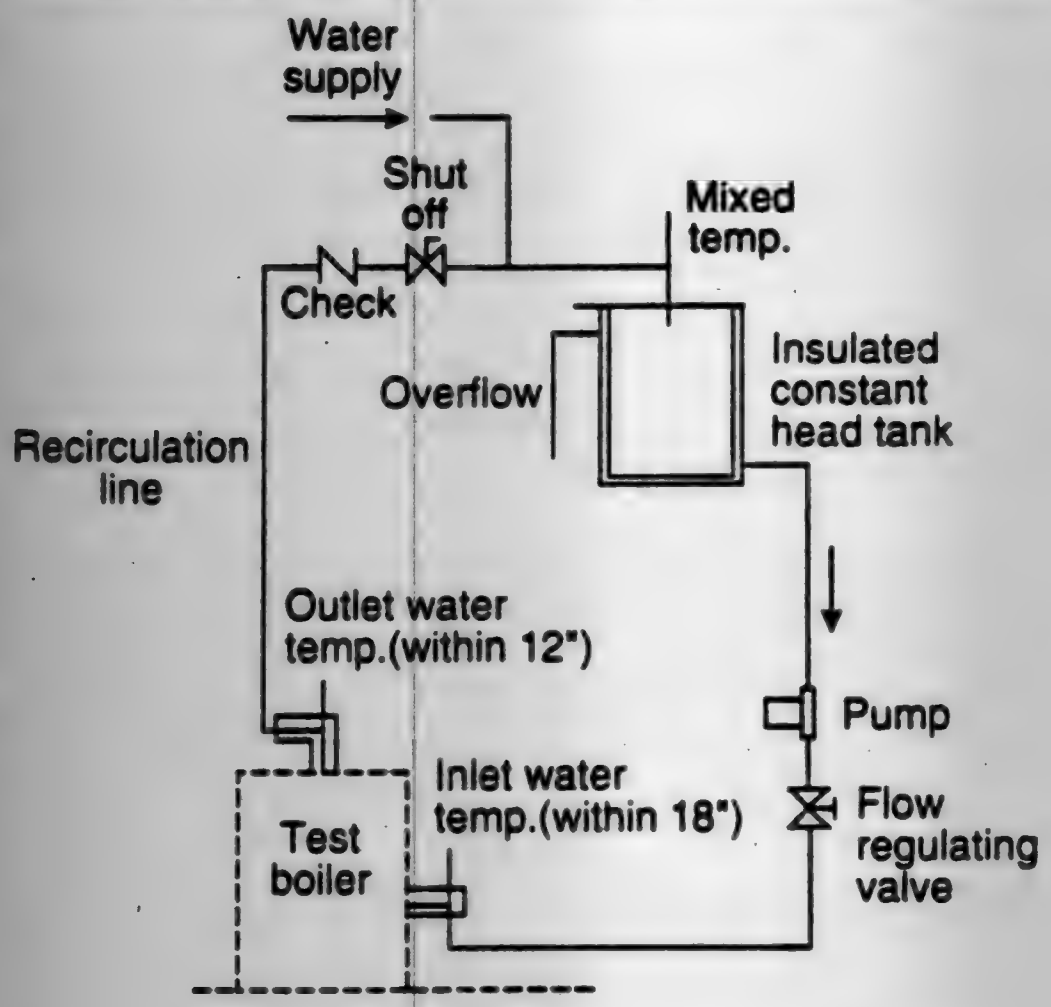

Figure 1. Suggested piping arrangement for hot water boilers

A = Inside blower door
B = Internal section of vent pipe (Uninsulated)
C = Blower access door
D = Flue collar
E = Top of unit, vent connection
F = Diverter box or inducer motor

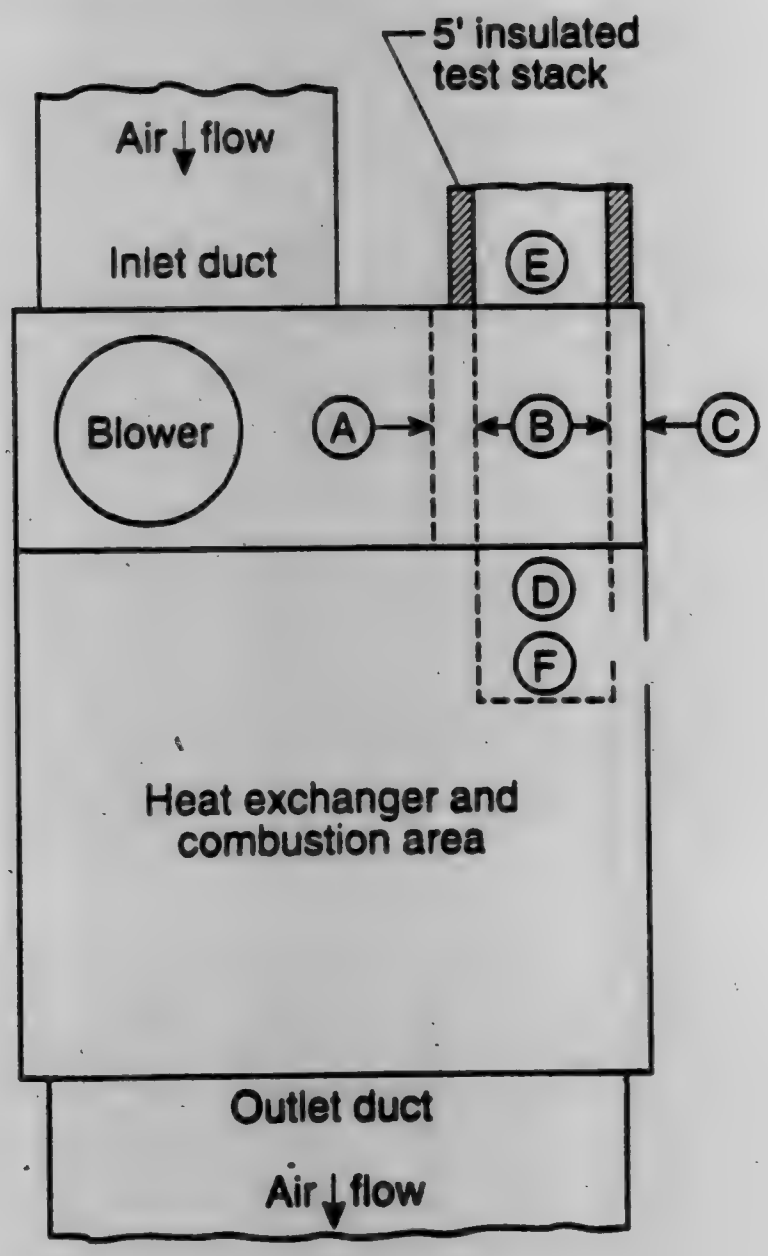

Figure 2. Jacket loss down flow unit

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5. Appendix O to Subpart B of Part 430 is amended as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

a. Section 3.5 is revised and sections 3.5.1 and 3.5.2 are added to read as follows:

3.5 *Pilot light measurement.*

3.5.1 Measure the energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters so equipped.

3.5.2 For manually controlled heaters where the pilot light is designed to be turned off by the user when the heater is not in use and instruction to do so is given on the heater near the gas control valve (e.g. by label) by the manufacturer, the measurement of Q_P need not be performed.

b. Section 4.2.4 is revised to read as follows:

4.2.4 *Weighted-average steady-state efficiency.*

For manually controlled heaters with various input rates the weighted average steady-state efficiency ($\eta_{SS\text{-}WT}$), is:

(1) At 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that the 50 percent of the maximum fuel input rate cannot be set, provided this minimum rate is no greater than ⅔ of maximum input rate of the heater.

For manually controlled heater with one single firing rate the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

c. Section 4.2.6 is revised to read as follows:

4.2.6 *Annual fuel utilization efficiency.*

For manually controlled vented heaters, calculate the AFUE expressed as a percent and defined as:

$$AFUE = \frac{2950\,\eta_{SS} Q_{in\text{-}max}}{2950\,\eta_{SS} Q_{in\text{-}max} + 2.083(4600)\,\eta_u\,Q_P}$$

where:

2950=average number of heating degree days

η_{SS}=as defined as $\eta_{SS\text{-}WT}$ in section 4.2.4 of this appendix

η_u=as defined in section 4.2.5 of this appendix

$Q_{in\text{-}max}$=as defined as Q_{in} at the maximum fuel input rate, as defined in section 3.1 of this appendix

4600=average number of non-heating season hours per year

Q_P=as defined in section 3.5 of this appendix

2.083=(65 − 15) / 24=50/24

65=degree day base temperature, °F

15=national average outdoor design temperature for vented heaters as defined in section 4.1.10 of this appendix

24=number of hours in a day

For manually controlled vented heaters where the pilot light can be turned off by the user when the heater is not in use as described in section 3.5.2, calculate AFUE expressed as a percent and defined as:

AFUE=η_u

where:

η_u=as defined in section 4.2.5 of this appendix

d. Section 4.3.7 is revised to read as follows:

4.3.7 *Annual Fuel Utilization Efficiency.*

Calculate AFUE expressed as a percent and defined as:

$$AFUE = \frac{2950\,\eta_{SS\text{-}WT}\,\eta_u\,Q_{in\text{-}max}}{2950\,\eta_{SS\text{-}WT}\,Q_{in\text{-}max} + 2.083(4600)\,\eta_u\,Q_P}$$

where:

2950=average number of heating degree days

$\eta_{SS\text{-}WT}$=as defined in section 4.1.16 of this appendix

η_u=as defined in section 4.3.6 of this appendix

$Q_{in\text{-}max}$=as defined in section 4.2.6 of this appendix

4600=as defined in section 4.2.6 of this appendix

Q_P=as defined in section 3.5 of this appendix

2.083=as defined in section 4.2.6 of this appendix

e. Add Sections 4.6, 4.6.1, 4.6.2, 4.6.3, 4.6.4, 4.6.4.1, and 4.6.4.2 after section 4.5.3 and before the tables to read as follows:

4.6 *Annual Efficiency.*

An Annual Efficiency which incorporates fossil fuels and electrical energy, is defined as, in percent:

AE=100•{(E_F)(AFUE/100)+3413(P_E)(BOH)}/{E_F+3413(F)(E_{AE})}

where:

E_{AE}=as defined in section 4.6.3 of this appendix

E_F=average annual fuel consumption as defined in section 4.6.2 of this appendix

AFUE=AFUE as defined in sections 4.1.17, 4.2.6, and 4.3.7 of this appendix, percent

P_E=Auxiliary electric energy input rate as defined in section 3.1.3 of this appendix

BOH=National average number of burner operating hours, defined in section 4.6.1 of this appendix as:

=(BOH_{SS}) for units with single stage or manual controls

=(BOH_R+BOH_H) for units with two stage or step modulating controls

F=the ratio of the energy consumed at the source of electrical generation to the electrical energy delivered at the vented heater, =3.37

3413=conversion factor from kilowatt to Btu/h

4.6.1 *National average number of burner operating hours.* For vented heaters equipped with single stage controls or manual controls, the national average number of burner operating hours is defined as:

BOH_{SS}=1416(A_F)(A)(DHR) − 1416(B)

where:

1416=national average heating load hours for vented heaters based on 2950 degree days and 15 °F outdoor design temperature

A_F=0.6858, adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system

DHR=typical design heating requirements based on Q_{OUT}, from Table 4 of this appendix.

Q_{OUT}=[(η_{SS}/100) − C_J(L_J/100)]•(Q_{in})

L_J=jacket loss as defined in section 4.1.5 of this appendix

C_J=2.8, adjustment factor as defined in section 4.3.6 of this appendix

η_{SS}=steady-state efficiency as defined in section 4.1.10 of this appendix, percent

Q_{in}=as defined in section 3.1 of this appendix at the maximum fuel input rate

A=100000/[341300(PE)+(Q_{in} − Q_P)(η_u)]

B=2.938(Q_P)(η_u)(A)/100000

100000=factor that accounts for percent and Kbtu

P_E=as defined in section 3.1.3 of this appendix

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Q_P=as defined in section 3.5 of this appendix
η_s=as defined in section 4.3.6 of this appendix for vented heaters using the tracer gas method, percent
=as defined in section 4.2.5 of this appendix for manually controlled vented heaters, percent
=AFUE (2950)(η_{SS})(Q_{in})/[(2950)(η_{SS})(Q_{in}) AFUE (2.083)(4600)(QP)] for vented heaters without manual controls and without thermal stack dampers and not using the optional tracer gas method, where AFUE = as defined in section 4.1.17 of this appendix, percent
2950=average number of heating degree days as defined in section 4.2.6 of this appendix
4600=average number of non-heating season hours per year as defined in section 4.2.6 of this appendix
2.938=(4160/1416)=ratio of the average length of the heating season in hours to the average heating load hours
2.083=as defined in section 4.2.6 of this appendix

For vented heaters equipped with two stage or step modulating controls the national average number of burner operating hours at the reduced operating mode is defined as:

$BOH_R=X_1E_M/Q_{red\text{-}in}$

where:

X_1=as defined in section 4.1.14 of this appendix
$Q_{red\text{-}in}$=as defined in section 4.1.11 of this appendix
E_M=average annual energy used during the heating season
=$(Q_{in}-Q_P)(BOH_{SS})+(8760-4600)(Q_P)$
Q_{in}=as defined in section 3.1 of this appendix at the maximum fuel input rate
Q_P=as defined in section 3.5 of this appendix
BOH_{SS}=as defined above, in which the term P_E in the factor A is increased by the factor R, which is defined in section 3.1.3 of this appendix as:
R=1.3 for two stage controls
=1.4 for step modulating controls when the ratio of minimum- to-maximum fuel input is greater than or equal to 0.7
=1.7 for step modulating controls when the ratio of minimum- to-maximum fuel input is less than 0.7 and greater than or equal to 0.5
=2.2 for step modulating controls when the ratio of minimum- to-maximum fuel input is less than 0.5
A=100000/[341300(PE)(R)+($Q_{in}-Q_P$)(η_s)]
8760=total number of hours per year
4600=as defined in section 4.2.6 of this appendix

For vented heaters equipped with two stage or step modulating controls the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$BOH_H=X_2E_M/Q_{in}$

where:

X_2=as defined in section 4.1.15 of this appendix
E_M=as defined above
Q_{in}=as defined in section 3.1 of this appendix at the maximum fuel input rate

4.6.2 *Average annual fuel energy for gas or oil fueled vented heaters.* For vented heaters equipped with single stage controls or manual controls, the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$E_F=BOH_{SS}(Q_{in}-Q_P)+8760(Q_P)$

where:

BOH_{SS}=as defined in section 4.6.1 of this appendix
Q_{in}=as defined in section 3.1 of this appendix
Q_P=as defined in section 3.5 of this appendix
8760=as defined in section 4.6.1 of this appendix

For vented heaters equipped with either two stage or step modulating controls E_F is defined as:

$E_F=E_M+4600(Q_P)$

where:

E_M=as defined in section 4.6.1 of this appendix
4600=as defined in section 4.2.6 of this appendix
Q_P=as defined in section 3.5 of this appendix

4.6.3 *Average annual auxiliary electrical energy consumption for vented heaters.* For vented heaters with single stage controls or manual controls the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours defined as:

$E_{AE}=BOH_{SS}(P_E)$

where:

BOH_{SS}=as defined in section 4.6.1 of this appendix
P_E=as defined in section 3.1.3 of this appendix

For vented heaters equipped with two stage or modulating controls E_{AE} is defined as:

$E_{AE}=(BOH_R+BOH_H)(P_E)$

where:

BOH_R=as defined in section 4.6.1 of this appendix
BOH_H=as defined in section 4.6.1 of this appendix
P_E=as defined in section 3.1.3 of this appendix

4.6.4 *Average annual energy consumption for vented heaters located in a different geographic region of the United States and in buildings with different design heating requirements.*

4.6.4.1 *Average annual fuel energy consumption for gas or oil fueled vented home heaters located in a different geographic region of the United States and in buildings with different design heating requirements.*

For gas or oil fueled vented heaters the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$E_{FR}=[(E_F-8760\ Q_P)\ HLH\ /\ 1416]+8760\ Q_P$

where:

E_F=as defined in section 4.6.2 of this appendix
8760=as defined in section 4.6.1 of this appendix
Q_P=as defined in section 3.5 of this appendix
HLH=heating load hours for a specific geographic region determined from the heating load hour map in Figure 3 of this appendix
1416=as defined in section 4.6.1 of this appendix

4.6.4.2 *Average annual auxiliary electrical energy consumption for gas or oil fueled vented home heaters located in a different geographic region of the United States and in buildings with different design heating requirements.*

For gas or oil fueled vented home heaters the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$E_{AER}=E_{AE}\ HLH\ /\ 1416$

where:

E_{AE}=as defined in section 4.6.3 of this appendix
HLH=as defined in section 4.6.4.1 of this appendix
1416=as defined in section 4.6.1 of this appendix

F. Table 4 and Figure 3 are added in the appropriate location to the end of Appendix O of Subpart B of 10 CFR part 430 to read as follows:

TABLE 4.— AVERAGE DESIGN HEATING REQUIREMENTS FOR VENTED HEATERS WITH DIFFERENT OUTPUT CAPACITIES

Vented heaters output capacity Q_{out}—(Btu/hr)	Average design heating requirements (Kbtu/hr)
5,000–7,499	5.0
7,500–10,499	7.5
10,500–13,499	10.0
13,500–16,499	12.5
16,500–19,499	15.0
19,500–22,499	17.5
22,500–26,499	20.5
26,500–30,499	23.5
30,500–34,499	26.5
34,500–38,499	30.0
38,500–42,499	33.5
42,500–46,499	36.5
46,500–51,499	40.0
51,500–56,499	44.0
56,500–61,499	48.0
61,500–66,499	52.0
66,500–71,499	56.0
71,500–76,500	60.0

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ALASKA	3500	HLH
HAWAII AND TERRITORIES	0	HLH

This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the Rockies.

FIGURE 3– **Heating Load Hours (HLH) for the United States and Canada**

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6. Appendix J1 to Subpart B of 10 CFR 430 is revised to read as follows:

Appendix J1 to Subpart B of 10 CFR 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

1. *Test Conditions.* 1.1 *Installation requirements for gas- and oil-fired storage water heaters, and specified test conditions for unfired storage tanks.* For gas- and oil-fired storage water heaters and for unfired storage tanks, follow the provisions in section 2.1 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

2. *Test Conditions for Electric Water Heaters.* Test conditions for electric water heaters shall be those specified in section 2.2 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

3. *Measurements.* Measurements shall be those specified in section 2.3 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart). For electric water heaters that have a combined rated energy consumption from all heating elements of more than 12 kW, the appropriate test voltage shall be 240 volts.

4. *Calculations.* 4.1 *Annual energy consumption efficiency.* Annual energy consumption efficiency shall be calculated as specified in section 2.4 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

4.2 *Annual energy consumption.* Annual energy consumption for gas- and oil-fired storage water heaters shall be calculated as follows:

4.2.1 *Annual energy consumption of gas and oil.* Annual energy consumption of gas or oil, AE, expressed in Btu's per year shall be calculated as follows:

$AE = E_t \cdot E_{ap} / E$

$E = E_t / (1 + (SL \cdot 24 \cdot t) / Q)$

where:

E_t = thermal efficiency, expressed as a ratio, as determined in section 2.8.1 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

E_{ap} = annual performance factor as determined in section 2.8.2 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

SL = standby loss, in Btu per hour, as determined in section 2.5 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

t = 1 hour per hour.

Q = hourly recovery, in Btu per hour, as determined in section 2.7 of the Standard RAERS Test Procedures for Water Heaters (Appendix E to this subpart).

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6. Appendix P to Subpart B of Part 430 is revised to read as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

1. *Test method.* The test method for testing gas- and oil-fired pool heaters shall be as specified in ANSI Standard for Gas-Fired Pool Heaters, Z21.56–1990.

2. *Test conditions.* Establish the test conditions specified in section 2.8 of ANSI Standard Z21.56–1990.

3. *Measurements.* Measure the quantities delineated in section 2.8 of ANSI Standard Z21.56–1990, except in the case of oil-fired heaters the measurement of energy consumption in Btu's is to be carried out in appropriate units, e.g., gallons.

4. *Calculations.* Calculate the thermal efficiency (expressed as a percent) as specified in section 2.8 of ANSI Standard Z21.56–1990, except in the case of oil-fired heaters the expression of fuel consumption shall be in Btu's.

4.1 *Annual Efficiency.* An Annual Efficiency which incorporates fossil fuels and electrical energy, is defined as the ratio of the annual output of energy delivered to the pool water (fossil fuel) to the total annual energy input to the pool heater, and is, in percent:

$AE = E_t \cdot E_{os}/(E_F + F \cdot E_{ae})$ for pool heaters with pilot light ignition

$= E_t/[1 + (F-1) \cdot PE/(Q_{IN} + PE)]$ for pool heaters without pilot light ignition

where:

E_t=thermal efficiency as defined in section 2.8.1 of ANSI Standard Z21.56–1990, percent
=steady-state efficiency as defined in section 2.8.2 of ANSI Standard Z21.56–1990, percent

E_{os}=average annual energy consumption when burner is on, as defined in section 4.2 of this appendix

E_F=as defined in section 4.3 of this appendix

Q_P=energy consumption of continuously operating heater pilot light, if employed, Btu/h

E_{ae}=Average annual auxiliary electrical energy consumption for pool heaters as defined in section 4.4 of this appendix, Btu

F=the ratio of the energy consumed at the source of electrical generation to the electrical energy delivered at the pool heater,
=3.37

Q_{IN}=rated fuel energy input as defined in section 2.8.1 or 2.8.2 of ANSI Standard Z21.56–1990, Btu/h

$PE = 2 \cdot E_c$ if heater tested according to section 2.8.1 of ANSI Standard Z21.56–1990

$= 3.413 \cdot PE_{rated}$ if heater tested according to section 2.8.2 of ANSI Standard Z21.56–1990

E_c=measured electrical energy consumption over a 30-minute interval as defined in section 2.8.1 of ANSI Standard Z21.56–1990, Btu/(30 minutes)

2=factor converting Btu per 30-minute to Btu/h

PE_{rated}=nameplate rating of auxiliary electrical equipment of heater, Watt

3.413=factor converting Watt to Btu/h

4.2 *Average annual energy consumption when burner is on.* The average annual energy consumption when the burner is on (E_{os}) is defined as:

$E_{os} = (BOH)(Q_{IN} + PE)$

where:

BOH=average number of burner operating hours, = 104

Q_{IN}=rated fuel energy input as defined according to section 2.8.1 or 2.8.2 of ANSI Standard Z21.56–1990, Btu/h

PE=electrical input when burner is on, as defined in section 4.1 of this appendix

4.3 *Average annual fossil fuel energy for pool heaters.* The average annual fuel energy for pool heater (E_F) is defined as:

$E_F = (BOH)(Q_{IN}) + (POH - BOH)(Q_P)$

where:

BOH=average number of burner operating hours as defined in section 4.2 of this appendix

POH=average number of pool operating hours, = 4464

Q_{IN}=rated fuel energy input as defined according to section 2.8.1 or 2.8.2 of ANSI Standard Z21.56–1990

Q_P=energy consumption of continuously operating pilot light if employed. It is assumed that the pilot is turned off during non-pool season of the year, Btu/h

4.4 *Average annual auxiliary electrical energy consumption for pool heaters.* The average annual auxiliary electrical energy consumption for pool heaters (E_{ae}) is expressed in Btu and defined as:

$E_{ae} = (BOH)(PE)$

where:

BOH=as defined in section 4.2 of this appendix

PE=as defined in section 4.1 of this appendix

[FR Doc. 93–19268 Filed 8–20–93; 8:45 am]

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Monday
August 23, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Definition of Awarding Official; Notice

VOL 58 ISS 161 AG 23 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Definition of Awarding Official

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) is publishing a definition for Awarding Official. This action will permit the BIA to accommodate the amendments to the Act whereby a non-construction self-determination contract is no longer a procurement contract.

DATES: This action is effective on August 23, 1993 and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: James J. Thomas, Chief, Division of Self-Determination Services at 1849 C Street, NW., room 4627–MIB., Washington, DC 20240, (202) 208–3708.

SUPPLEMENTARY INFORMATION: The amendment changing the status of non-construction self-determination contracts to non-procurement contracts eliminates the Federal Acquisition Regulations (FAR) as requirements for such contracts. Further, it is no longer necessary that only warranted contract officers award, administer, and oversee self-determination contracts. For example, other staff may serve as an Awarding Official if sufficiently qualified to serve in that capacity. To ensure proper administration and oversight of non-procurement contracts, the definition of Awarding Official shall include procedures for the selection, appointment, and if necessary, the termination of the appointment of an Awarding Official. The authority for this Notice is Pub. L. 93–638, 88 Stat. 2205, 2206, (25 U.S.C. 450(f)).

DEFINITION: For the purposes of this Notice, "Awarding Official" means contracting officer and shall be any person, other than an Approving Official who has the delegated authority to award, modify, and administer all non-procurement and non-construction contracts as defined in the 25 U.S.C. section 450(b)(j), as amended, and shall make decisions and issue findings and determinations with respect thereto. The Awarding Official may be other than a warranted contracting officer but also includes warranted contracting officers.

PROCEDURES: Selection, Appointment and Termination of Awarding Official:

A. *Selection:* In selecting Award Officials, Area Directors shall consider the candidate's experience, training, education, business acumen, judgment, character, and reputation. Selection criteria includes:

(1) Experience with Pub. L. 93–638 contracts and administration;

(2) Education and/or training in Pub. L. 93–638 contracting, contract administration, property management, accounting, or related fields;

(3) Knowledge of Pub. L. 93–638 policies and procedures including legislation, regulations and the proposed regulations;

(4) Satisfactory completion of Pub. L. 93–638 and other contract related training courses.

B. *Appointment:* Awarding Officials shall be appointed by an Area Director in writing via a "Letter of Appointment" which shall state any limitations on the scope of authority to be executed. The Area Director shall maintain files containing copies of all Letters of Appointment.

C. *Termination:* Termination of an Awarding Official appointment shall be by letter. Termination may be for reasons such as reassignment, termination of employment or unsatisfactory performance. No termination shall operate retroactively.

Dated: August 13, 1993.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–20282 Filed 8–20–93; 8:45 am]

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federal register

Monday
August 23, 1993

Part IV

Department of the Interior

Fish and Wildlife Service
50 CFR Part 20
Migratory Bird Hunting; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 1993–94 migratory bird hunting season. These early seasons may open prior to October 1, 1993. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the Federal Register as amendments to §§ 20.101 through 20.106, and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: This rule takes effect on August 23, 1993.

ADDRESSES: Season selections from States and Territories are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, NW., 1849 C Street, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1993

On April 9, 1993, the Service published for public comment in the Federal Register (58 FR 19008) a proposal to amend 50 CFR part 20, with comment periods ending July 22, 1993, for early-season proposals and September 1, 1993, for late-season proposals. On June 1, 1993, the Service published for public comment a second document (58 FR 31244) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 24, 1993, a public hearing was held in Washington, DC, as announced in the April 9 and June 1 Federal Registers to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for those species and for other early seasons.

On July 13, 1993, the Service published in the Federal Register (58 FR 37828) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1993–94 season. This rulemaking is the fourth in the series, and establishes final frameworks for early-season migratory bird hunting regulations for the 1993–94 season.

Review of Public Comments and the Service's Response

As of July 25, 1993, the Service had received 37 written comments; 27 of these specifically addressed early-season issues. The Service also received recommendations from all four Flyway Councils. Early-season comments are summarized and discussed in the order used in the April 9 Federal Register. Only the numbered items pertaining to early seasons for which comments were received are included.

General

Council Recommendations: The Central Flyway Council supported the proposed frameworks, except as addressed in other recommendations contained below.

Written Comments: The Fund for Animals opposed the hunting of migratory waterfowl believing it is an unethical pursuit. They believe waterfowl hunting should only be permitted when the biological evidence indicates that such take will not harm the population, when the take is necessary to alleviate a problem attributable to waterfowl, after all reasonable non-lethal alternatives have been used to alleviate the problem, and if public opinion is in favor of such an activity.

1. Ducks

i. Teal Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that an experimental 9–day September teal season be conducted for 3 years in Michigan. Limitations would be placed on both the number of areas open to hunting and hunter numbers.

The Committee also recommended that a 9–day season be held in the Southern Duck Zone in Iowa. Granting a teal hunting season in Iowa will allow similar hunting opportunity as in Illinois and Missouri.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the shooting hours remain one-half hour before sunrise to sunset.

The Central Flyway Council indicated that States should be allowed to select traditional shooting hours without further evaluations and supported the requested seasons in Iowa and Michigan.

Public-Hearing Comments: Mr. Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, supported allowing one-half hour before sunrise shooting hours for blue-winged teal without further evaluation, citing information from law-enforcement officials and field studies which he believed indicated that there was negligible impact on nontarget species last year. He stated that the Council supported requests for teal seasons in Iowa and Michigan.

Ms. Susan Hagood, representing the Humane Society of the U.S., suggested that the Service did not have adequate information to allow presunrise hunting during special seasons. States that hunt wood ducks and blue-winged teal should be collecting and reporting information on status of breeding populations.

Mr. Charles Kelly, representing the Alabama Department of Conservation and Natural Resources, said that the Service should allow shooting hours which begin one-half hour before sunrise for September teal seasons.

Written Comments: The Louisiana Department of Wildlife and Fisheries summarized the results of their recent shooting-hour study and strongly supported uniform presunrise shooting hours for all migratory bird hunting, including teal seasons during September. The Alabama Department of Conservation and Natural Resources supported the special teal season, but requested continuation of presunrise shooting hours without further evaluation.

The Central Flyway Council supported the use of presunrise shooting hours without further evaluation and initiation of seasons in Iowa and Michigan. The Texas Parks and Wildlife Commission supported the Central Flyway Council's recommendation.

The States of Iowa and Michigan supported the Council recommendations for September teal seasons in their respective States.

The Wisconsin Department of Natural Resources supported the return to sunrise shooting hours for September teal seasons, unless States can demonstrate that the impact of presunrise shooting hours on nontarget species is negligible. They objected to the inequality in duck-hunting opportunity in September and requested that the Service offer production States some compensation in lieu of September teal seasons. They expressed concern about the specific triggering levels which are currently being used for regulatory decisions, and about the level of harvest on blue-winged teal south of the U.S. border.

The National Audubon Society requested that shooting hours begin at sunrise, while two individuals from Texas requested that shooting hours begin at one-half hour before sunrise.

The Fund for Animals requested an immediate moratorium on the hunting of this species. The Humane Society of the U.S. opposed these and all other special seasons. An individual from Illinois also opposed this season.

Service Response: Breeding-population information for 1993 and harvest and band-recovery data from the 1992–93 waterfowl seasons indicate that a September teal season can be offered to nonproduction States in the Central and Mississippi Flyways in 1993.

However, regarding Iowa and Michigan, these States were defined as duck-production States following the evaluation of the 1965–67 teal seasons. Currently, the criteria for these seasons limits their use to nonproduction States. A re-evaluation of this aspect of the criteria may be warranted, but a coordinated, flyway-wide approach would be preferable to a State-by-State approach. However, the 1993 estimate of the blue-winged teal breeding population suggests that liberalization of teal seasons beyond those currently offered is not warranted at this time.

Consistent with the strategy for the use of shooting hours developed by the Service in 1990, shooting hours during species-specific duck seasons will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. States will be allowed to continue presunrise shooting hours during their September teal seasons under the condition that they conduct studies or provide information that demonstrate a negligible impact on nontarget duck species during the one-half hour prior to sunrise.

Some States collected data during their 1992 September teal seasons that addressed only the availability of nontarget ducks during the pre- and post-sunrise periods. Such availability studies did not adequately address the concerns of the Service regarding potential harvest of nontarget ducks during the pre-sunrise period.

The Service has prepared guidelines for shooting-hour studies, including the desired scope of the study (i.e., flyway-wide) and recommended sample sizes. The Service recommends the use of spy-blinds because they have been used in the past to adequately assess the harvest of nontarget species during regular and special seasons. The Service will provide standard operating procedures for spy-blind studies and data-collection cards to those States that so request.

ii. Wood Duck/Teal Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that shooting hours for these seasons in Kentucky and Tennessee be the same as those for regular seasons, one-half hour before sunrise to sunset.

Public-Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the U.S., suggested that the Service did not have adequate information to allow presunrise hunting during special seasons. States that hunt wood ducks and blue-winged teal should be collecting and reporting information on the status of breeding populations.

Written Comments: The National Audubon Society questioned the purpose of these seasons and whether these wood ducks would be unavailable during the regular season.

Service Response: A cooperative Wood Duck Initiative undertaken by the Service and the Atlantic and Mississippi Flyway Councils in 1991 is designed to improve banding programs and evaluate techniques for obtaining estimates of breeding population size and production. The Service does not intend to discontinue or expand September wood duck seasons, at least until the first phase of this initiative has been completed. These seasons are designed to harvest primarily locally produced wood ducks during September when few northern migrants are present.

The Service has published a strategy concerning shooting hours which states that during species-specific duck seasons shooting hours will begin at sunrise, unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. The Service has recently received information from Kentucky and Tennessee regarding the effect of presunrise shooting hours; this information is considered sufficient to demonstrate a negligible impact of presunrise shooting hours on nontarget duck species during seasons directed at both teal and wood ducks. Florida had previously provided sufficient information to allow presunrise shooting in that State. Therefore, Florida, Kentucky, and Tennessee may continue presunrise shooting hours during their September seasons without further evaluation.

3. Sea Ducks

Council Recommendations: The Atlantic Flyway Council recommended that the bag limit for sea ducks remain at 7, with a species-group restriction of 4 scoters, within the 107–day season during 1993.

Public-Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the U.S., expressed concern about the continuation of seasons on species, such as sea ducks, for which there is little biological information.

Written Comments: The Fund for Animals requested a moratorium on all sea duck hunting. The Humane Society of the U.S. opposed this season because they believe crippling and wanton waste occur frequently, data is insufficient to justify a season, and available data indicate possible declines for certain sea duck species. They believe that Atlantic Flyway seasons should be closed or their length and limits reduced substantially until complete and high-quality data are available. They also urged the Service to close Pacific Flyway seasons. A local organization from Massachusetts requested continuation of the 107–day, sea-duck season with no change in bag limits, shooting hours, or other frameworks.

Service Response: The Service has previously expressed its concern about the status of sea ducks and the potential impact that increased hunting activity could be having on these species. The Service stated that additional data and a management plan are needed to guide future management efforts for these species. In 1992, the Service asked that the Flyway Councils make substantial progress in addressing these concerns prior to the 1993–94 regulations-development cycle. In April 1993, the Service requested that the Atlantic and Pacific Flyway Councils review the status of sea ducks before recommending frameworks for 1993–94 hunting seasons, and reiterated that, without more complete information on population status and harvest, the Service may be forced to restrict these special seasons. Although the Service, in cooperation with the Flyway Councils, has accumulated additional information regarding sea ducks, it

continues to recommend the completion of the management plan and improvement of survey information. The Service is restricting the number of scoters allowed in the 7–bird sea-duck limit to 4. However, the Service remains concerned about the potential for increased harvest pressure upon these species. The Service will continue to monitor these species and notes that future restrictions may be necessary.

4. Canada Geese

Council Recommendations: The Atlantic Flyway Council made the following recommendations pertaining to special Canada goose seasons:

In Maryland, initiate a 3–year experimental season in the 14 counties west of Chesapeake Bay with framework dates of September 1–15.

In Massachusetts, extend the framework closing date for the season to September 15.

In New Jersey, initiate a 3–year experimental season in the northern portion of the State with framework dates of September 1–19.

In New York, expand the area open to goose hunting in the western portion of the State, initiate a new 3–year experimental season in the southeastern portion of the State, and extend the framework dates for the season in both areas to September 1–17.

In Virginia, initiate a 3–year experimental season with framework dates of September 1–15.

In North Carolina, amend the experimental season to allow a season length of 15 consecutive days with framework dates of September 1–30, during 1993–95.

In Pennsylvania, amend the experimental season in the Southeastern Area to include the Counties of Berks, Chester, and Delaware; and extend the framework dates in the Southeastern Area to September 1–15.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to special Canada goose seasons:

In Minnesota, a new 3–year experimental season in an expanded Southwest Zone, an expansion of the Fergus-Falls/Alexandria Zone with continued monitoring of hunter numbers and harvest, operational status for the Southwest-Border-Zone season and the Fergus Falls/Alexandria-Zone season, and allow the 10–day seasons in all zones to begin on the first Saturday in September.

In Ohio, a new 3–year experimental 10–day season in 31 southwest counties.

In Wisconsin, operational status for the early season in the southeast portion of the State.

The Committee further recommended that annual monitoring of hunter numbers in experimental-season zones no longer be required after the criteria have been met and the seasons have become operational.

The Central Flyway Council supported the Atlantic and Mississippi Flyway Councils' requests for special early seasons.

The Pacific Flyway Council made the following recommendations pertaining to special Canada goose seasons:

That operational status be given to the special season in Oregon and Washington; that permits no longer be required, seasons be increased from 10 to 12 days, daily bag limits be increased from 2 to 3, and States be allowed independent seasons.

That the Washington hunt area be enlarged to include the area along the Columbia River from the Astoria/Megler Bridge on State Highway 101 to the end of the North Jotty near Fort Camby.

That an experimental season be adopted in northwestern Oregon with season dates of September 1 through September 12 and a bag limit of 2. A mandatory State permit would be required.

That there be no change in frameworks for Utah and Wyoming.

Public-Hearing Comments: Mr. Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, supported requests for early Canada goose seasons in the Mississippi and Atlantic Flyways.

Written Comments: The States of Maryland, New York, and Virginia requested approval of the Council recommendations pertaining to special Canada goose seasons in their respective States.

The Minnesota Department of Natural Resources requested that the Service drop the requirement that these seasons be limited to 10 consecutive days, presented corrections to the proposed zone description for the Southwest Canada Goose Zone, and indicated they have postponed expansion of the Fergus Falls/Alexandria Canada Goose Zone.

The Wisconsin Department of Natural Resources urged the Service to reconsider the criteria recently established for early and late special Canada goose seasons. They continue to believe that these criteria are inappropriate and too exacting. They further urged the Service to drop its requirement that States annually monitor harvest and hunter participation after the experimental period has been successfully completed.

The Central Flyway Council supported the requests for early Canada goose seasons in the Atlantic and Mississippi Flyways.

The Fund for Animals stated that, though they are aware of the growing resident goose populations in many States, they are not in support of the various experimental goose season proposals. They assume, considering the areas where these seasons are proposed, that these experimental seasons are an attempt to deal with an alleged overpopulation problem or are in response to damage complaints. While they recognize that wildlife can cause damage to agricultural lands and other property, they believe that such damage is, particularly in the case of farmers, a risk of doing business. They also believe that wildlife "overpopulations" are generally not a function of biological factors but of sociological concerns.

The Humane Society of the U.S. opposed these seasons and all other special seasons. A local organization from Maryland opposed the season in that State and also believed that the bag limits were excessive. A local sportsmen's organization from Massachusetts supported the early seasons and continuation of the 5–bird limit.

The National Audubon Society questioned how the proposed changes in Washington and Oregon relate to the conservation and management of dusky Canada geese.

Service Response: As indicated in the July 13 Federal Register, the Service is modifying the special-season criteria to allow seasons of greater than 10 days in length in the Atlantic and Mississippi Flyways. The Service notes that the criteria currently indicate these seasons will generally be held between September 1 and September 10. Although the current guideline dates contain sufficient flexibility to allow seasons after September 10, proposals for such seasons will be assessed on an area-by-area basis. The Service also emphasizes that, for such seasons occurring after September 10, gathering of population information must begin at least 2 years prior to the requested season, and further emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria.

The special-season criteria are herein modified to read as follows:

Criteria for Special Canada Goose Seasons

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of

controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season.

A. In the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese, seasons will generally be held between September 1 and September 10. Requests for seasons after September 10 will be assessed on an area-by-area basis.

B. In the Central and Pacific Flyways, seasons may not exceed 30 consecutive days, generally between September 1 and September 30, and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held after the regular season but no later than February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. Initially, all seasons will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of Agreement and will include at least the following:

A. Conduct neck-collar observations (where appropriate) and population surveys beginning at least 1 year prior to the requested season and continuing during the experiment. For early seasons to be held after September 10, data-gathering must begin at least 2 years prior to the requested season.

B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

The Frameworks herein provide for the requested changes in frameworks by the Flyway Councils, except that seasons in the Atlantic Flyway must close no later than September 15, that the additional areas in southern Minnesota must be evaluated through an experimental season, that the special seasons in Minnesota must close no later than September 16, and that annual monitoring of harvest and hunter numbers will continue to be required after the seasons become operational.

Presently, the only source of harvest and hunter-activity information for special Canada goose seasons is through data-gathering programs established by the States for these seasons. The existing Federal harvest survey cannot provide reliable data on the small scale required for the special Canada goose seasons. The Service hopes that the new Migratory Bird Harvest Information Program will assist the States in conducting these monitoring programs. In the interim, however, the Service believes that the harvest and hunter-activity information should continue to be gathered by those States having the special seasons.

The Service recognizes that the special season in the Southwest Border Zone in Minnesota would have been granted operational status were it not for the modification of the zone boundaries. The seasons in Oregon and Washington are directed at locally produced geese before northern migrants, such as dusky Canada geese, arrive.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended that the sandhill crane hunting area in North Dakota be extended eastward to include the entire State. The eastern portion of North Dakota was previously closed to protect greater sandhill cranes. Hunting zones, season dates, and bag limit restrictions have all been used to limit harvest of greater sandhill cranes in North Dakota. Measurements on harvested sandhill cranes are routinely taken throughout the hunting season to identify areas of distribution and harvest of greater sandhill cranes. North Dakota plans to continue these actions in the future. Cranes have recently shifted their migrational pattern and larger numbers of cranes are using the eastern portion of the State. North Dakota sportsmen have requested an opportunity to take advantage of this shift in crane migration. In addition, complaints of crane depredation of row crops in areas east of Highway 281 have been reported.

The Council also recommended that season lengths for mid-continent sandhill cranes be increased by 14 days in the Central Flyway. Increasing the season length to include the time when depredations on winter wheat occur may curtail the damage to these crops. The Council believes allowing additional hunting days will not harm the population and would increase hunting opportunity.

The Pacific Flyway Council recommended continuation of the special seasons in the Pacific Flyway.

Public-Hearing Comments: Mr. Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, reiterated the Council's recommendations to extend North Dakota's sandhill crane zone and to allow 14 additional days in the Flyway's sandhill crane season.

Written Comments: The Central Flyway Council reiterated its recommendations to expand the open area in North Dakota and to increase the season length by 14 days flyway-wide. The North Dakota Game and Fish Department requested both expansion of the hunt area and an increase in season length. They believe the Central Flyway Council recommendations were fully justified. The Texas Parks and Wildlife Department requested a minor administrative change in the open area to reflect the recent completion of Interstate Highway 35 between Austin and the Texas-Oklahoma State line. Texas Parks and Wildlife Commission supported the Council's recommendations.

The Fund for Animals is unalterably opposed to all crane hunting.

Service Response: The Service is concerned about the requested expansion of the open area in North Dakota, and the effect that change may have on greater sandhill cranes. The Service believes that the collection of baseline data on subspecies composition in this portion of North Dakota will be necessary prior to opening this area to hunting of cranes. Collection of such data should begin several years prior to the expansion and should include statistically sound methodologies. The Service will provide assistance to North Dakota in order to improve the quality of population-composition information currently being collected and in developing methodologies to expand such data collection.

In regard to the request for 14 additional days, the Service does not believe that, given the current status of the population and the low reproductive potential of cranes, additional opportunity is not warranted at this time for the mid-continent population.

11. Moorhens and Gallinules

Public-Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the U.S., commended the Service for proposing to bring the Pacific Flyway's 25 coot-moorhen limit in line with the lower limits allowed in other flyways, but believed that even those limits are excessive and encourage "target shooting."

Written Comments: The Humane Society of the U.S. urged the Service to reduce bag limits for moorhens and gallinules.

Service Response: In the April 9 **Federal Register**, the Service proposed to establish frameworks for common moorhens in the Pacific Flyway that are consistent with those established in other flyways. Because the frameworks for moorhens in the Pacific Flyway are linked to the coot and duck frameworks, these proposed framework changes will be addressed as a late-season issue.

12. Rails

Written Comments: The Humane Society of the U.S. believed that the bag limits for rails are excessive and that large bag limits are not consistent with wise use of the resource, regardless of the status of the population.

Service Response: The Service believes harvest pressure is relatively light for rails and that the frameworks provided herein are appropriate.

13. Snipe

Council Recommendations: The Pacific Flyway Council recommended no change in the frameworks.

Service Response: The Service appreciates the support for the frameworks contained in this document.

15. Band-tailed Pigeons

Council Recommendations: The Central Flyway Council supported the request of the Pacific Flyway Council for continuation of the limited bandtail season, since it is obvious that hunting is not a significant factor affecting this population.

The Pacific Flyway Council recommended continuation of bandtail seasons with no change in the frameworks.

Public-Hearing Comments: Mr. Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, supported continuation of the band-tailed pigeon hunting season in the Pacific Flyway.

Written Comments: The California Department of Fish and Game and the Oregon Department of Fish and Wildlife requested continuation of the open season. They believed that the long-term status of the population is dependent primarily upon habitat conditions and that the last 20 years of population indices have not changed sufficiently to warrant further restrictions in harvest. They provided a joint assessment of population information, harvest and hunter-activity information, and suspected causes for the long-term decline, and a summary of ongoing data-gathering efforts in the two States. They stated that the current hunting seasons allow for the efficient collection of biological information about reproduction and, potentially, the prevalence and effect of disease. They believe complete cessation of hunting is not likely to result in substantial gains in this population given the low levels of harvest under current regulations.

The Central Flyway Council supported the continuation of a limited season for band-tailed pigeons.

The Fund for Animals remarked that there is, as is generally the case with other hunted species, no need to hunt this species. There is little chance that this species could "biologically overpopulate," and, considering the size of the bird, little if any edible meat remains after the pigeon has been shot. The Humane Society of the U.S. believed that the Service had closed the season on this population for the 1992–93 season and that the Service was now proposing to reopen that season; and, therefore, requested that the Service justify this perceived reversal.

Service Response: In the April 9 **Federal Register**, the Service expressed its concern about the long-term decline of the Coastal Population of band-tailed pigeons, requested that States submit all available population-status and harvest information for Service review by June 1, and indicated that it would carefully evaluate these data by June 15 to determine whether a hunting-season closure is warranted. In addition, the Service indicated that more information is needed to understand the status of the Interior Population of band-tailed pigeons.

The Service has reviewed the requested information provided by the States; and, based on evidence that the Coastal Population probably numbers between 1 and 3 million birds and that the 1992 harvest was between 8,000 and 20,000 birds, the Service believes continuation of the season, with very restrictive regulations, is justified. Season closure was seriously considered in 1992 and 1993, but hunting seasons provide some of the few sources of data and are a means of generating support for efforts to identify the factors causing the decline.

Beginning this year, all States having band-tailed pigeon hunting seasons must require band-tailed pigeon hunters to obtain mandatory State permits (or participate in the nationwide Migratory Bird Harvest Information Program) to provide a sampling frame for obtaining more precise estimates of band-tailed pigeon harvest. Those States not participating in the Migratory Bird Harvest Information Program will be required to conduct a harvest survey and provide the results to the Service by June 1.

16. Mourning Doves

Council Recommendations: The Central Flyway Council recommended that Texas be allowed to split the mourning dove season into three segments in its central and southern zones on an experimental basis; however, Texas would continue to utilize three zones. These additional season segments would permit greater flexibility in establishing dove-hunting seasons consistent with anticipated migration patterns and population levels and would also allow additional "opening days" to be established for Texas sportsmen. The Council believed consideration should be given to the size of the State.

The Pacific Flyway Council recommended that there be no change in the frameworks for mourning doves.

Public-Hearing Comments: Mr. Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, reiterated the Council request regarding three zones and three splits for mourning-dove hunting in Texas.

Ms. Susan Hagood, representing the Humane Society of the U.S., opposed any hunting of doves in September because nesting is still occurring.

Mr. Charles Kelly, representing the Alabama Department of Conservation and Natural Resources, complimented the Service regarding dove management. He said the hunting of mourning doves in September has been well studied, that these studies have shown no impact on populations, and the record was sufficient such that the issue should not be revisited each year.

Written Comments: The Central Flyway Council requested that Texas be allowed three zones and three splits for their regular seasons. The Florida Game and Freshwater Fish Commission has

requested that they be able to utilize the zoning option and establish two zones as described in a later portion of this document. The Alabama Department of Conservation and Natural Resources requested that Barbour County be moved from the North to the South Zone. The Texas Park and Wildlife Commission supported the Council's recommendation.

The Fund for Animals stated that this species is incapable of "biologically overpopulating," a hunt is not necessary, little edible meat remains after the dove is killed, and that doves are granted great popularity among the public. The Fund for Animals opposes all hunting of this species and encourages the Service to adopt a complete and permanent prohibition on the hunting of this species immediately.

Service Response: The Service approves the request for establishment of two zones in Florida because that option has been provided under established frameworks. However, the Service notes that the season in the South Zone of Florida may commence no earlier than September 20. The zone-boundary change in Alabama also is approved. In regard to Texas, the Service notes that no other States are allowed to select both three zones and three splits for any species; in fact, no State other than Texas is allowed to select three zones for doves. The Service does not wish to further complicate regulations by allowing additional splits, and is also concerned about the ability to detect and measure possible changes in harvest that may result from those additional splits. The uncontrolled proliferation of zones and split seasons is contrary to the preferred alternative in the 1988 Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14). The Service believes that Texas has been given sufficient recognition for its size by its ability to select three zones.

17. White-winged and White-tipped Doves

Council Recommendations: The Central Flyway Council recommended that the number of white-winged doves allowed in the 12-bird aggregate bag limit during the mourning dove season be increased from 2 to 6 in the Texas Counties of Cameron, Hidalgo, Starr, and Willacy. The Pacific Flyway Council recommended no change in the frameworks.

Public-Hearing Comments: Mr. Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, reiterated the request for modification of the Texas mourning dove bag limit to include 6 white-winged doves in the aggregate bag limit in four Lower Rio Grande counties.

Written Comments: The Central Flyway Council reiterated their request for an increased bag limit in the Lower Rio Grande Valley. The Texas Parks and Wildlife Commission supported the Council's recommendation.

Service Response: The white-winged dove population in the Lower Rio Grande Valley is recovering from habitat deterioration caused by drought and severe frost. The Service believes that this population has not improved sufficiently to warrant the requested increase in bag limit. Additional time is required for recovery of population levels. With continued improvement in the population, the Service would give serious consideration to such a request in 1994.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended that a new experimental tundra swan season be established in Game Management Unit 18 (Yukon-Kuskokwim Delta). The framework dates would be September 1–October 31. A maximum of 500 permits would be issued, and hunters would be allowed more than one permit per season, issued one at a time upon filing a harvest report. The Council recommended no change for other Alaska frameworks.

Written Comments: The Friends of Animals opposed the new experimental swan season, stating that the justification for this action is not persuasive, and its principal beneficiaries appear to be poachers. They also believe this action will result in increased harvest. An organization from Virginia opposed the new experimental swan season, citing that the public would have difficulty understanding the rationale behind legalizing an otherwise illegal act. They urged the collection of data, should the hunt be established; but did not support the destruction of any swans other than mute swans.

The Humane Society of the U.S. suggested that the opening date of all Alaska seasons be delayed by at least 2 weeks so that young birds are able to leave natal marshes before being subjected to hunting pressure.

Service Response: The frameworks herein provide for the requested tundra swan season on the Yukon-Kuskokwim Delta, including the provision for additional permits for each hunter.

Young birds have been and always will be a component of the harvest and delaying seasons in Alaska by 2 weeks will not reduce the component of young in the harvest. Phenologically, conditions in portions of Alaska, especially at higher altitudes and latitudes, are such that by mid-September in some years, ice has formed and most migratory birds are in migration. In such places, young birds have either matured sufficiently to migrate or they perish. There is no biological merit in delaying seasons in Alaska until mid-September.

22. Falconry

Council Recommendations: The Pacific Flyway Council recommended no change in the frameworks.

Written Comments: Minnesota Department of Natural Resources supported the Service policy regarding exceptions to the 3-split limit.

Service Response: The Service appreciates the support for the frameworks contained in this document.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

In August 1993, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the April 9 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

In the April 9 **Federal Register**, the Service stated that it planned to publish its Memorandum of Law for the 1993–94 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law. Section 4 of the Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided under section 3 of the Migratory Bird Treaty Act (Act) (July 3, 1918), as amended (16 U.S.C. 703–711). The Act authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported. Such regulations for hunting have been promulgated annually since 1918. They appear in 50 CFR part 20, subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the Service's budget. Among these activities are biological surveys, hunter-activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1993–94, the Service has published three proposed rules for public comment and conducted two public hearings to facilitate public input into the rulemaking process. Four additional rulemakings are included in the remaining schedule for establishing the annual hunting regulations for 1993–94. Numerous public comments were summarized in **Federal Registers** listed in the preamble of this document. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. Comments in support of the Service's initial or supplementary regulatory proposals are noted. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1993–94 migratory bird hunting regulations which are adequately supported by the Service's records.

Authorship

The primary author is William 0. Vogel, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory bird hunting regulations must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed early-season rulemaking was published on July 13, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that, at the close of the comment period, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State and Territory conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, for the 1993–94 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1993–94 hunting season are authorized under the

Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: August 2, 1993.

Don Barry,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1993–94 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1993, and March 10, 1994.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the August 21, 1992, **Federal Register** (at 57 FR 38212) are contained in a later portion of this document.

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: From sunrise to sunset daily, except in those States participating in a Service-approved study to assess the impacts of presunrise shooting hours on nontarget species. In those States, shooting hours will begin at one-half hour before sunrise.

Special September Teal/Wood Duck Seasons

Florida: An experimental 5–consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Tennessee and Kentucky: In lieu of a special September teal season, an experimental 5–consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea-duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea-duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and must be included in the regular duck-season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

Hunting Seasons: Experimental Canada goose seasons may be selected by Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Virginia. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except that the closing date is September 15 in Maryland, Massachusetts, New Jersey, New York, Virginia and southeastern Pennsylvania, and September 30 in North Carolina.

Daily bag limits: Not to exceed 5 Canada geese.

Mississippi Flyway

Hunting Seasons: Canada goose seasons may be selected by Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The seasons in the following States and portions of States are experimental: Indiana; Missouri; Ohio; the Southwest Canada Goose Zone in Minnesota; and in Michigan, that portion of the Upper Peninsula previously open to the hunting of Canada geese in early September and that portion of the Lower Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties and all counties north thereof. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except in Missouri, where the outside dates are October 1 and October 15, and Minnesota, where the closing date is September 16.

Daily Bag Limits: Not to exceed 5 Canada geese.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. The season length is 4 days during September 1–15.
2. Hunting will be by State permit.
3. Not more than 200 permits may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Oregon, in the Lower Columbia River Zone, may select a season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1–12.
2. The daily bag limit is 3 Canada geese.

Oregon, in the Northwest Zone, may select an experimental season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1–12.

2. Hunting will be by State permit.

3. Each permittee may take no more than 2 Canada geese per day.

Washington may select a season on Canada geese, subject to the following conditions, in the Lower Columbia River Zone:

1. The season length is 12 days during September 1–12.

2. The daily bag limit is 3 Canada geese.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Coloredo, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in his possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into two segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1 and January 31. States in the Central and Mississippi Flyways may select hunting seasons between September 1 and January 31.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Band-tailed Pigeons

Pacific Coast States: California, Oregon, Washington, and Nevada.

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States: Arizona, Colorado, New Mexico, and Utah.

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

2. In Cameron, Hidalgo, Starr, and Willacy Counties, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-winged doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may include no more than 2 pintails daily and 6 in possession, and 2 canvasbacks daily and 6 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued in GMU 22, authorizing each permittee to take 1 tundra swan per season.

2. No more than 500 permits may be issued during the experimental season in GMU 18. No more than 1 tundra swan may be taken per permit.

3. The seasons must be concurrent with other migratory bird seasons.

4. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 3.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 3 ducks.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California:

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Zone 1—That portion of the State lying north of U.S. 280 or east of I–75.

Zone 2—That portion of the State lying south of U.S. 280 and west of I–75.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State lying north of U.S. Highway 84.

South Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

Maryland

Open Area—Counties of Garret, Allegany, Washington, Frederick, Carroll, Harford, Baltimore, Howard, Montgomery, Prince George's, Anne Arundel, Calvert, Charles, and St. Mary's.

Massachusetts

Western Zone—That portion of the State west of a line extending from the Vermont line at I–91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

New Jersey

Open Area—That portion of New Jersey within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary line to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

New York

Northern Area—All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Western Area—Counties of Erie, Cattaraugus, Chautauqua, Niagara, Orleans, and Genesee, and portions of Wyoming, Livingston, Allegany and Steuben Counties.

Southeastern Area—All of Rockland, Westchester, Orange, Putnam, Dutchess, Columbia, and Rensselaer Counties, and portions of Sullivan, Delaware, Ulster, Greene, Albany, Schenectady, Saratoga, Warren, and Washington Counties.

North Carolina

Early-season Canada Goose Area—That portion of the State west of I–95; see State hunting regulations for area descriptions.

Pennsylvania

Northwestern Early-Season Goose Area—Counties of Butler, Crawford, Erie, and Mercer.

Southeastern Early-Season Goose Area—Counties of Berks, Bucks, Chester, Delaware, Lehigh, and Montgomery.

Virginia

Open Area—Counties of Albemarle, Caroline, Charles City, Culpeper, Fairfax, Fauquier, Fluvanna, Goochland, Greene, Hanover, Henrico, James City, Loudoun, Louisa, Madison, New Kent, Orange, Prince William, Rappahannock, Spotsylvania, Stafford, and York.

Mississippi Flyway

Indiana

Early-season Canada Geese Area—Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.

Michigan

Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.

Upper Peninsula—That area encompassed by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. 2 to I–75, north along I–75 to State Highway 28, west along State 28 to State 221, north along State 221 to Brimley, then north to the Ontario border.

Minnesota

Twin Cities Metro Zone—All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County line, and east along the Carver County line to the Hennepin County line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemount, South St.

Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Fergus Falls/Alexandria Zone—That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southwest Canada Goose Zone—All of Blue Earth, Cottonwood, Faribault, Jackson, LeSueur, Lincoln, Lyon, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County lying south and west of the following described line: beginning at the junction of U.S. Highway 14, and the east of Brown County line; thence west on U.S. Highway 14 to Cobden; thence due west one mile on U.S. Highway 14 and the township road to the Brown County line; thence due west 12 miles along the county line to the west Brown County line; that portion of Renville County east of State Trunk Highway 4 (STH); that portion of Meeker County south of U.S. Highway 12; in Scott County, the Townships of Belle Plaine, Blakeley, and Helena, including the municipalities located therein; and that portion of Carver County lying west, of the following described line: beginning at the northeast corner of San Francisco Township, thence west along the San Francisco Township line to the east boundary of Dahlgren Township, thence north on the Dahlgren Township line to U.S. Highway 212, thence west on U.S. Highway 212 to STH 284, thence north on STH 284 to County State Aid Highway (CSAH) 10, thence north and west on CSAH 10 to CSAH 30, thence north and west on CSAH 30 the STH 25, thence east and north on STH 25 to CSAH 10, thence north on CSAH 10 to the Carver County line.

Missouri

Central Missouri Zone—Boone County and that portion of Callaway County west of U.S. Highway 54.

Ohio

Northeast Zone—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Southwest Zone—Allen, Auglaize, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Greene, Hamilton, Hancock, Hardin, Licking, Logan, Madison, Marion, Mercer, Miami, Morrow, Montgomery, Preble, Pickaway, Putnum, Ross, Shelby, Union, and Warren Counties.

Wisconsin

Early-Season Subzone—That area encompassed by a line beginning at Lake Michigan in Port Washington and extending west along State Highway 33 to State 175, south along State 175 to State 83, south along State 83 to State 36, southwest along State 36 to State 120, south along State 120 to U.S. Highway 12, then southeast along U.S. 12 to the Illinois border.

Pacific Flyway

Oregon

Lower Columbia River Zone—Those portions of Clatsop, Columbia, and Multnomah Counties within the following boundary: beginning at Portland, Oregon, at the south end of the Interstate 5 Bridge; south on I–5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I–5 Bridge; south on the I–5 Bridge to the point of beginning.

Northwest Oregon Zone—All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties; except for the Lower Columbia River Zone.

Utah

Early-season Canada Goose Area—Cache County

Washington

Lower Columbia River Zone—Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area—Statewide.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich and Cache Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the Municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1993–94 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on September 1, 1993.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1993

On April 9, 1993, the Service published for public comment in the Federal Register (58 FR 19008) a proposal to amend 50 CFR part 20, with comment periods ending July 22 for early-season proposals and September 1 for late-season proposals. On June 1, 1993, the Service published for public comment a second document (58 FR 31244) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 24, 1993, a public hearing was held in Washington, DC, as announced in the April 9 and June 1 Federal Registers to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

On July 13, 1993, the Service published in the Federal Register (58 FR 37828) a third document which dealt specifically with proposed early-season frameworks for the 1993–94 season.

On August 5, 1993, a public hearing was held in Washington, DC, as announced in the April 9, June 1, and July 13 Federal Registers, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. The Service later published a fourth document containing final frameworks for early seasons from which wildlife conservation agency officials from the States and Territories selected early-season hunting dates, hours, areas, and limits.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, hours, areas, and limits. All pertinent comments on the proposals received through August 5, 1993, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under DATES. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the Federal Register on or about September 22, 1993.

Presentations at Public Hearing

Service employees presented reports on the status of waterfowl. These reports are briefly reviewed as a matter of public information. The first three presentations are summaries of information contained in the "Status of Waterfowl and Fall Flight Forecast" report. The last presentation is a regulatory perspective of waterfowl harvests.

Dr. David Caithamer reported on habitat conditions and the status of duck populations during May and June 1993. Favorable habitat conditions existed across much of South Dakota, Montana, and southern Alberta. Elsewhere in the prairie-pothole region, conditions were unfavorably dry. Upland nesting conditions were variable and may have limited nesting efforts in many regions. The total number of May ponds in Prairie Canada and the northcentral U.S. increased 13 percent from 1992, but remained 11 percent below the 1974–92 average. Throughout much of western Ontario, northern Saskatchewan, northern Manitoba, and northern Alberta, water levels were below normal. In the arctic, spring phenology was 1–2 weeks early. Flooding likely destroyed some nests near rivers in interior Alaska. In eastern North America, habitat conditions were mostly typical despite delayed spring phenology. Favorable habitat conditions existed throughout much of the Great Lakes and Plains Regions. Abundant precipitation during winter and spring ended California's 6-year drought.

In 1993, the estimated breeding population of all ducks, excluding scoters, eiders, oldsquaws, and mergansers, was 26.3 million. This estimate was 11 percent lower than the 1992 estimate of 29.4 million and remained 18 percent below the 1955–92 average. Total duck populations decreased significantly in Saskatchewan, Manitoba, and western Ontario, while they remained statistically unchanged elsewhere in the survey area. The distribution of ducks within the surveyed area was similar to recent years, with about 46 percent found in Prairie Canada and the northcentral U.S. Of the 10 major species monitored each spring, only blue-winged teal exhibited a significant change in population size from last year, decreasing 26 percent to 3.2 million; this is 23 percent lower than its average. However, historic estimates of blue-winged teal populations have shown marked fluctuations from year to year. Also, ancillary evidence suggested that the timing of their arrival in the surveyed area may have been delayed this year. Breeding populations of some prairie-nesting species continue to be depressed due to limitations in nesting cover, high predator populations, and extended drought in some regions, all of which have acted in concert to limit recruitment.

Dr. James Dubovsky reported that cool temperatures and above-average precipitation prevailed during June and July in areas west of the Mississippi River, the Great Lakes Region, and western Canada. Frequent rains resulted in extensive flooding in watersheds of the Mississippi and Missouri Rivers, and likely inundated some nests. The number of July ponds increased 80 percent in Prairie Canada over that of 1992, and reached a record high in the northcentral U.S. Both values were above long-term averages. Summer rains improved habitat conditions in southern Manitoba and southern Saskatchewan.

However, the improvements came too late to benefit early-nesting species, and brood indices for both of these areas were record lows. In contrast, habitat conditions generally were good to excellent in much of southern Alberta, Montana, and the Dakotas. Many basins were full, and lush vegetation should have provided abundant cover for late-nesting birds and broods. Additionally, wet soils and reduced plant growth delayed haying operations, which should have enhanced nest success. Overall, the brood index for Prairie Canada was a record low and was 74 percent below the long-term average, but the brood index for the northcentral U.S. was similar to the long-term average. Production in northwestern Canada and Alaska should have been poor to average, whereas production in eastern areas of Canada and the U.S. was expected to be average to good. The mallard fall-flight index should be about 8.8 million birds, similar to that of 1992. The total duck fall flight was predicted to be approximately 59 million birds, and is unchanged from that of last year. Fall flights for the Pacific and Central Flyways will be similar to those of last year, but the Mississippi and Atlantic Flyways should have smaller fall flights compared to 1992.

Mr. Fred Johnson reported on geese and swans. Information on population size and expected production of young was obtained from a number of sources. Most goose and swan populations in North America are numerically sound and the outlook for production this year is good to excellent. Spring phenology was earlier than normal throughout the Arctic, and despite substantial snow accumulations in some areas, above-normal temperatures caused rapid melting of ice and snow. By mid-June, important nesting areas in the arctic and subarctic regions of North America were virtually snow-free and a strong nesting effort was under way. Habitat conditions for nesting Canada geese in southern Canada and the northern U.S. also were good and large fall flights from these areas are expected. We remain concerned, however, about the declining numbers of Canada geese in the Atlantic and Southern James Bay Populations.

Mr. Johnson also reviewed waterfowl harvest and hunter activity in the U.S. during the 1992–93 hunting season and provided some perspectives on harvest management. The number of duck stamps sold and participation by hunters during the 1992–93 season was similar to the previous year. Duck harvest was similar, but goose harvest declined approximately 20 percent. The number of young per adult in the harvest is used as an indicator of reproductive success. Contrary to expectations, production of ducks nesting throughout North America in 1992 may have been worse than in 1991. Reduced age ratios in the harvest of most goose populations were also expected. Many goose populations had very poor production last year due to the late spring in the Arctic.

Populations of several duck species continue to decline significantly. Poor production caused by drought, agricultural impacts, and increased predator populations, are the primary causes of declining duck populations. To ensure that sport harvests do not inhibit population recovery, the Service has enacted very restrictive harvest regulations for ducks. These restrictions have been successful in reducing band-recovery rates, which serve as indices to harvest rates. Concurrent with reductions in harvest pressure have been increases in annual survival rate. Because the status of duck populations is largely unchanged this year, continued harvest restrictions seem warranted.

In contrast to ducks, most goose populations remain numerically sound, despite extremely poor production last year. Goose population status must be monitored closely, however, because of the strong influence of sport harvests on population growth. For example, the Atlantic and Southern James Bay Populations of Canada geese have declined due to several years of poor recruitment, and harvests should be managed carefully to help restore these populations.

Review of Comments Received at Public Hearing

Fourteen individuals presented statements at the August 5, 1993, public hearing. These comments are summarized below.

Mr. Lloyd Plasse Jr., representing the Cedar Gun Club and the Massachusetts Beach Buggy Association, expressed support for traditional shooting hours and current zoning configurations to provide hunting opportunities. He supported the 30-day duck season, but asked for consideration of additional days in those states prohibiting Sunday hunting. He suggested that the mallard bag limit be liberalized in the northern States of the Atlantic Flyway to reduce the threat of hybridization with black ducks. He called for a review of the status of the Atlantic Population of Canada geese before further restrictions are imposed. He asked the Service to consider additional harvest on green-winged teal and scaup.

Mr. Paul Accomando, representing the Parker River Refuge Access Committee, requested a 30-day duck season with compensatory days for Sunday closures. He asked that seasons on resident Canada geese in Massachusetts be expanded.

Mr. Charles Potter, representing the Delta Waterfowl Foundation, said that the Service, at such public hearings, always discusses the plight of ducks, but never how to increase their numbers. He said that predators severely affect duck populations and that the Service should develop a policy and implement strategies to control predators on the prairie. He reiterated that predation was the number one problem confronting waterfowl and that recovery of duck populations would not be possible without addressing the problem. He offered his group's assistance in helping the Service work towards that end. He opposed the one-half-hour-before-sunrise opening of shooting hours, recommending sunrise instead. He believed that three criteria should be followed when considering the opening time: (1) Number of ducks killed, (2) the ability of hunters to identify ducks, and (3) number of ducks crippled or lost. He supported no open season on canvasbacks in the three eastern flyways.

Mr. Bruce Barbour, representing the National Audubon Society, supported the Service's use of framework dates as a tool to achieve harvest-management objectives. With respect to geese, he noted that generally good-to-excellent spring habitat conditions will result in good-to-excellent production this year. However, he expressed concern for the status of Cackling, Dusky, Aleutian, Southern James Bay, Atlantic, Eastern Prairie, and Mississippi Valley Canada Goose Populations. He also indicated continuing concern for brant, emperor geese, and white-fronted goose populations. He recommended continuing harvest restrictions in place on these races, populations, and species. For the Atlantic, Southern James Bay, Eastern Prairie, and Mississippi Valley Populations of Canada geese, he suggested further harvest reductions may be appropriate. He also pointed out that with the prospect for high production for the Mid-continent Population of lesser snow geese, there is a continuing concern for degradation of breeding habitats and the loss of our ability to manage population size through hunting regulations.

Mr. Barbour noted improved wetland conditions in Alberta, Montana, the Dakotas, Minnesota, Iowa, and Nebraska will result in improved duck production from these areas. He suggested that

pintails would especially benefit from improvements in conditions in Alberta and Montana. Conversely, he noted poor spring conditions in Saskatchewan and Manitoba, but improved conditions by mid-summer. Although much of the improvement was too late for improvement in production this year, the stage is set for continued improvement next year. He noted that breeding population indices were lower than last year for many species and cited chronic habitat degradation and predators. For this year, the National Audubon Society supports the continuation of harvest restrictions until duck numbers and production improves. With respect to canvasbacks, he supported continental management and the development of a conservative population-dynamics model to predict annual allowable harvests. For 1993, he recommended a nationwide closure for canvasback hunting. Upon the consensus that an allowable harvest may exist in the future, he would advocate a limited conservative season of perhaps 10 days across all four Flyways. He also suggested that certain specific concentration areas should be closed to hunting. Finally, he supported international, cooperative approaches to develop equitable allocation of harvest among the Flyways and Canada. He supported the Central Flyway's request for a third drake mallard in the low-plains portion of the Flyway.

Mr. Frank Anderson, representing the Concerned Coastal Sportsmen's Association, asked the Service to consider establishing a licensing system for commercial guides, citing the increase in the number of guides in the Northeast in recent years. He indicated the need to collect information on harvest and better monitor the impacts of commercial hunting. He also asked the Service to provide a booklet for hunters to simplify rules and regulations in the Code of Federal Regulations and from various **Federal Register** documents. He supported current shooting hours and zoning but asked for a 40-day duck season with 2 hen mallards in the daily bag and asked for consideration of special harvest opportunities on green-winged teal and scaup. He requested compensatory days for Sunday closures, a 30-day brant season with a 2-bird daily bag limit, a 6-day canvasback season with 1 bird daily, and commented on the need to educate hunters about regulations and to better identify ducks.

Mr. Gerald Woodmansee, representing the Andover Sportsman Club and Lynn Fish and Game, commented on several of the points raised by Mr. Anderson, but in addition suggested the need for a guide bill to require that certain safety equipment be used when hunting with a commercial outfitter, that population thresholds be used to set regulations on waterfowl species, that shotshells with bismuth shot be allowed for hunting waterfowl, and that the impacts of cormorant and merganser depredations on fisheries programs be studied.

Mr. David Harbison, representing the Essex County League of Sportsmen, commented on compensatory days for Sunday closures, the need to study cormorant depredation, and supported traditional shooting hours.

Mr. James Smith, representing the Massachusetts Sportsmen's Council, asked that the Service consider the testimony of all Massachusetts commenters.

Mr. Wayne Pacelle, representing the Fund for Animals, stated that he was hopeful that the new Service administration would be more responsive to non-hunting input into the hunting-regulations process. He indicated concern about declines in many waterfowl populations and especially mallards and black ducks. He supported a closure of hunting for pintails and suggested that the high daily bag limits for coots and moorhens were inappropriate. Mr. Pacelle indicated that sea-duck bag limits were overly liberal considering the lack of data upon which to base such seasons. He believes that sandhill cranes and swans should not be hunted and that 90 percent of the public are unaware of hunting programs for these species and most would find these seasons repugnant. He indicated that the Fund for Animals is opposed to the recreational killing of any animal. He suggested that the Service's view of hunting is biased towards the 1.2 million waterfowl hunters. He also stated that the current policies which allow captive-reared mallards to be released for hunting purposes are outrageous and should be reviewed.

Mr. Vernon Bevill, representing the Central Flyway Council, supported the proposal to adjust the dates upon which the within-bag-limit restriction changes from 1 Canada goose to 2 Canada geese in North and South Dakota. He recommended a bag limit of three drake mallards in the low-plains portion of the Central Flyway and floating framework dates for duck hunting in the entire flyway. He supported the proposal to hunt canvasbacks. He also supported additional days for compensation of days lost to Sunday closures in the Atlantic Flyway. In this regard, he suggested that the Service reconsider this issue with respect to Equity-in-Access-and-Opportunity laws in order to accommodate a solution to this problem. He also recommended that the Service conduct another review of the point system with specific reference to its equity relative to the conventional bag system. Finally, he is encouraged by improved precipitation and subsequent improvements in habitat conditions in key duck-production areas and with the prospects for improved production next year and looks forward to working with the Service to take advantage of any future additional hunting opportunity.

Mr. Thomas Aldrich, representing the Pacific Flyway Council, expressed appreciation for the Service's favorable consideration of several Council recommendations. He complimented the Service for its efforts to cooperatively develop an adaptive harvest-management system which he believes will be an improvement over the current system, provide greater objectivity to the process, and allow States to maximize hunter opportunity. He noted an oversight in earlier recommendations regarding goose regulations and requested changing the ending framework date for goose seasons in Montana, west of the Continental Divide, from the first Sunday in January to the Sunday closest to January 20 to accommodate the 100-day season being proposed. He said that the general increases for goose seasons and limits throughout much of the flyway would have minimal impacts on Wrangel-Island snow geese and white-fronted geese because seasons and limits in areas where those geese are most likely harvested are mostly unchanged from previous years. He said that the Service had misunderstood the Council's rationale for the establishment of California's Southern San Joaquin Valley Temporary Zone for duck hunting. The purpose of that zone was then and remains maintenance of wetland habitats that would not otherwise have been flooded had that locality been required to take the same season as the Balance-of-the-State Zone. The 6-year drought throughout California and much of the West, which broke this year, had merely heightened the importance of maintaining these wetlands and gave a false impression that the request was solely because of the drought. He requested that the Service allow establishment of the zone based on the merits of providing habitat that would otherwise be lost. He noted that California had complied with the Service's request for information on amounts of wetlands flooded and harvests in the area. The Council supported requests from the Central and

Mississippi Flyway Councils for an additional drake mallard in the bag.

Mr. Richard Elden, representing the Michigan Department of Natural Resources and the Mississippi Flyway Council, recommended a 30-day duck season with 1 additional teal allowed in the daily bag limit during the first 9 days of the season. He indicated that the point system offered in the Mississippi and Central Flyways is not equitable with the conventional bag limit; therefore, drake mallards should be 35 points instead of 50. He expressed support for an additional drake mallard in the bag limit for the Central Flyway. He stated that the Michigan Department of Natural Resources supports the efforts now under way to develop breeding-population surveys for ducks in eastern North America. He also expressed support for the management of canvasbacks as one continental population. He indicated that efforts to control increasing populations of giant Canada geese are complicated by the restrictive regulations necessitated by declining populations of migrant Canada geese, and stated that the Service should consider innovative ways of redirecting harvest.

Ms. Susan Hagood, representing the Humane Society of the United States, recommended that seasons be closed on all species at or near record-low levels, such as the pintail, black duck, mallard, and redhead. The season should be closed at least for the pintail and black duck, and for all ducks in areas where these species concentrate. She opposed seasons on species about which there is little or no status information, such as bufflehead, goldeneyes, and ruddy ducks. She recommended that the Service undertake surveys for all hunted species. She opposed split seasons and special seasons; if allowed, penalties of at least 10 days should be assessed. She expressed support for Sunday-hunting closures. She recommended that shooting hours not open until 1/2-hour after sunrise. She expressed opposition to what she perceives as a lack of opportunity for the nonhunting public to participate in the regulations-setting process. Lastly, she opposed the hunting of tundra swans.

Flyway Council Recommendations and Written Comments

The preliminary proposed rulemaking which appeared in the April 9 **Federal Register**, opened the public-comment period for late-season migratory game bird hunting regulations. As of August 5, 1993, the Service had received 47 comments; 26 of these specifically addressed late-season issues. The Service also received recommendations from all four Flyway Councils. Late-season comments are summarized and discussed in the order used in the April 9 **Federal Register**. Only the numbered items pertaining to late seasons for which written comments were received are included.

General

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1. Ducks

A. General Harvest Strategy

Written Comments: An individual from Illinois supported the current regulations, while an individual from Texas suggested that liberalization was appropriate.

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Council Recommendations: The Atlantic Flyway Council recommended continuation of October 1 to January 20 framework dates. The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the opening framework date be the Saturday nearest October 1 and that the closing date be January 20. The Central and Pacific Flyway Councils recommended the use of floating framework dates including the Saturday nearest October 1 through the Sunday nearest January 20.

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Council Recommendations: The Atlantic, Mississippi, and Central Flyway Councils recommended continuation of the current season lengths; while the Pacific Flyway Council recommended an increase from 59 days to 60 days to accommodate the majority of States in that Flyway which have split seasons and also desire to open seasons on Saturdays and close on Sundays.

Written Comments: Two local sportsmen's organizations and one individual from Massachusetts requested a 40-day season. An individual from Texas requested longer seasons. An individual from Illinois was satisfied with the current duck frameworks, but indicated that he preferred an increase in days to an increase in limits should any liberalizations be warranted in the future.

D. Closed Seasons

Written Comments: The Fund for Animals opposed the continuation of the open seasons for mottled ducks.

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended continuation of current bag-limit restrictions for mallards and black ducks and continuation of an overall 3-duck limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that male mallards be changed from 50-point to 35-point birds under the point system and that an additional teal be allowed in production States for the first 9 days of the season.

The Central Flyway Council recommended removal of the within-bag-limit restriction for drake mallards flyway-wide. They cited a negligible impact of this change upon the harvest of ducks in the High Plains Unit, improved conditions in areas associated with the flyway, selectivity by Central-Flyway hunters of drakes over hens, and a high proportion of drakes among mallards in that flyway. They noted that the bag limit in the Central Flyway is the same as the Mississippi Flyway where there are more than twice as many hunters and more than three times as many mallards are harvested.

The Pacific Flyway Council recommended no change in bag limits.

Written Comments: An individual from Washington suggested that the Service establish a supplemental-tag system for controlling the harvest of various duck species. An individual from California suggested reducing the number of mallards allowed each day to 2 (but only 1 hen), increasing the number of pintails allowed each day to 2 (but only 1 hen), and increasing the overall duck bag limit to 5. An individual from Massachusetts requested that an extra mallard be allowed in the northeast portion of the Atlantic Flyway. A college student from Virginia suggested that the Service first establish criteria upon which to judge

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the request for the extra drake in the Central Flyway, and then assess that issue based upon those criteria.

F. Zones and Splits

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the special Catahoula Lake Zone in Louisiana be permitted a split season with a maximum of 14 days between season segments. They stated that this represented a compromise between the straight season used last year to reduce lead-poisoning losses of waterfowl and the season desired by many hunters. The surrounding portion of the State has 28 days between season segments. They indicated that deep-tillage operations will begin this fall in an effort to bury spent lead shot and reduce its accessibility by waterfowl.

The Pacific Flyway Council recommended permanent establishment of the temporary exception to duck-zoning criteria which was allowed in 1991 for the Southern San Joaquin Valley of California. This exception was granted based on emergency conditions caused by the severe drought that prevailed in this area. In 1992, the Service allowed this temporary exception to continue for the 1992-93 season only. The Council stated that additional wetland habitat would be provided as a result of this zoning exception. The Council also recommended reinstatement of Gilliam County, Oregon, into the Columbia Basin Unit.

Written Comments: The California Department of Fish and Game, the National Audubon Society, the California Waterfowl Association, two local sportsmen's organizations, and four individuals requested establishing the Southern San Joaquin Valley Temporary Zone as a permanent zone. Two local sportsmen's organizations and one individual from Massachusetts requested continuation of zoning for their State.

G. Special Seasons/Species Management

i. Canvasback

The Service announced in the April 9 **Federal Register** its intent to implement an interim harvest strategy for canvasbacks, based on its review of databases and input received from Flyway Councils. Further, the Service requested that Flyway Councils provide additional assistance in developing and refining this interim strategy by identifying the objective methods that will be used to determine a goal for the size of the breeding population, the annual allowable harvest, and the allocation of harvest among countries and flyways; as well as the harvest-management tools most appropriate to achieve harvest goals.

Council Recommendations: In March, the Atlantic Flyway Council accepted the concept of an interim strategy for canvasback harvest management. They supported the idea of managing canvasbacks on the basis of a continental population, equal harvest opportunity among flyways, and utilization of population goals. They also raised concerns that the parts-collection survey may not be adequate to monitor the harvest closely, and indicated that many details of the implementation need further exploration.

In July, the Atlantic Flyway Council recommended a nationwide open season for canvasbacks, with a season length of 10 days within the regular duck season, and a daily bag limit of 1. However, the Council recommended that the Service cooperate with the States in developing a hunt plan which would provide equal opportunity to harvest canvasbacks in all flyways.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service complete its evaluation of the interim harvest-management strategy in sufficient time for review by the Council's Technical Section prior to the Council's summer meetings. They believed that the review of available population data, pond numbers, and harvest could be utilized in a model to develop optimum population objectives for one continental population. This would allow the determination of potential to sustain an annual harvest in all Flyways.

In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council supported the management of canvasbacks as a continental population, the implementation of canvasback harvest opportunity for the 1993 hunting season, and the equitable distribution of harvest opportunity among all flyways. They opposed the closed-area concept with reference to canvasback hunting.

In March, the Central Flyway Council supported the concept of an interim strategy for managing canvasback harvest. They believed canvasbacks should be treated as a continental population. They also believed that the canvasback population is regulated primarily by factors other than hunting, such as environmental conditions or density-dependent mechanisms. The Council believed it is unlikely that canvasbacks will exceed a breeding population index of 500,000 (except during periods of wet years) without an intensive habitat-management program to restore drained wetlands across prairie Canada and the northcentral U.S. They did not agree with the suggested method of allocating allowable harvest. They believed that all flyways and Canada should have an open season -- but not identical season lengths or bag limits, since some flyways will be able to exert more harvest pressure than others. They recommended a daily limit of 1 in the conventional bag limit, and a point value of 100 under the point system for the length of the duck-hunting season.

In July, the Central Flyway Council again recommended that the canvasback season be opened during the regular duck season with a bag limit of 1.

In March, the Pacific Flyway Council did not support the Service's proposed interim strategy for canvasback harvest management. They believed that the strategy ignored flyway differences in the biology of canvasbacks and hunter behavior. They stated that there was no rationale for identical season lengths and bag limits in all flyways. They also had serious concerns about harvest allocation as it pertains to other flyways and Canada. They believed that the Service is considering a limited season for canvasbacks in all flyways without first trying other options in the Pacific Flyway. The Council indicated that a reduction in bag limit from 2 to 1 should be considered before reducing the season length. They supported the Service's attempt to provide hunting opportunity to all flyways and a strategy that would allow graduated changes in harvest as opposed to the current season-on/season-off approach; however, they did not support this strategy at the cost of losing flyway-management emphasis.

In July, the Council recommended no change for canvasbacks, including continuation of the 2-bird bag limit.

Written Comments: The California Waterfowl Association requested continuation of the current framework. The Fund for Animals opposed managing canvasbacks as a continental population, expressing their concern that this could result in overharvest of portions of that population. They prefer a nationwide closure for canvasback. An individual from Oklahoma requested a closed season, an individual from Alabama opposed the season until more improvement is realized for the population, and an individual from Massachusetts requested a 6-day season. A college student from Virginia opposed

managing canvasbacks as a single population because of the potential for mismanagement of either segment of the population.

ii. Scaup

Written Comments: An individual from Massachusetts requested a special scaup season for the northeast portion of the Atlantic Flyway.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Pennsylvania be permitted to modify the boundaries of the Susquehanna/Juniata Area. They also recommended that an experimental season be permitted in 1994 in the western half of New York's Long Island Zone. They further indicated that this request is only for 1 year based upon their intent to review cumulative harvest effects on the Atlantic Population that result from special seasons.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended initiation of a 3-year experimental season in the Fergus Falls/Alexandria Zone of Minnesota with a season length of 10 days. They also recommended discontinuation of the special season in Brown County, Wisconsin.

Written Comments: The Funds for Animals does not believe that goose hunting should be permitted. They believe, if such seasons are allowed, they should be restricted to areas where actual damage has occurred.

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the season length in Crawford County, Pennsylvania, be reduced from 70 days to 35 days due to the decline in the Southern James Bay Population.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates continue to allow the regular goose season to open in September, similar to those framework dates utilized in the past 5 years in the Mississippi Valley Population range.

In July, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a number of changes in season lengths, bag limits, and quotas to conform to the status of the respective Canada goose populations. Generally, these recommendations were for regulations that are more restrictive than last year, with harvest reductions of 50 percent designed for Eastern-Prairie-Population and Southern-James-Bay-Population areas and 18 percent for Mississippi-Valley-Population areas. Other changes recommended by the Upper-Region Regulations Committee included: in Indiana, expanding the Southern-James-Bay-Population control area; in Iowa, expanding the Southwest Zone and delaying the statewide opening date until October 9; in Michigan, combining areas within zones; in Minnesota, establishing new West and Northwest Zones; in Ohio, expanding the Lake Erie SJBP Zone; and in Wisconsin, varying opening dates among zones.

In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council supported Louisiana's experimental Canada goose hunting season and indicated that a final report on the season will be provided by July 1993, at which time a recommendation for an operational season similar to the experimental season would be submitted.

In July, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the following: in Alabama and Kentucky, a new zone be created in each State to better manage the harvest of Southern-James-Bay-Population Canada geese, with the season being 35 days as compared to 50 days in 1992–93; in Arkansas, move the framework closing date from January 31 to February 15 to minimize the overlap of Canada goose and duck seasons; in Louisiana, the experimental Canada goose season become operational; in Tennesse, establish a quota for the Kentucky/Barkley Lakes Zone to control the harvest of Southern-James-Bay-Population Canada geese.

The Central Flyway Council recommended adjusting the dates upon which the within-bag-limit restriction changes from 1 Canada goose to 2 Canada geese in North Dakota and the Missouri River Unit of South Dakota. The date would change from the Saturday nearest October 20 to the Saturday nearest October 15 in North Dakota and from the Saturday nearest November 8 to the Saturday nearest November 1 in the Missouri River Unit of South Dakota. The Council also supported the request for operational status for the season in southwest Louisiana.

The Pacific Flyway Council recommended an increase in season length from 93 days to 100 days in many parts of the Flyway; other parts of the Flyway already have a 100-day season. They also recommended an increase in the daily bag limit from 3 to 4 in certain parts of the Flyway, and an extension in the framework closing date for portions of Colorado, Idaho, Montana, and Utah in order to accommodate the longer season length.

Written Comments: The States of Michigan and Wisconsin requested continuation of season openings prior to October 1. A college student from Virginia encouraged the Service to prohibit regular goose seasons prior to October 1, citing the need for annual population data prior to opening seasons. Two local sportsmen's organizations and an individual from Massachusetts supported continuation of current regulations with no restrictions until a full evaluation has been completed. The Fund for Animals opposed all Canada goose seasons. An individual from California requested opening of the Willows/Colusa closure area with a 1-dark-goose bag limit.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommended no change for white-fronted geese, although the change in dates requested for Canada geese may slightly alter the amount of harvest pressure exerted upon whitefronts.

The Pacific Flyway Council recommended an increase in season length from 93 days to 100 days in many parts of the Flyway and an extension of the framework opening date from October 24 to October 16 in Lake, Klamath, and Harney Counties, Oregon. They also recommended a decrease in the number of whitefronts permitted in the dark-goose bag limit from 3 to 2, except in special areas.

Written Comments: An individual from California suggested increasing the season length for whitefronts to coincide with the light-goose season, and requested that an additional 10 days to be added to goose seasons in the Sacramento Valley Area.

6. Light Geese

Council Recommendations: The Atlantic, Mississippi, and Central Flyway Councils recommended no change in the frameworks. The Pacific Flyway Council recommended an increase in season length from 93 to 100 days in many parts of the Flyway. They also recommended removing the restrictions on possession limits.

Written Comments: An individual from California requested that an additional 10 days be added to goose seasons in the Sacramento Valley Area.

7. Brant

Council Recommendations: The Atlantic Flyway Council recommended

that the season length be reduced from 50 days to 30 days, consistent with the guidelines in the interim Atlantic Brant Hunt Plan, based upon mid-winter population estimates. The Pacific Flyway Council recommended no change in the frameworks for brant.

Written Comments: Two local sportsmen's organizations from Massachusetts supported the reduction in season length to 30 days, but requested a 4-bird bag limit. An individual from Massachusetts supported the proposed reduction to a 30-day season with retention of the 2-bird limit.

8. Tundra Swans

Council Recommendations: The Pacific Flyway Council recommended an increase in season length from 93 days to 100 days with no change in permit allocation.

Written Comments: The Fund for Animals believes no swan seasons are warranted. A college student from Virginia suggested that the Service obtain information about swan depredations on a State-by-State basis.

10. Coots

Council Recommendations: The Pacific Flyway Council recommended no change in the frameworks for coots.

23. Other

Written Comments: Three local sportsmen's organizations and an individual from Massachusetts suggested compensatory days for those days lost due to State-imposed Sunday-hunting prohibitions. They requested compensatory days be added to migratory bird hunting seasons, including seasons for ducks, sea ducks, and geese.

Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability of specific, reliable data on this year's status before mid-June for migratory shore and upland game birds and some waterfowl, and before late-July for most waterfowl. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but a substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1993," which is available upon request.

Endangered Species Act Consideration

In August 1993, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the April 9 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by

Section 4 of Executive Order 12291, in the early-season final frameworks Federal Register document published on August 23, 1993.

Authorship

The primary author is William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 18, 1993.

Don Barry,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1993–94 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1993, and March 10, 1994.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, and brant.

Light geese - lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the September 22, 1992, Federal Register (at 57 FR 43876) are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Hunting Season: Not more than 30 days.

Outside Dates: Between October 1 and January 20.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

Closures: The seasons on canvasbacks and harlequin ducks are closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Delaware: 80 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

Florida: Closed season.

Georgia: In specific areas, an 8-day experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days and 2 geese per day thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

New York:

Northeastern Zone - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Remainder of State - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental special season may be held in the Long Island Zone during February 1-14, with 5 geese per day.

North Carolina:

East Zone - Suspended.

West Zone - Suspended.

Pennsylvania:

South Zone - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental season may

be held in the Susquehanna/Juniata Zones from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

Remainder of State - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Carolina: Suspended regular season. A 4-day special season may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15, with a daily bag limit of 1 Canada goose.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Virginia:

Back Bay - Suspended.

Remainder - 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and February 10, with 5 geese per day. States may split their seasons into two segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between October 1 and January 20, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Hunting Seasons: Not more than 30 days.

Outside Dates: Between October 1 and January 20.

Duck Limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points - female mallard, pintail, black duck, redhead, hooded merganser.

50 points - male mallard, wood duck.

35 points - all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

Geese

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 2) and January 31, and 80 days for light geese between the Saturday nearest October 1 (October 2), and February 14. The daily bag limit is 7 geese, to include no more than 2 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone. In the West Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 61,300 birds. In the:

(a) Southern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 30,600 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken. If any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone - The season for Canada geese will close after 51 days or when 9,200 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken.

(c) Fulton-Knox Zone - The season for Canada geese may not exceed 46 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 46 days in the North and Central duck-hunting zones, except in the Northeastern Zone, where the season may not exceed 55 days. In the South duck-hunting zone, the season may

extend for 51 days. The daily bag limit is 2 Canada geese.

Indiana: The total harvest of Canada geese in the State will be limited to 14,300 birds. In:

(a) Posey County - The season for Canada geese will close after 51 days or when 3,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones, except in Jasper, LaGrange, Lake, LaPorte, Newton, Porter, Pulaski, Starke, and Steuben Counties, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 55 days in the respective duck-hunting zones and may open no earlier than October 9. The daily bag limit is 2 Canada geese.

Kentucky: In the:

(a) Western Zone - The season for Canada geese may extend for 66 days, and the harvest will be limited to 17,500 birds. Of the 17,500-bird quota, 11,400 birds will be allocated to the Ballard Reporting Area and 3,360 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days. The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) SJBP Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (October 2), and February 14, in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, a season for Canada geese may be held during January 20-28. During the season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 42,500 birds. In the:

(a) North Zone:- The framework opening date for all geese is September 25 and the season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(c) South Zone:

(1) Allegan County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 52 days or when 400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 40 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 8 and February 6. The daily bag limit is 2 Canada geese.

Minnesota: In the:

(a) West Zone:

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac qui Parle Zone the season will close after 30 days or when a harvest index of 4,000 birds has been reached, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Southeast Zone - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(e) Fergus Falls/Alexandria Zone - An experimental special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri: In the:

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Central Zone - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area; the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee: In the:

(a) Northwest Zone - The season for Canada geese may extend for 74 days, and the harvest will be limited to 6,800 birds. Of the 6,800-bird quota, 4,800 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 74-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 74 days. The season may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 59 days, and the harvest will be limited to 500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 56,300 birds. In the:

(a) Horicon Zone - The framework opening date for all geese is September 25. The harvest of Canada geese is limited to 34,700 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 25. The harvest of Canada geese is limited to 1,000 birds. The season may not exceed 61 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is October 1. The harvest of Canada geese is limited to 16,100 birds. The season may not exceed 70 days and the daily bag limit is 1 Canada goose. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days in each duck zone. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Lac qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, and the Kentucky/Barkley Lakes Zone and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Hunting Seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days start no earlier than the Saturday nearest December 10 (December 11). Seasons in the Low Plains Unit may include no more than 39 days.

Outside Dates: October 1 through January 20.

Duck Limits: The daily bag limit is 3, including no more than 2 mallards (3 in the High Plains), no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points - female mallard, pintail, redhead, hooded merganser, mottled duck.

50 points - male mallard (Low Plains), wood duck.

35 points - male mallard (High Plains), all other ducks, and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 2), through January 31, for dark geese and the Saturday nearest October 1 (October 2), through the Sunday nearest February 15 (February 13), except in New Mexico where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Kansas: For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 6), and no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.

North Dakota: For dark geese, no more than 79 days, with a daily bag limit of

1 Canada goose and 1 white-fronted goose, or 2 white-fronted geese, until the Saturday nearest October 15 (October 16), and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese, or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 1 (October 30), and no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days. The daily bag limit is 1 Canada goose and 1 white-fronted goose during the first 72 days; during the last 7 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese east of U.S. 81, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons: Concurrent 59-day seasons may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside Dates: Between October 1 and January 20.

Duck and Merganser Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads, or 1 of each.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments either statewide or in each zone.

Colorado, New Mexico, Montana, and Wyoming may split their duck seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona.

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2), and the Sunday nearest January 20 (January 23), and the basic daily bag limits are 3 light geese and 3 dark geese including no more than 2 white-fronted geese.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway and no open season on cackling Canada geese in California, Oregon, and Washington; those three States must include a statement on the closure for both those subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California:

Northeastern Zone - White-fronted geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 2 white-fronted geese.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona.

Southern Zone - The daily bag and possession limits for dark geese is 2 geese.

Balance-of-the-State Zone - A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before November 30, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho:

Northern Unit - The daily bag limit may not include more than 4 geese, including not more than 3 light geese and 2 white-fronted geese.

Southwestern Unit - The season must end on or before the first Sunday in January (January 2) with a daily bag limit of 3 geese, that may not include more than 2 dark geese.

Southeastern Unit - The daily bag limit is 3 geese, including not more than 2 white-fronted geese.

Montana:

West of Divide Zone - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Nevada:

Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon:

Malheur County Zone - The season must end on or before the first Sunday in January (January 2). From November 26, through the remainder of the season, the daily bag limit of dark geese may not include more than 2 Canada geese.

Lake, Klamath, and Harney Counties Zone - The season length may be 100 days. The daily bag limit of dark geese is 4, including no more than 2 white-fronted geese. White-fronted geese may not be taken before October 17 during the regular goose season.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 210 dusky Canada geese. See section on quota zones.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including not more than 3 light geese and 2 white-fronted geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 90 dusky Canada geese. See section on quota zones.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 100 days.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued during the experimental season.

—In South Dakota, no more than 1,500 permits may be issued during the experimental season.

In the Pacific Flyway

—A 100-day season may be selected between the Saturday nearest October 1 (October 2), and the Sunday nearest January 20 (January 23). Seasons may be split into 2 segments.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued.

—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks

Pacific Flyway

Oregon

Zone 1: Statewide, except Deschutes, Klamath, and Lake Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: Deschutes, Klamath, and Lake Counties.

Geese

Atlantic Flyway

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

North Zone: That portion of the State north of a line extending east from the Ohio border along I-80 to U.S. 220, U.S. 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Northwestern Early-Season Goose Area - Butler, Crawford, Erie, and Mercer Counties.

Southeastern Early-Season Goose Area - Bucks, Lehigh, and Montgomery Counties.

Susquehanna/Juniata Zone - See State regulations for detailed description.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

SJBP Zone: That portion of the state between the Western Zone and a line described as follows: From the Indiana border south along U.S. Highway 231 to the Green River Parkway, southeast along the Green River Parkway to Interstate Highway 65, then south along I-65 to the Tennessee border.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of U.S. Highway 71 and the Iowa border, then north along U.S. 71 to Interstate Highway 94, then north and west along I-94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift

County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southwest Canada Goose Zone - All of Blue Earth, Cottonwood, Faribault, Jackson, Lincoln, Lyon, LeSueur, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County south of State Highway 14, that portion of Meeker County south of State Highway 12, and that portion of Renville County east of State Highway 4.

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Ohio

Same zones as for ducks but in addition:

North Zone:

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Early-season Canada Goose Area: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Lake Erie SJBP Zone: That portion of the state encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I–280, south along I–280 to I–80, and east along I–80 to the Pennsylvania border.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	1 Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
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7 Parts:			
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27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-019-00009-7)	20.00	Jan. 1, 1993
52	(869-019-00010-1)	28.00	Jan. 1, 1993
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700-899	(869-019-00015-1)	21.00	Jan. 1, 1993
900-999	(869-019-00016-0)	33.00	Jan. 1, 1993
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24 Parts:			
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§§ 1.908-1.1000	(869-019-00093-3)	26.00	Apr. 1, 1993
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[FV93–945–1FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Temporary Suspension of Date for Continuance Referendum on Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This rule temporarily suspends an order provision which required a continuance referendum to be conducted on the marketing order. The suspension will allow the Department of Agriculture (Department) time to complete an order amendment proceeding, including an amendment referendum. If the order is subsequently amended, this action will allow the industry sufficient time to test operations under such an amended order before producers would be asked to vote whether they favor continuance of the order.

EFFECTIVE DATE: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis West, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724, or FAX (503) 326–7440; or Valerie L. Emmer or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2829 or (202) 720–2170 respectively, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This suspension of a provision of Marketing Agreement No. 98 and Order No. 945 [7 CFR part 945], both as amended, regulating the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order," is issued under section 16 of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This suspension action has been reviewed under Executive Order 12778, Civil Justice Reform, and is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of potatoes subject to regulation under the order and approximately 2,200 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of the handlers and producers of Idaho-Eastern Oregon potatoes may be classified as small entities.

This rule finalizes the June 15, 1993 [58 FR 33037] proposed suspension to temporarily suspend the provisions in section 945.83(d) of the order which specify that the Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by the producers. Interested persons were invited to submit written comments through July 15, 1993. No comments were received.

In June 1992, the Idaho-Eastern Oregon Potato Committee (Committee) recommended several amendments to improve the operations of the marketing order. A public hearing to consider the various proposals had been scheduled to begin March 4, 1993. However, since adequate notice could not be provided to interested parties, the Committee recommended that the hearing be rescheduled for this fall. Under the applicable rules of practice [7 CFR part 900], the next step in the amendment process, after the oral hearing and the receipt of post-hearing briefs, would be for the Administrator of the AMS to issue a Recommended Decision, with a period allowed to file exceptions thereto. Thereafter, the Secretary would consider the entire record, including any exceptions to the Recommended Decision, and then issue a Secretary's Decision and, if warranted, a Referendum Order. Without this temporary suspension of the initial continuance referendum, producers will be asked to vote on whether to continue a program which the Committee, which is representative of the industry as a whole, believes may need improvements. Thus, such a vote will not likely give the best indication of producers' true sentiments regarding continuation of the program.

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The suspension will allow the Department time to complete the amendatory proceeding, which may result in a referendum of industry producers to determine whether they favor any amendments that may result from the hearing.

The Committee also has recommended that the industry be allowed a year or two to test operations under any such amended order before being asked to vote on whether or not to continue the program. Although the Department could potentially hold a continuance referendum in 1995, that would result in conducting three producer referenda within a five year period. Such action would be an unnecessary use of the time and funds of the industry and the Department.

Therefore, the provisions regarding the initial continuance referendum and the requirement for a referendum every sixth year thereafter will be temporarily suspended through July 31, 1998, which is when the next continuance referendum would have been scheduled. However, the Department could decide to hold a continuance referendum earlier than July 31, 1998, if an order amendment referendum is not held.

This rule will not have a significant economic impact on small producers or handlers. The temporary suspension of the order provision will allow the Secretary to conduct a continuance referendum later than the initial date specified in the order. No increased costs on producers or handlers are anticipated as a result of this administrative action.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the first sentence in section 945.83(d), does not tend to effectuate the declared policy of the Act for the period specified herein and should be temporarily suspended for that period.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended by suspending a provision thereof as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OR

1. The authority citation for 7 CFR part 945 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will appear in the annual Code of Federal Regulations.

§ 945.83 [Amended]

2. In section 945.83, paragraph (d), the first sentence is temporarily suspended through July 31, 1998.

Dated: August 17, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20387 Filed 8–23–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 204

[INS No. 1609–93]

RIN 1115–AD38

Immigrant Investor Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1933 ("Appropriations Act"). Section 610 of the Appropriations Act provides that the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program (the "Immigrant Investor Pilot Program") to implement the provisions of section 203(b)(5) of the Immigration and Nationality Act, as amended, (the "Act"). Under the pilot program, 300 immigrant visas will be set aside annually for five years for aliens who make qualifying investments in commercial enterprises located within regional centers in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

DATES: This interim rule is effective on August 24, 1993. Written comments must be submitted on or before September 23, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS No. 1609–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Section 203(b)(5) of the Act

Under section 203(b)(5) of the Act, an alien may qualify for an immigrant visa if he or she is seeking to enter the United States for the purpose of engaging in a new commercial enterprise which the alien has established, in which he or she has invested one million dollars (or a lower amount for targeted areas), and which will benefit the United States economy and create full-time employment for no fewer than 10 eligible United States workers. Under current Immigration and Naturalization Service (Service) regulations, such full-time employment must be in the commercial enterprise established by the alien.

Under section 203(b)(5) of the Act, visas in a number not to exceed 7.1 percent of the worldwide level (approximately 10,000) are available to qualified immigrants, including their spouses and unmarried minor children. Of that number, not less than 3,000 visas are set aside for immigrants establishing commercial enterprises in targeted areas (rural areas and areas of high unemployment).

Section 610 of the Appropriations Act

In order to increase interest in the existing alien entrepreneur immigrant classification under section 203(b)(5) of the Act, Congress enacted section 610(a) of the Appropriations Act, Public Law 102–395, dated October 6, 1992. Section 610(a) of the Appropriations Act creates a pilot program which "shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment."

Section 610(c) of the Appropriations Act expressly relaxes the job creation requirement currently set forth in 8 CFR 204.6 by allowing aliens investing in new commercial enterprises located within regional centers to establish "reasonable methodologies" for

determining the number of jobs created, "including such jobs which are estimated to have been created indirectly through revenues generated from increased exports resulting from the pilot program." Under section 610(c), while the revenues generated by the qualifying commercial enterprise must result in exports, the commercial enterprise need not be engaged directly in generating exports of goods or services. Therefore, immigrants participating in the pilot program may credit jobs they create indirectly through contract or subcontract with commercial enterprises involved in direct export. *See* S. Rep. No. 918, 102 Cong., 2d Sess. (1992). To establish the requisite relation to exports, however, the alien must demonstrate the existence of a reasonable nexus between the commercial enterprise and the production of exports.

Under the pilot program, 300 visas of the overall total number for the fifth employment-based immigrant visa classification will be set aside annually for five years, commencing not later than October 1, 1993. The annual figure of 300 visas includes visas for qualified immigrants, as well as their spouses and unmarried minor children.

Requirements for Obtaining Approval as a Regional Center

Section 610(a) of the Appropriations Act states that the pilot program "shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." Section 610(a), however, does not designate a particular regional center in the United States for the program. This interim regulation sets forth at 8 CFR 204.6(m)(3) the criteria by which interested regional centers may obtain approval for participation in the pilot program.

Time for Submission of Proposals

Upon publication of this interim rule, the Service will begin accepting proposals from regional centers for participation in the Immigrant Investor Pilot Program.

Criteria for Participation as a Regional Center

Under 8 CFR 204.6(m)(3), each proposal for participation as a regional center must:

(1) Clearly describe how the center focuses on a geographical region of the United States and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(2) Provide in verifiable detail how jobs will be created indirectly through increased exports;

(3) Provide a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(4) Contain a detailed prediction regarding the manner in which the center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

(5) Be supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

Although section 610(a) of the Appropriations Act provides that the pilot program "shall involve a regional center" (emphasis added), the Service recognizes that more than one regional center may be able to meet the statutory criteria for participation under the pilot program. Absent a clear statutory directive requiring the Service to select only one regional center for participation in the pilot program, the Service believes that the purpose of Congress in enacting section 610(a)—to obtain empirical evidence of the effectiveness of the regional center concept in promoting economic growth—will be best served by permitting more than one statutorily qualifying regional center to participate in the pilot program. If more than one regional center is found to be qualified, all selected regional centers will draw off the annual allocation of 300 visas which section 610(b) of the Appropriations Act requires to be set aside for the pilot program. To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Service shall have the authority to terminate the participation of a regional center in the pilot program should it fail to satisfy these requirements.

Requirements for Filing Petitions for Alien Entrepreneurs

Section 610 of the Appropriations Act permits aliens under the pilot program to meet the requirement of job creation by establishing "reasonable methodologies" for determining the number of jobs created, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports resulting from the program. Such reasonable methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices which indicate the likelihood that the business will result in increased employment.

It is important to note that section 610 of the Appropriations Act does not relieve individuals seeking to immigrate to this country as alien entrepreneurs from any of the other requirements of section 203(b)(5) of the Act or 8 CFR 204.6. Therefore, among other things, prospective immigrants must show actual commitment of the required amount of capital in the commercial enterprise and be able to demonstrate that such capital was lawfully obtained. To demonstrate that the investment in a new commercial enterprise is *bona fide*, the prospective immigrant should also provide credible projections of the costs of doing business, including, but not limited to, estimated salaries to be paid to employees. In addition, persons immigrating pursuant to section 203(b)(5) of the Act must show that they are or will be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment. Alien entrepreneurs will also be required to apply for removal of the conditional basis of permanent residence during the ninety-day period before the second anniversary of their lawful admission for conditional permanent residence.

To effect the above, the Service is revising the definitions of the terms "employee" and "full-time employment" in 8 CFR 204.6(e), and adding a definition of the term "regional center." In addition, the Service is amending 8 CFR 204.6(j) to reflect the evidence to be submitted with a petition for classification as an alien entrepreneur under the Immigrant Investor Pilot Program. Finally, the Service is adding a new paragraph, 8 CFR 204.6(m).

This new paragraph sets forth the specific procedures to be followed by regional centers seeking to participate in the pilot program. In addition, 8 CFR 204.6(m) provides procedures for aliens seeking to immigrate under the pilot program. This new paragraph also

provides for termination of participation, under certain circumstances, of a regional center to participate in the pilot program, and describes the impact such termination will have on alien entrepreneurs who have obtained lawful permanent residence on a conditional basis pursuant to the pilot program.

Time for Filing of Petitions

Commencing on October 1, 1993, petitions will be accepted for filing and adjudicated in accordance with the provisions of this section if the alien entrepreneur has invested or is actively in the process of investing within a regional center which has been approved by the Service for participation in the pilot program.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B), (d)(3). The reasons and necessity for immediate implementation of this interim rule are as follows:

Immediate promulgation of this interim rule is necessary to ensure fair and orderly administration of the pilot program. In light of the limited number of visas available under the pilot program, the Service wishes to begin soliciting proposals from qualifying regional centers for participation in the pilot program immediately upon publication of this interim rule. The Service must allow a reasonable time for interested regional centers to submit their proposals before beginning the adjudication of individual visas petitions. Under this interim rule, the Service will be able to make the determinations with respect to interested regional centers in time to begin accepting for filing individual visa petitions on October 1, 1993, the deadline imposed by Congress for "setting aside" visas for the pilot program. Immediate implementation of this rule will ensure that on October 1, 1993, all aliens seeking to qualify under the pilot program will have an equal opportunity to participate. Without immediate implementation, the Service would be required to take the unacceptable choice of delaying adjudication of individual petitions until a date well after October 1, 1993, pending determination of proposals by regional centers to participate in the pilot program. For these reasons, immediate implementation is necessary to further Congress' goal in creating the pilot program of promoting economic growth, including job creation, in regional centers as soon as possible.

In accordance with 5 U.S.C. 605(b), the Acting Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is 1115–0183.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegations (Government agencies), Bonding, Fees, Forms, Freedom of Information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.1, paragraph (f)(2) is amended by:

a. Removing the word "and" at the end of paragraph (f)(2)(xxxvi);

b. Replacing the "." with a ";" at the end of paragraph (f)(2)(xxxvii); and by

c. Adding new paragraph (f)(2)(xxxviii) and (f)(2)(xxxix), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxviii) Request for participation as a regional center under § 204.6(m) of this chapter; and

(xxxix) Termination of participation of regional center under § 204.6(m) of this chapter.

* * * * *

PART 204—IMMIGRANT PETITIONS

3. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

4. In § 204.6, paragraph (e) is amended by revising the definition of "Employee", "Full-time employment"; and by adding the definition "Regional center" in alphabetical sequence, to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(e) * * *

Employee means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Immigrant Investor Pilot Program, "employee" also means an individual who provides services or labor in a job which has been created indirectly through investment in the new commercial enterprise. This definition shall not include independent contractors.

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. In the case of the Immigrant Investor Pilot Program, "full-time employment" also means employment of a qualifying employee in a position that has been created indirectly through revenues generated from increased exports resulting from the Pilot Program that requires a minimum of 35 working hours per week. A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met. This definition shall not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week.

* * * * *

Regional center means any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

* * * * *

5. Section 204.6 is amended by:

a. Revising introductory text in paragraph (j);

b. Adding a new paragraph (j)(4)(iii); and by

c. Adding a new paragraph (m), to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(j) *Initial evidence to accompany petition.* A petition submitted for classification as an alien entrepreneur must be accompanied by evidence that the alien has invested or is actively in the process of investing lawfully obtained capital in a new commercial enterprise in the United States which will create full-time positions for not fewer than 10 qualifying employees. In the case of petitions submitted under the Immigrant Investor Pilot Program, a petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital obtained through lawful means within a regional center designated by the Service in accordance with paragraph (m)(4) of this section. The petitioner may be required to submit information or documentation that the Service deems appropriate in addition to that listed below. * * *

* * * * *

(4) * * *

(iii) *Immigrant Investor Pilot Program.* To show that the new commercial enterprise located within a regional center approved for participation in the Immigrant Investor Pilot Program meets the statutory employment creation requirement, the petition must be accompanied by evidence that the investment will create full-time positions for not fewer than 10 persons either directly or indirectly through revenues generated from increased exports resulting from the Pilot Program. Such evidence may be demonstrated by reasonable methodologies including those set forth in paragraph (m)(3) of this section.

* * * * *

(m) *Immigrant Investor Pilot Program.*

(1) *Scope.* The Immigrant Investor Pilot Program is established solely pursuant to the provisions of section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, and subject to all conditions and restrictions stipulated in that section. Except as provided herein, aliens seeking to obtain immigration benefits under this paragraph continue to be subject to all conditions and restrictions set forth in section 203(b)(5) of the Act and this section.

(2) *Number of immigrant visas allocated.* The annual allocation of the visas available under the Immigrant Investor Pilot Program is set at 300 for each of the five fiscal years commencing on October 1, 1993.

(3) *Requirements for regional centers.* Each regional center wishing to participate in the Immigrant Investor Pilot Program shall submit a proposal to the Assistant Commissioner for Adjudications, which:

(i) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

(ii) Provides in verifiable detail how jobs will be created indirectly through increased exports;

(iii) Provides a detailed statement regarding the amount and source of capital which has been committed to the regional center, as well as a description of the promotional efforts taken and planned by the sponsors of the regional center;

(iv) Contains a detailed prediction regarding the manner in which the regional center will have a positive impact on the regional or national economy in general as reflected by such factors as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

(v) Is supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables.

(4) *Submission of proposals to participate in the Immigrant Investor Pilot Program.* On August 24, 1993, the Service will accept proposals from regional centers seeking approval to participate in the Immigrant Investor Pilot Program. Regional centers that have been approved by the Assistant Commissioner for Adjudications will be eligible to participate in the Immigrant Investor Pilot Program.

(5) *Decision to participate in the Immigrant Investor Pilot Program.* The Assistant Commissioner for Adjudications shall notify the regional center of his or her decision on the request for approval to participate in the Immigrant Investor Pilot Program, and, if the petition is denied, of the reasons for the denial and of the regional center's right of appeal to the Associate Commissioner for Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If the Assistant Commissioner for Adjudications determines that the regional center's participation in the Pilot Program should be terminated, the Assistant Commissioner for Adjudications shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the Associate Commissioner for Examinations as provided in 8 CFR 103.3.

(7) *Requirements for alien entrepreneurs.* An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.

(i) *Exports.* For purposes of paragraph (m) of this section, the term "exports" means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States;

(ii) *Indirect job creation.* To show that 10 or more jobs are actually created indirectly by the business, reasonable methodologies may be used. Such methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices which indicate the

likelihood that the business will result in increased employment.

(8) *Time for submission of petitions for classification as an alien entrepreneur under the Immigrant Investor Pilot Program.* Commencing on October 1, 1993, petitions will be accepted for filing and adjudicated in accordance with the provisions of this section if the alien entrepreneur has invested or is actively in the process of investing within a regional center which has been approved by the Service for participation in the Pilot Program.

(9) *Effect of termination of approval of regional center to participate in the Immigrant Investor Pilot Program.*

Upon termination of approval of a regional center to participate in the Immigrant Investor Pilot Program, the director shall send a formal written notice to any alien within the regional center who has been granted lawful permanent residence on a conditional basis under the Pilot Program, and who has not yet removed the conditional basis of such lawful permanent residence, of the termination of the alien's permanent resident status, unless the alien can establish continued eligibility for alien entrepreneur classification under section 203(b)(5) of the Act.

Dated: July 29, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR. Doc. 93–20174 Filed 8–23–93; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AE56

Withdrawal of Below Regulatory Concern Policy Statements

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of policy statements.

SUMMARY: The Nuclear Regulatory Commission is formally withdrawing its Below Regulatory Concern (BRC) policy statements. This action is necessary to comply with provisions of the Energy Policy Act of 1992. Specifically, this action removes the BRC Policy Statement issued on July 3, 1990, and the BRC Policy issued in 1986 concerning the submittal of petitions for disposal of radioactive waste streams below regulatory concern that were set out in the Commission's regulations.

EFFECTIVE DATE: This action is effective August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–1642.

SUPPLEMENTARY INFORMATION: Section 10 of the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985 directed the Commission to develop criteria and procedures to act upon petitions "to exempt specific radioactive waste streams from regulation * * * due to the presence of radionuclides * * * in sufficiently low concentrations or quantities as to be below regulatory concern." The Commission responded to this statutory provision by issuing a policy statement on August 29, 1986 (51 FR 30839) that contained criteria for evaluating such petitions. These criteria and the procedures for NRC staff implementation are set forth in 10 CFR part 2, appendix B, of the Commission's regulations. In order to establish a consistent risk framework for making regulatory exemption decisions across the broad spectrum of activities regulated by the Commission, the Commission later issued a second policy statement addressing the below regulatory concern issue, "General Statement of Policy on Below Regulatory Concern," July 3, 1990 (55 FR 27522).

In reaction to the public concern about the implications of the 1990 Policy, the Commission initiated a consensus-building process in July 1991 to seek the advice of affected interests on a re-evaluation of the Policy. In conjunction with the initiation of the consensus-building process, the Commission placed a moratorium on the implementation of the 1990 Policy. When the consensus-building process was terminated in December 1991 due to the difficulty of obtaining the participation of all affected interests in the process, the Commission indefinitely extended the moratorium on the implementation of the Policy. In October 1992, the Congress enacted the Energy Policy Act of 1992 (H.R. 776), and the bill was subsequently signed into law by President Bush. Section 2901 revoked the Commission's 1986 and 1990 BRC Policy Statements.

The Commission formally withdraws the two BRC Policy Statements in response to the Congressional action. In a document published in the proposed rule section of this issue of the **Federal Register**, the Commission also announces the termination of a rulemaking action that was initiated to implement the 1986 BRC Policy.

Although section 2901 of the Energy Policy Act effectively revoke the 1986 BRC Policy Statement by providing that it should have no further effect, it did not explicitly remove the Commission's obligation under section 10 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 to develop criteria and procedures for evaluating exemption requests for specific radioactive waste streams on an expedited basis. Nor did the Act revoke the Commission's authority under the Atomic Energy Act to exempt classes of materials from licensing. The Commission does not believe that it is necessary at this time to initiate the development of new generic criteria and procedures to replace those established in the 1986 Policy Statement that implemented section 10 of the LLRWPAA. The Commission believes that the current situation could allow these types of exemption requests to be effectively handled on a case-by-case basis using the Commission's existing authority under the Atomic Energy Act and the existing general procedures for the expedited processing of petitions for rulemaking. This is consistent with the Commission's policy to address individual exemption requests using the criteria and guidance in existence prior to the July 3, 1990, BRC Policy Statement.

Paperwork Reduction Act Statement

Withdrawal of this policy statement removes information collection matters that were subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Office of Management and Budget approval of the provisions contained in appendix B to 10 CFR part 2 was allowed to expire on December 31, 1992. The 10 CFR part 2 information collection requirements that remain in effect were approved by the Office of Management and Budget approval number 3150–0136.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.206 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

Appendix B to Part 2 [Removed and Reserved]

2. Appendix B to 10 CFR part 2 is removed and reserved.

Dated at Rockville, Maryland, this 18th day of August 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–20403 Filed 8–23–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) from Pet Products Plus, Inc., to Farnam Companies, Inc.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Pet Products Plus, Inc., 45 Corporate Woods Dr., Bridgeton, MO 63044, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA's 101–331, 125–730, and 139–191 to Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928. Accordingly, FDA is amending the regulations in 21 CFR 520.1806, 520.2041, and 520.2042 to reflect the change of sponsor. Furthermore, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Pet Products Plus, Inc., because the firm is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Pet Products Plus, Inc.," and in the table in paragraph (c)(2) by removing the entry for "059447".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1806 [Amended]

4. Section 520.1806 *Piperazine monohydrochloride liquid* is amended in paragraph (b) by removing "059447" and adding in its place "017135".

§ 520.2041 [Amended]

5. Section 520.2041 *Pyrantel pamoate chewable tablets* is amended in paragraph (b) by removing "059447" and adding in its place "017135".

§ 520.2042 [Amended]

6. Section 520.2042 *Pyrantel pamoate tablets* is amended in paragraph (b) by removing "059447" and adding in its place "017135".

Dated: August 18, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–20420 Filed 8–23–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Aminorex into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of aminorex in Schedule I of the Controlled Substances Act (CSA). The temporary scheduling of aminorex is due to expire on September 21, 1993. This notice will extend the

temporary scheduling of aminorex for six months or until rulemaking proceedings pursuant to the Act are completed, whichever occurs first.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On September 21, 1992, the Administrator of the DEA published a final rule in the **Federal Register** (57 FR 43399) amending § 1308.11(g) of title 21 of the Code of Federal Regulations to temporarily place aminorex into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on the findings by the Administrator that the temporary scheduling of aminorex was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expires at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services, or on the petition of any interested party. Such proceedings regarding aminorex have been initiated by the Administrator.

Therefore, the temporary scheduling of aminorex, which is due to expire on September 21, 1993, may be extended until March 21, 1994, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of aminorex be extended until March 21, 1994, or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a), whichever occurs first. The Administrator of the DEA hereby certifies that extension of the temporary placement of aminorex into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This action involves the extension of temporary control of a substance with no currently approved medical use or manufacture in the United States.

This final rule is not a major rule for the purposes of Executive Order 12291 (46 FR 13193) of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to provisions of Executive Order 12291. Accordingly, this extension of temporary scheduling is not subject to the provisions of Executive Order 12778 which are contingent on review by OMB.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Dated: August 16, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–20292 Filed 8–23–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD13–93–019]

Drawbridge Operation Regulations; East Fork of Hoquiam River, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; revocation.

SUMMARY: This amendment removes all regulations for the Panhandle Bridge across the East Fork of the Hoquiam River, mile 0.7, near Hoquiam in Grays Harbor County, Washington. The regulations are being revoked because the drawbridge has been modified to a fixed structure. A notice of proposed rulemaking has not been issued for this regulation because the conversion of the vertical lift to a fixed span eliminates the need for existing regulations.

DATES: This final rule becomes effective on August 24, 1993.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Thirteenth Coast Guard District, at (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this amendment are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Discussion of Final Rule

On April 28, 1993, the Commander, Thirteenth Coast Guard District, approved a bridge permit amendment which authorized the bridge owner to remove machinery, counterweights and cables from the vertical lift span thereby converting the drawbridge to a fixed span bridge. This modification has been completed. This final rule has no economic consequences since it merely revokes the operating regulations for a drawbridge that no longer exists.

Regulatory Evaluation

This proposed rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) the U.S. Coast Guard must consider whether rules will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). Nevertheless, the Coast Guard certifies that this action will not have significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Parts 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.1047 [Amended]

2. Section 117.1047 is amended by removing paragraph (e).

Dated: August 12, 1993.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 93–20457 Filed 8–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CCGD13–93–002]

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, OR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the New Youngs Bay Bridge across Youngs Bay, mile 0.7, the Old Youngs Bay Bridge across Youngs Bay, mile 2.4, and the Lewis and Clark River Bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. This change requires that four hours notice be given for opening any of the three drawspans from 9 p.m. to 5 a.m. This change is being made because of the decreased number of requests from vessel operators for openings during the subject period. This action will relieve the owner of the bridges from having a person constantly available at the bridges. This new regulation will still provide for the reasonable needs of navigation.

DATES: This regulation becomes effective on September 23, 1993.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (206) 220–7272.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Regulatory History

On April 9, 1993, the Coast Guard published a proposed rule (58 FR 18358) concerning this regulation change. The Commander, Thirteenth Coast Guard District, also published the proposal as a public notice in the Local Notice to Mariners Number 16 on April 20, 1993. In each notice interested persons were given until May 24, 1993, to submit comments. No objections to the proposed rule were received. A public hearing was not requested and one was not held.

Background and Purpose

The drawbridges presently open if a half hour notice is provided. Only the Lewis and Clark River Bridge has an operator in attendance 24 hours a day. This person also responds to the calls for opening the Old and New Youngs Bay Bridges. This final rule alters only the length of required notice between the hours of 9 p.m. and 5 a.m. This will relieve the bridge owner from having an operator present at the Lewis and Clark Bridge during the hours when requests for opening are seldom made.

Discussion of Comments and Changes

No comments were received either for or against the proposed rulemaking.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impacts of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because there is little or no commercial traffic on the subject waterways during the hours affected by this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the U.S. Coast Guard must consider whether rules will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act. Because this final rule imposes no new requirements on small businesses and will result in partial relief from a regulatory burden on the owner or operator of these bridges, the Coast Guard does not expect this rule to have significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.899 is revised to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half hour's notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio.

telephone, or other suitable means from 5 a.m. to 9 p.m. At all other times four hour's notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal for the passage of vessels if at least one half hour's notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 5 a.m. to 9 p.m. At all other times four hour's notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half hour's notice is given by marine radio, telephone, or other suitable means from 5 a.m. to 9 p.m. At all other times four hour's notice by telephone is required. The opening signal is one prolonged blast followed by four short blasts.

Dated: August 9, 1993.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 93-20459 Filed 8-23-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Paducah Regulation 93-012]

Safety Zone Regulations; Lower Mississippi River Mile 931.0-936.0, and Mile 910.0-916.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established two safety zones restricting vessel traffic from navigating the back sides of Island 8 and Wolf Island on the Lower Mississippi River. These regulations are needed to control vessel traffic in these regulated areas to prevent further wake damage to earthen levees, and property along the river. These regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATE: These regulations are effective on July 30, 1993 and will terminate on August 30, 1993.

FOR FURTHER INFORMATION CONTACT: ENS Robert I. Coller, Assistant Chief Operations Department, Captain of the Port, Paducah, Kentucky at (502) 442-1621.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of these regulations is ENS Robert I. Coller, Project Officer, Marine Safety Office, Paducah, Kentucky, and CDR Walt Brawand, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making this effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, with the recent rise in river levels on the Lower Mississippi River, the earth levees protecting agricultural lowlands have been deteriorating. This deterioration and weakening has been further aggravated by commercial towboats navigating the back side of these islands, out of the charted navigable channel. Recent rainfall in the Upper Mississippi valley has caused an increase in river currents and water levels on the Upper Mississippi which, have in turn, adversely affected the river conditions on the Lower Mississippi and lower Ohio Rivers, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for more than four months. This has contributed to increased currents and unusually wet conditions along the rivers with the resultant softening of the earth levees which protect the adjacent agricultural lowlands. With the closure of the Upper Mississippi River fleeting areas are becoming overwhelmed with barges awaiting transit North. The present river conditions and operations being conducted present a hazard not only to the earth levees protecting the low lying farm lands, but to fleeting areas as well. Recently, a local advisory was issued for the Lower Mississippi River requesting commercial vessel operators to follow some general rules while transiting these designated sensitive areas. The advisory has been proven ineffective and river flood conditions continue to worsen, therefore these regulations are required.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it is not expected to have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, Paducah, Kentucky will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A temporary § 165.T0261 is added, to read as follows:

§ 165.T0261 Safety zone: Lower Mississippi River from mile 931.0–936.0 and mile 910.0–916.0.

(a) *Location.* The Lower Mississippi River between mile 931.0–936.0 and mile 910.0–916.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on July 30, 1993 and will terminate on August 30, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply.

Dated: July 30, 1993.

Robert M. Segovis,

Commander, U.S. Coast Guard, Captain of the Port, Paducah, Kentucky.

[FR Doc. 93–20458 Filed 8–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Paducah Regulation 93–011]

Safety Zone Regulations; Upper Mississippi River Mile 0.0–55.3

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a safety zone on the Upper Mississippi River. This regulation is needed to control vessel traffic in the regulated area to prevent further wake damage to levees and property along the river. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATE: These regulations are effective on July 11, 1993 and will terminate September 15, 1993.

FOR FURTHER INFORMATION CONTACT: ENS Robert I. Coller, Assistant Chief, Operations Department, Captain of the Port, Paducah, Kentucky at (502) 442–1621.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is ENS Robert I. Coller, Project Officer, Marine Safety Office Paducah, Kentucky and CDR Walt Brawand, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making this effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Mississippi River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for more than four months. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands.

The recent rainfall over the Midwest pushed the rivers above the flood stage, setting records for high water. As a result, the waters of the Mississippi River have overflowed its banks and some levees in the area have failed. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if the levees are subjected to wakes and wheelwash from passing vessels. The flood conditions also present a hazard to navigation in that area's rivers are carrying larger amounts of trees and other debris which have been washed from the river banks and inundated lowlands; once visible obstructions to navigation are not submerged; and river currents are not following normal patterns. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic. The Army Corps of Engineers anticipates that it may take several weeks for the waters to recede to normal levels. Subsequently, the Captain of the Port Paducah as closed the Upper Mississippi River from mile 0.0 UMR to mile 55.3 UMR.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), we do not expect this regulation to have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port Paducah, Kentucky will monitor river conditions and will permit limited operations in specific areas as river conditions allow.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0257 is added, to read as follows:

§ 165.T0257 Safety zone: Upper Mississippi River from mile 0.0 UMR to mile 55.3 UMR.

(a) *Location.* The Mississippi River between mile 0.0 and 55.3 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on July 11, 1993 and will terminate September 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply.

Dated: July 11, 1993.

Robert M. Segovis,

Commander, U.S. Coast Guard, Captain of the Port, Paducah, Kentucky.

[FR Doc. 93–20460 Filed 8–23–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4697–7]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: The EPA is finalizing the update of the Outer Continental Shelf ("OCS") Air Regulations proposed in the **Federal Register** on June 18, 1993. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), as amended by the Clean Air Act Amendments of 1990. The portion of the OCS Air Regulations that is being updated pertains to the requirements for OCS sources for which the San Luis Obispo County Air Pollution Control District (San Luis Obispo County APCD), the Santa Barbara County Air Pollution Control District (Santa Barbara APCD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. This approval action incorporates the requirements contained in "San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources" (July 30, 1993), "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (July 30, 1993), and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (July 30, 1993) as proposed to be modified in the notice of proposed rulemaking on the consistency update, published on June 18, 1993.

EFFECTIVE DATE: This action is effective September 23, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1993 at 58 FR 33589, EPA proposed to approve the following requirements into the Outer Continental Shelf Air Regulations: "San Luis Obispo County Air Pollution Control District Requirements applicable to OCS Sources" (July 30, 1993), "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (July 30, 1993), and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (July 30, 1993), with some modifications as set forth in the proposal. These requirements represent the second update of part 55 and are being promulgated in response to the submittal of rules from local air pollution control agencies. EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in 58 FR 33589 and no comments were received.

EPA Action

In today's notice, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. Minor changes were made to the proposal set forth in the June 18, 1993 notice of proposed rulemaking. These changes include the addition of a document date for the requirements to be incorporated into part 55 and the deletion of a duplicate rule 74.12, Surface Coating of Metal Parts and Products, in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources. EPA is approving the submittal as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. The intended effect of approving these requirements is to regulate emissions from OCS sources in accordance with the requirements onshore. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by Section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of final rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by

reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 12, 1993.

John C. Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraphs (e) (3) (ii) (E), (e) (3) (ii) (F), and (e) (3) (ii) (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources,* July 30, 1993.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* July 30, 1993.

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* July 30, 1993.

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraphs (b)(5), (b)(6), and (b)(8) under the heading, "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California * * *

(b) * * *

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources,* July 30, 1993:

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 9/15/92)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* July 30, 1993:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)

Rule 332 Petroleum Refinery Vacuum Producing Systems. Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (12/10/91)
Rule 342 Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (03/10/92)
Rule 505 Breakdown Conditions Sections A.,B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, July 30, 1993:

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuances (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 1/8/91)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II–A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 12/22/92)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/16/92)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 93–20384 Filed 8–23–93; 8:45 am]
BILLING CODE 6560–50–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1105

[Ex Parte No. 55 (Sub-No. 22C)]

Technical Amendments to Environmental Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is making technical changes to its environmental regulations. These changes reflect new telephone numbers; clarify the environmental reporting requirements for States without clearinghouses; and provide additional information on how to file pleadings with the Commission on trail use, public use, and offers of financial assistance.

EFFECTIVE DATE: The rules are effective August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas L. McClelland, Jr., (202) 927–6197 or Elaine K. Kaiser (202) 927–6248. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The general purpose of this rulemaking is to update various telephone numbers set forth in the environmental rules. Also, we are amending § 1105.7(b) to clarify that if a State does not have a clearinghouse, environmental reports must be served on an equivalent State agency. Finally, we are adding information to the Sample Newspaper Notices required for Abandonment Exemption cases at § 1105.12 to ensure that pleadings regarding trail use, public use, and offers of financial assistance are filed properly.

Regulatory Flexibility Analysis

Under 5 U.S.C. 605(b), we conclude that our action regarding these rule changes will not have a significant economic impact on a substantial number of small entities. The purpose of our action is to reflect new telephone numbers, clarify the environmental reporting requirements for States without clearinghouses, and provide additional information regarding the proper methods of filing certain pleadings with the Commission. Accordingly, the economic impact, if any, is not likely to be felt by a substantial number of small entities.

Environmental And Energy Considerations

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR part 1105

Environmental impact statements, Reporting and record keeping requirements.

Decided: August 9, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1105 of the Code of Federal Regulations is amended as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for Part 1105 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

§ 1105.3 [Amended]

2. In § 1105.3, last line, the telephone number "202–275–7684" is revised to read "202–927–6211".

§ 1105.7 [Amended]

3. In § 1105.7(b)(1), the phrase "(unless the State has no clearinghouse)" is revised to read "(or other State equivalent agency if the State has no clearinghouse)".

§ 1105.11 [Amended]

4. In § 1105.11, Appendix, second paragraph, second sentence, the telephone number "(202) 275–7684" is revised to read "202–927–6211".

§ 1105.12 [Amended]

5. In § 1105.12, the Appendix is amended as follows:

a. In the first sample newspaper notice, second paragraph, last line, the telephone number "202–275–7684" is revised to read "202–927–6211".

b. In the first sample newspaper notice, third paragraph, third sentence, the telephone number "202–275–7597" is revised to read "202–927–7597".

c. In the second sample newspaper notice, second paragraph, last line, the telephone number "202–275–7684" is revised to read "202–927–6211".

d. In the second sample newspaper notice, third paragraph, third sentence, the telephone number "202–275–7597" is revised to read "202–927–7597".

e. In both the first and second sample newspaper notices, third paragraph, after the second sentence, add the following sentence:

"An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Commission's Office of the Secretary, 12th and Constitution Avenue NW., Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]."

[FR Doc. 93–20408 Filed 8–23–93; 8:45 am]

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VOL
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Proposed Rules

Federal Register
Vol. 58, No. 162
Tuesday, August 24, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 20

RIN 3150–AC35

Radioactive Waste Below Regulatory Concern; Generic Rulemaking, Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking, withdrawal.

SUMMARY: The Nuclear Regulatory Commission is formally withdrawing its advance notice of proposed rulemaking concerning a generic rulemaking for the disposal of radioactive waste below regulatory concern (BRC). This action is being taken to conform with the Commission's formal withdrawal of the BRC Policy issued in 1986 concerning the submittal of petitions for disposal of radioactive waste streams below regulatory concern that was set out in the Commission's regulations.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–1642.

SUPPLEMENTARY INFORMATION: In a document published in the final rule section of this issue of the **Federal Register**, the Commission formally announced the withdrawal of the BRC Policy Statements issued on August 29, 1986 (51 FR 30839) and on July 3, 1990 (55 FR 27522).

In this document, the Commission is terminating the rulemaking action that was initiated to implement the 1986 BRC Policy. On December 2, 1986 (51 FR 43367), the Commission published an advance notice of proposed rulemaking (ANPR) entitled "Radioactive Waste Below Regulatory Concern; Generic Rulemaking" (RIN 3150–AC35). This ANPR is withdrawn. However, the NRC staff will evaluate the public comments submitted on the ANPR to ensure that any comments that are relevant to the enhanced participatory rulemaking on the radiological criteria for site cleanup and decommissioning are considered as part of that rulemaking process.

Dated at Rockville, Maryland, this 18th day of August, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–20402 Filed 8–23–93; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Size Standards; Establishment of Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing regulations which amend the Small Business Size Regulations, to implement the Small Business Credit and Business Opportunity Enhancement Act of 1992. These regulations would set forth the limited circumstances under which the Secretary of a department or the head of a Federal agency may prescribe, for the use of such department or agency, a numerical size standard for determining whether or not an entity is small.

DATES: Written comments should be submitted on or before September 23, 1993.

ADDRESSES: Comments should be submitted to: Gary Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Director, Size Standards Staff, or Ajoy Sinha, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Section 222 of Public Law 102–366 amends section 3(a) of the Small Business Act (15 U.S.C. 632(a)) to delineate the limited circumstances under which a Secretary of a department or the head of a Federal agency may prescribe, for the use of such department or agency, a numerical size standard for determining whether or not an entity is small. SBA is proposing these regulations, amending 13 CFR part 121, to implement this law.

Specifically, these proposed regulations would amend 13 CFR 121.1502 to include a description of the requirements which a Secretary of a department or head of a Federal agency must meet in order to promulgate a numerical industry size standard other than one which has been established by SBA. First, the Secretary of a department or the head of a Federal agency may only prescribe a numerical size standard different from the size standard prescribed by SBA for use in connection with a program of such department or agency.

Second, unless a numerical size standard is specifically authorized by statute, the Secretary of a department or the head of a Federal agency may only prescribe a size standard different from that determined by SBA when the contemplated size standard:

(a) Is being proposed after an opportunity for public notice and comment;

(b) Provides for determining, over a period of not less than three (3) years (i) the size of a manufacturing concern on the basis of the number of its employees during that period; and (ii) the size of a concern providing services on the basis of the average gross receipts of the concern during that period; and (c) is approved by the SBA Administrator.

Finally, these proposed regulations would amend 13 CFR 121.1502 to include a provision which would require the Administrator of SBA to ensure, when establishing or approving a numerical size standard pursuant to the criteria stated above, that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and to consider other factors as the Administrator deems relevant.

Compliance With Executive Orders 12291, 12612, and 12778; Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of Executive Order 12291, SBA certifies that this proposed rule, if promulgated as a final rule, would not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major rule. SBA has made this

determination based upon the fact that, to date, the Agency has received very few requests from other Federal departments or agencies who wish to prescribe a numerical size standard different from that declared by SBA for purposes other than to perform a Regulatory Flexibility Analysis. SBA does not believe this proposed rule will increase the frequency of these requests.

For purposes of Executive Order 12612, SBA certifies that this proposed rule, if promulgated in final, would not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this proposed rule, if promulgated as a final rule, would not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Government property, Grant programs-business, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out above, title 13 of Code of Federal Regulations, part 121 is proposed to be amended to read as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b), 637(a), and 644(c).

2. Section 121.1502 is revised to read as follows:

§ 121.1502 Size standards of other agencies.

(a) Federal agencies which administer programs relating to small businesses which are not covered by the Small Business Act generally utilize small business size criteria developed pursuant to the Small Business Act. However, in limited circumstances, SBA's numerical size standards may not be appropriate for the particular program involved. In cases where a Federal department or agency decides the SBA numerical size standard is not appropriate, the Secretary of the department or the head of the Federal agency may, pursuant to the procedures set forth in paragraph (b) of this section, establish a numerical size standard which is more appropriate to the activities of the department or agency.

(b) Unless a numerical size standard is specifically authorized by statute, the Secretary of a department or the head of a Federal agency may prescribe a size standard for determining whether or not an entity is a small business concern, for the exclusive use of such department or agency, only when such numerical size standard:

(1) Is proposed pursuant to an opportunity for public notice and comment, as prescribed in the Administrative Procedure Act, 5 U.S.C. 553;

(2) Provides for determining, over a period of not less than three (3) years—

(i) The size of a manufacturing concern on the basis of the number of its employees during that period; or

(ii) The size of a concern providing services on the basis of the average gross receipts of the concern during that period; and

(3) Is approved by the SBA Administrator.

(c)(1) In order to receive the approval of the SBA Administrator, the Secretary of a department or the head of a Federal agency must communicate in writing to the SBA Administrator, prior to publishing the new numerical size standard as a proposed rule. The letter must:

(i) Explain the contemplated industry size standard, the reasons the SBA numerical standard is not appropriate, and the reasons the proposed numerical size standard would be appropriate; and

(ii) Certify that the criteria set forth in paragraph (b) (1) and (2) of this section will be complied with.

(2) The Secretary of a department or head of a Federal agency must also contact, in writing, the SBA Administrator prior to publishing the contemplated numerical size standard as a final rule after the public notice and comment period has expired. The correspondence must include the following:

(i) A copy of the intended final rule, including the preamble;

(ii) Copies of any public comments received in response to the proposed rule; and

(iii) Any other supporting documentation deemed relevant and requested by the SBA Administrator.

(d) When approving any numerical size standard established pursuant to paragraph (b) of this section, the SBA Administrator shall:

(1) Ensure that the numerical size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries; and

(2) Consider other factors the Administrator deems to be relevant.

(e) In those circumstances where the Secretary of a department or head of a Federal agency is developing a numerical size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the department or agency may, after consultation with the SBA Office of Advocacy, establish a numerical size standard different from SBA's which is more appropriate for the Regulatory Flexibility Analysis.

Dated: June 21, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20388 Filed 8–23–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–33–AD]

Airworthiness Directives: Cessna Aircraft Company 210, P210, and T210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92–26–04, which applies to certain Cessna Aircraft Company (Cessna) 210, P210, and T210 series airplanes. That AD specifies operational checks of the fuel gauges, fuel cap and adapter modifications, and preflight fuel system quantity checks. The FAA received a petition for reconsideration of AD 92–26–04, and subsequently suspended the effectiveness of this AD while the concerns specified in the petition were evaluated. The proposed AD would retain certain actions of AD 92–26–04, and incorporates certain other actions raised by the petition for reconsideration. The actions specified by the proposed AD are intended to prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing.

DATES: Comments must be received on or before November 1, 1993.

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ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–33–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; Telephone (316) 946–4143; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–33–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On December 1, 1992, the FAA issued AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), to require the following on certain Cessna 210, P210, and T210 series airplanes: (1) Performing operation checks of the fuel gauges; (2) modifying the fuel caps and adapters; and (3) incorporating pilot operating procedures that relate to preflight fuel system quantity checks into the airplane flight manual or airplane records. The modification is accomplished in accordance with the instructions to Cessna Service Kit SK210–136, which is referenced by Cessna Service Bulletin SEB91–10, dated October 25, 1991.

Over 100 accidents/incidents involving fuel exhaustion on Cessna 210, T210, and P210 Series airplanes prompted the actions specified in AD 92–26–04. After issuance of AD 92–26–04, the Cessna Pilots Association (CPA) petitioned the FAA to withdraw the AD. The Aircraft Owners and Pilots Association (AOPA) supported CPA's petition. This petition raised the following issues: (1) The required procedures for calibrating installed fuel quantity indicating systems are ineffective; (2) the required test equipment is unavailable; and (3) required parts are unavailable, FAA-approved repair facilities are scarce, and the cost of repairs is expensive. Without agreeing or disagreeing, the FAA determined that the issues raised by the petition warranted further consideration, and subsequently suspended the effectiveness of AD 92–26–04 on January 15, 1993.

After investigating and reviewing the issues raised by the petition referenced above, the FAA has determined the following regarding each of the issues raised in the petition:

(1) The procedures specified in the maintenance manual have been utilized for over 20 years, but maintenance personnel simplify these procedures for practical expediency when accomplishing fuel gauge calibration. The owner/operator should be allowed the option of accomplishing calibration procedures in accordance with an FAA-approved maintenance program or the applicable maintenance manual;

(2) To the best of the FAA's knowledge, test equipment for the Cessna Model 400 series airplanes has been available from the Cessna Aircraft Company for many years. The 400 series airplanes utilize the same type fuel quantity capacity gauging system as the 210 series airplanes. Repair facility personnel have found this test equipment easy to utilize on Cessna 210 series airplane fuel quantity capacity gauging systems for many years. As specified previously, the FAA is proposing to allow the option of accomplishing the calibration procedures in accordance with an FAA-approved maintenance program or the applicable maintenance manual; and

(3) New fuel quantity gauge systems will probably be available in January 1994, which, realistically, is about the time this proposed rule would become a final rule (if determined necessary). At the same time, FAA-certified repair facilities have maintained and continue to carry an adequate stock of fuel quantity gauge repair or replacement parts. The FAA also maintains that the cost of obtaining and installing these repair or replacement parts when deficiencies are found outweighs the risk of returning the airplane to service without repairing or replacing. In addition, the FAA has proposed to allow the owner/operator the option of accomplishing certain fuel checks (as specified by placards) after refueling as an alternative to installing raised fuel caps. With this in mind, parts cost for installing raised fuel caps would be eliminated, as well as providing an alternative if these raised fuel caps would become unavailable.

After examining the circumstances and reviewing all available information related to the aspects described above, the FAA has determined that additional AD action should be taken to prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing.

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna 210, P210, and T210 airplanes of the same type design, the proposed AD would supersede AD 92–26–04 with a new AD that would (1) retain the requirements of the current AD; (2) provide the option of utilizing approved alternative procedures for calibrating the fuel systems; (3) provide the option of accomplishing fuel capacity checks after refueling the airplane or installing raised fuel caps; and (4) revise the applicability of the actual AD to more fully clarify which airplanes are affected.

The FAA estimates that 5,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of

the proposed AD on U.S. operators is estimated to be $1,850,000. This figure takes into account that none of the affected airplanes have the proposed actions incorporated. In addition, AD 92–26–04 would have had a cost impact of $2,125,000 (5 workhours × $55 per hour plus $150 for parts × 5,000 airplanes) if the FAA had not suspended the effectiveness of that AD. This is actually a reduction of one workhour per airplane over that specified in AD 92–26–04, or a reduction of $275,000 for the entire U.S. fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), and by adding the following new airworthiness directive:

Cessna Aircraft Company: Docket No. 93–CE–33–AD. Supersedes AD 92–26–04, Amendment 39–8431.

Applicability: The following Model and serial number airplanes, certificated in any category.

Model	Serial Nos.
210G through 210R, and T210G through T210R.	21058819 through 21065009, and T210–0198 through T210–0454.
P210N, and P210R ...	P21000001 through P21000874.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing, accomplish the following:

(a) Incorporate the Pilot Operating Procedures—Preflight Fuel System Quantity Check that is Figure 1 of this AD into the airplane flight manual or airplane records.

Pilot Operating Procedures—Preflight Fuel System Quantity Check

The following procedures are to be used on certain Cessna 210, P210, and T210 Series airplanes whenever more than 75 gallons of fuel are needed for range and reserve.

1. Verify that the airplane is level laterally and is approximately 4.5 degrees nose up (normal nose strut on a level surface).

Note: The airplane turn and bank instrument may be used to check lateral leveling.

2. Visually inspect each fuel tank for fuel level with the upper wing surface when full fuel capacity is intended to be in each tank.

3. Check each fuel cap and seal for security and wing surface for a lack of fuel stains aft of each fuel cap.

Note: It is highly recommended that the tips and flap trailing edges are checked during flight for evidence of fuel siphoning.

Figure 1

(b) The incorporation of Figure 1 of this AD into the airplane flight manual or airplane records as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

(c) Calibrate the fuel quantity indicating system at the unusable (empty) fuel gauge indication by accomplishing the calibration procedures that are outlined in the applicable maintenance manual or FAA-approved maintenance program. Prior to further flight, correct any deficiencies detected during these procedures.

(d) Accomplish one of the following:

(1) Install raised fuel caps in accordance with the instructions to Cessna Service Kit SK210–136, which is referenced by Cessna SB SEB91–10, dated October 25, 1991; or Supplemental Type Certificate SA2456CE (owned by Mr. William J. Barton) for Monarch Air & Development, Inc., Assembly No. WW–100–2 fuel caps (only); or

(2) Fabricate two placards with the following words on each using letters at least ⅛-inch in height and install a placard on each wing fuel filler opening: "To Assure Full Capacity While Filling, Fill Slowly During Last 5 Gallons. Recheck for Full After 2 Minutes."

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 18, 1993.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–20392 Filed 8–23–93; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking and correcting amendments.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") seeks comments on its proposal to amend and correct rules relating to proceedings last revised substantively February 22, 1984. The proposed modifications update and streamline Commission procedures in light of the Commission's experience in the past nine years. In addition, the Commission seeks comment on whether

the voluntary decisional procedure should be retained in the reparation program.

DATES: Comments are due no later than October 25, 1993.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has reexamined the regulations governing reparation proceedings and found a need for certain corrections. Some references are outdated and need to be deleted or updated. Commission practice has found certain time limits may be compressed and procedures streamlined. Additionally, the Commission is considering raising jurisdictional and fee levels and removing the voluntary decisional procedure.

II. Need for Correction

The current regulations became applicable to matters filed on or after April 23, 1984. Since there are no matters pending before the Commission which date back to April 23, 1984, the date reference is unnecessary and should be deleted.

The definitional section is not in alphabetical order. The Commission believes that re-ordering the definitions alphabetically will make it easier for the user and will facilitate adding or deleting definitions in the future.

The Office of Government Ethics established uniform standards of ethical conduct for officers and employees of the Federal Government (57 FR 35006, Aug. 7, 1992). These were published as new government-wide regulations superseding individual agency regulations. Consequently, the reference in § 12.7 to 17 CFR 140.735–3(b)(3) needs to be updated to 5 CFR 2635.101(b).

Additionally, the current regulations refer to the "Chief of the Opinions Section." There is no longer an "Opinions Section." Consequently, references to the "Chief of the Opinions Section" have been changed to the "Deputy General Counsel for Opinions" and references to "Opinions Section" have been changed to "Office of General Counsel." Typographical errors are also corrected.

III. Need for Revisions

Based on its experience in the nearly ten years since the reparation rules were last revised substantively, the Commission has identified several rules which it believes should be modified. The Commission invites comments regarding the proposed revisions.

A. Response to Complaint

The Commission has identified two areas which should be revised in order to further the express purpose of the reparation procedures: "to provide a just, speedy and inexpensive determination of the issues" (§ 12.1(a)). Rule 12.16 currently affords a respondent 45 days to respond to a reparation complaint and permits the Director of the Office of Proceedings to extend the filing deadline for an additional 15 days. Initially, the Commission chose this time period to provide additional time in which to settle the complaint. See 41 FR 3994, 3995 (January 27, 1976). Actual experience, however, has disclosed no evidence that settlements are more likely to occur during this extended answering period.

In comparison, Rule 12(a) of the Federal Rules of Civil Procedure requires that an answer to a complaint be filed within 20 days after service of the summons and complaint. In reviewing the relative generosity of the length of time for filing a response in the current Commission rules, it is apparent that the processing of reparation proceedings could be expedited by reducing the time for filing the response to the complaint set forth in § 12.16 to 25 days, and the additional time that the Director of the Office of Proceedings could extend that deadline to 10 days. This would reduce the amount of total time in which to file a response from a maximum of 60 days to about half that time without infringing on the ability of the parties to present their cases. Moreover, it would shorten the total time for processing claims. Accordingly, the Commission proposes to revise § 12.16 to compress the filing deadlines.

B. Discovery

The Commission also identified an opportunity for time savings in the discovery process. Section 12.30(d) provides that discovery notices and requests be served within 40 days after the Proceedings Clerk notifies the parties of the commencement of a proceeding. It appears that the disposition of proceedings could be expedited by compressing the discovery period. Thus, the Commission is proposing to amend § 12.30(d) to reduce the time for serving discovery notices and requests to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding.

C. The Voluntary Decisional Procedure

The voluntary decisional procedure is a low-cost decisional procedure instituted in 1984 (49 FR 6602, Feb. 22, 1984). Its purpose is to provide an inexpensive, expeditious, and unappealable final decision. No oral hearing rights are afforded to the parties. It was expected that this procedure would result in a much faster and less costly final determination of reparation claims than would occur under the Commission's other procedures. At the time it was instituted, the voluntary decisional procedure was seen as meeting the desires of customers for an arbitration style forum. See 49 FR 6602, 6611 (February 22, 1984).

The voluntary decisional procedure has several advantages. Most significantly, parties waive certain procedural rights, including an oral hearing, for an inexpensive procedure in which the decision is immediately enforceable, public, and presumably consistent with Commission precedent. The procedure allows claims and counterclaims to be addressed in the same forum. If a need for more formality becomes apparent, the case can be "upgraded" to a summary or formal decisional procedure. In the fiscal years 1990 through 1992, of 354 complaints filed choosing voluntary proceedings, respondents upgraded approximately two-thirds to summary or formal proceedings, evidencing a benefit litigants obtain by having the flexibility to choose the level of proceeding they prefer. Finally, because unpaid reparation awards result in automatic suspension of registration and trading privileges, customers and the Commission have a potent weapon to ensure that violators pay judgments.

A question has arisen regarding the continuing need for the voluntary procedure. With the development of arbitration programs by the National Futures Association ("NFA"), the exchanges, and other private forums, the voluntary decisional procedure may be duplicative and unnecessary. However, some differences between private arbitration and the voluntary procedure are apparent. For example, NFA charges

filing fees according to a sliding scale, based on the amount of the claim, which are generally higher than the filing fee of $25 for the voluntary procedure in reparations. (However, by this notice the Commission proposes raising the fee to $50.) Hearings are available under NFA's arbitration procedure; the complainant pays a hearing fee—the amount dependent upon the amount of the claim. While there is no opportunity for oral hearing under the Commission's voluntary procedure, respondents may upgrade to either a summary or a formal decisional procedure to obtain an oral hearing by paying the difference in the filing fee. Finally, the records of voluntary proceedings are public whereas private arbitrations are confidential. However, both procedures result in a binding, non-appealable decision. While the decisions under the voluntary procedure are unappealable, the Commission maintains some control over the outcome because they are decided by Commission experts and are presumably consistent with Commission precedent. Thus, the public interest may be served by retaining the procedure. On the other hand, since the private arbitrations programs were required to be implemented under the provisions of the Commodity Exchange Act, in principle, they should be consistent with Commission precedent also. Thus, elimination of the reparation voluntary procedure may reduce government costs without depriving the public of its access to this style forum.

The Commission seeks public comment as to the continuing usefulness of the voluntary decisional procedure. Specifically, the Commission would like to know whether this forum serves a purpose that the NFA and other private arbitration forums do not. In responding to the questions, commenters are encouraged to focus attention on the general nature of the reparation program as one of the significant antifraud tools and customer protections created by Congress in the Commodity Exchange Act. The Commission wants to know whether eliminating voluntary proceedings as an option in reparations will tend to shift a number of cases from the public record to private decisionmakers, and if so, what the impact will be on the benefits and costs of these proceedings. Specifically, the Commission would like comments on the following questions:

1. Does the widespread availability of private arbitration render unnecessary the retention of the voluntary proceeding as an option in reparations? Are there any significant differences between the procedures used in Commission voluntary proceedings and those used in private arbitration?

2. What considerations are most important to customers choosing in which of several forums to file a commodity-related complaint? What considerations are most important to respondents in deciding whether to consent to a voluntary proceeding or to pay the filing fee for a summary or formal proceeding instead?

3. If the Commission were to eliminate the voluntary proceeding option, what would be the likely effect on its caseload? Would the cases that would have been filed as voluntary proceedings be filed with the Commission as summary and formal proceedings, alternatively in one of the private arbitration forums, or would such complaints not be filed at all?

4. Does the existence of voluntary proceedings help ensure the fairness of private arbitration by providing an alternative to customers? If so, would eliminating voluntary proceedings result in hidden costs exceeding the savings the Commission might realize?

5. If the Commission were to eliminate voluntary proceedings, should it simultaneously require private arbitrations subject to its regulation to provide the opportunity for litigants to select a proceeding in which filing fees are not based on the size of the claim? Should the complaints filed in these forums be made available to the public? What would be the costs and benefits of such a requirement and what would be the impact on incentives for private arbitrators to provide such services?

D. Filing Fees

Filing fees of $25 for the voluntary decisional procedure, $100 for the summary decisional procedure, and $200 for the formal decisional procedure were set in 1984 (49 FR 6602, Feb. 22, 1984). While the filing fees do not come close to covering the Commission's cost of processing the claims, they contribute in a small way. Costs generally have increased and a small increase in fees seems reasonable. Accordingly, the Commission is considering raising the filing fees for the voluntary decisional procedure to $50, for the summary decisional procedure to $125, and to $250 for the formal decisional procedure. The Commission proposes to amend § 12.25 accordingly. Additionally, the Commission proposes to amend § 12.106 to authorize Judgment Officers to assess the cost of the filing fee as part of the damage award in voluntary proceedings.

E. Summary Decisional Procedure

The summary decisional procedure was created by the Commission based upon the belief that parties with smaller claims should be entitled to a less expensive, more expeditious procedure which offers a greater likelihood of an early damage award and recovery. In 1978 Congress raised the ceiling, set in 1974, for damage claims eligible for summary proceedings from $2,500 to $5,000. In 1982 Congress removed the statutory ceiling. As a result, in 1984 the Commission raised the ceiling for damage claims eligible for summary decisional proceedings from $5,000 to $10,000 (49 FR 6602, Feb. 22, 1984). The Commission based its rationale on the decline in the value of the dollar in the years 1979 to 1982 and found that it was "reasonable to establish $10,000 as an amount above which a damage claim will not be considered small." (*Id.*, 6613) Upon reflection, the Commission believes that the size of the damage claim is not necessarily a measure of the difficulty of the case. Further, the Commission does not think that the relative smallness of the claim should be the only consideration in the allocation of Commission resources. The Commission's concern with the expeditious and efficient handling of cases is an equally valid consideration. Moreover, the Commission believes that it can save parties some costs related to litigation by making the summary procedure available to a greater number of parties. Thus, the Commission has examined the workload of the Office of Proceedings and believes that raising the ceiling from $10,000 to $30,000 will greatly increase the efficiency of that office. Allowing Judgment Officers to hear a greater number of cases will free the Administrative Law Judges to concentrate on enforcement proceedings and cases in which the damages claimed are greater than $30,000. Should the Judgment Officers become overburdened, ALJ's can be assigned cases below $30,000. The Commission believes that this change will result in more expeditious disposition of cases. Consequently, for the summary decisional procedure the Commission proposes to raise the ceiling for damage claims from $10,000 to $30,000. Accordingly, the Commission proposes to revise the applicable provisions.

Cases under the summary decisional procedure are usually decided based upon the written submissions of the parties. In some cases where the testimony of the parties conflicts, it is necessary for the Judgment Officer to make a credibility finding. Often, the Judgment Officer needs to see or hear

the parties in order to make a reliable credibility determination. The current rules allow a Judgment Officer to order a hearing only upon motion of a party. On occasion, the Commission has remanded cases with directions to hold an oral hearing when the parties did not request one or it has authorized Judgment Officers to invite oral hearing requests when they determine that a hearing is required. The proposed rule would accelerate the disposition of these proceedings by eliminating the need to remand for a hearing and the present practice of inviting a motion and then ruling on that motion. Accordingly, the Commission is proposing to modify § 12.208 and § 12.209 to authorize Judgment Officers to order oral hearings on their own motion. Hearings will be conducted by telephone unless the parties agree to a hearing in Washington, DC.

Additionally, the time frames in these sections have been compressed in order to expedite proceedings. Currently, the rules require that the parties be given 60 days notice prior to a hearing. It is the Commission's experience that shorter time periods generally would be adequate. Thus, the proposed rules require that the Judgment Officers set the time and place of the hearing with consideration for the convenience of the parties, but allow for 15 days notice for telephonic hearings and 30 days notice for in-person hearings.

Furthermore, the proposed rules make it clear that failure to appear at telephonic and in-person hearings and to provide correct telephone numbers is subject to sanctions, including default.

IV. Related Matter

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that part 12 reparation rules are not subject to the provisions of RFA because they relate solely to agency organization, procedure, and practice.[1] Nevertheless, because they do not impose regulatory obligations on commodity professionals and small commodity firms, and because, if instituted, the proposed corrections and amendments will expedite and improve the reparation process, the Commission does not expect the proposed rule to have a significant economic impact on a substantial number of small business entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any member of the public who believes that these revisions and corrections would have a significant impact on small businesses.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 12—RULES RELATING TO REPARATIONS

The Commodity Futures Trading Commission proposes to amend part 12 of chapter I of title 17 of the Code of Federal Regulations as follows:

1. The authority citation for part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12(a)(5), and 18.

§ 12.1 [Corrected]

2. In the first sentence of § 12.1(c) the comma after "complaints" is removed; the comma after "thereto" is removed and a period is added in its place. The rest of the paragraph is removed.

3. § 12.2 is revised to read as follows:

§ 12.2 Definitions.

For purposes of this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*;

Administrative Law Judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Commission means the Commodity Futures Trading Commission;

Commission decisional employee means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decisionmaking process in any proceeding, including, but not limited to: A Judgment Officer; members of the personal staffs of the Commissioners, but not the Commissioners themselves; members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge; members of the staffs of the Judgment Officers; members of the Office of General Counsel; members of the staff of the Office of Proceedings; and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter.

Complainant means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to section 14(a) of the Act, but shall not include a cross claimant or any other type of third party claimant. The term "complainant" under these rules applies equally to two or more persons who have applied jointly for a reparation award;

Complaint mean any document which constitutes an application for a reparation award pursuant to section 14(a) of the Act, regardless of whether it is denominated as such;

Counterclaim means an application for a reparation award by a respondent against a complainant which satisfies the requirements of § 12.19. A counterclaim does not mean a cross claim or other type of third party claim;

Director of the Office of Proceedings means an employee of the Commission who serves as the administrative head of that Office, with responsibility and authority to assure that the part 12 Reparation Rules are administered in a manner which will effectuate the purposes of section 14(b) of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Law Judges and their personally assigned law clerks. The Director shall have the authority to delegate his duties to administer §§ 12.15, 12.24, 12.26 and 12.27, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Judgment Officers, but not including Administrative Law Judges and their personally assigned law clerks;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include:

(1) A discussion, after consent has been obtained from all of the named parties, between a party and a Judgment Officer or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of settling the case without the need for a decision;

(2) Requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by these rules; or

(3) Requests made to the Office of Proceedings or the Office of General Counsel for interpretation of these rules.

Formal decisional procedure means, where the amount of damages claimed exceeds $30,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the

[1] 49 FR 6802, 6821 (February 22, 1984).

parties may be granted an oral hearing. A formal decisional proceeding is governed by subpart E;

Hearing means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission;

Interested person means any party, and includes any person or agency permitted limited participation or to state views in a reparation proceeding, or other person who might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding;

Judgment Officer means an employee of the Commission who is authorized to conduct the proceeding and render a decision in a summary decisional proceeding or a voluntary decisional proceeding. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

Office of the General Counsel refers to the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to these rules;

Office of Proceedings means that Office within the Commission comprised of the Administrative Law Judges, Judgment Officers, the Director of that Office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers these part 12 Reparation Rules, other than the rules authorizing direct review by the Commission;

Order means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, a Judgment Officer, or the Proceedings Clerk;

Party means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter;

Person means any individual, association, partnership, corporation or trust;

Pleading means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing;

Proceeding means a case in which the pleadings have been forwarded and in which a procedure has been commenced pursuant to § 12.26;

Proceedings Clerk means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparation docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings;

Registrant means any person who—

(1) Was registered under the Act at the time of the alleged violation;

(2) Is subject to reparation proceedings by virtue of section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or

(3) Is otherwise subject to reparation proceedings under the Act.

Reparation award means the amount of monetary damages a party may be ordered to pay;

Respondent means any person or persons against whom a complainant seeks a reparation award pursuant to section 14(a) of the Act; and

Summary decisional procedure means, where the amount of damages claimed does not exceed $30,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by § 12.208. A summary decisional proceeding is governed by subpart D.

Voluntary decisional procedure means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under these rules, for an expeditious resolution by a Judgment Officer. By electing the voluntary decisional procedure, parties agree that a decision issued by a Judgment Officer shall be without accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by subpart C of these rules;

§ 12.6 [Corrected]

4. In § 12.6(b) the word "the" is added between "expiration of" and "time".

§ 12.7 [Corrected]

5. In § 12.7(b) introductory text, the phrase "communication prohibited by paragraph (b)" is revised to read "communication prohibited by paragraph (a)".

6. In § 12.7(c)(3) the reference to "17 CFR 140.735–3(b)(3)." is revised to read "5 CFR 2635.101(b).".

§ 12.10 [Corrected]

7. In § 12.10(a)(1) add "a" between "course of" and "proceeding".

8. In § 12.10(a)(3) the phrase "Chief of the Opinions Section" is revised to read "Deputy General Counsel for Opinions".

§ 12.13 [Corrected and Amended]

9. In § 12.13(b)(2) the phrase "believes that" is revised to read "believes the".

10. § 12.13(b)(1)(viii) is revised to read as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(1) * * *

(viii) An election of a decisional procedure pursuant to subpart C, D, or E. (A procedure pursuant to subpart D may be elected only if the amount of damages claimed, exclusive of interest and costs, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the amount claimed as damages, exclusive of interest and costs, exceeds $30,000); and

* * * * *

11. § 12.16 is revised to read as follows:

§ 12.16 Response to complaint.

Within 25 days after the complaint has been served by the Office of Proceedings on the registrant, or within such additional time (not to exceed 10 days absent extraordinary circumstances) as the Director of the Office of Proceedings, or his/her delegee may grant, for good cause shown, each registrant shall either—

(a) Satisfy the complaint in accordance with § 12.17 of these rules; or

(b) Answer the complaint in the manner prescribed by § 12.18 of these rules.

§ 12.18 [Amended]

12. In § 12.18(a)(7) "$10,000." is revised to read "$30,000." and "$10,000);" is revised to read "$30,000);".

§ 12.25 [Amended]

13. In § 12.25(a)(1) "$25.00;" is revised to read "$50.00;".

14. In § 12.25(a)(2) "$10,000;" is revised to read "$30,000," and "$100.00." is revised to read "$125.00."

15. In § 12.25(a)(3) "$10,000," is revised to read "$30,000," and "$200.00." is revised to read "$250.00.".

16. In § 12.25(b)(1) "$10,000," is revised to read "$30,000,".

17. In § 12.25(b)(2) "$10,000," is revised to read "$30,000," and "$175.00." is revised to read "$200.00.".

18. In § 12.25(c) "$175.00;" is revised to read "$200.00".

§ 12.26 [Corrected]

19. In § 12.26(b) "$10,000," is revised to read "$30,000.00,".

20. In § 12.26(c) "$10,000," is revised to read "$30,000.00," and the words "to

a Proceedings Officer for discovery purposes" are removed.

§ 12.30 [Amended]

21. In § 12.30(d) revised the phrase "within forty (40) days" to read "within twenty (20) days" and remove the last sentence.

§ 12.106 [Amended]

22. In § 12.106(c) the phrase "(other than costs assessed as a sanction for abuse of discovery)." is revised to read "(other than the filing fee and costs assessed as a sanction for abuse of discovery)."

23. § 12.201(g) is revised to read as follows:

§ 12.201 Functions and responsibilities of the Judgment Officer.

* * * * *

(g) If an oral hearing is ordered, to preside at the hearing, which shall include the authority to receive relevant evidence, to administer oaths and affirmations, to examine witnesses, and to rule on offers of proof;

* * * * *

§ 12.204 [Amended]

24. In § 12.204(a) "$10,000" is revised to read "$30,000".

25. In § 12.204(b) "$10,000" is revised to read "$30,000".

26. § 12.208(b) is revised to read as follows:

§ 12.208 Submissions of proof.

* * * * *

(b) *Oral testimony and examination.* The Judgment Officer may order an oral hearing for the presentation of testimony and examination of the parties and their witnesses when appropriate and necessary for the resolution of factual issues, upon motion by either a party or the Judgment Officer. An oral hearing held under this section will be convened by conference telephone call as provided in § 12.209(b), except that an in-person hearing may be held in Washington, DC, under the circumstances set forth in § 12.209(c).

27. § 12.209 is revised to read as follows:

§ 12.209 Oral testimony.

(a) *Generally.* When the Judgment Officer determines that an oral hearing is necessary and appropriate, such oral hearing will be held either by telephone or in person in Washington, DC, as set forth below. The Judgment Officer, in his or her discretion with consideration for the convenience of the parties and their witnesses, will determine the time and date of such hearing. During an oral hearing, in his or her discretion, the Judgment Officer may regulate appropriately the course and sequence of testimony and examination of the parties and their witnesses and limit the issues.

(b) *Telephonic hearings.* When a Judgment Officer has determined to hold an oral hearing by telephone, an order to that effect will be issued at least 15 days prior to the hearing notifying the parties of the date and time of the hearing. The order will direct the parties to confirm, at least 48 hours in advance of the hearing, that the correct telephone numbers for the parties and their witnesses are on file with the Office of Proceedings, and warn that failure to provide correct telephone numbers may be deemed waiver of that party's right to participate in the hearing, to present evidence, or to cross-examine other witnesses. If a party is unavailable by telephone at the appointed time, any other party in attendance may present testimony; and the Judgment Officer also may impose any appropriate sanction listed in § 12.35. All telephonic hearings will be recorded electronically but will be transcribed only upon direction of the Judgment Officer (if necessary) or in the event of Commission review. The parties may secure a copy of the recording of the hearing from the Proceedings Clerk upon written request and payment of the cost of the recording.

(c) *Washington, DC hearings.* In exceptional circumstances and when an in-person hearing is determined to be necessary in resolving the issues, the Judgment Officer may order an in-person hearing in Washington, DC upon written request by a party and the agreement of at least one opposing party. The Judgment Officer will issue notice of the time, date, and location of an in-person hearing to the parties at least 30 days in advance of the hearing. Except as otherwise provided herein, an in-person hearing will be held and recorded in the manner prescribed in § 12.312 (c) through (f) of these rules. A party not agreeing to appear at the hearing in Washington, DC, may be ordered to participate by telephone. Any party not appearing in person or by telephone will be deemed to have waived the right to participate in the hearing, to present evidence, or to cross-examine other witnesses; further, that party may be subject to such action under § 12.35 as the Judgment Officer may find appropriate. The Judgment Officer may order any party who requests or agrees to appear at a hearing in Washington, DC and fails to appear without good cause, to pay any reasonable costs unnecessarily incurred by parties appearing at such a hearing.

(d) *Compulsory process.* An application for a subpoena requiring a non-party to participate in a telephonic hearing or to appear at an in-person hearing in Washington, DC, may be made in writing to the Judgment Officer without notice to the other parties. The standards for issuance or denial of an application for a subpoena, the service and travel fee requirements, and the method for enforcing such subpoenas are set forth at § 12.313 of these rules.

§ 12.210 [Corrected and Amended]

28. In § 12.210(a) the phrase "pay reparation award" is revised to read "pay a reparation award".

29. In § 12.210(b)(4) "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.315 [Amended]

30. In the heading of § 12.315 "$10,000." is revised to read "$30.000.".

31. In § 12.315 "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.404 [Corrected]

32. In § 12.404 the phrase "of proceeding on appeal of review before" is revised to read "of proceedings on appeal before".

§ 12.408 [Corrected]

33. The heading of § 12.408 is revised to read "Delegation of authority to the Deputy General Counsel for Opinions."

34. In the first sentence of § 12.408 revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

35. In § 12.408(b) revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

Issued by Order of the Commission.

Dated: August 18, 1993.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93-20348 Filed 8-23-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[EE-79-89]

RIN 1545-AN40

Requirement of Making Quarterly Payments of the Railroad Unemployment Repayment Tax; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations stating the time and manner of making payments of the railroad unemployment repayment tax.

DATES: The public hearing for this proposed regulation originally scheduled for Monday, August 30, 1993, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 6011 and 6302 of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Thursday, May 13, 1993 (58 FR 28374), announced that the public hearing on the proposed regulations would be held on Monday, August 30, 1993, beginning at 10 a.m., in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Monday, August 30, 1993, has been cancelled for this proposed regulation. However, the public hearing will be held, as scheduled, on August 30, 1993, for two additional separately issued notices of proposed rulemaking relating to the supplemental annuity tax—railroad retirement (EE–9–92), which appeared in the **Federal Register** for Thursday, May 13, 1993 (58 FR 28371), and on the update of Railroad Retirement Tax Act regulations (EE–63–92), which appeared in the **Federal Register** for Thursday, May 13, 1993 (58 FR 28366).

Jackie Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20368 Filed 8–23–93; 8:45 am]

BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 5

[Notice No. 778; Re: Notice No. 773]

Standards of Fill

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the comment period for Notice No. 773, an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on July 2, 1993. Notice No. 773 solicited comments on proposals to either retain, revise, or eliminate the existing standards of fill for distilled spirits and wine containers. ATF received a number of requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues addressed in the ANPRM.

DATES: Comments must be filed on or before November 30, 1993.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221. ATTN: Notice No. 778.

FOR FURTHER INFORMATION CONTACT: Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1993, the Bureau of Alcohol, Tobacco and Firearms (ATF) published Notice No. 773, an advance notice of proposed rulemaking, in the **Federal Register** (58 FR 35908). ATF has been petitioned to amend the regulations to reinstate the 500 milliliter standard of fill for distilled spirits containers and to authorize three new sizes for distilled spirits containers: A 296 milliliter can, a 680 milliliter bottle and a 946 milliliter bottle. The petitioners take the position that the existing standards of fill are actually operating as impediments to international trade. Historically, it has been ATF's position that standards of fill for distilled spirits and wine containers are necessary, and that without such standards there would be a proliferation of bottle sizes, possibly resulting in consumer confusion and deception. However, due to the concerns raised by these petitions, ATF wishes to solicit comments on the following questions:

(1) Should the existing standards of fill for distilled spirits and wine be retained, and if so, why?

(2) If the standards of fill are retained, should the regulations be amended to expand the authorized standards of fill to include a 296 milliliter can, a 500 milliliter bottle, a 680 milliliter bottle, and a 946 milliliter bottle for distilled spirits products?

(3) Should ATF eliminate the existing standards of fill for wine and distilled spirits products, in favor of allowing marketing practices and consumer preferences to dictate container sizes? Have changes in the world economy necessitated such an action?

(4) If standards of fill are abolished, should the regulations impose any additional labeling requirements in order to prevent consumer confusion which might result from the possible proliferation of bottle and can sizes?

In addition to the above questions, ATF is soliciting comments on any other suggestions or alternatives relating to the issue of standards of fill for wine and distilled spirits.

The comment period for Notice No. 773 was scheduled to close on August 31, 1993. Prior to the end of the comment period, ATF received three requests for an extension of the comment period. The first request was submitted on behalf of the Federation des Exportateurs de Vins et Spiritueux de France (FEVS).

The Federation is the French national trade association representing exporters of wine and spirits. It is a private organization composed of 550 members. Because July and August are traditionally "down" business months in Europe due to vacations and reduced staff levels, the FEVS requested an extension of 60 days.

The second request was submitted by the National Association of Beverage Importers, Inc. (NABI). NABI is a national trade association representing the companies that import 90% of all alcoholic beverages brought into the United States. A large number of its parent companies and foreign suppliers are located in Europe. Therefore, an extension of 90 days was requested based on the same reason given by FEVS.

The third request was submitted by the Wine and Spirits Wholesalers of America, Inc., (WSWA). WSWA members distribute over 90% of the wines and spirits imported into the United States. The association also requested a 90 day extension in order to have sufficient time for its members to assess the proposals and report their views.

In consideration of these requests, ATF has determined that in addition to the 60 days already allowed, an extension of 90 days is appropriate. Therefore, the comment period for Notice No. 773 will be extended to November 30, 1993.

Drafting Information

The principal author of this document is Gail Hosey of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority: This notice is issued under the authority in 27 U.S.C. 205.

Signed: August 17, 1993.

Stephen E. Higgins,

Director.

[FR Doc. 93-20404 Filed 8-23-93; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 778, and 784

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Availability of Decision; Public Participation in Permit Processing and Landowner Protection; Partial Granting of Petition

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available to the public its final decision on a petition for rulemaking from Mr. Jim B. Wyant of Vincennes, Indiana. The petition requested that OSM amend its existing regulations regarding the time frames for regulatory authority decisions following an informal conference and the notice to participants of such decisions; the notification requirements to people potentially affected by mining during the permit application review process; the inclusion of property within the permit area for which the applicant has not established uncontested surface rights; and the need for the permit to set forth projected land use within the 5-year term of permit.

ADDRESSES: Copies of the petition, and other relevant materials comprising the Administrative Record of this petition are available for public review and copying at Office of Surface Mining Reclamation and Enforcement, room 660, 800 North Capitol Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington DC 20240; Telephone: 202-343-3839 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Petition for Rulemaking Process
II. The Wyant Petition

I. Petition for Rulemaking Process

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act), any person may petition the Director of OSM for a change in OSM's regulations. The regulations governing the handling of rulemaking petitions are found at 30 CFR 700.12. Under the rules, the Director may publish a notice in the **Federal Register** seeking comments on the petition and hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under 30 CFR 700.12 the Director's decision constitutes the final decision for the Department of the Interior.

II. The Wyant Petition

OSM received a letter dated September 29, 1992, from Mr. Jim B. Wyant of Vincennes, Indiana, (the petitioner) to amend certain parts of OSM's regulations regarding the review and content of permit applications. The principal requests of the petition are set forth below. On November 12, 1992, OSM published a notice in the **Federal Register** containing the petition for rulemaking and providing a public comment period until December 14, 1992. (57 FR 53670.)

The principal requests of the petition are to—

1. Amend the permit application rules of 30 CFR 773.15 to require that all parties to an informal conference be notified of any decision requiring modification of the permit application within 60 days of the close of the conference or within some other fixed appropriate period of time following the close of such conference.

2. Amend 30 CFR 773.15 to require that a final decision on the permit application be made within 150 days of the close of an informal conference or within some other fixed appropriate period of time following the close of such conference.

3. Amend the public participation rules at 30 CFR 773.13 to require that during the pendency of the permit application review process the same notification requirements be applied to persons within the permit area (the "surface effects area" in Indiana for underground mines) as to persons adjacent to the permit area.

4. Amend the right-of-entry rules at 30 CFR 778.15 to require that the permit area (the "surface effects area" in Indiana for underground mines) designated in a permit application only be allowed to include property to which the applicant has established uncontested surface rights.

5. Amend the operation and reclamation plan requirements at 30 CFR 784.11 and 784.13 to require that the applicant set forth the proposed uses of land within the permit area (the "surface effects area" in Indiana for underground mines) during the 5-year term of the permit.

For the reasons discussed in the appendix to this notice, the Director has granted that part of the petitioner's first request which would require that all parties to an informal conference be notified of any decision to require modification of the permit application. OSM will initiate a rulemaking on this subject. The Director has denied that part of the first request which would impose fixed time frames for providing such notice. The Director has also denied the remainder of the petition requests. OSM will, however, propose a rule based on the fourth request that will prevent the inclusion of properties in the permit area of approved permits to which the applicant does not have uncontested right-of-entry. OSM will also through its oversight of the Indiana program address issues raised in the third request.

The Director's letter of response to the petitioner on this rulemaking petition appears in the appendix to this notice. This letter reports the Director's decision to the petitioner. Included in the appendix is an evaluation report on the issues raised by the petitioner. Included in this report are the comments received on the petition, a discussion of the comments, and OSM's position on the issues.

Dated: July 23, 1993.

W. Hord Tipton,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

July 23, 1993.

Mr. Jim B. Wyant,
R.R. 4 Box 71A, Vincennes, IN 47591.

Dear Mr. Wyant: This letter is in response to your September 29, 1992, petition for rulemaking to the Office of Surface Mining Reclamation and Enforcement (OSM) to amend certain OSM permitting regulations.

On October 27, 1992, the Director determined that the petition for rulemaking had sufficient basis to seek public comments on the proposed rule changes. Accordingly, on November 12, 1992, OSM published a notice of availability in the **Federal Register** and requested comments on the petition. (57

FR 53670.) The comment period closed on December 14, 1992. Ten comments were received by OSM during the comment period.

After careful consideration of the arguments presented in the petition and public comments, I am granting the petition in part. As a result, OSM will initiate Federal rulemaking proposing to revise the permit application provisions of 30 CFR 773.15 to require notification of all parties to an informal conference of any decision to require modification of the permit application. OSM will also initiate a rulemaking to revise the provisions of 30 CFR 778.15 to address the degree to which lands may be included in the permit area where the permittee does not have the right to enter. OSM will further address in its oversight of the Indiana program the issues raised in your third request regarding the different notification requirements for land owners adjacent to and those within a proposed permit area. The basis for my decision is fully disclosed in the enclosed evaluation of the petition. As provided in 30 CFR 700.12 this decision constitutes the final decision for the Secretary of the Interior.

Sincerely,

W. Hord Tipton,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

Evaluation of the Petition to Amend OSM's Rules Governing Public Participation in Permit Processing and Permit Conditions

Under section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (the Act), any person may petition the Director for a change in OSM's regulations. The rules governing the handling of rulemaking petitions are found at 30 CFR 700.12. To accept a petition for rulemaking, the petition must cite facts, technical justification, or law which was not previously considered in a petition or prior rulemaking and which justifies a need for a new rule or amending an existing rule.

On October 7, 1992, OSM received a petition from Mr. Jim B. Wyant, Vincennes, Indiana (the petitioner).

The principal requests in the petition were to—

1. Amend the permit application rules of 30 CFR 773.15 to require that all parties to an informal conference be notified of any decision requiring modification of the permit application within 60 days of the close of the conference or within some other fixed appropriate period of time following the close of such conference.

2. Amend 30 CFR 773.15 to require that a final decision on the permit application be made within 150 days of the close of an informal conference or within some other fixed appropriate period of time following the close of such conference.

3. Amend the public participation rules at 30 CFR 773.13 to require that during the pendency of the permit application review process the same notification requirements be applied to persons within the permit area (the "surface effects area" in Indiana for underground mines) as to persons adjacent to the permit area.

4. Amend the right-of-entry rules at 30 CFR 778.15 to require that the permit area (the "surface effects area" in Indiana for underground mines) designated in a permit application only be allowed to include property to which the applicant has established uncontested surface rights.

5. Amend the operation and reclamation plan requirements at 30 CFR 784.11 and 784.13 to require that the applicant set forth the proposed uses of land within the permit area (the "surface effects area" in Indiana for underground mines) during the 5-year term of the permit.

On November 12, 1992, OSM published a notice in the **Federal Register** containing the petition for rulemaking and providing public comment period until December 14, 1992 (57 FR 53670).

Analysis of Requests Made by the Petitioner and Comments in Response to the Petition

This analysis addresses the requests made by the petitioner. The requests, as given in this document, have been rephrased to facilitate analysis. Each request is stated followed by applicable regulations. Comments addressing the requests are then presented along with OSM's response to each comment and an analysis of the petitioner's request. OSM's decision is then stated.

Request number 1. Petitioner requests that OSM amend the permit application rules of 30 CFR 773.15 to require that all parties to an informal conference be notified of any decision requiring modification of the permit application within 60 days of the close of the conference or within some other fixed appropriate period of time following the close of such conference.

Applicable regulations: 30 CFR 773.15 Review of permit applications. Section 773.15(a)(1) requires that "(t)he regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section."

The petitioner objects to the fact that following an informal conference to which he was a party the regulatory authority did not notify him and other concerned citizens of its decision to require modification of the permit. He states that "a response should be required to be made to individuals participating in an informal conference within 60 days following the conference" or, if there is justification, a more appropriate time period. He cites section 514 of the Act as evidencing the intent to provide a reasonably quick decision on permit applications once an informal conference has been held.

Comments and analysis: One commenter stated that the request to impose a requirement that the regulatory authority respond to participants of an informal conference within 60 days has no basis in the Act. Another commenter stated that the Act does not authorize OSM to promulgate regulations requiring the regulatory authority to respond to each participant in an informal conference.

The petitioner's request that the Federal rules be amended to provide notice of informal conference decisions on permit applications to all persons party to the conference raises legitimate issues. While OSM's current regulations at 30 CFR 773.19(b)(1) require the regulatory authority to provide written notification of its final decision on the permit application to all parties to an informal conference, its regulations at 30 CFR 773.15(a) do not oblige the regulatory authority to provide the same notification to the same parties for a required modification of the permit application. Such notification was originally provided in the 1979 final permanent program regulations at 30 CFR 786.23(c) (March 13, 44 FR 15381) but dropped without explanation in the 1983 revision of OSM's regulations. (September 28, 48 FR 44371, 44395.) Accordingly, the Secretary will institute a Federal rulemaking on this subject. If a need for a rule exists, authority is provided under section 201(c)(2) of the Act.

Request number 2. The petitioner requests that OSM amend 30 CFR 773.15 to require that a final decision on the permit application be made within 150 days of the close of an informal conference or within some other fixed appropriate period of time following the close of such conference.

Applicable regulations: 30 CFR 773.15 Review of permit applications. This

request is closely allied with request number 1. The § 773.15 regulations which are described in part under request number 1. apply to this request as well.

In support of his request, the petitioner states that the uncertainty associated with having his property included in a permit application pending for over a year has had a negative impact on the property's value. Cited as principally contributing to this pendency of application is the fact that the applicant has an unlimited amount of time to respond to the modification letter sent by the regulatory authority some six months before. The petitioner contends that if a permit application is substantially inadequate at the end of some fixed time period, the regulatory authority should then deny the application and require the applicant to submit an entirely new permit application when the missing data can be provided. The petitioner further states his belief that section 514 of the Act was intended to provide for a reasonably quick decision on the permit application once an informal conference has been held.

Comments and analysis: Several commenters opposing the petition's request noted that section 510(a) of the Act leaves to each regulatory authority the discretion to place reasonable time limits on the decision to "grant, require modification of, or deny the application for a permit." Another commenter supporting the petition pointed out that, once a modification letter has been sent to an applicant, the applicant has unlimited time to respond and there is nothing requiring the process to be brought to closure to the potential detriment of third party interests. This commenter also pointed out that OSM was not overly concerned with third party interests in its 1979 rulemaking because permit decisions could be expected to occur routinely in as little as 60 to 80 days. (44 FR 15102.)

OSM agrees with the petitioner and commenters regarding the need under sections 510 and 514 of the Act to provide reasonably quick decisions on a permit application once an informal conference has been held. The Secretary's regulations at 30 CFR 773.15(a)(1) accommodate the need for an expeditious decision regarding issues raised by an informal conference and satisfy the statutory requirements. Where an informal conference is held, the rule requires a decision granting, denying, or modifying the permit application within 60 days of the close of the conference (with one minor exception unrelated to this issue). In effect, a decision requiring modification of a permit application may be construed to be a denial in part of that portion of the application required to be modified.

In its 1979 rulemaking, OSM previously considered and rejected a comment request to set further time limits for the processing of permit applications. Contrary to the characterization of commenter to the instant petition that OSM was not overly concerned with third party interests in its 1979 rulemaking, the preamble to that rule specifically stated that OSM concluded it to be in the "best interest of all parties" to allow the regulatory authority as much flexibility as possible regarding the time needed to judiciously consider the complex data often required in permit applications (44 FR 15102). As contemplated by OSM in 1979, regulatory authorities regularly require a substantial period of time to make informed decisions on increasingly large and complex administratively complete permit applications. In turn, permit applicants often legitimately require an equally substantial period of time to respond to the permit modifications imposed by the regulatory authority. In the great majority of such cases, it is in the applicant's best interests to move the permit application review process along as rapidly as possible. Required permit modifications even for the most diligently prepared permit application may reasonably take anywhere from a few months to over a year to respond to. Therefore, to require a final decision on the permit application within the 150 plus days requested by the petitioner would, in many cases, not only prevent meaningful review by the regulatory authority but also preclude meaningful compliance by the applicant to required modifications and would be contrary to the public's and petitioner's best interest.

To further require, as the petitioner requests, that a "substantially inadequate" (yet administratively complete) permit application be denied after some fixed period of time would force the applicant to later resubmit his application and start afresh the permit review process. This would unnecessarily increase the existing administrative burden of the regulatory authority and the applicant, needlessly drag out the permit application process, and further extend the uncertainty complained of by the petitioner as negatively affecting the value of his property.

On this basis, the Director is denying the petitioner's second request that OSM amend its national rules to require final decisions on the permit application be made within a fixed time period following the close of an informal conference.

Request number 3: Amend the public participation rules at 30 CFR 773.13 to require that during the pendency of the permit application review process the same notification requirements be applied to persons within the permit area (the "surface effects area" in Indiana for underground mines) as to persons adjacent to the permit area.

Applicable regulations: 30 CFR 773.13 Public participation in permit processing. These regulations track the public notice provisions of Section 513 of the Act and require that "an applicant * * * shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks." The Indiana program has, in addition to counter-part notice regulations to 30 CFR 773.13, statutory requirements I 13–4. 1–4–1(a)(2) which requires the permit applicant to mail a copy of the newspaper advertisement to "owners of record of all surface and subsurface areas adjacent to any part of the permit area" and I 13–4.1–4–1(a)(3) which requires the applicant to mail copies of the newspaper advertisement "to every person who had requested notice of such applications."

The petitioner contends that persons with property within the permit area should be entitled to receive the same level information from the applicant as persons with property adjacent to the permit area. The petitioner further argues that the current situation in Indiana allows the applicant to manipulate the mailing of information to land owners by varying the size and shape of the permit area (surface effects area) so as to exclude individuals within the permit area from receiving information by mail.

Comments and analysis: Several commenters opposing the petition pointed out that the specific mailing notice requirements of the Indiana regulations go beyond the general newspaper notice requirements of the Federal regulations and that the different mailing requirements (inside the permit area vs. adjacent to the permit area) about which the petitioner objects are themselves outside the purview of OSM.

As noted above, the general Federal newspaper notice requirements of 30 CFR 773.13 track the notice provisions of section 513 of the Act. The petitioner has not provided sufficient basis for amending these regulatory provisions. The notice problem about which the petitioner complains appears to be

unique to the Indiana program. On this basis, the petitioner's third request for rulemaking is denied.

While OSM agrees with commenters that the Indiana mailing provisions provide more notice than that required by the Federal regulations, OSM does not agree with these commenters that such provisions are therefore outside the purview of OSM. Sections 201(c)(1), 503, 505, and 517 of the Act clearly charge the Secretary with the duty and give the authority to evaluate the content and administration of approved State programs. Accordingly, OSM will address this issue through its oversight of the Indiana program.

Request number 4: Amend the right-of-entry rules at 30 CFR 778.15 to require that the permit area (the "surface effects area" in Indiana for underground mines) designated in a permit application only be allowed to include property to which the applicant has established uncontested surface rights.

Applicable regulations: 30 CFR 778.15 Right-of-entry information. These regulations require that "an application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining * * * shall state whether that right is the subject of pending litigation * * * and explain the legal rights claimed by the applicant."

The petitioner objects to the inclusion of properties in the permit area designated in a permit application when the applicant does not have surface rights to such properties. He states his firm intention of never granting to the applicant the surface rights to his own property. He also objects to the characterization of all such properties as in "pending litigation" and "surface rights pending" as implying that the properties have been sold or will be sold to the applicant. The petitioner further states his belief that it is the intent of sections 507(b)(8) and 507(b)(9) of the Act to prevent the conditions to which he objects.

Comments and analysis: Several commenters opposing the petition argued for continuation of the current Indiana practice of allowing "uncontrolled" property in the permit area designated in the application. As used here and elsewhere in this document, the term "uncontrolled property" means property for which the applicant does not have uncontested right of entry. These commenters feel that allowing uncontrolled property to be included in the permit area enables the creation of a logical unit from which projection of environmental impact can more accurately and easily be made. They also asserted that this practice accommodates the realities of the real estate market where it is not always possible nor prudent to acquire property rights long in advance of actual mining. These commenters pointed out that approval of a permit with uncontrolled property does not constitute the right to mine such property until the surface rights are acquired. They suggested that if particular surface rights are in dispute, the regulatory authority could condition the permit to preclude mining until the rights are resolved.

Another commenter opposing the practice of including uncontrolled property in the permit area stated that "(o)wnership of the rights is supposed to be a prerequisite, not an after-thought * * * I would be very upset if the State granted someone else a permit to mine my coal, if they can later gain my consent."

In response, section 507(b)(8) of the Act is not germane to the petitioner's fourth request. Section 507(b)(9) is more to the point and states "the applicant shall file with the regulatory authority on an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and shall provide to the regulatory authority a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation: *Provided*, That nothing in this Act shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes."

It is OSM's practice under its Federal and Indian lands programs to allow inclusion in the permit application of land for which the applicant can not establish uncontested right-of-entry but to prohibit inclusion of such land in the permit at its time of issuance. OSM believes this practice strikes a reasonable balance between unnecessarily burdening the legitimate mining industry and protecting the rights of landowners. OSM's practice is not replicated by State programs, however. On this basis and in partial response to the issues raised by the petitioner, OSM will initiate a rulemaking proceeding which will address the issue of inclusion of land in the approved permit for which the applicant does not have right-of-entry.

Request number 5: Amend the operation and reclamation plan requirements at 30 CFR 784.11 and 784.13 to require that the applicant set forth the proposed uses of land within the permit area (the "surface effects area" in Indiana for underground mines) during the 5-year term of the permit.

Applicable regulations: § 784.11 Operation plan: General requirements. Section 784.13 Reclamation plan: General requirements. Section 784.11 requires that "(e)ach application shall contain a description of the mining operation proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following: * * * coal mining procedures * * * equipment to be used * * * construction, modification, use, maintenance, and removal of * * * dams * * * overburden and topsoil handling and storage areas * * * coal processing waste", etc. Section 784.13 requires analogous information for the reclamation plan including a detailed timetable for the completion of each major step in the reclamation plan.

Comments and analysis: No commenters addressed this issue. The proposed land use information requested by the petitioner is already required to be included in a mining permit on a life of mine basis by §§ 784.11 and 784.13. OSM believes that breaking out this information into consecutive 5-year permit terms represents an unnecessary burden to the applicant and would not provide tangible benefit to other parties. On this basis, the petitioner's fifth request is denied.

Other Issues Raised by Commenters But Not Included in the Petition

Two commenters noted that permit applications may be revised subsequent to the informal conference with no mechanism for public comment. One commenter believes that revisions should be made available to the public at the place of public filing, and that comments should be accepted concerning such revisions up to the time of the final decision. The commenter believes this can be accomplished under existing regulations by a change in policy. Another commenter noted this lack of a specific mechanism to comment on a modified permit application as a weakness in the regulations protection of landowner's rights.

In response to these comments, OSM notes that when an application is revised responsive to required modifications, the regulatory authority already has sufficient authority under its approved program to require, as appropriate, readvertisement of the

application and opportunity for public comments.

Two commenters raised issues peripheral to the petitioner's request. One commented as to an alleged problem with another state program. The second expressed concerns about the protection of surface and near surface property rights in coal producing states particularly as such rights are affected by subsidence. Both of the issues addressed by these commenters fall outside the scope of this petition. The comments will, however, be forwarded to appropriate offices within OSM. The subsidence comment will be placed in the administrative record of the subsidence related rulemaking required by OSM under section 2504(a) of the National Energy Policy Act of 1992, Public Law 102–486.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 166 and 167

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 935, 936, 942 and 944

[CGD 93–044]

Port Access Routes Off the Coast of California; Vessel Traffic Regulations for Offshore California National Marine Sanctuaries

AGENCIES: Coast Guard, DOT; National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice of study.

SUMMARY: The Coast Guard and the National Oceanic and Atmospheric Administration (NOAA) are conducting a study to evaluate the need for vessel routing measures in the approaches to California ports and the need for measures to regulate vessel traffic in the offshore California national marine sanctuaries to protect sanctuary resources. As a result of the study, new or modified vessel routing measures or new or modified vessel traffic regulations for the sanctuaries may be proposed in the **Federal Register** if such measures are found necessary. This notice invites information and comments from persons who have an interest in the safe routing of vessels and protection of environmental resources in the study area.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–044), U.S. Coast Guard Headquarters, 2100 Second Street, SW. Washington, DC 20593–0001 or comments may be delivered to room 3406 at the same address between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, U.S. Coast Guard, Office of Navigation Safety and Waterway Services, (202) 267–0415; Lieutenant (junior grade) Walter Grudzinski, Eleventh Coast Guard District (oan), (310) 980–4300 Ext. 501; Commander Larry F. Simoneaux, NOAA Corps Sanctuaries Coordinator, (206) 526–4295; or Commander Terry D. Jackson, Sanctuary Manager, Monterey Bay National Marine Sanctuary, (408) 647–4201

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard and NOAA are interested in receiving information and opinions from persons who have an interest in safe routing of vessels and protection of environmental resources in the study area. The public is invited to comment, and to identify and support with documentation or other reasons, any positive or negative effects that could result from either further regulation or accepting the status quo with regard to vessel traffic within the study area.

In addition to addressing the specific questions asked herein, comments from the maritime community, offshore development concerns, environmental groups and any other interested parties are requested. All comments and supporting information will be considered in the study and development of any regulatory proposals. Persons submitting comments should include their names and addresses, and identify this notice (CGD 93–044). All comments and attachments should be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting a traffic separation scheme (TSS). The port access route study determines the need for TSSs or shipping safety fairways to increase vessel traffic safety in areas subject to the jurisdiction of the United States. The Coast Guard initiated the first port access route study (which included the California coast) by publishing a Notice of Proposed Study on April 16, 1979 (44 FR 22543).

For the purposes of the first port access route study, the U.S. coastline was divided into 32 geographically defined areas. Study area 22 included the coast of southern California and was assigned to the Eleventh Coast Guard District (Long Beach, CA). Study areas 23 to 25 included the central and northern California coast and were assigned to the former Twelfth Coast Guard District (San Francisco, CA). Through public participation and government agency consultation, the study evaluated potential traffic density patterns, waterways use conflicts, and the need for safe access routes in offshore areas.

The study results for the coast of southern California (area 22) were published on June 24, 1982 (47 FR 27430). An additional study of the Port Access Routes, Northern Approach to Santa Barbara Channel, was announced on July 26, 1984 (49 FR 30078), with results of that study published on December 5, 1985 (50 FR 49861).

The study results for the central and northern coast of California (areas 23–25) were published on October 14, 1982 (47 FR 46043). An additional study on Port Access Routes, Entrance to San Francisco Bay was announced on December 17, 1984 (49 FR 48949), and the study results were published on May 8, 1986 (51 FR 17071).

The port access route studies recommended amendments to the TSSs off the coast of California and the designation of new shipping safety fairways to establish a comprehensive safe routing system for vessels proceeding to, from, or between the ports of San Francisco and Los Angeles-Long Beach. The Coast Guard published a proposed rule in the **Federal Register** on April 27, 1989 (54 FR 18258) to implement the study recommendations. However, after public hearings and extensive written comments opposing

the shipping safety fairway portion of the proposal, the Coast Guard intends to withdraw that portion of the proposal and restudy the area to determine what routing measures are needed. Such review is consistent with the Coast Guard's responsibilities under the National Marine Sanctuaries Program Amendments Act of 1992 (pub. L. 102–587).

On November 4, 1992, the President signed into law Public Law 102–587, title II of which is the National Marine Sanctuaries Program Amendments Act of 1992. Section 2203(d) of that act requires that within 18 months after the date of enactment of this act, the Secretary of Commerce and the Secretary of Transportation, in consultation with the State of California and with adequate opportunity for public comment, report to Congress on measures for regulating vessel traffic in the Monterey Bay National Marine Sanctuary if it is determined that such measures are necessary to protect sanctuary resources. NOAA has determined that a vessel traffic study would also be useful with regard to the other three offshore California national marine sanctuaries.

A number of vessel routing measures exist in the study area to mitigate navigation safety problems identified through the port access route study process. A "traffic separation scheme" (TSS) is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

A "precautionary area" is a routing measure comprising an area within defined limits where ships must navigate with particular caution. Direction of traffic flow may be recommended within a precautionary area.

An "area to be avoided" is a voluntary routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties. All ships, or certain classes of ships may be advised to avoid the area.

A "shipping safety fairway" is a lane or corridor in which no fixed structures, either temporary or permanent, are permitted. Shipping safety fairways are routing measures which provide safe port access routes for vessels where the primary risk to vessels is collision with offshore structures. Vessel use of shipping safety fairways is voluntary and the direction of traffic flow within a shipping safety fairway may be recommended.

Study Area

The study area is bounded by a line connecting the following geographic positions (all coordinates in this notice are shown in North American 1983 datum, unless otherwise indicated):

Latitude	*Longitude*
38°20′ N	123°04′ W
38°20′ N	123°40′ W
37°30′ N	123°40′ W
36°37′ N	123°15′ W
33°52′ N	121°19′ W
33°08′ N	119°34′ W
33°13′ N	118°11′ W
33°28′ N	118°11′ W
33°28′ N	117°41′ W

The study area includes the waters of the Monterey Bay, Cordell Bank, Gulf of the Farallones, and Channel Islands National Marine Sanctuaries as well as the existing traffic separation schemes and precautionary areas off California.

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431 et seq., as amended, authorizes the Secretary of Commerce to designate discrete marine areas of special national significance as national marine sanctuaries. The purpose is to promote comprehensive, long-term protection and management of the special conservation, ecological, historical, recreational, research, educational and aesthetic resources of such areas.

National marine sanctuaries may be designated in coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law. NOAA administers the National Marine Sanctuary Program through the Sanctuaries and Reserves Division (SRD), in the Office of Ocean and Coastal Resource Management (OCRM).

The Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries are located along the central California coast. The Cordell Bank National Marine Sanctuary is located approximately 20 nautical miles due west of Point Reyes, California and is approximately 9.5 nautical miles long and approximately 4.5 nautical miles wide. The Gulf of the Farallones National Marine Sanctuary, which abuts the Cordell Bank National Marine Sanctuary, is located approximately 26 nautical miles west of the Golden Gate Bridge, with an outer boundary approximately 12 nautical miles around the Farallon Islands, approximately 6 nautical miles off Point Reyes Peninsula between Bodega Head and Rocky Point. The Monterey Bay National Marine Sanctuary extends from the Gulf of the Farallones National Marine Sanctuary near San Francisco, south past San Simeon to Cambria Rock and from the high tide mark, up to approximately 50 nautical miles seaward. The Channel Islands National Marine Sanctuary is located southwest of Santa Barbara and encompasses the waters within approximately 6 nautical miles around the northern Channel Islands and Santa Barbara Island. The precise boundaries of the four sanctuaries are:

Latitude	*Longitude*
Monterey Bay National Marine Sanctuary	
37°52′56.09055″ N	122°37′39.12564″ W
37°39′59.06176″ N	122°45′3.79307″ W
37°36′58.39164″ N	122°46′9.73671″ W
37°34′17.30224″ N	122°48′14.38141″ W
37°31′47.55649″ N	122°51′35.56769″ W
37°30′34.11030″ N	122°54′22.12170″ W
37°29′39.05866″ N	123°00′27.70792″ W
37°30′29.47603″ N	123°05′46.22767″ W
37°31′17.66945″ N	123°07′47.63363″ W
37°27.10.93594″ N	123°08′24.32210″ W
37°20′35.37491″ N	123°07′54.12763″ W
37°13′50.21805″ N	123°06′15.50600″ W
37°07′48.76810″ N	123°01′43.10994″ W
37°03′46.60999″ N	122°54′45.39513″ W
37°02′06.30955″ N	122°46′35.02125″ W
36°55′17.56782″ N	122°48′21.41121″ W
36°48′22.74244″ N	122°48′56.29007″ W
36°41′30.91516″ N	122°48′19.40739″ W
36°34′45.76070″ N	122°46′26.96772″ W
36°28′24.18076″ N	122°43′32.43527″ W
36°22′20.70312″ N	122°39′28.42026″ W
36°16′43.93588″ N	122°34′26.77255″ W
36°11′44.53838″ N	122°28′37.16141″ W
36°07′26.80988″ N	122°21′54.37541″ W
36°04′07.08898″ N	122°14′39.75924″ W
36°01′28.22233″ N	122°07′00.19068″ W
35°59′45.46381″ N	121°58′56.36189″ W
35°58′59.12170″ N	121°50′26.47931″ W
35°58′53.63866″ N	121°45′22.82363″ W
35°55′45.60623″ N	121°42′40.28540″ W
35°50′15.84256″ N	121°43′09.20193″ W
35°43′14.26690″ N	121°42′43.79121″ W
35°35′41.88635″ N	121°41′25.07414″ W
35°33′11.75999″ N	121°37′49.74192″ W
35°33′17.45869″ N	121°05′52.89891″ W
37°35′39.73180″ N	122°31′14.96033″ W
37°36′49.21739″ N	122°37′00.22577″ W
37°46′00.98983″ N	122°39′00.40466″ W
37°49′05.69080″ N	122°31′46.30542″ W
Cordell Bank National Marine Sanctuary	
38°15′51.72″ N	123°10′52.44″ W
38°07′55.68″ N	123°10′33.53″ W
38°06′45.21″ N	123°08′00.40″ W
38°04′58.41″ N	123°37′14.34″ W
38°04.28.22″ N	123°37′17.83″ W
38°03′42.75″ N	123°36′55.66″ W
38°03′11.10″ N	123°36′19.78″ W
38°02′46.12″ N	123°36′21.98″ W
37°02′02.74″ N	123°35′56.56″ W
38°01′27.10″ N	123°35′55.12″ W
38°01′22.28″ N	123°36′55.13″ W
38°01′11.54″ N	123°37′28.21″ W
38°00′49.16″ N	123°37′29.77″ W
37°59′54.49″ N	123°36′47.90″ W
37°59′12.39″ N	123°35′59.55″ W
37°58′39.40″ N	123°35′14.85″ W
37°58′00.87″ N	123°34′42.93″ W
37°57′18.99″ N	123°33′43.15″ W
37°56′56.42″ N	123°32′51.97″ W
37°56′18.90″ N	123°32′49.24″ W
37°55′22.37″ N	123°32′36.96″ W
37°54′26.10″ N	123°32′21.73″ W
37°53′07.46″ N	123°31′46.81″ W

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37°52'34.93" N	123°31'18.50" W
37°51'42.81" N	123°31'19.10" W
37°50'59.58" N	123°31'02.96" W
37°48'09.14" N	123°28'44.61" W
37°49'22.64" N	123°29'34.07" W
37°48'09.14" N	123°28'44.61" W
37°48'36.98" N	123°28'08.29" W
37°48'03.37" N	123°28'23.27" W
37°47'41.54" N	123°28'01.97" W
37°47'01.78" N	123°27'16.78" W
37°46'51.92" N	123°26'48.98" W
37°46'13.20" N	123°26'04.79" W
37°45'59.73" N	123°25'36.99" W
37°50'25.31" N	123°25'28.53" W
37°54'32.28" N	123°23'16.49" W
37°57'45.71" N	123°19'17.72" W
37°58'20.27" N	123°14'12.16" W
37°59'43.71" N	123°08'27.55" W
38°03'10.20" N	123°07'44.35" W
38°04'01.64" N	123°06'58.92" W
38°08'33.32" N	123°04'56.24" W
38°12'42.05" N	123°07'10.21" W

Above coordinates are shown in North American 1927 Datum

Channel Islands National Marine Sanctuary—Northern Channel Islands Section

33°58'28.958" N	119°16'23.800" W
33°58'03.919" N	119°14'56.964" W
34°01'33.848" N	119°14'07.740" W
34°04'24.203" N	119°15'21.308" W
34°06'06.653" N	119°17'27.002" W
34°06'54.809" N	119°19'46.046" W
34°06'57.988" N	119°23'24.005" W
34°06'51.627" N	119°24'04.196" W
34°07'01.640" N	119°25'40.819" W
34°06'59.904" N	119°26'58.959" W
34°08'02.002" N	119°28'47.501" W
34°08'17.693" N	119°29'27.698" W
34°08'32.234" N	119°30'39.562" W
34°09'16.780" N	119°35'22.667" W
34°09'05.106" N	119°36'41.694" W
34°06'02.782" N	119°09'33.421" W
34°06'46.870" N	119°41'48.621" W
34°09'35.363" N	119°45'57.284" W
34°09'32.627" N	119°46'37.335" W
34°09'32.396" N	119°47'32.285" W
34°09'43.668" N	119°48'09.018" W
34°10'10.616" N	119°50'07.659" W
34°10'21.586" N	119°51'05.146" W
34°10'33.161" N	119°53'17.044" W
34°10'36.545" N	119°55'57.373" W
34°10'21.283" N	119°57'26.493" W
34°06'07.255" N	120°01'07.233" W
34°08'13.144" N	120°02'27.930" W
34°07'47.772" N	120°05'05.449" W
34°07'23.314" N	120°06'36.282" W
34°07'30.691" N	120°09'35.238" W
34°06'35.285" N	120°12'39.335" W
34°06'40.634" N	120°13'33.940" W
34°08'10.759" N	120°15'07.017" W
34°09'12.290" N	120°17'07.046" W
34°09'50.706" N	120°17'31.649" W
34°10'56.346" N	120°18'40.520" W
34°11'28.249" N	120°19'29.213" W
34°12'08.076" N	120°21'00.635" W
34°12'25.468" N	120°25'01.261" W
34°12'18.754" N	120°25'30.373" W
34°11'33.184" N	120°27'33.921" W
34°12'19.470" N	120°30'22.620" W
34°12'17.540" N	120°32'19.959" W
34°10'54.593" N	120°35'57.887" W
34°06'07.491" N	120°38'27.883" W
34°04'53.454" N	120°38'16.602" W
34°03'30.539" N	120°37'39.442" W
34°01'09.860" N	120°35'04.606" W
34°00'48.573" N	120°34'25.106" W
33°59'13.112" N	120°33'53.389" W
33°57'01.417" N	120°31'54.590" W
33°55'36.973" N	120°27'37.188" W
33°55'30.037" N	120°23'14.007" W
33°54'50.532" N	120°22'29.536" W
33°55'01.840" N	120°19'26.722" W
33°54'34.409" N	120°18'27.344" W
33°53'23.129" N	120°17'39.927" W
33°50'29.995" N	120°15'13.874" W
33°49'53.260" N	120°13'41.904" W
33°49'03.437" N	120°12'06.750" W
33°48'36.087" N	120°11'10.821" W
33°47'39.280" N	120°07'59.707" W
33°47'37.617" N	120°06'04.002" W
33°47'59.351" N	120°04'08.170" W
33°48'38.700" N	120°02'33.168" W
33°48'52.187" N	120°01'50.244" W
33°50'28.488" N	119°57'60.820" W
33°50'66.128" N	119°56'19.934" W
33°63'13.333" N	119°52'53.439" W
33°52'04.800" N	119°52'10.719" W
33°51'30.818" N	119°47'21.152" W
33°51'48.582" N	119°46'13.213" W
33°51'35.798" N	119°44'34.689" W
33°51'44.374" N	119°41'12.735" W
33°52'23.857" N	119°38'14.708" W
33°53'08.385" N	119°37'30.706" W
33°53'12.754" N	119°35'35.780" W
33°53'17.114" N	119°34'64.587" W
33°53'38.885" N	119°32'51.578" W
33°84'02.277" N	119°31'08.274" W
33°54'58.444" N	119°20'54.052" W
33°54'39.349" N	119°27'37.512" W
33°54'15.235" N	119°25'23.779" W
33°54'07.547" N	119°24'22.849" W
33°54'04.662" N	119°22'68.006" W
33°04'14.311" N	119°21'44.573" W
33°54'22.024" N	119°21'09.083" W
33°04'46.994" N	119°19'54.577" W
33°55'95.934" N	119°19'16.027" W

Santa Barbara Island Section

33°28'50.904" N	119°10'04.092" W
33°28'32.064" N	119°10'01.325" W
33°24'19.904" N	119°06'52.239" W
33°23'26.019" N	119°07'54.826" W
33°22'04.835" N	119°05'18.710" W
33°21'49.387" N	119°04'01.551" W
33°21'44.534" N	119°02'40.857" W
33°21'49.588" N	119°01'37.839" W
33°22'07.030" N	118°59'49.357" W
33°28'27.774" N	118°58'51.823" W
33°22'47.067" N	118°58'07.833" W
33°23'20.808" N	118°57'14.375" W
33°24'18.458" N	118°58'06.450" W
33°28'24.130" N	118°54'51.352" W
33°29'02.820" N	118°54'22.270" W
33°51'27.917" N	118°54'50.367" W
33°32'17.935" N	118°55'18.390" W
33°35'10.090" N	118°59'40.091" W
33°35'24.575" N	119°01'22.108" W
33°35'08.497" N	119°03'09.463" W
33°34'08.322" N	119°05'03.374" W
33°32'37.151" N	119°08'37.701" W
33°30'41.731" N	119°09'45.846" W

Coordinates are shown in North American 1927 Datum

Gulf of the Farallones National Marine Sanctuary

38°15'30.349" N	122°10'48.933" W
38°12'00.006" N	123°07'04.846" W
38°00'57.000" N	120°05'27.405" W
38°08'28.872" N	120°04'32.584" W
38°07'42.136" N	123°06'10.714" W
38°06'02.017" N	122°08'49.920" W
38°05'28.785" N	123°08'00.922" W
38°06'66.587" N	123°08'29.251" W
38°03'54.438" N	123°08'57.681" W
38°03'07.527" N	123°07'37.735" W
37°59'32.425" N	123°08'24.905" W
37°59'22.344" N	123°14'06.127" W
37°57'31.931" N	123°19'19.187" W
37°54'16.943" N	123°23'18.456" W
37°50'05.522" N	123°25'28.791" W
37°45'33.799" N	123°25'32.606" W
37°41'20.351" N	123°23'29.811" W
37°38'01.053" N	123°19'37.445" W
37°38'04.685" N	123°14'30.483" W
37°38'30.191" N	123°13'31.060" W
37°33'47.197" N	123°11'50.804" W
37°31'12.270" N	123°07'39.515" W
37°30'28.708" N	123°05'42.221" W
37°29'39.267" N	123°00'23.711" W
37°30'34.337" N	122°54'18.138" W
37°31'47.784" N	122°51'31.582" W
37°34'17.583" N	122°45'10.415" W
37°35'58.627" N	122°48'06.779" W
37°38'58.303" N	122°44'59.038" W
37°38'56.085" N	122°07'35.105" W

All coordinates are in North American 1927 Datum.

The traffic separation scheme off San Francisco consists of four parts, an area to be avoided, and a precautionary area as described below:

Part I: Northern Approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°48.4' N	122°47.6' W
37°56.7' N	123°03.7' W
37°55.2' N	123°04.9' W
37°47.7' N	122°48.2' W

(b) A traffic lane for north-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°49.2' N	122°46.7' W
37°58.0' N	123°02.7' W

(c) A traffic lane for south-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°53.9' N	123°06.1' W
37°46.7' N	122°48.7' W

Part II: Southern Approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°39.0' N	122°41.4' W
37°00.0' N	122°34.7' W
37°00.0' N	122°32.1' W
37°39.2' N	122°39.8' W

(b) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°00.0' N	122°30.9' W
37°39.3' N	122°38.7' W

(c) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°39.0' N	122°42.5' W
37°00.0' N	122°36.0' W

Part III: Western Approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°41.9' N	122°48.0' W
37°38.1' N	122°58.1' W
37°36.5' N	122°57.3' W

37°41.1′ N	122°47.2′ W

(b) A traffic lane for south-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°42.8′ N	122°48.5′ W
37°38.6′ N	122°58.8′ W

(c) A traffic lane for north-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°35.0′ N	122°56.5′ W
37°40.4′ N	122°48.3′ W

Part IV: Main Ship Channel

(a) A separation line connecting the following geographical positions:

Latitude	*Longitude*
37°45.9′ N	122°38.0′ W
37°47.0′ N	122°34.3′ W
37°48.1′ N	122°31.0′ W

(b) A traffic lane for eastbound traffic between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°45.8′ N	122°37.7′ W
37°47.8′ N	122°30.8′ W

(c) A traffic lane for westbound traffic between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°46.2′ N	122°37.9′ W
37°46.9′ N	122°25.3′ W
37°48.5′ N	122°31.3′ W

Area To Be Avoided

A circular area with a radius of half a mile, centered upon geographical position 37°45.0′ N and 122°41.5′ W.

Precautionary Area

A precautionary area bounded to the west by an arc of a circle radius 6 miles centered upon geographical position 37°45.0′ N, 122°41.5′ W and between the following geographical positions:

Latitude	*Longitude*
37°42.7′ N	122°34.6′ W
37°50.2′ N	122°37.9′ W

and bounded to the east by a line connecting the following geographical positions:

Latitude	*Longitude*
37°42.7′ N	122°34.6′ W
37°45.9′ N	122°38.0′ W
37°50.2′ N	122°37.9′ W

The traffic scheme separation scheme in the Santa Barbara Channel is as follows:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
34°20.90′ N	120°30.10′ W
34°04.00′ N	119°15.90′ W
33°44.90′ N	118°35.70′ W
33°43.20′ N	118°36.90′ W
34°02.20′ N	119°17.40′ W
34°18.90′ N	120°30.90′ W

(b) A traffic lane for north-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
34°21.80′ N	120°29.90′ W
34°04.80′ N	119°15.10′ W
33°45.80′ N	118°35.10′ W

(c) A traffic lane for south-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°42.30′ N	118°37.50′ W
34°01.40′ N	119°18.20′ W
34°18.00′ N	120°31.10′ W

A shipping safety fairway, the Port Hueneme Fairway in the approach to Port Hueneme as follows:

Latitude	*Longitude*
34°06.10′ N	119°15.00′ W
34°07.37′ N	119°14.25′ W
34°08.49′ N	119°13.21′ W

Thence generally along the 30-foot-depth curve to the seaward end of the west entrance jetty; seaward end of the east entrance jetty, thence generally along the 30-foot-depth curve to:

Latitude	*Longitude*
34°08.21′ N	119°12.15′ W
34°07.10′ N	119°13.20′ W
34°05.48′ N	119°13.23′ W

The traffic separation scheme in the Approaches to Los Angeles-Long Beach consists of two parts:

Part I: Western Approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
33°39.7′ N	118°17.6′ W
33°38.7′ N	118°17.6′ W
33°38.7′ N	118°27.6′ W
33°43.2′ N	118°36.9′ W
33°44.9′ N	118°35.7′ W
33°39.7′ N	118°24.9′ W

(b) A traffic lane for northbound coastwise traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°40.7′ N	118°17.6′ W
33°40.7′ N	118°24.6′ W
33°45.6′ N	118°35.1′ W

(c) A traffic lane for southbound coastwise traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.7′ N	118°17.6′ W
33°37.7′ N	118°28.0′ W
33°42.3′ N	118°37.5′ W

Part II: Southern Approach

(a) A separation zone by a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.7′ N	118°07.7′ W
33°20.0′ N	118°02.2′ W
33°19.5′ N	118°04.6′ W
33°37.7′ N	118°10.1′ W

(b) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.7′ N	118°11.3′ W
33°19.1′ N	118°06.3′ W

(c) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
33°37.7′ N	118°06.5′ W
33°20.3′ N	118°00.5′ W

Precautionary Area as Follows

The Los Angeles-Long Beach Precautionary Area consists of the water area enclosed by the Los Angeles-Long Beach breakwater and a line connecting Point Fermin Light at 33°42.3′ N, 118°17.6′ W with the following geographical positions:

Latitude	*Longitude*
33°37.7′ N	118°17.6′ W
33°37.7′ N	118°06.5′ W
33°43.4′ N	118°10.8′ W

Issues

The Department of Commerce is authorized by Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (MPRSA), 16 U.S.C. 1431 et seq., to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to develop and implement coordinated plans for the protection and management of those areas with appropriate Federal agencies, State and local governments, and other public and private interests concerned with the continuing health and resilience of these areas. This authority has been delegated to NOAA. Resource protection is the primary objective of title III of the MPRSA.

Further, in order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PWSA directs the Secretary of Transportation to undertake a study of potential traffic density and the need for

safe access routes for vessels. It has been ten years since the last port access route study was conducted off the California coast. During that time, traffic patterns, traffic volumes, waterway uses and users have undoubtedly changed. In addition, the Monterey Bay and Cordell Bank National Marine Sanctuaries were designated.

Vessel traffic either entering or departing San Francisco Bay must transit the waters of the Gulf of the Farallones National Marine Sanctuary. If northbound after departure, they may also transit the waters of the Cordell Bank National Marine Sanctuary. If southbound after departure from San Francisco Bay, vessels may transit the waters of either or both the Monterey Bay or the Channel Islands National Marine Sanctuaries depending on their track line. This study will include all vessel traffic within the study area previously defined, including vessel traffic within the four national marine sanctuaries. For the purposes of this study, vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

This notice specifically requests comments and supporting documentation to help identify the waterway users and on the following relevant factors concerning navigation and vessel safety and protection of the marine environment:

a. The scopes and natures of risks or hazards and the locations;

b. Vessel characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;

c. Port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;

d. The proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;

e. Environmental effects, particularly on national marine sanctuary resources;

f. Economic effects; and

g. Local practices and customs, including voluntary arrangements and agreements within the maritime community.

Procedural Requirements

During the study, the Coast Guard and NOAA will consult with the state of California, Federal and State agencies and consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected.

In accordance with 33 U.S.C. 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved, ensuring that the interests of all affected parties are considered. These uses include, as appropriate, the exploration for, or exploitation of, oil, gas or other mineral resources; the construction or operation of deepwater ports or other structures; the establishment or operation of marine sanctuaries or national estuarine research reserves; and activities involving recreational or commercial fishing. The Coast Guard will also lend its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of regional traffic densities.

The results of this study will be published in the **Federal Register** and used as the basis for a Report to Congress on the need for vessel traffic regulations for the Monterey Bay National Marine Sanctuary to protect sanctuary resources. If it is determined that new or amended routing measures or new or amended vessel traffic regulations are needed, a notice of proposed rulemaking will be published. The study should be completed by December 31, 1993.

Dated: August 17, 1993.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–20456 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–T4–M

DEPARTMENT OF EDUCATION

34 CFR Part 361

The State Vocational Rehabilitation Services Program; Development of Evaluation Standards and Performance Indicators

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: The Secretary announces a public meeting to assist in the development of evaluation standards and performance indicators for The State Vocational Rehabilitation Services Program.

The purpose of the meeting is to provide an opportunity for public comment on the following 10 issues related to the development and implementation of evaluation standards and performance indicators as required by section 106 of the Rehabilitation Act, as amended by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569).

DATES: The public meeting is to be held on September 23, 1993. Written comments must be submitted by September 30, 1993.

ADDRESSES: Individuals who cannot attend the meeting are invited to send written comments regarding the issues identified in this notice to William L. Smith, Acting Commissioner, Department of Education, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC 20202–2531.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate in the public meeting or seeking additional information should contact Beverlee Stafford, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC 20202–2531. Telephone: (202) 205–9331. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5538.

SUPPLEMENTARY INFORMATION: A notice of intent to regulate was published in the **Federal Register** on February 19, 1993 (58 FR 9458). The notice provided examples of possible evaluation standards and performance indicators. Sixty-two parties submitted comments in response to that notice. Based on those comments, the Secretary has identified the following new issues on which the Secretary is interested in taking additional public comment before proceeding to publish a notice of proposed rulemaking.

(1) Treatment of Agencies That Serve Only Individuals Who Are Blind or Visually Impaired

State vocational rehabilitation agencies that serve only individuals who are blind or visually impaired are significantly different in size, organizational structure, caseload characteristics, and client outcomes than State vocational rehabilitation agencies that serve individuals with all types of disabilities. Because of these differences, should separate standards and indicators be developed for State vocational rehabilitation agencies that provide services only to individuals who are blind or visually impaired? If so, what should those standards and indicators be? If the same standards and indicators are used, should different weights or performance levels be established for agencies that serve only individuals who are blind or visually impaired?

(2) Use of Client Assistance Program (CAP) and Protection and Advocacy (P&A) Data in Assessing Consumer Satisfaction

Is it useful to consider data collected by CAP or P&A programs under an evaluation standard that would assess consumer satisfaction with services from a State vocational rehabilitation agency? Would this information also be relevant to a possible evaluation standard that would assess equal access to services for individuals with disabilities from traditionally unserved or underserved populations, including minorities? If so, how might the Secretary approach collecting and analyzing these data?

(3) Outreach to Unserved and Underserved Populations

If the Secretary were to propose a standard on equal access to services, should outreach efforts to traditionally unserved or underserved populations, including minorities, be considered? If so, how could outreach efforts be measured uniformly among States?

(4) Valuation of Comparable Services and Benefits

How can the value of comparable services and benefits, as documented in Individualized Written Rehabilitation Programs (IWRPs), be assessed uniformly under an evaluation standard that considers the effective use of total resources by State vocational rehabilitation agencies in relation to client outcomes? Do State agencies currently collect data on the dollar value of comparable services and benefits? If not, would it be burdensome for State agencies to begin collecting and reporting this information?

(5) Limits on Administrative Costs

Should there be a performance indicator that establishes a maximum range or optimum level (e.g., percentage of total expenditures) for administrative costs in a State agency under an evaluation standard that assesses the effective use of resources? If so, how can administrative costs be defined to separate clearly administrative expenses from the costs of services provided to individuals? What definitional changes are needed to ensure that administrative costs are reported in a uniform manner by all States?

(6) Adjusting for Differences in Agency Caseloads

There is some agreement that the percentage of individuals with severe disabilities is not a reliable indicator of differences in agency caseloads with respect to the relative difficulty or costs of achieving successful rehabilitations. Adjustments for such differences are essential if agencies are to be evaluated equitably with respect to rehabilitation rates or average costs-per-rehabilitation. What general approaches could accomplish this? In particular, does a functional assessment approach offer a means for solving this problem?

(7) Timeliness of Service Initiation

Consistent with the intent of the 1992 Amendments to streamline access to services for individuals with disabilities, is there a need to establish a time limit in program regulations for the period from determination of eligibility to the initiation of services, or should timeliness in the rehabilitation process be treated as a performance indicator rather than a compliance requirement? If a time requirement for initiating services is established as a performance indicator, what adjustments would be needed for State agencies operating under an order of selection in relation to waiting lists for eligible individuals in non-priority services categories? What possible adjustments might be made for justifiable delays in service initiation, such as the start of a new school term or delays requested by the eligible individual?

(8) High Quality Employment Outcomes

While public comment generally supported the concept of an evaluation standard for high quality employment outcomes, the collection of data on jobs with promotional potential may not be feasible on the basis of current data collection. Is there a mechanism available through the analysis of occupational codes, as defined in the Dictionary of Occupational Titles, or other sources, that would provide this information without placing an undue information collection burden on State agencies?

(9) Follow-up Surveys

If the Secretary proposes an evaluation standard on long-term retention of benefits, should State agencies be required to conduct follow-up for a statistically significant sample of individuals at various points after case closure? If so, what would be the most appropriate time or times for that post-closure follow-up (e.g., 6 months, 12 months, 18 months)?

(10) Adjustments for Local Economic Conditions

There is considerable agreement that differences in local economic conditions should be considered in evaluating employment outcomes for vocational rehabilitation clients. How should the local areas be defined? In particular, what would be the validity of using the 183 economic areas defined by the Bureau of Economic Analysis, U.S. Department of Commerce? (Information on the 183 economic areas can be obtained by calling (202) 205–9331.) How burdensome would it be to report case closures by local economic areas?

Meeting Information

The public meeting is scheduled to be held from 10 a.m. to 3 p.m. on September 23, 1993, at the Auditorium in the Wilbur J. Cohen Building, 300 C Street, SW., Washington, DC.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written or taped copy of their comments.

The meeting facilities and proceedings will be accessible to people with disabilities. Materials will be available in braille and large print. The services of a sign language interpreter will be available, and the meeting room will be equipped with an audio loop. If additional accommodations are needed, please contact the individual identified in the "For Further Information Contact" section of this notice.

Authority: 29 U.S.C. 701.

Dated: August 18, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–20385 Filed 8–23–93; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[IA–6–1–5631; FRL–4697–6]

Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act as amended (Act), EPA is authorized to redesignate areas (or portions thereof) as nonattainment for the sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS).

In this action, EPA is proposing to revise the SO_2 designation for part of Muscatine County, Iowa, from attainment to nonattainment. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the

Governor of Iowa, based on available information, that EPA believes the area should be redesignated from attainment to nonattainment. The redesignation is based upon monitored and modelled violations of the SO_2 NAAQS.

If EPA promulgates the redesignation as proposed, Iowa must submit an SO_2 implementation plan for the Muscatine area to EPA, within 18 months after promulgation, that meets the requirements of part D, title I of the Act. (See section 191(a) of the Act.)

DATES: All written comments must be submitted on or before October 25, 1993, at the address shown below.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended by the 1990 Amendments, provided designations for SO_2 areas based on their status immediately before enactment of the 1990 Amendments. For example, any area designated as not attaining the primary or secondary SO_2 NAAQS as of the date of enactment of the 1990 Amendments was designated nonattainment for SO_2 by operation of law upon enactment, pursuant to section 107(d)(1)(C)(i) of the Act. In addition, any area designated as attainment or unclassifiable (or "cannot be classified") immediately before the enactment of the 1990 Amendments was also designated as such upon the enactment of the Amendments pursuant to sections 107(d)(1)(C)(ii) and (iii) of the Act.

For the current status of SO_2 areas, readers should refer to the codification tables currently set forth in 40 CFR part 81 (1992) and to any subsequent modifications to these SO_2 tables that have been published in the **Federal Register**. At the present time, the current status of the entire state of Iowa is attainment for SO_2. (See 40 CFR 81.316.)

As described above, EPA is authorized to initiate the redesignation of additional areas (or portions thereof) as nonattainment for SO_2, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate. The EPA believes that reasonably reliable techniques, including monitoring and/or modeling information, may be used both in determining the designation appropriate for an area and in establishing SO_2 nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act. Nonattainment areas include any areas that do not meet the relevant NAAQS or that significantly contribute to a violation of the relevant NAAQS in a nearby area.

On August 19, 1991, the Iowa Department of Natural Resources (IDNR) notified EPA Region VII that the continuous SO_2 monitor in the city of Muscatine's Musser Park had recorded three violations of the 24-hour NAAQS, which is 365 $\mu g/m^3$. (See 40 CFR 50.4.) The two violations in June were 428 and 391 $\mu g/m^3$ and the one in July was 481 $\mu g/m^3$. Additional violations of the standard were recorded at the same monitor on September 5 and 13, 1992, with values of 490 $\mu g/m^3$ and 511 $\mu g/m^3$, respectively. Additionally, dispersion modeling by the IDNR showed modelled violations at a second location on a bluff in the vicinity of the major SO_2 sources. Known sources of SO_2 emissions in the area of the monitored and modelled violations include a power plant, a wet corn milling plant, and a chemical plant.

Following the process outlined above, pursuant to section 107(d)(3) of the Act, EPA Region VII notified the Governor of Iowa that EPA believed the city of Muscatine should be designated nonattainment for SO_2. The Governor was required to submit to EPA the redesignation he considered appropriate for the area in question within 120 days after notification pursuant to section 107(d)(3)(B). The EPA must then promulgate the redesignation that EPA deems necessary and appropriate, consistent with section 107(d)(3)(C).

The Governor's response letter, dated April 13, 1992, stated that the state did not think redesignation was necessary due to the actions the state was pursuing with the SO_2 sources in the area. Consequently, the Governor did not make a redesignation request or describe boundaries for the proposed nonattainment area.

Notwithstanding the state's efforts to control SO_2 emissions in Muscatine, EPA believes that it is appropriate to proceed with this nonattainment proposal and boundary designation given the lack of federally enforceable emission restrictions sufficient to protect the NAAQS.

Because EPA intends to modify the Governor's submittal, section 107(d)(3)(C) requires that EPA notify the state 60 days before promulgation of the revised designation and provide the state with an opportunity to demonstrate why any proposed modification is inappropriate. Thus, in addition to providing the public with notice and an opportunity to comment on today's action, today's notice constitutes notice to the Governor that EPA is proposing a redesignation different from the Governor's submittal and provides the Governor with an opportunity to demonstrate why the proposed modification is inappropriate.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. These definitions provide the controlling legal standard for any designations or redesignations to the relevant attainment status. The EPA is proposing that part of Muscatine County, Iowa, be redesignated nonattainment for SO_2. A nonattainment area is defined as any area that does not meet or that significantly contributes to ambient air quality in a nearby area that does not meet the national primary or secondary ambient air quality standard for the relevant pollutant. (See section 107(d)(1)(A)(i).) Thus, in determining the appropriate boundaries for the nonattainment area proposed today, EPA has considered, using the appropriate monitoring data and modeling information, not only the area where the violations of the SO_2 NAAQS are occurring, but nearby areas which may significantly contribute to such violations.

EPA Action

In this notice, EPA is proposing to designate part of Muscatine County, Iowa, as nonattainment for SO_2 in accordance with the section 107(d)(3) redesignation process described above. EPA is also proposing that the nonattainment area be described as follows: T 77 N, R 2 W, Sections 26, 27, 34, 35; and T 76 N, R 2 W, Sections 2, 3, 10, 11, 14, 15, 22, 26, 28, 33, 34, Muscatine County, Iowa.

Technical information supporting the redesignation of Muscatine and the redesignation boundaries may be found in the administrative docket for this notice. This information is available at the address indicated above.

If EPA promulgates the redesignation as proposed, Iowa must submit an SO_2 implementation plan for the Muscatine area to EPA, within 18 months after promulgation, that meets the requirements of part D, title I of the Act. (See section 191(a) of the Act.) EPA has published its preliminary views regarding the interpretations of these provisions of the Act. (See 57 FR 13498 (April 16, 1992).) The implementation plan must provide for attainment of the primary SO_2 NAAQS as expeditiously as practicable, but no later than five years from the date of the final

nonattainment designation. (See section 192(a) of the Act.)

Note that the table set out below specifies the boundary and associated designation status that EPA is proposing for the Muscatine area. Thus, the "designated area" and "designated type" indicate how EPA is proposing to amend the pertinent portion of 40 CFR 81.316.

PART 81.316. IOWA—SO_2

Designated area	Designation	
	Date	Type
Muscatine County (part) T 77 N, R 2 W, sections 26, 27, 34, 35; and T 76 N, R 2 W, sections 2, 3, 10, 11, 14, 15, 22, 26, 28, 33, 34.	Proposing.	Nonattainment.

The EPA is, by this notice, proposing that the SO_2 designation for part of Muscatine County, Iowa, be revised from attainment to nonattainment. The EPA is requesting public comments on all aspects of this proposal, including the appropriateness of the proposed redesignation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified above by October 25, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignations of an area to nonattainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the state must adopt new regulations, based on an area's nonattainment status, EPA will review the effect of those actions on small entities at the time the state submits those regulations. Thus, EPA certifies that this redesignation will not affect a substantial number of small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Noting in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 12, 1993.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 93–20379 Filed 8–23–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FL46–5690; FRL–4697–1]

Lead Redesignation to Nonattainment for Hillsborough County, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal rulemaking.

SUMMARY: Pursuant to sections 107(d)(3) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act), EPA is authorized to require states to redesignate areas (or portions thereof) in the state as nonattainment, attainment, or unclassifiable for lead. EPA is proposing a revision of the lead designation for a portion of Hillsborough County, Florida. Previously, consistent with section 107(d)(3)(A) of the Act, EPA provided notification to the Governor of Florida that EPA believes a portion of Hillsborough County, Florida, should be redesignated from unclassifiable to nonattainment for lead. The Governor of Florida through the Florida Department of Environmental Regulation has requested that the portion of Hillsborough County around the Gulf Coast Recycling facility be redesignated as nonattainment for lead to assure the coordinated correction of this lead violation and to protect the health and safety of the facility workers and the surrounding population. The proposed redesignation is based upon a monitored lead violation of 2.27 micrograms per cubic meter on a quarterly average. The National Ambient Air Quality Standard (NAAQS) for lead is 1.5 micrograms per cubic meter on a quarterly average.

DATES: Comments must be received on or before September 23, 1993.

ADDRESSES: Comments should be mailed to Carol L. Kemker, at the Region IV address listed below. Information supporting today's action is available for public inspection and copying (a reasonable fee may be charged for copying) during normal business hours at the following agencies:

Region IV, Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Air Management Division, Hillsborough County Environmental Protection Commission, 1410 North 21st Street, Tampa, Florida 33605.

FOR FURTHER INFORMATION CONTACT: Carol L. Kemker of the EPA Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION:

I. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for lead pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality related considerations the Administrator deems appropriate. As provided in section 107(d)(3), EPA may at any time notify the Governor of an affected state that available information indicates that the designation of an area should be revised.

Following the process outlined in section 107(d)(3), on June 24, 1992, EPA Region IV notified the Governor of Florida that EPA believed that a portion of Hillsborough County should be redesignated as nonattainment for lead. The EPA identified the area in a **Federal Register** notice published on September 25, 1992, 57 FR 44374. As provided under section 107(d)(3)(B) of the Act, the Governor of Florida was required to submit to EPA the designation he considered appropriate for Hillsborough County within 120 days after notification. On January 8, 1993, the State of Florida requested that the portion of Hillsborough County around the Gulf Coast Recycling Company be redesignated to nonattainment for lead. EPA is therefore proposing the above referenced area be redesignated as

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nonattainment for lead consistent with section 107(d)(3)(c) of the Act.

A nonattainment area is defined as any area that does not meet or that significantly contributes to ambient air quality in a nearby area that does not meet the national primary or secondary ambient air quality standard for the relevant pollutant.[1] (See section 107(d)(1)(A)(i).) Thus, in determining the appropriate boundaries for the nonattainment area proposed today, EPA has considered not only the area where the violation of the lead NAAQS is occurring but nearby areas which significantly contribute to such violations.

II. Background for Lead

In 1978, when EPA promulgated the lead NAAQS, EPA believed that implementation and maintenance of the lead NAAQS should be in accordance with the SIP requirements set forth in section 110, rather than part D. The EPA believed that section 107 and part D requirements were intended by Congress to apply only to NAAQS which were in effect prior to the 1977 Amendments to the Act. Therefore, EPA did not designate areas for lead upon promulgation of the lead NAAQS in 1978.

The Act, as amended in 1990, clearly defines EPA's authority to designate areas for lead. Section 107(d)(5) authorizes EPA to require states to designate areas (or portions thereof) as nonattainment, attainment, or unclassifiable, with respect to the lead NAAQS in effect as of the date of enactment of the Act as amended in 1990. The portion of Hillsborough County, Florida, addressed in today's notice was designated as unclassifiable after the passage of the 1990 Clean Air Act Amendments, as provided in section 107(d)(5) of the Act. 56 FR 56694 (November 6, 1991); 40 CFR 81.310 (1992).

As described above, EPA is authorized to initiate the redesignation of areas (or portions thereof) as nonattainment for lead, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations or any other air quality related considerations the Administrator deems appropriate. The EPA believes that monitoring and/or modeling information are among the reasonable tools that may be used in establishing lead nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act. As indicated previously, nonattainment areas consist of any area that does not meet the relevant NAAQS or that significantly contributes to a violation of the relevant NAAQS in a nearby area.

On June 24, 1992, EPA Region IV notified the Governor of Florida that EPA believed that the portion of Hillsborough County currently designated as unclassifiable for lead should be redesignated as nonattainment. In a **Federal Register** notice published on September 25, 1992, 57 FR 44374, EPA identified this portion of Hillsborough County as a lead area for which EPA had notified the Governor of Florida that the area's lead designation should be revised to nonattainment. After notification, and as provided in section 107(d)(3)(B), the Governor of Florida was required within 120 days to submit to EPA the redesignation he considered appropriate. On January 8, 1993, the State of Florida responded to EPA's request. The specific boundaries of the portion of Hillsborough County, Florida, around the Gulf Coast Recycling Company are set out below.

III. Action for Hillsborough County, FL

EPA is proposing to redesignate a portion of Hillsborough County, Florida, for lead in accordance with the section 107(d)(3) redesignation process, described above. This proposal is based on a lead value of 2.27 micrograms per cubic meter as reported from the fourth quarter of 1991 by monitor number 139 located south of the Gulf Coast Recycling plant boundary. This value violates the current lead NAAQS of 1.5 micrograms per cubic meter based on a quarterly average. Therefore, EPA is proposing to redesignate as nonattainment for lead that portion of Hillsborough County, Florida, currently designated as unclassifiable. Further, this proposal is consistent with the State's nonattainment redesignation for this area. The EPA announced in a notice published on September 25, 1992, (57 FR 44374) that it believed that the portion of Hillsborough County listed in that notice, should be redesignated as nonattainment for lead, based on a monitored violation of 2.27 micrograms per cubic meter of the lead NAAQS of 1.5 micrograms per cubic meter, based on a quarterly average. See 40 CFR 50.12.

Lead nonattainment areas are generally defined by the county perimeter for the county in which the ambient lead monitors recorded the violation of the lead NAAQS and/or in which a lead source is located. As an alternative, EPA has indicated that states may seek to define boundaries using certain techniques to justify the chosen boundary (56 FR 56694 and 56707, November 6, 1991).

EPA had approved, prior to the identification of the lead NAAQS violation, the following unclassifiable lead area, (56 FR 56694 and 56707, November 6, 1991) consisting of a portion of Hillsborough County:

> An area encompassed within a radius of (5) kilometers centered at UTM coordinates: 364.0 East 3093.5 North, Zone 17 (in city of Tampa).

This designation was codified at 40 CFR 81.310 (1992). This area surrounds the secondary lead smelting operation of Gulf Coast Recycling Company, a battery recycling facility. EPA believes it is reasonable to rely on the current Hillsborough County, Florida, unclassifiable boundary as the nonattainment area boundary since the State had previously demonstrated that this is the area impacted by the Gulf Coast Recycling Company. Therefore, in today's action, EPA is proposing to revise 40 CFR 81.310 by redesignating to nonattainment for lead that area in Hillsborough County, Florida, currently designated unclassifiable for lead. However, any ultimate determination will be made after considering any comments from the State of Florida, and any comments submitted by the public.

IV. Significance of Today's Action

If, in the final action on today's proposal, EPA redesignates any area in Florida as nonattainment for lead, then Florida must submit an implementation plan for such area to EPA within 18 months after promulgation of the nonattainment designation, which meet the requirements of part D, title I of the Act. (See section 191(a) of the Act) The implementation plan must provide for attainment of the lead NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final nonattainment designation. (See section 192(a) of the Act)

EPA has issued detailed guidance on the statutory requirements applicable to lead nonattainment areas. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), & 57 FR 31477 (July 16, 1992).

Proposed Action

On April 22, 1991, (56 FR 16274) EPA announced that it had notified the governors of affected States that they should proceed to designate as nonattainment those areas that had recorded violations of the National Ambient Air Quality Standard (NAAQS)

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The EPA believes it is reasonable to conclude that something greater than a molecular impact is required.

for lead. EPA also published a list of areas that the governors had been requested to designate as unclassifiable if they contained stationary lead sources which EPA believed to be capable of violating the lead NAAQS, but for which existing air quality data was insufficient to designate as attainment or nonattainment. Included in that list was Hillsborough County, Florida. Based on information provided by the State, EPA designated a portion of the county as unclassifiable for lead (56 FR 56694). Subsequently, a lead value of 2.27 micrograms per cubic meter as a quarterly average, was reported for the fourth quarter of 1991 by monitor number 139 located in the area. This value violates the current lead NAAQS of 1.5 micrograms per cubic meter based on a quarterly average. Therefore, EPA is proposing to redesignate as nonattainment for lead that portion of Hillsborough County, Florida, currently designated as unclassifiable. Further, this proposal is consistent with the State's nonattainment redesignation request for this area.

EPA is providing a 30-day comment period on this notice of proposed rulemaking. EPA requests public comments on all aspects of today's proposal. Public comments received on or before September 23, 1993 will be considered in EPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region IV office listed at the front of this notice.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not for profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the state submits these regulations. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, Lead.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 4, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–20382 Filed 8–23–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Cancellation and Rescheduling of Public Hearing on Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of change in public hearing.

SUMMARY: The Service gives notice that the public hearing scheduled for August 31, 1993, on the proposed determination of endangered status and designation of critical habitat for the Alabama sturgeon, *Scaphirhynchus suttkusi*, has been canceled.

DATES: The public hearing that was scheduled to be held from 7 p.m. to 10 p.m., on Tuesday, August 31, 1993, in Mobile, Alabama, has been canceled. The hearing will be scheduled for a new date within the near future.

ADDRESSES: The exact location for the rescheduled hearing has not been determined, but it will be held in Mobile, Alabama. The office responsible for establishing the new arrangements is the U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: James H. Stewart, at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The hearing as originally announced in the **Federal Register** of July 27, 1993 (58 FR 40109) is being canceled and rescheduled at the request of some members of the Alabama congressional delegation. The new hearing arrangements will be announced as soon as they can be completed.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: August 19, 1993.

John R. Eadie,

Acting Regional Director.

[FR Doc. 93–20527 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 921056–3148; I.D. 090992B]

RIN 0648–AD 44

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes standard groundfish product types and product recovery rates (PRRs) for purposes of enforcing certain regulatory requirements for the groundfish fisheries off Alaska. NMFS will use PRRs to calculate round weight equivalents of all groundfish catches. NMFS also proposes to reduce the proportion of pollock roe that may be retained onboard a vessel during the pollock fishery. These actions are necessary to facilitate enforcement of certain regulatory measures and to implement a statutory prohibition against roe stripping of pollock. They are intended to help achieve the objectives of the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) with respect to groundfish management off Alaska.

DATES: Comments are invited until September 23, 1993.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA and BSAI is managed by the Secretary of Commerce (Secretary) according to the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675.

This regulatory amendment proposes standard product types and standard PRRs representing groundfish products produced by the U.S. groundfish fishing industry off Alaska. A similar regulatory amendment was proposed for comment in 1991 (56 FR 4029, February 1, 1991). NMFS decided to re-propose that regulatory amendment because of information received in public comments. This rule reflects changes made as a result of comments received on earlier proposed rulemaking as well as new information on PRRs and product types received since that time. This action also proposes to revise the proportion of pollock roe that may be retained onboard a vessel.

A description of, and reasons for, these actions follow.

Standard Product Types and Product Recovery Rates

NMFS would use standard product types and PRRs to calculate round weight equivalents of groundfish catches from processed groundfish products. Each PRR represents an arithmetic proportion of the amount of primary product recovered from a whole fish during processing operations. Any other product from the same fish is an ancillary product.

PRRs would be used in the following manner. Under existing recordkeeping and reporting requirements at 50 CFR 672.5 and 675.5, each catcher/processor, mothership processor, and shoreside processor utilizing groundfish harvested off Alaska must maintain a Daily Cumulative Production Log (DCPL). DCPLs have been required since the beginning of the 1990 fishing year. Each processor that is required to maintain a DCPL must submit to NMFS, on a weekly basis, a Weekly Production Report (WPR) that reports production weight by species and product type.

Beginning in 1990 and continuing through 1991, NMFS monitored groundfish catches by using PRRs to convert the amounts of processed products reported in the WPRs to round weight equivalents. Beginning in 1992, NMFS monitored groundfish catches delivered to shore-based processors on the basis of landed weight reports. These weights were not based on PRRs; rather, they were based on actual weights determined by scales. During that same year, NMFS continued to monitor groundfish catches by offshore processors, except in the pollock fisheries, by using PRRs to convert the amounts of reported processed products to round weight equivalents. In the 1992 pollock fisheries, NMFS used a "best blend" system that compared total pollock catches reported by observers with WPR information reported by vessel operators. If the WPR information was within 10 percent of the observer information, NMFS used the WPR information for quota monitoring: Otherwise, the observer information was used.

Beginning in 1993, NMFS used the "best blend" system for all groundfish catches by offshore processors and continued to use landed weight reports by shore-based processors. Instead of the 10 percent difference used in 1992 to determine whether observer information or WPR information was used in the "best blend" system, NMFS used a 5 percent difference in 1993. An exception was the Community Development Quota (CDQ) fisheries for pollock. This program started in 1992 and continued through 1993. In 1992, CDQ pollock fisheries were managed under the same "best blend" system that was used for the 1992 non-CDQ pollock fisheries. In 1993, NMFS used observer estimates of total pollock catch weights for each haul. If observer estimates of a haul weight were not available, the vessel operator's estimate of that haul weight was used.

The above discussion emphasizes that the need for PRRs for monitoring groundfish catches has diminished since domestic groundfish catch information was initially required to be reported by means of WPRs in 1990. NMFS does not need to use PRRs to monitor catches delivered to shore-based processors. NMFS uses PRRs to monitor catches by offshore processors, but only when observer information is not available or differs by less than 5 percent from WPR information provided by the vessel operators.

Establishing standard product types and PRRs in regulations will facilitate enforcement of existing directed fishing standards at 50 CFR 672.20(g) and 675.20(h). In the past, enforcement officers have relied on statements from the vessel operator as to the conversion to processed product achieved by the vessel. This procedure was satisfactory only if a vessel operator reported a conversion that was actually being achieved by that vessel. It was not satisfactory if a vessel operator provided inaccurate information.

Standard PRRs will also be used to estimate the round weight equivalent of retained species for (1) assigning vessels to fisheries for monitoring fishery specific bycatch allowances of prohibited species, and (2) monitoring vessel compliance with fishery specific bycatch rate standards set forth under the vessel incentive program to reduce prohibited species bycatch rates. At the end of each weekly reporting period, PRRs will be used to estimate the round weight species composition for reported product types and amounts.

Also, standard PRRs will be used to assess fees to fund the observer coverage required by the North Pacific Fisheries Research Plan (Research Plan) if that plan is approved by the Secretary. Under the Research Plan, vessel operators will be assessed a fee based on the round weights equivalents of their groundfish catches to pay for observer coverage. Until a superior system becomes available to accurately determine weights of groundfish catches, PRRs will be used to calculate round weight equivalents, providing NMFS the best available information on which to assess these fees.

NMFS seeks comments on product types and PRRs that could be utilized for enforcing certain regulatory requirements within the groundfish fisheries as discussed above. For these purposes, the proposed PRRs are annual averages and would not vary by season. Data do not suggest differences between GOA and BSAI PRRs.

NMFS proposes the following 30 product types, and four descriptions of discarded groundfish, for purposes of managing the groundfish fisheries. Names and descriptions of these product types are the following:

Product type	Code	Description
Whole food fish	1	Unprocessed whole fish for human consumption.
Whole bait fish	2	Unprocessed whole fish used for bait.
Bled	3	Throat, or isthmus slit to allow blood to drain.
Gutted	4	Belly slit and viscera removed.
Headed and gutted, with roe	5	Head removed just before or aft of collar bone, viscera removed, and roe retained.
Headed and gutted, western cut	7	Head removed just in front of the collar bone, belly slit and viscera removed.
Headed and gutted, eastern cut	8	Head removed just behind the collar bone, belly slit and viscera removed.
Headed and gutted, tail removed	10	Head removed usually in front of collar bone, belly slit and viscera removed, and tail removed.
Kirimi	11	Viscera removed, head removed either in front or behind the collar bone; and tail removed by cuts perpendicular to the spine, resulting in a steak.
Salted and split	12	Head off, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail.
Wings	13	On skates, side fins are cut off next to body, body discarded or used as meal.
Roe	14	Eggs, either loose or in sacs, or skeins.
Pectoral girdle	15	Collar bone and associated bones.
Heads	16	Heads only, regardless where severed from body.
Cheeks	17	Side (opercular) bone and muscles on side of head.
Chins	18	Lower jaw (mandible) and muscles.
Belly	19	Body cavity walls below backbone.
Fillets with skin and ribs	20	Meat and skin with ribs attached on sides of body behind head and in front of tail.
Fillets with skin, no ribs	21	Meat and skin; ribs removed from sides of body behind head and in front of tail.
Fillets with ribs and no skin	22	Meat with ribs; skin removed from sides of body behind head and in front of tail.
Fillets, skinless/bone removed	23	Meat with both skin and ribs removed from sides of body behind head and in front of tail.
Deep skin fillets	24	Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
Surimi	30	Paste from any of the fish flesh.
Minced	31	Ground up flesh, including de-boned meat.
Fish meal	32	Ground up fish parts, usually including parts not otherwise used for human consumption.
Oil	33	Oil from fish reduction.
Milt	34	Sperm sacs.
Stomachs	35	Stomachs and other internal organs.
Octopus and squid mantles	36	Fleshy parts.
Butterfly, no backbone	37	Body slit along back and backbone removed.
Discards	95	Whole fish discarded while processing other fish.
Decomposed fish	96	Whole decomposed fish, which are discarded at sea, no processing.
At-sea discards	98	Whole fish, which are discarded at sea.
Dockside discards	99	Whole fish, which are discarded at the dock.

NMFS might use other product types to manage the groundfish fisheries as well, if additional product types and expected recovery rates become known.

The PRRs proposed for the above groundfish product types being processed off Alaska are set forth in proposed Table 2 to proposed § 672.20(j). These PRRs are also proposed for the BSAI in proposed § 675.25(k). NMFS is requesting comments on the proposed product types and PRRs. Comments also are invited on any other product type and associated PRR not presented in this table.

The PRRs proposed in this rulemaking are based on the best information available to NMFS at this time. NMFS requests comments on the accuracy of these PRRs and solicits additional data from industry that would support more precise PRRs. Final PRRs will be based on the best information available to NMFS at the time of the final rulemaking, including any new information received from comments or other sources.

NMFS also proposes to replace the pollock products and associated PRRs in the current roe stripping regulations found at §§ 672.20(i)(2) and 675.20(j)(2). Current regulations that limit the amount of pollock roe that may be retained onboard a vessel during a fishing trip use PRRs for the following pollock products: fillets, surimi, minced, meal, and headed and gutted. More pollock product types and associated PRRs are proposed in this action as follows:

Product code	Product description	PRR
6	Headed & gutted, western cut	0.65
8	Headed & gutted, eastern cut	0.56
10	Headed & gutted, without tail	0.50
20	Fillets with skin & ribs	0.35
21	Fillets with skin on, no ribs	0.30
22	Fillets with ribs no skin	0.30
23	Fillets, skinless, boneless	0.22
24	Deep skin fillets	0.13
30	Surimi	0.14
31	Mince	0.22
32	Meal	0.17

NMFS recognizes that from time to time information might become available that shows that a PRR in effect is inaccurate. A framework procedure is proposed that would allow a PRR to be adjusted. Under this procedure, a PRR could be adjusted by no more than 15 percent without opportunity for prior public comment. Such an adjustment would be effective upon publication in the **Federal Register**. Improvements in processing methods and technology during the course of the year are expected to occur, which could cause a PRR to change by up to 15 percent. To maximize fisheries management efficiency over the course of a fishing season, PRRs should be adjusted quickly.

From time to time entirely new or advanced processing technology may be introduced. Such technology would be expected to change a PRR by more than 15 percent. Under the proposed framework procedure, normally NMFS would propose an adjustment of greater than 15 percent in the **Federal Register**. The publication would provide a

description of the proposed adjustment and the information on which the proposed adjustment is based. Comments would be invited on the proposed adjustment for 30 days. Where there is good cause to make a greater than 15 percent adjustment to a PRR without affording an opportunity for prior public comment, NMFS would so find and invite comments on the adjustment for 15 days after the effective date.

If a new product type is developed, NMFS would propose the new type and an associated PRR in the **Federal Register** and invite public comments for 30 days. After reviewing comments received, NMFS would publish the final PRR associated with the new product type in the **Federal Register**.

Allowable Retained Amounts of Pollock Roe

The final rule implementing Amendments 14 to the BSAI FMP and 19 to the GOA FMP (56 FR 492, January 7, 1991) implemented the roe stripping statutory prohibition in section 307(N) of the Magnuson Act by restricting the amount of pollock roe that can be retained during a fishing trip to 10 percent. To determine the continuing appropriateness of this limit, NMFS examined recent catch data obtained from shoreside and at-sea processors for the years 1991 and 1992 to calculate the PRR achieved for roe when roe was produced as an ancillary product.

In 1991, shoreside processors achieved a PRR of 1.8 percent, based on 2,391 mt of roe and 133,659 mt of retained pollock round weight equivalents. In 1992, these values were 4,156 mt of roe and 112,881 mt of retained pollock, resulting in a PRR of 3.7 percent. Likewise, in 1991, at-sea processors achieved a PRR of 5.4 percent, based on 18,392 mt of roe and 339,774 mt of retained pollock round weight equivalents. In 1992, these values were 12,324 mt of roe and 363,403 mt of retained pollock as determined by "best blend" observations, resulting in a PRR of 3.4 percent. In 1993, preliminary data indicate that these values were 6,713 mt of roe and 258,600 mt of retained pollock, resulting in a PRR achieved by at-sea processors of 2.6 percent.

Thus, it would appear that a 10 percent limit on the proportion of roe that is allowed to be retained when harvesting pollock is too high, given the actual proportions that resulted during the 1991 and 1992 pollock fisheries in the BSAI. Retention of a 10 percent limit would allow processors to "top off" with amounts of pollock roe by stripping roe from subsequent pollock catches and discarding the carcasses.

Actual amounts of roe produced during the 1992 and 1993 "A" seasons (i.e., January 1—April 15) show that processors typically produced pollick roe as an ancillary product as intended by the BSAI FMP. Roe production resulted in an overall proportion of less than 4 percent of pollock primary products. However, NMFS recognizes that this proportion represents an overall average proportion. Individual processors likely achieve higher proportions only by topping off retained amounts of pollock round weight equivalents with additional pollock roe. A 10 percent limit could encourage this practice.

NMFS is proposing to reduce the limit to 5 percent. This amount respresents a proportion that is above the overall average obtained for shoreside processors in 1991 and 1992 and by at-sea processors in 1992 and 1993. This proposed proportion will allow processors to retain an occasional catch with roe that is heavier than average while still complying with the prohibition against roe stripping.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

The Alaska Region, NMFS, prepared an EA for this rule that describes the impact on the environment as a result of this rule. A copy of the EA may be obtained from the Regional Director (see **ADDRESSES**).

The AA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis as part of the EA/RIR/IRFA, which concludes that this proposed rule, if adopted, would have significant effects on small entities. A summary of the IRFA follows: The proposed action to establish standard product recovery rates is superior to the status quo alternative, because enforcement of directed fishing standards will be more effective, and assignments of vessels to target fisheries categories based on retained groundfish catches will be facilitated. The latter is necessary to improve the effectiveness of the vessel incentive program. Standard PRRs also are necessary to manage an anticipated Research Plan, in which vessel operators will be assessed a fee on the round weight equivalent of their groundfish catches to pay for observer coverage. Conservation of groundfish resources would be improved to the extent that more accurate PRRs are used by NMFS following public comment on standard PRRs.

Reducing the allowable proportion to 5 percent for retained pollock roe is superior to the status quo alternative in which the allowable proportion is 10 percent. In 1992, actual roe recovery rates achieved by shore-based and at-sea processors were 3.7 and 3.4 percent, respectively. In 1993, the actual roe recovery rate achieved by shorebased processors was 2.6 percent. The proposed recovery rate of 5 percent is not expected to be constraining and will better achieve the intent of the Council and the Magnuson Act to prohibit pollock roe stripping.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

The Regional Director determined that fishing activities conducted under this rule would not affect endangered and threatened species under the Endangered Species Act (ESA). Specifically, the Regional Director determined that fishing activities conducted under this action would not affect Steller sea lions in a way that was not already considered in the informal section 7 consultation on the final 1993 initial groundfish specifications that was concluded on January 27, 1993. The Regional Director also determined that fishing activities conducted under this action would not affect listed, proposed, and candidate seabirds under the ESA in a way that was not already considered in the informal section 7

consultation for the final 1993 initial groundfish specifications dated February 1, 1993, and clarified on February 12, 1993. Finally, the Regional Director determined that fishing activities conducted under this action could not affect listed species of Pacific salmon in a way that was not already considered in the informal section 7 consultation on the final 1993 initial groundfish specifications that was concluded on April, 21, 1993. NMFS has determined that no further consultation, pursuant to section 7 of the ESA, is required for adoption of this rule.

The Regional Director determined that fishing activities conducted under this rule would not adversely impact marine mammals.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 11, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

2. In § 672.2, a new definition of "round weight equivalent" is added to read as follows:

§ 672.2 Definitions.

* * * * *

Round weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

3. In § 672.20, paragraph (i)(3) is removed; paragraphs (i)(1) and (i)(2) are redesignated as paragraphs (i)(2) and (i)(3) respectively, and paragraph (i)(3) is revised; the text of paragraph (i) introductory text is designated as paragraph (i)(1) and revised; paragraph (i)(5) is revised; and a new paragraph (j) is added to read as follows:

§ 672.20 General limitations.

* * * * *

(i) *Allowable retention of pollock roe.* (1) Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 5 percent of the total round weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in paragraph (i)(4) of this section. No person may include pollock or pollock products from previous fishing trips that are retained onboard a vessel in determining the allowable retention of pollock roe for that vessel.

* * * * *

(3) Only the following product types and product recovery rates may be used to calculate round weight equivalents for pollock for purposes of this paragraph (i):

Product code	Product description	PRR
6	Headed & gutted, western cut	0.65
8	Headed & gutted, eastern cut	0.56
10	Headed & gutted, without tail	0.50
20	Fillets with skin & ribs	0.35
21	Fillets with skin on, no ribs	0.30
22	Fillets with ribs no skin	0.30
23	Fillets, skinless, boneless	0.22
24	Deep skin fillets	0.13
30	Surimi	0.14
31	Mince	0.22
32	Meal	0.17

* * * * *

(5) *Calculation of the amount of retainable pollock roe.* To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round weight equivalent by dividing the total amount of each primary product onboard by the appropriate product recovery rate. Add together round weight equivalents from primary pollock products. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the sum of the round weight equivalents by 0.05. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips does not count as this amount. If two or more products, other than roe, are made from a single fish, only the primary product shall be used to determine the amount of roe from that fish.

(j) *Standard product types and product recovery rates (PRRs).* (1) *Calculating round weight equivalents from PRRs.* Round weight equivalents for specified groundfish products shall be calculated using the product codes and PRRs specified in Table 2 of this section.

TABLE 2.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES LISTED IN TABLE 1 IN EACH OF 50 CFR 672.20(A)(1) AND/OR 50 CFR 675.20(A)(1)

FMP species	Species code	Product code										
		Whole food fish	Whole bait fish	Bled	Gutted	Headed & gutted with roe	Headed & gutted western cut	Headed & gutted eastern cut	Headed & gutted w/o tail	Kirimi	Salted & split	Wings
		1	2	3	4	5	7	8	10	11	12	13
Pacific cod	110	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44		0.45	
Arrowtooth flounder	121	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48		
Rockfish		1.00	1.00	0.98	0.88		0.60	0.50				
Sculpins	160	1.00	1.00	0.98	0.88		0.50	0.40				
Atka mackerel	193	1.00	1.00	0.98	0.87	0.67	0.61	0.64				
Pollock	270	1.00	1.00	0.98	0.80	0.70	0.65	0.56	0.50			
Smelts	510	1.00	1.00	0.98	0.82		0.71					
Eulachon	511	1.00	1.00	0.98	0.82		0.71					

TABLE 2.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES LISTED IN TABLE 1 IN EACH OF 50 CFR 672.20(A)(1) AND/OR 50 CFR 675.20(A)(1)—Continued

FMP species	Species code	Product code										
		Whole food fish	Whole bait fish	Bled	Gutted	Headed & gutted with roe	Headed & gutted western cut	Headed & gutted eastern cut	Headed & gutted w/o tail	Kirimi	Salted & split	Wings
		1	2	3	4	6	7	8	10	11	12	13
Capelin	516	1.00	1.00	0.98	0.89	.....	0.78	.....	.....	.....	.....	.....
Sharks	689	1.00	1.00	0.96	0.83	.....	0.72	.....	.....	.....	.....	.....
Skates	700	1.00	1.00	0.98	0.90	.....	.....	0.32	.....	.....	.....	0.32
Sablefish	710	1.00	1.00	0.98	0.89	.....	0.68	0.63	0.50	.....	.....	.....
Octopus	870	1.00	1.00	0.96	0.69	.....	.....	.....	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 672.20(a)												
Deep water flatfish	118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Shallow water flatfish	119	1.00	1.00	0.96	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Other flatfish	120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Thornyhead rockfish	143	1.00	1.00	0.98	0.88	0.55	0.60	0.50	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 675.20(a)												
Flathead sole	122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Rock sole	123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Yellowfin sole	127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Greenland turbot	134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....
Squid	875	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....

TABLE 2.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES LISTED IN TABLE 1 IN EACH OF 50 CFR 672.20(A)(1) AND/OR 50 CFR 675.20(A)(1)

FMP species	Species code	Product code											
		Roe	Pectoral girdle	Heads	Cheeks	Chins	Belly	Fillets: with skin & ribs	Fillets: skin on, no ribs	Fillets: with ribs no skin	Fillets: skinless/ boneless	Fillets: deep skin	Surimi
		14	15	16	17	18	19	20	21	22	23	24	30
Pacific cod	110	0.05	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15
Arrowtooth flounder	121	0.08	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....
Rockfish	.....	.....	.....	0.15	0.05	0.05	0.10	0.40	0.30	0.35	0.25	.....	.....
Sculpins	160	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Atka mackerel	193	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15
Pollock	270	0.04	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.22	0.13	0.14
Smelts	510	.....	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....
Eulachon	511	.....	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....
Capelin	515	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sharks	689	.....	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....
Skates	700	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Sablefish	710	.....	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....
Octopus	870	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 672.20(a)													
Deep water flatfish	118	0.08	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....
Shallow water flatfish	119	0.08	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....
Other flatfish	120	0.08	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....
Thornyhead rockfish	143	.....	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....

TABLE 2.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES LISTED IN TABLE 1 IN EACH OF 50 CFR 672.20(A)(1) AND/OR 50 CFR 675.20(A)(1)—Continued

FMP species	Species code	Product code: Roe 14	Pectoral girdle 15	Heads 16	Cheeks 17	Chins 18	Belly 19	Fillets: with skin & ribs 20	Fillets: skin on, no ribs 21	Fillets: with ribs no skin 22	Fillets: skinless/ boneless 23	Fillets: deep skin 24	Surimi 30
Target Species Categories Only at 50 CFR 675.20(a)													
Flathead sole	122	0.08						0.32	0.27	0.27	0.22		
Rock sole	123	0.08						0.32	0.27	0.27	0.22		
Yellowfin sole	127	0.08						0.32	0.27	0.27	0.22		0.18
Greenland turbot	134	0.08						0.32	0.27	0.27	0.22		
Squid	875												

TABLE 2.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES LISTED IN TABLE 1 IN EACH OF 50 CFR 672.20(A)(1) AND/OR 50 CFR 675.20(A)(1).

FMP species	Species code	Product code: Mince 31	Meal 32	Oil 33	Milt 34	Stomachs 35	Mantles 36	Butterfly backbone removed 37	Discards 95	Decomposed fish 96	At-sea discards 98	Dockside discards 99
Pacific cod	110	0.50	0.17					0.43	1.00	0.00	1.00	1.00
Arrowtooth flounder	121		0.17						1.00	0.00	1.00	1.00
Rockfish			0.17						1.00	0.00	1.00	1.00
Sculpins	160		0.17						1.00	0.00	1.00	1.00
Atka mackerel	193		0.17						1.00	0.00	1.00	1.00
Pollock	270	0.22	0.17					0.43	1.00	0.00	1.00	1.00
Smelts	510		0.22						1.00	0.00	1.00	1.00
Eulachon	511		0.22						1.00	0.00	1.00	1.00
Capelin	516		0.22						1.00	0.00	1.00	1.00
Sharks	689		0.17						1.00	0.00	1.00	1.00
Skates	700		0.17						1.00	0.00	1.00	1.00
Sablefish	710		0.22						1.00	0.00	1.00	1.00
Octopus	870		0.17				0.85	1.00	1.00	0.00	1.00	1.00
Target Species Categories Only at 50 CFR 672.20(a)												
Deep water flatfish	118		0.17						1.00	0.00	1.00	1.00
Shallow water flatfish	119		0.17						1.00	0.00	1.00	1.00
Other flatfish	120		0.17						1.00	0.00	1.00	1.00
Thornyhead rockfish	143		0.17						1.00	0.00	1.00	1.00
Target Species Categories Only at 50 CFR 675.20(a)												
Flathead sole	122		0.17						1.00	0.00	1.00	1.00
Rock sole	123		0.17						1.00	0.00	1.00	1.00
Yellowfin sole	127		0.17						1.00	0.00	1.00	1.00
Greenland turbot	134		0.17						1.00	0.00	1.00	1.00
Squid	875		0.17				0.75	1.00	1.00	0.00	1.00	1.00

(2) *Adjustments to Table 2 of this section.* The Regional Director may adjust PRRs and product types specified in Table 2 of this section if he determines that existing PRRs are inaccurate or if new product types are developed.

(3) *Procedure.* (i) Adjustments to any PRR listed in Table 2 that are within and including 15 percent of that PRR will be made without opportunity for prior public comment and will be effective upon publication in the **Federal Register**.

(ii) No PRR may be adjusted by more than 15 percent of the rate for that product rate listed in Table 2 issued under paragraph (j)(2) of this section nor any new product type may be announced without 30 days opportunity for prior public comment unless NMFS

finds, for good cause, that such notice and opportunity for public comment is impracticable and contrary to the public interest. If NMFS, for good cause, makes such adjustment or announcement without such notice and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days after its effective date.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16. U.S.C. 1801, *et seq.*

5. In § 675.2, a new definition of "round weight equivalent" is added to read as follows:

§ 675.2 Definitions.

* * * * *

Round weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the product recovery rate for that primary product as listed in § 672.20(j), of, if not listed, the weight of fish calculated by dividing the weight of a primary product by the product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

6. In § 675.20, paragraph (j)(3) is removed; paragraphs (j)(1) and (j)(2) are redesignated as paragraphs (j)(2) and (j)(3) respectively, and paragraph (j)(3) is revised; the text of paragraph (j) introductory text is revised and designated as paragraph (j)(1); paragraph (j)(5) is revised; and a new paragraph (k) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(j) *Allowable retention of pollock roe.* (1) Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 5 percent of the total round weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in paragraph (j)(4) of this section. No person may include pollock or pollock products from previous fishing trips that are retained onboard a vessel in determining the allowable retention of pollock roe for that vessel.

* * * * *

(3) Only the following product types and product recovery rates may be used to calculate round weight equivalents for pollock for purposes of this paragraph (j):

Product code	Product description	PRR
6	Headed & gutted, western cut	0.65
8	Headed & gutted, eastern cut	0.56
10	Headed & gutted, without tail	0.50
20	Fillets with skin & ribs	0.35
21	Fullets with skin on, no ribs	0.30
22	Fillets with ribs no skin	0.30
23	Fillets, skinless, boneless	0.22
24	Deep skin fillets	0.13
30	Surimi	0.14
31	Mince	0.22
32	Meal	0.17

* * * * *

(5) *Calculation of the amount of retainable pollock roe.* To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round weight equivalent by dividing the total amount of each primary product onboard by the appropriate product recovery rate. Add together the round weight equivalents from primary pollock products. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the sum of the round weight equivalents by 0.05. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips does not count as part of the amount, for purposes of this paragraph (j). If two or more products, other than roe, are made from a single fish, only the primary product shall be used to determine the amount of roe from that fish.

(k) *Standard product types and product recovery rates (PRRs).* Standard product types and PRRs pertaining to this section are governed by provisions set forth in § 672.20(j).

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Weigel House and Roadside Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project to recover insect-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Weigel Creek drainage on the Fisher River Ranger District, Kootenai National Forest, has killed approximately 20 to 100 percent of the lodgepole pine within the analysis area. In February 1993, the Fisher River District Ranger proposed a salvage timber sale to recover damaged timber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Environmental Assessment, Decision Notice, and project file for the Weigel House and Roadside Salvage Timber Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of high-value dead lodgepole pine that is suitable as house logs or commercial sawtimber must be accomplished quickly to avoid further deterioration, minimize fire danger and clear road surfaces and ditches to allow free movement of seasonal runoff and reduce erosion potential.

EFFECTIVE DATE: Effective on August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Froberg; Fisher River District Ranger; Kootenai National Forest; 12557 HWY. 37; Libby, MT 59923. Telephone: 406–293–7773.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic occurred in the Weigel Creek drainage (Compartment 30) on the Fisher River Ranger District during the last several years. The project area is located within Management Areas 12 and 15 as designated by the Kootenai Forest Plan, September 1987, as suitable timberland while maintaining big game summer range.

This proposal is designed to meet the following needs: (1) Expedite the salvage of high-value house logs and sawtimber before it deteriorates in value; (2) clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material, allow free movement of seasonal runoff and reduce erosion potential; and (3) minimize fire danger, protect existing regenerated stands and allow access for fire suppression by reducing dead lodgepole pine fuel accumulations adjacent to system roads.

An interdisciplinary team was convened, and scoping began in February 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 1,300 thousand board feet of timber from approximately 841 acres. The salvage area is accessible from existing roads; no new road construction or reconstruction will occur.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential of wildfire and to recover merchantable house logs and sawtimber before they deteriorate and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Environmental Assessment, the Decision Notice and the project file for the Weigel House and Roadside Salvage Timber Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR 217.

Dated: August 17, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–20391 Filed 8–23–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

[PB3430DO1; DES 93–27]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Draft Supplemental Environmental Impact Statement on the Management of Habitat for Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of public hearings.

SUMMARY: The public is invited to present oral or written comments on the Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Related Species within the Range of the Northern Spotted Owl, prepared by the Bureau of Land Management and the Forest Service. Six public hearings have been scheduled and are listed under **DATES** and **ADDRESSES** in this notice.

DATES: Public hearings will be held from 1 to 4 p.m. and 7 to 10 p.m. each day at the following locations:

September 27, 1993, in Redding, California; September 29, 1993, in Salem, Oregon; and October 1, 1993, in Lacey, Washington (Olympia area).

The period for submitting comments on the draft Supplemental Environmental Impact Statement (SEIS) ends October 28, 1993. To be considered, mailed comments must be postmarked no later than October 28, 1993. Fax comments cannot be accepted.

ADDRESSES: The public hearings will be held at the following addresses for the dates shown:

September 27, 1993—Red Lion Inn, 1830 Hilltop Drive, Redding, CA;

September 29, 1993—Columbia Hall, Oregon State Fairgrounds, 2330 17th Street NE, Salem, OR;

October 1, 1993—St. Martin's College, Worthington Convention Center, 5300 Pacific Avenue, SE, Lacey, Washington.

Send written comments on the draft SEIS to the Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

FOR FURTHER INFORMATION CONTACT: Sharon Heywood, Interagency SEIS Team, 503–326–7883.

SUPPLEMENTARY INFORMATION: These scheduled hearings will be formal hearings to receive official public comments. Both written and oral comments will be accepted. To ensure that everyone has an opportunity to be heard, speakers may be limited to three minutes. Each speaker's comments will be recorded and will receive equal consideration with written comments received by October 28, 1993.

Each hearing will be administered by a Hearing Officer. Officials from the Department of Agriculture and the Interior will be present to hear and receive the comments.

People wanting to speak at the hearing should register at the meeting site prior to the beginning of the hearing. Registration will begin one hour before each hearing. Elected officials will be allowed to speak first.

Copies of the draft SEIS and appendices will be available at the hearings. Copies are also available for review at all local Bureau of Land Management and Forest Service offices and some public libraries in Oregon, Washington, and northern California. Alternatively, copies may be obtained by calling 503–326–7883.

Notices about these hearings will also be published in local newspapers having general distribution in Northern California, Oregon, and Washington.

For the Forest Service:

Dated: August 18, 1993.

Thomas J. Mills,

Acting Deputy Chief, Programs and Legislation.

For the Office of the Secretary of the Interior.

Dated: August 19, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93–20441 Filed 8–23–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Thursday, September 16, 1993, at the Residence Inn by Marriott, Meeting Room, 150 Stoneridge Drive in Columbia, South Carolina 29210. The purpose of the meeting is to: (1) to discuss the status of the Commission and SACs; (2) to discuss civil rights progress and/or problems in the State; and (3) to review and discuss the draft report on Racial Tensions in South Carolina.

Persons desiring additional information, or planning a presentation to the Committee, should contact Robert L. Knight, Civil Rights Analyst, Southern Regional Office, at 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 17, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–20412 Filed 8–23–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the South Dakota Advisory Committee will be held from 8 a.m. until 8 p.m. on Friday, September 17, 1993, at the Holiday Inn City Centre, 100 W. 8 Street, Sioux Falls, South Dakota. The purpose of the meeting is to receive information on the subject of employment discrimination against women in South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rae Burnette or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 16, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–20411 Filed 8–23–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–93]

Foreign-Trade Zone 102—St. Louis, MO; Application for Subzone; Florsheim Shoe Company, Cape Girardeau, Jefferson City, Kirksville, West Plains, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Louis County Port Authority, grantee of FTZ 102, requesting special-purpose subzone status for the manufacturing and distribution facilities of Florsheim Shoe Company, located in Jefferson City, Cape Girardeau, Kirksville, and West Plains, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 13, 1993.

The proposal involves three manufacturing plants and a distribution center (1,450 employees). The manufacturing plants are: *Site 1* (12.6 acres)—1600 S.W. End Blvd., Cape Girardeau; *Site 2* (14.5 acres)—810 E. Shepherd Ave., Kirksville; and, *Site 3* (3.5 acres)—665 Missouri Avenue, West Plains. The distribution center (*Site 4*, 39 acres) is located at 312 Wilson Drive, Jefferson City. The manufacturing plants are used to produce a variety of men's and women's leather footwear. Materials are sourced both from the U.S. and abroad and include leather and shoe parts (uppers, midsoles, heels). The shoe parts may consist of U.S. and foreign materials. Certain parts, such as uppers, may be made in foreign countries. The distribution facility is used to distribute material inputs to the manufacturing plants as well as distribute finished products.

Zone procedures would exempt Florsheim from Customs duty payments

on the foreign products that are reexported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (5% to 8.5%). The duty rates on foreign-sourced items range from 2.4 to 10 percent. The company is also seeking an exemption from Customs duties on defective materials and waste materials resulting from the manufacturing process (est. 20%). The application indicates that zone savings would help improve the international competitiveness of the company's Missouri plants and contribute to maintaining domestic production and employment.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 25, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 8, 1993.).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 8182 Maryland Avenue, suite 303; St. Louis, Missouri 63105.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 18, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93-20461 Filed 8-23-93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with July anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with July anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than July 31, 1994.

Antidumping duty proceedings	Period to be reviewed
Brazil	
Frozen Concentrated Orange Juice A-351-605:	
Frutropic/COINBRA	5/1/92-4/30/93
Silicon Metal A-351-806:	
Companhia Brasileira Carureto de Calcio, Companhia Ferroligas Minas Gerais-Minasligas, Eletrosilla, S.A., RIMA Eletrometalurgica S.A	7/1/92-6/30/93
Germany	
High Tenacity Rayon Filament Yarn A-428-810:	
Akzo Faser AG	[1] 2/20/92-5/31/93
United Kingdom	
Industrial Nitrocellulose A-412-603:	
Imperial Chemical Industries PLC Nobel's Explosives Company Ltd	7/1/92-5/30/93
Canada	
Countervailing duty proceeding	
Certain Softwood Lumber Products [2] C-122-816	3/12/92-12/31/92

[1] This case was listed in the July 21, 1993, initiation notice showing the review period as 2/20/91-5/31/93. The correct review period is 2/20/92-5/31/93.

[2] In addition, 190 companies requested individual reviews under 19 C.F.R. 355.22(a)(2). The Department is currently reviewing these requests to ensure that they meet the requirements for individual company review.

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-20465 Filed 8-23-93; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-063. *Applicant:* Ames Laboratory, U.S. Department of Energy, Iowa State University, 133 Spedding Hall, Ames, IA 50011-3020. *Instrument:* Sequential Stopped-Flow Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics,

United Kingdom. *Intended Use:* The instrument will be used for evaluation of the rates of millisecond reaction during studies of various materials which are mostly transition metal complexes and organometallic compounds, including compounds of the elements Cr, Fe, V, Co, Rh, Mo, W and Cu. The objective of this research is to characterize the chemistry of reactive molecules that are involved in reactions leading to synthetic fuels and selective oxidations. In addition, the instrument system will be used to train graduate students in research methodologies in this particular area of chemistry. *Application Received by Commissioner of Customs:* July 20, 1993.

Docket Number: 93–085. *Applicant:* North Carolina State University, P.O. Box 7212, Raleigh, NC 27695-7212. *Instrument:* Kiel Carbonate Prep Device. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* The instrument will be used as an accessory to upgrade an existing mass spectrometer that is being used in paleoceanographic and paleoclimatic research to determine the history of global change. The instrument will also be used for educational purposes in the undergraduate and graduate program in Marine, Earth and Atmospheric Sciences in the courses: Stable Isotope Geochemistry, Marine Micropaleontology, Chemical Oceanography, Geochemistry, Paleontology—A History of Global Change and Global Water Cycle. *Application Received by Commissioner of Customs:* July 13, 1993.

Docket Number: 93–090. *Applicant:* University of Kansas, Chemistry Department, 2003 Malott Hall, Lawrence, KS 66045. *Instrument:* Cryostopped-Flow Spectrophotometer/ Fluorimeter System, Model SF-41 Canterbury. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to study synthetic compounds that reversibly bind the oxygen from the air. *Application Received by Commissioner of Customs:* July 19, 1993.

Docket Number: 93–091. *Applicant:* Washington University, One Brookings Drive, St. Louis, MO 63130. *Instrument:* Flanged Tip Handling System with Additional Sensor System. *Manufacturer:* SIG Packaging Technologies, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the DNA structure and genetic characteristics of the C-Elegans organism. Experiments will include a series of biological and chemical processes to extract DNA samples and bring them in such a form that can be tested for the presence or not of specific genetic base elements (a process called sequencing). *Application Received by Commissioner of Customs:* July 19, 1993.

Docket Number: 93–092. *Applicant:* Research & Education Institute, Inc., Harbor-UCLA Medical Center, 1124 West Carson Street, Torrance, CA 90502. *Instrument:* Isotope Ratio Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan Corp., Germany. *Intended Use:* The instrument will be used for analyzing samples in a number of studies of biological samples (breath, urine, blood or tissue from subjects in health or sickness) to obtain information regarding certain metabolic processes that are important in health or in disease. *Application Received by Commissioner of Customs:* July 19, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–20468 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–F

[A–428–061]

Barium Carbonate From Germany; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on barium carbonate from Germany.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping duty order on barium carbonate from Germany (58 FR 33610, June 25, 1981) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 18, 1993, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to each interested party on the Department's service list.

On June 21, 1993, a domestic interested party, the Chemical Products Corporation, objected to our intent to revoke the order. Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20470 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–080]

Carbon Steel Plate From Taiwan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping findings.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on carbon steel plate from Taiwan.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION: The Department of Commerce may revoke an antidumping finding, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We have not received a request to conduct an administrative review of the antidumping finding on carbon steel plate from Taiwan (44 FR 33877, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 18, 1993, we published in the **Federal Register** a notice of intent to revoke the finding, and served written notice of the intent to each interested party on the Department's interested party list.

On June 30, 1993, several domestic interested parties, Bethlehem Steel

Corporation, U.S. Steel Group, and Inland Steel Industries Inc., objected to our intent to revoke the finding. Therefore, because these domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping finding.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20478 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–002]

Chloropicrin From the People's Republic of China; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on chloropicrin from the People's Republic of China.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We have not received a request to conduct an administrative review of the antidumping duty order on chloropicrin from the People's Republic of China (49 FR 106915, March 22, 1984) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on February 26, 1993, we published in the **Federal Register** a notice of intent to revoke the order, and served written notice of the intent to each interested party on the Department's interested party list.

On March 29, 1993, several domestic interested parties, Niklor Chemical Co., Trinity Mfg., Inc., Hanlin Group, Inc., and ASHTA Chemicals, objected to our intent to revoke the order. Therefore, because several domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20479 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–508–829]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Defrost Timers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116.

PRELIMINARY DETERMINATION: We preliminarily determine that defrost timers from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on February 12, 1993 (58 FR 8255, February 12, 1993), the following events have occurred.

On March 5, 1993, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On March 19, 1993, petitioner requested that the Department of Commerce (the Department) expand the period of investigation (POI).

On March 17, 1993, the Department presented its questionnaire to Sankyo Seiki Manufacturing Co. Ltd. (Sankyo) which accounted for at least 60 percent of known sales to the United States during the POI, in accordance with 19 CFR 353.42(b). On March 26, 1993, the Department notified Sankyo that we would expand the POI in this investigation. See the **Period of Investigation** section of this notice.

The respondent submitted a response to section A of the Department's questionnaire, which pertains to respondent's corporate structure and general sales activities, on March 31, 1993. We issued a supplemental section A questionnaire on April 8, 1993, and received the response on April 19, 1993. The respondent submitted a response to sections B and C of the Department's questionnaire, which deal with the reporting of home market and U.S. sales, respectively, on April 30, 1993. On June 4, 1993, the Department notified all of the parties to the proceeding that the preliminary determination would be postponed until no later than August 17, 1993, determining this investigation to be "extraordinary complicated" due to the complexity of the issues surrounding the date of sale in the United States.

We issued a supplemental section B and C questionnaire on June 17, 1993, and received the response on July 16, 1993. We issued a second supplemental section B and C questionnaire on July 29, 1993.

On August 10, 1993, Sankyo requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of the publication of the affirmative preliminary determination. See the **Postponement of Final Determination** section of this notice. On August 10, 1993, Sankyo requested an extension to respond to the Department's July 29, 1993, supplemental questionnaire. On August 10, 1993, the Department granted Sankyo an extension until September 15, 1993. We will analyze and verify the deficiency response for use in the Department's final determination.

Scope of Investigation

For purposes of this investigation, defrost timers are electro-mechanical and electronic defrost timers for residential refrigerators. Electro-mechanical defrost timers are comprised of several components that make or break electric circuits by activating two sets of electrical contact points—one to disconnect the compressor (the cooling mechanism) and the other to connect the defrost heater. The articles are equipped with a synchronous or subsynchronous motor. The defrost timer disconnects the compressor by opening an electrical circuit after the compressor itself has run for a length of time predetermined by the manufacturer depending on the specifications of the model. Upon completion of the compressor run cycle (and simultaneously with the compressor's disconnection) the defrost heater is activated and runs for a preset time (again depending on the model), as predetermined by the manufacturer. Electronic defrost timers have a similar function but operate with greater efficiency. This is because a

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microprocessor in the device uses information gathered during the defrost cycle to adjust the compressor run time. This system defrosts only when needed, thereby improving the efficiency of the refrigerator.

The defrost timers subject to this investigation are currently classifiable under subheading 9107.00.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

We initiated this investigation using a six-month POI from July 1, 1992, through December 30, 1992. In order to capture U.S. sales made pursuant to long-term contracts, we have expanded the POI to include two additional six-month periods (i.e., April–Sept. 1991 and Oct. 91–March 92). Respondent will report home market sales in these periods to correspond to U.S. sales contracted in July 1991 and January 1992, respectively (see memorandum from Richard Moreland to Barbara Stafford dated June 4, 1993).

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Type of timer (either electronic or electro-mechanical); (2) length of interval between defrost cycles; (3) duration of the defrost cycle; (4) wattage of the device; (5) frequency in hertz; and (6) voltage of the device. Because respondent made incorrect comparisons of several product models, the Department rematched those models. This rematching was facilitated by the respondent's general adherence to the Department's matching criteria, by the relatively small number of comparisons to be adjusted, and by the fact that the data was submitted on computer tapes.

We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of defrost timers from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price (ESP) methodology, in those instances, was not otherwise indicated.

We calculated purchase price based on FOB, C&F, and CIF sales to unrelated customers. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act.

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1034, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We have drafted this proposed change, and have begun the rule making process.

We excluded from our analysis sales of one model because these sales made up an insignificant volume of total U.S. sales. (See memorandum dated August 5, 1993, from Richard W. Moreland to Barbara R. Stafford.)

Foreign Market Value

In order to determine whether there were sufficient sales of defrost timers in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of defrost timers to the volume of third country sales of the same product, in accordance with section 773(a)(1)(B) of the Act. Sankyo had a viable home market with respect to sales of defrost timers during the POI.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in credit and warranty expenses. We recalculated both home market and U.S. credit expenses to reflect the correct credit periods. Because Sankyo incorrectly reported both U.S. and home market warranty expenses as monthly costs allocated over sales quantity, we recalculated both U.S. and home market warranties as POI expenses allocated over their respective POI sales values. Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57. Because Sankyo failed to fully explain and substantiate its claimed difference-in-merchandise adjustments, we applied the single smallest difference-in-merchandise adjustment reported to all matches, as best information available (BIA).

We added U.S. commissions and deducted from FMV the weighted-average indirect selling expenses, up to the amount of the U.S. commission, in accordance with 19 CFR 353.56(b)(2). We recalculated U.S. commissions because the amounts reported were not consistent with the narrative description. We used the smallest reported home market indirect selling expense for each sales period as BIA because Sankyo failed to report the indirect selling expenses pertaining to defrost timers correctly, as a percentage of sales value, and because its partial worksheets did not include the data required to recalculate the expenses as a percentage of sales value; for the period where Sankyo failed to provide indirect selling expense worksheets, we disallowed any adjustment for indirect selling expenses as BIA.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, pursuant to Sankyo's timely submission of outstanding responses, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of defrost timers from Japan, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Sankyo Seiki Manufacturing Co. Ltd.	69.46
All others	69.46

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Postponement of Final Determination

As stated above, in accordance with 19 CFR 353.20(b), Sankyo, which accounts for a significant portion of the merchandise covered by this proceeding, has requested that in the event of an affirmative determination the Department postpone the final determination. We found no compelling reason to deny this request. Accordingly, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice, pursuant to 19 CFR 353.20(b).

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 8, 1993, rebuttal briefs no later than November 15, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 22, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the schedule time.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)) and 19 CFR 353.15(a)(4).

Dated: August 17, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20469 Filed 8–23–93; 8:45 am]

BILLING CODE 3510-DS-F

[A–331–602]

Fresh Cut Flowers From Ecuador; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on fresh cut flowers from Ecuador.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We have not received a request to conduct an administrative review of the antidumping duty order on fresh cut flowers from Ecuador (52 FR 8494, March 18, 1987) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 3, 1993, we published in the **Federal Register** a notice of intent to revoke the order, and served written notice of the intent to each interested party on the Department's interested party list.

On June 30, 1993, a domestic interested party, the Floral Trade Council, objected to our intent to revoke the order. Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20480 Filed 8–23–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–706]

Nitrile Rubber From Japan; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on nitrile rubber from Japan.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We have not received a request to conduct an administrative review of the antidumping duty order on nitrile rubber from Japan (53 FR 22553, June 16, 1988) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 18, 1993, we

published in the **Federal Register** a notice of intent to revoke the order, and served written notice of the intent to each interested party on the Department's interested party list.

On June 30, 1993, two domestic interested parties, Zeon Chemicals Kentucky, Inc., and Uniroyal Chemical Company, Inc., objected to our intent to revoke the order. Therefore, because these domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20481 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–605]

Oil Country Tubular Goods From Taiwan; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on oil country tubular goods from Taiwan.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We have not received a request to conduct an administrative review of the antidumping duty order on oil country tubular goods from Taiwan (51 FR 22098, June 18, 1986) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 18, 1993, we published in the **Federal Register** a notice of intent to revoke the order, and served written notice of the intent to each interested party on the Department's interested party list.

On June 25, 1993, several domestic interested parties, North Star Steel Ohio, Lone Star Steel Company and CF&I Steel Corporation, objected to our intent to revoke the order. Therefore, because several domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20476 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–247–003]

Portland Cement From the Dominican Republic; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on portland cement from the Dominican Republic.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce may revoke an antidumping finding, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We have not received a request to conduct an administrative review of the antidumping finding on portland cement from the Dominican Republic (28 FR 4507, May 4, 1963) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 21, 1993, we published in the **Federal Register** a notice of intent to revoke the finding, and served written notice of the intent to each interested party on the Department's interested party list.

On June 28, 1993, several domestic interested parties, Florida Crushed Stone, Southdown, Inc., North Texas Cement, formerly Gifford-Hill & Co., National Cement Co., Phoenix Cement, and Texas Industries, Inc., objected to our intent to revoke the finding. Therefore, because domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping finding.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20482 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–001]

Sorbitol From France; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on sorbitol from France.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping duty order on sorbitol from France (46 FR 15391, April 9, 1982) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on April 14, 1993, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to each interested party on the Department's service list.

On April 30, 1993, a domestic interested party, Lonza Inc., objected to our intent to revoke the order.

Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20472 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–DS–M

Standard Carnations From Kenya; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on standard carnations from Kenya.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Anna Snider or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping duty order on standard carnations from Kenya (58 FR 19407, April 23, 1981) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on April 14, 1993, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to each interested party on the Department's service list.

On April 30, 1993, a domestic interested party, the Floral Trade Council, objected to our intent to revoke the order. Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20475 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–006]

Steel Jacks From Canada; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on steel jacks from Canada.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202 482–3601.

SUPPLEMENTARY INFORMATION: The Department of Commerce may revoke an antidumping finding, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping finding on steel jacks from Canada (31 FR 11974, September 13, 1966) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on April 8, 1993, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to each interested party on the Department's service list.

On May 6, 1993, a domestic interested party, Bloomfield Manufacturing Company, Inc., objected to our intent to revoke the finding. Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke this antidumping finding.

Dated: August 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20471 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–FS–M

[A–401–040]

Stainless Steel Plate From Sweden; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on stainless steel plate from Sweden.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION: The Department of Commerce may revoke an antidumping finding, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests and administrative review.

We have not received a request to conduct an administrative review of the antidumping finding on stainless steel plate from Sweden (38 FR 15079, June 8, 1973) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 18, 1993, we published in the **Federal Register** a notice of intent to revoke the finding, and served written notice of the intent to each interested party on the Department's interested party list.

On June 29, 1993, several domestic interested parties, Armco Inc., G.O. Carlson, Inc., Jessop Steel Company, and Washington Steel Corporation, objected to our intent to revoke the finding. Therefore, because these domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping finding.

Dated: August 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–20477 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A-122-085]

Sugar and Syrups From Canada; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on sugar and syrups from Canada.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping duty order on sugar and syrups from Canada (45 FR 24126, April 9, 1980) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on April 14, 1993, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to each interested party on the Department's service list.

On April 27, 1993, several domestic interested parties, the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League, the Hawaiian Sugar Planters' Association, the Rio Grande Valley Sugar Growers, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association and the U.S. Cane Refiners' Association, objected to our intent to revoke the order. Therefore, because several domestic interested parties objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-20473 Filed 8-23-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077, A-427-078, A-428-082]

Sugar From Belgium, France, and Germany; Determination Not To Revoke Antidumping Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping findings.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping findings on sugar from Belgium, France, and Germany.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce may revoke an antidumping finding, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping findings on sugar from Belgium, France, and Germany (38 FR 7566, March 23, 1973) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on June 18, 1993, we published in the **Federal Register** notices of intent to revoke the findings and served written notice of the intent to each interested party on the Department's service list.

On June 21, 1993, a domestic interested party, Florida Sugar Marketing and Terminal Association, Inc., objected to our intent to revoke the findings. Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke these antidumping findings.

Dated: August 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-20474 Filed 8-23-93; 8:45 am]

BILLING CODE 3510-DS-M

[(A-351-819), (A-427-811)]

Notice of Postponement of Final Determinations of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From Brazil and France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Cunningham, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-4207.

POSTPONEMENTS:

Brazil

On July 28, 1993 (58 FR 41723, August 5, 1993), the Department of Commerce issued an affirmative preliminary determination in the antidumping duty investigation of certain stainless steel wire rods from Brazil.

On August 4, 1993, Eletrometal S.A. Metais Especiais (hereinafter referred to as "Eletrometal") requested that the Department postpone the final determination in accordance with section 353.20(b) of the Department's regulations. Eletrometal made this request in order to allow the Department time to adequately review recently submitted responses to the Department's supplemental questionnaire, and to prepare for verification.

On August 10, 1993, petitioners stated their opposition to Eletrometal's request for postponement arguing that the respondent's exports do not account for a significant portion of exports of the merchandise which is the subject of the investigation under section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)).

However, we have determined that Eletrometal's exports do account for a significant proportion of exports. Therefore, we find no compelling reasons to deny Eletrometal's request for postponement.

France

On July 28, 1993 (58 FR 41726, August 5, 1993), the Department of Commerce (the Department) issued an affirmative preliminary determination in the antidumping duty investigation of certain stainless steel wire rods from France.

On August 2, 1993, Imphy S.A. and Ugine-Savoie and their related U.S. entities, Metalimphy Alloys Corporation and Techalloy Company Inc., (hereinafter referred to collectively as "Imphy"), requested that the

Department postpone the final determination in accordance with section 353.20(b) of the Department's regulations. Imphy made this request in order to allow it time to adequately respond to the Department's supplemental questionnaire, and to prepare for verification, which it states is complicated by personnel scheduling and the compilation of U.S. value-added information. Imphy accounts for a significant portion of exports of SSWR to the United States. We find no compelling reasons to deny Imphy's request for postponement.

For the reasons above, we are postponing the above-referenced final determinations to the full extent authorized under section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). The final determinations for Brazil and France will, therefore, be issued not later than December 20, 1993, which is 135 days after the date of publication of the preliminary determinations.

Public Comment

Because of the postponement of the final determinations, the hearing dates of September 15, 1993 for Brazil, and September 21, 1993 for France, and the dates for the submission of case and rebuttal briefs have been changed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies now must be submitted to the Assistant Secretary for Import Administration no later than November 8, 1993 for Brazil, and November 12, 1993 for France, and rebuttal briefs no later than November 15, 1993 for Brazil, and November 19, 1993 for France. We request that parties in these cases provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Department determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold public hearings, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearings will be held on November 22, 1993 for Brazil, and November 23, 1993 for France, at 9:30 a.m. at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the Federal Register. Requests should contain:

(1) The party's name, address, and telephone number;

(2) The number of participants; and

(3) A list of the issues to be discussed.

In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), section 774(b) of the Act (19 U.S.C. 1677c(b)) and 19 CFR 353.20(b)(2).

Dated: August 18, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20464 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–P

Children's Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–010. *Applicant:* Children's Medical Center, Tulsa, OK 74135. *Instrument:* Cytoscan Computer Processor. *Manufacturer:* Applied Imaging, United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–20484 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–P

University of California at Los Angeles; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–044. *Applicant:* University of California at Los Angeles, Los Angeles, CA 90024–1547. *Instrument:* Samarium Cobalt Magnet. *Manufacturer:* International Center for Scientific Culture World Laboratory, CIS. *Intended Use:* See notice at 58 FR 31509, June 3, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–20466 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–P

Washington University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–025. *Applicant:* Washington University, St. Louis, MO 63139. *Instrument:* (2) 3-D

Micromanipulators, Model WR-88-R. *Manufacturer:* Narishige Instrument Co., Japan. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The foreign instrument provides superior freedom from vibration and electrical interference.

Docket Number: 93–031. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Mass Spectrometer, Model API III-R. *Manufacturer:* Perkin-Elmer Sciex Instruments, Canada. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The foreign instrument provides: (1) Tandem mass spectroscopy of ions with charge states of -3 to -7, (2) HPLC flow rates to 200 µl per minute and (3) buffer salt tolerance to 10 millimoles.

Docket Number: 93–033. *Applicant:* Albert-Einstein College of Medicine, Bronx, NY 10461. *Instrument:* Stopped-Flow Spectrophotometer System, Model SF-61AX with Model OPT.690 Anaerobic Kit. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 21974, April 26, 1993. *Reasons:* The foreign instrument provides: (1) Anaerobic operation, (2) detectors for both absorbance and fluorescence and (3) 0.8 msec dead time.

Docket Number: 93–034. *Applicant:* Michigan State University, East Lansing, MI 48824–1319. *Instrument:* Quench Flow Apparatus, Model QFM-5. *Manufacturer:* Bio-Logic, France. *Intended Use:* See notice at 58 FR 27266, May 7, 1993. *Reasons:* The foreign instrument provides five independently controlled supply syringes and a dwell time range of 0.8 to 200 msec.

Docket Number: 93–036. *Applicant:* Rutgers-The State University of New Jersey, New Brunswick, NJ 08903-0231. *Instrument:* Microvolume Stopped-flow Spectrofluorimeter, Model SX.17MV with Spares Kit. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 27266, May 7, 1993. *Reasons:* The foreign instrument provides time-resolved fluorescent spectroscopy and a 12.5 µsec interval between spectra.

The National Institues of Health advises in its memoranda dated July 13, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–20467 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–F

Wilford Hall Medical Center; Decision on Application for Duty-Free Entry of an Electron Microscope

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–042. *Applicant:* Wilford Hall Medical Center, San Antonio, TX 78236–5300. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* See notice at 58 FR 31509, June 3, 1993. *Order Date:* February 9, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to this purpose, which was being manufactured in the United States either at the time of order of this instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–20483 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

[Docket No. 930789–3189]

Opportunity To Join a Cooperative Research and Development Consortium To Develop Secure Software Encryption With Integrated Cryptographic Key Escrowing Techniques

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of opportunity to join a cooperative research and development consortium.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology for secure software encryption with integrated cryptographic key escrowing techniques. The program will be undertaken within the scope and confines of The Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities—but no funds—to the cooperative research program. Members will be expected to make contribution to the consortium's efforts in the form of materials, equipment, personnel, and/or funds. The first phase of the research program is expected to last two to three years. This is not a grant program.

DATES: Interested parties should contact NIST at the address or telephone number shown below no later than October 25, 1993.

ADDRESSES: Dr. Dennis K. Branstad, NIST Senior Fellow, Building 225, room A–216, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis K. Branstad, Telephone (301) 975–2913.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology for secure software encryption with integrated cryptographic key escrowing techniques. This technology, when available for voluntary use, will provide cost-effective security for unclassified applications while assuring that government agencies, under proper legal authority, may collect and decrypt electronically transmitted information. The development of software-based key escrowing encryption technology is in furtherance of the President's decision, announced by the White House Office of the Press Secretary on April 16, 1993, to encourage the development, manufacture, and use of such technology.

The purpose of this consortium is to develop technologies for secure software based encryption with integrated

cryptographic key escrowing technology that will: (1) Resist unauthorized replacement or modification as well as reverse engineering to obtain either the software encryption or law enforcement access field (LEAF) creation algorithms implemented in the code; (2) withstand unauthorized attempts to obtain or change cryptographic key(s); (3) provide for the output of a LEAF through a secure LEAF Creation Method; and (4) provide cost-effective security for a wide variety of unclassified government and commercial applications. These goals may be refined and augmented by NIST in consultation with consortium members.

The National Security Agency has agreed to be of technical assistance to NIST in this effort.

No access to classified information is anticipated.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a) which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements (CRADAs) with qualified parties. Under the law, a CRADA may provide for contributions from the federal laboratory of personnel, facilities, and equipment, but not direct funding.

Dated: August 18, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–20342 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–CN–M

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, September 14, 1993, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, it budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST management update and presentations on the Malcolm Baldrige National Quality Award Program, strategic planning of the Materials Science and Engineering Laboratory, the Board on Assessment of NIST Programs' annual report, clipper chip and implications for NIST's role in information security standards, and NIST laboratory tours.

Discussions on proposed funding on the Applied Technology Program and the Manufacturing Extension Partnership and the staffing of management positions at NIST scheduled to begin at 4:10 p.m. and to end at 5 p.m. on September 14, 1993, will be closed.

DATES: The meeting will convene September 14, 1993, at 8:30 a.m. and will adjourn at 5 p.m. on September 14, 1993.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, at the National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 21, 1993, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the ATP and the MEP Programs may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 18, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–20410 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Noncompetitive Financial Assistance Award

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Determination of Noncompetitive Financial Assistance (Grant) Award with Oklahoma Geological Survey.

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO), announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D), it intends to award a Grant through the Pittsburgh Energy Technology Center (PETC) to the Oklahoma Geological Survey to organize and conduct a workshop which will include a formal presentation and a field trip on Hunton Group Cores.

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Karen S. Contract Specialist, (412) 892–6202.

SUPPLEMENTARY INFORMATION:

Grant No.

DE–FG22–93BC14870

Title of Research Effort

"Hunton Group Core Workshop and Field Trip"

Awardee

Oklahoma Geological Survey

Term of Assistance Effort

Twelve (12) months

Cost of Assistance Effort

The total estimated value is $28,000.00.

Objective

Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (B) and (D), the objective of this grant is to fund a workshop to enhance science and technology transfer through discussions and reports dealing with the geological setting, depositional environments, and digenetic history of the Hunton group reservoirs, that have already been

discovered to contain large volumes of remaining oil and gas, and that have a large potential for additional recovery using advanced recover technologies. The presentation and field trip will address a means of technology transfer in order to provide a new source of information for oil and gas producers and meets the National Energy Strategy goal of arresting the U.S. vulnerability to oil supply disruptions by increasing the domestic crude oil resource base.

Dated: August 10, 1993.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–20445 Filed 8–23–93; 8:45 am]

BILLING CODE 6450–01–M

Chicago Field Office; Noncompetitive Award of Financial Assistance, SouthFace Energy Institute

AGENCY: Department of Energy.

ACTION: Notice noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the SouthFace Energy Institute to provide training and technical assistance to the Atlanta Pre-Olympic Revitalization Program.

FOR FURTHER INFORMATION CONTACT: Fred Singleton, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street, NE., Atlanta, Georgia 30308, (404) 347–3482.

SUPPLEMENTARY INFORMATION: Significant energy savings can result from the development and appropriate use of methods and technologies to improve the energy efficiency of HUD and other low and moderate income housing stocks. These energy savings can assist HUD and other low and moderate income housing developers in attaining their goal of expanding affordable housing opportunities. This grant is to provide training and technical assistance to the Atlanta's Pre-Olympic Revitalization Programs. This program is to help community-based nonprofit organizations and local government agencies increase the energy efficiency in affordable housing. This DOE-HUD Initiative allows for the transfer of DOE research and technology in the area of existing building energy efficiency and research programs. The project period for the grant is a one year period expected to begin in October 1993. DOE plans to provide funding in the amount of $25,000 for this project period.

Issued in Chicago, Illinois, on August 13, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–20446 Filed 8–23–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP89–638–014]

CNG Transmission Corp.; Amendment

August 18, 1993.

Take notice that on August 4, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89–638–014, under section 7 of the Natural Gas Act (NGA), and part 157 of the Commission's rules and regulations, to amend CNG's Lebanon to Leidy Project certificate authorization issued by Commission Order on June 11, 1991, as part of the open-season ANR Phase II Project.

By this amendment, CNG proposes to amend certain certificated transportation services, that are associated with CNG's Lebanon to Leidy Project, to reflect the latest changes in the market.

CNG states that, as a result of recent negotiations, CNG and Kamine/Besicorp Syracuse, L.P. (Kamine Syracuse) have signed a Termination Agreement for 16,000 Dt per day of transportation services. Kamine Syracuse has contracted with Empire State Pipeline to transport its gas supply. CNG states that it and Northeast Cogen have also signed a Termination Agreement for 11,000 Dt per day of transportation service. Niagara Mohawk Power Corporation renegotiated and bought out the existing power sales agreement with the developers of this cogeneration facility. Thus, the developers of the Northeast Cogen Plant have terminated their plans. CNG requests that the Commission vacate the certificate authority for these two uncommenced transportation transactions.

Additionally, CNG states that Kamine/Besicorp Allegany, L.P. (Kamine Allegany) and CNG have agreed that Kamine Allegany will reduce its volumes from 16,000 Dt per day to 11,100 Dt per day, and will take effect, at Allegany's election, sometime between April 1, 1994, and November 1, 1994.

Further, CNG states that Indeck-Corinth Limited Partnership (Indeck-Corinth) and CNG have agreed to increase Indeck-Corinth's level of service from 2,400 Dt per day to 26,200 Dt per day.

As a result, the total amount of transportation service has decreased from 374,188 Dt per day to 365,988 Dt per day.

Any person desiring to be heard or to make any protest with reference to said application, should on or before September 16, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and regulations under the Natural Gas Act (18 CFR 157.10).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG Transmission Corporation to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20425 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

Chicago Field Office, Noncompetitive Award of Financial Assistance; North Carolina Alternative Energy Corporation

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the North Carolina Alternative Energy Corporation to support establishment of an Electric Motor Systems Resource Center, at the North Carolina Alternative Energy Center Corporation Industrial Electrotechnology Laboratory (AEC/IEL).

FOR FURTHER INFORMATION CONTACT: Robert Biccum, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street NE., Atlanta, Georgia 30308. (404) 347–2379.

SUPPLEMENTARY INFORMATION: The project will consist of two tasks: (1) To develop a Generic Motor Policy Technical Bulletin supported by nine steps for implementation; (2) to provide specified technical assistance supported by four steps. These activities are designed to support the National Energy Strategy goal of increasing energy efficiency in industry and buildings by accelerating the commercialization and deployment of efficient Electric Motor Systems (EMS). The objective is to provide guidance for industrial employees responsible for establishing EMS specifications and maintaining them and for utility employees who operate customer assistance programs.

The project period for the grant is a two year period expected to begin October 1, 1993. DOE plans to provide initial funding of $40,000 with total project funding estimated at $100,000.

Issued in Chicago, Illinois, on August 13, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–20448 Filed 8–23–93; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office, Noncompetitive Award of Financial Assistance; Southern States Energy Board

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the Southern States Energy Board. The award represents the third phase funding for a program to implement strategies for conservation and renewable energy resources use in the sixteen Southern States and the Commonwealth of Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Warren Zurn, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street NE., Atlanta, Georgia 30308. (404) 347–1047.

SUPPLEMENTARY INFORMATION: The National Energy Strategy articulated the critical role that energy efficiency, conservation and renewable energy resources will play in meeting the nation's long term energy needs. The Energy Policy Act will require similar activity from the Department when that legislation is implemented. The southern region has extraordinary potential for the application of energy efficient technologies, development of renewable energy resources and the deployment of conservation measures. The Conservation and Renewable Energy Resources Committee, established as an umbrella committee by SSEB to assist DOE in identifying options and developing conservation and renewable energy strategies, has made some promising initial steps toward identifying currently available, cost-effective and environmentally sound renewable energy and energy efficiency technologies that can address the challenges facing the southern region. Through additional funding to support this Committee, efforts to promote Integrated Resource Planning through the established committee, efforts to establish a regional Integrated Resource Clearinghouse, and continuation of efforts to develop solid waste management projects, the SSEB will continue to provide regional leadership in these areas and provide DOE with a regional analysis to (1) identify conservation and renewable energy options with the southern region; and (2) develop strategies for implementing conservation and renewable energy initiatives to address regional and national energy concerns. The objectives of this committee and the two focused committees are to develop concrete, workable methods of implementing research industry and other interested parties, thereby enhancing the regional economy and accelerating the deployment of available technologies.

The project period for the grant award is a one-year period, expected to begin in September 1993. DOE plans to provide additional funding in the amount of $100,000 for this project period.

Issued in Chicago, Illinois, on August 16, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–20451 Filed 8–23–93; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office Federal Assistance Award to William R. Trutna

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to renew a cooperative agreement currently in place with William R. Trutna for development of a cocurrent distillation process to improve the efficiency of a multistage distillation process simultaneously with increasing the capacity of a given size distillation tower.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M. A. Barron, Contract Specialist. The Contracting Officer is Dr. Paul K. Kearns.

SUPPLEMENTARY INFORMATION: DOE has been providing financial assistance to Mr. Trutna under Cooperative Agreement No. DE–FC02–90ID13020 to refine the patented cocurrent distillation column to make it more attractive commercially. In the first phase, laboratory tests on alternative distributor configurations were conducted.

The number of collector states, stage heights, and channel orientation as functions of liquid handling ability and pressure drops were determined. A six-stage engineering prototype was designed, constructed and tested. DOE intends to continue assistance to Mr. Trutna to develop cocurrent distillation. DOE intends to restrict eligibility to Mr. Trutna for continuation of this research through development of cocurrent distillation in accordance with 10 CFR 600.7(b)(2)(i) (A) and (D).

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is a continuation of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity and satisfactory completion of the activity. Also, the applicant has exclusive domestic capability to perform the activity successfully based

upon proprietary information, technical expertise, and patent position.

DOE funding for the proposed activity is estimated to be $383,000 and Mr. Trutna's share is estimated to be $255,000 for a total of $638,000 over a forty-eight month period.

Issued in Chicago, Illinois, on August 16, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93-20449 Filed 8-23-93; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No. TEN-6(c)]

Proposal To Acquire up to 240 aMW of Firm Energy From the Tenaska Washington II Project and To Pay Its Sponsor's Preconstruction and Investigation Expenses

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of decision.

EFFECTIVE DATE: July 28, 1993.

SUMMARY: On May 28, 1993, BPA's Administrator issued a Record of Decision with respect to the proposal to acquire up to 240 average megawatts (aMW) of firm energy from The Tenaska Washington II project and to pay its sponsor's preconstruction and investigation expenses. This proposal is fully described at 57 FR 58014 (December 8, 1992).

The Administrator determined that the proposal to acquire up to 240 aMW of firm energy from The Tenaska Washington II project and to pay its sponsor's preconstruction and investigation expenses is consistent with the 1991 Northwest Conservation and Electric Power Plan (Plan) developed by the Northwest Power Planning Council (Council). The Administrator submitted the Record of Decision to the Council on May 28, 1993. On June 1, 1993, the Council received the Administrator's Record of Decision. The Council found by unanimous vote on July 28, 1993, that the proposal to acquire up to 240 aMW of firm energy from The Tenaska Washington II project and to pay its sponsor's preconstruction and investigation expenses is consistent with the Council's Plan. This notice is made pursuant to 16 U.S.C. 839d(c)(4)(B).

FOR FURTHER INFORMATION CONTACT: Ms. Helen Goodwin, Section 6(c) Process Manager, at 503-230-3129 or you may call the Public Involvement Office at 503-230-3478; the toll free number is 1-800-622-4519. Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503-230-4551.

Mr. Robert Laffel, Eugene District Manager, Federal Building, room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503-465-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Ms. Carol S. Fleischman, Spokane District Manager, room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-3279.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98807, 509-662-4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, suite 400, Seattle, Washington 98109, 206-553-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 508-522-6226.

Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, room 450, Boise, Idaho 83702, 208-334-9137.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

SUPPLEMENTARY INFORMATION: For supplementary information, please refer to 57 FR 58014, December 8, 1992.

Issued in Portland, Oregon, on August 10, 1993.

Randall W. Hardy,

Administrator.

[FR Doc. 93-20450 Filed 8-23-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP93-619-000]

Algonquin Gas Transmission Co., Notice of Request Under Blanket Authorization

August 18, 1993

Take notice that on August 6, 1993, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP93-619-000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to replace certain metering and regulating facilities with other facilities to enable an increase in deliveries of natural gas to Bristol and Warren Gas Company (Bristol and Warren) under Algonquin's blanket certificate issued in Docket No. CP87-317-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate certain facilities at the Warren, Rhode Island, delivery point (Warren Delivery Point) to increase the capacity for deliveries to Bristol and Warren, and to abandon facilities that are being replaced by the new facilities. Algonquin proposes to replace two 4-inch orifice meter runs, four 2-inch pressure regulators, and other related equipment, with one turbine meter with bypass, and related equipment. Algonquin states that these changes would be made within the existing meter station, within an enclosed building. Algonquin estimates that the facilities would cost $113,300 which would be reimbursed by Bristol and Warren.

Algonquin states that Bristol and Warren has acquired entitlements amounting to 300 MMBtu per day formerly held by the City of Norwich Board of Public Utilities Commissioners under Algonquin's former sales Rate Schedules F-2 and F-3 (Norwichtown Delivery Point) which now are subject to Algonquin's Rate Schedule AFT-1S. Algonquin further states that the reassignment of those quantities was authorized in Algonquin's Order No. 636 restructuring proceedings in Docket No. RS92-28, effective on June 1, 1993.[1] Also, Algonquin states that approximately 1,000 MMBtu per day, reassigned from Providence Gas Company to Bristol and Warren, would be delivered at the Warren Delivery Point rather than at the Providence-Barrington meter station (located adjacent to the Warren Delivery Point on the same site).

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request

[1] See 63 FERC ¶61,186 (1993).

shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20351 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–499–000]

Arizona Public Service Co.; Filing

August 18, 1993.

Take notice that on August 11, 1993, Arizona Public Service Company, tendered for filing additional information requested by Staff.

A copy of this filing has been served on Louis-Drefus Electric Power, Inc. and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20356 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–634–000]

Columbia Gas Transmission Corp.; Notice of Request Under Blanket Authorization

August 18, 1993.

Take notice that on August 11, 1993, Columbia Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP93–634–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate the facilities necessary to establish twelve additional points of delivery to existing wholesale customers under blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that it requests authorization to construct and operate the necessary facilities to establish twelve additional points of delivery for sales service, as follows:

Wholesale customer	Point location	Type	Annual quantities (DTH)
Columbia Gas of Kentucky, Inc	Bourbon County, Kentucky	Residential	150
Columbia Gas of Ohio, Inc	Lorain County, Ohio	Residential	150
Columbia Gas of Kentucky, Inc	Crawford County, Ohio	Industrial	3,558
Columbia Gas of Ohio, Inc	Licking County, Ohio	Commercial	180
Columbia Gas of Pennsylvania	Washington County, Pennsylvania	Commercial	225
Mountain Gas Company	Lincoln County, West Virginia	Residential	150
Mountain Gas Company	Kanawha County, West Virginia	Residential	150
Mountain Gas Company	Lincoln County, West Virginia	Residential	150
Mountain Gas Company	Mercer County, West Virginia	Residential	150
Mountain Gas Company	Cabell County, West Virginia	Residential	150
Mountain Gas Company	Lincoln County, West Virginia	Residential	150
West Ohio Gas Company	Putnam County, Ohio	Residential	110

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20352 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–15–000]

Equitrans, Inc.; Technical Conference

August 18, 1993.

Take notice that a technical conference will be convened in Docket No. RS92–15–000 on Tuesday, September 21, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of addressing technical questions raised by the storage cycling provisions of Equitrans' tariff.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy Carr at (202) 208–1240.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20365 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–266–002]

Boston Edison Co.; Filing

August 18, 1993.

Take notice that on August 2, 1993, Boston Edison Company tendered for

filing corrections to its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20354 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–943–000]

Iowa Southern Utilities Co.; Filing

August 18, 1993.

Take notice that Iowa Southern Utilities Company (ISU) on August 9, 1993, tendered for filing, as a change in rate schedule, an Interconnection and Transmission Agreement whereby ISU will provide transmission services to Northeast Missouri Power Cooperative (NEMO), in order to deliver power and energy to certain NEMO substations located on ISU's transmission system. ISU proposes an effective date of October 1, 1993.

A copy of the filing was served upon the Iowa State Utilities Board and Northeast Missouri Power Cooperative.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20358 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

The Board of Public Works of the City of Lewes, DE v. Delmarva Power and Light Co.; Notice of Filing

[Docket No. EL93–47–000]

August 18, 1993.

Take notice that on August 13, 1993 the Board of Public Works of the City of Lewes, Delaware tendered for filing an amendment to its original complaint filed in this docket on June 11, 1993 against Delmarva Power & Light Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20353 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–224–007, RP91–224–008, RP92–1–012, and RP92–1–000 (Processing Rights)]

Northern Natural Gas Co.; Notice Postponing Technical Conference

August 18, 1993.

Take notice that the technical conference previously scheduled for 1 p.m. on Thursday, August 19, 1993, has been postponed until 1 p.m. on Thursday, August 26, 1993, so that the parties may further negotiate a possible settlement in this proceeding. The technical conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street N.E., Washington, DC. A settlement proposal is anticipated to be filed shortly as a result of the technical conference. An expedited comment period is expected to be established at the technical conference.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20364 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–41–000]

Paiute Pipeline Co.; Change in Annual Charge Adjustment

August 18, 1993.

Take notice that on August 11, 1993, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheet:

Fourth Revised Sheet No. 10

Paiute states that the purpose of said filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1993 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective on October 1, 1993.

Paiute states that copies of this filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20366 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–68–017]

Penn-York Energy Corporation; Notice of Compliance Filing

August 17, 1993.

Take notice that on August 6, 1993, Penn-York Energy Corporation (Penn-York), in compliance with the Commission's order issued July 8, 1993, submitted tariff sheets concerning Penn-

York's underground storage service, including procedures for intra-day nominations.

Penn-York states that the tariff sheets reflect a revision to the SRC Rates as provided for in Article I, Section 3 of the settlement. Penn-York states that First Revised Sheet No. 56 reflects the rates contained in the restructuring filing of National Fuel Gas Supply Corporation.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20350 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–830–000]

Pennsylvania Power & Light Co.; Filing

August 18, 1993.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 29, 1993, tendered for filing a Supplement, dated July 1, 1993, (First Supplemental Agreement), to the Electrical Output Sales Agreement, dated June 26, 1992, between PP&L and the New York Power Authority (NYPA), which is on file with the Commission as PP&L's Rate Schedule FERC No. 111. The First Supplemental Agreement provides only for an extension of the term of the Electrical Output Sales Agreement between PP&L and NYPA which was accepted for filing by the Commission on August 21, 1992, in Docket No. ER92–687–000.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations to the extent necessary so that the proposed rate schedule can be made effective as of July 1, 1993.

PP&L states that a copy of its filing was served on the New York Power Authority, the Pennsylvania Public Utility Commission, and the New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20357 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–60–000]

Sacramento Municipal Utility District v. Pacific Gas & Electric Co.; Filing

August 18, 1993.

Take notice that on August 6, 1993, Sacramento Municipal Utility District (SMUD) tendered for filing a complaint and request for summary reduction of rates for transmission service provided by Pacific Gas & Electric Company (PG&E) pursuant to the terms of rate schedules on file with the Federal Energy Regulatory Commission or, in the alternative, for an investigation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint are due on or before September 7, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20355 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

Stingray Pipeline Co.; Notice of Informal Settlement Conference

August 18, 1993

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, August 24, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins (202) 208–0248 or Edith A. Gilmore (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20363 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–850–000]

Western Resources, Inc.; Notice of Filing

August 18, 1993.

Take notice that on August 6, 1993, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 246. WRI states the purpose of the change is to extend their term of the existing Electric Power Supply Contract between WRI and the City of Alma, Kansas. The change is proposed to become effective October 8, 1993.

Copies of the filing were served upon the City of Alma and the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20359 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13995T New Mexico–49]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 18, 1993.

Take notice that on August 16, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the Largo Gallup and Basin Dakota Fields in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 2,560 acres, more or less, all of which are administered by the Bureau of Land Management. The recommended area is described as all of Sections 3, 4, 9 and 10 of Township 27 North, Range 7 West.

The notice of determination also contains BLM's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR Sections 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20360 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13916T Texas–148]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 18, 1993.

Take notice that on August 13, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Marble Falls Formation, underlying a portion of Parker County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 7B and consists of the D. Gonzalus Survey (A–498).

The notice of determination also contains Texas' findings that the referenced portion of the Marble Falls Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR Sections 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20362 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13793T Texas–147]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 18, 1993.

Take notice that on August 9, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Strawn Formation, underlying a portion of Parker and Hood Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 7B and consists of approximately 23,163 acres as described on the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Strawn Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR Sections 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The following surveys are in Parker County, Texas.

L. de Zavalla, A–1698
H. Jones, A–760
S. Cockrell, A–219
W.C. Cooper, A–224
G. Allen, A–17
B.D. Austin, A–19
G. Orr, A–1025
S. Hamberton, A–631
W. McGaffey, A–915
N. Fields, A–454
D. Gonzalus, A–498
J. Shelton, A–1227
H.C. Weber, A–1595

The following surveys are in Hood County, Texas.

L. de Zavalla, A–613
S. Cockrell, A–87
D. Gonazalas, A–192
J. Shelton, A–536
W.H. Eggleston, A–172
L. Jordan, A–298
A.M.F. Ernest, A–713
I. Hawkins, A–259
D. Jennings, A–299
K. Walden, A–746
N. Hooe, A–271
N. Hooe, A–273
P. Quinn, A–702
J.D. Jameson, A–294
J.D. Brown, A–25
P.M. Hitchcock, A–260
H. Blood, A–65
W. Love, A–318
G. Grazley, A–195

[FR Doc. 93–20361 Filed 8–23–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4697–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this notice announces EPA's intent to survey various industries for the purpose of conducting industry studies under information collection request (ICR) number 818 approved by the Office of Management and Budget under OMB #2050–0042. Comments are solicited on this notice as

stated below. The Agency recently updated this ICR to more accurately reflect the information requirements of upcoming surveys.

FOR FURTHER INFORMATION CONTACT: Wanda Levine at EPA, (202) 260–7458.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste

Title: RCRA Section 3007 Questionnaire.

Abstract: EPA's Office of Solid Waste (OSW) is planning to conduct surveys of various industries during the rest of this fiscal year through FY 1994, primarily for the purpose of conducting various industries studies to develop hazardous waste listing determinations as part of a rulemaking under sections 3001 and 3004 of the Resource Conservation and Recovery Act (RCRA).

These surveys will collect data on the following:

- Plant identification—name, location, mailing address, EPA hazardous waste identification number, and facility representative.
- Feedstock information—chemical and physical identification of feedstocks and raw materials.
- Product information—identify all manufactured products and annual production volumes.
- Process information—identify unit operations, products, intermediates, co-products and by-products, relevant operating conditions.
- Residuals characterization—identify point of generation in the process/unit operation, annual generation volume, compounds known to be present in the residual, typical concentrations of compounds found in the residual.
- Residual management—identify on-site and/or off-site management methods for residuals generated by the process.
- Risk analysis—identify the level of risk posed by wastes to human health and/or the environment that would be associated with various management scenarios.
- Source reduction and recycling—provide information on current source reduction and recycling efforts and future plans, and barriers to source reduction and recycling.

The EPA Office of Solid Waste has compiled a list of industries to be surveyed in the future. This list is based on Congressional mandates and court orders. The information collected will be used primarily to determine if wastes from the specific industries should be listed as hazardous. In addition, this information will be used to support other RCRA activities, including developing engineering analyses, background documents, and economic impact analyses in support of new listings; providing baseline data for regulatory impact analyses; and developing treatment standards under the land disposal restrictions regulations.

Depending on the size and scope of the industry, the information collection will consist of either a census or a representative sample of all the facilities that are included in the specific industries.

Burden Statement: The average burden imposed by the survey is approximately 27.3 hours per respondent. This figure includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The industries to be surveyed through the end of FY94 (September, 1994) are:

Solvents

Petroleum Refining

Chlorinated Aliphatics

Dyes and Pigments

Smelting Waste

The following burden estimates are for surveys of the above industries and for surveys of the Pulp and Paper, Paint Production, and Inorganics industries, which most likely will begin at a later date.

Respondents: Facilities in industries identified by the EPA Office of Solid Waste.

Estimated No. of Respondents: 1,947.

Number of Responses per Respondent: 1.17.

Estimated Total Annual Burden on Respondents: 17,737.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460, and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Michael Flynn,

Acting Director, Characterization and Assessment Division.

[FR Doc. 93–20383 Filed 8–23–93; 8:45 am]

BILLING CODE 6560–60–P

[FRL–4697–3]

CWA 304(l): Availability of List Submissions and Proposed Approval Decisions

AGENCY: U.S Environmental Protection Agency, Region VII.

ACTION: Notice of availability.

SUMMARY: The notice announces the availability of lists submitted to EPA pursuant to CWA section 304(l) as well as EPA's proposed approval decisions, and requests public comment.

DATES: Comments must be submitted to EPA on or before September 23, 1993.

ADDRESSES: Copies of these items can be obtained by writing or calling Jerome Pitt; U.S. EPA Region VII; Water Management Division; 726 Minnesota Ave.; Kansas City, Kansas, 66101; Phone: (913) 551–7766; FAX: (913) 551–7765. Comments on these items should be sent to Jerome Pitt; U.S. EPA Region VII; Water Management Division; 726 Minnesota Avenue; Kansas City, Kansas, 66101.

FOR FURTHER INFORMATION CONTACT: Jerome Pitt; U.S. EPA Region VII; Water Management Division; 726 Minnesota Avenue; Kansas City, Kansas, 66101; Phone: (913) 551–7766; FAX: (913) 551–7765.

SUPPLEMENTARY INFORMATION: Section 304(l) of the Clean Water Act (CWA) required each state, within two years after February 4, 1987, to submit to the U.S. Environmental Protection Agency (EPA) three lists of waters, including a list (the "B List" or "Short List") of those waters that the state does not expect to achieve applicable water quality standards, after application of technology-based controls, due to discharges of toxic pollutants from point sources. Section 304(l)(1)(B), 33 U.S.C. 1314(l)(1)(B). The second or "Mini", list consists of waters that are not meeting the new water quality standards developed under section 302(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources.

Section 304(l)(1)(A)(i), 33 U.S.C. 1314(l)(1)(A)(i). The third or "Long", list includes all waters on the other two lists, plus any waters which after the implementation of technology-based controls, are not expected to meet the water quality goals of the Act. Section 304(l)(1)(A)(ii), 33 U.S.C. 1314(l)(1)(A)(ii).

For each water segment identified in these lists, the state was required by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing such water quality. Section 304(l)(1)(C), 33 U.S.C.

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1314(l)(1)(C); see *Natural Resources Defense Council* v. *EPA*, 915 F.2d 1313, 1323–24 (9th Cir. 1990); 57 FR 33040, 33050, (July 24, 1992) (amending EPA's section 304(l) regulations to require point sources to be identified for each listed water segment). For each point source identified on the state's "C List" as discharging toxic pollutants into a water segment on the state's "B List", the state was further required to submit to EPA an individual control strategy (ICS) that the state determined would serve to reduce point source discharges of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within three years after the date of the establishment of the ICS. 33 U.S.C. 1314(l)(1)(D).

EPA initially interpreted the statute to require states to identify on the "C List" only those facilities that discharge toxic pollutants believed to be impairing waters listed in the "B List." In *Natural Resource Defense Council* v. *EPA*, the Ninth Circuit Court of Appeals remanded that the portion of the regulation and directed EPA to amend the regulation to require the states to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharged by each source. EPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992).

Consistent with EPA's amended regulation, Iowa, Kansas, Missouri and Nebraska have submitted to EPA for approval their listing decisions under section 304(l)(1)(C). EPA today proposes to approve these lists hereby and solicits public comment on both the approval decision and on the state lists.

Dated: August 13, 1993.

Ronald B. Ritter,

Director, Water Management Division, U.S. EPA Region VII.

[FR Doc. 93–20380 Filed 8–23–93; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street , NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–070.

Title: Atlantic & Gulf/West Coast of South America Conference.

Parties: Compania Sud Americana de Vapores, S.A., Flota Mercante Grancolombia, S.A., Lineas Navieras Bolivianas, S.A.M., Lykes Bros. Steamship Co., Inc., Compania Chilena de Navigacion Interoceania, S.A., Nedlloyd Lijnen, B.V., E.N.S. Container Line Ltd.

Synopsis: The proposed amendment; (1) expands the scope of the Agreement to include Puerto Rico and the U.S. Virgin Islands, Ecuador, the Pacific Coast of Colombia, in-transit cargo to and from Argentina via ports in Chile, points in Ecuador and Colombia, and in-transit cargo from Bolivia; (2) authorizes the parties to charter space to and from each other, jointly establish sailing schedules, limit sailings, and jointly advertise each others vessels; (3) provides for ratemaking sections in the United States; (4) restricts voting by parties to countries where they provide a service; (5) restricts voting by breakbulk operators to matters relating to breakbulk service; (6) changes the Agreement's name from Atlantic and Gulf/West Coast of South America Conference to the West Coast of South America Agreement; (7) adds A.P. Moller-Maersk Line, Crowley American Transport, Inc., Gulf Pac Express Service, Empremar/MSC Joint Service Interoceania, S.A., Naviera del Pacifico, C.A., as parties to the Agreement; (8) changes the independent action ("I/A") period from one business day to five and requires that I/A be taken by a named Principal of each party; (9) establishes general rules regarding service contracts and other administrative changes; and (10) restates the Agreement.

Agreement No.: 203–011426.

Title: West Coast of South America Discussion Agreement.

Parties: West Coast of South America Agreement Naviera Consolidada S.A. Transportes Navieros Ecuatorianos Seaboard Marine Ltd.

Synopsis: The proposed Agreement would authorize the parties to discuss and exchange information on rates, charges, service items and other matters related to the transportation of cargo in the trade from ports and points on the Atlantic and Gulf Coasts of the United States to ports and points in Ecuador, Colombia, Peru and Chile. Adherence to any such agreement reached is voluntarily.

By Order of the Federal Maritime Commission.

Dated: August 18, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–20349 Filed 8–23–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R–0693]

Proposed Modification of the Payments System Risk Policy; Bankers' Banks, Edge Corporations, and Limited-Purpose Trust Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is seeking comment on the rate at which Federal Reserve Banks will assess a penalty fee on the average daily daylight overdrafts of bankers' banks that do not maintain reserves, Edge and agreement corporations, and limited-purpose trust companies. The Board proposes to assess the daylight overdraft penalty fee at a rate equal to the federal funds rate plus the overnight overdraft penalty rate, quoted on a 24-hour basis, for a 360-day year, and adjusted for the length of the Fedwire operating day. The penalty fee should create an incentive for institutions that do not have regular discount window access to avoid incurring daylight overdrafts in Federal Reserve accounts.

DATES: Comments must be submitted on or before September 24, 1993.

ADDRESSES: Comments, which should refer to Docket No. R–0693, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452–3625) or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division; Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: In May 1990, the Board requested comment on modifications to its payments system risk policy that would assess penalty fees for daylight overdrafts in Federal Reserve accounts incurred by institutions that do not have regular discount window access. These institutions include Edge and agreement corporations [1] and bankers' banks [2] that do not maintain reserves, such as corporate credit unions. The purposes of the proposed modifications were twofold: First, the proposal would provide an incentive for institutions without discount window access to refrain from incurring daylight overdrafts. This would help Federal Reserve Banks to avoid situations where they may face the possibility of extending overnight credit when such an institution is unable to cover a daylight overdraft by the end of the business day. Second, for bankers' banks that do not maintain reserves, the proposal would reflect the *quid pro quo* for discount window access established in the Monetary Control Act of 1980.

Background

Under the Board's current daylight overdraft policy, most depository institutions may incur daylight overdrafts in their accounts at Reserve Banks up to a maximum, or cap, that is a multiple of their risk-based capital. If a depository institution incurs frequent and material daylight overdrafts in excess of its cap due to book-entry securities transactions over Fedwire, the institution must collateralize its entire book-entry-related overdraft on an ongoing basis. Effective April 14, 1994, the Reserve Banks will assess a fee on average daily daylight overdrafts.

If an institution fails to cover a daylight overdraft by the close of the business day, it may either obtain a discount window loan (if it has access to the discount window) or carry the overdraft overnight. If an institution incurs an overnight overdraft, the Reserve Bank charges a penalty fee (the higher of 10 percent or the federal funds rate plus 2 percent (annual rate)),[3] and the institution must make up for any reserve or clearing account deficiency by subsequently holding additional overnight balances equal to the overdraft.

The Federal Reserve Act exempts bankers' banks from reserve requirements,[4] and Regulation A explicitly excludes bankers' banks from regular discount window access.[5] Nevertheless, the Board has permitted bankers' banks to have access to the discount window if they choose to maintain reserves voluntarily. Bankers' banks that choose to maintain reserves voluntarily may establish a cap and incur daylight overdrafts under the payments system risk policy to the same extent as depository institutions. Generally, bankers' banks for commercial banks have chosen to become member banks and to maintain reserves. They have made this choice because section 19(e) of the Federal Reserve Act provides that a member bank may deposit only 10 percent of paid-up capital and surplus in an institution other than a depository institution eligible for discount window advances. Most corporate credit unions have chosen not to maintain reserves and thus do not have the option of covering an overdraft with a discount window loan.

The Federal Reserve has long been concerned that bankers' banks that do not maintain reserves and are unable to borrow at the discount window may nevertheless incur overnight overdrafts. To address the risks arising from such overdrafts and to avoid the extension of overnight credit to institutions with no discount window access, current policy provides that these bankers' banks should refrain from incurring daylight overdrafts. If such institutions do incur daylight overdrafts, however, they are required to collateralize the overdrafts.

Edge corporations are subject to reserve requirements, but do not have access to the discount window on the same basis as depository institutions. Instead, Edge corporations generally are funded by their parent depository institutions, which have discount window access. Current policy permits Edge corporations to establish a cap and to incur overdrafts within that cap, provided that they post collateral for the overdrafts. Edge corporations also may incur book-entry securities overdrafts above their cap, provided the overdrafts are collateralized.

Board's 1990 Proposal

Under the 1990 proposal, bankers' banks that did not maintain reserves and Edge corporations would have been expected to pre-fund their funds and book-entry securities activity. The proposal would have treated the use of intraday credit in the form of daylight overdrafts much like the use of overnight credit in the form of overnight overdrafts. Under the proposal, Reserve Banks, absent unusual circumstances, would have charged bankers' banks that do not maintain reserves and Edge corporations an amount equal to the overnight overdraft penalty fee, levied against the maximum daylight overdraft for the day. If the daylight overdraft were not fully repaid by the end of the day, the institution would have continued to be subject to the overnight penalty fee and the requirement to hold excess reserve or clearing account balances on a subsequent night.

Policy Adopted by Board

The Board has adopted a modified version of the proposed policy, but has determined to seek further comment on the rate at which the daylight overdraft penalty fee will be assessed. The policy adopted by the Board provides that the daylight overdraft penalty fee will be levied on the daily average, rather than maximum, daylight overdraft of institutions that do not have regular discount window access. The daylight overdraft penalty fee will apply to limited-purpose trust companies as well as bankers' banks that do not maintain reserves and Edge corporations. The Board will continue to require that, in the event a bankers' bank or Edge corporation incurs a daylight overdraft, the overdraft should be collateralized.[6]

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[1] Edge corporations are organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631). Agreement corporations have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a). For the purposes of this docket, the term "Edge corporation" includes both Edge and agreement corporations.

[2] A bankers' bank is a financial institution that is not required to maintain reserves under the Board's Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public. A bankers' bank is not a depository institution as defined in the Board's Regulation A (12 CFR 201.2(a)).

[3] The overnight overdraft penalty fee is assessed on the negative overnight balance as a penalty for poor reserve management and is not related to the length of time the overdraft exists. The "regular" daylight overdraft fee, effective in April 1994, incorporates a factor to account for the length of the Fedwire operating day.

[4] 12 U.S.C. 461(b)(9).

[5] 12 C.F.R. 201.2(a)(2).

[6] As these institutions may not normally maintain collateral pledged to the Federal Reserve on an ongoing basis, if a bankers' bank or Edge corporation incurs a daylight overdraft the Reserve Bank generally requests a pledge of collateral (that would be eligible collateral for a discount window loan) for an appropriate period.

As proposed in 1990, the overnight penalty rate and excess balance requirements will continue to apply to overnight overdrafts incurred by these institutions. Reserve Banks will have the ability to waive the daylight and overnight charges, as well as the holding of excess balances if, for example, the overdraft resulted from a Reserve Bank error.

Average Daily Overdraft

Some commenters to the 1990 proposal noted that the fee should apply to the average rather than the peak daily overdraft to provide an incentive for institutions to cover the overdraft as quickly as possible. Also, use of an average overdraft is consistent with the "regular" pricing scheme for depository institutions' daylight overdrafts, effective in April 1994. The Board believes it would be appropriate to apply the penalty fee to the average daily daylight overdraft rather than the peak daily overdraft. Although the peak overdraft represents the maximum exposure to the Federal Reserve during the day, an institution would have little incentive to reduce its overdraft significantly during the day once it reaches its peak, thereby potentially exposing the Federal Reserve to a greater degree of risk due to prolonged large overdrafts. The Reserve Banks will calculate the average daily daylight overdraft used to compute penalty fees in the same manner as the average overdraft used to compute "regular" daylight overdraft fees (except that the penalty fee will not incorporate a deductible, as does the "regular" fee). The average daylight overdraft will equal the sum of the negative Federal Reserve balances at the end of each minute of the scheduled Fedwire operating day (with credit balances set to zero) divided by the total number of minutes in the scheduled Fedwire operating day.

Limited-Purpose Trust Companies and Other Zero-Cap Institutions

The Board requested comment in 1990 on whether the proposed policy should apply to depository institutions that have been assigned an overdraft cap of zero by the Federal Reserve, including certain trust companies. The Board received no comments on the proposal as it would apply to these institutions. Institutions with zero caps imposed by the Federal Reserve generally fall into two categories: limited-purpose trust companies and "problem" institutions. The Federal Reserve Act permits the Board to grant Federal Reserve membership to limited-purpose trust companies subject to conditions the Board may prescribe pursuant to the Act. As a general matter, member limited-purpose trust companies do not accept reservable deposits and do not have regular discount window access. The Board believes that limited-purpose trust companies with daylight overdraft caps of zero should be subject to the same daylight overdraft penalty fees as bankers' banks that do not maintain reserves and Edge corporations. Such a policy would ensure consistent treatment for daylight overdrafts incurred by institutions that do not have regular discount window access.

The Federal Reserve occasionally imposes a daylight overdraft cap of zero on "problem" institutions. For example, a depository institution may have a zero cap imposed by a Reserve Bank because the Reserve Bank believes the institution presents excessive risk or because the institution has not complied with the payments system risk policy. Under the Board's policy, depository institutions with imposed zero caps that have access to the discount window are able to incur book-entry securities-related overdrafts if collateral is posted, but they generally may not incur overdrafts caused by other activity. These institutions will not be subject to the penalty fee that would be applicable to institutions with no discount window access. The Board believes these "problem" institutions are best handled on an individual basis through collateralization and real-time monitoring when the Reserve Bank deems necessary.

Request for Comment—Penalty Rate Calculation

The Board requests comment on a revised rate for the daylight overdraft penalty fee. The revised rate proposed by the Board would make the treatment of daylight overdrafts incurred by institutions without regular discount window access more comparable to the treatment of overnight overdrafts. As noted above, for overnight overdrafts, all institutions are charged a penalty fee and are required to make up their overnight reserve or clearing account deficiencies on a subsequent night. Thus, the full penalty assessed for overnight overdrafts is the overnight penalty fee plus the lost interest on the excess funds that must be held the following night. If an institution without discount window access incurs a daylight overdraft, the Board's policy does not require the institution to hold "excess" daylight balances on the following day. Therefore, to equalize the treatment of overnight and daylight overdrafts by these institutions, the Board proposes that their daylight overdrafts be subject to a penalty fee at a rate equal to the overnight penalty rate plus the federal funds rate (e.g., given a 10 percent overnight penalty rate and a 3 percent federal funds rate, the daylight penalty rate would be 13 percent).[7]

The Board also proposes to adjust the manner in which the penalty fee is calculated to make it similar to the calculation of the "regular" daylight overdraft fee. The "regular" daylight overdraft fee is quoted on a 24-hour basis, for a 360-day year, and adjusted for the length of the Fedwire operating day. This adjustment maintains a constant per-minute charge in the event that Fedwire hours change. The proposed daylight penalty rate would be quoted on a similar basis. To calculate the daylight penalty rate, the "full" overnight rate (overnight rate plus federal funds rate) would be converted to a 24-hour rate, then adjusted to take account of the Fedwire operating day. This conversion would be accomplished by (1) dividing the "full" overnight rate by 14, the number of hours in a hypothetical "night," and multiplying by 24 to obtain the 24-hour rate, then (2) multiplying the 24-hour rate by the fraction of the day Fedwire is scheduled to operate (10/24 given the current 10-hour Fedwire day). Assuming an overnight overdraft rate of 10 percent, a federal funds rate of 3 percent, and thus an "full" overnight penalty rate of 13 percent (penalty plus lost interest), the annual 24-hour daylight penalty rate would be 22.3 percent (13 percent x (24/14)). The corresponding annual daylight penalty rate for a 10-hour Fedwire operating day would be 9.3 percent (22.3 percent x (10/24)), and the daily rate would be 2.6 basis points (9.3 percent / 360 days).

The Board anticipates that the cost to affected institutions, particularly those that incur occasional large book-entry securities-related overdrafts, would be significantly lower under the proposed revised rate as opposed to the cost under the Board's 1990 proposal. However, the Board seeks a penalty rate at a level high enough to provide a substantial incentive for institutions with no regular discount window access to avoid daylight overdrafts.

[7] As an intraday funds market has not yet developed, the Board believes that the federal funds rate, rather than the "regular" annual daylight overdraft price of 60 basis points, more accurately reflects the cost of the funds that an institution would have to hold during the day to make up for the previous day's daylight overdrafts.

Summary of Comments on 1990 Proposal

The Board received 29 comments on its 1990 proposal, categorized as follows:

Corporate credit unions	11
Bankers' banks (commercial banks)[8]	7
Trade associations	4
Commercial banks	3
Credit unions	2
Bank holding companies	2
Total	29

[8] This category refers to bankers' banks that maintain reserves and thus have access to the discount window.

Scope

Twenty-three respondents commented on the scope of the proposal's coverage. One trade association and seven bankers' banks asked the Board to clarify that the penalty fee does not apply to bankers' banks that are members of the Federal Reserve System, maintain reserve accounts at their respective Reserve Banks, have access to the discount window, and have established caps under the payments system risk policy. As stated above, the penalty fee does not apply to bankers' banks that maintain reserves. These bankers' banks are treated in the same manner as commercial banks under the payments system risk policy.

Corporate Credit Union Comments

Thirteen commenters, including nine corporate credit unions and one trade association (collectively, "the CCU commenters") strongly objected to the proposal, which they claimed would unnecessarily undermine the corporate credit unions' ability to provide payments services to credit unions nationwide. Their primary objections were:

1. Discount Window Access for Corporate Credit Unions

The CCU commenters argued that the Board should not base its policy on the fact that corporate credit unions do not have regular discount window access because the Federal Reserve Act specifically grants access to individuals, partnerships, and corporations on the collateral of government securities. They stated that the health of the corporate credit union network has obviated the need for the corporate credit unions to seek credit from the Federal Reserve and that the corporate credit unions have access to the National Credit Union Administration's central liquidity facility in the event they need emergency funding.

The Monetary Control Act ("MCA") subjected all depository institutions to reserve requirements and provided that nonmember depository institutions shall have the same discount window borrowing privileges as members,[9] but the Act specifically exempted bankers' banks from these requirements and privileges.[10] Nevertheless, the Board has permitted bankers' banks to have access to the discount window if they choose to maintain reserves. The Board's policy is consistent with Congress' purpose in the MCA to allow all depository institutions access to the discount window and other System services as a *quid pro quo* for maintaining reserves.

The Board, in its Regulation A, explicitly excluded bankers' banks and member banks that do not have reservable deposits, such as certain trust companies, from the defined group of depository institutions that have regular discount window access.[11] This exclusion was based on the premise that the discount window is meant to be a benefit for those institutions that bear the burden of maintaining reserves and an aid to the implementation of monetary policy.

The Federal Reserve Act provides that the Reserve Banks may make emergency discount window loans to individuals, partnerships, and corporations in certain circumstances or may make advances secured by U.S. government obligations to these entities subject to any limitations the Board may prescribe. The Board's Regulation A authorizes the Reserve Banks to make emergency discount window loans to individuals, partnerships, and corporations only in unusual and exigent circumstances if, in the judgment of the Reserve Bank, credit is not available from other sources and failure to provide credit would adversely affect the economy. These emergency loans require consultation with the Board, and if the loan is to be secured by collateral other than securities backed by the United States or its agencies, an affirmative vote of five Board members. Thus, although it may be possible for bankers' banks to obtain discount window access under the emergency provisions of Regulation A, such loans are seldom made and, by regulation and in some cases by statute, require Board attention.

2. Pyramiding of Reserves

The CCU commenters argued that reserve maintenance by corporate credit unions would result in reserve "pyramiding" because their member credit unions are already subject to reserve requirements under the Board's Regulation D. However, there would be no "pyramiding" or double-counting of reserves if corporate credit unions maintained reserves. Credit unions, when calculating their reservable liabilities, can take a "due from" deduction for deposits subject to immediate withdrawal held at corporate credit unions. For example, if a credit union deposits $1 million in a demand account at a corporate credit union, the corporate credit union would maintain reserves on that amount and the credit union would deduct $1 million from the amount on which it must maintain reserves.

3. Equal Access to Services

The CCU commenters asserted that the Board's proposal to treat corporate credit unions differently from other institutions violates the MCA principle that the Federal Reserve should provide depository institutions equal access to Federal Reserve services. There is no indication in the MCA, however, that Congress intended the allowance of overdrafts to be a Federal Reserve service. On the contrary, the MCA specifically provides that "nonmembers shall be subject to any * * * terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks." The purpose of such balances would be to avoid overdrafts. (The maintenance of clearing balances does not give rise to discount window access under Regulation A.)

4. Competitive Inequities

Twenty respondents commented on the negative effects that an absolute prohibition of daylight overdrafts would have on bankers' banks and Edge corporations. Twelve commenters, mainly corporate credit unions, stated that a prohibition of overdrafts would place them at a competitive disadvantage vis-a-vis other market participants. The corporate credit unions were particularly concerned that the proposal would force credit unions to do business with commercial banks, their direct competitors, if they wished to continue to offer book-entry securities services to their customers.

The commenters may be correct in their assessment that penalty fees on daylight overdrafts will affect their competitive position vis-a-vis depository institutions. For example, daylight overdraft data for U.S. Central Credit Union show frequent daylight overdrafts in the early morning hours. The possibility of early-morning overdrafts might be increased by the new posting procedures that go into effect in October 1993. U.S. Central

[9] 12 U.S.C. 461 (b)(2) and (b)(7).
[10] 12 U.S.C. 461(b)(9).
[11] See 12 CFR 201.2(a)(2).

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funds itself largely through ACH debit transactions. Under the new procedures, the funds from the ACH debit transactions will be posted at 11 a.m., as opposed to the current posting of net-positive ACH debit transactions at the opening of business. Under the Board's policy, U.S. Central will pay a penalty fee on its daylight overdrafts.

However, corporate credit unions currently have a significant advantage over competing depository institutions because they do not have to maintain reserves. The Board believes that the disadvantages of the proposal to corporate credit unions would be offset by the advantages they currently enjoy.

Eight commenters asserted that, given the infrequency and small size of bankers' bank overdrafts, the relatively low degree of risk does not justify the burden of a flat overdraft prohibition for these institutions. One commenter claimed that risk to the Federal Reserve would be increased if corporate credit unions were obligated to open Federal Reserve accounts in order to incur overdrafts. Two commenters noted that credit union customers would experience a decreased service level and worse funds availability under the proposal.

As noted above, the new policy does more than address risk. The penalty fee helps ensure that institutions that do not have regular discount window access will not receive extensions of Federal Reserve credit in the form of daylight or overnight overdrafts.

Edge Corporations

Given the sender-controlled nature of the book-entry securities system, five Edge corporation affiliates and a trade association favored a continuation of the present policy of allowing Edge corporations to establish a cap and incur collateralized book-entry securities overdrafts. The commenters argued that Edge corporation intraday overdrafts that are limited by a cap and backed by sound collateral are relatively risk-free. Another commenter requested that Edge corporations be allowed to pledge the securities in transit as collateral for a book-entry securities overdraft. One corporate credit union suggested that the present Edge corporation policy be extended to bankers' banks. One Edge affiliate commented specifically on the proposal as it applied to "problem" institutions with imposed zero caps. The commenter stated that the proposal may be appropriate for these zero-cap institutions, but drew a distinction between these entities and an Edge corporation with a financially sound parent that incurs daylight overdrafts for a short period of time.

The Board agrees that many imposed-zero-cap institutions, especially those that have been assigned a zero cap due to their financial problems, pose more of a risk than Edge corporations with financially sound parents. Such Edge corporations, however, could arrange to obtain funding intraday from their parents or channel all their payments activity through their parents, thus avoiding daylight overdrafts themselves. Should an Edge corporation incur a daylight overdraft, there is a possibility that its parent could be unable or unwilling to cover the Edge corporation's overdraft at the end of the day.

In addition, collateral and pricing serve two related but separate purposes. Although collateral limits Reserve Bank risk, its purpose is to make discount window loans to book-entry securities overdrafters feasible during periods of operational difficulty. The daylight overdraft penalty fee is designed to create economic incentives to eliminate the use of daylight credit by institutions without regular discount window access. The Board believes that their lack of access to the discount window suggests that Edge corporations should be subject to the same policy as bankers' banks that do not maintain reserves.

Overdraft Measurement Procedures

Seven commenters argued that the proposal was particularly unfair in light of the overdraft measurement procedures originally proposed by the Board under which ACH and other non-wire payments would be posted at the end of the business day (54 FR 26094, June 21, 1989). The commenters stated that the late posting combined with the daylight overdraft penalty fee would eliminate many overnight investment opportunities for corporate credit unions, while banks could continue to make investments by incurring daylight overdrafts. One corporate credit union supported the Board's proposal as long as non-wire transaction posting is not moved to the end of the day.

The Board adopted posting procedures for measuring daylight overdrafts (see 57 FR 47093, October 14, 1992) that provide for posting ACH credit transactions at the opening of business, ACH debit transactions at 11 a.m. Eastern Time, and check transactions throughout the day. The Board believes that this intraday posting alleviates many of the concerns regarding investment opportunities raised by the commenters.

Penalty Fee

Eight commenters specifically opposed the proposed penalty fee. The commenters generally believed the proposed fee to be excessive and onerous, particularly given the uncontrollable nature of book-entry securities overdrafts. The commenters questioned whether the penalty fee would deter daylight overdrafts. Three commenters suggested that the fee be brought in line with the 60 basis point annual fee proposed by the Board for daylight overdrafts by other institutions. Two commenters suggested that the penalty fee be applied to the average overdraft rather than the maximum overdraft to provide an incentive for institutions to cover the overdraft as soon as possible. Two commenters suggested the fee be tailored to overdraft size and frequency. One Edge corporation affiliate suggested that the amount subject to the penalty fee be subject to a deductible of 10 percent of the capital of the Edge corporation's parent bank to offset overdrafts that occurred due to circumstances beyond the institution's control. Another commenter suggested that Reserve Banks allow a one hour grace period before assessing a penalty fee to allow a reasonable time for the institution to cover an inadvertent overdraft.

As discussed above, the Board is requesting comment on a modified proposal to assess a fee at the overnight overdraft penalty rate plus the federal funds rate, adjusted for the length of the Fedwire operating day, against the average daily daylight overdraft. Under the policy adopted by the Board and the proposed rate revision, the cost to overdrawing institutions will be substantially lower than under the 1990 proposal.

Alternatives

The Board received several comments offering alternative methods of addressing daylight overdrafts by bankers' banks and Edge corporations. Seven CCU commenters believed that the Board's requirement that an institution hold reserve or clearing balances at a Reserve Bank in order to have discount window access should not apply to corporate credit unions, as long as they maintain an "overdraft protection accounts" at U.S. Central Credit Union or at Reserve Banks that could be accessed by the Reserve Banks in the event of an overdraft. The CCU commenters proposed that each corporate credit union's account be funded in the amount of 10 percent of the corporate credit union's risk-based capital. The commenters argued that their suggested overdraft collateralization method is consistent with other aspects of the Board's payments system risk policy.

As discussed above, the exclusion of bankers' banks that do not maintain reserves from discount window access was based on the premise that discount window access is a *quid pro quo* for the burden of maintaining reserves and is an aid to the Federal Reserve in the implementation of monetary policy. A deposit of collateral by bankers' banks at the Federal Reserve or at U.S. Central, as suggested by the CCU commenters, would not meet the MCA or Regulation A requirements for regular discount window access and would be contrary to the Board's policy that bankers' banks must maintain reserves in order to have discount window access.

Six commenters suggested that, instead of charging a penalty fee, a more effective way to reduce risk would be to place bankers' banks and Edge corporations on the real-time monitor and to refuse unfunded transfers. Two commenters suggested that the book-entry system be redesigned so that deliveries could be rejected if they cause an overdraft. One commenter also suggested that a standard posting time be established for all book-entry security debits and credits.

At an institution's request, a Reserve Bank will monitor its account in real time and reject outgoing funds transfers that would cause an overdraft. However, automatic rejection or queuing of securities transfers and a standard securities posting time would require significant changes in the operations of the Federal Reserve's book-entry security system. The Federal Reserve is currently studying various long-term improvements to its book-entry system.

Competitive Impact Analysis

The Board assesses the competitive impact of changes that have a substantial effect on payments system participants.[12] Under this analysis, the Board determines whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services.

The CCU commenters stated that the new policy would put them at a competitive disadvantage vis-a-vis other payments system participants, particularly in book-entry security settlement and safekeeping services. The CCU commenters asserted that daylight overdraft penalty fees would drive corporate credit unions out of the securities services and would force credit unions to do business with other service providers. Such other service providers could be private institutions, such as commercial banks, or credit unions could choose to establish accounts directly with a Federal Reserve Bank.

The Board does not believe that its policy adversely affects the ability of corporate credit unions to compete with the Reserve Banks in providing payments services. The policy places controls on the use of the Federal Reserve Banks' funds and book-entry transfer services, which are consistent with controls used in private clearing and settlement systems. Corporate credit unions have the ability to establish caps and collateralize book-entry securities overdrafts if they voluntarily maintain reserves, as commercial banks are required to do. By voluntarily maintaining reserves, the corporate credit unions would avoid the penalty fees that, according to their comments, would cause their customer credit unions to go the Reserve Banks or elsewhere for payments services.

By order of the Board of Governors of the Federal Reserve System, August 18, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–20406 Filed 8–23–93; 8:45 am]

BILLING CODE 6210–01–P

[12] These assessment procedures are described in the Board's policy statement entitled "The Federal Reserve in the Payments System" (55 FR 11648, March 29, 1990).

[Docket No. R–0806]

Proposals To Modify the Payments System Risk Reduction Program; Self-Assessment Procedures, Caps for U.S. Branches and Agencies of Foreign Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on proposed modifications to its Policy Statement on Payments System Risk. The Board is proposing to modify in two ways the procedures that depository institutions must use if they choose to complete a self-assessment to establish a daylight overdraft net debit cap. First, effective for self-assessments performed on or after January 1, 1995, the Board is proposing that depository institutions evaluate their operating controls and contingency procedures in addition to the three existing components of the self-assessment (creditworthiness, intraday funds management and control, and customer credit policies and controls). Second, the Board is proposing that depository institutions use a simplified "Creditworthiness Matrix" to determine their creditworthiness rating, except in certain limited circumstances, effective January 1, 1994. In addition to these two changes to the self-assessment procedures, the Board is proposing to eliminate the requirement that U.S. branches and agencies of foreign banks provide information on U.S. funding capability and discount window eligible collateral for use in determining their daylight overdraft net debit caps, effective January 1, 1994. Overall, the proposals would decrease the burden of complying with the Board's policy, improve the consistency of net debit caps across institutions, and reduce risks by encouraging depository institutions to focus attention on operational risks in the provision of payment services.

DATES: Comments must be submitted on or before October 8, 1993.

ADDRESSES: Comments, which should refer to Docket No. R–0806, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Federal Reserve first issued a policy statement on risks in large-dollar wire transfer systems in 1985. This policy required that depository institutions incurring daylight overdrafts in their Federal Reserve accounts as a result of Fedwire funds transfers establish a maximum limit, or net debit cap, on overdrafts incurred in those accounts. To implement the original policy, a document entitled Users' Guide to the Policy Statement, was prepared and distributed to depository institutions in 1985.

The original policy has been expanded and enhanced since 1985. The Users' Guide was updated

accordingly and reissued in 1988. In 1992, the Board issued a comprehensive statement of its previously adopted policies regarding payments system risk. The Federal Reserve is currently in the process of updating the Users' Guide to incorporate changes in the policy since 1988, including the modifications approved by the Board in late 1992 regarding intraday posting of transactions and fees for daylight overdrafts. The updated Users' Guide would also include the amendments to the 1992 comprehensive policy statement that are proposed in this notice, if ultimately adopted by the Board. The Board expects to issue the Guide to the Federal Reserve's Payments System Risk Policy once public comments on this notice's proposals have been received and considered. (The Board is also proposing to update the introductory section to its policy statement to reflect the availability of the Overview, discussed below, as well as the Guide's new title.) Once issued, the Guide to the Federal Reserve's Payments System Risk Policy will supersede previously issued versions of the Users' Guide. A draft copy of the Guide to the Federal Reserve's Payments System Risk Policy is available from any Reserve Bank for review. The Federal Reserve has also prepared a new summary document, entitled Overview of the Federal Reserve's Payments System Risk Policy, which is intended to describe the requirements of the policy for institutions that incur minimal daylight overdrafts.

Self-Assessment Procedures

Under the Board's policy, an institution's net debit cap (for a single day and on average over a two-week period) is based on its cap category. The three cap categories that permit the highest use of intraday credit are the Average, Above Average, and High cap categories. An institution that wishes to establish a cap in one of these categories must complete a self-assessment of its creditworthiness, intraday funds management and control, and customer credit policies and controls.

The Board is proposing to add a fourth component, operating controls and contingency procedures, to the self-assessment procedures. This component is critical to a thorough self-assessment because institutions could incur significant financial losses as a result of fraud and because operational failures at payment system participants could disrupt financial markets.

As a result of the potential added burden placed on depository institutions, the Board anticipates that implementation of this requirement, if approved, will be delayed until January 1, 1995 in order to provide institutions sufficient time to adopt procedures for evaluating this component. The Board would welcome comments on whether it is appropriate to incorporate a component on operational controls and contingency procedures into the self-assessment procedures as well as any potential administrative burden of including this additional requirement.

The Board is also proposing a change in the procedures for completing the creditworthiness component of the self-assessment. These new procedures are described fully in the draft Guide to the Federal Reserve's Payments System Risk Policy, which is available from any Reserve Bank. Since the inception of the self-assessment process for establishing net debit caps, concerns have been raised regarding the administrative burden raised by the self-assessment procedures. In an attempt to reduce burden on institutions electing to complete a self-assessment, the Board has developed a matrix that combines an institution's supervisory rating and Prompt Corrective Action capital category into a creditworthiness rating.[1] This "Creditworthiness Matrix" is shown below.

Creditworthiness Matrix

Capital level	Supervisory composite rating		
	Strong	Satisfactory	Fair
Well Capitalized	Excellent	Very Good	Adequate
Adequately Capitalized	Very Good	Very Good	Adequate
Undercapitalized	Full Assessment	Full Assessment	Below Standard.

Note: Institutions with a capital level or supervisory rating not shown in the matrix would receive a creditworthiness rating of "below standard."

While institutions electing to complete a self-assessment would still be required to perform a full self-assessment in other areas, use of the Creditworthiness Matrix should result in a substantial reduction in the regulatory compliance burden for these institutions. In addition, the use of the Matrix achieves greater objectivity in rating creditworthiness, and the resulting creditworthiness ratings and overall net debit cap categories are likely to be more consistent across institutions than under current procedures.

The Board is proposing that, in nearly all circumstances, depository institutions completing a self-assessment use the Creditworthiness Matrix to determine their creditworthiness rating. In certain limited circumstances, however, an institution may be permitted to perform a full assessment of its creditworthiness. For example, an institution whose condition has changed significantly since its last examination, or that possesses additional material information regarding its financial condition, may reasonably be permitted to use these factors to support a higher creditworthiness rating that would be derived using the Creditworthiness Matrix alone. Additionally, U.S. branches and agencies of foreign banks from countries that do not adhere to the Basle Capital Accord would be required to perform a full assessment to determine their rating on the creditworthiness component. Procedures for conducting a full assessment of creditworthiness are provided in Appendix C of the draft Guide to the Federal Reserve's Payments System Risk Policy. If adopted, the Creditworthiness Matrix approach would be effective on January 1, 1994, although earlier implementation by institutions may be permitted.

The Board has determined that use of the Creditworthiness Matrix would, for certain institutions, result in a lower net debit cap. The Board, therefore, requests comment on whether mandatory usage

[1] For U.S. branches and agencies of foreign banks that are based in countries that adhere to the Basle Capital Accord, risk-based capital ratios calculated according to home-country rules would be compared to the Prompt Corrective Action capital categories, and the resulting capital level would be used in the Creditworthiness Matrix.

of the matrix approach would adversely affect the smooth functioning of the payments system.

Net Debit Caps for U.S. Branches and Agencies of Foreign Banks

The determination of net debit caps for foreign banks is based on essentially the same procedures as those for U.S.-based institutions. However, for foreign banks, the Federal Reserve also requires evidence of U.S. funding capability and discount window eligible collateral. Based on the evidence submitted, the Federal Reserve may adjust the dollar amount of an institution's net debit cap to a level below its cap multiple times its risk-based capital.

Experience with U.S. funding capability and potential collateral data has shown that a significant administrative burden is created to collect these data with sufficient precision and frequency. In addition, if the proposed Creditworthiness Matrix approach, also discussed in this notice, is adopted by the Board, net debit caps adopted by foreign banks will be based on more objective supervisory ratings and the additional data will be less relevant to determining appropriate net debit caps.

The Board requests comment on the current limitation on net debit caps for U.S. branches and agencies of foreign banks and the data collection effort it entails. The Board is proposing that, effective January 1, 1994, for purposes of determining net debit caps for U.S. branches and agencies of foreign banks, data on U.S. funding capability and discount window eligible collateral no longer be required, provided that the Creditworthiness Matrix proposal is also approved.

None of the proposed amendments would affect a Reserve Bank's ability to prohibit an institution from using intraday Federal Reserve credit, if the institution's use of such credit is deemed unsafe or unsound by its supervisor or if the institution poses an excessive risk to a Reserve Bank.

Federal Reserve System Policy Statement on Payments System Risk

The Board proposes to amend its "Federal Reserve System Policy Statement on Payments System Risk" under the heading "I. Federal Reserve Policy" by replacing the last three sentences of the Introduction, part (C)(2) under the headings "C. Capital" and "2. U.S. Agencies and Branches of Foreign Banks," and the first paragraph of part (D)(1) under the headings "D. Net Debit Caps" and "1. Cap Set Through Self-Assessment" as set forth below:

Introduction

* * * * *

To assist depository institutions in implementing the Board's policies, the Federal Reserve has prepared two documents, which are available from any Reserve Bank: the Overview of the Federal Reserve's Payments System Risk Policy and the Guide to the Federal Reserve's Payments System Risk Policy. The Overview provides a summary of the Board's policy on payments system risk, including daylight overdraft net debit caps and fees. The Overview is intended for use by institutions that incur only small and infrequent daylight overdrafts. The Guide explains in detail how the policies apply to various types of institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as information on other aspects of the payments system risk policy.

* * * * *

I.C. Capital

2. U.S. Agencies and Branches of Foreign Banks

For U.S. agencies and branches of foreign banks, net debit caps on daylight overdrafts in Federal Reserve accounts are calculated by applying the cap multiples for each cap category to consolidated "U.S. capital equivalency."[4]

For a foreign bank whose home-country supervisor adheres to the Basle Capital Accord, U.S. capital equivalency is equal to the greater of 10 percent of worldwide capital or 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank. In the absence of contrary information, the Reserve Banks presume that all banks chartered in G–10 countries meet the acceptable prudential capital and supervisory standards and will consider any bank chartered in any other nation that adopts the Basle Capital Accord (or requires capital at least as great and in the same form as called for by the Accord) eligible for the Reserve Banks' review for meeting acceptable prudential capital and supervisory standards.

For all other foreign banks, U.S. capital equivalency is measured as the greater of: (1) The sum of the amount of capital (but not surplus) that would be required of a national bank being organized at each agency or branch location, or (2) the sum of 5 percent of the total liabilities of each agency or branch, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

In addition, any foreign bank may incur daylight overdrafts above its net debit cap up to a maximum amount equal to its cap multiple times 10 percent of its worldwide capital, provided that any overdrafts above its net debit cap are collateralized. This policy offers all foreign banks, under terms that reasonably limit Reserve Bank risk, a level of overdrafts based on the same proportion of worldwide capital. Consequently, banks chartered in countries that follow the Basle Accord and whose net debit cap is based on 10 percent of worldwide capital are not permitted to incur overdrafts above their net debit cap. All other foreign banks may incur overdrafts to the same extent as banks from Basle Accord countries, that is, up to their cap multiple times 10 percent of their worldwide capital, provided that sufficient collateral is posted for any overdrafts in excess of their net debit cap. In addition, foreign banks may elect to collateralize all or a portion of their overdrafts related to book-entry securities activity.

* * * * *

I.D. Net Debit Caps

1. Cap Set Through Self-Assessment

In order to establish a net debit cap category of Average, Above Average, or High, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and, effective January 1, 1995, operating controls and contingency procedures. The assessment of creditworthiness should be based on the institution's supervisory rating and Prompt Corrective Action capital category. An institution may be permitted to perform a full assessment of its creditworthiness, in certain limited circumstances, for example, if its condition has changed significantly since its last examination, or if it possesses additional material information regarding its financial condition. Additionally, U.S. branches and agencies of foreign banks from countries that do not adhere to the Basle Capital Accord would be required to perform a full assessment to determine their rating on the creditworthiness component. The institution should also assess its intraday funds management

[4] The term "U.S. capital equivalency" is used in this context to refer to the particular capital measure used to calculate daylight overdraft net debit caps, and does not necessarily represent an appropriate capital measure for supervisory or other purposes.

procedures and its procedures for evaluating the financial condition of and establishing intraday credit limits for its customers. Finally, the institution should ensure that its operating controls and contingency procedures are sufficient to prevent losses due to fraud or operational failures. The Guide to the Federal Reserve's Payments System Risk Policy, available from any Reserve Bank, includes a detailed explanation of the steps that should be taken by a depository institution in performing a self-assessment to establish a net debit cap.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 18, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-20407 Filed 8-23-93; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-342]

Educating Health Professionals in Environmental Health; Part I—Implementation Strategies for Undergraduate Medical School Curriculum; Part II—Enhancing Environmental Health Content in Nursing Practice

Summary

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement with the National Academy of Sciences, Institute of Medicine (NAS/IOM). Approximately $150,000 is available in FY 1993 to fund this award. It is expected that the award will begin on September 30, 1993, for a 12-month budget period, within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement is for NAS/IOM to investigate and recommend how to develop, implement, and finance medical and nursing curricula activities in environmental health.

ATSDR will assist NAS/IOM with identifying strategies to assure appropriate curriculum content and essential competencies for undergraduate environmental health curriculum for physicians and nurses; providing environmental health education/information resources for curriculum and faculty development; developing an environmental health curriculum evaluation plan; and establishing ongoing communication procedures to exchange current information related to implementation of environmental health medical school curriculum and enhancement of environmental health content in nursing practice.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604 (i)(14) and (15)).

Eligible Applicants

Assistance will be provided only to NAS/IOM. No other applications will be solicited. The program announcement and application kit have been sent to NAS/IOM. NAS/IOM, by virtue of its previous work in the proposed program area (described below), and to meet the purposes of this project, will be requested to: (1) Identify, for study and analysis, important issues and problems that relate to environmental health and medicine; (2) Initiate and conduct studies of national policy and planning for health care and health-related education and research in environmental health; (3) respond to requests from the Federal Government and other agencies for studies and advice on matters relating to environmental health and medicine curriculum; (4) establish liaison with the major scientific and professional societies in the field of environmental health; and (5) disseminate environmental health curriculum information to the public and relevant professions.

In its report, "The Role of the Primary Care Physician in Occupational and Environmental Medicine," NAS defines "environmental medicine" to include the caring for individuals exposed to toxic substances in their homes and neighborhoods through such media as contaminated soil, water, and air. (For ordering a copy of The Role of the Primary Care Physician in Occupational and Environmental Medicine, see the section Where To Obtain Additional Information.) The report states that physicians are inadequately trained in environmental medicine. This is due, in part, to the lack of clinical role models, a limited research presence, little published in the general medical literature or standard medical textbooks, and overcrowded curriculum. The report recommends that environmental medicine should be better represented in the medical school curriculum, be a vital part of the traditional student clinical assignments, and be included as part of third- and fourth-year teaching programs.

Historically, ATSDR's environmental education curriculum development projects have focused largely on primary care physicians. However, it is important to consider the environmental health concerns of other groups of health professionals and their role in primary care practice and education. An illustration of this is the diverse roles of public health nurses, school nurses, nurse practitioners, and other community health nurses practicing in primary care settings. These nurses provide client/patient care and health education, including environmental health community education. Due to their front line involvement in client evaluation, disease prevention, health promotion, and referrals, it is of utmost importance to develop environmental science content and educational activities in nursing school curriculum and continuing education programs to supplement existing knowledge and skills in the area of environmental health.

Because of NAS/IOM's unique position in assisting Federal Government agencies with important issues and problems that relate to health and medicine, and because of NAS/IOM's previous work directly related to the proposed cooperative agreement, it has an unparalleled capacity to carry out the purpose of this cooperative agreement in an appropriate, timely, and efficient manner.

Executive Order 12372 Review

The application submitted under this announcement is not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 342 and contact Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, Georgia 30305, telephone (404) 842–6630, for business management technical information.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

A copy of The Role of the Primary Care Physician in Occupational and Environmental Medicine (Publication No. PB 89–170617) referenced in the Eligible Applicants section may be obtained from the National Technical Information Service, Springfield, VA 22151, telephone (703) 487–4650. (A charge of $26 for hardcopy or $9 for microfiche is required.)

Dated: August 17, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–20395 Filed 8–23–93; 8:45 am]

BILLING CODE 4160–70–P

[ATSDR–356]

Announcement of Cooperative Agreement Study to Assess the Health Effects of Waste Incineration

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement with the National Academy of Sciences (NAS) for a study to assess the health effects of waste incineration. Approximately $173,000 is available in FY 1993 to fund this award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period, within a 2-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this project is to assist NAS in assessing the risks to public health of municipal, hazardous, and other types of waste incineration practices under various design, location, and operation conditions.

ATSDR will:

(1) Assist NAS in identifying and analyzing case study information relevant to the public health impacts from actual incineration practices in the field;

(2) Collaborate in evaluation of the conclusions and recommendations relevant to the public health impacts from major types of combusted waste streams, incineration techniques, and incinerator locations; and

(3) Participate in workshops, conferences, and meetings to exchange current information, opinions, and findings concerning incineration.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority: This program is authorized under section 104 (i) (5), (9) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i) (5), (9) and (15)], and the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) [42 U.S.C. 6939a (b) and (c)].

Eligible Applicants: Assistance will be provided only to NAS. No other applications will be solicited. The program announcement and application kit have been sent to NAS. By virtue of its previous work, NAS is uniquely suited to assess the risks to public health of municipal, hazardous, and other types of waste incineration.

Because of NAS's unique position in assisting Federal Government agencies with important issues and problems that relate to environmental health, and its previous work directly related to the health effects of hazardous wastes, the Academy has an unparalleled capacity to carry out the purpose of this cooperative agreement.

NAS has demonstrated the ability to: (1) Identify, for study and analysis, important issues and problems that relate to environmental health; (2) initiate and conduct studies on national policy and health-related research; (3) respond to requests from the Federal Government and other agencies for studies and advice on matters relating to environmental health; (4) establish liaisons with the major scientific and professional societies in the field; and (5) disseminate information to the public and relevant professions. Because of the unique abilities of NAS as a non-biased source of technical and scientific expertise in these areas, it is the only organization capable of carrying out the activities contemplated under this cooperative agreement.

Executive Order 12372 Review

Application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Where to Obtain Additional Information: If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 356 and contact Ms. Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E13, Atlanta, Georgia 30305, (404) 842–6797.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone 202–783–3238.

Dated: August 17, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–20394 Filed 8–23–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

[CRADA 93-006]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) for development of nucleic acid and/or recombinant protein based diagnostic assays for the hantavirus which has been associated with Adult Respiratory Distress Syndrome in the Four-Corners region of the United States, and other hantaviruses of public health importance. In addition, opportunities exist for the development of vaccines effective against this group of viruses. The collaborator will specially design new diagnostic assays in kit formation for detecting hantavirus specific antigens or antibodies.

It is anticipated that all inventions which may arise from this CRADA will be licensed on a nonexclusive royalty-bearing basis to the collaborator with whom the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC may not provide funds to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Stuart T. Nichol, Ph.D., Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mailstop G-14, Atlanta, GA 30333, telephone (404) 639-1189.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mailstop C-19, Atlanta, GA 30333, telephone (404) 639-3227.

SUPPLEMENTARY INFORMATION: In late May 1993, CDC was asked to assist in the investigation of an outbreak of an unknown disease which was termed unexplained adult respiratory distress syndrome (ARDS) in the Four Corners Region of the United States. The outbreak of illness has now been associated with a previously unrecognized hantavirus infection. In addition, hantavirus antibodies and RNA sequences have been identified in several rodent species from the Four Corners Regions. A unique hantavirus RNA sequence detected in patients and rodents during this outbreak has been determined at CDC by utilizing polymerase chain reaction technology.

The goal of this CRADA is to develop, evaluate, and commercialize diagnostic tests for detecting hantavirus infections in humans and rodents, and to develop, evaluate, and commercialize a vaccine against infections caused by the newly recognized hantavirus. CDC will provide nucleic acid sequence information, primers, probes, and antisera to the new hantavirus and selected other hantaviruses. The collaborator will utilize its expertise in vaccine, diagnostic development, evaluation and commercialization of the products obtained.

Diagnostic test development may include characterization and expression of the antigens and production of antibodies which will be employed in serologic and/or antigen detection assays. Monoclonal antibodies produced under this CRADA will be evaluated for diagnostic and therapeutic purposes.

Respondents should provide evidence of expertise in the development and evaluation of vaccines, and/or diagnostic assays, evidence of experience in commercialization of vaccine products and/or diagnostics, and supporting data (e.g., publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicant submissions will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility; and
4. Evidence of commitment and ability to develop an innovative design for diagnostic assays and/or vaccines.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99-502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mailstop C-19, Atlanta, GA 30333.

Dated: August 18, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-20393 Filed 8-23-93; 8:45 am]

BILLING CODE 4160-18-P

Food and Drug Administration

[Docket No. 93F-0273]

Lonza, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lonza, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of didecyldimethylammonium chloride as a slimicide used in the manufacture of paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by September 23, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4392) has been filed on behalf of Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The

petition proposes that the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) be amended to provide for the safe use of didecyldimethylammonium chloride as a slimicide used in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 23, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 13, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–20419 Filed 8–23–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Joint Meeting of the OTC Drugs Advisory Committee and the Arthritis Advisory Committee

Date, time, and place. September 8, 1993, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12m., unless public participation does not last that long; open committee discussion, 12m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; Lee L. Zwanziger or Mae Brooks, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The OTC Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 31, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The joint committee will discuss the relationship between alcohol and toxicities associated with OTC oral analgesic medications, except acetaminophen, in order to make recommendations on labeling to warn consumers of possible toxic effects of this combination. (On June 29, 1993, the OTC Drugs Advisory Committee discussed the relationship between alcohol and acetaminophen-induced liver toxicity (meeting announced in the **Federal Register** of May 17, 1993, 58 FR 28883 at 28885). The OTC Drugs Advisory Committee recommended that a warning be included in the labeling but that the agency defer action until similar questions about OTC internal analgesic medications were discussed at an advisory committee meeting). The joint committee will also discuss whether current data (i.e., case reports of gastrointestinal bleeding, pharmacokinetic, epidemiologic, or animal data) regarding the adverse effects of the use of alcohol with OTC analgesic drug products containing either aspirin, ibuprofen (or naproxen, should it become available over-the-counter) support the need for a label warning statement for products containing any or all of these ingredients; and if so, then which data support the need for a label warning statement for which ingredient. The agency is not aware of data concerning the adverse effects of the use of alcohol with other salicylates (i.e., carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate) proposed by the agency to be generally recognized as safe and effective OTC analgesics. The committee will, however, discuss whether OTC products containing any or all of these ingredients should bear a similar warning statement, and, if so, what specific information the warning should contain (e.g., general warning versus organ-specific information, statement of risk, or other information) for each individual ingredient. Prior to the meeting, the agency may reformulate or add to the discussion topics listed above; final questions will be available on the morning of the meeting. The tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products published in the **Federal Register** of November 16, 1988 (53 FR 46204). Additional new data submitted since that time will be considered by the committee members as they discuss whether the totality of the information warrants label revisions concerning the use of OTC dosages of internal analgesics with alcohol. The committee's recommendations will be considered by the agency in its preparation of the final monograph for OTC internal analgesic drug products. In addition, the committee will discuss further developments regarding new drug application (NDA) 20–204 to switch naproxen (Naprosyn®, Syntex Corp.) from prescription to over-the-counter status.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Gastrointestinal Drugs Advisory Committee

Date, time, and place. September 10, 1993, 9 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; closed committee deliberations, 10 a.m. to 1 p.m.; Joan C. Standaert (HFD–180), 419–259–6211, or Valerie M. Mealy (HFD–9), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 30, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Oncologic Drugs Advisory Committee

Date, time, and place. September 23, 1993, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 17, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) Supplemental new drug application (NDA) 20–262, Taxol® for injection concentrate (paclitaxel, Bristol-Myers Squibb), for change of dose and schedule of administration to 175 mg/M^2 by 3 hour i.v. infusion from 135 mg/M^2 by 24 hour infusion; and (2) supplemental NDA 50-443, Blenoxane® (bleomycin sulfate, USP, Bristol-Myers Squibb), "as a sclerosing agent for the treatment of malignant pleural effusions and for the prevention of recurrent pleural effusions."

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to investigational new drug applications and pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. September 23 and 24, 1993, 8:30 a.m., Holiday Inn Bethesda, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, September 23, 1993, 8:30 a.m. to 11:15 a.m.; open public hearing, 11:15 a.m. to 11:45 a.m., unless public participation does not last that long; open committee discussion, 11:45 a.m. to 5:45 p.m.; open public hearing, September 24, 1993, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2 p.m; closed committee deliberations, 2 p.m. to 3 p.m.; Linda A. Smallwood, Office of Blood Research and Review, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852, 301–594–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 16, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 23, 1993, the committee will review and discuss the product license application for Respiratory Syncytial Virus Immune Globulin Intravenous (Human) submitted by the Massachusetts Public Health Biologic Laboratories to reduce the incidence of severe Respiratory Syncytial Virus infection in infants with premature gestation and children with chronic pulmonary disease. In the afternoon, the committee will review the report of the FDA contract study on Increasing the Safety of the Blood Supply by Screening More Effectively. On September 24, 1993, the committee will hear presentations on Blood Product Transmission of Hepatitis A and Other Non-Enveloped Viruses, and review the report of the Scientific Site Visit for the Laboratory of Hemostasis, Division of Hematology, Office of Blood and Blood Research, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four seperable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open

public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 18, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–20421 Filed 8–23–93; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS, Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice amends part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services as published at 54 FR 46775, Nov. 7, 1989, to reflect technical changes in chapter AF, Office of Inspector General (OIG). While the basic organizational structure of the OIG is unchanged, this notice reflects a shift in the information resources management function's reporting responsibilities from the Office of Audit Services to the Office of Management and Policy.

EFFECTIVE DATE: This notice is effective on August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: Chapter AF of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services as published at 54 FR 46775, November 7, 1989, is amended as follows:

1. Under the heading *Section AFA1.20, Office of the Principal Deputy Inspector General—Functions*, subheading *B. Office of Management and Policy*, a new paragraph 3. is added to read as follows:

"3. The office is responsible for OIG information resources management (IRM), as defined by the Paperwork Reduction Act, OMB Circular A–130, the Federal Information Resources Management regulations, the Computer Security Act of 1987, HHS IRM Circulars, and of the related guidance. The office also provides information technology support to the OIG through management of its local area networks nationwide, provision of headquarters computer end-user support, and support of OIG information systems as required."

2. Under the heading *Section AFH.20, Office of Audit Services—Functions*, subheading *B. Audit Policy and*

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Oversight, paragraph 2. is amended to read as follows:

"2. It plans, develops, and coordinates advanced techniques to carry out the functions of the Office of Audit Services, and, with technical support from the Office of Management and Policy, manages the Office of Audit Services' information system."

Dated: July 30, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General.

[FR Doc. 93-20345 Filed 8-23-93; 8:45 am]

BILLING CODE 4150-04-M

Program Exclusions: July 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject—City, state	Effective date
Program-Related Convictions:	
Abbasi, Abdul, Woodhaven, NY	08/02/93
Angelo, Joseph S, Lincroft, NJ	08/15/93
Antonio, Amelita A, Scarsdale, NY	08/03/93
Boyd, Alpha Omega, W Palm Beach, FL	08/03/93
Brandon, Andrew E, Montgomery, AL	08/16/93
Brown, Phillip W, Columbia, LA	08/03/93
Buzea, Doina M, White Plains, NY	08/16/93
Chadwick, James C, Columbus, OH	08/16/93
Chapman, Gary R, Tampa, FL	08/15/93
Davidson, Jerry M, Eloy, AZ	08/02/93
Delgado, Luis, Brea, CA	08/15/93
Devaughn, Thomas P, Hollywood, FL	08/03/93
Di Giacomo, Anthony, Temecula, CA	08/15/93
DL Ultrasound Corp, Bronx, NY	08/16/93
Draper, Robert E, La Jolla, CA	08/15/93
Dufresne, Barbara, Manchester, NJ	08/16/93
Evans, Tracy, New York, NY	08/02/93
Eve, LeRoy, Poughkeepsie, NY	08/15/93
Famularo, Kenneth, Parlin, NJ	08/15/93
Ferretti, Luis, Walnut, CA	08/15/93
Friedman, Hindy, Brooklyn, NY	08/15/93
Golf Village Drugs, Inc., Mt Prospect, IL	08/16/93
Greenwich Acupuncture CTR, Inc., Greenwich, CT	08/16/93
Hager, Jerome P, Riverside, CA	08/02/93
Hayes, Timothy D, Mobile, AL	08/03/93
Hemsdorf, Gary P, Manchester, NH	08/15/93
Hock, Thomas, Monmouth Beach, NJ	08/16/93
Hwang, Charles, Wallington, NJ	08/02/93
Jones, David, Lebanon, TN	08/03/93
Kabnick, Earl, New Rochelle, NY	08/16/93
Kampka, Richard K, Hackettstown, NJ	08/15/93
Kifeld, Grigory, Brooklyn, NY	08/16/93
Klatte, John D, Randolph, NJ	08/15/93
Kohli, Jaspal S, Sterling Hgts, MI	08/03/93
Kohli, Harjit, Sterling Hgts, MI	08/03/93
Lahoti, Dinesh K, Allegany, NY	08/02/93
Landa, Sherry, Morganville, NJ	08/02/93
Laughlin, Sidney C, El Reno, OK	08/03/93
Lazado, Cielito R, Los Angeles, CA	08/02/93
Lee, Tharon T, Memphis, TN	08/03/93
Linck, Darren, Yonkers, NY	08/16/93
Lopez, Adelaido, Las Trampas, NM	08/03/93
Lucas, Edgar J, Pinole, CA	08/02/93
Manchester Wheelchair Trans, Manchester, NH	08/16/93
Oban-Boyd, Monica E, Ft Lauderdale, FL	08/03/93
Osgoodby, Susan, Sea Bright, NJ	08/16/93
Pama, Alitha B, Riverside, CA	08/02/93
Piassek, Gunther E, Kenilworth, NJ	08/15/93
Pike, James, South Orange, NJ	08/16/93
Pugner, Harry, Brewster, NY	08/02/93
Rasulov, Lilia, Studio City, CA	08/15/93
Royal, John Leo Jr., San Antonio, TX	08/03/93
Ruffin, Michael, Fluker, LA	08/16/93
Sawyer, Valerie Ann, Harrington, ME	08/03/93
Schwartz, Kenneth Gene, Port Angeles, WA	08/02/93
Scinto, Matthew, L, Trumbull, CT	08/15/93
Slater, Robert, Bronx, NY	08/02/93
Solomon, Elliot, Highland Park, IL	08/16/93
Souvenir, Kaye A, Southfield, MI	08/15/93
Suffolk County Hearing Aid Ctr, Smithtown, NY	08/16/93
Tamoro, Manuel V, Moreno Valley, CA	08/15/93
Umali, Edison, Chino Hills, CA	08/02/93
Williams, James R, Tampa, FL	08/03/93
Williams, Theresa, Tampa, FL	08/03/93
Wolf, Kenneth L, Seaside Hgts, NJ	08/15/93
Yang, Ge, Banning, CA	08/02/93
Yudelson, Bruce, St James, NY	08/02/93
Patient Abuse/Neglect Convictions:	
Acabeo, Virginia, Bronx, NY	08/02/93
Asberry, Travis, Iuka, MS	08/03/93
Baugher, Pauline E, Ottumwa, IA	08/16/93
Emmons, Barbara A, Buffalo, NY	08/16/93
Fields, Clifton W, Mobile, AL	08/03/93
Garrison, Dorothy Lanier, Montgomery, AL	08/15/93
Haslam, Milton, Buffalo, NY	08/16/93
Honeycutt, Camellia D, Marion, LA	08/15/93
Jackson, Katrina Denise, Elmore, AL	08/16/93
King, Mattie Lou, New Albany, MS	08/03/93
Melvin, Mary Lillian, Fort Worth, TX	08/16/93
Mercer, Renate A, Des Moines, IA	08/16/93
Miller, Derek Vernon, Montgomery, AL	08/15/93
Owens, Vickie, Monroe, LA	08/03/93
Pichon, Kellie, New Orleans, LA	08/03/93
Pritchett, Mark A, Montgomery, AL	08/15/93
Rawls, Michael Angelo, Wetumpka, AL	08/15/93
Reed, Wendell, Daytona Beach, FL	08/03/93
Rice, David J Sr, Des Moines, IA	08/16/93
Sullivan, James, Hebron, CT	08/16/93
Tracy, Lester L, Cadott, WI	08/03/93
Turner, Linnie Charles Jr, Citronelle, AL	08/03/93
Walker, Horace L, Pontiac, MI	08/03/93

Subject—City, state	Effective date
Zeigler, Robert James, Elmore, AL	09/03/93
Controlled Substance Convictions:	
Littge, Roger O, Redding, CA	08/02/93
License Revocation/Suspension:	
Grim, Suzanne M, Sacramento, CA	08/15/93
Heck, Barry, Fairfield, CT	08/02/93
Metzler, Warren, F, Hackensack, NJ	08/15/93
Miller, Dallas R, Bakersfield, CA	08/15/93
Shillen, Imram, Stamford, CT	08/03/93
Springer, Clyde H, St Michael Barbados	08/02/93
Weidman, Kevin A, Milkwaukee, WI	08/16/93
Entities Owned/Controlled By Convicted:	
Brewster Hearing Aid Center, Brewster, NY	08/02/93
Center Pharmacy, Inc, Espanola, NM	08/03/93
Datom International, Lebanon, TN	08/03/93
Interama Family Practice, N Miami Beach, FL	08/03/93
Jerry's Pharmacy, Eloy, AZ	08/02/93
Major Medical, Inc, Mobile, AL	08/03/93
Red Cross Drug Store #2, Columbia, LA	08/03/93
Superior Ambulance Serv, Inc, San Antonio, TX	08/03/93
Whitney Opticians, Ft Lauderdale, FL	08/02/93
Default on HEAL Loan:	
Arndt-Hagan, Mary L, Dallas, TX	08/13/93
Benzor, Joanne M, Perris, CA	08/25/93
Berryer, Yvanne M, N Miami, FL	08/13/93
Binagy, Dorothea, Whitewater, WI	08/25/93
Collins, James E, Nashville, TN	08/13/93
David, Izola, Philadelphia, PA	08/26/93
Harper, Nicholas, Long Beach, CA	08/25/93
Hollars, Rodney D, Louisville, KY	08/26/93
Howe, James K, Tempe, AZ	08/25/93
Jackson, William E, Oshkosh, WI	08/25/93
Jorgenson, James B, Peoria, AZ	08/25/93
King-Duarte, Doreen I, Carol Stream, IL	08/25/93
Menoff, Anne L, Waxhaw, NC	08/13/93
Moyal, William R, Pembroke Pines, FL	08/13/93
Pflepsen, Richard L, Waterloo, IA	08/25/93
Reddix-Norman, Irance E, Missouri City, TX	08/13/93
Ritchie, Lloyd, Cantonment, FL	08/13/93
Rivera, Samuel, Randolph, PA	08/13/93
Robideau, Robert G, Roswell, GA	08/26/93
Rodriguez, Humberto J, La Mirada, CA	08/25/93
Rowan, Andrew C, Crossville, TN	08/13/93
Sanchez, Gerald L, Houston, TX	08/12/93
Santa Cruz, Matthew E, Tampa, FL	08/13/93
Shafer, Joseph E Jr, Madison, TN	08/26/93
Soleye, Babatunde, Hartsdale, NY	08/12/93
Woods, Daemon S, Ft Drum, NY	08/12/93
Peer Review Organization Cases:	
Corkill, Anthony G, Redding, CA	07/07/93

* * * * *

Dated: August 6, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 93-20367 Filed 8-23-93; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health (NIH)

Meeting of Panel

Notice is hereby given that the Panel on NIH Research on Anti-social, Aggressive and Violence-related Behaviors and Their Consequences (Panel), a group of consultants convened to advise the Advisory Committee to the Director, NIH, will meet in its second public session on September 22–24, 1993 at the Holiday Inn Crowne Plaza in Rockville, Maryland. The meeting will begin at 8:30 a.m. each day and end at approximately 9 p.m. (September 22, 23) and noon (September 24). This will be the second of two meetings. Sessions will be open to the public, with the possible exception of an executive session.

The purpose of the Panel is to review NIH funded research in the areas of anti-social, aggressive and violence-related behaviors and their consequences and to examine the portfolio in terms of its relevance, adequacy and responsiveness to social and ethical concerns. The Panel consists of 29 members with expertise in violence-related topics from a broad variety of specialties, including biobehavioral, biomedical and social sciences, as well as education, law, and ethics. At the conclusion of its work, the Panel will transmit its report to the Advisory Committee to the Director, NIH, for review.

Presentations by concerned organizations and citizens will be heard on September 22 and 23. Applications for oral presentations (five minutes in length) should be made by phone and will be accepted in the order in which they are received. Individuals and organizations are also welcome to submit opinions in written form to the Panel in advance of the meetings. Written materials for the meeting should be received by September 15, 1993. Comments and questions related to the proposed meeting of the Panel should be addressed to Dr. Mary Groesch, National Institutes of Health, Office of Science Policy and Technology Transfer, Shannon Building, room 218, 9000 Rockville Pike, Bethesda, Maryland 20892, or call (301) 496–1454.

Dated: August 17, 1993.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 93-20486 Filed 8-23-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the Task Force on Aging Research

Pursuant to Public Law 92–463, notice is hereby given that the Task Force on Aging Research will meet on September 8, 1993, from 9 a.m. to 12 noon in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The entire meeting will be open to the public. The Task Force will meet to review the recommendations prepared by the Technical Working Group. These recommendations will form the basis for the Task Force's final report. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ronald P. Abeles, Ph.D., Executive Secretary, Task Force on Aging Research, the Gateway Building, 7201 Wisconsin Avenue, suite 2C–234, Bethesda, Maryland 20892, at (301) 496–3136, in advance of the meeting. Dr. Abeles will also provide substantive information on the meeting, a roster of the committee members and a summary of the meeting upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 18, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-20485 Filed 8-23-93; 8:45 am]

BILLING CODE 4140-01-M

AIDS Research Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on September 22, 1993, in the Baccarat and Haverford Suites of the Hyatt Hotel, 1 Bethesda Metro Center, Bethesda, MD 20814.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, telephone (301) 496-0545, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 17, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-20372 Filed 8-23-93; 8:45 am]

BILLING CODE 4140-01-M

President's Cancer Panel; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, September 22, 1993 at the National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on September 22, 1993 from 8 a.m. to approximately 5 p.m. The topic will include: Evaluation of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301/496-1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 4A34, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: August 17, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-20371 Filed 8-23-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-010-93-4322-02; 1784-010]

Arizona Strip District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Advisory Board will meet at the District Office Conference Room located at 390 North 3050 East, St. George, Utah at 9 a.m. on Wednesday, September 15, 1993. The primary topics are the Secretary's Grazing Reforms and Ecosystem Management.

FOR FURTHER INFORMATION CONTACT: Roger G. Taylor, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801-673-3545).

SUPPLEMENTARY INFORMATION: The meeting is open to the public and the board will consider both oral and written statements from the public at 9:30 a.m. Those wishing to make oral statements should contact BLM at 801/673-3545 at least 5 days in advance of the meeting.

Dated: August 13, 1993.

Roger G. Taylor,

District Manager.

[FR Doc. 93-20376 Filed 8-23-93; 8:45 am]

BILLING CODE 4310-32-M

[CA-020-4320-02-ADVB]

Notice of Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Susanville District Grazing Advisory Board, Susanville, CA.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on September 9, 1993.

The September 9, 1993 meeting will begin at 10 a.m. at the Alturas Resource Area Office, Bureau of Land Management, 608 West 12th Street, Alturas, California.

The meeting will consist of a discussion about "Rangeland Reform 94", a review of new allotment management plans, an update on the east Lassen Integrated Vegetation Management Plan, an update on the Wild Horse and Burro Program, a progress report for FY 1993 range improvement projects and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on September 9, 1993 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by September 7, 1993. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board Meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Herrick E. Hanks,

District Manager.

[FR Doc. 93-20347 Filed 8-23-93; 8:45 am]

BILLING CODE 4310-41-M

[CA-060-65-4210-02, CACA-31587]

Realty Action; Competitive Bid for Right to Complete an Environmental Impact Statement for Potential Wind Development, the Right to File a Right-of-Way Application in Order to Gain a Wind Industry Preference Right on Certain Public Lands Within the Mojave-Tehachapi Area; County of Kern; State of California

ACTION: Notice of Realty Action CACA#31587, Call for a Competitive Bid for the right to complete an Environmental Impact Statement (EIS) for potential wind development including the right to file a Right-of-Way (ROW) Application in order to gain a Wind Industry preference right on certain public lands within the Mojave-Tehachapi Area. This action is pursuant to the Competitive Bid standards within the Rights-of-Way Principles and Procedures as authorized by Title V of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1761–62, 1764–66, and 1783(e).

SUMMARY: The public lands described below near the communities of Mojave and Tehachapi, County of Kern, California are available for Competitive Bid by prospective Wind Power Facility developers under title 43 Code of Federal Regulations (CFR) part 2800. This procedure is only for the Wind Development Companies to obtain the right to complete an EIS. The EIS will determine the suitability of the lands for potential wind power facility development. The Bureau of Land Management (BLM) will allow the bid to be accompanied by a ROW application for the subject lands. The ROW application will be processed on those parcels determined as suitable according to the EIS. The BLM will only process ROW applications from the successful bidders, thereby precluding any other wind company from filing a non-competitive application for similar uses.

The land description below describes lands by whole section however, many sections below are only partial sections. Complete land descriptions and associated parcel numbers are included with the bid packages. The lands described below are available for bid and any bid submitted for other lands will not be considered:

State of California, County of Kern

Mount Diablo Meridian

T. 29S., R. 34E.,
Secs. 12 and 24.
T. 30S., R. 34E.,
Secs. 2, 12, 24, 26, 34, and 36.
T. 31S., R. 34E.,
Secs. 1, 2, 3, 4, 12, 14, 24, and 26.
T. 29S., R. 35E.,
Secs. 2–4, 6–8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, and 32.
T. 30S., R. 35E.,
Secs. 2, 10, 14, 18, 24, 26, 28, and 30–32.
T. 31S., R. 35E.,
Secs. 6, 35, and 36.
T. 32S., R. 35E.,
Secs. 24, 26, 32 and 34.
T. 29S., R. 36E.,
Secs. 4–6, 8, 15, 18, 19, 20, 22, 26, 28, 29, 30, 32, and 34.
T. 30S., R. 36E.,
Secs. 2, 4, 8, 10, 12, 18, 20, 28, 30–32, and 34.
T. 31S., R. 36E.,
Secs. 1–6, 8, 9–12, 14, 22, 24, 26, 28, 32, and 34.
T. 32S., R. 36E.,
Secs. 4, 6, 8, 10, and 18.
T. 31S., R. 361/2E.,
Secs. 12, 13, and 24.
T. 31S., R. 37E.,
Sec. 6.

San Bernardino Meridian

T. 12N., R. 13W.,
Sec. 34.
T. 10N., R. 14W.,
Secs. 4, 6, 8, 10 and 18.
T. 11N., R. 14W.,
Secs. 22, 28, 30, 32 and 34.
T. 10N., R. 15W.,
Secs. 2, 10, 12, 14, 24, 26, 28 and 32.
T. 11N., R. 15W.,
Secs. 22, 24, 32 and 34.

Aggregating 66,867.37 acres.

The EIS will include an amendment to the California Desert Conservation Area (CDCA) Plan, as amended, thereby classifying parcels of lands as either suitable or unsuitable for the development of Wind Power Facilities. A final decision on suitability will be issued and those lands found unsuitable will not be offered for future development. Additionally, this EIS may amend the CDCA Plan in regards to any changes made to the classifications in the Western Mojave Land Tenure Project.

The Objectives of the Bureau Are To

(1) Assure that wind exploration, development and production are conducted with reasonable protection of the environment;

(2) Evaluate the suitability of the subject are for potential development of wind energy;

(3) Ensure the EIS is completed in a timely manner consistent with timeframes of the California Public Utilities Commission's (CPUC) bid requirements for new energy facility contracts;

(4) Process applications for rights-of-way which are to accompany the bid. This will occur, if the area is determined suitable for development pursuant to the environmental review;

(5) After site specific analysis indicates development may be authorized, BLM will include in the ROW grant Terms and Conditions provisions which will insure the timely and orderly development of a wind power facility. All development will be compatible with the use of the public lands for other purposes which may include disposal of the land;

(6) Assure the public benefit from the wind resource on public lands will provide a fair return of its use;

(7) Develop a cost recovery account for the deposit of:

(A) a fee equally assessed to each bidding company to reimburse the Federal Government for hosting the bid; and

(B) a non-refundable parcel fee which will defray the estimated costs to the Federal Government in completing the technical review of the EIS; and

(8) Provide successful bidder protection from competitors while complying with Federal Requirements, thus providing the level of "site control" necessary to comply with the criteria of the CPUC's new facilities Final Standard Offer 4 (FSO4) contract. This provides a preferential right within the wind industry for a potential ROW. However, a successful bidder is not guaranteed to receive an approved ROW.

Bid Procedures, Requirements and Fees

Public Notice is provided that a competitive bid will be conducted on September 20, 1993, which will carry out the aforementioned objectives pursuant to Title V of FLPMA, supra and 43 CFR 2800. The BLM has developed procedures for a competitive bid on the subject public lands. The competitive bid will be accomplished through sealed and oral bids to designate the highest qualified responsible bidder. Oral bids will be used only when there are two or more bids on the same parcel. The BLM will evaluate the bids based on all the criteria outlined within this document for determining the highest qualified successful bidder. The primary areas of review are as follows:

(1) Hosting, Parcel and Bonus Bid Fees;

(2) Corporate Qualifications for Bid Eligibility;

(3) Requirements for the EIS; and

(4) Right-of-Way Application and Processing Procedures.

Failure to meet payments by the due dates or any other date requirements set forth in this document will result in immediate disqualification and rejection of the application. In a situation that results in a disqualification because of

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a bidder failing to meet a scheduled timeframe, the forfeiture of all deposits will be automatic and the next highest bidder will be awarded the parcel.

Copies of the bid packages which include an example of all required documents are available through the Bureau of Land Management at the address listed below.

Hosting, Parcel and Bonus Bid Fees

It is necessary for the BLM to assess a one-time Hosting Fee in order to recuperate the costs BLM has incurred. This Fee is being charged on an equal basis to all companies submitting a bid, regardless of whether the submitted bid is successful. The total cost for hosting the bid has been determined to be $62,300.00. In the event that the Hosting Fee deposits collected by the Government are in excess of the cost to host the bid, each company will be equally refunded that portion in excess. However, if the bidder turnout is less than anticipated and a deficit occurs to the Government, each bidding company will be equally billed for the difference. The Bonus Bid Fee is based on the highest dollar bid per acre for each acre within a parcel and must be made in whole dollar increments. The non-refundable Parcel Fees being assessed by the BLM will be applied to the BLM's cost associated with the technical review of the EIS. This Fee is based on a charge for each acre within each parcel. If bidding multiple parcels, Parcel Fees may be combined and submitted on one check.

However, the bidder must supply documentation that clearly delineates the distribution of the fees on the multiple parcels. All bids must be filed in accordance with the criteria set out in this document.

Bids must be submitted in a sealed legal-size envelope and marked in the front left corner as shown in the following example:

Tehachapi-Mojave Wind Energy
Suitability Analysis and Right-of-Way
Notice of Realty Action CACA#31587
Parcel No. 153–01–23
Final Date to Receive Bids—September 23, 1993, 2 p.m. PDST

The envelope shall contain a statement of the amount of the Bonus Bid for the subject parcel with a minimum starting bid of $7.00 per acre and a check equal to 10% of the amount of the bid.

The Bids must be submitted to the Area Manager, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555 and received by 2 p.m. (PDST), Thursday, September 23, 1993. Each parcel is a single bidding unit therefore, each bid must be placed in a separate envelope.

In addition, the following fees and documentation must be received in this office by 2 p.m. (PDST), September 23, 1993:

(1) A Hosting Fee deposit check of $16,000;

(2) A non-refundable Parcel Fee of $2.50 per acre;

(3) A separate ROW application for each parcel must accompany the sealed bid; and

(4) Corporate Documentation as required below.

All fees must be in the form of a certified or Cashiers check, bank draft or money order which is made payable to the U.S. Department of the Interior, Bureau of Land Management (USDI–BLM).

If two or more envelopes containing valid bids are received for the same parcel, an oral bid will take place only between the companies submitting the valid bid. The bid will begin at $5.00/acre above the highest bid amount. Oral bidding will be in whole dollar increments thenceforth. Payment of the oral bid fee will be in the form above or by Corporate Check. If paying by Corporate Check it must be replaced within 3 workdays with a check that meets the criteria outlined above.

Bids will be opened and read aloud on Friday, September 24, 1993, at 10 a.m. (PDST) in the Ridgecrest Resource Area office's main conference room in Ridgecrest, California. The opening of the bids is for the purpose of publicly announcing and recording bids received, determining if an oral bid is required and conducting such bid as necessary. Upon completion of the bonus portion of the bid, the BLM has until Close of Business on October 4, 1993, to complete the review of the bids and determine the successful bidder. A list of the successful bidders will be posted in the Public Room of the Ridgecrest Office and all bidders will be formally notified by Certified Mail.

The balance of the bonus bid is due by close of business on the 10th calendar day following the formal notification of a successful bid. Any unsuccessful bidder's Bonus Bid deposit will be returned.

The United States reserves the right to reject the highest qualified bid and release the bidder from his obligation and withdraw the parcel if the Authorized Officer (AO) determines that consummation of the bidding process would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered, or restrained free and open bidding or consummation of the bidding process would encourage or promote speculation on public lands.

Bidders are hereby warned that any violations of 18 U.S.C. 1860, could result in a fine or imprisonment, or both.

In the event that the AO rejects the highest qualified bid or releases the bidder from such bid, the AO shall determine whether the public lands involved in the offering shall be offered to the next highest bidder or re-offered at a later date. Final determination of award will still require review of the required corporate qualifications.

Corporate Qualifications for Bid Eligibility

All bidders must meet the following minimum requirements. Most of these qualifications can be handled through corporate resolutions and notarized documentation. They are as follows:

(1) Bids may be made either by a principal or duly qualified agent;

(2) Be in good Corporate Standing with both the State of Incorporation and the State of California;

(3) All documents submitted by the Bidder considered confidential and proprietary will require a statement pursuant to title 15 U.S.C. 1311–1314 and title 43 CFR 3590.1(b) stating such;

(4) Must have developed a successful wind power project within the last ten years with a minimum capacity of 10MW and a minimum annual energy production of 20,000 megawatt hours;

(5) If the bidder currently has wind parks on public lands they must be current on all rentals and royalties;

(6) Projects considered must show that only machines with a rated capacity of 200KW per machine or rotor diameter of 25 meters or greater will be used;

(7) A statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of FLPMA and 43 CFR 2800;

(8) A Corporate Resolution or an equivalent statement from the bidder agreeing to sign a Memorandum Of Understanding (MOU) with the BLM and any other affected parties (if any) to be full participant in accomplishing the EIS and any necessary subsequent site specific environmental studies. This requires to participate in the cost sharing of the EIS. The MOU which will outline the criteria and corporate roles necessary for the completion of the EIS must be signed within 10 calendar days of receipt; and

(9) The successful qualified bidder shall, within 10 calendar days of billing will pay the required proportionate share of the total costs associated with the publication of this document in the

Federal Register and local newspapers. These costs will not be determined until BLM has received all the billings for the publications.

The Requirements for an EIS Are

(1) All necessary data required pursuant to NEPA and the level of review required for the EIS will be outlined in an MOU with the successful bidders. This criteria will also include current wind data, which will be used in determining suitability;

(2) The EIS will be by a third-party contractor. The contractor will be retained by the Lead Proponent and approved by the BLM. The BLM will be the point of contact for the contractor, but the Contractor will be paid for by the successful bidders; and

(3) The Lead Proponent will be the successful bidder with the most parcels under "successful bid". All other successful bidders will be secondary proponents and will be required to work with BLM and the Lead Proponent in accomplishing the EIS. This will be accomplished through an MOU between the BLM, Lead Proponent and all Secondary Proponents.

Right-of-way Application and Processing Procedures

If a parcel is determined suitable through the procedures outlined within this document, BLM will process right-of-way applications filed with the bid package. Processing will be done in accordance with 43 CFR 2800 Rights-of-Way Principles and Procedures, including cost recovery provisions. The following procedures are required:

(1) Proponent has complied, to date, with the pertinent laws and regulations for this project;

(2) A Plan of Development (POD) must be submitted. These requirements are described within the Bid Package and BLM Manual;

(3) The BLM will order an appraisal to determine fair market value and royalties for each parcel;

(4) Proponent must show proof of a Utility Contract or its equivalent;

(5) The conclusion of the site specific environmental assessment pursuant to NEPA will determine developability of the site;

(6) Show through financial statements of assets and/or a letter of credit statements the financial ability to fully develop a wind power facility;

(7) Construction and Reclamation Bonds will be required in an amount equivalent to the estimated cost of removal and restoration requirements outlined in a ROW Grant;

(8) The proponent must obtain access across private inholdings under a reciprocal right-of-way agreement which names BLM as a party to that agreement;

(9) Prior to the issuance of a right-of-way, any other wind power facility interests that may exist by the proponent on Public Lands will be required to be in full compliance. A statement from the appropriate BLM office certifying the compliance will suffice.

Upon the completion of the above-mentioned procedures, a right-of-way grant will be offered to those companies meeting all the requirements. A Notice to Proceed will be issued after the execution of the Grant after all terms and conditions have been met. If a parcel is determined unsuitable all applications will be rejected.

For Further Information Contact

To receive a copy of the bid package which contains examples and requirements or for additional information, contact Mike Hogan, Lead Reality Specialist at the BLM's Ridgecrest Resource Area Office, (619) 375–7125, 300 S. Richmond Rd., Ridgecrest, CA 93555.

Dated: August 13, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–20149 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Terlingua Creek Cats-Eye for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Terlingua Creek cats-eye (*Cryptantha crassipes*). The Terlingua Creek cats-eye is a perennial herb in the Borage family (Boraginaceae). This endangered species has a very limited distribution on private land in Brewster County, Texas. All known plants are within a 100 square mile area. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 8, 1993, to assure consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482–5436.

Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kathryn Kennedy, Botanist, (512) 482–5436 (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific actions considered necessary for conservation of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Terlingua Creek cats-eye (*Cryptantha crassipes*) was listed as endangered on September 30, 1991 (56 FR 49634). This species grows on a rock formation with a high gypsum content, in Chihuahuan Desert scrub vegetation. Only 10 sites with about 5,000 individuals are known to exist. Terlingua Creek cats-eye is threatened by increasing habitat destruction and fragmentation. Roadbuilding and maintenance, subdivision of the area for a resort, utility construction, and off-road-vehicle use within its area of distribution are activities of concern that can damage needed habitat.

The objective of the Draft Terlingua Creek Cats-Eye Recovery Plan (Plan) is delisting. Delisting criteria are given in the Plan. Recovery efforts outlined in the Plan include site protection, habitat management, and public education and information. Other recovery efforts outlined include establishing a conservation seed bank and cultivated population, conducting research on the biological and ecological requirements of the species, searching for additional populations, examining the feasibility of reintroduction, and ensuring compliance with the provisions of the Act.

Public Comments Solicited

The Service solicits written comments on the Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 17, 1993.

James A. Young,

Acting Regional Director.

[FR Doc. 93–20405 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Appalachian National Scenic Trail Relocation of Right-of-Way

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of relocation.

SUMMARY: The relocation set forth below is necessary to preserve the purposes for which the Appalachian National Scenic Trail was established. This relocation is consistent with the route of the Appalachian National Scenic Trail contained in the Preferred Alternative of the Final Environmental Impact Statement for the Pico/Killington Section of the Appalachian National Scenic Trail prepared by the National Park Service and released to the public in July 1993. The National Trails System Act authorizes the Secretary of the Interior to relocate non-substantial segments of a national scenic trail right-of-way when necessary to preserve the purposes for which the trail was established, or to promote a sound land management program in accordance with established multiple-use principles.

The Director of the National Park Service has been delegated the authority to administer the Appalachian National Scenic Trail.

The relocation is necessary to preserve the purposes for which the Appalachian National Scenic Trail was established, and to promote a sound land management program within the Pico/Killington study area in accordance with established multiple use principles of land users and the State of Vermont.

DATES: Written comments, suggestions or objections to the Relocation of Right-of-Way will be accepted on or before September 23, 1993.

ADDRESSES: Comments should be directed to: Project Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry, WV 25425.

FOR FURTHER INFORMATION CONTACT: John F. Byrne, Project Manager, Appalachian National Scenic Trail, Telephone (304) 535–6278.

SUPPLEMENTARY INFORMATION:

Background

The National Trails System Act became law on October 2, 1968. The Act created a system to identify and establish a National Trails System. It also established the Pacific Crest Trail and the Appalachian Trail as the initial national scenic trails.

Section 7(a)(2) of the National Trails System Act created a process for the selection of a right-of-way for a national scenic trail by publication of a Notice of this right-of-way in the **Federal Register** together with appropriate maps and descriptions. In selecting the right-of-way, the Secretary is required to obtain the advice and assistance of the States, local governments, private organizations, landowners, and land users concerned. This responsibility for the Appalachian National Scenic Trail has been completed. A right-of-way and Trail route were selected after compliance with the consultation requirements of the Act and published in the **Federal Register**, Vol. 36, No. 197, Saturday, October 9, 1971.

Section 7(b) of the National Trails System Act authorizes the Secretary of the Interior to relocate non-substantial segments of a national scenic trail right-of-way, upon a determination that: (i) Such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles.

The National Park Service has prepared an Environmental Impact Statement for the protection of the Appalachian National Scenic Trail in the Pico/Killington area. Announcement of the availability of review of the Final Environmental Impact Statement by the U.S. Environmental Protection Agency was published in the **Federal Register** on July 18, 1993. The Preferred Alternative identified in the FEIS includes a relocation of the right-of-way for the Appalachian National Scenic Trail.

It has been the practice of the National Park Service to publish relocations of segments of the right-of-way of the Appalachian National Scenic Trail in the **Federal Register** when the relocations are not located on the map panel previously published in the **Federal Register**.

A section of approximately 4.5 miles in length of the route of the Appalachian Trail identified in the Preferred Alternative of the Final Environmental Impact Statement is not located on the previously published map panel and a new map panel showing this section is published today.

The relocation is necessary to preserve the purposes for which the Appalachian National Scenic Trail was established, and to promote a sound land management program within the Pico/Killington study area in accordance with established multiple use principles of land users and the State of Vermont.

Relocation of the following segment of the Appalachian National Scenic Trail is hereby announced:

Vermont

Beginning immediately south of the Pico Peak Lookout Tower and proceeding in a northwesterly direction, crossing U.S. Route 4, and continuing northerly to an intersecting point along the Long Trail, and continuing easterly along the Long Trail to the present junction of the Long and Appalachian Trail north of Sherburne Pass.

An appropriate map change, as designated above, is provided as an appendix to this Notice to indicate the revised right-of-way and the Trail route within the revised right-of-way. This change is in compliance with provisions of section 7 of the National Trails System Act.

During the preparation of the Environmental Impact Statement which contains the Preferred Alternative including the relocated Trail segment, the State and local governments, private individuals and affected land owners were offered opportunity to participate in the decision making and to comment on the Preferred Alternative.

The purpose of this Notice is to obtain public comment on the relocated right-

of-way segment described above. The Final Environmental Impact Statement that describes the relocated trail segment is available from the Project Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry, West Virginia 25425. Comments will be received by the Project manager at the above address for 30 days after this Notice appears in the **Federal Register**.

Following review of comments received on this relocation, and any appropriate amendments made, implementation of the revised right-of-way will be published in the **Federal Register**.

John H. Davis,

Acting Director, National Park Service.

BILLING CODE 4310-70-M

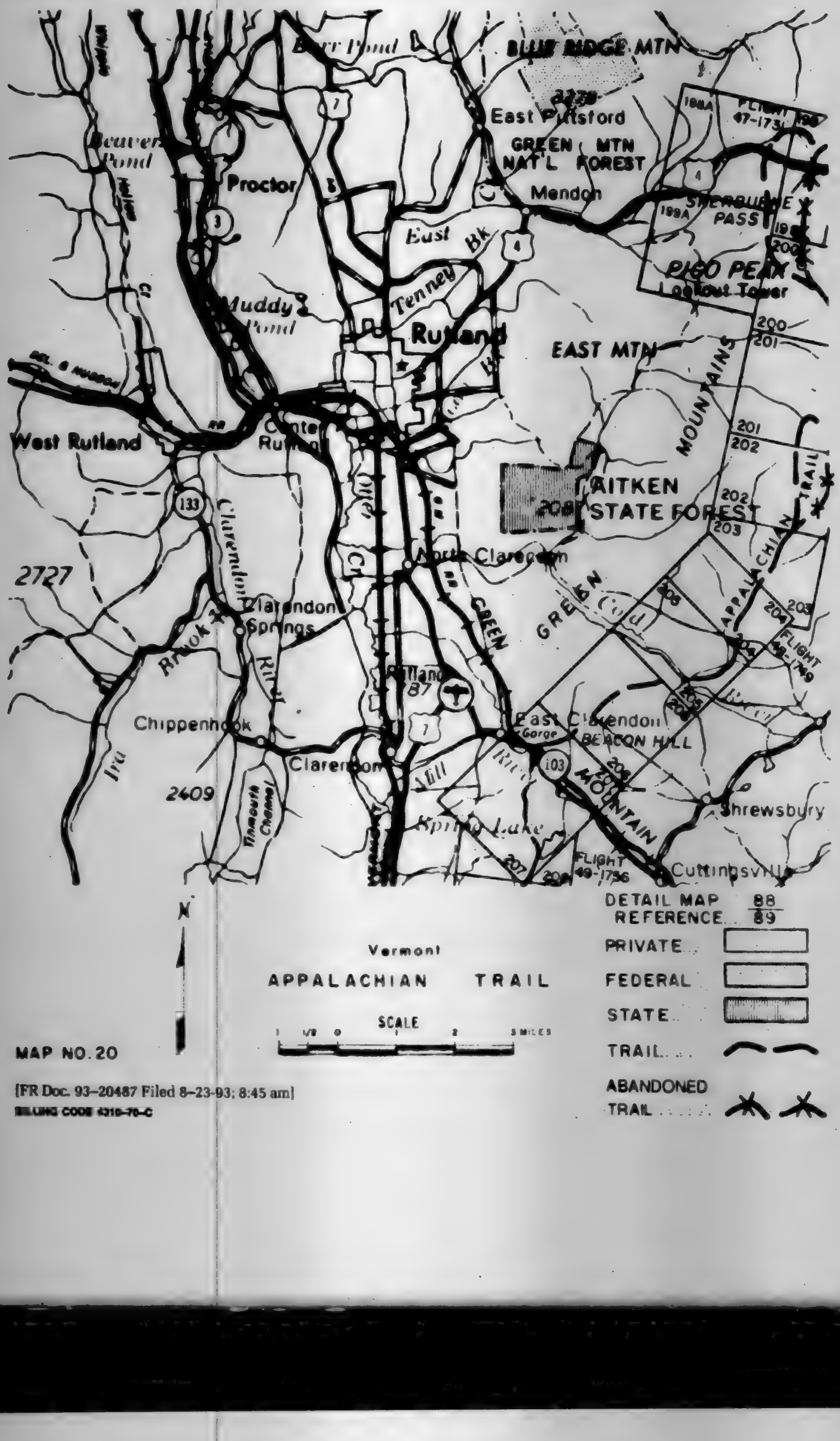

[FR Doc. 93-20487 Filed 8-23-93; 8:45 am]

BILLING CODE 4310-70-C

Appalachian National Scenic Trail; Record of Decision, Trail Protection Study, Pico/Killington Section

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of record of decision.

SUMMARY: In June 1993, the *Final Environmental Impact Statement (FEIS) for the Trail Protection Study-Pico/Killington Section* was made available to the public. The FEIS evaluated alternative routes for the section of the Appalachian Trail between U.S. Highway 4 and the Mendon-Shrewsbury town line in Rutland County, Vermont. The purpose of this Record of Decision (ROD) is to document the National Park Service (NPS) decision to select and implement the Preferred Alternative identified in the FEIS including the relocation of the trail and the acquisition of land for the route identified in this alternative. In addition to being printed in the **Federal Register**, copies of the ROD are being distributed to federal, state and local government agencies and other interested parties, and are being sent to Aldridge Public Library, Barre, Vermont; Bennington Free Library, Bennington, Vermont; Fletcher Free Library, Burlington, Vermont; Kellogg-Hubbard Library, Montpelier, Vermont; Rutland Free Library and Southwest Regional Library, Rutland, Vermont; and Norman Williams Library, Woodstock, Vermont. The ROD is available at the Appalachian Trail Project Office in Harpers Ferry West Virginia and in room 1210, Interior Building, 18th & C Streets, NW., Washington, DC.

Decision and Rationale

After analysis of the environmental impacts of the Preferred Alternative and other alternatives presented in the FEIS, and after consideration of public comments received, the NPS has determined that the Preferred Alternative as described in the FEIS most fully meets the purposes of the National Trails System Act, provides the highest level of protection for this section of the Appalachian Trail, and is the environmentally preferable alternative. Therefore, the NPS has decided to implement the Preferred Alternative as the federal action.

Implementation of federal action will require the acquisition of fee interests in about 572 acres of privately owned land (upon which an easement interest in 102 acres is presently owned by the U.S. Government), and the extinguishment of privately owned interests in about 175 acres of state-owned land. If, during negotiations with interest holders, it is determined that adjacent lands would become isolated due to acquisition of land for the 1000-foot Appalachian Trail corridor, it is possible that these isolated tracts would be acquired and the two figures will increase to 2600 acres and 475 acres respectively. Either acquisition or negotiation of an agreement will be required to protect about 250 acres of land owned by the City of Rutland. Within the study area an agreement with the State of Vermont will be required to protect 400 acres of state-owned land. To protect the existing route of the Trail through the Pico ski area, acquisition of an easement interest in about 275 acres of privately owned land will be required.

The federal action taken will have a beneficial effect on the natural environment, and hikers will benefit from the new route because of increased solitude and less visual intrusion from ski area development. The route selected will improve opportunities for natural scenic views and will enable hikers to enjoy a variety of vegetative types. The new route is considered technically and economically feasible. In deciding to select the Preferred Alternative, full consideration was given to minimizing the adverse effects upon adjacent landowners as is required by the National Trails System Act. Although the federal action will restrict the options presently available to private landowners whose lands will be acquired for the trail corridor, the protection and use of the selected trail corridor will harmonize with and complement established multiple-use plans and will ensure maximum benefit from the land. The Preferred Alternative is supported by the State of Vermont and the local trail managing volunteer group partners, and will ensure continued protection of the Appalachian Trail from potential adverse effects of adjacent land uses.

All practicable means will be taken in implementing the federal action to avoid or minimize environmental harm or harm to cultural and archaeological resources and traditional use sites. This will include archaeological monitoring during construction of the footpath, and consultation with the Abenaki during identification of the actual footpath in the field. Other mitigating measures and compliance requirements are identified in the FEIS.

The voluntary protective transfer of private lands discussed in the FEIS will not take place as the mediated agreement that bound all parties to these terms became void when the private ski area developers withdrew their plans for ski area expansion. The transfer of lands remained in the FEIS for analysis purposes. If and when the ski area developers propose ski area expansion in the future, consideration of these protective land transfers should be reconsidered.

Alternatives Considered and Description of the Proposed Action

The alternatives considered in the environmental impact statement were:

—Alternative 1 No Action (eighteen+ ski related crossings)
—Alternative 2A Modified Existing Route (ten ski related crossings)
—Alternative 2B Modified Existing Route (seven ski related crossings)
—Alternative 2C Modified Existing Route (two ski related crossings)
—Alternative 3 Existing Route (No ski related crossings)
—Alternative 4A Eastern Relocation (five ski related crossings)
—Alternative 4B Eastern Relocation (two ski related crossings)
—Alternative 5 (Preferred Alternative) Western Relocation (No ski related crossings)

Under the Preferred Alternative, the northern portion of the trail will be relocated about 1 mile west of the existing trail, partially on land in the Rutland City Forest, owned by the City of Rutland. About one mile of new trail will be built between U.S. 4 and Deer Leap Mountain on land to be acquired by the USDA Forest Service and on U.S. Government property managed by the USDA Forest Service. Approximately four miles of new trail will be constructed between Killington Peak and the Mendon-Shrewsbury town line. This route will be laid out to the east of Mendon Peak in order to protect natural and cultural values identified by the State of Vermont and the Abenaki. There will be no known adverse effects on biological and physical resources within the trail corridor caused by implementing the federal action. Land acquired for protection in the Appalachian Trail corridor will be protected from any physical development which will enhance biological productivity and reduce habitat fragmentation. Wetlands, headwater streams, spruce/fir and northern hardwood forest species will not be adversely affected. Hikers will continue to enjoy forested views with small natural clearings offering views.

Compliance

The following compliance will take place prior to trail construction.

A small portion of the trail will be built through a wetland on the north side of U.S. 4 using a pedestrian bridge or a technique called turnpiking. This

involves building a raised trail. This action will not have an adverse effect on the wetland and is an excepted action under *NPS Guidelines for Compliance with Executive Order 11990, Wetlands.* The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service will be consulted prior to construction.

Consultation will continue with the Abenaki to avoid impact to traditional use sites in the corridor. Members from the Abenaki Research Project will be present during identification in the field of the final footpath location. Traditional use sites will be avoided if at all possible, at which point mitigation will be identified and conducted.

Section 106 Compliance requirements have been completed.

Conclusion

It is our determination that the *Final Environmental Impact Statement for Trail Protection Study Pico/Killington Section, May 1993,* satisfies the requirements of Public Law 101–121 requiring the NPS to prepare an environmental impact statement to assess the impacts of ski development along this section of the Appalachian Trail.

The Preferred Alternative identified in the FEIS is selected as the federal action.

The route of the Appalachian Trail as described in the Preferred Alternative is selected as the permanent relocated route for the Appalachian National Scenic Trail between the Mendon-Shrewsbury town line and Deer Leap Mountain.

Willie P. King,

Acting Associate Director, Operations, National Park Service.

[FR Doc. 93–20488 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–70–M

Chesapeake & Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held at 1 p.m., Saturday, September 11, 1993, at the First Federal Savings Bank of Western Maryland, 118 Baltimore Street, Cumberland, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Ms. Diane C. Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland
Ms. Anne L. Gormer, Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Mr. George M. Wykoff, Jr., Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Ms. Mary Elizabeth Woodward, Shepherdstown, West Virginia
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn Hancock, Maryland
Mr. Laidley E. McCoy, Charleston, West Virginia
Ms. Jo Ann M. Spevacek, Burke, Virginia
Mr. Charles J. Weir, Falls Church, Virginia

The agenda for the meeting includes Old and New Business, Superintendent's Report and public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: August 17, 1993.

Sandra A. Alley,

Acting Regional Director, National Capital Region.

[FR Doc. 93–20492 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–70–M

Intent To Repatriate a Cultural Item in the Possession of the Field Museum of Natural History

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of the Field Museum of Natural History, Chicago, that meets the definitions of "sacred objects" and "object of cultural patrimony" under section 2 of the act.

The carved wheel with beads and eagle feathers, approximately 21 inches in diameter with an overall length of 30 inches, was collected in May 1900 at the Wind River Reservation, Wyoming, by George A. Dorsey, Chief Curator of Anthropology for the Field Museum. The original museum catalogue records describe the object as "catalogue number 61397; accession number 694; field number 548; Wheel (hoti)—from Sun dance pavilion—cottonwood; Arapahoe".

The form of the object, its source and documentation lead the museum to believe that it is a Sun Dance wheel. Copies of the museum records and photographs of the object have been provided to the Northern Arapaho Business Council and members of the appropriate Sun Dance religious body. Authorized representatives of the Arapaho tribe have viewed the object in person and concur with this identification of the object as a Sun Dance wheel. The Northern Arapaho Business Council has requested repatriation of the object from the Field Museum of Natural History in a letter dated January 19, 1993. The Field Museum of Natural History has no objections.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Jonathan Haas, Vice President for Museum Affairs, Field Museum of Natural History, Roosevelt Road at Lake Shore Drive, Chicago, IL 60605, telephone (312) 922–9410, extension 442, before September 23, 1993. Repatriation of the object to the Arapaho tribe may begin after that date if no additional claimants come forward.

Dated: August 11, 1993.

Dr. Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–20491 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–70–F

Completion of Inventory of Native American Human Remains Catalogued as Hawaiian, Received From Charles Derby, 1856, via the Essex Institute, ca 1867, in the Possession of the Peabody & Essex Museum, Salem, Massachusetts

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains catalogued as Hawaiian, received from Charles Derby, 1856, via the Essex Institute, ca 1867.

These remains are in addition to that reported on December 4, 1992, and published in the **Federal Register** on January 6, 1993, indicating remains identified during inventory of the museum's archaeological collections. The museum has continued in its consultation with Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, a Native Hawaiian organization recognized in Public Law 101–601.

Based on the above mentioned information, officials of the Peabody & Essex Museum, have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

Representatives of culturally affiliated Native Hawaiian organizations are advised that the human remains have been transferred, on loan, to representatives of The State Historic Preservation Officer, Chairperson, Department of Lands and Natural Resources who have agreed to hold the remains until an appropriate Native Hawaiian organization can be identified and any potential disputes settled, after which should a claimant come forward, they may be reinterred. This notice has been sent to officials of the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact John R. Grimes, Peabody & Essex Museum, East India Square, Salem, MA, (508) 745–1876, and Mr. William W. Paty, State Historic Preservation Officer, Chairperson, Department of Land and Natural Resources, P.O. Box 621 Honolulu, HI (808) 548–6550, before September 23, 1993.

Dated: August 11, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–20490 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–70–F

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 14, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 8, 1993.

Beth M. Boland,

Acting Chief of Registration, National Register.

FLORIDA

Volusia County

Strawn Historic Agricultural District (Citrus Industry Resources of Theodore Strawn, Inc., MPS), Bounded by Broderick and Retta Sts. and by Central and Dundee Aves., DeLeon Springs, 93000929

Strawn Historic Citrus Packing House District (Citrus Industry Resources of Theodore Strawn, Inc., MPS), 5707 Lake Winona Rd., DeLeon Springs, 93000931

Strawn Historic Sawmill District (Citrus Industry Resources of Theodore Strawn, Inc., MPS), 5710 Lake Winona Rd., DeLeon Springs, 93000930

GEORGIA

Coffee County

Downtown Douglas Historic District, Roughly bounded by Jackson St., Pearl Ave., Cherry St. and the Georgia—Florida RR tracks, Douglas, 93000941

Floyd County

Old Brick Mill, Park St. at Silver Cr., Lindale, 93000936

Lincoln County

Amity School (Lincoln County MPS), Clay Hill Rd. W of jct. with GA 43, Lincolnton vicinity, 93000933

Double Branches Historic District (Lincoln County MPS), Double Branches Rd. SE of jct. with main GA 220, Lincolnton vicinity, 93000934

Lincolnton Historic District (Lincoln County MPS), Roughly, along Washington, Peachtree, Goshen and Elm Sts., Lincoln, 93000932

Woodlawn Historic District (Lincoln County MPS), Jct. of Salem Church and Woodlawn—Amity Rds., Lincolnton vicinity, 93000935

LOUISIANA

Natchitoches Parish

Jones House (Louisiana's French Creole Architecture MPS), LA 484 along Cane R. Lake, Melrose vicinity, 93000937

MISSOURI

Boone County

Bond's Chapel Methodist Episcopal Church, MO A, 2.5 mi. NE of Hartsburg, Hartsburg vicinity, 93000940

Guitar, David, House, 2815 Oakland Gravel Rd., Columbia, 93000939

NORTH CAROLINA

Watauga County

Valle Crucis Episcopal Mission, NC 194 N side, 1 mi. SW of jct. with NC 1112, Valle Crucis vicinity, 93000938

OREGON

Deschutes County

Bend Amateur Athletic Club (Historic Development of The Bend Company in Bend, Oregon MPS), 520 NW. Wall St. (NE corner Wall St. and Idaho Ave.), Bend, 93000912

Bend Hill School (Historic Development of The Bend Company in Bend, Oregon MPS), 529 NW. Wall St., Bend, 93000916

Deschutes County Library (Historic Development of The Bend Company in Bend, Oregon MPS), 507NW. Wall St., Bend, 93000914

Reid School (Historic Development of The Bend Company in Bend, Oregon MPS), 129 NW. Idaho Ave., Bend, 93000913

Trinity Episcopal Church (Historic Development of The Bend Company in Bend, Oregon MPS), 469 NW. Wall St., Bend, 93000915

Jackson County

Baker, Sophenia Ish, House, 902 W. McAndrews Rd., Medford vicinity, 93000924

Patton, Hamilton and Edith, House, 245 Valley View Dr., Medford, 93000923

Pelton, John and Charlotte, House, 228 B St., Ashland, 93000922

Lane County

Eugene Blair Boulevard Historic Commercial Area, Blair Blvd. between W. 3rd and W. 5th Aves., including Van Buren St. between Blair and W. 3rd, Eugene, 93000926

Multnomah County

Broadway Hotel, 10 NW. Broadway, Portland, 93000927

Hahn, Henry, House, 1987 SW. Sixteenth Rd., Portland, 93000918

Long, A.G., House, 1987 SW. Sixteenth Ave., Portland, 93000917

Troutdale Methodist Episcopal Church, 302 SE. Harlow St., Troutdale, 93000921

Umatilla County

Still—Perkins House, 112 SE. Sixth Ave., Milton-Freewater, 93000925

Walla Walla Valley Traction Company Passenger Station and Powerhouse, 403 Robbins St., Milton-Freewater, 93000926

Wasco County

Fulton—Taylor House, 704 Case St., The Dalles, 93000920

Washington County

Crosley, Harry A., House, 2125 A St., Forest Grove, 93000919

[FR Doc. 93–20489 Filed 8–23–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property and Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property and motor carriers of passengers for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indexes are developed by the Bureau of Labor Statistics (BLS).

The base years for railroads, motor carriers of property, and passenger motor carriers are 1992, 1980, and 1988 respectively. Ex Parte No. 492, Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201, served June 17, 1992, raised the revenue classification level from $50 million (1978 dollars) to $250 million (1991 dollars). The base year for railroads, therefore, became 1991. The inflation index factors for 1989, 1990, 1991, and 1992 are presented as follows:

RAILROADS—RAILROAD FREIGHT INDEX

	Index	Deflator percent
1978	213.1	[1] 100.00
1990	402.3	52.98
1991	409.5	[2] 100.00
1992	411.8	99.45

[1] Docket No. 36367, Uniform System of Accounts for Railroads, served June 24, 1977, (42 FR 35016) raised the revenue classification level for Class I railroads from $10 million to $50 million effective January 1, 1978.

[2] Ex Parte No. 492, Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201, served June 17, 1992, raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992.

MOTOR CARRIERS OF PROPERTY PRODUCER PRICE INDEX*

	Index	Deflator percent
1980	89.8	.....
1990	116.3	77.21
1991	116.5	77.08
1992	117.2	76.62

*The indices and deflator percentages for motor carriers of property were adjusted to reflect changes by the BLS.

MOTOR CARRIERS OF PASSENGERS PRODUCER PRICE INDEX

	Index	Deflator percent
1988	106.9	.....
1990	116.3	91.92
1991	116.5	91.76
1992	117.2	91.21

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 927–5730.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20409 Filed 8–23–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1509N–93]

RIN 1115–AD38

Solicitation of Proposals From Interested Parties To Participate in a Pilot Immigration Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Commencing on August 24, 1993, the Immigration and Naturalization Service (the Service) will accept proposals from regional centers who wish to participate in an Immigrant Investor Pilot Program, provided for under section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Appropriations Act). Under this pilot program, the Service will select a regional center(s) in the United States that is/are responsible for promoting economic growth in a geographical area. For the purposes of the pilot program, 300 visas annually for five years will be set aside for immigrant investors who are coming to the United States to benefit the economy by creating employment for United States workers. The Service is publishing simultaneously in this issue of the **Federal Register** an interim rule to implement procedures and set forth criteria for selecting regional centers to participate in the Immigrant Investor Pilot Program.

DATES: Written proposals can be submitted on or after August 24, 1993.

ADDRESSES: Proposals must be submitted in duplicate, to the Acting Assistant Commissioner for Adjudications, R. Michael Miller, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications, Immigration and Naturalization Service, room 7122, 425 I Street, NW, Washington, DC 20536, telephone: (202) 514–5014.

Dated: July 30, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–20390 Filed 8–23–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 3, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 3, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC, this 9th day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Ametek—U.S. Gauge Div. (Wkrs)	Allentown, PA	08/09/93	07/28/93	28,926	Gas Pressure Gauges, Cockpit Instruments.
Eastern Associated Coal Corp. (UMWA)	Kopperston, WV	08/09/93	07/26/93	28,927	Coal.
Pentapco (Wkrs)	Elizabeth, NJ	08/09/93	07/09/93	28,928	Plaster Blister Packages.
L. J. Gonzer Associates (Wkrs)	Beacon, NY	08/09/93	07/19/93	28,929	Design and Engineering Service.
Kaiser Aluminum & Chemical Corp (USWA)	Mead, WA	08/09/93	07/26/93	28,930	Aluminum.
Fisher Rosemount System, Inc (Wkrs)	Burnsville, MN	08/09/93	05/18/93	28,931	Circuit Boards.
B&B Sportswear (Co)	Passaic, NJ	08/09/93	07/27/93	28,932	Ladies' & Mens' T-Shirts.
Brown & Root Industrial Services (Wkrs)	Houston, TX	08/09/93	07/26/93	28,933	Industrial Maintenance Services.
Bryan Manufacturing Co (Wkrs)	New Salem, PA	08/09/93	07/26/93	28,934	Ladies' Lingerie.
B.F.M. Energy Products (Wkrs)	Santa Ana, CA	08/09/93	07/08/93	28,935	Parts for Submarines.
Aeroquip Corp. (Wkrs)	Jackson, MI	08/09/93	07/23/93	28,936	Hose Lines & Fittings for Aerospace.
Aluminum Co. of America (USWA)	Badin, NC	08/09/93	07/26/93	28,937	Aluminum, Primary Ingot.
PPG Industries, Inc (AB&GU)	Greensburg, PA	08/09/93	07/27/93	28,938	Automobile Windshields.
Radiometer Technology, Inc (Wkrs)	Westlake, OH	08/09/93	07/28/93	28,939	Arterial Blood Samplers.
Reichert Shake & Fencing (Wkrs)	Toledo, WA	08/09/93	07/20/93	28,940	Cedar Shakes, Shingles & Fencing.
Super Computer Systems, Inc (Wkrs)	Eau Claire, WI	08/09/93	07/25/93	28,941	Computer Research and Development.
Spartan Oil Corp (Co)	Abilene, TX	08/09/93	07/26/93	28,942	Oil and Gas.
Joseph E. Seagrams & Sons (Wkrs)	So San Francisco, CA.	08/09/93	07/12/93	28,943	Distilled Spirits.
Imperial Smelting Corp (Wkrs)	Chicago, IL	08/09/93	07/15/93	28,944	Process Zinc Metal Alloys.
Texas Instrument (Wkrs)	Cypress, TX	08/09/93	07/29/93	28,945	Computer Service.
Technitrol, Inc (Wkrs)	Petersburg, PA	08/09/93	07/26/93	28,946	Transformers.
Allied Products Corp (UAW)	Hillsdale, MI	08/09/93	07/21/93	28,947	Large Automotive Dies.

[FR Doc. 93–20416 Filed 8–23–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28, 565]

Moench Tanning Company; Gowanda, NY; Affirmative Determination Regarding Application for Reconsideration

On August 6, 1993, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination will soon be published in the **Federal Register**.

The petitioners state, among other things, that a major customer was not surveyed.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of August 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services; Unemployment Insurance Service.

[FR Doc. 93–20417 Filed 8–23–93; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Eastern Associated Coal Corporation

[Docket No. M–93–197–C]

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Federal No. 2 Mine (I.D. No. 46–01456) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the main return airway cannot be traveled safely. The petitioner proposes to establish 4 ventilation check points to monitor the methane and oxygen airflow in the affected areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. New Warwick Mining Company

[Docket No. M–93–198–C]

New Warwick Mining Company, R.D. 1, Box 167A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Warwick Mine (I.D. No. 36–02374) located in Greene County, Pennsylvania. Due to hazardous conditions and roof falls certain areas of the return air course cannot be traveled safely. The petitioner proposes to establish evaluation check points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Island Creek Coal Company

[Docket No. M–93–199–C]

Island Creek Coal Company, Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. Due to hazardous conditions and roof falls in the Main South return entries, traveling the area would be unsafe. As an alternative, the petitioner proposes to establish monitoring stations on each side of a roof fall to monitor the return air across the fall and to examine this location weekly for hazardous conditions. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Peabody Coal Company

[Docket No. M–93–200–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Martwick Mine (I.D. No. 15–14074) located in Muhlenberg County, Kentucky. Due to hazardous conditions in the 2nd SE panel seals, the area cannot be traveled safely. The petitioner proposes to establish an evaluation check point at the outby (downwind) end of the seals; to have a certified person test for methane and oxygen at the evaluation point on a weekly basis; to record test results in a book; to examine the return air course entry adjacent to the 2nd SE panel seals weekly when monitoring the air that ventilates the seals; and to examine the 2nd SE seals from the adjacent entry being traveled during weekly checks. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Consolidation Coal Company

[Docket No. M–93–201–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364(b)(2) to its Humphrey No. 7 Mine (I.D. No. 46–01453) located in Monongalia County, West Virginia. Due to deteriorating roof and rib conditions, certain areas of the return air course cannot be traveled safely. The petitioner proposes to establish evaluation check points to monitor the air in the affected area and to have a certified person test for methane and the quantity of air on a weekly basis. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Ashland Coal Company

[Docket No. M–93–202–C]

Ashland Coal Company, Box 126, R.D. #2, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Orchard Slope (I.D. No. 36–06132) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Ashland Coal Company

[Docket No. M–93–203–C]

Ashland Coal Company, Box 126, R.D. #2, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Orchard Slope (I.D. No. 36–06132) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Ashland Coal Company

[Docket No. M–93–204–C]

Ashland Coal Company, Box 126, R.D. #2, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Orchard Slope (I.D. No. 36–06132) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Ashland Coal Company

[Docket No. M–93–205–C]

Ashland Coal Company, Box 126, R.D. #2, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Orchard Slope (I.D. No. 36–06132) located in Schuylkill

County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Ashland Coal Company

[Docket No. M–93–206–C]

Ashland Coal Company, Box 126, R.D. #2, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Orchard Slope (I.D. No. 36–06132) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Ashland Coal Company

[Docket No. M–93–207–C]

Ashland Coal Company, Box 126, R.D. #2, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1202–1(a) to its Orchard Slope (I.D. No. 36–06132) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. C & C Coal Company

[Docket No. M–93–208–C]

C & C Coal Company, 100 Big Mine Run, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Primrose Slope (I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner proposes to use an increased rope strength and secondary safety rope, instead of safety catches, on the slope conveyance (gunboat) used to transport persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Jim Walter Resources, Inc.

[Docket No. M–93–209–C]

Jim Walter Resources, Inc., P.O. Box 830079, Birmingham, Alabama 35283–0079 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley-wires, trolley feeder wires, high-voltage cables and transformers) to its No. 3 Mine (I.D. No. 01–00758) located in Jefferson County, Alabama. The petitioner proposes to use 2300 A.C. high-voltage cable to supply power to permissible longwall face equipment in or inby the last open crosscut. The petitioner asserts that the proposed alternate method would provide at least the same protection as would the mandatory standard.

14. Drummond Company, Inc.

[Docket No. M–93–210–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35203 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installations; minimum requirements) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner proposes to install low-level carbon monoxide sensors as an early warning fire detection system to monitor air traveling in the belt haulage entry; to provide an alarm at a manned location to detect carbon monoxide that exceeds 10 ppm above the ambient carbon monoxide level; to visually check the sensors each working day; and to check sensor calibration with a known concentration of carbon monoxide once every 30 days and record the results in a book maintained on the surface. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Drummond Company, Inc.

[Docket No. M–93–211–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35203 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner proposes to use all belt entries as intake air courses to eliminate any possible dead air areas and prevent air reversals due to changes in ventilation pressure; to continue separating the belt entries used as intake entries from other intake and return entries using a continuous permanent type stopping; and to install a carbon monoxide monitoring system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Clinch Valley Coal Corporation

[Docket No. M–93–212–C]

Clinch Valley Coal Corporation, P.O. Box 942, Tazewell, Virginia 24651 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its No. 5 Mine (I.D. No. 46–07642) located in McDowell County, West Virginia. Due to deteriorating roof conditions, the left return air course cannot be traveled safely. The petitioner proposes to establish evaluation check points to monitor the air in the affected area. The petitioner asserts that application of the standard would result in a diminution of safety to the mining personnel.

17. Copper Range Company

[Docket No. M–93–06–M]

Copper Range Company, P.O. Box 100, White Pine, Michigan 49971–0100 has filed a petition to modify the application of 30 CFR 57.14101(2)(3) (brakes) to its White Pine Mine (I.D. No. 20–00371) located in Ontonagon County, Michigan. Due to muddy conditions underground created by exceptionally saline (caustic) water, parking brakes on self-propelled equipment cannot be kept in a safe working condition. The petitioner proposes to use wheel chocks on standard highway pickup trucks used to transport personnel and supplies underground. The petitioner asserts that with necessary training the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 23, 1993. Copies of these petitions are available for inspection at that address.

Dated: August 13, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–20418 Filed 8–23–93; 8:45 am]

BILLING CODE 4910–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–068]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 23, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0017), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: Report of Government-Owned/Contractor-Held Property.

OMB Number: 2700–0017.

Type of Request: Reinstatement.

Frequency of Report: Annually.

Type of Respondent: Businesses or other for-profit, small businesses or organizations.

Number of Respondents: 2,750.

Responses per Respondent: 1.

Annual Responses: 2,750.

Hours per Response: 4.

Annual Burden Hours: 11,000.

Abstract-Need/Uses: NASA is required to account for Government-owned/contractor-held property. The NASA Form 1018 submitted by contractors provides the data to reconcile NASA's property accounts, from which internal management and external information reports are derived.

Dated: August 13, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–20396 Filed 8–23–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 56th meeting on Wednesday and Thursday, August 25–26, 1993, in the Maryland Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on July 28, 1993 (58 FR 40448).

Wednesday, August 25, 1993

8:30–9:00 a.m.: Opening Remarks by ACNW Chairman (Open)

The ACNW Chairman will make opening remarks regarding conduct of the meeting and the matters to be discussed. Interested members of the public will be offered an opportunity to comment at this time.

9:00–9:15 a.m.: Preparation for Discussions with Commissioners Rogers and de Planque (Open/Closed)

The Committee will discuss matters in preparation for the scheduled discussions with Commissioners Rogers and de Planque. Included in these discussions will be matters related to the appointment of new Members, ACNW resources, and organizational and personnel matters relating to ACNW Members and ACNW staff.

(**Note:** Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

9:15–10:15 a.m.: Discussions with Commissioner Rogers (Open/Closed)

The Committee will meet with Commissioner Rogers to discuss issues related to the past performance of the ACNW and the future role of the ACNW in the NRC regulatory process, including (1) a revised ACNW charter, (2) ACNW resources, (3) the future activities of the ACNW, and (4) organizational and personnel matters relating to ACRS Members and ACNW staff.

(**Note:** Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

10:15–11:00 a.m.: Preparation for Discussions with Commissioner de Planque and the NRC Staff (Open/Closed)

The Committee will discuss matters in preparation for the scheduled discussions with Commissioner de Planque and senior members of the NRC staff. Included in these discussions will be matters related to the appointment of new members, ACNW resources, and organization and personnel matters relating to ACNW Members and ACNW staff.

(**Note:** Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

11:00–1:30 p.m.: Discussions with the Director of the NRC Office of Nuclear Material Safety and Safeguards (Open)

The Committee will meet with the Director of the NRC Office of Nuclear Material Safety and Safeguards and his senior staff to discuss issues related to the ACNW role in the regulatory review process including matters related to the future activities of the ACNW.

1:30–2:00 p.m.: Preparation for Discussions with Commissioner de Planque (Open/Closed)

The Committee will discuss matters in preparation for the scheduled discussions with Commissioner de Planque. Included in these discussions will be matters related to the appointment of new Members, ACNW resources, and organizational and personnel matters relating to ACNW Members and ACNW staff.

(Note: Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

2:00–3:00 p.m.: Discussions with Commissioner de Planque (Open/Closed)

The Committee will meet with Commissioner de Planque to discuss issues related to the past performance of the ACNW and the future role of the ACNW in the NRC regulatory process, including (1) a revised ACNW charter, (2) ACNW resources, (3) the future activities of the ACNW, and (4) organizational and personnel matters relating to ACRS Members an ACNW staff.

(Note: Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to the 5 U.S.C. 552b(c)(6).)

3:00–4:00 p.m.: Executive Session (Open/Closed)

The Committee will discuss what it has learned from its discussions with Commissioners Rogers and de Planque and the NMSS staff, including matters related to (a) the appointment of new members, (b) ACNW resources, (c) revisions to the ACNW charter, (d) the future activities of the ACNW, and (3) organizational and personnel matters related to ACNW and NRC staff.

(Note: Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

4:00–5:00 p.m.: Discussions with R. Budnitz (Open)

The Committee will discuss with Dr. Budnitz his perspective on presentations/discussions thus far as well as his recommendations for future Committee activities and improved protocols.

5:00–7:00 p.m.: Executive Session (Open/Closed)

The Committee will discuss matters related to implementation plans for the future activities of the ACNW, including matters related to revisions to the ACNW charter, ACNW resources, the appointment of new Members, and organizational and personnel matters related to the ACNW Members and ACNW staff.

(Note: Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 522b(c)(6).)

7:00 p.m.: Recess

Thursday, August 26, 1993

8:30–10:30 a.m.: Executive Session (Open/Closed)

The Committee will continue its discussion of matters related to implementation plans for the future activities of the ACNW, including matters related to revisions to the ACNW charter, ACNW resources, the appointment of new Members, and organizational and personnel matters related to the ACNW Members and ACNW staff. The Committee will also work on the preparation of a report which discusses its conclusions and recommendations on these matters.

(Note: Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

10:30–Noon: Future ACNW Activities (Open)

The Committee will discuss matters related to the planning of future ACNW activities including:

- Agenda for September meeting
- Plans related to the ACNW visit to Nevada and the Working Group [WG] meeting on characterization of the unsaturated zone flow and transport properties.
- Establish full Committee and WG meeting schedule for remainder CY 1993

1:00–3:00 p.m.: Executive Session (Open/Closed)

The Committee will continue its discussion of matters related to implementation plans for the future activities of the ACNW, including matters related to revisions to the ACNW charter, ACNW resources, the appointment of new Members, and organizational and personnel matters related to the ACNW Members and ACNW staff. The Committee will also continue preparation of a report which discusses its conclusions and recommendations on these matters.

(Note: Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

3:00–5:00 p.m.: Appointment of New Members (Open/Closed)

The Committee will discuss the qualifications of potential candidates for nomination of ACNW membership.

(Note: Portions of this session may be closed to public attendance to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).)

5:00 p.m.: Adjourn

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss

organizational and personnel matters that relate solely to internal personnel rules and practices of this advisory committee, the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

Dated: August 18, 1993.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 93-20399 Filed 8-23-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on September 8, 1993, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 8, 1993—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the status of resolution of the remaining open issues in the ABWR Standard Safety Analysis Report and how the ABWR design satisfies the requirements resulting from the resolution of certain unresolved safety issues (USIs) and generic safety issues (GSIs). Also, it will discuss the NRC staff's schedule for submittal of the Final Safety Evaluation Report. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of GE and its consultants, and other interested persons regarding this review. Representatives of the NRC staff will participate, as appropriate.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 17, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-20400 Filed 8-23-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 8, 1993, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of certain portions that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, September 8, 1993—2:00 p.m. until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492-4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 16, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-20401 Filed 8-23-93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Information Collection SF 3105

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Standard Form 3105, Documentation in Support of Disability Retirement Application, is used by applicants for disability retirement under the Federal Employees Retirement System, to supply OPM with documentation of their medical condition. The information is used by OPM to determine if the applicant meets the requirements for disability retirement.

Approximately 3,100 SF 3105 forms will be completed per year. The form requires approximately 90 minutes to

fill out. The annual burden is 4,650 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Jr., Chief, FERS Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street NW., room 4429, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch (202) 606–0623.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–20343 Filed 8–23–93; 8:45 am]

BILLING CODE 6325–01–M

Request for Reclearance of an Information Collection, SF 2824, SF 2824A, and SF 2824C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Standard Form 2824, Documentation in Support of Disability Retirement Application, SF 2824A, Applicant's Statement of Disability, and SF 2824C, Physician's Statement, are used to collect information from applicants for Civil Service Retirement System disability retirement so that OPM can determine whether to approve a disability retirement.

Approximately 9,000 SF 2824, SF 2824A, and SF 2824C forms are completed annually. The SF 2824A requires approximately 30 minutes to complete and the SF 2824C requires approximately 60 minutes to complete. The annual burden is 9,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before September 23, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch (202) 606–0623.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–20344 Filed 8–23–93; 8:45 am]

BILLING CODE 6325–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Public Information Collection Requirements Submitted to OMB for Review

DATES: August 24, 1993.

PADC has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511 (44 U.S.C. ch. 35). Copies of the submission may be obtained by calling the PADC clearance officer listed. Send comments to the OMB reviewer listed and to the PADC clearance officer.

OMB Number: 3208.

Form Number: Standard Form 263.

Title: Claim for Moving Costs and Related Expenses—Businesses and Farm Operations.

Description: Under the authority of the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs regulation, 49 CFR part 24, PADC solicits information from businesses displaced by PADC's acquisition of real property for the purposes of determining eligibility and entitlement to relocation benefits. Standard Form 263 is generally recognized as the appropriate medium for this function; administrative regulations require OMB periodically to approve PADC's use of the form.

Respondents: Small businesses located within the Pennsylvania Avenue development area.

Clearance Officer: Talbot J. Nicholas II, Attorney, (202) 724–9055, PADC, suite 1220-North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

OMB Reviewer: Don Arbuckle, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

Dated: August 12, 1993.

Robert E. McCally,

Acting Executive Director.

[FR Doc. 93–20375 Filed 8–23–93; 8:45 am]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32762; File No. SR–Amex–93–01]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Adoption of New Rule 208, the Rescission of Rules 365 and 417 and the Revision of Rules 415 and 416

August 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 7, 1993, as subsequently amended on June 25, 1993,[1] the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new Rule 208 concerning the bunching of odd-lot orders, rescind Rule 365 relating to the participation of clearing members in the profits and losses of specialists for whom they clear, rescind Rule 417 and revise Rules 415 and 416 relating to the handling of accounts by member and member organizations.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] See letter from Linda Tarr, Special Counsel, Legal and Regulatory Policy Division, Amex, to Louis A. Randazzo, Attorney, Commission, dated June 22, 1993. Amendment No. 1 makes Commentary .01 to Amex Rule 415 applicable to both paragraph (a) and (b) of Rule 415.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently conducted a review of its rules and determined that certain changes were necessary to update them and, where appropriate, make them consistent with similar recently amended rules of the New York Stock Exchange ("NYSE"). Each rule change is described below, including an explanation as to why the changes are required.

New Rule 208. Bunching Odd-Lots. Currently, Exchange policy prohibits the combining of odd-lot orders given by several customers into round lots without the prior approval of such customers. Exchange policy also requires, under certain circumstances, that separate odd-lot orders which aggregate one or more round lots and which are entered for the same account,[2] to the extent possible, be consolidated into round lots.

This policy mirrors NYSE Rule 411(b) relating to the Conduct of Accounts,[3] and it is now proposed to articulate this policy in a new Exchange Rule 208.

Rule 365. Participation in Specialist Joint-Account Profits or Losses. This Rule, adopted in 1962, prohibits a clearing firm from participating in the profits or losses of a specialist joint account for which it clears, unless that clearing firm has a general partner or voting stockholder registered and active as a specialist in the joint account. Requiring active participation by a principal of the clearing firm was a crude method of dealing with specialist concentration issues, by in effect limiting the number of specialist units with which the clearing firm could be involved. Subsequently the Exchange has established more direct and sophisticated procedures for dealing with specialist concentration issues. Any proposed change in specialist unit structure is now reviewed by the Committee on Floor Member Performance and/or the Equities Allocations Committee, and, where such changes raise issues of concentration, they are analyzed by the staff and reviewed by the Committee on Specialist Unit Structure and by the Board of Governors of the Exchange.

No other exchange has a rule similar to Rule 365, an the Rule now unnecessarily restricts joint account arrangements involving clearing firms. Accordingly the Exchange proposes to delete Rule 365.

Rules 415 and 416. Member's Transactions with Another Member Organization and Accounts of Employees of Exchange and Members. These Rules restrict member organizations in the opening and handling of accounts of members and employees of other member organizations and employees of the Exchange. It is proposed that Rules 415 and 416 be revised to match certain clarifying amendments made recently in comparable NYSE rules.[4]

Rule 417. Margin Accounts of Employees of Financial Concerns. This Rules prohibits a member or member organization from opening a margin account or effecting a margin transaction for the account of an employee of a bank, trust company or similar financial organization unless the written consent of the employer has first been obtained. It is proposed to rescind this rule in line with the recent rescission of a comparable NYSE rule.[5] The Amex believes that such a Rule is now considered beyond the scope of appropriate exchange regulation.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–01 and should be submitted by September 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[2] The Commission notes that, as embodied in proposed Rule 208, this policy applies to multiple odd-lot orders entered by one person for his own account or for various accounts in which he has an actual monetary interest or over which he is exercising investment discretion.

[3] For the most recent amendments to NYSE Rule 411(b), see Securities Exchange Act Release No. 31048 (August 18, 1992), 57 FR 38706 (August 26, 1992) (File No. SR–NYSE–92–03).

[4] The Exchange states that the amendments are based on NYSE Rules 406 and 407. See Securities Exchange Act Release No. 30744 (May 27, 1992), 57 FR 24075 (June 5, 1992) (File No. SR–NYSE–92–04).

[5] See Release No. 30744, *supra* note 4.

[Release No. 34–32753; File No. SR–BSE–93–15]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by Boston Stock Exchange, Inc., Relating to Specialist Concentration Policy Pilot Program

August 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is granting accelerated approval and is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to obtain accelerated effectiveness of a one-year extension of the pilot program concerning the BSE's Specialist Concentration Policy ("Concentration Policy"),[3] which will continue to permit the Executive Committee to review proposed specialist combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the BSE's specialist concentration policy pilot program, which establishes certain standards based on Consolidated Tape Association ("CTA") ranking of specialist stocks for reviewing certain proposed mergers, acquisitions and other combinations between or among specialist units. The pilot program authorizes the Executive Committee of the Board of Governors to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

The Executive Committee reviews any arrangement where previously separate specialist organizations would be operating under common control and would comprise:

(a) 15% or more of the 100 most actively traded CTA stocks; or,

(b) 15% or more of the second 100 most actively traded CTA stocks; or,

(c) 20% or more of the third 100 most actively traded CTA stocks; or,

(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.[4]

The Executive Committee approves or disapproves the proposed combination based on its assessment of the following considerations:

(a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria;

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the resulting specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

With respect to the criteria relating to the "commitment to the Exchange market," the Executive Committee looks to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. For example, the Executive Committee reviews and assesses each constituent unit's past performance on the Exchange relating to such matters as:

—Acceptance and cooperation in the development, implementation and enhancement to the BSE Automated Communications Network ("BEACON");
—Efforts at resolving problems concerning customer orders;
—Willingness to facilitate early openings in order to compete effectively with other exchanges; and
—Willingness to voluntarily provide Execution Guarantees beyond the minimum required under BSE Rule 2039A.

2. Statutory Basis

The basis under the Act for the proposed policy is section 6(b)(5) in that the policy enables the Exchange to monitor the tendencies toward concentration in the specialist community and to intervene to prevent undue concentration, and as such is designed to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed policy will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] On February 7, 1990, the Commission approved, on a six-month pilot basis ending August 7, 1990, a proposed rule change by the BSE to establish procedures for reviewing proposed combinations among specialist units on the Exchange. *See* Securities Exchange Act Release No. 27684 (February 7, 1990), 55 FR 5527 (approving File No. SR–BSE–89–05). The Commission later approved the renewal of the pilot program for additional one-year periods ending August 1, 1991, August 13, 1992 and August 13, 1993. See Securities Exchange Act Release Nos. 28327 (August 10, 1990), 55 FR 33794 (File No. SR–BSE–90–11); 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06); and 31037 (August 13, 1992), 57 FR 37854 (File No. SR–BSE–92–08).

[4] The Free List is made up of securities which are not registered to certain specialists and can be traded by any specialist.

Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–15 and should be submitted by September 14, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to extend its pilot program regarding specialist concentration for an additional one-year period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, specifically, section 6 of the Act.[5] The Commission believes it is necessary to extend the pilot program's operation in order to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation during the Commission's consideration of permanent approval of the concentration rules. Although the pilot has been in effect since February, 1990, only two proposed combinations have triggered an Executive Committee review. Consequently, the Commission believes that the Exchange, in conjunction with the Commission, needs additional time to fully evaluate the operation of the Concentration Policy and to determine whether the concentration rules are enhancing the quality of markets and improving specialist performance on the BSE. The Commission believes that allowing the Exchange an additional one-year period in which to implement the pilot will enable the Exchange and the Commission to adequately address the effectiveness of the pilot program.

In its prior orders renewing and extending the pilot program,[6] the Commission requested that the BSE develop criteria to evaluate the effects of its concentration rules on the activities of specialists and to determine, for example, whether implementation of these rules is increasing the performance and effectiveness of specialists and aiding in the prevention of undue concentration. Specifically, the Commission requested that the BSE submit a report to the Commission addressing, among other things, the following issues: The number of proposed specialist combinations that have triggered an Executive Committee review since the inception of the pilot program and the circumstances surrounding these reviews; whether the existence of more firms has increased competition among specialists for new stock allocations; whether the concentration rules have increased incentives for quality markets and higher standards for performance; and the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.

In response to the Commission's request, the BSE submitted a letter[7] which addressed many of the issues the Commission outlined in previous orders. The BSE stated, during the last pilot period, there has been one recent proposed specialist combination that exceeded the concentration limits set forth in the policy.[8] The BSE reported that an acquisition of a specialist operation triggered an Executive Committee review where the proposed merger would have resulted in adding four stocks that would result in the combined unit exceeding the third category of review (i.e. 20% or more of the third 100 most actively traded CTA stocks). According to the BSE, the specialist, in keeping with the spirit and intent of the Concentration Policy, voluntarily gave up four stocks for reallocation. Thereafter, the Executive Committee approved of the proposed combination.

The Commission also asked the BSE to discuss whether competition among specialists for new stock allocations has increased, as evidenced by the number of new stock allocations as well as specialists and specialist firms applying for those allocations. In response, BSE stated that it found that the increase or decrease in the number of applications for new stock allocations is directly related to the perceived quality of the new stock in terms of potential order flow. The BSE noted that the Concentration Policy was introduced because mergers and other combinations of firms results in fewer firms, not more firms.

The Commission asked the BSE to evaluate whether the Concentration Policy has increased incentives for quality markets and higher standards of performance. The BSE reported that among the factors considered in the allocation of stocks are the specialist performance standards which measure the quality of markets on the Exchange. According to the BSE, it is imperative that each specialist strive to achieve the best quality markets and highest standards of performance in order to aid him/her in obtaining new allocations. The BSE stated that since most combinations in recent years have comprised the larger order flow firms acquiring smaller independent firms, it believes that it is the added order flow, rather than the Concentration Policy, that has led to improved quality of markets.

The Commission questioned what impact the Concentration Policy has had upon the competitive environment necessary to maintain an orderly market. The Exchange stated that it does not believe that the Concentration Policy has had any impact on the competitive environment necessary to maintain an orderly market. The BSE explained that a specialist must, by rule, maintain fair and orderly markets in each of his/her stocks. Furthermore, the BSE believes that the competition in those stocks is among the participants in the Intermarket Trading System, and new order flow enables the formerly independent BSE specialists to become more competitive.

The Commission asked the BSE to report on whether any firms that have undergone Executive Committee review have demonstrated an improvement in specialist evaluation results or displayed a higher quality of markets. The BSE responded that there is no direct correlation between the application of the Concentration Policy and improved specialist performance or higher quality of markets. The BSE stated that order flow and market conditions have the greatest impact on performance and market quality. The BSE explained that the Concentration Policy was not adopted to improve performance or market quality on the

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[5] 15 U.S.C. 78f (1988).

[6] See supra, note 3.

[7] See letter from Karen A. Aluise, Staff Attorney, BSE to Diana Luka-Hopson, Branch Chief, Commission, dated April 1, 1993.

[8] The BSE has had a total of two proposed combinations since the inception of the pilot program. The first proposed combination that exceeded the concentration limits was discussed in Securities Exchange Act Release No. 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06). The second proposed combination is discussed above. This issue was clarified during a telephone conversation between George W. Mann, Jr., Senior Vice President and General Counsel, BSE, and Elizabeth Cosgrove, Attorney, Commission, dated August 5, 1993.

Exchange, but rather to provide a reasonable means of preventing a monopoly or the concentration of most of the top quality stocks within a small number of firms. The BSE believes that the improvement in both specialist performance and market quality is directly related to the competition among specialist firms for the allocation of new stocks and their desire to attract new order flow.

Finally, the Commission asked whether the Concentration Policy has assisted the Exchange in increasing order flow and, if so, the reasons for this conclusion. The BSE responded that order flow to the Exchange has increased steadily since 1985. The BSE stated that this is in part due to the impact of national wirehouses entering the specialist business, absorbing some of the independent specialists, and directing new order flow to the Exchange. According to the BSE, with the addition of fee incentives, high quality markets and efficient automation, some of these firms now send order flow in stocks traded by unaffiliated specialists as well.

During the extended pilot period, as was requested during the previous one-year pilot periods, the Commission expects the Exchange to continue to develop criteria to evaluate the effects of its concentration rules on the activities of specialists. In this regard, the Commission expects the BSE to report to the Commission by May 1, 1994, the number of proposed specialist combinations that have triggered an Executive Committee review since the extension of the pilot program and the circumstances surrounding these reviews; whether competition among specialists for new stock allocations has increased, as evidenced by the number of new stock allocations as well as specialists and specialist firms applying for those allocations since the inception of the pilot program;[9] and whether any of the specialist firms that have undergone Executive Committee review have demonstrated an improvement in specialist evaluation results or displayed a higher quality of markets.[10] In addition, the Commission remains interested in whether the BSE finds that the concentration rules have assisted the Exchange in increasing order flow and if so, the reasons for this conclusion, as well as the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.[11]

The Commission finds good cause for approving the proposed extension of the specialist concentration pilot program prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the extension of this pilot program furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program on an uninterrupted basis during the Commission's consideration of the Exchange's request for permanent approval. Further, the substance of the proposed rule change has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act[12] that the proposed rule change (SR–BSE–93–15) be, and is hereby approved for a period ending August 13, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20339 Filed 8–23–93; 8:45 am]

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[9] The Commission believes the BSE needs to more fully address and justify why the proposed concentration levels are set appropriately and prevent mergers and combinations that could potentially decrease the competition for stock allocations thereby affecting the quality of BSE's markets.

[10] *Id.*

[11] In evaluating the effects of the pilot, the Commission expects the BSE to provide specific data to support its conclusions. For example, the Commission is interested in examining the number of specialists applying for new allocations both before and during the pilot program.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32752; File No. SR–BSE–93–5]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Exchange Inquiries

August 16, 1993. .

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1993, as amended subsequently on March 30, 1993,[1] and July 26, 1993,[2] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amended proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated March 25, 1993. Amendment No. 1 clarified certain language in the proposed rule change.

[2] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 20, 1993. Amendment No. 2 revised proposed BSE Chapter XVIII, Section 5(b).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to amend its Constitution and Rules to provide that members, member organizations and allied members must comply with Exchange requests for information and that continued non-compliance may result in the suspension or expulsion of that member or member organization.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to clarify the regulatory obligation of Exchange members, member organizations and allied members to comply with Exchange requests for information and access to books and records maintained under section 17(a) of the Act.[4] The Exchange

[3] The exact text of the proposed amendment was attached as Exhibit 2 to File No. SR–BSE–93–5 and can be obtained at the places specified in Item IV below.

[4] 15 U.S.C. 78q(a)(1) (1988). Section 17(a) of the Act requires, among other things, that every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, register broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods

Continued

Constitution currently provides that a member is required to submit records to its Board of Governors ("Board"), its committees and authorized officers. The Exchange now seeks to broaden this provision to add member organizations under its authority, as well as to eliminate the requirement of a two-thirds vote of the Board.[5] Because the constitutional provision acts as an enabling rule, the Exchange has proposed a rule which restates the requirement to respond to Exchange inquiries and sets forth procedures to address noncompliance.[6]

(2) Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange needs the ability to require its members, member organizations and allied members to provide access to books and records that are required to be maintained under section 17(a) of the Act in order for it to fulfill its responsibilities as a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was approved by the Exchange Board on February 23, 1993. The Exchange notified its membership of the proposal and received no comments on the proposed amendment to the Constitution.[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–5 and should be submitted by September 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20427 Filed 8–23–93; 8:45 am]

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Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Inc.

August 18, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Bedford Property Investors, Inc.
Common Stock, $1.00 Par Value (File No. 7–11047)
Triple A and Government Series—1995, Inc.
Common Stock, $.001 Par Value (File No. 7–11048)
DWG Corp.
Class A Common Stock, $.10 Par Value (File No. 7–11049)
Pittston Services Group
Common Stock, $.01 Par Value (File No. 7–11050)
Pittston Minerals Group
Common Stock, $.01 Par Value (File No. 7–11051)

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such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] Article XIV, section 6 of the BSE Constitution currently provides that the Board may, by a two-thirds vote of its members present, require that a member or allied member of the Exchange submit to the Board, any committee or authorized officer, for examination, such books or papers as are material and relevant to any matter under investigation by said Board or committee. As amended, Article XIV, Section 6 would authorize the Board, any Exchange committee or authorized officer to require that a member, member organization or allied member of the Exchange submit books and records deemed material and relevant to any matter under investigation by the Board, Committee, or authorized officer.

[6] The Exchange proposes to adopted the following amendment to Chapter XVIII of its Rules:

Failure to Respond to Exchange Inquiries

Sec. 5(a) In accordance with Article XIV of the Constitution, for any regulatory purpose that the Exchange deems appropriate under its Constitution and Rules, all Members and Member Organizations of the Exchange, and all associated persons thereof, shall be required to (1) respond orally or in writing to any Exchange inquiry and (2) provide access to its books, records and accounts, as required to be maintained under section 17(a) of the Securities Exchange Act of 1934, within the timeframe specified by the Exchange in its request.

(b) Failure to comply with the provisions of paragraph (a) shall result in written notice to the Member, Member Organization or associated person that the continued failure to respond to an Exchange inquiry constitutes grounds for suspension from membership. After fifteen (15) calendar days written notice without compliance, a Hearing Committee will be empaneled to address the non-compliance with paragraph (a). Upon a determination by the Hearing Committee, such Member, Member Organization or associated person may be suspended. Written notice of the suspension shall be provided to the Member, Member Organization or associated person.

[7] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated March 19, 1993.

Article XX, Section 1 of the BSE Constitution provides that any amendment to the Constitution which is adopted by the Board shall be submitted to Exchange members. If the amendment is not protested by fifteen Exchange members prior to the expiration of the seventh business day after the date of delivery or mailing of the proposed amendment, then the amendment is deemed approved.

U.S.A. Waste Services, Inc.
Common Stock, $.01 Par Value (File No. 7–11052)
Allied Signal, Inc.
Common Stock, $1.00 Par Value (File No. 7–11053)
Calprop Corporation
Common Stock, No Par Value (File No. 7–11054)
Kasler Holding Company
Common Stock, No Par Value (File No. 7–11055)
Navistar International Corporation (Holding Company)
$6.00 Cum. Conv. Pfd. Stock Series G, $.10 Par Value (File No. 7–11056)
USG Corporation
Common Stock, $.10 Par Value (File No. 7–11057)
USG Corporation
Warrants Expiring 1998, No Par Value (File No. 7–11058)
Crestar Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–11059)
Kaiser Aluminum Corp.
$.65 Depositary Shares, $.05 Par Value (File No. 7–11060)
Landauer, Inc.
Common Stock, $.10 Par Value (File No. 7–11061)
Motor Coach Industries International, Inc.
Common Stock, $.01 Par Value (File No. 7–11062)
Magma Copper
5.625% Cum Conv. Pfd. D, $.01 Par Value (File No. 7–11063)
Grupo Radio Centro SA DE
American Depository Shares (Rep. 5 Non-Red. Ord. Partic. Ctfs.), No Par Value (File No. 7–11064)
Southern Pacific Rail Corporation
Common Stock, $.001 Par Value (File No. 7–11065)
Southwestern Property Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11066)
AT&T Capital Corp.
Common Stock, $.01 Par Value (File No. 7–11067)
Diversified Communications Industries Ltd.
Common Stock, $.08 Par Value (File No. 7–11068)
Elan Corporation Plc
Rights, No Par Value (File No. 7–11069)
Houston Biotechnology, Inc.
Common Stock, $.10 Par Value (File No. 7–11070)
Robertson-Ceco Corporation
Common Stock, $.01 Par Value (File No. 7–11071)
Crown American Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11072)
Eckerd Corp.
Common Stock, $.01 Par Value (File No. 7–11073)
Forum Retirement Partners LP
Dep. Units, No Par Value (File No. 7–11074)
Lakehead Pipeline Partners LPI
Units, No Par Value (File No. 7–11075)
LSB Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–11076)
National Golf Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11077)
Excel Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–11078)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–20430 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 18, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Banco Bilbao Vizcaya International (Gibraltar) Ltd.
American Depositary Shares Ser. C (rep. Non-Cum. Gtd. Pref. Sh., Ser. C) (File No. 7–11114)
Carr-Gottstein Foods Co.
Common Stock, $.01 Par Value (File No. 7–11115)
China Tire Holdings Ltd.
Common Stock, $.01 Par Value (File No. 7–11116)
CSS Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–11117)
Ek Chor China Motorcycle Co. Ltd.
Common Stock, $.10 Par Value (File No. 7–11118)
Elf Overseas Ltd.
7⅝% Cum. Gtd. Pref. Ser. B (File No. 7–11119)
Espirito Santo Financial Holdings S.A.
American Depositary Shares (rep. 1 Ord. Sh. $10.00 Par Value (File No. 7–11120)
Freeport-McMoran Copper & Gold, Inc.
Depositary Shares (rep. $0.05 Sh. of Step-Up Cv. Pfd. Stk. $.10 Par Value (File No. 7–11121)
Grancare, Inc.
Common Stock, No Par Value (File No. 7–11122)
Grupo Radio Centre SA de C.V.
American Depositary Shares (rep. 5 Non-Red. Ord. Part. Ctfs.) (File No. 7–11123)
Hecla Mining Co.
Ser. B Cum. Cv. Pfd. $.25 Par Value (File No. 7–11124)
Kaiser Aluminum Corp.
$.65 Depositary Shares (rep. 1/10 sh. of Ser. A and Cv. Prem. Div. Pfd. Stk.) (File No. 7–11125)
LASMO Plc
American Depositary Shares Ser. A (rep. 1 Cum. Dollar Pref. SH. Ser. A) (File No. 7–11126)
Levitz Furniture, Inc.
Common Stock, $.01 Par Value (File No. 7–11127)
MMI Co.'s Inc.
Common Stock, $.10 Par Value (File No. 7–11128)
Mascotech, Inc.
Common Stock, $1.00 Par Value (File No. 7–11129)
Merry Land & Investment Co., Inc.
$1.75 Ser. A Cum. Conv. Pfd., No Par Value (File No. 7–11130)
Pulitzer Publishing Co.
Common Stock, $.01 Par Value (File No. 7–11131)
Rhone-Poulenc Overseas Ltd.
8⅛% Cum. Gtd. Pref. Ser. A (File No. 7–11132)
Sithe Energies, Inc.
Common Stock, $.01 Par Value (File No. 7–11133)
Stone Energy Corp.
Common Stock, $.01 Par Value (File No. 7–11134)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7–11135)

These securities are listed and registered on one or more other national

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–20431 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32746; International Series Release No. 574; File No. SR–ISCC–93–03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by International Securities Clearing Corporation Relating to a Revision to ISCC's Fee Schedule

August 13, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 11, 1993, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to ISCC's fees for providing instruction processing services.

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change consists of a change to the fees for providing instruction processing services, to reflect the actual costs that ISCC incurs. ISCC has two categories of fees for the receipt of transaction instruciotns—one for individuals and one where submission is by one entity on behalf of multiple member. The latter category was created several years ago with the implementation of Portal and has not been reexamined until recently due to the limited volume usage.

Under the link with Euroclear,[2] ISCC will receive transactions from Automatic Data Processing, Inc. on behalf of multiple members. Upon Examination of this fee, ISCC determined that it does not accurately reflect the cost involved in processing these transactions. ISCC is proposing an increase in this fee from $.50 per item to $1.00 per item. This fee would be applicable in all instances where one entity is submitting transactions on behalf of multiple members where the submitting entity is not a member.

(b) The proposed fee change will provide for the equitable allocation of fees among members, so the proposed rule change is consistent with the requirements of section 17A(b)(3)(D) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[2] See Securities Exchange Act Release No. 32564 (June 30, 1993), 58 FR 36722.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it establishes or changes a due, fee, or other charge of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and argumepts concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–ISCC–93–03 and should be submitted by September 14, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20428 Filed 8–23–93, 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32760; File No. SR–NSCC–92–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Short Positions That Are Subject to the Depository Trust Company's Honest Broker Procedures

August 17, 1993.

On October 13, 1992, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to settlement of open short positions subject to the Depository Trust Company's ("DTC") honest broker procedures. The Commission published notice of the proposed rule change in the **Federal Register** on December 3, 1992.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change adds new Rule 21 to NSCC's rules, which provides that an NSCC member requesting that DTC activate its honest broker program[3] thereby authorizes NSCC to submit to DTC on behalf of the member such data as necessary to allow DTC to deliver securities to NSCC's account at DTC to cover any short positions in NSCC's Continuous Net Settlement ("CNS") System in that security.[4] The authorization will continue for the entire period the member utilizes the honest broker program.

Under DTC's honest broker procedures, a troubled broker must submit to DTC a listing of the open delivery obligations that it would like to complete if shares are released by a pledge bank. If the member submits instructions to DTC relating to CNS open short positions and shares are released, DTC has agreed that CNS obligations will take priority over other delivery obligations. If the member does not include open CNS short positions in its instructions to DTC they will not be covered.

NSCC will settle money payments with DTC for deliveries made through the CNS settlement procedure on the day the deliveries are completed.[5] DTC will include such payments in its *pro rata* distribution to the pledgee banks that participate in the honest broker program.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act, and in particular, Section 17A(b)(3)(F).[6] That section provides that the rules of a clearing agency should be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. That section further provides that the rules of a clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds that are in the possession or control of the clearing agency.[7] The Commission believes the proposed rule change is consistent with these objectives.

The proposed rule change ensures that open CNS short positions are covered by the release of pledged securities in the event an NSCC member activates DTC's honest broker procedures. The need for such a mechanism became apparent during the 1990 winddown of Drexel Burnham Lambert Group, Inc. and its broker-dealer subsidiary, Drexel Burnham Lambert, Inc. ("Drexel").[8] Prior to becoming insolvent, Drexel held significant positions in corporate equity and debt that could be delivered by book-entry transfer. Counterparties were reluctant to release securities to Drexel due to concerns that Drexel's promise to pay at the end of the day might result in the counterparty's inability to retrieve the securities if a bankruptcy petition had been filed. This was made more complicated by the need to account for settling trades with NSCC. Among other things, Drexel's lenders were concerned that release of securities for delivery to NSCC could result in no net reduction of loans to Drexel because NSCC might apply the money due Drexel for those securities to meet other Drexel purchase or payment obligations. In response to this concern and other concerns of pledgee banks, Drexel and its lenders, in consultation with the Commission and federal bank regulatory staff, created a mechanism by which the pledgee bank delivered its collateralized securities to a third party financial institution that guaranteed that the pledgee bank would receive a *pro rata* share of the proceeds from any liquidated positions and the return of any securities that remained in the account at the end of the day.[9] NSCC's and DTC's proposals codify this mechanism to facilitate efficient clearance and settlement of pledged positions.

In CNS, NSCC assumes the credit risk of fails to deliver and fails to receive by substituting itself as the counterparty upon reporting successfully compared trades to members. NSCC seeks to protect against the financial risk of these open positions through its membership standards, marks-to-the-market, and by obtaining contributions from its members to a clearing fund that mutualizes the risk of a major loss among all NSCC members.

The proposal provides for DTC to allocate securities that are released from pledgee banks first to open short CNS positions at NSCC. This aspect of the rule change will promote confidence in the national clearance and settlement system by facilitating the orderly and timely settlement of CNS positions. Nevertheless, the Commission recognizes that some pledgee banks may not wish to have the securities allocated in this manner. A pledgee bank may decide not to deliver securities to the honest broker account if the pledgee bank believes the funds generated from the settlement of open short CNS

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31503 (November 23, 1992), 57 FR 57253.

[3] For a description of DTC's honest broker program, *see* Securities Exchange Act Release No. 30948 (July 22, 1992), 57 FR 33533 (notice of the proposed rule change). DTC will activate the honest broker program upon the request of a labor pledgor when pledgee banks are unwilling to return pledged securities directly to a pledgor that is experiencing financial or operational difficulties. The Commission is approving this order concurrently with the DTC honest broker proposal.

[4] NSCC's CNS system is a system for accounting for and settling securities transactions in which a member's short and long securities positions are brought forward on a perpetual basis, merged, and netted with the days's current settling trades. At the end of each day, all long and short positions that do not settle are marked-to-the-market. Because NSCC interposes itself as the counter party to its members' trades, *i.e.*, NSCC becomes the buyer to a member's sell obligations and the seller to a member's buy obligations, CNS provides financial protection to NSCC members, but it also exposes NSCC to the risk that a member will default on its settlement obligations.

[5] Pursuant to NSCC Rule 12, NSCC pays or collects the net amount of all debits and credits arising out of CNS transactions that have been entered into the settling member's account on the scheduled settlement day. NSCC's participation in the honest broker program will require that NSCC settle money payments with DTC on account of the release of pledged securities on the day the deliveries are completed.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] *Id.*

[8] As described more fully in the Commission's testimony before the Senate Banking Committee, near gridlock developed in the mortgage-backed securities market and in the corporate debt and equity markets where Drexel was an active participant. The Issues Surrounding the Collapse of Drexel Burnham Lambert, Hearings before the United States Congress, Senate Committee on Banking, Housing, and Urban Affairs, 101st Cong., 2d Sess. 5 (1990) (testimony of Richard C. Breeden, Chairman, Commission) ("Drexel testimony").

[9] Although the Drexel experience involved both physical and book-entry deliveries, the honest broker proposal only addresses the liquidation of book-entry pledges.

positions at NSCC will not cover the outstanding loan. To facilitate pledgee planning, DTC will notify each pledgee bank of the total settlement amount and the share price for CNS and non-CNS open positions. If a pledgee bank does not deliver securities to the *honest* broker account, the pledgee bank may liquidate the securities outside of DTC's system.[10]

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–92–12), be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20429 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32758; File No. SR–NASD–93–43]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Implementation of Trade Reporting Requirements for Over-the-Counter Equity Securities

August 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) under the Act, the NASD is proposing a rule change to defer until a date on or before December 27, 1993, the effectiveness of new Part XIV of Schedule D to the NASD By-Laws. This provision establishes rules and procedures for real-time reporting of members' transactions in securities classified as over-the-counter equity securities ("OTC Equity Securities").[1] In its original rule proposal on this matter (File No. SR–NASD–92–48), the NASD had specified implementation by mid-August of 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The sole purpose of this rule change is to defer the implementation of new NASD rules governing real-time transaction reporting in OTC Equity Securities. These trade reporting requirements were the subject of File No. SR–NASD–92–48, which was approved by the Commission on July 16, 1993.[2] In that rule filing, the NASD projected an implementation date of mid-August, 1993. The instant filing is intended to defer implementation until a date on or before December 27, 1993.

More specifically, the NASD intends to implement the new trade reporting regime in two phases. First, NASD members will be required to report transactions in OTC Equity Securities, within 90 seconds of execution, commencing no later than December 27, 1993. On or before May 31, 1994, the NASD will be prepared to support real-time vendor dissemination of transactional data in these securities. Between initiation of the first phase in December and the commencement of vendor dissemination next May, the NASD will collect and process trade data on OTC Equity Securities solely for regulatory purposes. This information will not be disseminated through the communications network of The Nasdaq Stock Market, Inc., until vendor dissemination begins next year.

The NASD acknowledges the importance of this trade reporting initiative *vis à vis* the goal of enhanced market surveillance and regrets having to defer implementation for approximately four months. However, this deferral is traceable to several factors including substantial commitments of staff resources to: (i) Development and testing of the data collection, processing, and market surveillance systems pertinent to transaction reporting in OTC Equity Securities; (ii) the migration to the new communications network and hardware platform for The Nasdaq Stock Market; (iii) development of the next generation of the Nasdaq workstation software; and (iv) development of the Fixed Income Pricing System ("FIPS") for high-yield debt instruments. In short, increasing demands placed on limited staff resources necessitate deferring effectiveness of the transaction reporting requirements for OTC Equity Securities until December, 1993.

Finally, the December implementation date will provide ample time for the NASD to publish the text of the new trade reporting requirements and respond to interpretive queries from the membership. Likewise, member firms will have additional time to make the necessary adjustments to their internal systems to facilitate the December start-up.

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(6) and 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance the ability of investors to monitor the quality of executions received, and foster competition among market participants. Section 15A(b)(6) requires *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and facilitate transactions in securities.

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[10] The Commission notes that DTC is providing a mechanism for delivery/receipt against payment for liquidation of pledged collateral held by banks. The proposal is not intended to alter the respective rights and obligations of the pledgor and pledgee under the terms of agreements between those parties.

[11] 17 CFR 200.30–3(a)(12) (1990).

[1] The term "OTC Equity Securities" is defined in Part XIV, Section 1(b) as any equity security not classified as a "designated security" for purposes of Parts XII and XIII of Schedule D to the NASD By-Laws. The term also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not "eligible securities" as defined by Section 1(d) of Schedule G to the NASD By-Laws. The term does not include "restricted securities," as defined by Rule 144 (a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market.

[2] Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotations and last sale information on certain low-priced equity securities (classified as "penny stocks" pursuant to Rule 3a51–1 under the Act) that are neither Nasdaq nor exchange-listed. Such securities are included within the universe of OTC Equity Securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal constitutes a stated policy, practice, or interpretation concerned solely with the administration of enforcement of an existing rule, the new Part XIV of Schedule D to the NASD By-Laws as approved by the Commission on July 16, 1993. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1993.

For the Commission, by the Division of Market regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20340 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32750; File No. SR–NYSE–93–26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Amending Rule 113(a)—Specialists' Public Customers—and Rule 98 Restrictions on Approved Person Associated With Specialist's Member Organization

August 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Rule 113(a) limits the ability of approved persons associated with specialist organizations to accept orders in specialty stocks from certain parties. The amendments to Rule 98 grant an exemption to the new Rule 113(a) limitation for approved persons.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 113(a) to limit the ability of approved persons associated with specialist organizations ("approved persons") to accept orders in specialty stocks from certain parties. The term approved person refers to an individual or entity that controls a member organization, or is engaged in the securities business and is either controlled by, or is under common control with a member organization.[1] An exception to this prohibition would be permitted for approved persons that have established procedures to effectively separate their business operations from those of their associated specialist organizations.

Rule 113(a) currently prohibits specialists and their associated member organizations and corporate affiliates from accepting orders in specialty stocks from certain entities. These include: (i) The specialists' listed companies; (ii) officers, directors and 10% shareholders of the listed companies; (iii) pension and profit sharing funds; and (iv) institutions such as banks, trust companies, insurance companies and investment companies. The Exchange is proposing to expand the limitation to prohibit approved persons from accepting orders in the specialty stocks from the entities noted in (i)–(iv) above.

In a similar context, Rule 113(b) currently requires approved persons to identify orders given to the specialist for accounts in which they are interested. This identification insures that orders for approved persons do not receive preferential treatment over public customer orders. Similarly, Rule 113.20 prohibits approved persons from popularizing specialty stocks unless they have obtained a Rule 98 exemption and make specified disclosures. This provision minimizes potential conflicts of interest.

In light of the restrictions already in place in Rule 113(b) and Rule 113.20, the Exchange is proposing to amend Rule 113(a) to extend the limitations contained in the rule to approved persons. The Exchange believes that restricting approved persons' ability to

[1] See Article I, Section 3 of the NYSE Constitution.

accept certain orders will further minimize potential conflicts of interest.

In conjunction with the proposed amendment to Rule 113(a), the Exchange also proposes to amend Rule 98 to provide an exemption to Rule 113(a) for approved persons that have implemented programs pursuant to Rule 98. Rule 98 and its Guidelines provide exemptions from several provisions of Exchange rules to associated parties of parties of specialist organizations that would otherwise place significant restrictions on full-service member organizations. In order to receive Rule 98 exemptions, approved persons must demonstrate that a functional separation has been implemented between themselves and their associated specialists member organizations. A functional separation establishes procedures for review of trading, substantive supervision of inter-firm communications and procedures concerning the access to, and handling of, sensitive position information with respect to specialty stocks. These procedures are designed to minimize potential conflicts of interests.

In order to allow a sufficient adjustment period for specialist organizations which might be impacted by the change to Rule 113(a), and which do not currently have Rule 98 exemptions, the Exchange proposes to implement the proposed rule changes six months after the Commission approves them.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general, to protect investors and the public interest. The amendments to Rule 113(a) and Rule 98 are consistent with these objectives in that they are designed to minimize approved persons' potential conflicts of interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20459. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions shall refer to File No. SR–NYSE–93–26 and should be submitted by September 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20338 Filed 8–23–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–32751; File No. SR–NYSE–93–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating To Proposed Measure of Specialist Capital Utilization

August 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 29, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of adopting an additional measure of specialist performance which focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks. This capital utilization measure, described in detail below, would be used by the Allocation Committee in allocating newly-listed stocks, and by the Market Performance Committee in conducting performance improvement actions pursuant to exchange Rule 103A. The use of this measure would be implemented on a one-year pilot basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In recent years, both the Commission and the Exchange have emphasized to specialist units the importance of dealer

participation, which provides "value added" in maintaining fair and orderly markets, particularly in volatile markets.[1]

The Commission has also emphasized "the need for the . . . NYSE to develop relative, objective standards of performance for evaluating specialists."[2] The Exchange shares that interest for developing measures of specialist performance for use by the Allocation Committee in allocating newly-listed stocks, and by the Market Performance Committee in conducting performance improvement actions pursuant to Exchange Rule 103A.

The Exchange has developed a measure of specialist performance dealing with utilization of capital for marketmaking. This measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.

A capital utilization percentage is derived fro each specialist unit by dividing the average daily dollar value of the unit's stabilizing purchases and sales by the average daily total dollar value of shares traded in the unit's stocks. This percentage is calculated both for stabilizing trades only and stabilizing plus reliquifying trades.[3] These percentages are provided for base periods (*i.e.*, non-volatile periods) and volatile periods,[4] so that performance of a unit relative to other units can be compared as to volatile and non-volatile market conditions.

The capital utilization measure separates stocks into three broad groupings including:

1. stocks included in the top 200 stocks in the S&P 500 Stock Index and other stocks that are at least as active,

2. the remainder of the S&P 500 and any stocks among the 500 most active on the Exchange,

3. all other stocks.[5]

Within each grouping, stocks would be further broken down as to whether they are high, mid-range or low beta stocks.[6]

Specialist units would be placed alphabetically into three tiers based on their base day and volatile day capital utilization percentages for each of the three groupings of stocks. Within each grouping, a Floor-wide mean capital utilization percentage would be calculated. A unit would be in Tier 1 if its capital utilization percentage is more than 1.1 standard deviations above the mean.[7] A unit would be in Tier 2 if its capital utilization percentage is within 1.1 standard deviations above or below the mean. A unit would be in Tier 3 if its capital utilization percentage is more than 1.1 standard deviations below the mean.

The Allocation Committee would receive specialist capital utilization information on a "rolling" 12-month basis. The Allocation Committee would be given information as to a unit's tier in each stock grouping, with the tier data being included with other objective data, such as DOT turnaround performance, stabilization rates[8] and TTV percentages.[9] This information would also be made available to the Market Performance Committee for use in counselling specialist units. The specialist units themselves would be given, on a monthly basis for the prior 12 months, their actual capital utilization percentages for each stock.

The Exchange proposes that this new measure of specialist performance be implemented on a one-year pilot basis. During this period, the Market Performance Committee would receive quarterly reports on this initiative, with a view toward their recommending such enhancements or modifications as may seem appropriate based on actual experience with this measure. Any modifications or enhancements would be filed with the Commission, and would be implemented only with the Commission's approval.

2. Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these objectives in that developing an objective measure of specialist performance based on capital utilization would help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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[1] For example, in a recent Commission release regarding NYSE specialists liquidated transactions the Commission noted that during the market breaks of October 1987 and October 1989, "specialists were confronted with extraordinary order imbalances that required unprecedented capital commitments . . . Both the 1987 Market Break Report and the October 1989 Report reaffirmed the importance of specialist participation in countering market trends during periods of market volatility." *See* Securities Exchange Act Release No. 29626 (August 29, 1991), 56 FR 43953 (September 5, 1991) (SR–NYSE–91–7).

[2] Division of Market Regulation, *The October 1987 Market Break*, February 1988, p. xvii.

[3] A reliquifying transaction is one in which the specialist reduces a position in a specialty stock by selling part of a long position on a zero-minus tick, or purchasing to cover part of a short position on a zero-plus tick.

[4] The NYSE defines as volatile periods days when there is a change of one percent or more in the S&P 500 Stock Price Index and the ten percent most volatile days for each stock. The S&P 500 Stock Price Index is a service mark of the Standard and Poor's Corporation.

[5] These three groups do not include the following: foreign stocks, preferred stocks, warrants, when issued stocks, IPOs (for the first 30 days), closed-end funds, stocks selling for $5 and under, and stocks with less than 2,000 shares average daily trading volume.

[6] A stock would be a low beta stock if its beta is below 0.5. A stock would be a mid-range beta stock if its beta is 0.5 to 1.5. A stock would be a high beta stock if its beta is above 1.5.

[7] A standard deviation is a statistical measure of the distance from the mean.

[8] The stabilization rate represents the percentage of specialist transactions which were stabilizing—buying as the price declined, selling as it rose.

[9] TTV percentage is computed by totalling all purchases and sales by the specialist and determining what percentage this share volume is of the security's twice total volume, or "TTV."

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–30 and should be submitted by September 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20374 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

August 18, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

AT&T Capital Corporation
Common Stock, $.01 Par Value (File No. 7–11079)
Aztar Corporation
Common Stock, $.01 Par Value (File No. 7–11080)
British Telecommunications, Plc
First American Depositary Shares (each rep. 10 interim ordinary shares (File No. 7–11081)
Chase Manhattan Corporation
Warrants (expire 6/30/96) (File No. 7–11082)
China Tire Holdings, Ltd.
Common Stock, $.01 Par Value (File No. 7–11083)
Elan Corporation, Plc
Rights (Expiring 8/12/93) (File No. 7-11084)
Kasler Holding Company
Common Stock, No Par Value (File No. 7–11085)
Mark Centers Trust
Common Stock, $.001 Par Value (File No. 7–11086)
Mascotech, Inc.
Common Stock, $1.00 Par Value (File No. 7–11087)
Mascotech, Inc.
$1.20 Conv. Pfd. (Dividend Enhanced Conv. Stock—DECS
$1.00 Par Value) (File No. 7–11088)
Morgan Stanley Emerging Markets Debt Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11089)
Pittston Minerals Group
Common Stock, $1.00 Par Value (File No. 7–11090)
Pittston Services Group
Common Stock, $1.00 Par Value (File No. 7–11091)
Royal Caribbean Cruises Ltd.
Common Stock, $.01 Par Value (File No. 7–11092)
Shanghai Petrochemical Company
American Depositary Shares (Rep. 100 class H Shares, RMB $1.00 Par Value (File No. 7–11093)
Southern Pacific Rail Corp.
Common Stock, $.001 Par Value (File No. 7–11094)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–20432 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 18, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–l thereunder for unlisted trading privileges in the following securities:

Beverly Enterprises, Inc.
Cum. Conv. Exchangeable Pfd. (File No. 7–11095)
United Meridian Corporation
Common Stock, $.01 Par Value (File No. 7–11096)
Freeport McMoran Copper & Gold, Inc.
Dep. Shares each rep. 0.05 Shares of Gold Denominated Pfd Stock (File No. 7–11097)
Aon Corporation
8% Cum. Prep. Pfd Stock, $1.00 Par Value (File No. 7–11098)
Motor Coach Industries International, Inc.
Common Stock, $.01 Par Value (File No. 7–11099)
Municipal Partners Fund II, Inc.
Common Stock, $.001 Par Value (File No. 7–111000)
Excel Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–11101)
Eckerd Corporation
Common Stock, $.01 Par Value (File No. 7–11102)
Texas Utilities Corporation
Dep. Shares Series A each rep. ¼ 7.50 Cum. Pfd Stock (File No. 7–11103)
Crestar Financial Corporation
Common stock, $5.00 Par Value (File No. 7–11104)
Cycomm International, Inc.
Common Stock, No Par Value (File No. 7–11105)
National Golf Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11106)
Shanghai Petrochemical Company, Ltd.
American Depositary Shares (File No. 7–11107)
USA Waste Services, Inc.
Common Stock, $.01 Par Value (file No. 7–11108)
Bank of Boston Corporation
Dep. Shares each 1.10th of a share of 7 7/8 Pc Cum. Pfd Stock (File No. 7–11109)
Andrea Electronics Corporation
Common Stock, $.50 Par Value (File No. 7–11110)
Pittston Minerals Group
Common Stock, $.01 Par Value (File No. 7–11111)
Pittston Services Group
Common Stock, $.01 Par Value (File No. 7–11112)
Ralston-Continental Baking Group
Common Stock, $.01 Par Value (File No. 7–11113)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washignton, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon

all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–20433 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19639; 811–4557]

Colonial California Tax-Exempt Trust; Notice of Application

August 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial California Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On January 10, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on May 30, 1986, and the initial public offering commenced on June 16, 1986.

2. On April 12, 1991 and December 13, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Colonial California Tax-Exempt Fund (the "California Fund"), a new series of Colonial Trust V—a registered open-end management investment company. In addition, on December 13, 1991, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On June 19, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on August 3, 1992, applicant was merged into the California Fund. Prior to the merger, the California Fund had no assets and no shareholders. Applicant's net assets and number of shares outstanding immediately prior to the merger were equal to the net assets and number of shares outstanding of the California Fund immediately after the merger. The merger was in economic terms a change in organizational structure, not a merger of two operating funds.

5. All expenses incurred in connection with the reorganization were borne by the applicant and totaled $31,255.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20434 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–19643; 811–1948]

Colonial Income Trust; Notice of Application

August 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On September 30, 1969, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on December 16, 1969.

2. On April 12, 1991 and December 13, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Colonial Income Fund, a new series of Colonial Trust I—a registered open-end management investment company. In addition, on December 13, 1991, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On March 20, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on May 1, 1992, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on May 1, 1992, applicant was merged into the Colonial Income Fund. Prior to the merger, the Colonial Income Fund had no assets and no shareholders. Applicant's net assets and number of shares outstanding immediately prior to the merger were equal to the net assets and number of shares outstanding of the Colonial Income Fund immediately after the merger. The merger was in economic terms a change in organizational structure, not a merger of two operating funds.

5. All expenses incurred in connection with the reorganization were borne by the applicant and totaled $49,206.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20435 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–19642; 811–4793]

Colonial Michigan Tax-Exempt Trust; Application

August 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Michigan Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On August 11, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on September 26, 1986.

2. On April 12, 1991 and December 13, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Colonial Michigan Tax-Exempt Fund (the "Michigan Fund"), a new series of Colonial Trust V—a registered open-end management investment company. In addition, on December 13, 1991, the board of trustees made the findings by rule 17a–8 under the Act.[1]

3. On June 19, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on August 3, 1992, applicant was merged into the Michigan Fund. Prior to the merger, the Michigan Fund had no assets and no shareholders. Applicant's net assets and number of shares outstanding immediately prior to the merger were equal to the net assets and number of shares outstanding of the Michigan Fund immediately after the merger. The merger was in economic terms a change in organizational structure, not a merger of two operating funds.

5. All expenses incurred in connection with the reorganization were borne by the applicant and totaled $15,001.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20436 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19641; 811–4794]

Colonial Minnesota Tax-Exempt Trust; Notice of Application

August 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Minnesota Tax-Exempt Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On August 11, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on September 26, 1986.

2. On April 12, 1991 and December 13, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Colonial Minnesota Tax-Exempt Fund (the "Minnesota Fund"), a new series of Colonial Trust V—a registered open-end management investment company. In addition, on December 13, 1991, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On June 19, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on August 3, 1992, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on August 3, 1992, applicant was merged into the Minnesota Fund. Prior to the merger, the Minnesota Fund had no assets and no shareholders. Applicant's net assets and number of shares outstanding immediately prior to the merger were equal to the net assets and number of shares outstanding of the Minnesota Fund immediately after the merger. The merger was in economic terms a change in organizational structure, not a merger of two operating funds.

5. All expenses incurred in connection with the reorganization were borne by the applicant and totaled $16,307.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

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[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20437 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–19640; 811–5268]

Colonial U.S. Government Trust; Notice of Application

August 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial U.S. Government Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On August 4, 1987, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on October 9, 1987, and the initial public offering commenced on October 13, 1987.

2. On April 12, 1991 and December 13, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Colonial U.S. Government Fund (the "Fund"), a new series of Colonial Trust II—a registered open-end management investment company. In addition, on December 13, 1991, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On December 27, 1991, applicant mailed proxy materials to its shareholders. At a meeting held on February 14, 1992, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on February 14, 1992, applicant was merged into the Fund. Prior to the merger, the Fund had no assets and no shareholders. Applicant's net assets and number of shares outstanding immediately prior to the merger were equal to the net assets and number of shares outstanding of the Fund immediately after the merger. The merger was in economic terms a change in organizational structure, not a merger of two operating funds.

5. All expenses incurred in connection with the reorganization were borne by the applicant and totaled $125,543.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20438 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–19529; 812–8490]

Keyport Life Insurance Co.; Application

August 16, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Keyport Life Insurance Company ("Keyport"), SteinRoe Variable Investment Trust (the "Trust"), Crown America Holding Company, Crown American Life Insurance Company ("Crown America"), Crown America Variable Life Separate Account, Crown America Variable Annuity Separate Account (collectively the "Crown America Separate Accounts"), and Crown America Series Fund, Inc. (the "Fund") (collectively the "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Exemptions requested under section 6(c) and Rule 17d–1, from section 17(d) of the 1940 Act and Rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request exemptions to the extent necessary to permit them to consummate a Stock Purchase and Reorganization which involves the merger of the Trust and the Fund.

FILING DATE: The application was filed on July 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 10, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Keyport Life Insurance Company, 125 High Street, Boston, Massachusetts 02110. Crown Life Insurance Company, 1881 Scarth Street, Regina, Saskatchewan, Canada S4P 4K9.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, or Wendell M. Faria, Deputy Chief, on (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Keyport is a stock life insurance company organized under the laws of Rhode Island. The Trust, a Massachusetts business trust, is a management investment company registered under the 1940 Act. Currently, the Trust offers its shares only to Keyport and Liberty Life Assurance Company of Boston, an affiliate of Keyport. The Trust serves as the underlying investment medium of the following separate accounts of Keyport that are registered as unit investment trusts under the 1940 Act and interests in which are registered under the Securities Act of 1933: Keyport Variable Account I and KMA Variable Account (the "Keyport Separate Accounts").

2. Crown America is a stock life insurance company organized under the laws of Michigan. Crown America is a wholly-owned subsidiary of Crown America Holding Company ("Crown America Holding"), a Delaware Corporation, which is, in turn, a wholly-owned subsidiary of Crown Life Insurance Company, a Canadian insurance company. The Crown America Separate Accounts, registered unit investment trusts under the 1940 Act, are maintained by Crown America as the funding media for its variable life insurance policies and variable annuity contracts ("Crown America Contracts"). The Fund is a Maryland Corporation registered as a management investment company under the 1940 Act. Shares of the Fund are offered solely to Crown America and the Crown America Separate Accounts.

3. Crown America Holding and Keyport entered into a Stock Purchase Agreement, dated May 21, 1993, pursuant to which Keyport will purchase from Crown America Holding all of the outstanding shares of Crown

America Stock (the "Stock Purchase"). Keyport currently intends that following the Stock Purchase, Crown America will change its name and continue as a wholly-owned subsidiary of Keyport and the Crown America Separate Accounts will, under different names, continue their existence and operations.

4. Keyport believes that the Reorganization of the Fund will make it more economical for it to administer the Crown America Contracts following the Stock Purchase than would otherwise be the case, and that the acquisition of Crown America will enable Keyport to achieve certain operating efficiencies and economies of scale that might not otherwise be available to Keyport. Accordingly, the Stock Purchase Agreement provides that, as a condition precedent to closing, the Fund will be reorganized and liquidated. Applicants represent that except for the Reorganization, which will involve the transfer of substantially all of the Fund's assets to the Trust in exchange for Trust shares, the purchase by Keyport of Crown America's stock will have no effect on the terms and conditions of the Crown America Contracts or on the holders of such Contracts.

5. On June 30, 1993, the Trust and the Fund entered into an Agreement and Plan of Reorganization and Liquidation (the "Agreement") pursuant to which certain of the Trust's series (the "Trust Series") will issue their shares in exchange for the assets of the corresponding series of the Fund (the "Fund Series") as follows:

Trust series	Fund series
Cash Income Fund	Money Market Series.
Managed Growth Stock Fund.	Capital Growth Series.
Managed Assets Fund.	Managed Series.
Mortgage Securities Income Fund.	Bond Income Series.
Mortgage Securities Income Fund.	Zero Coupon Bond Series 1996.
Mortgage Securities Income Fund.	Zero Coupon Bond Series 2006.

The exchange will be made at the respective net asset values of the above named series computed as of the close of business of the New York Stock Exchange on the Closing Date for the Reorganization ("Closing Date"). Immediately following these transactions, the Fund Series will liquidate and distribute the Trust Series shares to the Crown America Separate Accounts. Applicants state that except as otherwise provided in the Agreement, Keyport will assume all of the expenses of the Reorganization and that in no event will the Fund or the Trust assume such expenses.

6. Consummation of the Reorganization is conditioned upon obtaining the approval of Fund shareholders (the Crown America Separate Accounts) and the approval of the holders of Crown America Contracts. Applicants represent that holders of Crown America Contracts will have the opportunity to give voting instructions in accordance with the customary "pass through" voting procedures observed in connection with the Crown America Separate accounts.[1]

7. The Agreement is intended to be (a) a plan of reorganization and liquidation within the meaning of section 386(a) of the Internal Revenue Code of 1986, as amended ("Code"), and/or (b) a plan involving the transfer of assets in exchange for stock, followed by a liquidation under section 332 of the Code, for those acquired Series and acquiring Series as to which section 368(a) of the Code is inapplicable. Applicants represent that the Reorganization will have no adverse federal income tax consequences for Keyport, Crown America or the holders of Crown America Contracts. Moreover, Keyport has been advised that there will be no adverse federal income tax consequences for the holders of Keyport Contracts.

8. Applicants believe that the acquisition of Crown America by Keyport and the combination of the Fund and the Trust will have several possible benefits for holders of Crown America Contracts. Applicants state that Crown America ceased selling the Crown America Contracts several years ago whereas, following the Stock Purchase, the Contracts will be administered as part of Keyport's variable insurance product business to which Keyport is strongly committed and which will be significantly larger than the Crown America variable product business by itself. Following the Reorganization, the Crown America Contracts and the Keyport Contracts will also participate in significantly larger investment portfolios which should benefit from the increased asset size, the expense caps discussed below, and the economies of scale and additional operating efficiencies expected to result from the Reorganization. Furthermore, the holders of the Crown America Contracts will have a broader range of investment alternatives in the Trust than they have in the Fund. Also, the Trust will be larger and have better growth prospects; as a result, there is a greater likelihood that additional investment options might become available in the future before both the Crown America and Keyport Contracts.

9. Applicants acknowledge that the Reorganization may benefit Keyport and certain companies that are affiliated with Keyport and provide management and other services to the Trust. However, they assert that those benefits will depend on the terms of the contractual arrangements that are negotiated from time to time between the Trust and its service providers. Applicants submit that the Agreement provides protections to investors with respect to such arrangements. For example, the Agreement provides that, for a period of three years after the Closing Date, at least 75% of the Trust's Trustees will not be interested persons of the Trust, its current investment adviser or the Fund's current investment adviser. In addition, the Agreement provides that for two years after the Closing Date, with respect to the participating Trust Series, the Trust will not (a) pay directly or indirectly any compensation to its investment adviser or any interested person of its adviser for other than bona fide investment advisory or other services, (b) purchase securities from or sell securities to its investment adviser or any interested person of its investment adviser other than where such sales are permitted by section 15(f)(1)(B) of the 1940 Act, (c) enter into, participate in, or pay compensation in connection with any arrangement that facilitates or is intended to facilitate the payment of compensation proscribed by (a) and (b) above, or (d) increase the rate of fees payable by the Trust to its investment adviser or any interested person thereof, above the rate paid at May 3, 1993, nor, through April 30, 1995, permit or accede to an increase in the expense limits applicable on May 3, 1993. The expense limits for the Trust Series and the expense ratios for the corresponding Series of the Fund are set forth in the application.

10. Applicants represent that the Board of Trustees of the Trust and the Board of Directors of the Fund have determined that the transactions contemplated by the Reorganization are advisable and in the best interest of the Keyport Separate Accounts and the Crown America Separate Accounts, respectively, and that the interest of the Separate Accounts would not be diluted as a result of the transactions. Also, Applicants represent that the Stock Purchase and the Reorganization will

[1] See the Registration Statement of the SteinRoe Variable Investment Trust filed on Form N–14 on July 9, 1993 (File No. 33–65832), which is incorporated by reference in the application.

not proceed if the required approval of the Stock Purchase by the Michigan Insurance Bureau is not obtained.

Applicants' Legal Analysis

1. Section 17(d) of the 1940 Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to effect any transaction in which such registered investment company, or a company controlled by such registered company, is a joint participant with such a person or affiliated person, in contravention of the rules of the Commission. Rule 17d–1(a) prohibits persons enumerated in section 17(d) from participating in, or effecting "any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any * * * registered investment company," or a controlled company "is a participant" unless an application has been filed with the Commission and approved "prior to submission of the plan to * * * security holders."

2. Crown America Holding, Crown America, the Crown America Separate Accounts (including the subaccounts thereof) and the Fund (including its Series) may each be deemd to be an affiliated person of the other pursuant to section 2(a)(3) of the 1940 Act. Each of these Applicants will be affected in various ways by the Stock Purchase and/or Reorganization, which transactions are dependent upon one another. It is possible, therefore, that participation by some or all of these Applicants in various aspects of the transactions could be deemed to constitute participation in a joint enterprise or other joint arrangement or profit sharing plan within the contemplation of Rule 17d–1. For example, Crown America Holding and Keyport will bear certain costs and expenses in connection with the transactions. Crown America Holding and Keyport do not qualify for the exemption provided by Rule 17d–1(a)(8). Moreover, three of the Fund series will simultaneously exchange substantially all of their assets, together with payables relating to those assets, for shares of the Mortgage Securities Income Fund. Although Applicants do not believe that the provisions of section 17(d) or Rule 17d–1 apply to their proposed transactions, to remove any doubt, they have requested an order that would permit those transactions.

3. Applicants assert that although Keyport, Crown America and Crown America Holding hope to derive benefits from the proposed transactions, those benefits are not inconsistent with the interests of security holders of the Crown America Separate Accounts, the Fund, the Trust, or the Keyport Separate Accounts. Indeed the proposed transactions also will provide potential benefits to such security holders, as discussed above.

4. Applicants state that the only investment company that could be deemed to be undergoing a fundamental change is the Fund. Shareholders of each Fund Series voting separately must approve the Reorganization, and the holders of Crown America Contracts participating in each Fund Series will have the right to give voting instructions with respect to their allocable portion of the such shares. Shares for which voting instructions are not received and shares held by Crown America will be voted in the same proportion as shares of each series for which instructions have been received.

5. Applicants state that the Reorganization will result in the Fund's shareholders receiving shares of the Trust, which, as a Massachusetts business trust, is in some respects different from the Fund, which is a Maryland corporation. Nevertheless, to the extent material, these differences will be fully disclosed in the Proxy Statement.

6. According to the application, the Trust Series that will replace each Fund Series is judged by the Applicants to be the Trust Series that is most comparable to that Fund Series. Nevertheless, each of the Fund Series has investment objectives and policies that are at least slightly different from those of the corresponding Trust Series. These differences are greatest with the Mortgage Securities Income Fund. Applicants submit that, pursuant to full disclosure in the Proxy Statement, the holders of Crown America Contracts participating in each Fund Series will in effect have an opportunity to vote for or against these changes. Applicants assert that the 1940 Act, in general, permits changes in investment objectives and advisory fees, based on, among other things, security holder approval by a statutory majority and submit, therefore, that any differences between a Fund Series and the corresponding Trust Series will, under the circumstances, present no inconsistency with the policies, provisions and purposes of the 1940 Act and the rules thereunder.

7. Each Applicant will participate in the transactions described in the application in a different role from that of each other Applicant, and could therefore be said to participate on a "different basis" from each other Applicant. Also because of the differing roles of the respective Applicants, the potential benefits for each Applicant of the transactions are somewhat different. Applicants argue that it does not follow that the participation of any Applicant is on a basis "less favorable" than that of any other Applicant. Indeed, because the differences result from differences in the role of each Applicant, it would not be possible to make identical the effects of the transactions as to each Applicant.

8. Applicants submit that the proposed transactions are fair to all of the Applicants. In particular Applicants represent that the proposed transactions will be in the interest of shareholders of each Fund Series and each Trust Series, as well as in the interest of holders of insurance contracts participating in such Series. Applicants emphasize that the Reorganization will be submitted to holders of Crown America Contracts for their approval, and that neither such holders nor holders of Keyport Contracts will bear, directly or indirectly, any of the costs or expenses of the Reorganization and Liquidation. Also, Applicants represent that all transactions involving the valuation of investment company assets or liabilities, or the pricing of investment company securities, will be in compliance with all applicable provisions of the 1940 Act and rules thereunder.

Conclusion

Applicants request an exemption pursuant to Rule 17d–1, or, in the alternative, section 6(c) from section 17(d) and Rule 17d–1 thereunder to the extent necessary to permit them to consummate the Stock Purchase and Reorganization. Applicants state that, based upon the foregoing, the request for exemption meets the standards set forth in section 6(c) of the 1940 Act and Rule 17d–1 thereunder.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20336 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19637; 812–8430]

Midland National Life Insurance Co. et al.; Application for Exemptions

August 17, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Midland National Life Insurance Company ("Midland"),

Midland National Life Separate Account C ("Separate Account C"), and North American Management ("NAM").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of Separate Account C, which funds individual flexible premium variable annuity contracts.

FILING DATES: The application was filed on June 7, 1993 and amended on August 11, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, South Dakota 57193.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Midland was organized as a mutual life insurance company in South Dakota in 1906, and was reincorporated as a stock life insurance company in 1909. Midland is licensed to do business in 49 states, the District of Columbia, and Puerto Rico. Midland is a subsidiary of Sammons Enterprises, Inc.

2. Separate Account C was established by Midland as a separate account under South Dakota law on March 19, 1991 pursuant to a resolution of Midland's Board of Directors. Separate Account C is registered under the 1940 Act as a unit investment trust. The assets of Separate Account C are owned by Midland, but are held separately from Midland's other assets and are not chargeable with liabilities incurred in any other business operation of Midland (except to the extent that assets in Separate Account C exceed the reserves and other liabilities of Separate Account C). The income, capital gains, and capital losses incurred on the assets of Separate Account C are credited to or charged against the assets of Separate Account C, without regard to the income, capital gains, or capital losses arising out of any other business that Midland may conduct.

3. Separate Account C will invest in shares of one or more of the investment portfolios of the Fidelity Variable Insurance Products (VIP) Fund or the Fidelity VIP Fund II (the "Funds"). These Funds are diversified, open-end management investment companies, and are advised by Fidelity Management and Research Company. The assets of each portfolio of a Fund are separate from the others, and each portfolio has separate investment objectives and policies. As a result, each portfolio operates as a separate investment fund, and the investment performance of one portfolio has no effect on the investment performance of any other portfolio. Separate Account C has a number of investment divisions, each of which invests solely in shares of a specific portfolio of a Fund.

4. NAM will serve as the distributor and principal underwriter of the individual flexible premium variable annuity contracts (the "Contracts") to be issued by Separate Account C. NAM is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts may be purchased on a non-tax qualified basis, or they may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment. The Contracts may be purchased with a monthly premium of at least $100, for a Contract purchased and used in connection with a tax-deferred 403(b) annuity, or an initial premium of at least $2000, for any other contract. Subsequent premiums must be at least $50. The owner of the Contract can allocate premiums to one or more investment divisions of Separate Account C, or to Midland's general account. Under the Contracts, the annuitant may receive annuity payments that are either fixed in amount or variable, and that last for a fixed duration or for life. If the annuitant is the owner and dies before the maturity date of the Contract, then a death benefit equal to the greater of the following will be paid: (a) The contract value or (b) the sum of all premiums paid less any prior withdrawals.

6. Each contract year, Midland will deduct a contract maintenance charge of $33. This charge will be deducted from the contract value at the end of each contract year prior to the maturity date of the Contract (and upon a full surrender) to compensate Midland for the administrative services that it provides to Contract owners. Midland also deducts a daily administrative expense charge from the assets of each investment division of Separate Account C. This charge is equal to an effective annual rate of .15% of the net assets of each such investment division. Midland does not anticipate making any profit from the contract maintenance charge or the daily administrative expense charge. Midland will monitor its administrative expenses and the proceeds of those charges at least annually to ensure compliance with Rule 26a–1 under the 1940 Act. Midland guarantees that the contract maintenance charge and the administrative expense charge will never increase.

7. To cover its expenses of distributing the Contracts, Midland assesses a contingent deferred sales charge of up to 7% of the premiums withdrawn on certain full surrenders or partial surrenders of Contract value. The applicable percentage charge declines by one percent each year that the Contract is in effect, and is not imposed in the seventh Contract year and later. To the extent that this sales charge proves to be insufficient to recover all distribution expenses, the deficiency will be met from Midland's surplus, which may be, in part, derived from the mortality and expense risk charge.

8. Midland proposes to assess a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in Separate Account C. Of that amount, approximately .85% is attributable to mortality risks, and approximately .40% is attributable to expense risks. Midland guarantees that the mortality and expense risk charge will never increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Midland. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Midland. Midland currently

anticipates making a profit from this charge.

9. The mortality risk borne by Midland arises from its contractual obligation to make payments (determined in accordance with the tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the annuity payments that the annuitant will receive under the Contract. Midland also incurs a mortality risk in connection with its guarantee to pay a death benefit equal to the greater of the following: (a) The contract value or (b) the sum of all premiums paid less any prior withdrawals.

10. The expense risk assumed by Midland is the risk that Midland's actual administration costs will exceed the amount recovered through the administrative and contract maintenance charges.

11. Midland currently imposes no charge for the first fifteen transfers in a contract year, but imposes a $25 charge for each transfer thereafter. However, Midland reserves the right to impose the $25 charge after the fourth transfer in a contract year. Midland does not anticipate making any profit from this charge. No charges are currently made for federal, state, or local taxes, although Midland may deduct such taxes from Separate Account C in the future.

Applicants' Legal Analysis

1. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction under the Contracts of the mortality and expense risk charge from the assets of Separate Account C. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales load) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Applicants do not concede the applicability of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the charge for mortality and expense risks. However, in order to avoid any possibility that questions may be raised as to the potential applicability of those provisions to this charge, Applicants request exemptions from those provisions to the extent necessary to permit the assessment of the charge for mortality and expense risks in the manner described in the application.

2. Applicants submit that Midland is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Midland for the risks that (a) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts, (b) the Contract value will be less than the death benefit, and (c) administrative expenses will be greater than the amounts derived from the administrative charges.

3. Midland represents that the charge of 1.25% per annum for mortality and expense risks assumed under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Midland's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Midland will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Midland has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Separate Account C and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Midland at its home office and will be available to the Commission.

5. Midland also represents that Separate Account C will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1.

Conclusion

Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit them to deduct on a daily basis a charge equal to 1.25% annually of the assets of Separate Account C attributable to the Contracts for the assumption of mortality and expense risks described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20337 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19628; 812–8450]

Nicholas-Applegate Capital Management, et al.; Application for Exemption

August 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Nicholas-Applegate Capital Management (the "Adviser"), Stratford Partners (the "Partnership"), Nicholas-Applegate Emerging Growth Pooled Trust (the "Pooled Trust"), and Nicholas-Applegate Mutual Funds (the "Trust"), for itself and on behalf of the Trust's Emerging Growth Qualified Portfolio.

RELEVANT ACT SECTIONS: Exemption requested under section 17(b) from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Partnership and the Pooled Trust to transfer their assets and liabilities to the Trust's Emerging Growth Qualified

Portfolio in exchange for shares of the portfolio, which would then be issued to the owners of interests in the Partnership and Pooled Trust.

FILING DATE: The application was filed on June 16, 1993, and amended and restated on August 11, 1993. Applicants have agreed to file a second amended and restated application during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. September 9, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request nofication by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 600 West Broadway, 30th floor, San Diego, California 92101.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Pubiic Reference Branch.

Applicants' Representations

1. The Partnership is a California limited partnership organized on August 1, 1985. The Adviser serves as general partner and investment manager of the Partnership. The Partnership is not registered under the Act in reliance on section 3(c)(1) thereof.[1] Limited partnership interests in the Partnership are offered only to institutional investors and high net worth individuals in private placements pursuant to section 4(2) of the Securities Act of 1933. There is a minimum initial purchase requirement of $250,000. The investment objective of the Partnership is to maximize long-term capital appreciation by investing primarily in common stocks of companies with small market capitalizations. As of May 31, 1993, the Partnership had 25 limited partners and net assets of approximately $40.6 million.

2. The Pooled Trust was organized under Massachusetts law on January 1, 1988, pursuant to a trust agreement between State Street Bank and Trust Company (as trustee) and the Adviser. It is operated exclusively for the collective investment of the assets of eligible domestic pension plans, profit-sharing plans, and group trusts ("Participants"). The Pooled Trust is a qualified trust under section 401(a) of Internal Revenue Code and Revenue Ruling 81–100, and qualifies as a tax-exempt trust under section 501(a) of the Code. The Adviser serves as investment manager for the assets contributed to the Pooled Trust. The Pooled Trust is not registered under the Act in reliance on section 3(c)(1) thereof. Units of beneficial interest in the Pooled Trust are offered in private placements pursuant to section 4(2) of the Securities Act of 1933. There is a minimum purchase requirement of $1 million. The investment objectives of the Pooled Trust are identical to, and its portfolio securities substantially the same as, those of the Partnership. As of May 31, 1993, the Pooled Trust had seven Participants and net assets of approximately $171 million.

3. The Adviser, a California limited partnership formed in 1984, is registered as an investment adviser under the Investment Advisers Act of 1940. Its general partner is Nicholas-Applegate Capital Management, Inc., a California corporation. For its services to the Partnership, the Adviser receives an annual management fee from each limited partner, payable quarterly, equal to the sum of 1.75% of the first $1 million of a limited partner's net investment, 1.375% of such partner's net investment between $1 million and $2 million, and 1% of such partner's net investment above $2 million. The Adviser also is allocated net income, gains, and losses in proportion to its investment in the Partnership. For its services to the Pooled Trust, the Adviser receives an annual management fee, payable monthly, equal to 1% of the Pooled Trust's average daily net assets.

4. The Trust is registered under the Act as a diversified open-end management investment company. It was organized in December 1992 as a Delaware business trust. The Trust currently offers 17 series or "Portfolios." Assets of the Portfolios are invested in corresponding series of Nicholas-Applegate Investment Trust (the "Master Trust") in a "master-feeder" structure. The various series of the Master Trust have the same investment objectives, policies, strategies, and restrictions as the Portfolios that invest in them.

5. The Trust's Portfolios can be grouped into three categories. Series A Portfolios are offered to the public with a front-end sales load and lower 12b–1 fees. Series B Portfolios are offered to the public with a contingent deferred sales load and higher 12b–1 fees. Qualified Portfolios are offered without a sales charge or 12b–1 fees to qualified retirement plans with assets in excess of $100 million; to employee benefit trusts, foundations, endowments, corporations, and other advisory clients of the Adviser; to partners, officers, and employees of the Adviser and the Portfolios' distributor, and their immediate family members; and to former limited partners and participants of certain investment partnerships and pooled trusts previously managed by the Adviser.

6. The Trust's registration statement on Form N–1A was declared effective on April 8, 1993. On June 11, 1993, the Trust filed Post-Effective Amendment No. 2 to its registration statement to register three additional Portfolios: Emerging Growth Portfolio A, Emerging Growth Portfolio B, and Emerging Growth Qualified Portfolio. This application relates solely to the Emerging Growth Qualified Portfolio (the "Portfolio").

7. The Portfolio invests all of its assets in the Emerging Growth Fund series of the Master Trust (the "Fund"). The Fund invests primarily in a diversified portfolio of common stocks of U.S. companies with small market capitalizations.

8. Because of the master-feeder structure, the Portfolio will not have an investment adviser. The Adviser will serve as investment adviser to the Fund and will be compensated by the Fund at the annul rate, payable monthly, of 1% of the Fund's average daily net assets. The Portfolio will bear its proportionate share of the Fund's advisory fees and other operating expenses and, in addition, will have its own operating expenses. During the Portfolio's first year of operation, the Adviser has agreed to reduce its fees and to absorb certain other expenses of the Portfolio.

9. Applicant propose that, after the effective date of Post-Effective Amendment No. 2 to the Trust's registration statement, the Portfolio will acquire the assets and liabilities of the Partnership and Pooled Trust in exchange for Portfolio shares having an

[1] Section 3(c)(1) provides that an issuer is not an "investment company" for purposes of the Act if its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and it is not making and does not presently propose to make a public offering of its securities.

aggregate net asset value equal to the value of the net assets received. The Portfolio will issue its shares either (i) to the Partnership and Pooled Trust, which will then distribute such shares to the partners and Participants, respectively, in liquidation, or (ii) directly to the partners and Participants upon liquidation of the Partnership and Pooled Trust. Each limited partner and Participant will receive Portfolio shares having an aggregate net asset value equivalent to the net asset value of the interests in the Partnership or units of the Pooled Trust held by such partner or Participant prior to the exchange. (These transactions will be referred to hereafter as the "Affiliated Transactions.") The net assets of the Partnership and Pooled Trust received by the Portfolio will be transferred to the Emerging Growth Fund in exchange for Fund shares having an aggregate net asset value equal to the net asset value of the assets being transferred by the Portfolio. (This transaction and the Affiliated Transactions will be collectively referred to hereafter as the "Exchanged Transactions.")

10. The Exchange Transactions will establish the Portfolio as a successor investment vehicle to the Partnership and Pooled Trust. The Adviser will render investment management services to the Fund (and thus to the Portfolio) substantially the same as those it currently renders to the Partnership and the Pooled Trust. The Exchange Transactions will not result in increased investment management fees for the limited partners and Participants who will become shareholders of the Portfolio.

11. The Exchange Transactions will benefit limited partners of the Partnership and Participants of the Pooled Trust in several ways. Shareholders of the Portfolio will be able to purchase and redeem shares on each business day, as opposed to only monthly in the case of the Partnership and the Pooled Trust. Shareholders of the Portfolio also will have the advantage of being able to shift their funds among the various Portfolios offered by the Trust. Portfolio shareholders will receive relatively simple Form 1099 tax forms, as opposed to the complicated Form K–1s provided to the limited partners of the Partnership and the Participants of the Pooled Trust.

12. The foregoing benefits will be realized at no cost to investors. All expenses associated with the Exchange Transactions will be borne by the Adviser. No brokerage commission, fee, or other remuneration will be paid by any of the applicants. Finally, the Exchange Transactions will not result in the recognition of any gain or loss by the limited partners or Participants, and will allow the Portfolio to acquire portfolio securities without incurring brokerage expenses.

13. The Trust's board of trustees, including all of the trustees who are not "interested persons" of the Trust, and the Adviser (as general partner of the Partner and investment manager of the Pooled Trust) have approved the Exchange Transactions. The Exchange Transactions will be submitted to the limited partners and Participants for their approval. Each limited partner and Participant will be given a copy of the restructuring plan; a prospectus describing the Portfolio; and a written statement describing the nature of and reasons for the Exchange Transactions and the tax and other consequences to the limited partners and Participants, and comparing the Portfolio to the Partnership or Pooled Trust in terms of their investment objectives and policies, fees, management, an other aspects of their operations.

14. Limited partners and Participants who do not wish to become shareholders of the Portfolio will have adequate opportunity to redeem their Partnership interests or Pooled Trust units before the Exchange Transactions take place. Such partners and Participants also may be offered the opportunity to establish separate accounts that will be managed by the Adviser in the same manner as the Partnership and Pooled Trust were managed.

15. The Exchange Transactions will not be effected unless and until the registration statement covering shares of the Portfolio becomes effective, and the Adviser has received an opinion of counsel that the Exchange Transactions will not result in the recognition of a gain or loss by the Partnership, the Pooled Trust, the Portfolio, the partners, or the Participants.

Applicants' Legal Analysis

1. Applicants seek an exemption under section 17(b) of the Act from the provisions of section 17(a) to the extent necessary to permit the Affiliated Transactions. Section 17(a), in relevant part, prohibits any affiliated person of a registered investment company from selling to or purchasing from such company any security or other property. The Partnership and the Pooled Trust may each be considered affiliated persons of the Portfolio if the three entities are deemed to be under the "common control" of the Adviser.

2. Section 17(b) of the Act authorizes the Commission to exempt any person from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of the registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

3. Applicants assert that the Affiliated Transactions are fair and reasonable and do not involve overreaching. All Affiliated Transactions will occur at relative net asset value. The Adviser will bear all costs associated with the Affiliated Transactions. The Affiliated Transactions will not result in the recognition of any gain or loss by limited partners or Participants. Because there will be no Portfolio or Fund shares outstanding prior to implementation of the Affiliated Transactions, there can be no dilution of existing shareholders as a result of such transactions.

4. Applicants further assert that it is consistent with the policies of the Portfolio to acquire (and transfer to the Fund) securities owned by the Partnership and Pooled Trust because all three entities have the same investment objectives and policies. Moreover, by acquiring securities from the Partnership and Pooled Trust, the Portfolio is able to acquire securities with lower transaction costs than would have been possible in the open market.

5. Finally, applicants assert that the Affiliated Transactions are consistent with the general purposes of the Act as they do not give rise to the abuses that section 17(a) was designed to prevent.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20341 Filed 8–23–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–25869]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 17, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available

for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 9, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Newport Electric Corporation (70–8183)

Newport Electric Corporation ("Newport"), 12 Turner Road, P.O. Box 4128, Middletown, Rhode Island 02840, an electric public-utility subsidiary company of Eastern Utilities Associations, P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

There are two series of Electric Energy Facilities Revenue Bonds outstanding which have been authorized by the Rhode Island Port Authority and Economic Development Corporation ("Rhode Island Port Authority") for the benefit of Newport. These series are the $6,045,000 Series 1982 A bonds ("1982 A Bonds"), 12%, due 2011 and the $1,880,000 Series 1988 bonds ("1988 Bonds"), 8.5%, due 1998 (collectively, "Outstanding Bonds"). The proceeds from the 1982 A Bonds were used to finance, in part, the acquisition and installation of various machinery, equipment, and fixtures to be used to improve and expand the capacity of Newport to generate, transmit and distribute electricity in the City of Newport and the Towns of Jamestown, Middletown, and Portsmouth, all in the County of Newport, Rhode Island. The proceeds of the 1988 Bonds were used to refund Newport's $1.8 million Series 1982 B bonds, 13%, due 2012.

Newport proposes to refinance up to $7,925,000 aggregate amount of the Outstanding Bonds by entering into one or more loan agreements ("Loan Agreements") with the Rhode Island Port Authority or similar governmental agency with tax-exempt authority. Through the Loan Agreements, Newport will borrow, on or before December 31, 1994, the proceeds of one or more issues of refunding revenue bonds ("Refunding Bonds"). The Loan Agreements will require Newport to make payments corresponding to the amounts required to pay the principal, interest, and premium, if any, on the Refunding Bonds as they become due. The interest rates, payment dates, prepayment provisions, and maturities of the Refunding Bonds will be determined at the time of issuance by negotiation between the Rhode Island Port Authority and the purchaser of the Refunding Bonds or the managing underwriter of a public offering of the Refunding Bonds. However, the Refunding Bonds will mature no later than approximately 30 years after the date of issuance.

The Refunding Bonds will not be general obligations of the Rhode Island Port Authority or of the state of Rhode Island, rather the Refunding Bonds will be issued pursuant to one or more financing and security documents ("Financing Documents"). The Financing Documents will provide that the payments received by the Rhode Island Port Authority from Newport thereunder, are to be pledged and assigned by the Rhode Island Port Authority to a trustee ("Trustee") for the benefit of the holders of the Refunding Bonds. In addition, the Financing Documents will obligate Newport to pay the fees and expenses of the Rhode Island Port Authority and the Trustee.

The Refunding Bonds will be issued as either fixed rate bonds ("Fixed Rate Bonds") or as variable rate bonds ("Variable Rate Bonds"). The Fixed Rate Bonds will bear a fixed interest rate until maturity. The Variable Rate Bonds will bear interest at the floating rate for interest rate periods determined by Newport. The interest rate will be determined by a remarketing agent pursuant to a remarketing agreement. Owners of the Variable Rate Bonds will also be able to tender their bonds for mandatory purchase at 100% of the principal amount thereof plus accrued interest. Newport expects that the Variable Rate Bonds will also provide for a conversion at Newport's option, to a fixed rate for the remaining life of the bonds.

To enhance the credit rating of the Refunding Bonds, Newport may issue one or more series of first mortgage bonds or second mortgage bonds ("Collateral Bonds") to the Rhode Island Port Authority, obtain bond insurance, and/or arrange for an irrevocable letter of credit with a bank. The Collateral Bonds would contain provisions similar to those of the Refunding Bonds.

In consideration for the bond insurance, Newport would be required to pay a policy premium based on the debt service of the Refunding Bonds being issued. The insurer may require Newport to Provide certain security for Newport's obligation to reimburse the insurer if a claim is made under the policy, or require Newport to comply with certain covenants while the policy is outstanding.

To insure payment of principal of, premium, if any, and interest on the Variable Rate Bonds (and payment of purchase price upon tender for mandatory purchase), Newport may arrange for the issuance of an irrevocable letter of credit by a bank with an acceptable credit rating. Newport would execute a reimbursement agreement whereby Newport would agree to reimburse the bank for all draws under the letter of credit and to pay the fees and expenses of the bank in connection with such letter of credit. The letter of credit and reimbursement agreement may be extended when they reach maturity. Alternatively, from time to time Newport may enter into successor letter of credit and reimbursement agreements which thereafter may be extended.

Newport states that it will not undertake to refinance the Outstanding Bonds if Newport does not believe that the estimated net present value of the interest cost savings to be derived from the net difference between interest on the Refunding Bonds and the Outstanding Bonds would, on an after-tax basis, be greater than the present value of all redemption and issuance costs, including any tendering and premium costs and credit enhancement expenses, assuming an appropriate discount rate.

Newport requests authorization under Rule 50(a)(5) to commence negotiations with various underwriters, representatives, banks, and insurance companies with respect to the Refunding bonds and to the Collateral Bonds. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20335 Filed 8–23–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2674]

Territory of Guam; Declaration of Disaster Loan Area

The Territory of Guam is hereby declared a disaster area as a result of damages caused by an earthquake which occurred on August 8, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 18, 1993, and for economic injury until the close of business on May 17, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795; or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and nonprofit organizations without credit available elsewhere	4.000
Others (including nonprofit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 267402 and for economic injury the number is 799000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 17, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20452 Filed 8–23–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2668]

Kansas; Amendment #4; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 5, 6, and 9, 1993, to include Atchison, Brown, Clay, Cloud, Edwards, Ellis, Jackson, Jewell, Lane, Lyon, Marion, McPherson, Morris, Nemaha, Ness, Republic, Rooks, Stafford, and Washington Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chase, Coffey, Finney, Ford, Gove, Graham, Greenwood, Hodgeman, Kiowa, Pratt, Scott, Stafford, and Trego in the State of Kansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

The economic injury number for Kansas is 793500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20453 Filed 8–23–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7979]

South Carolina; and Contiguous Counties in North Carolina; Declaration of Disaster Loan Area

Berkeley, Cherokee, Colleton, Georgetown, and Kershaw Counties and the contiguous counties of Allendale, Bamberg, Beaufort, Charleston, Chesterfield, Clarendon, Darlington, Dorchester, Fairfield, Hampton, Horry, Lancaster, Lee, Marion, Orangeburg, Richland, Spartanburg, Sumter, Union, Williamsburg, and York in South Carolina; and Cleveland and Rutherford Counties in North Carolina constitute an economic injury disaster area as a result of a flooding which occurred in January 1993. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 13, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of North Carolina is 798000.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 13, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20455 Filed 8–23–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2673]

Washington; Declaration of Disaster Loan Area

King County and the contiguous counties of Chelan, Kitsap, Kittitas, Pierce, and Snohomish in the State of Washington constitute a disaster area as a result of damages caused by a fire which occurred on June 23, 1993 in the Village Green Apartments in the City of Kent. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 14, 1993, and for economic injury until the close of business on May 13, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795; or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and nonprofit organizations without credit available elsewhere	4.000
Others (including nonprofit organizations) with credit available elsewhere	7.625
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 267305 and for economic injury the number is 798900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 13, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20454 Filed 8–23–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–052]

Review of the Coast Guard Regulatory Development Process

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard is currently conducting an internal review of its regulatory development process. It will hold a public meeting to obtain comments from the public on the impact of the Coast Guard's current process for regulatory development. The public is invited to comment on public perception of the time involved in the regulatory process and to make suggestions for improvement.

DATES: A public meeting will be held from 9 a.m. to 3 p.m., September 20, 1993. Written comments must be received on or before September 20, 1993.

ADDRESSES: The public meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Comments may be mailed to the Executive Secretary, Marine Safety Council, Commandant (G–LRA), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain Dennis Bryant, Oil Pollution Act (OPA 90) Staff (G–MS), telephone (202) 267–6826, or at the address listed above.

SUPPLEMENTARY INFORMATION: The Coast Guard has many missions which directly affect the public. These missions include placing and maintaining aids to navigation, enforcing laws and treaties, maintaining military readiness, protecting the marine environment, search and rescue, and ensuring marine safety and security. Various statutes authorize the Coast Guard to issue regulations to implement these missions. Consequently, the Coast Guard regulates in such diverse areas as national security, port safety, safety of life at sea, protection of the marine environment, and recreational boating.

The Coast Guard has created the Marine Safety Council, a group of senior Coast Guard officers, to establish regulatory policy, review rulemakings, and advise the Commandant. The Marine Safety Council reviews planning documents for every regulatory project, whether an amendment to existing regulations or promulgation of a regulation under new statutory authority. Generally, rulemaking documents (notices of proposed rulemakings, supplemental notices, and final rules) are drafted by technical subject-matter experts, reviewed by appropriate program offices for policy implications, and reviewed by the Coast Guard legal staff for legal sufficiency and compliance with statutes, such as the Administrative Procedure Act, 5 U.S.C. 552, and existing Executive Orders. This is often a time consuming process.

The vast majority of Coast Guard rulemakings follow informal notice and comment rulemaking procedures under the Administrative Procedure Act. In informal rulemaking, the Coast Guard publishes a notice of proposed rulemaking in the **Federal Register**, and provides opportunity for public comment. The Coast Guard reviews the comments, and may change the final rule in response to the comments.

The Coast Guard is currently reviewing its internal regulatory development process to determine how to improve its response to rulemaking needs. It will conduct a public meeting on September 30, 1993, to obtain comments from the public on the effect of the Coast Guard's rulemaking process. The Coast Guard specifically seeks comments from the general public, members of the marine industry, recreational boaters, members of the environmental community, and members of existing Coast Guard advisory committees. It is especially interested in the public's evaluation of the Coast Guard's rulemaking process, and the impact, including indirect costs, of any perceived delays. The Coast Guard also seeks comments on developing and increasing the use of alternatives, such as negotiated rulemakings, to informal notice and comment rulemaking procedures.

Dated: August 19, 1993.

J.E. Shkor,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 93–20447 Filed 8–23–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 17, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance OfficeDepartment of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0173
Form Number: IRS Form 4563
Type of Review: Extension
Title: Exclusion of Income for Bona Fide Residents of American Samoa
Description: Used by bona fide residents of American Samoa whose income is from sources within American Samoa, Guam, and the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 100
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—33 minutes
Learning about the law or the form—5 minutes
Preparing the form—25 minutes
Copying, assembling, and sending the form to the IRS—17 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 135 hours
OMB Number: 1545–0520
Form Number: IRS Form SWR E–665
Type of Review: Extension
Title: Deduction for Depletion on Ground Water Used for Irrigation
Description: This form is required by Revenue Procedure 66–11 as an attachment to the tax return. The form provides a standard method of computing and reporting water depletion deductions by tax payers who extract ground water from the Ogallala geological formation. The Internal Revenue Service uses the information to determine if the depletion has been computed correctly.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents: 2,000
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Annually
Estimated Total Reporting Burden: 4,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service,

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room 5571, 1111 Constitution Avenue NW. Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 93–20373 Filed 8–23–93; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1994 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1994 Tax Counseling for the Elderly (TCE) Program is September 24, 1993.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, Management and Operations Branch (T:T:M) 1111 Constitution Ave., NW., room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, Management and Operations Branch (T:T:M) room 7207, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224. The non-toll-free telephone number is: (202) 622–7664.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1994 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in section 21.006.

John J. Mannion,

Chief, Management and Operations Branch.

[FR Doc. 93–20346 Filed 8–23–93; 8:45 am]

BILLING CODE 4830–01–U

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Sunshine Act Meetings

Federal Register

Vol. 58, No. 162

Tuesday, August 24, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice to Change Time of Board Meeting of the Export-Import Bank of the United States

TIME AND PLACE: Thursday, August 19, 1993 the Board of Directors Meeting will be held at 3:00 p.m. in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571. All other regular Board Meetings will be held at 9:30 a.m.

FURTHER INFORMATION: For further information, contact Loretta Carrier, Room 966, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Dated: August 19, 1993.

Helene H. Wall,

Vice President, Administrative and Management Services.

[FR Doc. 93–20424 Filed 8–20–93; 9:34 am]

BILLING CODE 6690-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 23, 30, September 6, and 13, 1993.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 23

Wednesday, August 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 30—Tentative

Tuesday, August 31

10:00 a.m.
Briefing on NRC Research Program on Aging (Public Meeting)
(Contact: John Craig, 301–492–3850)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)
(Contact: Shelly Schwartz, 301–504–2325)

Week of September 6—Tentative

Thursday, September 9

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.
Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301–504–1728)
10:30 a.m.
Briefing by Advanced Reactor Corporation (Public Meeting)
2:00 p.m.
Briefing on Management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301–504–2659)

Week of September 13—Tentative

Thursday, September 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 17

1:30 p.m.
Briefing on Status of Form and Content for Design Certification Rule (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1199)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: August 19, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–20558 Filed 8–20–93; 2:48 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 58, No. 162
Tuesday, August 24, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

Correction

In notice document 93-19546 beginning on page 43095 in the issue of Friday, August 13, 1993, make the following correction:

On page 19546, in the third column, under **SUMMARY**, in the sixth line, "September 3, 1993" should read "September 2, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; The Plant Eutrema penlandii (Penland Alpine Fen Mustard) Determined To Be a Threatened Species

Correction

In rule document 93-17933 beginning on page 40539 in the issue of Wednesday, July 28, 1993, on page 40539, in the first column, under **EFFECTIVE DATE**, "August 12, 1993" should read "August 27, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Gas and Oil Lease Sale 143

Correction

In notice document 93-18816 beginning on page 42098 in the issue of Friday, August 6, 1993, make the following corrections:

1. On page 42100, in the second column, in the table, for the entry "Coffee Lump", footnote reference "6" should precede "Various.".

2. On page 42102, in the first column, under **Outer Continental Shelf Lease Sale 143—Western Gulf of Mexico**, the blocks for Mustang Island, Galveston, and High Island should read as set forth below:

Leased Blocks and Partial Blocks

* * * * *

Mustang Island
730, 731, 737, 738, 739, 740, 742, 743, 752, 754, 755, 757, 758, 762, 763, 764, 765, 767, 768, 769, 776, 778, 779, 781, 782, 784, 785, 786, 787, 789, 790, 791, 801, 802, 803, 804, 805, 806, 809, 811, 813, 814, 821, 822, 823, 824, 825, 826, 827, 828, 830, 831, 832, 833, 837, 838, 844, 846, 847, 848, 849, 850, 852, 853, 854, 858, 868, 869, 870, 871, 872, 873, 874, 875, 876, A–1, A–2, NE¼NW¼ NE¼; NE¼NW¼; NE¼SE¼ NW¼; W½NW¼ NE¼, A–3, A–6, A–10, A–11, A–15, A–16, A–17, A–18, A–19, A–21, A–22, A–24, A–25, A–26, A–27, A–30, A–31, A–32, A–33, A–36, A–37, A–38

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Galveston
144, 151, 180, 181, 182, 189, 190, 191, 192, 209, 210, 211, 212, 213, 223, 225, 226, 238, 239, 240, 241, 242, (Landward of 8(g) Line), 243, 252, 253, 255, 256, 257, 258, 265, 266, 269, 270, 272, 273, 274, 283, 284, 285, 286, 287, 288, 289, (SW¼ NW¼ NW¼;W½ SW¼ NW¼; SE¼ SW¼NW¼;SW¼ SE¼ NW¼; SW¼ W½ SE¼), 290, 291, 294, 295, (S½ NE¼ NE¼; NW¼ NE¼; W½ SW¼ NE¼; NE¼ SW¼ NE¼; N½ SE¼ NE¼; W½; W½ NW¼ SE¼; S½ SE¼), 296, (NE¼; NE¼ NE¼ NW¼; S½ NE¼ NW¼; SE¼ NW¼; S½ SW¼ NW¼; N½ SW¼; NE¼ SW¼ SW¼; N½ SE¼ SW¼; N½ SE¼; N½ SW¼ SE¼; SE¼ SE¼), 297, 298, 299, 300, 301, 303, 304, 305, 312, 313, 318, 319, 320, 321, 322, 324, 325, 326, 328, 329, 330, 331, 332, 333, 334, 343, 344, 345, 346, 349, 350, 351, 354, 356, 357, 358, 359, 360, 361, 362, 363, 379, 380, 383, 384, 386, 388, 389, 391, 392, 393, 394, 395, 418, 419, 423, 427, 428, 460, 465, 503, A–2, A–15, A–16, A–18, A–21, A–24, A–34, A–35, A–37, A–38, A–39, A–40, A–41, A–42, A–49, A–50, A–54, A–58, A–60, A–62, A–77, A–78, A–79, A–81, A–84, A–85, A–86, A–108, A–109, A–110, A–111

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High Island
20, 21, 22, 34, 36, 47, 52, 53, 67, 68, 69, 70, 71, 73, 87, 88, 89, 90, 91, 92, 93, 97, 98, 105, 106, 108, 109, 110, 111, 113, 114, 115, 116, 117, 134, 135, (N½; N½ S½; SW¼ SW¼; W½ SE¼ SW¼; NE¼ SE¼ SW¼; N½ S½ SE¼), 136, (E½; E½ NE¼ SW¼; S½ SE¼ SW¼) 138, 139, 140, 141, (W½), 154, (N½), 155, (W½), 156, 160, (NE¼; NE¼ NW¼; E½ SE¼ NW¼; N½ SE¼; N½ SE¼ SE¼), 161, (NW¼ NE¼ NW¼; S½ NE¼ NW¼; W½ NW¼; SE¼ NW¼; NE¼ NE¼ SW¼; W½ NE¼ SW¼; NW¼ SW¼; NW¼ SW¼ SW¼), 164, 165, 170, 171, 173, 174, 175, 176, 177, 178, 179, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 204, 206, 207, 208, 229, 230, 231, 232, 233, 234, 235, 261, 262, 263, 264, 292, A–1, A–3, A–5, A–6, A–7, A–8, A–9, A–12, A–14, A–16, A–17, A–19, A–20, A–21, A–22, A–23, A–26, A–36, A–37, A–38, A–39, A–41, A–44, A–61, A–62, A–63, A–64, A–68, A–69, A–72, A–78, A–83, A–87, A–92, A–93, A–94, A–95, A–98, A–99, A–108, A–127, A–128, A–129, A–137, A–154

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BILLING CODE 1505-01-D

Federal Register

Tuesday
August 24, 1993

Part II

Department of Education

34 CFR Parts 76 and 80

State-Administered Programs Under the Rehabilitation Act of 1973; Withdrawal of Notice of Proposed Rulemaking

VOL 58 ISS 162 AG 24 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 80

RIN 1880–AA41

State-Administered Programs Under the Rehabilitation Act of 1973

AGENCY: Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Secretary withdraws a notice of proposed rulemaking regarding the administrative responsibilities of grantees and subgrantees under State-administered programs authorized under the Rehabilitation Act of 1973 (Rehabilitation Act). Congress passed legislation during the last session that removed the need for the proposed regulations. The Secretary takes this action to inform the public that development of the regulations described in the NPRM is no longer being considered.

FOR FURTHER INFORMATION CONTACT: Kathy Thomas, Grants Division, Policy and Support Staff, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 3636, ROB–3), Washington, DC 20202–4700, (202) 401–6901. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In the notice of proposed rulemaking published on August 26, 1992 (57 FR 38740), the Secretary proposed to add a new § 76.708 to the Education Department General Administrative Regulations (EDGAR) to extend the liquidation period for certain kinds of obligations. The proposed rule was designed to eliminate the undesirable effects of the liquidation rule in 34 CFR 80.23(b) on the various State-administered programs authorized under the Rehabilitation Act. The liquidation rule in part 80 requires that a State or local government liquidate obligations—that is, redeem checks or other instruments representing payment for goods or services—within 90 days after the end of the funding period or, if liquidation cannot be completed within the 90-day period, to request extension of the 90-day period from the Department.

The Rehabilitation Act has been funded out of current appropriations and those funds have been made available for a maximum period of 12 months. If Congress did not appropriate funds by the start of a fiscal year, the period for obligation would have been shorter than 12 months. The Secretary had determined that a maximum period of 12 months for obligation of funds under the Rehabilitation Act State-administered programs was so short as to place an inappropriate and burdensome restriction on grantees and subgrantees in the liquidation of obligations. However, Congress enacted the Rehabilitation Act Amendments of 1992 on October 29, 1992. Section 19 of that law (Pub. L. 102–569) extends the obligation period to 24 months, provided any program matching requirement is met fully within the initial 12-month period. This brings the State-administered programs of the Rehabilitation Act closer to the 27-month obligation period permitted under the other State-administered programs of the Department that are forward funded.

The Secretary stated in the NPRM that he did not see a need at that time to establish an extended liquidation period for the other State-administered programs of the Department, but asked for comment on whether the other programs should have a longer liquidation period. No comments were received in response to this request. The Secretary does not see a need for extended liquidation under either the Rehabilitation Act or other State-administered programs of the Department. Therefore, the Secretary withdraws the notice of proposed rulemaking that would have extended the liquidation period for certain obligations under the State-administered programs authorized by the Rehabilitation Act.

(Authority: 20 U.S.C. 1232e–3(a)(1) and 3474)

Dated: August 17, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

[FR Doc. 93–20386 Filed 8–23–93; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Tuesday
August 24, 1993

Part III

Pension Benefit Guaranty Corporation

29 CFR Parts 2606 and 2617
Rules for Administrative Review of Agency Decisions; Standard Terminations of Single-Employer Plans; Disaster Relief; Final Rule and Notice

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606 and 2617

Rules for Administrative Review of Agency Decisions; Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has concluded that its regulations governing administrative review of agency decisions and standard terminations of single-employer plans do not adequately provide for disasters of the magnitude of the current major flood disaster in the midwestern United States. Therefore, PBGC is amending (1) its administrative review regulation to include exceptions to the deadlines for filing requests for reconsideration and appeals of agency determinations and (2) its standard termination regulation to include both an exception to the deadline for filing the standard termination notice (and, hence, the deadline for issuing notices of plan benefits to participants and beneficiaries) and an exception to the deadline for completing the distribution of plan assets. Under the amended regulations, when the President of the United States declares that a major disaster exists, the PBGC's Executive Director (or his or her designee) may extend the above deadlines for up to 180 days by issuing a Notice of Disaster Relief. These amendments, which will permit the PBGC to grant relief to plan administrators, sponsors, participants and beneficiaries, and other affected parties who otherwise might be unable to comply with regulatory deadlines, are effective August 24, 1993.

DATES: Effective August 24 1993. Comments must be received on or before September 23, 1993.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (22000), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, or hand-delivered to suite 7200 at the above address between 9 a.m. and 5 p.m., Monday through Friday. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* Pursuant to its authority under 29 U.S.C. 1302(b)(3), the PBGC has issued regulations to carry out purposes of title IV; these regulations are codified at 29 CFR parts 2601 *et seq.* Several PBGC regulations include deadlines by which private parties are to submit filings to the PBGC or take other actions.

With the continuation and extension of the major flood disaster in the midwestern United States, the PBGC has come to realize that some of its regulations do not adequately provide for natural disasters of this magnitude and that, in certain limited situations, the deadlines should be extended. Accordingly, the PBGC is taking several steps to provide disaster victims with relief from certain deadlines imposed by PBGC regulations.

The PBGC is amending parts 2606 and 2617 of its regulations, Rules for Administrative Review of Agency Decisions and Standard Terminations of Single-Employer Plans, to provide for modification of certain of the deadlines in those regulations in the event of a major disaster. Under the amendments, when the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC's Executive Director (or his or her designee) may issue a Notice of Disaster Relief extending certain deadlines in the regulations. These amendments are effective immediately and, elsewhere in today's **Federal Register**, the PBGC's Executive Director is issuing a Notice of Disaster Relief to extend the deadlines for persons in areas affected by the current flood in the midwestern states.

In addition to these amendments to its regulations (which are discussed in more detail below), the PBGC is providing relief to flood victims with respect to premium penalties that may be imposed under section 4007 of ERISA (29 U.S.C. 4007) and penalties for failure to submit material information that may be assessed under section 4071 of ERISA (29 U.S.C. 1371). Such relief is described in the PBGC's Notice of Disaster Relief published elsewhere in today's **Federal Register**.

Amendments to the PBGC's Administrative Review Regulation

The PBGC's regulations provide rules for obtaining administrative review of certain agency decisions (29 CFR part 2606). Under those rules, an aggrieved person must file a request for reconsideration within 30 days after the date of the initial determination for which reconsideration is sought (§ 2602.33) and must file an appeal within 45 days after the date of the initial determination being appealed (§ 2606.53). The regulation also provides for extensions of time for good cause shown, if requested in writing prior to expiration of the applicable time limit (§ 2606.4).

The PBGC has concluded that in situations like the current flood in the Midwest, the above deadlines do not serve the agency's objective of making timely review of agency determinations available to aggrieved persons. The PBGC is accordingly amending its administrative review regulation to provide that, when the President declares that a major disaster exists, the PBGC's Executive Director may issue a Notice of Disaster Relief extending the deadlines for requests for reconsideration and appeals by up to 180 days. Such an extension is available to any person aggrieved by a PBGC decision who resides in, or whose principal place of business is located in, an area covered by the notice. Elsewhere in today's **Federal Register**, the PBGC's Executive Director is issuing such a Notice of Disaster Relief with respect to the flood in the midwestern states, extending the deadline for requesting reconsideration or filing an appeal until October 15, 1993.

Amendments to the PBGC's Standard Termination Regulation

Part 2617 of the PBGC's regulations (29 CFR part 2617) prescribes rules for the voluntary termination of a single-employer plan in a standard termination under ERISA section 4041 (29 U.S.C. 1341). These regulations, which were published on December 14, 1992, apply to single-employer plans for which notices of intent to terminate ("NOIT") are issued on or after January 28, 1993 (57 FR 59206, as amended 58 FR 6605, February 1, 1993, and corrected 58 FR 4203 and 34709, January 13 and June 29, 1993).

Part 2617 requires, among other things, that when a plan is being terminated in a standard termination, the plan administrator must file a standard termination notice (PBGC Form 500, with Schedule EA–S) with the PBGC no later than 120 days after

the proposed termination date (§§ 2617.3(b)(2) and 2617.25(a); 57 FR 59227 and 59231, respectively). The plan administrator also must issue notices of plan benefits to participants and beneficiaries (§§ 2617.3(b)(3) and 2617.23(a); 57 FR 59227 and 59231, respectively) no later than the date on which the standard termination notice is filed with the PBGC.

In addition, the plan administrator must distribute plan assets in satisfaction of all benefit liabilities under the plan within 180 days after the end of the PBGC's period for reviewing the standard termination notice, but may receive an automatic extension under certain limited circumstances (§ 2617.28(e)) or a discretionary extension upon written request filed with the PBGC at least 30 days before the expiration of the 180-day (or extended) period §§ 2617.28 (a) and (f); 57 FR 59233). If the plan administrator does not satisfy the above requirements, any action taken to effect the plan termination is null and void, and the plan is an ongoing plan (§§ 2617.3(c), 2617.27(b); 57 FR 59227 and 59232, respectively).

When the PBGC issued part 2617, it noted that while part 2617 does not provide for extension of the 120-day period, a plan administrator may defer its commencement (and thus, in effect, extend it) by specifying in the standard termination notice a proposed termination date that is later than the one in the NOIT (57 FR 59208). The PBGC anticipated that a plan administrator's discretion to delay the proposed termination date (as defined in § 2617.2, 57 FR 59227) by up to 30 days (*i.e.*, from the 60th to the 90th day after issuance of the NOIT) would be sufficient to enable plan administrators to respond to unforeseen circumstances.

The PBGC has concluded that, in situations like the current flood in the Midwest, the regulation's deadlines may not be feasible for many terminating plans and so do not serve the agency's objective of expediting the termination process with due regard for the needs and rights of private parties and the burdens on the PBGC. The PBGC is accordingly amending its regulations to provide that, when the President declares that a major disaster exists, the PBGC's Executive Director may issue a Notice of Disaster Relief extending by up to 180 days the deadlines for (1) filing standard termination notices (and, consequently, for providing notices of plan benefits to participants) and (2) completing the distribution of plan assets. The extended due dates would apply to plans with respect to which the principal place of business of the plan administrator or sponsor is within a designated disaster area.

Elsewhere in today's **Federal Register**, the PBGC is issuing a Notice of Disaster Relief providing relief for persons in areas affected the current flood in the midwestern states by extending the above deadlines to October 15, 1993. (The notice also provides relief from penalties for late filing of the post-distribution certification.)

The PBGC recognizes, with respect to all of the amendments to its regulations discussed above, that in some cases persons may invoke an extension even though their particular circumstances do not necessitate the additional time made available by the Executive Director's notice. The PBGC believes, however, that it is appropriate to avoid the public and private expense of case-by-case determinations of need for an extension and that, if the scope of relief to be granted is to be imprecise, that scope should be too broad rather than too narrow.

Need for Immediate Action

The PBGC has concluded that this action is appropriate under section 553 of the Administrative Procedure Act (5 U.S.C. 553). The extraordinary situation presented by the current major flood disaster constitutes good cause for finding that notice and public procedure thereon are impracticable and contrary to the public interest and for making these amendments effective on the date of publication (5 U.S.C. 553(b)(B) and (d)(3)). Moreover, these amendments are essentially procedural in that they establish alternative mechanisms for obtaining extensions of filing or other deadlines (5 U.S.C. 553(b)(A)). (While part 2617 notification requirements themselves may be viewed as substantive, this rule merely provides for the granting of an exemption from a regulatory deadline for complying with those requirements (see 5 U.S.C. 553(d)(1)).)

Persons who might be denied administrative review under part 2606 because of the flood in the midwestern states should receive immediate reassurance that they will not be denied that review. In some cases, timely reassurance will further the regulatory objectives of minimizing burdens on the public, making administrative review readily available whenever warranted, and eliminating the need for any unnecessary judicial proceedings. In any event, the reassurance would be significantly diluted if the PBGC were to await completion of notice and comment rulemaking before relieving this restriction on the availability of administrative review.

Similarly, immediate action is needed to ensure that extensions of the 120-day deadline for issuing notices of plan benefits and filing a standard termination notice and the 180-day deadline for completing the distribution of plan assets are available with respect to plan terminations affected by the flood disaster and thereby avoid the private sector disruption that may otherwise result. Due to the flood disaster, compliance with these regulatory deadlines may be impossible. If amendments that enable the PBGC to provide relief from these deadlines are delayed, plan administrators will have to initiate new termination proceedings, resulting in unwarranted burdens, delays, and uncertainties. That outcome would frustrate, rather than serve, the regulatory objective of ERISA section 4041(b), as implemented in part 2617: To provide for the orderly and expeditious termination of plans that are able to satisfy all promised benefits with only limited PBGC involvement.

The PBGC does recognize, however, that the amendments will enable it to take comparable action in the future, and it invites interested persons to submit written comments within the next 30 days. If the comments received warrant modifying provisions of this rule, the agency will do so.

E.O. 12291

For reasons stated above, the PBGC has concluded that this rule responds to an emergency situation and, hence, it is impracticable to follow section 3(c)(3) of E.O. 12291 and submit this rule to the Director of the Office of Management and Budget at least 10 days prior to publication. The PBGC did report this rule to the Director when it transmitted the rule to the **Federal Register** for publication.

Also, the PBGC has determined that this rule is not a "major rule" for the purposes of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

29 CFR Part 2606

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Part 2617

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

For the reasons set forth above, the PBGC is amending 29 CFR parts 2606 and 2617 as follows:

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 2606 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Section 2606.4 is amended by designating the current paragraph as (a) and adding a heading, and by adding a new paragraph (b) to read as follows:

§ 2606.4 Extension of time.

(a) *General rule.* * * *

(b) *Disaster relief.* When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the due date for filing a request for reconsideration under § 2606.33 or an appeal under § 2606.53 by up to 180 days.

(1) The due date extension or extensions shall be available only to an aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area; and

(2) The request for reconsideration or appeal shall identify the filing as one for which the due date extension is available.

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for part 2617 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

4. Paragraph (b)(2) of § 2617.3 is amended by adding, at the end before the semicolon, "or, if applicable, no later than the due date established in an extension notice issued under paragraph (a)(2) of that section".

5. Paragraph (a) of § 2617.25 is amended by removing everything after "thereto" and before the period and by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 2617.25 Standard termination notice.

(a) *Form.* * * *

(1) Except as provided in paragraph (a)(2) of this section, the plan administrator shall file the standard termination notice on or before the 120th day after the proposed termination date.

(2) When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the due date for filing the standard termination notice by up to 180 days.

(i) The due date extension or extensions shall apply only to plan terminations with respect to which the principal place of business of the contributing sponsor or the plan administrator is within a designated disaster area.

(ii) The standard termination notice shall identify the filing as being qualified for the due date extension.

* * * * *

6. Section 2617.28 is amended by adding a new paragraph (f)(4) to read as follows:

§ 2617.28 Closeout of plan.

* * * * *

(f) * * *

(4) Notwithstanding any other provision of this section, when the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the time for completing the distribution of plan assets by up to 180 days.

(i) The due date extension or extensions shall apply only to plan terminations with respect to which the principal place of business of the contributing sponsor or the plan administrator is within a designated disaster area.

(ii) The post-distribution certification required under paragraph (h) of this section shall identify the plan termination as being qualified for the distribution extension.

* * * * *

Issued in Washington, D.C. this 20th day of August, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-20600 Filed 8-23-93; 8:45 am]

BILLING CODE 7708-01-M

PENSION BENEFIT GUARANTY CORPORATION

Disaster Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of disaster relief in response to Midwestern flood.

SUMMARY: The PBGC is waiving penalties for certain late payments of premiums, is forgoing assessment of penalties for failure to comply with certain information submission requirements, and is extending the deadlines for complying with certain requirements of its administrative review and standard termination regulations. This relief is generally available to persons residing in, or whose principal place of business is within, an area designated by the Federal Emergency Management Agency as affected by the major disaster declared by the President of the United States on account of the severe flooding in the Midwest.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* Under ERISA and the PBGC's regulations, a number of deadlines must be met in order to avoid the imposition of penalties or other consequences. Four areas in which the PBGC is providing relief are (1) penalties for late payment of premiums due the PBGC, (2) ERISA section 4071 penalties for failure to provide required notices or other material information by the applicable time limit, (3) deadlines for filing a standard termination notice and distributing plan assets in a standard termination, and (4) deadlines for filing requests for reconsideration or appeals of certain agency determinations.

The President of the United States has declared, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster exists because of the severe storms and flooding in nine midwestern states. As of the third week in August, more than 450 counties, townships, and cities in these states (Minnesota, Wisconsin, Missouri, Iowa, Illinois, Nebraska, South Dakota, Kansas, and North Dakota) were designated areas (within the meaning of Federal Emergency Management Agency ("FEMA") regulations; 44 CFR 205.2(a)(5)).[1]

Given the severity of this major disaster, and its continuation and expanding scope over several months, as the Executive Director of the PBGC, I have decided to provide relief from certain PBGC deadlines and penalties. For purposes of premium penalties, section 4071 penalties, and standard termination deadlines, this notice is applicable with respect to plans whose administrators' or sponsors' principal place of business is located in a designated disaster area. For purposes of filing requests for reconsideration or appeals, this notice is applicable to any aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area.

Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment due on or after June 11, 1993, and before October 15, 1993, if the payment is made by October 15, 1993. The PBGC is not permitted by law to waive late payment interest charges still apply. (ERISA section 4007(b); 29 CFR 2610.7 and 2610.8(b)(3).)

Section 4071 Penalties

The PBGC will not assess a section 4071 penalty for a failure to file any of the following notices that were, or will be, required to be filed with the PBGC on or after June 11, 1993, and before October 15, 1993, if the notice is filed by October 15, 1993: (1) standard termination post-distribution certification (PBGC Form 501; ERISA section 4041(b)(3)(B); 29 CFR 2617.28(h) (57 FR 59206, 59233–34, December 14, 1993), (2) notice of termination for multiemployer plans (ERISA section 4041A; 29 CFR 2673.2), (3) notice of plan amendments increasing benefits by more than $10 million (ERISA section 307(e)), and (4) reportable event notice, *except* for reportable events related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, and transactions involving a change in contributing sponsor or controlled group (ERISA section 4043; 29 CFR 2615.21, 2615.22, and 2615.23).

The PBGC will not assess a section 4071 penalty for a failure to provide certain supporting information and documentation when any of the following notices is timely filed: (1) Notice of failure to make required contributions totaling more than $1 million (including interest) (PBGC Form 200; ERISA section 302(f)(4); 29 CFR 2615.30), and (2) notice of a reportable event related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or a transaction involving a change in contributing sponsor or controlled group. For a notice of failure to make required contributions, the timely filed notice must include at least items 1 through 7 and items 11 and 12 of Form 200; the responses to items 8 through 10, with the certifications in items 11 and 12, may be filed late. For a reportable event notice, the timely filed notice must include at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable. This relief applies to notices that were, or will be, required to be filed with the PBGC on or after June 11, 1993, and before October 15, 1993, provided that all supporting information and documentation are filed by October 15, 1993.

Standard Termination Notice and Distribution of Assets

With respect to a standard termination for which a notice of intent to terminate is issued on or after January 28, 1993, the PBGC is extending the due date for filing a standard termination notice (and, thus, for providing notices of plan benefits) and the deadline for completing the distribution of plan assets to October 15, 1993. In addition, as noted above, the PBGC is providing relief from penalties for late filing of the post-distribution certification irrespective of when the notice of intent to terminate was issued. (Elsewhere in today's **Federal Register** the PBGC is publishing an interim rule, effective immediately, that amends Part 2617 to provide for due date extensions under the circumstances addressed in this notice (29 CFR 2617.3, 2617.25, and 2617.28).)

Requests for Reconsideration or Appeals

For persons who are aggrieved by certain agency determinations and for whom the deadline for filing a request for reconsideration or an appeal falls on or after June 11, 1993, and before October 15, 1993, the PBGC will extend the deadline to October 15, 1993. (Elsewhere in today's **Federal Register** the PBGC is publishing an interim rule,

[1] For additional information as to which portions of these states are designated areas, contact FEMA's toll-free teleregistration number, 1–800–462–9029.

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effective immediately, that amends Part 2606 to provide for due date extensions under the circumstances addressed in this notice (29 CFR 2606.4, 2606.33, and 2606.53).)

Applying for Waivers/Extensions

A submission to the PBGC to which a waiver or an extension is applicable under this notice should be marked in bold print "FLOOD DISASTER, County of (fill in appropriate county name and state)" at the top center.

Issued in Washington, DC this 20th day of August, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–20601 Filed 8–23–93; 8:45 am]

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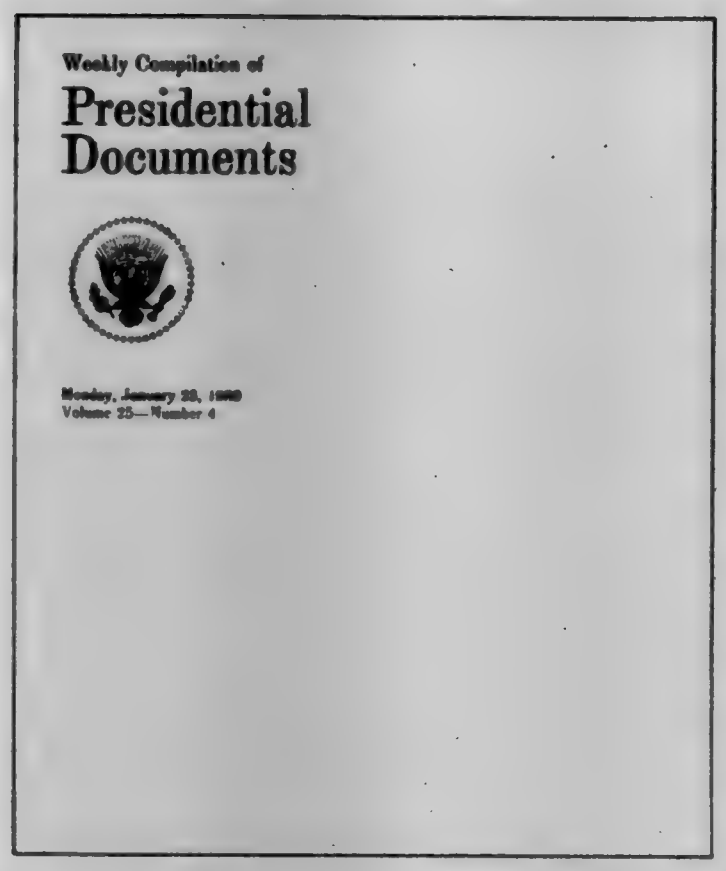

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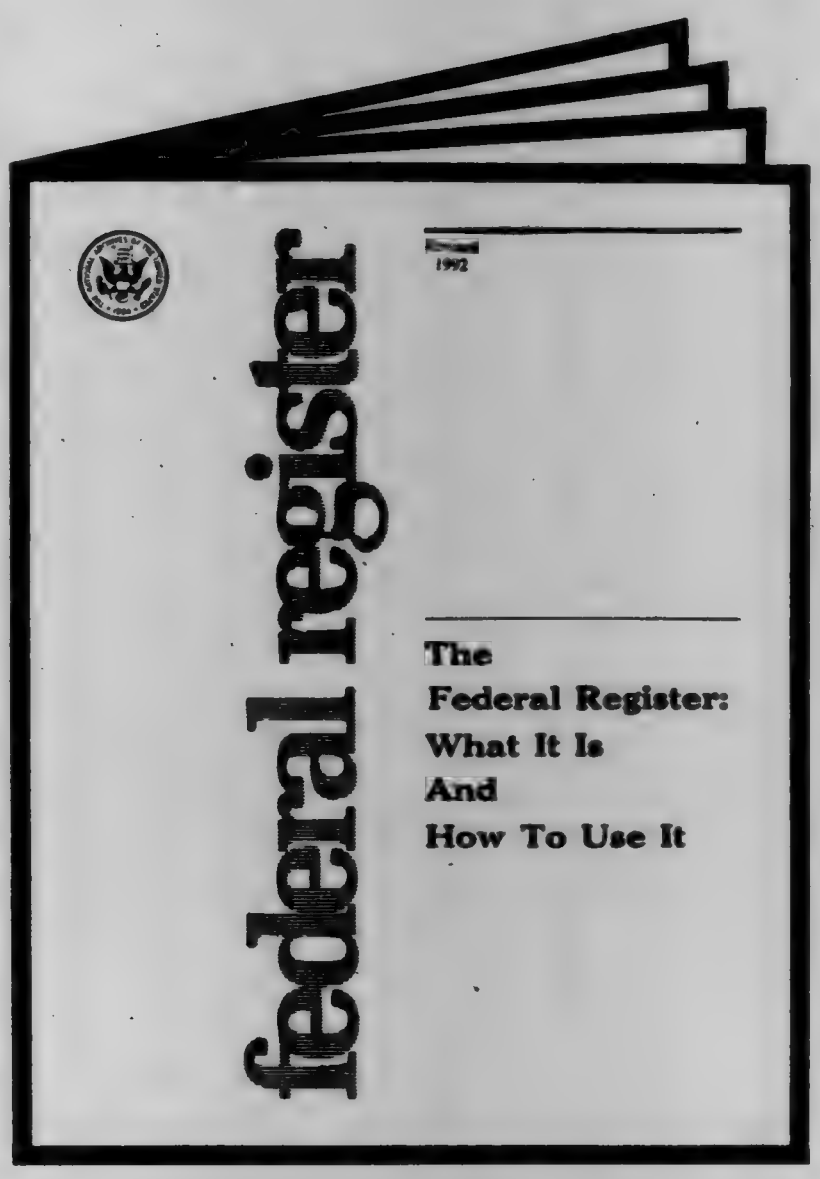

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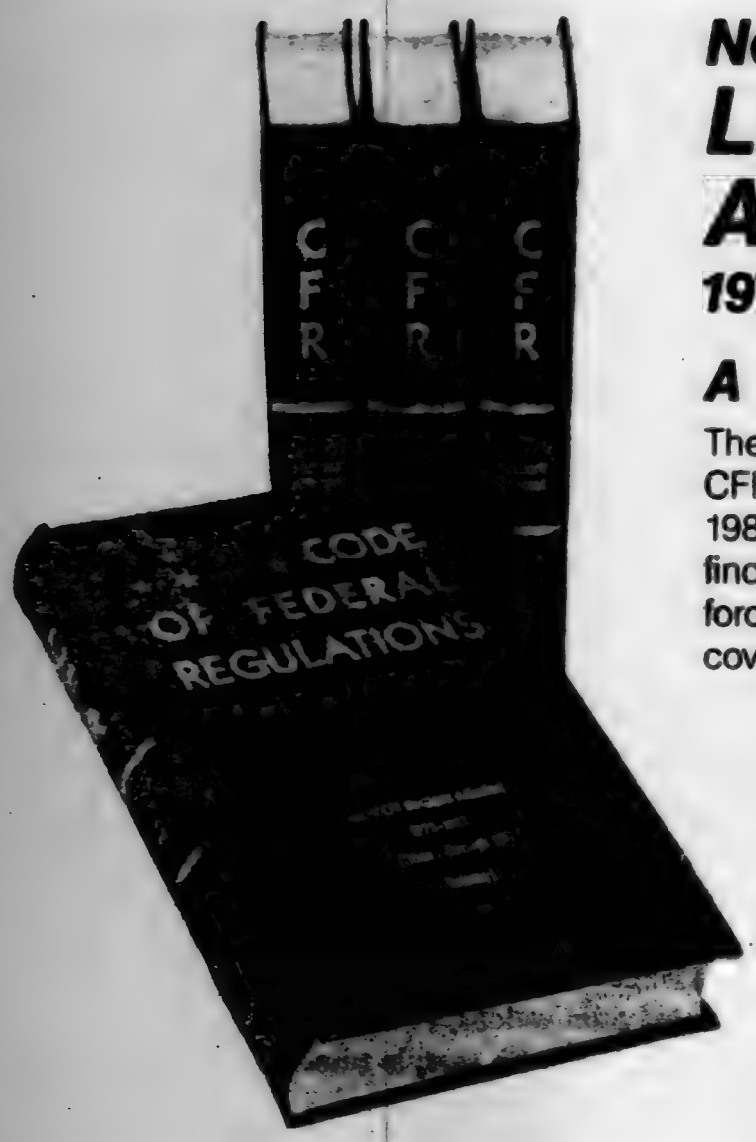

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 307

RIN 3206–AE59

Veterans Readjustment Appointments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to reflect statutory changes in the Veterans Readjustment Appointment (VRA) authority. The Veterans' Benefits Act of 1992, approved October 29, 1992, includes a provision to restore eligibility to Vietnam-era veterans for Federal employment under the VRA authority. The new law puts Vietnam-era service on equal footing with post-Vietnam-era service in qualifying for the VRA program, simplifies the eligibility requirements, and enables Federal agencies to make greater use of the VRA authority by expanding the pool of VRA eligibles.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, (202) 606–1407.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) has responsibility for implementing the VRA program as provided by the initial statute, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4214). Accordingly, OPM is required by law to issue and amend regulations governing the VRA program.

The VRA program reflects the nation's continuing interest in enhancing employment opportunities for Vietnam-era and post-Vietnam-era veterans. The VRA program is intended to meet the unique needs of veterans in the labor market, and to enable Federal agencies to hire needed talent quickly.

The VRA is an excepted appointment to a position otherwise in the competitive service that, prior to the Veterans' Benefits Act of 1992, Public Law 102–568, had been available to most post-Vietnam-era veterans but only to those Vietnam-era veterans who have a compensable service-connected disability, a separation from active duty for a disability incurred or aggravated in the line of duty, or a campaign or expeditionary medal for service during the Vietnam era. The new law eliminates those restrictions on Vietnam-era veterans. The term "Vietnam-era" refers to the period beginning August 5, 1964, and ending on May 7, 1975; the term "post-Vietnam era" refers to the period after May 7, 1975.

The VRA program was established in 1970 to help recently discharged Vietnam-era veterans who lacked marketable skills "readjust" by making it easier for them to obtain civil service employment. The VRA authority has been amended at various times over the years, with the primary concern being to provide a helping hand to the more recent service members. However, there was concern that the amendments of 1989 and 1991 to extend the program to veterans serving after the Vietnam era, had an adverse impact on Vietnam-era veterans by restricting their eligibility. As a result, the Office of Personnel Management asked Congress to put Vietnam-era service on equal footing with post-Vietnam-era service as qualifying for the VRA program. Congress agreed, and passed the amending legislation.

The regulations are also amended to reflect the modification of the definitions of VRA eligibility made by Public Laws 102–16 and 102–127.

OPM published interim rules in the **Federal Register** (58 FR 12145) on March 3, 1993. Two comments were received. One agency recommended granting VRA eligibility to pre-Vietnam-era veterans. OPM cannot do this by regulation because VRA eligibility is defined by statute. Another agency suggested describing the VRA as a noncompetitive appointment. This would not be correct because the VRA is an excepted appointment. The noncompetitive aspect consists of the conversion to career-conditional appointment that follows, provided performance is successful, 2 years after the VRA appointment is made.

OPM also has supplemented the new law with guidance issued through Federal Personnel Manual Letter 307–17, February 12, 1993.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employment practices.

List of Subjects in 5 CFR Part 307

Government employees, Veterans.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

PART 307—VETERANS READJUSTMENT APPOINTMENTS

Accordingly, OPM is adopting its interim regulations amending 5 CFR part 307 which were published at 58 FR 12145 on March 3, 1993, as final regulations without change.

[FR Doc. 93–20439 Filed 8–24–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 92–180–2]

Importation of Corn Seed From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of corn to allow seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of the corn to be imported into the United States from New Zealand. This action is warranted because pest risk analyses indicate that injurious plant diseases of concern to U.S. agriculture are not disseminated by such corn seed. This

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action relieves restrictions on the importation of corn seed from New Zealand, providing U.S. seed developers with a winter generation of corn seed to help speed the development of new seed varieties.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.24 (referred to below as the regulations) govern the importation into the United States of seed and all other portions of maize or Indian corn (*Zea mays L.*), and closely related plants, in the raw or unmanufactured state. Section 319.24(a) lists countries in which diseases occur that are injurious to such corn and closely related plants, and lists some of those diseases. Section 319.24(b) lists countries from which the importation of seed and all other portions of maize or Indian corn (*Zea mays L.*), and closely related plants, is generally prohibited because of the diseases of such corn listed in paragraph (a) and other diseases. Prior to the effective date of this final rule, New Zealand was among the countries listed in paragraphs (a) and (b) of § 319.24.

On June 10, 1993, we published in the **Federal Register** (58 FR 32456–32458, Docket No. 92–180–1) a proposal to amend the regulations to allow seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of corn to be imported from New Zealand into the United States. Also, we proposed to remove New Zealand from the list in § 319.24(a) of countries in which certain injurious diseases of such corn and closely related plants occur. These actions are warranted because pest risk analyses show that corn in New Zealand is not affected by the injurious diseases specifically listed in § 319.24(a) and we believe that any other plant diseases affecting corn or other plants in New Zealand would not be carried by corn seed.

Miscellaneous

The regulations in 7 CFR 319.41 govern the importation of Indian corn or maize, broomcorn, and related plants. Section 319.41–1, "Plant products permitted entry," lists products of Indian corn or maize, broomcorn, and closely related plants that may be imported into the United States. In Docket No. 92–180–1, we also proposed to add a new paragraph (c) to § 319.41–1, stating that seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of corn may be imported into the United States from New Zealand without further restriction, in order to make this section consistent with the proposed changes in § 319.24.

Finally, we proposed to amend footnote 2 in § 319.41–1. The footnote paraphrases § 319.24(b). We proposed to amend this footnote to reflect the proposed changes to § 319.24(b).

We solicited comments concerning our proposal for a 30-day comment period ending July 12, 1993. We received 1 comment by that date, from a seed trade association, which was in favor of the proposal.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested seed developers to begin preparing for research activities in the 1993–94 winter season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective upon signature.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

New Zealand is not expected to export a significant amount of corn seed to the United States for feed or industrial use as a result of this rule. Rather, New Zealand is expected to serve as a location for off-season seed development for purposes of research. Several large U.S. corn seed companies and at least one U.S. foundation grower (a grower that develops seed for public use) grow seed in the southern hemisphere during the fall and winter seasons to help speed the development of new seed varieties. Currently, Argentina and Chile are the primary countries utilized for this purpose.

In 1992, the U.S. corn seed industry had annual sales of approximately $1.5 billion. Only about 5 percent (less than $75 million) of this total was reinvested into developing new seed varieties. Of the companies making this investment, only a few used locations in the southern hemisphere for off-season seed development, and even fewer used New Zealand for this purpose.

Current U.S. corn research in New Zealand is valued at around $3 million. Most of the corn seed grown by U.S. companies in New Zealand is exported to countries in Europe, and would continue to be exported there even with the implementation of this rule. However, the overall U.S. research investment in New Zealand may increase somewhat with easier importation into the United States.

Most small businesses involved with corn production in the United States produce corn for feed and industrial use. There are approximately 160 small businesses in the United States that produce corn seed. Because the United States is one of the lowest-cost producers of corn in the world, these small businesses would not be threatened by imports from New Zealand. It is more expensive to grow corn in New Zealand, and transportation to the United States would add as much as 40 percent to the cost.

In preparing this analysis, APHIS first considered the possibility that the rule change would give large corn seed companies an advantage over small companies that could not afford, with their smaller budgets, to take advantage of the seed development opportunities in New Zealand.

Large corn seed companies are usually trying to develop new varieties of corn. As a rule, small corn seed companies are not involved in research and development, but are more interested in taking varieties already developed, usually by foundation growers, and adapting them for local conditions. Therefore, southern hemisphere locations would not be useful to small corn seed companies, except indirectly, as these locations are used by foundation growers. For this reason, the use of New Zealand by large corn seed developers will not put small companies at any disadvantage. As stated above, large corn seed companies are already using other southern hemisphere locations for seed development. No small businesses are known to have operations overseas. If there is a shift to more development operations in New Zealand, it will be at the expense of the other southern hemisphere locations, not at the expense of small corn seed companies in the United States.

APHIS also considered the possibility that this rule would prompt New Zealand to begin producing corn seed for planting by U.S. farmers, generating competition for U.S. corn seed companies, large and small. However, as stated earlier, it is much more expensive to grow corn in New Zealand than in the United States. With the addition of transportation costs, it is highly unlikely that importation of corn seed grown by New Zealand companies will pose any threat to U.S. companies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

Subpart—Corn Diseases

§ 319.24 [Amended]

2. Section 319.24 is amended as follows:

a. In paragraph (a), the phrase "New Zealand," is removed.

b. Paragraph (b) is amended by removing the first word in the introductory paragraph, "On", and adding the phrase "Except as provided for in paragraph (d) of this section for corn seed from New Zealand, on" in its place.

c. A new paragraph (d) is added to read as follows:

§ 319.24 Notice of quarantine.

* * * * *

(d) Seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of corn may be imported into the United States from New Zealand without further restriction.

Subpart—Indian Corn or Maize, Broomcorn, and Related Plants

3. In § 319.41–1, footnote 2 is amended (1) by removing the first word in paragraph (b), "Seed", and adding the phrase "Except as provided for in paragraph (c) for corn seed from New Zealand, seed" in its place; and (2) by adding a new paragraph (c) to read "Seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of corn may be imported into the United States from New Zealand without further restriction. (§ 319.24.)".

4. In § 319.41–1, a new paragraph (c) is added to read as follows:

§ 319.41–1 Plant products permitted entry.[1]

* * * * *

(c) Seed of Indian corn or maize (*Zea mays L.*) that is free from the cob and from all other parts of corn may be imported into the United States from New Zealand without further restriction.

Done in Washington, DC, this 18th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20517 Filed 8–24–93; 8:45 am]

BILLING CODE 3410–34–P

[1] Except as provided in § 319.41–6 the regulations in this subpart do not authorize importations through the mails.

Farmers Home Administration

7 CFR Parts 1910, 1941, 1943, and 1980

RIN 0575–AB32

Five-Year Applicant Loan Eligibility Certification by County Committee

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its loan making regulations to extend the period of time that an applicant may be eligible for direct and guaranteed farm operating, farm ownership, and soil and water loans to five years. This action is necessary to implement a provision of the Agricultural Credit Improvement Act of 1992, dated October 28, 1992. The intended effect is to reduce the amount of time needed to process Farmer Programs loan applications and reduce the amount of burden on County Office personnel, lenders, and the County Committee.

DATES: Interim rule effective August 25, 1993. Written comments must be submitted on or before September 24, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, FmHA, USDA, room 6348–S, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this rule will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Karen D. Eifert, Senior Loan Officer, Farmer Programs Loan Making Division, FmHA, USDA, room 5438–S, 14th Street and Independence Avenue, SW., Washington, DC 20250; telephone (202) 720–3889.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of FmHA

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Programs and Activities" (December 23, 1983), farm ownership loans and farm operating loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The soil and water loan program, however, is subject to the provisions of Executive Order 12372.

Programs Affected

These changes affect the following FmHA programs, as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Interim Rule

Farm loans made to FmHA applicants are governed mainly by the Consolidated Farm and Rural Development Act (CONACT; 7 U.S.C. 1921, et seq.). Present loan making regulations require the County Committee to determine an applicant's eligibility status for each loan requested, with the eligibility determination remaining valid for that loan only.

It is the policy of this Department to publish, for comment, rules relating to public property, loans, grants, benefits, and contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making because a statutory change made by section 12 of the Agricultural Credit Improvement Act of 1992 (Act) to section 333 of the CONACT necessitates amendment of Farmer Programs direct and guaranteed loan making regulations, and section 23 of the Act specifically requires publication of an interim rule. Section 12 authorizes the County Committee to extend an applicant's eligibility to a period not to exceed five years.

Upon determination by the County Committee that an applicant is eligible for a particular type of loan, any subsequent requests submitted by the applicant for the same type of assistance will not require County Committee action if the request is approved less than five years from the date of the original County Committee determination. However, if FmHA determines that the applicant's situation has changed significantly since the Committee's determination, the request will be presented to the County Committee for a new eligibility determination. The applicant will be notified in writing if the request is presented to the County Committee again. This action is not appealable; however, any ultimate denial of a loan guarantee would trigger appeal rights. This will provide some assurance that applicants who do not meet the eligibility requirements at the time of the loan request will not receive assistance. The eligibility will be determined by loan type because eligibility criteria vary slightly between loan types. For instance, an applicant for a farm ownership loan must be owner-operator of the farm after loan closing, while an applicant for a farm operating loan must be the owner-operator OR tenant-operator after loan closing. Emergency loan applicants are excluded from the five-year eligibility period because two of the eligibility requirements for emergency loans mandate that an applicant operate in a designated or contiguous disaster area and suffer a qualifying production and/or physical loss. The Committee cannot certify that an applicant will meet these requirements for any length of time. Therefore, eligibility determinations for emergency loans will continue to be made by the County Committee for each loan application, as set forth in § 1945.180 of subpart D of part 1945 of this chapter. Eligibility and ineligibility determinations by the County Committee are appealable in accordance with subpart B of part 1900 of this chapter, and applicants are given their appeal rights when notified in writing of an unfavorable Committee determination.

This rule is intended to minimize the administrative burden on the Agency and County Committee and decrease the timeframe for processing applications. These revisions will allow an applicant to remain eligible for FmHA farm operating, farm ownership, and soil and water loan assistance, as determined by the County Committee, for five years in most cases. FmHA and the County Committee will no longer be required to review every application for eligibility from an applicant already determined eligible.

References to "insured loans" in the regulation texts have been changed to read "direct loans" to reflect changes in terminology required by the Credit Reform Act of 1990 (2 U.S.C. 661 et seq.). Provisions also are added to ensure that each lender and loan applicant is notified of eligibility or ineligibility within 5 calendar days of the County Committee's determination. This revision is intended to provide more timely processing of applications within a reasonable period of time.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Therefore, FmHA amends chapter XVIII, title 7, Code of Federal Regulations, as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

2. Section 1910.4(b)(19) is amended by revising the word "Exclusion" to read "Exclusions".

3. Section 1910.4(c) is amended by revising the words "farmer program" to read "Farmer Programs" in the heading.

4. Section 1910.4(f) is amended by removing the words, "Farmer Programs Borrower Responsibilities," and inserting in their place, "Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with Farmer Programs Loans."

5. Section 1910.4(g) is revised to read as follows:

§ 1910.4 Processing applications.

* * * * *

(g) *Determining eligibility.* The County Committee will determine eligibility of all Farmer Programs applicants including RH applicants who are also applying for a Farmer Programs loan, or who are already indebted for a Farmer Programs loan. The Farmer Programs application does not need to be complete before it is reviewed by the County Committee; however, all

information relative to the eligibility decision must be received. The County Supervisor will determine eligibility for all other RH applicants.

(1) The County Committee will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in § 1955.103 of subpart C of part 1955 of this chapter, by use of Form FmHA 440–2, "County Committee Certification or Recommendation." An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority as outlined in § 1955.107(f) of subpart C of part 1955 of this chapter. In addition, it is the responsibility of the County Committee to determine whether or not the applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in need of FmHA credit assistance on eligible rates and terms to purchase suitable farmland. The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions must be made by the loan approval official.

(2) Eligible applicants will remain eligible for Farmer Programs loans for a period of five years from the date of the most current Form FmHA 440–2, subject to the following guidelines:

(i) The eligibility period for emergency loans is valid only for each application submitted, in accordance with § 1945.180 of subpart D of part 1945 of this chapter.

(ii) For OL, FO, and SW loans, the five-year eligibility period is valid by loan type (e.g., OL, FO, or SW). The exact dates of the period of eligibility will be documented on the Form FmHA 440–2. Loans must be approved prior to the end of the period of eligibility.

(iii) Subsequent requests for loan assistance within the eligibility period from an applicant who has previously been determined eligible for the same type of assistance do not need to be reviewed by the Committee unless the County Supervisor has determined that the applicant's situation has changed such that the eligibility determination would potentially be affected.

(iv) If the County Committee is to review an application within the eligibility period, the County Supervisor will immediately notify the applicant in writing prior to the Committee review, including the reason(s) for the review. This notification is provided as a courtesy and is not appealable. The review will take place without delay. The County Supervisor will send written notice of eligibility or ineligibility to the applicant within 5 calendar days of the date of the review, along with the exact dates of the period of eligibility, as applicable.

(v) If an applicant is determined eligible for a direct loan, the applicant is automatically eligible for a guaranteed loan of the same type. Likewise, an eligible determination for a guaranteed loan automatically indicates applicant eligibility for a direct loan of the same type, provided that the County Supervisor can document that alternate sources of credit are not available to the applicant with or without a guarantee. The County Supervisor must clearly document in the loan file the reason(s) the applicant is moved to direct credit in such cases.

* * * * *

6. Section 1910.4(i) is amended by revising the words "farmer program" to read "Farmer Programs" in the first sentence.

7. Section 1910.6 is amended by revising paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

§ 1910.6 Notification of applicant.

* * * * *

(a) *Favorable eligibility decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant within 5 calendar days of the County Committee determination. For OL, FO, and SW loans, the notification will include the exact dates of the period of eligibility, in accordance with § 1910.4(g) of this subpart. For Farmer Programs, if the County Supervisor has determined the operation is feasible, the loan will be promptly processed in accordance with the applicable regulations. Care should be exercised that the applicant clearly understands a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supervisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original eligibility determination may be in error, the County Committee will reconsider the applicant, taking the new information into account. The County Committee will then recertify whether or not the applicant still meets eligibility requirements, by the use of Form FmHA 440–2. Written notification as to the action taken will be sent to the applicant within 5 calendar days of the County Committee determination.

(b) * * *

(1) The County Supervisor will notify the applicant in writing of the unfavorable decision within 5 calendar days of the County Committee determination. * * *

* * * * *

PART 1941—OPERATING LOANS

8. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301, 7 CFR 2.23 and 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.29 [Amended]

9. In § 1941.29, the heading, paragraphs (b) introductory text, (b)(1), (b)(2), (c) introductory text, and (c)(3) are amended by revising each occurrence of the word "insured" to read "direct," and (c) introductory text is amended by revising the word "will" to read "may."

10. Section 1941.30 is revised to read as follows:

§ 1941.30 County Committee certification.

The County Committee will certify an applicant's eligibility status on Form FmHA 440–2, "County Committee Certification or Recommendation," in accordance with § 1910.4(g) of subpart A of part 1910 of this chapter. In some instances, the committee may want to interview the applicant or see the farm before making any recommendations.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

11. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

§ 1943.29 [Amended]

12. In § 1943.29, paragraph (d) is amended by revising the word "insured" to read "direct."

13. Section 1943.30 is revised to read as follows:

§ 1943.30 County Committee certification.

The County Committee will certify applicant eligibility status on Form FmHA 440–2, "County Committee Certification or Recommendation," in accordance with § 1910.4(g) of subpart A of part 1910 of this chapter. In some

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instances, the Committee may want to interview the applicant or see the farm before making any recommendations.

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

§ 1943.79 [Amended]

14. Section 1943.79, the section heading, paragraphs (a), (c) introductory text, (c)(1) and (d) are amended by revising each occurrence of the word "(I)insured" to read "(D)direct."

15. Section 1943.80 is revised to read as follows:

§ 1943.80 County Committee certification.

The County Committee will certify applicant eligibility status on Form FmHA 440–2, "County Committee Certification or Recommendation," in accordance with § 1910.4(g) of subpart A of part 1910 of this chapter. In some instances, the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.82 [Amended]

16. In § 1943.82, paragraph (a) is amended by revising the entry "1427–8" to read "1927–6" in the "FmHA form No." column.

PART 1980—GENERAL

17. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Farmer Programs Loans

§ 1980.114 [Amended]

18. In § 1980.114, the first sentence of the introductory text is amended by adding the word "loan" preceding the word "applicant."

19. In § 1980.115, the introductory text and paragraphs (a) and (b) are revised to read as follows:

§ 1980.115 County Committee review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received. The County Supervisor will notify both the lender and the loan applicant in writing within 5 calendar days of the County Committee's determination.

(a) *Favorable action.* If the County Committee finds the loan applicant eligible, the members will sign the Form FmHA 440–2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. The loan applicant will remain eligible for guaranteed FO, OL, and SW loans for a period of five years from the date of the most recent Form FmHA 440–2, subject to the following guidelines:

(1) The five-year eligibility period is valid by loan type (e.g., OL, FO, SW). The exact dates of the period of eligibility will be documented on Form FmHA 440–2. Loans must be approved prior to the end of the period of eligibility.

(2) When the loan applicant has been determined eligible for assistance and additional information becomes available before issuance of the conditional commitment that indicates the original determination may be in error, the County Committee will reconsider the loan applicant, taking the new information into account. The County Committee will then recertify whether or not the loan applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. The County Supervisor will provide proper notification of action taken, including the exact dates of the period of eligibility, as applicable, to the lender and the loan applicant.

(3) Subsequent requests for loan assistance within the eligibility period, from a loan applicant who has previously been determined eligible for the same type of assistance, do not need to be reviewed by the Committee unless the County Supervisor has determined that the loan applicant's situation has changed such that the eligibility determination would potentially be affected.

(4) If the County Committee is to review an application within the eligibility period, the County Supervisor will immediately notify the loan applicant and the lender in writing prior to the Committee review, including the reason(s) for the review. This notification is provided as a courtesy and is not appealable. The review will take place without delay. The County Supervisor will send written notice of the County Committee decision to the loan applicant and the lender within five calendar days of the date of the review, along with the exact dates of the period of eligibility, as applicable.

(5) A loan applicant with a valid eligibility determination for direct credit, as defined in § 1910.4(g) of subpart A of part 1910 of this chapter, will also be considered eligible for a guaranteed loan of the same type.

(b) *Unfavorable action.* If the County Committee finds the loan applicant ineligible, the members will complete Form FmHA 440–2. The County Supervisor will provide proper notification to the lender and the loan applicant of the County Committee's decision, the reasons for the unfavorable decision, and the opportunity for an appeal as set out in subpart B of part 1900 of this chapter.

* * * * *

§ 1980.116 [Amended]

20. Section 1980.116 is amended by adding the word "loan" preceding the word "applicant" in the second sentence.

§ 1980.117 [Amended]

21. Section 1980.117 is amended by adding the word "loan" before the word "applicant" in Administrative paragraph (A).

22. Exhibit E to subpart B is amended by revising paragraph IV. D. to read as follows:

Exhibit E to Subpart B—Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland

* * * * *

IV. PROGRAM ADMINISTRATION

* * * * *

D. Prospective borrowers must meet the applicable requirements of subpart G of part 1940 of this chapter, including providing Form SCS–CPA–026, "Highly Erodible Land and Wetland Conservation Determination," and Form AD–1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," as required by Exhibit M to subpart G of part 1940 of this chapter.

* * * * *

Dated: June 23, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–20334 Filed 8–24–93; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Parts 1809, 1823, 1922, 1941, 1943, 1944, 1945, 1951, 1955, 1965, and 1980

RIN 0575–AB30

Appraisal of Farms and Leasehold Interests

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Farmers Home Administration (FmHA) amends its farm tract appraisal regulations in order to implement and conform to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989. The intended effect of this rule is to meet the provisions of title XI of FIRREA and the Uniform Standards of Professional Appraisal Practice (USPAP) as directed from the Office of Management and Budget (OMB Bulletin A–129).

DATES: Interim rule effective August 25, 1993. Comments must be received on or before September 24, 1993.

ADDRESSES: Submit written comments in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ronald T. Thelen, Senior Loan Officer, Program Development Staff, USDA, FmHA, room 4918–S, South Building, Washington, DC 20250, telephone: (202) 720–0830.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Sections 1922.202–1922.208 of FmHA Instruction 1922–E are being exempted from the **Federal Register**. FmHA believes that these sections are exempt from those requirements because they involve only internal Agency management. It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to proposed rule making.

Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2 (a) and 2 (b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not needed.

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under NOS. 10.404—Emergency Loans, 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans, and 10.416—Soil and Water Loans.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) this program/activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Discussion of Changes

7 CFR part 1809, subpart A "Appraisal of Farms and Leasehold Interests," is being deleted from the **Federal Register** and revised and renumbered to FmHA Instruction 1922, subpart E—"Appraisal of Farms and Leasehold Interests." section 1922.201 "General" (old § 1809.1 "General") and a new § 1922.209 "Easements and appraising properties subject to easements" are being published for comment.

All other §§ 1809.2 through 1809.8 of subpart A have been amended and placed in §§ 1922.202 through 1922.208 of FmHA Instruction 1922 subpart E. The amendments were made in order to comply with FIRREA or FmHA Instruction 1922–A "General Appraisal" and Section III.A.3.a. (1) of OMB Circular A–129. FmHA Instruction 1922–A and OMB Circular A–129 require that the Agency's farm real property appraisals and reviews conform with the Uniform Standards of Professional Appraisal Practice (USPAP) Standards I, II, and III. Sections 1922.202 through 1922.208 are being exempted from the **Federal Register** since they involve internal Agency management.

The following changes are being made to §§ 1809.1—1809.2 of 7 CFR part 1809 subpart A:

1. Section 1809.1 entitled "General" has been amended to include compliance and reference to Section I and II of the Uniform Standards of Professional Appraisal Practice (USPAP) and will be published for comment as § 1922.201 "General."

2. Section 1809.1 "General (a)–(d)" have been amended and placed in § 1922.202 entitled "Administrative responsibilities" of FmHA Instruction 1922–E and § 1922.203 entitled "Definitions." Section 1922.203 includes a new definition for appraisal, and definitions for reproduction and replacement costs.

3. Section 1809.2 "Definition of values" was deleted and amended since references to agricultural value, Form FmHA 424–1 and other statements are no longer used in farm tract appraisals and/or are explained thoroughly in other parts of FmHA Instruction 1922–E or Sections I and II of USPAP. This amended section has been replaced with § 1922.204 "Fundamental assumptions" and includes those assumptions described in § 1809.3 (a)(1) through (4).

4. Section 1809.3 "Basic farm valuation principles" was deleted, revised and placed in § 1922.205 entitled "Basic principles of real property valuation." A majority of the principles set out in § 1809.3 are adequately described in USPAP Sections I and II and ExhibitA of FmHA Instruction 1922–E. The new § 1922.205 will include use of 12 economic principles affecting value. The 12 principles are: Anticipation, substitution, change, competition, supply and demand, balance, conformity, externalities, contribution, highest and best use, surplus productivity and increasing and decreasing returns.

5. Section 1809.4 "The three-way approach to market value" has been amended to follow Sections I and II of USPAP standards. The amended information has been transferred to § 1922.206 "Appraisal process" and § 1922.207 "The three approaches to value." Section 1922.206 is an outline of the items to complete in the appraisal process, while § 1922.207 details the three approaches as set out in USPAP. Major changes in the cost approach include authority to use either a direct method (Age-Life) or indirect method (Market extraction) in arriving at depreciation for buildings.

6. Section 1809.5 "Normal long-term prices and costs," has been updated and revised to include typical prices and costs used in the Income approach. The current contents of this section are now fully described in the Income approach in § 1922.207.

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7. Section 1809.6 "Making the appraisal" has been deleted and current revisions of the information are covered in Exhibit A of FmHA Instruction 1922–E.

8. Section 1809.7 "Loan to holders of leasehold interest" has been amended and retained as § 1922.208 "Appraising leasehold interest." The major amendments include guidance on appraising land subject to Conservation Reserve Program (CRP) leasehold interests. Section 1922.208 will require that the appraiser complete a market analysis to determine if the CRP leasehold interests have any significant increase or decrease to the market value of the property before an appraisal is completed.

9. Section 1809.8 "Preparation of appraisal report" has been amended by deleting references to Exhibit C "Long-Time Commodity Price Data;" D "Present Value of $1 PER ANNUM;" E "Long-Time Cost Data;" F "Work-out Earnings Table of Several Sales;" and G "Guide for Preparation of Form FmHA 1922–11 Appraisal for Mineral Rights." Exhibits C, D, E, and F are outdated and no longer applicable under USPAP standards and are no longer acceptable appraisal techniques. Exhibit G has been deleted and the information was placed in a Forms Manual Insert. The form will continue to be used.

Discussion of the Interim Rule

It is the policy of this Department to publish notice of proposed rulemaking with a comment period before rules are issued, even though 5 U.S.C. Section 553 exempts rules relating to loans, grants, benefits, or contracts. However, exemptions are permitted where an agency finds, for good cause, that compliance would be impracticable, unnecessary, or contrary to the public interest.

Sections 1922.202 through 1922.208 of FmHA Instruction 1922–E are being revised and omitted from the **Federal Register** since they involve only internal Agency management.

Sections 1922.201 and 1922.209 are being published for comment. Section 1922.201 requires that FmHA farm tract appraisals be performed in accordance with Sections I and II of the Uniform Standards of Professional Appraisal Practices (USPAP). These sections of USPAP and Section III were published as Interim Common Rule in the **Federal Register** (See 55 FR 53610 No. 251 dated 12/31/90) by the following Agencies and Departments: (1) Department of Treasury—Office of the Comptroller of the Currency, 12 CFR part 34; (2) Board of Governors of the Federal Reserve System, 12 CFR part 225; (3) Federal Deposit Insurance Corporation, 12 CFR part 323; (4) Department of the Treasury, Office of Thrift Supervision, 12 CFR part 564; (5) National Credit Union Administration, 12 CFR part 722; and (6) Resolution Trust Corporation, 12 CFR part 1608. It is intended that FmHA farm tract appraisals and reviews be performed in accordance with generally accepted appraisal standards (Sections I, II, and III) as evidenced by the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Section 1922.209 "Easements and appraising properties subject to easements" is also being published for comment. This new section was added to FmHA Instruction 1922–E, in order to furnish guidelines for FmHA contract appraisers and FmHA designated appraisers. FmHA believes that the methods, concepts and guidelines to be used in the easement valuation process are germane and acceptable to those promulgated by real estate appraisal foundations, alliances, institutes, and societies in the United States.

FmHA is making this action effective immediately upon publication in the **Federal Register**, without prior public comment. FmHA has concluded that there is a need to provide immediate guidance to FmHA designated appraisers and FmHA contract appraisers, concerning the use of the uniform standards as set out in Sections I, II, and III of USPAP. This emergency action is necessary since most States have enacted legislation and have implemented FIRREA. Most States implemented FIRREA on January 1, 1993; thus, the USPAP standards have to be adhered to by all appraisers when completing real property appraisals. This also means that such appraisers obtain or complete certain educational courses and testing for the appropriate State certificate or license. Further delays by FmHA will have a very real adverse impact on FmHA borrowers and loan applicants. Delays will allow FmHA contract appraisers, some guaranteed lenders and FmHA designated appraisers to use outdated techniques and methods when appraising farm real property. The continued use of outdated, nonuniform appraisal techniques will assuredly cause such appraisals to be appealed and ultimately reversed, since they may not have been completed within USPAP standards. Such actions will cause undue hardship and delays for many FmHA borrowers and Farmer Program loan applicants.

Lists of Subjects in 7 CFR Parts 1809, 1823, 1922, 1941, 1943, 1944, 1945, 1951, 1955, 1965, 1980

Accounting servicing, Agriculture, Credit, Crops, Debt restructuring, Disaster assistance, Farm labor housing, Foreclosure, Grant programs—Housing and community development, Government acquired property, Government property management, Home improvement, Indians, Intergovernmental relations, Livestock, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Real property—Appraisals, Recreation, Rent subsidies, Reporting requirements, Rural areas, Rural housing, Sale of government acquired property, Subsidies, Surplus government property, Water resources, Youth.

Accordingly, under the administrator's authority, 5 U.S.C. 301, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1809—[REMOVED AND RESERVED]

1. Part 1809 is removed and reserved.

PART 1922—APPRAISAL

2–3. The authority citation for part 1922 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

4. Subpart E, consisting of §§ 1922.201 through 1922.250, is added to part 1922 to read as follows:

Subpart E—Appraisal of Farms and Leasehold Interests

Sec.

1922.201 General.
1922.202–1922.208 [Reserved]
1922.209 Easements and appraising property subject to easements.
1922.210–1922.250 [Reserved]

Subpart E—Appraisal of Farms and Leasehold Interests

§ 1922.201 General.

This subpart prescribes the procedures and guidelines for conducting appraisals in connection with making and servicing Farmers Home Administration (FmHA) insured loans on farm tracts. It also includes guidance for market valuations of farm tracts when leasehold interests, Conservation Reserve Program, easements and mineral rights are involved. Farm tracts will be appraised for market value. FmHA designated appraisers and contract appraisers will comply with the guidelines and standards as set out in Sections I and II of the Uniform Standards of Professional Appraisal Practice (USPAP), when completing farm tract appraisals as prescribed in this subpart. A current copy of Sections I and II of USPAP promulgated by The Appraisal Foundation is located in each FmHA State Office.

§§ 1922.202–1922.208 [Reserved]

§ 1922.209 Easements and appraising property subject to easements.

(a) *Easements.* Easements represent an interest in real property that conveys use, but not ownership, of a portion of an owner's property. Easements frequently permit a specific portion of a property to be used for access to an adjoining property or as a public right-of-way. Although surface easements are the most common, subterranean and overhead easements are used for public utilities, roadways, bridges, air rights, etc. Basic easement valuation concepts are as follows:

(1) A property that acquires an easement is the beneficiary of additional rights; one that is subject to an easement is burdened. Easement rights can be conveyed in perpetuity or for a limited time period. An easement can be created by a contract between private parties or it can be arranged by states, municipalities, or public utilities through the exercise of eminent domain. In any case, a valuation is needed to estimate the price the easement beneficiary should pay to the burdened party.

(2) An easement that affords ingress and egress to an otherwise landlocked, parcel may increase its value. The value of an easement is usually estimated as some part of the amount of value it adds to the property it benefits; the burdened property's loss in value can also be used to indicate the value of an easement. The value of an easement reflects the basic economic concept of contribution.

(3) When an easement is acquired by a public utility company for overhead power lines, valuation becomes more complicated. In all cases, however, an easement is a partial interest in the burdened real estate property.

(4) Preservation easements, such as conservation easements, prohibit physical changes to the property. Usually, the owner must maintain the condition of the property at the time the easement is donated or immediately after a proposed restoration. The economic theory that underlies the valuation of preservation easements is generally the same as that which governs eminent domain appraising, although the acquirer of a preservation easement receives rather than takes rights. Each easement document contains specific controls and restrictions. An appraiser must carefully analyze easement restrictions or proposed restrictions to determine how it affects the property. Damage to the remaining property is the difference in the value of the remainder as a part of the whole, or its value before the easement, and the value of the remaining property after the easement before consideration of compensation. The amount of compensation is determined by subtracting the value of the remaining property after the easement, before compensation, from the value of the remaining property after easement, after compensation.

(5) Frontage easements (roads or underground water pipes, electricity, communication lines) can contribute to the value of the property. Rights considered consist of both subsurface and surface rights. Fair or just compensation consists of compensation for: The taking and use of the subsurface; the cost of replenishing any items destroyed (lawns, bushes, etc.); and any inconvenience or interruption during installation and later maintenance. Detailed market analysis may be completed to determine the value of the easement. Usually, 1 percent of the fair market value is adequate compensation for property taken. It may be higher when subsurface property has considerable disruption factors.

(6) Oil, gas, pipeline and powerline easements crossing property can be determined by two approaches. The appraiser can find comparable sales of land and narrow strips of land that have been sold or purchased in the market and tabulate the prices received and paid, or use the before and after values as set out in paragraph (b) of this section. Most landowners realize that a taking agency should pay no more than what it has paid others to acquire similar easements needed in the same area or what other landowners have accepted as compensation for the same kind of rights.

(b) *Appraising property subject to easements.*

(1) When there is an established traditional market for properties containing conservation or other easements, value of the property subject to the easement can be determined through the normal appraisal process outlined in § 1922.207 of this subpart.

(2) If there is no established traditional market (market value for the easement) for properties containing conservation or other easements, value of the property subject to the easement can be determined as outlined in paragraph (d) of this section. When there is an existing easement on the subject property, the before valuation will be completed assuming there is no easement on the property. The after valuation will be the market value of the property subject to an easement.

(c) *Appraising property with no established market for easements.* In most cases, there is no established traditional market for conservation easements or other easements. These interests must be valued indirectly through the Before and After method of appraisal. The Before and After method is used to determine whether, and the degree to which, an easement changes a property's use and value. The value of property after the imposition of the easement is subtracted from the value of the property before the imposition of the easement to estimate the value of the easement. Each value conclusion is made as of the same date. The following steps will be used to determine the value of easements to the subject property being appraised, i.e., if there is no traditional market for the easement available:

(1) *Before valuation.*

(i) Apply highest and best use principles.

(A) *Determine the property's highest and best use in its current condition unrestricted by the easement (the "Before" value).* Generally, in this step the appraiser considers the suitability of the property's current use under existing zoning and market conditions and estimates the reasonable likelihood of a change in use (and the associated direct and indirect costs and delay), absent the easement, to realize a more profitable economic use.

(B) *Evaluate potential for continuation of existing use and alternative uses.* Under this step the appraiser estimates the property's potential for continuation of existing use, if its existing use or realistic alternative uses generate greater value. Alternative uses may include, if appropriate, either existing improvements or as vacant land which may include the following: Subdivision, Redevelopment, Renovation, Flooding, or Timbering.

(C) *Estimate remoteness of eventual zoning changes.* Under this analysis, the appraiser must consider future changes in zoning. The quantification for the supported future probability of a change must be recognized in the market place

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and supported by quantification—both statistical and anecdotal. Hypothetically, value added to land by possibilities of development is not an appropriate pre-easement consideration, unless factually supported in the report.

(ii) *Apply the three recognized approaches to value.* This will be accomplished as set out in § 1922.207 of this subpart. The appraiser will apply, as appropriate, the three approaches to the "Before" value to estimate the value of the property without restrictions or not being encumbered by the easement. Comparable properties used should not be encumbered by the easement. All factors must be analyzed in view of the current local market, which if necessary, reflects foreseeable trends reflected in the market place, such as rezonings, demolition permits, subdivision approvals, leases, etc. The three approaches should be used whenever possible to estimate the value of an easement. For each method not used, the appraiser must explain why the omitted method is not applicable.

(2) *After valuation.*

(i) *Determining highest and best use by comparing easement covenants to existing zoning regulations and other controls.* The appraiser must analyze the easement terms and covenants, individually and collectively, and compare them to existing zoning regulations and other controls to estimate whether, and the extent to which, the use restrictions contained in the easement will affect current and alternate future uses of the property. Examples of pre-existing controls include local regulations, such as agricultural or historic district zones; statewide regulations, such as land-gain taxes to deter land speculation; and Federal limitations, such as flood plain controls or the necessity to obtain environmental or historic preservation reviews for federally licensed or assisted projects encumbered or restricted by the easement.

(ii) *Changes in highest and best use.* Easement restrictions may be reflected in the three approaches to value even without a change in highest and best use. Under the Comparable Sales approach to value, a well informed purchaser would consider the immediate and long term costs of complying with the easement and pay less for a restricted property than for otherwise comparable unrestricted properties. Similarly, the Cost and Income approaches may indicate immediate and long term value impairment attributable to the easement. The change in market value attributable to an easement is frequently greater on properties in those agricultural, recreational, residential, or commercial areas that are experiencing a change in highest and best use. Where current use is commensurate with highest and best use, an easement perpetually limiting use of the property to current use may have nominal value.

(iii) *Apply the three approaches to value.* This will be accomplished as set out in § 1922.207 of this subpart. The appraiser will apply the Comparable Sales, Cost, and Income approaches as appropriate to estimate the value of the property as encumbered or restricted by the easement. Comparable properties used would be subject to the type of easement appraised. Market abstractions, market analysis as well as feasibility analysis should be made part of this report. The three approaches should be used whenever possible to estimate the value for an easement. For each method not used, the appraiser must explain why the omitted method is not applicable.

(d) *Arriving at the estimated value of the easement.* The Recommended Market Value of the property arrived at from the After valuation is subtracted from the Before valuation to arrive at the estimated value of the easement.

(e) *Arriving at the Recommended Market Value of the property subject to an easement.* The Recommended Market Value of the property will be the Recommended Market Value of the property arrived at from the After valuation approach.

§§ 1922.210–1922.250 [Reserved]

5. 7 CFR chapter XVIII is amended by revising the numerals "422–1" to read "1922–1" in the following places:

a. Part 1941, subpart A, Exhibit A, paragraph B
b. Part 1943, subpart A, § 1943.32 (a)
c. Part 1943, subpart B, § 1943.82 (a)
d. Part 1944, subpart A, § 1944.30 (a)
e. Part 1945, subpart C, §§ 1945.111 (b) and § 1945.120 (b)(5)(ii)(A)
f. Part 1945, subpart D, § 1945.175 (c)(1)
g. Part 1951, subpart S, § 1951.911 (a)(6)(ii)
h. Part 1955, subpart A, Exhibit G, Item 1 and Exhibit G–1, Item 1
i. Part 1965, subpart A, § 1965.27 (g)(5)

6. 7 CFR chapter XVIII is amended by revising the numerals "422–2" to read 1922–2" in the following places:

a. Part 1941, subpart A, Exhibit A, paragraph B
b. Part 1943, subpart A, § 1943.32 (a)
c. Part 1943, subpart B, § 1943.82 (a)

7. 7 CFR chapter XVIII is amended by revising the numerals "422–3" to read "1922–3" in the following places:

a. Part 1941, subpart A, Exhibit A, paragraph B

8. 7 CFR chapter XVIII is amended by revising the numerals "422–10" to read "1922–10" in Part 1941, subpart A, Exhibit A, paragraph B.

9. 7 CFR chapter XVIII is amended by revising the words "FmHA 422–1, "Appraisal Report (Farm Tract)"" to read "FmHA'1922–1, "Appraisal Report—Farm Tract"" in the following places:

a. Part 1965, subpart A, § 1965.12(f)
b. Part 1980, subpart C, § 1980.246(c)(5)(i)

10. 7 CFR chapter XVIII is amended by revising the words "subpart A of part 1809 of this chapter (FmHA Instruction 422.1)" to read "subpart E of part 1922 of this chapter" in the following places:

a. Part 1943, subpart A, § 1943.25(c)(2)
b. Part 1943, subpart B, § 1943.75(c)(2)
c. Part 1944, subpart A, § 1944.24(c)(2)
d. Part 1944, subpart D, § 1944.169(a)(1)(i)
e. Part 1944, subpart J, § 1944.463(d)(2)
f. Part 1951, subpart S, § 1951.909(f)(1) (introductory text)
g. Part 1951, subpart S, § 1951.911(a)(6)(ii)
h. Part 1951, subpart S, § 1951.911(a)(7)(ii)
i. Part 1955, subpart A, § 1955.10(e) (introductory text)
j. Part 1955, subpart B, § 1955.66(h)(2)
k. Part 1955, subpart C, § 1955.103(definition of "Capitalization Value")
l. Part 1955, subpart C, § 1955.107(c)
m. Part 1965, subpart A, § 1965.12(d)
n. Part 1965, subpart A, § 1965.13(d) (introductory text)
o. Part 1965, subpart A, § 1965.25(d)(1)
p. Part 1965, subpart A, § 1965.26(a)(2)
q. Part 1965, subpart A, § 1965.27(h)(1) (introductory text)

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart N—Loans to Indian Tribes and Tribal Corporations

11. In Exhibit A, paragraph (2), the words "Form FmHA 442–1: Appraisal Report (Farm Tract)" are revised to read "Form FmHA 1922–1: Appraisal Report—Farm Tract."

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

12. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

§ 1941.25 [Amended]

13. In the introductory text of § 1941.25(a), the words "FmHA 422–1, "Appraisal Report (FARM TRACT)," are revised to read "FmHA 1922–1, "Appraisal Report—Farm Tract,"."

14. In Exhibit A, the Table at the end of paragraph B is revised to read as follows:

Exhibit A—Processing Guide—Insured Operating Loans

* * * * *

Application Processing

* * * * *

B. Field Visit

* * * * *

Form No.	Name
440–13	Report of lien search
440–21	Appraisal of chattel property
1922–1	Appraisal report-farm tract
1922–2	Supplemental report-irrigation, drainage, levee, and minerals.
1922–3	Map of property
1922–10	Appraiser's worksheet-farm tract.
2006–9	Notice of visit or meeting

* * * * *

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.157 [Amended]

15. In § 1944.157(a)(7)(iii), the words "subpart A of part 1809 (FmHA Instruction 422.1)" are revised to read "subpart E."

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

§ 1945.169 [Amended]

16. In § 45.169(n)(1)(iii), the words "FmHA 422–1, "Appraisal Report (Farm Tract)"" are revised to read "FmHA 1922–1, "Appraisal Report—Farm Tract"."

§ 1945.175 [Amended]

17. In the introductory text of § 1945.175(c)(2), the words "FmHA Instruction 422.1 (available in any FmHA office)" are revised to read "subpart E of part 1922 of this chapter."

PART 1951—SERVICING AND COLLECTIONS

Subpart S—Farmer Program Account Servicing Policies

§ 1951.909 [Amended]

18. In § 1951.909(i)(3)(iii), the words "subpart A of part 1809 of this chapter (FmHA Instruction 422.1, available in any FmHA office) for real estate and Form FmHA 422.1" are revised to read "subpart E of part 1922 of this chapter for real estate and Form FmHA 440–21."

19. In § 1951.909(i)(4)(ii), the words "FmHA Instruction 422.1" are revised to read "subpart E of part 1922 of this chapter."

§ 1951.910 [Amended]

20. In § 1951.910(a)(1), the words "subpart A of part 1809 of this chapter (FmHA Instruction 422.1, available in any FmHA office)" are revised to read "subpart E of part 1922 of this chapter."

§ 1951.911 [Amended]

21. In § 1951.911(a)(7)(ii), the words "FmHA 422.1" are revised to read "FmHA 1922–1."

Exhibit F—[Amended]

22. In Part 1951, Exhibit F, attachment 3, in paragraph V, the words "subpart A of part 1809 of this chapter (FmHA Instruction 422.1 available in any FmHA office)" are revised to read "subpart E of part 1922 of this chapter."

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-only Cases

§ 1965.12 [Amended]

23. Section 1965.12 is amended in paragraph (d) by revising the words "subpart A of part 1809 of this chapter (FmHA Instruction 422.1 available in any FmHA office)" are revised to read "subpart E of part 1922 of this chapter."

24. Section 1965.12 is amended in paragraph (d) by revising the words "subpart A of part 1809 of this chapter (FmHA Instruction 422.1, Exhibit A available in any FmHA office)" to read "subpart E of part 1922 of this chapter"; and in paragraph (g) by revising the words "§ 1965.34(f)" to read "§ 1965.34".

PART 1980—GENERAL

Subpart B—Farmer Program Loans

25. Exhibit C of subpart B is revised to read as follows:

EXHIBIT C OF SUBPART B—APPLICATION PROCESSING FOR GUARANTEED FARMER PROGRAM LOANS

FmHA Form No.	Title	Requirement
Exhibit D Attachment 1	Request for Interest Assistance	1980–B, Exhibit D.
Exhibit D Attachment 2	Interest Assistance Worksheet/Needs Test	1980–B, Exhibit D.
	Commercial Credit Report	1980–B, § 1980.113(a)(3).
	Evidence Required of Entity, Applicants Organization	1980–B, § 1980.113(a)(11).
1910–5 (optional)	Request for Verification of Employment	1980–B, § 1980.113(a)(2).
440–13 (optional)	Report of Lien Search	Optional at this point in processing, may be used to supplement Credit Report.
440–32 (optional)	Request for Statement of Debts and Collateral	1980–B, § 1980.113(a)(5).
1940–22 (required)	Environmental Checklist for Categorical Exclusions	1980–A, § 1980.40. See also §§ 1980.42, 1980.43, 1980.44.
	Leases and/or Contracts (Evidence of Ownership)	1980–B, § 1980.113(a)(4).
1980–25 (required form)	Farmer Programs Application and the following attachments:	1980–B, § 1980.113(a)(1).
431–2	Farm and Home Plan, or Projected Plan of Operation and Cash Flow Statement, substantiated by readily available production and financial history.	1980–B, § 1980.113(a)(7).
	Applicable drawings and specifications	
1922–1	Appraisal Report—Farm Tract or any form meeting USPAP.	Appraisal/Appraiser requirements are outlined in FmHA 1980–B, § 1980.113(a)(6).
440–21	Appraisal of Chattel Property	Do.

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EXHIBIT C OF SUBPART B—APPLICATION PROCESSING FOR GUARANTEED FARMER PROGRAM LOANS—Continued

FmHA Form No.	Title	Requirement
	Loan Agreement	1980–B, §1980.113(a)(6) paragraph VII of Form FmHA 449–35, "Lender's Agreement" or paragraph VII of Form FmHA 1980–38, "Lenders Agreement (Line of Credit)".
	Lender plan for servicing the loan and providing management assistance to the borrower.	1980–B, §1980.113(a)(9).
1980–24	Request Interest Assistance/Interest Rate Buydown/ Subsidy Payment to Guaranteed Loan Lender.	1980–B: §1980.110(b); Exhibit D, Exhibit E.
1940–3	Request for Obligation of Funds—Guaranteed Loans	1980–A: §1980.83(b); 1980–B: §1980.115 Administrative A.1., Exhibit D, Exhibit E.

Dated: August 10, 1993.

Bob Nash,

Undersecretary for Small Community and Rural Development.

[FR Doc. 93–20389 Filed 8–24–93; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1215

RIN 2127–AE50

[Docket No. 92–40 Notice 2]

Use of Safety Belts and Motorcycle Helmets; Compliance and Transfer-of-Funds Procedures

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule implements the penalty provisions contained in section 153 of title 23, United States Code, as enacted by section 1031 of the Intermodal Surface Transportation Efficiency Act of 1991. Section 153 provides that a State that fails to adopt and put into effect motorcycle helmet and safety belt use laws before October 1, 1993 is subject to having the Secretary of Transportation transfer funds apportioned under the State's Federal-aid highway programs to its apportionment under the section 402 highway safety program. This rule sets forth the criteria to be use to determine a State's compliance with the Act and the mechanism by which NHTSA and FHWA (the Agencies) will inform States of their compliance status.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Butler, Office of Regional Operations, room 5238, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–2674) or John Donaldson, Office of the Chief Counsel, room 5219, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834). Also, Mila Plosky, Office of Highway Safety, room 3407, FHWA, 400 Seventh Street SW., Washington, DC 20590 (202–366–6902) or Wilbert Baccus, Office of Chief Counsel, room 4230, FHWA, 400 Seventh Street SW., Washington, DC 20590 (202–366–0780).

SUPPLEMENTARY INFORMATION:

Background

Wearing safety belts and motorcycle helmets are two of the most effective actions the motoring public can take to reduce the incidence of death and serious injury from highway crashes. Section 1031 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240) (the Act) adds a new section 153 to title 23 of the United States Code which authorizes a three year incentive grant program designed to promote the passage of, and compliance with, motorcycle helmet and safety belt laws. To be eligible for funding under the Act in the first year, a State must have in effect both a law requiring all individuals on a motor cycle to wear helmets and a law requiring individuals in the front seat of passenger vehicles to wear safety belts (or be secured in child passenger safety systems).

Continued eligibility for the grants is conditioned upon meeting specific compliance rates. To be eligible in the second year a State must achieve at least 75 percent compliance with its motorcycle helmet law and 50 percent compliance with its safety belt law. For the third year, a State must achieve at least 85 percent compliance with its motorcycle helmet law and 70 percent compliance with its safety belt law.

If a State fails to adopt and put into effect motorcycle helmet and safety belt laws before the first day of fiscal year (FY) 1994 (October 1, 1993), section 153(h) directs the Secretary of Transportation to transfer funds from the State's Federal-aid highway programs under each subsections 104 (b)(1), (b)(2), and (b)(3) of title 23, United States Code, to the State's highway safety program under section 402 of that title. The transfer will take place in the fiscal year succeeding the year in which the State is in non-compliance. A State not in compliance throughout FY 1994 will experience a transfer of 1½ percent of its Federal highway construction funds for FY 1995. For non-compliance in FY 1995 and beyond, the transfer will rise to 3 percent for FY 1996 and thereafter. Any obligation limitation applicable to the transferred Federal-aid highway funds prior to transfer will apply, proportionately, to those funds after transfer.

The transferred funds may be used for projects in any 402 program area approved in the State's Highway Safety Plan, without Federal earmarking of any amounts or percentages for specific program activities. In accordance with section 153, the Federal share of the cost of any project carried out under section 402 with the transferred funds will be 100 percent.

Proposed Compliance Criteria

To regulate the transfer process for FY 1995 and later years, the Agencies published a joint notice of proposed rulemaking (NPRM) (58 FR 4622) on January 15, 1993. The NPRM proposed to apply criteria derived from those that the agency employed in awarding incentive grants for FY 1992. A State that qualified for an incentive grant for FY 1992 would be considered in compliance for transfer purposes and any State not meeting those criteria on October 1, 1993, would be in non-compliance and subject to the transfer.

The law provides that, in order to avoid the transfer of funds, a State must have in effect by October 1, 1993 a law which makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet and a law

which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

Section 153(i) contains the following definitions:

Motorcycle means a motor vehicle which is designed to travel on not more than 3 wheels in contact with the surface;

Motor vehicle means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails;

Passenger vehicle means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal Motor Vehicle Safety Standard to be equipped with a belt system;

Safety belt means: (a) With respect to open-body passenger vehicles, including convertible, an occupant restraint system consisting of a lap belt or a lap belt with a detachable shoulder belt; and (b) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

Except for children in child restraint systems, the statute does not provide for any exemptions from application. However, the Agencies acknowledged in the NPRM that all States have exemptions written into one or both of their motorcycle helmet and safety belt laws. The Agencies stated that Congress' intent to aid States in their efforts to achieve higher safety belt and motorcycle helmet use and to enact and maintain use laws would not be served by reading the statute so literally as to impose a penalty upon all States whose laws contain any exemptions. On the other hand, some exemptions are either incompatible with the language of the statute or would so undermine the safety considerations underlying the statute that States whose laws contain such exemptions should be subject to the penalties contained in the Act.

The Agencies reviewed existing State safety belt laws and proposed in the NPRM to permit exemptions covering persons with medical excuses; postal, utility and other commercial drivers who make frequent stops in the course of their business; emergency vehicle operators and passengers; persons riding in positions not equipped with safety belts; persons in public and livery conveyances; persons riding in parade vehicles; persons in the custody of police; persons in vehicles not required to have shoulder belts in front, and passengers of certain larger, heavier vehicles. The Agencies also proposed to permit exemptions from motorcycle helmet laws, such as for riders in enclosed cabs. The Agencies explained that these exemptions would apply in situations of very low risk or where exigent justifications exist.

The Agencies proposed to consider the following exemptions incompatible with the statute:

1. Motorcycle helmet laws of less than universal application, such as laws which apply only to minors or novice motorcycle operators;
2. Safety belt laws which exempt vehicles equipped with air bags.

The agency reasoned that a motorcycle helmet law exempting a significant percentage of riders from its coverage is wholly inconsistent with the statute, and would result in large numbers of riders being exposed to serious risk. Similarly, a law exempting persons in vehicles equipped with air bags would leave large numbers of persons at risk in side impact and rollover crashes—crashes for which air bags provide little or no protection—and would diminish occupant protection even in frontal crashes.

The Agencies further proposed that any State considering an exemption other than one identified as acceptable should anticipate that the agency would review the exemption in accordance with these principles. As an example of an unacceptable exemption, the Agencies described a provision calling for secondary enforcement of a motorcycle helmet law. Under such a system, a rider may not be cited for failure to wear a helmet unless stopped by a law enforcement officer for another reason. The Agencies states that they would consider a State helmet law with only secondary enforcement provisions non-complying because it is likely that helmet use in a jurisdiction with such a law would be significantly lower than that typical in a State with a primary enforcement law.

Notification of Compliance

The Agencies proposed to notify all States of initial assessments of compliance with section 153 for FY 1994 by September 30, 1993. Each State initially found not to comply would have an opportunity to rebut this initial determination. The Agencies would notify all States by January 31, 1994 of their final determinations of compliance or non-compliance with section 153 for FY 1994.

For FY 1995 and beyond, the Agencies proposed to notify States of initial assessments of compliance by September 15 of the fiscal year prior to the fiscal year for which compliance was being assessed. Each State initially found not to comply would have an opportunity to rebut this initial determination. The Agencies would notify all States by October 10 of the fiscal year for which compliance was being assessed of its final determinations of compliance or non-compliance with section 153 for that fiscal year.

None of the commenters to the NPRM questioned the Agencies' proposed procedures for informing the States of their compliance status. However, in order to simplify the Federal notification procedures, the Agencies have made some changes. These changes are for the administrative convenience of the Agencies, and will not result in any additional burden to the States.

For FY 1994, the States will continue to be notified of initial assessments of compliance and have the opportunity to contest negative initial determinations, in accordance with the procedures and the timeframes set forth in the NPRM. However, notification of final compliance status will be provided only to those States initially found to be in non-compliance. Those States initially found to be in compliance will receive no additional notice, and may rely on the initial notice as a final determination. For FY 1995 and beyond, the relevant information will be provided through the various notices of apportionment required under section 104(e) of title 23, United States Code. This process has been used successfully in regulations implementing the National Minimum Drinking Age Law (23 U.S.C. 158), which is structured similarly to section 153.

Discussion of Comments

The Agencies received responses to the NPRM from advocacy organizations and associations, State government agencies, members of Congress, and individuals. Commenters focused on the differences between safety belt laws and helmet laws, the impacts on the "rights" of States and individuals, and the desirability of various exemptions. The discussion of comments is organized under topic headings below.

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Differing Treatment of Safety Belt and Motorcycle Helmet Laws

In the NPRM, the Agencies proposed, consistent with the grant application procedures distributed to the States, that a State motorcycle helmet law with only secondary enforcement provisions would not comply with the requirements of section 153. In contrast, the Agencies have previously accepted safety belt laws with secondary enforcement provisions, when evaluating State laws for compliance with the requirements of section 153. Many commenters criticized this difference in enforcement approach.

Several commenters argued that the statutory language does not support such a different treatment. Others questioned why the Agencies' argument that a primary enforcement law for helmets would be more effective than a secondary enforcement law could not be applied equally to safety belts. One commenter argued that the assumption of lower helmet use under a secondary enforcement law was purely speculative, since no such laws exist on which to base that assumption.

Many commenters complained that requiring a primary enforcement approach for helmet laws, but not for safety belt laws, unfairly discriminates against motorcycle riders. Citing 1990 statistics from NHTSA's Fatal Accident Reporting System, some of these commenters stated that there were 15 times more fatal crashes involving passenger cars and light trucks than those involving motorcycles. Relying on these statistics, they argued that maintaining the primary/secondary enforcement distinction between the two laws "ignores the true traffic fatality problem as shown by the statistics." Moreover, they pointed out that safety belts, for which the Agencies allow a less stringent standard of enforcement, offer a greater degree of protection (head, chest, abdomen, and extremities) than do helmets (head only).

The commenters varied in their proposed solution, some urging that secondary enforcement provisions be acceptable for both laws, others seeking a uniform primary enforcement standard, and still others supporting the agencies' proposal in the NPRM. A few commenters were fundamentally opposed to the requirements and any accompanying enforcement provisions. One commenter supporting primary enforcement for both laws argued, with respect to helmet laws in particular, that there was no rationale for a secondary enforcement provision, because compliance with the law is visually apparent without the need for investigative activity.

Another commenter disagreed with any requirement for safety belt use, regardless of the enforcement level, arguing that buckling up has not decreased the absolute number of deaths and injuries, but merely shifted the distribution from the non-belted to the belted population. Still another commenter stated that driver and rider education concerning vehicle control and alcohol and drug use is more important to achieving highway safety gains than are safety belt and helmet laws.

The authors of section 153, Representative Jim Cooper and Senator John Chafee, pointed out that prior to the existence of section 153 both primary and secondary enforcement safety belt laws existed, and each of these had a proven record of increasing safety belt use. However, there was no record to demonstrate the effectiveness of secondary enforcement helmet laws, as no State had passed such a law. In support of the Agencies' proposal, they argued that the intent of the legislation was to require each State to pass a universal motorcycle helmet law that is enforced under all circumstances and that, in their view, secondary enforcement provisions would be as ineffective as age specific laws in attaining this goal.

The Agencies have carefully considered each of these comments in light of the statutory provision and the circumstances surrounding its enactment. In drafting section 153, Congress was guided by existing State safety belt and helmet laws. Helmet laws were on the books long before the first safety belt law, and all existing helmet laws are primary. They are readily enforceable since helmet use is easily observed without the need to stop the vehicle. Conversely, States evolved the concept of secondary enforcement for safety belt laws because belt use is not easily observed from outside the vehicle. Lawmakers were concerned that, in enforcing primary safety belt laws, police would make too many "false" stops. In short, the reasons underlying the choice of enforcement mechanism have historically been different for the two laws, and should not be ignored.

Helmet use in States that currently have universal laws (all are primary enforcement laws) is at the 95 to 100 percent level. There is precedent, however, that a weakening of Federal requirements could reduce this usage. In 1975, 47 States and the District of Columbia had passed primary enforcement laws requiring every rider to wear a helmet. With the 1976 removal of Federal sanction authority for States' failure to adopt highway safety standards (including motorcycle safety), 28 States weakened (e.g., by introducing age-specific limitations) or repealed their motorcycle helmet laws between 1976 and 1980. Comparing 1980 to 1975 (the year before repeals began), motorcycle fatalities increased 61 percent while motorcycle registrations increased only 15 percent.

Based on past precedent, the Agencies are concerned that the acceptance of secondary enforcement helmet laws would result in a reduction in safety, compared to what could be achieved with primary enforcement helmet laws. We agree with Representative Cooper and Senator Chafee that the difference between primary and secondary enforcement helmet laws would likely be measurable in numbers of helmets worn, and consequently in deaths, injuries, and health care costs. To reiterate a point made in the NPRM, every percentage point in lost helmet usage represents riders who will be at greater risk of fatal or serious injury.

The comment that there were 15 times (the correct figure, based on 1990 data from the Fatal Accident Reporting System, is actually 11 times) more fatal crashes involving cars and light trucks than those involving motorcycles in 1990 needs to be placed in perspective. This disparity follows naturally from the fact that there are many more cars and light trucks on the road than there are motorcycles. Motorcycles make up only 2 percent of all registered vehicles in the United States and account for only 0.5 percent of all vehicles miles traveled. However, per vehicle mile traveled, motorcyclists are about 20 times more likely to die in a motor vehicle crash than are passenger car occupants.

Moreover, though motorcyclists were involved in only 1 percent of all police-reported motor vehicle crashes in 1991, they accounted for 8 percent of all occupant fatalities and almost 7 percent of total traffic fatalities. Clearly, riding a motorcycle is a very high risk form of transportation in the normal traffic environment, and it is even more risky without a helmet. NHTSA estimates that an unhelmeted motorcyclist is 40 percent more likely to incur a fatal head injury and 15 percent more likely to incur a non-fatal head injury than a helmeted motorcyclist when involved in a crash.

In light of the overwhelmingly disproportionate involvement of motorcycle riders in fatal crashes, as compared to occupants of other motor vehicles, the Agencies do not believe

that requiring helmet laws to be primary enforcement laws, while accepting secondary enforcement provisions for safety belt laws, unfairly discriminates against motorcyclists. Moreover, given past precedent, the Agencies are concerned that secondary enforcement helmet laws will result in substantially reduced compliance from that which could be achieved with primary enforcement helmet laws. Consequently, the Agencies will not accept secondary compliance helmet laws as complying with section 153. The comment regarding the relative degree of protection offered by safety belts, as compared to motorcycle helmets, is irrelevant to this determination, as the two safety devices are unique to the vehicles in which they are employed.

The argument that safety belt use has merely shifted deaths and injuries from the non-belted to the belted population obscures the lifesaving record of safety belts. Such a shift is to be expected as more people buckle up. Indeed, if 100 percent of motorists wore safety belts, 100 percent of the observed fatalities would consist of belted victims. However, the important point is that there has been a consistent correlation between safety belt use and lives saved or serious injuries avoided. Numerous research studies confirm that lap and shoulder safety belts worn by front seat passenger car occupants reduce the risk of fatal injury by 45 percent and the risk of moderate to critical injuries by 50 percent.

The Agencies agree with the comment that driver and rider education can have an important role in reducing crashes and injuries. Indeed, motorist education programs have always played an important role in achieving NHTSA's mission. However, the purpose of this rule is to implement those provisions of section 153 concerning the adoption of safety belts and motorcycle helmet laws. The States are free to pursue education programs in further achievement of traffic safety objectives, and may even do so under the incentive grant provisions of section 153.

States' Rights and Individual Freedom

Several commenters argued, variously, that the proposed provisions interfere with the States' right to determine the best laws for their citizenry, trample on individuals' freedom of choice or privacy interests, overreach Congressional intent, or impose an unreasonable mandate on State legislatures.

There is little question that safety laws impose some degree of control on the lives of individuals, because they require actions that some people do not take voluntarily. Nevertheless, the legitimacy of most traffic laws (e.g., driving on the right side of the road, speed limits, traffic signals) is readily accepted, because we recognize that failure to obey these laws results in serious risks to ourselves and to others. Similar risks exist when individuals fail to buckle up or wear motorcycle helmets, because traffic crashes have many victims—family, friends, employers, and taxpayers—all of whom bear some measure of the human and economic cost.

Arguments concerning individual freedom or States' rights fail to recognize the tremendous costs to society and to the nation associated with the carnage on our highways. Motor vehicle crashes cost society more than $137 billion each year, and are the leading cause of death for persons aged 6 to 33.

In 1992, alone, 21,366 people died in passenger cars and 2,394 people died riding motorcycles. Many of these deaths might have been prevented, had the victims been belted or helmeted. Congress recognized this terrible toll when it enacted section 153. Indeed, in the broader context, the effect of traffic safety laws is to help individuals achieve the freedom to pursue greater challenges and liberties.

The courts have consistently recognized that safety belt and helmet laws do not violate the right to privacy and other due process provisions of Federal or State constitutions, and are a proper exercise of police power because of the public interest involved. For example, in affirming the constitutionality of Iowa's safety belt law, the Iowa Supreme Court stated:

> We fail to see how Hartog's claimed right to decide whether to buckle up resembles those liberty interests the Supreme Court has explicitly recognized to be part of the right of privacy implicit in the due process clause of the fourteenth amendment. Granted, Iowa's seat belt law does restrict Hartog's freedom of choice and, in that sense, does affect his interest in liberty. The law, however, does not regulate those intimate decisions relating to marriage, procreation, child rearing, education or family that have heretofore been recognized as deserving the heightened constitutional protection.

State v. Hartog, 440 N.W.2d 852, 855 (1989).

In addition, studies have shown that society pays when people crash, and societal costs are greater when individuals are unprotected. The General Accounting Office, in a 1991 report reviewing a broad array of published and unpublished effectiveness studies on helmets and helmet laws, highlighted the societal costs implicated, stating that:

> The additional deaths and serious head injuries resulting from the nonuse of helmets impose a substantial cost burden on society. Society bears direct costs related to the treatment and rehabilitation of accident victims and indirect costs consisting primarily of lost or reduced productivity. The studies we evaluated showed that nonhelmeted riders were more extensive users of medical services and long-term care, and were more likely to die or lose earning capacity through disability. In one sense, the care of accident victims represents a claim on society's resources regardless of how payment is made. The studies we evaluated also indicated, however, that much of the actual payment for care is made by society through tax-supported programs or insurance premiums.

In light of the broad societal interests at stake, and the minimal impacts on the rights of States or individuals, the Agencies do not believe that the requirements related to acceptable safety belt or helmet laws impose an unreasonable burden or are otherwise improper.

Exemptions

Several commenters suggested a different treatment of exemptions than that proposed in the NPRM. One commenter, citing an unfair burden to motorcyclists, for which the Agencies specified only one exemption, argued that similar standards should apply to both helmet and safety belt laws. That commenter believed, for example, that an exemption for medical reasons should apply under helmet laws as well as safety belt laws. Another commenter was concerned that the exemption for commercial drivers who make frequent stops might not be deemed to cover newspaper delivery persons, and requested that such persons be specifically included.

There were opposing views concerning the desirability of an exemption for motorcyclists in enclosed cabs. One commenter urged against the exemption, noting the special danger to parking enforcement officials who often use such vehicles, and that manufacturers of motorcycles with enclosed cabs recommend wearing helmets. That commenter also expressed concern about liability issues and the undermining of State efforts to require helmets in enclosed cabs. A second commenter supported the exemption, pointing out that three-wheeled electric vehicles often exhibit the safety characteristics of motor vehicles. This latter commenter suggested that a driver of such a vehicle be deemed a "rider in an enclosed cab," even if the vehicle is in the convertible mode, with the cab enclosure removed, if the other safety features of the vehicle remain unaltered.

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Alternatively, the commenter suggested that a new class of vehicles be defined for the purpose of accommodating such an exemption.

Two commenters sought more specificity in the Agencies' approach to exemptions. One urged that the Agencies address certain unanswered questions concerning helmet law requirements, such as whether they would apply to motorcycles ridden on private property, public rights-of-way (adjacent to public streets), public lands, non-Federal and State roads (e.g., county and private roads), or to motorcycles not in motion. The other commenter suggested that the Agencies publish in an appendix to the final rule, and update as necessary, each specific provision in State law would be found compatible with the provisions of section 153.

After careful consideration of these comments, the Agencies have decided not to expand upon the exemptions identified as acceptable in the NPRM. The Agencies do not accept the notion that each of the exemptions applicable to safety belt laws should, under concepts of fairness, be applied to helmet laws, because the two laws present different problems that cannot be address by common exemptions. The Agencies also decline to change the exemption for "commercial drivers making frequent stops." The existing characterization is sufficiently broad to cover a wide range of individuals engaged in bona fide stop-and-go commercial work activities, including newspaper delivery persons.

Motorcyles with enclosed cabs represent a very small proportion of the motorcycle fleet and have an enclosure that helps to protect the occupant. Because of these factors, the Agencies believe that the exemption from the requirement to wear helmets would not result in the exposure of a large group of persons to serious risk. Consequently, the Agencies will accept the exemption for motorcycles with enclosed cabs. However, the acceptance of the exemption for the purpose of compliance with section 153 is in no way intended to discourage States, in the exercise of their legislative judgment, from requiring helmets to be worn in these situations.

The Agencies declined to adopt the suggestion that a new class of vehicles be defined to accommodate three-wheeled electric vehicles exhibiting the safety features of motor vehicles. The universe of such vehicles is presently quite small, and the Agencies believe that special purpose vehicles of this nature should remain subject to the requirements imposed on motorcycles. Moreover, should the cab section of such a vehicle be removed, the exemption from wearing a motorcycle helmet would no longer apply, as allowing its continued application without the presence of the enclosed cab would render it essentially meaningless.

Finally, the Agencies do not believe it is appropriate to specify, in an appendix or otherwise, an exhaustive list of all the exemptions of agency would find acceptable under section 153. The variety of State laws that might be passed, and the combinations of exemptions that might be encountered, make the creation of such a list problematic at best. However, the Agencies do believe that certain exemptions, which have consistently been found either acceptable or not acceptable under past practice, should be specified in the rule. Consequently, we have inserted a new § 1215.5, identifying certain exemptions discussed in the NPRM as either complying or not complying with the provisions of section 153. (Subsequent sections and cross-references are renumbered accordingly.) The new section also provides that exemptions not specifically enumerated will be carefully reviewed for compatibility with section 153.

The Agencies have not included "persons in vehicles not required to have shoulder belts in front" or "passengers of certain larger, heavier vehicles" in new § 1215.5, though these provisions were referenced in the NPRM. The former provision has been deleted as unnecessary, since there is no statutory requirement to use a shoulder belt in a passenger vehicle not required to be manufactured with such a device. The latter provision is insufficiently specific to qualify as an absolute exemption for inclusion in the body of the rule. The Agencies will need to review individual State laws to determine what classes of "larger, heavier vehicles" are being excluded, in order to make an informed determination as to compliance. In any event, exemptions for larger, heavier vehicles falling outside the statutory definition of passenger vehicle would be acceptable. New § 1215.5 also provides that the Agencies will carefully review all other exemptions not enumerated to determine their compatibility with section 153.

The Agencies do not believe that any additional specificity concerning scope or exemptions is appropriate. Consequently, details regarding the application of helmet laws on public lands and rights-of-way, State and county roads, and the like, are not articulated in the rule. Rather, the Agencies intend that the reach of helmet laws be universal and broad, to the maximum extent of State enforcement authority. Moreover, should any of the specific exemptions identified as acceptable in this rule prove, in practice, to undermine the purposes of section 153, the Agencies will alleviate this situation in a new rulemaking procedure.

Miscellaneous

The Agencies wish to provide a clarification relevant to the use of transferred funds. Section 153 penalty funds are to be transferred to a State's apportionment under section 402 of title 23, United States Code (the section 402 program) and, except where prohibited by Federal law, administered in accordance with regulations implementing the section 402 program. One such regulation (23 CFR 1252.5(a)) limits the Federal contribution for State Planning and Administration activities to a maximum of ten percent of the total funds the State receives under 23 U.S.C. 402. The impact of this provision on transferred funds is arguably ambiguous. A similar question arises with respect to the impact of the statutory requirement that 40 percent of the Federal Funds for the section 402 program are to be expended by political subdivisions of States. To clarify that both the ten percent and the 40 percent figures are to be based on all funds available for use under the section 402 program, including transferred funds, the Agencies have added a new paragraph (d) to § 1215.8 of this rule.

Federalism Assessment

This action has been analyzed in accordance with Executive Order 12612, concerning Federalism. The rule's provisions may affect the allocations of States' resources, the way they measure their success in traffic law enforcement, relationships among State agencies, and the distribution of Federal funds between States' highway construction and safety programs. All of these effects may fairly be regarded as Federalism impacts. However, the basic requirements of the rule (i.e., the potential redistribution of Federal funds) are mandated by statute, so the agencies do not have discretion to mitigate these impacts. The agencies have carefully considered the comments of State agencies in shaping the details of the rule.

Economic and Other Effects

The Agencies have analyzed the effect of this action and have determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A Final Regulatory Evaluation describing in detail the expected costs and benefits from the implementation of the Act has been prepared and placed in the docket. The Agencies estimate that if all of the States without safety belt or helmet laws were to pass such laws to avoid the transfer of funds, 271 lives would be saved and there would be 5,722 fewer injuries, including 2,597 fewer moderate to critical injuries, each year. States with conforming laws will incur no costs as a result of this rulemaking action. States penalized will accrue a loss of highway construction funds, but these monies will remain in the State to be used in the State's section 402 program. For many States this will result in a doubling (or more) of the State's available section 402 funding. In any event, any costs to States resulting from the fund transfer are avoidable by passage of the requisite usage laws.

The Agencies have evaluated the effects of this rule on small entities. Based on the evaluation, we certify that this rule will not have a significant economic impact on a substantial number of small entities. The preparation of a Regulatory Flexibility Analysis is, therefore, unnecessary.

The Agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The Agencies have determined that this action will not have a significant effect on the quality of the human environment.

List of Subjects in 23 CFR Part 1215

Highway safety, Motorcycle helmets, Safety belts, Transportation.

In accordance with the foregoing, part 1215 of title 23 of the Code of Federal Regulations is added as follows:

PART 1215—USE OF SAFETY BELTS AND MOTORCYCLE HELMETS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES

Sec.

1215.1 Scope.
1215.2 Purpose.
1215.3 Definitions.
1215.4 Compliance criteria.
1215.5 Exemptions.
1215.6 Review and notification of compliance status.
1215.7 Transfer of funds.
1215.8 Use of transferred funds.

Authority: 23 U.S.C. 153; delegation of authority at 49 CFR 1.50.

§ 1215.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 153, for determining compliance with the requirement that States not having safety belt and motorcycle helmet use laws be subject to a transfer of Federal-aid highway apportionments under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the highway safety program apportionment under 23 U.S.C. 402.

§ 1215.2 Purpose.

This part clarifies the provisions which a State must incorporate into its laws to prevent the transfer of a portion of its Federal-aid highway funds to the section 402 highway safety program apportionment, describes notification and transfer procedures, and establishes parameters for the use of transferred funds.

§ 1215.3 Definitions.

As used in this part:

FHWA means the Federal Highway Administration.

Motor vehicle means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

Motorcycle means a motor vehicle which is designed to travel on not more than 3 wheels in contact with the surface.

NHTSA means the National Highway Traffic Safety Administration.

Passenger vehicle means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

Safety belt means, with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

§ 1215.4 Compliance criteria.

(a) In order to avoid the transfer specified in § 1215.7, a State must have a law which makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet.

(b) In order to avoid the transfer specified in § 1215.7, a State must have a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in the front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(c) A State that enacts the laws specified in paragraphs (a) and (b) of this section will be determined to comply with 23 U.S.C. 153, provided that any exemptions are consistent with § 1215.5.

§ 1215.5 Exemptions.

(a) The following provisions shall be deemed to comply with 23 U.S.C. 153:

(1) Safety belt laws exempting persons with medical excuses, persons in emergency vehicles, persons in the custody of police, persons in public and livery conveyances, persons in parade vehicles, persons in positions not equipped with safety belts, and postal, utility and other commercial drivers who make frequent stops in the course of their business.

(2) Motorcycle helmet laws exempting riders in enclosed cabs.

(b) The following provisions shall be deemed not to comply with 23 U.S.C. 153:

(1) Safety belt laws exempting vehicles equipped with air bags.

(2) Motorcycle laws of less than universal application (e.g. laws applying only to minors or novice motorcycle operators) or whose enforcement is by any means other than primary enforcement.

(c) An exemption not identified in paragraph (a) of this section shall be deemed to comply with 23 U.S.C. 153 only if NHTSA and FHWA determine that it is consistent with the intent of § 1215.4 (a) or (b), as applicable, and applies to situations in which the risk to occupants is very low or in which there are exigent justifications.

§ 1215.6 Review and notification of compliance status.

(a) Review of each State's laws and notification of compliance status for fiscal year 1994 shall occur in accordance with the following procedures:

(1) NHTSA and FHWA will review appropriate State laws and notify States by certified mail of their initial assessment of compliance with 23 U.S.C. 153 by September 30, 1993.

(2) If NHTSA and FHWA initially find that a State complies with 23 U.S.C. 153, the notice shall so inform the State. Otherwise, the notice shall state the reasons for the non-compliance and shall inform the State that it may, within 30 calendar days after its receipt of the notice, submit documentation showing why it is in compliance to the

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Associate Administrator for Regional Operations, NHTSA, 400 Seventh Street SW., Washington, DC 20950.

For each State initially found in non-compliance, NHTSA and FHWA will provide a final determination of compliance or non-compliance with 23 U.S.C. 153 by January 31, 1994.

(b) Review of each State's laws and notification of compliance status for fiscal year 1995 and beyond shall occur in accordance with the following procedures:

(1) NHTSA and FHWA will review appropriate State laws for compliance with 23 U.S.C. 153. States initially found to be in non-compliance will be notified of such funding and of funds expected to be transferred under § 1215.7 through the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(2) A State notified of non-compliance under paragraph (b)(1) of this section may, within 30 days after its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance to the Associate Administrator for Regional Operations, NHTSA, 400 Seventh Street SW., Washington, DC 20950.

(3) Every fiscal year, each State determined to be in non-compliance with 23 U.S.C. 153 will receive notice of the funds being transferred under § 1215.7 through the certification of apportionments required under 23 U.S.C. 104(e), normally on October 1.

§ 1215.7 Transfer of funds.

(a) If, at any time in fiscal year 1994, a State does not have in effect the laws described in § 1215.4, the Secretary shall transfer 1½ percent of the funds apportioned to the State for fiscal year 1995 under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(b) If, at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect the laws described in § 1215.4, the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(c) Any obligation limitation existing on the transferred construction funds prior to transfer will apply, proportionately, to those funds after transfer.

§ 1215.8 Use of transferred funds.

(a) Any funds transferred under § 1215.7 may be used for approved projects in any section 402 program area.

(b) Any funds transferred under § 1215.7 shall not be subject to Federal earmarking of any amounts or percentages for specific program activities.

(c) The Federal share of the cost of any project carried out under section 402 with the transferred funds shall be 100 percent.

(d) In the event of a transfer of funds under § 1215.7, the 40 percent political subdivision participation in State highway safety programs and the 10 percent limitation on the Federal contribution for Planning and Administration activities carried out under section 402 shall be based upon the sum of the funds transferred and amounts otherwise available for expenditure under section 402.

Issued on: August 19, 1993.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Howard M. Smolkin,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 93-20512 Filed 8-24-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-93-3656; FR-3552-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This document amends the list of areas eligible for high-cost loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act (NHA) by increasing the mortgage limits for some Counties and by adding new Counties to the list. This document also corrects several omissions and errors related to the Annual Update of Changes to the Maximum Mortgage Limits published on March 15, 1993 (58 FR 13950).

Loan and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, room 9272; telephone (202) 708-2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room B-133; telephone (202) 755-7400, for both: TDD, (202) 708-4594; 451 Seventh Street SW, Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. 1703 and 1709 *et seq.*, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA permits HUD to adjust the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands.

This document increases the high-cost loan and mortgage limits for Addison and Lamoille Counties, Vermont; Bucks County, Pennsylvania; St. Mary's County, Maryland; Augusta County, Virginia and the Cities of Waynesboro and Staunton, Virginia; Charlotte and Collier Counties, Florida; Johnson County, Iowa; Eagle, LaPlata and Routt Counties, Colorado; Burleigh County, North Dakota; Summit and Washington Counties, Utah; Flathead County, Montana; Maui County, Hawaii; the San Luis-Obispo-Atascardero-Paso Robles, CA MSA; Calaveras, Amador and Tuolumne Counties, California; and Kootenai County, Idaho; and adds to the list of high cost areas: Jackson County, Georgia; Sumter County, South Carolina; Erie County, Ohio; Tooele County, Utah; and Walla Walla County, Washington.

Part I of this document provides a revised method for computing high-cost area limits for manufactured home and lot loans and lot-only loans insured under Title I of the National Housing Act. This revised computation method is a consequence of the basic dollar limits being increased from $54,000 to $64,800 for manufactured home and lot loans, from $13,500 to $16,200 for lot-only loans, and from $40,500 to $48,600 for home-only loans. The new dollar limits were published in the **Federal Register** on July 30, 1993 (58 FR 40996) and became effective on August 30, 1993.

The revised computation method for Title I manufactured home loans is applicable to high-cost areas identified in this document and to high-cost areas listed in the Annual Update of Changes to the Maximum Mortgage Limits published on March 15, 1993 (58 FR 13950).

The last comprehensive list of high-cost areas was published on March 15, 1993 (58 FR 13590) listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area.

These high-cost limits are effective August 25, 1993 and supersede other published amounts in effect, to the extent they are inconsistent with figures appearing in this document.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs-housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

These amendments appear in two parts. Part I explains how the high-cost limits are calculated for manufactured home and lot loans insured under Title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residence (including condominiums) insured sections 203(b), 234(c) and 214 of the National Housing Act. Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Mortgage Limits

Part I. Method of Computing Limits Under Title I, National Housing Act.

A. *Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost area limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one-family" column of Part II by 96%. However, in no case may this high-cost area limit exceed $119,880 (185% of the basic limit of $64,800). For example, Addison County, VT has a one-family limit of $93,100. The combination home and lot loan limit is $89,376 (96% of $93,100), which is less than the cap of $119,880.

B. *Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost area limit for a combination manufactured home lot loan, multiply the dollar amount in the "one-family" column of Part II by 24%. However, in no case may this high-cost area limit exceed $29,970 (185% of the basic limit of $16,200). For example, Addison County, VT has a one-family limit of $93,100. The lot-only loan limit is $22,344 (24% of $93,100), which is less than the cap of $29,970.

C. *Alaska, Guam and Hawaii limits:* Section 2(b)(2) of the National Housing Act limits the maximum loan amounts for all types of manufactured home loans insured under Title I of the Act to 140% of the basic limits. Therefore, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $64,040 (140% of $48,600).

2. For combination manufactured homes and lots: $90,720 (140% of $64,800).

3. For lots only: $22,680 (140% of $16,200).

Part II

Accordingly, the Department is publishing the revised dollar limitations as follows:

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Regional Office—Boston:				
Barnstable County, MA	$124,875	$140,600	$170,200	$197,950
Dukes County, MA	124,875	140,600	170,200	197,950
Nantucket County, MA	124,875	140,600	170,200	197,950
HUD Field Office—Burlington:				
Addison County, VT	93,100	104,850	127,400	147,000
Lamoille County, VT	91,150	102,650	124,700	143,900
REGION II				
HUD Regional Office—Buffalo:				
Niagara Falls County, NY	94,500	106,400	129,300	149,200
REGION III				
HUD Regional Office—Philadelphia:				
Bucks County, PA	133,000	149,800	182,000	210,000
HUD Field Office—Baltimore:				
St. Mary's County, MD	113,900	128,250	155,850	179,850
HUD Field Office—Richmond:				
Augusta County and the Cities of Waynesboro and Staunton, VA	71,150	80,100	97,350	123,750
Isle of Wight County, VA	123,000	139,350	169,300	194,350
REGION IV				
HUD Regional Office—Atlanta:				
Jackson County, GA	78,350	88,250	170,250	123,750
HUD Field Office—Caribbean:				
Bayamon Municipio, PR	109,250	123,050	149,500	172,500
Aguas Buenas Municipio, PR	93,050	104,800	127,300	146,900
HUD Field Office—Columbia:				
Sumter County, SC	71,250	80,250	97,500	112,500

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Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Coral Gables:				
Charlotte County, FL	92,150	103,750	126,100	145,500
Collier County, FL	129,650	146,050	177,450	204,750
REGION V				
HUD Field Office—Cleveland:				
Erie County, OH	85,000	95,750	116,350	134,250
HUD Field Office—Columbus:				
Union County, OH	98,700	111,150	135,100	155,850
HUD Field Office—Grand Rapids:				
Kalamazoo-Battlecreek, MI MSA				
Calhoun County	78,850	88,800	107,900	124,500
Kalamazoo County				
Van Buren County				
HUD Field Office—Minneapolis:				
Sherburne County, MN	110,200	124,100	150,800	174,000
HUD Field Office—Salt Lake City:				
Tooele County, UT	74,400	83,800	101,800	117,450
Summit County, UT	151,725	194,100	234,600	291,600
Washington County, UT	83,100	93,600	113,750	131,250
HUD Field Office—Helena:				
Flathead County, MT	89,300	100,550	122,200	141,000
REGION IX				
HUD Regional Office—San Francisco:				
San Benito County, CA	123,500	139,100	169,000	195,000
Humbolt County, CA				
Lake County, CA				
HUD Field Office—Fresno:				
Mariposa County, CA	108,750	122,500	148,850	171,750
HUD Field Office—Honolulu:				
Maui County, HI	204,250	230,050	279,500	322,500
San Luis-Obispo-Atascadero-Paso Robles, CA MSA				
San Luis-Obispo County, CA	151,725	194,100	234,600	291,600
HUD Field Office—Sacramento:				
Calaveras County, CA	125,850	141,750	172,200	198,750
Amador County, CA	123,000	138,550	168,350	194,250
Tuolumne County, CA	122,550	138,000	167,700	193,500
REGION X				
HUD Regional Office—Seattle:				
Skagit County, WA	104,500	117,700	143,000	165,000
HUD Field Office—Boise:				
Kootenai County, ID	81,050	91,300	110,950	128,000
HUD Field Office—Spokane:				
Walla Walla County, WA	68,500	77,550	94,250	108,750

Dated: August 10, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–20442 Filed 8–24–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB34

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Data and Information To Be Made Available to the Public

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service's (MMS) regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS) include provisions for release of data and information to the public. This final rule ensures that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate (MER); MMS–1867, Request for Well Maximum Production Rate (MPR); MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report, that are made available for public inspection are clearly identified in the regulations.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR part 250 governing offshore oil and gas and sulphur operations, which were published in the **Federal Register** on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. Section 250.18 specifies periods of time when certain geological and geophysical data and information will be protected from disclosure to the public. Section 250.18(d) identifies specific items of data and information on Forms MMS–330, MMS–331, and MMS–331C that are to be protected from disclosure for specified time periods. The release of data and information on other MMS reporting forms is not

mentioned in 30 CFR part 250. This apparent inconsistency makes it necessary to determine whether data and information submitted on Forms MMS–1866, MMS–1867, MMS–1868, or MMS–1870 should be available for public inspection when the same data or information is protected from disclosure under § 250.18 when submitted on Forms MMS–330, MMS–331, or MMS–331C.

Under OCS Order No. 12, Public Inspection of Records, which was rescinded by a **Federal Register** notice published April 1, 1988 (53 FR 10596), lessees were advised regarding the specific data and information that would be protected from disclosure for specified time periods. The provisions of § 250.18 are not as inclusive as OCS Order No. 12.

Under revised part 250, the Gulf of Mexico OCS Region issued further guidance in the form of a Notice to Lessees and Operators (NTL). The NTL 88–03 was issued on June 29, 1988, and provided an interpretation on the data and information to be made available to the public. To provide additional specificity in the regulations, MMS published a notice of proposed rulemaking in the **Federal Register** on August 4, 1989 (54 FR 32316). The proposed rule would have amended § 250.18 to identify those items of data and information submitted on MMS reporting Forms MMS–1866 and MMS–1868 that would be subject to protection from disclosure and the timetables for release of the protected data and information. The proposed rule also provided that all data and information submitted on Forms MMS–1867, MMS–1869, and MMS–1870 would be available for public inspection upon receipt.

Following the public comment period, the comments received were reviewed, further analysis conducted within MMS, and a decision was made to propose a revised rule that more closely follows the framework of OCS Order No. 12.

The revised proposed rule published in the **Federal Register** on June 18, 1991 (56 FR 27929), modified the previously published proposal to provide that, with the exception of summary of the porous zones, all information on Forms MMS–330, MMS–331, and MMS–331C will be released when the well goes on production. Data and information on Forms MMS–1867, MMS–1868, MMS–1869, and MMS–1870, which are not submitted until after the well is on production, will be released upon receipt of the forms. Although Form MMS–1866 is submitted after the well is on production, most of the data on the form is used to estimate the reserves and will not be available for public inspection without the consent of the lessee for the same periods as those provided for in paragraph (b) of § 250.18. The MMS believes that returning to the basic approach of releasing certain information when a well goes on production will provide a balance between the commercial interests of the lessees to protect data and information from disclosure and the interests of the public to have access to data and information concerning public lands. Timely comments were received from two commenters and an analysis is presented in the discussion section.

Differences Between Proposed and Final Rules

Language changes made to the rule since its publication as a proposed rule are italicized.

The final rule clarifies the availability of information for Form MMS–1866 which will be subject to the requirement of § 250.18, paragraph (b), only.

The revision with reference to Form MMS–330 clarifies that the summary of porous zones is item 35 on the form. Item 36, geologic markers, is identified as an additional item of data and information on Form MMS–330 that would be subject to protection from disclosure.

On Form MMS–1868, static bottomhole pressure information will only be available to the public upon commencement of production or 2 years after submittal, whichever comes first.

Discussion of Comments

One commenter requested that special considerations be given for the protection of data and information from deepwater (greater than 400 meters) leases. The MMS disagrees with the change suggested by this commenter that pertains to Form MMS–1866, whereby items 1–33 would be withheld from public disclosure for "10 years or when leases are no longer in effect." First, items 1–31 will be withheld from the public. Items 32 and 33 (Gas Oil Ratio and Water Oil Ratio, respectively) will not be withheld because they are calculated data from other public information sources of production data such as Oil and Gas Operations Report Forms. Further, the suggested time period of 10 years after submission to MMS is inordinately long. We believe a reasonable time period for nondisclosure of the information is 2 years after submission. Form MMS–1866 is required for producing reservoirs; therefore, the 2-year period extends beyond first production.

Another commenter requested that § 250.18(d) be revised to read, "Data and information identified in paragraph (d)(1) through *(3)* of this section shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier. *Data and information identified in paragraph (d)(4) of this section shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section.*" (Emphasis added).

We agree with this suggested language because it would help to clarify the release of Form MMS–1866 information per § 250.18(d)(4) which is not contingent upon first production of a well but rather the requirements found in 30 CFR 250.172.

A minor change identifying the item number for "porous zones" was also suggested. We agree with the modification and additionally include the related item "geologic markers."

Section 250.18(d) is revised to read, *". . . except that item 35, summary of porous zones and item 36, geologic markers, on Form MMS–330, Well (Re)Completion Report, . . ."* (Emphasis added).

Additional Changes

The following language change was made to clarify the protection of static bottomhole pressure information. In § 250.18(d), a clause is added to the end of the paragraph to state, *". . ., except static bottomhole pressure information on Form MMS–1868 in paragraph (d)(6)."* (Emphasis added).

In § 250.18(d)(6), the words "are available for public inspection" are removed. A clause is added at the end of the paragraph to state, *". . . except static bottomhole pressure information are available to the public upon commencement of production or 2 years after submittal, whichever occurs first."* (Emphasis added).

In an effort to reduce the burden associated with information collection, MMS continuously reviews forms on which information is developed. In response to this review, MMS has developed revisions to several MMS forms. These revisions have been described in **Federal Register** notices published on August 9, 1990 (55 FR 32484–32502), and August 13, 1990 (55 FR 32973). When new forms are adopted, information will be protected from being released based on the type of information. Accordingly, although this final rule pertains to item numbers on forms currently in use, information will

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be protected on new forms based on requirements due to revisions resulting from this notice.

Author: This document was prepared by Kumkum Ray, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12291

The Department of the Interior (DOI) has determined that this rule will not have any effect on the economy and is not a major rule.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Paperwork Reduction Act

This rule does not affect any information collection which requires approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq.

Takings Implication Assessment

The DOI has determined that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI has certified to OMB that this final rule meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated July 16, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, 30 CFR part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.18 is amended by revising the introductory text of paragraph (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) to read as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified in paragraphs (d)(1) through (3) of this section shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier, except that item 35, summary of porous zones, and item 36, geologic markers, on Form MMS–330, Well (Re)Completion Report, shall not be released when the well goes on production unless the period of time specified in paragraph (b) of this section has expired.

Data and information identified in paragraph (d)(4) of this section shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section. Paragraph (d)(5) through (8) of this section identify forms on which all data and information are available for public inspection, except static bottomhole pressure information on Form MMS–1868 in paragraph (d)(6) of this section.

* * * * *

(4) On Form MMS–1866, Request for Reservoir Maximum Efficient Rate (MER), in the "Basic Data Required" section, items 1 through 31.

(5) On Form MMS–1867, Request for Maximum Production Rate (MPR), all items of data and information are available for public inspection.

(6) On Form MMS–1868, Well Potential Test Report, all items of data and information except static bottomhole pressure information are available to the public upon commencement of production. Static bottomhole pressure information is available 2 years after submittal.

(7) On Form MMS–1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS–1870, Semiannual Gas Well Test Report, all items of data and information are available for public inspection.

* * * * *

[FR Doc. 93–20495 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300286A; FRL–4587–4]

RIN No. 2070–AB78

Trimethylolpropane; 1-Tetradecanamine, N,N-Dimethyl-, N-Oxide; Tall Oil Diesters With Polypropylene Glycol; Glycerol-Propylene Oxide Polymer; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a tolerance for residues of trimethylolpropane; tetradecanamine, *N,N* dimethyl-, *N*-oxide; tall oil diesters with polypropylene glycol; and glycerol-propylene oxide polymer, when used as inert ingredients (components of water-soluble films) in pesticide formulations applied to growing crops only. This regulation was requested by Chris Craft Industrial Products, Inc.

EFFECTIVE DATE: This regulation becomes effective on August 25, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300286A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Dr., 6th Fl., North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 12, 1993 (58 FR 27974), EPA issued a proposed rule announcing that Chris Craft Industrial Products, Inc., 407 County Line Rd., Gary, IN 46403-2699, had submitted a pesticide petition (PP 3E4217) to EPA requesting that the Administrator, pursuant to section 408(e) to the Federal

Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of trimethylolpropane; 1-tetradecanamine, *N,N*-dimethyl-, *N*-oxide; tall oil diesters with polypropylene glycol; and glycerolpropylene oxide polymer, when used as inert ingredients (components of water-soluble films) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The proposed exemptions were based on the Agency's review of the contents of the Chris Craft polyvinyl alcohol water-soluble films. The Agency reviewed all of the components of the films and determined that many of the components did not require the establishment of a tolerance exemption because they constituted less than 0.1% of the film and therefore would not be detectable in food under reasonable worst-case conditions. However, four components, trimethylolpropane; 1-tetradecanamine, *N,N*-dimethyl-, *N*-oxide; tall oil diesters with polypropylene glycol; and glycerol-propylene oxide polymer could leave detectable residues in food.

These four chemicals were reviewed by the Office of Pollution, Prevention, and Toxic Substances (OPPT) Structure Activity Team (SAT). The SAT determined that 1-tetradecanamine, *N,N*-dimethyl-, *N*-oxide; tall oil diesters with polypropylene glycol; and glycerol-propylene oxide polymer were not expected to be absorbed by any route based upon a review of their chemical structures, thus eliminating concerns for toxicity including carcinogenicity, mutagenicity, and developmental toxicity. The SAT indicated a low-to-moderate concern for developmental toxicity for trimethylolpropane. This concern was based on a general concern for developmental toxicity in branched-chain alcohols as a chemical class. Based on a worst-case dietary exposure assessment of valproic acid and the expected use rate of trimethylolpropane, the Agency determined that this chemical would not pose a risk to human health under the proposed conditions of use, which included a limit of not more than 5% in the film.

Two comments were received in response to the proposed rule. The first comment concerned the proposed limit for trimethylolpropane. The commentor requested that the Agency raise the limit from 5% to 10%. This comment will be addressed in a separate Federal Register document.

The second comment involved several issues concerning (1) the amount of data submitted in support of the tolerance exemptions; (2) the review conducted by the SAT; (3) the bases of approval referencing FDA food additive regulations as basis for the establishment of an exemption from the requirement of a tolerance; and (4) the accuracy of the Agency's worst-case analysis demonstrating that components present in the film at less than 0.1% would not be detectable on food and would therefore not require a tolerance exemption.

(1) Although little data was received in support of the tolerance exemption, the four chemicals were reviewed on the basis of their chemical structures and behavior by the SAT. The review was not based on a blind application of the Office of Pesticides, Pollution and Toxic Substances Polymer Exemption Rule (40 CFR 723.50), which identifies polymers that are relatively unreactive, stable, and not readily absorbed and thus of no risk. Each chemical was reviewed and judged with respect to its potential biological activity. This type of review process is typical for inert ingredients, since the level of data required is not the same as for active ingredients. Although a minimum base set of data is required for all new nonfood and food-use inert ingredients, certain data requirements may be waived based on other available information.

(2) Frequently, prior FDA food additive regulations are listed in tolerance exemption documents. The Agency is aware that these FDA uses may result in different exposures than the pesticide uses and have various amounts of supporting data. Therefore, the tolerance exemption does not rely solely on the FDA food additive regulations listed in the notice, as the commentor implied, but rather supplements them with toxicological/risk assessments conducted by Agency.

(3) The Agency is not permitting the use of unknown components as inert ingredients in pesticides applied to food as stated in the comment. The Agency initially identified and reviewed each of the components contained in the films to determine if any component was known to be of toxicological concern. If any compound present, at any percentage, was a known toxicant, a further review would have been conducted. Although for several of the components in the films EPA deemed it unnecessary to establish tolerance exemptions because as minor components of the films they were unlikely, even under worst-case scenarios, to be detectable in foods, should any toxicological concern arise concerning any of these components EPA has the authority to regulate these components as part of the pesticide chemical under either a tolerance or exemption from tolerance.

(4) The commentor provided a worst-case analysis indicating that detectable residues would result from components present at less than 0.1%. The analysis was reviewed by the Agency and was determined to be incorrect because it did not account for commodity yield, that is, it did not divide the amount applied to the field by the amount of crop produced to determine the amount that would remain on the crop after harvesting. The analysis provided by the commentor also suggested a use rate of 20 bags per acre, which the Agency deemed to be an unreasonable method of application. Although it is impossible to account for every possible use, the Agency is confident that its worst-case analysis is reasonable and that it is a good representative worst case.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that tolerances are not necessary to protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR

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178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) table is amended by adding and alphabetically inserting the following inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Glycerol-propylene oxide polymer (CAS Reg. No. 25791-96-2).	.....	Component in water-soluble film.
* * *	*	* * *
Tall oil diesters with polypropylene glycol (CAS Reg. No. 68648-12-4).	.....	Component in water-soluble film.
* * *	*	* * *
1-Tetradecanamine, *N,N*-dimethyl-, *N*-oxide (CAS Reg. No. 3332-27-2).	.....	Component in water-soluble film.
* * *	*	* * *
Trimethylolpropane (CAS Reg. No. 7799-6)	..... Not to exceed 5% by weight of the film.	Component in water-soluble film.
* * *	*	* * *

* * * * *

[FR Doc. 93-20201 Filed 8-24-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 5F3177/R2006; FRL-4635-6]

RIN 2070-AB78

Pesticide Tolerance for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insect growth regulator cyromazine (*N*-cyclo-propyl-1,3,5-triamine) (Armor) and its metabolite melamine (1,3,5-triazine-2,3,6-triamine), calculated as cyromazine, in or on mushrooms at 10.0 parts per million (ppm). This regulation to establish maximum permissible levels for residues of the insecticide was requested pursuant to a petition submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective August 25, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 5F3177/R2006], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM 18), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 1993 (58 FR 34972), EPA issued a proposed rule that gave notice that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted pesticide petition (PP) 5F3177 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing a tolerance for residues of the insect growth regulator cyromazine (*N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on the raw agricultural commodity mushrooms at 10.0 parts per million (ppm)

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the

tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.414, new paragraph (e) is added, to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(e) Tolerances are established for combined residues of the insect growth regulator cyromazine (*N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Mushrooms	10.0

[FR Doc. 93-20200 Filed 8-24-93; 8:45 am]
BILLING CODE 6560-60-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 93-382]

Standards for Assessing Forfeitures

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: By this action, the Commission makes certain adjustments to its Policy Statement, Standards for Assessing Forfeitures. On its own motion, the Commission reviewed the application of the Policy Statement in actual cases and decided modifications were appropriate. The significant changes include: Reducing certain base amounts; incorporating new statutory authority and rule violation categories; and allowing a presumption of diminished ability to pay in certain services for individuals.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Beth Richards, Field Operations Bureau, Federal Communications Commission, (202) 632-7090.

SUPPLEMENTARY INFORMATION:

Policy Statement

Adopted: August 3, 1993; Released: August 12, 1993.

By the Commission: Commissioner Barrett concurring in the result.

1. In this Policy Statement, we make certain adjustments to our Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), modified in part on recon., 57 FR 24986 (June 12, 1992), 7 FCC Rcd 5339 (1992), petition for review pending sub nom. *USTA* v. *FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992) (1991 Policy Statement).

2. The Commission released the 1991 Policy Statement to establish general, non-binding guidance that may be used in assessing forfeitures. The Commission retained discretion in specific cases to deviate from the 1991 Policy Statement. The Commission has been operating under the 1991 Policy Statement guidelines since August, 1991. During that time, we have been able to review how it is functioning in practice. In light of that experience, we believe it is appropriate to make various modifications. Our most significant changes seek to ensure that the most significant penalties are applied to violations that implicate health or safety concerns; seek to ensure that forfeiture amounts are consistent for similar types of offenses; add certain violation categories; reiterate in the Appendix our and the staff's discretion not to follow the Policy Statement in specific cases, including by not issuing a forfeiture at all in appropriate cases; clarify that the upward adjustment factor for repeated or continuous violations is not necessarily applied on a per violation or per day basis; state that issuing a citation prior to a forfeiture is not required for tower owners who have received notice of their regulatory obligations; find that financial hardship may be presumed to exist in certain cases involving individuals; and reflect a change in the statutory amount applied to cable equal employment opportunity (EEO) violations. The modifications are set forth below, which supersedes prior versions of the Appendix.[1]

3. Accordingly, *it is ordered* that this Policy Statement is adopted, to be effective August 3, 1993.

4. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. 553(b)(A), (d)(2).

[1] The Commission has deleted the broadcast EEO rules violation category and will issue a Further Policy Statement in this regard at a later date.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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Standards for Assessing FCC Forfeitures [1]

I. Base Amounts for Section 503 Forfeitures

Violation	Percent of stat. max.	BC/CABLE ($25,000)	CC ($100,000)	Other ($10,000)
Misrepresentative/lack of candor	80	20,000	80,000	8,000
Construction and/or operation without an instrument of authorization for the service	80	20,000	80,000	8,000
Unauthorized substantial transfer of control	80	20,000	80,000	8,000
Violations of rules relating to distress & safety frequencies	80	20,000	80,000	8,000
False distress communications	80	20,000	80,000	8,000
Alien ownership violation	80	20,000	80,000	8,000
Failure to permit inspection	75	18,750	75,000	7,500
Violation of operator service requirements	75	n.a.	75,000	7,500
Violation of pay-per-call requirements	75	n.a.	75,000	7,500
Unauthorized conversion of long distance telephone service	75	n.a.	75,000	n.a.
Malicious interference	70	17,500	70,000	7,000
Importation or marketing of unauthorized equipment	70	n.a.	70,000	7,000
Exceeding authorized antenna height	60	15,000	60,000	6,000
Transmission of indecent/obscene material	50	12,500	n.a.	5,000
Violation of political rules: reasonable access, lowest unit charge, equal opportunities and discrimination	50	12,500	n.a.	n.a.
Fraud by wire, radio or television	50	12,500	50,000	5,000
Exceeding power limits	40	10,000	40,000	4,000
No licensed operator on duty	40	10,000	n.a.	4,000
Failure to maintain directional pattern within prescribed parameters	40	10,000	n.a.	n.a.
Failure to respond to Commission communications	40	10,000	40,000	4,000
Unauthorized emissions	40	10,000	40,000	4,000
Using unauthorized frequency	40	10,000	40,000	4,000
EBS equipment not installed or operational	40	10,000	n.a.	n.a.
Violation of children's television commercialization or programming requirements	40	10,000	n.a.	n.a.
Violation of main studio rule	40	10,000	n.a.	n.a.
Violation of broadcast hoax rule	40	10,000	n.a.	n.a.
Failure to engage in required frequency coordination	40	10,000	40,000	4,000
AM tower fencing	40	10,000	n.a.	n.a.
Failure to comply with prescribed lighting & marking	Varies	8,000	8,000	8,000
Violation of public file rules	20	5,000	20,000	n.a.
Unauthorized discontinuance of service	20	5,000	20,000	2,000
Use of unauthorized equipment	20	5,000	20,000	2,000
Construction or operation at unauthorized location	20	5,000	20,000	2,000
Violation of transmitter control and metering requirements	20	5,000	20,000	2,000
Failure to file required forms or information	20	5,000	20,000	2,000
Violation of sponsorship ID requirements	20	5,000	n.a.	n.a.
Violation of requirements pertaining to broadcasting of lotteries or contests	20	5,000	n.a.	n.a.
Broadcasting telephone conversations without authorization	20	5,000	n.a.	n.a.
Failure to make required measurements or conduct required monitoring	10	2,500	10,000	1,000
Violation of enhanced underwriting requirements	10	2,500	n.a.	n.a.
Failure to provide station ID	5	1,250	5,000	500
Unauthorized pro forma transfer of control	5	1,250	5,000	500
Failure to maintain required records	5	1,250	5,000	500
Miscellaneous minor violations	2.5	625	2,500	250

II. Adjustment Criteria for Section 503 Forfeitures [2]

Upward Adjustment Criteria

(1) Egregious misconduct	50–90%
(2) Ability to pay/relative disincentive [3]	50–90%
(3) Intentional violation	50–90%
(4) Substantial harm	40–70%
(5) Prior violations of same or other requirements	40–70%
(6) Substantial economic gain	20–50%
(7) Repeated or continuous violation	Varies [4]

Downward Adjustment Criteria

(1) Minor violation [5]	50–90%
(2) Good faith or voluntary disclosure	30–90%
(3) History of overall compliance	20–50%
(4) Inability to pay	Varies [6]

[1] This Policy Statement provides guidance that the Commission and its staff may use in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the *Policy Statement*, no forfeiture at all or alternative or additional sanctions. The forfeiture ceilings per violation or per day of a continuing violation contained in section 503 of the Communications Act and the Commission's Rules are $100,000 for common carriers or applicants, $25,000 for broadcasters and cable operators or applicants, and $10,000 for all others. 47 U.S.C. 503(b)(2); 47 CFR 1.80. In addition, for continuing violations involving a single act or failure to act, there is an overall limit of $1,000,000 for common carriers or applicants, $250,000 for broadcasters and cable operators or applicants, and $75,000 for all others. *Id.* The base amounts listed are for a single violation or single day of a continuing violation. While there is an upward adjustment factor for repeated or continuous violations, that upward adjustment is not necessarily applied on a per violation or per day basis. See Section II, *infra*. Unless Commission authorization is required for the behavior involved, a section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or is not operating in the radio control or citizens band radio service can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). However, a citation is not required for non-licensee tower owners who have previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Forfeitures issued under other sections of the Act are dealt with separately in Section III below.

[2] Both upward and downward adjustments are applied to the base forfeiture amount. More than one factor may apply in a given case. This list of factors is intended to include the most common situations that arise under section 503(b)(2)(D) and is not intended to limit the Commission's discretion under that section.

[3] The Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D).

[4] The percentage adjustment for this criterion could vary up to the statutory maximum per violation or per day of a continuing violation.

[5] A "minor" violation is misconduct which is at a low level of seriousness within the violation category. A minor violation is the opposite of "egregious misconduct."

[6] As noted above, the Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D). The application of a downward adjustment for inability to pay is based upon a showing of substantial financial hardship. Inability to pay would generally be considered as a downward adjustment factor only upon a specific showing by the entity against whom forfeiture action is taken. However, in cases involving violations by individuals who are not in the business of providing radio services, *e.g.*, recreational licensees, financial hardship may be presumed to exist in appropriate cases prior to a specific showing.

III. Non-Section 503 Forfeitures

Violation		Statutory amount [7]
Sec. 202(c)	Common carrier discrimination.	$6,000+$300/day.
Sec. 203(e)	Common carrier tariffs.	$6,000+$300/day.
Sec. 205(b)	Common carrier prescriptions.	$12,000.
Sec. 214(d)	Common carrier line extensions.	$1,200/day.
Sec. 219(b)	Common carrier reports.	$1,200.
Sec. 220(d)	Common carrier records & accounts.	$6,000/day.
Sec. 223	Dial-a-Porn	$50,000 maximum/day.
Sec. 364/386	Ship radio	$5,000/day (owner) $1,000 (master).
Sec. 506	Great Lakes Agreement.	$500/day (owner) $100 (master).
Sec. 634	Cable EEO	$500/day.

[7] Unlike section 503, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. The one exception is section 223 of the Act, which provides a maximum of $50,000 per day. For convenience, the Commission will treat the $50,000 set forth in section 223 as if it were a prescribed base amount, subject to downward adjustments.

Note: Non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in Section II above.

[FR Doc. 93–20497 Filed 8–24–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 64

[CC Docket No. 93–22; FCC 93–349]

Interstate Pay-Per-Call Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted this Report and Order to amend rules governing the provision of interstate pay-per-call services to conform with the requirements of the Telephone Disclosure and Dispute Resolution Act (TDDRA). This action was taken to amend the Commission's existing rules pertaining to interstate pay-per-call services to implement the requirements of the TDDRA. The rules adopted in the Report and Order are intended to maximize telephone subscribers' protection against fraudulent and abusive practices without unduly burdening common carriers and providers of legitimate pay-per-call services.

EFFECTIVE DATE: September 24, 1993 except that removal of § 64.711 and effectuation of § 64.1510 are deferred until November 1, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mary Romano, Enforcement Division, Common Carrier Bureau, 202–632–4887.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Docket No. 93–22 [FCC 93–349], adopted July 15, 1993 and released August 13, 1993. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. The full text of this Report and Order may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

I. Introduction

1. On July 15, 1993, the Commission adopted a Report and Order (R&O) in CC Docket No. 93–22 (released Aug. 13, 1993, FCC 93–349), summarized here, which replaces the Commission's existing pay-per-call regulations with new rules which have been drafted to meet the statutory requirements of the Telephone Disclosure and Dispute Resolution Act, Public Law 102–556 (1992) (TDDRA).

II. Background

2. Pay-per-call services (also known as "audiotext" or "900" services) provide telephone users a variety of information services for which they are charged rates different from, and usually higher than, the normal transmission rates charged for ordinary telephone calls. In 1991, the Commission established pay-per-call regulations aimed at protecting telephone subscribers from abusive practices which had been associated with the provision of such services. Under the TDDRA both this Commission and the Federal Trade Commission (FTC) were charged with adopting new rules to implement the required obligations and constraints to be imposed on common carriers, information providers (IPs), and other entities involved in the provision of interstate pay-per-call services. On February 11, 1993, the Commission adopted a Notice of Proposed Rule Making and Notice of Inquiry, 57 FR 14371 (Mar. 17, 1993) (NPRM/NOI), which proposed to amend exiting pay-per-call regulation in response to the statutory mandate of the TDDRA. In response to the NPRM/NOI, 35 comments and 18 reply comments were filed by interexchange carriers (IXCs), local exchange carriers (LECs), IPs, state regulatory and law enforcement entities, and consumer interest groups.

III. Discussion

A. Definitions (Section 64.1501)

3. In § 64.1505, the Commission adopted the statutory definition of pay-per-call services contained in the TDDRA. Although some commenters suggested that the definition be modified or amplified, the Commission

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concluded that the statutory definition reflects a consideration and balancing of interests by Congress that should not be disturbed.

4. The TDDRA specifically removes from the definition of pay-per-call "any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service." Most commenters urged the Commission to define explicitly the term "presubscription or comparable arrangement." In the interests of preventing circumvention of legitimate regulation while at the same time permitting mutually beneficial business arrangements between IPs and consumers, the Commission adopted a definition that requires a fully informed and legally responsible consumer to enter into a presubscription arrangement prior to any call for which charges are incurred. The consumer must also be informed of any future rate increases and be required to use an identification number or some other means designed to prevent unauthorized access to the service.

5. The Commission agreed with several commenters that the legislative history of the TDDRA provides evidence of congressional intent to leave credit and charge card transactions outside the scope of the TDDRA. Thus, § 64.1501(b) recognizes that an arrangement "comparable" to presubscription is established when a caller to an information service disclosed a credit or charge card number and authorizes charges to that number as long as the credit or charge card is subject to the dispute resolution procedures of the Truth in Lending and Fair Credit Billing Acts, 15 U.S.C. 1601 et seq.

B. Limitations on the Provision of Pay-Per-Call Services (Section 64.1502)

6. The Commission adopted a broad compliance requirement requiring that any common carrier who assigns telephone numbers for pay-per-call purposes must require by contract or tariff that IPs utilizing such numbers comply with the TDDRA and any implementing regulations prescribed by the FTC and FCC. The Commission determined that the language of this rule, and others covering the relationship between common carriers and IPs, encompasses all situations in which an IP is assigned a pay-per-call telephone number, regardless of whether that assignment is made directly by a common carrier or through a service bureau.

C. Termination of Pay-Per-Call Programs (Section 64.1503)

7. Under the TDDRA, a common carrier that has assigned a telephone number to a pay-per-call program is compelled to "terminate" that program if the carrier knows or reasonably should know that the program is not being offered in compliance with titles II and III of the TDDRA and related FTC regulations. Section 64.1503 specifies that carriers acting under that rule cannot terminate a pay-per-call program until at least seven and no more than 14 days after the IP has received written notice from a carrier citing the particular violation of law upon which a termination decision is based. An IP can avoid termination by responding with corrective action during the notice period. In addition, IPs believing that a termination decision is unwarranted can seek to enjoin a carrier from executing the decision. The Commission thus concluded that the due process rights of IPs would be fully protected.

8. The Commission declined to extend the grounds for required termination to include violations of state law in light of the TDDRA's clear designation of violations of federal law and rules as the only basis for mandatory termination. The Commission also rejected a suggestion that carriers immediately suspend pay-per-call programs upon an appearance of unlawfulness.

9. Finally, the Commission affirmed the view expressed by several carriers and IPs, alike, that the termination obligation does not require carriers to monitor pay-per-call programs or initiate investigations in the absence of a complaint. The Commission declined to specify a particular number of complaints upon which a carrier reasonably should know of illegal behavior but emphasized that carriers are expected to investigate each complaint of unlawfulness.

D. Restrictions on the Use of 800 Numbers (Section 64.1504)

10. The Commission's consideration of 800 number restrictions incorporated the record established in a separate rulemaking proceeding (RM–7990) which had been initiated in 1992 pursuant to a petition filed by the National Association of Attorneys General (NAAG) concerning the interplay between 800 number services and pay-per-call services. The NOI/NPRM encouraged commenters in CC Docket No. 93–22 to discuss the manner in which the TDDRA's provisions regarding 800 numbers differed from NAAG's proposals.

11. In the R&O, the Commission adopted § 64.1504 to codify the TDDRA's restriction on the use of 800 numbers for pay-per-call purposes. The statutory language was adopted almost unchanged to prohibit charges being assessed in connection with calls to 800 numbers except in the limited situation where the caller has established a presubscription or comparable arrangement. The Commission concluded that there are no constitutional impediments to the 800 number restrictions since they are content-neutral, leave other avenues of communication open to parties seeking to exercise First Amendment rights, and are narrowly tailored to serve the legitimate governmental interest in protecting consumers from deceptive practices.

E. Restrictions on Collect Telephone Calls (Section 64.1505)

12. In response to numerous comments suggesting that all collect information services be prohibited, the Commission reexamined the TDDRA to discern the proper regulatory treatment of such services. Upon review, the Commission concluded that, taken together, 47 U.S.C. 228(i)(1) (A)–(B) and 228(b)(5) effectively prohibit collect information services calls charged above a tariffed transmission rate, and that this prohibition should be explicitly reflected in pay-per-call regulations. Section 64.1505, thus, specifies that common carriers cannot transmit or bill for interstate collect information services calls carrying charges beyond the tariffed transmission rate.

13. The Commission observed that collect information services billed at a tariffed rate would be permissible under the regulatory system established by the TDDRA since tariffed services are explicitly exempted from the statutory requirements. Although the Commission could not predict to what extent IPs will seek to use tariffed services to provide information services on a collect basis, the Commission preserved in § 64.1505 the requirement that charges cannot be incurred in connection with tariffed collect information services calls unless a called party takes affirmative action indicating acceptance of charges.

F. Number Designation (Section 64.1506)

14. The TDDRA requires that all audio information or audio entertainment services and various other calls for which a caller incurs charges beyond the charge for transmission of the call be offered only through telephone numbers with area codes or prefixes designated by the Commission. The Commission

adopted § 64.1506 to require that all such pay-per-call services offered on an interstate basis be confined to telephone numbers beginning with the 900 service access code. In so ruling, the Commission concluded that any initial costs of relocation of pay-per-call services would be significantly outweighed by the increased ability of consumers to recognize particular numbers as belonging to pay-per-call services and carrying charges beyond normal telephone rates. Given state regulation of intrastate pay-per-call services, the Commission did not impose any number designation requirements upon intrastate services.

G. Prohibition on Disconnection or Interruption of Service for Failure To Remit Pay-Per-Call or Similar Service Charges (Section 64.1507)

15. In § 64.1507, the Commission adopted virtually verbatim the TDDRA's prohibition against disconnection of basic telephone services for failure to pay pay-per-call charges. In addition, the prohibition was expanded to cover non-payment of charges for (1) information services offered under a presubscription or comparable arrangement and (2) tariffed collect information services when the subscriber has disputed such charges. The Commission agreed with carriers who noted that they could not guarantee compliance with an absolute prohibition against disconnection associated with non-payment of tariffed collect information services charges since there is no clear means of differentiating such calls from ordinary tariffed collect calls. Thus, the Commission specified that the disconnection prohibition applied to tariffed collect information services calls only when charges have been disputed.

H. Blocking Access to 900 Service (Section 64.1508)

16. The Commission adopted § 64.1508 to codify the TDDRA's requirement that where technically feasible LECs must offer their subscribers the option of blocking access to 900 services. The rule incorporates that requirement that such blocking must be offered to all subscribers at no charge for a period of 60 days after the new pay-per-call regulations take effect and to all new subscribers for a period of 60 days after new service is established. The Commission noted that this rule did not preclude states from mandating more generous terms under which subscribers may obtain free blocking or carriers from voluntarily extending the free blocking option. In addition, the Commission concluded that the blocking obligation should encompass only an across the board block of all 900 services since selective blocking of individual 900 numbers is neither technically nor economically feasible at this time. Finally, the Commission required LECs to file their pay-per-call blocking tariffs with the Commission.

I. Disclosure and Dissemination of Pay-Per-Call Information (Section 64.1509)

17. Under the TDDRA, common carriers who assign telephone numbers for pay-per-call purposes must provide to interested parties the name, address, and customer service telephone number for individual IPs whose programs are transmitted by that carrier, a list of all pay-per-call numbers that have been assigned by that carrier along with a brief description of each service represented by such numbers. Common carriers who not only assign pay-per-call numbers but also provide pay-per-call billing and collection services have additional consumer education obligations. Such carriers must establish local or toll free telephone numbers to answer questions and provide information on subscribers' rights and responsibilities with respect to use of pay-per-call services. Names and mailing addresses of IPs using the carrier's facilities are to be available over this number. In addition, billing carriers must provide to each subscriber, within 60 days after effectuation of the Commission's pay-per-call rules, a disclosure statement explaining the rights and obligations of both the subscriber and carrier, including the subscriber's rights to obtain blocking and not to be billed for any programs not offered in compliance with the TDDRA and the Commission's and FTC's implementing regulations. The Commission incorporated these statutory requirements in section 64.1509.

18. In addition, to ensure that consumer are adequately informed with respect to pay-per-call services, the Commission expanded carriers' disclosure obligations to require that the mandated disclosure statement also include an explanation of the possibility of involuntary blocking of 900 access for failure to pay legitimate pay-per-call charges and the prohibition against disconnection of basic communications services for failure to pay pay-per-call and similar charges. The Commission also found that one-time provision for the disclosure statement was insufficient to ensure that consumers are adequately educated. Thus, disclosure statements must be distributed annually. The Commission declined to require carriers to undertake additional efforts with respect to consumer education or cooperation with state law enforcement or regulatory authorities, which had been requested by some commenters.

J. Billing and Collection of Pay-Per-Call and Similar Services Charges (Section 64.1510)

19. The TDDRA establishes a prohibition against carriers billing subscribers for pay-per-call charges when it is known or reasonably should be known that the pay-per-call service was not offered in compliance with the TDDRA. Billing carriers are also required to show pay-per-call charges in a portion of the bill separate from ordinary telephone charges and include (1) the amount of the charges, (2) the type of service being charged for, and (3) the date, time and duration of the call. Section 64.1510 includes these provisions with the caveat that when pay-per-call charges are not time-based, the duration of the call need not be shown.

20. The Commission also expanded the TDDRA's billing requirements so that telephone bills that include pay-per-call charges must contain a brief statement explaining basic pay-per-call rights and responsibilities. The Commission concluded that neither segregation of pay-per-call charges on a telephone bill nor provision of an annual disclosure statement would ensure that subscribers billed for pay-per-call services possessed the basic information necessary to make an informed choice whether to pay or contest such charges. However, the Commission found that inclusion of additional information, such as the IP's name or address, on the telephone bill was unnecessary.

21. Finally, because of the apparent difficulty in distinguishing tariffed collection information service calls from other types of collect calls, the Commission modified the NPRM/NOI proposal so that segregation of charges associated with collect information services is not an absolute requirement but required whenever "possible." Segregation of charges is similarly required when a common carrier bills for information services offered under a presubscription of comparable arrangement.

K. Forgiveness of Charges and Refunds (Section 64.1511)

22. Numerous commenters objected to the Commission's proposed rule codifying the TDDRA requirement that procedures be established to ensure that

carriers and other parties provide refunds to subscribers who have been billed for pay-per-call services offered in violation of federal law. Accordingly, the rule was redrafted and the R&O clarifies that the refund obligation does not require carriers to undertake wholesale actions, but instead applies to individual subscribers who have disputed charges. In addition, the Commission emphasized that carriers are not obligated to monitor pay-per-call programs in the absence of a complaint or to examine federal laws not directly applicable to the provision of pay-per-call service. Under § 64.1511, carriers are afforded discretion to set standards for determining when subscriber complaints merit forgiveness, refund, or credit of pay-per-call charges, provided that such adjustments must be made if the carriers investigation of disputed charges reveals that the services were not offered in compliance with federal law or such a finding of unlawfulness is made by this Commission, the FTC, or a court of competent jurisdiction. The Commission rejected some commenters suggestions that the scope of violative behavior necessary to prompt the refund obligation be expanded to include violations of state law.

L. Involuntary Blocking of Pay-Per-Call Services (Section 64.1512)

23. Section 64.1512 recognizes the rights of common carriers and IPs to employ involuntary blocking of pay-per-call services to protect themselves against subscribers who have failed to pay legitimate pay-per-call charges. While particular procedures for involuntary blocking were not adopted, the rule specifies that a subscriber's access to pay-per-call services cannot be involuntarily blocked while that subscriber has a pay-per-call complaint pending under dispute resolution procedures mandated by the FTC. However, once a complaint has been resolved in the IP's favor, involuntary blocking may be accomplished regardless of whether the subscriber files additional separate complaints.

M. Verification of Charitable Status (Section 64.1513)

24. Section 64.1513 codifies the TDDRA's requirement that a carrier assigning a pay-per-call number to an IP that it knows, or reasonably should know, is engaged in soliciting charitable contributions must obtain proof of the tax exempt status of any person or organization for which contributions are solicited. The Commission did not impose any investigatory obligation upon common carriers in connection with this requirement, finding that the legislative history of the TDDRA does not support commenters who would require carriers to question IPs as to their possible solicitation activities prior to assigning a pay-per-call telephone number. In addition, the Commission declined to require submission of documentation demonstrating compliance with state solicitation laws.

N. Recovery of Costs (Section 64.1515)

25. While the TDDRA recognizes the rights of common carriers to recover their costs of complying with the TDDRA, the statute expressly prohibits carriers from recovering such costs from local or long distance telephone ratepayers. Most commenters expressed the belief that this prohibition could be honored without a Commission-mandated cost recovery system or revision of general accounting or jurisdictional separations rules. Accordingly, § 64.1515 simply restates the statutory prohibition against recovery of TDDRA compliance costs from general telephone ratepayers.

O. Preemption

26. The TDDRA requires the FTC to adopt rules requiring IPs to begin their pay-per-call programs with an introductory message, or preamble, to inform callers about the nature and cost of the services they have reached. In light of that requirement, the Commission deleted its own preamble rule and ended preemption of inconsistent state-imposed preamble requirements on jurisdictionally mixed traffic. The Commission emphasized that Congress has expressly placed preambles matters within the FTC's regulatory authority and that it could not be assumed that such action was taken without appreciation of the extent of the FTC's jurisdiction, which is different from the Commission's. The Commission thus rejected arguments by some commenters that its preemption should continue.

IV. Notice of Inquiry Regarding Application of Pay-Per-Call Regulations to Data Services

27. Under the TDDRA, the Commission must report to Congress regarding the desirability of extending pay-per-call regulations to "persons that provide, for a per-call charge, data services that are not pay-per-call services." In light of the comments gathered in CC Docket No. 93–22 and its own experience that complaints of fraudulent and deceptive practices in the pay-per-call industry apply virtually without exception to audio service, the Commission concluded that such extension was unnecessary at this time.

V. Final Regulatory Flexibility Analysis

28. The Commission received no comments in response to the Initial Regulatory Flexibility Analysis contained in the NPRM/NOI. The Commission carefully considered all comments that were filed in CC Docket No. 93–22 with respect to the proposed rules to implement the requirements of the TDDRA and, upon review, concluded that the rules adopted by the R&O represent the most reasonable course of action to implement the requirements of the TDDRA and to protect consumers against unfair and deceptive practices associated with interstate pay-per-call services and ensure that they are provided with adequate information to make educated choices about their use of such services.

VI. Conclusion

29. In the R&O, the Commission adopted rules to implement the TDDRA in a manner that will maximize consumers' protection against abusive practices with minimal disruption to common carriers and providers of lawful and legitimate pay-per-call services.

VII. Ordering Clauses

30. Accordingly, it is ordered, pursuant to §§ 1, 4(i), 4(j), 201–205, 218 and 228 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 102–205, 218 and 228, that part 64 of the Commission's Rules are amended as set forth below.

31. It is further ordered that this Report and Order will be effective thirty (30) days after publication of a summary thereof in the **Federal Register**, except that effectuation of provisions governing billing and collection of pay-per-call services contained in § 64.1510 below and rescission of the Commission's preamble requirements set forth in 47 CFR 64.711 will be deferred until November 1, 1993.[1]

32. It is further ordered that all local exchange carriers shall file with this Commission, within 120 days of release of this Order, tariffs providing for blocking of services offered on the 900 service access code, consistent with the provisions of this order and to become effective on 60 days's notice. For these purposes, we waive § 61.58 of the Commission's Rules, 47 CFR 61.58, and assign Special Permission No. 93–658.

[1] The November 1, 1993 effective date is adopted to ensure consistency with related rules adopted by the FTC.

List of Subjects in 47 CFR Part 64

Communications common carriers, Computer technology, Telephone.

William F. Caton,

Acting Secretary.

Final Rules

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

§§ 64.709–64.716 [Removed]

2. Subpart G of part 64 is amended by removing §§ 64.709 through 64.716, inclusive.

3. A new subpart O of part 64 is added as read as follows:

Subpart O—Interstate Pay-Per-Call and 800 Services

Sec.

64.1501 Definitions.
64.1502 Limitations on the Provision of Pay-Per-Call Services.
64.1503 Termination of Pay-Per-Call Programs.
64.1504 Restrictions on the Use of 800 Numbers.
64.1505 Restrictions on Collect Telephone Calls.
64.1506 Number Designation.
64.1507 Prohibition on Disconnection or Interruption of Service for Failure to Remit Pay-Per-Call and Similar Service Charges
64.1508 Blocking Access to 900 Service.
64.1509 Disclosure and Dissemination of Pay-Per Call Information.
64.1510 Billing and Collection of Pay-Per-Call and Similar Service Charges.
64.1511 Forgiveness of Charges and Refunds.
64.1512 Involuntary Blocking of Pay-Per-Call Services.
64.1513 Verification of Charitable Status.
64.1514 Generation of Signalling Tones.
64.1515 Recovery of Costs.

Subpart O—Interstate Pay-Per-Call and 800 Services

§ 64.1501 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) *Pay-per-call service* means any service:

(1) In which any person provides or purports to provide:

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(3) Which is accessed through use of a 900 telephone number.

(b) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(1) *Presubscription or comparable arrangement* means a contractual agreement in which:

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer of any future rate changes;

(iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers.

(2) Disclosure of a credit or charge card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. 1601 et seq. No other action taken by the consumer during the course of a call to an information service, for which charges are assessed, can be construed as creating a presubscription or comparable arrangement.

§ 64.1502 Limitations on the provision of pay-per-call services.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall require, by contract or tariff, that such provider comply with the provisions of this subpart and of titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102–556) (TDDRA) and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

§ 64.1503 Termination of pay-per-call programs.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall specify by contract or tariff that pay-per-call programs not in compliance with § 64.1502 shall be terminated following written notice to the information provider. The information provider shall be afforded a period of no less than seven and no more than 14 days during which a program may be brought into compliance. Programs not in compliance at the expiration of such period shall be terminated immediately.

§ 64.1504 Restrictions on the use of 800 numbers.

Common carriers shall prohibit, by tariff or contract, the use of any telephone number beginning with an 800 service access code, or any other telephone number advertised or widely understood to be toll free, in a manner that would result in:

(a) The calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call;

(b) The calling party being connected to a pay-per-call service;

(c) The calling party being charged for information conveyed during the call unless the calling party has a presubscription or comparable arrangement; or

(d) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

§ 64.1505 Restrictions on collect telephone calls.

(a) No common carrier shall provide interstate transmission or billing and collection services to an entity offering any service within the scope of § 64.1501(a)(1) that is billed to a subscriber on a collect basis at a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(b) No common carrier shall provide interstate transmission services for any collect information services billed to a subscriber at a tariffed rate unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect service.

§ 64.1505 Number designation.

Any interstate service described in § 64.1501 (a)(1) through (a)(2) shall be offered only through telephone numbers beginning with a 900 service access code.

§ 64.1507 Prohibition on disconnection or interruption of service for failure to remit pay-per-call or similar service charges.

No common carrier shall disconnect or interrupt in any manner, or order the disconnection or interruption of, a telephone subscriber's local exchange or long distance telephone service as a result of that subscriber's failure to pay:

(a) Charges for interstate pay-per-call service;

(b) Charges for interstate information services provided pursuant to a presubscription or comparable arrangement; or

(c) Charges, which have been disputed by the subscriber, for interstate tariffed collect information services.

§ 64.1508 Blocking access to 900 service.

(a) Local exchange carriers must offer to their subscribers, where technically feasible, an option to block access to services offered on the 900 service access code. Blocking is to be offered at no charge, on a one-time basis, to:

(1) All telephone subscribers during the period from November 1, 1993 through December 31, 1993; and

(2) Any subscriber who subscribes to a new telephone number for a period of 60 days after the new number is effective.

(b) For blocking requests not within the one-time option or outside the time frames specified in paragraph (a) of this section, and for unblocking requests, local exchange carriers may charge a reasonable one-time fee. Requests by subscribers to remove 900 services blocking must be in writing.

(c) The terms and conditions under which subscribers may obtain 900 services blocking are to be included in tariffs filed with this Commission.

§ 64.1509 Disclosure and dissemination of pay-per-call information.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services shall make readily available, at no charge, to Federal and State agencies and all other interested persons:

(1) A list of the telephone numbers for each of the pay-per-call services it carries;

(2) A short description of each such service;

(3) A statement of the total cost or the cost per minute and any other fees for each such service; and

(4) A statement of the pay-per-call service provider's name, business address, and business telephone number.

(b) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

(1) Establish a local or toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by that carrier; and

(2) Provide to all its telephone subscribers, either directly or through contract with any local exchange carrier providing billing and collection services to that carrier, a disclosure statement setting forth all rights and obligations of the subscriber and the carrier with respect to the use and payment of pay-per-call services. Such statement must include the prohibition against disconnection of basic communications services for failure to pay pay-per-call charges established by § 64.1507, the right of a subscriber to obtain blocking in accordance with § 64.1508, the right of a subscriber not to be billed for pay-per-call services not offered in compliance with federal laws and regulations established by § 64.1510(a)(iv), and the possibility that a subscriber's access to 900 services may be involuntarily blocked pursuant to § 64.1512 for failure to pay legitimate pay-per-call charges. Disclosure statements must be forwarded to:

(i) All telephone subscribers no later than 60 days after these regulations take effect;

(ii) All new telephone subscribers no later than 60 days after service is established;

(iii) All telephone subscribers requesting service at a new location no later than 60 days after service is established; and

(iv) Thereafter, to all subscribers at least once per calendar year, at intervals of not less than 6 months nor more than 18 months.

§ 64.1510 Billing and collection of pay-per-call and similar service charges.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

(1) Ensure that a subscriber is not billed for interstate pay-per-call services that such carrier knows or reasonably should know were provided in violation of the regulations set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA or any other federal law;

(2) In any billing to telephone subscribers that includes charges for any interstate pay-per-call service:

(i) Include a statement indicating that:

(A) Such charges are for non-communications services;

(B) Neither local nor long distances services can be disconnected for non-payment although an information provider may employ private entities to seek to collect such charges;

(C) 900 number blocking is available upon request; and

(D) Access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges;

(ii) Display any charges for pay-per-call services in a part of the bill that is identified as not being related to local and long distance telephone charges;

(iii) Specify, for each pay-per-call charge made, the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(iv) Identify the local or toll-free number established in accordance with § 64.1509(b)(1).

(b) Any common carrier offering billing and collection services to an entity providing interstate information services pursuant to a presubscription or comparable arrangement, or for interstate tariffed collect information services, shall, to the extent possible, display the billing information in the manner described in paragraphs (a)(2)(i) through (a)(2)(ii) of this section.

§ 64.1511 Forgiveness of charges and refunds.

(a) Any carrier assigning a telephone number to a provider of interstate pay-per-call services or providing transmission for interstate tariffed collect information services or interstate information services offered under a presubscription or comparable arrangement, and providing billing and collection services for such services, shall establish procedures for the handling of subscriber complaints regarding charges for those services. A billing carrier is afforded discretion to set standards for determining when a subscriber's complaint warrants forgiveness, refund or credit of interstate pay-per-call or information services charges provided that such charges must be forgiven, refunded, or credited when a subscriber has complained about such charges and either this Commission, the Federal Trade Commission, or a court of competent jurisdiction has found or the carrier has determined, upon investigation, that the service has been offered in violation of federal law or the regulations that are either set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA. Carriers shall observe the record retention requirements set forth in § 42.6 of this chapter except that relevant records shall be retained by carriers beyond the requirements of part 42 of this chapter when a complaint is pending at the time the specified retention period expires.

(b) Any carrier assigning a telephone number to a provider of interstate pay-per-call services but not providing billing and collection services for such services, shall, by tariff or contract, require that the provider and/or its billing and collection agents have in place procedures whereby, upon complaint, pay-per-call charges may be forgiven, refunded, or credited, provided that such charges must be forgiven, refunded, or credited when a subscriber has complained about such charges and either this Commission, the Federal Trade Commission, or a court of competent jurisdiction has found or the carrier has determined, upon investigation, that the service has been offered in violation of federal law or the regulations that are either set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II of III of the TDDRA.

§ 64.1512 Involuntary blocking of pay-per-call services.

Nothing in this subpart shall preclude a common carrier or information provider from blocking or ordering the blocking of its interstate pay-per-call programs from numbers assigned to subscribers who have incurred, but not paid, legitimate pay-per-call charges, except that a subscriber who has filed a complaint regarding a particular pay-per-call program pursuant to procedures established by the Federal Trade Commission under title III of the TDDRA shall not be involuntarily blocked from access to that program while such a complaint is pending. This restriction is not intended to preclude involuntary blocking when a carrier or IP has decided in one instance to sustain charges against a subscriber but that subscriber files additional separate complaints.

§ 64.1513 Verification of charitable status.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain verification that the entity or individual for whom contributions are solicited has been granted tax exempt status by the Internal Revenue Service.

§ 64.1514 Generation of signalling tones.

No common carrier shall assign a telephone number for any pay-per-call service that employs broadcast advertising which generates the audible tones necessary to complete a call to a pay-per-call service.

§ 64.1515 Recovery of costs.

No common carrier shall recover its cost of complying with the provisions of this subpart from local or long distance ratepayers.

[FR Doc. 93-20498 Filed 8-24-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84-01; Notice 31]

Final Listing of High Theft Lines for 1993 Model Year; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final listing of high-theft lines for the 1993 Model Year (MY), that was published on January 12, 1993 (58 FR 3850). In the amended list in this document, errors in the names of two Alfa Romeo lines and two Mercedes-Benz models are corrected, two Mercedes-Benz models, the 300 SEL and 380 SL, are removed, and the following are added: Three Mercedes-Benz models, the 300 SDL, the 300 SE, and the 300 TD; a General Motors line, the Chevrolet Monte Carlo; and a Mitsubishi line, the Mitsubishi 3000GT.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: NHTSA is correcting errors in the final list of high theft vehicle lines for Model Year (MY) 1993, that appeared in the **Federal Register** on January 12, 1993 (58 FR 3850). This correction document incorporates updated information brought to NHTSA's attention subsequent to the publication of the final list for MY 1993. The following are corrections to appendix A of 49 CFR part 541, the Theft Prevention Standard:

The Alfa Romeo lines, erroneously listed as "Milano 141" and "Fiat 144" should read, respectively, "Milano 161" and "Fiat 164".

The Mercedes-Benz models, erroneously listed as "380 SEC/500 SEC", and "380 SEL/500 SEL" should read, respectively, "300 SEC/500 SEC", and "300 SEL/500 SEL". The "380 SL" is removed, as it is an erroneous listing of the 300 SL, which is already listed in Appendix A-I, under Mercedes-Benz, as part of the 129 line. The "300 SEL" is removed, as it is duplicative of the "300 SEL/500 SEL." In addition, the following three models are added to Mercedes-Benz's listing in Appendix A: the 300 TD, the 300 SE, and the 300 SDL lines.

The General Motors line, "Chevrolet Monte Carlo", and the Mitsubishi Motors line, the "Mitsubishi 3000GT", were inadvertently left out in the final list for MY 1993, and are added in this document.

Since the corrections made by this document only inform the public of previous agency actions, and do not impose any additional obligations on any party, NHTSA finds for good cause that the revisions made by this notice should be effective as soon as it is published in the **Federal Register**.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for part 541 continues to read as follows:

Authority: 15 U.S.C. 2021-2024, and 2026; delegation of authority at 49 CFR 1.50.

Appendix A—[Amended]

2. Appendix A is amended as follows:

a. In the entry for "Alfa Romeo", "Milano 141" is revised to read "Milano 161"; and "Fiat 144" is revised to read "Fiat 164".

b. In the entry for "General Motors", "Chevrolet Monte Carlo" is added after "Chevrolet Lumina".

c. In the entry for "Mercedes-Benz", "380 SEC/500 SEC" is revised to read "300 SEC/500 SEC"; "380 SEL/500 SEL" is revised to read "300 SEL/500 SEL"; "300 SEL" is removed; "380 SL" is removed; "300 SDL" is added after "260 E"; "300 SE" is added after "300 SDL"; and "300 TD" is added after "300 SEL/500 SEL".

d. In the entry for "Mitsubishi", "Mitsubishi 3000GT" is added after "Eclipse".

Issued on: August 18, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93-20500 Filed 8-24-93; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 930402-3134; I.D. 081393C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the recreational salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Humbug Mountain, Oregon, was closed at midnight, August 10, 1993. This action is necessary to conform to the preseason announcement of the 1993 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 10, 1993. Comments will be accepted through September 8, 1993.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its amended emergency interim rule (58 FR 31664, June 4, 1993), NMFS announced that the 1993 overall recreational catch from Cape Falcon, Oregon, to the U.S.-Mexico border would be limited to a catch quota of 68,000 coho salmon. When this coho salmon quota is reached, all recreational fisheries between Cape Falcon and Humbug Mountain, Oregon, will close. The recreational fishery between Cape Falcon and Humbug Mountain was open on May 1 through June 6, then reopened on July 13 and was scheduled to continue through the earlier of September 7 or the projected attainment of the overall coho quota south of Cape Falcon. Beginning July 13, the fishery was open Sunday through Tuesday only.

Based on the best available information on August 12, 1993, the recreational fishery catch south of Cape Falcon was estimated to be 61,000 coho salmon through August 10. The 7,000 fish remaining in the overall coho quota were projected to be caught by the recreational fisheries south of Humbug Mountain during the rest of their scheduled seasons. Therefore, the recreational fishery between Cape Falcon and Humbug Mountain, Oregon, which closed as regularly scheduled at midnight Tuesday, August 10, 1993, was not reopened on its next scheduled opening date of Sunday, August 15, 1993, and will remain closed for the remainder of the season.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this closure. The State of Oregon will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 15, 1993, the time of the next scheduled opening, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 Khz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1993.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-20526 Filed 8-24-93; 8:45 am]

BILLING CODE 3510-22-M

[I.D. 081993A]

50 CFR Part 285

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of reserve allocation to the 1993 Harpoon category quota.

SUMMARY: NMFS announces that it is taking action, pursuant to authority in implementing regulations, to allocate 7 metric tons (mt) from the 1993 reserve to the Harpoon category. This action is being taken to extend the season for the Harpoon category, thereby assuring additional collection of biological data, providing additional fishing opportunities for this traditional fishery during the late summer when the weather is usually good and, thereby, increasing the economic benefits from this fishery. This action results in a total 1993 Harpoon category quota of 60 mt and a remaining reserve of 3 mt.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin B. Foster, 508-281-9260, or Aaron E. King, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended U.S. quota among the various domestic fishing categories.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA, has the authority to allocate any portion of the reserve amount to any fishing category after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Allocating 7 mt from the reserve to the Harpoon category responds to the four criteria listed above as follows: (1) Harpoon landings allow collection of biological data (weight, length, area harvested, etc.) from the harpoon fishery; (2) 1993 Harpoon category catches have been high relative to recent years at this date in the season, and it would be necessary to close this category of the fishery within the next few days unless additional quota allocation is made; (3) given the importance of fishing in good weather conditions normally occurring in the late summer (late August and early September), but very unpredictable after that, the Harpoon category will be able to harvest the additional amount of Atlantic bluefin tuna; and (4) new quota monitoring techniques (e.g., daily faxing of dealer reports) will improve NMFS' ability to keep all categories within assigned quotas.

Since 1993 is the second year of the biennial quota, and one of the stated management objectives is to maximize use of the available ICCAT quota, NMFS believes it is preferable to allocate some of the reserve early in the 1993 season, rather than later. Allocation of the reserve beforehand will enable fishermen to plan better for fishing activities, will reduce the likelihood of a disruptive August closure when weather is usually good, and may distribute fishing opportunities more fairly than could be accomplished later in the season. Furthermore, the late summer fishery would allow Harpoon category fishermen to benefit from higher market prices.

At the present harvest level and rate of catch, NMFS estimates that the Harpoon category could reach its quota of 53 mt by August 24, 1993. Therefore, NMFS announces that it is taking action to allocate 7 mt from the 1993 reserve to the Harpoon category. It is estimated that this action will prolong the Harpoon category season by at least 5 days. The intent of this action is to prevent overharvest of the western Atlantic bluefin tuna catch quota established for this fishery for the 1992-93 biennial period, while providing continued collection of biological data, helping continue traditional late summer fisheries, maximizing the use of the available resource, and distributing the fishing opportunity and beneficial economic impacts among many businesses and users for a longer period of time. Additionally, this helps provide a reasonable opportunity for U.S. fishermen to harvest the 1992-93 quota, as required by the Atlantic Tunas Convention Act (ATCA).

Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 19, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 93-20540 Filed 8-20-93; 2:43 pm]

BILLING CODE 3510-22-P

VOL 58 ISS 163 AG 25 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 163
Wednesday, August 25, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN: 3206–AF50

Reduction in Force Assignment Rights

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations that would expand employees' assignment rights in reduction in force (RIF) competition. These proposed regulations broaden the "retreat" right, a form of "bumping" within the same retention subgroup that is limited to positions formerly held by a competing employee, to encompass additional positions held by other employees with less service in the same subgroup. The expanded retreat right would be mandatory for all RIF actions effected 6 months after the publication date of final regulations.

DATES: Written comments will be considered if received no later than October 25, 1993.

ADDRESSES: Send or deliver written comments to: Associate Director for Career Entry, room 6F08, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Edward P. McHugh, (202) 606–0960; FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: The present provisions covering RIF assignment rights are set forth in subpart G of 5 CFR 351. Competing employees in retention tenure Groups I and II with current performance ratings of at least "Minimally Successful" who have been released from their competitive levels are entitled to an offer of RIF assignment if they have "bumping" or "retreating" rights to an available position in the same competitive area. The available position must be within three grades or grade-intervals (or equivalent) of the employee's present position. However, an employee who is a preference eligible for purposes of this part and who has a compensable service-connected disability of 30 percent or more has a retreat right to positions up to five grades or grade-intervals (or equivalent) of the employee's present position.

Section 5 CFR 351.701(b) covers employee "bumping" rights. *Bumping* means displacing an employee in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. Although the released employee must be qualified for the position, it may be a position that the employee has never held. Sections 5 CFR 351.701(c) and (d) cover "retreat" rights. *Retreating* means displacing an employee with less service within the released employee's own tenure group and subgroup (i.e., a limited form of bumping within the same retention group and subgroup). The position must also be the same position or essentially identical to a position held by the released employee in any Federal agency on a permanent basis. An employee with a current annual performance rating of "Minimally Successful" only has retreat rights to positions held by an employee with the same or lower ratings.

Section 5 CFR 351.701(b) is revised to provide competing employees with a broader retreat right. An employee would have the right to retreat by displacing a lower-standing employee within the same group and subgroup when the agency could not make an equal offer of assignment using the bumping provisions. To exercise the expanded retreat right, the released employee must be qualified for the position. However, the retreat right would no longer be limited to a position that is the same or essentially identical to a position previously held by the released employee. This basic provision is presently an option set forth in 5 CFR 351.705(a)(1).

Under the revised 5 CFR 351.701(c), a preference eligible employee for purposes of this part with a compensable service-connected disability of 30 percent or more would have retreat rights to positions up to five grades or grade intervals (or equivalent).

In conforming changes, present 5 CFR 351.701(d) is deleted and 5 CFR 351.701(e) is redesignated 5 CFR 351.701(d).

Finally, 5 CFR 351.705(a)(1) is revised to provide that, at its option, an agency may allow bumping within the same subgroup in all actions without first considering whether the offer is equivalent to a bump offer under 5 CFR 351.701(b).

E.O. 12291 Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 351

Government employees.

U.S. Office of Personnel Management

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. In Section 351.701, paragraph (c) is revised, paragraph (d) is removed, and paragraph (e) is redesigned as paragraph (d), to read as follows:

§ 351.701 Assignment involving displacement.

* * * * *

(c) *Same subgroup-retreating.* A released employee shall be assigned in accordance with paragraph (a) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more than limit is five grades (or appropriate grade intervals or equivalent); and

(3) The agency cannot make an equal offer of assignment by displacing an employee in a lower subgroup (e.g., through bumping rights) under paragraph (b) of this section.

* * * * *

3. In § 351.705, paragraph (a)(1) is revised to read as follows:

§ 351.705 Administrative assignment.

(a) * * *

(1) Permit a competing employee to displace an employee with lower standing in the same subgroup consistent with § 351.701.

* * * * *

[FR Doc. 93–20440 Filed 8–24–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–095–1]

Importation of Apples, Apricots, Peaches, Persimmons, Pomegranates, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations by adding San Luis Rio Colorado to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported without treatment for these pests. We believe that this municipality is free from certain injurious insect pests known to occur in Mexico and known to attack these fruits. This action would allow the importation of these fruits into the United States from San Luis Rio Colorado, in accordance with the regulations. We are also proposing to make other nonsubstantive changes for clarity.

DATES: Consideration will be given only to comments received on or before September 24, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–095–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of certain injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56–2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects. Paragraph (h) of § 319.56–2 lists municipalities in Sonora, Mexico, that meet the criteria with regard to five listed insect pests: *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus.* Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from municipalities in Sonora, Mexico, listed in paragraph (h) may be imported into the United States without treatment for the five listed insect pests.

We are proposing to add San Luis Rio Colorado to the list of municipalities in Sonora, Mexico, determined to be free from the five listed fruit flies and from which apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported into the United States without treatment of these pests. We believe that San Luis Rio Colorado meets all the criteria contained in § 319.56–2(e)(4) and (f). Specifically, we have determined that:

1. Within the past 12 months, the Mexican Ministry of Agriculture and Water Resources has performed trapping surveys that show San Luis Rio Colorado to be free of the five listed fruit flies—including the Mexican fruit fly—and that the methods employed in these surveys met the requirements approved by the Administrator as adequate to detect these infestations.

2. The Mexican government has adopted and is enforcing requirements to prevent the introduction into San Luis Rio Colorado of injurious insects known to attack fruits and vegetables; these requirements have been deemed by the Administrator to be at least equivalent to those requirements imposed under chapter III, title 7 of the Code of Federal Regulations to prevent the introduction of injurious insects into the United States and the interstate spread of injurious insects.

3. The Mexican Ministry of Agriculture and Water Resource has submitted to the Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under paragraph (f) of § 319.56–2 to prevent the introduction of injurious insects into San Luis Rio Colorado.

We are also proposing to make other nonsubstantive changes for the sake of clarity.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action would allow the importation of apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from San Luis Rio Colorado into the United States, without treatment for the five listed fruit flies. This action could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of the above-listed fruits, and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant, since the amount of fruit imported into the

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United States from San Luis Rio Colorado is expected to be very small.

Based on available information, we anticipate that only imports of oranges, peaches, and possibly grapefruit may increase as a result of this rule. Further, if imports of oranges and peaches from Sonora and imports of grapefruit from Mexico in general were to increase 10 percent from 1992 levels, this increase would amount to less than one percent of total U.S. production and less than one percent of total U.S. imports of these commodities. Consequently, we do not estimate any changes in prices or costs of fresh oranges, peaches, or grapefruit as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule would allow fruit to be imported into the United States from San Luis Rio Colorado, Mexico. If this proposed rule is adopted, State and local laws and regulations regarding fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be revised to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (h) is amended by removing the eight semicolons following each city name and by adding commas in their places and by adding the phrase "San Luis Rio Colorado," immediately after "Puerto Penasco,".

Done in Washington, DC, this 18th day of August, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20542 Filed 8–24–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV93–966–1PR]

Tomatoes Grown in Florida; Proposed Rule To Revise the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on revisions to the handling regulation established under the Federal marketing order for Florida tomatoes. This action would clarify and bring the regulations into conformity with current industry operating practices. The Florida Tomato Committee (Committee), the agency responsible for local administration of the order, recommended this action.

DATES: Comments must be received by September 9, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX Number (202) 720–5698. Comments should reference the docket number, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–5698; or John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P. O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770 or FAX (813) 299–5169.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes that are subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the tomato handlers and producers may be classified as small entities.

This action proposes revising § 966.323 of Subpart—Administrative Rules and Regulations and is based on a recommendation of the Committee and other available information.

In accordance with § 966.323, Handling Regulation, of the order's rules and regulations, fresh market shipments of Florida tomatoes sold within the regulated area must meet grade, size and inspection requirements. Fresh market shipments of tomatoes to points outside of the regulated area must also meet grade, size and inspection requirements, as well as container requirements. The regulated area is defined as that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except for the panhandle. The production area is part of the regulated area.

In recent years, the Committee has recommended various changes to this handling regulation in an attempt to improve returns to Florida tomato producers and provide consumers with a quality product.

The Committee recommends that these regulations no longer apply to handlers shipping fresh tomatoes within the regulated area. According to the Committee, many handlers who sell tomatoes within the regulated area are small handlers who purchase the right to enter tomato fields and glean from them tomatoes that were picked over or missed by regular harvesting crews. These small handlers do not qualify as "registered handlers" under the marketing order. Registered handlers are defined as persons who have adequate facilities for grading tomatoes for market and who assume initial responsibility for compliance with inspection, assessment, and other regulatory requirements on the handling of tomatoes grown in the production area. These small handlers lack permanent, non-portable facilities to grade, size and pack tomatoes.

In the past, the industry had marketing problems with poor quality tomato shipments within the regulated area. The Committee indicates that this is no longer a problem.

Tomatoes shipped within the regulated area normally are more ripe than those shipped outside that area, and cannot withstand shipment to more distant markets. Most tomatoes produced in Florida are shipped fresh to markets outside the regulated area.

Hence, the Committee recommended that grade, size and inspection requirements implemented under the order only apply to shipments of fresh tomatoes made outside the regulated area. This action would modify the introductory paragraph by eliminating the reference to tomatoes shipped within the regulated area.

There are also minor changes proposed in the regulation to clarify and conform with current industry practices. In the size provision, clarification is being proposed to show that size requirements would apply to all tomatoes packed by a "registered" handler. Currently the word "registered" is not included in the regulation. In addition, clarification is proposed to show that containers or "lids" shall be marked with the proper size. Currently, the word "lids" is not included in that language. To conform with current industry practices, this language should be changed as recommended.

Regarding the provisions on special purpose shipments and safeguards, the Committee has recommended including authority for a special purpose shipment exemption for tomatoes for "pickling". Pickling is a common method of processing tomatoes and the Committee believes that pickling should be included in this provision.

Under § 966.323(d)(2), the Committee recommended changing, from 60 pounds to 50 pounds, the minimum quantity of tomatoes that may be handled per day exempt from the handling regulation. Thirty-pound tomato boxes are no longer used. Twenty-five-pound cartons are the most common size shipped and the intent of the Committee is to exempt up to two boxes of tomatoes per day from the requirements of § 966.323. This recommended change is included in this proposed rule.

With regard to container requirements of § 966.323(a)(3), the committee recommended a minor correction to the reference to the United States Standards for Grades of Fresh Tomatoes.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is provided to allow interested persons an opportunity to respond to this proposal. The Committee would like the proposed changes to be effective before October 10, 1993. That is the beginning of the period of regulation for the 1993–94 crop year. The Committee believes this action should be implemented at the beginning of the crop year. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the introductory text and the first sentence in paragraph (a)(2)(i); adding the words "or lid" after the phrase "and each container" in paragraph (a)(2)(ii); revising the last sentence in paragraph (a)(3)(i); adding in paragraphs (b) and (c) after the phrase "shipments of tomatoes for" the word "pickling,"; and changing in paragraph (d)(2) the words "60 pounds" to "50 pounds" to read as follows:

§ 966.323. Handling regulation.

From October 10 through June 15 of each season, except as provided in paragraph (b) and (d) of this section, no person shall handle any lot of tomatoes produced in the production area for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section.

(a) * * *

(2) *Size.* (i) All tomatoes packed by a registered handler shall be at least 2 $^{6}/_{32}$ inches in diameter and shall be sized with proper equipment in one or more of the following ranges of diameters.

* * *

* * * * *

(3) *Containers.* (i) * * * Section 51.1863 of the U.S. Tomato Standards shall apply to all containers.

* * * * *

Dated: August 18, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20413 Filed 8–24–93; 8:45 am]

BILLING CODE 3410–10–P

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9 CFR Parts 145 and 147

[Docket No. 92-151-1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new administrative and laboratory procedures for examining and testing participating flocks and preventing and responding to disease outbreaks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1992 Biennial Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry, allow the use of state-of-the-art laboratory procedures, and allow the Plan to better respond to disease emergencies.

DATES: Consideration will be given only to comments received on or before September 24, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-151-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202-690-2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436-7768.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program. Also, regulations in 9 CFR 82.34 require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S. Sanitation Monitored" under the Plan or they meet the requirements of a State classification plan determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to be equivalent to the Plan, in accordance with 9 CFR 145.23(d).

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as "the regulations") contain the provisions of the Plan. APHIS amends these provisions from time to time to incorporate new scientific information and technologies within the Plan. We are proposing to amend the regulations by:

1. Adding definitions of *Administrator, Animal and Plant Health Inspection Service, serial,* and *suspect flock;*
2. Clarifying the recordkeeping requirements for flocks maintained primarily for the production of hatching eggs;
3. Providing for U.S. Department of Agriculture (USDA) approval of pullorum-typhoid tube agglutination antigens;
4. Allowing a sample of at least 500 birds, in lieu of the entire flock, to be tested by the State Inspector to qualify certain succeeding flocks for participation in the Plan's pullorum-typhoid program;
5. Removing provisions that allow two consecutive generations in egg-type chicken breeding flocks, meat-type chicken breeding flocks, and waterfowl, exhibition poultry, and game bird breeding flocks to go without testing for pullorum-typhoid;
6. Providing for the Plan to investigate any multi-State outbreak of a Plan disease;
7. Allowing the use of a federally licensed *Salmonella enteritidis* bacterin to vaccinate birds in egg-type chicken multiplier breeding flocks;
8. Providing for various sample sizes of live birds for bacteriological examination under the U.S. Sanitation Monitored program for egg-type chickens;
9. Changing the name of the U.S. Sanitation Monitored program for egg-type chickens to U.S. *S. enteritidis* Monitored;
10. Adding a USDA-approved polymerase chain reaction (PCR)-based DNA procedure as a method of diagnosing mycoplasma;
11. Adding the enzyme-linked immunosorbent assay (ELISA) as a basic screening test for mycoplasma;
12. Adding an alternative laboratory procedure for mycoplasma hemagglutination inhibition testing using a microtiter technique;
13. Providing for the most contemporary laboratory methods for use in environmental sample selection, *Salmonella* isolation, examination of *Salmonella* reactors, and program monitoring procedures for egg-type chicken breeding flocks, meat-type chicken breeding flocks, and waterfowl, exhibition poultry, and game bird breeding flocks; and
14. Amending the procedure for determining the status and effectiveness of sanitation monitored programs.

These proposed amendments are consistent with the recommendations approved by the voting delegates to the National Plan Conference that was held from June 29 to July 2, 1992. Participants in the National Plan Conference represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating States. The proposed amendments are discussed in greater detail below.

Definitions

We are proposing to add three definitions to § 145.1, which contains definitions for various terms used within the Plan. First, we would add definitions of *Administrator* and *Animal and Plant Health Inspection Service.* These terms are used in the regulations but are not defined. The definitions we would add are the same definitions used for the terms in other parts of 9 CFR chapter I.

We would also add a definition of *serial,* a term that is used in this document in a proposed amendment to § 145.14. When used in connection with biological products, a serial is defined as the "total quantity of completed product which has been thoroughly mixed in a single container and identified by a serial number." We have taken the definition from 9 CFR part 101, which contains definitions for terms used in regulations concerning viruses, serums, toxins, and analogous products.

Finally, we would add a definition of *suspect flock.* A flock would be considered to be a suspect flock for the purposes of the Plan if any evidence exists that it has been exposed to a communicable poultry disease. The term would be useful in the event of an outbreak of a Plan disease, when even the slightest evidence that a flock may be exposed to a disease would demand investigation in order to ensure that the disease does not spread.

Inspections

Section 145.12 requires that the records of all flocks maintained primarily for the production of hatching eggs be examined annually, but does not specify which records are to be maintained or the length of time they are to be kept. We would amend § 145.12(b) to specify that the records shall include VS Form 9-2, "Flock Selecting and Testing Report;" VS Form 9-3, "Report of Sales of Hatching Eggs, Chicks, and Poults;" set and hatch records; egg receipts; and egg/chick orders or invoices. We would require the records to be maintained for 3 years. Keeping the records for 3 years is necessary to ensure the availability of complete records due to the differences between calendar years, hatching years (May to April), and reporting years (July to June). The records will provide the State Inspector with sufficient information to determine whether the flockowner is in compliance with the sanitation, blood testing, and other provisions of the Plan programs for which the flocks have, or are being, qualified.

Blood Testing

Section 145.14 contains requirements for the blood testing of poultry. The official blood tests for pullorum-typhoid set forth in § 145.14(a)(1) are the standard tube agglutination test, the microagglutination test, the ELISA test, and the rapid serum test for all poultry, and the stained antigen, rapid whole-blood test for all poultry except turkeys. The regulations require that all microtest antigens and ELISA reagents be approved by the Department, but does not require Department approval for tube agglutination antigens. The tube agglutination test is used for screening and to retest serum from positive reactions to the rapid whole-blood test in the field. If the reaction to this retest is positive in dilutions of 1:50 or greater for the standard tube agglutination test, additional examination of the bird and flock will be performed. It is, therefore, critical that the tube agglutination antigens be effective, so we are proposing to require that the tube agglutination antigens, like the microtest antigens and ELISA reagents, be submitted to the Department for approval. The antigen producer would be required to submit a sample from each serial of antigen upon its manufacture and, because some serials of antigen may last more than a year, once a year thereafter as long as antigen from that serial continues to be made available for use. This would ensure the effectiveness of all antigens and reagents used in official tests for pullorum-typhoid.

Testing of Succeeding Flocks

Section 145.14(a)(6) contains the pullorum-typhoid testing requirements that must be met for infected and succeeding flocks to qualify for participation in the Plan. Following the discovery of reactors in blood or serum from any flock, or the isolation of *Salmonella pullorum* or *Salmonella gallinarum* organisms in baby poultry or in fluff samples produced from hatching eggs, the infected flock must have two consecutive negative results to an official blood test for the flock to qualify for participation in the Plan. The succeeding flock, which is a flock brought onto the premises during the 12 months following the removal of an infected flock, must test negative to one official blood test.

When the succeeding flock contains more than 5,000 birds, 100 percent testing of the flock is time-consuming and costly. To help save some of that time and cost, we are proposing to allow a sample of at least 500 birds from a succeeding flock of more than 5,000 birds to be tested in lieu of the entire flock. In some cases, the circumstances of an outbreak and the improbability of horizontal transmission, along with the cleaning and disinfection measures that are prescribed following an outbreak, make it unlikely that the disease could have been passed on to a succeeding flock. In such situations, 100 percent testing of the succeeding flock would not be required to ensure a disease-free flock, so a smaller sample would be appropriate. Each Official State Agency would retain the authority to order 100 percent testing if there is known to be infected progeny that originated from the infected flock, and the smaller sample would be allowed only with the agreement of the Official State Agency, the flockowner, and the Administrator. This change in the regulations would give Official State Agencies a degree of flexibility in handling the testing of succeeding flocks, thus reducing the time and money spent on the testing of succeeding flocks following an outbreak of pullorum-typhoid in commercial flocks.

Terminology and Classification; Flocks and Products

Under the U.S. Pullorum-Typhoid Clean program, a breeding flock composed of progeny of a primary breeding flock that is intended solely for the production of multiplier breeding flocks may qualify for U.S. Pullorum-Typhoid Clean status without being required to undergo blood testing for pullorum-typhoid. However, pullorum disease and/or fowl typhoid can be introduced, and infection can be established, at any level of primary breeding flock following lapses in basic biosecurity. If two generations of infected breeding flocks are allowed to go untested, pullorum disease and/or fowl typhoid could become widely distributed before being detected. Therefore, we would amend the provisions of the U.S. Pullorum-Typhoid Clean program for egg-type chickens, meat-type chickens, and waterfowl, exhibition poultry, and game birds (§§ 145.23(b)(3), 145.33(b)(3), and 145.53(b)(3), respectively) to remove an exemption that allows two consecutive generations of breeding flocks to qualify for U.S. Pullorum-Typhoid Clean status without undergoing blood tests for pullorum-typhoid.

Investigation of Disease Outbreaks

The U.S. Pullorum-Typhoid Clean program also requires that Official State Agencies promptly investigate all reports of *Salmonella pullorum* or *Salmonella gallinarum* isolations from poultry to determine the origin of the infection. That requirement does not, however, provide for a coordinated investigation in the event of a multi-State disease outbreak. In order to facilitate the containment and eradication of such an outbreak, we are proposing to amend §§ 145.23(b)(3)(v), 145.33(b)(3)(v), 145.43(b)(3)(v), and 145.53(b)(3)(v) to require that the Plan conduct an investigation of any outbreak of a Plan disease if the infection involves more than one State or if there is exposure to poultry in another State from the positive flock.

Vaccination of Egg-Type Chicken Multiplier Breeding Flocks

We are proposing to amend § 145.23(d) to allow birds in egg-type chicken multiplier breeding flocks to be vaccinated with a federally licensed *Salmonella enteritidis* bacterin. Section 145.23(d)(1)(v) currently requires that environmental samples be collected from the flock for testing when the birds in the flock are at least 4 months of age.

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We would amend § 145.23(d)(1)(v) to require that the environmental samples be collected from the flock sooner, when the birds are 2 to 4 weeks of age. We would add a new paragraph stating that after the samples have been tested and it has been confirmed that the flock is free of *Salmonella enteritidis*, the flock, except for 350 chickens, could be vaccinated with a licensed *Salmonella enteritidis* bacterin. The 350 chickens from the flock that were not vaccinated would be banded and set aside to serve as sentinel birds until the flock reaches 4 months of age. At that time, 300 of the sentinel birds would be officially tested with pullorum antigen, as described in current § 145.23(d)(1)(vi). Following negative serological and bacteriological testing, the banded, non-vaccinated birds would be vaccinated.

Section 145.23(d)(3) requires that blood samples from 300 birds be tested every 30 days if *Salmonella enteritidis* is isolated from an environmental sample collected from the flock. Because blood samples taken from birds vaccinated with a *Salmonella enteritidis* bacterin would have positive reactions when tested with pullorum antigen, we would amend the requirement so that the requirement would apply only to non-vaccinated birds.

Allowing egg-type chicken multiplier breeding flocks to be vaccinated with a federally licensed *Salmonella enteritidis* bacterin would provide protection for those flocks from chance sources of *Salmonella enteritidis* infection, such as infected wild birds, contaminated feed or waste, and infected personnel. This would also give added assurance that all chicks would remain free of *Salmonella enteritidis*.

Testing of Egg-Type Chicken Flocks

Section 145.23(d)(2) states that if *Salmonella enteritidis* is isolated from an environmental or other specimen collected from an egg-type chicken breeding flock, then a 60-bird random sample must be taken from the flock for laboratory analysis. If only one specimen bird from that 60-bird sample is found positive for *Salmonella enteritidis*, the Plan participant may request another 60-bird sample be bacteriologically examined. The size of these samples is standard, regardless of whether the flock contains 200 birds or 200,000. This can place an unfair burden on small hatcheries, which are required to sacrifice as many birds as a large hatchery. Therefore, we would amend § 145.23(d)(2) to set the required sample size at 60 birds for flocks containing 5,000 birds or more and 30 birds for flocks with fewer than 5,000 birds. If the participant requests that a second sample be examined, that sample would be equal in size to the first sample. This revision would ease the burden on the owners of smaller flocks while still providing an adequate statistical sample of birds for testing.

Salmonellosis Prevention and Control Programs

As explained in §§ 145.23(d) and 145.33(d), the U.S. Sanitation Monitored program for the breeding-hatching industry is intended to be the basis from which the industry may conduct a program for the prevention and control of Salmonellosis. The classification "U.S. Sanitation Monitored" is currently used for both egg-type chickens and meat-type chickens, even though the requirements for each type of chicken are vastly different. We are proposing to amend § 145.23(d) to change the name of the program as it applies to egg-type chickens to "U.S. *S. enteritidis* Monitored." This would eliminate the potential for any confusion between the programs.

Testing of Mycoplasma Reactors

Section 147.6 contains the procedure for determining the status of flocks that have reacted to tests for *Mycoplasma gallisepticum*, *Mycoplasma synoviae*, and *Mycoplasma meleagridis*. The procedure calls for the use of an official test, either a macroagglutination test or a microagglutination test, as a basic screening test for mycoplasma. We are proposing to add a Department-approved PCR-based procedure as a supplemental means of identifying mycoplasma.

The current laboratory procedures for determining the status of mycoplasma reactors require the isolation of the causative agent or the identification of antibodies produced by the birds in response to the infection. These techniques can be time-consuming and lack the desired degree of accuracy. The PCR-based procedure provides the ability to identify mycoplasma rapidly and accurately by its molecular structure, rather than by indirect measurements based on what the mycoplasma does in cell culture. Additionally, the ability to automate the PCR-based procedure for testing large numbers of samples should help achieve greater efficiency in terms of cost, accuracy, and reliability.

Standard Test Procedures for Mycoplasma

In § 147.7, the serum plate agglutination test and the tube agglutination test are identified as basic screening tests for mycoplasma antibodies. Which test is selected depends on preference, laboratory facilities, and the availability of antigen. We are proposing to add the ELISA test to § 147.7 as a third basic screening test for mycoplasma antibodies. Many breeders already use ELISA tests to monitor their flocks for a number of diseases. The ELISA test appears to be more accurate than the serum plate and tube agglutination tests, delivering fewer false positive and false negative results.

Alternative Procedure for Microtiter Hemagglutination Inhibition Testing

Section 147.7(e) contains the procedure for the mycoplasma hemagglutination inhibition test using microtiter technique. We are proposing to add an alternative method of conducting the test that would use a single 4–HA dilution of antigen for all serum dilutions, rather than the 8 HA units and 4 HA units of antigen called for by the current method. The alternative method would also have serial dilutions of serum samples made prior to the addition of 4 HA units of antigen to all dilutions. The current procedure adds 8 HA units of antigen to the first dilution (highest antibody concentration) and serially dilutes the antigen-antibody mixture into tubes or wells containing 4 HA units of antigen. The proposed alternative test is the same as the current test, with the exception of the different dilution, and appears to be just as effective. The new test, however, is easier to perform and can be conducted in half the time as the current test. Adding this alternative procedure would give laboratories the option of using either method, since both are scientifically sound.

Bacteriological Examination Procedures

Section 147.11 contains the recommended laboratory procedures for the bacteriological examination of salmonella reactors. We are proposing to add a new set of procedures to § 147.11 for use with egg-type chickens, meat-type chickens, and waterfowl, exhibition poultry, and game birds. (During the 1992 Plan conference, representatives of the turkey industry unanimously requested that turkeys be removed from consideration for this particular proposal. Because some of the techniques in the proposed procedure regarding salmonella do not apply to the examination of turkeys, the existing procedures in § 147.11 would be retained for use with turkeys only.) The new procedures appear to provide more clarity and detail regarding the collection and handling of organ and intestinal samples from suspects or serological reactors cultured in the Plan's Pullorum-Typhoid and Sanitation Monitored programs. Scientific bacteriological techniques for culturing these samples in both the Pullorum-Typhoid Program and the Sanitation Monitored Program would be provided in a pair of flow charts that would be included in the revision. The two charts update, and are intended to clarify, the earlier Plan specifications.

Procedures to Determine Status and Effectiveness of Sanitation Monitored Program

Section 147.14 contains monitoring procedures that may be applied at the discretion of the Official State Agency to determine the status and effectiveness of a sanitation monitored program. One of the procedures involves the culturing of samples from dead-in-shell eggs. We are proposing to amend that procedure to add a recommendation that the eggs be cultured in a preenrichment broth supplemented with ferrous sulfate prior to subculture into a tetrathionate selective enrichment. The ferrous sulfate would be added to egg preenrichments to counteract the salmonella-inhibiting characteristics of egg conalbumin and ovotransferrin. The proposed amendment to § 147.14 would also provide further direction on the culture techniques presented in the illustrations that would accompany the proposed addition to § 147.11 discussed above. This proposed amendment to § 147.14 would make the procedure for culturing dead-in-shell eggs consistent with recommendations presented in American Association of Veterinary Laboratory Diagnosticians and American Association of Avian Pathologists laboratory manuals.

Miscellaneous

In addition to the proposed changes discussed above, we would also make several nonsubstantive editorial changes. We would redesignate many of the footnotes in parts 145 and 147 so that the footnotes are numbered consecutively by part, instead of by section. We would also revise or amend some of the footnotes for the sake of clarity or to update information. Finally, we would amend §§ 145.21, 145.31, 145.41, 145.51, and 147.41, all of which contain definitions applicable to their respective subparts, by removing the paragraph designation for each definition and arranging the definitions in alphabetical order.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 31st Biennial Conference. Because participation in the Plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program. The proposed changes would keep the provisions of the Plan current with changes in the poultry industry, allow the use of state-of-the-art laboratory and testing procedures, and allow the Plan to better respond to disease emergencies.

Of the proposed amendments, only two are expected to have more than a negligible effect on Plan participants. The proposal to allow, in certain cases, a 500-bird sample to be tested in lieu of the entire flock would result in a cost savings for affected Plan participants because fewer tests would be required to qualify certain multiplier breeding flocks and succeeding flocks for participation in the Plan's pullorum-typhoid program. It is likely, however, that those savings would be offset by the amendment that would increase testing requirements by removing, for all poultry except turkeys, provisions that allow two consecutive generations of breeding flocks to go without testing for pullorum-typhoid. The remaining items, because they are either administrative or procedural in nature, are not expected to have a significant economic impact.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 145.1 would be amended by adding, in alphabetical order, four new definitions to read as follows:

§ 145.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

* * * * *

Serial. The total quantity of completed product which has been thoroughly mixed in a single container and identified by a serial number.

* * * * *

Suspect Flock. A flock shall be considered, for the purposes of the Plan, to be a suspect flock if any evidence exists that it has been exposed to a communicable poultry disease.

* * * * *

§ 145.10 [Amended]

3. In § 145.10, paragraph (d), the words "§ 145.23(d) and" would be removed.

4. In § 145.10, a new paragraph (l) would be added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(l) *U.S. S. Enteritidis Monitored.* (See § 145.23(d).)

Figure 13

5. In § 145.12, paragraph (b), two new sentences would be added after the first sentence to read as follows:

§ 145.12 Inspections.

* * * * *

(b) * * * Records shall include VS Form 9–2, "Flock Selecting and Testing Report"; VS Form 9–3, "Report of Sales of Hatching Eggs, Chicks, and Poults"; set and hatch records; egg receipts; and egg/chick orders or invoices. Records shall be maintained for 3 years. * * *

§ 145.14 [Amended]

6. In § 145.14, paragraph (a)(1), at the end of the third sentence, the word "test." would be removed and the words "and tube agglutination tests. Each serial of tube antigen shall be submitted by the antigen producer to the Department for approval upon manufacture and once a year thereafter as long as antigen from that serial continues to be made available for use." would be added in its place.

7. In § 145.14, the introductory text of paragraph (a)(6), the third sentence would be revised to read as follows:

§ 145.14 Blood testing.

* * * * * *

(a) * * *

(6) * * * Testing to qualify flocks for Plan participation must include the testing of all birds in infected flocks and succeeding flocks for a 12-month period, and shall be performed or physically supervised by a State Inspector; *Provided,* That at the discretion of the Official State Agency, a sample of at least 500 birds, rather than all birds in the flock, may be tested by the State Inspector if it is agreed upon by the Official State Agency, the flockowner, and the Administrator.

* * *

* * * * * *

§ 145.21 [Amended]

8. Section 145.21 would be amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

§ 145.23 [Amended]

9. Section 145.23 would be amended as follows:

a. The introductory text of paragraph (b)(3) would be amended by removing the words ", or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks,".

b. Paragraph (b)(3)(v) would be amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

c. In paragraph (d), the paragraph heading and the first sentence of paragraph (d)(1)(i) would be amended by removing the word "Sanitation" and adding the words "*S. enteritidis*" in its place.

d. In paragraph (d)(1)(v), the first sentence would be amended by removing the words "more than 4 months" and replacing them with the words "2 to 4 weeks".

e. Paragraphs (d)(1)(vi), (d)(1)(vii), and (d)(1)(viii) would be redesignated as paragraphs (d)(1)(vii), (d)(1)(viii), and (d)(1)(ix), respectively, and a new paragraph (d)(1)(vi) would be added to read as set forth below.

f. In newly designated paragraph (d)(1)(vii), the first sentence would be amended by removing the word "birds" and replacing it with the words "non-vaccinated birds as described in paragraph (d)(1)(vi) of this section".

g. In paragraph (d)(2), the second and third sentences would be revised to read as set forth below.

h. Paragraph (d)(3) would be amended by removing the words "A flock" and adding the words "A non-vaccinated flock" in their place; by removing the citation "(d)(v)" and adding the citation "(d)(1)(v)" in its place; and by removing the citation "(d)(1)(vi)" and adding the citation "(d)(1)(vii)" in its place.

i. In paragraph (e)(1)(ii), the paragraph designations (*a*) and (*b*) would be corrected to read (A) and (B).

As amended, § 145.23 would read as follows:

§ 145.23 Terminology and classification: flocks and products.

* * * * * *

(b) * * *

(3) * * *

(v) * * * *Provided,* That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * * *

(d) * * *

(1) * * *

(vi) A federally licensed *Salmonella enteritidis* bacterin may be used in multiplier breeding flocks that are negative for *Salmonella enteritidis* upon bacteriological examination as described in paragraph (d)(1)(v) of this section: *Provided,* that a sample of 350 birds, which will be banded for identification, shall remain unvaccinated until the flock reaches at least 4 months of age. Following negative serological and bacteriological examinations as described in paragraph (d)(1)(vii) of this section, the banded, non-vaccinated birds shall be vaccinated.

* * * * * *

(2) * * * Isolation of SE from an environmental or other specimen, as described in paragraph (d)(1)(v) of this section, will require bacteriological examination for SE in an authorized laboratory, as described in § 147.11(a) of this chapter, of a random sample of 60 live birds from a flock of 5,000 birds or more, or 30 live birds from a flock with fewer than 5,000 birds. If only one specimen is found positive for SE, the participant may request bacteriological examination of a second sample, equal in size to the first sample, from the flock. * * *

* * * * * *

§ 145.31 [Amended]

10. Section 145.31 would be amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

§ 145.33 [Amended]

11. Section 145.33 would be amended as follows:

a. The introductory text of paragraph (b)(3) would be amended by removing the words ", or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks,".

b. Paragraph (b)(3)(v) would be amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

c. In paragraph (d)(1)(viii), footnote 4a and its reference in the text would be redesignated as footnote 4.

d. In paragraph (e)(1)(ii), the paragraph designations (a) and (b) would be corrected to read (A) and (B).

As amended, § 145.33 would read as follows:

§ 145.33 Terminology and classification: flocks and products.

* * * * * *

(b) * * *

(3) * * *

(v) * * * *Provided,* That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * * *

§ 145.41 [Amended]

12. In § 145.41, the paragraph designation "(a)" assigned to the definition of the word *Poults* would be removed.

§ 145.43 [Amended]

13. Section 145.43 would be amended as follows:

a. Paragraph (b)(3)(v) would be amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

b. In paragraph (f)(3)(ii), the words "Industry/Education Salmonella Reduction" would be removed and the words "Industry (APPI) Salmonella Education/Reduction" added in their place, and the footnote reference "4" would be removed.

As amended, § 145.43 would read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * * *

(b) * * *

(3) * * *

(v) * * * *Provided,* That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * * *

§ 145.51 [Amended]

14. Section 145.51 would be amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

§ 145.53 [Amended]

15. Section 145.53 would be amended as follows:

a. In paragraph (a), footnote 1 and its reference in the text would be redesignated as footnote 7.

b. The introductory text of paragraph (b)(3) would be amended by removing the words ", or a breeding flock composed of progeny of a primary breeding flock which is intended solely for the production of multiplier breeding flocks,".

c. Paragraph (b)(3)(v) would be amended by removing the words "S. pullorum or S. gallinarum isolations from poultry" and adding the words "any disease outbreak involving a disease covered under the Plan" in their place, and by adding a proviso at the end of the paragraph to read as set forth below.

As amended, § 145.53 would read as follows:

§ 145.53 Terminology and classification: flocks and products.

* * * * * *

(b) * * *

(3) * * *

(v) * * * *Provided,* That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

* * * * * *

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

16. The authority citation for part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§ 147.5 [Amended]

17. In § 147.5, paragraph (b), footnote 1 and its reference in the text would be redesignated as footnote 4, and the footnote would be amended by removing the words "Federal Building," and adding the words "Presidential Building, 6525 Belcrest Road," in their place.

§ 147.6 [Amended]

18. In § 147.6, the introductory text of paragraph (b), the second sentence, the words "or identified as infected by a polymerase chain reaction (PCR)-based procedure approved by the Department" would be added after the word "bacteriologically".

19. In § 147.6, paragraph (b)(5), the second sentence, the words "or a PCR-based procedure conducted on these specimens" would be added after the word "individually".

20. In § 147.6, in paragraphs (b)(12) through (b)(15), the words ", PCR-based procedures;" would be added after the words "in vivo bio-assay" each time they appear.

§ 147.7 [Amended]

21. Section 147.7 would be amended as follows:

a. In the section heading, footnote 1 and its reference would be redesignated as footnote 5.

b. In the introductory text, the first sentence would be amended by removing the words "plate of the tube agglutination" and adding the words "plate agglutination test, the tube agglutination test, and the enzyme-linked immunosorbent assay (ELISA)" in their place.

c. In the introductory text, the beginning of the third sentence would be amended by removing the word "Both" and adding the words "These three" in their place.

d. In the introductory text, the seventh sentence would be amended by removing the words "the plate and/or" and adding the words "the ELISA, plate, and/or" in their place.

e. In paragraph (a), the paragraph heading and the first sentence of the introductory text of paragraph (a)(1) would be amended by removing the words "plate test" and adding the words "plate agglutination test" in their place.

f. Paragraph (e) would be amended as follows:

i. In the paragraph heading, the word "test" would be removed and the word "tests" added in its place.

ii. Paragraphs (e)(1) through (e)(3)(xi) would be redesignated as follows:

Current paragraph	Proposed paragraph
147.7(e)(1)	147.7(e)(1)(i)
147.7(e)(1)(i)	147.7(e)(1)(i)(A)
147.7(e)(1)(ii)	147.7(e)(1)(i)(B)
147.7(e)(1)(iii)	147.7(e)(1)(i)(C)
147.7(e)(1)(iv)	147.7(e)(1)(i)(D)
147.7(e)(2)(i)	147.7(e)(1)(ii)(A)
147.7(e)(2)(ii)	147.7(e)(1)(ii)(B)
147.7(e)(2)(iii)	147.7(e)(1)(ii)(C)
147.7(e)(2)(iv)	147.7(e)(1)(ii)(D)
147.7(e)(2)(v)	147.7(e)(1)(ii)(E)
147.7(e)(2)(vi)	147.7(e)(1)(ii)(F)
147.7(e)(2)(vii)	147.7(e)(1)(ii)(G)
147.7(e)(2)(viii)	147.7(e)(1)(ii)(H)
147.7(e)(3)(i)	147.7(e)(1)(iii)(A)
147.7(e)(3)(ii)	147.7(e)(1)(iii)(B)
147.7(e)(3)(iii)	147.7(e)(1)(iii)(C)
147.7(e)(3)(iv)	147.7(e)(1)(iii)(D)
147.7(e)(3)(v)	147.7(e)(1)(iii)(E)
147.7(e)(3)(vi)	147.7(e)(1)(iii)(F)
147.7(e)(3)(vii)	147.7(e)(1)(iii)(G)
147.7(e)(3)(viii)	147.7(e)(1)(iii)(H)
147.7(e)(3)(ix)	147.7(e)(1)(iii)(I)
147.7(e)(3)(x)	147.7(e)(1)(iii)(J)
147.7(e)(3)(x)(A)	147.7(e)(1)(iii)(J)(*1*)
147.7(e)(3)(x)(B)	147.7(e)(1)(iii)(J)(*2*)
147.7(e)(3)(x)(C)	147.7(e)(1)(iii)(J)(*3*)
147.7(e)(3)(x)(D)	147.7(e)(1)(iii)(J)(*4*)
147.7(e)(3)(x)(E)	147.7(e)(1)(iii)(J)(*5*)
147.7(e)(3)(x)(F)	147.7(e)(1)(iii)(J)(*6*)
147.7(e)(3)(x)(G)	147.7(e)(1)(iii)(J)(*7*)
147.7(e)(3)(x)(H)	147.7(e)(1)(iii)(J)(*8*)
147.7(e)(3)(x)(I)	147.7(e)(1)(iii)(J)(*9*)
147.7(e)(3)(xi)	147.7(e)(1)(iii)(K)

iii. The introductory text of paragraph (e) would be redesignated as paragraph (e)(1) and a new paragraph heading for paragraph (e)(1) would be added to read as set forth below.

iv. A new paragraph (2) would be added to read as set forth below.

As amended, § 147.7(e) would read as follows:

§ 147.7 Standard test procedures for mycoplasma.[5]

* * * * *

(e) * * *

(1) *Procedure No. 1.* * * *

* * * * * *

(2) *Procedure No. 2.* Purpose: To test for antibodies to avian mycoplasma by hemagglutination inhibition (HI). The test uses the constant antigen, titered-sera method for measuring antibodies to *M. gallisepticum, M. synoviae,* or *M. meleagridis.*

(i) *Materials needed.*

(A) *M. gallisepticum, M. synoviae,* and/or *M. meleagridis* HI antigens.

(B) Positive and negative control sera.

(C) Phosphate buffered saline (PBS).

(D) Microtiter plates, 96-well, U-bottom.

(E) 12-channel pipettor (Titerek).

(F) 50 µl pipettor (Pipetman P200).

(G) Pipette tips.

(H) 0.5 percent homologous red blood cells (RBC's) in PBS (use RBC's from the same species being tested).

(I) Plate-sealing tape.

(J) Mirrored plate reader.

(ii) *Microtiter hemagglutination (HA) antigen titration.*

(A) Perform standard hemagglutination test (HA) on mycoplasma antigen to determine titer of antigen.

(*1*) Dispense 50 µl of PBS into each well of 3 rows of a 96-well microtiter plate.

(*2*) Dispense 50 µl of stock antigen into the wells of 2 rows.

(*3*) Perform serial two-fold dilutions (50 µl) using a 12-channel pipettor. The dilution series will be from 1:2 to 1:4096.

(*4*) Add 50 µl of 0.5 percent homologous RBC's to each well of all 3 rows. The row with no antigen serves as an RBC control.

(B) Incubate at room temperature (approximately 30 minutes) until the control RBC's give tight buttons. The HA titer is read as the last well to give a complete lawn (hemagglutination). The desired endpoint is 4 HA units. The well containing the 1:4 dilution should give a complete HA while the 1:8 dilution should show less than complete HA.

(C) Dilute stock antigen to 4 HA units for the HI test. The dilution required to give 4 HA units is calculated by dividing the stock antigen HA titer by 8. (Example: 1:320 HA units ÷ 8 = 40, dilute stock antigen 1:40.)

(iii) *Hemagglutination inhibition assay.*

(A) Label one column (A to H) of a 96-well, U-bottom microtiter plate for each sample, each positive and negative control sera, antigen backtitration, and RBC control.

(B) Add 40 µl of PBS to the top row of wells (row A) of the plate.

(C) Add 25 µl of PBS to all remaining wells of the plate.

(D) Add 10 µl of each test sera to well A of each column (making a 1:5 sera dilution).

(E) Serially dilute 25 µl from well A through H using a 12-channel pipettor. Discard the final 25 µl. Row A=1:5...row H=1:640.

(F) With an Oxford doser, add 25 µl of 4 HA unit antigen to wells B through H. Well A serves as sera control.

(G) Prepare an antigen backtitration by adding 25 µl of PBS to each well of one column. Add 25 µl of diluted antigen to well A and serially dilute 25 µl from wells A to D. This prepares 1:2, 1:4, 1:8, and 1:16 dilutions. (It is recommended that the antigen control backtitration be performed before the diluted antigen is used in the assay. Dilution problems could be detected and corrected before the inappropriately diluted antigen is used in the assay.)

(H) Leave a column of wells blank for an RBC control.

(I) Agitate gently and incubate for 30 minutes at room temperature.

(J) Add 50 µl of 0.5 percent RBC's to all wells. Note: Do not agitate after RBC's have been added (agitation may result in false positive reactions by causing the RBC's to fall, resulting in "false" buttons).

(K) Cover the plate with sealing tape. Incubate at room temperature for 30 minutes or until control RBC's give a tight button.

(L) Read the reaction on a mirrored plate reader.

(iv) *Results.*

(A) The titer is reported as the reciprocal of the last dilution to give a tight button of RBC's. The final dilution scheme includes the antigen in the dilution calculation and is as follows: B=1:20, C=1:40, D=1:80, E=1:160, F=1:320, G=1:640, H=1:1,280.

(B) For the assay to be valid:

(*1*) The positive control sera must give a result within one dilution of the previously determined titer.

(*2*) The negative control sera must be negative.

(*3*) The backtitration of the antigen must be 1:4 or 1:8.

(*4*) The RBC control must give tight, non-hemolyzed buttons.

(*5*) Sera controls (well A of each test sera) must not have non-specific agglutination or hemolysis. If negative, report as "negative with non-specific agglutination or non-specific hemolysis" or "unable to evaluate due to non-specific agglutination or hemolysis" or treat the serum to remove the non-specific agglutination and repeat the test. (See paragraph (e)(2)(v) of this section.)

(v) *Treatment to remove non-specific agglutination.*

(A) *Purpose.* Treatment of serum to remove non-specific agglutination that is interfering with HI assays.

(B) *Specimen.* Serum.

(C) *Materials.* Homologous RBC's (chicken or turkey), 50 percent solution PBS, centrifuge, incubator, 4C (refrigerator).

(D) *Procedure.* (*1*) Prepare a 1:5 dilution of test serum by adding 50 µl of serum to 200 µl of PBS.

(*2*) Prepare a 50 percent solution of RBC's by adding equal volumes of packed RBC's to PBS. Mix well.

(*3*) Add 25 µl of 50 percent RBC solution to the serum dilutions.

(*4*) Vortex gently to mix.

(*5*) Incubate at 4° C for 1 hour.

(*6*) Centrifuge to pellet the RBC's.

(*7*) Use the supernatant to perform the HI assay. Modify the dilution scheme in the assay to consider the initial 1:5 dilution prepared in the treatment. For the 1:5 dilution scheme, do not add PBS to row A. Add 50 µl of the 1:5 treated supernatant to row A. Serially dilute 25 µl from rows A through H. This prepares a serum dilution of 1:10 through 1:640 in rows B through H.

22. In part 147, "Subpart B—Bacteriological Examination Procedure," a new § 147.10 would be added to read as follows:

Subpart B—Bacteriological Examination Procedure

§ 147.10 Laboratory procedure recommended for the bacteriological examination of egg-type breeding flocks with salmonella enteritidis positive environments.

Birds selected for bacteriological examination from egg-type breeding flocks positive for *Salmonella enteritidis* after environmental monitoring should be examined as described in § 147.11(a) of this subpart, with the following exceptions and modifications allowed due to the high number of birds required for examination:

(a) Except when visibly pathological tissues are present, direct culture, § 147.11(a)(1) of this subpart, may be omitted; and

(b) Enrichment culture of organ (non-intestinal) tissues using a non-selective broth, § 147.11(a)(2) of this subpart, may be omitted.

§ 147.11 [Amended]

23. Section 147.11 would be amended as follows:

a. Footnotes 1 through 4 and their references in the regulatory text would be redesignated as footnotes 7 through 10.

b. Paragraphs (a) through (j) would be redesignated as follows:

Current paragraph	Proposed paragraph
147.11(a)	147.11(b)(1)
147.11(b)	147.11(b)(2)
147.11(b)(1)	147.11(b)(2)(i)
147.11(b)(2)	147.11(b)(2)(ii)
147.11(b)(3)	147.11(b)(2)(iii)
147.11(b)(4)	147.11(b)(2)(iv)
147.11(b)(5)	147.11(b)(2)(v)
147.11(c)	147.11(b)(3)
147.11(c)(1)	147.11(b)(3)(i)
147.11(c)(2)	147.11(b)(3)(ii)
147.11(c)(3)	147.11(b)(3)(iii)
147.11(c)(4)	147.11(b)(3)(iv)
147.11(c)(5)	147.11(b)(3)(v)
147.11(c)(6)	147.11(b)(3)(vi)
147.11(d)	147.11(b)(4)
147.11(e)	147.11(b)(5)
147.11(f)	147.11(b)(6)
147.11(g)	147.11(b)(7)
147.11(h)	147.11(b)(8)
147.11(i)	147.11(b)(9)
147.11(j)	147.11(b)(10)

c. A new paragraph (a) and a paragraph heading for paragraph (b) would be added to read as set forth below.

As amended, § 147.11 would read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of salmonella.

(a) *For egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds.* All reactors to the Pullorum-Typhoid tests, up to at least four birds, should be cultured in accordance with both *direct* (paragraph (a)(1)) and *selective enrichment* (paragraph (a)(2)) procedures described in this section. Careful aseptic technique should be used when collecting all tissue samples.

(1) Direct culture (refer to illustration 1). Grossly normal or diseased liver, heart, pericardial sac, spleen, lung, kidney, peritoneum, gallbladder, oviduct, misshapen ova or testes, inflamed or unabsorbed yolk sac, and other visibly pathological tissues where purulent, necrotic, or proliferative lesions are seen (including cysts, abscesses, hypopyon, and inflamed serosal surfaces), should be sampled for direct culture using either flamed wire loops or sterile swabs. Since some strains may not dependably survive and grow in certain selective media, inoculate non-selective plates in addition to two selective plating media. Refer to illustration 1 for recommended bacteriological recovery and identification procedures.[6] Proceed immediately with collection of organs and tissues for selective enrichment culture.

(2) Selective enrichment culture (refer to illustration 2). Collect and culture organ samples separately from intestinal samples, with intestinal tissues collected last to prevent cross-contamination. Samples from the following organs or sites should be collected for culture in selective enrichment broth. A non-selective broth culture (illustration 1) of pooled organs and sites should also be included as described in paragraph (a)(3) of this section.

(i) Heart (apex, pericardial sac, and contents if present.);

(ii) Liver (portions exhibiting lesions or, in grossly normal organs, the drained gallbladder and adjacent liver tissues.);

(iii) Ovary-Testes (entire inactive ovary or testes, but if ovary is active, include any atypical ova.);

(iv) Oviduct (if active, include any debris and dehydrated ova.);

(v) Kidneys and spleen; and

(vi) Other visible pathological sites where purulent, necrotic, or proliferative lesions are seen.

(3) From each reactor, aseptically collect 10 to 15 g, or the nearest lesser amount available, from each organ or site listed in paragraph (a)(2) of this section and mince, grind, and blend them completely in 10 times their volume of beef extract broth or a comparable non-selective broth. Organs or sites listed in paragraph (a)(2) of this section may be pooled from the same individual bird. Suspensions should be transferred in 10-ml aliquots to 100 ml of both tetrathionate brilliant green (TBG) (Hajna or Mueller-Kauffmann) broth and a separate non-selective broth and incubated at 37°C for 24 hours. Refer to illustration 2 for recommended bacteriological recovery and identification procedures, including delayed secondary enrichment and combinations of plating media that significantly suppress the overgrowth of contaminants, such as brilliant green Novobiocin (BGN) and Xylose-Lysine-Tergitol 4 (XLT4).

(4) From each reactor, make a composite sample of the following parts of grossly normal or diseased tissues from the digestive tract: Crop wall, duodenum (including portions of the pancreas), jejunum (including remnant of yolk-sac attachment), both ceca, cecal tonsils, and rectum-cloaca. Aseptically collect 10–15 g or the nearest lesser amount available from each specified digestive or intestinal tissue, and mince, grind, and blend them completely in 10 times their volume of TBG broth. The digestive/intestinal tissues may be pooled from the same individual bird. Do not pool tissues from different birds. Transfer 10 ml of the described digestive TBG suspensions into 100 ml of TBG broth, and incubate at 41.5° C for 24 hours. Cultures may be incubated at 37°C if 41.5° C incubators are not available. The higher incubation temperatures for TBG broth reduce populations of competitive contaminants common in gut tissue. Refer to illustration 2 for recommended bacteriological recovery and identification procedures, including

[5] For additional information on mycoplasma test procedures, refer to the following references: Proc. 77th Annual Meeting, U.S. Animal Health Association, 1973; Isolation and Identification of Avian Pathogens, 2nd Edition; Methods for Examining Poultry Biologics and for Identifying and Quantifying Avian Pathogens, 1971.

[6] Biochemical identification charts may be obtained from "A Laboratory Manual for the Isolation and Identification of Avian Pathogens," chapter 1, Salmonellosis. Third edition, 1989. American Association of Avian Pathologists, Inc., Kendall/Hunt Publishing Co., Dubuque, IA 52004–0539.

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delayed secondary enrichment and combinations of plating media that significantly suppress the overgrowth of contaminants, such as BGN and XLT4.

(5) The Analytical Profile Index for Enterobacteriaceae (API) system may be utilized to aid cultural identifications.

(6) All isolates culturally identified as salmonellae should be serogrouped or serotyped.

BILLING CODE 3410-34-P

ILLUSTRATION 1: Organ (non-intestinal) tissues.[1]
Pullorum-Typhoid reactors.

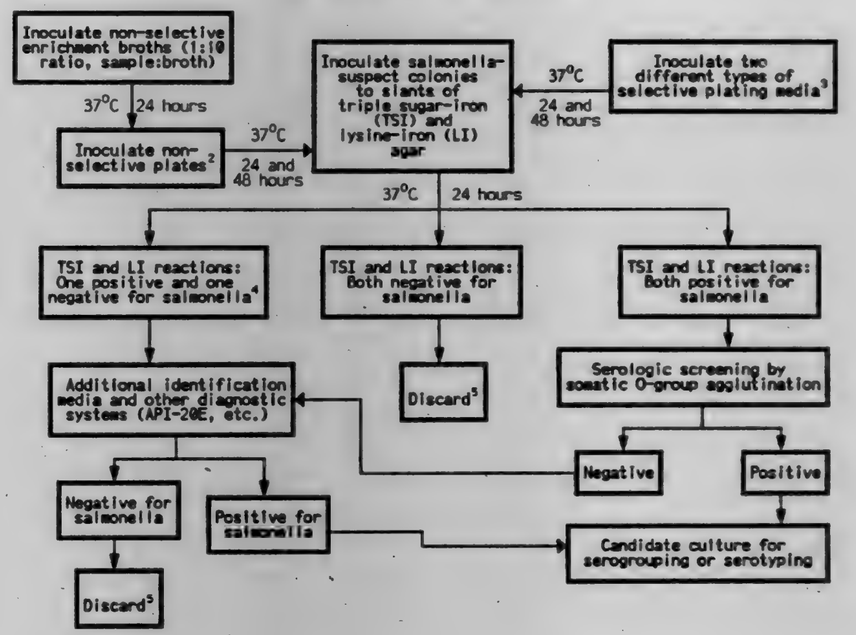

[1] All pullorum-typhoid reactors should also be evaluated with selective enrichment (refer to illustration 2).

[2] Inoculate beef extract or infusion plates. Comparable non-selective media may also be used.

[3] Inoculate brilliant green (BG) or BG-Novobiocin (BGN) AND another selective media such as xylose-lysine-desoxycholate (XLD) or XLD-Novobiocin (XLDN).

[4] If combined results with TSI and LI agars, additional identification media, and O-group screening procedures are inconclusive, restreak original colony onto selective plating media to check for purity.

[5] Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.

ILLUSTRATION 2: Environmental, organ, and intestinal samples.[1]
Environmental monitoring programs and pullorum-typhoid reactors.

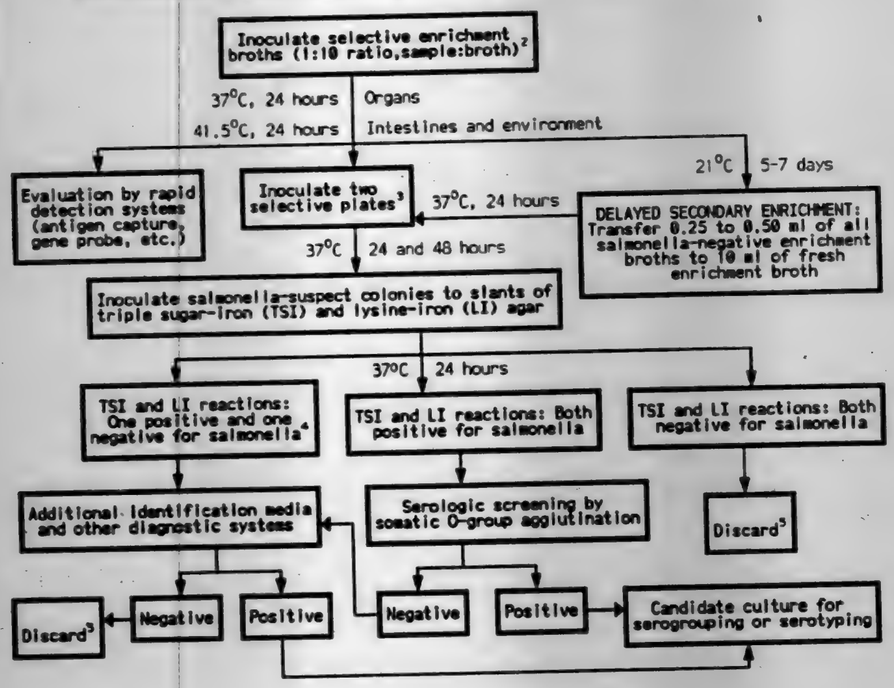

[1] Organ issues from all reactor birds should also be evaluated without selective enrichment (refer to illustration 1).

[2] Hajna TT or Mueller-Kauffmann tetrathionate enrichment broth is preferred over selenites.

[3] For enrichment broths of organ samples, inoculate xylose-lysine-desoxycholate (XLD) or XLD-Novobiocin (XLDN) AND brilliant green (BG) or BG-Novobiocin (BGN) media. One of the media shall be either XLDN or BGN. For enrichment broths of intestinal or environmental samples, inoculate xylose-lysine-tergitol 4 (XLT4) or XLDN and BGN or BG media.

[4] If combined results with TSI and LI agars, additional identification media, and O-group screening procedures are inconclusive, restreak original colony onto selective plating agar to check for purity.

[5] Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.

BILLING CODE 3410-34-C

(b) *For turkeys.* * * *

* * * * *

§ 147.12 [Amended]

24. In § 147.12, paragraph (c)(2), footnote 1 and its reference in the text would be redesignated as footnote 11.

§ 147.14 [Amended]

25. Section 147.14 would be amended as follows:

a. In the section heading, footnote 1 and its reference would be redesignated as footnote 12; the reference would be removed from the section heading and added to the introductory text of § 147.14, immediately after the word "procedures"; and the text of newly redesignated footnote 12 would be amended by removing the designations "(a)" and "(b)" and by adding a comma after "1980".

b. In paragraph (a)(2), the second sentence would be revised and paragraphs (a)(2) (i) and (ii) are added to read as set forth below.

As amended, § 147.14 would read as follows:

§ 147.14 Procedures to determine status and effectiveness of sanitation monitored programs.

* * * * *

(a) * * *

(2) * * * Such eggs should also be cultured for the dependable recovery of salmonellae. Culturing for the dependable recovery of salmonellae should include the use of:

(i) Preenrichment broths supplemented with 35 mg ferrous sulfate per 1,000 ml preenrichment to block iron-binding, salmonella-inhibiting effects of egg conalbumin; and

(ii) Tetrathionate selective enrichment broths, competitor-controlling plating media (XLT4, BGN, etc.), and delayed secondary enrichment procedures detailed in illustration 2 of § 147.11(a) of this part.

§§ 147.15 and 147.16 [Amended]

26. In §§ 147.15 and 147.16, footnotes 4 through 12 and their references in the regulatory text would be redesignated as footnotes 13 through 21, respectively.

§ 147.41 [Amended]

27. Section 147.41 would be amended by removing all paragraph designations and rearranging the definitions in alphabetical order.

Done in Washington, DC, this 18th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-20541 Filed 8-24-93; 8:45 am]

BILLING CODE 3410-34-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards Business Loan Program; Alternate Size Standard

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to establish an alternate size standard criterion for its Business Loan (7(a)) Program which would allow a concern to qualify if it satisfied the $6.0 million net worth and $2.0 million net income tests presently used for its Certified Development Company Program or financing under the Small Business Investment Company Program. The proposal will simplify size standards by extending the "alternate standard" to the Business Loan Program. However, a firm may still continue to qualify as a small business pursuant to the size standard applicable to its primary industry, even if it does not meet this alternate standard. The primary purpose of this proposal is to solicit additional comments for the Agency's consideration and review prior to a final decision on the alternate size standard that was temporarily in effect between December 31, 1992 and March 4, 1993 for the 7(a) Loan Program.

DATES: Comments must be submitted on or before October 25, 1993.

ADDRESSES: Send Comments To: Gary M. Jackson, Director, Size Standards Staff, 409 3rd Street, SW—suite 8150, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carl Jordan or Robert N. Ray, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On December 31, 1992, the SBA had adopted, on an interim final basis (57 FR 62477), this proposed alternate size standard criterion for its General Business Loan (7(a)) Program. However, the incoming Administration directed that all recently published but not finalized rules were to be thoroughly reviewed, and all Government Agencies were to determine their implications (Office of Management and Budget Memorandum on Regulatory Review, dated January 22, 1993 to Heads and Acting Heads of Federal Agencies). The SBA withdrew the alternate size standard criterion on March 4, 1993 (58 FR 12334) so it could further evaluate the implications of such a standard. The newly appointed SBA Administration has completed its review of the previously published rule, and believes the reasons for the alternate 7(a) size standard have continued merit and deserve consideration by SBA and the public. Hence, SBA is publishing this rule as a proposed (and not as an interim final rule) to afford the public additional opportunity to comment on the alternate size standard prior to any final Agency decision. A concern currently applying for a 7(a) loan must meet its current applicable industry size standard, unless and until this proposed rule becomes final.

SBA's regulations currently allow a concern applying for either a loan under the Certified Development Company (504) Program or financing under the Small Business Investment Company (SBIC) Program to qualify as a small business if, together with its affiliates, its net worth does not exceed $6.0 million and it has an average of not more than $2.0 million in net income (after Federal Income Taxes) measured over the concern's preceding two completed fiscal years (13 FR § 121.802(a)(2)). A firm that exceeds those net worth or net income levels (hereinafter the "alternate standard") can also be considered an eligible small business if its size is at or below the separate numerical size standard established for its industry (§ 121.601).

Under this proposed rule, the two-part alternate standard test would also be applied to SBA's General Business Loan (17(a)) Program. As such, a concern applying for a 7(a) loan could elect to meet either the alternate standard or the single employee- or receipts-based standard that is specified for its industry. However, it should specifically be noted that this is a proposed rule and as such, a concern currently applying for a 7(a) loan does not have the option of meeting the alternate standard.

As indicated above, SBA's regulations allow a business to be considered small for purposes of two of the Agency's financial programs, but not the 7(a) Program. Because of this situation, a business may, for example, qualify as a small business and obtain financing pursuant to the 504 Program (to construct a building), but not be able to obtain a loan under the 7(a) Program (to purchase inventory). This anomalous situation is exacerbated by the current economic climate in which businesses, and in particular small businesses, are having great difficulty obtaining credit in the private market. To resolve this situation, SBA is proposing this alternate size standard criterion noting that it merely expands the types of financing for which small businesses that already qualify as "small

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businesses," under the alternate standard for other purposes, are eligible.

This change would also benefit small business by simplifying the size standards applicable to applicant firms. A two-part alternate standard applicable to every firm, regardless of its type of business activity, reduces the burden and confusion as to whether or not the firm is a small business, which can be encountered in determining the size standard for its primary industry.

Most firms eligible as small businesses under the industry size standard will also be eligible under the alternate standard. In those few cases where the firm exceeds the net worth and net income test, the firm would ascertain whether it is an eligible small business under the more complicated industry size standards. Thus, this change greatly simplifies the determination of the size standard for a loan applicant.

SBA specifically invites comment, including from the commentators on the December 31, 1992 Interim Final Rule (57 FR 62477), on the appropriateness of these alternate size standards expressed in net worth *and* net income terms. SBA is seeking comment both as to its proposal to use these measures as alternate measures to its standard industry specific size standards for its 7(a) Business Loan Program and the appropriate magnitude (either higher or lower) of these measures if the commentor(s) believe these alternative measures should be used. SBA is willing to consider industry data and other information prior to making a final decision on a size standard. Comments on this standard or suggesting other standards should address the questions of:

- The interaction of this size standard with SBA's programs;
- The relative levels of participation at different size standards;
- The effect of this proposed size standard or other alternative size standards on business firms within these industries;
- The prospect of significant new entrants into these industries in response to this program; and
- The impact of higher size standard on smaller-sized businesses.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule will have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). In addition, this proposed rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a summary regulatory impact analysis and an initial regulatory flexibility analysis of this proposal.

(1) Description of Entities to Which the Rule Applies

For purposes of financial assistance, SBA estimates that about 47,000 firms currently defined as small businesses for the 504 and SBIC Programs will be eligible to seek financial assistance offered by the SBA's 7(a) Business Loan Program, provided they meet other program requirements for assistance. The vast majority of the firms gaining eligibility for the 7(a) Program because of this rule operate in the retail trade and services industries; almost no firms in manufacturing or mining will gain eligibility for the 7(a) Program because of this rule.

The proposed size standard would not impose a regulatory burden because it does not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Under this proposed rule small firms which are already eligible for other SBA financial assistance, will be eligible for the 7(a) Business Loan Program. This may result in job creation or retention in certain areas and localities, with associated benefits in consumer spending and tax revenue, but such benefits are difficult to quantify. Direct benefits in terms of number and volume of loans can be estimated, however. SBA accordingly estimates that about 450 firms each year should receive approximately $200 million in loans that would otherwise not be guaranteed under the existing size standards.

Another real but unquantifiable benefit would be the saving in time to potential borrowers and SBA personnel who may consult a simple, streamlined size standard instead of the lengthy table and associated Standard Industrial Classification codes and their descriptions that must now be examined before each anticipated or actual loan transaction.

(3) Description of Potential Costs of the Rule

This proposed rule should not result in any extra costs with respect to SBA's loan programs. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers, and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits From the Rule

From the above discussion, SBA believes that, because the potential costs of this proposed rule are minimal, the potential net benefits would approach fairly closely the potential benefits. The impact of the new size standard will appear exclusively in the Federal business lending area to which it is targeted.

(5) Description of Reasons Why This Action Is Being Taken and Objectives of the Rule

SBA has provided above a statement of the reasons why the new alternate standard for the Business Loan Program is being proposed and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for the Proposed Rule

The legal basis for the proposal is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to the Proposed Rule

This proposed rule will establish the most appropriate standards by which to define those small businesses that are eligible for SBA's financial assistance programs. There are no significant alternatives to defining a small business. SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this proposed rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., Chapter 35. For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

2. Section 121.802(a)(1) is amended by removing the words "Business Loan,".

3. Section 121.802(a)(2) is revised to read as follows:

§ 121.802 Establishment of Size Standard.

(a) * * *

(2) For financial assistance and/or management/technical assistance under the SBA Business Loan, Small Business Investment Company, and Development Company Programs, an applicant concern must meet one of the following standards:

(i) Together with its affiliates, it does not have net worth in excess of $6.0 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of $2.0 million; or

(ii) Together with its affiliates, it meets the size standard for the industry in which it is primarily engaged and excluding its affiliates, meets the size standard for the industry in which it is primarily engaged. These size standards are set forth in § 121.601.

* * * * *

Dated: July 30, 1993.

Erskine B. Bowles,

Administrator, U.S. Small Business Administration.

[FR Doc. 93–20285 Filed 8–24–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–105–AD]

Airworthiness Directives; Corporate Jets Limited Model BAe 125–800A and –1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Corporate Jets Limited Model BAe 125–800A and –1000A series airplanes. This proposal would require inspections of the wing leading edge skins, including the wing anti-ice fluid distribution panel (TKS panel) rebate and radius, subsequent corrosion protection treatment, and repair, if necessary. This proposal is prompted by reports of corrosion of the wing leading edge skin at the interface with the TKS panels. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing leading edge skin and TKS panel interface joint, which could adversely affect the flight characteristics of the airplane.

DATES: Comments must be received by October 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–105–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets Limited Model BAe 125–800A and –1000A series airplanes. The CAA advises of reports of exfoliation corrosion of the wing leading edge skins at the interface with the wing anti-ice fluid distribution panel (TKS panel). Exfoliation corrosion is due to the ingress of moisture through gaps in the sealant that have developed during service. Exfoliation corrosion, if not detected and corrected, could reduce the structural integrity of the interface joint, which could adversely affect the flight characteristics of the airplane. Exfoliation corrosion also could cause in-flight separation of airplane components.

Corporate Jets Limited has issued Service Bulletin S.B. 57–77, dated May 20, 1993, that describes procedures for conducting a one-time detailed visual inspection to detect corrosion of the wing leading edge skins, including the TKS panel rebate and radius, and a one-time dye penetrant inspection to detect exfoliation corrosion of the TKS panel rebate and radius. This service bulletin also describes procedures for removing corrosion from the wing leading edge skins, including the TKS panel rebate and radius, and subsequent enhanced protective treatment of TKS panel rebate and radius on the top and bottom leading edge skin section on each wing. Exfoliation corrosion is indicated by short, fine lines flowing in the direction of the grain. (This service bulletin references Corporate Jets Limited Repair Instruction Letter 25WS279, dated April 30, 1993, and Corporate Jets Limited

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Repair Instruction Letter 25WS294, dated June 5, 1993, for additional service information.) The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time detailed visual inspection to detect corrosion of the wing leading edge skin, and repair of the wing leading edge skins, if necessary. It would also require a detailed visual inspection and a dye penetrant inspection to detect exfoliation corrosion of the TKS panel rebate and radius on the top and bottom leading edge skin section on each wing, and removal of corrosion, if necessary. Finally, this proposed rule would require the application of a corrosion protection treatment on the TKS panel rebate and radius on the top and bottom leading edge skin section on each wing. The inspections, removal of corrosion, and corrosion protection treatment would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 154 Corporate Jets Limited Model BAe 125–800A and –1000A series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $423,500, or $2,750 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Corporate Jets Limited (Formerly British Aerospace): Docket 93–NM–108–AD.

Applicability: Model BAe 125–800A and –1000A series airplanes, as listed in Corporate Jets Limited Service Bulletin S.B. 57–77, dated May 20, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing leading edge skin and wing anti-ice fluid distribution panel (TKS panel) interface joint, which could adversely affect the flight characteristics of the airplane, accomplish the following:

(a) Within 24 months since airplane manufacture, or within 12 months after the effective date of this AD, whichever occurs later, conduct a detailed visual inspection to detect corrosion of the polished surface of the top and bottom leading edge skins on each wing, in accordance with Corporate Jets Limited Service Bulletin S.B. 57–77, dated May 20, 1993.

(1) If any corrosion is detected and the corrosion is within limits described in the service bulletin, prior to further flight, remove the corrosion in accordance with the service bulletin.

(2) If any corrosion is detected and that corrosion is outside the limits described in the service bulletin, prior to further flight, repair the wing leading edge skins in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Prior to further flight after accomplishing the actions required by paragraph (a) of this AD, conduct a detailed visual inspection to detect corrosion of the wing anti-ice fluid distribution panel (TKS panel) rebate and radius on the top and bottom leading edge skin section on each wing, in accordance with Corporate Jets Limited Service Bulletin S.B. 57–77, dated May 20, 1993.

(1) If any corrosion is detected and the corrosion is within limits described in the service bulletin, prior to further flight, remove the corrosion in accordance with the service bulletin.

(2) If any corrosion is detected and that corrosion is outside the limits described in the service bulletin, prior to further flight, repair the wing leading edge skins in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Prior to further flight after accomplishing the actions required by paragraph (b) of this AD, conduct a dye penetrant inspection to detect corrosion of the TKS panel rebate and radius on the top and bottom leading edge skin section on each wing, in accordance with Corporate Jets Limited Service Bulletin S.B. 57–77, dated May 20, 1993.

(1) If any corrosion is detected and the corrosion is within limits described in the service bulletin, prior to further flight, remove the corrosion in accordance with the service bulletin.

(2) If any corrosion is detected and that corrosion is outside the limits described in the service bulletin, prior to further flight, repair the wing leading edge skins in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Prior to further flight after accomplishing the actions required by paragraph (c) of this AD, accomplish both of the following actions:

(1) Apply enhanced protective treatment to the TKS panel rebate and radius on the top and bottom leading edge skin section on each wing, in accordance with the service bulletin.

(2) Conduct a flight check of the airplane stall warning system and stall characteristics, in accordance with the service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–20613 Filed 8–24–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

RIN 1010–AB78

Oil Spill Financial Responsibility for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is announcing its intention to publish regulations governing the establishment of financial responsibility for offshore oil facilities and gas facilities with concurrent gas condensate production, and requests comments from interested parties. This action is necessary to ensure that parties responsible for offshore oil and gas facilities are able to meet the financial responsibility requirements of the Oil Pollution Act of 1990 (OPA 90). These regulations will establish a level of financial responsibility at $150 million for all offshore facilities in, on, or under the navigable waters of the United States (U.S.).

DATES: Comments should be received or postmarked by October 25, 1993 to receive full consideration.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: William S. Cook, Chief, Inspection and Enforcement Branch, telephone (703) 787–1610 or FAX (703) 787–1575.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) is developing new regulations to implement Title I and section 4303 of OPA 90 (33 U.S.C. 2701) for offshore facilities in navigable waters of the U.S. These regulations will:

- Establish the amount of oil spill financial responsibility that must be evidenced by responsible parties at $150 million;
- Establish requirements for certification of financial responsibility for all "offshore facilities" (as defined in OPA 90) including those in, on, or under any navigable waters, including inland waters, of the States of the U.S., territories, and possessions, and facilities subject to U.S. jurisdiction in, on, or under any other waters.
- Define acceptable methods available to demonstrate evidence of oil spill financial responsibility;
- Define procedures to be used to submit evidence of oil spill financial responsibility;
- Define responsibilities, liabilities, and defenses of guarantors;
- Establish the maximum civil penalties to which responsible parties are subject as $25,000 per day of violation; and
- Establish civil penalties procedures.

The MMS solicits information and comments on OPA 90 issues, and MMS' preliminary interpretation of the OPA 90 requirements. Commentors should propose solutions to any problems they anticipate in complying with the OPA 90 requirements. The MMS is also seeking information on the effect of the new OPA 90 requirements on the oil, financial, and insurance industries; how MMS can best utilize the administrative expertise and experience of State regulatory agencies; and the concerns of environmental groups and other interested parties.

In August 1990, Congress passed OPA 90 which contains various provisions aimed at:

- Strengthening oil spill prevention, response capability, and cleanup efforts.
- Ensuring payment of damages resulting from oil spills.

Title III of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978 (OCSLAA 78) was repealed and the Federal Water Pollution Control Act and the Deepwater Port Act of 1974 were amended by OPA 90. To implement the authority under OPA 90, Executive Order (E.O.) 12777 was signed by the President on October 18, 1991, and was published in the **Federal Register** on October 22, 1991 (56 FR 54757). The E.O. delegated certain responsibilities to the Secretary of the Interior, including responsibilities relative to ensuring evidence of financial responsibility for companies operating offshore facilities on the OCS and other U.S. navigable waters. The Secretary subsequently redelegated these responsibilities to the Director, MMS.

A similar function was previously performed by the U.S. Coast Guard (USCG) on OCS waters under the authority of Title III of OCSLAA 78, and implemented by 33 CFR part 135 provides that the regulations in 33 CFR part 135 be continued effective until new offshore financial responsibility regulations are promulgated. On October 1, 1992, a memorandum of agreement (MOA) was signed transferring the personnel, equipment, and files associated with the function to the MMS in furtherance of the delegations in E.O. 12777.

Affected Facilities

The definition of "facility" in OPA 90 (section 1001(9)) includes all structures, equipment, or devices, other than vessels and deep water ports, used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term specifically includes pipelines. For the purposes of administering section 1016 of OPA 90, the MMS will apply financial responsibility requirements, in the case of offshore facilities other than pipelines, to the lessee or permittee of the area in which the facility is located or the holders of a right of use and easement granted under applicable State law or the OCS Lands Act for the area in which the facility is located. In the case of pipelines, the MMS will apply financial responsibility requirements to any person owning or operating pipelines located in, on, or under the navigable waters of the U.S. Under E.O. 12777, the responsibility for Deepwater Ports has been assigned to the Department of Transportation.

Geographic Jurisdiction

The financial responsibility requirements for offshore facilities under OPA 90 apply to all U.S. navigable waters. The law (OPA 90) defines U.S. navigable waters as the waters of the U.S. including the territorial sea. This includes all of the States of the U.S., the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the U.S. Also, these new authorities and responsibilities apply to offshore facilities that the MMS currently regulates for oil and gas operations in the OCS.

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Through its definition of the terms "navigable waters of the United States," and "offshore facility" in section 1001(22), OPA 90 extends its provisions concerning offshore facilities to facilities in, on, or under navigable waters of the U.S. and any facilities subject to the jurisdiction of the U.S. in, on, or under other waters. Thus, for example, a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the $150 million financial responsibility provisions of this rule, as would the operator of an oil well in the Great Lakes.

Implementation Procedures

In developing regulations to implement the oil spill financial responsibility requirements of OPA 90, the MMS will need to determine whether the following concepts in the existing regulations at 33 CFR part 135 can be used to address the responsibilities delegated under E.O. 12777:

- Evidence of financial responsibility may be provided by one or more Guarantors for one or more offshore facilities of a particular responsible party.
- Where multiple responsible parties own an offshore facility, evidence of financial responsibility may be established and maintained on behalf of all of the parties by that party designated as the lead responsible party.
- When evidence of financial responsibility is established in a consolidated form, the proportional share of each Guarantor must be shown.
- Each responsible party of an offshore facility is subject to civil penalties and/or referral to the Department of Justice if the required evidence of financial responsibility is not established and maintained.
- Evidence of financial responsibility may be established and maintained by any one or any combination of acceptable methods.
- Individual insurance underwriters, indemnitors, and bonding companies are subject to direct action to the extent of their contracts, indemnity coverage, or bond.

Solicited Information

Responses to the following questions are requested to assist MMS in formulating the requirements to implement OPA 90. In addition, to help fulfill its responsibilities for determining the economic effects of regulations, MMS requests information that can be used to determine the potential economic effect of this rulemaking on the oil and gas, the pipeline, the insurance, the fishing, the tourism, and other industries.

1. The MMS solicits information on the types and locations of facilities that may be subject to the offshore financial responsibility requirements of OPA 90. The OPA 90 defines an offshore facility as any facility of any kind located in, on, or under any of the navigable waters of the U.S., and any facility of any kind which is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel. In addition, OPA 90 defines a facility as any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes. Comments are invited on whether or not, and if not why not, this definition includes:

—Pipelines crossing over bodies of water on bridges, piers, breakwaters, berms, or similar structures.
—Fuel storage tanks, piping, and hoses installed in, on (i.e., in contact with or supported above), or under navigable waters, including those facilities in private marinas.
—Pipelines in, on, or under inland navigable waters but not crossing the inland navigable waters.
—Pipelines that cross in, on, or under both land masses and inland navigable waters.
—Pipelines that cross under inland navigable waters in tunnels or are surrounded by other impermeable barriers.
—Pipelines that cross the waters of the U.S. and the waters of another country.
—Drill strings, flow lines, or production casing extending under navigable waters but originating from land-based drilling and production facilities.
—Other structures to which the applicability of OPA 90 may be unclear.

2. Section 1016(e) of OPA 90, and 33 CFR part 135 enumerate the following potential ways of demonstrating financial responsibility:

—Insurance;
—Guaranty;
—Indemnity;
—Surety bond;
—Letters of credit;
—Qualification as self-insurer; or
—Any combination of the above methods.

What additional methods of demonstrating evidence of the $150 million level of financial responsibility exist to enable responsible parties and guarantors to meet the requirement? Do all of these methods provide equal assurance that all claims will be paid in a timely manner?

3. Section 1019 of OPA 90 states, "A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 1016." The MMS is seeking comments on:

—Existing State programs that can be demonstrated to be equivalent to OPA 90.
—Other State programs that address oil spill financial responsibility.
—How States expect to administer evidence of financial responsibility programs consistent with OPA 90.
—What relationships can exist between MMS and States that do and States that do not have their own evidence of financial responsibility programs.
—How MMS can verify that a State program satisfies the requirements of OPA 90.
—What contact and coordination mechanisms MMS can establish with States.
—To what extent MMS may be allowed to defer offshore facility financial responsibility under OPA 90 to a State program.

4. The oil and gas industry has expressed concerns regarding the availability of insurance for those responsible parties that cannot self-insure. Insurers attribute their problem to claiment direct action, duplicative liability under State law, and determinations of covered damages. The MMS is seeking comments regarding:

—Whether and how direct action, language limiting liability, uncertain scope of damage provisions, and lack of preemption provisions in OPA 90 affect the availability of insurance.
—What regulatory approaches are available under OPA 90 that may improve the availability of an insurance market.

5. Section 1016(e) of OPA 90 authorizes MMS, as the agent of the President, to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility. The MMS is seeking comments regarding:

—What defenses should be available to a Guarantor to ensure the availability of affordable bonds, insurance, or other forms of guarantees.
—On what terms and conditions, if any, should bank letters of credit be acceptable as evidence of financial responsibility.
—On what terms and conditions, if any, should third party guaranties be acceptable as evidence of financial responsibility.
—On what terms and conditions should a lessee/operator be allowed to self-insure for financial responsibility obligations under OPA 90.

6. Self-insurance, as well as insurance, re-insurance, and other indemnity mechanisms have been identified as methods to achieve the $150 million oil spill financial responsibility requirement of OPA 90. The MMS is seeking comments regarding:

—What organizational structures could be used for other indemnity mechanisms.
—What limitations are appropriate for these indemnity mechanisms to ensure that adequate financial responsibility coverage exists for all participating responsible parties.
—To what extent can a single indemnity mechanism be acceptable as evidence for a number of responsible parties or their offshore facilities.
—Should the utilization of a single indemnity mechanism be limited by a maximum number of offshore facilities or a maximum volume of oil handled by the offshore facilities. If not, why not.
—What financial tests or criteria should be used to judge applications for self-insurance.

7. For the purposes of administering section 1016 of OPA 90, the MMS interpretation of the definition for "oil" in section 1001(23) of OPA 90, excludes facilities that handle or produce only dry natural gas. The MMS recognizes that some quantity of natural gas liquids may be produced with the gas. Facilities handling at any one time 1,000 barrels or less of these highly volatile, light end petroleum fractions were exempted from the USCG financial responsibility regulations (33 CFR part 135) because these liquids posed significantly less environmental risk than crude or refined oil. The MMS is seeking comments and the basis for those comments regarding:

—Should offshore facilities that store or process only dry natural gas be exempt from the financial responsibility requirements of OPA 90.
—Should offshore facilities that store or process a de minimis quantity of natural gas condensate be exempt from the financial responsibility requirements of OPA 90.
—What are appropriate de minimis quantities.

8. The oil and gas industry has claimed that the requirement for $150 million in financial responsibility may result in premature abandonment of wells and preclude their transfer to smaller companies. The MMS is seeking comments regarding:

—What information is available to substantiate this claim.
—How regulations can be structured to avoid premature abandonment of producing wells.

Persons choosing to respond to this notice should send comments to the address shown in the addresses section. Following the analysis of comments received, proposed rules governing oil spill financial responsibility for offshore facilities will be developed and published in the **Federal Register**.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 93-20415 Filed 8-24-93; 8:45 am]

BILLING CODE 4310-MR-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4699-1]

Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the next public meeting of the Hazardous Waste Manifest Rulemaking Committee. The meeting is open to the public without advance registration.

The purpose of the meetings is to finalize revisions to the uniform national hazardous waste manifest form and rule.

DATES: The Committee meeting will be held on September 7, 1993 from 10 a.m. to 6 p.m., and on September 8, 1993 from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at Resolve-World Wildlife, 1250 Twenty-fourth Street NW., Fifth Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Westlund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-2745. Persons needing further information on procedural or logistical matters should call the Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street NW., suite 500, Washington, DC 20037, (202) 778-9533.

Dated: August 23, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93-20712 Filed 8-24-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[ND4-1-5670; FRL-4698-6]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of North Dakota for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this proposal; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by September 24, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments can be mailed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, Mail Code—8ART-AP, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Copies of the State's submittal and EPA's technical support document are available for inspection during normal business hours at the following location: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

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FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code—8ART-AP, Environmental Protection Agency Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 294-7539.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of North Dakota has submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

The State of North Dakota has met all of the requirements of Section 507 by submitting a SIP revision that implements all required PROGRAM elements. The North Dakota State Department of Health and Consolidated Laboratories (the Department) formally adopted the proposed SIP revision on October 23, 1992, which outlines the establishment of a PROGRAM. N.D.C.C. Sections 23-25-02 and 23-25-03 grant the the Department the authority to undertake the elements of the PROGRAM. Executive Order 1992-5 dated May 21, 1992, issued by the Governor of North Dakota, established a Small Business Compliance Advisory Panel in the State of North Dakota.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements[1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by committing in its proposed SIP revision Section 12.5 to "act as an information clearinghouse by referring small businesses to State technical experts within the Department who are trained to handle specific questions relevant to achieving compliance with the CAA." Section 12.5.1 further describes how this will be accomplished. A toll-free hotline will be established to direct calls from small businesses, the SBAP will be advertised through various methods, and informational packets will be distributed.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by committing in its proposed SIP revision Section 12.5 that the SBAP will collect and disseminate information to small businesses on pollution prevention and accidental release detection and prevention. Section 12.5.2 further commits to promote the goals of pollution prevention through training programs, workshops, and seminars, and to make available to small businesses information on the prevention and detection of accidental releases.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by committing in its proposed SIP revision Section 12.5 to collect and disseminate information to small businesses on determining applicable requirements under the CAA through the SBAP. Section 12.5.3 further commits to "provide direct and timely, one-on-one assistance to small businesses in * * * identifying applicable rules, determining the need for a permit, and identifying alternative methods or procedures for achieving compliance with the applicable rules."

The fourth and fifth requirements are to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights and obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. This must be done in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met these requirements by committing in its proposed SIP revision Section 12.5 to collect and disseminate information on small business' rights and obligations under the CAA, and on audit programs and procedures. Section 12.5.4 further states that the Department will notify small businesses of their rights in a timely manner through pamphlets, public service announcements, word-of-mouth from field inspectors, and by making presentations at trade or chamber of commerce meetings. In Section 12.5.5, the Department commits to maintaining a list of environmental consulting companies qualified to conduct audits, and making that list available upon request. For sources that do not have the resources to hire an independent consultant, the Department will, upon request, "conduct a consultation audit to assess the need for control measures and/or a Permit to Operate." The Department will also conduct an audit in conjunction with the initial inspection for those sources required to obtain a Permit to Operate to ensure that the source is in compliance.

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by committing in its proposed SIP revision Section 12.5 to "consider requests from a small business stationary sources for modifications of work practices, technological methods of compliance, or compliance procedures and provide guidance as necessary." Section 12.5.6 further details the procedures for requesting a modification of work practices or alternate control methods.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by locating the position of the Small Business Ombudsman in the Office of the Chief of the Environmental Health Section effective April 6, 1992, as stated in its proposed SIP revision Section 12.3.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing the CAP under Executive Order 1992-5 issued by the Governor on May 21, 1992, and through its proposed SIP revision Section 12.4 which outlines how the members will be determined, which is consistent with the method described above.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by outlining in its proposed SIP revision Section 12.4 the functions of the CAP which is consistent with those stated above.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of North Dakota has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The State of North Dakota has also provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants, and for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. Section 12.2 of the proposed SIP revision states that the SBAP "will be available to all small business stationary sources as defined by section 507(c) of the 1990 CAAA and all such eligible sources will not be excluded from the program without prior EPA approval."

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

III. Action

In this action, EPA is proposing to approve the SIP revision submitted by the State of North Dakota.

The State of North Dakota has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. Section 12.3 of the State's proposed SIP revision states that the Small Business Ombudsman was established on April 6, 1992, and details what the role and duties of the Ombudsman will be. The CAP was established under Executive Order 1992-5 issued by the Governor on May 21, 1992. Section 12.4 of the State's proposed SIP revision outlines the duties of the CAP and how its members will be chosen. A schedule for implementation of the State's SBAP submitted in a letter by the State dated January 18, 1993, indicates that the legislature will appoint panelists to the CAP by January 31, 1993, and that the first meeting will be April 1, 1993. This implementation schedule further indicates that the small business hotline will be installed by July 1, 1993. EPA is therefore proposing to approve this submittal.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. This program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to

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take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 10, 1993.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 93–20593 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[UT8–1–5842; FRL–4688–5]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Utah for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this proposal; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by September 24, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments can be mailed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, Mail Code—8ART–AP, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Copies of the State's submittal and EPA's technical support document are available for inspection during normal business hours at the following location: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code—8ART–AP, Environmental Protection Agency Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued Guidelines for the Implementation of section 507 of the 1990 Clean Air Act Amendments, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Utah has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

The State of Utah has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. House Bill 129 was passed to amend the Utah Air Conservation Act to add Section 19–2–109.2, which authorizes establishment of a SBAP, and creation of a Compliance Advisory Panel. The State of Utah proposes to amend the Utah SIP to include Section 17, which is a plan for implementation of the SBAP. R307–2 of the Utah Air Conservation Rules incorporates this proposed SIP amendment by reference.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements[1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by committing in its regulations Section 17.3.3 to "develop a library of information concerning compliance methods and technologies for small business stationary sources." The State has the authority to establish a toll-free hotline to address questions regarding compliance.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by including a commitment in its regulations Section 17.3.2 to "answer questions from small business stationary sources about pollution prevention and accidental release detection and prevention * * * alternative technologies, process changes, products, and methods of operation that help reduce air pollution." The State has the authority to establish a toll-free hotline for such purposes.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by committing in its regulations Section 17.3.5 to establish programs and work with trade associations and state and local governments to inform small businesses of new and existing state and federal rules. In Section 17.3.2 of its regulations, the State commits to help small businesses fill out permit application and emission inventory forms. The State has the authority to establish a toll-free hotline which would enable small businesses to ask questions about air quality rules.

The fourth and fifth requirements are to develop adequate mechanisms to assure that small business stationary sources receive notice of its rights and obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. This must be done in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met these requirements by committing in Section 17.3.4 of its regulations to "provide timely information to small businesses concerning their rights and obligations under the State and Federal Clean Air Act" and to "perform audits of the operations of small businesses" or "refer that small business stationary source to qualified auditors."

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by committing in Section 17.3.6 of its regulations to "consider requests from a small business stationary source for modifications of any work practice or technological method of compliance, or the schedule of milestones for implementing these modifications." The State has the authority to consider the technological and financial capability of small businesses making such requests.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by locating the Office of the Small Business Ombudsman in the Department of Environmental Quality, Office of the Executive Director, as stated in Section 17.5.1 of its regulations. This section commits to fund the Office of the Small Business Ombudsman with air pollution emission fees.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by committing in Section 17.4.1 of its regulations to appoint the members of the CAP as stated above.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by committing in Section 17.4.2 of its regulations to: (1) "Render advisory opinions to the Executive secretary concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement"; (2) make reports to EPA * * * concerning the compliance of the SBAP with the requirements of the Federal Paperwork Reduction Act, Regulatory Flexibility Act, and Equal Access to Justice Act to the extent these laws apply to the state program"; (3) "to review information prepared by the SBAP * * * to make sure the information is understandable by the layperson"; and to (4) "monitor the progress of the SBAP and make suggestions to the Air Quality Board through the Executive Secretary to improve the effectiveness of the program."

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Utah has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in Section 17.2.1 of the State's regulations.

The State of Utah has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants. This provision is contained in Section 17.2.2 of the State's regulations.

The State of Utah has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. This provision is contained in Section 17.2.3 of the State's regulations.

III. Action

In this action, EPA is proposing to approve the SIP revision submitted by the State of Utah.

The State of Utah has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. Section 17.6 of the State's regulations is a schedule for implementation of its SBAP. By July 1, 1993, the Office of the Small Business Ombudsman will be designated in the Department of Environmental Quality. By November 15, 1993, the members of the Compliance Advisory Panel will be appointed. By November 15, 1994, or date of approval of its Operating Permit Program, if earlier, the SBAP will be

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

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fully implemented. EPA is therefore proposing to approve this submittal.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. This program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 10, 1993.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 93–20595 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–4694–3]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Plymouth Harbor/Cannons Engineering Corporation Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Plymouth Harbor/Cannons Engineering Corporation Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act , as amended by the Superfund Amendments and Reauthorization Act (CERCLA). EPA and the Commonwealth of Massachusetts have determined that all appropriate CERCLA actions have been implemented and that no further cleanup at the Site is appropriate. Moreover, EPA and the Commonwealth have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this site may be submitted on or before October 6, 1993.

ADDRESSES: Comments may be mailed to: James M. Di Lorenzo, Remedial Project Manager, Waste Management Division, U.S. Environmental Protection Agency, J.F.K. Federal Building (HSN-CAN5), Boston, MA 02203.

Comprehensive information on this site is available through the EPA Region I public docket, which is located at EPA's Region I office and is available for viewing by appointment only from Monday through Friday, excluding holidays. Requests for appointment or copies of the contents from the Regional public docket should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 90 Canal Street, 1st Floor, Boston, MA 02114(617) 573–5729, Contact: Ellen Culhane.

A copy of the Regional public docket is also available for viewing at the Plymouth Harbor/Cannons Engineering Corporation Site information repository located at: Plymouth Public Library, 11 North Street, Plymouth, MA 02360, (508) 746–1927.

FOR FURTHER INFORMATION CONTACT: James M. Di Lorenzo, Remedial Project Manager, Waste Management Division, U.S. Environmental Protection Agency, J.F.K. Federal Building (HSN-CAN5), Boston, MA 02203, (617) 223–5510; or

Daniel J. Coughlin, Section Chief, Waste Management Division, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building (HSN-CAN5), Boston, MA 02203, (617) 573–9620; or

Harish Panchal, State Remedial Project Manager, Bureau of Waste Site Cleanup, Massachusetts Department of Environmental Protection, One Winter Street (5th floor), Boston, Massachusetts 02108, (617) 556–1118.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region I announces its intent to delete the Plymouth Harbor/Cannons Engineering Corporation Site, Plymouth, Massachusetts, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund).

Pursuant to § 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning this site for thirty (30) days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from or recatagorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA will consider, in consultation with the Commonwealth, whether any of the following criteria have been met:

1. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate; or

2. All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup by responsible parties is appropriate; or

3. Responsible or other parties have implemented all appropriate response actions required.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management in activities such as allocating Fund resources among releases.

EPA Region I will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA region I has recommended deletion and has prepared the relevant documents.

2. EPA and the Commonwealth conducted a joint inspection of the site on September 18, 1992, five years after the commencement of the remedial action. The Commonwealth of Massachusetts has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice, August 25, and will conclude on October 6, 1993.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period. The deletion will occur after the EPA Regional Administrator places a notice in the Federal Register. The NPL will reflect any deletions in the next final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to the local community by Region I.

IV. Basis for Intended Site Deletion

The Cannons Engineering Corporation-Plymouth Harbor Site (CEC-Plymouth Site or Site) is located in an industrial park known as Cordage Park in the town of Plymouth, Massachusetts. The CEC-Plymouth Site is one of four separate but related sites which form the Cannons Engineering Corporation Superfund Sites. The others are the Cannons Engineering Corporation Bridgewater Site in Bridgewater, Massachusetts; the Tinkham's Garage Site in Londonderry, New Hampshire; and the Gilson Road Site in Nashua, New Hampshire. All four sites are being handled under one enforcement effort.

The CEC-Plymouth Site consists of approximately 2.5 acres which is bordered on the northeast perimeter by Plymouth Harbor and on the southeast perimeter by a tidal stream. The site previously contained three above-ground storage tanks, each surrounded by an earthen berm measuring 6 to 8 feet in height. Tanks No. 1 and No. 2 each had a storage capacity of 250,000 gallons and tank No. 3 had a storage capacity of 500,000 gallons. The tanks were originally used for the storage of No. 6 fuel oil and bunker C oil until 1974 when this practice was discontinued. In 1975, the Cannons Engineering Corporation (CEC) leased the tanks for storage of waste oils and liquid hazardous substances, utilizing the gross storage capacity of tanks No. 1 and No. 2. Tank No. 3 was never utilized by CEC, though it was being prepared for similar use. In 1979, CEC was licensed by the Commonwealth of Massachusetts to store wastes at its Plymouth Facility. On June 12, 1980, the Commonwealth issued an Order of Revocation alleging that CEC had violated hazardous reporting regulations by falsifying documents. CEC was ordered to cease operations immediately.

From 1980 to 1983, site inspections by the EPA and the Massachusetts Department of Environmental Quality Engineering (DEQE), currently the Massachusetts Department of Environmental Protection (MADEP), indicated that the two smaller tanks, No. 1 and No. 2, were leaking a mixture of hazardous wastes from several seams, contaminating soils below. The tanks, which then were approximately 60 years old, were located about 20 yards from Plymouth Harbor.

The site was ranked according to EPA's Hazard Ranking System (HRS) which prioritizes sites for inclusion on the National Priorities List (NPL) of Superfund Sites. The CEC-Plymouth Site received a score of 54.82 and was proposed for listing on the NPL in December 1982. The NPL site listing was finalized in September 1983.

When CEC was shutdown by the Commonwealth in 1980, approximately 500,000 gallons of liquid hazardous substances stored in tanks No. 1 and No. 2 were abandoned at the Plymouth facility. A consent agreement between EPA and Salt Water Trust, the site owner, was entered into in August 1983 which required the Trust to drain and clean one of the two tanks containing waste. In September 1983, Jetline Services, Inc., under contract to Salt Water Trust, drained and cleaned the contents of tank No. 1. In January 1984, an EPA contractor, Clean Harbors, drained and cleaned the second tank, tank No. 2, completing the stored liquids removal. Both tanks were steam cleaned after emptying. There were no abandoned liquid hazardous substances stored in tank No. 3 at the Plymouth facility, because CEC never made use of this tank.

A Remedial Investigation and Feasibility Study (RI/FS) was completed in June 1985. In general, on-site soils were found to be relatively free of volatile organic compounds. Polynuclear aromatic hydrocarbons (uPAHs), lead, and pesticides were detected in on-site soils, but were not distributed in high concentrations in a uniform manner laterally or vertically. Groundwater was evaluated and found to be free of organic contaminants. Low levels of inorganics were detected in some samples.

A Record of Decision (ROD) was issued for the site in September 1985 which specified the following actions:

1. Dismantling and disposal of the three storage tanks and associated piping at an appropriate off-site facility.

2. Supplemental sampling in order to confirm the pattern of contamination identified in the RI, and to characterize the contaminant distribution located underneath the storage tanks. Supplemental samples were to be taken from soils under the dismantled tanks; surface and subsurface soil locations outside the tank berms; five on-site groundwater monitoring wells; and surface water and sediments located in the tidal seep.

3. Preparation of a site specific Floodplain Assessment.A plan for future action set forth in the 1985 ROD indicated that data generated from the supplemental sampling and floodplains

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assessment would be evaluated to assess the need for an amended ROD. Following implementation of the ROD and evaluation of the sampling data, however, EPA, in consultation with the Commonwealth, determined that the only necessary further response action at the site was a removal of stained soils.

As required in the ROD, a Floodplains Assessment was completed in January 1986. The Floodplain Assessment concluded that the CEC-Plymouth site lies within the 100 year floodplain. Several recommendations were presented in the Floodplains Assessment based on the specific remedial alternative selected. These recommendations were complied with during the subsequent response actions.

In April 1987, a detailed Work Plan and a Field Operations Plan (FOP) were completed for the site by an EPA contractor which called for the dismantling and disposal of the storage tanks and the performance of a Supplemental Sampling Program.

Prior to tank dismantling and disposal, the site was fenced in June 1987 to restrict uncontrolled access. The three storage tanks were inspected, decontaminated, demolished and disposed of off-site by EPA contractors during the Fall of 1987.

During the course of the tank dismantling and disposal, an area of stained soils was identified adjacent to the former location of tank No. 1. The tank dismantling subcontractor excavated and drummed approximately 3 cubic yards of stained soil. The drummed soil was transferred off-site with the rest of the manifested wastes. It was estimated that up to 180 cubic yards of soil contaminated with oily materials and hazardous substances remained within the bermed area of tank No. 1.

As required by the ROD, a supplemental sampling program was conducted by an EPA contractor in the Fall of 1987. The supplemental sampling program confirmed almost all of the contaminant characterization of the RI. On-site soils were free of VOC contamination, but were found to contain PAHs, lead and low levels of pesticides. In the one finding that differed from the results in the RI, no pesticides were found in the tidal seep sediments.

Pursuant to a consent decree, in September 1988, a removal of the stained soils identified adjacent to tank No. 1 was conducted by the Potentially Responsible Parties (PRPs). Approximately 200 tons of soil contaminated with oily materials and hazardous substances were excavated and disposed of at a Subtitle C hazardous waste facility. In addition, the top 6"–12" of soil from the interior of each of the three bermed areas where the tanks were previously located, approximately 50 tons, was excavated and disposed of along with the stained soils.

The sources of concentrated hazardous substances have been removed from the site. Evaluations of groundwater and soil residuals indicate that the site does not have the potential to significantly degrade air media, groundwater, or adjacent surface water bodies.

Therefore, the existing site conditions are currently protective and will not present an ongoing threat to human health and the environment for future commercial/industrial applications of the property. Based on the residual levels of PAHs and lead in on-site soils, the Endangerment Assessment (April 1989) concluded that the site can not be developed residentially unless further studies and/or subsequent remedial actions indicate that uses for the site other than commercial/industrial are appropriate.

Since the protectiveness determination is based upon continued commercial/industrial uses of the site, institutional controls, in the form of deed restrictions, are necessary.

The declaration of restrictions, recorded on April 21, 1992, provides in part that;

1. The site property will not be used for residential, school, hotel, motel, community and/or recreational purposes unless a study conducted by a qualified engineering or environmental consulting firm with risk assessment capabilities indicates to EPA and the Commonwealth of Massachusetts that there is no public health threat presented by conditions associated with residential, school, hotel, motel, community and/or recreational usage of the property; or

2. Response actions are undertaken and EPA and the Commonwealth of Massachusetts certify that residential, school, hotel, motel, community and/or recreational usage of the site is appropriate under remediated conditions.

The requirements of OSWER Directive 9355.7–02 dated May 23, 1991, provide that EPA will conduct five-year reviews as a matter of policy at sites for which the remedy was selected prior to the passage of the Superfund Amendments and Reauthorization Act (SARA) where hazardous substances will remain on-site above levels that allow for unlimited use and unrestricted exposure. Since residual contamination is being left on-site and future use of the site is limited, compliance with the five-year reviews will be maintained. The first five-year review for the site was completed on December 4, 1992.

EPA, with concurrence from the Commonwealth of Massachusetts, has determined that all appropriate responses under CERCLA at the Plymouth Harbor/Cannons Engineering Corporation Site have been completed, and that no further cleanup is appropriate.

Dated: July 28, 1993.

Paul G. Keough,

Acting Regional Administrator, USEPA Region I.

[FR Doc. 93–20300 Filed 8–24–93; 8:45 am]

BILLING CODE 6560-50-F

Notices

Federal Register

Vol. 58, No. 163

Wednesday, August 25, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Submitted for Review

AGENCY: ACTION, the Federal Domestic Volunteer Agency.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission may be obtained from the ACTION Clearance Officer.

DATE: OMB and ACTION will consider comments received by September 9, 1993. Send comments to both:

Willard Hoing, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington DC 20525

Steve Semenuk, Desk Officer for ACTION, Office of Management & Budget, 3002 New Executive Office Bldg., Washington DC 20503.

Title and Number of Form: Older American Volunteer Programs, Project Grant Application, ACTION Form No. 424–OA (12/90).

Need and Use: This application is used by prospective grantees to apply for sponsorship of OAVP projects or by existing grantees to reapply for continuing funding.

Type of Request: Extension of expiration date of a currently approved collection without any change in the substance or in the method of collection.

Respondent's Obligation to Reply: Required to obtain/retain benefits.

Descriptions of Respondents: Public agencies and private non-profit organizations.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 1220.

Estimated Average Burden Hours per Response: 15.9.

Dated: August 18, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–20555 Filed 8–24–93; 8:45 am]

BILLING CODE 8050-28-M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for San Clemente Creek, Marin County Shoreline Study, Town of Corte Madera, Marin County, California

AGENCY: U.S. Army Corps of Engineers, San Francisco District, DOD.

ACTION: Notice of intent.

SUMMARY: Proposed Action. The Corps of Engineers, San Francisco District, has been authorized by the Water Resources Development Act of 1986 (WRDA 1986), and the Committee on Public Works and Transportation of the U.S. House of Representatives, Docket No. 2252, August 8, 1984, to investigate the flood and related problems of those lands lying below the plain of mean higher high water along the San Francisco Bay shoreline in the Town of Corte Madera, Marin County, California. The Corps of Engineers has completed the Reconnaissance Study and Environmental Assessment and is proceeding to the Feasibility Study and Draft Environmental Impact Statement (DEIS) planning stage.

The Corps of Engineers, as the lead agency under the National Environmental Policy Act (NEPA), will prepare a Draft Environmental Impact Statement as part of feasibility studies. The local sponsor, Town of Corte Madera, is the lead agency under the California Environmental Quality Act (CEQA).

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Linda Hyde, USAED, 211 Main Street, San Francisco, California 94105–1905; (415) 744–3039.

SUPPLEMENTARY INFORMATION: The Reconnaissance Study and Environmental Assessment identified seven possible project Alternatives. The conclusion of these studies was a recommendation that three Alternatives and the No Action Alternative be further investigated during the Feasibility Study and Draft Environmental Impact Statement phase of the NEPA process. These Alternatives are discussed below

The purpose of the Draft Environmental Impact Statement and Feasibility Study is to investigate tidal and related fluvial flooding problems within the San Clemente Creek drainage basin in the vicinity of Corte Madera, Marin County, California. The study area includes two residential subdivisions known as Mariner Cove and Marina Village. The subdivisions are located in the low lying areas of Corte Madera east of U.S. Highway 101 and north of Paradise Drive. These areas face a flood hazard that is caused by either an extreme rainstorm coinciding with high tides in San Francisco Bay, or by extreme storm surges and coincident high tides.

Other physical processes exacerbate the flood damage potential in the subdivisions and adjacent areas. Subsidence of the land surface in the subdivisions is occurring due to ongoing consolidation of the underlying bay muds. Sea level rise is increasing the total height of high tides and storm surges in San Francisco Bay. Construction of the subdivisions disrupted the natural equilibrium of sediment flows between San Clemente Creek and the bay, increasing siltation of the creek channel. This siltation has restricted the creek's flood storage capacity and navigability. The combined effects of these processes expose the area to greater flood damage potential.

The Reconnaissance Study identified potential solutions to the flooding problems and determined a Federal interest in proceeding to the Feasibility Phase. The Feasibility Study will examine the following possibilities as alternative solutions:

Alternatives

—Tidal barrier with tide gate. This alternative provides an offshore barrier and tide gate. Levee raising, pump stations and/or dredging for storage would also be included as part of the plan. This alternative would provide an optimum degree of flood protection primarily by controlling tidal and fluvial flows.

—Tidal barrier with lock structure. This alternative provides an offshore barrier, navigation lock and raising levees. A navigation lock is used

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instead of a tide barrier. The storage capacity and navigability of San Clemente Creek would be increased. This is the locally preferred alternative. There are two interior storage choices within this alternative, one which would not pond Marta's Marsh, a tidal marsh adjacent to San Clemente Creek and northward, and another which would result in periodic ponding of Marta's Marsh. This alternative would provide an optimum degree of flood protection and improve navigation in San Clemente Creek.

—Modified tide gate. This utilizes a system of floodwalls and improved levees in conjunction with a tide gate on San Clemente Creek. This alternative would provide an optimum degree of flood protection.

—The No Action alternative is the study area without a Federal project.

Environmental Issues

The Environmental Assessment prepared during the Reconnaissance identified the following environmental significant issues associated with the DEIS:

Endangered species impacts
Wetland impacts and mitigation
Water quality impacts
Aquatic resources (including dredging and disposal) impacts
Socioeconomic impacts
Navigation impacts
Transportation impacts
Air quality impacts
Recreational impacts
Esthetic impacts
Visual impacts

Scoping: The U.S. Army Corps of Engineers, San Francisco District, and the Town of Corte Madera, with the support of the Marin County Flood Control and Water Conservation District, invite federal, state, and local agencies and members of the public to provide comments on the proposed project. A public scoping meeting has been scheduled for Thursday, September 29, 1993, in San Clemente School Multipurpose Room, 330 Golden Hinde Passage, Town of Corte Madera, California at 7 p.m. Scoping comments should clearly describe specific environmental issues or subjects which the commentor wishes to be addressed. Written comments should be mailed no later than Friday, October 15, 1993, to Ms. Linda Hyde, Corps of Engineers, San Francisco District, Environmental Branch, 211 Main Street, room 918, San Francisco, California 94105–1905.

Leonard E. Cardoza,
Lt., En Commanding.

[FR Doc. 93–20509 Filed 8–24–93; 8:45 am]
BILLING CODE 3710–EF–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 13–16 September 1993 at Wright Laboratory, Wright-Patterson Air Force Base, OH.

The purpose of this meeting is to review and evaluate the Aeropropulsion and Power, and Flight Dynamics laboratory programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 93–20615 Filed 8–24–93; 8:45 am]
BILLING CODE 3910–01–W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Global Positioning and Survivability will meet from 8 a.m. to 5 p.m. on 13 September 1993 at the Naval Research and Development Center, Warminster, PA.

The purpose of this meeting is to receive briefings and conduct discussions concerning GPS. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,
Air Force Federal Register, Liaison Officer.

[FR Doc. 93–20616 Filed 8–24–93; 8:45 am]
BILLING CODE 3910–01–W

Air Force Policy on Factory Simulation

The Assistant Secretary of the Air Force for Acquisition proposes to publish the following policy on factory simulation. If approved, the policy would apply to all new contracts for Air Force Acquisition Category I and II Programs, and on other programs for which Air Force System Program Directors determine it is necessary.

Our present methods of estimating risks are not adequate in the evolving world of system acquisition. We have entered a period where our senior managers have become more risk averse while at the same time searching for new technologies that offer greater military leverage at reduced unit costs. We will be pushed to make large jumps in technology with only limited experience in actually producing that technology. Requiring our contractors to simulate and analyze their current and proposed factory processes will help us meet these challenges. The potential for simulation of factory operations covers a broad range of applications from detailed models for the design and optimization of a single production process to an overall simulation of the complete factory process required for the final product.

DODI 5000.2 places a major emphasis on ensuring the feasibility of production operations as an integral part of the systems engineering process. Recent experience by a prime contractor in simulating the factory process flow demonstrated the feasibility and utility of such a model. By accounting for the statistical variation of major operations in final assembly and test, including supplier reliability (delivery) and quality, the model was able to demonstrate that the existing factory process was incapable of supporting contract delivery rates. It also provided the ability to evaluate the improvements required to achieve rate production. Because of this and other successful experiences we are convinced of the need to emphasize the use of factory simulation as a risk reduction tool.

Effective immediately, System Program Directors (SPDs) shall require their contractors to simulate their factory process flow throughout the system development and production process for all ACAT I and II programs and other programs as they believe necessary. This requirement only applies to new contracts. SPDs are encouraged but not required to implement this on existing contracts. During source selection, SPDs shall evaluate the contractor's proposed approaches to using factory simulation to manage and reduce risk. They will structure their source selection criteria to encourage the contractors to take a proactive approach to identifying and reducing manufacturing risk. The level of detail in the simulation should reflect the program phase, initial risk assessments, and the need to break constraints identified in earlier simulations. Additionally, thoroughly understanding the critical constraints in conjunction with factory simulation offers a structured decision making approach to system evaluation. Logically, we should focus our improvement efforts on those few constraints that most limit system performance, as improvements in nonconstraint areas do not yield commensurate improvements in overall system performance. This will allow us to rank order our improvement opportunities based on a consistent set of evaluation criteria.

SPDs should consider offering contractual incentives to encourage the early use of factory simulation during system development. For programs that are already in or are about to enter production, cost saving ideas identified through factory simulation may qualify for value engineering (VE) incentives. To be accepted as a Value Engineering Change Proposal, the ideas must result in a reduction in the overall project cost to the government and meet the requirements of FAR part 52.248–1. SPDs should consider setting aside funds to pay for VE proposals generated from factory simulation. SPDs may use VE savings to pay for other unfunded requirements.

By increasing this emphasis, the contractor industrial base will be encouraged to optimize planned production operations and reduce risk. The simulation should be run at not only the planned production rate but also at reduced and accelerated rates. However, in applying these analytical tools, we must not lose sight of the true purpose of the factory, which is to produce high quality products for our users, on time and at minimum cost. Factory efficiency should not be blindly pursued to the detriment of our goal of improving product quality by reducing variability. SPDs should encourage contractors to continually balance product quality and efficient factory operations through a structured decision making process. The factory process flow simulation forms the basis for identification of constraints on production operations, which may include technology shortfalls, technology insertion opportunities, and management policies and practices, including those imposed by the government. This will act as a catalyst for identifying targets of opportunity for shared responsibility in improving the industrial base.

If you have any comments on the proposed factory simulation policy, please send them to the following address within 30 days of publication of this notice in the **Federal Register**: SAF/AQXM, Attn: Maj Kirlin, 1060 Air Force Pentagon, Washington DC 20330–1060.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 93–20614 Filed 8–24–93; 8:45 am]
BILLING CODE 3910–01–W

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, title 10, United States Code, the Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado, 21–23 October 1993. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on the morning of October 22, 1993. Other portions of the meeting will be closed to the public to discuss matters listed in subsections (2), (4), and (6) of section 552b(c), title 5, United States Code. These closed sessions will include attendance at cadet training programs and discussions with cadets, military staff, and faculty officers involving personal information and opinion, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in various facilities throughout the cadet area.

For further information, contact Captain Nelson English, OL–C, USAFA, the Pentagon, Washington, DC 20330–1040, at 703–697–2919.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 93–20502 Filed 8–24–93; 8:45 am]
BILLING CODE 3910–01–M

Department of the Army

Military Personal Property Symposium; Open Meeting

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Military Personal Property Symposium. This meeting will be held on Thursday, September 23, 1993, at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 8:30 a.m. and adjourn at approximately 4 p.m.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTOP–QSS, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–0754, between 8 a.m.–4:30 p.m. Topics to be discussed should be received on or before August 31, 1993.

Kenneth L. Denton,
Army Federal Register Liaison Officer.

[FR Doc. 93–20508 Filed 8–24–93; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 24, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

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opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 19, 1993.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: NEW
Title: Fast Response Survey System—Survey on Attitudes and Expectations to ED in the U.S.
Frequency: One-time; non-recurring
Affected Public: Individuals or households
Reporting Burden:
Responses: 1,300
Burden Hours: 217
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey was developed by an international Organization for Economic Co-operation and Development (OECD) and will be administered in 12 countries worldwide in virtually identical form. It is a survey of the general public's attitudes and expectations toward education and focuses on four areas: courses or study, school goals and effectiveness, decisionmaking in schools, and teacher status. Information from each country will be compared and published in a publication "Education At A Glance."

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Performance Report for the Training Program for Special Program Staff and Leadership Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 15
Burden Hours: 45
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Department uses the data to evaluate projects for continuations, assess technical assistance needs, determine future funding levels, and assign scores to projects in competition for new grants.

[FR Doc. 93-20525 Filed 8-24-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Proposed Interim Remedial Actions at Waste Area Grouping 13

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a floodplain Statement of Findings for the proposed interim remedial actions at Waste Area Grouping (WAG) 13 at the Oak Ridge National Laboratory (ORNL), prepared in accordance with 10 CFR part 1022. DOE proposes to perform interim remedial actions in a floodplain located in Anderson County, Tennessee. DOE prepared a Floodplain Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain.

DATE: Comments are due to the address below by September 9, 1993.

ADDRESS: Mail comments to: Mr. Robert Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541. (615) 576–0715; Fax comments to: (615) 576–6074.

FOR FURTHER INFORMATION CONTACT: For further information on general DOE floodplain environmental review requirements, contact: Ms. Carol Borgstrom, Office of NEPA Oversight, (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586-4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for interim remedial action at WAG 13, prepared in accordance with 10 CFR part 1022. A Notice of Floodplain Involvement was published in the **Federal Register** on December 7, 1992, 57 FR 57828. WAG 13 contains eight treatment plots that were used as part of nuclear weapons fallout simulation experiments. A portion of WAG 13 lies in the 100-year floodplain of the Clinch River. The north-northeast corner of plot 7 lies within the 100-year floodplain, and the north-northeast corner of plot 6 intersects the edge of this same floodplain. The proposed action consists of excavation and disposal of the material at WAG 6. On the basis of the Floodplain Assessment, DOE has determined that no practical alternative to the proposed action exists and that the action would be designed to avoid or minimize potential harm to or within the floodplain of the Clinch River. Other alternatives, such as the no-action, installation of shielding over the plots, and excavation and storage of the material at the Interim Waste Management Facility in WAG 6, were considered and evaluated in making this determination.

The eight treatment plots are encircled by metal sheeting that extends 18 inches below the surface and 24 inches above the surface. Four of the eight plots (plots 2, 4, 6, and 7) are contaminated with cesium–137. DOE is proposing to excavate the top layer of soil in each of the four contaminated plots to a depth of approximately 1 foot and remove the metal perimeter sheeting. A total of approximately 5200 ft^3 of soil would be excavated; 2600 ft^3 of soil would be removed from plots that partially lie within the floodplain. All contaminated soil and metal sheeting would be placed in B–25-rated steel boxes that meet all DOE requirements for storage of low-level radioactive waste. The boxed soil and sheeting would then be disposed of within the boundaries of WAG 6. Following excavation and removal of the contaminated soil from WAG 13, a geotextile liner would be placed in the bottom and on the sides of the hole to prevent cross contamination of the new fill. Following installation of the liner, the excavation would be backfilled with clean fill and topsoil. Vegetation would then be established to prevent erosion at the site.

The floodplain assessment shows that removing the contaminated soil and metal sheeting from WAG 13 would have no significant environmental impact; would have no adverse impact on the floodplain; would not cause impacts such as backwater effects or inundation of land, property, or individuals; and would not promote development in the floodplain. The proposed action has been designed to conform to applicable State or local floodplain protection standards.

DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Clyde W. Frank,

Acting Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–20609 Filed 8–24–93; 8:45 am]

BILLING CODE 6450-01-M

Grant Award to Pacific International Center for High Technology Research

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14 is announcing its intention to award a cost sharing grant to Pacific International Center for High Technology Research (PICHTR) to identify, evaluate, and develop a plan for alternative energy uses and high value co-products from sugarcane land and facilities in Hawaii.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this action is Dr. Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The PICHTR application was determined to be meritorious based on the innovative approach employed by the applicant, and the immediate need to develop a viable plan to utilize existing, but presently unused, facilities and land for the social and economic benefit to the State of Hawaii, particularly in the area surrounding the Hamakua refinery on the island of Hawaii.

The overall objectives of the grant will be to identify and evaluate options and alternative energy uses for sugarcane land and facilities in Hawaii. Once the evaluation process has been completed, the final product is expected to be a sustainable development pathway for crops and land uses for the production of energy and complementary higher value co-products.

Specific objectives are addressed in the Statement of Work for the grant and include the following: Task 1. Communication and Integration: Establish communication with all interested parties providing inputs to the sustainable biomass products development and evaluation project for the Hamakua Region of the Island of Hawaii; Task 2. Potential Crop Assessment: Work with the USDA, Agricultural Research Service (ARS) State Department of Agriculture (DOA), and Hawaii's College of Tropical Agriculture and Human Resources (CTAHR) to identify a list of crops and agricultural and processing practices that may be appropriate under the physical and economic conditions that exist in the region; Task 3. Land Capability Assessment: The project team will work with the State DOA and Department of Land and Natural Resources, the University of Hawaii and Hawaii County to identify land areas that are most suitable for production of alternative crops and products; Task 4. Inventory of Available Facilities for Technology Demonstration and Evaluation: Review technological process and evaluate the suitability of the facilities for the purposes of demonstrating and ultimately developing the appropriate technologies; Task 5. Process Options: Evaluate process options that begin with crops or other raw materials and result with energy as a primary product and other by-products; Task 6. Options to Produce Electricity: Evaluate the various options which would provide a major contribution to the power generation requirements of Hawaii Electric Light Co. (HELCO) over the next 5 to 10 years; Task 7. Options to Produce Ethanol: Conduct an evaluation of the potential for part of the released land area to be allocated to an ethanol production option that would utilize existing infrastructure and assets of Hamakua Mill to help meet the fleet fuel requirements on the island of Oahu; Task 8. Complementary Activities: Evaluate the most appropriate process technologies to determine what by-products are available and the market value; Task 9. Economical and Technical Evaluations: Determine the costs of production of energy (electricity and ethanol) of the most promising technologies; Task 10. Market Survey: Evaluate the potential market for primary products and co-products along with the price sensitivities; Task 11. Sustainability Assessment: Examination of environmental, social and economic impacts of proposed options; Task 12. Identification of Barriers: Regulatory, environmental, financial, technical, and social barriers will be identified and addressed; and Task 13. Proposal for Further Actions: A proposal, based on the findings of this study, will be prepared for private sector review for the development of both near and medium term options.

The Department of Energy considered the likelihood of achieving the above listed objectives to be high due to the level of experience and expertise held by PICHTR and the other members of the project team. The technique of utilizing appropriate governmental agencies and private entities with specialized expertise will provide the broad coverage necessary to ensure all variables are addressed and to identify the most appropriate development plan.

The program will be managed under the leadership of Andrew Trenka, Vice President for Operations, PICHTR. The day to day program activities will be managed by Dr. Robert Shleser. Dr. Shleser holds a B.S. in Agriculture, an M.S. in Genetics, and a Ph.D. in Biophysics from Purdue University. Assisting Dr. Shleser will be Ajay Bhargava of PICHTR, Maria Tome Department of Business, Economic Development and Tourism (DBEDT) and John Sprague of PICHTR. Ajay Bhargava holds a B.S. and an M.S. in Mechanical Engineering from the University of Hawaii and is a Registered Professional Engineer, State of Hawaii. Maria Tome holds a B.S. in Mechanical Engineering from the University of Hawaii. John Sprague holds a B.S. in Marine Biology from California State University and has completed courses in Business Administration at Cerritos College. Other resources as necessary will be utilized to ensure completeness and timeliness.

Review and evaluation of the project determined that the applicant offers an exclusive domestic capability to perform the project and utilizes an innovative approach which would not be eligible for financial assistance under a recent, current, or planned DOE solicitation and a competitive solicitation for the project is considered by DOE to be inappropriate.

The estimated value of the grant is $420,000. Funding in the amount of $150,000 is to be provided by DOE, $80,000 from State of Hawaii, $10,000 from EPRI, $80,000 from DOA, and $100,000 from County of Hawaii. The term of the proposed grant will be six (6) months.

Issued in Chicago, Illinois, on August 5, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–20610 Filed 8–24–93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF90-143-001]

Yuma Cogeneration Associates; Amendment to Filing

August 20, 1993.

On August 13, 1993, Yuma Cogeneration Associates (Applicant), c/o California Energy Company, Inc., 10831 Old Mill Road, Omaha, Nebraska 68154, submitted for filing a supplement to its filing in this docket.

The amendment provides additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before September 10, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-20547 Filed 8-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 349-030, et al.]

Hydroelectric Applications [Central Elmore Water Authority, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Non-Project Use of Project Waters.

b. *Project No:* 349-030.

c. *Date Filed:* July 16, 1993.

d. *Applicant:* Central Elmore Water Authority.

e. *Name of Project:* Martin Dam Project.

f. *Project Licensee:* Alabama Power Company.

g. *Location:* Lake Martin on the Tallapoosa River in Elmore County, Alabama.

h. *Filed Pursuant to:* Section 23(b) of the Federal Power Act.

i. *Applicant Contact:* Mr. John R. Formby, Jr., Attorney At Law, 219 Hill Street, Wetumpka, Alabama 36092, (205) 567-5186.

j. *Licensee Contact:* John E. Dorsett, (205) 250-1380.

k. *FERC Contact:* Jon E. Cofrancesco, (202) 219-2650.

l. *Comment Date:* September 23, 1993.

m. *Description of Project:* Central Elmore Water Authority has filed, for Commission approval, a request to construct and operate a water intake facility within the Martin Dam Project in the area of Little Kowaliga Creek and to withdrawal up to 10 million gallons per day of water from the Lake Martin reservoir for municipal purposes.

n. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

2 a. *Type of Application:* Surrender of Exemption (5MW or Less).

b. *Project No:* 3474-013.

c. *Date filed:* July 29, 1993.

d. *Applicant:* Lake Junaluska Assembly.

e. *Name of Project:* Lake Junaluska Project.

f. *Location:* On Richland Creek in Haywood County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* M. Glenn Martin, Lake Junaluska Assembly, P.O. Box 67, Lake Junaluska, NC 28745, (704) 452-2881.

i. *FERC Contact:* Etta Foster, (202) 219-2679.

j. *Comment Date:* September 24, 1993.

k. *Description of Project:* The project for which the exemption is being surrendered consists of: (1) an existing 550 foot-long, 43 foot-high concrete dam; (2) an existing reservoir with a surface area of 189 acres and a storage capacity of 2,533 acre-feet; (3) an existing concrete powerhouse containing three generating units with a total rated capacity of 439.5 kW; and (4) appurtenant facilities.

The exemptee is requesting surrender of its exemption because it is not economically feasible to replace the old equipment which completely broke down in 1992.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

3 a. *Type of Application:* Amendment to Project Design.

b. *Project No:* 9195-012.

c. *Date Filed:* 07/06/93.

d. *Applicant:* City of Colorado Springs.

e. *Name of Project:* Stanley Canyon.

f. *Location:* On the West Monument Creek, about 10 miles north of the city of Colorado Springs in El Paso County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* John R. Tancock, Colorado Springs Utilities, P.O. Box 1103, MC620, Colorado Springs, CO 80947, Tel: (719) 636-5585, Fax: (719) 636-1487.

i. *FERC Contact:* Mohamad Fayyad, (202) 219-2665.

j. *Comment Date:* September 29, 1993.

k. *Description of Amendment:* Licensee proposes to amend the project design as follows: (1) Delete the following project features: the stilling basin, the energy dissipating structure, and underground reservoir; (2) Add the following project features: an above-ground regulating reservoir, and a tailrace conduit and a transfer conduit; and (3) Modify the following project features: Increase the project's installed capacity from 19.3 MW to 26.5 MW, increase the hydraulic capacity from 180 cfs to 200 cfs, change project's operation from run-of-river to peaking, and reduce the transmission line's length from 8.4 miles to 0.8 mile and revise the transmission line route.

l. *This notice also consists of the following standard paragraphs:* B; C1, and D2.

4. a. *Type of Filing:* Requests for Extensions of Time to Commence Project Construction.

b. *Project No.:* P-4204-019, White River Lock & Dam No. 1, located on the White River near the City of Batesville, Independence County, Arkansas. Licensee: City of Batesville, Arkansas.

c. *Project No.:* P-4660-023, White River Lock & Dam No. 2, located on the White River in the Cities of Locust Grove and Batesville, Independence County, Arkansas. Licensee: Independence County, Arkansas.

d. *Project No.:* P-4659-021, White River Lock & Dam No. 3, located on the White River in the City of Marcella, Stone County, Arkansas. Licensee: Independence County, Arkansas.

e. *Date Filed:* July 21, 1993.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and Public Law No. 101-155, 103 Stat. 935 (1989).

g. *Applicants Contact:* Wilkinson, Barker, Knauer & Quinn Law Offices, 1735 New York Avenue NW., Washington, DC 20006, (202) 783-4141, Attention: Donald H. Clarke.

h. *FERC Contact:* Mr. Lynn R. Miles, (202) 219-2671.

i. *Comment Date:* September 30, 1993.

j. *Description of the Request:* The licensees for the subject projects have requested that the deadlines for commencement of construction at FERC Project Nos. 4204, 4660, and 4659, be extended for an additional two-year period. The licensees state that the current deadlines of November 7, 1993, (P-4660) and February 27, 1993, (P-4204 and P-4659) do not afford the licensees sufficient time to (1) finalize their current ongoing discussions with a regional utility regarding arrangements for supplemental energy and marketing the projects; (2) present the proposal to potential power purchasers; and (3) finalize the terms of power purchase arrangements with the interested power purchaser.

k. *This notice also consists of the following standard paragraphs:* B, C, and D2.

5. a. *Type of Application:* Surrender of License.

b. *Project No.:* 5946-007.

c. *Date Filed:* July 30, 1993.

d. *Applicant:* The Commonwealth of Massachusetts for the University of Massachusetts, Lowell.

e. *Name of Project:* Lowell Atlantic Project.

f. *Location:* At Lawrence Canal, on the Lowell Canal System, adjacent to the Merrimack River, in Middlesex County, MA.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Thomas M. Costello, Vice Chancellor, Research and Technology, University of Massachusetts Lowell, 1 University Avenue, Lowell, MA 01854, (508) 934-2654.

i. *FERC Contact:* Ahmad Mushtaq, (202) 219-2672.

j. *Comment Date:* September 30, 1993.

k. *Description of Project Action:* The license for this 500-kW project, originally issued to Massachusetts Hydro Associates, was transferred to the licensee on September 24, 1992. The license was acquired as part of a large university renovation and expansion program. The planned development of the project is no longer considered economically feasible. The licensee states that the project has not been operational for at least the past three years and may not be operational for the next three to five years. The licensee seeks surrender of the license.

1. *This notice also consists of the following standard paragraph:* B, C1, and D2.

6. a. *Type of Application:* Surrender of License.

b. *Project No.:* 6863-025.

c. *Date filed:* July 26, 1993.

d. *Applicant:* Grisdale Hill Company.

e. *Name of Project:* Gibson Dam Hydroelectric Project.

f. *Location:* At the U.S. Bureau of Reclamation's Gibson Dam and Reservoir located on the Sun River in Teton, Lewis and Clark Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Glenn Gaydar, Sithe Energies Inc., 135 East 57th Street, 23rd Floor, New York, NY 10022, (212) 755-7600.

i. *FERC Contact:* Etta Foster, (202) 219-2679.

j. *Comment Date:* October 3, 1993.

k. *Description of Application:* The Licensee proposes to surrender its license because it is unable to secure an acceptable power purchase contract for output from the project. No on-site construction has taken place under the license.

1. *This notice also consists of the following standard paragraphs:* B, C1 and D2.

7 a. *Type of Application:* Amendment of License.

b. *Project No.:* 10773-011.

c. *Date Filed:* August 9, 1993.

d. *Applicant:* Alaska Aquaculture, Inc.

e. *Name of Project:* Burnett River Hatchery Project.

f. *Location:* On the Burnett River, in the First Judicial District of Alaska. The project will occupy lands of the United States within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Tod A. Jones, Alaska Aquaculture, Inc., P.O. Box 1288, Wrangell, AK 99929, (907) 874-2250.

i. *FERC Contact:* Paul Shannon, (202) 219-2866.

j. *Comment Date:* October 8, 1993.

k. *Description of Amendment:* Alaska Aquaculture, Inc. requests authorization to amend their license to change several project features. The licensee proposes to: (1) Construct a powerhouse that is 37 feet long and 23 feet wide instead of the licensed 24 foot by 16 foot powerhouse; (2) change the authorized penstock diameter from 28 inches to 24 inches; (3) change the alignment of the penstock; and (4) change the location of the powerhouse from the north side of the Burnett River to the south side.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 20, 1993, Washington, DC.
Lois D. Cashell,
Secretary.
[FR Doc. 93-20545 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-13996T New Mexico-50]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 20, 1993.

Take notice that on August 16, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Pictured Cliffs Formation underlying certain lands in the Rentz Area of the South Blanco Pictured Cliffs Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 4,467 acres, more or less, all of which are administered by the Bureau of Land Management. The recommended area is described as all of Sections 17-20 and 29-31 of Township 25 North, Range 3 West.

The notice of determination also contains BLM's findings that the referenced portion of the Pictured Cliffs Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 93-20546 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD93-13997T]

Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Denying Designating of Tight Formation

August 20, 1993.

Take notice that on August 16, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Upper Lewis Shale Formation (Blue Gravel Sand) in Moffat County, Colorado, does not qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The recommended area encompasses approximately 2,720 acres, more or less, of which 2,080 acres are Federal Land and 640 acres are State Land. The lands are described as follows:

Township 9, North, Range 90 West
Section 31: W/2

Township 9 North, Range 91 West
Section 23: E/2
Section 24: W/2
Section 25: All
Section 26: NE/4
Section 35: E/2
Section 36: All

The notice of determination also contains BLM's findings that the referenced portion of the Pictured Cliffs Formation does not meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR § 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 93-20548 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-67-NG]

Mobil Natural Gas Inc; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mobil Natural Gas Inc. authorization to export up to 200 Bcf of natural gas to Canada over a two-year term, beginning on the data of first delivery after September 30, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 17, 1993.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.
[FR Doc. 93-20611 Filed 8-24-93; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 93-79-NG]

Tennessee Gas Pipeline Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tennessee Gas Pipeline Company authorization to export up to 200 Bcf of natural gas to Canada over a two-year term, beginning on the date of first delivery after August 13, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 17, 1993.

Clifford P. Tomaszewski,
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.
[FR Doc. 93-20612 Filed 8-24-93; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TM94-2-91-000]

ANR Storage Co.; Proposed Changes in FERC Gas Tariff

August 19, 1993.

Take notice that on August 16, 1993, ANR Storage Company (ANR Storage) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Fifth Revised Sheet No. 1(a), with a proposed effective date of October 1, 1993.

ANR Storage states that Fifth Revised Sheet No. 1(a) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage is per FERC notice given on July 26, 1993 and is to be effective October 1, 1993.

ANR Storage states that copies of the filing were served upon ANR Storage's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 26,1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.
[FR Doc. 93-20520 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-1-61-000]

ANR Storage Co.; Proposed Changes in FERC Gas Tariff

August 19, 1993.

Take notice that on August 16, 1993, ANR Storage Company (ANR Storage) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 5, with a proposed effective date of October 1, 1993.

ANR Storage states that First Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1993.

ANR Storage states that copies of the filing were served upon the ANR Storage's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.
[FR Doc. 93-20524 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-1-112-000]

Blue Lake Gas Storage Co.; Proposed Changes in FERC Gas Tariff

August 19, 1993.

Take notice that Blue Lake Gas Storage Company (Blue Lake) on August 16, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5, with a proposed effective date of October 1, 1993.

Blue Lake states that First Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Blue Lake will be effective October 1, 1993.

Blue Lake states that copies of the filing were served upon the Blue Lake's jurisdictional customer.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.
[FR Doc. 93-20521 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP93-150-001]

Northern Natural Gas Co.; Compliance Filing

August 19, 1993.

Take notice that on August 13, 1993, Northern Natural Gas Company (Northern) filed work papers supporting the allocation methodology and detailing how the applicable Billing Demand Units will reflect the Tier Relationship Factor.

Northern states that the work papers are being filed in compliance with the Commission's letter order issued July 30, 1993 in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 93-20523 Filed 8-24-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-1-111-000]

Steuben Gas Storage Co.; Notice of Proposed Changes in FERC Gas Tariff

August 19, 1993.

Take notice that Steuben Gas Storage Company (Steuben) on August 16, 1993, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, First Revised Sheet No. 1(A), with a proposed effective date of October 1, 1993.

Steuben states that First Revised Sheet No. 1(A) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben is per FERC notice given on July 26, 1993 and is to be effective October 1, 1993.

Steuben states that copies of the filing were served upon Steuben's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20519 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–128–002 and RP85–177–113]

Texas Eastern Transmission Corp.; Compliance Filing

August 19, 1993.

Take notice that on July 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed to comply with ordering paragraph (B) of the Commission's order issued June 30, 1993 in Docket Nos. RP93–128–000 and RP85–177–102, wherein the Commission directed Texas Eastern file revised tariff sheets removing from its proposed Order No. 636 direct bill all pre-December 1, 1990, costs.

Texas Eastern states that all of the costs included in the tariff sheets accepted by the June 30 order were incurred on May 28, 1993. Therefore, Texas Eastern states that, since the proposed Order No. 636 direct bill includes no pre-December 1, 1990, costs, no revised tariff sheets are required to be filed in compliance with ordering paragraph (B) of the June 30 order.

Texas Eastern states that copies of its filing have been served on all authorized purchasers of natural gas from Texas Eastern, and all applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20522 Filed 8–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–314–001]

Tennessee Gas Pipeline Co.; Filing

August 19, 1993.

Take notice on August 13, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheets, to be effective on August 13, 1993:

First Revised Sheet No. 58
First Revised Sheet No. 289
First Revised Sheet No. 496
First Revised Sheet No. 549
First Revised Sheet No. 885
First Revised Sheet No. 922
First Revised Sheet No. 1012
First Revised Sheet No. 1046
First Revised Sheet No. 1202
First Revised Sheet No. 1216
First Revised Sheet No. 1233
First Revised Sheet No. 1247
First Revised Sheet No. 1730

Tennessee states that the purpose of these tariff sheets is to cancel the following T Schedules: T–16, T–50, T–68, T–71, T–98, T–100, T–109, T–111, T–125, T–126, T–127, T–128 and T–162. The cancellation of these Rate Schedules is pursuant to Commission Orders in docket numbers: CP92–314, CP92–392, CP93–184, CP93–199, and CP93–319.

Tennessee states that copies of its filing have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before August 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20522 Filed 8–24–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100127; FRL–4640–4]

Dynamac Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corp. has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Dynamac Corp. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Dynamac Corp. to fulfill the obligations of the contract.

DATES: Dynamac Corp. will be given access to this information no sooner than August 30, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D2–0057, Dynamac Corp. will assist in the review and evaluation of data relative to the chemistry and fate of pesticides in the environment. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Dynamac Corp. to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Dynamac Corp., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corp. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied.

Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Dynamac Corp. by EPA for use in connection with this contract will be returned to EPA when Dynamac Corp. has completed its work.

Dated: August 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–20604 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100129; FRL–4640–6]

Versar Inc. and Paladin Associates Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Versar Inc. and its subcontractor Paladin Associates Inc. have been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Versar Inc. and Paladin Associates Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Versar Inc. and Paladin Associates Inc. to fulfill the obligations of the contract.

DATES: Versar Inc. and Paladin Associates Inc. will be given access to this information no sooner than August 30, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D3–0013, Work Assignment 003, Versar Inc. and Paladin Associates Inc. shall support OPP efforts by assisting in the preparation of reviews of pesticide field exposure studies for planned program activities, special reviews, reregistration activities, and related technical support. Versar Inc. and Paladin Associates Inc. will also assist in the development and implementation of the Pesticide Handlers Exposure Database.

The Office of Pesticide Programs has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Versar Inc. and Paladin Associates Inc. to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Versar Inc. and Paladin Associates Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar Inc. and Paladin Associates Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Work Assignment Manager for this contract in the EPA Office of Pesticide Programs. All information supplied to Versar Inc. and Paladin Associates Inc. by EPA for use in connection with this contract will be returned to EPA when Versar Inc. and Paladin Associates Inc. have completed its work.

Dated: August 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–20605 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100131; FRL–4640–8]

Versar Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Versar Inc. has been awarded a contract to perform work for the EPA Office of Water, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Versar Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Versar Inc. to fulfill the obligations of the contract.

DATES: Versar Inc. will be given access to this information no sooner than August 30, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–D3–0013, delivery Order 001, Versar Inc. shall assist the Office of Water to prepare environmental exposure and risk assessments in support of the development of effluent guideline regulations and other similar regulatory actions necessary to preserve and protect human and aquatic life from adverse exposure and risks. The Office of Water effort is categorized on an industry-by-industry basis; pesticide

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manufacturers, formulators, and specific data concerning the manufacturing processes for various pesticides are required in this effort.

The Office of Pesticide Programs and the Office of Water have determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Versar Inc. to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Versar Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Manager for this contract in the EPA Office of Pesticide Programs. All information supplied to Versar Inc. by EPA for use in connection with this contract will be returned to EPA when Versar Inc. have completed its work.

Dated: August 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–20606 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100130; FRL–4640–7]

University of Wisconsin—Superior, Lake Superior Research Institute; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). University of Wisconsin - Superior, Lake Superior Research Institute (LSRI) has been awarded a contract to perform work for the EPA Office of Research and Development, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to LSRI consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable LSRI to fulfill the obligations of the contract.

DATES: LSRI will be given access to this information no sooner than August 30, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–C1–0034, LSRI will provide physical, biological, and chemical scientific support to the Environmental Research Laboratory, Duluth in the review of aquatic toxicity data for use in deriving water quality criteria. This task involves no subcontractor.

The Office of Pesticide Programs and the Office of Research and Development have determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by LSRI to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with LSRI, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, LSRI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to LSRI by EPA for use in connection with this contract will be returned to EPA when LSRI has completed its work.

Dated: August 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–20607 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100128; FRL–4640–5]

ICF Inc. and Clement International Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). ICF Inc. and its affiliate Clement International Corp. have been awarded a contract to perform work for the EPA Office of Pollution Prevention and Toxics, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ICF Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable ICF Inc. and Clement International Corp. to fulfill the obligations of the contract.

DATES: ICF Inc. and Clement International Corp. will be given access to this information no sooner than August 30, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D2–0064, work assignment No. 116, ICF Inc. and Clement International Corp. will assist in the production of toxicity profiles for a list of pesticide active ingredients to determine whether these ingredients meet the criteria for inclusion on the Toxic Release Inventory (TRI) reporting list. This contract involves no subcontractor.

The Office of Pesticide Programs and the Office of Pollution Prevention and Toxics have determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by ICF Inc. and Clement International Corp. to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with ICF Inc. and Clement International Corp., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ICF Inc. and Clement International Corp. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to these contractors until the above requirements have been fully satisfied.

Records of information provided to these contractors will be maintained by the Project Officer for this contract in the EPA Office of Pollution Prevention and Toxics. All information supplied to ICF Inc. and Clement International Corp. by EPA for use in connection with this contract will be returned to EPA when ICF Inc. and Clement International Corp. have completed its work.

Dated: August 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–20608 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4698–4]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with 40 CFR 2.301(h)(2) EPA has determined that VISTA Computer Services, Inc. requires access, on a need-to-know basis, to CBI materials submitted to EPA under title II, section 208, of the Clean Air Act (CAA). This access is necessary to this contractor's performance under EPA contract number 68–W3–0030.

DATES: The transfer of such data to this EPA contractor will occur no sooner than August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Clifford D. Tyree, Project Manager/ Freedom of Information Act Officer, Certification Division, Ann Arbor, MI, 48105, telephone (313) 668–4310.

SUPPLEMENTARY INFORMATION: Title II of the Clean Air Act (CAA) requires that manufacturers of light-duty vehicles, light-duty truck, heavy-duty engines, and motorcycles meet applicable exhaust emission standards. Section 208 of the CAA requires these manufacturers to provide "* * * such information as the Administrator may reasonably require * * *." Because this information is collected under section 208 of the Act, EPA possesses the authority to disclose said information to its authorized representatives. EPA provides a recommended application format identifying the information needed to support their assertions their vehicles/engines comply with the applicable emission standards. Each manufacturer is required to submit an application for certification for a certificate of conformity to the applicable regulations. These data include vehicle descriptions, engine/ vehicle descriptions, emission control system descriptions and calibrations, and sales information. Under contract No. 68–W3–0030, VISTA Computer Services, Inc., will provide computer data entry and computer application operational services for the Certification Division to process the data submitted by the manufacturers to support their respective exhaust emission and fuel economy programs. This contractor's responsibility is to maintain the integrity of the transfer of these data. In order to perform this function the contractor may, on a need-to-know basis, have access to these data. The contractor's address is: VISTA Computer Services, Inc., 4350 Fair Lakes Court, Fairfax, Virginia 22033.

This contract will prohibit the use of the information for any purpose not specified in the contract; will prohibit the disclosure, in any form, to a third party; and will require that each official and employee of the contractor with access to the confidential information sign an agreement to protect the information from unauthorized release or access.

Dated: August 18, 1993.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–20596 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4697–9]

Arkansas; Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of state of Arkansas for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/ Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved

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State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Arkansas applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Arkansas' MSWLF application and made a tentative determination that all portions of Arkansas' MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Arkansas' application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination and will hold the hearing if a sufficient number of people express interest in participating in the hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice. If a public hearing is held, it will take place on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on Arkansas' application for a determination of adequacy must be received by the close of business on September 24, 1993. If a public hearing is held, it will be scheduled for October 12, 1994 in Little Rock, Arkansas. State of Arkansas officials will participate in the hearing, if held by EPA.

ADDRESSES: Copies of State of Arkansas' application for adequacy determination are available during normal business hours for inspection and copying at the following addresses: Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas, Laura Mack, 501–570–2859; U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas, Ed Curran, 214–655–6723. Written comments should be sent to U.S. EPA Region 6, Becky Weber (6H–H), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ed Curran, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–655–6723.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Arkansas

On June 30, 1993, Arkansas submitted an application for adequacy determination. EPA has reviewed Arkansas' application and has tentatively determined that all portions of Arkansas' subtitle D program will ensure compliance with the revised Federal Criteria.

On June 4, 1993, the Arkansas Pollution Control and Ecology Commission passed a rule adopting 40 CFR part 258 by reference (as it was published on October 9, 1991, at 56 FR 50978) and incorporated it as an amendment to Chapter 4, Regulation 22 of the Arkansas Solid Waste Management Code.

By adopting by reference 40 CFR part 258, as promulgated on October 9, 1991, Arkansas' regulations provide for certain exemptions for owners and operators of small community landfills in arid and remote areas [40 CFR part 258.1(f)(1)]. On May 7, 1993, the U.S. Court of Appeals for the District of Columbia Circuit Court (*Natural Resources Defense Council* v. *EPA*) directed EPA to eliminate an exemption from ground water monitoring for small landfills in arid and remote locations. Under 40 CFR part 258, this exemption is available to a landfill that is located in an area that annually receives twenty-five inches or less of precipitation. There are no portions of Arkansas which receive twenty-five inches or less of precipitation annually. Thus, there are no landfills in Arkansas which qualify for the small arid landfill exemption under 40 CFR part 258(f)(1).

The public may submit written comments on EPA's tentative determination until September 24, 1993. Copies of Arkansas' application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative determination on October 12, 1993 at 10 a.m. at the Arkansas Department of Pollution Control and Ecology in Little Rock, Arkansas. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Arkansas' program. EPA's final determination notice will include a summary of the reasons for the final determination and a response to all major comments.

Arkansas' solid waste program is not enforceable on Indian lands.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

COMPLIANCE WITH EXECUTIVE ORDER 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 18, 1993.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 93–20598 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL 4698–1]

Texas; Partial Program Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Texas for partial program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the MSWLF owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Texas applied for a partial determination of adequacy under section 4005 of RCRA. EPA has reviewed Texas' MSWLF application and made a tentative determination of adequacy for those portions of the Texas MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. Texas plans to revise the remainder of its permit program to ensure complete compliance with the revised MSWLF Criteria and gain full program approval. Texas' application for partial program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination and will hold the hearing if a sufficient number of people express interest in participating in the hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice. If a public hearing is held, it will take place on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on Texas' application for a partial determination of adequacy must be received by the close of business on September 24, 1993. If a public hearing is held, it will be scheduled for October 12, 1993 at the Texas Water Commission (TWC) offices, in Austin, Texas. TWC officials will participate in the hearing, if held by EPA.

ADDRESSES: Copies of Texas' application for adequacy determination are available during normal business hours for inspection and copying at the following addresses: Texas Water Commission, 1700 North Congress Avenue, Austin, Texas, Attn: Nancy Frank-Overesch, Manager, Ground-Water Protection Section, Municipal Solid Waste Division, 512–908–6722; U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas, Attn: Andy Tayrien, 214–655–8546. Written comments should be sent to U.S. EPA Region 6, Attn: Becky Weber (6H–H), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Andy Tayrien, Environmental Engineer, (6H–HW), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–655–8546.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR that it will allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring

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compliance with 40 CFR part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal Programs that will come into effect on October 9, 1993, in those States/Tribes that only have parietal approvals of their MSWLF programs. On that date, federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991, municipal landfill rule, EPA's national subtitle D standards will take effect on October 9, 1993, in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 9, 1993, would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in STIR.

B. State of Texas

On August 4, 1993, Texas submitted an application for adequacy determination. EPA has reviewed Texas' application and has tentatively determined that all portions of Texas' subtitle D program will ensure compliance with the revised Federal Criteria, except for those listed in the following paragraphs.

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

On May 7, 1993, the U.S. Court of Appeals for the District of Columbia Circuit Court (Natural Resources Defense Council v. EPA) directed EPA to eliminate an exemption from ground water monitoring for small landfills in arid and remote locations [40 CFR 258(f)(1)]. Texas adopted changes to its Municipal Solid Waste Regulations to incorporate the 40 CFR part 258 standards in a final rule published on June 18, 1993, (effective October 9, 1993). As adopted, Texas rules currently provide for exempting certain small landfills in arid and remote regions from ground water monitoring requirements.

To ensure compliance with all of the revised Federal Criteria, Texas must revise one aspect of its permit program to remove the aforementioned ground water monitoring exemption. To allow Texas to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, EPA is proposing to approve all other aspects of the Texas program. EPA has reviewed Texas' proposal and believes it is reasonable because Texas has stated that they "intend to modify our rules to reflect the court's decision, as adopted by EPA in a final rule," in a letter to EPA, dated August 4, 1993.

Therefore, EPA has tentatively determined that Texas' application is consistent with the Federal Criteria, (with the exception of the exemption provided under 40 CFR 258(f)(1), which has been vacated by the U.S Court of Appeals for the District of Columbia Circuit Court, and will make a final determination of partial adequacy following the public comment period and public hearing, if held.

The public may submit written comments on EPA's tentative determination until September 24, 1993. Copies of Texas' application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative determination on October 12, 1993 at 10 a.m. at the Texas Water Commission in Austin, Texas. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing, if held. Issues raised by those comments may be the basis for a determination of inadequacy for Texas' program. EPA's final determination notice will include a summary of the reasons for the final determination and a response to all major comments.

Texas' MSWLF permitting program can not be enforced on Indian Lands.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

COMPLIANCE WITH EXECUTIVE ORDER 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 18, 1993.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 93–20599 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–34046; FRL 4636–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent To Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the four pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 23, 1993 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Delete From Label
000279–01254	Ethion 4 Miscible Insecticide/Miticide	Ornamentals (out of doors), home grounds
003125–00320	Bayleton 50% Wettable Powder	Barley, grasses grown for seed
003125–00340	Bayleton 50% Wettable Powder in Water Soluble Packets	Barley, grasses grown for seed
066222–00013	Trifluralin 4-EC	Mint

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000279	FMC Corporation, 1735 Market Street, Philadelphia, PA 19103.
003125	Miles Inc., P.O. Box 4913, 8400 Hawthorn Road, Kansas City, MO 64120.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: August 6, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–20202 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34044; FRL 4636–2]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide,

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Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent To Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 16 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 23, 1993 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete from Label
000802–00108	Miller's Malathion 25W	Apples, peaches, cherries, apricots, grapefruit, lemons, limes, oranges, tangerines, tangeloes, kumquats, pineapples, mango, passion fruit, guava, blueberries, grapes, walnuts, macadamia nuts, tomatoes, broccoli, turnips, brussel sprouts, cabbage, kale, mustard, eggplant, peppers, potatoes, onions (green, spring, bulb), lettuce (leaf), lettuce (head)
000802–00115	Miller's Malathion 5D	Alfalfa, clover, asparagus, beans, cantaloupe, cucumber, squash, melon, pumpkin, cauliflower, cabbage, broccoli, brussel sprouts, kale, kohlrabi, mustard, turnips, endive, lettuce, onions, parsley, spinach, peas, potatoes, carrots, radish, parsnips, horseradish, tomatoes, blueberries, strawberries, filberts, walnuts, stored field and garden seeds, stored grains (barley, corn, grain sorghum, oats, rice, rye, wheat
000802–00123	Lilly/Miller Malathion	Almonds, apples, asparagus, beet tops, carrots, anise, watercress, filberts, melons (cataloupe, casaba, crenshaw, honeydew, honey ball, muskmelon, persian, watermelon, hybrids), pears, pineapples, plums, prunes, pumpkins, quince, interior household use, exterior pet quarters
000802–00424	Miller's Cythion 50W	Alfalfa, apples, peaches, cherries, apricots, grapefruit, lemons, limes, oranges, tangerines, tangelos, kumquats, pineapple, mango, passium fruit, guava, blueberries, grapes, walnuts, macadamia nuts, tomatoes, brocolli, turnips, brussel sprouts, cabbage, kale, mustard eggplant, peppers, potatoes, onions, lettuce (leaf & head)
000909–00101	Cooke 57% Malathion Garden Spray	Almonds, apples, asparagus, beet tops, carrots, anise, filberts, hops, melons (cantaloupe, casaba, crenshaw, honeydew, honey ball, muskmelon, persian, watermelon, hybrids) mushrooms, nectarines, okra, pears, pineapple, plums, prunes, pumpkins, quince, rice, exterior pet quarters
002548–00072	Max Kill Dusta-Cide 6	Sunflower seeds, rice, sorghum
009779–00153	Mal-Methyl 44E	Soybeans
034704–00008	Clean Crop Malathion Grain Protector	Stored commodity treatment for rice, grain sorghum, field & garden seeds
034704–00106	Clean Crop 4% Malathion Grain Protector	Stored commodity treatment for grain sorghum, rice, sunflowers, peanuts, almonds, field and garden seeds, bagged citrus pulp
034704–00109	Clean Crop 2% Malathion Grain Protector	Grain sorhum, rice, sunflowers, peanuts, almonds, field and garden seeds, bagged citrus pulp
034704–00110	Clean Crop 6% Malathion Grain Protector	Grain sorghum, almonds, rice, sunflowers, peanuts, field and garden seeds, bagged citrus pulp
034704–00302	Cythion 50% Malathion E.C.	Pet uses for dogs and cats, animal premise uses for dogs and cats
034704–00721	Malathion 5 Dust	Beans, broccoli, brussel sprouts, cabbage, cauliflower, collards, kale, mustard, turnips, cucumbers, melons, pumpkins, squash, lettuce, peas, peppers, potatoes, spinach, tomatoes, apples peaches, cotton, pasture, range grass, grass, grass hay, pecans, beef & dairy cattle, beef & non-milking cattle, hogs, poultry houses, onions

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
046515–00019	Malathion 50 Insect Spray (Super K-Gro)	Apples, pears, animal quarters (dogs & cats), outbuildings, chicken houses, stables, dog kennels
051036–00039	Stored Grain Dust M-1	Rice, grain sorghum, field and garden seeds
051036–00103	Malathion ULV	Pears, safflower, soybeans, sugar beets, beet cattle feed lots and holding pens, tomatoes, forest trees

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000802	Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
000909	Cook Laboratory Products, Subsidiary of the Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
002548	Research Products Co., Division of McShares, Inc., P.O. Box 1460, Salina, KS 674402.
009779	Riverside/Terra Corp., 600 Fourth St., Sioux City, IA 51101.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, P.O. Box 667, Greeley, CO 80632.
046515	Celex Corp., 377 Amelia St., Plymouth, MI 48170.
051036	Micro-Flo Co., P.O. Box 5948, Lakeland, FL 33870.

[OPP–34045; FRL 4636–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the two pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 23, 1993 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Delete From Label
009779–00295	Simazine 90DF	Asparagus, artichokes, sugarcane, non-crop land uses
009779–00296	Simazine 4L	Asparagus, artichokes, sugarcane, non-crop land uses

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: August 6, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–20305 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
009779	Riverside/Terra Corporation, 600 Fourth Street, P.O. Box 6000, Sioux City, IA 51102.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: August 6, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93-20203 Filed 8-24-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66181; FRL 4636-8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 23, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent To Cancel

This Notice announces receipt by the Agency of requests to cancel some 28 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000464-00356	Sirlene Feed Grade Propylene Glycol	1,2-Propanediol
000572-00214	Rockland Lawn Fungicide with Dyrene	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
000572-00250	Rockland Professional Lawn Disease Control	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
001812-00275	Du-Ter Fungicide Wettable Powder In Water Soluble Bags	Triphenyltin hydroxide
001812-00276	Du-Ter Fungicide Wettable Powder	Triphenyltin hydroxide
001812-00277	Du-Ter Flowable-30	Triphenyltin hydroxide
001839-00002	Onyxide 75%	Alkenyl*dimethyl ethyl ammonium bromide *(90% C_{12}', 10% C_{16}')
002935 CA-82-0062	Red-Top Malathion 25 Spray Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002935 WA-78-0015	Malathion 8 Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
		Xylene range aromatic solvent
002935 WA-80-0045	Wilbur-Ellis Malathion 8 Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
003234-00045	Pax Fungicide, Insecticide Fertilizer	1-Napthyl-*N*-methylcarbamate
		2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
004704-00003	Magic Circle Deer Repellent	Bone oil
004758-00031	Pest Control Products Crack & Crevice Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004758-00083	Holiday Automatic Cleanout Fogger	Aliphatic petroleum hydrocarbons
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004758-00086	Professional Insect Bomb Concentrated	Aliphatic petroleum hydrocarbons

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004758-00087	Holiday Insect Bomb with Baygon	*o*-Isopropoxyphenyl methylcarbamate
		Aliphatic petroleum hydrocarbons
004758-00088	Holiday Bird & Cage Spray	Aliphatic petroleum hydrocarbons
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004758-00092	888 Insect Killer	Butoxypolypropylene glycol
		Aliphatic petroleum hydrocarbons
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004758-00097	Holiday Automatic Bug Fogger	*N*-Octyl bicycloheptene dicarboximide
		Aliphatic petroleum hydrocarbons
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
005870-00034	Acidisan A	Phosphoric acid
		Dodecylbenzenesulfonic acid
005887-00030	Pelletized Warf with Prolin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
008660-00080	Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
008991-00011	Sonacide	Glutaraldehyde
009198-00064	Loft's Lawn Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
010088-00037	Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
011649-00016	Ornitrol	20,25-Diazacholesterol dihydrochloride
020954 AZ-91-0015	Solicam DF Herbicide	4-Chloro-5-(methylamino)-2-(alpha,alpha,alpha-trifluoro-*m*-tolyl)-3(2*H*)-
060185 FL-86-0001	Cythion Insecticide the Premium Grade Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

Unless a request is withdrawn by the registrant within 90-days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000464	Dow Chemical Co., Reg. Compliance/Health & Environmental, 1803 Building, Midland, MI 48674.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
003234	Pax Co., 580 W. 13th South, Salt Lake City, UT 84115.
004704	Ehrich, J.C. Chemical Co., Inc., 840 William Lane, Reading, PA 19612.
004758	Pet Chemicals, 4242 BF Goodrich Blvd., Box 18993, Memphis, TN 38181.
005870	Texo Corp., 2801 Highland Ave., Cincinnati, OH 45212.
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
008660	The Andersons, Box 119, Maumee, OH 43537.
008991	Wyeth-Ayerst Laboratories, Division of American Home Products Corp., Box 8299, Philadelphia, PA 19101.
009198	The Andersons Lawn Fertilizer Division, DBA/Free Flow Fertilizer, Box 119, Maumee, OH 43537.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
010088	Athea Laboratories Inc., Box 23926, Milwaukee, WI 53223.
011649	Avitrol Corp., 7644 E. 46th Street, Tulsa, OK 74145.
020954	Sandoz Crop Protection Corp., Zoecon Research Institute, 12200 Denton Dr, Dallas, TX 75234.
060185	Polk County Environmental Services, Box 39, Barton, FL 33830.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, three pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3, with the EPA Company Number of their registrants:

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
8001-85-2	Bone Oil	004704
	Alkenyl*dimethyl ethyl ammonium bromide *(90% C_{18}, 10% C_{16})	001839
1249-84-9	Diazachloesterol dihydrochloride	011649

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 23, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: August 13, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-20204 Filed 8-24-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-64016; FRL 4634-1]

Cancellation of Pesticides for Non-Payment of 1993 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 4(i)(5)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has requires each registrant of a pesticide to pay an annual maintenance fee to keep their pesticide registrations in effect. The fee due on January 15, 1993, has gone unpaid for about 1,050 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by November 23, 1993.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (H7504C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location and telephone number: Room 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, (703) 305-6426.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i)(5) of FIFRA as amended, requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. (Uses registered under section 24(c) are deemed to be registered under section 3 for all purposes of FIFRA, except as otherwise provided in section 24(c)). Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 18 minor agricultural use registrations at the request of the registrants. The Agency has identified 26 other registrations for which the maintenance fee was not paid and for which no waiver was requested that fall into this category, and is deferring cancellation of these registrations for a period of 90 days. Section III contains a list of these registrations and their vulnerable minor uses, along with instructions for preventing their cancellation.

In late December, 1992, all registrants were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15; a supplemental notice was sent in February, however, to registrants who had not responded after acknowledging receipt of the original notice. A notice of intent to cancel was also sent in mid-March to registrants who still did not respond and to registrants who responded, but did not pay the fee for all of their registrations. Late payments of the fees were accepted until April 15, when the actual process of cancellation was begun.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 17,400 section 3 registrations, or about 95 percent of the registrations on file in December. Fees have been paid for about 2,500 section 24(c) registrations, or about 93 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 850 section 3 registrations and about 200 section 24(c) registrations.

II. Product Cancellations not Affecting Status of Active Ingredient

Our analyses indicate that many of these cancellations are unlikely to affect pesticide markets or users. For example, more than 60 percent of the section 3 registrations for which no fee was paid are no longer in production, and their disappearance from the market will cause no adverse impact.

Although we do not have comparable production data for them, we believe most of the canceled 24(c) registrations for special local needs to be similarly obsolete. Over 60 percent of them were originally issued before 1987—most for a finite period which has long since expired. We also know that a large proportion have been made obsolete by subsequent section 3 registrations for the same uses.

The remaining cancellations, 490 section 3 registrations and 117 section 24(c) registrations issued in the past 5 years, have been the principal focus of our further impact analyses. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until the due date for the next annual registration maintenance fee, January 15, 1994. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique non-agricultural uses will disappear, although the active ingredients will remain available for different uses in other products. When this situation occurs, there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Minor Agricultural Uses

A third type of impact arises in cases where unique agricultural uses would disappear. The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural uses when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency waived the fee for 18 registrations at the request of the registrants. The Agency has also identified 26 more registrations for minor agricultural uses for which the maintenance fee was not paid and for which no waiver was requested, and will defer cancellation of these registrations for 90 days to permit affected users to explore alternatives to cancellation. If the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will waive the 1993 maintenance fee and retain the registration in full active status. It should be emphasized, however, that

any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

The 26 registrations containing a disappearing minor agricultural use are grouped by active ingredient in the following Table 1.

TABLE 1. — PRODUCTS REGISTERED FOR A DISAPPEARING MINOR AGRICULTURAL USE WHICH ARE PENDING CANCELLATION FOR NON-PAYMENT OF 1993 REGISTRATION MAINTENANCE FEE

Chemical Name	Registration No.	Product Name	Site
2,4-D, dimethylamine salt	001386–00569	Unico Turf Treater "T"	Dichondra (Ground Cover)
Alkyl* dimethyl benzyl ammonium chloride *(50%CA_{114}, 40%CA_{112}, 10%CA_{116}).	001606–00007	Germatrol 1522	Corn, Field and/or Forage
Benomyl	000352 CA–82–0120		Anise (Flavoring and Spice Crop) Dill (Flavoring and Spice Crop) Pepper (Fruiting Vegetable) Cardoon Corn Peas Chicory
	060182 FL–82–0072		Display Crops (not for Consumption)
Bifenthrin	060182 FL–87–0018		Display Crops (not for Consumption)
Capsaicin (in oleoresin of capsicum).	047319–00001	Sevana Bird Repellent	Small Fruits Nut Crops Nectarine Fig Cabbage Carrot (Root Crop Vegetable) Radish Beets, Garden Corn Sunflower
Captan	050383–00017	Wilson Black Magic Rose and Flower Dust	Phlox Zinnia
Chlorthal dimethyl	001159–00165	Twin Light Professional Dacthal Crabgrass Preventer	Hemlock
	011181 CA–86–0043		Stocks (Column)
Copper sulfate	002105–00008	Chemline Copper Sulfate Crystals	Youngberry Cucurbits Ligustrum
Dichlorvos	037347–00002	Turicide D-2	Ornamental Perennial Grasses
Dicloran	002792–00043	Kiwi Lustr Tm 277 Concentrate with Fungicides	Kiwi Fruit
Dimethylamine dicamba	001386–00569	Unico Turf Treater "T"	Dichondra (Ground Cover)
Fatty alcohols (56% CA_{110}, 42% CA_{18}, 1.5% CA_{112}, 0.5% CA_{16}).	057582 NC–91–0010		Tobacco (Field Crop)
Garlic oil	047319–00001	Sevana Bird Repellent	Small Fruits Nectarine Fig Radish Beets, Garden Sunflower
Glyphosate, isopropylamine salt	000524–00439	Expedite Onestep Grass and Weed Herbicide	Crabapple Cotoneaster Forsythia Honeysuckle Periwinkle Rhododendron Rose Viburnum Hedera Ash Birch

TABLE 1. — PRODUCTS REGISTERED FOR A DISAPPEARING MINOR AGRICULTURAL USE WHICH ARE PENDING CANCELLATION FOR NON-PAYMENT OF 1993 REGISTRATION MAINTENANCE FEE—Continued

Chemical Name	Registration No.	Product Name	Site
			Dogwood Eastern Hemlock Juniper
IBA	000618–00041	Hormodin No. 2 Powder	Leucothoe
	000618–00042	Hormodin No. 1 Powder	Periwinkle Ageratum Snapdragon Abelia Barberry Crape Myrtle Crotons Deutzia Forsythia Honeysuckle Spirea Viburnum Elm Poplar
	000618–00043	Hormodin No. 3 Powder	Flowering Quince Hawthorn Ninebark Catalpa Russian Olive
MCPP, dimethylamine salt	001386–00569	Unico Turf Treater "T"	Dichondra (Ground Cover)
Malathion	002548–00077	Max Kill Malathion 80 WE	Cocoa (Beverage Crop), Eastern White Pine (Forest)
Myclobutanil	000707 CA–90–0020		Strawberry
Nicotine	007679–00023	American Brand Nicotine Sulfate	Eggplant Pepper (Fruiting Vegetable) Spinach
	008218–00001	Milazzo Brand Animal Chaser	Ornamental Broadleaf Evergreen Shrubs Boxwood Cedar
	007679–00023	American Brand Nicotine Sulfate	Ornamental Plants (Herb & Woody Types)
Oxadiazon	060258 CA–89–0015		Sweet Pea
Oxyfluorfen	011181 CA–89–0009		Kiwi Fruit
o-Phenylphenol	002792–00043	Kiwi Lustr TM 277 Concentrate with Fungicides	Fescue (Forage-Fodder) Brome Grasses (Forage-Fodder)
Sethoxydim	011197 CA–85–0027		Rangeland (Grasses) (Forage-Fodder)
Starficide	056228 TX–90–0002		Ornamental Flowering Plants Ornamental Turf Ornamental Lawns Ornamental Woody Shrubs
1,1,1-Trichloroethane	037347–00003	Fire Ant Killer and Nest Remover	

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with registrants identified by the first 6 digits of the Reg. No. in Table 1 to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registrations were transferred to them. The full names and addresses of the current registrants appear in Table 3 below.

IV. Cancellations Leading to Disappearance of Active Ingredients

A final type of impact arises if an active ingredient that is now or has recently been available in the marketplace disappears. The Agency has identified 14 registered active ingredients in this category. No production has been reported for seven of these active ingredients during the past three years; after deleting these 7 from the list of 14, 7 active ingredients remain. Three of the 7 active ingredients none subject to prior regulatory action, and all likely to disappear as a consequence of these cancellations are used in agriculture; two are disinfectants; one is used for aquatic treatment, and one is a flea and tick insecticide for use on dogs.

These 7 ingredients, grouped by these same general categories of use patterns, are listed along with the EPA Company Number of their registrants in the following Table 2.

TABLE 2. — ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1993 REGISTRATION MAINTENANCE FEES, IN SEQUENCE BY BROAD USE PATTERN

Chemical Name	Registration No.	Product Name
A. Agricultural Uses:.		
Dinitro-o-cresol	010163–00164	DNOC
Methazole	055947–00022	Technical Probe
Methazole	055947–00023	Probe 75 Wettable Powder
Chitosan	056437–00001	YEA! Poly-D-Gluco-samine Solution
B. Aquatic Uses:.		
POE Isooctadecanol	042943–00008	Arosurf MSF
C. Disinfectant Uses:.		
Disodium di(2-hydroxyethyl)	006831–00001	Verisheen with ethylenediaminediacetate Germicide
Benzyl (dodecylcarbamoyl-methyl) dimethyl ammonium chloride.	032867–00002	Urolocide-Untinted Crystal
D. Household Pet Uses:.		
Potassium tetrathionate	000059–00192	Thionium Shampoo with Lindane

Because these active ingredients are likely to disappear with their product registration, and because FIFRA does not provide for fee waivers for these non-minor and non-agricultural uses, the Agency has deferred for 90 days the cancellation of these 12 registrations. During that time those registrants or other affected persons may make arrangements to continue the registration.

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with the registrant identified by the first 6 digits of the Reg. No. in Table 2 to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. The full names and addresses of current registrants appear in Table 3 below. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives to these active ingredients.

If the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will retain the registration in full active status as soon as the delinquent maintenance fee payment is received. It should be emphasized, however, that any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

TABLE 3. — REGISTRANTS OF SELECTED REGISTRATIONS CANCELLATION FOR NON-PAYMENT OF 1993 REGISTRATION MAINTENANCE FEE

EPA Company No.	Registrant Name and Address
000059	Coopers Animal Health Inc., 1201 Douglas Ave, Kansas City, KS 66103.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000352	E.I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000524	Monsanto Co., Agent For: Monsanto Agricultural Co., 700 14th St, N.W. Suite 1100, Washington, DC 20005.
000618	Merck & Co. Inc., Agent For: Merck & Co. Inc., Hillsborough Rd, Three Bridges, NJ 08887.
000707	Rohm & Haas Co., Agri. Chemicals Registration & Regulator, Independence Mall W., Philadelphia, PA 19105.
001159	Seacoast Laboratories, Inc., Box 373, Dayton, NJ 08810.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
001606	Baums Castorine Co. Inc., 200 Matthew St, Rome, NY 13441.
002105	American Drug Industries Inc., 5810 S Perry Ave, Chicago, IL 60621.
002548	Research Products Co., Division of McShares, Inc., Box 1460, Salina, KS 67402.
002792	Elf Atochem N.A. Inc., Decco Division, 1713 S California Ave., Monrovia, CA 91017.

TABLE 3. — REGISTRANTS OF SELECTED REGISTRATIONS CANCELLATION FOR NON-PAYMENT OF 1993 REGISTRATION MAINTENANCE FEE—Continued

EPA Company No.	Registrant Name and Address
006831	Veritas Co. Inc., Div. of Sidmar Enterprises, Inc., 2 Kleen Way, Holbrook, MA 02343.
007679	American Brand Chemical Co., Box 4, Bonham, TX 75418.
008218	Milazzo Co. Samuel J, 1609 River Rd. Port Blanchard, Pittston, PA 18640.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010349	Nalco Chemical Co, One Nalco Center Box 87, Naperville, IL 60563.
011181	County of Santa Barbara Agricultural Commissioner, 263 Camino Del Remedio, Santa Barbara, CA 93110.
011197	Solano County Agricultural Commissioner, 2000 W. Texas, Fairfield, CA 94533.
032867	TFX Medical, 2450 Meadow Brook Parkway, Duluth, GA 30136.
033436	Clean-Flo Laboratories Inc., 4342 Shady Oak Rd., Hopkins, MN 55343.
037347	Uni-Chem Corp. of Florida, 2601 NW 55th Ct., Box 6336, Ft. Lauderdale, FL 33309.
042697	Delta Analytical Corp., Agent For: Safer Inc., 1414 Fenwick Ln, Silver Springs, MD 20910.
042943	Sherex, Box 646, Dublin, OH 43017.
047319	Sevana Co., 5336 E. Eerby Dr., Fresno, CA 93727.
050383	Alfred Miller, Agent For: Wilson Laboratories Inc., 150–152 Mason St, Greenwich, CT 06830.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
056228	U. S. Dept of Agriculture, Animal & Plant Health Inspection, Federal Building, Room 533, Hyattsville, MD 20782.
056437	Bentech Labs, Inc., Agent For: Bentech Labs, Inc., 4370 Ne Halsen St, Portland, OR 97213.
056644	Security Products Co. of Delaware, Inc., 7801 Metro Parkway, Box 59084, Minneapolis, MN 55420.
057582	Cochran Corp., Box 14603, Memphis, TN 38114.
057998	BBN Corp., c/o Guidelines Inc., 18441 N. W., 2nd Ave, Miami, FL 33169.
060182	Land, Epcot Center, Box 10,000, Lake Buena Vista, FL 32830.
060258	Monrovia Nursery Co., 18331 E. Foothill Blvd., Azusa, CA 91702.
063724	Dr. Jerry Callis, Agent For: Oxford Virology PLC, Paradise Point Rd., Box 537, Southold, NY 11971.

In addition to publishing this notice in the **Federal Register**, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list those which have been canceled in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, Room 1128, Crystal Mall 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

Dated: August 10, 1993.

Victor J. Kimm,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–20304 Filed 8–24–93; 8:45 am]
BILLING CODE 6560–50–F

[FRL–4698–2]

Kansas; Adequacy Determinations of State/Tribe Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Kansas for full program adequacy determination; public hearing and comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA,) as amended by the Hazardous and Solid Waste Amendments (HWSA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria, 56 FR 50978–51119 also referred to as 40 CFR part 258. RCRA section 4004(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) the will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be based on the statutory authorities and requirements. In addition, State/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important

benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Kansas applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Kansas' MSWLF application and made a tentative determination that all portions of Kansas' MSWLF permit program are adequate to ensure compliance with the revised MSWLF Criteria. Kansas' application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on Kansas' application for a determination of adequacy must be received by the close of business on September 24, 1993, or, if a public hearing is scheduled, at the close of the public hearing. If the Region holds a public hearing, it will be held on October 12, 1993, at 1:30 p.m., at Forbes Field, Building 740, Conference Room A, Topeka, Kansas. Representatives of the State of Kansas will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of Kansas' application for adequacy determination are available from 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas 66620–0001, Attn: Mr. Michael Tate, telephone 913–296–1600; and U.S. EPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone 913–551–7000.

Written comments should be sent to Ms. Altheà M. Moses, Mail Code WSTM/RCRA/STPG, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, Attn: Ms. Altheà M. Moses, Mail Code WSTM/RCRA/STPG, telephone 913–551–7055.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribe MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for the States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. The State of Kansas

On July 26, 1993, Kansas submitted an application for adequacy determination. EPA reviewed Kansas' application and tentatively determined that all portions of the Kansas Subtitle D program will ensure compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 24, 1993, or, if a public hearing occurs, until the conclusion of the public hearing. Copies of Kansas' application are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

The State of Kansas' landfill permit program is not enforceable on Indian lands.

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribe permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

Kansas is adopting the Federal Criteria by reference, with some minor, practical changes (e.g. all references to "an approved State" were replaced with "the Director"). The Kansas regulations do not include the exemption from ground-water monitoring for small landfills, consistent with the current Federal regulations as a result of *Sierra Club v. United States Environmental Protection Agency*, 992 F.2d 337 (D.C. Cir. 1993), which vacated the exemption. In addition, Kansas will be using the flexibility afforded in 40 CFR 258.54(a)(1) and (2), to specify a different list of Appendix I monitoring parameters that are more appropriate for the landfills in Kansas; Appendix II will be the same as the Federal Appendix II.

If Kansas adopts 40 CFR part 258, as stated above, before EPA makes a final determination, and their adopted regulations are effective on or before the relevant effective dates of the Federal Criteria, then EPA proposes to fully approve Kansas' MSWLF program. If Kansas does not adopt 40 CFR part 258, then EPA proposes to deny approval of Kansas' program.

Region VII will hold a public hearing, if significant requests are received within 30 days of the date of publication of this notice, on its tentative decision on October 12, 1993, at 1:30 p.m. at the Kansas Department of Health and Environment's office at Forbes Field, Building 740, Conference Room A, in Topeka, Kansas.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for determination of inadequacy for Kansas' program. EPA will make a final decision on whether or not to approve Kansas' program by October 9, 1993 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 13, 1993.

William Rice,

Regional Administrator.

[FR Doc. 93–20602 Filed 8–24–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1959]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

August 19, 1993.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed September 9, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 90 of the Commission's Rules to Provide for the Use of 220–222 MHz Band by the Private Land Mobile Radio Services. (PR Docket No. 89–552)

Number of Petitions Filed: 3.

Subject: Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards. (CC Docket No. 91–115)

Number of Petitions Filed: 19.

Subject: Regulatory Reform for Local Exchange Carriers Subject to Rate Return Regulation. (CC Docket No. 92–135)

Number of Petitions Filed: 3.

Subject: Amendment of part 90 of the Commission's Rules to Expand Coordination of the 800 MHz General Category Channels. (PR Docket No. 92–209).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–20496 Filed 8–24–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993: Schuyler County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20619 Filed 8–24–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993: Mississippi and Monroe Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20617 Filed 8–24–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-993-DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA-993-DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993: The county of Otter Tail for Individual Assistance, the counties of Freeborn, Kittson, Marshall, Mower, and Roseau for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,
Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-20618 Filed 8-24-93; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Withdrawal of Effectiveness of Revised Guidelines

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.
ACTION: Notice of withdrawal of effectiveness.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") announces the withdrawal of its Revised Guidelines Regarding State Certification and Licensing of Appraisers ("Revised Guidelines"). The Revised Guidelines were adopted by the ASC on May 29, 1991, and were published in the **Federal Register** at 56 FR 26088 (June 6, 1991) and made effective on that date. The ASC recently adopted and issued Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers ("Policy Statements") to replace the Revised Guidelines. The ASC intends that the Policy Statements serve the same purpose as the now superseded Revised Guidleines.

DATES: Withdrawal of the Revised Guidelines is effective August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200; Washington, DC 20037, or at (202) 634-6520, from whom copies of the newly issued Policy Statements are available.

SUPPLEMENTARY INFORMATION: Under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended,[1] the ASC, among other things, is charged with monitoring the certification and licensing programs for real estate appraisers in each State to determine whether the State's policies, practices and procedures are consistent with title XI and enforcing the State's compliance with the requirements of title XI. Title XI, as well as other Federal statutes and regulations[2] requiring the use of State certified or licensed appraisers, necessarily relies on the States to perform their real estate appraiser related duties in a responsible manner.

In exercising its oversight responsibilities, the ASC reviews each State's overall appraiser regulatory program to determine compliance with title XI. State appraiser regulatory agencies ("State agencies") generally need to take appropriate steps to ensure that each person seeking to become a State certified or licensed appraiser has demonstrated his or her competency and that certified or licensed appraisers continue to perform in a competent and ethical manner.

On August 4, 1993, the ASC approved the Policy Statements to assist the State agencies in the continuing development and maintenance of appropriate organizational and regulatory structures for certifying, licensing and supervising real estate appraisers. The ASC also determined that it is necessary to publish this Notice in the **Federal Register** announcing the withdrawal of the Revised Guidelines and the adoption of the Policy Statements. The ASC determined that the format change from Revised Guidelines to Policy Statements was appropriate because of the small number of regulatees—only 57 jurisdictions are directly subject to ASC oversight under title XI—and the need for regulatory flexibility and comity in dealing with these sovereign entities. The Policy Statements, however, are intended to serve the same purpose as the now superseded Revised Guidelines by providing the States and their appraiser regulatory agencies with the ASC's expectations regarding compliance with title XI.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: August 19, 1993.

Fred D. Finke,
Chairperson.

[FR Doc. 93-20529 Filed 8-24-93; 8:45 am]
BILLING CODE 6210-01-M

[1] Pub. L. 101-73, 103 Stat. 511 (1989), as amended by Pub. L. 102-233, 105 Stat. 1761, 1792 (1991), Pub. L. 102-242, 105 Stat. 2330, 2386 (1991), Pub. L. 102-550, 106 Stat. 3672 (1992), and Pub. L. 102-485, 106 Stat. 2771 (1992); 12 U.S.C. 3301, 3331-3352.

[2] Two Federal statutes, Title XI and 12 U.S.C. 1706(e)(B), currently require the use of State certified or licensed real estate appraisers, as do certain Federal regulations and policies such as the Department of Transportation's regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Office of Management and Budget Circular No. A-129 and Bulletin No. 92-06, and the Uniform Standards for Federal Land Acquisitions.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010050-009.
Title: U.S.-Flag Far East Discussion Agreement.
Parties:
American President Lines, Ltd.,
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to meet, discuss, and exchange information with members of the Japanese-Flag Far East-United States Discussion Agreement (FMC No. 203-010905). The parties have requested a shortened review period.

Agreement No.: 203-010905-004.
Title: Japanese-Flag Far East-United States Discussion Agreement.
Parties:
Kawasaka Kisen Kaisha, Ltd.,
Mitsui O.S.K. Lines, Ltd.,
Nippon Yusen Kaisha.

Synopsis: The proposed amendment would permit the parties to meet, discuss, and exchange information with members of the U.S.-Flag Far East Discussion Agreement (FMC No. 203-010050). It also eliminates all reference to Nippon Liner Systems, and deletes reference to Eastern U.S.S.R. and inserts Siberia. The parties have requested a shortened review period.

Agreement No.: 203-011427.
Title: Japanese-United States Flag Carrier Discussion Agreement in the Asia-United States Trades.
Parties:
Kawasaki Kisen Kaisha, Ltd.,
Mitsui O.S.K. Lines, Ltd.,
Nippon Yusen Kaisha,
American President Lines, Ltd.,
Sea-Land Service, Inc.

Synopsis: The proposed Agreement would authorize the parties to meet and discuss matters of mutual interest in the trade between the United States and the Far East with members of the Japanese-Flag Far East-United States Discussion Agreement (FMC No. 203-010905), and U.S.-Flag Far East Discussion Agreement (FMC No. 203-010050) which have common geographic scopes. Any adherence to agreements reached is voluntary. The parties have requested a shortened review period.

Dated: August 19, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 93-20515 Filed 8-24-93; 8:45 am]
BILLING CODE 6730-01-M

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Petition No. P53-93, Transax Data on Behalf of Gateway Maritime Transport Corp.; Petition No. P54-93, Carolina Freight Carriers Corp.; Petition No. P55-93, Transax Data on Behalf of Various Carriers; Filing of Petitions

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from current electronic filing deadlines.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 30, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on the following:

P53-93 & P55-93—Mr. Steve Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807
P54-93—Mr. Donald G. Hichman, Director, International Pricing, Carolina Freight Carriers Corporation, Post Office Box 697, Hwy. 150 E., Cherryville, North Carolina 28021

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,
Secretary.

[FR Doc. 93-20516 Filed 8-24-93; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

AmSouth Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 17, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to merge with First Sunbelt Bankshares, Inc., Rome, Georgia, and thereby indirectly acquire The Georgia State Bank of Rome, Rome Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Community Business Bancshares, Inc., Sauk City, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community Business Bank, Sauk City, Wisconsin, a *de novo* bank.

2. First Financial Corporation, Terre Haute, Indiana; to merge with First Citizens of Paris, Inc., Paris, Illinois, and thereby indirectly acquire The Citizens National Bank of Paris, Paris, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of First Amarillo Bancorporation, Inc., Amarillo, Texas, and thereby indirectly acquire The First National Bank of Amarillo, Amarillo, Texas.

2. FAB Acquisition Company (to be renamed Boatmen's Texas, Inc.), St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First Amarillo Bancorporation, Inc., Amarillo, Texas, and thereby indirectly acquire The First National Bank of Amarillo, Amarillo, Texas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FEO Investments, Inc., Hoskins, Nebraska; to acquire 100 percent of the voting shares of Elkhorn Valley Bank - in organization, Norfolk, Nebraska.

2. First National of Nebraska, Inc., Omaha, Nebraska; to acquire 100 percent of the voting shares of Larimer Bancorporation, Inc., Fort Collins, Colorado, and thereby indirectly acquire First Interstate Bank of Fort Collins, N.A., Fort Collins, Colorado.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Eldorado Bancshares, Inc., Eldorado, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Eldorado Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire First National Bank of Eldorado, Eldorado, Texas.

2. First Eldorado Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Eldorado, Eldorado, Texas.

3. Olney Bancorp of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Graham National Bank, Graham, Texas, a *de novo* bank.

4. Olney Bancshares, Inc., Olney, Texas; to acquire 100 percent of the voting shares of Olney Bancorp of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Graham National Bank, Graham, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20532 Filed 8–24–93; 8:45 am]

BILLING CODE 6210–01–F

BankAmerica Corporation, San Francisco, California; Application to Engage in Nonbanking Activities

BankAmerica Corporation, San Francisco, California (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, BA Securities, Inc., Seattle, Washington (formerly Security Pacific Securities, Inc.) (Company), a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and engage to a limited extent in underwriting and dealing in government obligations and money market instruments (bank-eligible securities), and in certain other types of debt securities (bank-ineligible securities), in the following securities-related activities:

(1) Acting as agent in the private placement of all types of securities, including providing related advisory services;

(2) Buying and selling all types of securities on the order of investors as a "riskless principal"; and

(3) Providing securities brokerage and investment advisory services, both separately and in combination.

In connection with this proposal, Applicant proposes to transfer certain securities-related businesses and activities from its lead bank, Bank of America NT&SA, San Francisco, California (Bank), to Company. Applicant would also transfer ownership and control of its direct wholly owned futures commission merchant subsidiary, BA Futures, Inc., Chicago, Illinois (BA Futures), to Company. Upon such transfer, BA Futures would become a direct wholly owned subsidiary of Company.

Applicant also proposes to transfer Company's principal place of business from Seattle, Washington, to San Francisco, California, and to establish branch offices in Los Angeles, California, New York, New York, Atlanta, Georgia, and Dallas, Texas. Applicant would conduct the proposed activities throughout the United States and the world.

Applicant also seeks a waiver from, or an interpretation regarding, one (Firewall 13) of the conditions and limitations (Section 20 Firewalls) that the Board has imposed on bank holding companies and their nonbank subsidiaries engaged in underwriting and dealing in bank-ineligible securities. *See Citicorp, et al.*, 73 Federal Reserve Bulletin 473, 504 (1987) (*Citicorp*). Firewall 13 provides, among other things, that no bank or thrift affiliate of any underwriting subsidiary will act as agent for, or engage in marketing activities on behalf of, the underwriting subsidiary. Applicant proposes for a wholly owned broker-dealer subsidiary of Bank, BA Investment Services, Inc., to act as a riskless principal or broker for customers in buying and selling bank-eligible securities that Company underwrites or deals in. Applicant believes that Firewall 13 does not apply to securities that national banks, such as Bank, are authorized to underwrite or deal in (*i.e.*, bank-eligible securities) but which are underwritten or dealt in by an underwriting affiliate, such as Company, for various business purposes. Alternatively, Applicant contends that Firewall 13 does not apply to the activity of a subsidiary of a national bank selling securities that are underwritten or dealt in by an underwriting affiliate, because that activity does not constitute a marketing activity. Applicant also argues, in the alternative, that the Section 20 Firewalls do not apply to subsidiaries of national banks. Applicant otherwise would continue to comply with the Section 20 Firewalls set forth in *Citicorp*, as modified subsequently by the Board.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board previously has approved, by order, the proposed private placement and riskless principal activities, and Applicant has stated that it will conduct these activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

The Board also has approved, by regulation, the proposed securities brokerage and investment advisory activities, and Applicant has stated that it will conduct these activities in accordance with the conditions and limitations set forth in the Board's Regulation Y. *See* 12 CFR 225.25(b)(4) and (15).

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 17, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20536 Filed 8–24–93; 8:45 am]

BILLING CODE 6210–01–F

BT Financial Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. BT Financial Corporation, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of FirstSouth Savings Bank, Pittsburgh, Pennsylvania, a bank resulting from the charter conversion of FirstSouth Savings Association, Pittsburgh, Pennsylvania.

In connection with this application, Applicant also proposes to acquire FirstSouth Bancorp, Inc., Pittsburgh, Pennsylvania, and its subsidiary FirstSouth Savings Association, Pittsburgh, Pennsylvania, and thereby engage in the acquisition of a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lone Tree Service Company, Lone Tree, Iowa; to acquire 100 percent of the voting shares of Packwood Financial, Inc., Packwood, Iowa, and thereby indirectly acquire Farmers Savings Bank, Packwood, Iowa.

In connection with this application, Applicant also proposes to acquire Packwood Insurance Agency, Packwood, Iowa, and thereby engage in selling general insurance in a small town, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20535 Filed 8–24–93; 8:45 am]

BILLING CODE 6210–01–F

First Southern Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Southern Bancorp, Stanford, Kentucky; to engage *de novo* through a loan production office yet to be named which will be located in Somerset, Kentucky, in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20533 Filed 8–24–93; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire Magic Line, Inc., Dearborn, Michigan, and thereby engage in ATM network access and switching services, ATM terminal driving services, ATM gateway services, ATM authorization services, card production and issuance, marketing support, and point of sale services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20534 Filed 8–24–93; 8:45 am]

BILLING CODE 6210–01–F

James G. Simmons, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 14, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. James G. Simmons, Jackson, Tennessee; to acquire an additional 26.50 percent, for a total of 44.49 percent, of the voting shares of Hardeman County Investment Company, Inc., Bolivar, Tennessee, and thereby indirectly acquire Hardeman County Bank, Bolivar, Tennessee.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kent D. Harrington, Plainview, Minnesota; to acquire an additional 8.25 percent, for a total of 25.01 percent, of the voting shares of Plainview Bankshares, Inc., Plainview, Minnesota, and thereby indirectly acquire First National Bank of Plainview, Plainview, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Roy Gene Evans, Dallas, Texas, to acquire 21 percent; Herschel Gordon Brown, Dallas, Texas, to acquire 3.2 percent; George Washington Reaves, Jr., Dallas, Texas, to acquire 3.2 percent; and David Lloyd King, Jr., Dallas, Texas, to acquire 0.7 percent, of the voting shares of The Bank of Van Zandt, Canton, Texas.

2. Juanita B. Henry and Joseph M. Henry, III, Natchitoches, Louisiana; jointly to acquire up to 71 percent, for a total of 73 percent, of the voting shares of Exchange Bancshares, Inc., Natchitoches, Louisiana, and thereby indirectly acquire Exchange Bank and Trust, Natchitoches, Louisiana.

3. Jimmie Michael Luecke, Giddings, Texas, to acquire an additional 9.19 percent, for a total of 19.19 percent; and Timothy Kleinschmidt, Lexington, Texas, as trustee for Susan Luecke Trust (owns 5.76 percent) and Fred Luecke Trust (owns 5.76 percent), to vote as trustee 11.52 percent, of the voting shares of Giddings Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire First National Bank of Giddings, Giddings, Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Mr. David F. Bolger, Ridgewood, New Jersey; to acquire 100 percent of the voting shares of Farmers & Merchants State Bank, Meridian, Idaho, and S&S Holding Company, Meridian, Idaho, and thereby indirectly acquire Farmers & Merchants State Bank, Meridian, Idaho.

Board of Governors of the Federal Reserve System, August 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20537 Filed 8–24–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3454]

National Society of Professional Engineers; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Virginia-based organization from restricting or limiting truthful and nondeceptive advertising claims by its members that refer to the quality of professional services or from encouraging or inducing any non-governmental person to engage in any practice that would violate the Commission's order. In addition, the respondent is required to remove from its Code of Ethics any provision that is inconsistent with the Commission's order.

DATE: Complaint and Order issued August 6, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Jonathan Banks, FTC/S–3308, Washington, DC 20580. (202) 326–2773.

SUPPLEMENTARY INFORMATION: On Wednesday, June 2, 1993, there was published in the **Federal Register**, 58 FR 31392, a proposed consent agreement with analysis In the Matter of National Society of Professional Engineers, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–20538 Filed 8–24–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0305]

Par Pharmaceutical, Inc., et al.; Withdrawal Of Approval Of 30 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 30 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70–342	Metoclopramide tablets, USP, 10 milligrams (mg)	Par Pharmaceutical, Inc., One Ram Ridge Rd.,Spring Valley, NY 10977.
70–903	Diazepam tablets, USP, 2 mg	Ferndale Laboratories, Inc.,780 West Eight Mile Rd.,Ferndale, MI 48220.
70–904	Diazepam tablets, USP, 5 mg	Do.
70–905	Diazepam tablets, USP, 10 mg	Do.
71–083	Naloxone hydrochloride injection, 0.4 mg/milliliter (mL)	The DuPont Merck Pharmaceutical Co., 1000 Stewart Ave.,Garden City, NY 11530.
71–084	Naloxone hydrochloride injection, 1 mg/mL	Do.
71–311	Naloxone hydrochloride injection, 1 mg/mL	Do.
71–828	Clorazepate dipotassium tablets, 3.75 mg	Warner Chilcott Laboratories,201 Tabor Rd.,Morris Plains, NJ 07950.
71–829	Clorazepate dipotassium tablets, 7.5 mg	Do.
71–830	Clorazepate dipotassium tablets, 15 mg	Do.
72–105	Propoxyphene napsylate and acetaminophen tablets, 50 mg/325 mg	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233–3599.
83–655	Phendimetrazine tartrate tablets, USP, 35 mg	Ferndale Laboratories, Inc.
83–879	Quinidine sulfate tablets USP, 200 mg	Warner Chilcott Laboratories.
84–001	Dextroamphetamine sulfate tablets, USP, 5 mg	Ferndale Laboratories, Inc.
85–454	Methocarbamol tablets, USP, 500 mg	Do.
85–674	Diphenhydramine hydrochloride capsules, USP, 25 and 50 mg	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
85–689	Isoetharine hydrochloride inhalation solution, USP, 1.0%	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
85–997	Isoetharine hydrochloride inhalation solution, USP, 0.5%	Do.
86–834	Phendimetrazine tartrate tablets, USP, 35 mg	Ferndale Laboratories, Inc.
88–000	Sulfacetamide sodium ophthalmic ointment, 10%	Pharmafair, Inc., 110 Kennedy Dr.,Hauppauge, NY 11788.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

ANDA no.	Drug	Applicant
88-007	Sulfacetamide sodium and prednisolone acetate ophthalmic suspension	Do.
88-324	Acetaminophen and codeine and codeine phosphate capsules, USP, 300 mg/30 mg	Lemmon Co.
88-499	Fluocinolone acetonide cream, 0.01%	Pharmafair, Inc.
88-506	Fluocinolone acetonide cream, 0.025%	Do.
88-507	Fluocinolone acetonide ointment, 0.025%	Do.
88-537	Acetaminophen and codeine phosphate capsules, USP, 300 mg/15 mg	Lemmon Co.
88-599	Acetaminophen and codeine phosphate capsules, USP, 300 mg/60 mg	Do.
88-705	Chlordiazepoxide hydrochloride capsules, USP, 5 mg	Do.
88-706	Chlordiazepoxide hydrochloride capsules, USP, 10 mg	Do.
88-707	Chlordiazepoxide hydrochloride capsules, USP, 25 mg	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective September 24, 1993.

Dated: August 3, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93-20568 Filed 8-24-93; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Science Board to the Food and Drug Administration

Date, time, and place. September 9, 1993, 8 a.m., Bethesda Ramada Inn, Ambassador Rooms I and II, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; Sheryl Rosenthal, Office of the Senior Advisor for Science (HF-33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5839.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before August 31, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open committee discussion. The existence of unbiased clinical research is essential to FDA's assessment of the safety and effectiveness of new human and animal drugs, medical devices, and biologics. The soundness of FDA's premarket decisions depends on the reliability of the data submitted by sponsors. While there are a number of potential sources of bias, there is growing recognition that certain kinds of payment arrangements for clinical trials, such as those that implicitly result in a higher fee for a particular outcome (e.g., equity, stock option, or royalty payments), have the potential to bias the outcome of trials. The Science Board will examine the broad concepts underlying the issue of disclosure of financial information by clinical investigators participating in clinical trials. In addition, the Science Board will receive an introduction to the operations of the Center for Drug Evaluation and Research.

Joint Meeting of the Gastrointestinal Drugs Advisory Committee and the OTC Drugs Advisory Committee

Date, time, and place. September 9, 1993, 8:30 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Joan C. Standaert (HFD-180), 419-259-6211, or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committees. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases. The OTC Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 30, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will jointly discuss new drug application 17-920, nonprescription cimetidine (SmithKline Beecham), for use in episodic heartburn as an over-the-counter product, and make recommendations to the agency as to whether substantial evidence has been provided to show that the drug is safe and effective for this use.

Generic Drugs Advisory Committee With Pulmonary-Allergy Drugs Advisory Committee Representation

Date, time, and place. September 14 and 15, 1993, 8 a.m., Potomac Inn, ballroom B, Three Research Ct., Rockville, MD 20850.

Type of meeting and contact person. Open committee discussion, September 14, 1993, 8 a.m. to 4:15 p.m.; open public hearing 4:15 p.m. to 5:15 p.m., unless public participation does not last that long; open committee discussion, September 15, 1993, 8 a.m. to 4:15 p.m.; open public hearing, 4:15 p.m. to 5:15 p.m., unless public participation does not last that long; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committees. Generic Drugs Advisory Committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases. The Pulmonary-Allergy Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 7, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 14, 1993, the committee will discuss the results of FDA-contracted pilot studies done at the Johns Hopkins University School of Medicine concerning albuterol dose/response relationships when delivered by metered dose inhalers (MDI's). These results will serve as the basis for the Office of Generic Drugs' draft interim bioequivalence guidance for albuterol MDI's. This meeting is a followup to the October 11, 1991, meeting (56 FR 49776, October 1, 1991) at which FDA's Office of Generic Drugs presented possible study designs for the assessment of bioequivalence of albuterol MDI's. On September 15, 1993, the committee will discuss issues related to current policy concerning the documentation of bioequivalence for solution/device combinations.

Antiviral Drugs Advisory Committee

Date, time, and place. September 20 and 21, 1993, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, September 20, 1993, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open committee discussion, September 21, 1993, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 3 p.m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 13, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 20, 1993, the committee will discuss newly available data on the safety and efficacy of zalcitabine (Hivid®, also known as ddC, manufactured by Hoffmann-LaRoche) when used as a monotherapy and when used as one agent of a combination therapy. On September 21, 1993, the committee will discuss adverse effects of nucleoside analogues including liver damage, lactic acidosis, and peripheral neuropathy. Products to be discussed include fialuridine (an experimental drug for hepatitis B, manufactured by Eli Lilly), alovudine (FLT, a drug no longer in clinical trials for HIV, manufactured by American Cyanamid), and zidovudine (Retrovir®, manufactured by Burroughs-Wellcome).

Anti-Infective Drugs Advisory Committee

Date, time, and place. September 23 and 24, 1993, 8:30 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, September 23, 1993, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; open public hearing, September 24, 1993, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committees. The committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 16, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 23, 1993, the committee will discuss central nervous system toxicity

associated with the use of fluoroquinolones and whether or not a new class warning for central nervous system toxicity is warranted. During the morning of September 24, 1993, the committee will discuss new drug application 50–679, cefepime hydrochloride (Bristol-Myers Squibb) and the issue of bacteremic sepsis as an indication for this product. During the afternoon of September 24, 1993, the committee will discuss the issue of pharmacokinetic parameters and microbiologic inhibitory and cidal activity data as surrogates for clinical effectiveness in the approval of new anti-infective drug products or in the alteration of dosing recommendations.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 19, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–20569 Filed 8–24–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–03–4332–02]

Emergency Closure of the Oregon Buttes Wilderness Study Area, Sweetwater County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure in the Oregon Buttes Wilderness Study Area; Green River Resource Area, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that, effective immediately, all public lands within the Oregon Buttes Wilderness Study Area (WSA) are closed to all mechanized motorized/non-motorized vehicular use to preserve the WSA's suitability as Wilderness pursuant to the provisions under sections 302(b) and 603(c) of the Federal Land Policy and Management Act of 1976.

Increased vehicular use in the area is causing unacceptable levels of soil erosion and rutting. Vehicular use off from the existing trails in the area is also increasing due to the rutting. The WSA's characteristic landscape is in danger of being permanently scarred and impairing the suitability of the area for inclusion in the National Wilderness Preservation System.

EFFECTIVE DATE: The closure will become effective August 25, 1993 and will remain in effect until further notice or until the Green River Resource Management Plan (RMP) is completed.

FOR FURTHER INFORMATION CONTACT: William LeBarron, Area Manager, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming 82901. Telephone: (307) 362–6422.

SUPPLEMENTARY INFORMATION: A **Federal Register** Notice was published on Monday, August 15, 1983 to notify the public of off-road vehicle (ORV) designation decisions for the 1982 Big Sandy Management Framework Plan. The ORV designation for the Oregon Buttes WSA (5,700 acres) is "limited to existing roads and trails" to maintain wilderness integrity, and protect elk calving and raptor nesting. The area is also closed to motorized vehicle use from March 1 to July 1.

Monitoring of the Wilderness Study Area has revealed that violations of the "existing road and trail" ORV designation is commonly occurring and erosion from vehicle use is increasing. There are 13 two-track trails and 2 seismograph trails crossing the Wilderness Study Area. These existing trails of about 12 miles will be rehabilitated to their natural state. Cultural, wildlife, wilderness, and scenic values will be protected.

The emergency closure applies to all BLM administered public lands within the Oregon Buttes Wilderness Study Area, located in Sweetwater County, approximately 30 miles northeast of Farson, Wyoming, in T. 26 N., R. 101 W., Sixth Principle Meridian. The closure prohibits the use of all mechanized motorized and non-motorized vehicles within the wilderness study area, with the exceptions of:

(1) Any Federal, State, or local officers engaged in fire, military, emergency, or law enforcement activities;

(2) BLM employees engaged in official duties.

Authority for closure orders is provided under 43 CFR subpart 8364.1.

Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Marlowe Kinch,

District Manager.

[FR Doc. 93–20507 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–22–M

[CO–070–4333–02–24–10]

Correction of Temporary Travel Restrictions for the Siloam Springs-Dotsero Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Order of Area, Road and Trail Use Restriction.

SUMMARY: This notice corrects the legal description for the affected lands in the notice of Temporary Travel Restrictions for the Siloam Springs-Dotsero area, published in the **Federal Register** Vol. 58, No. 137 on Tuesday, July 20, 1993, page 38781.

SUPPLEMENTARY INFORMATION: The correct legal description should read: the affected public land, situated in Eagle and Garfield Counties are located in T. 4 S., R. 86 W., Sec. 30 and 31; T. 4 S., R. 87 W., Sec. 25, 34, 35 and 36; T. 5 S., R. 86 W., Sec. 5 and 6; T. 5 S., R. 87 W., Sec. 1, 2, 3, 10, 11, 12, and 15; Sixth Principle Meridian; it is bounded by Interstate 70 to the south, Colorado River to the east, Deep Creek and Coffee Pot Road to the north, and the White River National Forest to the west.

EFFECTIVE DATE: The corrections shall be effective immediately and all existing restrictions shall remain in effect until rescinded or modified by the Authorized Officer.

Timothy Hartzell,

Grand Junction District Manager.

[FR Doc. 93–20503 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–JB–M

[CO–070–03–7122–03–7408; C–65434]

Designation of Public Lands in Eagle County, Co; Notice of Realty Action—Exchange

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Designation of public lands in Eagle County, Colorado, as preliminarily suitable for disposal out of Federal ownership by exchange.

SUMMARY: Pursuant to sections 205, 206, 209, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified the following-described public lands as preliminarily suitable for exchange. This action is in response to a land exchange proposal submitted by the State of Colorado and Gerald Rea.

Sixth Principal Meridian, Colorado

T. 4 S., R. 83 W.,
- Sec. 25: Lot 16
- Sec. 26: Lot 4
- Sec. 33: SE¼NE¼, NE¼SE¼
- Sec. 34: SW¼NE¼, SW¼, W½SE¼, SE¼SE¼
- Sec. 35: NE¼NE¼, S½NE¼, S½SW¼, SE¼
- Sec. 36: Lots 1, 2, 3, and 4

T. 5 S., R. 83 W.,
- Sec. 2: Lots 5, 6, and 8, W½NE¼, W½, NW¼SE¼
- Sec. 3: Lots 5, 6, and 11, N½, NW¼SW¼, NE¼SE¼
- Sec. 4: Lots 6 and 7, S½NE¼
- Sec. 10: Lot 1
- Sec. 11: Lots 2, 3, and 4

The lands described above contain 2,046.72 acres, more or less.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal by exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and the land use decision, a Notice of Realty Action shall be published to specify the selected public lands and the offered private lands proposed for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the lands proposed for exchange is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506.

Timothy Hartzell,

Grand Junction District Manager.

[FR Doc. 93–20504 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–57555]

Notice of Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Modifying Exchange NORA to Allow Lease/Purchase for Recreation and Public Purposes.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada are being considered for disposal by lease/purchase for Recreations and Public Purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq). The City of Las Vegas proposes to use the land for a park site, flood control detention basin and water reclamation.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
- Sec. 8: NW¼NE¼NE¼SE¼, S½NE¼NE¼SE¼, N½NW¼NE¼SE¼, SE¼NW¼NE¼SE¼, SE¼NE¼SE¼, N½SW¼NE¼SE¼, SW¼SW¼NE¼SE¼, NE¼NW¼SE¼, N½SE¼NW¼SE¼, SE¼SE¼NW¼SE¼, N½SE¼SE¼, N½S½SE¼SE¼, NE¼SW¼SE¼, NW¼SE¼SW¼SE¼, aggregating 92.500 acres.

Publication of this NORA in the **Federal Register** will modify exchange classification, N–56458, to allow for disposal by lease/purchase of the above described lands. Final determination on lease/purchase will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2741.5, subject to valid and existing rights, publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws and from any subsequent Recreation and Public Purposes Act proposals filed by any other proponent other than City of Las Vegas.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any

adverse comments will be reviewed by the State Director.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–20511 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–055–93–4350–02]

Amendment to the Caliente Management Framework Plan (MFP)

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: The BLM Las Vegas District proposes to amendment the Caliente MFP to allow for establishment of Rio Grande wild turkey *(Meleagris gallopavo)* populations on the resource area in the following areas: Clover Mountains, Meadow Valley Wash, Delamar Mountains, Highland Range and Clover Creek. The number of transplants and number of turkeys to be transplanted would be based upon monitoring studies that indicate the success of the initial transplants. The following is a legal description of the transplant areas:

Mount Diable Meridian

Clover Mountain—T. 6 and 7 S., R. 70 and 71 E.
Meadow Valley Wash—T. 4, 5, 6 and 7 S., R. 66 and 67 E.
Delamar Mountain—T. 4, 5, 6 and 7 S., R. 64, 65 and 66 E.
Highland Range—T. 1 N. and 1 S., R. 66 E.
Clover Creek—T. 3, 4 and 5 S., R. 67 and 68 E.

DATES: Comments may be submitted by September 24, 1993.

ADDRESSES: Interested parties may submit comments on the proposed amendment to the Caliente MFP to Curtis G. Tucker, Caliente Area Manager, P.O. Box 237, Caliente, Nevada 89008.

FOR FURTHER INFORMATION CONTACT: Kyle Teel, Caliente Wildlife Biologist, P.O. Box 237, Caliente, Nevada 89008. Telephone: (702) 726–8100.

SUPPLEMENTARY INFORMATION: The areas described above have been field inspected by biologists from the BLM and Nevada Department of Wildlife and were determined to be suitable for wild turkeys. The Rio Grande subspecies of wild turkeys was chosen to be transplanted into these areas because they are adapted to drier climates.

This plan amendment is authorized by Title 43 CFR 1610.5–5.

Dated: August 16, 1993.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 93–20543 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Ka'u Silversword, Argyroxiphium kauense, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Ka'u silversword, *Argyroxiphium kauense*, a Hawaiian plant. The Ka'u silversword occurs on the southeastern slopes of Mauna Loa Mountain on the island of Hawaii, Hawaii.

DATE: Comments on the draft recovery plan must be received on or before October 25, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (telephone 808–541–2749). Copies of the draft recovery plan will be available for inspection at the Hilo Public Library, 300 Waianuenue Ave., Hilo, HI 96720. Written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the above Honolulu address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is the Ka'u silversword, *Argyroxiphium kauense*. The areas of emphasis for recovery actions for this species are, the Upper Waiakea Forest Reserve, the Keapohina area of Kahuku Ranch and the sub-alpine parkland of Hawaii Volcanoes National Park on the island of Hawaii, Hawaii. Recovery efforts will focus on securing habitat and managing it to remove threats by feral ungulates, alien plants and predatory insects. Current populations will be augmented and new populations will be established.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 17, 1993.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 93–20528 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–769931

Applicant: James Greaves, Santa Barbara, CA

Applicant requests amendment to his current permit for authorization of take activities throughout the State of California with least Bell's vireos (*Vireos bellii pusillus*) for scientific purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 20, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–20562 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–55–M

Wild Bird Conservation Act (WBCA) of 1992; Possible Suspension of Imports of African Grey Parrots to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of a petition and proposed action.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the receipt of a petition from the Environmental Investigation Agency to suspend the import of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States under the Wild Bird Conservation Act of 1992 (WBCA). The Service hereby proposes to suspend the importation of African grey parrots (*Psittacus erithacus* and all subspecies) from Côte d'Ivoire, Togo, Benin, and Guinea, based on information in the petition and in other documents available to the Service. The petition has been found to present substantial information indicating that suspending the import of African grey parrots is warranted under the WBCA, and that the trade in African grey parrots from these countries is detrimental to the species' survival. Through the issuance of this notice, the Service requests additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific and conservation communities, industry groups, or any other concerned interested party regarding the status of African grey parrots.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by September 24, 1993 in making a final decision on this proposed action.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Mr. Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Dr., room 420C, Arlington VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On October 23, 1992, the Wild Bird Conservation Act (WBCA) of 1992 (16 U.S.C. 4901–4916) was signed into law. The purposes of the WBCA include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin.

Pursuant to section 105(b) of the WBCA (16 U.S.C. 4904), "Emergency Authority to Suspend Imports of Listed Species," the WBCA authorizes the Secretary of the Interior to suspend the importation of exotic birds of any species that is listed in any Appendix to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES, or Convention), if the Secretary determines that:

"1. Trade in that species is detrimental to the species,

2. There is not sufficient information available on which to base a judgement that the species is not detrimentally affected by trade in that species, or

3. Remedial measures have been recommended by the Standing Committee of the Convention that have not been implemented; and

4. The suspension might be necessary for the conservation of the species."

This proposed action is based on various documents, including published and unpublished studies. All documents on which this proposed action is based are on file in the Service's Office of Management Authority, and are available on request.

On February 22, 1993, the Service received a letter from G.A. Punguse, Chief Game and Wildlife Officer for Ghana, requesting that the United States stop African grey parrot shipments from Togo to the United States and stating that no African grey parrot populations are found in Togo and that all of the birds exported from Togo are actually smuggled from Ghana.

On April 12, 1993, the Environmental Investigation Agency submitted a petition to the Service requesting the Secretary to suspend imports of African grey parrots from Côte d'Ivoire, Togo, and Benin to the United States.

On April 15, 1993, the Service received a letter from the CITES Secretariat in Switzerland noting that a CITES report (Dandliker, 1992) on the grey parrot in Ghana indicates that the majority of the specimens that are exported from Côte d'Ivoire are in reality smuggled into Côte d'Ivoire from Ghana and other countries. The letter further noted that the Secretariat had corresponded with the Government of Côte d'Ivoire, expressed its concerns that a large number of birds may have been smuggled from Ghana, and recommended that Côte d'Ivoire stop exports of African grey parrots until populations could be surveyed.

At the eighth meeting of the CITES Conference of the Parties in Kyoto, Japan, Resolution Conf. 8.9 was adopted. The Resolution, entitled "The Trade in Wild-Caught Animal Specimens," established a process whereby the CITES Animals Committee would communicate primary and secondary recommendations to CITES Parties regarding species that had been identified as high-priority species. The African grey parrot is such a species. The resolution established a process whereby the CITES Secretariat would assess whether a party had implemented specific recommendations; any failure to so demonstrate would be brought to the attention of the Standing Committee. The Secretariat sent recommendations from the Animals Committee to several CITES Parties in June 1992; those that did not reply were sent reminders in October 1992 and January 1993. Based on the report of the Secretariat to the March 1993 meeting of the CITES Standing Committee in Washington, DC, the Standing Committee unanimously recommended to all Parties that imports be suspended for a number of species, including the African grey parrot from Guinea.

On April 20, 1993, the CITES Secretariat issued Notification to the Parties No. 737, which notified the Parties of the Standing Committee's

recommendation to suspend imports of *Psittacus erithacus* from Guinea.

On May 7, 1993, the CITES Secretariat issued Notification to the Parties No. 746, which "strongly recommended" that Parties "not accept any comparable documentation from Côte d'Ivoire for trade in specimens of African grey parrots (*P. erithacus*), including the subspecies *P. e. erithacus* and *P. e. timneh*." This recommendation remains in effect until the CITES Secretariat is satisfied that the government of Côte d'Ivoire has "completed surveys on its wild populations of African grey parrots and based on those surveys, establishes a management plan for sustainable international trade; and has taken appropriate measures to prevent the illegal import of grey parrots from other countries, and to ensure that shipments of grey parrots that are exported from Côte d'Ivoire do not include birds that have been imported illegally." The Notification notes that a CITES report on the grey parrot in Ghana indicates that the majority of *P. erithacus erithacus* exported from Côte d'Ivoire are birds that are smuggled from Ghana and other countries.

The African grey parrot (*Psittacus erithacus*) is a medium-sized parrot endemic to Africa. It is distributed in Central Africa from the Gulf of Guinea Islands and the west coast east to western Kenya and northwestern Tanzania; it possibly ranges to Mt. Kilimanjaro in Tanzania (Forshaw, 1989). They are primarily birds of lowland forests.

There are three subspecies recognized: *Psittacus e. erithacus, P. e. princeps, and P. e. timneh* (Forshaw, 1989; Howard and Moore, 1991). The nominate subspecies, *P. e. erithacus*, is widespread in equatorial Africa. It ranges from southeastern Côte d'Ivoire to western Kenya and south to northern Angola, southern regions of Zaire and to northwestern Tanzania. *P. e. princeps* is restricted to the islands of Principe and Bioko in the Gulf of Guinea; while *P. e. timneh* is confined to southern Guinea, Sierra Leone, Liberia and the westernmost parts of Côte d'Ivoire.

The nominate subspecies, *P. e. erithacus* ("Redtail"), can be distinguished from *P. e. timneh* ("Maroontail") by morphological characteristics. "Red-tailed African grey parrots" have an all-black bill and a bright red tail, whereas "Maroon-tailed African grey parrots" have a pale upper bill, a much darker maroon-red (often with a lot of dark-brown) tail, their general body color is darker, and on average, they are about 15% smaller in size than Red-tailed African grey parrots (Dandliker, 1992). Within the Red-tailed African grey parrots. (*P. e. erithacus*), there exists a gradient in body size between western and eastern populations (Dandliker, 1992). Traders distinguish between the "Ghanaian Redtails" and the "Congo or Cameroonian Redtails." "Congo Red-tailed African grey parrots" are larger and heavier than those from the western parts of the range.

Although African grey parrots have long been popular in the pet bird trade, very little scientific data on the status, population sizes, and demography of wild populations exists. The trade in this species has long been an issue of concern. Between 1983 and 1989, 346,782 African grey parrots were exported from 20 African countries, including two (Sénégal and Togo) which are not believed to be range states (Environmental Investigation Agency 1993). In 1991, 10,651 *Psittacus erithacus* and 3,976 *P. e. timneh* were imported into the United States. As of June 20, 1993, 6,421 *Psittacus erithacus* and 2,138 *P. e. timneh* had been imported into the United States since the WBCA was enacted, under the quota established by the WBCA and published in the **Federal Register** (58 FR 19840).

A CITES Report (Dandliker, 1992) estimated the total population of Red-tailed African grey parrots (*P. e. erithacus*) in West Africa to be between 40,000 and 100,000 birds. The largest population of Red-tailed African grey parrots occurs in Ghana, where the population is estimated to be between 30,000 and 80,000 birds (75%–80% of the total West African population) (Dandliker, 1992).

Since 1980, Ghana has banned the export of its African grey parrots. This ban was found to be necessary by the Ghana Department of Game and Wildlife "because of the large number of birds exported annually without scientific information to determine a sustainable off-take which would ensure the survival of the species in the wild" (Letter from G. Punguse, 1993). The recent CITES Secretariat-sponsored survey of African grey parrots in Ghana (Dandliker, 1992) concluded that the majority of the wild populations of Red-tailed African grey parrots are found in Ghana, with a few populations along the Côte d'Ivoire eastern boundary with Ghana and none in Togo. The CITES report (Dandliker, 1992) found that the majority of African grey parrots (*P. e. erithacus*) exported from Côte d'Ivoire are, in reality, birds that are smuggled into Côte d'Ivoire from Ghana, and all the African grey parrots exported from Togo come from Ghana.

The Environmental Investigation Agency (EIA, 1993) studies the illegal trade in African grey parrots from Ghana, at the request of the Ghanaian Government. Statements made by traders to EIA appear to further substantiate the findings of the CITES Report concerning the illegal trade in African grey parrots from Côte d'Ivoire. Statements made by traders to EIA also point to illegal trade in African grey parrots from Benin, which originated in Ghana.

After a review of the petition from the Environmental Investigation Agency, the aforementioned Notifications from the CITES Secretariat, and other information available, the Service concludes the petition did present substantial scientific and commercial information indicating that the suspension of imports of African grey parrots imports from Côte d'Ivoire, Togo, and Guinea is warranted. Information related to imports of African grey parrots from Benin is more limited, and the Service is interested in any information regarding trade in African grey parrots originating in or reexported from Benin. Information available to the Service indicated that in Ghana, although the African grey parrot is protected from export, it has been depleted by the "laundering" of smuggled birds through exports of the species from Côte d'Ivoire, Togo, and possibly Benin. Therefore, the Service finds that the trade of African grey parrots from Côte d'Ivoire, Benin, Togo, and Guinea may be detrimental to the species in Ghana; a suspension of imports from these countries is proposed, in the interest of the conservation of the species in Ghana.

Effects of the Rule

The Service has determined that this action is not a major rule under Executive Order 12291, nor does it have a significant economic effect on a substantial number of small entities. The estimated number of birds that may be made unavailable to the wild bird market totals 2,000. In October 1993, importation of this species will be prohibited by the Wild Bird Conservation Act; this action would impose the ban prior to October. This rule does not contain any information collections for which Office of Management and Budget approval is required under 44 U.S.C. 3501.

Public Comments Solicited

The Service intends that any final decision resulting from this Notice will be as accurate and as effective as possible. Therefore, any comments or data from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of this proposal are hereby solicited.

References Cited

Dandliker, G. 1992. The grey parrot in Ghana: A population survey, a contribution to the biology of the species, a study of its commercial exploitation and management recommendations. A report on CITES Project S–30 to the CITES Secretariat. 132 pp

Environmental Investigation Agency. 1993. Investigation into the trade in African grey parrots from Ghana. 146 pp. London, Great Britain

Forshaw, J. 1989. Parrots of the World. 3rd (revised) edition. Lansdowne Editions, Melbourne, Australia

Howard, R. and A. Moore. 1991. A Complete Checklist of the Birds of the World. 2nd edition. Academic Press Ltd., London, England

CITES Secretariat Notification to the Parties No. 737. Lausanne, 20 April 1993. Significant Trade in Animal Species included in Appendix II: Recommendations of the Standing Committee

CITES Secretariat Notification to the Parties No. 746. Lausanne, 7 May 1993. Côte d'Ivoire: Trade in African Grey Parrots

Authors: The authors of this notice are Dr. Rosemarie Gnam (Division of Law Enforcement) and Dr. Susan S. Lieberman (Office of Management Authority), U.S. Fish and Wildlife Service.

Dated: July 28, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–20594 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Royalty Management Advisory Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee (RMAC) will meet in Lakewood, Colorado, at the location and on the dates identified below. The purpose of these meetings are to conduct work in conjunction with the Department of the Interior's (Department) "reinvention laboratory" recently established in support of the National Performance Review, a major initiative of the Administration to streamline Federal agencies and programs.

LOCATION AND DATES: The RMAC will meet at building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado, on September 14 and October 6, 1993, from 9 a.m. to 5 p.m.

The meetings will be open to the public. Public attendance may be limited to the space available. Members of the public will be given an opportunity to address RMAC and questions from the public will be addressed at a designated time during each meeting. Written statements should be submitted by September 10, 1993, for the September 14 meeting, and by October 1 for the October 6 meeting to the address listed below. Minutes of these meetings will be available for public inspection and copying 10 days following each meeting at the same address.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Bartram, Chief, Staff Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Mail Stop 3060, Denver, Colorado 80225–0165, telephone number (303) 231–3410 or 231–3896.

SUPPLEMENTARY INFORMATION: The Department recently reestablished the RMAC Charter which expired February 25, 1993. The new charter will terminate in 2 years. During previous terms, RMAC was invaluable to the Department in providing input and advice regarding a number of issues, including product valuation, State and tribal audit funding, accounting system improvements, and Indian initiatives. The RMAC provides the Department with a formal mechanism for soliciting the viewpoint of representation interested in and knowledgeable regarding royalty-related policies.

The RMAC is comprised of 10 members, representing the interests of States, Indians, minerals industry, and MMS. The RMAC members have professional or personal qualifications or experience relative to mineral leasing and royalty management activities.

The RMAC was rechartered to work in conjunction with the Department's "reinvention laboratory" recently established in support of the National Performance Review, a major initiative of the Administration to streamline Federal agencies and programs. The "reinvention laboratory" will evaluate alternatives for simplifying the royalty collection and disbursement process. The RMAC will provide MMS a needed constituent sounding board as attempts are made to design and test improved royalty procedures.

Dated: August 19, 1993.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–20539 Filed 8–24–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Preliminary)]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Netherlands of aramid fiber formed of poly para-phenylene terephthalamide (PPD–T aramid fiber),[2] provided for in subheadings 5402.10.30, 5402.32.30, 5503.10.00, and 5601.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 2, 1993, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of E.I. du Pont de Nemours & Co., Wilmington, DE, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of PPD–T aramid fiber from the Netherlands. Accordingly, effective July 2, 1993, the Commission instituted antidumping investigation No. 731–TA–652 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 12, 1993 (58 FR 37503). The conference was held in Washington, DC, on July 23, 1993, and

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported merchandise which is the subject of Commerce's investigation is all forms of PPD–T aramid fiber from the Netherlands. This includes PPD–T aramid fiber in the form of filament yarn, staple, pulp (wet or dry), non-wovens, chopped fiber, and floc.

all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 16, 1993. The views of the Commission are contained in USITC Publication 2672 (August 1993), entitled "Aramid Fiber Formed of Poly Para-phenylene Terephthalamide from the Netherlands: Investigation No. 652 (Preliminary)."

Issued: August 17, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20571 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–621 (Final)]

Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China of certain compact ductile iron waterworks fittings, provided for in subheading 7307.19.30 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to 19 U.S.C. 1673(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

The Commission further determines, pursuant to section 735(b) of the Act, that an industry in the United States is materially injured by reason of imports from the People's Republic of China of cast iron glands for such fittings,[2] provided for in subheading 7325.99.10 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV. The Commission also determines, pursuant to 19 U.S.C. 1673d(b)(4)(A), that critical circumstances do not exist with respect to imports of such merchandise; thus, the retroactive imposition of antidumping duties is not necessary.

The Commission further determines, pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China of accessory packs, for which separate components are provided for in subheadings 4016.93.00, 7318.15.20, and 7325.99.10 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV.

Background

The Commission instituted this investigation effective February 9, 1993, following a preliminary determination by the Department of Commerce that imports of certain compact ductile iron waterworks fittings and accessories thereof from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 10, 1993 (58 FR 13278). The hearing was held in Washington, DC, on July 8, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 19, 1993. The views of the Commission are contained in USITC Publication 2671 (August 1993), entitled "Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China: Investigation No. 731–TA–621 (Final)."

Issued: August 19, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20572 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Anne E. Brunsdale and Commissioner Carol T. Crawford dissenting.

[Investigations Nos. 731–TA–654–657 (Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petitions in antidumping investigations.

SUMMARY: On August 16, 1993, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigations (Cordage Institute, Hingham, MA) withdrawing its petitions. Commerce has not initiated its investigations as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning certain cordage products from Costa Rica, Korea, Mexico, and Portugal (investigations Nos. 731–TA–654–657 (Preliminary)) are discontinued.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: August 17, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20573 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–344]

Commission Determination Not To Review an Initial Determination Finding a Respondent Has Waived Its Right To Appear, To Be Served With Documents, and To Contest the Allegations in Issue in the Investigation

In the Matter of Certain Cutting Tools for Flexible Plastic Conduit and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 16) in the above-captioned investigation finding that respondent Chewink Corporation ("Chewink") has waived its rights to appear, to be served with documents, and to contest the allegations in issue in this investigation.

FOR FURTHER INFORMATION CONTACT: Robin L. Turner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3103.

SUPPLEMENTARY INFORMATION: On July 7, 1993, the ALJ issued an order (Order No. 15) giving Chewink until July 16, 1993, to show cause why it should not be found, pursuant to Commission interim rule 210.25, to have waived its right to appear, to be served with documents, and to contest the allegations in issue in this investigation. Chewink did not respond to that order. On July 20, 1993, the ALJ issued an ID (Order No. 16) finding Chewink had waived the aforementioned rights.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: August 16, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20574 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–352]

Commission Determination Not To Review an Initial Determination Granting Motion To Intervene

In the Matter of Certain Personal Computers with Memory Management Information Stored in External Memory and Related Materials.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting the motion of Cyrix, Inc. to intervene on the side of respondents in the investigation.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108.

SUPPLEMENTARY INFORMATION: On June 16, 1993, Cyrix, Inc. (Cyrix) filed a Motion to Intervene on the Side of Respondents. Complainant Intel did not oppose Cyrix's motion; respondents Twinhead Int'l Corp. and Twinhead Corp. supported Cyrix's motion; and the Commission investigation attorney did not oppose Cyrix's motion. On July 2, 1993, the presiding administrative law judge issued an ID granting Cyrix's motion to intervene. No petitions for review or agency comments were filed regarding the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 17, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20575 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Decision To Review an Initial Determination Granting Motion for Summary Determination on the Issue of Jurisdiction

In the Matter of Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (ID) (Order No. 62) issued on July 26, 1993 ("the July 26 ID"), by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the motion for summary determination on the issue of jurisdiction filed by respondent Maxtor Corp. ("Maxtor").

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks ("sputtered disks") and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464 ("the '464 patent"). Aine's complaint alleges that Maxtor assembles overseas and imports into the United States disk drives containing sputtered disks that infringe the pertinent claims of the '464 patent.

In its motion for summary determination, Maxtor asserted that the disks that it purchases for installation in its disk drives are either manufactured in the United States or manufactured overseas by a licensee of complainant Aine. Consequently, it argued that it is entitled to summary determination because its purchasing activities are either outside the jurisdiction of section 337, insofar as they concern domestically-manufactured disks, or non-infringing, insofar as they concern the disks manufactured by the licensee. Maxtor asserted that the jurisdictional issues raised by its motions were identical to those in several previous motions for summary determination or partial summary determination filed by other respondents to the investigation which the ALJ granted in an ID issued on May 28, 1993 ("the May 28 ID"). In that ID, the ALJ concluded that the Commission does not have section 337 jurisdiction over domestically-manufactured articles. Complainant Aine opposed the Maxtor motion.

In the July 26 ID, the ALJ granted the Maxtor summary determination motion on the basis of the May 28 ID. On June 30, 1993, the Commission issued a notice indicating that it would review the May 28 ID. Additionally, on July 21, 1993, the Commission issued a notice indicating that it would review an ID on jurisdictional issues issued on July 2, 1993, ("the July 2 ID") on a consolidated

basis with the May 28 ID. Aine and Maxtor have filed Petitions for Review of the July 26 ID and have requested that it be reviewed on a consolidated basis with the May 28 and July 2 IDs.

Having reviewed the record in this investigation, including the ID, the Commission has determined to review the July 26 ID. Review of the July 26 ID will be consolidated with review of the May 28 and July 2 IDs. The parties have already filed with the Commission opening briefs on the jurisdictional issues under review pursuant to the June 30, 1993, notice of review. Consequently, the Commission does not request briefing from the parties beyond that permitted under the June 30, 1993, notice.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rules 210.55 and 210.56, 19 CFR 210.55, 210.56.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Dated: August 17, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20576 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Decision Not To Review Initial Determinations Granting Joint Motions To Terminate the Investigation With Respect to Respondent Hoya Electronics Corp. on the Basis of a Settlement Agreement and With Respect to Respondent Nippon Sheet Glass Co. on the Basis of a License Agreement

In the Matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 63) issued on July 27, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Hoya Electronics Corp. ("Hoya") to terminate the investigation as to Hoya on the basis of a settlement agreement. The Commission has also determined not to review an initial determination (Order No. 64) issued on July 29, 1993, by the ALJ granting the joint motion of Aine and respondent Nippon Sheet Glass Co. ("NSG") to terminate the investigation as to NSG on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On June 21, 1993, Aine and Hoya filed a joint motion to terminate the investigation with respect to Hoya on the basis of a settlement agreement. On June 23, 1993, Aine and NSG filed a joint motion to terminate the investigation with respect to NSG on the basis of a license agreement. The ALJ issued IDs granting both the Hoya-Aine and NSG-Aine joint motions and terminating the investigation as to Hoya and NSG. No petitions for review of either ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: August 16, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20577 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 751–TA–15]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: Counsel for the domestic producers of stainless steel plate has filed a request that the Commission hold in abeyance the above-referenced review investigation pending resolution of the dispute regarding the scope of the antidumping order by the Department of Commerce. Counsel for the Swedish producer, Avesta, supports the request. On July 27, 1993, counsel for the domestic producers formally submitted an application to Commerce requesting a determination of whether three products (Stavax, Remax and 904L) are within the scope of the order. Accordingly, the United States International Trade Commission gives notice of the suspension of its antidumping review investigation involving imports from Sweden of stainless steel plate, provided for in subheadings 7219.11.0000, 7219.12.0000, 7219.21.0000, 7219.22.0000, 7219.31.0000, 7220.11.0000, and 7220.20.10 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Authority: This investigation is being suspended under authority of 19 CFR 201.12 and 201.14. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: August 19, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20578 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–539–D and 539–E (Final)]

Uranium From Tajikistan and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Tajikistan of uranium, provided for in subheadings 2612.10.00, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission determines,[2] pursuant to section 735(b) of the Act, that an industry in the United States is threatened with material injury by reason of imports from Ukraine of uranium, other than highly-enriched uranium, provided for in subheadings 2612.10.00, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV. Further, the Commission determines,[3] pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Ukraine of highly-enriched uranium, provided for in subheading 2844.20.00 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV.

Background

The Commission continued these investigations effective April 19, 1993 (Ukraine), and May 13, 1993 (Tajikistan), following notification by the Department of Commerce that it had resumed its antidumping investigations of imports of uranium from Tajikistan and Ukraine that were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notices of the continuation of the Commission's investigations and of a public hearing to be held in connection therewith were given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of May 5, 1993 (58 FR 26798) (Ukraine)) and May 21, 1993 (58 FR 29635) (Tajikistan)). The hearing was held in Washington, DC, on July 1, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 16, 1993. The views of the Commission are contained in USITC Publication 2669 (August 1993), entitled "Uranium from Tajikistan and Ukraine: Investigations Nos. 731–TA–539–D and 539–E (Final)."

By order of the Commission.

Issued: August 17, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20579 Filed 8–24–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Brunsdale and Crawford dissenting.

[3] Chairman Newquist and Commissioner Rohr make affirmative determinations with respect to all forms of uranium from Ukraine.

[Investigation No. 337–TA–355]

Certain Vehicle Security Systems and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 16, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Code-Alarm, Inc., 950 East Whitcomb, Madison Heights, Michigan 48071–6408. A letter supplementing the complaint was filed on August 5, 1993. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vehicle security systems and components thereof by reason of direct, induced, and contributory infringement of claims 1–16 of U.S. Letters Patent 5,049,867, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 17, 1993, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain vehicle security systems or components thereof by reason of infringement of claims 1–16 of U.S. Letters Patent 5,049,867, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Code-Alarm, Inc., 950 East Whitcomb, Madison Heights, Michigan 48071–6408.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Directed Electronics, Inc., 2560 Progress Drive, Vista, California 92083
Audiovox Corporation, 150 Marcus Boulevard, Hauppauge, New York 11787
Magnadyne Corporation, 1111 West Victoria Street, Compton, California 90220
Nutek Company, 150 Muhhsin Road, Section 3, Taipei, Taiwan.

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 18, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20580 Filed 8–24–93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–55 (Sub-No. 467X), CSX Transportation, Inc.—Abandonment—In Pike and Letcher Counties, Kentucky. EA available 8/18/93.

AB–167 (Sub-No. 1126X), Consolidated Rail Corporation—Abandonment—Exemption—In Lawrence County, Pennsylvania. EA available 8/20/93.

Comments on the following assessment are due 30 days after the date of availability:

AB–167 (Sub-No. 1115X), Consolidated Rail Corporation—Abandonment—In Middlesex County, New Jersey. EA available 8/20/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20556 Filed 8–24–93; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: September 22–23, 1993.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center Education Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 18, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–20563 Filed 8–24–93; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 9 a.m.

DATES: September 13–14, 1993.

ADDRESSES: Jackson Lake Lodge, Grand Teton National Park, Moran, Wyoming.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 18, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–20564 Filed 8–24–93; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rule of Civil Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: October 21–23, 1993.

ADDRESSES: Park Hyatt San Francisco Hotel, 333 Battery Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 18, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–20565 Filed 8–24–93; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 9 a.m.

DATES: October 11–12, 1993.

ADDRESSES: Le Meridien San Diego Hotel at Coronado, 2000 Second Street, Coronado, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 18, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–20566 Filed 8–24–93; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m..

DATES: September 30–October 2, 1993.

ADDRESSES:

September 30–October 1

U.S. Court of Appeals, 600 Camp Street, Room 258, New Orleans, Louisiana.

October 2

Westin Canal Place Hotel, 100 Rue Iberville, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: August 18, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–20567 Filed 8–24–93; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(i) and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *James D. Cross, et al.*, Civil Action No. 89–2306, has been lodged with the United States District Court for the Central District of Illinois on August 13, 1993.

The Consent Decree resolves the claims alleged against Krueger Ringier, Inc., one of seven defendants, and all eleven third-party defendants, Allied Signal, Inc., Bagcraft Corporation of America, Ball Corporation, Beazer East, Inc., Container Corporation of America, R.R. Donnelley & Sons Co., Federated Paint Manufacturing Company, Grow Group, Inc., ICI Americas, Inc., INX International Ink Company, and Perry Printing Corporation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. The proposed consent order provides for the payment by these settling parties of $2,942,232, which represents all of the United States' past response costs and estimated future oversight costs at the Cross Brothers Pail (Pembroke) Site, Pembroke Township, Kankakee County, Illinois.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *James D. Cross, et al.*, D.J. Ref. 90–11–2–477.

The proposed consent order may be examined at the office of the United States Attorney for the central District of Illinois, 100 NE Monroe St., suite 253, Peoria, Ill. 61602, at the office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 93–20506 Filed 8–24–93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 16, 1993, a Complaint was filed and proposed Consent Decree was lodged with the United States District Court for the Western District of Washington in *United States* v. *Port of Tacoma*, Civil Action No. C93–5462B. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (EPA) for releases of hazardous substances in the Sitcum Waterway Problem Area of the Commencement Bay Nearshore/Tideflats (CBN/T) Superfund Site in Tacoma, Washington. The Consent Decree also settles claims for natural resource damages in the CBN/T Site asserted by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, the U.S. Department of the Interior, the State of Washington, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (the Natural Resource Trustees). The defendant, the Port of Tacoma (the Port), is the owner of the bed of sediments of the Sitcum Waterway as well as land adjacent to the Waterway.

The Complaint asserts claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9606 and 9607. The Complaint seeks an order that the Port implement the remedial design for the cleanup of the Sitcum Waterway, that the Port reimburse all response and assessment costs incurred and to be incurred by the plaintiffs, and that the Port pay damages for the injury to, destruction, and/or loss of use of natural resources within the CB N/T Site.

Pursuant to the Consent Decree, the Port of Tacoma has agreed to implement the remedial design selected by EPA for

the cleanup of the Sitcum Waterway Problem Area. The estimated cost of the Sitcum Waterway Remediation Project, which also includes dredging of contaminated sediments from the nearby Blair Waterway and disposal of those sediments in the Milwaukee Waterway, as well as related activities, is approximately $22 million. The Sitcum Waterway Remediation Project includes habitat mitigation measures at two locations to compensate for adverse environmental impacts of the dredge and fill activities. The Port has also agreed to reimburse 100% of EPA and the Department of Justice's past costs associated with the Sitcum Waterway Problem Area, plus $50,000 in interest, for a total recovery of $1,136,638. The Port has also agreed to pay all of the government's future response costs relating to the Sitcum Waterway Problem Area.

The Port has also agreed in the Consent Decree to pay the Natural Resource Trustees $335,000 for past damage assessment costs incurred by the Trustees, and $12 million in settlement of claims for natural resource damages and future damage assessment costs. Out of that $12 million, the Trustees may use up to $150,000 for future costs associated with oversight of the remedial action, and up to $1.95 million for future costs of assessing natural resource damages in Commencement Bay. The $12 million will be paid in a series of payments beginning in November 1993, and ending in November 1999. In addition to the cash payments, the Port has also agreed to provide interests in two parcels of real property identified by the Trustees as significant for habitat restoration efforts in Commencement Bay.

The Consent Decree contains a covenant not to sue by the United States on behalf of EPA pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Sitcum Waterway Problem Area, the Milwaukee Waterway, and the Blair Waterway. The Port will also be granted a covenant not to sue by the Natural Resource Trustees for liability for natural resource damages in the Commencement Bay environment, which includes the entire CB N/T Site, as well as the deeper waters of Commencement Bay.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Port of Tacoma*, D.J. Ref. No. 90–11–3–711.

EPA also issued an Explanation of Significant Differences (ESD) on June 24, 1993 that explains differences in the remedial action selected for the Sitcum Waterway Problem Area that significantly change, but do not fundamentally alter, the remedy selected in the Record of Decision for the Sitcum Waterway. The ESD provides details of EPA's decision to dispose of Sitcum Waterway Problem Area sediments in a nearshore confined disposal fill in the Milwaukee Waterway; habitat mitigation for the Remedial Action; the volume of sediments to be remediated; and the cost of the Remedial Action.

The proposed Consent Decree and exhibits may be examined at the following locations: The Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; the Washington Department of Ecology, 7272 Cleanwater Lane, Olympia, WA 98504; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; the Kobetich Branch Library, 212 Browns Point Blvd., Tacoma, WA 98407; the City of Tacoma Environmental Commission, 747 Market Street, Suite 345, Tacoma, WA 98402; the Tacoma Pierce County Health Department, 3633 Pacific Avenue, Tacoma, WA 98404; the Pacific Lutheran University Library, 121st and South Park Avenue, Tacoma, WA 98444; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the CB N/T Site may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $29.00 (without exhibits) or $120.00 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–20505 Filed 8–24–93; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Report of New System of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new system of records.

SUMMARY: As required by the Privacy Act of 1974, this notice proposes to establish a new system of records; NARA 21, Fellowship and Editing Institute Files. Background information about the system is provided in "Supplementary Information" section below, followed by the complete systems notice.

DATES: Written comments on the proposed new system should be received by September 24, 1993. As required by the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–130, NARA filed a new system report with the Congress and the Office of Management and Budget on August 12, 1993. The proposed new system shall be effective on September 24, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Comments on the proposed new system should be addressed to Mary Ann Hadyka, Acting Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Laurence Patlen at 202–501–5110.

SUPPLEMENTARY INFORMATION: NARA proposes to establish a new system of records under the authority of 44 U.S.C. 2504 and 2506. This system will contain personally identifiable, biographical information on applicants for archival administration fellowships, documentary editing fellowships, and attendance at the Institute for the Editing of Historical Documents (the Editing Institute). The fellowships and the Editing Institute are sponsored by the National Historical Publications and Records Commission (NHPRC). The proposed system is published below.

Dated: August 19, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

NARA 21

SYSTEM NAME:

Fellowship and Editing Institute Files.

SYSTEM LOCATION:

This system of records is located at the National Historical Publications and Records Commission, 7th and Pennsylvania Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those individuals who apply for the National Historical Publications and Records Commission (NHPRC) Fellowships in Archival Administration and Documentary Editing and to attend the NHPRC Institute for the Editing of Historical Documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information about the applicants including name, address, telephone number, education, professional vita, publications, archival skills, archival and historical records experience, and college transcripts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2504 and 2506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the system will be used by: (1) The staff of the National Historical Publications and Records Commission (NHPRC) to evaluate the eligibility of applicants for NHPRC fellowships, to select applicants to attend the Editing Institute, and for grant-making and grant administration; (2) institutions and documentary editing projects pre-selected by NHPRC who may host and select the fellow; (3) resident advisors of the Editing Institute to determine the most useful areas of instruction for the selected applicants; and (4) by any of these parties to verify the status of an applicant. The routine use statement F, described in the **Federal Register** Privacy Act Issuances, 1991 Compilation, Volume V, also applies to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of individual, in program files or grant files.

SAFEGUARDS:

During normal hours of operation, records are maintained in areas accessible only to authorized personnel of NARA. After hours, the building has security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Fellowship records on successful applications are transferred to grant case files and usually destroyed when 15 years old. On occasion, fellowship (grant) records may be selected by the Program Director for permanent retention because of certain unique characteristics. Editing Institute records on successful applications are destroyed when 10 years old. Fellowship and Institute records on unsuccessful (rejected or withdrawn) applications are destroyed when 5 years old.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for the system is the Program Director, National Historical Publications and Records Commission, 7th and Pennsylvania Avenue, NW., Washington, DC. Mailing address: National Historical Publications and Records Commission (NP), Washington, DC 20408.

NOTIFICATION PROCEDURE:

Inquiries by individuals as to whether the system contains a record pertaining to themselves should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager. In-person requests may be made during normal business hours. For written requests individuals should provide full name, address, telephone number, and approximate date of communication with the Commission. For personal visits, individuals should be able to provide some acceptable identification such as a driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Individuals who have applied for either an archival administration or documentary editing fellowship under the grant program of the NHPRC or to attend the Institute for the Editing of Historical Documents.

[FR Doc. 93–20544 Filed 8–24–93; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Description of Program; Advanced Technological Education (ATE)

Contact: (202) 357–7051 Before September 24, 1993; (703) 306–1668 After September 24, 1993.

I. General Program Description

A. Purpose

Ensuring high-quality scientific research, effective development of new technologies, internationally competitive manufacturing, protection of the environment, and other high technology activities requires well-educated science and engineering technicians. To achieve this goal, recognition is growing that improvement in the quality of our workforce depends on strong and innovative science, technology, engineering, and mathematics education at associate degree granting institutions. To best serve the nation, technological education programs require partnerships among two- and four-year colleges, universities, secondary schools, business, government, and industry.

The purpose of the Advanced Technological Education (ATE) program at the National Science Foundation (NSF) is to promote exemplary improvement in advanced technological education at the national and regional level through support of curriculum development and program improvement at the undergraduate and secondary school levels, especially for technicians being educated for the high performance workplace of advanced technologies. Curriculum development encompasses the design and implementation of new curricula, courses, laboratories, and instructional materials. Program improvement encompasses faculty and teacher development, student academic support, and formal cooperative arrangements among institutions and other partners. ATE projects will result in major improvements in advanced technological education, serve as models for other institutions, assure that students acquire strong backgrounds in mathematics and science, and yield nationally-usable educational products.

The program is managed in the Division of Undergraduate Education (DUE) in cooperation with the Division of Elementary, Secondary, and Informal Education (ESIE). The level of support provided will depend on availability of funds in FY 1994.

B. Scope of the Program

To carry out the goals above, the ATE program will establish Centers of Excellence in Advanced Technological Education to provide systemic approaches to technological education and projects which emphasize one or two aspects of this systemic activity. The ATE program thus features three components: National/Regional Centers of Excellence for Advanced

Technological Education, projects which focus on one or more aspects of advanced technological education, and special projects.

In FY 1994, the ATE program expects to support:

- Planning grants for Centers to serve as national and regional models and clearinghouses for model curricula, instructional materials, and methods;
- Up to five Centers;
- Projects which focus on one or more aspects of curriculum development, faculty or teacher enhancement, instructional materials development, or instrumentation and laboratory improvement; and
- Conferences, workshops, symposia, design and planning projects, studies, and other special projects that will lead to better understanding of issues in advanced technological education.

The number and distribution of Centers and projects depends on the availability of funds and quality of proposals received.

C. Eligibility

Eligible Programs: The object of this section is to characterize advanced technological education for the purposes of the current announcement. Technician education in general is the occupation-driven education of persons to use complex technologies. Advanced technological education programs are those technician education programs aimed at strategic advanced-technology fields. To qualify for NSF support, curricula and work experiences in these programs must emphasize and be based on scientific, mathematical, and engineering principles. Advanced engineering technological fields include, but are not limited to, aeronautical, architectural, chemical, civil, communications, computer, electrical and electronic, industrial, manufacturing, materials, mechanical, marine, nuclear, and systems. Advanced science technological fields include, but are not limited to, biotechnology, chemical, environmental, hazardous waste, marine science, and optics. Technicians in such fields enhance productivity in manufacturing, telecommunication, transportation, and other commercial activities important to national economic and security interests. Students enrolled in advanced technological programs in two-year colleges typically earn an associate degree in engineering technology or science technology which qualifies them for employment or for transfer to a four-year institution.

Through the ATE program, NSF is interested in supporting development of science and mathematics courses in both core and advanced technology areas. This is especially important in two-year colleges because it is expected that all associate degree advanced technological education programs have an appropriate and strong mathematics and science core of courses to serve as prerequisites and co-requisites for specialized technology courses. The ATE program is also interested in the development of advanced science and engineering technology course which assume that students have such skills and principles. It is expected that development of courses be cooperative efforts among faculty and appropriate industry staff (such as technicians and research staff) in mathematics, science, engineering, and technical fields.

An important feature of advanced technological education is opportunities for apprenticeships, cooperative education experiences, and internships which are oriented to specific jobs or skills. NSF support, through this announcement, can cover course development and program improvement, with proposing institutions and industry jointly providing support for technician training through apprenticeship and internship opportunities.

Eligible Institutions: Proposals are invited from two-year colleges, other associate degree granting institutions, two-year college systems, and consortia of two-year colleges as well as consortia of two-year colleges with other appropriate organizations and institutions such as four-year colleges and universities, secondary schools, professional societies, and non-profit, educational research and development groups. Proposals from a formal consortium should be submitted by the consortium; proposals from an informal consortium should be submitted by one member of the consortium.

Eligible Costs: NSF support extends to those items that represent new design or development costs. NSF funds may not be used to support expenditures that would normally be undertaken in the absence of an award.

II. National/Regional Centers of Excellence for Advanced Technological Education

A. Development of Centers

Closing Dates:
Preproposals: November 1, 1993
Formal Proposals: March 22, 1994
Formal Proposals for Planning Grants: November 1, 1993 or March 24, 1994

- Purpose

The ATE program will support up to five National/Regional Centers of Excellence in FY 1994. Centers will serve as national and regional models and clearinghouses for the benefit of both colleges and secondary schools. Model curricula, instructional materials, and teaching methods will be developed at and through these Centers and then disseminated through publishers, seminars, workshops, publications, electronic networks, and other appropriate means. The Centers may vary in size, complexity, disciplinary coverage, and extent of the region served. An essential feature of Centers is active participation in the educational process by both academia and the private and public sectors served by the educational system. Centers must be cooperative efforts among two-year colleges, four-year colleges and universities, secondary schools, industry, business, and government.

Proposals should involve a three-pronged alliance of support from:

- NSF for curriculum development, including core courses and laboratories in science, mathematics, engineering, science technology, and engineering technology and for program improvement, including faculty and teacher development, and formal cooperative arrangements among partners;
- The proposing educational institution(s) or consortium for other laboratory-driven experiences, student services, and other courses such as technical writing to support the programs;
- Local business, industry, and government agencies and laboratories for apprenticeships, cooperative educational experiences, and internships for students, faculty enhancement, loan of technical professionals to teach, and other modes of active cooperation in the Center.

It is anticipated that the proposal for a Center will include, but not be limited to, most of the following elements:

Curriculum Development

- Curriculum improvement in the basic mathematics, science, and engineering core underlying the proposed program;
- Curriculum improvement in science technology and engineering technology courses with the expectation that students have strong mathematics and science backgrounds;
- Assessment of student learning;
- A product-oriented approach aimed at producing laboratory experiments and manuals, textbooks, software, videos, CD–ROMS, and other educational materials of potential widespread benefit as well as

conference presentations and journal articles;

- Coordination among technical specialties and other course areas;
- Student experiences with appropriate equipment;
- Collaboration with secondary schools and technical education professionals in the design of curricula and instructional materials that provide a foundation for technician education;
- Instructional approaches that encourage such activities as student writing, oral presentations, group learning experiences, and long term projects;
- Pedagogical designs that enhance the learning opportunities for women, minorities, and persons with disabilities.

Program Improvement

- Preparation and enhancement of faculty and teachers;
- Use of modern instructional technologies in classrooms and laboratories;
- Recruitment, retention, and placement of students including those groups underrepresented in careers in science, mathematics, and engineering;
- Improved guidance for students with diverse educational and work experiences entering the programs (This includes students entering from high schools programs and those returning with a wide variety of work and educational experiences.);
- Alliances with local business, industry, and government including (a) internships, cooperative educational experiences, and apprentice opportunities for students and (b) faculty enhancement, exchange, and loan programs;
- Articulation of courses and programs between secondary schools, two-year colleges and four-year colleges and universities;
- Innovative partnerships for design of curricular and instructional materials and for their dissemination through national consortia, associations, and publishers;
- Project evaluation to include consistency with national standards;
- Professionalization of technician careers including accreditation, use of voluntary industry standards, and certification;
- Electronic networking of partners for exchange of information and materials including file transfers;
- Collaborative arrangements with secondary schools.

B. Funding and Duration of Centers

National/Regional Centers of Excellence for Advanced Technological Education are expected to be comprehensive projects involving curriculum development and program improvement as described above. During FY 1994, both planning grants and implementation grants for Centers will be supported.

- Planning Grants for Centers: Planning grants will be made for up to $50,000 within duration of one to two years. The grant enables development of a well-formulated plan for a Center of the scope described in Section IIA. While it is expected that most awardees will submit a proposal to NSF for a Center in the future, proposers should also seek other potential sources of funding to complement possible NSF funding.
- Implementation Grants for Centers: NSF anticipates making up to five awards for Centers. A Center must have a well-formulated underlying philosophy and a well-defined plan. These projects are comprehensive and expected to address most aspects listed in Section IIA. Awards will be made for up to a million dollars per year for three to five years. A planning grant is not a prerequisite for an implementation grant for a Center. Awards for Centers will be made as cooperative agreements.

C. Preparation and Submission of Preproposals and Formal Proposals for Centers, and Planning Grants

Formal proposals for Centers are due March 22, 1994; however, it is strongly recommended that preliminary proposals be submitted for the November 1, 1993 deadline. Formal proposals for planning grants will be accepted for either the November 1, 1993 or the March 22, 1994 deadline.

1. Preproposals for Centers

- Submit 7 copies postmarked by the November 1, 1993 deadline. The preproposal will be reviewed by NSF staff and other selected outside reviewers using as guidelines the review criteria listed in Section VI of this announcement. A subset of applicants will be encouraged to submit formal proposals. The time between the deadline for submission of preproposals and the reply from NSF will be approximately two months.
- The preproposal must include:

(a) Cover Sheet for Proposals (NSF–1207) signed by the principal investigator(s). Other institutional signatures are not necessary at the preproposal stage.

(b) Project Data and Summary Form (NSF–1295). This sheet requests institutional data and an abstract.

(c) A narrative not to exceed 10 double-spaced pages. The narrative should focus on the objectives and goals of the project, means by which they will be accomplished, approximate timelines, anticipated outcomes, and plans for evaluation and dissemination. No more than a paragraph each for documentation of need and knowledge of the state of advanced technological education in the relevant area is necessary.

(d) A list of institutions and agencies in the partnership and their respective roles.

(e) An estimated yearly budget separated into general categories for salaries equipment (equipment funds must be matched by non-federal dollars equal to or greater than funds requested from NSF, maximum NSF request for equipment is $100,000), supplies, travel, other direct costs, and indirect costs at institutionally approved rate. A plan for contributions by other partners in the alliance should be shown, together with an estimate of the amounts to be contributed. It is not necessary to use the NSF budget sheet or to provide budget details.

(f) A maximum of a two page vitae of each of the principals involved in the project. The vitae should be complete enough to show the necessary expertise to conduct the proposed project.

- Send preproposals to Advanced Technological Education, National Science Foundation, Dept. N–Bios, Announcement No. 93–132, 11200 Rockville Pike, Suite 300, Rockville, Maryland 20852.

2. Formal Proposals for Centers

General information on formal proposal preparation for the ATE program is included in Section V of this program announcement entitled "Preparation and Submission of Proposals." Note that at this stage the cover sheet must be signed by both the principal investigators and the institutional representative.

Send formal proposals to the above address in Rockville, Maryland postmarked by the March 22, 1994 deadline.

3. Formal Proposals for Planning Grants

Planning Grants will be awarded to allow development of a well-formulated plan for a Center. Applicants must present a clear description of the planning activities, goals, and methods. In general, the ATE program will support planning grants under the following conditions:

(a) Award may not exceed $50,000;

(b) Awards are non-renewable and are not to exceed two years;

(c) Continued support may be requested only through submission of a full proposal;

(d) A final report is due; and

(e) Indirect cost rate applied against these grants may not exceed 10 percent of modified total direct costs.

Proposals for planning grants should follow the same procedures as those for a formal proposal given in Section V on "Preparation and Submission of Proposals".

Proposals for planning grants will be accepted for either the November 1, 1993 or March 22, 1994 deadline.

III. Projects in Advanced Technological Education

A. Development of Projects

Submission Dates:

Preproposals: November 1, 1993

Formal Proposals: March 22, 1994

• Purpose

Technological education represents a variety of programs in the education system which prepare students for careers which use technology. While Centers are expected to be comprehensive projects as described in the previous section, projects in advanced technological education at the two-year college and secondary school level supported through the ATE program may focus more narrowly on curriculum development, faculty or teacher enhancement, faculty or teacher preparation, instructional materials development, or instrumentation and laboratory improvement. They should however be placed in the context of a more comprehensive program. Curriculum and materials development projects are expected to produce laboratory manuals, textbooks, videos, CD–ROMs, software, and other educational materials of potentially national benefit including conference presentations and journal articles. Because of the nature of advanced technological education programs, where appropriate, projects should build on alliances of associate degree granting institutions with four-year colleges and universities, secondary schools, business, industry, and government. Projects that cut across two or more of the boundaries listed below are especially encouraged.

1. Curriculum and Instructional Materials

The ATE program supports model projects to improve the quality of courses and curricula in the basic mathematics, science, and engineering core underlying programs in advanced technological education as well as more specialized science and engineering technology courses which build on this core. It encompasses activities affecting the learning environment, content, and experience of instruction. Technological education is field dependent and driven by applications. There should be a match between what work requires and what students are taught. The education component should provide understanding to make the technician more insightful about the work environment and more flexible about receiving additional training which may be job and/or skill related.

The Advanced Technological Education program seeks projects that envision major changes at the two-year college and secondary school level and that result in widely disseminated products such as textbooks, laboratory experiments and manuals, software, videos, CD–ROMs, and other educational products including conference presentations and journal articles. Projects may range from revision of existing materials to creation of entirely new ones; from a few modules at a single instructional level to comprehensive curricula for multiple years; and from a single subject to integration of several disciplines. Of particular interest are projects that are designed to produce major changes and significant improvement beyond the recipient institution and which will produce materials used regionally or nationally. Curriculum projects that integrate mathematics, science, and technology, and are developed by teams of educators, scientists, and in industry participants are especially sought, as are projects which implements the national mathematics and science standards in a technological context and which help produce two-year college students for technological programs. Curriculum projects that prepare future teachers and faculty for advanced technological programs are encouraged.

Curriculum and instructional materials projects may vary from the development of supplemental course materials to the development of full comprehensive courses. Projects of varying types are encouraged, and requests will normally range from $50,000 to $500,000 per year for one to five years depending on the complexity of the project.

2. Teacher and Faculty Enhancement

Faculty and teachers are key elements in advanced technological education. It is critical that they be intellectually vigorous and excited about their disciplines, that their knowledge of recent development in their fields be up-to-date, and that they regard teaching as an important and rewarding activity. To this end, the ATE program provides support to maintain currency and vitality of faculty and teachers and to assist them in enhancing their disciplinary capabilities and teaching skills.

Successful projects emphasize both content and pedagogy, help faculty and teachers develop and exercise leadership qualities, and provide opportunities for continuing professional growth. Faculty and teachers need to be familiar with recent advances in their fields, with new experimental techniques, with new pedagogical strategies, and with ways of incorporating all of these into advanced technological education. Faculty and teachers also need to be familiar with new instrumentation and the opportunity to evaluate its suitability for instructional use. They need opportunities to synthesize knowledge that cuts across their own and other disciplines. Finally, they also need opportunities to interact intensively with experts in the field and with colleagues who are active scientists, technicians, engineers, and mathematicians, both during the course of the project, and in a continuing way after the project.

Typical projects for teacher and faculty enhancement under the ATE program include conferences, seminars, short courses, institutes, and workshops, or a series of such activities. Sessions for college faculty may vary in length from a few days to several weeks. Follow-up activities to affect long-term change normally span at least one academic year. Teacher enhancement institutes are typically funded for at least two years with at least three weeks of intensive instruction each summer and follow-up during the academic year. These institutes provide major support for classroom and school change in implementing advanced technological education curricula as well as improved integrated mathematics and science to support technological education. Projects in which two-year college faculty work with four-year college or university faculty and/or secondary school teachers are encouraged.

Teacher and faculty enhancement projects will normally range from $25,000 to $500,000 per year for one to five years depending on the complexity and length of the activities, the number of teachers and faculty involved, and the follow-up support provided.

3. Instrumentation and Laboratory Improvement

Laboratory or field experiences with suitable modern equipment are crucial elements of advanced technological education, especially at the two-year college level. The ATE program seeks projects aimed at the development of innovative methods for using laboratory exercises to improve student understanding of basic principles and for use of modern instrumentation, new technologies, or applications of instruments that extend the instructional capability of the equipment. The ATE program encourages the establishment of equipment-sharing through consortia or centers.

Because the ATE program focuses on improving the quality of technological education through laboratory improvement, projects based primarily on financial need or replacement of equipment at the same level of capability are not appropriate.

Equipment funds must be matched by non-federal dollars equal to or greater than funds requested from NSF. The maximum NSF request is $100,000. Institutions have 30 months during which the requested equipment must be acquired and the development plan implemented.

B. Preparation and Submission of Preproposals and Formal Proposals

Preproposals for projects should follow the same guidelines given in Section II part C(1) "Preproposals for Centers." Formal proposals for projects should follow the same guidelines given in Section II part C(2) "Formal Proposals for Centers" and Section V "Preparation and Submission of Proposals." Planning Grants will not normally be given for projects.

IV. Workshops, Conferences, Seminars, Studies, and Other Special Projects

The ATE program expects to support a few special projects such as conferences, workshops, symposia, studies, and other activities that will lead to a better understanding of issues in advanced technological education.

Requests should normally be made at least 9 months in advance of the date of the scheduled activity. Individuals or groups wishing to submit such a request should contact an ATE Program Director at (202) 357–7051 before September 24, 1993 and (703) 306–1668 after September 24, 1993 before preparing a two- to three-page preliminary proposal. Following an initial discussion, a preliminary proposal which includes a project outline, description of personnel involved, and approximate budget should be sent to an ATE Program Director. NSF staff will review these preproposals and encourage selected formal proposals.

Formal proposals for such activities should include: (1) A summary indicating the objectives of the project; (2) statement of the need; (3) names and qualifications of key personnel organizing and leading the activity including vitae of principal investigators; (4) lists of participants to be invited or other persons to be involved in the project; (5) information on probable dates of workshops or meetings or duration of other type projects; (6) budget, detailing the requested NSF contribution and support requested or available from other sources. Because proceedings are normally published, requests for support can also include publication costs.

Preproposals and proposals for these special projects should be sent directly to an ATE Program Director at the National Science Foundation, Division of Undergraduate Education, 4201 Wilson Boulevard, Arlington, Virginia 22230 after October 25, 1993 and the Washington address before October 25, 1993, not the Rockville, Maryland address.

For additional information, contact Elizabeth Teles, Program Director, Division of Undergraduate Education, National Science Foundation, 1800 G Street NW., Washington, DC 20550 (202) 357–7051 or the Division of Elementary, Secondary, and Informal Education (202) 357–7066.

Dated: August 20, 1993.

Dr. Robert F. Watson,

Division Director, Division of Undergraduate Education.

[FR Doc. 93–20589 Filed 8–24–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Long-Term Solutions and Upgrade of Interim Corrective Actions for Thermal-Hydraulic Instabilities in Boiling Water Reactors; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed generic communication: Extension of comment period.

SUMMARY: On July 21, 1993; 58 FR 39044, the NRC published for public comment a proposed generic letter which would request each BWR holder of an operating license (except for Big Rock Point which does not have capability for operation at reduced flow conditions) (1) take the appropriate actions to augment its respective procedures and training for preventing thermal-hydraulic instabilities in its reactor and (2) submit to the NRC a plan describing the long-term stability solution option it has selected and the implementation schedule it proposes for the modification of plan protection system to ensure compliance with General Design Criteria 10 and 12 in appendix A to part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50). The comment period for this proposed generic letter was to have expired on August 20, 1993. The BWR Owners' Group (BWROG) has requested to extend the comment period in order to get their individual utility comments coordinated and receive appropriate approval. Because of the complexity of the issue involved, the NRC has decided to extend the comment period for an additional 30 days.

DATES: The comment period has been extended and now expires September 19, 1993. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Phillips (301) 504–3232.

Dated at Rockville, Maryland, this 16th day of August 1993.

For the Nuclear Regulatory Commission.

Richard J. Kiessel,

Acting Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–20585 Filed 8–24–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 9–11, 1993, in room P–110, 7920 Norfolk Avenue, Betnesda, Maryland. Notice of this meeting was

published in the Federal Register on July 22, 1993.

Thursday, September 9, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–9:45 a.m.: Proposed Guidelines for Digital Instrumentation and Control (I&C) Systems Upgrades (Open)—The Committee will review and comment on the guidelines proposed by NUMARC for 10 CFR 50.59 evaluations of digital I&C systems upgrades. Representatives of the NRC staff and the industry will participate.

9:45 a.m.–11 a.m.: Insights Gained from Foreign Trips and U.S. Military Sources Regarding Digital I&C Issues (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding insights gained by the staff through its interactions with foreign regulatory authorities and nuclear utilities as well as U.S. military sources on digital I&C issues.

Portions of this session will be closed to discuss foreign proprietary information per 5 U.S.C. 552b(c)(4) and classified national security information per 5 U.S.C. 552b(c)(1).

11:15 a.m.–11:45 a.m.: Report on the Activities of the Advanced Boiling Water Reactors Subcommittee (Open)—The Committee will hear a report on the activities of the ACRS Subcommittee on Advanced Boiling Water Reactors. Representatives of the NRC staff will participate, as appropriate.

11:45 a.m.–12:30 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss matters scheduled for discussion during its meeting with the NRC Commissioners.

2 p.m.–3:30 p.m.: Periodic Meeting Between the ACRS and the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners to discuss matters of mutual interest. These discussions will be held at One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

3:30 p.m.–5 p.m.: Proposed Priority Ranking of Generic Issues (Open)—The Committee will review and comment on the priority rankings proposed by the NRC staff for a number of generic issues. Representatives of the NRC staff will participate.

5 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, September 10, 1993

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10 a.m.: Proposed Generic Letter on Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators from Plant Technical Specifications (Open)—The Committee will review and comment on the proposed generic letter on removal of accelerated testing and special reporting requirements for emergency diesel generators from plant technical specifications. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

10:15 a.m.–11:30 a.m.: Proposed Rulemaking on the Fracture Toughness Requirements for Reactor Pressure Vessel (RPV)—Revisions to 10 CFR 50.61, Appendix G and Appendix H, and a New Rule on Thermal Annealing (10 CFR 50.66) (Open)—The Committee will review and comment on the proposed rulemaking on the fracture toughness requirements for RPV for protection against pressurized thermal shock events. Also, the Committee will review and comment on a new rule on thermal annealing of the RPV. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

11:30 a.m.–12:00 Noon: Reconciliation of ACRS Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

1 p.m.–2 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of internal organizational and personnel matters relating to ACRS staff members.

Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

2 p.m.–2:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

3 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

5:30 p.m.–6:30 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Saturday, September 11, 1993

8:30 a.m.–Close of Business: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss foreign Proprietary Information applicable to the matters being considered per 5 U.S.C. 552b(c)(4), information classified as national security information per 5 U.S.C. 552b(c)(1), and information that involves the internal personnel rules and practices of the agency per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 8 a.m. and 4:30 p.m. est.

Dated: August 19, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–20586 Filed 8–24–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–8 (50–317/318)]

Baltimore Gas & Electric Co., Calvert Cliffs Nuclear Power Plant; Director's Decision Under 10 CFR 2.206 (DD–93–14)

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to the Petition of December 21, 1992, by the Maryland Safe Energy Coalition requesting that the Nuclear Regulatory Commission institute a proceeding pursuant to 10 CFR 2.202 with regard to the Independent Spent Fuel Storage Installation (ISFSI) at the Calvert Cliffs Nuclear Power Plant (CCNPP). The Petitioner requested that the NRC:

(1) Halt the transfer of nuclear waste from the spent fuel pool at the CCNPP to the ISFSI until certain alleged safety problems have been fully investigated and solved;

(2) Conduct hearings for further rulemaking and regulation of nuclear waste storage at the plant; and

(3) Deny a Certificate of Compliance and suspend the license issued to the Baltimore Gas and Electric Company (BG&E) for dry cask storage of spent fuel until the concerns set forth in the Petition are addressed by the NRC and BG&E.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–93–14), which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555 and at the Local Public Document Room at the Calvert County Public Library, 30 Duke Street, P.O. Box 405, Prince Frederick, Maryland 20678. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 16th day of August 1993.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–20587 Filed 8–24–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Entergy Operations, Inc., (Waterford Steam Electric Station, Unit No. 3); Exemption

I.

Entergy Operations, Inc. (the licensee), is the holder of Facility Operating License No. NPF–38, which authorizes operation of the Waterford Steam Electric Station, Unit No. 3 (Waterford). The license provides, among other things, that Waterford is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The Waterford facility consists of a pressurized water reactor located in St. Charles Parish, Louisiana.

II.

In its letter dated May 7, 1993, the licensee applied for an amendment to Operating License No. NPF–38 to change certain provisions of the Waterford Technical Specifications (TSs). The licensee in this letter also requested an exemption from the Commission's regulations. The subject exemption is from a requirement in appendix J to 10 CFR part 50 that a set of three Type A tests (Containment Integrated Leakage Rate Tests, or CILRTs) be performed, at approximately equal intervals, during each 10-year service period.

The Type A test is defined in 10 CFR part 50, appendix J, Section II.F, as a "test intended to measure the primary reactor containment overall integrated leakage rate (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter." The 10-year service period begins with the inservice date. TS 4.6.1.2.a requires that the Type A tests be conducted during shutdown at 40±10 month intervals in each 10-year service period. This TS incorporates the requirements of Section III.D.1.(a) of appendix J with regard to performing three Type A tests at approximately equal intervals during each 10-year service period. The first CILRT testing interval was 32 months, and the second was 36 months. The time interval between CILRTs should be about 40 months based on performing three such tests at approximately equal intervals during each 10-year service period. Since refueling outages do not necessarily occur at 40-month intervals, a permissible variation of 10 months (25 percent variation) is typically authorized in the technical specifications issued with an operating license to permit flexibility in scheduling the CILRTs.

The proposed revision to the Waterford TSs associated with the licensee's May 7, 1993, request for a one-time exemption would change the TSs by extending the surveillance requirements of TS 4.6.1.2.a and its associated Bases. The extension would allow the third Type A CILRT within the first 10-year service period to be conducted during the Cycle 7 refueling outage. This TS change is a one-time schedular extension of the third maximum interval from 50 months to 54 months. It does not affect the second 10-year service period.

With respect to the subject exemption request, the NRC staff notes that the first and second CILRTs of the set of three tests for the first 10-year service period for Waterford were conducted in May 1988 and May 1991. This represents testing intervals of 32 and 36 months from the inservice date of September 1985. The third of the first set of three CILRTs will be scheduled for Refueling Outage 7, projected to start in October 1995, pending approval of the exemption request. The current third test period in the first 10-year service period will actually be exceeded by approximately 4 months.

Data from the first (May 1988) and second (May 1991) CILRT at Waterford 3 indicates that most of the measured leakage is from the containment penetrations and not from the containment barrier. The "as-left" leakage rate was well below the 10 CFR part 50 appendix J limit. Both appendix J and TS requires that the leakage rate be less that 75% of L_a to allow for deterioration in leakage paths between tests. The allowable leakage rate, L_a, is 0.5 wt.%/day. Therefore, the established acceptable limit is <0.375 wt.%/day. The "as-left" leakage rates for the first

two CILRTs were 0.116 and 0.0731 wt.%/day, which is well below the acceptance limit. The Type B and C test (Local Leakage Rate Test or LLRT) program also provides assurance that containment integrity has been maintained. LLRTs demonstrate operability of components and penetrations by measuring penetration and valve leakage. Additionally, there have been no modifications made to the plant that could adversely affect the test results.

The licensee further notes that the performance of a fourth test in the first 10-year service period to meet the requirements of the TSs and appendix J would result in additional radiation exposure to personnel. Omitting the test will result in additional dose savings by eliminating contamination and by reducing exposure from venting and draining and from setups and restorations of instrumentation required to perform the test. These factors and the costs associated with a fourth test for a 4-month difference in interval time are not offset by the benefits of the fourth test.

For the reasons set forth above, the NRC staff concludes that this deviation from the 10-year service period ending September 1995 is not significant in terms of complying with the safety or scheduling requirements of Section III.D.1.(a) of appendix J. Accordingly, the staff finds that the additional test would not provide substantially different information and that the intent of appendix J is met. Therefore, the subject exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(ii), in that the fourth test is not necessary to achieve the underlying purpose of the rule.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that extending the service period will not present an undue risk to the public health and safety; since the licensee has justified the leaktight integrity of the containment based on previous leakaged test results, the staff concludes that a one-time extension of approximately 4 months beyond the maximum permitted third test interval within the first 10-year service period will not have a significant safety impact.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, and exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to a requirement of 10 CFR part 50, appendix J, Section III.D.1(a):

For the Waterford Steam Electric Station, Unit 3, the current third test period within the first 10-year service period may be extended by approximately 4 months, so that the third periodic Type A test may be performed during the Cycle 7 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the subject exemption will not have a significant effect on the quality of the human environment (58 FR 34829).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 12th day of August 1993.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–20588 Filed 8–24–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Proposed Revisions

Form S–1—File No. 270–58.
Form S–4—File No. 270–287.
Form S–11—File No. 270–64.
Form 10—File No. 270–51.
Form 10–K—File No. 270–48.
Form SB–2—File No. 270–366.
Form 10–KSB—File No. 270–368.
Regulation S–K—File No. 270–2.
Regulation S–B—File No. 270–370.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted proposed rule revisions for OMB approval.

Form S–1 is the general registration form used by issuers that are not eligible to use any of the specified forms to register securities. It is anticipated that approximately 1,239 respondents will spend a total of 1,295 burden hours per response.

Form S–4 is the registration form for securities issued in business combination transactions. It is anticipated that approximately 505 respondents will spend a total of 1,260 burden hours per response.

Form S–11 gives investors the necessary information to make investment decisions regarding real estate investment trusts and other issuers whose business is primarily that of acquiring and holding for investment real estate or interests in real estate. It is anticipated that approximately 340 respondents will spend a total of 871 burden hours per response.

Form 10 provides material information about the issuer necessary for investors to make an informed investment decision. It is anticipated that approximately 110 respondents will spend a total of 119 burden hours per response.

Form 10–K elicits material information concerning the financial condition and business operations for each fiscal year for issuers of publicly-traded securities. It is anticipated that approximately 6,261 respondents will spend a total of 1,712.5 burden hours per response.

Form SB–2 is an optional registration form used by small business issuers. It is anticipated that approximately 259 respondents will spend a total of 928 burden hours per response.

Form 10–KSB elicits material information concerning the financial condition and business operations for each fiscal year for issuers of publicly-traded securities. It is anticipated that approximately 3,275 respondents will spend a total of 1,222 burden hours per response.

Regulation S–K provides an integrated disclosure system for issuers who have sold or wish to sell securities to the public. Regulation S–K is assigned one burden hour for administrative convenience, since this regulation simply prescribes the disclosure that must appear in other filings under the securities laws.

Regulation S–B provides an integrated disclosure system for small business issuers. Regulation S–B is assigned one burden hour for administrative convenience, since this regulation simply prescribes the disclosure that must appear in other filings under the securities laws.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Numbers: 3235–0065, 3235–0324, 3235–0067, 3235–0064, 3235–0063, 3235–0418, 3235–0418, 3235–0420, 3235–0071, 3235–0417), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 16, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20510 Filed 8–24–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32771; International Series No. 575; File No. S7–8–90]

Options Price Reporting Authority; Filing and Immediate Effectiveness of an Amendment to the National Market System Plan of OPRA

August 19, 1993.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 12, 1993, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"), extending until November 1, 1994, the pilot program providing for the dissemination of certain implied volatility quotations on selected foreign currency options to vendors outside of the OPRA system.

OPRA has designated this proposal as concerned solely with the administration of the plan, permitting it to become effective upon filing, pursuant to Rule 11Aa3–2(c)(3)(ii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

OPRA requests an extension of the pilot program that was the subject of the amendment previously filed on May 14, 1992,[1] providing for the dissemination of certain implied volatility quotations in foreign currency options directly by the Philadelphia Stock Exchange ("PHLX") through selected vendors, rather than through the OPRA network. A request for an extension of the pilot program was filed with the Commission on April 2, 1993,[2] and expires September 1, 1993.

The purpose of the pilot program is to permit PHLX to accommodate those institutional investors in foreign currency options who desire to receive indications of the current state of the foreign currency options market expressed in implied volatility quotations. These quotations serve only as indications of the state of the market; actual trading in foreign currency options continues to be conducted through bids and offers expressed in terms of the prices at which options may be bought or sold which continue to be disseminated over the OPRA system. Because the existing specifications of the OPRA system were not designed to accommodate implied volatility quotations, OPRA has consented to PHLX's arranging for the transmission of this information through selected vendors.

As originally filed, the pilot program was approved by the Commission for an initial period of six months from the date that one or more of the vendors first transmitted implied volatility quotations. Volatility quotations were first transmitted on October 5, 1992, and because OPRA does not yet have the capability to transmit implied volatility quotations through the OPRA network, it is necessary to extend the pilot program to insure the continued availability of these quotations.

OPRA has been giving consideration to whether and how the OPRA network might be utilized to disseminate these implied volatility quotations and at a meeting held on April 22, 1993, OPRA authorized the extension of the existing pilot through November 1, 1994, while it continues to study this matter.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed extension that are filed with the Commission, and all written communications relating to the proposed extension between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by September 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20561 Filed 8–24–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 30906 (July 16, 1992), 57 FR 31546.

[2] Securities Exchange Act Release No. 32154 (April 21, 1993), 58 FR 21481.

[Release No. 34–32759; File No. SR–DTC–92–09]

Self-Regulatory Organizations; The Depository Trust Co.; Order Approving a Proposed Rule Change Relating to the Establishment of an Honest Broker Program

August 17, 1993.

On June 16, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change establishing the honest broker program. On July 29, 1992, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] The Commission did not receive any comments. DTC received seven comment letters in response to a notice regarding the proposed procedures that was distributed to its participants before

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30948 (July 22, 1992), 57 FR 33533.

this filing was made.[3] This order approves the proposal.

I. Description

The proposed rule change establishes procedures to facilitate the liquidation of securities held for a participating bank and broker experiencing financial or operational difficulties, particularly in those cases when one or more DTC participants have an interest in those securities.[4] The procedures will be known as the "honest broker" program. DTC will activate the honest broker program upon a pledgor's request, principally when more than one pledgee bank is unwilling to return pledged securities directly to a single pledgor, and only after consultations with the Commission and other interested regulators.[5]

Prior to activating the honest broker program, DTC will notify pledgees and DTC participants by a broadcast message over the Participant Terminal System ("PTS") that the honest broker program will be activated. DTC will advise its participants that they may receive deliveries in settlement of their transactions with the pledgor from the DTC honest broker account. If a large number of participants are to be notified, DTC also will issue an Important Notice.

A pledgee bank may notify DTC by written notice, or by facsimile or telephone followed by a written notice, that it intends to participate in the honest broker program. Pledgees will have until 10 a.m., eastern time, on the day of settlement to provide such notice to DTC. In the notice to DTC, the pledgee bank must identify the account number to be used for delivering positions to the honest broker account. Participating pledgees will use DTC's "Demand of Collateral" procedures for pledged positions that the pledgee bank intends to deliver to the DTC honest broker account.[6]

A non-participant pledgee that utilizes DTC's pledge facilities under DTC Rule 2, Section 3, also may utilize the honest broker program by signing a written agreement that subjects the pledgee to DTC's By-Laws and rules.[7] In addition, the non-participant pledgee must request that DTC establish a participant account number so that DTC may allocate to the non-participant pledgee its share of the proceeds from the liquidated positions and any securities that have not been redelivered from the honest broker account.[8]

For transactions that the pledgor wishes to settle through the honest broker program on the next business day,[9] the pledgor will send to each affected pledgee bank and to DTC a PTS message identifying each issue of securities that the pledgee bank will deliver to the honest broker account. In addition, the pledgor will provide to DTC the quantity, price, settlement amount, and the DTC participant account to which each redelivery will be made. DTC will make the information available to the pledgee banks over PTS on the next business day.[10]

On the morning of settlement day, DTC will notify the pledgee banks of the total settlement amount and the per share price of short positions in each transaction. Based on this information, each pledgee bank will determine whether to deliver pledged positions to the DTC honest broker account and will notify the pledgor and DTC accordingly.

The pledgor will advise the DTC participants to whom deliveries are to be made that they should expect those deliveries from the DTC honest broker account. Deliveries to settle open short positions in NSCC's CNS system will be made first. DTC will make the remaining deliveries in descending order, with the highest price-per-share deliveries being made first.[11] All settlement credits will be made to the DTC honest broker account. For each issue, DTC will allocate proceeds received from the redeliveries and any securities that have not been redelivered from the honest broker account on a pro rata basis to pledgee banks that delivered securities to the honest broker account.[12] In operating the honest broker program, DTC will act exclusively as agent for participating pledgee banks. DTC will assume no liability other than that arising from its own gross negligence.

II. Discussion

The Commission believes DTC's proposal is consistent with the Act and particularly with sections 17A(b)(3) (A) and (F) of the Act.[13] Those sections require a clearing agency to be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. Section 17A(b)(3)(F) further provides that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and to protect investors and the public interest. As discussed below, the Commission believes the proposed rule change is consistent with those provisions.

Uncertainty concerning the ability of a major market participant to settle its trading obligations could disrupt the smooth functioning of the national clearance and settlement system. In the unlikely event of such a crisis, DTC's proposal will reduce the possibility that a loss of confidence in the ability of a financially troubled firm to settle transactions and satisfy its settlement obligations to counterparties will not swell into a widespread crisis of confidence in the national clearance and settlement system. In this regard, the Commission believes that DTC's proposal will inure to the benefit of public investors by maintaining the integrity of the national clearance and settlement system in volatile markets and in times of financial crises.

The proposed rule change will facilitate the liquidation of securities positions that have been pledged by book-entry in DTC. The need for such a mechanism became apparent during the winddown of Drexel Burnham Lambert Group, Inc. and its broker-dealer subsidiary, Drexel Burnham Lambert, Inc. ("Drexel").

As described more fully in the Commission's testimony before the Senate Banking Committee,[14] near gridlock developed in the mortgaged-backed securities market and in the corporate debt and equity markets where Drexel was an active participant. Drexel had significant positions in mortgage-backed securities that required physical delivery of certificates to settle and also in corporate equity and debt that could be liquidated by book-entry transfer. Lenders and counterparties, however, were reluctant to release both physical certificates and book-entry securities to Drexel. Those counterparties were concerned that the delivery of securities to Drexel against the promise of payment at the end of the day might result in the deliverer's inability to retrieve the securities if the deliverer did not receive payment because of an intervening event, such as the filing of a petition for bankruptcy by or against Drexel, or the assertion of a lien or set-off by one or more financial institutions handling those funds or securities.[15] Resolution of open positions was complicated by the need to coordinate the interests and actions of as many as ten banks with loans outstanding to Drexel, and was further complicated by the need to account for settling trades with NSCC.[16] In order to resolve the gridlock that this uncertainty created, Drexel and its lenders, in consultation with the Commission and federal bank regulatory staff, created a mechanism by which the pledgee bank delivered its collateralized securities to a third party financial institution that guaranteed that the pledgee bank would receive a pro rata share of the proceeds from any liquidated positions and the return of any securities that remained in the account at the end of the day.[17]

DTC's proposal codifies this mechanism to facilitate efficient clearance and settlement of pledged positions. The Commission therefore believes the proposal will promote the prompt and accurate clearance and settlement of securities transactions by providing pledgee banks a safe and secure method to liquidate securities held as collateral and by providing pledgors an efficient method to settle transactions during times of financial crises.

The proposal provides for DTC to allocate securities that are released from pledgee banks first to open short CNS positions at NSCC. This aspect of the rule change will promote confidence in the national clearance and settlement system by facilitating the orderly and timely settlement of CNS positions. Nevertheless, the Commission recognizes that some pledgee banks may not wish to have the securities allocated in this manner. A pledgee bank may decide not to deliver securities to the honest broker account if the pledgee bank believes the funds generated from the settlement of open short CNS positions at NSCC will not cover the outstanding loan. To facilitate pledgee planning, DTC will notify each pledgee bank of the total settlement amount and the share price for CNS and non-CNS open positions. If a pledgee bank does not deliver securities to the honest broker account, the pledgee bank may liquidate the securities outside of DTC's system.[18]

DTC received seven comment letters concerning the proposed rule change.[19] Two commentators inquired about the effect of the proposal on a pledgee's perfected security interest in securities or the proceeds of the sale of securities held at DTC when the securities have been released by the pledgee to the DTC honest broker account, i.e., whether the pledgee's perfected security interest would remain perfected in the event of a bankruptcy ruling or court-imposed stay. In response to this concern, DTC obtained a legal opinion stating, in pertinent part, that a pledgee that holds a perfected security interest in pledged securities that is not subject to avoidance under the U.S. Bankruptcy Code or comparable statutory provisions of federal or New York law prior to implementation of the honest broker procedures will continue to hold a perfected and non-avoidable security interest in the pledged securities after the implementation of the honest broker procedures and until the securities are delivered to the purchaser.[20]

One commentator questioned how DTC would account for dividends and interest that accrued on transactions settled through the honest broker account. At the end of each day, all securities delivered to the honest broker account will be redelivered or returned on a pro rata basis to pledgee banks.

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[3] DTC received comment letters from Alex. Brown & Sons, Brown Brothers Harriman & Co., Citicorp, Mabon Securities Corporation, Nations Bank, New York Clearing House Association, and U.S. Trust Company. The commentators generally supported the proposal. For a discussion of these comment letters, see Section II *infra*.

[4] The National Securities Clearing Corporation ("NSCC") acts on behalf of its members to clear trades with other members in eligible securities which include most corporate, municipal and mutual fund securities. NSCC's members include (directly or indirectly) almost all registered broker-dealers, which allows NSCC to net to a single delivery or receive obligation in each eligible security all of a member's trades in those securities and to a single payment or collect obligation monies payable or receivable across all trades. At the end of each day, all long or short positions that do not settle are marked-to-the-market and carried forward to the next settlement day. In the Continuous Net Settlement ("CNS") System, NSCC interposes itself as the counterparty of its members' trades, *i.e.*, NSCC becomes the buyer to a member's sell obligations and the seller to a member's buy obligations. NSCC maintains a settlement account at DTC in which settlement of member trades occurs by book-entry movement.

On October 13, 1992, NSCC filed a proposal with the Commission to authorize it to coordinate with DTC in regard to this program. Among other things, NSCC will provide DTC with the information to ensure that open short positions in NSCC's CNS system will be covered prior to other open short positions at DTC. The Commission is approving NSCC's and DTC's proposals concurrently. See Securities Exchange Act Release No. 32760 (August 17, 1993) [File No. SR–NSCC–92–12.]

[5] Among other things, DTC will review with regulatory officials whether activation of the honest broker program is appropriate and what steps have been taken to coordinate with other interested self-regulatory organizations.

[6] Under DTC's Demand of Collateral procedures a pledgee bank may move securities from the pledgee's DTC pledge account to the general account of any DTC participant (other than the pledgor) including the DTC honest broker account or the bank's own participant account.

[7] Under DTC Rule 2, Section 3, a non-participant pledgee may utilize DTC's services for the purpose of facilitating loans to DTC participants and effecting the pledge of DTC participants' securities held by or on behalf of DTC. A non-participant pledgee, however, may not receive a pledge of securities versus payment. See DTC Rule 2, Section 3.

[8] Letter from Jack Weiner, Associate Counsel, DTC, to Sonia Burnett, Attorney, Division of Market Regulation, Commission (November 2, 1992).

[9] DTC plans to enhance the honest broker facility in the next few months to enable the pledgor to provide information regarding transactions that will settle the same day.

[10] Depending on operational considerations and to ensure orderly settlement, it may be necessary to vary the deadline for receipt of this information, possibly by requiring notification by the pledgor and affirmation by the pledgee bank as early as the day prior to settlement.

[11] DTC will not process any free deliveries through the honest broker program.

[12] If sufficient shares are not received to complete a delivery, the transaction will be dropped unless the delivery is to settle open CNS positions, in which case a partial delivery will be acceptable. For example, if the deliver order is for 10,000 shares, and only 9,000 shares are delivered to the honest broker account by pledgee banks, the transactions would drop. If, however, the deliver order is from NSCC to settle open CNS positions, DTC will deliver the 9,000 shares.

[13] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[14] *The issues Surrounding the Collapse of Drexel Burnham Lambert, Hearings before the United States Congress, Senate Committee on Banking, Housing, and Urban Affairs*, 101st Cong., 2d Sess. 5 (1990) (testimony of Richard C. Breeden, Chairman, Commission) ("Drexel testimony").

[15] Ordinarily, lenders who accept securities in DTC's ledge program release those securities to the debtor's control without requiring full payment of outstanding loans, provided payment (including refunding through new pledge loans) occurs before the end of the day. This permits the debtor (typically, a broker-dealer) to deliver the pledged securities against payment to another participant or to NSCC during both of DTC's delivery processing cycles. Because settlement of transactions typically starts with delivery of securities, with the deliverer assuming the risk that payment will be made at or before the end of the day, release of pledged collateral can help maximize the number of trades that settle while shifting some credit risk to the deliver's bank.

When Drexel experienced financial difficulties, however, its lenders and counterparties took steps to reduce their credit risk exposure to Drexel. In particular, because of concern about what might happen during the day or the quality of collateral that might be posted at the end of the day, lenders insisted upon repayment before release of securities, which meant Drexel could not settle open transactions even as it was winding down its portfolio. *See* Drexel testimony at 47.

[16] While NSCC's CNS system provides important efficiencies and safeguards, Drexel's lenders were concerned that release of securities for delivery to NSCC could result in no net reduction of loans to Drexel because NSCC might apply the money due Drexel for those securities to meet other Drexel purchase or payment obligations.

[17] Although the Drexel experience involved both physical and book-entry deliveries, the honest broker proposal only addresses the liquidation of book-entry pledges.

[18] The Commission notes that DTC is providing a mechanism for delivery/receipt against payment for liquidation of pledged collateral held by banks. The proposal is not intended to alter the respective rights and obligations of the pledgor and pledgees under the terms of agreements between those parties.

[19] See note 3 *supra*.

[20] Letter from Milbank, Tweed, Hadley & McCloy, to DTC (November 2, 1992). In addition, in the event a bankruptcy petition is filed against a pledgor, the receipt by a pledgee of a pro rata portion of pledged securities will not be subject to avoidance by a pledgor, trustee or receiver for the pledgor appointed under the U.S. Bankruptcy Code, U.S. federal, or New York state law. In addition, DTC will not, on its own behalf, own, or hold a security interest in, the pledged securities before they are transferred to a purchaser. Id.

Since DTC will not hold securities positions in the honest broker account overnight, it is not necessary for DTC to trace or credit dividend and interest payments that accrue to securities processed in the honest broker account.

Another commentator requested that DTC ensure that it could process large volumes of transactions over several days in the honest broker program. DTC expects that the honest broker processing will account for less than 1,000 transactions per day.[21] DTC's processing capacity is now twice the level of October 1987, and the results of tests performed for the proposed program applications were satisfactory.[22] Thus, DTC has represented that its processing system is capable of handling the additional volume of transactions.[23]

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–92–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20582 Filed 8–24–93; 8:45 am]

BILLING CODE 8010–01–M

[21] Letter from Jack Weiner, Assistant General Counsel, DTC, to Sonia Burnett, Attorney, Division of Market Regulation, Commission (November 2, 1992).

[22] *Id.*

[23] *Id.*

[24] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–32764; File No. SR–NASD–93–40]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Part IX of Schedule D to the NASD By-Laws Regarding Rules and Procedures of the NASD Local Quotations Program

August 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change to Part IX of Schedule D to the NASD By-Laws. Proposed deletions are in brackets.

SCHEDULE D TO THE NASD BY-LAWS

[PART IX]

[LOCAL QUOTATIONS PROGRAM]

[The NASD Local Quotations Program is a service of the Association designed to provide a source of quotations to the media for securities of particular interest to specific communities. All quotations shall be inter-dealer quotations, represent the market for the security and, except for unusual circumstances, contain both bid and asked quotations. Nominal and "asked only" quotations shall not be released.]

[A. Authority of the NASDAQ Committee]

[The Local Quotations Program is administered by the Information Committee of the Corporation. It shall appoint the members of the Local Quotations Committees, consider requests for exceptions from the national inclusion standards set forth in Section C of this Part VII, and review and establish procedures for the administration of the program.]

[B. Role of the Local Quotations Committees]

[The various Local Quotations Committee shall be designated by the Information Committee and their members appointed by it. The Local Quotations Committees shall select securities to be included on their local quotations list, supervise the administration of the local quotation program, and develop local inclusion standards.]

[C. National Inclusion Standards]

[1. All securities of companies included in NASDAQ shall be eligible for inclusion in Local Quotations Lists.]

[2. The following inclusion standards shall apply to securities not included in NASDAQ.]

[a. Compliance with one of the following:

i. The bid price for a security shall be at least $2.00, or

ii. the issuer reports total assets not less than $2,000,000 and capital and surplus not less than $1,000,000 and may continue to be included so long as it continues to report total assets not less than $750,000 and capital and surplus not less than $375,000.]

[b. The issuer shall make prompt and full disclosure of all material corporate developments.]

[c. The issuer shall annually submit to its shareholders a balance sheet and income statement.]

[d. CUSIP numbers shall be imprinted on all stock certificates of the issuer.]

[D. Local Inclusion Standards]

[Whether an issue is selected to be included on a local quotations list shall depend upon considerations of sufficient shareholder interest, reflected by the number of shareholders residing in the area, or other fair and reasonable standards. Local Quotations Committees may, in response to local market conditions or space limitations, impose additional inclusion requirements, or inclusion requirements greater than the national requirements set forth in Section C, for its quotations list. It shall file such increased standards with the Information Committee.]

Parts X to XIII of Schedule D are renumbered Parts IX to XII respectively and the NASD will amend any references to those Parts of Schedule D to reflect the renumbering of the provisions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Part IX of Schedule D to the NASD By-Laws ("Schedule D") provides for the NASD Local Quotations Program (the "Program") which was a service of the Association designed to provide a source of quotations to the media for securities of particular interest to specific communities. The Program was administered by an NASD Information Committee which, in addition to other specified functions, appointed members to NASD Local Quotations Committees. The function of the NASD Local Quotations Committees was to select and provide to local media a list of Nasdaq securities and non-Nasdaq securities based on the National Inclusion Standards and Local Inclusion Standards contained in Sections C and D of Part IX to Schedule D.

In recent years, the Local Quotations Program has been phased-out by the NASD and the specified NASD Committees created under the Local Quotations Program have ceased to function. Under current practice, the NASD provides certain news media organizations and other market data vendors with two electronic data lines on information regarding all Nasdaq National Market System ("Nasdaq/NMS") securities and Nasdaq SmallCap Market ("Nasdaq SmallCap") Securities contained in the Nasdaq System.[1] One data line provides bid/ask quotes for all Nasdaq Stock Market securities, and the other data line provides last sale information for all Nasdaq Stock Market securities. Most news media organizations currently receive quotation information regarding all Nasdaq Stock Market securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq/NMS securities are currently made by individual news media organizations based on their respective publication criteria. The NASD, therefore, proposes to delete Part IX of Schedule D to the NASD By-Laws.[2]

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[3] which requires that the rules of a national securities association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change deletes rule language regarding an outdated NASD practice of providing the news media of specific communities with securities quotations of local interest. Deletion of Part IX to Schedule D reflects the NASD's determination to end the practice of only disseminating information about certain securities to the local news media pursuant to the Local Quotations Program in favor of the current practice whereby two electronic data lines disseminate information on all Nasdaq System securities to certain media organizations and market data vendors. Most news media organizations currently receive quotation information regarding all Nasdaq Stock Market securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq/NMS securities are currently made by individual news media organizations based on their respective publication criteria. The NASD's electronic data lines provide greater market information to the public than the procedures provided for under the Local Quotations Program contained in Part IX to Schedule D. The dissemination of quotes over the NASD electronic data lines, therefore, help perfect a free and open market and a national market system, and help to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] The Nasdaq System is comprised of both Nasdaq SmallCap and Nasdaq/NMS securities.

[2] The Commission recently approved a proposed rule change to delete Part V to Schedule D of the NASD By-Laws regarding publication and dissemination of quotations to the news media. See Securities Exchange Act Release No. 32246 (April 30, 1993), File No. SR–NASD–93–14. The NASD notes that the rationale for deleting Part V is very similar to the Association's rationale for the proposed deletion of Part IX to Schedule D.

[3] 15 U.S.C. 78o–3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted September 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20583 Filed 8–24–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32772; File No. SR–PTC–93–02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Participants Trust Co. Relating to a Modification of PTC's Method of Paying Principal and Interest to Participants

August 19, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 3, 1993, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. On August 16, 1993, PTC filed Amendment No. 1 to the proposed rule change.[2] The

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrects Exhibit A, Text of the Proposed Rule Change, removing Section 1A of Article III, Rule 2. Section 1A was the subject of a 1990 proposed rule change that PTC later withdrew. See Securities Exchange Act Release No. 29533 (August 7, 1991), 56 FR 40930 (withdrawing

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends PTC Article III, Rule 2 regarding PTC's method of paying principal and interest ("P&I") to its participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the requirement that payments of P&I from PTC to participants and limited purpose participants be made by means of a credit to the applicable Cash Balance of the participant or limited purpose participant, to permit PTC to make such payments either by means of such credit or by intraday Fedwire transfer of immediately available funds, as PTC may determine from time to time. It is expected that after this rule change is effective, PTC will proceed with a pilot program to make fifty percent of P&I on GNMA I securities available to participants, at their option, on or about noon on P+1, the usual day for such P&I disbursement.

Each of PTC's participants holds its securities on deposit at PTC in one or more Master Accounts, each of which consists of one of more of the following processing subaccounts: Agency Account, Agency Segregation Account, Proprietary Account, Proprietary Segregation Account, Pledgee Account, and Limited Purpose Account. PTC maintains a cash balance for each Proprietary Account (including any associated Proprietary Segregation Account), Agency Account, Agency Segregation Account, Pledgee Account, and Limited Purpose Account. PTC posts credits and debits to the Cash Balances intraday in connection with certain securities transactions and funds transfers processed through PTC, in accordance with PTC's Rules and Procedures. Cash Balances are settled at the end of the business day, when participants wire the amount of any Debit Balances to PTC's settlement account, after which PTC pays participants the amount of any end-of-day Credit Balances.

PTC's Rules and Procedures currently provide that PTC disburse P&I on securities deposited at PTC by means of a credit to the participant's applicable Cash Balance, resulting in the participant's receipt of available funds in the amount of the P&I, net of any account debits and/or credits, at the end of the day. The proposed rule change will eliminate that requirement, permitting PTC to make payment of P&I either by intraday Fedwire transfer of immediately available funds or by means of a credit to the applicable Cash Balance, as PTC deems advisable from time to time.

PTC disbursed a total of over $111 billion in P&I payments to its participants in 1992, of which approximately $104 billion constituted disbursement of P&I on GNMA I securities. The crediting of P&I to the Cash Balance defers the receipt of available funds by participants until completion of PTC's settlement cycle, at the end of the business day. The release of P&I funds to participants by Fedwire transfer will enable participants to receive those funds earlier in the day and to apply those funds elsewhere, as needed. Disbursement of immediately available funds during the business day may ease liquidity pressures on participants in other financial markets or in other settlement systems, thereby promoting smoother functioning of the financial markets in general.

PTC anticipates that it may generally disburse a portion of the P&I intraday by Fedwire transfer of immediately available funds, with the balance being distributed by means of a credit to the applicable Cash Balance. The relative amounts of such disbursements will be determined over time, taking into account P&I collection and disbursement experience, the impact of intraday disbursement of P&I by Fedwire transfer on PTC's settlement cycle, and participant response. Initially, PTC intends to permit participants to elect to receive 50% of the P&I payment made with respect to GNMA I securities by means of an intraday Fedwire transfer of immediately available funds at approximately 12 noon, with the balance of the P&I payment distributed by means of a credit to the applicable Cash Balance for disbursement at end-of-day. These percentages and the ability of participants to select the method of payment may change with respect to the initial month or in subsequent months.

The proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because the prompt release of P&I funds to participants upon disbursement facilitates the prompt and accurate clearance and settlement of securities transactions and promotes the mechanism of a national clearance and settlement system.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File Number SR–PTC–93–02 and should be submitted by September 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20584 Filed 8–24–93; 8:45 am]

BILLING CODE 8010–01–M

proposed Section 1A). Letter from Leopold S. Rasanick, Vice President, General Counsel, and Secretary, PTC, to Judith Poppalardo, Assistant Director, Division of Market Regulation, Commission, dated August 13, 1993.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2662]

Illinois; Amendment #4; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with Notices from the Federal Emergency Management Agency dated August 11 and 16, 1993, to include Brown, Cass, Fulton, Knox, Mason, Morgan, Ogle, Scott, and Warren Counties in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on April 13, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Logan, Menard, Peoria, Sangamon, and Tazewell in Illinois may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

The economic injury number for Illinois is 793200.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 9, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 18, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20549 Filed 8–24–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2662]

Illinois; Amendment #3; Declaration of Disaster Loan Area

In accordance with a Notice from the Federal Emergency Management Agency, dated August 4, 1993, the incident period for the above-numbered Declaration is hereby amended to be April 13, 1993 and continuing.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 9, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20550 Filed 8–24–93; 8:45 am]

BILLING CODE 8025–01–M

Increase in Disaster Business Loan Limit

On August 12, 1993, the President signed into law the Emergency Supplemental Appropriation for Flood Relief (Pub. L. 103–75). Among other things, this law increases the maximum ceiling for Small Business Administration (SBA) disaster business loans from $500,000 to $1,500,000 for all disasters commencing on or after April 1, 1993. The Administration continues to have authority to waive the maximum loan limitation for businesses that are major sources of employment. SBA is preparing an appropriate amendment to part 123 of its regulations to incorporate this change.

Dated: August 17, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20561 Filed 8–24–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2663; Amendment #3]

Missouri; Declaration of Disaster Loan Area

In accordance with a Notice from the Federal Emergency Management Agency, dated August 4, 1993, the incident period for the above-numbered Declaration is hereby amended to be June 10, 1993 and continuing.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 7, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20557 Filed 8–24–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2667; Amendment #3]

Nebraska; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 6 and August 9, 1993 to include the counties of Boone, Burt, Greeley, Howard, Nance, Nuckolls, Thayer, and Webster in the State of Nebraska as a disaster area as a result of damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning on June 23, 1993 and continuing through August 5, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Antelope, Garfield, and Wheeler in the State of Nebraska may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 17, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury number of Nebraska is 793400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20559 Filed 8–24–93; 8:45 am]

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[Declaration of Disaster Loan Area #2670; Amendment #2]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 4, 1993 to include Cavalier and Eddy Counties in the State of North Dakota as a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the termination data for filing applications for physical damage is September 27, 1993 and for economic injury the deadline is April 26, 1994.

The economic injury number for North Dakota is 795500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-20553 Filed 8-24-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2668]

South Dakota; Amendment #3; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 10, 1993 to include Beadle, Jerauld, and McPherson Counties in the State of South Dakota as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 6, 1993 and continuing.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury number for South Dakota is 793800.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 13, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-20551 Filed 8-24-03; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2660; Amendment #4]

Wisconsin; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated August 10, 1993 to include Monroe County in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 1, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 13, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-20560 Filed 8-24-93; 8:45 am]

BILLING CODE 8025-01-M

Investment Advisory Council; Meeting

Time and Date: 9 a.m.–4 p.m., Friday, September 24, 1993.

Place: The meeting will be held in the Eisenhower Conference Room on the eighth floor of SBA headquarters at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to identify and discuss provisions in the Small Business Investment Company (SBIC) proposed rules that should be revised prior to the adoption of final regulations to implement title IV of Public Law 102-366. The Council also will consider the impact of the proposed regulatory changes on currently licensed SBICs and Specialized SBICs, as well as potential investors and licensees.

For further information, contact Maureen C. Glebes, room 6300, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6510.

Dated: August 18, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93-20552 Filed 8-24-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; General Motors Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition by General Motors Corporation (GM) to exempt the Buick Riviera and Oldsmobile Aurora from the parts marking requirements of the vehicle theft prevention standard. The petition is granted pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, for Model Year 1995 and beyond. The petition is granted because the agency has determined that the antitheft device to be placed on the car lines as standard equipment is likely to be as effective in deterring and reducing motor vehicle theft as compliance with parts marking requirements.

DATES: The exemption granted by this notice is effective beginning with the 1995 Model Year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: On April 21, 1993, the agency received a submission from General Motors Corporation (GM) requesting an exemption from the theft prevention standard for its Buick Riviera (Riviera) and Oldsmobile Aurora (Aurora) car lines, pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, for Model Year (MY) 1995 and beyond. GM did not request confidential treatment for any of the information provided in its petition.

The information submitted by GM constitutes a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Accordingly, April 21, 1993 is the date on which the statutory 120 day period for processing GM's petition began.

In its petition for the Riviera and Aurora car lines, GM requests an exemption from parts marking based on the inclusion of the "PASS-Key II" theft deterrent system as standard equipment for these car lines. GM noted that the "PASS-Key II" is a modification of the "PASS-Key" theft deterrent system. GM also noted that in August 1989 and on

several occasions since, the agency has determined that the "PASS-Key" and "PASS-Key II" systems, installed as standard equipment on various GM car lines, will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (see e.g., 54 FR 38655, August 15, 1989). In a February 7, 1992 letter to GM, the agency determined that the changes in "PASS-Key II" constituted a *de minimis* change in the "PASS-Key" system that was the basis for the agency's previous granting of a theft exemption for a car line that had, as standard equipment, the "PASS-Key" system.

The "PASS-Key II" theft deterrent system utilizes an ignition key, an ignition lock cylinder and a decoder module. When the proper key is inserted into the ignition lock cylinder, the decoder module recognizes the match, and permits the key to release the steering wheel and transmission shift lever locks. Before the vehicle can be started, the electrical resistance of a pellet embedded in the shank of the key must be sensed by elements in the lock cylinder and its value compared to a fixed resistance in the decoder module located in the instrument panel in the passenger compartment. If the key pellet has the proper resistance, the starter enable relay is energized and a discrete signal is transmitted to the engine control module. Recognition of the signal by the engine module allows fuel injector pulses to begin. If a key other than the one with proper resistance for that vehicle is inserted, the decoder module will shut down for a period of three minutes plus or minus 18 seconds. GM states that this period of time is controlled by a timer within the decoder module, and is not a programmable feature. Unlike "PASS-Key," in "PASS-Key II," the timer for the decoder module does not reset to zero if further resistance comparisons are made while the decoder module is shut down. GM has stated that despite this difference, a similar level of performance will continue since the module, while shut down, will ignore any further attempts to start the vehicle by means of a key with an improper pellet resistance. GM claims that any process of trial and error using various keys with different resistance pellets, after the initial three minute shut down period, will result in the module shutting down again.

The components are located in the passenger compartment behind the instrument panel, with the exception of the starter solenoid/starter motor combination which is located in the engine compartment. GM states that unlike many other theft deterrent systems, removing and subsequently reapplying vehicle power does not alter "PASS-Key II" performance.

GM states that "PASS-Key II" is passive in that the system becomes fully functional once the ignition is turned off and the key is removed. No further operator action is required for activation. GM states that because "PASS-Key II" is fully operational once the engine has been turned off and the key removed, it has not provided specific visual or audio warnings, beyond the key warning buzzer, that unauthorized attempts have been made to enter or move the vehicles. However, the "PASS-Key II" system includes a starter interrupt function which, when activated, makes the vehicle inoperable.

In order to draw attention to improper use of a key to start the vehicle, GM has installed a yellow "Security" light inside the passenger compartments of the Riviera and Aurora. This light is designed to activate if the proper key with a dirty or contaminated resistor pellet is used and the vehicle does not start. If this happens, it is necessary to clean the key and delay a further attempt to start the engine until the "PASS-Key II" timer has run its course. The "Security" light is designed to illuminate also if a key with the proper mechanical but improper electrical code is used to try to start the vehicle.

GM states that a premise for the design of any theft deterrent system in its products has been that a failure in such a system would not affect a running vehicle. Although it may not be possible to restart a vehicle after such a failure, that failure would not stop an engine that has been started. That criterion has been met in "PASS-Key II." Once an "Engine Running" signal has been identified by the engine control module, a "PASS-Key II" failure will not cause the engine to stop.

GM's analysis of the failure mode effects of the "PASS-Key II" system indicated that the component with the highest probability for failure was the ignition lock cylinder with its key, wiring, contacts, and rotational motion. A 52,500 cycle automated bench test of the key, ignition lock cylinder, wiring, and "PASS-Key II" electronics module was conducted over a temperature range of approximately −40 degrees Fahrenheit to +212 degrees Fahrenheit. GM stated that each cycle consisted of inserting the key, rotating the cylinder to its "Start" position and then measuring the output from the electronics module to assure that the proper signals for the Starter Enable Relay and engine control module were present. The absence of either signal would terminate the test.

GM states that the "PASS-Key II" decoder module has undergone other durability tests to ensure that the component meets or exceeds specified performance requirements over an equivalent of approximately 10 years of vehicle life. These other tests were: A power and temperature cycling test; high temperature endurance test; humidity test; moisture susceptibility test; and random vibration durability tests. As part of the validation process for the "PASS-Key" system, GM subjected the starter enable relay to testing to ensure component reliability. GM states that the same component is used in "PASS-Key II".

GM also states that during 203,705 miles of durability testing on preproduction MY 1995 Riviera and Aurora prototype and pilot vehicles equipped with "PASS-Key II," there were no system failures. GM states that since "PASS-Key II" system failures have the potential to affect owner satisfaction, it will continue to carefully monitor warranty data and make any necessary changes to improve system reliability.

Since the "PASS-Key II" system has been installed in GM vehicles as standard equipment only since the 1992 model year, GM states that directly relevant theft data are not yet available. GM asserts that since the "PASS-Key II" system has been designed to provide the same kind of protection as the "PASS-Key" system, theft data for "PASS-Key" equipped vehicles can be used to form the basis for GM's belief that the "PASS-Key II" system will be effective in reducing and deterring motor vehicle theft. The agency concurs that the data for "PASS-Key" equipped vehicles are probative of the likelihood of success of the "PASS-Key II" system in reducing and deterring vehicle theft.

To substantiate its statements on the "PASS-Key" antitheft system's effectiveness, GM provided data on Buick Riviera, Oldsmobile Toronado, Cadillac DeVille/Fleetwood and Cadillac Eldorado car line theft rates for MYs 1986 through 1990. "PASS-Key" was made standard on each of these four car lines beginning with MY 1990. The data provided by GM is reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), which is NHTSA's official source of theft data (See 50 FR 46666, November 12, 1985). The NCIC receives reports on all thefts.

The NCIC data reported by GM showed that the Riviera, Toronado, DeVille, and Eldorado theft rates (per thousand vehicles) by Model Year were:

For 1986, 3.99 for the Riviera, 2.25 for the Toronado, 7.11 for the DeVille, and 2.27 for the Eldorado; for 1987, 6.37 for the Riviera, 6.30 for the Toronado, 6.16 for the DeVille, and 3.90 for the Eldorado; for 1988, 6.15 for the Riviera, 5.58 for the Toronado, 7.91 for the DeVille, and 3.16 for the Eldorado; for 1989, 2.16 for the Riviera, 3.33 for the Toronado, 5.57 for the DeVille, and 2.35 for the Eldorado; and for 1990, 1.32 for the Riviera, 2.62 for the Toronado, 3.81 for the DeVille, and 2.48 for the Eldorado.

GM stated a belief, based on the decreases in theft of the above four car lines during the 1990 model year, which occurred with the implementation of the "PASS-Key" as standard equipment, that the "PASS-Key" system is "extremely effective in deterring motor vehicle theft." GM stated that based on the performance of "PASS-Key" on other models and its similarity of design and functionality to the "PASS-Key II" system, it believes that "PASS-Key II" will be at least as effective as the first generation "PASS-Key" system.

NHTSA believes that there is substantial evidence indicating that the antitheft system to be installed as standard equipment on the Riviera and Aurora lines will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information GM submitted with its petition and on other available information. The agency believes that the device will provide all but one of the types of performance listed in § 543.6(a)(3); promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The single exception is that the device lacks an alarm which would attract attention to unauthorized entries.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its device. This information included a description of reliability and functional tests conducted by GM for the antitheft system and its components. GM presented extensive data on the life cycle test results of the "PASS-Key" ignition lock system, and durability testing of prototype MY 95 Rivieras and Auroras equipped with "PASS-Key II."

The decision to grant this exemption is consistent with earlier agency exemption decisions. As the petitioner noted, the "PASS-Key" ignition lock system has been the basis of the agency's exempting, in part, several high theft GM car lines from the requirements of 49 CFR part 541. The following GM car lines have the "PASS-Key" system as standard equipment, and have been exempted in part from the requirements of 49 CFR part 541: the Chevrolet Camaro and Pontiac Firebird, beginning with MY 1990 (see 54 FR 3365, August 15, 1989); the Cadillac DeVille/Fleetwood and Oldsmobile 98, beginning with MY 1991 (see 55 FR 17854, April 27, 1990); and the Pontiac Bonneville and Buick Park Avenue, beginning with MY 1992 (see 56 FR 14413, April 9, 1991). NHTSA has also granted exemptions in part for the following GM car lines that have "PASS-Key II" as standard equipment: the Oldsmobile 88 Royale and Buick LeSabre, beginning with MY 1993 (see 57 FR 10517, March 26, 1992) and the Cadillac Eldorado and Cadillac Seville, beginning with MY 1994 (see 58 FR 11659, February 26, 1993).

The agency had granted partial, rather than full, exemptions for the car lines listed above because neither the "PASS-Key" nor "PASS-Key II" antitheft systems include an audio or visual alarm system. As such, the GM systems lack, as standard equipment, an important feature that the agency has defined in its rulemaking on part 543 as one of several desirable attributes which contribute to the effectiveness of an antitheft system: Automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key.

Theft data experience for car lines incorporating "PASS-Key" have not shown that the lack of an audio and visual alarm has prevented the antitheft device from being effective. Since the introduction of "PASS-Key" in MY 1989, two years of theft data that assess the effectiveness of "PASS-Key" and "PASS-Key II" have been collected. The agency believes the data show that over time, despite the absence of the audio and visual alarm systems, "PASS-Key" and "PASS-Key II," when placed on car lines as standard equipment, continue to be likely to be as effective in deterring and reducing motor vehicle theft as compliance with parts marking requirements.

The agency arrived at this conclusion by examining theft data provided in GM's petition, and independently examining theft data for other car lines with "PASS-Key" as standard equipment. The data provided in GM's petition show a reduction in theft rates after placement of "PASS-Key." In addition, the agency examined three years of data for the Pontiac Firebird and Chevrolet Camaro lines and found consistent reductions in theft rates. "PASS-Key" has been standard equipment on these two lines since MY 1989. For MY 1989, the Firebird's theft rate was 8.98 (per thousand vehicles), and the Camaro's theft rate was 8.68. By MY 1991 (based on preliminary theft data), the Firebird's theft rate was 6.36 and the Camaro's theft rate was 7.80. It appears that a 29 percent reduction in theft rates for the Firebird and a 12 percent reduction for the Camaro have been experienced.

For the foregoing reasons, the agency hereby exempts the MY 1995 Buick Riviera and Oldsmobile Aurora car lines in full from the requirements of 49 CFR part 541. If the "PASS-Key II" is placed as standard equipment on the two car lines, GM would not be required to mark any of the major parts of these lines.

If GM decides not to use the exemptions for the MY 1995 Riviera and Aurora car lines, it should formally notify the agency. If such a decision is made, these car lines must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption."

The agency wishes to minimize the administrative burden which § 543.9(c) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if GM contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50 and 501.4.

Issued on: August 17, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–20499 Filed 8–24–93; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES ENRICHMENT CORPORATION

National Environmental Policy Act Procedure

AGENCY: United States Enrichment Corporation.

ACTION: Notice of proposed National Environmental Policy Act procedure with request for comments.

SUMMARY: The United States Enrichment Corporation (USEC) proposes to adopt a procedure for implementing the National Environmental Policy Act (NEPA). The USEC has undertaken the uranium enrichment enterprise formerly conducted by the Department of Energy (DOE), effective July 1, 1993, pursuant to the Energy Policy Act of 1992. The USEC proposes to adopt a procedure for implementing NEPA that is closely patterned on DOE's NEPA Implementing Procedures, with some modifications to reflect USEC's specific mission of operating the enterprise as a business enterprise on a profitable basis and eventually privatizing the enterprise. USEC proposes to voluntarily comply with NEPA as a reflection of the Corporation's commitment to environmental protection. Accordingly, USEC is proposing a NEPA procedure to incorporate analysis of environmental impacts into USEC's decisionmaking on proposals and is soliciting public comment on the proposed procedure. In addition, USEC is requesting that the Council on Environmental Quality (CEQ) review the proposed procedure for conformity with NEPA and CEQ's NEPA regulations.

DATES: Written comments on the proposed procedure should be submitted on or before September 9, 1993.

ADDRESSES: Written comments on the proposed procedure should be submitted to Robert J. Moore, General Counsel, United States Enrichment Corporation, 2300 M Street NW., 5th floor, Washington, DC 20037; or may be hand-delivered to the same address on business days between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, General Counsel at (202) 835–7610, or Charles Martin, Environmental Compliance, at (202) 835–7646.

SUPPLEMENTARY INFORMATION:

I. Background

The United States Enrichment Corporation was created by title IX of the Energy Policy Act, Public Law 102–486 (42 U.S.C. 2297 *et seq.*). USEC was created to take over the uranium enrichment enterprise from DOE on July 1, 1993. 42 U.S.C. 2297b-14. Congress created USEC to operate the uranium enrichment enterprise "as a business enterprise on a profitable and efficient basis" and to "maximize the long-term value of the Corporation to the Treasury of the United States." 42 U.S.C. 2297a (1) and (2). In addition, USEC is directed to develop a plan for the privatization of the uranium enrichment enterprise by transferring ownership of the Corporation to private investors. 42 U.S.C. 2297d. Congress also directed USEC "[t]o continue at all times to meet the objectives of ensuring the Nation's common defense and security[,]" "[t]o help maintain a reliable and economical domestic source of uranium enrichment services[,]" and "[t]o comply with laws, and regulations promulgated thereunder, to protect . . . the environment." 42 U.S.C. 2297a (8), (9), and (10).

USEC is intended by Congress to operate as a profit-making corporation engaged in providing uranium enrichment services in a highly competitive worldwide market. Moreover, USEC is to function as an integral link between the former operation of this enterprise by a federal government agency and the future operation as a fully private corporation. NEPA applies to federal government agencies and does not directly impose requirements on private corporations. As a corporation which is eventually to be privatized, USEC is not a federal agency subject to NEPA.

Nonetheless, USEC intends to conduct all its operations as a responsible corporate citizen, committed to maintaining a clean, safe and healthful environment. To help achieve that end USEC proposes, as a matter of voluntary corporate policy, to comply with the letter and spirit of NEPA and to incorporate NEPA procedures into corporate decisionmaking. Thus, USEC will ensure that potential environmental impacts are assessed before major proposals are adopted, that feasible alternatives are analyzed on the basis of environmental impacts, and that mitigation measures are employed when appropriate. Also, USEC intends to incorporate NEPA's directives to involve federal agencies, state agencies, and the public in USEC's decisionmaking process with respect to the environment, to the extent consistent with the legislation creating USEC.

II. Purpose

The purpose of the proposed NEPA procedure is to implement USEC's policy of voluntary compliance with NEPA and to provide guidance and a mechanism for incorporating NEPA into USEC's decisionmaking and day-to-day operations. Because the uranium enrichment enterprise was transferred by an Act of Congress from USEC to DOE, the proposed NEPA procedure is modeled on DOE's NEPA Implementing Procedures, 10 CFR part 1021. However, USEC's proposed NEPA procedure is also tailored to reflect the fact that DOE's mission is much broader than the uranium enrichment enterprise that was transferred to USEC and that USEC is directed to operate that enterprise "as a business enterprise on a profitable and efficient basis." 42 U.S.C. 2297a(1).

The proposed procedure is intended to implement USEC's voluntary decision to comply with NEPA to the same extent as a federal government agency by:

- Requiring the preparation and circulation of draft and final environmental impact statements (EISs) on proposals significantly affecting the quality of the human environment, and that would be "major federal actions" if undertaken by DOE, for example, or another federal agency.
- Requiring the preparation of environmental assessments (EAs) to determine whether a proposed action would require the preparation of an EIS under the standard of section 102(2)(C) of NEPA.
- Requiring the preparation of records of decision (RODs) and findings of no significant impact (FONSIs) to reflect the incorporation of EISs and EAs into USEC decisionmaking.
- Providing the public and federal and state agencies with access to information and an opportunity to provide meaningful comment on USEC proposals and the potential environmental impacts of such proposals.
- Requiring compliance with the CEQ NEPA Regulations.

In addition, USEC is voluntarily submitting this proposed procedure for review by CEQ for conformity with NEPA and the CEQ NEPA regulations

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(40 CFR 1507.3(a)). The proposed NEPA procedure will be adopted by USEC only after the opportunity for public comment offered by this notice and review by CEQ. This proposed procedure was developed in consultation with CEQ in accordance with the procedure set forth in the CEQ NEPA Regulations. 40 CFR 1507.3(a). USEC proposes to adopt a NEPA "procedure," and not formal regulations, as permitted by the CEQ regulations. Id.

III. Environmental Review

The proposed procedure is modeled on existing DOE NEPA Implementing Procedures which applied to DOE's operation of the uranium enrichment enterprise before its transition to USEC on July 1, 1993. Its purpose is primarily to tailor DOE's department-wide NEPA procedure to USEC's specific operation of the uranium enrichment enterprise as a business enterprise on a profitable basis without substantially changing the effect of that operation on the environment. Thus, this proposed procedure is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA.

IV. Review Under Executive Order 12291

The proposed procedure implements the Corporation's NEPA policy and does not constitute proposed rulemaking. This proposal is not a "rule" or "regulation" within the meaning of Executive Order 12291, and no analysis thereunder is required. In any event, the proposed procedure would not be a "major rule" because it: (1) Does not have an annual effect on the economy of $100 million or more; (2) does not result in a major increase in the cost of financial institution operations or governmental supervision; and (3) does not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity or innovation within the meaning of E.O. 12291.

Moreover, the proposed procedure would substantially adopt DOE's existing NEPA Implementation Procedures as they relate to the uranium enrichment enterprise formerly operated by DOE. Thus USEC's proposed NEPA procedure should have no incrementally greater impact on procurement, financial assistance, joint ventures, or marketing, which are the areas where any potential economic impact might be anticipated. Therefore, USEC has determined that the incremental impact, if any, of today's proposed procedure, if finalized, would not have effects on the economy of sufficient magnitude to bring the proposed procedure within the definition of a "major rule."

V. Regulatory Flexibility Act

USEC is proposing to adopt a procedure for implementing the Corporation's NEPA policy, and is not proposing rulemaking. Accordingly, this proposal is not a "rule" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2), and no regulatory flexibility analysis is required. In any event, the proposed procedure is closely patterned on DOE's NEPA Implementation Procedures which governed the uranium enrichment enterprise before July 1, 1993 and makes no substantive changes to requirements for any applicants for permits or licenses, or financial assistance, customers, or bidders for contracts, as related to NEPA compliance.

VI. Review Under Executive Order 12612

Executive Order 12612 requires that policies be reviewed for Federalism effects on the institutional interest of state and local governments, and if the effects are sufficiently substantial and direct, that a Federalism assessment be prepared to assist senior policymakers. The proposed NEPA procedure will not have any substantial and direct effect on state and local governments within the meaning of the Executive Order. The final procedure will affect USEC's NEPA policy, which is not subject to state regulation.

VII. List of Subjects

Environmental assessment, Environmental impact statement, National Environmental Policy Act.

Issued in Washington, DC.

Dated: August 20, 1993.

William H. Timbers, Jr.,

Transition Manager.

For the reasons set forth in the preamble, USEC proposes to adopt the following NEPA procedure:

United States Enrichment Corporation Policy For Adherence to the National Environmental Policy Act (NEPA)

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1.0 General

1.1 Purpose

The purpose of this document is to establish the United States Enrichment Corporation (USEC) policy for integration of environmental considerations into USEC planning and decisionmaking. It also establishes the criteria for determining USEC actions that are categorically excluded from requirements to prepare an Environmental Impact Statement (EIS). Applicable categorical exclusions (CX) are listed in section 4.2 of this policy. This USEC policy complies with and supplements the Council on Environmental Quality (CEQ) regulations published at 40 CFR 1500–1508. The CEQ regulations address the requirements for compliance with the procedural provisions of section 102(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)).

1.2 Policy

It is USEC policy to comply with the letter and spirit of NEPA; adhere to CEQ regulations; and apply the NEPA process early in the planning stages for USEC proposals. In doing so, USEC will endeavor to ensure that wise use of the human environment is incorporated into its actions. The USEC will also endeavor to minimize the adverse impact of its actions on the human environment. This will be accomplished by identifying the significant environmental impacts of USEC proposed programs and projects as early in the decisionmaking process as is practicable, and integrating those considerations throughout the planning and, ultimately, implementation of the proposed program and projects. The objective is to ensure, consistent with the National Environmental Policy Act and CEQ regulations, that environmental effects will be considered along with technical, economic and other factors in USEC decisionmaking processes.

USEC will endeavor to ensure that the NEPA process parallels the decisionmaking process on major programs and proposals likely to have a significant effect on the human environment.

USEC will integrate NEPA requirements with planning and environmental reviews required by law. USEC will accomplish this integration in a concurrent rather than consecutive manner. NEPA compliance is required for applicable USEC actions unless existing law applicable to a specific action or activity prohibits, exempts or makes compliance impossible.

USEC will endeavor to ensure that the alternatives considered in the decisionmaking process are within the range of alternatives considered in the relevant environmental documents and analyses.

USEC policy will be to adhere to Executive Order 12114 and to incorporate into its environmental analyses, consideration of actions that may significantly affect the global commons, environments of other nations or ecological resources of global importance. Where consistent with national security requirements and United States foreign policy, an environmental planning and evaluation process as outlined in Appendix A of this policy will be implemented for proposed USEC actions that would significantly affect those aspects of the worldwide environment.

1.3 Applicability

1.3.1 This section applies to all organizational elements of USEC.

1.3.2 This section applies to any USEC action affecting the quality of the human environment of the United States, its territories or possessions. Appendix A of this section applies to any USEC action having environmental effects outside the United States, its territories or possessions.

1.4 Definitions

1.4.1 The definitions set forth in 40 CFR part 1508 are referenced and used in this section of the USEC NEPA Policy and Procedures.

1.4.2 In addition to the terms defined in 40 CFR part 1508, the following definitions apply:

Action means a project, program, plan, or policy, as discussed at 40 CFR 1508.18, that is subject to USEC's control and responsibility. Not included within this definition are actions for which USEC has no discretion.

Adjacent State means a state that has a common boundary with a host state.

American Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska native entity, which is recognized as eligible for the special programs or services provided by the United States because of their status as Indians.

Categorical exclusion (CX) means an action that, as defined in 40 CFR 1508.4, does not individually or cumulatively have a significant effect on the human environment and, therefore, does not require either an environmental assessment or environmental impact statement.

CEO means the Chief Executive Officer of USEC.

CEQ means the Council on Environmental Quality as defined at 40 CFR 1508.6.

CEQ Regulations means the regulations issued by CEQ (40 CFR Parts 1500–1508) to implement the procedural provisions of NEPA.

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601.101(14)).

CFR means Code of Federal Regulations.

Day means a calendar day.

Draft Environmental Impact Statement (DEIS) means a draft of the NEPA document required by section 102(2)(C) of the National Environmental Policy Act, and CEQ Regulations at 40 CFR 1508.11.

EA means an environmental assessment as defined at 40 CFR 1508.9.

Emergency Action means an unplanned action necessary to prevent, or eliminate, acute health, safety, or environmental problems.

EIS means an environmental impact statement as defined at 40 CFR 1508.11, or, unless this policy specifically provides otherwise, a Supplemental EIS.

EPA means the U.S. Environmental Protection Agency.

Filing Notice means a notice issued by the EPA (i.e., a U.S. EPA Notice of Availability) for draft and final EISs and published in the **Federal Register** to inform the public and interested agencies of the availability of an EIS, pursuant to 40 CFR 1506.9.

Final Environmental Impact Statement (FEIS) means the document required by section 102(2)(C) of NEPA; designed to inform the public how environmental factors have been considered in making a decision on a proposed action.

Floodplain means that area adjoining inland and coastal waters including the stream channel and floodway fringe subject to a 1 percent or greater probability of flooding in any given year.

FONSI means a Finding of No Significant Impact as defined at 40 CFR 1508.13.

FS means a Feasibility Study as prepared in accordance with CERCLA.

Hazardous substance means a substance identified within the definition of hazardous substances in Section 101(14) of CERCLA (42 U.S.C. 9601.101(14)). Radionuclides are hazardous substances through their listing under section 112 of the Clean Air Act (42 U.S.C. 7412) (40 CFR part 61, subpart H).

Host state means a state within whose boundaries USEC proposes an action at an existing facility or construction or operation of a new facility.

Host tribe means an American Indian tribe within whose tribal lands USEC proposes an action at an existing facility or construction or operation of a new facility. For purposes of this definition, "tribal lands" means the area of "Indian country," as defined in 18 U.S.C. 1151, that is under the tribe's jurisdiction.

Interim action means an action concerning a proposal that is the subject of an ongoing EIS and that USEC proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1.

Low enriched uranium (LEU) means uranium that has been increased in its U–235 content beyond the level found in naturally occurring uranium (0.711 percent U–235), but no greater than 20 percent. LEU has been an article of common commerce within the United States and globally for at least 30 years. It is transported via common carrier in accordance with U.S. Department of Transportation (DOT) regulations in tested and DOT-approved packaging which is highly resistant to failure in the event of transportation accidents.

Mitigation Action Plan means a document that describes the plan for implementing commitments made in a USEC EIS and its associated ROD, or, when appropriate, an EA and FONSI, to mitigate adverse environmental impacts associated with an action.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

NEPA Compliance Officer means the USEC official designated by the CEO as having responsibility for oversight and coordination of corporate compliance with USEC NEPA policy.

NEPA document means a NOI, EIS, ROD, EA, FONSI, or any other

document prepared pursuant to a requirement of NEPA or the CEQ Regulations.

NEPA review means the process used to comply with section 102(2) of NEPA.

NOI means a Notice of Intent to prepare an EIS as defined at 40 CFR 1508.22.

Notice of Availability means a formal notice, published in the **Federal Register**, that announces the issuance and public availability of a draft or final EIS. The EPA Notice of Availability is the official public notification of an EIS; a USEC Notice of Availability is an optional notice used to provide information to the public.

Pollutant means a substance identified within the definition of pollutant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

Program means a sequence of connected or related USEC actions or projects as discussed at 40 CFR 1508.18(b)(3) and 1508.25(a).

Programmatic NEPA means an EA or EIS that identifies and assesses the environmental impacts of broad-scope USEC actions.

Project means a specific USEC undertaking including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities, which may include design, construction, and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4).

ROD means a Record of Decision as described in 40 CFR 1505.2.

Scoping means the process described at 40 CFR 1501.7; "public scoping process" refers to that portion of the scoping process where the public is invited to participate, as described at 40 CFR 1501.7(a)(1) and (b)(1).

Supplemental EIS means an EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c).

USEC means United States Enrichment Corporation.

USEC proposal (or proposal) means a proposal initiated by USEC and discussed at 40 CFR 1508.23.

Wetland means those areas that possess hydrological, vegetation, and soils characteristics which define wetlands as noted in the U.S. Army Corps of Engineers definition (33 CFR 328.3(b)).

1.5 Oversight Of USEC NEPA Activities

The USEC Chief Executive Officer, or his/her designee, is responsible for overall review of USEC NEPA compliance. Further information on USEC's NEPA process and the status of individual NEPA reviews may be obtained upon written request from the NEPA Compliance Officer, United States Enrichment Corporation located at 2300 M Street, NW, suite 500, Washington, DC 20037.

2.0 USEC Planning And Decisionmaking

2.1 USEC Planning

2.1.1 USEC shall provide for adequate and timely NEPA review and analysis of USEC proposals, including those for programs, policies, and projects, in accordance with 40 CFR 1501.2 and this section of the USEC NEPA Policy. In its planning for each proposal, USEC shall include adequate time and funding for proper NEPA evaluation and analysis and for preparation of anticipated NEPA documents.

2.1.2 USEC shall begin its NEPA evaluation as soon as possible after the time that USEC proposes an action or is presented with a proposal.

2.1.3 USEC shall determine the level of NEPA evaluation and analysis required for a proposal in accordance with subsection 3.1.1 and section 4.0 of this USEC policy.

2.1.4 During the development and consideration of a USEC proposal, USEC shall review any relevant planning and decisionmaking documents, whether prepared by USEC or a Federal agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, USEC shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

2.1.5 Where appropriate, USEC shall incorporate in its NEPA evaluations and analyses consideration of biodiversity as outlined in CEQ's "Incorporating Biodiversity Considerations into Environmental Impact Analysis Under the National Environmental Policy Act" (January 1993), and pollution prevention per CEQ guidance (FR 58(18): 6478; January 29, 1993).

2.2 USEC Decisionmaking

2.2.1 USEC's NEPA process includes the systematic examination and evaluation of the possible and probable environmental consequences of a proposed action. Integration of the NEPA process into USEC project planning will occur at the earliest possible time. Section 2.3 of this USEC NEPA policy specifies how the NEPA process will be integrated with decision points for certain types of proposals (40 CFR 1505.1(b)).

2.2.2 The objectives of USEC's NEPA process is to ensure that: (1) Planning and decisionmaking is accomplished such that the USEC decisionmaker is aware of the environmental consequences associated with implementation of the proposed action and is thus able to make an informed decision; (2) the policies and goals outlined in section 1.2 are implemented; and (3) delays and conflicts later in the process are minimized.

2.2.3 USEC shall complete its NEPA evaluations and analyses of a proposal under consideration before making a decision on the proposal except as provided in sections 2.3 and 2.4 of this policy (40 CFR 1506.1).

2.2.4 USEC will utilize a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning and the environmental design arts in ensuring that all USEC decisionmaking that may impact the human environment achieves the policies and goals outlined in section 1.2 of this policy (Pub. L. 91–190; section 102[2][A]).

2.2.5 It is USEC's intent that environmental effects and values of a proposed action be considered in sufficient detail along with other non-environmental analyses of the action (such as economic, engineering, and technical benefit:cost analyses) at the earliest possible time in the decision process.

2.2.6 During the decisionmaking process for each USEC proposal, USEC shall consider the relevant NEPA analyses and documentation, public and agency comments (if any) on those analyses and documents, and USEC responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)) and shall include such documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c)).

2.2.7 If an EIS or EA is prepared for a USEC proposal, USEC shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)). USEC NEPA analyses documented in an EA or EIS shall highlight the preferred alternative as well as the other alternatives considered, and will outline the mitigation measures needed to reduce the significant environmental impacts of the preferred alternative.

2.2.8 When USEC uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), USEC may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

2.3 Interim Actions: Limitations On Actions During The NEPA Process

While USEC is preparing an EIS under section 3.0 of this policy, USEC shall take no action concerning the proposal that is the subject of the EIS before issuing a ROD, except as provided at 40 CFR 1506.1. Actions that are covered by, or are a part of, a USEC proposal for which an EIS is being prepared shall not be categorically excluded under section 4.0 unless they qualify as interim actions under 40 CFR 1506.1.

2.4 Procurement, Financial Assistance, And Joint Ventures

2.4.1 This section applies to USEC competitive and limited-source procurements, to awards of financial assistance by a competitive process, and to joint ventures entered into as a result of competitive solicitations, unless the action is categorically excluded from preparation of an EA or EIS under section 4.0 of this policy. Subsections 2.4.2, 2.4.3, and 2.4.4 of this section apply as well to USEC sole-source procurements of sites, systems, or processes, to noncompetitive awards of financial assistance, and to sole-source joint ventures, unless the action is categorically excluded from preparation of an EA or EIS under section 4.0.

2.4.2 USEC may require that offerors submit environmental data and analyses as a discrete part of the offeror's proposal (40 CFR 1506.5(a)). USEC shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required.

2.4.3 USEC shall independently evaluate and review the environmental data and analyses submitted by offerors, and will approve that information. USEC may utilize that information in USEC NEPA documents, either directly or by reference (40 CFR 1506.5(a)).

2.4.4 If an EA or EIS is required, USEC shall prepare, consider and publish the EA or EIS in conformance with sections 3.3 and 3.4 of this policy before taking any action pursuant to the award of a contract for financial assistance (except as provided at 40 CFR 1506.1 and subsection 2.3 of these requirements). If the NEPA process is not completed before the award of the contract, financial assistance, or joint venture, then the contract, financial assistance, or joint venture shall be contingent on completion of the NEPA process (except as provided at 40 CFR 1506.1 and Subsection 2.3 of these requirements). USEC shall phase subsequent contract work to allow the NEPA review process to be completed in advance of a go/no-go decision.

3.0 Policy Implementation

3.1 General Requirements

3.1.1 USEC shall determine, under the procedures in the CEQ Regulations and this Section of USEC policy, whether any USEC proposal has a significant impact on the human environment by:

(a) Preparation of an EIS;

(b) Preparation of an EA; or

(c) Determination that the proposed action is categorically excluded from preparation of either an EIS or an EA.

USEC shall prepare any pertinent documents as required by NEPA, the CEQ Regulations, or this section of USEC policy.

3.1.2 USEC may prepare a NEPA analysis and documentation for any USEC action at any time in order to further the purposes of NEPA. This may be done to analyze the consequences of ongoing activities, support USEC planning, assess the need for mitigation, fully disclose the potential environmental consequences of USEC actions, or for any other reason. Documents prepared under this paragraph shall be prepared in the same manner as USEC documents prepared under Subsection 3.1.1 of this policy. When EAs and EISs are undertaken, the economic and social impact considerations will be incorporated into the analyses of environmental impacts. Economic and social impacts by themselves, in the absence of physical environmental impacts shall not, however, determine whether or not to prepare an EA or an EIS.

3.2 Agency Review And Public Participation

3.2.1 USEC shall make its NEPA documents available to Federal agencies, states, local governments, American Indian tribes, interested groups, and the general public, in accordance with 40 CFR 1506.6.

3.2.2 Wherever feasible, USEC NEPA documents shall explain technical or scientific terms or measurements using terms familiar to the general public, in accordance with 40 CFR 1502.8.

3.2.3 USEC shall notify the host state and host tribe of a USEC determination to prepare an EA or EIS for a USEC proposal, and may notify any other state or American Indian tribe that, in USEC's judgment, may be affected by the proposal.

3.2.4 USEC may, at its discretion, adopt an agency's EIS, EA, or portions thereof, if such documents encompass the proposed USEC action.

3.3 Environmental Impact Statements

USEC shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subsection of USEC policy. USEC may prepare an EIS on any USEC action at any time to assist USEC planning and decisionmaking.

3.3.1 Notice of intent and scoping. USEC shall publish a Notice of Intent (NOI) in the **Federal Register** and conduct the EIS scoping process in accordance with 40 CFR 1501.7. Publication of the NOI in the **Federal Register** initiates the scoping process wherein USEC provides the public, Federal agencies, state, regional and local agencies, public interest groups and other interested parties the opportunity to comment on the proposed action early in the process and to affect the scope of the EIS. The NOI shall contain the elements specified in 40 CFR 1508.22 and will be published as soon as practicable after a decision is made to prepare an EIS except as provided at 40 CFR 1507.3(e). However, if there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, USEC may defer publication of the NOI until a reasonable time before preparing the EIS, provided that USEC allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, USEC shall invite comments and suggestions on the scope of the EIS. USEC shall disseminate the NOI in accordance with 40 CFR 1506.6.

3.3.2 Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a USEC EIS shall allow a minimum of 30 days for the receipt of public comments.

3.3.3 Except as provided in subsection 3.3.11 of this section, USEC may hold a public scoping meeting(s) as part of the public scoping process for a USEC EIS. USEC shall announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the **Federal Register**, news releases to the local media, or letters to affected parties. If utilized by USEC, public scoping meetings shall not be held until at least 15 days after public notification. Should USEC change the location, date, or time of a public scoping meeting, or schedule additional

public scoping meetings, USEC shall publicize these changes in the **Federal Register** or in other ways as appropriate. USEC may also utilize other means of affording the public, Federal agencies, state, regional and local agencies and other interested parties the opportunity to comment during the scoping period. These other means may include measures such as notices and news releases in local media; direct letters to and contacts with affected parties; provision of copies of the NOI and other pertinent materials in reading rooms at USEC facilities and at public facilities such as libraries; and mail surveys within areas or regions affected by the proposed action.

3.3.4 In determining the scope of the EIS, USEC shall consider all comments received during the announced comment period held as part of the public scoping process. USEC may also consider comments received after the close of the announced comment period.

3.3.5 Public Review of Environmental Impact Statements. The public review and comment period on a USEC draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). USEC may extend the period as provided in 40 CFR 1506.10(d) and/or 40 CFR 1507.3(d). Requests for extension of the comment period beyond 45 days will be evaluated. Requests may be granted as noted in 40 CFR 1502.19(d). Failure to file timely comments will not be a sufficient reason for an extension (40 CFR 1506.10(d)). The public comment period begins when EPA publishes a Notice of Availability of the document in the **Federal Register**. The host state and, as appropriate, adjacent state(s) will be provided copies of the draft EIS.

3.3.6 USEC may hold a public meeting(s) on USEC draft EISs. Such public meetings shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS and include the location, date, and time of the public hearings.

3.3.7 Final Environmental Impact Statements. USEC shall prepare a final EIS following the public comment period and any public meetings on the draft EIS. The final EIS shall respond to oral and/or written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4. Availability of the final EIS will be provided through an EPA Notice of Availability published in the **Federal Register**.

3.3.8 USEC shall use appropriate means to publicize the availability of draft and final EISs and the time and place for any public meetings on a draft EIS. The methods chosen should focus on reaching persons who may be interested in or affected by the proposal and may include the methods listed in 40 CFR 1506.6(b)(3). The host state, affected American Indian tribes, and, as appropriate, the adjacent state(s) will be provided copies of the final EIS.

3.3.9 Supplemental Environmental Impact Statements. USEC shall prepare a supplemental EIS if there are substantial changes to the proposal or significant new circumstances or information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

3.3.10 USEC may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

3.3.11 USEC shall prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any other draft and final EISs, except that scoping is optional for a supplement (40 CFR 1503.9(c)(4)). If USEC initiates a public scoping process for a supplement, the provisions of subsections 3.3.1 through 3.3.4 of this policy shall apply. If USEC decides to take action on a proposal covered by a supplemental EIS, USEC shall prepare a ROD in accordance with the provisions of subsection 3.7 of this section.

3.3.12 When applicable, USEC will incorporate an EIS supplement into any related formal administrative record on the action that is the subject of the EIS supplement or determination (40 CFR 1502.9(c)(3)).

3.3.13 Records of Decision. No decision may be made on a proposal covered by an EIS during a 30-day "waiting period" following completion of the final EIS, except as provided at 40 CFR 1506.1 and 1506.10(b) and subsection 2.3 of these requirements. The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the **Federal Register**.

3.3.14 If USEC decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and subsection 2.3). No action shall be taken until the decision has been made public.

3.3.15 USEC RODs shall be published in the **Federal Register** and made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and subsection 3.7.

3.3.16 USEC may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of subsections 3.7.2 and 3.7.3 of this section.

3.4 Environmental Assessments

USEC shall prepare and circulate EAs and related FONSIs in accordance with the requirements of the CEQ Regulations, as supplemented by this subsection of USEC policy.

3.4.1 Requirements for Environmental Assessments. As required by 40 CFR 1501.4(b), USEC shall prepare an EA for a proposed USEC action that is described in the classes of actions listed in section 4.3 of these procedures, and for a proposed USEC action that is not described in any of the classes of actions listed in section 4.0. An EA is not required, however, if USEC has decided to prepare an EIS. USEC may prepare an EA on any action at any time in order to assist USEC planning and decisionmaking.

3.4.2 Purposes. A USEC EA shall serve the purposes identified in 40 CFR 1508.9(a), which include providing sufficient evidence and analysis for determining whether to prepare an EIS or to issue a FONSI.

3.4.3 Content. A USEC EA shall comply with the requirements of subsection 3.4.4 of this policy and of those found at 40 CFR 1508.9. In addition to any other alternatives, USEC shall assess the no action alternative in an EA, even when the proposed action is specifically required by legislation or a court order.

3.4.4 Format. An EA is a concise analytical document prepared to determine the extent of potential environmental impacts of a project and decide whether or not those impacts are significant. The EA will incorporate by reference any baseline environmental documents, limiting descriptions and evaluations relevant to the environmental resources affected by the proposed action.

An EA should consist of the following sections:

1. Purpose and need for action
2. Description of the proposed action and alternatives (including no-action)
3. Description of the affected environment
4. Environmental consequences of the proposed action and alternatives
5. Summary
6. List of agencies and/or individuals contacted
7. List of preparers
8. Appendices as necessary to support the EA.

3.4.5 Public Participation. Public scoping is not required for EA preparation, however, depending on the scope of the project and the potential environmental impacts of the proposed action, public scoping may be warranted. The scoping process

(Subsections 3.3.1 through 3.3.4 and 40 CFR 1501.7), if deemed necessary, should begin early in the EA preparation process to provide timely and pertinent public input which would be useful if a decision is reached to prepare an EIS.

3.4.6 Distribution. Copies of the EA and FONSI will be provided to the host state, affected American Indian tribes, and, as appropriate, adjacent states.

3.4.7 Findings of No Significant Impact. USEC shall prepare a FONSI only if the related EA supports the finding that the proposed action will not have a significant effect on the human environment. If a required USEC EA does not support a FONSI, USEC shall prepare an EIS and issue a ROD before taking action on the proposal addressed by the EA, except as permitted under 40 CFR 1506.1 and subsection 2.3 of this policy.

3.4.8 In addition to the requirements found at 40 CFR 1508.13, a USEC FONSI shall include the following:

(a) A summary of the supporting EA, including a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, and projected impacts;

(b) Any commitments to mitigations that are essential to render the impacts of the proposed action not significant, beyond those mitigations that are integral elements of the proposed action, and a reference to the Mitigation Action Plan prepared under subsection 3.6 of this section;

(c) The date of issuance; and

(d) The signature of the USEC approving official.

3.4.9 USEC shall make FONSIs available to the public as provided at subsection 3.4.6, and 40 CFR 1501.4(e)(1) and 1506.6; USEC shall also make copies available for inspection in the appropriate USEC public reading room(s) or other appropriate location(s) for a reasonable time.

3.4.10 In certain circumstances, USEC shall issue a proposed FONSI for a public review and comment period of 30 days (except as provided for at 40 CFR 1507.3(d)), before making a final determination on the FONSI. These circumstances are addressed at 40 CFR 1501.4(e)(2) as supplemented by section 4.4 of these procedures. USEC may issue a proposed FONSI for public review and comment in other situations as well.

3.4.11 Upon issuance of the FONSI, USEC may proceed with the proposed action subject to any mitigation commitments expressed in the FONSI, or as appropriate, the Mitigation Action Plan.

3.4.12 USEC may revise a FONSI at any time, so long as the revision is supported by an existing EA. A revised FONSI is subject to all provisions of subsections 3.4.7 through 3.4.11 of this policy.

3.5 Programmatic NEPA Documents

3.5.1 When required to support a USEC programmatic decision (40 CFR 1508.18((b)(3)), USEC shall prepare a programmatic EIS or EA (40 CFR 1502.4). USEC may also prepare a programmatic EIS or EA at any time to further the purposes of NEPA.

3.5.2 A USEC programmatic NEPA document shall be prepared, issued, and circulated in accordance with the requirements for any other NEPA document, as established by the CEQ Regulations and this USEC policy.

3.5.3 USEC shall evaluate programmatic EISs prepared under this subsection at least every five years. USEC shall determine whether to prepare a new programmatic EIS or supplement the existing EIS, as appropriate.

3.5.4 USEC shall evaluate programmatic EAs at least every five years to determine whether the existing programmatic EA remains adequate, whether to prepare a new programmatic EA, revise the FONSI, or prepare a programmatic EIS, as appropriate.

3.6 Mitigation Action Plans

3.6.1 Following completion of each EIS and its associated ROD, USEC shall prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the ROD. If no mitigation commitments are made in the ROD, a MAP is not required. The Mitigation Action Plan shall be made available to the public and shall explain how the corresponding mitigation measures, designed to mitigate adverse environmental impacts associated with the course of action directed by the ROD, will be planned and implemented. The Mitigation Action Plan shall be prepared before USEC takes any action directed by the ROD that is the subject of a mitigation commitment.

3.6.2 For EAs, under certain circumstances as specified in subsection 3.4.8 of this policy, USEC shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant. If such commitments are not necessary, a MAP is not required. The Mitigation Action Plan shall address all commitments to such necessary mitigations and explain how mitigation will be planned and implemented. The Mitigation Action Plan shall be prepared before the FONSI is issued and shall be referenced therein.

3.6.3 Each Mitigation Action Plan shall be as complete as possible, commensurate with the information available regarding the course of action either directed by the ROD or the action to be covered by the FONSI, as appropriate. USEC may revise the Plan as more specific and detailed information becomes available.

3.6.4 USEC shall make copies of the Mitigation Action Plans available for inspection at the appropriate USEC site(s) or other appropriate location(s) for a reasonable time. Copies of the Mitigation Action Plans shall also be available upon written request to the point of contact noted in subsection 1.6.

3.7 Classified, Confidential, and Otherwise Exempt Information

3.7.1 USEC shall not disclose classified, confidential, or other information that USEC otherwise would not disclose pursuant to title IX of the Energy Policy Act (42 U.S.C. 2297b-13) (Control of Information) or other applicable statutes, except as provided by 40 CFR 1506.6(f).

3.7.2 To the fullest extent possible, USEC shall segregate any information that is exempt from disclosure requirements into an appendix as provided for at 40 CFR 1507.3(c), to allow public review of the remainder of a NEPA document.

3.8 Coordination With Other Environmental Review Requirements

3.8.1 In accordance with 40 CFR 1500.4(k) and (o), 1502.25, and 1506.4, USEC shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements to the fullest extent possible.

3.8.2 To the extent possible, USEC shall determine the applicability of other environmental requirements early in the planning process, in consultation with Federal agencies when necessary or appropriate, to ensure compliance and to avoid delays, and shall incorporate any relevant requirements as early in the NEPA process as possible.

3.8.3 USEC will integrate its NEPA requirements for hazardous waste remediation actions being conducted under CERCLA into the Feasibility Study (FS). When the FS is prepared in accordance with 40 CFR 300, a second NEPA document is usually not required. The cover and title page of the FS and ROD will indicate that the document is also intended to comply with NEPA. When an FS is not prepared in accordance with 40 CFR 300,

appropriate NEPA documentation will be prepared.

3.9 Interagency Cooperation

For USEC programs that involve a Federal agency or agencies in related decisions subject to NEPA, USEC will comply with the requirements of 40 CFR 1501.5 and 1501.6. As part of this process, USEC shall cooperate with the involved agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either. Further, where appropriate and acceptable to the involved agencies, USEC shall develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

3.10 Variances

3.10.1 Emergency Actions. USEC may take an action without observing all provisions of these procedures or the CEQ Regulations, in accordance with 40 CFR 1506.11, in emergency situations that demand immediate action. USEC shall consult with CEQ as soon as possible regarding alternative arrangements for emergency actions having significant environmental impacts. USEC shall document, including publishing a notice in the **Federal Register**, emergency actions covered by this paragraph; this documentation shall identify any adverse impacts from the actions taken, further mitigation necessary, and any NEPA documents that may be required.

3.10.2 Reduction of Time Periods. On a case-by-case basis, USEC may reduce time periods established in these procedures that are not required by the CEQ Regulations. If USEC determines that such reduction is necessary, USEC shall publish a notice in the **Federal Register** specifying the revised time periods and the rationale for the reduction.

4.0 Typical Classes of Actions

4.1 Level of NEPA Review

4.1.1 This section identifies USEC actions that normally:

(a) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (Subsection 4.2 of this policy);

(b) Require preparation of an EA, but not necessarily an EIS (Subsection 4.3 of this policy); or

(c) Require preparation of an EIS (Subsection 4.3 of this policy).

4.1.2 Any completed, valid NEPA analysis and document, including those completed by the U.S. Department of Energy for USEC facilities prior to July 1, 1993 does not have to be repeated, and no completed NEPA documents need to be redone, except as provided in Subsections 3.5.3 and 3.5.4 of these procedures.

4.2 Categorical Exclusion Requirements

4.2.1 Categorical Exclusions encompass classes of actions which do not normally have, either individually or cumulatively, a significant impact on the quality of the human environment and require neither the preparation of an EA or EIS. USEC may, however, choose to prepare an EA or an EIS on any action at any time to aid USEC decisionmaking. For a project to be considered and assessed as a categorically excluded activity, it must satisfy the following conditions:

(a) The proposed activity would not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, or health.

(b) The proposed activity would not require siting and construction or major expansion of waste storage (> 90 days storage), disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, and groundwater).

(c) The proposed activity would not disturb hazardous substances, pollutants or contaminants preexisting in the environment such that there would be uncontrolled or unpermitted releases.

(d) The proposed activity would not adversely affect environmentally sensitive resources including, but not limited to: (i) Property of historic, archaeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places; (ii) federally-listed threatened or endangered species or their habitat (including critical habitat), federally-proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat; (iii) floodplains and wetlands; (iv) areas having a special designation such as federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and federal wildlife refuges, and marine sanctuaries; (v) prime agricultural lands; (vi) special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region) and (vii) tundra, coral reefs, or rain forests.

Additionally, for a proposed action to be considered for a categorical exclusion, the following statement should be applicable:

(e) This project would pose no significant individual or cumulative effect on the human environment. This project would not adversely affect any environmentally sensitive resources and is not part of a proposed action that is or may be the subject of an Environmental Assessment or Environmental Impact Statement. There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposed project.

4.2.2 Categorical Exclusions Applicable to General USEC Actions. The following types of actions are categorical exclusions applicable to general USEC actions. This does not, however, preclude these types of actions from the normal environmental oversight and monitoring that would occur as a routine part of USEC's environmental compliance activities.

(a) Routine actions, such as rulemaking, necessary to support the normal conduct of corporate business such as administrative, financial, and personnel actions.

(b) Sale, purchase, trade, import, or export of low enriched uranium (20 percent or less assay U-235). This includes the shipment of LEU (or uranium hexafluoride) in DOT approved canisters and overpacks via common carrier.

(c) Sale, purchase, trade, import, or export of natural and depleted Uranium materials.

(d) Transfer, lease, disposition, or acquisition of property, if the use is to remain unchanged from current uses.

(e) Award of contracts for technical support or personnel services.

(f) Information gathering, including but not limited to: literature surveys, inventories, and document preparation (e.g. feasibility studies, conceptual design reports, planning documents)

(g) Technical and planning assistance to state, federal, international, and local organizations.

(h) Employee health and safety training and emergency preparedness activities.

(i) Establishment of prices for enriched uranium.

(j) In accordance with applicable state and federal regulations, shipment of materials necessary to transact USEC business, including shipment of low-level radioactive wastes or hazardous wastes to an approved, permitted, commercial or DOE facility that normally accepts these wastes. USEC shall comply with all applicable DOT, NRC, EPA, state, or local regulatory requirements.

4.2.3 Categorical Exclusions Applicable to Facility Operation. The following types of actions are categorical exclusions applicable to facility operations. This does not, however, preclude these types of actions from the normal environmental oversight and monitoring that would occur as a routine part of USEC's environmental compliance activities.

(a) Installation of fencing within existing security areas or facilities.

(b) Routine maintenance activities and custodial services for buildings, structures, infrastructures (e.g., security fences), and equipment, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that the replacement performs the same or similar function and does not require major facility modifications. Routine maintenance activities include, but are not limited to:

- Repair of facility equipment, such as lathes, mills, pumps and presses.
- Door and window repair or replacement.
- Wall, ceiling, or floor repair.
- Minor reroofing.
- Plumbing, electrical utility, and telephone service repair.
- Routine replacement of high-efficiency particulate air filters, and routine air filter cleaning.
- Inspection and/or maintenance of currently installed utility poles.
- Repair of road embankments.
- Repair or replacement of fire protection sprinkler systems.
- Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing as long as the temporary access does not adversely affect environmentally sensitive areas.
- Erosion control and soil stabilization measures (such as reseeding and revegetation).
- Surveillance and maintenance of surplus facilities.
- Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).
- Routine testing and calibration of facility components, subsystems, or portable equipment (including but not limited to, control valves, transformers, capacitors).
- Routine decontamination and/or cleanup of spot or minor radiological contamination or hazardous/toxic materials on the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming) and removal of contaminated intact equipment (labware) and other materials (e.g., gloves and other clothing).
- Repair of fencing.
- Modification of air conditioning systems.

(c) Routine training exercises and simulations (including, but not limited to, firing-range training, emergency response training, fire fighter and rescue training, and spill cleanup training).

(d) Acquisition, installation, operation, and removal of communication systems, data processing equipment, alarms, and similar electronic equipment.

(e) Routine, onsite USEC storage at an existing facility of activated equipment and material (including lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

(f) Removal of asbestos-containing materials from buildings in accordance with 40 CFR part 61 (National Emissions Standards for Hazardous Air Pollutants), subpart M (National Emission Standards for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), § 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), § 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite), other appropriate Occupational Safety and Health Administration standards in title 29, chapter XVII of the CFR, and appropriate state and local requirements, including certification of removal contractors and technicians.

(g) Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

(h) Energy conservation activities (e.g. replacement of lighting, hot water heaters, thermostats) that do not involve construction of new facilities.

(i) Installation of, or improvements to, equipment for personnel safety and health, including, but not limited to, eye washes, safety showers, radiation monitoring devices, and fumehoods and associated collection and exhaust systems, provided that emissions would not increase.

(j) Minor modifications or improvements to cooling water systems within an existing building or structure provided that such modifications or improvements do not result in an exceedance of any applicable permit conditions or effluent limitations.

(k) Installation or modification of retention tanks or small (normally under one acre) basins and associated piping and pumps for existing operations to control runoff or spills (such as under 40 CFR part 112). Modifications include, but are not limited to, installing liners or covers.

(l) Modifications to structures, systems or operating procedures that do not result in modification to existing emissions or discharge permits.

(m) Siting, construction, operation, and maintenance of above ground storage tanks within the secured site boundary.

(n) Siting, construction, or operation of support buildings and support structures and/or modifications of existing buildings, structures, or roadways, within the secured site boundary. Support buildings and structures (and/or modifications) include, but are not limited to, those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes.

(o) Siting, construction, and operation of small-scale support buildings and structures within the reservation boundary but outside the secured area, where utilities are accessible.

(p) Expansion of existing uranium hexafluoride cylinder storage yards within existing facility boundaries.

(q) Activities involving wetlands that meet the requirements of the U.S. Army Corps of Engineers Nationwide Permit Program (33 CFR 325 to 330).

(r) Installation, operation, or abandonment of production water wells for operational use.

4.2.4 Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research. The following types of actions are categorical exclusions applicable to site characterization, monitoring and general research. This does not, however, preclude these types of actions from the normal environmental oversight and surveillance that would occur as a routine part of USEC's environmental compliance program.

(a) Site characterization and environmental monitoring, including siting, construction, operation, or dismantlement or closing (abandonment) of characterization and monitoring devices and siting, construction, or operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis. Activities covered include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. Specific activities include, but are not limited to:

- Geological, geophysical (such as gravity, magnetic, electrical, seismic, and radar), geochemical, and engineering surveys and mapping, including the establishment of survey marks.
- Installation and operation of ambient air monitoring equipment.
- Sampling and characterization of water, soil, rock, or contaminants.
- Sampling and characterization of water effluents, air emissions, or solid waste streams.
- Sampling of non-endangered (Federal and/or state listed) flora or fauna.
- Aerial surveys.

(b) Drop, puncture, water immersion, thermal, and fire tests of transport packaging for radioactive and hazardous materials to certify that the designs meet the requirements of 49 CFR 173.411 and 173.412 and requirements of severe accident conditions as specified in 10 CFR 71.73.

(c) Indoor bench-scale research projects and conventional laboratory operations (for example, preparation of chemical standards and sample analysis) within existing laboratory or production facilities.

(d) Outdoor ecological and other environmental research, inventory, and information collection activities that do not involve sampling techniques that would result in permanent change to the ecosystem, or that would adversely impact listed threatened or endangered species or critical habitat.

(e) Pilot-scale, short duration (less than two-year) research projects within existing laboratory or production facilities.

(f) Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools.

(g) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells and the abandonment of monitoring wells.

(h) Aquifer response testing.

(i) Installation and operation of meteorological towers and associated activities, including assessment of potential wind energy resources.

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

4.2.5 Categorical Exclusions Applicable to Removal and Cleanup Activities. The following types of actions are categorical exclusions for removal and cleanup activities conducted in accordance with RCRA or CERCLA.

(a) Removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and removal-type actions similar in scope under RCRA and other authorities (including those taken as partial closure actions and those taken before corrective action), including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the removal action. These actions will meet the CERCLA regulatory cost and time limits or satisfy either of the two regulatory exemptions from those cost and time limits (National Contingency Plan, 40 CFR part 300). These actions include, but are not limited to:

- Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination.
- Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain.
- Removal of an underground storage tank including its associated piping and underlying containment systems in compliance with RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination.
- Repair or replacement of leaking containers.
- Capping or other containment of contaminated soils or sludges if the capping or containment would not affect future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products into soil, groundwater, surface water, or air.
- Drainage or closing of man-made surface impoundments if needed to maintain the integrity of the structures.
- Confinement or perimeter protection using dikes, trenches, ditches, or diversions if needed to reduce the spread of, or direct contact with, the contamination.
- Stabilization, but not expansion, of berms, dikes, impoundments, or caps if needed to maintain integrity of the structures.
- Drainage controls (for example, run-off or run-on diversion) if needed to reduce offsite migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum or natural gas products or to prevent precipitation or run-off from other sources from entering the release area from other areas.
- Segregation of wastes that react with one another to result in adverse environmental impacts.
- Use of chemicals and other materials to neutralize the pH of wastes.
- Use of chemicals and other materials to retard the spread of the release or to mitigate its effects if the use of such chemicals would reduce the spread of, or direct contact with, the contamination.
- Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants if appropriate filtration or gas treatment is in place.
- Installation of fences, warning signs, or other security or site control precautions if humans or animals have access to the release.
- Provision of an alternative water supply that would not create new water sources if necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(b) The siting, construction, or operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities, and pilot-scale (generally less than one acre) waste stabilization and containment facilities (including siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis) if the action would not unduly limit the choice of reasonable remedial alternatives (by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives).

(c) Improvements to environmental monitoring and control systems of an existing building or structure (for example, changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems) if during subsequent operations (1) any substance collected by the environmental control systems would be recycled, released, or disposed of within existing permitted facilities and (2) there are applicable statutory or regulatory requirements or permit conditions for disposal, release, or recycling of any hazardous substance or CERCLA-excluded petroleum natural gas products that are collected or released in increased quantity or that were not previously collected or released.

(d) Siting, construction (or modification or expansion), operation, or decommissioning of an onsite facility for storing packaged hazardous waste (as designated in 40 CFR part 261) for 90 days or less or as provided in 40 CFR part 262.34 (d), (e), or (f) (e.g., accumulation or satellite areas).

(e) Modifications within an existing structure, including increases in capacity, used for storing, packaging, or repacking waste other than high-level radioactive waste or spent nuclear fuel, to handle the same class of waste as currently handled at that structure according to applicable regulatory requirements.

(f) Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include, but are not limited to, adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

4.3 Environmental Assessments (Actions Normally Requiring an EA)

4.3.1 When a proposed action does not meet the requirements of a categorical exclusion, or is listed as requiring an EA in this section, then an EA will be prepared to assess the potential environmental impacts of the proposed action except as provided in subsection 4.4 of these requirements. An EA may also be prepared on any action at any time to aid USEC decisionmaking (Subsection 3.4 of these procedures). The analysis presented in the EA would assess whether an EIS is necessary or a FONSI should be prepared.

4.3.2 Actions Normally Requiring an Environmental Assessment

(a) Siting, construction, and operation of additional or new waste treatment facilities (e.g., new sewage treatment facilities).

(b) Siting, construction, operation or decommissioning of additional or new hazardous or mixed waste storage facilities outside the secured boundary or for handling new waste streams (i.e., requires modification to the RCRA permit, RCRA/TSCA characterization, or is a new radiological waste stream).

(c) Construction, operation and closure of non-hazardous waste disposal facilities (landfills).

(d) Wetlands mitigation, creation, and restoration.

(e) Major construction projects outside the secured boundary.

(f) Decontamination and decommissioning projects within buildings.

(g) Major new programmatic procurement or initiative with a potential for significant environmental impact.

4.4 Environmental Impact Statements (Actions Normally Requiring an EIS)

4.4.1 EIS preparation will conform to the requirements of 40 CFR 1502, 1503 and other relevant sections of the Council on Environmental Quality Regulations. USEC may prepare an EIS on any action at any time to aid USEC decisionmaking (Subsection 3.3 of these procedures).

4.4.2 Actions Normally Requiring an Environmental Impact Statement

(a) Decontamination and decommissioning of an existing uranium enrichment plant or enrichment process building.

(b) Siting, construction, operation or decommissioning of a new uranium enrichment plant.

(c) Siting, construction, operation and decommissioning of a major production plant (e.g., uranium hexafluoride conversion).

Appendix A—Environmental Effects Of USEC Actions Abroad; Effects on the Global Commons

A–1 General

A–1.1 Background

Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," of January 8, 1979 (3 CFR 1979 Comp., p. 356; 44 FR 1957, Jan. 4, 1979) represents the United States Government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States, its territories and possessions. The Executive Order requires that all Federal agencies taking actions subject to environmental review under the Order adopt their own implementing procedures. It is USEC policy to comply with the letter and spirit of the Executive Order. In endeavoring to so comply, USEC has established in this Appendix guidelines and procedures applicable to USEC actions which are of the nature of those addressed by the Executive Order.

A–1.2 Purpose and Scope

These guidelines and procedures are intended for use by all persons acting on behalf of USEC in endeavoring to ensure compliance with Executive Order 12114. The guidelines and procedures are not intended to create or enlarge any procedural or substantive rights or cause of action against USEC.

A–1.3 Applicability

These guidelines apply to all organizational elements of USEC.

A–2 Actions for Which Environmental Review Is Required

A–2.1 Categories of Actions and Mandatory Environmental Review Requirements

In the decisionmaking process for actions that would fall into the following categories if undertaken by DOE, for example, or another federal agency, USEC will prepare and take into consideration the documents or studies specified below:

A–2.1.1 Major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica).

Actions in this category require the preparation of an environmental impact statement including, as appropriate, generic, program and specific statements.

A–2.1.2 Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in this action.

Actions in this category require the preparation of either:

(a) A bilateral or multilateral environmental study relevant or related to the proposed action. The study is to be conducted by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(b) A concise analysis of the environmental issues involved including environmental assessments, summary environmental analyses, or other appropriate documents.

A–2.1.3 Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

• A product or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk (see Annex 1); or

• A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

For actions in this category, USEC will either:

(a) Prepare a document as specified in section A–2.1.2(a); or

(b) Prepare a document as specified in section A–2.1.2(b).

A–2.1.4 Major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President pursuant to section 2–3(d) of Executive Order 12114 or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

For actions in this category, USEC will either:

(a) Prepare a document as specified in section A–2.1.1; or

(b) Prepare a document as specified in section A–2.1.2(a); or

(c) Prepare a document as specified in section A–2.1.2(b).

A–3 Actions Exempted From Mandatory Environmental Review

A–3.1 Actions Exempted by Executive Order 12114

A–3.1.1 The following actions are exempt from these guidelines and procedures:

(a) Actions not having a significant effect on the environment outside the United States, as determined by USEC. (Actions having a potential significant impact on the United States, its territories or possessions are subject to the provisions of the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR part 1500, November 29, 1978) and the USEC NEPA Policies and Procedures).

(b) Actions taken by the President.

(c) Actions taken by or pursuant to the direction of the President or a Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict.

(d) Intelligence activities and arms transfers.

(e) Actions taken with respect to "physical projects" and any other export in connection with such projects, pursuant to the definition of "physical projects" contained in "Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114," established by the Department of State, 44 FR 65560 (November 13, 1979). For purposes of Executive Order 12114, environmental review of these actions is governed by the Unified Procedures, and all exclusions contained therein.

(f) Votes and other actions in international conferences and organizations.

(g) Disaster and emergency relief action.

A–3.2 Actions Exempted by USEC

A–3.2.1 USEC has determined that the general classes of actions which are listed in Annex 2 generally do not have significant environmental impacts requiring review under these guidelines. They are hereby excluded from mandatory environmental review under these guidelines and procedures unless USEC determines that a particular action within such classes will have a significant environmental effect requiring such review. USEC may amend or expand Annex 2, as appropriate.

A–3.2.2 USEC may exempt, on a case-by-case basis, any action from these guidelines and procedures when such exemption is determined by USEC to be necessary to meet:

(a) Emergency circumstances;

(b) Situations involving exceptional foreign policy or national security sensitivities;

(c) Other such special circumstances.

A–3.2.3 In utilizing an exemption pursuant to section A–3.2.2 above, the USEC will consult with the Department of State and the Council on Environmental Quality as soon as is feasible.

A–3.3 Required Documentation for Exempted Actions

For actions in connection with which USEC utilizes any exclusion or exemption pursuant to section A–3.1 or A–3.2 of these guidelines and procedures, the Department will prepare a brief record which describes the basis for its determination to utilize such exclusion or exemption.

A–4 Other Provisions

A–4.1 Public Involvement

USEC will provide for public involvement in the environmental review process conducted pursuant to these guidelines and procedures to the following extent.

A–4.1.1 Environmental impact statements prepared pursuant to sections A–2.1.1 or A–2.1.4(a) of these guidelines and procedures shall be subject to the provisions of:

(a) USEC procedures regarding publication of a Notice of Intent to prepare an environmental impact statement and public involvement in the environmental impact statement scoping process;

(b) 40 CFR 1502.9 regarding preparation of a draft and final environmental impact statement;

(c) 40 CFR 1503 regarding comment procedures for a draft environmental impact statement.

A–4.1.2 Documents or studies prepared pursuant to sections A–2.1.2, A–2.1.3, or A–2.1.4(b) and A–1.3 of these guidelines and procedures are not subject to the public involvement procedures in A–4.1.1(a) through A–4.1.1(c) above. USEC may, at its discretion, elect to utilize any or all of these procedures for any such document or study.

A–4.2 Timing

A–4.2.1 USEC will commence preparation of environmental documents required by these guidelines as close as practicable to the time USEC is developing or is presented with a proposal, and complete such documents early enough so that they can serve practically as an important contribution to the decisionmaking process.

A–4.2.2 Until an environmental document required by these guidelines has been completed and considered, USEC will take no action concerning the proposal which would have an adverse environmental impact or limit or prejudice the choice of reasonable alternatives.

A–4.2.3 For actions which have significant impacts both on the environment of the United States, its territories or possessions and on the environment of foreign nations or the global commons, documents prepared pursuant to sections A–2.1.1, A–2.1.2, or A–2.1.3 of these guidelines analyzing the impacts outside the U.S. will, to the extent practicable, be prepared and reviewed in conjunction with the analyses of the domestic impacts of the proposed action.

A–4.3 Contents

A–4.3.1 Environmental impact statements prepared pursuant to section A–2.1.1 or A–2.1.4(a) of these guidelines will follow the recommended format of 40 CFR 1502.10 and contain the types of information specified in 40 CFR 1502.11–1502.18.

A–4.3.2 Bilateral or multilateral environmental studies prepared pursuant to sections A–2.1.2(a), A–2.1.3(a), or A–2.1.4(a) will contain a currently valid analysis of all significant environmental impacts of the proposed action.

A–4.3.3 Environmental analyses prepared pursuant to section A–2.1.2(a), A–2.1.3(b), or A–2.1.4(c) will include brief discussions of:

(a) The proposed action and the need therefore;

(b) The reasonable alternatives to the proposed action which could be implemented directly or indirectly by the United States; and

(c) All significant environmental impacts associated with the proposed action and the reasonable alternatives.

A–4.4 Notice of Availability

A–4.4.1 USEC will, as soon as feasible, inform Federal agencies with relevant interest and expertise of the availability of any documents prepared pursuant to these guidelines.

A–4.4.2 USEC will determine, after consultation with the Department of State, the appropriate time and manner for informing an affected nation of the availability of any relevant documents prepared pursuant to these guidelines.

A–4.4.3 As soon as practicable after notification to an affected nation in accordance with section 4.3.2 of these guidelines, USEC will provide notice to the public of the availability of the environmental review documents specified in sections A–2.1.1, A–2.1.2, A–2.1.3, and A–2.1.4 of this appendix.

A–4.5 Modifications to Contents, Timing and Availability

USEC will make appropriate modifications to the contents, timing, and availability of documents, where necessary, to:

A–4.5.1 Enable USEC to decide and act promptly as and when required;

A–4.5.2 Avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

A–4.5.3 Ensure appropriate reflection of:

(a) Diplomatic factors;

(b) International commercial, competitive, and export promotion factors;

(c) Needs for governmental or commercial confidentiality;

(d) National security considerations;

(e) Difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(f) The degree to which USEC is involved in or able to effect a decision to be made.

A–4.5.4 Modifications to the contents of documents might include, for example, the use of generic, typical, or hypothetical environmental impact analyses where critical site specific data cannot be obtained from an affected foreign nation. Regarding modifications to the availability of a document, where an affected nation notifies USEC of its desire not to notify the public of the availability of a document prepared pursuant to sections A–2.1.2, A–2.1.3, A–2.1.4(b), or A–2.1.4(c) of these guidelines, USEC may waive the requirements of section A–4.4.3 above regarding notices of availability.

A–4.6 Coordination With the Department of State

USEC will coordinate all communications with foreign governments concerning environmental agreements and other arrangements implementing these guidelines with the Department of State.

A–4.7 Duplication of Resources

A–4.7.1 USEC will not have to prepare any document or study required by section A–5.2.1 of these guidelines if it determines that a document or study already exists that is adequate in scope and content to meet the requirements of these guidelines.

A–4.7.2 USEC may adopt all or part of existing environmental analyses, including those prepared by foreign countries or international organizations, when USEC determines that these analyses are adequate in scope and content to fulfill the requirements of these guidelines.

A–4.7.3 USEC will, in the early stages of preparing any document or study described in section 2.1 above, request the cooperation of any Federal agency which the Corporation determines to possess a statutory mission or expertise relevant to the proposed action.

A–4.7.4 Where an action involves Federal agencies as well as USEC, a lead organization, as determined by those involved, will have responsibility for implementing the provisions of Executive Order 12114 using its own procedures implementing the Executive Order.

A–4.7.5 If an action that would constitute a major Federal action, if undertaken by DOE, for example, or another federal agency, having significant effects on the environment of the United States or the global commons requires preparation of an environmental impact statement by USEC and if the action is included in section A–2.1.2 or A–2.1.3 above as an action having significant effects upon the environment of a foreign nation, the environmental impact statement does not have to contain a review of these foreign impacts. The appropriate type of environmental review, as described in section A–2.1.2 or A–2.1.3 above, may be issued as a separate document.

A–4.8 Miscellaneous Provisions

The provisions of sections A–3.1 and A–3.2 regarding exclusions or exemptions from these procedures do not apply to actions that would constitute major Federal actions, if undertaken by DOE, for example, or another federal agency, significantly affecting the environment of the global commons unless permitted by law.

A–4.9 Definitions

A–4.9.1 Environment means the natural and physical environment, and it excludes social, economic, and other environments. Social and economic effects do not give rise to any requirements under these guidelines.

A–4.9.2 Federal Action means any action that is potentially subject to United States Government control and responsibility. It includes actions that are implemented, funded or approved directly or indirectly by the United States Government. It does not include actions in which the United States participates in an advisory, information gathering, representational or diplomatic capacity but does not implement, fund or approve the action or cause the action to be implemented. An action significantly affects the environment if it does significant harm to the environment even though on balance USEC believes the action to be beneficial to the environment.

A–4.9.3 Foreign Nation means any territory under the jurisdiction of one or more foreign governments, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of a foreign nation's continental shelf or, to the extent its claim of jurisdiction is recognized by the United States, its fisheries zone, shall be considered to be actions having significant environmental effects on that foreign nation.

A–4.9.4 United States means the States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, American Samoa, the United States Virgin Islands, Guam and the other territories and possessions of the United States, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of the continental shelf of the United States, or on resources of United States Fisheries Conservation Zones subject to the jurisdiction of the United States, shall be considered to be actions having significant environmental effects in the United States.

A–4.9.5 Global Commons is equivalent to areas outside the jurisdiction of any nation and means all areas not described in subsection A–4.9.3 and not described in Subsection A–4.9.4 above.

A–4.10 Compliance

These guidelines are intended for use by all persons acting on behalf of USEC in carrying out the provisions of Executive Order 12114. Any deviations from the guidelines must be soundly based and must have the advance approval of the Chief Executive Officer, U.S. Enrichment Corporation.

Annex 1—Illustrative List for Determining Compliance With Section A–2.1.3

1. The following is an illustrative list of the products, emissions and effluents addressed by section A–2.1.3 of these guidelines: asbestos, acrylonitrile, pesticides, mercury, arsenic, polychlorinated biphenyls, vinyl chloride, isocyanates, benzene, beryllium, and cadmium.

2. The following is an illustrative list of the products, emissions, and effluents not encompassed by section A–2.1.3: ammonia, chlorine, sulphuric acid, sulphur dioxide, sulfate and sulfate liquors, caustic soda, nitric acid, nitrogen oxides, and phosphoric acid.

Annex 2—Actions Normally Excluded by USEC From Preparation of an Environmental Impact Statement, Bilateral or Multilateral Environmental Study or Concise Environmental Analysis Under These Guidelines

1. Approval of USEC participation in international "umbrella" agreements for cooperation in research and development which do not commit the United States to any specific projects or activities.

2. Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations.

3. Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.

4. Sale, purchase, trade, import, or export of low enriched uranium (20 percent or less assay U–235). This includes the shipment of LEU (or uranium hexafluoride) in DOT approved canisters and overpacks via common carrier.

[FR Doc. 93–20603 Filed 8–24–93; 8:45 am]

BILLING CODE 6276–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 163
Wednesday, August 25, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Monday, August 30, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-20658 Filed 8-20-93; 4:35 pm]

BILLING CODE 6210-01-P

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 20, 1993.

PLACE: On board *Mississippi V* at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93-20700 Filed 8-23-93; 11:54 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 21, 1993.

PLACE: On board *Mississippi V* at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93-20701 Filed 8-23-93; 11:54 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 8:30 a.m., September 22, 1993.

PLACE: On board *Mississippi V* at Port of Rosedale, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93-20702 Filed 8-23-93; 11:54 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 24 1993.

PLACE: On board *Mississippi V* at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93-20703 Filed 8-23-93; 11:54 am]

BILLING CODE 3710-GX-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-24]

TIME AND DATE: August 30, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-673 (Preliminary) (Sebacic Acid from China)—briefing and vote
5. Outstanding action jackets—
   1. GC-93-086, Federal Register notice in Inv. No. 337-TA-345 (Certain Anisotropically Etched One Megabit and Greater DRAMs, Components Thereof, and Products Containing Such DRAMs).
   2. GC-93-087, Federal Register notice in Invs. Nos. 337-TA-334 (Condensers) and 337-TA-331 (Memory Controllers).
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: August 20, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-20789 Filed 8-23-93; 3:16 pm]

BILLING CODE 7020-02-P

Corrections

Federal Register
Vol. 58, No. 163
Wednesday, August 25, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 073093A]

Groundfish of the Gulf of Alaska

Correction

In rule document 93-18609 appearing on page 41438 in the issue of Wednesday, August 4, 1993, make the following corrections:

1. On page 41438, in the second column, in the **SUMMARY**, in the first line, remove the word "in".

2. On the same page, in the third column, in the third paragraph, in the sixth line, "1678" should read "16787".

3. On the same page, in the fourth paragraph, in third line "(c)" should be lower case, and in the ninth line the "R" in regional should be capitalized.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 080293B]

Groundfish of the Gulf of Alaska

Correction

In rule document 93-18733 appearing on page 41640 in the issue of Thursday, August 5, 1993, on page 41640, in the second column, under **SUPPLEMENTARY INFORMATION**, in the sixth line "Groundfish" was mispelled.

BILLING CODE 1505-01-D

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federal register

Wednesday
August 25, 1993

Part II

Federal Communications Commission

47 CFR Part 1, et al.
Metric Conversion; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90, and 94

[FCC 93-184]

Metric Conversion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The adopted rule completes the conversion of the Commission's rules to the International System of Units (metric system). This action is taken in order to comply with the provisions of the Metric Conversion Act of 1975 as amended by the Omnibus Trade and Competitiveness Act of 1988. This action is intended to enhance the international competitiveness of entities doing business with the Commission by encouraging their use of the International System of Units.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 93-184, adopted April 8, 1993 and released May 7, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. Copies may also be purchased from the Commission's duplicating contractor, International Transcription Services, at (202) 857-3800 or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Order

1. By this action, the Commission essentially completes the conversion of its rules to the International System of Units (metric system) of measurement. This action is consistent with the Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988. That act designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and requires, to the extent economically feasible, certain Federal agencies to use the metric system in their procurements, grants, and other business-related activities, except when such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

Discussion

2. The Commission has been converting its rules to the metric system of measurements as the rules have been routinely updated. However, not all existing rules have been converted. By this action, we are completing the conversion except as noted below. We are converting these rules in what we believe is a non-controversial manner. In particular, we have attempted to ensure that communications facilities previously in compliance with our rules do not become non-compliant as a result of metric conversion. To the extent possible, we have adopted metric units that are marginally less restrictive than those currently specified. To help make our metric standards convenient we have also used rounded units whenever possible. Each rule part was converted by the Commission bureau or office that is responsible for it, using the degree of precision the bureau or office believed was necessary, based upon its experience, to avoid significant controversy.

3. English units have been included in parentheses with many of our metric standards. The English units are for information purposes only, and in cases where the two figures are not precisely equivalent, the metric unit shall be considered as the sole requirement, except when a form requests information in English units. In such a case, the English unit shall be considered the sole requirement until such time as the form is changed to request metric units. It is estimated that all Commission forms will be converted to metric units within five years.

4. Currently licensed facilities and already authorized equipment will continue to be subject to the rules that were in effect prior to this action. Hence, license renewals will not be affected. However, licensees or grantees seeking to modify any technical parameter of their authorization must comply with the metric standard for that parameter.

5. In a few limited circumstances, we have not converted our rules to metric units. Exceptions include: (1) Rules that use non-metric units based on international convention; and, (2) rules that, if converted to metric units, would cause substantial confusion to long-standing industry practices and that, if not converted, would have no impact on international trade activities, e.g., tariff publications. Figures R3, 9, 10, and 11 in 47 CFR 73.190, the propagation curve in 47 CFR 80.767, and the shadow loss chart in 47 CFR 80.769 are not being converted in this order. They will be handled separately at a later date because the responsible bureaus are still developing the metric conversions for them.

6. This order does not change any of the Commission's forms, instruction manuals, bulletins, or information filing requirements, including those that require approval from the Office of Management and Budget (OMB). These items will be converted to metric units at the appropriate time consistent with Commission priorities and in accordance with our, and OMB's normal review processes. Therefore, applicants shall continue to report English units until such applicable filing forms are converted to metric units.

Procedural Matters

7. Because the simple conversions implemented by this order do not significantly change the Commission's rules, this change constitutes a minor and non-controversial amendment to our rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(B).

Ordering Clause

8. Accordingly, it is ordered that under the authority contained in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 CFR parts, 1, 2, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90 and 94 are amended as set forth below These rules and regulations are effective September 24, 1993.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Metric system, Reporting and recordkeeping requirements.

47 CFR Part 2

Metric system, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Metric system, Television.

47 CFR Part 18

Metric system, Reporting and recordkeeping requirements.

47 CFR Part 21

Communications, Communications common carriers, Metric system, Telecommunications.

47 CFR Part 22

Communications, Communications common carriers, Metric system, Telecommunications.

47 CFR Part 23

Communications, Communications common carriers, Metric system, Telecommunications.

47 CFR Part 25

Communications, Communications common carriers, Metric system, Telecommunications.

47 CFR Part 36

Communications, Communications common carriers, Metric system, Telecommunications.

47 CFR Part 61

Metric system, Reporting and recordkeeping requirements.

47 CFR Part 63

Communications, Communications common carriers, Metric system, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 68

Communications, Communications common carriers, Communications equipment, Metric system, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 69

Accounting, Communications common carriers, Metric system.

47 CFR Part 73

Communications, Metric system, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications, Metric system, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Communications, Cable television, Metric system.

47 CFR Part 78

Communications, Cable television, Metric system.

47 CFR Part 80

Communications, Maritime carriers, Metric system, Telecommunications.

47 CFR Part 87

Air traffic control, Communications, Metric system, Telecommunications.

47 CFR Part 90

Communications, Metric system, Telecommunications.

47 CFR Part 94

Communications, Metric system, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

47 CFR parts 1, 2, 15, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90, and 94 are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. A new § 1.19 is added to read as follows:

§ 1.19 Use of metric units required.

Where parenthesized English units accompany metric units throughout this chapter, and the two figures are not precisely equivalent, the metric unit shall be considered the sole requirement; except, however, that the use of metric paper sizes is not currently required, and compliance with the English unit shall be considered sufficient when the Commission form requests that data showing compliance with that particular standard be submitted in English units.

3. The first through sixth sentences of paragraph (a) in § 1.49 are revised to read as follows:

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any proceeding shall be on A4 (21 cm x 29.7 cm) or 8.5 in x 11 in (21.6 cm x 27.9 cm) paper. The impression shall be double spaced, except that long quotations shall be single spaced and indented. All papers shall be typewritten or prepared by mechanical processing methods. The left hand margin shall be not less than 4 cm (1.5 in) wide. Both sides on the paper may be used. (If both sides are used, it is the right hand margin of even-numbered pages which shall be at least 4 cm (1.5 in) wide; and the pleading shall be bound—e.g., stapled twice—in the left hand margin, so as to open like a book). * * *

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, and 307.

2. The first sentence of paragraph (b)(2) in § 2.948 is revised to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(2) Physical description of the test site accompanied by photographs of size A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm). * * *

* * * * *

3. The first three sentences of paragraph (a)(5) of § 2.975 are revised to read as follows:

§ 2.975 Application for notification.

(a) * * *

(5) For devices operated under the provisions of part 15 of this chapter, photographs showing the general appearance and the controls available to the user. Photographs should be size A4 (21 cm x 29.7 cm) or 8 x 10 inch (20.3 cm x 25.4 cm). Smaller photographs may be submitted provided they are sharp and clear, show the necessary detail, and are mounted on A4 (21 cm x 29.7 cm) or 8.5. x 11 inch (21.6 cm x 27.9 cm) paper.* * *

* * * * *

4. The fourth and fifth sentences of paragraph (b)(7) § 2.1033 are revised to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(7) * * * Photographs shall be of size A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm). Smaller photographs may be submitted provided they are sharp and clear, show the necessary detail, and are mounted on A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) paper. * * *

* * * * *

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, 304, and 307.

2. The first sentence of paragraph (a) of § 15.119 is revised to read as follows:

§ 15.119 Closed caption decoder requirements for television receivers.

(a) Effective July 1, 1993, all TV broadcast receivers with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce, manufactured, assembled, or imported from any foreign country into the United States shall comply with the provisions of this section. * * *

* * * * *

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PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 307, 302, 303, 304, 307.

2. Paragraph (b)(2) of § 18.205 is revised to read as follows:

§ 18.205 Description of measurement facilities.

* * * * *

(b) * * *

(2) Physical description of the test site accompanied by photographs A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm) in size. Photographs smaller than A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm) will be acceptable if they are of sufficient clarity and mounted on A4 (21 cm x 29.7 cm) paper or paper 8 x 10 inches (20.3 cm x 25.4 cm).

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602, 48 Stat. 1064, 1066, 1070–1071, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 313, 314, 403, 602; 47 U.S.C. 552.

2. Paragraph (b)(1) of § 21.13 is revised to read as follows:

§ 21.13 General application requirements.

* * * * *

(b) * * *

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 by 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under Section 1.65 of this chapter; and

* * * * *

3. Paragraphs (c)(1)(vii), (c)(2)(v) and (d)(1) of § 21.23 are revised to read as follows:

§ 21.23 Amendment of applications.

* * * * *

(c) * * *

(1) * *

(vii) Any change which increases the antenna height by 6.1 meters (20 feet) or more; or

* * * * *

(2) * * *

(v) Any change which increases the antenna height by 3.0 meters (10 feet) or more;

* * * * *

(d) * * *

(1) The geographic coordinates of the new station site are within 32.2 kilometers (20 miles) of the coordinates of the original site; and,

* * * * * *

4. Paragraphs (b)(3), (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of § 21.41 are revised to read as follows:

§ 21.41 Special processing of applications for minor facility modifications.

* * * * *

(b) * * *

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

* * * * *

(c) * * *

(2) * * *

(i) In all radio services except Multipoint Distribution Service and Digital Electronic Service, any increase in antenna height is less than 6.1 meters (20 feet) above the previously authorized height;

(ii) In Multipoint Distribution Service and Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

* * * * *

5. Paragraphs (c)(5)(i) and (c)(5)(ii) of § 21.42 are revised to read as follows:

§ 21.42 Certain modifications not requiring prior authorization.

* * * * *

(c) * * *

(5) * * *

(i) The new height (measured at the center-of-radiation) is within ±1.5 meters (5 feet) of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

* * * * *

6. Paragraph (b) introductory text, paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv), paragraphs (c)(3)(iii) and (c)(3)(iv) of § 21.113 are revised to read as follows:

§ 21.113 Quiet zones.

* * * * *

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of this present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals received on this 728.4 hectare (1800 acre) site (in the vicinity of coordinates 40° 07' 50" N Latitude, 105° 15' 40" W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values: * * *

(1) * * *

(i) All stations within 2.4 kilometers (1.5 miles);

(ii) Stations within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

(c) * * *

(3) * * *

(iii) Stations within 16.1 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(iv) Stations within 80.5 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

* * * * *

7. Paragraphs (c)(1) and (c)(2) of § 21.504 are revised to read as follows:

§ 21.504 Frequency interference.

* * * * *

(c) * * *

(1) An analysis of the potential for harmful interference with other stations

of the coordinates of any proposed station are located within 80.5 km (50 miles) of the coordinates of any authorized, or previously proposed station(s) that utilize(s), or would utilize, the same frequency or an adjacent potentially interfering frequency; and

(2) An analysis concerning possible advise impact on Canadian communications if the station's transmitting antenna is to be located within 56.3 km (35 miles) of the Canadian border.

* * * * *

8. Footnote 2 in paragraph (a) and paragraph (b) § 21.701 are revised to read as follows:

§ 21.701 Frequencies.

(a) * * *

[2] Except upon a showing that no alternative frequencies are available, no new assignments will be made in the band 2160–2162 MHz for stations located within 80.5 kilometers (50 miles) of the coordinates of the cities listed in § 21.901(c).

* * * * *

(b) Applications for new stations or frequency paths (except for power splits of existing frequency paths) in the bands 3,700–4,200 MHz and 5,925–6,425 MHz which are to be used to relay television signals to community antenna relay television systems will not be accepted for filing or granted: Provided, however, That waivers of this provision may be granted for good cause shown, including a showing that the proposed frequency usage is not likely to affect adversely the development of any major communications route; and Provided further, That such waivers will not be granted, absent a showing of compelling and unusual circumstances, for new stations or frequency paths (except for power splits of existing frequency paths) within 80.5 kilometers (50 miles) of the coordinates of the principal city, as set forth in the U.S. Department of Commerce publication "Air Line Distance Between Cities in the United States," of one of the top 25 standard metropolitan statistical areas, as ranked by the U.S. Census Bureau.

* * * * *

9. The introductory text of paragraph (C) and paragraph (d)(5) of § 21.901 are revised to read as follows:

§ 21.901 Frequencies.

* * * * *

(c) Channel 2 will be assigned only where there is evidence that no harmful interference will occur to any authorized point-to-point facility in the 2160–2162 MHz band. Channel 2 may be assigned only if the transmitting antenna of the station is to be located within 16.1 kilometers (10 miles) of the coordinates of the following metropolitan areas:

* * * * *

(d) * * *

(5) Notwithstanding the provision of § 21.31(a) all applications that propose to locate transmission facilities within or within 24.1 kilometers (15 miles) of the border of a Standard Metropolitan Statistical Area (SMSA) will be considered together. In the case of a Standard Consolidated Statistical Area (SCSA) all applications that propose to locate facilities within or within 24.1 kilometers (15 miles) of the boundary of any SMSA contained in the SCSA will be considered together. In those cases in which an applicant proposes to locate its transmission facilities so that it will be located in, or within 24.1 kilometers (15 miles) of, more than one SMSA, the applicant must specify which SMSA it intends to be its primary service area. Each application will be entitled to comparative consideration or to be included in a lottery in only one such service area.

* * * * *

10. Paragraphs (c)(1)(i), (c)(1)(ii), (c)(2)(i), (c)(2)(ii), (c)(4), (c)(5), (d)(1), (d)(2), (d)(3), (i)(1), (i)(1)(ii), (j)(1) and (j)(2) of § 21.902 are revised to read as follows:

§ 21.902 Frequency interference.

* * * * *

(c) * * *

(1) * * *

(i) if the coordinates of the applicant's proposed transmitter are within 160.94 km (100 miles) of the coordinates of any authorized or previously-proposed, cochannel or adjacent-channel station(s); or

(ii) if the great circle path between the applicant's proposed transmitter and the protected service area of any authorized, or previously-proposed, cochannel or adjacent-channel station(s) is within 241.41 km (150 miles) or less and 90 percent or more of the path is over water or within 16.1 km (10 miles) of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above (see secs. 21.701(a), 21.901(a) and 74.902 of this chapter);

(2)(i) One map, folded to an A4 (21 cm x 29.7 cm) or 8½ x 11 inch (21.6 cm x 27.9 cm) size, identifying the boundaries of the protected service areas of each authorized or previously-proposed cochannel station with transmitter site coordinates within 160.94 km (100 miles) of the coordinates of the applicant's proposed transmitter site, and the 45 dB desired signal to undesired signal contour line of the applicant's proposed MDS station for cochannel stations; and

(ii) A second map, folded to an A4 (21 cm x 29.7 cm) or 8½ x 11 inch (21.6 cm x 27.9 cm) size, identifying the boundaries of the protected service areas of each authorized or previously-proposed adjacent-channel station with transmitter site coordinates within 160.94 km (100 miles) of the coordinates of the applicant's proposed transmitter site, and the 0 dB desired signal to undesired signal contour line of the applicant's proposed MDS station for adjacent-channel stations (see 47 CFR 21.902(d));

* * * * *

(4) In the case of a proposal for use of channel 2, an analysis of the potential for harmful interference with any authorized point-to-point station located within 80.5 kilometers (50 miles) which utilizes the 2160–2162 MHz band; and

(5) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 56.3 kilometers (35 miles) of the border.

(d) * * *

(1) For a station using a transmitting antenna with an omnidirectional horizontal plane radiation pattern the boundary of the protected service area will be 24.1 kilometers (15 miles) from the transmitter site.

(2) For a station using a transmitting antenna with a non-omnidirectional horizontal plane radiation pattern the boundary of the protected service area will be the locus of all points located at instances from the transmitter as determined by the following equation:

$$Db = \frac{Dbmax}{\text{antilog } (Gbmax - G)/20}$$

in which the parameters are defined as follows:

Db=the distance from the transmitter site to the boundary in direction of interest;
G=the transmitter antenna gain in the direction of interest;
Gbmax=the maximum antenna gain;
Dbmax=the distance to boundary, in the direction of maximum gain that will make the total area of the protected service area equal to or less than 1838.8 square kilometers (710 square miles); all distances are in kilometers (miles), the gains are in dB relative to an isotropic antenna, and the antilog is taken to the base 10.

(3) Except that when the electrical horizon determined using the transmitting antenna height, a 9.1 meter

(30 foot) recieving antenna height, and assuming 4/3 earth radius propagation conditions, is closer to the transmitter than boundary described in paragraph (d)(1) or (d)(2) of this section, the electrical horizon shall be the boundary of the protected service area.

* * * * *

(i)(1) For each application for stations in the 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz frequency bands filed on or after December 30, 1991, the applicant must submit an analysis demonstrating that operation of the applicant's transmitter will not cause harmful interference to any existing, cochannel and adjacent-channel E-channel, F-channel, or G-channel Instructional Television Fixed Service (ITFS) station, licensed or with a construction permit authorized, with a transmitter site within 80.5 kilometers (50 miles) of the coordinates of the Multichannel Multipoint Distribution Service (MMDS) or MDS H-channel station's proposed transmitter site.

* * * * *

(ii) In the alternative, an applicant for an MMDS station may submit an analysis demonstrating that there are no ITFS licenses or construction permitees, as described in paragraph (i)(1) of this section, within 80.5 km (50 miles) of the coordinates of the proposed transmitter site of the MMDS station.

* * * * *

(j) * * *

(1) An analysis demonstrating that the modification will not increase the size of the geographic area suffering harmful interference within the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596–2644 MHz frequency band with a transmitter site within 80.5 km (50 miles) of the modifying station's transmitter site of the initial application for the interfered-with station was filed on September 9, 1983; and

(2) An analysis demonstrating that the modification will not cause harmful interference to any new portion of the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596–2644 frequency band with a transmitter site within 80.5 km (50 miles) of the modifying station's transmitter site, if the initial application for the interfered-with station was filed on September 9, 1983.

* * * * *

11. Paragraph (c) introductory test of § 21.904 is revised to read as follows:

§ 21.904 Transmitter power.

* * * * *

(c) An increase in station transmitter power, above currently-authorized or previously-proposed values, to the maximum values provided in subsections (a) and (b) of this section, may be authorized, if an applicant demonstrates that the requested power increase will not cause harmful interference to any authorized or previously-proposed co-channel or adjacent-channel station with a transmitter site within 80.5 kilometers (50 miles) of the applicant's transmitter site, or if an applicant demonstrates that:

* * * * *

12. Paragraph (c) of § 21.906 is revised to read as follows:

§ 21.906 Antennas.

* * * * *

(c) Transmitting antennas located within 56.3 kilometers (35 miles) of the Canadian border should be directed so as to minimize, to the extent that is practical, emissions toward the border.

* * * * *

13. In paragraph (d) of § 21.913, the term "50 miles" is replaced with "80.5 kilometers (50 miles)", in paragraph (g) introductory text the term "5 miles (8.05 km)" is replaced with "8.0 kilometers (5 miles)", in paragraph (g)(3) the term "1 mile (1.61 km)" is replaced with "1.6 kilometer (1 mile)", in paragraph (g)(5) the term "5-mile (8.05 km)" is replaced with "8.0 kilometer (5 mile)".

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. The definition of "Protected service area" in § 22.2 is revised to read as follows:

§ 22.2 Definitions.

* * * * *

Protected service area. A fixed 32.2 km (20 mi) radius from a 900 MHz paging transmitter which is protected from harmful interference. For other frequency bands see reliable service area.

* * * * *

3. The fourth sentence of paragraph (d)(1), the second sentence of paragraph (d)(3) and paragraph (d)(3)(iv) of § 22.6 are revised to read as follows:

§ 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(d) * * *

(1) * * * The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. * * *

* * * * *

(3) * * * The microfiche must depict the reduced A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) map (Application Exhibit II, See Section 22.924). * * *

* * * * *

(iv) A copy of each unserved area application must be served on the licensees for the same frequency block of any adjacent systems whose CGSA, MSA or RSA boundaries are within 80.4 km (50 mi) of the boundaries of the proposed system.

* * * * *

4. Paragraph (b)(1) of § 22.13 is revised to read as follows:

§ 22.13 General application requirements.

* * * * *

(b) * * *

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced there in is current and accurate in all significant respects under Section 1.65 of this chapter; and

* * * * *

5. Paragraphs (b)(1)(i), (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii), (i)(2) and (j)(8)(vi) of § 22.15 are revised to read as follows:

§ 22.15 Technical content of applications.

* * * * *

(b) * * *

(1) * * *

(i) One-way facilities from 35 to 162 MHz—within 108 kilometers (67 miles).

(ii) * * *

(A) From 152 to 162 MHz—within 135 kilometers (84 miles).

(B) From 450 to 460 MHz—within 108 kilometers (67 miles). *

(iii) Co-channel facilities with 201 kilometers (125 miles) when the bearing to the co-channel facility is within 22.5 degrees of a cardinal radial, where the effective radiated power exceeds the limits indicated in § 22.505 for the center of radiation height above average elevation in that radial direction.

* * * * *

(i) * * *

(2) All applications for new or additional facilities will identify any other pending or concurrently filed applications in this service for new or additional facilities within a 64 kilometer (40 mile) radius of the proposed station that applicant, or any principal thereof, may be a party to or have an interest in, either directly or indirectly. All applications shall also identify all existing facilities within a 64 kilometer (40 mile) radius of the proposed station licensed to the applicant or in which the applicant has an ownership interest, regardless of call sign or licensee name.

* * * * *

(j) * * *

(8) * * *

(vi) *900 MHz one-way paging.* Exact station location should be plotted on a map with a scale of 1:250,000 and the service protected area should be depicted by a 32 kilometer (20 mile) radius for each base station.

* * * * *

6. In paragraph (c)(2) of § 22.23 the heading and first sentence are revised to read as follows:

§ 22.23 Amendment of applications. (See also § 22.918)

* * * * *

(c) * * *

(2) *Amendment to proposed base station facilities.* If the amendment enlarges the reliable service area of the proposed base station facilities by more than 1.6 kilometers (1 mile) along any of eight radials spaced every forty-five (45) degrees from zero degree True North. * * *

* * * * *

7. Paragraphs (c)(1) and (c)(2) of § 22.33 are revised to read as follows:

§ 22.33 Grants by random selection.

* * * * *

(c) * * *

(1) An applicant proposing to add one or more transmitter locations to an authorized station on the same frequency or frequencies for which it is already licensed and within 64 kilometers (40 miles) of existing transmitter locations on those frequencies, and when the applicant demonstrates in its application a demand by its existing subscribers for the expanded service; or

(2) An applicant proposing to add one or more frequencies to an authorized station at the same location or other locations within 64 kilometers (40 miles) of an existing transmitter location, if the frequencies to be added are in the same frequency band as those already authorized (i.e., low-band (35–43 MHz), VHF (150 MHz), UHF (450 MHz) or 900 MHz).

8. Paragraph (d)(1)(iii), the heading and the first sentence of paragraph (d)(4)(iii), note A, the first two sentences of note B, and paragraphs (2) and (3) of note C of § 22.43 are revised to read as follows:

§ 22.43 Period of construction.

* * * * *

(d) * * *

(1) * * *

(iii) Applicants who have filed applications or amendments which request expansion of the reliable service area of a PLMS base station facility by less than 1.6 kilometers (1 mile). *Cf.* Section 22.23(c)(2) of the rules;

* * * * *

(4) * * *

(iii) *Applications and amendments to expand the reliable service area of a PLMS base station by less than 1.6 kilometers (1 mile).* Applications and amendments which request expansion of the reliable service area of a PLMS base station facility by less than 1.6 kilometers (1 mile), see § 22.43(d)(1)(iii), shall not be subject to the general rules set out in § 22.43(d)(2)(i). * * *

* * * * *

Note A: Pursuant to an agreement between the Commission and the Department of Communications in Canada, Commission authorizations issued for cellular facilities built within 72 kilometers (45 miles) of the U.S.-Canadian border shall have the following condition attached:

This authorization is subject to the condition that, in the event that cellular systems using the same frequency block as granted herein are authorized in adjacent territory in Canada, coordination of any of your transmitter installations which are within 72 kilometers (45 miles) of the U.S.-Canadian border shall be required to eliminate any harmful interference that might otherwise exist and to ensure continuance of equal access to the frequency block by both countries.

Note B: Pursuant to an agreement between the United States and Mexico, Commission authorizations issued for cellular facilities built within 72 kilometers (45 miles) of the U.S.-Mexican border, or whose 39 dBu contour extends into Mexico, shall have the following condition attached:

This authorization is subject to the condition that, in the event that cellular systems using the same frequencies granted herein are authorized in adjacent territory in Mexico, coordination of your transmitter installations which are within 72 kilometers (45 miles) of the U.S.-Mexico border shall be required to eliminate any harmful interference that might otherwise exist to ensure continuance of equal access to the frequencies by both countries. * * *

Note C: * * *

(2) Stations located within 161 kilometers (100 miles) of the coordinates listed below.

(3) Stations located within 402 kilometers (250 miles) of the Canadian border receive station coordinates listed below and within ±30 degrees of the given azimuth (from the Canadian station).

* * * * *

9. Paragraph (e)(1) of § 22.100 is revised to read as follows:

§ 22.100 Frequencies, interference.

* * * * *

(e) * * *

(1) The distance to the 115 dBu contour is determined using the following equation:

$d = 0.394 \times p^{1/2}$

where *d* is the distance in kilometers and *p* is the maximum effective radiated power in kilowatts.

* * * * *

10. Paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of § 22.113 are revised to read as follows:

§ 22.113 Quiet zones.

* * * * *

(b) * * *

(1) * * *

(i) All stations within 2.4 kilometers (1.5 miles);

(ii) Stations within 4.8 kilometers (3 miles) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 kilometers (10 miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iv) Stations within 80 kilometers (50 miles) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone.

* * * * *

11. Section 22.115 is revised to read as follows:

§ 22.115 Computation of average terrain elevation.

Except in cases of dispute, average terrain elevation may be calculated by computer using elevations from a 30 second point or better topographic data file. The data file used must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; for a 3 second point data file, the nearest point may be used. In cases of dispute, average terrain elevation determinations must be done manually, using 1:24,000 scale topographic maps.

(a) Radial average terrain elevation is calculated by taking the arithmetic mean of the elevations of a series of points between 3 and 16 kilometers (2 and 10 miles) from the antenna site along a straight line path extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from

the antenna site. At least 50 approximately evenly spaced data points for each radial should be used in the computation.

(b) The average terrain elevation at an antenna site is the average of eight radial average terrain elevations in the following azimuths: 0°, 45°, 90°, 135°, 180°, 225°, 270° and 315° with respect to true North.

(c) In Dade and Broward Counties, Florida, average terrain elevation is assumed to be 3 meters (10 feet) above mean sea level.

§ 22.117 [Amended]

12. In § 22.117 paragraph (b)(3), remove the words "20 feet" and add, in their place, the words "6 meters (20 feet)" and in paragraph (c) introductory text, remove the words "one mile" and add, in their place, the words "1.6 kilometers (1 mile)".

13. Section 22.501 is amended as follows:

A. In paragraph (j)(7)(i) of § 22.501 Table G is removed and reserved, Figure A, Figure B and the notes following them are removed, and new Tables I and J are added, and Table B, Table C, Table D and Table F are revised to read as shown below.

B. In paragraph (a)(5)(i) of § 22.501 the words "125 miles (201 km)" are removed and the words "201 kilometers (125 miles)" are added in their place.

C. In paragraph (a)(5)(iii) of § 22.501 the words "two-mile" are removed and the words "3.2 kilometer (2 mile)" are added in their place.

D. In paragraph (e) of § 22.501 the words "50 miles" are removed and the words "80 kilometers (50 miles)" are added in their place.

E. In paragraph (f)(1)(i) of § 22.501 the words "10 and 80 miles" are removed everywhere they appear and the words "16 and 129 kilometers (10 and 80 miles)" are added in their place.

F. In paragraph (f)(1)(ii) of § 22.501 the words "10 miles" are removed everywhere they appear and the words "16 kilometers (10 miles)" are added in their place.

G. In paragraph (f)(1)(ii) of § 22.501 the words "10–80 mile" are removed and the words "16–129 kilometer (10–80 mile)" are added in their place.

H. In paragraph (g)(3)(i) of § 22.501 the words "70 miles" are removed and the words "113 kilometers (70 miles)" are added in their place.

I. In paragraph (j)(3) of § 22.501 the words "50 miles" are removed and the words "80 kilometers (50 miles)" are added in their place.

J. Paragraphs (j)(4), (j)(5)(i), (j)(5)(ii), the first two sentences of paragraph (j)(6), the first sentence of paragraph (j)(7), and paragraphs (k)(1) and (k)(2) of § 22.501 are revised in their entirety to read as shown.

K. The first two sentences of paragraph (k)(5)(iv) of § 22.501 are revised to read as shown below:

§ 22.501 Frequencies.

* * * * *

(j) * * *

(4) Mobile stations must not be operated at locations more than 129 kilometers (80 miles) from the "Geographic Canter" of the appropriate urbanized area as defined in Table A of this section. Mobile stations must not be operated at locations that are more than 48 kilometers (30 miles) from all associated base stations.

(5) * * *

(i) Base stations shall be located a minimum of 1.6 kilometers (1 mile) from local television stations operating on TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

(ii) Mobile units operating on the frequencies available for land mobile use in any given urbanized area shall afford protection to co-channel television stations in accordance with the values set out in Table D of this section. Associated base transmitter locations must be at least 145 kilometers (90 miles) from protected television stations when land mobile stations transmit in the adjacent television channel.

* * * * *

(6) For antenna heights between 152 and 914 meters (500 and 3000 feet) above average terrain the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in Table I of this section. For heights of more than 152 meters (500 feet) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth.

* * *

(7) Applicants for base stations in the Miami, Fla., urbanized area may, in lieu of calculating the height of average terrain, use 3.2 meters (10 feet) as average terrain height.

(i) * * *

Table B—Antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

MAXIMUM ERP (WATTS) FOR BASE TRANSMITTERS

Distance to protected TV station location in kilometers (miles)	Antenna height above average terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
261 (162)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
257 (160)	1000	1000	1000	1000	1000	1000	1000	1000	1000	800
249 (155)	1000	1000	1000	1000	1000	875	775	700	625	575
241 (150)	1000	1000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	465	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

Table C—Antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

MAXIMUM ERP (WATTS) FOR BASE TRANSMITTERS

Distance to specified location in kilometers (miles)	Antenna height above average terrain in meters (feet)									
	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)	
106 (67)	1000	1000	1000	1000	1000	1000	1000	1000	1000	
106 (66)	1000	1000	1000	1000	1000	1000	1000	1000	750	
105 (65)	1000	1000	1000	1000	1000	1000	825	650	600	
103 (64)	1000	1000	1000	1000	1000	775	625	500	400	
101 (63)	1000	1000	1000	1000	440	400	350	320	300	
100 (62)	1000	1000	1000	525	375	250	200	150	125	
98 (61)	1000	700	450	250	200	125	100	75	50	
97 (60)	1000	425	225	125	100	75	50			

Table D—Minimum distance between associated base station and protected co-channel television station where mobile transmits in the same television channel.

Mobile unit ERP (watts)	Minimum distance	
	Kilometers	Miles
60	225	140
50	217	135
25	201	125
10	188	117
5	180	112

* * * * *

Table F—Antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

MAXIMUM ERP (WATTS) FOR BASE TRANSMITTERS

Distance to protected TV station Location in kilometers (miles)	Antenna Height Above Average Terrain in Meters (Feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
209 (130)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
201 (125)	1000	1000	1000	1000	1000	1000	1000	850	750	725
193 (120)	1000	1000	1000	1000	900	750	675	600	550	500
185 (115)	1000	1000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	150	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50					

Table G—[Reserved]

* * * * *

Table I—Antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

MAXIMUM ERP (WATTS) FOR CONTROL TRANSMITTERS

Distance to protected TV station Location in kilometers (miles)	Antenna Height Above Average Terrain in Meters (Feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
261 (162)	1000	501	282	170	110	71
241 (150)	400	209	110	60	36	23
225 (140)	225	102	50	28	16	10
209 (130)	100	48	21	11	7	5
193 (120)	50	19	9	5	3	2

Table J—Antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

MAXIMUM ERP (WATTS) FOR CONTROL TRANSMITTERS

Distance to protected TV station location in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
209 (130)	1000	447	219	117	71	46

MAXIMUM ERP (WATTS) FOR CONTROL TRANSMITTERS—Continued

Distance to protected TV station location in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
193 (120)	500	209	95	50	30	19
177 (110)	225	91	35	19	11	8
161 (100)	100	30	10	5	3	2
153 (95)	50	13	5	3	2	1

(k) * * *

(1) Control stations must be located within 80 kilometers (50 miles) of the center city coordinates listed in paragraph (k)(3) of this section.

(2) Control stations may transmit with 1000 watts effective radiated power and an antenna center of radiation height above average terrain of 152 meters (500 feet).

(5) * * *

(iv) For antenna heights between 152 and 914 meters (500 and 5,000 feet) above average terrain the effective radiated power must be reduced below 1 kW in accordance with the values shown in Table I of § 22.501(j) except for channel 15 in New York, NY, and Cleveland, Ohio and channel 16 in Detroit, Mich., where the effective radiated power must be reduced in accordance with Table J. For heights of more than 152 meters (500 feet) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. * * *

14. Section 22.502 is amended by revising paragraph (b) and the tables in paragraphs (a) and (c), as follows:

§ 22.502 Classification of base stations.

(a) * * *

CLASS OF PUBLIC LAND MOBILE STATION

Antenna HAAT in meters (feet)	Effective radiated power (watts)				
	30 or less	31–60	61–120	121–250	251–500
123 to 152 (401 to 500)	C	B	B	A	A
92 to 122 (301 to 400)	C	C	B	B	A
61 to 91 (201 to 300)	D	C	C	B	B
31 to 60 (101 to 200)	D	D	C	C	B
30 or less (100 or less)	E	D	D	C	C

(b) Any station with antenna height more than 152 meters (500 feet) above average terrain and effective radiated power within the limits in § 22.505 is considered to be a Class A station.

(c) * * *

CLASS OF 931 MHz PAGING STATION

Antenna HAAT in meters (feet)	Effective radiated power (Watts)					
	125 or less	126–250	251–500	501–1000	1001–1860	1861–3500
1220 to 1524 (4001 to 5000)	G	G	F	F	F	F
862 to 1219 (2826 to 4000)	H	G	G	F	F	F
611 to 861 (2001 to 2825)	K	H	H	G	F	G
428 to 610 (1401 to 2000)	L	K	H	G	G	G
306 to 427 (1001–1400)	L	L	K	H	G	G
178 to 305 (581–1000)	L	L	L	L	K	H
177 or less (580 or less)	L	L	L	L	L	L

15. Section 22.503 is amended by revising the tables in paragraphs (a), (b) and (d), and removing the word "mileage" from paragraph (c) and adding the word "distance" in its place.

§ 22.503 Geographic separation of co-channel stations.

(a) * * *

MINIMUM REQUIRED DISTANCE SEPARATION BETWEEN CO-CHANNEL STATIONS USING VHF FREQUENCIES LISTED IN § 22.501(b)

[In kilometers (miles)]

Station class	A	B	C	D	E
A	135 (84)	129 (80)	121 (75)	113 (70)	105 (65)
B	129 (80)	119 (74)	111 (69)	103 (64)	97 (60)
C	121 (75)	111 (69)	93 (58)	87 (54)	80 (50)
D	113 (70)	103 (64)	87 (54)	71 (44)	64 (40)
E	105 (65)	97 (60)	80 (50)	64 (40)	48 (30)

MINIMUM REQUIRED DISTANCE SEPARATION BETWEEN CO-CHANNEL STATIONS USING UHF FREQUENCIES LISTED IN § 22.501(b)

[In kilometers (miles)]

Station class	A	B	C	D	E
A	108 (67)	103 (64)	98 (61)	93 (58)	89 (55)
B	103 (64)	93 (58)	87 (54)	82 (51)	76 (47)
C	98 (61)	87 (54)	76 (47)	71 (44)	68 (42)

MINIMUM REQUIRED DISTANCE SEPARATION BETWEEN CO-CHANNEL STATIONS USING UHF FREQUENCIES LISTED IN § 22.501(b)—Continued

[In kilometers (miles)]

Station class	A	B	C	D	E
D	93 (58)	82 (51)	71 (44)	60 (37)	55 (34)
E	89 (55)	76 (47)	66 (42)	55 (34)	42 (26)

(b) * * *

MINIMUM REQUIRED DISTANCE SEPARATION BETWEEN CO-CHANNEL STATIONS USING VHF ONE-WAY PAGING FREQUENCIES

[In kilometers (miles)]

Station class	A	B	C	D	E
A	108 (67)	103 (64)	95 (59)	90 (56)	85 (53)
B	103 (64)	93 (58)	87 (54)	82 (51)	76 (47)
C	95 (59)	87 (54)	72 (45)	68 (42)	61 (38)
D	90 (56)	82 (51)	68 (42)	55 (34)	52 (32)
E	85 (53)	76 (47)	61 (38)	52 (32)	48 (30)

(d) * * *

MINIMUM REQUIRED DISTANCE SEPARATION BETWEEN CO-CHANNEL STATIONS USING UHF ONE-WAY PAGING FREQUENCIES

[In kilometers (miles)]

Station class	L	K	H	G	F
L	113 (70)	121 (75)	129 (80)	163 (101)	224 (139)
K	121 (75)	126 (78)	134 (83)	167 (104)	229 (142)
H	129 (80)	134 (83)	138 (86)	172 (107)	233 (145)
G	163 (101)	167 (104)	172 (107)	187 (116)	248 (154)
F	224 (139)	229 (142)	233 (145)	248 (154)	275 (171)

16. Section 22.504, paragraph (b) is amended by removing Figures 1, 2, 3, and 4. Paragraph (b)(1), the table in paragraph (b)(2) and paragraph (c) are revised to read as follows:

§ 22.504 Reliable service area.

* * * * *

(b)(1) The field strength contours described in paragraph (a) of this section determine the limits of the reliable service area of stations other than those transmitting in the 931–932 MHz frequency range for the purpose of providing protection to such stations from co-channel harmful interference and for defining the area within which consideration will be accorded claims of economic competitive injury. The propagation curves contained in FCC Report No. R–6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service", by Roger B. Carey must be used in determining areas of reliable service and interference.

(2) * * *

RADIUS IN KILOMETERS (MILES)

Station Class	F	G	H	K	L
Service Area	84 (52)	56 (35)	42 (26)	37 (23)	32 (20)
Interfering Contour	192 (119)	130 (81)	97 (60)	89 (55)	80 (50)

* * * * *

(c) All applications for base station authorization (Form 401) shall show the maximum distance from the base station to the reliable service area contour as determined from each of the eight radials shown in § 22.115 (a)(1) and (b).

17. In § 22.505 in paragraph (a)(1) of § 22.505 the words "500 feet" are removed and the words "152 meters (500 feet)" are added in their place, the tables in paragraphs (a)(2) and (b) are revised, in paragraph (c)(1) the words "500 feet" are removed and the words "152 meters (500 feet)" are added in their place, in the formula at the end of paragraph (c)(1) the words "HAAT/500" are removed and the words "HAAT/152" are added in their place, and the words "with HAAT in meters." are added after the formula at the end of paragraph (c)(1).

22.505 Antenna height-power limit.

(a) * * *

(2) * * *

Antenna HAAT in meters (feet)	Maximum ERP in watts
152 (500)	(500)
168 (550)	397
183 (600)	323
213 (700)	223
244 (800)	166
274 (900)	126

Antenna HAAT in meters (feet)	Maximum ERP in watts
305 (1000)	98
381 (1250)	57
457 (1500)	37
610 (2000)	20
762 (2500)	13
914 (3000)	10
1067 (3500)	9
1219 (4000)	8
1524 (5000)	7

* * * * *

(b) * * *

Antenna HAAT in meters (feet)	Maximum ERP in watts
1524 (5000)	65
1372 (4500)	70
1219 (4000)	75
1067 (3500)	100
914 (3000)	140
762 (2500)	200
610 (2000)	350
457 (1500)	600
305 (1000)	1000

* * * * *

18. Paragraph (f)(1) of § 22.506 is revised to read as follows:

§ 22.506 Power.

* * * * *

(f) * * *

(1) All applications proposing the use of the frequencies 152.24, 152.84, 158.10, 158.70, and 454.025 MHz operating with effective radiated powers above 500 watts must show that their base stations are located a required distance from adjacent channel stations: 5 kilometers (3.2 miles) for the 152 MHz band and 7 kilometers (4.4 miles) for the frequency 454.025 MHz. All applicants for these adjacent channel frequencies must submit a study of the Commission's Master Frequency File showing that the required separation distances to the adjacent channel base stations have been met. In addition, any common carrier stations operating on 158.70 and 158.10 MHz at powers greater than 500 watts must submit an analysis of the common carrier land mobile base station cumulative staff study showing that they are located more than 5 kilometers (3.2 miles) from common carrier stations operating on the base channels 152.21 and 152.81 MHz respectively.

* * * * *

§ 22.521 [Amended]

19. In the first sentence of paragraph (b) of § 22.521 the words "25 miles" are removed and the words "40 kilometers (25 miles)" are added in their place.

§ 22.525 [Amended]

20. In paragraphs (b) and (e) § 22.525 the words "forty miles" are removed everywhere they occur and the words "64 kilometers (40 miles)" are added in their place.

21. Paragraphs (a)(2)(i), (a)(2)(iv) and (a)(3) of § 22.601 are revised, and in the first two sentences of paragraph (g)(3) of § 22.601 the words "150 miles" are removed everywhere they occur and the words "241 kilometers (150 miles)" are added in their place to read as follows:

§ 22.601 Frequencies.

(a) * * *

(2) * * *

(i) Rural radio service licensees may not use these frequencies within 161 kilometers (100 miles) of the border of the top 54 SMSAs as defined in the Domestic Cellular Radio Service;

* * * * *

(iv) The same frequency group may not be reassigned to a base station within 113 kilometers (70 miles) of another base station on the same channels or channels offset by 12.5 kHz;

* * * * *

(3) For the Canadian Regions and within 110 kilometers (68 miles) of the Mexican border, the frequencies in paragraph (c) of this section are not available.

* * * * *

§ 22.902 [Amended]

22. In the first sentence of paragraph (d)(1) of § 22.902 the words "75 miles" are removed and the words "121 kilometers (75 miles)" are added in their place.

23. Paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of § 22.903 are revised to read as follows:

§ 22.903 Cellular geographic service area.

* * * * *

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, the radial distance from a cell transmitting antenna to its service area boundary is calculated as follows:

$$d = 2.531 \times h^{0.34} \times p^{0.17}$$

where

d is the radial distance in kilometers

h is the radial antenna HAAT in meters

p is the radial ERP in Watts

(2) For the cellular systems authorized to serve the Gulf of Mexico MSA, the radial distance from a cell transmitting antenna to its service area boundary is calculated as follows:

$$d = 6.895 \times h^{0.30} \times p^{0.15}$$

where

d is the radial distance in kilometers

h is the radial antenna HASL or HAMSL in meters

p is the radial ERP in Watts

(3) The value used for h in the formula in paragraph (a)(2) of this section must not be less than 8 meters (26 feet) HASL (or HAMSL, as appropriate for the support structure). The value used for h in the formula in paragraph (a)(1) of this section must not be less than 30 meters (98 feet) HAAT, except that for unserved area applications proposing a cell with an ERP not exceeding 10 Watts, the value for h used in the formula to determine the service area boundary for that cell may be less than 30 meters (98 feet) HAAT, but not less than 3 meters (10 feet) HAAT.

* * * * *

(5) Whenever use of the formula in paragraph (a)(1) of this section pursuant to the exception contained in paragraph (a)(3) of this section results in a calculated distance that is less than 5.4 kilometers (3.4 miles), the radial distance to the service area boundary is deemed to be 5.4 kilometers (3.4 miles).

* * * * *

24. Section 22.905 is revised to read as follows:

§ 22.905 Antenna height-power for base stations.

In view of the fact that the predominant characteristic of cellular systems is frequency reuse within a given service area, the effective radiated power (ERP) of base stations with transmitting antennas in excess of 152 meters (500 feet) above average terrain (AAT) must be reduced as shown in the table below, unless coordination is performed and agreements are reached with all neighboring carriers that are within 120 kilometers (75 miles).

Antenna HAAT in meters (feet)	Maximum ERP in watts
152 (500)	500
168 (550)	397
183 (600)	323
213 (700)	223
244 (800)	165
274 (900)	125
305 (1000)	98
381 (1250)	57
457 (1500)	37
610 (2000)	20
762 (2500)	13
914 (3000)	10
1067 (3500)	9
1219 (4000)	8
1524 (5000)	7

For AATs between the above listed values, linear interpolation should be used.

25. The last sentence of paragraph (a)(1) of § 22.913 is revised and in paragraph (c) of § 22.913 the words "4 x 6 inch" are removed and the words "B6 (125 mm x 176 mm) or 4 x 6 inch (102 mm x 152 mm)" are added in their place to read as follows:

§ 22.913 Content and form of MSA applications.

(a) * * *

(1) * * * In addition, this exhibit shall include an A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) reduced copy of the 1:250,000 scale map required by § 22.903(a).

* * * * *

26. In paragraph (a)(1) of § 22.923 the words "8½ x 11 inch" are removed and the words "A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm)" are added in their place, in paragraphs (b)(1) and (b)(5) of § 22.923 the words "5 inch x 7½ inch" are removed and the words "B6 (12.5 cm x 17.6 cm) or 5 x 7.5 inch (12.7 cm x 19.1 cm)" are added in their place and in paragraph (b)(6) of § 22.923 the words "9 inch x 12 inch" are removed and the words "C4 (22.9 cm x 32.4 cm) or 9 x 12 inch (22.9 cm x 30.5 cm)" are added in their place.

27. Paragraph (a)(1) and the first sentence of paragraph (b)(2) of § 22.924 are revised to read as follows:

§ 22.924 Content and form of applications for unserved areas.

(a) * * *

(1) Applications for unserved areas must propose a minimum geographical coverage of 130 contiguous square kilometers (50 contiguous square miles).

* * * * *

(b) * * *

(2) Exhibit II–A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) reduced map. * * *

* * * * *

28. Paragraph (b) of § 22.925 is revised to read as follows:

§ 22.925 System information update.

* * * * *

(b) The reduced map must be a proportional reduction, to A4 (21 cm x 29.7 cm) or 8.5 x 11 inches (21.6 cm x 27.9 cm), of the full-size map required in paragraph (a) of this section, unless it proves to be impractical to depict the entire cellular market by reducing the full-size map. In such instance, an A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) map of a different scale may be substituted, provided that the required features of the full-size map are clearly depicted and labeled.

29. Paragraph (h) of § 22.930 is revised to read as follows:

§ 22.930 Special provisions for alternative cellular technologies and auxiliary services.

* * * * *

(h) Operations under the cellular service option are subject to frequency coordination in accordance with § 22.902(d) and the following requirements. The cellular system operator must perform an engineering analysis to ensure that interference will not occur from implementation of auxiliary services or alternative cellular technologies. The operator must obtain the concurrence of other cellular systems on the same frequency block within 121 kilometers (75 miles).

30. In Table A following § 22.1001 paragraph (a), remove the words "3-mile" and add, in their place, the words "5-kilometer (3-mile)".

31. In Table B following § 22.1001 paragraph (b), remove the words "3-mile" and add, in their place, the words "5-kilometer (3-mile)".

32. In Table C following § 22.1001 paragraph (c), remove the words "3-mile" and add, in their place, the words "5-kilometer (3-mile)".

33. In Table C following § 22.1001 paragraph (c), remove the words "175 mile" and add, in their place, the words "282-kilometer (175-mile)".

34. Paragraphs (d)(2)(i), (d)(2)(ii), (d)(4), (d)(5) and (d)(6), and Table D and the note following and Table E and the note following in paragraph (d)(7) of § 22.1001 are revised to read as follows:

§ 22.1001 Frequencies.

* * * * *

(d) * * *

(2) * * *

(i) Using the method specified in § 73.611 of this chapter, determine the distance between the proposed station and the protected co-channel television station. If the exact distance does not appear in Table D of this section, the next lower distance separation figure is to be used.

(ii) Enter the table at the distance figure found in paragraph (d)(2)(i) of this section. Opposite this distance figure, ERPs are given that may be used for antenna heights of 30, 46, or 61 meters (100, 150, or 200 feet) above sea leave. If the exact antenna height is not shown, the ERP allowed will be that shown for the next higher antenna height.

* * * * *

(4) No airborne subscriber station shall be operated with an effective radiated power in excess of 1 watt or at heights in excess of 305 meters (1,000 feet) above mean sea level. Airborne subscriber stations using Channel 17 frequencies shall not be operated outside the limits of the Zone specified in Table A of this section. Further, to provide adjacent channel protection to TV Channel 18, these stations shall not operate within a 129 kilometer radial distance to Lake Charles, Louisiana. Airborne subscriber stations using Channel 16 frequencies shall not be operated outside the limits of the Zone specified in Table B of this section. Further, to provide adjacent channel protection to TV Channel 15, these stations shall not operate within a 129 kilometer (80 mile) radial distance to Lafayette, Louisiana. Airborne subscriber stations using Channel 15 frequencies shall not be operated outside the limits of the Zone specified in Table C of this section. Further, to provide adjacent channel protection to TV Channels 14 and 16, these stations shall not operate within a 129 kilometer (80 mile) radial distance of either Corpus Christi or Houston, Texas.

(5) Antenna heights in excess of 61 meters (200 feet) above mean sea level will not be authorized, except that surface mobile stations will be limited to a height of 10 meters (30 feet) above the water line.

(6) Mobile stations shall not operate with an effective radiated power in excess of 25 watts within 32.2 km (20 miles) of the 5 kilometer (3 mile) limit. In all other Zones, the effective radiated power shall not exceed 100 watts.

(7) * * *

TABLE D.—PROTECTION OF CO-CHANNEL FULL SERVICE TELEVISION STATIONS BY STATIONS IN THE OFFSHORE RADIO TELECOMMUNICATIONS SERVICE

[65 dB protection]

Distance from ORTS transmitter to TV station in kilometers (miles)	Antenna height above mean sea level in meters (feet)		
	30 (100)	46 (150)	61 (200)
338 (210)	1000	1000	1000
330 (205)	1000	900	800
322 (200)	800	710	630
314 (195)	580	520	450
306 (190)	450	400	330
298 (185)	320	280	240
290 (180)	250	210	175
282 (175)	180	150	130
274 (170)	175	110	100
265 (165)	95	80	70
258 (160)	65	55	50
249 (155)	50	40	35
241 (150)	35	30	25

Note: No ORS station shall operate less than 241.4 km (150 mi) from any full service co-channel TV station.

TABLE E.—PROTECTION OF ADJACENT CHANNEL FULL SERVICE TELEVISION STATIONS BY STATIONS IN THE OFF-SHORE RADIO TELECOMMUNICATIONS SERVICE

[0 dB protection]

Distance beyond the 5-kilometer (3-mile) limit in kilometers (miles)	Antenna height above sea level in meters (feet)	
	30 (100)	61 (200)
6 (4)	25	6
8 (5)	40	10
10 (6)	65	15
11 (7)	100	25
13 (8)	150	35
14 (9)	215	50
16 (10)	295	70
18 (11)	400	100
19 (12)	530	130
21 (13)	685	170
23 (14)	870	215
24 (15)	1000	270
26 (16)	1000	415
27 (17)	1000	505
29 (18)	1000	610
31 (19)	1000	730
32 (20)	1000	865
34 (21)	1000	1000

Note: Table E of this section applies only within a 128.8 km (80 mi) radial distance of full service adjacent channel TV stations.

* * * * *

§ 22.1002 [Amended]

35. In the first sentence of § 22.1002 the words "20 miles" are removed and the words "32 kilometers (20 miles)" are added in their place, and the words "3 mile" are removed and the words "5 kilometer (3 mile)" are added in their place..

36. In the first sentence of § 22.1109 the words "one mile" are removed and the words "1.6 kilometers (1 mile)" are added in their place, and paragraphs (a) and (b) are revised to read as follows:

§ 22.1109 Geographical channel block layout.

* * * * *

(a) Air-ground licensees may use any of the channels to provide service from any location to airborne mobile stations on the ground, provided that no interference is caused to service provided by ground stations operating in accordance with the geographical channel block layout or with paragraph (b) of this section, and provided that the locations of ground stations providing such service are at least 483 kilometers (300 miles) from all locations using the channel block(s) for communication with 800 MHz airborne mobile stations in flight.

(b) A ground station location may be more than 1.6 kilometers (1 mile) from all of the locations listed in this section provided that it is at least 885 kilometers (550 miles) from all existing locations using the same channel block for communication with 800 MHz airborne mobile stations in flight.

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

1. The authority citation for part 23 continues to read as follows:

Authority: Section 47 U.S.C. 154; 303: Interpret or apply Section 47 U.S.C. 301.

2. The third sentence of paragraph (d) introductory text of § 23.20 is amended by removing the words "1800 acre" and adding words "728 hectare" in their place, and paragraphs (d)(1) (i) through (iv) are revised to read as follows:

§ 23.20 Assignment of frequencies.

* * * * *

(d) * * *

(1) * * *

(i) All stations within 2.4 kilometers;

(ii) Stations within 4.8 kilometers with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16.1 kilometers with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80.5 kilometers with 25 kW or more ERP in the primary plane or polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

3. Section 23.40 is revised to read as follows:

§ 23.40 Changes in height or location of antenna.

The licensee of a fixed public radio station, the transmitter of which is authorized at a fixed location, shall not make any changes, without the express authority of the Commission, either in the height or the location of the antenna or its supporting structures, except when the existing or proposed antenna or structure has a maximum height not in excess of 30.5 meters above the ground, changes in height or local changes in location may be made without specific authorization. In no case shall any change in the height or location of the antenna or its supporting structures be made without authority when located or proposed to be located within 8 kilometers of an airport recognized by the Federal Aviation Agency or within 8 kilometers of the center line of an established Federal airway.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Sections 101–404, 76 Stat 419–427; 47 U.S.C. 701–744, Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154 Interprets or applies Sec. 303, 48 Stat. 1082, as amended, 47 U.S.C. 303.

2. Paragraphs (e)(2)(i), (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), (g)(3)(i), (g)(3)(ii), (g)(3)(iii) and (g)(3)(iv) of § 25.203 are revised to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(e) * * *

(2) * * *

(i) All stations within 2.5 kilometers;

(ii) Stations within 5 kilometers with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 15 kilometers with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80 kilometers with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

* * * * *

(g) * * *

(3) * * *

(i) All stations within 2.5 kilometers;

(ii) Stations within 5 kilometers with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iii) Stations within 15 kilometers with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 kilometers with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

* * * * *

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: Sections 151, 154(i), 154(j), 205, 221(c), 403 and 410.

2. Paragraphs (a)(3) and (b)(3)(iii) of § 36.2 are revised to read as follows:

§ 36.2 Fundamental principles underlying procedures.

(a) * * *

(3) In the development of "actual use" measurements, measurements of use are (i) determined for telecommunications plant or for work performed by operating forces on a unit basis (e.g., conversation-minute-kilometers per message, weighted standard work seconds per call) in studies of traffic handled or work performed during a representative period for all traffic and (ii) applied to overall traffic volumes, i.e., 24-hour rather than busy-hour volumes.

(b) * * *

(3) * * *

(iii) Conversation-minute-kilometers or conversation minutes is the basis for measuring the use of interexchange circuit plant and holding-time minutes is the basis for measuring the use of exchange trunk plant. While the use of holding-time-minute-kilometers is the basic fundamental allocation factor for interexchange circuit plant and exchange trunk plant, the use of conversation-minute-kilometers or conversation-minutes for the allocation of interexchange circuit plant and holding-time minutes for the allocation of exchange trunk plant are considered practical approximations for separations between state and interstate operations when related to the broad types of plant classifications used herein.

* * * * *

3. Paragraphs (a)(1)(i)(A), (a)(1)(i)(B), (a)(1)(ii)(C), (a)(2)(i)(B) and (b)(1) of § 36.153 are revised to read as follows:

§ 36.153 Assignment of Cable and Wire Facilities (C&WF) to categories.

(a) * * *

(1) * * *

(i) * * *

(A) By section of cable, uniform as to makeup and relative use by categories. From an analysis of cable engineering and assignment records, determine in terms of equivalent gauge the number of pairs in use or reserved, for each category. The corresponding percentages of use, or reservation, are applied to the cost of the section of cable, i.e., sheath meters times unit cost per meter, to obtain the cost assignable to each category.

(B) By using equivalent pair kilometers, i.e., pair kilometers expressed in terms of equivalent gauge. From an analysis of cable engineering and assignment records, determine the equivalent pair kilometers in use for each category by type of facility, e.g., quadded, paired. The equivalent pair kilometers are then divided by a cable fill factor to obtain the equivalent pair kilometers in plant. The total equivalent pair kilometers in plant assigned to each category is summarized by type of facility, e.g., quadded and paired, and priced at appropriate average unit costs per equivalent pair kilometer in plant. If desired, this study may be made in terms of circuit kilometers rather than physical pair kilometers, with average cost and fill data consistent with the basis of the facilities kilometer count.

(ii) * * *

(C) For use in the assignment of poles to categories, the equivalent sheath kilometers of aerial cable assigned to each category are determined. For convenience, these quantities are determined in connection with assignment of cable costs.

* * * * *

(2) * * *

(i) * * *

(B) By pricing out each category by determining the pair meters of loaded pairs assigned to each category and multiplying by the unit cost per pair meter of loading by type.

* * * * *

(b) * * *

(1) The cost of wire accounted for as exchange is assigned to the appropriate Exchange Cable & Wire Facilities categories. The cost of wire accounted for as toll, which is used for exchange, is also assigned to the appropriate Exchange Cable & Wire Facilities categories. The cost of the remaining wire accounted for as toll is assigned to the appropriate Interexchange Cable & Wire Facilities categories as described in § 36.156. For companies not maintaining exchange and toll subaccounts, it is necessary to review the plant records and identify wire plant by use. The cost of wire used for providing circuits directly assignable to a category is assigned to that category. The cost of wire used for providing circuit facilities jointly used for exchange and interexchange lines is assigned to categories on the basis of the relative number of circuit kilometers involved.

* * * * *

4. Section 36.156 is revised to read as follows:

§ 36.156 Interchange Cable and Wire Facilities (C&WF)—Category 3—apportionment procedures.

(a) An average interexchange cable and wire facilities cost per equivalent interexchange telephone circuit kilometer for all circuits in Category 3 is determined and applied to the equivalent interexchange telephone circuit kilometer counts of each of the classes of circuits.

(b) The cost of C&WF applicable to this category shall be directly assigned were feasible. If direct assignment is not feasible, cost shall be apportioned between the state and interstate jurisdiction on the basis of conversation-minute kilometers as applied to toll message circuits, TWX circuits, etc.

5. Paragraph (a)(1) of § 36.157 is revised to read as follows:

§ 36.157 Host/remote message Cable and Wire Facilities (C&WF)—Category 4—apportionment procedures.

(a) * * *

(1) The cost of host/remote message C&WF excluding WATS closed end access lines for the study area is apportioned on the basis of the relative number of study area minutes-of-use kilometers applicable to such facilities.

* * * * *

6. In the Appendix at the end of part 36, the definition of "Cable Fill Factor" is revised, the definition of "Circuit Mileage or Miles" is removed and the definition of "Circuit Kilometers" is added in its place, the definition of "Conversation-Minute-Miles" is removed and the definition of "Conservation-Minute-Kilometers" is added in its place, the definition of "Equivalent Miles of 104 Wire" is removed and the definition of "Equivalent Kilometers of 104 Wire" is added in its place, the definition of "Equivalent Pair Miles" is removed and the definition of "Equivalent Pair Kilometers" is added in its place, the definition of "Equivalent Sheath Miles" is removed and the definition of "Equivalent Sheath Kilometers" is added in its place, the definition of "Minutes-of-Use-Miles" is removed and the definition of "Minutes-of-Use-Kilometers" is added in its place, the definition of "Sheath Miles" is removed and the definition of "Sheath Kilometers" is added in its place, the definition of "TWX Connection-Minute-Miles" is removed and the definition of

"TWX Connection-Minute-Kilometers" is added in its place, and the definitions of "Long Haul Toll Traffic" and "Short Haul Toll Traffic" are removed to read as follows:

* * * * *

Cable Fill Factor

The ratio of cable conductor or cable pair kilometers in use to total cable conductor or cable pair kilometers available in the plant, e.g., the ratio of revenue producing cable pair kilometers in use to total cable pair kilometers in plant.

* * * * *

Circuit Kilometers

The route kilometers or revenue producing circuits in service, determined by measuring the length in terms of kilometers, of the actual path followed by the transmission medium.

* * * * *

Conversation-Minute-Kilometers

The product of (a) the number of messages, (b) the average minutes of conversation per message and (c) the average route kilometers of circuits involved.

* * * * *

Equivalent Kilometers of 104 Wire

The basic units employed in the allocation of pole lines costs for determining the relative use made of poles by aerial cables and by aerial wire conductors of various sizes. This unit reflects the relative loads of such cable and wire carried on poles.

Equivalent Pair Kilometers

The product of sheath Kilometers and the number of equivalent gauge pairs of conductors in a cable.

Equivalent Sheath Kilometers

The product of (a) the length of a section of cable in kilometers (sheath kilometers) and (b) the ratio of the metallic content applicable to a particular group of conductors in the cable (e.g., conductors assigned to a category) to the metallic content of all conductors in the cable.

* * * * *

Minutes-of-Use-Kilometers

The product of (a) the number of minutes-of-use and (b) the average route kilometers of circuits involved.

* * * * *

Sheath Kilometers

The actual length of cable in route kilometers.

* * * * *

TWX Connection-Minute-Kilometers

The product of (a) the number of TWX connections, (b) the average minutes per TWX connection and (c) the average route kilometers of circuits involved.

* * * * *

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

§ 61.33 [Amended]

2. In paragraph (a) of § 61.33 the words "8½ x 11 inches" are removed and the words "A4 (21 cm x 29.7 cm) or 8.5 x 11 inches (21.6 cm x 27.9 cm)" are added in their place.

3. Paragraph (a) of § 61.52 is revised to read as follows:

§ 61.52 Form, size, type, legibility, etc.

(a) All tariff publications must be in loose-leaf form of size A4 (21 cm x 29.7 cm) or 8.5 x 11 inches (21.6 cm x 27.9 cm), and must be plainly printed in black print on white paper of durable quality. Less than 6-point type may not be used. Erasures or alterations in writing must not be made in any tariff publication filed with the Commission or in those copies posted for public convenience. A margin of no less than 2.5 cm (1 inch) in width must be allowed at the left edge of every tariff publication.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. Paragraph (j)(4) of § 63.01 is revised to read as follows:

§ 63.01 Contents of applications.

* * * * *

(j) * * *

(4) Cities, towns, and villages along routes indicated on map or sketch, with approximate population of each, and route kilometers between the principal points;

* * * * *

3. Section 63.03 is amended by revising paragraphs (b)(6), (e)(2) and (e)(3) to read as follows:

§ 63.03 Special provisions relating to small projects for supplementing of facilities.

* * * * *

(b) * * *

(6) The route kilometers of the facilities involved (excluding leased facilities) and airline kilometers between terminal communities in the proposed project; and

* * * * *

(e) * * *

(2) The route kilometers thereof (excluding leased facilities);

(3) The terminal communities served and airline kilometers between such communities;

* * * * *

4. Paragraph (b) of § 63.04 is amended by removing the words "route mileage" and adding the words "route kilometers" in their place, and by removing the words "airline mileage" and adding the words "airline kilometers" in their place, and by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 63.04 Special provisions relating to temporary or emergency service.

* * * * *

(c) * * *

(2) The route kilometers thereof (excluding leased facilities);

(3) The terminal communities served and the airline kilometers between terminal communities in the proposed project;

* * * * *

5. The first sentence of § 63.53 is revised to read as follows:

§ 63.53 Form.

Applications under section 214 of the Communications Act shall be submitted on paper not more than 21.6 cm (8.5 in) wide and not more than 35.6 cm (14 in) long with a left-hand margin of 4 cm (1.5 in). * * *

6. Paragraphs (b)(2) and (d)(1) of § 63.56 are revised and in paragraph (c) the words "route mile" are removed and the words "route kilometer" are added in their place to read as follows:

§ 63.56 Waivers.

* * * * *

(b) * * *

(2) A demonstration that the proposed service area has a density of less than thirty households per route kilometer of coaxial cable trunk and feeder line;

* * * * *

(d) * * *

(1) The density of the area to be served is thirty or more households per route kilometer; or

* * * * *

7. Paragraph (a)(1) of § 63.64 is revised to read as follows:

§ 63.64 Alternative procedure in certain specified cases involving public coast stations.

(a) * * *

(1) Where applicant proposes to close a branch, agency, or jointly-operated office located within 0.4 kilometers of another office of the applicant with the same or longer hours of service and equal or better pickup and delivery facilities which will be made available to the area served by the office to be closed, and the average number of messages sent and received at the office to be closed, for the preceding 6 months, has been 50 or less per day;

* * * * *

8. In paragraph (a)(4) introductory text of § 63.70 the words "20 inches by 24 inches" are removed and the words "A2 (42.0 cm x 59.4 cm) or 20 in x 24 in (50.8 cm x 61.0 cm) in size" are added in their place.

9. In paragraph (a) introductory text of § 63.90 the words "20 inches by 24 inches" are removed and the words "A2 (42.0 cm x 59.4 cm) or 20 in x 24 in (50.8 cm x 61.0 cm) in size" are added in their place, and in paragraph (b) the words "4 column inches" are removed and the words "10 column centimeters (4 column inches)" are added in their place, and in paragraph (c) the words "11 inches by 17 inches" are removed and the words "A3 (29.7 cm x 42.0 cm) or 11 in x 17 in (27.9 cm x 43.2 cm) in size" are added in their place.

10. Section 63.500 is amended by revising paragraph (k)(3) to read as follows:

§ 63.500 Contents of applications to dismantle or remove a trunk line.

* * * * *

(k) * * *

(3) Cities and towns along routes with approximate population of each, and route kilometers between the principal points;

* * * * *

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303), unless otherwise noted.

2. Paragraph (a) of the definition of "Demarcation point" in section 68.3 is amended by removing the words "twelve inches" everywhere they occur and adding the words "30 cm (12 in)" in their place, paragraph (b)(2) of the definition of "Demarcation point" is amended by removing the words "twelve inches" and adding the words "30 cm (12 in)" in their place, and paragraph (a)(1) of the definition of "System premises wiring" is amended by removing the words "50 feet" and adding the words "15 meters (50 feet)" in their place.

3. In the first sentence of paragraph (f) of § 68.200 the words ', 8" x 10"' are removed and the words "of size A4 (12.0 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm)" are added in their place, in the second sentence of paragraph (f) the words '8" x 10"' are removed everywhere they appear and the words "A4 (21.0 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm)" are added in their place, and paragraph (h)(1) and the last sentence of paragraph (h)(2) are revised to read as follows:

§ 68.200 Application for equipment registration.

* * * * *

(h) * * *

(1) An extension cord must consist of a male connector and a female connector and wiring between them which is no longer than 7.6 meters (25 feet).

(2) * * * Switch wiring must be "fully protected" wiring, no longer than 7.6 meters (25 feet).

* * * * *

§ 68.213 [Amended]

4. Paragraph (c) of § 68.213 is amended by removing the words "six inches" and adding in their place the words "15 cm (6 in)".

§ 68.215 [Amended]

5. Paragraph (a)(2) of § 68.215 is amended by removing the words "twenty-five feet" and adding the words "7.6 meters (25 feet)" in their place, and paragraph (d)(2) is amended by removing the words "six inches" and adding the words "15 cm (6 in)" in their place.

6. Paragraphs (b) and (c)(1) of § 68.302 are revised to read as follows:

§ 68.302 Environment simulation.

* * * * *

(b) *Temperature and humidity.* Cycling at any convenient rate through the following temperature and humidity conditions three times: 30 minutes at 65° C (150° F) and 15 percent relative humidity, followed by 30 minutes at 32° C (90° F) and 90 percent relative humidity, followed by 30 minutes at −40° C (−40° F) and any convenient humidity.

(c) *Shock.*

(1) Registered Terminal Equipment and Registered Protective Circuitry Equipment Unpackaged:

Hand-Held Items Normally Used at Head Height:

18 random drops from a height of 150 cm (60 in) onto concrete covered with 3 mm (⅛ in) asphalt tile or similar surface.

Normally Customer Carried Equipment:

6 random drops from a height of 75 cm (30 in) onto concrete covered with 3 mm (⅛ in) asphalt tile or similar surface.

Equipment Not Normally Customer Carried:

These tests are made onto concrete covered with 3 mm (⅛ in) asphalt tile or similar surface.

0–10 kg (0–20 lbs): One 15 cm (6 in) face drop on each normal or designated rest face, one 7 cm (3 in) drop on all other faces, and one 7 cm (3 in) corner drop on each corner.

10–20 kg (20–50 lbs): One 10 cm (4 in) face drop on each normal or designated rest face, one 5 cm (2 in) face drop on all other faces, and one 5 cm (2 in) corner drop on each corner.

20–50 kg (50–100 lbs): One 5 cm (2 in) face drop on each normal or designated rest face. One edgewise drop and one cornerwise drop from a height of 5 cm (2 in) on each edge and corner adjacent to the rest face.

50–500 kg (100–1000 lbs): One 2 cm (1 in) face drop on each normal or designated rest face. One edgewise drop and one cornerwise drop from a height of 2 cm (1 in) on each edge and corner adjacent to the rest face.

Over 500 kg (1,000 lbs): One 2 cm (1 in) face drop on each normal or designated rest face. One edgewise drop from a height of 2 cm (1 in) on each edge adjacent to this rest face.

* * * * *

§ 68.304 [Amended]

7. In Note 5 in paragraph (h) of § 68.304 the words "(10N+ 0.04L)" are removed and the words "(10N+ 0.13L)" are added in their place, and in Note 5 in paragraph (h) the word "feet" is removed and the word "meters" is added in its place.

8. Section 68.500 is amended as follows:

A. In § 68.500 the introductory text is revised as shown below.

B. Figures 68.500(a)(2)(i) and 68.500(a)(2)(ii), and Notes 3, 4, 5, 6, 8 and 9 to Figures 68.500(a)(2)(i) and 68.500(a)(2)(ii) are revised to read as shown below.

C. Figure 68.500(a)(3)(i) is revised, Notes 1, 2, 5 and 6 to Figure 68.500(a)(3)(i) are revised to read as shown below.

D. Figures 68.500(a)(4)(i) and 68.500(a)(5)(i) are revised to read as shown below.

E. Figures 68.500 (b)(2)(i) and (b)(3)(i) are revised to read as shown below.

F. Notes 1, 3, 4, 5, 7, 8 and the first, second and fourth paragraphs of Note 10 to Figures 68.500(b)(2)(i) and 68.500(b)(3)(i) are revised to read as shown below.

G. Figures 68.500 (c)(2)(i) and (c)(2)(ii) are revised to read as shown below.

H. Notes 2, 3, 4 and 6 to Figures 68.500(c)(2)(i) and 68.500(c)(2)(ii) are revised to read as shown below.

I. Figure 68.500(c)(3)(i) is revised to read as shown below.

J. Notes 1, 2, 5 and 6 to Figure 68.500(c)(3)(i) are revised to read as shown below.

K. Figures 68.500(c)(4)(i), 68.500(c)(5)(i), 68.500(d)(2)(i) and 68.500(d)(3)(i) are revised to read as shown below.

L. Notes 1, 3, 4, 5, 7, 8, the first, second and fourth paragraphs of Note 10, and Note 12 to Figures 68.500(d)(2)(i) and 68.500(d)(3)(i) are revised to read as shown below.

M. Paragraphs (e)(1), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), (e)(8) and (e)(9) are revised to read as shown below.

N. Figures 68.500(e)(1), 68.500(e)(2), 68.500(e)(3) and 68.500(e)(4) are revised to read as shown below.

O. Paragraphs (f)(1), (f)(3), (f)(4), (f)(5), (f)(6), (f)(7), (f)(8) and (f)(9) are revised to read as shown below.

P. Figures 68.500(f)(1), 68.500(f)(2) and 68.500(f)(3) are revised to read as shown below.

Q. Paragraph (g) and its Note are revised to read as shown below.

R. Figures 68.500(g)(1) and 68.500(g)(2) are revised to read as shown below.

S. Paragraph (h) and its Note are revised to read as shown below.

T. Figure 68.500(h) is revised to read as shown below.

U. Figures 68.500(i)(2)(i) and 68.500(i)(2)(ii) are revised to read as shown below.

V. Notes 2, 3, 4 and 6 to Figures 68.500(i)(2)(i) and 68.500(i)(2)(ii) are revised to read as shown below.

W. Figure 68.500(i)(3)(i) is revised to read as shown below.

X. Notes 1, 2, 5 and 6 to Figure 68.500(i)(3)(i) are revised to read as shown below.

Y. Figures 68.500(i)(4)(i), 68.500(i)(5)(i) and 68.500(j)(2)(i) are revised to read as shown below.

Z. Notes 1, 3, 4, 5, 7, 8 and 10 to Figure 68.500(j)(2)(i) are revised to read as shown below.

§ 68.500 Specifications.

General. The US customary units are shown in parentheses throughout this Subpart F. US customary units were the original dimensional units used in designing the plugs and jacks shown in the following pages. The dimensions shown without parenthesis are in SI units. The SI dimensional units are derived from the US customary units by multiplying "inches" by "25.4" to derive the exact conversion in millimeters with no rounding-off of the resulting decimal value. The number of decimal places to which the conversion is taken by adding a particular number of zeroes to the right end of the resulting SI value, where required, is governed by the concept that when the calculated SI dimensional unit is divided by "25.4," the resulting "inches" calculation will be exactly that shown in the parenthesis (the original design dimension). The conversion to SI force units, newtons, is rounded off to a number of decimal places that will result in the calculated SI force value being within less than one percent of the original US customary force unit value located adjacent in parenthesis (the original design value). The rationale for this is that this will bring the force conversions to within the degree of accuracy of the force-measuring device and avoid the carrying of an unrealistic number of decimal places which would otherwise result from an exact conversion. The plugs and jacks described in this section represent the standard connections to be used for connections to the telephone network. The plug and jack designs shown are representative of generic types, and should not be interpreted as the only designs that may be used. Design innovation and improvement is expected; but for interchangeability to be maintained, alternative designs (the "or equivalent" permitted in § 68.104) must be compatible with the plugs and jacks shown. The interface dimensions between mating plugs and jacks must be maintained. Hardware used to mount, protect, and enclose standard jacks is not described. The only requirement on connecting blocks, housings, dust covers, outdoor boxes, and the like that contain standard network jacks is that they accept standard plugs with cordage. For special purpose applications, plugs may be made longer than shown or adapted for direct use on equipment or apparatus without cordage. The sliding modular plug used on the back of many modular wall telephone sets is an example of such a special purpose application. It is the responsibility of the designers and manufacturers of communication equipment who use such plugs to assure that they are compatible with the hardware used to mount standard jacks with which they plan to interface.

(a) Minature 6-position plug:

* * * * *

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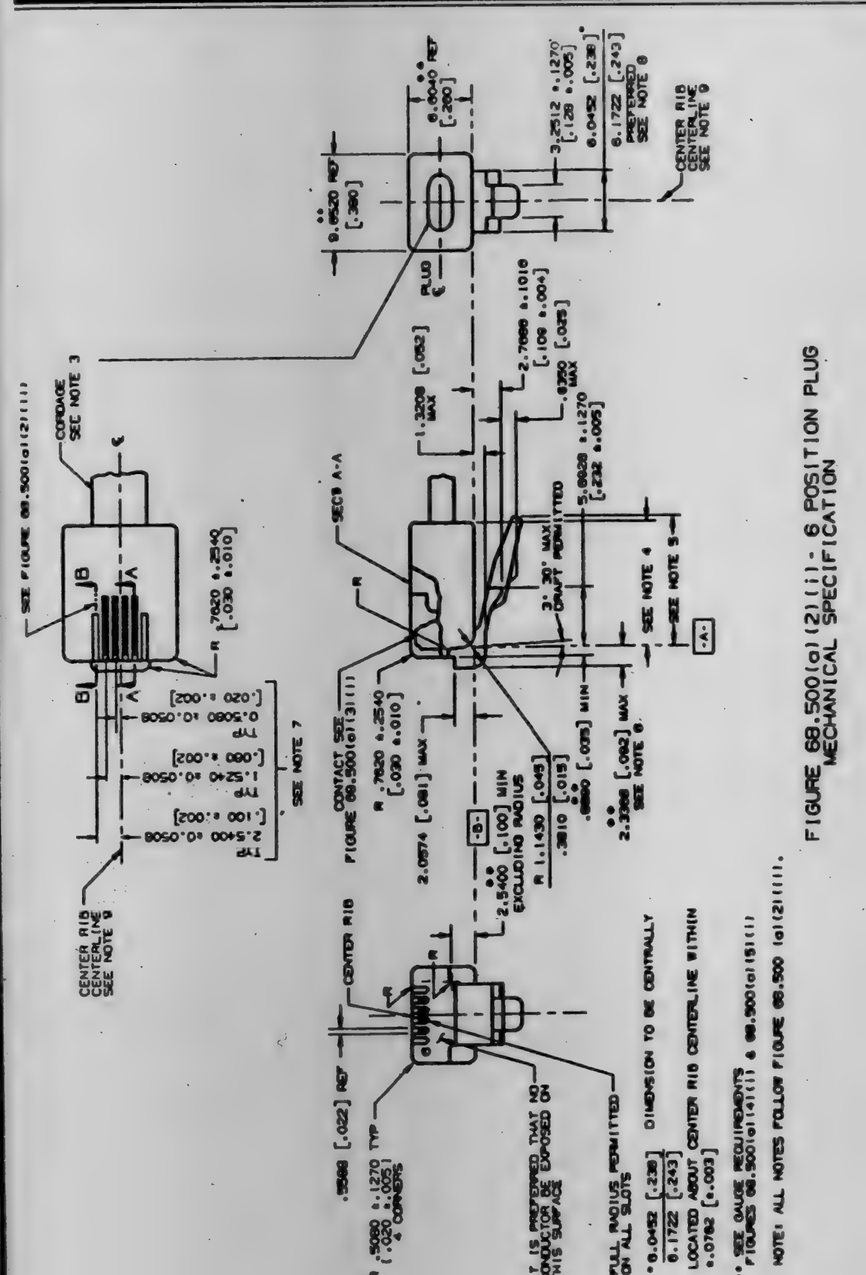

FIGURE 68.500(a)(2)(i)- 6 POSITION PLUG MECHANICAL SPECIFICATION

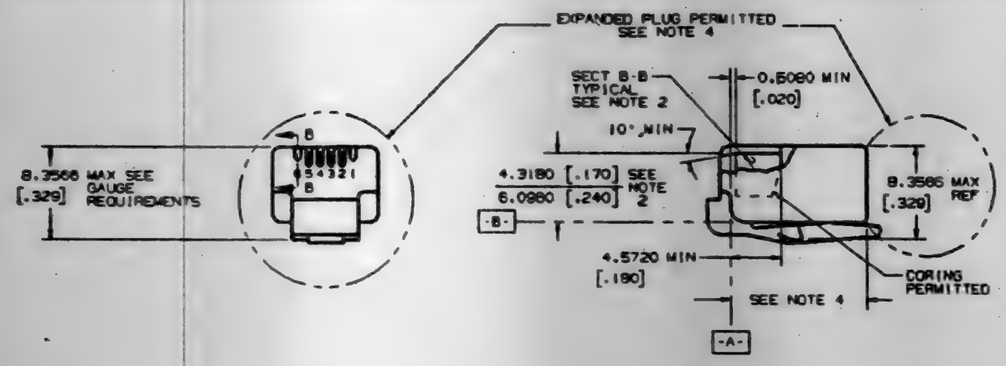

NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(a)(2)(ii) - 6 POSITION PLUG
MECHANICAL SPECIFICATION (CONTINUED)

BILLING CODE 6712-01-C

Notes: (Notes apply to Figures 68.500(a)(2)(i) and 68.500(a)(2)(ii))

* * * * *

3. The preferred major cordage cross section is 2.5400 mm (.100 inch) max. thick by 5.0800 mm (.200 inch) max. wide, with rounded corners. It should exit the plug on the plug centerline. Other cordage configurations are permitted but may inhibit the special features of some network jack enclosures.

4. The standard plug length is 11.6840 mm (.460 inch) max. Plugs may be made longer than standard or adapted for direct use on special cords, adapters with out cordage, and on apparatus or equipment subject to the limitations described in the Section 68.500 introductory paragraphs. Plugs longer than standard may inhibit the special features of some network jack enclosures.

5. A 12.0396 mm (.474 inch) minimum tab length is required. It is preferred that a maximum tab length be no longer than 13.2080 mm (.520 inch). Longer tabs may be used with the same limitations as described in Note 4.

6. To obtain maximum plug guidance when 6-position plugs are inserted in 8-position jacks, it is desirable to extend the front plug nose to the 2.3368 mm (.092 inch) maximum.

* * * * * * *

8. The 6.0452/6.1722 mm (.238/.243 inch) dimension is preferred to obtain maximum plug guidance in jacks with more than 6 conductors. A tolerance range of 5.9182/6.1722 mm (.233/.243 inch) is permitted, but may create targeting problems in 8-position jacks.

9. The center rib centerline shall be coincident with the plug width 9.6520 mm (.380 inch) ref. centerline within +/− .0762mm (+/− .003 inch).

BILLING CODE 6712-01-M

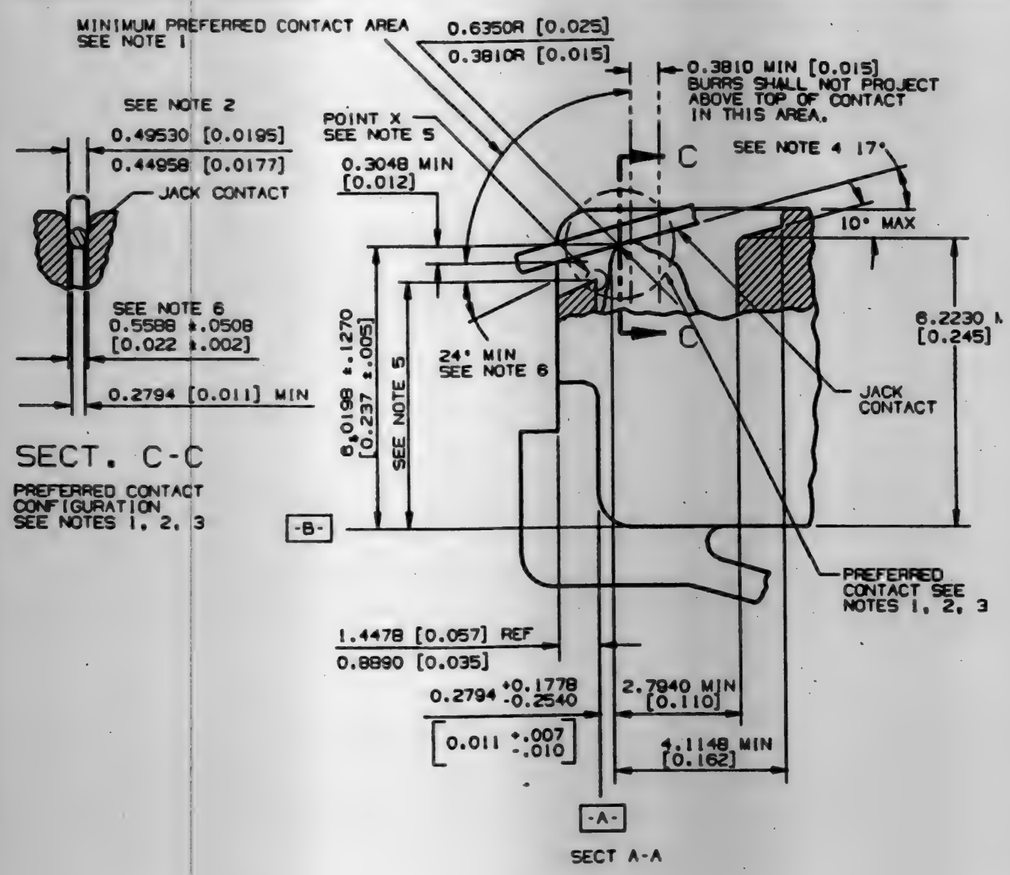

NOTE: ALL NOTES FOLLOW THIS FIGURE.

NOTE: THE 8 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL.

FIGURE 68.500(a)(3)(i)- 6 POSITION PLUG
PLUG /JACK CONTACT SPECIFICATION

BILLING CODE 6712-01-C

Notes: (Notes apply to Figure 68.500(a)(3)(i).

1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (0.000050 inch) on each side of the interface. The minimum contact force should be .98 N (100 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .4572 mm (.018 inch) spring temper phosphor bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .44958/.49530 mm (.0177/.0195 inches). Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

* * * * * *

5. To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "X" should be 5.0800 mm (.200 inch) max. A dimension greater than 5.3594 mm (.211 inch) may result in loss of electrical contact between plugs and jacks. The 5.3594 mm (.211 inch) max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than 4.8260 mm (.190 inches).

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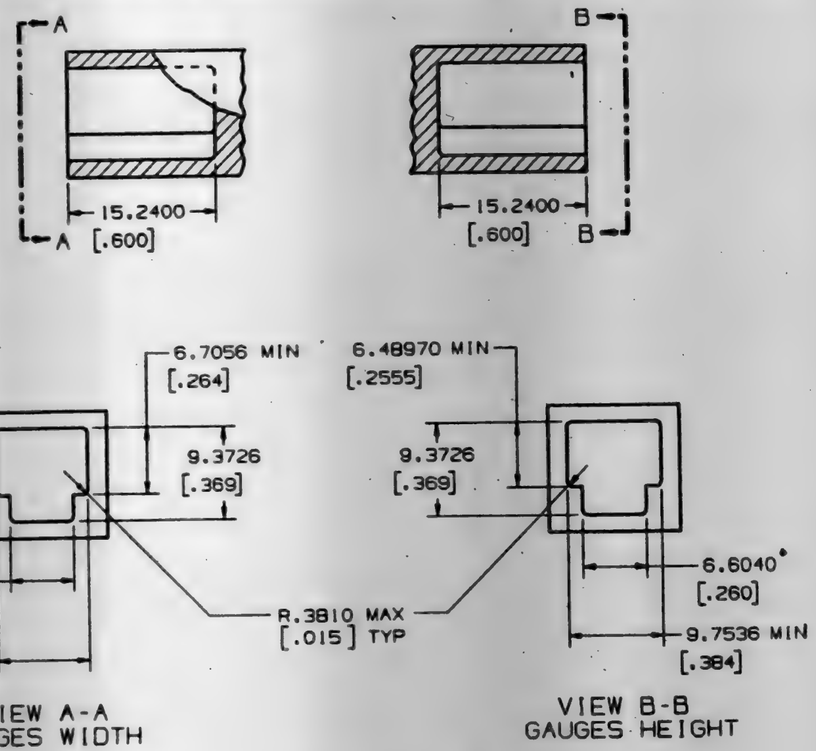

VIEW A-A
GAUGES WIDTH

VIEW B-B
GAUGES HEIGHT

NO-GO GAUGE

NOTES:

1. THE PLUG SHALL NOT BE CAPABLE OF ENTERING THE GAUGE MORE THAN 1.7780mm [.070] BEYOND DATUM-A- (SEE FIGURE 68.500(a)(2)(i)) WITH 8.90 newtons[2.0 POUNDS] INSERTION FORCE.
2. NON-TOLERANCED DIMENSIONS GIVEN TO FOUR PLACES SHALL BE WITHIN ±0.0508mm [.002].
3. •6.6040mm [.260] DIMENSION TO BE CENTRALLY LOCATED WITH RESPECT TO 9.7536mm [.384] MINIMUM AND 9.53770mm [.3755] MINIMUM WITHIN ±0.0508mm [.002].

FIGURE 68.500(a)(4)(i)- 6 POSITION PLUG
MINIMUM PLUG SIZE

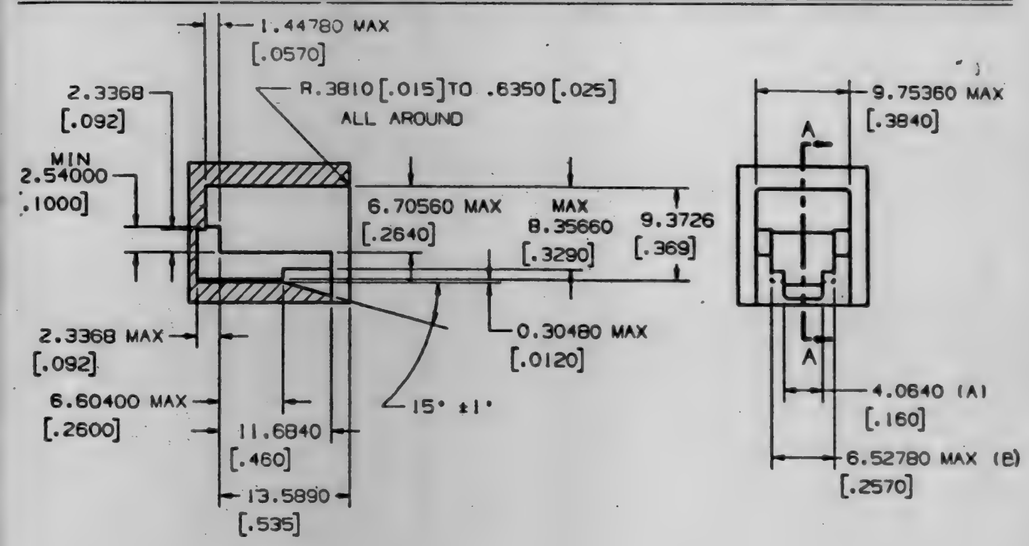

SECT. A-A

GO GAUGE

NOTES

1. THE PLUG SHALL BE CAPABLE OF INSERTION AND LATCHING INTO THE GUAGE WITH 22.24 newtons [5 POUNDS] OR LESS INSERTIONS FORCE. PLUG LATCHING BAR SHALL BE DEPRESSED SO AS NOT TO INTERFERE WITH THE PLUG ENTRY. AFTER INSERTION AND LATCHING, PLUG SHALL BE CAPABLE OF REMOVAL, WITH THE LATCH DEPRESSED, WITH A REMOVAL FORCE OF 44.48 newtons [10 POUNDS] OR LESS APPLIED AT AN ADVANTAGEOUS ANGLE.
2. DIMENSIONS GIVEN TO FOUR DECIMAL PLACES SHALL BE WITHIN ±.0508mm [±.002].
3. DIMENSIONS (A) AND (B) TO BE CENTRALLY LOCATED WITH RESPECT TO 9.75360mm [.3840] MAX. JACK OPENING WIDTH WITHIN ±0.0254mm [.001].
4. DO NOT SCALE DRAWINGS FOR EXTERNAL CONFIGURATION.

FIGURE 68.500(a)(5)(i)- 6 POSITION PLUG
MAXIMUM PLUG SIZE

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(b)* * *

(1) [reserved]

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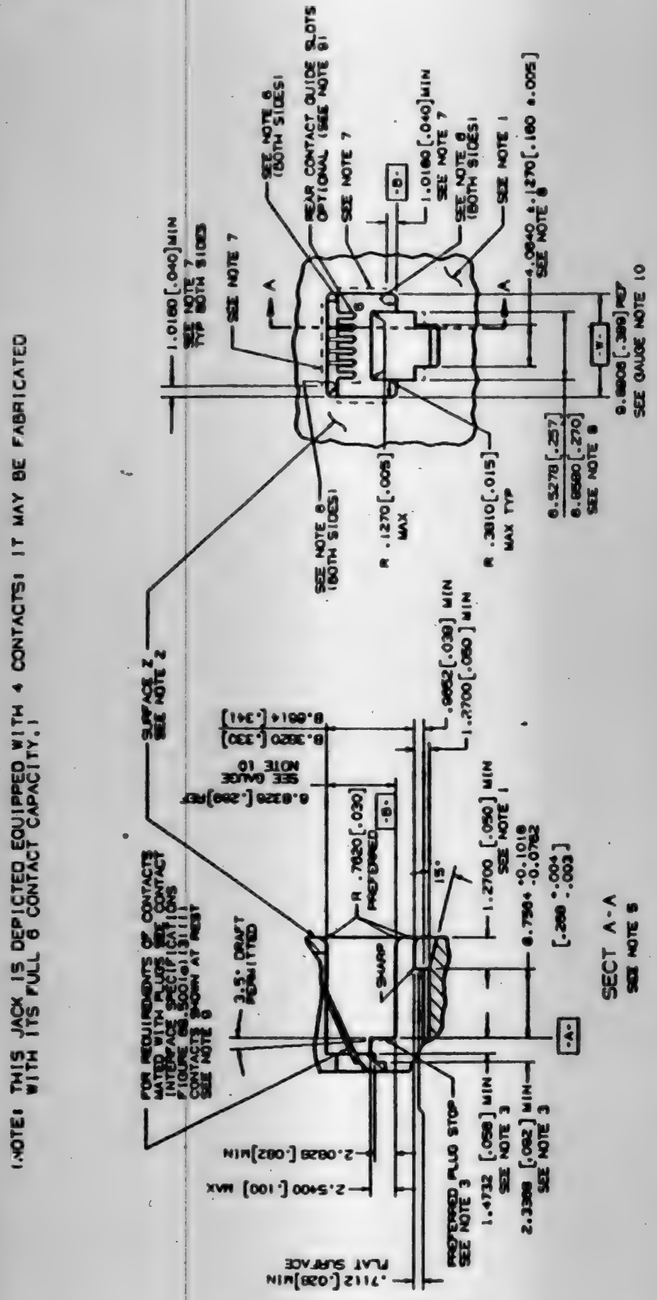

SECT A-A
SEE NOTE 5

(NOTE: THIS JACK IS DEPICTED EQUIPPED WITH 4 CONTACTS; IT MAY BE FABRICATED WITH ITS FULL 6 CONTACT CAPACITY.)

FIGURE 68.500(b)(2)(i)- 6 POSITION JACK
MECHANICAL SPECIFICATION

NOTE: ALL NOTES FOLLOW FIGURE 68.500(b)(3)(i) UNLESS SPECIFIED.

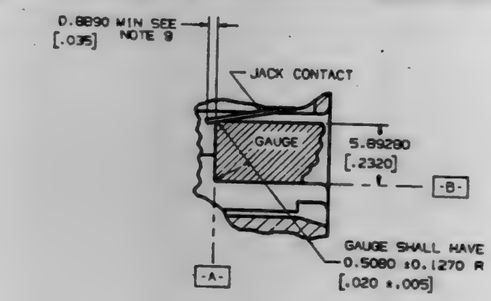

SEC A-A
(SHOWN WITHOUT REAR CONTACT GUIDES)

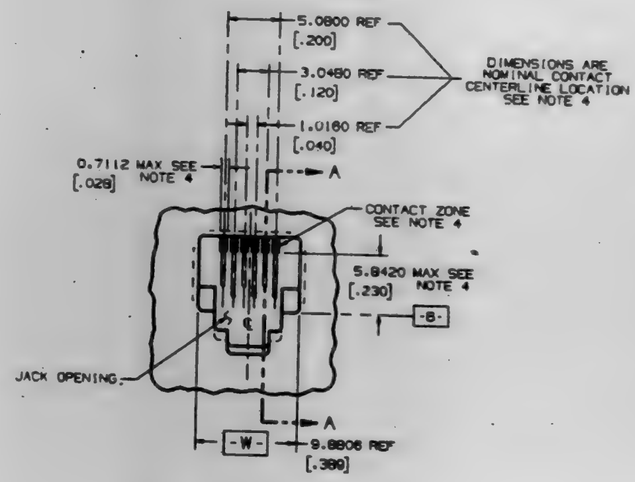

VIEW OF CONTACT ZONE
(SHOWN WITHOUT REAR CONTACT GUIDES)

(NOTE: ALL NOTES FOLLOW THIS FIGURE.)

FIGURE 68.500(b)(3)(i)- 6 POSITION JACK
MECHANICAL SPECIFICATIONS (CONTINUED)

Notes: (Notes apply to Figures 68.500(b)(2)(i) and 68.500(b)(3)(i).)

1. Front surface projections beyond the 1.2700 mm (.050 inch) min. shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(a)(2)(i), 6-Position Plug, Mechanical Specifications). A catch length greater than 1.2700 mm (.050 inch) is beneficial in providing greater breakout strength.

* * * * *

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 1.1430 mm (0.045 inch).

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, .7112 mm (.028 inch) max. wide, where they extend into the jack openings. There is no location requirement for jack contacts below these zones 5.8420 mm (.230 inch) max., but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (included all locating tolerances), about the jack opening width 9.8806 mm (.389 inch) Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .3810 mm (.015 inch) radius max. unless specified.

* * * * *

7. Relief inside the dotted areas on 3 sides of the jack opening is permitted. The 6.8326 mm (.269 inch) Ref and 9.8806 mm (.389 inch) Ref Gauge Requirements must be maintained in each corner, (ref. 1.0160 mm (0.040 inch) min), to assure proper plug/jack interface guidance. A .8128 mm ±.1270 mm (.032 inch ±.005 inch) relief on the top side, (opposite plug catch), is required on jacks in connecting blocks which mount and connect portable wall telephones so as to assure interface with the special purpose sliding modular plug used on many wall telephone sets.

8. 4.0640 mm (.160 inch) and 6.5278/6.8580 mm (.257/.270 inch) dimensions to be centrally located to jack opening width -W- within ±.1778 mm (0.007 inch).

* * * * *

10. Gauge Requirements:

GO: The jack shall be capable of accepting a 9.7536 x 6.7056 mm (0.3840 x 0.2640 inch) gauge and the gauge shall be capable of being removed with a maximum force of 8.9 newtons (2 pounds).

NO GO: The jack shall not accept either a 10.00760 x 6.45160 mm (0.3940 x 0.254 inch) horizontal width of opening gauge or a 6.95960 x 9.5504 mm (.2740 x .376 inch) vertical height of opening gauge. However, if either gauge is accepted the force necessary to remove the gauge shall be minimum .83 newtons (3.0 ounces).

* * * * *

Gauges shall have a .7620 mm (.030 inch) radius on the nose and a .3810 mm (0.015 inch) radius on all edges with clearance provided for contacts.

(c) * * *

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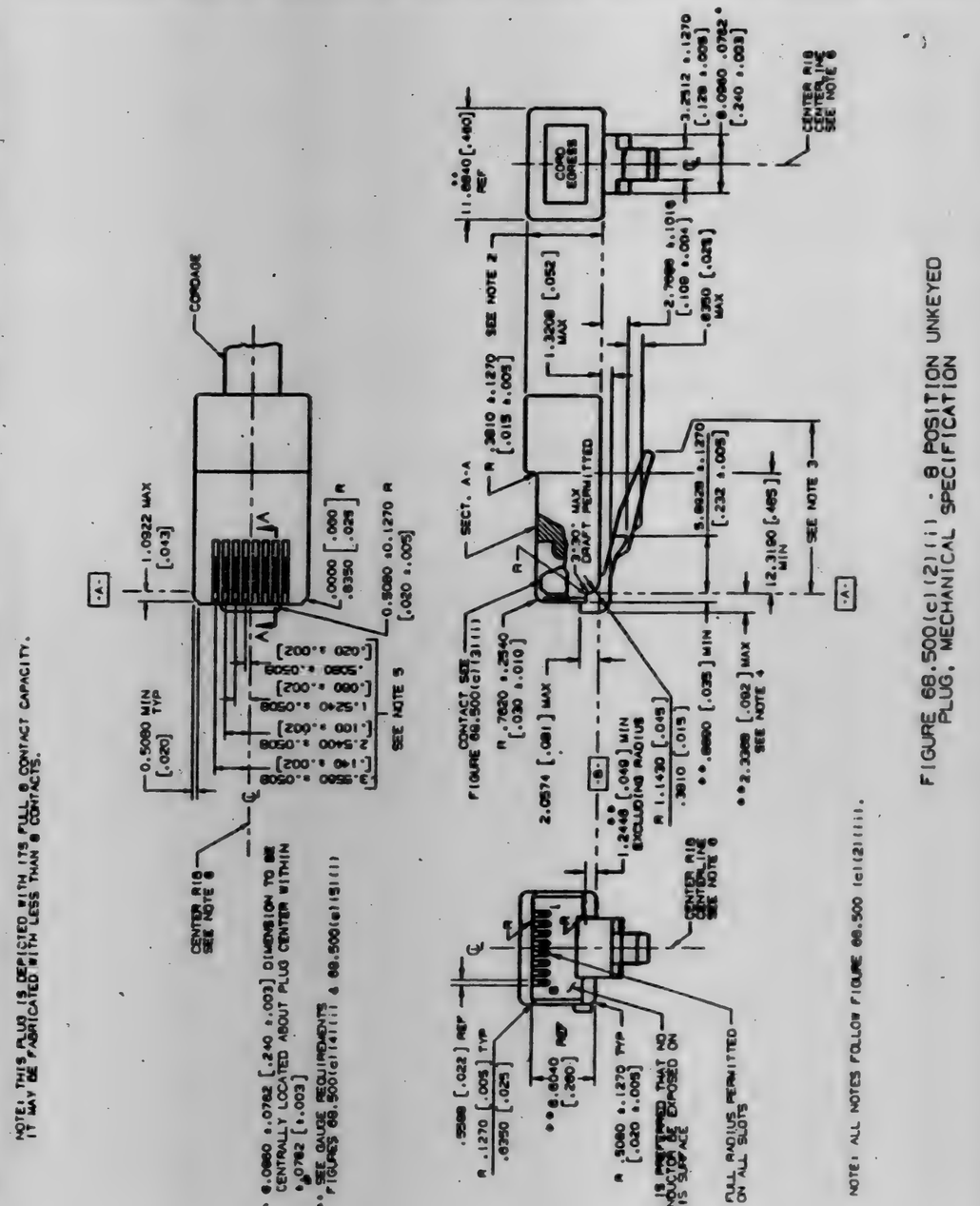

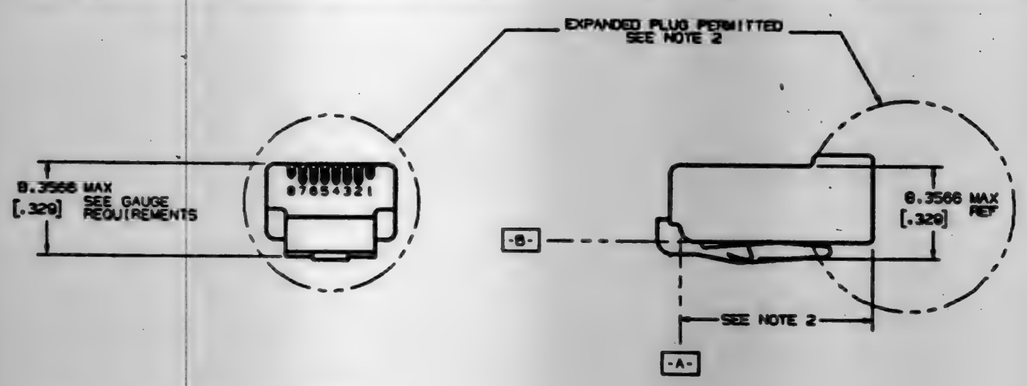

NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(c)(2)(ii) - 8 POSITION UNKEYED PLUG, MECHANICAL SPECIFICATION (CONTINUED)

BILLING CODE 6712-01-C

Notes: (Notes apply to Figures 68.500(c)(2)(i) and 68.500(c)(2)(ii).)

* * * * *

2. The standard plug height in the area shown is 8.0010 mm (.315 inch) maximum. The standard plug length is 23.1140 mm (.910 inch) maximum. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, apparatus or equipment subject to the limitations described in the introductory paragraphs of 68.500. Plugs longer and/or higher than standard may inhibit the special features of some network jack enclosures.

3. A 14.6050 mm (.575 inch) minimum tab length is required. It is preferred that a maximum tab length be no longer than 15.8750 mm (.625 inch). Longer tabs may be used with the same limitations described in Note 2.

4. To obtain maximum plug guidance in jacks, it is desirable to extend the front plug nose to the 2.3368 mm (.092 inch) maximum.

* * * * *

6. The center rib centerline shall be coincident with the plug width 11.6840 mm ref. (.460 inch ref.) centerline within ±.0762 mm (.003 inch)

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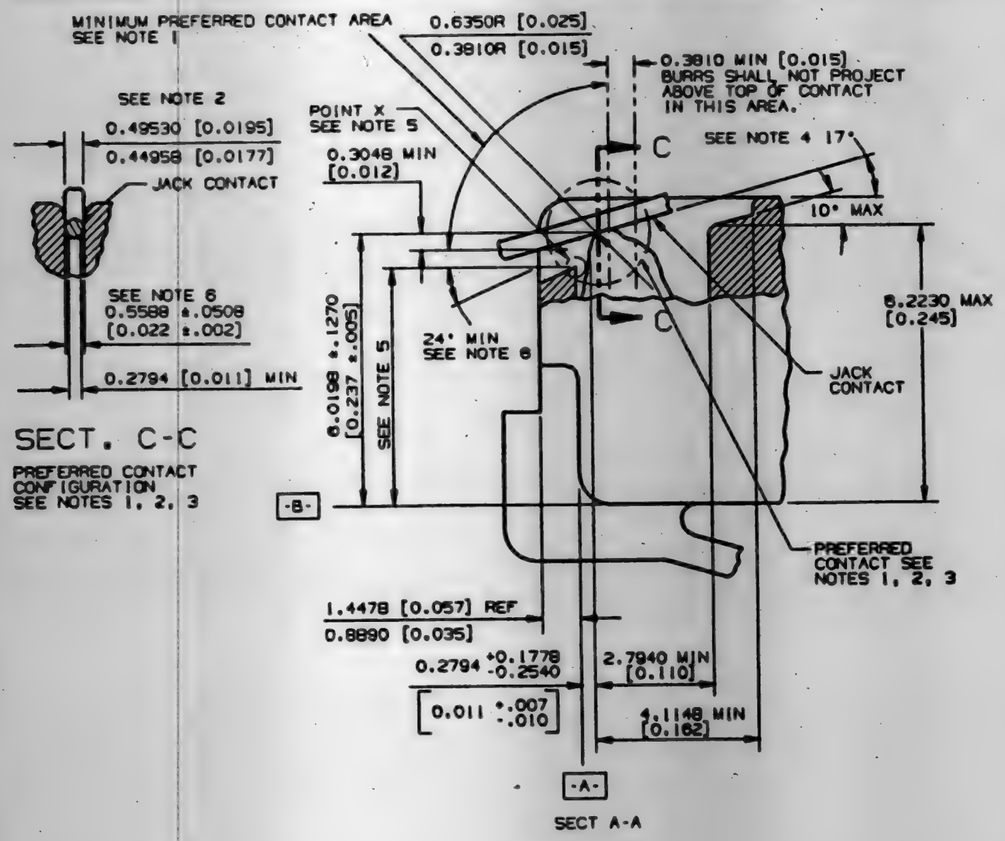

NOTE: ALL NOTES FOLLOW THIS FIGURE.

NOTE: THE 8 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL.

FIGURE 68.500(c)(3)(i) - 8 POSITION UNKEYED PLUG
PLUG /JACK CONTACT SPECIFICATION

BILLING CODE 6712-01-C

Notes: (Notes apply to Figure 68.500(c)(3)(i).)

1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (.000050 inch) on each side of the interface. The minimum contact force should be .98 N (100 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .4572 mm (.018 inch) spring temper phosphor bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .44958/.49530 mm (.0177/.0195 inches). Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contract areas.

* * * * *

5 To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "X" should be 5.0800 mm (.200 inch) max. A dimension greater than 5.3594 mm (.211 inch) may result in loss of electrical contact between plugs and jacks. The 5.3594 mm (.211 inch) max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than 4.8260 mm (.190 inches).

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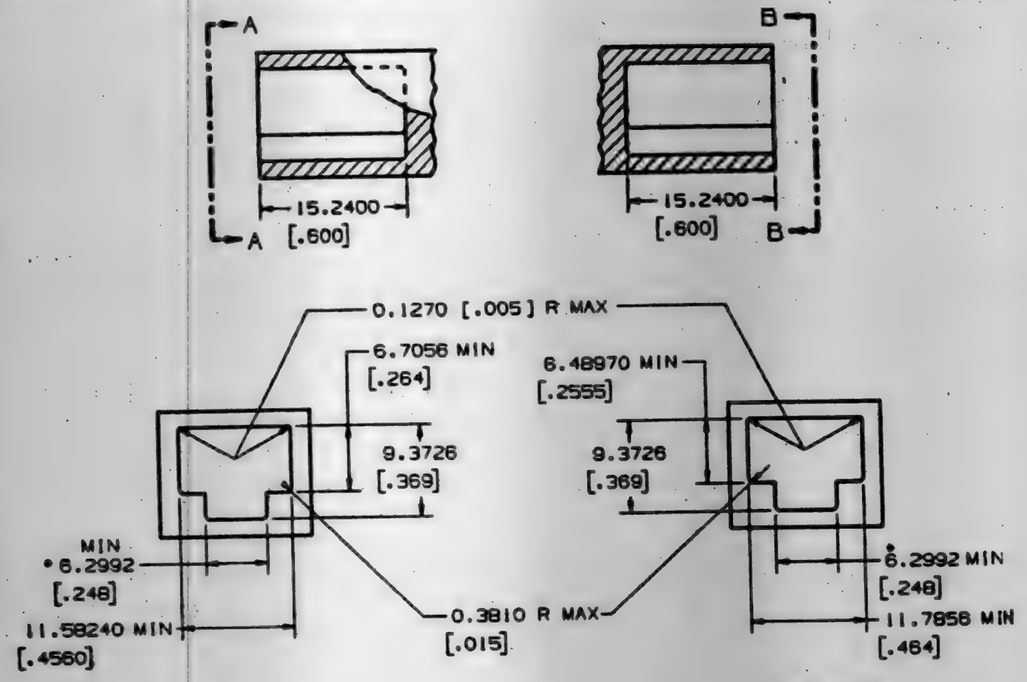

VIEW A-A
GAUGES WIDTH

VIEW B-B
GAUGES HEIGHT

NO-GO GAUGE

NOTES:

1. THE PLUG SHALL NOT BE CAPABLE OF ENTERING THE GAUGE MORE THAN 1.7780mm [.070] BEYOND DATUM-A-(SEE FIGURE 68.500(c)(2)(i)) WITH 8.90 newton [2.0 POUNDS] INSERTION FORCE.

2. NON-TOLERANCED DIMENSIONS GIVEN TO FOUR PLACES SHALL BE WITHIN ±0.0508mm [.002].

3. • 6.2992mm [.248] DIMENSION TO BE CENTRALLY LOCATED WITH RESPECT TO 11.7858mm [.464] MINIMUM AND 11.58240mm [.4560] MIMIMUM WITHIN ±0.0508mm [.002].

FIGURE 68.500(c)(4)(i)-8 POSITION UNKEYED
PLUG, MINIMUM PLUG SIZE

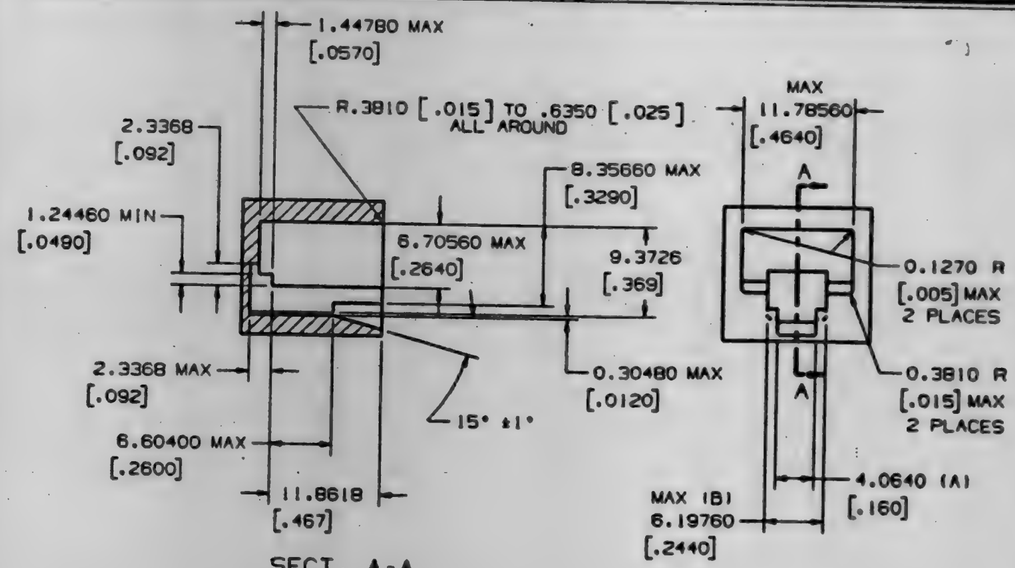

SECT. A-A

GO GAUGE

NOTES:

1. THE PLUG SHALL BE CAPABLE OF INSERTION AND LATCHING INTO THE GAUGE WITH 22.24 newtons [5 POUNDS] OR OR LESS INSERTION FORCE. PLUG LATCHING BAR SHALL BE DEPRESSED SO AS NOT TO INTERFERE WITH THE PLUG ENTRY. AFTER INSERTION AND LATCHING, PLUG SHALL BE CAPABLE OF REMOVAL, WITH THE LATCH DEPRESSED, WITH REMOVAL FORCE OF 44.48 newtons [10 POUNDS] OR LESS APPLIED AT AN ADVANTAGEOUS ANGLE.

2. DIMENSIONS GIVEN TO FOUR DECIMAL PLACES SHALL BE WITHIN ±.0508mm [.002].

3. DIMENSIONS (A) AND (B) TO BE CENTRALLY LOCATED WITH RESPECT TO 11.78560mm [.4640] MAX. JACK OPENING WIDTH WITHIN ±0.0254mm [.001].

4. DO NOT SCALE DRAWINGS FOR EXTERNAL CONFIGURATION.

FIGURE 68.500(c)(5)(i)-8 POSITION UNKEYED
PLUG, MAXIMUM PLUG SIZE

BILLING CODE 6712-01-C

(d) * * *

BILLING CODE 6712-01-M

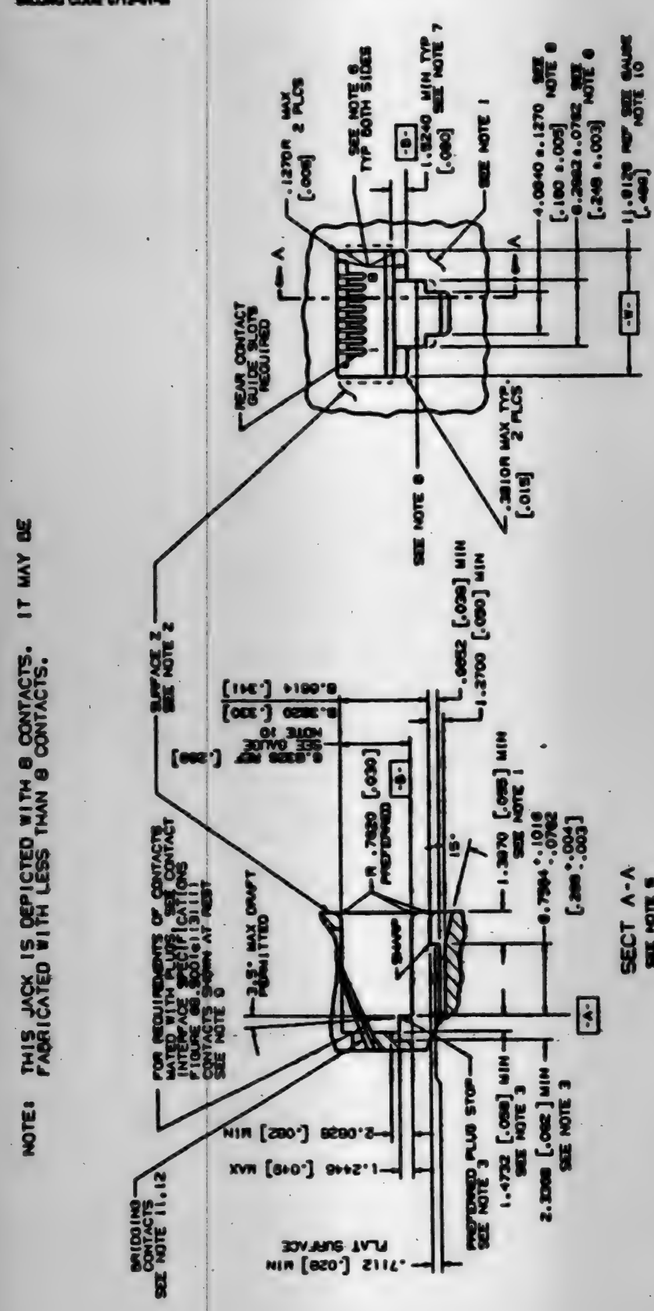

NOTE: THIS JACK IS DEPICTED WITH 8 CONTACTS. IT MAY BE FABRICATED WITH LESS THAN 8 CONTACTS.

NOTE: ALL NOTES FOLLOW FIGURE 68.500(d)(3)(i).

FIGURE 68.500(d)(3)(i)-8 POSITION SERIES
JACK, MECHANICAL SPECIFICATION

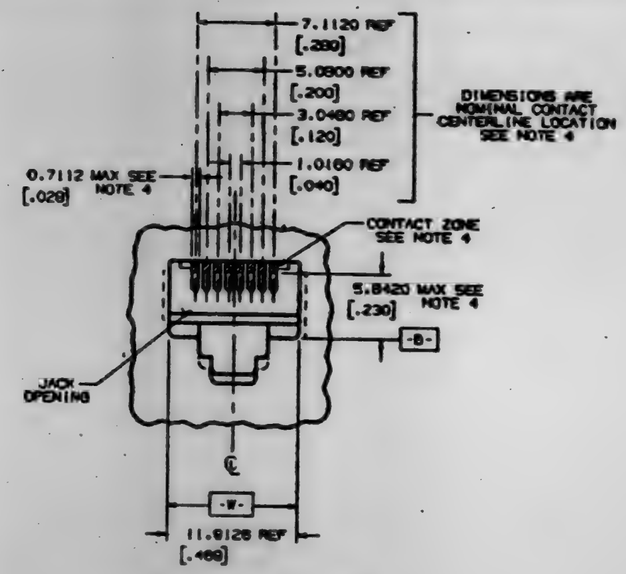

VIEW OF CONTACT ZONE

NOTE: ALL NOTES FOLLOW THIS FIGURE.

FIGURE 68.500(d)(3)(i)-8 POSITION SERIES
JACK, MECHANICAL SPECIFICATION (CONTINUED)

BILLING CODE 6712-01-C

Notes: (Notes apply to Figures 68.500(d)(2)(i) and 68.500(d)(3)(i).)

1. Front surface projections beyond the 1.3970 mm (.055 inch) minimum shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(a)(2)(i) and Figure 68.500(c)(2)(i) 6 and 8-Position Plug, Mechanical Specifications). A catch length greater than 1.3970 mm (.055 inch) is beneficial in providing for greater breakout strength and improved guidance when interfacing with a 6-position plug.

* * * * *

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 1.1430 mm (.045 inch).

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.7112 mm (.028 inch) max. wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (5.8420 mm (.230 inch) max.), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width 11.9126 mm (.469 inch) Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .3810 mm (.015 inch) radius max. unless specified.

* * * * *

7. Relief inside the dotted areas on both sides of the jack opening is permitted. The 6.8326 mm (.269 inch) Ref and 11.9126 mm (.469 inch) Ref Gauge Requirements must be maintained in each of the corners indicated, (Ref. 1.5240 mm (.060 inch) min), to assure proper plug/jack interface guidance.

8. 4.0640 mm (.160 inch) and 6.2992 mm (0.248 inch) dimensions to be centrally located to jack opening width -W- within ±−. 1270 mm (.005 inch).

* * * * *

10. Gauge Requirements:

GO: The jack shall be capable of accepting an 11.7856 x 6.7056 mm (.4640 x .2640 inch) gauge and the gauge shall be capable of being removed with a maximum force of 8.9 newtons (2.0 pounds).

NO GO: The jack shall not accept either a 12.0396 x 6.4516 mm (.4740 x .254 inch) horizontal width of opening gauge or a 6.9596 x 11.5824 mm (.2740 x .456 inch vertical height of opening gauge. However, if the gauge is accepted, the force necessary to remove the gauge shall be a minimum of .83 newtons (3.0 ounces).

* * * * *

Gauges shall have a .7620 mm (.030 inch) radius on the nose and a .3810 mm (.015 inch) radius on all edges with clearance provided for contacts.

* * * * *

12. The jack contact/bridging interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700 mm (.000050 inch) on each side of the interface. The minimum contact bridging force should be .294 N (30 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance.

(e) *50-Position Miniature Ribbon Plug.*

(1) Contact finish in the region of contact shall be gold, .0007620 mm (.000030 inch) minimum thickness, electrodeposited hard gold preferred.[1]

* * * * *

(3) The center line of each contact shall be located within .2286 mm (.009 inch) of true position with respect to "Datum B".[1]

(4) Contact width at region of contact shall be 1.1430±.0508 mm (.045±0.002 inch).[1]

(5) Center line of shell dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(6) Center line of barrier dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(7) "Surface X" shall have a .0001016 mm (4 microinch) finish or better; finishing shall be done in the direction of the arrow.[2]

(8) A force of not more than 178 newtons (40 pounds) shall be sufficient to fully insert the plug onto the sizing gauge shown on Figure 68.500(e)(1). The plug is fully inserted when "Surface A" of the plug[1] touches "Surface A" of the sizing gauge.

(9) After one insertion of the plug on the sizing gauge, Figure 68.500(e)(2), a force of not more than 44.5 newtons (10 pounds) shall be sufficient to fully insert the plug on the continuity gauge shown in Figure 68.500(e)(3). The plug is fully inserted on the continuity gauge when "Surface A" of the plug[1] touches "Surface A" of the continuity gauge.

* * * * *

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[1] Figure 68.500(e)(1).

[2] Figures 68.500 (e)(2) and (e)(3).

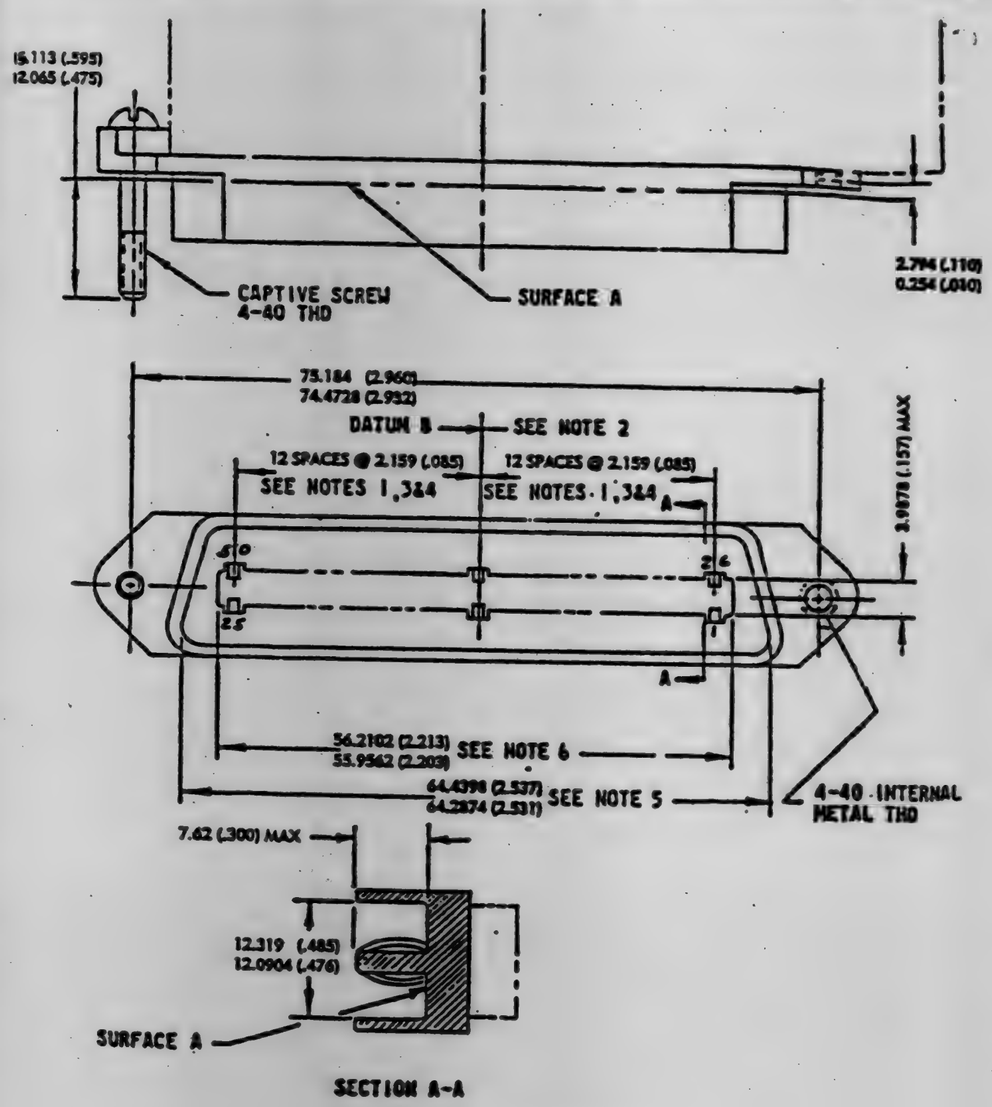

Figure 68.500(e)(1)--50 Position Miniature Ribbon Plug

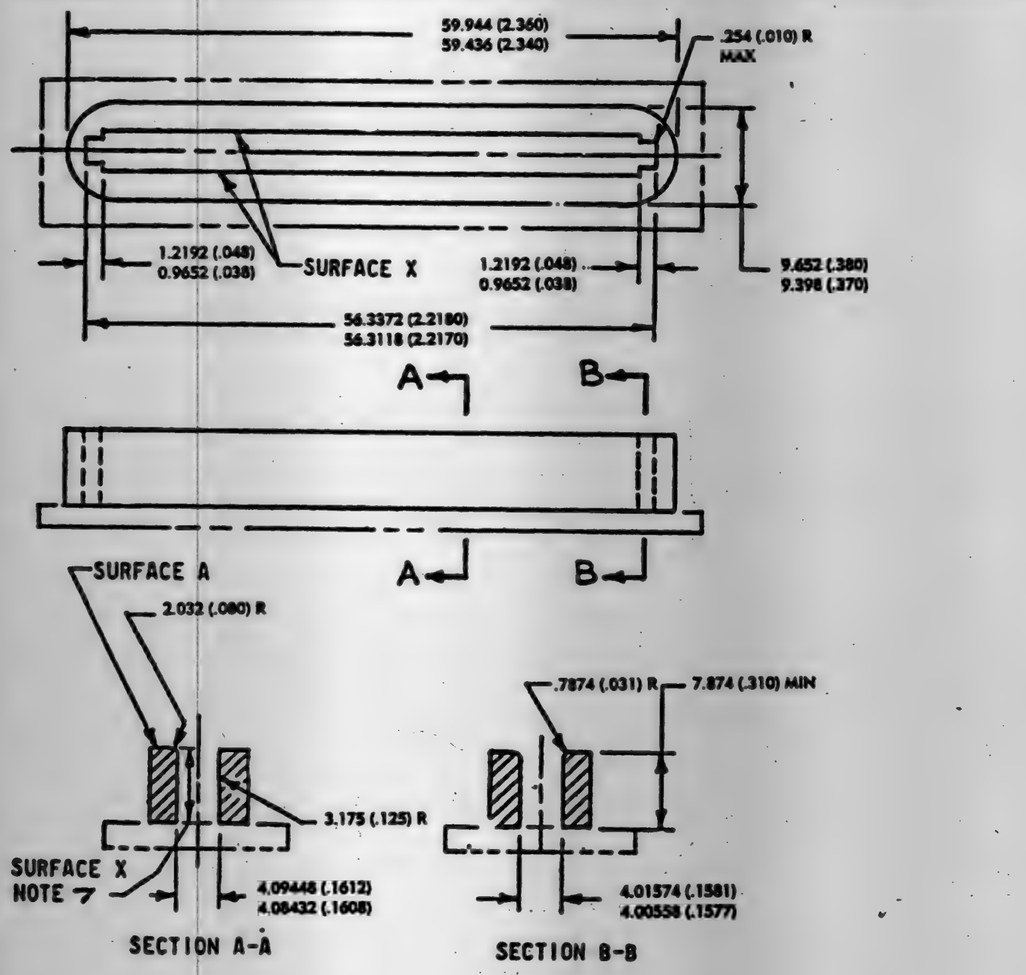

Figure 68.500(e)(2)--50 Position
Miniature Ribbon Plug
Sizing Gauge

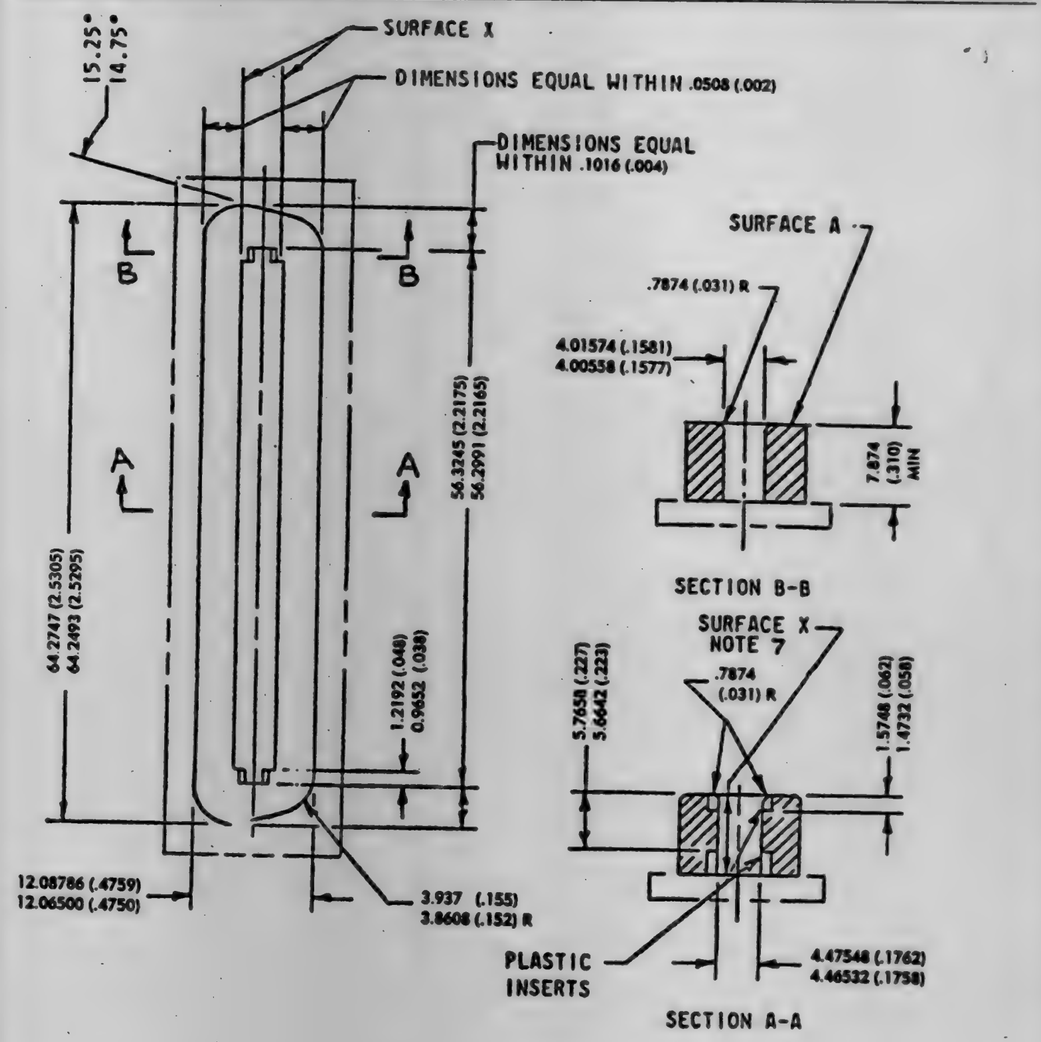

Figure 68.500(e)(3)--50 Position
Miniature Ribbon Plug
Continuity Gauge

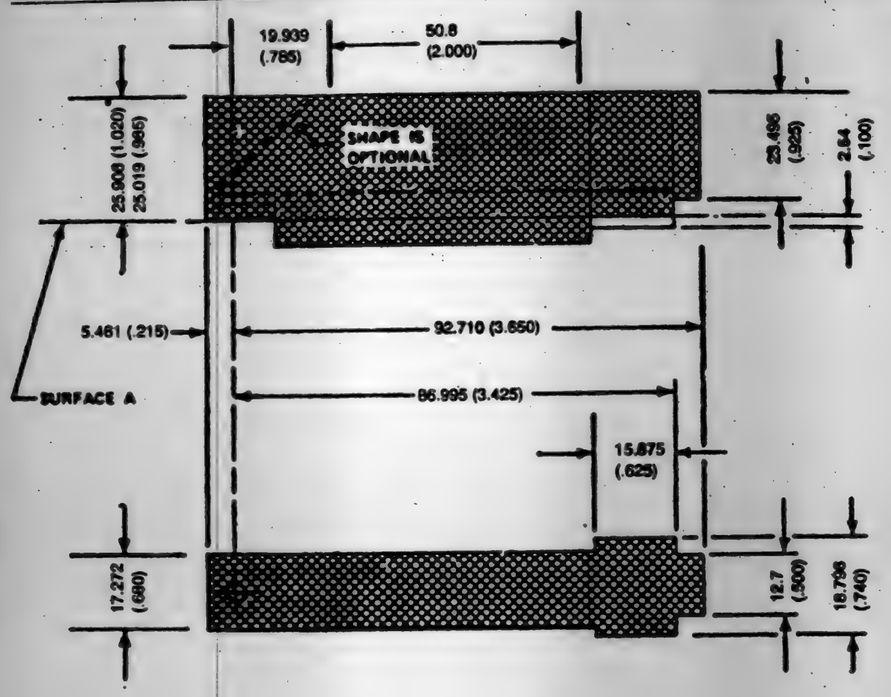

Figure 68.500(e)(4)

50-POSITION MINIATURE RIBBON PLUG - HOOD ENVELOPE

BILLING CODE 6712-01-C

(f) *50-position miniature ribbon jack:*

(1) Contact finish in the region of contact shall be gold, .0007620 mm (.000030 inch) minimum thickness, electrodeposited hard gold preferred.[1]

* * * * *

(3) The center line of each contact shall be located within .2286 mm (.009 inch) of true position with respect to "Datum B".[1]

(4) Contact width at region of contact shall be 1.1430±.0508 mm (.045±0.002 inch).[1]

(5) Center line of shell dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(6) Center line of cavity dimension indicated shall be within .1270 mm (.005 inch) of "Datum B".[1]

(7) "Surface X" shall have a .0001016 mm (4 microinch) finish or better; finishing shall be done in the direction of the arrow.[2]

(8) A force of not more than 134 newtons (30 pounds) shall be sufficient to fully insert the jack onto the sizing gauge shown on Figure 68.500(f)(2).

The jack is fully inserted when "Surface A" of the jack [1] touches "Surface A" of the sizing gauge.

(9) After one insertion of the jack on the sizing gauge, Figure 68.500(f)(2), a force of not more than 44.5 newtons (10 pounds) shall be sufficient to fully insert the jack on the continuity gauge shown in Figure 68.500(f)(3). The jack is fully inserted on the continuity gauge when "Surface A" of the jack [1] touches "Surface A" of the continuity gauge.

* * * * *

[1] Figure 68.500(f)(1).

[2] Figures 68.500 (f)(2) and (f)(3).

BILLING CODE 6712-01-M

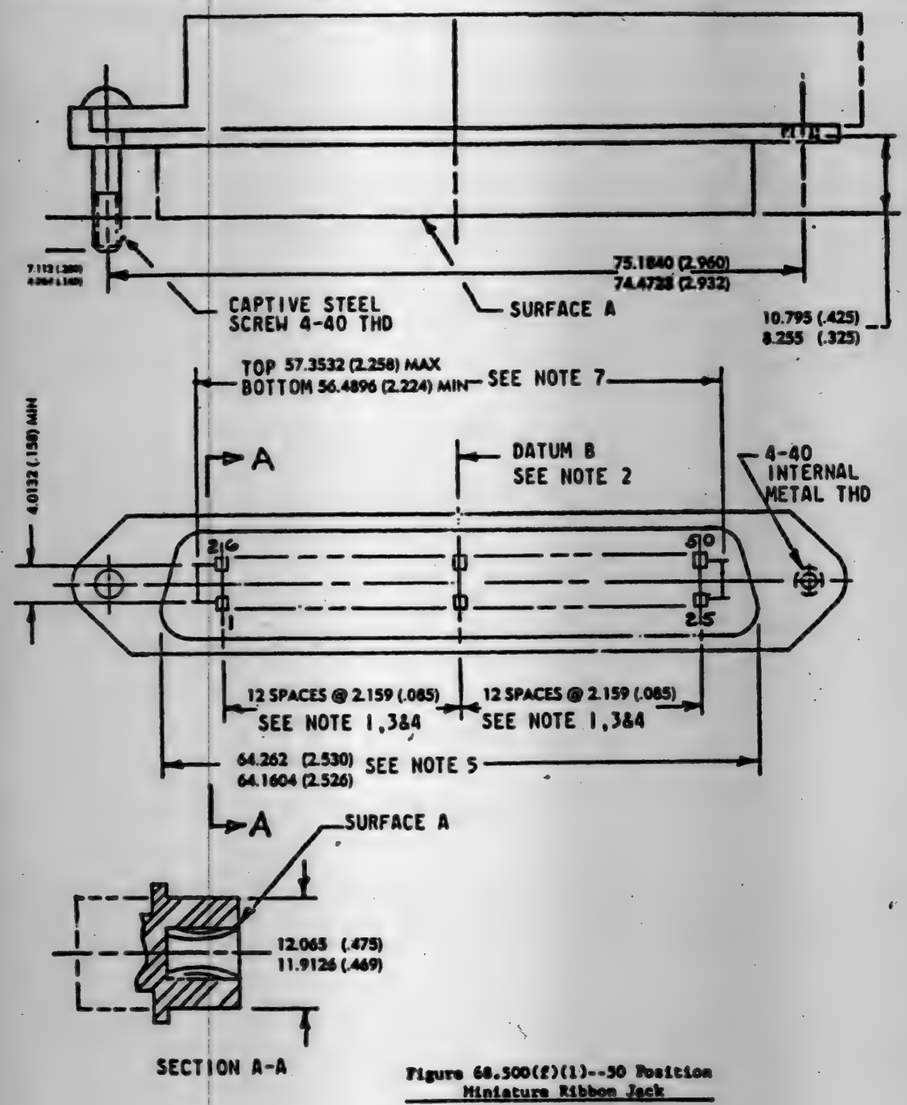

Figure 68.500(f)(1)--50 Position Miniature Ribbon Jack

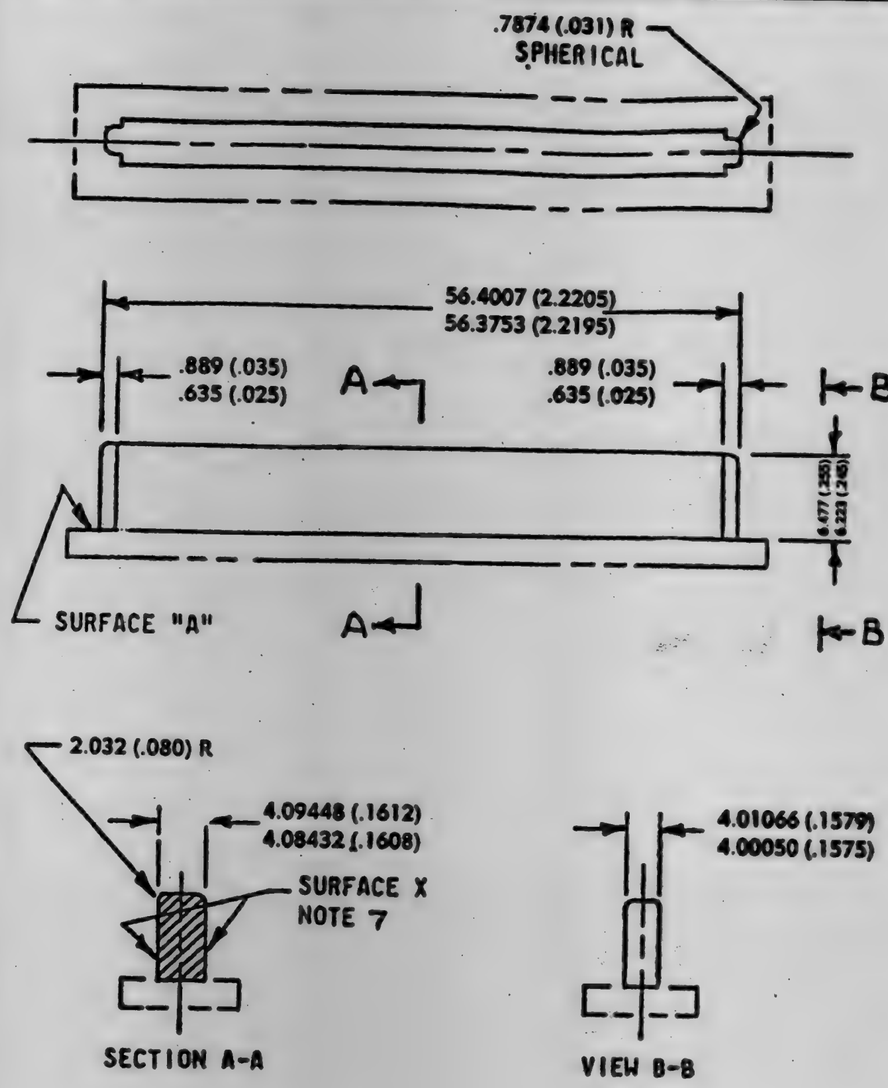

Figure 68.500(f)(2)--50 Position Miniature Ribbon Jack Sizing Gage

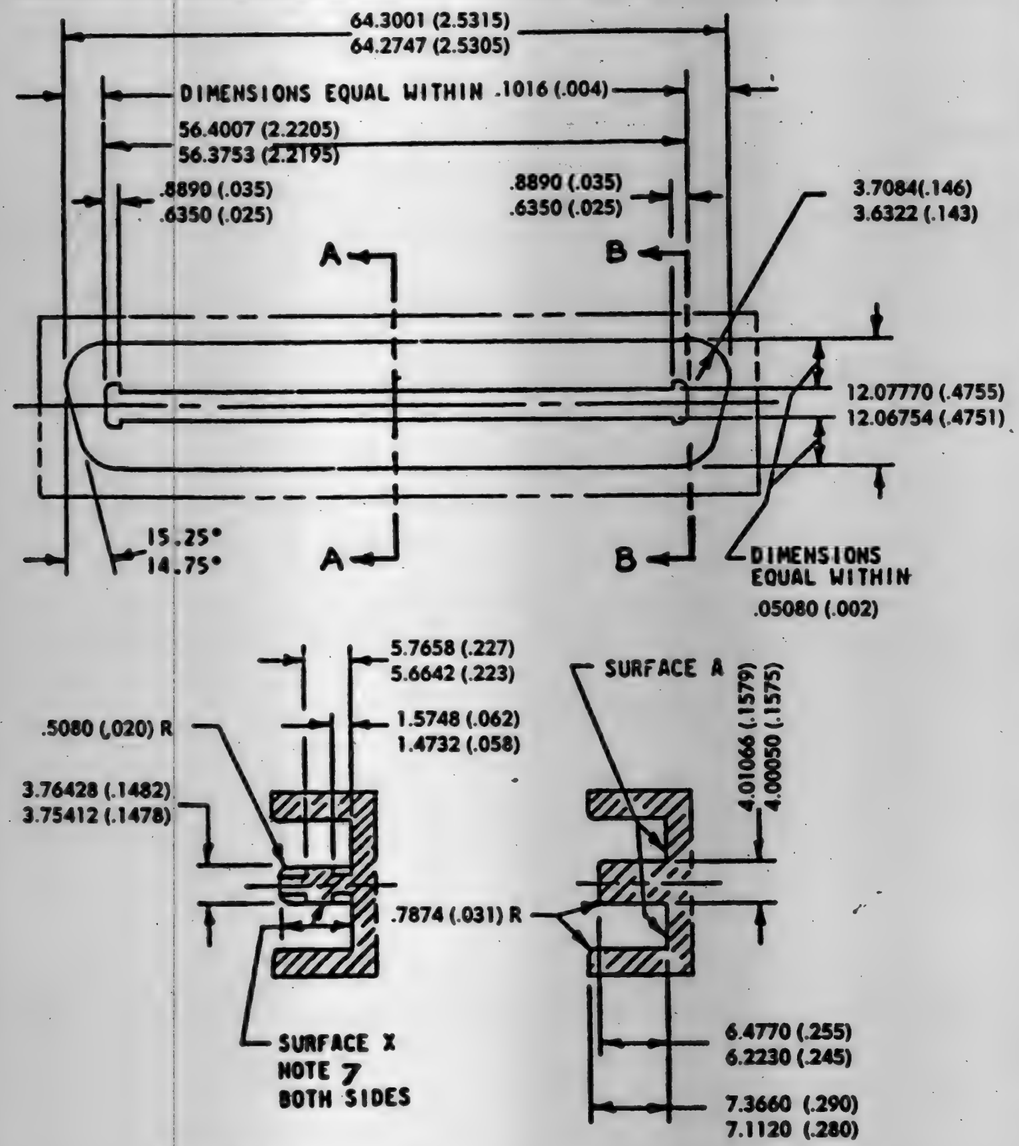

Figure 68.300(f)(3)--50 Position Miniature Ribbon Jack Continuity Guage

BILLING CODE 6712-01-C

(g) *3-Position weatherproof plug:*

Contact blade material shall be brass, with minimum .00762 mm (.0003 inch) thick nickel plating.

Note: All linear dimensions are in millimeters (inches).

BILLING CODE 6712-01-M

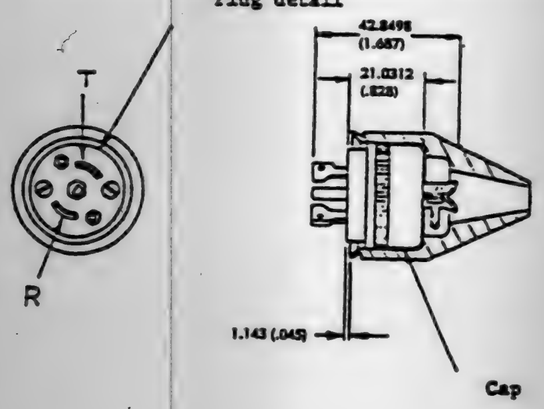

Figure 68.500(g)(1)--3 Position Plug
Plug Assembly

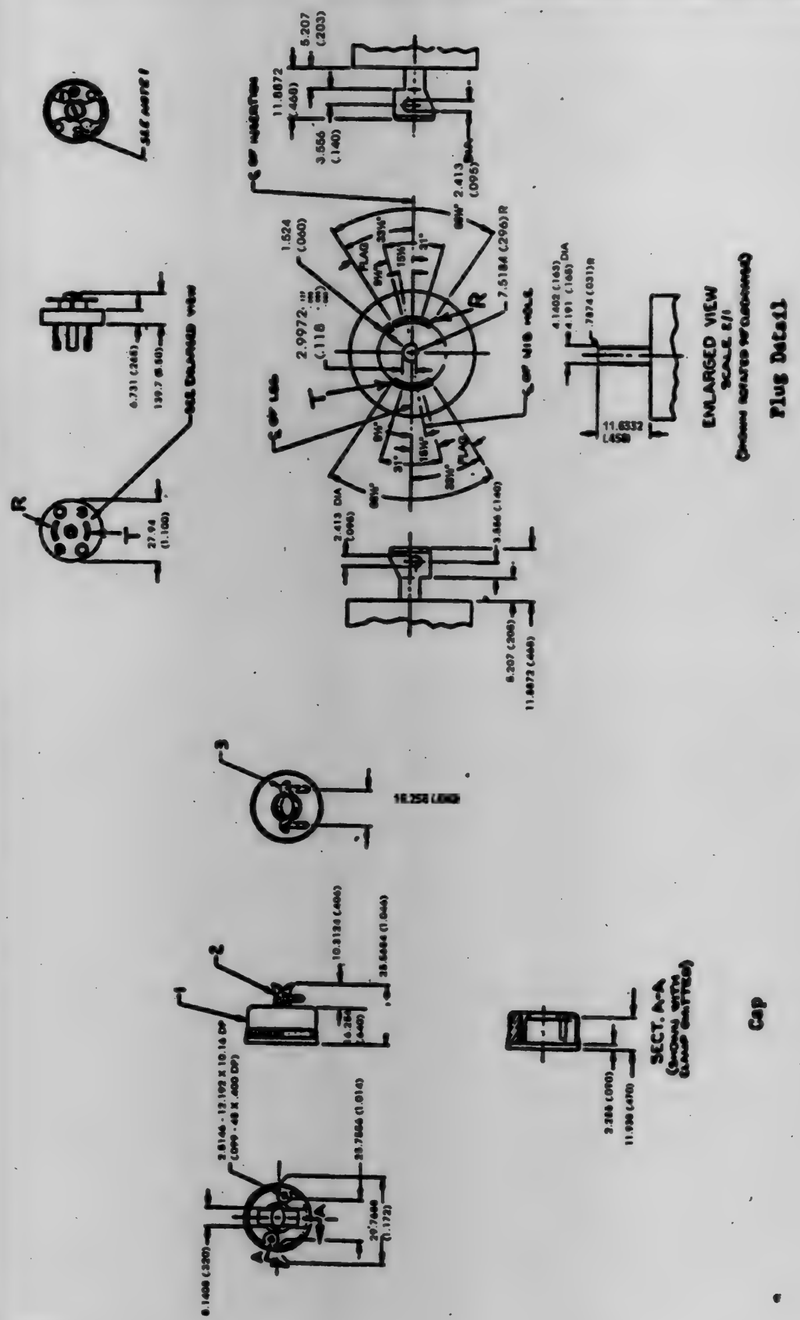

Figure 68.500(g)(2)--3 Position
Plug Detail

(h) *3-Position weatherproof jack:*

Contact blade material shall be brass, with minimum .00762 mm (.0003 inch) thick nickel plating.

Note: All linear dimensions are in millimeters (inches).

BILLING CODE 8712-01-M

(Note: All linear dimensions are in inches.)

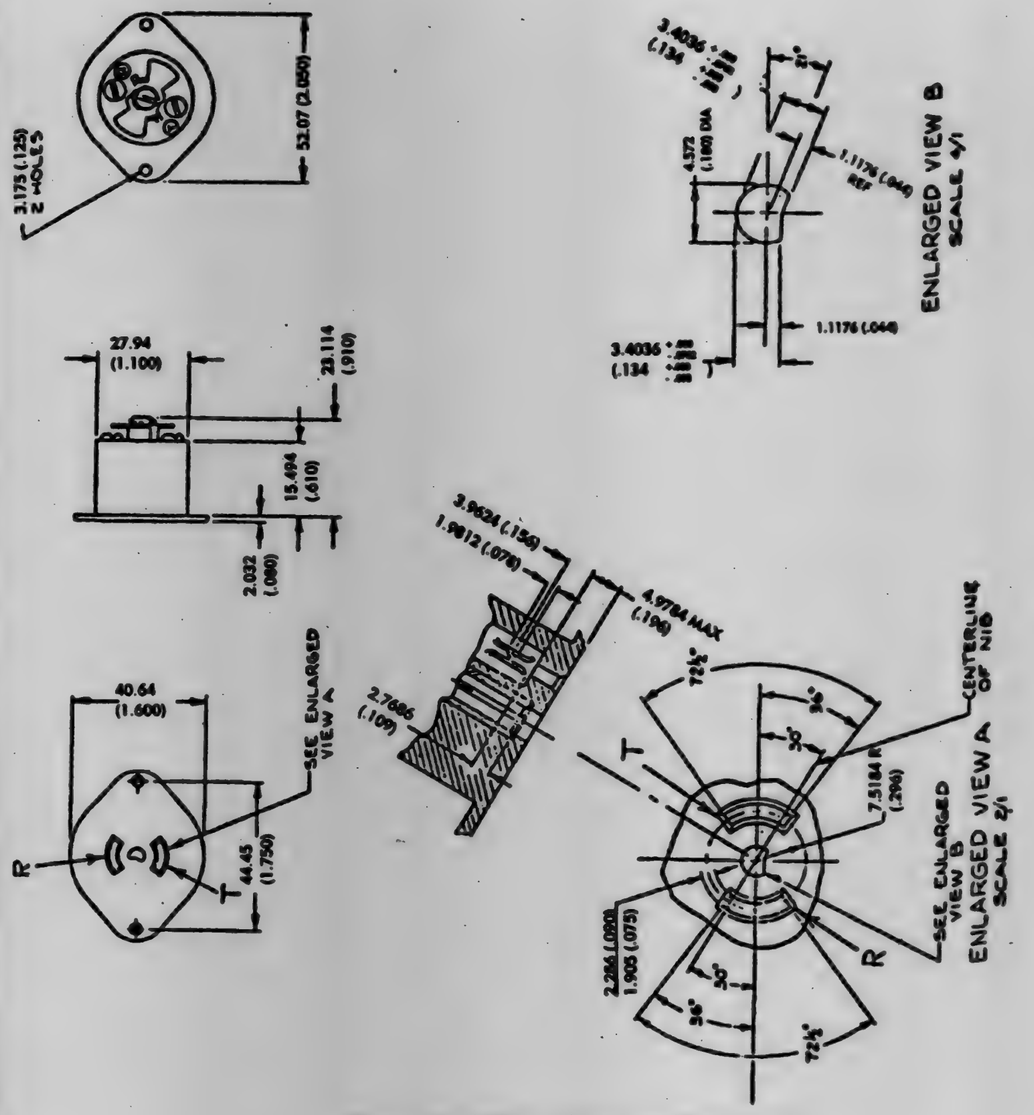

Figure 68.500(h)--3 Position Plug Detail

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(i) * * *

* * * * *

BILLING CODE 8713-01-M

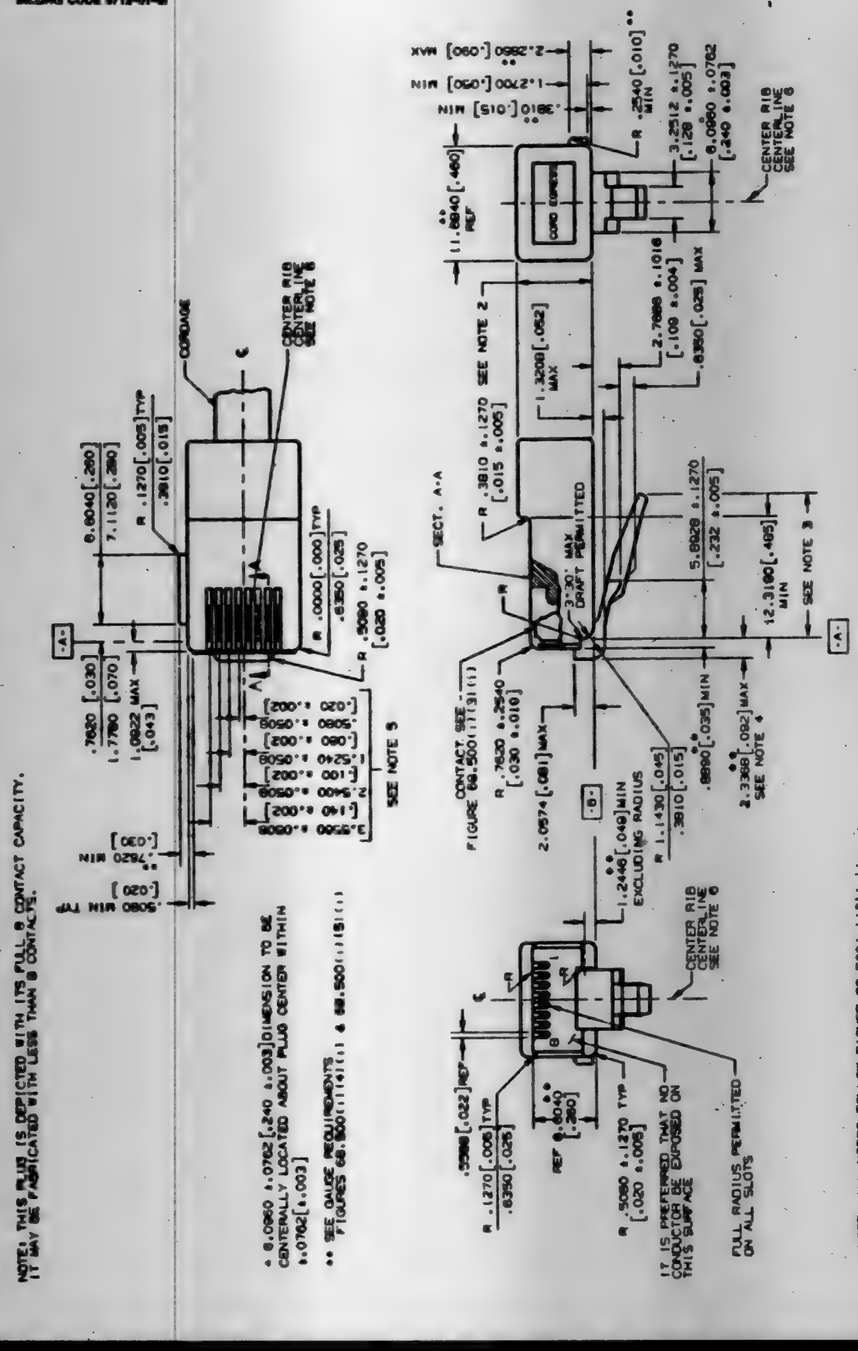

FIGURE 68.500(i)(1)(i) - 8 POSITION KEYED PLUG, MECHANICAL SPECIFICATION

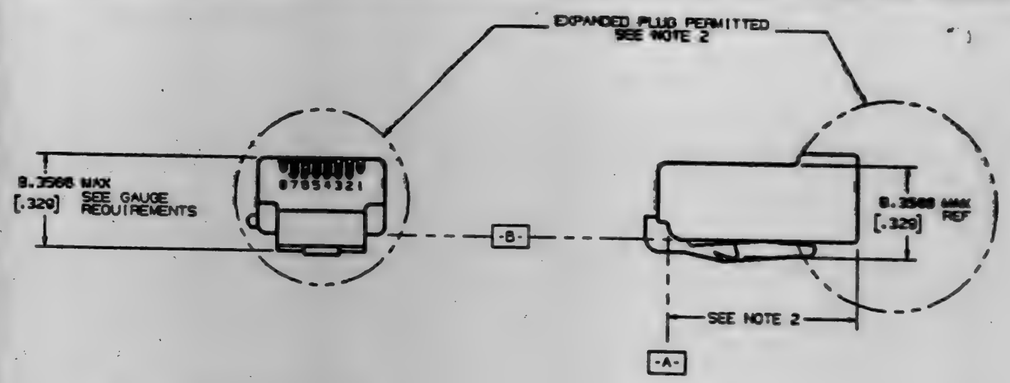

FIGURE 68.500(i)(2)(ii) - 8 POSITION KEYED PLUG, MECHANICAL SPECIFICATION (CONTINUED)

BILLING CODE 8713-01-C

Notes: (Notes apply to Figures 68.500(i)(2)(i) and 68.500(i)(2)(ii))

* * * * *

2. The standard plug height in the area shown is 8.0010 mm (.315 inch) maximum. The standard plug length is 23.1140 mm (.910 inch) maximum. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, apparatus or equipment subject to the limitations described in the introductory paragraphs of 68.500. Plugs longer and/or higher than standard may inhibit the special features of some network jack enclosures.

3. A 14.6050 mm (.575 inch) minimum tab length is required. It is preferred that maximum tab length be no longer than 15.8750 mm (.625 inch). Longer tabs may be used with the same limitations described in Note 2.

4. To obtain maximum plug guidance in jacks, it is desirable to extend the front plug nose to the 2.3368 mm (.092 inch) maximum.

* * * * *

6. The center rib centerline shall be coincident with the plug width, 11.6840 mm ref (.460 inch ref.) center line within ± .0762 mm (± .003 inch).

BILLING CODE 6712-01-M

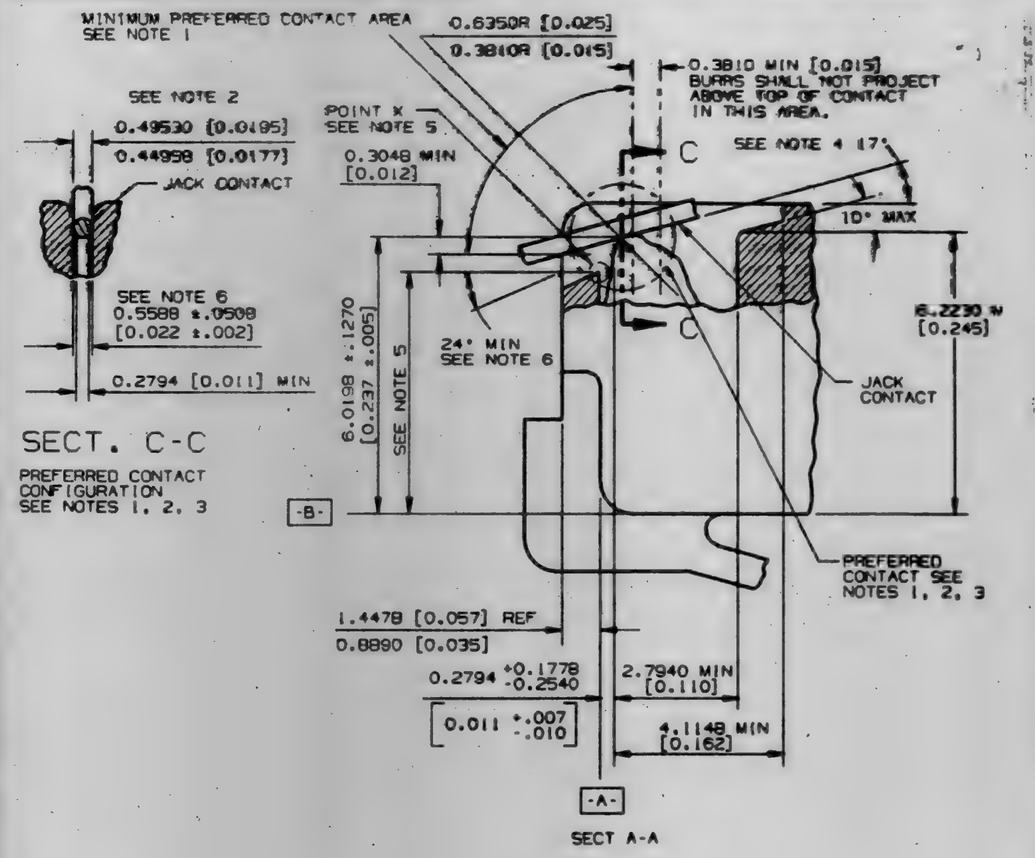

NOTE: ALL NOTES FOLLOW THIS FIGURE.

NOTE: THE 6 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL.

FIGURE 68.500(i)(3)(i)- 8 POSITION KEYED PLUG
PLUG /JACK CONTACT SPECIFICATION

BILLING CODE 6712-01-C

Notes: (Notes apply to Figure 68.500(i)(3)(i))

1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of .0012700mm (.000050 inch) on each side of the interface. The minimum contact force should be .98 N (100 grams). Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .4572 mm (.018 inch) spring temper phosphor bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .44958/.49530 mm (.0177/.0195 inches). Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

* * * * *

5. To avoid loss of electrical contact, the preferred dimension from "Datum B" to the highest point "X" should be 5.0800 mm (.200 inch) max. A dimension greater than 5.3594 mm (.211 inch) may result in loss of electrical contact between plugs and jacks. The 5.3594 mm (.211 inch) max. shall be considered an absolute maximum.

6. The 25 degree min. angle applies only to plugs with front plastic walls higher than 4.8260 mm (.190 inches).

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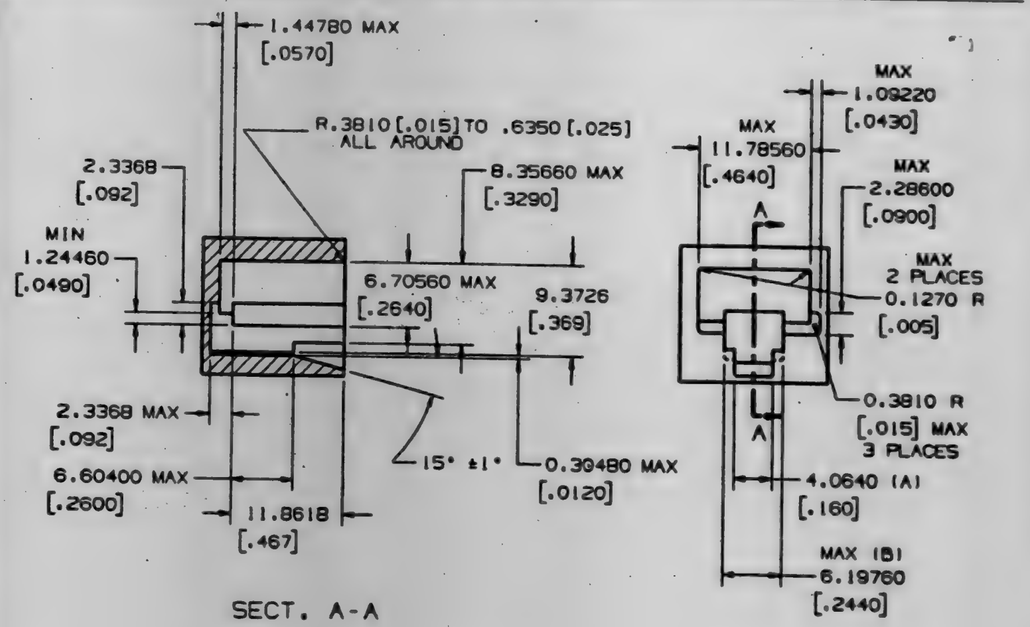

GO GAUGE

NOTES:

1. THE PLUG SHALL BE CAPABLE OF INSERTION AND LATCHING INTO THE GAUGE WITH 22.24 newtons [5 POUNDS] OR LESS INSERTION FORCE. PLUG LATCHING BAR SHALL BE DEPRESSED SO AS NOT TO INTERFERE WITH THE PLUG ENTRY. AFTER INSERTION AND LATCHING, PLUG SHALL BE CAPABLE OF REMOVAL, WITH THE LATCH DEPRESSED, WITH A REMOVAL FORCE OF 44.48 newtons [10 POUNDS] OR LESS APPLIED AT AN ADVANTAGEOUS ANGLE.
2. DIMENSIONS GIVEN TO FOUR DECIMAL PLACES SHALL BE WITHIN ±.0508mm [.002].
3. DIMENSIONS (A) AND (B) TO BE CENTRALLY LOCATED WITH RESPECT TO 11.78560mm [.4640] MAX. JACK OPENING WIDTH WITHIN ±.0254mm[.001].
4. DO NOT SCALE DRAWINGS FOR EXTERNAL CONFIGURATION.

FIGURE 68.500(i)(4)(i)-8 POSITION KEYED PLUG
MAXIMUM PLUG SIZE

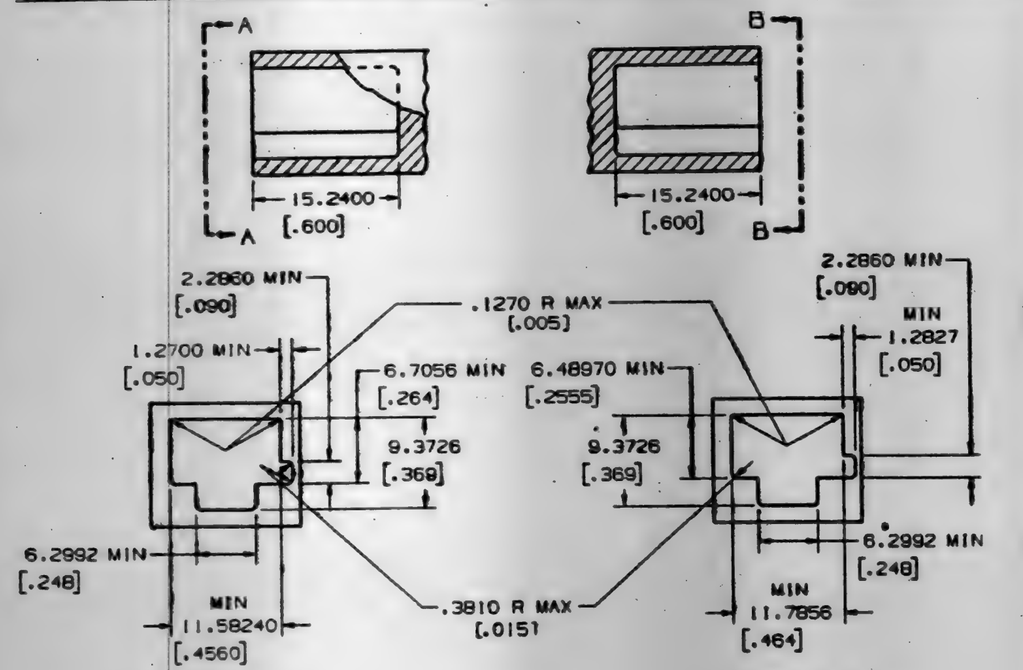

NO-GO GAUGE

NOTES:

1. THE PLUG SHALL NOT BE CAPABLE OF ENTERING THE GAUGE MORE THAN 1.7780mm [.070] BEYOND DATUM-A- (SEE FIGURE 68.500(j)(2)(i)) WITH 8.90 newton [2.0 POUNDS] INSERTION FORCE.
2. NON-TOLERANCED DIMENSIONS GIVEN TO FOUR PLACES SHALL BE WITHIN ±.0508mm [.002].
3. 6.2992mm [.248] DIMENSION TO BE CENTRALLY LOCATED WITH RESPECT TO 11.7856mm [.464] MINIMUM AND 11.58240mm [.4560] MINIMUM WITHIN ±.0508mm [.002].

FIGURE 68.500(j)(5)(i)-8 POSITION KEYED PLUG, MINIMUM PLUG SIZE

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(j) * * *

* * * * *

BILLING CODE 6713-01-M

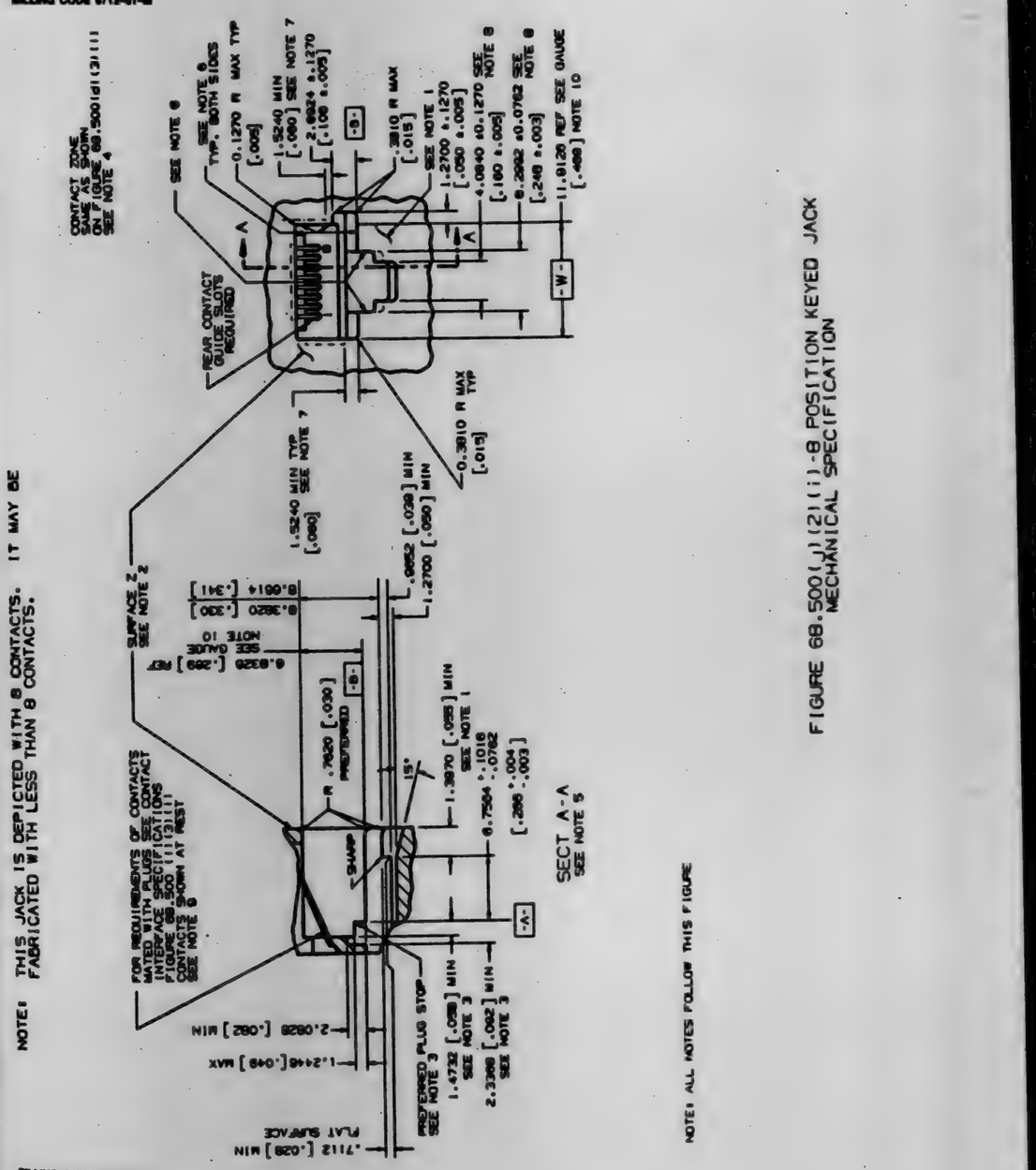

NOTE: THIS JACK IS DEPICTED WITH 8 CONTACTS. IT MAY BE FABRICATED WITH LESS THAN 8 CONTACTS.

NOTE: ALL NOTES FOLLOW THIS FIGURE

FIGURE 68.500(j)(2)(i)-8 POSITION KEYED JACK MECHANICAL SPECIFICATION

BILLING CODE 6713-01-C

Notes: (Notes apply to Figure 68.500(j)(2)(i))

1. Front surface projections beyond the 1.3970 mm (.055 inch) minimum shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(i)(2)(ii) and 8-Position Plug, Mechanical Specifications). A catch length greater than 1.3970 mm (.055 inch) is beneficial in providing for greater breakout strength and improved guidance when interfacing with a 6-position plug.

* * * * * *

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 1.1430 mm (.045) inch.

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.7112 mm (.028 inch) max wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (5.8420 mm (.230 inch) max), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width 11.9126 mm (.469 inch) Ref, (Datum–W–). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .3810 mm (.015 inch) radius max unless specified.

* * * * * *

7. Relief inside the dotted areas on both sides of the jack opening is permitted. The 6.8326 mm (.269 inch) Ref and 11.9126 mm (.469 inch) Ref Gauge Requirements must be maintained in each of the corners indicated, (Ref. 1.5240 mm (.060 inch) min), to assure proper plug/jack interface guidance.

8. 4.0640 mm (.160 inch) and 6.2992 mm (.248 inch) dimensions to be centrally located to jack opening width –W– within ±.1270 mm (.005).

* * * * * *

10. Gauge Requirements:

GO: The jack shall be capable of accepting and 11.78560 × 6.70560 mm (.4640 × .2640 inch) gauge and the gauge shall be capable of being removed with a maximum force of 8.9 newtons (2.0 pounds).

NO GO: The jack shall not accept either a 12.03960 × 6.4516 mm (.4740 × .254 inch) horizontal width of opening gauge or a 6.95960 × 11.5824 mm (.2740 × .456 inch) vertical height of opening gauge. However, if the gauge is accepted, the force necessary to remove the gauge shall be minimum of .83 newtons (3.0 ounces).

Removal forces do not include forces contributed by contact springs nor shall external forces be applied to the jack that will affect these removal forces.

Gauges shall have a .7620 mm (.030 inch) radius on the nose and a .3810 mm (.015 inch) radius on all edges with clearance provided for contracts.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Paragraphs (a)(1) and (a)(2) of § 69.108 are revised to read as follows:

§ 69.108 Transport rate benchmark.

(a) * * *

(1) The total charge for a 1.609 km (1 mi) channel termination, 16.09 km (10 mi) of interoffice transmission, and one DS3 multiplexer using the telephone company's DS3 special access rates to;

(2) The total charge for a 1.609 km (1 mi) channel termination plus 16.09 km (10 mi) of interoffice transmission using the telephone company's DS1 special access rates.

* * * * *

§ 69.110 [Amended]

3. In the last sentence of paragraph (b)(1) of § 69.110 the first occurance of the word "mileage" is removed and the word "distance" is added in its place. In the last sentence of paragraph (b)(1) of § 69.110 the second occurance of the word "mileage" is removed and the word "kilometers" is added in its place.

4. In the last sentence of paragraph (b)(2) of § 69.110 the first occurance of the word "mileage" is removed and the word "distance" is added in its place. In the last sentence of paragraph (b)(2) of § 69.110 the second occurance of the word "mileage" is removed and the word "kilometers" is added in its place.

§ 69.111 [Amended]

5. In the last sentence of paragraph (b) § 69.111 the first occurance of the word "mileage" is removed and the word "distance" is added in its place. In the last sentence of paragraph (b) of § 69.111, the second occurance of the word "mileage" is removed and the word "kilometers" is added in its place.

§ 69.112 [Amended]

6. In the last sentence of paragraph (b)(1) of § 69.112 the first occurance of word "mileage" is removed and the word "distance" is added in its place. In the last sentence of paragraph (b) (1) of § 69.112, the second occurance of the word "mileage" is removed and the word "kilometers" is added in its place.

7. In the last sentence paragraph (b)(2) of § 69.112 the first occurance of the word "mileage" is removed and the word "distance" is added in its place. In the last sentence of paragraph (b)(2) of § 69.112, the second occurance of the word "mileage" is removed and the word "kilometers" is added in its place.

§ 69.125 [Amended]

8. In the third sentence of paragraph (b) of § 69.125 the first occurance of the word "mileage" is removed and the word "distance" is added in its place. In the third sentence of paragraph (b) of § 69.125, the second occurance of the word "mileage" is removed and the word "kilometers" is added in its place.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Paragraph (b) of § 73.312 is revised to read as follows.

§ 73.312 Typographic data.

* * * * *

(b) The Commission will not ordinarily require the submission of typographical maps for areas beyond 24 km (15 miles) from the antenna site, but the maps must include the principal city or cities to be served. If it appears necessary additional data may be requested.

* * * * *

3. The fifth sentence of paragraph (c)(2) of § 73.316 is revised to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(2) * * * The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10-nth. * * *

* * * * *

4. Footnote 2 to the table in paragraph (a) of § 73.501 is revised to read as follows:

§ 73.501 Channels available for assignment.

(a) * * *

[2] The frequency 88.1 MHz, Channel 206, in the New York City metropolitan area, is reserved for the use of the United Nations with the equivalent of an antenna height of 150 meters (492 feet) above average terrain and effective radiated power of 20 kW and the Commission will make no assignments which would cause objectionable interference with such use.

* * * * *

5. The first sentence of the definition of "antenna power gain" in § 73.681 is revised to read as follows:

§ 73.681 Definitions.

* * * * *

Antenna power gain. The square of the ratio of the root-mean-square free space field strength produced at 1 kilometer in the horizontal plane, in millivolts per meter for one kW antenna input power to 221.4 mV/m. * * *

* * * * *

6. The first sentence of paragraph (f)(5) of § 73.685 is revised to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(f) * * *

(5) All horizontal plane patterns must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5 or 5 times 10-nth. * * *

* * * * *

7. Paragraph (b)(8) of § 73.1820 is revised to read as follows:

§ 73.1820 Station log.

* * * * *

(b) * * *

(8) The indicating equipment conforms to the requirements of § 73.1215 (Indicating instruments—specifications) except that the scales need not exceed 5 cm (2 inches) in length. Arbitrary scales may not be used.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

2. The first sentence of paragraph (c)(4) of § 74.735 is revised to read as follows:

§ 74.735 Power limitation.

* * * * *

(c) * * *

(4) All horizontal plane patterns must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 18 cm x 25 cm (7 inches x 10 inches)) using only scale divisions and subdivisions of 1, 2, 2.5 or 5 times 10-nth. * * *

* * * * *

3. Paragraph (f) of § 74.902 is revised to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(f) A temporary fixed ITFS station may use any available ITFS channel on a secondary basis. Operation of stations located within 56.3 km (35 miles) of Canada shall be limited by § 74.24(h)(3).

* * * * *

4. Paragraphs (b)(1)(ii), (b)(2) and (b)(3) of § 74.903 are revised to read as follows:

§ 74.903 Interference.

* * * * *

(b) * * *

(1) * * *

(ii) The proposed transmitter is within 80.5 km (50 miles) of the coordinates of any such station.

(2) An analysis of the potential for harmful adjacent channel interference with any authorized or previously proposed station(s) if the proposed transmitter is within 80.5 km (50 miles) of the coordinates of any other station(s) that utilize(s), or would utilize, an adjacent channel frequency.

(3) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 80.5 km (50 miles) of the border.

* * * * *

§ 74.931 [Amended]

5. In paragraphs (h) and (j) of § 74.931 the words "20 miles" are removed and the words "32 km (20 miles)" are added in their place.

§ 74.935 [Amended]

6. In paragraph (c) introductory text of § 74.935 the words "50 miles" are removed and the words "80.5 km (50 miles)" are added in their place.

7. The third sentence of paragraph (a) of § 74.937 is revised to read as follows:

§ 74.937 Antennas.

(a) * * * However, for the purpose of interference calculations, the general characteristics of the reference receiving antenna shown in Figure 1 of this section (i.e., a 0.6 meter (2 foot) parabolic reflector antenna) are assumed to be used in accordance with the provisions of § 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use at the receive site. * * *

* * * * *

§ 74.985 [Amended]

8. In paragraph (d) of § 74.985 the words "50 miles" are removed and the words "80.5 km (50 miles)" are added in their place, in paragraph (g) introductory text the words "5 miles" are removed and the words "8 km (5 miles)" are added in their place, and in paragraph (g)(5) the words "5 mile" are removed and the words "8 km (5 mile)" are added in their place.

§ 74.990 [Amended]

9. In paragraph (a) of § 74.990 the words "50 miles" are removed and the words "80.5 km (50 miles)" are added in their place.

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1068, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

§ 76.5 [Amended]

2. Paragraph (e) of § 76.5 is amended by removing the words "35 air miles" and adding the words "56.3 air km (35 air miles)" in their place, paragraph (jj) is amended by removing the words "thirty households per route mile" and adding the words "19 households per route kilometer or thirty households per route mile" in their place.

§ 76.55 [Amended]

3. Paragraph (b)(1) of § 76.55 is amended by removing the words "50 miles" and adding the words "80.45 km (50 miles)" in their place, paragraph (d)(4) is amended by removing the words "35 miles" and adding the words "56.32 km (35 miles)" in their place.

4. Paragraphs (d) and (e) and the note following paragraph (f) of § 76.92 are revised to read as follows:

§ 76.92 Network non-duplication; extent of protection.

* * * * *

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of

any television broadcast station whose reference point (See § 76.53) is more than 88.5 km (55 miles) from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See Section 76.53) is also within 88.5 km (55 miles) of the community of the community unit.

(f) * * *

Note: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 32.2 additional kilometers (20 additional miles). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 76.658(m) for each named community in that market.

* * * * *

5. Paragraph (a)(3) of § 76.605 is revised to read as follows:

§ 76.605 Technical standards.

(a) * * *

(3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of 0.0133 (Z) millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of 0.00662(Z) millivolts, where Z is the appropriate impedance value.)

* * * * *

6. Paragraph (h)(5) of § 76.609 is revised to read as follows:

§ 76.609 Measurements.

* * * * *

(h) * * *

(5) Measurements shall be made where other conductors are 3 or more meters (10 or more feet) away from the measuring antenna.

* * * * *

7. The definition of "θ" in paragraph (a)(1) of § 76.611 is revised to read as follows:

§ 76.611 Cable television basic signal leakage performance criteria.

(a) * * *

(1) * * *

θ is the fraction of the system cable length actually examined for leakage sources and is equal to the strand kilometers (strand miles) of plant tested divided by the total strand kilometers (strand miles) in the plant;

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

1. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

378.11 [Amended]

2. In paragraph (e) of § 78.11 the words "20 feet" are removed and the words "6.1 meters (20 feet)" are added in their place.

3. Paragraph (i)(2) of § 78.18 is revised to read as follows:

§ 78.18 Frequency assignments.

* * * * *

(i) * * *

(2) The transmission path is more than 16.1 km (10 miles) in length;

* * * * *

4. Paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii) and (d)(1)(iv) of § 78.19 are revised to read as follows:

§ 78.19 Interference.

* * * * *

(d) * * *

(1) * * *

(i) All stations within 2.4 km (1.5 statute miles);

(ii) Stations within 4.8 km (3 statute miles) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 km (10 statute miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iv) Stations within 80 km (50 statute miles) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone.

* * * * *

5. Paragraph (c)(12) of § 78.33 is revised to read as follows:

§ 78.33 Special temporary authority.

* * * * *

(c) * * *

(12) Description of antenna to be used, including height. In the event that the proposed antenna installations will increase the height of any natural formation, or existing manmade structure, by more than 6.1 meters (20 feet), a vertical plan sketch showing the height of the structures proposed to be erected, the height above ground of any existing structure, the elevation of the site above mean sea level, and the geographic coordinates of the proposed sites shall be submitted with the application.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1088, as amended; 47 U.S.C. 154, 303.

2. Paragraph (j) of § 80.257 is revised to read as follows:

§ 80.257 Manufacturing requirements for radiotelegraph automatic alarm receiver (auto alarm).

* * * * *

(j) The auto alarm must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.76 mm (0.03 inch) in a direction at an angle of 30 to 45 degrees with the base of the auto alarm.

3. Paragraph (1) of § 80.261 is revised to read as follows:

§ 80.261 Technical requirements for automatic-alarm-signal keying device.

* * * * *

(1) The automatic-alarm-signal keying device must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.76 mm (0.03 inch) in a direction at an angle of 30 to 45 degrees with the base of the automatic-alarm-signal keying device.

4. Paragraph (b)(9) of § 80.269 is revised to read as follows:

§ 80.269 Technical requirements for radiotelephone distress frequency watch receiver.

* * * * *

(b) * * *

(9) The receiver must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.76 mm (0.03 inch) in a direction at an angle of 30 to 45 degrees with the base of the auto alarm.

5. Footnote 3 to the table in paragraph (c) of § 80.371 is revised to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

[3] Within 120 km (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, the frequency 157.925 MHz is available for use by ship stations for public correspondence communications only. One hundred twenty kilometers (75 miles) from the United States/Canada border 157.425 MHz is available for intership and commercial communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

* * * * *

6. The last sentence of paragraph (b)(6), footnote 8 to the table in paragraph (f), and the introductory text of paragraph (g) in § 80.373 are revised to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(b) * * *

(6) * * * The geographic limitations to the frequencies 2738.0 KHz and 2830.0 Khz do not prohibit intership communication of less than 320 km (200 statute miles) when only one of the ship stations is within a permitted use geographic area.

* * * * *

(f) * * *

[8] Within 120 km (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, 157.425 MHz is half of the duplex pair designated as Channel 88. In this area, Channel 88 is available to ship stations for communications with public coast stations only. More than 120 km (75 miles) from the United States/Canada border in the area of the Puget Sound and the Strait of Juan de Fuca, its approaches, the Great Lakes, and the St. Lawrence Seaway, 157.425 MHz is available for intership and commercial communications. Outside Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is also available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

* * * * *

(g) On-board communications: This section describes the carrier frequency pairs assignable for on-board mobile radiotelephony communications. The center of the on-board repeater antenna must not be located more than 3 meters (10 feet) above the ship's working deck. These frequencies are available on a shared basis with stations in the Business Radio Service.

* * * * *

7. Paragraph (c)(2) of § 80.375 is revised to read as follows:

§ 80.375 Radiodetermination frequencies.

* * * * *

(c) * * *

(2) The station antenna height does not exceed 6 meters (20 feet) above sea level in a buoy station or 6 meters (20 feet) above the mast of the ship in which it is installed.

* * * * *

8. Paragraphs (b)(5)(i) and (b)(7) of § 80.379 are revised to read as follows:

§ 80.379 Maritime frequencies assignable to aircraft stations.

* * * * *

(b) * * *

(5) * * *

(i) The altitude of aircraft stations does not exceed 300 meters (1,000 feet), except for reconnaissance aircraft participating in icebreaking operations where an altitude of 450 meters (1,500 feet) is allowed;

* * * * *

(7) Commercial fishing vessels and associated aircraft may use 157.425 MHz while engaged in commercial fishing activities except within 120 km (75 miles) of the United States/Canada border and Puget Sound and the Strait of Juan de Fuca and its approaches, the Great Lakes, and the St. Lawrence Seaway.

9. Paragraphs (b) and (c) of § 80.759 are revised to read as follows:

§ 80.759 Average terrain elevation.

* * * * *

(b) Draw a circle of 16 km (10 statute mile) radius using the antenna site as the center. Divide each radial into 320 meter (0.2 statute mile) increments inside the circumference to the 3.2 km (2 statute mile) point.

(c) Calculate the height above sea level of each 320 meter (0.2 statute mile) division by interpolating the contour intervals of the map, and record the value.

* * * * *

10. Paragraph (a)(8) of § 80.808 is revised to read as follows:

§ 80.808 Requirements of reserve installation.

(a) * * *

(8) The emergency electric lights must be controlled by two-way switches placed near the main entrance to the radiotelegraph operating room and at the radiotelegraph operating position, in all cases where the distance between these points is greater than 2.4 meters (8 feet). This requirement applies to stations which replace, or initially install the main or reserve radiotelegraph transmitter on and after May 26, 1965.

* * * * *

§ 80.828 [Amended]

11. In § 80.828 the words "5 inches" are removed and the words "12.7 cm (5 inches)" are added in their place.

12. Paragraph (f) of § 80.829 is revised to read as follows:

§ 80.829 Survival craft nonportable radiotelegraph installation.

* * * * *

(f) When the lifeboat is afloat the installation must be capable of developing an antenna current such that the product of the maximum height of the antenna above the mean surface of the water, expressed in meters, and the r.m.s. antenna current on the frequency 500 kHz, expressed in amperes, is not less than 9.6.

13. Section 80.865 is revised to read as follows:

§ 80.865 Radiotelephone station clock.

A clock having a face of at least 12.7 cm (5 in.) in diameter must be mounted in a position that can be observed from the principal operating position.

14. Paragraph (b) of § 80.875 is revised to read as follows:

§ 80.875 VHF radiotelephone power supply.

* * * * *

(b) When the power supply for the VHF radiotelephone installation consists of batteries, they must be installed in the upper part of the ship, secured against shifting with motion of the ship, capable of operating the installation for 6 hours, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

15. Paragraph (b) of § 80.915 is revised to read as follows:

§ 80.915 Main power supply.

* * * * *

(b) When the main power supply consists of batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

16. Paragraph (c) of § 80.917 is revised to read as follows:

§ 80.917 Reserve power supply.

* * * * *

(c) When the reserve power supply consists of batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

17. Paragraph (a) of § 80.933 is revised to read as follows:

§ 80.933 General exemptions.

(a) Subject U.S. vessels less than 50 gross tons which are navigated not more than 300 meters (1,000 feet) from the nearest land at mean low tide are exempt from the provisions of Title III, Part III of the Communications Act.

* * * * *

18. Paragraph (c) of § 80.1001 is revised to read as follows:

§ 80.1001 Applicability.

* * * * *

(c) Every towing vessel of 7.8 meters (26 feet) or over in length, measured from end to end over the deck excluding sheer, while navigating; and

* * * * *

19. Paragraph (b) of § 80.1015 is revised to read as follows:

§ 80.1015 Power supply.

* * * * *

(b) When the power supply for a nonportable bridge-to-bridge radiotelephone installation consists of or includes batteries, they must be installed as high above the bilge as practicable, secured against shifting with motion of the vessel, and accessible with not less than 26 cm (10 in.) head room.

* * * * *

20. Paragraph (a) of § 80.1179 is revised to read as follows:

§ 80.1179 On-board repeater limitations.

* * * * *

(a) The on-board repeater antenna must be located no higher than 3 meters (10 feet) above the vessel's highest working deck.

* * * * *

21. Paragraph (a)(1) of § 80.1181 is revised to read as follows:

§ 80.1181 Station identification.

(a) * * *

(1) The vessel is within 32 km (20 miles) of any coastline; or

* * * * *

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Paragraphs (l)(1), (z) and (aa) in § 87.187, are revised to read as follows:

§ 87.187 Frequencies.

* * * * *

(l) * * *

(1) The altitude of aircraft stations must not exceed 300 meters (1,000 feet), except for reconnaissance aircraft participating in icebreaking operations where an altitude of 450 meters (1,500 feet) is allowed;

* * * * *

(z) The frequencies 121.950 MHz, 122.850 MHz and 127.050 [1] MHz are authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level in the vicinity of Grand Canyon National Park in Arizona within the area bounded by the following coordinates:

36–28–00 N. Lat; 112–47–00 W. Long.
36–28–00 N. Lat; 112–48–00 W. Long.
35–50–00 N. Lat; 112–48–00 W. Long.
35–43–00 N. Lat; 112–47–00 W. Long.

(aa) The frequency 120.650 [1] MHz is authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level within the area bounded by the following coordinates:

35–59–45 N. Lat; 114–51–45 W. Long.
36–09–30 N. Lat; 114–50–00 W. Long.
36–09–30 N. Lat; 114–02–55 W. Long.
35–54–45 N. Lat; 113–48–45 W. Long.
35–54–45 N. Lat; 114–41–45 W. Long.

3. Paragraph (a)(3) in § 87.263 is revised to read as follows:

§ 87.263 Frequencies.

(a) * * *

(3) The frequencies 122.825 and 122.875 MHz are available for assignment to enroute stations which provide local area service to aircraft approaching or departing a particular airport. These frequencies will be assigned without regard to the restrictions contained in § 87.261 (c) and (d). Only organizations operating aircraft with a maximum capacity of 56 passengers or 8,200 kg (18,000 lbs) cargo will be authorized use of these enroute frequencies.

* * * * *

4. Footnote 3 to the table in paragraph (b) of § 87.303 is revised to read as follows:

§ 87.303 Frequencies.

* * * * *

(b) * * *

[3] Mobile station operations on these frequencies are limited to an area within 320 km (200 mi) of an associated flight test land station.

* * * * *

5. The first three sentences of paragraph (a)(1) of § 87.305 are revised to read as follows:

§ 87.305 Frequency coordination.

(a)(1) Each application for a new station license, renewal or modification of an existing license concerning flight test frequencies, except as provided in paragraph (b) of this section, must be accompanied by a statement from a frequency advisory committee. The committee must comment on the frequencies requested or the proposed changes in the authorized station and the probable interference to existing stations. The committee must consider all stations operating on the frequencies requested or assigned within 320 km (200 mi) of the proposed area of operation and all prior coordinations and assignments on the proposed frequency(ies). * * *

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 307, 331, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307, 332; secs. 4(i) and 303(r), Communications Act of 1934, as amended, Secs. 0.131 and 0.331 of the Commission's Rules and 5 U.S.C. 553 (b)(3)(B) and (d)(3).

2. The definitions of "average terrain" and "conventional radio system" in § 90.7 are revised to read as follows:

§ 90.7 Definitions.

* * * * *

Average terrain. The average elevation of terrain between 3.2 and 16 km (2 and 10 miles) from the antenna site.

* * * * *

Conventional radio system. A method of operation in which one or more radio frequency channels are assigned to mobile and base stations but are not employed as a trunked group. An "urban-conventional system" is one whose transmitter site is located within 24 km (15 miles) of the geographic center of any of the first 50 urbanized areas (ranked by population) of the United States. A "sub-urban-conventional system" is one whose transmitter site is located more than 24 km (15 miles) from the geographic center of the first 50 urbanized areas. See Table 21, Rank of Urbanized Areas in the United States by Population, page

[1] Until further notice this frequency is available for air-to-air use as described in the Grand Canyon vicinity. Availability is a result of the FAA's assignment of this frequency. If the FAA reassigns this frequency the Commission may require air-to-air use to cease.

1–87, U.S. Census (1970); and Table 1 of § 90.635.

* * * * *

3. Paragraph (f)(7) of § 90.19 is revised to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(f) * * *

(7) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively, transmissions may be increased to 200 milliseconds every second. Transmissions from base stations will be limited to a total time of 1 second every minute. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant:

(i) Shows that the proposed site is the only suitable location;

(ii) Develops a plan to control any interference caused to TV reception from the operations; and

(iii) Agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations. The licensee must eliminate any interference caused by its operation to TV channel 7 reception within 30 days of the time it is notified in writing by the Commission. If this interference is not removed within the 30-day period, operation of the base station must be discontinued. The licensee is expected to help resolve all complaints of interference.

* * * * *

4. Paragraph (c)(14) of § 90.23 is revised to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(c) * * *

(14) This frequency may not be assigned within 161 km (100 miles) of New Orleans (coordinates 29–56–53 N and 90–04–10 W).

* * * * *

5. Paragraphs (c)(37), (c)(38) and (c)(40) of § 90.65 are revised to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(c) * * *

(37) This frequency is shared with the Special Industrial Radio Service and is available for assignment in the Petroleum Radio Service only in the States of Texas and Louisiana within 120 km (75 miles) of the Gulf of Mexico and in adjacent offshore waters. Mobile relay stations will not be authorized.

(38) This frequency is shared with the Special Industrial Radio Service in the States of North Dakota; South Dakota; Iowa; Nebraska; Kansas and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Colorado and Wyoming east of Longitude 106 degrees; and Minnesota south of Latitude 47 degrees.

* * * * *

(40) This frequency may not be shared in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

6. Paragraphs (c)(28), (c)(31) and (c)(33) of § 90.67 are revised to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(C) * * *

(28) This frequency is shared with the Taxicab Radio Service. It is available for assignment in this service only in the States of Washington, Oregon, Idaho, and Montana in areas at least 64 km (40 miles) from the center of urbanized areas of 200,000 or more population (U.S. Census of Population, 1970). The maximum output power is limited to 75 watts.

* * * * *

(31) This frequency is shared with the Special Industrial Radio Service in the States of North Dakota; South Dakota; Iowa; Nebraska; Kansas and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Colorado and Wyoming east of Longitude 106 degrees; and Minnesota south of Latitude 47 degrees.

* * * * *

(33) This frequency may not be shared in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

7. Paragraphs (d)(3), (d)(29), (d)(30) and (d)(33) of § 90.73 are revised to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(d) * * *

(3) Operation on this frequency is limited to a maximum output of 2 watts; and each station authorized will be classified and licensed as a mobile station. Any units of such a station, however, may provide the operational functions of a base or fixed station, on a secondary basis to mobile service operations provided that the separation between the control point and the center of the radiating portion of the antenna of any units so used does not exceed 7.6 m (25 ft).

* * * * *

(29) This frequency is shared with the Petroleum Radio Service in the States of Texas and Louisiana within 120 km (75 miles) of the Gulf of Mexico and in adjacent offshore waters.

(30) This frequency is shared with other Industrial Radio Services and is available for assignment in the Special Industrial Radio Service only in the States of North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Wyoming and Colorado east of Longitude 106 degrees except within a 80 km (50 mile) radius of Denver; and Minnesota south of Latitude 47 degrees except within a 80 km (50 mile) radius of St. Paul, Minnesota. The maximum transmitter output power may not exceed 110 watts.

* * * * *

(33) This frequency is not available for assignment in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

8. Paragraphs (c)(3) and (c)(27) of § 90.75 are revised to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(c) * * *

(3) This frequency will be assigned only to stations used in itinerant operations, except within 56 km (35 miles) of Detroit, Mich., where it may be assigned for either itinerant or

permanent area operations (i.e., general use).

* * * * *

(27) Within the boundaries of urbanized areas of 200,000 or more population, defined in the United States Census of Population, 1980, vol. 1, table 23, page 1–50, this frequency may be used only by persons rendering a central station commercial protection service within the service area of the radio station utilizing the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central Station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Business Radio Service may be licensed on this frequency only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urbanized areas of 200,000 or more population. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States."

* * * * *

9. Paragraphs (d)(21) and (d)(22) of § 90.79 are revised to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(21) This frequency is shared with the Special Industrial Radio Service in the States of North Dakota; South Dakota; Iowa; Nebraska; Kansas and Missouri beyond 80 km (50 miles) from St. Louis and Kansas City; Colorado and Wyoming east of Longitude 106 degrees; and Minnesota south of Latitude 47 degrees.

(22) This frequency may not be shared in the Special Industrial Radio Service within 32 km (20 miles) of the cities of Duluth, Minnesota; Des Moines and Davenport, Iowa; Omaha, Nebraska; Colorado Springs, Colorado; and Wichita, Kansas.

* * * * *

10. Paragraph (d)(4) of § 90.81 is revised to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Power, Petroleum, Forest Products, Manufacturers, and Telephone Maintenance Radio Services. It may be assigned only when all of the base and mobile frequencies in the 450–470 MHz band for which the applicant is primarily eligible are assigned within 56 km (35 miles) of the proposed base station. Applications for this frequency must be coordinated with all five services. Telephone Maintenance Radio Service licensees on this frequency authorized prior to September 26, 1986, including their successors or assignees in business, will be permitted to renew their authorizations indefinitely, increase the number of transmitters operated, and expand the geographic coverage area of their systems, without a showing that all of the base and mobile Telephone Maintenance Radio Service frequencies in this band are assigned within 56 km (35 miles) of the existing base station.

* * * * *

11. Paragraph (c)(10) of § 90.93 is revised to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(c) * * *

(10) This frequency is shared by stations in the Forest Products Radio Service in the States of Washington, Oregon, Idaho, and Montana in areas at least 64 km (40 miles) removed from the center of urbanized areas of 200,000 or more population, 1970 Decennial Census. (Provided that, taxicab operations within the specified urbanized areas will not be authorized on frequencies shared with the Forest Products Radio Service until the unshared frequencies are fully utilized.) For two-frequency systems, separation between base and mobile transmit frequencies is 5 MHz; however, a mobile station may be assigned the frequency of an associated base station. (Such operation may, however, subject the single-frequency system to interference that would not occur to a two-frequency system.)

* * * * *

12. Paragraphs (c)(26) and (c)(27) of § 90.103 are revised to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(c) * * *

(26) Each frequency assignment in this band is on an exclusive basis within the primary service area to which assigned. The primary service area is the area where the signal intensities are adequate for radiolocation purposes from all stations in the radiolocation system of which the station in question is a part; that is, the primary service area of the station coincides with the primary service area of the system. The normal minimum geographical separation between stations of different licensees shall be at least 1931 km (1200 miles) when the stations are operated on the same frequency or on different frequencies separated by less than 1.0 kHz. Where geographical separation of less than 1931 km (1200 miles) is requested under these circumstances, it must be shown that the desired separation will result in a protection ratio of at least 20 decibels throughout the primary service area of other stations.

(27) Notwithstanding the bandwidth limitations otherwise set forth in this section of the rules, wideband systems desiring to operate in this band may use such bandwidth as is necessary for proper operation of the system provided that the field strength does not exceed 120 microvolts per meter per square root Hertz (120 uv/m/Hz½) at 1.6 km (1 mile). Such wideband operations shall be authorized on a secondary basis to stations operating within otherwise applicable technical standards. Applications for wideband systems in this band will be accepted beginning December 15, 1985.

* * * * *

13. Paragraph (a)(2) of § 90.137 is revised to read as follows:

§ 90.137 Applications for operation at temporary locations.

(a) * * *

(2) The application must specify the general geographic area within which the operation will be confined. The area may be specified as a city, a county or counties, a state or states or other definable geographic area such as a specified radius around a particular city or known geographic site.

* * * * *

14. Paragraph (a) of § 90.159 is revised to read as follows:

§ 90.159 Temporary permit.

(a) An applicant for a private land mobile station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed temporary license certificate (Form 572) after submitting or filing a formal application for station license in accordance with § 90.127, provided that all the antennas employed by control stations are 6.1 m (20 ft) or less above

ground or 6.1 m (20 ft) or less above a man-made structure other than an antenna tower to which it is affixed. When required by § 90.175, applications must be accompanied by evidence of frequency coordination. The temporary operation of stations, other than mobile stations within the Canadian coordination zone is limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 6.1 meters (20 ft) above average terrain.

* * * * *

15. Paragraph (a) of § 90.175 is revised to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) For frequencies between 25 and 470 MHz. A statement from the applicable frequency coordinator recommending the most appropriate frequency. The coordinator's recommendation may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate potential interference. Except for narrowband operations, the coordinator must not recommend any adjacent channel frequency 15 kHz removed to existing stations which would result in a separation of less than 16 km (10 miles), or 11 km (7 miles) in the Taxicab Radio Service. If the frequency recommended is in the 150–170 MHz band, and is 17.5 kHz or less removed from a frequency which is available to another radio service, the coordinator's statement must show that approval has been received from the coordinator for the other service. Coordination with another service is not required, however, for narrowband assignments more than 5 kHz removed from other narrowband assignments. Frequencies in the 450–470 MHz band, when used for secondary fixed operations, shall be assigned and coordinated pursuant to § 90.261.

* * * * *

16. Paragraph (c)(3)(ii) of § 90.239 is revised to read as follows:

§ 90.239 Interim provisions for operation of automatic vehicle monitoring (AVM) systems.

* * * * *

(c) * * *

(3) * * *

(ii) The minimum separation between a proposed AVM station and the nearest co-channel base station of another licensee operating a voice system is 120 km (75 miles) for a single frequency mode of operation or 56 km (35 miles) for a two-frequency mode of operation. Where the minimum distance separation cannot be achieved, agreement to the use of F1D, F2D, G1D, G2D or P0N emission must be received from all existing co-channel licensees using voice emissions within the applicable distance separation limits. If there is interference with voice operations and required agreement was not received, or operation was authorized on a secondary noninterference basis, the licensee of the AVM system is responsible for eliminating the interference.

* * * * *

17. Paragraph (a)(4) of § 90.241 is revised to read as follows:

§ 90.241 Radio call box operations.

(a) * * *

(4) The antenna and its supporting structure must not exceed 6.1 m (20 ft) in height above the ground.

* * * * *

18. Paragraph (d) of § 90.250 is revised to read as follows:

§ 90.250 Meteor burst communications.

* * * * *

(d) Co-channel base stations of different licensees shall be located at least 241 km (150 miles) apart. A remote station and a base station of different licensees shall be located at least 241 km (150 miles) apart if the remote units of the different licensees operate on the same frequency. Waiver of this requirement may be granted if affected users agree to a cooperative sharing arrangement.

* * * * *

19. Paragraph (a)(1) of § 90.271 is revised to read as follows:

§ 90.271 Narrowband operations.

(a) * * *

(1) Applications for narrowband operations must be accompanied by evidence of frequency coordination (§ 90.175). In the case of frequencies 7.5 kHz removed from FM channels the interference analysis should consider existing stations located within 96 km (60 miles).

* * * * *

20. Paragraph (c) introductory text, and paragraph (d), of § 90.273 are revised to read as follows:

§ 90.273 Availability and use of frequencies in the 421–430 MHz band.

* * * * *

(c) Base or control stations shall be located within 48 km (30 miles) of the center of Buffalo or 80 km (50 miles) of the center of Detroit. In Cleveland, base or control stations will be allowed at locations north of line A that are within 48 km (30 miles) of the city center. In addition, low power (2 watts or less) base stations may locate within 80 km (50 miles) of the center of Buffalo. The following coordinates shall be used for the centers of these areas:

* * * * *

(d) Mobile operation shall be confined to within 80 km (50 miles) of the centers of Detroit, Cleveland, or Buffalo.

21. Paragraph (a) of § 90.279 is revised to read as follows:

§ 90.279 Power limitations applicable to the 421–430 MHz band.

(a) Base station authorizations in the 421–430 MHz band will be subject to Effective Radiated Power (ERP) and Effective Antenna Height (EAH) limitations as shown in the table below. ERP is defined as the product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction. EAH is calculated by subtracting the Assumed Average Terrain Elevation (AATE) as listed in Table 7 of § 90.619 from the antenna height above mean sea level.

LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO EFFECTIVE ANTENNA HEIGHTS (EAH) OF BASE STATIONS IN THE 421–430 MHZ BAND

Effective antenna height (EAH) in meters (feet)	Maximum effective radiated power (ERP) (watts)
0–152 (0–500)	250
Above 152–305 (above 500–1000)	150
Above 305–457 (above 1000–1500)	75
Above 457–610 (above 1500–2000)	40
Above 610–762 (above 2000–2500)	20
Above 762–914 (above 2500–3000)	15
Above 914–1219 (above 3000–4000)	10
Above 1219 (above 4000)	5

* * * * *

22. Paragraph (d) of § 90.307 is revised to read as follows:

§ 90.307 Protection criteria.

* * * * *

(d) The minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 km (90 miles).

* * * * *

23. Paragraphs (a)(2), (a)(3), (a)(4) and (a)(5) and Tables A, B, C, D and E in § 90.309 are revised to read as follows:

§ 90.309 Tables and figures.

(a) * * *

(2) Entering the proper table at the mileage figure found in paragraph (a)(1) of this section, find opposite, a selection of powers that may be used for antenna heights ranging from 15 m (50 ft) to 152.5 m (500 ft) (AAT). If the exact antenna height proposed for the land mobile base station does not appear in the proper table, use the power figure beneath the next greater antenna height.

(3) The lowest power found using the tables mentioned in paragraphs (a)(1) and (a)(2) of this section is the maximum power that may be employed by the proposed land mobile base station.

(4) In determining the average elevation of the terrain, the elevations between 3.2 km (2 mi) and 16 km (10 mi) from the antenna site are employed. Profile graphs shall be drawn for a minimum of eight radials beginning at the antenna site and extending 16 km (10 mi). The radials should be drawn starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 12.2 m (40 ft) to 30.5 m (100 ft) and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 61 m (200 ft) to 122 m (400 ft) contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic chart may be used. The average elevation of the 12.8 km (8-mile) distance between 3.2 km (2 mi) and 16 km (10 mi) from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging these values. In the preparation of the profile graphs, the elevation or contour intervals may be taken from U.S. Geological Survey Topographic Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps. Maps with a scale of 1:250,000 or larger (such as 1:24,000) shall be used. Digital Terrain Data Tapes, provided by the National Cartographic Institute, U.S. Geological Survey, may be utilized in lieu of maps, but the number of data points must be equal to or exceed that special above. If such maps are not published for the area in question, the next best topographic information should be used.

(5) Applicants for base stations in the Miami, FL, urbanized area may, in lieu of calculating the height of average terrain, use 3 m (10 ft) as the average terrain height.

TABLE A—BASE STATION—COCHANNEL FREQUENCIES (50 dB PROTECTION) MAXIMUM EFFECTIVE RADIATED POWER (ERP) [1]

Distance in kilometers (miles): [2]	Antenna height in meters (feet) (AAT)									
	15 (50)	30.5 (100)	45 (150)	61 (200)	76 (250)	91.5 (300)	106 (350)	122 (400)	137 (450)	152.5 (500)
280 (162)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
257 (160)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	800
249 (155)	1,000	1,000	1,000	1,000	1,000	875	775	700	625	575
241 (150)	1,000	1,000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	475	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

[1] The effective radiated power (ERP) and antenna height above average terrain (AAT) shall not exceed the values given in this table.
[2] At this distance from transmitter site of protected UHF television station.

TABLE B—BASE STATION—COCHANNEL FREQUENCIES (40 dB PROTECTION) MAXIMUM EFFECTIVE RADIATED POWER (ERP) [1]

Distance in kilometers (miles): [2]	Antenna height in meters (feet) (AAT)									
	15 (50)	30.5 (100)	45 (150)	61 (200)	76 (250)	91.5 (300)	106 (350)	122 (400)	137 (450)	152.5 (500)
209 (130)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
201 (125)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	850	750	725
193 (120)	1,000	1,000	1,000	1,000	900	750	675	600	550	500
185 (115)	1,000	1,000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	159	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50	.....	.....	.....	.....	.....

[1] The effective radiated power (ERP) and antenna height above average terrain (AAT) shall not exceed the values given in this table.
[2] At this distance from transmitter site of protected UHF television station.

TABLE C—MOBILE AND CONTROL STATION—DISTANCE BETWEEN ASSOCIATED BASE STATION AND PROTECTED COCHANNEL TV STATION

[50 dB protection]

Effective radiated power (watts) of mobile unit and control station	Distance	
	Kilometers	Miles
200	249	155
150	243	151
100	233	145
50	217	135
25	201	125
10	188	117
5	180	112

TABLE D—MOBILE AND CONTROL STATION—DISTANCE BETWEEN ASSOCIATED LAND MOBILE BASE STATION AND PROTECTED COCHANNEL TV STATION

[40 dB protection]

Effective radiated power (watts) of mobile unit and control station	Distance	
	Kilometers	Miles
200	209	130
150	201	125
100	193	120
50	185	115
25	177	110

TABLE D—MOBILE AND CONTROL STATION—DISTANCE BETWEEN ASSOCIATED LAND MOBILE BASE STATION AND PROTECTED COCHANNEL TV STATION—Continued

[40 dB protection]

Effective radiated power (watts) of mobile unit and control station	Distance	
	Kilometers	Miles
10	169	105
5	161	100

TABLE E—BASE STATION ADJACENT CHANNEL FREQUENCIES MAXIMUM EFFECTIVE RADIATED POWER (ERP) [1]

Distance in kilometers (miles): [2 3]	Antenna height in meters (feet) (AAT)									
	15 (50)	30.5 (100)	45 (150)	61 (200)	76 (250)	91.5 (300)	106 (350)	122 (400)	137 (450)	152.5 (500)
108 (67)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
106 (66)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	750
104 (65)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	825	650	600
103 (64)	1,000	1,000	1,000	1,000	1,000	1,000	775	625	500	400
101 (63)	1,000	1,000	1,000	1,000	1,000	650	450	325	325	225
99 (62)	1,000	1,000	1,000	1,000	525	375	250	200	150	125
98 (61)	1,000	1,000	700	450	250	200	125	100	75	50
96 (60)	1,000	1,000	425	225	125	100	75	50		

[1] The effective radiated power (ERP) and antenna height above average terrain (AAT) shall not exceed the values given in this table.
[2] At this distance from transmitter site of protected UHF television station.
[3] The minimum distance is 145 km (90 miles) where there are mobile units associated with the base station. See sec. 90.307(d).

* * * * *

24. Paragraphs (a), (f), (g), (h) and (i) and Table 1 and its notes in paragraph (d), and Table 2 and its notes in paragraph (e), in § 90.315 are revised to read as follows:

§ 90.315 Special provisions governing use of frequencies in the 476–494 MHz band (TV Channels 15, 16, and 17) in the Southern Louisiana-Texas Offshore Zone.

(a) The frequency bands from 480–491 and 493–494 MHz will be available for assignment to stations governed by this part within Zone A. The boundaries of Zone A are from longitude 87°45′ on the east to longitude 94°00′ on the west, and from the 3-mile limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south. The frequency bands from 484–485 and 476–488 MHz will be available for assignment to stations governed by this part within Zone B. The boundaries of Zone B are from longitude 87°45′ on the east to longitude 95°00′ on the west and from the 3-mile limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south. The frequency bands from 478–479 and 481–481 MHz will be available for assignment to stations governed by this part within Zone C. The boundaries of Zone C are from longitude 94°00′ on the east, the 3-mile limit on the north and west, a 281 km (175 mile) radius from the reference point at Linares, N.L., Mexico on the southwest, latitude 26°00′ on the south, and the limits of the Outer Continental Shelf on the southeast. These frequencies may also be assigned to fixed stations located on shore designed to provide communications service within the zone.

* * * * *

(d) * * *

TABLE 1.—PROTECTION OF COCHANNEL TELEVISION STATIONS BY OFFSHORE STATIONS OPERATING IN THE SOUTHERN LOUISIANA-TEXAS OFFSHORE ZONE (65 dB PROTECTION); MAXIMUM EFFECTIVE RADIATED POWER

[In Watts]

Distance from transmitter to co-channel TV station kilometers (miles)	Antenna Height above sea level meters (feet)		
	30.5 (100)	45 (150)	61 (200)
338 (210)	1,000	1,000	1,000
330 (205)	1,000	900	850
322 (200)	800	710	630
314 (195)	590	520	450
306 (190)	450	400	330
298 (185)	320	280	240
290 (180)	250	210	175
281 (175)	175	150	130
274 (170)	130	110	100
265 (165)	95	80	70
257 (160)	65	55	50
249 (155)	50	40	35
241 (150)	35	30	25

Note: To determine the maximum permissible effective radiated power:

(1) As specified in § 73.611 determine the distance between the proposed station and the cochannel television station. If the exact distance does not appear in Table 1 of this section, the next lower distance separation is to be used.

(2) Opposite this distance figure ERPs are given that may be used for antenna heights of 30.5, 45 or 61 meters (100, 150 or 200 ft) ASL. If the exact antenna height is not shown, the ERP allowed will be that shown for the next higher antenna height.

(e) * * *

TABLE 2.—MAXIMUM REARWARD EFFECTIVE RADIATED POWER ALLOWED FOR SHORE STATIONS; REARWARD EFFECTIVE RADIATED POWER (IN WATTS) FROM SHORE ANTENNA IN A SECTOR <±>22½° FROM THE LINE JOINING THE SHORE ANTENNA TO THE COCHANNEL TELEVISION STATION

Distance from transmitter to cochannel television station: kilometers (miles)	Antenna height above ground in meters (feet)					
	30.5 (100)	45 (150)	61 (200)	91.5 (300)	152.5 (500)	229 (750)
298 (185)	320	280	240	190	125	90
290 (180)	250	210	175	125	100	60
281 (175)	175	150	130	100	70	50
274 (170)	130	110	100	75	40	35
265 (165)	95	82	70	50	35	25
257 (160)	65	55	50	40	25	20
249 (155)	50	40	35	30	20	15
241 (150)	35	30	25	20	15	10
233 (145)	25	20	18	15	10	7
225 (140)	18	15	13	10	7	5
217 (135)	13	10	9	7	5	3
209 (130)	10	8	6	5	3	2
201 (125)	7	6	5	4	3	2
193 (120)	5	4	3	3	2	1

Note: As an example of the use of Tables 1 and 2, assume an offshore station located 290 km (180 mi) from TV Channel 17 located in Bude, Miss. with an antenna height of 30.5 m (100 ft). Table 1 allows this station to operate with 250 W ERP. Now assume the shore station communicating with the offshore station is 48 km (30 mi) from the offshore station and 241 km (150 mi) from Bude, Miss. The shore station antenna height is 152.5 m (500 ft) above ground. The shore station will be allowed the same ERP as the offshore station (250 W) in the direction of the offshore station. Table 2 indicates that the effective radiated power in a sector <±> 22½° from the line joining the shore antenna to Bude, Miss. can only be 15 W. Consequently, a directional antenna must be used whose minimum front-to-back ratio over this 45° sector must be at least 12.2 dB. (250 W forward power to 15 W rearward power is a power ratio of 16.6 or 12.2 dB).

(f) To provide cochannel protection to television stations, no shore station will be allowed closer than 193 km (120 miles) from the cochannel television station.

(g) To provide adjacent channel protection to television stations, no shore or offshore station shall be allowed within an 128 km (80 mile) distance of the adjacent channel television station.

(h) Mobile stations shall not operate closer to shore than 6.4 km (4 miles) beyond the three mile limit and shall not operate with an ERP in excess of 100 watts with 9.1 m (30 ft) maximum antenna height.

(i) Mobile stations installed in aircraft shall operate 11 km (7 miles) beyond the three mile limit and shall not operate with an ERP in excess of 1 watt or at heights in excess of 305 m (1000 feet) AMSL.

* * * * *

25. Paragraphs (a)(1), (c)(1) and (c)(2) of § 90.423 are revised to read as follows:

§ 90.423 Operation on board aircraft.

(a) * * *

(1) Operations are limited to aircraft that are regularly flown at altitudes below 1.6 km (1 mi) above the earth's surface;

* * * * *

(c) * * *

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes greater than 1.6 km (1 mi) above the earth's surface.

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below 1.6 km (1 mi) above the earth's surface.

* * * * *

26. Paragraph (a)(4)(ii) of § 90.425 is revised to read as follows:

§ 90.425 Station identification.

* * * * *

(a) * * *

(4) * * *

(ii) In the Land Transportation Radio Services, licensees may request the Commission's local Engineer-in-Charge to approve the use of special mobile unit identifiers in lieu of the assigned call sign. Such requests, however, will not be granted where it appears that harmful interference to international operations may be caused by stations below 50 MHz, or by stations operating in areas within 80 km (50 miles) of an international boundary, or where it appears that the proposed method of identification will not adequately distinguish the mobile units of the applicant from the mobile units of other licensees in the area.

* * * * *

27. Paragraph (f) of § 90.463 is revised to read as follows:

§ 90.463 Transmitter control points.

* * * * *

(f) In urban areas, the location of fixed transmitter control points will be specified, "same as transmitter," unless the control point is at a street address which is different from that of the transmitter(s) controlled. In rural areas, the location of fixed control points will be specified, "same as transmitter," unless the control point is more than 152.5 m (500 ft) from the transmitter(s) controlled. In the latter case, the approximate location of the control point will be specified in distance and direction from the transmitter(s) controlled in terms of distance and geographical quadrant, respectively. It would be assumed that the location of a fixed control point is the same as the location of the transmitter(s) controlled, unless the applicant includes a request for a different location described in appropriate terms as indicated herein.

* * * * *

28. Paragraph (d)(3) of § 90.477 is revised to read as follows:

§ 90.477 Interconnected systems.

* * * * *

(d) * * *

(3) In the Special Emergency Radio Service (subpart C of this part), except for medical emergency systems in the 450–470 MHz band, the business and Special Industrial Radio Services (subpart D of this part) and the Automobile Emergency and Taxicab Radio Services (subpart E of this part), interconnection will be permitted only where the base station site or sites of proposed stations are located 120 km (75 miles) or more from the designated centers of the urbanized areas listed below. If licensees seek to interconnect in these five services within 120 km (75 miles) of the 25 cities they must obtain the consent of all co-channel licensees located both within 120 km (75 miles) of the center of the city; and within 120 km (75 miles) of the interconnected base station transmitter. The consensual agreements among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection. If a licensee has agreed to the use of interconnection on the channel, but later decides against the use of interconnection, the licensee may request that the co-channel licensees reconsider the use of interconnection. If the licensee is unable to reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed to the use of interconnection and the new licensee does not agree, the new licensee may request that the co-channel licensees reconsider the use of interconnection. If the new licensee can not reach an agreement with co-channel licensees it may request that the Commission reassign it to another channel.

* * * * *

29. Paragraphs (b)(1)(ii), (b)(2)(i), (b)(2)(ii), (c) and (d) of § 90.483 are revised to read as follows:

§ 90.483 Permissible methods and requirements of interconnecting private and public systems of communications.

* * * * *

(b) * * *

(1) * * *

(ii) When a frequency is shared by more than one system, automatic monitoring equipment must be installed at the base station to prevent activation of the transmitter when signals of co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without the monitoring equipment if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems on frequencies above 800 MHz are exempt from this requirement.

(2) * * *

(i) When a frequency is shared by more than one system, automatic monitoring equipment must be installed at each base station to prevent its activation when signals of other co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without this equipment if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems above 800 MHz are exempt from this requirement.

(ii) Initial access from points within the public switched telephone network must be limited to transmission of a 3-second tone, after which time the transmitter shall close down. No additional signals may be transmitted until acknowledgement from a mobile station of the licensee is received. Licensees are exempt from this requirement if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems above 800 MHz are exempt from this requirement.

(c) In single frequency systems, equipment must be installed at the base station which will limit any single transmission from within the public switched telephone network to 30 seconds duration and which in turn will activate the base station receiver to monitor the frequency for a period of not less than three (3) seconds. The mobile station must be capable of terminating the communications during the three (3) seconds. Licensees are

exempt from this requirement if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission.

(d) A timer must be installed at the base station transmitter which limits communications to three (3) minutes. After three (3) minutes, the system must close down, with all circuits between the base station and the public switch telephone network disconnected. This provision does not apply to systems licensed in the Police, Fire, Local Government, Special Emergency, Power, Petroleum, Railroad Radio Services, or above 800 MHZ. All systems must be equipped with a timer that closes down the transmitter within three minutes of the last transmission. Licensees may operate without these requirements if they have obtained the consent of all co-channel licensees located within a 120 km (75 mile) radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission.

30. Paragraph (f) of § 90.494 is revised to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

* * * * *

(f) The effective radiated power and antenna height for base stations providing one-way paging service in the frequency band 929–930 MHz must not exceed 1 kilowatt (30 dBw) and 305 m (1000 ft) above average terrain (AAT), or the equivalent thereof determined from the following table:

Antenna height (AAT) meters (feet)	Effective radiated power (ERP) (watts)
Above 1,372 (4,500)	65
Above 1,220 (4,000) to 1,372 (4,500)	70
Above 1,067 (3,500) to 1,220 (4,000)	75
Above 915 (3,000) to 1,067 (3,500)	100
Above 763 (2,500) to 915 (3,000)	140
Above 610 (2,000) to 763 (2,500)	200
Above 458 (1,500) to 610 (2,000)	350
Above 305 (1,000) to 458 (1,500)	600

* * * * *

31. The "special limitations" column of the combined frequency list in § 90.555(b) is revised for the frequencies 166.250 MHz and 170.150 MHz, only, to read as follows:

§ 90.555 Combined Frequency Listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
*	*	*
166.250	PF	Available only within 241 km (150 mi) of New York City.
*	*	*
170.150	PF	Available only within 241 km (150 mi) of New York City.
*	*	*

32. Paragraph (d)(4) of § 90.609 is revised to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(d) * * *

(4) Each application must include a signed statement listing any co-channel licensees (including call signs) located within 113 km (70 miles) of the primary site of the trunked system verifying that they all have agreed to the proposed trunked use (see § 90.621(c)).

* * * * *

33. Paragraph (b)(2)(ii) of § 90.615 is revised to read as follows:

§ 90.615 Frequencies available in the General Category.

* * * * *

(b) * * *

(2) * * *

(ii) Each application must include a written signed statement from each co-channel licensee located within 113 km (70 miles) of the primary site of the trunked system verifying that each such licensee has agreed to the proposed trunked use (see § 90.621(c)). The statement(s) should include each licensee's call sign.

* * * * *

34. Paragraph (d) introductory text and footnotes 2 and 3 to Table 4C of § 90.617 are revised to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(d) The channels listed in Tables 4A and 4B are available only for eligibles in the SMR category which consists of Specialized Mobile Radio (SMR) stations and eligible end users. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border. See § 90.619 for the assignment of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401–600 will be assigned in groups as outlined in Table 4C.

* * * * *

[2] These frequencies will be authorized only in the area encompassed by a 113 km (70 mile) radius centered at 41°52'28" N. 87°38'22" W.

[3] All stations located beyond the 113 km (70 mile) distance authorized on or before August 16, 1982 to use these frequencies may continue to do so. Stations beyond the 113 km (70 mile) distance authorized after August 16, 1982, shall employ frequencies listed in Table 4A subject to the provisions of § 90.621 (b) or (c) as applicable.

35. Paragraph (b)(6) of § 90.619 is revised to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

(b) * * *

(6) Two Canadian television stations provide service in British Columbia in the band 806–890 MHz in accordance with U.S./Canadian Television Agreement of 1952. They are:

Enderby, B.C.	Channel 72	818–824 MHz.
Radium/Hot Springs, B.C.	Channel 77	848–854 MHz.

Until reassignment of these stations, they must be protected as follows: the field strength of an interfering mobile radio signal at the station's calculated B contour (where the protected contour crosses the border, that portion of the border lying within the contour shall be treated as the relevant segment of the B contour) may not exceed 14 dBu for frequencies co-channel with the television channel utilized, and may not exceed 54 dBu in the two adjacent 6 MHz guard bands. The field strength of any interfering signal must be calculated using the FCC Report R–6602 F(50,10) propagation curves at a receiving effective antenna height of 9.1 m (30 ft).

* * * * *

36. Paragraphs (b)(2) (i) and (c) of § 90.621 are revised to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(2) * * *

(i) Required co-channel separations between common antenna sites are given by Table 1. A channel group assigned to a station on a site listed in the vertical column may not be re-assigned to a station on a site listed in the horizontal column if there is an "X" in the box created by the intersection of the vertical and horizontal lines. The geographic coordinates listed in the table represent an average for each particular site; all locations within 1.6 km (1 mi) of the coordinates will be considered to be at that site.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business and General Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a distance separation of 113 km (70 miles) for typical system parameters. Applicants should be aware that in some areas, e.g., Seattle, Los Angeles, and northern California, separations greater than 113 km (70 miles) may be appropriate. Separations may be less than 113 km (70 miles) where the requested service areas, terrain or other factors warrant reduction. In the event that the separation is less than 113 km (70 miles), the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

* * * * *

§ 90.623 [Amended]

37. Paragraphs (c) introductory text and (d) in § 90.623 are amended by removing the words "40 miles" everywhere they occur and adding the words "64 km (40 miles)" in their place.

§ 90.627 [Amended]

38. In paragraph (b) introductory text of § 90.627 the words "40 miles" are removed and the words "64 km (40 miles)" are added in their place.

39. Tables 2, 3 and 4 of Section 90.635 are revised to read as follows:

§ 90.635 Limitations on power and antenna height.

* * * * *

TABLE 2—EQUIVALENT POWER AND ANTENNA HEIGHTS FOR BASE STATIONS IN THE 851–869 MHZ AND 935–940 MHZ BANDS WHICH HAVE A REQUIREMENT FOR A 32 KM (20 MI) SERVICE AREA RADIUS

Antenna height (ATT) meters (feet)	Effective radiated power (watts) [1 2 5]	
	Urban/trunked	Suburban
Above 1,372 (4,500)	65	15
Above 1,220 (4,000) to 1,372 (4,500)	70	20
Above 1,067 (3,500) to 1,220 (4,000)	75	25
Above 915 (3,000) to 1,067 (3,500)	100	30
Above 763 (2,500) to 915 (3,000)	140	35
Above 610 (2,000) to 763 (2,500)	200	50
Above 458 (1,500) to 610 (2,000)	350	80
Above 305 (1,000) to 458 (1,500)	600	160
Above 152.5 (500) to 305 (1,000)	[3] 1,000	220
Up to 152.5 (500)	1,000	[4] 500

[1] Power is given in terms of effective radiated power (ERP).

[2] Applicants in the Los Angeles, CA, area who demonstrate a need to serve both the downtown and fringe areas will be permitted to utilize an ERP of 1 kw at the following mountaintop sites: Santiago Park, Sierra Peak, Mount Lukens, and Mount Wilson.

[3] Stations with antennas below 305 m (1,000 ft) (AAT) will be restricted to a maximum power of 1 kw (ERP).

[4] Stations with antennas below 152.5 m (500 ft) (AAT) will be restricted to a maximum power of 500 W (ERP).

[5] Licensees in San Diego, CA, will be permitted to utilize an ERP of 500 watts at the following mountaintop sites: Palomar, Otay, Woodson and Miguel.

TABLE 3.—EQUIVALENT POWERS AND ANTENNA HEIGHTS FOR SUBURBAN-CONVENTIONAL BASE STATIONS IN THE 851–869 MHZ AND 935–940 MHZ Bands Which Have a Requirement for Less Than 32.2 km (20 mi) SERVICE AREA RADIUS—MAXIMUM EFFECTIVE RADIATED POWER (WATTS)

[Base station antenna height (AAT) in meters (feet)]

	Above/to					
	122 (400) to 152.5 (500)	91.5 (300) to 122 (400)	61 (200) to 91.5 (300)	30.5 (100) to 61 (200)	15 (50) to 30.5 (100)	0 (0) to 15 (50)
Service area radius km (mi):						

TABLE 3.—EQUIVALENT POWERS AND ANTENNA HEIGHTS FOR SUBURBAN-CONVENTIONAL BASE STATIONS IN THE 851–869 MHz AND 935–940 MHz Bands Which Have a Requirement for Less Than 32.2 km (20 mi) SERVICE AREA RADIUS—MAXIMUM EFFECTIVE RADIATED POWER (WATTS)—Continued

[Base station antenna height (AAT) in meters (feet)]

	Above/ to					
	122 (400) to 152.5 (500)	91.5 (300) to 122 (400)	61 (200) to 91.5 (300)	30.5 (100) to 61 (200)	15 (50) to 30.5 (100)	0 (0) to 15 (50)
32 (20)	500	500	500	500	500	500
30 (19)	400	500	500	500	500	500
29 (18)	310	385	500	500	500	500
27 (17)	235	300	385	500	500	500
26 (16)	175	220	285	440	500	500
24 (15)	130	160	215	330	500	500
22 (14)	95	120	155	240	480	500
21 (13)	70	85	115	175	350	500
19 (12)	50	60	80	125	250	500
18 (11)	35	45	60	90	180	360
16 (10)	25	30	40	60	120	240
14 (9)	15	20	25	40	80	160
13 (8)	10	12	15	25	50	100
11 (7)	6	7	10	15	30	60
10 (6)	3	4	5	7	15	30
8 (5) or less	1	2	3	4	8	16

TABLE 4.—EQUIVALENT POWERS AND ANTENNA HEIGHTS FOR URBAN-CONVENTIONAL AND TRUNKED SYSTEM BASE STATIONS IN THE 851–869 MHz AND 935–940 MHz BANDS WHICH HAVE A REQUIREMENT FOR LESS THAN 32.2 km (20 mi) SERVICE AREA RADIUS—MAXIMUM EFFECTIVE RADIATED POWER (WATTS)

	Base station antenna height (AAT) meters (feet)							
Above	228 (750)	152.5 (500)	122 (400)	91.5 (300)	61 (200)	30.5 (100)	15 (50)	0 (0)
to	305 (1,000)	228 (750)	152.5 (500)	122 (400)	91.5 (300)	61 (200)	30.5 (100)	15 (50)
Service area radius: km (mi):								
32 (20)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
30 (19)	800	1,000	1,000	1,000	1,000	1,000	1,000	1,002
29 (18)	640	830	1,000	1,000	1,000	1,000	1,000	1,000
27 (17)	480	625	960	1,000	1,000	1,000	1,000	1,000
26 (16)	360	470	720	800	1,000	1,000	1,000	1,000
24 (15)	270	350	540	675	875	1,000	1,000	1,000
22 (14)	200	260	400	500	650	1,000	1,000	1,000
21 (13)	140	180	280	350	450	700	1,000	1,000
19 (12)	100	130	200	250	325	500	1,000	1,006
18 (11)	70	90	140	175	230	350	700	1,000
16 (10)	45	60	90	110	145	220	440	1,000
14 (9)	30	40	60	75	100	150	300	600
13 (8)	20	25	40	50	65	100	200	400
11 (7)	15	20	30	40	50	80	160	300
10 (6)	8	10	16	20	25	40	80	100
8 (5) or less	5	6	9	12	15	25	50	100

40. Section 90.657 is revised to read as follows:

§ 90.657 Temporary permit.

An applicant for a subpart S radio station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed certification of FCC Form 572 after filing a formal application for station license, together with evidence of frequency coordination (when required), provided that the antenna(s) employed by the control station(s) is (are) 6.1 m (20 ft) or less above ground or 6.1 m (20 ft) or less above a man-made structure other than an antenna tower to which it is affixed.

41. Paragraph (c) of § 90.729 is amended to read as follows:

§ 90.729 Limitations on power and antenna height.

* * * * *

(c) Channels 196–200 are limited to 2 watts ERP and a maximum antenna height of 6.1 meters (20 ft) above ground.

PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 301, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 301, 303, 307; secs. 4(i), 301, and 303(r), Federal Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r).

2. In § 94.3, the definitions of "long haul system" and "short haul system" are revised to read as follows:

§ 94.3 Definitions.

* * * * *

Long Haul System. A microwave system licensed under this part in which the longest radio circuit of tandem radio paths exceeds 402 km (250 miles).

* * * * *

Short Haul System. A microwave system licensed under this part in which the longest radio circuit of tandem radio paths does not exceed 402 km (250 miles).

* * * * *

3. Paragraphs (g)(1) and (g)(2) of § 94.15 are revised to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) * * *

(1) An applicant may not apply for a frequency or frequency pair within a 40 km (25 mile) radius of any location for which it has concurrently applied;

(2) Further, no party may have an ownership interest, direct or indirect, in two or more pending applications proposing sites within 40 km (25 miles) of each other.

* * * * *

4. Paragraph (d)(4)(i) of § 94.63 is revised to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(d) * * *

(4) * * *

(i) For multiple address stations in the 928–929/952–960 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications:

Fixed-to-fixed.....145 km (90 miles)
Fixed-to-mobile.....113 km (70 miles)
Mobile-to-mobile.....80 km (50 miles)

Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the distance is measured from the reference point specified on the license application.

* * * * *

5. The table in paragraph (a)(1)(v) of § 94.65 is revised to read as follows:

§ 94.65 Frequencies.

* * * * *

(a) * * *

(1) * * *

(v) *Equivalent power and antenna heights for multiple address master stations:*

Antenna height (AAT) in meters (feet)	Maximum effective radiated power	
	Watts	dBm
Above 305 (1,000)	200	53
Above 274 (900) to 305 (1,000)	250	54
Above 244 (800) to 274 (900)	315	55
Above 213 (700) to 244 (800)	400	56
Above 182 (600) to 213 (700)	500	57
Above 152.5 (500) to 182 (600)	630	58
152.5 (500) and below	1,000	60

For mobile operations the maximum ERP is 25 watts (44 dBm).

* * * * *

6. Paragraph (f) of § 94.90 is revised to read as follows:

§ 94.90 Special provisions for low power, limited coverage systems in the 12,200–12,700 MHz band.

* * * * *

(f) Radio systems authorized under the provisions of this section shall have no more than three hops in tandem but in any event, the maximum tandem length of the system should not exceed 40 km (25 miles).

* * * * *

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Wednesday
August 25, 1993

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 880, et al.
Preferences for Admission to Assisted Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 880, 881, 882, 883, 884, 885, 886, 889, 904, 905, 906 and 960

[Docket No. R-93-1671; FR-3122-P-01]

RIN 2501-AB35

Preferences for Admission to Assisted Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions to the tenant selection preference provisions of regulations of several project-based assisted housing programs. The proposed rule would decrease the number of families that must be admitted on the basis of qualifying for a federal selection preference and would specifically authorize adoption of local selection preferences by housing agencies to be used in admitting some applicants. If a housing agency wants to use such local preferences, the proposed rule would require the agency to adopt ones that respond to local housing needs and priorities after conducting public hearings. The proposed rule also would disqualify from a selection preference for three years any individual or family that has been evicted from certain HUD assisted housing for drug-related criminal activity.

These revisions are being proposed to implement statutory changes to the United States Housing Act of 1937 affecting preferences for participation in public housing, Indian housing, and all phases of the Section 8 program for the Certificate and Voucher programs (which are covered by a separate rulemaking).

DATES: Comment due date: October 25, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title and should specify what regulation section is the subject of the comment. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: For the public housing and Section 8 Moderate Rehabilitation programs (Parts 882, 904, and 960), Edward Whipple, Director, Occupancy Division, Office of Public Housing, (202) 708-0744 (voice); (202) 708-0850 (TDD).

For the Section 8 programs except for the Moderate Rehabilitation program (Parts 880, 881, 883, 884, 885, 886, and 889), James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing, (202) 708-3944 (voice); (202) 708-4594 (TDD).

For the Indian housing programs (Part 905), Dominic A. Nessi, Director, Office of Native American Housing, (202) 708-1015 (voice); (202) 708-0850 (TDD).

For the Section 5(h) homeownership program (Part 906), Gary F. Van Buskirk, Office of Resident Initiatives, (202) 708-4233 (voice); (202) 708-0850 (TDD).

None of these telephone numbers is toll-free. All of the individuals listed are located at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The information collection requirements for the preference provisions of the assisted housing programs are included in the paperwork burden of the application procedures, which were previously approved under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501-3520) by the Office of Management and Budget (OMB). The revised preference provisions have now been submitted to OMB for review under that Act.

The estimated public reporting burden of these collections is stated under the Preamble heading Findings and Certifications at paragraph III G. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk at the above address; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

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I. Overview

A. Timetable and Request for Comments

This proposed rule is being issued pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3672, approved October 28, 1992). Section 104 of that Act requires that the Department give notice and opportunity for public comment before issuing a rule for effect. That section also requires issuance of a final rule to implement the tenant selection preference provisions originally enacted by the National Affordable Housing Act (Pub. L. 101-625, 104 Stat. 4079, approved November 28, 1990), no later than April 26, 1993, to take effect upon issuance.

Although the deadline for issuance of a final rule has passed, the Department is issuing this rule as a proposed rule, as required by the statute, to solicit public comments on its content. A final rule will be published as expeditiously as possible after the end of the comment period. The changes in the preference provisions enacted in 1990 and 1992 are not effective until issuance of that final rule.

B. Statutory Provisions Being Implemented

The regulation will implement the following sections of the National Affordable Housing Act ("NAHA") of 1990:

501—Preference Rules, Public and Indian Housing
506—Public Housing Assistance for Foster Care Children
545—Preference Rules, Section 8 Housing and Section 202 Housing

The regulation will also implement the following sections of the Housing and Community Development Act ("HCD Act") of 1992:

104—Public Housing and Section 8 (and Section 202) Housing Tenant Preference Rules (implement NAHA 501 and 545 within 180 days)
105(a)—Restriction on Selection of Higher Income Families to Local Preference Admissions
112—Public Housing Tenant Preferences [federal preferences minimum decreased from 70% to 50%]

C. Affected Sections of the U.S. Housing Act Public and Indian Housing

Section 6(c)(4)(A) of the United States Housing Act of 1937 ("1937 Act") was amended by section 501 of NAHA (change in minimum percentages, hearings for local preferences, drug-related evictions, and broad range of incomes); and by section 112 of the HCD Act (change in percentage). Section 6 was also amended by section 506 of NAHA to add a new paragraph (o) (subject to preferences, coordination with child welfare organizations permitted to facilitate adequate housing to avoid foster care). The section 112 changes do not apply to Indian Housing, although the section 501 and section 506 changes do.

Section 16(c) of the 1937 Act was amended by section 105(a) of the HCD Act to exempt from a prohibition against selection of a family "in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence," those families selected by a housing agency for admission to public housing on the basis of local preferences adopted in accordance with the public hearing procedure.

Section 8 (Including 202 Elderly Projects)

Amendments concerning minimum federal preference percentages and public hearings to establish local preferences were made applicable by section 545 of NAHA to housing constructed or substantially rehabilitated with assistance provided under section 6(b)(2), as it existed before elimination of authority for the program on October 1, 1983, including projects financed under section 202 of the Housing Act of 1959 (so-called 202 elderly projects).

In addition, this rule covers Section 8 existing housing programs other than the Certificate and Voucher programs. It covers Section 8 Loan Management and Property Disposition programs administered under 24 CFR part 886 and the Section 8 Moderate Rehabilitation program administered under part 882. These programs are subject to the same amendments as the New Construction and Substantial Rehabilitation programs, and to the requirement that applicants be denied federal preference if they have been the subject of a drug-related eviction.

D. Affected Regulations

This regulation will amend:

24 CFR part 880—Section 8 New Construction
24 CFR part 881—Section 8 Substantial Rehabilitation
24 CFR part 882—Section 8 Moderate Rehabilitation
24 CFR part 883—State Housing Agencies
24 CFR part 884—Section 8/FmHA 515 set-aside
24 CFR part 885—Section 8/Section 202
24 CFR part 886—Special Allocations
24 CFR part 889—Supportive Housing for the Elderly
24 CFR part 904—Turnkey III Homeownership
24 CFR part 905—Indian Housing
24 CFR part 906—Section 5(h) Homeownership
24 CFR part 960—Public Housing

A rule amending parts 882 and 887 and creating a new part 982 to replace most of those parts implements the changes in preferences for the Section 8 Certificate and Voucher programs. Therefore, those parts are not included in this rule, except for the subpart of part 882 that covers the Section 8 Moderate Rehabilitation program.

Previous statutory provisions concerning federal preferences have included changes to the statute authorizing the Rent Supplement program (12 U.S.C. 1701s). Neither NAHA nor the HCD Act of 1992 amended that statute. Consequently, the Department has no plans to make changes in the federal preference regulations covering that program (24 CFR part 215).

E. Major Considerations

The NAHA and HCD Act provisions:

—Increase, for public housing, the percentage of non-federal preference holders who can be admitted from 10 percent to 50 percent. (NAHA 501 and HCD 112)
—Increase, for Indian Housing and for the project-based Section 8 programs covered by this rule, the percentage of non-federal preference holders who can be admitted from 10 percent to 30 percent. (NAHA 501 and 545)
—Provide specifically for local preferences to be used as a separate basis for admission from federal preferences. These local preferences are to be established by a housing agency after a public hearing. (NAHA 501 and 545)
—Prohibit any individual or family evicted from housing assisted under the U.S. Housing Act because of drug-related criminal activity from having a federal or local preference for a period of three years for public housing, Indian Housing, and Section 8 moderate rehabilitation, loan management, and property disposition programs. (NAHA 501 and 545)

F. Other Considerations

The NAHA and HCD Act provisions also:

—Amend the requirement that Housing Agency (HA) policies be directed toward achieving the broad range of income objective "within a reasonable period of time," to require, instead, that this objective be achieved "to the maximum extent feasible." (NAHA 501, amending section 6(c)(4)(A) of the 1937 Act)
—Allow HAs, in admitting families to public and Indian housing, to consider the needs of families that would otherwise have to place children in foster care and of youth being discharged from foster care. (NAHA 506, adding section 6(o) to the 1937 Act) It permits HAs, subject to the preferences, to coordinate with local public agencies involved in child welfare to make available units to families—where lack of adequate housing is a primary factor requiring foster care placement or retention of children—and to youth—upon discharge from foster care where return to the family is not possible. This provision imposes no requirements on HAs, and, therefore, this rule imposes none. HAs can implement section 506 by adopting an appropriate local preference.

While developing the method to implement statutory preferences, the Department has considered the potential for fraud in various methods and the means of HUD monitoring. The choice to limit qualification for the rent burden component of federal preferences to applicants who have paid more than 50 percent of family income for rent for at least 90 days is an example of a decision motivated by concern to limit the preference to families that are genuinely experiencing difficulty, and not just manipulating their situation with the sole intent of qualifying for the preference. The method of monitoring compliance with this preference rule will be to include oversight of this function during the normal management

reviews and in the implementation of the tenant rental assistance certification system.

II. Specific Provisions

A. All Programs

1. Clarification of Percentage Limitations

The statute requires that a minimum percentage of admissions must be based on federal preference. Any remaining admissions may be based on local preferences, adopted by the housing agency after conducting public hearings. Both NAHA and the HCD Act amended the preference provisions to permit a higher percentage of admissions to be based on local preference. The HCD Act, while continuing, for most of the assisted housing programs, the restriction against use of selection criteria whose purpose is the selection of higher income applicants, still permits it in the context of admissions to public housing, but now only when the admission is pursuant to a local preference. (Indian housing programs are not subject to this restriction.)

These changes highlight the importance of the method of determining how the federal preference percentage is to be applied. One alternative is to apply the percentages only when a selection for admission involves a choice between selecting an applicant without a federal preference or an applicant with a federal preference. Another alternative is to apply the percentages to all admissions. In the latter case, each admission is categorized as either a federal preference admission or a local preference admission, to be counted against the applicable percentage.

To simplify administration of the program and to assure that the exemption from the restriction on applying income range considerations is limited to local preference admissions in public housing, the Department has chosen the second alternative. The method for implementing this alternative would be somewhat simpler for the programs other than public housing, since they are not subject to the statutory exemption of section 16(c) of the 1937 Act, which requires more separation between federal preference admissions and local preference admissions.

For these programs, the owner or HA would be permitted to count an admission as a federal preference admission if the applicant admitted was a federal preference holder. In addition, the admission could be counted as a federal preference admission even if the applicant were not a federal preference holder if none was available that qualified for the unit at the time of admission.

For the public housing program, an admission could be counted as a federal preference admission if the applicant admitted was a federal preference holder and the selection was not based on a local preference whose purpose was to admit higher income families. In addition, the admission could be counted as a federal preference admission even if the applicant were not a federal preference holder if none was available that qualified for the unit at the time of admission, and the selection was not based on a local preference whose purpose was to admit higher income families.

The regulation would permit local preference admissions for up to 50 percent (public housing) or 30 percent (Indian Housing and project-based Section 8) of admissions during the HA's fiscal year. For the Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs, local preference admissions (in accordance with the HA's Section 8 local preferences approved by HUD for the project) would be permitted for as much as 30 percent of the admissions. In any case, the HA or owner would be able to exercise discretion to use a higher percentage of federal preference admissions than the statute requires. So, for example, an owner could devote 100 percent of admissions to the federal preference category.

2. Effect on Current Waiting Lists

The rule provides that an HA may adopt different local preferences for the Section 8 programs than for its public housing (or Indian housing) program.

New local preferences will affect the status of new applicants and applicants already on the waiting list. New applicants will be given notice of the new preferences when they apply for assistance. Applicants already on the waiting list will be notified of the revised system and be given an opportunity to show that they qualify.

The current public housing and Indian housing regulations provide for notice to applicants on a waiting list of a change in the preferences. The notice provision permits notification of less than the full waiting list under certain circumstances. This provision is preserved for these two programs and is added to the Section 8 program regulations.

3. Possible Expansion of Current Definitions

Since the initial implementation of federal preferences, some HAs have expressed interest in extending the definition of substandard housing to include overcrowding and families who are doubled up in the definition of overcrowding. HUD has decided to retain its current definition of substandard housing, which refers only to the physical dwelling, without regard to who may live in it. This limited definition keeps to a minimum the number of applicants who qualify for the preference, and that therefore compete for very limited resources.

HAs using the HUD definitions of these terms will not include overcrowding as a component of substandard housing, as clarified in this rule. However, in the public housing, Indian housing, and Section 8 Moderate Rehabilitation programs, HAs may adopt their own definitions of the three federal preference terms with HUD approval; this allows sufficient flexibility to deal with these issues locally.

HAs also can address concerns like overcrowding or being doubled up by adopting a local preference for applicants in these situations. A local preference has the advantage of recognizing that there is a hierarchy of needs among applicants and that those who meet the federal preference provisions, as HUD defines them (e.g., in a substandard unit), are usually in greater need than those whose situations fall just outside HUD's definitions (e.g., overcrowded but in a standard unit).

In the case of project-based Section 8 programs administered by project owners, the rule adds a provision that permits HUD to specify additional conditions, in a handbook or other administrative instructions, that would satisfy the definition of federal preference. The current handbook permits an applicant to qualify for a federal preference as involuntarily displaced in some cases when an extended family breaks up. (See the Occupancy Handbook for Multifamily Housing Programs, HUD 4350.3, chapter 2.)

Editorial changes are proposed to the definition of involuntary displacement. These changes permit the use of the term by itself in the initial list of federal preferences, comparable to the other terms, and the expanded definition is found all in one place, in paragraph (c)(3) of the various regulations.

The provision concerning involuntary displacement of a battered spouse would be modified in this rule in two

respects. First, it would describe the battered spouse as someone who has vacated "the dwelling where he or she resides" instead of "his or her unit". This change is intended to permit a battered spouse to qualify regardless of whether the person has a property right to the unit. (An applicant also can qualify as a victim of domestic violence if the applicant is still living in the housing unit with the perpetrator.) Secondly, the rule would permit the owner or HA to limit the preference based on this category to a family that will not include the abuser. This addition is made to encourage housing administrators to see that the preference category is not misused.

Some HAs have suggested restricting the federal preference based on rent burden to those who have paid more than 50 percent of their income for rent for at least 12 months. This rule restricts qualification for the preference for rent burden to those affected for at least 90 days. In addition, an HA or owner may rank its applicants with federal preferences by duration of the rent burden condition. For example, an HA or owner may use a ranking preference to those who have paid more than 50 percent of income for more than 12 months but may not deny a federal preference to those who have paid more than 50 percent of income for at least 90 days.

4. Relationship of Preferences to Characteristics of Unit

Under the current regulation, questions have been raised on the relationship between the federal preferences and the characteristics of the unit to which the applicant will be assigned. For example, would a two person family with a federal preference be assigned to a three-bedroom unit ahead of a six person family without a federal preference? No. (The size of unit would be a more important consideration.) Would an elderly family without a federal preference be selected for an elderly public housing project ahead of a non-elderly family with a federal preference? Yes. (The characteristics of the project would be a more important consideration.) The proposed rule provides that federal preferences, and any local preferences, would govern selection among families who qualify for a unit of a particular size under the occupancy policy of the HA or the Section 8 housing owner.

The regulation would make clear that the preference to be accorded under the federal preferences and local preferences does not take precedence over other factors in selecting an appropriate tenant for a particular unit. The size of unit, as described above, must be considered first. Also, the regulation does not affect the statutory ranking of elderly, disabled, and displaced singles over other singles. Elderly, disabled, and displaced singles would have priority over other singles regardless of the individuals' particular preferences. [The applicability of local preferences to Section 8 housing constructed for occupancy by the elderly, however, is the subject of a pending rulemaking to implement section 655 of the HCD Act.]

5. Examples of Local Preferences Permitted

The list of permissible local preferences stated in the statute is not exclusive—the list given is of examples. The rule simply requires that the HA follow the public hearing requirement, adopting preferences that respond to local housing needs and priorities and that do not conflict with nondiscrimination requirements. For example, an IHA may establish a local preference for Tribal member Indians over non-Tribal member Indians and non-Indians in its Indian Housing programs; or an HA may establish a local preference for applicants who have at least one family member that is employed—providing that the preference satisfies nondiscrimination requirements.

The rule does not repeat the examples given in the statute of appropriate local preferences but instead gives a cross-reference to the statute. The list of examples in the statute (NAHA section 501) is as follows:

—Assisting very low-income families who either reside in transitional housing assisted under the McKinney Act or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities;

—Assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with the child's family;

—Assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; and

—Achieving other objectives of national housing policy as affirmed by Congress.

For the Section 8 program, the list of examples includes a preference in providing certificates and vouchers for persons displaced by the rental rehabilitation program.

6. Local Preferences for Objectives Affirmed by Congress

In the list of examples of local preferences, the statute mentions, "other objectives of national housing policy as affirmed by Congress." The objectives of national housing policy have been expressed most recently in section 102 of NAHA:

"(1) To ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness;

"(2) To increase the Nation's supply of decent housing that is affordable to low-income and moderate-income families and accessible to job opportunities;

"(3) To improve housing opportunities for all residents of the Untied States, particularly members of disadvantaged minorities, on a nondiscriminatory basis;

"(4) To help make neighborhoods safe and livable;

"(5) To expand opportunities for homeownership;

"(6) To provide every American community with a reliable readily available supply of mortgage finance at the lowest possible interest rates; and

"(7) To encourage tenant empowerment and reduce generational poverty in federally assisted and public housing by improving the means by which self-sufficiency may be achieved."

Another objective of national housing policy, and an element applicable to tenant selection policies with respect to public housing and Indian housing, under section 6(c)(4)(A)(iv) of the 1937 Act, is the obligation to ensure, to the maximum extent feasible, a broad range of incomes in particular projects, or in the HA's projects as a whole.

7. Residency Preferences

Another category of preferences that has been used very frequently by HAs and owners is a local residency preference. The current rule for the Section 8 programs requires the owner to submit any residency preference to HUD but does not require prior approval. The current public housing and Indian housing rules do not require any HUD review of residency preferences, although they do impose limitations on the types of residency preferences that may be adopted. The treatment of residency preferences would be changed in this rule for all of the programs to require HUD approval

before a residency preference could be implemented.

This change is proposed because the Department has found that residency preferences have had a negative impact on fair housing objectives, decreasing the availability of housing for applicants of racial/ethnic minorities in non-minority areas, in several areas of the country with respect to the Section 8 program and with respect to Section 202 projects. We are concerned that similar negative effects may be occurring in the public housing program, as well. The prior approval requirement will permit HUD to address with HAs how to revise any residency preference provision that would have a discriminatory impact before any family actually suffers from that type of discrimination.

Residency requirements are not permitted in the Section 8 programs, and would not be permitted for program under the proposed rule. The public housing and Indian housing rules would be revised similarly in this rule, for uniformity of policy, so residency requirements would no longer be permitted in those programs.

Although the statute requires that Section 8 project owners use the HA's local preferences to the extent they use a system of preferences other than the federal preferences (and any ranking preferences) as the basis for admission, the proposed rule contains a provision requiring HUD review of the HA's local preferences with respect to any Section 8 project owner's project before the owner implements the local preference system (see § 880.615(b). This provision is included in the rule because of the Department's experience with local preferences that have operated in the case of particular projects to cause a violation of requirements of title VI of the Civil Rights Act of 1964 or the Fair Housing Act and of implementing HUD regulations. If HUD determines that the local preference system violates these requirements, it would not approve the owner's use of the local preferences as a basis for admission. The Department specifically invites comments on this provision.

6. Public Hearings

If an HA wants to make admissions not based on federal preference, it must hold a public hearing to determine what preferences would be responsive to local housing needs and priorities. It must hold such a hearing even if the HA plans only to use date and time to select applicants on a basis other than federal preference. When an HA decides to make additional changes in its local preferences, the rule requires a public hearing to be held to consider the proposed changes.

If an HA does not want to exercise its discretion to make non-federal preference admissions, it does not need to hold a public hearing. In that case, the HA need not change its system of applying the federal preferences, unless it has been using a ranking preference for federal preference admissions based on income ranges or on residency.

9. Using Ranking Preferences To Select Among Federal Preference Holders

Under current regulations, HAs and owners may use their own system to select among applicants who qualify for a federal preference. The use of these "ranking preferences" has allowed HAs and owners to address local objectives while meeting the statutory requirement to serve federal preference holders.

This rule continues to permit selecting among federal preference holders according to ranking preferences. "Ranking preferences" is the term used in this rule and preamble for factors used only to distinguish among federal preference-holders, whereas "local preferences" is used to refer to those factors adopted after the hearing procedure to use in admitting applicants as an alternative to admission of federal preference holders.

An HA may use a ranking preference that is the same as a local preference when making a federal preference admission. For example, if the HA had a local preference for veterans, an HA or owner would be able to select a federal preference holder who was a veteran over a federal preference holder who was not a veteran. Similarly, an owner or HA may use a ranking preference to select among local preference holders when making a local preference admission, and the ranking preference may be the same as a federal preference.

The one exception to use of local preferences as ranking preferences when making a federal preference admission is that, in the public housing program, in accordance with a recent revision to section 16(c) of the United States Housing Act of 1937, a local preference for admitting applicants with a broad range of income may not be used in federal preference admissions to admit a higher income applicant over a lower income applicant whose place on the waiting list is higher. Since section 16(c) does not apply to Indian housing or homeownership programs, this exception does not affect those programs.

10. Status of Current Local Policies

Are an HA's preferences for local residents and veterans affected by these statutory and regulatory changes? If the HA uses veterans status only as a ranking device to choose among applicants who qualify for a federal preference, it is not affected. However, if it is to be used for local preference admissions, as distinguished from federal preference admissions, it must be reconsidered and adopted by an HA as a local preference in accordance with the hearing procedure. Residency preferences would now be subject to prior approval by HUD, regardless of whether they are used as a ranking preference for federal preference admissions or as the basis of local preference admissions.

Many HAs and owners are operating under locally-adopted preferences that were not adopted in accordance with a public hearing, as now required by the statute. If an HA or owner intends to make only federal preference admissions—not using as ranking preferences either residency or income ranges—it does not need to be concerned about newly adopted local preferences.

After the expiration of three months after the effective date of a final rule, if the HA has not adopted local preferences in accordance with the public hearing requirement, there will be no local preferences in effect (in accordance with §§ 905.305, 960.213), and the federal preferences will be used exclusively—by owners and the HA (along with any permissible ranking preferences they may use for selecting among federal preference-holders)—until such time as the HA does duly adopt local preferences. If residency preference provisions have not been submitted by that time, they will not be permitted to be used—even as ranking preferences.

B. Public Housing, Indian Housing and Section 8 Moderate Rehabilitation

This rule implements the statutory provision applicable to these programs that disqualifies from a federal or local preference for three years any individual or family that has been evicted from housing under a program of assistance under the 1937 Act because of drug-related criminal activity. The disqualification does not apply if the individual has completed a rehabilitation program approved by the HA. The HA has the authority to waive this disqualification.

C. Public and Indian Housing

The statute, at section 6(c)(4)(A)(iv), requires tenant selection criteria "designed to assure that, to the maximum extent feasible, the projects of an agency will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems." This differs from the old requirement in two respects: (1) It uses the term "to the maximum extent feasible" rather than "within a reasonable period of time," and (2) it says "the projects of an agency will include" rather than "the project will include."

The rule provides that these standards would continue to apply on a project by project basis, since the Department believes that is essential in avoiding "concentrations of low-income and deprived families with serious social problems." The regulation would allow the HA to determine if it is feasible to attain occupancy by families with a broad range of income for any of its projects.

This broad range of income concern is an overall objective of each housing authority, specifically required by the statute. An HA may choose to implement this objective by adopting an admission preference based on income range as a local preference, or by other means. (See discussion in section A9 above of the limitation on use of such a local preference in federal preference admissions.) Some other means that an HA could choose to implement the objective are to use outreach to higher income families (among the category of low income families eligible for these programs) or to stimulate income growth among current residents.

The provisions of part 960 covering tenant selection policies in public housing would be rearranged substantially to improve clarity, to make them more consistent with similar provisions of part 905 covering Indian housing, and to eliminate redundancy.

One change would be to remove the nondiscrimination provision from the section on preferences (§ 960.211) and to expand the existing discussion of the topic in § 960.203. The subject still would be covered in the same depth as it is currently, and reference to the Americans with Disabilities Act would be added.

Section 960.204 would be revised to eliminate some provisions that were not found in the comparable provisions of the Indian housing provisions and that were not deemed necessary, such as paragraph (a). Other provisions, such as the language about avoiding concentrations of the most economically and socially deprived families, would be updated to reflect current statutory language, which includes a phrase modifying socially deprived families "with serious social problems." The broad range of income provision is updated, as described elsewhere. A provision that protects an applicant for the Section 8 program from losing its place on that waiting list when it applies for public housing has been removed, since that provision belongs in and is now proposed to be included in the appropriate Section 8 program regulation (see 58 FR 11292, 11299, 11334). A prohibition against denying admission based on attributes of a category of persons to which the applicant belongs would be removed because it also is found in § 960.205(a). A nondiscrimination provision would be removed, because that subject is addressed in its own section. A provision that the PHA's policies be consistent with the PHA's responsibilities as a public body would be eliminated, since it is vague, it does not derive from the governing statutes, and its enforceability by HUD is uncertain.

Section 960.205(c) of the current public housing regulations also would undergo significant revision. The current rule anticipated implementation of the broad range of income objective after determining to what extent it is necessary to cover the costs of operating the HAs projects. It requires an HA to conduct studies of the income levels of lower income families in the area, in occupancy in its developments, and on the waiting list, as well as to determine operating costs and rents needed to cover those costs and rents that can be achieved based on the income of the families in those categories. This rule would remove those provisions, and would use the statutory language only. HAs may wish to conduct such studies, but the rule would not require it.

D. Section 8 New Construction and Substantial Rehabilitation and Section 202 Housing for the Elderly

1. Applicability of HA-Adopted Local Preferences

The provision that the owner use the HA's local preferences raises several questions:

—Suppose the owner would prefer not to use local preferences at all?
—What happens to any local preferences the owner may currently be using?
—What if more than one HA has jurisdiction in the area in which the housing is located?

The regulation affirms that, if the owner chooses to make non-federal preference admissions, the owner must use the same local preferences adopted by the local HA for the Section 8 Certificate and Voucher programs for this purpose (as approved by HUD for the project). However, the owner need not make any non-federal preference admissions and so would not have to adopt the HA's local preferences at all. A project owner may continue to use its own ranking preferences for selecting among federal preference holders, as discussed above in section A9 of this preamble.

If the owner's property is in an area with overlapping HA jurisdictions, the owner may choose which HA's local preferences to adopt for purposes of admitting an applicant that does not qualify for a federal preference.

2. Limitations on Using HA's Local Preferences

What does the statute mean, in section 545(c)(2) of NAHA by "to the extent that such preferences are applicable with respect to any tenant eligibility limitations for the housing"? The Department interprets it to mean that the HA's local preferences are to be used to the extent that they are consistent with the requirements of the category of housing involved. If the housing was designed and operated for use by the elderly, as would be the case for housing financed under section 202, the preferences would be applied to elderly applicants.

III. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk,

room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. The rule specifies to what extent preferences for admission of particular categories of applicants that are established by the local housing agency, in accordance with a statutorily-prescribed hearing procedure, may be used to admit participants. The only guidelines stated for the local agency's discretion are those required by the statute: the preferences are to respond to local housing needs and priorities. Since the rule merely carries out a statutory mandate and does not create any new significant requirements, it is not subject to review under the Executive Order.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule merely carries out the mandate of federal statute with respect to admission preferences. (To the extent that an HA adopts a location preference for admitting families whose children would otherwise be put in foster care, as is suggested by the statute, there would be a positive impact on families. However, neither the statute nor the rule requires adoption of such a preference.)

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners.

F. Regulatory Agenda

This rule was listed as sequence number 1375 under the Office of the Secretary in the Department's Semiannual Regulatory Agenda published on April 26, 1993 (58 FR 24382, 24394), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Public Reporting Burden

The Department has estimated the public reporting burden involved in the information collections contained in the rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PUBLIC REPORTING BURDEN—PREFERENCE IN ADMISSIONS TO ASSISTED HOUSING PUBLIC AND INDIAN HOUSING PROGRAMS

Description	No. of respondents	Response per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
HA informs applic. of avail. of prefs. (includes families on wait list).	3,300	1	3,300	3.3	10,890	905.301, 960.206, 905.303, 960.211, 905.305, 960.213.
HA develops proced. May submit altern. definitions to HUD for review.	330	1	330	12.0	3,960	905.301, 960.206, 905.304, 960.212, 905.305, 960.213.
Applicants certify qualif. for prefs.	130,000	1	130,000	1.0	130,000	905.304(c)(1), (j). 960.212(C)(1), (j).
HA verifies basis for elig. for prefs.	3,300	39	128,700	1.0	128,700	905.304(e), (g), (j), 906.212(e), (g), (j).
Gov. Agencies and present landlords cert. basis for prefs.	10,000	13	130,000	.25	32,500	905.304(e), (g), 960.212(e), (g).
HA notifies applicant if not meet criteria.	3,300	3.9	12,870	1.0	12,870	905.304(k), 960.212(k).
Total burden hours					318,920	(Formerly approved under OMB no. 2577–0105)

PUBLIC REPORTING BURDEN—PREFERENCE IN ADMISSIONS TO ASSISTED HOUSING SECTION 8 HOUSING PROGRAMS

Description	No. of respondents	Response per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Owner informs applic. of avail. of prefs. (includes families on wait list).	300,000	1	300,000	.15	75,000	880.613, 885.427, 891.613, 886.132, 883.714, 886.337, 884.228, 889.611.
Owner submits PHA Local Preference system for review by HUD.	21,186	1	21,186	.15	3,178	880.615, 885.427, 891.615, 886.134, 883.716, 886.339, 884.228, 889.613.
Applicant certifies qualification for preferences.	300,000	1	300,000	.5	150,000	880.614(c), 891.614(c), 883.715(c), 884.227(c), 885.427(c), 886.133(c), 886.338(c), 889.612(c).

PUBLIC REPORTING BURDEN—PREFERENCE IN ADMISSIONS TO ASSISTED HOUSING SECTION 8 HOUSING PROGRAMS CONTINUED

Description	No. of respondents	Response per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Owner certifies basis for eligibility for preference.	300,000	1	300,000	1.0	300,000	880.614(e)(g)(i), 891.614(e)(g)(i), 883.715(e)(g)(i), 884.227(e)(g)(i), 885.427(e)(g)(i), 886.133(e)(g)(i), 886.338(e)(g)(i), 889.612(e)(g)(i).
Gov. Agencies and present landlords must certify basis for preferences.	270,000	1	270,000	.15	40,500	880.614(e)(g)(i), 891.614(e)(g)(i), 883.715(e)(g)(i), 884.227(e)(g)(i), 885.427(e)(g)(i), 886.133(e)(g)(i), 886.338(e)(g)(i), 889.612(e)(g)(i).
Owner notifies applicant if it does not meet criteria.	30,000	1	30,000	.5	4,500	880.614(k), 891.614(k), 883.715(k), 884.227(k), 885.427(k), 886.133(k), 886.338(k), 889.612(k).
Total Responses	1,221,186					(Formerly approved under OMB 2502–0372*).
Total Burden Hours					573,178	

*This chart does not include burden hours for the Rent Supplement Program, since the operation of preferences in that program is unaffected by this rule.

H. Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.157, 14.182, 14.850, and 14.856.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and record keeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and record keeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and record keeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Handicapped, Public housing.

Accordingly, the Department proposes to amend chapters VIII and IX of title 24 of the Code of Federal Regulations as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

§ 880.603 [Amended]

2. Section 880.603 would be amended by removing from the introductory text of paragraph (b) the reference to "§ 880.613" and adding in its place a reference to "§§ 880.613–615"; by removing paragraph (b)(1); and by redesignating paragraphs (b) (2), (3), and (4) as paragraphs (b) (1), (2), and (3).

3. Section 880.613 would be revised and new §§ 880.614 and 880.615 would be added, to read as follows:

§ 880.613 Selection preferences.

(a) *General.* (1) *Use of preference in selection process.*

(i) In selecting applicants for assistance under this part, owners must give preference, in accordance with this section, to applicants who are otherwise eligible and qualify for a federal preference, as described in § 880.614, or a local preference, as described in § 880.615.

(ii) Before applying the federal preference and any local preferences, the owner will match other characteristics of the applicant with the type of unit available. For example, in selection of a family for a unit that has special accessibility features, the owner will give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a project for the elderly, the owner will give preference to elderly families.

(2) *System.* (i) The owner must establish a system for applying the preferences; must inform all applicants of the availability of the federal preferences, as described in § 880.614, and any local preferences, as described in § 880.615; and must offer applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph, applicants include families on any waiting list maintained by the owner when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(iii) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraphs (a)(3) and (a)(4) of this section before implementation of such a system.

(3) *Nondiscrimination.* Any selection preference that is used by an owner must be established and administered in a manner that is compatible with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the implementing regulations at 24 CFR part 146; Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. Such preferences must also be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(4) *Residency.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(5) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(b) *Application of preferences.* (1) Federal and local preferences generally govern selection among families who qualify for a unit of a particular size under the owner's occupancy policy.

(2) In selecting tenants during each successive one-year period, the owner will apply the preferences as follows:

(i) For at least seventy percent of the admissions, admit applicants that qualify for a federal preference before other applicants; and

(ii) For any remaining admissions, admit first those applicants that qualify for a local preference (if any).

(3) The percentage limitation is a factor in every admission. An owner may consider an admission as a federal preference admission that is counted towards the percentage in paragraph (b)(2)(i) of this section when either the applicant admitted qualifies for a federal preference or no family that qualifies for the available unit qualifies for a federal preference. Any other admissions are based on local preferences and count towards the percentage in paragraph (b)(2)(ii) of this section for local preference admissions.

§ 880.614 Federal preferences.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing; or

(3) Paying more than 50 percent of family income for rent.

(b) *Application of federal preferences.* In applying the federal preferences, the owner may determine the relative weight of the federal preferences through means such as:

(1) Applying its own priorities, including ones that are the same as the housing agency's local preferences for the Section 8 Certificate and Voucher programs, to rank applicants who qualify for a federal preference (i.e., provide that applicants who qualify for a federal preference and a ranking preference take precedence over a federal preference holder who does not qualify for a local preference);

(2) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(3) Ranking the federal preferences (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(4) Ranking the definitional elements of a federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Certification and verification of qualification for a federal preference.*

(1) *Certification.* Applicants may claim qualification for a federal preference by certifying when they apply for assistance under this part (or thereafter until the time that they are offered admission) to the owner that the family qualifies. The owner must accept this certification unless it verifies that the applicant is not qualified for a federal preference.

(2) *Verification.* Before an applicant is selected for admission on the basis of a federal preference, the owner must require the applicant to provide verification that the family qualifies for a federal preference by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification and selection for admission, including a change from one federal preference category to another. Once verified, the applicant's qualification for a federal preference need not be verified again, unless the owner determines that the length of time since verification makes it desirable or the owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(d) *Definition of involuntary displacement.*

(1) For qualification on the basis of involuntary displacement, the applicant must have been involuntarily displaced or be certain of displacement within no more than six months from the certification or verification (as appropriate), and must not be living in standard, permanent replacement housing. Standard, permanent replacement housing is housing that is decent, safe and sanitary; that is adequate for the family size; and that the family is occupying pursuant to a lease or occupancy agreement. Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and, in the case of domestic violence, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(2) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the dwelling where he or she resides as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(3) An applicant is also involuntarily displaced if—

(i) The applicant has vacated the dwelling where he or she resides as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

(iii) For purposes of paragraph (d)(3) of this section, the actual or threatened violence must, as determined by the owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature. The owner may limit use of this preference to a family that will not include the abuser.

(4)(i) For purposes of paragraph (d)(2)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(ii) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(A) To comply with applicable program policies and procedures under this part with respect to the occupancy of underoccupied and overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a member of the clergy, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(3) For purposes of paragraph (f) of this section, an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(4) For purposes of paragraph (f) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, the definition of "substandard housing" in this section. In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Certificate program for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent, amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Certificate program, the applicable utility allowance for purposes of calculating rent under this section, will be determined under 24 CFR part 905, subpart K.

(5) In the case of members of a cooperative, rent under this section means the charges under the occupancy agreement between the members and the cooperative.

(6) An applicant may not qualify for a federal preference under this provision:

(i) If the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937, under section 101 of the Housing and Urban Development Act of 1965 ("rent supplement program"), or under section 236(f)(2) of the National Housing Act ("rental assistance payments") with respect to that unit has been terminated as a result of the applicant's documented refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units; or

(ii) If the applicant has been paying more than 50 percent of family income for rent for less than 90 days.

(j) *Verification of an applicant's income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR part 813.

(2) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contracting the landlord (or cooperative) or its agent directly.

(3) The owner must verify the amount paid to amortize the purchase price of a manufactured home:

(i) By requiring the family to furnish copies of its most recent payment receipts (which may include canceled checks or money order receipts) or a copy of the family's current purchase agreement, or

(ii) By contacting the lienholder directly.

(4) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (h) must be carried out in accordance with HUD's requirements. The applicant also may exercise other rights, such as rights granted under Federal, State, or local civil rights laws, if the applicant believes that he or she has been discriminated against on prohibited bases such as race, color, religion, sex, national origin, age, handicap, or familial status.

(l) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

§ 880.615 Local preferences.

(a) *General.* (1) In addition to the federal preferences, there may be a system for selection of families on the basis of local preferences that is applicable to an owner's tenant selection process, which was adopted for use in the section 8 Certificate and Rental Voucher programs. If the public housing agency (PHA) that has jurisdiction in the area where the housing is located establishes such a system of local preferences, the owner must use it for any admissions other than federal preference admissions. If more than one PHA has jurisdiction in the area, the owner may select which PHA's system follow.

(2) Admission of an applicant based on qualification for a local preference ("local preference admission") is permitted until an admission would cause the owner's local preference selections for the year to exceed the percentage limitation for such admissions described in § 880.613(b)(2)(ii).

(b) *Approval of PHA local preferences.* Before the owner implements the PHA-adopted section 8 local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with the requirements pertaining to nondiscrimination set forth in § 880.613(a)(3) (including the owner's HUD-approved Affirmative Fair Housing Marketing Plan (where applicable) and the Affirmative Fair Housing Marketing objectives). If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of local preferences.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

4. The authority citation for part 881 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

5. Section 881.613 would be revised to correspond to § 880.613, and new §§ 88.614 and 881.615 would be added, to correspond to §§ 880.614 and 880.615. If this proposal is adopted, §§ 881.613 through 881.615 will be printed in full text in the final rule.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Subpart E—Special Procedures for Moderate Rehabilitation Program Development and Operation

6. The authority citation for part 882 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. Section 882.517 would be revised to correspond to paragraphs (b) through (g) of § 982.204, as it appeared in a proposed rule published on February 24, 1993 (58 FR 11335); and new §§ 882.518 and 882.519 would be added, to correspond to §§ 982.205 and 982.206, as they appeared in that proposed rule. If this proposal is adopted, §§ 882.517 through 882.519 will be printed in full text in the final rule.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

8. The authority citation for part 883 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

9. Section 883.714 would be revised to correspond to § 880.613, and new §§ 883.715 and 883.716 would be added to correspond to §§ 880.614 and 880.615. If this proposal is adopted, §§ 883.714 through 883.716 will be printed in full text in the final rule.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

10. The authority citation for part 884 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

11. Section 884.226 would be revised to correspond to § 880.613, and new §§ 884.227 and 884.228 would be added to correspond to §§ 880.614 and 880.615. If this proposal is adopted, §§ 884.226 through 884.228 will be printed in full text in the final rule.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

12. The authority citation for part 885 would continue to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

13. Section 885.427 would be revised to read as follows:

§ 885.427 Selection preferences.

The provisions of §§ 880.613–880.615 of this chapter are applicable to projects assisted under subpart B of this part.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

14. The authority citation for part 886 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

15. Section 886.132 would be revised to correspond to § 880.613, with the addition of a paragraph (b)(4) that corresponds to § 960.211(b)(4), using the word "owner" instead of the word "PHA". If this proposal is adopted, § 886.132 will be printed in full text in the final rule.

15A. A new § 886.133 would be added to correspond to § 880.614; and § 886.134 would be added to correspond to § 880.615. If this proposal is adopted, §§ 886.133 through 886.134 will be printed in full text in the final rule.

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

16. Section 886.337 would be revised to correspond to § 880.613, with the addition of a paragraph (b)(4) that corresponds to § 960.211(b)(4), using the word "owner" instead of the word "PHA". If this proposal is adopted, § 886.337 will be printed in full text in the final rule.

16A. A new § 886.338 would be added to correspond to § 880.614; and § 886.339 would be added to correspond to § 880.615. If this proposal is adopted, §§ 886.338 through 886.339 will be printed in full text in the final rule.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

17. The authority citation for part 889 would be revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

18. Sections 889.611–889.613 would be added to correspond to §§ 880.613–880.615. If this proposal is adopted, §§ 889.611 through 889.613 will be printed in full text in the final rule.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

19. The authority citation for part 904 would be revised to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

20. Section 904.122 would be revised, to read as follows:

§ 904.122 Statutory preferences.

In selecting applicants for assistance under this part, the LHA must give preference, in accordance with the authorized federal preference and local preference requirements described in §§ 960.211–960.213. Notwithstanding those preferences, the LHA can limit homeownership admission to eligible homeownership candidates.

PART 905—INDIAN HOUSING PROGRAMS

21. The authority citation for part 905 would be revised to read as follows:

Authority: 42 U.S.C. 1437aa–1437ee and 3535(d); 25 U.S.C. 450e(b).

22. Section 905.301 would be amended by removing from paragraphs (e)(1) and (e)(4) the phrase, "the Federal preferences contain in § 905.305" and adding in its place the phrase, "the federal and local preferences in accordance with §§ 905.303–905.305"; by removing from paragraph (e)(2) the word "Fig."; by removing from paragraph (e)(4) the phrase "10 percent" and adding in its place the phrase "30 percent"; by removing from paragraph (e)(4) the reference to "§ 905.305(b)(2)(ii)" and adding in its place a reference to "§ 905.303(b); and by revising paragraph (a) to read as follows:

§ 905.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall establish and adopt written policies for admission of participants. The policies shall cover all programs operated by the housing authority and, as applicable, will address the programs individually to meet their specific requirements (i.e., Rental, MH, or Turnkey III). A copy of the policies shall be posted prominently in the IHA's office for examination by prospective participants and shall be submitted to the HUD field office promptly after adoption by the IHA. (See § 905.416 with respect to Mutual Help admission policies.)

(2) These policies shall be designed:

(i) To assure that, to the maximum extent feasible, each project of the IHA will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the participants or the project environment;

(iii) To give a preference in selection of tenants and homebuyers to applicants who qualify for a federal or local preference, in accordance with §§ 905.303–905.305; and

(iv) To assure that selection by the IHA among otherwise eligible applicants is objective and reasonable.

(3) The IHA admission policies shall include the following:

(i) Requirements for applications and waiting lists, including requirement for selection from the top of the list;

(ii) Description of the standards and procedures for selection of applicants, including any preferences to be applied: the federal preferences, as specified in § 905.304, the local preferences adopted by the IHA in accordance with § 905.305, and any ranking preferences it uses to distinguish among the federal preferences;

(iii) Procedures for verification and documentation of information relevant to acceptance or rejection or an applicant;

(iv) Procedures governing participant transfer between units, projects, and programs, including a requirement that a participant is not eligible for voluntary transfer unless all obligations under the current program have been met, including payment of charges to the IHA and completion of maintenance requirements;

(v) Procedures to comply with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and

(vi) Procedures to comply with 24 CFR part 760, which requires applicants and participants to sign and submit consent forms for the obtaining of wage and claims information from State wage and information collections agencies.

(4) Residency provisions are subject to the following:

(i) Residency requirements are not permitted;

(ii) A residency preference may not be based on how long the applicant has resided in the jurisdiction;

(iii) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction; and

(iv) They must be approved in advance by HUD.

* * * * *

23. New §§ 905.303 and 905.304 would be added, to read as follows:

§ 905.303 Selection preferences.

(a) *General.* (1) *Use of preference in selection process.*

(i) In selecting applicants for assistance under this part, the IHA must give preference, in accordance with this section, to applicants who are otherwise eligible and qualify for a federal preference, as described in § 905.304, or any local preference, as described in § 905.305.

(ii) Before applying the federal preferences and local preferences, the IHA will match other characteristics of the applicant with the type of unit available. For example, in selection of a family for a unit that has special accessibility features, the IHA will give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a project for the elderly, the IHA will give preference to elderly families (see § 905.301(e)).

(2) *System.* (i) The IHA's system for applying the preferences, in accordance with its policies, must inform all applicants of the availability of the federal preferences and any local preferences, and must offer applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph, applicants include families on any waiting list maintained by the IHA when this section is implemented or thereafter.

(ii) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(B) It is unlikely that, on the basis of the IHA's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) *Nondiscrimination.* Any selection preference used by an IHA must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives. The Indian Civil Rights Act may apply to operations of the IHA. In addition, the following nondiscrimination requirements may apply: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the implementing regulations at 24 CFR part 146; Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity.

(b) *Application of preferences.* (1) Federal and local preferences generally govern selection among families who have been determined to qualify for a unit of a particular size under the IHA's occupancy policy. Date and time of application govern selection among families that qualify for the same housing unit size, the same federal preference status, the same local preference status, and any other applicable selection criteria.

(2) In selecting tenants for units made available for occupancy during each successive IHA fiscal year, the IHA will apply the preferences as follows:

(i) For at least seventy percent of the admissions, admit applicants that qualify for a federal preference before other applicants; and

(ii) For any remaining admissions, admit first those applicants that qualify for a local preference (if any).

(3) The percentage limitation is a factor in every admission. The IHA may consider an admission as a federal preference admission that is counted towards the percentage in paragraph (b)(2)(i) of this section when either the applicant admitted qualifies for a federal preference or no family that qualifies for the available unit qualifies for a federal preference. Any other admissions are based on local preferences and count towards the percentage in paragraph (b)(2)(ii) of this section for local preference admissions.

(4)(i) A family may not be granted a federal or local preference if any member of the family is a person or member of a family evicted from housing assisted under the 1937 Act, during the past three years, because of drug-related criminal activity. "Housing assisted under the 1937 Act" means public or Indian housing, housing assisted with tenant-based or project-based assistance under Section 8 (24 CFR part 982), rental rehabilitation program housing, Section 23 rental assistance, housing development grant housing, and Turnkey III and Mutual Help housing. However, the family may qualify for federal or local preference if each evicted person who engaged in such drug-related criminal activity who is a member of the family seeking admission to the program has successfully completed a rehabilitation program approved by the IHA.

(ii) The IHA may waive the preference prohibition for drug-related criminal activity eviction. The IHA may waive the prohibition for an evicted person if the evicted person demonstrates to the IHA's satisfaction either that the evicted person clearly did not participate in and had no knowledge of the drug-related criminal activity, or that circumstances leading to eviction no longer exist.

§ 905.304 Federal preferences.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing; or

(3) Paying more than 50 percent of family income for rent.

(b) *Application of federal preferences.* (1) Unless the IHA submits alternative definitions for HUD's review and approval, the IHA must apply the definitions of the following terms in this section: "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income"; and "rent." In applying the federal preferences, the IHA will use the verification procedures contained in this section, unless it has adopted verification procedures of its own.

(2) In applying the federal preferences, the IHA may determine the relative weight of the federal preferences through means such as:

(i) Applying ranking preferences (which may be the same as those adopted in accordance with § 905.305) as a way of selecting families from among those who qualify for a federal preference (i.e., provide that applicants who qualify for a federal preference and an IHA ranking preference take precedence over a federal preference holder who does not qualify for an IHA ranking preference);

(ii) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(iii) Ranking the federal preferences (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iv) Ranking the definitional elements of a federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Certification and verification of qualification for a federal preference.*

(1) *Certification.* Applicants may claim qualification for a federal preference by certifying when they apply for assistance under this part (or thereafter until the time that they are offered admission) to the IHA that the family qualifies. The IHA must accept this certification unless it verifies that the applicant is not qualified for a federal preference.

(2) *Verification.* Before an applicant is selected for admission on the basis of a federal preference, the IHA must require the applicant to provide verification that the family qualifies for a federal preference by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification and selection for admission, including a change from one federal preference category to another. Once verified, the applicant's qualification for a federal preference need not be verified again, unless the IHA determines that the length of time since verification makes it desirable or the IHA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(d) *Definition of involuntary displacement.*

(1) For qualification on the basis of involuntary displacement, the applicant must have been involuntarily displaced or be certain of displacement within no more than six months from the certification or verification (as appropriate), and must not be living in standard, permanent replacement housing. Standard, permanent replacement housing is housing that is decent safe and sanitary; that is adequate for the family size; and that

the family is occupying pursuant to a lease or occupancy agreement. Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and, in the case of domestic violence, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(2) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the dwelling where he or she resides as a result of one or more of the following actions:

(i) A disaster, such as fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by an owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(3) An applicant is also involuntarily displaced if—

(i) The applicant has vacated the dwelling where he or she resides as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

(iii) For purposes of paragraph (d)(3) of this section, the actual or threatened violence must, as determined by the IHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature. The IHA may limit use of this preference to a family that will not include the abuser.

(4)(i) For purposes of paragraph (d)(2)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(ii) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(A) To comply with applicable program policies and procedures under this part with respect to the occupancy of underoccupied and overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1) (iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a member of the clergy, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f) of this section, a housing unit is not substandard because it is overcrowded or more than one family lives in the same unit.

(3) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(4) For purposes of paragraph (f) of this section, an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State or Tribal law.

(5) For purposes of paragraph (f) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, the definition of "substandard housing" in this section, or that adopted by the IHA. In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 905.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Certificate program for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent, amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under this section will be determined under 24 CFR part 905, subpart K.

(5) In the case of members of a cooperative, rent under this section means the charges under the occupancy agreement between the members and the cooperative.

(6) An applicant may not qualify for a federal preference under this provision:

(i) If the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937, under section 101 of the Housing and Urban Development Act of 1965 ("rent supplement program"), or under section 236(f)(2) of the National Housing Act ("rental assistance payments") with respect to that unit has been terminated as a result of the applicant's documented refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units; or

(ii) If the applicant has been paying more than 50 percent of family income for rent for less than 90 days.

(j) *Verification of an applicant's income and rent.* The IHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The IHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under this part.

(2) The IHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) The IHA must verify the amount paid to amortize the purchase price of a manufactured home:

(i) By requiring the family to furnish copies of its most recent payment receipts (which may include canceled checks or money order receipts) or a copy of the family's current purchase agreement, or

(ii) By contacting the lienholder directly.

(4) To verify the actual amount that a family paid for utilities and other housing services, the IHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where federal preference is denied.* If the IHA determines that an applicant does not meet the criteria for receiving a federal preference, the IHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the IHA to review it. (See, for example, procedures specified in § 905.340.) The applicant also may exercise other rights, such as rights granted under Federal, State, or local civil rights laws, if the applicant believes that he or she has been discriminated against on prohibited bases such as race, color, religion, sex, national origin, age, handicap, or familial status.

24. Section 905.305 would be revised to read as follows:

§ 905.305 Local preferences.

(a) *General.* In addition to its system of administering the federal preferences, the IHA may have a system for selection of families on the basis of local preferences.

(b) *Adoption of local preferences.* (1) *General.* The IHA system of selection on the basis of local preferences must be established to respond to local housing needs and priorities after the IHA conducts a public hearing on the subject. The preferences established after a public hearing and that are used for this purpose are those that are referred to throughout this subpart as "local preferences." When the IHA wants to revise these local preferences, it must again conduct a public hearing on the subject.

(2) *Transition.* After the expiration of three months after [*Insert the effective date of the final rule*], if the IHA has not adopted local preferences following a public hearing, no local preferences will be in effect, and the federal preferences will be used exclusively (in accordance with § 905.304), until such time as local preferences are duly adopted. Similarly, if the IHA has not submitted its residency preference provisions for HUD approval by that time, the IHA will not be permitted to use residency preference for any purpose.

(c) *Examples of local preferences.* Examples of local preferences an IHA might adopt are stated in section 6(c)(4)(A)(ii) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)(ii). Another example would be a local preference for admitting tenants with a broad range of incomes to each project.

(d) *Use of local preferences.* Admission of an applicant based on qualification for a local preference ("local preference admission") is permitted until the admission would cause the IHA's local preference admissions for the year to exceed the

percentage limitation for such admissions described in § 905.303(b)(2)(ii).

25. Section 905.416 would be amended by removing from paragraph (d) the phrase, "Federal preference in accordance with § 905.305", and adding in its place the phrase, "federal or local preference, in accordance with §§ 905.303–905.305"; by removing from paragraph (f) the reference to § 905.305 and adding in its place the reference to § 905.304; and by revising paragraph (a)(3), to read as follows:

§ 905.416 Selection of MH homebuyers.

(a) * * *

(3) *Different standards for MH program.* (i) The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(A) Ability to provide maintenance for the unit; and

(B) Potential for maintaining at least the current income level.

(ii) The policies for the Mutual Help program must include procedures for determining the successor to a unit upon the death of a homebuyer (in the event that the homebuyer has not designated a successor or the successor fails to qualify).

* * * * *

26. In § 905.1008, the introductory text and the first sentence of paragraph (a) would be revised to read as follows:

§ 905.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) Subject to the preference provisions of §§ 905.303–905.305 and any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller IHA, and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller PHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). * * *

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PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

27. The authority citation for part 906 would be revised to read as follows:

Authority: 42 U.S.C. 1437c(h), 1437d, and 3535(d).

28. In § 906.8, the introductory text and the first sentence of paragraph (a) would be revised to read as follows:

§ 906.8 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) Subject to the preference provisions of §§ 960.211–960.213 (except for the restriction in § 960.212 against use of a ranking preference that would cause selection of a relatively higher income family and the limitation of § 960.213(d)(2)) and any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller PHA, and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller PHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased.) * * *

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

29. The authority citation for part 960 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

30. Section 960.203 would be revised to read as follows:

§ 960.203 Nondiscrimination requirements.

The tenant selection criteria and requirements used by a PHA must be established and implemented in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. Any tenant selection preferences must also be consistent with HUD's affirmative fair housing objectives.

31. Section 960.204 would be revised to read as follows:

§ 960.204 Tenant selection policies.

(a) *Selection policies.* (1) The PHA shall establish and adopt written policies for admission of tenants.

(2) These policies shall be designed:

(i) To assure that, to the maximum extent feasible, each project of the agency will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the participants or the project environment;

(iii) To give a preference in selection of tenants to applicants who qualify for a federal or local preference, in accordance with §§ 960.211–960.213; and

(iv) To assure that selection by the PHA among otherwise eligible applicants is objective and reasonable.

(3) The PHA tenant selection policies shall include the following:

(i) Requirements for applications and waiting lists, including procedures for selection from the top of the list (see 24 CFR 1.4);

(ii) Description of the standards and procedures for selection of applicants, including any preferences to be applied: the federal preferences, as specified in § 960.212, the local preferences adopted by the PHA in accordance with § 960.213, and any ranking preferences it uses to distinguish among the federal preferences;

(iii) Procedures for verification and documentation of information relevant to acceptance or rejection of an applicant; and

(iv) Procedures governing participant transfer between units, projects, and programs, including a requirement that a participant is not eligible for voluntary transfer unless all obligations under the current program have been met, including payment of charges to the PHA and completion of maintenance requirements.

(b) These selection policies shall:

(1) Be duly adopted; and

(2) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or tenants upon request.

(c) Such policies shall be submitted to the HUD field office upon request from that office and, in any event, if they contain a preference for those living in the jurisdiction of the PHA at the time of application (residency preference).

(d) Residency provisions are subject to the following:

(1) Residency requirements are not permitted;

(2) A residency preference may not be based on how long the applicant has resided in the jurisdiction;

(3) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction; and

(4) They must be approved in advance by HUD.

32. In § 960.205, paragraphs (a) and (c) would be revised to read as follows:

§ 960.205 Standards for PHA tenant selection criteria.

(a) The criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member, such as families with children born out of wedlock. This prohibition shall not apply to selection criteria or preferences based on a family's employment status.

* * * * *

(c) Subject to the requirements and limitations of part 913 of this chapter, the criteria to be established shall be reasonably related to achieving the basic objective of attaining, to the maximum extent feasible, a tenant body in each project composed of families with a broad range of income, generally representative of the range of income of lower income families in the PHA's area of operation, as defined in State law. PHAs shall develop criteria, by local preference (see § 960.213) or otherwise, which will be reasonably calculated to attain the basic objective. The criteria developed shall be sufficiently flexible to assure administrative feasibility. A dwelling unit should not be allowed to remain vacant for the purpose of awaiting application by a family falling within the appropriate range.

* * * * *

§ 960.206 [Amended]

33. In § 960.206, the last sentence of paragraph (a) would be amended by removing the reference to "§ 960.211," and adding in its place the phrase, "§ 960.212, or a local preference under § 960.213,".

§ 960.207 [Amended]

34. In § 960.207, paragraph (a) would be amended by removing "§ 960.211" and adding in its place "§ 960.212"; and paragraph (b) would be amended by removing the second sentence, including the material designated as paragraphs (b)(1) and (b)(2).

35. Section 960.211 would be revised to read as follows:

§ 960.211 Selection preferences.

(a) *General.* (1) *Use of preference in selection process.*

(i) In selecting applicants for assistance under this part, the PHA must give preference, in accordance with this section, to applicants who are otherwise eligible and qualify for a federal preference, as described in § 960.212, or any local preference, as described in § 960.213.

(ii) Before applying the federal preferences and local preferences, the PHA will match other characteristics of the applicant with the type of unit available. For example, in selection of a family for a unit that has special accessibility features, the PHA will give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a project for the elderly, the PHA will give preference to elderly families (see subpart D of this part).

(2) *System.* (i) The PHA's system for applying the preferences, in accordance with its regulations, must inform all applicants of the availability of the federal preferences and any local preferences, and must offer applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph, applicants include families on any waiting list maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(b) *Application of preferences.* (1) Federal and local preferences generally govern selection among families who qualify for a unit of a particular size under the PHA's occupancy policy. Date and time of application govern selection among families that qualify for the same housing unit size, the same federal preference status, the same local preference status, and any other applicable selection criteria.

(2) In selecting tenants for units made available for occupancy during each year, the PHA will apply the preferences as follows:

(i) For at least fifty percent of the admissions, admit applicants that qualify for a federal preference before other applicants; and

(ii) For any remaining admissions, admit first those applicants that qualify for a local preference (if any).

(3) The percentage limitation is a factor in every admission. The PHA may consider an admission as a federal preference admission that is counted towards the percentage in paragraph (b)(2)(i) of this section when the applicant admitted is a federal preference holder and the selection is not based on a local preference whose purpose was to admit relatively higher income families. In addition, the PHA may consider an admission as a federal preference admission if no family that qualifies for the available unit qualifies for a federal preference, *and* the selection was not based on a local preference who purpose is to select higher income families. Any other admissions are counted towards the percentage in paragraph (b)(2)(ii) of this section.

(4)(i) A family may not be granted a federal or local preference if any member of the family is a person or member of a family evicted from housing assisted under the 1937 Act, during the past three years, because of drug-related criminal activity. "Housing assisted under the 1937 Act" means public or Indian housing, housing assisted with tenant-based or project-based assistance under Section 8 (24

CFR part 982), rental rehabilitation program housing, Section 23 rental assistance, housing development grant housing, and Turnkey III and mutual help homeownership housing. However, the family may qualify for federal or local preference if each evicted person who engaged in such drug-related criminal activity who is a member of the family seeking admission to the program has successfully completed a rehabilitation program approved by the PHA.

(ii) The PHA may waive the preference prohibition for drug-related criminal activity eviction. The PHA may waive the prohibition for an evicted person if the evicted person demonstrates to the PHA's satisfaction either that the evicted person clearly did not participate in and had no knowledge of the drug-related criminal activity, or that circumstances leading to eviction no longer exist.

36. A new § 960.212 would be added, to read as follows:

§ 960.212 Federal preferences.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing; or

(3) Paying more than 50 percent of family income for rent.

(b) *Application of federal preferences.* (1) Unless the PHA submits alternative definitions for HUD's review and approval, the PHA must apply the definitions of the following terms in this section: "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income"; and "rent." In applying the federal preferences, the PHA will use the verification procedures contained in this section, unless it has adopted verification procedures of its own.

(2) In applying the federal preferences, the PHA may determine the relative weight of the federal preferences through means such as:

(i) Applying ranking preferences (which may be the same as those adopted in accordance with § 960.213)—except for any ranking preference the purpose of which is to select a relatively higher income applicant—as a way of selecting families from among those who qualify for a federal preference (i.e., provide that applicants who qualify for a federal preference and a PHA ranking preference take precedence over a federal preference holder who does not qualify for a PHA ranking preference);

(ii) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(iii) Ranking the federal preferences (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iv) Ranking the definitional elements of a federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Certification and verification of qualification for a federal preference.* (1) *Certification.* Applicants may claim qualification for a federal preference by certifying when they apply for assistance under this part (or thereafter until the time that they are offered admission) to the PHA that the family qualifies. The PHA must accept this certification unless it verifies that the applicant is not qualified for a federal preference.

(2) *Verification.* Before an applicant is selected for admission on the basis of a federal preference, the PHA must require the applicant to provide verification that the family qualifies for a federal preference by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification and selection for admission, including a change from one federal preference category to another. Once verified, the applicant's qualification for a federal preference need not be verified again, unless the PHA determines that the length of time since verification makes it desirable or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(d) *Definition of involuntary displacement.*

(1) For qualification on the basis of involuntary displacement, the applicant must have been involuntarily displaced or be certain of displacement within no more than six months from the certification or verification (as appropriate), and must not be living in standard, permanent replacement housing. Standard, permanent replacement housing is housing that is decent, safe and sanitary; that is adequate for the family size; and that the family is occupying pursuant to a lease or occupancy agreement. Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and, in the case of domestic violence, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(2) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the dwelling where he or she resides as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by an owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(3) An applicant is also involuntarily displaced if—

(i) The applicant has vacated the dwelling where he or she resides as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

(iii) For purposes of paragraph (d)(3) of this section, the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature. The PHA may limit use of this preference to a family who will not include the abuser.

(4)(i) For purposes of paragraph (d)(2)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(ii) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(A) To comply with applicable program policies and procedures under this part with respect to the occupancy of underoccupied and overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a member of the clergy, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f) of this section, a housing unit is not substandard because it is overcrowded or more than one family lives in the same unit.

(3) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(4) For purposes of paragraph (f) of this section, an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(5) For purposes of paragraph (f) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, the definition of "substandard housing" in this section, or that adopted by the PHA. In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a mostly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR part 882, subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent, amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this section means the charges under the occupancy agreement between the members and the cooperative.

(5) An applicant may not qualify for a federal preference under this provision:

(i) If the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937, under section 101 of the Housing and Urban Development

Act of 1965 ("rent supplement program"), or under section 236(f)(2) of the National Housing Act ("rental assistance payments") with respect to that unit has been terminated as a result of the applicant's documented refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units; or

(ii) If the applicant has been paying more than 50 percent of family income for rent for less than 90 days.

(j) *Verification of an applicant's income and rent.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under this part.

(2) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) The PHA must verify the amount paid to amortize the purchase price of a manufactured home:

(i) By requiring the family to furnish copies of its most recent payment receipts (which may include canceled checks or money order receipts) or a copy of the family's current purchase agreement, or

(ii) By contacting the lienholder directly.

(4) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA to review it. (See, for example, procedures specified in 24 CFR part 966.) The applicant also may exercise other rights, such as rights granted under Federal, State, or local civil rights laws, if the applicant believes that he or she has been discriminated against on prohibited bases such as race, color, religion, sex, national origin, age, handicap, or familial status.

37. A new § 960.213 would be added, to read as follows:

§ 960.213 Local preferences.

(a) *General.* In addition to its system of administering the federal preferences, the PHA may have a system for selection of tenants on the basis of local preferences.

(b) *Adoption of local preferences.* (1) *General.* The PHA system of selection on the basis of local preferences must be established to respond to local housing needs and priorities (e.g., as expressed in the local comprehensive housing affordability strategy, prepared in accordance with 24 CFR part 91), after the PHA conducts a public hearing on the subject. The preferences established after a public hearing and that are used for this purpose are those that are referred to throughout this subpart as "local preferences," it must again conduct a public hearing on the subject.

(2) *Transition.* After the expiration of three months after [*the effective date of a final rule*], if the PHA has not adopted local preferences following a public hearing, no local preferences will be in effect, and the federal preferences will be used exclusively (in accordance with § 960.212), until such time as local preferences are duly adopted. Similarly, if the PHA has not submitted its residency preference provisions for HUD approval by that time, the PHA will not be permitted to use residency preference for any purpose.

(c) *Examples of local preferences.* Examples of local preferences a PHA might adopt are stated in section 6(c)(4)(A)(ii) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)(ii). Another example would be a local preference for admitting tenants with a broad range of incomes to each project.

(d) *Use of local preferences.* (1) Admissions of an applicant based on qualification for a local preference ("local preference admission") is permitted until the admission would cause the PHA's local preference admissions for the year to exceed the percentage limitation for such admissions described in § 960.211(b)(2)(ii).

(2) Selection of a higher income family that is lower on the waiting list is permitted where it is a selection from a waiting list in accordance with a duly-adopted system of local preferences. (But see 24 CFR 913.105 for other income-related restrictions on selection.)

Dated: July 29, 1993.

Henry G. Cisneros,

Secretary.

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Part IV

Environmental Protection Agency

40 CFR Part 180

Pesticide Tolerances; Revision of Crop Groups; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300269; FRL-4170-6]

RIN 2070-AC18

Pesticide Tolerances; Revision of Crop Groups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to its pesticide tolerance crop grouping regulations, which allow establishment of tolerances for multiple related crops based upon data from a representative set of crops. The revisions would create new crop subgroups, expand existing crop groups by adding new commodities, and revise the representative crops in some groups. The current crop grouping scheme has been underused since its establishment in 1983. EPA believes that these revisions will promote greater use of crop grouping for tolerance-setting purposes, and in particular will assist in retaining or making available pesticides for minor crop uses.

DATES: Written comments, identified by the document control number, [OPP-300269], must be received on or before October 25, 1993.

ADDRESSES: By mail submit comments to: Public Response and Program Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m.. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Hoyt L. Jamerson, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 13, Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file in *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1, and ASCII.

I. Background

EPA is authorized to establish tolerances for pesticide residues in raw agricultural commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a). To establish a tolerance, a petition is submitted to the Agency, requesting the tolerance and furnishing information on the chemical identity and composition of the pesticide, and its use pattern on the crop, toxicology data, and extensive residue data on the nature of the residue and the residue levels resulting from the proposed use pattern.

One of the principal data requirements pertaining to establishment of a tolerance is the requirement for magnitude of residue data on the treated commodity. These data are used by EPA to determine the appropriate tolerance level for the treated commodity. The magnitude of residue must be determined in field trials using the pesticide in accordance with its proposed use pattern. Tolerances may be proposed for individual commodities such as oranges or lemons, or for a group of related commodities such as the citrus crop group.

The crop grouping regulations currently in 40 CFR 180.34(f) enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. The crop grouping concept leads to an estimate of the maximum level of residue that could occur on any crop within the group. The minimum data base required for a group tolerance consists of residue data on all of the representative commodities for a group. Data may be submitted, however, for a suitable substitute in place of data for a designated representative commodity. Once the crop group tolerance is established, the tolerance level applies to all raw agricultural commodities within the group, unless a crop is specifically excluded.

The concept of utilizing crop grouping to estimate maximum pesticide residues on each commodity within a group of related commodities has been used since publication of crop grouping regulations in the **Federal Register** of December 6, 1962 (27 FR 12100). In the **Federal Register** of June 29, 1983 (48 FR 29855), EPA revised the crop group regulations to allow for more extensive use of group tolerances for related crops. The revised 40 CFR 180.34(f) defined the crop groups involved and the procedures for establishing group tolerances. The 1983 rule replaced the existing crop groups in 40 CFR 180.34(f) with an expanded set of crop groupings. Included in the revised regulations was a list of representative crops for each group, these crops being those likely to have the highest residue and the most economically important crops in each group. Currently there are 19 crop groups, ranging in size from 4 commodities (Bulb vegetable group) to 34 commodities (Herbs and spices group).

II. The Problem

The current crop grouping scheme was developed, in part, to minimize the burden of developing data in support of commodity-specific tolerances for "minor crops" (i.e., crops for which data development in support of individual tolerances is not cost-efficient for the pesticide producer). A number of minor crops can be included in a group tolerance based upon residue data for the representative crops, for which a pesticide producer is more likely to have an economic incentive to undertake the necessary residue data development.

Despite this seemingly attractive means of securing clearances for minor crop residues in a cost-effective manner, only about 10 percent of the petitions submitted to EPA over the past 8 years proposed the establishment of crop group tolerances. The vast majority of petitions continue to propose commodity-specific tolerances. Although the concept of crop grouping is legally, scientifically, and economically sound, it appears that the current scheme suffers from practical impediments that have discouraged parties from seeking crop group tolerances. The success of the crop grouping scheme depends upon the incentives for, and willingness of, the pesticide industry to develop residue data for the representative crops of a group. The major difficulty of the current scheme is that pesticide companies frequently do not have sufficient economic incentive to generate data for all of the representative crops in a group. The cost of residue data is a significant factor in such decisions.

A second cost obstacle to certain group tolerances is the cost of secondary residue data (livestock feeding studies and processing data) for certain representative crops that greatly increase the cost of data development. Potatoes and sugar beets, two representative crops for the Root and tuber vegetables group, and soybeans for the Legume vegetables group, require extensive processing residue data. Crop group tolerances for these groupings are not feasible unless the registrant has sufficient economic interest in these and the other representative commodities to develop the data required for a group tolerance.

In other cases, corporate decisions about which crops warrant the costs of residue data development may be dictated by marketing or efficacy considerations. If the product has not been demonstrated to be efficacious against the principal pests of the representative crops, such that it would warrant marketing to growers of those crops, the company is not likely to undertake residue data collection. A company's marketing strategy may lead it to market the pesticide only in certain areas or for certain crops which do not constitute a set of representative crops.

While reevaluating the crop groupings, EPA has found that cranberry, grape and strawberry, which are three of the five representative crops for the Small fruits and berries group, are basically unlike each other or the other berries in the group. Residue data are needed independently for each of these representative crops and for the other berries, which are similar among themselves and are represented adequately by the blueberry and blackberry or raspberry. The inclusion of three crops which are dissimilar deters data development for the entire crop group. In the 10 years since the group was established, only a single crop group tolerance has been established.

Finally, a noneconomic factor that precludes the establishment of group tolerances is the variability in the residue profile and use patterns associated with crops in a group. If the use pattern or the actual residue levels among the representative crops are too variable (a difference of more than a factor of 5 between lowest and highest residues), a crop group tolerance cannot be scientifically supported.

In summation, the current crop grouping scheme appears unwieldy for companies to use because a number of crop groups are too large or too variable to permit cost-effective application of the crop group concept.

The practical difficulties of realizing crop group tolerances have been highlighted by the apparent loss of minor crop uses (and associated tolerances) resulting from the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Section 4 of FIFRA has imposed costs upon registrants for the registration and reregistration of pesticide products. While some of these costs are direct, i.e., an annual fee for each registered product and a reregistration fee for each active ingredient, the indirect costs of data development to support tolerance reassessment are believed to be a more significant factor in the loss of pesticides for minor uses.

This proposal should increase the usefulness of the crop grouping scheme, leading more companies and user groups to take advantage of it.

III. The Proposal

A. Summary

EPA proposes to amend the crop grouping scheme in 40 CFR 180.34(f) in a number of ways, summarized here and discussed in detail in unit IV. of this preamble by crop group:

1. *Format changes.* EPA proposes to create a new section, § 180.40, devoted to the crop group scheme. Included is new language explaining the subgroup system, and a series of tables for ease of use and greater clarity and comprehensibility. EPA is assigning each group a number for reference purposes. EPA is also adding an alphabetical listing of commodities with cross references to the assigned crop groups. Many of the crop group listings have been revised to some degree to reflect updated common and/or scientific names for various commodities. Finally, EPA proposes to locate its crop grouping scheme in new §§ 180.40 and 180.41. Section 180.40 would contain the explanation of the crop grouping scheme, and § 180.41 would contain the tables of crop groups.

2. *Creation of subgroupings.* Subgroupings (smaller and more closely related groupings of commodities) are proposed for 8 of the 19 crop groupings. The commodities for each subgroup are a subset of the commodities of the associated "parent" crop group. The number of representative commodities for each subgroup ranges from one to three commodities based on the size, diversity, and economic and dietary importance of the subgroup. The representative commodities for each subgroup were chosen from the representative commodities for the "parent" group.

The eight crop groups for which subgroups are proposed incorporate approximately two-thirds of all food crops covered by the crop grouping scheme. The remaining 11 crop groups for which there are no proposals for subgroupings consist of animal feed commodities or smaller groupings of food commodities which have only two or three representative commodities. EPA requests comments on possible subgroups for other crop groups.

3. *Revised representative commodities.* Revisions to the representative commodities for the "parent" crop groups are proposed for six crop groups. EPA will continue to permit group tolerances, on a case-by-case basis, when data for acceptable substitutes for the representative commodities are available.

4. *Additions.* Additions to the crop groups (commodities not previously included in a crop group) are proposed for five crop groups and included in the new subgroups.

5. *Deletions.* Deletion of cranberries, grapes, and strawberries from the Small fruits and berries group, and addition to the list of miscellaneous commodities not grouped in new § 180.41(b) is proposed.

EPA does not propose to revise the "factor of 5" criterion. By allowing up to, but not more than, a factor of 5 between lowest and highest residues expected in the various commodity members of a crop group, there is a certain amount of flexibility in setting a crop group tolerance level without allowing too great a range of residues within the group. Although it is less likely that crops within a subgroup will have residues that vary by as much as a factor of 5, the Agency will retain that approach to crop grouping. This will be important primarily for the parent crop groups, but will apply to subgroups if the need arises.

6. *Technical corrections.* Finally, EPA proposes to revise 40 CFR 180.1(g) to eliminate the inconsistency between that section and § 180.34(f) regarding the setting of crop group tolerances for systemic pesticides. The reference to "negligible residues" will be removed from § 180.1(g) since crop group tolerances set under § 180.34(f) have not been limited to negligible residue situations since 1983. Also, the limitation on grouping for systemic pesticides was eliminated in 1983 and will be removed.

B. Specific Revisions

This section discusses the current crop groups and explains the proposed revisions group by group.

1. *Crop Group 1. Root and tuber vegetables group.* EPA is proposing the creation of four subgroups:

a. *1-A. Root vegetables.* Vegetables that form a root which grows almost entirely underground, such as carrots, and vegetables that form an enlarged bulbous root which grows near or above the soil surface, such as the garden beet.

b. *1-B. Root vegetables (except sugar beet).*

c. *1-C. Tuberous and corm vegetables.* Vegetables in which the true tuber (enlarged fleshy underground stem), enlarged tuberous roots or rhizomes, or corms (thickened compressed underground stem) grow entirely underground and are consumed, such as sweet potato.

d. *1-D. Tuberous and corm vegetables (except potato).*

Subgroups are proposed that include potatoes (Tuberous and corm vegetables) or exclude potatoes (Tuberous and corm vegetables (except potato)), and include sugar beets (Root vegetables) or exclude sugar beets (Root vegetables (except sugar beet)). Potatoes are the representative commodity for the Tuberous and corm vegetable subgroup, which includes potatoes, and sweet potatoes are the representative crop for the Tuberous and corm vegetable subgroup, which excludes potatoes. Similarly, carrots, radishes, and sugar beets are the representative crops for the Root vegetables subgroup, and carrots and radishes are the representative crops for the Root vegetables (except sugar beet) subgroup.

The Agency initially considered having only two subgroups, Root vegetables (except sugar beet) and Tuberous and corm vegetables (except potato). Since data from both potato and sugar beet are needed to acquire a tolerance for the parent crop group, there seemed to be little need to have subgroups which would also require data from these commodities. However, EPA believes that a petitioner might have an interest in potato but not sugar beet or vice versa, or only in one of the subgroups containing potato or sugar beet. Since the intent of providing the new subgroups is to encourage additional group tolerances, the Agency is proposing four subgroups.

These four subgroups will provide petitioners with a variety of options in the number of representative commodities for which they may generate residue data. Approximately half the total number of commodities included in the parent crop group are included in Subgroup 1-B. Root vegetables (except sugar beet) and can be covered by residue data from two representative commodities, carrot and radish. Sugar beet data are needed primarily to support a tolerance for sugar beet. Data from sweet potato may be used to support Subgroup 1-D. Tuberous and corm vegetables (except potato) but is not an acceptable representative commodity for the parent crop group since processing data for potato are required for the parent crop group.

The Agency considered creating a fifth subgroup which would have included the bulbous root vegetables, those vegetables that form an enlarged bulbous root which grows near or above the soil surface, such as table/garden beet, celeriac (celery root), rutabaga, and turnip, all of which are now proposed to be included in both of the Root vegetables subgroups; the representative commodity would have been the petitioner's choice of garden beet or turnip. However, neither garden beet nor turnip is currently a representative commodity for the parent crop group, and the Agency does not intend to revise the current representative crops for this group at this time. EPA believes it is inappropriate to have a representative commodity for a subgroup which is not also a representative commodity for the parent crop group.

2. *Crop Group 2. Leaves of root and tuber vegetables group.* EPA proposes to allow substitution of garden beet for sugar beet as a representative crop. Although sugar beet tops are used to a greater extent for animal feed compared to garden beet tops, the residue data to be derived from either of those commodities should serve equally well to determine the appropriate residue level for the other. A petitioner who is developing residue data for Subgroup 1-B. Root vegetables (except sugar beet) may be interested in pursuing a tolerance for Crop Group 2 if table/garden beet data can be substituted for sugar beet data.

3. *Crop Group 3. Bulb vegetables (Allium spp.) group.* EPA proposes to revise the representative commodities for the crop group by designating onion (dry bulb and green) as the representative commodity. The representative commodities for the group are currently listed as onion (bulb and green) and one other commodity.

The Bulb Vegetable group is a small group of closely related commodities that includes garlic, leek, onion, and shallot. Members of this group are marketed fresh (green) such as green onion, leek, and green shallot, or they are dried such as dry bulb onion, garlic, and dry bulb shallot. Residue data for green and dry bulb onion are representative of the Bulb Vegetable group and are sufficient to support tolerances for the group.

4. *Crop Group 4. Leafy vegetables (except Brassica vegetables) group.* EPA proposes the creation of two subgroups:

a. *4-A. Leafy greens.* Leafy vegetable crops in which the leaves are the part primarily consumed, such as leaf and head lettuce and spinach; and

b. *4-B. Leaf petioles.* Leafy vegetable crops in which the petioles, stems, or stalks are the parts primarily consumed, such as celery.

Most of the commodities included in the parent crop group will fall into the subgroup for leafy greens. A petitioner who is interested in leafy greens but not celery or other leaf petiole crops will be able to obtain the Leafy greens subgroup tolerance without celery data. Conversely, a petitioner with only celery data will be able to obtain a Leaf petiole subgroup tolerance.

EPA proposes to add a new entry for radicchio (red chicory) to the parent group and to the Leafy greens subgroup

5. *Crop Group 5.* Brassica (cole) leafy vegetables group. EPA proposes the creation of two subgroups:

a. *5-A. Head and stem Brassica. Brassica* (cole) leafy vegetables in which the flower head and adjoining stems (or heads, formed of densely packed flowers, leaves, and stem material) or a bulbous stem are the parts primarily consumed, such as broccoli; and

b. *5-B. Leafy Brassica greens. Brassica* (cole) leafy vegetables in which heads are not formed, but the leaves are the parts primarily consumed, such as kale.

Cauliflower will be added to the list of representative commodities for the parent group and the subgroup as an alternative to broccoli. EPA proposes to add a new entry for cavalo broccolo (a hybrid of cauliflower and broccoli) to the parent group and to the Head and stem *Brassica* subgroup.

6. *Crop Group 6. Legume vegetables (succulent or dried) group.* EPA proposes the creation of three subgroups:

a. *6-A. Edible-podded legume vegetables.* Legume vegetables in which both the pods and the enclosed seeds are the parts primarily consumed, such as snap beans;

b. *6-B. Succulent shelled peas and beans.* Legume vegetables in which the succulent seeds are removed from the pod and are the parts primarily consumed, such as garden peas; and

c. *6-C. Dried shelled peas and beans (except soybeans).* Legume vegetables in which the dried seeds are removed from the pod at maturity and are the parts primarily consumed, such as navy beans.

Dried soybeans are excepted from the Dried shelled pea and bean subgroup in order to make the subgroup tolerances more attainable. Tolerances for dried soybeans can be obtained specific to the commodity or as a member of the Legume vegetables crop group. An additional commodity (soybean immature seed) has been added to both the parent group, and the subgroup and the entries have been clarified by including synonyms.

7. *Crop Group 7. Foliage of legume vegetables group.* EPA proposes the creation of 1 subgroup:

a. *7-A. Foliage of legume vegetables (except soybeans) subgroup.* Plant parts of any legume vegetable included in the Legume vegetable group (except soybeans). Soybean foliage is excepted from the subgroup to make tolerances more attainable. A petitioner who is developing residue data for Subgroup 6c. Dried shelled peas and beans (except soybeans) may be interested in pursuing a tolerance for Subgroup 7-A if soybeans are excluded.

8. *Crop Group 8. Fruiting vegetables (except cucurbits) group.* No changes.

9. *Crop Group 9. Cucurbit vegetables group.* EPA proposes to create two subgroups:

a. *9-A. Melons.* Fruits of varieties of muskmelons (*Cucumis melo*) or watermelons (*Citrullus* spp.) that have a firm to semi-firm outer rind and the interior pulp is edible, and a short storage life; and

b. *9-B. Squash/cucumber.* Fruits of the Gourd (Cucurbitaceae) family, including the cucumber.

A third subgroup, for winter squash, was considered and rejected. Residue data from at least one representative commodity would be needed to support the winter squash subgroup tolerance. However, the current representative commodities for the parent crop group do not include any winter squash. Residue data for the representative commodity summer squash are considered sufficient to support winter squash as well. To add a winter squash to the representative commodities for the parent crop group would have been counterproductive. Instead, EPA proposes to include the summer squash and winter squash in the same subgroup, along with cucumber. The representative commodities for the subgroup will be cucumber and summer squash, both of which are representative commodities for the parent crop group.

The parent and subgroups have been revised by adding new entries for *Momordica* spp., and expanding various entries to include synonyms.

10. *Crop Group 10. Citrus fruits group.* No changes.

11. *Crop Group 11. Pome fruits group.* No changes.

12. *Crop Group 12. Stone fruits group.* EPA proposes to revise the group by adding a new entry for plumcot (a hybrid of plums and apricots).

13. *Crop Group 13. Berries group.* EPA proposes to revise this crop group by removing cranberry, grape and strawberry and placing these commodities in § 180.41(b) as crops not grouped. These three commodities are sufficiently distinctive, with specific residue data requirements, that they are less representative of the group than of themselves. The remaining commodities in the group are all "berries." The representative commodities for the new Berries group will be blueberry and one variety of blackberry or one variety of raspberry. It will be possible to obtain commodity-specific tolerances for cranberries, grapes and strawberries, but they will be excepted from the crop group and subgroups in order to make the group and subgroup tolerances more attainable.

There is one established tolerance for the Small fruits and berries crop group and several tolerances for the pre-1983 crop group Small fruits. No revisions to the established tolerances are needed at this time to make this crop group revision consistent with existing tolerance rules. These tolerances will continue in effect until such time as the particular pesticides undergo the reregistration process.

Further, EPA proposes to create two subgroups within the Berries group:

a. *13-A. Caneberry (blackberry and raspberry);* and

b. *13-B. Bushberry.* Includes woody shrubs and bushes that produce fruit in clusters. In addition, the commodity entry for blackberries (*Rubus* spp.) will be clarified with the inclusion of additional Rubus spp. berries.

14. *Crop Group 14. Tree nuts group.* EPA proposes to delete English walnuts as a representative commodity for the group. A comparison of established pesticide tolerances for pecans and English walnuts shows that residues for the same pesticide are similar for both commodities. Pecans are preferred to English walnut as a representative commodity since they are more widely grown; more than 99 percent of the U.S. production of English walnuts are grown in California. Residue data for almonds and pecans, the remaining representative commodities, are considered adequate for establishing crop group tolerances for the tree nuts group.

15. *Crop Group 15. Cereal grains group.* No changes.

16. *Crop Group 16. Forage, fodder and straw of cereal grains group.* No changes.

17. *Crop Group 17. Grass forage, fodder, and hay group.* No changes.

18. *Crop Group 18. Non-grass animal feeds (forage, fodder, straw and hay) group.* No changes.

19. *Crop Group 19. Herbs and spices group.* EPA proposes to create two subgroups:

a. *19-A. Herbs.* Herbs grown largely in temperate climatic areas, mostly for their leaves and stems and may be used fresh or dried, such as basil; and

b. *19-B. Spices.* Spices grown mostly in tropical climatic areas and consisting mostly of aromatic seeds, dried roots, flowers, fruit, and/or bark, such as allspice.

EPA proposes to revise the representative commodities for the parent crop group to equitably reflect herbs and spices. The spices celery seed and dillseed, as alternates to each other, and black pepper will be representative commodities for the parent group and the new Spice subgroup. Chives and both fresh and dried forms of the herb basil will be representative commodities in both the parent crop group and the new Herb subgroup. Sage and marjoram or other *Origanum* spp. will be deleted as representative herb commodities for the group since the remaining representative commodities will provide sufficient residue data to support group tolerances.

EPA also proposes to add new commodities to the parent group and subgroups.

EPA requests comments and suggestions on additional groupings or subgroups. Any recommended changes to existing crop groupings or to those proposed in this document should be presented in a form which includes all necessary background and supporting information, such as a list of all commodities to be included, accompanied by scientific names if not already included in the proposed regulation, naming all representative commodities and providing a rationale for selecting the particular commodities and representative commodities to be included.

IV. International Considerations

The current crop grouping scheme does not include all commodities produced or marketed in the U.S. Several commodities with regional production in the U.S., such as figs, hops, mushrooms, okra, peanuts, and

watercress, were considered for grouping in 1983, but were determined to be inappropriate for grouping and were intentionally excluded. Other commodities such as bananas, mangoes, and papayas, which are primarily imported, were also determined to be inappropriate for grouping. Although the Agency does not propose to significantly expand the scope of the crop groupings at this time, EPA has initiated a project to develop options for harmonizing the U.S. crop groups with the International Codex Classification of Food and Feed Crops (CAC/PR 4-1989), which is a more extensive listing of commodities in trade.

The CODEX classification of foods and animal feeds is intended to be as complete a listing of commodities in trade as possible, classified into groups on the basis of the commodities' similar potential for pesticide residues. The Codex Committee on Pesticide Residues (CCPR), Joint FAO/WHO Food Standards Programme, recommended at its 23rd Session in 1991 that national governments adopt the CODEX Classification of Food and Feeds.

EPA recognizes the importance of establishing uniformity in commodity terms used to describe commodities in international trade and has initiated an evaluation of opportunities for harmonizing the CODEX and the U.S. commodity classification and crop grouping schemes. One aspect of this effort will be the large-scale evaluation of many crops classified by CODEX but not currently grouped by the U.S. to determine whether they can be incorporated into the U.S. crop grouping scheme. This evaluation will include commodities not previously considered for the U.S. groupings, as well as commodities that have previously been excluded from the crop groupings. EPA will also consider the addition of new crop groupings (such as a tropical fruit group) to more closely harmonize with the Codex system and to meet the needs of U.S. growers. The proposed revisions to the crop group regulations will not impede future efforts to harmonize the U.S. and CODEX commodity classifications.

V. Index to Commodities

This unit contains an alphabetical index to the crops in all the crop groups, giving the Crop Group number. The index will be included in Volume 40 of the Code of Federal Regulations as a Finding Aid after its publication in the **Federal Register**.

Commodity	Crop Group Number
Acorn squash (see squash, winter)	9
Adzuki bean (see bean (*Phaseolus* spp.))	6
Alfalfa (forage, fodder, straw, hay)	18
Allspice	19
Almond	14
Amaranth	4
Angelica	19
Anise (anise seed)	19
Annual marjoram (see marjoram (*Origanum* spp.))	19
Apple	11
Apricot	12
Arracacha	1
Arrowroot	1
Arrowroot, Queensland	1
Arrugula	4
Artichoke, Chinese	1
Artichoke, globe	Na (Not applicable)
Artichoke, Jerusalem	1
Asparagus	Na
Asparagus bean (see bean (*Vigna* spp.))	6
Avocado	Na
Balm	19
Balsam apple (see *Momordica* spp.)	9
Balsam pear (see *Momordica* spp.)	9
Banana	Na
Barley	15
Barley (forage, fodder, straw)	16
Basil	19
Bay leaf (see sweet bay)	19
Bean (*Lupinus* spp.)	6
Bean (*Lupinus* spp.) (foliage)	7
Bean (*Phaseolus* spp).	6
Bean (*Phaseolus* spp.) (foliage)	6
Bean (*Vigna* spp.)	6
Bean (*Vigna* spp.) (foliage)	7
Bean, broad	6
Bean, broad (foliage)	7
Bean, lablab	6
Bean, lablab (foliage)	7
Bean, velvet (forage, fodder, straw, hay)	18
Beech nut	14
Beet, garden	1
Beet, garden (foliage)	2
Beet, sugar	1
Beet, sugar (foliage)	2
Bell pepper (see pepper (*Capsicum* spp.))	8
Bingleberry (see blackberry)	13
Bitter cassava	1
Bitter cassava (foliage)	2
Bitter melon (see *Momordica* spp.)	9
Black pepper	19
Black raspberry	13
Black salsify	1
Black salsify (foliage)	2
Black satin berry (see blackberry)	13
Black walnut	14
Blackberry (*Rubus* spp.)	13
Blackeyed pea (see bean (*Vigna* spp.))	6
Blueberry	13
Bok choy (see cabbage, Chinese)	5
Borage	13
Boysenberry (see blackberry)	13
Brazil nut	14
Broad bean	6
Broad bean (foliage)	7
Broccoli	5
Broccoli raab	5
Brussels sprouts	5
Buckwheat	15
Buckwheat (forage, fodder, straw)	16
Burdock, edible	1
Burdock, edible (foliage)	2
Burnet	19
Bush nut (see macadamia nut)	14
Butternut	14
Butternut squash (see squash, winter)	9
Cabbage	5
Calabaza (see squash, winter)	9
Calamondin	10
Camomile	19
Cantaloupe (see muskmelon)	9
Caper buds	19
Caraway	19
Carrot	1
Carrot (foliage)	2
Cassabe (see muskmelon)	9
Cashew	14
Cassava, bitter or sweet	1
Cassava, bitter or sweet (foliage)	2
Cassia bark	19
Cassia buds	19
Catjang (see bean (*Vigna* spp.))	6
Catnip	19
Cauliflower	5
Cavalo broccolo	5
Celeriac	1
Celeriac (foliage)	2
Celery	4
Celery root (foliage)	2
Celery root (see celeriac)	1
Celery seed	19
Celtuce	4
Cherokee blackberry (see blackberry)	13
Cherry, sour and sweet	12
Chervil	4
Chervil, turnip-rooted	1
Chervil, turnip-rooted (foliage)	2
Chesterberry (see blackberry)	13
Chestnut	14
Cheyenne blackberry (see blackberry)	13
Chickasaw plum	12
Chickpea	5
Chickpea (foliage)	7
Chicory	1
Chicory (foliage)	2
Chili pepper (see pepper (*Capsicum* spp.))	8
Chinese artichoke	1
Chinese broccoli	5
Chinese cabbage (napa)	5
Chinese cucumber (see *Momordica* spp.)	9
Chinese longbean (see bean (*Vigna* spp.))	6
Chinese mustard cabbage	5

Commodity	Crop Group Number
Chinese okra (see gourd, edible)	9
Chinese preserving melon (see Chinese waxgourd)	9
Chinese spinach (see amaranth)	4
Chinese waxgourd	9
Chinquapin	14
Chironja (see citrus hybrids)	10
Chive	19
Chrysanthemum, edible-leaved	4
Chrysanthemum, garland	4
Chufa	1
Cilantro (see coriander)	19
Cinnamon	19
Citron	10
Citron melon	9
Citrus hybrids (*Citrus* spp.)	10
Clary	19
Clove buds	19
Clover (forage, fodder, straw, hay)	18
Cocoyam (see tanier)	1
Cocoyam (foliage)	2
Collards	5
Cooking pepper (see pepper (*Capsicum* spp.))	8
Coriander (leaf and seed)	19
Corn	15
Corn (forage, fodder)	16
Corn salad	4
Coryberry (see blackberry)	13
Costmary	19
Cowpea (see bean (*Vigna* spp.))	6
Crabapple	11
Cranberry	Na
Crenshaw melon (see muskmelon)	9
Cress, garden	4
Cress, upland	4
Cress, winter (see cress, upland)	4
Crookneck squash (see squash, summer)	9
Crowder pea (see bean (*Vigna* spp.))	6
Crown vetch (foliage, fodder, straw, hay)	18
Cucumber	9
Cucuzza (see gourd, edible)	9
Cumin	19
Currant	13
Curry leaf	19
Daikon (see radish, Japanese)	1
Daikon (foliage)	2
Dameon plum	12
Dandelion	4
Darrowberry (see blackberry)	13
Dasheen	1
Dasheen (foliage)	2
Dewberry (see blackberry)	13
Dill seed	19
Dillweed	19
Dirksen thornless berry (see blackberry)	13
Dock	4
Dwarf pea (see pea (*Pisum* spp.))	6
Edible burdock	1
Edible burdock (foliage)	2
Edible gourd	9
Edible-leaved chrysanthemum	4
Edible-pod pea (see pea (*Pisum* spp.))	6
Eggplant	8
Elderberry	13
Endive	4
English pea (see pea (*Pisum* spp.))	6
English walnut	14
Escarole (see endive)	4
Fava bean (see broad bean)	6
Fava bean (foliage)	7
Fennel, Florence	4
Fennel, Italian and sweet	19
Fenugreek	19
Field bean (see bean (*Phaseolus* spp.))	6
Field pea (see pea (*Pisum* spp.))	6
Fig	Na
Filbert	14
Florence fennel	4
Gai choy (see cabbage, Chinese mustard)	5
Gai lon (see broccoli, Chinese)	5
Garbanzo bean (see chickpea)	6
Garbanzo bean (foliage)	7
Garden beet	1
Garden beet (foliage)	2
Garden cress	4
Garden pea (see pea (*Pisum* spp.))	6
Garden purslane	4
Garland chrysanthemum	4
Garlic	3
Garlic, great headed	3
Gherkin	9
Ginger	19
Ginseng	19
Globe artichoke	4
Golden pershaw melon (see muskmelon)	9
Gooseberry	13
Gourd, edible	9
Grain lupine (see bean (*Lupinus* spp.))	6
Grape	Na
Grapefruit	10
Grasses (either green or cured)	17
Great-headed garlic	3
Green pea (see pea (*Pisum* spp.))	Na
Groundcherry	9
Guar	6
Guar (foliage)	8
Hazelnut (see filbert)	6
Hechima (see gourd, edible)	7
Hickory nut	14
Himalayaberry (see blackberry)	13
Honey balls (see muskmelon)	19
Honeydew melon (see muskmelon)	9
Hops	14
Horehound	Na
Horseradish	10
Huckleberry	17
Huilberry (see blackberry)	3
Hyacinth bean (see lablab bean)	Na
Hyacinth bean (foliage)	6
Hyotan (see gourd, edible)	9
Hyssop	19
Indian spinach (see vine spinach)	4
Italian fennel	19
Jackbean	6
Jackbean (foliage)	7
Japanese plum	12
Japanese radish	1
Jerusalem artichoke	1
Juniper berry	19
Kale	5
Kidney bean (see bean (*Phaseolus* spp.))	6
Kiwi fruit	Na
Kohlrabi	5
Kudzu (forage, fodder, hay, straw)	18
Kumquat	10
Lablab bean	6
Lablab bean (foliage)	7
Lavacaberry (see blackberry)	13
Lavender	19
Leafy amaranth (see amaranth)	4
Leek	3
Lemon	10
Lemon balm (see balm)	19
Lemongrass	19
Lentil	6
Lentil (foliage)	7
Leren	1
Lespedeza (forage, fodder, straw, hay)	18
Lettuce	4
Lima bean (see bean (*Phaseolus* spp.))	6
Lime	10
Loganberry	13
Loquat	11
Lovage (leaf and seed)	19
Lowberry (see blackberry)	13
Lucretiaberry (see blackberry)	13
Lupine, grain (see bean (*Lupinus* spp.))	6
Lupine (foliage, fodder, stray, hay)	18
Macadamia nut	14
Mace	19
Malabar spinach (see vine spinach)	4
Mammoth blackberry (see blackberry)	13
Mandarin	10
Mango	Na
Mango melon (see muskmelon)	9
Marigold	19
Marionberry (see blackberry)	13
Marjoram (*Origanum* spp.)	19
Mayhaw	11
Milk vetch (forage, fodder, straw, hay)	18
Millet, pearl	15
Millet, pearl (forage, fodder, straw)	16
Millet, proso	15
Millet, proso (forage, fodder, straw)	16
Milo (see sorghum)	15
Momordica spp.	9
Moth bean (see bean (*Phaseolus* spp.))	6
Mung bean (see bean (*Phaseolus* spp.))	6
Mushroom	Na
Muskmelon	9
Mustard greens	5
Napa (see cabbage, Chinese)	5

Commodity	Crop Group Number
Nasturtium	19
Navy bean (see bean (*Phaseolus* spp.))	6
Nectarberry (see blackberry)	13
Nectarine	12
New Zealand spinach	4
Nutmeg	19
Oats	15
Oat (forage, fodder, straw)	16
Okra	Na
Olallieberry (see blackberry)	13
Onion	3
Onion, Welch	3
Orach	4
Orange, sour and sweet	10
Oregano (see marjoram (*Origanum* spp.))	19
Oregon evergreen berry (see blackberry)	13
Oriental pear	11
Oyster plant (see salsify)	1
Papaya	Na
Parsley	4
Parsley (dried)	19
Parsley, turnip-rooted	1
Parsnip	1
Parsnip (foliage)	2
Pawpaw	Na
Pea (*Pisum* spp.)	6
Pea (*Pisum* spp.) (foliage)	7
Pea, blackeyed (see bean (*Vigna* spp.))	6
Pea, Crowder (see bean (*Vigna* spp.))	6
Pea, southern (see bean (*Vigna* spp.))	6
Peach	12
Peanut	Na
Pear	11
Pear, oriental	11
Pearl millet	15
Pearl millet (forage, fodder, straw)	16
Pecan	14
Pennyroyal	19
Pepino	8
Pepper (*Capsicum* spp.)	8
Pepper, black	19
Persian melon (see muskmelon)	9
Persian walnut (see walnut, black and English)	14
Persimmon	Na
Phenomenalberry (see blackberry)	13
Pigeon pea	6
Pigeon pea (foliage)	7
Pimento (see pepper (*Capsicum* spp.))	8
Pineapple	Na
Pineapple melon (see muskmelon)	9
Pinto bean (see bean (*Phaseolus* spp.))	6
Plum	12
Plumcot	12
Popcorn	15
Popcorn (forage, fodder)	16
Pot marjoram (see marjoram (*Origanum* spp.))	19
Potato	1
Proso millet	15
Proso millet (forage, fodder, straw)	16
Prune (fresh)	12
Pummelo	10
Pumpkin	5
Purslane, garden	4
Purslane, winter	4
Queensland artichoke	1
Quince	11
Radicchio (red chicory)	4
Radish	1
Radish (foliage)	2
Radish, Oriental	1
Radish, Oriental (foliage)	2
Rangeberry (see blackberry)	13
Rape greens	5
Rapini (see broccoli raab)	5
Raspberry, black and red	13
Ravenberry (see blackberry)	13
Red raspberry	13
Rhubarb	4
Rice	15
Rice (forage, fodder, straw)	16
Rice bean (see bean (*Phaseolus* spp.))	6
Rice, wild	15
Roquette (see arrugula)	4
Rosemary	19
Rossberry (see blackberry)	13
Rue	19
Runner bean (see bean (*Phaseolus* spp.))	6
Rutabaga	1
Rutabaga (foliage)	2
Rye	15
Rye (forage, fodder, straw)	16
Saffron	19
Sage	19
Sainfoin (forage, fodder, straw, hay)	18
Salsify	1
Salsify, black (foliage)	2
Santa Claus melon (see muskmelon)	9
Satsuma mandarin	10
Savory, summer and winter	19
Scallop squash (see squash, summer)	9
Shallot	3
Shawnee blackberry (see blackberry)	13
Skirret	1
Snake melon (see muskmelon)	9
Snap bean (see bean (*Phaseolus* spp.))	6
Snow pea (see pea (*Pisum* spp.))	6
Sorghum	15
Sorghum (forage, fodder, straw)	16
Sorrel (see dock)	Na
Sour cherry	12
Sour orange	10
Southern pea (see bean (*Vigna* spp.))	6
Soybean (dried)	20
Soybean (foliage)	7
Soybean (immature seeds)	6
Spaghetti squash (see squash, winter)	9
Spanish salsify	1
Spinach	4
Squash, summer and winter	9
Straightneck squash (see squash, summer)	9
Strawberry[1]	Na
Sugar beet	1
Sugar beet (foliage)	2
Sugar pea (see pea (*Pisum* spp.))	6
Summer savory	19
Summer squash	9
Sweet bay	19
Sweet cassava	1
Sweet cassava (foliage)	2
Sweet cherry	12
Sweet fennel	19
Sweet lupine (see bean (*Lupinus* spp.))	6
Sweet marjoram (see marjoram (*Origanum* spp.))	19
Sweet orange	10
Sweet pepper (see pepper (*Capsicum* spp.))	8
Sweet potato	1
Sweet potato (foliage)	2
Swiss chard	4
Sword bean	6
Sword bean (foliage)	7
Tampala (see amaranth)	4
Tangelo (see citrus hybrids)	10
Tangerine (see mandarin)	10
Tangor (see citrus hybrids)	10
Tanier	1
Tanier (foliage)	2
Tansy	19
Taro (see dasheen)	1
Taro (foliage)	2
Tarragon	19
Teosinte	15
Teosinte (forage, fodder, straw)	16
Tepary bean (see bean (*Phaseolus* spp.))	6
Thyme	19
Tomatillo	8
Tomato	8
Trefoil (forage, fodder, straw, hay)	18
Triticale	15
Triticale (forage, fodder, straw)	16
True cantaloupe	9
True yam (foliage)	2
True yam	1
Turmeric	1
Turnip	1
Turnip (foliage)	2
Turnip-rooted chervil	1
Turnip-rooted chervil (foliage)	2
Turnip-rooted parsley	1
Upland cress	4
Urd bean (see bean (*Phaseolus* spp.))	6
Vanilla	19
Vegetable marrow (see squash, summer)	9
Velvet bean (forage, fodder, straw, hay)	18
Vetch (foliage, fodder, straw, hay)	18
Vine spinach	4
Walnut, black	14
Walnut, English	14
Walnut, Persian (see walnut, black and English)	14
Water chestnut	Na
Watercress	Na
Watermelon	9
Wax bean (see bean (*Phaseolus* spp.))	6
Waxgourd, Chinese	9
Welch onion	3
Wheat	15
Wheat (forage, fodder, straw)	16
White lupine (see bean (*Lupinus* spp.))	6
White sweet lupine (see bean (*Lupinus* spp.))	6
Wild marjoram (see marjoram (*Origanum* spp.))	19
Wild rice	15
Wild rice (forage, fodder, straw)	16
Winter cress (see cress, upland)	4
Winter purslane	4
Winter savory	19
Winter squash	9
Wintergreen	19
Woodruff	19
Wormwood	19
Yam, true	1
Yam, true (foliage)	2
Yam bean	1
Yardlong bean (see bean (*Vigna* spp.))	6
Yellow rocket (see cress, upland)	4
Youngberry	13
Zucchini (see squash, summer)	9

VI. Regulatory Requirements

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis (Economic Assessment: Proposed Revisions to the Crop Grouping Regulations) is available for public inspection in Rm. 1132, at the address given above.

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a rule is "major" and therefore subject to the requirement for a Regulatory Impact Analysis. EPA has determined that this proposal is not a "major" regulatory action, i.e., it will not result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule revision is intended to promote greater utilization of crop grouping for tolerance-setting purposes by establishing subgroupings for certain existing crop groups. The subgroupings will require supporting data from fewer representative crops, making subgroup tolerances easier to obtain. This proposed rule has been reviewed by the Office of Management and Budget as required by Executive Order 12291.

B. Regulatory Flexibility Act

This regulatory action has been reviewed under the provision of section 3(a) of the Regulatory Flexibility Act, and EPA has determined that it will not have a significant adverse economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to simplify established policy, it is anticipated that no adverse economic impact will occur on any small entity.

Accordingly, EPA certifies that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: August 13, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1, by revising paragraph (g), to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) For the purpose of computing fees as required by § 180.33, each group of related crops listed in § 180.34(e) and each crop group listed in § 180.41 is counted as a single raw agricultural commodity in a petition or request for tolerances or exemption from the requirement of a tolerance.

* * * * *

§ 180.34 [Amended]

2. By amending § 180.34 *Tests on the amount of residue remaining* by removing paragraph (f).

3. By adding new § 180.40, to read as follows:

§ 180.40 Tolerances for crop groups.

(a) Group or subgroup tolerances may be established as a result of:

(1) A petition from a person who has submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(2) On the initiative of the Administrator.

(3) At the request of an interested person.

(b) The tables in § 180.41 are to be used in conjunction with this section for the establishment of crop group tolerances. Each table in § 180.41 lists a group of raw agricultural commodities that are considered to be related for the purposes of this section. Refer also to § 180.1(h) for a listing of commodities for which established tolerances may be applied to certain other related and similar commodities.

(c) When there is an established or proposed tolerance for all of the representative commodities for a specific group or subgroup of related commodities, a tolerance may be established for all commodities in the associated group or subgroup. Tolerances may be established for a crop group or, alternatively, tolerances may be established for one or more of the subgroups of a crop group.

(d) The representative crops are given as an indication of the minimum residue chemistry data base acceptable to the Agency for the purposes of establishing a group tolerance. The Agency will take a flexible approach to allow for group tolerances when data on suitable substitutes for the representative crops are available (e.g., limes instead of lemons).

(e) Since a group tolerance reflects maximum residues likely to occur on all individual crops within a group, the proposed or registered patterns of use for all crops in the group or subgroup must be similar before a group tolerance is established. The pattern of use consists of the amount of pesticide applied, the number of times applied, the timing of the first application, the interval between applications, and the interval between the last application and harvest. The pattern of use will also include the type of application; for example, soil or foliar application, or application by ground or aerial equipment.

(f) When the crop grouping contains commodities or byproducts that are utilized for animal feed, a tolerance or exemption from a tolerance for the pesticide in meat, milk, poultry and/or

eggs must be established before a tolerance will be granted for the group as a whole. This criterion, of course, applies only if the pesticide transfers to meat, milk, poultry and/or eggs. The representative crops include all crops in the group that could be processed such that residues may concentrate in processed food and/or feed. Processing data will be required prior to establishment of a group tolerance, and food additive tolerances will not be granted on a group basis.

(g) If maximum residues (tolerances) for the representative crops vary by more than a factor of 5 from the maximum value observed for any crop in the group, a group tolerance will ordinarily not be established. In this case, individual crop tolerances, rather than group tolerances, will normally be established.

(h) Alternatively, a commodity with a residue level significantly higher or lower than the other commodities in a group may be excluded from the group tolerance (e.g., cereal grains, except corn). In this case an individual tolerance at the appropriate level for the unique commodity would be established, if necessary. The alternative approach of excluding a commodity with a significantly higher or lower residue level will not be used to establish a tolerance for a commodity subgroup. Most subgroups have only two representative commodities; to exclude one such commodity and its related residue data would likely provide insufficient residue information to support the remainder of the subgroup. Residue data from crops additional to those representative crops in a grouping may be required for systemic pesticides.

(i) The commodities included in the groups will be updated periodically either at the initiative of the Agency or at the request of an interested party. Persons interested in updating this section should contact the Registration Division of the Office of Pesticide Programs.

(j) Establishment of a tolerance does not substitute for the additional need to register the pesticide under a companion law, the Federal Insecticide, Fungicide, and Rodenticide Act. The Registration Division of the Office of Pesticide Programs should be contacted concerning procedures for registration of new uses of a pesticide.

4. By adding new § 180.41, to read as follows:

§ 180.41 Crop group tables.

(a) The tables in this section are to be used in conjunction with § 180.40 to establish crop group tolerances.

(b) Commodities not listed are not considered as included in the groups for the purposes of this paragraph, and individual tolerances must be established. Miscellaneous commodities intentionally not included in any group include asparagus, avocados, bananas, cranberries, figs, globe artichokes, grapes, hops, kiwifruit, mangoes, mushrooms, okra, papayas, pawpaws, peanuts, persimmons, pineapples, strawberries, water chestnuts, and watercress.

(c) Each group is identified by a group name and consists of a list of representative commodities followed by a list of all commodity members for the group. If the group includes subgroups, each subgroup lists the subgroup name, the representative commodity or commodities, and the member commodities for the subgroup.

(1) *Crop Group 1:* Root and Tuber Vegetables.

(i) *Representative commodities.* Carrot, potato, radish, and sugar beet.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 1 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 1: ROOT AND TUBER VEGETABLES

Commodities	Related crop subgroups
Arracacha (*Arracacia xanthorrhiza*)	1-C, 1-D
Arrowroot (*Maranta arundinacea*)	1-C, 1-D
Arrowroot, Queensland (*Canna edulis*)	1-C, 1-D
Artichoke, Chinese (*Stachys affinis*)	1-C, 1-D
Artichoke, Jerusalem (*Helianthus tuberosus*)	1-C, 1-D
Beet, garden (*Beta vulgaris*)	1-A, 1-B
Beet, sugar (*Beta vulgaris*)	1-A
Burdock, edible (*Arctium lappa*)	1-A, 1-B
Carrot (*Daucus carota*)	1-A, 1-B
Cassava, bitter and sweet (*Manihot esculenta*)	1-C, 1-D
Celeriac (celery root) (*Apium graveolens* var. *rapaceum*)	1-A, 1-B
Chervil, turnip-rooted (*Chaerophyllum bulbosum*)	1-A, 1-B
Chicory (*Cichorium intybus*)	1-A, 1-B
Chufa (*Cyperus esculentus*)	1-C, 1-D
Dasheen (taro) (*Colocasia esculenta*)	1-C, 1-D
Ginger (*Zingiber officinale*)	1-C, 1-D
Ginseng (*Panax quinquefolius*)	1-A, 1-B
Horseradish (*Armoracia rusticana*)	1-A, 1-B
Leren (*Calathea allouia*)	1-C, 1-D
Parsley, turnip-rooted (*Petroselinum crispum* var. *tuberosum*)	1-A, 1-B
Parsnip (*Pastinaca sativa*)	1-A, 1-B
Potato (*Solanum tuberosum*)	1-C
Radish (*Raphanus sativus*)	1-A, 1-B
Radish, Japanese (daikon) (*Raphanus sativus* subvar. *longipinnatus*)	1-A, 1-B
Rutabaga (*Brassica campestris* var. *napobrassica*)	1-A, 1-B
Salsify (oyster plant) (*Tragopogon porrifolius*)	1-A, 1-B
Salsify, black (*Scorzonera hispanica*)	1-A, 1-B
Salsify, Spanish (*Scolymus hispanicus*)	1-A, 1-B
Skirret (*Sium sisarum*)	1-C, 1-D
Sweet potato (*Ipomoea batatas*)	1-C, 1-D
Tanier (cocoyam) (*Xanthosoma sagittifolium*)	1-C, 1-D
Turmeric (*Curcuma domestica*)	

TABLE 1—CROP GROUP 1: ROOT AND TUBER VEGETABLES—Continued

Commodities	Related crop subgroups
Turnip (*Brassica rapa* var. *rapa*)	1-A, 1-B
Yam bean (*Pachyrhizus erosus*)	1-C, 1-D
Yam, true (*Dioscorea* spp.)	1-C, 1-D

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 1, specifies the representative commodity(ies) for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 1 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 1–A. Root vegetables subgroup.	
Carrot, radish, and sugar beet..	Beet, garden; beet, sugar; burdock, edible; carrot; celeriac; chervil, turnip-rooted; chicory; ginseng; horseradish; parsley, turnip–rooted; parsnip; radish; radish, Japanese; rutabaga; salsify; salsify, black; salsify, Spanish; skirret; turnip.
Crop Subgroup 1–B. Root vegetables (except sugar beet) subgroup.	
Carrot and radish..	Beet, garden; burdock, edible; carrot; celeriac; chervil, turnip–rooted; chicory; ginseng; horseradish; parsley, turnip–rooted; parsnip; radish; radish, Japanese; rutabaga; salsify; salsify, black; salsify, Spanish; skirret; turnip.
Crop Subgroup 1–C. Tuberous and corm vegetables subgroup.	
Potato.	Arracacha; arrowroot; arrowroot, Queensland; artichoke, Chinese; artichoke, Jerusalem; cassava, bitter and sweet; chufa; dasheen; ginger; leren; potato; sweet potato; tanier; turmeric; yam, true; yam bean.
Crop Subgroup 1–D. Tuberous and corm vegetables (except potato) subgroup.	
Sweet potato.	Arracacha; arrowroot; arrowroot, Queensland; artichoke, Chinese; artichoke, Jerusalem; cassava, bitter and sweet; chufa; dasheen; ginger; leren; sweet potato; tanier; turmeric; yam, true; yam bean.

(2) *Crop Group 2.* Leaves of Root and Tuber Vegetables (Human Food or Animal Feed) Group (Human Food or Animal Feed) Group.

(i) *Representative commodities.* Turnip and garden beet or sugar beet.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 2:

Crop Group 2: Leaves of Root and Tuber Vegetables (Human Food or Animal Feed)—Commodities

Beet, garden (*Beta vulgaris*)
Beet, sugar (*Beta vulgaris*)
Burdock, edible (*Arctium lappa*)
Carrot (*Daucus carota*)
Cassava, bitter and sweet (*Manihot esculenta*)
Celeriac (celery root) (*Apium graveolens* var. *rapaceum*)
Chervil, turnip-rooted (*Chaerophyllum bulbosum*)
Chicory (*Cichorium intybus*)
Dasheen (taro) (*Colocasia esculenta*)
Parsnip (*Pastinaca sativa*)
Radish (*Raphanus sativus*)
Radish, Japanese (daikon) (*Raphanus sativus* subvar. *longipinnatus*)
Rutabaga (*Brassica campestris* var. *napobrassica*)
Salsify, black (*Scorzonera hispanica*)
Sweet potato (*Ipomoea batatas*)
Tanier (cocoyam) (*Xanthosoma sagittifolium*)
Turnip (*Brassica rapa* var. *rapa*)
Yam, true (*Dioscorea* spp.)

(3) *Crop Group 3.* Bulb Vegetables (*Allium* spp.) Group.

(i) *Representative commodities.* Onion (green and dry bulb).

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 3:

Crop Group 3: Bulb Vegetables (Allium spp.)—Commodities

Garlic (*Allium sativum*)
Garlic, great-headed (elephant) (*Allium ampeloprasum* var. *ampeloprasum*)
Leek (*Allium ampeloprasum, A. porrum, A. tricoccum*)
Onion (*Allium cepa, A. fistulosum*)
Onion, Welch (*Allium fistulosum*)
Shallot (*Allium cepa* var. *cepa*)

(4) *Crop Group 4.* Leafy Vegetables (Except *Brassica* Vegetables) Group.

(i) *Representative commodities.* Lettuce (head and leaf), celery, and spinach (*Spinacia oleracea*).

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 4 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 4: LEAFY VEGETABLES (EXCEPT *BRASSICA* VEGETABLES)

Commodities	Related crop subgroups
Amaranth (leafy amaranth, Chinese spinach, tampala) (*Amaranthus* spp.)	4-A
Arugula (Roquette) (*Eruca sativa*)	4-A
Celery (*Apium graveolens* var. *dulce*)	4-B
Lettuce (*Lactuca sativa*)	4-B
Chervil (*Anthriscus cerefolium*)	4-A
Chrysanthemum, edible-leaved (Japanese) (*Chrysanthemum coronarium* var. *coronarium*)	4-A
Chrysanthemum, garland (*Chrysanthemum coronarium* var. *spatiosum*)	4-A
Corn salad (*Valerianella locusta*)	4-A

TABLE 1—CROP GROUP 4: LEAFY VEGETABLES (EXCEPT *BRASSICA* VEGETABLES)—Continued

Commodities	Related crop subgroups
Cress, garden (*Lepidium sativum*)	4-A
Cress, upland (yellow rocket, winter cress) (*Barbarea vulgaris*)	4-A
Dandelion (*Taraxacum officinale*)	4-A
Dock (sorrel) (*Rumex* spp.)	4-A
Endive (escarole) (*Cichorium endivia*)	4-A
Fennel, Florence (*Foeniculum vulgare*)	4-B
Lettuce (*Lactuca sativa*)	4-A
Orach (*Atriplex hortensis*)	4-A
Parsley (*Petroselinum crispum*)	4-A
Purslane, garden (*Portulaca oleracea*)	4-A
Purslane, winter (*Montia perfoliata*)	4-A
Radicchio (red chicory) (*Cichorium intybus*)	4-A
Rhubarb (*Rheum rhaponticum*)	4-B
Spinach (*Spinacia oleracea*)	4-A
Spinach, New Zealand (*Tetragonia tetragonioides, T. expansa*)	4-A
Spinach, vine (Malabar, Indian) (*Basella alba*)	4-A
Swiss chard (*Beta vulgaris* var. *cicla*)	4-B

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 4, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 4 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 4–A. Leafy greens subgroup.	
Lettuce (head and leaf) and spinach (*Spinacia oleracea*).	Amaranth; arrugula; chervil; chrysanthemum, edible-leaved; chrysanthemum, garland; corn salad; cress, garden; cress, upland; dandelion; dock; endive; lettuce; orach; parsley; purslane, garden; purslane, winter; radicchio (red chicory); spinach; spinach, New Zealand; spinach, vine.

TABLE 2—CROP GROUP 4 SUBGROUP LISTING—Continued

Representative commodities	Commodities
Crop Subgroup 4–B. Leaf petioles subgroup.	
Celery.	Celery; celtuce; fennel, Florence; rhubarb; Swiss chard.

(5) *Crop Group 5. Brassica* (Cole) Leafy Vegetables Group.

(i) *Representative commodities.* Broccoli or cauliflower, cabbage, and mustard greens.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 5 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 5: *Brassica* (Cole) Leafy Vegetables

Commodities	Related crop subgroups
Broccoli (*Brassica oleracea* var. *botrytis*)	5-A
Broccoli, Chinese (gai lon) (*B. alboglabra*)	5-A
Broccoli raab (rapini) (*B. campestris*)	5-B
Brussels sprouts (*B. oleracea* var. *gemmifera*)	5-A
Cabbage (*B. oleracea*)	5-A
Cabbage, Chinese (bok choy) (*B. pekinensis*)	5-B
Cabbage, Chinese (napa) (*B. campestris* var. *chinensis, B. campestris* var. *pekinensis*)	5-A
Cabbage, Chinese mustard (gai choy) (*B. campestris*)	5-A
Cauliflower (*B. oleracea* var. *botrytis*)	5-A
Cavalo broccolo (*B. oleracea* var. *botrytis*)	5-A
Collards (*B. oleracea* var. *acephala*)	5-B
Kale (*B. oleracea* var. *acephala*)	5-B
Kohlrabi (*B. oleracea* var. *gongylodes*)	5-A
Mustard greens (*B. juncea*)	5-B
Rape greens (*B. napus*)	5-B

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 5, specifies the representative commodity(ies) for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 5 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 5–A. Head and stem *Brassica* subgroup	
Cabbage and broccoli or cauliflower.	Broccoli; broccoli, Chinese; Brussels sprouts; cabbage; cabbage, Chinese (napa); cabbage, Chinese mustard; cauliflower; cavalo broccolo; kohlrabi

TABLE 2—CROP GROUP 5 SUBGROUP LISTING—Continued

Representative commodities	Commodities
Crop Subgroup 5–B. Leafy *Brassica* greens subgroup.	
Mustard greens.	Broccoli raab; cabbage, Chinese (bok choy); collards; kale; mustard greens; rape greens

(6) *Crop Group 6.* Legume Vegetables (Succulent or Dried) Group.

(i) *Representative commodities.* Bean (*Phaseolus* spp.; one succulent variety and one dried variety); pea (*Pisum* spp.; one succulent variety and one dried variety); and soybean.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 6 and identifies the related crop subgroups.

TABLE 1—CROP GROUP 6: LEGUME VEGETABLES (SUCCULENT OR DRIED)

Commodities	Related crop subgroups
Bean (*Lupinus* spp.) (includes grain lupine, sweet lupine, white lupine, and white sweet lupine)	6-C
Bean (*Phaseolus* spp.) (includes adzuki bean, field bean, kidney bean, lima bean, moth bean, mung bean, navy bean, pinto bean, rice bean, runner bean, snap bean, tepary bean, urd bean, wax bean)	6-A, 6-B, 6-C
Bean (*Vigna* spp.) (includes asparagus bean, blackeyed pea, catjang, Chinese longbean, cowpea, Crowder pea, southern pea, yardlong bean)	6-A, 6-B, 6-C
Broad bean (fava bean) (*Vicia faba*)	6-B, 6-C
Chickpea (garbanzo bean) (*Cicer arietinum*)	6-C
Guar (*Cyamopsis tetragonoloba*)	6-C
Jackbean (*Canavalia ensiformis*)	6-A
Lablab bean (hyacinth bean) (*Dolichos lablab*)	6-C
Lentil (*Lens esculenta*)	6-C
Pea (*Pisum* spp.) (includes dwarf pea, edible-pod pea, English pea, field pea, garden pea, green pea, sugar pea (snow pea))	6-A, 6-B, 6-C
Pigeon pea (*Cajanus cajan*)	6-A, 6-C
Soybean (*Glycine max*)	N/A
Soybean (immature seed) (*Glycine max*)	6-A
Sword bean (*Canavalia galdiata*)	6-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 6, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 6 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 6–A. Edible-podded legume vegetables subgroup.	
Any one variety of bean (*Phaseolus* spp.) and any one variety of pea (*Pisum* spp.)..	Bean (*Phaseolus* spp.) (includes moth bean, runner bean, snap bean, wax bean); bean (*Vigna* spp.) (includes asparagus bean, Chinese longbean, yardlong bean); jackbean; pea (*Pisum* spp.) (includes dwarf pea, edible-pod pea, sugar pea); pigeon pea; soybean (immature seed); sword bean.

TABLE 2—CROP GROUP 6 SUBGROUP LISTING—Continued

Representative commodities	Commodities
Crop Subgroup 6–B. Succulent shelled pea and bean subgroup.	
Any succulent variety of bean (*Phaseolus* spp.) and garden pea..	Bean (*Phaseolus* spp.) (includes lima bean (green)); broad bean (succulent); bean (*Vigna* spp.) (includes blackeyed pea, cowpea, southern pea); pea (*Pisum* spp.) (includes English pea, garden pea, green pea).

TABLE 2—CROP GROUP 6 SUBGROUP LISTING—Continued

Representative commodities	Commodities
Crop Subgroup 6-C. Dried shelled pea and bean (except soybean) subgroup	
Any one dried variety of bean (*Phaseolus* spp.); and any one dried variety of pea (*Pisum* spp.).	Dried varieties of bean (Lupinus spp.) (includes grain lupine, sweet lupine, white lupine, and white sweet lupine); (*Phaseolus* spp.) (includes adzuki bean, field bean, kidney bean, lima bean (dry), mung bean, navy bean, pinto bean; rice bean, tepary bean, urd bean); bean (*Vigna* spp.) (includes blackeyed pea, catjang, cowpea, Crowder pea, southern pea); broad bean (dry); chickpea; guar; lablab bean; lentil; pea (*Pisum* spp.) (includes field pea); pigeon pea.

(7) *Crop Group 7.* Foliage of Legume Vegetables Group.

(i) *Representative commodities.* Any variety of bean (*Phaseolus* spp.), field pea (*Pisum* spp.), and soybean (*Glycine max*).

(ii) *Table.* The following Table 1 lists the commodities included in Crop Group 7.

TABLE 1—CROP GROUP 7: FOLIAGE OF LEGUME VEGETABLES

Representative commodities	Commodities
Any variety of bean (*Phaseolus* spp.), field pea (*Pisum* spp.), and soybean (*Glycine max*) ...	Plant parts of any legume vegetable included in the group legume vegetables that will be used as animal feed.

(iii) *Table.* The following Table 2 names the crop subgroup for Crop Group 7 and specifies the representative commodities and all included commodities for the subgroup.

TABLE 2—CROP GROUP 7 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 7-A. Foliage of legume vegetables (except soybeans)	
Any variety of bean (*Phaseolus* spp.), and field pea (*Pisum* spp.).	Plant parts of any legume vegetable included in the group legume vegetables (except soybeans) that will be used as animal feed.

(8) *Crop Group 8.* Fruiting Vegetables (Except Cucurbits) Group.

(i) *Representative commodities.* Tomato and pepper.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 8:

Crop Group 8: Fruiting Vegetables (Except Cucurbits)—Commodities

Eggplant (*Solanum melongena*)
Groundcherry (*Physalis* spp.)
Pepino (*Solanum muricatum*)
Pepper (*Capsicum* spp.) (includes bell pepper, chili pepper, cooking pepper, pimento, sweet pepper)
Tomatillo (*Physalis ixocarpa*)
Tomato (*Lycopersicum esculentum*)

(9) *Crop Group 9.* Cucurbit Vegetables Group.

(i) *Representative commodities.* Cucumber, muskmelon, and summer squash.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 9 and identifies the related subgroups.

TABLE 1—CROP GROUP 9: CUCURBIT VEGETABLES

Commodities	Related crop subgroups
Chinese waxgourd (Chinese preserving melon) (*Benincasa hispida*)	9-B
Citron melon (*Citrullus lanatus* var. *citroides*)	9-A
Cucumber (*Cucumis sativus*)	9-B
Gherkin (*Cucumis anguria*)	9-B
Gourd, edible (*Lagenaria* spp.) (includes hyotan, cucuzza); (*Luffa acutangula, L. cylindrica*) (includes hechima, Chinese okra)	9-B
Momordica spp. (includes balsam apple, balsam pear, bitter melon, Chinese cucumber)	9-B
Muskmelon (hybrids and/or varieties of *Cucumis melo*) (includes true cantaloupe, cantaloupe, casaba, crenshaw melon, golden pershaw melon, honeydew melon, honey balls, mango melon, Persian melon, pineapple melon, Santa Claus melon, and snake melon)	9-A
Pumpkin (*Cucurbita* spp.)	9-B
Squash, summer (*Cucurbita pepo* var. *melopepo*) (includes crookneck squash, scallop squash, straightneck squash, vegetable marrow, zucchini)	9-B
Squash, winter (*Cucurbita maxima; C. moschata*) (includes butternut squash, calabaza); (*C. mixta; C. pepo*) (includes acorn squash, spaghetti squash)	9-B
Watermelon (includes hybrids and/or varieties of *Citrullus lanatus*)	9-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 9, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 9 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 9-A. Melon subgroup	
Cantaloupes ...	Citron melon; muskmelons (hybrids and/or varieties of *Cucumis melo*) (includes true cantaloupe, cantaloupe, casaba, crenshaw melon, golden pershaw melon, honeydew melon, honey balls, mango melon, Persian melon, pineapple melon, Santa Claus melon, snake melon); watermelons (includes hybrids and/or varieties of *Citrullus lanatus* spp.)
Crop Subgroup 9-B. Squash/cucumber subgroup/.	
One variety of summer squash and cucumber..	Chinese waxgourd (Chinese perserving melon); Cucumber (*Cucumis sativa*); edible gourd (*Lagenaria* spp.) (includes hyotan, cucuzza), (*Luffa* spp.) (includes hechima, Chinese okra); gherkin (*Cucumis anguria*); *Momordica* spp. (includes balsam apple, balsam pear, bitter melon, Chinese cucumber); pumpkin; summer squash (*Cucurbita pepo*) (includes crookneck squash, scallop squash, straightneck squash, vegetable marrow, zucchini); winter squash (*Cucurbita maxima; C. moschata*) (includes buttemut squash, calabaza); (*C. mixta; C. pepo*) (includes acorn squash, spaghetti squash); and other varieties and/or hybrids of these.

(10) *Crop Group 10.* Citrus Fruits (*Citrus* spp., *Fortunella* spp.) Group.

(i) *Representative commodities.* Sweet orange, lemon, and grapefruit.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 10:

Crop Group 10: Citrus Fruits (Citrus spp., Fortunella spp.)—Commodities

Calamondin (*Citrus mitis*)
Citron (*C. medica*)
Citrus hybrids (*Citrus* spp.) (includes chironja, tangelo, tangor)
Grapefruit (*C. paradisi*)
Kumquat (*Fortunella* spp.)
Lemon (*C. jambhiri, C. limon*)
Lime (*C. aurantiifolia*)
Mandarin (tangerine) (*C. reticulata*)
Orange, sour (*C. aurantium*)
Orange, sweet (*C. sinensis*)
Pummelo (*C. grandis, C. maxima*)
Satsuma mandarin (*C. unshiu*)

(11) *Crop Group 11:* Pome Fruits Group.

(i) *Representative commodities.* Apple and pear.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 11:

Crop Group 11: Pome Fruits—Commodities

Apple (*Malus sylvestris domestica*)
Crabapple (*Malus* spp.)
Loquat (*Eriobotrya japonica*)
Mayhaw (*Crataegus aestivalis, C. opaca,* and *C. rufula*)
Pear (*Pyrus communis*)
Pear, oriental (*Pyrus pyrifolia*)
Quince (*Cydonia oblonga*)

(12) *Crop Group 12.* Stone Fruits Group.

(i) *Representative commodities.* Sour or sweet cherry, peach and plum or fresh prune (*Prunus domestica*).

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 12:

Crop Group 12: Stone Fruits—Commodities

Apricot (*Prunus armeniaca*)
Cherry, sour (*Prunus cerasus*)
Cherry, sweet (*Prunus avium*)
Nectarine (*Prunus persica*)
Peach (*Prunus persica*)
Plum (*Prunus domestica, Prunus* spp.)
Plum, Chickasaw (*Prunus angustifolia*)
Plum, Damson (*Prunus insititia*)
Plum, Japanese (*Prunus salicina*)
Plumcot (*P. armeniaca X P. domestica*)
Prune (fresh) (*Prunus domestica, Prunus* spp.)

(13) *Crop Group 13.* Berries Group.

(i) *Representative commodities.* Blueberry and any one blackberry or any one raspberry.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 13 and identifies the related subgroups.

TABLE 1—CROP GROUP 13: BERRIES

Commodities	Related crop subgroups
Blackberry (*Rubus subatus*) (including bingleberry, black satin berry, boysenberry, Cherokee blackberry, Chesterberry, Cheyenne blackberry, coryberry, darrowberry, dewberry, Dirksen thornless berry, Himalayaberry, hullberry, Lavacaberry, lowberry, Lucretiaberry, mammoth blackberry, marionberry, nectarberry, olallieberry, Oregon evergreen berry, phenomenalberry, rangeberry, revenberry, rossberry, Shawnee blackberry, and varieties and/or hybrids of these)	13-A
Blueberry (*Vaccinium* spp.)	13-B
Currant (*Ribes* spp.)	13-B
Elderberry (*Sambucus* spp.)	13-B
Gooseberry (*Ribes* spp.)	13-B
Huckleberry (*Gaylussacia* spp.)	13-B
Loganberry (*Rubus loganobaccus*)	13-A
Raspberry, black and red (*Rubus occidentalis, Rubus strigosus, Rubus idaeus*)	13-A
Youngberry (*Rubus casesius*)	13-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 13, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 13 SUBGROUPS

Representative commodities	Commodities
Crop Subgroup 13-A. Caneberry (blackberry and raspberry) subgroup. Any one blackberry or any one raspberry..	Blackberry; loganberry; youngberry; red and black raspberry; varieties and/or hybrids of these.
Crop Subgroup 13-B. Bushberry subgroup.. Blueberry, highbush..	Blueberry, highbush and lowbush; currant; elderberry; gooseberry; huckleberry.

(14) *Crop Group 14.* Tree Nuts Group.

(i) *Representative commodities.* Almond and pecan.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 14:

Crop Group 14: Tree Nuts—Commodities

Almond (*Prunus dulcis*)
Beech nut (*Fagus* spp.)
Brazil nut (*Bertholletia excelsa*)
Butternut (*Juglans cinerea*)
Cashew (*Anacardium occidentale*)
Chestnut (*Castanea* spp.)
Chinquapin (*Castanea pumila*)
Filbert (hazelnut) (*Corylus* spp.)
Hickory nut (*Carya* spp.)
Macadamia nut (bush nut) (*Macadamia* spp.)
Pecan (*Carya illinoensis*)
Walnut, black and English (Persian) (*Juglans* spp.)

(15) *Crop Group 15.* Cereal Grains Group.

(i) *Representative commodities.* Corn (fresh sweet corn and dried field corn), rice, sorghum, and wheat.

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 15:

Crop Group 15: Cereal Grains—Commodities

Barley (*Hordeum* spp.)
Buckwheat (*Fagopyrum esculentum*)
Corn (*Zea mays*)
Millet, pearl (*Pennisetum glaucum*)
Millet, proso (*Panicum milliaceum*)
Oats (*Avena* spp.)
Popcorn (*Zea mays* var. *everta*)
Rice (*Oryza sativa*)
Rye (*Secale cereale*)
Sorghum (milo) (*Sorghum* spp.)
Teosinte (*Euchlaena mexicana*)
Triticale (*Triticum-Secale* hybrids)
Wheat (*Triticum* spp.)
Wild rice (*Zizania aquatica*)

(16) *Crop Group 16.* Forage, Fodder and Straw of Cereal Grains Group.

(i) *Representative commodities.* Corn, wheat, and any other cereal grain crop.

(ii) *Commodities.* The commodities included in Crop Group 16 are: Forage, fodder, and straw of all commodities included in the group cereal grains.

(17) *Crop Group 17.* Grass Forage, Fodder, and Hay Group.

(i) *Representative commodities.* Bermuda grass, bluegrass, and bromegrass or fescue.

(ii) *Commodities.* The commodities included in Crop Group 17 are: Any grass, *Gramineae* family (either green or cured) except sugarcane and those included in the group cereal grains, that will be fed to or grazed by livestock, all pasture and range grasses and grasses grown for hay or silage.

(18) *Crop Group 18.* Nongrass Animal Feeds (Forage, Fodder, Straw, and Hay) Group.

(i) *Representative commodities.* Alfalfa and clover (*Trifolium* spp.)

(ii) *Commodities.* The following is a list of all the commodities included in Crop Group 18:

Crop Group 18: Nongrass Animal Feeds (Forage, Fodder, Straw, and Hay)—Commodities

Alfalfa (*Medicago sativa* subsp. *sativa*)
Bean, velvet (*Mucuna deeringiana*)
Clover (*Trifolium* spp., *Melilotus* spp.)
Kudzu (*Pueraria lobata*)
Lespedeza (*Lespedeza* spp.)
Lupine (*Lupinus* spp.)
Sainfoin (*Onobrychis viciiaefolia*); Trefoil (*Lotus* spp.)
Vetch (*Vicia* spp.)
Vetch, crown (*Coronilla varia*)
Vetch, milk (*Astragalus* spp).

(19) *Crop Group 19.* Herbs and Spices Group.

(i) *Representative commodities.* Basil (fresh and dried), black pepper, chive, and celery seed or dill seed.

(ii) *Table.* The following Table 1 lists all the commodities included in Crop Group 19 and identifies the related subgroups.

TABLE 1—CROP GROUP 19: HERBS AND SPICES

Commodities	Related crop subgroups
Allspice (*Pimenta dioica*)	19-B
Angelica (*Angelica archangelica*)	19-A
Anise (anise seed) (*Pimpinella anisum*)	19-B
Balm (lemon balm) (*Melissa officinalis*)	19-A
Basil (*Ocimum basilicum*)	19-A
Borage (*Borago officinalis*)	19-A
Burnet (*Sanguisorba minor*)	19-A
Camomile (*Anthemis nobilis*)	19-A
Caper buds (*Capparis spinosa*)	19-B
Caraway (*Carum carvi*)	19-B
Cassia bark (*Cinnamomum cassia*)	19-B
Cassia buds (*Cinnamomum cassia*)	19-B
Catnip (*Nepeta cataria*)	19-A
Celery seed (*Apicum graveolens*)	19-B
Chive (*Allium schoenoprasum*)	19-A
Cinnamon (*Cinnamomum zeylanicum*)	19-B
Clary (*Salvia sclarea*)	19-A
Clove buds (*Eugenia caryophyllata*)	19-B
Coriander (cilantro) (leaf) (*Coriandrum sativum*)	19-A
Coriander (cilantro) (seed) (*Coriandrum sativum*)	19-B
Costmary (*Chrysanthemum balsamita*)	19-A
Cumin (*Cuminum cyminum*)	19-B
Curry leaf (*Murraya koenigii*)	19-A
Dill (dillweed) (*Anethum graveolens*)	19-A
Dill seed (*Anethum graveolens*)	19-B
Fennel (Italian and sweet) (*Foeniculum vulgare*)	19-A
Fenugreek (*Trigonella foenumgraecum*)	19-B
Horehound (*Marrubium vulgare*)	19-A
Hyssop (*Hyssopus officinalis*)	19-A
Juniper berry (*Juniperis communis*)	19-B
Lavender (*Lavandula officinalis*)	19-A
Lemongrass (*Cymbopogon citratus*)	19-A
Lovage (leaf) (*Levisticum officinale*)	19-A
Lovage (seed) (*Levisticum officinale*)	19-B
Mace (*Myristica fragrans*)	19-B
Marigold (*Calendula officinalis*)	19-A
Marjoram (*Origanum spp.*) (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram)	19-A
Nasturtium (*Tropaeolum majus*)	19-A
Nutmeg (*Myristica fragrans*)	19-B
Parsley (dried) (*Petroselinum crispum*)	19-A
Pennyroyal (*Mentha pulegium*)	19-A
Pepper, black (*Piper nigrum*)	19-B
Rosemary (*Rosemarinus officinalis*)	19-A
Rue (*Ruta graeolens*)	19-A
Saffron (*Crocus sativus*)	19-B
Sage (*Salvia officinalis*)	19-A
Savory, summer and winter (*Satureja spp.*)	19-A
Sweet bay (bay leaf) (*Laurus nobilis*)	19-A
Tansy (*Tanacetum vulgare*)	19-A
Tarragon (*Artemesia draculunculus*)	19-A
Thyme (*Thymus spp.*)	19-A
Vanilla (*Vanilla planifolia*)	19-B
Wintergreen (*Gaultheria procumbens*)	19-A
Woodruff (*Gallum odorata*)	19-A
Wormwood (*Artemesia absinthium*)	19-A

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 19, specifies the representative commodities for each subgroup, and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 19 SUBGROUPS

Representative commodities	Commodities
Crop Subgroup 19-A. Herb subgroup.	
Basil (fresh and dried) and chive.	Angelica; balm; basil; borage; burnet; camomile; catnip; chive; clary;coriander; costmary; curry leaf; dillweed; fennel (Italian and sweet); horehound; hyssop; lavender; lemongrass; lovage (leaf); marigold; marjoram (*Origanum* spp.) (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram); nasturtium; parsley (dried); pennyroyal; rosemary; rue; sage; savory, summer and winter; sweet bay; tansy; tarragon; thyme; winter wormwood.

TABLE 2—CROP GROUP 19 SUBGROUPS—Continued

Representative commodities	Commodities
Crop Subgroup 19-B. Spice subgroup.	
Black pepper and celery seed or dill seed.	Allspice; anise seed; caper buds; cassia buds; cassia bark; caraway; celery seed; cinnamon; clove buds; coriander seed; cumin; dill seed; fenugreek; juniper berry; lovage seed; mace; nutmeg; pepper, black; saffron; and vanilla.

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Part V

Department of Defense

Department of the Army
Corps of Engineers

33 CFR Parts 323 and 328

Environmental Protection Agency

40 CFR Part 110, et al.
Clean Water Act Regulatory Programs; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Parts 323 and 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232 and 401

Clean Water Act Regulatory Programs

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are issuing today final regulations that implement the following actions with regard to the Clean Water Act (CWA) Section 404 regulatory program: (1) Modification of the definition of "discharge of dredged material;" (2) clarification of when the placement of pilings is a discharge of fill material; and (3) codification of the current policy that prior converted croplands are not waters of the United States. EPA is also issuing conforming changes to the definition of "waters of the United States" and "navigable waters" in other CWA program regulations. The first two changes implement the settlement agreement in *North Carolina Wildlife Federation* v. *Tulloch*, Civil No. C90–713–CIV–5–BO (E.D.N.C. 1992).

EFFECTIVE DATE: This rule becomes effective on [Insert 30 days from the publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Mr. Michael Davis, Office of the Assistant Secretary of the Army for Civil Works at (703) 695–1376 or Mr. Sam Collinson (Corps) at (202) 272–0199 or Mr. Gregory Peck (EPA) or Ms. Hazel Groman (EPA) at (202) 260–7799.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1992, the Federal government agreed to settle a lawsuit brought by the North Carolina Wildlife Federation and the National Wildlife Federation (*North Carolina Wildlife Federation, et al.* v. *Tulloch*, Civil No. C90–713–CIV–5–BO (E.D.N.C. 1992)) involving CWA Section 404 as it pertains to certain activities in waters of the United States. In accordance with the settlement agreement, the Corps and EPA proposed changes to their regulations on June 16, 1992 to clarify that mechanized landclearing, ditching, channelization, and other excavation activities involve discharges of dredged material when performed in waters of the United States, and that these activities would be regulated under Section 404 of the CWA when they have or would have the effect of destroying or degrading waters of the United States, including wetlands. 57 FR 26894. In addition, the Corps and EPA agreed to propose to incorporate into the Section 404 regulations the substantive provisions of Corps Regulatory Guidance Letter (RGL) 90–8 to clarify the circumstances under which the placement of pilings have the effect of "fill material" and is subject to regulation under Section 404. The agencies stated that the proposal would not affect, in any manner, the existing statutory exemptions for normal farming, ranching, and silviculture activities in Section 404(f)(1).

In addition to the changes proposed in accordance with the settlement agreement, the Corps and EPA proposed to incorporate into the Section 404 regulations the substantive provisions of Corps RGL 90–7 to clarify that prior converted croplands are not waters of the United States for purposes of the CWA. EPA also proposed conforming changes to the definitions of "waters of the United States" and "navigable waters" for all other CWA program regulations contained in 40 CFR parts 110, 112, 116, 117, 122, and 401 to provide consistent definitions in all CWA program regulations.

Overall, these changes were proposed in order to promote national consistency, more clearly notify the public of regulatory requirements, ensure that the Section 404 regulatory program is more equitable to the regulated public, enhance the protection of waters of the United States, and clarify which areas in agricultural crop production would not be regulated as waters of the United States.

The proposed changes were published in the **Federal Register** on June 16, 1992, for public comment. The comment period closed on August 17, 1992. We received over 6,300 comments. The significant issues raised by public comments and the changes that have been made from the proposed rule are discussed below.

II. General Comments on the Proposed Rule

Several commentors raised general issues with regard to the proposed rule. These comments are addressed first below. Comments relating to the specific components of the rule are addressed in the following sections of this preamble.

Several commentors expressed concern that the agencies had agreed to propose these revisions as part of a settlement agreement with plaintiffs in the *Tulloch* lawsuit. These commentors felt that this procedural posture for the rulemaking impaired the agencies' ability to conduct the rulemaking impartially and based upon a good faith consideration of all public comments, as required by the Administrative Procedure Act. The commitments the agencies entered in the settlement of the *Tulloch* case have not, in any way, bound the agencies to reach a predetermined outcome in this rulemaking. The agencies agreed in the settlement agreement to propose certain revisions to their regulations in exchange for the plaintiffs' agreement to stay that litigation. The settlement agreement in no way binds the agencies to an outcome in the final rule, but provides that the plaintiffs in the lawsuit will dismiss their action if the final rule is "substantially similar" in language and effect as the proposal. The agencies do not view the settlement agreement as narrowing our discretion in any manner to adopt a final rule that best reflects relevant legal and policy considerations under Section 404. Because this rulemaking is of great national significance to the Section 404 program, EPA and the Corps have pursued this rulemaking based upon careful consideration of all the policy issues raised in the proposal and addressed by public comments. The agencies would not adopt policies in this final rule that we do not believe are appropriate merely to avoid reinitiation of litigation in the *Tulloch* lawsuit. As reflected by the discussion in this preamble, the agencies have fully considered all the public comments received on the proposal, and we have therefore fully complied with the procedural requirements of the Administrative Procedure Act.

Several commentors recommended that no decision on the final rule be made until a wetland definition was agreed upon by Congress. Two commentors stated that the wetlands definition was too broad and that it was not applicable across the country. Similarly, two commentors stated that because the rulemaking regarding the wetlands delineation manual was not yet complete, it was inappropriate to propose changes that would expand activities in wetlands covered under the program, thereby increasing uncertainty about the Federal government's regulation of wetlands. Several commentors were concerned about how

the functions and values of wetlands would be addressed or requested that a wetland classification system be developed. Some commentors requested that no decision be made until such a system was developed.

We do not agree that these concerns should delay promulgation of this rule. With the exception of the prior converted (PC) cropland aspect of this rulemaking, this rule addresses the scope of activities regulated under Section 404. The question of what activities result in a discharge of dredged or fill material is distinct and separate from the issue of what areas constitute wetlands, or how wetlands functions and values are considered in the permitting process. Today's rule will enable the Corps and EPA to make appropriate determinations as to whether an activity occurring in waters of the U.S. is subject to regulation under Section 404, however wetlands are defined. Therefore, there is no reason to delay this rulemaking pending completion of the delineation manual rulemaking. With regard to the PC cropland portion of this rule, the agencies do not believe that completion of this rulemaking should await conclusion of the manual rulemaking. The proposed revisions to the delineation manual did not alter the policy finding in Corps RGL 90–7 that PC cropland is not wetlands under the Act. Since the applicability of Section 404 to PC cropland is not an issue in the delineation manual rulemaking, delaying completion of this rule is not warranted. In any case, EPA and the Corps are both currently making wetlands delineations using the 1987 Corps Manual. Corps of Engineers Wetland Delineation Manual (Technical Report 4–87–1, Department of the Army, Corps of Engineers, Waterways Experiment Station, Vicksburg, MS). We believe that the guidance in that Manual is entirely consistent with our statutory and regulatory authorities under the CWA.

Several commentors requested that the comment period be extended. We believe that a 60-day comment period was sufficient time to provide an opportunity for the public comment, as reflected by the fact that we have received over 6,300 comments on the proposal. At least one commentor requested that the agencies hold a public hearing on the proposal. The agencies have declined to do so. The comments on the proposal addressed many legal and factual issues that were presented in great detail in written submissions, and the agencies have fully considered the submitted documents in developing the final rule. EPA and the Corps do not believe that the opportunity for meaningful public input or the agencies' understanding of public comments would have been materially advanced by the holding of a public hearing.

Several commentors requested that the Corps districts work with local regulatory agencies to avoid duplication of effort. We agree and encourage districts to develop regional general permits to avoid duplication of effort for those activities with minimal impacts.

III. Revisions to Definition of "Discharge of Dredged Material 33 CFR 323.2(d) and 40 CFR 232.2(e)

We have organized the numerous comments on the definition of discharge of dredged material into several issues. Our discussion of the comments is provided below.

A. Summary of Major Issues and Changes From the Proposal

The aspect of the rule which engendered the most public comment was the proposed revisions to the definition of "discharge of dredged material." Many commentors supported the proposed revisions on the grounds that they would better achieve the goals of the Section 404 program, and help ensure more equal treatment of different types of activities that adversely impact wetlands.

Opponents of the changes challenged the appropriateness of the proposed rule on both legal and factual grounds. In their legal arguments, many commentors contended that the proposal constituted a change in the Corps' longstanding approach to regulating landclearing and excavation activities, and that the agencies had failed to explain adequately the reasons for changing the existing approach, as required by the Administrative Procedure Act. Commentors also contended that EPA and the Corps lacked the authority under the CWA to regulate incidental discharges associated with mechanized landclearing, ditching, channelization and other excavation on the grounds that such incidental discharges do not constitute an "addition" of "dredged material" to waters of the U.S. within the meaning of the Act. These commentors also contended that the proposed rule would impermissibly regulate "activities" rather than "discharges," something they argued was beyond the agencies' jurisdiction under the statute. Other commentors argued that the proposed rule's establishment of a presumption that mechanized landclearing, ditching, channelization and other excavation destroy or degrade wetlands was contrary to the requirements of the CWA.

Factual contentions raised by commentors centered on objections to the finding in the proposed rule that mechanized landclearing, ditching, channelization and other excavation always result in a discharge of dredged material. Some commentors contended that the agencies had failed to compile an adequate factual record to support this finding, and a few commentors discussed activities which they believed did not result in a discharge. Some commentors also objected to the rebuttable presumption in the proposed rule that mechanized landclearing, ditching, channelization and other excavation destroy or degrade wetlands or other waters of the United States. Commentors suggested specific activities that they believed should be excluded from the regulation on the grounds that they did not cause such effects. Concerns were also raised in public comments that the term "degrade" was not adequately defined by the agencies.

Based upon public comments, the agencies have made certain changes to the language in the regulation defining "discharge of dredged material." However, the basic thrust of the proposal had not changed. Under the final rule, any addition or redeposition of dredged material associated with any activity, including mechanized landclearing, ditching, channelization and other excavation, that destroys or degrades waters of the United States requires a Section 404 permit.

The agencies have modified some of the language and structure of the final rule to improve clarity, since some public comments found the proposed rule language hard to follow. In response to public comments, we have decided to include definitions of the terms "destroy" and "degrade" in the final rule. These changes are discussed in section D.1, below.

In response to public comments, the agencies have deleted the irrebuttable presumption in the proposed rule that all mechanized landclearing, ditching, channelization and other excavation result in a discharge of dredged material. This change is discussed further in section C, below.

The agencies have modified the structure of the final rule to provide that any addition, including redeposit, of dredged material associated with any activity, including mechanized landclearing, ditching, channelization and other excavation, constitutes a discharge of dredged material. The final rule states, however, that a Section 404

permit is not required for an activity that would not destroy or degrade waters of the U.S. because it would have only a *de minimis* effect on such waters. Under the final rule, mechanized landclearing, ditching, channelization and other excavation activities resulting in a redeposition of dredged material associated with a discharge of dredged material require a Section 404 permit unless the discharger demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to the discharge, that the activity will not have such an effect. Under the final rule, the discharger bears the burden of demonstrating that its mechanized landclearing, ditching, channelization and other excavation activity will not destroy or degrade waters of the United States.

B. Comments on Agencies' Legal Authority To Promulgate This Regulation

Several commentors argued that EPA and the Corps lack legal authority under the Clean Water Act to issue the proposed regulation. Each of the bases for commentors' assertion is addressed below.

1. Definition of "Dredged Material"

Several commentors argued that the term "dredged material" has a narrow and specific meaning as used by Congress in the Clean Water Act, and that Congress never intended incidental discharges associated with landclearing, ditching, channelization and other excavation to be regulated as dredged material under Section 404.

These commentors cited a dictionary definition of the verb "to dredge" as meaning "to gather and bring up with a dredge, as oysters; to clear out or deepen with a dredge, as a channel," and the definition of the noun "dredge" as "a contrivance for gathering objects or material from the bed of a river, lake or harbor, by dragging along the bottom * * *. "New Webster's Dictionary of the English Language 301 (1984). According to these commentors, therefore, the term "dredged material" in Section 404 is limited to material taken from the bottom of a harbor, river or channel and cannot be construed as extending to material redeposited in the course of activities taking place in other waters of the United States, such as wetlands. While these commentors argued that the meaning of the statutory language was so clear that recourse to the legislative history was not necessary, they contended that the legislative history of the 1972 Amendments of the Clean Water Act also supports their view.

EPA and the Corps believe that these comments are unfounded, for several reasons. First, these comments are in fact not relevant to this rulemaking, for they do not address the revisions the agencies are making to the definition of the term "discharge of dredged material." Rather, these comments challenge, in effect, the agencies' definition of the term "dredged material" which includes "any material dredged or excavated from waters of the U.S." (see 40 CFR 232.2(g) and 33 CFR 323.2(c)). Presumably the commentors believe that this definition should have been revised so that it would be limited to material excavated from waterbodies such as harbors, rivers and channels. However, EPA and the Corps have not proposed to revise this longstanding definition in any respect in this rulemaking, and this comment is therefore not relevent to the proposal on which we solicited public comment.

Even if these comments were relevant to this rulemaking, however, EPA and the Corps disagree with the commentors that the statutory term "dredged material" was expressly limited by Congress to mean material dredged from the bottom of waterways such as lakes, rivers or channels. While the "narrow" and "specific" definition of this term favored by these commentors appears in the Webster's dictionary, it is not contained in any provision of the Clean Water Act. Congress therefore left to the agencies administering Section 404 the discretion to define this term. Since regulations were first promulgated implementing Section 404, the Corps has interpreted the term "dredged material" to mean any material excavated from waters subject to the full jurisdictional reach of the CWA (see 39 FR 12119, April 3, 1974), and the current language in the agencies' definition has been in existence since 1977 (see 42 FR 37145, July 19, 1977). This longstanding definition of the term "dredged material" is a straightforward and reasonable reading of the statutory language used by Congress.

The commentors' approach to defining dredged material, in contrast, would draw arbitrary distinctions in how the CWA regulates identical types of material based upon whether the waterbody from which it was excavated met some vague standard of wetness and water depth (i.e., material excavated from the bottom of a "lake" would qualify as dredged material but material excavated from a "drier" water such as a saturated wetland would not). Such distinctions are without any support in the language or structure of the CWA.

Because the commentors' approach does not reasonably reflect the structure of the Act, their suggested reading of the term "dredged material" would lead to anomalous results that we believe could not have been intended by Congress. For example, under their scenario, material excavated from a saturated wetland presumably would not qualify as "dredged material" under Section 404. However, the disposal of that material into waters of the U.S. would nonetheless require a permit under the Act, since the material, even if not meeting the definition of "dredged material," would in any case constitute a "pollutant" within the meaning of the Act (see section 502(6) of the Act, defining pollutant to include "sand" and "rock"). The disposal of such material, therefore, would require a permit under Section 402 of the Act, a regulatory provision ill-suited for authorizing such discharges. In our view, it is clearly more consistent with Congressional intent that all material dredged from and redeposited in waters of the U.S. be regulated under a single regulatory scheme—Section 404 of the CWA. Rather than draw the arbitrary distinctions suggested by these commentors, the agencies' definition of the term is a straightforward and logical interpretation of the statutory language in Section 404 that is consistent with the jurisdictional reach of Section 404 to all waters of the United States.

While the legislative history of the 1972 Amendments to the Clean Water Act reflects Congressional concern regarding disposal of material dredged from waterways to maintain navigation, EPA and the Corps do not read that legislative history as demonstrating Congressional intent to limit narrowly the agencies' discretion to define dredged material so that it includes any material excavated from waters of the U.S. The agencies' longstanding definition of this term is reasonable and fully consistent with the language and purposes of the Clean Water Act.

2. "Addition" of Pollutants to Waters of the U.S.

Some commentors argued that the activities that would be subject to this regulation are beyond the scope of Section 404 because they do not result in the "addition" of pollutants to U.S. waters, as required by the definition of "discharge" contained in section 502(6) of the Clean Water Act. According to these commentors, no such "addition" occurs when the material to be excavated falls back into the very same water being dredged. An "addition" only takes place, these commentors believe, where material is excavated from one water of the U.S. and falls into "another" water, "outside" the area being excavated. These commentors cited as support the decisions in *National Wildlife Federation* v. *Consumers Power*, 862 F.2d 580 (6th Cir. 1988); *National Wildlife Federal* v. *Gorsuch*, 693 F.2d 156, 174–75 (D.C. Cir. 1982); and *U.S.* v. *Lambert*, 18 Env't Rep Cas (BNA) 1294 (M.D.Fl. 1981), *aff'd* 695 F.2d 536 (11th Cir. 1983).

In *Consumers Power* and *Gorsuch*, environmental groups challenged EPA's longstanding interpretation of the CWA that impacts on water quality and fish caused by the operation of dams were not covered by the CWA because the dams did not cause an "addition" of pollutants. EPA's longheld view was that impacts resulting from the passage of water through the dam did not constitute an "addition" because pollutants did not enter the water "from the outside world." See *Gorsuch*, 693 F.2d at 165. The *Consumers Power* and *Gorsuch* courts deferred to EPA's administrative interpretation of the CWA and upheld it as reasonable. Commentors argued that these holdings prevent EPA and the Corps from finding that redeposition of soil incidental to mechanized landclearing, ditching, channelization and other excavation constitutes an "addition" of pollutants.

We do not believe that the analysis of the *Gorsuch* and *Consumers Power* decisions is controlling here. These cases did not address what constitutes an addition of dredged material to waters of the United States. In our view, it would not be reasonable to require that dredged material enter waters of the U.S. "from the outside world" since dredged material, by definition, is contained in the waters themselves. This was the conclusion of the Fifth Circuit in *Avoyelles Sportsmen's League* v. *Marsh*, 715 F.2d 897 (5th Cir. 1983), which addressed the applicability of the *Gorsuch* case to mechanized landclearing activities. While the court did not rule on the question whether those activities resulted in a discharge of dredged material (finding that a discharge of fill material had occurred), the court rejected the notion that dredged material is only regulated if it enters waters from the "outside world." Since dredged material comes from the water itself, the court concluded that such an interpretation "would effectively remove the dredge-and-fill provision from the statute." 715 F.2d at 294, n.43. See also *U.S.* v. *Sinclair Oil Co.*, 767 F.Supp. 200 (D.Mont. 1990) (distinguishing *Gorsuch* and *Consumers Power* cases partially on the grounds that they were decided under the "separate regulatory framework" of Section 402, and holding that redistribution of riverbed materials constituted a "discharge" of fill material). *United States* v. *MCC of Florida, Inc.*, 772 F.2d 1501 (11th Cir. 1985) (holding that redeposition of seabed materials by tug-boat propellers on adjacent sea grass beds was an "addition" of dredged spoil).

Some commentors suggested that the appropriate test in this context should be whether dredged material is moved from "one place to another" or "from one water to another." If the material is not moved in this manner, these commentors argued, it does not trigger Section 404. The agencies do not believe that such a vague test would be a meaningful or appropriate one to adopt in this rule. If dredged material must be "moved" from one "location" to another in order to trigger Section 404, the question arises as to how far the material must be moved. The agencies see a strong potential for drawing arbitrary distinctions among activities that may be identical in terms of the amount of soil redeposited and their effects on the aquatic ecosystem, but differ only in terms of the distance the soil is moved. EPA and the Corps certainly do not view such a distinction as legally compelled by the Clean Water Act.

Commentors also cited as support for their position the decision of the district court in *U.S.* v. *Lambert*, Env't Rep. Cases (BNA) 1294 (M.D.Fla. 1981), *aff'd*, 695 F.2d 536 (11th Cir.1983), which held that "back-spill" of dredged material into the area from which it was excavated could not be considered to be an "addition" of a pollutant. Notably, however, the *Lambert* case was decided before the Supreme Court decision in *Chevron U.S.A.* v. *NRDC*, 467 U.S. 837 (1984), which now establishes a deferential standard of review of agency actions where Congress has not specifically addressed an issue. EPA and the Corps do not believe that Congress has specifically mandated in any provision of the CWA that redeposition of dredged material is only regulated if it is "moved" from one "place" to "another." Rather than focus simply on the spatial relationship between where the excavation and redeposition occur as the deciding factor determining regulatory jurisdiction under Section 404, this rule will regulate an activity (involving a discharge to any part of waters of the U.S.) taking into account the effect of the activity on the aquatic environment. The agencies believe that this approach is entirely consistent with the language of the CWA, and better effectuates the environmental protection goals of the statute than the approach suggested by commentors. See CWA section 101(a).

3. Regulation of "Activities," Not "Discharges"

Many commentors argued that the proposed rule was outside the agencies' authority under the CWA because the effects-based test for determining whether an activity requires a Section 404 permit impermissibly regulates "activities," whereas the statute only authorizes regulation of "discharges." These commentors also argued that if the agencies were to adopt the proposed rule, EPA and the Corps would be limited by Section 404 of the CWA to considering the environmental effects associated with the discharge itself, not the activity with which the discharge is associated. Commentors cited the decision of the district court in *Reid* v. *Marsh*, 20 Env't Rep. Cas. (BNA) 1337 (N.D.Ohio 1984) as supporting this argument.

EPA and the Corps agree with the point made by these commentors that the presence of a "discharge" into waters of the U.S. is an absolute prerequisite to an assertion of regulatory jurisdiction under Section 404. Based on the clear language in section 301(a) of the CWA, this has been the agencies' longstanding position, and we are not altering that view in this rulemaking. For the reasons explained in this preamble, the agencies believe that addition or redeposition of dredged material in the course of activities such as mechanized landclearing, ditching, channelization and other excavation meets the discharge requirement of section 301(a). Because this rule will only regulate activities where the jurisdictional prerequisite of a "discharge" is present, EPA and the Corps disagree with commentors who argued that this rule is outside the scope of the agencies' authority under Section 404.

Commentors are therefore flatly incorrect that this rule would trigger Section 404 jurisdiction over a discharge based upon the environmental effect of the associated activity. Under today's rule, the presence of certain environmental effects is not a prerequisite for Section 404 jurisdiction; rather, this rule looks to the environmental effects for purposes of creating an exception to the Section 404 permitting requirement that would otherwise apply to the discharge. Consideration of such effects is appropriate in order to ensure that the creation of a *de minimis* exception is consistent with the goals and objectives of Section 404. See discussion in section D, below. Since the agencies clearly have the authority under Section 404 to regulate *all* discharges of dredged

material into waters of the United States, without regard to effects on the aquatic environment, we fail to see how our decision in this rulemaking to regulate a subset of these activities could conceivably be overstepping our regulatory authority under Section 404. Because the only statutory condition for regulation under Section 404 is the presence of a "discharge," commentors' arguments about the scope of environmental effects that can be considered under Section 404 are irrelevant to the findings that EPA and the Corps are making to support today's rule.

To the extent commentors argued that EPA and the Corps can only consider the environmental effects of the discharge itself in administering Section 404 (i.e., in the Corps' permitting process or EPA's Section 404(c) process), such comments are not relevant to this rulemaking, which addresses the circumstances when a discharge or dredged material will required a Section 404 permit, not how the discharge will be addressed in the permitting or 404(c) process. In any case, however, EPA and the Corps wish to clarify that consideration of the environmental effects of activities associated with discharges covered by this rule is well within the agencies' authority in carrying out their authorities under Section 404. Because the scope of the agencies' authority to consider environmental effects is not relevant to our authority to issue this rule, the following discussion is not provided as a legal justification of today's rule, but rather as an attempt to help the public understand how we administer the Section 404 program generally.

Commentors' extremely narrow reading of the agencies' authority is first belied by the language of Section 404(f) of the Act, which was discussed in the preamble to the proposed rule. Section 404(f)(1) exempts certain activities from the requirement to obtain a Section 404 permit. Section 404(f)(2), however, requires that a permit nonetheless be obtained for "any discharge of dredged or fill material into the navigable waters incidental to any activity" which has the purpose of changing the water's use and the effect of impairing the water's flow or circulation, or reducing its reach. Commentors criticized the citation of Section 404(f)(2) in the preamble to the proposed rule. They argued that this provision merely recaptures activities that are exempted under Section 404(f)(1), but that it does not expand the underlying scope of activities covered by the permit requirement of Section 404(a). These commentors have misinterpreted the reason why the agencies cited Section 404(f)(2) in the preamble to the proposal. We agree with the commentors' point that Section 404(f)(2) does not expand the scope of activities subject to Section 404. However, the agencies do not rely on Section 404(f)(2) for such a proposition. Rather, we believe that Section 404(f)(2) contradicts the argument that Congress intended to preclude EPA and the Corps from considering under Section 404 the effects of activities associated with discharges of dredged or fill material, such as mechanized landclearing, ditching, channelization and other excavation. In Section 404(f)(2), Congress expressly required EPA and the Corps to implement the statutory exemptions based upon consideration of not only the effects of the discharge itself, but also the effects of the activity "incidental" to the discharge. Because Congress expressly required the agencies to consider such effects under Section 404(f), we do not believe it would be reasonable to conclude that Congress nonetheless intended to prohibit EPA and the Corps from otherwise considering such effects under Section 404.

Moreover, EPA's longstanding interpretation of Section 404, as reflected in the Section 404(b)(1) Guidelines, demonstrates that EPA and the Corps are not limited to considering solely the environmental effects of the discharge itself. The Guidelines expressly require consideration of "secondary effects," which are defined as

> effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material.

40 CFR 230.11(h). Where an activity such as mechanized landclearing, ditching, channelization and other excavation activities are performed in waters of the U.S. and result in a discharge of dredged material to those waters, we believe that such activities are clearly "associated with" the discharge, within the meaning of Section 230.11(h), and therefore considering the effects of those activities is properly within the scope of Section 404.

Commentors nonetheless cite the decision in *Reid* v. *Marsh*, which addressed the Corps' authority to regulate dredging activities under Section 404. This case held that the Corps was limited under Section 404 to evaluating the effect of the discharge itself, and that the Corps could not look at the effects of the overall dredging activity. For the reasons noted above, however, *Reid* is simply not relevant to this rulemaking, since the sole trigger under this rule for asserting Section 404 jurisdiction is the presence of a "discharge of dredged material," and the agencies therefore have clear authority to regulate the activities covered by today's rule. *Reid* did not address in any manner the scope of the agencies' authority to establish a *de minimis* exception under Section 404.

In any case, we do not view the *Reid* decision as precluding EPA and the Corps from considering the effects of activities associated with a discharge of dredged material in the Section 404 permitting or veto process. Notably, *Reid* was decided before the Supreme Court decision in *Chevron U.S.A.* v. *NRDC* which, as discussed previously, now mandates that courts defer to any reasonable agency interpretation of a statute it administers unless Congress has specifically spoken to the question at issue. The *Reid* opinion failed to cite any provision of the Clean Water Act as precluding the Corps from looking beyond the effects of the discharge itself; nor did *Reid* discuss at all the well-established administrative interpretation in the Guidelines that secondary effects must be considered in issuing permits under Section 404. Since the CWA does not reflect specific Congressional intent that EPA and the Corps be precluded from considering secondary effects under Section 404, the agencies retain broad discretion in deciding whether such an approach is appropriate. EPA and the Corps believe that considering the primary and secondary effects of a discharge is clearly consistent with the language and intent of Section 404 to ensure protection of the aquatic system from effects associated with the discharge of dredged and fill material.

In addition, the *Reid* decision is at odds with the decision of the Tenth Circuit in *Riverside Irrigation District* v. *Andrews*, 758 F.2d 508 (10th Cir. 1985). In this case, the Corps denied nationwide permit coverage for the construction of a dam, the operation of which would have resulted in depleted stream flows that would adversely affect habitat of an endangered species. Even though the discharge of fill material itself to construct the dam would not have had an adverse impact, the court held that the CWA authorized the Corps to consider the total environmental impact of the discharge, including indirect effects such as the impact of the operation of the dam on flows downstream and associated wildlife impacts.

Several commentors cited cases under section 10 of the Rivers and Harbors Act, the National Environmental Policy Act (NEPA), and Section 402 of the CWA as supporting their argument that EPA and the Corps are narrowly constrained to evaluating the effects of the discharge itself. For the reasons discussed previously, these cases are simply not on point because this rule properly triggers Section 404 jurisdiction based upon the presence of a "discharge of dredged material," and arguments about the proper scope of environmental review under Section 404 are therefore not relevant to this rulemaking. In any case, for the reasons explained above, we disagree with commentors that EPA and the Corps are limited to considering only the direct effects of discharges themselves in implementing Section 404.

4. Authority Limited to Regulating Impacts on Water Quality

A few commentors contended that EPA and the Corps could only consider "degradation" of waters of the U.S. in terms of the impacts of an activity on chemical water quality. Some commentors cited for support for this argument the decision of the Seventh Circuit Court of Appeals in *Hoffman Homes* v. *EPA*, 961 F.2d 1310 (7th Cir. 1991), reh. granted and opinion vacated, 35 ENV'T Rep. Cases (BNA) 1328 (7th Cir. Sept. 4, 1992).

EPA and the Corps believe that this comment is erroneous. First, the decision in *Hoffman Homes* relied upon by some commentors has since been vacated by the Seventh Circuit. A new opinion issued by the Court in this case contains no support for the commentor's argument that the CWA is only intended to address impacts of an activity on chemical water quality (*Hoffman Homes* v. *EPA*, No. 90–8810 (July 19, 1993)). We believe, moreover, that there is no support in the CWA as a whole or in Section 404 for the proposition that impacts to the aquatic ecosystem under Section 404 are limited to impacts on chemical water quality, as opposed to impacts on other functions such as flood storage and wildlife habitat.

First, the language in Section 404 itself repudiates the notion that EPA and the Corps may only evaluate impacts of a discharge on chemical water quality. For example, Section 404(c) authorizes EPA to deny or restrict specification of a disposal site for dredged or fill material if the disposal would have an unacceptable adverse effect on a range of aquatic system values, including "shellfish bed and fishery areas (including spawning and breeding areas)," "wildlife," or "recreational areas." There is no language in Section 404 indicating that the adverse impacts to these other aquatic functions are only remediable under Section 404 if the impacts result directly from impacts to chemical water quality.

Similarly, Congress directed that the Section 404(b)(1) Guidelines be based upon criteria comparable to the ocean discharge criteria contained in Section 403(c) of the Act. Section 403(c) states that guidelines for ocean discharges shall include consideration of impacts of a discharge on "marine ecosystem diversity, productivity, and stability; and species and community population changes." Again, there is no language in Section 403(c) limiting the consideration of such impacts solely to those deriving directly from changes to chemical water quality itself. Therefore, the line that some commentors seek to draw around EPA's and the Corps' ability to protect the aquatic environment is simply not one that has been drawn by Congress.

The agencies' interpretation of Section 404, as reflected in the Section 404(b)(1) Guidelines, reaffirms their responsibility to consider impacts of discharges on the broader aquatic ecosystem, and not just water quality itself. For example, 40 CFR 230.10(c) prohibits any discharge of dredged or fill material that would cause significantly adverse effects on ecosystem diversity, productivity and stability such as loss of fish and wildlife habitat. See also 40 CFR 230.32 (describing wildlife values that must be considered in the permitting process); 40 CFR 230.41 (describing how discharges of dredged or fill material may damage or destroy habitat and adversely affect the biological productivity of wetlands).

5. Reversal of Agency Position

Commenters argued that the proposed rule was arbitrary because it represented an abandonment and reversal of an allegedly longstanding agency interpretation of the CWA, and because the agencies allegedly had failed to provide an adequate explanation of the change in policy.

In certain respects this final rule represents a change in Corps regulations and policy, but some commenters seemed to overstate and exaggerate both the extent and the "abruptness" of that change. The Corps and EPA expect that the net effect of this rule will be that most projects involving mechanized landclearing, ditching, channelization, mining, or other excavation activity in waters of the U.S. will require authorization under CWA Section 404. Although this new rule will regulate a number of projects that previously might have escaped Section 404 regulation, it is important to realize that the Corps has been regulating many projects involving mechanized landclearing, ditching, channelization, mining, or other excavation in waters of the U.S. for years because those projects frequently involved substantial discharges of dredged or fill material into waters of the U.S. For example, many drainage ditches in wetlands traditionally have been dug by sidecasting the excavated material into the wetlands; those activities have always been regulated under Section 404. Similarly, many channelization, mining, and other excavation activities in U.S. waters have been regulated under Section 404 over the years, because they involved substantial discharges through disposal or stockpiling of the excavated material in waters of the U.S., or "sloppy" excavation practices, or other substantial discharges. As we shall explain below, the Corps has gradually changed its policy and practice to increase our regulation of mechanized landclearing activities over a period of years. Thus, this final rule is not an abrupt change in policy, interpretation, or practice, that would suddenly begin to regulate all landclearing, ditching, channelization, and other excavation activities in U.S. waters for the first time.

Nevertheless, this final rule does represent both a clarification of agency guidance and a change of agency practice regarding a sub-class of excavation-type activities in waters of the U.S.: i.e., those that would take place with relatively small-volume, "incidental" discharges of dredged material that unavoidably accompany such excavation operations. Until the Corps and EPA undertook this present rulemaking, neither agency had ever promulgated written guidance explicitly and specifically addressing the question whether CWA Section 404 could or should regulate ditching, channelization, mining, or comparable excavation activities in waters of the U.S. based solely on their incidental discharges of dredged material. However, most Corps districts normally followed the practice of not regulating such activities so long as their discharges of dredged material were limited to small-volume, "incidental" discharges.

This practice by most Corps districts was generally consistent with the informal policy of the Department of the Army during much of the 1980s, which narrowly construed the scope of Section

404 jurisdiction over these activities. The practice of not regulating small, incidental discharges was also viewed by many Corps districts as consistent with the thrust of guidance dating from the late 1970s regarding *de minimis* discharges associated with normal dredging activities. This practice led to the adoption by the Corps in 1986 of the current language in the definition of "discharge of dredged material," which excludes from regulation "*de minimis*, incidental soil movement occurring during *normal dredging operations*." 33 CFR 323.2 (1986) (emphasis added). This language was explained in several paragraphs in the preamble to the Corps' 1986 rule, which some commenters who oppose today's rule quoted to support their position. It states:

> Section 404 clearly directs the Corps to regulate the discharge of dredged material, not the dredging itself. *Dredging operations* cannot be performed without some fallback. However, if we were to define this fallback as a "discharge of dredged material," we would, in effect, be adding the regulation of *dredging* to Section 404 which we do not believe was the intent of Congress.

51 FR 41210 (Nov. 13, 1986) (emphasis added).

While some in the Corps (along with some commentors opposed to this rule) have interpreted this language as indicating that the Corps did not intend to regulate fallback associated with *any* activity, the Corps has never in fact adopted written guidance clarifying the scope of this exclusion, or defining the term, "normal dredging activities." Moreover, there is no explicit indication that the language of the rule, or the explanation statement in the preamble, applies generally to mechanized landclearing, ditching, channelization, or other excavation activities in the waters of the U.S. As discussed further below, an informal survey of Corps districts shows that, in fact, the districts have varied in their approach to regulating activities involving only incidental discharges, indicating that the language of the 1986 rule and preamble was not as definitive as some commentors have suggested.

Today's rule therefore represents the first time that the Corps and EPA have clarified the meaning of the term "normal dredging operations," which we have defined as:

> *Dredging for navigation* in *navigable waters of the United States*, as that term is defined in Part 329 of this chapter, with proper authorization from Congress and/or the Corps pursuant to Part 322 of this Chapter; however, this exception is *not* applicable to *dredging activities in wetlands*, as that term is defined at Section 328.3 of this Chapter. (Emphasis added).

By providing this definition, the Corps and EPA hope to substantially reduce the inconsistency among Corps District offices as to scope of the *de minimis* exclusion for discharges of dredged material.

Much of the inconsistency among the Corps district offices on this issue resulted from the decentralized nature of the Corps. Recognizing that conditions and situations differ tremendously across the country, the Corps confers a large amount of discretion upon each of its district engineers to operate the regulatory program in a reasonable manner. Each district engineer must therefore consider local and regional factors in applying national standards. This approach enables the program to remain flexible enough to interpret one standard set of regulations so that it applies to widely varying regional needs and circumstances. In carrying out their responsibilities, districts have therefore had to interpret terms used (but not defined) in the 1986 regulation, such as "*de minimis*," "incidental," and "normal dredging operations" in response to specific projects, situations, and regional needs and these interpretations have differed somewhat across the country.

Corps headquarters did not intercede to halt the adoption of these varying interpretations so long as they did not conflict with the plain words of the regulations. The Corps has always provided its districts with the flexibility to interpret the Corps' regulations so that they may be reasonably applied to varying circumstances. So long as the districts abided by the regulatory language in Section 323.1(d), that indicates that the term "discharge of dredged material * * * does not include *de minimis*, incidental soil movement occurring during normal dredging operations," districts were not prohibited from developing their own operating interpretations of "*de minimis*," "incidental," and "normal dredging operations."

Today's rule aims to rectify the ambiguity inherent in the 1986 rule's statements on "*de minimis* soil movement" and "normal dredging operations," first, by making it clear that the exclusion from Section 404 of "incidental movement" of dredged material only applies to such movement occurring in the course of "normal dredging operations"; all other incidental discharges of dredged material under this rule can be considered a discharge of dredged material regulated under Section 404. Second, today's rule for the first time defines "normal dredging operations," as quoted above.

As noted above, over the years Corps district offices have developed somewhat differing approaches to how they regulate the various activities that produce incidental discharges of dredged material. To sample this diversity, the Corps conducted an informal survey of eleven Corps district offices. The Corps selected the districts surveyed in order to obtain a cross-section of likely practices among district offices. The Corps did not intend, however, for this to be a "scientific" survey statistically representative of practices across the country; the Corps simply wanted to obtain anecdotal information regarding the range of interpretations and practices among the districts. In the survey the Corps found that many districts currently regulate some of the activities covered by this rule. Although the Corps is not aware of any district that regulates all the activities subject to the rulemaking in the same manner that today's rule dictates, there are several districts that regulate one or more of these activities in the same manner as provided for under this rule.

Since the issuance of the 1990 RGL on landclearing (RGL 90–5), the districts have been much more consistent in how they regulate landclearing. In the absence of comparable guidance on ditching, channelization, and mining, the Corps districts have shown a greater diversity in their regulation of these activities. By examining the informal survey results on an activity-by-activity basis, this diversity becomes readily apparent.

Virtually all of the districts surveyed regulate ditching activities that involve sidecasting. At least one of the districts surveyed regulates ditching activities that produce only incidental discharges. These incidental discharges were typically in the form of drippings or fallback from ditching machinery. Another district regulates ditching based on these same incidental discharges, but only if the water of the U.S. being ditched is covered by some type of vegetation that the district could use to classify the activity as landclearing, and thus, apply the guidance in RGL 90–5.

Several Corps districts surveyed regulate channelization activities based on incidental discharges. These districts tend to focus on those channelization operations that employ drag lines. At least one of these districts will only regulate these channelization activities if the activity is conducted in water.

At least three of the eleven districts surveyed regulate mining activities in the waters of the U.S. Two of these districts are currently regulating these activities in virtually the same manner as they will be regulated under today's rule. Other districts only regulate mining activities if the material removed is in water. Yet another district regulates the discing of peat bogs, which is required in the mining of peat.

As explained above, mechanized landclearing is being regulated in a fairly consistent manner by all Corps districts due in large part to the series of regulatory guidance letters that have been issued by the Corps over the past decade. There is, however, some inconsistency in how the most recent RGL (RGL 90–5) is currently being applied by some districts. At least one district, as explained above, uses the RGL 90–5 to regulate discharges incidental to ditching, as long as the area has some type of vegetation on it.

Some degree of inconsistency among the Corps districts' in regulating ditching, channelization, mining, and even landclearing is therefore evident in the results of our survey. The Corps will readily concede that practically every district will have to change some number of their regulatory practices to conform to today's rule. However, the allegation that today's rule represents a sudden and radical departure from a longstanding, official interpretation of our Section 404 regulatory jurisdiction substantially overstates the case.

Commentors specifically cited several RGLs on landclearing, the only written, national guidance the Corps has issued concerning any of these activities, as evidence that the Corps, by promulgating this rule, allegedly is drastically departing from past agency positions. The commentors focused mainly on the RGLs that were issued by the Corps in 1982 and 1985 that more narrowly construed the extent to which mechanized landclearing activities would be subject to Section 404. RGL 82–5 stated that Section 404 did not cover "[m]inimal ("de minimis") movement of dirt, in and of itself, incidental to removal of planting of vegetation." Under this RGL, such activity would be covered if "accompanied by a land leveling operation which alters the topographic features of a 'water of the U.S.' through significant movement of soil." After the decision was issued by the 5th Circuit in *Avoyelles*, the Corps issued RGL 85–4, which provided that mechanized landclearing activities required a Section 404 permit if "the activity would involve burying logs or burying burn residue, or totally or partially filling in sloughs or low areas, or leveling the land." This RGL also stated that piling of trees, brush and stumps with *de minimis* amounts of soil attached or gathered in the piling operation did not necessarily constitute a Section 404 discharge unless it would totally or partially fill in sloughs or level the land. The RGL also stated that the filling of stump holes is normally a *de minimis* discharge because of the *de minimis* nature of the incidental soil movement.

EPA and the Corps acknowledge that the interpretation of the applicability of Section 404 to mechanized landclearing activities contained in these two earlier RGLs was more narrow than that reflected in today's regulation. Rather than view today's rule as a sharp departure of our past position, however, we believe that there has been an evolution in the agencies' treatment of mechanized landclearing under Section 404, which has gradually brought more and more mechanized landclearing activities under regulation by the Section 404 program. The 1982 RGL most narrowly construed the applicability of Section 404 to these activities, while the 1985 RGL recognized additional circumstances when mechanized landclearing would trigger Section 404 jurisdiction. Finally, almost three years ago, the Corps issued RGL 90–5, which took the position that mechanized landclearing activities generally are regulated under Section 404 because they result in the redeposition of dredged material. Today's rule is therefore entirely consistent with the guidance issued by the Corps in 1990.

Thus, while our position has changed over the course of the last decade regarding the applicability of Section 404 to mechanized landclearing activities, we do not agree with the commentors who argued that today's rule is an "abrupt" reversal of our longstanding position. The interpretation of Section 404 contained in the landclearing portion of today's rule is the position that has been taken by the Corps since 1990. This position reflects, moreover, the gradual increase in our appreciation of the severe adverse environmental effects associated with mechanized landclearing that has led us to conclude that regulation of these activities under Section 404 is warranted.

Even if one were to consider today's rule an "abrupt reversal" of a longstanding agency position, however, the Corps and EPA believe that such a change is warranted in light of our increased understanding of the severe environmental effects often associated with the activities covered by the rule, and the increasing sophistication of developers who seek to convert waters of the U.S. to uplands without being subject to the Section 404 regulatory program as previously administered by the agencies. As the Supreme Court recently provided in *Rust* v. *Sullivan*, an "agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis." 111 S. Ct. 1759, 1769 (1991), *quoting Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863–64, 104 S. Ct. 2792. The Court further explained that agencies must be provided the flexibility to "'adapt [their] rules and policies to the demands of changing circumstances.'" *Id.*

Such changes, whether dramatic or slight, must be consistent with the authorizing statute and be based on a "'reasoned analysis.'" *Id. quoting Motor Vehicle Mfrs. Assn. of the United States* v. *State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 42, 103 S. Ct. 2856, 2866 (1983). The Corps and EPA both strongly believe that the regulatory mandates expressed in today's rule are within the authorities provided to our agencies pursuant to Section 404 of the Clean Water Act. Furthermore, we feel that, to whatever extent today's rule constitutes a change of previous practice, such a change is warranted, for the reasons we have explained in the preamble.

The Corps regulatory program over the years has proved to be remarkably adaptable to changes that has occurred in our appreciation of wetland functions and values and in our increased understanding of the effects of certain activities on wetlands. Ever since the Corps was first given authority to regulate discharges of dredged or fill material into waters of the U.S., the Corps and EPA have been shaping and defining the regulatory program with the broad discretion granted to the agencies by the CWA. Today's rule embodies many changes that we have gradually adopted through less formal guidance over the past two decades, and incorporates some refinements and clarifications to our policy that are long overdue.

In certain respects, and for every Corps district, today's rule will bring about changes in our previous practice; however, we believe that such changes are warranted in order to ensure that the Section 404 program can effectively protect our aquatic resources from the degradation that can result from unregulated mechanized landclearing, ditching, channelization, and other excavation activities. As discussed further below, we have learned increasingly over the last decade how

these activities can severely impact our nation's aquatic resources, and we therefore view today's rule as an important means of achieving the objectives of the CWA to "restore and maintain the chemical, physical and biological integrity" of those resources.

The specific facts of the case that led to the initiation of litigation in the *Tulloch* lawsuit provides a graphic example of how mechanized landcleering and ditching activities adversely affect the aquatic environment, and of the inequities that have resulted under the previous policies for regulating these activities. The facts in *Tulloch* help demonstrate the necessity of this rule by revealing how one developer with the technical expertise and financial resources was able, under past agency policies, to avoid the requirement to obtain a Section 404 permit for environmentally destructive activities in waters of the United States.

The *Tulloch* case involved an 1800 acre development project in New Hanover County, North Carolina, called the Pembroke Jones Park. In 1987, the Corps determined that about 700 acres of the site were wetlands. The developer performed numerous activities in the wetlands that "destroyed or degraded" them, yet the Wilmington District repeatedly determined, based on their understanding of the policies of the Corps, that the developer's activities should not be regulated under Section 404.

The developer originally applied for a permit for discharges associated with its development, but withdrew the application in light of concerns among the Corps and resource agencies about the significant adverse effects likely to be caused by the development. The developer subsequently met repeatedly with the Wilmington District of the Corps, presenting a strategy for constructing the same project without the need to obtain a Section 404 permit. First, the developer land cleared much of the wetland acreage. This was accomplished by pushing the vegetation from the cleared area. Wilmington District determined that since the developer removed all the vegetation and did not recontour the land, this activity did not require a Section 404 permit.

If these same activities were employed after the promulgation of today's rule, those activities would trigger Section 404 regulation. Under the rule, for example, the dirt falling from the roots of the trees as they were removed from the ground, in and of itself, would constitute a discharge of dredged material that would subject the mechanized landclearing operation to regulation. Pursuant to today's rule, these landclearing activities pursued by the developer would certainly destroy or degrade the wetlands and therefore require Section 404 authorization.

Second, the developer performed two types of excavation activities in the wetlands. He excavated some areas to create new ponds and excavated drainage ditches. The excavation was performed using draglines (in the ponds) and backhoes, which had sealed buckets. The soil excavated was either placed directly on uplands or placed in sealed containers resting on the beds of 4-wheel drive and 6-wheel drive trucks or pans. The excavation, for the most part, was performed in such a manner that only drippings from the buckets of the excavation machinery were allowed to fall back into the wetland.

Using computer modeling, the developer's consultant determined that by excavating ditches four feet deep every two hundred feet, the wetlands in the first conversion area could be drained, eliminating the presence of wetland hydrology and wetland vegetation, and thereby removing the area from Section 404 jurisdiction. After these ditches were completed and the water table had dropped sufficiently, the Wilmington District released the tract from jurisdiction. The developer used this technique in several other tracts which were also later released from jurisdiction.

The developer also excavated many acres of the wetlands in order to create approximately eighty-five acres of open water ponds. He also inundated portions of the wetlands acreage to create additional open water ponds. The work was accomplished by constructing wooden piers that the Wilmington District did not find to be an activity that was regulated under Section 404.

During the course of the excavation operations, the Wilmington District determined that these activities were not subject to regulation. By using sealed buckets and container trucks, the developer was able to substantially reduce the amount of dredged material being redeposited in the wetland. Although the Wilmington District later adopted a more strict position regarding excavation activities in wetlands, the District initially determined that it would not require the developer to secure a permit based on the "drippings" along.

As a result of this operation, hundreds of acres of environmentally valuable wetlands have been converted into a residential development and a golf course without being regulated, eliminating opportunities to avoid and mitigate adverse environmental effects. Pocosins are an unusual and relatively rare type of wetland found only in the Southeast. Owing their existence to poor drainage and abundant rainfall, pocosins typically serve important water quality and groundwater recharge functions, and often provide habitat for rare plants and animals. Because of the sophisticated methods employed, this developer was able to evade regulation under the Section 404 program while destroying these ecologically valuable wetlands.

It is clear that the methods used by the developer were expressly chosen because they would avoid triggering the need to obtain a Section 404 permit. The developer's representatives met repeatedly with the staff at the Wilmington District to determine what the District believed was the exact extent of its regulatory jurisdiction over wetland excavation. It was only after the developer was confident that it could successfully evade Corps regulation that it would proceed with the next destructive portion of its operation.

It is precisely because of operations like this development that the Corps and EPA have decided to promulgate this rule. At one time it appeared to be sufficient to base the regulation of ditching on sidecast material. This, as well as other similar projects, have demonstrated that this is no longer the case. It the Corps and EPA are to perform their assigned mission under the CWA, "to protect and restore the chemical, biological, and physical integrity of the waters of the U.S.," we believe that modification of earlier practices and policies is necessary and appropriate.

C. Presumption That Mechanized Landclearing, Ditching, Channelization and Other Excavation Result in Discharges

The proposed rule contained language that would have established an irrebuttable presumption that mechanized landclearing, ditching, channelization or other excavation activities in waters of the United States result in the discharge of dredged material (proposed 33 CFR 323.2(d)(2) and 40 CFR 232.2(e)(2)).

1. Public Comments and Changes to Proposed Rule

Commentors expressed several concerns with this approach. First, commentors argued that the terms "mechanized landclearing," "ditching," "channelization" and "excavation" are vague, and therefore do not provide clear guidance to the regulated public as to whether their activities would require a permit under the rule. Commentors argued, moreover, that the agencies had not presented factual information in justify the conclusion that these activities invariably result in discharges. They contended that it is possible in some cases to conduct some of these activities without causing any fallback or redeposition of dredged material.

In response to these comments, and in order to ensure that the final rule is clear and understandable, the Corps and EPA have made certain changes in the final rule. The agencies have deleted the proposed rule language that would have established the irrebuttable presumption that the listed activities will result in discharges of dredged material. As explained in the preamble to the proposed rule and explained further below, we believe that it is virtually impossible to conduct mechanized landclearing, ditching, channelization or excavation in waters of the United States without causing incidental redeposition of dredged material (however small or temporary) in the process. However, the agencies cannot rule out the possibility that, in a highly unusual case, or with novel technology, one or more of these activities might be accomplished without such a discharge. Moreover, since the agencies' jurisdiction over a particular activity can only be triggered by the presence of a discharge in the specific case, the agencies declined to make a categorical finding in this regulation that the listed activities always result in discharges. That determination, by its nature, depends on the facts of a particular case. However, the agencies strongly admonish any party considering conducting any one of these activities without obtaining a permit that they may be proceeding at the risk of violating Section 404 since, under today's rule, a permit is required in any case where any incidental redeposition of dredged material (however small or temporary) is cause in connection with an activity that would destroy or degrade waters of the United States, unless otherwise exempted under Section 404(f).

Because this rule does not make a finding that mechanized landclearing, ditching, channelization and other excavation will always result in discharges, commentor's concerns about the factual support for such a finding are no longer relevant. Section C, below, however, provides a detailed description of how mechanized landclearing, ditching, channelization and other excavation activities can result in the redeposition of dredged materials.

Several commentors stated that the term "mechanized landclearing" should not be defined to include operations such as the moving or cutting of vegetation where the activity occurs at or above the soil/sediment line. Some commentors wanted the Corps and EPA to clarify which landcleering activities will be regulated under this rule. We agree that not all mechanized operations involving the removal of vegetation in wetlands and other waters of the United States should be regulated because not all these operations result in a discharge of dredged or fill material.

In response to these comments, the definition of discharge of dredged material in the final rule expressly excludes "activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, or chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material." Under this language, a discharge only occurs when mechanized landclearing activities occurring in waters of the U.S. cause soils and other excavated dredged materials to be added or redeposited in such waters. So long as all work occurs above ground level, and root systems are not substantially disturbed, the cutting of vegetation, whether using hand-held equipment or equipment mounted on heavy machinery, would not cause either the addition or the redeposition of dredged material. For example, maintenance clearing of existing powerlines and chipping cut vegetation in place or shearing vegetation above the soil line where the vegetation is not subsequently windrowed or otherwise pushed would not usually cause a discharge regulated under Section 404.

Several commentors, however, appeared to argue that maintenance of utility line corridors would never result in a discharge of dredged or fill material. These commentors cited the decision of the Fifth Circuit in *Save Our Wetlands, supra*, which held that cutting of trees with a chainsaw and windrowing of the vegetation did not result in a discharge subject to Section 404. As noted above, today's rule expressly excludes from the definition of "discharge of dredged material" the cutting of vegetation above the ground. Under today's rule, if vegetation is cut above the surface and then lifted into windrows without causing redeposition of excavated material, then no Section 404 permit is required. If, however, windrowing is accomplished in a manner that would redeposit dredged material (for example, by pushing the fallen vegetation with a bulldozer or similar equipment), then a permit would be required.

Unlike certain commentors, however, we do not read *Save Our Wetlands* as holding that EPA and the Corps are precluded under the CWA from regulating landclearing unless it would result in a conversion of waters of the U.S. to uplands. That decision did not construe the scope of the agencies' statutory authority under Section 404, but rather turned on EPA's and the Corps' regulatory definition of discharge of dredged material. The court held that the activities in that case did not constitute a discharge of dredged material under the agencies' regulatory definition because the activity would not convert wetlands to uplands. An activity involving a discharge of dredged material subject to today's rule, however, would require a permit if it would destroy or degrade a water of the United States. We do not read *Save Our Wetlands* as addressing, in any respect, the agencies' statutory authority to adopt the regulatory approach we are taking here. Indeed, the court expressly noted in its opinion that Congress left to EPA and the Corps how to define the term "dredged or fill material." *Id.* at 647.

2. Description of Mechanized Landclearing, Ditching, Channelization and Other Excavation Activities

The agencies provide below a detailed description of the actual processes involved in mechanized landclearing, ditching, channelization and other excavation. This discussion is intended to be illustrative of the major types of landclearing and excavation techniques currently used, and is not intended to be exhaustive or limit in any manner the scope or applicability of the final rule. We are providing this description in order to illustrate the manner in which these types of activities cause incidental soil movement, which results in additions or redepositions of dredged material.

a. *Mechanized landclearing.* In the mechanized landclearing process, the addition or redeposit of dredged material can occur several ways. For example, implements used in the mechanized landclearing process are scraped along the surface of the ground or pushed into the ground and then moved through the soil, usually by bulldozers or loaders. Brushrakes, rootrakes, chunkrakes, disc harrows, root plows, rippers, bulldozer plows, and many types of shearing blades are characteristic of the type of equipment which operate in this way. Brushrakes, for example, have tines which scrape

below the ground level to gather and stockpile slash and loose rock; chunkrakes have bowl shaped blades frequently up to two feet or more in diameter, which cut into the ground and fluff the soil; disc harrows knock down, chop and partially bury weeds, brush, and small saplings by using concave disc, two feet or more in diameter, with sharp scalloped edges; root rakes remove roots and stumps by use of a fork-like blade pushed through the soil; shearing blades are tractor-mounted shears which can weigh up to several thousand pounds and can move large amounts of debris, soil and roots if they are moved along the surface of the ground. Rippers and deep plows are pulled along below the soil surface to break up hard pans or other stiff subsoil. The arm which attaches them to the bulldozer or loader drags through the soil surface, moving soil aside and thereby causing a discharge.

When the implements used in mechanized landclearing move along the ground or through the soil, they scrape, pick up, move or otherwise displace debris and soil (including leaf litter and humus) and usually have a leveling effect on the ground by moving debris from high areas to low areas. When soils are picked up, moved, or otherwise displaced, they are added or redeposited to waters of the United States at various distances from the excavation point as the implements used in the mechanized landclearing process move through waters of the United States. During the discing, tining, or raking process, for example, soil will ride in front of the disc, tine, or rake if the disc, tine, or rake scrapes or penetrates the ground, resulting in a displacement and redepositing of soils and sediments.

The addition or redeposit of dredged material also occurs when equipment is used to knock down trees and rip up root systems even if the equipment used does not, in itself, scrape across or penetrate the ground. When stumps are ripped out of the waters of the United States, soils and sediments are added or redeposited back into the waters of the United States. Also, holes and depressions are created in the ground which are typically filled by using the vehicle which removed the trees and their roots or subsequently by other vehicles or equipment. This filling or redeposition would constitute a discharge in addition to that which occurs by the removal of the stumps themselves. Tree pushers and tree splitters are examples of equipment which normally operate in this way. A tree pusher uses a bar mounted to the front of a bulldozer or loader while a tree splitter uses a V-shaped blade, which is usually about 18 to 20 feet in length. As the tree pusher or tree splitter knocks the tree down, the roots are usually ripped up out of the ground. Any roots remaining are then typically removed from the ground by the bulldozer's blade. Not all equipment used to remove trees disturbs root systems, or pushes, drags, or otherwise engages in an activity which results in a discharge of dredged material. Some tree shears or tree pinchers, for example, may be operated in such a manner so that they do not cause a discharge of dredged material, provided the vegetation is cut above the ground while leaving the soils and roots intact.

b. Ditching, channelization and other excavation. During excavation, material in either a solid or semi-solid form is removed from the waters of the United States. As material is excavated from the waters of the United States, the addition or redeposit of dredged material occurs through soil or sediment spills, drippings, and moving or displacing of soils and sediments as the dredging equipment moves through the soil or sediments.

Ditching and channelization are two types of excavation activities which often occur in wetlands and in other waters of the Untied States. As we use the terms here, ditching is the act of creating ditches (i.e., trenches or troughs) by excavating the earth. Channelization is the modification made to, within, or adjacent to an existing stream channel, as well as the rerouting of a steam channel. Both ditching and channelization are used to convey water, often for irrigation or drainage purposes and can be accomplished by using the same equipment.

Most ditching and channelization activities are accomplished using excavation equipment of some type, which is usually characterized by the use of some form of bucket or scoop to excavate soil and sediment.

Mechanial dredging equipment typically consists of a backhoe, a bulldozer, a dipper, or a bucket. A backhoe is a hoe-type or pull-type shovel usually attached to the back of a front loader. A backhoe, which shovels and then lifts soil or sediments from waters of the United States, is often used during the construction of ditches or for stream channelization projects. A dipper and bucket operate at the end of a boom, which is attached to a crane or other vehicle. Buckets are suspended from a cable and dippers are fixed directly to the boom, Typically, a crane drops the bucket into the soil or through the water column to the bottom. The bucket is filled with soil or sediments and lifted from the water or off the ground and dropped or sidecast on adjacent grounds or into vehicles where it is moved to another disposal site. Bucket dredging for ditching and channelization projects is commonly done with a dragline. Draglines, or other equipment of this kind, operate by dropping the bucket into the soil or sediment and then dragging it through the soil or sediment until it is filled. With a dipper, as with a backhoe, a bulldozer or loader pushes the scoop or hoe through the soil or sediment in order to fill up the dipper. The dipper is then moved off the bottom and the collected sediments disposed of as they are with buckets.

Many stream channelization projects are accomplished by using a bulldozer to push sediments, including cobble, gravel and sand, from a particular point in the stream to another location. To complete such work, the bulldozer blade is lowered into the bottom of the stream and then moved in a forward direction which results in the pushing of sediments to another location in the steam or to an upland area.

Because of the physical processes of soil movement inherent in the act of dredging, the use of bulldozers, draglines, dippers, and backhoes, or other equipment of this kind will, except in limited situations, result in some addition or redeposition of dredged material. The addition or redeposit of dredged material occurs as soils and sediments are picked up and moved during the excavation process.

For example, when a dragline or backhoe is dragged through soils or sediments, such soils and sediments are displaced and redeposited to various distances from the initial excavation point as the implement used in the excavation process gathers the dredged material. This same type of displacement and redeposition occurs as a bulldozer pushes sediments during a stream channelization project. Also, when the dragline or backhoe stops moving along the bottom and the bucket is raised, additional additions or redeposits of soils or sediments occur as such material falls from the bucket.

The cutterhead dredge is the most commonly used hydraulic dredger. It operates by using a rotating cutter to cut into the sediments. The rotating cutter is attached to a suction line which sucks in the material as it is being cut. Typically, a cutterhead is used to break up the sediment and mix it into a slurry and then pump it through a pipe to a disposal area. As the cutterhead moves through the bottom, it pushes the sediment around. The addition or redeposit or dredged material occurs as the whirling of the cutter slings some of the dredged material away from the suction of the pump either as discrete clumps or in suspension and adds or redeposits it at various points from where the cutterhead moved through the bottom.

D. Effects of Mechanized Landclearing, Ditching, Channelization and Other Excavation

The agencies received substantial public comment regarding whether the activities that would be covered by this rule in fact destroy or degrade waters of the U.S. Many commentors cited activities that they believed did not cause such an effect. There was also confusion regarding the meaning of "degrade" in the proposed rule. Some commentors also objected to the presumption in the proposed rule that these activities destroy or degrade wetlands, and questioned the factual basis for such a presumption. These comments are addressed below.

1. Definition of "Destroy" and "Degrade"

The proposed rule did not contain definitions of the terms, "destroy" and "degrade." In the preamble to the proposal, however, the agencies solicited public comment on defining destruction as altering an area "in such a way that it would no longer be a water of the U.S," and defining degradation as occurring when a discharge "results in an identifiable decrease in the functional values of the water of the U.S." 57 Fed. Reg., 26896.

Several commentors supported the definition of "destroy," stating it was clear and concrete. A few commentors recommended that the definition of "destroy" be modified to clarify that it is only necessary to determine whether there is destruction in areas currently being delineated as waters of the United States. Two commentors felt the destruction threshold was inadequate and that destruction would also occur when a wetland or other special aquatic site is converted to open waterbody, such as conversion of a wetland to a retention pond. Another commentor disagreed and argued that this type of activity did not destroy, and possible did not even degrade, waters of the United States. We believe that the term "destroy" is sufficiently clear that no change in the proposed approach is appropriate.

We agree with commentors that the jurisdictional status of an area before and after an activity takes place should be based on current agency guidance for making such determinations. While we agree that conversion of a wetland or other water of the U.S. to another type of water of the U.S. (e.g., conversion of a wetland to open water such as a lake) does not necessarily "destroy" a water of the U.S., such a change could in fact "degrade" an area by adversely affecting at least one of the aquatic functions of the site. As discussed further below, while there may be some environmental benefits associated with such a project, any adverse effect on any aquatic function would mean that an activity required a Section 404 permit. While such an activity may well receive a permit based on consideration of the Corps' public interest review and the Section 404(b)(1) Guidelines, we do not believe that it would be appropriate to exclude such activities from the coverage of Section 404 entirely. For clarity, we have added the definition of destroy to the final rule (see 33 CFR 323.2(d)(4); 40 CFR 232.2(e)(4)).

By far, most commentors addressing these terms were concerned with the definition of "degrade" contained in the preamble to the proposal as "an identifiable decrease in the functional values of waters of the United States." The commentors stated that "identifiable decrease" and "functional values" were vague terms, which were not susceptible to measurement, and that adoption of these terms would only contribute to increased confusion over the Section 404 regulatory process, as a result of subjective determinations made by Corps or EPA personnel. Two commentors felt that the term "functional values" was inappropriate and should be replaced with "functions and values," to be judged separately since functions are measurable and values are subjective. A few commentors recommended that regulated waters be generally classified, according to potential functions and values, for their respective geographic areas, while two others felt functions should be directly related to the science of water quality. Several commentors stated that there is no established methodology to evaluate functional values for impact assessment. Therefore, they recommended that the Corps and EPA develop a methodology and/or identify a preferred method to provide a clear and precise standard to measure degradation. Further, two of these commentors also felt that the selected methodology should be implemented only after promulgation through notice-and-comment rulemaking.

Several commentors disagreed with the example presented in the proposed rule, *i.e.*, that if the hydrologic regime of a wetland is altered enough to change the vegetative composition of the area, it will be degraded. These commentors did not believe a mere change in vegetative composition automatically results in degradation. As a means of better clarifying the term "degradation," several commentors suggested that the definition refer to an "identifiable adverse effect that the proposed activity is likely to have on waters of the United States." Two commentors suggested replacing the word "identifiable" with "significant" and one commentor recommended changing "identifiable decrease" with "appreciable decrease."

Because there was confusion among the public about the term "degrade" we have chosen to include a definition of degradation in the final rule that incorporates suggestions made by some commentors. Under the final rule, an activity results in degradation when it would have more than a *de minimis* effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function. As discussed further below, this standard is a threshold for determining whether an activity requires a Section 404 permit at all, so we believe that any adverse effect to any aquatic function of the site would constitute "degradation" under the final rule. Evaluation of the project and its overall impacts under the Section 404(b)(1) Guidelines and the Corps' public interest review would occur during the permit process.

This definition changes how the term "*de minimis*" is used in the rule from the way it has been used previously in the definition of "discharge of dredged material." In the previous rule, the term "*de minimis*" referred to the amount of soil moved during normal dredging activities, and the proposed rule similarly used this term to refer to the amount of soil moved in the process of mechanized landclearing, ditching, channelization and other excavation. The definition of degradation in the final rule uses the term "*de minimis*" to refer to the degree of environmental effects associated with these activities. This change makes sense for several reasons. First, using the term "*de minimis*" to refer to environmental effects is consistent with the intent of this rulemaking, which is to ensure that incidental discharges associated with mechanized landclearing, ditching, channelization and other excavation trigger Section 404 where those activities would have certain effects on waters of the U.S. Establishing a *de minimis* effects test also comports with the structure and goals of Section 404, which focus on providing protection of waters of the United States from adverse effects associated with discharges of dredged or fill material.

EPA and the Corps believe that the *de minimis* exception contained in today's regulation is within the agencies' authority under Section 404. The underlying focus of Section 404 is on evaluating and, where possible, reducing and avoiding adverse effects to the aquatic environment due to discharges of dredged or fill material. Section 404's focus on environmental effects is evident in numerous aspects of this statutory provision. For example, Section 404(c) authorizes EPA to prohibit, deny or restrict the specification of any site for the discharge of dredged or fill material if it would have "unacceptable adverse effects" on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. A similar focus on environmental effects is evident in Section 404(f)(2), which "recaptures" activities otherwise exempt under Section 404(f)(1) where the activities have the purpose of changing the use of an area of waters of the United States, and have the effect of impairing the flow or circulation, or reducing the reach, of waters of the United States.

Thus, the very purpose of Section 404 is to conduct an environmental review of discharges of dredged or fill material in order to determine the gravity of the environmental harm associated with the discharge, and evaluate ways in which that harm can be reduced or avoided. The focus of Section 404 on effects of discharges is reflected throughout the Section 404(b)(1) Guidelines which, for example, prohibit discharges where a practicable alternative would have less "adverse impact" on the aquatic ecosystem, where a discharge would cause or contribute to significant degradation of the aquatic environment or where appropriate and practicable steps have not been taken to minimize "adverse effects of the discharge on the aquatic ecosystem." See 40 CFR 230.10 (a), (c), and (d). See also 40 CFR 230.11 (listing types of effects that must be considered in the permitting process).

Therefore, subjecting *de minimis* activities to review under section 404 would be a needless paper exercise that would divert limited agency resources from focusing on discharges associated with environmental effects of concern under Section 404. Given the clear focus of Section 404 on regulating activities based on their environmental effects, we view an exception for discharges of dredged material having *de minimis* effects as a tool for advancing the goals and objectives of Section 404. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (DC Cir. 1979).

We note that the exception addressed by this rulemaking was already present in the agencies' regulatory definition of "discharge of dredged material." This rule is clarifying, and narrowing the effect of, this pre-existing exception. Moreover, as discussed further below, EPA and the Corps have included provisions in the rule to help ensure that only truly *de minimis* activities are exempted from the Section 404 program by requiring that dischargers engaging in mechanized landclearing, ditching, channelization and other excavation obtain a finding by the Corps, or EPA as appropriate, prior to their discharge, that their activities do not require a permit.

We wish to emphasize that the threshold of adverse effects for the *de minimis* exception is a very low one. Under the final rule, an identifiable adverse individual or cumulative effect on any aquatic function is sufficient to subject an activity to Section 404 jurisdiction. Some activities may cause certain adverse effects on the aquatic ecosystem while having other beneficial effects. For example, an activity altering the hydrology of a wetland may result in restoring pre-existing hydrology, or may improve habitat value or water quality in the long-term. If the activity would result in some loss or identifiable reduction of any aquatic function to achieve this result, however, the activity would "degrade" waters of the U.S. and a permit would be required under today's rule. For example, if a discharge activity would have any adverse impact on the suitability of the area as habitat for any species utilizing the area, a permit would be required. It is not our intent, therefore, that the positive and negative effects of the activity be balanced and to require a permit only in those cases where the net effect is adverse. Rather, an adverse effect on any one aquatic function, even if it is temporary, would be sufficient under the final rule to trigger the Section 404 permit requirement.

In the case of endangered or threatened species, any effect of an activity on such species would trigger an inquiry by the Corps as to the nature of that effect, and whether the activity would destroy or degrade waters of the U.S. within the meaning of today's rule. If there is an effect on endangered or threatened species from an activity, the Corps in consultation with the Fish and Wildlife Service or the National Marine Fisheries Service (depending on the agency having jurisdiction over the species) under Section 7 of the Endangered Species Act, will determine whether the activity is likely to adversely affect the species. If the Corps finds that the activity is not likely to adversely affect the species, and the Service concurs in writing in this finding, then the activity would not "degrade" the water within the meaning of today's rule, and no permit would be required. If, however, either the Corps or the Service believes that the effect is likely to be adverse, then a Section 404 permit will be required for the activity.

Other examples of adverse effects on any aquatic function would be an adverse alteration of the area's hydrologic regime, or of the type, distribution of diversity of vegetation, fish and wildlife that depend on such waters. Again the threshold of effect under the final rule is a low one. It would not be necessary for a discharge activity to remove or significantly impair wetland hydrology to trigger the permit requirement. An activity that would, for example, likely reduce the duration of inundation or saturation of a portion of wetland would "degrade" the wetland within the meaning of this rule. Indeed, in some cases, increasing the duration of inundation or saturation may have an adverse effect on an aquatic function. Similarly, alteration of the vegetative composition of a water of the U.S. does not require that all vegetation be removed, or that the vegetative composition be so significantly altered that the area would no longer meet the hydrophytic vegetation criteria for delineating wetlands. A lesser change to the vegetation of an area can, for example, have an impact on the function of a wetland as a food source or as habitat for a species utilizing the area.

Activities such as walking, bicycling or driving a vehicle through a wetland would have *de minimis* effects except in extraordinary situations, and the agencies do not intend to devote scarce resources to regulating such typically innocuous activities.

In response to commentors who thought that the agencies should establish a higher effects threshold in this rule (e.g., activities would be regulated only when they have a "significant" effect on the environment), we wish to emphasize that the *de minimis* exception is necessarily a narrow one, limited to "trifling" or "inconsequential" effects (see *Alabama Power Co.* v. *Costle*, 636 F2d. at 360 (DC 1979). Moreover, the evaluation of effects under this rule is for the purpose of determining whether an activity is subject to regulation under the CWA at all. When an activity poses more than *de minimis* effects on the aquatic environment, the severity of those effects will be evaluated to determine whether, for example, a class of activities would have minimal effects and therefore could be authorized by a general permit. See CWA Section 404(e). The severity of effects is also evaluated during the individual permitting process to determine whether a permit should be issued and, if so, with what conditions. Where the question, however, is whether an activity requires authorization at all, we believe that the threshold should be a low one, consistent with the nature of the legal *de minimis* exception.

The term "significant impacts" by contrast, generally suggests a severe adverse environmental effect. As used in the National Environmental Policy Act (NEPA), an action "significantly" affecting the environment triggers the most rigorous of environmental reviews, an environmental impact statement. Similarly, under the Section 404(b)(1) Guidelines, any discharge that would "significantly" degrade waters of the U.S. is prohibited. Such a high threshold is not appropriate where, as here, the question is whether an activity should be subject to regulatory scrutiny under Section 404 at all.

Because commentors expressed confusion regarding the application of the phrase "decrease in functional values" that was included in the proposed rule, this phrase is not included in the final rule. Nevertheless, an evaluation of the functions of a water of the U.S. is obviously relevant to determining whether an activity may cause an adverse effect on waters of the U.S. For example, an area whose functions include vegetation serving as a food source or habitat for migratory waterfowl would suffer a decrease in that function by the alteration or removal of vegetation. However, it is not our intent to place on the Corps or EPA a heavy burden of conducting a detailed evaluation of the water's functions and values and documenting how they would be impacted by an activity. Such an inquiry is more relevant to the evaluation conducted by the Corps under the Section 404(b)(1) Guidelines and Corps regulations in the permitting process itself. Again, we emphasize that this is merely the threshold inquiry of whether an activity should be subject to regulation under Section 404 at all. We believe it is sufficient for this purpose that the Corps or EPA, as appropriate, evaluate the available information to make a reasonable judgment of whether an activity will adversely affect waters of the U.S.

For similar reasons, we also disagree with commenters who suggested that the agencies should establish a scheme for classifying the values of wetland areas for purposes of this rule. The "value" of a water of the U.S. is again something that should be considered in the permitting process when the Corps determines whether a discharge complies with the Section 404(b)(1) Guidelines, and what type and level of mitigation is necessary to compensate for the impacts of a project. We do not view a detailed consideration of values of an area to be necessary for the Corps or EPA to determine whether an activity would simply have an "adverse effect" on a water of the U.S.

One commenter argued that the rule should list the specific activities that require a Section 404 permit based on the type, location, and known impact of the activities and also should identify "*de minimis*" activities that will not require a Section 404 permit. While such a list might be ideal from the regulated community's standpoint, the types of activities that involve a discharge and would destroy or degrade waters of the United States are too numerous and varied to list definitively. They generally must be evaluated on a case-by-case basis. However, today's rule does provide examples of several activities that require a permit unless the discharger demonstrates they would not destroy or degrade waters of the U.S. (i.e., mechanized landclearing, ditching, channelization and other excavation in waters of the United States).

Several commentors argued that the agencies had failed to give the public adequate notice of the meaning of the terms "destroy" and "degrade" as required by the Administrative Procedure Act. We disagree. Definitions of the terms "destroy" and "degrade" were discussed in the preamble of the proposed rule, along with a request for public comment. The definitions of "destroy" and "degrade" in the final rule reflect the proposal and the public comments received. We believe that the agencies have fully complied with the Administrative Procedure Act's rulemaking requirements.

One commentor felt that the definitions of "destroy" and "degrade" contradicted Section 101(g) of the CWA. It is entirely unclear to us how this rule conceivably would be inconsistent with Section 101(g), which provides that State water rights will not be superseded, abrogated, or impaired by the CWA. This aspect of the rule simply addresses what activities result in discharges of dredged material requiring a permit under Section 404 of the Act. Merely subjecting activities to the Section 404 permitting requirement cannot, in and of itself, result in any impact on allocation of water rights. The substantive criteria for processing Section 404 permits are not altered in any way by this rule.

Two commenters believed that the determination of degradation should be the responsibility of the State agency to ensure compliance with State water quality standards. We disagree, since the Corps and EPA are charged with administering the regulatory responsibilities of CWA Section 404. Moreover, degradation of waters of the U.S. will not necessarily be limited to consideration of State water quality standards.

2. Presumption That Activities Destroy or Degrade

The proposed rule also would have established a rebuttable presumption that mechanized landclearing, ditching, channelization and other excavation would result in the destruction or degradation of waters of the United States. See 33 CFR 323.2(c)(2); 40 CFR 232.2(e)(2). Some commenters supported the proposed rebuttable presumption because they felt these activities virtually always cause adverse impacts to the aquatic ecosystem.

Other commentors opposed the presumption in the proposal on the grounds that the government should bear the burden for demonstrating that it has jurisdiction over an activity. These commentors cited the discussion in the preamble to the proposed revisions to the wetlands delineation manual, in which the government stated that it bore the burden of demonstrating that it has geographic jurisdiction over a specific area under the statue. These commentors argued that such a burden should also fall on the government here. Some commentors contended that the presumption would impose unreasonable costs on project proponents seeking to rebut the presumption. Commentors also argued that the presumption was based upon a factual finding that these activities virtually always destroy or degrade wetlands, yet the agencies have not provided record support for such a conclusion beyond the reference to the "experience" of the agencies in administering the Section 404 program.

We believe that these commentors have misconstrued the nature of and basis of the approach in this rulemaking. In the proposed rule, the agencies stated that, in our experience, mechanized landclearing, ditching, channelization and other excavation virtually always destroy or degrade waters of the United States. While this statement accurately describes our experience, we are not relying on such a factual finding to support the approach in the final rule. Rather, we view the final rule as legally appropriate in light of the language and structure of

Section 404, which prohibits the discharge of dredged or fill material except in compliance with a permit under Section 404. In our view, the addition or redeposit of *any* dredged material into waters of the U.S. associated with mechanized landclearing, ditching, channelizaton and other excavation constitutes a "discharge," and is therefore prohibited if no permit is obtained under Section 404, unless otherwise exempted under Section 404(f).

The approach taken by the agencies in this rule is to carve out a narrow exception to the Section 404 permitting requirement for certain discharges that are associated with activities that have only *de minimis* environmental effects. We do not view this exception as compelled by the Act. There is no express *de minimis* exception in Section 404, and it would therefore be perfectly consistent with the statutory scheme to require that any person discharging dredged material in the course of mechanized landclearing, ditching, channelization, other excavation or any other activity to obtain a Section 404 permit, without regard to the effects of the associated activity on waters of the U.S. Nonetheless, the agencies believe that the better approach in this case is to maintain a narrow exception for those activities that have only a *de minimis* effect on waters of the U.S. This exception, as explained above, is consistent with Section 404 and will help improve the efficiency and effectiveness of the program by focusing limited agency resources on activities having more than inconsequential environmental effects.

The language and structure of the final rule have been modified to reflect the basis for the agencies' approach. First, the rule states that any addition or redeposit of dredged materials into waters of the U.S. incidental to any activity, including mechanized landclearing, ditching, channelization and other excavation constitutes a "discharge of dredged material." 33 CFR 323.2(d)(1)(iii); 40 CFR 232.2(e)(1)(iii). The rule therefore provides that a Section 404 permit is required for the incidental discharge unless the discharger demonstrates to the Corps, or EPA as appropriate, prior to the discharge, that the activity associated with the discharge does not have or would not have the effect of destroying or degrading any area of waters of the United States. Under the final rule, a discharger bears the burden of demonstrating that such activities will not destroy or degrade the waters of the U.S., including wetlands. 33 CFR 323.2(d)(3)(i); 40 CFR 232.2(e)(3)(i).

Given the language and structure of the Act, we believe that the approach adopted in the final rule is appropriate. Under the CWA, a party wishing to discharge dredged material into waters of the U.S. can only do so if it obtains a Section 404 permit, unless otherwise exempted. Therefore, if such a discharger conducting mechanized landclearing, ditching, channelization or other excavation desires to proceed without Section 404 authorization, we believe that it behooves the discharger to obtain an affirmative finding from the Corps, or EPA as appropriate, prior to the discharge, that the discharge is subject to the *de minimis* exception. Requiring dischargers to bear the burden of demonstrating that its activities do not require a Section 404 permit does not, as some commentors have asserted, place an unreasonable burden on the discharger. Rather, since the discharger would otherwise be required to obtain a permit for its activities, we believe that it behooves the discharger to demonstrate affirmatively that mechanized landclearing, ditching, channelization or other excavation activities should be exempted from the permitting requirement. Moreover, EPA and the Corps would not feel comfortable establishing a *de minimis* exception for mechanized landclearing, ditching, channelization or other excavation activities without the procedural protection of requiring an affirmative finding prior to the discharge by EPA or the Corps that the exception is appropriate in a particular case. This will ensure consistency in the application of the exception and guarantee that the exception is interpreted in a manner consistent with the purposes of the CWA. Under the final rule, dischargers conducting activities other than mechanized landclearing, ditching, channelization or other excavation which would not destroy or degrade waters of the United States (e.g., walking and vehicular traffic) do not require a prior finding by the relevant agency that the activity can proceed without obtaining a Section 404 permit. The agencies do not believe that it would be practical, or an efficient use of limited agency resources, to require a prior determination in such cases. However, should any activity—including activities other than mechanized landclearing, ditching, channelization or other excavation—undertaken by a discharger in fact have more than a *de minimis* effect on waters of the United States, that discharger is subject to enforcement action or citizen suit for discharging without a Section 404 permit.

Some commentors objected to the proposal of regulating only activities that are associated with incidental discharges where those activities produce certain environmental effects. These commentors felt that the agencies should regulate any addition or redeposit associated with mechanized landclearing, ditching, channelization and other excavation, regardless of its impact on the aquatic environment. We do not believe, however, that it would be an effective use of limited agency resources to eliminate completely the *de minimis* language in the current definition of "discharge of dredged material" so that all incidental discharges would be regulated, without regard to their environmental effect. The underlying purpose of Section 404 is to avoid, where possible, the degradation of our nation's aquatic resources due to discharges of dredged or fill material, and it is in keeping with that goal to focus limited agency resources on activities that have more than a *de minimis* effect on those waters. See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357–360 (DC Cir. 1979).

We also do not agree with one commentor that there should be an opportunity for an appeal to an independent panel of a decision to require a Section 404 permit. The CWA grants the Corps or EPA, as appropriate, the authority to determine that a certain activity is subject to the Section 404 permitting requirement. Allowing an "appeal" at such a preliminary stage in the permitting process would not be in accordance with the agencies' roles under the statute, and would be wasteful of limited agency resources.

Many commentors recommended that the Corps specify the mechanism by which project proponents may demonstrate that their activity does not require a Section 404 permit. The Corps district engineer and EPA Region, as appropriate, will require the minimum information necessary to conduct an adequate evaluation of an activity's impacts. The submittal to the Corps district engineer will include, as necessary, the following information: A written description of the project; the specific landclearing, ditching, channelization, or excavation techniques to be used; the equipment to be used; the acreage and type of wetland or other waters of the U.S. to be affected; the extent and type of impacts projected; the change or loss of wetland functions and values that could be anticipated from the activity; a project location-vicinity map; the name, address and phone number of the applicant; and other site-specific information requested by the district engineer. Based on this information, the Corps district engineer or EPA Region, as appropriate, will determine, within a reasonable length of time, whether a Section 404 permit is required.

One commentor recommended that the language of the proposed rebuttable presumption be modified to have the nature and extent of the impact assessed during the individual permit review process. We agree with the intent of this suggestion; however, no change is necessary. If an individual Section 404 permit application is submitted, the Corps will evaluate the nature and extent of the impacts of the activity and, if appropriate, return the application if no permit is required.

Finally, we do not believe that a determination by the Corps or EPA that a discharger must obtain a permit under today's rule would be subject to judicial review, since pre-enforcement review is not available under the CWA. See *e.g., Avella* v. *Corps*, 20 ELR 20920 (S.D. Fla. 1990), *aff'd* 916 F.2d 721 (11th Cir. 1990) (holding that Corps finding that a discharger could not proceed under a general permit and had to obtain an individual permit was not subject to judicial review).

3. Whether Specific Activities Will Destroy or Degrade Waters of the U.S.

In the preamble to the proposal, we solicited public comment on whether there were certain categories of activities which, as a general rule, did not destroy or degrade waters of the U.S. and which therefore would not come within the scope of this regulation. We address below comments that were submitted on this issue.

Many commentors felt that the modification of the definition of "discharge of dredged material" was too expansive and would result in the regulation of such activities as walking, grazing, vehicular traffic, and boating in waters of the United States. Several other commentors indicated that they believe vehicular traffic should be regulated. As indicated above, under today's rule, we are not regulating every discharge associated with activities in waters of the U.S., but only those associated with activities which have or would have the effect of destroying or degrading any area of a water of the United States. We believe that activities such as walking, grazing, vehicular traffic and boating (excluding prop-dredging) in waters of the United States would not generally be regulated under this rule because, even if they do result in discharges, they generally do not destroy or degrade waters of the United States. As discussed previously, activities such as these do not require a finding prior to the discharge that the activity would not destroy or degrade waters of the United States. If the effect of the activity is *de minimis*, then a Section 404 permit is not required.

One commentor stated that the following activities should be categorically excluded from regulation under Section 404: landclearing activities for the creation and maintenance of utility line corridors; mechanized landclearing in wetlands that are seasonally dry or frozen, provided that cutting of brush and timber occurs above the soil surface; and use of corduroy roads in constructing utility lines. Another commentor said that activities associated with the construction and maintenance of powerlines and distribution corridors should be exempted from regulation under Section 404 because they do not destroy or degrade wetlands. One commentor suggested that routine maintenance of pipeline rights-of-way should not require an individual permit since there is no long-term impact on vegetation. Another commentor stated that pipeline construction on Alaska's North Slope should be specifically identified as an activity that should be excluded from regulation under Section 404 because the pipelines are elevated and supported by pilings that result in only temporary *de minimis* discharges.

If a landclearing operation does not disturb the soil, no discharge occurs; thus, such activities would not be regulated (see 33 CFR 323.2(d)(1); 40 CFR 232.2(e)(2)(ii)). We do not believe that it would be appropriate, as this commentor has suggested, to categorically exclude from regulation mechanized landclearing to create utility line or transmission line corridors. As we have explained above, where a discharge occurs, we believe that it is appropriate for the discharger to bear the burden of demonstrating that a particular activity will not destroy or degrade waters of the United States. Pipelines that are normally built on pilings and where no landclearing or fill pad construction is required are generally not regulated under Section 404. Similarly, we do not believe it is appropriate to categorically exclude from regulation mechanized landclearing in frozen or seasonally dry wetlands. While we agree with the commentor that cutting of brush and timber in wetlands above the soil's surface does not normally result in a redeposition of soil (see 33 CFR 323.2(d)(1)(ii); 40 CFR 232.2(e)(2)(ii)), as described in today's preamble at section III(c), mechanized landclearing usually results in a discharge of dredged material, and the commentor has provided no basis for concluding that mechanized landclearing in seasonally dry or frozen wetlands will never result in such a discharge. We therefore do not believe there is a basis to exclude categorically such areas from the scope of this rule. Where a regulated discharge occurs, it is subject to this rule, regardless of the type of water of the U.S. in which it occurs.

In response to the commentor's request that corduroy roads, (i.e., roads which are created by placing cut timber and brush along the centerline of a utility line corridor through a wetland without the addition of dirt or rock fill), should be excluded from Section 404 regulation, we agree that this activity generally does not constitute a discharge of dredged material. However, this activity may constitute a discharge of fill material, and require Section 404 authorization. The agencies cannot, as suggested by this commentor, administratively expand the statutory exemptions for farm, forestry and mining roads to include corduroy roads used for utility line construction unrelated to farming, forestry, or mining operations.

Other activities that commentors contended should be excluded from regulation are: Maintenance of flood control structures according to design specifications; public health and safety projects; activities associated with the maintenance of natural or mitigated wetlands; construction or repair of water diversion structures to divert water under state water rights, where there is only a minor amount of excavation with temporary, minimal impacts; maintenance dredging of cooling water intake channels; dredging operations in wetlands; the creation of stormwater retention/detention basins for residential construction which involve only *de minimis* soil movement that should not destroy or degrade wetlands; certain wetland wildlife management activities, including wetland wildlife enhancement work and gravel placement in river channels to serve as salmon spawning habitat; and excavation in a dry streambed or similar areas, which will not cause destruction or degradation of a water of the United States.

We do not agree with these commentors that these activities would, as a general rule, not result in discharges of dredged material that would destroy or degrade waters of the U.S. For example, a category of activities such as "public health and safety projects" relates to the purpose of the activity, not to whether it causes additions or redeposits of dredged

material or whether it will destroy or degrade waters of the U.S. Activities associated with the maintenance of natural or mitigated wetlands might have an overall purpose of benefiting the environment, but may nonetheless cause certain adverse effects warranting review under Section 404. Such activities may be addressed through general permits if they would have minimal environmental impacts. Similarly, we do not believe that there is a basis for concluding that the other activities listed by this commentor will not destroy or degrade waters of the United States. However, some of these activities are authorized by existing nationwide and regional general permits. In addition, to the extent construction or repair of water diversion structures involve the construction or maintenance of irrigation ditches or the maintenance of drainage ditches, such activities may be exempt under Section 404(f) of the Act. Furthermore, we do not believe that today's rule will greatly burden the regulated public because, to the extent they involve minimal environmental impacts, the Corps will consider issuing general permits to regulate those activities.

Two commentors requested that the nationwide permits not be subject to the presumption and demonstration requirements of Section 323.2(d)(2). They recommended adding to § 323.2(d)(2), as follows: "(2) For the purposes of paragraph (d)(1), mechanized landclearing, ditching, channelization, or other excavation activities in waters of the United States result in a discharge of dredged material. Further, where such activities occur in waters of the United States and are not authorized under the Nationwide Permit Program at part 330, the activity is presumed to result in destruction * * *." We do not agree with the thrust of this comment. The tests in this rule go to the question whether an activity results in a discharge of dredged material requiring a permit under Section 404. By definition, activities already covered by a Section 404 permit (including nationwide permits) are subject to regulation. The scope, applicability and potential use of nationwide permits is not affected by today's rule. Those excavation activities that destroy or degrade waters of the U.S. but only have minimal adverse environmental effects may qualify for coverage under a nationwide permit. Corps districts are encouraged to develop general permits for those classes of mechanized landclearing, ditching, channelization, and other excavation that are determined to have only minimal individual and cumulative adverse effects.

Several commentors addressed discussion in the preamble to the proposed rule regarding "snagging," which we stated included "the removal of trees, parts of trees, or the like, from a water body to prevent their interfering with navigation." We concluded that such activities generally would not result in a discharge and therefore would not be subject to Section 404, unless in a particular case, the snagging operation would result in a discharge through redeposition of soil and would destroy or degrade a water of the United States. Some commentors agreed that snagging operations, such as the removal of trees and tree parts from streams, should be regulated. Two commentors stated that all snagging operations should be regulated. Another commentor asserted that snagging, especially in waters only subject to Section 404 jurisdiction and where Section 10 permits are not required, should be regulated because it involves a discharge and will result in significant adverse impacts to wetlands and water quality. One commentor suggested that the exclusion for snagging should be more narrowly defined to allow removal of tree and tree parts only where there is interference with navigation or where they are likely to obstruct normal stream flow. Several commentors expressed concern that the new proposed rules would negatively affect flood control activities, such as snagging and dredging, by requiring Section 404 permits. Two commentors stated that an exemption to Section 404 is needed for the maintenance of flood control projects that involve the removal of vegetation.

We have carefully considered these comments and believe that qualifying the term "snagging" in the proposal to include only the removal of trees and tree parts where that removal is to prevent their interfering with navigation is not appropriate. Therefore, for purposes of today's preamble, we are eliminating that qualification (i.e., prevention of interference with navigation). The determination of whether an activity involves a discharge of dredged material is not based on the intent of the activity; instead, that determination turns on whether there is any addition or redeposit of dredged material into waters of the United States. Where only vegetation is removed during a snagging operation and no discharge of dredged or fill material occurs, a permit is obviously not required. Consequently, snagging operations will only be regulated when they would result in incidental discharges through redeposition of soil and the activity would destroy or degrade waters of the United States. For this reason, we do not agree with the commentor who suggested inclusion of an additional qualifier (i.e., snagging only includes removal of trees or tree parts where they are likely to obstruct normal stream flow).

While today's rule may affect those flood control projects that involve snagging operations that result in discharges of dredged material by requiring authorization under Section 404, some such activities may already be exempted under sections 404(f)(1) (B) and (C), and others may be covered by current general permits. Also, in some cases, general permits may be developed where the adverse environmental effects of certain snagging operations that involve a discharge of dredged material into waters of the United States are determined to be minimal.

Several commentors expressed concerns that the regulation of excavation would affect normal drainage practices around small isolated wetlands that allegedly have little or no value. It is unclear what this commentor means by normal drainage practices. Section 404(f) provides an exemption for maintenance of existing drainage ditches, and such practices would therefore not be affected by today's rule. To the extent they are not exempt, such activities in small isolated wetlands may also be authorized by nationwide permit number 26 or other general permits. In general, however, we believe that the approach suggested by the commentor is overboard. Small isolated wetlands can be of great cumulative importance to the aquatic ecosystem. Categorically exempting drainage activities in these areas from Section 404 of the Act would therefore not be warranted or appropriate.

Two commentors stated that it was unclear how commercial sand and gravel dredging operations would be regulated and wanted exemptions for such operations. Several commentors wanted mining exemptions for the removal of overburden and sand and gravel mining operations in intermittent streams. While we appreciate these concerns, we believe that an exemption would be inappropriate for this type of activity since sand and gravel operations do involve excavation activities in waters of the U.S. and there is no basis to conclude categorically that these activities will not destroy or degrade waters of the U.S. Indeed, most mining activities result in significant alteration of the aquatic environment since their very purpose is to remove overburden and substrate materials, and such activities generally would therefore have an identifiable adverse impact on the aquatic environment. We have, however, decided to include a grandfather provision for mining activities that have not been regulated prior to the adoption of this rule to allow time for operators to obtain the necessary permits and for the Corps to consider development and issuance of general permits for mining activities that have minimal individual and cumulative impacts.

One commentor expressed concern that the rule would regulate "normal reservoir operations." Such activities below the ordinary high water mark of a reservoir will often require Section 404 authorization; however, districts may develop regional general permits to authorize certain activities with minimal impacts, as appropriate.

One commentor expressed concern that the new regulations would discourage developers from creating stormwater management ponds through the excavation of existing wetlands. The agencies note that today's rule is not meant to "discourage" activities that comply with the Section 404(b)(1) Guidelines, including the construction of appropriate stormwater management ponds. Under today's rule, the creation of stormwater management ponds will be regulated under Section 404 to the extent that such creation involves a discharge of dredged material incidental to excavation activities which destroy or degrade wetlands or other waters of the United States. However, this does not mean these activities are prohibited, only that they require Section 404 authorization. As part of the permit evaluation process, the agencies will evaluate whether the proposal to excavate an existing wetland to create a stormwater management pond is the least environmentally damaging practicable alternative, and whether all appropriate actions have been taken to minimize impacts to the aquatic ecosystem, and whether other Section 404 permitting criteria are met. Moreover, to the extent creation of stormwater management ponds require the construction of dikes or berms, such activities would be regulated as a discharge of fill material, regardless of today's rule.

Several commentors indicated we should regulate the pumping of water because pumping water from a wetland has the same effect as draining, and, according to this commentor, "the impact of draining would be considered an identifiable decrease" in functions and values of waters of the U.S. We believe that pumping water from a wetland or other waters of the United States would not, in and of itself, necessarily result in a discharge of dredged material. *See Save Our Community v. EPA*, 971 F.2d 1155 (5th Cir. 1992). However, if excavation would be necessary to accomplish the pumping and the activity would destroy or degrade a water of the United States, then the discharge activity would be regulated under Section 404. Further, if the pumping resulted in a discharge of other pollutants to a water of the United States, such a discharge would be regulated under Section 402 of the CWA. Section 404 covers only discharges of dredged or fill material. We do not believe that simply placing a pipe into a water of the United States, per se, would necessarily involve a regulated discharge.

One commentor indicated that the deepening and widening of existing ditches should be regulated. Maintenance of existing drainage ditches are exempted from the permit requirement under Section 404(f)(1)(C), provided the original dimensions of the drainage ditches are not increased. Those excavation activities in drainage ditches that deepen or widen an existing drainage ditch beyond the original dimension do not qualify for an exemption and, if they would expand the carrying capacity of the ditch, would likely alter the hydrological regime of adjacent areas, and therefore result in degradation.

Some commentors indicated that they believe that many excavation activities are beneficial to the environment and result in increased aquatic functions and values, including excavation for purposes of stormwater management and maintenance of ditches, and were concerned that many such activities will be regulated under Section 404. However, even though these activities may have some beneficial effects, they can still have adverse effects by, for example, altering the hydrology of an area of the water of the U.S. Therefore, they may be covered under this rule. However, the Corps will consider the use of general permits where such environmentally beneficial activities otherwise result in minimal impacts. In addition, particular cases where the applicant can demonstrate that the activity would not destroy or degrade a water of the United States would not be regulated under Section 404.

One commentor indicated that the preamble should clarify that the excavation of wetlands to place drainage tiles should be regulated under Section 404 since this involves a discharge and destroys wetlands. The excavation of wetlands to place drainage tiles is currently regulated under Section 404 unless such activities qualify for a Section 404(f) exemption. Activities that involve replacing existing field drainage tiles where the replacement does not increase the extent of drainage beyond that provided by the original tiling would generally qualify for such an exemption.

E. Normal Dredging Operations

Many commentors suggested that all discharges of dredged material should be regulated, stating that it does not seem reasonable or consistent to exclude discharges incidental to "normal dredging operations" for navigation, while regulating excavation for non-navigation purposes. One commentor stated that the proposal was extremely confusing because, while the preamble discussed eliminating the *de minimis* exemption, the proposed rule mentioned exemptions for certain *de minimis* activities. The commentor stated that the proposed rule has created a disparity with respect to excavation in waters of the United States versus normal dredging operations in navigable waters of the United States. Several commentors stated that, contrary to the explanation that normal dredging operations "generally do not alter the reach or flow or circulation of the waters, nor do they convert waters of the United States into dry land or degrade wetlands," these operations do in fact have negative impacts. These commentors further cited specific examples, including increased sedimentation, changes in salinity, loss of habitat, alteration of flows, changes in circulation and lowered dissolved oxygen concentrations. Two commentors stated that the exemption for normal dredging operations to maintain navigation is acceptable so long as the term "navigation channel" is clearly defined as that type of channel capable of carrying commercial traffic. However, those commentors stated that the extension or deepening of navigation channels should be regulated under Section 404.

Today's rule clarifies that "normal dredging operations" will continue to be excluded from the definition of "discharge of dredged material." "Normal dredging operations" are defined as "dredging for navigation in navigable waters of the United States, as that term is defined in part 329 of this Chapter, with proper authorization from the Congress and/or the Corps pursuant to part 322 of this Chapter; however, this exception is not applicable to dredging activities in wetlands, as that terms is defined at § 328.3 of this Chapter" (33 CFR 323.2(d)(3)(ii)).

There are several reasons for continuing to exclude incidental soil movement occurring during "normal dredging operations" from the regulatory definition of "discharge of dredged material." The overriding goal is to ensure that discharges of dredged or fill material into the waters of the United States are regulated in a satisfactory manner. In light of this goal, the Corps, as well as all other Federal or private dredging entities, fully comply with the regulatory requirements of the Section 404 process for any and all disposal of the dredged material removed from the navigation channel during dredging and discharged in the waters of the United States, whether that dredged material has been generated by Corps or other dredging operations. Furthermore, the Corps applies for state Section 401 water quality certifications and any required state permits for these disposal activities.

The Corps has established a two-part regulatory framework for the actual dredging portion of its own normal dredging operations. Prior to conducting any normal dredging operations for Corps dredging projects, the Corps must comply fully with its Operations and Maintenance dredging regulations. (33 CFR 209, 335, 336, 337, and 338.) These regulations were developed by the Corps in 1986 specifically to address environmental and other aspects of normal dredging operations on the waters of the United States. Pursuant to these regulations the Corps must fully comply with NEPA, the Clean Water Act, including Section 401, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Marine Protection Research and Sanctuaries Act, and all other applicable environmental laws. Furthermore, each time a federally authorized navigation channel is designated or modified, Congress, in effect, conducts a public interest review through the authorization process. This provides another safeguard that the subsequent normal dredging operations to maintain these channels are in the best interests of the Nation.

The procedure is different for those normal dredging operations conducted by other Federal agencies or non-Federal entities. The Corps requires that these dredgers apply for a Section 10 Rivers and Harbors Act permit. The Section 10 permit process includes an extensive public interest review pursuant to which any adverse impacts of the proposed dredging are fully discussed and analyzed. The Corps must ensure that NEPA, CWA Section 401, the Coastal Zone Management Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Marine Protection Research and Sanctuaries Act, and all other applicable Federal environmental laws are complied with prior to granting a Section 10 permit.

Considering these various types and levels of review, the Corps and EPA have concluded that it would not be in the public interest to require that the Corps, other Federal agencies, and private entities also be required to secure a Section 404 permit for each normal dredging operation. This process would be resource intensive and duplicative, and would only serve to divert limited Corps and EPA resources away from permit applications that deserve our careful scrutiny.

Additionally, the Corps and EPA believe that this is an appropriate approach because, as a general rule, normal dredging operations which have been subjected to the above regulatory process and associated environmental safeguards do not have a substantially adverse effect on the aquatic environment. It may be true, as some commentors have stated, that normal dredging operations can, in some cases, cause changes in sedimentation, salinity, habitat, flows and circulation patterns, and dissolved oxygen concentration. However, the Corps and EPA believe that these impacts are adequately addressed as part of the regulatory and congressional review processes described above and do not warrant the additional scrutiny of the Section 404 regulatory process.

As stated above, two commentors agreed that normal dredging operations conducted in Federal (Corps of Engineers) navigation channels should not be regulated under Section 404; however, these commentors argued that any deepening or extension of these channels should be regulated under Section 404. We disagree, and see no reason to distinguish between normal dredging operations, on the one hand, and channel deepening or extensions, on the other hand. For one thing, Congress must authorize any major extensions of, and any deepening of, any Corps Federal navigation channel. Through this authorization process, Congress is responsible for determining whether it is in the public interest to conduct these activities. Moreover, Federal agencies and non-Federal entities must apply for a Section 10 permit for any project to extend or deepen a Federal navigation channel.

The Corps' and EPA's position that incidental soil movement associated with normal dredging operations does not constitute a discharge under Section 404 is specifically addressed in the Corps' regulations at 33 CFR 323.2. Since 1977, the Corps has consistently held that Section 404 does not apply to incidental soil movement during normal dredging operations. We continue to believe that "normal dredging operations" to maintain or deepen navigation channels in the navigable waters of the United States, with proper authorization from the Congress and/or the Corps under Section 10, will not result in significant environmental impacts affecting the reach or flow or circulation of the waters, nor do they convert waters of the United States into dry land. The definition of "normal dredging operations" excludes dredging that takes place in wetlands. We made this exclusion to reflect the fundamental purpose of the normal dredging operations exception, which is to allow for the maintenance of navigation channels. We believe it would be a rare and exceptional circumstance for a party to propose dredging wetlands for purposes of navigation. If such an exceptional case were to arise, however, we believe that the activity should be evaluated under Section 404 in light of the special functions and values of wetlands that Section 404 is specifically designed to address.

As we stated in the proposed rule, it is our desire to avoid duplicative regulation of dredging itself in waters within the jurisdictional scope of the Rivers and Harbors Act. Normal dredging operations in the navigable waters will continue to be regulated and evaluated under Section 10 of the Rivers and Harbors Act of 1899.

F. Section 404(f)(1)(A) Exemptions

Several commentors expressed concern that the language of the proposed rule might be construed as weakening the exemptions provided for normal farming, silviculture, and ranching activities under Section 404(f)(1)(A). A few commentors urged the continued exemption for normal farming and forestry practices as provided in Section 404(f). Many commentors requested clarification that the 404(f)(1) exemptions would not be affected by the new regulations and some requested that the following language be added to the rule: "The term 'discharge or dredged material' does not include activities defined in 33 CFR 323.4(a)." One commentor requested assurance by suggesting changing § 323.2(d)(2) to state that the existing exemptions of Section 404(f) are not presumed to have the effect of destroying or degrading waters of the United States. A few commentors stated that § 323.2(d)(1) be amended to read

"the term does not include the activities defined in § 323.4(a)(1)–(6)." We disagree that any further clarification is necessary. As indicated in the Preamble of the proposed rule, this rule does not change, in any way, the manner in which the Corps and EPA determine whether an activity is exempt under Section 404(f) of the CWA. Therefore, this regulation will not, in any way, affect the exemptions for normal agriculture, silviculture or ranching activities now provided by Section 404(f)(1)(A) of the CWA, or any of the other exemptions found in Section 404(f)(1).

As part of today's rule, the agencies have also made an additional minor revision to the Corps' definition of "discharge or dredged material" which would make EPA's and Corps' definition consistent with each other and conform the definitions to the language and intent of Section 404(f). The EPA' pre-existing definition expressly excludes "plowing, cultivating, seeding and harvesting for the protection of food, fiber and forest products." 33 CFR 323.2(d). EPA's current definition, by contrast, does not contain this exclusion, see 40 CFR 232.2(e), although the proposal would have added the Corps' language in EPA's definition. The final rule deletes this exclusion entirely from the definition of "discharge of dredged material" because it has created confusion with regard to the effect of today's rule on the Section 404(f) exemptions.

This exclusion in the Corps' regulation predates the adoption of Section 404(f) in the 1977 Amendments to the CWA. Clean Water Act of 1977, Public Law No. 95–217, 91 Stat. 1566 (amending 33 U.S.C. 1251–1376). Section 404(f)(1)(A) expressly lists these activities as examples of normal farming, silviculture, and ranching activities exempt from Section 404, unless the activities would be recaptured under Section 404(f)(2). The exclusion of these activities from the definition of "discharge of dredged material" is broader than the exemption in Section 404(f) because, under the Corps' regulatory definition, these activities would never require a Section 404 permit, even if they would have effects "recapturing" the activities under Section 404(f)(2). Since Congress expressly stated in Section 404(f) that discharges associated with these activities require a permit if they would be recaptured under Section 404(f)(2), we believe that the exclusion in the current rule should be deleted in order to be consistent with Congressional intent in this area. The Corps and EPA reiterate that today's rule, including deletion of this sentence, has no effect with regard to the scope and applicability of the Section 404(f) exemptions. This is further emphasized in the rule at §§ 323.3(d)(3)(iv) and 232.2(e)(3)(iv). Under Section 404(f)(1), discharges of dredged or fill material associated with certain activities, including normal farming, ranching, and silviculture activities, are exempt from the Act's permit requirement, provided that they are not "recaptured" under Section 404(f)(2).

G. Grandfather Provision

Numerous commentors requested that the Corps and EPA include a grandfather provision as part of the revised definition of "discharge of dredged material." In light of these comments and consistent with past Corps practice, the Corps and EPA have included such a provision in this part of the final rule.

By including a grandfather provision here, the Corps and EPA are intending to avoid application of the revised definition of "discharge of dredged material" in a manner that would frustrate the reasonable expectations of persons who, as explained below, justifiably relied on the previous definition of that phrase as interpreted by the regulatory agencies. At the same time, however, we are also mindful of the goals of today's rule and the overall goals of the Clean Water Act.

Therefore, we have developed procedures to "grandfather" certain "discharges of dredged material" that, in some Corps districts, were not considered to be subject to regulation under the previous definition of that term. Under these procedures, Section 404 authorization will not be required for discharges of dredged material associated with ditching, channelization and other excavation activities in waters of the United States where such discharges were not previously regulated and where such activities had commenced or were under contract prior to the date of publication of this final rule in the **Federal Register**, and where such activities are completed within one year from the date of publication of the final rule. This provision does not apply to discharges associated with mechanized landclearing because the Corps current policy (reflected in RGL 90–5) has generally subjected this activity to Section 404 regulation. To further ensure that implementation of the revised definition proceeds in a fair and equitable manner, the Corps will be able to extend the one-year grandfather provision on a case-by-case basis subject to the following three conditions: (1) The excavation activity is of a type that occurs on an ongoing basis, either continuously or periodically (e.g., seasonally); (2) the discharger submits a completed individual permit application to the Corps within one year from the date of publication of this final rule; and (3) the total time period within which the excavation activity proceeds subject to this grandfather provision does not exceed three years from the date of publication of today's rule. The agencies recognize that the revised definition of "discharge of dredged material" is likely to apply to some persons who have been engaging in ongoing excavation activities, such as some mining or sand and gravel operations, which given their ongoing nature on either a continual or periodic basis, will not be able to be completed within one year from the date of publication of today's rule. Therefore, in situations where persons engaged in excavation activities occurring on an ongoing basis have acted in good faith by submitting a complete individual permit application seeking Section 404 authorization for such activities no later than one year from the date of publication of this rule, the agencies believe it is appropriate to retain sufficient flexibility to ensure that such persons are not prevented from proceeding with these excavation activities pending the evaluation of a Section 404 permit application for the discharges associated with the activity. The agencies have further determined that a grandfather period not to extend beyond three years from publication of today's rule is sufficiently long to ensure fair and equitable treatment of the regulated community in a manner consistent with the environmental goals of this rulemaking and the Clean Water Act. Moreover, discharges associated with activities that were regulated by a particular Corps district prior to the promulgation of this rule will not be subject to the grandfather provision in the regulation. If a discharger is uncertain whether its activity was regulated by the Corps district in which the discharge would take place, the discharger should contact the Corps district. Finally, the grandfather provision does not apply to landclearing activities, since the Corps has interpreted current regulatory provisions as covering mechanized landclearing under the Section 404 program since 1990. See RGL 90–5.

H. General Permit Comments

We invited public comment to identify mechanized landclearing, ditching, channelization, or other

excavation activities that would generally have minimal environmental impacts and therefore be potential candidates for authorization under general permits. Several commentors suggested activities that are either exempt from regulation or already covered under the nationwide general permit program. Several commentors suggested that activities having minimal environmental impacts should be authorized by general permits, but they did not give specific candidate activities. Another commentor indicated that all activities should be regulated on a case-by-case basis. Several activities were suggested for authorization by general permits. These include all mechanized landclearing; mechanized landclearing in seasonally dry or frozen wetlands where brush and timber cutting occurs above the soil surface; landclearing for creation and maintenance of utility line or overhead transmission line corridors; water diversion structures constructed to exercise water rights; activities when states already have effective regulatory controls; discharges incidental to dredging or excavation to improve fish and/or wildlife habitat or to restore previously filled wetlands; excavation in dry streambeds; use of a hydroax to clear vegetation; creation of stormwater retention/detention basins for residential construction; and sand and gravel mining activities having minor impacts.

The general permit program is an extremely important regulatory tool used by the Corps to regulate effectively activities with minimal impacts on the aquatic environment. The Corps does not have the resources to regulate all activities on a case-by-case individual permit basis. Therefore, we must focus our resources on those activities with more than minimal impacts. Moreover, general permits are very effective in protecting the aquatic environment, because they are issued with stringent conditions that limit authorized activities to those with minimal adverse effects. This regulation may increase the number of discharges regulated by the Corps nationwide. In order to administer reasonably the regulatory program and protect effectively the environment, the Corps will identify those activities with minimal impacts and pursue development of general permits. We appreciate the suggestions made and will consider them for possible issuance as nationwide or regional general permits in the near future. Any proposed nationwide permits will be published in the Federal Register and any proposed regional general permits will be proposed by public notice to obtain public comment before a decision is made whether to issue such nationwide or regional general permits.

IV. Revision to Definition of "Discharge of Fill Material;" 33 CFR 323.3(c) and 40 CFR 232.2(r)

We have organized the numerous comments on the regulation of pilings as fill material into several issues. Our discussion of the comments is provided below.

A. Summary of Major Issues and Changes From the Proposal

Many commentors supported the proposed revisions on the grounds that the regulation of the placement of pilings as a discharge of fill material was necessary under Section 404 to ensure that adverse impacts to wetlands and other aquatic resources are minimized. Many of these commentors, as explained in more detail below, also argued that the placement of pilings should be regulated as a discharge of fill material in *all* circumstances, and that the proposed revisions contained unnecessary and unjustified limitations and exceptions. Other commentors contended that EPA and the Corps lacked the authority under the CWA to regulate the placement of pilings as fill material. Concerns were also raised by commentors that the terms used in the proposed revisions were not adequately defined by the agencies.

Based upon public comments, the agencies have made certain changes to the language in the regulations to clarify when the placement of pilings constitutes a discharge of fill material subject to regulation under Section 404. Under the final rule, the placement of pilings in waters of the United States shall require a Section 404 permit when such placement has or would have the physical effect of a discharge of fill material.

The agencies have made two major changes to the rule in response to public comments. First, we have deleted the "functional use and effect" test in the proposed rule. In addition, the final rule does not contain an exception for structures "traditionally constructed" on pilings. For the reasons explained further below, we agree with commentors who argued that the physical effect of the placement of pilings (as opposed to its functional use, or whether the structure was traditionally placed on pilings) should be the focus for determining when placement of pilings constitutes a discharge of fill material. We recognize, however, that some projects generally use pilings in a manner that does not result in the same physical effect as the placement of fill material. Consequently, the final rule notes that placement of pilings for these projects (i.e., linear projects, piers, wharves, and individual houses on stilts) generally do not have the effect of a discharge of fill material and therefore a Section 404 permit will generally not be required for these projects. The Corps and EPA, nevertheless, reserve the right on a case-by-case basis to determine that the proposed placement of pilings to support a particular linear project or a particular pier, wharf, or individual home on stilts does have or would have the effect of fill material and therefore requires Section 404 authorization.

B. Need for Regulating Pilings Having the Effect of Fill

The Corps adopted RGL 90–8 in order to address projects placed on pilings in waters of the U.S. that would have the kinds of adverse environmental consequences generally associated with discharges of fill material, but which were not subject to any environmental review under Section 404 to avoid or mitigate those adverse effects. For example, in one case, a developer proposed a large, multi-use high rise waterfront complex which would have covered over 16 acres of the East River in New York. The developer proposed an unconventional construction method, using pilings instead of solid fill to support the 16 acres of structures. The developer apparently pursued this course of action in order to try to avoid the necessity of obtaining a Section 404 permit. To provide the necessary structural support, the pilings would have been so large and so closely spaced that they would have physically displaced over 20% of the bottom surface area and the water column. In addition to the physical displacement of aquatic habitat due to the extraordinarily dense spacing, the project would have substantially altered current and sedimentation patterns such that at least some of the covered area would have silted in and eventually lost its character as a water of the U.S.

In another case, a 13-acre hotel/office development project was proposed to be constructed in palustrine forested wetland in New Jersey. This wetland was identified as habitat for more than 80 species of birds, including numerous migratory birds that had witnessed decreasing population numbers due to fragmentation and loss of habitat. The developer originally proposed that the project be built on fill material, which would have required a Section 404 permit, but subsequently proposed to build virtually the identical project on 12-16 inch diameter pilings. While the pilings did not need to be spaced densely to support the structure, as in the East River situation, the platform supporting the 13 acre development would have rested from 3 inches to approximately one foot above the wetland. The project would therefore have prevented sunlight from reaching almost all of the 13 acres of wetlands underneath the structures, thereby making wetland vegetation growth impossible and causing the area to lose virtually all of its wildlife habitat value. The project also would have contributed to soil erosion by killing vegetation that provide soil stability, resulting in interference with the site's natural flood protection function, and impairment to downstream water quality. Ultimately, the developer decided not to pursue this project.

In both of these cases, the environmental effects of the projects would have been severe, comparable in many respects to the effects that would have resulted had the projects been built on fill material. Adoption of RGL 90–8 reflected the Corps' belief that allowing such projects to proceed without any environmental review under Section 404 would not be consistent with the goals and objectives of the CWA or Section 404. Regulating pilings when the project would have the effect of fill will therefore help insure that potentially damaging activities constructed on pilings in waters of the United States are reviewed under Section 404.

C. Comments on Agencies' Legal Authority To Promulgate This Aspect of the Regulation

Several commentors argued that EPA and the Corps lack legal authority under the Clean Water Act to issue the proposed regulation. These commentors, however, did not cite any provision of the statute or discussion in the legislative history to support this contention; they simply asserted that placement of pilings having the effect of fill was not the same thing as a discharge of fill material itself. We believe, however, that today's rule is a reasonable exercise of our authority under the statute.

The CWA does not define the term, "fill material." Nor does the CWA specifically address, in any manner whatsoever, whether the placement of pilings in waters of the U.S. is a discharge of fill material subject to Section 404 of the Act. Therefore, it is up to EPA and the Corps to determine a reasonable regulatory approach to this activity, consistent with the language and purposes of the CWA. We have made what we believe to be a very straightforward determination here that placement of pilings is a discharge of fill material when it would have the effect of fill material on waters of the U.S. The agencies believe that this approach is entirely consistent with the language of the Act, and helps effectuate the underlying goal of the statute of protecting our nation's aquatic resources.

Several commentors requested that we not pursue this rulemaking but instead wait to see how Congress addresses pilings in the upcoming reauthorization of the CWA. Because this rule is entirely consistent with existing statute, we see no reason to delay promulgating this rule.

One commentor argued that there is no justification for regulating certain pilings under Section 10 of the Rivers and Harbors Act, but not regulating them as "fill" under the Clean Water Act, when the pilings are placed in waters subject to jurisdiction of both Acts. This commentor also suggested that Section 10 jurisdiction does not substitute for Section 404 jurisdiction. Today's decision to define fill material under Section 404 to include the placement of certain pilings is not in any manner related to the regulation of pilings under Section 10. Section 10 establishes an independent regulatory program that regulates any work, among other things, in navigable waters that affects the navigable capacity of those waters. Regulatory jurisdiction under Section 10 does not depend to any degree on whether the work involves a "discharge of fill material." Therefore, we do not believe, as this commentor does, that the scope of activities regulated under Section 10 of the Rivers and Harbors Act and Section 404 of CWA must be the same.

D. Establishment of "Effects" Tests and Exceptions to the Regulation of the Placement of Pilings as Fill Material

The proposed rule contained language that would have regulated the placement of pilings where the pilings were essentially equivalent to a discharge of fill material in physical effect or in functional use and effect. In addition, the rule would have provided exceptions to the regulation of the placement of pilings as fill material in circumstances involving linear projects or projects which have traditionally been constructed on pilings.

Commentors expressed several concerns with this approach. First, several commentors contended that all pilings, without exception, should be regulated. One commentor also argued that pilings are by definition "fill material" and therefore must be regulated in all cases. Numerous commentors were concerned that the proposed rule was arbitrary since it would regulate the placement of pilings based on what type of structure is built on the pilings. Asserting that the functional use of the pilings is irrelevant, several commentors suggested that the agencies rely solely on the physical effect test to determine when the placement of pilings would constitute fill material. Other commentors disagreed, supporting the inclusion of a functional use and effect test.

We agree with commentors who argued that it is not appropriate to determine whether Section 404 applies to the placement of pilings solely on the basis of the functional use of the pilings or whether the structures on the pilings have traditionally been built in this fashion. As discussed earlier, the agencies have deleted the "functional use and effect" test set forth in the proposed rule. We agree with certain commentors that this test was vague, and that focusing on the use of the pilings structure is not appropriate where our paramount concern is the effect of the placement of pilings on the aquatic environment. Our primary motivation in adopting the pilings RGL in December 1990 and in proposing this rule, has been to address the growing practice among some project proponents of building large development projects on pilings, even though they would normally have been placed on top of fill material. In these cases, the projects had a clear adverse impact on the aquatic environment, yet no permit was being required for the activity. While the type of structures built on top of pilings can be indicative of how the pilings will affect the aquatic environment, ultimately it is the effect of the pilings that is of concern to us. Focusing solely on those effects will therefore simplify implementation of this regulation.

For the same reasons, the final rule provides that the placement of pilings will not be excluded from regulation under Section 404 based on whether the structures they support are traditionally constructed on pilings. The final rule will require a Section 404 permit when the placement of pilings has or would have the effect of a discharge of fill material; this test will be applied in all circumstances. The final rule also provides examples of activities that generally have the effect of a discharge of fill material, including the following: projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the

pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.

We disagree, however, with the commentor who argued that the placement of a piling is by definition a discharge of fill material in all cases and that all pilings must therefore be regulated under Section 404. As discussed above, the CWA does not define fill material. We believe that it is reasonable to define the placement of pilings as a discharge of fill material when such placement would have the effect of fill material. This commentor apparently believes that EPA and the Corps are compelled to regulate the placement of a piling in waters of the United States as a discharge of fill material, even where the placement would not have effects associated with discharges of fill material. We see no provision of the Clean Water Act that would compel the adoption of such an approach. We have taken what we believe to be a straightforward and common-sense approach to defining when the placement of pilings is a discharge of fill material, an approach that we believe is entirely consistent with the Clean Water Act.

Several commentors raised concern over the exception for the placement of pilings in linear projects. Some commentors suggested deleting the exception based on their concerns that adverse impacts to the aquatic ecosystem would occur as a result of the construction of linear projects. One commentor suggested that linear projects not be excepted if the project would "significantly alter the flow of water or increase sedimentation so that the quantity and quality of habitat is reduced." One commentor also suggested that the exception for projects that have traditionally been constructed on pilings be eliminated, while another commentor was concerned that determining what constitutes a pier or marina is subject to "plastic interpretations" and therefore should not be exempted. Other commentors supported the exception for linear projects, and one commentor requested that "hot-oil" pipelines constructed in Alaska's North Slope be included in the list of linear projects where the placement of pilings would not require a Section 404 permit. Some commentors argued that the proposed exceptions were too narrow, and suggested additional examples of activities involving the placement of pilings that should not be considered a discharge of fill material. In particular, several commentors suggested that the examples of structures that would not require a Section 404 permit due to their having been traditionally constructed on pilings should be expanded to include "commercial and industrial structures interrelated to wharves, piers, and marinas." Finally, one commentor suggested that all non-water dependent activities in waters of the United States be regulated under Section 404.

We believe that linear project construction on pilings will generally not have the physical effect of fill material. We recognize, however, the possibility that such projects could, in certain cases, have the effect of fill material and therefore should be subject to Section 404. Therefore, the regulation does not establish a definitive rule that linear projects will never have the effect of fill material.

Nonetheless, we believe that it will be a rare case when pilings used for linear projects have the effect of fill material and require authorization under Section 404. The most significant factors in determining whether placement of pilings has the effect of fill material are how densely the piles are placed, the size of the pilings, and the ground clearance of the structures built on pilings, and the overall areal coverage of the structures built on pilings.

Closely spaced pilings of any size, for example, can have the effect of substantially replacing an aquatic area. Very large pilings, regardless of their spacing, may also substantially replace an aquatic area. Large or closely spaced pilings can also affect current patterns and sedimentation rates. The above-ground clearance, and the overall areal coverage of the structures built on pilings, affect the suitability of the area underneath for vegetation and wildlife. The losses of aquatic and wetland functions and values under these circumstances can be the same as would occur from the discharge of fill material itself.

Most linear projects (piers, wharves, bridges, elevated roads and pipelines, etc.) do not require either closely spaced pilings or overly large pilings since they generally do not support massive structures requiring great support. Also, although some linear projects (e.g., bridges and elevated roads and pipelines) may be quite long, they generally are not very wide, and therefore would generally not result in the overall areal coverage that can result in substantial adverse effects on vegetation and suitability of the area as wildlife habitat.

Although an individual home on pilings is generally not "linear" in design, it generally shares many of the same attributes as linear projects so that we believe that it generally will not have the effect of fill material. Most pile supported individual houses require neither closely spaced nor large pilings. An individual home also generally does not cover large areas. Some commentors objected to the term "single-family" houses contained in the proposed rule. We agree that this term was somewhat vague and confusing. We have substituted the word "individual" for "single-family" in the final rule in order to more effectively exclude larger structures (e.g., a development of multiple single-family houses) that may indeed have the effect of a discharge of fill material, as outlined above.

We do not take the position that pile supported linear projects and an individual house on pilings can never have any adverse effects on the aquatic ecosystem. Obviously, aquatic life located where a single piling is placed will be crushed by the placement of the piling. Similarly, even less-than-massive structures on widely spaced pilings have some effects on the aquatic environment. We, however, are concerned with the cases where the pilings and structures they support cause impacts on the aquatic environment comparable to those which occur with the discharge of fill material (i.e., by displacing many or all of the aquatic functions of an area). Today's rule will ensure that such effects do not occur without undergoing environmental review under Section 404 of the CWA.

We do not agree with commentors who argued that we should expand the proposed exceptions to include "commercial and industrial structures interrelated to wharves, piers and marinas." Such a broad category of structures could certainly include those with large area coverage or those built on large or closely spaced pilings; therefore we cannot find as a general matter that these types of structures generally would not have the effect of fill material.

Several commentors expressed concern over the manner in which the effects tests were defined. Some of these commentors suggested that the rule should be consistent with the test proposed for determining whether a discharge of dredged material occurs, i.e., the rule should clarify that the placement of pilings should be regulated as a discharge of fill material only when the activity would destroy or degrade any area of waters of the United States. One commentor suggested that the proposal to regulate the placement of pilings as fill material when a project "significantly alters or eliminates aquatic functions and values" was too vague. Another commentor was concerned that the proposed test of whether the "pilings are so closely spaced that sedimentation rates are increased" would be difficult to implement given technical difficulties in predicting sedimentation rates. Commentors also requested that we develop specific thresholds, such as flow/temperature, or volume change, to determine if pilings have the same physical or functional effect as fill material. For example, one commentor recommended setting a standard volume of piles to be used in one project below which a project would not be regulated because there would be "minimal environmental impact." One commentor suggested that use of the phrase "essentially the same effects as fill" was vague, and left open questions of how similar the effect would have to be in order to be "essentially the same."

The agencies disagree with the comments that suggested the inclusion of the same "destroy or degrade" test proposed for the definition of "discharge of dredged material." We note that the definition of "discharge of dredged material," unlike that of the "discharge of fill material," historically has contained an exclusion for *de minimis* discharges associated with "normal dredging operations." As part of today's rule, the agencies are narrowing that exclusion in a manner that we believe carries out the purposes and objectives of the CWA. There is no comparable language in the agencies' definition of "discharge of fill material" and we see no justification for adding such language.

In response to the comment that "significantly alters or eliminates aquatic functions and values" was too vague, we have deleted the term "significantly." We agree that this qualifier would add confusion to the determination of whether the placement of pilings should be regulated as fill material, and is unnecessary. We agree with the comment that precise predictions would be difficult. We believe, however, that Corps and EPA staff are able to make general predictions regarding sedimentation rates that may result from the placement of pilings. Moreover, we believe that such generalized findings would be sufficient to determine whether a placement of pilings would have the effect of a discharge of fill material. Consequently, we have retained this part of the proposed rule without modification.

We agree with the concern expressed over the use of the term "large" when referring to structures, and have deleted it from the final rule. We have not set specific standards or thresholds to measure the physical effect of pilings as suggested by comments, as we believe the circumstances related to each situation are so diverse that setting specific standards would be inappropriate. Instead, we believe the determination of the effect of the placement of pilings should be determined on a case-by-case basis considering the facts of each individual case. We agree with the commentor that "essentially" the same is unclear, and we have deleted use of the term "essentially" in the final rule.

E. Additional Comments

A few commentors expressed the need to note specifically that existing nationwide permits are not affected by this rule and that activities determined not to be subject to Section 404 regulation may still need a Section 10 permit when undertaken in traditionally navigable waters of the United States. With regard to the first point, today's rule does not modify, in any manner, current authorizations provided by existing nationwide permits. However, the Corps will examine the need for additional general permits under Section 404 for those projects involving the placement of pilings that have less than minimal adverse effects on the environment. In addition, as specifically provided for in today's rule, the placement of pilings in traditionally navigable waters of the United States remains subject to authorization under Section 10 of the Rivers and Harbors Act.

Another commentor expressed concern that the regulation will prohibit construction of any structures in wetlands (either on fill material or on pilings). This is clearly not our intent. The Corps authorizes thousands of projects involving fill material every year, and the Corps expects to authorize activities on pilings where appropriate. One commentor proposed that a set of quantifiable standards be developed for how and where structures such as decks may be built. We believe that national standards for pile supported structures are inappropriate; instead, these determinations are more properly addressed on a case-by-case basis in the permitting process. One commentor suggested that pilings should be defined to include pile caps, columns, piers and abutments which are part of linear projects, such as bridges. We agree with this comment.

V. Revision to the Definition of Waters of the United States to Exclude Prior Converted Cropland

A. Background and Rationale for the Final Rule.

The agencies proposed to add language in the definition of waters of the U.S. providing that the term does not include prior converted ("PC") cropland, as defined by the National Food Security Act Manual (NFSAM) published by the Soil Conservation Service (SCS). PC cropland is defined by SCS as areas that, prior to December 23, 1985, were drained or otherwise manipulated for the purpose, or having the effect, of making production of a commodity crop possible. PC cropland is inundated for no more than 14 consecutive days during the growing season and excludes pothold or playa wetlands. EPA and the Corps stated in the preamble to the proposal that we were proposing to codify existing policy, as reflected in RGL 90–7, that PC cropland is not waters of the United States to help achieve consistency among various federal programs affecting wetlands.

Some commentors supported the proposed change. They felt that it was important for EPA, the Corps and the Department of Agriculture to follow consistent procedures and policies, because to do otherwise undermines the credibility and effectiveness of federal wetlands protection programs. Other commentors opposed the change in its entirety or took issue with specific aspects of the PC cropland definition that they believed were inappropriate. We have decided to retain the approach contained in the proposed rule. The reasons for this approach and responses to comments opposing the proposal are discussed below.

As stated in the preamble to the proposal, we are excluding PC cropland from the definition of waters of the U.S. in order to achieve consistency in the manner that various federal programs address wetlands. One commentor argued that such consistency is not a "goal of the CWA," and that it was therefore not appropriate to base wetlands policy on this consideration. We believe, however, that effective implementation of the wetlands provisions of the Act without unduly confusing the public and regulated community is vital to achieving the environmental protection goals of the Clean Water Act. The CWA is not administered in a vacuum. Statutes other than the CWA and agencies other

than EPA and the Corps have become an integral part of the federal wetlands protection effort. We believe that this effort will be most effective if the agencies involved have, to the extent possible, consistent and compatible approaches to insuring wetlands protection. We believe that this rule achieves this policy goal in a manner consistent with the language and objectives of the CWA.

Moreover, we believe that excluding PC cropland from the definition of waters of the U.S. is consistent with EPA's and the Corps' paramount objective of protecting the nation's aquatic resources. By definition, PC cropland has been significantly modified so that it no longer exhibits its natural hydrology or vegetation. Due to this manipulation, PC cropland no longer performs the functions or has values that the area did in its natural condition. PC cropland has therefore been significantly degraded through human activity and, for this reason, such areas are not treated as wetlands under the Food Security Act. Similarly, in light of the degraded nature of these areas, we do not believe that they should be treated as wetlands for the purposes of the CWA.

The altered nature of PC cropland was discussed in RGL 90–7, in which the Corps concluded that cropped conditions constitute the "normal circumstances" of such areas. The Corps contrasted PC cropland with "farmed wetlands," defined by SCS as potholes and playas with 7 or more consecutive days of inundation or 14 days of saturation during the growing season, and other areas with 15 or more consecutive days (or 10 percent of the growing season, whichever is less) of inundation during the growing season. Because the hydrology of farmed wetlands has been less drastically altered than it has for PC cropland, the Corps stated in RGL 90–7 that farmed wetlands continued to retain their basic soil and hydrological characteristics, and that such areas should therefore be considered to be wetlands.

B. Technical Validity of Excluding PC Cropland From Regulation Under Section 404

Several commentors argued that it was not technically valid to treat all PC cropland as non-wetlands. These commentors pointed out that the SCS definition of PC cropland excludes areas that are inundated for more than 14 consecutive days a year, and they argued that this requirement was inconsistent with EPA's and the Corps' regulatory definition of wetlands, which includes areas that have wetland hydrology due to inundated or saturated soil conditions.

We believe that these commentors have oversimplified the relationship between the SCS definition of PC cropland and the wetlands definition under Section 404. In fact, except for a brief period of time after the adoption of the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989 Manual), the Section 404 program has generally not considered such farmed areas as meeting the regulatory definition of wetlands under the CWA. In 1986, the Corps issued RGL 86–9, which interpreted the phrase "normal circumstances" in our regulatory definition of wetlands as referring to an area's characteristics and use in the present and recent past. Under this interpretation, cropped areas did not constitute wetlands where hydrophytic vegetation has been removed by the agricultural activity. In the 1989 Manual, EPA and the Corps modified this approach and evaluated whether a cropped area retained wetland hydrology to the extent that wetland vegetation would return if the cropping ceased. Under the 1989 Manual, therefore, the phrase "normal circumstances," as applied to agricultural areas, meant the circumstances that would be present absent agricultural activity. The Corps ceased using the 1989 Manual in August, 1991 at the direction of Congress (Energy and Water Development Appropriations Act of 1992, Publ L. 102–580) and began using its earlier 1987 Corps of Engineers Wetlands Delineation Manual (1987 Manual) for wetlands delineations. EPA is currently also using the Corps' 1987 Manual in implementing Section 404 (See 58 FR 4995, January 19, 1993). While the 1987 Manual does not address application of the "normal circumstances" phrase as it relates to areas in agricultural production, both agencies continue to follow the guidance provided by RGL 90–7, which interprets our regulatory definition of wetlands to exclude PC cropland.

The evolution over the last several years in the EPA and Corps policy for delineating wetlands in agricultural areas attests to the difficult technical, legal and policy considerations that bear on this issue. We therefore disagree with commentors who seemed to believe that ascertaining the jurisdictional status of PC cropland is a cut-and-dried technical question readily resolved by reference to generally accepted delineation methodologies. In utilizing the SCS definition of PC cropland for purposes of Section 404 of the CWA, we are attempting, in an area where there is not a clear technical answer, to make the difficult distinction between those agricultural areas that retain their wetland character sufficiently that they should be regulated under Section 404, and those areas that been so modified that they should fall outside the scope of the CWA. As is inevitable where the government engages in such line-drawing, we recognize that the particular line we have chosen to draw is not perfect. Two areas that are inundated for 14 days and 15 days a season respectively may not, in fact, differ materially in terms of their function and values. This criticism, however, could be made no matter where we chose to draw the line between wetlands and non-wetlands. We believe that the distinctions under the Food Security Act between PC cropland and farmed wetlands provides a reasonable basis for distinguishing between wetlands and non-wetlands under the CWA. In addition to the fact that we believe this distinction is an appropriate one based on the ecological goals and objectives of the CWA, adopting the SCS approach in this area will also help achieve the very important policy goal of achieving consistency among federal programs affecting wetlands.

C. Role of SCS PC Cropland Determinations

In the preamble to the proposal, we stated that jurisdictional determinations under the CWA can only be made by EPA and the Corps. While we stated we would accept and concur in SCS determinations to the extent possible, this rule does not alter the final authority of EPA regarding CWA jurisdiction.

This discussion in the preamble was criticized by commentors from several angles. Some commentors were concerned that the proposed rule effectively "delegated" EPA's and the Corps' authority regarding CWA jurisdiction to SCS. Some of these commentors urged that SCS be required to obtain Corps (or EPA) concurrence for the purposes of making PC cropland determinations. From the other side, commentors argued that EPA and the Corps should not be allowed to make an independent judgment at a site, and should be required to defer absolutely to SCS determinations.

In response to these comments, we note that today's rule does not "delegate" EPA's ultimate authority for determining the scope of geographic jurisdiction under the CWA. At the same time, we believe it is critical that duplication between the SCS's wetlands program and the CWA Section 404 program be reduced. In that regard, we believe that farmers should generally be able to rely on SCS wetlands determinations for purposes of complying with both the Swampbuster program and the Section 404 program. In order to make this reliance possible, we are working with SCS to develop appropriate procedures, including monitoring, for coordinating wetland determinations by the agencies. We are also working with SCS to develop field guidance for implementing the 1987 Corps Manual to clarify procedures for identifying wetlands in areas managed for agriculture, and are expediting current efforts to revise the SCS's NFSAM to provide greater consistency between our wetlands delineation procedures. Moreover, we are also developing an interagency training program with SCS and other agencies to ensure that agency field staff are properly trained, and that standard, agreed-upon methods are utilized in making wetland determinations. However, in order to clarify the relationship between determinations made by SCS and the Corps or EPA, we have added language to the rule itself stating that the final authority regarding CWA jurisdiction remains with EPA.

We also disagree with commenters who stated that SCS should be required to obtain EPA or Corps concurrence in their PC cropland determinations. First, since SCS is the administering agency under the Food Security Act, we do not believe it would be appropriate to require that SCS obtain the concurrence of other federal agencies before making determinations under that statute. Moreover, requiring EPA/Corps concurrence on every PC designation made by the SCS would be an inefficient use of our limited resources, since a site being evaluated by SCS may not be one where a regulated activity will occur (i.e., a discharge of dredged or fill material not exempt under Section 404(f)). In those cases, a Section 404 delineation will not be necessary at all, and expending our resources on delineations in such cases would be a waste of taxpayer money. In light of EPA's ultimate statutory responsibility for determining the scope of CWA jurisdiction, we cannot satisfy commentors who argued that we should be required to defer absolutely to SCS determinations. However, recognizing SCS's expertise in making these PC cropland determinations, we will continue to rely generally on determinations made by SCS.

Many commentors expressed concerns about the alleged lack of consistency and reliability in SCS prior converted cropland determinations. These commenters stated that most SCS PC cropland determinations are made based on aerial photos, and they argued that site visits were necessary to accurately delineate wetlands under Section 404. As discussed earlier, the SCS, in consultation with the Corps and EPA, is working to improve the consistency of its prior converted cropland determinations.

D. Expand Exclusion to All Agricultural Areas

Some commentors argued that the exclusion of agricultural areas should not be limited to land that meets the SCS definition of PC cropland but that the exclusion should apply to any agricultural area that is not inundated for more than 14 consecutive days during the growing season. While these commentors believed there would be advantages to treating all agricultural areas similarly in this manner, we believe that such considerations are outweighed by the importance of achieving the goal of consistency with the PC definition under the Food Security Act.

E. Incorporation of NFSAM Into EPA/Corps Regulations

Several commentors made the procedural argument that adoption of the NFSAM by reference into EPA's and the Corps' regulations violated the Administrative Procedure Act. These commentors pointed out that the NFSAM had not yet gone through rulemaking when it was adopted by SCS and they argued that reference to the NFSAM in the proposed rule was not legally adequate. Other commenters questioned the appropriateness of incorporating the NFSAM into EPA's and the Corps' regulatory provisions when the agency that developed the manual (SCS) uses it as a guidance document. Some commentors also felt that EPA and the Corps should retain the flexibility to follow future revisions to the NFSAM made by SCS.

As explained above, one of the primary reasons that EPA and the Corps are amending the definition of waters of the United States to exclude prior converted croplands is to ensure consistency in the way various federal agencies are regulating wetlands. We believe that consistency with SCS policy will best be achieved by our utilizing the NFSAM in the same manner as SCS, i.e., as a guidance document used in conjunction with other appropriate technical guidance and field testing techniques to determine whether an area is prior converted cropland. We also agree with the commentors' arguments about the need to be able to maintain consistency with SCS in the future when revisions are made to the NFSAM; incorporating one version of the manual into EPA's and the Corps' regulations would impair our ability to follow future revisions to the NFSAM in administering Section 404. The final rule, therefore, continues to exclude prior converted cropland from the definition of waters of the United States, but does not specifically incorporate by reference the provisions of the NFSAM. EPA and the Corps will, however, implement this exclusion in a manner following the guidance contained in the NFSAM and appropriate field delineation techniques, and will continue to rely, to the extend appropriate, on determinations made by SCS. The Corps and EPA will continue to work with SCS on procedures for implementing the prior converted cropland portion of the NFSAM. We will also issue policy guidance directing our field staff to utilize the guidance in the NFSAM when determining the presence of wetlands on agricultural lands.

By codifying our existing policy that prior converted croplands are not waters of the U.S., the final rule strengthens the regulatory basis for not regulating these areas under Section 404. The fact that we have not incorporated by reference the actual provisions of the NFSAM into our rules does not undercut our ability to maintain this consistency. Rather, as explained above, we believe that utilizing the NFSAM as a guidance manual, as it is used by SCS, will enhance consistency in the administration of the Food Security and Clean Water Act programs.

F. Section 404(f) Exemptions

Some commentors expressed concern that codifying Regulatory Guidance Letter 90–7 would eliminate all exemptions for agricultural activities under Section 404(f)(1)(A) of the Act. Other commentors felt that the rule was not needed and that prior converted croplands should be considered exempt under the Section 404(f) normal farming activities exemption.

As previously stated in this preamble, today's rule will not eliminate or in any way effect the exemptions for normal farming, ranching, or silviculture activities in Section 404(f)(1). Moreover, the exemptions apply only to discharges and not to the issue of whether an area is within the geographic scope of Section 404.

G. Criteria for Abandonment

Some commentors expressed concerns that the abandonment rule was not clear. A few commentors opposed

the use of prior converted croplands for non-agricultural uses. One commentor objected to the fact that there is no mechanism providing for "recapture" into Section 404 jurisdiction of those prior converted croplands that revert back to wetlands. One commentor objected to the requirement that a prior converted cropland is considered abandoned unless it is used for the production of an agricultural commodity at a regular interval, stating that it should include use for any agricultural production, including hay and pastureland.

The Corps and EPA will use the SCS provisions on "abandonment," thereby ensuring that PC cropland that is abandoned within the meaning of those provisions and which exhibit wetlands characteristics will be considered wetlands subject to Section 404 regulation. While we agree that SCS's abandonment provisions may be complex, SCS has been applying these provisions for several years in implementing the Swampbuster program, and farmers have become familiar with the standards used to determine whether a property has been "abandoned." If EPA and the Corps were to use different abandonment provisions in implementing today's rule, we believe the resulting inconsistency between the two regulatory programs would serve only to create confusion as to which standards are applicable to the same parcel of property. In response to commentors who opposed the use of PC croplands for non-agricultural uses, the agencies note that today's rule centers only on whether an area is subject to the geographic scope of CWA jurisdiction. This determination of CWA jurisdiction is made regardless of the types or impacts of the activities that may occur in those areas. The agencies also note that today's rule will provide a mechanism for "recapturing" into Section 404 jurisdiction those PC croplands that revert back to wetlands where the PC cropland has been abandoned. Finally, in response to the request that a PC cropland not be considered abandoned if the area is used for any agricultural production, regardless of whether the crop is an agricultural commodity, we note that SCS's abandonment provisions do recognize that an area may be used for other agricultural activities and not be considered abandoned. In particular, PC cropland which now meets wetland criteria is considered to be abandoned *unless*: For once in every five years the area has been used for the production of an agricultural commodity, or the area has been used and will continue to be used for the production of an agricultural commodity in a commonly used rotation with equaculture, grasses, legumes or pasture production.

H. Grandfather Clause

One commentor said that RGL 90–7 results in the retroactive grandfathering of illegal drainage activities between 1977 and 1985. It has been and continues to be the position of the Corps and EPA that unauthorized discharge activity cannot eliminate Section 404 jurisdiction. Therefore, wetlands that were converted to prior converted cropland between 1972 and 1985 as a result of unauthorized discharges of dredged or fill material do not constitute "prior converted cropland" within the meaning of today's rule and remain "waters of the United States" subject to Section 404 regulation.

VI. Environmental Documentation

Some commentors wanted the Corps to prepare an Environmental Impact Statement (EIS), arguing that this rulemaking constitutes a major federal action significantly affecting the quality of the human environment. Some commenters felt that since these rules protected wetlands, an EIS would be needed to determine such environmental effects as mosquito infestation, odors, and gases. Others wanted an EIS prepared because they felt that these rules would result in a loss of wetlands. One commentor requested that the Corps prepare an EIS for farming, forestry and ranching disturbances and other questionable wetland impacts before proceeding with further rulemaking.

Section 511(c) of the CWA provides that, except for certain actions not relevant here, no action by EPA constitutes a major federal action significantly affecting the quality of the human environment with the meaning of NEPA. In this joint rulemaking by EPA and the Corps, these two agencies are making substantively identical revisions to their regulations in order to better carry out the purposes of Section 404 of the CWA. EPA is exempt from NEPA under Section 511(c), and we believe that, under the circumstances of this joint rulemaking, the Corps is exempt as well.

Nonetheless, the Corps has prepared an environmental assessment and determined that there will not be a significant impact on the quality of the human environment. This assessment is contained in the record for this rulemaking. Consequently, an EIS has not been prepared by the Corps. Furthermore, appropriate environmental documentation, including an EIS when required, is prepared by the Corps for all permit decisions.

VII. Executive Order 12291 and the Regulatory Flexibility Act

Numerous commentors indicated that a regulatory impact analysis under Executive Order 12291 should be done because the rule would allegedly cause an increase in the Corps' workload and in costs to permit applicants and because the rule will allegedly result in additional encumbrances or burdens on the public in the form of tax increases, project delays, project scrutiny and increased project costs. One commentor felt that agency resources would be diverted from larger, more significant projects by this rule. EPA and the Corps do not believe that this regulation meets the definition of a major rule under Executive Order 12291, and we therefore have not prepared a regulatory impact analysis for the rule.

Some commentors also argued that the agencies were required to perform a Regulatory Flexibility Analysis for this regulation under the Regulatory Flexibility Act, 5 U.S.C. 601–612. EPA and the Department of the Army certify, pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, that this regulation will not have a significant impact on a substantial number of entities. Therefore we have not prepared a regulatory flexibility analysis for this rule.

EPA and the Corps do not believe that this regulation will have a significant impact on a substantial number of small entities first because most of the components of this rule merely codify current agency policies and these aspects of the rule will therefore not result in any increased regulatory burden on the public, including small businesses. Since 1990, the Corps has followed the policy under RGL 90–5 of regulating mechanized landclearing activities under Section 404. Similarly, RGL 90–8 established, in December 1990, the Corps policy of regulating the placement of pilings when the activity would have the effect of discharge of fill material. The amendment of the definition of waters of the United States in today's rule also codifies the agencies' current policy of not regulating prior converted cropland under Section 404, as reflected by Corps RGL 90–7. RGL 90–7, moreover, eased the regulatory burden of the Section 404 program by excluding prior converted cropland from coverage under this provision.

EPA and the Corps believe, moreover, that coverage of discharges associated with ditching, channelization and other excavation activities that would destroy or degrade waters of the United States should not result in a significant impact on a substantial number of small entities. Prior to today's rule, the Corps has uniformly regulated these activities where they were accomplished by excavating dredged material and sidecasting the material in adjacent waters of the United States. Conducting these activities without sidecasting dredged material is technically difficult and costly, and operators unable or unwilling to pay the costs to perform their activities in this manner have therefore already been subject to the Section 404 program. In addition, the practices of Corps districts have varied in this area, with some districts already regulating ditching, channelization and other excavation activities where dredged material was not sidecast. Therefore, we do not believe that the incremental regulatory burden associated with this aspect of the regulation should be significant.

Moreover, EPA and the Corps have included a provision in this regulation that would minimize any increased regulatory burden that may result from subjecting some activities to Section 404 jurisdiction for the first time. The rule does not regulate discharges of dredged material associated with activities that would not destroy or degrade waters of the United States. Establishing this threshold for requiring a Section 404 permit should be relevant for small entities in most instances, since they may be more likely than large operations to engage in minor activities having only a *de minimis* impact on the aquatic ecosystem. Some commentors believed that there would be regulatory impacts on the public due to regulating activities such as mowing, certain snagging activities, pumping, and vehicular traffic. While such activities may occur in waters of the United States, they generally do not involve a discharge of dredged material or would not have the effect of destroying or degrading a water of the United States and therefore would not trigger the requirement of a Section 404 permit.

In addition, as discussed elsewhere in this preamble, the Corps intends to issue general permits (regional or nationwide) for newly regulated activities that would have a minimal individual or cumulative impact on the aquatic environment. Issuance of general permits should further reduce any regulatory burden associated with complying with today's rule.

Finally, one primary purpose of the Regulatory Flexibility Act is to encourage agencies to explore regulatory alternatives that would minimize impacts of the regulatory scheme on small entities. See 5 U.S.C. 604(a)(2) (requiring that final regulatory flexibility analysis include "a description of each of the significant alternatives to the rule * * * designed to minimize any significant economic impact of the rule on small entities"). The only issue addressed in this rulemaking, however, is whether a discharge of dredged or fill material will require a Section 404 permit. Under Section 404, there are therefore only two regulatory "alternatives" available to the agencies: either a Section 404 permit is required or it is not. Section 404 does not authorize any other "intermediate" regulatory control mechanisms for regulated discharges that the agencies could consider establishing for small entities. Because, under Section 404, the requirement to obtain a permit is the sole tool for regulating activities covered by this provision, we do not believe that there are less burdensome alternatives available to achieve the objectives of this rulemaking. Rather, we believe that the appropriate forum for exploring means of reducing impacts on small businesses is through the permitting process itself (e.g., through issuance of general permits where appropriate, and by tailoring permit requirements to the severity of the environmental harm, which in turn may correlate with the size of the entity undertaking the project). As explained previously, the agencies have considered in this rulemaking alternatives that may, indirectly, have resulted in less of a regulatory burden on small entities (e.g., by excluding from regulation activities associated with a discharge of dredged material that would not have a "significant" effect on the environment). For the reasons explained in this preamble, however, we rejected these alternatives as not being consistent with the language, goals and/or objectives of Section 404. Therefore, we believe that the final rule reflects a regulatory approach that appropriately meets the requirements of Section 404.

Note 1.—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 328

Navigation, Water pollution control, Waterways.

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, and 401

Wetlands, Water pollution control.

Dated: August 19, 1993.

Carol M. Browner,

Administrator, Environmental Protection Agency.

G. Edward Dickey,

Acting Assistant Secretary of the Army (Civil Works), Department of the Army.

Accordingly, 33 CFR parts 323 and 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232 and 401 are amended as follows:

33 CFR Chapter II—Corps of Engineers, Department of the Army

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

1. The authority citation for part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Section 323.2(d) is revised to read as set forth below.

3. Section 323.2(e) is amended by adding a sentence at the end that reads as set forth below.

4. Section 323.2(f) is amended by adding a sentence at the end that reads as set forth below.

§ 323.2 Definitions.

* * * * *

(d)(1) Except as provided below in paragraph (d)(2), the term *discharge of dredged material* means any addition of dredged material into, including any redeposit of dredged material within, the waters of the United States. The term includes, but is not limited to, the following:

(i) the addition of dredged material to a specified discharge site located in waters of the United States;

(ii) the runoff or overflow from a contained land or water disposal area; and

(iii) any addition, including any redeposit, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

(2) The term *discharge of dredged material* does not include the following:

(i) discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such

material may require a permit from the Corps or applicable state Section 404 program.

(ii) activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material.

(3) Section 404 authorization is not required for the following:

(i) any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the United States as defined in paragraphs (d)(4) and (d)(5) of this section; however, this exception does not apply to any person preparing to undertake mechanized landclearing, ditching, channelization and other excavation activity in a water of the United States, which would result in a redeposit of dredged material, unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States, as defined in paragraphs (d)(4) and (d)(5) of this section. The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States.

(ii) incidental movement of dredged material occurring during normal dredging operations, defined as dredging for navigation in *navigable waters of the United States*, as that term is defined in part 329 of this chapter, with proper authorization from the Congress and/or the Corps pursuant to part 322 of this Chapter; however, this exception is not applicable to dredging activities in wetlands, as that term is defined at section 328.3 of this Chapter.

(iii) those discharges of dredged material associated with ditching, channelization or other excavation activities in waters of the United States, including wetlands, for which Section 404 authorization was not previously required, as determined by the Corps district in which the activity occurs or would occur, *provided* that prior to August 25, 1993, the excavation activity commenced or was under contract to commence work and that the activity will be completed no later than August 25, 1994. This provision does not apply to discharges associated with mechanized landclearing. For those excavation activities that occur on an ongoing basis (either continuously or periodically), e.g., mining operations, the Corps retains the authority to grant, on a case-by-case basis, an extension of this 12-month grandfather provision *provided* that the discharger has submitted to the Corps within the 12-month period an individual permit application seeking Section 404 authorization for such excavation activity. In no event can the grandfather period under this paragraph extend beyond August 25, 1993.

(iv) certain discharges, such as those associated with normal farming, silviculture, and ranching activities, are not prohibited by or otherwise subject to regulation under Section 404. See 33 CFR 323.4 for discharges that do not required permits.

(4) For purposes of this section, an activity associated with a discharge of dredged material destroys an area of waters of the United States if it alters the area in such a way that it would no longer be a water of the United States.

[Note: Unauthorized discharges into waters of the United States do not eliminate Clean Water Act jurisdiction, even where such unauthorized discharges have the effect of destroying waters of the United States.]

(5) For purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a *de minimis* (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function.

(e) * * * See § 323.3(c) concerning the regulation of the placement of pilings in waters of the United States.

(f) * * * See § 323.3(c) concerning the regulation of the placement of pilings in waters of the United States.

* * * * *

5. Section 323.3(c) is added to read as follows:

§ 323.3 Discharges requiring permits.

* * * * *

(c) *Pilings.* (1) Placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.

(2) Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material. All pilings, however, placed in the *navigable waters of the United States*, as that term is defined in part 329 of this chapter, require authorization under section 10 of the Rivers and Harbors Act of 1899 (see part 322 of this chapter).

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

6. The authority citation for part 328 continues to read as follows:

Authority: 33 U.S.C. 1344.

7. Section 328.3(a) is amended by adding a new paragraph (a)(8) that reads as follows:

§ 328.3 Definitions.

* * * * *

(a) * * *

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

40 CFR Chapter I—Environmental Protection Agency

PART 110—DISCHARGE OF OIL

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1321 (b)(3) and (b)(4) and 1361(a); 33 U.S.C. 1517(m)(3).

2. Section 110.1, definition of *navigable waters*, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 110.1 Definitions.

* * * * *

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

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PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 112.2(k), definition of *navigable waters*, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 112.2 Definitions.

* * * * *

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

1. The authority citation for part 116 continues to read as follows:

Authority: 33 U.S.C. 1521 *et seq.*

2. In § 116.3, the definition of *navigable waters* is amended by adding three new sentences of concluding text at the end of the definition, as set forth below, and the definitions are placed in alphabetical order.

§ 116.3 Definitions.

* * * * *

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. The definition of *navigable waters*, § 117.1(i), is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 117.1 Definitions.

* * * * *

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: 33 U.S.C. 1251 *et. seq.*

2. Section 122.2, definition of *waters of the United States*, is amended by adding three new sentences at the end of the concluding text of the definition to read as follows:

§ 122.2 Definitions.

* * * * *

* * * Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 continues to read as follows:

Authority: 33 U.S.C. 1344(b) and 1361(a).

2. Section 230.3(s), definition of *waters of the United States*, is amended by adding three new sentences of concluding text at the end of the definition to read as follows:

§ 230.3 Definitions.

* * * * *

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

1. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. In § 232.2, the definition of *discharge of dredged material* is revised to read as set forth below.

3. In § 232.2, the definition of *discharge of fill material* is revised to read as set forth below.

4. In § 232.2, the definition of *waters of the United States* is amended by adding two new sentences of concluding text at the end of the definition to read as set forth below.

§ 232.2 Definitions.

* * * * *

Discharge of dredged material. (1) Except as provided below in paragraph (2), the term *discharge of dredged material* means any addition of dredged material into, including any redeposit of dredged material within, the waters of the United States. The term includes, but is not limited to, the following:

(i) The addition of dredged material to a specified discharge site located in waters of the Untied States;

(ii) The runoff or overflow, associated with a dredging operation, from a contained land or water disposal area; and

(iii) Any addition, including any redeposit, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

(2) The term *discharge of dredged material* does not include the following:

(i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable state.

(ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material.

(3) Section 404 authorization is not required for the following:

(i) Any incidental addition, including redeposit, of dredged material

associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the U.S. as defined in paragraphs (4) and (5) of this definition; however, this exception does not apply to any person preparing to undertake mechanized landclearing, ditching, channelization and other excavation activity in a water of the United States, which would result in a redeposit of dredged material, unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States, as defined in paragraphs (4) and (5) of this definition. The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States.

(ii) Incidental movement of dredged material occurring during normal dredging operations, defined as dredging for navigation in *navigable waters of the United States*, as that term is defined in 33 CFR part 329, with proper authorization from the Congress or the Corps pursuant to 33 CFR part 322; however, this exception is not applicable to dredging activities in wetlands, as that term is defined at § 232.2(r) of this Chapter.

(iii) Those discharges of dredged material associated with ditching, channelization or other excavation activities in waters of the United States, including wetlands, for which Section 404 authorization was not previously required, as determined by the Corps district in which the activity occurs or would occur, *provided* that prior to August 25, 1993, the excavation activity commenced or was under contract to commence work and that the activity will be completed no later that August 25, 1994. This provision does not apply to discharges associated with mechanized landclearing. For those excavation activities that occur on an ongoing basis (either continuously or periodically), e.g., mining operations, the Corps retains the authority to grant, on a case-by-case basis, an extension of this 12-month grandfather provision *provided* that the discharger has submitted to the Corps within the 12-month period an individual permit application seeking Section 404 authorization for such excavation activity. In no event can the grandfather period under this paragraph extend beyond August 25, 1996.

(iv) Certain discharges, such as those associated with normal farming, silviculture, and ranching activities, are not prohibited by or otherwise subject to regulation under Section 404. See 40 CFR 232.3 for discharges that do not require permits.

(4) For purposes of this section, an activity associated with a discharge of dredged material destroys an area of waters of the United States if it alters the area in such a way that it would no longer be a water of the United States.

Note: Unauthorized discharges into waters of the United States do not eliminate Clean Water Act jurisdiction, even where such unauthorized discharges have the effect of destroying waters of the United States.

(5) For purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a *de minimis* (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function.

Discharge of fill material. (1) The term *discharge of fill material* means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

(2) In addition, placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.

(i) Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material. All pilings, however, placed in the *navigable waters of the United States*, as that term is defined in 33 CFR part 329, require authorization under section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR part 322).

(ii) [Reserved]

* * * * *

Waters of the United States. * * *

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 401—EFFLUENT GUIDELINES AND STANDARDS

1. The authority citation for part 401 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 401.11(l), definition of *navigable waters*, is amended by adding two new sentences at the end of the definition to read as follows:

§ 401.11 General definitions.

* * * * *

(l) * * * Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

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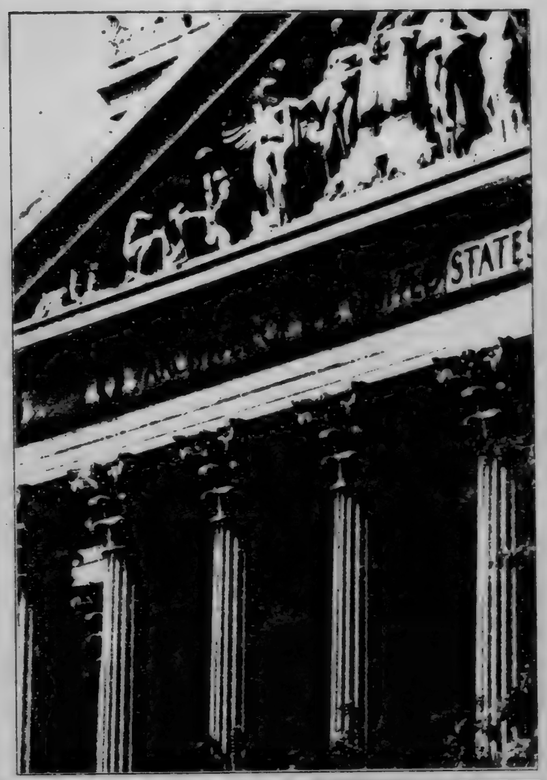

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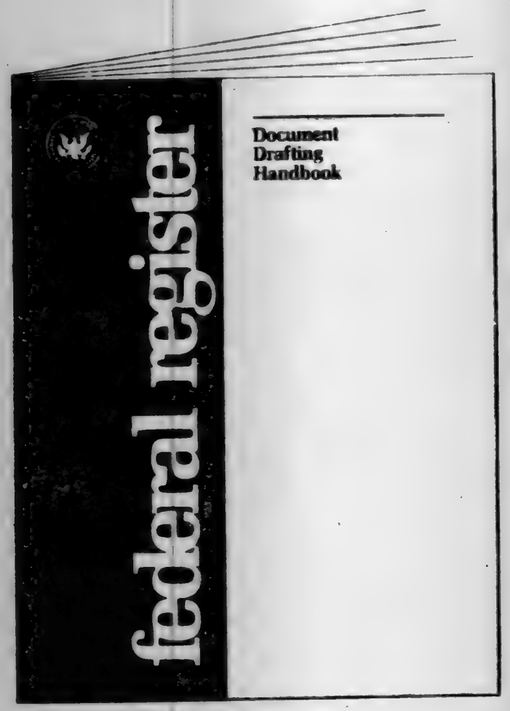

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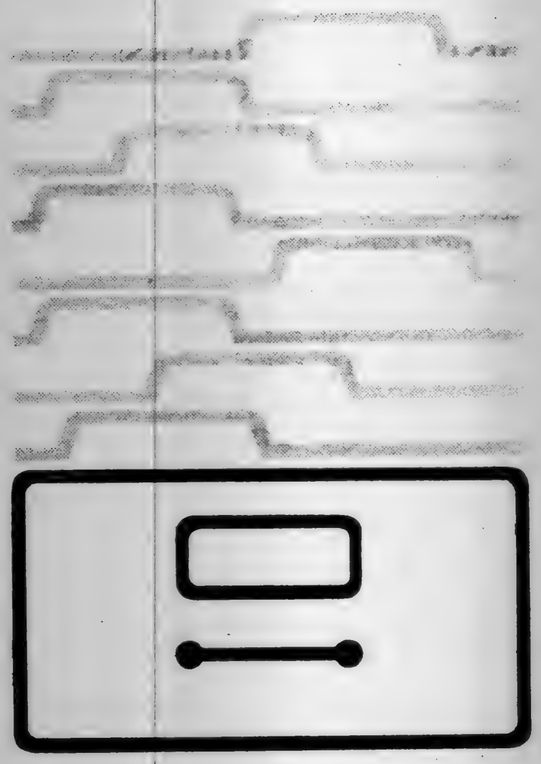

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD31

Price Support Loan Requirements; Farmer Owned Reserve Program Eligibility Requirements

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the Price Support Loan Program and the Farmer-Owned Reserve (FOR) Program which are conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949, as amended (the 1949 Act). The amendments made by this interim rule will offer producers an additional opportunity to declare their intentions for the 1992 feed grains FOR Program, and allow extensions of maturing 1990 FOR wheat loans and 1992 wheat and feed grain loans.

DATES: Interim rule effective August 26, 1993. Comments must be received on or before September 27, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7641. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3623, South Agriculture Building, USDA, 14th Street and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Overbo, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–8223.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and it has been determined "nonmajor" because these program provisions will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because:

(1) This rule will not have a significant adverse impact on a substantial number of small entities since this rule liberalizes benefits and,

(2) The CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This interim rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this interim rule are retroactive to the extent that this rule extends price support availability for loans which may have matured. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collections requirements for participating in the FOR Program have been approved for use by the Office of Management and Budget (OMB) through August 31, 1994, and assigned OMB No. 0560–0087. The amendments to 7 CFR part 1421 set forth in this interim rule do not impose any new or revised information collection requirements to participate in FOR from those previously reviewed and approved by OMB.

Public reporting burden for these collections is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250–0001; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0087), Washington, DC 20503.

Comments

Because of recent natural disasters, producers with outstanding 1990 wheat FOR loans and 1992 wheat and feed grain loans that matured in June, or will mature in July or August, are unable to market or move the loan collateral in order to settle such CCC price support loans. In addition, producers are currently making decisions regarding eligible commodities which may be pledged as collateral for FOR loans. Accordingly, the provisions of this

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interim rule are effective upon publication in the **Federal Register**. Comments are requested within 30 days of publication and will be taken into consideration when developing the final rule. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Background

Producers with regular 9-month nonrecourse price support loans are eligible to enter the FOR upon maturity of the regular loan. This interim rule amends 7 CFR 1421.203 by requiring producers intending to enter wheat or feed grains into the FOR who have regular 9-month nonrecourse loans that will mature on or before the date announced by CCC to request an extension of such loans in order to file their intention to enroll the commodity into the FOR. Current regulations provide that CCC may extend a price support loan (1) for wheat, to the last day in February following the year in which the crop is normally harvested; and (2) for corn, grain sorghum, barley, and oats, to May 31 following the year in which the crop is normally harvested.

This interim rule amends § 1421.6 (c) by extending the deadline by which producers intending to enter the FOR must request loan extensions for 9 month nonrecourse loans to a date determined and announced by CCC. This allows extending loans to a date that reasonably corresponds to the date producers are required to file an offer of their intentions to participate in the FOR when such program is announced.

This interim rule amends § 1421.6 to allow producers to extend outstanding wheat, corn, grain sorghum, barley, oats, and rye loans if the producer is unable to market the commodity pledged as collateral for such loans due to a natural disaster. The flooding in the midwestern part of the United States has resulted in the interruption of the normal marketing and movement of commodities. CCC has determined that to require producers to settle such loans by the maturity date would cause producers severe financial difficulties. To remove hardships caused by this natural disaster, CCC has determined that such producers with outstanding wheat and feed grain CCC price support loans that mature during times of natural disasters may request an extension of the original maturity date of such loans until marketing and movement of commodities return to normal levels. This will allow producers in the disaster affected areas an opportunity to settle their loans without financial hardship. In addition, CCC has determined in accordance with § 1421.202 to allow producers to extend for 6 months, outstanding 1990-crop wheat FOR loans.

In order to ensure that maximum reserve quantities are not exceeded and to ensure regional equity when FOR programs are announced, CCC may require producers to file an offer with CCC of their intentions to participate in the FOR. When this is required, producers must now file their intentions for wheat by January 31, and for feed grains by April 30, of the year following the year in which the crop is normally harvested. This interim rule amends § 1421.203 to provide that when producers are required to file their intentions to participate in the FOR, such intentions must be filed by a producer by the date determined and announced by CCC for the applicable commodity pursuant to § 1421.6(c). This allows for greater program flexibility based on conditions at the time of the program announcement without compromising program integrity.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds; Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. In § 1421.6, paragraph (c) is revised and paragraph (e) is added to read as follows:

§ 1421.6 Maturity and expiration dates.

* * * * *

(c) 1991 and subsequent year wheat, corn, grain sorghum, barley, and oat loans may only be extended by CCC beyond the maturity date specified in paragraph (a) of this section as CCC determines necessary for allowing producers an opportunity to participate in the farmer owned reserve program conducted in accordance with §§ 1421.200 through 1421.217.

* * * * *

(e) Notwithstanding any other provision of this section, CCC may allow producers with outstanding wheat, corn, grain sorghum, barley, oat, and rye loans maturing during times of a natural disaster, as determined by CCC, to extend such loans beyond the maturity date specified in paragraph (a) of this section. If CCC determines that the commodity pledged as collateral for such loans cannot be marketed because of such natural disaster, CCC may, at its discretion, extend such loans to a date that will allow affected producers to market such commodity in a normal manner.

3. Section 1421.203 is revised to read as follows:

§ 1421.203 Reserve quantity.

The maximum quantity of wheat and feed grains stored under the FOR program shall be determined and announced annually by CCC by the date specified in § 1421.201(b). In order to assure that such quantities are not exceeded and to ensure regional equity, CCC may require producers to file with CCC, on a form prescribed by CCC, an offer which includes a statement of the quantity of grain which is pledged as collateral for a regular price support loan which such producers intend to place in the FOR program. If the quantities on such forms show that the quantity intended to be entered into the FOR program by producers will likely exceed the maximum quantity allowed, CCC may apply a uniform factor to the offered quantity. If such a form is required, failure to file such form with respect to a commodity that would otherwise be eligible for entry into the FOR program, will result in ineligibility of the commodity for FOR entry. All such forms, if required by CCC, must be filed by a producer with the ASCS county office that disbursed the qualifying regular price support loan by the date determined and announced by CCC for the applicable commodity.

Signed in Washington, DC, on August 19, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–20660 Filed 8–25–93; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 91–035–4]

RIN 0579–AA42

Random Source Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in a final rule that established regulations under the Animal Welfare Act (Act) regarding the housing and care of dogs and cats held by certain facilities that provide these animals to dealers, and that also added certification requirements regarding random source dogs and cats provided by dealers. The rule was promulgated under the Act to prevent the use of stolen pets in research and to provide owners the opportunity to locate their animals. The final rule was published in the **Federal Register** on July 22, 1993 (58 FR 39124–39130, Docket No. 91–035–3).

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Assistant Deputy Administrator, Animal Care, Regulatory Enforcement and Animal Care, APHIS, USDA, room 554, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4981.

§ 2.75 [Corrected]

In FR Doc. 93–17439, pages 39124–39130, the following correction is made: On page 39129, third column, in § 2.75, paragraph (a)(4), the words "cat sold or otherwise disposed of by a dealer or exhibitor: *Provided*," are added immediately before the word "*however*,".

Done in Washington, DC, this 20th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–20719 Filed 8–25–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–87–AD; Amendment 39–8665; AD 93–16–08]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections to detect cracking in the midspar fuse pins, replacement of certain fuse pins, and inspections of the bushings in the midspar attachment which terminate the requirement for the repetitive inspections. This amendment removes the requirement to terminate the repetitive inspections. This amendment is prompted by reports of cracked fuse pins found on in-service airplanes. The actions specified in this AD are intended to prevent the separation of the strut and engine from the wing of the airplane.

DATES: Effective September 10, 1993.

The incorporation by reference of Boeing Service Bulletin 757–54A0020, Revision 4, dated May 27, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of September 10, 1993.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of December 3, 1992 (57 FR 48959, October 29, 1992).

Comments for inclusion in the Rules Docket must be received on or before October 25, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On October 2, 1992, the FAA issued AD 92–22–11, Amendment 39–8397 (57 FR 48959, October 29, 1992), to require repetitive inspections to detect cracking in the midspar fuse pins, replacement of straight fuse pins (part number 311N5067–1), and inspections of the bushings in the midspar attachment which terminate the requirement for the repetitive inspections. That action was prompted by an analysis conducted by the manufacturer which indicated that bushing inspection and fuse pin replacement may terminate the requirement for the repetitive inspections of the midspar fuse pins. The actions required by that AD are intended to prevent the separation of the strut and engine from the wing of the airplane.

Since the issuance of that AD, the FAA has received additional reports of cracked straight fuse pins on in-service Model 757 series airplanes equipped with Rolls Royce engines. Testing of these fuse pins has indicated that the inspection of the bushings in the midspar attachment, as required by the existing AD, does not adequately protect these fuse pins from cracking as originally anticipated. Therefore, the FAA finds that this inspection of the bushings in the wing of the airplane should not terminate the requirement for repetitive eddy current inspections of the midspar fuse pins.

Finite Element Modeling was used to evaluate the midspar fuse pins. The results of that evaluation alone, however, could not accurately predict an exact interval for inspection of these pins that would be adequate to detect cracking before it initiated or propagated. Therefore, FAA reviewed the service experience of affected in-service airplanes and has determined that a conservatively adjusted repetitive inspection interval of 1,500 flight cycles is appropriate.

Further, the FAA has conducted a review of the integrity of refinished straight fuse pins on in-service airplanes. As a result, the FAA has determined that fatigue cracking in refinished straight fuse pins can be detected in a timely manner and safety of the fleet will not be affected adversely by their use if the fuse pins are inspected at intervals of 1,500 flight cycles.

Since the issuance of AD 92–22–11, the FAA has determined that fuse pins on other Model 757 series airplanes equipped with Rolls Royce engines may also be subject to this type of cracking. To ensure that all of these fuse pins are inspected adequately (i.e., new and refinished straight fuse pins) or replaced regularly (i.e, bulkhead fuse pins), the FAA finds that the applicability of the rule must be expanded to include all Model 757 series airplanes equipped with Rolls Royce engines.

Complete fracture of both midspar fuse pins on the same strut could result in separation of the strut and engine from the wing of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757–54A0020, Revision 4, dated May 27, 1993, that describes procedures for eddy current inspections to detect cracking in the inner diameter of the strut midspar fuse pins, and replacement of certain cracked fuse pins with new or refinished fuse pins.

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Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 92-22-11 to remove the previous requirement to terminate the repetitive inspections of the midspar fuse pins. This AD requires continuing repetitive inspections to detect cracking in the midspar fuse pins and replacement of certain fuse pins with new or refinished fuse pins. Additionally, this AD is now applicable to all Model 757 series airplanes equipped with Rolls Royce engines.

This is considered to be interim action. The manufacturer currently is developing a modification that will positively address the subject unsafe condition, and will constitute terminating action for the repetitive inspections required by this AD. Once this modification is completed, tested, approved, and available, the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-87-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8397 (57 FR 48959, October 29, 1992), and by adding a new airworthiness directive (AD), amendment 39-8665, to read as follows:

93-16-06 Boeing: Amendment 39-8665. Docket 93-NM-87-AD. Supersedes AD 92-22-11, Amendment 39-8397.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For Model 757 series airplanes equipped with straight fuse pins, part number (P/N) 311N5067-1, perform an eddy current inspection to detect cracking in those fuse pins in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993; Revision 3, dated March 26, 1992; or Revision 2, dated October 31, 1991; at the times specified in paragraph (a)(1) and (a)(2) of this AD.

(1) For airplanes, line numbers 1 through 273 inclusive, 276, 278 through 283 inclusive, and 288 through 425 inclusive:

(i) For new fuse pins not previously inspected in accordance with AD 92-22-11: Prior to the accumulation of 5,000 total flight cycles on the fuse pin;

(ii) For refinished fuse pins not previously inspected in accordance with AD 92-22-11: Prior to the accumulation of 1,500 total flight cycles on the fuse pin;

(iii) For fuse pins previously inspected in accordance with paragraph (a) of AD 92-22-11, but not previously inspected in accordance with paragraph (e) of that AD: Within 1,500 flight cycles on the fuse pin after the last inspection in accordance with that AD; and

(iv) For fuse pins previously inspected in accordance with paragraph (e) of AD 92-22-11: Within 500 flight cycles after the effective date of this AD or 60 days after the effective date of this AD, whichever occurs first.

(2) For airplanes, line numbers 274 through 275 inclusive, 277, 284 through 287 inclusive, and 426 and subsequent: Inspect prior to the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) or (a)(2)(iii), as applicable:

(i) Within 500 flight cycles after the effective date of this AD or 60 days after the effective date of this AD, whichever occurs first, on the fuse pin.

(ii) Prior to the accumulation of 5,000 total flight cycles on a new straight fuse pin.

(iii) Prior to the accumulation of 1,500 total flight cycles on a refinished straight fuse pin.

(b) If cracking is found, prior to further flight, replace the cracked fuse pin with a new or refinished straight fuse pin having P/N 311N5067-1 in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993. Following replacement, inspect these fuse pins in accordance with the time specified in paragraph (a)(1) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the fuse pin.

(c) If no crack is found, reinspect the fuse pins at intervals not to exceed 1,500 flight cycles on the fuse pin in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993.

(d) For Model 757 series airplanes equipped with bulkhead fuse pins, P/N 311N5211-1: Prior to the accumulation of 6,000 total flight cycles on the bulkhead fuse pin replace it with one of the following:

(1) A new bulkhead fuse pin having P/N 311N5211-1 in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993, and thereafter at intervals not to exceed 6,000 flight cycles on any bulkhead fuse pin, replace it with a new bulkhead fuse pin having P/N 311N5211-1.

(2) A new straight fuse pin having P/N 311N5067-1 in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993. Following replacement, accomplish the requirements of paragraph (a) of this AD.

(3) A refinished straight fuse pin in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993. Following replacement, accomplish the requirements of paragraph (a) of this AD. Bulkhead fuse pins shall not be refinished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 757-54A0020, Revision 4, dated May 27, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Certain other inspections and replacements shall be done in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991; or Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 10, 1993.

Issued in Renton, Washington, on August 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-20635 Filed 8-25-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-CE-23-AD; Amendment 39-8671; AD 93-17-01]

Airworthiness Directives; Beech Aircraft Corp. Models B90, C90, and C90A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Models B90, C90, and C90A airplanes. This action requires inspecting the inboard nipple on the leading edge fuel cell for cracks or fuel leaks, repairing if cracks or fuel leaks are found, and replacing the fuel interconnect assembly. Reports of fuel line misalignment that resulted in cracking of the fuel cell nipples at the inboard wing root of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of these fuel cell nipples caused by cracking and fuel leaks, which, if not detected and corrected, could result in an airplane fire.

DATES: Effective October 12, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 12, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Riddle, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4144; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech Models B90, C90, and C90A airplanes was published in the Federal Register on April 16, 1993 (58 FR 19788). The action proposed to require: (1) Inspecting the inboard nipple on the leading edge fuel cell for cracks or fuel leaks, and repairing any cracks or fuel leaks; and (2) replacing the fuel interconnect tube assembly. The proposed inspection and fuel interconnect tube assembly replacement would be accomplished in accordance with Beech Service Bulletin No. 2475, dated February 1993. If necessary, the proposed repair would be accomplished in accordance with procedures specified in the applicable maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 572 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $228,800. These figures take into account that none of the affected airplane operators have accomplished the required actions.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

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Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93-17-01 Beech Aircraft Corporation: Amendment 39-8671; Docket No. 93-CE-23-AD.

Applicability: Models B90, C90, and C90A airplanes (serial numbers LJ-489 through LJ-1318), certificated in any category.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the leading edge fuel cell nipples caused by cracking and fuel leaks, which, if not detected and corrected, could result in an airplane fire, accomplish the following:

(a) Inspect the inboard nipple on the leading edge fuel cell for cracks or fuel leaks in accordance with Part I of the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2475, dated February 1993. If cracks or fuel leaks are found, prior to further flight, repair the fuel cells in accordance with procedures specified in the applicable maintenance manual.

(b) Replace the fuel interconnect tube assembly in accordance with Part II of the Accomplishment Instructions section of Beech SB No. 2475, dated February 1993.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The inspection and replacement required by this AD shall be done in accordance with Beech Service Bulletin No. 2475, dated February 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8671) becomes effective on October 12, 1993.

Issued in Kansas City, Missouri, on August 19, 1993.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-20671 Filed 8-25-93; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-88-AD; Amendment 39-8666; AD 93-16-09]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Pratt and Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections to detect cracking in the midspar fuse pins and replacement of certain fuse pins. That AD also provides for optional inspections of the bushings in the midspar attachment which terminate the requirement for the repetitive inspections. This amendment removes the option to terminate the repetitive inspections. This amendment is prompted by reports of cracked fuse pins found on in-service airplanes. The actions specified in this AD are intended to prevent the separation of the strut and engine from the wing of the airplane.

DATES: Effective September 10, 1993.

The incorporation by reference of certain other publications listed in the regulation is approved previously by the Director of the Federal Register as of September 10, 1993.

The incorporation by reference of Boeing Alert Service Bulletin 757-54A0019, Revision 2, dated October 11, 1991, as listed in the regulation was approved previously by the Director of the Federal Register as of February 25, 1992 (57 FR 4843, February 10, 1992).

Comments for inclusion in the Rules Docket must be received on or before October 25, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-88-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2778; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On January 23, 1992, the FAA issued AD 92-04-04, Amendment 39-8174 (57 FR 4843, February 10, 1992), to require repetitive inspections to detect cracking in the midspar fuse pins and replacement of straight fuse pins (part number 311N5067-1), and to provide for optional inspections of the bushings in the midspar attachment which terminate the requirement for the repetitive inspections of the midspar fuse pins. That AD also requires replacement of bulkhead fuse pins (part number 311N5211-1) every 6,000 flight cycles. That action was prompted by tests of the pins, which demonstrated that the pin crack growth rates are greater than previously anticipated. The actions required by that AD are intended to prevent the separation of the strut and engine from the wing of the airplane.

Since the issuance of that AD, the FAA has received additional reports of cracked straight fuse pins on in-service Model 757 series airplanes equipped with Pratt and Whitney engines. Testing of these fuse pins has indicated that the optional terminating inspection of the bushings in the midspar attachment (as provided in the existing AD) does not adequately protect these fuse pins from cracking as originally anticipated. Therefore, the FAA finds that this optional inspection should not terminate the requirement for repetitive eddy current inspections of the midspar fuse pins, and that those inspections must continue in order to ensure the continuing airworthiness of the midspar attachment.

Finite Element Modeling was used to evaluate the midspar fuse pins. The results of that evaluation alone, however, could not accurately predict an exact interval for inspection of these pins that would be adequate to detect cracking before it initiated or propagated. Therefore, FAA reviewed the service experience of affected in-service airplanes and has determined that a conservatively adjusted repetitive inspection interval of 1,000 flight cycles is appropriate.

Further, the FAA has conducted a review of the integrity of refinished straight fuse pins used on in-service airplanes. As a result, the FAA has determined that fatigue cracking in refinished straight fuse pins can be detected in a timely manner and safety of the fleet will not be affected adversely by their use if the fuse pins are inspected at intervals of 1,000 flight cycles.

Since the issuance of AD 92-04-04, the FAA has determined that fuse pins on other Model 757 series airplanes equipped with Pratt and Whitney engines may be also be subject to this type of cracking. To ensure that all of these fuse pins are inspected adequately (i.e., new and refinished straight fuse pins) or replaced regularly (i.e., bulkhead fuse pins), the FAA finds that the applicability of the rule must be expanded to include all Model 757 series airplanes equipped with Pratt and Whitney engines.

Complete fracture of both midspar fuse pins on the same strut could result in separation of the strut and engine from the wing of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757-54A0019, Revision 4, dated May 27, 1993, that describes procedures for eddy current inspections to detect cracking in the inner diameter of the strut midspar fuse pins, and replacement of certain cracked fuse pins with new or refinished fuse pins.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 92-04-04 to remove the previous option of terminating the repetitive inspections. This AD requires continuing repetitive inspections to detect cracking in the midspar fuse pins and replacement of certain fuse pins with new or refinished fuse pins. Additionally, this AD is now applicable to all Model 757 series airplanes equipped with Pratt and Whitney engines.

This is considered to be interim action. The manufacturer currently is developing a modification that will positively address the subject unsafe condition, and will constitute terminating action for the repetitive inspections required by this AD. Once this modification is completed, tested, approved, and available, the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-88-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8174 (57 FR 4843, February 10, 1992), and by adding a new airworthiness directive (AD), amendment 39-8666, to read as follows:

93-16-09 Boeing: Amendment 39-8666. Docket 93-NM-88-AD. Supersedes AD 92-04-04, Amendment 39-8174.

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Applicability: Model 757 series airplanes equipped with Pratt and Whitney engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For Model 757 series airplanes equipped with straight fuse pins, part number (P/N) 311N5067–1, perform an eddy current inspection to detect cracking in those fuse pins in accordance with Boeing Service Bulletin 757–54A0019, Revision 2, dated October 11, 1991; Revision 3, dated March 26, 1992; or Revision 4, dated May 27, 1993; at the times specified in paragraph (a)(1) and (a)(2) of this AD.

(1) For airplanes, line numbers 1 through 277, inclusive, and 284 through 424, inclusive:

(i) For new fuse pins not previously inspected in accordance with AD 92–04–04: Prior to the accumulation of 3,800 total flight cycles on the fuse pin;

(ii) For refinished fuse pins not previously inspected in accordance with AD 92–04–04: Prior to the accumulation of 1,000 total flight cycles on the fuse pin;

(iii) For fuse pins previously inspected in accordance with paragraph (a) of AD 92–04–04, but not previously inspected in accordance with paragraph (d) of that AD: Within 1,000 flight cycles on the fuse after the last inspection in accordance with that AD; and

(iv) For fuse pins previously inspected in accordance with paragraph (d) of AD 92–04–04: Within 500 flight cycles after the effective date of this AD or 60 days after the effective date of this AD, whichever occurs first.

(2) For airplanes, line numbers 278 through 283 inclusive, and 425 and subsequent, inspect prior to the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) or (a)(2)(iii), as applicable:

(i) Within 500 flight cycles after the effective date of this AD or 60 days after the effective date of this AD, whichever occurs first, on the fuse pin.

(ii) Prior to the accumulation of 3,800 total flight cycles on a new straight fuse pin.

(iii) Prior to the accumulation of 1,000 total flight cycles on a refinished straight fuse pin.

(b) If cracking is found, prior to further flight, replace the cracked fuse pin with a new or refinished straight fuse pin in accordance with Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993. Following replacement, inspect these fuse pins in accordance with the time specified in paragraph (a)(1) of this AD. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on the fuse pin.

(c) If no crack is found, reinspect the fuse pins at intervals not to exceed 1,000 flight cycles on the fuse pin in accordance with Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993.

(d) For Model 757 series airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Prior to the accumulation of 6,000 total flight cycles on the bulkhead fuse pin, replace it with one of the following:

(1) A new bulkhead fuse pin having P/N 311N5211–1 in accordance with Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993, and thereafter at intervals not to exceed 6,000 flight cycles on any bulkhead fuse pin, replace it with a new bulkhead fuse pin having P/N 311N5211–1.

(2) A new straight fuse pin having P/N 311N5067–1 in accordance with Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993. Following replacement, accomplish the requirements of paragraph (a) of this AD.

(3) A refinished straight fuse pin in accordance with Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993. Following replacement, accomplish the requirements of paragraph (a) of this AD. Bulkhead fuse pins shall not be refinished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacement shall be done in accordance with Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993; or Boeing Service Bulletin 757–54A0019, Revision 3, dated March 26, 1992. The incorporation by reference of these documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Certain other inspections and replacements shall be done in accordance with Boeing Alert Service Bulletin 757–54A0019, Revision 2, dated October 11, 1991. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 10, 1993.

Issued in Renton, Washington, on August 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–20634 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 93–AWA–6]

Amendment of Federal Airways V–18 and V–185

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes language from the airspace designations of Federal Airways V–18 and V–185 concerning Restricted Area R–6004. Presently, these designations exclude the airspace within R–6004. R–6004 was revoked in 1976. However, the designations of V–18 and V–185 were not updated to reflect this revocation. This action updates the designations to reflect the revocation of Restricted Area R–6004.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes language from the airspace designations of Federal Airways V–18 and V–185 concerning Restricted Area R–6004. Presently, these designations exclude the airspace within R–6004. R–6004 was revoked in 1976. However, the designations of V–18 and V–185 were not updated to reflect this revocation. This action updates the designations to reflect the revocation of Restricted Area R–6004. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Domestic VOR Federal airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–18 [Revised]

From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap; Dallas-Forth Worth, TX; Quitman, TX; Shreveport, LA; Monroe, LA; Jackson, MS; Meridian, MS; Tuscaloosa, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; Charleston, SC.

* * * * *

V–185 [Revised]

From Savannah, GA; Colliers, SC; Greenwood, SC; Sugarloaf Mountain, NC; Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer.

* * * * *

Issued in Washington, DC, on August 18, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20679 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–ANM–24]

Alteration of Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the names of three VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aids and one VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) aid, within the designations of certain Class E airspace areas located in Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport. This action reflects the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–24, 1601 Lind Avenue SW. Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On December 29, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the names of four VORTAC's within the airspace designations for certain Class E airspace located in Oregon and Idaho (57 FR 61848). FAA Handbook 7400.2C states that a NAVAID with the same name as the associated airport should be located on the airport. These four NAVAID's are not located on the airport surfaces, so the names should be changed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice, except for slight changes in longitude of the Bend Municipal Airport, Medford-Jackson County Airport, the Pumice LOM, Oregon, and latitude of Nez Perce VOR/DME, Idaho to reflect the latest data. Airspace Reclassification, which became effective September 16, 1993, discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North America Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations changes the names of three VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aids and one VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) aid, within the designation of certain Class E airspace areas located in Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport. The action reflects the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Bend, OR [Revised]

Bend Municipal Airport, OR

(lat. 44°05'37"N, long. 121°12'00"W)
Deschutes VORTAC (lat. 44°15'10"N, long. 121°18'13"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Bend Municipal Airport, and within 1.8 miles each side of the Deschutes VORTAC 334° and 154° radials extending from the 4.3-mile radius to .9 mile northwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 4.3 miles southwest and 7 miles northeast of the Deschutes VORTAC 334° radial extending from the VORTAC to 10.5 miles northwest of the VORTAC.

* * * * *

ANM OR E5 Medford, OR [Revised]

Medford-Jackson County Airport, OR

(lat. 42°22'20"N, long. 122°52'21"W)
Rogue Valley VORTAC (lat. 42°28'47"N, long. 122°54'47"W)
Pumie LOM (lat. 42°27'03"N, long. 122°54'48"W)
Klamath Falls VORTAC (lat. 42°09'11"N, long. 121°43'39"W)
Fort Jones VORTAC (lat. 41°26'59"N, long. 122°48'23"W)

That airspace extending upward from 700 feet above the surface within 6.1 miles northeast and 4.3 miles southwest of the Medford ILS localizer northwest course extending from 2.7 miles northwest of the Pumie LOM to 20.9 miles northwest of the LOM, and within 3 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 7.4 miles north of the VORTAC, and within 3.1 miles each side of the Medford ILS localizer southeast course extending from the LOM to 20.9 miles southeast of the LOM; that airspace extending upward from 1,200 feet above the surface bounded on the east by V–452, on the southeast by the 34.8-mile radius of the Klamath Falls VORTAC, on the south by V–122, on the west by V–23, and that airspace southeast of Medford bounded on the north by the south edge of V–122, on the east by the 34.8-mile radius of the Klamath Falls VORTAC, on the southeast by a line 4.3 miles southeast and parallel to the Fort Jones VORTAC 041° radial, on the west by the east edge of V–23, and that airspace west of the Rogue Valley VORTAC bounded on the north by the south edge of V–287, on the west by the east edge of V–27, on the south by the north edge of V–122.

* * * * *

ANM OR E5 Redmond, OR [Revised]

Redmond, Roberts Field, OR

(lat. 44°15'14"N, long. 121°09'00"W)
Deschutes VORTAC (lat. 44°15'10"N, long. 121°18'13"W)

That airspace extending upward from 700 feet above the surface within 1.8 miles north and 11.8 miles south of the Deschutes VORTAC 059° radial to 28.8 miles east of the VORTAC, and within 1.8 miles each side of the 230° bearing from the Roberts Field Airport extending 8.7 miles southwest of the airport, and within 1.8 miles each side of the Deschutes VORTAC 162° radial extending from the VORTAC to 4.3 miles south of the VORTAC, and within 1.8 miles each side of Deschutes VORTAC 281° radial extending from the VORTAC to 4.3 miles west of the VORTAC and within 3.5 miles each side of the Deschutes VORTAC 014° radial extending from 13.1 miles north of the VORTAC to 30.5 miles north; that airspace extending upward from 1,200 feet above the surface within a 32.2–mile radius of the VORTAC between the 006° and 048° radials, within a 27-mile radius of the VORTAC between the 048° radial and a line 5.3 miles west of and parallel to the 189° radial; that airspace extending upward from 1,700 feet above the surface within a line beginning at Deschutes VORTAC extending north on V–25 to V–112, east on V–112 to V–4, southeast on V–4 to V–357, southwest on V–357 to V–122, west on V–122 to V–452, northwest on V–452 to V–269, east on V–269 to the Deschutes VORTAC; excluding that airspace within Federal Airways; the Lakeview, OR Additional Control Area; the Baker, OR; Klamath Falls, OR; Pendleton, OR; The Dalles, OR and the Burns, OR, class E airspace areas.

* * * * *

ANM OR E5 Sunriver, OR [Revised]

Sunriver Airport, OR

(lat. 43°52'35"N, long. 121°27'10"W)
Deschutes VORTAC (lat. 44°15'10"N, long. 121°18'13"W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of the Sunriver Airport and within 3.5 miles each side of the Deschutes VORTAC 197° radial extending from the 6.1-mile radius to 8.7 miles north of the airport.

ANM OR E5 The Dalles, OR [Revised]

The Dalles Municipal Airport, OR

(lat. 45°37'07"N, long. 121°10'02"W)
Klickitat VORTAC (lat. 45°42'49"N, long. 121°06'03"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of The Dalles Municipal Airport, and that airspace within 4.4 miles each side of the Klickitat VORTAC 184° radial extending from the Klickitat VORTAC to 15.2 miles south of the VORTAC, and that airspace between the Klickitat VORTAC 206° radial clockwise to the 222° radial extending from the 4.3-mile radius of the airport to the 10.1-mile radius of the airport, and that airspace 4.3 miles either side of the 15.1 mile radius of the VORTAC between the 121° radial clockwise to the 206° radial; that airspace extending upward from 1,200 feet above the surface within 7 miles north and 5.3 miles south of the Klickitat VORTAC 281° radial and 101° radial extending from 6.1 miles west to 12.2 miles east of the VORTAC, and within 4.3 miles north of the VORTAC 101° radial extending from 12.2 miles east to 20.1 miles east of the VORTAC, and that airspace within a 20.1-mile radius of the VORTAC extending clockwise from the 101° radial to the 272° radial, excluding the airspace within the Portland, OR, class E airspace area.

* * * * *

ANM ID E5 Lewiston, ID [Revised]

Lewiston-Nez Perce County Airport, ID

(lat. 46°22'28"N, long. 117°00'55"W)
Nez Perce VOR/DME (lat. 46°22'54"N, long. 116°52'10"W)
Walla Walla VOR/DME (lat. 46°05'13"N, long. 118°17'33"W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°29'25"N., long. 117°34'09"W.; east to lat. 46°30'45"N., long. 117°00'49"W.; north to lat. 46°34'25"N., long. 117°04'44"W.; than via the arc of a 14.4 nautical mile radius centered on the Nez Perce VOR/DME to lat. 46°27'00"N., long. 116°32'09"W.; east to lat. 46°25'30"N., long. 116°26'03"W.; south to lat. 46°13'20"N., long. 116°30'04"W.; west to lat. 46°14'33"N., long. 116°35'15"W.; then via the arc of a 14.4 nautical mile radius centered on the Nez Perce VOR/DME; to lat. 46°09'00"N., long. 116°46'54"W.; north to lat. 46°17'00"N., long. 116°49'14"W.; west to lat. 46°18'05"N., long. 117°00'15"W.; west to lat. 46°17'42"N., long. 117°22'04"W.; south to lat. 46°10'30"N., long. 117°26'24"W.; west to lat. 46°12'00"N., long. 117°35'44"W.; north to point of beginning; that airspace extending upward from 1,200 feet above the surface, within an area bounded by a line beginning at lat. 46°00'00"N., long. 116°00'04"W., to lat. 46°00'00"N., long. 116°23'04"W., to lat. 45°39'00"N., long. 116°10'03"W., to lat. 45°30'00"N., long. 116°14'03"W., to lat. 45°23'00"N., long. 116°21'03"W., to lat. 45°25'00"N., long. 116°34'04"W., to lat. 45°30'00"N., long. 116°46'04"W., to lat. 46°00'00"N., long. 116°56'04"W.; thence west along lat. 46°00'00"N, to the Walla Walla VOR/DME 16.6 nautical mile radius, thence north along the 16.6 nautical mile radius until intercepting V–536, thence east along V–536 to long. 116°00'00"W.; thence south along long. 116°00'00"W., to lat. 46°00'00"N., to beginning.

* * * * *

Issued in Seattle, Washington, on August 9, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–20680 Filed 8–25–93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93–ASW–32]

Alteration of Jet Routes, VOR Federal Airways and Low Altitude Reporting Points; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Roswell, NM, very high frequency omnidirectional range/tactical air navigation (VORTAC) to the Chisum, NM, VORTAC. Because the Roswell VORTAC is not located on the Roswell Industrial Air Center, having the same name as the airport could confuse pilots as to their desired destination. The Roswell VORTAC is located approximately 5 nautical miles west of the Roswell Industrial Air Center. Due to the potential confusion, FAA guidelines recommend that navigational aids (NAVAID's) not located on the airport surface not have the same name as the primary airport. This action changes the descriptions in all jet routes, airways and reporting points that have Roswell in their text.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of the Roswell, NM, VORTAC to the Chisum, NM, VORTAC in all jet routes, airways and reporting points that have Roswell in their text. Because the Roswell VORTAC is not located on the Roswell Industrial Air Center, having the same name as the airport could confuse pilots as to their desired destination. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Jet routes, domestic VOR Federal airways, and domestic low altitude reporting points are published in paragraphs 2004, 6010 and 7001, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet routes, airways, and reporting point listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–15 [Revised]

From Humble, TX, via INT Humble 269° and Junction, TX, 112° radials; Junction; Wink, TX; Chisum, NM; Corona, NM; Albuquerque, NM; Farmington, NM; Grand Junction, CO; Salt Lake City, UT; Boise, ID; Kimberly, OR; INT Kimberly 288° and Battle Ground, WA, 136° radials; to Battle Ground.

* * * * *

J–28 [Revised]

From Ciudad Juarez, Mexico, via El Paso, TX; INT of El Paso 070° and Chisum, NM, 215° radials; Chisum; Amarillo, TX; Gage, OK; Wichita, KS; Kansas City, MO; Kirksville, MO; Bradford, IL; to Joliet, IL. The airspace within Mexico is excluded.

* * * * *

J–65 [Revised]

From San Antonio, TX, INT San Antonio 323° and Abilene, TX, 180° radials; Abilene; Chisum, NM; Truth or Consequences, NM; Phoenix, AZ; INT Phoenix 272° and Blythe, CA, 096° radials; Blythe; Palmdale, CA; INT Palmdale 310° and Shafter, CA, 140° radials; Shafter; Clovis, CA; Sacramento, CA; Red Bluff, CA; Klamath Falls, OR; to Seattle, WA.

* * * * *

J–168 [Revised]

From San Simon, AZ, via Truth or Consequences, NM; Chisum, NM; to Wichita Falls, TX.

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Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–14 [Revised]

From Chisum, NM, via Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK, 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Indianapolis, IN; Muncie, IN; Findlay, OH; Dryer, OH; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany; INT Albany 094° and Gardner, MA, 284° radials; Gardner; to Norwich, CT. The airspace within R–5207 and Canada is excluded.

* * * * *

V–66 [Revised]

From Montrose, CO; Cones, CO; Dove Creek, CO; Cortez, CO; Farmington, NM; INT Farmington 128° and Albuquerque, NM, 345° radials; Albuquerque, via INT Albuquerque 120° and Corona, NM, 311° radials; Corona; 41 miles 85 MSL, Chisum, NM; Hobbs, NM; Midland, TX; San Angelo, TX; Junction, TX; Center Point, TX; San Antonio, TX; INT San Antonio 064° and Industry, TX, 267° radials; Industry; INT Industry 101° and Hobby, TX, 290° radials to Hobby.

* * * * *

V–83 [Revised]

From Carlsbad, NM, via Chisum, NM; 40 miles, 85 MSL Corona, NM; Otto, NM, Santa Fe, NM; Taos, NM; Alamosa, CO; INT Alamosa 074° and Pueblo, CO, 191° radials; Pueblo, INT Pueblo 004° and Colorado Springs, CO, 153° radials; Colorado Springs; Kiowa, CO.

* * * * *

V–280 [Revised]

From Ciudad Juarez, Mexico, via El Paso, TX; INT El Paso 070° and Pinon, NM, 219° radials; Pinon; Chisum, NM; INT Chisum 063° and Texico, NM, 216° radials; Texico; INT Texico 044° and Amarillo, TX, 252° radials; Amarillo; Gage, OK; INT Gage 025°

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and Hutchinson, KS, 234° radials; Hutchinson; INT Hutchinson 061° and Topeka, KS, 236° radials; to Topeka. The airspace within Mexico is excluded.

* * * * *

V–291 [Revised]

From Hobbs, NM, via INT Hobbs 287° and Chisum, NM, 136° radials; Chisum, via INT Chisum 335° and Corona, NM, 124° radials; Corona, via INT Corona 328° and Albuquerque, NM, 103° radials; Albuquerque; Gallup, NM; Winslow, AZ; Flagstaff, AZ; to Peach Springs, AZ. The airspace within Restricted Area R–2302 is excluded.

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Paragraph 7001—Domestic Low Altitude Reporting Points

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Chisum, NM [New]

* * * * *

Roswell, NM [Remove]

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Issued in Washington, DC, on August 17, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20682 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASO–6]

Establishment of Class D Airspace; Fort Rucker Shell, AL; Andalusia, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Shell Army Heliport, Fort Rucker, AL; and Andalusia-Opp Airport, AL. The United States Army operates a control tower at each of these locations. Terminal Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term Airport Traffic Area (ATA) and will eliminate the requirement for two-way radio communication with the control towers at Shell Army Heliport and Andalusia-Opp Airport. The intended effect of this action is to provide adequate Class D airspace to perpetuate the existing two-way radio communication requirement at these two airports.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Shell Army Heliport, Fort Rucker, AL; and Andalusia-Opp Airport, AL (58 FR 21122). Terminal Airspace Reclassification, which becomes effective on September 16, 1993, will discontinue the use of the term Airport Traffic Area (ATA) and will eliminate the requirement for two-way radio communication with the control towers at Shell Army Heliport and Andalusia-Opp Airport. The proposed action would provide adequate Class D airspace to perpetuate the existing two-way radio communication requirement for these two locations. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas are published in Para 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993 (58 FR 36298, July 6, 1993). The Class D airspace listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Shell Army Heliport, Fort Rucker, AL; and Andalusia-Opp Airport, AL. This action lowers the base of controlled airspace from 700 feet above the surface to the surface in vicinity of Shell Army Heliport and Andalusia-Opp Airport. The intended effect is to provide adequate Class D airspace to perpetuate the existing two-way radio communication requirement at these two airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 5000 General

* * * * *

ASO AL D Andalusia, AL
Andalusia-Opp Airport, AL
(lat. 31°18'32"N., long. 86°23'38"W.)
That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Andalusia-Opp Airport. This Class D airspace is effective during the special dates and times established by Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

ASO AL D Fort Rucker Shelk, AL
Fort Rucker, Shell Army Heliport, AL
(lat. 31°21'46"N., long. 85°50'58"W.)
That airspace extending upward from the surface to and including 1,500 feet MSL within a 1.8-mile radius of Shell Army Heliport, excluding that airspace south of latitude 31°20'47"N. This Class D airspace is effective during the special dates and times established by Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in East Point, Georgia, on August 12, 1993.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–20684 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AAL–5]

Revocation of Transition Area and Control Zone; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700/1200 foot above ground level (AGL) transition areas and the control zone at Amchitka Island, Alaska. The Amchitka Very High Frequency Omnidirectional Range/Tactical Air Navigational Aid (VORTAC) will be taken out of service effective the last week of August 1993. The instrument landing system (ILS) will be decommissioned on September 8, 1993. The standard instrument approach procedures (SIAPs) based on the VORTAC and ILS will be canceled. Controlled airspace to the surface will no longer be needed to contain Instrument Flight Rules (IFR) operations at Amchitka.

EFFECTIVE DATE: 0901 u.t.c., September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700/1200 foot above ground level (AGL) transition areas and the control zone at Amchitka Island, Alaska.

The Department of the Navy has, on short notice, advised the Federal Aviation Administration of their decision to terminate Naval activity at Amchitka. The U.S. Navy will no longer require the control zone, transition area, or instrument approaches after September 15, 1993. The Navy owned and operated VORTAC will be removed during the last week of August 1993, and the ILS will be decommissioned on September 8, 1993. The weather reporting used to support the IFR approaches and the control zone is being discontinued. Since there will no longer be Naval activity at Amchitka, the controlled airspace to the surface at Amchitka must be removed to avoid confusion on the part of the pilots flying in the vicinity of the Amchitka Airport and to promote safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b), are impracticable and good cause, pursuant to 5 U.S.C. 553(d), exists for making this amendment effective in less than thirty days.

Transition areas are published in § 71.181 and control zones are published in § 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area and control zone listed in this document will be removed subsequently from the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zone

* * * * *

AAL AK CZ Amchitka Island, AK [Removed]

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Section 71.181 Designation of Transition Areas

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AAL AK TA Amchitka Island, AK [Removed]

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Issued in Anchorage, AK, on August 16, 1993.

Gene Cowgill,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 93–20775 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 93–AWP–13]

Change in Using Agency for Restricted Areas R–2519, R–2535A, R–2535B; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–2519, Point Mugu, CA, R–2535A and R–2535B, San Nicolas Island, CA, to "U.S. Navy, Commander, Naval Air Warfare Center Weapons Division, Point Mugu, CA." This is an administrative change initiated by the U.S. Navy to reflect its reorganization. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3178.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R–2519 Point Mugu, CA, R–2535A and R–2535B San Nicolas Island, CA, to "U.S. Navy, Commander, Naval Air Warfare Center Weapons Division, Point Mugu, CA." Currently, Commander, Pacific Missile Test Center, Point Mugu, CA, is the designated using agency for these restricted areas. This is an administrative change initiated by the U.S. Navy to reflect its reorganization. This action does not affect the boundaries, designated altitudes, times of designation, or activities conducted

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in these restricted areas. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is an administrative change and does not affect the boundaries, designated altitudes, times of designation, or activities of the restricted areas. Accordingly, this action will have no effect on current air traffic procedures or routing of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

2. In each designation listed below, remove the words "Commander, Pacific Missile Test Center, Point Mugu, CA" for the using agency and add, in their place, the words, "U.S. Navy, Commander, Naval Air Warfare Center Weapons Division, Point Mugu, CA":

(a) R–2519 Point Mugu, CA
(b) R–2535A San Nicolas Island, CA
(c) R–2535B San Nicolas Island, CA

Issued in Washington, DC, on August 17, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20678 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 93–ASW–34]

Change of Time of Designation for Restricted Areas R–5103A, B, C, and D, McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the times of designation for Restricted Areas R–5103A, B, C, and D, McGregor, NM. This action is taken to provide more efficient management of the airspace by accurately reflecting the actual times utilized. This action is a result of an FAA special use airspace review and results in lessening the burden on the flying public.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the times of designation for R–5103A, B, C, and D, McGregor, NM. The FAA conducted a special use airspace review of the McGregor Range in Fiscal Year 1993. During this review it was determined that the published times of designation did not reflect the actual times of use. This action reduces the times of designation for R–5103A, B, C, and D, from "0700–2400 local time; other times by NOTAM" to "0700–2000 local time; other times by NOTAM." The revised times of designation will lessen the burden on the flying public; because this rule is insignificant in nature and impact, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the times of designation for R–5103A, B, C, and D. This amendment does not change either the dimensions or activities currently conducted within the established areas and the FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.51 [Amended]

2. In each designation in § 73.51 listed below remove the words "0700–2400 local time; other times by NOTAM" for the time of designation and add, in their place, the words "0700–2000 local time; other times by NOTAM."

(a) R–5103A McGregor, NM
(b) R–5103B McGregor, NM
(c) R–5103C McGregor, NM
(d) R–5103D McGregor, NM

Issued in Washington, DC, on August 11, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–20686 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 27420; Amdt. No. 378]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on August 20, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 1, 1993:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

PART 95—[AMENDED]

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 378—Effective Date, September 16, 1993]

From	To	MEA
§ 95.1001 Direct Routes-U.S. Is Amended to Read in Part		
Williston, ND VORTAC VIA ISN VORTAC 340 °3400–MOCA	U.S. Canadian Border	°8000 MAA–17500
§ 95.1001 Direct Routes-U.S. Puerto Rico Routes		
A319	**Is Added to Read**	
BETIR, PR FIX	THANK, PR FIX	11000
A523		
Dorado, PR NDB °1500–MOCA	Coraf, PR FIX	°2000
Coraf, PR FIX °1500–MOCA	Vermo, PR FIX	°2000
Vermo, PR FIX °1300–MOCA	Thank, PR FIX	°2000
Thank, PR FIX °1300–MOCA	Grann, PR FIX	°2000
B891		
Pokeg, BI FIX	Gradi, BI FIX	4000
Gradi, BI FIX	Watrs, OA FIX	10000
Watrs, OA FIX	Grann, PR FIX	10000
B892		
Mayaguez, PR VOR/DME	Antex, RP FIX	4000
G432	**Is Amended by adding**	
Grann, PR FIX °1300–MOCA	Thank, PR FIX	°2000
Thank, PR FIX °1300–MOCA	Vermo, PR FIX	°2000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 378—Effective Date, September 16, 1993]

From	To	MEA
Vermo, PR FIX *1500–MOCA	Coral, PR FIX	*2000
Coral, PR FIX *1500–MOCA	Dorado, PR NDB	*2000
H100		
Is Added to Read		
Borinquen, PR VORTAC	Limon, PR FIX	4000
Route 8		
Is Amended To Read In Part		
Coral, PR FIX *1300–MOCA	Coqui, PR FIX	*3000
Coqui, PR FIX *3000–MRA **1300–MOCA	*Inham, PR FIX	**5000
*Inham, PR FIX *3000–MRA **1300–MOCA	Idaho, PR FIX	**15000
Route 9		
*Carib, PR FIX *2500–MRA **1200–MOCA	Vermo, PR FIX	**13000
Bahama Routes		
G445		
Is Added to Read		
Grand Turk, BI VORTAC	Pamms, BI FIX	2000
Pamms, BI FIX	Besas, BI FIX	6000
Atlantic Routes		
A555		
Is Amended by Adding		
Grand Turk, BI VORTAC *1500–MOCA	Cocbu, BI FIX	*2000
Cocbu, BI FIX *1300–MOCA	Gradi, BI FIX	*1000
Gradi, BI FIX *1300–MOCA	Hardy, PR FIX	*2000
Hardy, PR FIX *1300–MOCA	Idaho, PR FIX	*2000
Idaho, PR FIX *1500–MOCA	Dorado, PR NDB	*2000
Is Amended to Read In Part		
Stirr, BF FIX	Looks, BF FIX	2000
§ 95.6008 VOR Federal Airway 8 Is Amended to Read In Part		
Lucer, CA FIX *8000–MOCA	Bulgy, CA FIX	*9000
Bulgy, CA FIX *7000–MOCA	Hector, CA VORTAC	*9000
§ 95.6012 VOR Federal Airway 12 Is Amended To Read In Part		
San Marcus, CA VORTAC *6000–MCA PALMDALE VORTAC, W BND.	Palmdale, CA VORTAC	9000
Palmdale, CA VORTAC	Helde, CA FIX	
	E BND	7500
	W BND	6000
§ 95.6013 VOR Federal Airway 13 Is Amended to Read In Part		
Duluth, MN VORTEC	Weman, MN FIX	4000
Weman, MN FIX	Bypor, MN FIX	5000
Bypor, MN Fix	U.S. Canadian Border	4000
§ 95.6021 VOR Federal Airway 21 Is Amended to Read In Part		
Lucer, CA FIX *8000–MOCA	Bulgy, CA FIX	*9000
Bulgy, CA FIX *7000–MOCA	Hector, CA VORTAC	*9000
§ 95.6027 VOR Federal Airway 27 Is Amended to Read In Part		
Newport, OR VORTAC	Cutel, OR FIX	
	N BND	8000
	S BND	3000
Cutel, OR FIX	Danes, OR FIX	
	N BND	8000
	S BND	5000
§ 95.6052 VOR Federal Airway 52 Is Amended to Read In Part		
Central City, KY VORTAC	Bowling Green, KY VORTAC	2400
§ 95.6106 VOR Federal Airway 106 Is Amended to Read In Part		
Rashe, PA FIX	Selinsgrove, PA VORTAC	14000
§ 95.6113 VOR Federal Airway 113 Is Amended to Read In Part		
Boise, ID VORTAC	Pluto, ID FIX	
	SW BND	9700
	NE BND	12500
Pluto, ID FIX	Salmon, ID VOR/DME	12500
§ 95.6148 VOR Federal Airway 148 Is Amended to Read In Part		
Hayes Center, NE VORTEC *4500–MOCA	North Platte, NE VORTAC	*4900

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 378—Effective Date, September 16, 1993]

From	To	MEA
§ 95.6165 VOR Federal Airway 165 Is Amended to Read In Part		
Deschutes, OR VORTAC	Bottl, OR FIX	
	NW BND	12500
	SE BND	7000
Bottl, OR FIX	Elkes, OR FIX	12500
Maver, OR FIX *3600–MOCA	Rawer, OR FIX	*5000
§ 95.6194 VOR Federal Airway 194 Is Amended to Read In Part		
Raleigh/Durham, NC VORTAC	Tar River, NC VORTAC	2500
§ 95.6198 VOR Federal Airway 198 Is Amended to Read In Part		
Tallahassee, FL VORTAC *5000–MRA	*Lloyd, FL FIX	2000
Lloyd, FL FIX	Greenville, FL VORTAC	2000
§ 95.6219 VOR Federal Airway 219 Is Amended to Read In Part		
Sioux City, IA VORTAC *3200–MOCA	Ritta, IA FIX	*4500
Ritta, IA FIX	Milss, IA FIX	9000
Milss, IA FIX *8000–MRA	*Gruve, IA FIX	8000
Gruve, IA FIX	Fairmont, MN VOR/DME	8000
§ 95.6224 VOR Federal Airway 224 Is Amended to Read In Part		
Marquette, MI VOR/DME	Eston, MI FIX	10000
Eston, MI FIX	Schoolcraft County, MI VOR/DME	2500
§ 95.6283 VOR Federal Airway 283 Is Amended to Read In Part		
Lucer, CA FIX *8000–MOCA	Bulgy, CA FIX	*9000
Bulgy, CA FIX *7000–MOCA	Hector, CA VORTEC	*9000
§ 95.6310 VOR Federal Airway 310 Is Amended to Read In Part		
Raleigh/Durham, NC VORTEC	Tar River, NC VORTAC	2500
§ 95.6316 VOR Federal Airway 316 Is Amended to Read In Part		
Ecker, MI FIX *2300–MOCA	Sault Ste Marie, MI VORTAC	*2600
§ 95.6413 VOR Federal Airway 413 Is Amended to Read In Part		
Gopher, MN VORTAC	Brainerd, MN VORTAC	4000
§ 95.6442 VOR Federal Airway 442 Is Amended to Read In Part		
Aples, CA FIX *8300–MOCA	Hector, CA VORTAC	*1000
§ 95.6452 VOR Federal Airway 452 Is Amended to Read In Part		
Cheez, OR FIX	Mansn, OR FIX.	
	SE BND	#*11000
	NW BND	#*8000
*7400–MOCA		
#MEA is established with a gap in navigation signal coverage		
Mansn, OR FIX *9800–MOCA	Mixup, OR FIX	*1100
Mixup, OR FIX	Klamath Falls, OR VORTAC	
	NW BND	1100
	SE BND	#1100
§ 95.6509 VOR Federal Airway 509 Is Amended to Read In Part		
Hulla, FL FIX	Hallr, FL FIX	3000
§ 95.6510 VOR Federal Airway 510 Is Amended to Read In Part		
Dayle, MN FIX	Gopher, MN VORTAC	4000
§ 95.6537 VOR Federal Airway 537 Is Amended to Read In Part		
Greenville, FL VORTEC *1500–MOCA	Moultrie, GA VOR/DME	*5000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airways Changeover Points			
V–12 Is Amended by Adding			
Palmdale, CA VORTAC	Hector, CA VORTAC	60	Palmdale.
V–113 Is Amended to Read In Part			
Boise, ID VORTAC	Salmon, ID VOR/DME	36	Boise.
V–219 Is Amended by Adding			
Sioux City, IA VORTAC	Fairmont, MN VOR/DME	74	Sioux City.
V–442 Is Amended by Adding			
Hector, CA VORTAC	Parker, CA VORTAC	#41	Hector.
#Use the Needles (EED) VORTAC from the Cop to the Clipp Int			

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Airway segment		Changeover points	
From	To	Distance	From
V–445 is Amended by Adding			
Bettles, AK VORTAC	Fairbanks, AK VORTAC	#85	Bettles.
#Use the Nenana (ENN) VORTAC from the Cop to the Rampa Int			
V–452 is Amended to Read in Part			
Eugene, OR VORTAC	Klamath Falls, OR VORTAC	67	Eugene.

[FR Doc. 93–20774 Filed 8–25–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27415; Amdt. No. 1560]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on August 18, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
07/12/93	IA	Milford	Milford/Fuller	FDC 3/3723	VOR/DME–A Orig.
07/28/93	CA	Camarillo	Camarillo	FDC 3/4156	VOR Rwy 26 Amdt 3A.
07/29/93	NJ	Millville	Millville Muni	FDC 3/4203	VOR Rwy 9 Amdt 3.
08/01/93	TX	Houston	Houston Intercontinental	FDC 3/4286	ILS Rwy 8 Amdt 18.
08/01/93	TX	Houston	Houston Intercontinental	FDC 3/4287	ILS Rwy 9 Amdt 3.
08/01/93	TX	Houston	Houston Intercontinental	FDC 3/4289	ILS Rwy 27 Amdt 1.
08/01/93	TX	Houston	Houston Intercontinental	FDC 3/4291	ILS Rwy 32R Amdt 9.
08/03/93	FL	Marianna	Marianna Muni	FDC 3/4321	NDB–C Amdt 2.
08/03/93	FL	Marianna	Marianna Muni	FDC 3/4322	VOR–A, Amdt 10.
08/03/93	FL	Marianna	Marianna Muni	FDC 3/4323	VOR–B, Amdt 3.
08/03/93	OK	Sand Springs	William R. Pogue Muni	FDC 3/4338	VOR–A Amdt 1.
08/04/93	GA	Columbus	Columbus Metropolitan	FDC 3/4357	ILS Rwy 5 Amdt 23A.
08/04/93	GA	Donalsonville	Donalsonville Muni	FDC 3/4358	VOR/DME–A Amdt 2.
08/05/93	AK	King Salmon	King Salmon	FDC 3/4383	RADAR–1 Amdt 8.
08/11/93	FL	New Port Richey	Tampa Bay Executive	FDC 3/4495	VOR–A Amdt 1.
08/11/93	FL	Orlando	Orlando Intl	FDC 3/4496	RADAR–1 Amdt 5.
08/11/93	FL	Orlando	Orlando Intl	FDC 3/4500	ILS Rwy 17 Amdt 1.
08/11/93	FL	Tampa	Peter O. Knight	FDC 3/4493	NDB Rwy 3 Amdt 10.
08/11/93	FL	Tampa	Tampa Intl	FDC 3/4494	VOR Rwy 9 Amdt 7.
08/11/93	FL	Tampa	Tampa Intl	FDC 3/4497	NDB Rwy 36L Amdt 13.
08/11/93	FL	Tampa	Tampa Intl	FDC 3/4498	NDB Rwy 18L Amdt 32.
08/11/93	FL	Tampa	Tampa Intl	FDC 3/4499	LOC BC Rwy 36R Amdt 19.
08/11/93	MA	Boston	General Edward Lawrence Logan Intl.	FDC 3/4518	ILS/DME–2 Rwy 27 Orig.
08/11/93	ME	Waterville	Waterville Robert LaFleur	FDC 3/4504	ILS Rwy 5 Amdt 1.
08/11/93	MO	Kansas City	Kansas City Downtown	FDC 3/4492	ILS Rwy 19 Amdt 20.
08/11/93	MO	Kansas City	Kansas City Downtown	FDC 3/4523	ILS Rwy 3 Amdt 1A.
29JUL93	OR	Klamath Falls	Klamath Falls Intl	FDC 3/4305	ILS Rwy 32 Amdt 19A.

[FR Doc. 93–20677 Filed 8–25–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27414; Amdt. No. 1559]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register

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on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on August 13, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 U.T.C. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME, § 97.27 NDB, NDB/DME; 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective November 11, 1993

Huntsville, AL, Huntsville Intl Carl T. Jones Field, ILS RWY 18L, Amdt. 2
Warren, AR, Warren Muni, NDB RWY 3, Amdt. 1
Arcata/Eureka, CA, Arcata, ILS RWY 32, Amdt. 28
Los Angeles, CA, Los Angeles Intl, ILS RWY 24R, Amdt. 21
Santa Monica, CA, Santa Monica Muni, VOR–A, Amdt. 10
Eagle, CO, Eagle County Regional, LOC–B, Amdt. 1
Eagle, CO, Eagle County Regional, LOC/DME–C, Amdt. 1
Las Vegas, NM, Las Vegas Muni, VOR RWY 20, Amdt. 5
Las Vegas, NM, Las Vegas Muni, VOR RWY 2, Amdt. 10
Brownfield, TX, Terry County, NDB RWY 2, Amdt. 1
Palestine, TX, Palestine Muni, VOR/DME RWY 17, Amdt. 2
Palestine, TX, Palestine Muni, NDB RWY 17, Amdt. 2
Palestine, TX, Palestine Muni, NDB RWY 35, Amdt. 6
Jackson, WY, Jackson Hole, VOR–A, Amdt. 6
Jackson, WY, Jackson Hole, VOR/DME RWY 36, Amdt. 3
Jackson, WY , Jackson Hole, ILS RWY 18, Amdt. 6
Sheridan, WY, Sheridan County, VOR/DME RWY 31, Amdt. 6

Sheridan, WY, Sheridan County, ILS/DME RWY 31, Amdt. 5

. . . Effective October 14, 1993

Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RWY 17, Orig.
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt. 9
Rialto, CA, Rialto Muni/Miro Fld, NDB–A, Amdt. 4
Oneida, TN, Scott Muni, VOR/DME–A, Amdt. 5
Oneida, TN, Scott Muni, SDF RWY 23, Amdt. 4
Oneida, TN, Scott Muni, NDB RWY 23, Amdt. 4
Kerrville, TX, Kerrville Muni/Louis Schreiner Field, VOR/DME RNAV RWY 12, Amdt. 2
Kerrville, TX, Kerrville, Muni/Louis Schreiner Field, VOR–A, Amdt 2.
Kerrville, TX, Kerrville Muni/Louis Schreiner Field, LOC RWY 30, Amdt. 3
Kerrville, TX, Kerrville Muni/Louis Schreiner Field, NDB RWY 30, Amdt. 3
Marlin, TX, Marlin, VOR/DME–A, Amdt. 5

. . . Effective September 16, 1993

Sand Point, AK, Sand Point, NDB/DME–A, Amdt. 4
Sand Point, AK, Sand Point, NDB/DME–B, Orig.
Sand Point, AK, Sand Point, NDB RWY 13, Orig.
Sand Point, AK, Sand Point, NDB RWY 15, Orig.–A CANCELLED
Sand Point, AK, Sand Point, NDB/DME RWY 33, Amdt. 2A, CANCELLED
Mesa, AZ, Falcon Fld, NDB–A, Orig.
Mesa, AZ, Falcon Fld, NDB–C, Amdt. 2, CANCELLED
Los Angeles, CA, Los Angeles Intl, ILS RWY 7R, Amdt. 2
Bridgeport, CT, Igor I. Sikorsky Memorial, VOR RWY 6, Amdt. 20
Bridgeport, CT, Igor I. Sikorsky Memorial, VOR RWY 24, Amdt. 14
Bridgeport, CT, Igor I. Sikorsky Memorial, VOR RWY 29, Amdt. 1
Bridgeport, CT, Igor I. Sikorsky Memorial, ILS RWY 6, Amdt. 8
Danbury, CT, Danbury Muni, VOR–A, Amdt. 7
Danbury, CT, Danbury Muni, LOC RWY 8, Amdt. 1
Danbury, CT, Danbury Muni, VOR/DME RNAV RWY 8, Amdt. 3
Danbury, CT, Danbury Muni, VOR/DME RNAV RWY 26, Amdt. 4
Windsor Locks, CT, Bradley International, ILS RWY 6, Amdt. 30
Ormond Beach, FL, Ormond Beach Muni, VOR RWY 17, Orig.
Griffith, IN, Griffith-Merrillville, VOR RWY 8, Amdt. 6
Atchison, KS, Amelia Earhart, VOR/DME RNAV RWY 16, Amdt. 3
Rangeley, ME, Rangeley Muni, NDB–A, Amdt. 3
Rangeley, ME, Rangeley Muni, NDB–B, Orig.
Worcester, MA, Worcester Muni, LOC RWY 29, Amdt. 1
Worcester, MA, Worcester Muni, NDB RWY 11, Amdt. 18
Worcester, MA, Worcester Muni, NDB RWY 29, Amdt. 10
Worcester, MA, Worcester Muni, ILS RWY 11, Amdt. 19
Camdenton, MO, Camdenton Memorial, VOR–A, Amdt. 3
Berlin, NH, Berlin Muni, VOR/DME RWY 18, Amdt. 1
Berlin, NH, Berlin Muni, VOR–B, Amdt. 1
Berlin, NH, Berlin Muni, NDB–A, Amdt. 10, CANCELLED
Berlin, NH, Berlin Muni, NDB RWY 18, Orig.
New York, NY, John F. Kennedy Intl., ILS RWY 22L, Amdt. 22
Saranac Lake, NY, Adirondack Regional, VOR RWY 9, Orig.
Saranac Lake, NY, Adirondack, VOR RWYs 5 & 9, Amdt. 11, CANCELLED
Schenectady, NY, Schenectady County, ILS RWY 4, Amdt. 3
Syracuse, NY, Syracuse Hancock Intl, VOR RWY 14, Amdt. 20
Syracuse, NY, Syracuse Hancock Intl, NDB RWY 28, Amdt. 27
Syracuse, NY, Syracuse Hancock Intl. ILS RWY 10, Amdt. 8
Syracuse, NY, Syracuse Hancock Intl, ILS RWY 28, Amdt. 31
Wahpeton, ND, Harry Stern, NDB RWY 33, Amdt. 4
Dayton, OH, James M. Cox Dayton Intl, ILS RWY 6L, Amdt. 6
Willoughby, OH, Willoughby Lost Nation Muni, NDB RWY 27, Amdt. 11
Claremore, OK, Claremore Muni, VOR/DME–A, Orig.
Claremore, OK, Claremore Muni, VOR/DME–B, Orig.
Philadelphia, PA Northeast Philadelphia, ILS RWY 24, Amdt. 10
Newport, RI, Newport State, LOC RWY 22, Amdt. 6
North Kingstown, RI, Quonset State, ILS RWY 16, Amdt. 6
Providence, RI, Theodore Francis Green State, ILS/DME RWY 34, Amdt. 7
Dallas-Fort Worth, TX, Dallas/Fort Worth International, Converging ILS RWY 17R, Amdt. 4
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 17R, Amdt. 17
West Point, VA, West Point Muni, VOR–A, Amdt. 3
Winchester, VA, Winchester Regional, NDB–A, Orig.
Eau Claire, WI, Chippewa Valley Regional, VOR–A, Amdt. 21
Eau Claire, VI, Chippewa Valley Regional, LOC/DME BC RWY 4, Amdt. 7
Eau Claire, WI, Chippewa Valley Regional, NDB RWY 22, Amdt. 6
Eau Claire, WI, Chippewa Valley Regional, ILS RWY 22, Amdt. 6
Wisconsin Rapids, WI, Alexander Field South Wood County, VOR/DME–A, Amdt. 8
Wisconsin Rapids, WI, Alexander Field South Wood County, SDF RWY 2, Amdt. 3
Wisconsin Rapids, WI, Alexander Field South Wood County, NDB RWY 2, Amdt. 4
Wisconsin Rapids, WI, Alexander Field South Wood County, NDB RWY 29, Amdt. 7

[FR Doc. 93–20687 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8417]

RIN 1545–AQ63

Limitation on Passive Activity Losses and Credits—Technical Amendments to Regulations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the temporary regulations (T.D. 8417), which was published in the **Federal Register** for Friday, May 15, 1992 (57 FR 20747). The temporary regulations relate to the limitation on passive activity losses and credits.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donna J. Welch, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document that is the subject of this correction adopted as final regulations changes to the regulations under section 469 of the Internal Revenue Code, as amended. The regulations also revised the temporary regulations to reflect where portions have been adopted as final.

Need for Correction

As published, T.D. 8417 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.469–1T(e)(5) is amended by removing the reference "§ 1.469–1(e)(5)" and adding the

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reference "§ 1.469–2(d)(2)(xii)" in its place.

Jackie Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20514 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–U

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: This rule amends the Cuban Assets Control Regulations (the "Regulations") to add an interpretation concerning transactions related to the provision of telecommunications service between Cuba and the United States. The Cuban Democracy Act ("CDA") authorizes telecommunications service between Cuba and the United States and provides for the licensing of payments to Cuba. This rule interprets existing statements of licensing policy contained in the Regulations to permit authorization of payments for such service on a case-by-case basis. In addition, this rule interprets licensing policy governing the authorization of travel transactions to permit authorization, on a case-by-case basis, of travel transactions related to negotiation and performance of telecommunications agreements between Cuba and the United States. In addition, a recently assigned number is added to the Paperwork Reduction Act notice and other technical corrections are made to the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 •T3et seq.•T1 does not apply.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480) or William B. Hoffman, Chief Counsel (tel.: 202/622–2410) Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Section 1705(e) of the Cuban Democracy Act of 1992, Public Law 102–484, sections 1701–12, October 23, 1992, 106 Stat. 2575, 22 U.S.C. 6001–6010, (the "CDA"), concerns telecommunications service between the United States and Cuba. Section 1705(e) indicates that the President may provide for the issuance of licenses for the full or partial payment to Cuba of amounts owed to Cuba as a result of the provision of telecommunications services authorized pursuant to the CDA. Executive Order 12854 of July 4, 1993, 58 FR 36587 (July 7, 1993), delegates to the Secretary of the Treasury responsibility for such licensing.

On July 22, 1993, Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State, in a letter to James H. Quello, Chairman, Federal Communications Commission ("FCC"), announced general policy guidelines for implementing the telecommunications provisions of the CDA (the "July 22 letter"). In a notice issued by the FCC, this letter was made publicly available. Applicants interested in securing authorization for the provision of telecommunications services between the United States and Cuba were informed in the FCC notice that applications for such authorization must be submitted to the Departments of Treasury and State as well as the FCC.

Section 515.418 is added to the Regulations to clarify that § 515.542(c), which indicates that licenses for transactions related to FCC-approved telecommunications services will be issued on a case-by-case basis, applies to all transactions related to payment to Cuba for telecommunications services between the United States and Cuba under the CDA and the guidelines contained in the July 22 letter.

Section 515.560(b) was recently amended (58 FR 34709, June 29, 1993) to expand the categories of travel for which transactions will be considered for authorization on a case-by-case basis. Travel for purposes related to "transmission of information" was one of the categories added to this section. An interpretation is added at § 515.417(b) to indicate that travel related to the negotiation or performance of telecommunications agreements will be considered for authorization under § 515.560(b).

Section 515.901 is amended to add a recent control number related to the collection of information in §§ 515.703 and 515.704.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Cuba, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 5; secs. 1701–12, Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6001–6010); 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748, E.O. 12854, 58 FR 36587 (July 7, 1993).

Subpart D—Interpretations

2. Section 515.418 is added to subpart D to read as follows:

§ 515.418 Transactions related to telecommunications.

(a) Section 515.542(c) provides that specific licenses may be issued for transactions incident to the receipt or transmission of communications between the United States and Cuba. Pursuant to § 515.542(c), licenses may be issued for payment to Cuba for full or partial payment of amounts due Cuba as a result of the provision of telecommunications services provided such services and payments are approved by the Federal Communications Commission and are consistent with policy guidelines governing telecommunications between the United States and Cuba established to implement the Cuban Democracy Act of 1992.

(b) Section 515.560(b) provides, in part, that licenses will be issued in appropriate cases for transactions for travel related to the transmission of information. Pursuant to § 515.560(b), licenses may be issued on a case-by-case basis for travel transactions related to travel for negotiation or performance of telecommunications agreements for service between the United States and Cuba.

Subpart E—Licenses, Authorizations, and Statements of Licensing

3. Section 515.563(b) is amended by adding the term "daughter-in law" after the term "son-in-law" in the last sentence of the section.

4. In § 515.569, in paragraph (b), the reference to "§ 515.560(j)" is corrected to read "§ 515.560(g)", and in paragraph (c), in the first sentence, the reference to "(j)" is corrected to read "(g)".

Subpart I—Miscellaneous Provisions

5. Section 515.901 is revised by adding the following sentence to the end thereof:

§ 515.901 Paperwork Reduction Act notice.

* * * Information collection requirements in §§ 515.703 and 515.704 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0145.

Dated: August 20, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 20, 1993.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–20670 Filed 8–23–93; 11:31 am]

BILLING CODE 4810–25–W

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

RIN 3067–AC01

Organization, Functions, and Delegations of Authority

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the existing FEMA regulation on organization, functions and delegations of authority relating to financial management. It describes the organization of the Office of Financial Management and the general course and method by which that office's functions are channeled and determined. It revises delegations of authority by the Director to the Chief Financial Officer.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Financial Policy Officer, Office of Financial Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3718.

SUPPLEMENTARY INFORMATION: This regulation revises 44 CFR part 2, first promulgated March 22, 1982. The revisions are made pursuant to the Chief Financial Officers Act, 31 U.S.C. 901 et seq., and reflect the current organization and internal practices of the Office of Financial Management.

This document relates to FEMA's organization and internal practices. Further, it is not a substantive rule, and it makes no substantial changes in existing arrangements. Hence, notice and public comment have been omitted and the rule is effective immediately upon publication in the **Federal Register.**

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Director of FEMA certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule relates to the internal organization and operations of FEMA, and will have no direct effect on small business or governmental entities. Accordingly, no regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule as defined under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 2

Authority delegations (Government agencies), Organization and functions (Government agencies).

PART 2—[AMENDED]

Accordingly, 44 CFR part 2 is amended as follows:

1. The authority citation for part 2 is revised to read as follows:

Authority: Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 2.23 is revised to read as follows:

§ 2.23 Office of Financial Management.

This office reports directly to the head of the Agency regarding financial management matters and is headed by the Chief Financial Officer. It oversees all financial management activities relating to the programs and operations of the Agency. It develops, operates, and maintains an integrated Agency accounting and financial management system, including internal and external financial reporting, and oversees the internal control guidance and review program. It directs, manages, and provides policy guidance and oversight of Agency financial management personnel, activities, and operations. It prepares the annual report described in 31 U.S.C. 902(a)(6) to the Director of FEMA and to the Office of Management and Budget. It oversees and is responsible for the formulation and execution of the budget of the Agency, accounts for actual expenditures, and prepares and submits to the Director of FEMA and operating units timely performance reports. It reviews, on a biennial basis, the fees, royalties, rents, and other charges imposed by the Agency for services and things of value it provides, and makes recommendations on revising those charges to reflect costs incurred by the Agency in providing those services and things of value.

3. Section 2.68 is revised as follows:

§ 2.68 Chief Financial Officer.

The Chief Financial Officer is delegated the following basic authority and functions:

(a) Supervise the activities and functions of the Office of the Financial Management and oversee all financial management activities relating to the programs and operations of the Agency.

(b) Direct, manage, and provide policy guidance and oversight of the Agency financial management personnel, activities and operations.

(c) Establish and maintain an integrated Agency accounting and financial management system, including financial reporting and internal controls which—

(1) Complies with applicable accounting principles, standards, and requirements and standards prescribed by the Office of Management and Budget, the General Accounting Office, and the Department of the Treasury;

(2) Provides for complete, reliable and timely information; which is prepared on a uniform basis and which is responsive to the financial management needs of the Agency; and,

(3) Complies with any other requirements applicable to such systems.

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(d) Prepare and submit a financial statement which conforms to the requirements of 31 U.S.C. 902 and 3515. Develop and implement the 5-year financial management plan as required by 31 U.S.C. 902(a)(5).

(e) Develop the Agency's financial management plans and budgets, and review legislative proposals and other programmatic proposals to provide advice to the Director on the financial implications of such proposals.

(f) Develop and implement Agency asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(g) Review on a biennial basis the fees, royalties, rents and other charges imposed by the Agency for services and things of value it provides, and make recommendations to the Director on revising those charges to reflect actual costs incurred by the Agency in providing those services and things of value. Premiums and other policy holder charges that relate to the issuance of policies (National Flood Insurance and Crime Insurance programs) are set by the Federal Insurance Administrator pursuant to Federal law and regulation.

(h) Develop, operate and maintain an Administrative Fund Control System that provides, for accurate and timely data on the status of each account. This Administrative Fund Control System shall comply with appropriate statutory requirements and regulations issued by General Accounting Office, Office of Management and Budget, the Department of the Treasury, and other central administrative agencies.

(i) Establish and maintain the appropriate accounts designated by the Department of the Treasury, the General Accounting Office, and Office of Management and Budget and such subsidiary records as may be necessary for accounting, audit and management purposes. Establish and maintain controls for appropriations and other special limitations required by law. Maintain reliable accounting records that will be the basis for preparing and supporting the budget requests of the Agency, controlling the execution of the budget and providing financial information required by law and regulation.

(j) Oversee the implementation of internal control systems which conform with rules, circulars, and other directives issued by General Accounting Office, Office of Management and Budget, and the Department of the Treasury. Report to the Director, as required by law and regulation, whether the Agency's internal control systems and other financial systems and processes comply with applicable law and regulation.

(k) Develop and implement administrative standards and cost principles for the Agency's assistance programs in conformity with rules, circulars, and other directives that are issued by the General Accounting Office, the Office of Management and Budget, and the Department of the Treasury.

(l) Develop and maintain procedures for approving requisitions for disbursing funds, reports of current accounts rendered by disbursing officers, and other financial and accounting documents involving FEMA, the General Accounting Office, the Department of the Treasury, and the Office of Management and Budget.

(m) Certify to the General Accounting Office any charge against any officer or agent entrusted with public property, arising from any loss and accruing by this person's fault, to the Government as to the property so entrusted to this person.

(n) Approve all expenditures and receipt all vouchers and other documents necessary to carry out FEMA's appropriations and programs.

(o) Certify that all required documents, information and approvals respecting fiscal transactions are present; verify or cause to be verified the accuracy of the financial computations, the consistency of the information included in the various documents; and determine, or cause to be determined, that the financial transactions of the Agency are in strict accordance with the law, regulations and decisions.

(p) Authorize officers and employees to certify vouchers.

(q) Receive and credit amounts received to the applicable appropriation of FEMA or to the miscellaneous receipts account.

(r) Request cashier designation and resolution from the Department of the Treasury, and designate cashiers to serve in FEMA.

(s) Approve invitational travel for the Office of Financial Management.

(t) The Chief Financial Officer shall have access to records and documents as required by 31 U.S.C. 902(b)(1)(A), (1)(B), and (1)(C). Access to records and documents is subject to the limitations in 31 U.S.C. 902(b)(2).

Dated: August 19, 1993.

James L. Witt,

Director.

[FR Doc. 93–20747 Filed 8–25–93; 8:45 am]

BILLING CODE 6718–01–P

44 CFR Part 64

[Docket No. FEMA–7583]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region II				
New York: Lyme, town of, Jefferson County.	360343	Apr. 27, 1977, Emerg.; April 15, 1986, Reg.; Sept. 2, 1993, Susp.	Sept. 2, 1993	Sept. 2, 1993
Region IX				
Hawaii: Kauai County, unincorporated areas.	150002	Apr. 2, 1971, Emerg.; Nov. 4, 1981, Reg.; Sept. 2, 1993, Susp.	Sept. 2, 1993	Do.
Region II				
New York:				
Chatham, town of, Columbia County ..	361314	Oct. 26, 1975, Emerg.; Dec. 15, 1982, Reg.; Sept. 15, 1993, Susp.	Sept. 15, 1993	Sept. 15, 1993.
Freeport, village of, Nassau County	360454	Nov. 26, 1971, Emerg.; Feb. 14, 1976, Reg.; Sept. 15, 1993, Susp.	Sept. 15, 1993	Do.
Moreau, town of, Saratoga County	360723	Aug. 11, 1975, Emerg.; June 15, 1984, Reg.; Sept. 15, 1993, Susp.	Sept. 15, 1993	Do.
Philadelphia, village of, Jefferson County.	360348	June 24, 1975, Emerg.; Feb. 15, 1985, Reg.; Sept. 15, 1993, Susp.	Sept. 15, 1993	Do.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Tennessee: Erin, city of, Houston County	470213	Apr. 23, 1974, Emerg.; July 17, 1986, Reg.; Sept. 15, 1993, Susp.	Sept. 15, 1993	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: August 18, 1993.

Donald L. Collins,

Assistant Administrator, Federal Insurance Administration.

[FR Doc. 93–20746 Filed 8–25–93; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 76

[MM Docket No. 92–264, DA 93–1006]

Broadcast Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the decision text and the final regulations adopted in the Report and Order segment of the Commission's Report and Order/Further Notice of Proposed Rule Making (*Report and Order*) in MM Docket No. 92–264, found at 58 FR 42013, August 6, 1993 (FR Doc. 93–18652). The Report and Order adopted regulations interpreting and implementing the antitrafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Jacqueline Chorney, Mass Media Bureau (202) 632–6990.

SUPPLEMENTARY INFORMATION:

Background

The text and the regulations that are the subject of these corrections amend the Commission's Rules to implement the cable/Multichannel Multipoint Distribution Service (MMDS) and the cable/satellite master antenna television service (SMATV) cross-ownership restrictions mandated by the 1992 Cable Act. The action was one of several Commission decisions taken to comply with and to implement provisions of the 1992 Cable Act.

Need for Correction

As published, the summarized decision and the associated final regulations contain errors which have caused some confusion and are therefore in need of clarification.

Correction of Publication

Accordingly, paragraph 31 of the summarized decision published on August 6, 1993, and found at 58 FR 42017, column 1, is corrected to read as follows:

31. The 1992 Cable Act amends section 613(a) of the Communications Act, to add a cable/MMDS and a cable/SMATV cross-ownership restriction. The cross-ownership provision addresses Congress' concern that the common ownership of different means of video distribution may reduce competition and limit the diversity of voices available to the public. Section 613 of the 1992 Cable Act also authorizes the Commission to waive the statutory cross-ownership requirements to the extent necessary to "ensure all significant portions of a franchise area are able to obtain video programming." Section 613 further directs the Commission to waive all cable/MMDS and cable/SMATV cross-ownership interests existing as of October 5, 1992, the date of enactment of the 1992 Cable Act. Accordingly, the Commission will waive all cable/MMDS and cable/SMATV cross-ownership interests existing as of that date.

Additionally, the publication of August 6, 1993, of the final regulations which were the subject of FR Doc. 93–18652, is corrected as follows:

§ 21.912 [Corrected]

Paragraph 1. On pages 42018, the third column, and 42019, the first column, § 21.912, the amendatory language and the rule text for § 21.912 are corrected to add new paragraphs (e)(1) and (e)(2) to read as follows:

Section 21.912 is amended by revising paragraphs (a), (b), and (c), and the notes following paragraph (c), by removing paragraph (d), redesignating paragraphs (e) through (g) as (d) through (f), by revising the first sentence of newly designated paragraph (f), and by adding paragraphs (e) (1) and (2) to read as follows:

§ 21.912 Cable television company eligibility requirements.

* * * * *

(e) * * *

(1) Applications filed by cable operators, or affiliates, for MMDS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, leases between cable operators, or affiliates, and MDS/MMDS station licensees, conditional licensees, or applicants executed on or before February 8, 1990, or thereafter are invalid.

(2) Applications filed by cable operators, or affiliates for MDS channels after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibition of this section, if, pursuant to the then existing overbuild or rural exceptions, the applications were allowed under the then existing cable/MMDs cross-ownership prohibitions. Lease arrangements between cable operators and MDS entities for which a lease or firm agreement was signed after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then existing rural and overbuild exceptions, the lease arrangements were allowed.

* * * * *

§ 76.502 [Corrected]

Par. 2. On page 42020, in the second column, in § 76.502, paragraph (i)(1), line three, "a completed FCC (Form 345)" is corrected to read "a completed FCC (Form 394)".

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–20690 Filed 8–25–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–21; Notice 6]

RIN 2127–AC88

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule, date for early optional compliance.

SUMMARY: On November 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 217, Bus Window Retention and Release, by revising the minimum requirements for school bus emergency exits and improving access to school bus emergency doors. The new requirements will become effective on May 2, 1994. NHTSA has recently been informed that states are requesting school bus manufacturers to produce new buses complying with the new requirements before their May 2, 1994 effective date.

Manufacturers are having difficulty in both certifying compliance with the current requirements of Standard No. 217 and satisfying these requests. Because the new requirements increase the number of emergency exits on some school buses and do not decrease the number of emergency exits on any school buses, NHTSA has decided that it is in the interest of safety that the manufacturers be permitted to comply with the new requirements instead of the existing ones.

EFFECTIVE DATE: The amendments to Section 571.217 (49 CFR 571.217), published at 57 FR 49413, November 2, 1992, and 57 FR 57020, December 2, 1992, continue to be effective May 2, 1994.

Vehicles manufactured before May 2, 1994, may voluntarily comply on August 20, 1993, with those rules' amendments instead of the requirements currently in effect.

FOR FURTHER INFORMATION CONTACT: Charles R. Hott, NRM–15, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone; (202) 366–0247.

SUPPLEMENTARY INFORMATION: On November 2, 1992, NHTSA published a final rule amending Federal motor vehicle safety standard No. 217, Bus Window Retention and Release, by revising the minimum requirements for school bus emergency exits and improving access to school bus emergency doors (57 FR 49413). That final rule will become effective on May 2, 1994. A technical amendment to the November 2, 1992 final rule was published on December 2, 1992 (57 FR 57020).

NHTSA has recently been informed that states are requesting that school bus manufacturers produce new buses complying with the new requirements before their May 2, 1994 effective date. Manufacturers are having difficulty in certifying compliance with the current requirements of Standard No. 217 while, at the same time, satisfying these requests. For example, S5.4.2.1(b) of Standard No. 217 currently states:

* * * A vertical transverse plane tangent to the rearmost point of a seat back shall pass through the forward edge of a side emergency door.

In the November 2, 1992 final rule, the agency amended the requirements concerning clearance to a side emergency door in S5.4.2.1(a)(2)(i) as follows:

* * * no portion of a seat or restraining barrier shall be installed within the area bounded by the opening of a side emergency exit door, a vertical transverse plane tangent to the rearward edge of the door opening frame, a vertical transverse plane parallel to that plane at a distance of 30 centimeters forward of that plane, and a longitudinal vertical plane passing through the longitudinal centerline of the bus.

Manufacturers can comply with the existing requirement while voluntarily complying with the new requirement but only at the cost of lost passenger seating capacity. The problem occurs because the existing requirement references the front edge of a side emergency door's opening area, while the new requirement references the rear edge. The practical effect of the existing requirement is that no portion of a seat may be located opposite the forward part of the emergency exit opening, although a restraining barrier or the front portion of a seat could be located opposite the rearward part of the opening. Conversely, under the new requirement, no portion of a seat may be located opposite the rearward part of the opening, although a restraining barrier or the rear portion of a seat could be located opposite the forward part of the opening. The reference by these requirements to opposite edges of a side emergency door means that manufacturers complying with the existing requirement while also attempting to comply voluntarily with the new requirement cannot place any portion of a seat adjacent to the door. As a result, for each side emergency door on a school bus, there is a loss of capacity of at least 3 seating positions.

NHTSA has decided that manufacturers should have the option of complying with the existing requirements of Standard No. 217 or with those requirements as amended by the November 2, 1992 final rule. The agency is taking this action for several reasons. First, since the emergency exit access resulting from compliance with either requirement is sufficient, the agency concludes that the additional access gained from attempting to comply with both requirements is unnecessary. Second, the new requirements increase the number of emergency exits on some school buses, and do not decrease the number of emergency exits on any school buses. Thus, some buses manufactured to comply with the new requirements will have more emergency exits than they would if they had been manufactured to meet the existing requirements. Third, whether or not a particular bus complying with the new requirements will have more exits, allowing early compliance with the new requirements will allow states and school bus manufacturers to obtain school buses complying with those requirements at an earlier date than is currently possible and without the loss of seating capacity.

NHTSA finds for good cause that notice and opportunity for comment are unnecessary. NHTSA also finds for good cause that this final rule can be effective immediately. This final rule imposes no duties or responsibilities on any party. Manufacturers may continue to comply with the current requirements until the previously established effective date of the November 2, 1992 final rule. As an alternative, this final rule gives manufacturers the option of complying instead with the requirements of Standard No. 217, as amended by the November 2, 1992 final rule, which will become effective May 2, 1994.

Accordingly, under the authority of 15 U.S.C. 1392, 1401, 1403, and 1407, and the delegation of authority at 49 CFR 1.50, the amendments to § 571.217 (49 CFR 571.217) published at 57 FR 49413, November 2, 1992, and 57 FR 57020, December 2, 1992, continue to be effective May 2, 1994. Vehicles manufactured before May 2, 1994, may voluntarily comply on August 20, 1993,

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with this rule's amendments in lieu of the requirements currently in effect.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is neither "major" within the meaning of E.O. 12291, nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule gives manufacturers the option of complying with either the current requirements of Standard No. 217, or the requirements of Standard No. 217, as amended by the November 2, 1992 final rule, which will be effective May 2, 1994. Accordingly, this final rule will not impose any costs on manufacturers.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this final rule imposes no costs on manufacturers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), the agency notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Issued on August 20, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–20648 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 920494–3297; I.D. 101392B]

Taking and Importing of Marine Mammals; Listing of Eastern Spinner Dolphin as Depleted

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final determination.

SUMMARY: NMFS has determined that the eastern stock of spinner dolphin is below the maximum net productivity level (MNPL) and, therefore, is depleted as defined by the Marine Mammal Protection Act (MMPA). This determination is based on a review of the best available information.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

The stock of eastern spinner dolphin, *Stenella longirostris orientalis*, a subspecies of the spinner dolphin, is endemic to the Eastern Tropical Pacific (ETP) (Perrin 1990). An extensive database on the distribution of this subspecies has been compiled from almost 25 years of observations by observers on tuna purse-seine and research vessels in the ETP. The eastern spinner dolphin is distributed over a large triangular region, with the northern point of the triangle off the coast of Baja California (24°N. lat.), the southern point just south of the equator off the coast of Peru, and the offshore point at about 12°N. lat., 135°W. long. (Fig. 1). The core range of the subspecies occurs from near the coast of Mexico and Central America, extending about 1,000 km offshore (8–15° N. lat. and 90–125° W. long.) (Perrin *et al.* 1985; Perrin 1990; Perrin *et al.* 1991).

The status of the eastern spinner dolphin has been at issue for many years. Discussion since 1976 regarding the abundance and the status of eastern spinner dolphins relative to historical population levels was reviewed at 57 FR 27010, June 17, 1992. Amendments to the MMPA in 1984 required that NMFS conduct a 5-year survey (referred to as the Monitoring of Porpoise Stocks surveys, MOPS) to estimate the abundance of ETP dolphin stocks, including the eastern spinner dolphin. Based largely on the estimates of abundance and the status of dolphin stocks analyses that followed the MOPS surveys, NMFS was petitioned to list the eastern spinner dolphin as a depleted species or population under the MMPA on August 2, 1991. NMFS published a notification of receipt of this petition and a determination that this petition presented substantial information on November 5, 1991 (56 FR 56502) indicating that the petitioned action may be warranted, and a request for comments. NMFS proposed to list the eastern spinner dolphin as depleted under the MMPA on June 17, 1992 (57 FR 27010).

A preliminary population estimate from the MOPS surveys (at Wade 1991), and the status of the eastern spinner dolphin, were revised (at Wade, in press) as a result of the comments of the methodology delivered during a November 18–22, 1991, workshop on the status of ETP dolphin stock (DeMaster and Sisson, 1992), and discussion and comments since that meeting. The best data available on abundance, mortality and population dynamics (at Wade, in press) indicate that the population of eastern spinner dolphin is 44 percent of pre-exploitation population size. NMFS, therefore, has determined that the eastern stock of spinner dolphin is below MNPL, and therefore depleted as defined by the MMPA.

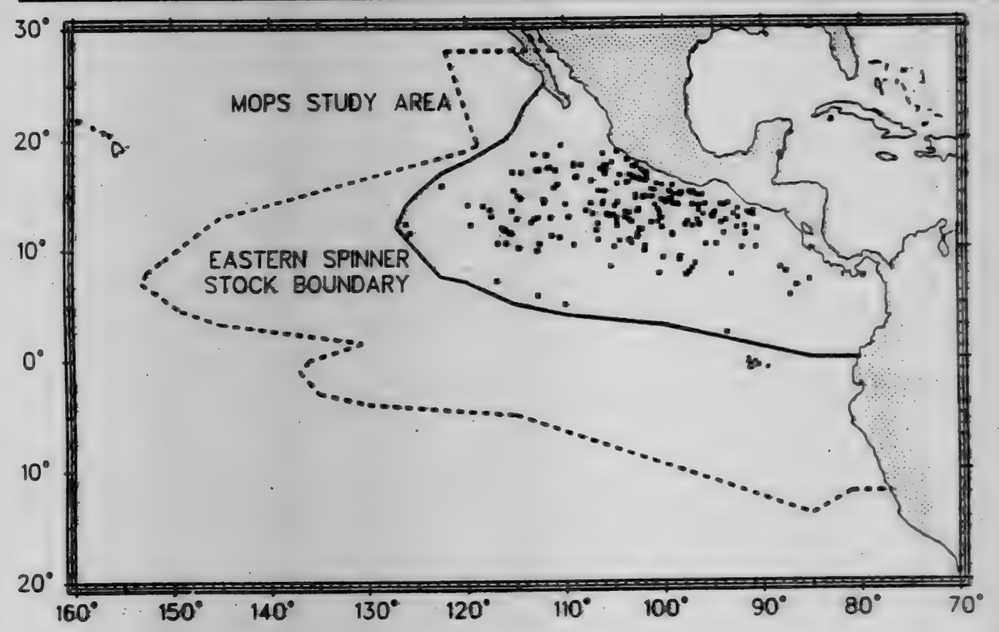

Figure 1. Distribution of the eastern stock of spinner dolphin in the eastern Tropical Pacific. Squares represent positions of all sightings from the MOPS surveys (1986–1990) used in the abundance estimate (a total of 236 sightings). The outer dotted line represents the MOPS study area, and the inner solid line represents the area occupied by the eastern stock of spinner dolphin.

Definition of Depleted under the MMPA

Section 3(1) of the MMPA (16 U.S.C. 1362(1)) defines the term "depletion" or "depleted" as meaning any case in which:

(A) The Secretary, after consultation with the Marine Mammal Commission [MMC] and the Committee of Scientific Advisors on Marine Mammals * * * determines that a species or population stock is below its optimum sustainable population;

(B) A State, to which authority for the conservation and management of a species or population stock is transferred * * *, determines that such species or stock is below its optimum sustainable population; or

(C) A species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.

Section 3(8) (16 U.S.C. 1362(8)) of the MMPA defines optimum sustainable population (OSP) as:

With respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

NMFS regulations at 50 CFR 216.3 clarify the definition of OSP as:

"a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem (K) to the population level that results in MNPL. MNPL is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality."

Comments and Responses on the Notification of Receipt of Petition and the Proposed Rule to List Eastern Spinner Dolphins as Depleted Under the MMPA

NMFS requested written comments following notice of receipt of the petition (56 FR 56502, Nov. 5, 1991) and following the proposed listing of the eastern spinner dolphin as depleted (57 FR 27010, June 17, 1992). Many of the issues raised in the comments received by NMFS have been previously discussed at the annual status of ETP

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dolphin stocks meetings, and in the minutes of the workshop on the status of stocks following the MOPS surveys, 1985–1990 (DeMaster and Sisson 1992). Specific responses to comments follow.

Comment: Several commenters suggested that the trend analyses of the sighting data (on dolphin sighting rates) collected by observers on fishing vessels, and reported to the International Whaling Commission (IWC), indicate stability (i.e., no significant trends are apparent) in the relative abundance of the eastern spinner dolphin population between 1976–1990. Similarly, several commenters stated that NMFS has concluded (based on the MOPS research vessel surveys conducted in the ETP between 1986–1990), that no decline in the abundance of the eastern spinner dolphin stocks has occurred.

Response: Estimates of relative abundance have been made based on sighting data collected by observers onboard tuna fishing vessels (Anganuzzi and Buckland 1989, Anganuzzi *et al.*, 1991, Anganuzzi *et al.*, in press). These data provide a continuous sequence of relative abundance from 1975 to the present necessary to monitor trends in dolphin population levels. The data were discussed at Anganuzzi and Buckland (1989) and DeMaster *et al.* (1992).

Between 1975 and 1989, Anganuzzi *et al.* (1991) found that the only 5-year period with a significant decline in relative abundance of eastern spinner dolphins was from 1975 to 1979. The decline followed years of high mortality associated with the purse-seine yellowfin tuna industry. Anganuzzi *et al.* (1991) suggest that the minimum abundance of the eastern spinner dolphin was reached in the early 1980s. No significant trend in the population of eastern spinner dolphins has been determined since the late 1970s, and the population level of the eastern spinner dolphins in 1990 is not considered significantly different from that in the late 1970s (Anganuzzi *et al.*, in press). This would indicate that the eastern spinner dolphin population remained relatively stable during the last decade. This does not imply the population is within its OSP range, but rather that the population was depleted due to mortality caused by the tuna fishery in the 1960s and early 1970s, and has remained relatively constant over the last 15 years. The appearance of population stability below the OSP is likely due to the similarity in rates of net production and fishery-related mortality, and difficulties in detecting rates of change on the order of 2 percent per year.

Comment: One commenter stated that the results of the 5-year surveys "indicate that the population of eastern spinner dolphin has not increased in size relative to the 1979 population levels." This commenter further stated that the final rule should indicate the magnitude of population changes that could be detected by the surveys.

Response: No significant trend in abundance for eastern spinner dolphins was observed by NMFS between 1986–1990 (suggesting stability), but the power to detect a trend was low (Wade and Gerrodette 1992a). The data collected by observers on research vessels during the 1986–1990 MOPS surveys were designed to detect trends in abundance of the dolphin populations in the ETP using information available on likely sighting rates, school sizes, and CVs from previous surveys, and were anticipated to produce results sufficient to allow detection of an increase or decline in abundance of spotted dolphins of 41 percent (10 percent per year over an anticipated 6-year survey period, at α and β error levels of 10 percent, with an annual CV of 14 percent (Holt *et al.* 1987). For eastern spinner dolphins (a species with lower sighting rates), only larger increases or decreases could be detected (Holt *et al.* 1987).

It is not surprising, therefore, that, from 1986 to 1990, no statistically significant change in abundance could be detected using MOPS data. However, it should be noted that the lack of a statistically significant trend does not necessarily mean that the population has not declined. The data do not warrant any conclusion that no impact is occurring because the statistical power of detecting even a large decline during a 5-year period, given the observed variability of the estimates, is low (Gerrodette 1987). Nonetheless, it is this lack of a detectable change that has resulted in conclusive-sounding statements that there have been no detectable declines in abundance during this 5-year period.

Comment: Several commenters opposed the proposed designation of the eastern spinner dolphin as depleted. Several stated that, based on the observer trend data, the eastern spinner stock is at or above levels that will ensure continued survival. They stated further that, considering current estimates of the size of the populations, recruitment rates (and magnitude), and recent incidental mortality rates, listing these stocks as depleted is inappropriate. NMFS's justification is based primarily on abstract criteria (K, OSP, MNPL). Independent scientific review indicates, however, that the ETP marine mammal populations are either increasing (NAS report), or stable. In view of this, a depleted finding is simply not justified from a scientific standpoint.

One of these commenters continued by stating that "both the NMFS and IATTC studies demonstrate that none of the indicators of stock size show any statistically significant trend in the least 5 years. Considering the estimates of incidental mortality and population estimates for the past 5 years, and generally accepted estimates of recruitment rates, the recent incidental mortality rates are unlikely to jeopardize the viability of these stocks. Irrespective of the size of the populations that existed prior to human-induced mortality, current populations will not be threatened by recent estimated levels of incidental mortality of several thousand individuals." The commenter continued by stating that "it seems unrealistic to list stable or increasing populations of hundreds of thousands of individuals as depleted just because the populations were larger prior to incidental human exploitation. The key fact that NOAA's proposals neglect is that the excessive incidental mortality rates of the past have been significantly reduced and things are looking better in the ETP."

Response: NMFS agrees with the statement that eastern spinner stocks may be at levels that ensure continued survival (57 FR 47620, Oct. 19, 1992), and that the situation in the ETP with respect to dolphin stocks is encouraging.

Several commenters pointed out that fishery-induced mortality is being rapidly reduced (by 80 percent between 1986 and 1991), is currently lower than the most conservative estimate of the maximum net productivity rate or recruitment to the stocks, and continues to be reduced. The fishery-related mortality of eastern spinner dolphins in 1990–1991 decreased to <1 percent of the eastern spinner dolphin populations, levels that are considered sustainable. Minimum viable population levels (see Soule 1987) for the eastern spinner dolphin population have been estimated by NMFS using Goodman's model for estimating mean time of persistence (Goodman 1987), an expected range of annual growth rates between 0.9 and 1.06, and an assumption of a population containing hundreds of thousands of animals. Furthermore, U.S. and international efforts to reduce dolphin mortality in the purse-seine fishery for tuna, and promote dolphin conservation, have been, or will be, implemented. The result indicates that the population is extremely likely to persist over the next 100 years.

Therefore, NMFS is in partial agreement with the commenters. There is no immediate threat to the continued existence of the eastern spinner dolphin population. However, none of the points discussed above address the issue of depletion as defined in the MMPA. Although current trends indicate that the population may be stable, it is stable at a level considerably less than the historic level. As discussed above, mortality of ETP dolphins in the purse-seine fishery has been high since the inception of the fishery, and NMFS has concluded that the best scientific information indicates that a reduction of greater than 40 percent relative to initial population size has occurred in the population of eastern spinner dolphins, that the population is below the level of maximum net productivity, and that the population has been, and continues to be, at levels considered depleted under the MMPA (see also proposed rule at 57 FR 27010, June 17, 1992).

Comment: Several commenters referred to recent studies suggesting that the MNPL for marine mammals is between 60 and 80 percent of carrying capacity for marine mammal populations, and that this should be noted.

Response: Historically, MNPL has been expressed as a range of values (generally 50–70 percent of K) determined by estimating what size stock in relation to the original stock size will produce the maximum net increase in population (42 FR 12010, Mar. 1, 1977). The midpoint of this range (60 percent) has been used to determine whether ETP dolphin stocks were depleted (42 FR 64548, Dec. 27, 1977). For ETP dolphins, the 60 percent value was supported in the final rule governing the taking of marine mammals incidental to commercial fishing operations (45 FR 72178, Oct. 31, 1980) and Wade (in press) considered 0.60 the best working value of MNPL currently available for the eastern spinner dolphin.

Comment: One commenter indicated that it is very difficult to assess the importance of in-migration into the sample area when defining a decline in species abundance at-sea, and asked "if eastern spinner dolphins are killed in the central part of their range, do animals from the peripheral areas tend to move in, thus obscuring the decline in abundance? The effect becomes especially difficult [to determine] if there is hybridization as a result." The commenter continued "that some data from Perrin [Perrin *et al.* 1991] indicate that these things are likely and that the depletion of the base population may therefore be even greater than simple abundance figures can show. So I [commenter] think that the depletion of the eastern spinner dolphin is likely to be worse, rather than better, than the base data suggest. The submissions rightly show that depletion in these long-lived animals that produce few young can happen at remarkably low exploitation levels * * * all of these things make me feel that the submission is timely, and conservatively expressed."

Response: This comment has been addressed at 57 FR 47620, October 19, 1992; therefore it will be briefly summarized at this time. The introgression of genes from the pantropical spinner dolphin (*S.l. longirostris*) into traditional eastern spinner dolphin habitat could conceivably delay the recovery of the eastern spinner dolphin or could possibly prevent a return to historic levels (Perrin *et al.* 1991). Although the information needed to evaluate this concern is presently not available, a reduction of mortality associated with the purse-seine fishery should make the eastern spinner dolphin less vulnerable to genetic "swamping" from less-exploited populations of spinner dolphins.

Comment: Several commenters stressed that listing a species can only be accomplished on the basis of the best available scientific and commercial information. They continued that the petitions regarding the status of ETP dolphins rely principally upon two documents, DeMaster *et al.* (1992) and Wade and Gerrodette (in press), although it would appear that the best scientific information available is that which followed the critical review of these manuscripts by NMFS and others at the November 1991 workshop. In view of the high quality of recent data, several commenters further suggested that the analyses recommended by the Workshop participants be completed prior to the determination of listing, and that interested parties review and comment on the new data.

Response: Although the review was not complete at the time of the receipt of the petitions, comments and suggested analytical changes received by NMFS at the 1991 Workshop and since (summarized at Wade, in press) were incorporated into the assessment of the eastern spinner dolphin population prior to being relied upon in this final determination.

Comment: One commenter noted that section 115(b)(1) of the MMPA requires NMFS to prepare a conservation plan for any species or stock designated as depleted unless it determines that such a plan will not promote the conservation of the species or stock. The commenter recommended that NMFS indicate in the final rule whether it intends to prepare a conservation plan for the eastern spinner dolphin. The commenter continued that if NMFS does not prepare such plans, it should explain its rationale for determining that the plans would not promote the conservation of the stocks and should describe what actions it intends to take (e.g., continued monitoring) in response to the depletion findings.

Response: Section 115 of the MMPA does not require that a conservation plan be prepared concurrently with a final depleted listing. Also, existing regulatory mechanisms protecting ETP dolphins under the MMPA preclude the immediate need for a conservation plan. Furthermore, in a series of intergovernmental meetings convened under the auspices of the Inter-American Tropical Tuna Commission (IATTC) in 1991 and 1992, nations harvesting tuna in the ETP have agreed to limit dolphin mortality to levels approaching zero. The nations have committed to (1) achieving 100-percent observer coverage; (2) identifying alternative fishing methods that would not involve the encirclement of dolphins and, therefore, would not result in dolphin mortality associated with purse-seine techniques; (3) reducing dolphin mortality; and (4) developing and implementing a dolphin conservation program in 1992 and subsequent years (MMC 1992; 57 FR 21081, May 18, 1992).

On April 12, 1991, the three largest U.S. tuna canners announced that they would no longer purchase tuna caught in association with dolphins. The combined effects of prohibiting sundown sets, applying skipper performance standards, increased observer coverage, lower mandated mortality rates, negotiations with, and efforts of, non-U.S. fleets, and research into alternative fishing methods have resulted in a reduction in the mortality rate for eastern spinner dolphins to less than 1 percent per year. With the currently small U.S. fleet, only two to six vessels fishing on dolphins, and the cooperation of other countries that fish on dolphins in the ETP, future dolphin mortality due to tuna purse-seining is expected to decline further.

Finally, the International Dolphin Conservation Act (Public Law 102–523) was enacted on October 26, 1992. This act amended the MMPA to authorize the United States to enter into an international agreement to establish a global moratorium to prohibit

harvesting of tuna through the use of purse-seines deployed on or to encircle dolphins for at least 5 years beginning on March 1, 1994.

In summary, U.S. and international efforts to reduce dolphin mortality in the purse-seine fishery for tuna, and promote dolphin conservation, have been, or are being, implemented. These protective measures are considered adequate to protect the species from further declines within the foreseeable future, and NMFS therefore determines that a conservation plan would not further promote the conservation of the species. As a result, NMFS does not plan to prepare a conservation plan at this time.

Comment: One commenter noted that section 104(h)(3)(B) of the MMPA requires NMFS to modify the incidental take quotas and/or the requirements for gear and fishing practices applicable under the general permit issued to the American Tunaboat Association if it "determines, on the basis of the best scientific information available, that the incidental taking of marine mammals * * * is having a significant adverse effect on a marine mammal population stock * * *." The commenter stated that NMFS, in the final rule, should review the available information and provide its rationale for determining that taking incidental to the ETP tuna fishery is or is not having a significant adverse effect on these stocks.

Response: A depletion determination does not, as a matter of law, require modification of the general permit. It is indisputable that the purse-seine fishery for yellowfin tuna has had adverse impacts on dolphin stocks. However, it appears that eastern spinner dolphin mortality in this fishery has been reduced in recent years to levels considered sustainable. Therefore, at this time, it does not appear that a modification of the general permit is needed.

Status Determination Under the MMPA

Eastern Spinner Dolphin Incidental Mortality From Wade (in press)

Initial estimates of dolphin kill from the yellowfin tuna fishery in the ETP were provided by Smith (1983), Lo and Smith (1986) for 1973–1978, and by Wahlen (1986) for 1973–1978, in each case with associated standard errors. Kill estimates for 1979–87, with associated standard errors, have also been published (IATTC 1989). However, Lo and Smith (1986) reported total dolphin kill and did not divide it into stock categories, while Wahlen (1986) reported kill estimates by stock, but only for the U.S. tuna vessel fleet. Therefore, Wade (in press) divided the kill estimates of Lo and Smith (1986) by the same stock proportions used in Smith (1983), and adjusted the estimates of Wahlen (1986) using the estimated total number of sets, as reported in Punsley (1983). Wahlen (1986) reported the estimated number of sets by the U.S. fleet. Wade (in press) multiplied the kill estimate in each year from Wahlen (1986) by the ratio of the sets made by the entire fleet to the sets made by the U.S. fleet to produce an estimate of the total number of eastern spinner dolphins killed in each year (Table 1).

TABLE 1.—ESTIMATES OF FISHERIES KILL, IN THOUSANDS, BY YEAR FOR THE EASTERN STOCK OF SPINNER DOLPHIN. CV IS THE COEFFICIENT OF VARIATION OF THE KILL ESTIMATE.[1]

Year	Mortality	CV
1959	14.3	.32
1960	124.3	.31
1961	138.8	.28
1062	56.2	.25
1963	62.4	.22
1964	101.4	.20
1965	119.6	.20
1966	97.2	.15
1967	66.8	.16
1968	59.5	.15
1969	106.0	.15
1970	107.4	.15
1971	58.4	.17
1972	87.4	.16
1973	18.4	.16
1974	17.8	.11
1975	17.1	.11
1976	14.7	.12
1977	1.8	.12
1976	1.1	.11
1979	1.5	.24
1980	1.1	.20
1981	2.3	.28
1982	2.6	.33
1983	.7	.38
1984	6.0	.52
1985	8.9	.16
1986	19.4	.19
1987	10.4	.11
1988	18.8	.09
1989	15.2	.11
1990	5.4	.18
1991	5.9	.13

[1] Sources for the estimates are (1) 1959–72 from Lo and Smith (1986), using the stock proportions of Smith (1983); (2) 1973–78 from Wahlen (1986), adjusted for number of sets of total fleet in Punsley (1983); (3) 1979–87 from Anon. (1989), 1988–1990 from Hall and Boyer (1990, 1992). Table from 1959–1987 found at Wade (in press).

Wade (in press) discussed the following potential sources of bias in the kill estimates:

(1) Observer effects on kill rate have been suggested by Wahlen and Smith (1985). This would bias estimates of mortality downward, as the kill rate on tuna vessels with observers would be less than the kill rate on unobserved tuna vessels.

(2) The lack of participation in data collection by some countries during some years may have biased kill rates, especially if significant differences in kill rates existed between countries.

(3) The moderate amount of data collected in 1971 was considered potentially biased because most of the boats with observers were smaller and older, and may have had a higher mortality-per-set (Edwards 1989; Lo and Smith 1986). Similarly, the small amount of data available collected prior to 1970 was not collected by observers placed on tuna vessels for that purpose. Some data from 1964 were reported by a fisherman, while other data from 1964 and data from 1966 and 1968 were observed by scientists on board tuna vessels for the purpose of collecting other types of data (Smith and Lo 1983). Random placement of observers on tuna vessels began in 1972 (Edwards 1989). However, the mortality-per-set did not differ greatly in those years from the data collected in 1972 (Lo and Smith 1986). The mortality-per-set for the pooled 1964–1972 data was virtually identical to the mortality-per-set in 1972 alone, when observers were placed in an unbiased fashion, a predictable result given the similarity in mortality-per-set between years and the greater quantity of data in 1972. Therefore, the fisheries kill estimates for 1959–1971 were essentially estimated from the mortality rate that existed in 1972 and from what were thought to be accurate estimates of the number and type of sets made in each year (Punsley 1983).

Mortality-per-set has declined over time, declining most consistently following the passage of the MMPA in 1972 (Smith 1983). There is no evidence that mortality-per-set was lower from 1959–1971 than it was in 1972. If anything, mortality may have been higher, especially before use of the back-down procedure had become widespread and well practiced.

Thus, three major sources of bias in the fisheries kill estimates, the lack of observations of mortality-per-set in many years prior to 1972, the possible effects on fishing behavior of having an observer aboard, and the lack of participation in data collection by some countries for some time periods, all suggest that if the kill estimates were biased, they would be negatively biased. If it can be assumed that mortality-per-set has declined since the beginning of the fishery, which all information suggests, the kill estimates prior to 1972 were likely under-estimates of the true kill.

Abundance of Eastern Spinner Dolphins

Smith (1979) and Holt and Powers (1982) estimated abundance of eastern spinner dolphins in 1979 using pooled data from research and fishing vessels. Both Holt and Powers (1982) and Wade and Gerrodette (1992) used line-transect analysis methods (Burnham *et al.* 1980) to estimate abundance. However, the relatively low number of sightings that resulted from the 1979 survey required an analysis technique that involved pooling sightings of different stocks and species of dolphin in order to estimate the abundance of each stock (Holt and Powers 1982). Approximately 75 percent of the 1979 survey was concentrated within 1,000 km of the coast, whereas the range of the eastern stock of spinner dolphin is up to 2,000 km from the coast (Perrin *et al.* 1985). The 1979 survey provided very little coverage of the western half of this range (Holt and Powers 1982).

Data collected during the 1986–1990 MOPS surveys covered approximately five times more area than did the 1979 survey. Sample sizes show the large difference in the quantity of data, as a total of 285 schools containing eastern spinner dolphins were recorded during the MOPS surveys, versus a total of only 41 schools during the 1979 survey. The large increase in the quantity of data made the MOPS estimates of abundance more precise for this stock, while the increased coverage of the stock range reduced potential bias due to geographical variation in abundance. Therefore, to examine trends in abundance, a revised analysis for each of the 5 years of MOPS data was undertaken in which annual estimates of abundance for each stock were made only from sightings of that stock (Wade and Gerrodette 1992). These estimates were considered to be less biased estimates of abundance than earlier estimates available for eastern tropical Pacific dolphins (Anon. 1992).

Two major differences between the analytical techniques used by Wade and Gerrodette (1992) and by Holt and Powers (1982) were discussed by Wade (in press): (1) Wade and Gerrodette estimated the effective strip width (i.e., 2.0/f(0); Burnham *et al.* 1980) for each stock separately, rather than estimating a single effective strip width from sightings of all species of dolphins. The effective strip width varied substantially between the different dolphin stocks, ranging from a low of 2.5 km to a high of 11.9 km, indicating that the Holt and Powers (1982) technique may have introduced considerable bias by pooling across different stocks and species; and (2) Holt and Powers (1982) estimated the abundance of each stock by making a pooled estimate for each species, and then divided the species estimate between the stocks of that species according to the relative size of the area occupied by each stock. For example, an estimate of spinner dolphin abundance was made by pooling sightings of eastern spinner dolphins with whitebelly spinner dolphins, a different morphological form that is distributed further offshore and partially overlaps the area occupied by the eastern spinner dolphin (Perrin *et al.* 1985, Perrin *et al.* 1991). Then the abundance estimate for the eastern spinner dolphin was made by multiplying this pooled estimate by the ratio of the area occupied by the eastern spinner dolphin to the sum of that area plus the area also occupied by the whitebelly spinner dolphin. This approach would only be unbiased if the two stocks had exactly the same density (number of animals per unit area) within their respective stock areas. There is no reason to assume this is true; therefore, an analysis based solely on sightings of eastern spinner dolphin pooled across years, as in Wade and Gerrodette (1992), is likely to be less biased.

Other differences summarized by Wade (in press) were that all size schools rather than only schools greater than 15 animals were used. Schools with only a "minimum" rather than "best" estimate of school size were not tested. Unidentified dolphin schools were not used in the estimate of school size. School size was not weighted as had been previously done in some of the years. The truncation of the perpendicular distance distribution was changed from 3.7 to 7.4 km. Bootstrap re-sampling was continued until the total distance was matched, and the number of bootstrap iterations was increased from 100 to 200.

Pooled Abundance Estimate by Wade (in press): Wade (in press) applied the methods of Wade and Gerrodette (1992) to all 5 years of data together rather than separately for each year. The estimate of population abundance (N) of eastern spinner dolphins was computed for each stratum in the MOPS survey area by line-transect methods (Burnham *et al.* 1980) and described in Wade (in press). Only sightings from a stratum were used to calculate the density, and therefore abundance, within the stratum. Abundance estimates for each stratum were summed across all four strata to get a total estimate for the stock. The only change in methodology by Wade (in press) from Wade and Gerrodette (1992) involved the calculation of f(0) (see Wade, in press, for further details on the calculation of f(0)).

Eastern spinner and whitebelly spinner dolphins (*S. l. orientalis* X *S. l. longirostris*) partially overlap in range, but can be distinguished from each other by their color pattern and morphology (Perrin 1990; Perrin *et al.* 1991). There were a small number of sightings of spinner dolphins in the area of overlap between the two stocks that were, for various reasons, unidentified to stock. Wade (in press) prorated those sightings to the eastern stock of spinner dolphin, using the estimated proportion of spinner dolphin in the overlap area that were from the eastern stock (at Wade and Gerrodette 1992). Similarly, Wade (in press) prorated sightings of unidentified dolphins to the eastern stock using the estimated proportion of dolphins that were from the eastern stock in each stratum. Wade added the prorated portions of unidentified spinner and unidentified dolphin to the original estimate to give a final estimate of abundance.

The abundance estimate based solely on the 5 years of the MOPS surveys (236 sightings) was estimated to be 391,200 to 754,200 for each of the 5 years of the MOPS surveys, with CVs of 0.37–0.42 (Wade and Gerrodette 1992). The average abundance estimate over the 5 years of the survey period was 588,500. The pooled estimate of Wade (in press), which incorporated the review and comments of the methodology delivered during the November 1991 workshop, was 568,100. Adding in prorated numbers of unidentified spinner and unidentified dolphin sightings resulted in a final estimate of 632,700 with a CV of 0.167 (Wade, in press) (Table 2). The abundance estimate from Wade (in press) represents the best (least biased and most precise) abundance estimate currently available for eastern spinner dolphin.

TABLE 2.—ESTIMATE OF ABUNDANCE (IN THOUSANDS OF ANIMALS) OF THE EASTERN STOCK OF SPINNER DOLPHIN (STENELLA LONGIROSTRIS ORIENTALIS) FROM THE MONITORING OF PORPOISE STOCKS SURVEYS (1986–90). STRATA ARE IDENTIFIED AT WADE (IN PRESS).[1]

	Total	Inshore	Middle	West
Abundance estimates:				
From eastern spinner schools	568.0	364.8	160.2	43.1
Prorated from unid. spinner	15.4	9.0	6.0	0.4
Prorated from unid. dolphins	49.2	37.5	10.9	0.8
Final estimate	632.7	.....	.....	.....
Standard error	105.7	.....	.....	.....
Coefficient of variation	0.167	.....	.....	.....
Upper 95% confidence limit	778.9	.....	.....	.....
Lower 95% confidence limit	403.2	.....	.....	.....

[1] From Wade (in press).

Potential Bias in Current Abundance Estimate: Any bias in the estimate of current abundance could also bias the estimate of relative population size. Wade and Gerrodette (1992) discuss a number of sources of potential bias when applying line-transect theory to the MOPS survey data. Several potential sources of bias do not appear to have a major effect, if any. Independent observer experiments indicate that few schools (and no large schools) were missed on the trackline, an important assumption.

Aerial photographs have confirmed that little bias have been introduced by the observer's estimate of school size (Gerrodette and Perrin 1992). One partially unresolved issue is that of vessel avoidance by the dolphin schools, which would bias the estimate downwards, although there is some evidence that this has not been a major problem (Au and Perryman 1982; Hewitt 1985). Additionally, mean school size is likely over-estimated due to the decreased probability of detection of small schools at larger perpendicular distances (Drummer and McDonald 1987). Although some stocks in the MOPS surveys appeared to be biased by as much as 20 percent by this problem, not all stocks were (Wade and Gerrodette 1992a), including the eastern stock of spinner dolphin. Finally, the distribution of the eastern spinner dolphin is well known (Perrin *et al.* 1985) and well within the MOPS study area (Fig. 1), so that it can be concluded that the abundance estimate applies to the entire population. Therefore, it appears that the estimate of abundance did not contribute any major bias to the estimate of relative population size, and the effect of the precision of the abundance estimate was accounted for in the calculation of the confidence intervals.

Historical Abundance Estimate: One method for determining a population's status relative to MNPL is to estimate its historical abundance, meaning its abundance prior to significant fisheries mortality, which is assumed to be equivalent to the equilibrium population size (i.e., carrying capacity). Then the current population size is compared with the MNPL for the population, given the estimate of equilibrium population size (Gerrodette and DeMaster 1990). Smith (1983) described a method for back-calculating historical population size (N_h) for *Stenella* spp. dolphins from estimates of the current population size (N_c), the historical kill in the tuna fishery, the maximum net recruitment rate (R_m), and the maximum net productivity level (MNPL). Smith used this technique to estimate historical abundance for the eastern spinner dolphin, resulting in estimates of relative population size (N_c/N_h) for 1979 ranging from 0.17 to 0.25.

Back-calculation estimates of historical abundance are sensitive to estimates of current abundance (Smith and Polacheck 1979; Wade 1991). The revised abundance estimate by Wade (in press) was sufficiently different from the 1979 estimate to justify a re-estimation of historical population size for the eastern stock of spinner dolphin. Additionally, estimates of the historical kill rate by the purse-seine fishery have also been revised since Smith (1983), although these revised estimates did not differ greatly from other previous estimates (Lo and Smith 1986; Wahlen 1986). Therefore, Wade estimated the historical population size for the eastern spinner dolphin using the same methods and the same ranges for the parameters R_m and MNPL as Smith (1983), but with revised abundance and fishery mortality estimates. This resulted in new estimates of relative population size (N_c/N_h) for this stock.

Confidence limits for the estimates of relative population size were calculated using Monte Carlo simulation methods (Buckland, 1984). These confidence limits only incorporated uncertainty due to sampling error of the current population estimate and the mortality estimates. They did not incorporate uncertainty in the model parameters R_m and MNPL. Confidence intervals were calculated for all parameter combinations.

Population Model: Wade (in press) duplicated the methods of Smith (1983), using the relationship

$$N_{t+1} = N_t - K_t + R_t\left(N_t - \tfrac{1}{2}K_t\right) \quad (1)$$

where
N_t=population abundance in year t
K_t=fisheries kill in year t
R_t=net recruitment rate in year t

Density-dependence is incorporated into the equation through the net recruitment rate, which is defined as

$$R_t = R_m\left[1-\left(\frac{N_t}{N_h}\right)^z\right] \quad (2)$$

where
R_m=maximum net recruitment rate
Z=shape parameter that sets the maximum net productivity level (MNPL)
N_h=historical population size (assumed to be the equilibrium population size)

For any value of R_m and MNPL, z can be calculated as in Polacheck (1982). The first equation can be solved for N_t as a function of N_{T+1}, R_t, and K_t. Therefore, by specifying an initial population size, the number of animals killed in each year, the maximum net recruitment rate, and the maximum net productivity level, these two equations can be iteratively solved for N_h.

Smith (1983) used values for R_m of 0.0, 0.03, and 0.06, which were thought to encompass the range of the possible values of R_m for Stenellid dolphins. No direct estimate of net reproductive rate (R) exists for eastern spinner dolphins due to the difficulty in estimating survival rates. The calving interval has been estimated to be approximately 3 years (Perrin and Reilly 1984). The age of sexual maturity (ASM) has been reported as 5 years (Perrin and Henderson 1984). However, Wade (in press) cited a new study using a much larger data set that estimated ASM for the eastern spinner dolphin to be approximately 10 years. This is similar to the estimate of approximately 11 years for the congener northern spotted dolphin, *Stenella attenuata* (Chivers and Myrick 1992; Myrick *et al.* 1986), which is found in the same region of the ETP.

There are no estimates of survival rates for eastern spinner dolphin. Therefore, estimating the net reproductive rate for eastern spinner dolphin requires using estimates of survival rates from another dolphin population. Among the best estimates of survival rates for a delphinid come from a long-term study of known individuals of a coastal population of bottlenose dolphin, *Tursiops truncatus*, with estimates of adult and calf survival of 0.96 and 0.80, respectively (Wells and Scott 1992). From Reilly and Barlow (1986), those survival rates in combination with a calving interval of 3 years and an ASM of 9 years results in an R of 0.03. The maximum survival rates considered by Reilly and Barlow (1986), with the same calving interval (3 years) and ASM (9 years), resulted in an R of 0.05. If the eastern stock of spinner dolphin was below half its equilibrium population size in 1979 (as suggested by Smith 1983) then its net reproductive rate should have been very close to its maximum, R_m. Therefore, Wade (in press) considered 0.04 as the best estimate of R_m currently available for the eastern spinner dolphin, with 0.06 the greatest value of R_m possible. These are the same range of values as in Smith (1983).

Values used by Smith (1983) for MNPL were 0.50, 0.65, and 0.80 (Wade expressed these MNPL values as a fraction of the equilibrium population, corresponding to z values of 1.0, 2.482, and 11.216, respectively). No direct estimate of MNPL exists for the eastern spinner dolphin. Fowler (1984) gave evidence that MNPL was greater than 0.50 for cetaceans, and a value of 0.60 is currently being used for management of cetaceans under the MMPA (45 FR 64548, Oct. 31, 1980). Values of z were used so that MNPL ranged from 0.50 to 0.80 (the same range as in Smith 1983), using increments of 0.01, for a total of 31 values. The exact value of z necessary to give the specified MNPL for any value of R_m was calculated as in Polacheck (1982).

Potential Bias in the Population Model: Bias could be introduced in the final status determination by model misspecification, meaning that an inappropriate model was used. A fairly simple model was used, which probably does not capture some of the complexity of dolphin population dynamics, but it has been shown by simulation that a simple model can perform equally well as a more complex model for this type of analysis (Lankester and Cooke 1987). What was important here was whether the model correctly captured the major behavioral dynamic of the population relevant to estimating relative population size. The most important dynamic that the model correctly contained was the relatively low upper limit on population growth that results from the biological constraints of the spinner dolphin's life history (Reilly and Barlow 1986). There is certainly some environmental variance in dolphin population growth that is not incorporated into this model, but these biological constraints prevent there from being large positive fluctuations in growth rate. Any strong impact of environmental influence could only be in the negative direction, which would lead to this model overestimating relative population size.

Of more concern may be the lack of age-structure in the model, which could potentially bias the results (Goodman 1984). The age-distribution of the spotted dolphin (*S. attenuata*) kill for the years 1974 to 1983 was heavily biased towards mature animals (Barlow and Hohn 1984). If the age-distribution of the kill of eastern spinner dolphin was similar to this for all years, then the simple model used would have overestimated relative population size. Removing proportionally more mature animals, whose reproductive value was highest, would have temporarily reduced the growth rate of the population and caused the population to decline for a longer period of time than predicted by the simple model. Therefore, any bias introduced by the population model would likely lead to an over-estimate of relative population size.

Relative Population Size by Smith (1983) Compared to Those by Wade (in Press)

Population estimates of the eastern spinner dolphin population prior to 1979 were calculated by Smith (1983) (methods described therein), using 1979 abundance estimates (from combined research vessel and fishing vessel data, and from research vessel data alone), pooled kill-rate data collected by observers prior to (and including) 1972, then extrapolated back to 1959 for the years when no kill rate data were collected (at Smith 1983). For all parameter values of R_m and MNPL equal to those in Smith (1983), estimates of relative population size were higher in the analysis by Wade. For example, for R_m=0.03 and MNPL=0.65, Smith (1983) reported a relative population size of 0.20 versus a result of 0.42 by Wade. The different results must be due to either the revised estimates of abundance and kill or to the fact that the Wade (in press) analysis was considering the population size in 1988 rather than 9 years earlier in 1979, because these were the only differences between the analyses. Most of the difference can be shown to be due to the much higher estimate of current population size, while the lower revised kill estimates also contributed to a higher estimate of relative population size. Repeating the back-calculation of Smith (1983) from 1979, but using the revised population and kill estimates of Wade (in press), resulted in nearly the same estimate of relative population size. For example, for R_m=0.03 and MNPL=0.65, a back-calculations from 1979 as opposed to 1988 resulted in a current estimate of relative population size of 0.41 versus 0.42, while Smith (1983) reported a value of 0.20. The difference was not due to the different starting year, as the model trajectories, except at the highest growth rates, indicated little change in the population size between 1979 and 1988. This is in agreement with independent results by Buckland *et al.* (1992), who indicated little difference in relative population size between those 2 years. Therefore, the difference in the results between Wade (in press) and those of Smith (1983) should not be interpreted as a recovery in the population between 1979 and 1988. The new, higher estimates of status should instead be interpreted as a revision of the estimate of relative population size, due mostly to the improved abundance estimate available from the MOPS surveys.

The new estimates of relative population size, while higher than Smith (1983), were still below MNPL for all parameter combinations. Because the range of parameter values used encompassed what is possible for a spinner dolphin, the results of Wade (in press) indicate that the population of eastern spinner dolphin is currently well below what its population size was in 1959. With R_m0.04 and MNPL=0.60, the population was estimated to be at 44 percent of its historical size. Even using the maximum value of R_m of 0.06, the population in 1988 was estimated to be from 43 percent (MNPL=0.50) to 58 percent (MNPL=0.80) of its size in 1959 (Wade, in press).

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Contours of relative population size (N_t/N_h) as a function of R_m and MNPL (calculated by Wade, in press) ranged from 0.35 to 0.55. Relative population size increased with both R_m (growth rate) and MNPL (the amount of non-linearity in the density-dependence response). The lowest relative population size was 0.32, for the case of R_m=0.00, (i.e., no net growth in the population before fisheries kill is included). The highest relative population size was 0.58 for the case of the highest growth rate and MNPL (0.06 and 0.80, respectively). The influence of MNPL was greater at higher growth rates, as relative population size increased by approximately 0.02 for every increase of 0.10 in MNPL at R_m=0.02, but increased by approximately 0.05 for every increase of 0.10 in MNPL at R_m=0.06. There were no combinations of parameter values such that relative population size was estimated to be above MNPL.

Final Determination Under the MMPA

A pooled estimate of abundance from recent (1986–1990) research vessel surveys was used in combination with estimates of fisheries kill from tuna vessel observer data to estimate the historical population size for the eastern stock of spinner dolphin, using a back-calculation technique (Wade, in press). Estimates of relative population size were calculated using a range of values for the maximum net recruitment rate and the maximum net productivity level (MNPL).

The new estimates of relative population size, while higher than Smith's (1983), were still below MNPL for all parameter combinations. The difference between the results of Smith (1983) and Wade (in press) was due mostly to the use of a new, better estimate of abundance, rather than to a recovery of the population between 1979 and 1988.

Using the best data available on abundance, kill, and population dynamics, the population size in 1988 of the eastern spinner dolphin was estimated to be below MNPL. Because the range of parameter values used encompassed all those possible for a spinner dolphin, the results of Wade indicate that the population of eastern spinner dolphin is still well below what its population size was in 1959. Using what may be considered the best parameter values, R_m=0.04 and MPPL=0.60, the population was estimated to be at 44 percent of its historical size. Even using the maximum value of R_m of 0.06, the population in 1988 was estimated to be from 43 percent (MNPL=0.50) to 58 percent (MNPL=0.80) of its size in 1959 (Wade, in press). However, a growth rate higher than 0.04 is very unlikely, as the population would have shown a substantial increase from 1979 to the present, rather than remaining at the same level, as reported in Buckland *et al.* (1992). Estimates of relative population size were all below the value of MNPL used to calculate each estimate (Wade, in press). Calculation of confidence limits for relative population size indicated that the precision of the estimates of relative population size was sufficient to make a status determination (Wade, in press).

Although there were uncertainties associated with this analysis, especially with the early kill data, the results indicated that the eastern spinner dolphin population was well below historical abundance in 1988. The fisheries kill that has occurred from 1988 to 1991 makes it highly unlikely that the population has experienced any significant recovery since 1988 (Wade, in press). Additionally, Buckland *et al.* (1992) indicate no recovery has occurred since 1979 to the present. Most uncertainties in Wade (1992) would lead to over-estimates of relative population size suggesting that the population may be at a lower level than indicated here.

Therefore, NMFS has determined that the eastern spinner dolphin population is below OSP, and by definition, the eastern spinner dolphin is depleted under the MMPA.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this final rule is exempt from the requirements of Executive Orders 12291 and 12612, the Paperwork Reduction Act, and the Regulatory Flexibility Act, because section 115(a)(2) of the MMPA requires listing decisions to be based solely on the basis of the best scientific information available.

A designation of depletion in this instance, which is similar to a listing action under ESA section 4(a), is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act.

References

References are provided upon request, see **ADDRESSES.**

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: August 20, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator For Fisheries.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.15, a new paragraph (e) is added to read as follows:

§ 216.15 Depleted species.

(e) Eastern spinner dolphin (*Stenella longirostris orientalis*).

[FR Doc. 93–20692 Filed 8–25–93; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 285

[Docket No. 920407–2519; ID# 081993A]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of the school Atlantic bluefin tuna component of the Angling category in waters off Delaware and states south.

SUMMARY: NMFS closes the fishery for school Atlantic bluefin tuna conducted by Angling category fishermen in the waters off Delaware and states south. Closure of this fishery is necessary because the annual adjusted quota of 61.5 metric tons (mt) of school Atlantic bluefin tuna allocated for this subcategory in waters off Delaware and states south has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective from 0001 hours local time August 23 through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin B. Foster, 508–281–9260, or Aaron E. King, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(d)(2) of the regulations provides for an adjusted annual quota of 61.5 mt of school Atlantic bluefin tuna to be harvested from waters off Delaware and states south by individuals in the Angling category. The Assistant Administrator for Fisheries, NOAA (AA), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The AA has determined, based on the reported catch, that the adjusted annual quota of school Atlantic bluefin tuna for those fishing in waters off Delaware and states south will be attained by August 23, 1993. Fishing for, retaining, or possessing any school Atlantic bluefin tuna in the closed area must cease at 0001 hours local time on August 23, 1993. In addition, landing any school Atlantic bluefin tuna in or from the closed area is prohibited.

Classification

This action is required by 50 CFR 285.20(b)(1) and complies with E.O. 12291.

Authority: 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 20, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20657 Filed 8–20–93; 4:43 pm]

BILLING CODE 3510-22-P

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50 CFR Part 625

[Docket No. 930815–3215; I.D. 080593F]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing the Summer Flounder Fishery Management Plan (FMP). This emergency interim rule allows two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine summer flounder commercial quota. It is designed to prevent adverse economic and social impacts that would otherwise result in substantial damage to portions of the commercial fishing industry for summer flounder.

EFFECTIVE DATE: This emergency interim rule is effective from August 23, 1993, through November 24, 1993.

ADDRESSES: Copies of documents supporting this action, including the environmental assessment, may be obtained from: Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations are authorized by the Magnuson Fishery Conservation and Management Act (Magnuson Act), and are found at 50 CFR part 625. The regulations were amended on November 30, 1992 (57 FR 57358, December 4, 1992) by the final rule to implement Amendment 2 to the FMP, and on August 26, 1993 (58 FR 40072, July 27, 1993), by the final rule to implement Amendment 3 to the FMP. These regulations imposed several management measures, including an annual commercial quota allocated to the states on a percentage basis.

This action is consistent with items (2) and (3) within the description of "Emergency Justification" of the Policy Guidelines for the Use of Emergency Rules published at 57 FR 375 on January 6, 1992, to address economic and social issues which require immediate action that would otherwise result in substantial damage to portions of the commercial fishing industry in the summer flounder fishery.

Background

The summer flounder resource has been managed since 1988 under an FMP developed jointly by the Council and ASMFC. Amendment 2 to the FMP enacted comprehensive management measures that include an annual commercial quota. The total annual quota is divided among eleven coastal states on a percentage basis, with the percentages based on average state shares of the annual coastwide total of commercial landings for the period 1980–1989. State percentage shares of the quota are based on these historic landings so that each state receives an initial allocation in the same proportion as past landings to overall landings for the period 1980–1989.

In recent years, however, vessel landing patterns have changed, in some cases significantly, from the period of time used to establish the state allocations. In response to this, state fisheries agencies have requested an FMP change to enable them to transfer or combine quota with NMFS approval. At its July meeting, the Council voted to adopt Amendment 5 to the Summer Flounder FMP to enact this change. The Council also voted to request emergency implementation of Amendment 5 in order to allow the State of Virginia the opportunity to seek a quota transfer prior to implementation of Amendment 5.

Data indicate that the amount of summer flounder landed in Virginia by vessels from North Carolina has increased steadily through the period 1990–93. It appears that concerns about the safety of passage through Oregon Inlet (the passage into Albermarle Sound and such traditional ports as Wanchese) have caused vessels to land in Virginia rather than North Carolina more frequently than in the past. In addition, in 1992 and 1993 vessels fished farther north than usual to avoid the requirement to use turtle excluder devices (TEDs) in the waters off of North Carolina. Many of these vessels landed in Virginia.

Virginia subdivided its State quota into quarterly quotas. This change caused the first quarter quota to be harvested quickly. The State transferred quota from its fourth quarter to allow the fishery to remain open. Recent landings projections indicate that the fourth quarter quota will be harvested in less than a week after opening of the fishery on October 1. The Council has requested emergency action to enable states to transfer or combine quota. This emergency action would enable Virginia to seek a quota transfer from another state and prevent needless economic harm to the Virginia industry while Amendment 5 proceeds.

A quota transfer or combination transaction will require separate

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requests from two or more states. One state or more will agree to transfer a certain amount of quota and another state or more will agree to accept the same amount. The requests are to be conveyed in writing to the Regional Director and must be signed by an appropriate official of the state involved. The Regional Director will consider the requests under the criteria outlined in § 625.20(f) and will notify the states making the request of the disposition of it within ten working days of the written submission.

The transfer or combination of quota does not revise the coastwide commercial quota or alter the handling of quota overages specified in § 625.20(d) (2) and (3). Transfers and combinations remain in effect only for the calendar year of enactment.

In the case of quota transfer, the recipient state will be responsible for a quota overage and it will be deducted from the following year's quota for that state. In the case of quota combination, an overage will be deducted in the following year from the quotas of all participant states, with the deduction made in the same proportion as their contribution to the combined quota. For example, states A and B combine quota, with state A contributing 70 percent and state B contributing 30 percent of the combined quota amount. If there is a quota overage, 70 percent of the overage will be deducted from the following year's quota for state A and 30 percent will be deducted from the following year's quota for state B.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget (OMB), with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment or to delay for 30 days the effective date of these emergency regulations under the provisions of section 553 (b) and (d) of the Administrative Procedure Act. Failure to implement emergency measures would preclude state transfers of quota that could be made to prevent premature closure of the fishery in Virginia in October and needlessly harm the fishing industry in that State.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: August 20, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 625 is temporarily amended from August 23, 1993, through November 24, 1993.

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.20(f) is added to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may apply to the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may apply to the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Applications for transfer or combination of commercial quotas for summer flounder must be in writing and signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The application must certify that all pertinent state requirements have been met. Each letter must contain the name of each state involved in the transaction and the amount of quota to be transferred. Any transfer or combination made pursuant to this paragraph is valid only for the calendar year in which it is made and does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

(1) Within ten working days following receipt of an application, the Regional Director must notify the appropriate state officials of the disposition of the request. The Regional Director will consider the following criteria in the evaluation of requests to transfer or combine quota.

(i) The transfer or combination will not preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the FMP and Magnuson Act.

(2) The transfer or combination of quota will be effective upon filing a notification with the Office of the Federal Register.

(3) A state may not submit a request to transfer or combine quota if a request to which it is party is pending before the Regional Director. It may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notification of the transfer or combination of quota has been filed at the **Federal Register.**

(4) If states combine quota and there is a quota overage for the states involved in the combination of quota, at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year.

[FR Doc. 93–20699 Filed 8–23–93; 12:57 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185–3021; I.D. 082393A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure

SUMMARY: NMFS is closing directed fishing for pollock by operators of trawl vessels using nonpelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the total 1993 Pacific halibut bycatch mortality allowance for the trawl pollock/Atka mackerel/"other species" fishery has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 25, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1993 Pacific halibut bycatch mortality allowance for the trawl pollock/Atka mackerel/"other species" fishery, which is defined at § 675.21(b)(1)(iii)(F), is 1,257 metric tons (58 FR 14524, March 18, 1993).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that the 1993 Pacific halibut bycatch mortality allowance for the trawl pollock/Atka mackerel/"other species" fishery has been reached. Therefore, NMFS is prohibiting directed fishing for pollock by trawl vessels using nonpelagic trawl gear, in the BSAI from 12 noon, A.l.t., August 25, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20743 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–22–M

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Proposed Rules

Federal Register
Vol. 58, No. 164
Thursday, August 26, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans—Defense Economic Assistance

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would implement section 7(a)(21) of the Small Business Act ("Act"), enacted on September 4, 1992, which authorizes SBA to make or guarantee loans to businesses which have been detrimentally affected by the closure or substantial reduction of a Department of Defense installation.

DATES: Comments must be submitted on or before September 27, 1993.

ADDRESSES: Comments may be mailed to Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202/205–6490.

SUPPLEMENTARY INFORMATION: Section 7(a)(21) of the Act (Pub. L. 102–366, 106 Stat. 997—998, 15 U.S.C. 636(a)(21)) was enacted on September 4, 1992. Under this proposed regulation SBA would make direct or guaranteed loans to assist a small business concern that has been, or can reasonably be expected to be, detrimentally affected by the closure or substantial reduction of a Department of Defense (DOD) installation. SBA would also be authorized to assist an eligible business detrimentally affected by the termination, or substantial reduction, of a DOD program on which such small business was a prime contractor or subcontractor (or supplier) at any tier.

Under this proposed regulation, the Agency would also be authorized to make or guarantee loans to a qualified individual who seeks to establish, or acquire, and operate a small business concern in an area that has been or can reasonably be expected to be detrimentally affected by such closure or substantial reduction. For purposes of this subsection of the Act, "qualified individual" would be defined to be: (1) A member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement; or (2) a civilian DOD employee involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or (3) an employee of a prime contractor, subcontractor, or supplier at any tier of a DOD program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a DOD program.

In recognition that greater risk may be associated with a loan to an applicant under this program, the proposed rule would resolve any reasonable doubts concerning the small business concern's proposed business loan for transition to nondefense-related markets in favor of the loan applicant when SBA makes any determination regarding the sound value of the proposed loan. In order to determine "sound value", SBA will consider such factors as quality of the product or service, technical qualifications of the applicant's management and employees, sales projections and the applicant's financial status.

Because the Act requires SBA to resolve any credit doubts in favor of the loan applicant under this program, the proposed regulation would not authorize any loan under this program to be made under the certified lenders program (where the lender is entitled to a three day review by SBA) or the preferred lenders program (where the lender has authority to commit the Agency's guaranty without submitting any paperwork to SBA for review).

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated in final, will not constitute a major rule for the purposes of Executive Order 12291, since the proposed changes are not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This proposed rule, if promulgated as final, would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small business loans.)

List of Subjects in 13 CFR Part 122

Loan programs—business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a), 636(m).

2. New §§ 122.62 through 122.62–4 would be added to added as follows:

§ 122.62 Defense Economic Transition Assistance Under Section 7(a)(21) of the Act.

§ 122.62–1 General rule.

(a) *Business.* The Act authorizes SBA to make direct or guaranteed loans to assist a small business concern that has been (or can reasonably be expected to be) detrimentally affected by:

(1) *Closure.* The closure (or substantial reduction) of a Department of Defense installation; or

(2) *Termination.* The termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier.

(b) *Qualified Individual.* Under this program, SBA is authorized to make direct or guaranteed loans to a qualified individual who seeks to establish (or acquire) and operate a small business concern.

§ 122.62–2 Qualified individual.

Qualified individual, for purposes of this program, is:

(a) *Military Status.* A member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement; or

(b) *Civilian Status.* A civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(c) *Contractor or Supplier.* An employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

§ 122.62–3 Repayment ability.

Recognizing that greater risk may be associated with a loan to an applicant under this program, any reasonable doubts concerning the small business concern's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan. In order to determine "sound value", SBA will consider such factors as quality of the product or service, technical qualifications of the applicant's management and employees, sales projections and the applicant's financial status.

§ 122.62–4 Loan Making Authority.

Any defense economic assistance loan made by a participating lender cannot be made under the Certified Lenders Program pursuant to part 120, subpart E of these regulations, or under the Preferred Lenders Program pursuant to part 120, subpart D of these regulations.

Dated: July 30, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20389 Filed 8–25–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASO–13]

Proposed Establishment of Class E Airspace; Courtland, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Courtland, Alabama. A Standard Instrument Approach Procedure (SIAP) for Runway 13 at the Industrial Airpark has been developed and controlled airspace from 700 feet to 1200 feet AGL is needed to contain IFR operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations within controlled airspace. If approved, the operating status of the airport would change from VFR operations to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: November 10, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–13, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of the Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Courtland, Alabama. A SIAP based on the Muscle Shoals Very High Frequency Omnidirectional Range (VOR) has been established to serve the Industrial Airpark Airport. Controlled airspace extending from 700 feet to 1200 feet AGL is needed to contain IFR operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR Rwy 13 SIAP at Industrial Airpark Airport. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993, which is incorporated by reference in 14 CFR

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71.1 effective September 16, 1993 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. If approved, the operating status of the airport would change from VFR operations to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Courtland, AL [New]

Industrial Airpark, Airport, AL
(lat. 34°39'46" N, long. 87°20'30" W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Industrial Airpark Airport, excluding that airspace within the Muscle Shoals Class E airspace.

* * * * *

Issued in East Point, Georgia, on August 12, 1993.

Walter E. Denley,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 93–20681 Filed 8–25–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

Implementing the Mammography Quality Standards Act of 1992—Roles in Improving Mammography Services; Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference to discuss the development of mammography quality standards as required under the Mammography Quality Standards Act of 1992 (the MQSA). FDA intends to issue regulations to implement the MQSA to ensure safe, reliable, and accurate mammography on a nationwide level.

DATES: The public conference will be held on September 20 and 21, 1993, from 8 a.m. to 5 p.m., and on September 22, 1993, from 8 a.m. to 1 p.m. Plenary sessions, September 20, 1993, 9 a.m. to 12 m., and September 22, 1993, 8 a.m. to 1 p.m.; breakout sessions, September 20, 1993, 1:30 p.m. to 5 p.m., and September 21, 1993, 9 a.m. to 5 p.m. Registration is required by September 13, 1993.

ADDRESSES: The public conference will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Dr., Reston, VA 22091. For registration materials, contact Sociometrics, Inc., 8300 Colesville Rd., suite 550, Silver Spring, MD 20910, 301–608–2151 or 1–800–729–0890 (FAX 301–608–3542). There is a registration fee of $60.00. Conference facility space is limited; therefore, interested persons should preregister by September 13, 1993. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Amy S. Birgensmith, Center for Devices and Radiological Health, Food and Drug Administration (HFZ–240), rm. 216, 1901 Chapman Ave., Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION: Enacted by Congress in October 1992, the MQSA is intended to ensure that mammography is reliable and safe. The MQSA makes it unlawful for any facility to provide mammography services after October 1, 1994, unless it is accredited by an approved, private, nonprofit organization or State body and has received Federal certification. The MQSA requires the development of quality standards relating to equipment and personnel for all mammography facilities, the accreditation and certification of each facility, and annual inspections to ensure compliance.

In June 1993, FDA was delegated authority for implementing the MQSA. FDA's Center for Devices and Radiological Health is responsible for implementation of the MQSA.

Major topics planned for discussion include: (1) The MQSA's scope, intent, and purpose; (2) FDA's plans for implementation; and (3) development of quality standards as aforementioned. Time will be provided for conference participants to identify issues and make recommendations for incorporation into the drafting of quality standards. Agenda items are subject to change as priorities dictate.

Public discussion at this meeting is intended to lay the groundwork for more extensive consideration of the quality standards by the National Mammography Quality Assurance Advisory Committee, as required by MQSA. FDA is in the process of soliciting nominations for advisory committee membership (58 FR 41793, August 5, 1993) and expects to hold the first advisory committee meeting later this calendar year.

Dated: August 20, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–20632 Filed 8–25–93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–22–92]

RIN 1545–AR10

Dividends Received Deduction Holding Period Reduced for Periods Where Risk of Loss Diminished; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that would determine when a taxpayer must reduce its holding period of stock for purposes of the dividends received deduction because it has diminished its risk of loss by holding a position in substantially similar or related property.

DATES: The public hearing will be held on Wednesday, September 28, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, September 14, 1993.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attn: CC:DOM:CORP:T:R [FI–22–92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 246(c)(4)(C) of the Internal Revenue Code. These proposed regulations appeared in the **Federal Register** for Thursday, May 27, 1993 (58 FR 30727).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, September 14, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Jackie Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20513 Filed 8–25–93; 8:45 am]

BILLING CODE 4830-01-P

26 CFR Part 48

[PS–52–93]

RIN 1545–AR92

Diesel Fuel Excise Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice invites written comments from the public on issues that the Internal Revenue Service may address in proposed regulations relating to the dyeing of diesel fuel destined for a nontaxable use. All materials submitted will be available for public inspection and copying.

DATES: Written comments must be submitted by September 27, 1993.

ADDRESSES: Send comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:DOM:CORP:T:R (PS–52–93), Washington, DC 20044. In the alternative, comments may be hand delivered to: CC:DOM:CORP:T:R (PS–52–93), Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 13242 of the Omnibus Budget Reconciliation Act of 1993 revises the federal diesel fuel tax, effective January 1, 1994. Generally, under revised section 4081 of the Internal Revenue Code, the diesel fuel tax will be imposed in the same manner as the present gasoline excise tax. However, tax will not apply to diesel fuel that the Secretary determines is destined for a nontaxable use and that is indelibly dyed (or dyed and marked) in accordance with regulations that the Secretary prescribes.

The Service invites comments from the public on any issue that should be addressed in regulations relating to the federal diesel fuel tax. The Service is particularly interested in receiving comments on the following matters.

1. The type (or types) and concentration of dye to be used to identify diesel fuel destined for a nontaxable use.

2. The type and concentration of markers (if any) to be added to diesel fuel destined for a nontaxable use.

3. Whether the dye used in the Environmental Protection Agency's diesel desulfurization program to identify high-sulfur diesel fuel also should be allowed to be used to identify low-sulfur diesel fuel destined for a nontaxable use.

4. The type of labeling that should be required on retail diesel fuel pumps and other delivery facilities where dyed fuel is dispensed.

5. Any additional rules that are needed to assure that buyers and sellers of diesel fuel will know whether the fuel is dyed, including rules regarding coding of invoices, recordkeeping, information reporting, etc.

Stuart Brown,

Associate Chief Counsel (Domestic).

[FR Doc. 93–20621 Filed 8–25–93; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–4698–3]

Hazardous Air Pollutant List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition.

SUMMARY: This document documents the receipt of a petition by AlliedSignal, Inc, BASF Corporation, and DSM Chemicals North America, Incorporated, to remove the compound caprolactam (CAS No. 105–60–2) from the Hazardous Air Pollutant list in section 112(b)(1), 42 U.S.C. 7412(b)(1). The EPA has determined that the data submitted in this petition will support an assessment of risks associated with the current peak and annual average emissions and related exposures to the people living in the vicinity of caprolactam emitting facilities. In addition, the submitted data will support an assessment of the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. The EPA must respond to this petition within 18 months. Comments will be solicited at the time of proposal of the decision on the petition. With this document, the EPA is formally announcing an open request for additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts associated with caprolactam.

DATES: Additional data will be accepted if received on or before October 25, 1993.

ADDRESSES: *Data Submissions:* Additional data should be submitted (in duplicate if possible) to: Pam J. Smith, Docket Clerk, Office of Air Quality Planning and Standards, MD–13, U.S. EPA, Research Triangle Park, North Carolina 27711.

Documents. A copy of the petition is available in room 922, 411 West Chapel Hill Street in Durham, North Carolina and will be available for public inspection and copying between 8:30 a.m. and 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. A reasonable fee may be charged for copying. In addition, the industry has made copies of the petition available to the public in key locations where caprolactam is produced and used. The public may call the industry help line at 800–441–8784 between 8:30 a.m. and 4:30 p.m. EST, Monday through Friday for exact locations.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy B. Pate, Pollutant Assessment Branch, Emission Standards Division (MD–13), U. S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5347.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Petitions to add or delete chemicals from the Hazardous Air Pollutant list are allowed under section 112(b)(3)(A) of the Clean Air Act, 42 U.S.C 7412(b)(3)(A). Any person may petition the Administrator to modify, by addition or deletion, the list of hazardous air pollutants. Based upon the information presented by the petitioner and any other pertinent information, the Administrator may grant or deny a petition. A petitioner seeking to delete a substance must provide information to demonstrate that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or the environment through inhalation or other routes of exposure.

II. Background

On July 19, 1993 the EPA received a petition from AlliedSignal, Inc, BASF Corporation, and DSM Chemicals North America, Incorporation ("Petitioners"), to remove caprolactam (CAS No. 105–60–2) from the Hazardous Air Pollutant list in section 112(b)(1), 42 U.S.C. 7412(b)(1). After receipt of a petition, the EPA determines if the data submitted in the petition will support a valid risk assessment of the human health and environmental impacts associated emissions of a section 112(b)(1) listed pollutant. The EPA has determined that the data submitted in this petition will support an assessment of risks associated with the current peak and annual average emissions and related exposures to the people living in the vicinity of caprolactam emitting facilities. In addition, the submitted data will support an assessment of the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions.

III. Description of Petition

The petition states that these Petitioners comprise 100 percent of the U.S. caprolactam producers and caprolactam by-product ammonium sulfate manufacturers, 88 percent of the Nylon 6 fiber producers, and 72 percent of the Nylon 6 plastic producers, and the only major supplier of Nylon 6 films. The petition contains the following information:

(A) Identification and location of all facilities producing or using caprolactam;

(B) Estimated current and future air emissions of caprolactam, atmospheric modeling and monitoring data supporting the estimation of peak short-term and annual average ambient concentrations, estimates of the number people potentially exposured to those concentrations and estimated deposition of caprolactam to the land and surface water.

(C) Documentation of a literature search conducted within 6 months prior to the petition filing, including identification of the data bases searched, the search strategy, and printed results.

(D) Printed copies of all human, animal, *in vitro*, or other toxicity studies cited in the literature search. In addition, the petition contains unpublished occupational health data and studies collected over 20 years at the AlliedSignal facility in Hopewell, Virginia.

(E) Printed copies of environmental effect data characterizing the fate of caprolactam when it is released into the atmosphere. This information includes atmospheric residence time, solubility, phase distribution, vapor pressure, octanol/water partition coefficient, particle size, adsorption coefficients, information on atmospheric transformations, potential degradation or transformation products, and bioaccumulation potential.

(F) List of all support documents in the petition.

IV. Petition Availability

A copy of the complete petition is available in room 922 at 411 West Chapel Hill Street, Durham, NC. It is available for public inspection and copying between 8:30 a.m. and 4:30 p.m. EST, Monday through Friday. A reasonable fee may be charged for copying. Contact the Docket Clerk at 919–541–5319 for access information on the electronic availability of a summary of the petition contents and the names and locations of the producers and users with the potential to emit caprolactam. In addition, the industry has made copies of the petition available to the public in key locations where caprolactam is produced and used. The public may call the industry help line at 800–441–8784 between 8 a.m. and 4:30 p.m. EST, Monday through Friday for exact locations.

V. Request for Additional Data

Comments will be solicited at the time of proposal of the decision on the petition. However, with this notice, the EPA is requesting, from the public any additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts. Data existing in the current petition should not be submitted. Additional data should be submitted (in duplicate if possible) to: The Docket Clerk, Office of Air Quality Planning and Standards, MD–13, Research Triangle Park, NC 27711. To determine what data have been filed in the petition and to avoid submitting duplicative data, the public may call the Docket Clerk at 919–541–5319 or the industry help line at 800–441–8784 between 8 a.m. and 4:30 p.m. EST, Monday through Friday.

(Authority: 42 U.S.C. 7412)

Dated: August 17, 1993.

Michael Shapiro,

Acting Assistant Administrator.

[FR Doc. 93–20597 Filed 8–25–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–4697–6]

National Oil and Hazardous Substance Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Mowbray Engineering Company site from the National Priorities List (NPL): request for comments.

SUMMARY: EPA, Region IV, announces its intent to delete the Site from the NPL and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Alabama have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments on the Notice of Intent to Delete the Site from the NPL should be submitted no later than September 27, 1993.

ADDRESSES: Comments may be mailed to: Jane Stone Spann, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Comprehensive information on this Site is available through the EPA Region IV public docket, which is located at EPA's Region IV office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region IV docket office.

The address for the regional docket office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone No.: (404) 347–2930.

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Greenville Public Library, 309 Fort Dale Street, Greenville, Alabama 36037, (205) 382–3216.

FOR FURTHER INFORMATION CONTACT:

Ms. Jane Stone Spann, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–2643.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA, Region IV, announces its intent to delete the Site from the NPL, which constitutes appendix B of the NCP, and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

In addition to the above, for all Remedial Actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, it is EPA's policy to review all remedial actions at a site and ensure that all appropriate action has been taken to ensure that the site remains protective of public health and the environment, and meets EPA's deletion criteria as outlined on the previous page. EPA must also assure that five-year reviews will continue to be conducted at the site until no hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure. States may conduct five-year reviews under/pursuant to Cooperative Agreements or Superfund State Contracts with EPA, and submit five-year review reports to EPA.

III. Deletion Procedures

EPA Region IV will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA has agreed to conduct five-year reviews at this Site. (2) EPA has recommended deletion and has prepared the relevant documents. (3) The State has concurred with the deletion decision. (4) Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties. (5) The Region has made all relevant documents available in the Regional Office and local Site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion occurs after the EPA Regional Administrator places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region IV.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Site is located approximately 40 miles southwest of Montgomery in the town of Greenville, Alabama. The Site encompasses a 2.7 acre tract situated diagonally across from the now bankrupt Mowbray Engineering Company (MEC) facility at 300 Beeland Street, Greenville. The MEC facility repaired and reconditioned electrical transformers, and from 1955 to 1974, emptied waste Polychlorinated Biphenyl (PCB) transformer oil on the ground behind the plant. The contaminated oil entered a stormwater drainage system which discharged into a swamp across Beeland Street to the southwest of the property. In 1974, MEC began collecting the waste oil for recycling in underground storage tanks located in the rear of the property. In 1985, the company, and its owner, Norman Parker, filed bankruptcy petitions under Chapter 7 of the U.S. Bankruptcy Code.

The Site was proposed for addition to the National Priorities List (NPL) in **Federal Register** 47 FR 58476, on December 30, 1982, after major fish kills, in 1975 and 1980, and a removal action in August, 1981. The U.S. EPA performed extensive sampling in February, 1981, which determined the extent of the PCB contamination in the soil, and resulted in the removal action. The Hazard Ranking System listed groundwater as the main concern at the site due to a nearby inactive public water supply well. Final listing was published in **Federal Register**, No. 47 FR 40658, on September 8, 1983.

In 1985, the EPA contracted Camp, Dresser, and McKee to complete a Remedial Investigation and Feasibility Study (RI/FS) to determine the nature and extent of the contamination and to explore potential remedies. The results of the Remedial Investigation concluded that PCBs were the only contaminant of concern, although low levels of phenols, chloroform, dichloroethane, and trichloroethanes were detected. The PCB's were detected in groundwater sampling at 2.4 µg/1, considerably above the MCL level of 0.5 µg/1 for groundwater.

The Record of Decision (ROD), issued by EPA, Region IV, on September 25, 1986, selected alternatives consistent with the recommendation in the Feasibility Study. The alternative selected included the following: Excavation, removal, and disposal of the underground storage tanks located on the MEC property; treatment and storage of the waste oils in the swamp and in the tanks; drainage diversion of surface runoff into the swamp; excavation of soils with PCB's above 25 ppm with either off-site incineration, on-site incineration, or on-site solidification/stabilization (incineration with an infrared incinerator was the preferred option); grading and revegetation; proper closure of the abandoned city water well; and operation and maintenance activities including the diversion ditches, revegetated area, and possibly monitoring the solidified matrix.

EPA community relations activities at the Site included a public meeting held in 1986 announcing the Agency's Proposed Plan for Remediation at the Site. Public comments received during a 30-day comment period were received and addressed in the Responsiveness Summary. The EPA issued a press release in the local newspaper in the summer of 1987, notifying the public that the Remedial Action phase of the project was beginning. Throughout the construction period, nearby residents were kept informed as to project schedules and potential temporary construction nuisances.

Remedial activities were begun by HazTech on June 6, 1987, and construction completed on August 20, 1987. Remedial activities at the site included solidification/stabilization of approximately 2500 cubic yards of PCB contaminated soil (monolith), capping the resulting monolith, construction of a diversion ditch, fencing off the swamp area, grading and revegetating the swamp area, closure of the abandoned city well, excavation, removal, and disposal of the underground storage tanks, removal of abandoned transformers, disposal/treatment of all waste oils. Confirmatory sampling was conducted after each segment of the RA and confirmed that cleanup goals of less than 25 ppm had been achieved.

The State did not concur in EPA's selection of remedy and, therefore, there was no agreement for the conduct of Operation and Maintenance at the Site. EPA unsuccessfully tried to enlist the county to undertake Operation & Maintenance (O&M). In November, 1988, while struggling with the issue of O&M and an acceptable way to delist the site, EPA uncovered thousands of invoices which evidenced extensive business dealings between MEC and approximately 100 businesses engaged in electric power generation. On December 12, 1988, notice/information request/demand letters were issued to Potentially Responsible Parties (PRPs) which led to the formation of a steering committee. An agreement was reached in principle in December, 1989, and a Consent Decree signed in October, 1990, requiring the PRPs to perform O&M activities.

It is EPA's policy to conduct consecutive five Year Reviews if hazardous materials remain on site above the levels that allow unlimited use and unrestricted exposure. The first Five Year Review of the Site was conducted by Roy F. Weston, Inc. and documented in a report dated February, 1993. This report found that the remedial activities appeared to be performing well with structures in good condition and PCB contamination remaining controlled within the solidified matrix and cover material. The PRPs continue to perform O&M activities as required by the ROD and Consent Decree and recommended in the Five-Year Review. The next Five-Year Review will be conducted before June 30, 1997. EPA, with concurrence of the State, has determined that all appropriate Fund-financed responses under CERCLA at the Site have been completed, and that no further cleanup by responsible parties is appropriate.

Dated: July 20, 1993.

John R. Barker,

Acting Regional Administrator, USEPA Region IV.

[FR Doc. 93–20730 Filed 8–25–93; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–233; DA 93–992]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by Agape Church, Inc. ("Agape"), to amend the Commission's Rules to change the designation of the Little-Rock, Arkansas television market to include the community of Pine Bluff, Arkansas. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before September 23, 1993, and reply comments are due on or before October 8, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792 or James A. Hudgens, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–233, adopted August 9, 1993, and released August 19, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Agape Church, Inc., licensee of KVTN(TV), Pine Bluff, Arkansas, proposed to amend Section 76.51 of the Rules to change the designation of the Little-Rock, Arkansas television market to include the community of Pine Bluff, Arkansas.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Station KVTN and stations licensed to communities in the Pine Bluff and Little Rock television markets do compete for audiences and advertisers throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Agape's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few television licensees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 23, 1993, and reply comments on or before October 8, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–20691 Filed 8–25–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Mirabilis Macfarlanei (MacFarlane's Four-o'clock) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the plant *Mirabilis macfarlanei* (MacFarlane's four-o'clock), a species listed as endangered in 1979, from endangered to threatened status. This action is proposed due to improvement in the status of this species and the discovery of additional colonies. *Mirabilis macfarlanei* now occurs in 18 colonies in Idaho and Oregon. In addition, the species meets the minimum goals for reclassification identified in the *Mirabilis macfarlanei* Recovery Plan. This rule is proposed under the Endangered Species Act of 1973 as amended (Act), and is based on a review of all information currently available for the species. The proposed change in classification reflects an improvement in status and will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 25, 1993. Public hearing requests must be received by October 12, 1993.

ADDRESSES: Comments should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705. The complete file for this proposed rule is available for public inspection by appointment, during normal business hours, at the same address.

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FOR FURTHER INFORMATION CONTACT: Robert L. Parenti, at the above address (208–334–1931).

SUPPLEMENTARY INFORMATION:

Background

Mirabilis macfarlanei was named for Ed MacFarlane, a boatman on the Snake River, who pointed out the plant on the Oregon side of the Snake River to Rollins and Constance in 1936; these botanists described the species later that year (Constance and Rollins 1936). Records indicate MacFarlane's four-o'clock was collected in the Hells Canyon area in 1939. In 1947, a population was discovered by R.J. Davis, an Idaho botanist, near the confluence of Skookumchuck Creek and the Salmon River in Idaho. Futile searches for *Mirabilis macfarlanei* from 1947 to mid-1970's led botanists to consider it possibly extinct. In May 1977, a small extant colony was found along the Snake River near Cottonwood Landing on the Oregon side of the River. In 1979, the Skookumchuck population was rediscovered on Bureau of Land Management (Bureau) lands (Heidel 1979), and in 1980, a large colony was discovered on Bureau and private lands in the Long Gulch area above the Salmon River, Idaho County, Idaho.

Since 1983, 15 additional colonies have been located, bringing the total number of extant colonies to 18, encompassing approximately 150 acres. Seven colonies are on the banks and canyonland slopes above the Snake River, Idaho County, Idaho, and seven colonies are on the banks and canyonland slopes above the Salmon River, Idaho County, Idaho. Two colonies are on the banks and canyonland slopes above the Snake River, Wallowa County, Oregon, and two colonies are on canyonland slopes above the Imnaha River, Wallowa County, Oregon. These colonies generally occur on talus slopes within canyonland corridors above the rivers.

Three out of 14 colonies (21 percent) of *Mirabilis macfarlanei* in Idaho are located on private lands in Idaho County, Idaho. Four colonies (29 percent) are on Bureau lands in Idaho County, Idaho. Seven colonies (50 percent) are within the Idaho side of Hells Canyon National Recreation Area in Idaho County, Idaho; these seven colonies are managed by the Wallowa-Whitman National Forest in Oregon.

Three out of four colonies (75 percent) of *Mirabilis macfarlanei* in Oregon are located within the Oregon side of Hells Canyon National Recreation Area in Wallowa County, Oregon; these three colonies are managed by the Wallowa-Whitman National Forest in Oregon. One colony (25 percent) in Oregon is located on private land in Wallowa County, Oregon. There are approximately 6,300 plants in Idaho, and 2,300 in Oregon (Johnson, Bureau of Land Management, and Stein, Forest Service, pers. comms., 1992).

Mirabilis macfarlanei is a member of the four-o'clock family (Nyctaginaceae). It is a perennial with a stout, deep-seated taproot. The stems are freely branched, swollen at the nodes so that the plant forms hemispherical clumps 6–12 decimeters (24 to 47 inches (in)) in diameter. The leaves are opposite, somewhat succulent, green above and glaucescent (with a whitish or bluish cast) below. The lower leaves are orbicular or ovate-deltoid in shape and become progressively smaller toward the top of the stem. The inflorescence is a four- to seven-flowered cluster subtended by an involucre. The flowers are striking due to their large size, up to 25 millimeters (mm) (1 in) long and 25 mm (1 in) wide, and showy magenta color. They are funnel-form in shape with a widely expanding limb. The flower is five-merous, with five stamens (male reproductive structures) generally exerted. Flowering is from early May to early June, with mid-May usually being the peak flowering period. *Mirabilis macfarlanei* is most closely related to *Mirabilis greenei* Wats. of the Klamath (Siskiyou) region of California and Oregon (Constance and Rollins 1936).

No other species of *Mirabilis* occur in Hells Canyon, and no member of the regional flora resembles Macfarlane's four-o'clock. This large plant is easily recognized by its large, green, succulent leaves that are oppositely arranged on the stem. The cluster of large, magenta flowers is unlike anything else in the flora of the northwest (Moseley, Idaho Department of Fish and Game, pers. comm., 1992). The generic name, *Mirabilis*, for MacFarlane's four-o'clock in Latin means wondrous. It is a fitting name for one of the most striking members of the four-o'clock genus.

Mirabilis taxa in the United States are mainly restricted to the southwest, so it is quite unusual for *Mirabilis macfarlanei* to exist as far north as west central Idaho and northeast Oregon. It is conjectured that the genus expanded northward in a period of warmer climate. With climates cooling, the species or its predecessor was, in essence, "trapped" (Stebbins 1979). The Salmon River and Snake River canyonland areas in northeastern Oregon and west central Idaho provide some of the longest growing seasons and mildest winter conditions of any mountainous region east of the Cascades. *Mirabilis macfarlanei* is in a canyonland corridor where the climate is regionally warm and dry with precipitation occurring mostly in a winter-to-spring period. If *Mirabilis macfarlanei* originated in the north in a warmer period and its path of retreat with cooling climate was cut off by less favorable conditions, the warmer climate (such as near Riggins, Idaho, in the Salmon River Canyon) would explain the restricted distribution of the species.

The colonies of *Mirabilis macfarlanei* usually grow as scattered plants on open, steep (50 percent) slopes of sandy soils, generally having west to southeast aspects. However, during the 1984 season a colony was discovered having an east aspect. Talus rock underlies the soil in which the plants are rooted. There are a variety of soils that support this plant throughout its range. Even though sandy soils support the larger populations of *Mirabilis macfarlanei*, they are quite susceptible to displacement by wind and water erosion.

The plant community is in a transition zone between *Agropyron spicatum—Poa sandbergii* and *Rhus glabra—Agropyron spicatum*, consisting of *Agropyron spicatum* (bluebunch wheatgrass), *Bromus tectorum* (cheatgrass), *Sporobolus cryptandrus* (sand dropseed), *Phacelia heterophylla* (scorpion weed), *Lomatium dissectum* (desert parsley), *Celtis reticulata* (hackberry), *Rhus glabra* (smooth sumac), *Achillea millefolium* (yarrow), and *Chrysothamnus nauseosus* (rabbit bush) (Daubenmire 1970, Franklin and Dyrness 1973). Near Long Gulch, Idaho, an *Agropyron spicatum—Poa sandbergii* community existed; however, the latter species have been replaced by the exotic *Bromus tectorum* (Johnson 1984).

From 1936 to 1979, *Mirabilis macfarlanei* was known only from 3 sites with approximately 20 to 25 individual plants. *Mirabilis macfarlanei* was added to the Federal List of Endangered and Threatened Plants on October 26, 1979 (44 FR 61912).

At the time of listing, *Mirabilis macfarlanei* colony estimates were based upon sparse data. Prior to listing, several professional and amateur botanists were active in searching the canyonlands in Idaho and Oregon without success. This led botanists to believe that the plant was extremely rare and perhaps extirpated from likely areas in Idaho and Oregon.

The 1985 *Mirabilis macfarlanei* Recovery Plan includes the following primary subobjective for reclassification and delisting the species: When a total of 10 colonies (5 colonies, or any combination of 10, in each of 2 geographically distinct and isolated populations) are protected and managed to assure their continued existence.

Specific criteria for reclassifying from endangered to threatened: *Mirabilis macfarlanei* may be considered for reclassification to threatened when 4 of the colonies in each population meet the above criteria. The objectives will be reevaluated should new colonies be discovered or new conditions identified.

The objectives have been reevaluated based on additional information. The colonies that are being protected and managed meet the criteria for reclassification from endangered to threatened. An updated Recovery Plan will be prepared reflecting data obtained since the plant was listed in 1979.

Based on the best current estimates available, there are now 18 *Mirabilis macfarlanei* colonies with a total of approximately 8,600 plants. Monitoring at specific sites indicate the plant is stable showing little or no decline. Also, there are no indications that there has been an appreciable increase in plant numbers at the sites monitored. However, climatic conditions have often dictated the trends on any given year for *Mirabilis macfarlanei*. Even through 6 to 7 years of drought, the plant has not shown any appreciable decline. The plants may be smaller and produce fewer flowers during dry years, but the colonies seem to maintain themselves until favorable growing conditions return. It has been suggested that a greater threat may exist for colonies that occur in less than 1 acre (Johnson, pers. comm., 1992). However, those colonies found in the 1990 and 1991 seasons, in areas less than 1 acre, appeared to be vigorous, with one being reported as exceptionally vigorous. Several sites were reported as having from 35 to 60 percent immature or juvenile plants, suggesting that some recruitment is occurring. In addition, many of the small sites identified have many acres of potential habitat (Mancuso and Moseley 1991). Continued searches in the rugged country where this plant is found will probably lead to the discovery of more colonies (Moseley, pers. comm., 1992).

Previous Federal Action

Federal involvement with *Mirabilis macfarlanei* began with section 12 of the Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intent to review the status of the plant taxa named therein. In this notice, *Mirabilis macfarlanei* was treated as under petition for listing as endangered. The Service published a proposed rule in the June 16, 1976, **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list, including *Mirabilis macfarlanei*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523) that included *Mirabilis macfarlanei*. On October 26, 1979, *Mirabilis macfarlanei* was listed as an endangered species in a final rule published by the U.S. Fish and Wildlife Service (44 FR 61912).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. The Service's listing regulations (50 CFR part 424) provide for a review of the following five factors when reclassifying (or listing or delisting) a species (50 CFR 424.11). These factors and their application to *Mirabilis macfarlanei* Conat. and Roll. (MacFarlane's four-o'clock) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In 1979, when *Mirabilis macfarlanei* was listed as endangered, this species was threatened by grazing, its close proximity to a hiking trail, potential collecting, fungus, and a limited number of populations. Since that time, studies have shown that moderate to light grazing does not affect the plant. In addition, the Forest Service and the Bureau of Land Management have modified their grazing practices. The Forest Service has cattle removed from grazing allotments in and near where *Mirabilis* occurs in April before the plant starts to grow. Through the cooperation of a private landowner, the Forest Service has fenced the only *Mirabilis* population on private land in Oregon. In Idaho, the Bureau of Land Management fenced a major portion of one of the largest populations of *Mirabilis* known. The Bureau has also removed grazing from an area 1 immediately outside the fenced exclosure. A private landowner adjacent to the Bureau's unfenced area has reduced grazing to assist in the conservation of *Mirabilis macfarlanei*. Grazing on other Bureau lands has been reduced to protect the plant (Scott Riley, Bureau of Land Management, pers. comm., 1992). The Oregon population identified in the 1979 listing next to a hiking trail along the Snake River in Hells Canyon still exists. Although the population is still unprotected from casual collecting or trampling, there is no apparent decline of the species at that location. However, since Hells Canyon is designated as a National Recreation Area, there is still a potential for increased recreational use of the river trail and potential trampling and collecting. The fungus identified as a threat in the 1979 listing has never been reported again as a threat. There are still several small populations, but many more of them. The smaller populations reported in recent surveys have been identified as vigorous to extremely vigorous. Also, as new sites have been found, population sizes have increased considerably.

Studies were conducted by the Bureau of Land Management between 1981 and 1983 to determine the effect of domestic grazing on *Mirabilis macfarlanei* in the Long Gulch and John Day sites of Idaho (Johnson 1984). The study was conducted under a cattle grazing treatment and no cattle grazing treatment (exclosure) scenario. The exclosure was a 45-acre plot in the Long Gulch site. The grazing treatment was on Bureau land between the Long Gulch and John Day sites. The Idaho sites historically were used for fall and spring range by sheep and cattle, most recently cattle. The primary grazing period is in the spring, late March to early June. This coincides with the peak flowering time for *Mirabilis macfarlanei*, which is from the middle of May to early June. Bureau studies indicate that *Mirabilis macfarlanei* can be adversely affected by high grazing pressure and concentrations of livestock (Johnson 1984). However, moderate to light grazing has caused no detrimental impact to the plant (Johnson, pers. comm., 1992). Tueller and Tower (1979) found in their study of exclosure sites previously subjected to heavy utilization of grasses and forbs by livestock that continued protection favors good growth and high yields. No *Mirabilis macfarlanei* plants were noted

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on moderate sloped areas (less than 20 percent) that were historically used by livestock for loafing and concentration areas (Johnson 1984). Cattle trampling damage to plants was observed in the grazed area, but appeared limited. The presence of livestock trampling the ground and causing soil erosion is also a potential hazard. However, minimal erosion was noticed in the Hells Canyon populations even though there was some grazing (Mancuso and Moseley 1991).

During the period of settlement, much of the Salmon River was overgrazed by domestic animals, and a decline of range condition and climax vegetation took place. Presently the Bureau has reduced grazing on Bureau lands to a point where the plant is not affected. In the John Day site, the private landowner has reduced grazing in a cooperative effort to protect *Mirabilis macfarlanei* plants and habitat (Riley, Bureau of Land Management, pers. comm., 1992).

In Oregon, the Forest Service has two grazing allotments in the vicinity where *Mirabilis macfarlanei* plants are found. However, one allotment in the Tyron Bar area has not been grazed for 12 years. It is unlikely that the allotment will be filled. In the second area, the West Kurry Divide 1, 2, and 3, grazing is incidental due to the lack of water. The Forest Service has also initiated a policy that requires removing grazing from *Mirabilis* sites before the plant starts to grow in April (Stein, pers. comm., 1992). In addition, the Forest Service was given permission by the landowner to fence the only privately owned land containing *Mirabilis macfarlanei* (Stein, pers. comm., 1992). Currently, the canyonlands in both Idaho and Oregon where *Mirabilis* occurs are better managed for grazing, and general range improvement has taken place.

Additional threats identified in the Hells Canyon National Recreation Area during a 1991 survey include resumed prospecting or mining near the "Mine Gulch" population. Habitat destruction due to vehicular travel over claims along with surface disturbance could contribute to degradation of habitat in mining areas. Widening along Road #493 in the vicinity of the Kurry Creek population causes surface disturbance and possibly materials falling on plants due to earth movement. Livestock damage identified earlier was also observed during the 1991 survey, but appeared minimal. In addition, there was increased weedy invasion in many areas because of previous grazing pressures (Mancuso and Moseley 1991). At the present time, 60 to 70 percent of the populations of *Mirabilis macfarlanei* on Federal lands are directly or indirectly protected.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Increased collecting pressure is a foreseeable problem if the sites become known. The collection of plant material could easily cause extirpation from many of the colonies, especially the smaller ones. Other species of *Mirabilis* are cultivated and prized as garden ornamentals. *Mirabilis macfarlanei* is an attractive plant with a very showy magenta flower. A statement made in Hitchcock *et al.*'s (1973) *Flora of the Pacific Northwest* recommends that the "rather attractive" plants are worth a try in the wild garden, which places the plant in further jeopardy. *Flora of the Pacific Northwest* is the definitive text on flora of the area and is widely read by botanists and commercial plant collectors.

C. Disease or Predation

Mule deer prefer forbs, and some utilization of *Mirabilis* has been observed (Johnson 1984). In the West-Kurry Divide 3 site, some disturbance apparently was caused by wildlife use (deer, rabbits) but the population is not particularly threatened by this use (Mancuso and Moseley 1991). Domestic livestock have also been observed in the vicinity of *Mirabilis* plants. In addition, domestic livestock hoof prints and droppings have been observed near plants that have been eaten, suggesting that cattle may also utilize *Mirabilis* plants. However, grazing is better managed, and general range improvement in several areas with *Mirabilis* has taken place since the original listing. See discussion under Factor A above.

As described in the 1979 final rule listing *Mirabilis macfarlanei* as an endangered species, at least two species of fungi had been observed on the vegetative parts of the plants in Idaho. Current information does not mention nor reference fungi species affecting plant parts.

Since the time of listing, insect depredation has been shown to be detrimental to *Mirabilis macfarlanei*. A lepidopteran (*Lithariapteryx*) has been discovered feeding on the buds and leaves of *Mirabilis macfarlanei* (Baker 1983). Examination of some of the nearly-open flowers revealed ovaries eaten away, as well as other floral and vegetative parts. In addition, a second group of depredating insects, including at least two species of spittle bugs, was so abundant on certain plants as to cause the complete dieback of all emergent parts (Baker 1983). In many cases, there was a stunting and general unthriftiness of plants with sizeable numbers of spittle bugs feeding on them (Baker 1983, 1984). However, this is not the case at all sites.

D. The Inadequacy of Existing Regulatory Mechanisms

To date, HMP's have been developed and implemented for *Mirabilis macfarlanei* for three populations on Bureau lands in Idaho to provide protection and quality habitat for the species. The three HMP's are for the Long Gulch, Skookumchuck, and Lucile Caves areas in Idaho County, Idaho, along the Salmon River. The Long Gulch Habitat Management Plan (HMP) area, which includes 45 acres, was fenced in 1981 to exclude cattle grazing. Monitoring studies that began in 1983 used the fenced area to evaluate and compare an ungrazed area with nearby grazed lands. The Skookumchuck HMP, which includes 28 acres located between Highway 95 and the old highway, was developed primarily as a protection mechanism against herbicide use in the immediate area. In addition, seasonal monitoring of *Mirabilis macfarlanei* is conducted within the Skookumchuck HMP to determine the trends of a small population. The Lucile Caves HMP was developed to monitor the success of transplanting plants in the area and for use as a research area. Monitoring of the Lucile Caves transplant project indicates that the transplanted colony has remained static.

Under the Oregon Endangered Species Act (ORS 564.100–564.135) and pursuant regulations (OAR 603, Division 73), the Oregon Department of Agriculture has listed *Mirabilis macfarlanei* as endangered (OAR 603–73–070). This statute prohibits the "take" of State-listed plants on State-owned or State-leased lands only. *Mirabilis macfarlanei* also occurs on privately owned lands where the plant is not protected from actions the landowner may take that would adversely affect the species. However, some landowners in Idaho and Oregon have cooperated with the Bureau and the Forest Service to assist in the conservation of *Mirabilis macfarlanei*.

Currently, Idaho has not passed legislation to protect endangered or threatened plants or developed an official State list of such plants. See Factor A above for measures taken by the Bureau and Forest Service to protect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Most of the natural communities in the Pittsburg portion of Hells Canyon have been degraded by the invasion of weedy species, many of them annuals. Most of this degradation has been fostered by many years of intensive domestic grazing pressures (Mancuso and Moseley 1991). Undesirable plants, especially *Bromus tectorum*, have increased as a result of overgrazing (Johnson 1984). Because of exotic species invasion, the germination, growth, and development of native plants are often impeded. Continued weedy invasion by exotics has been an ongoing problem for *Mirabilis macfarlanei* and many other native plant species. As a result, the inhibition of *Mirabilis macfarlanei* growth and development has been noted (Baker 1983).

A study was initiated to study the allelopathic (interference) affects of *Bromus tectorum* on *Mirabilis jalapa* (Peruvian four-o'clock). Preliminary studies indicate that *Bromus tectorum* inhibits the germination, growth, and development of *Mirabilis jalapa* plants. Other selected plants used in laboratory studies showed inhibition similar to *Mirabilis jalapa* (Owen 1984). Field studies indicated *Mirabilis macfarlanei* is affected when growing with dense stands of *Bromus tectorum* (Baker 1983; Johnson, pers. comm., 1992). This is especially true during the earlier stages of growth. These studies may have management implications for *Mirabilis macfarlanei*.

To date, low seed viability for *Mirabilis macfarlanei* has been reported; therefore, viable sexual propagation may be very low (Johnson 1984). Low seed viability reduces genetic variability within the species. Primary reproduction of *Mirabilis macfarlanei* is rhizomatous, and plants are long-lived. Because *Mirabilis macfarlanei* plant colonies appear to be static after 12 years of data, "natural" increases are very slow or non-existent.

Indiscriminate herbicide spraying by State spray crews would have adverse effects on the small number of *Mirabilis macfarlanei* plants located on an Idaho colony downslope from Highway 95. In addition, using insecticides for insect control is detrimental to many of the known pollinators of this species.

Remaining colonies of *Mirabilis macfarlanei* with small numbers of plants are subject to stochastic events that could destroy the colonies because of their small size. Species that are reduced to very small numerical levels may also be subject to the additional threat of poor genetic viability. Their small numbers may reduce their ability to adapt to environmental changes or events that may cause their extirpation.

This species has been the focus of a 12-year recovery program, and has benefited from management and research accomplishments. The number of colonies that have been located in Idaho and Oregon since listing represents a six-fold increase in the number of known colonies due to new discoveries. In addition, the number of known individuals has increased from 25 to 30 plants when listed to approximately 8,600 plants in 1991.

Permanent plots for monitoring populations of *Mirabilis macfarlanei* along the Snake River in Oregon were established in 1990 and 1991 in Hells Canyon along the Snake River on land managed by the Wallowa-Whitman National Forest. The emphasis in Oregon is on monitoring population trends. A population model to determine population viability will be developed (Kaye *et al.* 1990). Specific parameters monitored in Idaho and Oregon include: (1) Numbers, (2) cover, (3) average height, (4) flowering plants, (5) phenology, (6) climatic data, (7) deer, elk, and cattle use days, and (8) other vegetation trend data. Permanent photo trend plots, belt transects, and permanent plots also have been established.

Recovery efforts will also depend on cooperation with private landowners. Opportunities exist for land exchanges to acquire private lands for public ownership and thus protect the species. There are discussions at the present time for a land exchange in an area containing one of the largest colonies of *Mirabilis macfarlanei*.

The discovery of additional colonies on public lands, better grazing management, and the static condition of existing colonies in Idaho and Oregon have reduced the degree of threat to this species. The Service has been encouraged by new colony discoveries of *Mirabilis macfarlanei* with the possibility of more being found with continued searches. The commitment by the Forest Service to monitor and evaluate *Mirabilis* population trends on their lands has been helpful. The Forest Service has changed their grazing practices by removing grazing from *Mirabilis* sites before they germinate and develop. These activities along with the continuing monitoring, research, and grazing management changes of the Bureau in Idaho have given the Service additional information on *Mirabilis macfarlanei*. The cooperation between the land management agencies and private landowners has also added to the effort to conserve *Mirabilis macfarlanei* plants and habitat.

In reviewing the progress toward recovery that this species has made since listing, the Service concludes that *Mirabilis macfarlanei* is no longer in danger of extinction. However, due to a lack of plant recruitment in some areas, insect predation, exotic plant invaders, and several small populations, the Service finds that delisting is premature.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by the species. Based on this evaluation, the preferred action is to reclassify *Mirabilis macfarlanei* from endangered to threatened status. The Service will recommend that this species be delisted when recovery criteria as outlined in the recovery plan are reached.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed as endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B above, *Mirabilis macfarlanei* is vulnerable to taking and vandalism. Landowners have been alerted to the presence of the plant without the publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat. The publication of such precise maps and descriptions would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. Protection of the species' habitat will continue to be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *Mirabilis macfarlanei* is not prudent at this time. Recovery efforts for *Mirabilis macfarlanei* have led to a change in land management practices and greatly reduced the threats facing this species even though critical habitat has not been designated.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results

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in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions have been initiated by the Service following the 1979 listing of *Mirabilis macfarlanei*. The protection required by Federal agencies and taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Bureau of Land Management and the Forest Service have been involved in recovery and section 7 consultation activities for this plant since its listing in 1979, and are likely to continue to be involved in such activities.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 for threatened plant species set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Mirabilis macfarlanei* the trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, have been applied since listing the species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to engage in certain activities involving "taking" of the species. Certain exceptions apply to agents of the Service and State conservation agencies. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. No trade in this species is known. No trade permits involving *Mirabilis macfarlanei* have ever been sought or issued since the species is not commonly cultivated.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Mirabilis macfarlanei*;

(2) The location of any additional populations of *Mirabilis macfarlanei* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Mirabilis macfarlanei*.

Any final decision of this proposal to reclassify *Mirabilis macfarlanei* from endangered to threatened will take into consideration any comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Boise Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334–1816).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by revising the entry under "Nyctaginaceae—Four-o'clock family" for *Mirabilis macfarlanei* to read "T" under "Status."

Dated: August 9, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–20620 Filed 8–25–93; 8:45 am]

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Notices

Federal Register
Vol. 58, No. 164
Thursday, August 26, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 20, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Farmers Home Administration

7 CFR, part 1944–J, Section 504 Rural Loans and Grants
On occasion
Individuals or households; 18,300 responses; 1,464 hours
Jack Holston, (202) 720–9736

- Farmers Home Administration

7 CFR, part 1980–D, Rural Housing Loans 1980–11, 12, 13, 16, 17, 18, 20, 21, 80, 81
On occasion; Monthly, Quarterly
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 65,723 responses; 33,378 hours
Jack Holston, (202) 720–9736

- Foreign Agricultural Service

7 CFR, part 1493—Regulations covering CCC's Export Credit Guarantee Program (GSM–102) and CCC's Intermediate export Credit Guarantee Program (GSM–103)
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 41,499 responses; 8,167 hours
L.T. McElvain, (202) 720–6211

- Animal and Plant Health Inspection Service

National Animal Health Monitoring System (NAHMS)
NAHMS–23, 24, 25
Monthly
Farms; 7,900 responses; 5,405 hours
David Cummings, (303) 490–7895

Extension

- Cooperative State Research Service

Financial Report, Morrill-Nelson Funds for Food and Agriculture
Higher Education
Annually
State or local governments; 73 responses; 73 hours
G. Lindell Williams, (202) 401–1790

- Food Safety and Inspection Service

Certificate of Medical Examination (Pre-Employment)
On occasion
Individuals or households; Federal agencies or employees; 600 responses; 150 hours
Victoria Levine, (202) 720–7163

- Food Safety and Inspection Service

Questionnaire for Hotline Callers
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; 800 responses; 67 hours
Victoria Levine, (202) 720–7163

Reinstatement

- Farmers Home Administration

7 CFR 1942–A, Community Facility Loans 440–11, 24; 442–2, 3, 7, 20, 21, 22, 28, 30; 1942–8, 9, 46, 47
On occasion; Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 95,362 responses; 236,696 hours
Jack Holston, (202) 720–9736

- Animal and Plant Health Inspection Service

Permit for Movement of Restricted Animals
VS 1–27
On occasion
Farms; 39,609 responses; 2,237 hours
Dr. G.H. Frye, (301) 436–8711

New Collection

- Animal and Plant Health Inspection Service

User Fees—Addendum 2
VS 16–3 & VS 16–7
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 34,096 responses; 1,943 hours
Helen C. Schmitt, (301) 436–8119

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–20661 Filed 8–25–93; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 93–092–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of June 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of June 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 20th day of August 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–20720 Filed 8–25–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agriculture Research Service, intends to grant to North Star Technologies of Bloomington, Minnesota, an exclusive field of use license to U.S. Patent Nos. 4,851,291 (S.N. 07/055,476); 4,871,615 (S.N. 06/818,567); and 4,908,238 (S.N. 07/371,779), each entitled "Temperature Adaptable Textile Fibers and Method of Preparing Same." Notice of Availability for S.N. 07/055,476 and S.N. 06/818,567 was published in the **Federal Register** on July 18, 1990. S.N. 07/371,779 is a division of S.N. 07/055,476.

DATES: Comments must be received on or before October 25, 1993.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC–West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT:

June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of these inventions to the U.S. public.

The prospective exclusive field of use license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 93–20662 Filed 8–25–93; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Exemption of 602 Tourist Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to rehabilitate the timber resource and contribute to watershed recovery is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: During routine Forest surveys conducted in 1992, insect and disease mortality of commercial sawtimber was identified on 193 acres in the 602 Tourist Salvage Planning Area on the Wallace Ranger District, Idaho Panhandle National Forests (IPNF). In 1992, the Wallace District Ranger proposed rehabilitation action to recover damaged sawtimber and contribute to watershed recovery in the affected area. The District Ranger has determined, through resource reports in the 602 Tourist Salvage Timber Sale project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area should be accomplished quickly to avoid further deterioration of sawtimber, to initiate the planting of tree species less susceptible to root disease and blister rust, and to initiate watershed recovery.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Steve E. Williams, District Ranger; Wallace Ranger District, Idaho Panhandle National Forests; Box 14; Silverton, Idaho 83867. Telephone 208–752–1221.

SUPPLEMENTARY INFORMATION: Insect and disease infestations have damaged approximately 193 acres of sawtimber on the west slopes of Shoshone Ridge on the Wallace Ranger District. Root disease, bark beetles, and blister rust have been and will continue to cause mortality in the area. The affected area was designated as Management Areas 1 and 4 by the IPNF Forest Plan (1987). These lands are designated as suitable timberlands and are to be managed for a variety of resource goals.

In 1992, the Wallace District Ranger proposed a rehabilitation and salvage harvest to recover damaged sawtimber in the affected area. This proposal was designed to meet the following needs: (a) Salvage merchantable timber products; (b) protect against insects and disease; (c) improve the net growth and yield of timber resources; (d) rehabilitate timber stands that are understocked through site preparation

and planting; (e) contribute to watershed recovery through application of management practices designed to minimize the potential damage to the channel due to peak flows; and (f) manage big-game habitat to achieve Forest Plan goals. Implementation of this proposed timber sale using Special Provision C5.604# Watershed Improvement (1/93) would contribute to the watershed improvement objective. This special authority was given to the IPNF to accomplish watershed improvement in conjunction with timber harvest operations on sales sold in FY 1993.

An interdisciplinary team (IDT) was convened and scoping began in January 1993. In addition to the six extraordinary circumstances listed in 1909.15(30.3), eight potential site-specific extraordinary circumstances were identified through the scoping process. These 14 extraordinary circumstances were the basis for the IDT analysis of environmental effects which were documented and included in the project file. Three alternatives were developed. Alternative 1 was No Action. Alternative 2 was the Proposed Action which described a need to treat 404 acres based on Forest Plan objectives and common issues and concerns. Alternative 3 was the Modified Action and is the selected alternative. This alternative was developed to treat 193 acres to achieve the Forest Plan and site-specific objectives.

The selected alternative will salvage approximately 386 MBF of dead and dying timber on 193 acres from existing roads. No roads will be constructed or reconstructed for this sale. Conifer species less susceptible to root disease and/or blister rust will be planted where openings are created.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this regulation, the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the 602 Tourist Salvage Timber Sale project file and the District Ranger's Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under CFR 217.4.

Dated: August 20, 1993.

Christopher D. Richvalt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93-20669 Filed 8-25-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Middle Swamp Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage project to recover insect-killed, dead and down, and high risk timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Swamp Creek drainage on the Fortine Ranger District, Kootenai National Forest, has killed approximately 70 to 100 percent of the lodgepole pine within the analysis area. In 1993, the Fortine District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Middle Swamp Salvage Timber Sale, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, minimize fire danger and increase the health, vigor, and species diversity for long-term vegetative growth.

EFFECTIVE DATE: Effective on August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Jane P. Kollmeyer, Fortine District Ranger; Kootenai National Forest; P.O. Box 116; Fortine, MT 59918. Telephone 406-882-4541.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic occurred in the Swamp Creek drainage on the Fortine Ranger District, Kootenai National Forest during the last several years. The project area is located within Management Area 15 which is designated as suitable timberland with timber management goals by the Kootenai Forest Plan, September 1987.

In April of 1993, the Fortine District Ranger proposed a salvage timber harvest within the Swamp Creek drainage. This proposal is designed to meet the following needs: (1) Reduce the risk of catastrophic wildfire in stands killed by the beetle infestation by reducing fuel loading; (2) improve long-term timber growth and productivity by reforesting the affected area; (3) expedite the re-establishment of coniferous species to provide security for wildlife and watershed protection by salvaging, site-preparation and regeneration; (4) clear road surfaces and ditches of dead lodgepole pine to permit road maintenance, reduce erosion potential and allow access for fire suppression; and (5) contribute to a continuing supply of timber for industry by salvaging lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened and scoping began in March 1993. Two alternatives were analyzed: No treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would harvest approximately 500 MBF from 80 acres. The proposal would be implemented with one small salvage sale and would use existing roads; no new roads are required.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for catastrophic wildfire and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and the project file for the Middle Swamp Salvage Timber Sale, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project would not be subject to review under 36 CFR part 217.

Dated: August 20, 1993.

Christopher D. Richvalt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93-20668 Filed 8-25-93; 8:45 am]

BILLING CODE 3410-11-M

Enzymatic Deinking of Recycled Fibers Correction of Notice of Intent to Form a Consortium

Program Description

The USDA, Forest Service, Forest Products Laboratory (FPL) announced the formation of a consortium dedicated to the enzymatic deinking of recycled fibers under the authority of the Federal Technology Transfer Act in the **Federal Register**, Vol. 58, No. 134 dated Thursday, July 15, 1993 and a correction to that notice in Vol. 58, No. 151 dated Monday, August 9, 1993. The first notice indicated a meeting of potential industrial partners would be held on August 24, 1993, to discuss the formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. The second notice corrected the date(s) of the meeting. The meeting has now been postponed. When it is rescheduled, a further announcement will be made in the **Federal Register**.

Done at Madison, WI, on August 17, 1993.

Kenneth E. Peterson,

Acting Director.

[FR Doc. 93-20721 Filed 8-25-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Program – Wave III (Mandatory).

Form Number(s): Various.

Agency Approval Number: 0607-0476.

Type of Request: Revision of a currently approved collection.

Burden: 2,115 hours.

Number of Respondents: 2,284.

Avg Hours Per Response: 56 minutes.

Needs and Uses: The Current Industrial Reports (CIR) Program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for over 4,300 manufactured products. Primary users of these data are Government agencies, business firms, trade associations, and private research and consulting organizations.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93-20766 Filed 8-25-93; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Program – Wave III (Voluntary).

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,837 hours.

Number of Respondents: 1,274.

Avg Hours Per Response: 46 minutes.

Needs and Uses: The Current Industrial Reports (CIR) Program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for over 4,300 manufactured products. Primary users of these data are Government agencies, business firms, trade associations, and private research and consulting organizations. Wave II (Voluntary) was allowed to expire in 1991 because, at that time, there was only one survey in the package. In 1991 that one survey was recleared under Wave I (Voluntary). We are now reinstating Wave III (Voluntary) and including in it three annual surveys which were conducted on a mandatory basis during the 1992 Economic Censuses and are now reverting back to their normal voluntary status and another voluntary survey which has had some content changes.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly and annually.

Respondent's Obligation: Monthly surveys—voluntary, Annual survey—Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93-20765 Filed 8-25-93; 8:45 am]

BILLING CODE 3510-07-F

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Neilsen Manufacturing, Inc	3501 Portland Road Northeast, Salem OR 97303.	07/26/93	Housing for computers and printers, fish hatchery equipment.
Haines & Emerson, Inc	Blaine & Firman St., P.O. 359, Hoquiam, WA 98550–0359.	07/27/93	Machinery and equipment—machinery for finishing paper and miscellaneous parts.
Ajax Electric Company	60 Tomlinson Road, Huntingdon Valley, PA 19006.	07/28/93	Gas furnaces, electric furnaces and other electric heating equipment using metal.
Enomoto Roses, Inc	2275 Cabrillo Highway South, Half Moon Bay, CA 94019.	07/30/93	Flowers—roses: plants are purchased, planted, grown, cultivated, picked and shipped.
Andrew A. Adams dba A.A. Tool	350 Whitney Street, Rochester, NY 14606	07/30/93	Metal products—metal enclosures for computers metal bearings and bushings.
Robotics and Automation Control, Inc.	508 East 32nd Street, Fremont, NE 68025	08/03/93	Industrial robots.
Arrow Manufacturing Company, Inc	P.O. Box 420, West New York, NJ 07093	08/04/93	Jewelry boxes, counter displays and trays, parts, etc.
Mother Moose Enterprises, Inc	4065 South Pub Place, PO Box 675, Jackson Hole, WY 83001.	08/06/93	Wood products—Christmas ornaments of wood, refrigerator magnets.
Christy Minerals Company	P.O. Box 158, High Hill, MO 63350	08/06/93	Metal products—alumina—silica clay, calcined, blend, grind and package.
Chicago Dial Indicator Company, Inc	1372 Redeker Road, Des Plaines, IL 60016	08/09/93	Electronic digital measuring instruments.
Huther Brothers, Inc	1290 University Avenue, Rochester, NY 14607.	08/09/93	Knives.
Universal Photonics, Inc	495 West John Street, Hicksville, NY 11801	08/09/93	Micro-cellular rigid foam polyurethane used as polishing material for glass lenses.
Scientific Tool Co., Inc	116 Luther Avenue, Liverpool, NY 13088	08/09/93	Machined metal components for radar apparatus, paper handling equipment used in copiers, laundry equipment.
Neely Industries, Inc	1 Main Street, PO Box 238, Neely, MS 39461.	08/11/93	Apparel—shirts of cotton knit and fleece.
Industrial Gasket, Inc	8100 S.W. 15th, Oklahoma City, OK 73128	08/13/93	Gaskets.
American Electric Cordsets Co	1065 Sesame Street, Bensenville, IL 60106–0802.	08/13/93	Electrical power supply cords and tooling for use in the manufacturing of power supply cords.
Decorative Aides Company, Inc	317 St. Pauls Avenue, Jersey City, NJ 07306.	08/13/93	Knitted fabric for vertical and pleated blinds and window trimmings.
Wilson's Oysters, Inc	1783 Bayou Dularge Road, Theriot, LA 70397.	08/17/93	Food and beverages—oysters.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 20, 1993.

David L. McIlwain,

Acting Deputy Assistant Secretary for Program Operation.

[FR Doc. 93–20767 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[C–580–818]

Amendment to Countervailing Duty Order: Certain Cold-Rolled Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Jacqueline Arrowsmith, Office of Antidumping Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

Amendment to Countervailing Duty Order

On August 12, 1993, the Department of Commerce (the Department) issued its Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations of Certain Steel Products from Korea, which were published in the **Federal Register** on August 17, 1993. This notice serves to amend the order on certain cold-rolled carbon steel flat products only.

In the order issued on August 12, 1993, the Department incorrectly stated that the International Trade Commission (ITC) had determined that imports of certain cold-rolled carbon steel flat products are materially injuring a U.S. industry. In fact, in its August 9, 1993, report, the ITC determined, pursuant to section 705(b)(1)(A)(ii)) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1671d(b)(1)(A)(ii)), that a U.S. industry is threatened with material injury. Next, pursuant to 705(b)(4)(B) of the Tariff Act (19 U.S.C. 1671d(b)(4)(B)), the ITC examined whether material injury would have been found but for the suspension of liquidation of the merchandise. The ITC determined that such was not the case.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 706(b)(2) (19 U.S.C. 1671e(b)(2)) applies. Therefore, all entries of certain cold-rolled carbon steel flat products from Korea, entered, or withdrawn from warehouse, for consumption, made on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for August 18, 1993), will be liable for the assessment of countervailing duties. See, Countervailing Duty Order: Sulfanilic Acid from India, 58 FR 12026 (March 2, 1993).

The Department will direct the U.S. Customs Service to terminate the suspension of liquidation for the entries of certain cold-rolled carbon steel flat products from Korea, entered or withdrawn from warehouse, for consumption, before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (which is currently scheduled for August 18, 1993), and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to those entries. For entries on or after that date, the U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 3.95 percent *ad valorem*.

In accordance with section 706 of the Act (19 U.S.C. 1671e), the Department hereby directs U.S. Customs officers to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain cold-rolled carbon steel flat products from Korea. In accordance with section 706(b)(2), these countervailing duties will be assessed on all unliquidated entries of certain cold-rolled carbon steel flat products from Korea which were entered, or withdrawn from warehouse, for consumption, on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**.

This notice constitutes an amendment to the countervailing duty order with respect to certain cold-rolled carbon steel flat products from Korea pursuant to section 706(a) of the Act (19 U.S.C. 1671e(a)). The effective date of this order remains August 17, 1993, the date of publication of the original order. Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this order constitute the following "class or kind" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from these investigations is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

This notice is published in accordance with section 706(a) of the Act (19 U.S.C. 1671e(a)) and 19 CFR 355.21.

Dated: August 18, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20768 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–503]

Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 7, 1993, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (58 FR 36395). We have now completed that review and determine the total subsidy to be 0.11 percent *ad valorem* for all firms during the period April 1, 1991 through March 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 36396) the preliminary results of its

administrative review of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under items 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1991 through March 31, 1992 and two programs: (1) Livestock Incentive Scheme (LIS) and (2) Export Market Development Taxation Incentive (EMDTI).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine that total subsidy to be 0.11 percent *ad valorem* for all firms during the period April 1, 1991 through March 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from all firms exported on or after April 1, 1991 and on or before March 31, 1992.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 19, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20773 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–808]

Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Correction

In notice document 93–58130 beginning on page 37327 in the issue of Friday, July 9, 1993, make the following correction:

On page 37336, in the first line of the first column, "0.44" should read "0.18".

Dated: August 18, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–20771 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 062393B]

Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting pertaining to the development of a vessel incentive program to limit vessel bycatch amounts of Pacific salmon taken in the Bering Sea and Aleutian Islands management area trawl fisheries for groundfish. The purpose of this meeting is to identify issues associated with a salmon vessel incentive program and develop a recommendation for an incentive program that will be presented to the North Pacific Fishery Management Council during its September 21–25, 1993 meeting in Anchorage, Alaska. The meeting is scheduled for Thursday, September 2, 1993, in room 541A of the Federal Building, 709 West 9th, Juneau, Alaska. The meeting will begin at 9:30 a.m., Alaska local time.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

Dated: August 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20718 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

August 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 341 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60174, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 19, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on August 23, 1993, you are directed to amend further the directive dated December 11, 1992 to increase the limit for Category 341 to 1,957,840 dozen[1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20760 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

August 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit and guaranteed access level.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

[1] The limit has not been adjusted to account for any imports exported after January 31, 1993.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding dated July 22, 1993 between the Governments of the United States and Guatemala, establishes, among other things, a specific limit and guaranteed access level for cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Guatemala and exported during the period beginning on October 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990. Also see proposed new requirements in 58 FR 41215 and 58 FR 41245, published on August 3, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 19, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 1, 1993, you are directed to amend further the December 9, 1992 directive to establish a limit for cotton and man-made fiber textile products in Categories 351/651 for the period beginning on October 1, 1993 and extending through December 31, 1993 at a level of 50,416 dozen, as provided under the terms of a Memorandum of Understanding (MOU) dated July 22, 1993 between the Governments of the United States and Guatemala.

Imports charged to the limit for Categories 351/651 for the period May 28, 1993 through September 30, 1993, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Additionally, pursuant to the MOU dated July 22, 1993; and the terms of the Special Access Program, as set forth in 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987); and 54 FR 50425 (December 6, 1989); and proposed requirements set forth in 58 FR 41215 (August 3, 1993); and 58 FR 41245 (August 3, 1993), effective on October 1, 1993, a guaranteed access level of 50,416 dozen is being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in Categories 351/651 which are re-exported to the United States from Guatemala during the period October 1, 1993 through December 31, 1993.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20761 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Increase in Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

August 20, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to increase the 1993 Guaranteed Access Levels for cotton and man-made fiber textile products in Categories 340/640 and 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992; and 57 FR 62306, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, as amended on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 23, 1993, you are directed to amend further the December 9, 1992 directive to increase the current guaranteed access levels for the following categories:

Category	Guaranteed access level
340/640	720,000 dozen.
347/348	1,300,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20763 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

August 20, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special allowance provided for handmade products under the current agreement.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56328, published on November 27, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 23, 1993, you are directed to amend the directive dated November 20, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335/635	442,260 dozen.
336/636	637,403 dozen.
340/640	1,582,819 dozen.
341	3,328,363 dozen.
342/642	901,530 dozen.
347/348	413,104 dozen.
647/648	342,110 dozen.
Sublevel in Group II	
351/651	175,303 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20764 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa and Certification Requirements and Announcement of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

August 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and certification requirements and announcing a guaranteed access level.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated July 22, 1993, the Governments of the United States and Guatemala agreed, among other things, to establish guaranteed access levels (GALs) for cotton and man-made fiber textile products in Categories 351/651 for the periods October 1, 1993 through December 31, 1993 and January 1, 1994 through December 31, 1994.

Beginning on September 1, 1993, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 351/651 that are destined for Guatemala and subject to the GAL established for the period beginning on October 1, 1993 and extending through December 31, 1993. These products are governed by Harmonized Tariff item number 9802.00.8010 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 351/651 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Guatemala in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend visa and certification requirements to include merged Categories 351/651 and to begin signing the first section of form ITA–370P for Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990. Also see proposed new requirements in 58 FR 41215 and 58 FR 41245, published on August 3, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directives amends, but does not cancel, the directive issued to you on January 24, 1990, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns export visa and certification requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala.

Effective on August 26, 1993, you are directed to amend further the January 24, 1990 directive, to include the coverage of cotton and man-made fiber textile products in merged Categories 351/651, produced or manufactured in Guatemala and exported from Guatemala on and after August 26, 1993.

Merchandise in merged Categories 351/651 may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate visa or certification shall be denied entry and a new visa must be obtained.

Beginning on September 1, 1993, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 351/651 and that are destined for Guatemala to be re-exported to the United States on and after October 1, 1993.

Shipments of goods in Categories 351/651 which are re-exported from Guatemala prior to October 1, 1993 shall not be permitted entry under the Special Access Program and shall be charged to the existing quota level for Categories 351/651.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–20762 Filed 8–25–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: October 22, 1993, 9 a.m. to 4:30 p.m. and October 23, 1993, 9 a.m. to 2 p.m.

CIVILIAN ADDRESS: 4–12–20, Minami-Azabu, Minato-ku, Tokyo 106, Japan. Telephone: 011–03–3440–7871.

MILITARY ADDRESS: U.S. Naval Joint Services Activity, The New Sanno, Unit 45002, APO AP 96337–0110.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Hohenthal, Chief, Executive Services, DoDDS-Pacific Region, Futenma Box 796, FPO, AP 96372, telephone number: 011–81–988–76–3005; or Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 1225 Jefferson Davis Highway, Crystal Gateway #2, suite 1500, Arlington, Virginia 22202; telephone number: 703–746–7846.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C, chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of education institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and

the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, academic achievement encouragement, education of handicapped dependents, communications throughout the system, increased parental involvement, drawdown planning, educational technologies, and responses to the recommendations made by the Council during its April 1993 meeting.

Dated: August 20, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–20637 Filed 8–25–93; 8:45 am]

BILLING CODE 3800–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 17 September 1993.

Time: 1100–1700 Hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) will participate in the DAS(R&T) C3 Advanced Technology Demonstration (ATD) Review which will focus on selected CECOM Research, Development, & Engineering Center ATD program baselines with a view towards ATD Advanced Warfighting Experiments that support TRADOC Battle Lab Advanced Warfighting Demonstrations in "winning the information war." This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–20732 Filed 8–25–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intent To Grant Exclusive Patent License; SBS Engineering, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant exclusive patent license; SBS Engineering, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SBS Engineering, Inc. a revocable, nonassignable, exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,923,402 entitled "Marksmanship Expert Trainer", 5,035,622 entitled "Machine Gun and Minor Caliber Weapons Trainer", 5,213,503 entitled "Team Trainer", 5,215,463 entitled "Disappearing Target"; 5,215,464 entitled "Aggressor Shot-Back Simulation"; and 5,215,465 entitled "Infrared Spot Tracker."

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: August 10, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–20630 Filed 8–25–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 27, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 20, 1993.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Reinstatement

Title: Continuation Application for Grants under the School Dropout Demonstration Assistance Program

Frequency: Annually

Affected Public: State or local governments; non-profit institutions

Reporting Burden:
Responses: 85
Burden Hours: 850

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by State Educational agencies to apply for funding under the School Dropout Demonstration Assistance Program. The Department will use the information to make grant awards.

[FR Doc. 93–20664 Filed 8–25–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2422–004, 2327–003, 2328–002, 2327–002, 2311–001, 2288–004, and 2300–002]

Androscoggin River, NH; Intent To Hold a Public Meeting To Discuss Staff's Draft Environmental Impact Statement (DEIS) for Existing Projects on the Upper Androscoggin River

August 20, 1993.

On June 3, 1993, the Commission's Staff mailed the Upper Androscoggin River Basin Hydroelectric Projects, New Hampshire, DEIS to the Environmental Protection Agency, resource and land management agencies, interested organizations, and individuals. This document evaluates the continued operation of the Sawmill Project, FERC No. 2422; J. Brody Smith Project, FERC No. 2287; Cross Project, FERC No. 2328; Cascade Project, FERC No. 2327; Gorham Project, FERC No. 2311; Gorham Project, FERC No. 2288; and Shelburne Project, FERC No. 2300. The seven existing hydropower projects are located on the Androscoggin River. All the projects are located in Coos County, New Hampshire.

The action of relicensing these projects involves tradeoffs between energy production and enhancement of environmental quality. The staff formulated alternatives, and evaluated impacts to respond to concerns raised during the scoping process. In developing recommendations in the DEIS, the staff gave equal consideration to developmental and nondevelopmental values in accordance with the Federal Power Act.

The DEIS also evaluated expansion of capacity at the Cascade and Gorham (FERC No. 2311) projects. A 1.7-foot increase in the reservoir surface elevation is proposed at the Shelburne Project.

The issues addressed in the DEIS are potential impacts to and effects on; (1) geologic and soils resources, (2) water quality and quantity, (3) fisheries resources, (4) terrestrial resources, (5) recreational resources, (6) aesthetic resources, (7) cultural resources, (8) air quality, and (9) cumulative effects on dissolved oxygen and resident salmonids.

Alternatives to the applicants' proposals considered in detail are (1) modification to proposed project operation or facilities to further protect, enhance, or mitigate adverse impacts to environmental resources and values and (2) no action.

The public meeting will be conducted by staff in Berlin, New Hampshire on Wednesday, September 9, 1993, from 7 p.m. to 10 p.m. at the City Hall Auditorium, 168 Main Street, Berlin, New Hampshire.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the Androscoggin River projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

All those that are formally recognized by the Commission as intervenors in the Androscoggin Projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

For further information please contact Mr. R. Feller at (202) 219–2796.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–20663 Filed 8–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–635–000, et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP93–635–000]

August 19, 1993.

Take notice that on August 11, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93–635–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia states that it proposes the construction and operation of approximately 2.1 miles of 12-inch pipeline to replace approximately 2.1 miles of 10-inch pipeline, designated as Line A–5 located in Orange County, New York.

Columbia says that it does not request authorization for any new or additional service. Columbia states that the segments of pipeline to be replaced have become physically deteriorated to the extent that replacement is deemed advisable. The estimated cost of the proposed construction is $1,949,000 and would be financed with funds generated from internal sources.

Comment date: September 16, 1993, in accordance with Standard Paragraph F at the end of the notice.

2. El Paso Natural Gas Co.

[Docket No. CP93–633–000]

August 19, 1993.

Take notice that on August 11, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–633–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to modify and operate the existing Conoco Ramsey Plant Receipt Point in Reeves County, Texas as a reversed flow delivery point, to permit the interruptible transportation and delivery of natural gas directly to Conoco Inc. (Conoco), under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that by letter dated February 1, 1993, Conoco informed El Paso of Conoco's intention to stop tendering residue gas to El Paso for transportation from the Conoco Ramsey Plant. El Paso states further that Conoco would tender the same quantity of residue gas to El Paso for transportation at the tailgate of Sid Richardson Carbon & Gasoline Company's Jal No. 3 Plant in Lea County, New Mexico. It is said that Conoco also requested that El Paso reverse the gas flow through the Conoco Ramsey Plant Line and utilize the Conoco Ramsey Plant Meter Station as a delivery point, rather than as a receipt point.

Conoco, it is said, would utilize gas transported and delivered by El Paso as fuel to operate field compressors and as lift gas in carbon dioxide flood operations.

El Paso states that the estimated cost to reverse the gas flow through the Conoco Ramsey Plant Meter Station is $22,700.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Questar Pipeline Co.

[Docket No. CP93-670-000

August 19, 1993.

Take notice that on August 16, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-670-000 an application pursuant to section 7(b) of the Natural Gas Act requesting authority to abandon natural-gas transportation service provided to Mountain Fuel Supply Company (Mountain Fuel) under Questar's Rate Schedule X-33 to Original Volume No. 3 of its FERC Gas Tariff. By mutual agreement between Questar and Mountain Fuel, the authorized service proposed to be abandoned by Questar will be converted to Rate Schedule T-1 firm transportation service under First Revised Volume No. 1 of Questar's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests expedited consideration of its request so that authority to abandon the Rate Schedule X-33 transportation service to Mountain Fuel may be granted September 1, 1993, the effective date of First Revised Volume No. 1, Questar's restructuring compliance tariff, as ordered by the Commission on August 2, 1993, in Docket No. RS92-9-000.

Questar represents that by letter dated September 28, 1992, Mountain Fuel, as a party to Questar's restructuring proceeding in Docket No. RS92-9-000, requested that its 118,470 Dth of Rate Schedule X-33 transportation service be converted to Rate Schedule T-1 firm transportation service upon Questar's implementation of the services restructured according to the Commission's Order No. 636. Questar states that it does not propose to abandon any existing facilities in conjunction with this filing.

Questar requests Commission waiver of the first-come, first-served provision reflected in § 7.1(c) of Original Volume No. 1-A of its FERC Gas Tariff, or if the instant filing is acted upon subsequent to Questar restructuring under Docket No. RS92-9-000, § 5.8(b) of First Revised Volume No. 1 of Questar FERC Gas Tariff, so that the priority applicable to the quantity of gas transported to Mountain Fuel under Rate Schedule X-33 may be transferred to the equivalent transportation service that will be provided under Questar's blanket certificate and according to 18 CFR 284.223.

Comment date: September 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Questar Pipeline Co.

[Docket No. CP93-591-000]

August 19, 1993

Take notice that on July 29, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-591-000, a request pursuant to 18 CFR 157.205 and 157.211 of the Commission's Regulations for authorization to convert the jurisdictional status of minor metering facilities, located at the inlet of the Brady Gas Processing Plant (Brady Plant) owned and operated by Union Pacific Resources Company (UPRC) from an 18 CFR 284.3(c) exempt facility designated to a Natural Gas Act (NGA) Section 7(c) jurisdictional designation. Questar states that the metering facilities it proposes to convert comprise one 3-inch meter run and minor yard and station piping located in Sweetwater County, Wyoming, and serve as a transportation delivery point to UPRC's Brady Plant for Union Pacific Fuels, Inc. (UPF), an affiliate of UPRC. This request was made under the blanket certificate authorization issued in Questar's Docket No. CP82-491-000 pursuant to NGA section 7(c), all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Questar explains that, consistent with the Commission's Order No. 537, the Brady Plant delivery-point metering facilities, which were previously constructed pursuant to 18 CFR 284.3(c) as facilities exempt from the Commission jurisdiction and operated solely to provide open-access transportation service under NGPA section 311(a)(1) and 18 CFR 284.102 to UPRC, for the account of UPF, are proposed to be converted to section 7(c) jurisdictional facilities.

Questar states that the exempt Brady Plant delivery-point facility that it proposes to convert to a section 7(c) jurisdictional facility comprise one 3-inch meter run, valving and minor associated yard and station piping. The Brady Plant delivery point is located in Section 11, Township 16 North, Range 101 West, Sweetwater County, Wyoming and the facilities are utilized to provide UPRC's Brady Plant with its fuel, space and water heating requirements in the event of plant failure or similar emergency. The total cost of installing the 3-inch meter run and completing the related facility modifications was $21,461, for which Questar was reimbursed in full by UPRC. The Brady Plant delivery point was placed in service on September 26, 1989, and transportation of fuel-gas volumes to UPRC, for the account of UPF, commenced on October 6, 1989. Questar anticipates that future peak-day and annual requirements at the delivery point may approximate 1,300 Dth per day and 150,000 Dth per year. Questar states that no changes in the level of transportation service is proposed in this prior notice filing.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Valero Interstate Transmission Co.

[Docket No. CP93-667-000]

August 19, 1993.

Take notice that on August 16, 1993, Valero Interstate Transmission Company ("Vitco"), 530 McCullough Avenue, San Antonio, Texas 78215, filed in Docket No. CP93-667-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities and service effective January 1, 1994, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Vitco states that its request for authorization consists of three major elements: (1) The abandonment of all facilities by conveyance to Valero Transmission, L.P. ("VTLP"), an affiliate intrastate pipeline; (2) the abandonment of firm sales service to El Paso under rate schedule S-3; and (3) the abandonment of interruptible transportation service to Transcontinental Gas Pipe Line Corporation under rate schedules ITS-1. Vitco states that after abandonment VTLP will offer § 311 service to Vitco's existing § 311 customers.

Vitco seeks Commission approval of abandonment of all of its transmission lines (139.7 miles) and related gathering facilities (112.5 miles) in Brooks, Hidalgo, Jim Wells, Kleberg and Starr Counties, Texas and a 1000 HP mainline compressor in Jim Wells County, Texas. Vitco states that it is proposing to abandon these facilities because it is more economical to abandon these facilities and operate them as an integral part of VTLP's intrastate pipeline system.

Vitco states that all of the facilities will be conveyed to VTLP and that VTLP will assume all of the transportation obligations to Vitco upon abandonment. Vitco states that there will be no diminution of service because service to Vitco's customers before and after abandonment will be equivalent.

Comment date: September 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

6. Mojave Pipeline Company and Kern River Gas Transmission Co.

[Docket No. CP93-665-000]

August 19, 1993.

Take notice that on August 13, 1993, Mojave Pipeline Company (Mojave), 5001 E. Commercenter Drive, Bakersfield, California 93309, and Kern River Gas Transmission Company (Kern River), Post Office Box 2521, Houston, Texas 77252 filed in Docket No. CP93-665-000 a joint request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization for the addition of delivery points under Mojave's blanket certificate issued in Docket No. CP89-002-000 and under Kern River's blanket certificate issued in Docket No. CP89-2048-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Mojave proposes to use certain jointly-owned delivery points presently certificated to be constructed and operated by Kern River and Kern River proposes to use certain jointly-owned delivery points certificated to be constructed and operated by Mojave. It is stated that all of the delivery points, located in Kern County, California, have been constructed and are in operation.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Co.

[Docket No. CP93-644-000]

August 19, 1993.

Take notice that on August 13, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93-644-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct an interconnection between ANR and Wisconsin Public Service Corporation (WPS), an existing customer, in Sheboygan County, Wisconsin, under ANR's blanket certificate issued in Docket No. CP82-480-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to construct an interconnection between ANR and WPS in order to permit WPS to provide residential service to the towns of St. Cloud and Mount Calvary, Wisconsin, without detriment to other customers.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

East Tennessee Natural Gas Co.

[Docket No. CP93-621-000]

August 19, 1993.

Take notice that on August 6, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed Docket No. CP93-621-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to remove and replace about 35 feet of pipeline in Hawkins County, Tennessee under East Tennessee's blanket certificate issued in Docket No. CP82-421-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to replace about 35 feet of 2-inch pipeline in Hawkins County, Tennessee in order to increase capacity to its firm sales customers Natural Gas Utility District of Hawkins County, Tennessee (Hawkins), to enable Hawkins to render service to additional customers. East Tennessee asserts that there would be no increase in daily and/or annual quantities to Hawkins.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

9. William Natural Gas Co.

[Docket No. CP93-664-000]

August 19, 1993.

Take notice that on August 13, 1993, William Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93-664-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to relocate eight town border deliveries and eighteen domestic customers in Harper, Sumner and Dedgwick Counties, Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, WNG proposes to relocate the deliveries as detailed below from the Pampa 20-inch pipeline to an adjacent 6-inch pipeline under construction.

	Peak day Dth	Annual Dth
Clearwater	770	80,716
Conway	648	70,739
Viola	54	8,541
Norwich	398	44,477
Argonia	216	32,382
Danville	21	3,049
Harper	944	103,622
Anthony	1,653	185,872
Total	4,714	529,398

WNG indicates that approximately 3,000 feet of 2-inch pipeline is required to connect the Argonia town border to the new 6-inch line and that the other town borders would require approximately 100 feet of 2-inch pipeline each to connect to the new 6-inch line.

WNG estimates that the cost to relocate town border taps and the domestics would be approximately $130,349.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Co.

[Docket No. CP93-643-000]

August 19, 1993.

Take notice that on August 13, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93-643-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas transportation services for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that ANR and Natural have agreed to terminate Rate Schedules X-40, X-72, X-83, X-105 and X-118 under Original Volume No. 2 of ANR's FERC Gas Tariff. ANR further states that it requests an effective date of November 1, 1993, as agreed to by ANR and Natural.

Comment date: September 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

11. ANR Pipeline Co.

[Docket No. CP93-637-000]

August 19, 1993.

Take notice that on August 12, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93-637-000 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for

authorization to construct and operate an interconnection, consisting of a hot tap and appurtenant facilities, in Lenawee County, Michigan, under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, ANR proposes to construct the interconnection to connect to the facilities of Westside Pipeline Company in Lenawee County, for the delivery of gas to Citizens Gas Fuel Company, also in Lenawee County.

Cost of the interconnection is estimated to be $74,000, of which, ANR would be fully reimbursed.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Eastern Transmission Corp.

[Docket No. CP93–668–000]

August 19, 1993.

Take notice that on August 16, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP93–668–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a new delivery point in order to deliver natural gas to PECo, an LDC, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that the delivery point would be located on Texas Eastern's 16-inch line No. 1–A at M.P. 3.22 in Delaware County, Pennsylvania. The facilities, it is said, would include a single 16-inch side valve to be installed by Texas Eastern. Texas Eastern states that PECo would cause to be installed a 12-inch Meter Station and approximately 6,100 feet of 16-inch pipeline. The approximate cost of such facilities is said to be $761,000 and would be 100% reimbursable by PECo.

The installation of the delivery point, it is said, would be without detriment or disadvantage to Texas Eastern's other customers nor any increase in PECo's existing entitlements.

Comment date: October 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20689 Filed 8–25–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4699–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 27, 1993.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: 1993 Hazardous Waste Report System (EPA ICR #0976.07; OMB No. 2050–0024). This ICR is a reinstatement of a previously approved information collection.

Abstract: Generators and owners/operators of hazardous waste management facilities must compile a biennial report of information on location, amount and description of hazardous waste handled. EPA uses the information to define the population of the regulated community and to expand its data base of information for rulemaking and compliance with statutory requirements.

Burden Statement: The estimated average public burden for this collection of information is about 21 hours per response. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, reviewing the collection of information, and submitting the form. The recordkeeping burden is estimated to average 1.3 hours per response.

Respondents: Generators and Handlers of Hazardous Waste.

Estimated Number of Respondents: 20,250.

Frequency of Collection: Biennial.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 234,900.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460,

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: August 20, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–20711 Filed 8–25–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Transfer Agent Registration and Amendment Form.

Form Number: Form TA–1.

OMB Number: 3064–0026.

Expiration Date of OMB Clearance: November 30, 1993.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks wishing to register with the FDIC as transfer agents, as required by the Securities Exchange Act of 1934.

Number of Responses: 32.

Number of Responses Per Respondent: 1.

Total Annual Responses: 32.

Average Number of Hours Per Response: 0.47.

Total Annual Burden Hours: 15.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0026), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before October 25, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 17(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q) requires a bank to register with the appropriate federal bank regulatory agency prior to performing any transfer agent function. Under FDIC regulation 12 CFR Part 341, an insured nonmember bank uses Form TA–1 to register with the FDIC as a transfer agent.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–20629 Filed 8–25–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Black Hawk, Davis, Franklin, Fremont, Jefferson, Keokuk, Kossuth, Lucas, Mahaska, Osceola, Webster, and Winneshiek Counties for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20749 Filed 8–25–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–999–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–999–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Gregory County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–20748 Filed 8–25–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Wisconsin dated July 2, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

Menominee and Shawano Counties for Individual Assistance and Public Assistance.

Pepin County for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-20750 Filed 8-25-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Dolphin Cruises, Inc., Ulysses Cruises, Inc. and Masefield Company Limited, 901 South America Way, Miami, Florida 33132-2073.

Vessel: Dolphin IV

Dated: August 23, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-20673 Filed 8-25-93; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Regal Cruises, Inc. (d/b/a Regal Cruises), Regal Enterprises, Inc., and Regal Cruises Limited, 69 Spring Street, Ramsey, New Jersey 07446-0507

Vessel: Regal Empress.

Dated: August 23, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-20672 Filed 8-25-93; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Met Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Regal Cruises, Inc., Regal Enterprises, Inc., Regal Cruises Ltd. and International Shipping Partners, 69 Spring Street, Ramsey, New Jersey 07446-0507

Vessel: Regal Empress.

Dated: August 23, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-20674 Filed 8-25-93; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

T C International Marketing Network, Inc., 1430 S. Eastman Ave., #200, Los Angeles, CA 90023, Officers: Thomas T. Chen, President/Director, Wendy C. Shiao, Secretary/Director

Kamay Shippers, 3353 3rd Avenue, Bronx, NY 10456, Thomas Panford, Sole Proprietor

Tejas Freight Forwarding, Inc., 22118 Gosling Road, Spring, TX 77389, Officer: Nimia Del Rosario Rodriguez, President

Larry Linh Bui, 8172 Monticello Circle, Westminister, CA 92683, Sole Proprietor

Van Esch Trading and Shipping B.V., 6033 W. Century Blvd., #1222, Los Angeles, CA 90045, Officers: H. van Esch, Sr., President, J. Groenedijk, Officer, W. van Esch, Managing Director

Calbac, Inc., 2840 North 73rd Ave., Hollywood, FL 33024, Officers: Caleel Bacchus, President, Ena Bacchus, Secretary

ITO El Paso-International Transport Organization, Inc., 9601 Carnegie Ave., El Paso, TX 79925, Officers: Georg Koenigsmann, President/Director, Dieter Schmekel, Vice President/Director, Horst Dieter Lange, Vice President/Director, Berndt E. Becker, Manager/V. President/Treasurer, Eva H. Martin, Secretary

Falcon Forwarding, Inc., 3981 N.W. 66th Ave., Miami, FL 33166, Officer: Carlos J. Dovo, President.

Dated: August 23, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-20675 Filed 8-25-93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Update of the Clinical Practice Guideline on Urinary Incontinence in Adults

The Agency for Health Care Policy and Research (AHCPR) announces the first public meeting to receive comments and information pertaining to the update of the clinical practice guideline on "Urinary Incontinence in Adults." The guideline is being developed by a private-sector panel of health care experts and consumers.

A notice announcing that AHCPR was arranging for the development of this clinical practice guideline was published in the **Federal Register** on October 14, 1992 (57 FR 47106). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to address the update of the guideline for "Urinary Incontinence in Adults," and to provide an opportunity for other interested parties to contribute relevant information and comments will be held as follows:

Meeting: Urinary Incontinence In Adults

Date: Monday, September 20, 1993

From: 9 a.m.-12:00 p.m., Hyatt Hotel, Arlington at Key Bridge, 1325 Wilson Boulevard, Arlington, Virginia 22209.

Phone: 703-525-1234

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299-299c-6 and 1320b-12). The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102-410), enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines.

In keeping with its legislative mandate, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102-410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299-3(a)), as amended by Public Law 102-410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Arrangements for the September 20, 1993 Public Meeting on Urinary Incontinence in Adults

Representatives of organizations and other individuals are invited to provide relevant written comments and information, and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with David Shactman, Mikalix and Company (M & C), the contractor providing administrative support to this panel, at the address set out below by September 10, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to M & C by September 10, 1993. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 p.m. on September 20, 1993, the co-chairpersons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in updating the guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact M&C by September 10, 1993, at the address below.

Registration should be made with, and written materials submitted to: Mikalix and Co. (M & C), Attn: David Shactman, 404 Wyman Street, suite 375, Waltham, MA 02154-1210, Phone: (617) 290-0090, Fax: (617) 290-0180.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR Commissioned Clinical Practice Guidelines," dated April, 1993. This document describes the AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document can be obtained from the AHCPR Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1-800-358-9295.

Also information can be obtained by contacting Kathleen A. McCormick, Ph.D., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the following address: Director, Office of the Forum for Quality and Effectiveness in Health Care/ Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., suite 310, Rockville, MD 20852, Phone: 301-594-4015, Fax: 301-594-4027.

Dated: August 18, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93-20693 Filed 8-25-93; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 16 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy

will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members should be sent to Adele S. Seifried (address below). All nominations for consumer-nominated members should be sent to Phyllis Weller (address below).

FOR FURTHER INFORMATION CONTACT: Regarding all nominations for membership, except consumer-nominated members: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Regarding all nominations for consumer-nominated members: Phyllis Weller, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 16 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Anesthetic and Life Support Drugs Advisory Committee*: Five vacancies occurring March 31, 1994, including that of the consumer-nominated member.

2. *Anti–Infective Drugs Advisory Committee*: Four vacancies occurring November 30, 1993, and two vacancies occurring November 30, 1994.

3. *Antiviral Drugs Advisory Committee*: Four vacancies occurring October 31, 1993, including that of the consumer-nominated member, and two vacancies occurring October 31, 1994.

4. *Arthritis Advisory Committee*: Three vacancies occurring September 30, 1994.

5. *Cardiovascular and Renal Drugs Advisory Committee*: Three vacancies occurring June 30, 1994.

6. *Dermatologic Drugs Advisory Committee*: Two vacancies occurring August 31, 1993, including that of the consumer-nominated member, and three vacancies occurring August 31, 1994.

7. *Endocrinologic and Metabolic Drugs Advisory Committee*: Eight vacancies occurring immediately, including that of the consumer-nominated member, and three vacancies occurring June 30, 1994.

8. *Gastrointestinal Drugs Advisory Committee*: Three vacancies occurring June 30, 1994, including that of the consumer-nominated member.

9. *Generic Drugs Advisory Committee*: Three vacancies occurring October 31, 1993, and five vacancies occurring October 31, 1994, including that of the consumer-nominated member.

10. *Medical Imaging Drugs Advisory Committee*: Five vacancies occurring June 30, 1994, including that of the consumer-nominated member.

11. *Oncologic Drugs Advisory Committee*: Three vacancies occurring June 30, 1994.

12. *Over-the-Counter (OTC) Drugs Advisory Committee*: Three vacancies occurring May 31, 1994.

13. *Peripheral and Central Nervous Systems Drugs Advisory Committee*: Two vacancies occurring January 1, 1994.

14. *Psychopharmacologic Drugs Advisory Committee*: Four vacancies occurring immediately, including that of the consumer-nominated member, and three vacancies occurring June 30, 1994.

15. *Pulmonary–Allergy Drugs Advisory Committee*: Three vacancies occurring May 31, 1994.

The functions of the 15 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

16. *Drug Abuse Advisory Committee*: Three vacancies occurring immediately, including that of the consumer-nominated member, and two vacancies occurring May 31, 1994.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by both the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential for drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as anesthesiology, surgery, internal medicine, infectious disease, asthma, rheumatology, microbiology, pediatrics, ophthalmology, cardiology, clinical/medical oncology, hematology, radiology, nuclear medicine, biostatistics, epidemiology, dermatopathology/immunodermatology, dermatology, psychopharmacology, neurochemistry, neuropharmacology, endocrinology, obstetrics and gynecology, reproductive endocrinology, gastroenterology, pharmacology, clinical pharmacology, hepatology, virology, pharmaceutical manufacturing, bioavailability and bioequivalence research, pharmacokinetics, neurology, psychiatry, psychology, neuropharmacology, neuropathology, pulmonary disease, allergy, immunology, clinical immunology, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 19, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–20633 Filed 8–25–93; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 56 FR 29484, June 27, 1991) is amended to reflect the abolishment of the Office of Science and the transfer of science functions, except for AIDS coordination, to the Office of Operations. FDA believes that this realignment of science functions within FDA is necessary to integrate fully the science and operational functions of the Agency.

The Office of AIDS Coordination will be retitled as the Office of AIDS and Special Health Issues and relocated from the Office of Science to the Office of External Affairs. The reorganization expands the Office of AIDS Coordination to include similar support for other special health issues such as cancer and Alzheimer's disease. The purpose of the expansion is to facilitate Agency coordination and communication on special health issues and associated advocacy groups.

Under section HF–B, Organization:

1. Delete paragraph Office of Operations (HFA9) in its entirety and insert a new paragraph reading as follows:

Office of Operations (HFA9). Advises and assists the Commissioner and other key officials on compliance-oriented matters.

Develops and administers all Agency field operations and provides direction and counsel to Regional Food and Drug Directors.

Administers regulation of biological products under the biological product control provisions of the Public Health Service Act and applicable provisions of the Federal Food, Drug, and Cosmetic Act. Works to develop an Acquired Immune Deficiency Syndrome (AIDS) vaccine and AIDS diagnostic tests, and conducts other AIDS-related activities.

Develops and administers programs with regard to the safety, effectiveness, and labeling of all drug products for human use.

Develops and administers programs with regard to the safety, composition, quality (including nutrition), and labeling of foods, food additives, colors, and cosmetics.

Develops and administers programs with regard to control of unnecessary exposure of humans to, and assures the safe and efficacious use of, ionizing and non-ionizing radiation-emitting electronic products.

Develops and administers programs with regard to the safety, effectiveness, and labeling of medical devices for human use.

Develops and administers programs with regard to the safety and effectiveness of animal drugs, feeds, feed additives, veterinary medical devices (medical devices for animal use), and other veterinary medical products.

Manages the implementation of the provisions of the Orphan Drug Act.

Advises and assists the Commissioner with regard to research programs being conducted to study the biological effects of potentially toxic chemical substances found in the environment to determine the adverse health effects resulting from long-term, low-level exposure to chemical toxicants in animal organisms, to develop improved methodologies and test protocols for evaluating the safety of chemical toxicants, and to develop data to facilitate the extrapolation of toxicological data from laboratory animals to man.

The Office of Operations includes the: Office of Regulatory Affairs (HFA4), Regional Field Offices (HFR), Center for Biologics Evaluation and Research (HFB), Center for Drug Evaluation and Research (HFN), Center for Food Safety and Applied Nutrition (HFF), Center for Devices and Radiological Health (HFW), Center for Veterinary Medicine (HFV), Office of Orphan Products Development (HFA–E), Office of Biotechnology (HFA–H), National Center for Toxicological Research (HFT).

2. Insert a new subparagraph under Office of External Affairs (HFAQ) reading as follows:

Office of AIDS and Special Health Issues (HFAS). Serves as an information resource to FDA and provides advice to the Commissioner, Deputy Commissioners, and other senior FDA staff on matters related to AIDS, cancer, Alzheimer's Disease and other special health issues.

Coordinates interactions between FDA and consumer and professional groups dealing with AIDS, cancer, Alzheimer's Disease, and other special health issues.

Serves as a liaison point to coordinate contacts between FDA and other federal agencies to ensure effective coordination and communication on AIDS, cancer, Alzheimer's Disease, and other special health issues.

Provides internal coordination on FDA activities related to AIDS, cancer, Alzheimer's Disease, and other special health issues.

Assists in the planning, administration, development, and evaluation of FDA policies related to AIDS, cancer, Alzheimer's Disease, and other special health issues.

3. Delete paragraph Office of Science (HFAH) in its entirety.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: August 18, 1993.

Denna E. Shalala,

Secretary.

[FR Doc. 93–20723 Filed 8–25–93; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Institutes of Health

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–25–0168, "Invention, patent and licensing documents submitted to the Public Health Service by its employees, grantees, fellowship recipients and contracts, HHS/PHS/NIH/OTT." We are also proposing routine uses for this new system.

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DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before September 27, 1993. PHS has sent a report of a new system to the Congress and to the Office of Management and Budget (OMB) on August 12, 1993. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register**. The routine uses will be effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to: NIH Privacy Act Officer, Building 31, Room 3B03, 9000 Rockville Pike, Bethesda, MD 20892, 301–496–2832.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chief, Technology Management Branch, Office of Technology Transfer, National Institutes of Health, Box OTT, Rockville, Maryland 20852, 301–496–7736.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0168, "Invention, patent and licensing documents submitted to the Public Health Service by its employees, grantees, fellowship recipients and contractors, HHS/PHS/NIH/OTT." This system of records will be used by the NIH Office of Technology Transfer (OTT) to: (1) Obtain patent protection of inventions submitted by PHS employees; (2) monitor the development of inventions made by grantees, fellowship recipients and contractors; (3) grant licenses to patents obtained through the invention reports made by PHS employees; and (4) provide royalty payments to PHS inventors.

The system will comprise records that contain: Inventor name, address, Social Security number (required if inventor is receiving royalties, otherwise optional), title and description of the invention, Employee Invention Report (EIR) number, prior art related to the invention, evaluation of the commercial potential of the invention, prospective licensees' intended development of the invention, associated patent prosecution and licensing documents, and royalty payment information.

The amount of information recorded on each individual will be only that which is necessary to accomplish the purpose of the system. Records are established from invention reports submitted by PHS employees, grantees, fellowship recipients and contractors, and from private sector organizations interested in and/or applying for potential licenses.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are PHS Technology Development Coordinators, NIH Patent Advisors, NIH Technology Licensing Specialists, NIH Paralegals, NIH Legal Technicians, NIH Licensing Technicians, PHS contract patent attorneys, and other NIH staff responsible for implementing OTT program activities. The records will be stored in file folders, computer tapes and computer discs. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Records are stored in a locked room or in locking file cabinets in file folders. During normal business hours, OTT Patent Branch and Technology Licensing Branch on-site personnel regulate availability of the files. During evening and weekend hours the offices are locked, and the building is closed. Data stored in computers will be accessed through the use of keywords known only to the authorized users.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual. The second routine use of this system allows disclosure to the Department of Justice to obtain advice on legal issues raised by the information in this system or to defend the Federal Government, the Department, or employees of the Department in the event of litigation. The third routine use allows referral to the appropriate agency in the event that a system or records maintained by this agency to carry out its functions indicates a violation or potential violation of law. The fourth routine use allows disclosure of records to contractors for the purpose of processing or refining the records in the system. The fifth routine use allows disclosure of information from this system of records for the purpose of obtaining patent protection for PHS inventions and licenses for these patents to: (a) Scientific personnel, both in this agency and other Government agencies, and in non-Governmental organizations such as universities, which possess the expertise to understand the invention and evaluate its importance as a scientific advance; (b) contract patent counsel and their employees and foreign contract personnel retained by the Department for patent searching and prosecution in both the United States and foreign patent offices; (c) all other Government agencies whom PHS contacts regarding the possible use, interest in, or ownership rights in PHS inventions; (d) prospective licensees or technology finders who may further make the invention available to the public through sale or use; (e) parties, such as supervisors of inventors, whom PHS contacts to determine ownership rights, and those parties contacting PHS to determine the Government's ownership; and (f) the United States and foreign patent offices involved in the filing of PHS patent applications. The sixth routine use allows disclosure to the Treasury Department, Internal Revenue Service (IRS), to report, as taxable income, the amount of royalty payment paid to PHS inventors.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 17, 1993.

Wilford J. Forbush,

Director, Office of Management.

09–25–0168

SYSTEM NAME:

Invention, patent and licensing documents submitted to the Public Health Service by its employees, grantees, fellowship recipients and contractors, HHS/PHS/NIH/OTT.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Third Floor, Rockville, MD 20852.

Division of Financial Management (DFM), Operations Accounting Branch, National Institutes of Health, Building 31, Room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

Public Health Service (PHS) Technology Development Coordinators and PHS Contract Attorneys retain files supplemental to the records maintained by the Office of Technology Transfer. Write to the system manager at the address below for office locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS employees, grantees, fellowship recipients and contractors who have reported inventions, applied for patents, have been granted patents, and/or are receiving royalties from patents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inventor name, address, Social Security number (required if inventor is receiving royalties, otherwise optional), title and description of the invention, Employee Invention Report (EIR) number, prior art related to the invention, evaluation of the commercial potential of the invention, prospective licensees' intended development of the invention, associated patent prosecution and licensing documents and royalty payment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

45 CFR parts 6 (Inventions and Patents (General)), 7 (Employee Inventions) and 8 (Inventions Resulting from Research Grants, Fellowship Awards, and Contracts for Research), describing Departmental standards for assessing, reporting, and maintaining rights, including patent rights, in inventions of Departmental employees, grantees, fellowship recipients, and contractors, or inventions made through other resources and activities of the Department; Exec. Order No. 9865, as amended, 35 U.S.C. 266 note, "Patent protection abroad of inventions resulting from research financed by the Government," describing the Government-wide policy for obtaining foreign patent protection for inventions resulting from research conducted or financed by the Government; and Exec. Order No. 10096, as amended, 35 U.S.C. 266 note, "Uniform Government Patent Policy for Inventions by Government Employees," describing Government-wide policy pertaining to inventions made by Government employees.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used to: (1) Obtain patent protection of inventions submitted by PHS employees; (2) monitor the development of inventions made by grantees, fellowship recipients and contractors; (3) grant licenses to patents obtained through the invention reports; and (4) provide royalty payments to PHS inventors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected. Disclosure may also be made to the Department of Justice to obtain legal advice concerning issues raised by the records in this system.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records for the purpose of obtaining patent protection for PHS inventions and licenses for these patents to: (a) Scientific personnel, both in this agency and other Government agencies, and in non-Governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance; (b) contract patent counsel and their employees and foreign contract personnel retained by the Department for patent searching and prosecution in both the United States and foreign patent offices; (c) all other Government agencies whom PHS contacts regarding the possible use, interest in, or ownership rights in PHS inventions; (d) prospective licensees or technology finders who may further make the invention available to the public through sale or use; (e) parties, such as supervisors of inventors, whom PHS contacts to determine ownership rights, and those parties contacting PHS to determine the Government's ownership; and (f) the United States and foreign patent offices involved in the filing of PHS patent applications.

6. NIH will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the amount of royalty payment paid to PHS inventors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be stored in file folders, computer tapes and computer discs.

RETRIEVABILITY:

Records are retrieved by name of the inventor, EIR number or keywords relating to the nature of the invention.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in patenting and licensing of PHS inventions. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Records are stored in a locked room or in locking file cabinets in file folders. During normal business hours, OTT Patent Branch and Licensing Branch on-site personnel regulate availability of the files. During evening and weekend

hours the offices are locked and the building is closed.

3. Procedural and Technical Safeguards: Data stored in computers will be accessed through the use of keywords known only to the authorized users. A password is required to access the data base. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information, including confidential business information submitted by potential licensees, from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 1100–L, which allows records to be kept for a maximum of twenty (20) years. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Technology Management Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Third Floor, Rockville, Maryland 20852.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. The request should include: (1) Full name, and (b) appropriate identifying information on the nature of the invention.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Inventors and other collaborating persons, grantees, fellowship recipients and contractors; other Federal agencies; scientific experts from non-Government organizations; contract patent counsel and their employees and foreign contract personnel; United States and foreign patent offices; prospective licensees; and third parties whom PHS contacts to determine individual invention ownership or Government ownership.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–20694 Filed 8–25–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3660; FR–3520–N–01]

Procedures for Payment of Section 801 Retroactive Payments to Owners of Section 8 Moderate Rehabilitation Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of procedures for payment of retroactive payments.

SUMMARY: This notice advises eligible owners of Section 8 Moderate Rehabilitation projects of the availability of funds for retroactive annual adjustment payments, which will be paid to owners by Housing Agencies (HAs) administering Section 8 Moderate Rehabilitation Housing Assistance Payments (HAP) Contracts.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, room 4226, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–2841; TDD (202) 708–0850. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements under this notice and 24 CFR part 888, subpart D, have been approved under the Paperwork Reduction Act by the Office of Management and Budget under control number 2502–0042.

I. Background

Subpart D of 24 CFR part 888, entitled Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects, provides for Housing Agencies (HAs) to calculate and make retroactive Housing Assistance Payments to eligible owners of Section 8 Moderate Rehabilitation projects. This publication serves as notice to eligible owners who made a request for payment, as required by 24 CFR 888.410, and are entitled to payment, as provided by §§ 888.410 and 888.415, that funds are available for payment.

II. Applicability

This notice is applicable to owners with Section 8 Moderate Rehabilitation project HAP Contracts under 24 CFR 882 (subparts D, E, and H), who requested and were determined eligible for retroactive payments under Notice PIH 91–40 (PHA), extended, renumbered and renamed Notice PIH 92–53 (PHA).

(A separate notice of opportunity to claim payments was published in the **Federal Register** dated April 12, 1993, which contained different procedures for retroactive payments under New Construction (24 CFR part 880), Substantial Rehabilitation (part 881), State Finance Agencies (part 883), Section 515 Farmers Home Administration (part 884), Section 202 Elderly or Handicapped (part 885), and Special Allocations (part 886).)

III. Moderate Rehabilitation Retroactive Payment Procedures

HAs have previously obtained certifications from Moderate Rehabilitation owners, in accordance with Notice PIH 92–53 (PHA), that the owners are eligible to receive retroactive payments. HAs have calculated the payments and notified owners of the amount of retroactive payments the owners will receive. HA's have

informed the Department of the total amount of retroactive payments due. The Department has organized this information by Moderate Rehabilitation project number, HA, Field and Regional Office.

The Department will use Fiscal Year 1993 funds to make retroactive payments to eligible Moderate Rehabilitation owners who are entitled to receive retroactive payments. The Department will assign the funds to the Regional Offices, and the Regional Offices will subassign the funds to the Field Offices. Funds will be reserved by Moderate Rehabilitation project number. Field Offices will notify HAs that the funds have been reserved. It is anticipated (but not certain at this time) that sufficient funds will be available to pay all amounts properly requisitioned for this purpose.

HAs with retroactive payments due will requisition the reserved funds from the Field Offices in accordance with the Notification Letters sent to them by the Field Offices. The Field Offices will approve and sign the HAs' requisition documents and forward them to the Regional Accounting Divisions (RAD). The RAD will date stamp each set of signed HA requisition documents upon receipt and deposit the funds in the HA's designated bank account on a first-come-first-served basis, as determined by the date stamp.

HAs will issue retroactive payment checks to owners who have been determined eligible and currently are entitled to receive retroactive payments in accordance with Notice PIH 92–53 (PHA). HAs will withhold payments from owners whose housing assistance payments are subject to restriction in accordance with § 888.415, including those whose HAP Contract units fail to meet the Housing Quality Standards (HQS). The payments will be made to such owners whose units fail to meet HQS when the physical deficiencies identified by the latest inspection have been corrected.

HAs have been instructed to identify Moderate Rehabilitation projects undergoing a review of initial base and contract rents, and not to calculate retroactive payments for these projects until the intitial rent review is complete. These instructions are still in effect for the noninsured and coinsured projects with incomplete rent reviews; that is, if HUD has not issued a letter to the HA stating the results of the review, the HA must wait to calculate the retroactive payment.

HAs are required to submit to the Department year-end documentation on their receipt and payment of retroactive payments. The Department will use this statement to monitor actual retroactive amounts paid by HAs.

Dated: August 6, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–20665 Filed 8–25–93; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–93–4320–01–1784]

Montrose District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Grazing Advisory Board will be held on October 5, 1993, at the Anasazi Heritage Center in Dolores, Colorado.

DATES: A meeting is scheduled October 5, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Kauffman, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado, 81401, telephone (303) 249–7791.

SUPPLEMENTARY INFORMATION: The Board will convene at 10:00 A.M. on October 5, 1993, at the Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado.

Agenda items include: minutes of the previous meeting, public presentations and requests, range improvement project review, new Board proposals, updates of current issues, and arrangements for the next meeting. The meeting will adjourn at 4 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: August 19, 1993.

Phillip W. Dwyer,

Acting District Manager.

[FR Doc. 93–20728 Filed 8–25–93; 8:45 am]

BILLING CODE 4310–JB–M

[UT–050–03–4320–03]

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meeting.

SUMMARY: The Richfield District Grazing Board will hold a meeting on September 21, 1993. The meeting will start at 10 a.m. in the District Office, 150 East 900 North, Richfield, Utah. The agenda will be:

1. Election of Officers
2. RMP planning status—Henry Mountain Resource Area
3. Rangeland Reform 1994
4. Allotment Management Plan Development—All Resource Area's
5. Animal Damage Control EA
6. District Personnel Changes
7. Status of Antelope Pipeline
8. Status of FY 1993 Projects
9. Proposed FY 1995 Projects

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801–896–8221). For further information contact: Sheril Slack, District Range Conservationist at the above address.

Dated: August 19, 1993.

S. Doug Wood,

Chief, Branch of Support Services.

[FR Doc. 93–20734 Filed 8–25–93; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–943–2300–02; GP3–355; OR–46956]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 105.45 acres of acquired land to mineral leasing. The land is within the New River Area of Critical Environmental Concern withdrawal boundary and will not be opened to surface entry and mining.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of Section 205 of the Federal Land Policy and Management

Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 30 S., R. 15 W.,
Sec. 28, lots 2 and 3, and SE¼NE¼.

The area described contains 105.45 acres in Curry County.

2. At 8:30 a.m., on September 30, 1993, the land described in paragraph 1 will be opened to applications and offers under the mineral leasing laws.

Dated: August 16, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-20638 Filed 8-25-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-356; OR-47129]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 240.15 acres of acquired land to mineral leasing. The land is within the New River Area of Critical Environmental Concern withdrawal boundary and will not be opened to surface entry and mining.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of Section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 30 S., R. 15 W.,
Sec. 2, W½SW¼;
Sec. 10, E½NE¼, EXCEPTING any portion lying below the mean high tide line of the Pacific Ocean;
Sec. 11, 3 parcels of land lying in the NW¼ further described as:
Parcel III: NW¼NW¼, EXCEPTING that portion described as follows: Beginning at the southeast corner of the NW¼NW¼, said Sec. 11; Thence north 122 feet; Thence north 76° 20' west 180 feet to a ¾ inch pipe post; Thence north 82° 23' west and 257 feet passing through a ½ inch pipe post and continuing the same course a total distance of 512 feet; Thence south 225 feet, more or less, to the south boundary of the NW¼NW¼ of said Sec. 11; Thence along said south boundary east 694 feet to the place of beginning.
Parcel IV: Beginning at a point in the center of a road which is 631.8 feet south and 315.12 feet east of the southeast corner of the NW¼NW¼ of said Sec. 11; Thence south 610 feet to the east and west quarter line of said Sec. 11; Thence west 500.82 feet to a point which is 1,137 feet east of the west quarter corner of said Sec. 11; Thence north 860 feet to the center of a road; Thence along the center of said road southeasterly 550 feet to the place of beginning, EXCEPTING THEREFROM: An easement for a road 20 feet wide along the north boundary of the foregoing described parcel.
Parcel V: Beginning at the quarter section corner on the line between Secs. 10 and 11; Thence east 1,137 feet along the quarter section line; Thence north 1,320 feet to the sixteenth section line; Thence west 1,137 feet along said sixteenth section line to the section line between Secs. 10 and 11; Thence south 1,320 feet to the place of beginning.

The area described contains 240.15 acres in Coos County.

2. At 8:30 a.m., on September 30, 1993, the land described in paragraph 1 will be opened to applications and offers under the mineral leasing laws.

Dated: August 16, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-20639 Filed 8-25-93; 8:45 am]

BILLING CODE 4310-33-M

[CA-016-03-3110-10-B002; #CACA 32667]

Realty Action; Exchange of Public Lands in Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands are being considered for exchange to The Trust for Public Land, under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Note: Not all lands identified below may be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands. The selected public lands are within Tehama County, in the Mount Diablo Meridian, as follows:

APN & tract#	Legal description	Acreage
T. 26 N., R. 8 W.:		
018-250-02 #1	Sec. 14 N½, N½SW¼, SW¼SW¼, NW¼SE¼	480.
018-250-07 #2	Sec. 22 NE¼NE¼	40.
019-250-09 #3	Sec. 24 All	640.
T. 26 N., R. 7 W.:		
021-220-01 #4	Sec. 30 Lots 1 through 4, NE¼, E½NW¼, E½SW¼, N½SE¼, SE¼SE¼	603.56.
021-220-06 #5	Sec. 32 N½, SW¼	480.
Total acreage		2,243.56 more or less.

In exchange for these lands, the Bureau of Land Management (BLM) will acquire private lands in Tehama County, CA within the Sacramento River Management Area and/or private lands within Tulare County, CA.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire historic riparian habitat for wildlife and fisheries enhancement, acquire lands for recreation opportunities, and to consolidate public lands into a pattern for better manageability. This exchange is consistent with BLM planning for the lands involved. The public interest will be well served by completing the exchange. Land to be transferred from the United States will be evaluated in accordance with the National Environmental Policy Act, and will be subject to the following reservations, terms, and conditions:

(1) A reservation to the United States for a right-of-way for ditches or canals constructed by the United States, Act of August 30, 1890 (43 U.S.C. 945).

(2) A reservation to the United States for a right-of-way for access roads in Sections 30 and 32, T. 26 N., R. 7 W., MDM under casefile CAS 3712.

(3) A right-of-way for existing access roads in Sec. 32, T. 26 N., R. 7 W., MDM under casefile CACA 32317.

Publication of this notice in the **Federal Register** segregates the above public lands from settlement, location, and entry under the public land laws, right-of-way laws, permit laws, and mining laws, but not exchange under sec. 206 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first. These lands were previously segregated for exchange by CA 31254; this notice supersedes that action. The exchange will be on an equal value basis, not an acre-for-acre basis. An independent appraisal will establish the fair market value of the public and private lands.

DATES: Interested parties may submit comments to the BLM Area Manager at the following address until October 12, 1993. For further information contact: Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any comments will be evaluated by the Area Manager, who may vacate or modify this realty action and issue a final determination.

FOR FURTHER INFORMATION CONTACT: Mike Truden, Realty Specialist, (916) 224-2100.

Dated: July 29, 1993.

Mark T. Morse,

Area Manager.

[FR Doc. 93-19434 Filed 8-25-93; 8:45 am]

BILLING CODE 4310-40-M

[OR-117-4210-04; 3-368]

Realty Action: Exchange of Public and Private Lands in Josephine County, OR

AGENCY: Bureau of Land Management, Medford District Office, Grants Pass Resource Area

ACTION: Notice of realty action.

Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Grants Pass Resource Area, is considering the following described land in Josephine County as suitable for exchange.

Selected Public Land

Willamette Meridian, Oregon

T. 39 S., R. 7 W.
Sec. 23, lot 3;
Aggregating 41.41 acres.

Offered Private Land

Willamette Meridian, Oregon

T. 37 S., R. 6 W.
Section 31, lots 1 and 2;
T. 37 S., R. 7 W.
Section 36, all;
T. 39 S., R. 8 W.
Section 11, SE¼SE¼;
Aggregating 758.46 acres.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: The Environmental Assessment and other information concerning this exchange is available for review at the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this Realty Action.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate resource management opportunities. The private lands being offered have important values for fisheries and wildlife habitat, timber management, and recreation.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved through acreage adjustment or by cash payment of an amount not to exceed 25 percent of the lands being transferred out of Federal ownership.

The following reservations will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way of ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid, existing rights, including but not limited to any right-of-way, easement, or Lease of Record.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except mineral leasing and exchange under section 206 of FLPMA. For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, canceled, or the exchange is approved prior to that date.

Dated: August 17, 1993.

Wayne M. Kuhn,

Acting District Manager.

[FR Doc. 93-20727 Filed 8-25-93; 8:45 am]

BILLING CODE 4310-33-M

[MT-060-03-4410-02]

West HiLine Resource Management Plan Amendment; Liberty and Toole Counties, MT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice is hereby given that the West HiLine Resource Management Plan will be amended by the Great Falls Resource Area, Great Falls, Montana.

SUMMARY: The Bureau of Land Management proposes to withdraw 19,684.74 acres of public mineral estate from locatable mineral entry in the Sweet Grass Hills, Liberty and Toole Counties, Montana. The purpose of the proposed withdrawal is to protect high value potential habitat for reintroduction of endangered peregrine falcons, areas of traditional religious importance to Native Americans, aquifers that currently provide the only potable water in the area, and seasonally important elk and deer habitat. A withdrawal of these lands is not in conformance with the record of decisions for the West HiLine Resource Management Plan (RMP) (1988 and 1992). This requires that the land use plan be amended to address the proposed withdrawal and develop management guidelines for other land uses in the Sweet Grass Hills. The Great Falls Resource Area, Lewistown District, Bureau of Land Management will prepare a plan amendment and associated environmental impact statement.

PUBLIC PARTICIPATION: The public will be provided an opportunity to comment on this proposal at public scoping meetings to be held at: Chester, MT, Chester High School Auditorium, September 28, 1993, 7 p.m.; Browning, MT, Browning High School Annex, September 29, 1993, 7 p.m.; and Rocky Boy, MT, Rocky Boy Community Center, September 30, 1993, 3 p.m. These meetings will also fulfill the public meeting requirements for withdrawal proposals under 43 CFR part 2310.3-1. Comments and recommendations on this proposal to amend the West HiLine RMP should be received by November 1, 1993.

ADDRESSES: Comments should be sent to the Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401.

FOR FURTHER INFORMATION CONTACT: Richard L. Hopkins, Area Manager, Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401, 406-727-0503.

Dated: August, 19, 1993.
B. Gene Miller,
Acting District Manager.
[FR Doc. 93–20729 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–GN–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., August 18, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of section 2, and a metes-and-bounds survey in section 2, Township 8 South, Range 25 East, Boise Meridian, Idaho, Group No. 856, was accepted August 12, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 18, 1993.
Jerrold E. Knight,
Acting Chief Cadastral Surveyor for Idaho.
[FR Doc. 93–20736 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on August 18, 1993.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines in Township 48 North, Range 1 West, Boise Meridian, Idaho, Group No. 838, was accepted August 13, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 18, 1993.
Jerrold E. Knight,
Acting Chief Cadastral Surveyor for Idaho.
[FR Doc. 93–20737 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–GG–M

[ID–943–4210–06; IDI–15614]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 255.90 acre withdrawal for Powersite Reserve No. 357, continue for an additional 20 years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have been and will remain open to mineral leasing and mining.

EFFECTIVE DATE: Comments should be received by November 24, 1993.
FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

The Bureau of Land Management proposes that the existing land withdrawal made by Executive Order dated May 27, 1913, for Powersite Reserve No. 357, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

T. 8 S., R. 30 E.,
Sec. 21, lots 2 to 8 inclusive;
Sec. 22, lot 5.

The area described contains 255.90 acres in Power County.

The withdrawal is essential for protection of potential waterpower development. The existing withdrawal closes the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 17, 1993.
William E. Ireland,
Chief, Realty Operation Section.
[FR Doc. 93–20640 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–GG–M

[NM–920–4210–06; NMNM 42954]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 40-acre withdrawal for Public Water Reserve No. 107 continue for an additional 20 years. The land will remain closed to surface entry and nonmetalliferous mining. The land has been and will remain open to mineral leasing and metalliferous mining.

DATES: Comments should be received by November 24, 1993.
ADDRESSES: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 27115, Santa Fe, NM 87502–7115.
FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, 505–438–7594.
SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the withdrawal of land made by Secretarial Order dated February 6, 1939 be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), (1988). The land is described as follows:

New Mexico Principal Meridian

T. 25 S., R. 8 W.,
Sec. 12, SE¼SW¼.

The area described contains 40 acres in Luna County.

The withdrawal is essential for protection of Public Water Reserve No. 107. The withdrawal currently segregates the land from surface entry and nonmetalliferous mining. The land has been and will remain open to leasing under the mineral leasing laws and to metalliferous mining.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake

such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 16, 1993.
Kathy Eaton,
Acting State Director.
[FR Doc. 93–20641 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–FB–M

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council

AGENCY: Department of the Interior, U.S. Fish and Wildlife Service.
ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 9 a.m. to 12 Noon on Monday, September 13, 1993.
PLACE: The meeting will be held at the Red Lion-Columbia River, 1401 North Hayden Island Drive, Portland, Oregon.
FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.
SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The primary agenda item will be discussion of the Hoopa Valley Indian Tribe's proposal to temporarily raise the escapement floor (above 35,000 natural spawners) for fall chinook. The strategy, known as "deficit accounting" is recommended by the Tribe because of inadequate adult escapement in the Klamath Basin over the past 3 years. The intended action is for the Klamath Fishery Management Council to make a recommendation to the Pacific Fishery Management Council for the 1994 Ocean Salmon Management season.

Dated: August 17, 1993.
William E. Martin,
Acting Regional Director, U.S. Fish and Wildlife Service.
[FR Doc. 93–20733 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0079); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart G, Abandonment of Wells
OMB approval number: 1010–0079
Abstract: Respondents submit this information to MMS so it can verify that the final disposition of a well is being diligently pursued and that any deviations from the approved plan and the documentation of the temporary plugging of the wellbore and marking of the location have been performed by the lessee operator.
Bureau form number: None
Frequency: Annual
Description of respondents: Federal Outer Continental Shelf oil and gas lessees
Estimated completion time: 0.25 hour
Annual responses: 853
Annual burden hours: 213
Bureau Clearance Officer: Arthur Quintana (703) 787–1239

Dated: July 30, 1993.
Henry G. Bartholomew,
Deputy Associate Director for Operations and Safety Management.
[FR Doc. 93–20726 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–MR–M

National Park Service

Management and Land Protection Plans

AGENCY: National Park Service, Interior.
ACTION: Notice of availability.

SUMMARY: With this notice, the National Park Service is notifying the public of the availability of a revised agency guideline for floodplain management.

ADDRESSES: Copies of the revised guideline may be obtained by writing to the Chief, Water Resources Division, National Park Service, 1201 Oak Ridge Drive, Fort Collins, Colorado 80525.
FOR FURTHER INFORMATION CONTACT: Dan B. Kimball, Chief, Water Resources Division, National Park Service, telephone (303) 225–3501.
SUPPLEMENTARY INFORMATION: On August 11, 1993, the Director, National Park Service, issued Special Directive 93–4 to establish agency-specific guidance for floodplain management, as required by Executive Order 11988, "Floodplain Management." This guideline replaces the National Park Service floodplain management guidance published in 45 FR 35916 and 47 FR 36718, "Floodplain Management and Wetlands Protection Guidelines."

This guideline does not replace the wetlands protection guidance provided in the earlier guidelines.

The revised floodplain management guideline maintains the National Park Service policy of preserving floodplain values and minimizing potentially hazardous conditions associated with flooding. A revised procedure for implementing the guideline is provided.

Dated: August 16, 1993.
Dennis B. Fenn,
Acting Associate Director, Natural Resources.
[FR Doc. 93–20769 Filed 8–25–93; 8:45 am]
BILLING CODE 4310–70–M

[Order No. 5, Amendment 8]

Superintendents, et al., Southwest Region; Delegation of Authority

Southwest Region Order No. 5, approved March 22, 1972, and published in the **Federal Register** of April 19, 1972 (34 FR 7722), set forth in Section 2 certain authority. This amendment changes paragraphs (d) and (e) to read as follows:

Section 2. Delegation. * * *

(d) Chief, Division of Land Resources. The Chief, Division of Land Resources is authorized to execute the land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of

offers to sell to, or exchange with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91–646, as amended.

(e) Field Land Acquisition Officers. The Field Land Acquisition Officers are authorized to execute the land acquisition program in their assigned area, including contracting for acquisition of lands and related properties, and options and offers to sell related thereto, not in excess of $1,000,000, and to approve claims for reimbursement under Public Law 91–646 when the amount does not exceed $5,000.

Dated: August 11, 1993.

John E. Cook,

Regional Director.

[FR Doc. 93–20770 Filed 8–25–93; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0092), Washington, DC 20503, telephone 202–395–7340.

Title: Part 745—State–Federal Cooperative Agreements.

OMB Number: 1029–0092.

Abstract: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State Regulatory Authorities.

Annual Responses: 22.

Annual Burden Hours: 11,740.

Estimated Completion Time: 1,364 hours.

Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: August 4, 1993.

Andrew F. DeVito,

Acting Chief, Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–20642 Filed 8–25–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be make directly to the Bureau clearance officer listed below, and to the Office of Management and Budget, Paperwork Reduction Project (1029–0054), Washington, DC 20503, telephone (202) 395–7340.

Title: Abandoned Mine Reclamation Funds—30 CFR Part 872

OMB Number: 1029–0054

Abstract: 30 CFR Part 872 establishes requirements for information collection to be used by the regulatory authority to determine whether delays in the use of allocated funds were due to unavoidable delays in program approval or are not necessary to carry out approved reclamation activities. These requirements serve as safeguards to protect States/Indian tribes against automatic or indiscriminate withdrawal of funds.

Bureau Form Number: None

Frequency: As required

Descritption of Respondents: State and Indian tribes

Estimated Completion Time: One hour

Annual Responses: One

Annual Burden Hours: One

Bureau Clearance Office: John A. Trelease, (202) 343–1475.

Dated: August 4, 1993.

Andrew F. DeVito,

Acting Chief, Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–20631 Filed 8–25–93; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–641 (Final)]

Ferrosilicon From Brazil; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–641 (Final) under § 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of ferrosilicon from Brazil are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on January 12, 1993, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland OH; Silicon Metaltech, Inc., Seattle WA; Oil, Chemical & Atomic Workers Union (local 389); United Autoworkers of America Union (locals 523 and 12646); and United Steelworkers of America Union (locals 2528, 3081, and 5171).

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. Section 201.11 (b) of the Commission's rules is hereby waived. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

The Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. Section 207.7 (a)(2) of the Commission's rules is hereby waived. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on August 31, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 14, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 7, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing.

All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 9, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 8, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 22, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 22, 1993. A supplemental brief addressing only the final antidumping determination of the Department of Commerce is due on January 3, 1993. The brief may not exceed five (5) pages in length. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: August 23, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20827 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–P

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 118]

The Eastern Central Motor Carriers Association, Inc. and Middle Atlantic Conference—Consolidation; EC–MAC Motor Carriers Service Association, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of joint application for approval of consolidation and agreement, and for comments.

SUMMARY: The Eastern Central Motor Carriers Association, Inc. (ECMCA) and Middle Atlantic Conference (MAC) (applicants) have filed a joint application seeking approval of the consolidation of ECMCA and MAC into EC–MAC Motor Carriers Service Association, Inc. (EC–MAC) and approval of the proposed agreement of EC–MAC. The new agreement, which is patterned after the present ECMCA agreement, also embraces some provisions of the present MAC agreement. The EC–MAC agreement would permit EC–MAC, as successor to ECMCA and MAC, to engage in the same ratemaking activity as the existing bureaus. The present boards of ECMCA and MAC would be combined into an interim board to govern EC–MAC until its first regular meeting. The EC–MAC agreement contemplates no changes in the ratemaking procedures from those previously approved by the Commission in the existing ECMCA and MAC agreements.

DATES: Comments (original and 10 copies) must be filed by September 27, 1993, and concurrently served on applicants' representatives. Comments must contain the basis for supporting or opposing the proposed consolidation and approval of the EC–MAC agreement. Applicants' reply must be filed and concurrently served on the other parties by October 5, 1993.

ADDRESSES: Send an original and 10 copies of all documents (referring to Section 5a Application No. 118) to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of comments to each of the following

applicants' representatives: (1) Bryce Rea, Jr., 1920 N Street NW., suite 420, Washington, DC 20036, and (2) John W. McFadden, Jr., 1600 Wilson Blvd., #1210, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Jessie Hodge (202) 927–5302 or Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The joint application seeks approval of the consolidation of ECMCA and MAC into EC–MAC, and approval of the proposed agreement of EC–MAC, patterned after ECMCA's Section 5a Agreement No. 48, while also embracing some provisions of MAC's Section 5a Agreement No. 23. Upon approval, collective ratemaking would continue within the Eastern Central and Middle Atlantic territories under EC–MAC procedures.

ECMCA engages in ratemaking activities for the Eastern Central Territory, as described in *Eastern Central Motor Carriers—Agreement*, 297 I.C.C. 563 (1955), namely between points in the District of Columbia, Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia, on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin.

The present MAC agreement provides for collective consideration and publication of rates (1) for transportation of property, (a) to, from, and within Middle Atlantic or New England Territories, and (b) between Middle Atlantic or New England Territories and Canada; and (2) for transportation of iron and steel, bricks, and numerous other specified related commodities, between points in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky (North Bank Ohio River Crossings and points within 5 miles of the Ohio River), Maine, Maryland, Massachusetts, Michigan (Lower Peninsula), Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.[1] The Middle Atlantic Territory includes all points in New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and West Virginia, and the District of Columbia, those points in Kentucky within 20 miles of Williamson, WV, Bristol, TN, and points in Tennessee that may from time to time be grouped with Bristol for ratemaking purposes in tariffs published by EC–MAC (as successor to MAC). The New England Territory includes points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.[2] Canada includes all points under Canadian jurisdiction.

Applicants believe that significant economies of operation will result from the consolidation. They note that the functions of collective ratemaking, rate procedures, processing of independent actions, publication of agency tariffs and individual tariffs, computer services, other printing and support services, research activities, Federal regulatory activities, and other functions, interests, and activities of both ECMCA and MAC are very similar. A consolidation will reduce the number of meetings that will be held for purposes of considering rate matters. Consequently, they believe that the economies and efficiencies of operations can be achieved without a reduction in service to member carriers, participants, tariff subscribers, shippers, and the general public. The consolidated operation would be conducted under the terms of the EC–MAC agreement, which is patterned (with minor amendments) after the ECMCA and MAC agreements. The existing agreements received final approval as consistent with the requirements of 49 U.S.C. 10706(b) in Section 5a Application Agreement 23, Middle Atlantic Conference—Agreement (not printed), decisions served August 5, 1987, March 28, 1988, and September 23, 1992 (minor amendment), and Section 5a Application No. 48, The Eastern Central Motor Carriers Association, Inc.—Agreement (not printed), decisions served June 10, 1987, and January 5, 1989 (minor amendment).

No Commission decision accompanies this notice. Copies of the application are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from the applicants' representatives identified above. Applicants are encouraged to make copies promptly available to those who request them so that potential commentors will be able to submit informed comments on a timely basis.

[1] MAC is the successor to the Steel Carriers' Tariff Association, Inc. See Section 5a Application 23, Middle Atlantic Conference—Assumption of Steel Carriers' Tariff Association, Inc.—Functions (not printed), served October 6, 1986.

[2] Described portions of New York and New Jersey appearing in the New England Territory description of the present MAC agreement have been deleted as redundant in the new EC–MAC agreement.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: July 16, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20705 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–6 (Sub #356X)]

Exemption; Burlington Northern Railroad Co.—Abandonment Exemption—in Renville County, ND

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its 7.43-mile line of railroad between BN milepost 46.73, near Mohall, and milepost 54.16, near Lorain, in Renville County, ND.

BN has certified that : (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 25, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 7, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 15, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sara J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 31, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 16, 1993.

By the Comission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2074 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub #355X)]

Exemption; Burlington Northern Railroad Co.—Abandonment Exemption—in Pembina County, ND

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its 19.23-mile line of railroad between BN milepost 60.20 near Glasston and milepost 79.40 near Neche in Pembina County, ND.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user or rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 25, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 7, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 15, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) by August 31, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20706 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub #353X)]

Exemption; Burlington Northern Railroad Co.—Abandonment Exemption—in Grand Forks and Walsh Counties, ND

Burlington Northern Railroad Company has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 16.69 miles of rail line between BN milepost 6.50 near McCanna and milepost 23.15 near Conway in Grand Forks and Walsh Counties, ND.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 25, 1993 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 7, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 15, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main St., Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 31, 1993. Interested parties may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historical preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20707 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1988). Any entity seeking a stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

[Docket No. AB–6 (Sub # 354X)]

Exemption; Burlington Northern Railroad Co.—Abandonment Exemption—in McHenry and Bottineau Counties, ND

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonment* to abandon its 35.04-mile line of railroad between BN milepost 0.00 near Towner, and BN milepost 35.26 near Newburg, in McHenry and Bottineau Counties, ND, including the stations of Bantry (milepost 14.0), Upham (milepost 22.0), and Newburg (milepost 34.8).

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complainant filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 1105.12 (newspaper) publication) 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 26, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 7, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 15, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railway Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 31, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 20, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20708 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–6 (Sub #352X)]

Exemption; Burlington Northern Railroad Co.—Abandonment Exemption—in Emmons and McIntosh Counties, ND

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 29.93 miles of rail line between BN milepost 45.32 (MILW milepost 74.38) near Linton and MILW milepost 44.41 near Zeeland, in Emmons and McIntosh Counties, ND.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report); 49 CFR 1105.8 (historic report); 49 CFR 1105.11 (transmittal letter); 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 25, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 7, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 15, 1993, with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Esq., Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 31, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20709 Filed 8–25–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See, *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32337]

Sunshine Mills, Inc.—Feeder Line Acquisition—Norfolk Southern Railway Co. Line Between Corinth, MS, and Haleyville, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of acceptance of feeder line application.

SUMMARY: Sunshine Mills, Inc. (Sunshine), has filed a feeder railroad development application under 49 U.S.C. 10910 and 49 CFR 1151.3 to acquire the Norfolk Southern Railway Company's (NS) line between milepost IC–528.9, at or near Corinth, MS, and milepost IC–606.8, at or near Haleyville, AL, plus all sidings, stations, switching track and facilities appurtenant to the line, including all the right, title, and interest of NS in and to the underlying and contiguous real estate. The application is accepted to the extent that it seeks to acquire segments of NS's line between milepost IC–528.9 at or near Corinth, MS, and milepost IC–571.0 at or near Red Bay, AL, and between mileposts IC–604.0 and IC–606.8 in Haleyville, AL.

The line segment between milepost IC–571.0 at or near Red Bay, AL, and milepost IC–604.0 at or near Haleyville, AL (the Red Bay-Haleyville segment), is the subject of an offer of financial assistance proceeding in Docket No. AB–290 (Sub-No. 123X), and is subject to automatic rejection because the application was filed under 49 U.S.C. 10910(b)(1)(A)(ii). Applicant may amend the application to acquire the Red Bay-Haleyville segment under the alternative standard of 49 U.S.C. 10910(b)(1)(A)(i).

DATES: Competing applications by any person seeking to acquire all or any portion of the line sought are due September 22, 1993. Verified statements and comments addressing both the initial and competing applications must be filed by October 22, 1993. Verified replies by applicants and other interested parties must be filed by November 12, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32337 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Applicant's representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210, and (3) The railroad's representative: Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: August 20, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Chairman McDonald, joined by Vice Chairman

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Simmons dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-20787 Filed 8-25-93; 8:45 am]

BILLING CODE 7555-01-P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at One Park Avenue, New York, New York, on September 29, 1993, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 18, 1993.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 93-20627 Filed 8-25-93; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Office for Victims of Crime

Victims of Crime Act Victim Assistance Grant Program

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Notice of proposed program guidelines (revised) for the victims of Crime Act Victim Assistance Grant Program.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing, for a 45-day public comment period, Proposed Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, et seq. (hereafter referred to as VOCA).

DATES: Comments must be submitted on or before October 12, 1993.

ADDRESSES: State Compensation and Assistance Division, Office for Victims of Crime, 633 Indiana Avenue, NW., room 1386, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Hightower, Director, State Compensation and Assistance Division, at the above address; telephone number (202) 307-5947. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VOCA authorizes Federal financial assistance to States for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of Federal crimes.

These Program Guidelines provide information on the administration and implementation of the VOCA victim assistance grant program as authorized in Section 1404 of VOCA, Public Law 98-473, as amended, codified at 42 U.S.C. 10603, and contain information on the following: Background; Funding Allocation and Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. The Guidelines are based on the experience gained during the first seven years of the grant program and are in accordance with VOCA, as amended. When approved in final form, these Program Guidelines will supersede any Guidelines previously issued by OVC.

These Program Guidelines do not constitute a "major" rule as defined by Executive Order 12291, because they do not result in the following: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, these Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is *not* required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The collection of information requirements contained in the Reporting Requirements section has been submitted to the Office of Management and Budget (OMB) for review, under the Paperwork Reduction Act, 44 U.S.C. 3504(h). Approval to use the specified reports to gather information on the use and impact of VOCA victim assistance grant funds has been given by OMB numbers 7390/2A and 7390/4.

Background

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits from fines and penalties levied on criminals convicted of Federal crimes. This Fund provides the source of funding for carrying out all of the activities mandated by VOCA.

OVC serves as the Federal focal point for all crime victim issues, to include ensuring that the criminal justice system addresses the legitimate rights and interests of crime victims. OVC's program activities are consistent with VOCA. These Program Guidelines address the specific program and financial requirements of the VOCA crime victim assistance grant program.

OVC makes annual VOCA crime victim assistance grants from the Fund to States. The primary purposes of these grants are to support the provision of direct services to innocent victims of violent crime throughout the Nation, to assist victims of crime as soon as possible in order to reduce the severity of the psychological consequences of the victimization, to increase the victim's willingness to cooperate with the criminal justice process, and to restore the victim's faith in the criminal justice system.

VOCA gives latitude to States to determine how VOCA victim assistance grant funds will best be used within each State. However, each State grantee must abide by the minimal statutory requirements outlined in VOCA and the requirements in these Program Guidelines.

Funding Allocation and Application Process

A. Distribution of Crime Victims Funds

OVC administers the deposits made into the Fund for activities, as specified in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund.

The Federal Courts Administration Act of 1992 removed the cap on the Fund, beginning with Federal Fiscal Year (FFY) 1993 deposits, which will be used for grants in FFY 1994. This Act also eliminated the need for periodic reauthorization of VOCA and the Fund. Thus, under current legislation, the Fund will receive deposits indefinitely.

B. Availability of Funds

All States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and Palau (hereinafter referred to as "States") are eligible to apply for, and receive, VOCA victim assistance grants. See Section 1404(d)(1) of VOCA, codified at 42 U.S.C. 10603(d)(1).

Funds are available for expenditure during the FFY of award and in the next FFY. The FFY begins on October 1 and ends on September 30 of the following year. States may incur expenses retroactively to the beginning of each year's grant, October 1, even though the VOCA grant may not be awarded until later in the grant period. Funds that are not obligated by the end of the grant period must be returned to the General Fund of the U.S. Treasury. Therefore, States are encouraged to closely monitor the expenditure of VOCA funds at the subrecipient level and to reallocate unexpended funds prior to the end of the grant period, when possible.

C. Allocation of Funds to States

From the Fund deposits available for victim assistance grants, each State receives a base amount of $200,000, except Palau. The remaining Fund deposits are distributed to each States based upon the State's population, as determined by current census data, in relation to all other States.

D. Allocation of Funds Within the States

The Governor of each State designates the State agency that will administer the VOCA victim assistance grant program. That designated State agency establishes policies and procedures regarding the implementation and administration of the VOCA victim assistance grant program. These policies and procedures must meet the minimum requirements of VOCA and the Program Guidelines but can be more restrictive.

VOCA victim assistance funds granted to the States are to be used by eligible public and private nonprofit organizations to provide direct services to crime victims. States have sole discretion for determining which organizations will receive funds and at what level, as long as the recipients meet the requirements of VOCA and the Program Guidelines.

States are encouraged to develop a VOCA program funding strategy, which should consider the range of victim services throughout the State and within communities; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing services for crime victims; the availability of services to crime victims throughout the criminal justice process; the extent to which other sources of funding are available for services; etc.

States are encouraged to expand into new service areas as needs change. Many States use VOCA funds to stabilize victim services by continuously funding selected organizations. Some States terminate funding to organizations in order to fund new organizations. Other States limit the number of years an organization may receive VOCA funds. These practices are within the State's discretion and are supported by OVC, when they serve the best interests of crime victims within the State.

States may award VOCA funds to organizations that are physically located in an adjacent State. States should use this adjacent-State approach when it is the only efficient mechanism available for providing services to victims who reside in the awarding State. When adjacent-State awards are made, the amount of the award is to be proportional to the number of victims to be served by the adjacent-State organization. OVC recommends that States enter into an interstate agreement with the adjacent State to address monitoring of the VOCA subrecipient, audit of Federal funds, compliance issues, reporting requirements, etc. NOTE: States are requested to notify OVC of each VOCA award made to an organization in another State.

States may choose to use an organization as a "conduit" to aid in the selection of qualified subrecipients or to reduce the State's administrative burden in implementing the grant program. However, the "conduit" organization may not receive reimbursement from the VOCA victim assistance grant for the administrative, coordination, and/or oversight activities it provides. The use of a "conduit" organization does not relieve the State from ultimate programmatic and financial responsibilities.

E. Application Process

States shall use the Standard Form 424, Application for Federal Assistance, and its attached certified assurances to apply for VOCA victim assistance grant funds. Applications for VOCA crime victim assistance grants must be submitted by the State agency designated by the Governor to administer the VOCA grant. Each year, OVC issues to each eligible State a Program Instruction and Application Kit, which contains the necessary forms and detailed information required to make application for VOCA grant funds. The amount for which each State may apply is included in the Application Kit. At the time of application, States are not required to provide specific information on the subrecipients that will receive VOCA victim assistance funds.

The following are attachments to the Application for Federal Assistance:

1. States shall specify their [illegible] arrangements for complying with the provisions of Circular A-128 (Audits of State or Local Government).
2. States shall submit Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; Civil Rights Compliance, and any other certifications required by OJP and OVC. Additionally, States must complete a disclosure form specifying any lobbying activities that are conducted.
3. States shall identify the type of crime(s) that will be used to meet the underserved requirement.

F. Application for Training Funds

Beginning with the FFY 1994 VOCA victim assistance grant program, State grantees may choose to retain a portion of their VOCA victim assistance grant for conducting State-wide and/or regional State training of victim services staff.

Because the quality of victim services is directly tied to appropriately trained direct service providers, staff development and training has always been a VOCA-allowable cost. However, the use of VOCA victim assistance grant funds to support staff development and training has previously been limited to costs incurred at the VOCA subrecipient level. Further, VOCA subrecipients could only use VOCA funds to receive training within their State boundaries or within a similar geographical area.

Appropriate training is not always available within the State boundaries, and direct service providers do not have sufficient discretionary funds to travel outside of the State. Additionally, limiting access to quality training to the few VOCA subrecipients within a State may impede the expansion of quality services to crime victims through other victim service providers. For these reasons, OVC is extending to State grantees the flexibility to take an active role in ensuring that appropriate and uniform training is available to direct service providers throughout the State in the most cost-effective way possible.

Thus, States may retain a portion of their VOCA victim assistance grant for a training activity as described in this section. These States must submit a training proposal to OVC at the time of application or at a later date prior to the training event.

Note: States who choose to sponsor a State-wide or regional training are not precluded from awarding VOCA funds to subrecipients for other types of staff development.

Although specific criteria for applying for training funds will be given in each year's Application Kit, the following general guidance is provided, as follows:

1. Prior OVC review and approval is required for all training proposals.
2. The training proposal must describe how the VOCA funds will be used to improve the skills of paid and volunteer direct service staff. The training offered by the State must consist of intensive, staff development activities. Proposals submitted for seminars and conferences that focus on sharing ideas, providing general information, and networking will not be approved.
3. The maximum amount permitted for this purpose is $5,000 or 1 percent of the State's grant, whichever is greater.
4. The training proposal must identify the service provider needs and address a plan for meeting these needs through the training activity.
5. The training proposal will describe the goals of the training event, outline the curriculum, and identify costs associated with the purchase of trainers, space, conference coordination, curriculum development, materials, etc.
6. If registration fees will be charged to non-VOCA supported staff and volunteers, the proposal must identify how the program income will be used to defray the cost of the project.
7. VOCA funds will be matched at 50 percent, cash or in-kind, and the proposal will describe the source of the match.
8. The training activity must occur within the grant period.
9. A Subgrant Award Report must be submitted on the training activity and pertinent information included on the Performance Report.
10. VOCA grant funds cannot be used to supplant the cost of existing State program administrative staff or related State training efforts, i.e., Statewide conferences, coalition conferences, etc.

Program Requirements

A. State Eligibility Requirements

VOCA and the Program Guidelines establish minimal eligibility requirements. When applying for the VOCA victim assistance grant, States are required to give assurances that the following special conditions or requirements will be met:

1. States shall certify that only eligible organizations will receive VOCA funds and that VOCA crime victim assistance funds will only be used for direct services to victims of crime. See Section 1404(b)(2), codified at 42 U.S.C. 10603(b)(2). Activities that are tangentially related to providing direct services are not eligible for support with VOCA funds, such as serving on task forces, commissions, working groups, teams, councils, and committees. Further, activities involving the general administration of an organization and supervision of staff are not VOCA allowable activities. However, representing the needs of a crime victim at multidisciplinary team meetings, which facilitate coordinated, comprehensive services to individual crime victims, can be supported with VOCA funds.

2. States shall certify that VOCA crime victim assistance grant funds will not be used to supplant State and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(C) of VOCA, codified at 10603(a)(2)(C). VOCA victim assistance grant funds are intended to enhance or expand services, not substitute for other sources of funding. This supplantation clause applies to State and local public agencies, only.

3. States shall certify that a minimum of 10 percent of each FFY's grant will be allocated to each of the following categories of crime victims: sexual assault, domestic violence, and child abuse. These categories of crime victims are identified as "priority" victims by VOCA, because the problems experienced by these victims are often exacerbated by societal attitudes or vulnerabilities. Although "priority" victims are given special consideration in allocating VOCA funds, this designation does not imply that the needs and suffering of "priority" victims are greater than other crime victims.

Each State must meet this requirement, unless it can document to OVC that (1) a "priority" crime victim is currently receiving significant amounts of financial assistance from the State or other funding sources, and (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program.

Note: Beginning with the FFY 1994 VOCA victim assistance grant, States are requested to verify for OJP representatives that a minimum of 10 percent has been expended for services to each "priority" category of crime victims. States, who submit documentation to OVC that less than 10 percent is needed are requested to verify the amount expended in relation to the amount allocated.

4. States shall certify that an additional 10 percent of each VOCA grant will be allocated to victims of crime who were "previously underserved" with VOCA victim assistance funds. In 1988, VOCA was amended to require that States make VOCA victim assistance grant funds available for services to victims of violent crime, other than the "priority" victims, such as survivors of homicide victims, victims of assault, survivors of DUI/DWI crashes (driving under the influence of alcohol or drugs), etc.

Each State must meet this requirement, unless it can convincingly justify to OVC that (1) services to victims of violent crime, other than the "priority" categories, are receiving significant amounts of financial assistance from the State or other funding sources, and (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program.

Note: Beginning with the FFY 1994 VOCA victim assistance grant, States are requested to verify for OJP representatives that a minimum of 10 percent has been expended for services to victims of violent crime, other than the "priority" victims. States, who submit documentation that less than 10 percent is needed are requested to verify the amount expended in relation to the amount allocated.

Services to vulnerable adults who are crime victims may be used to meet the underserved requirement. For the purpose of the VOCA victim assistance grant program, vulnerable adults are described as individuals who do not have the mental and/or physical capacity to manage their daily needs without the assistance of a guardian or caretaker. This description differs significantly from the victimization of elderly individuals who are able to maintain an independent lifestyle.

Although Native Americans and/or the elderly may be underserved in a particular area or State, the intent of the 1988 amendment to VOCA was to extend services to victims of violent crime other than the "priority" categories. A designation by characteristic, instead of type of crime, prevents States and OVC from reporting to Congress the VOCA grant funds allocated to other victims of violent crime, other than "priority" victims, as required in the 1988 amendments to VOCA.

Since 1989, States have been permitted to meet the "previously underserved" requirement by allocating VOCA funds to organizations serving Native American crime victims. This exception was permitted because of the paucity of services for Native American crime victims on reservations. Since 1989, OVC has undertaken an extensive effort to foster the growth of services to Native Americans on reservations and has dedicated substantial financial resources for services in Indian country. OVC believes that services to Native American crime victims are disproportionally low in relation to the rate of violent crime. Thus, OVC is committed to continuing these efforts to expand and enhance services to Native American crime victims through the VOCA Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program. However, beginning with FFY 1994 VOCA victim assistance grant program, all States must identify underserved by type of crime. Those States, who wish to fund services to Native Americans to meet the "previously underserved" requirement, must identify the type of violent crime to which Native Americans are subjected. Likewise, States who wish to meet the underserved requirement by allocating VOCA funds to serve crime victims such as elderly or Hispanic, must identify the type of crime to which these victims are subjected.

5. States are encouraged to coordinate their activities with the State victim compensation agency. Coordination could include activities such as meetings; training activities for direct service providers on the general parameters of the State compensation agency's program (e.g., eligibility criteria, completion of claims, and time frames for receiving compensation); exchanging information on VOCA victim assistance services within the State; jointly developing guidance, where applicable, on third-party payments to VOCA assistance organizations; etc.

6. States shall certify that appropriate accounting, auditing, and monitoring procedures will be employed at the State and subrecipient levels and that records are maintained to assure fiscal control, proper management, and efficient disbursement of the VOCA victim assistance funds, as per the OJP "Financial and Administrative Guide for Grants" (M7100.1D), effective edition.

7. States shall certify compliance with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of 28 Code of Federal Requirements (CFR) applicable to grants.

8. States shall certify its compliance, and its subrecipients' compliance, with the applicable provisions of VOCA and the Final Program Guidelines.

9. States shall submit required programmatic and financial reports on the use of the VOCA victim assistance funds by the deadlines prescribed by OVC. (See sections on *Program Requirements* and *Financial Requirements*, for reporting requirements and timelines.)

10. States shall certify that in the event a Federal or State court or administrative agency makes a finding of discrimination, after a due process hearing on the grounds of race, religion, national origin, sex, or disability against a recipient of VOCA victim assistance funds, a copy of the findings will be forwarded to the Office of Civil Rights (OCR) for OJP.

11. States shall immediately notify OVC in the event of a finding of fraud, waste, and/or abuse of VOCA funds and continue to apprise OVC of the status of on-going investigations.

B. Subrecipient Organization Eligibility Requirements

VOCA establishes minimal eligibility criteria that must be met by all organizations that receive VOCA funds. It is intended that VOCA funds support direct services that are provided by staff of the VOCA-funded organization. It was not intended that the VOCA subrecipients serve as contractors of services. However, at times, it may be necessary for VOCA subrecipients to contract for specialized services. For example, if there is an infrequent need for a victim service, it may not be cost-effective for the VOCA subrecipient to employ an individual with the skills to perform the needed service, either on a part- or full-time basis. Additionally, there may be emergency situations requiring victim services that are beyond the scope of the VOCA subrecipient organization. In these situations, VOCA subrecipients may contract for VOCA-allowable services, at the discretion of the State grantee and within the parameter of the OJP contracting rules and regulations and the M7100.1D.

Contracted services are usually purchased on an hourly basis and might include costs that are unallowable with VOCA funds at the subrecipient level, such as overhead and other administrative costs. Therefore, States are encouraged to closely scrutinize each request to use VOCA funds to purchase services and consider the following: (1) How the need for, and frequency of, the contracted services was determined; (2) the total amount of contracted services requested within the grant period; (3) how reasonable is the hourly fee; (4) what other options for service provision were investigated; (5) do the subrecipient's contracting procedures strictly adhere to OJP contract guidelines; etc. Upon request, States will make available all contract documentation for review by OVC and the Office of the Comptroller at both the State and the subrecipient level.

When contracted services are a necessity, they are expected to comprise a very small percentage of a subrecipient's VOCA award. VOCA subrecipients are prohibited from using their entire VOCA award to purchase services.

Minimal requirements have been established which identify organizations that are eligible and ineligible to receive VOCA funds. Each subrecipient organization shall:

1. Be a public or nonprofit organization that provides direct services to crime victims.

2. Have a record of providing effective direct services to crime victims for a minimum of one year, have the support and approval of its services by the community, have a history of providing direct services in a cost-effective manner, and have financial support from non-Federal sources. An organization meeting this criteria is considered an "existing" organization for match purposes.

States may choose to fund organizations which have been providing direct victim services for less than one year. However, these organizations must provide financial support from non-Federal sources and meet the match requirement for "new" victim services organizations.

3. Be able to meet program match requirements. For an "existing" victim services organization, the match is 20 percent, cash or in-kind, of the total VOCA project (VOCA grant plus match). For a "new" victim services organization the match is 35 percent, cash or in-kind, of the total VOCA project (VOCA grant plus match). Match must be committed for each VOCA-funded project, must be derived from the other resources within the organization, must be expended within the project period, and cannot be derived from other Federal funds and/or sources, except as provided in Chapter 2, paragraph 14(c)(3)(b) of the M7100.

All funds designated as match are restricted to the same uses as the VOCA victim assistance funds. Thus, only services and activities that are VOCA-allowable qualify as match. VOCA subrecipients must maintain records which clearly show the source, the amount, and the period during which the match was expended. Organizations are not encouraged to commit excessive amounts of match to the VOCA-funded project.

Exceptions: The match for VOCA subrecipients that are Native American tribes/organizations located on

reservations, whether new or existing, is 5 percent, cash or in-kind, of the total VOCA project (VOCA grant plus match). A Native American tribe/organization is described as any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans. Reservation is defined as a tract of land set aside for use of, and occupancy by, Native Americans.

Subrecipients located in the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and all other territories and possessions of the United States, whether considered new or existing, are not required to match the VOCA funds. See 48 U.S. Code, § 1469a(d).

4. Use volunteers unless the State determines a compelling reason exists to waive this requirement. A "compelling reason" may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort. States may impose additional stipulations to ensure adherence to this requirement throughout the duration of the project, e.g., establish a minimum number of volunteer hours or establish a maximum value on all volunteer time.

5. Promote, within the community served, a coordinated approach for serving crime victims, thus avoiding duplication of effort. Coordination may include serving on task forces, commissions, working groups, multidisciplinary teams on behalf of individual crime victims, information and referral agreements, and/or written interagency agreements—all of which contribute to better and more comprehensive services to crime victims.

6. Assist victims in seeking available crime victim compensation benefits. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, and/or checking on claim status.

7. Comply with the applicable provisions of VOCA, the Program Guidelines, and the requirements of the OJP's M7100.1D, which includes maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes financial documentation for disbursements; daily time and attendance records specifying time devoted to VOCA-allowable victim services; client files; the portion of the project supplied by other sources; and other records which will facilitate an effective audit.

8. Maintain statutorily required civil rights statistics on victims served by race or national origin, sex, age, and disability, within the timetable established by the State grantee; and permit reasonable access to its books, documents, papers, and records to determine whether the recipient is complying with applicable civil rights laws.

9. Submit statistical and programmatic information on the impact of VOCA funds to the State grantee, that is requested, and within the timetable established, by the State grantee.

10. Maintain client-counselor confidentiality. VOCA subrecipients cannot use or reveal any client information without the consent of the client. This confidentiality provision does not override or repeal a State's existing law governing the disclosure of information under mandatory reporting statutes, i.e., suspected child abuse, or during criminal justice proceedings.

11. Provide services to victims of Federal crimes on the same basis as victims of State crimes.

12. Provide a variety of services and assistance to crime victims over and above assistance with compensation and information and referral services.

13. Provide services, at no charge, through VOCA-funded staff. Organizations are prohibited from charging a crime victim, or a third-party payor, for any services supported with VOCA funds.

14. Abide by any additional eligibility or service criteria as established by the State grantee.

C. Eligible Subrecipient Organizations

Nonprofit and public organizations that provide direct services to crime victims are eligible to receive VOCA funds. These include rape crisis centers, domestic violence shelters, child abuse treatment facilities, prosecutor offices, courts, probation and parole authorities, hospitals, public housing authorities, and religious-affiliated organizations.

There are often limitations on the use of VOCA victim assistance grant funds in these organizations. For example, VOCA-funded projects within public organizations must be an extension of the victim services mandated by law to ensure that there is no violation of the supplantation clause. In situations where a service is mandated by law but has not been allocated the necessary resources to provide the service, State grantees are cautioned to closely review using VOCA funds to support legislative mandates. At times, States may choose to use VOCA funds to support an unfunded legislative mandate for a limited time, if the State believes that such support is essential to meeting the needs of crime victims.

The following examples show how VOCA funds may be used in the public and nonprofit sector:

1. Criminal justice agencies such as law enforcement organizations, prosecutor offices, courts, probation and parole authorities are eligible to receive VOCA-funding. However, these offices/organizations may only use VOCA victim assistance funds for victim services that exceed the boundaries of their legislative mandate. For example, a police department cannot use VOCA victim assistance funds to hire law enforcement personnel or for activities that a sworn law enforcement officer would be expected to provide in the normal course of his/her duties, such as crime scene intervention, questioning of victims and witnesses, investigation of the crime, and follow-on activities.

2. State agencies are eligible recipients of VOCA victim assistance grant funds, if the State agency provides direct services to victims of crime, meets all criteria set forth by VOCA, meets any additional criteria established by the State for other VOCA subrecipients, and does not use VOCA funds to supplant State funds designated for victim services.

3. Religious-affiliated organizations are eligible to receive VOCA victim assistance grant funds under the following conditions: (1) If the purpose of the grant is secular, not religious; (2) if the purpose is not to advance religious views; (3) if services are offered to all crime victims without regard to religious views and the receipt of services is not contingent upon participation in a religious activity or event; and (4) if the funds do not create an "excessive entanglement" of church and State.

4. Social services organizations that are responsible for child protective services and adult protective services, as well as other public mental health organizations, are eligible to receive VOCA victim assistance funds. Because rules and laws governing each jurisdiction differ, OVC encourages each State to closely review requests for VOCA funding by social services and public mental health organizations to ensure supplantation does not occur.

5. Nonprofit organizations whose primary mission or purpose is not providing services to crime victims but who have a component of the organization that provides services to crime victims are eligible for VOCA-funding. Such organizations may include mental health centers, hospitals, legal services agencies, coalitions, etc.

6. State crime victim compensation agencies are eligible to receive a VOCA victim assistance grant if the services offered focus on actual direct services as intended by VOCA and the Program Guidelines. Such services include providing group treatment, providing therapy and counseling, accompanying a victim to court, providing shelter, etc. These services extend far beyond information, referral, counseling regarding compensation benefits, and assistance with filing for compensation benefits. Generally speaking, State compensation programs do not provide the type of services envisioned by VOCA and the Program Guidelines. Therefore, State grantees are encouraged to discuss with OVC any proposed award of VOCA funds to a compensation program prior to making a final funding decision to ensure that the proposed award complies with the terms of VOCA and the Program Guidelines.

7. Hospitals and emergency medical facilities are eligible to receive VOCA victim assistance funds to offer counseling, support groups, and other types of victim services. Additionally, States may award VOCA fund to a medical facility for the purpose of performing forensic examinations on sexual assault victims if (1) the examination meets the standards established by the State, local prosecutor's office, or State-wide sexual assault coalition, and (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

D. Ineligible Recipients of VOCA Funds

Some public and nonprofit organizations that offer services to crime victims are not eligible to receive VOCA funding. These organizations include the following:

1. U.S. Attorneys Offices, military installations, and other Federal agencies are not eligible to receive VOCA funds. Receipt of VOCA funds represents an augmentation of the Federal budget with money intended for State agencies.

2. In-patient treatment facilities that are designed to provide treatment to individuals with drug, alcohol, and/or mental health related conditions are not eligible to receive VOCA victim assistance grant funds. In-patient facilities are not open and accessible to the general public and, therefore, do not meet the criteria for a victim services organization as intended by Congress.

E. Services, Activities, and Costs

Throughout the legislative history of VOCA, Congress has provided significant guidance on the need to use VOCA victim assistance funds to offer services to victims of crime as soon as possible after the crime occurs, to reduce the severity of the psychological consequences of the victimization. Through early and appropriate crisis intervention, often the need for services later is reduced and a victim's trauma is lessened. Services that assist and encourage crime victims to participate in the criminal justice system are equally important, in that they help to restore the victim's faith in the criminal justice system.

The types of direct services intended by VOCA include those services which respond to the immediate needs of crime victims; assist the victim in participating in the criminal justice process; help restore the victim's sense of dignity, self esteem, and coping mechanisms. Likewise, costs that are necessary and essential to providing these direct services and costs that improve the efficiency and effectiveness of service provision may be supported with VOCA victim assistance grant funds.

1. Allowable Direct Services, Activities, and Costs. The VOCA-funded project (VOCA funds plus match) within the subrecipient organization must be used for direct services to crime victims. The following is a non-exhaustive listing of services, activities, and costs that are considered to be eligible for support with VOCA victim assistance grant funds:

a. Those services which immediately respond to the emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; accompaniment to hospitals for medical examinations; hotline counseling; emergency food, clothing, transportation, and shelter; emergency legal assistance such as filing restraining orders; and other emergency services that are intended to restore the victims' sense of dignity, self esteem, and coping mechanisms. This authority cannot serve as a mechanism to provide compensation to crime victims.

Note: The use of VOCA victim assistance grant funds to support emergency financial assistance should be appropriately identified in the subrecipient's budget and monitored closely by the State grantee. Additionally, provisions should be made for unexpended emergency funds set aside by subrecipients.

b. Those services and activities that assist the primary and secondary victims of crime in understanding the dynamics of victimization and in stabilizing their lives after the victimization such as counseling, group treatment, and therapy.

c. Services that are directed to the needs of the victim within the criminal justice system but not, primarily, to the needs of the criminal justice system. These services may include criminal justice advocacy, accompaniment to law enforcement offices, transportation to court, child care while in court, trial notification and case disposition information, restitution advocacy, assistance with victim impact statements, and parole notification.

d. Services which offer an immediate measure of safety to crime victims such as temporary security measures which prevent the reburglarization of a home such as boarding-up windows, and replacement or repair of security locks.

e. Forensic examinations for sexual assault victims *only* to the extent that other funding sources (such as State compensation or private insurance or public benefits) are unavailable or insufficient. Use of VOCA victim assistance funds for this purpose cannot be contrary to the nonsupplantation clause in VOCA.

State grantees should establish controls for using VOCA victim assistance funds to pay for forensic examinations in sexual assault cases. The controls should require VOCA subrecipients to investigate to what extent other resources are available to pay for the examinations; what other direct services will be offered in conjunction with the examination; will the examination meet the evidentiary standards established by the State, local prosecutor's office or State-wide coalition. VOCA funds cannot be used to pay for those forensic examinations that do not conform to these standards.

f. Costs that are necessary and essential to providing direct services such as pro-rated costs of rent, telephone service, transportation costs for victims, and local travel expenses for direct service providers.

g. Services which assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim vis-a-vis other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; and helping to apply for public financial assistance; assisting the victim to resume their life; managing the overall service and informational needs on behalf of the crime victim until such time that the

victim can assume these responsibilities; etc.

h. Costs that are directly related to maintaining staff, both paid and volunteer, such as salaries, fringe benefits, malpractice insurance for professional direct service providers who are subject to civil actions, and advertising costs associated with hiring VOCA-funded personnel.

i. Meetings and panels where crime victims are able to confront perpetrators, if they offer therapeutic value to crime victims. Often such meetings and panels provide the victim with an opportunity to tell and retell one's story, put feelings and experiences into words, and enable victims to move forward with their lives.

States that plan to fund this type of service should closely review the criteria for, and the standards governing, the type of service to be provided. At a minimum, the following should be considered: (1) The benefit or therapeutic value to the victim, (2) the type of crimes and subsequent victims that will benefit from the service, (3) the number of victims wishing to participate, (4) the provision of appropriate support and accompaniment for the victim, (5) appropriate "debriefing" opportunities for the victim after the meeting or panel, (6) the credentials of the facilitators, (7) the other needs of individual crime victims, and (8) the opportunity for a crime victim to withdraw from the process at any time without negative feelings or penalty. States are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity.

Note: Victim-Offender mediation services in which the mediation serves to replace criminal justice proceedings cannot be supported with VOCA victim assistance funds.

2. Other Related Allowable Services, Activities, and Costs. Expenses under this section are not direct crime victim services; however, they may at times be closely tied to providing quality direct services. Therefore, when other sources of support are not available for following activities, States may approve subrecipient budgets to use limited amounts of VOCA funds to support these expenses. States may not subaward VOCA funds solely for the purpose of funding one or more of the following expenses, unless other direct crime victim services are provided within the VOCA-funded organization and can be documented by the State:

a. Training for staff development. VOCA funds designated for training are to be used exclusively for developing the skills of direct service providers (paid and volunteer) so that they are better able to offer quality services to crime victims. VOCA funds cannot support training for executive directors, board members, and other individuals that do not provide direct services. However, VOCA funds can be used for training direct service providers within the organization, who are not supported with VOCA funds. However, priority should be given to the individuals supported with VOCA funds.

VOCA funds can purchase materials such as books, training manuals, and videos for direct service providers, within the VOCA-funded organization, and can support the costs of a trainer for in-service staff development. Although VOCA cannot be used to train individuals in other organizations, individuals from other organizations can attend training activities that are held for the subrecipient's staff, if no additional costs will be incurred by the VOCA-funded project.

VOCA funds can support costs associated with attendance at training activities held on a statewide basis or within a similar geographic area, such as travel, meals, lodging, and registration fees.

Note: VOCA Subrecipients in Hawaii, Alaska, and the U.S. territories have greater latitude in selecting appropriate sites for training, because of their isolation from the Continental United States.

b. Equipment and furniture that the State determines is necessary and essential to providing or enhancing direct services to crime victims, as demonstrated by the VOCA subrecipient. NOTE: VOCA funds cannot support the entire cost of equipment that is not used exclusively for victim-related activities but can support a prorated share. Additionally, subrecipients cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service.

Examples of allowable costs may include beepers; word processors; video-tape cameras and players for interviewing children; two-way mirrors; and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas.

At times, computers may increase a subrecipient's ability to reach and serve crime victims. In such cases, VOCA subrecipients must describe to the State how the computer equipment will enhance services to crime victims; how it will be integrated into and/or enhance the subrecipient's current system; the cost of installation; the cost of training in use of the computer equipment; the on-going operational costs, such as maintenance agreements, supplies; how these additional costs will be subsidized; etc. VOCA funds cannot be used to support computer networks and linkages.

States should maintain a listing of all equipment purchased with VOCA victim assistance funds, establish guidance on the acquisition of equipment, and develop a policy on the disbursement of the equipment at the end of the grant. (See M7100.1D).

c. Professional fees are allowable only under certain circumstances. The payment of attorney fees is justified only in emergency situations and/or jurisdictions where the services of an attorney are mandated for specific victim activities, such as filing restraining orders. The payment of physician fees are permitted only for conducting forensic examinations on sexual assault victims only to the extent that other funding sources (such as State compensation or private insurance or public assistance) are unavailable or insufficient. VOCA funds cannot be used for any other physician fee or for dental fees. Additionally, VOCA funds cannot be used to pay for victims to have legal representation involving divorces, child custody disputes, visitation rights disputes, etc.

d. Operating costs incurred by the subrecipient in serving crime victims are allowable, such as pro-rated share of audit costs; office supplies; equipment use fees, when supported by usage logs; printing and postage; brochures which describe available services; books and other victim-related materials; administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to maintain crime victims' records; minor repairs and enhancements to work spece and waiting areas; photocopying costs; and pro-rated building operating costs.

e. Supervision of direct service providers (paid and volunteer) only to the extent that the State grantee believes that such supervision is necessary and essential to providing direct services to crime victims. VOCA was never intended to defray the costs of administrative salaries within an organization. The primary purpose of VOCA is to offer a supplement to those victim services organizations that are able and willing to absorb the costs of supervising additional VOCA-funded direct service provider(s).

f. Repair and/or replacement of an essential item of a victim service that contributes to maintaining a healthy and/or safe environment, such as a furnace in a shelter. State grantees are cautioned to scrutinize each request for expending VOCA funds for such purposes to ensure the following: (1) All other sources of funding have been exhausted, (2) there is no available option for providing the service in another location, (3) that the cost of the repair or replacement is reasonable considering the value of the building, (4) the cost of the repair or replacement is pro-rated among all sources of income, and (5) that the building is owned by the subrecipient organization and not rented/leased from another responsible party. States are encouraged to discuss individual requests for substantial repairs of essential service components with OVC.

3. Unallowable Services, Activities, and Costs. The following services, activities, and costs, although not exhaustive, cannot be supported with VOCA victim assistance grant funds:

a. Crime prevention activities and other activities intended to educate the community and raise the public's consciousness of crime victim issues and how to prevent crime.

b. Lobbying and administrative advocacy for victim legislation or administrative reform, whether conducted directly or indirectly.

c. Perpetrator rehabilitation and counseling. Subrecipients shall not knowingly use VOCA funds to provide perpetrator rehabilitation and/or counseling nor can VOCA funds be used to offer services to incarcerated individuals, even when the service pertains to the victimization of that individual.

d. Needs assessments, surveys, evaluations, studies, and research efforts conducted by individuals, organizations, task forces, special commissions, etc. which study and/or research a particular crime victim issue. However, it is expected that subrecipients routinely review services offered to ensure that the crime victims are appropriately served.

e. Activities that improve the criminal justice system's effectiveness and efficiency, witness notification and management activities, activities related to prosecuting an offender, such as supporting expert testimony at a trial.

f. Fundraising activities.

g. Indirect organizational costs such as liability insurance on buildings and vehicles; capital improvements and/or repairs made to leased buildings; security guards and body guards; property losses and expenses; real estate purchases; mortgage payments; construction costs; etc.

h. Use of assistance funds for reimbursing crime victims for expenses incurred as a result of a crime or to supplement crime victim compensation awards to victims of crime for such costs as funeral expenses, lost wages, medical bills, etc.

i. Services and/or activities that are, by law, to be provided by a State or local public agency or organization.

j. Vehicles, purchased or leased.

k. Nursing home care, home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical treatment. (This does not include sexual assault examinations.) VOCA victim assistance grant funds cannot support medical costs regardless of whether they are a result of a victimization or not.

l. Relocation expenses such as travel expenses, security deposits on housing, ongoing rent, mortgage payments; and victim/witness expenses such as travel to testify in court, subsequent lodging and meal expenses, victim protection costs, etc., which are considered part of the criminal justice agency's budget.

m. Professional dues and memberships in an individual's name. However, VOCA funds may purchase an organizational membership that will offer timely, relevant information on victim services and issues.

n. Administrative costs and expenses incurred by the State in administering the VOCA program. Section 1404(a)(1) of VOCA, codified at 42 U.S.C. 10603(a)(1), requires VOCA grant funds to be used "for financial support of eligible crime victim assistance programs." Thus, amounts expended for administration of the program (including performance of State audits) are not allowable costs.

o. Salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals whose functions are removed from direct contact with crime victims.

p. Development of protocols, interagency agreements, coordination teams, etc. The development of these types of working agreements and relationships are considered an essential prerequisite for an organization to receive VOCA funding. As such, VOCA funds should not be used to support these activities. However, VOCA-funded staff can represent the needs of individual crime victims in multi-disciplinary team activities, which facilitate coordinated, comprehensive services to a crime victim.

q. The costs of sending individual crime victims to conferences. The intent of Congress was to maximize the impact of the limited VOCA funds by expanding the number of direct service providers available to offer services to as many crime victims as possible, not to support conference attendance by individual crime victims.

r. Attendance at national-level conferences and symposia, even when held in a subrecipient's community. State grantees will be notified by OVC of approved national/regional scope trainings that can be supported with VOCA funds.

s. Development of training manuals and/or extensive training materials. Training materials are currently available from many sources. Further, use of VOCA funds for developing materials is not consistent with the intent of VOCA—to provide direct services to crime victims.

F. Program Reporting Requirements

States will be required to adhere to all reporting requirements and times for submitting the required reports, as indicated below. Failure to do so may result in a hold being placed on the drawdown of the current year's funds or may result in a hold being placed on processing the next year's grant award and can result in the suspension of a grant.

1. Subgrant Award Reports. States are required to submit to OVC, within 30 days of making the subaward, Subgrant Award Report information for each subrecipient of VOCA victim assistance grant funds. Subgrant Award Report information is to be submitted to OVC via the automated subgrant dial-in system, whenever possible. When not possible, State grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient and within the prescribed timeframe.

If the Subgrant Award Report information has changed by the end of the grant period, States must inform OVC of the changes, either by revising the information via the automated subgrant subdial system, by completing and submitting to OVC a revised Subgrant Award Report form, or by making notations on the State-wide database report and submitting it to OVC. The total of all Subgrant Award Reports submitted by the State must agree with the Final Financial Status Report (269A) that is submitted at the end of the grant period.

A subgrant report is required for each organization that receives VOCA funds and uses the funds for employee salaries, fringe, supplies, rent, etc. This requirement applies regardless of whether the subaward is called a grant, contract, or subgrant and regardless of the type of organization (public or nonprofit) that receives the funds.

Subgrant Award Reports are not to be completed for organizations that serve only as conduits for distributing VOCA funds or for organizations that provide services that are purchased at an hourly rate (which includes salary, fringe, and other costs). All activities purchased on an hourly rate with VOCA funds are to be reflected on the Subgrant Award Report along with the activities offered within the VOCA subrecipient organization. Further, the subrecipient organization must meet all eligibility requirements established by VOCA and by the State. (See *Program Requirements*, B. Subrecipient Organization Eligibility Requirements.)

Organizations may not use their entire VOCA award to purchase services on a contractual, hourly or daily basis.

2. Performance Report. Each State is required to submit specific end-of-grant data on the OVC-provided Performance Report, form No. OJP 7390/4, no later than 90 days after each VOCA victim assistance grant ends.

G. Additional Requirements

1. Civil Rights—Prohibition of Discrimination for Recipients of Federal Funds. No person in any State shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving Federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR part 42, subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq. and Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39; title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.

2. Confidentiality of Research Information. No recipients of monies under VOCA shall use or reveal any research or statistical information gathered under this program by any person, and identifiable to any specific private person, for any purpose other than the purpose for which such information was obtained, in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. See section 1407(d) of VOCA, codified at 42 U.S.C. 10603(d).

This provision is intended, among other things, to assure the confidentiality of information provided by crime victims tc employees of VOCA-funded victim services organizations. However, there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of a suspected child abuse. [See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981)].

Financial Requirements

State grantees and subrecipients of VOCA victim assistance funds shall adhere to the financial and administrative provisions set forth in the OJP, "Financial and Administrative Guide for Grants", M7100.1D (effective edition). The following describes the audit requirements for State grantees and subrecipients, the completion and submission of Financial Status Reports, and actions that result in termination of advanced funding.

A. Audit Responsibilities for Grantees

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), grantees that receive $100,000 or more in Federal financial assistance in any fiscal year must have a single audit for that year. State governments receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. State and local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

B. Audit Responsibilities for Subrecipients

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), local governments that receive $100,000 or more in Federal financial assistance in any fiscal year shall have a single audit for that year. Local governments receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. Local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

Institutions of higher education and other nonprofit organizations that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133. Organizations and institutions that receive at least $25,000, but less than $100,000, in a fiscal year shall have an audit made in accordance with OMB Circular A–133 or an audit of the Federal program. Institutions and organizations receiving less than $25,000 in any fiscal year are exempt from audit requirements.

C. Financial Status Report for State Grantees

Financial Status Reports (269A) are required from all State grantees. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred. Financial Status Reports shall be submitted to the Office of the Comptroller, by the State, within 45 days after the end of each subsequent calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 90 days after the end of the VOCA grant, no later than December 31.

D. Termination of Advance Funding

If the State grantee receiving cash advances by Letter of Credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, OJP may terminate advance funding and require the State to finance its operations with its own working capital. Payments to the State will then be made by the direct Treasury check method, which reimburses the State for actual cash disbursements.

Monitoring

A. Office of the Comptroller

The Office of the Comptroller conducts periodic reviews of the financial policies and procedures and records of VOCA grantees and subrecipients. Therefore, upon request, States and subrecipients must give authorized representatives the right to access and examine all records, books, papers, case files, or documents related to the grant and all subawards.

B. Office for Victims of Crime

Beginning with the FFY 1991 grant period, OVC implemented an on-site monitoring plan in which each State grantee is visited a minimum of once every three years. While on site, OVC personnel will expect to review various documents and files such as (1) financial and program manuals and procedures governing the VOCA grant program; (2) financial records, reports, and audit reports for the State grantee and all VOCA subrecipients; (3) the State's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other State and subrecipient records and files. Additionally, OVC will visit selected subrecipients and will review similar documents such as (1) financial records, reports, and audit reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

Suspension and Termination of Funding

If, after notice and opportunity for a hearing, OVC finds that a State has failed to comply substantially with VOCA, the M7100.1D, the Final Program Guidelines, or any implementing regulation, OVC may suspend or terminate funding to the State and/or take other appropriate action. At such time, State grantees may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the State, may not request a hearing at the Federal level. However, VOCA subrecipients who believe that the State has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.

Carolyn A. Hightower,

Interim Director, Office for Victims of Crime, Office of Justice Programs.

[FR Doc. 93–20656 Filed 8–25–93; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Grant Awards to Successful Applicants of the Meritorious and Innovative Grants Program (MIGP)

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to 8 legal services programs selected as grantees through the Meritorious and Innovative Grants Program. A total of $198,125 will be awarded to the following programs.

Program	State	Amount
1. Central Florida Legal Services.	FL	$40,000
2. Jacksonville Area Legal Aid, Inc.	FL	20,000
3. Legal Counsel for the Elderly.	DC	25,000
4. Legal Services of Southern Piedmont.	NC	34,000
5. Legal Services for NYC/Support Unit.	NY	22,000
6. Michigan Indian Legal Services.	MI	14,625
7. Nat'l Center on Women and Family Law.	NY	30,000
8. Western Wisconsin Legal Services.	WI	12,500
Total		198,125

These one-time, non-recurring grants are awarded under the authority of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to Section 1007(f) of the Act, with a request for comments within a period of 30 days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed only upon the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received on or before 5 p.m. on September 25, 1993.

ADDRESS: Comments should be sent to: Office of Field Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses III, Deputy Director, Office of Field Services, at (202) 336–8822.

Dated: August 23, 1993.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 93–20739 Filed 8–25–93; 8:45 am]

BILLING CODE 7050–01–M

Grant Awards for Expansion or Development of Timekeeping Systems at Legal Services Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award grants to eighteen (18) legal services field programs to fund the expansion or development of timekeeping systems. The Corporation plans to award grants as follows:

Name of legal services field program	Amount
1. Legal Aid Foundation of Las Angeles (CA)	$15,000
2. Legal Aid of Marin (CA)	14,459
3. Pueblo County Legal Services, Inc. (CO)	20,000
4. Idaho Legal Aid Services, Inc. (ID)	20,000
5. Kansas Legal Services, Inc. (KS)	15,000
6. Pine Tree Legal Assistance, Inc. (ME)	15,000
7. Michigan Indian Legal Services, Inc. (MI)	13,837
8. Michigan Legal Services (MI)	15,000
9. Mid-Missouri Legal Services Corporation (MO)	5,500
10. S. Mississippi Legal Services Corporation (MS)	20,000
11. Legal Services of S.E. Nebraska (NE)	6,632
12. Neighborhood Legal Services, Inc. (NY)	50,000
13. Public Utility Law Project (NY)	15,000
14. Legal Aid Society of Cincinnati (OH)	15,000
15. Northeast Ohio Legal Services (OH)	15,000
16. Stark County Legal Aid Society (OH)	13,000
17. Utah Legal Services, Inc. (UT)	15,000
18. Virginia Legal Aid Society, Inc. (VA)	15,000

These one-time grants will be awarded pursuant to authority conferred by Section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996 (a)(1)(B)). In an effort to provide ample time for public comment, thirty (30) days are allotted to give interested parties an opportunity to discuss any issues pertaining to these grants, and to help assure that all considerations regarding these grants are addressed. Grants will become effective at the conclusion of the 30 day comment period.

DATES: All comments and recommendations must be received on or before the close of business on September 27, 1993.

ADDRESS: All comments should be addressed to the Office of Field Services, Legal Services Corporation, 750 First Street, NE, 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Leslie Q. Russell, Manager, Program Support & Technical Assistance Division, Office of Field Services, (202) 336–8908.

Date Issued: August 23, 1993.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 93–20740 Filed 8–25–93; 8:45 am]

BILLING CODE 7050–01–P

Designate Recipient for the Provision of State Support Services for the Provision of Legal Services in the State of Pennsylvania

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to make a grant to Pennsylvania Legal Services (PLS) to provide state support services to the Legal Services Corporation's recipient programs in the State of Pennsylvania. This grant will be made effective October 1, 1993.

The grant will be awarded pursuant to authority conferred by section 1006(a)(1)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of 30 days from the date of publication of this notice.

DATES: All comments and recommendations must be received on or before 5 p.m. on September 27, 1993.

ADDRESSES: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: John Meyer, Counsel to the Director, Office of Field Services, (202) 336–8909.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal service to the poor. Law Coordination Center (LCC) has been providing state support services in Pennsylvania since 1985. LCC has agreed to merge with Pennsylvania Legal Services Corporation (PLSC) to form PLS. PLSC provides support services to LSC-funded programs with funds from the State of Pennsylvania and serves as the conduit for State of Pennsylvania grant funding to these LSC-funded programs in Pennsylvania. PLS will receive both LSC and State of Pennsylvania funding to provide support services to LSC programs in the State of Pennsylvania and PLS will continue to be the conduit for State of Pennsylvania grant funding.

The remainder of the 1993 grant to LCC will be transferred to PLS. Thus PLS will receive any unexpended balance of LSC funds held by LCC and will receive a total of $32,466.17 in additional grant funding for the remainder of 1993. In 1994, PLS will receive the full annualized allocation for Pennsylvania state support funding.

Dated: August 23, 1993.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 93–20738 Filed 8–25–93; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–059)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 27, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0057), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: Application for Volunteer Program.

OMB Number: 2700–0057.

Type of Request: Extension.

Frequency of Report: One time only initial requirement; thereafter occasional replacements.

Type of Respondent: Individuals or households.

Number of Respondents: 80.

Responses per Respondent: 1.

Annual Responses: 80.

Hours per Response: 1.

Annual Burden Hours: 80.

Abstract-Need/Uses: Goddard Space Flight Center has established a volunteer program for conducting tours and performing administrative tasks at the Visitor Center. Respondents will furnish information to enable selection. An anticipated 50 to 100 applications from retirees, students, housewives and senior citizens are expected.

Dated: August 16, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–20742 Filed 8–25–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* September 8, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education in the Humanities submitted to the Division of Education Programs, for projects beginning after September 1, 1994.
2. *Date:* September 14, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education in the Humanities submitted to the Division of Education Programs, for projects beginning after September 1, 1994.
3. *Date:* September 16, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education in the Humanities submitted to the Division of Education Programs, for projects beginning after September 1, 1994.

David C. Fisher,

Advisory Committee, Management Officer.

[FR Doc. 93–20659 Filed 8–25–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Change in Proposal Submission Dates for DHRD Minority Focused Programs

The Division of Human Resource Development (DHRD) has primary responsibility for broadening participation of individuals from underrepresented minority groups in science, engineering, and mathematics (SEM). The activities reflect NSF's growing commitment for developing the resources of the scientific and technological community as a whole and insuring an adequately trained research and development work force in the next decade.

To meet the challenges presented by the Nation's accelerating needs in science and technology, DHRD is initiating a consolidated thrust to increase the presence of minorities, women, and persons with disabilities in science and engineering.

Below are proposal submission dates for DHRD minority-focused programs.

1. The Research Careers for Minority Scholars (RCMS) Program will resume accepting new and renewal proposals in Fiscal Year 1994. The proposal submission deadline is November 30, 1993. Contact RCMS: (202) 357–5054.

2. The Alliances for Minority participation (AMP) Program proposal submission deadline is November 30, 1993. Contact AMP: (202) 357–5054.

3. The Comprehensive Regional Centers for Minorities (CRCM) Program will not accept new or renewal proposals in Fiscal Year 1994. The program will accept new and renewal proposals in Fiscal Year 1995. The proposal submission deadline is November 30, 1994. Beginning in Fiscal Year 1995, no new or renewal CRCM proposal will be accepted from institutions located in the twenty-five cities that are eligible for the NSF Urban Systemic Initiative (USI) Program. Contact CRCM: (202) 357–7461.

4. The Partnerships for Minority Student Achievement (PMSA) Program submission deadline for Preliminary Proposals is November 15, 1993. The deadline for submission of Implementation Proposals is February 15, 1993. Contact PMSA: (202) 357–7461.

5. The Summer Science Camps (SSC) Program proposal submission deadline is November 30, 1993. Contact SSC: (202) 357–7461.

6. The Research Improvement in Minority Institutions (RIMI) Program proposal submission deadline is December 1, 1993. Contact RIMI: (202) 357–7350.

7. No new proposals will be accepted in the Minority Research Centers of Excellence (MRCE) Program in Fiscal Year 1994. Contact MRCE: 9202) 357–7350.

For further information and the Program Announcement and Guidelines (NSF 92–111), contact the appropriate program within the Division of Human Resources Development.

Dated: August 20, 1993.

Roosevelt Calbert,

Division Director.

[FR Doc. 93–20751 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 3 meetings.

Name: Special Emphasis Panel in Biological and Critical Systems.

Dates & Locations: September 10, September 15, and September 16, 1993. Meetings will be held in room 1133 from 8:30–5 p.m. each day.

Contact Person: Dr. Edward H. Bryan, Program Director, room 1133, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7737.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20752 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in the Division of Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time; September 14, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1132A, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Norman Caplan, Section Head, Bioengineering & Environmental Systems Section, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7737.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovative Research (SBIR) proposals for the Biomedical Engineering and Research to Aid Persons with Disabilities Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20753 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel for Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Design & Manufacturing Systems.

Date and Time: September 15 & 16, 1993—8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 1800 "G" Street, NW., rm. 540, Washington, DC 20005.

Type of Meeting: Closed.

Contact Person: Dr. Thom Hodgson, Division Director, and Dr. F. Stan Settles, Program Director, Design & Manufacturing Systems, rm. 1128, National Science Foundation, 1800 "G" St., NW, Washington, DC 20550. Telephone: (202) 357–7508.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Agile Manufacturing proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20754 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel.

Date and Time: September 15, 16, & 17, 1993; 8 a.m. to 6 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC, (202) 357–9591.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20755 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 8, 1993; 8:30 a.m.–5 p.m.

Place: Conference Room # 523, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7356.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Graduate Research Traineeship (GRT) Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20756 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 6 meetings.

Name: Special Emphasis Panel in Mechanical Systems.

Date & Time: September 15 (2 meetings), September 21, September 22, September 23, September 24, 1993.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC.

Contact Person: Program Managers, Division of Mechanical Systems, National Science Foundation, room 1128, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9542.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research Program proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20757 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Office of Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 16–17, 1993 at 8:30 a.m.

Place: September 16 in room 500A located at 1110 Vermont Ave. NW., Washington, DC and September 17 in room 536 located at the National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Julie Palais, Program Manager for Polar Glaciology, Office of Polar Programs, room 620, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7894.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Glaciology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–20758 Filed 8–25–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8084]

Rio Algom Mining Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA–1119 for the Lisbon Uranium Mill, Utah, to approve a tailings reclamation plan as supported by a Finding of No Significant Impact.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA–1119 to incorporate a tailings disposal area reclamation plan for Rio Algom Mining Corporation's Lisbon Uranium Mill located near La Sal, Utah. The accepted plan reclaims the disposal area in conformance with regulations in 10 CFR part 40, appendix A. The proposed action is supported by a Finding of No Significant Impact as concluded in an Environmental Assessment prepared by the Commission in April 1993.

DATES: The comment period expires September 27, 1993.

ADDRESSES: Copies of the environmental assessment, the license amendment request, and the staff evaluations which are the bases for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Lakewood, Colorado, and the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules Review and Directives Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80255.

Comments may be hand-delivered to room P–223, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans for nonoperational tailings impoundments as soon as practicable, but in any event not later than September of 1993.

The Lisbon Uranium Mill tailings disposal area consists of two impoundments formed by two dams. The impoundments contain approximately 4 million tons of tailings. Under the proposed plan, the surfaces of the two tailings impoundments will be reconfigured to drain toward several channels which will collect and discharge runoff from both onsite and offsite drainages. The reconfigured tailings surfaces will be covered with a layer of soil to reduce radon emanation as required by 10 CFR part 40, appendix A. The radon attenuation barrier will then be covered with rock riprap to minimize the potential for erosion. The side slopes of the dams that form the impoundments will be flattened and covered with rock riprap.

On December 14, 1992, Rio Algom Mining Corporation submitted an Environmental Report Supplement in support of the proposed reclamation plan for the disposal area. This document was submitted as a supplement to an Environmental Report submitted by Rio Algom in 1976, NRC's "Final Environmental Statement related to operation of The Humeca Uranium Mill" (NUREG–0046, April 1976), and NRC's "Final Generic Environmental Impact Statement on Uranium Milling" (NUREG–0706, September 1980). The supplement specifically addresses the expected impacts associated with mill tailings reclamation and evaluates alternatives for mitigating the impacts.

An Environmental Assessment has been prepared by the Commission to evaluate the proposed licensing action. It was concluded in the assessment that reclamation of the tailings in accordance with the proposed plan will not have a significant impact on the environment. Short-term impacts to the environment will be minimal, while long-term impacts will be reduced to levels determined to be acceptable by promulgation of appendix A to 10 CFR part 40. The bases for the finding of no significant impact (FONSI) are provided in the Environmental Assessment dated April 1993.

Dated at Denver, Colorado, this 19th day of August 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–20715 Filed 8–25–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Review Group

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of the Regulatory Review Group's final report to the Executive Director for Operations.

SUMMARY: On May 18, 1993, the NRC announced the availability of the Regulatory Review Group report for public comment on may 28, 1993 (FR 58 29012). The Review Group completed its effort and on August 20, 1993, the final report of the Regulatory Review Group was placed in the NRC Public Document Room. The Commission will be considering the recommendations over the next several months. Copies of the referenced material are available for inspection and/or copying for a fee in the NRC Public Document Room, 2102 L Street, NW. (Lower Level), Washington, DC. Additionally, copies may be ordered by telephone, with a reproduction fee, by calling the NRC Public Document Room at (202) 634–3273.

Dated at Rockville, Maryland, this 19th day of August, 1993.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Regulatory Review Group.

[FR Doc. 93–20716 Filed 8–25–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458–OLA; ASLBP No. 93–680–04–OLA]

Gulf States Utilities Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.150, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Gulf States Utilities Company, River Bend Station, Unit 1, Facility Operating License No. NPF-47 (Change in Ownership of GSU)

This Board is being established pursuant to a notice published by the Commission on July 7, 1993, in the Federal Register (58 FR 36423, 36435) entitled "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing". The proposed amendment would revise the license to reflect a change in ownership of Gulf States Utilities (GSU). Upon approval by the NRC and other regulatory agencies, GSU, which owns a 70 percent undivided interest in River Bend Station, will become a wholly owned subsidiary company of Entergy Corporation. The license would be changed by adding a footnote that describes this change in ownership of GSU.

The Board is comprised of the following administrative judges:

Judge B. Paul Cotter, Jr., Board Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge Richard F. Cole, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge Peter S. Lam, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 19th day of August 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 93-20714 Filed 8-25-93; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals

(1) *Collection title*: Application for Survivor Death Benefits.

(2) *Form(s) submitted*: AA-21, AA-11a, G-131 and G-273a.

(3) *OMB Number*: 3220-0031.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequencey of response*: On occasion.

(7) *Respondents*: Individuals or households.

(8) *Estimated annual number of respondents*: 14,570.

(9) *Total annual responses*: 24,170.

(10) *Average time per response*: .37087 hours.

(11) *Total annual reporting hours*: 8,964.

(12) *Collection description*: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the RRA. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93-20643 Filed 8-25-93; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32786; File No. SR-NYSE-93-32]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of a Hybrid Debt Security Exchangeable for Common Stock

August 23, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 20, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading Debt Exchangeable for Common Stock ("DECS")[3] issued by American Express Company ("American Express"). The DECS are hybrid debt securities issued by American Express that pay a fixed rate of interest. At maturity, holders will receive an amount (in either cash or the common stock of First Data Corporation ("FDC"), at the option of American Express) that depends upon the then-current share price of FDC, based upon a stated formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to the listing criteria set forth in Section 703.19 of the Exchange's Listed Company Manual, the Exchange proposes to list and trade American Express DECS. The DECS will provide investors with a fixed rate of interest while also allowing holders to participate in a portion of the possible appreciation in the value of FDC common stock.[4] Investors in DECS will

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] "DECS" and "Debt Exchangeable for Common Stock" are service marks of Salomon Brothers Inc.

[4] The percentage of possible appreciation of FDC common stock will be determined based on a premium that is set immediately prior to issuance of the DECS. For example, if the premium is set at 20%, holders of DECS will be able to participate in 83.33% of the possible appreciation of FDC common stock, *i.e.*, the reciprocal of the sum of 1 plus the premium.

bear the risk of any decline in the price of FDC common stock.

The Security

The DECS will be offered and sold at a price equal to the closing price of FDC common stock on a specified day prior to issuance of the DECS and will pay a fixed rate of interest. Similarly, at maturity and as more fully described below, holders of each DECS will receive in exchange for the principal amount thereof up to one share of FDC common stock (or, at the option of American Express, an amount of cash) which will be based upon the "Maturity Price" of FDC common stock. However, there is no guarantee that holders of the DECS will receive upon maturity the full amount of their investment in DECS.

If the Maturity Price is greater than or equal to a set "Threshold Price," the holder of DECS will receive a predetermined fraction of one share of FDC common stock for each DECS held.[5] If the Maturity Price is less than the Threshold Price but greater than the initial price of the DECS, the holder will receive a fractional share of FDC common stock so that the cash value of the stock (based on the Maturity Price) is equal to the initial price of the DECS. Finally, if the Maturity Price is less than or equal to the initial price of the DECS, the holder will receive one share of FDC common stock. American Express retains the option of redeeming the DECS for cash equal to the value of the shares of FDC common stock due to a holder.[6]

Pursuant to Section 703.19 of the Exchange's Listed Company Manual, the NYSE will only list for trading a series of American Express DECS if there are at least one million outstanding securities, at least 400 security-holders, a minimum life of one year, and an aggregate market value of at least $4 million.

The Issuer and the Linked Security

The Exchange based its decision to list the American Express DECS on the fact that both American Express and FDC and NYSE listed companies in good standing and are subject to the continuous reporting obligations of the Act. In considering the listing of the DECs, the Exchange has also determined that American Express has assets in excess of $100 million, a minimum tangible net worth of more than $150 million, and that the market value of the DECS will amount to less than 25% of the tangible net worth of American Express as of the date of issuance. In addition, according to the NYSE, the market capitalization of FDC as of August 9, 1993, was approximately $4 billion and the trading volume of FDC common stock for the year ending June 30, 1993 was over 50 million shares.

Prior to April 1992, American Express owned all the outstanding shares of FDC common stock; currently, American Express owns approximately 21.5% of FDC common stock. It is anticipated that the offering of the DECS will, depending on certain factors including the Maturity Price of FDC common stock and whether the underwriters' over-allotment option is exercised in full, represent approximately 21.5% of the outstanding FDC common stock.

The fact that American Express currently owns shares of FDC common stock equal in number to the maximum number of shares underlying the issue of DECS distinguishes this situation from that presented in the listing standards recently adopted by the American Stock Exchange, Inc. ("AMEX") and approved by the Commission regarding listing on the AMEX of Equity Linked Term Notes or "ELNs."[7] The ELNs listing standards contain several limitations relating to the size of the market in the underlying linked equity security as it relates to the size of the related ELN offering.[8]

In the case of the DECS, however, the issuer of the DECS, American Express, presently owns all of the shares of FDC common stock it would need to satisfy its obligations under the DECS at maturity.[9] In addition, because American Express has the option of satisfying its obligation by physical delivery of shares of FDC common stock (whereas the ELNs only permitted cash settlement), the Exchange believes that American Express has no need or incentive to sell the shares of FDC common stock prior to or at maturity (although nothing will restrict American Express' ability to do so). As a result, American Express presently is perfectly hedged with respect to its obligations on the DECS at maturity.

Therefore, since the NYSE believes that the DECS present none of the concerns regarding adverse impact in the market for the underlying linked equity security, the Exchange views as inapplicable and has not included any of the restrictions relating to the underlying linked equity security that were contained in the ELNs listing standards.[10]

Exchange Trading of DECS

DECS will trade on the Exchange's stock floor and will be subject to stock trading rules. In addition, the DECS will be subject to equity margin rules. Due to the unique characteristics of the DECS, the Exchange will also distribute a circular to its members and member organizations alerting them to the unique attributes and risks of DECS and providing guidance regarding their compliance responsibilities with respect to such securities. Prior to Commission approval of the proposed rule change, the Exchange will file a copy of that circular with the Commission for its review and approval.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

[5] The Threshold Price will be determined at issuance by adding the "premium" to the initial price. For example, if the initial price is $40 and the premium is 20%, the Threshold Price will be $48. See note 4, *supra*.

[6] For example, assume the initial price of the DECS is $40, the premium is 20%, and at maturity, American Express elects to exchange the outstanding DECS for shares of FDC common stock. There are three possibilities at maturity: (1) If the Maturity Price is greater than $48, holders of the DECS will receive .833 shares of FDC common stock for each DECS; (2) if the Maturity Price is between $40 and $48, holders of the DECS will receive a fraction of a share of FDC common stock determined by dividing the initial price by the Maturity Price; and (3) if the Maturity Price is less than $40, holders of the DECS will receive one share of FDC common stock for each DECS.

[7] See Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 ("Exchange Act Release No. 32343").

[8] *Id.*

[9] American Express, however, is not obligated to place these shares into escrow or to refrain from trading in shares of FDC common stock prior to maturity of the DECS. It is possible therefore that American Express will not own shares of FDC common stock sufficient to satisfy its obligations at maturity.

[10] See Exchange Act Release No. 32343, *supra* note 7. The Commission notes, however, that this proposal is designed solely for the listing and trading of American Express DECS. If the Exchange subsequently desires to list and trade other series of DECS the Exchange will be required to submit a rule filing pursuant to Rule 19b-4 under the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–32 and should be submitted by September 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20772 Filed 8–25–93; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 35–25870]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 20, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 13, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ohio Power Company (70–5995)

Ohio Power Company ("OPCO"), 301 Cleveland Avenue, Canton, Ohio 44702, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment under sections 9(a), 10 and 12(d) of the Act and Rule 44(b)(3) thereunder to its application filed under sections 9(a) and 12(d) of the Act and Rule 44(b)(3) thereunder.

By order dated June 8, 1977 and May 16, 1979 (HCAR No. 20068), OPCO was authorized to enter into an agreement of sale ("Agreement") with Mason County, West Virginia ("County") concerning the construction, installation, financing, acquisition and sale of pollution control facilities ("Facilities") at Units 2, 4, and 5 of OPCO's Phillip Sporn Generating Station.

In connection with the acquisition by the County of the Facilities, the County issued revenue bonds in a principal amount of $50 million due in 2007 bearing a fixed interest rate of 7% ("Series A Bonds"). The proceeds were deposited with Charleston National Bank as trustee ("Trustee") under an indenture ("Indenture") entered into between the County and the Trustee. The proceeds from the sale of the Series A Bonds were applied by the Trustee to the payment of the costs of construction of the Facilities.

Under the Agreement, OPCO agreed to acquire an undivided interest in the Facilities and to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the County to pay, when due, (a) the interest and principal on the Series A Bonds, any additional bonds and any refunding bonds and (b) all amounts payable in connection with any mandatory redemption of such bonds.

It is now proposed that OPCO will effect the County's issuance and sale of its Series B Refunding Bonds ("B Bonds") in the aggregate principal amount of $50 million, prior to June 30, 1994, pursuant to underwriting arrangements between Goldman, Sachs & Co. and the County. The B Bonds will be issued under and secured by the Indenture and a First Supplemental Indenture of Trust between the County and the Trustee. The proceeds from the issuance and sale of the B Bonds will be used to provide for the early redemption of the entire $50 million principal amount of the Series A Bonds. The Series A Bonds may be redeemed at par.

OPCO is advised that the Series B Bonds will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. The Series B Bonds may be subject to mandatory redemption under circumstances and terms to be specified at the time of pricing, and, if it is deemed advisable, may also include a sinking fund provision. In addition, the Series B Bonds may not be redeemable at the option of the County in whole or in part at any time for a period to be determined at the time of pricing. OPCO may provide some form of credit enhancement for the C Bonds, such as a surety bond or bond insurance, and pay associated fees.

OPCO will not agree, without further order of the Commission, to the issuance of any Series B Bond by the County if: (1) The stated maturity of any such bond shall be more than 30 years; (2) the rate of interest to be borne by any such bond shall exceed 6.75% per annum; (3) the discount from the initial pubic offering price of any such bond exceeds 5% of the principal amount; or

(4) the initial public offering price is less than 95% of the principal amount. Additionally, OPCO will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Series B Bonds.

The Connecticut Light and Power Company, et al. (70–8088)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, both wholly-owned electric utility subsidiaries of Northeast Utilities, a registered holding company, have filed amendments to its declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder in connection with their proposal to refinance a portion of each company's cost of acquiring, constructing and installing certain pollution control and/or sewage or solid waste disposal facilities. An original notice of the filing of the declaration was issued by the Commission on July 16, 1993 (HCAR No. 25855) ("Original Notice").

The declarants propose that the Connecticut Development Authority ("CDA") issue through September 30, 1995 one or more series of pollution control revenue refunding bonds (1) on behalf of CL&P in the aggregate principal amount of not more than $315,516,500 and (2) on behalf of WMECO in the aggregate principal amount of not more than $53,853,500 (collectively, "New Bonds") for the purpose of refunding certain pollution control revenue bonds that were previously issued by the CDA on behalf of the declarants ("Old Bonds").

The New Bonds will be issued, and the proceeds thereof will be loaned to the declarants to cause the refunding of the Old Bonds, pursuant to indentures of trust, loan agreements and promissory notes (collectively, "Bond Documents"). Under the Bond Documents, the declarants will agree to make payments corresponding to the amounts needed to pay the principal, interest, and premium, if any, on the New Bonds as they become due, and will be obligated to pay the fees and charges of the CDA and trustees. The monies receivable from the declarants by the CDA will be pledged and assigned to the trustees as security for the New Bonds.

The New Bonds will mature not later than 35 years from the date of issuance and may bear interest at commercial paper rates, weekly rates, or multiannual rates and may be converted for their remaining term to bear interest at a fixed rate. Such rates will be determined by remarketing agents for each interest rate period (or, if the New Bonds are converted for their remaining term to bear interest at a fixed rate, for such remaining term) at that rate which results in the market value of the New Bonds on the date of such determination being 100 percent of the principal amount thereof, subject to a maximum interest rate of 12% per annum. Each company will pay its remarketing agent(s) an annual fee not to exceed 0.125% of the principal amount of its New Bonds outstanding. Taking into account all the fees, charges and other costs in connection with the proposed transactions, the effective annual interest cost will not exceed the interest rate on the New Bonds by more than one percent.

It is anticipated that the New Bonds will initially bear interest at weekly rates, payable monthly in arrears. While the New Bonds bear interest at weekly rates (and at certain other times as well), each transaction will be structured so that the company's loan payment obligations shall be satisfied by drawings under an irrevocable letter of credit ("Letter of Credit"). Under each Letter of Credit, while the New Bonds bear interest at weekly rates, the applicable paying agent on the New Bonds would be entitled to draw up to (i) an amount equal to the principal amount of the outstanding New Bonds and (ii) an amount equal to approximately 45 days' interest on the New Bonds at the maximum interest rate of 12% per annum.

Each Letter of Credit is expected to be issued by a bank to be determined ("Bank") pursuant to a letter of credit and reimbursement agreement ("Reimbursement Agreement"). Under each Reimbursement Agreement, the company would be obligated to pay an annual letter of credit commission at a rate not to exceed 0.75% per annum of the total amount available to be drawn under the applicable Letter of Credit. Each Reimbursement Agreement would also require the company to pay certain transfer, drawing, cancellation, and other fees, to comply with certain business covenants, and to reimburse the Bank for any amounts drawn under the Letter of Credit, with interest thereon until paid. Each Letter of Credit will expire three to five years after its date of issuance, unless earlier terminated or extended in accordance with its terms. The declarants seek authority to obtain extensions of an replacements for the Letters of Credit and the Reimbursement Agreements (and any previous extensions thereof and replacements therefor) from time to time during the term of the New Bonds, provided that (i) the annual letter of credit commission applicable to any such extension or replacement does not exceed 0.75% per annum of the total amount available to be drawn under the extended or replacement Letter of Credit and (ii) such extension or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the Letter of Credit and the Reimbursement Agreement (or previous extension thereof or replacement therefor) being extended or replaced.

The Bond Documents will provide that, while the New Bonds bear interest at weekly rates, they are subject to tender for purchase from time to time at the option of the holders, at a price equal to par plus accrued interest. The remarketing agents will be obligated to use their best efforts to remarket such tendered New Bonds upon such optional tender, and the principal portion of the purchase price for such tendered bonds will be paid to tendering holders from remarketing proceeds. To the extent that the remarketing agents are unable to remarket tendered New Bonds, the paying agent for such New Bonds will be required to pay such principal portion to tendering holders from the proceeds of drawings made on the applicable Letter of Credit and such tendered New Bonds not remarketed would be pledged as security for such declarant's obligations to reimburse the Bank for any Letter of Credit drawings made to purchase such New Bonds.

The Reimbursement Agreements will provide that all Letter of Credit drawings (other than drawings to pay the principal portion of the purchase price for unremarketed tendered bonds) are immediately reimbursable to the Bank. Drawings to pay the principal portion of the purchase price for unremarketed tendered New Bonds will be treated as advances or loans bearing interest until paid. Such interest rate will be equal to the higher of the prime rate or the federal funds rate plus 50 basis points. The New Bonds and the loans from the CDA to the declarants will be subject to optional and mandatory redemption provisions, in some cases at a premium.

The New Bonds will be initially marketed and sold pursuant to underwriting arrangements reflected in bond purchase agreements. Each company will pay an underwriting fee not to exceed 0.50% of the principal amount of the New Bonds to be purchased by the underwriter and will reimburse the underwriter for certain expenses.

All or some of the declarants' payment obligations under the Bond Documents, together with all or some of the declarants' reimbursement obligations under the Reimbursement Agreements, may be secured, equally and ratably, by second mortgages on their interests in the Millstone 1 nuclear electric generating facility located in Waterford, Connecticut.

The declarants request an exemption from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder with respect to the proposed transactions. The declarants requested authorization to begin negotiations with potential underwriters and were so authorized in the Original Notice.

General Public Utilities Corporation (70-8245)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

GPU proposes to issue and sell for cash from time to time through December 31, 1996 up to four million additional shares of its common stock, par value $2.50 per share ("Additional Common Stock"). GPU has a total of 150 million authorized shares of common stock, of which 110,862,206 shares were issued and outstanding at June 30, 1993. In addition, GPU had 14,921,132 reacquired shares at that date. The Additional Common Stock would be sold either from authorized and unissued shares or reacquired shares.

GPU would issue and sell the Additional Common Stock to the public through: (i) Negotiated transactions with one or more underwriters, or, one or more selling agents who regularly engage in the placement of such securities pursuant to a selling agency or distribution agreement (GPU requests that such transactions be exempted from the competitive bidding requirements of Rule 50); (ii) competitive bidding pursuant to the requirements of Rule 50 or under the alternative competitive bidding procedure in accordance with the Commission's Statement of Policy; or (iii) any combination of the foregoing. In addition, GPU may sell the Additional Common Stock to a selling agent, as principal, for resale to the public either directly or through dealers.

GPU has also requested that it be authorized to begin negotiations with prospective underwriters and/or selling agents with respect to the sale of the Additional Common Stock. It may do so.

GPU will utilize a portion of the net proceeds from the sale of the Additional Common Stock to make cash capital contributions, pursuant to separate Commission authorizations, to its electric operating subsidiaries, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. Such subsidiaries have called for redemption in September 1993 of a total of $156 million stated value of their outstanding cumulative preferred stock. Such net proceeds will be used by such subsidiaries to (i) Redeem outstanding cumulative preferred stock in accordance with the optional redemption provisions thereof,[1] (ii) repay outstanding indebtedness incurred for such purpose, or (iii) reimburse their treasuries for funds previously expended therefrom for such purposes. The balance of such net proceeds would be used to reimburse GPU's treasury for funds previously expended therefrom to make such capital contributions, the repayment of outstanding indebtedness, and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-20731 Filed 8-25-93; 8:45 am]

BILLING CODE 8010-01-M

[1] GPU anticipates that the net proceeds (approximately $128 million assuming all of the Additional Common Stock were sold at the June 30, 1993 closing price of $32 per share) will be applied to such preferred stock redemption. The balance is expected to be obtained from the proceeds of sales by such subsidiaries of additional long-term debt pursuant to an exemption under Rule 52 or a separate Commission authorization.

DEPARTMENT OF STATE

[Public Notice No. 1850]

Defense Trade Advisory Group; Partially Closed Meeting

The Defense Trade Advisory Group (DTAG) will meet at 2 p.m., Wednesday, October 6, 1993 in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. This advisory committee consists of private sector defense trade specialists who advise the Department on policies, regulations, and technical issues affecting defense trade.

The open session, which will occur at the beginning of the meeting, will include reports on DTAG Working Group progress, accomplishments, and future projects. Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by Friday, September 24, 1993. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647-4231 or fax number (202) 647-4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them. They should enter the building through the C-Street diplomatic entrance, where Department personnel will direct them to the Loy Henderson auditorium.

Following the open portion of the meeting, a briefing which the Department of State will arrange for DTAG members will involve discussions of classified information pursuant to Executive Order 12356. The disclosure of classified and/or propriety information essential to formulating U.S. defense trade policies would substantially undermine U.S. defense trade relations with foreign competitors. Therefore, this segment of the meeting will be closed to the public, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Defense Trade Policy (PM/DTP), Room 7815 Main State, Washington, DC 20520-7815. She may be reached at telephone number (202) 647-4231 or fax number (202) 647-4232.

Dated: August 5, 1993.

Michael H. Newlin,

Acting Deputy Assistant Secretary, Bureau of Political-Military Affairs.

[FR Doc. 93-20644 Filed 8-25-93; 8:45 am]

BILLING CODE 4710-25-M

[Public Notice No. 1851]

Study Groups 4 and 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meetings

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on September 14, 1993, at the Department of State, 2201 C Street, NW., Washington, DC, from 9:30 a.m. to 12 noon in room 3519. Study Groups 4 and 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold a joint open meeting on the same date and location from 1:30 p.m. to 4 p.m.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is to (1) Deal with administrative matters, (2) review the activities of the Working Parties and Task Groups, (3) consider priority issues and contributions, (4) consider Radiocommunication Assembly matters and (5) consider World Radiocommunication Conference matters.

Study Group 9 deals with matters relating to the study of radio relay systems. The purpose of the joint meeting is to continue preparations for the international meeting of Working Party 4-9S that will be held in Geneva from September 20 to October 1, 1993. The agenda will include (1) Administrative matters, (2) consideration of priority issues and contributions and (3) consideration of Radiocommunication Assembly and World Radiocommunication Conference matters.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should so advise this office at: (202) 647-0201, (fax 202 647-7407) no later than two days before the meeting. Notification should include name, date of birth and Social Security number. All attendees must use the C Street entrance.

Dated: August 17, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 93-20724 Filed 8-25-93; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice No. 1849]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on September 15, 1993 at 10 a.m. in room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of this meeting will be to discuss the outcome of the 38th Session of the International Maritime Organization's Sub-Committee on Fire Protection, held on June 29, 1993.

The meeting will focus on the fire safety of commercial vessels. Specific discussion areas include: Smoke and toxicity, round robin tests for devices to prevent the passage of flame, revision of resolution A.472, heat radiation through windows and glass partitions, automatic sprinkler systems and fixed water spraying systems, dynamically supported craft, criteria for minimum fire loads, analyses of fire casualty records, guidelines for performance and testing criteria and surveys of foam concentrates, phasing out of halons, interpretations to SOLAS 74, requirements for dangerous solid bulk cargo, escape route sizing on passenger vessels, role of the human element in maritime casualties, interim fire protection requirements for open-top container ships, smoke control and ventilation, carriage of dangerous goods on the vehicle decks of passenger ships, fire safety aspects of composite materials used on board ships, and low-location lighting.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267-2997.

Dated: August 16, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93-20645 Filed 8-25-93; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[(Order 93-8-30) Docket 48796]

Application of Renown Aviation, Inc. for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Renown Aviation, Inc., fit, willing, and able and (2) awarding it a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than September 7, 1993.

RESPONSES: Objections and answers to objections should be filed in Docket 48796 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1064.

Dated: August 20, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-20725 Filed 8-25-93; 8:45 am]

BILLING CODE 4910-62-P

Aviation Proceedings; Agreements Filed During the Week Ended August 13, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49078
Date filed: August 10, 1993
Parties: Members of the International Air Transport Association
Subject: MV/PSC/091 dated June 24, 1993, Mail Vote S062 (Reso 783, Location Identifiers)
Proposed Effective Date: September 18, 1993.

Docket Number: 49085
Date filed: August 11, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Reso/P 0895 dated July 27, 1993, Expedited Resos 002q (r-1) & 152f (r-2)
Proposed Effective Date: September 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-20646 Filed 8-25-93; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 13, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49079
Date filed: August 10, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 7, 1993
Description: Application of Aeromexpress, S.A. De C.V., pursuant to section 402 of the act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of property and mail between points in Mexico and points in the United States.

Docket Number: 49081
Date filed: August 10, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 7, 1993
Description: Application of Turks & Caicos Airways, Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit which would authorize TCA to provide scheduled foreign air transportation of persons, property and mail between Miami, Florida and San Juan, Puerto Rico, on the one hand, and points in the Turks and Caicos Islands, on the other hand. TCA also requests authority to provide foreign charter air transportation of persons, property and mail pursuant to Part 212 of the Department's Economic Regulations.

Docket Number: 49084
Date filed: August 11, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 8, 1993
Description: Application of United Parcel Service Co., pursuant to section 401 of the Act and Subpart Q of the Regulations, requests that its certificate of public convenience and necessity for Route 569 be amended to include authority for UPS to engage in the scheduled foreign air transportation of property and mail as follows: Between the terminal point Louisville, Kentucky and the terminal point Mexico City, Mexico: Between the terminal point Louisville, Kentucky and the terminal point Monterrey, Mexico; and between the terminal point Louisville, Kentucky and the terminal point Guadalajara, Mexico.

Docket Number: 49087
Date filed: August 12, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 9, 1993
Description: Application of Mahalo Air, Inc., pursuant to section 401(d)(1) of the Act, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation (State of Hawaii).

Docket Number: 46475
Date filed: August 13, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 10, 1993
Description: Application of Transbrasil S/A Linhas Aereas, pursuant to section 402 of the Act, and Subpart Q of the Regulations, requests the Department to amend its operating permit; to include Washington, DC and New York, N.Y. for scheduled combination passenger and cargo air transportation service between Brazil and the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93-20647 Filed 8-25-93; 8:45 am]
BILLING CODE 4910-62-P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Montgomery County Airpark, Gaithersburg, MD

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Montgomery County Airpark under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Montgomery County Revenue Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 Montgomery County Airpark were in compliance with applicable requirements effective January 29, 1992. The proposed noise compatibility program will be approved or disapproved on or before February 4, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 9, 1993. The public comment period ends October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York, 11430, (718) 553-0902. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Montgomery County Airpark, which will be approved or disapproved on or before February 4, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations FAR part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Montgomery County Airpark, effective on August 9, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(d) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 4, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR pat 150, § 150.33. The primary considerations in the evaluation process

are whether the proposed measures may reduce the level of aviation safety, create an undue burden in interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land use and preventing the introduction of additional noncompatibility land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., rm, 617, Washington, DC 20591.
Federal Aviation Administration, Eastern Region—AEA—610, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York, 11430.
Federal Aviation Administration, Washington Airports District Office, 101 West Broad St., suite 300, Falls Church, VA 22046.
Mr. Stuart Kenny, Executive Director, Montgomery County Revenue Authority, 211 Monroe St., Rockville, MD 20850.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Jamaica, New York, August 9, 1993.

Louis P. DeRose,
Manager, Airports Division.
[FR Doc. 93-20685 Filed 8-25-93; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Riverside County, CA; Notice of Intent

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement will be prepared for a proposed highway project beginning at PM 2.2 in the Community of Oasis, northerly to PM 22.5 in the City of Indio in Riverside County, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, Chief, District Operations—C, Federal Highway Administration, 980 Ninth Street, suite 400, Sacramento, CA 95814-2724. Telephone: 916/551-1307.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the California Department of Transportation (CALTRANS) will prepare a Supplemental Environmental Impact Statement (SEIS) for a proposal to modify State Route 86 between the existing SR 86 expressway at Oasis with Interstate 10 at Indio, in Riverside County. The Corps of Engineers (COE), Environmental Protection Agency (EPA) and Fish and Wildlife (FWS) have agreed to be cooperating agencies.

The purpose of the project is to improve safety and traffic flow on the existing highway which passes through the commercial center of the City of Coachella. Route 86 in its entirety is the primary highway connector between two Interstate freeways, I-8 to the south and I-10 to the north. For the portion between Oasis and Coachella, Route 86 is an undivided highway with higher-then-expected accident and fatality rates. A bypass of the City of Coachella would reduce congestion, traffic impacts, and accidents.

Several alternatives are being considered for this project. These include a "no-build" alternative, operational improvements to existing SR 86, partial realignment of existing SR 86 to bypass Coachella, and the degree to which planned transit could meet project objectives of reducing accidents and traffic congestion.

The appropriate federal, state and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will be placed on a mailing list. A project development team will be established consisting of federal, state and local agency staff along with Caltrans and consultant personnel. A public hearing will be held after the SEIS is available for review. A public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Information about potential impacts to endangered species habitat, wetlands, tribal lands, and historic and archaeological resources is being developed and is specifically solicited. Also please indicate if you are interested in being notified of the completion of any of the above studies. Some resources already being identified as possibly being impacted include air quality (this project is in a nonattainment area for ozone and particular matter) and wetlands. There is also a potential presence of the Yuma clapper rail, Desert pupfish, and Coachella Milkvetch.

Scoping meetings will be held in the vicinity of the proposed project for solicitation of community input. These meetings will be held within 90-days following the publishing of the "Notice of Intent." Federal, State, and local agencies are invited to participate. It is anticipated additional scoping opportunities will consist of conference calls, written comments, or a combination of all three.

Background and Previous Environmental Clearance

A Final Environmental Impact Statement for this project was approved by the Federal Highway Administration of August 10, 1973. A Notice of Determination was filed June 20, 1974. Due to the magnitude of the project, it has been divided into construction stages. The following two portions of the initially-cleared project have been constructed:

1. From the Imperial County line to the Community of Oasis—a four-lane expressway extending from the expressway to the immediate south.
2. From near Dillon Road in Indio to Avenue 58 near the community of Thermal—a four-lane expressway with an interchange at Dillon Road where ramps connect to I-10.

The SEIS will provide analysis of various alternatives and address new impacts and circumstances in the area, and measures to avoid, minimize and mitigate impacts. Though previous stages have already been constructed, their costs and logistics will not preclude them or portions of from being reevaluated.

Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA at the address provided previously in this Notice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program).

Issued on: August 20, 1993.

Peter C. Markle,
Assistant Division Administrator, Sacramento, California.
[FR Doc. 93-20667 Filed 8-25-93; 8:45 am]
BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions

from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–82–13) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before October 13, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

The Cuyahoga Valley Railway Company (Waiver Petition Docket Number RSGM–82–13)

In 1983, The Cuyahoga Valley Railway Company (CUVA) was granted a waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR Part 223 for 15 locomotives. The railroad has added 12 locomotives to their roster and have requested an extension of their waiver to cover these locomotives. The railroad provides switching service in Cleveland, Ohio.

Texas South-Eastern Railroad Company (Waiver Petition Docket Number RSGM 93–5)

The Texas South-Eastern Railroad Company (TSE) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for three locomotives. The TSE provides switching service on 17 miles of track between Diboll and Lufkin, Texas. The railroad states there is no history of vandalism.

Toppenish, Simcoe and Western Railroad (Waiver Petition Docket Number RSGM 93–15)

The Toppenish, Simcoe and Western Railroad (TSWR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for one locomotive. The locomotive, which was built by ALCO in 1953 for the U.S. Army, is considered historically significant since it is capable of operating on more than one track gauge. It will be operated in excursion and occasional freight service. The railroad is located in rural Yakima County, Washington.

Towanda-Monroeton Shippers' Lifeline, Incorporated (Waiver Petition Docket Number RSGM 93–12)

The Towanda-Monroeton Shippers' Lifeline, Incorporated (TMSS) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for one locomotive. The railroad operates between Towanda and Monroeton, in a rural area of Pennsylvania.

Indiana Northeastern Railroad Company (Waiver Petition Docket Number RSGM 93–13)

The Indiana Northeastern Railroad Company (IN) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for four locomotives. The IN recently purchased most of the assets of the Hillsdale County Railroad including their locomotives which were covered by waiver RSGM 80–72. The railroad states there has been no vandalism on the IN nor on the predecessor railroad.

Minnesota Transportation Museum, Incorporated (Waiver Petition Docket Number RSGM 93–8 and RSGM 93–9)

The Minnesota Transportation Museum, Incorporated (MNTM) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards 49 CFR part 223 for 3 passenger cars (RSGM 93–8) and 3 locomotives (RSGM 93–9). The MNTM is a non-profit corporation which operates on the Dresser Subdivision of Wisconsin Central Transportation Corporation (WC). There have been no acts of vandalism on this line in the five years the WC has owned it. Maximum train speed is 25 mph. The cars, which were built in the 1950's, have been restored to their original Great Northern paint scheme. The locomotives are diesel-electric switchers built in the 1940's and 1950's. The MNTM states that the cost of installing FRA glazing would necessitate an increase in ticket prices and subsequently, a loss of ridership.

Algers, Winslow and Western Railway Company (Waiver Petition Docket Number LI 93–10)

The Algers, Winslow and Western Railway Company (AWW) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards 49 CFR part 229 for four locomotives. The AWW owns 4 SD–9 locomotives, built in 1955, which are equipped with 24–RL brake equipment. The railroad seeks relief from the cleaning, repairing and testing requirements of 49 CFR 229.27(a) and 229.29(a). AWW suggests the periodic intervals for cleaning, repairing and testing be extended from 368 to 736 days for Section 229.27(a) and from 736 to 1,472 days for Section 229.29(a) or that they be put on an actual hours used basis of 5,888 and 11,776 hours respectively.

The AWW operates on 16 miles of track in southern Indiana. The 4 locomotives are used to load coal in cars for off-line delivery and for servicing 2 small industries once a week. The locomotives are only used from 1.2 to 2.0 hours per day. The AWW states that the cost of maintaining the 24–RL brake equipment is prohibitive since it is nearly 40 years old and sources of repair are minimal. Their most recent repair bills averaged over $2300 per locomotive set not including shipping or installation costs. Maximum speed through the rural area is 15 mph.

The Canadian National-North America (Waiver Petition Docket Number PB–93–6)

The Canadian National-North America (CN) seeks a waiver of compliance with certain provisions of the Railroad Power Brake Standards 49 CFR part 232 for one track geometry car for their subsidiary, Grand Trunk Western Railroad Company (GTW). CN is seeking relief from § 232.12 which requires that all brakes to be operating at an initial terminal. The track measuring equipment interferes with the brake equipment on one truck of the car, number 15007, and it is necessary to cut this truck out when testing track. CN has requested a waiver be granted to operate the car over the GTW with the brakes cutout on the one truck when testing.

Issued in Washington, DC, on August 20, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–20676 Filed 8–25–93; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 19, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0001
Form Number: IRS Form CT–1
Type of Review: Revision
Title: Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return
Description: Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA) and Railroad Unemployment Repayment Tax (RURT) taxes. Form CT–1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 2,387
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—14 hours, 50 minutes
Learning about the law or the form—2 hours, 6 minutes
Preparing the form—5 hours, 13 minutes
Copying, assembling, and sending the form to the IRS—48 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 52,895 hours

OMB Number: 1545–1350
Form Number: IRS Form 9465
Type of Review: Revision
Title: Installment Agreement Request
Description: This form will be used by the public to provide identifying account information and financial ability to enter into an installment agreement. The form will be used by the IRS to establish a payment plan for taxes owed to the Federal Government, if appropriate.
Respondents: Individuals or households, State, or local governments, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 7,000,000
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,120,000 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan

Departmental Reports Management Officer.

[FR Doc. 93–20652 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that adipic acid be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to this petition must be received by October 25, 1993. Any modification of the list of taxable substances based upon this petition would be effective July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on September 29, 1989. The petitioner is Monsanto Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2917.12.00.00
CAS number: 124–04–9

This substance is derived from the taxable chemicals methane, benzene, and nitric acid. Adipic acid is a solid produced predominantly by oxidation of cyclohexane using air and nitric acid in a two-step process. The cyclohexane is produced by the reaction of hydrogen (derived from methane in natural gas) and benzene.

The stoichiometric material consumption formula for this substance is:

3 CH_4 (methane)+1.66 H_2O (water)+2 C_6H_6 (benzene)+1.5 O_2 (oxygen)+4.66 HNO_3 (nitric acid)——> 2 $C_6H_{10}O_4$ (adipic acid)+6 H_2 (hydrogen)+3 CO_2 (carbon dioxide)+4.66 NO (nitric oxide)

According to the petition, taxable chemicals constitute 86.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.03 per ton. This is based upon a conversion factor for methane of 0.11, a conversion factor for benzene of 0.72, and a conversion factor for nitric acid of 0.63.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20622 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petitions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that benzoic acid and benzaldehyde be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 25, 1993. Any modification of the list of taxable substances based upon these petitions would be effective July 1, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on August 12, 1992 (benzoic acid) and August 23, 1992 (benzaldehyde). The petitioner is Kalama Chemical Inc., a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Benzoic acid	
HTS number	2916.31.10.05
CAS number	65–85–0

This substance is derived from the taxable chemical toluene. Benzoic acid is a solid produced predominantly by the continuous liquid-phase oxidation of toluene, using air as the oxygen source, in the presence of a cobalt containing catalyst.

The stoichiometric material consumption formula for this substance is:

C_7H_8 (toluene) + 1.5 O_2 (oxygen) → $C_7H_6O_2$ (benzoic acid) + H_2O (water)

According to the petition, taxable chemicals constitute 65.7 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.67 per ton. This is based upon a conversion factor for toluene of 0.7545.

Benzaldehyde	
HTS number	2912.21.00.00
CAS number	100–52–7

This substance is derived from the taxable chemical toluene. Benzaldehyde is a liquid produced predominantly by as a co-product of benzoic acid by the continuous liquid-phase oxidation of toluene, using air as the oxygen source, in the presence of a cobalt containing catalyst.

The stoichiometric material consumption formula for this substance is:

C_7H_8 (toluene) + O_2 (oxygen) → C_7H_6O (benzaldehyde) + H_2O (water)

According to the petition, taxable chemicals constitute 74.1 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.22 per ton. This is based upon a conversion factor for toluene of 0.8682.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20626 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petitions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that diphenylamine and aniline be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 25, 1993. Any modification of the list of taxable substances based upon these petitions would be effective January 1, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on February 5, 1992. The petitioner is Aristech Chemical Corporation, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Diphenylamine	
HTS number	2921.44.00.00
CAS number	122–39–4

This substance is derived from the taxable chemicals benzene and nitric acid. Diphenylamine is a liquid produced predominantly by liquid phase condensation of aniline over an acid catalyst.

The stoichiometric material consumption formula for this substance is:

2 C_6H_6 (benzene) + 2 HNO_3 (nitric acid) + 6 H_2 (hydrogen) → $C_{12}H_{11}N$ (diphenylamine) + NH_3 (ammonia) + 6 H_2O (water)

According to the petition, taxable chemicals constitute 95.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.11 per ton. This is based upon a conversion factor for benzene of 1.010 and a conversion factor for nitric acid of 0.835.

Aniline	
HTS number	2921.41.10.00
CAS number	62–53–3

This substance is derived from the taxable chemicals benzene and nitric acid. Aniline is a liquid produced predominantly by the hydrogenation of nitrobenzene.

The stoichiometric material consumption formula for this substance is:

C_6H_6 (benzene) + HNO_3 (nitric acid) + 3 H_2 (hydrogen) → C_6H_7N (aniline) + 3 H_2O (water)

According to the petition, taxable chemicals constitute 95.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.44 per ton. This is based upon a conversion factor for benzene of 0.8780 and a conversion factor for nitric acid of 0.7260.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20624 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that hexamethylenediamine be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be received by October 25, 1993. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on July 1, 1991. The petitioner is Monsanto Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number	2921.22.00.00
CAS number	124–09–4

This substance is derived from the taxable chemicals methane, ammonia, and butadiene. Hexamethylenediamine is a solid produced predominantly by the reaction of hydrogen (derived from methane in natural gas) with adiponitrile made by the reaction of butadiene with hydrogen cyanide (derived from ammonia and from methane in natural gas).

The stoichiometric material consumption formula for this substance is:

3 CH_4 (methane) + 2 NH_3 (ammonia) + 3 O_2 (oxygen) + C_4H_6 (butadiene) → $C_6H_{16}N_2$ (hexamethylenediamine) + CO_2 (carbon dioxide) + 4 H_2O (water)

According to the petition, taxable chemicals constitute 58.6 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.82 per ton. This is based upon a conversion factor for methane of 0.07, a conversion factor for ammonia of 0.38, and a conversion factor for butadiene of 0.53.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20623 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that nylon 6/6 polymer be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to this petition must be received by October 25, 1993. Any modification of the list of taxable substances based upon this petition would be effective July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (Petition), room 5228).

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on September 27, 1989. The petitioner is Monsanto Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number	2908.10.00.00
CAS number	52349–42–5

This substance is derived from the taxable chemicals methane, benzene, nitric acid, ammonia, and butadiene. Nylon 6/6 polymer is a solid produced predominantly by the reaction of adipic acid with hexamethylene diamine. The adipic acid is derived from benzene via hydrogenation to cyclohexane, which is oxidized using air and nitric acid in a two-step process. The hexamethylene diamine is made by the reaction of butadiene with hydrogen cyanide (derived from ammonia and from methane in natural gas).

The stoichiometric material consumption formula for this substance is:

9 CH_4 (methane) + 10 H_2O (water) + 2 C_6H_6 (benzene) + 4.66 HNO_3 (nitric acid) + 4 NH_3 (ammonia) + 6 O_2 (oxygen) + 2 C_4H_6 (butadiene) ——→ 2 $C_{12}H_{22}N_2O_2$ (nylon 6/6 polymer)

According to the petition, taxable chemicals constitute 67.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.65 per ton. This is based upon a conversion factor for methane of 0.40, a conversion factor for benzene of 0.47, a conversion factor for nitric acid of 0.41, a conversion factor for butadiene of 0.28, and a conversion factor for ammonia of 0.20.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–20625 Filed 8–25–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Boards; Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

	Date	Time	Location
Merit Review Board For:			
Respiration	Sept. 29, 1993	8 a.m. to 5 p.m.	Holiday Inn Crowne Plaza.[1]
Do	Sept. 30, 1993	do	Do.
Alcoholism and Drug Dependence	Oct. 4, 1993	do	Ramada Renaissance.[2]
Hematology	Oct. 4, 1993	do	Ramada Renaissance.
Do	Oct. 5, 1993	do	Do.
Gastroenterology	Oct. 6, 1993	do	Ramada Renaissance.
Do	Oct. 7, 1993	do	Do.

	Date	Time	Location
Infectious Diseases	Oct. 6, 1993	do	Ramada Renaissance.
Do	Oct. 7, 1993	do	Do.
Do	Oct. 8, 1993	do	Do.
Surgery	Oct. 9, 1993	11 a.m. to 5 p.m.	San Francisco Marriott.[3]
Do	Oct. 10, 1993	12 p.m. to 5 p.m.	Do.
Neurobiology	Oct. 11, 1993	8 a.m. to 5 p.m.	Radisson Park Terrace.[4]
Do	Oct. 12, 1993	do	Do.
Do	Oct. 13, 1993	do	Do.
Do	Oct. 14, 1993	do	Do.
Do	Oct. 15, 1993	do	Do.
Nephrology	Oct. 13, 1993	do	Holiday Inn Crowne Plaza.
Do	Oct. 14, 1993	do	Do.
Endocrinology	Oct. 20, 1993	do	Ramada Renaissance.
Do	Oct. 21, 1993	do	Do.
Do	Oct. 22, 1993	do	Do.
Cardiovascular Studies	Oct. 21, 1993	do	Ramada Renaissance.
Do	Oct. 22, 1993	do	Do.
Immunology	Oct. 28, 1993	do	Holiday Inn Central.[5]
Do	Oct. 29, 1993	do	Do.
Mental Health and Behavioral Sciences	Nov. 1, 1993	8 a.m. to 5 p.m.	Holiday Inn Crowne Plaza.
Do	Nov. 2, 1993	do	Do.
Do	Nov. 3, 1993	do	Do.
Oncology	Nov. 4, 1993	do	Holiday Inn Central.
Do	Nov. 5, 1993	do	Do.
Do	Nov. 6, 1993	do	Do.
Basic Sciences	Nov. 4, 1993	do	Holiday Inn Central.
Do	Nov. 5, 1993	do	Do.
Do	Nov. 6, 1993	do	Do.

[1] Holiday Inn Crowne Plaza, 775 12th Street, NW., Washington, DC 20005.
[2] Ramada Renaissance, 999 9th Street, NW., Washington, DC 20001.
[3] San Francisco Marriott, 55 4th Street, San Francisco, CA 94103.
[4] Radisson Park Terrace, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
[5] Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 523–5942 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 12, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–20651 Filed 8–25–93; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Availability of Report

Under section 10(d) of Public Law 94–463 (Federal Advisory Committee Act) notice is hereby given that the Geriatrics and Gerontology Advisory Committee has issued reports entitled, "Rural Health Care for the Elderly Veterans in the Western 'Frontier' States."

These reports are available for public inspection at: Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540.

Dated: August 10, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–20650 Filed 8–25–93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 164
Thursday, August 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 a.m. on Tuesday, August 24, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: August 24, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–20901 Filed 8–24–93; 3:33 pm]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 44401, August 20, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 A.M., Wednesday, August 25, 1993.

CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meeting.

- Report on the Proposed Revision to the Finance Board's Private Sector Adjustment Factor ("PSAF") Methodology

The Board determined that agency business required its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–20903 Filed 8–24–93; 3:46 pm]

BILLING CODE 6725-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Wednesday, September 15, 1993.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing and discussion of the Board's fiscal year 1994 research agenda.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: August 23, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–20849 Filed 8–24–93; 2:25 pm]

BILLING CODE 7400-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 44401, August 20, 1993.

PREVIOUSLY ANNOUNCED DATE OF MEETING: August 31, 1993.

CHANGE: Delete the following item from the open meeting agenda:

5. Additional Space for the National Postal Museum.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 93–20831 Filed 8–24–93; 11:24 am]

BILLING CODE 7710-12-M

federal register

Thursday
August 26, 1993

Part II

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

45 CFR Part 96

Substance Abuse Prevention and Treatment Block Grants: Sale or Distribution of Tobacco Products to Individuals Under 18 Years of Age; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

45 CFR Part 96

Rin: 0905–AE03

Substance Abuse Prevention and Treatment Block Grants: Sale or Distribution of Tobacco Products to Individuals Under 18 Years of Age

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Sections 1921 to 1954 of the Public Health Service (PHS) Act authorize the Secretary to provide Block Grants to States for the purposes of prevention and treatment of substance abuse. This notice of proposed rulemaking seeks comments on proposed regulations implementing section 1926 of the Public Health Service (PHS) Act regarding the sale or distribution of tobacco products to individuals under age 18.

DATES: Written comments must be received on or before October 25, 1993.

ADDRESSES: Written comments on this proposed rule may be sent to Gale A. Held, Director, State Prevention Systems Program, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patrick G. Talmon, at (301) 443–7942.

SUPPLEMENTARY INFORMATION: Sections 1921 to 1954 of the PHS Act, 42 U.S.C. 300x–21—300x–64, authorize the Secretary to provide Block Grants to States for the purposes of prevention and treatment of substance abuse. All but section 1926 of the PHS Act, 42 U.S.C. 300x–26, affect fiscal year 1993 Block Grants. Section 1926 does not become effective until fiscal year 1994 and, in some cases, fiscal year 1995. The regulations implementing all but section 1926 of the PHS Act were published as an interim final at 58 FR 17062 (March 31, 1993) and subsequent corrections at 58 FR 21218 (April 19, 1993). For purposes of this proposed rule implementing section 1926, it should be noted at the onset that the term "State" is defined to include the District of Columbia and the territories.

This Notice of Proposed Rulemaking (NPRM) seeks comment on proposed regulations to implement section 1926 of the PHS Act. Section 1926 of the PHS Act stipulates that the Secretary may not make a grant to a State for the first applicable year and all subsequent fiscal years unless the State has in effect a law prohibiting any manufacturer, retailer, or distributor of tobacco products from selling or distributing any such products to any individual under the age of 18. For States whose legislature does not convene a regular session in fiscal year 1993 or in fiscal year 1994, the first applicable year is fiscal year 1995. For all other States, the first applicable fiscal year is 1994.

The Secretary proposes to implement this statutory provision by requiring States to have in place a law which prohibits the sale or distribution of any tobacco product to persons under the age of 18 through any sales or distribution outlet. This would include such sales or distribution from any location which sells at retail or otherwise distributes tobacco products to consumers including (but not limited to) locations that sell such products over-the-counter or through vending machines. The Secretary believes that vending machines must be covered, since they are an unsupervised and easy source of access for younger smokers. Although controlling access by minors to tobacco products is not an easy process and may be particularly difficult with regards to vending machines, the Secretary believes reducing the availability of tobacco products as required by the law is an important public health measure. Beyond this, the Secretary does not propose specifying the provisions of the States' laws. However, appended to this NPRM is a copy of a model law the States may wish to consider. It should be noted that these proposed regulations in this NPRM would be considered minimum standards and would not supersede any State or local law or ordinance that is more restrictive regarding minors' access to tobacco products.

With regard to enforcement, the Secretary proposes that for the first applicable fiscal year and for subsequent fiscal years, the State (directly or through local government or private entities) must, at a minimum, enforce the law using both random and targeted unannounced inspections of both over-the-counter and vending machine outlets. Random, unannounced inspections must be conducted annually and must be conducted in such a way as to ensure a scientifically sound estimate of the success of enforcement actions being taken throughout the State. Thus, the State shall give due consideration to the methodological design of the inspection effort and the adequacy of the sample design. The sample must reflect the distribution of the population of those under 18 throughout the State and the distribution of outlets throughout the State. The sample must further reflect that, because of location (e.g. near schools) or other factors, some outlets are more likely to be used by minors. States are to ensure that the inspections occur at times when minors are likely to purchase tobacco products. Targeted inspections are to focus on outlets which have a history of prior violations.

In addition, the Secretary proposes that the State must have in place other well-designed procedures for reducing the likelihood or prevalence of violations. Examples of well-designed procedures include a tobacco sales or distribution licensing system similar to that used for alcoholic sales, a graduated schedule of penalties for illegal sales or distribution culminating in loss of license, controls on tobacco vending machines in locations accessible to youth, publication of the names of outlets making illegal sales, and use of local enforcement to supplement central enforcement. Such measures, the Secretary believes, will assist in ensuring that the law is enforced in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.

Section 1926(b)(2)(B) of the PHS Act requires the State to annually submit to the Secretary a report describing, among other things, its activities for enforcing the law for the preceding year. The Secretary proposes that this report be filed with the State's application. For applications submitted for the first applicable fiscal year, the Secretary proposes that States be required only to submit a copy of the statute enacting the law described earlier and a description of the strategies to be utilized by the State for enforcing such law in the year for which they are applying for a grant. The Secretary is not proposing that for an application for the first applicable year the State be required to submit a description of how it had enforced the law in the previous year, if such law was in place, since section 1926 of the PHS Act does not require the States to have and enforce such law for fiscal year 1993 and, in some cases, fiscal year 1994. However, the Secretary strongly encourages the States to describe activities to enforce such a law during the previous year, if such law was in place. This information will be used only for informational purposes; it will not be used to determine compliance with any Block Grant requirements.

For subsequent years, the State is to describe its activities to enforce the law regarding sales or distribution of tobacco products to minors, as well as the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought. The State is also to describe the extent of success the State has achieved during the previous year in reducing the availability of tobacco products to individuals under the age of 18. The Secretary proposes that such description include the results of the random and targeted unannounced inspections. The results of over-the-counter and vending machine outlet inspections are to be reported separately. In addition, the Secretary proposes that the State submit as part of its report a summary of how it went about conducting its random, unannounced inspections.

The Secretary proposes that the annual report be made public within the State and public comment be obtained and considered by the State prior to submission. The Secretary believes public comment is an excellent means of obtaining ideas on ways the enforcement measures may be improved.

Section 1926(c) of the PHS Act requires that, before making an award to a State under the Block Grant, the Secretary must make a determination as to whether the State has maintained compliance with the requirements to enact and effectively enforce a law against sale or distribution of tobacco products to individuals under the age of 18. As indicated by section 1926(a), the Secretary may award a Block Grant to a State for the first applicable fiscal year and each subsequent year only if the State has a law in place making it unlawful to sell or distribute tobacco products to individuals under the age of 18. In determining enforcement compliance, the Secretary proposes the following: The State must demonstrate that its random, unannounced inspections were conducted in a scientifically sound manner, and the data submitted by the State in the annual report must how that the percentage of the retailers or distributors involved in the random, unannounced inspections that make illegal sales do not exceed more than fifty (50) percent during the first applicable fiscal year, forty (40) percent during the second applicable fiscal year, thirty (30) percent during the third applicable fiscal year, and twenty (20) percent during the fourth applicable fiscal year and subsequent fiscal years.

If a State is not in substantial compliance with the above-mentioned criteria, the Secretary, in extraordinary circumstances, may consider a number of factors, including scientifically sound data showing that the State is making significant progress toward reducing use of tobacco products by children and youth, data showing that the State has progressively decreased the availability of tobacco products to minors, aggressive enforcement by the State through targeted inspections, composition of the outlets inspected, and the State's plan for improving the enforcement of the law in the fiscal year for which the State is applying for a grant. The Secretary encourages all States to provide the Department with related data showing that the State is making significant progress toward reducing use of tobacco products by children and youth.

The Secretary believes this compliance criteria will allow States time to develop and implement effective enforcement actions. Some studies in which unannounced inspections were used to measure access by minors to tobacco products show a significant reduction in the availability of such products when enforcement is strengthened. Feighery and Altman showed that the percentage of times in the unannounced inspections a minor was able to buy tobacco products over-the-counter, after stronger enforcement measures were taken, decreased from 71% to 24% over a two-year period, but a 1% increase in vending machine sales, Feighery, E., M.S., Altman, D., Ph.D., *et al.*, "The Effects of Combining Education and Enforcement to Reduce Tobacco Sales to Minors: A Study of Four Northern California Communities," Journal of the American Medical Association, Vol. 266, No. 22, pp. 3168–3171 (December 11, 1991). Altman and Foster showed a reduction from 74% to 39% in six months, with stronger enforcement, but no reduction in vending machine sales. Altman, D., Ph.D., Foster, V., M.P.H., *et al.*, "Reducing the Illegal Sale of Cigarettes to Minors," Journal of the American Medical Association, Vol. 261, No. 1, pp. 80–83 (January 6, 1989). Jason and Ji saw a reduction from 70% to 5% in over-the-counter sales from stores over a year and a half period. Jason, L., Ph.D., Ji, P., *et al.*, "Active Enforcement of Cigarette Control Laws in the Prevention of Cigarette Sales to Minors," Journal of the American Medical Association, Vol. 266, No. 22, pp. 3159–3161 (December 11, 1991). Further, Forster, Hourigan and McGovern found a reduction from 53% to 38% in over-the-counter access and a decrease from 82% to 80% in vending machine sales following an increased penalty for sale to minors. Forster, J., Ph.D., M.P.H., Hourigan, M., M.P.H., and McGovern, P., Ph.D., "Availability of Cigarettes to Underage Youth in Three Communities," Preventive Medicine, Vol. 21, No. 3, pp. 320–328 (May 1992). Finally, Forster, *et al.*, found that installation of locking devices on vending machines significantly reduced access from those machines and that removing children's access to vending machines by various types of bans greatly reduced or eliminated illegal sales. Forster, Jean L., *et al.*, "Vending Machines: Evaluation of a City Ordinance," American Journal of Public Health, Vol. 82, No. 9, pp. 1217–1220 (September 1992). These studies suggest that States using reasonable enforcement measures should be able to reduce the availability of tobacco products to minors. If States' experience indicates that States can reasonably achieve a failure rate lower than the 20 percent that is proposed to be required for the fourth applicable year, the Secretary may consider lowering the failure rate further. These percentages, however, all represent "safe harbors" rather than the Department's intended goals. The Department expects every State to attempt to achieve zero failure rates.

The determination of substantial compliance in enforcing the law is within the discretion of the Secretary, and the Secretary, in extraordinary circumstances, may, as indicated above, consider a number of factors. Nevertheless, if, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not incompliance with the regulations, the Secretary will reduce the amount of the allotment in such amounts as is required by section 1926 of the PHS Act.

The Secretary invites comments on the appropriateness of the proposed State performance criteria and on other strategies that may achieve the statutory objective in a more cost-effective manner. Alternative strategies or performance measures could include: (1) State-specific performance measures reflecting demographic variations; (2) measures developed by State consensus; (3) criteria that would require a certain percentage decrease in the failure rate of the random, unannounced inspections from year to year; (4) separate performance criteria for over-the-counter sales versus vending machine sales; (5) reliance on the more general Secretarial process; or (6) criteria based on different percentage reductions.

The Secretary also proposes that States not be permitted to use program funds to enforce this provision; however, they may use part of the 5 percent allowed for administrative expenses under section 1931(a)(2) of the PHS Act. The Secretary believes that enforcement, such as prosecution of

entities or individuals who illegally sell tobacco products to minors, is not a true prevention and treatment activity. The Block Grant Program funds may be used, however, to provide technical assistance to communities to maximize procedures for enforcing the law regarding tobacco as provided in § 96.125(a)(6).

Finally, the Secretary believes that decreasing access of tobacco products to minors is a very important health issue, and the Secretary welcomes comments on how to implement the requirements. The Secretary recognizes that tobacco is the single most preventable cause of disease and premature death, killing more than 434,000 Americans every year. It is responsible for more then $65 billion annually in health and economic costs. An estimated 3.7 million U.S. teenagers (16 percent) are current smokers and nearly 3,000 young people become regular smokers every day. More than half of all smokers start using tobacco before age 18. Despite the fact that it is illegal to sell cigarettes to minors in a vast majority of States, nearly one billion packs of cigarettes are sold each year to children under the age of 18. Studies have also found that smoking is positively correlated with the use of alcohol and other drugs, with escalation from cigarettes to alcohol the most prevalent pattern found. Accordingly, the Secretary believes that by requiring States to have laws prohibiting access to minors is a first step in reducing this national health problem.

To assist States in implementing the requirements of the statute, the Department will provide technical assistance after issuance of the final rule. We envision such assistance covering matters such as effective enforcement practices and the development of scientifically valid inspections, as well as acceptable alternative mechanisms for funding enforcement activities.

Economic Impact

Executive Order 12291 requires the Department to prepare and publish a Regulatory Impact Analysis (RIA) for any regulation that is likely to have an economic impact of $100 million or more, cause a major increase in costs or prices, or meet other threshold specified in the Order. For purposes of compliance, HHS treats a $100 million effect within five years of regulatory promulgation as requiring preparation of an RIA. In addition, as required by the Regulatory Flexibility Act, the Department prepares a Regulatory Flexibility Analysis (RFA) for any regulation which is likely to have a significant economic impact on a substantial number of small entities.

Teenagers purchase and smoke approximately 1 billion packs of cigarettes each year, with a retail value of over $1.5 billion (DiFranza, J.R. and Tye, J.B., "Who profits from tobacco sales to children?", JAMA, 1991, vol. 266, pp. 3149–3153). As little as a 7 percent total reduction in sales within five years would have an economic effect of $100 million. We believe that a much greater reduction than this is likely to occur, possibly $1 billion a year within three years, depending on the emphasis that the States place on enforcement of their statutes and other factors.

In addition to overall reductions in tobacco sales, enforcement will affect the retail market. The money which would have been spent on tobacco products will be spent on other goods and services. Much may be spent in the same stores which sell tobacco products. However, in some instances (e.g., sales from free-standing vending machines) it is not clear that alternative products will raise the same volume of revenue for the store. Therefore, the statute and the Department's final rule may have a significant effect on some small businesses that currently sell tobacco products to minors. Thus, based on this information, both a RIA and an RFA are required.

The following analysis, in conjunction with the remainder of this preamble, presents a combined Regulatory Impact Analysis and Regulatory Flexibility Analysis, in compliance with E.O. 12291 and the Regulatory Flexibility Act.

In this analysis, the Department focuses mainly on cigarette sales, which account for the overwhelming majority of tobacco product sales to youth. Almost all of the analysis is, however, equally applicable to cigars as well as snuff, chewing, and pipe tobacco.

Magnitude of Effects

For purposes of the analysis, the Department assumes that States will take actions which reduce tobacco sales to minors by between one-third and two-thirds within three to four years. The reduction could be larger or smaller, however, depending upon how many minors are able to get cigarettes from older youths who can legally purchase cigarettes, the emphasis that States place on enforcing the laws, and the ease with which minors can purchase cigarettes by going to other outlets including vending machines which are harder to monitor.

Because minors will, in some cases, find other sources of cigarettes, a one-third or two-thirds reduction in illegal sales volume will only occur if there is an even greater reduction in the percentage of outlets making illegal sales. (For purposes of this analysis, the term "outlet" means any location that sells at retail or otherwise distributes tobacco products to consumers, including (but not limited to) locations that sell such products over-the-counter or through a vending machine.)

The proposed rule would require that States bring the percentage of outlets making illegal sales down to 20 percent within four years or risk loss of drug abuse funds. Some States, perhaps most States, may be able to bring failure rates well into the single digit range. The Department is aware of one community—Woodbridge, Illinois—that used a tobacco vending license and other tools to reach a failure rate of well under 5 percent for all types of outlets. (Jason, Leonard A., *et al.*, "Active Enforcement of Cigarette Control Laws in the Prevention of Cigarette Sales to Minors," JAMA, pages 3159–3161, December 11, 1991, Vol. 266, No. 22.) In this same community, cigarette use by youth decreased by half, despite the availability of illegal sales outlets in adjoining areas near the enforcing community.

Thus, even though we are proposing to set the compliance level for States at 20 percent after four years, our expectation is that actual violation levels in most States will be driven far lower by new State enforcement programs, perhaps near the level achieved in Woodbridge. We do not know, however, either what level the States will on average achieve, or precisely how that level will translate into reductions in teen smoking. Therefore, our estimates of actual smoking reductions by youth range from one-third to two-thirds.

A reduction in teen smoking implies an almost equally large reduction in adult smoking, over time. Some evidence suggests that approximately 71 percent of adult daily smokers became daily cigarette smokers by age 18 (Office on Smoking and Health, unpublished data from the 1991 SAMHSA National Household Survey on Drug Abuse). If most of the reduction in youth smoking translated into non-smoking adults, there would be a corresponding reduction over time in tobacco use by adults. This effect would be over and above the effects of smoking cessation programs, education, family pressures, and other public and private influences on the prevalence of smoking.

Thus, while the Department estimates a probable reduction in cigarette sales is valued on the order of $500 million to $1 billion a year (i.e., from one-third to two-thirds) in the near term, this reduction would translate into an annual multi-billion dollar effect over the long run, as each cohort of non-smoking youth ages into non-smoking adults.

Benefit Estimates

The benefits of reducing tobacco use lie primarily in reducing the costs created by tobacco. There is a considerable amount of literature on the costs of smoking. Probably the best of these studies—and certainly the most careful at distinguishing among costs to smokers themselves and costs to the rest of society—is "The Taxes of Sin—Do Smokers and Drinkers Pay Their Way?" (Manning, Willard G. *et al.*, JAMA, pages 1604–1609, March 17, 1989, Vol. 261, No. 11).

This study estimated the net present value cost for 1986 to members of society other than the smokers of cigarettes, by comparing the excess costs of services used by smokers to the taxes and premiums paid by smokers. Several estimates of the cost were calculated, based on varying assumptions and discount rates. The best estimate for our purposes is a "present value" (discounted) cost of $0.39 per pack to persons other than the smokers themselves, under the assumption of a 5 percent discount rate applied to future costs. This cost contained the following component costs per pack: Employer and taxpayer share of excess medical bills incurred by smokers ($0.26); sick leave and group life insurance subsidies ($0.06); lost taxes on smokers' unrealized earnings ($0.09); the value of lives lost to passive smoking ($0.14); the material cost of fires caused by smoking ($0.02); and the value of lives lost to fires caused by smoking ($0.09). These costs were then offset by the reduction in pensions and nursing home benefits paid to smokers due to their premature deaths (−$0.27).

This study omitted several major components of external costs, such as cleaning costs in buildings where smokers are employed. Most importantly, it made no allowance for the cost of low-birthweight infants. Over 200,000 such infants are born each year in the United States. These 6 percent of all births account for over 50 percent of all acute inpatient infant care costs. (These data come from Schwartz, Rachel M., "What Price Prematurity?", pages 170–174, Family Planning Perspectives, August 1989, Vol. 21, No. 4.) The risk of having a low-birthweight infant doubles if the mother smokes. A recent study estimated the effects of smoking-induced perinatal problems to include 2,250 excess perinatal deaths and about 39,000 excess low-birthweight infants (one-half of these subsequently hospitalized in intensive care units). (Marks, James S. *et al.*, "A Cost-Benefit/Cost-Effectiveness Analysis of a Smoking Cessation Program for Pregnant Women", American Journal of Preventive Medicine, pages 282–289, Vol. 8, No. 5, 1990.) Extrapolating from the data in this study, the total costs of tobacco use by expectant mothers in 1989 were about $500 million for use of neonatal intensive care units, about $500 million in present value of future long-term care costs for disabled newborns, and about $8.7 billion for the value of 2,250 lost lives (using the same $1.66 million value for a lost life as in the paper written by Manning *et al.*). On the same discounted cost per pack basis used by Manning *et al.*, these costs would add at least 15 cents a pack more.

Thus, in 1989 the net external costs borne by non-smokers exceeded 50 cents for every pack of cigarettes sold (lost earnings and medical care costs borne by smokers themselves were shown by Manning *et al.* to be over $1 a pack). In 1989, this was equivalent to over one-third of the then-current price of cigarettes.

Translated into the terms of this initiative, the $½ to $1 billion annual reduction in cigarette purchases by youth that the Department postulates achieving in three or four years is worth one-sixth to one-third of a billion dollars annually to the rest of our society (in addition, of course, to the $½ to $1 billion that youth save from not purchasing cigarettes).

Over the longer run, and assuming that adult smoking is reduced correspondingly, the benefits of better law enforcement will be many billions of dollars annually. We do not calculate a precise estimate because there are so many uncertainities as to future outcomes. None of these uncertainties, however, are likely to reduce our estimates of benefits.

Costs

The primary cost of improved enforcement lies in enforcement costs themselves (see section below for estimates of transfer and other effects). The Department has no good data on the costs of enforcement because so little has been attempted in the past and because new methods may be needed. However, these costs need not be substantial in relationship to other costs of State and local law enforcement, or to other duties faced by retail business.

The Department assumes, for purposes of this cost analysis, that the upper end of possible enforcement costs will result if each State adopts the Model Law recommended by HHS. This Model Law is appended to this NPRM.

An HHS Inspector General's report, also appended here, contains an appendix showing the elements of each State's enforcement scheme in 1991, using headings corresponding to many elements of the Model Law. For example, 22 States have some form of vending machine restriction, and 14 provide for revocation of a license to sell tobacco products if illegal sales are made to minors. Most of these restrictions are relatively new and are not reflected in the studies summarized earlier in the preamble showing that about two-thirds of outlets sell tobacco products illegally.

The Model Law represents a substantial enforcement effort compared to current practice, but nowhere near the greatest effort possible. The Model Law would require a licensing apparatus to be set up, stores to be notified of their obligations, hearing procedures to be developed, inspections organized, fines to be levied, and the like. Even if a State were to piggyback this system on top of an alcohol licensing and enforcement system, it would require a staff of one or two dozen people and an annual budget of approximately $1 million. Across all jurisdictions, this implies costs on the order of $50 million for an effective enforcement effort.

The most cost-effective method of compliance enforcement appears to lie in well-designed "sting" operations in which clearly underage youth without false identification attempt to make illegal purchases under adult supervision. Assuming that 200–400 stings a year are conducted in the average State, that each sting requires 10 person-hours of participant time (for training, travel, etc.), and that the average hour is valued at $10, the total national cost of conducting stings would be $1–$2 million annually. Individual businesses may have to train staff, post signs, check for compliance, relocate vending machines, and the like. Annual compliance costs could average as much as $100 a retail store (much less in small stores, much more in the larger stores). The largest component of this would be time spent in instructing sales clerks that they must avoid selling to minors and in dealing with occasional lapses. The average store has only about 12 employees, but assuming that 1 million outlets sell cigarettes or other tobacco products, national compliance costs might reach $100 million.

Counting both public and private costs, the national cost total for careful enforcement using this model would be

on the order of $150 million. Assuming that States financed their costs by licensing fees, as suggested by the Model Law, the net budgetary cost to States would be close to zero, and retail outlets would bear the entire $150 million annually.

These gross cost estimates include no offset for present enforcement efforts. However, studies have consistently shown that many businesses do not sell tobacco products to minors. Effective staff training may already be in place in a third or more of all businesses. Most States have at least some pieces of enforcement machinery in place, even if none has a comprehensive scheme (see Appendix A of the appended Inspector General report). Therefore, the *net* costs of stringent enforcement efforts may be a third less, perhaps $100 million a year rather than $150 million, taking into account current levels of effort.

Enforcement costs could also be reduced if States undertook less comprehensive enforcement actions. For example, an "informational" strategy of publishing in local newspapers the names of stores caught selling illegally to minors might be effective in signalling consumers who would wish to steer their patronage to stores which do not violate the law. Presumably, outlets selling tobacco as one of many product lines would police themselves vigorously to avoid this much larger loss of business. Concentrating enforcement resources and levying large, multiple fines on repeat offenders might also prove less costly than creating a moderate, graduated penalty system as set forth in the Model Law. The compliance standard proposed in this NPRM—reducing the proportion of outlets selling illegally to 20 percent or less within 4 years—could probably be met by efforts less substantial than adoption of the entire model law. This could reduce gross enforcement costs to near the $100 million level, and net enforcement costs even lower. It is unlikely that net costs could go below $50 million, however, because the major costs arise from actions which outlets would have to take to make a serious reduction in illegal sales, regardless of precise target level and regardless of the precise enforcement approach used by the State.

As discussed further below, there may be some additional costs due to market dynamics over time. For example, some stores that barely break even on tobacco sales may decide to drop this product line rather than spend resources on efforts to prevent illegal sales of tobacco to minors, such as paying a licensing fee and training staff. Some vending machines currently located in businesses that cater to minors may have to be relocated or withdrawn prematurely from use, and vending machine sales will drop. Some adult consumers will be inconvenienced if fewer outlets sell cigarettes. The Department has no basis at this time for estimating the magnitude or actual costs of these effects. However, the Department sees no reason to expect that these will exceed a few million dollars a year.

These are very imprecise estimates. The Department welcomes comments on the estimates and suggestions for improvement. Note, however, that States remain free to devise any enforcement approaches that they find cost-effective. The Department encourages the public to provide us information on effective and economical approaches which can be shared with the States.

Comparison of Benefits to Costs

Based on the estimates above, the Department expects that in three or four years net enforcement costs on the order of $50 and possibly $100 million will generate social benefits on the order of one-sixth of a billion dollars and possibly one-third of a billion dollars, a return of potentially 2 or 3 to 1, depending on the cost estimate and actual effects on smoking by youth. The lower end of the range of both costs and benefits is most likely to arise from serious but modest State efforts, and the higher end of both from more substantial State efforts.

Over the longer run, the Department expects enforcement costs to decrease slightly and benefits to increase greatly. Costs will decrease as compliance approaches 100 percent because there will be fewer violations, and fewer enforcement actions. Benefits will increase because as larger cohorts of non-smoking youth pass into adulthood without addiction, smoking is expected to drastically decrease. The packs of cigarettes affected by these regulations are the packs that cause addiction. A smoking reduction now will itself cause a smoking reduction later. Thus, the benefits from not smoking these particular packs of cigarettes are likely to be many times the benefits from not smoking the "average" pack of cigarettes studied by Manning, *et al.*

Distributional and Transitional Effects

The estimates above deal with the ultimate effects of smoking reductions and activities directed toward reductions. There are additional economic consequences which are not part of these calculations but which are of concern.

First, this law enforcement effort will increase jobs and profits in the economy. When a teenager does not spend $1.50 or $2 for a pack of cigarettes, there is no loss to the economy. The money is spent on some other good or service instead. True, some particular jobs (ultimately, those in cigarette, cigar, snuff, and chewing and pipe tobacco factories, and in cancer wards of hospitals) will be affected by any large scale redirection of resources away from tobacco purchases. However, other jobs will be created instead. For example, if the money is spent on chewing gum and music tapes, there will be increases in jobs in gum factories and music studios. In fact, the excess of benefits over costs involved represents a pure gain to the economy, much of which will show up in increased productivity and job growth.

Second, there will be negligible adverse effects on the great majority of retail outlets. It is true that stores that currently sell tobacco products to minors will lose sales in the short run. These sales may or may not be offset by increases in sales of other items. However, with the single exception of vending machines (discussed below), we believe that these effects on sales will be small. There are approximately 1½ million retail sales outlets in the United States, and about two-thirds of these sell tobacco products (all data in this paragraph are obtained from the Statistical Abstract of the United States 1992, table 1284, p. 761). On average, tobacco products represent 5 percent of total sales in those outlets that sell tobacco. In 1987, according to the Statistical Abstract, retail establishments sold $23 billion of tobacco products (at current prices this number would exceed $30 billion). The potential $1 billion reduction (assuming a two-thirds reduction in smoking by youth) that the Department estimates in the near future represents less than 5 percent of that amount, and one-fourth of 1 percent of total sales in stores selling tobacco products. Considering that in many if not all cases the money not spent on tobacco will be spent on other products in the same stores, the negative economic effects on sales, costs, and profits will be negligible. Moreover, some outlets will actually increase tobacco sales as others decide to drop cigarettes and various forms of chewing tobacco as marginal product lines.

Third, the Department expects significant drops in vending-machine sales of tobacco products because of the actions that will have to be taken to prevent sales to minors from these devices. The access studies have shown

that vending machines provide by far the easiest method for youth to make purchases. For the youngest minors, they are often the only easy sources of purchase. A study for the vending machine industry shows that only 23 percent of smoking youth now use vending machines often or occasionally (Response Research, Inc., "Findings for the Study of Teenage Cigarette Smoking and Purchasing Behavior," June/July 1989). However, in the future this percentage would rise greatly—perhaps close to 100 percent—if enforcement eliminated other sources of illegal sales but left vending machines available to youth.

There are several options for preventing illegal sales from vending machines, including installing locking devices on tobacco vending machines—which allow use only after an employee verifies that the prospective purchaser is not under-age, and removing tobacco vending machines from locations where youth can legally approach them (e.g., removing them from all locations except bars where minors are not permitted). The experience of St. Paul, Minnesota, illustrates the difficulty of enforcement options short of bans: A year after enforcement began, about 30 percent of merchants had not installed locking devices, and even where these were installed, employees allowed illegal purchase about 40 percent of the time. On the other hand, communities that have banned these machines altogether show complete or near complete compliance. (See Forster, Jean L. *et. al.*, "Vending Machines: Evaluation of a City Ordinance," American Journal of Public Health, pages 1217–1220, September 1992, Vol. 82 No. 9). Quite apart from compliance, the St. Paul experience shows that locking devices are inconvenient to stores, cost as much as $100 a machine, and that a quarter of the merchants either switched to over-the counter sales or dropped tobacco vending when faced with a requirement for locking devices.

Based on these data, the Department would expect that States will face significant challenges in complying with the new law unless they impose strict controls on tobacco vending machines in locations accessible to minors. Data from the vending-machine industry sheds some light on the consequences of partial or total bans. (See the Statement of Richard W. Funk on behalf of the National Automatic Merchandising Association, Tobacco Issues (Part I), Hearings before the Subcommittee on Transportation and Hazardous Materials of the Committee on Energy and Commerce, U.S. House of Representatives, July 25, 1989, Serial No. 101–85, pages 240–245.) This testimony indicates that there are at least 1,400 vending-machine companies, of which 1,000 operate some 370,000 cigarette-vending machines, with average annual revenues of about $4,000 per machine. For the entire industry, including companies which do not sell tobacco, these machines account for 9.5 percent of vending sales in dollars and 3.6 percent of vending sales in units (taking into account taxes, it appears that vending sales represent about 7 percent of non-tax revenue for all these companies, and 10 percent for those companies selling tobacco products). About one-third of these machines are located in bars or cocktail lounges, but many are in motels, colleges, restaurants, and other locations readily accessible to youth. Depending on what actions States decided to take, two-thirds or more of these machines might be affected by ban or locking device. Assuming, for purposes of this analysis, that two-thirds of these machine were eliminated over a phased, three-year period, and that there were no offsetting increases in tobacco sales from the remaining machines, by the end of the third year 1,000 companies would face an annual loss of sales averaging about 7 percent of non-tax revenue (7 percent is ⅔ of the 10 percent discussed above). The sales reduction could be less than this or greater than this, depending on the precise actions taken by the States. It would also vary significantly from company to company. Companies could, of course, take actions to overcome such losses, such as replacing tobacco products with other products. States could mitigate these effects by phasing, banning only locations accessible to youth, and allowing use of locking devices. The Department solicits comments on this issue and on whether any other alternatives would be cost-effective.

Alternatives

Elsewhere in this preamble the Department has requested comment on several modifications to our proposed regulations. The main alternative the Department has considered and has temporarily rejected was to impose a more stringent standard on the States. There is a strong line of argument that near-100 percent compliance can be achieved over some period of time. One community, the city of Woodbridge, Illinois, essentially ended illegal sales to minors, apparently by using a licensing law (not rigidly enforced) and the part-time efforts of one police officer. (See Jason, Leonard A. *et al.*, "Active Enforcement of Cigarette Control Laws in the Prevention of Cigarette Sales to Minors," JAMA, pages 3159–3161, December 11, 1991, Vol. 266 No. 22). However, it would not be prudent to rely on the experience of one community in setting a national policy, and even in Woodbridge success took a number of years to achieve. Moreover, States have not had consistant success in enforcing laws against sale of alcohol to minors (see "Youth and alcohol: Laws and Enforcement," Office of the Inspector General, HHS, September 1991). Tobacco-law enforcement may turn out to pose similar hazards. Therefore, the Department believes that risking an error which would force us to take vitally needed drug-treatment funds from a State despite a serious enforcement effort is too dangerous at present. Hence, on an interim basis, and until the Department and the States gain some experience from serious State-wide efforts at enforcement, we have allowed the States both time and leeway to achieve compliance. Nonetheless, we welcome comments addressed to the feasibility and fairness of a stricter standard, such as penalizing States in which outlets with illegal sales exceed 20 percent in the third year, or 20 percent in the fourth year and 10 percent in the fifth year.

Second, the Department also considered specifying particular enforcement measures that States must take, such as requiring that stores illegally selling to minors lose a license to sell tobacco products, or imposing strict controls on vending machine sales of tobacco products. However, the same uncertainty that would make a near-100 percent compliance standard imprudent until we have more information appears to make imposing uniform processes on all States unwise. Furthermore, the Department believes that governors and States should have maximum flexibility to devise their own solutions. The Model Law represents the Department's best judgment as to cost-effective steps States might take, but the current state of knowledge does not necessarily justify imposing its components as requirements.

Third, the Department considered more stringent approaches to compliance measurement. As indicated above, stings are a low-cost and highly effective method of determining which outlets violate the law. The Department considered requiring States to conduct a minimum number of stings, such as 1 sting annually at 50 percent of all sales outlets. However, we decided that it would be premature to force a particular standard upon all States.

Fourth, the Department considered creating a special review process by which private groups could bring the

results of their own unannounced inspections directly to our attention, if they believed that States were not honestly reporting progress. This was rejected because the public is free to provide such information to the Department for its consideration.

Finally, a State could reduce use by minors, as well as increase State revenue, by placing higher taxes on cigarettes. Research has shown that youth are particularly sensitive to tobacco prices (Grossman, M., Coate, D., Lewit, E.M., and Shakotko, R.A. "Economic and other factors in youth smoking." Washington, DC: National Science Foundation; 1983. Final Report, Grant No. SES–8014959; and Lewit, E.M., Coate, D. and Grossman, M. "The effects of government regulations on teenage smoking. Journal of Law and Economics. Vol. XXIV, No. 3, pp. 545–569 (December 1981)). Thus, a State may choose to impose taxes so high as to discourage most youth purchases.

The Department requests comments on these and any other alternatives which might reduce costs or increase benefits.

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Minors' Access to Tobacco—42 CFR 96.122—NPRM.

Description: Data to be reported is required by 42 USC 300x–26 and will be used by the Secretary to evaluate State compliance with the statute, to report to Congress as required under 42 USC 300x–59, and to publish special analytic studies from time to time.

Description of respondents: State or local governments.

Estimated Annual Reporting Burden:

Section	Annual number of respondents	Annual frequency	Average burden/response	Annual burden hours
Application/Annual Report: 45 CFR 96.122(f)(5) and .130(d)	60	1	30 hrs	1800

We will submit a copy of this proposed rule to OMB for review of these information collections. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, may be sent to the agency official whose name appears in the FOR FURTHER INFORMATION section above, and to Allison Eydt, SAMHSA Desk Officer, Office of Information and Regulatory Affairs/OMB, room 3001, 725 17th St., NW., Washington, DC 20503.

Appendix A to Preamble—Model Sale of Tobacco Products to Minors Control Act; A Model Law Recommended for Adoption by States and Localities To Prevent the Sale of Tobacco Products To Minors

U.S. Department of Health and Human Services, May 24, 1990

Introduction

The great majority of states prohibit sale of tobacco products to minors. Yet over one million teenagers start smoking each year, and minors buy about one billion packs of cigarettes each year. Because nicotine is an addicting drug, a minor who starts smoking is likely to be a lifelong customer—and one in four will die prematurely of lung cancer or other smoking-related disease. Illegal tobacco sales dwarf illegal alcohol and hard drug sales to minors, and the resulting mortality is many times greater—390,000 deaths a year. These are preventable deaths, and many of them occur because youth can obtain tobacco products with ease. Over eighty percent of teenagers correctly believe that it is very easy for them to buy cigarettes.

Access of minors to tobacco is a major problem in every state of the Nation. About three-fourths of the million outlets which sell cigarettes to adults also sell cigarettes to minors. These stores ignore the laws of their states because enforcement is almost non-existent. Many retailers are even unaware that such sales are illegal. Yet there are straightforward enforcement approaches which can eliminate almost all sales to minors while yielding revenues to cover the cost of enforcement. Teenage smoking can be greatly reduced without disruption either to governments or to sales to adults.

Data on the nature and extent of the enforcement problem, and information on successful community efforts to prevent illegal sale of tobacco products to youth, are presented in the report of the Office of the Inspector General titled "Youth Access to Cigarettes," dated May, 1990. Additional information on this issue can be obtained from the Office on Smoking and Health, within the Centers for Disease Control of the Public Health Service.

The Department of Health and Human Services has reviewed options for improving enforcement. The approach we have developed is embodied in a draft model law. We recommend that each of the 50 states enact this model. No state now uses all of the tools needed to make enforcement effective. In states which are not immediately willing to adopt the model law, counties and cities can enact most features by ordinance and prevent children's access to tobacco products.

No enforcement scheme is perfect. Many of those who are already addicted will find ways to get tobacco to meet their craving for nicotine. But for most teenagers, easy access to tobacco products and addiction can be eliminated. For others, reductions in frequency and numbers of cigarettes smoked will decrease the likelihood of becoming long-term smokers.

Summary of the Model Law

The model law has several key features. These are summarized below and discussed further in the section-by-section analysis. Some of these features can and should be modified by each state to reflect its internal organization and processes. But the underlying approaches, however implemented, are key to effective enforcement. The model law would:

- Create a licensing system, similar to that which is used to control the sale of alcoholic beverages, under which a store may sell tobacco to adults only if it avoids making sales to minors. Signs stating that sales to minors are illegal would be required at all points of sale.
- Set forth a graduated schedule of penalties—monetary fines and license suspensions—for illegal sales so that owners and employees face punishment proportionate to their violation of the law. Penalties would be fixed and credible. Those who comply would pay only a license fee.
- Provide separate penalties for failure to post a sign, and higher penalties for sales without a license.
- Place primary responsibility for investigation and enforcement in a designated state agency, and exclusive authority for license suspension and revocation in that agency, but allow local law enforcement and public health officials to investigate compliance and present evidence to the state agency or file complaints in local courts.
- Rely primarily on state-administered civil penalties to avoid the time delays and costs of the court system, but allow use of local courts to assess fines, similar to traffic enforcement. This would provide flexibility to both state and local authorities to target enforcement resources. (An illegal sale could not result in two fines, but a local conviction would be reported to the state and count towards possible license suspension).
- Set the age of legal purchase at 19. This is higher than under many existing state tobacco statutes, but lower than the age for alcohol. States may wish to consider age 21, because addiction often begins at ages 19 and 20, but rarely thereafter.
- Ban the use of vending machines to dispense cigarettes, parallel to alcohol practice and reflecting the difficulty of preventing illegal sales from these machines. (This is another area where states should examine options carefully; allowing sales in places not legally open to minors, or use of store-controlled electronic enabling devices, may be acceptable alternatives. States could also consider phasing of the ban to minimize disruption.)
- Contain a number of features to minimize burdens on retail outlets: Requiring identification only for those who are not clearly above the age of 19, allowing a driver's license as proof of age, setting a nominal penalty for the first violation, disregarding one accidental violation if effective controls are in place, having the state provide required signs, and setting license fees lower for outlets with small sales volume.

The model law does not explicitly address several topics, including possession of tobacco by minors, earmarking revenues for enforcement, allowing local ordinances to be stronger than the state law, and authorizing use of minors in "sting" operations to detect violations. This does not mean that states should not consider including such provisions, as discussed further below, but that we did not believe them necessary or appropriate within the statute. For example, use of stings will be vital to effective enforcement of this law, but like other investigative procedures need not be detailed in statute.

In summary, the model law attempts to create workable procedures which will provide retail outlets the incentive and tools to refuse to sell to minors, as already required by law in almost all states. Stores which comply will have no burden other than a licensing fee and, in some cases, replacement of vending machine by over-the-counter sales. Compliance by responsible stores, which would quickly become the great majority, will enable state and local authorities to concentrate enforcement efforts on a small number of recalcitrant outlets. The few stores which are unable or unwilling to prevent sales to minors may elect to stop carrying tobacco products, or will lose the license to sell tobacco products. Adults will continue to be able to buy cigarettes and other tobacco products at a wide range of outlets.

Ultimately, the effectiveness of this legislation depends on the willingness of concerned citizens to report violations to authorities who are responsible for taking investigatory and, if necessary, enforcement action. We are sure that enough citizens are concerned; the model law simply provides an effective and efficient system to handle their complaints, filling voids in almost all state enforcement schemes. Indeed, merely putting an effective enforcement mechanism in place is the single most important reform. The better the mechanism, the less likely it will have to be used.

Section-by-Section Analysis

Section 1 states the title of the bill, here suggested as "Sale of Tobacco Products to Minors Control Act."

Section 2 presents appropriate findings of fact. Most important, in this context, are that tobacco products are addicting, that addiction almost always starts in teenage years, and that smoking causes death on a large scale. States exploring these issues may wish to consult recent reports of the Surgeon General, which summarize and synthesize the large body of knowledge extant.

Section 3 establishes a state "Office of Tobacco Control" and the key powers of that office. Whether that office would best be located in the Department of Health or the state alcohol sales licensing agency, or established as an independent agency, is uniquely a matter for state-specific decision.

Two key provisions of section 3 require the Office to operate a licensing system and to prepare and distribute to licensed outlets signs concerning sales to minors. Requiring a license for sale of tobacco products conditions the privilege of sale on compliance with the law. Later in the bill heavy penalties are provided for any sales (or free distribution) to any persons without such a license. Failure of licensed outlets to prevent sale to minors leads to financial penalties and revocation of the license. The text is worded to allow licensing mobile vendors—it is not the purpose of the law to harm any small businesses.

The state agency is empowered to investigate and enforce the law. The investigative and enforcement techniques are not specified in detail, since these are generally routine and well-established administrative functions. However, the most powerful technique for both investigation and enforcement will in most circumstances involve testing compliance by sending underage persons to stores which sell tobacco products—especially those which have been reported for illegal sales. A request to purchase cigarettes is then made and the sale, if consummated, provides evidence of violation of the statute. Properly designed and supervised by state or local officials, such testing can readily and inexpensively establish whether an outlet violates the law, and provide the basis for a formal complaint and enforcement decision. States and communities now using this approach often hire teenagers to perform this function as temporary employees, to provide insurance protection to the teenagers and assure proper supervision. Depending on other law (e.g., whether possession by minors is illegal) and court rulings, some states may wish to authorize this approach explicitly. Tennessee does so now.

The model law provides that local officials may also investigate violations, and either assist the state agency by bringing evidence before it or bring cases directly in local courts. Local officials in some cities and counties will have the resources and expertise to contribute significantly to enforcement. Such contributions will not only speed enforcement directly, but allow the state agency to allocate its resources where they are most needed. In general, the assumption of the bill is that there will be substantial state and local cooperation, similar to the kinds of arrangements used for traffic violations. A varied local role in investigation and

enforcement will also be useful in identifying techniques which are particularly effective within each state.

The license fee is suggested as $300 for most stores but only $50 for stores with a volume of tobacco sales below $5,000 a year. This should provide enough revenue to make enforcement budget-neutral, while protecting small businesses from what might be perceived as an onerous cost in relation to sales. Of course, enforcement costs will not necessarily vary by size of outlet and a state could balance these considerations differently. Regardless, a state could use additional distinctions (e.g., by size, or whether licensed to sell alcoholic beverages) or set these fees higher or lower, depending on other licensing systems, its revenue goals, and whether it wishes the tobacco control system to be fully financed through license fees. We have not suggested earmarking revenues to accrue directly to the Tobacco Control agency rather than the general fund, but some states might wish to do this.

Section 4 requires license holders to display the license and sign (*section 7* provides a monetary penalty for failure to display them). A visible sign provides continuing notice to all—sales clerks, underage customers, and older customers—as to the law's requirements and the store's declared willingness to comply. The sign also aids clerks in refusing to sell to underage customers.

Section 5 provides that both licensees and their employees may not sell or give tobacco products to individuals known to be under the legal age, or to individuals who are not clearly older or who do not have appropriate proof of age such as a driver's license. It also bans entirely sales of "broken packs" (cigarettes are sometimes sold one-by-one to minors), vending machine sales, and sales other than at licensed outlets.

Two of these provisions raise significant questions. First, why age 19, when alcohol purchase is illegal below age 21 and most states now ban tobacco sales at age 18 or below? To the significant extent that tobacco, like alcohol, has been an adult privilege to which many teenagers turn at the first legal opportunity, raising the age will postpone such exposure until the adolescent has reached an age at which mature judgment has a better chance of overcoming the intense pressure to experiment with "adult" behaviors. This postponement may be even more important for tobacco than for alcohol, since nicotine is rapidly addicting. Even a month or so of regular smoking is likely to create a lifelong addiction for most persons. Also, a realistic appraisal must concede that most teenagers a year younger than the legal age can readily obtain tobacco products from friends who can legally purchase them. Thus, an age 18 limit exposes most 16 and 17 year old youth to an easily exercised temptation. Only if the age limit is at least 19 can the state be confident that most high school students will not have ready access to tobacco. Of course, a few teenagers will be able to obtain such products from family or older friends; the issue here is ready access for *most* teenagers. Finally, only if the age limit is at least 19 will smoke-free school policies be fully enforceable—no students will have legal access to tobacco products. States are encouraged to consider age 21; this will parallel alcohol practice and also protect older teenagers during years in which many are still vulnerable.

Second, why ban vending machine sales? The basic problem with these sales is that they do not require human intervention—the active participation of a clerk who sells the product only after observing or checking age. Vending machines are often used now by adolescents, and vending machines will nullify otherwise effective action preventing over-the-counter sales. Sales personnel at a register cannot effectively police even nearby machines while serving other customers. Individual states may wish to consider two variations: Allowing vending machine sales in places which minors may not legally enter at all, or electronic disabling devices which require positive action by a clerk to activate. However, Utah found that disabling devices were ineffectual in practice. Finally, states could consider allowing a grace period for elimination of these machines to minimize disruption.

Section 6 prohibits unlicensed sale or distribution of tobacco products. It allows exceptions for distribution by relatives or friends on private property not open to the public (e.g., the home) and for wholesale distribution. Section 7 provides for a fine of up to $1,000, and imprisonment of up to 30 days, for unlicensed sale or distribution.

Section 7 establishes two types of financial penalties for violations committed at licensed outlets—civil money penalties and fines. These financial penalties apply both to license holders and sales personnel. Sales personnel are subject to penalties both to emphasize their responsibility under the law and to protect employers against the carelessness of employees. Financial penalties rise progressively with repeated offenses, and are designed to avoid penalizing compliant stores for truly isolated lapses occurring over wide periods of time. A license holder may also avoid one penalty in any two year period by showing that an effective system to prevent violations is in place, i.e., that the sale was a true lapse. The suggested penalty for a first offense is $100 and no suspension; the fourth violation brings a $1,000 dollar fine and a 9 to 18 month suspension of the license. In effect, law abiding stores have nothing to fear; persistent offenders will lose the right to sell tobacco products to adults.

The Department of Health and Human Services has found that use of civil money penalties assessed through administrative law judges rather than the courts has greatly improved the effectiveness and efficiency of enforcing various statutes related to fraud and abuse. The capacity of the Federal criminal justice system is so stretched that without the alternative of civil money penalties, many "minor" frauds or other crimes simply could not be prosecuted. States face similar constraints. Using civil money penalties is not an "either-or" choice—under existing Federal law, *both* civil and criminal remedies are available and the choice of which to use in particular cases greatly facilitates effective enforcement. The advantage of this added tool is not only case-specific but systemic: The mere existence of a credible and workable civil money penalty raises the potential cost of statutory violations, and thereby deters violations.

Although the model law emphasizes civil money penalties, fines are authorized as well to provide an enforcement role for both state and local authorities and to provide flexibility of approach. For any particular instance of noncompliance, only one financial penalty may be assessed. Any penalties assessed at the local level must be reported to the Tobacco Control agency so that this agency can accumulate records needed for license suspensions.

Thus, the model law allows the following kinds of flexibility:

- The Tobacco Control agency may develop a backlog of cases nonrenewal. Starting with the second offense, there are progressively steeper periods of suspension: Seven days for the second offense, up to 9 to 18 months for the fourth violation. Section 8 also provides for suspension of licenses for all outlets of a chain if more than three outlets have violated the law more than three times in a two year period. This provision creates a strong incentive for retail chains to ensure compliance by all of their outlets.

Other Matters. The model law does not prohibit purchase or possession of tobacco products by minors. Some states and communities already prohibit these and others may wish to consider this. We left out such provisions because in our judgment they would be far harder to enforce—and of less relevance to preventing widespread availability—than prohibitions on sales. Such provisions also raise such issues as use of minors as sales clerks; establishment of enforcement procedures; establishment of penalties (small fines, community service, or attending smoking cessation programs are commonly proposed); and possible need to exempt purchase by minors in supervised "sting" operations. Regardless, any underage person smoking in public would indicate a potential violation of the sales ban even absent a possession or purchase law. Authorities could investigate the source of these tobacco products whether or not purchase or possession were banned. States willing to invest in enforcement for *both* sales and possession should consider adding possession prohibitions.

Finally, while the model law provides for a significant local role in enforcement, it does not provide for independent local statutes. States might wish to empower municipalities to levy higher fines or otherwise exercise some independent authority. The worst possible outcome would be to enact a state statute which failed to establish an effective and workable enforcement system while preempting local governments from filling this void.

Conclusion

Existing state laws prohibiting sales of tobacco products to minors have largely been ineffectual. This enforcement failure is hypocritical and contributes to a scoff-law environment. Unlike some other law enforcement problems, this is neither inherent or insuperable. Eliminating virtually all sales to minors does not even present particularly difficult enforcement problems. It simply requires workable procedures which create swift and sure sanctions for violations, with minimal cost or inconvenience to retailers and adult customers. There is a large and articulate body of citizenry—including a large proportion of teenagers and retailers—who understand the gravity of tobacco consumption as a public health problem and who would welcome reasonable laws. Enactment and responsible implementation of this model law is the single most important reform to improve the health of its citizens that any state could undertake in the decade of the 1990s.

Model Sale of Tobacco Products to Minors Control Act

Section 1. *Short Title.*

This Act may be cited as the "Sale of Tobacco Products to Minors Control Act".

Sec. 2. *Findings.*

The Legislature finds that——

(1) Approximately 390,000 Americans die each year of diseases caused by cigarette smoking,

(2) The Surgeon General of the Public Health Service has determined that smoking is the leading cause of preventable death in this country,

(3) Nicotine in tobacco has been found by the 1988 report of the Surgeon General, *The Health Consequences of Smoking: Nicotine Addiction* to be a powerfully addictive drug, and it is therefore important to prevent young people from using nicotine until they are mature and capable of making an informed and rational decision,

(4) Most adults who smoke wish to quit, a majority of current adult smokers have tried to quit without success, and one-half of all teenagers who have been smoking for five years or more have made at least one serious but unsuccessful attempt to quit,

(5) Every day more than 3,000 minors begin smoking,

(6) One-half of smokers begin before the age of 18, and 90 percent begin before the age of 21, and

(7) Minors spend more than one billion dollars on cigarettes and other tobacco products every year.

Sec. 3. *Office of Tobacco Control.*

(a) *Establishment of Office.*—There is established in the Department of _____ an Office of Tobacco Control. The Office shall be headed by a Director.

(b) *Functions of Director.*—The Director shall—

(1) Issue licenses for the sale of tobacco products,

(2) Provide without charge signs (concerning the prohibition on sales to individuals under 19 years of age) that meet the requirements of subsection (d) to persons licensed to sell tobacco products,

(3) Investigate (concurrently with other State and local officials) violations of sections 4 through 6,

(4) Enforce civil money penalties under section 7, (5) enforce (concurrently with other State and local officials) fines under section 7, and

(6) Bring license suspension, revocation and nonrenewal actions under section 8.

(c) *Licenses.*— (1) A license for the sale of tobacco products shall be issued to a specific person for a specific outlet (a fixed location or mobile unit) and shall be valid for a period of one year.

(2) The annual fee for a license is $50 for an outlet whose annual volume of tobacco sales is less than $5000, and $300 for an outlet whose annual volume of tobacco sales is $5000 or more.

(d) *Signs Concerning Sales to Individuals Under Age 19.*—Signs to be provided under subsection (b)(2) shall—

(1) Contain in red lettering at least one-half inch high on a white background "IT IS A VIOLATION OF THE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 19", and

(2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle.

Sec. 4. *Display of License and Signs.*

A person that holds a license issued under section 3(b)(1) shall—

(1) Display the license (or a copy) prominently at the outlet for which the license is issued, and

(2) Display prominently at each place at that outlet at which tobacco products are sold a sign that meets the requirements of section 3(d).

Sec. 5. *Prohibitions Applicable To License Holders and Their Employees and Agents.*

(a) *Prohibition on sale or distribution to individuals under the age of 19 and in certain other cases.*—A person that holds a license issued under section 3(b)(1), or an employee or agent of that person, may not sell or distribute a tobacco product—

(1) To any individual that the license holder, employee, or agent knows is under 19 years of age,

(2) To any individual (other than an individual who appears without reasonable doubt to be over [illegible] years of age) who does not present a driver's license (or other generally accepted means of identification) that describes the individual as [illegible] years of age or older, contains a likeness of the individual, and appears on its face to be valid,

(3) In any form other than an original factory-wrapped package, or

(4) Other than at an outlet for which a license has been issued under section 3(b) ([illegible].

(b) *Prohibition on maintaining vending machines.*—A person that holds a license issued under section 3(b)(1), or an employee or agent of that person, may not maintain at a licensed outlet any device that automatically dispenses tobacco products.

(c) *No more than one violation on any one day.*—No person shall be liable under the preceding subsections for more than one violation on any one day.

Sec. 6. *Prohibition on unlicensed sale or distribution of tobacco products.*

(a) General rule.—No person, other than a person who holds a license issued under section 3(b) [(1) or (2)], or an employee or agent of that person, may sell or distribute a tobacco product.

(b) *Exceptions.*—Subsection (a) does not apply to—

(1) Distribution by an individual to family members or acquaintances on private property that is not open to the public, or

(2) The sale or distribution to a manufacturer of tobacco products, to a wholesaler of tobacco products, or to a person who holds a license issued under section 3(b)(1).

Sec. 7. *Penalties.*

(a) Nature and size of penalties.—(1) Any license holder that violates a requirement of section 4 shall be subject to a fine or civil money penalty of not more than $100.

(2) Any license holder, employee, or agent that violates a prohibition of section 5 shall each be subject to—

(A) A fine or civil money penalty of $100, for the first violation within a two year period.

(B) A fine or civil money penalty of $250, for the second violation within a two year period,

(C) A fine or civil money penalty of $500, for the third violation within a two year period,

(D) A fine or civil money penalty of $1000, for any additional violation within a two year period.

(3) Any person that violates a prohibition of section 6 shall be subject to a fine of not more than $10000, or imprisonment of not more than 30 days, or both.

(b) *Exception for license holder.*—A person that holds a license issued under section 3(b)(1) shall not be subject to a fine or civil money penalty under subsection (a)(2) for a violation by an employee or agent of a prohibition under section 5, and an assessment of a fine or civil money penalty under subsection (a)(2) for a violation by an employee or agent shall be disregarded for purposes of section 6(a), if the license holder affirmatively demonstrates that the license holder has an effective system in place to prevent violations of the prohibitions under section 5. The exception prescribed by the preceding sentence applies only once to a license holder during any two year period.

(c) *No double penalty.*—(1) If an action has been commenced against a person under subsection (a)(1) or (a)(2) for a particular violation for the payment of a fine, an action may be commenced against that person for that violation for the payment of a civil money penalty.

(2) If an action has been commenced against a person under subsection (a)(1) or (a) (2) for a particular violation for the payment of a civil money penalty, no action may be commenced against that person for that violation for the payment of a fine.

(d) *Notification to Office of Tobacco Control of Fines Imposed.*—A court shall notify the Director of the Office of Tobacco Control of any fine imposed under subsection (a)(2).

Sec. 8. *Suspension, revocation, and nonrenewal of licenses.*

(a) Suspension, revocation, and nonrenewal of individual licenses.—A license issued under section 3(b)(1) for a particular outlet shall be suspended or revoked, and not renewed, for a period of—

(1) 7 days, if a fine or civil money penalty has been imposed under section 7(a)(2) for the second violation at that outlet within two years,

(2) 1 to 6 months, if a fine or civil money penalty has been imposed under section 7(a)(2) for the third violation at that outlet within two years, or

(3) 9 to 18 months, if a fine or civil money penalty has been imposed under section 7(a)(2) for any additional violation at that outlet within two years.

(b) *Suspension, revocation, and nonrenewal of all licenses for outlets under common ownership or control.*—All licenses issued under section 3(b)(1) for outlets that are under common ownership or control shall be suspended or revoked, and not renewed, for a period of 9 to 18 months, if fines or civil money penalties have been assessed under section 7(a)(2) for three or more violations at three or more outlets within a two year period.

(c) *No double counting.*—A violation committed by an employee or agent, and attributed to a license holder, shall be counted only once for purposes of the preceding subsections.

(d) *Exception.*—See section 7(b).

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Appendix B to Preamble—Youth Access to Tobacco

December 1992
Office of Inspector General
U.S. Dept. of Health and Human Services

Executive Summary

Purpose

To assess the level and characteristics of State and local enforcement of laws limiting youth access to tobacco.

Background

In 1990, the Office of Inspector General (OIG) inspection, "Youth Access to Cigarettes" found that 45 States had laws prohibiting the sale of cigarettes to minors. However, States were not enforcing their laws. The report provided information for the development of the Secretary's "Model Sale of Tobacco Products to Minors Control Act: A Model Law Recommended for Adoption by States or Localities to Prevent the Sale of Tobacco Products to Minors."

The Office of the Secretary has asked the Office of Inspector General (OIG) to conduct a follow-up survey of the enforcement of State laws limiting youth access to tobacco. In addition, the Congressional Subcommittee on Health and the Environment has requested the OIG's assistance in determining the extent to which States have adopted and are enforcing youth access laws.

Recently, significant youth access legislation has been enacted. In July 1992, the President signed the ADAMHA Reorganization Act, PL 102-321, which requires States to ban the sale and distribution of tobacco products to anyone under the age of 18 by October 1, 1994. It also requires States to enforce their laws "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to underage youths."

Findings

Although most States prohibit the sale of tobacco to minors, their failure to enforce their laws would place them out of compliance with the new Federal law:

All but three States ban the sale of tobacco to minors under the age of 18. Montana does not have a law prohibiting the sale of tobacco, New Mexico only prohibits the sale of smokeless tobacco and Georgia bans sales to minors under 17 years of age rather than 18.

Only two States are enforcing their laws restricting the sale to minors statewide.

In Florida and Vermont, the liquor control agencies enforce their youth access laws statewide.

A few States are funding local initiatives to reduce youth access. Four States (California, New Jersey, North Dakota and Utah) make funds available specifically to limit youth access or as part of broader tobacco education and control efforts.

Low priority by police and lack of a designated enforcer are seen as obstacles to enforcement. State respondents also frequently cite a lack of community awareness of youth access issues and a lack of commitment to enforcing these laws as serious problems.

Despite lack of State efforts, some localities are demonstrating enforcement is possible.

These localities have developed different enforcement models. All, however, enforce State or local laws, designate an agency responsible for enforcement, and choose a method of enforcing that best meets their needs.

Vending machine restrictions are the most common initiative. In addition to their State laws prohibiting the sale of tobacco to minors, 21 States and Washington DC have passed laws that restrict vending machines.

Conclusion

Our finding that most States are not enforcing their laws limiting youth access to tobacco is a major concern given the requirements of Public Law 102-321. While we found that most States have laws that prohibit the sale of tobacco to minors, they must move quickly to enforce their laws to avoid the penalty.

State Options

The models that exist at the State and local levels present successful options for enforcing youth access laws. This report describes steps that can be taken by States that can reasonably be expected to reduce tobacco usage by youth. The States can:

Designate an enforcer
Ban vending machines
Enact provision of the model law
Educate communities and vendors
Post signs
Conduct stings

Federal Options

HHS has already taken steps to provide guidance to the States, however, as the Department implements the new law, there may be other ways to provide leadership and direction to the States. The Department can:

Provide technical assistance to the States
Monitor States activities and collect base line data
Conduct research on effective enforcement models
Develop criteria

* * * * *

Youth Access to Tobacco

OEI-02-91 December 1992
Office of Inspector General
U.S. Dept. of Health and Human Services

Introduction

Purpose

To assess the level and characteristics of State and local enforcement of laws limiting youth access to tobacco.

Background

The Office of the Secretary has asked the Office of Inspector General (OIG) to conduct a follow-up survey to a 1990 OIG inspection of the enforcement of State laws limiting youth access to tobacco. In addition, the Congressional Subcommittee on Health and the Environment has requested the OIG's assistance in determining the extent to which States have adopted and are enforcing youth access laws.

Federal Initiatives

In 1990, the OIG surveyed States regarding their laws on the sale of cigarettes to minors. The OIG inspection, "Youth Access to Cigarettes," OEI-02-90-02310, reported that 45 States had laws prohibiting the sale of cigarettes to minors. However, States were not enforcing their laws. The five States that could provide statistical information documented a total of only 32 vendor violations in 1989. The few places actively enforcing youth access to tobacco laws were mostly localities.

The inspection report provided information for the development of the Secretary's "Model Sale of Tobacco Products to Minors Control Act: A Model Law Recommended for Adoption by States or Localities to Prevent the Sale of Tobacco Products to Minors." The model law called for: (1) Licensing of vendors and revocation of their license if they sell to minors, (2) a graduated schedule of penalties so that vendors and employees are punished proportionate to their violation of the law, (3) penalties for failing to post signs, (4) designating State or local, law or health officials for enforcement, (5) civil in addition to criminal penalties to avoid overloading the criminal justice system, (6) an age of legal purchase of at least 19, (7) banning or greatly restricting access to vending machines, and (8) minimizing the burden of compliance on retail outlets.

The model law was widely distributed. Each State governor received a copy, as did State health department officials and anti-smoking groups. The law was also made available to localities active in establishing and enforcing youth access laws, and to experts in the youth smoking field. Further, the Secretary and the Surgeon General frequently spoke about the model law.

The Centers for Disease Control's Office on Smoking and Health is the focal point within the Federal government for tobacco-related efforts. The office's activities include expanding the science base of tobacco control through implementation of epidemiologic studies, surveillance activities and publications such as the Surgeon General's Report on the Health Consequences of Smoking; coordinating national media information and education campaigns to educate the public on the health hazards of tobacco use; and assisting States to build their capacity to sustain broad-based tobacco control programs.

Other Federal activity includes the National Cancer Institute's (NCI) ongoing Community Intervention Trial for Smoking Cessation (COMMIT) and its American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) programs. COMMIT promotes community health concepts and technologies in 11 cities. The ASSIST program incorporates COMMIT's strategy and efforts and extends it statewide. The ASSIST program, currently in 17 States, works to create comprehensive programs to prevent and control tobacco use. The NCI collaborates with the American Cancer Society (ACS), State and local health departments and other related organizations.

Recently, significant youth access legislation has been enacted regarding youth access to tobacco. In July 1992, the President signed the ADAMHA Reorganization Act, Public Law 102-321. This new law requires States to ban the sale and distribution of tobacco products to everyone under the age of 18. It also requires States to enforce their law "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to underage youths." The States must annually submit a report to the Secretary describing their enforcement activities and annually conduct "random, unannounced inspections," commonly called stings or observed buys. States must implement these provisions by Fiscal Year 1994, or risk a reduction in Federal funds for mental health, alcohol and other drug abuse programs.

Tobacco Use Among Youth

Despite the States' laws and national attention to the problem, tobacco use continues to be widespread among youth. The Centers for Disease Control (CDC) estimates that as many as 1 million American minors start to smoke each year, about 3,000 per day. They also estimate that in 1990 teenagers

bought 947 million packs of cigarettes and 26 million cans of smokeless tobacco, which is chewing tobacco and snuff. Further, approximately 75 percent of current smokers became addicted to tobacco by age 18, generally before it was even legal for them to purchase tobacco products. About half of the tobacco industry's profits, $3.35 billion, derives from sales to smokers who became addicted as children.[1] Tobacco is also an initial drug preferred by young people and is associated with other drug use.[2]

Other studies also suggest tobacco use is prevalent among youth. The 1990 school-based Youth Risk Behavior Survey, conducted by the CDC, found that about 36 percent of all students nationally, in grades 9–12, reported using some form of tobacco during the 30 days preceding the survey. About 32 percent of students used cigarettes, 10 percent used smokeless tobacco, and some used both.[3]

Another study indicates minors use smokeless tobacco extensively. Between 1970 and 1986, the use of snuff increased 15 times and the use of chewing tobacco four times among males ages 17 to 19.[4] An OIG inspection, "Youth Use of Smokeless Tobacco: More Than a Pinch of Trouble," P–06–86–0058, published in 1986, concluded that "addiction is a serious problem for many (smokeless tobacco) users * * * youth use of smokeless tobacco is a growing national problem with serious current and future health consequences."[5]

Research shows that children can still easily buy tobacco products. A 1990 study by Drug Free Youth, covering 93 communities in 38 States, found that "merchants readily sell cigarettes to children in every city."[6] This study, as well as others, indicates that 70 to 80 percent of merchants sell cigarettes to minors. These sale rates support Secretary Sullivan's statement that "access of minors to tobacco products is a major problem in every State." Based on current rates of smoking, he projects 5 million American children alive today will die of a smoking-related disease.

A recent study by the American Cancer Society suggests that the public supports youth access laws and their enforcement. The survey of 1,096 adults from four States found that 86 percent believe there should be stronger laws to prevent tobacco sales to minors; 90 percent believe there should be better enforcement.[7]

[1] Footnotes to appear at end of article.

Methodology

The inspection team interviewed the 51 National Network of State Tobacco Prevention and Control contacts, a group of State health department officials representing the 50 States and Washington DC. The team asked these respondents to identify legislative and enforcement activity occurring at the State level. State respondents also identified local officials enforcing youth access laws and any research evaluating the effectiveness of enforcement.

Additionally, the team reviewed all State youth access laws. We requested the laws from each State contact and analyzed them according to key components. (See Appendix A).

The team also interviewed selected local officials to assess enforcement activity and to obtain their opinions and experience about effective methods of enforcement. These methods include stings and observed buys. For the purposes of this inspection, a sting is an enforcement technique where underage youth are accompanied by an enforcement agent and attempt to buy tobacco. An observed buy is a technique whereby the enforcer checks or watches stores to see if they sell to minors. The team selected localities based upon discussions with the State respondents, informal discussion with experts in the tobacco field and a review of the Tobacco Access Law News (a compilation of current legislative and enforcement activity). The local officials interviewed were also selected to represent different geographical locations and enforcement approaches.

Findings

Although Most States Prohibit the Sale of Tobacco to Minors, Their Failure to Enforce Their Laws Would Place Them out of Compliance With the New Federal Law

All but three States ban the sale of tobacco to minors under the age of 18.

Public Law 102–321 requires States by October 1, 1994 to ban the sale and distribution of tobacco products to minors under 18 years of age. All but three States have laws that ban the sale of tobacco to minors. Montana is the only State without any law prohibiting the sale of tobacco products. Georgia prohibits sales to minors under 17 years of age rather than 18 and New Mexico only prohibits the sale of smokeless tobacco. (All other laws include both cigarettes and smokeless tobacco.) Three States (Georgia, Louisiana and Virginia) however, only address the sale of tobacco products and not distribution. Since 1990, youth access legislation has been a dynamic area of change; 23 States have enacted new legislation.

States' youth access laws vary. Alabama, Alaska, and Utah prohibit tobacco sales to minors under 19. About two-thirds (36) of the States' laws are criminal; 13 States' laws are civil. California's laws may be enforced as either a criminal law or a civil law. However, very few States (8) name a specific agency or organization to enforce the law. Enforcement is often placed, almost be default, with local police departments. All of the States with laws have fines as a penalty for violating the law, and 17 include jail.

Many of the States (29) require that signs be present at the point of sale. Thirty-one States require vendors of tobacco products to be licensed. Further, 23 States make it illegal for minors to purchase tobacco products and 21 limit minors from possessing tobacco products. Lastly, five States preempt localities from creating more stringent local ordinances that relate to minors' access to tobacco products. (See Appendix A for a summary of State law provisions.)

Only two States are enforcing their laws restricting the sale to minors statewide.

State enforcement has not changed greatly since the previous OIG report, "Youth Access to Cigarettes," two years ago. Although States have laws, interviews with the State Tobacco Prevention and Control contacts indicate that 48 States and Washington D.C. do not enforce their laws statewide. Respondents in seven of these States report enforcement is minimal and is conducted randomly at the local level; they cite only a handful of vendor violations.

Florida and Vermont are the only States enforcing their laws statewide. Since 1990 Vermont is the only State that began enforcing youth access laws statewide. Both Florida and Vermont designate the state liquor control agency for this purpose. However, Florida's law is criminal and Vermont's is civil.

In Florida, the Department of Business Regulations enforces tobacco as well as alcohol access laws. It conducts stings, observes buys, and responds to complaints from the public of vendors selling to minors. Alcohol licensing fees in the past have funded these activities. However, recent legislation, effective January 1993, requires tobacco vendors to be licensed and their fees to be used to fund full-time tobacco enforcement staff. State respondents report it is easier to convict vendors in Florida by conducting a sting or a buy in response to a complaint because it establishes a predisposition.

Some judges consider random stings to be entrapment. Last year, Florida reported 22 violations.

Vermont has only recently begun enforcing its youth access law. The Department of Liquor Control enforces it statewide. Initially, the liquor agency sent signs, posters and license applications to retailers. Following this campaign, a team of 14 liquor control inspectors began making random unannounced visits twice a week to vendors. No violations have yet been reported.

Two other States, Utah and South Dakota, enforce youth possession laws. In 1991, Utah police and school monitors issued nearly 5,000 violations to minors, but only 30 to vendors. Similarly, in FY 1991 South Dakota police issued 58 violations to minors but only 3 to vendors. Pub. L. 102–321 does not address youth possession.

A few States are funding local initiatives to reduce youth access.

While not actually enforcing their State access laws, four States make funds available to localities interested in limiting youth access to tobacco. (Utah, California, North Dakota and New Jersey). Three of them, Utah, California, and New Jersey, encourage local initiatives to reduce youth access as part of broader tobacco education and control efforts. North Dakota makes grants specifically for youth access. Further, Utah and California make grants to all counties while the other two States fund only select local sites.

Utah's Department of Health contracts with district health departments to conduct tobacco control and prevention activities. Districts choose from a number of different tobacco initiatives, ranging from youth access to worksite smoking policies. Every district addresses youth access in some way. All twelve districts have extensive vendor education campaigns; five districts educate law enforcement officers about the importance of the law. Law enforcement and/or health departments conduct observed buys in six districts. In one district, law enforcement officials have issued violations.

California provides funding for local youth access initiatives. In 1988 California passed Proposition (Prop) 99, which increased the cigarette tax to 35 cents to fund anti-tobacco education and control programs. Prop 99 created tobacco control programs throughout the State by funding county health departments, nonprofit organizations and schools. These programs include prevention education, cessation and policy initiatives. Many of the programs target youth among other groups. Prop 99 funds two projects specifically to reduce youth access, STAMP, Stop Tobacco Access to Minors Project and TRUST, Teens and Retailers United to Stop Tobacco. So far, TRUST has conducted merchant education, while STAMP has more actively enforced youth access. In conjunction with STAMP, three communities in Solano County, conduct regular stings and issue violations. STAMP also conducts merchant and community education campaigns and underage buy surveys in six counties. Three counties are currently exploring civil prosecution of vendors who have repeatedly sold to minors. A study by the University of San Diego suggests that the anti-smoking campaign has contributed to a 17 percent decline in smoking from 1987 to 1990.

New Jersey makes youth smoking prevention grants to localities. The State Health Department issued eight three-year grants to local health departments to encourage innovative education and youth cessation programs. Most of the communities receiving grants focus on educating vendors. Some local health departments visit vendors to inform them of the State law and to encourage them to voluntarily comply. However, one community also uses the grant to conduct observed buys and stings, and to enforce a local vending machine restriction. This community began enforcing the law following a highly publicized educational campaign. So far, health department officials have issued warnings to vendors who violate the law and are planning to issue citations shortly.

North Dakota also encourages local youth access initiatives. Its Department of Health made youth access grants to seven cities. These grants encourage cities to educate and work with police and retailers, and to enact city ordinances limiting vending machines. The seven cities have achieved these goals to varying degrees. Some have successfully enacted local vending machine laws. A few have also conducted observed buys. So far, none have issued violations against vendors.

Low priority by police and lack of a designated enforcer are seen as obstacles to enforcement.

State respondents cite a number of problems in enforcing youth access laws. Most State youth access laws are criminal and, therefore, only enforceable by police. State respondents most frequently cite the low priority given by police to enforcing tobacco sale laws. One respondent notes, "Law enforcement agencies are understaffed and they have no desire to enforce anything not considered pressing." Other respondents cite the lack of an agency clearly identified as responsible for enforcement as a problem. One respondent, typical of many, said, "There's no one charged with enforcement, it's not coordinated in any way."

State respondents frequently cite a lack of community awareness of youth access and smoking and a lack of commitment to enforcing the laws as serious problems. Several believe that communities do not consider tobacco and youth access important issues. "We need an evolution of attitudes—the public has a general attitude that alcohol should not be sold to kids. They don't feel the same way about cigarettes." Several respondents report that the police will not enforce the law if the community is not supportive. One reports, "The community must motivate police to enforce youth access * * * the police will respond to this pressure." A few States also mention the lack of concern by vendors as a problem.

State respondents report difficulties in convicting vendors. Several State respondents believe State legislative language is vague and causes difficulties in enforcing the law. Several States' laws contain the phrase, "to knowingly sell tobacco products to minors." Respondents claim this makes it difficult to convict vendors because vendors claim they did not know the person they sold to was underage. Further, judges are sometimes reluctant to convict clerks for selling cigarettes to minors. They often dismiss the cases, believing the vendor should be penalized, not the clerk. Also, some judges dismiss violations issued as the result of random stings, considering them as entrapment.

Despite Lack of State Efforts, Some Localities Are Demonstrating Enforcement is Possible

Based on our interviews with State respondents and experts and a literature review, we identified localities that enforce laws prohibiting the sale of tobacco to minors and/or laws prohibiting the possession of tobacco by minors. In several instances State and Federal programs have encouraged localities, through grants and contracts, to enforce youth access laws. In other instances, individuals interested in the issue and grassroots groups have taken youth access on as their own cause. Some localities have developed coalitions, working together with advocacy groups and local health departments, to raise community awareness and win the support of local merchants and police. As one local respondent comments "We needed to develop enforcement at the local level

* * * there is no enforcement at the State level and it is easier to enforce at the local level."

Regarding sale to minors laws, we identified 52 localities in 19 States that enforce these laws and have developed varying models. All, however, enforce either State or local laws, designate an agency responsible for enforcement, and choose a method of enforcing that best meets their needs. Some have conducted research to evaluate the effectiveness of their efforts. The following are examples of how local models differ on these characteristics.

Type of law: Slightly more than half of the localities enforce State laws while the others have enacted and are enforcing local laws. Several localities enforce the State law prohibiting the sale of tobacco to minors, but have enacted and enforce local ordinances restricting vending machines.

Research suggests that the effect of enacting and implementing local ordinances varies. Preliminary analyses of a study, which compared Marquette County, Michigan to a county with no access law, indicates that passing a law does not significantly change the perceived difficulty of buying tobacco, knowledge of the legal age or smoking rates among youth.[8] However, the previously mentioned study by Drug Free Youth, conducted in 95 communities in 38 States, found that passage of an ordinance has some effect on sales to minors. Stores in cities with ordinances sold to minors about 48 percent of the time; stores in cities without ordinances sold to them about 82 percent of the time.[9]

Designated Enforcer: In 23 localities, local police enforce the law. In another 21 localities, local health officials enforce the law, and in the remaining localities licensing or regulatory agencies are responsible for enforcement. A few localities have coordinated efforts between the health department and police.

Opinions differ as to who should enforce youth access laws. State respondents most frequently designate health departments. The majority of these respondents believe that health departments are more concerned about tobacco than are police. One comments, "It is not a public safety issue, but rather a health issue." However, other State respondents consider police the best enforcers. Most of these respondents believe it is more appropriate for the police to enforce because as one says, "enforcement is their business." Still others believe licensing and other regulatory agencies should be responsible; since these departments would issue the license to sell tobacco, they would have authority to suspend it.

Method of Enforcement: Localities enforce their law differently.

They enforce access by using stings, observing buys, responding to complaints by the public or a combination of these mechanisms. Frequently, localities conduct an initial sting to document that minors can easily buy tobacco and use this information to attract the media, educate retailers and raise community awareness. Twenty-one localities have conducted stings for such educational purposes.

However, research appears to indicate that education alone is not enough. A study in Santa Clara, CA reports that while a retailer education campaign reduced sales to minors, one year later sales rebounded as a result of no enforcement.[10]

Other localities enforce the law more extensively. Twenty-one localities conduct stings or observed buys and penalize violators. They issue fines and/or suspend the vendor's license. Some have taken vendors or clerks to court. Several respondents in these localities believe the only way to get compliance is to penalize vendors. Many comment that if vendors are threatened with suspension of their license to sell tobacco they will comply.

The remaining localities conduct stings or buys, but do not issue violations. They usually warn the vendors or clerks who sell tobacco illegally to minors. Some believe initially warning vendors is only fair, but in the future plan to issue violations.

Others believe conducting observed buys without issuing violations sufficiently alerts vendors and discourages them from selling to minors.

Research suggests that regular stings and violations can be effective in reducing youth access and, in some cases, smoking. In Woodridge, Illinois, police conduct regular stings and issue criminal violations to vendors. As a result, tobacco sales to minors decreased from 70 percent to 5 percent. Experimentation and regular use of cigarettes by minors reportedly decreased 50 percent.[11] Another study conducted in Everett, Washington suggests that a local ordinance enforced by the threat of fines and license revocation reduced sales to minors and significantly reduced tobacco use among girls.[12]

Other studies indicate that enforcement decreases sales to minors significantly. In Solano County, California, local police in two towns conduct stings twice a year and issue citations. Researchers report that while originally 71 percent of vendors sold to minors, only 24 percent sold after citations were issued.[13] Likewise, in Sponkane County, Washington local health departments conduct regular stings but do not issue violations. Researchers here show that passing a local regulation and conducting regular views decreased sales to about 27 percent.[14]

A study, conducted in Bollingbrook, Illinois, suggests frequent checks are necessary to maintain compliance. In 1989 and 1990, when observed buys were conducted quarterly, only 18 percent of stores were noncompliant. In 1991, buys were conducted less frequently and 35 percent were noncompliant.[15]

Regarding youth possession laws, we identified a few localities that enforce youth possession laws to reduce youth access. Some localities in North Dakota, Wyoming and Minnesota issue violations for possession of tobacco by minors. In Gillete, Wyoming, for example, police issue violations to minors to discourage youth from using tobacco. Here, the police initially wanted to stop teens from loitering and they decided to enforce the law against possession of tobacco by minors. They now work successfully with schools to educate and reduce access and tobacco use among youth. They believe possession laws limit peer pressure and send a consistent message to youth to stop using tobacco.

Opinions differ as to whether possession should be made illegal. Some respondents want minors to share the blame with vendors. They believe that possession and sale laws send an appropriate message to both youth and vendors and will effectively reduce youth smoking. However, other respondents believe that youth should not be blamed and that vendors selling to minors is the issue.

Vending Machine Restrictions Are the Most Common Initiative

Restricting tobacco vending machines is the most commonly observed way States and localities limit youth access to tobacco. In addition to their State laws prohibiting the sale of tobacco to minors, 21 States and Washington DC have passed laws that restrict vending machines in some manner.

States have adopted different types of vending machine restrictions. Nine States and Washington DC restrict the placement of vending machines to areas inaccessible to minors, such as bars, liquor stores, work areas and private clubs. Five States require that vending machines be supervised by the owner or an employee, or that the machines be equipped with a locking device that can be released once the age of the person using the machine is verified. Seven States combine these approaches by restricting the placement and/or requiring supervision. In five of these States localities have enacted even stricter local vending machine ordinances.

Over 140 localities in 19 States have enacted local ordinances limiting vending machines. Nearly one-third of these localities have banned vending machines altogether. The remaining localities have limited placement and/or required supervision or locking of vending machines.

All State respondents interviewed agree that vending machines should be limited in some way. One respondent expressed the beliefs of many when he said, "Ban all vending machines, they are easy access (for minors)." Others believe that localities should "put vending machines only in places that can be monitored or just get rid of them altogether."

Vending machine bans and placement restrictions require minimal enforcement. One State respondent comments, "vending machines are the only part (of youth access laws) that are enforceable." Often, localities can enforce vending machine restrictions by initially reviewing their placement and sending a follow-up notice to vendors not in compliance. Another State respondent said, a "letter can usually get rid of vending machines."

Ordinances that call for supervision or locking devices are not as easily enforced. Supervision of vending machines requires the same enforcement efforts as over the counter sales and are therefore, generally not being enforced. Additionally, a recent study in Minnesota concludes that "compliance with locking device laws is a problem." The study suggests that locking devices require additional enforcement to ensure compliance and may not be effective as vending machine bans. The author of the study also notes the importance of restricting vending machines, stating "it is hard to get over-the-counter merchants to take the age-of-sale laws seriously when they know that cigarettes are available in vending machines freely."[16]

Conclusion

Our finding that most States are not enforcing their laws limiting youth access to tobacco is a major concern given the requirements of Pub. L. 102–321. While we found that most States have laws that prohibit the sale of tobacco to minors, they must move quickly to enforce their laws to avoid the potential federal penalty on their FY 1994 ADAMHA Block Grant funds.

State Options

The models that exist at the State and local level present different successful options for enforcing youth access laws. Most often they include stings and vending machine restrictions. Each State must develop and implement its own enforcement program to reduce youth access and youth smoking. This report, however, describes several steps that can be taken by the States that can reasonably be expected to reduce tobacco usage by youth. The States can:

—Designate an enforcer
—Ban vending machines
—Enact provisions of the model law
—Educate communities and vendors
—Post signs
—Conduct stings

Federal Options

HHS has already taken steps to provide guidance to the States to assist them with their efforts to reduce the extent to which tobacco products are available to underage youth by developing and disseminating the Model law. However, as the Department implements the new law requiring that States ban the sale and distribution of tobacco products to anyone under the age of 18 and to enforce their laws, there may be other ways for the Department to provide leadership and direction to the States. The Department can:

—Provide technical assistance to the States
—Monitor States activities
—Conduct research on effective enforcement models
—Develop criteria
—Collect baseline data

Endnotes

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STATE LAW PROVISIONS*

[*See legend at end of matrix]

State	Age	Sale	Possession	Purchase	Licenses	Signs	Vending machines	Graduated penalties	Fines	Jail	Revocation	Enforcer	Preemption
AK	19	CV	Y		Y	Y	B		Y		Y		

STATE LAW PROVISIONS*

[*See legend at end of matrix]

State	Age	Sale	Possession	Purchase	Licenses	Signs	Vending machines	Graduated penalties	Fines	Jail	Revocation	Enforcer	Preemption
AL	19	CR			Y				Y	Y	Y		
AR	18	CR			Y	Y	B	Y	Y		Y		
AZ	18	CR	Y	Y	Y				Y				
CA	18	**				Y			Y				Y
CO	18	CR		Y		Y	B		Y				
CT	18	CV		Y	Y	Y	B	Y	Y				
DC	18	CR			Y	Y	P	Y	Y	Y	Y		
DE	18	CR	Y		Y				Y			Y	
FL	18	CR			Y	Y			Y	Y		Y	
GA	17	CR			Y	Y	S		Y		Y		
HI	18	CV	Y	Y		Y	P	Y	Y			Y	
IA	18	CR	Y	Y	Y		L		Y		Y	Y	Y
ID	18	CR	Y	Y	Y		S	Y	Y	Y			
IL	18	CR		Y		Y		Y	Y				
IN	18	CV	Y	Y		Y	P		Y				
KS	18	CR		Y	Y				Y	Y	Y		
KY	18	CR				Y		Y	Y				
LA	18	CR		Y		Y			Y				
MA	18	CR			Y	Y		Y	Y	Y			
MD	18	CV							Y	Y			
ME	18	CV		Y	Y	Y	S		Y				
MI	18	CR	Y	Y		Y			Y			Y	
MN	18	CR		Y	Y		B		Y	Y			
MO	18	CR				Y		Y	Y				
MS	18	CR							Y	Y			
MT	.....												
NC	18	CR							Y	Y			
ND	18	CR	Y		Y		S		Y	Y			
NE	19	CR	Y		Y		P		Y				
NH	18	CV	Y	Y	Y	Y		Y	Y				
NJ	18	CR			Y	Y			Y				
NM	18	CR		Y	Y	Y	P						Y
NV	18	CV			Y				Y		Y		
NY	18	CV			Y	Y	P	Y	Y		Y	Y	
OH	18	CR					B	Y	Y				
OK	18	CR	Y		Y				Y	Y			
OR	18	CV	Y	Y		Y	P		Y				
PA	18	CR		Y	Y			Y	Y	Y			
RI	18	CR	Y	Y	Y	Y		Y	Y		Y		
SC	18	CR							Y	Y			
SD	18	CR	Y	Y					Y				
TN	18	CR	Y		Y	Y		Y	Y	Y	Y		
TX	18	CR			Y	Y			Y				
UT	19	CR	Y	Y	Y		P	Y	Y	Y			
VA	18	CV	Y	Y		Y			Y				
VT	18	CV		Y	Y	Y	P	Y	Y		Y	Y	
WA	18	CR			Y				Y	Y	Y		
WI	18	CV	Y		Y	Y	B	Y	Y		Y	Y	Y
WV	18	CR	Y					Y	Y				
WY	18	CR	Y	Y		Y	P		Y				Y

Legend

State: The name of the State in abbreviation.
Age: The age at which a person may purchase tobacco products.
Sale: Type of sale law. CR indicates the law is criminal and CV indicates the law is civil. **indicates that the law may be enforced as a civil law or a criminal law.
Possession: Possession by a minor. Y indicates that it is illegal for a minor to possess tobacco products.
Purchase: Purchase by a minor. Y indicates that it is illegal for a minor to purchase tobacco products.
License: Licenses for vendors. Y indicates that vendors must have licenses to sell tobacco products.
Signs: Signs at the point of sale. Y indicates that a sign at the point of sale must be present.
Vending machines: Vending machine restrictions. S indicates that vending machines (vm) have to be supervised by an employee. P indicates that vm are restricted in placement (to areas where minors are not present). B indicates that vm have to be supervised and/or restricted in placement. L indicates that vm must have locking devices.
Graduated penalties: Y indicates that there is a set graduated scale of penalties for each offense.
Fines: Y indicates that fines may be a penalty for noncompliance.
Jail: Y indicates that jail time may be penalty for noncompliance.
Revocation: Revocation of license. Y indicates that the revocation of a vendor's license may be a penalty for noncompliance.
Enforcer: Enforcer of law. Y indicates that the enforcer is stated in the law.
Preemption: Preemption clause. Y indicates that there is a preemption clause not allowing localities to create stricter laws regarding youth access.

List of Subjects in 45 CFR Part 96

Alcohol abuse, Alcoholism, Confidentiality, Drug abuse, Health records.

For the reasons set out in the preamble, the Secretary proposes to amend part 96 of title 45 of the Code of Federal Regulations, as set forth below.

Dated: August 12, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Dated: August 19, 1993.

Donna E. Shalala,

Secretary.

PART 96—BLOCK GRANTS

1. The authority citation for 45 CFR part 96, subpart L continues to read as follows:

Authority: 42 U.S.C. 300x–21 to 300x–35 and 300x–51 to 300x–64

§ 96.122 [Amended]

2. Subpart L is amended to add § 96.122(f)(6) to read as follows:

* * * * *

(f) * * *

(6) For the first applicable year for which the State is applying for a grant, a copy of the statute enacting the law as described in § 96.130(a), a description of the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought, and, if the State desires, a description of the activities undertaken during the previous fiscal year to enforce any law against the sale or distribution of tobacco products to minors that may have existed; and for subsequent fiscal years for which the State is applying for a grant, the annual report as required by § 96.130(d) and any amendment to the law described in § 96.130(a).

* * * * *

§ 96.123 [Amended]

3. Subpart L is amended to add § 96.123(a)(5) to read as follows:

(a) * * *

(5) the provisions of § 96.130 relating to the sale of tobacco products to minors are being carried out as prescribed by law;

* * * * *

4. Subpart L is amended to add § 96.130 as follows:

§ 96.130 State law regarding sale of tobacco products to individuals under age of 18.

(a) The Secretary may make a grant to a State only if the State has the following:

(1) Except as provided in paragraph (a)(2) of this section, the State shall for fiscal year 1994 and subsequent years, have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18 through any sales or distribution outlet.

(2) In the case of a State whose legislature does not convene a regular session in fiscal year 1993, and in the case of a State whose legislature does not convene a regular session in fiscal year 1994, the requirement described in paragraph (a)(1) of this section as a condition of a receipt of a Block Grant shall apply only for fiscal year 1995 and subsequent fiscal years.

(b) For purposes of this section, the term *first applicable fiscal year* means fiscal year 1995, in the case of any State described in paragraph (a)(2) of this section, and fiscal year 1994, in the case of any other State. The term "outlet" is any location which sells at retail or otherwise distributes tobacco products to consumers including (but not limited to) locations that sell such products over-the-counter or through vending machines.

(c) For the first applicable fiscal year and for subsequent fiscal years, the State (directly or through local governments or private entities) will, at a minimum, enforce the law described above as follows:

(1) The State shall conduct annual, random and targeted, unannounced inspections of both over-the-counter and vending machine outlets. The random inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. Random, unannounced inspections shall be conducted annually and shall be conducted in such a way as to ensure a scientifically sound estimate of the success of enforcement actions being taken throughout the State. Thus, the State shall give due consideration to the methodological design of the inspection effort and the adequacy of the sample design. The sample shall reflect the distribution of the population of those under 18 throughout the State and the distribution of outlets throughout the State. The sample shall further reflect that, because of location (e.g. near schools) or other factors, some outlets are more likely to be used by minors. States are to ensure that the inspections occur at times when minors are likely to purchase tobacco products. Targeted inspections shall focus on outlets which have a history of prior violations.

(2) The State shall have in place other well-designed procedures for reducing the likelihood or prevalence of violations, such as, for example, a tobacco sales or distribution licensing system similar to that used for alcoholic sales, a graduated schedule of penalties for illegal sales or distribution culminating in loss of license, controls on tobacco vending machines in locations accessible to youth, publication of the names of outlets making illegal sales, or use of local enforcement to supplement central enforcement.

(d) The State shall annually submit to the Secretary with its application a report which shall include the following:

(1) A detailed description of the State's activities to enforce the law required in paragraph (a) of this section during the fiscal year preceding the fiscal year for which that State is seeking the grant;

(2) A detailed description regarding the overall success the State has achieved during the previous fiscal year in reducing the availability of tobacco products to individuals under the age of 18, including the results of the unannounced inspections as provided by paragraph (c)(1) of this section for which the results of over-the-counter and vending machine outlet inspections shall be reported separately;

(3) A detailed description of how the unannounced inspections were conducted and the methods used to identify outlets; and

(4) The strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

(e) The annual report required under paragraph (d) of this section shall be made public within the State and public comment shall be obtained and considered by the State prior to its submission to the Secretary.

(f) Before making a Block Grant to a State, the Secretary shall make a determination as to whether the State has maintained compliance with this section. In making this determination, the Secretary will consider the following factors:

(1) Except as provided by paragraph (f)(2) of this section, the State must demonstrate that its random, unannounced inspections were conducted in a scientifically sound manner and the results of the random, unannounced inspections submitted by the State in its annual report must show that the percentage of the sampled distributors that made illegal sales do not exceed:

(i) More than fifty (50) percent during the first applicable fiscal year;

(ii) More than forty (40) percent during the second applicable fiscal year;

(iii) More than thirty (30) percent during the third applicable fiscal year; and

(iv) More than twenty (20) percent during the fourth applicable year and subsequent fiscal years.

(2) If a State is not in substantial compliance with paragraph (f)(1) of this section, the Secretary, in extraordinary circumstances, may consider a number of factors, including scientifically sound survey data showing that the State is making significant progress toward reducing use of tobacco products by children and youth, data showing that the State has progressively decreased the availability of tobacco products to minors, the composition of the outlets inspected as to whether they were over-the-counter or vending machine outlets, and the State's plan for improving the enforcement of the law in the next fiscal year.

(g) If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with this section, the Secretary will reduce the amount of the allotment in such amounts as is required by section 1926 of the PHS Act.

(h) The State shall not expend the Block Grant program funds for enforcement activities under this section. However, the Block Grant funds which States are permitted to use for administrative purposes may be used for enforcement. Block Grant program funds may be used to provide technical assistance to communities to maximize procedures for enforcing the law regarding tobacco as provided in § 96.125(a)(6), including providing guidance on effective community approaches in enforcing the law.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Notice of Fund Availability for the Indian CDBG Program for Fiscal Year 1993

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3642; FR-3505-N-01]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages; Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability for Fiscal Year 1993.

SUMMARY: This Notice of Fund Availability (NOFA) announces HUD's funding for the Community Development Block Grant Program for Indian tribes and Alaskan native villages for Fiscal Year 1993. In the body of this document is information concerning the following:

(a) The purpose of the NOFA, and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications may be mailed to HUD, provided that they are postmarked no later than midnight on the deadline date: November 9, 1993. Applications that are physically delivered to HUD must be received by the appropriate HUD Field Office (FO) no later than 4:30 p.m. November 9, 1993. Application materials will be available from each field OIP.

FOR FURTHER INFORMATION CONTACT: Applicants should contact the HUD Field Office serving their geographic area.

Isaac Pimentel, Chicago Regional Office, Office of Indian Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604. Telephone (312) 353-1683.

Jules Valdez, Oklahoma City Office, Indian Programs Division, CPD Branch, Murrah Federal Building, 200 NW 5th St., Oklahoma City, OK 73102-3202. Telephone (405) 231-5958.

Gloria Dale Lewis, Denver Regional Office, Office of Indian Programs, Housing and Community Development Division, Executive Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349. Telephone (303) 844-6481.

Gerald Hammon, Office of Indian Programs, Region IX, CPD Division, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004-2361. Telephone (602) 379-4197.

Robert Barth, Office of Indian Programs, CPD Division, Program Management Team, (San Francisco) Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102-3448. Telephone (415) 556-9200.

Joanne McArthur, Seattle Regional Office, Office of Indian Programs, CPD Division, Federal Office Building, 909 First Avenue, Suite 200 , Seattle, WA 98104-1000. Telephone (206) 553-0760.

Colleen Craig, Anchorage Office, CPD Division, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508-4135. Telephone (907) 271-4684.

With general program questions, contact Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4140, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 708-1015. The Telecommunications Device for the Deaf (TDD) number is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2506-0043.

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I. Purpose and Substantive Description

A. Authority

Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR Part 571.

B. Funding

Amendments to Title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. The interim regulation containing the selection criteria was issued April 7, 1982.

The Department has determined that only quality Indian Community Development Block Grant (ICDBG) projects are to be funded. Section 571.100(b)(2) prohibits HUD field offices (FO) from funding applications that do not meet a serious need or which do not impact on the needs identified in the application. Accordingly, even if funds were available to fund a project based on its rating, if that project did not meet these criteria, it would not be funded. The funds would be used to fund the next highest ranking project or could be carried forward to the next funding cycle, if none of the lower ranking projects met a serious need or impacted on the needs identified in the application. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR 571.

Documentation and Public Access Requirements; Applicant/Recipient disclosures: HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports -- both applicant disclosures and updates --will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

1. *Allocations.* The requirements for allocating funds to field offices responsible for program administration are found at 24 CFR 571.101. Following these requirements, the allocation for FY 1993 is as follows:

Chicago	$ 2,965,000
Oklahoma	7,539,000
Denver	6,302,000
Phoenix	17,809,000
Seattle	2,182,000
Anchorage	3,204,000
Total	$40,000,000

2. *Grant Ceilings.* The authority to establish grant ceilings is found at 24 CFR 571.100(b). These grant ceilings are established for FY 1993 funding at the following levels:

Region/Field Offices	Population	Ceiling
Region 5 (Chicago).	ALL	$300,000
Region 6 (OK City).	5,001+	500,000
	1,001-5,000	400,000
	1,000 or less	300,000
Region 8 (Denver).	ALL	800,000
Region 9 (Phoenix).	50,001+	5,000,000
	10,501-50,000	2,500,000
	9,001-10,500	2,000,000
	7,501-9,000	1,500,000
	6,001-7,500	1,000,000
	4,501-6,000	750,000
	3,001-4,500	650,000
	1,501-3,000	550,000
	1-1,500	450,000
Region 10 (Seattle).	ALL	270,000
Anchorage.	ALL	500,000

3. *Imminent Threats.* The criteria for grants to alleviate or remove imminent threats to health or safety that require immediate solution are described at Subpart E of Part 571. The following field offices are setting aside funds for imminent threats:

Region 9 (Phoenix) $400,000. These funds will be available until the Phoenix Office receives its FY 1994 ICDBG allocation.

Seattle $250,000. These funds will be available until Seattle completes the rating and ranking process for funds distributed under this NOFA.

Anchorage $500,000. These funds will be available until the Anchorage Office receives its FY 1994 ICDBG allocation.

C. Eligibility of Activities

Activities that are eligible for CDBG funds are identified at 24 CFR Part 570 Subpart C. Both the National Affordable Housing Act (NAHA) (P.L. 101-625) and the Housing and Community Development Act of 1992 (the 1992 Act) (P.L. 102-550) amended Title I of the Housing and Community Development Act of 1974 (HCD Act). Various amendments made by these two recent acts are applicable, as described below, to the funds made available under this NOFA.

1. *Program Income.* Section 804 of the 1992 Act deletes any consideration of

whether the grantee is still participating in the CDBG program in determining the applicability of CDBG requirements to the use of program income.

2. *Microenterprise and Small Business Development.* Section 807(c) of the 1992 Act defines a small business as one that meets the criteria set forth in section 3(a) of the Small Business Act (15 USC 632(a)) and defines a microenterprise as a commercial enterprise having five or fewer employees, one or more of whom owns the enterprise.

This section further directs HUD in the provision of assistance under § 570.203(b) to for-profit microenterprises and small businesses not to consider the use of CDBG funds for training, technical assistance, and other support costs provided to such entities to be planning or administrative costs.

The section also directs HUD not to consider CDBG funds to be for a planning or administrative activity when used to pay costs to develop the capacity of the grantee or a subrecipient to provide training, technical assistance or other support services to small businesses or microenterprises. Consequently, since these activities are not to be considered as planning or administrative activities, they are subject to compliance with the national objective requirements.

3. *Lump Sum Drawdowns.* The use of lump sum drawdowns for residential rehabilitation has been reauthorized by section 909 of the NAHA for CDBG funds appropriated after Fiscal Year 1992.

4. *Eligible Activities.*

a. *Changes Affecting Existing Categories*

(1) Assistance to For-profit Businesses. Section 806(b) of the 1992 Act amends Section 105(a) of the HCD Act so that CDBG assistance to for-profit businesses shall not be limited to activities for which no other forms of assistance are available, or to activities that could not be accomplished but for that assistance.

(2) Direct Homeownership Assistance. NAHA amended Section 105(a) of the HCD Act to add as an eligible activity direct assistance to facilitate and expand homeownership among persons of low- and moderate-income. Under this provision, CDBG funds may be used to: subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by homebuyers; acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that assistance under Title I of the HCD Act may not be used by recipients or subrecipients to directly guarantee such mortgage financing); provide up to 50 percent of the downpayment required from low-and moderate-income buyers; and pay reasonable closing costs normally associated with the purchase of a home incurred by a low- and moderate-income homebuyer. While this provision was set to expire on October 1, 1993, it has been extended to October 1, 1994, by section 807(b) of the 1992 Act.

(3) Code Enforcement. Section 807(e) of the 1992 Act adds private improvements or services undertaken in an area to the activities that may be considered together with code enforcement in order to determine whether CDBG funds may be used to pay for the code enforcement in that area.

(4) Loans to Subrecipients. Section 807(d) of the 1992 Act amends section 105(a)(14) of the HCD Act to authorize CDBG assistance to be provided for such activities in the form of loans, both interim and long-term, as well as grants.

(5) Neighborhood-based Nonprofit Organizations. Section 807(f) of the 1992 Act amends section 105(a)(15) of the HCD Act to add nonprofit organizations serving the development needs of communities in nonentitlement areas as eligible entities to carry out CDBG activities.

b. *New Categories of Eligibility*

(1) Nonprofit Capacity Building. Section 807(a)(4) of the Housing and Community Development Act of 1992 makes eligible the provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, and makes clear that such use of funds is not to be considered as a planning or administrative cost of the program. Prior to the amendment, such a use of funds has only been eligible under § 570.205 and therefore subject to the cap on planning and administration at § 570.200(g). While nonprofit capacity building is now eligible under the new provision and not subject to a percentage limitation, it should be noted that any such use of funds under the new authority must be shown to meet one of the national objectives. This may be difficult in some cases since it appears that all activities carried out by the nonprofit using the added capacity will need to be considered for that purpose.

(2) Institutions of Higher Education. Section 807(a)(4) of the 1992 Act makes it eligible for the grantee to provide CDBG funds to institutions of higher education to carry out activities otherwise eligible for CDBG assistance, provided it can be determined that the institution has demonstrated capacity to carry out such activities.

(3) Acquisition by Tax Foreclosure. Section 807(a)(4) of the 1992 Act makes eligible the use of CDBG funds to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods.

(4) Microenterprises. Section 807(a)(4) of the 1992 Act establishes a new category of eligibility under which CDBG funds may be used to provide assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by:

- providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
- providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and
- providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises.

(5) Housing Services. Section 807(a)(4) of the 1992 Act establishes a new category of eligibility for housing services. Such activities include housing counseling, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities authorized under the CDBG program or the HOME program. Activities that are carried out under this provision are to be subject to the 20 percent limitation on administrative expenses.

It is important to note that almost all of these activities are currently eligible in the CDBG program when carried out in conjunction with rehabilitation (see 24 CFR 570.202(b)(9)), and thereby not subject to the administrative cap on expenditures.

(6) Lead-Based Paint Hazards. Section 1012 of the 1992 Act amends section 105(a) by stating that CDBG funds may be used for lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. It should be noted that § 570.202(a)(iv) currently authorizes inspection and abatement of lead-based paint in conjunction with CDBG-assisted rehabilitation. Moreover, § 570.205 authorizes evaluation of lead-based paint hazards within the grantee's jurisdiction generally. Until the regulations are modified to incorporate this new provision, grantees may use the new authority to fund lead-based paint inspection of houses whether or not rehabilitation of the houses will be CDBG-funded. The new authority may also be used to fund large scale evaluation of lead based-paint hazards in the grantee's jurisdiction (assuming that it is an approved activity in the Indian Community Development Block Grant application), outside of the 20 percent limitation on planning and administration cost, if the grantee can demonstrate that the evaluation addresses a CDBG national objective.

c. *Changes Concerning National Objectives—Low/Mod Jobs Presumption.* Section 806(e) of the 1992 Act amends section 105(c) of the HCD Act by adding a subparagraph (4) which states that, for purposes of determining whether an activity involves the employment of persons the majority of whom are low- and moderate-income persons, a person may be presumed to be a low- or moderate-income person if they reside in a census tract where not less than 70 percent of the residents are low- and moderate-income persons.

D. Applicant Eligibility

To apply for funding in a given fiscal year, an applicant must be eligible as an Indian tribe or Alaskan native village, or as a tribal organization by the application submission date.

"Tribal organizations" are permitted to submit applications under 24 CFR 571.5(b) on behalf of eligible tribes or villages when one or more eligible tribe or village authorize the organization to do so under concurring resolutions. The Tribal organization must also be eligible under the Indian Self-Determination Act. If a tribe or tribal organization claims that it is a successor to an eligible entity, the FO must review the documentation to determine whether it is in fact the successor entity.

Due to the unique governmental structure of Alaskan Native Villages there is on occasion more than one group that could be recognized as the governing body of an eligible entity as set forth at 24 CFR 571.5.

On December 29, 1988, the Bureau of Indian Affairs (BIA) published a Federal Register Notice entitled "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs". This Notice included an alphabetical listing of all Alaskan entities eligible to receive funding and services from the Bureau of Indian Affairs. Each entity listed qualified under one of the nine criteria set forth in the Notice. The Notice stated that an entity which qualified under criteria 1, 2, 3, 4, or 9 is also an "Indian tribe" under the definition of that term used for the purposes of the Indian Self-Determination Act. The criteria are:

1. "Tribes" as defined or established under the Indian Reorganization Act (IRA) as supplemented by the Alaska Native Act.
2. Alaska Native Villages defined in or established pursuant to the Alaska Native Claims Settlement Act (ANCSA).
3. Village corporations defined in or established pursuant to ANCSA.
4. Regional corporations defined in or established pursuant to ANCSA.
9. Tribes which have petitioned to be acknowledged and have been determined to exist as tribes pursuant to 25 CFR Part 83. (A BIA regulation)

The hierarchy for funding priority continues to be the IRA Village Council, then the Traditional Village Council, followed by the Village Corporation and the Regional Corporation. Since there may only be one application submitted for an ICDBG grant for each area within the jurisdiction of an entity eligible under 24 CFR 571.5, if a Village Corporation or Regional Corporation submits an application for an ICDBG grant for activities in the jurisdiction of one or more eligible tribes or villages, it must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit a ICDBG application for that funding round.

If possible, questions regarding eligibility determinations and related documentation requirements should be referred to the Anchorage FO prior to the deadline for submitting an application. (See 24 CFR 571.5 for a complete description of eligible applicants.)

E. Selection Criteria/Rating Factors

1. Rating and Ranking System

Prior to the rating process, field offices will screen applications to ensure that they meet the acceptance criteria in 24 CFR 571.301(a). Field offices will review each application that passes the screening to ensure that each proposed project meets all of the requirements in 24 CFR 571.302(a), as implemented by this NOFA.

The field office will determine the proper category and component (e.g., Housing Rehabilitation) under which to rate each project. Each component is worth 100 points, which is the maximum that a project can receive.

All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by a field office rating team of at least three voting members. The rating team will normally consist of representatives from the Indian CDBG staff. Voting members may be selected from other HUD divisions, such as the non-CPD portion of the Office of Native American Programs, and non-Indian CPD. The rating panel may solicit technical advice from experts such as attorneys, economists and cost analysts. Experts may be voting or non-voting members.

After each of the applications has been rated, the projects will be ranked in order of the point totals they received, regardless of the rating category or component under which the points were awarded. Projects will be selected for funding based on their ranking, in accordance with the requirements of §§ 571.100(b) and 571.302(c).

2. Thresholds

The ICDBG regulation (24 CFR Part 571) contains two types of general thresholds: those that relate to applicants, and those that address overall community development appropriateness. Project-specific definitions and thresholds will be addressed within the pertinent project selection criteria categories.

Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project(s), and on its past performance in the ICDBG and Housing programs. An applicant that has participated in the ICDBG program previously must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting an ICDBG application to HUD.

In order for the project(s) contained in applications that have passed the initial screening tests outlined in section 571.301 to be rated and ranked, field offices must determine that the proposed project(s) meets the

community development appropriateness thresholds and (a) has costs that are reasonable, (b) is appropriate for the intended use, and (c) will normally be completed within two years.

If an applicant fails to meet the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or project-specific thresholds will not be considered for funding.

a. Applicant-Specific Thresholds—Capacity and Performance

(1) *Capacity.* The field office will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical or administrative capability necessary to carry out the proposed project(s). The application should address who will administer the project(s) and how the applicant plans to handle the technical aspects of executing the project(s). If the field office determines, based on substantial evidence, that the applicant does not have or cannot obtain the capacity to undertake the proposed project(s), the project(s) will be rejected from further consideration.

(2) *Performance.* If an applicant has participated in the ICDBG Program previously, the field office shall determine whether the applicant has performed adequately in grant administration and management. Where an applicant was found to be performing inadequately, the field office shall determine whether the applicant is following a schedule to correct performance, to which the applicant and HUD have agreed. In cases of previously documented deficient performance, the field office must determine that the applicant has taken appropriate corrective action to improve its performance.

(a) *Community Development.* The applicant is presumed to be performing adequately unless the field office makes a performance determination to the contrary by monitoring.

(b) *Housing assistance.* The applicant is presumed not to have taken actions to impede the provision of housing assistance for low- and moderate-income members of the tribe or village. Any action that is known to HUD to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons shall be evaluated in terms of whether it constitutes inadequate performance by the applicant.

In addition, tribes have certain responsibilities and obligations to Indian Housing Authorities (IHAs), outlined in Article VIII of HUD's Model Tribal Ordinance. In instances where a tribe has established or joined an IHA, and has obtained housing assistance from HUD, its compliance with the resolution set forth in Article VIII will be a performance consideration.

Applicants will not be held accountable for the poor performance of Indian Housing Authorities (IHAs). However, if inadequate performance is found to be a direct result of the applicant's action or inaction, the application will be rejected from further consideration. Applicants who are members of "umbrella" IHAs will be judged only on their individual performance and will not be held accountable for the poor performance of other tribes that are represented by the IHA.

In the case of tribes that have not established or are not members of housing authorities, HUD will consider in making its determination, whether the tribe received CDBG funds for the provision of new housing, and if so: (i) whether the proposed units were constructed; (ii) whether housing assistance was provided to the beneficiaries identified in the application, and if not, why not; (iii) whether the tribe followed the provisions of its housing plan and procedures; and (iv) whether there were sustained complaints from tribal members regarding provision and/or distribution of CDBG housing assistance.

(c) *Audits.* This threshold requires the applicant to meet the following performance criteria:

(i) The applicant cannot have an outstanding ICDBG obligation to HUD that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions, until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

(ii) The applicant cannot have an overdue or unsatisfactory response to an audit finding(s). If there is an overdue or unsatisfactory response to an audit finding(s), the applicant will be disqualified from current and subsequent competition until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding(s). Only when a satisfactory arrangement for repayment of the debt has been made, and payments are current, will an exception be granted when funds are due HUD.

b. Community Development Appropriateness.

The following criteria must be met by all applicants:

(1) Costs are reasonable. The project(s) must be described in sufficient detail so that HUD can determine: (a) that costs are reasonable; and (b) that the funds requested from the CDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

(2) The project(s) is appropriate for the intended use.

(3) The project(s) is usable or achievable in a timely manner, generally within a two-year period. The applicant must indicate its timetable for project implementation and completion. A period of more than two years is acceptable in certain circumstances, which are beyond the applicant's control. For example, a construction season may be limited by severe weather, or extra time may be required to coordinate different funding dates for other entities assisting the same project.

3. Tiebreakers

When rating results in a tie among projects, field offices shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors should be used in the order listed to resolve the tie:

a. Chicago Office

(1) The application that benefits the highest percentage of low-and moderate-income persons.

(2) The application that benefits the most low-and moderate-income persons.

b. Oklahoma City Office

(1) The application that benefits the highest percentage of low-and moderate-income persons.

(2) The applicant with the fewest active grants.

(3) The application that benefits the most low-and moderate-income persons.

c. Denver Office

(1) The application that benefits the highest percentage of low-and moderate-income persons.

(2) The application that benefits the most low-and moderate-income persons.

d. Phoenix Office

(1) The applicant with the fewest active grants.

(2) The applicant that has not received a block grant over the longest period of time.

(3) The application that benefits the highest percentage of low-and moderate-income persons.

e. Seattle Office

(1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the highest percentage of low-and moderate-income persons.

f. Anchorage Office

(1) The applicant that has not received a block grant over the longest period of time.

(2) The application that benefits the highest percentage of low-and moderate-income persons.

(3) The application that benefits the most low-and moderate-income persons.

4. General Definitions

Adopt. To approve by formal tribal resolution, as defined at 24 CFR Part 571.4.

Assure. To comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document. To supply supporting written information and/or data in the application, which satisfies the NOFA requirement.

Leverage. Resources the grantee can use in conjunction with CDBG funds to achieve the objectives of the project. Resources include, but are not limited to: tribal trust funds, loans from individuals or organizations, state or federal loans or guarantees, other grants, as well as noncash contributions and donated services. Funds from any source must be documented by a written commitment and may be contingent on approval of the CDBG award. Resources will be counted only if they are currently available or will be available within 3 months of grant notification. If delays in the Federal funding process preclude an agency from making a firm funding commitment, resources will be counted if the agency issues a written statement indicating that it is extremely likely that the applicant will be funded within 6 months of the date of grant notification. Donated services will be accepted, provided: (1) the costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and (2) comparable costs and time estimates are submitted which support the donation.

Project Cost. Total cost to implement the project. Project cost includes both CDBG and non CDBG funds.

Tribe. Indian tribe, band, group or nation, including Alaskan Indians, Aleuts, Eskimos and Alaskan native villages.

5. Project Definitions, Thresholds and Selection Criteria

a. Housing

(1) *Definition—Section 8 standards.* Standards contained in the Section 8 Housing Assistance Payments Program–Existing Housing (24 CFR 882.109).

(2) *General Thresholds.* Households that have been evicted from HUD housing within the past five years may not be assisted, except in emergency situations, which will be reviewed by field offices on a case-by-case basis.

(3) *Rehabilitation*

(a) *Thresholds*

(i) All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application.

(ii) Any units to be rehabilitated must be the permanent non-seasonal residence of the occupant(s). The resident(s) must live in the unit at least nine months per year.

(iii)) Housing units slated for eventual replacement may only receive repairs essential for health and safety.

(iv) The applicant shall provide an assurance that it will use project funds to rehabilitate HUD assisted units only where the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions on a case-by-case basis, to the requirement that beneficiaries be current to permit housing rehabilitation in emergency situations.

(v) Houses that have received comprehensive rehabilitation assistance from any CDBG or federal grant within the past 8 years cannot receive CDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(b) *Applicant Guidance.* The following requirements apply to all successful applicants for rehabilitation funds provided for under this NOFA. All single family units to be rehabilitated must be occupied by low- and moderate-income households. If a structure contains two units, at least one must be occupied by a low-or moderate-income household. If a structure contains more than 2 units, at least 51 percent of the units must be occupied by low-and moderate-income households. When two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered a single structure for the purpose of calculating low- and moderate-income occupancy. Low- and moderate-income tenants occupying a rehabilitated dwelling shall pay no more than 30 percent of their household income in rent.

(c) *Grant limits.* Rehabilitation grant limits for each field office jurisdiction are as follows:

(i) Region 5 (Chicago)	$15,000
(ii) Region 6 (OK City)	15,000
(iii) Region 8 (Denver)	33,500
(iv) Region 9 (Phoenix)	25,000
(v) Region 10 (Seattle)	18,000
(vi) (Anchorage)	Lesser of $35/square feet or $25,000

(d) *Selection Criteria.* Applicants for housing rehabilitation projects will be rated based on the following:

(i) Project Need and Design (45 points)

(A) The percentage of CDBG funds committed to bring the housing up to standard condition as defined by the applicant. Standard condition is defined as adoption of standards at least as stringent as Section 8. Exceptions, which must be approved by the field office, may be made when local conditions make the use of Section 8 standards infeasible. For example, units may be too remote to make the provision of electricity and running water economically feasible, or Section 8 standards may not be met for historic preservation reasons. In all cases, to be considered in standard condition, a home must be in safe, sanitary, and physically sound condition with all systems performing their intended functions.

Administrative and technical assistance expenditures are excluded in computing the percentage of CDBG funds committed to bring housing up to standard condition. The percentage of CDBG funds not used to bring housing up to standard condition should be used for emergency repairs, demolition of substandard units, planning related to the particular project or another purpose closely related to the housing rehabilitation project.

	Percentage of CDBG Funds Committed to bring housing up to standard condition	Points
1	91–100%	25
2	81–90%	10
3	80% and less	0

(B) The applicant's selection criteria give priority to the neediest households. "Neediest" is defined as households whose current residences are in the

greatest disrepair in the project area, or very low-income households.

1 YES (10 points)
2 NO (0 points)

(C) Documentation of project need with a housing survey of all of the units to be rehabilitated with CDBG funds. This survey should include standard housing data on each unit surveyed (e.g., age, size, type, rooms, type of heating). The survey should show the number of standard units, the number of substandard units suitable for rehabilitation with the deficiencies listed for each unit, and the number of substandard units unsuitable for rehabilitation. A definition of "suitable for rehabilitation" should be included. At a minimum, this definition should not include units that need only minor repairs, or units that need such major repairs that rehabilitation is structurally or financially infeasible.

Submission of acceptable survey of deficiencies.

1 YES (10 points)
2 NO (0 points)

(ii) Planning and Implementation (45 points)

(A) Rehabilitation Policies including:

1 Adopted rehabilitation standards. Adopted rehabilitation standards should be at least equal to Section 8 standards except that the field office can approve lesser standards as provided in Paragraph I.E.5.a.(3)(d)(i). Tribes may submit their request for lesser standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval from the field office.

- YES (5 points)
- NO (0 points)

2 Rehabilitation selection criteria. Rehabilitation selection criteria include property selection standards, cost limits, type of financing (e.g., loan or grant), homeowner costs and responsibilities, procedures for selecting households to be assisted, and income verification procedures.

- MAXIMUM (11 points)

The application contains all the selection criteria listed above.

- MODERATE (5 points)

The application does not contain all the selection criteria listed above, but a sufficient number to enable the project to proceed effectively; OR the application contains all the selection criteria listed above, but in insufficient detail.

- UNSATISFACTORY (0 points)

The submission does not meet the MODERATE criteria.

3 Project planning documents and applicable policies and procedures. Project planning documents include surveys, time schedules, and work priorities. Policies and procedures include: inspections, contractor payment (an inspection to ensure the work is successfully completed before the contractor is paid), household involvement in the rehabilitation (e.g., helping select the contractor and signing off on inspections), contractor selection, contractor forms, complaints, contract or dispute resolution, and repayment provisions for early sale, (i.e., before 5 years).

- MAXIMUM (5 points)

The application contains all the policies and procedures listed above, and they will enable the project to be effectively implemented.

- MODERATE (3 points)

The application contains some but not all of the policies and procedures listed above, and they are sufficient for the project to proceed effectively.

- UNSATISFACTORY (0 points)

The submission does not meet the MODERATE criteria.

(B) Post rehabilitation maintenance policies, including counseling and training homeowners on maintenance.

1 MAXIMUM (7 points)

The policy contains a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and handicapped). The policy includes follow-up inspections after rehabilitation is completed to ensure the unit is being maintained.

2 MODERATE (4 points)

The policy contains a well-planned homeownership maintenance training and counseling program.

3 UNSATISFACTORY (0 points)

The submission does not meet the MODERATE criteria.

(C) Quality of cost estimates. Cost estimates have been prepared by a qualified individual.

1 MAXIMUM (12 points)

Costs must be documented on a per unit basis and must be justified. Applicants must include work write-ups based on tribal specifications or estimates by a qualified individual. Work write-ups state what needs to be done to correct the deficiency (e.g., provide an oil heater to correct a deficiency of an inadequate heating system). The tribal specifications state the quality and the dimensions of the improvements (e.g., the heating unit must be capable of putting out x BTU's in order to heat the unit to a temperature of 70 degrees when the outside temperature is 0 degrees).

2 HIGH (8 points)

Cost estimates developed by a qualified individual have been prepared on each dwelling unit to be rehabilitated to determine the total rehabilitation cost. Costs to rehabilitate each house are documented by a deficiency list.

3 MODERATE (3 points)

A qualified individual has prepared cost estimates only for the project based on surveys, but not for individual units.

4 UNSATISFACTORY (0 points)

The submission does not meet the criteria in paragraph 3.

(D) Cost effectiveness of the rehabilitation program. This measures the efficiency of the expenditures that are made for housing rehabilitation, considering the needs of the unit. Projects should propose rehabilitation that is needed to bring units up to standard in the most efficient manner and at a reasonable cost. Cost savings may be realized through efforts such as energy conservation, or a partnership or affiliation with technical experts to develop an innovative approach.

1 Rehabilitation project is cost effective (5 points)

2 Rehabilitation project is not cost effective (0 points)

(iii) Leveraging (10 points)

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of Project Cost	Points
25 and over	10
20–24	8
15–19	6
10–14	4
5–9	2
0–4	0

(4) *Land to Support New Housing*

(a) *Thresholds*

(i) The net usable acres acquired must not exceed the amount of property needed to construct the proposed houses utilizing prudent site design.

(ii) Housing assistance needs must be clearly demonstrated, for example, with a survey or an IHA-approved waiting list.

(b) *Applicant Guidance*

The HUD FO may not enter into a contract with a successful applicant for funds provided under this NOFA if the following circumstances exist.

(i) There can be no outstanding reasons why the IHA cannot receive

housing units from HUD if units are to be provided by HUD Indian Housing.

(ii) Where a dwelling(s) currently exists on the land to be acquired, and the tribe plans to use that unit for housing for qualified households, the applicant must submit with the application a proposed plan that contains a method for selecting the recipient(s), housing maintenance and a description of the type of housing being acquired. If the unit(s) can be rehabilitated or can be occupied without rehabilitation, the unit(s) must meet tribal or Section 8 standards, whichever is higher.

(iii) If the CDBG funding cycle is before the Housing Development funding cycle (for housing projects proposed to be constructed with HUD Traditional Indian Housing Development funds), successful applicants in Land Acquisition for Housing will be issued a contract for the full amount of the grant. The contract will contain a condition that until the project receives Housing Development approval, CDBG funds may be expended only to secure an option. If the IHA is not selected for Housing Development Program funds, the balance of the CDBG grant will be canceled.

(iv) If it can be demonstrated that a commitment has been made by the Bureau of Indian Affairs (BIA) under the Home Improvement Program (HIP) for funding new housing construction, the 2-year time period for project completion may be extended to be consistent with the commitment identified. The commitment should indicate that the funds committed will be used to build housing on the land to be acquired.

(c) *Selection Criteria.*

Applications for land purchase will be selected based on the following:

(i) Project Need (40 Points)

(A) MAXIMUM (40 points)

The applicant has no suitable land to construct new housing and needed amenities (e.g., water and sewer) for new housing.

(B) HIGH (30 points)

The applicant has land suitable for housing construction and infrastructure, but the land is officially dedicated to another purpose.

(C) MODERATE (25 points)

The applicant will be acquiring land to construct new housing and to provide needed amenities (e.g., water and sewer) to both new housing and existing housing.

(D) LOW (15 points)

The applicant will be acquiring land to construct amenities (e.g., water and sewer) for existing housing.

(E) UNSATISFACTORY (0 points)

The submission does not meet the criteria in paragraph d.

(ii) Planning and Implementation (60 points)

(A) Suitability of land to be acquired. A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, and the land has adequate drainage and access to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements. Land is available at a reasonable price. Future land development costs are expected to be consistent with other area subdivision costs. (Subdivision costs include the cost of constructing each unit, plus the land, water and sewer service, electrical service and roads required to serve the subdivision.) The site complies with all applicable requirements.

1 YES (18 points)
2 NO (0 points)

(B) Housing resources are committed at the time of project application.

1 Conditional commitment or approvable application submitted. (5 points)

2 No Conditional commitment or approvable application submitted. (0 points)

(C) Availability/accessibility of supportive services and employment opportunities. Upon completion of construction, fire and police protection, road accessibility and utilities will be available to the site, and medical and social services, schools, employment opportunities, and shopping will be accessible from the site, i.e., according to the community's established norm.

1 YES (8 points)
2 NO (0 points)

(D) Commitment that families will move into the new housing.

1 Documented commitment from families that they will move into new housing. (5 points)

2 No documented commitment. (0 points)

(E) Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future. This commitment should take the form of a resolution by the governing body indicating that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

1 Documentation that land can be taken into trust or provisions made for taxes and fees. (4 points)

2 Inadequate or no documentation. (0 points)

(F) A plan for any infrastructure needed to support housing to be developed. This includes a conditional commitment for funds to develop necessary water, sewer, electricity and roads to support the housing to be developed.

1 Financial commitment provided or infrastructure is in place. (10 points)

2 A plan, but no financial commitment, is in place. (5 points)

3 No financial commitment or plan. (0 points)

(G) The extent to which the proposed site meets the applicant's housing needs. The application shows that the tribe has examined and assessed the appropriateness of alternative sites. The applicant submits comparable sales that show the cost is reasonable.

1 YES (10 points)
2 NO (0 points)

(5) *New Housing Construction/Direct Homeownership Assistance*

(a) *New Construction*

(i) Thresholds

(A) New housing construction can only be implemented through a nonprofit organization that is eligible under Section 571.202 or a nonprofit organization serving the development needs of the communities of nonentitlement areas or as otherwise eligible under Section 570.207(b)(3).

(B) All applicants for new housing construction grants must document the following in their application:

1 No other housing is available in the immediate reservation area that is suitable for the families to be assisted.

2 No other funding sources can meet the needs of the household(s) to be served.

3 Rehabilitation of the unit occupied by the family to be housed is not economically feasible, or the family to be housed is currently in an overcrowded unit (sharing unit with other household(s), or the family to be housed has no current residence.

(C) All applicants for housing construction grants shall adopt construction standards and construction policies, prior to submitting an application. Applicants must identify the building code they will use to construct the unit(s). The building code may be a locally adopted tribal building

code or a nationally recognized model code. If the code is a locally adopted code, it must regulate all of the areas and subareas identified in 24 CFR 200.925(b), and it must be reviewed and approved by the HUD field office. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925(c).

(D) Any units to be constructed must be the permanent non-seasonal residences of the recipient. The residents must live in the unit at least nine months per year.

(E) The applicant shall assure that it will use project funds to construct units only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit new construction, in emergency situations.

(ii) Selection Criteria

(A) New construction under Section 248 of the National Housing Act will be rated under the Direct Homeownership Assistance Selection criteria. The New Construction thresholds will be used for Section 248 New Construction.

(B) Project Need and Design (45 points)

1 The applicant either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time, or the IHA serving the applicant has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time, due to a lack of funds. The period of time during which the IHA serving the applicant does not receive funding for inadequate or poor performance by the applicant does not count towards the period of time that no assistance has been provided by HUD.

- No assistance from IHA for 10 years or longer. (15 points)
- No assistance from IHA for 6–9.9 years. (10 points)
- No assistance from IHA for 0–5.9 years. (0 points)

2 Adopted housing construction policies and plan. The plan should include a description of the proposed subrecipient and its relationship to the tribe. In addition, the policies and plan should include:

- A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.
- A system effectively addressing long-term maintenance of the constructed units.
- Estimated costs and identification of the responsible entity for paying utilities, fire hazard insurance and other normal maintenance costs.
- Policies governing ownership of the units, including the status of the land.
- Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.
- Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated.

- Acceptable policies and plan. (20 points)

- Unacceptable policies and plan. (0 points)

3 Beneficiary identification (all beneficiaries are low- and moderate-income.)

- Beneficiaries to be housed are identified. (10 points)
- Beneficiaries are not identified. (0 points)

(C) Planning and Implementation (45 points)

1 Occupancy Standards. The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying family (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room).

- Applicant has adopted reasonable occupancy standards. (10 points)
- Applicant has no occupancy standards or standards are inappropriate. (0 points)

2 Site Acceptability. This includes consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

The applicant has control of the land. The applicant has written assurance from the BIA that the land is (or will be) taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future. This commitment should take the form of a resolution by the governing body within one year of the application deadline indicating that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, land has adequate drainage and accessibility to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements.

- YES (15 points)
- NO (0 points)

3 Energy Conservation Design. The project is designed so that energy consumption will meet or exceed state conservation standards for similar units in the same general area. Special design features and methodology should be described in detail.

- YES (5 points)
- NO (0 points)

4 Housing Survey. The survey should include all of the units in the service area for the new housing. The survey should include standard housing data on each unit surveyed (e.g., age, size, type, rooms, type of heating), as well as the components listed below.

i Total number of existing housing units in the community.

ii Number of occupied units.

iii Number of vacant units (line A minus line B).

iv The number of standard units.

v The number of substandard units suitable for rehabilitation with the deficiencies listed for each unit. A definition of "suitable for rehabilitation" should be included.

vi The number of substandard units unsuitable for rehabilitation.

vii Number of vacant units that are in standard condition available and affordable to low-and moderate- income families.

viii Number of Indian/native families living with other families resulting in overcrowded conditions.

ix Number of Indian/native families living in units which are below standard and that are not cost effective to rehabilitate.

x Number of homeless Indian/native families.

xi Number of families living in below standard conditions

(Lines *viii*, plus *ix*, plus *x* equal line *xi*.)

- Acceptable survey. (10 points)
- Unacceptable survey. (0 points)

5 Cost effectiveness of new housing construction. This measures the efficiency of the expenditures. Projects should provide new units in the most efficient manner and at a reasonable cost. Cost savings may be realized through efforts such as the use of cost effective construction techniques, a partnership or affiliation with technical experts to develop an innovative approach, or a repayment provision.

- New Housing Construction is Cost Effective (5 points)
- New Housing Construction is not Cost Effective (0 points)

(D) Leveraging (10 points).

Applicants must provide documentation of the amount and sources of additional funds. Sources may include private contributions including equity and loans, applicant and other non-CDBG governmental funding.

Non-CDBG % of Project Cost	Points
25 and over	10
20–24	8
15–19	6
10–14	4
5–9	2
0–4	0

(b) *Direct Homeownership Assistance*

(i) Thresholds

(A) No other funding sources can meet the needs of the household(s) to be served.

(B) The unit occupied by the family to be housed does not meet Section 8 standards, and rehabilitating the unit is not economically feasible, or the family to be housed currently is in an overcrowded unit (sharing unit with other household(s), or the family to be housed has no current residence.

(C) Any units to be occupied must be the permanent non-seasonal residences of the recipient. The residents must live in the unit at least nine months per year.

(D) The applicant shall assure that it will use project funds to provide direct homeownership assistance only where the tenant's payments are current or the tenant is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit direct homeownership assistance in emergency situations.

(ii) Selection Criteria

(A) Project Need and Design (45 points)

1 Adopted housing policies and plan. The plan should include a description of the proposed subrecipient (if applicable) and its relationship to the tribe. In addition, the policies and plan should include:

- A selection system that gives priority to the neediest qualifiedhouseholds. Neediest may be defined as households whosecurrent residences are in the greatest disrepair, very low- income households, or households without permanent housing.
- Description of a comprehensive plan or approach being implementedby the tribe to meet the housing needs of its members.
- Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated.
- A system effectively addressing long-term maintenance of theunits.
- Estimated costs of utilities, fire hazard insurance and other normal maintenance costs.
- Policies governing ownership of the units, including the status of the land.
- The units will meet Section 8 standards or another standard approved by the field office.

i The policies and plan are acceptable and contain all of the items listed above. (30 points)

ii The policies and plan contain only the first three items listed above, and they are acceptable. (20 points)

iii The policies and plan contain only the last four items listed above,and they are acceptable. (10 points)

iv The policies and plan do not meet the criteria of paragraphs *i*, *ii*, or *iii*. (0 points)

2 Beneficiary identification. (All beneficiaries are low and moderate income.)

- Beneficiaries are identified. (15 points)
- Beneficiaries are not identified. (0 points)

(B) Planning and Implementation (45 points)

1 Occupancy Standards. The housing units will meet adopted reasonable standards that govern the size of the housing in relation to the size of the occupying family (minimum and maximum number of persons allowed for the number of sleeping rooms); and the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room).

- Applicant has appropriate occupancy standards. (13 points)
- Applicant has no occupancy standards or standards are inappropriate. (0 points)

2 Site Acceptability. This includes consideration of land control, access, utilities, infrastructure, physical characteristics, whether the site is held in trust, and available services, such as fire and police protection.

The applicant or prospective homeowner has control of the land. Applicant has a written assurance from the BIA that the land is (or will be) taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future.

A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, land has adequate drainage and accessibility to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements.

- YES (20 points)
- NO (0 points)

3 Energy Conservation Design. The project is designed so that energy consumption will be no greater than that of similar units in the same general area. Special design features and methodology should be described in detail.

- YES (6 points)
- NO (0 points)

4 Cost effectiveness of program. This measures the efficiency of the expenditures that are made for direct homeownership. Cost savings may be realized through efforts such as the use of cost effective construction techniques, a partnership or affiliation with technical experts to develop an innovative approach, provision of the least amount of assistance necessary for each homeowner to acquire the unit, or a provision for the homeowner to repay the tribe.

- YES (6 points)
- NO (0 points)

(C) Leveraging (10 points). Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of Project Cost	Points
70 and over	10
60–69	8
50–59	6
40–49	4
30–39	2
0–29	0

b. Community Facilities

(1) *General Thresholds.* The applicant shall describe the problem, the proposed project and the anticipated impact on the tribe/village if the problem is not solved immediately.

(2) *Infrastructure*

(a) *Applicant Guidance*

(i) For all projects which include provision of water, waste water treatment or solid waste disposal facilities, the applicant shall include with the application evidence that the project has been submitted to the Indian Health Service (IHS) for review and comment.

(ii) If the project consists of new or existing community water system improvements (defined as serving more than 25 persons or 15 households), the applicant must provide evidence that the project has been submitted to the Environmental Protection Agency (EPA) for review and comment. Community water systems serving fewer than 25 persons or 15 households are eligible for CDBG funding, but do not require EPA review.

(b) *Selection Criteria*

(i) Project Need and Design (60 points)

(A) Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services. (Example: water/sewer, waste disposal)

1 Permanent solution. The project offers a long-term solution. (17 points)

2 Health and safety intermediate solution. The project responds to a health or safety problem by offering a solution which is not permanent (e.g., providing potable water from elsewhere). (15 points)

3 Intermediate solution. The project responds to a problem which is not related to health or safety by offering a solution which is not permanent (e.g., providing a gravel road to a reservation where no road exists). (12 points)

4 Inadequate solution. (0 points)

(B) Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

1 MAXIMUM (22 points)

90 percent or more of the beneficiaries are low and moderate income (80 percent of area income).

2 MODERATE (13 points)

75–89.9 percent of the beneficiaries are low and moderate income.

3 UNSATISFACTORY (0 points)

Less than 75 percent of the beneficiaries are low and moderate income.

(C) Provides infrastructure that does not currently exist for the area to be served OR replaces an existing facility that no longer functions adequately to meet the current needs OR eliminates or substantially reduces a health or safety problem. If the project addresses a health and safety problem, the applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) a threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

1 MAXIMUM (21 points)

The infrastructure does not exist or no longer functions, or does not meet health and safety standards. (Examples: there is no sewage treatment plant; paved roads do not exist or must be reconstructed due to severe deterioration.)

2 MODERATE (15 points)

The infrastructure no longer functions adequately or does not meet current needs. (Example: capacity of existing sewage treatment plant is insufficient to meet the demands of area residents.)

3 UNSATISFACTORY (0 points)

The infrastructure does not meet the criteria of *1* or *2*.

(ii) Planning and Implementation (30 points)

(A) A viable plan for maintenance and operation. The tribe must adopt a maintenance plan addressing maintenance, repair and replacement of items not covered by insurance, and operating resources, if applicable. The applicant must submit this plan. The plan must identify a funding source to assure that the facility will be properly maintained and operated. The resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion. If an entity other than the Tribal Council commits to pay for maintenance and operation, that entity must submit a letter of commitment which identifies the responsibilities the entity will assume and the amount of funds that will be provided annually to the project. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

1 YES (15 points)

2 NO (0 points)

(B) An appropriate and effective design, scale and cost. The applicant shows that it has proposed the most appropriate and cost effective approach to address its identified need(s). The applicant shows that it has considered initial construction and lifetime operation costs, as well as the use of existing facilities and resources, and alternatives, including method of implementation and cost. If only one approach is feasible, the applicant should explain why.

1 YES (15 points)

2 NO (0 points)

(iii) Leveraging (10 points). Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of Project Cost	Points
a 25+	10
b 20–24	8
c 15–19	6
d 10–14	4
e 5–9	2
f 0–4	0

(3) *Buildings*

(a) *Thresholds.* Tribes proposing a facility which would provide health care services must assure the facility meets IHS requirements.

(b) *Selection Criteria.* Applications for Community Facilities will be evaluated based on the following:

(i) Project Need and Design (60 points)

(A) Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

1 MAXIMUM (28 points)

90 percent or more of the beneficiaries are low and moderate income (80 percent of area median).

2 MODERATE (18 points)

75–89.9 percent of the beneficiaries are low and moderate income.

3 UNSATISFACTORY (0 points)

Less than 75 percent of the beneficiaries are low and moderate income.

(B) Provides a building that serves a function that does not currently exist either within or outside (nearby) the community or reservation OR replaces an existing facility that no longer functions adequately to meet current needs. (Examples: health clinic; subsistence food processing facility, Alaska.)

1 MAXIMUM (15 points)

The building does not exist or does not meet health and safety standards.

2 MODERATE (12 points)

The building no longer functions adequately or does not meet current needs.

3 UNSATISFACTORY (0 points)

The building does not meet the criteria of *1* or *2*.

(C) Provides multiple uses or multiple benefits, or has services

available 24 hours a day. The application must show that the proposed facility will house more than one broad category of activity. "Broad category" means a single activity or group of activities which serves a particular group of beneficiaries (e.g., senior citizens) or meets a particular need (e.g., literacy). No one category of activity will occupy more than 75 percent of the available space for more than 75 percent of the time. The use of space must be actually committed and documented in writing. Multipurpose buildings do not automatically meet these criteria, nor do buildings that provide a variety of activities for one client group.

1 YES (3 points)

2 NO (0 points)

(D) Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services; OR eliminates or substantially reduces a health or safety problem. If the project addresses a health or safety problem, the applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) a threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

1 YES (14 points)

2 NO (0 points)

(ii) Planning and Implementation (30 points)

(A) A viable plan for maintenance and operation. The tribe must adopt a maintenance plan addressing maintenance, repair and replacement of items not covered by insurance, and operating resources, if applicable. The applicant must submit this plan. The plan must show that adequate funds are available for future replacements and identify a funding source to assure that the facility will be properly maintained and operated. The adopted resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion. If an entity other than the Tribal Council commits to pay for maintenance and operation, that entity must submit a letter of commitment which identifies the responsibilities the entity will assume and the amount of funds that will be provided annually to the project. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

1 YES (15 points)

2 NO (0 points)

(B) An appropriate and effective design, scale and cost. The applicant documents that it has proposed an appropriate and cost effective approach to address its identified need(s). The applicant documents that it has considered initial construction and lifetime operation costs, as well as the use of existing facilities and resources, and alternatives including, method of implementation and cost. If only one approach is feasible, the applicant should explain why.

1 YES (15 points)

2 NO (0 points)

(iii) Leveraging (10 points). Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of Project Cost	Points
a 25+	10
b 20–24	8
c 15–19	6
d 10–14	4
e 5–9	2
f 0–4	0

c. Public Services

(1) *Thresholds*

(a) Public services activities may comprise no more than 15 percent of the total grant award. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total grant award. A public service project will be funded only if both the public service project itself *and* the other project(s) with which it is submitted rank high enough to be funded.

(2) *Selection Criteria.* Applications for Public Services will be evaluated based on the following:

(a) *Project Need and Design (45 points)*

(i) Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services.

(A) YES (15 points)

(B) NO (0 points)

(ii) Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

(A) MAXIMUM (27 points)

90 percent or more of the beneficiaries are low and moderate income (80 percent of area median).

(B) MODERATE (16 points)

75–89.9 percent of the beneficiaries are low and moderate income.

(C) UNSATISFACTORY (0 points)

Less than 75 percent of the beneficiaries are low and moderate income.

(iii) Provides a service(s) that will eliminate or substantially reduce a health or safety problem. The applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) a threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

(A) YES (3 points)

(B) NO (0 points)

(b) *Planning and Implementation (45 points)*

(i) A viable plan for continuing provision of the service(s). The tribe must adopt a plan to address continuing provision of the service(s). The applicant must submit this plan. The plan must identify a funding source to assure that the public service(s) will be properly carried out. The resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion.

(A) YES (15 points)

(B) NO (0 points)

(ii) An appropriate and effective design, scale and cost. The applicant shows that it has proposed an appropriate and cost effective approach to address its identified need(s). The applicant shows that it has considered initial and long-term costs, as well as the use of existing services and resources, or has submitted an analysis from a qualified authority addressing alternatives, method of implementation and cost. If only one approach is feasible, the applicant should explain why.

(A) YES (15 points)

(B) NO (0 points)

(iii) An innovative method of using the public service to resolve the problem (e.g., original treatment methods, program delivery system, or use of technology).

(A) YES (15 points)

(B) NO (0 points)

(c) *Leveraging (10 points).* Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of Project Cost	Points
(i) 25+	10
(ii) 20–24	8
(iii) 15–19	6
(iv) 10–14	4
(v) 5–9	2
(vi) 0–4	0

D. Economic Development

(1) *Thresholds*

(a) Economic development assistance may be provided only when a financial analysis is done which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success. The applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project.

(b) All economic development projects must meet one of the national objectives. A general claim of cash flow or benefit to the tribe as a whole does *not* demonstrate low- and moderate-income benefit.

(2) *Applicant Guidance.* The applicant shall submit a project description. This description should include the following information:

(a) *The product or service:* what the enterprise will do or produce.

(b) *The location and physical facilities:* regional, local and site-specific location; description of existing and proposed facilities. If land is to be acquired for the specific economic development project, the applicant must either submit evidence that the land will be taken into trust, or demonstrate compliance with zoning and other local requirements, and show that the tribe or the entity operating the business, has the ability to pay all required taxes on that land.

(c) *Key production factors:* requirements relating to utilities, transportation access, special technical and/or equipment requirements, market, raw materials, and labor force.

(d) *Jobs/labor available:* justification that the number of permanent full time equivalent jobs proposed to be created or retained by the project (full and part-time) is realistic; evidence that the project can support job costs/salaries.

(e) *The developmental entity:* identification of entity to be used (e.g., local development corporation, tribe/village, private developer, joint venture).

(f) *Equipment:* projects that include the purchase of equipment must demonstrate the appropriateness and cost effectiveness of purchasing versus leasing. The use of lease financing is encouraged wherever possible to help contain development costs.

(g) *Financial information:* applicants shall submit a detailed cost summary, evidence of funding sources, and five year operating or cash flow financial projections. For existing businesses, financial statements for the most recent three year period shall be submitted. Financial statements include the balance sheet, income statement and statement of retained earnings. For new start-up businesses, current financial or net worth statements on the principal business owners or officers are needed unless the tribe or Alaskan Native Village will be the owner of the business.

(h) *Economic strategy and objectives:* the applicant shall demonstrate how the proposed project will meet the tribe's/village's economic development strategy and objectives (e.g., to create or retain permanent, private sector jobs or provide a product and service needed and affordable to native members).

(3) *Selection Criteria.* Applications for Economic Development projects will be evaluated based on the following:

(a) *Project Viability (55 points)*

The application will be rated on the adequacy and quality of the following subparts:

(i) Market analysis

(A) MAXIMUM (10 points)

An independent third party feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market.

(B) MODERATE (6 points)

Feasibility/Market Analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market.

(C) LOW (0 points)

The submission does not meet the criteria in paragraph b.

(ii) Management capacity

(A) MAXIMUM (10 points)

A management team with qualifying *specialized* training or technical/managerial experience in the operation of a similar business has been identified. If the grant is approved, the business will hire the identified team or persons with similar training and experience. Applicants must submit job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team.

(B) MODERATE (6 points)

A management team with qualifying general business training or experience will be hired if the grant is approved. Applicants must submit job descriptions of key management positions.

(C) UNSATISFACTORY (0 points)

The submission does not meet the criteria in paragraph b.

(iii) Organization

(A) MAXIMUM (8 points)

1 The tribe or entity that will operate the business has anon-going successful business enterprise. The applicant mustdescribe this enterprise and provide documentation of itshealthy financial condition (e.g., audited financial statements for the past three years); and

2 The tribe or entity that operates the business has an acceptable business management system for project development and operation.

(B) MODERATE (5 points)

The tribe or entity that will develop and operate the business has an acceptable business management system for project development and operation.

(C) UNSATISFACTORY (0 points)

The submission does not meet the criteria in paragraph b.

(iv) Viability of the Business (excluding microenterprises). The viability of an economic development project will be determined by an analysis of financial and other project related information. Components of the financial analysis are: costs, sources of funds, cash flow projections and financial statements. The applicant must submit: a detailed cost summary, evidence of funding sources; five year operating or cash flow financial projections; and business financial statements for the most recent three year period. For start-up businesses, that are not owned by the grantee, current financial or net worth statements on principal business owners or officers are needed. Financial statements include the balance sheet, income statement and statement of retained earnings.

The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall project viability. In determining whether a project is viable, the field office will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used.

(A) MAXIMUM (15 points)

Based on the analysis, the project has excellent prospect of achieving viability.

(B) MODERATE (7 points)

The project has an average prospect of achieving viability.

(C) LOW (0 points)

The project has a minimal prospect of achieving viability.

(v) Viability of the Microenterprise. Microenterprises employ five or fewer employees, including the entrepreneur. The viability of a microenterprise will be determined by an analysis of financial and other project related information. Components of the financial analysis are: costs, sources of funds, cash flow projections and financial statements. The applicant must submit: a detailed cost summary, evidence of funding sources; five year operating or cash flow financial projections and monthly projections until the cash flow is positive; and business financial statements for the most recent three year period. For start-up businesses, current financial or net worth statements on principal business owners or officers are needed. Financial statements include balance sheet, income statement and statement of retained earnings.

In determining whether a project is viable the field office will also consider current and projected market conditions and profitability measures such as net profit to total assets ratio, as well as other information that the field office has that will have an effect on the project's potential viability.

(A) MAXIMUM (15 points)

1 The project will generate income for the entrepreneur, over a minimum of five years, at or above 125 percent of the annual county average individual income; and

2 Based on the analysis, the project has excellent prospect of achieving viability.

(B) MODERATE (7 points)

1 The project will generate income for the entrepreneur at or above 100 percent of the annual county average individual income; and

2 The project has an average prospect of achieving viability.

(C) UNSATISFACTORY (0 points)

The submission does not meet the criteria in paragraph *(B)* above.

(vi) Leveraging. Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of Total Project Cost	Points
30%+	12
20–29%	8
10–19%	4
less than 10%	0

(b) *Permanent Full-Time Equivalent Job Creation.* Provide total number of permanent full-time jobs expected to be created and/or retained as a result of the project. Provide a summary of job descriptions and skills required. Identify the number and kind(s) of jobs expected to be available to low-and moderate-income persons. (30 points)

(i) CDBG cost per job

(A) MAXIMUM (13 points)
$15,000 or less

(B) MODERATE (10 points)
$15,001–25,000

(C) LOW (7 points)
$25,001–35,000

(D) UNSATISFACTORY (0 points)
$35,001+

(ii) CDBG cost per job targeted to low- and moderate-income persons.

(A) MAXIMUM (13 points)
$15,000 or less

(B) MODERATE (10 points)
$15,001–25,000

(C) LOW (7 points)
$25,001–35,000

(D) UNSATISFACTORY (0 points)
$35,001+

(iii) Quality of jobs targeted to low- and moderate-income persons.

(A) The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; OR

(B) The employer commits to provide training opportunities (submit a description of planned training program).

1 YES (4 points)

2 NO (0 points)

(c) *Additional Considerations (15 points).* A project must meet three of the following criteria to receive 15 points. Maximum 15 points.

(i) Use, improve or expend members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences (e.g., technical expertise in electronic assembly; making traditional native crafts).

(A) YES (5 points)

(B) NO (0 points)

(ii) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community (e.g., create new investment opportunities in the area; provide a consumer product or service not currently available on or near the reservation, or provide an available consumer product or service at a significant reduction in cost).

(A) YES (5 points)

(B) NO (0 points)

(iii) Provide special opportunities for residents of federally-assisted housing (e.g., employ residents for maintenance services).

(A) YES (5 points)

(B) NO (0 points)

(iv) Provide benefits to other businesses owned by Indians or Alaska natives (e.g., increase their sales).

(A) YES (5 points)

(B) NO (0 points)

(v) Loan Repayment/Reuse of CDBG funds. If the business is not tribally owned, at least 50% of the CDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees within a 10 year period to use funds equal to 50% of the CDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

(A) YES (5 points)

(B) NO (0 points)

II. Application Process

A. An application package may be obtained from the HUD Field Offices of Indian Programs in the following geographic locations:

Region V.

Chicago Regional Office, Office of Indian Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604. Telephone: (312) 353–1684 (all states east of the Mississippi River, plus Iowa and Minnesota)

Region VI.

Oklahoma City Office, Indian Programs Division, CPD Branch, Murrah Federal Bldg., 200 N.W. 5th Street, Oklahoma City, OK 73102–3202. Telephone: (405) 231–5968 (Louisiana, Kansas, Oklahoma, and Texas, except West Texas)

Region VIII.

Denver Regional Office, Office of Indian Programs, Housing and

Community Development Division, CPD Staff, Executive Tower Bldg., 1405 Curtis Street, Denver, CO 80202–2349. Telephone: (303) 844–6481 (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)

Region IX.

Indian Programs Office, Region IX, CPD Division, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361. Telephone: (602) 379–4197 (Arizona, New Mexico, Southern California, West Texas)

Indian Programs Office, CPD Division, Program Management Team (San Francisco), Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448. Telephone: (415) 556–9200 (Northern California and Nevada)

Region X.

Seattle Regional Office, Office of Indian Programs, CPD Division, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000. Telephone: (206) 220–5271 (Idaho, Oregon, Washington)

Anchorage Office, CPD Division, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135. Telephone: (907) 271–4684 (Alaska)

B. Completed applications should be submitted to the appropriate HUD Field Office, listed above, from which application information and packages were obtained.

C. Applications may be mailed to HUD, provided that they are postmarked no later than midnight on the deadline date: November 9, 1993. Applications that are physically delivered to HUD must be received by the appropriate HUD Field Office no later than 4:30 p.m. November 9, 1993.

III. Checklist of Pre-application and Application Submission Requirements

A. *Citizen participation.* Prior to submitting an application, the applicant shall certify, by an official tribal resolution, that it has:

1. Furnished residents with information concerning amounts of funds available and the range of activities to be undertaken;

2. Held one or more public meetings to obtain the views of residents;

3. Developed and published or posted a community development statement which gives affected residents an opportunity to review it and comment on it;

4. Given residents an opportunity to review and comment on the applicant's performance under any active community development block grant;

5. Considered public comments and, if the applicant deems it appropriate, modified the application accordingly; and

6. Made the modified application available to residents.

B. Applicants shall submit an application to the appropriate field office. In accordance with the requirements of Section 571.300(f) the application should include:

1. Standard Form 424;

2. Community Development Statement which includes:

a. Components that address the relevant selection criteria

b. A brief description or an updated description of community development needs;

c. A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing the project.

d. A schedule for implementing the project (form HUD–4125);

e. Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share (form HUD–4123); and

3. A map showing project location, if appropriate;

4. If the proposed project will result in displacement or temporary relocation, include a statement that identifies (a) the number of persons (families, individuals, businesses and nonprofit organizations occupying the property on the date of the submission of the application (or date of initial site control, if later); (b) the number to be displaced or temporarily relocated; (c) the estimated cost of relocation payments and other services; (d) the source of funds for relocation; and (e) the organization that will carry out the relocation activities.

5. Citizen Participation. Certify, in the form of an official tribal resolution, that citizen participation requirements of section 571.604 have been met;

6. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under Subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

IV. Corrections to Deficient Applications

HUD will not accept unsolicited information from the applicant regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official. The field office also may, at its discretion, request information to resolve inconsistencies or ambiguities in the application.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

V. Other Matters

A. *Environmental Statement.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

B. *Federalism Executive Order.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaskan native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

C. *Family Executive Order.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being and thus is not subject to review under the Order.

D. *Registration of Consultants.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes

disclosure requirements on those who are typically involved in these efforts -- those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the statute described above should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202) 708–3815; TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

E. *Prohibition of Advance Disclosure of Funding Decisions.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are restrained by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: 42 U.S.C. 5301, *et seq.*; 42 U.S.C. 3535(d); 24 CFR part 571.

Dated: August 10, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–20655 Filed 8–25–93, 8:45 am]

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federal register

Thursday
August 26, 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201
Warning Statements for Over-the-Counter Drugs Containing Water-Soluble Gums; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N-0200]

RIN 0905-AA06

Warning Statements Required for Over-The-Counter Drugs Containing Water-Soluble Gums as Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule requiring specific warning and direction statements in the labeling of all over-the-counter (OTC) drug products containing as active ingredients water-soluble gums, hydrophilic gums, and hydrophilic mucilloids, including, but not limited to, agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B-1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum. The warning and direction statements will alert users of these products to consume adequate fluid and to avoid using such products if the person has previously experienced any difficulty in swallowing. FDA is issuing this final rule after evaluating reports of esophageal obstruction and asphyxiation involving OTC drug products containing water-soluble gums as active ingredients. Water-soluble gums as active ingredients have been used in OTC antidiarrheal, laxative, and weight control drug products. They are currently used primarily in OTC laxative drug products and are under review in the ongoing rulemaking for OTC laxative drug products as part of FDA's OTC drug review. FDA has determined that implementation of specific warning and direction statements for these ingredients should not await completion of the OTC drug review process. Therefore, the warning and direction statements will now be required to support the safe use of OTC drug products containing water-soluble gums as active ingredients. The warning and direction statements will be incorporated into the pertinent OTC drug monographs as the rulemakings for these drug products are completed.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 30, 1990 (55 FR 45782), FDA proposed to amend 21 CFR part 201, subpart G, *Specific Labeling Requirements for Specific Drug Products*, to require a warning for all OTC drug products containing water-soluble gums as active ingredients. The agency proposed the following warning: (Select one of the following, as appropriate: "Take" or "Mix") "this product with at least 8 ounces (a full glass) of water or other fluid. Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have ever had difficulty in swallowing or have any throat problems. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention." The agency considered this warning necessary because water-soluble gums used as active ingredients in certain orally-administered OTC drug products have been associated with esophageal obstruction and asphyxiation.

Water-soluble gums have primarily been used in OTC bulk laxative and weight control drug products. The ingredients involved are natural or semisynthetic hydrocolloid gums including, but not limited to, agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, glucomannan [1], guar gum, karaya gum, kelp [2], methylcellulose, plantago seed (psyllium) [3], polycarbophil, polycarbophil calcium, tragacanth, and xanthan gum. The ingredients polycarbophil and calcium polycarbophil are also used in OTC antidiarrheal drug products.

Because of the hydrophilic nature of water-soluble gums, when water is added to the gum it swells and increases in bulk. If inadequate water is added, a viscous, semi-solid mass forms. The rate and degree of swelling, as well as the viscosity and adhesiveness of the mass, vary from product to product depending on the amount of gum present. When orally-administered OTC drug products containing a high level of one of these gums are used by individuals who have difficulty in swallowing, or when such products are taken with an inadequate amount of water or other fluid, there is a risk that the product will swell and form a viscous adhesive mass that can block the throat or esophagus. The type and degree of adverse effects are influenced by the amount of fluid taken with the product.

As discussed in the proposed rule (55 FR 45782 at 45783 to 45784), esophageal obstruction and asphyxiation associated with the ingestion of water-soluble gums have been reported in the literature since the 1930's, although such reports were relatively rare. However, in recent years FDA has become aware of an increased number of reports. FDA is aware of at least 191 cases of esophageal obstruction and 8 cases of asphyxia associated with orally-administered OTC laxative and weight control products containing these ingredients between 1970 and May, 1992. Death occurred in 18 of these cases (Refs. 1 and 2).

As part of FDA's OTC drug review, water-soluble gums were reviewed as OTC bulk laxatives by the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (Laxative Panel) and as OTC weight control drug products by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel).

The Laxative Panel, in its report published in the **Federal Register** of March 21, 1975 (40 FR 12902), classified five water-soluble gums in Category I (safe and effective)—carboxymethylcellulose sodium, karaya gum, methylcellulose, polycarbophil, and psyllium. Three additional water-soluble gums were classified in Category III (insufficient effectiveness data)—agar, carrageenan, and guar gum. In its discussion of these bulk laxative ingredients, the Laxative Panel acknowledged the risk of esophageal obstruction from water-soluble gums (40 FR 12902 at 12907) and specifically noted with respect to psyllium:

> Esophageal, gastric, small intestinal and rectal obstruction due to the accumulation of mucilaginous derivatives of psyllium preparations have been described on several occasions. The common denominator in most cases has been insufficient water intake or underlying organic disease which resulted in compromise of the intestinal lumen, (40 FR 12906).

The Laxative Panel recommended that labeling for bulk laxative ingredients stress the importance of adequate fluid intake, i.e., 8 ounces (oz) of liquid, with each dose.

After reviewing the recommendations of the Laxative Panel and considering public comments received following publication of its report, FDA published a tentative final monograph on OTC laxative drug products in the **Federal Register** of January 15, 1985 (50 FR 2124). The risk of esophageal obstruction from certain bulk laxative ingredients, including water-soluble gums, and the need for adequate fluid intake (8 oz) with each dose of these ingredients was again discussed in comments 36 and 37 of the tentative final monograph (50 FR 2124 at 2131 and 2132).

In an amendment to the tentative final monograph on OTC laxative drug products, published in the **Federal Register** of October 1, 1986 (51 FR 35136), FDA proposed that bulk laxative ingredients be administered in divided doses rather than a single daily dose. This action was taken because it was noted that; "* * * the maximum daily dose of some bulk laxatives is so large that it may pose a risk of esophageal obstruction if taken at one time," (51 FR 35136). In response to these proposals, a major manufacturer of psyllium-containing bulk laxatives commented in support of FDA's recommendation regarding adequate fluid intake (8 oz) with each dose of a bulk laxative. This manufacturer recommended that all bulk laxatives bear the following warning (Ref. 3):

> Bulk forming agents have the potential to block the esophagus, particularly in the presence of esophageal narrowing or when consumed with insufficient fluid. Patients with esophageal narrowing should not use this product. If you observe symptoms of esophageal blockage, including chest pain/pressure, regurgitation and difficulty swallowing, seek immediate medical attention.

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published a final rule establishing that certain active ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. Among the ingredients listed in this final rule under active ingredients for bulk laxative drug products were agar, carrageenan (degraded), carrageenan (native), and guar gum. No substantive comments or new data had been submitted to support the reclassification of any of these ingredients to monograph status. The final rule stated that the listed active ingredients should be eliminated from OTC drug products by May 7, 1991, regardless of whether further testing was undertaken to justify future use, and regardless of whether the relevant OTC drug monographs had been finalized by that date. Therefore, on or after May 7, 1991, no OTC laxative drug product containing any of these four water-soluble gum active ingredients could be initially introduced or initially delivered for introduction into interstate commerce unless it was the subject of an approved application.

In its report on OTC weight control drug products, published in the **Federal Register** of February 26, 1982 (47 FR 8466), the Miscellaneous Internal Panel classified the water-soluble gums alginic acid, carboxymethylcellulose sodium, carrageenan, chondrus [4], guar gum, karaya gum, methylcellulose, psyllium, sea kelp, and xanthan gum in Category III. The Miscellaneous Internal Panel noted, with respect to carboxymethylcellulose sodium and methylcellulose, that occasional cases of esophageal obstruction have occurred when these ingredients are chewed or swallowed without liquid (47 FR 8466 at 8477 and 8478). While concluding that the water-soluble gums listed above are safe, the Miscellaneous Internal Panel recommended that directions for these products state; "Take a full glass of water (8 ounces) with each dose," (47 FR 8477 to 8479).

In the **Federal Register** of October 30, 1990 (55 FR 45788), the agency published a notice of proposed rulemaking stating that certain ingredients in OTC weight control drug products are not generally recognized as safe and effective and are misbranded. Among the ingredients proposed as nonmonograph were the water-soluble gums, alginic acid, carboxymethylcellulose sodium, carrageenan, chondrus, guar gum, karaya gum, kelp, methylcellulose, plantago seed, and xanthan gum. The agency determined that no substantive comments or additional data had been submitted to the OTC drug review to support any of these ingredients as being generally recognized as safe and effective in OTC weight control drug products.

In the **Federal Register** of March 6, 1991 (56 FR 9312), the agency issued a clarification of this October 30, 1990, notice of proposed rulemaking. The purpose of this clarification was to make clear that the addition of the proposed warning statement in product labeling was not a sufficient basis to permit the continued marketing of OTC weight control drug products containing guar gum.

In the **Federal Register** of August 8, 1991 (56 FR 37792), FDA issued a final rule establishing that certain active ingredients in OTC weight control drug products are not generally recognized as safe and effective or are misbranded. Among the ingredients subject to this final rulemaking are the water-soluble gums alginic acid, carboxymethylcellulose sodium, carrageenan, chondrus, guar gum, karaya gum, kelp, methylcellulose, plantago seed, and xanthan gum. On or after February 10, 1992, no OTC drug product containing any of these active ingredients for weight control use could be initially introduced or initially delivered for introduction into interstate commerce unless it was the subject of an approved application.

Although many drug products containing these water-soluble gums can no longer be initially introduced or initially delivered for introduction into interstate commerce, laxative drug products containing the water-soluble gums carboxymethylcellulose sodium, karaya gum, methylcellulose, polycarbophil, and psyllium may continue to be marketed. In addition, water-soluble gums may be present as active ingredients in other than laxative and weight control drug products, e.g., polycarbophil in antidiarrheal drug products. Accordingly, the agency is requiring these new warning and direction statements at this time, without waiting for the completion of any OTC drug review rulemakings related to such products.

In response to the proposed rule requiring a warning in the labeling of all OTC drug products containing water-soluble gums as active ingredients, nine manufacturers, one drug manufacturers' association, one individual, one health department, and six professional associations submitted comments. Copies of the comments received are on public display in the Dockets Management Branch, Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

References

(1) Department of Health and Human Services, FDA, Adverse Drug Reaction Reports for the years 1971 to 1992, in OTC

[1] Glucomannan is the commonly used name for the glucose/mannose polymer(B-1,4 linked) polymannose acetate.

[2] The panel that evaluated this ingredient as part of FDA's OTC drug review designated it "sea kelp." However, "kelp" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

[3] The panel that evaluated the ingredients "plantago ovata husks, plantago seeds, psyllium hemicellulose, psyllium hydrophilic mucilloid, psyllium seed, and psyllium seed husks" as part of FDA's OTC drug review designated these ingredients as "psyllium." However, "plantago seed" is the official name for these ingredients in the "USAN and the USP dictionary of drug names, 1992."

[4] Chondrus was classified in Category III as a separate ingredient by the Miscellaneous Internal Panel; however, chondrus is but one of several sources of carrageenan.

Volume 20 FR, Docket No. 90N–0200, Dockets Management Branch.

(2) Adverse Drug Reaction Reports, Reference No. 7 in OTC Volume 20 TFR, Docket No. 90N–0200, Dockets Management Branch.

(3) Comment No. C00100, Docket No. 78N–0361, Dockets Management Branch.

I. The Agency's Conclusions on The Comments

1. One comment supported the intent of the proposed warning for OTC drug products containing water-soluble gums, stating that there is sufficient evidence to mandate the inclusion of a warning for these products. Another comment stated that the warning requirement is appropriate and is preferable to FDA's October 30, 1990, proposal (55 FR 45788) to ban the use of guar gum in OTC weight control drug products. The comment added that the warning would allow consumers to continue using products they wish to use, while eliminating the potential for safety hazards in connection with such products.

The agency notes that this current rulemaking does not allow the use of guar gum in OTC weight control drug products even with the accompanying warning label. Since this comment was submitted, the agency published a clarification notice (March 6, 1991, 56 FR 9312) and a final rule for OTC weight control drug products (August 8, 1991, 56 FR 37792), in which it concluded that certain active ingredients, including guar gum, in OTC weight control drug products are not generally recognized as safe and effective and are misbranded. Accordingly, use of the warning and direction statements provided for in this final rule is not a basis for the continued use of guar gum or any other water-soluble gums as an active ingredient in OTC weight control drug products. As noted above, the warning and direction statements must appear on all OTC drug products containing a water-soluble gum as an active ingredient, including OTC bulk-forming laxative drug products containing carboxymethylcellulose sodium, karaya gum, methylcellulose, psyllium, or polycarbophil as an active ingredient.

2. Three comments stated that a warning is not necessary for water-soluble gum products because adverse reactions were reported by only a very small percentage of product users. Two comments suggested that the situation could be handled by manufacturers identifying the water-soluble gum ingredients on the product label so that the subpopulation of sensitive individuals can avoid these products. The comments stated that this approach is consistent with the FDA's long-term policy regarding the identification of ingredients as the primary means of notifying sensitive individuals who may react to certain ingredients. Two comments noted that even though many common foods (e.g., milk, eggs, nuts, shellfish) cause adverse reactions, which range from mild to life-threatening, in subgroups of the population, they are not required to have warning labels.

The agency agrees that listing ingredients on the product label is necessary and often sufficient to alert consumers who are sensitive to certain ingredients. In the present case, however, the problem presented is not one of the sensitivity of a subset of the population but of vulnerability to serious adverse outcomes in all members of the population who use the drugs incorrectly. The purpose of the warning for drug products containing water-soluble gums is to ensure that consumers know how to use the products safely, specifically, in a way that avoids esophageal obstruction. Merely identifying the water-soluble gum ingredient(s) on the product label would not alert consumers to the problem or to the remedy. Foods are discussed in comment 3.

3. One comment, which agreed with the need for a warning statement for OTC drug products containing water-soluble gums, recommended that the agency also address food products that contain approximately the same amount of these ingredients per serving as is used in a dose of certain OTC drug products. The comment mentioned a cereal product that contains 3.5 to 3.7 grams (g) of psyllium per serving, and an OTC laxative drug product containing 3.6 g of psyllium per dose. The comment was concerned that individuals taking both the OTC laxative drug product and one or more servings of such a cereal would increase their odds of having esophageal or bowel obstruction.

The agency is aware that there are many food products on the market containing water-soluble gums. The agency is concerned about the potential hazards of these ingredients, whether present in drug or food products, and has established standards for a number of water-soluble gums used as food additives. For example, the use of psyllium as an optional ingredient in certain frozen desserts at levels not exceeding 0.5 percent was provided for in a final rule establishing standards of identity for frozen desserts published by the agency in 1960 (25 FR 7126, July 27, 1960). Maximum usage levels also have been set for guar gum (21 CFR 184.1339), agar-agar (21 CFR 184.1115), karaya gum (21 CFR 184.1349), and gum tragacanth (21 CFR 184.1351). The percentage of water-soluble gums allowed in food products is generally low, and the agency has not seen any problems of esophageal obstruction or asphyxiation associated with the use of water-soluble gums at these levels in food products.

Although water-soluble gums used in food products are not included in this rulemaking, the agency will continue to evaluate and monitor these ingredients when they are used in any products marketed for human consumption. Appropriate warnings will be proposed if a need to do so is found to be necessary.

4. Several comments suggested that the proposed warning for OTC drug products containing water-soluble gums should apply only to products in a dry or unhydrated form. One comment mentioned that the cases of esophageal obstruction discussed in the proposed rule (55 FR 45782 at 45783) referred to gums in tablet form and agreed that the proposed warning is appropriate for this type of product. However, the comment contended that insufficient evidence exists to mandate the proposed warning for OTC drug products containing water-soluble gums in powder form which are dissolved in 8 oz of water prior to ingestion. The comment argued that little evidence exists that such water-based products, when taken according to the label directions by individuals without esophageal or throat problems, pose a risk of asphyxiation or esophageal obstruction.

The agency agrees that water-soluble, gum-containing products that are marketed in a fully hydrated form (e.g., in a solution) do not pose any significant risk of causing esophageal obstruction and that the warning statement is not necessary for those products. The problem with esophageal blockage associated with the use of water-soluble, gum-containing OTC drug products has been limited to those products marketed in the unhydrated form. Products that are marketed in a dry or incompletely hydrated state (intended to be dissolved in water by the consumer prior to ingesting, or taken with water or other liquid), whether in tablet (see comment 5), capsule, powder, or other form, have the potential for causing obstruction if the product is taken with inadequate fluid or if it is taken by individuals with swallowing or other throat problems. The agency acknowledges that the dosage forms involved in the cases of esophageal obstruction due to guar gum, which were discussed in the proposed rule (55 FR 45782 at 45783), were tablets. However, a number of cases of esophageal obstruction due to other water-soluble gums have involved different dosage forms (e.g., powdered forms of psyllium, and granular forms of psyllium, karaya gum, and tragacanth) (see 55 FR 45783 and 45784: specifically references 7 through 10, 13, 15, and 16). Although dry forms of water-soluble gums could be hydrated according to label directions, prior to ingestion, and safely used by most consumers, the agency believes a warning will decrease the extent to which these products could be misused by some individuals with possible adverse consequences. Further, the agency does not have any data to show how much time is necessary to fully hydrate these products after mixing them with water. The agency therefore concludes that it is appropriate to require the warning for all dosage forms of OTC drug products containing water-soluble gums as active ingredients in dry or incompletely hydrated form, including those intended to be hydrated by the consumer (i.e., with label directions to dissolve the product in water). The agency has included this information in new § 201.319(b). Those OTC drug products marketed in a completely hydrated form will not require the warning.

5. One comment agreed that the proposed warning is appropriate for OTC drug products containing water-soluble gums in tablet form, but contended that the warning would be inaccurate for two-piece, hard-shell capsules that require significant exposure to fluid before dissolving. The comment claimed such an environment does not exist in the throat and therefore the risk is moot. The comment added that virtually all reports of esophageal blockage cited by the agency in the proposal (55 FR 45782 at 45783) involved tablets. The comment recommended that the warning be modified for water-soluble gums marketed in two-piece, hard-shell capsules to read as follows:

> Take this product with at least 8 ounces (a full glass) of water or other fluid. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention.

The comment concluded that this approach would encourage industry to adopt the safest known dosage forms and would minimize potential consumer confusion and loss of confidence in the safety of many other OTC drug products offered as capsules and tablets.

As discussed in comment 4, the agency is aware of numerous cases of esophageal obstruction due to various dosage forms of water-soluble gum OTC drug products (i.e., tablets, granules, powder). Although capsules may be a safer dosage form than tablets for administering water-soluble gums, the agency believes capsules could also be potentially hazardous if they are chewed or otherwise broken before or during ingestion. For instance, a consumer who has difficulty swallowing may chew the capsule to allow for greater ease in swallowing, thereby releasing the capsule contents in the throat or esophagus. Because of the small size of the released particles, greater hydration and greater swelling could occur from the broken capsule than from a tablet. Therefore, because esophageal obstruction could occur when capsules are broken, the agency believes that safer consumer use would result by having the same warnings for capsules as other dosage forms containing water-soluble gums. Accordingly, the warning in § 201.319(b) is being required for all dosage forms (e.g., capsules, granules, powders, tablets, wafers) of unhydrated water-soluble gums when used as active ingredients in OTC drug products. However, the agency will consider exempting a water-soluble gum product from the warning statements on the basis of data demonstrating that no swelling occurs for that particular ingredient in a specific dosage form or formulation. Such requests for exemption from the warning should be submitted in the form of a citizen petition as provided in § 10.30 (21 CFR 10.30). However, the mere submission of a citizen petition does not allow an exemption from the required warning while the citizen petition is being evaluated.

6. Four comments objected to the proposed warning statements being applicable to psyllium, calcium polycarbophil, and methylcellulose dry powder. Two comments contended that the proposed warnings should not apply to psyllium on the basis of a 1982 evaluation by the Select Committee of GRAS Substances (a group of leading food experts). This Committee reviewed 60 years of data on psyllium and stated (Ref. 1):

> There is no evidence in the available information on psyllium seed husk gum that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

One comment stated that calcium polycarbophil is not a soluble fiber and does not swell appreciably in the upper gastrointestinal tract. The comment contended that, based on the drug's chemical characteristics and reported adverse drug reactions, esophageal obstruction due to swelling of the product is not an adverse reaction associated with calcium polycarbophil. Another comment contended that the proposed warnings are not appropriate for the methylcellulose dry powder formulation used in its product because there is no evidence that this formulation causes esophageal obstruction. The comment submitted results of some simple in-vitro comparison tests carried out by mixing methylcellulose-based formulations and ground psyllium-based formulations with grossly underrecommended quantities of water and observing the resulting properties of the mixtures. The comment argued that, even when dispersed in inadequate amounts of water, its methylcellulose formulation does not form a gel that could cause esophageal obstruction. The comment requested a hearing on this issue.

The comments' arguments that the proposed warnings should not apply to specific water-soluble gums are not persuasive. Because ingestion of water-soluble gums with inadequate amounts of fluid or by individuals with difficulty in swallowing could potentially cause esophageal obstruction, the agency believes that the warning statements are necessary to ensure the safe use of these drug products. Swelling and increased bulk are known results of adding water to a water-soluble gum. Even though different formulations and types of gums vary in their swelling volume, the degree of swelling remains uncertain. Although the in-vitro tests indicated a difference in the viscosities of methylcellulose-based formulations and ground psyllium-based products, no data were submitted to indicate how these results would apply to the in-vivo situation, where variables such as individual body temperature, additional food intake, or esophageal motility might affect the ingredients. The agency concludes that it cannot accept contentions of no evidence of a hazard as a basis for exempting specific water-soluble gum ingredients from the warning requirement. As noted in comment 5, the agency will consider an exemption from the required warning. The agency concludes that, without adequate data at this time, insufficient justification exists to grant a hearing.

Reference

(1) "Evaluation of the Health Aspects of Oat Gum, Okra Gum, Quince Seed Gum, and Psyllium Seed Husk Gum as Food Ingredients," Report of the Select Committee on GRAS Substances, Life Sciences Research

Office, Federation of American Societies for Experimental Biology, Bethesda, MD, 1982.

7. Several comments contended that proposed § 201.319(b) is too broadly worded in that it requires the warning statement on any drug products containing water-soluble gums. The comments suggested that the warning be revised to clarify its application only to those drug products containing water-soluble gums as active ingredients. The comments stated that the warning was not necessary on drug products that contain water-soluble gums in small quantities as inactive ingredients because such products do not pose a risk of esophageal obstruction. Several comments mentioned that water-soluble gums are used as suspending agents in many liquid drug products for both prescription and OTC use, and claimed there is no risk of esophageal obstruction associated with those products. One comment added that certain water-soluble gums have been used as a tablet disintegrant for more than 25 years with no known adverse incidents.

The agency concurs that the warning should be clarified to state its application only to those OTC drug products containing water-soluble gums as active ingredients. Many currently marketed products contain water-soluble gums as inactive ingredients used as suspending agents, binders, tablet disintegrants, etc. The agency is not aware of any reports showing that the amount of a water-soluble gum used as an inactive ingredient produces the potential for esophageal obstruction and thus poses a threat to consumer safety. Accordingly, the agency is revising the language in the heading in § 201.319 to read: § 201.319 *Water-soluble gums, hydrophilic gums, and hydrophilic mucilloids (including * * *) as active ingredients; required warnings and directions,* and paragraph (b) of § 201.319 to read: "Any drug products for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient in an oral dosage form when marketed in a dry or incompletely hydrated form as described in paragraph (a) of this section are misbranded within the meaning of section 502 of the Federal Food, Drug, and Cosmetic Act unless their labeling bears the following warnings and directions in bold print and capital letters: * * *."

8. Three comments contended that the concerns raised by the proposed warning statements for OTC drugs containing water-soluble gums could be adequately addressed under "Directions for Use." One comment mentioned that the first statement of the proposed warning currently exists under "Directions for Use" for OTC bulk-forming laxatives. Another comment stated that the directions for use found on its product label (both descriptive and pictorial) adequately convey appropriate product use, which is supported by actual consumer experience. The comment mentioned the very low incidence rate of serious esophageal blockage reports for its products, which are mixed with liquid prior to ingestion. The comment requested an oral hearing if the agency disagrees with its position and maintains that the warning is warranted (for its product).

Two comments suggested adding the following sentence to the "Directions for Use": "Taking this product without enough liquid may cause choking." One of the comments stated that the term "choking" encompasses several of the other proposed consequence terms of the warning and thus would eliminate the need for the part of the proposed warning that states: "If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention." The comment recommended that the proposed warning appear under the "Directions for Use" as follows:

(Select one of the following, as appropriate: "Take" or "Mix") "this product with at least8 ounces (a full glass) of liquid. Taking this product without enough liquid may cause choking."

Three comments suggested an alternative to the proposed warning in the form of an "instructive warning," which states: "*VERY IMPORTANT*—Take (or mix) this product with at least 8 ounces (a full glass) of water or other fluid."

The agency has considered the comments' recommendations and agrees that information conveying the proper use of OTC water-soluble, gum-containing drug products should be included under the "Directions" section of the product's labeling (see also comment 9). Therefore, the agency is establishing a "Directions" section in § 201.319 that states: "(Select one of the following as appropriate: 'TAKE' or 'MIX') THIS PRODUCT (CHILD OR ADULT DOSE) WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ENOUGH LIQUID MAY CAUSE CHOKING. SEE WARNINGS." This new direction statement will be required in the labeling of OTC water-soluble, gum-containing drug products upon the effective date of this final rule. At a later date, when the final rules for OTC laxative and antidiarrheal drug products are published, the warnings and directions included under § 201.319 will be incorporated into the labeling of bulk laxative drug products in § 334.52 and antidiarrheal drug products in § 335.50, respectively.

The agency concludes that critical information alerting the consumer about the possible consequences of not taking these products correctly should be appropriately placed in both the "Warnings" and the "Directions" sections of the products' labeling. The agency believes that the significance of the information will be emphasized if it appears in both sections of the labeling. Further, because of possible adverse reactions that can occur if the product is not taken correctly, the agency considers it very important that consumers' attention also be directed to the warning information. Therefore, to help draw attention to the warning statement, the agency is also adding the phrase "SEE WARNINGS" at the end of the "Directions" in § 201.319, to read: "(Select one of the following as appropriate: 'TAKE' or 'MIX') THIS PRODUCT (CHILD OR ADULT DOSE) WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ENOUGH LIQUID MAY CAUSE CHOKING. SEE WARNINGS."

The agency denies one comment's request for a hearing at this time because of a lack of adequate data showing that the warning is not warranted for a specific product. However, as noted in comment 5, the agency will consider requests for an exemption from the warning, submitted in the form of a citizen petition as provided in § 10.30. Interested parties must provide documentation of the safety and low incidence rate of esophageal blockage for their specific product(s) in the citizen petition.

9. One comment contended that the proposed warning is inaccurate, overly broad in scope, and would not serve properly to warn consumers. The comment pointed out that the requirement to state "at least 8 ounces (a full glass) of water or other fluid" does not take into account the lower recommended dosages for some of these ingredients for children ages 6 to under 12. The comment stated that lesser amounts of liquid are appropriate for those users, and the warning should be modified to recognize the different dosages for these products.

The purpose of the warning is to ensure safe and effective use by both adults and children of OTC drug products containing water-soluble gums as active ingredients; specifically, to prevent esophageal blockage that could result from taking or mixing these drugs with inadequate amounts of water or from use by individuals with swallowing difficulties. Although the maximum single dose of water-soluble gums for children (ages 6 to under 12) generally equals one-half the maximum single dose for adults, the minimum single dose for children is frequently the same as that for adults. For instance, in the tentative final monograph for OTC laxative drug products, the agency proposed that the minimum single dose of psyllium as a bulk forming laxative for both adults and children (ages 6 to under 12) is 2.5 g (51 FR 35136 at 35137). Similarly, for methylcellulose and sodium carboxymethylcellulose the proposed minimum single dose for adults and children is 0.45 g. Thus, because a child (age 6 to under 12) would take the same minimum single dose as an adult, the child would need to consume the same amount of fluid to avoid swelling and possible blockage problems. Therefore, the directions statement included in this final rule state that the same amount of fluid (at least 8 oz) should be taken with both children's and adult's doses of water-soluble gum products.

10. A number of comments suggested revising the third and fourth sentences of the proposed warning, which state:

DO NOT TAKE THIS PRODUCT IF YOU HAVE EVER HAD DIFFICULTY IN SWALLOWING OR HAVE ANY THROAT PROBLEMS. IF YOU EXPERIENCE CHEST PAIN, VOMITING, OR DIFFICULTY IN SWALLOWING OR BREATHING AFTER TAKING THIS PRODUCT, SEEK IMMEDIATE MEDICAL ATTENTION.

The comments described these statements as "unduly alarming," "without sufficient justification," "not easily understood," "too strongly worded," "too broad and too vague," and "ambiguous." Several of the comments contended that the phrase "if you have ever had difficulty in swallowing or have any throat problems" could apply to almost all consumers because nearly everyone at some time has had a sore throat (from a cold, cough, minor irritation, or smoking) that resulted in difficulty in swallowing. Several comments expressed concern that if people take the warning literally, the market for water-soluble, gum-containing OTC drug products would be severely damaged. The comments mentioned that many of the water-soluble gums are already generally recognized as safe as food ingredients, and that these products are currently being used safely by millions of people.

Two comments argued that the statement about difficulty in swallowing or throat problems should be eliminated or, if retained, modified to refer only to persons with diagnosed swallowing problems or a history of throat problems. Another comment suggested modifying the statement to read: "Do not take this product if you have esophageal narrowing or dysfunction."

Two comments suggested revising the proposed warning statement to direct individuals with throat problems to seek the advice of a doctor prior to using the product. One comment suggested the following: "If you have been diagnosed with a condition that causes difficulty in swallowing, consult a doctor before using this product." The other comment suggested different wording, as follows: "If you have been diagnosed with esophageal narrowing or have difficulty swallowing, consult a doctor before taking this product."

The agency agrees that the third sentence of the proposed warning could be revised to make the statement more specific. Individuals who have had swallowing difficulties in the past due to minor sore throat, colds, or coughs need not be excluded from taking water-soluble gum drug products; however, individuals with medically-related swallowing problems must be warned to avoid these products. The agency does not believe a statement advising consumers with swallowing difficulties to seek the advice of a doctor before taking this type of product is appropriate because water-soluble, gum-containing products should not be taken by those individuals. Further, the agency does not believe that the terms "esophageal narrowing" or "esophageal dysfunction" should be used in the warning because they are too technical. The agency believes that the term "difficulty in swallowing" is better understood by consumers. The agency also is not including the term "diagnosed" in the warning statement because individuals could have throat problems without the problems having been diagnosed by a physician. None of the comments requested a specific revision in the fourth sentence of the warning. If chest pain, vomiting, or difficulty in swallowing occur after taking a water-soluble gum-containing drug product the agency finds it appropriate to alert consumers to seek immediate medical attention. Accordingly, in this final rule, the third sentence of the warning statement is revised and the fourth sentence remains as proposed, to read:

DO NOT TAKE THIS PRODUCT IF YOU HAVE DIFFICULTY IN SWALLOWING. IF YOU EXPERIENCE CHEST PAIN, VOMITING, OR DIFFICULTY IN SWALLOWING OR BREATHING AFTER TAKING THIS PRODUCT, SEEK IMMEDIATE MEDICAL ATTENTION.

11. One comment stated that if this final rule becomes effective before the monographs for OTC laxative and weight control drug products, it must provide adequate time for manufacturers to develop and implement new labeling. The comment recommended that the effective date of any final rule be at least 12 months after the date of publication in the Federal Register, and that consideration be given to requests for limited extensions based on extenuating circumstances.

A final rule on OTC weight control drug products containing water-soluble gum active ingredients was published in the Federal Register of August 8, 1991 (56 FR 37792). All water-soluble gum active ingredients were found to be not generally recognized as safe and effective for this use. A final rule for OTC laxative and for OTC antidiarrheal drug products will not be published until after this final rule for water-soluble gums becomes effective. The final rules for OTC laxative and antidiarrheal drug products may include several water-soluble gum active ingredients. Drug products containing these active ingredients will need to be relabeled to bear the directions and warning statements required by this final rule (21 CFR 201.319) before the final monographs for OTC laxative and antidiarrheal drug products become effective. Normally, when a monograph is published, the agency provides a 12-month period for any necessary reformulation, relabeling, and stability testing that needs to be done. In the current situation, no reformulation or stability testing needs to be done. The only required action is relabeling to add several additional statements. The agency recognizes that in order for manufacturers to comply with this final rule for OTC drug products containing water-soluble gums, new labels will have to be written, ordered, received, and incorporated into the manufacturing process. However, this required relabeling relates to a safety problem, for which the agency has determined that a shorter deadline than the customary 12 months should be established. Therefore, this final rule will be effective 6 months after the date of publication in the Federal Register. The agency believes that 6 months is sufficient time for most manufacturers to bring their products into compliance with this final rule, which affects only the labeling of the product. Therefore, any OTC drug product that is subject to

this rule that is initially introduced or initially delivered for introduction into interstate commerce, or that is repackaged or relabeled, after the effective date of the rule must be in compliance with the rule regardless of the date the product was manufactured, initially introduced, or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with this rule at the earliest possible date. Requests for a limited extension of time will be considered by the agency only if extenuating circumstances are adequately documented. Any such requests should be sent to the Food and Drug Administration, Division of Drug Labeling Compliance (HFD–310), 7520 Standish Pl., Rockville, MD 20855.

II. Summary of Significant Changes From The Proposed Rule

1. The agency has clarified § 201.319 to state that the warning and direction statements apply only to OTC drug products containing a water–soluble gum as an active ingredient. (See comment 7.)

2. The agency has revised § 201.319(b) to indicate that the warning and direction statements are required only for water-soluble gum products marketed in a dry or incompletely hydrated form. (See comments 4 and 5.)

3. The agency is deleting the first sentence of the warning proposed in § 201.319(b) and is, instead, adding "Directions" in § 201.319(b) that state: (Select one of the following, as appropriate: "TAKE" or "MIX") "THIS PRODUCT (CHILD OR ADULT DOSE) WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ENOUGH LIQUID MAY CAUSE CHOKING. SEE WARNINGS." (See comment 8.) These directions indicate that the same amount of fluid (at least 8 ounces) should be mixed or taken with the product by an adult as well as a child. (See comment 9.)

4. The agency is revising the third sentence of the warning statement proposed in § 201.319 to read: "DO NOT TAKE THIS PRODUCT IF YOU HAVE DIFFICULTY IN SWALLOWING." (See comment 10.)

III. The Agency's Final Conclusions on The Safety of Water-Soluble Gums in Orally-Administered OTC Drug Products

Based on available evidence, the agency is issuing a final rule requiring specific warning and direction statements in the labeling of all OTC drug products for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient when marketed in a dry or incompletely hydrated form to include, but not limited to, the following dosage forms: capsules, granules, powders, tablets, and wafers. Esophageal obstruction and asphyxiation due to orally-administered OTC drug products containing water-soluble gums, hydrophilic gums, and hydrophilic mucilloids as active ingredients are significant health risks when these products are taken without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty swallowing. Therefore, the agency is requiring specific warning and direction statements for all OTC drug products containing water-soluble gums as active ingredients prior to the completion of rulemakings for certain classes of OTC drug products that contain these ingredients. These ingredients include, but are not limited to, agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B-1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum. (NOTE: Although some of these ingredient names are no longer official, they do appear in the labeling of some products. Therefore, the agency is including all ingredient names, whether official or not, in this final regulation.)

Because of the potential serious health risk involved, the warning and direction statements must appear in bold print and in capital letters. The required statements are as follows:

"*WARNINGS*: TAKING THIS PRODUCT WITHOUT ADEQUATE FLUID MAY CAUSE IT TO SWELL AND BLOCK YOUR THROAT OR ESOPHAGUS AND MAY CAUSE CHOKING. DO NOT TAKE THIS PRODUCT IF YOU HAVE DIFFICULTY IN SWALLOWING. IF YOU EXPERIENCE CHEST PAIN, VOMITING, OR DIFFICULTY IN SWALLOWING OR BREATHING AFTER TAKING THIS PRODUCT, SEEK IMMEDIATE MEDICAL ATTENTION."

DIRECTIONS: (Select one of the following, as appropriate: "TAKE" or "MIX") "THIS PRODUCT (CHILD OR ADULT DOSE) WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ENOUGH LIQUID MAY CAUSE CHOKING. SEE WARNINGS."

The warning and direction statements in § 201.319 will be incorporated into the labeling contained in the monographs for OTC laxative and antidiarrheal drug products, or any other applicable monograph, as the monographs are finalized. The agency concludes that it would be an unacceptable health risk to delay implementation of these warning and direction statements until these rulemakings are completed. Manufacturers are encouraged to comply with this final rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 45782 at 45784). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for specific warning and direction statements for OTC drug products containing water-soluble gums as active ingredients, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC drugs containing water-soluble gums as active ingredients is not expected to pose such an impact on small businesses. The final rule will impose direct one- time costs associated with changing product labels, but that cost is estimated to total less than $1 million. Manufacturers will have 6 months in which to implement this relabeling. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.319 is added to subpart G to read as follows:

§ 201.319 Water-soluble gums, hydrophilic gums, and hydrophilic mucilloids (including, but not limited to agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B-1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil tragacanth, and xanthan gum) as active ingredients; required warnings and directions.

(a) Reports in the medical literature and data accumulated by the Food and Drug Administration indicate that esophageal obstruction and asphyxiation have been associated with the ingestion of water-soluble gums, hydrophilic gums, and hydrophilic mucilloids including, but not limited to, agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B-1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum. Esophageal obstruction and asphyxiation due to orally-administered drug products containing water-soluble gums, hydrophilic gums, and hydrophylic mucilloids as active ingredients are significant health risks when these products are taken without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty in swallowing. Additional labeling is needed for the safe and effective use of any OTC drug product for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient when marketed in a dry or incompletely hydrated form to include, but not limited to, the following dosage forms: capsules, granules, powders, tablets, and wafers.

(b) Any drug products for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient in an oral dosage form when marketed in a dry or incompletely hydrated form as described in paragraph (a) of this section are misbranded within the meaning of section 502 of the Federal Food, Drug, and Cosmetic Act unless their labeling bears the following warnings and directions in bold print and capital letters:

"*WARNINGS*: TAKING THIS PRODUCT WITHOUT ADEQUATE FLUID MAY CAUSE IT TO SWELL AND BLOCK YOUR THROAT OR ESOPHAGUS AND MAY CAUSE CHOKING. DO NOT TAKE THIS PRODUCT IF YOU HAVE DIFFICULTY IN SWALLOWING. IF YOU EXPERIENCE CHEST PAIN, VOMITING, OR DIFFICULTY IN SWALLOWING OR BREATHING AFTER TAKING THIS PRODUCT, SEEK IMMEDIATE MEDICAL ATTENTION."

"*DIRECTIONS*:" (Select one of the following, as appropriate: "TAKE" or "MIX") "THIS PRODUCT (CHILD OR ADULT DOSE) WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ENOUGH LIQUID MAY CAUSE CHOKING. SEE WARNINGS."

(c) After February 28, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce, or any such drug product that is repackaged or relabeled after this date regardless of the date the product was manufactured, initially introduced, or initially delivered for introduction into interstate commerce, that is not in compliance with this section is subject to regulatory action.

Dated: August 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–20695 Filed 8–25–93; 8:45 am]

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 331
Antacid Drug Products; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 331

[Docket No. 85N–0049]

RIN 0905–AA06

Antacid Drug Products For Over-the-Counter Human Use; Amendment Of Antacid Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend the final monograph for over-the-counter (OTC) antacid drug products to require that all antacid drug products contain the statement: "Drug Interaction Precaution: Antacids may interact with certain prescription drugs. If you are presently taking a prescription drug, do not take this product without checking with your physician or other health professional." FDA is issuing this final rule after considering public comments on the agency's proposed regulation and all new data and information that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: August 26, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antacid drug products that established conditions under which these products are generally recognized as safe and effective and not misbranded. Section 331.30(d)(1) (21 CFR 331.30(d)(1)) of the monograph currently requires that the labeling of OTC aluminum-containing antacid drug products include the following drug interaction precaution: "Do not take this product if you are presently taking a prescription antibiotic drug containing any form of tetracycline." In the Federal Register of October 19, 1979 (44 FR 60328), the agency proposed to amend the antacid monograph to require that this drug interaction precaution also be included on the labeling of antacid drug products containing calcium or magnesium. The proposed amendment also would have required the following additional statement as part of the drug interaction precaution: "If you are not sure whether or not you are taking a tetracycline product, contact your physician or pharmacist." Interested persons were invited to file written comments to the proposed amendment on or before December 18, 1979.

On November 15, 1982, FDA received a petition (Docket No. 82P–0360/CP) requesting, among other things, that the labeling of OTC antacid drug products include a precaution concerning the interaction between antacids and the prescription drug digoxin. After evaluating the comments to the proposed amendment (44 FR 60328), the petition, and data in the literature indicating that antacids interact with a number of other drugs, in the Federal Register of July 30, 1986 (51 FR 27342), FDA proposed that a different drug interaction precaution be included in the labeling of all OTC antacid drug products, as follows: "Antacids may interact with certain prescription drugs. If you are presently taking a prescription drug, do not take this product without checking with your physician." Interested persons were invited to file written comments or objections by September 29, 1986.

In response to this notice of proposed rulemaking, seven professional associations, three manufacturers, three academic institutions, two pharmaceutical trade organizations, two pharmaceutical publications, and one individual submitted comments. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

1. Many comments requested that the wording of the proposed warning be revised to include the "pharmacist" as another health professional that consumers could check with about possible drug interactions. The comments mentioned several reasons for including pharmacists as a source of information and advice: their professional knowledge, ready availability, and willingness to provide advice without charging expensive professional fees. The comments contended that pharmacists have access to the patients' full medical profile and consumers are likely to purchase antacids from pharmacies. Two comments added that FDA has used similar language in the past.

The agency agrees that pharmacists' professional knowledge, ready availability, and willingness to provide advice make them an excellent source of information, particularly relating to drug interactions, for consumers taking both an OTC antacid and a prescription drug. In some cases, the pharmacist may have access to the consumer's complete medical profile and be able to offer medication counseling when a questionable situation arises.

The agency believes, however, that other health professionals, such as nurses and physician assistants, can also help consumers determine whether the prescription drug they are taking interacts with an antacid. Information about such interactions appears in references, such as the "Physicians' Desk Reference," that are available to these health professionals. In developing warning and drug interaction precaution statements for other OTC drug products, the agency has previously considered the most appropriate wording to designate who could provide consumers with information concerning OTC drugs. The agency determined that "health professional" is the preferred term, because this term does not restrict consumers from other available sources of information. (See, for example, the pregnancy-nursing warning for OTC drugs in 21 CFR 201.63 and the proposed drug interaction precaution for monoamine oxidase inhibitor drugs (57 FR 27658, 27662, and 27666 (June 19, 1992)).

Accordingly, in this final rule, the agency is revising the drug interaction precaution statement in § 331.30(d) to read as follows: "Antacids may interact with certain prescription drugs. If you are presently taking a prescription drug, do not take this product without checking with your physician or other health professional."

2. Two comments contended that physicians and their staffs would be overburdened by patient inquiries regarding possible OTC antacid-prescription drug interactions, many of which may be "trivial, clinically insignificant, or nonexistent." Another comment stated that the warning language is so broad that it fails to distinguish between known interactions and merely conjectural ones. The comment considered the warning to be a public service message to remind patients to keep physicians apprised of all medications being consumed. The comment concluded that while this is a laudable goal, it is not a proper use of limited OTC drug labeling space.

The agency has determined that an antacid drug interaction precaution is necessary due to the large number of interactions that could occur between antacids and prescription drugs. Antacids can alter the rate of absorption, bioavailability, and/or renal elimination of a number of drugs (see discussion in comment 5). While the language in the precaution could be considered overly broad, the agency's goal is to alert consumers without resorting to a confusing and burdensome list of all known interactions.

The agency does not believe that physicians and their staffs will be overburdened as a result of the new precaution. Information regarding interactions of prescription drugs with other drugs (prescription or OTC) should be provided as part of the physician-patient consultation when prescription drugs are prescribed. However, in some instances, patients may not be taking an OTC antacid at the time a prescription drug is prescribed. Later, the patient may have a need for an OTC antacid. In these instances, the drug interaction precaution is intended to alert patients to check with their physician before taking the antacid. The agency believes that this process is an essential part of good health care, and that most physicians and their staffs would not consider such inquiries to be burdensome.

3. Four comments contended that if a drug interaction merits a warning, then the proper vehicle for the warning would be the approved labeling for the prescription drug in question. The comments argued that the information is best provided when the medication is prescribed by the physician as part of the physician-patient consultation. Two of the comments mentioned that information about possible drug interactions is also provided by the pharmacist at the time the prescription is filled.

The agency agrees that when clinically significant drug interactions occur, the labeling of the prescription drug in question is an appropriate place to state that information. However, the prescription labeling is not the only appropriate place where such information can be provided. Also, having this information in the OTC drug product labeling serves to remind patients who may have forgotten their physicians' or pharmacists' instructions and is intended to help prevent unnecessary drug interactions from occurring.

The agency's general policy is that when an interaction between a prescription drug and an OTC drug is significant enough to be included in the approved labeling of the prescription drug product, a similar corresponding warning should be included in the labeling of the OTC drug product. This policy may not apply when the known prescription-OTC drug interaction cited in the prescription drug labeling affects only a limited portion of the total population taking the prescription drug. However, in those cases where known drug interactions are not limited to specific drugs and involve numerous drugs or entire drug categories, the agency states the interaction information in terms of general drug categories. For example, if a significant number of prescription drugs are known to interact with an OTC drug, the drug interaction warning may need to be a general "prescription drug" warning rather than listing all of the possible prescription drugs likely to cause interactions.

In the case of antacid drug products, the interaction between aluminum, calcium, or magnesium antacids and tetracycline is the most frequently reported. However, as discussed in comment 5, data in the literature indicate that drugs in the entire class of antacids, due to pH-related and other mechanisms, interact with a number of other drugs (Refs. 1 through 8). Because it would be impossible to list every prescription drug that could possibly cause an interaction in the antacid product's labeling, the agency finds a general warning statement to be most appropriate for this situation.

References

(1) D'Arcy, P. F., and J. C. McElnay, "Drug-Antacid Interactions: Assessment of Clinical Importance," *Drug Intelligence and Clinical Pharmacy*, 21:607–617, 1987.

(2) "USP DI, Volume I, Drug Information for the Health Care Professional," 13th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 195–197, 1993.

(3) Hansten, P. D., and J. R. Horn, "Drug Interactions," 6th ed., Lea and Febiger, Philadelphia, pp. 225, 229, 250, and 348, 1987.

(4) "Drug Evaluations," 6th ed., American Medical Association, Chicago, p. 947, 1986.

(5) Garnett, W. R., "Antacid Products" in "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, pp. 270–274, 1990.

(6) Clark, W. G., D. C. Brater, and A. R. Johnson, "Goth's Medical Pharmacology," 12th ed., The C. V. Mosby Co., St. Louis, pp. 748–750, 1988.

(7) Brunton, L. L., "Agents for Control of Gastric Acidity and Treatment of Peptic Ulcers" in "The Pharmacological Basis of Therapeutics," 8th ed., edited by L. S. Goodman, and A. G. Gilman, Pergamon Press Co., Inc., New York, pp. 904–909, 1990.

(8) Shinn, A. F., and R. P. Shrewbury, "Evaluations of Drug Interactions," 3d ed., The C. V. Mosby Co., St. Louis, p. 399, 1985.

4. Two comments contended that the proposed warning is contrary to the statutory definition of OTC drugs in section 503(b)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(b)(1)(B) the intent of that definition which, according to one comment, "mandates nonprescription status for drug products which are deemed as safe for use without the supervision of a physician." These comments argued that a general drug interaction statement, as proposed, would "seek to impose a requirement of physician intervention before use if the patient is taking any concurrent prescription therapy."

The agency considers the drug interaction precaution statement to be consistent with section 503(b)(1)(B) of the act. That section states that certain drugs shall be dispensed only by prescription when certain conditions exist and the drug is not safe except when used under the supervision of a practitioner licensed by law to administer such drug. This section of the statute does not prohibit warnings and drug interaction precaution statements for OTC drug products. These warnings and precaution statements do not impose a requirement of physician intervention for all consumers, but serve to alert certain users of the product to consult a physician or other health professional for advice when certain situations exist (e.g., when taking a prescription drug product concurrently). Thus, the requirements are not at odds with the statute.

In other OTC drug rulemakings, the agency has included similar drug interaction precautions in the OTC drug products' labeling to alert consumers to consult a doctor before taking certain drugs concurrently. For example, the precaution, "Do not use this product if you are presently taking a prescription drug for high blood pressure or depression without first consulting your doctor," is currently required for OTC bronchodilator drug products (see 21 CFR 341.76(c)(4)) and OTC anorectal drug products (see 21 CFR 346.50(c)(7)(ii)). On June 19, 1992 (57 FR 27662), the agency proposed to revise the wording for the precaution for OTC bronchodilator drug products. Other examples include the warning, "Do not give this product to children who have a chronic pulmonary disease, shortness of breath, or who are taking other drugs unless directed by a doctor," for OTC antitussive drug products containing codeine labeled for children under 12 years of age (see 21 CFR 341.74(c)(4)(iii)) and the warning, "Avoid alcoholic beverages while taking

this product. Do not take this product if you are taking sedatives or tranquilizer, without first consulting your doctor," for OTC nighttime sleep-aid drug products containing diphenhydramine hydrochloride or diphenhydramine monocitrate (see 21 CFR 338.50(c)(4)).

5. Two comments contended that the proposed drug interaction warning is not supported by the medical/scientific literature. One comment stated that the articles referenced in the agency's proposal provide questionable support for the agency's position because they are largely review articles with citations to papers that are often anecdotal and out of date. The comment added that the articles contain broad generalizations about drug interactions without adequate discussion of clinical significance.The comment argued that unnecessary warnings dilute the significance and impact of such warnings that are needed for the safe use of the product by the consumer. The comment concluded that the warning is unnecessary.

The agency disagrees with the comments. The medical/scientific literature reviewed by the agency shows that the entire class of antacids can cause numerous drug interactions. In 1982, D'Arcy and McElnay identified the hazards of interactions with antacids as being largely confined to a relatively small group of drugs: tetracycline, phenytoin, digoxin, and chloroquine (Ref. 1). In 1987, the same authors reported newer evidence showing that additional interactions occurred between antacids and cimetidine, quinidine, nonsteroidal antiinflammatory drugs, and beta-adrenergic blocking drugs (Ref. 2). Other references published after the agency's proposal in 1986 include more reports of antacid interactions. For example, the "United States Pharmacopeial Dispensing Information" currently contains extensive interaction data, listing 35 specific interactions between antacids containing aluminum, calcium, magaldrate, magnesium, or sodium bicarbonate and frequently prescribed medications selected on the basis of their potential clinical significance (Ref. 3).

These reports in the literature show that antacids can interact with a wide range of primary drugs, and can adversely affect the efficacy of the primary medication. Interactions can occur by a number of mechanisms, some of which act concomitantly: for example, by altering gastric pH (giving rise to altered dissolution rate of drug formulation, changed drug ionization, and modified absorption patterns), by adsorption of drug onto the surface of the interactant, or through the formation of poorly soluble salts or complexes. Interactions with antacids may also involve kinetic changes, including changed gastric emptying rate and/or gastric motility.

Antacids may alter the rate of dissolution, absorption, biovailability, and renal elimination of a number of drugs. Numerous authors report that, through a combination of factors, many antacids decrease the bioavailability of cimetidine, ranitidine, nitrofurantoin, digoxin, ethambutol, some indomethacin, phenytoin, vitamin A, fluoride, and phosphate (Refs. 2 and 4 through 8). It has also been reported that antacids considerably reduce ketoconazole concentrations (Ref. 4). Antacids decrease the bioavailability of atenolol and propranolol and increase the bioavailability of metoprolol. Antacids also increase the dissolution and absorption of the acidic forms of sulfonamides and the rate of absorption of levodopa (Ref. 8). Concurrent antacid therapy with ferrous sulfate, isoniazid, or tetracycline has frequently been reported to decrease the bioavailability of these drugs in actual patients (Refs. 2, 3, and 9).

Concurrent administration of tetracycline with antacid products containing aluminum hydroxide or divalent ions (magnesium or calcium) significantly decreases the gastrointestinal absorption of the antibiotic, thereby lessening its therapeutic effect. Demeclocycline, methacycline, chlortetracycline, and oxytetracycline are other forms of tetracycline that, administered concurrently with an aluminum hydroxide antacid product, also form insoluble chelates (Ref. 9).

Aluminum hydroxide has been shown to interfere with the absorption or excretion of warfarin, while aluminum hydroxide in combination with magnesium hydroxide can increase the absorption of dicumarol (Refs. 5 and 6). Thiazide diuretics cause retention of calcium and may exacerbate hypercalcemia when calcium carbonate antacids are taken concurrently (Ref. 8).

Alkalinization of the urine affects renal clearance of drugs that are weak acids or bases. Concurrent antacid therapy increases the rate of elimination of salicylates and phenobarbital and decreases the elimination of amphetamine, ephedrine, mecamylamine, pseudoephedrine, and quinidine (Refs. 5 and 8).

Antacids containing aluminum delay gastric emptying, tending to slow the entry of drugs to the absorptive surface of the small intestine, thus resulting in a delayed absorption rate. In combination products, compounds that contain magnesium can partially block the effect of aluminum on gastric motility; therefore, the combination product's absorption rate will be less delayed as compared to that of an aluminum compound's. Magnesium trisilicate and aluminum compounds are notable for their ability to absorb drugs and to form insoluble complexes that are not absorbed (Ref. 8).

Based on information in the medical/scientific literature, the agency concludes that the drug interaction precaution statement is necessary not only for antacid drug products containing aluminum, but for all OTC antacid drug products. Section 331.30(d) of the antacid monograph is revised accordingly.

References

(1) D'Arcy, P. F., and J. C. McElnay, "Drug-Metal Ion Interactions in the Gut," in Sigel H., "Metal Ions in Biological Systems, Vol. 14," in "Inorganic Drugs in Deficiency and Disease," Marcel Dekker, New York, 1982:1–35.

(2) D'Arcy, P. F., and J. C. McElnay, "Drug-Antacid Interactions: Assessment of Clinical Importance," Drug Intelligence and Clinical Pharmacy, 21:607–617, 1987.

(3) "USP DI, Volume I, Drug Information for the Health Care Professional," 13th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 195–197, 1993.

(4) Hansten, P. D., and J. R. Horn, "Drug Interactions," 6th ed., Lea and Febiger, Philadelphia, pp. 225, 229, 250, and 348, 1987.

(5) "Drug Evaluations," 6th ed., American Medical Association, Chicago, p. 947, 1986.

(6) Garnett, W. R., "Antacid Products" in "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, pp. 270–274, 1990.

(7) Clark, W. G., D. C. Brater, and A. R. Johnson, "Goth's Medical Pharmacology," 12th ed., The C. V. Mosby Co., St. Louis, pp. 748–750, 1988.

(8) Brunton, L. L., "Agents for Control of Gastric Acidity and Treatment of Peptic Ulcers" in "The Pharmacological Basis of Therapeutics," 8th ed., edited by L. S. Goodman, and A. G. Gilman, Pergamon Press Co., Inc., New York, pp. 904–909, 1990.

(9) Shinn, A. F., and R. P. Shrewbury, "Evaluations of Drug Interactions," 3d ed., The C. V. Mosby Co., St. Louis, p. 399, 1985.

6. Two comments stated that this proposal for a general warning may be setting a precedent that could affect the labeling of many OTC drug products in other drug classes. One comment contended that such action after a rulemaking process has been completed represents a major deviation from the scope of a final monograph and usurps the dedicated efforts of many people who participated in that process. The other comment argued that, because the proposed change is of such a sweeping

nature, it should be made subject to a formal rulemaking proceeding in order to provide meaningful notice to all interested parties with opportunity for comment. The comment concluded that if the policy is not abandoned, it must be published as a freestanding proposed rule.

The agency does not consider this antacid drug interaction precaution to be a precedent setting matter that could affect the labeling of many other classes of OTC drug products. This particular drug interaction is a problem specific to OTC antacid drug products. While FDA has used general warnings that affect more than one class of OTC drugs, such as the general pregnancy and nursing warning in 21 CFR 201.63, this usage has been rather limited and there currently are no plans to expand the usage of general warnings on a broad basis. The agency will consider the need for such general warnings as circumstances arise.

In the current situation, the drug interaction precaution for OTC antacid drug products was initiated by a citizen petition (Ref. 1) after the rulemaking for OTC antacid drug products had been completed. Agency regulations in 21 CFR 330.10(a)(12) provide for the amendment of monographs in this manner. Further, the proposed change has been the subject of a proposed rule in a notice and comment rulemaking proceeding, and interested parties have had the opportunity to comment.

Reference

(1) CP, Docket No. 82P–0360, Dockets Management Branch.

7. One comment strongly urged the agency to finalize the proposed rule to amend the labeling requirements for OTC antacid drug products. The comment mentioned personal experience relating to an adverse interaction that occurred between an OTC antacid and a prescription drug. The comment stated that "physicians can not be relied upon to inform their patients of possible negative reactions to a combination of a prescription drug and OTC antacid drug," and "the general public has no other way of ascertaining the information easily."

This comment supports the need for having the drug interaction precaution statement in the labeling of OTC antacid drug products. The warning provides the general public guidance on how to seek information when a question arises as to drug use and should specifically benefit consumers who did not receive adequate instructions initially, who may have forgotten the original instructions regarding their prescription products, or who need to take an antacid after a prescription medication has been prescribed by a doctor. In the event that adequate information was not given initially, the warning alerts consumers to check with their physician or other health professional when taking an OTC antacid drug product with their prescription medication(s) and should result in specific guidance being given at the time of the subsequent inquiry.

II. Summary of Changes in the Final Monograph

After considering the comments received and warnings used for other OTC drug products (see comment 1), the agency has added the words or "other health professional" to the second sentence of the drug interaction precaution so that it now reads: "Antacids may interact with certain prescription drugs. If you are presently taking a prescription drug, do not take this product without checking with your physician or other health professional." In addition, the agency is now requiring that this drug interaction precaution appear in the labeling of all OTC antacid drug products, not just antacid drug products containing aluminum. (See comment 5.) Section 331.30(d) of the antacid monograph is revised accordingly.

The agency is also adding new § 331.30(h) to provide that the word doctor may be substituted for the word physician in any of the labeling statements in § 331.30. No comments were received in response to this part of the proposal. This addition makes the antacid monograph consistent with other recently published monographs.

III. The Agency's Final Conclusions on a Revised Drug Interaction Precaution Statement for OTC Antacid Drug Products

The agency has determined that a drug interaction precaution is needed in the labeling of all OTC antacid drug products (not just those containing aluminum) because the medical/scientific literature identifies a number of interactions that can occur between OTC antacids and prescription drugs. The agency believes that this information represents good health care and will serve as a reminder to consumers who are using antacids to contact their physicians or other health professionals for medication counseling if they are taking a prescription drug.

As discussed in the proposal (51 FR 27342 at 27343), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the **Federal Register**. Therefore, on or after August 26, 1994, any OTC antacid drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC antacid drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (51 FR 27342 at 27343). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules including amendment of the monograph for OTC antacid drug products is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking amending the final monograph for OTC antacid drug products is not expected to pose such an impact on small businesses. This final rule will require minor relabeling of one statement in the labeling for all OTC antacid drug products. Manufacturers will have 1 year to implement this relabeling, and almost all manufacturers normally reorder labeling during that time span. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this actions is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 331

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 331 is amended as follows:

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

1. The authority citation for 21 CFR part 331 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 331.30 is amended by revising paragraph (d) introductory text and by adding paragraph (h) to read as follows:

§ 331.30 Labeling of antacid products.

* * * * *

(d) Drug interaction precaution. The labeling of the product contains the following statements under the heading "Drug Interaction Precaution": "Antacids may interact with certain prescription drugs. If you are presently taking a prescription drug, do not take this product without checking with your physician or other health professional."

* * * * *

(h) The word "doctor" may be substituted for the word "physician" in any of the labeling statements in this section.

Dated: August 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–20698 Filed 8–25–93; 8:45 am]

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federal register

Thursday
August 26, 1993

Part VI

Department of Education

34 CFR Part 776

Library Education and Human Resource Development Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 776

RIN 1860–AA48

Library Education and Human Resource Development Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Library Education and Human Resource Development Program (formerly the Library Career Training Program). These amendments are needed to implement the Higher Education Amendments of 1992 (1992 Amendments), to reflect changes in the Education Department General Administrative Regulations (EDGAR), and to clarify and restructure certain provisions in the existing regulations governing the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Louise V. Sutherland or Frank A. Stevens. Telephone: (202) 219–1315. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Library Education and Human Resource Development Program, is authorized by section 222 of title II, part B of the Higher Education Act of 1965, as amended (HEA). Section 222 was amended by the Higher Education Amendments of 1992 (1992 Amendments) (Pub. L. 102–325), which were enacted on July 23, 1992. These final regulations revise the existing regulations to implement the 1992 Amendments, to reflect changes in the Education Department General Administrative Regulations (EDGAR), and to clarify and restructure certain provisions in the existing regulations governing the program.

On June 11, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 32828). The major issues addressed by the regulations are discussed in the preamble to the NPRM.

The Secretary notes that the preamble of the NPRM incorrectly stated that § 776.7 of the regulations would be revised to replace the word "training" in the definition of "institute" with the term "staff development." The proposed regulations did not incorporate this change, and the Secretary has determined that this change is unnecessary. Institute grants have been and continue to be available for training projects, including staff development projects.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any substantive comments. There are no differences between the NPRM and these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 776

Education, Government contracts, Grant programs—education, Libraries.

(Catalog of Federal Domestic Assistance Number: 84–036B—Library Education and Human Resource Development Program)

Dated: August 23, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 776 to read as follows:

PART 776—LIBRARY EDUCATION AND HUMAN RESOURCE DEVELOPMENT PROGRAM

Subpart A—General

Sec.

776.1 What is the Library Education and Human Resource Development Program?
776.2 Who is eligible for a grant?
776.3 Who is eligible to participate in a project?
776.4 What types of projects may the Secretary fund?
776.5 What priorities may the Secretary establish?
776.6 What regulations apply?
776.7 What definitions apply?
776.8 What is the duration of a project?

Subpart B—What Are the Application Requirements?

776.10 How does one apply for a grant?
776.11 What assurance must an applicant for a fellowship project provide?

Subpart C—How Does the Secretary Make an Award?

776.20 How does the Secretary evaluate an application?
776.21 How does the Secretary evaluate an application for a fellowship project?
776.22 What selection criteria does the Secretary use to evaluate an application for an institute project?
776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship project?

Subpart D—What Conditions Must be Met After an Award?

776.30 How may a grantee use grant funds?
776.31 What are the restrictions on costs for participants?
776.32 What are the allowances for assistance under other Federal programs?
776.33 What requirements govern the removal, withdrawal, and substitution of participants?
776.34 What agencies must be informed of activities funded under this program?

Authority: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

Subpart A—General

§ 776.1 What is the Library Education and Human Resource Development Program?

The Secretary awards grants under the Library Education and Human Resource Development Program to—

(a) Educate and train persons in library and information science through fellowships, institutes, or traineeships, particularly in areas of critical needs; and

(b) Establish, develop, and expand programs of library and information science, including new techniques of information transfer and communication technology.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.2 Who is eligible for a grant?

Eligible applicants are—

(a) Institutions of higher education;

(b) Library organizations; or

(c) Library agencies.

(Authority: 20 U.S.C. 1032)

§ 776.3 Who is eligible to participate in a project?

In order to be selected by a grantee as a participant in a project, an individual must—

(a)(1) Be a United States citizen or national;

(2) Provide evidence from the United States Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Republic of Palau (until the Compact of Free Association with Palau takes effect);

(b) Be engaged in or preparing to engage in a profession or other occupation involving library or information science; and

(c) Meet the selection criteria of the grantee.

(Authority: 20 U.S.C. 1032)

§ 776.4 What types of projects may the Secretary fund?

A grantee may conduct one or more fellowship projects, institute projects, and traineeship projects with funds under this program.

(Authority: 20 U.S.C. 1032)

§ 776.5 What priorities may the Secretary establish?

(a) The Secretary may give priority to applications that address one or more of the following critical needs:

(1) To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

(2) To educate, train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

(3) To educate, train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

(4) To increase excellence in library leadership through advanced training in library management.

(5) To increase excellence in library education by encouraging study in library and information science and related fields at the doctoral level.

(6) To provide advanced training in the development, structure, and management of new library organizational formats, such as networks, consortia, and information utilities.

(7) To recruit, educate, train, retrain and retain minorities in library and information science.

(b) The Secretary establishes priorities by publishing a notice in the **Federal Register**, in accordance with 34 CFR 75.105.

(Authority: 20 U.S.C. 1032)

§ 776.6 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 776.

(Authority: 20 U.S.C. 1021)

§ 776.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract (includes definition of Subcontract)
Department
EDGAR
Grant
Grantee
Private
Project
Project period
Public

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Higher Education Act of 1965, as amended.

Disadvantaged means those persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from library services to the same extent as the general community benefits from these services.

Fellowship means an award of financial assistance for tuition to an individual who has been accepted for admission to an institution of higher education and who is or will be enrolled full-time in a graduate program of library and information science, working toward or completing the requirements for a specific degree in some aspect of library and information science.

Financial need means the fellow's financial need as determined under title IV, part F, of the Act for the period of the fellow's enrollment in the graduate program for the specific degree in library and information science for which the fellowship was awarded.

Institute means a specialized long-term or short-term group training project in library and information science that—

(i) Is separate from the regular academic program of the applicant;

(ii) Has an innovative curriculum; and

(iii) Either provides persons with the skills needed to enter the library and information science field or provides library and information science personnel—including library educators—an opportunity to strengthen or increase their knowledge and skills.

Institution of higher education means an institution of higher education as defined in section 1201 of the Act.

Library and information science means the study of recordable information and knowledge and the services and technologies to facilitate their management and use. The term encompasses information and knowledge creation, communication, identification, selection, acquisition, organization, description, storage, retrieval, preservation, analysis, interpretation, evaluation, synthesis, dissemination, and management.

Library organization or agency means a public or private organization or agency that provides library services or programs.

Participant means a person who is enrolled in a project funded under this part.

Participation costs means the costs associated with participation in a

traineeship or institute, including the costs of travel and subsistence, for which the grantee pays directly or reimburses the trainee or institute participant.

State agency means the State agency designated under section 1203 of the Act.

Stipend means an award of money from a grantee to a fellow, the amount of which is determined on the basis of the fellow's demonstrated financial need.

Traineeship means a training project in library and information science that—

(i) Is separate from the regular academic program of the applicant;

(ii) Is designed to meet the individual needs of mid-level library and information science professionals; and

(iii) Provides individualized instruction, usually through an internship.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.8 What is the duration of a project?

(a) A fellowship must provide at least one academic year of training.

(b) A long-term institute project must provide at least one academic year but no more than 12 months of training.

(c) A short-term institute project must provide at least one week but no more than six weeks of training.

(d) A traineeship project may not exceed 12 months.

(Authority: 20 U.S.C. 1021, 1032)

Subpart B—What Are the Application Requirements?

§ 776.10 How does one apply for a grant?

(a) An applicant must submit separate applications for fellowship, institute, and traineeship projects.

(b) An applicant must submit separate applications for fellowship projects at the master's, post-master's, and doctoral levels, limited to one application per level for new fellowships.

(c) An applicant must include all of its requests for new fellowships at a particular level within the single application for that level.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.11 What assurance must an applicant for a fellowship project provide?

An applicant for a fellowship project must provide an assurance that in the event funds made available to a participant under this program are insufficient to provide the assistance due a participant under the commitment entered into between the applicant and the participant, the applicant will endeavor, from any funds available to it, to fulfill the commitment to the participant.

(Authority: 20 U.S.C. 1032)

Subpart C—How Does the Secretary Make an Award?

§ 776.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a fellowship project on the basis of the provisions in § 776.21 and awards up to 110 possible points for these criteria.

(b) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.22 and awards up to 100 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.23 and awards up to 100 possible points for these criteria.

(d) The maximum score for each criterion is indicated in parentheses.

(Approved by the Office of Management and Budget under control number 1850–0022.)

(Authority: 20 U.S.C. 1032)

§ 776.21 How does the Secretary evaluate an application for a fellowship project?

(a) *Continuation awards.* Before considering applications to support new fellowships, the Secretary provides funds to continue support for qualified students who were awarded fellowships under this program in the previous two years and who are maintaining satisfactory progress as determined by the institution.

(b) *Selection criteria for new fellowship projects.* The Secretary evaluates an application for a new fellowship project based on the following selection criteria:

(1) *Project description* (20 points). The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(i) The project addresses one or more of the critical needs announced by the Secretary as a priority or priorities under § 776.5(a);

(ii) The project objectives are clearly stated, realistic, and satisfy a current training need;

(iii) The required courses meet standards that are recognized by the library and information science profession; and

(iv) The student field experience component (if included) is well designed.

(2) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(3) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project; and

(C) The time that these key personnel will commit to the project.

(ii) To determine the qualifications of these key personnel the Secretary considers—

(A) Experience, training, and professional productivity in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(4) *Selection of fellows* (15 points). The Secretary reviews each application to determine the effectiveness of the applicant's method of selecting fellows including—

(i) Conformance with program priorities in § 776.5(a); and

(ii) Evidence that admissions standards for fellows are comparable to those for other students admitted to the library and information science education program.

(5) *Applicant characteristics* (20 points). The Secretary reviews each application to determine the applicant's commitment to library and information science education, including—

(i) The adequacy of the description in the applicant's catalog of the specific library education program in which participants will be enrolled;

(ii) The extent to which the amount the applicant spends per student for education in library and information science is comparable to that of other education programs;

(iii) The extent to which the ratio of degrees awarded to total enrollment in the applicant's library education program is comparable to that of other library education programs;

(iv) The extent to which the ratio of requested fellowships to other fellowships and scholarships in library and information science supported by the applicant is comparable to that of other library education programs; and

(v) The extent to which the academic level of the project is appropriate to the applicant's capabilities or experience.

(6) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(7) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(i) Appropriate to the project;

(ii) Objective; and

(iii) Designed to produce data that are quantifiable.

Cross-Reference: See 34 CFR 75.590 Evaluation by the grantee.

(8) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(9) *Project impact* (10 points). The Secretary reviews each application to determine the extent to which the project will expand and strengthen the applicant's library and information science degree programs.

(c) *Other considerations.* The Secretary may give priority among applications for new fellowship projects that are of substantially the same quality to applications that will contribute to an appropriate balance of fellowships among the priorities announced under § 776.5.

(Approved by the Office of Management and Budget under control number 1850–0022)

(Authority: 20 U.S.C. 1021, 1032)

§ 776.22 What selection criteria does the Secretary use to evaluate an application for an institute project?

(a) *Project description* (20 points). The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the critical needs announced by the Secretary as a priority or priorities under § 776.5(a);

(2) The subject matter of the project is significant, timely, well-described, appropriate for an institute, and is not duplicated in the applicant's regular curriculum;

(3) The project duration is appropriate for presenting the subject matter;

(4) The project content satisfies rigorous educational standards;

(5) The blend of theoretical and practical training is suitable to the subject matter and the needs of the participants; and

(6) The training methods are innovative and imaginative.

(b) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Selection of institute participants* (15 points). The Secretary reviews each application to determine the effectiveness of the method of participant selection, including the extent to which—

(1) Participants will be selected according to their ability, experience, current responsibilities, and training needs; and

(2) The number of participants is appropriate to the training methods and project resources.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (8 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Designed to produce data that are quantifiable.

Cross-Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources* (7 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Project effectiveness* (10 points). The Secretary reviews each application to determine the effectiveness of the project, including the extent to which—

(1) The project will increase the number of librarians with specialized skills; and

(2) The project includes plans for disseminating promising results and high quality materials to other institutions or agencies.

(Approved by the Office of Management and Budget under control number 1850–0022)

(Authority: 20 U.S.C. 1032)

§ 776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship project?

(a) *Project description* (15 points). The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the critical needs announced by the Secretary as a priority or priorities under § 776.5(a);

(2) The training needs to be met by the project are significant, of current interest to the library and information science community, and well-described;

(3) Project activities are designed to meet the individual needs of each participant; and

(4) Other library agencies or institutions will cooperate with the applicant in providing appropriate and high quality internship opportunities.

(b) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of

key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel plan to commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Selection of trainees* (15 points). The Secretary reviews each application to determine the effectiveness of the applicant's method of trainee selection, including the extent to which trainees will be selected on the basis of their stated career goals and on their potential for high level advancement and continued professional growth within the field of library and information science.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (10 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate for the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

Cross-Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources* (15 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved by the Office of Management and Budget under control number 1850–0022)

(Authority: 20 U.S.C. 1021, 1032)

Subpart D—What Conditions Must Be Met After an Award?

§ 776.30 How may a grantee use grant funds?

(a)(1) A grantee may use grant funds in the following amounts to cover the cost of providing fellowship training:

(i) For each fellowship awarded at the master's level—$8,400 for an academic year plus $1,600 for a summer session.

(ii) For each fellowship awarded at postmaster's and doctoral levels—$8,000 for an academic year plus $2,000 for a summer session.

(2) A grantee shall use grant funds to pay stipends to fellows, based on the amount of demonstrated financial need up to a maximum of $14,000 a year.

(b)(1) A grantee may use grant funds to cover the costs of providing institute training.

(2) A grantee may use grant funds to assist in covering the participation costs of institute training.

(c)(1) A grantee may use grant funds to cover the costs of providing traineeship training.

(2) A grantee may use grant funds to assist in covering the participation costs of traineeship training.

(Authority: 20 U.S.C. 1032)

§ 776.31 What are the restrictions on costs for participants?

A grantee may not charge tuition or fees to a participant in a project funded under this program.

(Authority: 20. U.S.C. 1032)

§ 776.32 What are the allowances for assistance under other Federal programs?

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except veterans', war orphans', and widows' educational assistance under title 38, United States Code) must be deducted from the amount that participant would receive under this part.

(b) If a participant receives a federally assisted educational loan, the amount of the loan and any interest paid may not be deducted from the amount received by the participant under this part.

(Authority: 20 U.S.C. 1021, 1032 and 38 U.S.C. 1700)

§ 776.33 What requirements govern the removal, withdrawal, and substitution of participants?

(a) A grantee shall remove a participant from a project if the grantee determines that the participant has ceased to maintain academic proficiency.

(b) If a grantee removes the participant or if a participant withdraws, the grantee—

(1) May replace the participant if the new participant can successfully complete the fellowship, traineeship, or institute at no additional cost to the Department; and

(2) Must notify the Secretary in writing—

(i) Within 30 days of the removal or withdrawal; or

(ii) Within 30 days of a substitution if the grantee substitutes another participant.

(c) The date of removal or withdrawal is—

(1) The date the grantee determined that the participant had ceased to maintain academic proficiency; or

(2) The last date the participant attended class.

(d)(1) If a grantee removes a fellowship participant or if a fellowship participant withdraws, the grantee shall prorate the participant's stipend, according to the number of weeks the participant has completed in the project.

(2) For purposes of paragraph (d)(1) of this section, the grantee shall count attendance in any part of a week as a full week.

(e) If a grantee does not substitute a participant for the participant who has been removed or who has withdrawn from a fellowship, traineeship, or institute, the grantee shall return to the Federal Government the unused portion of the stipend and any participation costs.

(Approved by the Office of Management and Budget under control number 1850–0022)

(Authority: 20 U.S.C. 1032)

§ 776.34 What agencies must be informed of activities funded under this program?

Each institution of higher education that receives a grant under this part shall annually inform the agency designated under section 1203 of the Act of its project activities.

(Authority: 20 U.S.C. 1022)

[FR Doc. 93–20713 Filed 8–25–93; 8:45 am]
BILLING CODE 4000–01–P

federal register

Thursday
August 26, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 336 and 338

Antiemetic Drug Products; Nighttime Sleep-Aid Drug Products; Notices of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 336

[Docket No. 92N-0346]

RIN 0905-AA06

Antiemetic Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the monograph for over-the-counter (OTC) antiemetic drug products to revise a required warning, and to add a similar warning for products labeled for use only for children under 12 years of age. This proposal will ensure that warnings for ingredients contained in OTC antiemetic drug products are the same as those required for related ingredients used in other OTC drug products (e.g., antihistamines, antitussives, and nighttime sleep-aids). This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by October 25, 1993; written comments on the agency's economic impact determination by October 25, 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1987 (52 FR 15886), FDA issued a final monograph for OTC antiemetic drug products (21 CFR part 336) that included the following warning statement in § 336.50(c)(1) (21 CFR 336.50(c)(1)) for all antiemetics: "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

In § 341.72 of the tentative final monograph for OTC antihistamine drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2200 at 2215), the agency proposed this same warning for all OTC antihistamines. Antihistamines should not be used by people who have any obstructive pulmonary disease in which clearance of secretions is a problem. The agency stated that respiratory distress symptoms, such as difficulty in breathing and shortness of breath, are characteristic of chronic obstructive pulmonary disease. The agency concluded that such descriptive terms should be included in the warning in addition to the names of the diseases, in order to provide more information to the consumer.

In the final monograph for OTC antihistamine drug products, published in the **Federal Register** of December 9, 1992 (57 FR 58356 at 58374), the agency revised this warning to include the broader phrase "breathing problem" to describe symptoms such as shortness of breath and difficulty in breathing related to obstructive pulmonary disease. The change in wording will allow consumers to recognize respiratory distress symptoms more readily. The agency also removed the descriptive term "asthma" from the warning and replaced the term "chronic pulmonary disease" with the term "chronic bronchitis." The revised warning, which appears in § 341.72(c)(2) of the final monograph (21 CFR 341.72(c)(2)), reads as follows: "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

In the **Federal Register** of December 9, 1992 (57 FR 58378), the agency proposed to amend the monograph for OTC antitussive drug products to include the same warning for antitussive drug products containing diphenhydramine. Elsewhere in this issue of the **Federal Register**, the agency is proposing that the warning also be used for OTC nighttime sleep-aid drug products containing diphenhydramine. Because diphenhydramine is also used as an OTC antiemetic, the agency is now proposing that the existing warning for diphenhydramine and other monograph antiemetics, which appears in § 336.50(c)(1), be revised to be the same as the warning in § 341.72(c)(2) for OTC antihistamine drug products, in proposed § 341.74(c)(4)(vii)(a) for antitussive drug products, and in § 338.50(c)(3) for OTC nighttime sleep-aid drug products.

The agency is taking this action because diphenhydramine and the other active ingredients in the antiemetic monograph (cyclizine hydrochloride, dimenhydrinate, and meclizine hydrochloride) are classified as antihistamines. Diphenhydramine is classified chemically in the ethanolamine group (43 FR 25544 at 25580, June 13, 1978). Dimenhydrinate is the 8-chlorotheophylline salt of diphenhydramine (40 FR 12902 at 12936, March 21, 1975). Cyclizine and meclizine are members of the benzhydryl piperazine group of antihistamine compounds; these compounds differ chemically from other antihistamines in that the alkyl-amino group exists as a ring structure (40 FR 12902 at 12935).

The antiemetic final monograph does not contain any warnings specifically for drug products labeled for use only by children under 12 years of age. However, it is possible that antiemetic drug products containing chlorcyclizine hydrochloride, dimenhydrinate, and diphenhydramine hydrochloride can be marketed with labeling for use only by children under 12 years of age. Therefore, the agency is including in the monograph a slightly differently worded warning for antiemetic drug products that are labeled for use only by children under 12 years of age, which reads: "Do not give this product to children who have a breathing problem such as chronic bronchitis or who have glaucoma, without first consulting the child's doctor." This warning is consistent with the warning in § 341.72(c)(6)(i) of the final monograph for OTC antihistamine drug products and the warning proposed in § 341.74(c)(4)(vi) of the monograph for OTC antitussive drug products.

The agency has examined the economic consequences of this proposed rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antiemetic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antiemetic drug products is not expected to pose such an impact on small business. There will be a minor, one-time labeling revision, which manufacturers will have 1 year to implement. Therefore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antiemetic drug products. Comments regarding the impact of this rulemaking on OTC antiemetic drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 25, 1993, submit written comments or objections on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before October 25, 1993. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 336

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 336 be amended as follows:

PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 336 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 336.50 is amended by revising paragraph (c)(1) to read as follows:

§ 336.50 Labeling of antiemetic drug products.

* * * * *

(c) * * *

(1) *For products containing any ingredient identified in § 336.10—(i) When labeled for use in adults and for those products that can be and are labeled for use in children under 12 years of age.* "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

(ii) *For those products that can be and are labeled only for children under 12 years of age.* "Do not give this product to children who have a breathing problem such as chronic bronchitis or who have glaucoma, without first consulting the child's doctor."

* * * * *

Dated: August 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-20096 Filed 8-25-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 338

[Docket No. 92N-0349]

RIN 0905-AA06

Nighttime Sleep-Aid Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the monograph for over-the-counter (OTC) nighttime sleep-aid drug products to revise a warning required for products that contain diphenhydramine citrate or diphenhydramine hydrochloride. This proposal will ensure that warnings are the same for diphenhydramine salts whether the ingredient is used in OTC nighttime sleep-aid, antihistamine, or antitussive drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments on the proposed regulation by October 25, 1993; written comments on the agency's economic impact determination by October 25, 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 14, 1989 (54 FR 6814), FDA issued a final monograph for OTC nighttime sleep-aid drug products (21 CFR part 338) that included the following warning statement in § 338.50(c)(3) (21 CFR 338.50(c)(3)) for products containing diphenhydramine salts: "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

In § 341.72 of the tentative final monograph for OTC antihistamine drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2200 at 2215), the agency proposed this same warning for all OTC antihistamines. Antihistamines should not be used by people who have any obstructive pulmonary disease in which clearance of secretions is a problem. The agency stated that respiratory distress symptoms, such as difficulty in breathing and shortness of breath, are characteristic of chronic obstructive pulmonary disease. The agency concluded that such descriptive terms should be included in the warning in addition to the names of the diseases, in order to provide more information to the consumer.

In the final monograph for OTC antihistamine drug products, published in the **Federal Register** of December 9, 1992 (57 FR 58356 at 58374), the agency revised this warning to include the broader phrase "breathing problem" to describe symptoms such as shortness of breath and difficulty in breathing related to obstructive pulmonary disease. The change in wording will allow consumers to recognize respiratory distress symptoms more readily. The agency also removed the descriptive term "asthma" from the warning and replaced the term "chronic pulmonary disease" with the term "chronic bronchitis." The revised warning, which appears in § 341.72(c)(2) of the final monograph (21 CFR 341.72(c)(2)), reads as follows: "Do not take this product, unless directed by

a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

In the **Federal Register** of December 9, 1992 (57 FR 58378), the agency proposed to amend the monograph for OTC antitussive drug products to include diphenhydramine citrate and diphenhydramine hydrochloride as active ingredients. The agency also proposed that the revised warning in § 341.72(c)(2) of the antihistamine final monograph be used for OTC drug products containing diphenhydramine as an antitussive. The agency is now proposing that the existing warning for diphenhydramine used as an OTC nighttime sleep-aid, which appears in § 338.50(c)(3), be revised to be the same as the warning in § 341.72(c)(2) for OTC antihistamine drug products and in proposed § 341.74(c)(4)(vii)(a) for OTC antitussive drug products.

The agency has examined the economic consequences of this proposed rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC nighttime sleep-aid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC nighttime sleep-aid drug products is not expected to pose such an impact on small business. There will be a minor, one-time labeling revision, which manufacturers will have 1 year to implement. Therefore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC nighttime sleep-aid drug products. Comments regarding the impact of this rulemaking on OTC nighttime sleep-aid drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 25, 1993, submit written comments or objections on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before October 25, 1993. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 338

Labeling, Over-the-counter drugs.

Therefore, under the Federal, Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 338 be amended as follows:

PART 338—NIGHTTIME SLEEP–AID DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

1. The authority citation for 21 CFR part 338 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 338.50 is amended by revising paragraph (c)(3) to read as follows:

§ 338.50 Labeling of nighttime sleep-aid drug products.

* * * * *

(c) * * *(3) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

* * * * *

Dated: August 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–20697 Filed 8–25–93; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
August 26, 1993

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Between the United States and Yugoslavia; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28903; Special Federal Aviation Regulation (SFAR) No. 66–1]

RIN 2120–AE91

Prohibition Against Certain Flights Between the United States and Yugoslavia

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On June 23, 1992, the FAA published a prohibition against certain flights between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro; hereinafter "Yugoslavia") (57 FR 28031). That prohibition expired June 19, 1993. This action reinstates that prohibition.

DATES: *Effective date:* August 26, 1993. *Expiration date:* August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under Section 103 of the Federal Aviation Act of 1958 (Act), as amended, the FAA is charged with the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security. In addition, Section 1102(a) of the Act requires the FAA Administrator to exercise authority consistently with any treaty obligations of the United States. The United States is a party to the Charter of the United Nations (Charter) (59 Stat. 1031; 3 Bevans 1153 (1945)). Articles 25 and 48 of that Charter require Members of the United Nations to carry out the decisions of the Security Council. Article 25 states, "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Additionally, Article 48(1) states, in pertinent part, "[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations * * *."

On May 30, 1992, acting under Chapter VII of the UN Charter, the Security Counsel adopted Resolution 757, mandating an embargo of certain air traffic with Yugoslavia. Paragraph 7(a) of Resolution 757 requires all states to deny permission to any aircraft to take off from, land in, or overfly their territory if the aircraft is destined to land in or has taken off from Yugoslavian territory. An exception is made for flights that have been approved on the grounds of urgent humanitarian need by a special Security Council committee established by paragraph 13 of the Resolution.

The United States Government fully expects member states of the UN to comply with UN Security Council Resolution 757. Such action would have the effect of denying overflight rights to aircraft travelling to or from Yugoslavian territory. As a result, the FAA believes that a flight from the United States to Yugoslavia during the effective period of Resolution 757 could not be planned with assurances that the aircraft would have safe primary and alternate landing points within the fuel range of the aircraft. There is substantial risk, therefore, that such a flight could not be conducted safely.

The United States Government has taken several earlier actions to restrict air transportation between the United States and Yugoslavia. On June 5, 1992, the President issued Executive Order 12810, which prohibits "[a]ny transaction by a United States person, or involving the use of U.S.-registered vessels and aircraft, relating to transportation to or from the Federal Republic of Yugoslavia (Serbia and Montenegro) * * * or the sale in the United States by any person holding authority under the Federal Aviation Act * * * of any transportation by air which includes any stop in the Federal Republic of Yugoslavia (Serbia and Montenegro)." The Executive Order also prohibits:

the granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or a continuation of that flight, is destined to land in or has taken off from the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro).

Executive Order 12810 cited the President's authority under the International Emergency Economic Powers Act (50 U.S.C. § 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), Section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. app. 1514), Section 301 of the United States Code (3 U.S.C. 301), and Section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287(c)). This last Act provides that:

> Notwithstanding the provisions of any other law, whenever the United States is called upon by the [UN] Security Council to apply measures which said Council has decided * * * to be employed to give effect to its decisions under [the United Nations] Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, or regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations of rail, sea, [and] air * * * between any foreign country or to any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof * * *.

On June 12, 1992, the Office of the Secretary of Transportation issued Order 92–6–27, which implements Executive Order 12810 by amending all Department of Transportation (DOT) certificates issued under Section 401 of the Act, all permits issued under Section 402 of the Act, and all exemptions from Section 401 and 402 accordingly.

The May 30 UN Security Council Resolution, Executive Order 12810, and DOT Order 92–6–27 remain in effect, and copies have been placed in the docket for this rulemaking.

Temporary Restrictions on Flights Between the United States and Yugoslavia

On the basis of the above, and in support of the Executive Order of the President of the United States, I find that action by the FAA is required to reinstate the prohibition that expired June 19, 1993. Furthermore, after consultation with the Department of State, I find that the current circumstances, including the closure of airspace and landing sites in countries situated between the United States and Yugoslavia to aircraft destined to land in, or having taken off from, Yugoslavia, represent a hazard to any aircraft used for that purpose as well as to persons onboard that aircraft. Accordingly, these circumstances further warrant action by the FAA to maintain the safety of flight and meet obligations under international law. For these reasons, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under section 1102(a) of the Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

The rule contains an expiration date of August 26, 1994 but may be terminated sooner or further extended if circumstances so warrant.

Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and Yugoslavia and the cost of having to circumnavigate the territory by U.S.-registered private aircraft. Revenue flights to Yugoslavia are currently prohibited by DOT Order 92–6–27, and the FAA is unaware of any U.S.-registered private aircraft currently operating over Yugoslavia. Accordingly, this action will impose no additional burden on commercial or private operators.

Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and most likely would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory Policies and Procedures are minimal, and a further regulatory evaluation will not be conducted.

Paperwork Reduction Act

There are no requirements for information collection associated with this rule that require approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

International Trade Impact Assessment

DOT Order 92–6–27 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Yugoslavia. This SFAR does not impose any restrictions on commercial carriers beyond those imposed by the DOT Order. Therefore, the SFAR will not create a competitive advantage or disadvantage for foreign companies in the sale of aviation products or services in the United States, nor for domestic firms in the sale of aviation products or services in foreign countries.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Yugoslavia are already prohibited by DOT Order 92–6–27, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Aviation safety, Yugoslavia.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 66 is added to read as follows:

Special Federal Aviation Regulation No. 66

Prohibition Against Certain Flights Between the United States and Yugoslavia

1. *Applicability.* Except as provided in paragraphs 3 and 4 of this Special Federal Aviation Regulation, this rule applies to all aircraft operations originating from, destined to land in, or overflying the territory of the United States.

2. *Special flight restrictions.* Except as provided in paragraph 3 of this SFAR—

(a) No person shall operate an aircraft or initiate a flight from any point in the United States to any point in the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter "Yugoslavia"), or to any intermediate destination on a flight the ultimate destination of which is in Yugoslavia or which includes a landing at any point in Yugoslavia in its intended itinerary;

(b) No person shall operate an aircraft to any point in the United States from any point in Yugoslavia, or from any intermediate point of departure on a flight the origin of which is in Yugoslavia, or which includes a departure from any point in Yugoslavia in its intended itinerary; and

(c) No person shall operate an aircraft over the territory of the United States if that aircraft's flight itinerary includes any landing at or departure from any point in Yugoslavia.

3. *Permitted operations.* This SFAR shall not prohibit the takeoff or landing of an aircraft, the initiation of a flight, or the overflight of United States territory by an aircraft authorized to conduct such operations by the United States Government in consultation with the United Nations Security Council Committee established by UN Security Council Resolution 757 (1992).

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Any deviation required by an emergency shall be reported to the Air Traffic Control Facility having jurisdiction as soon as possible.

5. *Expiration.* This Special Federal Aviation Regulation expires August 26, 1994.

Issued in Washington, DC, on August 19, 1993.

David R. Hinson,

Administrator.

[FR Doc. 93–20776 Filed 8–25–93; 8:45 am]

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Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121
Emergency Evacuation Demonstration Procedures, Exit Handle Illumination Requirements, and Public Address Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 26063; Amendment Nos. 25–79 and 121–233]

RIN 2120–AC45

Miscellaneous Changes to Emergency Evacuation Demonstration Procedures, Exit Handle Illumination Requirements, and Public Address Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: These amendments to the airworthiness standards for transport category airplanes and the operating rules for air carrier operators of such airplanes modify the procedures for conducting an emergency evacuation demonstration. These include a requirement that the flightcrew take no active role in the demonstration, and a change to the age/sex distribution requirement for demonstration participants. In addition, the airworthiness standards are amended to standardize the illumination requirements for the handles of the various types of passenger emergency exits, and to add a requirement to prevent the inadvertent disabling of the public address system because of an unstowed microphone. These amendments are intended to enhance the provisions for egress of occupants of transport category airplanes under emergency conditions.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, FAA, Regulations Branch (ANM–114), Transport Airplane Directorate, Aircraft Certificate Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2121.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 89–23, which was published in the **Federal Register** on September 8, 1989 (54 FR 37414). The notice proposed to modify the procedures for conducting an emergency evacuation demonstration by requiring that the flightcrew take no active role in the demonstration, and by changing the age/sex distribution requirement for demonstration participants. The notice also proposed to standardize the illumination requirements for the handles of the various types of passenger emergency exits. Additionally, the notice proposed to add a requirement that would prevent the inadvertent disabling of the public address system because of an unstowed microphone.

As discussed in the notice, the FAA held a public technical conference in Seattle, Washington on September 3–6, 1985, to solicit and review information from the public on a variety of topics related to the emergency evacuation of transport category airplanes. The proposals in Notice 88–23 were in response to recommendations made as a result of the public conference.

Role of the Flightcrew

Section 25.803(c) of the Federal Aviation Regulations (FAR) defines the requirements for conducting an emergency evacuation demonstration for the type certification of transport category airplanes. Similar requirements for U.S. air carrier operators are defined in § 121.291 and appendix D of part 121 of the FAR. Section 121.291 requires, in part, that each holder of an air carrier operating certificate must conduct an emergency evacuation demonstration in accordance with appendix D of part 121 for each type and model of airplane to be used in passenger-carrying operations, unless compliance has been shown with § 25.803 in effect on December 1, 1978 (Amendment 25–46) during type certification, or with § 121.291(a) in effect on October 24, 1967 (Amendment 121–30). Appendix D of part 121, in turn, contains demonstration criteria which are similar to those of § 25.803. Section 25.803(c)(19) of part 25 and appendix D, paragraph (a)(19), of part 121 require the applicant's approved emergency evacuation training program procedures to be fully utilized during the demonstration.

Most operators' procedures call for one or more of the flight crewmembers to enter the cabin and assist in an evacuation. To the extent that they are available for such assistance, it is appropriate that they do so in an evacuation under actual emergency conditions. It cannot be assured, however, that the flight crewmembers will always be available to provide such assistance on a timely basis. They may have to perform other duties which would delay their entry into the cabin. Such duties may include, for example, engine shutdown or communications with persons on the ground. If the evacuation is initiated by a flight attendant, the flightcrew may not be immediately aware of the evacuation. Furthermore, they may not be available to assist in the cabin if they are incapacitated or have already evacuated through one of the cockpit emergency exits. In this regard, some operators' procedures call for one of the flightcrew to leave the airplane immediately and assist on the ground.

Because it cannot be assured that the flightcrew would always be available to assist in an evacuation under actual emergency conditions, it was recommended that the demonstration be conducted without the assistance of the flightcrew in the cabin. In this way, the demonstration would more accurately reflect conditions that are likely to be encountered during an actual evacuation.

As proposed, the flightcrew could participate in the coordination of the demonstration by determining when the airplane is properly prepared for the demonstration, relaying information to ground personnel, or initiating the demonstration. When the demonstration starts, the flightcrew would have to be in their assigned seats. They would then leave the airplane through one of the exits close to the flight deck, after simulating the time required to complete the emergency checklist. After the flightcrew had reached the ground, they would be permitted to assist evacuees.

Section 121.291(a) would be amended to specify that any demonstration conducted on or after the effective date of the amendment would have to be conducted without the active participation of the flightcrew, regardless of whether the demonstration is conducted under the provisions of that part or during type certification under the provisions of § 25.803. After the effective dates of these amendments, where compliance with § 25.803 is to be shown by analysis rather than actual demonstration, this would not preclude an analysis that is based on the results of demonstrations conducted prior to the effective date of the amendment.

Since the role of the flightcrew in the demonstration would be minimal, there would be no need for them to be members of a regularly scheduled line crew. Section 25.803(c)(7) of part 25, and appendix D, paragraph (12) of part 121 would be revised accordingly. Additionally, the word "or" in § 25.803(c)(7)(i) would be changed to "and" in order to clarify that the requirement is for a joint part 25 and part 121 certification effort.

Age/Sex Mix

Section 25.803(c)(8), as well as appendix D to part 121, specifies, in part, that the emergency evacuation demonstration must be conducted using a representative load of persons in normal health. Currently this load is specified as being at least 30 percent female and at least 5 percent over 60 years of age, with a proportionate number of females (i.e., 30 percent of 5 percent, or 1.5 percent of the total load must be female and over 60). In addition, at least 5 percent, but not more than 10 percent, must be children under 12 years of age.

The use of elderly persons in conducting emergency evacuation demonstrations subjects those persons to a high risk of suffering injuries, such as broken bones, etc. Furthermore, it is an unnecessary risk since compensating factors can be applied to provide the same test results. Although there is less risk of injury to children, the use of minors in conducting emergency evacuation demonstrations actually violates prevailing child labor laws in many states. Because of these unnecessary risks, the FAA has permitted emergency evacuation demonstrations to be conducted with other mixtures of age and sex under the equivalent safety provisions of § 21.21(b)(1).

In view of these unnecessary risks, it was recommended that the FAA re-evaluate the mixture of sex and age used for emergency evacuation demonstrations. In responding to the recommendations, the FAA first reviewed three sources of data to determine the average mixture of passengers being flown in air carrier operations: (1) The "Demographic Characteristics of Airline Passengers (1984)," The Airliner Cabin Environment: Air Quality and Safety, National Academy Press; (2) an age distribution survey of trans-Atlantic passengers conducted in the United Kingdom by the Civil Aviation Authority (CAA); and (3) a cursory age/sex distribution survey of airline passengers conducted by the Air Transport Association (ATA). Copies of these reports have been placed in the rules docket.

In addition to reviewing data concerning the average mixture of passengers being flow in air carrier operations, the FAA also reviewed test data concerning the relative evacuation capability of different mixtures of age and sex.

Data were available from the FAA Civil Aeromedical Institute (CAMI), which had conducted a series of tests to compare the relative evacuation rates of four different seating configurations adjacent to a Type III emergency exit (as defined in § 25.807). From those tests, the relative evacuation rates of different mixtures of age and sex were developed. In addition, the Aerospace Industries Association of America (AIA) presented data to the FAA concerning the relative evacuation capability of different mixtures of age and sex.

The calculations performed in determining the proposed age/sex were presented in detail in Notice 89–23.

The FAA also proposed to allow the use of an alternative mixture of sex and age, provided it would produce equivalent results. Producing equivalent results means that the alternative age/sex mix would have to produce the same evacuation rates as the age/sex distribution specified in the regulation, or the 90-second time limit would have to be adjusted accordingly. Typically, the applicant would have to conduct comparative tests in order to show that the alternative age/sex distribution would produce equivalent results.

Overwing Exit Assist Means

Notice 89–23 contained a proposal to clarify the wording in § 25.803(c)(3) and paragraph (a)(3) of appendix D to part 121 to specify that stands and ramps may be used in emergency evacuation demonstrations at overwing exits only when off-wing descent devices are not installed on the airplane. This has been the practice since the inception of the rule, and the rewording obviates any future uncertainty over the requirement. Corresponding conforming changes to § 25.803(c)(18) and paragraph (a)(18) of appendix D to part 121 were also proposed.

As a further conforming change, the FAA proposed to revise § 121.291(a) to extend the exceptions of those subparagraphs to include emergency evacuation demonstrations conducted in accordance with any later amendments to that section or § 25.803.

Exit Handle Illumination

The notice also contained a proposal to revise § 25.811 to standardize the requirements for illumination of passenger emergency exit operating handles. This section specifies that each operating handle of Type I and Type A passenger emergency exits must be self-illuminated, or be conspicuously located and well-illuminated by the emergency lighting. Section 25.811 does not provide this option for Type III exits. The operating handle of a Type III passenger emergency exit has to be self-illuminated. The FAA has, however, accepted such exits with handles which are conspicuously located and well-illuminated by the cabin emergency lighting, under the equivalent level of safety provisions of § 21.21(b)(1). Further, § 25.811 does not provide criteria for illumination of the operating handles of Type II and Type IV passenger emergency exits. The notice proposed the same alternative methods of illumination for the operating handles of all passenger emergency exits, regardless of the type.

Because no criteria are contained in § 25.811 regarding the illumination of handles of Type II and Type IV exits, there may be transport category airplanes in current air carrier, air taxi, or commercial service which have no illumination or insufficient illumination of those handles. The FAA therefore specifically invited comments concerning the models and numbers of transport category airplanes in such service with Type II or Type IV exits, the adequacy of any existing illumination of operating handles in those airplanes, the cost of providing sufficient illumination of those handles on a retrofit basis, and whether the cost of modifying airplanes in service would be commensurate with any increase in safety that would result.

Covers are sometimes provided for the operating handles of passenger exits. Section 25.811 requires the instructions for the removal of such covers from Type III exits to be self-illuminated; however, the FAA has allowed the option of locating the instructions conspicuously and providing sufficient illumination by the cabin emergency lighting in lieu of self-illumination. Although the need for such illumination of the removal instructions for handle covers at exits other than Type III exits is of equal importance, § 25.811 does not specify any requirement to illuminate the instructions for removal of the operating handle cover from any other type of passenger emergency exit. It was therefore proposed that § 25.811 be amended to specify that the instructions for removing such covers from any type exit must either be self-illuminated or conspicuously located and well-illuminated by the cabin emergency lighting.

Public Address System

It was also proposed to amend part 25 to require that a PA system, if required by the operating rules of this chapter, not be rendered inoperative by an unstowed microphone. Additionally, the equipment requirements of § 121.318 would be incorporated into part 25 so that all the design requirements for the PA system would be in one section of part 25. The FAA also requested comments as to whether the change to the system should be made retroactive to air carrier airplanes and what the cost of those changes might be.

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Discussion of Comments

Six commenters, representing the views of airplane manufacturers, airlines, an airplane crew organization, and U.S. and foreign government organizations, responded to Notice 89–23. All commenters generally endorse the intent of the proposals in Notice 89–23, but each proposes some changes or expresses some reservations.

Two commenters disagree with the proposal to prohibit the flightcrew from actively assisting the flight attendants during the emergency evacuation demonstration. One of those commenters believes that either of two demonstration conditions would "more accurately reflect conditions that are likely to be encountered during an actual evacuation." The two conditions are: (1) The specification of a delay time before the flight crewmembers can assist in the cabin, and (2) the exclusion of the flgtcrew from the number of occupants who must evacuate the airplane within 90 seconds through the passenger exits. The other commenter stated that the FAA had not presented evidence that the current practice has resulted in unsafe operating conditions.

The FAA concurs with the first commenter that one or more flight crewmembers have been available to assist in many actual emergency evacuations, but that the time at which they were available is not well documented or consistent. It has been documented, however, that during several evacuations flight crewmembers did not or could not assist the flight attendants in the passenger cabin. In fact, a third commenter, the National Transportation Safety Board, which supports this change, states in its comment: "The Safety Board's investigations of several survivable accident and noncrash-related evacuations have found numerous instances when flightcrews were not available to assist during the evacuations." Therefore, with respect to the commenter's first proposed condition of a specified delay time, the FAA has determined that any delay does not compensate for those occasions when no flight crewmember would be available to assist at any time. Regarding the second condition of excluding the flight crewmembers from having to evacuate the airplane through the passenger emergency exits in 90 seconds, the FAA considers that this is unacceptable. It is often extremely difficult to assess the effectiveness of the actions of the flight crewmembers in previous demonstrations in terms of seconds saved or lost. On the other hand, it is likely that flight cremembers would evacuate through a passenger emergency exit in an actual emergency. It is clear, in that case, that the time necessary to evacuate through that exit would be greater. In most cases, when movie or video records have been kept, this additional time can be determined. Therefore, the commenter's proposal is inappropriate.

Concerning the second commenter's contention that the FAA has not presented evidence that the current practice has resulted in unsafe operating conditions, a possible unsafe condition does not have to currently exist for rulemaking to be justified. The FAA has determined, and the NTSB agrees, that flight crewmembers are not always available to assist in emergency evacuations. Therefore, in order to take this very real possibility into account and thereby increase the level of safety, the final rule revises the test conditions as proposed.

One commenter recommends that the FAA delay this final rule until after the establishment of an emergency evacuation advisory committee. The FAA disagrees with the recommendation. There is no indication as to what recommendations for research or rulemaking, if any, may be forthcoming from the recently established aviation rulemaking advisory committee. For reasons discussed in other sections of this preamble, the FAA believes that these rule changes are necessary. To delay them for no specific reason is therefore unwarranted.

One commenter agrees with the proposal to prohibit the flightcrew's active involvement in the demonstration, but is concerned that the FAA might permit the airlines to reduce flightcrew training for emergency evacuation. The FAA intends that flightcrews will assist in actual emergency evacuations, to the maximum extent possible. It is not the FAA's intent to reduce the training of flightcrews in emergency evacuation procedures.

One commenter recommends withdrawal of the proposal contained in § 25.803(c)(8)(vi) to allow alternative passenger loads in lieu of that proposed in §§ 25.803(c)(8) (i), (ii), and (iii), including the possibility of adjusting the 90 second time criterion. The commenter observes that it would encourage the use of alternative age/sex mixes, and that an adjustment in the allowed time would be difficult to assess.

The FAA concurs with the commenter's recommendation. While the FAA does not necessarily agree with the commenter's observation, it is noted that the age/sex mix proposed in §§ 25.803(c)(8) (i), (ii) and (iii) would allow applicants to much more easily obtain participants for the evacuation demonstrations, thus greatly lessening the need for alternative mixes. Additionally, alternative age/sex mixes would still be allowed under the existing provisions of § 21.21(b)(1). Therefore, the proposal to allow alternative passenger loads is withdrawn.

One commenter proposes that § 121.291(a) be revised to require evacuation demonstrations for airplanes with seating capacities of 30 to 44 passengers. The commenter did not provide any justification for the proposal.

The FAA does not concur and is unaware of any justification for change of this nature. Furthermore, the commenter's proposal could not be adopted at this time because the public has not been given an opportunity to comment on it.

Another commenter states that although no change was proposed to § 25.803(c)(8)(iv), the articulation and weights of the required dolls should represent the anthropomorphic populations they are intended to represent.

Advisory Circular 25.803–1, paragraph 6g, Emergency Evacuation Demonstrations, dated November 13, 1989, provides guidance relative to the dolls. The FAA is not aware of any need for rulemaking in that regard.

Subsequent to the release of Notice 89–23 for public comment, the FAA issued Amendment 25–72 (55 FR 29756, July 20, 1990), which updated part 25 for clarity and accuracy. One of the revisions promulgated by that amendment was the relocation of the evacuation demonstration test criteria from § 25.803(c) to a new appendix J to part 25. Because of this relocation, non-substantive conforming revisions have been made in the final rule.

One commenter agrees with the proposed revision to the illumination standards for exit handles and for removal instructions for covers over exit handles, but expresses concern that potential rulemaking for parts 121 and 135, discussed in the preamble section of Notice 89–23, addressed only Type II and Type IV exits. The commenter sought assurance that potential rulemaking affecting parts 121 and 135 would be compatible with the proposed amendment to § 25.811 for all exit handles and not just for Type II and Type IV exits.

In the preamble discussion referred to by the commenter, the FAA solicited information regarding the illumination

of handles for Type II and Type IV exits in airplanes in service or coming into service shortly. Information was not requested regarding the other exit types because sufficient illumination for those exit handles is already required by § 25.811(e). However, since the type certification bases for all the transport category airplanes in part 121 and part 135 operations are not the same, the type certification requirements for the illumination of handles may differ even for Type A, Type I, and Type III exits. Therefore, if the FAA were to proceed with rulemaking to amend part 121 and part 135, the agency would consider requiring the illumination to be upgraded for all exit types.

One commenter questions whether the 10-second period in proposed § 25.1423 refers to the time to activate the PA system or the time to get to and activate the system, and recommends substituting the words "starting the message" for "operation."

The words in the proposal were transferred verbatim from § 121.319 and refer to the time needed to activate the system with the flight attendant already at the PA station. The FAA does not consider that the commenter's suggested rewording would improve the understandability of the regulation. However, § 25.1423 has been revised to clarify that the reference to accessibility relates to the system rather than to its use.

The same commenter recommends substituting the word "intelligible" for "audible" in proposed § 25.1423.

The FAA concurs. The word "intelligible" is a more precise term that describes the quality of message that the PA system is required to be capable of transmitting. If the person using the PA system speaks intelligibly, the message transmitted by the system must also be intelligible. As proposed in the notice, the FAA's intent is to incorporate the equipment requirements of § 121.318 of the operating rules into § 25.1423 in order that all the design requirements for the public address system will be in one location in part 25. The word "audible" was simply part of the existing text of § 121.318(f) that was transferred to § 25.1423. Although the FAA concurs with the commenter and has revised § 25.1423 accordingly, it should be noted that this change is not intended to imply that the FAA uses one standard for the design requirements and a separate or different standard for the operating requirements.

One commenter recommends that the change to the PA system be made retroactive to in-service transport category airplanes operating under parts 121 and 135, and to newly manufactured airplanes type certificated under part 25.

This comment was apparently in response to a request for comments on the costs of modifying existing airplanes to meet the new PA system requirement. Unfortunately, this commenter did not provide any retrofit cost estimates. Although the commenter's recommendation could not be adopted at this time, the FAA will consider it for further rulemaking.

One commenter agrees with the proposal to require that an unstowed microphone not disable the PA system, but seeks assurance that the flight deck microphone would continue to possess override capability.

Although most, if not all, current PA systems have a system override capability associated with the microphone in the flight deck, this feature is not a requirement. The FAA considers this to be a desirable feature, however, and may pursue further rulemaking on this subject.

During the comment period for Notice 89–23, the FAA adopted Amendments 25–70, 121–209 and 135–34 (54 FR 43925, October 27, 1989). As amended by Amendments 121–209 and 135–34, both parts 121 and 135 require the installation of independent power sources for the PA systems installed in transport category airplanes manufactured after November 27, 1990, having a seating capacity of more than 19 seats, and used in air carrier, air taxi or commercial service. Amendment 25–70 created a new § 25.1423 that provides standards for PA systems. Section 25.1423 does not, in itself, require the installation of a PA system, but merely contains the standards that a PA system must meet if the system is required for operation under part 121 or part 135. A number of non-substantive editing changes have been made for compatibility with the text of those amendments.

Section 25.1423 is also amended to require the installation of a PA system microphone in the flight deck if the PA system is required for operation under part 121 or part 135. It has come to the attention of the FAA that neither the proposed change to § 25.1423 nor the existing requirement of § 25.1411(a)(2) concerning accessibility of the PA system explicitly requires the installation of a microphone in the flight deck. Both existing §§ 121.318(c) and 135.150(a)(3) do, however, require that a PA system microphone must be accessible to at least two flight crewmembers, an implicit requirement for the installation of a microphone in the flight deck. Because those parts require a microphone in the flight deck implicitly, this amendment is a non-substantive change that places no additional burden on any person. In addition, the accessibility requirement of § 25.1411(a)(2) is transferred to § 25.1423 for clarity. This too is non-substantive change that places no additional burden on any person.

With the exception of the revisions discussed above, the remaining proposals identified in Notice 89–23 are adopted as proposed.

Aviation Rulemaking Advisory Committee

The FAA recognizes that many factors must be evaluated in designing transport category airplanes for safe evacuation under emergency conditions Cabin-safety rulemaking must consider the interaction among cabin sizes, passenger capacity, the type and number of emergency exits, exit location, distance between exits, aisle design, exit row and escape path markings and lighting, flame resistance of cabin interior materials, and other important variables. In order to develop future proposed safety standards by using a systems-analysis, the FAA chartered a committee of safety experts known as the Aviation Rulemaking Advisory Committee (ARAC), on February 5, 1991. Under the auspices of ARAC are several working groups that deal with different areas of FAA rulemaking activity. One, the Performance Standards Working Group, is reviewing emergency evacuation issues.

Members of the Performance Standards Working Group represent the interests of airplane manufacturers; airlines; an airplane equipment manufacturer; pilot, flight attendant, and machinists unions; an airline passenger association; the National Transportation Safety Board; and the airworthiness authorities of Europe, Canada, and the United States. The charter of this working group is to recommend whether new or revised standards for emergency evacuation could and should be adopted as performance-based standards. Performance-based standards state regulatory requirements in terms of objective safety performance rather than specific design requirements. To date the working group has not made any recommendations to ARAC for any new performance-based standards or for any performance-based standards to replace existing non-performance based design standards.

Performance-based standards are desirable in that they would offer the manufacturer maximum flexibility in designing equipment or systems to

comply with the regulations. They can, however, be difficult to develop, particularly when involved with human performance and behavior under stressful conditions, such as emergencies that necessitate cabin evacuation. In view of the potential increase in safety than can be realized by early adoption of this rule and the fact that the currently-specified test actually violates prevailing child-safety laws in many states, the FAA does not consider that deferring this action pending further study by ARAC is warranted. Nevertheless, it may be anticipated that other new cabin safety standards will be developed by ARAC and proposed by the FAA in future rulemaking.

Regulatory Evaluation

Three principal requirements pertain to the economic impacts of changes to Federal regulations. First, Executive Order 12291 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits exceeding its costs and is neither major as defined in the Executive Order nor significant as defined in the Department of Transportation's Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; and (3) will not have an effect on international trade. These analyses, available in the docket, are summarized below.

For purposes of this analysis, benefits are compared with costs on a per certification basis, assuming that 20 airplanes will be produced each year between 1998 and 2007 under a representative part 25 certification. This approach results in a relevant presentation of the relationship between benefits and costs, while avoiding prediction of the types and numbers of new airplanes that will be certified in the future.

Costs

The FAA estimates that the incremental cost of compliance with the rule will be approximately $46,000 per type certification (1992 dollars at present value). The FAA has determined that only one of the five amendments to part 25 (the push-to-talk switch amendment) will result in additional costs to manufacturers of transport category airplanes. In addition, none of the three amendments to part 121 is expected to adversely affect air carrier operators. Each of the amendments is evaluated below for expected costs to manufacturers:

1. Role of the Flightcrew

The requirement that the evacuation demonstration be conducted without the assistance of flight crewmembers in the cabin is not expected to impose any additional costs on manufacturers because it represents only a minor procedural change.

2. Age/Sex Distribution of Passengers Used in an Emergency Evacuation Demonstration

These changes are not expected to impose additional costs on manufacturers.

3. Overwing Exit Assist Means

This requirement permits the use of stands and ramps at overwing exits in emergency evacuation demonstrations only when off-wing descent devices are not installed on the airplane. No incremental costs will be imposed on manufacturers.

4. Exit Handle Illumination

This amendment will not impose much, if any, additional cost on manufacturers because three of five types of passenger emergency exit operating handles are currently subject to illumination requirements. Type I and Type A handles are already required to be self-illuminated or conspicuously located and well-illuminated, and Type III handles must be self-illuminated (without the alternative of being conspicuously located and well-illuminated). The FAA has made findings of equivalent safety for Type III exit handles when the handle is conspicuously located and well-illuminated.

Prior to this rule, the regulations did not provide criteria for the illumination of Type II and Type IV passenger emergency exit operating handles. This rule will standardize the illumination of all passenger emergency exit operating handles (and cover removal instructions, if the operating handle is covered) to only two methods: (1) Self-illuminated, or (2) conspicuously located and well-illuminated. Neither Type II nor Type IV exit handles meet the new requirements. Nevertheless, the requirements will not impose additional costs on manufacturers, primarily because transport category airplanes seldom have such exits. For the few airplanes that will have Type II or IV exits, the emergency lighting currently required by § 25.812 will provide sufficient lighting for the exit handles (and cover removal instructions, if the operating handle is covered) or will provide the electrical circuitry with which additional lighting could easily be provided.

5. Push-To-Talk Switch

This item is expected to cost less than $425 per airplane. The costs for 200 airplanes produced under a representative type certification uniformly from 1998 through 2007 total approximately $85,000 and $46,000 in non-discounted and discounted terms, respectively.

Benefits

The rule is expected to generate safety benefits in the form of the reduced likelihood of fatal and nonfatal injuries in survivable post-crash ground fire emergency evacuations from part 25 airplanes.

Estimation of these benefits, in monetary terms, is difficult since there has not been a documented accident in which injuries have been directly attributed to the deficiencies noted. There was an incident, however, in which an emergency evacuation followed a large fuel spill from a United Airlines Boeing 747 airplane in Honolulu, Hawaii, in 1984. During that incident, the escape slides were deployed into the fuel, presenting a potential hazard. The flight attendants at the rear of the cabin could not be notified of the fuel leak due to an inoperative public address system. The system was inoperative because one cockpit microphone had not been returned to the stowed position.

As a result of that incident and in consideration of various recommendations made by the National Transportation Safety Board (NTSB), the FAA believes that injuries and/or fatalities in survivable post-crash ground fire accidents could be prevented by the provisions of this rule. The FAA postulates that without this rule at least one associated serious injury per type certification could occur from a post-crash ground fire accident on affected airplanes operating between 1999 and 2008, at costs of $640,000 and $288,000 in terms of non-discounted and discounted dollars, respectively.

Comparison of Costs and Benefits

In terms of 1992 dollars at present value, the minimum benefits and expected costs of the rule per representative part 25 certification are estimated to be $288,000 and $46,000 respectively, yielding a benefit-to-cost ratio of 6.3 to 1. The FAA therefore finds the amendments to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of entities." No transport category airplane manufacturer is considered to be a small entity in accordance with FAA criteria which classifies a small manufacturer as one with 75 or fewer employees (FAA Order 2100.14A). Therefore, the rule will not have "a significant economic impact on a substantial number of small entities."

International Trade Impact Assessment

The rule changes will have no affect on trade on both American firms doing business in foreign countries, and foreign firms doing business in the United States. In the U.S., foreign manufacturers must meet U.S. requirements, and thus will gain no competitive advantage. Similarly, U.S. manufacturers must meet the airworthiness requirements of foreign aviation authorities to market airplanes in those countries and, as such, will experience no change in competitive stance.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves regulations that are not considered to be major under the procedures and criteria prescribed in Executive Order 12291. The FAA has also determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, the FAA certifies under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities, since none are affected. A copy of the evaluation prepared for this action has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 25 and 121 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

2. Section 25.811 is amended by removing paragraph (e)(3) and marking it [Reserved] and by revising the introductory text of paragraph (e)(2) to read as follows:

§ 25.811 Emergency exit marking.

* * * * *

(e) * * *

(2) Each passenger emergency exit operating handle and the cover removal instructions, if the operating handle is covered, must—

* * * * *

(3) [Reserved]

* * * * *

3. Section 25.1411 is amended by removing paragraph (a)(2) and by redesignating paragraph (a)(1) as (a) and revising newly redesignated (a) as follows:

§ 25.1411 General.

(a) *Accessibility.* Required safety equipment to be used by the crew in an emergency must be readily accessible.

* * * * *

4. Section 25.1423 is revised to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must—

(a) Be powerable when the aircraft is in flight or stopped on the ground, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation, for—

(1) A time duration of at least 10 minutes, including an aggregate time duration of at least 5 minutes of announcements made by flight and cabin crewmembers, considering all other loads which may remain powered by the same source when all other power sources are inoperative; and

(2) An additional time duration in its standby state appropriate or required for any other loads that are powered by the same source and that are essential to safety of flight or required during emergency conditions.

(b) Be capable of operation within 10 seconds by a flight attendant at those stations in the passenger compartment from which the system is accessible.

(c) Be intelligible at all passenger seats, lavatories, and flight attendant seats and work stations.

(d) Be designed so that no unused, unstowed microphone will render the system inoperative.

(e) Be capable of functioning independently of any required crewmember interphone system.

(f) Be accessible for immediate use from each of two flight crewmember stations in the pilot compartment.

(g) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, have a microphone which is readily accessible to the seated flight attendant, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants.

5. Appendix J is amended by revising paragraphs (c), (g), (h)(1), (h)(2), (h)(3), (q), and (r) to read as follows:

Appendix J—Emergency Evacuation

* * * * *

(c) Unless the airplane is equipped with an off-wing descent means, stands or ramps may be used for descent from the wing to the ground. Safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the emergency evacuation equipment of the airplane may be used to aid the participants in reaching the ground.

* * * * *

(g) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in the seat until receiving the signal for commencement of the demonstration. Each crewmember must be a person having knowledge of the operation of exits and

emergency equipment and, if compliance with § 121.291 is also being demonstrated, each flight attendant must be a member of a regularly scheduled line crew.

(b) * * *

(1) At least 40 percent of the passenger load must be female.

(2) At least 35 percent of the passenger load must be over 50 years of age.

(3) At least 15 percent of the passenger load must be female and over 50 years of age.

* * * * *

(q) Except as provided in paragraph (c) of this section, all evacuees must leave the airplane by a means provided as part of the airplane's equipment.

(r) The applicant's approved procedures must be fully utilized, except the flightcrew must take no active role in assisting others inside the cabin during the demonstration.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

7. Section 121.291 is amended by revising paragraph (a) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

(a) Except as provided in paragraph (e)(1) of this section, each certificate holder must conduct an actual demonstration of emergency evacuation procedures in accordance with paragraph (a) of appendix D to this part to show that each type and model of airplane with a seating capacity of more than 44 passengers to be used in its passenger-carrying operations allows the evacuation of the full capacity, including crewmembers, in 90 seconds or less.

(1) An actual demonstration need not be conducted if that airplane type and model has been shown to be in compliance with this paragraph in effect on or after October 24, 1967, or, if during type certification, with § 25.803 of this chapter in effect on or after December 1, 1978.

(2) Any actual demonstration conducted after September 27, 1993, must be in accordance with paragraph (a) of Appendix D to this part in effect on or after that date or with § 25.803 in effect on or after that date.

* * * * *

8. Appendix D to part 121 is amended by revising paragraphs (a)(3), (a)(7), (a)(12), (a)(18), and (a)(19) to read as follows:

Appendix D to Part 121—Criteria for Demonstration of Emergency Evacuation Procedures Under § 121.291

(a) * * *

(3) Unless the airplane is equipped with an off-wing descent means, stands or ramps may be used for descent from the wing to the ground. Safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the emergency evacuation equipment of the airplane may be used to aid the participants in reaching the ground.

* * * * *

(7) A representative passenger load of persons in normal health must be used. At least 40 percent of the passenger load must be females. At least 35 percent of the passenger load must be over 50 years of age. At least 15 percent of the passenger load must be female and over 50 year of age. Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger. Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers.

* * * * *

(12) Each crewmember must be a member of a regularly scheduled line crew, except that flight crewmembers need not be members of a regularly scheduled line crew, provided they have knowledge of the airplane. Each crewmember must be seated in the seat the crewmember is normally assigned for takeoff, and must remain in that seat until the signal for commencement of the demonstration is received.

* * * * *

(18) Except as provided in paragraph (a)(3) of this appendix, all evacuees must leave the airplane by a means provided as part of the airplane's equipment.

(19) The certificate holder's approved procedures and all of the emergency equipment that is normally available, including slides, ropes, lights, and megaphones, must be fully utilized during the demonstration, except that the flightcrew must take no active role in assisting others inside the cabin during the demonstration.

* * * * *

Issued in Washington, DC, on August 19, 1993.

David R. Hinson,

Administrator.

[FR Doc. 93–20777 Filed 8–25–93; 8:45 am]

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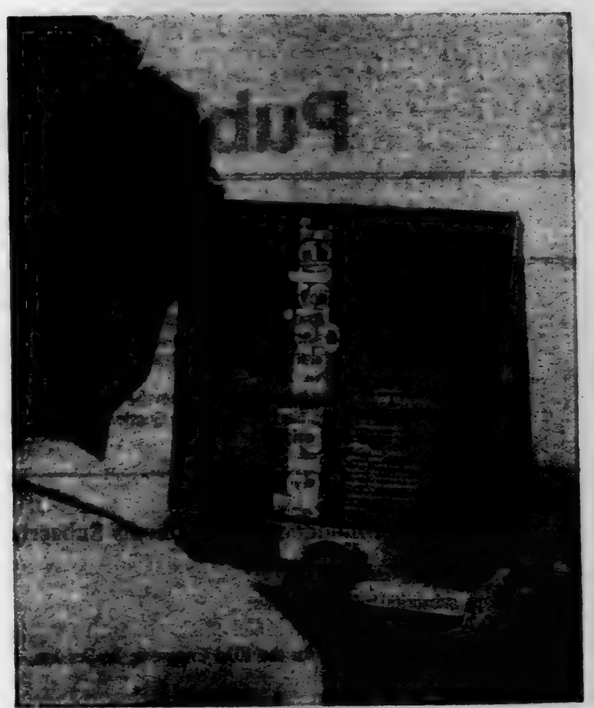

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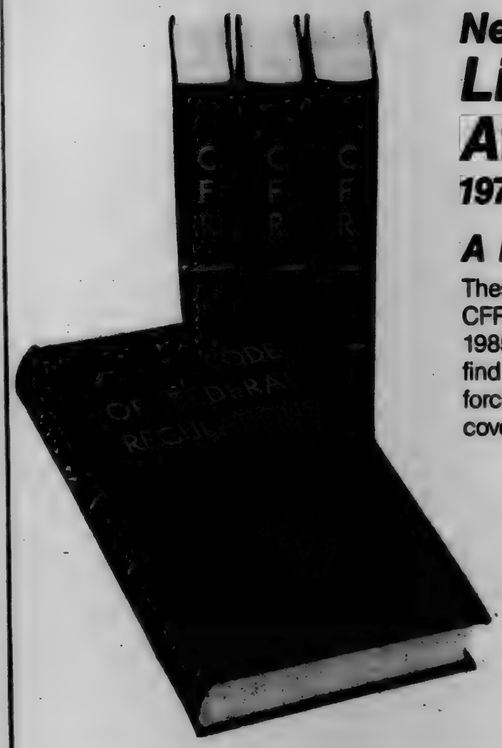

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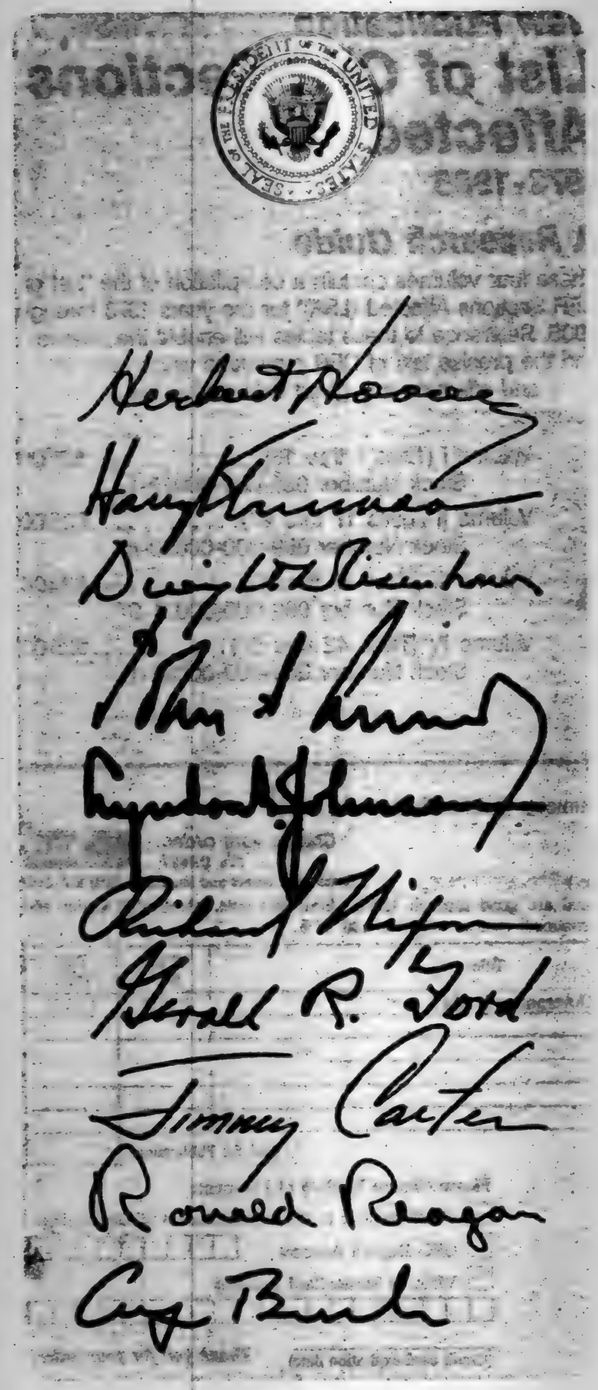

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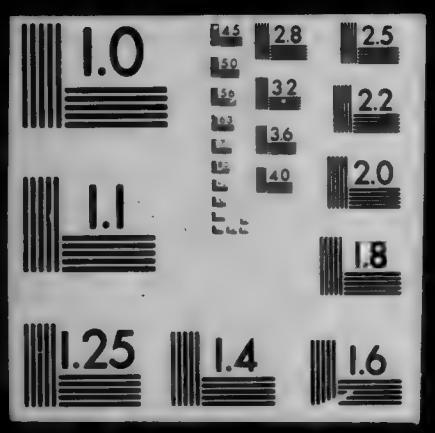
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Briefings on How To Use the Federal Register
For information on briefings in Atlanta, GA, and Washington, DC, see announcement on the inside cover of this issue.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV93-916-1FIR]

Expenses and Assessment Rates for the Marketing Order Covering Nectarines and Fresh Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule the provisions of an interim final rule, with appropriate changes, authorizing expenses and establishing assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) under M.O. Nos. 916 and 917 for the 1993–94 fiscal year. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: March 1, 1993, through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Agreement and Order No. 916 [7 part 916] regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 [7 CFR part 917] regulating the handling of fresh peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1993–94 fiscal year, which began March 1, 1993, through February 28, 1994. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities. The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the committees are nectarine and peach handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The Nectarine Administrative Committee met on April 29, 1993, and unanimously recommended total expenses of $3,804,962, with an assessment rate of $0.1825 per 25-pound box for the 1993–94 fiscal year. In comparison, the 1992–93 fiscal year expenses amounted to $4,106,247. This represents a $302,059 decrease in expenses from the 1992–93 fiscal year

with the assessment rate remaining unchanged.

Major expense categories for the 1993–94 nectarine budget include $330,539 for salaries and benefits, $1,827,970 for market development, $1,050,00 for inspection, and $128,225 for research. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $221,704, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met April 29, 1993, and on a seven to two vote recommended total expenses of $3,853,545, with an assessment rate of $0.19 per 25-pound box for the 1993–94 fiscal year. Two committee members were opposed to the $0.19 per 25-pound box assessment rate and requested that it be lowered to $.1850 per box. Their request was defeated by a four to five vote. In comparison, the 1992–93 fiscal year expenses totaled $3,925,512 with an assessment rate of $0.19 per box of peaches.

Major expense categories for the 1993–94 fiscal period are $330,497 in salaries and benefits, $1,827,970 for market development, $1,105,000 for inspection, and $128,225 for research. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $458,948, will be within the maximum permitted by the order of one fiscal year's expenses.

This action was published as an interim final rule in the **Federal Register** [58 FR 33883, June 22, 1993] and provided a 30-day comment period which ended July 22, 1993. One comment was received from the committees.

The committees requested that this final rule correct the assessment rate for nectarines from "$0.19" to "$0.1825" as incorrectly stated in the amendatory language. The comment also noted that the interim final rule's supplementary information listed an expense of $128,225 for sizing research for peaches and the same amount for sizing research for nectarines. The comment noted that no sizing research had been recommended for the 1993–94 fiscal year and that the budget categories should be referred to simply as "research". This change has been made to the supplementary information section for this action. Also, this action clarifies that the rates of assessment are per "25-pound container or equivalent" for each commodity rather than "per box".

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is found that finalizing the interim final rule, with appropriate changes, as published in the **Federal Register** [58 FR 33884, June 22, 1993] will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal period for the committees began March 1, and the marketing orders require that the assessment rates for the fiscal period apply to all assessable nectarines and peaches handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. § 916.231 is amended by revising the phrase "$0.19 per box" to read "$0.1825 per 25-pound container or equivalent".

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. § 917.255 is amended by revising the phrase "per box" to read "per 25-pound container or equivalent".

Dated: August 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20869 Filed 8–26–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 920

[FV93–920–3–IFR]

Expenses and Assessment Rate for Marketing Order Covering Kiwifruit Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1993–94 fiscal year. The Committee is responsible for local administration of the marketing order which regulates the handling of California kiwifruit. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by September 27, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–64566, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, CA, 93721, telephone 209–487–5901; or Mark Hessel, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC, 20090–6456; telephone: 202–720–5127.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 920 (7 CFR Part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California kiwifruit are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable California kiwifruit during the 1993–94 fiscal year beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of kiwifruit grown in California who are subject to regulation under the kiwifruit marketing order and approximately 650 producers of kiwifruit in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of kiwifruit producers and handlers may be classified as small entities.

The kiwifruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable kiwifruit handled from the beginning of such year. The budget of expenses for the 1993–94 fiscal year was prepared by the Committee and submitted to the Department for approval. The Committee consists of producers and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 14, 1993, and unanimously recommended 1993–94 marketing order expenditures of $156,150 and an assessment rate of $0.01 per tray or tray equivalent of kiwifruit. In comparison, 1992–93 marketing year budgeted expenditures were $152,913, which is $3,237 less than the $156,150 recommended for this fiscal year. The assessment rate of $0.01 per tray or tray equivalent is $0.01 less than last year's assessment rate of $0.02. The major budget category for 1993–94 is $92,055 for administrative, staff and field salaries.

Assessment income for 1993–94 is estimated to total $100,000 based on anticipated fresh domestic shipments of 10 million trays or tray equivalents of kiwifruit. The assessment income will have to be augmented by $56,150 from the Committee's reserves to provide adequate funds to cover budgeted expenses. Funds in the reserve at the end of the 1993–94 fiscal year are estimated to be $109,882. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1993–94 fiscal year began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable kiwifruit handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 920.210 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 920.210 Expenses and assessment rate.

Expenses of $156,150 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.01 per tray or tray equivalent of assessable kiwifruit is established for the 1993–94 fiscal year ending on July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: August 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20867 Filed 8–26–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 932

[Docket No. FV–92–932–1IFR; Amendment 1]

Increase in Expenses for Marketing Order 932 Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes an increase in expenditures for the California Olive Committee (committee) established under Marketing Order No. 932 for the 1993 fiscal year. This increase is needed to cover additional expenditures for research projects conducted at the recommendation of the committee in July 1993 which were not anticipated when the committee drafted its budget in December of 1992.

DATES: Effective January 1 through December 31, 1993. Comments received by September 27, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Facsimile number (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, California, 93721, telephone: (209) 487–5901; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC, 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order 932 [7 CFR part 932], as amended, regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments applicable to all assessable olives handled during the 1993–94 crop year, which begins August 1, 1993, and ends July 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 5 handlers of California olives regulated under the marketing order, and approximately 1,350 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee met on December 7, 1992, and unanimously recommended total expenses for the 1993 fiscal year of $2,796,000 and an assessment rate of $25.75 per ton of assessable olives handled. This action was published as an interim final rule in the **Federal Register** (58 FR 8538, February 16, 1993) and provided a 30-day comment period which ended March 18, 1993. The recommended 1993 expenses and assessment rate were adopted in a final rule and published in the **Federal Register** (58 FR 33013, June 15, 1993). There were no comments received prior to publication of the final rule.

At a meeting held on July 7, 1993, the committee voted unanimously to increase its expenses by $23,760 to cover additional production research projects not anticipated by the committee in December of 1992. These increased expenses are in the form of additional funding levels for five research projects currently being conducted. These projects include optimum crop water use, use of nitrogen fertilizers, a study of the parasite Black Scale, a mechanical harvesting rake, and research-related travel costs. This would increase the total budget approved by the Department from $2,796,000 to $2,819,760. This action thus amends the June 15 final rule by increasing the committee's authorized 1993 expenses. No change in the assessment rate was

recommended by the committee. Adequate funds are available in the committee's reserves to cover the increase in expenses resulting from this action. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (2) this interim final rule provides for a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

§ 932.226 [Amended]

2. Section 932.226 is amended by revising "$2,796,000" to read "$2,819,760."

Dated: August 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20866 Filed 8–26–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS No. 1618–93]

RIN 1115–AD44

Determination of Public Charge for Legalization Benefits, Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Immigration and Naturalization Service relating to applications for lawful temporary residence under section 245A of the Immigration and Nationality Act. Specifically, this rule amends the special rule for determination of public charge to provide that aliens who are self-supporting despite earning income below the poverty level may be admissible without having to apply for a waiver of inadmissibility under 8 CFR 245a.2(k)(2).

DATES: This interim rule is effective August 27, 1993. Written comments must be submitted on or before September 27, 1993.

ADDRESSES: Please submit written comments in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1618–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jane R. Gomez, Senior Immigration Examiner, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: On July 12, 1989, the Service published a final rule in the Federal Register at 54 FR 29449, revising 8 CFR 245a.2(k)(4). The final rule inadvertently added language that previously had been removed from the rule. That language provided that persons described in the special rule for determination of public charge (persons who are self-supporting but who earn an income below the poverty level) may be admissible under 8 CFR 245a.2(k)(2). By making reference to 8 CFR 245a.2(k)(2), the rule made applications for a waiver of inadmissibility under that section a requirement for persons described in the special rule seeking to establish eligibility for lawful temporary resident status. It was not the Service's intention to require such a waiver. This rule removes the language referring to 8 CFR 245a.2(k)(2) in order to clarify that persons described in the special rule for determination of public charge are in fact admissible without having to apply for a waiver of inadmissibility.

The Service's implementation of this rule as an interim rule, with revision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(1). The reason and necessity for immediate implementation of this interim rule is as follows: This rule clarifies that persons described in the special rule for determination of public charge who are seeking to establish eligibility for lawful temporary resident status do not need to apply for a waiver of inadmissibility to establish such eligibility. Moreover, this interim rule confers a benefit upon eligible persons and does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are entitled to the benefit may apply accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12292, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Lists of Subjects in 8 CFR Part 245a

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100–204, SECTION 902

1. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

§ 245a.2 [Amended]

2. In § 245a.2, paragraph (k)(4) is amended in the first sentence by removing the phrase "under paragraph (k)(2) of this section."

Dated: August 9, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-20881 Filed 8-26-93; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93-096-1]

Horses From Mexico; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the importation of horses from Mexico to require that such horses be quarantined for not less than 7 days. We are also amending the regulations to provide that quarantine and inspection of all horses imported into the United States from Mexico through land border ports must be carried out in Mexico at facilities approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects. These requirements would help ensure that horses imported from Mexico are not infected with Venezuelan equine encephalomyelitis, and are necessary to protect horses in the United States from the disease.

DATES: Interim rule effective August 20, 1993. Consideration will be given only to comments received on or before October 26, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-096-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products, including horses from Mexico, to prevent the introduction into the United States of various animal diseases.

Under the regulations prior to the effective date of this interim rule, horses from Mexico, except those imported for immediate slaughter, were required to be quarantined at a designated port until they (1) tested negative to an official test for dourine, glanders, equine piroplasmosis, and equine infectious anemia; (2) tested negative to such other tests that may have been required by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture; and (3) were found free from any communicable disease and fever-tick infestation upon inspection.

Recently, the Government of Mexico reported that Venezuelan equine encephalomyelitis (VEE) has been detected in horses in that country. VEE is an equine viral disease, transmitted primarily by mosquitoes and other hematophagous (blood-feeding) insects, particularly flying insects, and results in a high mortality rate in animals infected with the disease. Its introduction into the United States would pose a significant health risk to horses in this country.

Although tests exist for the presence of VEE in horses, the tests currently available may yield positive results for horses that have been vaccinated for VEE but that are not otherwise affected with the disease. The most efficient method for initial identification of horses that may be infected with VEE is observation of the horses for clinical signs of the disease.

The clinical signs most commonly exhibited by horses affected by VEE are marked fever, depression, and incoordination, followed by death. A horse will usually exhibit signs of VEE within 2-5 days after contracting the disease.

Prior to the effective date of this interim rule, horses intended for importation from Mexico were not required to be held in quarantine for any specified number of days. This was in contrast to the 7-day quarantine period required for all other horses intended for importation from the Western Hemisphere, except those from Canada and Argentina. The 7-day quarantine period for these other horses is necessary because VEE exists in the countries in question, and 7 days is the length of time necessary to ensure that any clinical signs of VEE manifest themselves. In order to ensure that horses imported from Mexico are likewise quarantined for a sufficient period of time, we are amending the regulations in § 92.308(a)(1) to provide that horses from Mexico are not exempt from the 7-day quarantine period required of certain other horses from the Western Hemisphere.

Horses Imported for Immediate Slaughter

Prior to the effective date of this interim rule, horses could be imported from Mexico for immediate slaughter without quarantine if they (1) were accompanied by a health certificate, and were inspected and treated for cattle fever ticks at the port of entry; (2) were consigned from the port of entry to a recognized slaughtering establishment where they were slaughtered within 2 weeks from the date of entry; and (3) were moved from the port of entry in conveyances sealed with seals of the United States government. These provisions were adequate to ensure that the horses were not infected with, and did not transmit, exotic equine diseases existing in Mexico, none of which were transmitted through flying insects.

Because VEE is transmitted primarily through flying insects, however, even horses moving to slaughter could potentially transmit the disease via mosquitoes and other vectors. Therefore, it is necessary to ensure that horses imported into the United States and moving to slaughter are not infected with VEE. We are therefore providing in § 92.326 that, in addition to meeting the previous requirements of that section (except as discussed under the heading "Location of Inspection and Quarantine Facilities," below), horses intended for importation from Mexico for immediate slaughter must be quarantined for not less than 7 days.

Location of Inspection and Quarantine Facilities for Horses Imported Through Land Border Ports

Prior to the effective date of this interim rule, § 92.324 of the regulations required that horses intended for importation from Mexico be

quarantined at a port designated in § 92.303. Section 92.303(c) listed land border ports designated as having the necessary inspection facilities for the entry of horses from Mexico. Section 92.323 required that horses offered for entry from Mexico through land border ports be inspected at the port of entry.

However, inspection and quarantine facilities for horses imported into the United States from Mexico through land border ports are not located at the ports of entry. Rather, they are located near the ports listed, but on the Mexican side of the border. This location is necessary to ensure that horses intended for importation from Mexico do not introduce fever ticks or communicable diseases into the United States during the inspection and quarantine process. To make this clear, we are amending the provisions in § 92.303(c) regarding Mexican border ports to remove the statement that they have the inspection facilities necessary for the entry of horses from Mexico, and are amending §§ 92.323 and 92.324 to provide that inspection and quarantine of horses imported into the United States from Mexico through land border ports must be carried out at a facility in Mexico that has been approved by the Administrator. Similarly, we are amending § 92.326 to provide that conveyances used to import horses imported into the United States from Mexico through land border ports for immediate slaughter in the United States must be sealed with seals of the United States Government at a facility in Mexico described in § 92.324, rather than at the port of entry.

Construction of Quarantine Facilities

Because flying insects had not been vectors of the exotic diseases of concern of horses imported into the United States from Mexico, the regulations did not require that the facilities used to quarantine horses imported into the United States from Mexico through land border ports be constructed so as to prevent the entry of these insects. As noted above, however, VEE is transmitted among horses primarily by flying insects, particularly mosquitoes. If a horse infected with VEE were brought into a quarantine facility that was not constructed so as to prevent the entry of these insects, a mosquito might enter the facility during the quarantine period, bite the infected horse, then bite another horse scheduled for imminent release from quarantine. The second horse, now infected, might then be released for entry into the United States because it had not shown any clinical signs of VEE during the quarantine period. Therefore, we are amending the regulations in § 92.324 to require that horses intended for importation into the United States from Mexico through land border ports be quarantined at a facility in Mexico constructed so as to prevent the entry of mosquitoes and other hematophagous insects.

Miscellaneous Additions

Sections 114a, 136 and 136a of Title 21 of the United States Code (21 U.S.C. 114a, 136 and 136a) are being added to the authority citation for part 92. Section 114a pertains to the authority of the Secretary to control and eradicate communicable diseases which constitute an emergency and threaten the livestock industry of the United States. Sections 136 and 136a concern additional inspection services and the collection of fees for inspection services.

Correction

Prior to the effective date of this interim rule, § 92.308(a)(1) contained a typographical error that erroneously implied that § 92.324 contained provisions regarding the importation of horses from Argentina. We are amending § 92.308 in this interim rule to correct that reference.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to help ensure that horses imported from Mexico do not transmit VEE to horses in the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an impact on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Impact Analysis.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, 371.2(d).

§ 92.303 [Amended]

2. In § 92.303, paragraph (c) is amended by removing the words "as

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having the necessary inspection facilities".

§ 92.308 [Amended]

3. In § 92.308, paragraph (a) introductory text is amended by adding the words "and in § 92.324" immediately after "as provided in this section", and paragraph (a)(1) is amended by removing the words "§§ 92.317 and 92.324" and adding in their place "§ 92.317 and".

§ 92.323 [Amended]

4. Section 92.323 is amended as follows:

a. The heading is revised to read "*Inspection.*".

b. In paragraph (a), the first sentence is amended by removing the words "the port of entry" and adding in their place "a facility described in § 92.324".

c. Paragraph (b) is amended by removing the words "ports, designated in § 92.303" and adding in their place "facilities described in § 92.324".

§ 92.324 [Amended]

5. Section 92.324 is amended by revising the heading to read *"Detention for quarantine."*, and by removing the words "at a port designated in § 92.303 until they qualify for release from such quarantine" and adding in their place ", for not less than 7 days and until they qualify for release from such quarantine, either at an APHIS facility designated in § 92.303(a) or at a facility in Mexico approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects".

§ 92.326 [Amended]

6. In § 92.326, the first sentence is amended by removing "and 92.323" and adding in its place "92.323, and 92.324", and the last sentence is amended by removing the words "the port of entry" and adding in their place "a facility described in § 92.324".

Done in Washington, DC, this 20th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-20062 Filed 8-26-93; 8:45 am]

BILLING CODE 3410-DM-P

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 83-033F]

RIN 0583-AB20

Use of Citric Acid as a Color Preserver on Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of citric acid as a color preserver on cured pork products during storage. A solution consisting of citric acid, at levels not to exceed 30 percent in water, will be allowed as a spray applied to the surfaces of cured pork cuts, prior to packaging. Use of the citric acid in water solution will be limited to a one-time application. This rule is in response to a petition submitted by the Better Marketing Company, East Rutherford, New Jersey.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under section 408 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on wholly intrastate operations that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This final rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will permit the use of citric acid as a color preserver on cured pork cuts during storage. A solution consisting of citric acid will be allowed as a spray applied to the cured pork cuts prior to packaging. Manufacturers opting to use citric acid in this manner will be required to revise the ingredients statements on product labels to show the presence of citric acid. This would entail a one-time labeling cost of approximately $1,000 for each product. All small entities producing cured pork cuts will be affected by this rule, if they opt to use citric acid in the manner and at the level as this rule permits. The use of citric acid will be voluntary and any costs associated with a new label applications will be covered under existing approved paperwork requirements of FSIS's prior label approval system. FSIS has no information that would indicate that this rule would affect any of the small entities in a significant manner. Decisions by individual manufacturers on whether to use citric acid on cured pork cuts will be based on their

conclusions that the benefits will outweigh the costs.

Background

Better Marketing Company Petition

FSIS was petitioned by Better Marketing Company, East Rutherford, New Jersey, to approve the use of a solution consisting of citric acid, at a level of 30 percent in water, to be applied to cut surfaces of cured meat products, prior to packaging, to preserve the product's cured color for up to 3 days.[1] According to the petitioner, a color retention of 3 days is considered essential for retail merchandising of cured meat cuts such as slices and end pieces of smoked hams and picnics. After cured meat is cut, the cut surface fades rapidly, usually within 30 minutes, from pink to a light gray, resulting in economic loss to meat merchandisers, who either trim and rewrap the product or reduce the price.

The petitioner contended that a one-time spraying of a solution containing 30 percent citric acid and water to the surfaces of cured pork cuts would not preserve the product's cure color beyond 3 days nor reverse gray-colored meat to a pink color. Supporting data submitted by the petitioner was based on a series of tests using citric acid alone and in combination with ascorbic acid in solution levels ranging from 10 percent to 30 percent on surfaces of cured pork cuts. The data showed that only the solution consisting of 30 percent citric acid in water provides a cure color retention of up to but not more than 3 days. The data also showed that a 30 percent citric acid level is the lowest level sufficient for up to 3-day color preservation without a concern for masking any indicators of spoilage.

Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of citric acid as a curing accelerator to accelerate color fixing or preserve color during storage of cured pork and beef cuts, and cured comminuted meat food products. Citric acid may be used in cured products or in a 10 percent solution to spray surfaces of cured cuts prior to packaging to replace up to 50 percent of the ascorbic acid, erythorbic acid, sodium ascorbate or sodium erythorbate that is used (9 CFR 318.7(c)(4)). Citric acid may also be used as an acidifier, an anticoagulant, a flavoring agent, and a synergist at various levels in various meat food products (9 CFR 318.7(c)(4)). The Food and Drug Administration lists citric acid as generally recognized as safe (GRAS) for use in foods in 21 CFR 182.1033, when used in accordance with good manufacturing practices.

Proposed Rule

On January 5, 1993, FSIS published a proposed rule in the Federal Register to amend the chart of approved substances in 9 CFR 318.7(c)(4) to allow the use of citric acid to preserve the color on surfaces of cured pork cuts. The Agency proposed to permit the one-time spray application of a solution consisting of citric acid, at levels not to exceed 30 percent in water, to the surfaces of cured pork cuts. Although the petitioner requested use of the citric acid and water solution on cut surfaces of "cured meat products," the petitioner's supporting data was based on tests done on cured pork products only. In addition, although the data submitted by the petitioner showed that the 30 percent citric acid level is the lowest level sufficient for up to a 3-day color preservation, FSIS proposed use levels up to 30 percent because some manufacturers may want to use lower levels to preserve the cured color for less than 3 days.

Discussion of Comments

FSIS received one comment in response to the proposed rule. The comment was submitted by a food processor. The commenter supported the proposed rule, but requested that the Agency extend the proposed use of citric acid as a color preserver to other species.

FSIS based the proposed rule on supporting technical data for pork products only, submitted by the petitioner. The Agency cannot extend this rulemaking to include species other than pork without technical data to support such use. However, FSIS would consider a petition with supporting data requesting that FSIS approve the application of citric acid as a color preserver to other cured meat products.

After review of the comment and other information, the Administrator has determined that the use of citric acid in cured pork products, as permitted in the rule, will not render the products in which it is used adulterated or misbranded or otherwise not in compliance with the requirements of the Federal Meat Inspection Act. The Administrator has further determined that citric acid would be functional and suitable for the products and it would be permitted for use in cured pork products at the lowest level necessary to accomplish the stated technical effect.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4), the Class of substance "Miscellaneous" is amended by adding at the end thereof the following:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Miscellaneous	* * *	.....	.....	

[1] A copy of this petition is available for public review in the FSIS Hearing Clerk's Office.

Class of substance	Substance	Purpose	Products	Amount
	Citric acid	To preserve cured color during storage.	Cured pork cuts	Not to exceed 30 percent in water solution used to spray surfaces of cured cuts, prior to packaging, in accordance with 21 CFR 182.1033. (The use of such solution shall not result in the addition of a significant amount of moisture to the product and shall be applied only once to the product.)

Done at Washington, DC, on: August 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20873 Filed 8–26–93; 8:45 am]

BILLING CODE 3410–DM–M

9 CFR Part 318

[Docket No. 90–013F]

RIN 0583–AA76

Use of Tocopherols and Citric Acid in Various Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of tocopherols and citric acid in the preparation of various meat food products. Tocopherols act as antioxidants and citric acid acts as a synergist to increase the effectiveness of antioxidants. Tocopherols will be allowed in various meat food products at a level not to exceed 0.03 percent based on the fat content and citric acid will be allowed in various meat food products at a level not to exceed 0.01 percent based on the fat content. This rule is in response to a joint petition submitted by Akzo Salt, Inc., and Henkel Corporation.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678). States may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in case of the imported articles which are not at such an establishment, after their entry into the United States. States that conduct meat inspection programs with respect to wholly intrastate operations must impose requirements at least equal to those imposed on federally inspected products and establishments under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the applicable administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The applicable administrative procedures specified in 9 CFR part 335, must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The rule will allow the use of tocopherols as alternative antioxidants in various meat food products, and the use of citric acid in various meat food products as a synergist. Manufacturers, both large and small, opting to use tocopherols as antioxidants will be required to revise the ingredients statement on the labels to show the presence of tocopherols and citric acid. However, the use of these substances will be voluntary and any costs associated with new label applications will be covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this rule will not impose new paperwork requirements on the industry. Decisions by individual manufacturers on whether to use tocopherols as alternative antioxidants and citric acid as a synergist in various meat food products will be based on their conclusions that the benefits would outweigh the costs of including these substances in their formulations.

Background

Joint Petition

FSIS was jointly petitioned by Akzo Salt, Inc., Clarks Summit, Pennsylvania, and Henkel Corporation, Ambler, Pennsylvania, to approve the use of tocopherols as antioxidants and citric acid as a synergist in various meat food products. The petitioners requested that tocopherols be allowed to be added to

dry sausage, semi-dry sausage, dried meats, uncooked fresh pork sausage, uncooked Italian sausage products, uncooked fresh sausage made from beef or beef and pork, uncooked meatballs and uncooked meat pizza toppings at a level of 0.05 percent based on fat content. They also requested that these products, when cooked, as well as brown-and-serve sausage, pregrilled beef patties, and restructured meats, be permitted to contain tocopherols at 0.1 percent, based on fat content. Tocopherols would not be used in combination with butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), tertiary butylhydroquinone (TBHQ) or propyl gallate, which are other antioxidants permitted in various meat products in accordance with restrictions set forth in 9 CFR 318.7(c)(4). The use of tocopherols would be an effective alternative antioxidant to BHA and BHT in such meat food products.

The petitioners also requested that citric acid be permitted as a synergist in various products to increase the effectiveness of antioxidants, at a level of 0.01 percent based on the fat content.

Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of tocopherols as antioxidants and oxygen interceptors in rendered animal fat or a combination of such fat and vegetable fat at a level of 0.03 percent. Section 318.7(c)(4) also allows the use of citric acid as a synergist in lard, shortening, fresh pork sausage and dried meats at 0.01 percent and in dry sausage at 0.003 percent. Citric acid may also be used as an acidifier, an anticoagulant, a curing accelerator, and a flavoring agent at various levels in various meat food products (9 CFR 318.7(c)(4)). Section 317.2(j)(10) of the Federal meat inspection regulations (9 CFR 317.2(j)(10)) requires that when antioxidants are added to products as permitted under Part 318, a statement must appear on the product label identifying the specific antioxidant used and the purpose of such use, such as "BHA, BHT, and Propylgallate added to help protect flavor."

Section 381.147(f)(4) of the poultry products inspection regulations (9 CFR 381.147(f)(4)) permits the use of tocopherols as antioxidants and oxygen interceptors in various poultry products at a level of 0.03 percent based on the fat content. Prominent labeling is also required for poultry products containing antioxidants (9 CFR 381.120). Citric acid is allowed as a synergist in poultry fats at 0.01 percent, and as a curing accelerator and flavoring agent in various poultry products at various levels (9 CFR 381.147(f)(4)).

The Food and Drug Administration (FDA) lists tocopherols in 21 CFR 182.3890 and citric acid in 21 CFR 182.1033 as generally recognized as safe (GRAS) for use in foods with no limitations other than good manufacturing practices.

Proposed Rule

On August 25, 1992, FSIS proposed to permit the use of tocopherols as antioxidants in various meat food products at levels not to exceed 0.03 percent based on the fat content (57 FR 38448). The Agency also proposed to allow the use of citric acid as a synergist in various meat food products at the level of 0.01 percent based on the fat content.

The proposal also stated that the presence and purpose of any antioxidant added to meat and poultry products must be shown in prominent lettering on the product label and contiguous to the product name (9 CFR 317.2(j)(10) and 381.120).

In addition, the Agency proposed to revise the manner in which the entry for malic acid is presented in the chart, thus, requiring that the chart specify the use level (amount) and basis of calculation for malic acid.

Discussion of Comments

The Agency received 27 comments in response to the August 25, 1992, proposal. Eleven of the comments were from food processors, three were from trade associations, nine were from flavoring associated industries, and four were from individuals affiliated with the meat and poultry industry.

All commenters supported the proposal to permit the use of tocopherols as antioxidants in combination with citric acid as a synergist in various meat food products to increase effectiveness and flexibility of antioxidant use. Several commenters supporting the proposal stated that: (1) Tocopherols are generally recognized as safe (GRAS) by FDA and pose no safety concern, (2) tocopherols are already being used in some meat products, (3) low levels of tocopherols provide protection to meat products against rancidity, and (4) the proposed use would increase processing options for the meat industry.

The use of tocopherols as antioxidants and citric acid as a synergist have been permitted for a number of years to retard rancidity in a limited number of meat and poultry products listed in 9 CFR 318.7(c)(4) and 381.147(f)(4), respectively. This rule will extend the use of tocopherols and citric acid in the preparation of various meat food products.

Several trade associations and food processors submitted additional research data supporting the safe use of tocopherols to enhance oxidative stability of poultry, pork and beef products. One commenter stressed the safety of tocopherols (or Vitamin E) by pointing out that some research indicates that tocopherols may be beneficial for reducing the risk of degenerative diseases. The Agency agrees with the consensus regarding the safety of tocopherols as an antioxidant, however, the use level as an antioxidant in meat food and poultry products is the lowest level necessary to achieve the technical effect, and the intent of the current allowance is not to be that of a vitamin supplement.

Several commenters questioned the need for limits on the use level of tocopherols. Three commenters suggested higher limits based on total weight of product rather than on the fat content. Three others suggested no limits, e.g., "sufficient for purpose" within a level consistent with good manufacturing practices (GMP). One commenter stated that basing use level on fat content poses a processing hardship because antioxidants are commonly pre-blended with other ingredients such as seasoning mixes. If the tocopherols' level is limited to the fat content of meat products, the commenter explained that multiple inventories of seasoning blends containing tocopherols would be necessary because of fluctuations in fat content of various meat products. Basing the use level on total weight of product or "sufficient for purpose" would allow greater flexibility for pre-blended mixes containing tocopherols. FSIS believes the problems described can be addressed during formula development and through proper inventory control. The Agency also continues to believe that, although tocopherols are safe, use levels in meat food products should continue to be restricted. This belief is based on a concern for indiscriminate additive use beyond that which has been shown in technical data as necessary to achieve the intended technical effect, i.e., 0.03 percent. Higher levels of tocopherols in meat food products could mask the effects of spoilage or make the product appear fresher than it actually is. Furthermore, tocopherols, like other antioxidants, protect fat from rancidity. Basing the calculation on other than a fat basis would not be technically sound.

One commenter pointed out that some meat products used for further processing may require higher initial levels of tocopherols in order to function properly in the finished product because of their greater surface area, e.g., sliced or diced pepperoni. FSIS is permitting the use of tocopherols and citric acid at levels supported by research data submitted by the petitioner that establish the effective use level. It is the Agency's practice to avoid indiscriminate use of additives. Therefore, the level necessary to achieve the intended effect, supported by the data submitted by the petitioner, is the basis for the decision to continue to set limits for the use of tocopherols and citric acid in meat food products. The limits established by this rule are consistent with use limits established for other antioxidants permitted for similar products and synergists used in combination with antioxidants. The use level for tocopherols, not to exceed 0.03 percent based on fat content, is sufficient for the intended purpose and parallels the use level currently allowed in § 381.147(f)(4) of the poultry products inspection regulations.

The petitioner's request for a 0.01 percent use level for citric aid is consistent with present use levels permitted in the regulations (9 CFR 381.7(c)(4) and 381.147(f)(4)) for the use of citric acid as a synergist, except current use is limited to 0.003 percent in dried sausage and 0.01 percent of the total weight when used in dried meat. The Agency believes that to allow tocopherols in various meat food products at a level not to exceed 0.03 percent based on the fat content and citric acid in various meat products at a level not to exceed 0.01 percent based on the fat content is sound and accomplishes the intended effect based on supporting data. If the Agency is petitioned to amend established limits for these or any other ingredient and compelling data are provided to support establishing different limits, the Agency will consider such requests for future rulemaking.

One commenter from the flavoring industry suggested that the Agency clarify the definition of tocopherols. FSIS uses the FDA's definition of tocopherols, i.e., it is an antioxidant according to 21 CFR 182.3890. This definition includes all biologically active forms of tocopherol which are either synthetically or naturally derived.

Three commenters expressed support for the elimination of disclosure statements as part of the principal display panel. In general, commenters stated that the information is redundant because it is also provided in the ingredients statement, and product qualifiers do not provide significant benefit to consumers, rather, they engender consumer confusion regarding the significance of such qualifiers. The point that FDA does not have a similar requirement was also made.

Currently, the presence and purpose of any antioxidant added to meat food and poultry products must be shown in prominent lettering on the product label and contiguous to the product name (9 CFR 317.2(j)(10) and 381.120). However, FSIS is reassessing its overall policy regarding prominent labeling. On November 4, 1992, the Agency published a proposed rule in the **Federal Register** (57 FR 52596) to eliminate specific labeling requirements for the prominent disclosure of certain information that qualifies product names. The proposed rule would eliminate those prominent disclosure requirements for product name qualifiers where the inclusion of a substance does not significantly alter the basic identity of the finished product, or where the prominently disclosed information can be found in the ingredients statement. While prominent disclosure of certain product name qualifiers on product labels would no longer be a requirement, manufacturers would have the option of continuing to use such labeling if they so choose.

After review of all comments, the Administrator has determined that the use of the tocopherols and citric acid in various meat products, as permitted in the rule, will not render these products adulterated or misbranded or otherwise not in compliance with the requirements of the Act. The Administrator has further determined that tocopherols and citric acid would be permitted for use in various meat products at the lowest levels necessary to accomplish the stated technical effect as determined in specific cases.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

Final Rule

After careful consideration of the comments, FSIS is adopting the proposed rule as published. Accordingly, FSIS is amending 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4) under the Class of substance "Antioxidants and oxygen interceptors," the Substance "Tocopherols" is amended by adding the following at the end thereof:

§ 318.7 Approval of subetances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
•	•	•	•	•
Antioxidants and oxygen interceptors.	• • •			
	Tocopherols	• • •		
		.....do	Dry sausage, semidry sausage, dried meats, uncooked or cooked fresh sausage made with beef and/or pork, uncooked or cooked Italian sausage products, uncooked or cooked meatballs, uncooked or cooked meat pizza toppings, brown and serve sausage, pregrilled beef patties, and restructured meats.	Not to exceed 0.03 percent based on fat content. Not used in combination with other antioxidants.
•	•	•	•	•

3. In the chart in § 318.7(c)(4) under the Class of substance "Synergists," the entries under the Substances "Citric acid" and "Malic acid" are revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *
(4) * * *

Class of substance	Substance	Purpose	Products	Amount
•	•	•	• •	• •
Synergists (used in combination with antioxidants).	Citric acid	To increase effectiveness of antioxidants.	Any product permitted to contain antioxidants as provided in this Part.	Not to exceed 0.01 percent based on fat content.
	Malic acid	.....do	Lard and shortening	0.01 percent based on total weight in combination with antioxidants.
•	•	•	• •	• •

Done at Washington, DC, on: August 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20875 Filed 8–26–93; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 54

RIN 3150–AE63

FSAR Update Submittals

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on power reactor safety in order to consistently apply the requirement that nuclear power plant licensees submit final safety analysis report (FSAR) updates annually or six months after each refueling outage. These amendments eliminate confusion regarding two references to an existing reporting requirement. The final rule does not require additional reporting requirements.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Claudia M. Craig, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1281.

SUPPLEMENTARY INFORMATION:

Background

In February 1993, the Commission approved the establishment of a regulatory review group (RRG) to conduct a comprehensive and disciplined review of power reactor regulations and related NRC processes, programs, and practices for their implementation. The RRG found two areas in the regulations that may cause confusion regarding a recent amendment to another section of the regulations. On August 31, 1992, the Commission amended 10 CFR 50.71(e) to allow nuclear power reactor licensees to submit FSAR updates either annually or 6 months after each refueling outage. The RRG discovered that 10 CFR 50.54(a)(3) and 10 CFR 54.37(b) still referenced the previous requirement for annual FSAR submittals. This conflict may confuse licensees in determining how often quality assurance program changes and FSAR updates for license renewal should be submitted.

Description

The amendments delete the references to the annual submittal of updates in 10 CFR 50.54(a)(3) and 10 CFR 54.37(b). The amended sections reference the regulation, 10 CFR 50.71(e), not the specific requirements of the regulation. Licensees with a QA program description that is common to multiple units or several sites may submit changes to the common quality assurance (QA) program description that do not reduce commitments annually or 6 months after each refueling outage at only one of the sites if the interval between submittals does not exceed 24 months and all applicable dockets are referenced. This would allow licensees with multiple plants to tie the submittal of changes to the common QA program to the refueling outage schedule of only one plant and would eliminate the need for a separate submittal for each plant. The amendment will eliminate the confusion caused by the conflicting requirements in different sections of the regulations.

Summary of Public Comments

On May 14, 1993 (58 FR 28523), the NRC published a proposed rule that would delete the references to the annual submittal of updates in 10 CFR 50.54(a)(3) and 10 CFR 54.37(b). The comment period ended on June 14, 1993, and the NRC received five letters of public comment on the proposed rules. Four commenters fully supported the proposed changes; one commenter submitted statements for § 50.54(a)(3) to further clarify the requirements and recommended that NRC revise 10 CFR 54.37(c) to duplicate the reporting frequency of § 50.59(b)(2); one commenter also recommended that NRC consider extending the reporting frequency associated with 10 CFR 50.59(b)(2) to be consistent with the FSAR update submittal. The Commission agrees with the proposed statements for 10 CFR 50.54(a)(3) and has incorporated the statements into the final rule. All other sections of the final rulemaking remain unchanged. Copies of those letters and the NRC staff response to the public comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3) (i) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3051 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150–0011 and 3150–0155.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Claudia M. Craig, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–1281.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" as given in the Regulatory Flexibility Act, or the Small Business Size Standards promulgated in the regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. The rule affects recordkeeping and reporting requirements which have been deemed not subject to the backfit rule and the changes are voluntary relaxations of requirements which are not being imposed upon licensees. Therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Incorporation by reference, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 50 and 54.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.54, paragraph (a)(3) introductory text is revised to read as follows:

§ 50.54 Conditions of licenses.

(a) * * *

(3) After March 11, 1983, each licensee described in paragraph (a)(1) of this section may make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report, provided the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted to the NRC in accordance with the requirements of § 50.71(e). Changes to the quality assurance program description that do reduce the commitments must be submitted to NRC and receive NRC approval prior to implementation, as follows:

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

1. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842).

2. In § 54.37, paragraph (b) is revised to read as follows:

§ 54.37 Additional records and recordkeeping requirements.

* * * * *

(b) The FSAR update required by 10 CFR 50.71(e) must include any SSCs newly identified as important to license renewal as a result of generic information, research, or other new information after the renewed license is issued. The update must also identify any SSCs deleted from the list of SSCs important to license renewal. This FSAR update must describe how the age-related degradation unique to license renewal of newly identified SSCs important to license renewal will be effectively managed during the period of extended operation. The update must also be accompanied by a justification for deleting any SSCs previously identified as important to license renewal.

* * * * *

Dated at Rockville, Maryland, this 16th day of August, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–20717 Filed 8–26–93; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies Associate Development Company Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing the 503 development company program by requiring a probationary period for newly certified 503 companies. It also provides for a class of entities designated as Associated Development Companies which do not have full 503 company status. Insufficiently active existing 503 companies may be converted into this new class of development companies so that they may continue to serve economic development needs in a more efficient manner.

EFFECTIVE DATE: This rule is effective August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Allan S. Mandel, Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington, DC 20416, Telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: On September 18, 1992 (at 57 FR 43155) a proposed rule including the changes listed in the summary above was published. Six (6) comments were received and their content was taken into consideration in developing this final rule. SBA is hereby adopting the proposed regulation with one modification indicated below as final.

By this final rule, 13 CFR part 108 is amended by adding a new § 108.507 to provide for an Associate Development Company (ADC) designation to increase program availability in underserved areas by allowing organizations that do not have the interest or ability to be a full fledged 503 company to play a role in program delivery. An ADC is permitted to provide information to potential borrowers and to form a relationship with a fully certified 503 company with which it may contract to do some part of development company loan processing. Only certified 503 companies are eligible to receive SBA guarantees and are responsible for loans made to small businesses with the proceeds of those guarantees. This approach allows maximum flexibility to permit a variety of organizations to assist in program delivery, but at the same time allows SBA to focus its full regulatory efforts on 503 development companies that are ultimately responsible for processing, making, and servicing loans. An ADC is not subjected to the degree of regulatory oversight necessary for an organization that is responsible for loan making. The only modification from the proposed rule is to change § 108.507–2 to make a specific reference to the ADC application form.

Three of the commentors supported the idea of ADCs, one commentor opposed the concept because of a concern that a 503 company transferred to ADC status would lose the income generated by its existing portfolio. However, the ADC program does not change the definition of inactivity. Under the current regulations, an inactive 503 company may be decertified and lose its 503 loan fee income. The ADC program merely provides an intermediate step for such a company.

The remaining two commentors took no position but raised technical issues. One commentor misinterpreted the requirement that an ADC have experience administering an existing loan portfolio. That requirement applies only where such ADC would contract with a CDC in processing loan applications. Organizations with no existing loan portfolio would be able to participate as an ADC but would not be able to process applications under contract with a 503 company. The other technical questions were related to minor administrative details associated with the relationship of ADCs processing applications for 503 companies. These types of day to day operational issues are not regulatory items so they will be addressed in the operating guidance provided upon implementation.

13 CFR 108.503–2 is amended to provide for a probationary period for new certified 503 companies. If a new 503 company is unable to deliver the 504 program during the probationary period, its exit from the program is automatic. Such development company has the option of transferring to status as an ADC if qualified, which will allow it to continue to provide information to local borrowers while being relieved of the burden of loan delivery. If the development company successfully delivers the 504 program, SBA may provide permanent status under § 108.503. Only one comment was received on this issue and that was supportive.

Lastly, the rule provides for transfer of a 503 company not meeting the activity requirements to a classification as an ADC. Also, a conforming change was made to 13 CFR 108.503–3(c) in order to implement this change. SBA's goal is to eliminate burdensome regulation of organizations that do not efficiently provide loan delivery while still encouraging avenues for information to reach small businesses. The one comment received on this issue was discussed above.

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy cannot attain $100 million because it addresses the oversight of essentially non-loan producing CDCs. While the creation of this new classification of ADCs has as its goal an increased number of projects due to greater program visibility, such increase is unlikely to result in more than $40 million because it is unlikely that there will be one additional loan created as a result of the existence of each ADC.

This rule does not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and does not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that this rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of the Paperwork Reduction Act, Public Law 98–115, 44 U.S.C. ch. 35, SBA certifies that § 108.507 imposes a new reporting requirement. SBA has received clearance for this paperwork requirement from the Office of Management and Budget (#3245–0285).

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set forth above, part 108 of title 13, Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.503–2 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 108.503–2 Certification.

* * * * *

(d) *Probationary period.* All 503 companies certified after August 27, 1993 will be subject to a probationary period of two (2) years from the date of certification. No later than two (2) months prior to the end of the probationary period a 503 company may (1) petition for permanent status under § 108.503, (2) petition for a one time only, one year extension of the probationary period, or (3) petition for status as an Associate Development Company (ADC) under § 108.507. Failure to file a petition prior to the end of the probationary period shall be considered an automatic election of expiration of status under part 108. If the third option is elected, or if no petition is filed, all documents related to funded and/or approved loans shall be transferred to a 503 company in good standing, SBA, or another servicer pursuant to instructions from SBA.

(e) *Transfer of certification to associate status.* Any 503 development company which does not meet the activity requirement of § 108.503–3(c) on average for any two (2) consecutive fiscal years shall be transferred to status as an ADC pursuant to § 108.507. SBA shall provide written notice of such transfer at least ten (10) business days prior to the effective date of such action. Such notice shall inform the 503 development company of the opportunity for a hearing pursuant to part 134 of this chapter. During the period of any proceedings under part 134, the action of the SBA shall remain in effect.

3. Section 108.503–3(c) is revised to read as follows:

§ 108.503–3 Operational requirements for 503 companies.

* * * * *

(c) *Levels of activity.* In order to meet the needs of small business in its area of operations, a 503 company shall conduct active operations. For the purposes of this paragraph, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under title V of the Small Business Investment Act to at least two small concerns.

* * * * *

4. A new undesignated centerheading and §§ 108.507, 108.507–1, 108.507–2, 108.507–3, 108.507–4 and 108.507–5 are added to read as follows:

Associate Development Companies

§ 108.507 Program objectives.

This section establishes policy and procedures for the designation and administration of Associate Development Companies (ADCs), created for the purpose of assisting in the promotion of the development company programs provided for in part 108. ADCs shall foster economic development in both urban and rural areas by assisting those organizations qualified under § 108.503 to deliver long term, fixed asset financing. SBA shall not guarantee financing by organizations designated under § 108.507.

§ 108.507–1 Permissible functions of an ADC.

An ADC shall provide information about SBA programs to small businesses, financial institutions, and others participating in economic development activities, and may contract with a 503 company to aid the 503 company in the provision of financial assistance to small concerns if such ADC meets the staff requirements of § 108.507–2(d) and administers an existing portfolio of loans to small businesses.

§ 108.507–2 Eligibility requirements.

Using SBA Form 1849, an applicant shall demonstrate to SBA's satisfaction that it has:

(a) *Status and purpose.* A state charter as a non-profit organization which, at least in part, supports local economic development efforts.

(b) *Management.* Adequate management ability in its board of directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the ADC.

(c) *Board of directors.* The board of directors shall be composed of individuals chosen from the membership by the stockholders or members. Such board shall meet at least quarterly to make management decisions for the company.

(d) *Professional staff.* Each ADC shall have a full-time professional staff and professional management ability. The number of personnel may vary, but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience satisfactory to SBA to market the 503 program. For ADCs contracting with a 503 company to assist in processing a 504 loan, the staff must possess small business lending experience acceptable to SBA. Any contract for these functions, other than contracts for employment of individuals, shall require SBA's prior written approval, shall be approved annually by SBA and shall prohibit self-serving actions which would increase costs to a small business borrower. Compensation under such contracts shall be reasonable and customary for like services by like organizations. Such contracts shall be subject to audit by SBA at no cost to the ADC.

(e) *Management services.* Where an ADC provides management advice and services to small concerns, such services provided pursuant to a contract for other than employment of individuals shall be subject to audit by SBA at no cost to the ADC.

(f) *Financial capability.* An ADC shall have the ability to sustain its operations on a continuous basis from reliable sources of funds. An ADC shall submit a budget or copy of financial statements for its operations which demonstrates that adequate resources will be available to perform the ADC functions.

§ 108.507–3 Operational requirements for ADCs.

An ADC shall provide assistance to small concerns pursuant to § 108.507–1, maintain the eligibility requirements set forth in § 108.507–2 of this part, and meet the following operational requirements:

(a) *Records.* The ADC shall develop a system to ensure and document the dissemination of SBA-related information. Documents, or a photographic copy thereof, relating to its operations shall be made available to SBA.

(b) *Reporting requirements.* The requirements of §§ 108.4(c), 108.5(c), (d), (e), and (f) apply to an ADC, and in addition, each ADC shall submit to the SBA an annual report, in duplicate, containing financial statements, and operational and management information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for Preparation of the Annual ADC Report (SBA Form 1850).

(1) The operational and management part of the annual report shall contain an explanation of the ADC's activity and accomplishments for the year then ended and plans for the next year.

(2) In addition to the required Form 1081, personal resumes of new officers, directors and professional staff

employed by the ADC shall be promptly filed with the SBA office servicing the area where the development company's headquarters are located. The requirement for a personal resume and Form 1081 may be waived by SBA if such documents have been previously filed with SBA under a development company program, and no significant changes have occurred.

(c) *Training.* The ADC shall provide evidence that staff members are receiving appropriate training.

§ 108.507–4 Fees which may be received by the ADC.

(a) *Charges and fees.* An ADC may contract with a 503 company to perform some or all of the loan packaging and non-legal staff functions related to a loan. Such contract shall specify the responsibilities of the ADC and identify the amount and schedule of compensation to be paid by the 503 company to the ADC. The 503 company shall be solely responsible to SBA for the processing, closing, and servicing of a loan.

(b) *Service fee paid by small concern.* Use of an ADC shall not result in any greater cost charged by a 503 company to a small business concern.

§ 108.507–5 Oversight and evaluation; suspension and revocation.

(a) *Operational review.* An ADC shall be subject to an operational review by SBA. The ADC shall cooperate with SBA by making its staff, records, and facilities available.

(b) *Compliance audit.* Each development company shall be subject to compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General pursuant to the Inspector General Act (5 U.S.C. App., section 1, *et seq.*).

(c) *Revocation, suspension and other corrective actions.*

(1) *Corrective actions.* SBA reserves the right to suspend temporarily the eligibility of any ADC, or to require any other corrective action for a violation of law or SBA regulation, or the terms of any agreement with SBA, or any inability to meet the operational requirements set forth in this part.

(2) *Revocation and appeal of suspensions.* Revocation proceedings and appeals of suspension actions shall be conducted in accordance with the provisions of part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(6) and 134.34.

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans)

Dated: July 8, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20840 Filed 8–26–93; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 120

Business Loan Policy; Loan Making Policy

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: Under this final rule, SBA is precluded from making or guaranteeing a loan to an applicant under section 7(a) of the Small Business Act (the "Act") if the Agency has incurred a loss (which remains outstanding) in connection with unreimbursed SBA advance payments under the 8(a) program or an earlier section 7(a) or 7(b) loan or guaranty with respect to the applicant (or its predecessor) or to any business controlled by the same person(s) who controlled an applicant on which a loss was incurred.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416. Telephone 202/205–6490.

SUPPLEMENTARY INFORMATION: On September 25, 1992, SBA published in the **Federal Register** (57 FR 44346) a proposed regulation which would prevent SBA from making or guaranteeing a loan under section 7(a) of the Act if the Agency had incurred a loss on an earlier loan. Seven comments generally supportive of the rule were received and they contained several suggestions which the Agency has adopted in this final rule. Accordingly, the final regulation is being promulgated with changes as noted.

Under this final rule, SBA will not provide section 7(a) direct or guaranteed loan assistance to an applicant small business concern if the Agency has incurred a loss from either unreimbursed SBA advance payments in the 8(a) program or on a prior loan under section 7(a) or 7(b) of the Act made to the applicant (or its predecessor) or to any business controlled by the same person(s) who controlled an applicant. This prohibition will apply so long as the earlier loss remains outstanding on the books of SBA. In rare circumstances, in order to achieve an equitable result, the SBA Assistant Administrator for Financial Assistance or his/her designee would have the authority to waive the application of this rule for good cause shown. For example, it is possible that where a principal of the applicant was involved with another business which received SBA assistance, and SBA suffered a loss in conjunction with that assistance, and such principal was in no way responsible for such loss, a waiver could be granted.

Section 7(a) of the Act deals with business loans made or guaranteed by SBA, while section 7(b) of the Act covers disaster loans made by SBA. Since it is irrelevant whether the earlier Agency loss was incurred under the business loan program or the disaster loan program, this final rule precludes section 7(a) business loan assistance regardless of whether the earlier Agency loss had been incurred under section 7(a) or section 7(b) of the Act. To clarify such position in this final rule, the Agency includes the reference to section 7(b) as well as section 7(a).

One of the commenters suggested that SBA should not provide 7(a) assistance if the earlier Agency loss was attributable to unreimbursed advance payments made by SBA in the 8(a) program. The Agency considers this comment to have merit since a loss is being carried on the Agency's books so long as the advance payments remain unreimbursed. Consequently, the final rule incorporates the suggestion. Under § 124.401 of SBA regulations (13 CFR 124.401), SBA may make cash disbursements to an 8(a) concern prior to the completion of performance of a specific 8(a) subcontract. Such advance payments are made to the 8(a) concern to meet financial requirements pertinent to the performance of the 8(a) contract. The SBA advance payments are reimbursable from the payments by the subcontractor to the 8(a) concern. If such advance payments are not repaid SBA reflects a loss on its books. So long as such loss remains outstanding, the 8(a) contractor to whom the advance payments were made is not eligible for 7(a) financing under this final rule. The Agency position is that an entity which caused the Agency to incur a loss in one of its program is not entitled to additional financial assistance from SBA under the 7(a) program.

Under this final rule, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a small business concern, whether through the ownership of voting shares, by contract, position, or otherwise. Control may be affirmative or

negative and it is immaterial whether it was exercised so long as the power to control existed. In addition to stock ownership, control could arise through the occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. Such determinations shall be made in accordance with part 121 of SBA regulations (13 CFR 121.401).

Under this final rule, a "loss" means the discrepancy between an amount owed and the amount collected for which SBA has not been fully reimbursed (1) from the sale or other disposition of collateral after a debtor's default on a direct SBA loan or after SBA has honored its guaranty with respect to a guaranteed 7(a) loan, (2) as a result of the execution of a compromise agreement, (3) as a result of the bankruptcy of the debtor, or (4) for SBA advance payments under the 8(a) program.

When SBA makes payment under its guaranty with respect to a guaranteed 7(a) loan because of the debtor's default, it reflects such payment on its records and it then seeks to be reimbursed from the sale or other disposition of the underlying collateral. Similarly, when SBA makes a direct business or disaster loan to a concern and the debtor defaults on the loan SBA forecloses on the collateral and attempts to be reimbursed for its loss by the sale or other disposition of the property. To the extent that the proceeds from such sale or disposition do not reimburse the Agency in full for the direct loan or for the funds paid to honor its guaranty, it has incurred a loss. If SBA has entered into a compromise with a borrower, the Agency has agreed to accept an amount from the borrower less than that which would have fully reimbursed the Agency. (A compromise may excuse the business concern from making full payment on its existent financial obligation, but the Agency loss remains outstanding on its books). That the loss in such a situation has been the result of a contract makes it no less a loss which SBA must recognize. Similarly, in the case of a bankruptcy, the Agency may be compelled by law to accept less recompense than owed when the debts of the business are being discharged in bankruptcy, but the loss to the Agency is still considered to exist on its books under this final rule. Similarly, as noted above, SBA carries a loss on its books when it is not reimbursed for advance payments made under the 8(a) program.

A commenter stated that the so-called "fresh start" provision in the Bankruptcy Code (11 U.S.C. 525) might preclude SBA from denying 7(a) financial assistance to a business which has filed under the Bankruptcy Code and which has been discharged from bankruptcy. Section 525 states that a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to a business which has taken advantage of the Bankruptcy Code. SBA has considered the effect of 11 U.S.C. 525, and is satisfied that such law does not prevent it from refusing 7(a) assistance to such a business, under *Goldrich* v. *New York Higher Education Services Corporation*, 771 F.2d 28, 30 (2d Cir. 1985) and *Watts* v. *Pennsylvania Housing Finance Co.*, 876 F.2d 1090, 1093 (3rd Cir. 1989). Both courts held that section 525 does not promise protection against consideration of the prior bankruptcy in post-discharge credit arrangements. As noted by the court in *Watts, supra*, "* * * if a credit guarantee is not a 'similar grant', neither is a loan." 876 F.2d 1090 at 1093.

A commenter suggested that SBA promulgate a rule which would implement 28 U.S.C. 3201(e) which provides that a debtor who has an unsatisfied judgment lien against its property held by the federal government shall be ineligible to receive any additional grants, loans or funds from the government until the judgment is paid in full or otherwise satisfied. SBA will address this issue separately.

As a housekeeping function, by this rulemaking SBA is eliminating the asterisk at the end of § 120.102, together with the editorial note to which it refers, since SBA plans no correction document as mentioned in the note.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this final rule does not have a significant impact on a substantial number of small entities.

SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this rule on the national economy will not attain $100 million or more.

The final rule does not impose new reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA is amending part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.102 is revised and § 120.102–12 is added to read as follows:

§ 120.102 Limitations on loan purposes.

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, to refinance outstanding notes payable. For additional special rules applicable to refinancing loans, see § 122.7–3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

* * * * *

§ 120.102–12 Loss previously incurred by SBA.

(a) *Loss on prior loan or guaranty or on 8(a) advance payments.* Assist an applicant when SBA has incurred a loss on unreimbursed advance payments under the 8(a) program or a prior section 7(a) or section 7(b) direct or guaranteed loan (and that loss remains outstanding) to (1) the same applicant (whether a proprietorship, partnership or corporation) or its predecessor; (2) any business entity in which a principal was a principal in an entity on which a previous loss was incurred; or (3) any business entity controlled by the same person(s) who controlled a borrower on which SBA sustained a previous loss. This section is applicable regardless of whether the loss incurred by SBA was attributable to a compromise agreement with SBA or to a voluntary or involuntary bankruptcy. The SBA Assistant Administrator for Financial

Assistance or his/her designee shall have the authority to waive any part of the application of this section for good cause shown.

(b)(1) *Control.* For the purposes of this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a small business concern, whether through the ownership of voting shares, by contract, position, or otherwise. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists. Control can also arise through the occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. Determinations of control shall be made in accordance with 13 CFR 121.401.

(2) *Principal.* For purposes of this section, "principal" means any person who has at least a 20% ownership interest, whether direct or indirect, in a business concern.

(c) *Loss.* For the purposes of this section, "loss" means the discrepancy between an amount owed and the amount collected for which SBA has not been fully reimbursed (1) from the sale or other disposition of collateral which it has acquired after the debtor's default on a direct loan or after SBA has honored its guaranty with respect to a 7(a) loan, (2) from the execution of a compromise agreement, (3) from the bankruptcy of the business, or (4) for SBA advance payments under the 8(a) program.

(d) *Predecessor.* For the purposes of this section, "predecessor" means a business entity controlled by the same person(s) who controls the applicant.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: June 5, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20839 Filed 8–26–93; 8:45 am]

BILLING CODE 8025–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 211 and 345

RIN 3220–AA87

Railroad Employers' Reports and Responsibilities; Creditable Railroad Compensation; Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to modify the method of reporting compensation under the Railroad Retirement Act (RRA) in order to conform such reporting to the reporting required for employment tax treatment of such compensation. These amendments are intended to ease the reporting requirements for employers covered under the RRA.

EFFECTIVE DATE: August 27, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 209.6 of the Board's regulations (20 CFR 209.6) requires employers to file annual reports of compensation paid to their employees. In preparing these reports the Board has required employers to report required compensation with respect to the year in which it was earned even though paid in a later year, the so-called "earned basis." Thus, for example, compensation attributable to services performed in December but paid in the following January is required to be reported for the calendar year in which the services were performed, not the year in which the compensation was paid. The only exception made to this rule is found at 20 CFR 211.11 which permits retroactive wage increases to be reported in the year paid subject to an election by the employee to have them reported, by way of an adjustment, in the year in which they were earned.

Prior to 1985 this earned basis of reporting was in accord with the employment tax treatment of compensation. Thus, for purposes of the Railroad Retirement Tax Act (RRTA), compensation earned in December but paid in January was deemed paid in December. 26 CFR 31.3231(e)–1(d)(3). However, for calendar years after 1984 the RRTA requires that compensation be reported on the return covering the year in which it was paid, regardless of when it was earned, the so-called "paid basis." See generally §§ 221, 222, 223, 225 and 227 of Public Law 98–76 (97 Stat. 411 (1983)).

This difference in reporting requirements between the RRA and RRTA has caused considerable confusion among employers and employees covered under those statutes. Furthermore, over an employee's career whether compensation is credited on an earned or paid basis has virtually no effect on the amount of an annuity which may become payable under the RRA.

Consequently, the Board adds a new § 209.15 to its regulations which would permit employers to file their reports required under § 209.6 to reflect compensation on a paid basis, subject to the proviso that an employee, within 4 years after the report, may elect to have the compensation reported by way of adjustment under § 209.7 in the year in which it was earned. Thus, the Board is extending the treatment accorded retroactive wage increases to all payments of compensation except pay for time lost, which is accorded special treatment as set forth in § 209.7(c) of the Board's regulations. In this regard it should be noted that reporting on a paid basis is not mandatory. Thus, where an employer files a report on an earned basis, an employee may *not* require that employer to make an adjustment to a paid basis. In addition, it should be noted that § 209.15 does not change the definition of a reportable month of service as defined in § 210.3 of title 20. (Section 209.15 also contains cross references to sections dealing with separation payments, vacation and miscellaneous pay, which contain special reporting requirements relating to these types of payments.)

In addition, the Board amends part 211 of its regulations to conform to the change in reporting in § 209.15. For example, § 211.4 (vacation pay) is revised since vacation pay will be reported in accordance with § 209.15. Similar revisions are made to § 211.8 (displacement allowance), § 211.9 (dismissal allowance), and § 211.10 (separation allowance).

Section 211.11 (retroactive wage increase) is removed since it will no longer be necessary when § 209.15 becomes effective. This section is replaced by a new section which explains the operation of section 1(h)(8) of the RRA (45 U.S.C. 231(h)(8)). This section provides that any payment made to an employee by an employer which is subject to railroad retirement taxes shall be considered compensation for purposes of the tier I component of the RRA annuity (the component based on the Social Security Act benefit formula), notwithstanding the fact that such payment may be excluded from compensation by another provision of the RRA. This section is important particularly with respect to sick pay, which is excluded from compensation by section 1(h)(6)(v) of the RRA, but is subject to employment taxes under the Railroad Retirement Tax Act (RRTA), and to certain post-employment payments, such as severance pay. Because such payments are subject to

employment taxes, section 1(h)(8) requires their inclusion in the definition of compensation for purposes of the computation of the tier I component. Such payments will be reported in accordance with revised § 209.13.

Sections 211.13 and 211.14 are redesignated as §§ 211.14 and 211.15 and a new § 211.13 is added which provides that payments made in the year after an employee's death to the employee's survivors or estate are not compensation. These payments have not been subject to employment taxes and therefore should not be considered compensation.

Conforming amendments have been made for § 211.2 (Definition of compensation). Redesignated § 211.14 (Maximum creditable compensation) is amended to provide for the annual publication of the maximum creditable compensation under the RRA. Finally, § 345.4 is amended to make it clear that the reporting requirements under the RRA are also applicable to the Railroad Unemployment Insurance Act (RUIA).

On March 1, 1993, the Board published these regulations as a proposed rule seeking comments by March 31, 1993 (58 FR 11811). A number of comments were received.

One commenter suggested that an employee should not be able to request an employer, who has previously reported his compensation on a paid basis, to adjust the compensation to an earned basis. Adoption of this suggestion, would be inconsistent with the Board's longstanding interpretation of section 1(h)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(h)(1)) and its predecessor section in the Railroad Retirement Act of 1937. This section provides, in part, that "[a] payment made * * * to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation * * * in the period with respect to which the payment is made." For over 40 years the Board has interpreted this language as allowing an employee to have his or her compensation credited in the period it was earned where it was his advantage to do so. The Board sees no compelling reason to change this interpretation. For the vast majority of employees, whether compensation is credited on an earned or paid basis makes little difference in the amount of their retirement benefits. Consequently, the Board does not anticipate many requests to change compensation reported on a paid basis to an earned basis.

One commenter opposed § 211.14, Maximum creditable compensation, on the basis that it would allow the Board to increase the maximum annual taxable wage base by regulation. Section 211.14 would not authorize the Board to increase the taxable wage base by regulation. This section merely provides for the publication of this base. The actual wage base is set by section 3231(e)(2)(B) of the Internal Revenue Code.

One commenter suggested that all separation allowance and severance payments, up to the annual maximum taxable wage base, be credited toward benefits. Sections 3(i) and 3(j) of the Railroad Retirement Act (45 U.S.C. 231 (i) and (j)) provide that for purposes of the tier II computation, no compensation may be credited and no months of service can accrue for any month after termination of the employment relationship. Thus, such a regulation would not be consistent with the RRA. However, separation payments which may not be credited under section 3(i), but are subject to taxation under the Railroad Retirement Tax Act, are credited for tier I purposes under section 1(h)(8). See § 211.11.

Finally, one commenter questioned the purpose of § 211.13, which provides that payments made by an employer with respect to a deceased employee to the survivors or estate of that employee after the calendar year of his or her death are not compensation. This regulation parallels a regulation under the Social Security Act (20 CFR 404.1058(f)). Such payments are generally not subject to employment taxes and by eliminating such payments from the definition of compensation, both employers and the Board are relieved of making adjustments to an employee's compensation record long after his or her death. The Board believes that this provision will clarify the treatment of payments after death and ease the administrative burden on both employers and the Board.

The Board has determined that this is not a major rule under Executive order 12291. Therefore, no regulatory analysis is required. There are no new information collections imposed by these amendments.

For the reasons set out in the preamble, 20 CFR parts 209, 211 and 345 of the Board's regulations are amended as follows:

List of Subject in Parts 209, 211 and 345

Railroad employees, Railroad retirement, Railroad Unemployment Insurance, Railroads.

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

1. The authority citation for part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 209.13 is revised to read as follows:

§ 209.13 Miscellaneous pay reports.

(a) Employers, insurance carriers or other parties paying miscellaneous pay, as defined in § 211.11 of this chapter, shall furnish the Board an annual report of such pay before the last day of February of the calendar year following the year in which the payment was made.

(b) Miscellaneous pay reports are to be filed in accordance with instructions issued by the Director of Research and Employment Accounts and are to be mailed directly to the Director. The reports may be made on magnetic tape or the form described in § 200.2 of this chapter.

3. Section 209.15 is added to read as follows:

§ 209.15 Compensation reportable when paid.

(a) *General.* In preparing a report required under this part, an employer may report compensation in the report required for the year in which the compensation was paid even though such compensation was earned by the employee in a previous year. If compensation is reported with respect to the year in which it was paid, it shall be credited by the Board to the employee in such year unless within the four year period provided in § 211.15 of this chapter the employee requests that such compensation be credited to the year in which it was earned. If the employee makes such a request, and the Director of Research and Employment Accounts determines that the compensation should be credited to the year in which it was earned, the reporting employer must file an adjustment report as required by § 209.7 of this part which reports such compensation in the year in which it was earned. The employee may revoke his or her request anytime prior to the filing of the adjustment report. Upon the Board's receipt of the adjustment report, the request becomes irrevocable.

(b) *Pay for time lost.* Compensation which is pay for time lost, as provided in § 211.3 of this chapter, shall be reported with respect to the period in which the time and compensation were lost. For example, if an employee is off work because of an on-the-job injury for a period of months in a given year and in a later year receives a payment from his or her employer to compensate for wages lost during the period of absence, the employer must, by way of adjustment provided for in § 209.7 of this part, report the compensation with

respect to the year in which the time and compensation were lost.

(c) *Separation allowance or severance pay.* A separation allowance or severance payment shall be reported in accordance with § 209.14 of this part.

(d) *Miscellaneous pay.* Miscellaneous pay shall be reported in the year in which it was paid in accordance with instructions provided for in § 209.13 of this part.

(e) *Vacation pay.* Vacation pay may be reported in accordance with this section except that any payments made in the year following the year in which the employee resigns or is discharged shall be reported by way of adjustment under § 209.7 of this part as paid in the year of resignation or discharge.

PART 211—CREDITABLE RAILROAD COMPENSATION

4. The authority for part 211 continues to read as follows:

Authority: 45 U.S.C. 231f.

5. Section 211.2 is amended by revising paragraph (b)(9) and adding (b)(13) to read as follows:

§ 211.2 Definition of compensation.

* * * * *

(b) * * *

(9) Miscellaneous pay as provided for in § 211.11 of this part;

* * * * *

(13) Payments made by an employer with respect to a deceased employee except as provided for in § 211.13 of this part.

* * * * *

6. Section 211.4 is revised to read as follows:

§ 211.4 Vacation pay.

Payments made to an employee with respect to vacation or holidays shall be considered creditable compensation whether or not the employee takes the vacation or holiday.

7. Section 211. 8 is revised to read as follows:

§ 211.8 Displacement allowance.

An allowance paid to an employee because he has been displaced to a lower paying position is creditable compensation.

§ 211.9 [Amended]

8. Section 211.9 is amended by removing the last sentence.

9. Section 211.10 is revised to read as follows:

§ 211.10 Separation allowance or severance pay.

Separation or severance payments are creditable compensation except that no part of such payment shall be considered creditable compensation to any period after the employee has severed his or her employer-employee relationship except as provided for in § 211.11 of this part.

10. Section 211.11 is revised to read as follows:

§ 211.11 Miscellaneous pay.

Any payment made to an employee by an employer which is excluded from compensation under the Railroad Retirement Act, but which is subject to taxes under the Railroad Retirement Tax Act, shall be considered compensation for purposes of this part but only for the limited purpose of computing the portion of the annuity computed under sections 3(a), 4(a), or 4(f) of the Railroad Retirement Act (commonly called the tier I component).

11. Sections 211.13 and 211.14 are redesignated §§ 211.14 and 211.15 and a new § 211.13 is added as follows:

§ 211.13 Payments made after death.

Payments made by an employer with respect to a deceased employee but paid after the calendar year of the employee's death to the employee's survivors or estate are not creditable compensation.

12. Newly redesignated § 211.14, is revised to read as follows:

§ 211.14 Maximum creditable compensation.

Maximum creditable compensation for calendar years after 1984 is the maximum annual taxable wage base defined in section 3231(e)(2)(B) of the Internal Revenue Code of 1986. In November of each calendar year the Director of Research and Employment Accounts shall notify each employer of the amount of maximum creditable compensation applicable to the following calendar year.

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

13. The authority citation for part 345 is revised to read as follows:

Authority: 45 U.S.C. 362(1).

14. Section 345.4 is revised to read as follows:

§ 345.4 Employers' reports of compensation of employees.

The provisions of part 209 of this chapter shall be applicable to the reporting of compensation under the Railroad Unemployment Insurance Act to the same extent and in the same manner as they are applicable to the reporting of compensation under the Railroad Retirement Act.

Dated: August 20, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–20793 Filed 8–26–93; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF–348; Re: T.D. ATF–333, T.D. ATF–317, T.D. ATF–311, T.D. ATF–306, Notice Nos. 716, 403, 410, 583; 91F009P]

RIN 1512–AA10

Vodka; Deferral of Compliance Date

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule defers the compliance date with respect to the citric acid limitation established in an earlier regulation concerning vodka. The deferral of the compliance date is necessary in order to allow time to publish a notice in the **Federal Register** announcing the results of independent lab tests on sensory threshold levels for citric acid addition to vodka and to make the material available for public comment.

DATES: This document is effective on August 27, 1993. The compliance date for 27 CFR 5.23(a)(3)(ii) with respect to the citric acid limitation is August 28, 1995.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF–306 (55 FR 49994 (December 4, 1990)), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million) of sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka. T.D. ATF–306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products may made within the limitations of the Treasury decision. The compliance date was deferred by T.D. ATF–333, 57 FR 40323 (September 3, 1992).

Petition

On March 4, 1991, ATF issued T.D. ATF–311, 56 FR 8922, deferring the compliance date with respect to the

citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF–306. T.D. ATF–311 was issued in response to a petition from Heublein, Inc., for the reconsideration of T.D. ATF–306. Heublein's petition was based on a representation that new scientific information and data not previously available had come to their attention concerning maximum levels for the use of citric acid in vodka.

Notice No. 716

On April 29, 1991, ATF issued Notice No. 716, 56 FR 19623, to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF–306 should be retained or revised. During the comment period, ATF secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka. In response to Notice No. 716, ATF received ten comments. All of the comments were opposed to setting a maximum limitation as low as 150 ppm for the addition of citric acid to vodka. The only commenter submitting sensory test data from independent contractors was Heublein, Inc. An evaluation of the test data by ATF revealed a disparity between the Heublein independent contractors' test results and the sensory test results from the outside firm secured by ATF. Therefore, the compliance data of December 4, 1991, set forth in T.D. ATF–311, was deferred until September 3, 1992, by T.D. ATF–317 in order to allow time to resolve the disparity in test results.

On January 28, 1992, the President asked U.S. government agencies to set aside a 90-day period to evaluate existing regulations and programs and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burden or otherwise promote economic growth. Subsequently, the president's 90-day moratorium on new regulations was extended until August 28, 1992.

During that time, ATF reexamined its system of regulatory controls over the labeling of distilled spirits to ensure that existing regulations do not impose any unnecessary regulatory burdens. At the same time, ATF published T.D. ATF–333 deferring the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) until September 3, 1993.

Currently, a notice of proposed rulemaking (NPRM) is being prepared announcing the results of the independent tests conducted by the outside testing firm discussed in Notice No. 716. Therefore, ATF is deferring the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) in order to allow time to publish a notice in the Federal Register announcing the results of the independent lab tests on sensory threshold levels for citric acid addition to vodka and to make the material available for public comment.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF–306, in order to give public notice concerning the independent lab results, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF–306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

(a) An annual effect on the economy of $100 million or more;

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of Heublein's petition, the notices, the Treasury decisions, and all comments are available for public inspection during normal business hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is further postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF–306. The compliance date is August 28, 1995.

Signed: July 8, 1993.

Stephen E. Higgins,

Director.

Approved: August 19, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–20836 Filed 8–26–93; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 216

RIN 1010–AB84

Amendment of Production Accounting Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its Royalty Management Program regulations at 30 CFR part 216 to reflect administrative changes due to the transfer of responsibility for production accounting related to onshore Federal and Indian oil and gas leases from the Bureau of Land Management (BLM) to MMS. The amendments clarify operator responsibilities for reporting information to MMS.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, Mail Stop 3901, P.O. Box 25165, Denver, Colorado 80225–0165, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Marvin D. Shaver of the Rules and Procedures Staff, MMS, Royalty Management Program.

I. Background

The MMS maintains a computerized Production Accounting and Auditing System (PAAS) which is an integrated system of manual and automated processes for minerals production reporting, accounting, and auditing. Based upon production reports submitted by reporters, the PAAS will track oil, gas, and solid minerals produced from or allocated to Federal and Indian leases, including the OCS, from the source of production to the point of disposition with emphasis on the point of royalty determination, or point of sale, whichever is applicable. Initially, only production information on offshore leases and certain onshore leases was submitted to PAAS.

At the Secretary of the Interior's request, a study was performed within the Department of the Interior (DOI) to determine the feasibility of extending the reporting requirements of the PAAS to all onshore oil and gas leases. The Secretary also directed that the Royalty Management Advisory Committee (RMAC) propose recommendations on the issue. The DOI study, called the "Mineral Lease Information Study" (MLIS), concluded in a September 1986 report that onshore implementation of PAAS would be fiscally attractive to the Government and would offer several advantages to lease and royalty management programs. However, there would be a substantial increase in industry's costs of reporting. The RMAC panel recommended that DOI computerize the existing production report (Form BLM 3160–6) submitted to the BLM and use data from this form to effect systematic production/sales comparisons.

Because of the RMAC panel's recommendations, the Secretary directed, in March 1987, that an addendum to the MLIS report be completed to analyze various options of implementing the panel's recommendations. This addendum concluded that automation of a slightly modified version of the existing form should occur and that MMS should become responsible for the receipt, edit/error correction, and distribution of the data to BLM, the Bureau of Indian Affairs, States, and Indian Tribes. Based on these studies, the Secretary decided in June 1987 that:

- Responsibility for receipt and processing of production data should be transferred from BLM to MMS.
- Operators of the Federal and Indian onshore oil and gas leases should continue to report production data on the existing production report which will be slightly modified and automated, and
- the MMS should distribute production data to all users.

On May 9, 1988, MMS published a Notice of Final Rulemaking in the **Federal Register** (53 FR 16408) to amend its regulations at 30 CFR part 216 to provide instructions to lease operators during the transfer of accounting responsibility from BLM. A phased conversion schedule was followed to accomplish the transfer of production reporting from BLM to MMS. The transfer (conversion) of responsibility from BLM to the MMS automated system has been completed. Therefore, MMS is amending its regulations to remove the instructions applicable during the conversion period. We are also amending our regulations to clarify operator responsibilities for reporting operations information to MMS.

II. Summary of Final Rule

The amendments included in this rulemaking are discussed below by section. Many sections in part 216 are not being amended by this rulemaking.

Section 216.2 Scope

This section is amended to remove instructions to reporters for submitting production reports during the conversion period.

Section 216.6 Definitions

This section is amended to remove the definition of "Conversion period" at paragraph (e). We are also amending this section to remove the alphabetical designation (i.e., (a), (b), (c), etc.) assigned to each definition for organizational consistency with other MMS regulations.

Section 216.20 Applicability

This section is amended to remove the applicability of 30 CFR part 216 to operators during the conversion period.

Section 216.50 Monthly Report of Operations

This section is amended to remove paragraph (a) which made the reporting requirements of § 216.50 applicable to operators during the conversion period. Paragraphs (b) through (e) are redesignated as paragraphs (a) through (d), respectively. We are also amending the new paragraph (a), formerly paragraph (b), to clarify operator responsibilities for reporting operations information on this report (Form MMS–3160). The cross reference in the new paragraph (d)(3), formerly paragraph (e)(3), is changed from (e)(2) to (d)(2).

Section 216.51 Facility and Measurement Information Form and Supplement

This section is amended to remove language relating to the conversion period. This section is also amended to remove the reporting requirements relative to the "supplement form" (Form MMS–4051 Supplement), which is no longer required. The title of § 216.51 is also amended to remove reference to the supplement.

Section 216.54 Oil and Gas Operations Report

This section is amended to clarify the responsibilities of operators who elect to report production on the Oil and Gas Operation Report (Form MMS–4054) instead of the Monthly Report of Operations (Form MMS–3160).

Section 216.55 Gas Analysis Report

Under the existing regulations, this report (Form MMS–4055) is required to be submitted by onshore and offshore operators by the 15th day of the second month following the production month. Because MMS no longer requires the information from onshore operators on a monthly basis, we are amending § 216.55. The amended § 216.55 requires that Form MMS–4055 be submitted by offshore operators on a semi-annual basis and by onshore operators upon request.

Section 216.56 Gas Plant Operations Report

Under the existing regulations, this report (Form MMS–4056) is required to be submitted by onshore and offshore operators by the 15th day of the second month following the production month. Because MMS no longer requires the information from onshore operators on a monthly basis, we are amending § 216.56. The amended § 216.56 requires that Form MMS–4056 be submitted by the 15th day of the second month following the production month by offshore operators unless the plant no longer processes gas and has not processed said gas for 6 months or more. The amended section requires onshore operators to submit Form MMS–4056 only upon request by MMS in order to verify the composition of a gas stream which is transferred to a gas plant.

Section 216.58 Production Allocation Schedule Report

Under the existing regulations, this report (Form MMS–4058) is required to be submitted by onshore and off-shore operators of any facility or measurement device. Because MMS no longer requires the information from onshore operators, we are amending § 216.58. The

amended § 216.58 requires that Form MMS–4058 be submitted only by offshore operators by the 15th day of the second month following the production month.

Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are administrative only and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon the date of publication in the **Federal Register.**

Executive Order 12291 and the Regulatory Flexibility Act

Because the changes are administrative only with no additional requirements or burden placed on small business entities, the Department of the Interior (Department) has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned Clearance Number 1010–0040.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: July 23, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 216 is amended as follows:

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 216.2 under Subpart A—General Provisions, is revised to read as follows:

§ 216.2 Scope.

This part governs the reporting of oil, gas, and solid minerals operations information on Federal and Indian leases or federally-approved agreements including leases or agreements on the OCS. This part also governs the reporting of other operational information associated with production from Federal and Indian leases or federally-approved agreements when such operations occur prior to the point of sale or royalty determination, whichever is applicable. Reporters are required to submit certain production reports to MMS as set forth in this part.

§ 216.6 [Amended]

3. Section 216.6, "Definitions" under Subpart A—General Provisions is amended to remove the alphabetic paragraph designation of each definition and to remove the definition of "Conversion period".

4. Section 216.20 under Subpart A—General Provisions, is revised to read as follows:

§ 216.20 Applicability.

The requirements of this part shall apply to all oil, gas, and solid mineral operators reporting information on Federal and Indian leases or federally-approved agreements, including leases or agreements on the OCS.

5. Section 216.50, under Subpart B—Oil and Gas, General, is amended by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as new paragraphs (a) through (d), respectively. The new paragraph (a) (formerly paragraph (b)) is revised to read as follows:

§ 216.50 Monthly report of operations.

(a) Each operator of each onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned shall file a Monthly Report of Operations (Form MMS–3160) unless production data is authorized to be reported on Form MMS–4054. This requirement does not apply to reporting of operations of gas storage agreements, which must continue to be reported to the appropriate BLM office. A completed Form MMS–3160 shall be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated, or the last well is approved as permanently plugged or abandoned by BLM and all inventory is disposed of, or until monthly omission of the report is authorized by MMS. The MMS may grant time extensions for filing Form MMS–3160 on a case-by-case basis upon written request to MMS.

* * * * *

6. The new paragraph (d)(3) of § 216.50 (formerly paragraph (e)(3)) is amended to change the cross reference in that paragraph from "paragraph (e)(2)" to "paragraph (d)(2)".

7. Section 216.51, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.51 Facility and Measurement Information Form.

A Facility and Measurement Information Form (Form MMS–4051) must be filed for each facility or measurement device which handles production from any Federal or Indian lease, or federally-approved agreement, through the point of first sale or the point of royalty computation, whichever is later. The completed form must be filed by any operator (reporting production on a Form MMS–4054) of an onshore Facility Measurement Point (FMP) that handles production from any Federal or Indian lease or federally-approved agreement prior to, or at the point of royalty determination, or any operator who acquires an onshore FMP that is currently reporting to the PAAS. The report must be filed no later than 30 days after the establishment of a new facility or measurement device, or 30 days after a change is made to an existing facility or measurement device.

8. Section 216.54 under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.54 Oil and Gas Operations Report.

Every operator of an OCS lease or federally-approved offshore agreement and any operator of an onshore Federal or Indian lease or federally-approved agreement that has elected to report production on an Oil and Gas Operations Report (Form MMS–4054) instead of the Form MMS–3160 (see § 216.50(c)(2)) must file a Form MMS–4054 each month as long as there exists at least one well that is not permanently plugged and abandoned. A completed Form MMS–4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported, until the lease or agreement is terminated, or the last well is permanently plugged or abandoned and all inventory is disposed of, or until omission of the report is authorized by MMS.

9. Section § 216.55, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.55 Gas Analysis Report.

Any operator of an OCS lease or federally-approved agreement and, upon request by MMS, any operator of an onshore Federal or Indian lease or federally-approved agreement, from which gas is sold or is transferred for processing prior to the point of royalty computation, must file a Gas Analysis Report (Form MMS–4055) for each sales or transfer meter. The form is due at least twice a year; once in the first 6 months of the calendar year, and once in the last 6 months of the calendar year, but may be submitted monthly, or as specified by the gas sales contract terms, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies. All reports must be submitted by August 15th for any sales/transfers occurring in the first 6 months of the calendar year and February 15th of the following year for any sales/transfers occurring in the second 6 months of the calendar year.

10. Section 216.56, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.56 Gas Plant Operations Report.

The operator of each gas plant that processes gas that originates from an OCS lease or federally-approved agreement and, upon request by MMS, the operator of a gas plant that processes gas from an onshore Federal or Indian lease or federally-approved agreement, prior to the point of royalty computation, must file a Gas Plant Operations Report (Form MMS–4056) for each calendar month, beginning with the month in which processing of gas is initiated, on or before the 15th day of the second month following the month being reported. The report must show 100 percent of the gas. If a plant no longer processes gas that originated from a Federal or Indian lease, or federally-approved agreement, prior to the point of royalty computation and has not processed such gas for 6 months or more, the operator of the gas plant is not required to file a Gas Plant Operations Report until the plant again produces such gas. The operator of the gas plant must notify MMS, in writing, when such gas has not been processed for 6 months or longer.

11. Section 216.58 under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.58 Production Allocation Schedule Report.

(a) Any operator of an offshore Facility Measurement Point (FMP) handling production from a Federal lease or federally-approved agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination must file a Production Allocation Schedule Report (Form MMS–4058). This report is not required whenever all of the following conditions are met:

(1) All leases involved are Federal leases;

(2) All leases have the same fixed royalty rate;

(3) All leases are operated by the same operator;

(4) The facility measurement device is operated by the same person as the leases/agreements;

(5) Production has not been previously measured for royalty determination; and

(6) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part.

(b) A completed Form MMS–4058 must be filed for each calendar month, beginning with the month in which handling of production covered by this section is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

[FR Doc. 93–20759 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–MR–M

30 CFR Part 256

RIN 1010–AB38

Surety Bond Coverage for Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the surety bond provisions. Although this final rule applies to all OCS leases, the new levels of required minimum bond coverage are designed primarily to address lease abandonment and cleanup on producing leases in shallow water from 0 to 200 feet. The level of bond coverage required on the remaining leases will be addressed on a case-by-case basis pursuant to § 256.61, Additional bonds. This rule is being promulgated to assure that lessees have the financial capacity to carry out their obligations, e.g., to properly plug and abandon wells, remove platforms, and clear the well or platform site of obstructions.

EFFECTIVE DATE: November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: This final rule establishes a three-tier approach to bond coverage requirements for OCS oil and gas leases and postlease operations similar to the one proposed in the notice of proposed rulemaking (NPR) that was published on January 24, 1990 (55 FR 2388). This approach provides a transition period for implementation of the new bond requirements by retaining the current level of bond coverage for leases until such time as there is a change in lease activity or ownership. The increased bond coverage will be required when an Exploration Plan (EP) or a significant revision to an approved EP, a Development and Production Plan (DPP) or a significant revision to an approved DPP, a Development Operations Coordination Document (DOCD), or a significant revision to an approved DOCD, or a request for assignment of a lease is submitted to the Minerals Management Service (MMS) for approval. The final rule also allows a lessee or operator to submit a bond in an amount less than the amount prescribed by the rule for individual leases when the authorized officer agrees with the lessee's (operator's) showing that well abandonment, platform removal, and site clearance costs for the lease will be less than the amount of the lease bond coverage

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($200,000 to $500,000) specified in this final rule.

The title of part 256 has been changed to Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf to reflect the subject matter contained therein. Part 256 no longer addresses rights-of-way, and the leasing of OCS minerals other than oil, gas, and the sulphur is governed by the provision of 30 CFR part 281. Changes have also been made in the text of the rule, as issued, to clarify the intent of the new rule and to retain certain aspects of the current rule that were omitted from the proposed rule (e.g., the final rule retains the provision that permits a lessee to maintain a $300,000 areawide bond if it only holds leases that have had no exploration or development and production activity proposed).

Provisons of the Final Rule

The objective of this rulemaking is to identify the appropriate level(s) of bond coverage required of OCS lessees. The level of coverage should reflect an appropriate balance between encouraging the maximum economic recovery of natural gas and oil from Federal offshore leases while providing the Federal Government with an adequate level of protection in the event lessees default in their obligations to properly abandon lease wells, remove platforms and other structures, and clear the seafloor around the well and platform site of debris and other obstructions to alternate uses.

The 1985 Marine Board of the National Research Council study entitled "Disposal of Offshore Platforms," estimated the removal costs for structures in 20 feet or less of water (includes some older structures in up to 50 feet of water) to range from $50,000 to $400,000 while the costs of removing structures in water depths between 20 feet (in some instances 50 feet) and 100 feet were estimated to range between $600,000 and $1.3 million. The removal costs of structures in water depths of 100 to 200 feet were estimated to range between $1 million and $2.5 million.

The total costs for platform removal, well abandonment, and site clearance can vary significantly among individual leases because of differences in the number of structures, number and depth of wells, water depth, and other factors. The MMS estimates the average cost for removing all structures and clearing entire lease sites in shallow water (0 to 200 feet) in the Gulf of Mexico (GOM) to be: (0 to 50 feet)—$3.2 million, (51 to 100 feet)—$2.6 million, (101 to 200 feet)—$3.9 million. The MMS estimates the same work in deep water (more than 201 feet) to be (201 to 400 feet)—$8.8 million, (more than 401 feet)—$21 to over $90 million.

The surety bond requirements of this rule balance the Government's need for a greater degree of protection against the costs and disincentives to additional production that higher surety bonds would impose. The requirements do not seek to require surety bond levels that would cover each individual lease's full liabilities in all cases, since it is expected that in many cases the wells and associated structures on a lease would not all stop being economically producible at the same time. Thus, it is expected that the lessee typically will have some funds available to cover part or all of its potential liability. The MMS regulations at 30 CFR part 250, subparts G and I, and other MMS requirements make it clear that lessees are responsible for all removal, plugging and abandonment, and site clearance costs—the level of bond coverage does not provide a ceiling for lessee obligations and responsibilities.

The findings of the National Research Council study combined with more recent lessee provided information concerning actual well-abandonment costs and site cleanup costs provided general guidelines for revising the levels of bond coverage required without causing an unnecessary burden on offshore lessees and operators.

The new, basic surety bond amounts established by this final rule will provide an effective mechanism to give greater assurance of the financial capability of OCS lessees and operators, without hindering the capability of those lessees and operators to undertake OCS exploration and development operations.

Under the approach retained by this final rule, prior to the issuance of a lease, a successful bidder must submit and maintain a $50,000 surety bond conditioned upon compliance with all the terms and conditions of the lease. The successful bidder is not required to submit an individual $50,000 surety bond if the bidder already maintains or furnishes an areawide surety bond in any of the amounts specified in the rule ($300,000, $1 million, or $3 million) that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases held by the bidder in the OCS area in which the lease that is to be issued is located.

When a lessee proposes to initiate exploratory activities on a lease, or proposes to assign the record title in a lease that has an approved EP, a surety bond in the amount of $200,000 must be submitted with the EP unless the authorized officer, for good cause, permits the lessee to submit the $200,000 bond after the submission of the EP but prior to the approval of drilling activities under the EP. A lessee need not submit a $200,000 lease exploration bond with its EP if the lessee already maintains or furnishes a $500,000 lease development bond or an areawide surety bond in the sum of $1 million or $3 million that is conditioned upon compliance with all the terms and conditions of the OCS oil and gas and sulphur leases held by the lessee in the OCS area in which the lease is located.

At the development and production stage, or where a lessee proposes to assign the record title in a developed lease, this final rule requires the submission of a $500,000 lease bond unless the lessee already maintains or furnishes an areawide bond in the amount of $3 million that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases in the OCS area in which the lease is located.

As noted in the preamble to the proposed rule and proposed § 250.62, these higher bond amounts are also required when there is an assignment by lessees of record title interests in a lease with an approved EP, DPP, or DOCD consistent with the requirements of 30 CFR 256.64(c).

This final rule retains the provision under which an operator's bond in an equal amount may be substituted for a lessee's bond. It should be noted that the substitution of an operator's bond for a lessee's bond does not relieve the lessee(s) of the obligation to comply with all the terms and conditions of the lease.

This final rule also retains the provision under which the authorized officer may require additional security in the form of a supplemental bond or bonds or require an increase in the coverage of an existing bond when additional security is deemed necessary (30 CFR 256.61, Additional bonds). Thus, the authorized officer may, on a case-by-case basis, require a lessee to increase its level of bond coverage to the level necessary to ensure present and future compliance with all lease obligations. Section 256.61(d) expands upon current § 256.61 to include examples of factors similar to those currently being examined by authorized officers to help determine the need for additional or supplemental security. Those factors include, but are not limited to, financial ability, record of meeting obligations, and projected financial strength. Inclusion of such examples informs the public of the kinds of considerations that have been and will be evaluated in determining

the need for an increase in the bond coverage required on a lease.

This is not a substantive change from the kinds of factors MMS currently examines.

This rule also requires that bonds be issued by a surety certified by the U.S. Department of the Treasury (U.S. Treasury). U.S. Treasury securities (U.S. Bonds or Notes) may be submitted in lieu of a bond should the lessee or operator so choose. In addition, the rule allows the substitution of alternate forms of financial assurance in lieu of surety bonds if certain criteria are met and the authorized officer approves the substitution. For example, letters of credit might be provided in lieu of the required surety bond if the authorized officer determines that the interests of the Government are sufficiently protected, and the letter of credit is not revocable.

The MMS is not adopting that provision of proposed § 256.62(e) which would have excused an assignee from furnishing bond if the assignor furnished bond and agreed to liability for the assignee's performance, because it is unnecessary. An existing regulation at § 256.64(c) permits an assignor and assignee agreement as joint principals on a bond. Further, current rules at § 256.62(d) provide that assignors remain "liable for all obligations under the lease accruing prior to the approval of the assignment." These obligations, accrued but not yet due for performance, include those of sealing wells, removing platforms, and clearing the ocean of obstructions. These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in subpart G of part 250 are followed. The assignor continues to be jointly liable for the performance of these obligations with respect to wells or structures in existence and not plugged or removed at the time of the assignment.[1]

[1] A letter dated June 6, 1988, to a single producer from the Director of MMS stated that Interior would not proceed against the original lessee-assignor to perform plugging and abandonment, apparently on the erroneous premise that the regulations did not contemplate assignors remaining responsible for any obligations for which the assignee was obligated under 30 CFR 256.62(e). The letter was mistaken in apparently assuming only one party could be liable for any given obligation. The MMS is not alone in holding an assignor jointly liable with an assignee for performing an obligation accruing before the assignment and which continues to be due after the assignment. In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere. See, generally, Clark, Continued Liability of a Seller After a Sale of Producing Properties, 41 Inst. on Oil and Gas L. and Tax'n 5–6 (1990). Similarly, under the Louisiana Mineral Code, an assignee becomes responsible directly to the lessor for the performance of the lease obligations, but the assignor is not relieved of its obligations unless the lessor discharges the assignor expressly and in writing. La. Rev. Stat. 31:128 and 129.

Typically an assignment agreement between an assignor and assignee will require the assignee to meet these obligations, and to provide a performance bond or indemnity agreement to protect the assignor from potential liability to the lessor or the regulatory body for their performance. However, as one means of minimizing the assignor's perceived need for demanding bond for the same liability as bonded for MMS, MMS will accept, under § 256.64(c), a joint bond from an assignor and assignee in the amount specified in this rule. The Regional Director may also employ the authority under new § 256.58(g) to accept alternative security instruments, or the implicit authority to phase in the increase in supplemental bond required under new § 256.61(d). This should facilities assignee bonding at a sufficient level to eliminate the assignor's perceived need for a second bond not payable to the United States.

Additional revisions for technical accuracy not affecting the substance of the rule were also made.

Comments and Recommendations of Respondents

In order to alert the potentially impacted parties, MMS mailed copies of the **Federal Register** NPR directly to some 272 lessees and operators who are currently active in the OCS. This final rule incorporates, to the degree practicable, the comments and recommendations received in response to the NPR, while providing a more acceptable level of increased protection for the environment.

A total of 60 timely comments were received. Fifty-three of these were from companies and individuals in the offshore oil and gas industry. Of the 53, 30 were from lessees and operators and 15 from companies and individuals in the oil and gas support services industry. The opposition to the proposed increases in bond coverage expressed in these comments was based upon the view that the United States should accept responsibility for lease abandonment and clearance liabilities resulting from a default by a lessee or operator either directly or through a fund established for that purpose. Federal and State agencies either supported the proposed rule or objected to the proposal on the basis that it did not provide the level of bond coverage necessary to ensure lessee/operator compliance with lease abandonment and cleanup requirements.

Comments from five companies in the insurance and surety business were mixed with one generally supporting the proposed rule, two favoring alternate approaches, and two providing only general comments.

Comment: A frequently stated comment was that the proposed $3 million areawide bond is much greater than the costs of site clearance in shallow water depths and exceeds the costs actually experienced by the smaller companies which do not operate in deeper water. Several respondents suggested that the proposed higher bond requirements apply only to facilities in water depths greater than 300 feet. These respondents supported their argument that the proposed bond coverage was too high by citing the Category I cost estimate of $400,000 for platform removal presented in the 1985 Marine Board study.

Response: The estimated costs of $400,000 for removing Category I lease structures was for small structures in water depths of less than 20 feet (and some older structures in less than 50 feet of water) and did not include costs associated with well abandonment and seafloor clearance. It should be noted that leases in shallow water support more structures on average than do leases in deeper water.

Comment: Many of the respondents opposed the proposed rule on the grounds that the record does not show a significant level of default by OCS lessees.

Response: The record shows that defaults by OCS lessees in meeting their well (lease) abandonment and cleanup obligations are a relatively new but growing phenomenon. The development of this new phenomenon has focused attention on the hazards to safety of operations and potential environmental damage faced in this situation. The MMS does not have the appropriation authority required to assume the financial liabilities of even one lessee or operator who defaults on its obligations to abandon lease wells, remove structures and clear the worksite. Thus, MMS would be remiss in its responsibility for protection of the environment and safety of operations in the OCS if it waits the development of a record of a more significant level of defaults by offshore lessees before taking action.

Prior to 1985, the number of platforms being decommissioned was relatively small. In 1989, 100 platforms were removed from the Gulf of Mexico OCS. This is up from the 32 that were removed in 1985. The number of

platforms expected to be removed in 1995 is 148. As these greater numbers of platforms must be abandoned and removed, the potential for damage due to lessees' failure to perform required lease abandonment and clearance operations becomes significantly greater.

In a recent instance, in which a lessee failed to carry out OCS well abandonments or to timely meet requirements for restoring production through OCS well repairs, after numerous demands by MMS, the lease expired. The lessee lacked the financial capability to carry out its lease abandonment responsibilities and other obligations. The wells were subject to numerous liens. The MMS offered the tract for lease, subject to the successful bidder accepting responsibility for eventually plugging and abandoning those wells even if it never used them. The MMS was fortunate to be able to lease the tract subject to these conditions and the outstanding liens. The MMS would not have been so fortunate had the resources of the tract been depleted.

Comment: Another reason cited for opposition to the proposed increase in the required level of bond coverage was the view that coverage at the higher amounts would be extremely difficult if not impossible for some to obtain. Many operators reported that they are required to fully collateralize the surety bonds that they obtain. This requirement of bonding companies ties up assets which lessees and operators feel could be better used for their leasehold operations. Some respondents estimate that the cost for the higher areawide bond coverage and its capitalization would be $150,000 a year or more. Opponents of the higher bonding requirement claimed that the added cost of the higher bond would eliminate many smaller operators who want to participate in oil and gas operations in the OCS.

Response: Entities that engage in offshore activities (i.e., activities in the OCS) must have access to high levels of technical and financial resources in order to properly and safely conduct offshore activities. In general, such entities are not considered to be small. The MMS recognizes that the increased levels of bond coverage represent higher costs for OCS lessees and operators. It does not necessarily follow that competent smaller operators or producers will be eliminated from conducting operations in the OCS or that competition will be affected. The MMS is aware of a number of smaller operators who are providing much higher levels of surety protection to the current lessees of OCS leases which they (the smaller operators) hope to obtain through farm-in or other means. It should be noted that the regulations require only one bond for each lease. Where there are two or more lessees, only one needs to maintain the bond for that lease in as much as each lessee is responsible for the full performance of lease obligations. Lessees may continue to hold leasehold interests in OCS leases covered by bonds provided by other lessees without providing bond coverage. (It should be noted that the current level of bond coverage is provided by 25 percent of the owners of lease and pipeline right-of-way interests.) However, when operators become sole lessees, they must provide an appropriate level of bond coverage prior to the approval of the lease assignment.

Comment: A number of commenters claimed that the proposed rule would eliminate many small operators from the OCS and reduce competition.

Response: As noted in the preceding response, MMS does not believe that this rule will adversely affect a substantial number of small entities. Safe conduct of activities, such as exploration in the OCS and the development and production of OCS oil and gas properties, requires access to high levels of experience together with high levels of technical and financial resources. The inherent costs and nature of these activities, rather than any discretionary rulemaking action on the part of MMS, establish effective barriers to the participation of substantial numbers of small entities in OCS activities.

Comment: One commenter recommended a "phase-in" of the proposed increased bonding requirements rather than a single compliance date in order to allow operators, who currently have bonds, to continue operations without having to increase their bond coverage until a new activity is commenced. The "phase-in" approach will allow sureties to underwrite the additional bonds over a period of time rather than be faced with a mass effort just before a prescribed date for all lessees to bring their bond coverage into compliance with the increased levels. Another commenter recommended that MMS include a specific provision for review and adjustment of the bond coverage for existing offshore leases and structures. That commenter felt that current lessees should be required to post supplemental bonds or increase their coverage to the level mandated under the new regulations, when finalized.

Response: The MMS recognizes the need to "phase-in" the increase in bonding requirements contained in this final rule and, therefore, is not requiring additional bonds from all lessees simultaneously but is requiring additional security in most cases only at such times as new MMS approvals are needed. A separate rulemaking is being initiated which would establish a deadline for the posting of supplemental bonds for leases which have experienced exploration or development and production activities under EP's, DOCD's, or DPP's approved prior to the effective date of this rule. These leases, of course, remain subject to the supplemental bonding rule at 30 CFR 256.61.

Alternate Approaches

One alternate approach suggested to MMS by an insurance/bonding consultant includes an arrangement under which the lease bond would be collateralized by payments from leasehold production into an escrow account (trust fund) established by lessees with a financial institution serving as trustee. Initially, the necessary surety bond coverage would be provided by the financial institution. As payments are made into a trust fund (e.g., quarterly payments derived from "overrides" on production), the trust fund would replace collateralization for the bond. Once the amount deposited in the trust fund reaches the level of the required bond coverage, the parties in interest could retire the bond and deposit a U.S. Treasury security purchased with the proceeds from the escrow account with MMS, or the parties could continue to maintain the surety bond on a fully collateralized basis.

In two recent bankruptcies, MMS has agreed to accept the establishment of abandonment accounts or trust funds with significant initial deposits to be followed by payments at a specified rate from future production, assured by the grant of an overriding royalty or the pledge or mortgage of proved producing reserves. The use of trust funds is cited here only as an example of the kinds of innovative arrangements that have been developed between offshore lease assignors and assignees. The final rule permits lessees to create a wide variety of new arrangements and mechanisms for compliance with the new minimum bonding requirements, as long as the requirements of new § 256.58 (f) or (g) are met.

The January 1990 NPR described two alternative approaches for ensuring adequate levels in the safety of OCS operations and the protection of the

environment from lessee defaults in obligations for well abandonment, platform removal, site clearance, or other lessee requirements. The NPR asked for comments on these alternative approaches as well as suggestions and comments on any other approaches which respondents wished to submit for consideration as alternatives to the current bonding requirements and MMS proposed changes.

Respondents suggested a variety of alternate approaches. We have evaluated these proposals in terms of the degree to which each meets the objectives to:

(1) Assure lessees' financial capacity to perform lease obligations;

(2) Protect the environment from threat of harm which might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations on a lease;

(3) Achieve a reasonable degree of protection at a minimum increase in costs to lessees and operators; and

(4) Select a method of attaining these goals which impacts equitably on all parties who would be affected.

The following alternative approaches have been considered:

Variable bonds—This approach was one of the alternatives put forward by MMS in the NPR. Specifically, comments were requested on the concept of a level of bond coverage that would increase as a percent of the total investment in exploration or development and production structures on the lease.

Several variations of this concept were supported by 17 respondents. Specific suggestions were:

(1) To set the level of bond coverage on the basis of water depth (greater or less than 300 feet);

(2) To establish the level of bond coverage on a case-by-case basis according to the site;

(3) To establish sliding scale levels of bond coverage for operators based on their activities; and

(4) To establish the level of bond coverage by scaling it to each individual property.

Although these suggested alternatives differ in detail from each other, they are all variations on the alternative of establishing the level of bond coverage on a nonstandard basis. That is, in contrast to MMS's proposal, each of these approaches would require the establishment of the level of bond coverage for each lease individually on the basis of the determining factor(s) such as water depth, level of leasehold activity, or percent of total investment.

These approaches would establish the level of bond coverage required on a case-by-case basis according to estimates of anticipated well abandonment, platform removal, and site clearance costs. The establishment of the amount of bond coverage required based on a case-by-case evaluation of the actual expected costs of site clearance and abandonment would result in much higher costs to lessees and operators than the proposed or final rule.

The tiered approach established by this final rule is, to some degree, a variable level of bond coverage in that the minimum level of bond coverage required is tied to the activity level on the lease. Increased levels of bond coverage are required as leasehold activity increases (1) upon the approval of an EP authorizing the conduct of exploration activities and (2) upon the approval of a DPP or DOCD authorizing development and production activities.

Alternative approaches calling for variable levels of bond coverage based on other determining factors (i.e., investment level, sliding scale based on the level of leasehold operations, etc.) would require a much higher degree of analysis and evaluation of the amount of bond coverage to be required for each lease. It would also be necessary to recalculate and update the level of bond coverage for each lease as investment levels increase or the type and level of operations change. These individual lease activity analyses would require MMS and OCS lessees and operators to dedicate many more administrative and management resources to the establishment and maintenance of the appropriate levels of lease surety bond coverage.

Alternate Forms of Securities—The second alternative for which MMS requested comments and recommendations was that of providing alternate forms of security against a lessee's default in its obligations in lieu of providing a surety bond.

The final rule makes it clear that MMS will accept, in lieu of a surety bond, U.S. Treasury instruments with a negotiable value at the time of submittal equal to the amount of the surety bond that would be required for the particular activities and lease in question.

In addition, the final rule provides that application may be made to the authorized officer for approval of other substitute security instruments. Such approval may be given if the applicant can show that the interests of the Government would be sufficiently protected by the submission of another form of collateral or alternative financial instrument.

Comment: Respondents to MMS's request for comments on the submission of alternate forms of securities favored MMS's acceptance of cash deposits, financial statements, bank letters of credit, and "self suretyship." One respondent proposed the use of a company's "net worth" test in which a letter of credit or a surety bond would be posted with MMS only if a company's assets fell below the estimated amount that would be needed to fund lease abandonment and cleanup. Three respondents opposed the concept of substitute security instruments in lieu of the surety bond. They contended that the surety bonding procedures result in surety companies performing a financial screening function. Alternate security instruments may not provide a comparable screening process.

Response: The financial screening process performed by surety companies is recognized as an important service. Under existing regulations, when a substitute surety instrument is provided in the form of U.S. Treasury instruments, there is no financial screening by a third party. The MMS expects only a few lessees to propose alternate forms of security. In those instances, the burden is on the lessee to demonstrate its financial capabilities to MMS's satisfaction. Thus, in those instances, MMS conducts its own screening process.

The support for alternative forms of security was specifically for acceptance of liability insurance and bank letters of credit on the basis that these are more easily obtainable at a lower cost to the lessee or operator than bonds and would tie up less capital and free funds for use in conducting leasehold operations. The MMS recognizes that letters of credit and liability insurance would cost lessees less than surety bonds and has added a provision to the final rule to allow for alternative security instruments to be substituted for the required bond if certain criteria are met.

Unfortunately, these alternative security instruments usually fail to provide an irrevocable and noncancellable assurance by the guarantor that the required actions will be performed in the event a lessee defaults. Letters of credit and insurance policies are operative for specified periods of time and must be renewed periodically (often annually) by the issuing financial institution. If these barriers can be removed or overcome to the satisfaction of the authorized officers, these alternatives may be accepted.

Creation of a Trust Fund—An alternative means of providing funds to assume the responsibility for lease abandonment and clearance in cases of default by lessees or operators in the

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OCS could be provided by the enactment of legislation to create a Well Abandonment, Platform Removal, and Site Clearance Trust Fund to be subscribed to by all OCS oil and gas lessees.

Comment: Twenty-eight of the 32 respondents who specifically addressed this issue supported the idea. This concept was referred to also as an "Abandonment Trust" or a "Contingency Fund." Most supporters suggested that it be funded by surcharges on production or assessments against each lease. One respondent suggested that surcharges be assessed differently for properties in waters less than 300 feet than for properties in waters of more than 300 feet. Another suggested that a trust fund be created by a service charge on drilling and development activities. Three respondents recommended a system similar to the U.S. Coast Guard's (USCG) Offshore Oil Pollution Compensation Fund. One respondent opposed the establishment of a fund on the basis that it would not prevent losses because there is no prequalification of participants such as there is in the bonding process. Another response in opposition to the idea of a contingency fund objected to the establishment of a fund on the basis that responsible and financially capable lessees and operators would in effect be required to "underwrite lessees who default in their obligations."

Response: The MMS does not presently have the authority to establish a Well Abandonment, Platform Removal, and Site Clearance Trust Fund. The MMS will continue to look into the advisability of seeking legislation authorizing the use of a trust fund as a supplement to the increased levels of bond coverage provided by this rule.

Comment: One suggestion related to the trust fund concept was that the bond requirement be replaced with a proof of financial responsibility, such as the USCG accepted as evidence that offshore operators can meet the $35 million liability for oil-spill damage and cleanup established in connection with the Offshore Oil Spill Pollution Fund. The provisions in former title III of the OCS Lands Act Amendments of 1978, that require owners or operators of offshore facilities to establish and maintain evidence of financial responsibility in the amount of their liability under the law, could be satisfied by providing evidence of liability insurance in the required amount. The commenters suggested that MMS accept the same evidence in lieu of the bond requirement.

Response: Section 256.58(g) of this final rule authorizes the authorized officer to approve the submission of alternate types of securities or collateral in lieu of the required surety bond. The authorized officer may accept an alternate type of security when (1) the authorized officer determines that the interests of the Government are protected to the same extent that those interests would be protected by a surety bond and (2) the substitute security instrument is not limited in its term and is not revocable.

Summary of Need for Increased Bond Coverage

The MMS is particularly concerned about the demonstrated potential for the failure of lessees of older leasehold operations in shallow waters (0 to 200 feet) to protect the environment by expeditious and proper well abandonment, platform removal, and site clearance operations. These activities are very high cost operations and are obligations that must be carried out at a time when the lessee's interest in a property is low because of the drilling of a "dry hole" or because the property has been depleted of its resources.

Securing timely payment of royalty due the United States is also one of the functions of a lease bond. However, the risk of a lessee's default in making royalty payments is low during the early stages of production. Late payment charges and civil penalties, together with the fact that future revenues from a lease comprise assets which can be attached to cover unpaid royalty obligations plus interest, combine to protect against the nonpayment of royalty. Where there have been no drilling activities on a lease, the only risk is in the form of a relatively minor loss of income due from default in the making of rental payments.

Therefore, the MMS has focused its attention on the safety of operations and protection of the environment from the damage that could result from a lessee's failure to plug and abandon wells, remove platforms and facilities, and clear the seafloor.

Recent failures of lessees and operators to perform well abandonment or well repairs and restoration of production in a timely manner have forced MMS to more fully identify the magnitude of the existing unfunded financial liabilities of lessees and operators.

The current $50,000 lease surety bond or $300,000 areawide bond was established in August 1969. Clearly, this level of bond coverage no longer can provide assurance of safety in OCS operations and effective protection to the environment.

Given the potential environmental and safety hazards posed by a lessee's failure to promptly and properly abandon wells and remove structures at the end of their useful life, it is incumbent upon MMS to ensure that lessees assure performance through the submission of bonds in an amount which more nearly ensures that the necessary work will be performed by the responsible guarantor should an OCS lessee become financially unable to meet its obligations.

As previously noted, the level of bond coverage required in this final rule is based generally upon the range in estimated costs for OCS well abandonment, platform (structure) removal, and site clearance in relatively shallow water (0 to 200 feet).

The most comprehensive work regarding platform removal costs is found in the 1985 study by the Marine Board of the National Research Council entitled "Disposal of Offshore Platforms." This study was funded by the Department of the Interior (DOI). It derived cost estimates for platform removal by categorizing structures based on the complexity or type of structure, weight of the structure, and water depth.

The cost estimates contained in the Marine Board study cover only removal costs of individual platforms. They do not include the additional financial obligations of OCS lessees to plug and abandon wells and clear the leasehold of obstructions. Typically, it may cost over $100,000 to abandon a single OCS oil and gas well. The cost per well may be somewhat less where a number of wells are abandoned as one operation. Combined end-of-lease abandonment and clearance costs for a typical developed OCS lease in less than 200 feet of water range from $3.2 million for leases in 0 to 50 feet of water to $3.9 million for leases in 101 to 200 feet of water.

These are average costs, not minimum costs. Actual costs vary significantly between leases because of differences in the number of structures, number and depth of wells, water depth, and other factors unique to individual leases. These cost data illustrate the minimum level of financial responsibility which a lessee will need to carry out the end-of-lease oil and gas well abandonments, structure removal, and seafloor clearance required under OCS lease terms. These requirements include considerations of international law and national security requirements associated with surface or subsurface navigation.

The new levels of bond protection required for exploration, development, and production activities will provide a greater level of protection where that protection is most needed without adding an undue burden to OCS lessees and operators. The MMS will continue to explore alternate means to assure that lessees meet their obligations for well abandonment and cleanup costs when producing OCS oil and gas leases cease to produce, and the seafloor must be cleared of obstructions for other uses.

Author

This document was prepared by Mary B. McDonald, John V. Mirabella, and Gerald D. Rhodes, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12291

The DOI has determined that this rule does not meet any of the criteria for a major rule under E.O. 12291, and therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this document will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Paperwork Reduction Act

This final rule does not contain new information collection requirements which require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 501 et seq. The information collection requirements under 30 CFR part 256 are approved by OMB under project No. 1010–0006.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a takings implication assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI has certified to OMB that this final regulation meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 1, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, part 256 of title 30 of the Code of Federal Regulations is amended as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.

2. The heading of part 256 is revised as set forth above.

3. The heading for subpart A is revised to read as follows:

Subpart A—Outer Continental Shelf Oil, Gas, and Sulphur Management, General

4. Section 256.0 is revised to read as follows:

§ 256.0 Authority for information collection.

The collections of information contained in part 256 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB control number 1010–0006. The information will be used to determine if the applicant filing for a lease on the Outer Continental Shelf (OCS) is qualified to hold such a lease. Response is required to obtain a benefit in accordance with 43 U.S.C. 1331 et seq. Public reporting burden for this information is estimated to average 1.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service, Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget; Paperwork Reduction Project 1010–0006; Washington, DC 20503.

5. In § 256.58, the section heading is revised; paragraphs (a), (c), and (e) are revised; paragraph (f) is redesignated as paragraph (h); and new paragraphs (f) and (g) are added to read as follows:

§ 256.58 Acceptable bonds/alternate security instruments.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a surety bond in the amount of $50,000 conditioned on compliance with all the terms and conditions of the lease. A $50,000 lease surety bond need not be submitted and maintained if the bidder furnishes and maintains an areawide bond in the sum of $300,000 issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued in situated, furnishes and maintains an areawide bond under § 256.61 (a)(2) or (b)(2) of this part, or submits a substitute security instrument in accordance with paragraphs (f) and (g) of this section.

* * * * *

(c)(1) A lessee shall provide a separate areawide surety bond furnished and maintained pursuant to paragraph (a) of this section, or § 256.61 of this part, or a separate areawide alternate security instrument furnished pursuant to paragraphs (f) or (g) of this section, to secure the performance of lessee's obligation to comply with all the terms and conditions of leases in each of the areas identified in paragraph (b) of this section in which leases are held.

(2) An operator's bond in the same amount as the lease bond required under paragraph (a) of this section, or § 256.61 of this part, or alternate security instruments of the same amount as provided for in paragraphs (f) and (g) of this section, may be substituted at any time for the equivalent lessee's bond. The substitution of an operator's bond or alternate security instrument for a lessee's bond shall not relieve the lessee of its obligation to comply with the terms and conditions of the lease.

* * * * *

(e) If any bond has been reduced by any amount as the result of payment for default, the lessee must post a new bond in at least the amount of the original face value of the reduced bond within 6 months or such shorter period of time as the authorized officer may direct after a default. If the reduced bond is an individual lease bond, the lessee or

operator may replace it with an areawide bond as provided in paragraph (a) of this section or § 256.61 (a)(2) or (b)(2) of this part. Failure to post such a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of the lease(s) covered by the defaulted bond.

(f) U.S. Department of the Treasury (U.S. Treasury) securities (U.S. Bonds or Notes) may be submitted in lieu of a bond, provided the U.S. Treasury instrument or legal tender submitted is negotiable at the time of submission for an amount of cash equal to the value of the required bond.

(g) The authorized officer may approve the submission of alternate types of securities or collateral in lieu of the surety bonds required by this section if:

(1) The authorized officer determines that the interests of the Government are protected to the same extent that these interests would be protected by a surety bond, and

(2) The substitute security instrument is not limited in its term and is not revocable.

* * * * *

6. Section 256.59 is revised to read as follows:

§ 256.59 Bond form.

All bonds furnished by a bidder, lessee, or operator shall be on a form, or in a form, approved by the Director. Bonds required by this part and submitted after November 26, 1993 shall be issued by a qualified surety company certified by the U.S. Treasury as an acceptable surety on Federal bonds and listed in the current U.S. Treasury Circular No. 570 which is available from Surety Bond Branch, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

7. Section 256.61 is revised to read as follows:

§ 256.61 Additional bonds.

(a)(1) A surety bond in the amount of $200,000 issued by a qualified surety, and conditioned on compliance with all the terms and conditions of the lease, shall be furnished to the authorized officer with a proposed Exploration Plan (EP) or a proposed assignment of a lease with an approved EP submitted for approval on or after November 26, 1993. Approval of the EP or assignment shall be conditioned upon receipt of a lease surety bond in the amount of $200,000, unless the authorized officer, for good cause, authorizes the submission of the $200,000 lease exploration bond after the submission of the EP but prior to approval of drilling activities under the approved EP. This bond coverage may be provided by increasing the bond coverage provided pursuant to § 256.58(a) of this part.

(2) A $200,000 lease exploration bond pursuant to paragraph (a)(1) of this section need not be submitted and maintained if the lessee either:

(i) Furnishes and maintains an areawide bond in the sum of $1 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the lease on the OCS for the area in which the lessee is situated; or

(ii) Furnishes and maintains a bond pursuant to paragraph (b)(2) of this section.

(b)(1) A surety bond in the amount of $500,000 issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the authorized officer with a proposed Development and Production Plan (DPP), Development Operations Coordination Document (DOCD), or a proposed assignment of a lease with an approved DPP or DOCD submitted for approval on or after November 26, 1993. Approval of a DPP, DOCD, or assignment of a lease with an approved DPP or DOCD shall be conditioned on receipt of a lease surety bond in the amount of $500,000, unless the authorized officer, for good cause, authorizes the submission of the $500,000 lease development bond after the submission of the DPP or DOCD but prior to the approval of platform installation or drilling activities under the approved DPP or DOCD. The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage of $200,000 provided under paragraph (a) of this section.

(2) The lessee need not submit and maintain a $500,000 lease development bond pursuant to paragraph (b)(1) of this section if the lessee furnishes and maintains an areawide bond in the sum of $3 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the lessee on the OCS for the area in which the lease is situated.

(c) When a lessee can demonstrate to the satisfaction of the authorized officer that wells and platforms can be abandoned and removed and the drilling and platform sites cleared of obstructions for less than the amount of lease bond coverage required under paragraph (b)(1) of this section, the authorized officer may accept a lease surety bond in an amount less than the prescribed amount but not less than the amount of the cost for well abandonment, platform removal, and site clearance.

(d) The authorized officer may require additional security (i.e., security over and above the amounts prescribed in §§ 256.58(a) and 256.61 (a), (b), and (c) of this part) in the form of a supplemental bond or bonds or increased amount of coverage of an existing surety bond if the authorized officer deems such additional security necessary to cover royalty due the Government or costs and liabilities of the lessee for regulatory compliance, e.g., abandonment of wells, removal of platforms, and clearance of equipment and facilities from the lease once production ceases and the lease expires. The authorized officer shall base the decision on an evaluation of the ability of the lessee to carry out its present and future financial obligations, as demonstrated by factors such as:

(1) Financial capacity of the lessee substantially in excess of existing and anticipated lease and other obligations (including but not limited to well abandonment, platform removal, and royalty due to the Government) as evidenced by audited financial statements including auditor's certificate, balance sheet, and profit and loss sheet;

(2) Projected financial strength as evidenced by existing OCS production and proven reserves of future production valued significantly in excess of existing and future obligations;

(3) Business stability as evidenced by years of successful operation in the OCS or in the oil and gas industry;

(4) Reliability in meeting obligations as evidenced by credit ratings and trade references (for which purpose a lessee shall upon request furnish a list of the names and addresses of lessees, drilling contractors, and suppliers with whom it has dealt); and

(5) Record of compliance with laws, regulations, and lease terms.

8. In § 256.62, paragraph (e) is revised to read as follows:

§ 256.62 Assignment of leases or interests therein.

* * * * *

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the act including the requirement to furnish surety bonds as specified in OCS leases and §§ 256.58 and 256.61 of this part.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Bank Secrecy Act, authorizes the Secretary of the Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. The Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. The Secretary has imposed particular reporting and recordkeeping requirements on these casinos. This final rule delays the effective date of the final rule published on March 12, 1993, in the **Federal Register**, 58 FR 13538–13550.

EFFECTIVE DATE: The effective date of the final rule ("the Rule") published on March 12, 1993, in the **Federal Register**, 58 FR 13538–13550, dealing with nineteen amendments to the Bank Secrecy Act regulations affecting casinos, is delayed until March 1, 1994.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Assistant Director, Rules and Regulations Section, Office of Financial Enforcement, Department of the Treasury, (202) 622–0400.

SUPPLEMENTARY INFORMATION: On March 12, 1993, Treasury issued a final rule dealing with amendments to the Bank Secrecy Act regulations affecting casinos. The rule's effective date was September 8, 1993. The purpose of the amendments was to enhance compliance with Bank Secrecy Act requirements, (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5326), and to provide Bank Secrecy Act examiners with "audit trails" to determine the adequacy of compliance.

Treasury has received a request from the Casino Association of New Jersey requesting a delay in the implementation date of the final rule to give their casinos additional time to revise systems and procedures and train employees after the conclusion of the busy summer season. Treasury has decided to delay the implementation date until March 1, 1994, to give all casinos meeting the definition in 31 CFR 103.11(i)(7)(i), an additional six months to comply with the rule. In addition, the final rule will be considered in the course of an ongoing, comprehensive review of Treasury's anti-money laundering enforcement programs.

Dated: August 20, 1993.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–20796 Filed 8–26–93; 8:45 am]

BILLING CODE 4810–25–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-7D]

Cable Compulsory License; Definition of a Cable System

AGENCY: Copyright Office; Library of Congress.

ACTION: Final regulation; technical amendment.

SUMMARY: The Copyright Office is making a technical amendment to its rules in light of its recent decision to postpone the effective date of its regulation regarding the definition of a cable system under the cable compulsory license. Satellite carriers and MDS/MMDS operators, whose royalty payments under the cable license will no longer be accepted by the Copyright Office as of January 1, 1995, may file a written request no later than March 1, 1995 for a refund of past royalties submitted to the Office.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On January 29, 1992, the Copyright Office issued a final regulation in its proceeding regarding the definition of a cable system under the cable compulsory license, 17 U.S.C. 111. 57 FR 3284 (1992). The Office concluded that satellite carriers and MDS/MMDS operators were not eligible for compulsory licensing under section 111, and amended its rules to reflect that conclusion as well as permit satellite carriers and MDS/MMDS operators time in which to request a refund for royalties submitted under section 111 in previous accounting periods. 37 CFR 201.17(k). The Office initially set an effective date of January 1, 1994 for the new regulation.

On July 28, 1993, the Copyright Office issued a policy decision extending the effective date of the § 201.17(k) cable regulation by one year to January 1, 1995. 58 FR 40363 (1993). The Office now makes a technical amendment to the regulation to extend the time period within which to request a refund from March 1, 1994 to March 1, 1995.

Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act. [1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 201

Cable systems, Cable compulsory license.

Final Regulation

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702: 201.7 is also issued under 17 U.S.C. 408,409, and 410; 201.16 is also issued under 17 U.S.C. 116; 201 17 is also issued under 17 U.S.C. 111; 201.27 and 201.28 are also issued under Pub. L. 102-563, 106 Stat. 4237.

2. Section 201.17(k) is revised to read as follows:

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[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act of 1976 (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(k) *Satellite carriers and MMDS not eligible.* Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. At its election, any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of the royalties paid by submitting a written request no later than March 1, 1995, addressed to the Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

Dated: August 6, 1993.

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 93-20798 Filed 8-26-93; 8:45 am]

BILLING CODE 1410-09-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 171

[CGD 93-041]

RIN 2115-AG33

Domestic Passenger Vessel Damage Stability Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule; suspension of regulation with request for comments.

SUMMARY: The Coast Guard announces a 6-month suspension of 46 CFR 171.080(e) in the stability design and operational regulations published on September 11, 1992 at 57 FR 41812 for all vessels not requiring a SOLAS Passenger Ship Safety Certificate. These regulations (CGD 88-037) became effective on December 10, 1992. This section is being suspended for 6 months to allow completion of further research and other investigation based on new information presented during a public meeting held August 5, 1993 on the subject of passenger vessel damage stability standards and the application of Coast Guard regulations in 46 CFR 171.080(e) to domestic passenger vessels. The information presented during the August 5, 1993 public meeting indicated that some difficulties not originally envisioned were being experienced as vessel designs entered preliminary plan review.

DATES:

Effective Date: As of August 27, 1993, 46 CFR 171.080(e) in the final rule published at 57 FR 41812 is suspended until February 23, 1994 for all vessels not requiring a SOLAS Passenger Vessel Safety Certificate.

Comments: Comments must be received on or before November 26, 1993.

ADDRESSES: Comments should be submitted in writing to the Executive Secretary, Marine Safety Council (G-LRA-2/3604) (CGD 93-041), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. The comments and materials referenced in this notice will be available for examination and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the Office of the Executive Secretary, Marine Safety Council (G-LRA-2), room 3604, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division (G-MTH-3), room 1308, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone: (202) 267-2988, telefax: (202) 267-4816.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Stability Design and Operational Regulations in the **Federal Register** (55 FR 5120).

During the NPRM 60-day comment period, the Coast Guard received 28 letters commenting on the proposed rulemaking. Only two of the 28 letters received included comments on the new damage stability standards for passenger vessels.

On September 11, 1992, the Coast Guard published a final rule entitled Stability Design and Operational Regulations in the **Federal Register** (57 FR 41812) which adopted damage stability requirements for new passenger vessels from the proposed rule.

Reason for Suspension of Effective Date

Following implementation of the final rule, the Coast Guard received inquiries questioning the appropriateness of the damage stability standards for new passenger vessels in 46 CFR 171.080(e).

On July 7, 1993, the Coast Guard published a notice in the **Federal Register** to announce a public meeting on August 5, 1993 to discuss what problems were being encountered in complying with the standard and what actions might be appropriate.

At the public meeting, discussions on the application of this requirement to domestic vessels, especially vessels operating in protected and partially-protected waters were held. Comments indicated that unexpected difficulties were being experienced by some designers in complying with the new standard as these new vessel designs began to be reviewed under the new regulation. The Coast Guard believes the development of damage stability regulations is necessary and achievable with minimal design changes. However, questions regarding the specific criteria to be applied in various waters should be addressed before applying what may be, in some instances, an unduly restrictive standard. Therefore, based on the information received at this public meeting, the Coast Guard has decided to temporarily suspend the effectiveness of § 171.080(e) for all vessels not carrying a SOLAS Passenger Ship Certificate, to allow time for further comment from the public and completion of further research into the application of the standard to new domestic passenger vessel designs.

Drafting Information

The principal persons involved in the drafting of this notice are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Request for Data, Information, and Comments

This notice encourages the submission of specific information and comments. It is the Coast Guard's goal to propose regulations that will best address both the safety and operational needs of all vessels. All new large U.S. passenger vessels, as defined in 46 CFR 171.045, are required to meet the damage stability standard in 46 CFR 171.080(e). This criteria was based on a standard developed by the International Maritime Organization for application to any passenger vessel allowed to carry 12 or more passengers on an international voyage. The great expansion of river excursion and gambling vessels on protected and partially-protected waters, was not envisioned at the time this requirement was originally proposed for domestic vessels. As a result, further research and investigation

of the effect of this standard on these vessel types must be completed. Also, from information gathered through the public meeting and written comments, the Coast Guard received indications that other vessel designs intended for service on protected and partially-protected waters were also experiencing unexpected difficulties in complying with the new standard. Therefore, the Coast Guard again seeks input on aspects associated with compliance with § 171.080(e) from vessel owners, operators, naval architects, shipyards, Coast Guard and classification society inspectors, consumers, and others involved with the affected vessels. Interested persons are invited and encouraged to participate by submitting written views, data or arguments.

Persons submitting comments should include their names and addresses, identify this notice (CGD 93–041), identify the specific area of the section to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Receipt of comments will be acknowledged if a stamp self-addressed post card or envelop is enclosed with the comments.

Further Actions

The Coast Guard has already begun additional research on the application of this standard to domestic passenger vessels through the Volpe National Transportation Systems Center. Also all comments will be evaluated, including those made in the August 5, 1993 public hearing and those solicited in this notice, before further action is taken. Depending on the outcome of these actions, the Coast Guard may form an industry group of technical design experts to help in the revision of the delayed standard. The Coast Guard expects to publish either a supplemental notice of proposed rulemaking, if the proposed changes are major, or an interim final rule with a new effective date, if the changes are minor. This suspension has been made immediately effective so that current vessel designs will not continue to be based on a standard that has the potential to be changed in the near future.

Specific Issues

The Coast Guard requests comment on a number of specific issues. In the comments received to this point, and from the discussion at the August 5, 1993 public meeting, we have identified some areas of the criteria that seem to be causing the difficulties experienced by designers at this time. One problem area seems to be in the application of § 171.080 (e)(1) and (e)(2) to vessels in service on protected and partially protected waters, especially those which have a barge-type hull. Also, the treatment of downflooding points in § 171.080(e)(2) must be clarified. A second problem area cited is in the application of § 171.080 (e)(4)(i) and (e)(4)(ii) to vessels with an extremely high passenger density operating on exposed waters. Another area of possible difficulties has been in the application of these rules, as a whole, to a novel vessel or one that would be considered as of unusual proportion and form. Each of these areas is discussed in greater detail below so that concern parties can fully address these issues in their comments.

Issue 1. The delayed standard requires a range of positive righting arms of at least 15 degrees and a range to downflooding of 15 degrees. Please comment on the need, or lack of need, for each of these requirements, especially for vessels operating solely in protected or partially-protected waters. Where possible, please provide specifics of the recommended change to the standard that you believe will ensure a level of safety equivalency and state a basis for the change.

Issue 2. An area under the righting arm curve is specified by the standard. Please comment on the correctness of varying this requirement to compensate for vessels needing a reduction in their range of stability due to their extreme hull form. Please comment on what righting arm area standard you would consider appropriate for vessels of varying route or service.

Issue 3. A standard righting arm requirement is set for all passenger vessels when subjected to specific residual righting arms to allow for passenger disembarkation, wind pressure, and survival craft launching. Please comment on whether there should be a reduction of this standard or removal of one or more of these residual righting arms based on vessel route or service. Please include specifics of what you would consider an appropriate alternative level of safety proposal for these vessels.

Issue 4. Questions have been received on the appropriateness of this standard to all domestic vessels, including vessels on exposed waters routes. Please comment on whether a comprehensive damage stability standard should be required for domestic vessels on exposed waters routes. Please discuss the reasons why you believe the standard in 46 CFR 170.080(e) is, or is not, appropriate for domestic vessels on exposed water routes. Specify those parts of the criteria that you consider inappropriate for these exposed route vessels and what you consider an appropriate change.

Requirement for Damage Survival on New Passenger Vessels

Paragraph (e) of 46 CFR 170.80, containing the provisions being suspended by this rulemaking, is reproduced below for reference:

(e) *Damage survival for vessels constructed on or after December 10, 1992.* A vessel is presumed to survive assumed damage if it is shown by calculations to meet the conditions set forth in paragraphs (e)(1) through (e)(6) of this section in the final stage of flooding and the conditions set forth in paragraphs (e)(7) and (e)(8) of this section in each earlier stage of flooding as specified:

(1) Each vessel must have positive righting arms for at least 15 degrees beyond the final angle of equilibrium.

(2) Each vessel must not have any opening through which progressive flooding can occur within 15 degrees of the angle of equilibrium unless the vessel can meet all survival criteria prescribed in this section after progressive flooding. Openings fitted with effective weathertight closures must be considered as progressive flooding locations if the openings lead to spaces accessible to passengers or the crew.

(3) Each vessel must have an area under each righting arm curve of at least 2.82 foot-degrees (0.015 meter-radians), measured from the angle of equilibrium to the smaller of the following angles:

(i) The angle at which progressive flooding occurs; or

(ii) 22 degrees from the upright in the case of one compartment flooding or 27 degrees from the upright in the case of two compartment flooding.

(4) Each vessel must have a maximum righting arm within 15 degrees of the angle of equilibrium of at least 0.13 feet (0.04 meters) greater than each of the following heeling arms, but in no case less than 0.33 feet (0.10 meters):

(i) Passenger heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas towards one side of the vessel on the decks where muster stations are located and in such a way that they produce the most adverse heeling moment.

(ii) Asymmetric passenger escape routes heeling moment divided by vessel displacement if the vessel has

asymmetric passenger escape routes where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas in a manner that accounts for the use of any asymmetric passenger escape routes to get to the decks where muster or embarkation stations are located and in such a way that they produce the most adverse heeling moment.

(iii) Launching of survival craft heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) All survival craft, including davit-launched liferafts and rescue boats, fitted on the side to which the vessel heels after sustained damage are swung out if necessary, fully loaded and ready for lowering;

(B) Persons not in the survival craft that are swung out and ready for lowering are centered about the center line so that they do not provide additional heeling or righting moments; and

(C) Survival craft on the side of the vessel opposite to which the vessel heels remain stowed.

(iv) Wind pressure heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) A wind pressure of 2.51 pounds per square foot (120 Newtons per square meter);

(B) The wind acts on an area equal to the projected lateral area of the vessel above the waterline corresponding to the intact condition; and

(C) The wind lever arm is the vertical distance from a point at one-half the mean draft, or the center of area below the waterline, to the center of the lateral area.

(5) Each vessel must have an angle of equilibrium that does not exceed the following:

(i) 7 degrees for one compartment flooding; or

(ii) 12 degrees for two compartment flooding.

(6) The margin line of the vessel must not be submerged in the equilibrium condition.

(7) Each vessel must have a maximum angle of equilibrium that does not exceed 15 degrees during each earlier stage of flooding.

(8) Each vessel must have a maximum righting arm of at least 0.16 feet (0.05 meters) and positive righting arms for a range of at least 7 degrees during each earlier stage of flooding. Only one breach in the hull and only one free surface need be assumed when meeting the requirements of this paragraph.

Dated: August 20, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-20886 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 91-213, FCC 93-403]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In order to ensure revenue neutrality in the initial tariff filing implementing the transport rate restructure, the Commission determined that the local exchange carriers (LECs) should compute the interconnection charge using historic demand for all demand components of the formula.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202-632-1304.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Memorandum Opinion and Order on Reconsideration in CC Docket No. 91-213, adopted on August 17, 1993 and released on August 18, 1993. This item reconsiders and clarifies matters addressed in Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (Transport Order), 57 FR 54717 (Nov. 20, 1992), recon., First Memorandum Opinion and Order on Reconsideration, FCC 93-366 (released July 21, 1993), 58 FR 41184 (Aug. 3, 1993) (First Reconsideration Order).

The complete text of this Second Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., room 230, Washington, DC 20554.

Synopsis of Second Memorandum Opinion and Order on Reconsideration

1. In the Transport Order, we adopted an interim transport rate structure consisting of rate elements for entrance facilities, direct-trunked transport, tandem-switched transport, and the interconnection charge. We concluded that the interconnection charge should initially be priced on a residual basis so that the transport rate restructure would be revenue neutral for the LECs. In the First Reconsideration Order, we reaffirmed that the interconnection charge was to be revenue neutral. However, because of LEC incentives to project reconfigurations in a manner that would maximize the interconnection charge, and because of the difficulty of evaluating those projections, we concluded that the LECs should be required to use historical facility demand in computing the initial interconnection charge. We permitted LECs to seek mid-course adjustments to the interconnection charge, based in part on reports of actual demand results. In addition, we required the LECs to divide the interconnection charge revenue requirement by the projected number of switched minutes in computing the initial interconnection charge.

2. As noted above, the earlier transport decisions concluded that the transport restructure should be revenue neutral, *i.e.*, during the initial year after the transport rate restructure is implemented, the LECs should have the opportunity to receive the same revenues under the new rate structure they would have received under the equal charge rule. A further review of the methodology adopted in the Reconsideration Order reveals that it would not, in fact, achieve the intended revenue neutrality. To correct a technical defect in the methodology adopted in the Reconsideration Order, we are modifying the requirement that LECs use projected demand in calculating the interconnection charge. In a typical restructure under the price cap rules, historical demand and revenue data would be used to determine compliance with price cap constraints. While the transport restructure adopted in this proceeding is not a typical restructure in many respects, we conclude upon further review that the use of historic revenue and demand data will produce the revenue neutrality for the LECs that we intended for this restructure. Accordingly, we will require the LECs to use historic demand for all demand components of the formula.

3. The use of historical demand will also eliminate the need for a true-up for forecasting errors in estimating the number of minutes used in calculating the rate for the interconnection charge since an estimate of minutes will no longer be used. Thus, the true-up

procedures will only apply to those divergences from historical demand used in initializing demand for facility charges, as discussed in the Reconsideration Order.

4. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 4 (i) and (j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201–205, 218, 220, and 403, and pursuant to section 1.108 of the Commission's rules, 47 CFR 1.108, the Commission reconsiders its decision in Transport Rate Structure and Pricing, First Memorandum Opinion and Order on Reconsideration, CC Docket No. 91–213, FCC 93–366 (released July 21, 1993), on its own motion to the extent specified herein.

5. *It is further ordered* that part 69 of the Commission's rules is amended as set forth below.

6. *It is further ordered* that the decisions and rules adopted herein shall be effective on September 1, 1993.[1]

List of Subjects in 47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 69 of title 47, Code of Federal Regulations, is amended as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.108 is amended by revising paragraph (c) to read as follows:

§ 69.108 Transport rate benchmark.

* * * * *

(c) If a telephone company's initial transport rates are based on special access rates with a DS3–to–DS1 benchmark ratio of less than 9.6 to 1, those initial transport rates will generally be suspended and investigated absent a substantial cause showing by the telephone company. Alternatively, the telephone company may adjust its initial transport rates so that the DS3–to–DS1 ratio calculated as described in paragraph (a) of this section of those rates is 9.6 or higher. In that case, initial transport rates that depart from existing special access rates effective on September 1, 1992 so as to be consistent with the benchmark will be presumed reasonable only so long as the ratio of revenue recovered through the interconnection charge to the revenue recovered through facilities-based charges is the same as it would be if the telephone company's existing special access rates effective on September 1, 1992 were used.

3. Section 69.124 is amended by revising paragraph (b)(1) to read as follows:

§ 69.124 Interconnection charge.

* * * * *

(b)(1) For telephone companies not subject to price cap regulation, the interconnection charge shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues from the part 69 transport revenue requirement, and dividing by the total interstate local switching minutes.

* * * * *

[FR Doc. 93–20784 Filed 8–26–93; 8:45 am]

BILLING CODE 6712–01–M

[1] Because the tariffing rules governing the tariffs to be filed on September 1, 1993 will become effective on that date, good cause exists to make these related modifications effective on the same date.

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47 CFR Part 73

[MM Docket No. 93–146; RM–8231]

Radio Broadcasting Services; Potts Camp, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Potts Camp, Mississippi, as that community's first local broadcast service in response to a petition filed by Potts Camp Broadcasting. See 58 FR 31688, June 4, 1993. The coordinates for Channel 240A are 34–35–39 and 89–19–33. There is a site restriction 6.1 kilometers (3.8 miles) south of the community. With this action, this proceeding is terminated.

DATES: Effective October 7, 1993. The window period for filing applications for Channel 240A at Potts Camp, Mississippi, will open on October 8, 1993, and close on November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–146, adopted August 4, 1993, and released August 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Potts Camp, Channel 240A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–20782 Filed 8–26–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–118; RM–8219]

Radio Broadcasting Services; Trenton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C2 for Channel 269A at Trenton, Florida, and modifies the license for Station WCWB(FM) to specify operation on Channel 269C2, at the request of Robert D. Fogel, personal representative of the Estate of William H. Burckhalter. See 58 FR 26947, May 6, 1993. Channel 269C2 can be allotted to Trenton in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 27.4 kilometers (17 miles) southwest at petitioner's desired transmitter site. The coordinates for Channel 269C2 at Trenton are North Latitude 29–35–00 and West Longitude 83–05–50. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 93–116, adopted August 4, 1993, and released August 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 269A and adding Channel 269C2 at Trenton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–20783 Filed 8–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–101; RM–8201]

Radio Broadcasting Services; Pelham, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 222A to Pelham, Georgia, as that community's first local aural transmission service, at the request of Mitchell County Television. See 58 FR 26089, April 30, 1993. Channel 222A can be allotted to Pelham in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.8 miles) south, in order to avoid a short-spacing to Station WAZE (FM), Channel 221A, Dawson, Georgia, and Station WDDQ (FM), Channel 221A, Adel, Georgia. The coordinates for Channel 222A at Pelham are North Latitude 31–06–07 and West Longitude 84–08–44. With this action, this proceeding is terminated.

DATES: Effective October 7, 1993. The window period for filing applications for Channel 222A at Pelham, Georgia, will open on October 8, 1993, and close on November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–101, adopted August 3, 1993, and released August 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Pelham, Channel 222A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–20781 Filed 8–26–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS–131; Amdts. 192–69, 193–8, and 195–48]

RIN 2137 AC13

Update of Standards Incorporated by Reference; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction of final rule document.

SUMMARY: This document corrects a final rule published on Thursday, March 18, 1993 (FR Doc. 93–6257). The final rule updated references to documents incorporated in 49 CFR parts 192, 193, and 195.

EFFECTIVE DATE: April 19, 1993.

FOR FURTHER INFORMATION CONTACT: Christina M. Sames, (202) 366–4561.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1993, RSPA published a final rule document titled, "Update of Standards Incorporated by Reference" (51 FR 14519). This final rule updated the editions of documents incorporated by reference in 49 CFR parts 192, 193, and 195 to more recent published editions. The final rule also deleted from the lists of documents incorporated by reference those documents that were no longer referenced.

The heading of the final rule document had an incomplete agency number. The following amendment designations were omitted from the agency number: Amdts. 192–68, 193–8, and 195–48.

The final rule clarified § 192.153(b) by adding "section VIII, Division 1, or section VIII, Division 2 of" prior to "the ASME Boiler and Pressure Vessel Code." This clarification should have read "section I, section VIII–Division 1, or section VIII–Division 2 of". The ASME Boiler and Pressure Vessel Code, section I should have also been added to the list of ASME document in appendix A to part 192.

Finally, the document, National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code," which is incorporated by reference in 49 CFR 192.735, was inadvertently removed from the list of NFPA documents in appendix A to part 192. The referenced edition of this document should have been updated to the 1990 edition.

Correction of Publication

Accordingly, the final rule document published on March 18, 1993 (FR Doc. 93–6257) is corrected as follows:

1. On page 14519, in the first column, in the document heading, the agency number "[Docket No. PS–131]" is corrected to read "[Docket No. PS–131; Amdts. 192–68, 193–8, and 195–48]".

§ 192.153 [Corrected]

2. On page 14521, in the second column, § 192.153(b), line 4, insert "section I," after "accordance with".

Appendix A—[Corrected]

3. On page 14522, in the first column, appendix A to part 192, section II, paragraph C. is corrected by redesignating subparagraphs 3., 4., and 5. as 4., 5., and 6., respectively; and by adding subparagraph 3. as follows:

3. ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1992 with Interpretations, Volume 30, dated July 1992).

4. On page 14522, in the first column, appendix A to part 192, section II, paragraph E. is corrected by redesignating subparagraphs 1., 2., and 3. as 2., 3., and 4. respectively; and by adding subparagraph 1. as follows:

1. ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1990).

Issued in Washington, DC, on August 20, 1993.

Rose A. McMurray,

Acting Administrator for the Research and Special Programs Administration.

[FR Doc. 93–20649 Filed 8–26–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930236–3210; I.D. 011293A]

Designated Critical Habitat; Steller Sea Lion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: Pursuant to the Endangered Species Act (ESA), NMFS is designating critical habitat for the Steller (northern) sea lion (*Eumetopias jubatus*) in certain areas and waters of Alaska, Oregon and California. The direct economic and other impacts resulting from this critical habitat designation, over and above those arising from the listing of the species under the ESA, are expected to be minimal.

The primary benefit of this designation of critical habitat is that it provides notice to Federal agencies that a listed species is dependent on these areas and features for its continued existence and that any Federal action that may affect these areas or features is subject to the consultation requirements of section 7 of the ESA.

EFFECTIVE DATE: September 27, 1993.

ADDRESSES: Requests for copies of this rule or the Environmental Assessment should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802, (907) 586–7235, or Mr. Michael Payne, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Counts of Steller sea lions on rookeries and major haulouts during the breeding season have indicated that extensive declines have occurred within the Alaskan and the Russian portions of their range over the last 30 years. A 1989 range-wide survey of Steller sea lions indicated that about 70 percent of the Steller sea lion population during the summer resides in Alaska (Loughlin, Perlov and Vladimirov 1992). A series of counts in the Gulf of Alaska (GOA) and the Bering Sea/Aleutian Islands (BSAI) between the mid-1970s and 1991 indicated a 70 percent decline in the Alaskan portion of the population over this time period (Merrick, Calkins, and McAllister 1992). Counts in Southeast Alaska, British Columbia, and Oregon have remained stable over the same period; Steller sea lion numbers in California have declined. The causes of the Steller sea lion population decline are unknown. Potential causative factors include disease, incidental takes in fishing gear, direct mortality (shooting), and natural or human induced changes (through fishing) in the abundance and species composition of the sea lion prey (Merrick, Loughlin and Calkins 1987, Loughlin and Merrick 1989).

Because of the drastic population decline, NMFS issued an emergency interim rule on April 5, 1990, (55 FR 12645), which listed the Steller sea lion as a threatened species throughout its range and imposed protective measures. The final rule listing the Steller sea lion as threatened (55 FR 49204, Nov. 26, 1990) became effective on December 4, 1990, and imposed protective measures very similar to those established by the emergency interim rule (50 CFR 227.12). These protective measures were intended to reduce sea lion mortality, to restrict opportunities for unintentional harassment of sea lions, and to minimize disturbance and interference with sea lion behavior, especially at pupping and breeding sites.

On April 1, 1993 (58 FR 17181), NMFS published a proposed rule to designate critical habitat for the Steller sea lion. NMFS also completed an environmental assessment (EA) pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designation. The preamble to the proposed rule outlines previous federal actions, including the recovery plan, and describes the procedures and criteria used to designate critical habitat.

After consideration of public comments, NMFS is designating critical habitat for the Steller sea lion as described in the proposed rule.

Essential Habitat of the Steller Sea Lion

Available biological information for the listed Steller sea lion can be found in the final recovery plan (NMFS 1992). The physical and biological habitat features that support reproduction, foraging, rest, and refuge are essential to the conservation of the Steller sea lion. For the Steller sea lion, essential habitat includes terrestrial, air and aquatic areas.

Terrestrial Habitat

Because of their traditional use and the relative ease of observation, terrestrial habitats are better known than aquatic habitats. Steller sea lion rookeries and haulouts are widespread throughout their geographic range (figure 1) and the locations used change little from year to year. Factors that influence the suitability of a particular area include substrate, exposure to wind and waves, the extent and type of human activities and disturbance in the region, and proximity to prey resources (Mate 1973).

The best known Steller sea lion habitats are the rookeries (Table 1), where adult animals congregate during the reproductive season for breeding and pupping. Rookeries are defined as those sites where males defend a territory and where pupping and mating occurs on a consistent annual basis. Rookeries typically occur on relatively remote islands, rocks, reefs, and beaches, where access by terrestrial predators is limited. A rookery may extend across low-lying reefs and islands, or may be restricted to a relatively narrow strip of beach by steep cliffs. Rookeries are occupied by breeding animals and some subadults throughout the breeding season, which extends from late May to early July throughout the range. Female sea lions frequently return to pup and breed at the same rookery in successive years (Gentry 1970), and this site may be the same rookery, or approximate rookery (same island) as the female's natal site (Calkins and Pitcher 1982).

Steller sea lion rookeries are found from the central Kuril Islands around the Pacific Rim of the Aleutian Islands to Prince William Sound (Seal Rocks, at the entrance to Prince William Sound, Alaska, is the northernmost rookery) and south along the coast of North

America to Ano Nuevo Island, California, the southernmost rookery (figure 1). Loughlin, Rugh and Fiscus (1984) identified 51 Steller sea lion rookeries; since that time two additional rookeries have been identified in southeastern Alaska (Hazy Islands and White Sisters), bringing the total to 53 (43 of which are within U.S. borders). Historically, the largest rookeries occurred in the central and eastern Aleutian Islands, and the western and central GOA (Kenyon and Rice 1961; Loughlin, Rugh and Fiscus 1984; Loughlin, Perez and Merrick 1987). Because of drastic declines in pup production at the GOA and Aleutian Islands rookeries, the Forrester Island rookery in southeastern Alaska has been the largest annual producer of pups in recent years.

Haulouts (Table 2) are areas used for rest and refuge by all ages and both sexes of sea lions during the non-breeding season and by non-breeding adults and subadults during the breeding season. Sites used as rookeries in the breeding season may also be used as haulouts during other times of the year. Many rocks, reefs, and beaches are used as haulout sites; Steller sea lions are also occasionally observed hauled out on sea ice and manmade structures, such as breakwaters, navigational aids, and floating docks.

A total of 105 major haulouts have been identified in Alaska. Major haulouts were defined by the Recovery Team as sites where more than 200 animals have been counted at least once since 1970. There are many more haulout sites throughout the range that are used by fewer animals or may be used irregularly.

Aquatic Habitat

Although they are most commonly seen and studied while on land, Steller sea lions spend most of their time at sea. The principal, essential at-sea activity presumably is feeding.

Nearshore Waters Around Rookeries and Haulouts

For regulatory purposes, the waterward boundary of rookeries and haulouts has been defined as the mean lower-water mark. However, biologically, the boundaries are not easily delineated. Nearshore waters surrounding rookeries and haulouts are an integral component of these habitats. Animals must regularly transit this region as they go to, and return from, feeding trips. As pups mature, they spend an increasing amount of time in waters adjacent to rookeries, where they develop their swimming ability and other aquatic behaviors. Waters surrounding rookeries and haulouts also provide a refuge to which animals may retreat when they are displaced from land by disturbance.

Rafting Sites

In addition to rookeries and haulouts, sea lions also use traditional rafting sites. These are locations where the animals rest on the ocean surface in a tightly-packed group (Bigg 1985). Although the reasons for rafting are not fully understood, the widespread use and traditional nature of these sites indicate that they are an essential part of Steller sea lion habitat.

Food Resources

Adequate food resources are an essential component of the Steller sea lion's aquatic habitat. Steller sea lions are opportunistic carnivores that prey predominantly upon demersal and off-bottom schooling fishes. Invertebrates, e.g., squid and octopus, also appear to be regular components of their diet (Pitcher 1981). Prey consumption is expected to vary geographically, seasonally, and over years in response to fluctuations in prey abundance and availability (Pitcher 1981; Hoover 1988).

Data on Steller sea lion prey consumption are fairly limited. Results of limited diet studies conducted in Alaska since 1975 indicate that walleye pollock (*Theragra chalcogramma*) has been the principal prey in most areas over this time period, with Atka mackerel (*Pleurogrammus monopterygius*), Pacific cod (*Gadus macrocephalus*), octopus (*Octopus* sp.), squid (*Gonatidae*), Pacific herring (*Clupea harengus*), Pacific salmon (*Onchorhynchus* spp.), capelin (*Mallotus villosus*), and flatfishes (*Pleuronectidae*) also consumed (Pitcher 1981; Calkins and Pitcher 1982; Calkins and Goodwin 1988; Lowry et al. 1989). In recent years Atka mackerel appears to be the principal prey consumed in the Aleutian Islands (Merrick 1993 unpublished data). Few data are available on Steller sea lion prey preferences in Alaska prior to 1975; however, those data available indicate that pollock may have been a less important component of the diet in previous years (Fiscus and Baines 1966; Pitcher 1981). Limited food habitat data from California and Oregon show a predominance of rockfish (*Scorpaenidae*) and hake (*Merluccius productus*) in the diet, with flatfish, squid, octopus, and lamprey (*Lampetra tridentatus*) also eaten.

Foraging Habitats

Specific foraging areas, and their constancy over time, have not been well defined. NMFS' ongoing studies in the central GOA and Aleutian Islands using satellite telemetry are providing more detailed information on feeding areas and diving patterns in Alaskan waters. The following summarizes the findings to date: NMFS has deployed 52 satellite-linked time depth recorders on Steller sea lions since 1989. The results of this tagging indicate that waters in the vicinity of rookeries and haulouts are important foraging habitats, particularly for post-parturient females and young animals. These investigations strongly suggest that sea lion foraging strategies and ranges change seasonally, and according to the age and reproductive status of the animal.

Summertime foraging by postpartum females, whose foraging range is probably restricted by the need to return to the rookery to nurse pups, appears to occur mainly in relatively shallow waters within 20 nm of the rookeries. Data from tagged animals without pups and females with pups during the winter indicate that adult sea lions have the ability to forage at locations far removed from their rookeries and haul-out sites, and at great depths. Sea lion pups by their sixth month are also capable of traveling extended distances from land. However, dive depth appears to be more limited, and may restrict foraging success. Few observed dives by juvenile sea lions (younger than 11 months) have exceeded 20 meters (m), whereas adults have been observed diving to depths greater than 250 m.

Need for Special Management Considerations or Protection

The following discussion outlines specific essential habitats that may require special management considerations or protection. In particular, rookeries, haulouts, and prey availability in certain areas may require special management considerations. Under separate rulemakings, NMFS has already determined that certain Steller sea lion habitats require special management protection, and has limited human activities in these areas. These management actions and the essential habitats they protect are also described below.

Terrestrial Habitats

The use of traditional sites by Steller sea lions, and the link of territorial males, postpartum females, and pups to rookery sites during the breeding season make them particularly vulnerable to harassment. Observed responses to human disturbance vary from no reaction at all to mass stampedes into the water. In some cases, haulout sites have been completely abandoned after

repeated disturbances, whereas in other cases sea lions have continued to use sites even after extreme harassment (Hoover 1988). The remote locations of most rookeries and haulouts help to reduce the frequency of harassment, but disturbance of sea lions by air and water craft continues to occur. Steller sea lions are vulnerable to harassment and disruption of essential life functions (e.g., breeding, pup care, and rest) at rookeries and haulouts throughout their range.

Aquatic Habitats

Nearshore Waters Around Rookeries and Haulouts

Nearshore waters associated with terrestrial habitats are subject to the same types of disturbance as rookeries and haulouts. NMFS has prohibited vessel entry within 3 nm of all Steller sea lion rookeries west of 150° W. longitude, the area where the greatest population decline has occurred, primarily to protect sea lions using these habitats from intentional and unintentional harassment. The Recovery Team recommended that waters extending 3,000 feet (0.9 km) from rookeries and major haulouts throughout the range of Steller sea lions be considered essential habitat that merits special management consideration.

Rafting Sites

Available information is not sufficient to identify any specific rafting sites that are in need of special management consideration. Therefore, rafting sites are not included in this critical habitat designation.

Prey Resources and Foraging Habitats

Reduction in food availability, quantity, and/or quality is considered to be a possible factor in the Steller sea lion population decline (Calkins and Goodwin 1988; Merrick, Loughlin and Calkins 1987; Loughlin and Merrick 1989; Lowry, Frost and Loughlin 1989). Most of the data on proximate causes of the Alaska sea lion decline point to reduced juvenile survival as a significant causative agent. There are also indications that decreased juvenile survival is due to a lack of food post-weaning and during the winter/spring of the first year. Calkins and Goodwin (1988) found that Steller sea lions collected in the GOA in 1985–1986 were significantly smaller (girth, weight, and standard length) than same-aged animals collected in the GOA in the 1970s. Reduced body size at age was interpreted as an indicator of nutritional stress.

Conservation and management of prey resources and foraging areas appears essential to the recovery of the Steller sea lion population. The quality and quantity of these resources may be degraded by human activities, e.g., pollutant discharges, habitat losses associated with human development, and commercial fisheries. Available data indicate that contamination of sea lion food resources by anthropogenic pollutants has not been a significant factor in the Steller sea lion decline. Changes in prey base due to physical habitat alteration also appear insignificant. Local degradation of sea lion food resources may occur near human population centers, along shipping lanes, and near drill sites. Presently, there is insufficient information to identify any specific geographic areas where additional management measures to protect sea lion food resources from contaminant inputs and habitat loss, beyond the existing state and Federal regulations, are necessary.

The relationship between commercial fisheries and the ability of Steller sea lions to obtain adequate food is unclear. The BSAI/GOA geographic region where Steller sea lions have experienced the greatest population decline is also an area where large commercial fisheries have developed. Many of the Steller sea lion's preferred prey species are harvested by commercial fisheries in this region, and food availability to Steller sea lions may be affected by fishing. At present, NMFS believes that the exploitation rates in federally managed fisheries are unlikely to diminish the overall abundance of fish stocks important to Steller sea lions. However, spatial and temporal regulation of fishery removals in some areas has been determined to be necessary to ensure that local depletion of prey stocks does not occur.

No definitive description of Steller sea lion foraging habitat is possible. However, available data from satellite telemetry studies indicate that nearshore waters proximal to rookeries and haulouts are important foraging zones for females with pups during the breeding season and yearlings in the non-breeding season. Because of concerns that commercial fisheries in these essential sea lion habitats could deplete prey abundance, NMFS amended the BSAI and GOA groundfish fishery management plans. Under the Magnuson Act, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries during the BSAI winter pollock roe fishery to mitigate concentrated fishing effort on the southeastern Bering Sea shelf and in Seguam Pass; and (3) placed spatial and temporal restrictions on the GOA pollock harvest to divert some fishing effort away from sea lion foraging areas and to spread effort over the calendar year. NMFS has seasonally expanded the 10 nm no-trawl zone around Ugamak Island in the eastern Aleutians to 20 nm (58 FR 13561, Mar. 12, 1993). The expanded seasonal "buffer" at Ugamak Island better encompasses Steller sea lion winter habitats and juvenile foraging areas in the eastern Aleutian Islands region during the BSAI winter pollock fishery.

Three large aquatic foraging areas have been identified through foraging studies, historical observations of Steller sea lions, and current observations of the distribution of their prey. Seguam Pass, in the Aleutian Islands, is a major area of concentration of Atka mackerel. Prior to the implementation of trawl prohibition areas around rookeries near Seguam Pass, a large portion of the Atka mackerel harvest occurred there. The Bogoslof area, including the Unimak Pass and eastern Bering Sea shelf, is known to support dense aggregations of spawning walleye pollock. Shelikof Strait, in some years, also supports large spawning concentrations of walleye pollock. Survival of pollock larvae and juveniles in the Gulf of Alaska is thought by some to be dependent upon the southwestward transport of larvae from spawning grounds in Shelikof Strait to suitable nursery grounds along the Alaska Peninsula (Lloyd and Davis 1989). These areas also contain, or are adjacent to, Steller sea lion rookeries and haulouts.

Through past regulatory actions, NMFS determined that aquatic habitats and prey resources in the vicinity of GOA and BSAI sea lion rookeries, in Seguam Pass, and on the southeastern Bering Sea shelf are essential to Steller sea lions, and are in need of special management considerations and/or protection. These aquatic habitats are identified as critical habitat.

NMFS is also designating other foraging habitats, e.g., within 20 nm of major haulouts and Shelikof Strait, that may be in need of management although no specific restrictions are being considered at this time. Monitoring of fishery harvests and Steller sea lion research in these habitats will continue.

Essential Steller sea lion prey resources and foraging habitats also occur outside of the GOA and BSAI. However, declines in Steller sea lions generally are less severe in the areas to the east of 144° W. longitude and

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information concerning specific foraging areas and special management needs does not exist at this time.

Activities That May Affect Essential Habitat

A wide range of activities by several private, state, and Federal agencies may affect the essential habitats of Steller sea lions. Specific human activities that occur within or in the vicinity of the essential sea lion habitat defined above, and that may disrupt the essential life functions that occur there, include, but are not limited to: (1) Wildlife viewing (primarily south-central and southeastern Alaska and California); (2) boat and airplane traffic (throughout the range of the Steller sea lion); (3) research activities (on permitted sites and during specified times throughout the year); (4) commercial, recreational, and subsistence fisheries for groundfish, herring, salmon, and invertebrates, e.g., crab, shrimp, sea urchins/cucumbers (throughout the range of the Steller sea lion); (5) timber harvest (primarily southeastern and south-central Alaska); (6) hard mineral extraction (primarily southeastern Alaska); (7) oil and gas exploration (primarily Bering Sea and GOA); (8) coastal development, including pollutant discharges (specific sites throughout range); and (9) subsistence harvest (Alaska).

Federal agencies whose actions may affect essential sea lion habitats and will most likely be affected by this critical habitat designation include, but are not necessarily limited to: (1) The U.S. Department of Interior, Bureau of Land Management, Minerals Management Service (MMS), National Park Service, and U.S. Fish and Wildlife Service; (2) the U.S. Department of Agriculture, Forest Service; (3) the U.S. Environmental Protection Agency (EPA); (4) the U.S. Department of Transportation, Coast Guard; (5) the U.S. Department of Defense, including the Navy and Air Force; and (6) primarily, the U.S. Department of Commerce, NMFS. Other users will not be affected by critical habitat designation unless their activities are authorized or carried out by Federal agencies.

Expected Impacts of Designating Critical Habitat

There are no inherent restrictions on human activities in an area designated as critical habitat. A critical habitat designation directly affects only those actions authorized, funded, or carried out by Federal agencies. Under section 7 of the ESA, Federal agencies in consultation with NMFS, are required to ensure that their actions are not likely to result in the destruction or adverse modification of Steller sea lion critical habitat. It should be noted that activities conducted outside of designated critical habitat that may affect critical habitat and could be subject to the consultation requirement. Such effects should be anticipated if the activity may impact an essential feature identified in the critical habitat designation.

In many cases, the primary benefit of the designation of critical habitat is that it provides specific notification to Federal agencies that a listed species is dependent on a particular area or feature for its continued existence and that any Federal action that may affect that area or feature is subject to the consultation requirements of section 7 of the ESA. This designation would require Federal agencies to evaluate their activities with respect to Steller sea lion critical habitat and to consult with NMFS prior to engaging in any action that may affect the critical habitat. This designation may assist Federal agencies in evaluating the potential environmental impacts of their activities on Steller sea lions and their critical habitat, and in determining when consultation with NMFS would be appropriate.

Regardless of this critical habitat designation, Federal agencies active within the range of the Steller sea lion are required to consult with NMFS regarding projects and activities that may affect the species pursuant to the jeopardy clause of section 7 of the ESA. Under that provision, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of the species.

It is difficult to separate the concept of jeopardy from the destruction or adverse modification of critical habitat. Activities that result in the destruction or adverse modification of critical habitat are also very likely to jeopardize the continued existence of the species, given the definitions specified in 50 CFR 402.02, regardless of any official critical habitat designation or the absence of such a designation. NMFS has already reinitiated ESA section 7 consultation on Federal actions that occur within the range of the Steller sea lion, including those that occur within the critical habitat areas. Federal activities for which ESA section 7 consultations have been reinitiated/conducted include: (1) Federally managed fisheries; (2) MMS Outer Continental Shelf (OCS) lease sales (areas being considered by MMS for oil and gas lease sales during the 1992–1997 period include portions of critical habitat in Shelikof Strait and the Bogoslof Island area); (3) U.S. Forest Service timber harvest and mineral extraction proposals; (4) EPA waste discharge permits; (5) U.S. Army Corps of Engineers section 10/404 permits; and (6) U.S. military activities.

ESA section 7 consultations on the Federally managed groundfish fisheries of the BSAI and GOA management areas have resulted in changes in the manner in which these fisheries are prosecuted, specifically to protect Steller sea lions and their essential habitats. Economic effects attributable to these regulations were analyzed in the environmental assessments and other regulatory documents produced in support of those decisions.

The designation of critical habitat will not directly affect state and local government activity, or private actions unless there is some Federal involvement. The designation will help, however, to inform these agencies and the public of the importance of these habitat areas to Steller sea lions.

NMFS prepared an Environmental Assessment (EA), based on the best available information, that describes the environmental and economic impacts of alternative critical habitat designations.

This action identifies and delineates critical habitat for the Steller sea lion. Designation of these areas as critical habitat is intended to maintain and/or enhance, rather than to use, a resource. No adverse environmental impacts from the designation of critical habitat are expected. Rather, the designation may enhance the long-term productivity of these areas by ensuring that a Federal agency's actions will not result in the adverse modification or destruction of critical habitat for the Steller sea lion.

Designated Critical Habitat: Essential Features

NMFS, by this final rule, designates certain rookeries and haulouts and associated areas, as well as three special foraging areas as critical habitat for the Steller sea lion. These areas are considered essential for the health, continued survival, and recovery of the Steller sea lion population, and may require special management consideration and protection.

In Alaska, major Steller sea lion rookeries, haulouts and associated terrestrial, air, and aquatic zones are designated as critical habitat. Critical habitat includes a terrestrial zone extending 3,000 feet (0.9 km) landward from each major rookery and haulout. Critical habitat also includes air zones extending 3,000 feet (0.9 km) above these terrestrial zones and aquatic zones. Aquatic zones extend 3,000 feet (0.9 km) seaward from the major rookeries and haulouts east of 144° W.

longitude. The aquatic zone extends 20 nm (37 km) seaward for major rookeries and haulouts west of 144° W. longitude.

Rookeries and haulouts in Alaska are within the historical center of Steller sea lion abundance, and have experienced the greatest decline. Aquatic areas surrounding major rookeries and haulout sites provide foraging habitats, prey resources, and refuge considered essential to the conservation of Steller sea lions. The critical habitat surrounding each BSAI and GOA rookery and major haulout site includes not only the aquatic areas adjacent to rookeries that are essential to lactating females and juveniles, but also encompasses aquatic zones around major haulouts, which provide foraging and refuge habitat for non-breeding animals year-round and for reproductively mature animals during the non-breeding season. These areas are considered critical to the continued existence of the species throughout their range since they are essential for reproduction, rest, and refuge from predators and human-related disturbance.

In California and Oregon, major Steller sea lion rookeries and associated air and aquatic zones are designated as critical habitat. Critical habitat includes an air zone extending 3,000 feet (0.9 km) above rookery areas historically occupied by sea lions. Critical habitat also includes an aquatic zone extending 3,000 feet (0.9 km) seaward.

There are no rookeries in Washington state waters. A 3,000 foot "buffer zone" landward of rookeries in Oregon and California would not be appropriate, generally, for these sites. These rookeries are, for the most part, small offshore rocks and outcroppings where upland boundaries are not applicable due to the small size of the site. Haulout sites in Washington, Oregon and California have not been identified as Steller sea lion critical habitat.

Critical habitat designations for rookeries, haulouts, and associated areas are consistent with recommendations of the Recovery Team, except that rookeries and haulouts outside of U.S. waters have not been included (50 CFR 424.12(h)) and 20 nm aquatic zones around rookeries and haulouts west of 144° W. have been designated. The designations are also consistent with the intent of protective measures developed by NMFS at the time the species was listed as threatened (55 FR 49204, Nov. 26, 1990).

In addition to rookeries, haulouts, and associated areas, NMFS designates three special aquatic foraging areas as critical habitat for the Steller sea lion. The first is located in the GOA (Shelikof Strait) (figure 2), and the other two are located in the BSAI area (Bogoslof Island area and Seguam Pass) (figures 3 and 4). These sites were selected because of their geographic location relative to Steller sea lion abundance centers, their importance as Steller sea lion foraging areas, their present or historical importance as habitat for large concentrations of Steller sea lion prey items that are essential to the species' survival, and because of the need for special consideration of Steller sea lion prey and foraging requirements in the management of the large commercial fisheries that occur in these areas.

The aquatic foraging sites in the GOA and BSAI are the same as those that were recommended by the Recovery Team for critical habitat designation with one modification. The designated area on the southeastern Bering Sea shelf that includes Bogoslof Island is larger than that recommended by the Recovery Team. This enlarged area better incorporates the walleye pollock spawning area to the north and east of Unimak Pass and encompasses a diverse oceanographic region with high concentrations of important sea lion food resources, e.g., walleye pollock, eulachon, capelin, and migrating herring, as well as intense commercial fisheries for these prey resources.

Modifications to this critical habitat designation may be necessary in the future as additional information becomes available.

References

A list of references is included in the Environmental Assessment (EA) and available upon request (see **ADDRESSES**).

Comments and Responses

On April 1, 1993, NMFS proposed to designate critical habitat for the Steller sea lion under the ESA, and provided a 60-day comment period (58 FR 17181). NMFS convened a public hearing in Anchorage, Alaska, on July 9, 1993, and extended the comment period on the proposed rule to designate critical habitat for the Steller sea lion until July 19, 1993 (58 FR 34238, June 24, 1993).

During the comment periods and at the public hearing, a total of 28 sets of comments were received. Commenters represented 29 organizations, including 9 government agencies, 4 private groups, 15 fishing industry organizations and 1 private oil company. A compilation of these comments are addressed below.

Comments on Designation of Rookeries and Haulouts

Comment 1: The State of Alaska Division of Governmental Coordination (ADoGC) and Department of Fish and Game (ADF&G) supported Steller sea lion critical habitat designation, and agreed that all Steller sea lion rookeries and major haulouts constitute critical habitat. However, they urged adoption of a seaward boundary of 3000 feet for rookeries and haulouts throughout the range, as proposed by the Steller Sea Lion Recovery Team. The ADoGC suggested the 20 nm zones west of 144° W. longitude placed a greater burden on Alaska despite the lack of human habitation in the area as compared to other parts of the Steller sea lion's range. The ADF&G suggested that the 20 nm zones around rookeries and haulouts were inappropriate because they were based on satellite telemetry data from only a few locations. They indicated these zones did not represent the areas in coastal and offshore waters that contain appropriate environmental and biological characteristics to provide important feeding habitats for sea lions from several rookeries and haulouts. ADF&G recommended critical habitat be of sufficient size to be meaningful while allowing appropriate controls on human activities that may affect sea lion habitat. ADF&G suggested NMFS identify foraging areas, such as the 3 large marine areas proposed, according to ecological factors rather than proximity to haulouts or existing regulatory mechanisms. Both agencies indicated NMFS did not supply sufficient documentation to justify the designation of 20 nm areas around rookeries and haulouts as critical habitat.

ADoGC recommended NMFS designate critical habitat at Steller sea lion rookeries and haulouts, seaward to 3000 feet, and recommended withdrawal of the extended areas around haulouts and rookeries until: (1) A firm scientific basis can be shown which justifies additional designations and (2) NMFS conforms with all procedural requirements. Additionally, an illustration of the areas identified as critical habitat was suggested to assist in envisioning the way the haulout and rookery areas relate to the marine foraging areas. Three additional commenters supported this suggestion.

Response: With respect to the first point, NMFS has determined that the 20 nm aquatic zones around major rookeries and haulouts in Alaska west of 144° W. longitude are warranted given the geographic concentration and distribution of Steller sea lions, the rates of observed declines in Steller sea lions in various areas, the importance of prey resources in aquatic areas, possible impacts of commercial fishing operations, and the fact that these

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extended areas may be in need of management.

NMFS agrees that critical habitat designation needs to represent meaningful areas. Consequently, NMFS is not designating the Steller sea lion's entire range, but rather is focusing attention on particular areas that have essential features and that may be in need of management.

The Steller sea lion recovery team recommended two types of habitat for designation, terrestrial (rookeries and haulouts) and aquatic areas. The team indicated an area of minimal disturbance near rookeries and haulouts was an important physical feature to be considered in designating critical habitat. Thus, a 3000 ft aquatic zone around rookeries and haulouts was suggested as a sufficient "buffer" area to minimize disturbance or harassment of the Steller sea lions at rookeries and haulouts. However, availability of prey resources is also an essential biological feature of aquatic habitat that NMFS believes must be considered in designating critical habitat. The importance of prey resources, as well as other features, is summarized in the "Essential Habitat of the Steller sea lion" section of this preamble and in the proposed rule.

The foraging habits and food needs of Steller sea lions is not completely understood, however, ongoing satellite telemetry studies indicate Steller sea lions forage in shallow waters within 20 nm of rookeries in summer months (NMML unpublished data). Concerns about the availability of prey resources and the relationship between these resources and commercial fishing operations, especially in areas near rookeries and haulouts, are summarized in the "Need for Special Management Considerations or Protection" section of this preamble and in the proposed rule.

Furthermore, NMFS has determined that the 20 nm aquatic zones around major rookeries and haulouts in Alaska west of 144° W. longitude may be in need of management. It is important to emphasize that in designating these extended aquatic zones, NMFS is not attempting to justify or prove that these areas, in fact, actually do need special management or specific regulation, but rather that these areas may be in need of management. Of course, currently the commercial groundfish fisheries throughout the BSAI and GOA are being managed under the Magnuson Fishery Conservation and Management Act and associated fishery management plans and regulations. Specific fishery management restrictions near certain rookeries are described in the proposed rule.

At this point, NMFS is not recommending additional special management measures for these extended aquatic zones except for further research and monitoring. For example, research is planned concerning Steller sea lion foraging behavior proximal to rookeries and haulouts, including additional satellite telemetry studies. Modification of critical habitat designation or specific management measures may be considered based upon this research.

This final rule does not include specific management measures and no additional burden on the State of Alaska is anticipated as a result of the designation of these extended aquatic zones as critical habitat. If and when specific management measures are proposed, it is anticipated that the proposed rule will explain the scientific basis and justification for the measures.

With respect to the second point, NMFS acknowledges that certain procedural requirements were not followed upon publication of the proposed rule. All notification requirements of 50 CFR 424.16(b) have now been satisfied.

Finally, NMFS agrees with ADoGC and others' recommendation that illustrations of critical habitat should be prepared. This final rule contains an illustration of the range of the Steller sea lion population (figure 1) and the aquatic foraging habitats (figures 2, 3 and 4) and provides tables listing the latitude and longitude of all haulouts and rookeries designated as critical habitat. There was insufficient time available prior to publication of this final rule in the **Federal Register** to prepare additional detailed illustrations. Further graphics will be prepared and will be disseminated with associated information in the near future.

Comment 2: One commenter was "especially pleased" with the proposal to designate critical habitat 20 nm seaward of rookeries and major haulouts west of 144° W. longitude, as well as the 3 large aquatic foraging habitats. However, this commenter questioned the definition of a major haulout and suggested NMFS revisit the criterion of 200 or more animals due to drastic reduction in the population and resultant low numbers of observations at some haulouts.

Response: The Steller sea lion Recovery Team recommended designating only major haulouts, which they defined as those used by 200 or more Steller sea lions at least once since 1970, as critical habitat. The Team acknowledged the difficulty selecting a finite number to designate critical habitat, but concluded that occupation by 200 Steller sea lions reflected significant use of a site.

The decline in Steller sea lions was first detected in the eastern Aleutian Islands in the mid-1970's, and spread east and west from there by the late 1970's. The use of 1970 as the baseline year should preclude the omission of major haulouts due to the subsequent decline in the population.

Comment 3: ADoGC suggested a designation of a haulout on the outer coast of the Kachemak Bay State Wilderness Park as critical habitat.

Response: Information received from ADF&G indicated 70 to 100 male Steller sea lions use the outer coast of the Kachemak Bay State Wilderness Park as a haulout. This level of use does not meet the standard for a major haulout (at least 200 Steller sea lions observed on at least one occasion since 1970) for critical habitat designation.

Comment 4: One commenter opposed the designation of the terrestrial zones as critical habitat on the grounds that the designation would constitute a "taking" of private property rights through potential restrictions regarding land use.

Response: As stated in the proposed rule, the only direct impact of a critical habitat designation is through the provisions of section 7 of the ESA. That section applies only to those actions authorized, funded or carried out by Federal agencies. Federal activities that would affect areas designated as critical habitat are subject to the section 7 consultation process to determine if those activities are likely to destroy or adversely modify the critical habitat. Of course, in almost all cases those Federal activities would also affect listed species and would be subject to consultation under the jeopardy standard, regardless of whether critical habitat was or was not designated.

This final rule contains no special land use regulations. This critical habitat designation will not directly affect private or State land use activities unless there is some Federal nexus or involvement. Even where there is Federal involvement, NMFS anticipates that this final critical habitat designation, by itself, will not restrict private land use activities in a manner or to an extent that these activities are not already circumscribed as a result of the listing of this species, under the Marine Mammal Protection Act, or by other laws.

Comment 5: ADoGC and another commenter stated that NMFS is required to conduct an analysis pursuant to section 810 (16 U.S.C. 3120) of the Alaska National Interest Lands Conservation Act (ANILCA) concerning

the impacts to subsistence uses as a result of designating public lands as critical habitat. Because the State of Alaska asserts that designation of public lands as critical habitat is a form of withdrawal or reservation covered by section 810, NMFS should conduct the analysis required by section 810 before designating those areas as critical habitat.

Response: Section 810(a) of ANILCA provides that, in determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

It is unlikely that NMFS would be considered the Federal agency having primary jurisdiction over Federal public lands included in the critical habitat designation. Furthermore, this rule, by itself, does not restrict the use of public lands although NMFS may subsequently consult with other agencies to ensure compliance with the requirements of section 7. Consequently, NMFS has concluded that the requirements contained in section 810(a) are not applicable to the designation of critical habitat for Steller sea lions.

Comment 6: One commenter suggested Beehive and Matushka Islands be included as critical habitats if not already included under the Chiswell Islands listing. The commenter indicated staff at Kenai Fjords National Park observed 1100 to 1300 Steller sea lions hauled out at Beehive Island on January 16, 1985.

Response: Beehive and Matushka Islands are within the critical habitat identified at Chiswell Islands.

Comments on Designation of Special Aquatic Foraging Habitats

Comment 7: The ADoGC recognized the importance of Shelikof Strait, Bogoslof and Seguam foraging areas, but suggested that NMFS did not present adequate justification in the proposed rule or EA. ADF&G recommended designation of these three foraging areas based on the needs of sea lions and other ecological factors, rather than proximity to haulouts.

Response: NMFS has concluded that there is adequate justification for designation of the three special aquatic foraging areas in Alaska for Steller sea lions based on biological and ecological needs of the species and the potential need for special management consideration. The ESA and associated regulations require designation of critical habitat that contain "features essential to the conservation of Steller sea lions and that may require special management considerations or protection" (50 CFR 424.12(b)). The sections of this preamble entitled, "Essential Habitat of the Steller sea lion" and "Need for Special Management Consideration" summarize the justification for the designation of these three special areas. Likewise much of the response to comment 1 is also applicable to this comment. Again, the potential need for special management considerations does not necessarily mean restrictions or elimination of activities. Close monitoring of activities and additional research also constitute "special management considerations".

Comment 8: One commenter, representing nine fishery organizations, identified existing protective measures resulting from the cooperation between the fishing industry, the North Pacific Fishery Management Council (the Council) and NMFS, despite limited available data. This commenter suggested that the benefits of designating the large aquatic areas are not clear unless they are related to anticipated future regulatory measures. The commenter indicated future measures are not necessary due to: (1) Existing regulations, (2) NMFS presentations to the Council that the population reduction is due to loss of pups, which are not impacted by commercial fisheries, (3) questions regarding linkages between commercial fisheries and the health of Steller sea lion population, and identification of other factors that may have contributed to the decline, (4) lack of incidental take in groundfish trawl fisheries, and (5) need for completion of NMFS studies of feeding ecology, energetics and effects of fishing on sea lion prey prior to implementation of these regulations. Ten other commenters supported these observations, and wanted NMFS to clarify its intent regarding anticipated future regulations resulting from designation.

Response: NMFS appreciates the cooperation of the Council and the fishing industry in the development of and adherence to regulations modifying fishing activities to reduce impacts of the groundfish trawl fisheries on the Steller sea lion population. Existing regulations include 3 nm buffer zones, 10 nm trawl prohibition areas around rookeries, and 20 nm seasonal expansion of some of the trawl prohibition areas.

The Steller sea lion recovery team first recommended the designation of aquatic critical habitats in 1991, noting that "since nutritional factors appear to be involved in the population decline the Team felt that it would not be satisfactory to wait for additional information before recommending designation of some areas that are critical habitat for feeding" (Lowry April 1, 1991). NMFS agrees with this observation, and believes that designation of these foraging areas will assist the Council and fishing industry in identifying areas where modifications in fishing effort may be necessary to protect Steller sea lions.

No additional regulatory actions are anticipated for fisheries conducted under the BSAI and GOA groundfish management plans as a result of critical habitat designation. Alaskan groundfish fisheries are considered under ESA section 7 consultations at least once a year when the total allowable catch specifications are determined. Past consultations have resulted in changes in the manner in which these fisheries are prosecuted and, as a result of these modifications, NMFS has determined that Alaskan groundfish fisheries are not likely to jeopardize the continued existence of Steller sea lions or essential habitat. New information regarding Steller sea lions or their prey, or changes in fishing practices that may affect Steller sea lions, could result in a modification of regulations regardless of critical habitat designation.

NMFS will continue to collect and analyze data regarding Steller sea lion feeding ecology and energetic needs. NMFS believes existing information, discussed in the preamble to this final rule, is adequate to allow the designation of critical habitat including aquatic zones and the three special aquatic foraging areas.

Comment 9: One commenter suggested the Shelikof Strait foraging area be extended northward along the Cape Douglas coast to include Shaw Island, which lies in waters the commenter has observed as important for foraging Steller sea lions.

Response: NMFS believes the most important foraging areas near Shelikof Strait are within the boundaries identified as critical habitat, although clearly sea lions may forage outside this area. Critical habitat boundaries can be modified in the future if NMFS receives additional information or observes other areas that are critical to Steller sea lions.

Comment 10: Three commenters questioned the proposed designation of the entire Shelikof Strait as critical

habitat for Steller sea lions. They suggested actions already taken through ESA section 7 consultations and associated management actions taken under the Magnuson Act precluded the need to designate Shelikof Strait as critical habitat. One of the commenters indicated data in the recovery plan and proposed rule did not support the designation of the entire Shelikof Strait as critical habitat, and suggested data on satellite-tagged Steller sea lions indicated Steller sea lions forage offshore in winter and are therefore not found in Shelikof Strait during winter months. During the breeding season, they suggest Steller sea lions are found only marginally at the northeast and southeast portions of Shelikof Strait near rookeries.

Response: Shelikof Strait was proposed as critical habitat because it contains "features essential to the conservation of Steller sea lions and that may require special management considerations or protection" (50 CFR 424.12(b)). These features include large spawning concentrations of walleye pollock. Survival of pollock larvae and juveniles in the Gulf of Alaska is thought by some to be dependent upon the southwestward transport of larvae from spawning grounds in Shelikof Strait to suitable nursery grounds along the Alaska Peninsula (Lloyd and Davis 1989). Additionally, Shelikof Strait contains or is adjacent to a number of haulouts and is proximal to major rookeries.

During intensive harvest of pollock between 1982 and 1984, a total of 901 Steller sea lions were observed killed in Shelikof Strait and a total of 2115 were estimated to have been killed. Stomach contents from 36 animals taken in 1983 and 1984 indicated the sea lions were feeding on pollock similar in size to that being harvested in the fishery (Loughlin and Nelson 1986). These observations confirmed ADF&G aerial survey results which identified Shelikof Strait as an important foraging area for Steller sea lions in the Central Gulf in the late winter, especially in years when pollock are abundant in those waters.

The need to continue to monitor and manage activities which impact fishery resources in Shelikof Strait through the section 7 consultation process illustrates the appropriateness of designation of this area as critical habitat. Seasonal use of the area will be considered during the ESA section 7 process in a case by case basis, rather than through seasonal designation. Impacts to habitat during seasons of low occurrence of sea lions which may affect Steller sea lions returning to the area, such as physical destruction of haulouts, could be averted as a result of identification of the critical habitat.

General Comments

Comment 11: ADoGC suggested critical habitat designation may affect lease sales in the Shelikof Strait area proposed by Alaska's Division of Oil and Gas by increasing the scrutiny and mitigation measures resulting from that designation. ADoGC indicated these possible impacts are not adequately addressed in the proposed rule.

Response: NMFS does not anticipate any special or increased restrictions regarding lease sales in the Shelikof Strait area to result from this critical habitat designation separate or apart from restrictions which would have occurred as a result of listing Steller sea lions in 1990 as a threatened species.

Currently, Federal agencies permitting, funding or carrying out activities that may affect Steller sea lions are required to consult with NMFS regarding these activities. Even without this critical habitat designation, Federal agencies are required to consult with NMFS in most, if not all, situations which may affect Steller sea lion habitat, since actions affecting the habitat would also be expected to affect the species. Likewise, the protection provided by a critical habitat designation, therefore, usually only duplicates the protection provided under the ESA section 7 jeopardy provision.

Initiation of consultation, pursuant to section 7 of the ESA, is the responsibility of the action agency since NMFS cannot know when actions that may affect Steller sea lions are planned. Appropriate scrutiny resulting from heightened awareness of Steller sea lion's needs due to the designation of critical habitat would be a benefit to the species. Agencies are provided with a clearer indication as to when consultation under section 7 will be required. This is most important in cases where the action would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present).

Comment 12: One commenter indicated NMFS did not offer evidence that activities other than commercial fishing affect the Steller sea lion population, and therefore the existing biological opinion regarding activities such as Outer Continental Shelf (OCS) lease sales should not be modified.

Response: NMFS has identified features, including established rookeries and haulouts and prey availability, that are essential to the conservation of Steller sea lions. Section 7 of the ESA requires Federal action agencies to ensure that their activities are not likely to jeopardize Steller sea lions or result in destruction or adverse modifications of their critical habitat. Consultation must be reinitiated any time significant new information becomes available regarding the biology of the species or the effects of the Federal action, or when critical habitat is designated. NMFS does not anticipate that reinitiated consultation will result in changes to the opinion based on the designation unless there is new information available not previously considered in the opinion.

Comment 13: One commenter indicated NMFS should take meaningful action, in addition to critical habitat designation, to prevent impacts from OCS oil and gas activities. Suggested actions included excluding OCS oil and gas leasing, exploration, development and transportation activities within Shelikof Strait, lower Cook Inlet and the St. George Basin and canceling other Alaska OCS and state offshore oil and gas lease sales to allow time for a review of threats posed to the Steller sea lion population and the marine ecosystem. This commenter indicated transport of oil from other sale areas presented an increased risk to the Steller sea lion and its habitat.

Response: NMFS believes that specific management measures, such as proposed by this commenter, are better considered during the consultation process rather than in this designation of critical habitat. During the consultation process, NMFS will evaluate whether or not specific activities are likely to destroy or adversely modify critical habitat. Further, NMFS will continue to work with other Federal agencies, such as MMS (the Federal agency responsible for OCS lease sales), toward completion of Recovery Plan goals.

Comment 14: One commenter representing nine fishing organizations and supported by 9 additional commenters took exception to claims that overfishing, incidental take in fishing gear, shooting and other fishing activities were causes of the Steller sea lion population decline.

Response: The Alaskan groundfish fisheries have developed in the geographic area that has historically supported the bulk of the Steller sea lion population, and this area has experienced substantial declines in the number of Steller sea lions counted on breeding sites over the last 30 years. Although the relationship between the Steller sea lion population and the harvest of billions of pounds of

groundfish is unclear, Steller sea lions may compete with commercial fisheries for food resources, and are occasionally taken incidental to commercial fishing operations. Trawl fisheries are suspected to be especially competitive for Steller sea lion prey resources due to both the species targeted and the ability of trawls to catch concentrated patches of fish. Mid-water trawl fisheries, such as the pollock fishery, may particularly affect juvenile sea lions due to their ability to capture fish within the water column at depths accessible to juveniles. Regardless of the causes of the decline of this threatened species, however, modifications of fishing practices have been identified as one of the few mechanisms available that would be likely to reduce human impacts on Steller sea lions and promote the recovery of the species.

Comment 15: Two commenters recommended NMFS take additional actions to manage commercial fishing operations in critical habitat and elsewhere, either as part of critical habitat designation or as a separate action accompanying critical habitat designation. One of these commenters suggested: (1) Taking precautions when determining the amount of fish to be harvested, (2) providing temporal and spatial limits in areas where competition between fisheries and sea lions may occur, and (3) developing an ecosystem approach to reflect biological interaction.

Response: NMFS is currently managing fisheries in a manner consistent with the recommendations listed by this commenter. Amounts of groundfish total allowable catches (TACs) available for harvest each fishing year are based on stock assessments prepared annually for each species or species group. The assessments are prepared and peer-reviewed annually, and provide the basis for recommendations of TAC provided by the Council to the Secretary of Commerce (Secretary) for implementation. Stock assessments use the best historical and current information available. These assessments incorporate a host of biological parameters related to the size and health of each exploited population and its relationship to other parts of the marine ecosystem, such as: total fishing mortality, predator-prey relationships and expected predation mortality, and groundfish biomass distribution. Proposed TACs are further reviewed for impacts to threatened and endangered species through annual section 7 consultations. Existing year-round and seasonal restrictions on trawl fishing operations in certain areas were developed as a result of this consultation process. In addition to annual consultations, consultations are reinitiated whenever NMFS receives new information regarding Steller sea lions or fishery activities which may change the basis of previous determinations regarding impacts to Steller sea lions.

Comment 16: ADoGC and 3 other commenters indicated additional information regarding the potential impacts of critical habitat designation on non-Federal activities was needed. Commenters questioned the justification for subjecting commercial and recreational users of these areas to heightened inquiry associated with critical habitat designation.

Response: Heightened public awareness due to critical habitat designation may indirectly result in reduced impact to Steller sea lions and critical habitat. The direct economic and other impacts on non-federal activities resulting from this critical habitat designation are expected to be minimal.

Comment 17: One commenter representing nine fishing organizations suggested NMFS designate critical habitat that reflects the seasonal nature of Steller sea lion habitat use.

Response: Some activities that occur within the designated critical habitat areas when Steller sea lions are not present could have a permanent or long-term impact on the habitat or essential features and, thus, would affect Steller sea lions returning to the area. As a result of this possibility, NMFS believes it would not be practical or beneficial for the conservation of the species to establish seasonal critical habitat designation. Federal actions that take place in critical habitat will be evaluated individually through the section 7 consultation process, and impacts to Steller sea lions seasonally occupying an area will be considered on a case-by-case basis.

Comment 18: One commenter requested Steller sea lion critical habitat designation not be used to alter the vessel transit area that have been established through buffer zones at Akutan, Clubbing Rock and Outer Island Steller sea lion rookeries. Two commenters expressed concern that designation of critical habitat may unnecessarily restrict traditional or emergency activities in the vicinity of the designated sites without the opportunity for public review or comment.

Response: Designation of Steller sea lion critical habitat will not change existing regulations or exemptions. As noted in the proposed rule, the designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. The final rule does not contain further protective regulations or restrictions, beyond the designation of critical habitat. If, at some future time, it is determined that further restrictions are necessary to protect Steller sea lions or critical habitat, NMFS will initiate the rulemaking process which provides opportunity for public review and comment.

Comment 19: One commenter believed that protective measures taken by the State of Oregon to limit disturbance of Steller sea lion rookeries have been successful, and that industry cooperation and public education efforts there have been effective in protecting the rookeries.

Response: NMFS agrees that the steps taken by the State of Oregon and constituent groups have been positive. NMFS believes that the designation of Steller sea lion rookeries off the southern coast of Oregon will provide further guidance for Federal agencies in evaluating the potential effects of any future Federal actions which may be considered in the areas adjacent to the Steller sea lion rookeries in Oregon.

Comment 20: One commenter recommended further research to evaluate the effects of disturbance on Steller sea lions in order to provide additional information for use by resource agencies and the public in resolving potential resource use conflicts.

Response: Research is currently being conducted concerning the effects of disturbance on Steller sea lions under the guidance of the Steller Sea Lion Recovery Plan.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impacts specifically result from the designation of critical habitat, above the impacts attributable to listing the species or from other

authorities, are expected to be minimal. The General Counsel of the Department of Commerce certified when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act; therefore, a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally are categorically excluded from the requirements to prepare on EA or Environmental Impact Statement. However, in order to more clearly evaluate the minimal environmental and economic impacts of critical habitat designation versus the alternative of a no-critical habitat designation, NMFS has prepared an EA. Copies of the EA are available on request (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the designation of critical habitat for Steller sea lions is consistent with the maximum extent practicable with the approved Coastal Zone Management Programs of the states of Alaska, Washington, Oregon, and California. The responsible state agencies concurred with this determination, as required by section 7 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife.

Dated: August 23, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.12 is added to subpart B to read as follows:

§ 226.12 North Pacific Ocean.

Steller Sea Lion (*Eumetopias jubatus*)

(a) *Alaska rookeries, haulouts, and associated areas.* In Alaska, all major Steller sea lion rookeries identified in Table 1 and major haulouts identified in Table 2 and associated terrestrial, air, and aquatic zones. Critical habitat includes a terrestrial zone that extends 3,000 feet (0.9 km) landward from the baseline or base point of each major rookery and major haulout in Alaska. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above the terrestrial zone of each major rookery and major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is east of 144° W. longitude. Critical habitat includes an aquatic zone that extends 20 nm (37 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery and major haulout in Alaska that is west of 144° W. longitude.

(b) *California and Oregon rookeries and associated areas.* In California and Oregon, all major Steller sea lion rookeries identified in Table 1 and associated air and aquatic zones. Critical habitat includes an air zone that extends 3,000 feet (0.9 km) above areas historically occupied by sea lions at each major rookery in California and Oregon, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 3,000 feet (0.9 km) seaward in State and Federally managed waters from the baseline or basepoint of each major rookery in California and Oregon.

(c) *Three special aquatic foraging areas in Alaska.* Three special aquatic foraging areas in Alaska, including the Shelikof Strait area, the Bogoslof area, and the Seguam Pass area.

(1) Critical habitat includes the Shelikof Strait area in the Gulf of Alaska which is identified in Figure 2 and consists of the area between the Alaska Peninsula and Tugidak, Sitkinak, Aiaktilik, Kodiak, Raspberry, Afognak and Shuyak Islands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56°38′N/157°27′W) and the southwestern tip of Tugidak Island (56°24′N/154°41′W) and bounded in the east by a line connecting Cape Douglas (58°51′N/153°15′W) and the northernmost tip of Shuyak Island (58°37′N/152°22′W).

(2) Critical habitat includes the Bogoslof area in the Bering Sea shelf which is identified in Figure 3 and consists of the area between 170°00′W and 164°00′W, south of straight lines connecting 55°00′N/170°00′W and 55°00′N/168°00′W; 55°30′N/168°00′W and 55°30′N/166°00′W; 56°00′N/166°00′W and 56°00′N/164°00′W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:

52°49.2′N/169°40.4′W
52°49.8′N/169°06.3′W
53°23.8′N/167°50.1′W
53°18.7′N/167°51.4′W
53°59.0′N/166°17.2′W
54°02.9′N/166°03.0′W
54°07.7′N/165°40.6′W
54°08.9′N/165°38.8′W
54°11.9′N/165°23.3′W
54°23.9′N/164°44.0′W

(3) Critical habitat includes the Seguam Pass area which is identified in Figure 4 and consists of the area between 52°00′N and 53°00′N and between 173°30′W and 172°30′W.

3. Tables 1 and 2 and Figures 1 through 4 are added to part 226 to read as follows:

Table 1 to Part 226 [Added]

Major Steller sea lion rookery sites are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Alaska:				
Western Aleutians:				
Agattu I.:				
Cape Sabak[1]	52 23.5N	173 43.5E	52 22.0N	173 41.0E
Gillon Point[1]	52 24.0N	173 21.5E.		
Attu I.[1]	*52 54.5N	172 28.5E	52 57.5N	172 31.5E

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Buldir I.[1]	52 20.5N	175 57.0E	52 23.5N	172 51.0E
Central Aleutians:				
Adak I.[1]	51 36.5N	176 59.0W	51 38.0N	176 59.5W
Agligadak I.[1]	52 06.5N	172 54.0W.		
Amchitka I.:[1]				
Column Rock[1]	51 32.5N	178 49.5E.		
East Cape[1]	51 22.5N	179 28.0E	51 21.5N	179 25.0E
Ayugadak I.[1]	51 45.5N	178 24.5E.		
Gramp Rock[1]	51 29.0N	178 20.5W.		
Kasatochi I.[1]	52 10.0N	175 31.5W	52 10.5N	175 29.0W
Kiska I.:				
Lief Cove[1]	51 57.5N	177 21.0E	51 56.5N	177 20.0E
Cape St. Stephen[1]	51 52.5N	177 13.0E	51 53.5N	177 12.0E
Seguam I./Saddleridge[1]	52 21.0N	172 35.0W	52 21.0N	172 33.0W
Semisopochnoi I.:				
Pochnoi Pt[1]	51 58.5N	179 45.5E	51 57.0N	179 46.0E
Petrel Pt[1]	52 01.5N	179 37.5E	52 01.5E	179 39.0E
Tag I.[1]	51 33.5N	178 34.5W.		
Ulak I.[1]	51 20.0N	178 57.0W	51 18.5N	178 59.5W
Yunaska I.[1]	52 42.0N	170 38.5W	52 41.0N	170 34.5W
Eastern Aleutian:				
Adugak I.[1]	52 55.0N	169 10.5W.		
Akun I./Billings Head[1]	54 18.0N	165 32.5W	54 18.0N	165 31.5W
Akutan I./Cape Morgan[1]	54 03.5N	166 00.0W	54 05.5N	166 05.0W
Bogoslof I.[1 2]	53 56.0N	168 02.0W.		
Ogchul I.[1]	53 00.0N	168 24.0W.		
Sea Lion Rocks. (Amak)[1]	55 28.0N	163 12.0W.		
Ugamak I.[1]	54 14.0N	164 48.0W	54 13.0N	164 48.0W
Bering Sea:				
Walrus I.[1]	57 11.0N	169 56.0W.		
Western Gulf of Alaska:				
Atkins I.[1]	55 03.5N	159 18.5W.		
Chernabura I.[1]	54 47.5N	159 31.0W	54 45.5N	159 33.5W
Clubbing Rocks (N)[1]	54 43.0N	162 26.5W.		
Clubbing Rocks (S)[1]	54 42.0N	162 26.5W.		
Pinnacle Rock[1]	54 46.0N	161 46.0W.		
Central Gulf of Alaska:				
Chirikof I.[1]	55 46.5N	155 39.5W	55 46.5N	155 43.0W
Chowiet I.[1]	56 00.5N	156 41.5W	56 00.5N	156 42.0W
Marmot I.[1]	58 14.5N	151 47.5W	58 10.0N	151 51.0W
Outer I.[1]	59 20.5N	150 23.0W	59 21.0N	150 24.5W
Sugarloaf I.[1]	58 53.0N	152 02.0W.		
Eastern Gulf of Alaska:				
Seal Rocks[1]	60 10.0N	146 50.0W.		
Fish I.[1]	59 53.0N	147 20.5W.		
Southeast Alaska:				
Forrester I.	54 51.0N	133 32.0W	54 52.5N	133 35.5W
Hazy I	55 52.0N	134 34.0W	55 51.5N	134 35.0W
White Sisters	57 38.0N	136 15.5W.		
Oregon:				
Rogue Reef: Pyramid Rock	42 26.4N	124 28.1W.		
Orford Reef:				
Long Brown Rock	42 47.3N	124 36.2W.		
Seal Rock	42 47.1N	124 35.4W.		
California:				
Ano Nuevo I.	37 06.3N	122 20.3W.		
Southeast Farallon I.	37 41.3N	123 00.1W.		
Sugarloaf I. & Cape Mendocino	40 26.0N	124 24.0W.		

[1] Includes an associated 20 NM aquatic zone.
[2] Associated 20 NM aquatic zone lies entirely within one of the three special foraging areas.

Table 2 to part 226 [Added]

Major Steller sea lion haulout sites in Alaska are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the basepoint

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Alaska:				
Western Aleutians:				
Alaid I.[1]	52 45.0N	173 56.5E	52 46.5N	173 51.5E
Attu/Chirikof Pt.[1]	52 30.0N	173 26.7E		
Shemya I.[1]	52 44.0N	174 09.0E		
Central Aleutians:				
Amatignak I.[1]	51 13.0N	179 08.0E		
Amlia I:				
East[1]	52 05.0N	172 58.5W	52 06.0N	172 57.0W
Sviech. Harbor[1]	52 02.0N	173 23.0W		
Amukta I. & Rocks[1]	52 31.5N	171 16.5W	52 26.5N	171 16.5W
Anagaksik I.[1]	51 51.0N	175 53.5W		
Atka I.[1]	52 23.5N	174 17.0W	52 24.5N	174 07.5W
Bobrof I.[1]	51 54.0N	177 27.0W		
Chagulak I.[1]	52 34.0N	171 10.5W		
Chuginadak I.[1]	52 46.5N	169 44.5W	52 46.5N	169 42.0W
Great Sitkin I.[1]	52 06.0N	176 10.5W	52 07.0N	176 06.5W
Kagamil I.[1]	53 02.5N	169 41.0W		
Kanaga I:				
North Cape[1]	51 56.5N	177 09.0W		
Ship Rock[1]	51 47.0N	177 22.5W		
Kavalga I.[1]	51 34.5N	178 51.5W	51 34.5N	178 49.5W
Kiska I./Sirius Pt.[1]	52 08.5N	177 36.5E		
Kiska I./Sobaka & Vega[1]	51 50.0N	177 20.0E	51 48.5N	177 20.5E
Little Sitkin I.[1]	51 59.5N	178 30.0E		
Little Tanaga I.[1]	51 50.5N	176 13.0W	51 49.0N	176 13.0W
Segigik I.[1]	52 00.5N	173 08.0W		
Seguam I:				
South[1]	52 10.0N	172 37.0W	52 19.5N	172 18.0W
Finch Pt.[1]	52 23.5N	172 25.5W	52 23.5N	172 24.0W
Segula I.[1]	52 00.0N	178 06.5E	52 03.5N	178 09.0E
Tanaga I.[1]	51 55.0N	177 58.5W	51 55.0N	177 57.0W
Tanadak I. (Amlia)[1]	52 04.5N	172 57.0W		
Tanadak I. (Kiska)[1]	51 57.0N	177 47.0E		
Ugidak I.[1]	51 35.0N	178 30.5W		
Ulaga I.[1]	53 04.0N	169 47.0W	53 05.0N	169 46.0W
Unalga & Dinkum Rocks[1]	51 34.0N	179 04.0W	51 34.5N	179 03.0W
Eastern Aleutians:				
Akutan I./Reef-Lava[1]	54 10.5N	166 04.5W	54 07.5N	166 06.5W
Amak I.[1]	55 24.0N	163 07.0W	55 26.0N	163 10.0W
Cape Sedanka & Island[1]	53 50.5N	166 05.0W		
Emerald I.[1]	53 17.5N	167 51.5W		
Old Man Rocks[1]	53 52.0N	166 05.0W		
Polivnoi Rock[1]	53 16.0N	167 58.0W		
Tanginak I.[1]	54 13.0N	165 19.5W		
Tigalda I.[1]	54 08.5N	164 58.5W		
Umnak I./Cape Aslik[1]	53 25.0N	168 24.5W		
Bering Sea:				
Cape Newenham[1]	58 39.0N	162 10.5W		
Hall I.[1]	60 37.0N	173 00.0W		
Round I.[1]	58 36.0N	159 58.0W		
St. Paul I:				
Northeast Point[1]	57 15.0N	170 06.5W		
Sea Lion Rock[1]	57 06.0N	170 17.5W		
St. George I:				
S Rookery[1]	56 33.5N	169 40.0W		
Dalnoi Point[1]	56 36.0N	169 46.0W		
St. Lawrence I:				
S Punuk I.[1]	64 04.0N	168 51.0W		
SW Cape[1]	63 18.0N	171 26.0W		
Western Gulf of Alaska:				
Bird I.[1]	54 49.0N	159 46.0W		
Castle Rock[1]	55 17.0N	159 30.0W		
Caton I[1]	54 23.5N	162 25.5W		
Jude I[1]	55 16.0N	161 06.0W		
Lighthouse Rocks[1]	55 47.5N	157 24.0W		
Nagai I.[1]	54 52.5N	160 14.0W	54 56.0N	160 15.0W
Nagai Rocks[1]	55 50.0N	155 46.0W		
Sea Lion Rocks (Unga)[1]	55 04.5N	160 31.0W		
South Rock[1]	54 18.0N	162 43.5W		
Spitz I.[1]	55 47.0N	158 54.0W		
The Whaleback[1]	55 16.5N	160 06.0W		

[1] Inclu
[2] Asso

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State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Central Gulf of Alaska:				
Cape Barnabas [1]	57 10.0N	152 55.0W	57 07.5N	152 55.0W
Cape Chiniak [1]	57 35.0N	152 09.0W	57 37.5N	152 09.0W
Cape Gull [1 2]	58 13.5N	154 09.5W	58 12.5N	154 10.5W
Cape Ikolik [1 2]	57 17.0N	154 47.5W		
Cape Kuliak [1 2]	58 08.0N	154 12.5W		
Cape Sitkinak [1]	56 32.0N	153 52.0W		
Cape Ugat [1 2]	57 52.0N	153 51.0W		
Gore Point [1]	59 12.0N	150 58.0W		
Gull Point [1]	57 21.5N	152 36.5W	57 24.5N	152 39.0W
Latax Rocks [1]	58 42.0N	152 28.5W	58 40.5N	152 30.0W
Long I. [1]	57 45.5N	152 16.0W		
Nagahut Rocks [1]	59 06.0N	151 46.0W		
Puale Bay [1 2]	57 41.0N	155 23.0W		
Sea Lion Rocks (Marmot) [1]	58 21.0N	151 48.5W		
Sea Otter I. [1]	58 31.5N	152 13.0W		
Shakun Rock [1 2]	58 33.0N	153 41.5W		
Sud I. [1]	58 54.0N	152 12.5W		
Sutwik I. [1]	56 32.0N	157 14.0W	56 32.0N	157 20.0W
Takli I. [1 2]	58 03.0N	154 27.5W	58 03.0N	154 30.0W
Two-headed I. [1]	56 54.5N	153 33.0W	56 53.5N	153 35.5W
Ugak I. [1]	57 23.0N	152 15.5W	57 22.0N	152 19.0W
Ushagat I. [1]	58 54.5N	152 18.5W		
Eastern Gulf of Alaska:				
Cape Fairweather	58 47.5N	137 54.0W		
Cape St. Elias [1]	59 48.0N	144 36.0W		
Chiswell Islands [1]	59 36.0N	149 34.0W		
Graves Rock	58 13.0N	136 39.0W		
Hook Point [1]	60 20.0N	146 15.5W		
Middleton I. [1]	59 26.5N	146 20.0W		
Perry I. [1]	60 39.5N	147 56.0W		
Point Eleanor [1]	60 35.0N	147 34.0W		
Point Elrington [1]	59 56.0N	148 13.5W		
Seal Rocks [1]	60 10.0N	146 50.0W		
The Needle [1]	60 07.0N	147 37.0W		
Southeast Alaska:				
Benjamin I.	58 33.5N	134 54.5W		
Biali Rock	56 43.0N	135 20.5W		
Biorka I	56 51.0N	135 32.0W		
Cape Addington	55 26.5N	133 48.5W		
Cape Cross	57 55.5N	136 33.0W		
Cape Ommaney	56 09.5N	134 39.5W		
Coronation I	55 49.5N	134 16.5W		
Ledge Point	56 48.5N	130 45.5W		
Lull Point	57.18.0N	134 48.5W		
Sunset I.	57 30.5N	133 35.0W		
Timbered I.	55 42.0N	133 48.0W		

[1] Includes an associated 20 NM aquatic zone.
[2] Associated 20 NM acquatic zone lies entirely within one of the three special foraging areas.

Figures to Part 226

BILLING CODE 3510-22-M

Figure 1: Map of the North Pacific Ocean showing the general range of Steller sea lions (stippled area) and the location of major rookeries (arrows).

Figure 2: Steller sea lion critical habitat in Shelikof Strait. Locations indicated are major Steller sea lion rookeries.

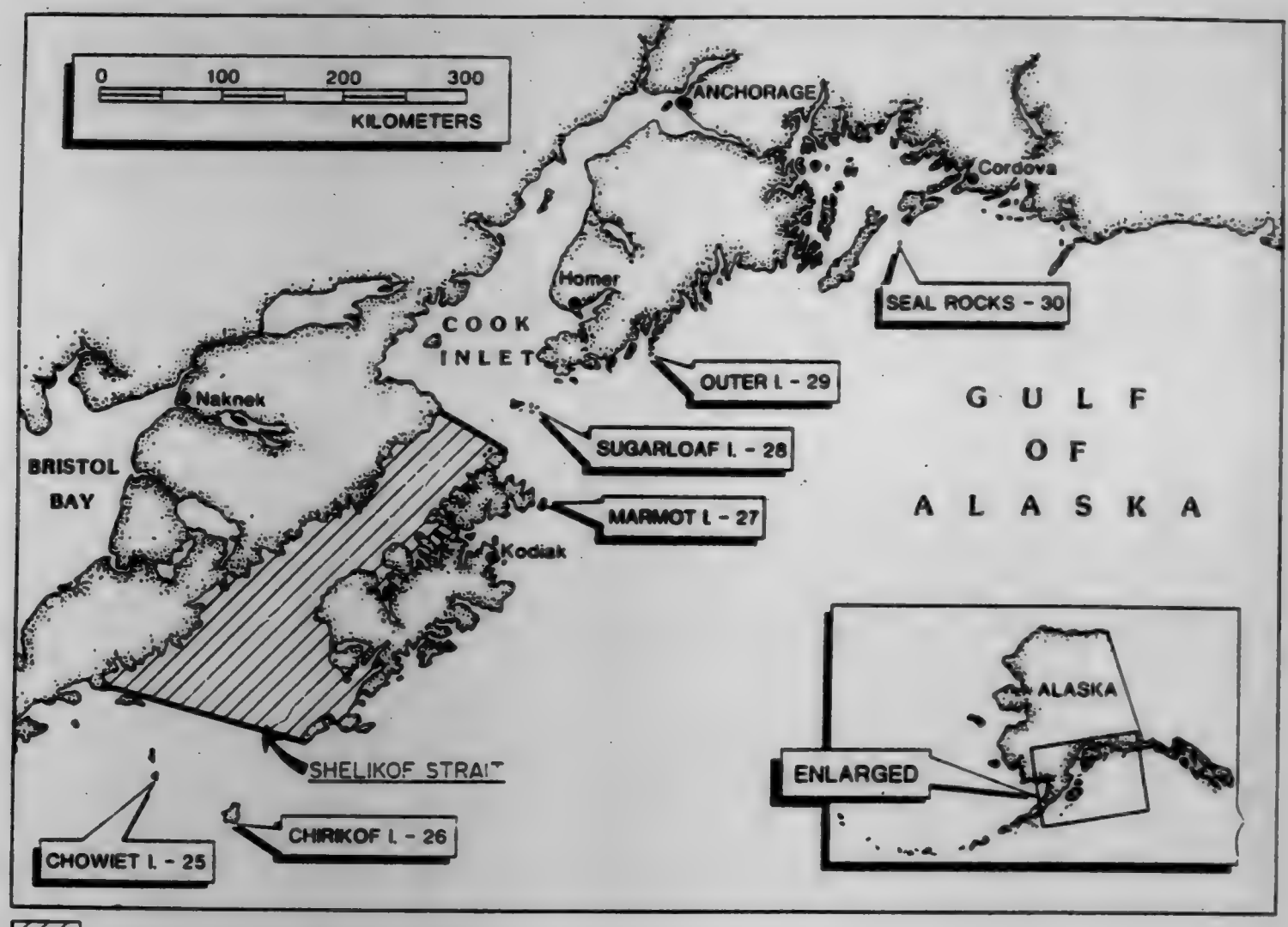

Figure 3: Steller sea lion critical habitat in the vicinity of Bogoslof Island. Locations indicated are major Steller sea lion rookeries.

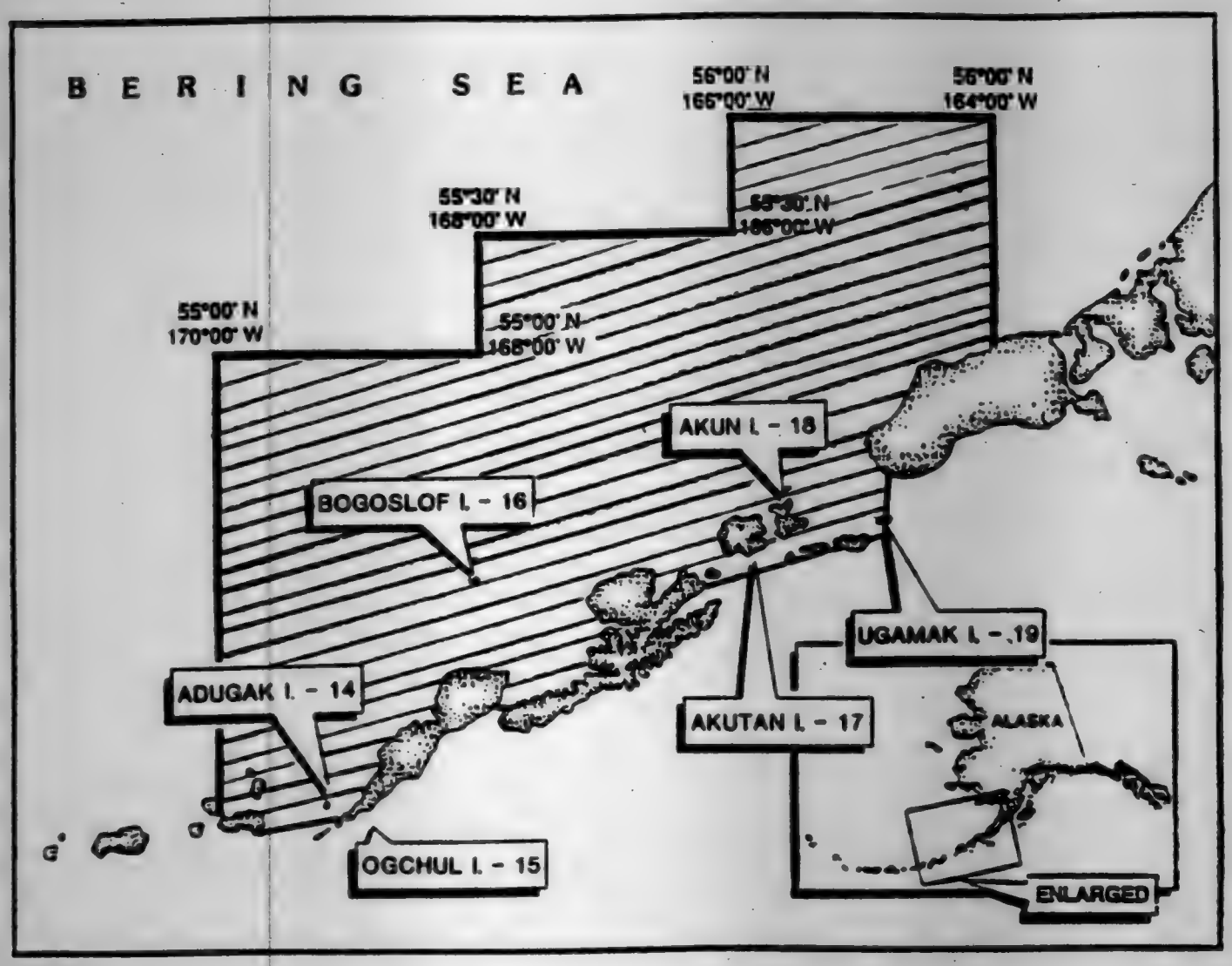

Figure 4: Steller sea lion critical habitat in vicinity of Sequam Pass. Locations indicated are major Steller sea lion rookeries.

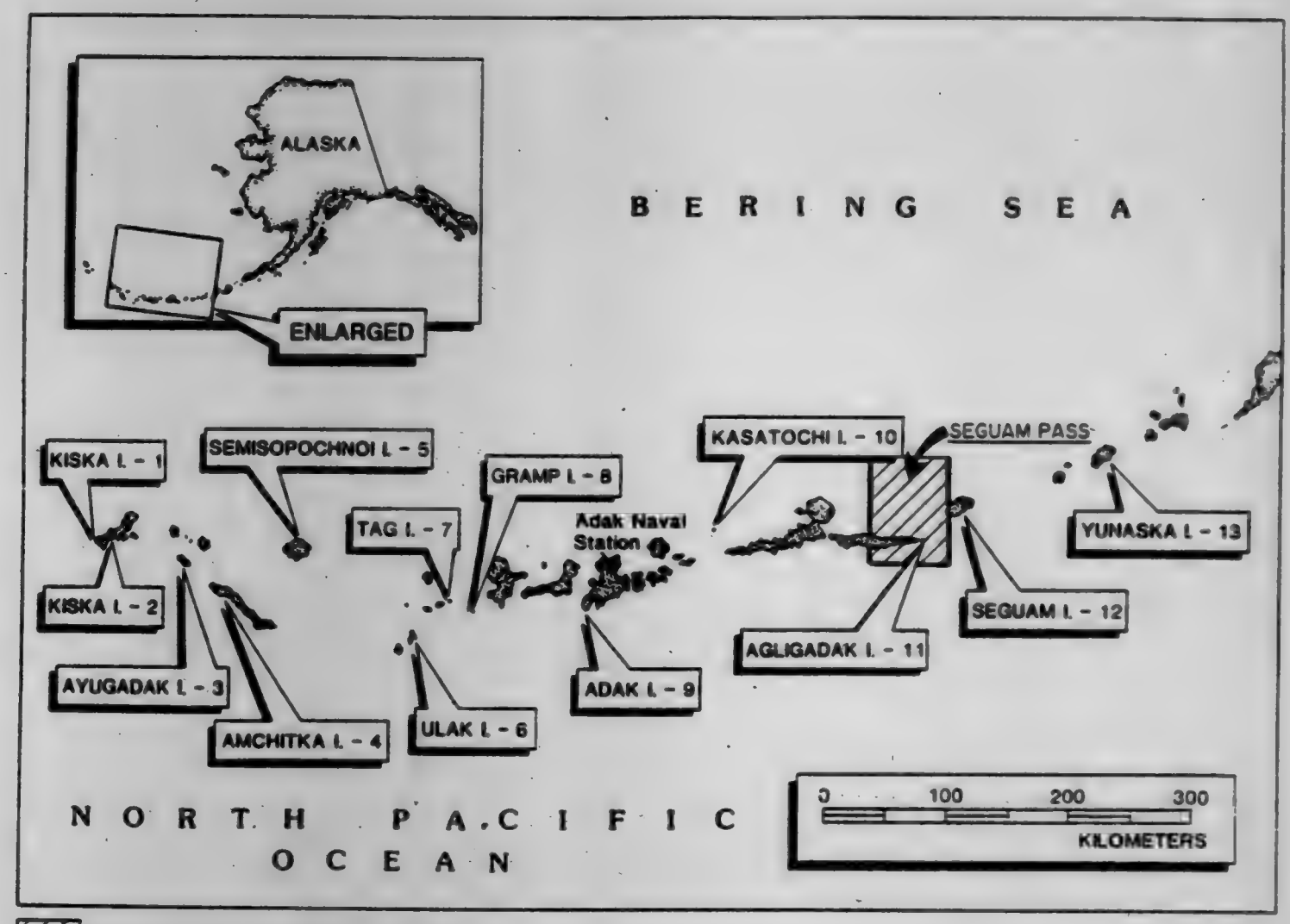

Proposed sea lion critical water habitat.

[FR Doc. 93-20821 Filed 8-26-93; 8:45 am]
BILLING CODE 3510-22-C

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50 CFR Part 285

[Docket No. 930486-3086; I.D. 032293A]

RIN 0648-AE83

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this final rule to revise the regulations governing the Atlantic tuna fisheries to require Atlantic bluefin tuna (ABT) dealers to submit daily reports via FAX and a bi-weekly report instead of the present weekly report; require permits for vessels fishing in the Angling category; require at-sea observer coverage on vessels taking Atlantic tunas, if so requested by NMFS; prohibit the use of non-authorized gear in the Atlantic tuna fisheries except pursuant to an experimental fishing exemption; allow the Assistant Administrator for Fisheries, NOAA (AA) to make inseason transfers of potentially underharvested quota between fishing categories; raise the amount of General category set-aside for the late season fishery from 40 metric tons (mt) to 65 mt; allow for inseason adjustments to the Angling category bag and boat limits for private, party and charter boats; and make technical changes to enhance administration, management and enforcement.

This action is necessary to improve management and monitoring of the U.S. Atlantic tuna fisheries, to conform more closely to the 1991 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, and to enhance collection of data to improve assessment of the environmental, economic, and social impacts of the fisheries and of fishery policy.

EFFECTIVE DATE: August 26, 1993.

ADDRESSES: Copies of the Final Background Document/Environmental Assessment/Regulatory Impact Review, are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to the AA for Fisheries, NOAA (AA).

Purpose of Current Action

These actions are intended to meet existing obligations of the United States to implement ICCAT recommendations and to improve the efficiency of the domestic fishery management program.

The background of this current action was provided in the proposed rule (58 FR 32894, June 14, 1993) and is not repeated here.

Management Measures

These changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries.

Daily Reports by FAX, Revised Bi-weekly Report, and Permit Fee

This rule requires ABT dealers to submit daily reports by FAX, as well as by mail. In addition, the requirement for a weekly dealer report is replaced with a bi-weekly report to enhance the usefulness of information collected. The rule authorizes the Regional Director to collect fees to recover the administrative costs of issuing dealer permits. The amount of the fee will be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. As an interim measure, no fees will be collected for dealer permit applications processed in 1993.

Angling Category Permits

Angling category vessel permits will be issued first to party and charter vessels in 1993 and to private vessels in 1994. The permit authorizes vessels to fish for or take school, large school, and small medium size class bluefin tuna within established daily trip, bag, and vessel limits. Valid permits are required of party and charter vessels beginning September 15, 1993. Private vessel permits are required beginning May 15, 1994.

Mandatory Observer Coverage

This rule authorizes NMFS to require observers for any vessel that is fishing for, or incidentally catching, Atlantic tunas at any time. Owners of vessels selected for observer coverage are required to notify NMFS prior to the vessel's departure on a fishing trip.

Prohibit Unauthorized Gear in the Atlantic Tuna Fisheries

The rule designates certain types of fishing gear as authorized for use in the Atlantic tuna fisheries and is prohibiting the use of unauthorized gear. Fishermen wishing to employ unauthorized gear to take Atlantic tunas, either as a directed fishery, or as incidental catch, must submit a request to the Director of the Office of Fisheries Conservation and Management (Director) for an experimental fishing exemption.

Authority To Allocate Underharvest Between Fishing Categories

NMFS revises 50 CFR 285.22 to authorize the AA to make adjustments to quotas by transfers of quotas between fishing categories if, during any year of a single-year quota period, or the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category or, as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer, inseason, any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at § 285.22(f) and the likelihood that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The AA will file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before the date such transfer is to become effective.

Set-aside for the Late Season General Category Fishery

This rule sets aside 65 mt of ABT for the General category quota for a late season fishery, instead of the 40 mt set aside in 1992. This will provide for extended fishing for the General category with minimal chance of a closure prior to September 15. This amount for the late-season set aside is based on comments received during the public comment period and on General category landings data since 1982.

Angling Category Inseason Adjustments

The rule authorizes the AA to adjust the private boat catch from two school ABT per boat to one per angler or two per angler per trip, as in the charter/party boat sector, and to adjust the charter/partyboat sector to as few as two

fish per vessel, as in the private boat sector, if necessary, to avoid a closure.

Technical Changes to the Regulations

A number of technical changes are made to clarify the language or to enhance enforcement of the existing regulations. The changes:

1. Clarify the dividing line between the northern and southern regions for management of the Angling category quota;
2. Clarify the meaning of "authorized officer", "postmarking", and "delegated authority";
3. Clarify the prohibitions and authorized activities for incidental take of ABT;
4. Clarify which categories of ABT permits may be held concurrently;
5. Clarify that ABT may not be possessed or landed in areas otherwise closed to fishing;
6. Clarify non-transferability of vessel permits;
7. Clarify references to certain size classes of ABT;
8. Correct misspellings and incorrect cross-references;
9. Eliminate redundant sections;
10. Clarify permit application information requirements; and
11. Clarify language concerning subcategories of ABT fishing categories.

These changes will not affect the conduct of the tuna fisheries except to close "loopholes" and facilitate enforcement. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

In addition, NMFS received written and oral comments that a correction to the regulatory text was needed to clarify the prohibition on landing Atlantic tuna in a form other than round (fins intact) or other than with the head removed and eviscerated. NMFS, in the proposed rule, requested additional comment on the need for flexibility in the regulations governing at-sea processing of all species of Atlantic tuna, as applied to both the commercial and recreational fisheries. Based on public comment and NMFS' ability to identify dressed tunas, this rule changes the prohibition to allow the fins, except for one pectoral fin, and the tail to be removed from dressed tuna, except for bluefin. For bluefin tuna, one pectoral fin and the tail must remain on the carcass when landed.

Comments and Responses

1. *Measure:* Require Atlantic bluefin tuna (ABT) dealers to submit daily reports via fax and replace the weekly report with a bi-weekly report.

Comment: There was general agreement with these requirements; some concern was expressed about the dealers who only handle a few fish and do not have fax machines.

Response: NMFS acknowledges that all dealers do not have fax machines. However, commercial fax services are available at modest cost at many private and public sites. NMFS believes that the requirement to fax daily reports will not pose undue hardship and that the requirement is needed to ensure accurate and timely quota monitoring.

Comment: There were several suggestions that daily fax reports not be required until the quota is close to being filled.

Response: Since this is the first year for this measure and it might be used in the future to replace mailing the daily report, NMFS needs both sets of information for comparative purposes.

Comment: There were several comments concerning the difficulty of indicating quality ratings for bluefin tuna on the proposed bi-weekly dealer report.

Response: NMFS recognizes that there may be difficulties for some dealers to provide the quality rating of the bluefin tuna they purchase. Thus, NMFS has decided to make the quality rating portion of the form optional.

2. *Measure:* Require permits for vessels fishing in the Angling category.

Comment: There was general support for this measure in all areas except New Jersey. Several comments from New Jersey objected to Angling category permits claiming they are nothing but a tax and provide no useful information.

Response: NMFS believes that in order to monitor the catch in the Angling category, it is important to have a more accurate count of the universe of angling vessels. Currently, to extrapolate catch per unit of effort estimates to total catch, it is necessary to use an estimate of the total number of vessels in the fishery. With Angling category vessel permits, the universe of angling vessels fishing for bluefin tuna will be known and the catch estimation procedure will be much more timely and accurate. This will help to resolve questions concerning past estimates of catch in the Angling category and will increase confidence in future estimates. Furthermore, permitting the Angling category vessels will facilitate socio-economic analysis of the ABT recreational fishery. Permits are the most efficient method of improving the data base for the Angling category fishery. Also, permits facilitate notification procedures for Angling category vessels, such as for public meetings or hearings, changes to the bag limits, and season closures.

Comment: Some commentors expressed concern that NMFS considers General category vessels to be commercial and that commercial vessels must have U.S. Coast Guard approved safety equipment.

Response: NMFS, in its recognition of General category vessels as commercial, is simply acknowledging an existing U.S. Coast Guard determination that vessels having a General category permit are commercial and must have U.S. Coast Guard approved safety equipment onboard.

3. *Measure:* Require at-sea observer coverage on vessels taking Atlantic tunas, if so requested by NMFS.

Comment: There was general support for this measure except in Maine, where there was some concern about insurance coverage and interruptions to sailing schedules.

Response: NMFS acknowledges general support for this measure. Insurance costs are included in the contract that NMFS has for observer coverage in the Northeast Region and observers in the Southeast Region also are covered while on participating vessels. Current observer programs are operating in a manner as least disruptive as possible, so that interruptions to sailing schedules should be minimal.

4. *Measure:* Allow only authorized gear to be used in the Atlantic tuna fisheries except pursuant to an experimental fishing exemption.

Comment: There was considerable support for this measure at every meeting. NMFS received a petition to regulate and study the use of pair trawl gear from the Center for Marine Conservation (CMC). NMFS also received about 3,400 form letters in support of this petition.

Response: NMFS is allowing only authorized gear to be used in the Atlantic tuna fisheries, except pursuant to an experimental fishing exemption. This specifically responds to the concerns raised in the CMC petition on regulating pair trawling as an experimental fishery.

Comment: A number of individuals, particularly in New Jersey (2,500 letters), submitted comments requesting a ban on pair trawl fisheries.

Response: NMFS believes that the experimental fishery provisions in the final rule will limit potential adverse effects of new gear, including pair trawls, while developing an adequate data base to make decisions on whether these gear types should be authorized for directed or bycatch fisheries in the future.

5. *Measure:* Allow the AA to make inseason transfers of potentially

underharvested quota between fishing categories.

Comment: There was general support for this measure except in written and oral comments from fishery participants from Maine and New Jersey.

Response: NMFS acknowledges the general support and will respond to the negative comments below.

Comment: One comment expressed distrust in sole decision-making authority vested in the AA and wanted to see a committee established to make these decisions. Another comment indicated that NMFS should provide more specific criteria for making transfers between categories.

Response: NMFS believes that the criteria provided at 50 CFR 285.22(f) (1) through (4) provide proper guidance for the AA to make timely and objective management decisions on this measure. Allocation adjustments are based on the usefulness of information obtained from catches of the particular category, the catches of that category to date and its likelihood of closure without additional allocation, the ability of that category to harvest the additional quota, and the likelihood of overharvest in other categories.

Comment: There was some opposition to this measure and concern that it would be used to adversely affect future quotas.

Response: NMFS is concerned that large amounts of underharvested quota in any fishing category at the end of the fishing year, if used to increase quota for that category in the following year, may result in excessive allocations and continuing underharvest of quota if the particular gear segment is in fact unable to harvest the additional amount. Allocation of additional quota to a particular category that cannot make use of that amount is inconsistent with the stated management objective of maximizing use of the available quota while sharing the opportunity to fish among as many users as possible. Additionally, the ATCA requires that NMFS provide a reasonable opportunity for domestic fishermen to harvest any quota allocated to the United States under an international agreement. NMFS believes that allowing the AA to make inseason transfers of unharvested quota between categories provides the flexibility needed to collect data necessary for monitoring the status of the stock, minimize economic displacement, and maximize use of the available resource. A number of factors could be involved in underharvest of a category. As more is known about those factors, decisions could be made on long-term reallocation. However, inseason actions taken pursuant to this measure would not be the sole basis of any decisions that might be made on long-term reallocation.

6. *Measure:* Raise the amount of General category set-aside for the late season ABT fishery from 40 mt to 65 mt.

Comment: NMFS received comments supporting, objecting to, and suggesting compromise on this issue. All but one comment at the Maine meeting opposed the proposed 100 mt set-aside for the late season fishery but there was support for the concept of a late season fishery.

Response: NMFS recognizes the concern of the commenters in Maine that a 100 mt set-aside could cause an early season closure and reduced the set aside to 65 mt, which should allow the season to remain open until the 65 mt set-aside becomes available on September 15.

Comment: Other than in the State of Maine, there was more general support for a late-season set aside (not necessarily 100 mt; however, suggestions were made for compromise figures between 50 and 75 mt) and particularly support for the late season fishery with numerous suggestions for an August 1 opening date for the General category fishery.

Response: NMFS agrees that the set-aside concept would help ensure that a portion of the annual quota would remain for traditional late-season fisheries. NMFS believes a late-season set-aside has merit from a scientific standpoint (e.g., continuing the collection of data on large medium and giant ABT through September, and potentially into October) and could have positive economic impacts due to the higher prices usually received for ABT in late summer and early fall. NMFS believes that a 65 mt set-aside will provide for a late-season fishery with minimal chance of a closure prior to September 15. The selection of 65 mt as the amount of the set-aside is supported by General category landings data since 1982.

7. *Measure:* Allow for inseason adjustments to the Angling category bag and boat limits for private, party and charter boats.

Comment: Comments were received recommending that the private boat sector be treated in a similar manner, in terms of the bag limits, as the charter/partyboat sector. In addition, public comment indicated that closures can adversely impact the recreational sector to a greater degree than lower bag or boat limits.

Response: NMFS believes the data collected during 1992 provide adequate justification for allowing the AA the flexibility to adjust the private boat catch from two school ABT per boat to one per angler or two per angler per trip, as in the charter/party boat sector, and to adjust the charter/partyboat sector to as few as two fish per vessel, as in the private boat sector, if necessary to avoid a closure. Such flexibility will provide more options for regulating both the charter/party and the private boat fisheries and will help to reduce the likelihood of closures in the recreational sector.

8. *Measure:* Make other technical changes to enhance administration, management and enforcement.

Comment: NMFS received few comments on the technical changes; of the few received most were in support.

Response: NMFS acknowledges the support for this measure.

Comment: NMFS received written and oral comments that a correction to the regulatory text is needed to clarify the prohibition on landing Atlantic tuna in a form other than round (fins intact) or other than with the head removed and eviscerated.

Response: Based on these comments and NMFS' ability to identify dressed tunas, changes have been made to this prohibition to allow the fins, except for one pectoral fin, and the tail to be removed from dressed tuna, except for bluefin tuna. For bluefin tuna, one pectoral fin and the tail must remain on the carcass when landed.

Changes From the Proposed Rule

Based on comments received, and further analysis of landings data, the following changes were made to the proposed rule.

Dealer reporting. In § 285.29(b)(1), the mandatory quality rating requirement has been made optional.

Angling category permits. The effective dates for these permits have been changed to September 15, 1993, for charter/party vessels and May 15, 1994, for private vessels.

General category set-aside. The ABT late season set-aside has been reduced from 100 mt to 65 mt. It was 40 mt in 1992.

Other changes to the rule.

In § 285.3, the prohibition in paragraph (f) against landing tuna is revised to read, "any person or vessel subject to the jurisdiction of the United States to land: (1) Any tuna, except bluefin, in forms other than round (fins intact), or other than eviscerated with the head, tail, and fins removed, except that one pectoral fin must remain attached; and (2) bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and tail must remain attached." Also, a

prohibition is added to make it unlawful to violate any conditions specified in any exemption authorization issued under § 285.7.

Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

The AA has determined, based on the Regulatory Impact Review (RIR) prepared for this rule, that this is not a "major" rule requiring a Regulatory Impact Analysis under E.O. 12291.

This rule contains several new collection-of-information requirements subject to review under the Paperwork Reduction Act and revises and continues requirements all of which were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0202 and 0648–0239. Changes in the information requested on permit applications and on dealer reports involved changing or deleting several words in the existing regulatory text. However, the public reporting burden for permit application collections of information is not expected to change from the present average of 30 minutes per response for a new vessel permit application and 15 minutes per response for a vessel permit renewal. The revised public reporting burden for collections of information on dealer reports are estimated at 2.5 minutes per response for daily dealer reports, and 33 minutes per response for bi-weekly dealer reports. The burden for inspection notification for purse seine vessels remains unchanged at 5 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

New collection-of-information requirements are associated with requests for permitting the Angling category, experimental fishing exemptions, and mandatory observer coverage. The public reporting burden for Angling category permits is expected to average 30 minutes for a new application and 10 minutes for a renewal (in the case that a vessel owner would be applying for an Angling category permit in addition to renewing a current General category permit). The public reporting burden for an experimental fishing exemption is expected to average 1 hour to apply for an exemption, and 2 hours per report on exempted fishing activities. The public reporting burden for vessel owners selected for observer coverage is estimated to average 1 hour per observed fishing trip. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention NOAA Desk Officer).

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 24, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, new definitions for *drift gillnet, Fisheries Science Center Director,* and *postmark* are added and the definitions of *authorized officer* and *Secretary* are revised to read, in alphabetical order, as follows:

§ 285.2 Definitions.

* * * * *

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

* * * * *

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

* * * * *

Fisheries Science Center Director means:

(1) For areas south of Virginia, the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee; or

(2) For Virginia and areas to the north, the Science and Research Director, Northeast Fisheries Science Center, NMFS, 166 Water Street, Woods Hole, MA 02543–1097, telephone 508–548–5123.

* * * * *

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt or a receipt issued upon hand delivery to an authorized representative of NMFS.

* * * * *

Secretary means the Secretary of Commerce, or a designee.

* * * * *

3. Section 285.3 is amended by revising the introductory text, paragraphs (f) and (h) and adding paragraphs (i) through (p) to read as follows:

§ 285.3 Prohibitions.

It is unlawful:

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land:

(1) Any tuna, except bluefin, in forms other than round (fins intact), or other than eviscerated with the head, tail, and fins removed, except that one pectoral fin must remain attached; and

(2) Bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and tail must remain attached.

* * * * *

(h) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(i) For any person to assault, impede, oppose, intimidate, or interfere with, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(j) For any person or vessel subject to the jurisdiction of the United States to fish for, catch, or retain any species of Atlantic tuna with gear that is not authorized under § 285.9, unless authorized under § 285.7.

(k) For any person to possess any Atlantic tuna on board a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 285.9, unless authorized under § 285.7.

(l) For any person to violate any conditions specified by the Director in any exemption issued under § 285.7.

(m) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(n) For any person to assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(o) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an at-sea observer conducting his or her duties aboard a vessel.

(p) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 285.8(c).

4. Sections 285.7 through 285.9 are added to subpart A to read as follows:

§ 285.7 Experimental fishing exemption.

(a) Upon a written request received at least 30 days before the desired effective date, the Director, in order to provide for the conduct of experimental fishing to gather data needed to make management decisions for the Atlantic tuna resources or fisheries, may exempt any person or vessel from specific requirements of this part.

(b) A request for an exemption must be in writing and received by the Director at least thirty (30) days before the desired effective date. The request must specify any vessel(s) involved, describe the gear to be used, the manner in which the gear will be fished, the duration of the activity, the area where the activity will be conducted, the species of tuna that will be caught, the anticipated bycatch, the port(s) involved and the disposition of the catch, both domestic and foreign. The request must include any fee specified by the Director pursuant to § 285.7(e).

(c) The Director may not grant such exemption unless it is determined that the purpose, design, and administration of the experimental fishing is consistent with the objectives of the management program, ICCAT recommendations, the provisions of the Atlantic Tunas Convention Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic tunas resources and fisheries; or

(2) Create significant enforcement problems.

(d) Each vessel participating in any experimental fishing activity is subject to all provisions of this part except those specified in the exemption granted that activity by the Director. The conditions, duration of the experimental fishing, and the provisions of this part to which the exemption applies, will be specified in a letter issued by the Director to each vessel or person participating in the exempted activity. This letter must be carried aboard the vessel conducting the exempted activity. Any exemption authorization that has been altered, erased, or mutilated is invalid. A letter of exemption issued under this part is not transferable or assignable. Any violation of any condition in a letter of exemption shall render it null and void upon receipt of written notification from the Director.

(e) The Director may charge a fee to recover the administrative expenses of issuing a letter of exemption. The amount of the fee will be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs. Persons seeking an exemption may contact the Director at (301) 713–2334 to find out the applicable fee. Failure to pay the fee will preclude issuance of the exemption. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any letter of exemption.

§ 285.8 At-sea observer coverage.

(a) Notwithstanding the selection for placement or the placement of on-board fishery observers under the authority of any other Federal statute or fisheries regulation, NMFS may require observers for any vessel engaged in directed fishing for, or incidentally taking, Atlantic tunas at any time.

(b) Owners of vessels selected for observer coverage are required to notify the appropriate Fisheries Science Center Director before commencing any fishing trip that may result in the harvest of any Atlantic tuna. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 285.9 Authorized gear.

(a) The following fishing gear is authorized for Atlantic tunas, with the exception of Atlantic bluefin tuna: handline, rod and reel, harpoon, purse seine, longline, and drift gillnet.

(b) Any fishing gear authorized for the categories allocated a quota under subpart B of this part is authorized for Atlantic bluefin tuna.

5. In § 285.21, paragraphs (a), (b), (c), (e), (g), (h), (k) and (l) are revised and paragraph (m) is added to read as follows:

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for, or takes, Atlantic bluefin tuna must have on board a valid permit issued under this section. Party and charter vessels fishing in the Angling category must have on board a valid permit by September 15, 1993. Private vessels fishing in the Angling category must have a valid permit on board by May 15, 1994.

(b) *Categories of permits.* Except as allowed under paragraph (m) of this section, the Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners

of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(c) *Application procedure.* Permits issued under this section must be renewed annually. A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner or agent on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name, address and telephone number of the vessel owner(s) (for each owner that owns more than a 25 percent interest in the vessel); the name of the vessel; the port where the vessel is docked; the official U.S. Coast Guard documentation or state registration number; the gross tonnage, if known; the length of the vessel; the engine horsepower; the year the vessel was built; the type of vessel construction; the type of vessel propulsion; the vessel's fish hold capacity; the type(s) of fishing gear used; the normal crew size; number of party or charter passengers licensed to carry (if applicable); and the category of the permit. In addition, applicants must submit a copy of the official state registration or U.S. Coast Guard documentation, party/charter boat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation, including the names and addresses of all shareholders owning 25 percent or more of the corporation's shares). Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless there is sufficient evidence for the Regional Director to determine that an error involving contradictory information was made on the application.

* * * * *

(e) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or it expires. A permit issued under this section expires when the name of the owner or vessel changes, or upon the renewal date specified on the permit by the Regional Director.

* * * * *

(g) *Replacement.* The Regional Director may issue replacement permits when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (k) of this section, may be charged for issuance of the replacement permit.

(h) *Transfer.* A permit issued under this section, except in the case of purse seine permits as allowed under paragraph (b) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

* * * * *

(k) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing to the Regional Director. The permit is void if any change in the information is not reported within 15 days.

(m) *Multiple categories.* The following combinations of vessel permits, and fishing activity subject to the provisions governing these categories, are allowed to exist simultaneously aboard a single vessel, although individual fish taken under any permit category remain subject to the provisions of the regulations applicable to that category:

(1) Angling and General category; and

(2) Angling and Incidental Catch (Rod and Reel) category. (Approved by the Office of Management and Budget under OMB control number 0648–0202.)

6. Section 285.22 is amended by revising the introductory text and paragraphs (a) through (e) and adding paragraph (i) to read as follows:

§ 285.22 Quotas.

The total annual (January 1–December 31) amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 531 mt, of which 65 mt is set aside for a late-season fishery beginning September 15. On the basis of the statistics referenced at § 285.20(b)(1), the AA will project a date when the catch of Atlantic bluefin tuna will equal the annual quota minus 65 mt, and will publish a notification in the **Federal Register** stating that fishing for, retaining, possessing or landing Atlantic bluefin tuna under the early-season quota must cease on that date at a specified hour, and not recommence until September 15, whereupon a quota equal to the difference between the annual quota and the estimated catch prior to September 15 will become available. If the AA determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the AA may set aside an allocation of the late-season quota for such area. The amount of any allocation shall not exceed the greater of 20 mt or the maximum reported landings in the identified area in any of the preceding 3 years. The AA will publish notification of any set-aside allocation and its basis in the **Federal Register**. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse Seine.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 301 mt.

(d) *Angling.* The total annual amount of school, large school, and small medium Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 219 mt. No more than 100 mt of this quota may be school Atlantic bluefin tuna. This quota is further subdivided as follows:

(1) 47 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed south of 38°47′ N. latitude.

(2) 53 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed north of 38°47′ N. latitude.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 226 mt for the 2-year period 1992–1993. This quota is further subdivided as follows:

(1) 85 mt for longline vessels. No more than 67 mt may be caught, retained, possessed, or landed in the area south of 36°00′ N. latitude.

(2) For vessels fishing under § 285.23 (a) and (d), 4 mt may be caught, retained, possessed, or landed in the regulatory area.

* * * * *

(i) *Transfers between categories.* The AA is authorized to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period or the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at paragraphs (f) (1) through (4) of this section, and the probability that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The AA shall file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before such transfer is to become effective.

7. Section 285.23 is amended by revising paragraphs (c)(1), (c)(2) and (d) and by removing paragraph (f) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(c) * * *

(1) One fish per vessel per fishing trip landed south of 36°00′ N. latitude, provided that at least 2,500 pounds (1,134 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 36°00′ N. latitude.

(d) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel issued a permit for the Angling category and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one large medium or giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMPS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes.

* * * * *

8. Section 285.24 is amended by redesignating paragraphs (d) (2) and (3) as (d) (3) and (4) respectively, revising new paragraph (d)(4), and adding a new paragraph (d)(2) to read as follows:

§ 285.24 Catch limits.

* * * * *

(d) * * *

(2) The AA may change the per angler limit to a per boat limit or a per boat limit to a per angler limit, and may increase the bag limit for school tuna for anglers on party and charter boats from one to two, and may reduce it from two to one, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota over the longest possible period of time. The AA shall publish a notification in the Federal Register of any adjustment in the bag limit.

* * * * *

(4) *Private boats*—Private boat anglers may catch, retain, possess, or land each day the bag limit for anglers specified in paragraph (d)(1) of this section for the number of anglers on board; provided, however, that no more than one small medium and two school bluefin tuna may be retained on board a vessel each day, regardless of the number of anglers on board.

9. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic bluefin tuna. The vessel owner must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508–563–5721 or 508–281–9261. Purse seine vessel owners must have each large medium and giant bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

* * * * *

10. Section 285.26 is amended in the table by revising the entry for "school" under the heading "size classes" to read as follows:

§ 285.26 Size classes.

* * * * *

Size class	Total fork length	Pectoral fin fork length	Approx. round weight
* * * * *	* * * * *	* * * * *	* * * * *
School	26 to <45 in	19 to <33 in	14 to <66 lbs.
* * * * *	* * * * *	* * * * *	* * * * *

* * * * *

11. Section 285.28 is amended by revising paragraphs (b) and (j) to read as follows:

§ 285.28 Dealer permits.

* * * * *

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

* * * * *

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

* * * * *

12. Section 285.29 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the existing postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508–281–9135) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where the fish was caught.

(b) Must submit to the Regional Director a bi-weekly report on forms supplied by NMFS.

(1) Said report must be postmarked and mailed within 10 days after the end of each 2-week reporting week period in which Atlantic bluefin tuna were purchased, received, or imported. Each report must specify accurately and completely for each tuna purchased: Date of landing or import; vessel ABT permit number (if appropriate); metal tail tag number; weight in pounds or kilograms (specify if round or dressed); nature of the sale (dockside or consignment); price per pound or kilogram (round or dressed weight); and destination of the fish (domestic or export). In addition, dealers may indicate the quality rating of their bluefin tuna: (A, B, or C) for four attributes (freshness, fat, color, and shape).

(2) At the top of each form, the dealer must indicate the company name, license number, and the name of the person filling out the report. In addition, the beginning and ending dates of the 2-week reporting week period must be specified by the dealer and noted at the top of the form.

* * * * *

(d) Must retain at his/her place of business a copy of each daily report (including proof of FAX transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was submitted to the Regional Director.

* * * * *

13. Section 285.30 is amended by revising paragraph (c)(2) to read as follows:

§ 285.30 Metal tags.

* * * * *

(c) * * *

(2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing said Atlantic bluefin tuna and make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a metal tag to it. The offices to contact are: Portland, ME (207–780–3241); Otis Air Force Base, MA (508–563–5721); Brielle, NJ (201–528–3315); Atlantic Beach, NC (919–247–4549); Brunswick, GA (912–265–0108); Miami, FL (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, FL (813–893–3145); St. Joe, FL (904–227–1879); or Corpus Christi, TX (512–888–3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

* * * * *

14. Section 285.31 is amended by revising the word "bluefish" to read "bluefin" in paragraphs (a) (1), (2) and (5) and by revising paragraphs (a) (10), (16), (26), (30) and (31), and removing paragraph (a)(32); and redesignating paragraphs (a)(33) through (a)(38) as paragraphs (a)(32) through (a)(37), respectively, to read as follows:

§ 285.31 Prohibitions.

(a) * * *

* * * * *

(10) Land any Atlantic bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and the tail must remain attached.

* * * * *

(16) Engage in fishing with a vessel issued a permit under § 285.21 unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any Atlantic bluefin tuna under control (secured to the catching vessel or aboard) with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

* * * * *

(26) Fish for, catch, retain, possess or land Atlantic bluefin tuna with longline gear except as provided in § 285.23(c);

* * * * *

(30) Fish for, catch, retain, possess or land Atlantic bluefin tuna from the Gulf of Mexico except as specified under § 285.23 (c), (d) and (l);

(31) Fish for or catch or retain Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.22, 285.23, and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

* * * * *

15. Section 285.50 is revised to read as follows:

§ 285.50 Authorized fishing.

Fishing for, catching, retention or possession of yellowfin and bigeye tuna

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in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for

(a) Vessels employing gear types specified at § 285.9 unless the gear is authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

(b) Yellowfin or bigeye tuna that weigh 7 pounds round weight (3.2 kg) or more, except as provided in § 285.52.

[FR Doc. 93-20876 Filed 8-26-93; 8:45 am]

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Proposed Rules

Federal Register
Vol. 58, No. 165
Friday, August 27, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

AGENCY: Federal Grain Inspection Service, USDA.[1]
ACTION: Advance notice of proposed rulemaking.

SUMMARY: According to the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) invites comments and suggested changes to subpart A of the part 68 regulations under the Agricultural Marketing Act of 1946, as amended (Act).

DATES: Comments must be submitted on or before November 26, 1993.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in room 0624 USDA South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: This periodic review of subpart A of the part 68 regulations under the Act is being conducted in accordance with Executive Order 12291 and Departmental Regulation 1512–1. During this review, FGIS will assess the need for revising these regulations, the potential for improvement, and language clarity. Specifically, FGIS will review the need to:

1. Eliminate the special appeal inspection requirements for rice (i.e., requests must be made before the rice has left the place of inspection and no later than the close of business on the second business day following the day of the inspection being appealed);
2. Eliminate the provisions for requesting, performing, and certificating new original inspections;
3. Allow requests for divided-lot certificates to be made for up to one year from the outstanding certificate date and, at the discretion of the Service, after the identity of the commodity has been lost;
4. Require applicants for inspection to provide suitable working space (e.g., clean and heated/cooled) when inspection service is performed at a plant;
5. Establish a commercial inspection service that would allow the use of modified sampling and inspection procedures;
6. Eliminate the required issuance of inspection certificates;
7. Establish an inspection equipment testing service; and
8. Extend the validation period of inspector, technician, and sampler licenses from 3 to 5 years and allow the license termination date to be advanced or delayed, when necessary, by a period not to exceed 120 days.

Public comments are requested and any data, views, or arguments are welcome.

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: August 11, 1993.

David R. Galliart,
Acting Administrator.

[FR Doc. 93–20744 Filed 8–26–93; 8:45 am]
BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Agricultural Marketing Service

7 CFR Part 1138

[DA–93–25]

Milk in the New Mexico-West Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would suspend certain provisions of the New Mexico-West Texas Federal milk order. The proposal would suspend for two years the provisions of the New Mexico-West Texas order that limit diversions of producer milk. The request for the suspension was made by Associated Milk Producers Association, Inc. (AMPI), which represents most of the producers who deliver milk to plants regulated by the New Mexico-West Texas order. AMPI requested this suspension to allow pooling all of the milk produced by its members in that area.

DATES: Comments are due no later than September 27, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), suspension for a two-year period of the following provisions of the order regulating the handling of milk in the New Mexico-West Texas marketing area is being considered.

1. In § 1138.7, paragraph (a)(1), the words "Including producer milk diverted from the plant,";
2. In § 1138.7, paragraph (c), the words "35 percent or more of the producer"; and
3. In § 1138.13(d), paragraphs (1), (2), and (5).

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension was requested by Associated Milk Producers Association, a cooperative association representing the vast majority of producers for the New Mexico-West Texas market. AMPI has requested the suspension of certain provisions in the New Mexico-West Texas order to allow pooling all of the milk produced in the area by AMPI's members.

AMPI requests for a two-year period the suspension of order provisions that in one way or another limit the pooling of diverted milk.

AMPI's request states that milk production in New Mexico alone has slightly more than doubled in the last five years (from 1,094 million pounds in 1988 to 2,249 million pounds in 1992). At the same time, Class I use has remained stable at about 60–65 million pounds each month. AMPI expects production increases to continue. AMPI further indicates an expectation that cheese production will expand because local milk supplies are available. However, under current provisions of the New Mexico-West Texas order, all of the milk available cannot be pooled.

For these reasons, AMPI proposes to suspend:

1. The provision that requires that diverted milk be included as a receipt at distributing plants for computing whether the plants are "pool plants";

2. The requirement that a cooperative association must deliver at least 35 percent of its milk supply to distributing plants in order to pool a plant located in the marketing area that is operated by the cooperative association and is neither a distributing plant nor a supply plant;

3. The requirement during the months of September through January that a producer's milk must be delivered to a pool plant at least one day per month to be eligible to be diverted to a nonpool plant on other days of the month;

4. The provision that allows a cooperative association to divert an amount of milk that does not exceed the amount delivered to and physically received at pool plants during the month; and

5. The provision that eliminates from the pool any diverted milk that would cause a plant to lose its status as a pool plant because too much diverted milk had been considered as a receipt at the pool plant.

The suspension of these provisions apparently would allow AMPI to pool all the milk produced in the area by its members. AMPI has requested that these provisions be suspended for two years, beginning as soon as possible.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 23, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–20868 Filed 8–26–93; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 309, 310 and 317

[Docket No. 89–031R]

RIN 0583–AB16

Policy for Differentiating Between Calves and Adult Cattle

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; withdrawal and reproposal.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to provide standard criteria by which FSIS inspectors will determine whether a bovine animal or animal carcass declared to be a calf or calf carcass is properly identified as such under the Federal Meat Inspection Act. This provision would assure that appropriate inspection procedures are applied and better assure that products labeled as coming from calves are labeled accurately.

This proposed rule is a reproposal of a proposed rule which was published on June 6, 1990, in the **Federal Register** (55 FR 23100), which is hereby withdrawn. Comments received on the June 6, 1990, proposed rule and the Agency's desire to amend and clarify certain provisions of the proposal have resulted in a number of changes to the proposed rule prompting the Agency to provide an additional opportunity for comments before consideration is given to the issuance of a final regulation.

DATES: Comments must be received on or before: September 27, 1993.

ADDRESSES: Written comments to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also Comments under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. Craig Reed, Deputy Administrator, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–5190.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. State and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing requirements with respect to the operations of any establishment at which inspection is provided under Title I of the FMIA, or any marking, labeling, packaging, or ingredient requirements on federally inspected meat or meat products, which are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not as such establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This proposed rule is not intended to have retroactive effect, and there are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

The majority of calf producers and establishments slaughtering calves are small entities. By providing relatively simple, objective criteria by which inspectors may identify calves, the proposal would permit more consistent and accurate labeling of products, and promote fair competition in the marketplace. Such uniformity is important since meat products derived from calves generally yield higher prices than meat products derived from adult bovine animals.

Paperwork Requirements

The proposal would allow an establishment to submit documentary evidence to the Veterinary Medical Officer (VMO) to prove that an animal is no more than 9 months of age in cases where the establishment disputes a determination made by the VMO. The paperwork requirements will be submitted to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket No. 89–031R. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and 1:30 p.m. and 4 p.m., Monday through Friday.

Background

The United States has had mandatory inspection for meat and meat food products prepared for distribution in commerce since 1906. The FMIA requires the inspection by an inspector appointed by the Secretary of Agriculture of certain domesticated animals such as cattle, prior to their entering an establishment for slaughter, and the post-mortem inspection of their carcasses and parts thereof in any establishment preparing such articles for distribution in commerce for human food purposes. The purpose of both ante-mortem and post-mortem inspection is to assure that the carcass of the animal slaughtered and parts thereof are wholesome and not adulterated. In addition, the FMIA requires that the Federal inspector inspect meat products made from such carcasses and parts to assure that they are not adulterated and are properly labeled, marked and packaged.

FSIS has been petitioned by the Southwest Meat Association to establish criteria, based principally on weight, to differentiate between beef cattle and calves. The petitioner requests that the weight limits for calves be established at 750 pounds live weight and 450 pounds carcass weight and that the animal in question be an obviously young animal before it is designated as a calf.

FSIS inspectors frequently must differentiate calves from adult bovine animals to assure the application of appropriate inspection procedures, including those relating to the labeling of inspected product. The meat products derived from "calves," when so labeled, generally command a premium price, because the tissues of immature cattle have flavor and texture properties that are unique and considered desirable.

In the vast majority of instances, there is no question that animals presented for inspection as calves are, in fact, calves. However, there are instances when it is not clear whether certain animals are adult bovine animals or calves. If a question arises, the inspector must make a subjective determination which is influenced greatly by the inspector's knowledge, skills and experience with such animals.

Current policy on what constitutes a calf for FSIS inspection and labeling purposes (other than for certain residue testing) is based on custom and practice in the industry. Inspectors may assess a number of factors including weight of the animal, age of the animal, meat color and texture, teeth formation and bone formation. FSIS inspectors generally consider a bovine animal to be a calf if the animal's weight is 600 pounds or less. However, inspectors in different parts of the country have used various other criteria, resulting in inconsistent determinations of what animals and animal products are appropriately labeled "calf."

The June 1990, Proposal

On June 6, 1990, FSIS published a proposed rule in the **Federal Register** (55 FR 23100) to amend the Federal meat inspection regulations to provide criteria by which inspectors will determine whether a bovine animal or animal carcass declared to be a calf or calf carcass is properly identified as such under the FMIA.

The proposal defined "calf," for inspection purposes, as a "young" bovine animal whose weight does not exceed 750 pounds live, or whose dressed carcass weight does not exceed 450 pounds with the hide on, or 425 pounds with the hide removed. In addition, since the degree of maturation may be indicated by factors other than weight, physical indicators of maturity could be used in conjunction with weight limits to differentiate "calves"

from cattle. The proposal provided that if an inspector has reason to believe that an animal or animal carcass whose weight is within the prescribed weight limitations for a calf is actually that of an adult animal, the inspector could segregate the carcass and request that a VMO examine it for physical indicators of maturity and make a determination of whether it is "calf." If the VMO determined that certain physical indicators of maturity were present, the bovine animal would not be considered to be a "calf" for purposes of this regulation.

The proposal also provided that FSIS inspectors would accept determinations made by Agricultural Marketing Service (AMS) graders as to the age of the animal, for purposes of ante-mortem inspection, post-mortem inspection and labeling requirements of the FMIA.

Response to Comments

The Agency received 11 comments in response to the proposed rule. The following is a summary of the comments and the Agency's responses.

Comment: The American Veterinary Medical Association supports the proposed rule, stating that it will provide a uniform standard criterion for segregating calves and adult cattle for inspection purposes. However, they believe greater emphasis should be placed on closer examination of the physical characteristics of the larger "calves" to differentiate between heavier, faster grown calves and lighter, slower grown adults.

Response: The proposed regulations provide criteria for inspectors to follow when determining whether an animal is a calf or an adult bovine animal for inspection purposes. In addition, in cases where the inspector has observed certain physical characteristics and has reason to believe that the animal in question is an adult animal, the inspector may request that a VMO examine the animal in question to determine whether it is a calf or an adult animal. The Agency believes that the provisions regarding examination of the physical characteristics, together with other changes made in this proposal, are sufficient to assure that animals presented for inspection as "calves" are properly identified.

Comment: A professor at Auburn University stated that the weight limit of 750 pounds was too high and suggested that it be set at 500 pounds. The professor asserts that many light weight dairy cows or beef cows are sexually mature at weights lower than 750 pounds.

Response: The Agency has research data [1] and other information to indicate that producers are capable of producing calves with weaning weights as high as 750 pounds. In addition, the Agency believes that the provisions providing for VMO review of questionable animals and carcasses will prevent improper identification of sexually mature dairy and beef animals as calves.

Comment: The law firm of Hogan and Hartson stated that the proposal does not address problems facing processors who receive the product after the initial determination has been made and are not on site when the "calf-adult animal" decision is made. The commenter is concerned that an inspector or an AMS grader at a second establishment may overrule the decision made at the first establishment as to whether the animal was a calf. Thus the proposal may not protect processors who, in good faith, buy products labeled "calf" for further processing. The firm also stated that, as an additional aid in determining whether an animal is a calf or an adult, receipt of written certification from the producer verifying the age and characteristics of the animal should be added to the list of indicators. Accordingly, the regulations should include a provision that the Agency will accept certified documentation from the producer that an animal is a calf for purposes of establishing the proper labeling of products derived from the animal.

Response: FSIS believes that accurate determinations regarding whether an animal presented for inspection is a calf or an adult bovine can and should be made upon examination of the animal or its carcass by the inspector and/or the VMO at the slaughter facility. In addition, the determination made by the inspector at the slaughter establishment is based, in large part, on criteria which are not available to inspectors or graders at processing establishments. Therefore, a decision that an animal is a calf, made at the time the animal is presented for slaughter, could not be overruled at another establishment. In addition, in this reproposal, FSIS is removing the provision that FSIS inspectors will accept AMS grading determinations as to the age of a bovine animal, for purposes of ante-mortem inspection, post-mortem inspection and labeling requirements of the FMIA. Because the Agency has determined that accurate determinations can be made by the inspection program inspector and the VMO, providing for an alternate, extra-agency determination on whether or not a bovine animal is a "calf" is confusing and unnecessary. Therefore, the FSIS determination will be dispositive as to the identity of the animal under the FMIA. The animal will be inspected and labeled accordingly.

FSIS agrees that documentation from the producer certifying an animal as a calf for inspection purposes is useful and has added provisions to this proposed rule for use of such documentation in cases where the inspector's determination is disputed. The primary criteria for determining whether an animal presented for slaughter is a calf would be based on the weight of the animal. However, if an inspector believes, through observation of certain physical characteristics, that an animal or animal carcass within the weight limitation for a calf is actually an adult animal or adult animal carcass, the inspector may segregate the animal or animal carcass and request that a VMO examine it to determine whether it is a "calf." Under these circumstances, the establishment may present documentary evidence that the animal is no more than 9 months of age. The credibility of the documentary evidence will be determined by the VMO and will be used in conjunction with their examination of the animal or animal carcass, when determining whether it is a calf or an adult animal.

Comment: Seven comments—two from trade associations and five from meat packers—stated that they see no need to provide a 25-pound weight adjustment for dressed calves; i.e., 450-pound weight limit for hide-on carcasses and 425-pound weight limit for hide-off carcasses. The commenters stated that they would prefer the weight limit for a dressed carcass be 450 pounds as provided in the interim guidelines issued by the Agency on December 21, 1989. These commenters stated that the vast majority of calves are shipped without the hide.

Response: The Agency agrees with the commenters. The interim guidelines [2] provide, in part, that products from animals weighing up to 750 pounds live or up to 450 pounds dressed may be labeled "calf." In addition, FSIS has received information to indicate that a 25-pound weight allowance for "hide on" dressed carcasses is unnecessary as the vast majority of establishments are "hot skinning" calf carcasses to remove skins immediately after slaughter,

[1] A copy of the data is on display with the FSIS Hearing Clerk, Policy Office, room 3171, South Building, U.S. Department of Agriculture, Washington, DC. 20250. Upon request, a copy of the data will be provided free of charge.

[2] A copy of the interim guidelines is on display with the FSIS Hearing Clerk, Policy Office, room 3171, South Building, U.S. Department of Agriculture, Washington, DC 20250. Upon request, a copy will be provided free of charge.

which results in dressed carcasses being shipped without the hide. In reassessing its interim guidelines, FSIS has determined that the use of these guidelines has resulted in accurate and proper identification of animal carcasses, and that the guidelines have been widely accepted by the industry. Therefore, FSIS has deleted the weight adjustment for dressed calves in this proposed rule.

Comment: The United States Hide, Skin and Leather Association is requesting that the Agency make clear in the final rule that the definition of calf is not intended to be interpreted to apply to the skins coming from these animals. The commenter stated that one of the products resulting from calf slaughter is the calf skin, and their concern is that the definition of calf could be interpreted to apply to skins as well as edible products.

Response: FSIS is responsible for proper disposition of carcasses and parts, which includes the hides. However, FSIS does not anticipate that the age determinations made pursuant to the criteria in this document will have any appreciable effects on the activities of the hide, skin, and leather industry.

Changes to the June 1990 Proposal

This proposed rule modifies the June 1990 proposal based on comments received on that proposal and FSIS's desire to amend and clarify certain provisions of that proposal. The following is a brief description of the changes to the June 1990 proposal. These changes are discussed in more detail later in this document.

1. The term "young" as it applies to calves has been clarified to mean a bovine animal no more than 9 months of age.
2. The 25-pound weight allowance for "hide on" dressed carcasses has been deleted.
3. The provisions relating to determinations made under the Agricultural Marketing Act have been deleted.
4. Provisions for presenting documentary evidence as to the age of the animal have been added.

The Proposal

FSIS would define "calf," for inspection purposes, as a young bovine animal, no more than 9 months of age, whose weight does not exceed 750 pounds live or whose dressed carcass weight does not exceed 450 pounds. Research conducted by the Texas Agricultural Extension Service indicates that producers are capable of producing 7-month old calves with weaning weights as high as 750 pounds. It is estimated that the dressed weight for a 750-pound calf would be no more than 450 pounds.

Since the degree of maturation may be indicated by factors other than weight, physical indicators of maturity to determine the age of an animal could be used in conjunction with weight limits to differentiate "calves" from adult cattle. The physical changes that occur around 9 months of age allow for such differentiation. These physical indicators of maturity are teeth formation, bone formation, and pregnancy. If an inspector has reason to believe, through observation of these physical characteristics, that an animal or animal carcass whose weight is within the weight limitation for a calf is actually an adult animal or adult animal carcass, the inspector may segregate the animal or animal carcass and request that a VMO examine it for physical indicators of maturity and make a determination of whether it is a calf or calf carcass. Upon examination, if the VMO determines that the bovine animal is pregnant, or has any permanent teeth other than the first molar, or has a mature bone structure, the bovine or bovine carcass would not be considered to be a calf or calf carcass for purposes of this regulation. In instances where such determination is disputed, the establishment could present to the VMO documentary evidence that the animal is no more than 9 months of age or that the carcass derived from a bovine animal is no more than 9 months of age. The credibility of the documentary evidence will be determined by the VMO and will be used in conjunction with the VMO's examination of the animal or animal carcass to determine whether it is a calf or a calf carcass. The VMO would make the final determination of the age of the animal.

Products from animals that have been determined to be adult bovine animals over the age of 9 months would not be permitted to be labeled as "calf."

In addition, as discussed above, FSIS is removing from the proposal the provisions relating to graders under the Agricultural Marketing Act. Under this proposed rule, determinations as to whether a bovine animal presented for inspection is a "calf" or an adult bovine will be made by inspectors at the slaughter facility. The FSIS determination will be dispositive as to the identity of the animal under the FMIA. The animal will be inspected and labeled accordingly.

List of Subjects

9 CFR 309

Calf, Meat inspection, Requirements, Definitions.

9 CFR 310

Calf, Meat inspection, Requirements, Definitions.

9 CFR 317

Calf labeling.

For the reasons set forth in the preamble, 9 CFR 309, 310, and 317 would be amended as follows:

PART 309—ANTE-MORTEM INSPECTION

1. The authority citation for part 309 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 309.1 would be amended by adding new paragraphs (c) and (d) to read as follows:

§ 309.1 Ante-mortem inspection in pens of official establishments.

* * * * *

(c) As set forth in this part, ante-mortem inspection is intended primarily to prevent the use in commerce of meat and meat food products which are adulterated. Inspectors also may be required to inspect animals in accordance with other sections of this chapter.

(d) In order to be classified as a calf for any purpose other than for residue testing under § 309.16(d), a bovine animal must be young (not more than 9 months of age) and weigh 750 pounds or less at the time it is presented for ante-mortem inspection. However, if the inspector has reason to believe, through observation of certain physical characteristics, that the animal weighing less than 750 pounds may nevertheless be an adult animal over 9 months of age, the inspector may request a USDA Veterinary Medical Officer to undertake an examination of the animal to detect the following indicators of maturity: permanent teeth (other than the first molar), mature bone structure, and pregnancy. When, in the judgment of the Veterinary Medical Officer, one or more physical indicators of maturity are present, the carcass of the animal shall, regardless of weight, be considered that of an adult animal over 9 months of age and shall be inspected pursuant to § 310.1(a)(2) of this subchapter and labeled accordingly: *Provided*, however, that if the establishment presents to the Veterinary Medical Officer documentary evidence that the animal in question is 9 months of age or younger, such

documentation will be considered by the Veterinary Medical Officer, along with his or her physical examination of the animal, to determine whether such animal is a calf or an adult bovine animal. The credibility of the documentary evidence will be determined by the VMO. The VMO's determination of the age of the animal is final.

3. Section 309.16(d) would be amended by revising the introductory text to read as follows:

§ 309.16 Livestock suspected of having biological residues.

* * * * *

(d) Calves shall not be presented for ante-mortem inspection in an official establishment except under the provisions of this paragraph, and the provisions of § 309.1.

* * * * *

PART 310—POST-MORTEM INSPECTION

4. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

5. Section 310.1 would be amended by revising the heading, redesignating paragraph (a) as paragraph (a)(1), and by adding new paragraphs (a)(2) and (a)(3) to read as follows:

§ 310.1 Extent, scope and time of post-mortem inspection; staffing standards.

(a)(1) * * *

(2) As set forth in this part, post-mortem inspection is intended primarily to prevent the use in commerce of meat and meat food products which are adulterated. Inspectors also may be required to inspect carcasses and parts in accordance with other sections of this chapter.

(3) In order to be classified as a calf for any purpose other than for residue testing under § 310.21(b), the dressed weight of a carcass shall not exceed 450 pounds. For purposes of this paragraph, the term "dressed weight" shall mean the weight of the carcass minus the head, skin, blood, and viscera. However, if an inspector has reason to believe, through observation of certain physical characteristics, that the carcass which weighs less than 450 pounds and which is represented to be a calf when presented for post-mortem inspection may nevertheless be that of an adult animal over 9 months of age, the inspector may request a USDA Veterinary Medical Officer to undertake an examination of the carcass to detect the following physical indicators of maturity: Permanent teeth (other than first molar), mature bone structure, and pregnancy. When, in the judgment of the Veterinary Medical Officer, one or more physical indicators of maturity are present, the carcass shall, regardless of weight, be considered that of an adult animal over 9 months of age and shall be inspected and labeled accordingly: *Provided*, however, that if the establishment presents to the Veterinary Medical Officer documentary evidence to prove that the carcass in question is that of a bovine animal 9 months of age or younger, such documentation will be considered by the Veterinary Medical Officer, along with his or her physical examination of the carcass, to determine whether the carcass is that of a calf or an adult bovine animal. The credibility of the documentary evidence will be determined by the VMO. The VMO's determination of the age of the animal is final.

* * * * *

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

6. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

7. Section 317.8 would be amended by adding a new paragraph (b)(38) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

(a) * * *

(b) * * *

(38) Product labeled with the term "calf" shall not be used in such a manner as to be false or misleading and shall be consistent with the provisions of §§ 309.1 and 310.1 of this subchapter.

Done at Washington, DC, on: August 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20874 Filed 8–26–93; 8:45 am]

BILLING CODE 3410–DM

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Surety Bond Guarantee Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase its size standard for the Surety Bond Guarantee Program to $6.0 million in average annual receipts. This size standard would be applied to firms in the construction and service industries and would be an increase from the current level of $3.5 million. This action is being taken to better define the size of business that SBA believes should be eligible for contract surety bond guarantee assistance. Its effect would be to increase the number of firms eligible for assistance under this program.

DATES: Comments must be submitted on or before October 26, 1993.

ADDRESSES: Send comments to Gary Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street SW.-suite 8150, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Carl J. Jordan, Size Standards Staff, Tel: (202) 205–6618.

Dorothy D. Kleeschulte, Office of Surety Guarantees, Tel: (202) 205–6540.

SUPPLEMENTARY INFORMATION: SBA has administered a program of contract surety bond guarantee assistance for small businesses since 1971. The SBA guarantee enables participating surety companies to furnish surety bonds on behalf of small contractors that would be unable to obtain bonding on reasonable terms and conditions without an SBA guarantee. The SBA guarantees the surety company against a percentage of loss it may incur under an eligible contractor's bond. In 1978, the maximum size of firm (i.e., the size standard for a contractor) eligible to utilize this program was established at $3.5 million in annual average receipts for the general and special trades construction and the service industries. At that time the size standard used for other SBA programs for general construction was $12 million and for special trades $5 million. In 1984 these size standards were increased for inflation to $17 million and $7 million, respectively. For surety bond guarantee purposes, however, the size standard remained at the $3.5 million level.

Firms in other industries needing contract surety bonding assistance have continued to use the individual industry size standards established in SBA's 13 CFR 121.601. However, since a significant amount of all contract surety bonding is for construction contracts (either general construction or special trade) this size standard is the key determinant of eligibility for firms to participate in the SBA Surety Bond Guarantee Program.

For a number of reasons SBA is proposing to increase the surety bond guarantee size standard from $3.5 million to $6.0 million in average

annual receipts for firms in the industry groups of construction and services. These reasons are summarized below:

(1) To account for the effect of inflation on the eligibility of firms for the Surety Bond Guarantee Program of the Small Business Administration since the standard was last revised in 1978.

(2) To bring the size standard for surety bonding closer to the size standards used in construction for SBA's procurement and loan programs ($7 million for special trade contractors and $17 million for general construction contractors, respectively).

(3) To extend assistance to contracting firms in the $3.5 to $6.0 million range who otherwise cannot obtain surety bond on reasonable terms and conditions without an SBA guarantee.

Each of these factors is discussed in greater detail below.

(1) Inflationary Impact on Eligibility

Since the surety bond guarantee size standard was established by SBA at $3.5 million in 1978 (see 43 FR 21689), its real value has been eroded by inflation. As a result, eligibility for the program has declined compared to 1978 when that size standard was instituted. Inflation in the construction industry has been monitored by the U.S. Department of Commerce, Bureau of the Census. Its Implicit Price Deflator (IPD) (63.4 for 1978, 112.3 for 1992) for construction reflects that inflation has increased construction costs by 77.1% between 1978 and 1992. Applying this increase to the $3.5 million size standard would result in a size standard of nearly $6.2 million. As a result, in the construction industries alone, SBA estimates that, based on a special tabulation prepared for the SBA by the Census Bureau using 1990 data, approximately 13,000 firms no longer enjoy small business eligibility for the Surety Bond Guarantee Program solely due to inflation. A higher size standard would offset the decrease in eligibility and restore the originally targeted level of coverage.

(2) Comparability of Size Standards With Other SBA Programs

Reflecting the different objectives of the SBA Surety Bond Guarantee Program, its size standard for the construction and service industries has been lower than that used for other SBA programs. For example, in the procurement assistance and loan programs the construction size standards for special trade and general construction are $7 million and $17 million, respectively. Size standards of the levels are greater than necessary for the Surety Bond Guarantee Program, since SBA believes small business concerns with sales in excess of $6.0 million can obtain bonding without an SBA guarantee. A $6.0 million size standard would bring the surety size standard closer to those used in construction for SBA's other programs, and reflect the Agency's desire to narrow differences in its size standards as they apply to different SBA programs. This will minimize certain inconsistencies in eligibility for SBA's programs, one of which is reviewed below.

In SBA's Minority Small Business and Capital Ownership Development, or 8(a), Program, SBA has been concerned especially about a subgroup of construction firms that, while small in terms of eligibility for 8(a), are not small for SBA guaranteed surety bonds for work awarded under other than 8(a) contracts. This currently occurs when an 8(a) firm has more than $3.5 million in receipts and desires an SBA guarantee for a surety bond for non-8(a) public or other commercial work to which the $3.5 million size standard presently applies. For 8(a) contractors, however, the size standard to receive an SBA guaranteed surety bond is higher than $3.5 million if it is needed for a specific 8(a) contract. Such firms are eligible for SBA guaranteed surety bonds (see 13 CFR 121.1108) as long as they are within the size standards specified in 13 CFR 121.601, that is, for the construction industries, $7 million in average annual receipts for special trades and $17 million for general construction. For work not awarded under an 8(a) contract, however, such firms must qualify under the surety bond size standard, currently at $3.5 million. A higher size standard of $6.0 million would partially alleviate this situation by expanding the surety bond guarantee eligibility of 8(a) firms for non-8(a) construction contracts and provide a more consistent application of the size standards within the SBA programs.

(3) Firms in the $3.5–$6.0 Million Range

The purpose of the Surety Bond Guarantee Program is to provide greater opportunities for small businesses to compete in the procurement process through increased surety availability. SBA believes that firms above the $6.0 million level in the construction and service industries usually have the capacity to secure bonding without an SBA guarantee. Information from surety industry sources as well as SBA's experience indicates that most firms with receipts above $6.0 million are sufficiently strong financially to obtain surety bonding in the standard market. However, some firms in the $3.5 million to $6.0 million range have experience difficulty in obtaining bonding on reasonable terms and conditions without an SBA guarantee. For this reason, SBA is proposing to limit eligibility to firms whose sales are equal to or less than $6.0 million in receipts.

In summary, a higher size standard would restore the real or inflation-adjusted value of the size standard to the 1978 level. It would also assist some firms whose financial condition may be inadequate to secure bonding on their own, and more closely fulfill the purpose of the authorizing legislation. It would also narrow differences in size standards for major SBA programs.

For these reasons SBA is proposing to establish a size standard of $6.0 million to accomplish these objectives.

SBA specifically invites comments on the appropriateness of this revised size standard for the Surety Bond Guarantee Program. Comments should address the questions of (1) the interaction of this size standard with SBA's programs; (2) the relative levels of participation at a different size standard; (3) the effect of this revised size standard on firms in the construction and service industries; and, (4) the prospect of significant new entries into these industries in response to this size standard.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule, if promulgated in final form, will impact in terms of eligibility on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and will have a significant economic impact on a substantial number of small entities for purposes of this Act. Eligible contractors remit to the SBA a guarantee fee of $6 per $1,000 of the awarded contract price. The amount estimated below in (1) would represent an impact upon newly eligible contractors of approximately $1.7 million, at the estimated participation level. However, since the contemplated economic impact in terms of the amount of SBA guarantee utilization is approximately $234 million (see (1), below), it would constitute a major rule for the purpose of E.O. 12291, if promulgated in final form. Immediately below, SBA has set forth a summary regulatory impact analysis and an initial regulatory impact analysis of this proposed rule.

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(1) Description of Entities to Which the Rule Applies

SBA estimates that 13,000 additional firms (or an additional 2.5 percent), out of a total of 529,000 firms in the construction industries, would gain small business status for the Surety Bond Guarantee Program if this proposed rule is adopted in final form. There were approximately 13,000 firms in the construction industries with between $3.5 and $6.0 million in annual sales according to a special tabulation prepared by the Census Bureau for the SBA using 1990 data. These 13,000 firms accounted for approximately $51 billion in sales (10 percent of total construction receipts).

They would become eligible for SBA's surety bond assistance provided they meet the other program requirements.

While an estimated 13,000 firms would be newly eligible as a result of this rule, the number of additional firms actually receiving assistance will be much fewer. The SBA estimates that 119 additional firms would receive assistance in an average year. This estimate is based on the fact that less than one percent (4,532 in FY 1991) of the 503,000 construction firms that are currently eligible now receive SBA guaranteed surety bonds, and it also assumes that a similar percentage of the newly eligible firms in the $3.5 million to $6.0 million size range would receive SBA guaranteed surety bonds.

SBA bases its estimate of $234 million in additional guarantees on its experience with those firms that in the past have received SBA guaranteed bonds. SBA has observed that these users have obtained SBA guarantees on contract bonds representing approximately 61% of their gross revenue. Construction firms in the $3.5 to $6.0 million sales range generate nearly $51 billion in annual sales, or an average of $3.9 million per firm ($51 billion÷13,000 firms). One hundred and nineteen of those newly eligible construction firms (less than 1%) are projected to utilize the SBA Surety Bond Guarantee Program. These firms collectively generate $467 million in sales. However, since approximately 61% of participating firms' sales are guaranteed under SBA's Surety Bond Program, roughly $285 million in additional SBA guaranteed contract surety bonding would be covered, or about $234 million in additional government commitments (see Table, below).

Construction firms in $3.5–$6.0 million range			Total receipts of firms receiving bonds	Total value of bonding affected by the guarantee	Total government exposure
(a) Total	(b) Total to receive SBA surety guarantees (a)×0.91%	(c) Average receipts per firm	(d) (b)×(c)	(e) (d)×61%	(f) (e)×82%
13,000	119 firms	$3.9 million	$466.8 million	$284.8 million	$233.5 million.

The proposed standard, however, would not impose a regulatory burden on these newly eligible firms because it does not regulate or control behavior.

(2) Description of Potential Benefits of the Rule

The benefits of this proposed rule are not easily quantifiable. However, the resulting additional competition from contracting firms that are newly eligible to bid on and perform contracts under the proposed size standard should result in lower costs to the Federal Government and to other public and private contracting bodies for construction and service contracts. Since 1971, through and including fiscal year 1992, it is estimated that the Surety Bond Guarantee Program has saved the public sector over $1.2 billion. The savings is the computation between the lowest bid coming from the SBG participant and the next higher bidder. The premise is that the cost of the procurement has been reduced because the small contractor (i.e., the lowest bidder), would not have been awarded the job had the contractor not been a participant in the Surety Bond Guarantee Program. The savings to the public sector at the local, city, state and federal levels would also include amounts these entities would have had to pay for the higher bidder's surety bond protection if the Surety Bond Guarantee program were not in existence. Private sector savings are also believed to be significant, but not measurable.

(3) Description of Potential Costs of the Rule

This change in size standards as it impacts on Government should not add a major element of cost to the Government and, in fact, as described above in (2) may reduce the cost to a procuring Federal or other public agency as a result of additional competition for contracts. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits From the Rule

From the above discussion, SBA believes that, because the potential costs of this interim rule are minimal, the potential net benefits would approach fairly closely the potential benefits. By increasing the size standard to $6.0 million, a number of businesses in the $3.5 to $6.0 million range that presently have difficulty obtaining surety bonding would not be eligible for SBA surety bond guarantee assistance. As a result, competition will be similarly increased, and hence reduce the overall costs to both public and private procuring bodies.

(5) Description of Reasons Why This Action Is Being Taken and Objectives of Rule

SBA has provided above in the supplementary information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for the Proposed Rule

The legal basis for this rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(7) Federal Rules

There are no Federal rules that duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

The changes to the current size standard set forth in this rule attempt to establish the most appropriate definition of small businesses eligible for SBA's Surety Bond Guarantee Program. There are no significant alternatives to defining a small business

other than developing an alternative size standard.

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this proposed rule, if promulgated as final, will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant Programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

(1) The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(2) In § 121.802, Establishment of the size standard, paragraph (a)(3) is proposed to be revised to read as follows:

§ 121.802 Establishment of the size standard.

* * * * *

(a)(3) For purposes of surety bond guarantee assistance, (i) Any construction (general or special trade) concern is small if its annual receipts average for its preceding three completed fiscal years does not exceed $6.0 million.

(ii) Any concern performing a contract for services (including, but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three completed fiscal years does not exceed $6.0 million.

(iii) For other surety bond guarantee assistance, an applicant must meet the size standard set forth in § 121.601 for the primary industry (as defined in § 121.802(b)) in which the applicant, including its affiliates is engaged.

* * * * *

Dated: July 6, 1993.

Erskine Bowles,

Administrator, U.S. Small Business Administration.

[FR Doc. 93-20837 Filed 8-26-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 774, 776, and 843

RIN 1029-AB62

Definition and Procedures for Transfer, Assignment and Sale of Permit Rights; Definition of Ownership and Control; Permit Information Requirements and the Applicant/Violator System; Civil Penalties for Owners and Controllers of Violators

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule, extension of public comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until September 27, 1993, the public comment period on the proposed rule published in the June 28, 1993 Federal Register (58 FR 34652). This will provide more time in which to comment on the proposed rule.

DATES: Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on September 27, 1993.

ADDRESSES: Written Comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240: Telephone: 202-208-6652.

SUPPLEMENTARY INFORMATION: OSM published a proposed rule on June 28, 1993 (58 FR 34652), that would amend its regulations and amend existing provisions to clarify the role of the AVS in the permit application process; reorganize and amend the definitions of ownership and control; amend the definition of and procedures for transfer, assignment, or sale of permit rights; establish procedures for permit revisions regarding changes in operators or other changes in ownership or control; revise requirements for information to be submitted as part of the permit application process; eliminate certain civil penalties for owners and controllers of violators; and establish penalties for knowing submission of false or incomplete ownership or control information during any of the above or several other information collection processes.

The comment period for the proposed rule was scheduled to close on August 27, 1993. However, an extension was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on September 27, 1993.

Dated: August 23, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93-20778 Filed 8-26-93; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment contains statutory changes adopted by the Montana 1993 Legislature that address ownership and control provisions, violation history updates, notices of intent for prospecting, consent to surface mining by surface owner, and editorial changes.

This document sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the pubic hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. September 27, 1993. If requested, a public hearing on the proposed amendment will be held on September 21, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 13, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street; room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Gary Amestoy, Administrator, Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444–2074.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Proposed Amendment

By letters dated June 16 and July 18, 1993, (Administrative Record No. MT–11–01) Montana submitted a proposed amendment to its permanent program pursuant to SMCRA. The Montana proposed amendment reflects the statutory changes adopted by the Montana 1993 Legislature. These changes fall into four categories: (1) Prospecting under notices of intent; (2) Ownership and control provisions and revision of provisions specifying which permitting actions are subject to violation history review; (3) Repeal of a section of the Montana Act relating to surface owner consent; and (4) non-substantive editorial changes.

1. Prospecting

Montana proposes to add a new subsection (8) to Montana Code Annotated (MCA) Section 82–4–226. The new subsection would provide for the conduct of prospecting under a notice of intent, instead of under a prospecting permit, when not conducted in an area designated unsuitable for coal mining and not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit. In some such cases, compliance with coal prospecting performance standards would be required. The new subsection would also provide for the Department (of State Lands) to inspect such operations.

Revision would also be made to subsection (1) of MCA 82–4–226 to reference the new subsection.

2. Ownership and control provisions

Montana proposes to revise subsections (11) and (12) of MCA 82–4–227 to require permit denial for certain violations by any person who owns or controls the applicant; denial would also be required for permit amendments other than incidental boundary revisions. The proposal would further require denial of permit amendments (other than incidental boundary revisions) for patterns of willful violations.

3. Surface owner consent

Montana proposes to repeal MCA 82–4–224. That section requires that in instances where the owners of the mineral and surface estates are not the same, an application for a surface mining permit must include a written consent (or a waiver) by the surface owner for entrance and commencement of strip-mining operations (except when the mineral estate is federally-owned).

4. Editorial Changes

Montana proposes editorial revisions throughout MCA Sections 82–4–203, 82–4–226, and 82–4–227. The State presents such changes as non-substantive.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. September 13, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that required approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–20623 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Utah rules pertaining to the scope of rulemaking and promulgation of rules, petitions to initiate rulemaking, hearing requirements for designating areas unsuitable for coal mining, confidentiality of coal exploration information, permit application requirements pertaining to blasting and hydrology, and mining in special areas, specifically prime farmland and alluvial valley floors. The amendment is intended to incorporate the additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. on September 27, 1993. If requested, a public hearing on the proposed amendment will be held on September 21, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 13, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated August 2, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–851). Utah submitted the proposed amendment at its own initiative. Utah proposes revisions to the Utah Rules of Practice and Procedure of the Board of Oil, Gas and Mining (Board) at Utah Administrative Rules (Utah Admin. R.) 641–112–100, scope of rulemaking, and 641–112–200, promulgation of rules. Utah also proposes revisions to the Utah Coal Mining Rules at Utah Admin. R. 645–100–500, petitions to initiate rulemaking; 645–103–441, hearing requirements for designating areas unsuitable for coal mining and reclamation operations; 645–203–200, confidentiality of coal exploration information; 645–301–524.661, permit application blasting level chart; 645–301–731.760, permit application cross sections and maps showing hydrologic information; and 645–302–314.110 and 645–302–323.310, special areas of

mining, specifically prime farmland and alluvial valley floors.

Utah proposes to delete the scope of rulemaking provision at Utah Admin. R. 641–112–100 that requires the Board to promulgate such procedural and substantive rules it deems useful or necessary to implement the statutory duties, fulfill its statutory obligations, or interpret the statutory authority under which it operates. At Utah Admin. R. 641–112–200, Utah proposes to revise the procedures for promulgation of rules to provide that the Board will promulgate rules under the authority provided at Utah Code Annotated (U.C.A.) Sections 40–6–5, 40–9–3.5(2), and 40–10–6(1). At Utah Admin. R. 645–100–500, Utah proposes that persons other than the Division of Oil, Gas and Mining (Division) or the Board may petition to initiate rulemaking pursuant to Utah Admin. R. 641 and the Utah Administrative Rulemaking Act, U.C.A. 63–46–8. At Utah Admin. R. 645–103–441, Utah proposes that within 10 months after receipt of a complete petition to designate an area unsuitable for coal mining, the Board shall hold a public hearing in the locality of the area covered by the petition unless the petitioners and intervenors agree. At Utah Admin. R. 645–203–200, Utah proposes to revise its exploration confidentiality provision to require that the Division will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is classified as being protected, private, or controlled under the Government Records Access and Management Act or confidential under other applicable State or Federal laws, rules, or regulations. At Utah Admin. R. 645–301–524.661, Utah proposes to delete the reference to U.C.A. 63–46a–(3)(7)(a)f and reference only Figure 1 which shows the maximum allowable ground particle velocity for blasting operations. At Utah Admin. R. 645–301–731.760, Utah proposes to add to its hydrology permit application requirements that the Division may, depending on the structures and facilities located in the permit area, require other relevant cross sections and maps. At Utah Admin. R. 645–302–314.110, Utah proposes to revise its prime farmland application permit content requirements to indicate that U.S. Department of Agriculture Soils Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are incorporated on the effective date, rather than the date of adoption, of Utah Admin. R. 645; Utah also proposes to delete the statement that notices of changes made to these publications will be periodically published in the **Federal Register**. At Utah Admin. R. 645–302–323.310, Utah proposes to revise its alluvial valley floor water quality requirement by adding language that incorporates by reference the specific publication by Maas and Hoffman, "Crop Salt Tolerance—Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on September 13, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–20822 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4699–2]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed decision.

SUMMARY: On February 12, 1993, the Governor of Alaska submitted a petition requesting that the State of Alaska be considered for certain exemptions from the diesel fuel sulfur requirements of section 211(i) of the Clean Air Act, as amended (Act). Alaska is not requesting an exemption from the minimum cetane requirement for motor vehicle diesel fuel as set forth in section 211(i) of the Act.

The Administrator of the Environmental Protection Agency (EPA) proposes in this document to grant the petition for exemption as requested by the Governor of Alaska. The exemptions would be based on the finding that it is unreasonable to require persons in Alaska who are located in remote communities not served by the Federal Aid Highway System, and, at this time, for persons served by the Federal Aid Highway System in Alaska, to comply with the sulfur requirement of section 211(i) of the Act and EPA's motor vehicle diesel fuel regulations due to Alaska's unique geographical, meteorological and economic factors, as well as significant local factors.

DATES: A hearing will be held in Washington, DC, on this petition if one is requested on or before September 13, 1993. If no hearing is held, comments on this Notice of Proposed Decision must be submitted on or before September 27, 1993. If a hearing is held, comments must be submitted on or before 30 days from the date of the hearing and EPA will publish an announcement of a public hearing in the **Federal Register**. For more information on public participation see **SUPPLEMENTARY INFORMATION: IV. Public Participation.**

ADDRESSES: Copies of information relevant to this petition are available for inspection in public docket A–93–14 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A duplicate public docket, AK1–1993–1, has been established at U.S. EPA Region X, 1200 Sixth Avenue (AT–082), Seattle, WA 98101, (206) 553–0180, and is available between the hours of 8 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m. Monday through Friday.

Any comments (in duplicate if possible) from interested parties should be addressed to both dockets with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Ms. Whitney Trulove-Cranor, Environmental Protection Specialist, Plans and Program Section, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233–9036.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) provides that the States of Alaska and Hawaii may seek exemption from the requirements of this subsection in the same manner as provided in section 325 [1] of the Act, and requires the Administrator to take final action on any petition filed under this section, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including section 211(i). Such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

II. Petition for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, Governor of the State of Alaska, submitted a petition to exempt motor vehicle diesel fuel in Alaska from all of the requirements of section 211(i) except the minimum cetane index requirement of 40. The petition requests a short-term exemption for areas accessible by the Federal Aid Highway System ("on-highway") and a permanent exemption for areas not accessible by the Federal Aid Highway System ("off-highway"). The short-term exemption would exempt motor vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the Federal Aid Highway System from meeting the sulfur content requirement

[1] Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law 101–549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

specified in section 211(i) until October 1, 1996. Those areas of Alaska not reachable by the Federal Aid Highway System would be permanently exempt from the sulfur content requirement of section 211(i). The petition is based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

If granted, the exemption would apply to all persons in Alaska subject to the prohibitions of section 211(i) of the Act and the diesel fuel requirements in 40 CFR Part 80. Persons in communities served by the Federal Aid Highway System would be exempt from compliance with the diesel fuel sulfur content requirement until October 1, 1996. Persons in communities who are not served by the Federal Aid Highway System (i.e., they are served by barge lines) would be permanently exempt from compliance with the diesel fuel sulfur content requirement. The exemption would apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in the State of Alaska, motor vehicle diesel fuel. Alaska is not requesting an exemption from the minimum cetane requirement for motor vehicle diesel fuel.

The following discussion summarizes the contents of the petition.

A. Geography and Location of the State of Alaska

At 586,000 square miles in area, Alaska is about one-fifth as large as the combined area of the lower 48 states. Because of its extreme northern location, rugged terrain and sparse population, no other state relies on barges to deliver petroleum products to the extent Alaska does. Only 35% of Alaska's communities are served by the Federal Aid Highway System which is a combination of road and marine highways. These on-highway communities account for 69% of the total State population. The remaining 65% of Alaska's communities are served by barge lines and are referred to as off-highway or "remote" communities. Although barge lines can directly access some off-highway communities, those communities that are not located on a navigable river are served by a two-stage delivery system: Over water by barge line and then over land to reach the community. Off-highway communities with populations over 100 account for 13% of the total State population. The remaining 18% of the population consists of off-highway communities with populations less than 100 persons. In 1990, the State's total population was only 550,043.

Because of the State's high latitude, it experiences seasonal extremes in the amount of daily sunlight, which in turn affects the cost of construction in Alaska. For example, the city of Anchorage, located at 61° latitude, receives approximately 19 hours of sunlight on a summer day, and approximately 5.5 hours of sunlight on a winter day; whereas, the community of Point Barrow, located at 71° latitude, receives approximately 24 hours of sunlight on a summer day, and approximately zero hours of sunlight on a winter day. Alaska's petition states that this limitation on the amount of winter-time daylight is one reason why construction costs in the State are high compared to the lower 48 states.

According to the petition, Alaska's extreme northern location places it in a unique position to fuel transcontinental cargo flights between Europe, Asia, and North America. Roughly 75% of all air transit freight between Europe and Asia lands in Anchorage, as does that between Asia and the United States. The result is a large market for jet-A fuel produced by local refiners, which decreases the importance of highway diesel fuel to these refiners. Based on State tax revenue receipts and estimates by Alaska's refiners, diesel fuel consumption for highway use represents roughly 5% of total distillate fuel consumption.

B. Climate, Meteorology and Air Quality

Alaska's climate is colder than that of the other 48 states. The extremely low temperatures experienced in Alaska during the winter impose a unique fuel composition requirement for diesel fuel in Alaska, known as a "cloud point" specification.[2] Although all highway diesel fuels, which are governed by the American Society of Testing and Materials (ASTM) product specifications, are required to meet a cloud point specification, the cloud point varies from one area to another since it is based on the tenth percentile minimum ambient temperature for the area in which the fuel will be used.[3] Alaska has the most severe cloud point specification for diesel fuel in the U.S. at −56 °F. For this reason, all diesel fuel used in the State of Alaska is produced by refiners located in Alaska. Jet-A kerosene meets the same cloud point specification as No. 1 diesel fuel (which is marketed primarily during the winter as opposed to No. 2 diesel fuel which is marketed primarily in the summer) and is commonly mixed with or used as a substitute for No. 1 diesel fuel. However, because jet-A kerosene is allowed a maximum sulfur content of 0.3%, the new diesel fuel sulfur requirement of 0.05% would prohibit using jet-A and No. 1 diesel fuel interchangeably.

Ice formation during the winter months restricts fuel delivery to off-highway areas served by barge lines. Therefore, fuel is generally only delivered to these areas between the months of May and October. This further restricts the ability of fuel distributors in Alaska to supply multiple grades of petroleum products to off-highway communities.

The only violations of ambient air quality standards in Alaska are for carbon monoxide (CO) and particulate matter (PM_{10}). CO violations have only been recorded in the State's two largest communities: Anchorage and Fairbanks. PM_{10} violations have only been recorded in two rural communities, Mendenhall Valley of Juneau and Eagle River, a community within the boundaries of Anchorage. The most recent PM_{10} inventories for these two communities show that these violations are the result of fugitive dust from paved and unpaved roads, and that motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of each of these areas.[4] Moreover, Eagle River has not had a violation of the PM_{10} standard since 1986 and plans to apply for a change in its attainment status. Mendenhall Valley has plans for extensive road paving to be implemented to control road dust. The sulfur content of diesel fuel is not expected to have any significant impact on ambient PM_{10} or CO levels in any of these areas because of the minimal contribution by motor vehicles to PM_{10} in these areas and the fact that diesel fuel sulfur content has an insignificant effect on CO emissions.

C. Economic Factors

Alaska states in its petition that local refineries have limited refining capabilities. Demand for jet-A kerosene, which is sold as No. 1 diesel fuel because it meets Alaska's winter cloud point specification, accounts for almost fifty percent (50%) of distillate

[2] The cloud point defines the temperature at which a cloud or haze of wax crystals appears in the oil. Its purpose is to ensure a minimum temperature above which fuel lines and other engine parts are not plugged by solids that form in the fuel.

[3] Annual Book of ASTM Standards, Designation D975–89 "Standard Specification for Diesel Fuel Oils," Current edition approved March 31, 1989.

[4] "PM_{10} Emission Inventories for the Mendenhall Valley and Eagle River Areas," prepared for the U.S. Environmental Protection Agency, Region X by Engineering-Science, February 1988.

consumption and dominates refiner planning. A survey of the refiners in Alaska, conducted by the State, revealed that it would cost over $100,000,000 in construction and process modifications to refine Alaska North Slope (ANS) crude into 0.05% sulfur diesel fuel to meet the demand for highway diesel fuel. Among the reasons for the high cost include the construction costs in Alaska, which range from 25% to 65% higher than costs in the lower 48 states, and the cost of modifying the fuel production process itself. The petition states that because there is such a small demand for highway diesel fuel in Alaska, the costs that would be incurred to comply with section 211(i)'s sulfur requirement are excessive; and without an exemption from having to meet this requirement, most refiners would choose to exit the market for highway diesel fuel. Although one refiner has discovered a low-cost approach to producing 0.05% sulfur diesel fuel, information provided to EPA subsequent to the receipt of this petition revealed that this fuel is a custom Arctic Heating Fuel that has its own unique specifications and does not meet all ASTM standards for highway diesel fuels such as No. 1 and No. 2 diesel. Therefore, this low-sulfur diesel fuel would not be marketed for commercial use, but only for internal use in fleet vehicles on the North Slope.[5]

Currently, barge shipments of diesel fuel to communities off the Federal Aid Highway System do not require segregation of diesel fuel used in motor vehicles from diesel fuel used for off-highway purposes. It would be costly to create separate storage facilities and tankage for transportation of low-sulfur highway diesel fuel to off-highway communities, where motor vehicle diesel fuel consumption represents less than 5% of total distillate consumption. Since the majority of diesel fuel consumption in these communities is for off-highway purposes (generation of electricity, heat, non-road vehicles) the cost associated with converting the entire diesel fuel supply to low-sulfur diesel would be prohibitive, increasing the overall cost of living in these communities. Currently, it is not uncommon for the cost of electricity to exceed 50 cents/kwh in off-highway communities, as opposed to the cost of electricity for on-highway communities, which ranges from 6.6 cents/kwh to 11.25 cents/kwh. In comparison, the national average cost of electricity in 1992 was 6.8 cents/kwh for all sources (i.e., residential, commercial, industrial, and other).[6]

The Alaska Department of Environmental Conservation (ADEC) has estimated that refiners would have to charge an additional 28 to 46 cents per gallon of highway diesel fuel to recover the cost of the investment to produce low-sulfur diesel fuel, compared to an estimated 3 to 5 cents per gallon increase for the lower 48 states. Currently, the price of diesel fuel marketed on the Federal Aid Highway System in Alaska ranges from $1.09 to $1.21 per gallon. Prices of diesel fuel in off-highway communities currently range from $1.45 to $2.65 per gallon.

D. Environmental Factors

Information provided to EPA by the State of Alaska subsequent to receipt of the petition indicates that the current sulfur content for diesel fuel in Alaska averages approximately 0.1% by weight for nine months of the year, and 0.25% by weight for the remaining three months of the year. Thus, the current level of sulfur in motor vehicle diesel fuel used in Alaska is well below the current ASTM sulfur specification of 0.5% (by weight).[7]

III. Proposed Decision

Presently, refiners in the State of Alaska are the only source of highway diesel fuels meeting the arctic cloud point specification. Such fuels are not currently available in the lower 48 states. Given the petroleum refining, storage and distribution infrastructure in the State of Alaska, in-state refiners and residents of off-highway communities would be most affected if required to comply with the section 211(i) diesel fuel sulfur content requirement.

In complying with the section 211(i) sulfur requirement, refiners have the option to invest in the process modifications necessary to produce low-sulfur diesel fuel for use in motor vehicles, or not invest in the process modifications and only supply diesel fuel for off-highway purposes (e.g., heating, generation of electricity, fuel for non-road vehicles). Most of Alaska's refiners indicated that given the minuscule size of the highway diesel fuel market in Alaska, they could not justify the investments required to produce low-sulfur diesel fuel and would choose to exit the market for highway diesel fuel if this exemption is not granted. Although one refiner appears to have discovered a low-cost approach to producing a diesel fuel that meets the section 211(i) sulfur requirement, this fuel does not meet ASTM viscosity specifications for No. 1 diesel. Another limitation to this approach is that the process modifications involved in producing low-sulfur diesel fuel would result in a substantial decrease in yield. The refiner has indicated to EPA that even if it could produce a commercial grade low-sulfur diesel fuel, it would primarily be for internal use only, as the refiner does not have the capacity to supply Alaska's highway diesel fuel market. In addition, the cost and logistics of distribution to areas on the highway system would also be prohibitive due to the location of the refineries.[8]

It is proposed that areas in Alaska served by the Federal Aid Highway System and marine highway system be granted a three year exemption (until October 1, 1996) from having to meet the diesel fuel sulfur content requirement of 0.05% (by weight), as per section 211(i) of the Act.[9] The basis for this decision is that compliance with this requirement would, at this time, create a severe economic burden for refiners, distributors and consumers of diesel fuel in the State of Alaska. This economic burden is created by unique meteorological conditions in Alaska and unique distillate product demands as outlined above. As a result of these conditions, low-sulfur diesel fuel will not be available for commercial use in Alaska by October 1, 1993, when the section 211(i) requirement goes into effect.

The EPA believes that a three year exemption from the diesel fuel sulfur content requirement is a reasonable time period for areas served by the Federal Aid Highway System. During the exemption period, the State of Alaska plans to establish a Task Force (in which an EPA representative will participate) to evaluate further the availability of arctic-grade, low-sulfur diesel fuel from out-of-state refiners, the costs associated with importing the fuel, and the costs of storing and distributing

[5] Letter from Robert G. Kratsas, Manager, Environment, Health and Safety, ARCO Alaska, Inc. to Commissioner John A. Sandor of the Alaska Department of Environmental Conservation (DEC), March 10, 1992, and letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc. to Ronald G. King of the Alaska DEC, April 9, 1993.

[6] "Monthly Energy Review," Energy Information Administration, U.S. Department of Energy, March 1993.

[7] American Society for Testing and Materials Standard D975.

[8] Letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc., to Ronald G. King of the Alaska DEC, April 9, 1993.

[9] EPA will consider a community to be "on-highway" if it can be reached by an on-road vehicle from the contiguous road system or by barge on the marine highway system. All other communities not accessible by the contiguous road or marine highway system will be considered "off-highway."

the fuel to areas on the highway system. If the Task Force's evaluation provides adequate proof that it is not economically feasible to produce or import an arctic-grade diesel fuel that meets the 0.05% sulfur requirement, and that it would not be feasible for EPA to impose an intermediate sulfur content standard for motor vehicle diesel fuel used in areas served by the highway system, and no other alternatives are discovered, the State will have adequate time to prepare and submit another exemption request. If a new exemption request is submitted, EPA will publish another notice in the Federal Register and re-examine the issue of an exemption.

Although the State's largest communities, Fairbanks and Anchorage, are carbon monoxide (CO) nonattainment areas, granting this exemption is not expected to have any significant impact on ambient CO levels because the sulfur content in diesel fuels does not significantly affect CO emissions. Two rural communities are designated nonattainment areas with respect to particulate matter (PM_{10}); however, motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of these two areas where fugitive dust is a problem. The EPA believes that granting a 3-year exemption to communities served by the highway system will not have any significant impact on the attainment prospects of any of these communities.

Whether low-sulfur diesel fuel is produced in Alaska or imported from the lower 48 states or Canada,[10] there remains the problem of segregating the two fuels for transport to communities located off the highway system and storage of the fuels thereafter. Fuel is delivered to these communities by barge lines and off-road transport only between the months of May and October due to ice formation which blocks waterways leading to these communities for much of the remainder of the year. The fuel supplied to these communities during the summer months must last through the winter and spring months until the ice has melted and resupply can occur. Additionally, the existing fuel storage facilities limit the number of fuel types that can be stored for use in these communities. The cost of constructing separate storage facilities and providing separate tanks for transport of low-sulfur diesel fuel to remote communities is prohibitive. This is largely due to the high cost of construction in Alaska and the constraints inherent in distributing fuel to Alaska's remote communities as outlined above. One alternative to constructing separate storage facilities is to supply only low-sulfur diesel fuel to these communities. However, the result would require use of the higher cost, low-sulfur diesel fuel for all diesel fuel needs. This would greatly increase the already high cost of living in these communities since approximately 95% of distillate consumption in these communities is for off-highway uses, such as operating diesel powered electrical generators.

Given that highway diesel fuel consumption represents less than 5% of total distillate consumption in these remote communities, that many villages have a total of only one or two vehicles, and that these remote communities are currently in attainment with all air quality standards, EPA believes that the cost of using low-sulfur diesel fuel in these communities far outweighs the benefits. Because the Agency believes that requiring these remote communities to comply with the section 211(i) sulfur requirement would create a severe economic burden on distributors of diesel fuel to these communities and the residents of these communities themselves, and because the Agency believes the unique conditions faced by these remote communities are not likely to change in the future, the Agency proposes that communities that are not served by the contiguous road or marine highway system be permanently exempted from the 0.05% (by weight) sulfur requirement of section 211(i) of the Act.

For the same reasons, the Agency also proposes to exempt Alaska from those provisions of section 211(g)(2) of the Act that prohibit the fueling of motor vehicles with high-sulfur diesel fuel.[11] Although Alaska did not explicitly request an exemption from this provision in its petition, it is reasonable to read the petition as including such a request. Sections 211(g) and 211(i) both restrict the use of high-sulfur motor vehicle diesel fuel, and exempting Alaska from section 211(i)'s sulfur content requirement but not from section 211(g)'s related prohibition would provide no relief from the problems Alaska presented in their petition. Therefore, it is proposed that areas in Alaska served by the Federal Aid Highway System be exempted from the related 211(g)(2) provisions until October 1, 1996, and that off-highway areas, served by barge lines, be permanently exempted from these related provisions.

Finally, EPA recognizes that the primary purpose of reducing the sulfur content of diesel fuel is to reduce vehicle particulate emissions. Additional benefits cited in the final rule (55 FR 34120, August 21, 1990) include a reduction in sulfur dioxide (SO_2) emissions and the ability to use exhaust after treatment devices on diesel fueled vehicles, which would result in some reduction of HC and CO exhaust emissions. Despite the possibility that the use of high-sulfur diesel fuel may cause plugging or increased particulate sulfate emissions in diesel vehicles equipped with trap systems or oxidation catalysts, any increase in sulfate particulate emissions would likely be insignificant in Alaska since current motor vehicle contributions to PM_{10} emissions are minimal, as previously discussed in part B. Also, the lower sulfur requirement for motor vehicle diesel fuel will have no impact on the attainment prospects of Fairbanks and Anchorage with respect to CO, since reducing sulfur content has no direct affect on CO emissions. Since Alaska is currently in attainment with HC and SO_2 air quality standards, there is currently no concern for reducing HC or SO_2 emissions. Additionally, the extent to which exhaust after treatment devices will be used on diesel vehicles, and the extent to which plugging or other damage would occur to these devices as a result of using high-sulfur diesel fuel, is relatively uncertain at this time. Given the limited number of vehicles that may be affected, EPA plans to handle warranty and recall liability issues on a case-by-case basis.

The Agency recognizes that granting these exemptions means Alaska will forego the potential benefits to its air quality resulting from the use of low-sulfur diesel fuel. The Agency believes that the potential benefits to Alaska's air quality are minimal and far outweighed by the increased costs to remote communities, and at this time, to communities served by the highway

[10] Although low-sulfur diesel fuel is not currently available in Canada, Environment Canada is working with diesel fuel refiners in Canada and manufacturers of diesel vehicles to create Memoranda of Understanding, whereby 0.05% sulfur diesel fuel, which also meets the cetane index requirement of 40, is expected to be available in some parts of Canada by October 1, 1994.

[11] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05%, when such fuel is permitted to be sold or dispensed for use in motor vehicles. The proposed exemptions would include exemptions from this prohibition, but not include the prohibitions in section 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

system. For this reason, EPA proposes to grant the requested exemptions.

IV. Public Participation

EPA will consider this petition in accordance with section 307(d) of the Act. To aid in preparing EPA's final response to the petition, EPA hereby invites public comment on the proposed decision to grant the petition for exemption as requested.

Parties who wish to request a hearing should contact Ms. Whitney Trulove-Cranor at (202) 233–9036. If a hearing is scheduled based on a request and you wish to be notified or to participate, you must contact the above individual for the date, time and location of the hearing. If there is a hearing, parties wishing to testify should contact Ms. Whitney Trulove-Cranor. It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the EPA Air Docket in Washington, DC, and the Region X docket in Seattle, WA. Additional information on the submission of comments to both dockets may be found in the ADDRESSES section of this notice.

V. Statutory Authority

Authority for the action proposed in this notice is in sections 211(i)(4) (42 U.S.C. 7545(i)(4)) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order (E.O.) 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The decision proposed today alleviates any potential adverse economic impacts in Alaska and is not a regulation or rule as defined in E.O. 12291. Therefore, no regulatory impact analysis has been prepared.

VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. Today's proposed decision is not a rulemaking. Furthermore, the action eases requirements otherwise applicable to affected entities. Thus, it will not result in a significant adverse impact on a substantial number of small business entities.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: August 23, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–20855 Filed 8–26–93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–177, DA 93–1024]

AM Radio Service Directional Antenna Performance

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: The Commission extends the time for filing comments in its proceeding examining the policies and rules pertaining to the performance verification of directional antenna systems at AM Broadcast Radio Service stations from August 20, 1993 to October 29, 1993 and for reply comments from September 7, 1993 to December 29, 1993. The Notice of Inquiry in this proceeding may be found at 58 FR 36184 (July 6, 1993). This action is being taken to allow parties knowledgeable in this area an adequate opportunity to base comments on a careful analysis of the issues.

DATES: Comments are now due October 29, 1993; reply comments are due December 29, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joe Johnson, Mass Media Bureau (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Order Granting *COM001*Extension of Time

Adopted: August 19, 1993.

Released: August 20, 1993.

Comment Date: October 29, 1993.

Reply Comment Date: December 29, 1993.

By the Chief, Mass Media Bureau:

1. On June 14, 1993, the Commission adopted a Notice of Inquiry, 8 FCC Rcd 4345 (1993), ("NOI") in MM Docket No. 93–177 to examine the policies and rules pertaining to the performance verification of directional antenna systems at AM Broadcast Radio Service stations. Since those rules were established in the late 1930s, they have been amended many times, but the entire framework has never been comprehensively reexamined. The NOI initiates that broad review and seeks to identify those portions of the current rules affecting AM directional arrays which ought to be the subject of a Notice of Proposed Rule Making. The deadlines for filing comments and reply comments were, respectively, August 20, 1993 and September 7, 1993.

2. On July 12, 1993, the Association of Federal Communications Consulting Engineers ("AFCCE") requested an extension of the comment period. AFCCE is an association of consulting engineers, engineers employed by broadcast stations, networks and equipment manufacturers. AFCCE indicates that it will not be meeting during the summer and therefore will be unable to file comments on the established deadline. Thus, they request that the filing deadlines be extended by approximately 60 days.

3. Five consulting engineering firms that are members of AFCCE filed the petition that initiated this proceeding. The continued participation of those firms, of other AFCCE members, and of AFCCE as an organization should provide valuable assistance in our effort to update our AM directional antenna rules. We agree that it is important that the parties knowledgeable in this area have an adequate opportunity to base comments on a careful analysis of the issues. Therefore, we are persuaded that the extension now under consideration should be approved.

4. Accordingly, *it is ordered* that the request to extend the comment date filed July 12, 1993 by the Association of Federal Communications Consulting Engineers is granted. The date for filing comments in this proceeding is extended to October 29, 1993 and the date for filing reply comments is extended to December 29, 1993.

5. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

6. Further information may be obtained from Joe Johnson, Mass Media Bureau, Engineering Policy Branch, (202) 632–9660.

Federal Communications Commission.
Roderick K. Porter,
Deputy Chief, Mass Media Bureau.
[FR Doc. 93-20780 Filed 8-26-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93-232; DA 93-991]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by First Century Broadcasting, Inc. ("First Century"), to amend the Commission's Rules to change the designation of the San Francisco-Oakland-San Jose, California television market to include the community of Concord, California. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before September 22, 1993, and reply comments are due on or before October 7, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-232, adopted August 11, 1993, and released August 19, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by First Century Broadcasting, Inc., licensee of KFCB-TV, Concord, California, proposed to amend § 76.51 of the Rules to change the designation of the San Francisco-Oakland-San Jose, California television market to include the community of Concord, California.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that KFCB-TV and stations licensed to communities in the San Francisco-Oakland-San Jose television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, First Century's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 22, 1993, and reply comments on or before October 7, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
Roy J. Stewart,
Chief, Mass Media Bureau.
[FR Doc. 93-20779 Filed 8-26-93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking from Case Consulting Laboratories requesting NHTSA to

amend Federal Motor Vehicle Safety Standard No. 116, Motor vehicle brake fluids. Petitioner requested that NHTSA revise certain test procedures and specify a new compatibility brake fluid for DOT 3 and DOT 5.1 brake fluids. After careful review, NHTSA has determined that the petition has not shown that there is a safety need for the requested changes.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Carter's telephone number is: (202) 366–5274.

SUPPLEMENTARY INFORMATION:

Background Information

This notice denies a petition for rulemaking from Mr. Leonard Mackowiack of Case Consulting Laboratories, Inc., requesting NHTSA to amend Federal Motor Vehicle Safety Standard No. 116 (Standard No. 116, 49 CFR 571.116). Standard No. 116 specifies requirements for the performance of DOT 3, DOT 4, DOT 5 and DOT 5.1 brake fluids. The purpose of the standard is to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated fluid.

The Petition

On July 7, 1992, Case Consulting Laboratories (Case) petitioned NHTSA to amend several requirements and test procedures in Standard No. 116, in order to address what Case described as "technical gaps" in the standard. Case's petition raised the following issues. Case believed that the "humidfication" requirement (i.e., the wet equilibrium reflux boiling point requirement of S5.1.2, which measures the amount of water a brake fluid absorbs) is inappropriate for DOT 4, DOT 5 and DOT 5.1 fluids because the test was developed from test data of DOT 3 fluid. The petitioner suggested that the humidification test procedure "has to be validated and modified for use with" the DOT 4, 5, and 5.1 fluids.

The petitioner also suggested that NHTSA develop a chloride corrosion test. Case stated that data submitted by members of a Society of Automotive Engineers brake fluid committee indicated that chlorides are present in vehicles' brake fluid. Case believed that those chloride levels "in combination with water, in a closed system are a source for metal corrosion."

Finally, Case requested NHTSA to develop new compatibility materials for DOT 3 and 5.1 fluids. Compatibility materials are test materials used in Standard No. 116 to evaluate new brake fluids and brake hoses. Since there is no specific chemical formula for brake fluid, compatibility fluid is used to detect adverse chemical reactions when brake fluids from various manufacturers are mixed together.

Agency Response

NHTSA has decided to deny Case's petition because of a lack of a safety need for the requested changes. There is no evidence, either supplied by the petitioner or otherwise available to NHTSA, supporting Case's belief that the alleged deficiencies in Standard No. 116 exist. The information supplied by the petitioner discussed, from an engineering point of view, particular brake system problems that might possibly occur, but did not indicate the existence or magnitude of any real-world safety problem. Standard No. 116's humidification test has applied to DOT 4, DOT 5 and DOT 5.1 fluids since May 6, 1986. Since that date, no problems have arisen about applying the requirement to the fluids in question. Similarly, there is no showing of a safety need to adopt a chloride corrosion test. The agency does not have information showing a safety problem from brake system corrosion due to chloride and water in vehicle brake systems.

Case has not shown a need to develop additional compatibility fluids for DOT 3 and 5.1 fluids. The agency has proposed to replace the current DOT 3 compatibility fluid (RM–66–03) with a newly developed fluid (RM–66–04). 57 FR 49162, October 30, 1992. Case believes that the RM–66–04 fluid "is not a true blend of DOT 3 type fluids because of a DOT 4 type is part of its blend." Case is correct when it indicates that the new (RM–66–04) compatibility fluid is not a true blend of DOT 3 brake fluids. It was never intended to be a blend of DOT 3 brake fluids. The blending of brake fluids for use in compatibility fluid RM–66–04 is intended to represent a broader range of brake fluids that just those used in fluids meeting the requirements of DOT 3 brake fluids.

In addition, NHTSA sees no need for development of a separate compatibility fluid for DOT 5.1 brake fluid. The higher boiling point brake fluids which meet the requirements of DOT 5, but are not silicon based compounds, fall into the classification covered by DOT 5.1. The brake fluids which fall into the DOT 5.1 category are borate ester based compounds which have been developed to be entirely compatible with the requirements of SAE J1703 and Standard No. 116. RM–66–04 compatibility fluid is such a brake fluid. Thus, RM–66–04 compatibility fluid, when issued, will be the fluid used to test DOT 5.1.

In its petition, Case also expressed concern about how water absorbed in brake fluid can affect braking performance by increasing the fluid's viscosity and by shrinking styrene and butadiene rubber (SBR) cups in wheel and master cylinders. The petitioner suggested that NHTSA evaluate the extent of any problems with viscosity and rubber cup shrinkage and take corrective actions.

This request does not meet the requirements in 49 CFR part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders, for rulemaking "petitions." The focus of the request was on conducting research to investigate alleged problems. There is no provision for petitioning the agency to undertake research or to evaluate the extent of an alleged safety problem, such as that possibly relating to brake fluid viscosity and SBR cup shrinkage. Thus, Case's request for such action is not properly a matter for a petition.

In any event, the agency would like to respond to Case's concern by emphasizing that NHTSA is not aware of safety problems warranting the type of evaluation of brake fluid viscosity and SBR cups at this time. Further, Case did not provide any safety data or other information supporting its belief in the need for such an evaluation. Case is asking that NHTSA expend agency time and resources on this area, but no safety increase or benefit can be foreseen. The agency has decided that safety would be better served if it were to devote its resources to the other areas of motor vehicle safety that need attention.

Based on the above, the agency has determined that there is not a reasonable possibility that the order requested in Case's petition would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.

Issued on August 23, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–20809 Filed 8–26–93; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 58, No. 165
Friday, August 27, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082393E]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's Reef Fish Advisory Panel (Panel) will meet on September 7–8, 1993, at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000. The meeting will begin on September 7 at 1 p.m. and run until 5 p.m. and on September 8 from 8 a.m. until 3 p.m.

The Panel will review the Reef Fish Stock Assessment Panel Report and the Socioeconomic Assessment Panel Report; provide recommendations on Amberjack, Vermillion Snapper, Red Grouper, Red Snapper, Gray Triggerfish, Red Porgy, Gag, and other species; and discuss Red Snapper trip limits for 1994 and the proposed schedule for Amendment #8 to the Reef Fish Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: August 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20879 Filed 8–26–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 082393F]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's Standing and Special Reef Fish Scientific and Statistical Committees (Committees) will meet on September 9–10, 1993, at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000. The meeting will begin on September 9 at 10 a.m. and run until 5 p.m. and on September 10 from 8 a.m. until 12 noon.

The Committees will review the Reef Fish Stock Assessment Panel Report and the Socioeconomic Assessment Panel Report; provide recommendations on Amberjack, Vermillion Snapper, Red Grouper, Red Snapper, Gray Triggerfish, Red Porgy, Gag, and other species; and discuss Red Snapper trip limits for 1994 and the proposed schedule for Amendment #8 to the Reef Fish Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: August 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20880 Filed 8–26–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 082393C]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold a public meeting on September 12–17, 1993, at the Columbia River Red Lion Inn, 1401 North Hayden Island Drive, Portland, OR. Except for the closed session noted below, the meetings are open to the public.

The Council will meet on September 14 at 8 a.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The Council's open session begins at 8:30 a.m. on September 14 to consider administrative and other matters, including the election of the chair and vice chair of the Council, Council budget and personnel matters, amendments to the Magnuson Fishery Conservation and Management Act and other legislation, environmental community representation on the advisory panel, Council operating procedures and work load priorities. The Council will also address the following salmon management and habitat issues on September 14.

The salmon agenda items are:

(1) Sequence of events and status of the fisheries;

(2) California sport fishery measures between September 30, 1993 and May 1, 1994;

(3) Status of stock reviews for Klamath and Sacramento River fall chinook;

(4) Review of hooking mortality estimate for ocean sport fisheries; and

(5) Salmon plan Amendment #1.

The public may address the Council on fisheries issues unrelated to the agenda items on September 14 at 4 p.m. Public comments that pertain to action items on the agenda will be heard during the Council's deliberations on each issue.

The Council will reconvene on September 15 beginning at 8 a.m. to consider Pacific halibut issues as follows:

(1) Review of stock assessment for Area 2A;

(2) Review of by-catch estimate for Area 2A;

(3) Catch sharing plan for 1994; and

(4) Proposals to amend the catch sharing plan for 1995.

Also on that day, the Council will address individual quotas for the fixed gear sablefish fishery.

On September 15 at 8 p.m. there will be a public workshop on West Coast groundfish stock assessments.

On September 16 and 17, beginning at 8 a.m. on each day, the Council will

address groundfish management issues as follows:

(1) Status of regulations implementing Council actions;

(2) Status of fisheries and inseason adjustments;

(3) Revisions to the definition of legal gear;

(4) System for combining limited entry permits;

(5) Incorporation of the Newport, CA, dory fleet into the limited access fishery;

(6) Preliminary stock assessments, harvest levels and other specifications for 1994;

(7) Open access/limited entry allocations and trip limits;

(8) Pacific whiting allocation framework; and

(9) Scoping for new management approaches.

Other Meetings

The Scientific and Statistical Committee (SSC) will meet on September 13 at 8 a.m. to address scientific issues on the Council agenda, and will reconvene on September 14 at 8 a.m.

The SSC Groundfish Subcommittee will meet on September 12 at 3 p.m. to address halibut stock assessment and bycatch. The SSC Salmon Subcommittee will meet on September 12 at 1 p.m. to review the salmon plan amendment and the sport hooking mortality study.

The Groundfish Advisory Subpanel will meet on September 13 at 1 p.m. to address groundfish management issues on the Council agenda, and will reconvene on September 14 and 15 at 8 a.m.

The Salmon Technical Team will meet on September 13 at 1 p.m. to discuss salmon issues on the Council agenda.

The Budget Committee will meet on September 13 at 1 p.m. to review the status of the fiscal year 1993 budget, the fiscal year 1994 budget request and personnel rules.

The Habitat Committee will meet on September 13 at 1 p.m. to consider activities affecting the habitat of fish stocks managed by the Council.

The Enforcement Consultants will meet on September 14 at 7 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above meetings will be available to the public after September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20877 Filed 8–26–93; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082393B]

South Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint public meeting of its Law Enforcement Committee and Advisory Panel on September 8–9, 1993, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000. The meeting will begin on September 8 at 1:30 p.m. and run until 5 p.m., and on September 9 from 8:30 a.m. until 12 p.m.

Topics tentatively scheduled for discussion include:

(1) Funding of law enforcement under the Magnuson Fishery Conservation and Management Act;

(2) Captain and mate licensing requirements under the Coast Guard Vessel Safety Act;

(3) Agency reports of minimum size limit violations;

(4) Status of proposed management for "live rock" by the South Atlantic Council; and

(5) The transfer at-sea of Spanish mackerel from larger boats to smaller boats because of daily vessel limits imposed on the commercial fishery off Florida.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: August 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–20878 Filed 8–26–93; 8:45 am]

BILLING CODE 3510–22–F

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of scientific research permit No. 665 (P77#32).

SUMMARY: Notice is hereby given that on August 20, 1993, Permit No. 665, issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on March 21, 1989 (54 FR 12471), was modified to extend its duration through December 31, 1994.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices.

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301) 713–2289; and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4047 (310/980–4016).

SUPPLEMENTARY INFORMATION: The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. *et seq.*), and the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 20, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–20863 Filed 8–26–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of scientific research permit No. 684 (P77#35).

SUMMARY: Notice is hereby given that on August 20, 1993, Permit No. 684, issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on October 16, 1989 (54 FR 43194), was modified to extend its duration through December 31, 1994.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4047 (310/980–4016).

SUPPLEMENTARY INFORMATION: The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. *et seq.*), and the provisions of §§ 216.33 (d) and (e) of the Regulations

Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 20, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-20864 Filed 8-26-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 27, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On July 16, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (58 FR 38364) of proposed addition to the Procurement List.

Comments were received from the current contractor for the services and a union representing the contractor's workers. The contractor questioned the ability of workers with severe disabilities to operate equipment safely and to meet the health and safety requirements of performing the services in an environment like the Soldiers' Home. The union objected to the loss of employment and benefits by its members who are currently employed at the Soldiers' Home.

Nonprofit agencies employing people with severe disabilities perform janitorial and custodial services, and related activities, in a wide variety of Government environments, including areas with health and safety requirements like those of the Soldiers' Home.

The nonprofit agency which will provide these services is currently performing janitorial and custodial services under the Committee's program in nine other locations in the Washington, DC area.

Nonprofit agency employees are currently undergoing the specialized training which the Soldiers' Home requires of workers performing these services. The central nonprofit agency that represents most of the nonprofit agencies performing janitorial and custodial services under the Committee's program has verified that the nonprofit agency is fully capable of providing the services required at the Soldiers' Home. The Soldiers' Home declined an opportunity to make its own determination that the nonprofit agency is capable of performing the services. The Soldiers' Home has informed the Committee that it considers the nonprofit agency is capable of performing the services. For these reasons, the Committee has determined that the nonprofit agency is capable of performing the service at the Soldiers' Home.

The addition of this service to the Procurement List will provide employment for a substantial number of people with severe disabilities. Nationally, people with severe disabilities have a disability rate of over 65%, far above that of the workers who will be displaced at the Soldiers' Home. The Committee believes that the loss of employment for workers who can more easily get other jobs is outweighed by the creation of jobs for people with severe disabilities by the addition of this service to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial

U.S. Soldiers' and Airmen's Home
3700 North Capitol Street, NW.
Washington, DC

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93-20865 Filed 08-26-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: September 27, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On May 28, June 18, 25, July 2 and 9, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 31016, 33622, 34425, 35916 and 36944) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to Procurement List:

Commodities

Folder, File
7530–00–707–8406

Handle, Extension, Aluminum
7920–00–926–5146

Squeegee, Floor-Cleaning
7920–00–530–5740
7920–00–965–4873

Services

Janitorial/Custodial

Douglas Station Post Office
904 Third Street
Douglas, Alaska

Janitorial/Custodial

Basewide
Homestead Air Force Base, Florida

Janitorial/Custodial

Marine Corps Air Station Commissary
Kaneohe Bay, Hawaii

Janitorial/Custodial

Illinois Waterway Visitor Center
Dee Bennett Road
Utica, Illinois

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Sweatshirt

8415–00–269–0403
8415–00–262–1534
8415–00–262–1535
8415–00–262–1536

Sweatpants

8415–00–268–8178
8415–00–268–8179
8415–00–268–8180

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 93–20883 Filed 8–26–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 27, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Canvas Basket Insert

7240–02–000–8704
Nonprofit Agency: New Horizons of Oakland County, Inc. Bloomfield Hills, Michigan

Deletion

It is proposed to delete the following services from the Procurement List:

Grounds Maintenance

U.S. Naval Security Activity
Skaggs Island
Sonoma, California

Janitorial/Grounds Maintenance

USARF—Grant County Airport
Moses Lake, Washington

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 93–20884 Filed 08–26–93; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Delegation of Settlement Authority

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Department of Justice Civil Division Directive No. 1–93 and 10 U.S.C. 113(d), the Secretary of Defense has delegated to the Secretaries of the Army, Navy, and Air Force the authority to adjust, determine, compromise, and settle administrative claims involving their respective Military Departments under 28 U.S.C. 2672 (relating to the administrative settlement of federal tort claims), if the amount of the proposed settlement, compromise or award does not exceed $200,000.

The delegation to the Secretary of the Army includes the authority to adjust, determine, compromise, and settle administrative claims arising out of the acts or omissions of civilian personnel of DoD Components other than the Military Departments, in accordance with DoD Directive 5515.9, "Settlement of Tort Claims," September 12, 1990.

The authority delegated above may be redelegated in writing.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia L. Toppings, Directives Division, Attn: room 2A286, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Dated: August 24, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–20835 Filed 8–26–93; 8:45 am]

BILLING CODE 5000–04–M

Privacy Act of 1974; Notice to Amend Record Systems

AGENCY: Office of the Secretary of Defense, DOD

ACTION: Notice to amend record systems.

SUMMARY: The Office of the Secretary of Defense proposes to amend six systems of records notices to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on September 27, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, Room 5C315, Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: August 23, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AMENDMENTS

DGC 04

SYSTEM NAME:

Industrial Personnel Security Clearance Case Files *(February 22, 1993, 58 FR 10232).*

CHANGES:

* * * * *

SYSTEM LOCATION:

First paragraph, second line, delete 'Defense Legal Service Agency' and replace with 'Defense Legal Services Agency,'.

Second paragraph, first line, insert 'are held' after 'segments'.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Current and former government contractor employees whose industrial security clearance cases were referred to the Directorate for Industrial Security Clearance Review (DISCR) by the Defense Industrial Security Clearance Office (DISCO) or by the Director, Defense Investigative Service (DIS) for adjudication under E.O. 10865, as implemented by DoD Directive 5220.6.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'System includes automated case status records for current cases and inactive cases, an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system, and individual case files.

Case files include requests for investigation and clearance; general correspondence relating to cases; personnel security questionnaires; investigative reports prepared by various investigative agencies; medical and psychiatric records and evaluations; DISCO referral recommendations; correspondence between applicants for clearance and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, Military Departments, other DoD Components and Federal agencies, Personnel Security Specialists, Department Counsel, Administrative Judges, Appeal Board, and elements of the Office of the Secretary of Defense and Defense Investigative Service; written interrogatories and Statements of Reasons (SOR) to applicants, with replies, recommendations, summaries, and records of adjudicative actions; transcripts of hearings; and exhibits.

Supplementing the system's case files are redacted copies, with indexes thereto, of DISCR administrative and adjudicative decisions from July 1961 to present. Names and identifying information of applicants, witnesses, sources of information, and other sensitive information are redacted from these decisions to protect the privacy of persons involved.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Third line, insert 'E.O. 11382, and E.O. 12829;' after 'E.O. 10909'.

PURPOSE(S):

Line 14, delete 'to respond to inquiries from Presidential Staff offices when the inquiry is made at the request of the individual;' and replace with 'to respond to inquiries from offices within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes;'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records are maintained in file folders, and on vertical file cards at DISCR; and automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.'

RETRIEVABILITY:

Line five, replace 'personnel' with 'personal'.

SAFEGUARDS:

Delete entry and replace with 'Records are stored in a secured area accessible only to DISCR authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Only information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones or is individually password controlled. Individual passwords are changed quarterly and upon departure of personnel. The automated systems are operated by DISCR and by the Defense Investigative Service, Personnel Investigations Center, Information

Systems Division. Only DISCR personnel with need-to-know are given individual passwords and user identification, information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations have read-only access to DISCR case status records in the system.'

* * * * *

RECORD ACCESS PROCEDURES:

Insert new sentence at the end of first paragraph 'Some records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.'

Delete second paragraph and replace with 'Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301–1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.' (Signature)'*

Move third paragraph to follow first paragraph and change line 1 from 'final determination should' to 'final determinations of Administrative Judges and Appeal Board should'.

* * * * *

RECORD SOURCE CATEGORIES:

Change '; from individual,' to '; from individuals,'.

* * * * *

DGC 04

SYSTEM NAME:

Industrial Personnel Security Clearance Case Files.

SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995.

Decentralized inactive segments are held at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, MD 20755. Automated records are maintained on a system V5–02, Defense Central Index of Investigations, at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former government contractor employees whose industrial security clearance cases were referred to the Directorate for Industrial Security Clearance Review (DISCR) by the Defense Industrial Security Clearance Office (DISCO) or by the Director, Defense Investigative Service (DIS) for adjudication under E.O. 10865, as implemented by DOD Directive 5220.6.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes automated case status records for current cases and inactive cases, an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system, and individual case files.

Case files include requests for investigation and clearance; general correspondence relating to cases; personnel security questionnaires; investigative reports prepared by various investigative agencies; medical and psychiatric records and evaluations; DISCO referral recommendations; correspondence between applicants for clearance and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, Military Departments, other DoD Components and Federal agencies, Personnel Security Specialists, Department Counsel, Administrative Judges, Appeal Board, and elements of the Office of the Secretary of Defense and Defense Investigative Service; written interrogatories and Statements of Reasons (SOR) to applicants, with replies, recommendations, summaries, and records of adjudicative actions; transcripts of hearings; and exhibits.

Supplementing the system's case files are redacted copies, with indexes thereto, of DISCR administrative and adjudicative decisions from July 1961 to present. Names and identifying information of applicants, witnesses, sources of information, and other sensitive information are redacted from these decisions to protect the privacy of persons involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10865, Safeguarding Classified Information Within Industry, as amended by E.O. 10909; E.O. 11382, and E.O. 12829; DOD Directive 5220.6, Industrial Personnel Security Clearance Program; DOD Regulation 5200.2–R, DOD Personnel Security Program (32 CFR part 154).

PURPOSE(S):

These records are collected and maintained to determine whether the granting or retention of security clearance to industrial contractor personnel is clearly consistent with the national interest, to record clearance adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DOD Consulting Psychiatrists to compile evaluations and reports; to respond to inquiries from offices within the executive and legislative branches when the inquiry is made at the request of the individual or for official purposes; to monitor and control adjudicative actions and processes.

Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Justice in determining claims for reimbursement in preparation of hearings, appeals and Federal Court review.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on vertical file cards at DISCR; and automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

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RETRIEVABILITY:

Filed alphabetically by name or by case number. Access to computer data may be made by name and Social Security Number and a combination of name and other personal identifying data.

SAFEGUARDS:

Records are stored in a secured area accessible only to DISCR authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Only information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones or is individually password controlled. Individual passwords are changed quarterly and upon departure of personnel. The automated systems are operated by DISCR and by the Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DISCR personnel with need-to-know are given individual passwords and user identification, information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations have read-only access to DISCR case status records in the system.

RETENTION AND DISPOSAL:

Completed case files are retained in office files for two years after annual cut-offs, then are retired to the Washington National Records Center, for an additional 20 years.

Inactive, completed case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Ft. Meade, MD 20755. Automated electronic case status records and alphabetical card index files are retained as locator for both active and inactive records. Computer data and alphabetical card files are purged when the inactive case file is no longer retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Directorate for Industrial Security Clearance Review, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995.

RECORD ACCESS PROCEDURES:

Request for copies of redacted, final determinations of Administrative Judges and Appeal Board should be sent to the system manager, and should include OSD Case Number of the records request.

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203–1995. Some records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.

Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301–1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.' (Signature).*

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of assignment and Federal agencies DOD organizations, agencies and offices; from individuals, their attorneys or authorized representatives.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

DGC 05

SYSTEM NAME:

Administrative Files on Active Psychiatric Consultants to Department of Defense *(February 22, 1993, 58 FR 10233).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Current list of active DoD psychiatric consultants. Records are filed alphabetically by last name of psychiatrist, and consist of correspondence concerning agreement to conduct psychiatric examinations.'

* * * * *

PURPOSE(S):

Lines one and two, replace 'to maintain a research of' with 'to maintain as a resource a database of'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are stored in a secured area accessible to DISCR authorized personnel.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace '4015 Wilson Boulevard, Suite 300,' with 'PO Box 3656,'.

NOTIFICATION PROCEDURE:

Delete '4015 Wilson Boulevard, Suite 300,' and replace with 'PO Box 3656,'.

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203–1995. Records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.

Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301–1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized, or if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both. (Signature)'*

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Correspondence with individual psychiatrists.'

* * * * *

DGC 05

SYSTEM NAME:

Administrative Files on Active Psychiatric Consultants to Department of Defense.

SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Arlington, VA 22203–1995.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Psychiatric consultants who have entered into agreement with the Department of Defense to conduct psychiatric examination of individuals applying for industrial security clearance for access to classified information required in the performance of their work for classified Government contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current list of active DoD psychiatric consultants. Records are filed alphabetically by last name of psychiatrist, and consist of correspondence concerning agreement to conduct psychiatric examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DOD Directive 5220.6, Industrial Personnel Security Clearance Program; E.O. 10865, February 20, 1960, and Deputy Secretary of Defense Memorandum dated October 20, 1965, Subject: Employment of Psychiatric Consultants for Industrial Security Program.

PURPOSE(S):

The purpose of this system is to maintain as a resource a database of active psychiatric consultants available to conduct psychiatric examinations of individual applicants for industrial personnel security clearance in convenient geographical areas. Psychiatric consultants have active professional service agreements with the Department of Defense and are used by DISCR in processing requests for industrial personnel security clearance of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, vertical file cards.

RETRIEVABILITY:

Alphabetically by surname.

SAFEGUARDS:

Records are stored in a secured area accessible to DISCR authorized personnel.

RETENTION AND DISPOSAL:

Destroy six months after agreement between consultant and DOD has been terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203–1995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203–1995.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Directorate for Industrial Security Clearance Review, PO Box 3656, Arlington, VA 22203–1995. Records may be made available for review at DISCR Headquarters, 4015 Wilson Boulevard, Suite 300, Arlington, VA.

Written requests by an individual for copies of records containing information pertaining to the individual should be sent to Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301–1400 and should include the individual's full name, any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized, or if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both. (Signature).*

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence with individual psychiatrists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOCHA 01

SYSTEM NAME:

Health and Dental Benefits Authorization Files *(February 22, 1993, 58 FR 10251).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete 'and Dental'.

SYSTEM LOCATION:

Delete the eighth paragraph.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Lines two and four, delete 'and dental'.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Line six, delete 'and dental'.

* * * * *

DOCHA 01

SYSTEM NAME:

Health Benefits Authorization Files.

SYSTEM LOCATION:

Primary system is located at Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR) APO New York 09102–5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS.

Each company listed below maintains claim files on beneficiaries in their respective geographical areas. Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408;

Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–1408;

Uniformed services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660;

Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026;

Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927;

FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900;

Foundation Health Federal Services, Inc., 2 Lakeway Center, Suite 1960, 3850 Causeway Boulevard, Metarie, LA 70002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek authorization or preauthorization for care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence with individuals, medical statements, Congressional inquiries, medical treatment records, authorization for care, case status sheets, memos for records, follow-up reports justifying extended care, correspondence with fiscal intermediaries and work-up sheets maintained by case workers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 41 CFR part 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397.

PURPOSE(S):

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under CHAMPUS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Determine eligibility of an individual, authorize payment, respond to inquiries from congressional offices made at the request of the individual covered by the system, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for congressional committees and auditors.

Referral to the Secretary of the Department of Health and Human Services and/or the Secretary of the Department of Veterans Affairs consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS. Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

RETENTION AND DISPOSAL:

Automated indexes are permanent. Hardcopy records are closed out at the end of the calendar year in which finalized, held one additional year, and transferred to the Federal Records Center (FRC). The FRC will destroy the records after an additional five-year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Operations Division, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045–6900.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045–6900.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045–6900.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 02

SYSTEM NAME:

Medical and Dental Care Inquiry Files *(February 22, 1993, 58 FR 10252).*

CHANGES:

SYSTEM NAME:

Delete 'and Dental'.

SYSTEM LOCATION:

Third paragraph, second line, delete 'and dental'. Delete eighth paragraph.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Line two, delete 'and dental'.

* * * * *

DOCHA 02

SYSTEM NAME:

Medical Care Inquiry Files.

SYSTEM LOCATION:

Primary system is located at Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; and Fiscal Intermediaries (FIs)/Contractors under contract to OCHAMPUS.

Each company listed below maintains medical care inquiry files on beneficiaries in their respective geographical areas.

Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408;

Uniformed Services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660;

Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026;

Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927;

FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900;

Foundation Health Federal Services, Inc., 2 Lakeway Center, Suite 1960, 3850 Causeway Boulevard, Metarie, LA 70002.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All individuals who seek information concerning health care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting inquiries received from private individuals for information on CHAMPUS/CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101–11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and E.O. 9397.

PURPOSE(S):

To maintain and control records pertaining to requests for information concerning the processing of individual CHAMPUS/CHAMPVA claims and the benefit structure and procedures of CHAMPUS/CHAMPVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Establish eligibility, respond to inquiries from individuals, and respond to inquiries from congressional offices made at the request of the individual covered.

Referral of the Secretary of the Department of Health and Human Services and/or Secretary of the Department of Veterans Affairs consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS.

Disclosure to other third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

RETENTION AND DISPOSAL:

Automated indexes are permanent. Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Public and Beneficiary Relations Division, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045–6900.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045–6900.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045–6900.

Written requests for information should include the full name of the individual, military sponsor's name and Social Security Number, current address and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that medical record.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Services, consultants, and individuals.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 07

SYSTEM NAME:

Medical and Dental Claim History Files *(February 22, 1993, 58 FR 10253).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete 'and Dental'.

SYSTEM LOCATION:

Delete eighth paragraph

CATEGORIES OF RECORDS IN THE SYSTEM:

Line three, delete 'dental records,' Line ten and eleven, delete 'and dental care'.

* * * * *

PURPOSE(S):

Lines five, six, and seven delete 'dental claims', 'and dental', and '/ dental', respectively.

* * * * *

RECORD SOURCE CATEGORIES:

Line one, delete 'dentists,'.

* * * * *

DOCHA 07

SYSTEM NAME:

Medical Claim History Files.

SYSTEM LOCATION:

Primary system is located at Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045–6900.

Decentralized segments are located at the Office of Civilian Health and Medical Program of the Uniformed Services-Europe (OCHAMPUSEUR), APO New York 09102–5000; and Fiscal intermediaries/Contractors (FIs) under contract to OCHAMPUS.

Each company listed below maintains claim files on beneficiaries in their respective geographical areas.

Health Management Strategies International, Inc., 1725 Duke Street, Suite 300C, Alexandria, VA 22314–3408;

Uniformed services Benefit Plans, Inc., 720 North Marr Road, Columbus, IN 47201–6660;

Blue Cross-Blue Shield of South Carolina, 200 North Dozier Boulevard, Florence, SC 29501–4026;

Wisconsin Physicians Service, 1617 Sherman Avenue, Madison, WI 53707–7927;

FHC Options, Inc., 240 Corporate Boulevard, Norfolk, VA 23502–4900;

Foundation Health Federal Services, Inc., 2 Lakeway Center, Suite 1960, 3850 Causeway Boulevard, Metario, LA 70002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible beneficiaries and all individuals who seek health care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains claims, billings for services, applications or approval forms, medical records, family history files, records on appeals and hearings, or any other correspondence, memorandum, or reports which are acquired or utilized in the development and processing of CHAMPUS/CHAMPVA claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports which are acquired or utilized during the projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397.

PURPOSE(S):

OCHAMPUS and its contractors use the information to control and process health care benefits available under CHAMPUS including the processing of medical claims, the control and approval of medical treatments, and necessary interface with providers of health care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits and civil or criminal litigation related to the operation of CHAMPUS.

Information from CHAMPVA claims will be given to the Department of Veterans Affairs.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

Issuance of deductible certificates; responding to inquires from congressional offices, made at the request of the person to whom a record pertains; and conducting audits of FI processed claims to determine payment and occurrence accuracy of the FI's adjudication process.

Process and control of recoupment claims in favor of the United States arising under the Federal Claims

Collection Act. In connection with these recoupment claims, information may be disclosed to:

a. The U.S. Department of Justice, including U.S. Attorneys, for legal action and final disposition of the recoupment claims.

b. The Internal Revenue Service to obtain current address information on delinquent accounts receivable (automated controls exist to preclude redisclosure of solicited IRS address information) and to report amounts written-off as uncollectible as taxable income.

c. Private collection agencies for collection action when deemed to be in the best interest of the U.S.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number; beneficiary's name; classification of medical diagnosis, procedure code, or geographical location of care provided; and selected utilization limits.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through the medium of OCHAMPUS prepared computer programs resulting in a printout of the data. OCHAMPUS buildings are protected by Department of Defense security force and/or military police security force.

RETENTION AND DISPOSAL:

Records maintained on magnetic tape are individual annual files and are permanent. Paper records are closed out at the calendar year end in which processed, held one additional year, and transferred to the Federal Records Center. Federal Records Centers will destroy after an additional four-year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Contract Management Division, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, CO 80045–6900.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045–6900.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, ATTN: Privacy Act Officer, Aurora, CO 80045–6900.

Written requests for information should include the full name of the beneficiary, the full name and Social Security Number of the sponsor, current address, and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians, hospitals, and other sources of care; individuals; insurance companies; and consultants.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DWHS P27

SYSTEM NAME:

Department of Defense (DOD) Pentagon Building Pass Application File *(February 22, 1993, 58 FR 10274).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete 'Application'.

SYSTEM LOCATION:

Delete entry and replace with 'Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Line two, replace 'employer' with 'employee'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains name, sponsoring office of the Department of Defense and activities serviced by Washington Headquarters Services (WHS), sex, height, weight, date place of birth, access level, previous pass issuances, authenticating official, total personnel from all sites, and audit counts.'

PURPOSE(S):

Line two, replace 'the Physical Security Division,' with 'Security Services, Defense Protective Services,'.

* * * * *

STORAGE:

Delete entry and replace with 'Electronic database'.

RETRIEVABILITY:

Delete entry and replace with ''

SAFEGUARDS:

Delete entry and replace with 'Secure room. Building has DoD Police Officers'.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records of pass holders are maintained as active records for as long as the individual holds a DoD pass. Inactive files consisting of individuals who have terminated affiliation with DoD and activities serviced by WHS are retained for five years.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Chief, Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

NOTIFICATION PROCEDURE:

Delete lines four through nine and replace with 'address written inquiries

to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

RECORD ACCESS PROCEDURES:

Delete lines four through nine and replace with 'inquiries to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

* * * * *

DWHS P27

SYSTEM NAME:

Department of Defense (DOD) Pentagon Building Pass File.

SYSTEM LOCATION:

Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Department of Defense military or civilian employee sponsored by the Department of Defense, or other persons who have reason to enter the Pentagon for official Department of Defense business, and who therefore require an entry pass.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, sponsoring office of the Department of Defense and activities serviced by Washington Headquarters Services (WHS), sex, height, weight, date place of birth, access level, previous pass issuances, authenticating official, total personnel from all sites, and audit counts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, and E.O. 9397.

PURPOSE(S):

This information is used by officials of Security Services, Defense Protective Services, Directorate for Real Estate and Facilities, WHS to maintain a listing of personnel who are authorized a DOD Pentagon Building Pass.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic database.

RETRIEVABILITY:

Electronic database accessible by individual's name, Social Security Number and pass number.

SAFEGUARDS:

Secure room. Building has DoD Police Officers.

RETENTION AND DISPOSAL:

Records of pass holders are maintained as active records for as long as the individual holds a DoD pass. Inactive files consisting of individuals who have terminated affiliation with DoD and activities serviced by WHS are retained for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Security Services, Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

All data maintained in the system is received voluntarily from individual DOD Pentagon Building Pass Applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93-20788 Filed 8-26-93; 8:45am]

BILLING CODE 5000-04F

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. Daniel A. Dreyfus has been appointed as a Special Assistant to the Secretary. As a result of his previous employment with the Gas Research Institute, Mr. Dreyfus has vested insurance interests, within the meaning of section 602(c) of the Act, in the postretirement medical and life insurance benefits offered by the Institute. I have granted Mr. Dreyfus a waiver of the divestiture requirement of section 602(a) of the Act with respect to these insurance interests for the duration of his employment with the Department as a supervisory employee.

In accordance with section 208, title 18, United States Code, Mr. Dreyfus has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the Gas Research Institute, unless his appointing official determines that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Mr. Dreyfus.

Dated: August 16, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93–20890 Filed 8–26–93; 8:45 am]

BILLING CODE 6450–01–M

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory

employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. Charles Kyle Simpson has been appointed as Executive Assistant to the Deputy Secretary. As a result of his previous employment with Coastal States Management Corporation, a wholly owned subsidiary of The Coastal Corporation, Mr. Simpson has a vested interest, within the meaning of section 602(c) of the Act, in the Pension Plan for employees of The Coastal Corporation. I have granted Mr. Simpson a waiver of the divestiture requirement of section 602(a) of the Act with respect to this pension interest for the duration of his employment with the Department as a supervisory employee.

In accordance with section 208, title 18, United States Code, Mr. Simpson has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon The Coastal Corporation, unless his appointing official determines that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Mr. Simpson.

Dated: August 16, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93–20891 Filed 8–26–93; 8:45 am]

BILLING CODE 6450–01–M

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined by section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined by section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance or other similarly vested interest.

Victor H. Reis has been appointed to the position of Assistant Secretary for Defense Programs. As a result of his previous employment with the Massachusetts Institute of Technology, Dr. Reis has a vested interest, within the meaning of section 602(c) of the Act, in the Massachusetts Institute of Technology Retirement Plan. I have granted Dr. Reis a waiver of the divestiture requirement of section 602(a) of the Act for the duration of his employment as a supervisory employee with the Department with respect to his pension interest.

In accordance with section 208, title 18, United States Code, Dr. Reis has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the Massachusetts Institute of Technology, unless there has been a determination, pursuant to section 208(b), that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: August 16, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93–20892 Filed 8–26–93; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetlands Involvement for the Centralization and Upgrading of the Sanitary Wastewater System Located on the Savannah River Site (SRS)

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The DOE proposes to centralize and upgrade the site sanitary wastewater collection and treatment system located on the SRS near Aiken, South Carolina. Project activities would involve crossing of the floodplain or wetlands of Upper Three Runs Creek and Fourmile Branch and the placement of an outfall structure on Fourmile Branch. These activities would necessitate temporary construction access, burying pipelines, and placing support pillars in SRS floodplains and wetlands. In accordance with applicable Federal and State regulations, the existing National Pollution Discharge Elimination System (NPDES) permit will be modified to include the new effluent discharge and upgrades to the existing site facilities. In accordance with title 10, CFR, part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments on the proposed actions are due on or before September 13, 1993.

ADDRESSES: Comments should be addressed to Floodplain/Wetlands Comments, Stephen R. Wright, Director, Environmental and Laboratory Programs Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. The phone number is (803) 725–3957. Fax comments to: (803) 725–7688.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

A location map showing the project sites and further information can be obtained from the Savannah River Operations Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: DOE proposes to replace or upgrade existing site sanitary wastewater treatment facilities with safe, efficient, and cost-effective facilities to enable SRS to comply with newly promulgated or proposed Federal and State regulations for the treatment and discharge of sanitary wastewater. The proposed action includes replacing most of the aging SRS treatment facilities with a new central treatment facility and connecting them with a new 18-mile primary sanitary sewer collection system. The sewer collection system will include two stream pipeline crossings. The final design of the pipeline would be approved by the South Carolina Department of Health and Environmental Control to minimize the potential for any spill of untreated sewage. The first crossing will occur at Upper Three Runs Creek along SRS Road C. This will entail the untreated sewage pipeline in intermittent stretches of deciduous, intermittently flooded forested wetlands adjacent to Road C prior to crossing of the creek itself. The overstory vegetation in these wetlands is dominated by sweetgum (*Liquidambar styraciflua*), laurel oak (*Quercus laurifolia*), willow oak (*Q. phellos*), water oak (*Q. nigra*) and loblolly pine (*Pinus taeda*). Collectively,

approximately 1,500 linear feet of wetlands will be traversed by the pipeline. The crossing of the creek channel will be aboveground with the pipeline attached to the Road C bridge. Temporary construction access and some clearing of timber will be required to place the pipeline in those wetlands adjacent to Road C. This clearing of timber would primarily involve sweetgum, several of the oak species, and loblolly pine. However, these trees are along the boundary of the Road C right-of-way and have been heavily pruned over time as a result of maintenance of that right-of-way. The approximate area of potential impacts from construction of the first crossing to wetlands and the 100-year floodplain would be less than 1 acre and less than 2 acres, respectively. The second crossing will occur at Fourmile Branch along a transmission line right-of-way west of the 100–C Area. The pipeline crossing is expected to be aboveground, supported by pillars placed in wetlands on either side of the braided stream. This second crossing would span approximately 200 contiguous linear feet of wetlands. Most of the overstory vegetation within the proposed area of impact in the wetlands is either dead or dying. These species include sweetgum, laurel oak, and green ash (*Fraxinus pennsylvanica*). The projected impact area appears to have been receiving sediment over the past 50 to 100 years, and the soil is only partly consolidated, which could contribute to deforestation. There are healthy herbaceous floral species (e.g., panic grass, *Panicum* spp., arrowhead, *Sagittaria* spp., and poison ivy, *Toxicodendron radicans*) that are common in wetlands. Again, temporary construction access and some clearing of timber will be required in order to install this second pipeline crossing. The final component of the proposed action that will involve floodplain and wetlands will be the placement of an outfall structure to discharge treated sanitary wastewater from the new central treatment facility. The existing NPDES permit will be modified to include the new effluent discharge. This outfall structure will be located on Fourmile Branch at the site of the aforementioned pipeline crossing. The outfall pipeline will be aboveground and attached to the concrete pillar on the north side of the stream. The approximate area of impacts from construction of the second crossing and the outfall structure to both wetlands and the 100-year floodplain would be less than 1 acre. Construction activities for the outfall structure and any associated potential impacts will take place concurrently with the construction of the pipeline crossing on Fourmile Branch.

A number of mitigation activities will be implemented to minimize potential impacts to the floodplain and wetlands. Operation of construction equipment in the wetland and floodplain areas will be minimized. Silt fences and other erosion control structures as needed will be installed to ensure there is no deposition in downslope wetland areas. Long-term construction impacts in the floodplain and wetland areas will be minimized through the removal of excess excavated sidefill and restoration to the original contours following completion of construction. The wetland soils will require platform support mats to work on in order to install the support pillars that will anchor the line over the stream and floodplain. This material will be removed when the line is completed. The discharge from the outfall structure will need to be controlled in such a manner (e.g., placement of riprap) as to not cause erosion to the stream sediment and the water chemistry such that it does not produce problems in downstream water quality. Additionally, an erosion control plan will be developed so that the proposed action complies with applicable State and local floodplain protection standards and further to ensure that no additional impacts to wetlands will occur due to erosion and applicable State and local floodplain protection standards and further to ensure that no additional impacts to wetlands will occur due to erosion and sedimentation. Best management practices will be employed during construction and maintenance activities associated with this proposed action.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (title 10, CFR, part 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA.

Issued in Washington, DC, on August 20, 1993.

Victor Stello, Jr.,

Principal Deputy Assistant Secretary for Facilities Defense Programs.

[FR Doc. 93–20893 Filed 8–26–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Assistance Award to California Institute of Technology

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the California Institute of Technology for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries. This is not a notice for solicitation of proposals or of financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Ms. Ruth E. Adams, Contract Specialist.

SUPPLEMENTARY INFORMATION: For the past several years, the applicant has been conducting research to develop and demonstrate computer-aided tools which are useful for molecular modeling of enzymatic biocatalytic processes. These computer-aided tools may be used to design biocatalysts for the chemical industry.

Based upon work previously accomplished, specific models will be developed for applied problems of general importance to the chemical industry. This work will pursue the advanced concepts of hierarchical protein folding and protein stichery.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which open competition for assistance would not be productive or beneficial to the public purpose, and would have a significant adverse effect on completion of the activity. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. DOE knows of no other organization which is conducting or is planning to conduct research on atomistic modeling and

stimulation as proposed by the applicant.

DOE funding for this five-year effort is estimated to be $1,456,713. The anticipated term of the proposed grant shall be sixty months from the effective date of the ward.

Issued in Chicago, Illinois, on August 17, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–20894 Filed 8–26–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

National Petroleum Council; Meeting Postponement Notice

An open meeting of the National Petroleum Council which was scheduled to be held on Tuesday, August 31, 1993, at 9 a.m., the Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, D.C., has been postponed. This meeting was announced in the **Federal Register**, on Monday, August 9, 1993. (58 FR 42309)

Issued at Washington, DC, on August 25, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–20946 Filed 8–26–93; 8:45 am]

BILLING CODE 6450–01–M

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Proposed establishment of a new Privacy Act system of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish a notice in the **Federal Register** of a proposed system of records. The Department of Energy (DOE) proposes to establish a new system of records entitled, "DOE–82, Grant and Contract Records for Research Projects, Science Education, and Related Activities."

DATES: The proposed new system of records will become effective without further notice 60 days after publication in the **Federal Register** (October 26, 1993), unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Chief, Freedom of Information and Privacy, U.S. Department of Energy, AD–621, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Robert A. Zich, Director, Acquisition and Assistance Management Division, Office of Management, ER–64, Office of Energy Research, Washington, DC 20585, (301) 903–5544 or (2) Denise Diggin, Chief, Freedom of Information and Privacy Act, AD–621, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 585–5955 or (3) Abel Lopez, Office of General Counsel, GC–43, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–8618.

SUPPLEMENTARY INFORMATION: DOE proposes to establish a new system of records entitled "DOE–82, Grant and Contract Records for Research Projects, Science Education, and Related Activities." This system of records will contain records of grant applications and contract proposals submitted to DOE for funding, written technical reviews by expert peer reviewers, and records of grant and contract awards.

The DOE Office of Energy Research supports research in the natural and physical sciences, including high energy and nuclear physics, magnetic fusion energy; biological and environmental research, and basic energy sciences research in the materials, chemical, and applied mathematical sciences, engineering and geosciences, and energy biosciences. The basic research programs help build the science and technology base that underpins energy development by Government and industry. In addition, support of specialized pre-college and university science education and manpower development efforts helps ensure the training of advanced energy researchers and broadens the pool of experienced scientists and engineers.

The DOE Office of Energy Research solicits grant applications and contract proposals for research, science education and related activities in the program areas described above. When received by DOE, applications and proposals are generally subjected to scientific or peer review. Expert reviewers, selected by the DOE project officer for their expertise in specific research areas, provide to DOE written analyses of the merits of proposed projects.

Applications and proposals selected for award are funded, as appropriate, through grants, contracts, or other award instruments.

The text of the system notice is set forth below.

Issued in Washington, DC. this 20th day of August, 1993.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration

DOE–82

SYSTEM NAME:

Grant and Contract Records for Research Projects, Science Education, and Related Activities.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Energy Research, U.S. Department of Energy (DOE).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals on whom records are maintained: (1) Principal Investigator, i.e., the scientist or other individual designated by the applicant or proposer to direct the project; (2) DOE Project Officer, i.e., the individual at DOE who is responsible for the review and evaluation of the application or proposal and the monitoring of a resulting grant or contract; and (3) Peer Reviewer, i.e., the individual who provides a written review or evaluation of the application or proposal to the DOE Project Officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include grant applications, contract proposals, technical reviews by peer reviewer, records of grant and contract awards, and any other pertinent information needed for the approval of a grant or contract.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Section 644, Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act.

PURPOSE(S):

The purpose of the system is to track and monitor the receipt, review, and disposition of grant applications and contract proposals from universities, non-profit organizations, large and small businesses, other Federal agencies, State and local governments, and individuals seeking Federal financial support for research projects, training, and related activities.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

A record in this system may be disclosed to expert peer reviewers selected by DOE for their expertise in specific research areas to evaluate the

application or proposal in accordance with established evaluation criteria.

A record from this system may be disclosed to DOE contractors in performance of their contracts if they have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

A record in this system may be disclosed to a member of Congress submitting a request involving a principal investigator or a peer reviewer when the individual is a constituent of the member and has requested assistance from the member with respect to the records maintained about the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, hard disk, or diskette.

RETRIEVABILITY:

Records are retrieved by application or proposal number, award number, applicant, name of principal investigator, peer reviewer, or DOE project officer.

SAFEGUARDS:

Manual and machine readable records are treated as sensitive, unclassified materials. Records are stored in unlocked cabinets in offices within secured buildings, and access is on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with authorities contained in DOE Order 1324.2, "Records Disposition."

SYSTEM MANAGER AND ADDRESS:

U.S. Department of Energy, Director, Acquisition and Assistance Management Division, Office of Management, Office of Energy Research, Washington, DC 20585, (301) 903–5544.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if this system of records contains information about him or her should be directed to the Privacy Act Officer, U.S. Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR part 1008, September 16, 1980, 45 FR 61576). Requests should include the individual's full name; applicant, proposer, or awardee organization name and address; the date the application or proposal was submitted to DOE; and the dates of any resulting grant or contract awards.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Grant applications and contract proposals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–20895 Filed 8–26–93; 8:45 a.m.]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–858–000, et al.]

Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER93–858–000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Hingham Municipal Lighting Plant (Hingham) under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Hingham.

Edison states that it has served the filing on Hingham and the Massachusetts Department of Public Utilities.

Comment date: September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Co.

[Docket No. ER93–862–000]

August 18, 1993.

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on August 12, 1993, tendered for filing an Agreement for the sale of Capacity and Energy to the Borough of Park Ridge, New Jersey (Park Ridge). Pursuant to the Agreement, PSE&G proposes to begin selling power effective October 1, 1993 in an effort to provide economic benefit to Park Ridge.

PSE&G requests the Commission to waive its notice requirements under § 35.3 of its Rules and to permit the Capacity and Energy Sales Agreement to become effective by October 1, 1993.

Copies of the filing have been served upon Park Ridge and the New Jersey Board of Regulatory Commissioners.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date. September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Co.

[Docket No. ER93–857–000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Braintree Electric Light Department (Braintree) under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Braintree.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Co.

[Docket No. ER93–859–000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Norwood Municipal Light Department (Norwood) under its FERC Electric Tariff, Original Volume No. 4, Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Norwood.

Edison states that it has served the filing on Norwood and the Massachusetts Department of Public Utilities.

Comment date: September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Co.

[Docket No. ER93–860–000]

August 18, 1993.

Take notice that on August 12, 1993, Boston Edison Company (Edison) tendered for filing a supplement to a Service Agreement for Reading Municipal Light Department (Reading)

under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission (the "Tariff"). The supplement specifies that Boston Edison will provide coordination services for switching and tagging of transmissions lines used to serve Reading.

Edison states that it has served the filing on Reading and the Massachusetts Department of Public Utilities.

Comment date: September 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Co.

[Docket No. ER93–862–000]

August 19, 1993.

Take notice that on August 12, 1993, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an Agreement for the sale of Capacity and Energy to the Borough of Park Ridge, New Jersey (Park Ridge). Pursuant to the Agreement, PSE&G proposes to begin selling power effective October 1, 1993, in an effort to provide economic benefit to Park Ridge.

PSE&G requests the Commission to waive its notice requirements under § 35.3 of its Rules and to permit the Capacity and Energy Sales Agreement to become effective by October 1, 1993.

Copies of the filing have been served upon Park Ridge and the New Jersey Board of Regulatory Commissioners.

Comment date: September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Co.

[Docket No. ER93–866–000]

August 19, 1993.

Take notice that on August 16, 1993, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Agreement for the Purchase and sale of Power between The Washington Water Power Company (WWP) and Public Utility District No. 1 of Douglas County, WWP requests that the Commission accept the Agreement for filing, effective as of July 1, 1992 and grant waiver of the prior notice requirement.

A copy of the filing was served upon Public Utility District No. 1 of Douglas County.

Comment date: September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER93–868–000]

August 19, 1993.

Take notice that on August 16, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and the Pennsylvania Electric Company (Penelec) dated August 10, 1966 providing for certain borderline sales to Penelec. Niagara Mohawk is filing this under the general amnesty announced by the Commission in its final order issued on July 30, 1993 in Docket No. PL93–2–002.

The August 10, 1966 agreement provides for Niagara Mohawk sales to Penelec at various points of delivery near the border of Niagara Mohawk's and Penelec's service territories in Northwestern Pennsylvania. The rates contained in the agreement are Niagara Mohawk's standard borderline rates approved by the New York State Public Service Commission under Niagara Mohawk's PSC Tariff No. 207, SC No. 2.

The effective date of August 10, 1966 is requested by Niagara Mohawk.

Copies of this filing were served upon Penelec and the New York State Public Service Commission.

Comment date: September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co.

[Docket No. ER93–867–000]

August 19, 1993.

Take notice that on August 16, 1993, Northeast Utilities Service Company tendered for filing a System Power Sales Agreement between the NU System Companies and SouthHadley Electric Light Department.

Comment date: September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Co.

[Docket No. ER93–624–000]

August 19, 1993.

Take notice that on August 16, 1993, Montaup Electric Company filed an executed amendment to the contract between itself and MASSPOWER. The executed amendment is to be substituted for the unexecuted version which was submitted with the original filing.

Comment date: September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Co.

[Docket No. ER93–863–000]

August 19, 1993.

Take notice that on August 12, 1993, Southwestern Public Service Company (Southwestern) tendered for filing a Rate Schedule to be included in its wholesale electric rate tariff. The rate schedule is a contribution in aid of construction agreement between Southwestern and Farmers' Electric Cooperative. The agreement provides for Farmers' to pay Southwestern $34,669,000 for the construction of a steel transmission tower.

Southwestern has requested that the amendment become effective as of the date service commences over the new tower and has requested a waiver pursuant to 18 CFR 35.11. The waiver request is supported by the agreement of Farmers.

Comment date: September 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Co. of New Mexico

[Docket No. ER93–871–000]

August 20, 1993.

Take notice that on August 17, 1993, Public Service Company of New Mexico (PNM) tendered for filing an Interconnection Agreement (including associated Service Schedules A, B, C, D and E) between PNM and Utah Associated Municipal Power Systems (UAMPS). The Interconnection Agreement provides, among other things, for the indirect interconnection of PNM's and UAMPS' electric systems, for the exchange of power and energy between the Parties' systems for emergency assistance and other purposes and for the transmission of UAMPS' power and energy associated with its contracted purchase from PNM of an interest in San Juan Generating Station Unit 4.

Copies of the filing have been served upon UAMPS and the New Mexico Public Utility Commission.

Comment date: September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Co.

[Docket No. ER93–873–000]

August 20, 1993.

Take notice that on August 17, 1993, Duke Power Company (Duke) filed a supplement to its Electric Power Contract with Due West, South Carolina. This contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10. The supplement provides for an increase in contracted delivery voltage at Delivery Point No. 1 to 4.16 Kv at the request of the customer.

Comment date: September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Co.

[Docket No. ER93–874–000]

August 20, 1993.

Take notice that on August 17, 1993, Southern California Edison Company

(Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on March 23, 1993, by the respective parties: PacifiCorp-Edison Transmission Service Agreement Between PacifiCorp and Southern California Edison Company (Agreement).

The Agreement provides the terms and conditions whereby Edison will provide transmission service for power received by Edison at the Palo Verde Nuclear Generating Station for delivery to PacifiCorp at the California-Oregon Border. Edison will provide 78 MW of transmission service through December 31, 1993, and beginning on January 1, 1994, Edison will provide 260 MW of transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power Co.

[Docket No. ER93-872-000]

August 20, 1993.

Take notice that on August 17, 1993, Duke Power Company (Duke) filed a supplement to its Electric Power Contract with Forest City, North Carolina. This contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10. The supplement provides for increased capacity at Delivery Point No. 3 with a contracted demand of 15,999 kW at an existing delivery point at the request of the customer.

Comment date: September 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Black Hills Corp.

[Docket No. EC93-23-000]

August 20, 1993.

Take notice that on August 17, 1993, Black Hills Corporation, which operates its electric utility under the assumed name of Black Hills Power and Light Company (BHPL), pursuant to section 203(a) of the Federal Power Act, 16 U.S.C. 824b, tendered for filing an Application for an order authorizing BHPL to sell the Spearfish-to-Kirk 230 kV transmission line (approximately 18.2 miles of line located in Lawrence County, South Dakota, referred to herein as the "230 kV Addition) to Basin Electric Power Cooperative (BEPC), a rural electric generation and transmission cooperative. The 230 kV Addition is a new addition, energized on February 9, 1993, to BHPL's integrated 230 kV transmission system which is used by both BHPL and BEPC to serve their respective customers in the transmission area consisting of the Black Hills area of western South Dakota, the northeastern area of Wyoming and a small area in southeastern Montana. The purpose of the sale is to equalize BEPC's contribution to the area transmission system with its ratio of use. BEPC proposed to pay BHPL its actual construction costs incurred to permit and build the 230 kV Addition.

BHPL generates, transmits, distributes and sells electricity to approximately 52,778 retail customers and one wholesale customer in portions of eleven counties in western South Dakota, eastern Wyoming and southeastern Montana. BHPL's retail operations are subject to regulation by the state commissions of South Dakota, Wyoming and Montana. Subject to the jurisdiction of the Federal Energy Regulatory Commission, BHPL provides partial requirements wholesale to Gillette, Wyoming and transmission service to rural electric cooperatives and purchases electricity from neighboring utilities.

BEPC is a rural electric transmission and generation cooperative which generates, purchases, transmits and sells electricity primarily to rural electric members, including those located in western South Dakota and northeastern Wyoming.

BHPL believes that the sale of the 230 kV Addition to BEPC will be in the best interests of the public and its customers and shareholders and the members of BEPC in that it furthers the cooperation of BHPL and the rural electric cooperatives to use one integrated transmission system jointly and efficiently without requiring duplication of facilities and provides for the equalization of capital contribution with the ratio of use by each party.

BHPL has requested that further notice be waived and the application be expedited.

Comment date: September 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20800 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7809-007 Vermont]

Emerson Falls Hydro, Inc.; Availability of Environmental Assessment

August 24, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of exemption to retain 1-foot-high flashboards on the crest of the Emerson Falls Dam. Emerson Falls Dam is located on the Sleepers River in Caledonia County, Vermont. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the action. In the EA, the staff concludes that retaining the existing flashboards would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-20842 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11035-001 North Carolina]

B. Everett Jordan Hydro Associates; Surrender of Preliminary Permit

August 23, 1993.

Take notice that the B. Everett Jordan Hydro Associates, permittee for the B. Everett Jordan Hydro Project No. 11035, located on the Haw River, in Chatham County, North Carolina, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 25, 1991, and would have expired on May 31, 1994. The permittee states that the project would be economically infeasible.

The permittee filed the request on July 23, 1993, and the preliminary permit for Project No. 11035 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary

[FR Doc. 93–20816 Filed 8–26–93, 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11026–001 Georgia]

Savannah Hydro Associates; Surrender of Preliminary Permit

August 23, 1993.

Take notice that the Savannah Hydro Associates, permittee for the New Savannah Bluff Hydro Project No. 11026, located on the Savannah River, in Aiken County, Georgia, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 31, 1991, and would have expired on April 30, 1994. The permittee states that the project would be economically infeasible.

The permittee filed the request on July 23, 1993, and the preliminary permit for Project No. 11026 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit sha.l remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20815 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–875–000]

Arizona Public Service Co.; Filing

August 23, 1993.

Take notice that on August 18, 1993, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Transmission Service Agreement between Arizona Public Service Company (APS or Company) and Tohono O'odham Utility Authority (TOUA) (APS-FERC Rate Schedule No. 161) (Exhibit and Agreement). The Exhibit lists Contract Demands applicable under the Agreement.

No change to the rate and revenue levels currently on file with the Commission is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20817 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2338–001]

Hugh M. Chapman; Notice of Filing

August 23, 1993.

Take notice that on August 3, 1993, Hugh M. Chapman (Applicant) tendered for filing an Application under Section 305(b) of the Federal Power Act to hold the following positions:

Director, South Carolina Electric and Gas Company
Director, South Carolina Generating Company, Inc.
Executive Officer (Chairman of Nationsbank South), NationsBank Corporation
Chairman of the Board and Director, NationsBank of Florida, N.A.
Chairman of the Board and Director, NationsBank of Georgia, N.A.
Chairman of the Board and Director, NationsBank of Tennessee, N.A.
Director, C&S Premises, Inc.
Chairman of the Board and Director, Sovran Capital Management Corporation
Director, Ocmulgee Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20810 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER92–236–005 and EL92–13–000]

Delmarva Power & Light Co.; Filing

August 23, 1993.

Take notice that on August 13, 1993, Delmarva Power & Light Company (Delmarva) tendered for filing its compliance refund report in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20813 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–669–000]

Florida Gas Transmission Co.; Application

August 23, 1993.

Take notice that on August 16, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–

669–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two transportation service agreements under FGT's Rate Schedules X–13 and X–17, all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT states that on May 1, 1979, the Commission issued an order in Docket No. CP78–537 granting, among other things, FGT authority to transport Southern Natural Gas Company's (SNG) share of natural gas produced from South Marsh Island Blocks 149 and 150, Offshore Louisiana. FGT further states that the transportation service was performed pursuant to two transportation service agreements both dated September 12, 1978, as amended. Rate Schedule X–13 represented the offshore transportation segment under which FGT would transport for SNG, on a firm basis, up to 80,000 MMBtu per month, it is stated. FGT says that Rate Schedule X–17 represented the onshore transportation segment under which FGT would transport for SNG, on an interruptible basis, up to 5,000 MMBtu per day. FGT states that for the reason FGT no longer provides SNG transportation services under Rate Schedules X–13 and X–17, both parties have agreed to terminate the aforementioned service agreements. FGT does not propose to abandon any facilities herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)* and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing

Lois D. Cashell,

Secretary.

[FR Doc. 93–20802 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–740–000]

Montenay Montgomery Limited Partnership; Issuance of Order

August 24, 1993.

On June 29, 1993, Montenay Montgomery Limited Partnership (MMLP) submitted for filing a power sale agreement with Public Service Electric and Gas Company. MMLP also requested waiver of various Commission regulations. In particular, MMLP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MMLP

On August 18, 1993, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted the requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MMLP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MMLP is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that said issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of MMLP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is September 17, 1993.

Copies of the full text of the order are available for public inspection at the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE. Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–20843 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–861–000]

Ohio Edison Co.; Filing

August 23, 1993.

Take notice that on August 12, 1993, Allegheny Power Service Corporation on behalf of Ohio Edison Company, Pennsylvania Power Company, Potomac Electric Power Company, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing Notices of Cancellation of FERC Rate Schedule Nos. 39, 40, 44, and 148.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20804 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–876–000]

Pennsylvania Electric Co.; Filing

August 23, 1993.

Take notice that on August 18, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to

Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Butler, New Jersey. Under such Agreement, Penelec proposes to provide supplemental power service to Butler through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for such supplemental power service to such delivery point for Butler will be based upon the rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allegheny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also those employed by Penelec, beginning July 29, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93-669-000).

The transmission service to deliver such Penelec supplemental power to Butler will be provided by JCP&L, and the rate charged by JCP&L to deliver such service will be similar to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc.

Copies of the filing have been served on Butler.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20814 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-765-000]

Potomac Edison Co.; Filing

August 23, 1993.

Take notice that on August 11, 1993, tendered for filing a Supplement No. 1 to proposed changes in its FERC Electric Tariff, First Revised Volume No. 3. This Supplement is filed to supply additional information as requested by the Commission staff. The proposed effective date for the increased rates is September 15, 1993.

Copies of the filing were served upon the jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be file on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20806 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-691-000]

Potomac Electric Power Co.; Filing

August 23, 1993.

Take notice that on August 6, 1993, Potomac Electric Power Company (PEPCO) tendered for filing an amendment to its original filing filed in the above-referenced docket on June 2, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-20812 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-9-004]

Questar Pipeline Co.; Technical Conference

August 24, 1993.

In the Commission's August 2, 1993 order on Questar Pipeline Company's Order No. 636 compliance filing,[1] the Commission determined that certain issues needed to be discussed at a technical conference. The conference to address these issues will be held on Thursday, September 2, 1993, beginning at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons are invited to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-20844 Filed 8-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-525-000]

Tampa Electric Co.; Filing

August 23, 1993.

Take notice that on April 15, 1993, Tampa Electric Company (Tampa) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

[1] 64 FERC ¶ 61,187 (1993).

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20805 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–19–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

August 23, 1993.

Take notice that on August 18, 1993 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Eighth Revised Sixth Revised Sheet No. 28, with a proposed effective date of August 1, 1993.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

TGPL states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

TGPL states that copies of the filing are being mailed to each of its S–2 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20803 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–877–000]

West Texas Utilities Co.; Filing

August 23, 1993.

Take notice that on August 18, 1993, West Texas Utilities Company (WTU), tendered for filing a Service Agreement between WTU and the City of Brady, Texas (Brady). Under the terms of the agreement, Brady will become a full-requirements customer under WTU's FERC Electric Tariff-TR–1, WTU's tariff of general availability for full-requirements service.

WTU requests waiver of the notice requirements in order that the agreement may become effective as of August 23, 1993.

Copies of the filing have been served on Brady and the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20807 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–671–000]

Williams Natural Gas Co.; Application

August 23, 1993.

Take notice that on August 17, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–671–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange agreement with Arkla Energy Resources, Inc. (Arkla) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that it was authorized to exchange up to 10,000 Mcf of natural gas per day, on an interruptible basis, with Arkla by Commission order issued November 1, 1971, in Docket No. CP72–15, as amended. WNG has been providing this service under its Rate Schedule X–11, it is stated. WNG asserts that, by letter dated September 30, 1992, it provided Arkla written notification to terminate the exchange agreement effective March 31, 1993.

WNG further states that no facilities will be abandoned in conjunction with the abandonment of this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20801 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–865–000]

Wisconsin Power & Light Co. Filing

August 23, 1993.

Take notice that on August 13, 1993, Wisconsin Power & Light Company (WP&L) tendered for filing Notices of Cancellation of FERC Rate Schedule Nos. 4 and 137.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–20811 Filed 8–26–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–4624–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 9, 1993 through August 13, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–J65206–CO

Rating EO2, Snowmass Ski Area Upgrading and Expansion Development Plan, Special Use Permit and COE Section 404 Permit, White River National Forest, Aspen Ranger District, Pitkin County, CO.

Summary

EPA expressed environmental objections to the proposed action due to significant air and water quality impacts. EPA requested that the final EIS contain additional analysis and mitigation.

ERP No. D–BLM–E02007–FL

Rating EC2, Miccosukee Indian Reservation Exploratory Well Drilling, Lease and Permit, City of Fort Lauderdale, Broward County, FL.

Summary

EPA expressed environmental concerns based on the following issues: Impacts of access road construction, 404 jurisdictional wetlands, cultural resources, disposed of drill cuttings, fuel spill and ground water contamination. EPA requested more details on spill prevention and countermeasure plans, and copies of well logs taken during activities. Impact analyses of full field production were requested.

ERP No. D–NPS–E61034–MS

Rating EC2, Natchez National Historical Park Management, Development and Use Plan, Implementation, Adams County, MS.

Summary

EPA had environmental concerns and requested more details of the Park's plans to alter the angle of repose of the bluffs, and asked for waste reduction and energy conservation measures to be considered for the visitor center.

ERP No. D–SFW–H64002–MO

Rating L01, New Madrid National Wildlife Refuge Establishment, Land Acquisition, New Madrid County, MO.

Summary

EPA expressed concerns about the lack of discussion in the DEIS regarding impacts to wetlands and waterways as a result of project implementation and requested additional information in the final EIS.

ERP No. DS–FRC–L05201–ID

Rating E02, Shelley (FERC. No. 5090) Hydroelectric Project on the Snake River, Construction and Operation, Licensing, Updated Information, City of Idaho Falls, Bingham County, ID.

Summary

EPA had environmental objections based on: inadequate mitigation for highly valued riparian and wetland functions and values; and the elimination of roost trees and winter foraging habitat for the federally listed endangered species, the bald eagle.

Final EISs

ERP No. F–AFS–L65162–ID

Emerald Resource Unit Timber Harvest and Road Construction, Implementation, Idaho Panhandle National Forests, Emerald Creek Drainge, St. Maries Ranger District, Benweah, Shoshone and Latah Counties, ID.

Summary

Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F–AFS–L65168–AK

North and East Kuiu Timber Harvest, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Kuiu Island, AK.

Summary

Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F–SCS–J36045–WY

Allison Draw Watershed Protection and Flood Control Plan, Implementation, Funding, Section 404 Permit and Right-of-Way, Laramie County, WY.

Summary

EPA continued to express environmental concerns regarding the lack of a full alternatives analysis.

ERP No. F1–AFS–J65105–CO

Grand Mesa, Uncompahgre, and Gunnison National Forests, Land and Resource Management Plan, Implementation, Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan and San Miguel Counties, CO.

Summary

EPA continued to express environmental concerns that the document does not address baseline data water quality needs for the leasing analysis.

Dated: August 24, 1993.
Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 93–20851 Filed 8–26–93; 8:45 am]
BILLING CODE [illegible]

[ER–FRL–4623–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed August 16, 1993 Through August 20, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930288, DRAFT EIS, COE, CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction and Mining-Use-Permit, City of Healsburg, Sononma County, CA, Due: October 12, 1993, Contact: Lars Forsman (415) 744–3322.

EIS No. 930289, DRAFT EIS, AFS, AK, Shamrock Timber Sales, Timber Harvesting and Road Construction, Stikine Area, Kupreanof Island, Tongass National Forest, Implementation, AK, Due: October 18, 1993, Contact: Jim Thompson (907) 772–3871.

EIS No. 930290, FINAL EIS, AFS, MT, Buck-Little Boulder Timber Sales, Timber Harvest, Implementation, Bitterroot River, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT, Due: September 27, 1993, Contact: Stewart Lovejoy (406) 821–3678.

EIS No. 930291, DRAFT EIS, NPS, NY, Hamilton Grange National Memorial, General Management Plan, Implementation, New York County, NY, Due: October 15, 1993, Contact: Georgette Nelms (212) 264–4456.

EIS No. 930292, FINAL EIS, COE, CA, Prado Dam Water Conservation Plan Implementation, Prado Flood Control Basin, Santa Ana River, Riverside and San Bernardino Counties, CA, Due: September 27, 1993, Contact: Alex Watt (213) 894–5990.

EIS No. 930293, FINAL SUPPLEMENT, BLM, NV, Egan Resource Management Plan (RMP), Oil and Gas Leasing Amendment, Updated Information, Implementation, Ely District, White Pine Lincoln and Nye Counties, NV, Due: September 30, 1993, Contact: Neil D. Talbot (702) 785–6464.

EIS No. 930294, FINAL EIS, AFS, MN, Superior National Forest Land and Resource Management Plan, Adoption of Boundary Waters Canoe Area (BWCA) Wilderness Management Plan, Implementation, Cook, Lake and St. Louis Counties, MN, Due: September 27, 1993, Contact: James H. Rogers (218) 720–5492.

EIS No. 930295, DRAFT EIS, USN, WA, Whidbey Island Naval Air Station, Air Operations Management between Ault Field and Outlying Field Coupeville, Oak Harbor, WA, Due: October 12, 1993, Contact: Peter W. Havens (206) 476–5773.

EIS No. 930296, DRAFT EIS, BPA, WA, ID, CA, UT, AZ, OR, MT, NV, NM, WY, Alternating Current (AC) Intertie Transmission Facilities, Capacity Ownership and Federal Marketing and Joint Ventures, Implementation, WA, OR, ID, MT, CA, NV, UT, NM, AZ, WY and British Columbia, Due: October 12, 1993, Contact: Roy B. Fox (503) 230–4261.

EIS No. 930297, DRAFT EIS, FHW, OH, OH–129/Princeton Road Transportation Improvements, from OH–129 to OH–4 in the City of Hamilton and I–75, Funding, NPDES Permit and COE Section 404 Permit, Butler County, OH, Due: October 12, 1993, Contact: Fred Hempel (614) 469–6896.

Amended Notices

EIS No. 900385, DRAFT EIS, AFS, ID, Swamp Ridge Timber Sales and Road Construction, Portions of Swamp, Shell, Sugar, Pollock, and Lake Creek Drainages, Implementation, Clearwater National Forest, North Fork Ranger District, Clearwater County, ID, Due: January 17, 1991, Contact: Arthur S. Bourassa (208) 476–3775. Published FR 06–21–89—Officially Canceled by Preparing Agency.

EIS No. 930216, DRAFT EIS, AFS, OR, Eagle Creek Timber Sale and Road Construction, Implementation, Estacada and Zigzag Ranger Districts, MT. Hood National Forest, Clackamas County, OR, Due: September 07, 1993, Contact: Janet Anderson-Tyler (503) 630–6861. Published FR–07–09–93—Review period extended.

EIS No. 930220, FINAL EIS, USA, CA, Fort Ord Disposal and Reuse Installation, Implementation, Establishment of Presido of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA, Due: September 17, 1993, Contact: Bob Verkade (916) 557–7423. Published FR 07–09–93—Review period extended.

Dated: August 24, 1993.
Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 93–20850 Filed 8–26–93; 8:45 am]
BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 19, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Application for Renewal of Amateur Radio Station License.

Form Number: FCC Form 610–R.

Action: New collection.

Respondents: Individuals or households.

Frequency of Response: Every 10 years.

Estimated Annual Burden: 2,000 responses; .084 hours average burden per response; 168 hours total annual burden.

Needs and Uses: In accordance with FCC Rules, Amateur Radio Service licensees are required to apply for renewal of their radio station license every ten years. In lieu of filing a FCC Form 610, the Commission has developed this "short form" for license renewal. This form will be computer-generated and mailed to licensees near the end of their ten year license term. Licensees will no longer have to contact the Commission for an application at renewal time; will be informed when their license is about to expire; and can renew simply by signing and returning the application as opposed to answering several questions on the FCC Form 610. The FCC staff will use the data to determine the eligibility for radio station renewal authorization and to issue a license. Data is also used in conjunction with Field Engineers for enforcement and interference resolution purposes.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–20830 Filed 8–26–93; 8:45 am]
BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Post-FTS2000 Concept Development Conference

August 19, 1993.
AGENCY: General Services Administration.
ACTION: Notice of Post-FTS2000 Concept Development Conference.

SUMMARY: The federal government currently meets its needs for inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in December 1998. The federal government would like a free and open discussion of ideas related to the provision of inter-city telecommunications resources to its users after 1998.

The May 14, 1993, edition of the Commerce Business Daily (Issue No. PSA–0846), requested ideas and comments related to the provision of telecommunications services to federal government users in the post-FTS2000 environment. To hear further comments and encourage discussion of different points of view on the post-FTS2000 environment, the government plans to conduct the Post-FTS2000 Concept Development Conference. This conference will provide an opportunity for the presentation of multiple points of view related to: the future direction of the telecommunications marketplace, services, technology, and regulation; the future telecommunications requirements of the federal government, including major government and society trends likely to affect future telecommunications requirements; strategies for the procurement of telecommunications services and systems; program management strategies; possible price structures; and, how the government can ensure continuing competitive prices.

The Post-FTS2000 Concept Development Conference will be held October 19 through 21, 1993, at the Department of Commerce Auditorium, located at 100 14th Street, NW., Washington, DC. The conference will feature speakers and panels of experts presenting visions of future telecommunications technology and marketplaces, and views on how best to provide telecommunications services to government users.

Individuals with a specific interest may request an opportunity to speak on a particular topic with the understanding that the Government will limit the number of presentations. Questions and responses will be taken on a time-available basis following questions from government representatives.

Admission to the conference will require advance reservation. Reservations by name(s) may be requested in writing at General Services Administration, Attention: Concept Development Conference Reservations, 7980 Boeing Court, Vienna, VA 22182–3988, by fax at (703) 760–7523, or electronically at concept@access.digex.com. Reservation requests must be received by September 1, 1993. Reservations will be confirmed by September 15, 1993, on a space available and equitable basis. Since the government is unlikely to be able to accommodate all who would like to attend this conference we are considering broadcasting the conference via satellite so that it would be available for downlink. To determine whether there is demand for such a capability please respond to the address listed above by September 10 if you would like to have access to the conference via satellite. Technical information will be published at a later date if there is sufficient interest.

A preliminary conference agenda is as follows: Day 1—October 19, 1993: (a) The Context of the Post-FTS2000, (b) Government Requirements and the Available Technologies, Services, and Marketplace; Day 2—October 20, 1993: (a) Telecommunications Regulation and Pricing, (b) Telecommunications Administration, Management, and Oversight; Day 3—October 21, 1993: Acquisition Strategies.

DATES: Reservations request for the Concept Development Conference must be received by September 1, 1993. If you like to have access to the conference via satellite, please respond by September 10, 1993. Reservations to the conference will be confirmed by September 15, 1993. Post-FTS2000 Concept Development Conference will be held from October 19 through 21, 1993.

ADDRESSES: (1) Requests for reservations to the Concept Development Conference and requests for accessing the conference via satellite should be submitted in writing to: General Services Administration, Attn: Concept Development Conference Reservations, 7980 Boeing Court, Vienna, VA 22182–3988; (2) Post-FTS2000 Conference will be held at: Department of Commerce Auditorium, 100 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Delores W. Sharpe, Contracting Officer, (703) 760–7488 or Darlene Goggins at (703) 760–7487.

SUPPLEMENTARY INFORMATION: Techical information will be published at a later date if there is sufficient interest.

Phillip R. Patton,
Branch Chief, Network A Contracts Branch.
[FR Doc. 93–20845 Filed 8–26–93; 8:45 am]
BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 58 FR 7568, dated February 8, 1993) is amended to reflect the establishment of the Office of Health Communication within the Office of the Director, Centers for Disease Control and Prevention (CDC).

Section HC–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of Public Affairs (HCA2),* insert the following:

Office of Health Communication (HCA3). The Office of Health Communication (OHC) is located in the Office of the Director, CDC. Its primary mission is to strengthen the science and practice of health communication throughout the agency by providing leadership and assistance to CDC Centers, Institute, and Offices (CIOs). In carrying out its mission, the OHC:

(1) Provides leadership in the development of CDC principles, strategies, and practices for effective health communication;

(2) Provides a CDC-wide forum for the discussion, development, and adoption of health communication policies and procedures;

(3) Promotes, stimulates, conducts, and supports research on topics of CDC-wide interest in the field of health communication;

(4) Assists CIOs in conducting health communication research in specific

program areas by providing consultation and access to data, expertise, and related services (e.g., marketing and consumer research, formative message development and testing, and analysis of communication channels);

(5) Promotes, stimulates, and supports evaluation of the effort, efficiency, and effectiveness of health communication initiatives;

(6) Assists the CIOs and their constituents in identifying and building needed expertise, state-of-the-art technology, logistical support, and other capacities required to conduct effective health communication;

(7) Assists CIOs and their constituents in the planning, design, implementation, and evaluation of health communication initiatives;

(8) Promotes quality assurance in health communication initiatives;

(9) Systematically captures, assesses, and disseminates information on ongoing research, current trends, and emerging issues in health communication;

(10) Identifies and fosters collaboration with public, non-profit, and private organizations and agencies involved in health communication;

(11) Creates and maintains liaison with CIOs to share information about health communication activities, arrange for related services, and provide opportunities for collaboration across CDC.

Dated: August 16, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-20722 Filed 8-26-93; 8:45 am]

BILLING CODE 4160-18-M

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Thursday, September 23, from 9 a.m. to 5 p.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on Friday, September 24, 1993, from 8:30 a.m. to 11:00 a.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be at the Arlington Renaissance, 950 North Stafford Street, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594-1459.

In addition, if sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594-6666 no later than September 3, 1993.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the activity of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D.; Edward C. Bessey, M.B.A.; Marion F. Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; Joseph T. Curti, M.D.; John W. Danaher, M.D.; David E. Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D., Ph.D.; Walter J. McNerney, M.H.A.; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Louis F. Rossiter, Ph.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio Members. These members are:

Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, September 23, 1993, the meeting will begin at 9 a.m. with the call to order by the Council Chairman. The Assistant Secretary for Health, Philip R. Lee, M.D., will address the Council. Following the address by the Assistant Secretary will be the Administrator's update on AHCPR activities. Concluding the morning will be a preliminary report from the Technology Assessment Task Force. In the afternoon, the Chairmen of AHCPR study sections will discuss with Council the AHCPR grant review process. AHCPR staff will conclude the meeting with a discussion of AHCPR training activities. The Council will recess at 5 p.m.

On Friday, September 24, 1993, the Council will resume with a closed meeting to review grant applications from 8:30 a.m. to 11 a.m. The meeting will then adjourn at 11 a.m.

Agenda items are subject to change as priorities dictate.

Dated: August 18, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93-20834 Filed 8-26-93; 8:45 am]

BILLING CODE 4160-90-U

Food and Drug Administration

[Docket No. 93N-0099]

Robert Shulman; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Mr. Robert Shulman, Federal Prison Camp Allenwood, Montgomery, PA 17752, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Mr. Shulman was convicted of felonies under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug

product under the act. Mr. Shulman has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: August 27, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Walter A. Brown, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 1993, the United States District Court for the District of Maryland entered judgment against Mr. Robert Shulman for, in addition to other offenses, one count of obstruction of a Federal agency proceeding and two counts of making false statements to a Federal agency, Federal felony offenses under 18 U.S.C. 1505 and 18 U.S.C. 1001.

Based on these convictions, as well as others, FDA served Mr. Shulman by certified mail on March 22, 1993, a notice proposing to debar him permanently from providing services in any capacity to a person that has an approved or pending drug product application and offering him an opportunity for a hearing on the proposal. The proposal was based on findings, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Shulman did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Robert Shulman has been convicted of felonies under Federal law (18 U.S.C. 1505 and 18 U.S.C. 1001) for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product under the act (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Robert Shulman is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective August 27, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Shulman during his period of debarment (21 U.S.C. 335a(c)(1)(B)).

Any person with an approved or pending drug product application who knowingly uses the services of Mr. Shulman in any capacity, during his period of debarment, will be subject to civil money penalties under section 307(a)(6) of the act (21 U.S.C. 335b(a)(6)). If Mr. Shulman, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties under section 307(a)(7) of the act.

Any application by Mr. Shulman for termination of debarment under section 306(d)(4) of the act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. 93N-0069 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–20786 Filed 8–26–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91P–0176]

Citizen Petition Requesting Federal Preemption of Certain State and Local Standards Affecting Blood, Blood Components, and Blood Derivatives; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting public comment, from interested parties, including the States, on a citizen petition filed on behalf of the American Blood Resources Association, American National Red Cross, American Association of Blood Banks, and Council of Community Blood Centers. The petition requests Federal preemption of State and local regulations on donor suitability, testing, and labeling of blood, blood components, and blood derivatives. The petition was dated and filed on May 2, 1991. On October 25, 1991, the Center for Biologics Evaluation and Research issued an interim response to the petitioners. FDA will consider the comments received before responding to the petition.

DATES: Submit written comments on the petition by November 26, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Minor, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA received a petition, dated and filed on May 2, 1991, on behalf of the American Blood Resources Association (ABRA), American National Red Cross (ARC), American Association of Blood Banks (AABB), and Council of Community Blood Centers (CCBC) (blood organizations or petitioners). The petition states that it is submitted under sections 351 and 361 of the Public Health Service Act, as amended, 42 U.S.C. 262 and 264, to request that the Commissioner of Food and Drugs issue a regulation or order, or take other appropriate action, to preempt State and local laws and regulations pertaining to: (1) The determination of donor suitability; (2) the testing of blood, blood components, and blood derivatives; and (3) the labeling of blood, blood components, and blood derivatives.

I. Summary of the Issues and Arguments Raised In the Petition

A. Current Practice of Exchanging Needed Products Among Blood Establishments

In a section titled "Summary of Reasons for Preemption" the petitioners state that blood components and derivatives are essential lifesaving elements of modern health care. They move extensively and continuously in interstate commerce, from blood center

to blood center, from blood center to hospital, from hospital to hospital, from collection center to manufacturers of blood derivatives, and from manufacturers of blood derivatives to treatment centers and hospitals. Many establishments collecting, processing, and distributing blood components and derivatives conduct operations in multiple jurisdictions. The petitioners state that FDA comprehensively regulates the collection, processing, labeling, and distribution of blood components and derivatives. Petitioners argue that State regulation of the same activities is increasing, resulting in a regulatory patchwork that does not demonstrably improve safety and threatens to thwart the goal of providing a safe and adequate blood supply.

B. Obstacles of State and Local Requirements

In a section titled "Statement of Grounds for Requested Action" the petitioners argue that blood is a national resource and that community self-sufficiency in blood components does not exist. They claim that State action can actually decrease safety, and can jeopardize the blood supply while improving only the perception of safety.

The petitioners argue that FDA has many years of unparalleled medical and scientific expertise in regulating—through the careful application of scientific knowledge and judgment—the complex of blood components and derivatives. No State or local jurisdiction has comparable resources, expertise, or experience. Moreover, they claim that because State and local regulation of blood components and derivatives frequently has significant impact on other jurisdictions, localized action in this area does not meet the test for appropriate local regulation that federalism contemplates. The actions of one jurisdiction may be seized on by others not wanting to be perceived as affording their constituents a lower degree of safety. Because of liability laws, a legal requirement of one local jurisdiction may become part of the "community standard" of another jurisdiction and widely-adopted merely by being a legal requirement, not because it is scientifically valid.

The petitioners state that, without a uniform regulatory scheme, the nation's vital interest in the free flow of blood components and derivatives across State and local borders, as well as between the United States and its foreign trading partners, is in jeopardy. In addition, they assert that State action can actually decrease blood safety by mandating poorly thought-out schemes that may overwhelm the limited resources available to blood establishments and cause paradoxical outcomes.

C. Benefit of Federal Regulation

The blood organizations argue that they do not advocate ignoring local concerns. They contend, however, that although principles of federalism require that the National Government normally defer to the legitimate interests of State and local governments, these principles also require that local interests must be subordinate to national interests where the issues are national in scope. They state that the assurance of a safe and adequate supply of blood components and derivatives is just such a national concern. The petitioners assert that because blood is a national resource, the focus for regulatory decisions about the nation's blood component and derivative supply should be national, and that State and local jurisdictions should bring their concerns to the Federal regulatory authorities for consideration rather than promulgating a plethora of conflicting laws. The petitioners provide information, including case law and previous agency action, to support their position that FDA's authority to preempt State and local laws with respect to blood, blood components, and blood products is well-established.

In support of this request, the petitioners also argue that preemption of State and local laws pertaining to donor suitability, product labeling, and testing is necessary to promote Federal objectives. They state that the goals of uniformity, safety, and adequacy of supply are as valid today as when they were set forth in the National Blood Policy (39 FR 32702, September 10, 1974). The petitioners assert that unlike Federal regulation, State and local regulation is not likely to be effective to assure a safe and adequate national supply of blood and its components and derivatives. They claim that by asserting its authority to preempt, FDA can assure that the goals of a safe and adequate blood supply will be met and that U.S. regulations will be consistently in line with prudent and reasonable regulations of its foreign counterparts.

D. Conclusion

The petitioners argue that the major risk from State and local regulation of donor suitability, product labeling, and testing is that blood components and derivatives will not be readily available where they are needed. They state that such local regulation also diverts scarce and valuable resources into unproductive activities. In addition, they state that unnecessary State regulation is not benign when it comes to safety, namely, where there is no benefit there is risk of needlessly complicating an already complex system, which can induce life-threatening errors. They claim that it is impossible to quantify the impact of State and local initiatives concerning blood components and derivatives, and that FDA has not required such information in preempting State and local requirements in other areas (e.g., over-the-counter pregnancy warnings, Reye syndrome labeling, and tamper-resistant packaging).

The petitioners state that blood regulation is a matter of compelling national concern, that there is growing national fear over the safety of the blood supply, and therefore that Federal leadership is required. The blood organizations, which represent virtually every aspect of the blood and plasma sectors, both not-for-profit and for-profit, agree that the time has come to halt the proliferation of State and local regulations that frustrate standardization and uniformity and impede the acknowledged Federal objectives of a safe and adequate supply of blood components and blood derivatives. They request that FDA pronounce its intention to preempt in the areas of donor suitability, testing, and labeling of blood components and derivatives.

II. The Executive Order on Federalism (Executive Order 12612)

Executive Order 12612, which was issued on October 26, 1987, provides direction on the issue of preemption. Executive Order 12612 states, among other things, that agencies formulating and implementing policies are to be guided by certain federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles.

Section 3 of Executive Order 12612 states that, in addition to the fundamental federalism principles set forth in Section 2, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications, including: (1) Encouraging States to develop their own policies to achieve program objectives and to work with appropriate officials in other States; (2) refraining, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, deferring to the States to establish standards; and (3) when national standards are required, consulting with appropriate officials and organizations

representing States in developing those standards.

Section 4 of Executive Order 12612 lists special requirements for preemption, including construing, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

Section 4 also states that, when an executive department or agency foresees the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing States in an effort to avoid such a conflict. An executive department or agency proposing to act through adjudication or rulemaking to preempt State law is to provide all affected States notice and opportunity for appropriate participation in the proceedings.

III. Request for Comment from Interested Parties Under Executive Order 12612

Regulation of the safety and effectiveness of blood products, as a national resource, has historically involved the collective resources of Federal, State, local, and private sector entities. In effect, the petition requests a reassessment and reallocation of relative responsibilities with regard to donor screening requirements, product labeling, and product testing. While the citizen petition states arguments in favor of such a reallocation, including putatively beneficial uniformity in labeling and a perceived limitation in unnecessary or unscientific standards, arguments exist as well in favor of continuing a mix of Federal, State, local, and private standards. FDA believes that an airing of these issues will ultimately be beneficial to the long-term safety and effectiveness of the blood supply regardless of the ultimate action taken by FDA in response to the petition.

Consistent with Executive Order 12612, and in response to the petition requesting preemption of State laws regarding blood and blood products and labeling, this notice requests information and comments from interested parties on these issues, including the States, its health officials, and other interested parties.

Interested persons may, on or before November 26, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition, comments received, and Executive Order 12612 may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–20785 Filed 8–26–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPA–008–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for September 13, 1993, from 9 a.m. until 5 p.m. d.s.t. An additional meeting is tentatively scheduled for December 13, 1993.

ADDRESSES: The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: John Lanigan, Acting Executive Director, Practicing Physicians Advisory Council, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted on November 5, 1990, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration (HCFA) not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Advisory Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Advisory Council by appropriate action before the end of the 2-year term.

The current members are: Gary C. Dennis, M.D., Harvey P. Hanlen, D.O., Kenneth D. Hansen, M.D., Isabel V. Hoverman, M.D., Ramon L. Jimenez, M.D., Jerilyn S. Kaibel, D.O., William D. Kirsch, D.O., Marie G. Kuffner, M.D., David L. Massanari, M.D., Kenton K. Moss, M.D., Susan W. Owens, M.D., Isadore Rosenfeld, M.D., Richard B. Tompkins, M.D., James C. Waites, M.D., and Gary L. Yordy, M.D. The chairperson is Richard B. Tompkins, M.D.

The sixth meeting of the Council will be held on September 13, 1993. The purpose of the meeting will be to discuss and make recommendations on provisions of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), enacted on August 10, 1993, that affect physicians.

Those individuals or organizations who wish to make 10-minute oral presentations on the above issues must contact the Acting Executive Director to be scheduled. For the name, address, and telephone number of the Acting Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. A written copy of the oral remarks must be presented to the Acting Executive Director at the time of the presentation.

Anyone who is not scheduled to speak may submit written comments to the Acting Executive Director. The

meeting is open to the public but attendance is limited to the space available on a first-come basis.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92-463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 16, 1993.

John P. Lanigan,

Acting Executive Director, Practicing Physicians Advisory Council

[FR Doc. 93-20921 Filed 8-26-93; 8:45 am]

BILLING CODE 4120-01-P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 20, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Office on (202) 690-7100.

1. OMAR Quick Launch Physician Survey: Instrument 2: The Use of Corticosteroids in Preterm Labor—New—The National Institute of Child Health and Human Development (NICHD) will conduct surveys of physicians to evaluate practice behavior related to the use of antenatal corticosteroid to improve outcomes in preterm infants, the subject of an upcoming Consensus Development Conference. *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 1,335; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.167 hours; *Estimated Annual Burden: 223 hours.*

2. Follow-up of a Cohort Study of Steelworkers Exposed to Sulfuric Acid Mists—New—The population of interest is a cohort of workers exposed to acid mists while working in the pickling areas of three midwestern steel mills. This cohort has been studied previously and the purpose of this data collection is to determine whether laryngeal cancer incidence remains elevated in this cohort: *Respondents:* Individuals or households; *Number of Respondents:* 621; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.167 hours; *Estimated Annual Burden:* 104 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 23, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-20852 Filed 8-26-93; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

[Social Security Ruling SSR 93-1]

Disability—Workers' Compensation Offset—Offset of Wage Loss Benefits—Florida

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Principal Deputy Commissioner of Social Security gives notice of Social Security Ruling 93-1. This Ruling is based on a Department of Health and Human Services Regional Chief Counsel Opinion. For years, Florida's workers' compensation wage loss benefits were not subject to State offset (the reverse offset) because the wage loss benefit was a monthly, not a weekly benefit. SSA, therefore, reduced the Social Security disability insurance benefits due to the individual's receipt of monthly wage loss benefits. In 1989, Florida amended its wage loss benefit statute to substitute "weekly" for "monthly." Consistent with the Social Security Administration's (SSA) long-standing position that by statute and regulation the expansion of an existing, recognized reverse offset law cannot be recognized by SSA, the Regional Chief Counsel advised that, notwithstanding the 1989 amendments, SSA must continue to reduce Social Security disability insurance benefits due to the receipt of wage loss benefits under Florida law.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: August 19, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Section 224 (a) and (d) of the Social Security Act (42 U.S.C. 424a (a) and (d)) Disability—Workers' Compensation Offset—Offset of Wage Loss Benefits—Florida

20 CFR 404.408(b)(2)(i)

Section 224 of the Social Security Act requires an offset of disability insurance benefits if the disabled worker receives workers' compensation benefits. By statute, this reduction does not apply if the workers' compensation law or plan provides for a reduction of the workers' compensation benefit if the worker receives disability insurance benefits and the reverse offset law or plan was provided for on February 18, 1981. This is referred to as reverse offset. The Florida workers' compensation law contains a reverse offset plan, for weekly workers' compensation benefits, that was provided for on and prior to February 18, 1981. This reverse offset

law precludes the Social Security Administration's (SSA) offset of disability insurance benefits. The Florida workers' compensation law also provides for monthly wage loss benefits, which SSA can use to offset disability insurance benefits.

In 1989, the Florida wage loss law was amended to substitute "weekly" for "monthly" so as to include wage loss benefits under the Florida reverse offset law. Since this expansion of an existing reverse offset law did not occur until after the statutory 1981 controlling date, SSA does not recognize this as part of the Florida reverse offset law. Therefore, SSA can reduce an individual's disability insurance benefit due to the disabled worker's receipt of wage loss benefits.

The question before the Regional Chief Counsel was whether workers' compensation offset under section 224 of the Social Security Act (the Act) was properly applied to the claimant's wage loss benefits paid under section 440.15(3)(b)(1) of the Florida workers' compensation statutes. Section 224 of the Act requires an offset of disability insurance benefits if the disabled worker is receiving workers' compensation benefits. Section 224(d) provides for "reverse offset" as follows:

> The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) [conditions for reduction] under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under section 223 [disability insurance benefit payments], and such law or plan so provided on February 18, 1981.

Section 440.15(9) of the Florida Statutes Annotated contains a reverse offset provision that requires a reduction of the weekly workers' compensation benefit if the worker is receiving disability insurance benefits. When this reverse offset applies, disability insurance benefits are not reduced. Section 440.15(3) of the Florida workers' compensation law contained a provision that paid a monthly wage loss benefit. For years, the position of the Florida Division of Workers' Compensation and, later, of the State courts was that the wage loss benefit was not subject to State offset (the reverse offset) because it was a monthly, not a weekly, benefit. Therefore, SSA reduced the disability insurance benefits due to the individual's receipt of monthly wage loss benefits.

In the Florida laws of 1989 (C.89–289, section 12), section 440.15(3)(b)(1), which provides for wage loss benefits, was amended to substitute "weekly" for "monthly" throughout the subparagraph. The effective date of the amendment was October 1, 1989. Pursuant to section 224(d) of the Act, quoted above, and our regulation at 20 CFR 404.408(b)(2)(i), this revision of Florida law cannot be recognized by SSA for purposes of removing offset of disability insurance benefits since the amendment became effective after February 18, 1981. This position has been supported by the Office of the General Counsel in analogous situations arising in North Dakota and Washington. The procedures in SSA's operating instructions, DI 52001.080 of the Program Operations Manual System, apply to the offset of Florida wage loss benefits and disability insurance benefits must be offset using the full unreduced wage loss amount.

Although this Ruling involves Florida wage loss benefits, it clearly illustrates SSA's long-standing position that under the statute and regulation noted above the expansion of an existing, recognized reverse offset law after February 18, 1981, cannot be recognized by SSA.

[FR Doc. 93–20847 Filed 8–26–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force:* John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (This is not a toll-free number).

Dated: August 20, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 8/27/93

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1-story with 2 to 5 bedrooms.
Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3-story structures including dorms and lodging.
Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel, a gate house, a post office and an education center.
Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreation centers, theater, commissary and stores.
Property Numbers: 199210100–199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp.
Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete structures including a hospital, clinics and pharmacy.
Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures.
Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities.
Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs.
Property Number: 199210106
Type Facility: Base Support and Flight Maintenance Facilities— 52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops.
Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures.

Arkansas—Eaker Air Force Base

Eaker Air Force Base is located in Blytheville, Arkansas 72317–5000. All the properties are excess to the needs of the Air Force. Properties shown below as suitable/available may be available for use to assist the homeless.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block, masonry or metal/brick construction.
Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.
Property Number: 199210073
Type Facility: Commissary—1 building; 38,575 sq. ft.,one story concrete block/metal commissary.
Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer.

Suitable/Unavailable

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25 four-unit buildings with two story four bedroom units; four playgrounds.
Property Number: 199210044
Type Facility: Security Related Facilities—13 buildings; 30 to 2400 sq. ft., 1 story; metal, concrete block or wood frame; includes traffic check houses, kennels, guard towers, alert shelters.
Property Number: 199210045
Type Facility: Office/administration—26 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction.
Property Numbers: 199210056

Type Facility: Warehouses/multi-use buildings—36; metal,concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities.
Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.
Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction.
Property Numbers: 199210063–199210065
Type Facility: Stores and services—3 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store.
Property Number: 199210066
Type Facility: Airfield related buildings—9; 96 to 49,000 sq. ft.; shingle, metal or concrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers.
Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings.
Property Number: 199210069
Type Facility: Fuels/related storage facilities—33 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage.
Property Number: 199210070
Type Facility: Hazardous storage buildings—4; 96 to 3,000 sq. ft.; one story metal structures.
Property Number: 199210071
Type Facility: Munitions facilities—10 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines.
Property Numbers: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio- visual photo lab.
Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions.
Property Number: 199210079
Type Facility: Land; 1,962 acres; restrictive agricultural lease.
Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/ asbestos cement shingles frame.
Property Number: 199210072
Type Facility: Cold Storage—Building 435; 3,195 sq. ft., 1 story concrete block frame.

Unsuitable Properties

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures.
Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies.

California—George Air Force Base

George Air Force Base is located in San Bernardino, California, 92394–5000. All the properties are excess to the needs of the Air Force.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Unavailable Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—400 buildings with a total of 1,525 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos
Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos
Property Numbers: 199120421–199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos
Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos
Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 66,000 sq. ft.; possible asbestos
Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos
Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos
Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos
Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos
Property Numbers: 199120634–199120635
Type Facility: Fire facilities— 2 buildings; fire station and command center; possible asbestos
Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos
Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos
Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos
Property Numbers: 199120656–199120666

Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos
Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive materials
Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive materials

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Unavailable Properties

Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos.
Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos.
Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos.
Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos.
Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos.
Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos.
Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos.
Property Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos.
Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos.
Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos.
Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos.
Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos.
Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos.
Property Number: 199210033
Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos.
Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos.
Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure.
Property Number: 199210036
Type Facility: Fuel Facilities—8 buildings; one story structures.
Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures.
Property Number: 199210038
Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures.
Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres).

California—Norton Air Force Base

Norton Air Force Base is located in San Bernardino, California, 92409. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers approximately 2,339 acres, 132 Government owned buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable include dormitory housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199320048
Type Facility: Dormitories—23 buildings; ranging in size from 11,520 sq. ft. to 25,723 sq. ft., 1-story concrete block.
Property Number: 199320049
Type Facility: Administrative Bldgs.—7 buildings; ranging in size from 1750 sq. ft. to 261,700 sq. ft., 1-story concrete block including offices, admin. and Hq. maint. facilities.
Property Number: 199320050
Type Facility: Training Facility—Bldg. 730; 29,380 sq. ft., 1-story concrete block classroom (NCO Academy).
Property Number: 199320051
Type Facility: Warehouses—39 buildings; ranging in size from 9000

sq. ft. to 293,574 sq. ft., 1-story concrete block warehouses.

Property Number: 199320052
Type Facility: Commercial Bldgs.—23 buildings; ranging in size from 400 sq. ft. to 100,581 sq. ft., 1-story concrete block including stores, clinics, child care centers, dining facilities and fire station.

Property Number: 199320053
Type Facility: Maintenance Facilities—5 buildings; ranging in size from 2942 sq. ft. to 625,145 sq. ft., 1-story concrete block including maintenance, storage and headquarters facilities.

Property Number: 199320054
Type Facility: Recreation Bldgs.—7 buildings; ranging in size from 3000 sq. ft. to 25,358 sq. ft., 1-story concrete block including library, golf bldgs., gym, and recreation/bowling/youth centers.

Property Number: 199320055
Type Facility: Recreation Areas—land; 200 acres including golf course, ballfields, etc.

NOTE: Property Number 199320047—Housing Units were inadvertently reported. The housing will be retained for military use. The units will serve as an overflow for March AFB personnel.

Colorado—Lowry Air Force Base

Lowry Air Force Base is located in Denver, Colorado 80230–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,006 acres, 181 government-owned buildings and 867 units of family housing. The properties that HUD has determined suitable and which are available include various types of housing; community and recreation facilities; administration and training buildings; storage/warehouses; and other more specialized structures.

Suitable/Available Properties

Property Number: 189010254
Type Facility: Land—NTMU—Partial Area; west of aspen terrace housing area; approx. 20 acres; sloping parts in the area.

Property Number: 199320001–199320009
Type Facility: Housing—867 units; 1, 2, 4 & 8 unit bldgs. and storage sheds & vehicle garages; 1 to 4 bedrooms; brick, wood w/metal siding frame; possible asbestos; some may need rehab; 192 to 14617 sq ft.

Property Number: 199320010
Type Facility: Housing—28 dormitories; 4382 to 188923 sq. ft.; brick or wood frame; 1 to 3 story; possible asbestos; some may need rehab; includes officer's quarters, dorm housing, motels and hotel housing.

Property Number: 199320012
Type Facility: Community/Recreation—49 facilities; includes playgrounds; running track; soccer, baseball & softball fields; tennis and basketball courts, and golf course.

Property Number: 199320013
Type Facility: Recreational—22 facilities; brick, wood or cinderblock frame; some may need rehab; includes gyms, theater, bowling alleys, youth centers, swimming pools, bath houses, museum.

Property Number: 199320014
Type Facility: Administration—26 buildings; 1143 to 337588 sq. ft.; wood, brick, metal or cinderblock frame; some may need rehab; possible asbestos; includes correctional facility, headquarters bldg., security operations, traffic management and admin services.

Property Number: 199320015
Type Facility: Training—32 facilities; 1026 to 97442 sq. ft., brick, metal or cinderblock frame; 1 to 4 story; includes technical training labs, TV studio, classrooms.

Property Number: 199320016
Type Facility: Commercial—24 buildings; 64 to 84860 sq. ft.; 1 & 2 story; some may need rehab; possible asbestos; brick, wood or metal frame; includes stores, child care centers, medical clinics, chapels & car garages.

Property Number: 199320017
Type Facility: Industrial—21 facilities; 757 to 37832 sq. ft.; metal, brick, wood or cinderblock frame; possible asbestos, some may need rehab; includes vehicle maintenance, training aid, BE maintenance, and industrial bldgs.

Property Number: 199320018–199320019
Type Facility: Storage/Warehouses—46 facilities; 169 to 50363 sq. ft.; wood, brick, metal or cinderblock frame; some may need rehab; possible asbestos; includes cold storage, housing support, warehouses, commissary, clothing stores, covered storage.

Unsuitable Properties

Property Number: 199320011
Type Facility: Dormitories (2)—Buildings 410 and 414; extensive deterioration.

Property Number: 199320020–199320021
Type Facility: Hazard Storage/Warehouses—6 facilities; extensive deterioration.

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 585 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Unavailable Properties

Property Number: 199210139
Type Facility: Housing—585 houses including off-base Chapman Courts with 1 to 8 units, brick and wood structure, possible asbestos.

Property Number: 199210140
Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos.

Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos.

Property Number: 199210142
Type Facility: Storage/Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs.

Property Number: 199210143
Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos.

Property Number: 199210144
Type Facility: Engine Test Cells/Warehouse—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos.

Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations.

Property Number: 199210146
Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos.

Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch

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exchanges and 1 commissary, possible asbestos.

Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos.

Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos.

Property Number: 199210150
Type Facility: Recreation—48 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range.

Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos.

Property Number: 199210153
Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/wood band center, needs rehab.

Property Number: 189010232, 189010255, 189010259–189010260
Type Facility: Miscellaneous Bldgs.—4 buildings including training facility, jail, pump house and bath house

Unsuitable Properties

Property Number: 189010227–189010231
Type Facility: Waste Treatment Facilities

Indiana—Grissom Air Force Base

Grissom Air Force Base is located in north central Indiana, approximately 70 miles from Indianapolis. All properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of various parcels of land, 107 Government-owned buildings and 1,110 units of housing. The properties that HUD has determined suitable and which are available include various types of housing; administrative buildings; maintenance and storage facilities; recreational facilities and other more specialized structures.

Suitable/Available Properties

Property Number: 199330001
Type Facility: Land—13 parcels totalling 839 acres; various uses including farm land, housing area, saddle club barns and grazing, etc., easement restrictions.

Property Number: 199330002–199330006
Type Facility: Housing—606 buildings; various square feet; 2 to 4 bedrooms; 1 to 6 unit bldgs., some w/garages or carports; includes dormitories, multifamily residences, and temporary living facilities.

Property Number: 199330007–199330008, 199330010
Type Facility: Administration/Communication—14 buildings; 1226 to 55797 sq. ft.; presence of asbestos; 3 located near airport clear zone; includes admin. and communication facilities, law center and reserved forces training.

Property Number: 199330009
Type Facility: Support Facilities—22 buildings; 784 to 55267 sq. ft.; presence of asbestos; 4 located near airport clear zone; includes commissary, snack bar, library, animal clinic, chapel, credit union, classrooms, base exchange, etc.

Property Number: 199330011
Type Facility: Maintenance—12 facilities; 323 to 130,492 sq. ft.; presence of asbestos; includes sheds, hangars, BE maintenance, covered storage.

Property Number: 199330012
Type Facility: Storage—11 facilities; 587 to 21,214 sq. ft.; presence of asbestos; 2 located near airport clear zone; includes warehouses, open storage.

Property Number: 199330013
Type Facility: Medical—2 buildings; 5573 to 58291 sq. ft.; presence of asbestos; includes dental clinic and medical clinic.

Property Number: 199330014–199330015
Type Facility: Recreational—23 facilities; includes bowling, swimming pool, golf clubhouse and storage, softball/baseball fields, tennis courts, golf course, range and recreation courts.

Unsuitable Properties

Property Number: 199330016
Type Facility: Operations—6 facilities; within an airport runway.

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311–5000. All the properties are excess to the needs of the Air Force.

The base covers 2,282 acres and contains 568 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; and land. Other properties include recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/Available Properties

Property Numbers: 199210080–199210081
Type Facility: Housing—286 buildings with 568 dwelling units; one and two story; wood or masonry frame; 1,190 to 6,701 sq. ft.

Property Number: 199210082
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame; presence of asbestos in several structures.

Property Number: 199210094
Type Facility: Land, airfield, runways—25 parcels; 10 to 398,099 square yards; concrete or asphalt.

Suitable/Unavailable Properties

Property Numbers: 199210083–199210084
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, theatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures.

Property Number: 199210085
Type Facility: Dorms and dining areas—14 buildings; 3,902 to 25,715 sq. ft.; brick or masonry frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall.

Property Number: 199210086
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structures; includes classrooms, child care center, school, education office and field training facility.

Property Number: 199210087
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital.

Property Number: 199210088
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mall, photo lab, post office, service station and base package store.

Property Number: 199210089
Type Facility: Storage/Warehouses—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to 60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures.

Property Number: 199210090
Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures.

Property Number: 199210091
Type Facility: Airfield related facilities—36 buildings including vehicle fuel station, petroleum operations building, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.,; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures.

Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos.

Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame.

Unsuitable Properties

Property Number: 199210095
Type Facility: Fuel storage containers—14 hazardous storage containers.

Maine—Loring Air Force Base

Loring Air Force Base is located in Limestone, Maine 04736. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 8,702 acres, 163 government-owned buildings, and 598 family housing units. The properties that HUD has determined suitable and which are available include various types of housing; admin/community support; vehicle maintenance/storage; weapons storage area; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 189010590–189010605
Type Facility: Family Housing Annex—16 buildings; 1116 sq. ft.; 1 story frame residences; fuel tanks removed; sewage line need repairs.

Property Numbers: 199320033–199320036
Type Facility: Housing—Wherry, Capehart, and Family Housing residences and officer's quarters; 1420 to 38058 sq. ft.; aluminum, wood and shingle frame; 1 to 3 story.

Property Number: 199320037
Type Facility: Housing Garages—117 buildings; wood or cedar frame, 1 story, various sq. ft.

Property Numbers: 199320038, 199320040
Type Facility: Vehicle Maintenance/Storage—30 buildings; wood, metal or concrete structures, includes storage and maintenance facilities; vehicle maintenance, dry cleaners, auto shop, and water supply.

Property Number: 199320039
Type Facility: Admin/Community Support—42 buildings; 900 to 145877 sq. ft.; 1 to 3 story; brick, concrete or wood frame; includes chapel, post office, dining hall library, child care centers, theater, pool.

Property Number: 199320041
Type Facility: Nose Docks/Hangars—59 facilities; concrete, metal or brick structures; includes fuel bldgs., pump stations, vehicle parking, storage sheds and buildings, security operations.

Property Number: 199320042
Type Facility: Flightline Support—22 facilities; concrete, metal, wood, brick structures; includes fire stations, correctional facility, avionics shop, maintenance shop, vehicle parking, utility vault.

Property Number: 199320043
Type Facility: Weapons Storage Area—86 buildings; concrete, metal, or brick structures; includes inspection bldgs., igloos storage, munitions storage, warehouses, police bldg., and storage magazines.

Property Number: 199320045
Type Facility: Land—On Base; 5233 acres of which 3583 is unimproved; improved land includes aprons, roads, runways, parking, etc.

Property Number: 199320046
Type Facility: Land—Off Base; 4517 acres of which 4047 is unimproved; improved land includes roads, runways, parking, housing, etc.

Unsuitable Properties

Property Number: 199320044
Type Facility: 7 Water/Waste Facilities

Michigan—Wurtsmith Air Force Base

Wurtsmith Air Force Base is located in Oscoda, Michigan 48753. All the properties are excess to the needs of the Air Force. Properties shown below as suitable/available may be available for interim lease for use to assist the homeless.

The base consists of approx. 5,221 acres with 62 government-owned buildings and 1,349 units of housing. The suitable/available properties include various types of housing; office buildings; recreational facilities; dining and child care facilities; stores; warehouses and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199240001–199240005
Type Facility: Housing—1,349 units and 13 dormitories; 1, 2, 4, 6, 7 and 8 unit buildings; 1073 to 90501 sq. ft.

Property Numbers: 199240006–199240007, 199240015–199240018, 199240022–199240025
Type Facility: Recreational—18 facilities; includes swim bath house; recreation center; library; bowling alley; running track; softball, baseball, football, and soccer fields; theatre.

Property Number: 199240008
Type Facility: Dining—3 buildings; 13388 to 15062 sq. ft.; includes open mess.

Property Number: 199240009
Type Facility: Stores—4 buildings; 4208 to 40701 sq. ft.; includes sales store; service outlet exchange; exchange branch; and base package store.

Property Number: 199240010
Type Facility: Warehouses—4; 7856 to 104213 sq. ft.; includes commissary; supply and equipment base; and traffic facility.

Property Numbers: 199240011, 199240014, 199240021
Type Facility: Miscellaneous—11 buildings; includes storage facilities; vehicle maintenance shops; arts & crafts center; radar building.

Property Numbers: 199240012–199240013; 199240020
Type Facility: Offices—15 buildings; includes admin offices; child care centers; education facility; headquarters group; family housing management offices; environmental health.

Property Number: 199240019
Type Facility: Chapel—19977 sq. ft.; roof leaks.

Property Number: 199240026
Type Facility: Air Force Land—58 acres; portion located in airport runway area.

Missouri—Richards-Gebaur Air Reserve Station

Richards-Gebaur Air Reserve Station is located in Kansas City, Missouri, 64147. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base is approximately 906 acres with 69 government-owned buildings. The properties that HUD has determined suitable and which are available include office buildings, recreation facilities, dorm housing, medical clinics, community support buildings, storage and maintenance facilities.

Suitable/Available Properties

Property Number: 199320022
Type Facility: Facility 918; 68767 sq. ft., 1 story concrete block; most recent use—aircraft hangar.
Property Number: 199320023
Type Facility: Dormitories—3 buildings (#243, 250 & 252); 9722 to 9739 sq. ft.; 2 story wood frame.
Property Number: 199320024
Type Facility: Mess Hall—Facility 248; 25536 sq. ft., 2 story concrete block/ wood frame.
Property Number: 199320025
Type Facility: Medical Clinics—2 buildings (#601 & 604); 4541 & 9099 sq. ft.; 1 story concrete block/wood frame.
Property Number: 199320026
Type Facility: Offices—18 buildings; 856 to 67816 sq. ft.; 1 & 2 story; wood, concrete block, prefab steel or corrugated metal; includes office clinics, base exchange, offices, office maintenance shop.
Property Number: 199320027
Type Facility: Recreation—2 facilities; 1083 & 1624 sq. ft.; 1 story wood/steel frame; includes pool bath house and base park shelter house.
Property Number: 199320028
Type Facility: Facility 1049; 611 sq. ft., 1 story concrete block most recent use—offfice/storage/small arms range.
Property Number: 199320029
Type Facility: Facility 924; 569 sq. ft.; 1 story wood frame; most recent use—grounds shop.
Property Number: 199320030
Type Facility: Community Support—3 facilities; 308 to 10417 sq. ft.; wood and concrete block; includes fire station; communications support, 7 story control tower.
Property Number: 199320031
Type Facility: Maintenance Shops/ Hangars—10 facilities; 1812 to 23404 sq. ft., 1 story corrugated metal or concrete block.
Property Number: 199320032
Type Facility: Storage—28 facilities; 141 to 97400 sq. ft., wood, concrete block or steel beems; includes covered open storage, office/storage and sheds.

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base.

Suitable/Unavailable Properties

Property Number: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall
Property Number: 189040326
Type Facility: 1 bachelor quarters buildings
Property Number: 189040327
Type Facility: Hospital heat plant
Property Number: 189040328
Type Facility: Hospital
Property Number: 189040330–198040332
Type Facility: 3 training facilities
Property Number: 189040333–198040334
Type Facility: 2 child care facilities
Property Number: 189040335
Type Facility: Fire station
Property Number: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences
Property Number: 189040352
Type Facility: 1 chapel
Property Number: 189040387–189040394
Type Facility: 8 dormitories
Property Number: 189040395–189040404
Type Facility: 10 residences with detached garage
Property Number: 189040405—189040467
Type Facility: 63 2-unit residences with detached garage
Property Number: 189040468—189040471
Type Facility: 4 6-unit residences with attached garage
Property Number: 189040472–189040581
Type Facility: 90 detached housing storage sheds
Property Number: 189040737–189040740
Type Facility: 4 recreational facilities
Property Number: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities
Property Number: 189040774–189040775, 189040777–189040778, 189040787
Type Facility: 5 miscellaneous buildings used for offices, laboratory, storage, maintenance, and other purposes
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive

Ohio—Rickenbacker Air National Guard

Rickenbacker Air National Guard Base is located eight miles southeast of Columbus, Ohio. Portions of the base were disposed of by base closures in the past. The National Guard is now occupying the base. The remaining portion consist of 24 buildings and related acreage. Properties shown below as suitable/available are available for interim lease for use to assist the homeless. The Base is scheduled to close on or about September 30, 1994.

Suitable/Available Properties

Property Number: 199330019
Type Facility: Bldg. 812; 13,988 sq. ft.; 1 story cinderblock/brick frame; asbestos present; secured area w/ alternate access.
Property Number: 199330021
Type Facility: Recreational—4 facilities; secured area w/alternate access; bldgs. need repairs; includes swimming pools, bathhouse and consolidated club.

Unsuitable Properties

Property Number: 199330017
Type Facility: Gym—within 2,000 feet from flammable or explosive material. Storage tanks store JP-4 and has been identified as a contamination site.
Property Number: 199330018
Type Facility: Office/Dorms—16 buildings; secured area and within 2,000 feet from flammable or explosive material.
Property Number: 199330020
Type Facility: Bldg. 856— secured area.
Property Number: 199330022
Type Facility: Offices—2 buildings; secured area; within airport runway; and 2,000 feet from flammable or explosive material.

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties are

excess to the needs of the Air Force. Properties shown below as suitable/available are available for interim lease for use to assist the homeless.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two, three, and four bedrooms single family dwellings and duplexes with attached carports.

Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures.

Property Number: 199210003
Type Facility: Miscellaneous—12 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall.

Property Number: 199210005
Type Facility: Office/Administration—44 buildings; one to two story modular, block, wood and brick structures.

Property Numbers: 199210006–199210007
Type Facility: Recreation—12 buildings and land including bath houses, bowling center, gymnasium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground (golf course bldgs. are unavailable—leased to local community).

Property Number: 199210009
Type Facility: Utility Type Facilities—36 buildings; one story structures including warehouses, shops and sheds.

Property Number: 199210010
Type Facility: Security—3 police buildings; one story masonry structures including a jail.

Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures.

Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest.

Suitable/Unavailable Properties

Property Number: 199210004
Type Facility: Six one story medical support buildings.

Property Number: 199210008
Type Facility: Golf course and driving range.

Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—15 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons.

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building
Reason: Extensive Deterioration

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing.

Suitable/Available Properties

Property Numbers: 199210108–199210122
Type Facility: Housing—352 military family residences; 1 and 2-story wood frame, concrete and brick/wood buildings.

Texas—Bergstrom Air Force Base

The properties reported below for Bergstrom Air Force Base are located in Austin, Texas 78743–5000. The remaining Base properties are not subject to Title V requirements since the Base reverts back to the City.

Unsuitable Properties

Property Number: 199310003
Type Facility: Building (off-site installation); extensive deterioration

Property Number: 199310004
Type Facility: Ammo Storage—11 buildings; within 2,000 feet of flammable or explosive material

Property Number: 199310001
Type Facility: Land—40.50 acres; within airport runway clear zone

Property Number: 199310002
Type Facility: Land—46.27 acres; within airport runway clear zone

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DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Proposed Lake Pointe Development, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Southwest Travis County, LTD (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act. The Applicant has been assigned permit Number PRT–782186. The requested permit, which is for a period not to exceed 15 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of an operation of a commercial and residential development on a 496 acre tract in Austin, Travis County, Texas.

The Service has prepared a draft Environmental Assessment (EA) for the incidental take permit application. A determination of jeopardy to the species or a Finding of no Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and draft EA should be received within 30 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, suite 407, Austin, Texas 78701. Persons wishing to review the draft EA may obtain a copy by contacting Mr. Bryan Arroyo, Austin Ecological Services Field Office. Documents will be available by written request for public inspection, by appointment, during normal business

hours at the Austin Ecological Services Field Office (8 to 4:30). Written data or comments concerning the application and draft EA should be submitted to Mr. Sam Hamilton, State Administrator, Austin Ecological Services Field Office. Please refer to Permit Number PRT–782186 when submitting comments. Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, suite 407, Austin, Texas 78701, phone (512/482–5436).

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Arroyo at the above Austin Ecological Services Field Office address.

SUPPLEMENTARY INFORMATION: Section 9, of the Act prohibits the "taking" of endangered species, including the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to "Take" endangered wildlife species if such taking is incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a commercial and residential development located on the southwest side of Austin near the intersection of Farm to Market Road 2244 and State Highway 71 in Travis County, Texas. The development will occupy approximately 354 acres with the remaining 142 acres proposed as conservation areas. These activities will permanently eliminate about 80 acres of occupied and/or potential endangered species habitat. The Applicant proposed to mitigate the incidental take via dedicating 142 acres for an on-site preserve, conducting golden-cheeked warbler monitoring studies, establishing an escrow fund of $50,000 to fund a golden-cheeked warbler biological study within Travis County, and constructing and maintaining a fence between the proposed development and the portion of the open space set aside for the golden-cheeked warbler.

The Applicant considered four alternatives but rejected them because they were not economically viable.

James A. Young,

Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Southwest Region (2), Albuquerque, New Mexico.

[FR Doc. 93–20825 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–55–M

Findings, Conclusion, and Recommendations of the Intentional Introductions Policy Review Available

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of document availability.

SUMMARY: This notice announces the immediate availability of a proposed report to Congress on the "Findings, Conclusions, and Recommendations of the Intentional Introductions Policy Review" developed by the federal interagency Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

DATES: Comments on the proposed report should be received on or before October 25, 1993.

ADDRESSES: Written responses and requests for copies of the proposed report should be mailed to: Sharon Gross, ANS Task Force Coordinator, U.S. Fish and Wildlife Service (ARLSQ 820), U.S. Department of Interior, 1849 C Street, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Sharon Gross at (703) 358–1718.

SUPPLEMENTARY INFORMATION: The ANS Task Force is co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The proposed report presents background information on the Act and review process, current uses of and risks associated with nonindigenous aquatic species, and recommendations for reducing the risk of adverse consequences associated with intentional introductions of aquatic organisms. The ANS Task Force emphasizes education, cooperation, and accountability. Recommendations address support for education, extension, and research; improvements in the implementation of existing authorities; a permitting system; consultations on introductions with potential interjurisdictional effects, and codes of good business practices.

Dated: August 23, 1993.

Noreen Clough,

Acting Co-Chair, ANS Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 93–20787 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CO–050–4320–01]

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 10 a.m. Tuesday, September 21, 1993 at the Bureau of Land Management, 1921 State Ave., Alamosa, Colorado, and at 8:30 a.m. Wednesday, September 22 at the Alamosa Inn, 1901 Main, Alamosa, Colorado.

The purpose of this meeting will be:

1. Discussion of proposed Range Improvement projects.
2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.
3. Discuss Range Reform in the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public, with a public comment period at 1 p.m. on Wednesday, September 22. Any member of the public may file with the Board a written statement concerning matters to be discussed at the meeting. September 21 will include a visit to segments of the Rio Grande, where we will discuss riparian and ecosystem management. The Board will leave from the BLM office at 10 a.m. and return at approximately 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275–0631.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93–20792 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–JB–M

[AZ–040–4333–03]

Livestock Grazing Notice and Establishment of Supplementary Rules for the Hot Well Dunes Recreation Area, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decisions and establishment of supplementary rules. Livestock grazing notice. This announcement constitutes an official notice of livestock closure for the lands in the Hot Well Dunes Recreation Area. BLM will be responsible for

maintenance of the boundary fence around the area. Establishment of supplementary rules.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of persons, property, and public lands and resources. The Hot Well Dunes Recreation Area is the area of consideration for the application of these supplementary rules. In addition to the regulations contained in 43 CFR 8365.2 the following rules will be applied to the area.

1. Vehicle Restricted Area—For the safety and enjoyment of bathers, vehicles will not be allowed in the area immediately around the tubs and restroom. This area is closed to all motor vehicles and will be delineated with post and cable and will also be signed.

2. Trapping—Trapping is prohibited, except for health and public safety or administrative purposes as determined by BLM.

3. Woodcutting—Woodcutting is prohibited. Gathering of dead and down wood for use in campfires is permitted.

4. Firearms Use—The area is closed yearlong to the discharge of firearms or other weapons, including archery. BB guns and pellet guns for the purpose of public safety. Target shooting and "plinking" are prohibited.

5. Length of Stay—Persons may occupy any specific location within the area for a period of not more than 14 days within any period of 28 consecutive days unless otherwise authorized.

6. Pets—Pets must be leashed at all times within the area.

7. Closures—Portions of the Hot Well Dunes Recreation Area may be temporarily closed to all or specific types of public use for the protection of natural and cultural resources or to provide for public safety. These areas will be signed and displayed on maps in the local area.

8. Speed Limit—The speed limit on and within 50 feet of the entrance road, any campsite or concentration of people is 10 miles per hour.

9. Camping Restrictions—Camping is not allowed within the designated parking area or within the post and cable barrier around the tubs.

10. Waste Disposal—Dumping of sewage and/or gray water is prohibited.

DATES: On or before October 12, 1993, interested parties may submit comments to the Safford District Manager, 711 14th Avenue, Safford, Arizona 85546. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these actions and issue a final determination. In the absence of any action by the District Manager, these actions will become the final determination of the Department of the Interior.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Thomas Schnell, Outdoor Recreation Planner, BLM, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428–4040.

Dated: August 16, 1993.

Frank Rowley,

Acting District Manager.

[FR Doc. 93–20735 Filed 8–26–93; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–346]

Certain In-line Roller Skates With Ventilated Boots and In-line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Notice

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on September 7, 1993, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: August 23, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93–20828 Filed 8–26–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–343 (Remand)]

Certain Mechanical Gear Couplings and Components Thereof; Notice of Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: K-Power Products, Inc. and A.R. Hutchings.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 23, 1993.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than September 7, 1993. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: August 23, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–20829 Filed 8–26–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 349X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In Greene and Polk Counties, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of a 30.40-mile rail line between milepost 183.40, near Springfield, Greene County, MO, and milepost 153.00, at Bolivar, Polk County, MO, subject to environmental, public use, interim trail use/rail banking, and the standard employee protective conditions.

DATES: This exemption will be effective on September 26, 1993 unless stayed or a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by September 6, 1993. Petitions to stay must be filed by September 11, 1993. Requests for a public use condition must be filed by September 16, 1993. Petitions to reopen must be filed by September 21, 1993.

ADDRESSES: Send pleadings, referring to Docket No. AB–6 (Sub-No. 349X) to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 13, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–20846 Filed 8–26–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 13, 1993 a proposed consent decree in *United States of America* v. *Bethlehem Village District*, Civil Action No. 93–443–B, has been lodged with the United States District Court for the District of New Hampshire. The United States' complaint, filed at the same time as the consent decree, sought penalties and injunctive relief under the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.* The consent decree provides that the defendant will pay $15,000 in civil penalties to the United States pursuant to Section 1414 of the Safe Drinking Water Act, 42 U.S.C. 300g–3. The decree also provides for the defendant to perform injunctive relief, including the installation of a filtration system and distribution system improvements.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bethlehem Village District*, D.J. Ref. 90–5–1–1–3962.

The proposed consent decree may be examined at the office of the United States Attorney, 55 Pleasant St., room 301, Concord, NH 033001 and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, MA 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–20790 Filed 8–26–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Joint Stipulation of Dismissal in *United States* v. *O'Donnell-Usen Fisheries Corp.*, Civil Action No. 89–2207–Y, was lodged on August 17, 1993, with the United States District Court for the District of Massachusetts. This is an action seeking civil penalties for violations of Section 301(a) of the Clean Water Act (the Act), 33 U.S.C. 1311(a), brought pursuant to Sections 309 (b) and (d) of the Act, Sections 1319 (b), (d). The action involves the O'Donnell-Usen Fisheries Corporation located in Gloucester, Massachusetts. The facility processes frozen fish into fishsticks or portions, and prepares them for sale. O'Donnell-Usen was issued a discharge permit by the City of Gloucester in 1985, which authorized O'Donnell to discharge from its treatment facility to the Gloucester sewer system subject to certain prescribed limits. The complaint alleges that O'Donnell-Usen had on numerous occasions violated the discharge standards for pH set forth at 40 CFR 403.5, the prohibition on "pass through" and "interference" set forth at 40 CFR 403.5(a)(1), and local discharge limits established by the City of Gloucester. The complaint also sought to enjoin future non-compliance by O'Donnell-Usen. O'Donnell-Usen has been in compliance with applicable limits and standards since 1990, and thus no injunctive relief is part of the Stipulation of Dismissal. The company has agreed to pay a civil penalty of $375,000 in settlement of this action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Joint Stipulation of Dismissal. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *O'Donnell-Usen Fisheries Corporation*, DOJ Ref. #90–5–1–1–3408.

The proposed Joint Stipulation of Dismissal may be examined at the Office of the United States Attorney, District of Massachusetts, McCormack Post Office and Courthouse, Boston, MA 02109, the Office of the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street NW., Washington, DC 20005, 202–624–0892. A copy of the proposed Joint Stipulation of Dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–20791 Filed 8–26–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,538; Outokumpu Cooper Kensosha, Inc, Kenosha, WI

TA–W–28,738; Page Aluminized Steel Corp., Monassen, PA

TA–W–28,690; Kollmorgen Corp., Industrial Drives Div., Radford, VA

TA–W–28,571; G & L Machine, South Paris, ME

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–28,796; Hexel Corp., Graham, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,706; Leslie Fay, Castlebrook Div., New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,894; Restaura, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,802 & TA–W–28,802A; Buffalo Branch Office Sevicenter, Buffalo, NY, & Alpharetta Customer Support, Alpharetta, GA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,888; Wagner & Brown Limited, Midland, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA–W–28,715; Wagner & Brown Limited, Midland, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA–W–28,592; Mida Corp., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,689; Massey Ferguson Parts Co., Racine, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,666; The M.W. Kellogg Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,857; Cowden Distribution Center, Lexington, KY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,754; Americomm Direct Marketing, Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,625; Brooks Well Service, Inc., Kilgore, TX

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,767, TA–W–28,767A & TA–W–28,767B; Chevron USA Production Co., Law Department, Houston, Wilcrest & Midland, TX

TA–W–28,768; Chevron USA Production Co., Law Department, New Orleans, LA

TA–W–28,769; Chevron USA Production Co., Law Department, Bakersfield, CA

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations

TA–W–28,601; Industrial Steel Stamping, Monroe, MI

A certification was issued covering all workers separated on or after April 1, 1993.

TA–W–28,773; GCA Corp., Williston, VT

A certification was issued covering all workers separated on or after June 4, 1992.

TA–W–28,707; Leslie Fay, Andrea Gayle Div., New York, NY

A certification was issued covering all workers separated on or after April 20, 1992.

TA–W–28,776; Carboloy, Inc., Warren, MI

A certification was issued covering all workers separated on or after June 2, 1992.

TA–W–28,778; Barry Belt, Inc., Archbald, PA

A certification was issued covering all workers separated on or after June 3, 1992.

TA-W-28,775; Cleo, Inc., Bloomington, IN

A certification was issued covering all workers separated on or after March 8, 1992.

TA-W-28,793; Petroleum Testing Service, Inc., Santa Fe Springs, CA

A certification was issued covering all workers separated on or after December 11, 1992.

TA-W-28,836; C.A. Reed, Inc., Williamsport, PA

A certification was issued covering all workers separated on or after June 17, 1992.

TA-W-28,755 and TA-W-28,756; Target Sportswear, Inc., (Target Square Road) Clearfield, PA and New Philadelphia, PA

A certification was issued covering all workers separated on or after May 24, 1992.

TA-W-28,758 & TA-W-28,759; Target Sportswear, Inc., (Fletcherville Road, Clearfield, PA and (Kent I Plant), Curwensville, PA

A certification was issued covering all workers separated on or after May 24, 1992.

TA-W-28,676 and TA-W-28,677; Circuitech, Inc., Glen Cove, NY and Wantagh, NY

A certification was issued covering all workers separated on or after April 12, 1992.

TA-W-28,447; E-Systems, Inc., Salt Lake City, UT

A certification was issued covering all workers separated on or after January 22, 1992.

TA-W-28,624; McDonnell Douglas Corp., Douglas Aircraft Co., Melbourne, AR

A certification was issued covering all workers separated on or after May 23, 1992.

TA-W-28,791; Union Apparel, Norvelt, PA

A certification was issued covering all workers separated on or after June 15, 1992.

I hereby certify that the aforementioned determinations were issued during the month of August 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 18, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-20853 Filed 8-26-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume III

Arizona
AZ930006(Aug. 27, 1993)
Washington
WA930013(Aug. 27, 1993)
Washington
WA930014(Aug. 27, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware
DE930002(Feb. 19, 1993)
DE930005(Feb. 19, 1993)
Kentucky
KY930001(Feb. 19, 1993)
KY930003(Feb. 19, 1993)
KY930004(Feb. 19, 1993)
KY930029(Feb. 19, 1993)
KY930034(Feb. 19, 1993)

KY930035(Feb. 19, 1993)
Pennsylvania
PA930014(Feb. 19, 1993)
Rhode Island
RI930001(Feb. 19, 1993)

Volume II

Iowa
IA930004(Feb. 19, 1993)
Illinois
IL930001(Feb. 19, 1993)
IL930012(Feb. 19, 1993)
IL930013(Feb. 19, 1993)
IL930014(Feb. 19, 1993)
Kansas
KS930012(Feb. 19, 1993)
KS930016(Feb. 19, 1993)
KS930017(Feb. 19, 1993)
KS930022(May. 28, 1993)
Louisiana
LA930001(Feb. 19, 1993)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 20th day of August 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–20570 Filed 8–26–93; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

Extension of Enforcement Policy With Respect to Welfare Plans With Participant Contributions

The purpose of this notice is to announce the extension of the Pension and Welfare Benefits Administration's enforcement policy with respect to cafeteria and certain other contributory welfare plans. On June 2, 1992, the Department of Labor (the Department) announced an enforcement policy providing interim relief from the trust and certain annual reporting requirements, including the audit requirements, of the Employee Retirement Income Security Act (ERISA) for so-called "cafeteria" plans (described in section 125 of the Internal Revenue Code). The policy also temporarily relieves contributory welfare plans from compliance with the trust requirements of ERISA with respect to participant contributions used to pay insurance premiums in accordance with current regulations. The specific terms of the enforcement policy are set forth in Technical Release 92–01. 57 FR 23272 (1992).

The enforcement policy set forth in Technical Release 92–01 contained an expiration date of December 31, 1993. The Department has determined, however, that this relief should remain effective until the adoption of final regulations addressing the application of the trust and reporting requirements of Title I of ERISA to welfare plans that receive participant contributions. Accordingly, this notice extends the enforcement policy set forth in Technical Release 92–01 until such time as final regulations are adopted or until further notice.

FOR FURTHER INFORMATION CONTACT: Cary L. Gilbert, Office of Regulations and Interpretations, (202) 219–8671 (not a toll free number).

Signed at Washington, DC, this 23 day of August 1993.

E. Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–20654 Filed 8–26–93; 8:45 am]

BILLING CODE 4510–29–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Receipt of Petition for Identification Under Section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act and Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of receipt of petition for identification under section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act; request for public comment.

SUMMARY: The United States Trade Representative (USTR) is providing notice that it has received a petition filed by Vista Chemical Company (Vista) pursuant to section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100–449, 102 stat. 1851 (section 409(b)). In the petition, Vista has requested the United States Trade Representative (USTR) to "identify" the United States linear alkylbenzene (LAB) industry pursuant to section 409(b) because the petition alleges that (i) the domestic LAB industry is likely to face increased competition from subsidized imports from Canada as a result of the implementation of the United States-Canada Free-Trade Agreement (FTA) and (ii) the domestic LAB industry is likely to experience a deterioration of its competitive position before rules and

disciplines relating to government subsidies will have been developed, USTR invites written comments from the public on the information contained in this petition.

DATES: Written comments from the public are due on or before September 20, 1993.

FOR FURTHER INFORMATION CONTACT: P. Claude Burcky, Director for Canadian Affairs, (202) 395–3412, or Vanessa P. Sciarra, Assistant General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Vista is a domestic producer of LAB, an active ingredient in some household laundry detergent and industrial cleaning products. On July 15, 1993, Vista filed a petition pursuant to section 409(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 requesting that the USTR identify the domestic LAB industry pursuant to section 409(b). In its petition, Vista alleged that, as a result of the implementation of the FTA, the domestic LAB industry is likely to face increased competition from subsidized Canadian imports of LAB. Further, the petition alleged that the domestic LAB industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to Canada.

Pursuant to section 409(b)(2), the USTR has until October 13, 1993 to decide, in consultation with the Secretary of Commerce, whether to identify the domestic LAB industry "on the basis that there is a reasonable likelihood" that the industry (i) is likely to face increased competition from subsidized Canadian imports of LAB and (ii) is likely to experience a deterioration of its competitive position before the rules and disciplines relating to the use of government subsidies have been developed with respect to Canada. In the event the USTR decides to identify the domestic LAB industry pursuant to section 409(b)(2), section 409(b)(3) provides that the USTR may (i) compile and make available to the industry information under section 308 of the Trade Act of 1974 or (ii) recommend to the President that an investigation by the United States International Trade Commission be requested under section 332 of the Tariff Act of 1930 or (iii) take both of the actions described in (i) and (ii).

Copies of the public version of the petition are available for public inspection in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Appointments may be made from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Interested persons are invited to submit written comments on the information contained in this section 409(b) petition. Comments must be filed by September 29, 1993. Comments must be in English and provided in twenty copies to: Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of the cover page or letter and each succeeding page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file which is open to public inspection.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–20826 Filed 8–26–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32781; File No. SR–Amex–93–05]

Self-Regulatory Organizations; Order Partially Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, 4, and 5 to Proposed Rule Changes by the American Stock Exchange, Inc. Relating to Flexible Exchange Options ("FLEX Options")

August 20, 1993.

I. Introduction

On February 4, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Major Market ("XMI"), Institutional ("XII"), and Standard & Poor's Corporation ("S&P") MidCap ("MID") Indexes.[3]

Notice of the proposed rule changes and Amendment No. 1 were published for comment and appeared in the **Federal Register** on April 29, 1993.[4] The Amex further amended the proposal on July 27, 1993,[5] July 30, 1993,[6] August 6, 1993,[7] and August 17,

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] The XMI is a broad-based, price-weighted index comprised of 20 blue-chip stocks designed to measure the performance of the blue-chip sector of the U.S. equity market. The XII is a broad-based, capitalization-weighted index consisting of the 75 major stocks currently held in highest dollar amounts in institutional portfolios that have a market value of more than $100 million in investment funds. The MID is a capitalization-weighted index composed of 400 domestic stocks from four broad market sectors: industrials, utilities, financials and transportation. The MID is designed to track the performance of domestic stocks that fall in the middle capitalization range of securities. The Amex's filing also proposed to trade FLEX Options on the Japan index ("JPN"), a modified price-weighted index that measures the aggregate performance of 210 common stocks actively traded on the to Tokyo Stock Exchange that are representative of a broad cross section of Japanese industries. The Commission is only approving in this order FLEX Options on the XMI, XII, and the MID Indexes.

[4] See Securities Exchange Act Release No. 32196 (April 22, 1993), 58 FR 26009. On April 12, 1993, the Exchange filed an Amendment No. 1 setting forth applicable position and exercise limits for FLEX Options. This amendment was published for comment and appeared in the **Federal Register** noted above.

[5] On July 27, 1993, the Amex filed Amendment No. 2 revising proposed Rules 903G, 904G, and 906G, and introducing proposed Rule 909G. Proposed Rule 909G sets forth applicable financial requirements for Registered Options Traders ("ROTs") and floor brokers trading FLEX Options. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated July 27, 1993 ("Amendment No. 2").

[6] The Exchange on July 30, 1993 filed Amendment No. 3, which among other things, clarifies the FLEX Options trading hours and the parameters of the "Request Response Time" defined in proposed Rule 900G(b)(5). See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, dated July 30 1993 ("Amendment No. 3").

[7] The Exchange on August 6, 1993 filed Amendment No. 4, which among other things, clarifies that priority, parity, and precedence procedures for bids and offers of FLEX Options must be in compliance with Section 11(a) of the Act and the rules promulgated thereunder. In addition, Amendment No. 4 also specifies that Exchange specialists trade FLEX Options are committed to provide FLEX quotes in response to a request for Quotes in an underlying equivalent value of at least $10 million or the dollar amount indicated in the Request for Quotes, whichever is less. See letter from Claire McGrath, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 6, 1993 ("Amendment No. 4").

1993.[8] This order approves the proposal as amended.[9]

II. Background

The purpose of the Amex's FLEX Option proposal is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. The Amex is currently proposing to trade FLEX Options on the XMI, XII, JPN, and MID stock indexes. In recent years, an over-the-counter ("OTC") market in customized index options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions[10] through a relatively small number of securities dealers. The Exchange believes FLEX Options will help it compete with this growing OTC market in customized index options. In particular, the options traded under Amex's FLEX proposal will not have the following contract terms set in advance: (1) Strike prices; (2) exercise types; (3) expiration date;[11] and (4) form of settlement.

The Amex believes that market participants will benefit from the trading of FLEX Options in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing our positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.[12]

III. Description of the Proposal

Transactions in FLEX Options traded on the Amex generally will be subject to the same rules that presently apply to the trading of Amex index options.[13] In order, however, to provide investors with the flexibility to designate certain of the terms of the options and to accommodate other special features of FLEX Options and the way in which they are traded, the Amex has proposed several new rules.

The principal rules proposed by the Amex that are uniquely applicable to the FLEX market include a rule containing new definitions (Rule 900G), a rule regarding the hours of trading FLEX Options (Rule 901G), a special rule regarding trading rotations (Rule 902G), rules setting forth the special terms of FLEX contracts and certain special pieces of information that must be included in FLEX Requests for Quotes and Responsive Quotes (Rule 903G), rules prescribing the mechanics of initiating a FLEX Request for Quotes and bidding and offering in response thereto, rules setting forth the principles applicable to the formation of binding FLEX contracts, rules defining the applicable priority principles (Rule 904G), special position limit and exercise limit rules (Rules 906G and 907G), and special financial requirements for ROTs and floor brokers trading FLEX Options (Rule 908G and 909G). Discussion of each of these new rules follows.

Proposed Rule 900G adopts nomenclature uniquely tailored to fit the special characteristics of FLEX Options and the FLEX market. For example, the term "Request Response Time" refers to the time interval, set by the submitting member in its Request for Quotes, during which responsive bidding and offering is to take place. Similarly, the term "FLEX Quote" has both its usual connotation—specialist and ROT bids and offers—and a new connotation—orders to purchase and orders to sell entered by floor brokers—that is necessary in view of the unique mechanics of the FLEX exchange auction.

Proposed Rule 901G provides that FLEX trading will commence at 10 a.m. and close at 4:15 p.m. (New York time), although the Exchange may, from time to time, determine to amend the trading hours for FLEX Options as circumstances dictate.[14] As a complementary rule uniquely applicable to FLEX Options, Proposed Rule 902G specifies that there will be no trading rotations in FLEX Options.

Proposed Rule 903G specifies the term elements and other informational ingredients that must be included in Requests for Quotes, FLEX Quotes submitted in response to such requests, and, ultimately, FLEX contracts that are the product of FLEX trading. As paragraph (a) of proposed rule 903G indicates, the content of certain terms of each FLEX contract is to be determined by the parties to the contract. Other terms, such as the level of the index multiplier and the nature of the rights and obligations of FLEX Option purchasers and sellers, are the same for FLEX as for non-FLEX index options.

More specifically, Paragraph (b) of Proposed Rule 903G specifies the term elements that a submitting member must include in its Request for Quotes and indicates the content alternatives available for each term. Under this paragraph a submitting member must designate, among other terms, the day, month, and year of the FLEX Option's expiration, subject to certain limitations designed to avoid the overlap of FLEX expirations with expirations of non-FLEX index options.[15] Similarly, a submitting Member must identify the exercise price[16] and the exercise

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[8] On August 17, 1993, the Exchange filed Amendment No. 5, which among other things, sets forth additional financial requirements for FLEX-registered specialists. Specifically, Proposed Rule 909G(a) requires that FLEX-registered specialists to maintain at least $1 million net liquidating equity or net capital, as applicable. See letter from Howard A. Baker, Senior Vice President, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated August 17, 1993 ("Amendment No. 5").

[9] The Commission is approving the Amex FLEX Options proposal based on the XMI, XII, and MID Indexes. At this time, however, the Commission is deferring judgment on the JPN index pending further review. In addition, for those amendments approved on an accelerated basis, the Commission is soliciting comment on the substance of those amendments. Any comments received will be considered in connection with review of further Amex initiatives in this area.

[10] Large size in this context is intended to mean options having an underlying contract value equal to or greater than $1 million.

[11] The FLEX Options proposal, however, requires that the expiration dates for FLEX Options be at least two business days away from the expiration dates for existing listed options in order to protect against possible market disruptions that may otherwise result from the concurrent expiration of existing listed non-FLEX index options and FLEX Index Options. See Amendment No. 2, *supra* note 5.

[12] The Commission has designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. See Securities Exchange Act Release No. 31919 (February 23, 1993), 58 FR 12056 ("9b–1 Order"). As described in note 34 *infra*, and for the same reasons stated in the 9b–1 Order, XMI, XII, and MID FLEX Options are deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework.

[13] See Amex Constitution and Rules, Part V, Section 11 (May 1993), as amended by appropriate Amex rule changes.

[14] Specifically, the Amex proposes to implement the hours of trading for FLEX Options as follows: (1) Initial hours of FLEX trading will be 10 a.m.–4:15 p.m. (New York time); (2) FLEX trading hours may be altered at the discretion of the Exchange by 15 minutes or less so long as the change does not extend trading beyond the normal Amex business hours of 9:30 a.m.–4:15 p.m. (New York time); (3) FLEX trading hours that are altered by more than 15 minutes but remain within normal business hours must be submitted by the Exchange to the Commission in a section 19(b)(3)(A) filing; (4) FLEX trading hours extended beyond the Amex's normal business hours must be submitted to the Commission for approval pursuant to section 19(b)(2); and (5) the Exchange will provide adequate advance notification to its members and member organizations of such changes in FLEX trading hours. See Amendment No. 3, *supra* note 6.

[15] See Securities Exchange Act Release Nos. 31844 (February 9, 1993), 58 FR 8796 ("QLX Approval Order"); 31330 (October 16, 1992), 57 FR 48406 ("A.M.-settled XII Approval Order").

[16] Specifically, exercise prices can be determined in reference to (a) a specific index value number,

Continued

settlement value[17] of the FLEX Option, and those variable FLEX terms must fit within stated parameters.

Paragraph (c) of this proposed rule lists certain additional categories of information that must be addressed by the submitting member in its Request for Quotes. In particular, under this paragraph a submitting member must indicate the type and form of quote sought, the length of the Request Response Time (i.e., the time interval during which FLEX-participating members may enter quotes responsive to the request),[18] and the submitting member's intention, if any, to cross a customer order or act as principal with respect to any part of the FLEX trade.

Finally, paragraph (d) of this proposed rule specifies the maximum term and the minimum value size of any FLEX contract and provides that the term and size may be set, within the stated limits, at the discretion of the submitting member or the quoting party, as applicable. Under this paragraph, the maximum FLEX term is five years; the minimum value size (i.e., the aggregate underlying dollar value that is the subject of the option) for a FLEX Request for Quotes is $10 million in an opening transaction in a new FLEX Option series and $1 million in an opening or closing transaction in any currently-opened FLEX series (or less in a closing transaction where the remaining underlying value is less than $1 million); and the minimum value size for quotes in response to a Request for Quotes is the lesser of $1 million or the remaining underlying equivalent value on a closing transaction (except that Exchange specialists trading FLEX Options on the underlying index that is the subject of the Request for Quotes must be prepared to respond to a Request for Quotes in a size of at least $10 million underlying value or the dollar amount indicated in the Request for Quote, whichever is less).

These provisions, collectively, provide investors and FLEX-participating members with significant latitude in structuring the terms of FLEX Options contracts. The Exchange believes that such latitude is both important and necessary to the Exchange's effort to create a product and a market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the OTC options market. To enable the efficient, centralized clearance and active secondary trading of opened FLEX Options, however, the extent of variability in structuring FLEX Options is necessarily limited. Only certain terms are subject to flexible structuring by the parties to FLEX transactions, and most of such terms have a specified number of alternative configurations. In addition to the specified term alternatives indicated above, FLEX Options will be limited to transactions on the XMI, XII, and MID Indexes[19] and shall be denominated for settlement in cash in U.S. dollars only under Proposed Rule 903G(e).

Proposed Rule 904G prescribes in some detail the mechanics of submitting Requests for Quotes and entering responsive bids and offers. These mechanics, described below, are designed to create a modified auction that takes into account the relatively small number of transactions that are likely to occur in this institutional, large-size market, while at the same time providing the FLEX market with the price improvement and transparency benefits of competitive Exchange floor bidding and offering, as compared with the OTC market. Proposed Rule 904G also subjects FLEX Options on the Exchange to existing time and price priority principles and contains special rules respecting the bidding and offering process and the method of allocating trades in instances in which the submitting member expresses an intention to cross or act as principal on a Request for Quotes.[20] These proposed rules are designed to promote active bidding and offering that will generate the best price available, while also providing incentives to specialists, ROTs, floor brokers, and upstairs firms alike to participate in the FLEX market.

In particular, paragraphs (a) and (b) of proposed Rule 904G indicate that the FLEX bidding and offering process is initiated once a submitting member has supplied a Request for Quotes in proper form and the FLEX Specialist has disseminated the terms of that request at the post and over FLEX communications. Thereafter, FLEX Quotes in proper form may be entered, modified, or withdrawn by public outcry at any time during the Request Response Time. The length of the Request Response Time, which must fall within time parameters to be set by the Exchange, is to be specified in the Request for Quotes.[21] At the expiration of the Request Response Time, the best bid and/or offer (the "BBO") will be determined according to Exchange price and time priority principles set forth in Amex Rule 126.

Proposed paragraph (c) of Rule 904G provides that the BBO will be displayed at the post and over communication facilities and, at that point, or after further bidding and offering that occurs in certain specified circumstances, the submitting member will have the opportunity to accept or reject the BBO. The submitting member, however, has no obligation to accept the BBO. Thus, whenever the BBO is rejected the Request for Quotes expires, although Flex-participating Exchange members other than the submitting member may accept the entire order or the unfilled balance of the BBO. Similarly, whenever the BBO is accepted, the transaction (or transactions) will be executed in accordance with the crossing principles and priority principles set forth in Amex Rule 126 and Commentary .02 to Amex Rule 950. FLEX-participating members may accept any unfilled balance of the BBO.

Proposed Rule 906G states position limits that will be unique to FLEX Options. Specifically, proposed Rule 906G provides that FLEX Options will be subject to a maximum limit of 200,000 contracts on the same side of the market on a given underlying index, without aggregation for other contracts on the same index with one exception. Under the proposal members must, at

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(b) a method for fixing such a number at the time a FLEX quote is accepted, and/or (d) the cap interval in the case of capped style options.

[17] Specifically, exercise settlement value is defined as the index value reported at the close or at the open of trading on the Exchange or as a specified average provided that any average index value must conform to the averaging parameters established by the Exchange, that is used in setting the exercise settlement amount.

The Exchange has determined that the averaging parameters will be limited to three alternatives: The average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. See letter from Howard A. Baker, Senior Vice President, Options Division, Amex, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated August 4, 1993.

[18] Initially, the Request Response Time will be a minimum of 10 minutes and a maximum of 30 minutes. Under the proposed rules, the Exchange has the authority to set the range for the Request Response Time. The Exchange will provide at least 2 days notice to members and member organizations of any changes to the Request Response Time range. See Amendment No. 3, *supra* note 6.

[19] The Commission is today approving the Exchange's FLEX Options framework for those contracts based on the XMI, XII, and MID Indexes. Amex's proposal to trade FLEX Options on the JPN Index is still pending with the Commission. If the Amex in the future proposes to trade FLEX Options based on different underlying indexes, a rule proposal under section 19(b) of the Act would be required to be filed with the Commission.

[20] See Amex Rule 126 and Commentary .02 to Amex Rule 950. See also Section 11(a) of the Act and note 7, *supra*.

[21] See *supra* note 18.

the close of business two days prior to the last day of trading of the calendar quarter aggregate positions in P.M.-settled FLEX Options with comparable quarterly expiration index options ("QIXs") and those positions may not exceed the QIX limits.[22] In each case, the applicable hedge exemptions under Rule 904C may be applied to the aggregate positions.[23]

Proposed Rules 908G and 909G set minimum financial requirements for ROTs, floor brokers, and specialists trading FLEX Options. The financial minimums stated in proposed Rule 909G are unique to FLEX Options.

Specifically, proposed Rule 909G(a) require FLEX-registered specialists to maintain at least $1 million in net liquidating equity or net capital, as applicable.[24] Proposed Rule 909G(b) requires every ROT and/or floor brokers to maintain at least $100,000 in net liquidating equity in any FLEX trading account with each designated clearing member.

Proposed Rule 908G extends the fidelity bond requirements under existing Exchange Rule 330 to FLEX ROTs and floor brokers, thereby subjecting FLEX participants to a focused creditworthiness review by their clearing members. The review and issuance requirement imposed under Proposed Rule 908G substantially supplements the independent financial requirements of proposed Rule 909G.[25]

[22] The specific position and exercise limits for QIXs on the Amex are as follows: (1) QIX XMIs are subject to a 34,000 contract limit; (2) QIX XIIs are subject to a 45,000 contract limit with an index arbitrage limitation of 25,000 contracts; and (3) QIX MIDs are subject to a 25,000 contract limit. In addition, these positions are entitled to certain hedge exemptions from position limits under the Exchange's rules. See QIX Approval Order, *supra* note 15.

[23] Under the proposal, Amex's position limits would be established as a three-year pilot, during or following which adjustments may be required. See Amendment No. 3, *supra* note 6. In addition, the Amex has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. See, *infra*, discussion section on one year monitoring report.

[24] On August 11, 1993, the Commission amended its net capital rule under the Act, to make the rule applicable to certain specialists that are currently exempt from the rule. See Securities Exchange Act Release No. 32737 (August 11, 1993). The Amex has represented that specialists in FLEX Options satisfy these requirements. See Amendment No. 5, *supra* note 6.

[25] The Exchange's FLEX Options proposal also includes a change concerning the discretionary authority of floor brokers. Proposed Rule 905G would permit a floor broker to purchase or sell an unspecified number of FLEX Options based on such floor broker's discretion. This rule would require discretionary authority to be granted by the customer in a manner approved by the Amex and reflected in a contemporaneously-prepared time-stamped document prepared by the floor broker. A copy of this approving document would be promptly sent to the customer with an additional copy maintained by the floor broker for the full duration of the FLEX Option contract or the time required by the Commission under Rule 17a–4 of the Act, whichever is longer.

IV. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) and 11A.[26] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for broad-based indexes currently traded on the Exchange that may be more suitable to their investment needs than other outstanding FLEX index options.[27]

Moreover, consistent with section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the Amex to compete with the growing OTC market in customized index options.

For instance, as noted by the Amex, the OTC market in customized index options has developed, in part, to meet the needs of institutional investors who require increased flexibility for the purpose of satisfying particular investment objectives that could not be met by the existing standardized exchange markets in options. Accordingly, the Commission believes the Amex proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the Amex proposal will help to promote the maintenance of a fair and orderly market, consistent with sections 6(b)(5) and 11A, because the purpose of the proposal is to extend the benefits of a listed, exchange market in XMI, XII, and MID options that have certain terms varied by the particular investor.[28] The attributes of the Exchange's options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.[29]

In general, transactions in FLEX Options will be subject to many of the same rules that apply to index options traded on the Amex. In order to provide investors with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.

Due to the customized nature of these options, FLEX Options will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 904G sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain options terms.[30] Accordingly, the Amex proposed rules specific to FLEX vary from the traditional procedure for trading non-FLEX stock index options.

The Commission believes that the FLEX auction process, as outlined in Amex's proposal, appears reasonably designed to provide the benefits of an Exchange auction environment for XMI, XII, and MID options with features of a negotiated transaction between investors. The Commission recognizes that the Amex proposal marks, in many respects, an experiment in trading option contracts of substantial value, for which continuous quotation may be difficult to sustain. Accordingly, the

[26] 15 U.S.C. 78f(b)(5) and 78k–1 (1982).

[27] The Chicago Board Options Exchange, Inc. ("CBOE") trades FLEX Options based on the S&P 100, S&P 500, and Russell 2000 stock indexes. See Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 ("S&P 100 and 500 FLEX Options Approval Order") and 32694 (July 29, 1993) (approval of File No. SR–CBOE–93–16).

[28] As stated in note 9, *supra*, the Commission is approving the Amex FLEX Options proposal only for contracts based on the XMI, XII, and MID Indexes.

[29] On February 26, 1993, the Commission received a comment letter from the New York Stock Exchange, Inc. ("NYSE") on the CBOE's original FLEX Option proposal which articulated concerns about potential adverse effects FLEX Options could have on securities markets trading securities that are components of stock index options. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, dated February 26, 1993.

As discussed in the S&P 100 and 500 FLEX Options Approval Order, the Commission is satisfied that the CBOE, and now the Amex, have established appropriate measures to address and monitor potential adverse effects. Moreover, there have been no indications of adverse market consequences through July 19, 1993, in the 46,715 FLEX Options contracts that have expired at the CBOE since trading in FLEX Options commenced. As discussed below, although the Commission shares many of the NYSE's concerns regarding market impact, we believe that structures are in place to monitor the FLEX market and that the Amex, CBOE and NYSE will consider appropriate changes if necessary.

[30] A submitting member (the Exchange member that initiates the FLEX auction process by submitting a request for quotes) is under no obligation to accept any FLEX bid or offer, even if it is the best bid or offer ("BBO"). Proposed Amex Rule 904G(c)(iii).

Amex has established procedures for quotes upon request, which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission notes that FLEX Options based on the XMI, XII, and MID can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in those securities.[31] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[32] these concerns are reduced in the case of FLEX Options, since expiration of these stock index options will not correspond to the normal expiration of stock index option, stock index futures, and options on stock index futures. In particular, FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that FLEX Options could have on the underlying cash market on expiration days.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX and QIX Options. As proposed, Amex Rule 906G requires P.M.-settled FLEX Options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX Options would be aggregated two days prior to expiration subject to the lower QIX position limits of 34,000 for the XMI, 45,000 for the XII, and 25,000 for the MID. The Commission believes that these rules should help prevent an investor from using FLEX Options for the purposes of avoiding the position limits applicable to comparable QIXs.

Nevertheless, because the position limits for FLEX Options are much higher than those currently existing for outstanding exchange-traded index options and open interest in one or more FLEX series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX Option stock indices. The Amex has taken several steps to address this concern, including establishing the proposed position limits as a three-year pilot and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading FLEX Options. That report will include, among other things:

- The type of strategies used by FLEX Options market participants and whether FLEX Options are being used, in lieu of existing standardized stock index options.
- The type of market participants using FLEX Options.
- The terms which are predominantly being "flexed" by market participants, *i.e.*, strike prices, settlement value (A.M. v. P.M.), term of duration, European v. American style.
- The size of the FLEX position on average, the size of the largest FLEX positions on any given day and the size of the largest FLEX position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect FLEX positions have had on the underlying cash market, including an analysis of FLEX positions and their market impact on days NYSE's Rule 80A is invoked.

In addition, the Commission expects and the Amex has agreed to monitor the actual effect of FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the Amex, the Commission believes that the Amex and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with FLEX Options. Specifically, the Exchange represents that "the introduction of FLEX Options by the Amex will not degrade OPRA's throughput capacity, either on total throughput over the trading day or during the opening peaks."[33]

The Commission finds good cause for approving proposed Amendment Nos. 2, 3, 4, and 5 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because such amendments will help to benefit the FLEX Options market and market participants utilizing these options. In addition, the changes included in these Amendments are technical in nature rendering acceleration reasonable. The Commission accordingly believes that granting accelerated approval of Amendments 2, 3, 4, and 5 of the proposed rule change is appropriate and consistent with section 6 of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Amendments. Persons making written submissions should file six copies thereof with the Secretary, Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93–05 and should be submitted by September 17, 1993.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal to trade FLEX Options on the XMI, XII, and MID is consistent with the Act and sections 6 and 11A of the Act, in particular. In addition, the Commission also finds pursuant to Rule 9b–1 under the Act, that FLEX Options based on the XMI, XII, and MID stock indexes are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[34]

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[31] See A.M.-settled XII Approval Order *supra* note 15.

[32] *Id.*

[33] See letter from Charles H. Faurot, Managing Director, Market Data Services, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated July 30, 1993.

[34] As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. See Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792. On May 4, 1993, Chairman Breeden pursuant to Public Law 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), and Article 10–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests (17 CFR 200.30–3), designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[35] that the portion of the amended proposed rule change (SR-Amex-93-05), proposing FLEX Options on the XMI, XII, and MID Indexes, including Amendment Nos. 2, 3, 4, and 5 on an accelerated basis, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-20861 Filed 8-26-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32780; File No. SR-MSRB-93-4]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Board's Arbitration Code

August 20, 1993.

On March 23, 1993, the Municipal Securities Rulemaking Board ("Board or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change consisting of amendments to the Board's Arbitration Code. The proposed rule change was published for comment in Securities Exchange Act Release No. 32168 (April 19, 1993), 58 FR 22006 (April 26, 1993). No comments were received. On August 3, 1993, the Board filed with the Commission a letter amendment revising the rule filing to incorporate changes in the text of the Code that were requested by the Commission.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends MSRB rule G-35, the Board's Arbitration Code (hereafter referred to as "the proposed rule change"), to reflect recent amendments to the Uniform Code of Arbitration ("Uniform Code"). The Uniform Code has been developed by the Securities Industry Conference on Arbitration ("SICA") and is the basis for the MSRB's Arbitration Code.

Matters Subject to the Board's Arbitration Code

The proposed rule change adds new language (identical to the Uniform Code) to Section 1 of the Code that excludes class action claims from Board arbitration proceedings. The amendments also provide that a claimant may pursue a claim in arbitration even if that claim is the subject of a class action, as long as the claimant has complied with any court-imposed conditions for properly withdrawing from the class. In addition, the amendments prohibit dealers from attempting to compel a customer to arbitrate a claim included in a class action, or from attempting to enforce an arbitration agreement against any customer that has initiated a class action claim in court and who has not opted out of the class, until a court denies class certification, the class is decertified, or the court excludes the customer from the class.

Persons Subject to the Board's Arbitration Code

The amendment conforms Section 2 of the Board's code to the Uniform Code by including the terms "municipal securities dealer" and "municipal securities broker" as persons subject to the Code.

Joinder and Consolidation

The amendments track the Uniform Code by clarifying and expanding the ability of parties to proceed jointly in arbitration proceedings. Claimants may join in one action, and respondents may be joined in one action, where claims arise out of the same transaction or occurrence, or series of transactions or occurrences, and where questions of law or fact common to the parties will arise in the action. In addition, judgments may be apportioned according the claimants' rights to relief and the respondents' liabilities. The amendments clarify that the Director of Arbitration is permitted to consolidate claims that have been filed separately, and that all further determinations made by an arbitration panel concerning such matters shall be deemed final.

Designation of Time and Place of Hearings

The rule change would amend Section 16 of the Board's Code to make final the Director's and arbitrators' determinations concerning the time and place of hearings.

Failure to Appear

The amendments to Section 19 clarify that arbitrators are authorized to proceed with and resolve a case if a party fails to appear at a hearing or at any continuation of a hearing session.

Discovery

The amendments to Section 22 clarify when discovery requests may be served.

Party Service of Amended Pleadings

The amendments to Section 29 require the parties to serve copies of amended pleadings on all other parties and provide the Director of Arbitration with sufficient additional copies for each arbitrator.

Awards

This amendment to Section 31 provides that interest shall accrue on awards that are not paid within 20 calendar days of receipt unless an appeal or motion to vacate has been filed in court. The amendments also provide for the determination of the rate of interest to be applied. This amendment to Section 31 retains the MSRB's existing safeguards for investors requiring that awards that are not paid promptly be protected through escrow accounts or letters of credit, while adding the additional measures developed by SICA that require interest to be paid on awards that are not promptly paid.

Agreement to Arbitrate

The amendments to Section 32 are intended to assure that a party who does not sign a submission agreement, but is subject to other agreements to arbitrate, also is bound by the Board's Arbitration Code.

Use of Simplified Arbitration for Small Claims

The amendments to Section 34, paragraph (a), eliminate the requirement that a customer demand use of the small claims procedures before they can be implemented and the requirement that parties first consent in writing to the use of these procedures.

The amendments to Section 34, paragraph (h), add new language which codifies the applicability of Board discovery procedures to simplified arbitrations when a public customer demands a hearing and establishes a procedure to resolve discovery disputes when no hearing is demanded or consented to.

Simplified Arbitrations—Intra-Industry

The amendments to Section 35, paragraph (a), clarify that only those inter-dealer small claims that are subject

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options" pursuant to Rule 9b-1(a)(4). Accordingly, this subdelegation provides the necessary authority for XMI, XII, and MID FLEX Options to be designated as "standardized options" by the Division of Market Regulation. See Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[35] 15 U.S.C. 78s(b)(2) (1982).

[36] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1).

[2] See letter from Jill C. Finder, Assistant General Counsel, to Katherine A. England, Assistant Director, Commission (August 3, 1993).

to the Board's arbitration code shall be resolved pursuant to the simplified procedures set forth in this section.

Predispute Arbitration Agreements

The amendments to Section 36 add new language requiring that all new predispute arbitration agreements signed by customers must include a prescribed statement excluding class actions from the arbitration contract and clarifying investors' ability to pursue class actions in court. This amendment applies only to new agreements signed by an existing or new customer.

II. Discussion

The Uniform Code has been developed by SICA in an effort to promote consistency in the securities industry arbitration process. Because the MSRB's Arbitration Code closely tracks the Uniform Code, the MSRB must amend it periodically to bring it into closer conformity with recent amendments to the Uniform Code. The proposed rule change will amend the Board's code accordingly.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and in particular, Section 15B(b)(2)(C), which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in municipal securities and, in general, to protect investors and the public interest, and Section 15B(b)(2)(D), which authorizes the Board to provide for the arbitration of claims, disputes and controversies relating to transactions in municipal securities.

The Commission agrees with the Board that the proposed amendments will facilitate the just and timely resolution of disputes between customers and dealers, and will further the Board's statutory mandate to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-20794 Filed 8-26-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32788; File No. SR-NYSE-93-28]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 35 (Floor Employees To Be Registered) and Rule 301 (Proposed Transfer or Lease of Membership)

August 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On July 30, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is herewith filing proposed amendments to Rules 35 and 301 which will require all Floor employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking and appropriate processing. The Exchange proposes to adopt the following amendments:[2]

Rule 35—Floor Employees To Be Registered

. . . .Supplementary Material:

.50 Applications for Registration—Registration applications for all employees of members and member organizations for admission to the Floor shall be submitted to the Exchange on the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

.60 Fingerprinting—All Floor employees of members and member organizations and all employees of members and member organizations who have submitted registration applications for admission to the Floor are required to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Exchange for identification and appropriate processing.

Rule 301—Proposed Transfer or Lease of Membership

.Supplementary Material:

[.21] *.20* Bids and offers—Memberships. (No change in text).

[.22] *.21* Deposit—Indemnity agreement. (No change in text).

[.23] *.22* Application for membership.—In making application for membership, a candidate is required to sign a personal statement, on a form prescribed by the Exchange, giving among other things, complete details as to [his] business history. [He must] *A candidate who will be active on the Floor will be required to* arrange with the Medical Clinic located in the Exchange building for a physical examination. [He must] *A candidate may also be required to* present letters of recommendation from at least three responsible persons other than those persons referred to in .24 below.

.23 Fingerprinting.—Every member and every applicant for membership is required to be fingerprinted and to submit such fingerprints, or cause the same to be submitted to the Exchange for identification and appropriate processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Rule 35 states that employees of members or member organizations may not be admitted to the Floor unless such employees are registered with and approved by the Exchange. The registration process consists of filling out an application card and a data sheet which call for disclosure of very limited information (e.g., name of employee,

[1] See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Diana Luke-Hopson, Branch Chief, Commission, dated July 30, 1993. Amendment No. 1 renumbered the Supplementary Material to NYSE Rule 301.

[2] With respect to the following language, italicizing indicates new material and brackets indicate material to be deleted.

employee's date of birth and name of employer). Currently, the only Floor employees required to submit a completed Uniform Application for Securities Industry Registration or Transfer ("Form U–4") are those who accept orders from the public.

Under the proposed amendment to Rule 35, Floor employees will be required to submit Form U–4 in order to become registered. The form U–4 requires detailed disclosure of background information, including information regarding employment and disciplinary history, and is the standard industry form submitted to self-regulator organizations *("SRO") for individuals required to be registered (including securities salespersons and traders). Applicants for Exchange membership are currently required to submit Form U–4.

Having the background information submitted on Form U–4 will enable the Exchange to better fulfill its responsibilities by identifying those individuals who are statutorily disqualified under section 3(a)(39) of the Act.[3] The Exchange is required to make a determination in each case where an individual who is subject to a statutory disqualification (e.g., has been suspended or barred by an SRO, has been convicted of any felony or other specified offense, etc.) seeks admission to or continuance of membership, participation in, or association with a member or member organization. In addition, detailed reporting regarding statutory disqualifications to the Commission is required by Rule 19h–1[4] under the Act for admission or continuance of membership or participation or association with a member or member organization, notwithstanding a statutory disqualification.

Additional amendments to Rule 35 and an amendment to Rule 301 will require all Floor employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking and appropriate processing. The proposed amendments to require fingerprinting of all Exchange members and Floor clerks will also help in identifying persons who are subject to a statutory disqualification as well as enhance the overall security on the Exchange Floor.

Fingerprinting is currently required for each partner, director, officer or employee of broker-dealers pursuant to Rule 17f–2[5] under the Act, with certain exceptions. Currently, members conducting business with the public (e.g., Floor members who accept orders from institutional or retail customers and other non-broker/dealers) are required to submit fingerprints. Members that do not conduct business with the public have not been required by the Exchange to submit fingerprints since the adoption of rule 17f–2 in the 1970's because they do not physically handle monies or securities. However, the Exchange has now determined that all members should be fingerprinted since they do represent customers in the auction market and are an integral part of the trading process. The requirement to fingerprint members is consistent with the requirements of other exchanges.

The requirements of the amended rules to submit Form U–4 and fingerprints will apply to all current and prospective Floor employees and members.

(b) Statutory Basis

The proposed rule change is consistent with section 17(f)(2) of the Act, which requires (with certain exceptions) fingerprinting of each partner, director, officer or employee of broker-dealers.

The rule change is also consistent with section 3(a)(39) of the Act because having more comprehensive background information submitted on Form U–4 will enable the Exchange to identify individuals who are statutorily disqualified under section 3(a)(39).

The rule change advances the objectives of Rule 19h–1 under the Act which requires detailed reporting of persons subject to statutory disqualification to the Commission.

Finally, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–28 and should be submitted by September 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 20859 Filed 8–26–93; 8:45 am]

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[3] 15 U.S.C. 78c(a)(39) (1988).

[4] 17 CFR 240.19h–1 (1992).

[5] 17 CFR 240.17f–2 (1992).

[Release No. 34-32775, File No. SR-PSE-93-13]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Trading Restrictions Imposed on Financially Affiliated PSE Members

August 20, 1993.

On April 13, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change that broadens the scope of Rule 6.40 governing trading restrictions imposed on financially affiliated market makers to include financial arrangements between market makers and any other PSE member or member organization. The proposal also expands the trading restrictions to prohibit financially affiliated PSE members from trading in the same crowd without the approval of two floor officials.[3]

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on July 14, 1992.[4] No comments were received on the proposal.

Currently, the PSE has provisions in its rules designed to prevent the domination of options trading crowds by groups of market makers with financial arrangements between themselves. Specifically, in this regard, the PSE has rules regarding the disclosure of financial arrangements among market makers and rules that place restrictions on the trading activities of market makers with certain financial arrangements. The PSE proposes to clarify and modify its rules in both of these areas.

The PSE proposes to consolidate in Rule 4.18 the requirement that market makers disclose to the Exchange any financial arrangements with market makers, floor brokers, specialists, or member organizations.[5] Currently, a financial arrangement disclosure obligation is contained in both PSE Rules 6.40 and 4.18. Specifically, the PSE proposes to consolidate its disclosure rules into PSE Rule 4.18 and cross reference PSE Rule 4.18 in PSE Rule 6.40.[6]

The PSE also proposes to expand the trading restrictions imposed on financially affiliated market makers. Currently, Commentary .01 to PSE Rule 6.40 provides that market makers which maintain existing financial arrangements with other market makers may not bid, offer, purchase, sell, or enter orders in the same option series. First, the PSE proposes to expand the trading restrictions to include members and member organizations. Therefore, a market maker who has a financial arrangement with another member or member organization and the member or member organization having a financial arrangement with that market maker will be subject to the trading restrictions. Second, the PSE proposes to expand the trading restrictions to provide that market makers and affiliated members or member organizations "may not bid, offer, and/or trade in the same trading crowd at the same time * * *." Accordingly, whereas before affiliated market makers could not bid, offer, or trade in the same options series, under the proposed rule they can not bid, offer, or trade in the same crowd. The proposal, however, provides that affiliated market makers and members can trade in the same crowd if they obtain written approval from two floor officials, which approval shall only be made on the basis of a demonstrated need to trade in the same crowd at the same time. Further, even if allowed to trade in the same crowd, the proposal provides that affiliated market makers and members still may not trade on the same option ticket at the same time or bid, offer, or trade in the same options series at the same time. In addition, the proposal provides that the Options Floor Trading Committee ("OFTC") must still review all approvals by floor officials to let affiliated market makers and members trade in the same crowd. Third, the PSE proposes to amend Exchange Rules 6.84 (the PSE's rule governing joint accounts) and 6.40 to clarify that the above-noted trading restrictions also apply to joint account participants.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[7] and the rules and regulations thereunder. Specifically, the Commission finds that requiring full disclosure of financial arrangements among PSE market makers, floor brokers, specialists, and member organizations will help the Exchange to better identify and deter potential trading abuses among affiliated PSE members and member organizations. In addition, with such disclosure, the Exchange's ability to monitor the financial condition of its members and member organizations will be enhanced.

The Commission also believes that it is appropriate for a PSE market maker and any of his financially affiliated PSE members or member organizations to be prohibited from bidding, offering, and/or trading in the same trading crowd at the same time. The Commission also believes it is appropriate for participants in joint accounts to be subject to the same trading restriction. Specifically, the Commission believes that the Exchange, in designing the proposed trading restrictions, has appropriately balanced the objective of deterring fraudulent and manipulative conduct with the objective of allowing market makers and other PSE members to participate freely in trading crowds to provide maximum market depth and liquidity. Moreover, the Commission believes that it is consistent with the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1992).

[3] The PSE amended the proposal on May 4, 1992 in order to provide cross-references to other relevant PSE rules with provisions or terms identical to those contained in Rule 6.40, thereby avoiding duplicative language throughout the PSE's rules. Specifically, the PSE deleted proposed paragraphs (a) (1)–(3) of Rule 6.40 and replaced them with a cross-reference to PSE Rule 4.18, entitled "Disclosure of Financial Arrangements of Members," because the provisions are already contained in subparagraphs (a) (1)–(3) of Rule 4.18. Similarly, the PSE amended PSE Rule 6.84, entitled "Joint Accounts," by deleting language from subparagraph (f) and replacing it with a cross-reference to Rule 6.40 because the language deleted from Rule 6.84 is also contained in proposed Rule 6.40(b). See Letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 4, 1992. The PSE also amended the proposal on May 22, 1992, to include in Rule 4.18 provisions which the PSE proposed to delete from Rule 6.40. Specifically, as originally submitted, the PSE proposal deleted language from Rule 6.40(d) and replaced it with a cross-reference to Rule 4.18. The deleted language, however, contained more provisions than those contained in Rule 4.18. Accordingly, the PSE amended Rule 4.18 to include all of the provisions deleted from Rule 6.40. See Letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 22, 1992. The May 22, 1992 amendment was not published by the Commission in the notice of the PSE's rule proposal, dated May 28, 1992. See note 4, *infra*. However, because this amendment is minor in nature and does not change the substance of the PSE's rule, it has not been separately noticed for comment.

[4] Securities Exchange Act Release No. 30738 (May 28, 1992), 57 FR 31225.

[5] Rule 4.18 defines a financial arrangement as one involving: (1) The direct financing of a member's dealings upon the Exchange; (2) any direct equity investment or profit sharing arrangement; or (3) any consideration over the amount of $5,000 that constitutes a gift, loan, salary, or bonus.

[6] As noted *supra* note 3, the PSE also proposes to include in Rule 4.18 language which is proposed to be deleted from Rule 6.40 dealing with additional disclosure requirements for market makers. Specifically, these requirements require that a market maker must inform the PSE immediately of the intention of any party (1) to change any financial arrangement or (2) to issue a margin call.

[7] 15 U.S.C. 78f(b)(5) (1982).

Act to allow two floor officials to grant exemptions from the trading restrictions. First, an exemption can only be granted if there is a demonstrated need for the financially affiliated entities to trade in the same crowd at the same time. Second, even if allowed to trade in the same crowd at the same time, the affiliated entities can not trade on the same order ticket or offer, bid, and/or trade in the same options series. Lastly, the PSE's OFTC will review each exemption granted.

On balance, the Commission believes that a sufficient number of PSE market makers will continue to be able to respond to trading conditions in all options classes on the Exchange floor, and that, therefore, the proposal should not impact adversely the liquidity of the Exchange's options markets. Moreover, the Commission believes that the imposition of the trading restrictions on financially affiliated market makers, members, and member organizations should help to preclude collusive trading activity and increase public confidence in the markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PSE–92–13) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20860 Filed 8–26–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 27, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Training Participation Evaluation Questionnaire.

Form No.: SBA Form 20.

Frequency: On Occasion.

Description of Respondents: Individuals receiving SBA training and counseling assistance.

Annual Responses: 12,000.

Annual Burden: 3,000.

Dated: August 20, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–20838 Filed 8–26–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[GGD–93–053]

National Boating Safety Advisory Council; Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463); 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Personal Watercraft Definition and Requirements to be held on Friday, September 24, 1993, at the Sheraton Hartford Hotel, 315 Trumbull Street, Hartford, Connecticut between 8 a.m. and 5:30 p.m. The agenda for the meeting will be to review the status of various projects undertaken by the subcommittee and initiate any necessary new tasks.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington, DC 20593–0001, or by calling (202) 267–1077.

Dated: August 20, 1993.

W.J. Eckel,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–20887 Filed 8–26–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on September 16, 1993, at 9 a.m.

ADDRESSES: The meeting will be held at the Nassif Building, Headquarters, Department of Transportation, room 4436, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 16, 1993, at the Nassif Building, Headquarters, Department of Transportation, room 4436, 400 7th Street, SW., Washington, DC 20590. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Autopilot Engagement Working Group, and Flight Crewmember Flight/Duty/Rest Requirements Working Group. Each working group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 1 CFR 200.30–3(a)(12) (1992).

may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT".

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on August 13, 1993.

David S. Potter,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-20857 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Barkley Regional Airport, Paducah, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Barkley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131-0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard R. Roof, Airport Manager of the Barkley Regional Airport at the following address: Paducah Airport Corporation, P.O. Box 1131, Paducah, KY 42002-1131.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Barkley Regional Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Planner, Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131-0301. (901) 544-3495.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Barkley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On August 10, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Paducah Airport Corporation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 3, 1993.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00

Proposed charge effective date: December, 1993

Proposed charge expiration date: August, 1997

Total Estimated PFC Revenue: $386,284

Brief description of the proposed project(s):

Impose and Use:

1. Acquire Property Underlying Runway 22 Approach Path
2. Passenger Terminal Improvements
3. Acquire Handicapped Passenger Lift
4. Standardization of Airfield Directional Signage
5. Runway 14/32 Parallel Taxiway and Ramp Extension Project
6. Acquire Property for Eventual Airport Expansion
7. Emergency/Stand-By Electrical Generator
8. Perimeter Airport Service Road

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 (Air Taxi) Operators which enplane less than 50 passengers annually.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Paducah Airport Corporation at 2901 Fisher Road, Paducah, Kentucky.

Issued in Atlanta, Georgia on August 17, 1993.

Mr. Steve Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93-20858 Filed 8-26-93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, Missouri 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Aviation Director, Des Moines International Airport, at the following address: Des Moines International Airport, 5800 Fleur Drive, Des Moines, Iowa 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Des Moines, Des Moines International Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Region, 601 E. 12th Street, Kansas City, Missouri 64106, (816) 426-4728. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines, Iowa, was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than December 2, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1993.

Proposed charge expiration date: June 30, 1997. Total estimated PFC revenue: $7,301,300.

Brief description of proposed project(s):

(1) Baggage Claim Area Expansion;

(2) Restroom Expansion on Concourses A and C;

(3) Curbside and Roadway Island Canopy Construction;

(4) Service Dock and Roadway Modifications.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri, on August 16, 1993.

Michael J. Faltermeier,

Acting Manager, Airports Division, Central Region.

[FR Doc. 93–20856 Filed 8–26–93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hilton Head Island Airport, Hilton Head Island, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Department of Transportation, FAA, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, College Park, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Randolph L. Wood, Jr., Deputy Administrator of the Beaufort County Council, at the following address: Beaufort County Council, P.O. Drawer 1228, Beaufort, South Carolina 29901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Beaufort County Council under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. James T. Castleberry, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, College Park, Georgia 30349. Telephone number (404) 994–5306.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On August 13, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Beaufort County Council was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 23, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: December 1, 1993

Proposed charge expiration date: December 31, 1998

Total estimated PFC revenue: $1,542,300

Brief description of proposed project(s): Construct Terminal Building, Construct Terminal Apron, Construct Access Road, Construct Parallel Taxiway

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, 3400 Norman Berry Drive, East Point, Georgia 30344.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Beaufort County Council, 1000 Ribaut Road, Beaufort, South Carolina 29901.

Issued in East Point, Georgia, on August 20, 1993.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93–20848 Filed 8–26–93; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S–902]

American President Lines, Ltd., Application for Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application of July 16, 1993, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), so as to permit APL to operate in its existing services six vessels now under construction contracts with foreign shipyards. APL, on May 10, 1993, entered into contracts for the construction of six "C11" cargo liners, three in a German shipyard and three in a Korean shipyard. Delivery is expected during 1995, with the first vessel being delivered in May 1995.

The vessels will be similar to the five C10's in APL present fleet. They will have a service speed of 25 knots and a container capacity of about 4,800 TEU.

APL currently operates three line haul loops in transpacific services:

Five-vessel weekly "Pacific South Express" service, California/Japan-Taiwan-Hong Kong.

Five-vessel weekly "Pacific Island Express" service, California/Guam-Taiwan-Japan.

Five-vessel weekly "Seattle-Japan Express" service, Seattle-Dutch Harbor/Japan-Hong Kong-Taiwan-Korea.

APL states that it will use the vessels as replacements for the overage or inadequate (by reason of size or fuel consumption) vessels in its present fleet. APL further states that it now expects to place them on delivery in the Pacific South Express loop, extended to Singapore, with consequent redeployment of the vessels now employed in that loop to its Seattle-Japan Express loop.

The deployment of its vessels, explains APL, within its service area must, of course, meet changes in trade conditions and the pattern of its

competition. While variation in its deployment plans may be required by the time of vessel delivery, the waiver that it seeks is nevertheless confined to the boundaries of APL's present services. Within that service area, the most likely deployment alternative, APL points out, would be to place the new ships in the Pacific Northwest loop, extending the itinerary to Singapore.

APL argues that it stands in need of these vessels under foreign registry either as an interim measure awaiting reflagging to the U.S. flag and entry into an acceptable, new American maritime program, or, if there be no such program, then as an element of an APL-owned, foreign-flag fleet. APL states that MARAD has already defined and applied principles which show section 804 is wholly consistent with its imperative needs under either alternative.

Concerning special circumstances and good cause, APL states that it has been in transpacific service for almost 150 years. Now vessels are necessary for any continuing liner operation, and must of necessity now be built in foreign shipyards.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on September 27, 1993. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: August 24, 1993.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 93-20683 Filed 8-26-93; 8:45 am]

BILLING CODE [illegible]

National Highway Traffic Safety Administration (NHTSA)

Motor Vehicle Noncompliance and Safety Defect Petition

This notice sets forth the reasons for the denial in part of a petition for a noncompliance and safety defect investigation that was submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*). NHTSA has granted other parts of the petition and has opened a noncompliance investigation, NCI 3288.

On March 29, 1993, Ms. Darlene E. Skelton, President, National Institute of Emergency Vehicle Safety, petitioned the agency to determine whether an order should be issued concerning owner notification and remedy with respect to certain vehicles manufactured by John Russo Industrial, Inc., also doing business as Colet Manufacturing (Colet or the manufacturer). The petitioner claimed that the vehicles failed to comply with Federal Motor Vehicle Safety Standard (FMVSS) Nos. 104, 108, 113, 205, 207, 208, 209, 210, and 217 and alleged that the vehicles contain certain safety-related defects.

The petition referred to a fleet of 16 vehicles although 17 were actually delivered to the San Jose Fire Department. All of the chassis were manufactured by incomplete vehicle manufacturers, and the vehicles were completed by Colet. Of the 17, 15 were completed by Colet from chassis cabs and the remaining two (the "Astrowhiz" and the "Command" vehicles) were completed from a bare chassis. Only two of the allegations involve the 15 vehicles completed from chassis cabs, i.e., emergency lamps mounted in the grill and vehicle labeling.

An information request was sent to Colet to obtain relevant information. The request included a copy of the subject petition. Colet was asked to provide comments on each of the allegations in the petition and to provide test results and other information on which it based certification that the vehicles meet the specific FMVSS. In addition, a NHTSA investigator visited the San Jose Fire Department and Colet to examine the vehicles in question.

The data in the petition, Colet's response to the information response, and information acquired in the vehicle inspection have been analyzed. As described below, NHTSA has granted the petition to conduct an investigation to determine if certain of the vehicles fail to comply with the FMVSS noted. With respect to the remaining issues, NHTSA has concluded that the petition should be denied.

Unless otherwise noted, the following allegations apply to both the Astrowhiz and Command vehicles built on bare chassis.

I. FMVSS No. 104, "Windshield Washing & Wiping Systems"—The petitioner claims that the driver's line of vision through the windshield is inadequate. Separately, although not an alleged violation of FMVSS No. 104, the petition states that the wiper motors supplied with the vehicles "were not large enough to operate the wipers on a dry surface."

The manufacturer submitted data, including engineering drawings, indicating that the vehicles meet the wiped area requirements of this standard. With respect to the claim that the windshield wiper motors were inadequate, FMVSS No. 104 does not require the wipers to meet performance requirements on a dry surface. Since there are no data to suggest that the vehicles do not comply with FMVSS No. 104, this aspect of the petition is denied.

II. FMVSS No. 113, "Hood Latch Systems"—The petitioner claims that the hood restraint system has neither a primary nor secondary latching system. This aspect of the petition has been granted.

III. FMVSS No. 207, "Seating Systems"—The petitioner states that the seats are anchored with ½-inch grade 5 bolts through an aluminum diamond plate and a plywood floor. The petitioner believes that the seats will not meet the performance requirements of the standard, S4.2.

The manufacturer furnished engineering calculations indicating compliance with the performance requirements of this standard. Additionally, a vehicle inspection conducted by a NHTSA investigator did not indicate a potential noncompliance in this regard. Inasmuch as a nonconformity to this aspect of the standard can only be proven by destructive testing, which would not be practical, there is no reason to open a compliance investigation, and this aspect of the petition is denied. Although not covered in the petition, the NHTSA investigator noted that the labeling requirements of S4.4 of the standard did not appear to be satisfied, and this possible noncompliance will be investigated.

IV. FMVSS No. 120, "Tire Selection and Rims for Vehicles Other than Passenger Cars." The allegation relates to all 17 vehicles. The petitioner claims that Colet has attached labels that do not

have all of the required information regarding tire ratings, axle weight, and vehicle weight. This aspect of the petition has been granted.

V. FMVSS No. 108, "Lamps Reflective Devices and Associated Equipment"—The petitioner claims that the headlights are mounted on a post and will rotate laterally on the Astrowhiz vehicle. Further, the petitioner asserts that there is no vertical headlight adjustment and that operators indicate that, due to the height of the vehicle, the lighting supplied is inadequate to illuminate the roadway.

The headlamps are on a ball-type mounting. Such a mounting within itself does not violate FMVSS No. 108. Section S7.8.2 of FMVSS No. 108, states, "Each headlamp shall be installed on a vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim and is accessible for both of those uses without removal of any vehicle parts, except for protective covers removable without the use of tools." Colet supplied certification information from the lamp supplier and a statement to the effect that the headlamps were adjusted to meet Federal and California requirements. Colet has never been advised by a vehicle owner/driver that vehicle lighting was inadequate. There are no data to suggest that the vehicle does not comply with any of the applicable provisions of FMVSS No. 108. Accordingly, this aspect of the petition is denied.

VI. FMVSS No. 208, "Occupant Crash Protection;" No. 209, "Seat Belt Assemblies;" and No. 210, "Seat Belt Assembly Anchorages"—The petitioner states that the upper restraints are mounted on flat pieces of aluminum and lap restraints are mounted to the plywood floor. The petition asserts that the occupant restraints are inadequate and would not meet the tests required by FMVSS Nos. 208, 209, and 210.

The agency's inspection of the vehicles indicate that they have 3-point safety belts in the proper location, in accordance with FMVSS No. 208. The seat belts were certified by the manufacturer as conforming to FMVSS No. 209. Test data, drawings and calculations were submitted indicating conformity to FMVSS No. 210. As was the case regarding FMVSS No. 207, testing for further verification would be destructive and thus would not be practical. Accordingly, this aspect of the petition is denied.

VII. FMVSS No. 217, "Bus Window Retention and Release"—The petitioner claims that the vehicles in question are "bus type" vehicles and alleges that there are no window releases for the occupants as required in FMVSS No. 217. The petition states that an escape hatch is provided in the roof; however, it is 17" × 24" and the door provided partially blocks the opening.

This standard does not apply because none of the subject vehicles are considered to be a "bus." As defined in 49 CFR 571.3(b), "Bus means a vehicle, except a trailer, with motive power designed for carrying more than 10 persons." Neither vehicle is "designed for carrying more than 10 persons." The Astrowhiz vehicle has fewer than 10 seats. While the "Command" vehicle has more than 10 seating positions, the positions are not used while the vehicle is in motion, since the vehicle is used as a "command" station only when the vehicle is stationary, e.g., at a disaster site for meetings. Accordingly, this aspect of the petition is denied.

VIII. FMVSS No. 205, "Glazing Materials"—The petitioner claims that the windshield is a flat piece of glass material measuring 43" × 84."

There is no identifiable marking on the windshield which indicates that it is laminated safety glass. Accordingly, this aspect of the petition has been granted. The investigation will also consider whether the glazing meets the light transmittance requirements of the standard.

IX. The petition also alleged other "items may violate the intent of FMVSS."

A. The petitioner claims that the stainless steel body side panels, measuring approximately 8 ft × 13 ft, are lifted hydraulically to provide access to equipment carried on the vehicle. Once in the air, there are no holding valves to serve as a safety mechanism in the event of a failure in the hydraulic system.

Colet furnished information concerning safety devices in the hydraulic system to ensure that the doors could not fall. It indicated that there is a hydraulic lock in the pump and a restrictor safety valve in the cylinder which results in a design safety factor of 20 to 1. The Fire Department has not indicated any problems with this device. Accordingly, this aspect of the petition is denied.

B. The petition claims that the transmission gear selector provided by Colet does not provide a neutral position, and requires a person to crawl underneath the vehicle to manually shift the transmission if the motor is shut off while the transmission is in gear.

Although a potential inconvenience, the allegation regarding the transmission gear selector was not supported by data indicating a safety concern. The manufacturer has provided a copy of its Hazmat service manual which indicates that a neutral position exists and provides instructions on the use of the gear selector. It also indicates that operators should not shift gears if the engine is not running. Accordingly, this aspect of the petition is denied.

X. The petition claims that the emergency light bar is mounted in the grill in several vehicles and is part of the hood latching system.

The manufacturer replied that it is unaware of any problem in this regard. The hood latch systems on all vehicles except for the Astrowhiz and the Command vehicle were supplied by the incomplete vehicle manufacturer. Without additional information there is no reason to believe that this condition constitutes a failure to comply or safety defect. Pictures submitted by the manufacturer and an examination of several vehicles did not indicate that the light bar was part of the hood latching system. Accordingly, this aspect of the petition is denied.

XI. The petition claims that the passenger side door on the Command unit pops open when the vehicle is traveling on the road.

The allegation that the side door in the Command vehicle pops open has never been reported by the Fire Department to the manufacturer. The door is not covered by FMVSS No. 206 because it does not lead into a compartment containing one or more designated seating positions. Moreover, in view of the fact that no one may ride in the back of the vehicle while it is in motion, this alleged condition even if proven, would apparently not constitute a safety-related defect. Accordingly, this aspect of the petition is denied.

On the basis of the foregoing, NHTSA has opened a noncompliance investigation with respect to certain of the petitioner's allegations, NCI 3288. However, NHTSA has concluded that there is not a reasonable possibility that a recall order concerning noncompliance or safety defects in relation to the remainder of the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether noncompliances or safety-related defects exist in these areas does not appear to be warranted. Therefore, the petition has been denied with respect to those aspects.

Authority: 15 U.S.C. 1410a, delegations of authority at 49 CFR 1.50(a) and 501.8.

Issued on August 24, 1993.
William A. Boehly,
Associate Administrator for Enforcement.
[FR Doc. 93-20889 Filed 8-26-93; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 20, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0885.
Regulation ID Number: LR-108-84 Temporary, CO-23-89 (NPRM) (Formerly LR-183-84).
Type of Review: Extension.
Title: Losses, Expenses, and Interest in Transactions Between Related Taxpayers.
Description: Coverage of this regulation includes the deferral and restoration of loss on the sale or exchange of property from one member of a controlled group to another member under section 267(f)(2) Internal Revenue Code as added by section 174(b)(2) of the Tax Reform Act of 1984.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Recordkeepers: 2,001.
Estimated Burden Hours Per Recordkeeper: 3 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 6,001 hours.
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 93-20799 Filed 8-26-93; 8:45 am]
BILLING CODE 4830-01-P

Office of Thrift Supervision

Crestline Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (A) and (B) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Crestline Federal Savings and Loan Association, Crestline, Ohio ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 30, 1993.

Dated: August 23, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,
Corporate Technician.
[FR Doc. 93-20819 Filed 8-26-93; 8:45 am]
BILLING CODE 6720-01-M

Irvington Federal Savings Bank, Glen Burnie, MD; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Irvington Federal Savings Bank, Glen Burnie, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 20, 1993.

Dated: August 23, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,
Corporate Technician.
[FR Doc. 93-20820 Filed 8-26-93; 8:45 am]
BILLING CODE 6720-01-M

[AC-42; OTS No. 6012]

First Federal Savings and Loan Association of Thibodaux, Thibodaux, LA; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on August 18, 1993, the Deputy Director for Regional Operations approved the application of First Federal Savings and Loan Association of Thibodaux, Thibodaux, Louisiana, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a merger application. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 West John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 23, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,
Corporate Technician.
[FR Doc. 93-20818 Filed 8-26-93; 8:45 am]
BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 165
Friday, August 27, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, September 1, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding publication requirements for merger applications.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20955 Filed 8–25–93; 11:31 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, September 1, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Proposals regarding a Federal Reserve Bank's renovation requirements.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–20956 Filed 8–25–93; 11:31 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meetings

TIME AND DATE: The Legal Services Corporation Board of Directors' Provision for the Delivery of Legal Services; Office of the Inspector General Oversight; and, Audit and Appropriations Committees will meet on September 9, 1993. The meetings will commence at 2:00 p.m. in the following order, with the next committee meeting commencing immediately following adjournment of the prior committee meeting until all business has concluded. The meetings are open to the public.

1. Provision for the Delivery of Legal Services Committee;
2. Office of the Inspector General Oversight Committee; and
3. Audit and Appropriations Committee.

PLACE: The Hilton Plaza Inn, One East 45th Street, The Regency West Ballroom, Kansas City, Missouri, (816) 753–7400.

STATUS OF MEETINGS: Open.

PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE MEETING:

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of June 27, 1993 Meeting Minutes.
3. Consideration of Status Report on Request for Proposals for Migrant Ombudsman Demonstration Projects.
   a. Consideration of Report on the Availability of Funds for Supplemental Grants for Current Recipients of Corporation Migrant Funding.
4. Consideration of Status Report on Grantee Attorney Recruitment and Retention Effort Review.
5. Consideration of Status Report on Timekeeping Grant Solicitation.
6. Consideration of Status Report on Meritorious and Innovative Grant Projects.
7. Consideration of Status Report on Emergency Grant Awards.

OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE MEETING:

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of February 21, 1993 Meeting.
3. Approval of Minutes of June 28, 1993 Meeting.
4. Consideration of Inspector General's Value and Financially-Focused Report on the Office of the Inspector General's Activities for the Past 18-Month Period.

CLOSED SESSION:

5. Consideration of Assessment of the Inspector General's Job Performance During the Past 12-Month Period.

OPEN SESSION: (Resumed)

6. Consideration of Other Business.
7. Consideration of Motion to Adjourn.

AUDIT AND APPROPRIATIONS COMMITTEE MEETING:

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Draft Minutes of June 28, 1993 Meeting.
3. Consideration and Review of the Budget and Expenses through June 30, 1993 and Projections for the Three-Month Period of July 1, 1993 to September 30, 1993.
   a. Consideration of Need for Internal Budgetary Adjustments.
   b. Consideration of Reallocation of Fiscal Year 1993 Consolidated Operation Budget.
4. Consideration and Review of the Corporation's Consolidated Operating Budget, Expenses, and Other Funds Available for the Ten-Month Period Ending July 30, 1993.
5. Consideration of proposed Fiscal Year 1994 Management and Administration Budget.
6. Consideration of proposed Fiscal Year 1995 Consolidated Operating Budget.
7. Consideration of Staff Report on the Possible Use of Punitive Damage Awards, or Portions Thereof, for the Provision of Civil Legal Services to the Indigent.
8. Consideration of Status Report on Leasing the Corporation's Former Headquarters Office Space.
9. Consideration of Status Report on Effort to Secure Corporation Funds.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 25, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–20979 Filed 8–25–93; 2:29 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet September 11, 1993. The meeting will commence at 9:00 a.m. and continue until all business has been concluded.

PLACE: The Hilton Plaza Inn, One East 45th Street, The Regency West Ballroom, Kansas City, Missouri, (816) 753–7400.

BOARD OF DIRECTORS MEETING:

STATUS OF MEETING: *Open*, except that a portion of the meeting will be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on June 28, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters as well as conduct his annual performance assessment. Finally, the Board will consult with the President on internal personnel and operational matters as well as conduct his annual performance assessment. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), (f), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 28, 1993 Meeting.
3. Presentation by Directors of Corporation-Funded Programs in the State of Missouri Regarding the Legal Needs of the Indigent in Missouri.
4. Chairman's and Members' Reports.
5. Consideration of Proposed Resolution Modifying the Service Arrangement Under the Corporation's Retirement Plan.
6. Consideration of Proposed Revisions to 45 C.F.R. Part 1602.
7. Consideration of Operations and Regulations Committee Report.
8. Consideration of Office of the Inspector General Oversight Committee Report.
9. Consideration of Provision for the Delivery of Legal Services Committee Report.
10. Consideration of Audit and Appropriations Committee Report.
11. Consideration of Whether to Release to a Third Party a Copy of the June 17, 1993 Memorandum of the Corporation's General Counsel to the Committee on the Possible Use of Punitive Damage Awards, or Portions Thereof, for the Provision of Civil Legal Services to the Indigent.
12. President's Report.
13. Inspector General's Report.

CLOSED SESSION:

14. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
15. Consideration of Annual Assessment of Job Performance of the Corporation's Inspector General.
16. Consultation by Board with the President on Internal Personnel and Operational Matters.
17. Consideration of Annual Assessment of Job Performance of the Corporation's President.
18. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.
19. Approval of Minutes of Executive Session Held on June 28, 1993.

OPEN SESSION: (RESUMED)

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 25, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–20980 Filed 8–25–93; 2:29 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Monday, August 30, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Monday, August 30

10:00 a.m.

Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)

(Contact: Shelly Schwartz, 301–504–2325)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION:
William Hill, (301) 504–1661.

Dated: August 24, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–20947 Filed 8–25–93; 10:33 am]

BILLING CODE 7590–01–M

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[1] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

Corrections

Federal Register

Vol. 58, No. 165

Friday, August 27, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; I.D. 081193B]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-19985 beginning on page 44136 in the issue of Thursday, August 19, 1993, make the following correction:

On page 44137, in the 1st column, in the last paragraph, in the 11th line from the bottom, "BAS" should read "BS".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control Prevention

Variability of Respiratory Tract Deposition in Workers: Meeting

Correction

In notice document 93-19936 beginning on page 43897 in the issue of Wednesday, August 18, 1993, make the following corrections:

1. On page 43897, in the third column, in the heading above and in the second line from the bottom, "Trace" should read "Tract".

2. On page 43898, in the first column, in the fourth paragraph (*Purpose*), in the fifth line, "academic" should read "academia".

BILLING CODE 1505-01-D

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Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1650
Separation Due to Reduction in Force Regulations; Interim Rule

VOL 58 ISS 165 AG 27 1993 UMI

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Separation Due to Reduction in Force Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing amendments to regulations on withdrawing funds from the Thrift Savings Plan (TSP) to state the withdrawal methods available to participants who separate from Government employment due to a reduction in force (RIF).

Public Law 102–484 provided participants who separate from Government employment due to a RIF with the same withdrawal options that are available to employees who separate with eligibility for immediate basic retirement benefits as defined in the amended regulations. Public Law 102–484 also conformed the spousal notice and waiver requirements applicable to participants who separate from Government employment due to a RIF with those applicable to other participants who separate with eligibility for immediate basic retirement benefits.

These amended regulations also include changes that clarify a participant's withdrawal rights under the TSP based on their eligibility for basic retirement benefits.

DATES: These interim rules are effective July 1, 1993. Comments must be received on or before October 26, 1993.

ADDRESSES: Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis (202) 942–1661.

SUPPLEMENTARY INFORMATION: Public Law 102–484 provides participants who separate from Government employment due to a RIF pursuant to regulations issued under 5 U.S.C. 3502(a) or procedures issued under 5 U.S.C. 3595(a) with all of the TSP withdrawal options available to participants who separate from Government employment with eligibility for immediate basic retirement benefits. A definition of "separation due to a RIF" has been added to the definitions contained in 5 CFR 1650.2. The definition reflects the language added to 5 U.S.C. 8433(b) by Public Law 102–484.

Subsection (c) has been added to 5 CFR 1650.5 to reflect the provisions of Public Law 102–484 giving participants who separate due to a RIF the same withdrawal options as those that are available to participants who separate with immediate basic retirement eligibility. Subsection (c) further reflects the provision in Public Law 102–484 that conformed the spousal rights applicable to participants who separate due to a RIF with those applicable to participants who separate with eligibility for immediate basic retirement benefits. As is the case for participants eligible for immediate basic retirement benefits, the spousal protections applicable to participants who separate due to a RIF vary depending upon the basic retirement system under which they are covered (e.g., FERS or CSRS). Public Law 102–484 states that its provisions shall apply to separations due to a RIF occurring after December 31, 1993, or such earlier date as prescribed by the Executive Director in regulations. Subsection (c) establishes that the legislation applies to separations due to a RIF occurring after June 30, 1993.

The remaining amendments to the regulations are designed to clarify, without substantive change, the withdrawal options available to participants based on their retirement eligibility.

A definition of "basic retirement benefits" has been added to 5 CFR 1650.2. The first five paragraphs of the definition list five types of benefits, eligibility for which triggers withdrawal rights under the TSP (FERS and CSRS Retirement and Disability, Federal Employees' Compensation Act (FECA), and Foreign Service Retirement and Disability and Foreign Service Pension System). Although workers' compensation (FECA) is not a retirement benefit, it is included in this definition because, under 5 U.S.C. 8433, separation with eligibility for workers' compensation (FECA) benefits entitles a participant to the same TSP withdrawal options as participants who separate with eligibility for immediate basic FERS or CSRS retirement benefits. The sixth paragraph of the definition is designed to clarify that "basic retirement benefits" also includes those relatively few participants who do not fit into any of the first five categories but who may be eligible for certain benefits that trigger their right to exercise withdrawal options under the TSP.

The definition of "basic retirement eligibility" has been amended to mean eligibility for any of the basic retirement benefits referred to in the definition of that term.

Section 1650.0 has been split into subsections (a) and (b), and the title of § 1650.4 has been amended to more accurately reflect the differences in the withdrawal options available to participants, depending on whether they separate without eligibility for basic retirement benefits, with eligibility for deferred basic retirement benefits, or with eligibility for immediate basic retirement benefits.

Subject to the automatic cashout provisions contained in subpart C of part 1650, participants who separate from Government employment without eligibility for basic retirement benefits are required to transfer their accounts to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. The heading of § 1650.4 has been amended to clarify that it applies to participants who separate without eligibility for basic retirement benefits. Participants with deferred or immediate eligibility for basic retirement benefits may elect either to receive an immediate TSP annuity, or to defer the commencement of their annuity, or to transfer their account to an IRA or other eligible retirement plan. They may also elect to receive their accounts in one payment or in substantially equal monthly payments. However, for participants with eligibility for immediate basic retirement benefits, the equal payment(s) may commence at any time, whereas, for participants with eligibility for deferred basic retirement benefits, the payment(s) cannot commence until the date they are eligible to receive their basic retirement benefits. We not that eligibility for disability retirement or workers' compensation benefits is always immediate. The amended subsections (a) and (b) of § 1650.5 reflect the distinction between TSP withdrawal options available to participants eligible for deferred basic retirement benefits and those eligible for immediate basic retirement benefits.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(B), I find that in order to provide TSP withdrawal options to persons separating from Government service due to a RIF as soon

as possible, good cause exists for waiving the general notice of proposed rulemaking.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

PART 1650—[AMENDED]

1. The authority citation for part 1650 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434(a)(2)(E), 8434(b), 8435, 8436, 8467, 8474(b)(5), 8474(c)(1), and sec. 4437, Pub. L. 102–484, 106 Stat. 2724.

2. Section 1650.2 is amended by revising the definition of the term *basic retirement eligibility* and by adding definitions for *basic retirement benefits* and *separation due to a RIF* as set forth below:

§ 1650.2 Definitions.

* * * * *

Basic retirement benefits means:

(a) An annuity under subchapter II of chapter 84 of title 5, United States Code;

(b) An annuity under subchapter III of chapter 83 of title 5, United States Code;

(c) Disability benefits under subchapter V of chapter 84 of title 5, United States Code;

(d) Benefits under subchapter I of chapter 81 of title 5, United States Code;

(e) An annuity under part I or part II of subchapter VIII of chapter 52 of title 22, United States Code;

(f) Any other benefits, eligibility for which, pursuant to statute or regulation, establishes an employee's entitlement to make a TSP withdrawal election.

Basic retirement eligibility means eligibility for basic retirement benefits.

* * * * *

Separation due to a RIF means separation from Government employment due to a reduction in force pursuant to regulations issued under 5 U.S.C. 3502(a) or procedures issued under 5 U.S.C. 3595(a).

* * * * *

3. The heading of § 1650.4 is revised to read as follows:

§ 1650.4 Employees not eligible for basic retirement benefits.

4. Section 1650.5 is revised to read as follows:

§ 1650.5 Employees eligible for basic retirement benefits.

(a) *Deferred eligibility.* Subject to the rights of spouses set forth in subpart G of this part, a participant who separates from Government employment and is only eligible to receive basic retirement benefits at a later date may elect to withdraw his or her account by any of the following withdrawal methods:

(1) An immediate annuity as described in subpart F of this part.

(2) An annuity as described in subpart F of this part, to commence on the date a participant specifies, but not later than April 1 of the year following the year in which the participant becomes 70½ years old.

(3) A deferred withdrawal of the balance in the account in one payment or in substantially equal monthly payments, to be paid or to begin no earlier than the date on which the participant is eligible to receive basic retirement benefits and no later than April 1 of the year following the year in which the participant becomes 70½ years of age.

(4) Transfer to an eligible retirement plan.

(b) *Immediate eligibility:* Subject to the rights of spouses set forth in subpart G of this part, a participant who separates from Government employment and is eligible to receive basic retirement benefits immediately may elect to withdraw his or her account balance by any of the following withdrawal methods:

(1) An immediate annuity as described in subpart F of this part.

(2) An annuity as described in subpart F of this part, to commence on a date the participant specifies, but not later than April 1 of the year following the year in which the participant becomes 70½ years old.

(3) Withdraw the balance in the account in one payment or in substantially equal monthly payments, to be paid or to begin immediately or at a later date, but no later than April 1 of the year following the year in which the participant becomes 70½ years of age.

(4) Transfer to an eligible retirement plan.

(c) *Employees separated due to a RIF.* For purposes of TSP withdrawal rights, a participant who is separated due to a RIF after June 30, 1993, shall be treated as if he or she separated with eligibility to receive basic retirement benefits immediately, and shall have all of the withdrawal options set forth in paragraph (b) of this section. Such employees shall also be subject to the rights of spouses set forth in subpart G of this part in the same way as employees with eligibility for basic retirement benefits.

[FR Doc. 93–20795 Filed 8–26–93; 8:45 am]

BILLING CODE 6760–01–M

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Part III

Department of Housing and Urban Development

ECHO Housing Demonstration Program Under Section 202, Funding Availability and Program Guidelines; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3649; FR–3403–N–01]

Funding Availability for Fiscal Year 1993, and Notice of Program Guidelines for the ECHO Housing Demonstration Program Under Section 202

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of funding availability (NOFA); and Notice of program guidelines for ECHO housing demonstration program.

SUMMARY: This notice announces HUD's funding for the elder cottage housing opportunity units (ECHO housing) demonstration program for the elderly, and provides HUD's guidelines for this demonstration program. The ECHO housing demonstration program is a section 202 elderly housing program which will allow a nonprofit owner to place a small, self-contained, barrier free, energy efficient and removable dwelling unit (ECHO unit) adjacent to the existing one to four family home of a friend or relative of an eligible elderly person.

The purpose of this demonstration program is to determine the feasibility of incorporating ECHO units into the section 202 capital advance program. The demonstration will be conducted in Regions 2, 4 and 7.

This NOFA contains information for nonprofit sponsors regarding the application process, including the application requirements, the deadline for filing applications, and the selection process, including how selections will be made.

DATES: An application may be submitted immediately after publication of this NOFA, and must be submitted by 4 p.m. e.s.t. on October 26, 1993.

Applications will be funded on a first-come, first-served basis. In cases where additional time is allowed under this NOFA to correct technical deficiencies in an application, the initial date and time of receipt will determine first-come, first-served eligibility. Every effort should be made to submit applications as soon as possible after the publication of this NOFA; furthermore, the above stated deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Application packages may be requested from Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–4542. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.) Completed applications must be submitted to: ECHO Demonstration, Assisted Elderly and Handicapped Housing Division, Room 6116, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–4542. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements have been assigned OMB Control Number 2502–0267.

I. Purpose and Substantive Description

A. Authority

The ECHO housing demonstration program is authorized by section 806(b) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990; hereinafter referred to as NAHA), as amended by section 602(d) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

The regulations governing the ECHO housing demonstration program are codified at 24 CFR part 889.

B. Background

The ECHO housing demonstration program is a demonstration program which will allow a nonprofit section 202 owner to place a small, free-standing, barrier free, energy efficient, and removable dwelling unit (ECHO unit) adjacent to the existing single family home of a friend or relative of an eligible elderly person.

The purpose of the ECHO housing demonstration program is to determine the feasibility of incorporating ECHO units into the section 202 capital advance program. Specifically, the Secretary is directed to examine the durability of ECHO units, and determine whether the ECHO units are durable enough for continued use over the life of a capital advance (40 years). The demonstration also is designed to provide a basis for evaluating the factors that determine the success or failure of a Sponsor in providing ECHO housing, and the extent to which those factors differ from the ones that are used to evaluate the Sponsors who apply in the regular program.

Thus, each applicant must submit certain plans, information about the applicant organization, and similar information detailing the planned program. Providing this information is a threshold requirement for funding; this will ensure that each Sponsor has done the necessary planning to be prepared to implement the program, and further will provide a base of program detail that will be used in the evaluation of the demonstration.

This Proposed Program Plan (exhibit 12), described in section III.B. of this NOFA, will not be evaluated at the application stage because the Department has no basis on which to assume that Sponsors who rate highly on the standard Section 202 rating criteria would be the best organizations to undertake this particular demonstration. In addition, the Department wishes to avoid screening out flexible, innovative approaches by eligible but nontraditional Sponsors. Rather, the information in Exhibit 12 will become the record of the Sponsor's demonstration plan against which the performance of the Owner and the results of the demonstration can be weighed. This approach will help to ensure that as broad a range of factors as possible are demonstrated.

The concept of elder cottages originated in Australia where the government owns approximately 5000 "granny flats." The Australian government distributes the granny flats to elderly persons, who use them for as long as needed. After the elderly person no longer needs the elder cottage, the elder cottage is moved to another site for use by someone else.

The legislative history reveals that the ECHO housing demonstration program is modeled in part after the Australian granny flat. The house report provides in relevant part:

> Rather than building or acquiring and renovating multifamily buildings, an eligible

sponsor would be able to purchase ECHO units and install them for eligible elderly persons, adjacent to a relative's existing home. With an ECHO unit, the elderly can remain independent while living near their relatives. When the unit is no longer needed, it can be moved to another site to serve another elderly person.

H.R. Rep. No. 559, 101st Cong., 2nd Sess. 44 (1990)

The ECHO housing demonstration program requires that each ECHO unit be placed adjacent to the existing single family home of a close family friend or relative. While the statutory language merely refers to an existing single family dwelling, the legislative history shows that Congress envisioned that ECHO units would be place adjacent to a relative's existing single family home. The Department believes that some situations may exist where a close family friend is willing to provide a parcel of land, and allow an ECHO unit to be placed adjacent to the family's home. Consequently, ECHO units may also be placed adjacent to the existing single family home of a close family friend.

Moreover, because section 806(b) of NAHA requires that ECHO units be placed adjacent to an existing 1- to 4-family dwelling, this demonstration program does not cover a development consisting solely of ECHO units.

In accordance with section 806(b)(2) of NAHA, the Department will award up to 100 ECHO units; however, because this is a small demonstration program involving no more than 100 units of ECHO housing, the Department will not conduct the demonstration on a nationwide basis.

The competition for the ECHO housing demonstration program will be open in Regions 2, 4 and 7; however, the Department will not award any region more than ECHO units, unless not enough eligible applicants from other regions apply for those units. In selecting regions 2 and 7, the Department has considered: (1) The production capacity of modular home manufacturers and the proximity of the regions to the modular home manufacturers; and (2) the availability of nonprofit entities and communities that are educated about and receptive towards the concept of ECHO housing. However, in designing this demonstration program, the Department is mindful that the purpose of this demonstration program is to learn whether the section 202 program is an efficient vehicle for conducting the ECHO housing program. Accordingly, the Department has also selected a market with an unknown capacity (region 4) for ECHO housing units.

C. Allocation Amounts

Section 806(b)(2) of NAHA requires that the Department reserve from amounts available for fiscal years 1993 and 1994 under section 202 of the Housing Act of 1959, a sufficient amount to fund at least 100 units under this demonstration program. The Department has elected to fund all 100 units from fiscal year 1993, unless not enough eligible applicants apply. The Department has allocated $4,533,632 to cover these 100 ECHO units.

D. Eligibility

The only eligible applicants under this program are private, nonprofit organizations and nonprofit consumer cooperatives. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. In this competition, Sponsors must design projects with between 10 and 20 ECHO units. This demonstration program does not cover the refinancing of existing ECHO units.

The Department will award up to 100 ECHO units. The competition for the ECHO housing demonstration program will be open in Regions 2, 4 and 7; however, the Department will not award any region more than 40 ECHO units, unless not enough eligible applicants from other regions apply for those units.

E. Selection Criteria

In order to be considered for funding, an application must successfully complete technical processing. Applicants successfully completing technical processing will be funded on a first-come, first-served basis, as long as a region has not used up its allocation of 40 units (unless not enough eligible applicants from other regions apply for those units). HUD headquarters will ensure that all applications (including copies) are date and time-stamped immediately upon receipt. HUD headquarters will sort applications in chronological order according to the date and time stamp placed on the application.

For example, supppose that the first three applicants which have successfully completed technical processing are from Region 2, and each applicant has applied for 20 units of ECHO housing for a total of 60 units of ECHO housing in Region 2. The first two applicants would be funded, while the third applicant would not be selected since Region 2 would have used up its maximum allocation of 40 units. Suppose, however, using this same example, that the Department awarded a combined total of only 40 ECHO units in Regions 4 and 7 (40 ECHO units Regions 4 and 7, plus 40 units in Region 2 for a total award of 80 ECHO units). In this case, the third applicant in Region 2 would be funded for the 20 units since the Department has elected to award 100 ECHO units.

As a final example, suppose that in Region 2, the first applicant only applied for 10 units, while the second and third applicants each applied for 20 units for a total of 50 units in Region 2. The result in this second example is that the third applicant would be given the option of being funded for 10 units. If the third applicant does not opt for funding of the 10 ECHO units, then the third applicant would be rejected, and the fourth applicant would be funded, subject to the same limitations discussed above.

II. Application Process

All applications for the ECHO housing demonstration program submitted by eligible sponsors must be filed with: ECHO Demonstration, Assisted Elderly and Handicapped Housing Division, Room 6116, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, and must contain all exhibits required by this notice. An applicant must submit an original and 2 copies of the application. Application packages can be obtained from Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

No application will be accepted after 4 p.m. E.S.T. on October 26, 1993, unless that date and time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

A. In General

Each application shall include all of the information, materials, forms, and exhibits listed below in paragraph B and

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must be indexed and tabbed. HUD Headquarters will base its determination of the eligibility of the Sponsor for a reservation of ECHO housing capital advance funds on the information provided in the application.

In preparing applications, applicants may use information and exhibits previously prepared for prior applications under section 202, section 811 or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the section 202 or section 811 programs; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

B. Application Contents

1. Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner and which includes a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending date of each person's term.

3. CHAS certification. The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved CHAS for FY 1994 (or for FY 1993, where the provisions of the next paragraph apply). The certification must be made by the unit of general local government if it is required to have, or has, a complete CHAS. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated CHAS, by the unit of general local government if it is willing to prepare such a CHAS. All CHAS certifications must be made by the public official responsible for submitting the CHAS to HUD, or his or her authorized representative. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided below.

If the certification will be made by a jurisdiction required to have a complete CHAS for FY 1994, but the CHAS has not yet been submitted to HUD by the application submission deadline, the certification may be made with respect to the jurisdiction's CHAS for the prior fiscal year, as provided in section 91.80(a)(2) of the CHAS regulations governing certification requirements when a competitive funding application submission deadline falls between October 1 and December 31.

If the certification will be made by a jurisdiction which has submitted its CHAS by the application submission deadline, but the CHAS has not yet been approved by HUD, the deadline will not be applied to the certification. Instead, the application must include a written statement from the public official responsible for submitting the CHAS that the jurisdiction has submitted a complete or an abbreviated CHAS for FY 1994 for HUD approval and that the application is consistent with the CHAS. If HUD approves the CHAS, the certification that the application is consistent with a HUD-approved CHAS for FY 1994 must be submitted before an application will be funded.

No CHAS consistency certification is required for a project located on a reservation of an Indian tribe. The CHAS regulations are published in 24 CFR part 91. Section 91.80 of the regulation sets forth the meaning of a certification of consistency with the CHAS, i.e., to what the jurisdiction is certifying.

4. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

5. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

6. Anti-lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for grants exceeding $100,000. Disclosure of Lobbying Activities (Standard Form-LLL) if other than federally appropriated funds will be or have been used to lobby the Executive or Legislative branches of the Federal Government regarding specific contracts, grants, loans or cooperative agreements. The applicant determines if the submission of the SF–LLL is warranted.

7. Additional Certifications. (a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109 and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative marketing regulations at 24 CFR part 200, subpart M, to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8.

(d) A certification by the Sponsor(s) that it will form an Owner (as defined in § 889.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under § 889.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project.

8. A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, and manage the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified

Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed $10,000, if non-affiliated with National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors; see § 889.250).

9. A list of the applications, if any, the Sponsor has submitted or is planning to submit in response to this NOFA. A list of all FY 1993 and prior year capital advance projects to which the Sponsor(s) is a party, identified by project number and Field Office, which have not been finally closed.

10. HUD–2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

11. Evidence of permissive zoning. Evidence that ECHO housing is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the conditional commitment application (*e.g.*, a summary of results of any recent requests for rezoning on land in similar zoning classifications and the time required for rezoning, preliminary indication of acceptability from the zoning body, a letter from the local community evidencing its support for the ECHO housing project, *etc.*).

12. Proposed program plan. Each of the following elements must be contained in a proposed program plan that describes how the Sponsor proposes to carry out the program and provides basic information about the characteristics and experience of the Sponsor and its ties to the local community. This plan must include separate sections on each of these elements:

(a) Sponsor's plan for soliciting host families. The plan should indicate the geographic area in which the Sponsor intends to solicit host families, and describe the method by which the Sponsor intends to obtain host families. The Owner must follow an affirmative marketing strategy to reach persons who are least likely to apply because of race, color, creed, religion, sex, handicap or national origin.

(b) Determination of need for ECHO housing and supportive services. A description of the category or categories of elderly persons the housing is intended to serve, evidence demonstrating sustained effective demand for ECHO housing based on that population and their host families in the market area, and a description of the methods used by the sponsor to gather evidence demonstrating sustained effective demand for ECHO housing. (Such methods must include, but are not limited to, consideration of the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and FmHA) (*e.g.*, public housing); state or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly populations and households; the number of income eligible elderly households by size, tenure and housing condition; the types of supportive services arrangements currently available in the area and the utilization of such services as evidenced by data from local social service agencies or agencies on aging. In describing the types of supportive service arrangements currently available in the area, a Sponsor may include supportive service arrangements which host families would be required to provide.)

(c) Sponsor characteristics. This must include a description of the Sponsor's purposes and activities, ties to the community and minority support and how long it has been in existence; any other rental housing projects and/or medical facilities sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families and minorities; the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families and minorities; and a statement describing the Sponsor's experience in contracting with minority and women-owned businesses, including amounts awarded.

IV. Corrections to Deficient Applications

A. Initial Screening

Applications for ECHO housing section 202 capital advances that are received by HUD Headquarters by 4 p.m. E.S.T. on October 26, 1993, will be reviewed to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. Deficiency letters will be sent informing Sponsors of any technical deficiencies in an application. Technical deficiencies are technical in nature and curable, such as failure to sign a certification or a missing part of the application, and must not be of such a nature as to affect the technical quality of the application. Sponsors must correct such technical deficiencies within 14 calendar days from the date of the deficiency letter. In cases where this time is allowed to correct technical deficiencies in an application, the initial date and time of receipt will determine first-come, first-served eligibility.

B. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. All applications will be reviewed against the following threshold criteria: (1) Eligibility of Sponsor, (2) eligibility of the population to be served, (3) legal capacity of the Sponsor, and (4) submission of a Proposed Program Plan containing all required elements. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. An applicant will be afforded 14 calendar days from the date of HUD's written notice to appeal a technical rejection to HUD Headquarters. Headquarters must respond within 5 working days to the Sponsor, HUD Headquarters shall make a determination on an appeal prior to making its selection recommendations. All applications will be either ranked in chronological order or technically rejected at the end of technical processing.

Technical processing will also assure that if the Sponsor has been found by a court or by a Federal, State, or local agency, in noncompliance with any of the statutes, regulations, or other requirements listed in the civil rights certification (§ 889.270(b)(8)(i)), HUD will obtain from the Sponsor a statement of the actions taken to correct that noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice and no pending administrative actions for civil rights violations instituted by HUD, including a charge of discrimination under the Fair Housing Act. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Department's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and the Department's implementing regulations (24 CFR 8.57).

Upon completion of technical processing, all acceptable applications will be selected on a first-come, first-served basis in accordance with I.E. above.

V. Guidelines

Because the ECHO housing demonstration is a program under section 202 of the Housing Act of 1959, the ECHO housing demonstration shall be conducted in accordance with the section 202 handbooks, regulations, and policy guidance, except as modified in this Notice.

A. Definitions

For purposes of the ECHO housing demonstration program, the following definitions supplement the definitions provided in 24 CFR part 889—

Host family means the family that owns the single family home site where the ECHO unit will be located. The host family must be either a close family friend or a relative of the elderly person.

Single family home means an existing one- to four-family dwelling.

B. Location, Acquisition and Selection of Sites; Site Control

1. *Location and Acquisition.* ECHO units will be placed adjacent to the single family home of the host family. No two sites for ECHO units may be contiguous to each other. Land cost is not an eligible item for funding from the HUD capital advance. The host family must either convey the parcel to the Owner for nominal consideration or lease the parcel to the Owner (groundlease) for 40 years for nominal consideration ($1 per year). The deed or leasehold instrument may contain reversionary language to the effect the parcel reverts back to the host family when the ECHO unit is removed, which must occur within one year after the elderly person ceases to reside in the unit.

2. *Site Control; Selection and Approval of Sites.* Site control is not required during the application stage. After the issuance of an ECHO housing fund reservation, the Owner will solicit and select elderly participants with a host family who will provide a parcel of land next to the host family's single family home. In soliciting elderly participants with a host family, the Owner must follow an affirmative marketing strategy to reach persons who are least likely to apply because of race, color, creed, religion, sex, handicap or national origin.

After selecting each site, the Owner must request approval of the site from the appropriate HUD Field Office. The HUD Field Office must approve each initial site before the Owner purchases the ECHO unit to be placed on the site. As part of its request for approval of the site by the HUD Field Office, the Owner must submit: (i) A narrative giving a description of the site and area surrounding the site, as well as the characteristics of the neighborhood, and (ii) a map showing the intended geographical areas and racial composition, with any areas of racial concentration delineated.

As part its review of each site, HUD will conduct its environmental review in accordance with 24 CFR part 50. HUD will also review each site to ensure that the selection of the site complies with HUD's site and neighborhood standards set forth in 24 CFR 889.230.

C. Initial Closing and First Draw

Initial closing may occur after the Owner has obtained ground leases or conveyances from host families for 5 sites. After initial closing, the Owner will have an additional 12 months to locate the remaining host families, and obtain the remaining sites either by groundlease or conveyance. If the Owner does not obtain the remaining number of sites within 12 months of initial closing, the Owner will forfeit the right to develop the remaining sites.

The Owner may include in its first draw, a request for 10% of the cost of the number of ECHO units from which the Owner has obtained sites to make a down payment to the manufacturer of the ECHO units.

D. Provision of Services

An Owner of an ECHO housing project is not required to provide any of the services set forth in 24 CFR 889.260. Any costs associated with the provision of services will not be an eligible cost under the contract for project rental assistance. (In the standard section 202 project, the Project Rental Assistance Contract (PRAC) normally provides up to $15 per month per unit. Because each ECHO housing project will contain between 10 and 20 units, and the units are located on scattered sites, from an economic viewpoint, an Owner will not be able to provide services in any meaningful way. Moreover, the host family is ideally located to assist the elderly person with the services listed in 24 CFR 889.260.)

E. Project Standards

1. *Construction Standards.* ECHO units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS), and the Department's implementing regulations (24 CFR part 40), the statewide industrialized building code (if one exists) and any other relevant local building code. If a statewide industrialized building code or local building code does not exist, then the ECHO units must be constructed in accordance with the CABO One and Two Family Dwelling Code, Council of American Building Officials (CABO), distributed by Building Officials and Administrators International, Inc. (1983). (Copies of the CABO One and Two Family Dwelling Code are available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041 (703–931–4533)).

The installation of the ECHO unit on the homesite shall comply with the manufacturer's requirements for anchoring, support, stability and maintenance. The dealer or manufacturer shall inspect the ECHO unit, as installed on the homesite, for structural damage or other defects resulting from the transportation and installation of the ECHO unit. The dealer or manufacturer shall also test the performance of the ECHO unit's plumbing, mechanical and electrical systems to assure that they are fully operational.

ECHO units must be separately metered for utility services from the host family.

2. *Amenities.* Washers and dryers for each ECHO unit are eligible for funding from the HUD capital advance.

3. *Removal of ECHO units for subsequent reuse.* Each ECHO unit must be designed and constructed so that the ECHO unit can be disassembled and removed as easily as the ECHO unit is installed, without causing structural damage to the ECHO unit.

4. *Warranty for ECHO unit.* The home manufacturer shall furnish the Owner with a written warranty, duly executed by an authorized representative of the manufacturer on a HUD-approved form. The warranty shall be provided without cost to the Owner. The effective date of the warranty shall be the date of delivery of the ECHO unit to the Owner, regardless of when the warranty was executed by the manufacturer or was delivered to the Owner.

The warranty shall obligate the home manufacturer to take appropriate action to correct any nonconformity with the standards prescribed in paragraph III(e)(1) above, or any defects in materials or workmanship which become evident within one year after the date of delivery to the homesite. The warranty must also insure that the structural integrity of the ECHO unit shall be maintained so that it is liveable and durable after a subsequent move to a second homesite. This warranty shall

be in addition to, and not in derogation of, all other rights and privileges which the borrower may have under any other law or instrument during such period or thereafter. A copy of the warranty shall be collected at initial closing.

F. Moving Reserve Account

The Owner must establish and maintain a separate interest-bearing account entitled "moving reserve account" in a HUD-approved depository. The Owner must maintain separate records indicating the amount of funds deposited and withdrawn from the moving reserve account. Twenty percent (20%) of the capital advance amount shall be escrowed into the moving reserve account at final closing. The moving reserve account shall be maintained to pay for the removal, re-installation and accompanying rehabilitation of each ECHO unit. Funds may be drawn from the moving reserve account and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

G. Other Federal Requirements—Uniform Relocation Assistance and Real Property Acquisition Policies Act

Because of the inherent nature of the ECHO housing demonstration program (host family provides parcel of land) no individuals will be displaced under this demonstration program. Accordingly, the Department's relocation assistance requirements provided in 24 CFR 889.265(e) do not apply to the ECHO housing demonstration program.

H. Selection of Subsequent Elderly Person/Removal of ECHO Unit

After the elderly person no longer needs the ECHO unit, the host family may recommend another eligible family member or close family friend for the ECHO unit, or may require that the Owner remove the ECHO unit. If the host family requires removal of the ECHO unit, the Owner will have up to one year to remove the ECHO unit. However, the Owner will not remove the ECHO unit until 60 days after the ECHO unit is no longer needed, unless the host family requests earlier removal.

I. Offsite Storage

If an Owner receives a discount for buying multiple ECHO units, the Owner may store the ECHO units offsite; however, offsite storage of ECHO units shall be at the Owner's risk. In such a case, the Sponsor will have to purchase liability insurance for the ECHO units, or arrange for the seller of the ECHO units to maintain insurance on the ECHO units. Insurance for offsite storage will not be covered by the Capital Advance. In the event the offsite ECHO units are destroyed or damaged, or the Owner is unable to locate a host family, the Department will not disburse funds for the offsite ECHO units.

J. Insurance

The manufacturer must insure the ECHO unit during transportation to the site. Each time the ECHO unit is moved, the Owner must obtain insurance to cover any damage done during the move, or hire a mover with adequate insurance to cover any damage done during the move.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

B. Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under that Order. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for the ECHO housing demonstration program.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. Because this demonstration program only involves funding for 100 units of ECHO housing nationwide, the impact on families is not expected to be significant. However, to the extent there is an impact on families, the impact will be beneficial. Families will benefit because ECHO units allow elderly persons to remain independent while living near their relatives or close family friends. Accordingly, no further review is considered necessary.

D. Prohibition Against Advance Disclosure on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways,

they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

G. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

H. Catalog of Federal Domestic Assistance of Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: 12 U.S.C. 1701q and 1701q note; 42 U.S.C. 3535(d).

Dated: August 6, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–20882 Filed 8–26–93; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States et al.; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1993–94 season.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1993

On April 9, 1993, the Service published for public comment in the **Federal Register** (58 FR 19008) a proposal to amend 50 CFR part 20, with comment periods ending July 22, 1993, for early-season proposals and September 1, 1993, for late-season proposals. On June 1, 1993, the Service published for public comment a second document (58 FR 31244) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 24, 1993, a public hearing was held in Washington, DC, as announced in the April 9 and June 1 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 13, 1993, the Service published in the **Federal Register** (58 FR 37828) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1993–94 season. On August 5, 1993, a public hearing was held in Washington, DC, as announced in the April 9, June 1, and July 13 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 23, 1993, the Service published a fourth document (58 FR 44576) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. The fifth document in the series, published August 23, 1993 (58 FR 44590), dealt specifically with proposed frameworks for the 1993–94 late-season migratory bird hunting regulations. The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR 20 to set hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

In August 1993, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the April 9 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634–ARLSQ, 1849 C Street, NW., Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 23, 1993 (58 FR 44576).

Authorship

The primary authors of this rule are William O. Vogel, David F. Caithamer, and Patricia Hairston, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature,

operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States and Territories would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 18, 1993.

Don Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K, is amended as follows.

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–711, 712, and 742 a–d and e–j.

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Note - The following annual hunting regulations provided for by §§20.101 through 20.108 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

(a) Puerto Rico

	Season Dates	Limits Bag	Limits Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 4-Nov. 1	10	10
Scaly-naped pigeons	Sept. 4-Nov. 1	5	5
Ducks	Nov. 13-Dec. 20 & Jan. 8-Jan. 24	3 3	6 6
Common Moorhens	Nov. 13-Dec. 20 & Jan. 8-Jan. 24	6 6	12 12
Common Snipe	Nov. 13-Dec. 20 & Jan. 8-Jan. 24	6 6	12 12

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot.

Closed Areas: Closed areas are described in the August 23, 1993, Federal Register (58 FR 44576).

(b) Virgin Islands

	Season Dates	Limits Bag	Limits Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	Jan. 1-Jan. 31	3	6

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Daily Bag and Possession Limits

Area	Ducks(1)	Geese(2)	Brant	Common Snipe	Sandhill Cranes(3)
North Zone	8-24	6-12	2-4	8-16	3-6
Gulf Coast Zone	6-18	6-12	2-4	8-16	2-4
Southeast Zone	5-15	6-12	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	5-15	6-12	2-4	8-16	2-4
Kodiak Zone	5-15	6-12	2-4	8-16	2-4

(1) In State Game Management Units (Units) 1-26 (Statewide), the basic bag limits may include not more than 2 pintails daily, 6 in possession, and 2 canvasbacks daily, 6 in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, king and common eider, oldsquaw, harlequin ducks, and common and red-breasted mergansers. The season is closed for Steller's and spectacled eiders. In Units 6(D) and 7, the season for harlequin ducks will not open until October 1.

(2) No more than 4 daily, 8 in possession, may be any combination of Canada and/or white-fronted geese, provided that in Units 1-9 and 14-18, no more than 2 daily, 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island), the taking of Canada geese is prohibited. The taking of Canada geese also is prohibited in that portion of Unit 18 west of a line from the mouth of the Pastolik River to Kusilvak Mountain, then to the mouth of the Kiatik River, then to the Unit 18 boundary near the north outlet of Nagugun Lake. In Unit 1(C), the taking of snow geese is prohibited. In Units 1-26 (Statewide), the taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

(3) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Unit 22, there will be a tundra swan season from September 1 through October 30 with a season limit of 1 tundra swan per hunter. This season is by registration permit only. Up to 300 permits may be issued. In Unit 18, there will be a tundra swan season from September 1 through October 31 with a limit of 1 tundra swan per permit. More than 1 permit per season may be issued to a hunter, with issuance one at a time upon filing a harvest report. Up to 500 permits may be issued.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits: Bag	Limits: Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 18-Oct. 31 &	15	15
	Dec. 26-Jan. 10	15	15
South Zone			
12 noon to sunset	Oct. 9-Nov. 26 &	12	12
	Dec. 26-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 4-Sept. 25	12	24
1/2 hour before sunrise			
to sunset	Oct. 18-Oct. 30 &	12	24
	Dec. 9-Jan. 12	12	24
Florida (1)			
Northwest Zone			
12 noon to sunset	Sept. 18-Oct. 10 &	12	24
1/2 hour before sunrise			
to sunset	Nov. 20-Dec. 5 &	12	24
	Dec. 11-Jan. 9	12	24
South Zone			
12 noon to sunset	Oct. 2-Oct. 24	12	24
1/2 hour before sunrise			
to sunset	Nov. 20-Dec. 5 &	12	24
	Dec. 11-Jan. 9	12	24

	Season Dates	Limits Bag	Limits Possession
Georgia			
Zone 1			
12 noon to sunset	Sept. 4	12	24
1/2 hour before sunrise to sunset	Sept. 5-Oct. 18 &	12	24
	Nov. 25-Nov. 27 &	12	24
	Dec. 25-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 25	12	24
1/2 hour before sunrise to sunset	Sept. 26-Oct. 24 &	12	24
	Nov. 25-Nov. 27 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 30	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 5-Nov. 14 &	15	30
	Nov. 25-Nov. 28	15	30
Kentucky			
11 a.m. to sunset	Sept. 1-Sept. 30 &	15	30
	Oct. 9-Nov. 1	15	30
sunrise to sunset	Dec. 4-Dec. 9	15	30
Louisiana			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 16-Nov. 14 &	12	24
	Dec. 13-Jan. 10	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 23	12	24
1/2 hour before sunrise to sunset	Nov. 16-Nov. 26 &	12	24
	Dec. 20-Dec. 25	12	24
Mississippi	Sept. 4-Sept. 26 &	15	30
	Oct. 16-Nov. 7 &	15	30
	Dec. 27-Jan. 9	15	30
North Carolina			
12 noon to sunset	Sept. 4-Oct. 2	12	24
1/2 hour before sunrise to sunset	Nov. 22-Nov. 27 &	12	24
	Dec. 13-Jan. 15	12	24
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 9	12	24
1/2 hour before sunrise to sunset	Oct. 30-Nov. 27	12	24
Rhode Island			
12 noon to sunset	Sept. 20-Oct. 3	12	24
1/2 hour before sunrise to sunset	Oct. 16-Nov. 21 &	12	24
	Dec. 26-Jan. 13	12	24
South Carolina			
12 noon to sunset	Sept. 4-Sept. 6 &	12	24
1/2 hour before sunrise to sunset	Sept. 7-Oct. 9 &	12	24
	Nov. 20-Nov. 27 &	12	24
	Dec. 21-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept. 1	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 27 &	15	30
	Oct. 9-Oct. 23 &	15	30
	Dec. 23-Jan. 9	15	30
Virginia			
12 noon to sunset	Sept. 4-Sept. 30	12	24
1/2 hour before sunrise to sunset	Oct. 1-Oct. 30 &	12	24
	Dec. 27-Jan. 8	12	24
West Virginia			
12 noon to sunset	Sept. 1	12	24
1/2 hour before sunrise to sunset	Sept. 2-Oct. 9 &	12	24
	Oct. 25-Nov. 6 &	12	24
	Dec. 22-Jan. 8	12	24

	Season Dates	Limits Bag	Limits Possession
Alabama			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 18-Nov. 14 &	12	24
	Dec. 13-Jan. 10	12	24
Arkansas			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 18-Nov. 14 &	12	24
	Dec. 13-Jan. 10	12	24
Connecticut			
12 noon to sunset	Sept. 1-Oct. 2	12	24
1/2 hour before sunrise to sunset	Nov. 22-Nov. 27 &	12	24
	Dec. 13-Jan. 15	12	24
Delaware			
12 noon to sunset	Sept. 1-Oct. 9	12	24
1/2 hour before sunrise to sunset	Oct. 30-Nov. 27	12	24
Florida			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 18-Nov. 14 &	12	24
	Dec. 13-Jan. 10	12	24
Kansas			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 18-Nov. 14 &	12	24
	Dec. 13-Jan. 10	12	24
Missouri			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 18-Nov. 14 &	12	24
	Dec. 13-Jan. 10	12	24
New Jersey			
12 noon to sunset	Sept. 1-Oct. 2	12	24
1/2 hour before sunrise to sunset	Nov. 22-Nov. 27 &	12	24
	Dec. 13-Jan. 15	12	24
New York			
12 noon to sunset	Sept. 1-Oct. 9	12	24
1/2 hour before sunrise to sunset	Oct. 30-Nov. 27	12	24

	Season Dates	Limits Bag	Limits Possession
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 4-Sept. 26 &	15	30
	Oct. 2-Oct. 17 &	15	30
	Dec. 11-Dec. 31	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas	Sept. 1-Oct. 30	15	30
Missouri	Sept. 1-Oct. 30	15	30
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (2)	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma	Sept. 1-Oct. 30	15	30
South Dakota (3)	Sept. 1-Oct. 15	15	30
Texas (4)			
North Zone	Sept. 1-Nov. 9	12	24
Central Zone	Sept. 1-Oct. 31 &	12	24
	Dec. 26-Jan. 3	12	24
South Zone			
Special Area	Sept. 24-Nov. 10 &	12	24
	Dec. 26-Jan. 12	12	24
(special season)	Sept. 4-Sept. 5 &	10	20
	Sept. 11-Sept. 12	10	20
Remainder of the South Zone	Sept. 24-Nov. 14 &	12	24
	Dec. 26-Jan. 12	12	24
Wyoming	Sept. 1-Oct. 15	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 12 &	10	20
	Nov. 23-Jan. 9	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 13-Dec. 27	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 6-Jan. 2 &	10	10
	Jan. 8-Jan. 16	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate.

(3) In South Dakota, shooting hours are from sunrise to sunset.

(4) In Texas, the daily bag limit is 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 6 may be white-winged doves and 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties, where the daily bag limit may include no more than 2 white-winged doves. Possession limits are twice the daily bag limit.

During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 10, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 22 through January 10, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

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(6) In the white-winged dove open areas of California and Nevada, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning and laced doves in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is only permitted on weekends and holidays.

(b) Band-tailed Pigeons

Seasons in:	Season Dates	Limits Bag	Limits Possession
Arizona (1)	Oct. 13-Oct. 22	5	10
California			
North Zone	Sept. 18-Sept. 26	2	2
South Zone	Dec. 18-Dec. 26	2	2
Colorado (1)	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon (1)	Sept. 15-Sept. 23	2	2
Utah (1)	Sept. 1-Sept. 30	5	10

(1) Each band-tailed pigeon hunter must have a State permit or special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
ATLANTIC FLYWAY				
Connecticut (4)	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
Florida	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Dec. 11-Jan. 24	Nov. 1-Feb. 16
Georgia	Sept. 15-Nov. 23	Sept. 15-Nov. 23	Dec. 11-Jan. 24	Nov. 16-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 19-Nov. 26 & Dec. 13-Dec. 18	Sept. 20-Nov. 26 & Dec. 13-Jan. 20
Massachusetts	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
New Hampshire	Closed	Closed	Oct. 1-Nov. 14	Sept. 15-Nov. 30
New Jersey (5)				
North Zone	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 19	Oct. 1-Jan. 15
South Zone	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 13-Dec. 4 & Dec. 13-Dec. 25	Oct. 1-Jan. 15
New York (5)	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
North Carolina	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Dec. 9-Jan. 22	Nov. 15-Feb. 28
Pennsylvania	Sept. 1-Nov. 6	Closed	Oct. 23-Nov. 6	Oct. 23-Nov. 27
Rhode Island	Sept. 13-Nov. 21	Sept. 13-Nov. 21	Oct. 16-Nov. 26	Sept. 13-Nov. 26 & Dec. 11-Jan. 11
South Carolina	Sept. 13-Oct. 19 & Nov. 13-Dec. 15	Sept. 13-Oct. 19 & Nov. 13-Dec. 15	Nov. 24-Dec. 11 & Dec. 25-Jan. 20	Nov. 12-Feb. 26
Vermont	Closed	Closed	Oct. 1-Nov. 14	Sept. 25-Dec. 3
Virginia	Sept. 11-Nov. 19	Sept. 11-Nov. 19	Oct. 25-Nov. 20 & Dec. 22-Jan. 8	Oct. 18-Jan. 31

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
MISSISSIPPI FLYWAY				
Alabama	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Dec. 11-Jan. 24	Nov. 1-Feb. 16
Arkansas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
Illinois	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Indiana	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Iowa	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Kentucky	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
Louisiana	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Dec. 11-Jan. 24	Nov. 1-Feb. 16
Michigan	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Minnesota	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Mississippi	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Dec. 11-Jan. 24	Nov. 1-Feb. 16
Missouri	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
Ohio	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Tennessee	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
Wisconsin	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Kansas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Montana	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Nebraska	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
New Mexico	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
North Dakota	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Oklahoma	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 22-Jan. 5	Nov. 22-Jan. 31
South Dakota	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Texas	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Sept. 1-Sept. 30 & Nov. 24-Jan. 2	Dec. 11-Jan. 24	Nov. 1-Feb. 16
Wyoming	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
PACIFIC FLYWAY				
Alaska	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Arizona	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
California	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Colorado	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Hawaii	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Idaho	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Nevada	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
New Mexico	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Oregon	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Utah	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Washington	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30
Wyoming	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 16-Nov. 29	Oct. 16-Nov. 30

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
West Virginia	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 1-Dec. 16
MISSISSIPPI FLYWAY				
Alabama (7)	Sept. 11-Sept. 19 & Nov. 21-Jan. 20	Sept. 11-Sept. 19 & Nov. 21-Jan. 20	Nov. 27-Jan. 30	Nov. 13-Feb. 27
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 6-Dec. 13 & Jan. 1-Jan. 27	Nov. 13-Feb. 27
Illinois	Sept. 4-Nov. 12	Closed	Oct. 1-Dec. 4	Sept. 4-Dec. 19
Indiana	Sept. 1-Nov. 9	Closed	Sept. 25-Nov. 28	Sept. 1-Dec. 16
Iowa (8)	Sept. 4-Nov. 12	Closed	Sept. 18-Nov. 21	Sept. 4-Dec. 19
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 16-Dec. 19	Sept. 15-Oct. 29 & Nov. 25-Jan. 25
Louisiana	Sept. 18-Sept. 26 & Nov. 13-Jan. 12	Sept. 18-Sept. 26 & Nov. 13-Jan. 12	Nov. 27-Jan. 30	Nov. 6-Feb. 20
Michigan (9	Sept. 15-Nov. 14	Closed	Sept. 15-Nov. 14	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 1-Nov. 4	Sept. 1-Nov. 4
Mississippi	Oct. 16-Dec. 24	Oct. 16-Dec. 24	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 16-Dec. 18	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Sept. 24-Nov. 27	Sept. 1-Nov. 27 & Dec. 6-Dec. 24
Tennessee	Deferred	Closed	Oct. 9-Dec. 12	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 18-Nov. 21	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 9-Dec. 12	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (10)	Sept. 1-Nov. 9	Closed	Sept. 16-Nov. 16	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
North Dakota	Closed	Closed	Closed	Oct. 2-Nov. 28
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Jan. 4	Oct. 1-Jan. 15
South Dakota (11)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Deferred	Deferred
Wyoming	Sept. 11-Nov. 19	Closed	Closed	Sept. 11-Dec. 14
PACIFIC FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho (12)	Closed	Closed	Closed	Sept. 18-Jan. 2
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
Wyoming	Sept. 11-Nov. 19	Closed	Closed	Sept. 11-Dec. 14

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(8) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

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(9) In Michigan, the season opens concurrently with the duck season in certain areas.

(10) In Nebraska, the rail limits are 10 daily and 20 in possession.

(11) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(12) In Idaho, in Zone 5, the snipe season in October 23 through December 20.

6. Section 20.105 is amended by revising paragraphs (a) through (d) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules:

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov 9	15	30
Florida (1)	Sept. 1-Sept. 30 & Nov 24-Jan. 2	15 15	30 30
Georgia	Deferred	--	--
Maine	Sept. 1-Nov 9	15	30
New Jersey	Sept. 1-Nov 9	15	30
New York Long Island Remainder of State	Closed Sept. 1-Nov 9	-- 15	-- 30
North Carolina	Sept. 4-Nov 12	15	30
Pennsylvania	Sept. 1-Nov 6	15	30
Rhode Island	Sept. 13-Nov 21	15	30
South Carolina	Sept. 13-Oct. 19 & Nov 13-Dec. 15	15 15	30 30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Sept. 11-Sept. 19 & Nov 21-Jan. 20	15 15	15 15
Arkansas	Sept. 1-Nov 9	15	30
Indiana	Sept. 1-Nov 9	15	30
Kentucky	Sept 1-Nov 9	15	30
Louisiana	Sept. 18-Sept. 26 & Nov. 13-Jan. 12	15 15	30 30
Michigan	Deferred	--	--
Minnesota	Deferred	--	
Mississippi	Oct. 16-Dec. 24	15	30
Ohio	Sept. 1-Nov 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
Colorado	Deferred		--
New Mexico	Deferred	--	--
Oklahoma	Sept. 1-Nov 9	15	30
Texas	Sept. 1-Nov 9	15	30
Wyoming	Deferred		--
PACIFIC FLYWAY			
All States	Deferred		

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal and

PACIFIC FLYWAY

All States	Deferred

(1) The season applies to common moorhens only

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Connecticut	Deferred	--	--
Delaware	Sept. 25-Jan. 8	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 1-Jan. 15	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 6-Jan. 15	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Florida (1)	Sept. 25-Sept. 29	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 11-Sept. 19	4	8
Arkansas (2)	Sept. 11-Sept. 19	4	8
Illinois (2)	Sept. 4-Sept. 12	4	8
Indiana (2)	Sept. 1-Sept. 9	4	8
Kentucky (3)	Sept. 15-Sept. 19	4	8
Louisiana	Sept. 18-Sept. 26	4	8
Mississippi	Sept. 11-Sept. 26	4	8
Missouri (2)	Sept. 11-Sept. 19	4	8
Ohio (2)	Sept. 11-Sept. 19	4	8
Tennessee (3)	Sept. 11-Sept. 15	4	8
CENTRAL FLYWAY			
Colorado	Sept. 4-Sept. 12	4	8
Kansas	Sept. 11-Sept. 19	4	8
New Mexico (2)	Sept. 11-Sept. 19	4	8
Oklahoma	Sept. 11-Sept. 19	4	8
Texas	Sept. 11-Sept. 19	4	8

(1) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate. The possession limit is twice the daily bag limit.

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(2) Shooting hours are from sunrise to sunset.

(3) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Early (September) Canada Goose Seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Maryland	Sept. 7-Sept. 15	3	6
Massachusetts (1)	Sept. 7-Sept. 15	5	10
New Jersey	Sept. 8-Sept. 15	5	10
New York			
Northern	Sept. 7-Sept. 15	3	6
Western	Sept. 7-Sept. 15	3	6
Southeastern	Sept. 7-Sept. 15	3	6
North Carolina (1)	Sept. 16-Sept. 30	3	6
Pennsylvania			
Northwestern Counties	Sept. 1-Sept. 10	3	6
Southeastern Counties	Sept. 1-Sept. 15	5	10
Virginia	Sept. 7-Sept. 15	3	6
MISSISSIPPI FLYWAY			
Indiana (1)	Sept. 1-Sept. 10	5	10
Michigan	Sept. 1-Sept. 10	5	10
Minnesota (2)	Sept. 4-Sept. 13	4	8
Ohio	Sept. 1-Sept. 10	3	6
Wisconsin (3)	Sept. 1-Sept. 10	5	10
PACIFIC FLYWAY			
Oregon			
Lower Columbia River Zone	Sept. 1-Sept. 12	2	4
Northwestern Zone (1)	Sept. 1-Sept. 12	2	4
Washington	Sept. 1-Sept. 12	2	4
Wyoming (1)	Sept. 4-Sept. 6	2 per season	

(1) State permit required.

(2) In Minnesota, the bag and possession limits for Canada geese will be 2 and 4, respectively, in the Fergus Falls/Alexandria Zone and Southwest Zone.

(3) In Wisconsin, the season is closed from September 4 through September 6.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 23, 1993 Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Florida	Nov. 14-Jan. 31	3	6
Georgia	Nov. 14-Jan. 31	3	6
MISSISSIPPI FLYWAY			
Kentucky	Nov. 14-Jan. 31	3	6
Tennessee	Nov. 14-Jan. 31	3	6
CENTRAL FLYWAY			
Texas	Nov. 14-Jan. 31	3	6
PACIFIC FLYWAY			
Arizona	Nov. 14-Jan. 31	3	6
California	Nov. 14-Jan. 31	3	6
New Mexico	Nov. 14-Jan. 31	3	6
Utah	Nov. 14-Jan. 31	3	6

	Season Dates	Limits Bag	Limits Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 2-Nov. 28	3	6
Kansas	Deferred	--	--
Montana			
Regular season (1)	Sept. 25-Nov. 21	3	6
Special season (2)	Sept. 11-Sept. 12 &	1 per season	
	Sept. 18-Sept. 19	1 per season	
New Mexico			
Regular season (1)(3)	Oct. 16-Jan. 16	3	6
Middle Rio Grande Valley Area (2)(3)(4)	Oct. 30-Oct. 31 &	3	6
	Dec. 4-Dec. 5 &	3	6
	Dec. 18-Dec. 19 &	3	6
	Jan. 12-Jan. 13 &	3	6
	Jan. 15-Jan. 16 &	3	6
	Jan. 25-Jan. 26	3	6
Southwest Area (2)(3)(4)	Jan. 8-Jan. 9	3	6
North Dakota (1)	Sept. 11-Nov. 7	3	6
Oklahoma (1)	Deferred	--	--
South Dakota (1)	Sept. 25-Oct. 31	3	6
Texas (1)	Deferred	--	--
Wyoming			
Regular Season (1)	Sept. 15-Nov. 11	3	6
Riverton-Boysen Unit (2)	Sept. 25-Sept. 30	2 per season	

	Season Dates	Limits Bag	Limits Possession
PACIFIC FLYWAY			
Arizona (2)	Nov. 5-Nov. 7 &	2 per season	
	Nov. 9-Nov. 11 &	2 per season	
	Nov. 13-Nov. 15 &	2 per season	
	Nov. 17-Nov. 19	2 per season	
Utah (2)(4)(5)	Sept. 4-Sept. 5	1 per season	
	Sept. 11-Sept. 12	1 per season	
Wyoming			
Bear River Area (2)	Sept. 4-Sept. 6	2 per season	
Salt River Area (2)	Sept. 4-Sept. 6	2 per season	
Eden-Farson Area (2)	Sept. 4-Sept. 6	2 per season	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) Hunting in the special seasons is by State permit only.

(3) The seasonal bag limit is 6.

(4) Shooting hours are sunrise to sunset.

(5) In Utah, the season is open in Rich County only.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 23, 1993, Federal Register (58 FR 44576).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Daily bag limit ..... 3 migratory birds, singly or in the aggregate.

Possession limit ..... 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Mourning and white-winged doves	
Northwest Zone	Oct. 16-Nov. 19 & Dec. 6-Dec. 10
South Zone	Oct. 25-Nov. 19 & Dec. 6-Dec. 10 & Jan. 10-Jan. 16
Rails and common moorhens	Oct. 16-Nov. 23
Woodcock	Nov. 24-Dec. 10 & Jan. 25-Mar. 10
Maryland	
Mourning doves	Oct. 24-Nov. 15 & Dec. 12-Dec. 19 & Dec. 26-Dec. 31
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 18 & Nov. 27-Dec. 12 & Dec. 19-Jan. 19
Pennsylvania	
Mourning doves	Oct. 10-Oct. 29 & Nov. 28-Dec. 15
Virginia	
Doves	Dec. 13-Dec. 26 & Jan. 9-Jan. 31
Rails	Dec. 13-Jan. 16
Woodcock	Dec. 13-Dec. 21 & Jan. 9-Mar. 2
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 13-Dec. 19
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16
Indiana	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Iowa	
Ducks and mergansers (1)	
North Zone	Sept. 1-Sept. 30
South Zone	Sept. 1-Sept. 30
Geese (1)	Sept. 1-Sept. 30

	Extended Falconry Dates
Kentucky	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Michigan	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Minnesota	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Missouri	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Ohio	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Wisconsin	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
CENTRAL FLYWAY	
Colorado	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Kansas	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Montana	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Nebraska	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
New Mexico	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
North Dakota	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Oklahoma	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
South Dakota	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Texas	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Wyoming	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
PACIFIC FLYWAY	
Arizona	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
California	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Idaho	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Nevada	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Oregon	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Utah	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30
Washington	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 1-Sept. 24 & Nov. 29-Dec. 16
Ducks, mergansers, and coots (1)	
North Zone	Sept. 26-Sept. 30

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	Extended Falconry Dates
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22
Ducks, mergansers, coots, and moorhens (1)	
North Zone	Sept. 7-Sept. 30
Middle Zone	Sept. 7-Sept. 30
South Zone	Sept. 7-Sept. 30
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 18
Ducks, mergansers, coots, and moorhens (1)	Sept. 1-Sept. 30
Missouri	
Mourning doves	Oct. 31-Dec. 16
Ducks, merganser, and coots	Sept. 11-Sept. 19
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 30
Woodcock	Sept. 1-Sept. 17
Ducks, mergansers, and coots (1)	
North Zone	Sept. 1-Sept. 30
South Zone	Sept. 15-Sept. 30
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers and coots (1)	Sept. 1-Sept. 3 & Sept. 13-Sept. 30
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 11-Sept. 30

	Extended Falconry Dates
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30 & Dec. 31-Jan. 9
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Jan. 17-Jan. 30
North Dakota	
Ducks, mergansers, coots, and snipe (1)	Sept. 1-Oct. 1
Oklahoma	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 20-Sept. 30
South Dakota	
Ducks, mergansers, and coots (1)	Sept. 4-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 15-Dec. 21
Rails and gallinules	Nov. 15-Dec. 21
Wyoming	
Rails	Sept. 1-Sept. 14
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30

	Extended Falconry Dates
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 13-Oct. 28
Ducks and mergansers (1) North Zone	Sept. 1-Sept. 30
Colorado	
Ducks, mergansers, and coots (1)	Sept. 18-Sept. 30
Idaho	
Mourning Doves	Oct. 1-Nov. 30 & Feb. 23-Mar. 10
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30
Geese	
Zones 2 and 3	Sept. 1-Sept. 14
Zones 1, 4, and 5	Sept. 1-Sept. 7
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30 & Dec. 31-Jan. 9
Band-tailed pigeons North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Sept. 1-Oct. 15 & Dec. 1-Dec. 31
Wyoming	
Rails and snipe	Sept. 1-Sept. 10
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30

(1) Additional days occurring after Sept. 30 will be published with the late-season selections

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 93-20872 Filed 8-26-93; 8:45 am]
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federal register

Friday
August 27, 1993

Part V

Department of State

Bureau of Politico-Military Affairs

Imposition of Missile Proliferation Sanctions Against Entities in China and Pakistan; Notice

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1857]

Imposition of Missile Proliferation Sanctions Against Entities in China and Pakistan

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Under Secretary of State for International Security Affairs has determined that entities in China and Pakistan have engaged in missile technology proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979, as amended by the National Defense Authorization Act for Fiscal Year 1991, and the National Defense Authorization Act for Fiscal Years 1992 and 1993.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT:
On General issues: Vann H. Van Diepen, Office of Weapons Proliferation Policy, Bureau of Politico-Military Affairs, Department of State (202–647–4930).

On Munitions licensing issues: Rose Biancaniello, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (202–875–7056).

On Commerce licensing issues: Raymond Jones, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce (202–482–4244).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1), Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)), Sections 1702 and 1703 of the National Defense Authorization Act for Fiscal Year 1990–91 (Pub. L. 101–510), and Executive Order 12851 of June 11, 1993, the Under Secretary of State for International Security Affairs determined on August 24, 1993, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)) on these entities and their subsidiaries:

1. Ministry of Aerospace Industry, to include China Precision Machinery Import-Export Corporation (CPMIEC) (China)
2. Ministry of Defense (Pakistan)

Accordingly, the following sanctions are being imposed on these entities and their subsidiaries:

(A) licenses for export to the sanctioned entities of Missile Technology Control Regime (MTCR) equipment or technology controlled pursuant to the Export Administration Act of 1979 or the Arms Export Control Act will be denied for two years; and

(B) no U.S. government contracts relating to MTCR equipment or technology and involving the sanctioned entities will be entered into for two years.

These sanctions apply not only to the entities described above, but also to their divisions, subunits, and any successor entities. Such additional entities include, but are not limited to, the following:

1. China National Space Administration (China)
2. China Aerospace Corporation (China)
3. Aviation Industries of China (China)
4. China Precision Machinery Import-Export Corporation (CPMIEC) (China)
5. China Great Wall Industrial Corporation or Group (China)
6. Chinese Academy of Space Technology (China)
7. Beijing Wan Yuan Industry Corporation (a/k/a Wanyuan Company or China Academy of Launch Vehicle Technology) (China)
8. China Haiying Company (China)
9. Shanghai Astronautics Industry Bureau
10. China Chang Feng Group (a/k/a China Changfeng Company) (China)

Additionally, because of China's status as a country with a non-market economy that was not a member of the Warsaw Pact, the following sanctions must be applied to all activities of the Chinese government relating to missile development or production, as well as all activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft.

(A) licenses for export to the government activities described above of MTCR equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(B) no U.S. government contracts relating to MTCR equipment or technology and involving the government activities described above will be entered into for two years.

With respect to all of the entities and activities described above, the export sanction does not apply to existing licenses and will not require the revocation of such licenses.

Further, with respect to items controlled pursuant to the Export Administration Act, the export sanction does not apply to exports made pursuant to certain General licenses.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993. The Department of Commerce will shortly issue regulations relating to the implementation of these sanctions with respect to exports controlled by the Export Administration Act.

Dated: August 25, 1993.

Robert Einhorn,

Acting Assistant Secretary of State for Politico-Military Affairs.

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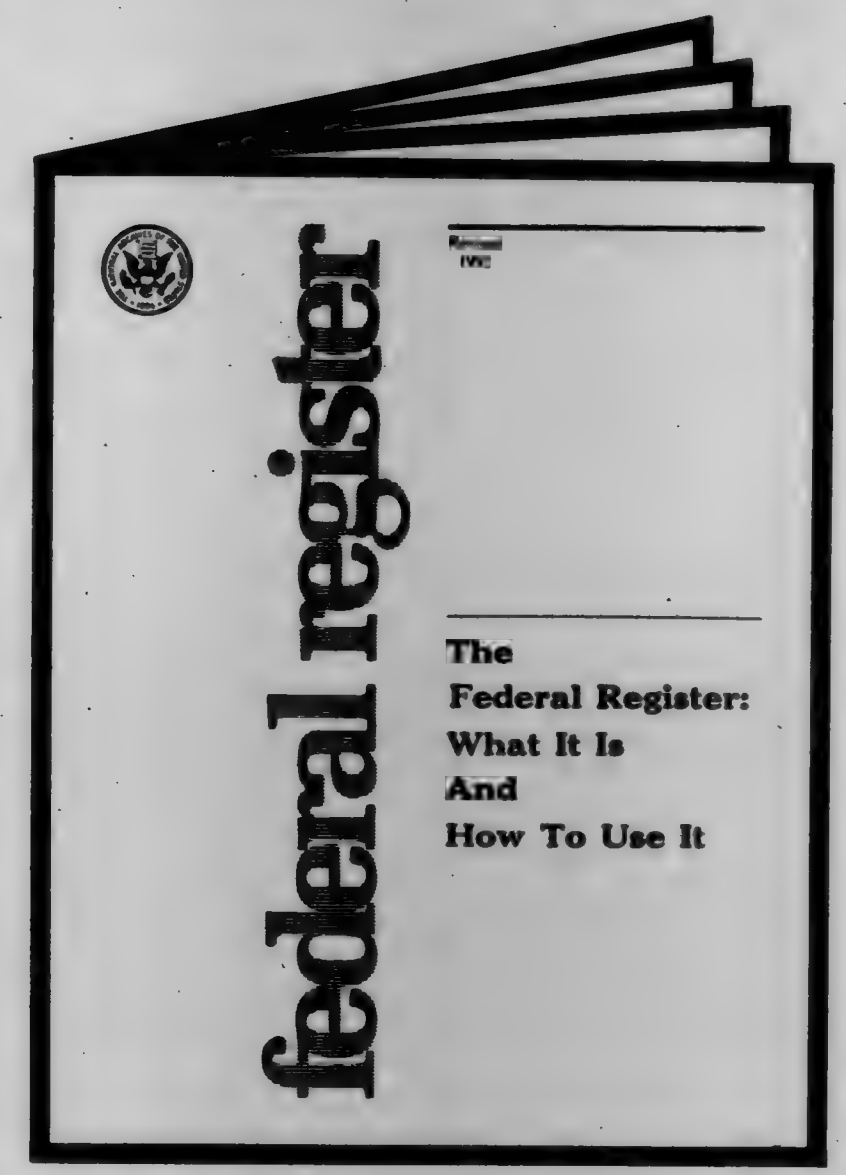

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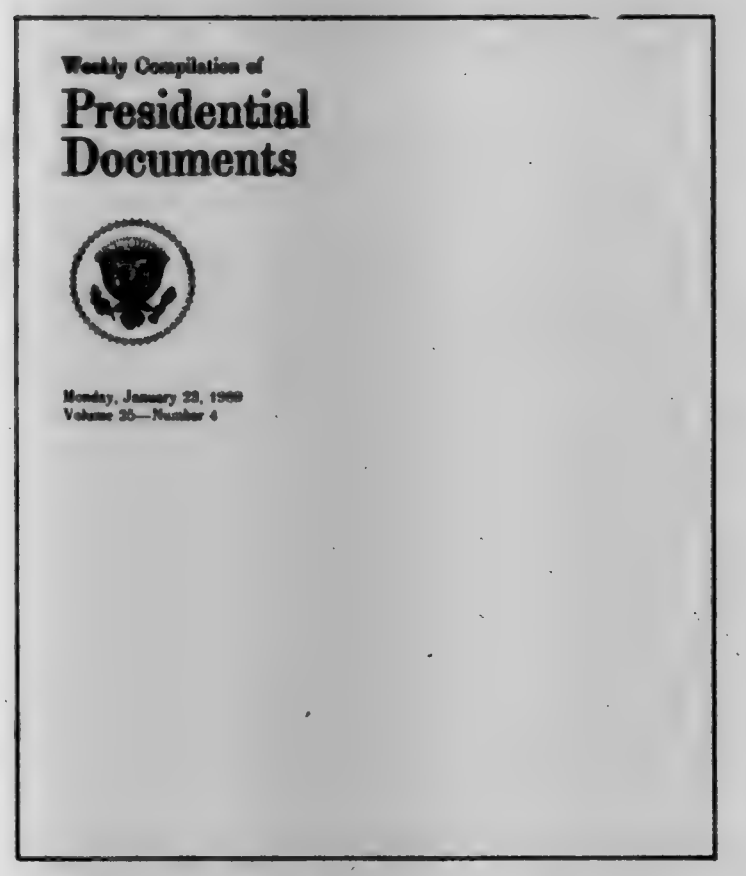

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Briefings on How To Use the Federal Register
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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Where: Jimmy Carter Presidential Library, One Copenhill Avenue, Atlanta, GA
Reservations: Federal Information Center, 1–800–347–1997

WASHINGTON, DC

(two briefings)

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States adopted three recommendations at its Forty-Eighth Plenary Session addressing: Use of APA formal procedures in civil penalty proceedings; administrative and judicial review of prompt corrective action decisions by the federal banking regulators; and peer review in the award of discretionary grants.

The Administrative Conference of the United States is a federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and to make recommendations for improvements.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, Information Officer (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 591–596. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)).

At its Forty-Eighth Plenary Session, held June 10–11, 1993, the Assembly of the Administrative Conference of the United States adopted three recommendations. These recommendations were issued August 18, 1993.

Recommendation 93–1, Use of APA Formal Procedures in Civil Money Penalty Proceedings, recommends that in all cases involving administratively-imposed civil money penalties, the opportunity for a formal adjudication pursuant to the APA be available to the parties. Recognizing the current existence of civil money penalty programs where the hearing officers are not protected by the APA's separation-of-functions provisions, the Conference recommends that agencies by rule should ensure that presiding officers in such programs will not report to, be evaluated by, or consult with prosecuting or investigating officials.

Recommendation 93–2, Administrative and Judicial Review of Prompt Corrective Action Decisions by the Federal Banking Regulators, calls for greater procedural protection for depository institutions subject to adverse capital classifications and individuals who are dismissed from office by a federal banking agency's prompt corrective action decision. At the same time, the procedures recommended by the Conference permit expeditious action in meeting the Federal Deposit Insurance Corporation Improvement Act's (FDICA's) goals of avoiding bank failures and minimizing the drain on the bank insurance funds.

Recommendation 93–3, Peer Review in the Award of Discretionary Grants, draws on the experience of several federal agencies with peer review grant programs to set forth procedures grantmaking agencies may use to produce better decisions and reduce the potential for bias and conflicts of interest in the peer review grant process.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session is available for public inspection at the Conference's offices at suite 500, 2120 L Street NW., Washington, DC. Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register**. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR part 305). Copies of all past Conference recommendations and statements, and the research reports on which they are based, may be obtained from the Office of the Chairman of the Administrative Conference.

List of Subjects in 1 CFR Part 305

Administrative practice and procedure, Civil money penalties, Federal bank regulation, and Discretionary grants.

Parts 305 of title 1 of the Code of Federal Regulations is amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 591–596.

2. New §§ 305.93–1 through 305.93–3 are added to read as follows:

§ 305.93–1 Use of APA Formal Procedures in Civil Money Penalty Proceedings (Recommendation No. 93–1).

Since 1972, the Administrative Conference has been encouraging the use of administratively-imposed civil money penalties as an enforcement tool. In Recommendation 72–6, the Conference recommended that Congress provide for such remedies, to be imposed after a hearing (usually presided over by an administrative law judge) pursuant to the Administrative Procedure Act's provisions in sections 554, 556 and 557, which govern formal adjudications. Congress has followed that recommendation in hundreds of contexts over the past 20 years, and administrative civil money penalties have become a frequent enforcement mechanism.

Congress has, however, in several recent environmental statutes, authorized the Environmental Protection Agency to impose civil money penalties without a formal APA hearing, without an ALJ, and without de novo judicial review. The Army Corps of Engineers and the United States Coast Guard have been granted similar authority. The amounts of potential liability under these statutory provisions vary from maximums of

$3,000 up to as high as $125,000. The issue is whether this trend is a good one.

The Administrative Conference has made a number of recommendations that relate to this topic. In its first recommendation on this subject, Recommendation 72–6, "Civil Money Penalties as a Sanction," the Conference recommended that systems for administrative imposition of civil money penalties should provide for adjudications on the record after a formal hearing pursuant to the APA. It reiterated that position in Recommendation 79–3, "Agency Assessment and Mitigation of Civil Money Penalties."

In Recommendation 92–7, "The Federal Administrative Judiciary," the Conference considered the issue from a different perspective. In that recommendation, the Conference addressed the proliferation of non-ALJ adjudicators in agency proceedings, and encouraged Congress to return to a more consistent use of ALJs in the types of cases for which their use is most appropriate, so that the uniformity of process and decisionmaker characteristics that the APA envisioned could be reestablished. In proposals that presumed the implementation of recommended changes in the ALJ selection process and mode of performance review, the Conference suggested a set of guidelines that Congress should use in determining when ALJs should be required as presiding officers.[1]

Among the types of cases cited by Recommendation 92–7 in which Congress should consider requiring ALJ hearings are those involving the "imposition of sanctions with substantial economic effect." While this is but one factor Congress is urged to take into account, it would appear to weigh strongly in favor of APA–ALJ proceedings in civil money penalty cases of the type at issue here. While the economic impact of a civil money penalty will vary depending on the respondent's resources, it can reasonably be assumed that a penalty of $25,000 would be substantial to most respondents, and even smaller penalty amounts might be substantial in many situations.

The interest in uniformity also weighs very much in favor of using APA–ALJ hearings in civil money penalty cases. Most administratively-imposed civil money penalty statutes do in fact require APA–ALJ hearings. There does not appear to be anything particularly unusual about the cases engendered by the programs under study that would warrant a different type of hearing. As a matter of good policy, anyone facing a civil money penalty imposed by a federal administrative agency with judicial review on the record of the administrative proceedings should have available the opportunity to have his or her case heard by an ALJ in a formal APA hearing. Where penalties would be small, it is of course less likely that such an opportunity would be taken; where they are large, such an opportunity becomes that much more important.

While neither an APA hearing nor an ALJ as presider may be constitutionally required, there may well be situations where due process would require something very much like an APA–ALJ hearing. An advantage of uniformly requiring the opportunity for ALJ hearings in civil money penalty proceedings is that it alleviates the uncertainty that arises from trying to apply the standards of *Mathews* v. *Eldridge*[2] in a variety of contexts. That case, which requires a balancing of three different interests in determining what process is due in a particular situation, provides no clear guideposts. Its requirements can only be determined definitively on post-hoc review. In contrast, the validity of the APA's formal adjudication process is well-established.

The Conference is therefore recommending that, in all cases involving administratively-imposed civil money penalties, the opportunity for a formal adjudication pursuant to the APA's provisions, 5 U.S.C. 554, 556–558, be available to parties.[3]

Recognizing the current existence of civil money penalty programs where the hearing officers are not protected by the APA's separation-of-functions provisions in section 554(d), the Conference is recommending that agencies with such programs provide for this important protection by regulation. Agencies should ensure that non-ALJ presiding officers and presiding officers in non-APA hearings will not report to, be evaluated by, or consult with prosecuting or investigating officials.[4]

Although the Conference originally recommended use of administrative hearings in civil money penalty cases because of the comparative cumbersomeness and expense of federal district court trials, concerns have been raised that APA–ALJ hearings can also be too slow, expensive and cumbersome, and that some cases should therefore not be required to be adjudicated under the APA. This concern, which extends beyond civil money penalty cases, can, however, be addressed within the ambit of the APA.

The APA provides flexibility with respect to procedures used in formal proceedings. Although sections 554, 556–558 contain certain basic requirements (such as proper notice, opportunity to present evidence and rebuttal, at least limited cross-examination, and the chance to submit proposed findings or exceptions), the APA leaves to agency discretion or other statutory provision such issues as the scope of discovery, the existence of time limits, and many evidentiary issues. Agencies should take advantage of such flexibility to issue rules that would encourage expeditious resolutions in ALJ proceedings.[5] For example, agencies could authorize (or require) limitations on discovery or the number of pages filed, or could set deadlines for the various stages of the proceeding, including the amount of time to issue a decision. They could also encourage the use of alternative dispute resolution in appropriate cases.[6] Thus, the uniformity provided by the APA does not and should not limit agency or ALJ flexibility in handling civil penalty cases expeditiously and fairly.

Recommendation

1. Congress should provide that the Administrative Procedure Act's formal adjudication provisions (5 U.S.C. 554, 556–558) are available to parties whenever money penalties may be imposed by administrative agencies.

2. Agencies should ensure in their regulations that non-administrative law judge presiding officers in civil money penalty adjudication proceedings not covered by the APA's formal adjudication provisions are protected from undue influence. Specifically, such officers should not report to, be evaluated by, or consult on an ex parte basis with, prosecuting or investigative officials.[7]

§ 305.93–2 Administrative and Judicial Review of Prompt Corrective Action Decisions by the Federal Banking Regulators (Recommendation No. 93–2).

In the wake of the recent crises in the banking industry, Congress has passed two major statutes affecting the relationship among the four principal banking regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision) and the industries they supervise.[1] In 1989, the Financial Institutions

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[1] Non-ALJs can, of course, be used by agencies for adjudications not stipulated by Congress to be within the coverage of sections 554, 556 and 557 ("non-APA adjudications"), or in APA adjudications where Congress has specially designated a presiding board or non-ALJ adjudicator. See 5 U.S.C. 556(b). Recommendation 92–7 was intended to address both types of congressional actions.

[2] 424 U.S. 319 (1976).

[3] The recommendation that the opportunity for a hearing be afforded is intended to retain flexibility for resolving the case prior to an ALJ hearing, through settlement, alternative dispute resolution processes, or other processes agreed upon by the parties.

[4] As reflected in Recommendation 92–7, "The Federal Administrative Judiciary," the Conference also recognizes that there may be infrequent situations where Congress may wish to specially designate presiding officers with technical or other specialized expertise for APA formal adjudications in civil money penalty programs. See section 556(b) of title 5. In these situations, the APA mandates a separation of functions.

[5] See, e.g., Recommendation 86–7, "Case Management as a Tool for Improving Agency Adjudication," 1 CFR 305.86–7 (1992).

[6] See Public Law No. 101–552, the Administrative Dispute Resolution Act, which amends the APA to provide authorization to use alternative dispute resolution processes. See also Recommendation 86–3, "Agencies' Use of Alternative Means of Dispute Resolution," 1 CFR 305.86–3 (1992).

[7] Recommendation 2 is intended to assure that separation-of-functions protections are included within existing programs. These very important protections would be required by Congress in future programs by Recommendation 1, which urges that all of the APA's adjudication safeguards be made available in new civil money penalty programs. It is unlikely that Congress would consider a civil money penalty adjudication proposal for which it would not be in the public interest to make available the full range of APA safeguards. However, should that unlikely event occur, it is strongly urged that Congress assure that at least separation-of-functions protections of the type described in Recommendation 2 be incorporated in any such program.

[1] The Board of Governors of the Federal Reserve System is an independent federal agency with

Reform, Recovery and Enforcement Act gave the banking agencies extensive new enforcement powers. The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) went further, authorizing the federal banking agencies to take "prompt corrective action to resolve the problems of federally insured depository institutions," and to do so "at the least possible long-term loss to the deposit insurance fund." 12 USC 1831o(a) (1) and (2). Underlying the FDICIA scheme is Congress' belief that by acting quickly at the earliest sign of problems, the banking agencies may be able to prevent the failure or further deterioration of regulated institutions.

FDICIA added a new section 38 to the Federal Deposit Insurance Act, which requires banking regulators to take prompt corrective action (PCA) to preempt the possibility that a bank or savings association will fail or, if failure appears likely, to seize the bank early enough to ensure that there remain assets within the institution sufficient to cover its liabilities. The PCA framework is premised on a "tripwire" approach, under which banking regulators may take increasingly severe action, on a stage-by-stage basis, against a depository institution as the capital and soundness of the institution decline. FDICIA creates a system of five capital classifications, ranging from well capitalized to critically undercapitalized, within which bank regulators place institutions based on the application of capital standards. Downgrading of an institution's capital classification not only subjects it to increasing intervention by regulators, but also automatically triggers certain restrictions on the institution's activities (e.g., loss of authority to accept brokered deposits or to make payments on subordinated debt). In addition to considering capital standards, regulators may reclassify the institution based on a determination that it is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice.

Before passage of FDICIA, the banking agencies took coercive action through the formal enforcement provisions of section 8 of the Federal Deposit Insurance Act, which provides extensive procedural protections. The new section 38, on the other hand, accommodates the need for banking agencies to respond quickly to developing problems by permitting exercise of functionally similar powers outside the formal procedural framework of section 8. Moreover, although FDICIA dramatically increased the importance of capital classifications, and the standards on which they are based, in the regulatory scheme, the bank examination process in which these determinations are made is very informal, with limited opportunity for review. Specifically, while section 38 makes provision for limited procedural protection for an individual who is dismissed from office as a result of a PCA directive, as well as for an institution subject to a determination that it is in an unsafe or unsound condition, it does not provide for administrative review of PCA decisions, nor does it expressly provide for—or preclude—judicial review of PCA determinations.

The Administrative Conference believes that, in light of the significance of prompt corrective actions, greater procedural protection is appropriate. On the other hand, since time will often be of the essence in meeting FDICIA's goals of avoiding bank failures and minimizing the drain on the bank insurance funds, any procedural requirements must permit expeditious action and must be limited to those situations where agency actions have the severest impact. Moreover, any scheme for expanded review of PCA decisions must take into account the broad discretion Congress has afforded the banking agencies in determining and applying standards in this area.

The Conference believes that administrative review should be available for decisions that have an adverse effect on an institution's capital classification. These decisions, which are ordinarily made in the context of a bank examination rather than in a PCA directive, form the basis for any PCA action that may be taken against an institution. The highly informal and discretionary mechanisms for review of examination decisions that are currently provided by the banking agencies were designed for use in an atmosphere of trust and close working relationships between bankers and examiners. In the current environment, a somewhat more structured administrative review by a higher-level reviewing authority within the agency would promote fairness and more consistent results.

Providing a more effective administrative review mechanism is particularly important here where, because of the broad discretion afforded agencies to interpret fairly general statutory standards and the subjective nature of some of the determinations that must be made in the examination process, judicial review may be of limited effectiveness. Moreover, the proposed review process would provide a more meaningful record for judicial review in those cases where it can be effective. Paragraph 1 of this recommendation proposes a uniform, record-creating appeal process for decisions by all federal banking agencies in which an institution's capital classification is determined or changed. The banking agencies' rules should make clear whether changes in capital classification will ordinarily go into effect while administrative review is pending or will not become final until after administrative review; in either case, agency rules should provide for exceptions from ordinary practice in appropriate circumstances.

In addition, judicial review should be available for some of the most crucial PCA decisions. Institutions that have suffered adverse capital classifications and persons who have been dismissed as a result of PCA directives should be able to seek judicial review of those decisions, and the provisions governing judicial review in these cases should be made uniform across all the relevant federal banking agencies.

Similarly, any action to appoint a conservator or receiver for an institution should be judicially reviewable. Some such actions are already reviewable under existing law, though section 38 may be interpreted to preclude such review. Congress should clarify that review is available for all such decisions made by every federal banking agency and should provide for uniform standards of review and time limits for review of these decisions. The Conference recognizes the need for flexibility in determining whether an adverse capital classification or prompt corrective action decision should take effect pending judicial review and concludes that stays of agency action should be discretionary rather than automatic.

Recommendation

1. Administrative Appeals of Classification Decisions

a. In formulating an appeal process for independent internal review of classification decisions, the federal banking agencies should promulgate rules providing for an appeal to a senior official by a depository institution of a decision of an examiner or regional director that results in an adverse capital classification of the institution (including a decision to assign the institution a less-than-satisfactory rating for asset quality, management, earnings, or liquidity).

b. The appeal procedures should provide that:

(1) The affected institution is given immediate notice of its right to appeal;

(2) The institution is provided with a written report stating the reasons, including the factual bases, for the adverse classification or rating;

(3) The institution has an opportunity to supply further facts and information, make written representations, and, in the agency's discretion, present oral testimony and argument; and

(4) The agency's final decision is issued within a specified time.

c. The agencies also should specify in their rules whether or not an adverse capital classification decision will ordinarily be stayed pending completion of the internal appeal process and, in either event, provide for exceptions where special circumstances justify departure from regular practice.

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primary federal responsibility for the regulation of all bank holding companies, state-chartered banks that are members of the Federal Reserve System, and foreign banks. The Federal Deposit Insurance Corporation, also an independent federal agency, administers the Bank Insurance Fund for commercial banks and the Savings Association Insurance Fund for savings and loans, has primary federal responsibility for the regulation of all state-chartered federally insured banks that are not members of the Federal Reserve System, and has secondary regulatory authority over all other federally insured banks and thrifts. The Office of the Comptroller of the Currency, located within the Treasury Department, charters and supervises all national banks. The Office of Thrift Supervision, also located within the Treasury Department, charters all federally chartered savings and loans and supervises all savings and loan holding companies and federally insured savings associations.

2. Judicial Review of Final Agency Decisions[2]

a. Congress should amend section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, to permit a depository institution that has suffered an adverse capital classification, or a person who has been dismissed pursuant to section 38(n) of the Act, 12 U.S.C. 1831o(n), to seek judicial review of the federal banking agency's final decision in a federal district court.

(1) A party affected by an adverse capital classification should be required to seek review within 10 days of receiving notice of the agency's final decision.

(2) The court should review the agency's decision under the standards of judicial review set forth in 5 U.S.C. 706.

(3) Whether the agency's ruling is stayed pending judicial review should be determined by the court under the usual standards for granting stays.

b. Congress should amend section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, to clarify that it does not preclude judicial review of decisions to appoint a conservator or receiver under the terms of section 38(h)(3), 12 U.S.C. 1831o(h)(3).

(1) In addition, Congress should amend section 2 of the National Bank Receivership Act, 12 U.S.C. 191, to provide for judicial review of decisions to appoint receivers for national banks, and section 11(p) of the Federal Reserve Act, 12 U.S.C. 248(p), to provide for judicial review of decisions by the Board of Governors of the Federal Reserve System to appoint conservators and receivers for state member banks.

(2) Congress should also amend the provisions relating to judicial review of decisions by all the federal banking agencies to appoint conservators and receivers so as to provide for:

(i) A consistent standard of review in accordance with 5 U.S.C. 706; and

(ii) Consistent time limits within which judicial review must be sought after a conservator or receiver has been appointed.

§ 305.93–3 Peer Review in the Award of Discretionary Grants (Recommendation No. 93–3).

Governments in most industrialized nations now play a prominent role in assembling and sustaining a sound scientific and engineering infrastructure and in providing financial support for artistic and other endeavors. Although many procedural vehicles exist for making the difficult scientific and artistic judgments that necessarily arise in apportioning limited resources, the United States government has depended to a large degree upon "peer review" systems in which the agency decisionmaker assembles a group of experts for advice.

Under this peer review model, the government does not attempt to persuade researchers to undertake particular research or artists to create particular kinds of art. Instead, a grantmaking agency allocates sums of money to broad fields of endeavor and invites researchers, artists, or performers to develop creative proposals for projects. A group of "peers" with expertise in the relevant area then evaluates and ranks proposals, leaving the ultimate funding decisions up to the governmental program officials. Peer review is intended to ensure that public funds are awarded objectively to meritorious scientists, artists, eleemosynary institutions, and, increasingly, for-profit entities in a way that renders the system accountable to the public and its elected representatives.

While peer review has proved remarkably durable in the 30 to 40 years during which federal agencies have employed it, the process has not been without controversy. Some critics suggest that peer review is an expensive waste of time; that it diverts creative minds from productive research to writing, reviewing, and discussing proposals; that it rewards huckstering skills at the expense of solid research; that it is sometimes abused by reviewers who breach confidentiality; and that it can be counterproductive in programs designed to explore fresh ideas and innovative approaches. In particular, some peer review systems have been criticized for permitting ad hoc and systematic bias for and against individuals, groups, or new ideas. Decisionmaking bias in the award of discretionary grants can result from favoritism, animus, or conflict of interest. It can stem from the identity of the potential grantee, as, for instance, where an "old boy" network exists or a "halo effect" causes poorly conceived proposals from well-known scientists to be funded, or from conflicts of interest that have to do with the affiliation or position of the decisionmaker. Bias can include personal or professional animus, a lack of regard for those mavericks who challenge conventional views, or a systematic refusal to give sufficient weight to particular criteria relevant to the decision. Finally, ex parte lobbying or even political pressure may occasionally cause an otherwise objective process to become biased for or against particular persons or approaches.

To the extent that bias infects it, the decisionmaking process loses objectivity and, consequently, legitimacy. While the incidence and impact of bias are not susceptible to empirical measurement, the Conference believes that, on balance, the peer review model has worked well[1] and is highly appropriate for awarding discretionary grants in the arts and sciences.[2] The Conference's recommendation is based largely on a study of programs in the National Institutes of Health, the National Science Foundation, the Environmental Protection Agency, and the National Endowment for the Arts. Although all rely heavily upon the principle of peer review in awarding discretionary grants, these agencies manage the peer review process in diverse ways. None has completely eliminated the potential for bias, though some have made great strides in that direction. Each can learn from the others, and all grantmaking agencies not included in the Conference study can learn from their experiences. These recommendations draw on their experience to suggest reforms that should further reduce the potential for bias at a relatively low cost.

Recommendation

1. Promoting Openness and Accountability

a. Reviewer meetings. Agencies that rely upon peer review to evaluate grant proposals should generally assemble the reviewers for a meeting in which each reviewer, in the presence of the other members, has an opportunity to comment upon the evaluations made by other members. Such meetings may also be by telephone conference call.

b. Feedback and rebuttal. Insofar as practicable, agencies should provide applicants with an opportunity for feedback and rebuttal as follows:

(1) Agencies that rely on peer review should prepare and routinely transmit to all applicants brief summaries of the reasons for evaluation results.

(2) If peer review committees prepare written evaluations of individual applications, agencies should retain these documents for a full funding cycle, and should make available copies of such written evaluations to applicants upon request in a redacted

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[2] In making these recommendations related to judicial review of decisions by federal banking agencies, the Administrative Conference takes no position on whether and to what extent judicial review of these decisions is available under current law.

[1] To encourage flexibility, innovation, or a rapid response where warranted, some agencies that ordinarily rely on peer review to evaluate grant proposals (such as the National Science Foundation) have found it useful to set aside a small portion of the available funds for relatively brief, small awards outside the normal channels of peer review.

[2] Especially in the scientific agencies, a recent trend toward greater openness has been noted. This has been prompted in part through enactment of the Freedom of Information Act (FOIA), the Federal Advisory Committee Act (FACA), and the Privacy Act. FOIA requires every federal agency to make available to any person any record in the agency's possession (subject to several exceptions potentially relevant to the peer review process) upon a request by that person that reasonably describes the record. FACA requires federal agencies that rely on recommendations of advisory committees to charter these committees and to run them according to statutory standards of openness. The Privacy Act directs agencies to protect personal information in agency files from unauthorized disclosure and to give individuals an opportunity to review information about themselves and to require that the agency correct inaccuracies. While peer review committees clearly come with FACA's definitions, there have been significant litigation and uncertainty over the effect of these laws.

form so that particular evaluations may not be attributed to particular reviewers. Agencies that retain documents prepared by peer reviewers should make them available in redacted form where practicable and where reviewers' candor would not be unduly affected.

(3) Statements and summaries of reasons should be made available to applicants sufficiently far in advance of the agency's final decision so that applicants may review the documents and submit comments for timely consideration by the peer reviewers or agency staff. Where this is not practicable, agencies should maintain an appropriate reconsideration system.

(4) Agencies that rely on peer review should develop guidelines identifying information that will normally be made available to grant applicants relating to their applications and specifying the procedures under which particular kinds of information will be available to different classes of requesters.

c. Applicant anonymity. While applicant anonymity will often be infeasible and inconsistent with effective application of merit review criteria, agencies should be aware of situations in which not revealing to peer reviewers the identities of applicants for discretionary grants would further objective review. Agencies should consider allowing reviewers to conduct discrete portions of peer reviews under conditions of applicant anonymity in cases in which complete applicant anonymity is not feasible or consistent with effective application of merit review criteria.

d. Reviewer anonymity. (1) The agency should provide that, although the identities of all members of any peer review panels should be made available to applicants and the public, granting agencies should be authorized to refuse to disclose information that would enable applicants to identify the persons who reviewed in detail a particular application.

(2) Agencies that rely on peer review should inform all peer review panelists in writing of their Privacy Act obligations and of the penalties that may flow from a breach of confidence. Agencies should consider sanctions, including instituting debarment or suspension procedures, against any panel reviewer who knowingly breaches confidentiality.

e. Contacts with peer reviewers, staff, and decisionmakers. While agencies that rely on peer review should encourage informal contacts between applicants and agency staff for the purpose of conveying general information, they should adopt appropriate statements of policy discouraging all ex parte contacts regarding particular grant proposals with peer reviewers and agency decisionmakers that attempt to influence grantmaking decisions outside the normal decisionmaking process.

2. Participants in the Review Process

a. Composition and structure of review committees. (1) Agencies that rely on peer review should endeavor to include some reviewers from related professional fields on peer review panels. Agencies should also consider including on the panels individuals who are not peers but who bring to bear perspectives relevant to the decision.

(2) To the extent consistent with agency resources and depending on the size and number of the grants awarded in a program, agencies should provide that the membership of peer review panels change on a regular basis; ensure that the number of persons serving on an individual peer review committee is sufficiently large to dilute the impact of any bias, permit duplicate reviews in two or more subcommittees, or allow multiple committees to perform a tiered review.

b. Conflicts of interest. (1) Agencies that rely on peer review should promulgate guidelines that prevent a person from reviewing or sitting on a panel that reviews his or her own grant application or the application of a relative, a close collaborator, a recently graduated former student, an institution by which the person is employed, or an affiliated institution. Insofar as possible, reviewers with a competing or other adverse interest to an application to be considered should not review that application.

(2) Agencies should provide that a reviewer must disclose a conflict of interest or appearance thereof to the agency and, if the reviewer continues to participate, to other members of the review committee.

(3) If necessary, agencies may provide for specific waivers, with disclosure, of the conflict of interest recommendations on a case-by-case basis when there is no other practical means for securing appropriate expert advice on a particular grant application.

(4) Agencies that rely on peer review should ensure that reviewers are informed and observe applicable rules or guidelines on bias and conflict of interest. In particular, agencies should caution persons on peer review panels of the need to protect against panel misuse of confidential information made available to it and should ensure that such information or position is not misused.

c. Opportunity to object to reviewers. Agencies that rely on peer review should provide that any applicant may submit a confidential list containing a small number of potential reviewers that the applicant deems objectionable together with a statement of the reasons for the challenges. Agencies should seriously consider such objections and honor those that are meritorious, unless the agency determines that a qualified group of peers cannot be assembled if all such challenges are honored.

d. Scoring applications. Agencies that rely upon scoring systems for evaluating and ranking discretionary grant proposals should consider developing methodologies for ensuring fairness in scoring applications.

3. Audits for Potential Bias

Agencies that rely on peer review should implement independent reviews of the process for bias and conflict of interest.

Dated: August 18, 1993.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 93–20741 Filed 8–27–93; 8:45 am]

BILLING CODE 8110–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF62

Prevailing Rate Systems; Definition of Travis and Burnet Counties, Texas, to Nonappropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to abolish the Travis, Texas, Nonappropriated Fund (NAF) wage area. The Travis wage area is composed of Travis County, Texas (survey area), and Burnet County, Texas (area of application). This regulation redefines Travis County, Texas, to the Bexar, Texas, wage area as an area of application and Burnet County, Texas, to the Bell, Texas, wage area of application. Because of downsizing associated with a scheduled base closure, the Travis County, Texas, survey area will not longer have the required minimum of 26 NAF wage employees, and no local activity within the Travis wage area has the capability to conduct a wage survey.

DATES: This interim rule is effective on June 1, 1993. Comments must be

received on or before September 29, 1993.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts (202) 606–2848.

SUPPLEMENTARY INFORMATION: Travis, Texas, is presently defined as a separate wage area for NAF pay-setting purposes. The Department of Defense notified OPM that the host activity for the Travis wage area, Bergstrom Air Force Base (AFB), is scheduled to close on October 1, 1993. Downsizing is underway, and most NAF activities were scheduled to close by June 1, 1993. Bergstrom AFB does not have the capability to conduct the wage-change survey for the Travis, Texas, wage area that was required to begin in June 1993 in accordance with appendix B to subpart B of part 532, title 5, Code of Federal Regulations.

In addition, Travis County, Texas, will no longer meet the regulatory criteria for an established Nonappropriated fund wage area under 5 CFR 532.219. Bergstrom AFB and Flying K Recreation Area are the only installations with NAF employment in the Travis wage area. As of October 1, 1993, Bergstrom AFB, located in Travis County, will be closed. The Flying K Recreation Area, located in Burnet County, Texas, does not employ the minimum of 26 NAF employees required to establish an NAF wage area. Thus, Travis and Burnet Counties must both be redefined as areas of application to existing wage areas for pay-setting purposes.

The following criteria are taken into consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;
(2) Transportation facilities and commuting patterns; and
(3) Similarities of the counties in:
  (i) Overall population;
  (ii) Private employment in major industry categories; and
  (iii) Kinds and sizes of private industrial establishments.

Geographically, Bergstrom AFB in Travis County is slightly closer (approximately 142 km (88 miles)) to Fort Hood in Bell County, the survey area for the Bell, Texas, wage area. The next closest wage area activity is Lackland AFB, which is approximately 150 km (93 miles) distant in Bexar County, Texas, the survey area for the Bexar, Texas, wage area. Transportation facilities do not favor any wage area. Commuting patterns indicate that 185,720 workers live and work in Travis County and that 434 Travis County residents commute to work in the Bexar, Texas, wage area, while 155 Travis County residents commute to work in the Bell, Texas, wage area. Travis County, population 576,407, is arguably more similar to Bell County in overall population—191,088 in Bell County, as compared to 1,185,394 in Bexar County. However, Travis County is most similar to Bexar County in regard to private employment in major industry categories and the kinds and sizes of private industrial establishments.

Geographically, Flying K. Recreation Area in Burnet County is closest (approximately 97 km (60 miles)) to Fort Hood in Bell County, Texas. The next closest wage area activity is Lackland AFB (approximately 153 km (95 miles) away), in Bexar County, Texas. Transportation facilities do not favor any wage area. However, the commuting patterns indicate that 4,325 workers live and work within Burnet County, while 139 Burnet County residents commute to work in the Bell, Texas, wage area. Residents do not commute from Burnet County to any other FWS wage area. Burnet County is most similar to Bell County in overall population. Burnet County is also most similar to Bell County in regard to private employment in major industry categories and the kinds and sizes of private industrial establishments.

Based on a review of the criteria for establishing and combining wage areas, we find that the Travis, Texas, wage area should be abolished as of June 1, 1993. In addition, on October 1, 1993, Travis County, Texas, should be redefined as an area of application to the Bexar, Texas, wage area, and Burnet County, Texas, should be redefined as an area of application to the Bell, Texas, NAF wage area. Thus, employees paid from the Travis, Texas, NAF wage schedule will remain on their current schedule until Bergstrom AFB officially closes on October 1, 1993. The Federal Prevailing Rate Advisory Committee reviewed this request and recommended approval by consensus.

Pursuant to sections 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking to accommodate changes necessitated by DOD downsizing and expedite this wage area redefinition. By June 1993, Travis County, Texas, did not meet the current criteria for establishing nonappropriated fund wage areas. Bergstrom AFB does not have the capability to conduct the Travis County wage-change survey that was required to begin in June 1993, and no local activity within the Travis wage area has the capability to conduct a wage survey.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATES SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—[Removed]

2. In appendix B to subpart B of part 532, the listing for the Travis, Texas, wage area is removed.

3. Appendix D to subpart B of part 532 is amended by removing the listing for the Travis, Texas, wage area and by revising the wage area listings for Bell, Texas, and Bexar, Texas, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Texas

Bell

Survey Area

Texas:
  Bell

Area of Application. Survey Area Plus

Texas:
  Burnet [1]
  Coryell
  Falls

Bexar

Survey Area

Texas
  Bexar

Area of Application. Survey Area plus

Texas:
Comal
Kerr
Travis[1]
Val Verde

* * * * *

[1] Effective date October 1, 1993.

[FR Doc. 93–20909 Filed 8–27–93; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Parts 872 and 873

RIN 3206–AE64

Federal Employees' Group Life Insurance Program; Election of Optional Coverage Upon Divorce or Death of a Spouse

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is publishing final Federal Employees' Group Life Insurance (FEGLI) Program regulations to allow Federal employees who have Basic FEGLI coverage an opportunity to elect Option B and/or Option C, or to add multiples of Option B, upon divorce or death of a spouse. This will provide consistency of election opportunity for all employees who experience a change in family status, whether upon marriage, divorce, death of a spouse, or acquisition of a child.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On December 9, 1992, OPM published proposed regulations (57 FR 58159) to permit FEGLI enrollees to elect coverage upon divorce or death of a spouse, or add coverage when the enrollee has dependent children. We received comments from two agencies and three employee organizations. One agency commenter suggested several editorial changes to increase the clarity of the provisions. We agree and have incorporated the suggested changes. The other agency commenter recommended that the opportunity to elect or add Option B coverage should be extended to divorced or widowed enrollees, regardless of whether there are any dependent children. The purpose of the regulatory change was to meet the increased life insurance needs of an enrollee who experiences a change in family responsibilities as a result of the divorce or death of a spouse. While a divorced or widowed enrollee with no dependents may experience changed financial circumstances, we see no compelling argument that such an individual has an increased need for life insurance.

All of the employee organizations support the proposal.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they relate to Federal employees and annuitants.

List of Subjects in 5 CFR Parts 872 and 873

Administrative practice and procedures, Government employees, Hostages, Life insurance, Retirement.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, OPM is amending 5 CFR parts 872 and 873 as follows:

1. The authority citations for parts 872 and 873 continue to read as follows:

Authority: 5 U.S.C. 8716.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

2. Section 872.205 is amended by revising the first and last sentences of paragraph (a)(2) and adding paragraphs (a)(2)(i) through (iii) and revising the first and last sentences of paragraph (a)(4) and adding paragraphs (a)(4)(i) through (iii) to read as follows:

§ 872.205 Cancellation of declination.

(a) * * *

(2) An employee who has declined additional optional insurance may elect it upon his/her marriage or divorce, or upon a spouse's death, or upon the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and subpart G of part 873 of this chapter. * * * The number of multiples which an employee may obtain upon marriage, divorce, death of a spouse or acquisition of unmarried dependent children is limited to the following:

(i) For marriage, the number of additional family members (spouse and/or dependent children) associated with the marriage;

(ii) For acquisition of children, the number of additional children acquired;

(iii) For divorce or death of a spouse, the total number of dependent children of the enrollee.

* * * * *

(4) An employee who has in force additional optional insurance of at least one but fewer than five multiples of annual pay may elect to increase the number of multiples upon his/her marriage or divorce, or upon a spouse's death, or upon the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and subpart G of part 873 of this chapter. * * * The number of multiples which an employee may obtain upon marriage, divorce, death of a spouse or acquisition of unmarried dependent children is limited to the following:

(i) For marriage, the number of additional family members (spouse and/or dependent children) associated with the marriage;

(ii) For acquisition of children, the number of additional children acquired;

(iii) For divorce or death of a spouse, the total number of dependent children of the enrollee.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

3. In § 873.205(a), the first sentence is revised to read as follows:

§ 872.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his or her marriage or divorce, or upon the acquisition of an unmarried dependent child, or upon a spouse's death, if the enrollee has any dependent children. * * *

* * * * *

[FR Doc. 93–20910 Filed 8–27–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV93–946–2FR]

Irish Potatoes Grown in Washington; Specification of a Minimum Grade Requirement for Potatoes Packed in Cartons and Clarification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which made several revisions to the handling regulation for Washington

potatoes, including the requirement that potatoes packed in cartons for domestic and export shipment must be modified U.S. No. 1 grade or better. The revised requirements are expected to improve the marketing of Washington potatoes and increase returns to Washington potato producers.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, MOAB, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170, or Dennis West, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 35 handlers of Washington potatoes subject to regulation under the order and about 450 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Washington fresh market potato shipments are regulated year-round by grade, size, quality, and maturity. These regulations have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the State of Washington Potato Committee (Committee). The Committee met February 4, 1993, and unanimously recommended a minimum of modified U.S. No. 1 grade for all cartons.

The interim final rule was issued June 3, 1993, and published in the Federal Register (58 FR 33016, June 15, 1993), with an effective date of June 15, 1993. That rule amended § 946.336 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended July 15, 1993. No comments were received.

Section 946.336(c) of the order specifies minimum grade requirements for potatoes packed in cartons. Upon implementation of the interim final rule, § 946.336(c) was amended to delete "50-pound" preceding "cartons" so that it applies to any carton. The Committee had been informed by food service and institutional buyers, both domestic and foreign, that a smaller carton size is more desirable for some users than the 50-pound carton. These buyers indicate that they need a smaller carton that takes up less storage space and is easier to lift and handle. However, the buyers still want to be provided with the same quality of potato—U.S. No. 1 or better. Previously, potatoes packed in other than 50-pound cartons had to meet only U.S. No. 2 requirements. This change in the handling regulation reflects the industry's current practice of providing a high quality product to users of potatoes packed in cartons.

Also, § 946.336(a)(2)(iv) was revised by removing redundant language. Previously, the handling regulation specified that the tolerances for size in the U.S. Standards for Grades of Potatoes (Standards) shall apply, except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minimum size and weight of 2⅛ inches or 4 ounces, a 3 percent tolerance for undersize shall apply. The Standards specify a 3 percent tolerance for potatoes that are smaller than the minimum size, regardless of the type of container used by the handler. The minimum size under the handling regulations for long variety (Russet type) potatoes is 2¼ inches or 4 ounces. Therefore, the 3 percent tolerance specified in the Standards for long variety (Russet type) potatoes smaller than 2⅛ inches or 4 ounces would apply. Therefore, the exception § 946.336(a)(2)(iv) was redundant and has been removed.

Finally, paragraph 946.336(c) was amended to clarify that certain potatoes must meet all U.S. No. 1 Grade requirements except size. Previously, the handling regulation provided that red, yellow-fleshed and white type potatoes, may be 1 inch minimum diameter, if U.S. No. 1 grade. The handling regulation also provided that any type of any size of potato may be packed in 3 pound or less containers if the potatoes are U.S. No. 1 grade or better. The regulation needed to be clarified because the U.S. No. 1 Grade requires a minimum size of 1⅞ inches in diameter. Therefore, the regulatory language was clarified to indicate that these potatoes must be U.S. No. 1 in all respects except size.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (58 FR 33016, June 15, 1993) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 946.336, which was published in the Federal Register (58 FR 33016, June 15, 1993), is adopted as a final rule without change.

[Note: This section will appear in the Code of Federal Regulations.]

Dated: August 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–20918 Filed 8–27–93; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 1004

[DA–93–17]

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of September 1993 through February 1994 the requirement that distributing plants qualifying for pooling under the Middle Atlantic Federal milk order dispose of at least 40 percent of their receipts as Class I use. As a result of the suspension, a pool distributing plant must dispose of at least 30 percent of its monthly milk receipts for fluid purposes in these months. The suspension was requested by several cooperatives that represent producers who supply a large portion of the milk for the market, and is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order.

EFFECTIVE DATE: September 1, 1993 through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 23, 1993; published June 29, 1993 (58 FR 34725).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the Federal Register on June 29, 1993 (58 FR 34725) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment supporting the proposed suspension was received, and is summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1993 through February 1994 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1004.7(a), the words "40 percent in the months of September through February, and" and "in the months of March through August".

Statement of Consideration

For the months of September 1993 through February 1994, this action suspends provisions of the Middle Atlantic milk order for the purpose of reducing the percentage of a pool distributing plant's receipts that must be disposed of for Class I purposes for each of the months covered by this action to the 30 percent level effective for other months. During the months the suspension is effective, distributing plants pooled under the Middle Atlantic milk order will have to use at least 30 percent, rather than 40 percent, of their monthly milk receipts as Class I milk.

The suspension was requested by several cooperative associations that represent about 90 percent of the market's producer milk. Since 1990, the percentage of the Middle Atlantic market's producer milk used in Class I has decreased. For example, in February 1990, 52 percent of Middle Atlantic producer milk was used in Class I compared with only 45 percent for the same month in 1993.

In addition, two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order. Under Order 4, diverted milk is included in the receipts of the plant from which the milk is diverted in determining whether such plant meets the minimum Class I use percentage to qualify as a pool plant.

As a consequence of the above recent changes in marketing conditions in the Middle Atlantic area, the cooperative association handlers of most of the producer milk in the marketing area are experiencing difficulty associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic

order without affecting the pool status of the milk and/or the plants.

A comment supporting the proposed suspension was filed by Dairylea Cooperative, Inc., on the basis that the suspension would assure that uneconomic and inefficient movements of milk would not be required to maintain the pool status of the milk of producers historically associated with the market.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Middle Atlantic marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7 part 1004 are suspended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.7 [Temporarily suspended in part]

2. In § 1004.7(a), the words "40 percent in the months of September through February, and" and "in the months of March through August", are suspended.

Dated: August 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–20974 Filed 8–27–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 329

[INS No. 1404–92]

RIN 1115–AC31

Special Classes of Persons Who May Be Naturalized: Naturalization Based Upon Active Duty Service in the United States Armed Forces During Specified Periods of Hostilities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Immigration and Naturalization Service (the Service) relating to the naturalization of aliens based upon military service during periods of hostilities. This rule implements section 405 of the Immigration Act of 1990 (IMMACT), which allows for the naturalization of natives of the Philippines, based upon certain active duty military service in the Armed Forces of the United States during World War II, who would not otherwise be eligible for naturalization. It also implements section 113 of The Department of Justice and Related Agencies Appropriations Act, 1993, ("1993 DOJ Appropriations Act"), which permits the interviewing and naturalization of these persons in the Philippines and extends the application period through February 2, 1995.

EFFECTIVE DATE: This rule is effective August 30, 1993. This rule applies to applications for naturalization filed on or after November 29, 1990, and before February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Chief, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington DC, 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: On March 15, 1991, at 56 FR 11060, the Immigration and Naturalization Service published an interim rule with request for comments to amend Service regulations in Title 8 of the Code of Federal Regulations, part 329, by changing the title of the part and adding a new § 329.5. This was necessary to implement section 405 of IMMACT which provides for the naturalization of certain natives of the Philippines based upon certain active duty military service in the Armed Forces of the United States during World War II. Section 405 provides that those persons with qualifying service may be naturalized as citizens of the United States without having been lawfully admitted to the United States for permanent residence, or without having enlisted within the United States or other qualifying area as required by section 329 of the Immigration and Nationality Act of 1952, as amended ("the Act"). Section 405 also waives the requirement that an applicant for naturalization must intend to reside in the United States after naturalization, allowing these newly naturalized citizens to reside in the Philippines after naturalization. Section 113 of the DOJ Appropriations Act, which was enacted on October 6, 1992, permits the interviewing and naturalization of these persons in the Philippines until February 2, 1996, and extends the application period through February 2, 1995. Other than these exemptions, applicants are required by statute to comply with all other requirements of naturalization under section 329 of the Act.

The interim rule provided specific documentary requirements that applicants must meet in order to apply for naturalization under this section. The interim rule also provided for central processing of applications submitted from outside the United States. The interim rule further provided that the Service will designate an interview site in the United States where applicants will be interviewed, unless an applicant specifically requests a different interview site when submitting the application. The interview site designated by the Service will be one where the adjudication of applications can be conducted most efficiently, so that the naturalization of applicants can be completed within a short period of time upon completion of the interview. Interested parties were invited to submit written comments to the interim rule by April 15, 1991.

Discussion of Comments on Interim Rule

During the 30-day comment period, the Service received 105 comments, all of which were reviewed and considered in developing this final rule. The Service has also noted the views of 135 late commenters who addressed many

of the same issues and expressed concerns similar to those previously submitted.

Numerous commenters discussed issues that either clearly exceeded the scope of section 405 of IMMACT or were not within the Service's rule-making authority. These areas are listed below.

(1) Requests were made that section 405 benefits be extended to persons who served in the United States Armed Forces during World War I, the Korean conflict, or the Vietnam era. However, the dates of qualifying service reflected in the regulation are those dates mandated by the statute.

(2) Requests were made that section 405 benefits be extended to the widows and/or survivors of persons who, if still alive, might have been eligible for these benefits. However, the statute provides only for the naturalization of the person who performed the qualifying military service.

(3) Requests were made that the families of the newly naturalized citizens be exempted from immigrant visa quotas. The statute, however, did not provide for any immigration benefits for family members and section 201 of the Act is specific as to who may be exempted from immigrant visa numerical restrictions.

(4) Requests were made to have veterans benefits made available to persons who would be naturalized under section 405 or to provide that veterans benefits for persons who served in the Philippine Army (and recognized guerrilla units) be the same as for those persons who served in the United States Army. The statute, however, did not provide for any changes in veterans benefits nor does the Service have the authority to promulgate regulations affecting veterans benefits.

(5) Requests were made that persons born outside the Philippines of Filipino parents who are considered citizens by the Philippine Government be included in the regulations. The statute provides only for the naturalization of persons born in the Philippines.

Many of the commenters objected to parts of the regulation on the basis that these parts are not consistent with sections 701 and 702 of the Immigration Act of 1940. The 1940 Act specifically provided that applicants under those sections would not be charged any fees and would be exempt from the normal literacy and educational requirements. Although section 405 of IMMACT was intended to provide relief to persons who would have been eligible under sections 701 or 702 of the 1940 Act but for the expirations of those sections in 1946, it was not merely a restatement of the 1940 Act. In 1968, the Supreme Court held that the expiration of these provisions left the courts of the United States without authority to naturalize aliens under the expired provisions. *INS v. Pangilinan*, 486 U.S. 875 (1988). It is clear from both the language and the legislative history of section 405 that Congress intended that applicants under this section be naturalized in a manner consistent with naturalization law currently in force.

Commenters also requested that all fees relating to the naturalization process be waived for the applicants under section 405. The commenters stated that many or most of the potential applicants are aged, unemployed, and very poor. Currently, 8 CFR 103.7(c) provides for a waiver of fees on a case-by-case basis for persons who are unable to pay. Therefore, there is no need to include an additional waiver in this regulation. Commenters also stated that no fees should be required under section 405 since none were required under section 701 of the 1940 Act. Section 344(a)(1) of the Act specially provides that a fee be charged for the "making, filing and docketing of an application for naturalization * * *". Without specific statutory authority to exempt applicants under section 405 from these fees, the Service can not exempt these applicants as a class from the appropriate fees.

Numerous commenters asked that the English language requirement and the testing on United States Government and history be waived for these applicants because of the applicants' advancing age or because these requirements were not included in section 701 of the 1940 Act. However, persons who may be exempted from the language requirement are specified in section 312 of the Act as persons who are at least 50 years of age who have resided in the United States for 20 years following lawful admission for permanent residence, persons who are at least 55 years of age who have resided in the United States for 15 years after lawful admission for permanent residence, and persons who are physically incapable of reading, writing, or speaking. No persons are exempted from displaying a knowledge of United States Government and history.

Two commenters questioned the evidence that would be accepted as proof of military service and the appropriateness of the certification of military service on Form N-426. These commenters recommended that Form N-426 be amended to reflect qualifying service in the Philippine Army, Philippine Scouts, or recognized guerrilla units. Other commenters suggested that the records of the Philippine Armed Forces and the Philippine Veterans Board, as well as affidavits of disinterested persons attesting to an applicant's active duty service, be honored equally with those of the United States Army with regard to the qualifying military service. The language used on Form N-426, Certification Military Service, is not specific to any one unit of the military. Therefore, it is not necessary to develop a new form solely for the purpose of certifying the military service of this group of applicants.

Section 329(a) of the Act states, in pertinent part, that "The executive department under which such person served *shall* (emphasis added) determine whether persons have served honorably *in* an active-duty status." Section 329(b)(3) further provides that "service in the military, air, or naval forces of the United States *shall* (emphasis added) be proved by a duly authenticated certificate from the executive department under which the applicant served * * *". No provision exists for the recognition of components of the Government of the Philippines or any other foreign government as an executive department of the United States. Additionally, a program to validate claims of those Filipinos who served in World War II took place from May 1945, through June 1946. These verifiable records for Philippine Scouts are maintained at the National Personnel Records Center (Military Personnel Records), St. Louis, Missouri, a branch of the National Archives. While there was some destruction of master personnel and medical records pertaining to persons who served in the United States Army (Philippine Scouts) due to a fire at the St. Louis facility, that agency has access to other official files including unit records, payroll records, and other military records from which the applicant's military service can be reconstructed for those affected files. The official repository for records of persons who served in the Philippine Army and the recognized guerrilla units during World War II is the United States Army Reserve Personnel Center at St. Louis, Missouri. Analysts associated with that Center have access to the various rosters of the guerrilla units, files related to claims for arrears in pay, as well as various other military records for use in certifying military service. While affidavits from individuals were statutorily acceptable under section 701 of the 1940 Act, they are not acceptable under section 329 of the Act. Therefore, a new paragraph (g) of § 329.5 has been added to clarify that only certifications

from the United States Army Reserve Personnel Center, St. Louis, Missouri, and the National Personnel Records Center, St. Louis, Missouri, will be accepted as proof of military service. This additional paragraph is merely a restatement of current Service policy.

The Service notes that there exist provisions for the correction of military service records. 10 U.S.C. 1552. If the relevant military personnel records center is unable to verify an applicant's military service, the applicant may want to pursue that alternative. If the request for correction of records results in the issuance of the proof of service required under the new paragraph 329.5(g), the applicant would then be able to satisfy the naturalization requirements of section 329 of the Act and section 405 of IMMACT.

One commenter felt that the amendments to the previous regulation were unnecessary, since the previous regulation was adequate to implement section 405. However, section 405 added requirements, such as the one which requires the applicant to be born in the Philippines, which were not addressed in the previous regulation at 8 CFR part 329. Nor can the procedures under the previous regulation accommodate the filing of thousands of applications from abroad within a short period of time. It is the intent of this regulation to both clarify the evidence required and provide a mechanism for the filing and processing of large numbers of applications from abroad.

Many of the commenters requested that applicants be either interviewed in, or permitted to naturalize in the Philippines. Other commenters suggested that if the Service was unable to naturalize persons in the Philippines, then applicants should be interviewed in the Philippines and then have arrangements made for them to travel to the United States for the actual naturalization ceremony. Several commenters suggested that Agana, Guam, be designated as the designated interview site. On October 6, 1992, however, the President signed into law the 1993 DOJ Appropriations Act. Section 113 of the DOJ Appropriations Act authorizes the Service to conduct naturalization proceedings under IMMACT section 405 in the Philippines during the period from February 3, 1993, through February 2, 1996. Section 329.5(d) has been amended to provide for the conduct of interviews in Manila, Philippines.

Several commenters objected to the requirement of § 329.5(b)(2) that persons who have resided outside the United States during the last five years provide police clearances for that period of time. The objection was based on the fact that they felt that honorable military service alone was sufficient for naturalization and this had not been required under section 701 of the 1940 Act. Under section 329 of the Act, those persons who have served honorably in the United States Armed Forces, if now discharged, must still establish good moral character for a reasonable time immediately preceding the naturalization. For persons who have been residing in the United States, the Service is able to check the records of the various law enforcement agencies of the United States and generally has had access to the applicant's criminal records abroad via the immigrant visa process. The requirement for a police clearance has been determined to be a reasonable way to investigate the applicant's good moral character. This process has been used in the enforcement of other provisions of the Act and the Service believes this is not an unreasonable burden on the applicant. Contrary to the statements of some of the commenters, this is not a requirement for a "Certificate of Good Moral Character." Therefore, this requirement will not be eliminated.

This final rule amends paragraph (e) to reflect the extension of the filing period provided by the Appropriations Act to February 2, 1995.

In that the naturalization regulations in general do not contemplate naturalization outside the United States, paragraphs (h) and (i) have been added to provide exemptions from other regulatory sections which make specific reference to the naturalization taking place within the United States, either in the context of the conduct of the ceremony, or in reference to revocation procedures.

This final rule also includes the correct zip code for the Lincoln, Nebraska, processing center, which is "68508."

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule as defined in Section 1(b) of E.O. 12992, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB Control Number for this collection is contained in 8 CFR 299.5

List of Subjects in 8 CFR Part 329

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements, Veterans.

Accordingly, the interim rule amending part 329 which was published at 56 FR 11060–11061 on March 15, 1991, is adopted as final with the following changes:

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

1. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443.

§ 329.5 [Amended]

2. In § 329.5, paragraph (c) is amended by revising the reference: "68509" to read: "68508".

3. Section 329.5 is amended by:

a. Revising paragraphs (d) and (e); and

b. Adding paragraphs (g), (h), and (i) to read as follows:

§ 329.5 Natives of the Philippines with active duty service during World War II.

* * * * *

(d)(1) A person residing in the Philippines shall be examined on his or her application at Manila, Philippines, unless he or she indicates in the application a preference to be interviewed in the United States. Those persons wishing to be interviewed in the United States shall submit with the application a statement listing the desired location and the reasons therefor. The Service may interview the applicant at a different site other than the one requested if it would, in fact, be in the best interest of the applicant to do so.

(2) A person residing outside the United States and outside the Philippines may request to be interviewed in the Philippines or in the United States. If such a person elects to be interviewed in the Philippines, he or she will be solely responsible for obtaining the necessary documents for entry into the Philippines.

(e) To be considered an application for naturalization under section 405, the application must be received by the Service no earlier than November 29, 1990, and no later than February 2, 1995.

* * * * *

(g) The service described in § 329.5(a)(2) shall be provided solely by the duly authenticated records of the United States Army Reserve Personnel

Records, St. Louis, Missouri, or the National Personnel Records Center, St. Louis, Missouri.

(h) Irrespective of the requirement in § 337.2(a) of this chapter that an administrative oath ceremony be conducted in the United States and within the jurisdiction in which the application was filed or was transferred pursuant to § 335.9 of this chapter, the administrative oath ceremony for an applicant under this section may be held within the geographical limits of the Philippines, provided the examination on the application was conducted in the Philippines.

(i) If it should be necessary to institute revocation proceedings pursuant to section 340 of the Act in the case of a person naturalized outside the United States pursuant to § 329.5 and he or she has never resided in the United States, the report of facts required in § 340.11 of this chapter shall be made to the district director having jurisdiction over the person's current residence outside the United States.

Dated: April 21, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–20981 Filed 8–27–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 574

[93–87]

RIN 1550–AA36

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its acquisition of control regulations, to add a new section implementing section 32 of the Federal Deposit Insurance Act, enacted as section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The new section requires certain savings associations and savings and loan holding companies to file a notice with the OTS prior to adding or replacing a member of the board of directors and prior to employing an individual in a position, or changing the responsibilities of an individual into another position, as a senior executive officer. The new regulation defines the terms "senior executive officer" and "troubled condition," establishes procedures for filing required notices, and clarifies the types of changes in control of a savings association or savings and loan holding company that require notices under section 32.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Senior Counsel, (202) 906–6415, V. Gerard Comizio, Deputy Chief Counsel, (202) 906–6411, Corporate and Securities Division; Mary Jo Johnson, Policy Analyst, Supervision, (202) 906–5739; Jackie Durham, Project Manager, (202) 906–6712, David A. Sjogren, Program Manager, Corporate Analysis, (202) 906–6739; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183, 484–5, was enacted into law. Section 914 of FIRREA added section 32 of the Federal Deposit Insurance Act (FDIA), codified at 12 U.S.C. 1831i (section 32), which requires that certain savings associations and savings and loan holding companies furnish the OTS with at least 30 days notice prior to adding any individual to the board of directors or employing any individual as a senior executive officer.

Savings associations and savings and loan holding companies subject to section 32 are prohibited from adding an individual as a member of the board of directors, or employing an individual as a senior executive officer, if the OTS issues a notice of disapproval of the addition or employment of such individual. The OTS must disapprove a notice if it finds that the competence, experience, character, or integrity of an individual indicates that it would not be in the best interests of the depositors of the savings association or the public for the individual to be employed by, or associated with, the savings association or savings and loan holding company. The OTS initially provided interim guidance concerning compliance with section 32 in Thrift Bulletin 45 (April 25, 1990).

II. Summary of Proposal

Notice of the proposed rule, published in the **Federal Register** on August 5, 1991, 56 FR 37162 (August 5, 1991), solicited public comment on all aspects of the proposal for a 30-day comment period. The proposed rule provided that a savings association or savings and loan holding company is subject to the notice requirement if the savings association or savings and loan holding company: (1) Has been chartered less than two years in the case of a savings association; (2) has undergone a change in control within the preceding two years; or (3) is not in compliance with the minimum capital requirements applicable to such savings association or is otherwise in a "troubled condition." The proposed rule included definitions of "director," "senior executive officer," and "troubled condition," and elaborated on the type of "change in control" that triggered the written notice requirement.

The proposed rule also set forth procedures for the filing of written notices, for the OTS's processing of the notices and requests for additional information, and for determining when the statutory 30-day review period begins. Under the proposed rule, individuals could assume their posts if the OTS issued a notice of intent not to disapprove. As permitted by section 32, the proposed rule provided for waivers of the prior notice requirement. Finally, the proposed rule set forth grounds for disapproval prescribed by section 32 and established an appeal procedure for cases where the OTS disapproved an individual's service as a director or senior executive officer.

Upon consideration of all the comments received during the public comment period, the OTS is adopting the proposal with some modifications, described below, in order to implement section 32 and also to clarify and provide guidance on various issues that have arisen in the application of these provisions.

III. Summary of Comments

The OTS received a total of 15 comment letters in response to the proposal, including 8 from savings associations and savings and loan holding companies, 3 from trade associations, and 4 from law firms that represent financial institutions. All of the commenters supported the proposal. The OTS has carefully considered all of the comments received during the comment period. The OTS also has reviewed the interim final rules promulgated by the other Federal banking agencies and has sought to adopt consistent provisions in order to provide a uniform scheme of regulation. The following is a discussion of the issues raised by the commenters:

Five commenters, primarily from the legal community, objected to the inclusion of "general counsel" or "their

functional equivalents," within the definition of "senior executive officer," questioning the regulatory oversight of an association or holding company's appointment of counsel. These commenters noted that the position of "general counsel" was not included in the definitions of "senior executive officer" in the regulations implementing section 32 that were promulgated by the other Federal banking agencies, and also raised concerns about the potential for the OTS to interpret the phrase "functional equivalents" to require prior notice for outside counsel retained by a savings association or savings and loan holding company. One commenter noted that the definition should be limited to employees of an institution, since management and the board of directors, not outside consultants and law firms, make major policy decisions for an institution. As discussed below, the OTS believes it is appropriate to delete these terms from the final rule.

Five commenters expressed concern that the proposed definition of "troubled condition" was too broad in application and differed from the more limited definitions promulgated by the other Federal banking agencies. In particular, comments dealt with the types of enforcement actions, proceedings, and agreements that could characterize an association or holding company as being in "troubled condition." Other comments noted that the proposal lacked any degree of regulatory flexibility to otherwise not denote an association or holding company as being in "troubled condition," merely because a certain action gave rise to a formal written agreement. As discussed below, the OTS has clarified the definition of "troubled condition" contained in the final rule to provide consistency in the definitions promulgated by all of the Federal banking agencies.

Two comments were received concerning the proposed special rule for multi-tiered publicly held diversified savings and loan holding companies. One commenter urged that the OTS apply the special rule to multi-tiered non-diversified publicly held companies. One commenter urged that the OTS apply the special rule to diversified companies that do not have a class of stock registered under the Securities Exchange Act of 1934. As discussed below, the OTS has expanded the coverage of the special rule to all multi-tiered savings and loan holding companies and adopted an abbreviated notice procedure in certain circumstances to further ease regulatory compliance consistent with the scope and purpose of section 32.

Two comments were received pertaining to the application of section 32 requirements to a holding company acquiror of a savings association. One commenter recommended deletion of the reference to the Savings and Loan Holding Company Act and suggested an explicit exemption for acquisition transactions requiring an application by a company (including a bank or savings and loan holding company) that has been approved by the OTS after evaluation of its managerial resources. Another commenter recommended that the final rule clarify the term "change in control" to state that a savings and loan holding company does not experience a change in control when it acquires a savings association. As discussed below, the OTS has determined that acquisitions by companies will constitute a change in control, triggering the notice requirements, but only with respect to personnel changes at the savings association level.

Comments were received concerning the lateral transfer of a senior executive officer to another position at a savings association or holding company. Two commenters argued that section 32 should not apply since the individual is already in a policy-making position. As discussed below, the OTS believes that a change in responsibility of an individual is appropriate for regulatory oversight. The OTS's view is consistent with the positions expressed by the other Federal banking agencies.

IV. The Final Rule

The final rule is structured in four sections: (i) Definitions (§ 574.9(a)); (ii) prior notice requirements (§ 574.9(b)); (iii) savings associations and holding companies covered (§ 574.9(c)); and (iv) the procedures to be followed (§ 574.9(d)). In response to the comments received, the final rule reflects certain changes from the proposed rule, discussed below. In addition, the OTS has made other changes for purposes of clarification. Further, the final rule reflects certain changes from the procedures for processing notices, designed to streamline and simplify the requirements that may be imposed on a savings association or savings and loan holding company during the notice period.

A. Definitions

1. Senior Executive Officer

For purposes of the notice requirements of section 32, the term *senior executive officer* was proposed to include the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel, or their functional equivalents, or any individual who exercises significant influence over, or participates in, major policy-making decisions of a savings association or savings and loan holding company without regard to title, salary, or compensation.

The proposed term "senior executive officer" also included any employee of another entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation on behalf of a savings association or savings and loan holding company.

The final rule generally adopts the proposed definition of "senior executive officer." However, the OTS has made several changes to the proposed definition designed to clarify the rule's requirements and, where appropriate, streamline the regulatory compliance burden under the rule.

First, the senior executive officer definition is clarified by eliminating the reference to the phrase "or their functional equivalents" that had been in the proposal. A savings association or savings and loan holding company will not be obligated to file a notice for an individual other than for a specifically listed position, unless the OTS identifies that an individual who will occupy a position not specified in the list will exercise significant influence over, or participate in, major policy making decisions of the savings association or savings and loan holding company. The OTS believes that this change will provide savings associations and savings and loan holding companies with more certainty over which positions are covered by the definition of senior executive officer. Second, the position of president has been deleted from the definition, because the individual who will occupy that position generally will also perform one of the listed functions.[1]

In addition, the OTS has removed the specific reference to "general counsel" from the list of enumerated positions to be more consistent with the "senior executive officer" definitions of the other Federal banking agencies. However, if an individual holding that type of position exercises significant influence over or participates in major

[1] Where an individual is the president of a savings association or savings and loan holding company and does not perform one of the listed functions, the OTS still may determine that the individual exercises significant influence over, or participates in, major policy making decisions of the savings association or savings and loan holding company and, therefore, require that a notice under section 32 be filed.

policy-making decisions of a savings association or savings and loan holding company, the OTS may subject that individual to the requirements of section 32 and the rule.[2]

For the positions specifically listed in the final rule, responsibility rests with savings associations, savings and loan holding companies, and entities or persons covered by the rule to ensure compliance. Savings associations and savings and loan holding companies are encouraged to contact the appropriate OTS Regional Office prior to employing or retaining any individual, if questions exist regarding the application of section 32 to that individual.

The final rule makes clear that prior notice to the OTS must be given where a senior executive officer of a savings association or savings and loan holding company is promoted or laterally transferred to another position as a senior executive officer of the same savings association or savings and loan holding company subject to section 32. Section 32 requires the OTS to evaluate the competence, experience, character, and integrity of any individual proposed to occupy a position as director or senior executive officer, to determine if it is in the best interests of the depositors of the savings association and the public to permit the individual to be employed by, or associated with, a savings association or savings and loan holding company that is subject to the rule. Therefore, it is appropriate to apply the requirements whenever there is a "change in responsibilities" of any individual at a savings association or holding company subject to this rule, even though such "change in responsibilities" is not accompanied by a change in title or salary.

Furthermore, with respect to the applicability of section 32 to the "proposed addition of any individual to the board of directors," the final rule also clarifies that section 32 covers not only increases in board membership but also replacements, filling of vacancies on the board, and a "change in responsibilities" of any individual. Therefore, the notice requirement also applies to a senior executive officer who is proposed as a director of the savings association or savings and loan holding company and to a director who is offered employment as a senior executive officer. However, the provision is not intended to apply to a re-election of a director who is already serving on the board of directors of a savings association or savings and loan holding company.

2. Complete Notice

For purposes of clarity and to streamline filing and processing procedure requirements, further discussed below, the OTS has added to the final rule a definition of the term "complete notice". A complete notice is a notice that provides all the information required by § 574.9(d). This information includes legible fingerprints and complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers. The information also includes any additional information that the OTS may request following a determination that the original submission of the notice was not complete.

If a savings association or savings and loan holding company does not provide full and thorough information, the OTS will provide written notification to the filer of the notice that the notice is not complete, set forth the reasons for this determination, and may request that the filer of the notice submit additional information on specific topics.

If false information is provided concerning a material fact: (1) The person(s) responsible may be subject to criminal sanctions; (2) the fraudulent notice will be considered by the OTS as never having been complete; and (3) if a individual assumed the position designated in the fraudulent notice, that individual will be required to discontinue service to the savings association or savings and loan holding company.

3. Complete Notice Date

For purposes of clarity and to streamline the processing procedure requirements, the OTS has also added to the final rule a definition of the term "complete notice date." The OTS will provide written notification to the filer of a notice of the complete notice date when the OTS has received a "complete notice." This date of receipt will mark the beginning of the 30-day review period. If, however, the original submission of the notice is considered not complete, the OTS will inform the filer of the notice of this conclusion in writing.

4. Troubled Condition

a. Savings Associations. The term "troubled condition" with respect to savings associations was proposed to mean a savings association: (1) That has received a composite examination rating of 4 or 5 in its most recent report of examination; (2) that is subject to a capital directive or a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or (3) that was informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 32 as a result of its current financial statements or report of examination, or limited-scope review of the savings association or its holding company. In addition, a savings association that fails to meet any of its applicable regulatory capital requirements under 12 CFR part 567 would be subject to the section 32 notice requirement.

The OTS has clarified the definition contained in the final rule to provide greater consistency in the definitions promulgated by all of the Federal banking agencies. Therefore, a savings association is defined as being in "troubled condition" under the rule if it: (1) Has a composite examination rating of 4 or 5; (2) is informed in writing by the OTS that it has been designated in "troubled condition" based upon its current financial statements, report of examination, or limited scope review of the association; or (3) is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a prompt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS. Prompt corrective action directives have been added to the foregoing list in recognition of the effectiveness of the prompt corrective action provisions of section 38 of the FDIA, 12 U.S.C. 1831o.

b. Savings and Loan Holding Companies. The term "troubled condition" with respect to a savings and loan holding company was proposed to mean a savings and loan holding company: (1) That is subject to either a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of its subsidiary savings

[2] Furthermore, in situations where a savings association or savings and loan holding company retains any outside person to perform the functions of a "senior executive officer" and that person is identified by the OTS as an individual that will exercise significant influence over or participate in major policy-making decisions of a savings association or savings and loan holding company, the individual would be subject to the rule. Thus, outside counsel, other professionals, or consultants may be subject to the rule if the individual performs the functions of a "senior executive officer" and is identified by the OTS as an individual that will exercise significant influence over or participate in major policy-making decisions of a savings association or savings and loan holding company.

association, unless otherwise informed in writing by the OTS; (2) that was informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 32 as a result of the current financial statements or report of examination, or limited scope review of the holding company or its subsidiary association; or (3) that the OTS determines is having a detrimental or burdensome effect on its subsidiary savings association or that requires more than the normal level of supervision.

The OTS has clarified the types of enforcement actions that would trigger a holding company deemed to be in "troubled condition" to conform to the definitions used by the other Federal banking agencies. The OTS also has deleted the "detrimental and burdensome" standard and will use standards consistent with the standards used by the Board of Governors of the Federal Reserve System (Board of Governors), where appropriate, to determine if a holding company is in "troubled condition." Thus, a savings and loan holding company will be deemed to be in "troubled condition" if the holding company is rated unsatisfactory or is otherwise notified in writing by the OTS that it is having or has had an adverse effect on its subsidiary savings association.

B. Prior Notice Requirement

Like the proposed rule, the final rule provides that a savings association or savings and loan holding company subject to this section shall notify the OTS of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such association or holding company at least 30 days before such addition or employment becomes effective. The final rule includes the clarification that a savings association or savings and loan holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the OTS issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the OTS receives a complete notice of the proposed action under this section. The description of the savings associations and holding companies covered has been moved to a separate paragraph.

C. Savings Associations and Holding Companies Covered

Pursuant to section 32, the final rule identifies three categories of savings associations and savings and loan holding companies that must file a notice of intent to add a director or employ a senior executive officer.[3] As proposed, the first category includes savings associations that have been chartered for less than two years. However, the final rule also includes an exclusion for a savings association that has operated as an insured depository institution for at least two years, as determined by the OTS upon written request.

The second category includes savings associations or savings and loan holding companies that have directly or indirectly undergone a change in control within the preceding two years, subject to either the Change in Bank Control Act, 12 U.S.C. 1817(j), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated under these provisions at 12 CFR part 574. The change in control standard for application of the section 32 requirements is triggered for a savings association if there is a direct change in control of the savings association or a change in control of the association's holding company. However, upon written request to the OTS, the OTS may determine that the transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control, such as an Application H–(e)1–S or an Application H–(e)4, will not be deemed to be a change in control triggering the requirements of section 32.

The OTS has also concluded that a change in control at the savings association level that would trigger section 32 prior notice requirements for directors and senior executive officers at the association would not trigger section 32 requirements for directors or senior executive officers at an acquiring company. Of course, if a holding company also undergoes a change in control or is deemed to be in "troubled condition," section 32 would become applicable to changes in directors and senior executive officers at the holding company level.

The current standard for changes of control at mutual savings associations provides that a change of control occurs upon the filing of reports of change in control of mutual savings associations, pursuant to 12 CFR 563.181. The OTS had explicitly sought comments concerning whether a change in the highest-ranking official at a mutual association should also be treated as a change in control for purposes of section 32.

Because a change in the highest-ranking official of a mutual savings association could result in a change in the direction of the management or policies of the association, the OTS will review, on a case-by-case basis, the facts and circumstances surrounding the filing of notices filed under § 563.183, Reports of Change in Chief Executive Officer or Director. If, upon review of such notices, it appears that an actual change in control has occurred, the OTS will notify the association that, in the future, it is subject to section 32.

The third category of associations required to provide prior notice under section 32 includes savings associations not in compliance with any of the minimum capital requirements established pursuant to 12 CFR part 567 and savings associations or savings and loan holding companies that are otherwise deemed to be in a "troubled condition."

Failure to file prior notice of intent to add a director or employ a senior executive officer may require immediate resignation of the subject individual and may subject the individual, the savings association, or savings and loan holding company to enforcement actions, including assessment of civil money penalties.

D. Procedures

1. Filing Requirements

a. Required Information. Section 32 provides that notices filed pursuant to that section must contain the information required under section 7(j)(6)(A) of the FDIA, 12 U.S.C. 1817(j)(6)(A), and such additional information as the OTS may require by regulation. In particular, section 32 requires the OTS to review the competence, experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of a savings association or savings and loan holding company.

The final rule provides that notices shall be filed in accordance with the filing procedures set forth at 12 CFR 516.1. Since the final rule includes all the processing procedures for a notice, the applications processing guidelines under 12 CFR 516.2 and the definitions under 12 CFR 516.3 will not apply to a notice.

[3] The OTS notes that under section 10(l) of the Home Owners' Loan Act, 12 U.S.C. 1467a(10)(l), state-chartered savings banks or cooperative banks not currently subject to regulation by the OTS may elect to be treated as savings associations for the purpose of section 10 of the HOLA. Regulation by the OTS of an institution that makes a section 10(l) election generally is limited to regulation of its savings and loan holding company under section 10 of the HOLA, and verification that the holding company's subsidiary institution meets the Qualified Thrift Lender Test.

Notices are required to be filed on the appropriate OTS form(s), which requests the identity, personal history, business background, and experience of the individual, including financial statements and other relevant financial data, pending legal or administrative proceedings, and an explanation of any criminal indictment or conviction involving the individual. The OTS may modify these requirements where appropriate, but will require at least the information that is required by section 7(j)(6)(A) of the FDIA (unless the special rule discussed below is applicable), and may request additional information necessary to permit a full evaluation of the competence, experience, character, or integrity of the individual with respect to whom the notice has been filed, or of the public interest factors the OTS must consider. Section 574.9(d)(2) of the final rule has been added to clarify the information requirements for the content of a notice.

In addition, for certain notices the OTS may require information regarding proposed compensation arrangements. The OTS has provided guidance on the matter of executive compensation.[4]

b. Special Rule for Multi-Tiered Holding Companies. The OTS will apply the full notice requirements required by this final rule only to savings and loan holding companies that directly control a savings association. However, if such savings and loan holding company is a "shell" in a multi-tiered holding company structure, *i.e.*, a minimally capitalized company without substantial assets and lacking independent operations, then that company and its immediate parent company, *i.e.*, the company that controls such shell company, also will be subject to the full notice requirements. In addition, in the event such second company also is a shell, then the company above it shall be subject to such requirements, and so on, until at least one savings and loan holding company in the line of ownership that is not a shell is subject to the full notification requirements of this provision.

Proposed directors and officials of companies in a multi-tiered savings and loan holding company structure who are not required to submit Form 1393 by virtue of this special rule may satisfy the OTS's notice requirements under section 32 by submitting: (1) The OTS's Regulatory Bulletin 20 certification regarding such individual's involvement in certain types of legal proceedings and (2) a certification, from the individual and the highest-ranking official of the company, that the appointment of the individual as a senior executive officer would not raise grounds for disapproval of the notice under section 32, 12 U.S.C. 1831i, or the OTS rule thereunder. All such filings are subject to § 563.180(b) regarding false or misleading statements or omissions in filings made with the OTS.

Notwithstanding this special rule, the OTS may require any such additional information as is necessary to adequately evaluate a notice filed under this section.

c. Waiver of Prior Notice. The final rule provides, in § 574.9(d)(8), that a savings association or savings and loan holding company may file with the OTS a written request for a waiver of the prior notice requirement. The OTS may waive the prior notice requirement, but not the filing of the notice required under section 32 of the FDIA, if the OTS finds that the waiver of prior notice would be in the best interest of the savings association or savings and loan holding company, would be in the public interest or that other extraordinary circumstances exist. The final rule clarifies that any request for a waiver of prior notice be in writing.

The final rule also clarifies, in § 574.9(d)(8)(ii), that in situations where directors are elected who were not nominated by the board of directors of the savings association or savings and loan holding company, such as in the case of a proxy contest, a waiver of prior notice is automatically granted to the savings association or savings and loan holding company. However, the waiver of prior notice is granted contingent upon the savings association or savings and loan holding company subsequently filing a complete notice with the OTS as soon as practicable but not later than seven days from the date the individual is notified of election to the board of directors.

In these contested election situations, there is potential for shareholders of a savings association or savings and loan holding company to draw a negative inference from the lack of prior regulatory review under section 32. Therefore, as an alternative to the above described waiver of notice procedure, the final rule provides, in § 574.9(d)(1)(ii), that an individual not nominated by the board of directors of the savings association or savings and loan holding company may submit a notice directly to the OTS. In these situations, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete, and made in good faith. Therefore, under the final rule, an individual not nominated for election by the board of directors of the savings association or savings and loan holding company has the option of either submitting the notice directly to the OTS prior to the election as provided under § 574.9(d)(1)(ii) or relying on the automatic waiver provided under § 574.9(d)(8)(ii).

Finally, with respect to waivers of prior notice, the OTS has made three clarifying changes to the final rule. First, the OTS has revised the provision regarding waiver of prior notice to clarify that the length of the waiver period is based on the circumstances of each situation.

Second, once the OTS has granted a waiver of prior notice, the proposed individual may assume the position on an interim basis, and the savings association or savings and loan holding company must submit a complete notice in a timely manner as provided for in the waiver. If a complete notice is filed in a timely manner, the proposed individual can serve on an interim basis until the individual and the savings association or savings and loan holding company receive a notice of disapproval. If a complete notice is not filed in a timely manner, the proposed individual must resign his or her position as of the date the complete notice was due. The individual can assume the position on a permanent basis only after the savings association or savings and loan holding company receives a notice of intent not to disapprove or the 30-day review period elapses.

Third, in the last sentence of § 574.10(c)(5)(i) of the proposed rule, the OTS has replaced the phrase "within 30 days of the receipt of a complete notice" with "within 30 days of the expiration of such waiver." The new language is found in § 574.9(d)(8)(i) of the final rule. The OTS amended this language to be consistent with the statutory language of section 32 of the FDIA.[5] This change provides the OTS with the full 30 days to review the notice after the last possible date that the complete notice could be submitted under the terms of the waiver (i.e., on the date the waiver expires).

d. Requests for Additional Information Following Receipt of a

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[4] *See*, OTS Regulatory Bulletin 27a, dated March 5, 1993.

[5] 12 U.S.C. 1831i(c)(2) provides that such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

Complete Notice. For purposes of clarification and to further streamline the notice requirements, the OTS final rule sets forth revised notice processing provisions. If the OTS, during its review of a complete notice, discovers information that may lead to a disapproval before the end of the 30-day review period, the OTS may request in writing, when feasible, that the filer of the notice submit additional information, within a certain time frame, which addresses the discovered information. Because the OTS cannot extend the 30-day review period, the filer of the notice must provide the additional information by the date specified by the OTS. However, if the 30-day review period is about to expire, the filer of the notice may request, under § 574.9(d)(4), that the OTS suspend processing the notice for up to 60 days if the filer of the notice is unable to respond to the request for additional information within the time period specified by the OTS.

If the filer of the notice does not provide the additional information before the expiration of the applicable time period, the OTS has two choices; it can make a decision on the notice based on the information then before it (drawing any reasonable inferences from the failure to provide the requested information) or it can treat the notice as withdrawn and inform the savings association or savings and loan holding company and the individual of this determination in writing.

e. Instances when the OTS Does not Receive Report(s) that it has Requested from other Government Agencies Within the 30-day Review Period. For purposes of clarification and to further streamline the notice requirements, the OTS final rule includes a notice processing provision that relates to background reports from other government agencies. Occasionally, the OTS does not receive a report or reports that it has requested from other government agencies concerning a proposed individual within the 30-day review period. In that case, the OTS may request that the savings association or savings and loan holding company and the proposed individual certify, by signing a letter provided by the OTS, that the individual will not assume the proposed position until the OTS has received and reviewed the report(s) and has issued a notice of intent not to disapprove. In making this request, the OTS will notify the savings association or savings and loan holding company and the individual of the basis for the OTS's unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period. If either the savings association or savings and loan holding company, or the individual does not sign the certification before the end of the 30-day review period, the OTS will decide whether to issue a notice of disapproval based on the information then before it. The final rule has been modified to reflect this change.

f. Commencement of Service. The proposed rule provided that the proposed individual may begin service in a position upon the expiration of the 30-day review period unless the OTS issues a notice of disapproval by the end of that period. The OTS has clarified the final rule to provide additional guidance on the question of when an individual can assume the proposed position. Under the final rule, an individual may assume the proposed position following the end of the 30-day review period, unless: (1) The OTS issues a notice of disapproval during the 30-day review period; (2) the OTS suspends the 30-day review period pursuant to § 574.9(d)(4)(i); (3) the savings association or savings and loan holding company and the proposed individual certify, pursuant to § 574.9(d)(4)(ii), that the individual will not assume the proposed position; or (4) the savings association or savings and loan holding company does not provide additional information within the time period required by the OTS pursuant to § 574.9(d)(3)(ii) and the OTS informs the savings association or savings and loan holding company in writing that it is treating the notice as withdrawn.

2. Appeals

The proposed rule included a specific provision concerning the procedures for appealing a notice of disapproval. Since the OTS's Application Restructuring Regulation[6] deleted provisions providing appeals procedures from various OTS regulations, the appeals provision included in the proposed rule has not been included in the final rule. However, until the OTS issues new procedures regarding appeals of notices of disapprovals, as a matter of policy, the OTS will follow the appeal procedures set forth in the proposed rule.[7]

If an appeal is not filed within the time period indicated in the notice of disapproval, objection to the notice of disapproval is waived. A timely appeal filed in accordance with the procedures set forth in the notice of disapproval or the OTS's procedures shall be mandatory for securing judicial review of a notice of disapproval.

E. Other Matters

1. Effect on Other Statutes

The OTS does not believe that Congress, in enacting section 32, intended to repeal, modify, or amend other pre-existing statutory authority permitting or requiring the OTS to require a notice in similar situations. Specifically, section 32 does not displace or supersede the OTS's authority implied in section 5(e) of the Home Owners' Loan Act, 12 U.S.C. 1464(5)(e), to require, as a condition of granting a charter, prior review of proposed changes in executive officers for three years after a savings association is chartered. Such a condition has been imposed on new thrift charters for many years.[8]

Similarly, section 32 does not replace or repeal section 7(j)(12) of the FDIA, 12 U.S.C. 1817(j)(12), that states that whenever a change in control occurs, the bank or savings association "shall report promptly * * * any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period * * *."

Nor does section 32 displace or repeal any provision of section 8(b) of the FDIA, 12 U.S.C. 1818(b), which authorizes the OTS to include a provision in a cease and desist order requiring a savings association to take "affirmative action to correct the conditions resulting from [any] violation or practice." Under this authority, the OTS can require a savings association to obtain prior approval from the OTS before a proposed individual becomes a director of, or is employed by, a savings association. This authority is also not subject to a requirement that review of requests be completed within 30 days.

Further, section 32 does not displace any provision of section 38(f) of the FDIA, 12 U.S.C. 1831o(f). This statute authorizes the OTS to do one or more of the following: order a new election for a savings association's board of directors; require a savings association to dismiss from office any director or senior executive officer who held office for more than 180 days immediately before the savings association became undercapitalized; or require a savings association to employ qualified senior executive officers (who, if the OTS so specifies, shall be subject to approval by the OTS). This statute, like the chartering authority, does not require the OTS to complete its review or to act

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[6] *See*, 57 FR 14329 (Apr. 20, 1992).

[7] *See*, 58 FR 37162, 37166 (Aug. 5, 1991) (proposed to be codified at 12 CFR 574.10(c)(6)).

[8] *See*, 12 U.S.C. 1831i.

with respect to a proposed individual in 30 days.

Finally, it is emphasized that compliance with the prior notice requirement of section 32 does not remove the requirement for certain individuals to comply with the provisions of section 19 of the FDIA, 12 U.S.C. 1829. Pursuant to section 1829, persons previously convicted of criminal offenses involving dishonesty or breach of trust may not become institution-affiliated parties with respect to a savings association, or participate, directly or indirectly, in the conduct of a savings association's affairs, without obtaining the prior written consent of the FDIC. Section 32 does not preclude or remove the requirement for an affected individual to obtain separate prior written consent from the FDIC pursuant to section 1829.

Other statutes may also provide authority to review changes in executive officers or directors of savings associations or savings and loan holding companies and, similarly, are not preempted by the section 32 process.

2. Effective Date

Section 32 became effective upon the enactment of FIRREA on August 9, 1989. Accordingly, all savings associations and savings and loan holding companies that were subject to one of the three categories of applicability under section 32 upon enactment of the FIRREA were at that time subject to the section 32 prior notice requirements. This final rule clarifies and implements the application of section 32 to savings associations and savings and loan holding companies. It does not alter the August 9, 1989 effective date of the requirements of section 32.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

VI. Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" for purposes of Executive Order 12291. Therefore, preparation of a regulatory impact analysis is not required.

VII. Paperwork Reduction Act

The reporting requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1550-0047. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting requirements in this final rule are found in 12 CFR 574.9(d). The information is needed by the OTS to enable it to make a determination as to the hiring or appointment of senior executive officers or directors at savings institutions or thrift holding companies. The OTS determination must be based on an evaluation of the individual's competence, experience, character, and integrity. The information required by the collection is necessary to make this determination. The likely respondents are savings associations and savings and loan holding companies.

Estimated number of respondents: 900.

Estimated average annual burden per respondent: 2.5 hours.

Estimated annual frequency of responses: 1.

Estimated total annual reporting burden: 2,250 hours.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends parts 506 and 574, subchapters A and D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding 16 new entries to the table in paragraph (b) in numerical order and by removing three entries to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
[Removed]	
* * * *	* *
563.45	1550–0002
* * * *	* *
563.131	1550–0028
* * * *	* *
563b.20 through 563.33	1550–0074
* * * *	* *
[Added]	
* * * *	* *
552.6	1550–0025
552.7	1550–0025
* * * *	* *
552.13	1550–0025
* * * *	* *
563.170	1550–0011
* * * *	* *
563.181	1550–0032
563.183	1550–0032
* * * *	* *
563.99 through 563.101 (subpart D), Appendix A	1550–0078
* * * *	* *
563b.4	1550–0032
* * * *	* *
563b.20 through 563.32	1550–0074
* * * *	* *
571.5	1550–0016, 1550–0025
* * * *	* *
574.3(b)	1550–0032
574.5	1550–0032
* * * *	* *
574.9	1550–0047
* * * *	* *
584.2–1	1550–0063
* * * *	* *
584.9	1550–0063

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

3. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

4. Section 574.9 is added to read as follows:

§ 574.9 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.

(a) *Definitions.* As used in this section and in the forms under this section, the following definitions apply, unless the context otherwise requires:

(1) *Director.* The term *director* means any individual who serves on the board

of directors of a savings association or savings and loan holding company, except that such term does not include an advisory director who was not elected by the shareholders of the savings association or savings and loan holding company and is not authorized to vote on any matters before the board of directors, but provides only general policy advice to the board of directors. However, the term does include an advisory director who performs the same functions as a director or who exercises significant influence over, or participates in, major policy-making decisions of the board of directors of a savings association or savings and loan holding company.

(2) *Senior Executive Officer.* The term *senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer and any other individual identified by the OTS to a savings association or a savings and loan holding company who exercises significant influence over, or participates in, major policy decisions of a savings association or a savings and loan holding company without regard to title, salary, or compensation. The term also includes employees of entities retained by a savings association or savings and loan holding company to perform such functions in lieu of directly hiring the individuals, who are similarly identified by the OTS to the savings association or savings and loan holding company.

(3) *Complete Notice.* The term *complete notice* means a notice that provides all the information requested in paragraph (d)(2) of this section, including legible fingerprints, complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OTS may request following a determination that the original submission of the notice was not complete.

(4) *Complete Notice Date.* The term *complete notice date* means the date on which the OTS has received a complete notice.

(5) *Troubled Condition.* The term *troubled condition* means:

(i) Any savings association that:

(A) Has a composite rating of 4 or 5 under the examination rating system;

(B) Is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a pt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(C) Is informed in writing by the OTS that it has been designated in *troubled condition* based on the current financial statements, report of examination, or limited scope review of the savings association; or

(ii) Any savings and loan holding company that:

(A) Is subject to a cease and desist order, a consent order, a prompt corrective action directive, or a formal written agreement, relating to the safety and soundness or financial viability of its savings association subsidiary, unless otherwise informed in writing by the OTS;

(B) Is informed in writing by the OTS that it has been designated as being in *troubled condition* based on the current financial statements, report of examination, limited scope review, periodic filings, or other filings of the holding company or its subsidiary savings association; or

(C) Is rated unsatisfactory or is informed in writing by the OTS that it otherwise has an adverse effect on its subsidiary savings association.

(b) *Prior Notice.* (1) A savings association or savings and loan holding company described in paragraph (c) of this section shall notify the OTS of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such savings association or savings and loan holding company at least 30 days before such addition or employment becomes effective.

(2) A savings association or savings and loan holding company described in paragraph (c) of this section may not add any individual to the board of directors or employ any individual as a senior executive officer if the OTS issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the complete notice date.

(c) *Savings associations and holding companies covered.* The requirements of paragraph (b) of this section shall apply:

(1) In the case of a savings association, a savings association that has been chartered less than two years, excluding a savings association that has operated as an insured depository institution for at least two years as determined by the OTS upon written request;

(2) In the case of a savings association or savings and loan holding company, a savings association or savings and loan holding company, respectively, that within the two years preceding the proposed addition or employment, has directly or indirectly undergone a change in control subject to the Change in Bank Control Act, 12 U.S.C. 1817(j), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated thereunder at 12 CFR part 574, or the Reports of Change in Control of Mutual Savings Associations, 12 CFR 563.181, excluding transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control as determined by the OTS upon written request, or

(3) In the case of a savings association, a savings association that is not in compliance with any of its applicable regulatory capital requirements established pursuant to 12 CFR part 567, or a savings association or the savings and loan holding company that is otherwise in troubled condition, as defined in this section.

(d) *Procedures*—(1) *Filing Requirements.* (i) Except where otherwise provided in this section, notices shall be filed in accordance with the filing procedures set forth at 12 CFR 516.1. Except as noted in paragraph (d)(5) of this section, the appropriate OTS form(s) shall be used for all notices. A notice is required to contain all the information set forth in paragraph (d)(2) of this section. A notice shall comply with all applicable regulations and guidelines. The OTS will provide written notification to the filer of a notice of the complete notice date when the OTS has received a complete notice. The 30-day review period begins on the complete notice date.

(ii) The notice shall be submitted by the savings association or savings and loan holding company that proposes a particular individual to serve as a director or senior executive officer; each individual on whose behalf a notice is filed must certify that, to the best of his or her knowledge and belief, all the information filed is true, correct, complete, and made in good faith; and a senior official of the savings association or savings and loan holding company must certify that information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company may be at odds, such as in the case of a proxy contest, the notice may be submitted to the OTS directly by the individual. In such case, the individual

must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete, and made in good faith. If a notice for such an individual has not been submitted to the OTS prior to the election, the individual and the savings association or savings and loan holding company have the alternative of relying on the automatically granted waiver under paragraph (d)(8)(ii) of this section.

(2) *Content of Notice.* A notice must contain the identity, personal history, business background, and experience of each person whose designation as a director or senior executive officer is subject to this section. The notice must include:

(i) A description of his or her material business activities and affiliations during the 5 years preceding the date of the notice;

(ii) A description of any material pending legal or administrative proceedings in which he or she is a party,

(iii) Any criminal indictment or conviction by a State or Federal court; and

(iv) Legible fingerprints of such person, *except that* fingerprints are not required with respect to any person who, within the three years immediately preceding the date of the present notice, has been subject to a notice filed with the OTS pursuant to 12 U.S.C. 1831i or this section and has previously submitted fingerprints.

(3) *Requests for Additional Information.* (i) If the original submission of a notice is considered not complete, the OTS will provide written notification to the filer of the notice that the notice is not complete, set forth the reasons for this determination, and may request that the filer of the notice submit additional information.

(ii) Following receipt of a complete notice, the OTS may make a written request, when feasible, for additional information and may specify a time period during which such information must be provided.

(4) *Suspension of the 30-day Review Period* (i) When the OTS makes a request for additional information under paragraph (d)(3)(ii) of this section, the savings association or savings and loan holding company must provide the information within the time period specified by the OTS or the savings association or savings and loan holding company may request in writing that the OTS suspend processing of the notice. To enable the savings association or savings and loan holding company to provide such information, the OTS may suspend processing for a period of up to 60 days from the date of the request. If the savings association or savings and loan holding company has not provided the requested information within the latest applicable time period specified by the OTS:

(A) The OTS may make its decision based on the information then before it and may draw any reasonable inferences from the savings association or savings and loan holding company's failure to provide the requested information; or

(B) The OTS may treat the notice as withdrawn and inform the savings association or savings and loan holding company in writing.

(ii) If the OTS does not receive a report that it requested from another government agency concerning an individual proposed by the savings association or savings and loan holding company within the 30-day review period, the OTS may request that the savings association or savings and loan holding company and the proposed individual certify, by signing a letter provided by the OTS, that the individual will not assume the proposed position until the OTS has received and reviewed the report and has issued a notice of intent not to disapprove. In making this request, the OTS will notify the savings association or savings and loan holding company and the individual of the basis for its unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period without receipt and review of the report. If either the savings association or savings and loan holding company or the individual do not sign the certification before the end of the 30-day review period, the OTS will decide whether to issue a notice of disapproval based on the information then before it.

(5) *Special Notice Rule for Multi-Tiered Savings and Loan Holding Companies.* (i) With respect to multi-tiered savings and loan holding companies, the notification required by paragraph (d)(1) of this section will only be required for the savings and loan holding company that directly controls a savings association; provided that if such company is without substantial assets other than the ownership of the subsidiary savings association, then the company that directly controls such savings and loan holding company shall also be subject to the notification requirement of paragraph (d)(1) of this section; further provided that, in the event the first indirect savings and loan holding company also is without substantial assets other than the ownership of the direct savings and loan holding company, then each company that directly and/or indirectly holds the indirect savings and loan holding company shall be subject to the notification requirement of paragraph (d)(1) of this section until a savings and loan holding company in the line of ownership that has substantial assets other than the indirect ownership of the savings association is subject to the notification requirement of paragraph (d)(1) of this section.

(ii) Other savings and loan holding companies in a multi-tiered ownership structure described in paragraph (d)(5)(i) of this section may satisfy the notification requirement of paragraph (d)(1) of this section by submitting:

(A) An executed copy of the OTS's RB 20 certification regarding the subject individual's involvement in certain types of legal proceedings; and

(B) A certification from the individual and the highest-ranking official of the company, certifying that the appointment of the individual as a senior executive officer would not raise grounds for disapproval of the notice under 12 U.S.C. 1831i or this section.

(iii) Notwithstanding the provisions of paragraphs (d)(5)(i) and (ii) of this section, the OTS may require submission of a complete notice under this section for any savings and loan holding company in a multi-tiered ownership structure.

(6) *Notice of Disapproval.* The OTS may disapprove an individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company upon determining that, on the basis of the individual's competence, experience, character, or integrity, it would not be in the best interests of the depositors of the savings association or savings and loan holding company or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. The OTS will send a notice of disapproval to both the savings association or savings and loan holding company and the disapproved individual. The notice of disapproval will contain a statement of the basis for disapproval.

(7) *Notice of Intent Not to Disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company may begin service before the expiration of the 30-day review period if the OTS notifies the savings association or savings and loan holding company of an intention not to disapprove the

proposed director or senior executive officer.

(8) *Waiver of Prior Notice.* (i) A savings association or savings and loan holding company may file with the OTS a written request for a waiver of the prior notice requirement. The OTS may waive the prior notice requirement but not the filing of a notice under this section, if the OTS finds that waiver would be in the best interest of the savings association or the savings and loan holding company, would be in the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision. The length of any waiver depends on the circumstances in each individual case. If a waiver is granted, the required notice shall be filed within the time period specified in the waiver and the proposed individual may assume the position on an interim basis until the individual and the savings association or savings and loan holding company receive a notice of disapproval. If the required notice is not filed within the time period specified in the waiver, the proposed individual must immediately resign his or her position. The individual can assume the position on a permanent basis only after the savings association or savings and loan holding company receives a notice of intent not to disapprove or after the 30-day review period elapses. A waiver shall not affect the authority of the OTS to subsequently issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by the board of directors of the savings association or savings and loan holding company, if the individual has not submitted a notice directly to OTS under paragraph (d)(1)(ii) of this section, a waiver is automatically granted and the proposed individual may begin service as a director. However, under these circumstances, the savings association or savings and loan holding company must file the required notice with the OTS as soon as practical but not later than seven days from the date the individual is notified of the election to the board of directors.

(9) *Commencement of Service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the 30-day review period, which begins on the complete notice date, unless:

(i) The OTS issues a notice of disapproval during the 30-day review period,

(ii) The OTS suspends the 30-day review period pursuant to paragraph (d)(4)(i) of this section;

(iii) The savings association or savings and loan holding company and the individual certify, pursuant to paragraph (d)(4)(ii) of this section, that the individual will not assume the proposed position; or

(iv) The savings association or savings and loan holding company does not provide additional information within the time period required by the OTS pursuant to paragraph (d)(3)(ii) of this section and the OTS treats the notice as withdrawn.

Dated: June 3, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–20688 Filed 8–27–93; 8:45 am]

BILLING CODE 6720-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of NCUA; Requests for Action

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: This rule contains descriptions of the various offices of NCUA and a means for requesting agency action. Due to changes in the duties and responsibilities of various offices, and to the change in addresses of the Central Office, some Regional Offices, and the Central Liquidity Facility (the "CLF"), it is necessary to amend this part. In addition, descriptions are added for the Asset Liquidation Management Center (the "ALMC") and the Chairman, Community Development Revolving Loan Program (the "Program"). The section regarding requests for agency action remains unchanged.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Conrey, Staff Attorney, at 202–682–9630.

SUPPLEMENTARY INFORMATION:

Discussion

The NCUA Board, in accordance with its policy to update, clarify, simplify, and review existing regulations every three years, has reviewed part 790. The revisions made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (the "APA"), 5 U.S.C. 551 *et seq* The final rule revisions relate only to matters relating to agency management and personnel, topics exempt from APA requirements. 5 U.S.C. 553(a)(2).

Several agency management and personnel changes have been made since the last revision of part 790 in 1989. 54 FR 18473 (May 1, 1989). The Central Office, the Central Liquidity Facility (the "CLF"), and Regional Offices in Regions II and IV will move or have recently moved to new locations. Moreover, the State of New Jersey was transferred from the jurisdiction of Region I to the jurisdiction of Region II. Similarly, the Commonwealth of Puerto Rico and the Virgin Islands were transferred from the jurisdiction of Region I to the jurisdiction of Region III. In addition, three of the Offices have recently been renamed: (1) The former "Controller's Office" has been retitled the "Office of the Controller"; (2) the former "Personnel Office" has been retitled the "Office of Human Resources"; and (3) the former "Administrative Office" has been retitled the "Office of Administration." The Office of the Chief Economist has been abolished, and the functions of that office have been transferred to the Office of Examination and Insurance.

For the first time, the Asset Liquidation Management Center (the "ALMC") is included and described. The ALMC was created in 1988 by the NCUA Board to manage NCUA's acquired assets, real estate and recoveries from National Credit Union Share Insurance Fund ("NCUSIF") liquidations. In 1990, the NCUA Board expanded the responsibilities of the ALMC to include all facets of NCUA's liquidation functions.

A description of the Chairman, Community Development Revolving Loan Program (the "Program") is included and described for the first time. In 1991, the NCUA Board created this position to approve and disapprove applications for loans from the Program, and to provide technical assistance to credit unions participating in the Program. The Program was transferred to the NCUA in 1986 by the Community Development Credit Union Revolving Loan Fund Transfer Act. 42 U.S.C. 9822 note. Part 705 of the NCUA Rules and Regulations was promulgated under this authority in 1987, and was revised earlier this year. Final Rule, 58 FR 21642 (April 23, 1993). Before creation of the position of Program Chairman, the NCUA Board performed all delegated Program functions.

Several changes are made in the description of the CLF. The positions of

Vice President for Credit and Vice President for Finance have long been vacant and have been incorporated into the position of CLF President. In the near future, the NCUA Board intends to revise the Bylaws of the CLF to incorporate these changes, along with several others not pertinent here.

Other changes are semantic in nature, and not substantive. Section 790.3, requests for action, remains unchanged.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Analysis concerning the effect of these changes in internal agency office addresses, descriptions and responsibilities indicates that no significant economic impact will result from the rule. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to the internal organization of the NCUA, and to means of making requests to the NCUA. Therefore, the final rule does not affect state interests.

List of Subjects in 12 CFR Part 790

Organization and functions.

By the National Credit Union Administration Board on August 23, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR part 790 is amended as set forth below.

1. Part 790 is revised to read as follows:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

790.1 Scope
790.2 Central and regional office organization.
790.3 Requests for agency action.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552.

§ 790.1 Scope.

This part contains a description of NCUA's organization and the procedures for public requests for action by the Board. Part 790 pertains to the practices of the National Credit Union Administration (NCUA) only and does not apply to credit union operations.

§ 790.2 Central and regional office organization.

(a) *General organization.* NCUA is composed of the Board with a Central Office in Alexandria, Virginia, six Regional Offices, the Asset Liquidation Management Center, the Community Development Revolving Loan Program, and the NCUA Central Liquidity Facility (CLF).

(b) *Central Office.* The Central Office address is NCUA, 1775 Duke St., Alexandria, Virginia 22314–3428.

(1) *The NCUA Board.* NCUA is managed by its Board. The Board consists of three members appointed by the President, with the advice and consent of the Senate, for six-year terms. One Board member is designated by the President to be Chairman of the Board. A second member is designated by the Board to be Vice-Chairman. The Board is also responsible for management of the National Credit Union Share Insurance Fund (NCUSIF) and serves as the Board of Directors of the CLF.

(2) *Secretary of the Board.* The Secretary of the Board is responsible for the secretarial functions of the Board. The Secretary's responsibilities include preparing agendas for meetings of the Board, preparing and maintaining the minutes for all official actions taken by the Board, and executing and maintaining all documents adopted by the Board or under its direction. The Secretary also serves as the Secretary of the CLF.

(3) *Office of Administration.* The Director of the Office of Administration is responsible for providing NCUA's executive offices and Regional Directors with administrative services generally, including: Agency security; information resources management, contracting and procurement; contract management; management of equipment and supplies; acquisition; records management; printing and graphics; and warehousing and distribution. The Director is also responsible for carrying out the Board's responsibilities under the Freedom of Information Act, the Privacy Act, the Paperwork Reduction Act, and in directing NCUA responses to reporting requirements.

(4) *Asset Liquidation Management Center.* The President of the Asset Liquidation Management Center is responsible for all of NCUA's acquired assets, credit union recoveries, and involuntary liquidations; responsible for managing the payout process for all federally insured credit unions placed in involuntary liquidation; manages the orderly processing of payment of share insurance, sale and/or collection of loan portfolios, and liquidation of other assets; responsible for managing the evaluation, disposal and/or management of major assets acquired by the NCUSIF. The address of the ALMC is 4807 Spicewood Springs Road, suite 5100, Austin, Texas 78759–8490.

(5) *Office of the Controller.* The Controller, NCUA's chief financial officer, is in charge of budgetary, accounting and financial matters for the NCUA. The Controller is responsible for submitting annual budget and staffing requests for approval by the Board and, as required, by the Office of Management and Budget (OMB); for managing NCUA's budgetary resources; for collecting from federally insured credit unions the capitalization deposits required as a condition of deposit insurance, and, as determined by the Board, for collecting annual operating fees from Federal credit unions; for maintaining NCUA's accounting system and accounting records; for processing payroll, travel, and accounts payable disbursements; and for preparing internal and external financial reports.

(6) *Office of Examination and Insurance.* The Director of the Office of Examination and Insurance: Formulates standards and procedures for examination and supervision of the community of federally insured credit unions, and reports to the Board on the performance of the examination program; administers the National Credit Union Share Insurance Fund (NCUSIF), and reports on its condition and performance, including the premiums invested, income earned, and assistance provided; serves as the Board expert on accounting principles and standards, on auditing standards, and on investments for credit unions; represents NCUA at meetings with the American Institute of Certified Public Accountants (AICPA), Federal Financial Institutions Examination Council (FFIEC) and Government Accounting Office (GAO); and collects data and provides statistical and economical reports and research papers on market trends affecting credit unions. The Director is also responsible for developing and conducting research in support of NCUA programs, and for preparing reports on research activities for the information and use of agency staff, credit union officials, state credit

union supervisory authorities, and other governmental and private groups.

The Director, Office of Examination and Insurance, also manages NCUA's corporate credit union program in accordance with established policies. The Director's duties include: Directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing corporate resources to meet program objectives in the most economical and practical manner, and maintaining good public relations with public, private, and governmental organizations, corporate credit union officials, credit union organizations, and other groups which have an interest in corporate credit union matters.

(7) *Office of the Executive Director.* The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: The General Counsel; the Regional Directors; and the Office Directors for Administration, Controller, Examination and Insurance, Human Resources, Information Systems, and Public and Congressional Affairs. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility.

(8) *Office of General Counsel.* The General Counsel has overall responsibility for all legal matters affecting NCUA and for liaison with the Department of Justice. The General Counsel represents NCUA in all litigation and administrative hearings when such direct representation is permitted by law and, in other instances, assists the attorneys responsible for the conduct of such litigation. The General Counsel also provides NCUA with legal advice and opinions on all matters of law, and the public with interpretations of the Federal Credit Union Act, the NCUA Rules and Regulations, and other NCUA Board directives. The General Counsel has responsibility for the drafting, reviewing, and publication of all items which appear in the **Federal Register**, including rules, regulations, and notices required by law.

(9) *The Office of Human Resources.* The Office of Human Resources provides a comprehensive program for the management of NCUA's human resources. This is done in support of NCUA's goal to recruit, develop, and retain a quality and representative workforce. The Director is responsible for managing NCUA's compensation program, for facilitating good organization design, for staffing positions through recruitment and merit promotion programs, and for maintaining an automated personnel records system. The Director is also responsible for the Board's training, performance management, incentive awards, employee assistance, and benefit programs. These programs are geared to foster healthy employee/management relations and to provide employees with good working conditions.

(10) *Office of Information Systems.* The Director of the Office of Information Systems is responsible for managing NCUA's automated information resources, which includes: Ensuring the accuracy, validity, security, and integrity of the Board's data base; providing and supporting efficient, relevant, and reliable automated products and related services; supporting the Board's hardware and software environment; and operating NCUA's automated information processing facility. The Director advises and counsels of the Board on all automation issues affecting the NCUA.

(11) *Office of the Inspector General.* The Inspector General reports directly to the Board and provides semi-annual reports regarding audit and investigation activities to the Board and the Congress. The Inspector General is responsible for: (a) Conducting independent audits and investigations of all NCUA programs and functions to promote efficiency; (b) reviewing policies and procedures to evaluate controls to prevent fraud, waste, and abuse; and (c) reviewing existing and proposed legislation and regulations to evaluate their impact on the economic and efficient administration of the Agency.

(12) *Office of Public and Congressional Affairs.* The Director of the Office of Public Congressional Affairs is responsible for maintaining NCUA's relationship with the public and the media; for liaison with the U.S. Congress, and with other Executive Branch agencies concerning legislative matters; and for the analysis and development of legislative proposals and public affairs programs.

(c) *Regional offices.*

(1) NCUA's programs are conducted through six regional offices:

Region No.	Area within region	Office address
I	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.	9 Washington Square, Washington Avenue Extension, Albany, NY 12205.
II	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.	1775 Duke Street, suite 4206, Alexandria, VA 22314–3437.
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	7000 Central Parkway, Suite 1600, Atlanta, GA 30328.
IV	Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin	4225 Naperville Rd., suite 125, Lisle, IL 60532.
V	Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.	4807 Spicewood Springs Road, suite 5200, Austin, TX 78759.
VI	Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	2300 Clayton Road, suite 1350, Concord, CA 94520.

(2) A Regional Director is in charge of each Regional Office. The Regional Director manages NCUA's programs in the Region assigned in accordance with established policies. This person's duties include: Directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing regional resources to meet program objectives in the most economical and practical manner; and maintaining good public relations with public, private, and governmental organizations, Federal credit union officials, credit union organizations, and other groups which have an interest in credit union matters in the assigned Region. The

Director maintains liaison and cooperation with other regional offices of Federal departments and agencies, state agencies, city and county officials, and other governmental units that affect credit unions. The Regional Director is aided by a Deputy Regional Director and an Associate Regional Director. Staff working in the Regional Office, with the exception of the Special Actions staff, report to the Deputy Regional Director. Each Region is divided into examiner districts, each assigned to a Supervisory Examiner; groups of examiners are directed by a Supervisory Examiner, each of whom in turn reports directly to the Associate Regional Director. Special Actions staff also report to the Associate Regional Director.

(d) *NCUA Central Liquidity Facility (CLF)*—(1) *General organization.* The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed ownership Government corporation under the Government Corporation Control Act (32 U.S.C. 9101, *et seq.*). The CLF corporate headquarters is located at 1775 Duke Street, suite 4013, Alexandria, Virginia 22314–3428. NCUA's Central and Regional Offices provide services and information to the CLF on a cost reimbursable basis; depending upon need, employees of CLF may be assigned to the Regional Offices. The CLF is also assisted in its operations by corporate credit unions designated as "Agent Members," which provide CLF services to other credit unions lacking direct access to the CLF.

(2) *Board of Directors.* The CLF is managed by the NCUA Board, which acts as the CLF Board of Directors. The Chairman of the NCUA Board is the Chairman of the Board of Directors. The CLF Board is assisted in managing the CLF by a President, Secretary, and Treasurer who are appointed by and are responsible to the CLF Board.

(3) *President.* The President is the chief executive officer of the CLF and works under the general supervision of the CLF Board. The President provides overall executive direction and guidance and is responsible for the ongoing management of the CLF. The President manages the CLF staff and their activities in the Central Office and the Regions; provides general supervision to the other officers of the CLF; and initiates and maintains working relationships with the credit union community, other Federal and state government authorities, and the banking and investment communities. The President is also responsible for planning, implementing, and directing programs related to the CLF's lending policies, procedures and regulations, and for directing CLF lending to regular members, agent members and agent group representatives, and for monitoring lending activities throughout the CLF to assure conformity with policies, procedures and regulations. The President must also develop and maintain a working relationship with state supervisors, state insurance authorities, and Federal financial agencies. In addition, the President is responsible for planning, implementing, and directing borrowing and investment programs to finance CLF operations. The President has responsibility for directing CLF borrowing from the Federal Financing Bank for the CLF's investment of funds in the U.S. Government and agency securities; and for developing and maintaining working relationships with the investment and banking communities and Federal financial agencies.

(4) *Treasurer.* The Treasurer develops and manages the CLF's operational systems to monitor and report the use of the CLF's funds. The Treasurer establishes accounting policies and procedures for the CLF, and maintains working relationships with Agent members, state supervisors, state insurance corporations, and Federal financial agencies.

(5) *Secretary.* The Secretary of the Board serves as the Secretary of the CLF. The Secretary has responsibility for preparing the Board's agenda, giving all required notices, and keeping the minutes of the Board.

(e) *Community Development Revolving Loan Program.* The Chairman, Community Development Revolving Loan Program, is responsible for the operation of the Community Development Revolving Loan Program for Credit Unions (the "Program"). The Chairman approves and disapproves applications for loans from the Program, and provides technical assistance to credit unions participating in the Program and performs other duties necessitated by part 705 of subchapter A of this chapter. The address is the same as for the Central Office.

§ 790.3 Requests for action.

Except as otherwise provided by NCUA regulation, all applications, requests, and submittals for action by the NCUA shall be in writing and addressed to the appropriate office described in § 790.2. This will usually be one of the Regional Offices. In instances where the appropriate office cannot be determined, requests should be sent to the Office of Public and Congressional Affairs.

[FR Doc. 93–20902 Filed 8–27–93; 8.45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AA85

Family and Medical Leave Act of 1993; Extension of Comment Period

AGENCY: Wage and Hour Division, Labor.

ACTION: Interim rule; extension of comment period.

SUMMARY: This document extends the period for filing written comments on the interim final regulations implementing the Family and Medical Leave Act of 1993. This action is being taken in order to provide interested parties additional time and experience under the Act to prepare their comments.

DATES: Comments must be received on or before December 3, 1993.

ADDRESSES: Address written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters desiring notification of receipt of their comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, written comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122. This is not a toll-free number

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Interim final regulations, 29 CFR part 825, implementing the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 *et seq.*, were published in the **Federal Register** on Friday, June 4, 1993 (58 FR 31794). The interim rules, which became effective on August 5, 1993, invited interested parties to submit public comments on or before September 2, 1993. Because of the interest that has been expressed in the implementation of this Act, and the desire of some commenters to gain

additional experience under the Act as they prepare their comments on the interim final rules, the Department believes it is desirable to extend the comment period for interested parties. Therefore, the period for submitting written comments on the interim final rules implementing the Family and Medical Leave Act of 1993, 29 CFR part 825, published in the **Federal Register** on June 4, 1993, is extended to December 3, 1993.

Signed in Washington, DC, this 24th day of August, 1993.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 93–20973 Filed 8–27–93; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AB35

Assessments for Failure To Submit Payment of Same Amount as Form MMS–2014 or Bill Document or To Provide Adequate Information

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its Royalty Management Program (RMP) regulations to provide for a new assessment not to exceed $250 that may be charged payors each time the MMS Auditing and Financial System (AFS) cannot automatically apply a payment to a Report of Sales and Royalty Remittance (Form MMS–2014) or to a Bill for Collection (bill document) because of errors in reporting made by payors on Federal or Indian mineral leases. This assessment may also be charged each time a payment made by a payor is not equivalent in amount to the total of individual line items on the associated Form MMS–2014 or bill document.

This new assessment will allow MMS to recover administrative costs incurred as the result of payor reporting and/or payment errors and will improve the efficiency of MMS' disbursement of royalties and other monies to States and Indians.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, telephone (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Marvin D. Shaver of the Rules and Procedures Staff, RMP, MMS.

I. Background

Pursuant to 30 CFR part 210, lessees and other royalty payors on Federal and Indian mineral leases are required to submit certain forms and reports to MMS. Section 30 CFR 210.52, states that a completed Report of Sales and Royalty Remittance (Form MMS–2014, OMB No. 1010–0022) must accompany all payments to MMS for royalties and, where specified, for rents on nonproducing leases. Similarly, for solid minerals leases, pursuant to § 210.202, as amended by a final rule published on November 5, 1992 (57 FR 52719), a Form MMS–2014 must accompany all payments to MMS for rents (other than first year) and royalties.

A Bill for Collection (Form DI–1040b) is issued by MMS to notify a payor of assessments, late-payment interest charges, or other amounts owed. Bills are also issued to purchasers of royalty oil under the Government's Royalty-in-Kind program.

The royalty reports and bill documents are part of MMS' automated royalty accounting system, AFS. A receivable from a payor is created in AFS when a payor reports royalty due on a Form MMS–2014 or when a bill is entered in AFS and issued to a payor. From the information entered into AFS with respect to a royalty report, or bill or payment document, AFS attempts to automatically apply each payment to the associated royalty report or bill documents. If a payment cannot be automatically applied by AFS to the associated royalty report or bill document because of inadequate or erroneous information, it must be manually researched and applied by MMS personnel.

If a payment is made by a payor via Electronic Funds Transfer (EFT), MMS receives a transmittal message of the payment from the Department of the Treasury Fedwire Deposit System. If a payment is remitted by a payor directly to a lockbox for an Indian tribe that has a lockbox payment arrangement, MMS receives notification of receipt of the payment from the financial institution involved. The information on EFT and lockbox payments is entered into AFS upon receipt by MMS.

If a specific royalty report or bill document has not had full payment applied, the unapplied portion remains as a receivable balance in AFS. This situation may result if a payment has been automatically applied by the AFS, but is less than the total of individual line items on the royalty report or bill document or if a payment cannot be applied by AFS because of inadequate or erroneous information provided by the payor. If a payment amount is greater than the total of individual line items on the royalty report or bill document, AFS will only apply an amount equal to the total of the individual line items, and AFS will have an excess cash balance. In either case, manual effort is required by MMS personnel to research cash and receivable balances to resolve differences.

The manual effort required by MMS personnel to research cash and receivable balances results in MMS incurring substantial costs so that AFS can operate properly to account for and distribute royalties. To recover costs related to this effort and to encourage more careful preparation of royalty reports and payments by payors, MMS published a Notice in the **Federal Register** on March 22, 1990 (55 FR 10630), proposing to amend its regulations to provide for a new assessment. The new assessment, not to exceed $250, was proposed to be charged payors each time that a specified reporting and/or payment violation occurred.

In response to the proposed rulemaking, MMS received comments from 10 lessees/payors and other interested parties. All of these comments were considered in this final rulemaking and are discussed in Section II below. The final rule is summarized and discussed in Section III below.

II. Comments Received on Proposed Rule

The proposed rulemaking (55 FR 10630, March 22, 1990) provided for a 60-day public comment period, which ended May 21, 1990. Ten commenters from industry submitted comments during this period. No comments were received from Indian representatives. The comments that were received are addressed in this section according to the nature of the comment. The final rule has been revised to reflect comments, as appropriate.

(a) Opposition to the New Assessment

Seven commenters expressed opposition to the proposed new assessment. The comments that were received from these commenters are discussed below:

(1) One commenter questioned MMS' authority to impose such strict liability penalties. This commenter stated that if Congress had intended for MMS to have such authority, the pertinent statutes

would have specifically provided for this authority.

Response: Congress has passed numerous laws that establish the responsibility and authority of the Secretary of the Interior with respect to minerals management functions on Federal and Indian lands. For example, section 301(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1751, which applies to Federal and Indian oil and gas leases, authorizes the Secretary of the Interior (Secretary) to prescribe such rules and regulations as he or she deems necessary to carry out the purpose of the Act. Section 101 of FOGRMA, 30 U.S.C. 1711, requires that the Secretary establish a comprehensive accounting and auditing system.

The Secretary's responsibility for royalty and mineral revenues management was assigned to MMS by Secretarial Order No. 3071, dated January 19, 1982, and amended on May 10, 1982, and Secretarial Order No. 3087, dated December 3, 1982. Consequently, MMS is of the opinion that it has the authority to establish the new assessment as provided for in the final rule.

(2) Three commenters argued that the proposed rule did not consider underlying conditions which result in reporting and payment problems. One of these commenters suggested that the causes of the problem should be investigated and resolved rather than to just impose additional penalties.

Examples of underlying conditions, identified by these commenters, included the following:

(i) Problems may stem from the requirement for early payment of royalties on production, particularly gas and gas liquids, the proceeds from which may not be known when the royalty payment is required.

(ii) Improvement and simplification are needed to the MMS Production Accounting and Auditing System and AFS.

(iii) It is inappropriate to attribute reconciliation errors solely to the payor. Because the payor does not have perfect control over the accuracy of information provided by third parties for the purpose of rendering royalty payments and reports, it is not equitable to assess an additional penalty every time reconciliation differences are identified. In the past, bills issued by MMS for unliquidated amounts have been found to be seriously overstated.

(iv) Because MMS regulations do not provide for payment of interest on overpayments, there may be a tendency of payors to avoid overpayments at the risk of underpayments.

(v) Because the error could be an overpayment in favor of the lessor, the assessment of a penalty may not be equitable.

(vi) In making a timely royalty report to avoid penalty and interest, a payor becomes at risk for reporting with inadequate information.

Response: The MMS agrees that there are many underlying conditions that affect the accuracy of reporting and payment of amounts owed by payors on Federal and Indian mineral leases. However, these conditions should not prevent the payor from submitting its payment for the same amount that it reported as owed on a royalty report whether or not correctly reported, or for the amount due on a bill document. Also, those conditions should not prevent the payor from providing adequate and accurate information to allow the payment to be automatically applied by AFS to the royalty report or bill document. Therefore, MMS did not revise the proposed rule to reflect the concerns expressed by these commenters.

(3) Four commenters expressed their opinions that existing MMS assessment regulations already encourage the submittal of accurate royalty reports and payments and that any additional assessment would result in an unfair duplication of penalties. Another commenter stated that the proposed new assessment is not an encouragement to better reporting and payment, but rather an irritation.

Response: Although the assessment and interest charges provided for under existing regulations have resulted in an increase in the accuracy of reports and payments submitted by payors, additional improvement is needed. In many instances, inadequate and/or erroneous information submitted by payors continues to delay the payment application process with a resulting delay in MMS' distribution of royalties and related information to States and Indian tribes and allottees. The new assessment is not a duplication of assessments and/or interest authorized by other MMS regulations and is needed to encourage more careful preparation and submittal of reports and payments by payors.

Therefore, MMS did not revise the proposed rule to reflect the concerns expressed by these commenters.

(b) Exceptions or Limitations to the New Assessment

Although generally opposed to the proposed new assessment, 9 of the 10 commenters recommended that the new assessment not be charged in certain situations or be limited in amount. The exceptions and limitations recommended by these commenters are discussed below:

(1) Three commenters were of the opinion that there should be no assessment if incorrect reporting occurs through no fault of the payor or due to matters beyond the control of the payor. They recommended that the final rule establish who is responsible if a bank or the U.S. Postal Service is at fault for losing information.

Response: Under the final rule, the new assessment may be charged each time that a specified violation is committed by a payor, regardless of whether or not the amount reported was correct or receipt of the report by MMS was delayed by others. It is the responsibility of the payor to ensure that proper payment and report information is received timely by MMS to permit AFS to apply payments to associated royalty reports and bill documents.

(2) One commenter recommended that the final rule include a provision that would exclude any documents that were submitted based on explicit instructions given by MMS and later determined to be incorrect or deficient in any manner. In this commenter's opinion, payors should not be penalized for relying upon official MMS guidelines that are later determined to be incorrect.

Response: As stated in MMS' response under paragraph II(b)(1) of this preamble, the new assessment would only be charged as the result of the violations specified in the rule that are committed by the payor. Therefore, MMS did not consider it necessary to include the recommended provision in the final rule.

(3) One commenter expressed an understanding that there will not be an assessment in instances where a payor receives a bill and a full payment is not made due to an appeal of the full amount or portion thereof. The commenter understood that this situation would be determined based on research performed by MMS.

Response: The MMS published a Notice of Proposed Rulemaking in the **Federal Register** on February 23, 1990 (55 FR 6401) to clarify its regulations regarding suspension of MMS decisions and orders pending appeal. Comments received from the public were considered and a final rule was published in the **Federal Register** on September 30, 1992 (57 FR 44991). This rulemaking, which was codified at 30 CFR 243.2, addresses suspension of a required payment of a bill pending a decision on an appeal.

The assessment provided in § 218.41(a) of this final rule would not

be charged when a payor has filed a timely appeal and has provided MMS with an acceptable surety instrument within the allowed time period in accordance with the provisions of 30 CFR part 243.

(4) Two commenters expressed concern that the new assessment would be charged where good faith efforts had been made by payors regardless of whether or not negligence or culpable conduct is involved. Four other commenters recommended that assessments not be imposed for inadvertent and nonrecurring errors.

Response: The MMS assumes that most payors make a good faith effort to report and pay properly. However, payors sometimes, for various reasons (including inadvertent errors), submit inadequate or erroneous information. The new assessment will encourage more careful preparation and submittal of reports and payments by payors. Under the final rule, the new assessment may be charged each time MMS determines that the payor committed a violation, regardless of whether or not the violation was inadvertent and nonrecurring.

(5) Because of the many problems involved relative to nonstandard Indian reporting and paying, one commenter recommended that any violations relative to nonstandard leases be exempted from the final rule.

Response: The MMS agrees that there are many problems associated with nonstandard leases. However, these problems should not affect the payor's responsibility and ability to prepare and submit adequate and correct information relative to any payment or report document that it may submit on nonstandard leases. Consequently, MMS did not exclude nonstandard leases from the new assessment in the final rule.

(6) One commenter identified the following situations which could result in invalid and erroneous assessments.

—Failure of MMS to process a credit or refund prior to applying an adjusted payment to a bill.
—A payment submitted to MMS in error, which must be returned. In these cases there is no receivable established in AFS.
—The payor's submittal of a correcting Form MMS–2014 report which results in a different payment amount.
—An MMS keypunch error which results in a wrong report total.

Because of their concerns that a payor could improperly be assessed a penalty, three commenters recommended that the assessment not be automatic. They also suggested that the final rule provide for some error rate without a penalty to allow MMS to exercise some discretion. These commenters suggested that if an assessment must be made, it should be based on graduated experience (average number of errors during a past period) and on the significance of the error (amount of effort required by MMS to correct error). Three commenters stated that if additional penalties must be imposed, they should be directed toward payors who consistently make reporting or payment errors; i.e., frequent offenders and those who blatantly disregard MMS instructions.

Response: The AFS identifies instances when a payment has not been automatically applied to a royalty report or bill document. However, the AFS cannot identify the reason why a payment was not applied. Therefore, MMS personnel must manually review each unapplied payment to determine why it was not applied by the AFS. If the unapplied payment was due to a reporting or payment error committed by the payor, as defined in paragraphs (a) and (b) of § 218.41 of the final rule, an assessment may be charged.

Significant additional administrative effort would be required by MMS to identify past errors and the significance of errors committed by payors. Therefore, for consistency and equity, the assessment provided by the final rule may be charged each time that the payor commits a violation.

(7) One commenter stated that an automatic assessment may result in increased administrative costs as the result of appeals. The commenter suggested that if an automatic assessment is adopted, the final rule should provide for a method of questioning the assessment through the MMS Lessee Contract Branch without filing a formal appeal.

Response: Although some payors may appeal the new assessment, MMS does not consider it necessary or desirable to establish an alternate method of resolving the assessment as suggested by this commenter. Under the final rule, payors will have the right to file a formal appeal of the assessment in accordance with the provisions of 30 CFR part 243. If, in its appeal, the payor can demonstrate no violation, MMS will issue a credit.

(c) Ambiguities in Proposed Rule

Two commenters stated that the proposed rule was unclear in certain areas and recommended that these areas be clarified in the final rule. The ambiguities identified by these commenters are discussed below:

(1) One commenter agreed with MMS' intent that the assessment should apply to the total and complete royalty report, as applicable, and not to each line item that may be incorrect. However, both commenters stated that, as written, there is an ambiguity in the proposed regulations that could improperly result in multiple assessments. In their opinion, the terms "report document," "payment document," and "per incident," could be misinterpreted to apply to each line item contained on a Form MMS–2014. Therefore, they recommend that the final rule be clarified by deleting the words "per incident" throughout the final regulations.

Response: Because the assessment would only be charged as the result of errors relative to preparation and submittal of the total and complete royalty report and not to individual line items on the report, MMS does not feel that multiple assessments could result. However, for purposes of clarification, MMS has removed the words "per incident" in the final rule as recommended by the commenters. As stated in section III (a) below, MMS has also specifically identified "Form MMS–2014" as the report document in the final rule to lesson confusion.

(2) One commenter recommended that the final rule specifically state that the assessment is in addition to the assessments and interest charges provided for in 30 CFR 218.40 and 218.54.

Response: Because this assessment will be codified as a separate regulation at § 218.41, MMS does not consider it necessary to include a statement therein that it is in addition to any other assessment and/or interest provided for in other MMS regulations.

(3) One commenter stated that § 218.41(a) of the proposed rule is misleading as it applies to EFT payments. The commenter felt that this paragraph could be construed to mean that the Form MMS–2014 must accompany EFT payments. The commenter recommended that MMS rewrite this paragraph to more accurately address the EFT process.

Response: The proposed rule provided for an assessment for each payment submitted without the accompanying report/bill document and for each report/bill document submitted without the accompanying payment document. However, after further consideration, MMS has excluded the proposed assessment for this type of violation from the final rule. The exclusion of this assessment from the final rule resolves this commenter's concern.

(d) Advance Notification of Assessment

Three commenters recommended that MMS provide advance notification to payors before any assessment is charged. One commenter stated that under the legal requirement for "due process," the payor must be given an opportunity to explain discrepancies before any assessment is imposed. A different commenter, who was opposed to an automatic assessment, recommended that the assessment be charged only after a careless payor with repeated violations had been served with a notice that an assessment would be charged for further violations. The third commenter was of the opinion that MMS should be required to notify payors of the problems causing an assessment in order for corrective action to be taken prior to the payor's next submittal of a report and payment.

Response: Lessees and payors on Federal and Indian mineral leases have a responsibility to be knowledgeable of laws and regulations governing the reporting and payment of royalties and other monies owed on those leases. Therefore, MMS did not, under the final rule, provide for advance notification to payors before an assessment will be charged.

A bill will be issued by MMS to a payor who is charged an assessment under the final rule which will explain the reason for the assessment. Upon receipt of the bill, the payor should take appropriate corrective action prior to its next submission of the royalty report and/or payment to avoid subsequent assessments.

III. Summary and Discussion of Final Rule

This final rulemaking will be included in MMS regulations at 30 CFR 218.41. The final rule is summarized and discussed below:

(a) Under § 218.41(a) of the final rule, MMS may charge payors an assessment not to exceed $250 each time that a payment amount is not equivalent in amount to the total of individual line items on the associated Form MMS–2014 or a bill document, unless the difference in amount has been authorized by MMS.

The proposed rule (55 FR 10631, March 22, 1990) included references to separate Reports of Sales and Royalty Remittance for oil and gas (Form MMS–2014) and for solid minerals (Form MMS–4014). However, MMS published a Notice of Final Rulemaking in the **Federal Register** on November 5, 1992 (FR 52719) to amend its regulations to eliminate the Form MMS–4014 and to combine all royalty reporting requirements on the Form MMS–2014. For this reason, MMS has removed all references to Form MMS–4014 from the discussion and text of the final rule. The MMS has also removed references to "report document" and has specifically identified Form MMS–2014 as the report document in the discussion and text of the final rule to avoid confusion with the definition of a report at § 218.40(c).

A "Form MMS–2014," for purposes of the final rule, includes submissions of royalty information by magnetic media. Magnetic media submissions include submissions by magnetic tape, magnetic cartridge, or floppy diskette. See paragraph § 218.41(c).

(b) Under § 218.41(b) of the final rule, MMS may charge payors an assessment not to exceed $250 each time that a payment cannot be automatically applied by AFS to the associated Form MMS–2014 or bill document because of inadequate or erroneous information submitted by the payor. This provision, proposed as paragraph § 218.41(d), has been redesignated as paragraph § 218.41(b) in the final rule. Inadequate or erroneous information as defined in the final rule is discussed below:

(1) *Incorrect payor-assigned document number or no payor-assigned document number on a Form MMS–2014 and on the associated payment document.* Payors are required to complete block 3a on Form MMS–2014. This block provides for the payor's identification of a unique "payor assigned document number" (hereafter referred to as a "3a number"). The same unique 3a number is also required to be identified on the associated payment document (EFT message, check, bank draft, money order, etc.), in order to provide a cross reference and facilitate the automated application by AFS of the payment to the proper Form MMS–2014.

As stated in section 2.2.5 of Volume II of the MMS Oil and Gas Payor Handbook and instructions provided in the AFS Solid Minerals Payor Handbook, it is imperative that the 3a number be unique and used for only one report/payment combination. The reuse of the same payor assigned 3a number in subsequent reporting periods may result in the associated payment being misapplied to the wrong Form MMS–2014 and would subject a payor to an assessment. See § 218.41 (b)(1) and (b)(2).

(2) *Bill for Collection number not identified on the payment document, when required.* Instructions are included with each Bill for Collection issued to a payor requesting that the bill number be identified on the payment document. See § 218.41(b)(2).

(3) *Absent or incorrect name of administering Bureau of Indian Affairs (BIA) Agency/Area office and word "allotted" or tribe name on payments remitted to MMS for Indian tribes and allottees.* As stated in section 2.4.3.5 of Volume II of the MMS Oil and Gas Payor Handbook and instructions provided in the AFS Solid Minerals Payor Handbook, payors are required to specify the word "allotted" and the name of the administering Bureau of Indian Affairs Agency/Area office on a check remitted to MMS for a payment on an Indian allotted lease. In the case of a payment on an Indian tribal lease, the check must specify the name of the appropriate tribe. In accordance with § 218.51, all payors whose aggregate royalty payment obligation totals $10,000 or more must make a payment by EFT, unless otherwise directed by MMS. In the case of EFT payments, the payor must identify the tribe/allottee on the EFT message by a five digit code in accordance with instructions provided by MMS to payors. See § 218.41(b)(3).

(4) *Absent or incorrect MMS assigned payor code on payment document.* As stated in section 1.1.6 of Volume II of the MMS Oil and Gas Payor Handbook, and instructions provided in the AFS Solid Minerals Payor Handbook, all payments, reports, and correspondence must include a five-digit MMS assigned payor code. Companies with multiple payor codes must submit a separate royalty report and payment for each payor code. Payors reporting via magnetic media submission may submit more than one report on their submission; however, each report may only contain one payor code. See § 218.41(b)(4).

(c) The amount of the assessment to be imposed pursuant to paragraphs (a) and (b) of the final rule will be established periodically by MMS based on its experience with costs and improper reporting and/or payment by payors. Based on recent MMS cost experience, the assessment amount will initially be set at $100 for each violation. The MMS will publish a Notice in the **Federal Register** of the initial and any subsequent revised assessment amount(s) to be applied with the effective dates. See § 218.41(f).

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (Department) has determined that this document is not a major rule under Executive Order 12291 and certifies that

this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The assessment provided by this final rulemaking will allow MMS to recover administrative costs as the result of payor reporting and/or payment errors and will improve the efficiency of MMS' disbursement of royalties and other monies to States and Indians.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This final rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 218.41 is added under Subpart A—General Provisions to read as follows:

§ 218.41 Assessments for failure to submit payment of same amount as Form MMS–2014 or bill document or to provide adequate information.

(a) An assessment of an amount not to exceed $250 may be charged when the amount of a payment submitted by a payor is not equivalent in amount to the total of individual line items on the associated Form MMS 2014 or bill document, unless the difference in amount has been authorized by MMS.

(b) An assessment of an amount not to exceed $250 may be charged for each payment submitted by a payor that cannot be automatically applied by AFS to the associated Form MMS–2014 or bill document because of inadequate or erroneous information submitted by the payor. For purposes of this section, inadequate or erroneous information is defined as:

(1) Absent or incorrect payor assigned document number, required to be identified by the payor in Block 3a on a Form MMS–2014, or the reuse of the same payor assigned document ("3a") number in a subsequent reporting period.

(2) Absent or incorrect bill document invoice number (to include the four character alpha prefix and the eight digit number) or the payor-assigned 3a number required to be identified by the payor on the associated payment document, or the reuse of the same payor assigned 3a number in a subsequent reporting period.

(3) Absent or incorrect name of the administering Bureau of Indian Affairs Agency/Area office and the word "allotted" or the tribe name on payment documents remitted to MMS for an Indian tribe or allottee. If the payment is made by EFT, the payor must identify the tribe/allottee on the EFT message by a pre-established five digit code.

(4) Absent or incorrect MMS assigned payor code on a payment document.

(c) For purposes of this section, the term "Form MMS–2014" includes submission of reports of royalty information by magnetic media. Magnetic media submissions include submissions by magnetic tape, magnetic cartridge, or floppy diskette.

(d) For purposes of this section, a bill document is defined as any Bill of Collection (Form DI–1040b) that has been issued by MMS for assessments, late-payment interest charges, or other amounts owed.

(e) For purposes of this section, a payment document is defined as one of the payment methods identified in § 218.51(a)(3).

(f) The amount of the assessment to be imposed pursuant to paragraphs (a) and (b) of this section shall be established periodically by MMS. The assessment amount will be based on MMS' experience with costs and improper reporting and/or payment as specified in this section. The MMS will publish a Notice in the Federal Register of the assessment amount to be applied with the effective date.

[FR Doc. 93–21019 Filed 8–27–93; 8:45 am]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning a permanent program amendment from the State of Kansas under the Surface Mining Control and Reclamation Act of 1977, at 30 CFR 916.15, Approval of Regulatory Program Amendments.

The rule published on Monday, June 14, 1993, incorrectly codified 30 CFR 916.15, the approval of regulatory amendments. A subsequent correction notice published on June 22, 1993 (58 FR 33986), incorrectly recodified 30 CFR 915.15, the approval of regulatory program amendments.

EFFECTIVE DATE: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program,

including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

Need for Correction

As published, the Final regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final rule published in the **Federal Register** issue of Monday, June 14, 1993 (58 FR 32854), is corrected as follows:

§916.15 [Corrected]

1. On page 32854, in the third column, in amendatory instruction 2., in the second line, "paragraph (1)" should read "paragraph (n)."

2. On the same page, in the third column, under the heading *§ 916.15 Approval of regulatory program amendments.*, in the first line, "(1)" should read "(n)."

Dated: August 19, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–20824 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–036–5800; FRL–4666–5]

Approval and Promulgation of Implementation Plans Alabama: Approval of Revisions to Alabama State Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA is approving revisions to the Alabama State Implementation Plan (SIP). On November 10, 1992, the State of Alabama through the Alabama Department of Environmental Management (ADEM) submitted revisions to the Air Pollution Control Rules and Regulations. These approved revisions involve changes to Chapters 335–3–6, –14, and appendix D, concerning organic emissions, permits, and nonattainment areas, respectively. Most of the revisions were due to typographical or grammatical errors, but there were some significant additions to the regulations, including volatile organic compound (VOC) offsets for new sources locating in a nonattainment area. Additionally, ADEM requested an exemption from the requirement for ozone nonattainment areas to provide for New Source Review (NSR) offsets for oxides of nitrogen (NO_X). EPA approves this request and the above referenced revisions.

EFFECTIVE DATES: This action will be effective October 29, 1993, unless notice is received by September 29, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Attn: Jerry Kurtzweg, ANR 443, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, GA 30365.

Air Division, Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, AL 36109.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur of the EPA Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On November 10, 1992, the State of Alabama through the Alabama Department of Environmental Management (ADEM) submitted a package with various revisions to the Air Pollution Control Rules and Regulations to be incorporated into the SIP. The original revisions proposed to the Alabama Environmental Management Commission included provisions for NO_X offsets for ozone nonattainment areas to meet the requirements of section 182(f) of the Clean Air Act Amendments of 1990 (CAA) enacted on November 15, 1990. (Pub. L. 101–549, 101 Stat. 2399, codified at 42 U.S.C. 7401–7671q.) ADEM subsequently removed the provisions for NO_X offsets from the proposal before adoption by the Environmental Management Commission and requested that EPA exempt the area from this requirement. The basis for approving an exemption is stated in section 182(f)(1)(A) of the CAA, "nonattainment areas not within an ozone transport region under section 184 if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area." The Birmingham marginal ozone nonattainment area is required by the CAA to attain the National Ambient Air Quality Standard for ozone by November 15, 1993. Offsets from new sources of NO_X applying for a permit to locate in the Birmingham ozone nonattainment area after November 15, 1992, would not in practice be achieved prior to the attainment date. These provisions, therefore, will not contribute to the timely attainment of the NAAQS in this area. It is expected that the Birmingham area will attain the ozone NAAQS by the statutory deadline.

EPA is approving the following revisions to the Alabama SIP. These revisions are more fully discussed in the official SIP submittal that is available at the Region IV office listed under the "**ADDRESSES**" section of this notice.

Section 335–3–6–.04(4), *Fixed-Roof Petroleum Liquid Storage Vessels*, p.6–7, is amended to fix a recodification error by removing the numbers "6.4.4" preceding the section.

Sections 335–3–14–.03(2)(b)15 and 17, *Definitions*, p.14–15, are amended by adding the numbers "15" and "17" to indicate the beginning of the respective sections.

Sections 335–3–14–.03(2)(b)17 and 18, *Definitions*, p.14–15, are amended by replacing "means" with "shall mean" to achieve consistency throughout the definitions.

Section 335–3–14–.03(2)(b)20, *Definitions*, p.14–16, is added to provide a definition for "offset ratio".

Section 335–3–14–.03(2)(c)2, *Applicability*, p.14–16, is amended by removing the words "in the" to make the section grammatically correct.

Section 335–3–14–.03(2)(e), *Temporary Emissions*, p.14–17, is amended by correcting the spelling of the word "temporary".

Sections 335–3–14–.03(2)(g)1(i) and (ii), *Offset Standards*, p.14–18, are added to establish the offset ratios for new or modified major VOC sources locating in nonattainment areas. These offset ratios are consistent with those specified in section 182(a)(4) of the CAA.

Appendix D, *Nonattainment Areas*, p.D–1, is amended by replacing the phrase "Photochemical Oxidants" with "Ozone" and adding Shelby County to the list of counties designated nonattainment for ozone.

Final Action

EPA is today approving the aforementioned revisions to the Alabama Air Pollution Control Rules and Regulations and the request for an exemption from the NO_x NSR offset requirement. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective October 29, 1993. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).]

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by Reference, Nitrogen dioxide, Ozone.

Dated: June 2, 1993.

Donald J. Guinyard,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(61) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(61) Revisions to the Alabama SIP to correct errors and to add offset ratios which were submitted on November 10, 1992.

(i) Incorporation by reference.

(A) Amendments to the following sections of the Alabama regulations—335–3–6–.04(4), 335–3–14–.03(2)(b)15, 335–3–14–.03(2)(b)17, 335–3–14–.03(2)(b)18, 335–3–14–.03(2)(b)20, 335–3–14–.03(2)(c)2, 335–3–14–.03(2)(e), 335–3–14–.03(2)(g)1(i), 335–3–14–.03(2)(g)1(ii), and Appendix D—were adopted by the State on October 23, 1992.

(ii) Other material.

(A) Letter of November 10, 1992, from the Alabama Department of Environmental Management.

[FR Doc. 93–20926 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA12–4–5881; FRL–4696–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District; Placer County Air Pollution Control District; and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of four rule revisions to the California State Implementation Plan (SIP) proposed in the Federal Register. The revisions concern rules from the following districts: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Placer County Air Pollution Control District (PCAPCD), and San Diego County Air Pollution Control District (SDCAPCD). This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from gas production facilities, printing facilities, and the storage of petroleum products. Thus, EPA is finalizing a limited approval of these revisions into the California SIP under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. EPA is also finalizing a limited disapproval of these rules under provisions of the CAA cited above because these rules contain deficiencies, and as a result, do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA

approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective September 29, 1993.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, suite 104, Fresno, CA 93711.

Placer County Air Pollution Control District, 11464 "B" Avenue, Auburn, CA 95003.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: William Davis, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

EPA proposed granting a limited approval and limited disapproval of the following rules into the California SIP:

District	Rule	Date of publication	Federal Register
PCAPCD	212	June 9, 1992.	57 FR 24451
SDCAPCD.	61.1	June 9, 1992.	57 FR 24451
SJVUAPCD.	465.3	September 17, 1992.	57 FR 42913
SJVUAPCD.	466.1	September 21, 1992.	57 FR 43420

PCAPCD's Rule 212, Storage of Petroleum Products, was adopted by the PCAPCD on September 25, 1990. SDCAPCD's Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals, was adopted on October 16, 1990. SJVUAPCD's Rule 465.3, Components Serving Light Crude Oil or Gases at Light Crude Oil and Gas Production Facilities and Components at Natural Gas Processing Facilities, and Rule 466.1, Graphic Arts, were both adopted by SJVUAPCD on April 11, 1991. Rules 212 and 61.1 were submitted by the California Air Resources Board (CARB) to EPA on April 5, 1991, and Rules 465.3 and 466.1 on May 30, 1991. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their Reasonably Available Control Technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the above-referenced notices of proposed rulemaking (NPRs).

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 42913, 57 FR 43420, and 57 FR 24451. EPA is today finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluations has been provided in the above cited **Federal Registers** and in technical support documents (TSDs) available at EPA's Region 9 office (TSDs dated January 3, 1992 for SJVUAPCD's Rule 465.3; June 18, 1992 for SJVUAPCD's Rule 466.1; and March 12, 1992 for PCAPCD's Rule 212 and SDCAPCD's Rule 61.1).

Response to Public Comments

A 30-day public comment period was provided in the above cited **Federal Registers**. EPA received one comment letter on the NPRs from SDCAPCD. The comment has been evaluated by EPA and a summary of the comment and EPA's response is set forth below.

Comment: SDCAPCD commented that submitted Rule 61.1 was originally revised and adopted with input from EPA, and that EPA had confirmed that all appropriate changes had been made. However, in the NPR, EPA cited two deficiencies in the rule that were given as the reason for a limited disapproval. The two deficiencies were (1) recordkeeping for throughput exemptions, and (2) lack of certain test methods. Recordkeeping was listed as a deficiency in EPA's comments but that deficiency had been fixed according to the District. The lack of test methods was a newly found deficiency. SDCAPCD believes that Rule 61.1 should be approved because the District revised the rule according to EPA's comments and EPA had confirmed those revisions and cited no other deficiencies. The District would like EPA to approve the rule and note the deficiencies so that they could address them during the next revision cycle.

Response: EPA regrets that not all of the deficiencies in the rule were noted by EPA at the time the District revised the rule. However, the primary responsibility for identifying rule deficiencies is with the District, and EPA's failure to identify all rule deficiencies during the local public workshops and hearings for the rule does not excuse noncompliance with CAA requirements. The District feels it corrected the recordkeeping deficiency. However, they added the recordkeeping provision to a section of the rule with which an affected facility is not required to comply. The District has been informed of EPA's position on recordkeeping and test methods through the dissemination of the document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to appendix D of November 24, 1987 **Federal Register**" (Blue Book) and other guidance documents. EPA believes that the CAA allows the District adequate time to revise the rule before sanctions or a Federal Implementation Plan (FIP) would be required.

EPA Action

EPA is today finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPRs. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPRs, upon the effective date of this NFR, the 18 month clock for sanctions and the 24 month FIP clock

will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this NFR have been adopted by the SJVUAPCD, PCAPCD, and SDCAPCD and are currently in effect in those districts. EPA's limited disapproval action in this NFR does not prevent those districts or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 9, 1993.

John C. Wise,

Acting Regional Administrator

Title 40 of the Code of Federal Regulations, part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (183)(i)(A)(*11*), (183)(i)(C)(*4*), and (185)(i)(C)(*6*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*11*) Amended Rule 61.1, adopted October 16, 1990.

* * * * *

(C) * * *

(*4*)Amended Rule 212, adopted September 25, 1990.

* * * * *

(c) * * *

(185) * * *

(i) * * *

(C) * * *

(*6*) Amended Rules 465.3 and 466.1, adopted April 11, 1991.

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[FR Doc. 93–20928 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CA–11–9–5838; FRL–4693–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District; San Luis Obispo County Air Pollution Control District; and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 17, 1992 and December 2, 1992. The revisions proposed September 17, 1992 concern rules from the following districts: Bay Area Air Quality Management District (BAAQMD), San Luis Obispo County Air Pollution Control District (SLOCAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD). The revisions proposed December 2, 1992 concern the BAAQMD. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from several different industries. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective September 29, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Jerry Kurtzweg, ANR–443, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.
California Air Resources Board, Stationary Source Division, Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.
San Luis Obispo County Air Pollution Control District, 2156 Sierra Way, Suite B, San Luis Obispo, CA 93410.
Santa Barbara County Air Pollution Control District, 26 Castillan Drive, B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: William Davis, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1992, in 57 FR 42911, EPA proposed to approve the following rules into the California SIP: BAAQMD's Regulation 8, Rule 46 (8–46), Marine Tank Vessel to Marine Tank Vessel Loading; SLOCAPCD's Rule 424, Gasoline Dispensing Facilities; and SBCAPCD's Rule 316, Storage and Transfer of Gasoline. On December 2, 1992, in 57 FR 57045, EPA proposed to approve BAAQMD's Regulation 8, Rule 44 (8–44), Marine Vessel Loading Terminals, into the SIP. Rules 8–44 and 8–46 were adopted by the BAAQMD on January 4, 1989 and July 12, 1989, respectively. Rule 424 was adopted by the SLOCAPCD on July 18, 1989, and Rule 316 was adopted by the SBCAPCD on July 10, 1990. The BAAQMD rules 8–44 and 8–46 were submitted by the California Air Resources Board (CARB) to EPA on March 26, 1990 and December 31, 1990, respectively. CARB submitted the SBCAPCD rule to EPA on April 5, 1991, and submitted the SLOCAPCD rule on December 31, 1990.

All of these rules, except the SLOCAPCD rule, were submitted in response to EPA's 1988 SIP-Call and the CAA requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act.[1] A detailed discussion of the background for each of the above rules and nonattainment areas is provided in 57 FR 42911 and 57 FR 57045.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 42911 and 57 FR 57045. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the **Federal Registers** cited above and in technical support documents (TSDs) available at EPA's Region 9 office (TSDs dated September 25, 1990 for Rule 8–44; July 22, 1992 for Rule 8–46; and July 23, 1992 for Rules 424 and 316).

A 30-day public comment period was provided in 57 FR 42911 and in 57 FR 57045. EPA received no comments on these rules.

EPA Action

In this notice, EPA takes final action to approve the above rules for inclusion into the California SIP. EPA is approving the submittals under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The BAAQMD Rule 8–44 was a Table 1 action for the publication of the notice of proposed rulemaking (NPR) because EPA is in the process of developing federal rules governing VOC emissions during the loading of marine vessels. EPA received no comments from the public on the NPR. Therefore, action on this rule is now classified as a Table 2 action under current policy for notices which receive no adverse comments. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget (OMB) has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 4, 1993.

Harry Seraydarian,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(179)(i)(C), (182)(i))(B)(3), (182)(i)(C), and (183)(i)(E)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(179) * * *

(i) * * *

(C) Bay Area Air Quality Management District.

(*1*) Rule 8–44, adopted January 4, 1989.

* * * * *

(182) * * *

(i) * * *

(B) * * *

(*3*) Rule 8–46, adopted July 12, 1989.

(C) San Luis Obispo County Air Pollution Control District.

(*1*) Rule 424, adopted on July 18, 1989.

* * * * *

(183) * * *

(i) * * *

(E) * * *

[1] The SLOCAPCD is an ozone attainment area and, therefore, was not subject to the SIP-Call or to the RACT fix-up requirement.

(2) Rule 316, adopted on July 10, 1990.

* * * * *

[FR Doc. 93-20927 Filed 8-27-93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 52

[CA11-6-5816; FRL-4691-9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on February 3, 1992. The revision concerns a rule from the South Coast Air Quality Management District (SCAQMD). This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended, in 1990 (CAA or the Act). The revision concerns SCAQMD's Rule 109, Recordkeeping for Volatile Organic Compound Emissions, which prescribes recordkeeping requirements, VOC calculations and test methods to demonstrate compliance with VOC emission limits for a number of different source categories such as coatings, graphic arts, adhesives, and solvent cleaning operations. Thus, EPA is finalizing a limited approval of this revision into the California SIP under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. EPA is also finalizing a limited disapproval of this rule under the provisions of the CAA cited above because the rule contains deficiencies, and as a result, does not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval, EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on September 29, 1993

ADDRESSES: Copies of the rule revision and EPA's evaluation report for Rule 109 are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revision are also available for inspection at the following locations:

Rulemaking Section II (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

South Coast Air Quality Management District, 21865 E. Copely Drive, Diamond Bar, CA 91765-4182.

FOR FURTHER INFORMATION CONTACT: Dave Hodges, Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1992 in 57 FR 3976, EPA proposed granting limited approval and limited disapproval of the following rule into the California SIP: SCAQMD Rule 109, Recordkeeping for Volatile Organic Compound Emissions. Rule 109 was adopted by SCAQMD on May 5, 1989 and submitted by the California Air Resources Board to EPA on December 31, 1990. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their Reasonably Available Control Technology rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the notice of proposed rulemaking (NPR) cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 3976. EPA is finalizing the limited approval of this rule in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluation has been provided in 57 FR 3976 and in a technical support document (TSD) available at EPA's Region IX office (TSD dated January 15, 1992).

Response to Public Comments

A 30-day public comment period was provided in 57 FR 3976. EPA received one comment letter on the NPR from Thompson & Formby, Inc. and Minwax. The comments have been evaluated by EPA and a summary of the comments and EPA's response are set forth below.

Comment: Thompson & Formby, Inc. and Minwax (TF&M) requested that EPA approve the use of the method referenced in Rule 109, which calculates the VOC content of low-solid adhesives, adhesive primers, or stains as "grams of VOC per liter of material" (the "with-water" method). TF&M state that the VOC unit required by EPA to measure the VOC content in coatings, "grams of VOC per liter of material less water and exempt compounds" (the "less-water" method), is applicable only to coatings with high solids-to-diluent ratios and therefore inappropriate for certain low-solid coatings regulated under SCAQMD Rules 1136 Wood Products Coatings and Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Applications. The "with-water" calculation was listed as a rule deficiency in the NPR for Rule 109.

Response: The issue of certain low-solids coatings and the appropriate method for calculating the VOC content in such coatings was described in the TSD for the NPR on Rule 109. As discussed in the TSD, the application of the "with-water" method was determined to be acceptable for zero-solids coatings, but its acceptability for low-solids coatings was under review by EPA's Office of Air Quality Planning and Standards (OAQPS). OAQPS is currently considering the issue of low-solids coatings and the appropriateness of the "with-water" method.[1] EPA will keep the SCAQMD informed of any change in its policy which currently requires the "less-water" calculation for coatings containing solids regardless of solids content.

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of this rule is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. However, the rule does not meet the

[1] EPA believes that since Rule 109 is applicable to many SCAQMD RACT rules and because recordkeeping requirements are an important enforcement tool, it is preferable to finalize Rule 109 while OAQPS review is pending.

section 182(a)(2)(A) CAA requirements because of the deficiencies discussed in the NPR. Thus, in order to strengthen the SIP, EPA is granting limited approval of this rule under sections 110(k)(3) and 301(a) of the CAA. This action approves the rule into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the NPR, upon the effective date of this NFR, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the NFR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this NFR has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's limited disapproval action in this NFR does not prevent the SCAQMD or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years (54 FR at 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Limited approvals under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 30, 1993.

John C. Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(182)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(A) * * *

(*2*) Rule 109, adopted on May 5, 1989.

* * * * *

[FR Doc. 93–20029 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA–11–7–5782; FRL–4692–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on October 2, 1991. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD) and San Diego County Air Pollution Control District (SDCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). Each rule establishes guidance modeled after the EPA's Emissions Trading Policy Statement, published on December 4, 1986, for the trading of VOC emissions within applicable existing stationary sources in the SCAQMD and SDCAPCD. The proposed **Federal Register** notice

published on October 2, 1991 provided a 30-day public comment period, and EPA received one minor comment on its proposal to approve these revisions. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on September 29, 1993.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

South Coast Air Quality Management District, Planning & Rules Division, P.O. Box 4939, Diamond Bar, CA 91765–0939

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1991, in 56 FR 49857, EPA proposed to approve the following rules into the California SIP: SCAQMD's Rule 108, Alternative Emission Control Plans (AECPs), and SDCAPCD's Rule 67.1, Alternative Emission Control Plans. Rule 108 was adopted by SCAQMD on April 6, 1990, and Rule 67.1 was adopted by SDCAPCD on May 21, 1991. The rules were submitted by the CARB to EPA on December 31, 1990 and May 30, 1991.

These rules were submitted in response to EPA's 1988 SIP-Call and the CAA requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPR) cited above.

At the time of the SIP-Call in May, 1988, numerous SCAQMD and SDCAPCD rules contained AECP provisions which allowed a source to average its VOC emissions from a variety of operations within a facility. While EPA policy allows for the averaging of emissions, the SCAQMD and SDCAPCD AECP provisions were inconsistent with EPA criteria established in the Emissions Trading Policy Statement (ETPS).[1] As a response to the SIP-Call, the SCAQMD adopted Rule 108 and SDCAPCD adopted Rule 67.1, which are both new rules modeled after criteria in the ETPS. Along with the adoption of Rule 108, the SCAQMD deleted the AECP language in a number of VOC regulations (described below) and added a provision in each applicable VOC regulation which referenced Rule 108. SDCAPCD has taken a similar approach with its applicable VOC regulations (also described below). EPA is not taking action in this document on the individual rules which reference Rules 108 and 67.1.

Description of Regulations

SCAQMD Rule 108 and SDCAPCD Rule 67.1 establish criteria for the averaging or bubbling of VOC emissions within existing stationary sources. Key criteria within Rules 108 and 67.1 include the following:

- The AECP shall be enforceable over a 24-hour period;
- The AECP shall establish an emissions baseline for each source by using the lowest of either actual or allowable values for the emission rate, capacity utilization, and hours of operations, based on the previous two years of information or another more representative period;
- Emission reductions shall be surplus, permanent, quantifiable, and enforceable;
- The AECP shall provide a net air quality benefit by achieving a 20% reduction beyond the established baseline;
- AECP approvals shall be submitted to CARB and EPA as source-specific revisions to the SIP.

Rule 108 is applicable to an existing stationary source electing to comply by means of an AECP and subject to one of the following SCAQMD VOC rules:

1104—Wood Flat Stock Coating Operations,
1106—Marine Coating Operations,
1107—Coating of Metal Parts and Products,
1115—Motor Vehicle Assembly and Component Coating Operations,
1124—Aerospace Assembly and Component Coating Operations,
1125—Metal Container, Closure, and Coil Coating Operations,
1128—Paper, Fabric, and Film Coating Operations,
1130—Graphic Arts,
1136—Wood Products Coatings,
1145—Plastic, Rubber, and Glass Coatings,
1151—Motor Vehicle and Mobile Equipment Non-assembly Line Coating Operations,
1164—Semiconductor Operations,
1168—Control of Volatile Organic Compound Emissions from Adhesive Application.

These thirteen source categories represent a variety of surface coating operations which emit VOCs. Prior to adoption of Rule 108, the SCAQMD staff estimated that an undetermined number of sources representing six rule categories (1107, 1124, 1125, 1130, 1136, and 1145) had previously applied for and were operating using an AECP. Upon adoption of Rule 108, applicable sources were required to reapply for an AECP under the revised criteria if they intended to continue using an AECP as a method of compliance. While this document finalizes the approval of Rule 108, EPA is not taking action in this notice on the individual rules listed above. Revisions to these rules and applicable AECP submittals will be addressed in future rulemaking actions. At that time, EPA will consider the applicability, if any, of the additional requirements in the ETPS for state assurances.

Rule 67.1 is applicable to an existing stationary source electing to comply by means of an AECP and subject to one of the following SDCAPCD VOC rules:

67.3—Coating of Metal Parts and Products,
67.4—Metal Container, Metal Closure and Metal Coil Coating Operations,
67.5—Paper, Film and Fabric Coating Operations,
67.9—Aerospace Coating Operations,
67.11—Wood Products Coating Operations,
67.16—Graphic Arts Operations,
67.18—Marine Coating Operations.

These seven source categories represent a variety of surface coating operations which emit VOCs. Prior to adoption of Rule 67.1, the SDCAPCD staff estimated that three sources (all regulated under Rule 67.9) were operating under an AECP. Upon adoption of Rule 67.1, applicable sources were required to reapply for an AECP under the revised criteria if they intended to continue using an AECP as a method of compliance. While this document finalizes the approval of Rule 67.1, EPA is not taking action in this

[1] In light of the 1990 Clean Air Act amendments, EPA is reviewing the requirements of the ETPS for consistency with the amended Act's requirements.

notice on the individual rules listed above. Revisions to these rules and applicable AECP submittals will be addressed in future rulemaking actions. At that time, EPA will consider the applicability, if any, of the additional requirements in the ETPS for state assurances.

Response to Public Comments

On October 2, 1991, EPA published in the **Federal Register** a proposal to approve submitted rules 108 and 67.1 into the SIP. EPA received one comment letter, dated October 28, 1991, which addressed SCAQMD Rule 108. The purpose of this section is to summarize and respond to the submitted comments.

Comment #1: The proposed method of establishing the source's emissions baseline does not assure Reasonable Further Progress (RFP) toward attainment of the ozone standard. When calculating its baseline, a source could use previous high levels for limits and usage, which may be inconsistent with current VOC emission limitations and may negate the net 20% air quality benefit requirement.

EPA response: The three variables used to determine a source's baseline are required to be the lower of actual or allowable values. This, in combination with the 20% requirement, is intended to assure RFP. Values for capacity utilization (or throughput) and hours of operation are generally based on actual throughput and hours of operation for the previous two years. The value for the emission rate is determined using the lower of the actual or allowable emission rate (pounds of VOC per gallon of solids) in the current District or SIP rule.

While a source can generally request a higher baseline because its previous two years of operations were not representative, the baseline must also reflect "surplus" emissions, meaning emission reductions not already mandated in the SIP, relied upon for SIP planning purposes, or used to meet another regulatory requirement. Taken together, these requirements should protect RFP.

Comment #2: Rule 108 does not allow for future RACT emission reductions at sources covered by an AECP when lower VOC coating requirements are adopted by the SCAQMD. Rule 108 establishes an AECP baseline and allows a source to emit at that baseline rate essentially forever, and therefore appears to circumvent the SIP RACT requirement of the Clean Air Act.

EPA response: Rule 108 specifically precludes a source from taking credit for emission reductions which are not surplus or are required by subsequent amendments to an applicable VOC rule. Thus, for example, if a lower VOC coating requirement is adopted, a source would need to identify a new process which would result in lower VOC emissions or reduce production to offset the continued use of a non-compliant coating in order to meet its AECP requirements. While the commentor is correct that this requirement would not necessarily result in lower emissions beyond what the baseline would have previously allowed, the requirement will likely result in affected AECP sources emitting below their baselines. Lower future RACT limits alone would not guarantee lower VOC emissions for non-AECP sources because non-AECP sources can meet a lower RACT requirement but still increase production up to permitted levels. In addition, there is nothing to prevent the SCAQMD from adjusting a source's baseline in the future if it determines such action necessary to meet air quality goals.

EPA Action

EPA is taking final action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the CAA will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 4, 1993.

Harry Seraydarian,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (182)(i)(A)(*3*) and (185)(i)(B)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(A) * * *

(3) Rule 108, adopted on April 6, 1990.

* * * * *

(185) * * *

(i) * * *

(B) * * *

(5) Rule 67.1, adopted on May 21, 1991.

* * * * *

[FR Doc. 93-21006 Filed 8-27-93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[IL66-1-5720; FRL-4696-2]

Approval and Promulgation of a Small Business Assistance Program; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving the State Implementation Plan (SIP) revision submitted by the State of Illinois for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the federal mandate of the Clean Air Act (CAA) to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA requirements. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

EFFECTIVE DATES: This action will be effective October 29, 1993, unless notice is received by September 29, 1993, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, Air and Radiation Division, Region 5, AR-18J, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's technical support document are available for inspection during normal business hours at the following location: Regulation Development Branch, Air and Radiation Division, Region 5, AR-18J, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Illinois SIP is available for inspection at: Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jennifer Drury-Buzecky, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois 60604, (312) 886-3194.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National Ambient Air Quality Standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) and submit this PROGRAM as a revision to the federally approved State Implementation Plan (SIP). In addition, the CAA directs the USEPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February of 1992, USEPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions. A copy of these guidelines is part of the rulemaking docket for this rule.

On November 12, 1992, the State of Illinois submitted a requested SIP revision to USEPA in order to satisfy the requirements of section 507. For full USEPA approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. USEPA has determined that the Illinois submittal contains each of the required program elements. The following analysis explains how the Illinois submittal addresses each of the program requirements and how the program elements meet the program requirements.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The State has met this requirement by designating the Illinois Department of Commerce and Community Affairs (DCCA) as the primary agency implementing the PROGRAM pursuant to an Interagency Agreement between the Illinois Environmental Protection Agency (IEPA) and DCCA. The DCCA will operate a toll-free hotline to provide confidential assistance with individual source questions and concerns and work with trade associations to promote voluntary compliance. Although DCCA will increase the number of staff with the expertise to interpret technical and regulatory environmental information as funds become available, the current number of staff is considered adequate for the implementation of this program at a level sufficient for approval of the SBAP by USEPA. DCCA will also use a State program currently operated in cooperation with the United States Small Business Administration, called the Illinois Small Business Development Center Network (NETWORK), as additional outreach assistance. The NETWORK operates throughout the State within community colleges, chambers of commerce and local business organizations. These organizations hold seminars and otherwise disseminate information relevant to small businesses and could be utilized to communicate information regarding environmental issues. DCCA may also provide additional outreach in the form of public service announcements to inform small businesses of upcoming hearings or meetings on environmental regulations or other related issues.

The second requirement is to establish adequate mechanisms for assisting small business stationary

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

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sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by utilization of various existing programs and statutory regulation. The Illinois Pollution Prevention Act of 1992 specifically requires DCCA to assist businesses in implementing pollution prevention alternatives. DCCA will work with IEPA and the Hazardous Waste Research and Information Center (HWRIC), a division of the Illinois Department of Energy and Natural Resources, to obtain information from HWRIC's library and clearinghouse, which contains extensive information on pollution prevention related topics and a computerized system to provide waste generators with a wide range of options regarding reducing and recycling of waste. The HWRIC also provides free environmental audits to sources in the areas of land, air and water pollution as well as information concerning compliance with State and federal regulations.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. The State has met this requirement by utilizing the various organizations throughout the State that currently work with DCCA. Some of these organizations include the Illinois Manufacturers Association, Illinois Retail Merchants Association, National Federation of Independent Businesses, Chemical Industries Council and the Illinois State Chamber of Commerce. These organizations will continue to provide information and forums for outreach with small businesses on environmental compliance issues.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulations or standards issued under the CAA. The State has met this requirement by requiring DCCA, pursuant to an Interagency Agreement between IEPA and DCCA, to establish sufficient mechanisms for notifying small business stationary sources of their rights under the CAA and other applicable requirements on a timely basis. The mechanisms described under requirement one, such as community outreach, dissemination of information through the NETWORK and HWRIC, and Public Service Announcements are sufficient to meet this requirement.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the CAA. The State has met this requirement by requiring DCCA to provide a list of qualified auditors to small businesses at their request. The list of auditors will continually be revised and updated. DCCA will also refer small businesses to the HWRIC for assistance with environmental audits. Small businesses may request this information through the toll-free hotline.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by utilizing IEPA technical personnel to provide any necessary expertise regarding compliance methods or other technical information and to assist DCCA in implementation of the SBAP.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by appointing Mr. Delbert Haschemeyer, the former Deputy Director of IEPA, as Ombudsman and Senior Counsel to IEPA. The Office of the Ombudsman for the State of Illinois is located in the Director's Office along with other senior IEPA officials such as the Deputy Director, the Associate Director for Legal Affairs, the Senior Environmental Advisor and the Public Information Manager. The Ombudsman is appointed with the authority and ability to objectively represent small business concerns to IEPA's Bureau of Air, to gain access to other governmental entities including the Governor's Office, the Director of IEPA, the Director of DCCA, and other officials of comparable position, and to provide any necessary reports and/or to otherwise communicate with such persons as State legislators and those governmental officials listed above. The Ombudsman will share in the responsibilities of the CAP, namely to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; periodically report to USEPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act and the Regulatory Flexibility Act; and to develop and disseminate the reports and advisory opinions made through the SBAP. The Ombudsman, however, will assume sole responsibility for the review and assurance that information for small business stationary sources is easily understandable. The translation of information into easily understandable language for small businesses was originally assigned to the Compliance Advisory Panel under the CAA.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing the CAP consistent with these federal requirements.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to USEPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three federal statutes. However, since State agencies are not required to comply with them, USEPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these federal statutes.

requirements by jointly assigning these duties to either the Ombudsman, the CAP or both. The CAP will be responsible for sharing duties of 1, 2 and 4 with the Ombudsman, however, the responsibility to review and assure that information for small business stationary sources is easily understandable rests solely upon the Ombudsman.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Illinois has met this requirement by using the definition of small business stationary source in section 507(c) of the CAA to define a small business stationary source.

The State of Illinois has not established a formal mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. Instead, attempts will be made to screen requests for assistance so as to narrow the assistance to those sources who are eligible under the PROGRAM. This responsibility is delegated to DCCA under the Interagency Agreement between IEPA and DCCA. Because this approach will not limit assistance to small businesses it is approvable.

The State of Illinois has not provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants. Because Illinois will not strictly limit eligibility to those sources that meet the definition in section 507(c)(1) of the CAA, this approach satisfies USEPA requirements.

The State of Illinois has not provided for exclusion from the small business stationary source definition, after consultation with the USEPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. This meets USEPA requirements because the Illinois program is not limited to small business sources.

Although the State of Illinois did not adopt these previous three procedures, the State will need to follow these procedures if a change in the definition of a small business stationary source is desired or if the scope of the program will be narrowed. Although the State of Illinois is not limiting this program strictly to small businesses, no small business will be excluded from the program.

III. Final Rulemaking Action

Because the Illinois SBAP requested SIP submittal meets the approval criteria as discussed above and summarized below, USEPA is approving the SIP revision submitted by the State of Illinois.

The State of Illinois has submitted a requested SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. Members will be appointed to the CAP by June 1993, with the first meeting of the CAP, including the Ombudsman, in November of 1993. The Title V permit program will be submitted to USEPA by November 1993, and will specify the exact funds and distribution of these funds from Title V permit fees for staff, training, and other purposes. IEPA training of DCCA and PROGRAM core-staff will begin in January 1994. By June 1994, the Ombudsman's office will be in place and by November 1994, a ramp-up of resources will begin for the implementation of the PROGRAM.

Because USEPA considers this final rule noncontroversial and routine, we are approving it today without prior proposal. This rule will become effective on October 29, 1993. However, if we receive notice by September 29, 1993, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This final rule is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State.

Therefore, because the USEPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Small business assistance program.

Dated: August 9, 1993.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(96) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(98) On November 12, 1992, the State of Illinois submitted a Small Business Stationary Source Technical and Environmental Assistance Program for incorporation in the Illinois State Implementation Plan as required by section 507 of the Clean Air Act Amendments of 1990. Included in the State's submittal were a program description, newly adopted enabling legislation including new subsection 20 of section 39.5 of the Environmental Protection Act, Public Act 87–1213, and new subsection 46.13(a) of the Civil Administrative Code, Public Act 87–1177, and a May 4, 1992, State of Illinois, Illinois Department of Commerce and Community Affairs (DCCA), Illinois Environmental Protection Agency (IEPA) Interagency Agreement defining the responsibilities of DCCA and IEPA in developing and implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program (Program).

(i) *Incorporation by reference.* (A) Subsection 20 of section 39.5 of the Environmental Protection Act adopted as Public Act 87–1213 signed into law on September 26, 1992 and effective upon signature.

(B) Subsection 46.13(a) of the Civil Administrative Code adopted as Public Act 87–1177 signed into law on September 21, 1992 and effective upon signature.

(ii) *Other material.* (A) Program description.

(B) May 4, 1992, Interagency Agreement between DCCA and IEPA defining the responsibilities of each agency in developing and implementing the program.

3. Section 52.744 is added to read as follows:

§ 52.744 Small business stationary source technical and environmental compliance assistance program.

The Illinois program submitted on November 12, 1992, as a requested revision to the Illinois State Implementation Plan satisfies the requirements of section 507 of the Clean Air Act Amendments of 1990.

[FR Doc. 93–20930 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MO–13–1–5881; FRL–4684–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Missouri rules which apply to rotogravure and flexographic printing facilities in Kansas City, Missouri, and St. Louis, Missouri. These revisions are the result of an EPA rule effectiveness study which concluded that changes in the language of the rules would facilitate better compliance and enforcement.

EFFECTIVE DATES: This rule will become effective on September 29, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; and Jerry Kurtzweg (ANR–443), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: On May 27, 1993, EPA proposed approval of amendments to the Missouri rules entitled "Control of Emissions from Rotogravure and Flexographic Printing Facilities" (10 CSR 10–2.290 and 10 CSR 10–5.340), which apply to sources in Kansas City, Missouri, and St. Louis, Missouri, respectively (58 FR 30730). These amendments were submitted as a result of an EPA rule effectiveness study and will aid in compliance and enforcement. No comments were received in response to the proposal. For a complete discussion of the state submittal, the reader is directed to the above referenced Federal Register notice.

EPA Action

In today's notice, EPA takes final action to approve amendments to Missouri's rules 10 CSR 10–2.290 and 10 CSR 10–5.340, which were included in state submittals of September 16 and September 23, 1992. EPA's rationale for this action is stated in the May 27, 1993, proposal, cited above.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan (SIP). Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: August 2, 1993.

William W. Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(84) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(84) The Missouri Department of Natural Resources submitted rule revisions pertaining to rotogravure and flexographic printing facilities in Kansas City, Missouri, and St. Louis, Missouri; and an amendment to the sampling methods rule which adds a compliance test method for the capture efficiency of air pollution control devices. These amendments were submitted September 16 and September 23, 1992.

(i) Incorporation by reference.

(A) Revised regulations 10 CSR 10–2.290 (except section (2) Definitions and section (6) Compliance Dates) and 10 CSR 10–5.340 (except section (2) Definitions and section (6) Compliance Dates), both entitled Control of Emissions from Rotogravure and Flexographic Printing Facilities, effective February 6, 1992.

(B) Revised regulation 10 CSR 10–6.030 (section (20)), effective April 9, 1992.

[FR Doc. 93–20924 Filed 8–27–93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 52

[NE–4–1–5861; FRL–4694–6]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves the State Implementation Plan (SIP) revision submitted by the state of Nebraska for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP). The revision was submitted by the state to satisfy the federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

EFFECTIVE DATE: This action will be effective October 29, 1993, unless notice is received by September 29, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Nebraska Department of Environmental Quality, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509–8922; and Jerry Kurtzweg (ANR–443), Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt an SBAP and submit this program as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation.

The requirements for establishing a program are set out in section 507 of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

Nebraska's SBAP plan was submitted to EPA on November 16, 1992, in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must, at a minimum, contain commitments and schedules to fully implement the following elements: (1) The establishment of an SBAP to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. SBAP

Section 507(a) sets forth seven requirements that the state must meet to have an approvable SBAP. Six of these requirements are discussed in this section; the seventh requirement is discussed in the next section. The first requirement is to establish adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act.

In Phase I of the plan, the Public Advocate (Ombudsman) will coordinate with the Nebraska Department of Environmental Quality (NDEQ) staff which includes the air program staff, waste minimization program staff, the emergency response coordinator, and the Title III coordinator to define their roles for collecting and developing information. (The emergency response coordinator was designated under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, to provide information to the public relating to emergency planning and response.) The Public Advocate will also work with staff from the Nebraska Library Commission, the Nebraska Department of Economic Development, the University of Nebraska, and the Nebraska Industrial Development Association to develop the reactive and proactive information dissemination mechanisms listed in the SBAP plan.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

NDEQ has a previously established Waste Minimization Program. This program has assisted all Nebraska businesses in maximizing opportunities for pollution prevention by providing examples from other facilities, alternative chemicals which are less toxic, technical literature, and case studies to interested sources. According to the plan, the Waste Minimization coordinators from this program will provide their services to eligible small businesses which are referred by the Public Advocate. The Emergency Response and Title III coordinators are also located within NDEQ, and are identified as resources which will be

available to the SBAP to provide accidental release assistance to eligible small businesses.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

Nebraska has committed to meet this requirement by July 1993. According to the Plan, the Public Advocate will coordinate resources from many different entities including NDEQ, private consultants, the University of Nebraska, the Nebraska Technical Information Center, and local air pollution control agencies. Individuals and/or resources from each of these agencies will be used to form the small business compliance and technical assistance program.

The fourth requirement is to develop adequate mechanisms to ensure that small business stationary sources receive notice of their rights under the Act, in such manner and form as to ensure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act.

A statewide emission inventory will be used to develop a list of potential SBAP eligible sources. The state has committed to reach these sources through the use of a reactive and proactive information dissemination program. This program will utilize SBAP staff to respond to telephone inquiries, environmental audits, electronic bulletin boards, newsletters, video networks, chambers of commerce, trade associations, and media marketing. This information transfer method will be in place by July 1993.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the Act.

According to the Plan, the state has committed to make NDEQ staff available to provide SBAP eligible sources with advice. Also, the state will coordinate with the Nebraska Society of Professional Engineers and the Nebraska Society of Civil Engineers to develop a comprehensive list of engineers who are available and who have the expertise to advise small business stationary sources of their rights, obligations, and compliance posture under the CAA. The referral list is scheduled to be completed by July 1993.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (1) Any work practice or technological method of compliance; or (2) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The state has committed to developing these procedures within the purview of its operating permit program regulations.

2. Ombudsman

Section 507(a)(3) requires the designation of a state office to serve as the Ombudsman for small business stationary sources.

The state has met this requirement by hiring a Public Advocate in November 1992. The Public Advocate is located in the office of the NDEQ Deputy Director. The position has statutory authority to conduct the duties required of the Ombudsman in the CAA. These duties include: (1) Rendering advisory opinions concerning the effectiveness of the SBAP; (2) making periodic reports to Congress regarding the SBAP compliance with the Paper Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and (3) reviewing information for the small businesses to ensure that it is understandable by the layperson. A specific list of other Public Advocate duties is listed in Section 1 of the plan and their implementation is described in Section 2 of the plan.

3. CAP

Section 507(e) requires the state to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The state has committed to meet this requirement. Because the Nebraska constitution provides for a nonpartisan, unicameral legislature, there are no minority and majority parties. Therefore, the panel members will be selected by the unicameral legislature as a whole. The CAP appointments should be completed by July 1993. EPA believes that the process for designation by the legislature meets the intent of section 507(e).

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act; (3) to review and ensure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP.

(Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with the three federal statutes listed in point number 2 of the previous paragraph. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these federal statutes.)

The state submittal meets these requirements. The Plan lists CAP duties that include providing advisory opinions, reporting on SBAP compliance with statutory requirements, and annual reporting on the effectiveness of the SBAP.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

a. Is owned or operated by a person who employs 100 or fewer individuals,

b. Is a small business concern as defined in the Small Business Act;

c. Is not a major stationary source;

d. Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

e. Emits less than 75 tpy of all regulated pollutants.

According to the Plan, the SBAP will use numerous proactive mechanisms to transfer compliance information to Nebraska small businesses. (See the "fourth requirement" under Section II.1 of this notice.) The Public Advocate will develop a tracking system which quantifies the number of eligible businesses which request assistance from the SBAP via the established phone line. Source eligibility will be determined using the criteria in section 507(c)(1) of the CAA.

The state of Nebraska has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C),

(D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The state has also provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator, and after providing notice and opportunity for public comment, of any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. This Action

In this action, EPA is approving the SIP revision submitted by the state of Nebraska. The state of Nebraska has submitted a SIP revision implementing each of the program elements required by section 507 of the CAA. NDEQ had selected a Small Business Public Advocate (Ombudsman) at the time of the submission of this program to EPA. This Public Advocate is currently implementing the program schedule to develop the full program. The CAP will be selected in June 1993 and will develop the first annual review of the SBAP effectiveness by December 1993. Coordination with each of the agencies involved in staffing the SBAP has already taken place. The establishment of the SBAP will be fully completed by July 1993. EPA is therefore approving this submittal.

EPA Action

In this notice, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. This program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 29, 1993, unless, by September 29, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 29, 1993.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: August 2, 1993.

William W. Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(40) to read as follows:

§52.1420 Identification of plan.

(c) * * *

(40) The Nebraska Department of Environmental Quality submitted the Small Business Assistance program State Implementation Plan revision on November 12, 1992.

(i) Incorporation by reference.

(A) Revision to the Nebraska State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program was adopted by the state of Nebraska on November 12, 1992, and became effective on the same date.

[FR Doc. 93–20925 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–18–1–5832; FRL–4691–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the Texas State Implementation Plan (SIP) to include revisions to Texas Air Control Board (TACB) Regulation II, chapter 112, entitled Control of Air Pollution from Sulfur Compounds. These revisions correct enforceability deficiencies and strengthen the provisions of chapter 112.

EFFECTIVE DATE: This action will become effective on October 29, 1993, unless notice is received by September 29, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. The EPA Region 6 provided a list of deficiencies in Regulation II to the State of Texas by cover letter dated March 13, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Regulation II for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, and the EPA Region 6 March 13, 1991, letter are included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards (NAAQS); (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) Director's discretion issues; and (7) Stack Height issues.

The State of Texas filed revisions to Regulation II in the Texas Register on October 9, 1992 (effective October 23, 1992), in order to correct enforceability deficiencies. The revisions, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (CAA) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Texas held public hearings on May 21, 1992, and May 22, 1992, to entertain public comment on proposed revisions to Regulation II addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed in the Texas Register on October 9, 1992 (effective October 23, 1992). The SIP revision was submitted by the Governor to the EPA by cover letter dated October 15, 1992. It is important to note that by the same cover letter the Governor also submitted revisions of the TACB Regulation I to the EPA, concerning control of air pollution from visible emissions and particulate matter. The revisions to the TACB Regulation I will be addressed in a separate **Federal Register** notice.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated December 17, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in this action, the EPA is approving this Texas SIP submittal to correct SO_2 enforceability deficiencies.

2. Review of Revisions to Regulation II

The State of Texas revised Regulation II in order to correct SO_2 enforceability deficiencies. These revisions are found in Chapter 112, entitled Control of Air Pollution from Sulfur Compounds. For a detailed explanation of each change to Regulation II, chapter 112, being approved in this action, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

The revisions to Regulation II, chapter 112, strengthen the provisions. Language has been added to chapter 112 to protect the three-hour SO_2 NAAQS. Compliance determination methods were clarified, including the involvement of the EPA in the approval of equivalent test methods and exemptions. Emission limitations were clarified by the use of equations rather than by the use of graphs. In addition, clear language was added to chapter 112 describing temporary fuel shortage plan filing, operating, and reporting requirements. Continuous emissions monitoring (CEM) provisions (including 40 CFR part 51, appendix P requirements), and recordkeeping and reporting requirements were also added to the regulation. Additional provisions were included to allow affected sources, in lieu of 40 CFR part 51, appendix P CEM requirements, to incorporate the CEM requirements from the Title IV acid rain provisions under section 412(c) of the CAA and all regulations promulgated thereunder.

The revisions to chapter 112 also contain new language which outlines a study to determine whether or not a tighter emission limitation under three pounds per million British Thermal Units (BTU), three-hour average, is required for solid fossil fuel-fired steam generators having a design heat input of greater than 1,500 million BTU per hour and which, on January 1, 1991, were not

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subject to the Federal New Source Performance Standards. It is important to note that the provisions outlining the study were initially adopted by the TACB on February 21, 1992, and submitted to the EPA by cover letter from the Governor dated May 29, 1992. At that time, the provisions for the study were found in section 112.5. The May 29, 1992, submittal has now been superseded by the October 15, 1992, submittal being acted upon in this action. The provisions of the study have not changed but are now found in section 112.8. Please reference the Technical Support Document for more information concerning the background for the special study.

Finally, the EPA will not be acting on section 112.8(b) of the TACB Regulation II in this action. The EPA will act upon section 112.8(b) in a separate **Federal Register** action. Section 112.8(b) contains a relaxed emission limitation of 4.0 pounds SO_2 per million BTU, three-hour average, for solid fossil fuel-fired steam generators located in Milam County, Texas, which began operation prior to January 1, 1955. The current Federally-approved SIP limitation is 3.0 pounds SO_2 per million BTU, three-hour average, which remains in place. The State of Texas has submitted a schedule to the EPA outlining the development, adoption, and Governor's submittal of supporting technical information addressing section 112.8(b).

Final Action

The EPA is approving this revision to the Texas SIP to include revisions to the TACB Regulation II, chapter 112, entitled *Control of Air Pollution from Sulfur Compounds*. These revisions correct enforceability deficiencies and strengthen the provisions of Regulation II, chapter 112. The revisions were submitted by the Governor to the EPA by cover letter dated October 15, 1992.

The EPA has reviewed these revisions to the Texas SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 29, 1993, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 29, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing.

Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Executive Order 12291

This action has been classified as a Table two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Tables two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table two and three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 30, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(76) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(76) A revision to the Texas State Implementation Plan (SIP) to include revisions to Texas Air Control Board (TACB) Regulation II, 31 TAC Chapter 112. Control of Air Pollution from Sulfur Compounds, submitted by the Governor by cover letter dated October 15, 1992.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board (TACB), Regulation II, 31 TAC Chapter 112, Section 112.1, "Definitions;" Section 112.2, "Compliance, Reporting, and Recordkeeping;" Section 112.3, "Net Ground Level Concentrations;" Section 112.4, "Net Ground Level Concentration—Exemption Conditions;"

Section 112.5, "Allowable Emission Rates—Sulfuric Acid Plant Burning Elemental Sulfur;" Section 112.6, "Allowable Emission Rates—Sulfuric Acid Plant;" Section 112.7, "Allowable Emission Rates—Sulfur Recovery Plant;" Section 112.8, "Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators," Subsections 112.8(a), except for the phrase "Except as provided in subsection (b) of this section," 112.8(c), 112.8(d), 112.8(e); Section 112.9, "Allowable Emission Rates—Combustion of Liquid Fuel;" Section 112.14, "Allowable Emission Rates—Nonferrous Smelter Processes;" Section 112.15, "Temporary Fuel Shortage Plan Filing Requirements;" Section 112.16, "Temporary Fuel Shortage Plan Operating Requirements;" Section 112.17, "Temporary Fuel Shortage Plan Notification Procedures;" Section 112.18, "Temporary Fuel Shortage Plan Reporting Requirements;" Section 112.19, "Application for Area Control Plan;" Section 112.20, "Exemption Procedure;" and Section 112.21, "Allowable Emission Rates Under Area Control Plan," as adopted by the TACB on September 18, 1992.

(B) Texas Air Control Board Order No. 92–19, as adopted by the Texas Air Control Board on September 18, 1992.

(ii) Additional material.

(A) Texas Air Control Board certification letter dated October 1, 1992, and signed by William R. Campbell, Executive Director, Texas Air Control Board.

(B) Texas Air Control Board clarification letter dated July 5, 1993, from William R. Campbell, Executive Director, Texas Air Control Board, to A. Stanley Meiburg, Director, Air, Pesticides, and Toxics Division, EPA Region 6.

* * * * *

[FR Doc. 93–20923 Filed 8–27–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[VA9–3–5469; FRL–4694–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia—Revised Regulations for the Control of Sulfur Dioxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of revised requirements to Parts I, IV, and V of Virginia's air pollution control regulations with regard to allowable emissions limitations for sulfur dioxide (SO_2), compliance monitoring, recordkeeping and reporting, and associated revised definitions of terms. The intended effect of this action is to revise the federally-approved SIP so that it conforms with the current State requirements. This action is being taken in accordance with the provisions of the Clean Air Act.

EFFECTIVE DATE: This action will become effective October 29, 1993, unless notice is received on or before September 29, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia, 23240.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: On February 14, 1985, the Commonwealth of Virginia submitted a revised format and numerous amendments, both administrative and substantive, to its Regulations for the Control and Abatement of Air Pollution. Virginia requested that these changes be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP).

Virginia certified that public hearings pertaining to these proposed revisions were held on June 15, 1984 and September 18, 1984, in Richmond, as required by 40 CFR 51.102. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield.

On February 25, 1993 (58 FR 11374), EPA approved the majority of Virginia's regulatory and format amendments as revisions of the Virginia SIP. However, in the Notice of Proposed Rulemaking (NPR) published on October 19, 1987 (52 FR 38787), EPA announced that it was deferring action on revised provisions to Parts I (Definitions) and IV (Control of Existing Sources) governing control of sulfur dioxide (SO_2) emissions. In this notice, EPA is taking final action on the above-mentioned provisions. The revised provisions are summarized below:

Summary of SIP Revision

The following definitions have been revised:

1. Variance (Part I, Section 120–01–03)
2. Coal preparation plant (Part IV, Rule 4–15, Section 120–04–1502C.)
3. Sulfuric acid production unit (Part IV, Rule 4–21, Section 120–04–2102C.)

The revised definition of the term *variance* makes clear that a variance represents an exemption to the applicable regulation rather than a deferral of compliance from an applicable regulation.

The definition of *coal preparation plant* is revised to:

(1) Include "breaking" as a method of preparing coal;

(2) Expand "cleaning" to specify "wet or dry cleaning"; and

(3) Specify "drying" to mean thermal drying.

The revised *sulfuric acid production unit* replaces "sulfuric acid plant." The definition itself is not changed.

The following SO_2 regulations found in Part IV are placed under a source-specific rule in Part IV as part of the administrative changes brought about by Virginia's action to recodify and reorganize its air pollution control regulations:

1. Rule 4–4 (General Process Operations), Section 120–04–0405
2. Rule 4–8 (Fuel Burning Equipment), Section 120–04–0806.
3. Rule 4–9 (Coke Ovens), Section 120–04–0904.
4. Rule 4–11 (Petroleum Refinery Operations) Section 120–04–1104.
5. Rule 4–16 (Portland Cement Plants), Section 120–04–1604.
6. Rule 4–19 (Lightweight Aggregate Process Operations), Section 120–04–1904.
7. Rule 4–21 (Sulfuric Acid Production Units), Section 120–04–2103.

In addition, Virginia has revised the following two rules with additional provisions:

1. Rule 4–18 (Primary and Secondary Metal Operations), Section 120–04–1804. In the SO_2 emission equation applicable to existing sources, the variable "Y" is changed from

"allowable sulfur *oxide* emissions."

2. Rule 4–22 (Sulfur Recovery Operations), Section 120–04–2203. The revised provisions establish maximum allowable emissions rates both for sulfur recovery operations with an SO_2 production rate of less than 50 tons/day (415 lb/hour of SO_2) and those with an SO_2 production rate of more than 500 tons/day (4150 lb/hour of SO_2).

At the same time, Virginia has deleted SIP regulation 4.50, which consists of a general provision which prohibited operations that disperse into the atmosphere unspecified quantities and concentrations of gaseous pollutants "so as to injure human, plant, or animal life or to cause a condition of air pollution." Virginia has replaced this regulation with its source-specific SO_2 emissions limitations. EPA inadvertently omitted any mention of Virginia's deletion action in the October 19, 1987 NPR. Therefore, EPA will take final action as part of this Direct Final Rulemaking Action.

EPA's Evaluation

Since 1975, the Virginia SIP has permitted the State to issue variances. Historically, EPA has required all variances whose time period extends beyond one year to be submitted to EPA as a SIP revision (regardless of whether they represent compliance deferrals or regulatory exemptions), and Virginia has complied with this requirement. Under SIP Section 120–02–05A, Virginia holds public hearings on pending variances prior to the effective date. The revised definition would not change these fundamental requirements.

Therefore, EPA approves this SIP revision, with the understanding that Virginia must continue to submit variances it issues as formal SIP revisions.

With regard to the definition of "coal preparation plant," the revised definition matches that which is found in 40 CFR part 60, subpart Y.

The revised SO_2 regulations of the Virginia SIP are primarily comprised of administrative wording changes. The revised wording strengthens the applicable SO_2 provisions for sulfur recovery operations (Rule 4–22, Section 120–04–2203) by establishing SO_2 emissions limits for all sulfur recovery operations, regardless of size. Since the revised provisions remove prior threshold exemptions, EPA expects no adverse impacts on ambient SO_2 standards as a result of the establishment of these emissions limits.

At 40 CFR 52.2420(c)(90) (58 FR 33205), EPA approved Virginia's revised definition of the term "total capacity." This definition, which is used in the provisions of Rule 4–8, Section 120–04–0806A., B., and C., refers to the sum of the rated capacities which must be operated simultaneously under conditions of "100% use load." The expression "use load" refers to the load that is necessary for the fuel burning equipment (FBE) installation to meet in order to support normal plant operation. The rated capacities of standby and emergency units are not to be included in determining a given source's total capacity.

However, Virginia has stated in a July 14, 1986 letter to EPA that for the purposes of air quality attainment demonstrations and Prevention of Significant Deterioration (PSD) increment consumption analyses, allowable emissions from standby and emergency units will be factored into any modelling analyses performed for these purposes.

For all other source categories whose SO_2 emissions are subject to regulatory control, there are no revised regulatory requirements nor emission limitations. Therefore, EPA expects no adverse air quality impacts.

Enforceability Issues

The major changes to the SO_2 regulations consist of the relocation of specific emission limits to the applicable source category rule. This change is consistent with Virginia's overall recodification format. This format improves the overall enforceability of the regulation since the reorganized regulations make clarify what limit applies to that source category. Virginia contends that the wording change to the definition of "total capacity" approved by EPA in 40 CFR 52.2420(c)(90) for control of particulate matter emissions also prevents sources from circumventing the intent of the regulations and determining an allowable SO_2 standard based on boiler capacity that would never be utilized under "normal" operating conditions. This SIP change was made to clarify and make legally enforceable an interpretation Virginia has used for some time.

As a result of EPA's prior approval action codified in 40 CFR 52.2420(c)(90), no additional action is required as this modification, since the revised definition of "total capacity", is federally enforceable as applied to all pollutants regulated by Rule 4–8.

In Rule 4–15, Section 120–004–1503C., the definition of "coal preparation plant" is revised to: (1) Include "breaking" as a method of preparing coal; (2) expand "cleaning" to specify "wet or dry cleaning"; and (3) specify "drying" to mean thermal drying. The revised definition matches the one which is found in 40 CFR part 60, subpart Y.

In Rule 4–18, the addition of "oxide" to the "Y" variable for the equation defining the allowable SO_2 emissions limit from primary and secondary metals operations (Section 120–04–1804) makes it clear that the provision was designed to determine allowable SO_2 emissions.

In Rule 4–21, Section 120–04–2102C., the revised definition of "sulfuric acid production unit" replaces "sulfuric acid plant." The definition itself is not changed.

In Rule 4–21, Section 120–04–2103 and Rule 4–22, Section 120–04–2104, the wording has been revised so that the applicable allowable SO_2 emissions rates and volumetric concentration levels apply to the total SO_2 emission points from a given source, and not specifically to tail gas streams. In both Sections 120–04–2103 and 120–04–2204, the SIP allowable SO_2 emissions rates and volumetric concentration levels have not been revised, although as noted above, the size threshold of sources subject to the provisions of Section 120–04–2204 has been expanded.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 29, 1993, unless, by September 29, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on October 29, 1993.

Final Action

EPA is approving the revised provisions to Parts I (Definitions) and IV (Control of Existing Sources) submitted by Virginia on February 14, 1985 pertaining to definitions of certain terms and control of sulfur dioxide (SO_2) emissions. The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that

the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (CAA), preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule to approve Virginia's revised SO_2 regulations and associated definitions does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: August 6, 1993.

Richard J. Kampf,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(98) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the State Implementation Plan submitted by the Virginia Department of Air Pollution Control on February 14, 1985.

(i) Incorporation by reference.

(A) Letter from the Commonwealth of Virginia dated February 14, 1985 submitting a revision to the Virginia State Implementation Plan.

(B) The following provisions of the Virginia Regulations for the Control and Abatement of Air Pollution, effective February 1, 1985:

(*1*) Part I General Definitions.

Section 120–01–02 (Definition of "variance").

(*2*) Part IV Emission Standards from Existing Sources.

Rule 4–4, Section 120–04–0405.
Rule 4–5, Section 120–04–0806.
Rule 4–9, Section 120–04–0904.
Rule 4–11, Section 120–04–1104.
Rule 4–15, Section 120–04–1503C. (Definition of "coal preparation plant")
Rule 4–16, Section 120–04–1604.
Rule 4–18, Section 120–04–1804.
Rule 4–19, Section 120–04–1904.
Rule 4–21, Sections 120–04–2102C. (Definition of "sulfuric acid production unit") and 120–04–2103.
Rule 4–22, Section 120–04–2203.

Deletion of Section 4.50 of the Virginia Regulations for the Control and Abatement of Air Pollution in effect before February 1, 1985.

(ii) Additional material.

(A) Remainder of the February 14, 1985 State submittal pertaining to: The revised definitions of "variance," "coal preparation plant," and "sufuric acid production unit"; and Virginia's revised sulfur dioxide provisions.

(B) Letter dated July 14, 1986 from the Virginia State Air Pollution Control Board to EPA.

[FR Doc. 93–20922 Filed 8–27–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 70–27, Notice 31 and Docket No. 83–07, Notice 5]

RIN 2127–AF–13

Federal Motor Vehicle Safety Standards; Burnish Procedures for Heavy Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Interim final rule, delay of effective date.

SUMMARY: In a final rule published in the **Federal Register** on March 14, 1988, NHTSA amended Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, with respect to the burnish procedures for heavy vehicles. That notice adopted a new burnish procedure effective September 12, 1988, but permitted a choice between either the old or the new burnish procedures until September 1, 1993. Effective September 1, 1993, the old burnish procedure is completely eliminated from the standards.

In partial response to petitions from Eaton Corporation and the American Automobile Manufacturers Association (AAMA), this notice amends the standards by adopting a one year extension in the period during which there is a choice between the two burnish procedures. In a notice of proposed rulemaking published elsewhere in today's **Federal Register**, the agency is proposing to extend the period an additional eighteen months.

EFFECTIVE DATE: The amendments made by this rule are effective August 30,

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1993. Vehicles manufactured before September 1, 1994 may be burnished according to the procedures set forth in S7.4.2.1(a) or S7.4.2.1(b) of Standard No. 105 and S6.1.8.1(a) or S6.1.8.1(b) of Standard No. 121. Vehicles manufactured on or after September 1, 1994 shall be burnished according to the procedures set forth in S7.4.2.1(b) of Standard No. 105 and in S6.1.8.1(b) of Standard No. 121.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than September 29, 1993.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket No. 70–27, Notice 31 and Docket No. 83–07, Notice 5 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems* (49 CFR 571.121), specify tests to measure whether heavy vehicles equipped with hydraulic or air brakes comply with the standards' performance requirements. These vehicles are subject to "burnish" procedures conducted at the outset of road testing and dynamometer testing. The burnish procedures serve to simulate the break-in of the brakes on new vehicles under normal driving conditions.

The standards currently contain old and new burnish procedures, identified in the standards as option "a" and option "b," respectively. The old burnish procedure consists of a series of brake applications, which are also known as "snubs," that result in the brakes being heated to not more than the specified maximum temperature of 550° F. The old burnish procedure is known as a "hot" burnish or temperature control burnish.

The agency amended the burnish procedures in a rulemaking proceeding that was conducted in response to a petition from International Harvester and culminated in a final rule published on March 14, 1988 (49 FR 8191). The agency initiated rulemaking regarding the temperature limit because the limit, which was established with drum brake designs in mind, appeared inappropriate for disc brake designs. Disc brake systems are designed to operate at appreciably higher temperatures than are drum brake systems. As a result, it has been difficult to avoid exceeding the specified maximum temperature during the burnish of vehicles with disc brake systems.

After issuing several notices, the agency added a new burnish procedure providing that the brakes on heavy duty vehicles are to be burnished by 500 snubs slowing the vehicle from 40 mph to 20 mph, without regard to brake temperatures generated during the burnish. For that reason, the new burnish procedure is known as a "cold" burnish or vehicle deceleration burnish. NHTSA believes that under the new burnish procedure, brakes will be burnished in a manner that is more realistic and representative of the break-in that vehicle brakes actually receive in service without favoring drum brake designs over disc brake designs.

NHTSA allowed a five year transition period for implementing the new burnish procedure. The agency provided this longer than normal lead time to minimize the rulemaking's cost impact by allowing manufacturers to phase-in any required changes to brake systems as design changes were made. During the transition period, there is a choice between the old and new burnish procedures. As established in the March 1988 final rule, the period lasts until September 1, 1993 (see S7.4.2.1 of Standard No. 105 or S6.1.8.1 of Standard No. 121).

On and after that date, the only burnish procedure in the standards was to be the new one.

II. Petitions

NHTSA received petitions from Eaton Corporation and the American Automobile Manufacturers Association (AAMA) concerning the effective date for the new burnish procedure. Eaton petitioned the agency to either permit an option that retains the old burnish procedure or postpone the effective date for the new procedure to allow the agency to investigate problems associated with using only the new procedure.

Eaton stated that there are problems with specifying only the new burnish procedure since certain brake designs that comply after being subjected to the old burnish procedure do not pass the parking or service brake systems tests after being subjected to the new burnish procedure. The petitioner further stated that using the new procedure results in less consistent test results and increased sensitivity to test methods. As a result of these problems, Eaton contended that vehicles would need higher friction linings; more, larger, or higher force spring brakes; or air system redesigns. It viewed any such changes in the brake systems as resulting in unjustified costs and posing unknown risks to heavy truck braking performance.

The AAMA petitioned NHTSA to delete the effective date for the new brake burnish procedure. If AAMA's request were granted, a choice between the old and new burnish procedures would be allowed indefinitely. AAMA stated that specifying only the new burnish would result in increased variability that could adversely affect brake effectiveness. The petitioner also believed that the new burnish procedure would increase the stringency of the parking brake requirements because, it claimed, braking performance generally degrades at lower burnish temperatures. In addition, AAMA stated that many current vehicles that comply with the brake standards after being subjected to the old burnish procedure will not comply when tested after being subjected to the new burnish procedure, even though it is not aware of any safety problem arising from the braking performance of vehicles tested after using the old procedure.

After receiving these petitions, NHTSA staff met with representatives of Eaton, Freightliner, PACCAR, Navistar, Rockwell, Lucas, Carlisle, and Ford. According to these representatives of the heavy truck industry, the new burnish procedure would result in significant variability problems and potential compliance problems. Accordingly, they requested that NHTSA either (1) delay the September 1, 1993 effective date, (2) allow either procedure indefinitely, or (3) develop a new burnish procedure.

III. Agency Decision

The March 14, 1988 final rule was not intended to impose additional or more stringent performance requirements for heavy vehicles. Instead, the adoption of the new burnish procedure had two purposes: (1) To ensure that the compliance tests are more representative of actual vehicle break-in and (2) to eliminate the current burnish procedure's bias against new brake designs.

After reviewing the petitions, NHTSA believes that it should extend the time period during which either burnish procedure may be used. The agency believes further that without this delay, vehicle manufacturers would have faced a significant cost burden related to compliance testing and product development, without corresponding safety benefits. In particular, under the

recent proposal to reinstate stopping distance requirements for heavy vehicles, manufacturers would have to conduct two sets of compliance testing using both the old and new burnish procedures within the comment period. (58 FR 11003, 11009, February 23, 1993). In addition, the agency needs to assets the petitioners' contention that the new burnish procedures result in a more stringent requirement.

Based on these concerns, the agency has decided to issue two notices regarding extensions of the effective date for the new burnish procedure. In this interim final rule, the agency is extending the period during which either the old or new burnish procedures can be used until September 1, 1994. In a notice of proposed rulemaking (NPRM) published elsewhere in today's **Federal Register**, NHTSA is also proposing to extend the optional period for the new burnish procedure an additional 18 months to March 1, 1996.

The one year extension will permit the agency to complete its analysis of the arguments made by the petitioners and provide a further response to the petitioners. It will also alleviate potential compliance problems for manufacturers who have experienced problems with variability resulting from the cold burnish procedure. The additional time will also allow the agency to evaluate the manufacturers' contention that the new burnish procedure increases the stringency of the parking brake and stopping requirements and necessitates the use of more costly, higher friction linings. Such linings are more sensitive to temperature and brake applications.

NHTSA finds that the issuance of this notice without prior opportunity for comment is necessary in view of the nearness of the September 1, 1993 effective date and the compliance difficulties which would occur if the date were not extended. The agency also finds for good cause that it is in the public interest to establish an immediate effective date for the amendments made by this notice. In the absence of an immediate effective date, manufacturers might be unable to certify that some of their vehicles currently being produced comply with Standard No. 105 and Standard No. 121. The amendments impose no new requirements but instead provide additional flexibility to manufacturers by extending the time they may comply with the alternative burnish procedure.

Regulatory Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. Since the amendment imposes no new requirement but simply extends an alternative test procedure for an additional year, any cost impacts will be in the nature of slight, nonquantifiable cost savings.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this rulemaking on small entities. Based on this evaluation, I hereby certify that the amendments will not have significant economic impact on a substantial number of small entities. Few of the truck tractor or brake manufacturers qualify as small entities. While some trailer manufacturers may qualify as small entities, the only impacts of the amendments will be slight, nonquantifiable cost savings. Thus, manufacturers of motor vehicles, small businesses, small organizations, and small governmental units that purchase motor vehicles will not be significantly affected by the amendments. Accordingly, a regulatory flexibility analysis has not been performed.

C. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant effect on the quality of the human environment.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.105 is amended by revising the introductory text of S7.4.2.1 to read as follows:

§ 571.105 Standard No. 105, Hydraulic brake systems.

* * * * *

S7.4.2.1. *Burnish.* Vehicles manufactured before September 1, 1994 are burnished according to the procedures set forth in S7.4.2.1(a) or S7.4.2.1(b) of this section, at the manufacturer's option. Vehicles manufactured on or after September 1, 1994 are burnished according to the procedures set forth in S7.4.2.1(b) of this section.

* * * * *

3. Section 571.121 is amended by revising the introductory text of S6.1.8.1 to read as follows:

§ 571.121 Standard No. 121, Air brake systems.

* * * * *

S6.1.8.1 Vehicles manufactured before September 1, 1994 are burnished according to the procedures set forth in S6.1.8.1(a) or S6.1.8.1(b) of this section, at the manufacturer's option. Vehicles manufactured on or after September 1, 1994 are burnished according to the procedures set forth in S6.1.8.1(b) of this section.

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Issued on: August 24, 1993.

Howard M. Smolkin,

Executive Director.

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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150 AE17

Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of public comment period.

SUMMARY: On May 24, 1993 (58 FR 29795), the NRC published for public comment a proposed rule to provide Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS). The comment period for this proposed rule was to have expired on August 9, 1993.

The Commission has received two requests to extend the public comment period. The consideration to extend the comment period is based on the fact that the proposed rule presents difficult issues requiring thoughtful and careful analysis if the comments are to be of maximum value to the Commission. In particular, "* * * the eight remaining applicants for Federal grants to consider hosting the MRS facility are Native American Tribal Governing Councils. These Councils represent rural, generally poor citizens who are difficult to contact quickly. Frequently, members of these communities take more time than usual to discuss and evaluate complex issues such as those relating to the MRS."

The Commission therefore finds that it is reasonable to extend the public comment period 90 days to November 9, 1993, in order to allow all interested persons adequate time for such consideration.

DATES: The comment period has been extended and now expires November 9, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays.

Copies of the environmental assessment and finding of no significant environmental impact, and comments received may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3918.

Dated at Rockville, Maryland, this 24th day of August, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–20948 Filed 8–27–93; 8:45 am]
BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 113

[Notice 1993–19]

Expenditures; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission today seeks comments on a new rule governing the conversion of campaign funds to personal use. The Federal Election Campaign Act, as amended, prohibits any person from converting amounts received by a candidate as contributions to his or her personal use. The Commission is considering inserting a definition of personal use into its regulations. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before September 29, 1993.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 113 of the Federal Election Campaign Act Amendments of 1979, Public Law 96–187, 93 Stat. 1339, 1366–67, amended 2 U.S.C. 439a to prohibit the conversion of certain campaign contributions to personal use. Specifically, the 1979 amendments revised section 439a to say that no amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

This provision has been difficult for the Commission to apply in both the enforcement and advisory opinion processes. Because of the way the law is drafted, the Commission has often been called upon to determine whether a disbursement of campaign funds is a legitimate campaign expenditure, a permissible expense connected to the duties of a holder of Federal office, or a conversion to personal use. In making these determinations, the Commission has attempted to give force and effect to Congress' desire to prohibit the use of contributions for personal benefit, while at the same time leaving candidates and committees discretion to conduct election campaigns in whatever way they believe is appropriate.

The Commission's efforts have also been affected by the "grandfather" provision that Congress included in section 113 when it passed the 1979 amendments. This provision exempted any person who was a "Senator or Representative in, or Delegate or Resident Commissioner to, the Congress" on January 8, 1980 from the personal use prohibition. Many of the Commission's enforcement actions and advisory opinions involved persons who, because they were members of Congress on January 8, 1980, were eligible to convert campaign funds to personal use. Thus, the question of

whether a particular disbursement was a legitimate campaign expenditure or a conversion of campaign funds to personal use may not have been fully explored during this period.

Congress repealed the grandfather provision when it passed the Ethics Reform Act of 1989, Public Law 101–194, section 504, 103 Stat. 1716, 1755. The Ethics Reform Act limits conversions to personal use by grandfathered members and former members to the unobligated balance in their campaign accounts on November 30, 1989. It also prohibits conversions by anyone serving in the 103rd or any later Congress. Thus, any grandfathered members who chose to return to Congress this year gave up the right to convert funds to personal use by being sworn in to the 103rd Congress on January 5, 1993.

Consequently, the Commission expects that, in the future, most of the situations it will address will involve persons who are not eligible to convert funds to personal use. This increases the need for a clear distinction between permissible uses of campaign funds and impermissible conversions to personal use. In an effort to address this need, the Commission has initiated this rulemaking. The Commission is seeking comments on a proposed definition of personal use to be inserted in part 113 of its regulations.

The proposed rule would include a general definition of personal use and several enumerated examples. Generally, personal use would be any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person what would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder. This approach is similar to the one used by the Commission in Advisory Opinions 1980–138 and 1981–2, in which the Commission said that "expenses which would exist regardless of an individual's election to Federal office are not 'incidental' and may not be paid from campaign funds." Advisory Opinion 1981–2.

The proposed general definition would partially modify Advisory Opinion 1976–17, in which the Commission said that "any disbursements made and reported by the campaign as expenditures will be deemed to be for the purpose of influencing the candidate's election." Disbursements for expenses that would exist regardless of the candidacy would not be deemed to be permissible expenditures. It would also clarify Advisory Opinion 1980–49, in which the Commission indicated that section 439a allows a campaign to pay the "personal living expenses" of the candidate. The proposed rule would limit the payment of living expenses to those additional expenses incurred because of the candidacy.

With regard to payments for travel and travel-related food and lodging expenses, the general definition would be consistent with portions of Advisory Opinions 1992–1, 1984–8, 1981–25 and 1980–138 in that it would distinguish between expenses that exist because of campaign activity and those which would exist in the absence of campaign activity. The payment of expenses that are "caused" by campaign activity would not be a personal use of campaign funds.

The proposed rule also contains a nonexhaustive list of uses of funds that would be regarded as conversions to personal use. The list indicates that the use of campaign funds to pay mortgage, rent or utility payments on property not owned or leased by the committee, or loan payments on a vehicle not owned or leased by the committee, would be conversions to personal use, as would payments for the purchase of clothing or household food items. This is consistent with language in Advisory Opinion 1985–42 that would have prohibited the use of campaign funds to pay rent on a candidate's apartment had that candidate not been grandfathered. It would resolve issues raised in Advisory Opinions 1985–22, 1992–1 and 1992–4 by making it clear that the use of campaign funds for food, child support, health care, utilities, insurance, and for the purchase of clothing would be conversions to personal use, as would the use of campaign funds for tuition payments on a child's education.

The list also indicates that using campaign funds to pay dues, fees or gratuities to a country club, tennis club, health and fitness club or other social organization, its employees or persons who work on its premises, would be a conversion to personal use, unless the payments are part of the costs of a fundraising event held on club premises. Under this rule, membership dues, greens fees, court fees or other payments for access to these clubs would be personal use, as would payments to caddies or professionals who provide services at the club, regardless of whether they are club employees or independent contractors. However, if these payments are part of the costs of a fundraising event, they would be expenditures rather than conversions to personal use.

Also included in the list of personal uses would be funeral, cremation or burial expenses. The Commission is aware that campaign funds have been used for these expenses by the estates of grandfathered members. The Commission believes that, under the current state of the law, these expenses should be covered by the personal use ban.

Proposed § 113.1(g)(1)(vi) would resolve one of the issues raised in Advisory Opinion 1992–1 by defining the payment of a salary to the candidate as personal use. In addition, this section would modify Advisory Opinion 1987–1 by defining the payment of a salary to a candidate as personal use regardless of whether the salary is compensation for valuable services provided to the campaign. This proposal is consistent with Advisory Opinions 1985–30 and 1983–27, in which the Commission said that a candidate would violate the personal use prohibition by receiving compensation from a tax exempt organization to which he or she had contributed excess campaign funds if the organization had not yet expended all of those funds for purposes unrelated to the candidate's personal benefit.

The proposed rule would also clarify the Commission's policy regarding the payment of a salary to the candidate's spouse or other family member. The proposed rule seeks comment on two alternative versions, both of which would define salaries paid to spouses or family members as personal use unless the recipient has been hired to provide services to the campaign. Both versions are consistent with the result reached in Advisory Opinion 1992–4. However, they would impose more stringent conditions on salaries paid to spouses or family members than were set out in that advisory opinion.

Alternative A–1 would define the salary as personal use unless the spouse or family member is providing services that he or she has previously provided in a professional capacity outside of the campaign. This provision would ensure that the spouse or family member is actually providing a service of value to the campaign by requiring them to have some experience providing the service in an unrelated employment situation.

Alternative A–2 is more general. It would define the salary as personal use unless the spouse or family member has been hired to provide bona fide services at fair market value. Under this provision, so long as the spouse or family member provides a service to the committee, the salary payments would not be a conversion to personal use. No prior professional experience in providing that service would be required.

The proposed rule also contains alternative proposals on payments for

the use of the candidate's property. In the past, the Commission has allowed a campaign to rent a portion of the candidate's home or office for use in the campaign and pay for that use with campaign funds. See Advisory Opinions 1993–1, 1988–13 and 1985–42. The Commission has said that "the issue of personal use would not appear to arise" where the candidate "charge[s] rent to the committee at the comparable commercial rate and * * * charge[s] rent only for the period while the facility is being used for campaign purposes." Advisory Opinion 1993–1, n.1.

Alternative B–1 of the proposed rule would reverse this policy. Under alternative B–1, any payment of campaign funds for the use of the candidate's residence, office or other property would be a personal use. This version takes the view that transactions between a candidate and his or her campaign committee are indistinguishable from more typical conversions of campaign funds to personal use. It would force campaign committees to rent space from disinterested third parties in arms-length transactions. See Advisory Opinion 1993–1 (concurring statement of Vice Chairman Potter).

Alternative B–2 would continue the Commission's current policy of allowing the use of campaign funds to pay rent on property owned by the candidate, so long as they are bona fide payments at fair market value. Under this rule, such transactions would not be conversions to personal use so long as they are consistent with normal business practices.

In addition to comments on these provisions, the Commission is interested in receiving comments on how it might address certain situations that might involve uses of campaign funds in violation of the personal use prohibition. In these situations, campaign funds are used to finance an activity that benefits participants in their private capacity, usually in the form of entertainment, but may not benefit the candidate's campaign in any apparent way. Nevertheless, the candidates and committees involved treat these uses as campaign expenditures, often because the persons who participate allegedly discuss campaign business.

One example would be the use of campaign funds to pay for admission to a sporting event, concert, theater or similar activity. Another example would be the use of campaign funds for meals that have no apparent relationship to the campaign, perhaps because they take place overseas or because the participants are not associated with the campaign.

A third example involves members of Congress who make trips for speaking engagements or fact finding that are legitimately part of their official duties, but then use campaign funds to extend their stay beyond their obligation. This may effectively transform a portion of the trip into a vacation, particularly when the trip is to a resort or tourist area or to a location overseas.

When these activities actually involve a discussion of campaign business or are part of a larger campaign fundraising event, the costs of the activities are clearly campaign-related and payment of those costs from campaign funds raises no personal use issues. However, when the primary effect of these activities is not the advancement of the campaign but the entertainment of the people who attend, payment of the costs of these activities from campaign funds does raise personal use issues. The Commission is interested in receiving comments on whether it should address these issues, and if so, how it might distinguish between activities that are truly campaign-related and can be paid for with campaign funds, and activities that are not campaign-related and thus would involve conversions to personal use.

The Commission is also interested in receiving comments on another situation that may raise personal use issues. In the past, campaign funds have been used by candidates and members to pay the costs of legal representation. Some of this representation may have been unrelated to any election campaign. In its advisory opinions the Commission has concluded that the costs of legal services not involving compliance or audit matters under the FECA are not expenditures under the Act, since they have no election-influencing purpose. Advisory Opinions 1983–21 1981–16, 1975–27. This raises the question of whether the use of campaign funds for such representation would be a conversion to personal use.

In a similar situation, a member of Congress uses campaign funds to make a contribution to the legal defense fund of a candidate or another member. Although the Act allows contributions from one candidate or member to another, section 439a prohibits conversions of campaign funds to personal use by any person. The prohibition is not limited to personal uses by the person to whom the funds were contributed. Thus, contributions from one member to the legal defense fund of another member would also appear to raise personal use issues. The Commission invites comments on whether this would be a conversion to personal use, and on how the Commission might address it in the regulations.

Proposed § 113.1(g)(2) would indicate that occasional uses of campaign committee vehicles or office equipment will not be considered personal use so long as the campaign committee is reimbursed at the usual and normal rental charge as defined in 11 CFR 100.7(a)(1)(iii)(B). This rule would be consistent with two advisory opinions in which the Commission allowed candidates to use vehicles purchased by their campaign committees for occasional non-campaign uses, so long as they reimbursed the committee the fair market value of the expenses incurred. Advisory Opinions 1992–12 and 1984–59.

Proposed § 113.1(g)(3) relates to transfers between a campaign committee and a candidate. Generally, transfers of campaign committee assets to the candidate for adequate consideration would not be conversions to personal use under the proposed rule. Transfers for less than adequate consideration would be conversions to personal use.

Proposed § 113.1(g)(3) also contains provisions that would ensure that the cost of the asset being transferred is properly allocated between the committee and the candidate. Many assets such as vehicles and office equipment depreciate dramatically immediately after they are purchased. If a campaign committee purchases an asset, uses it during a campaign season, and then sells it to the candidate at its depreciated fair market value, the candidate receives the asset at a substantially reduced cost but with significant time remaining in its useful life. Thus, the cost of the depreciation falls disproportionately upon the campaign committee. This would effectively be a conversion of campaign funds to personal use.

Proposed § 113.1(g)(3) addresses this situation. Any depreciation in the value of the asset that occurs before the asset is transferred, and any amount spent that enhances the asset's value but is not reflected in its fair market value, must be allocated between the committee and candidate. This allocation must be based on the useful life of the asset, with the committee absorbing only those portions of the depreciation and enhancement costs that are attributable to the time period during which it uses the asset. The consideration paid by the candidate must include the allocated depreciation and enhancement costs that are not attributable to the committee's period of ownership.

This approach is consistent with Advisory Opinion 1992–12, in which the Commission required a Congressman who was assuming a lease of a van from his campaign committee to "accept a pro rata share of the financial obligations and charges attending the lease * * *." The Commission also noted that "the lease may provide for a discount on the purchase price of the van at the conclusion of the agreement. In that event, a portion of the discount may belong to the committee." Advisory Opinion 1992–12, n.3.

The proposed rule also indicates, at paragraph (g)(4), that payments of expenses that would be conversions to personal use if made by the candidate or the candidate's committee will generally be considered contributions to the candidate if made by a third party. Consequently, the amount donated or expended will count towards the individual's contribution limits. However, no contribution would result if the payment would have been made irrespective of the candidacy or if the funds used were the candidate's or the candidate's spouse's personal funds as defined by 11 CFR 110.10(b). This rule would follow portions of Advisory Opinions 1982–64, 1978–40, 1976–70 and the Commission's response to Advisory Opinion Request 1976–84.

The Commission is also proposing an amendment to the list of permissible uses of excess campaign funds contained in 11 CFR 113.2. The amendment would specifically indicate that certain travel costs and certain office operating expenditures would be considered ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder. The costs of travel for a Federal officeholder and an accompanying spouse who are attending and participating in a function that is directly connected to bona fide official responsibilities would be included, as would the costs of winding down the office of a former Federal officeholder for sixty days after he or she leaves office. Consequently, the use of excess campaign funds to pay for those expenses would be permissible under the proposed rule.

This notice also contains a proposed conforming amendment to the definition of expenditure contained in the regulations. Section 100.8(b)(22) would be amended to indicate that payments by a candidate or a candidate's spouse from his or her personal funds for routine living expenses which would have occurred without the candidacy are not expenditures. This amendment clarifies that payments of the candidate's personal living expenses by the candidate's spouse will not be considered contributions to the candidate so long as those payments come from the candidate's or the spouse's personal funds.

The Commission notes that Internal Revenue Service regulations under 26 U.S.C. 527 contain a definition of personal use by political organizations. 26 CFR 1.527–5(a)(1). However, the IRS definition is not controlling in this situation, and is not necessarily coextensive with the proposed rule. House and Senate rules also apply in this area with respect to members of Congress. The proposed regulations contained in this notice should be read in conjunction with those rules.

The Commission welcomes comments on the proposed rules, and on any other issues raised by this rulemaking. In particular, the Commission urges commenters to express their views on the alternatives contained in the proposed rule, and indicate which versions would be preferable.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached proposed rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the proposed rule is directed at individuals rather than small entities within the meaning of the Regulatory Flexibility Act. Therefore, no small entities will be significantly impacted.

List of Subjects

11 CFR Part 100

Elections

11 CFR Part 113

Campaign funds, Elections, Political candidates.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraph (b)(22) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(22) Payments by a candidate or candidate's spouse from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses which would have been incurred without candidacy, including the cost of food and residence, are not expenditures.

* * * * *

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

3. The authority citation for part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

4. Section 113.1 would be amended by adding paragraph (g), to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(g) *Personal use. Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder.

(1) *Personal use* includes but is not limited to the use of funds in a campaign account for:

(i) Mortgage, rent, or utility payments on property not owned or leased by the committee;

(ii) Loan or lease payments on a vehicle not owned or leased by the committee;

(iii) The purchase of clothing or household food items;

(iv) Tuition payments for a child's education;

(v) Dues, fees or gratuities paid to a country club, tennis club, health and fitness club, or other social organization, to its employees, or to persons working on its premises, unless the payment is part of the costs of a fundraising event held on club premises;

(vi) Funeral, cremation or burial expenses;

(vii) The payment of a salary to the candidate;

Alternative A–1

(viii) The payment of a salary to a candidate's spouse or family member, unless the spouse or family member was hired to provide services to the committee that he or she has previously performed in a professional capacity outside of the campaign; and

Alternative A–2

(viii) The payment of a salary to a candidate's spouse or family member, unless the spouse or family member was

hired to provide bona fide services to the committee at fair market value; and

Alternative B–1

(ix) Payments for the use of a residence, office or other property owned or leased by the candidate;

Alternative B–2

(ix) Payments for the use of a residence, office or other property owned or leased by the candidate, except for bona fide payments at fair market value.

(2) Occasional use of campaign committee vehicles or office equipment for purposes unrelated to the campaign is not personal use so long as the campaign committee is reimbursed by the user within thirty days at the usual and normal rental charge as defined in 11 CFR 100.7(a)(1)(iii)(B).

(3) Transfers of campaign committee assets for adequate consideration are not conversions to personal use. However, any depreciation in the value of the asset that takes place before the transfer, and any amount spent that enhances the asset's value but is not fully reflected in its fair market value, must be allocated between the committee and the transferee based on the useful life of the asset, with the committee bearing only those portions of the depreciation and enhancement costs that are attributable to the time period during which it uses the asset. In order to be adequate, the consideration given for the asset must include the fair market value of the asset plus the allocated depreciation and enhancement costs that are not attributable to the committee's period of use.

(4) Notwithstanding that payment of a particular expense would be a personal use if made from a campaign account, payment of that expense by any person other than the candidate, the candidate's spouse or the candidate's committee shall be considered a contribution to the candidate unless the payment would have been made irrespective of the candidacy or the funds used are the candidate's or the candidate's spouse's personal funds as defined in 11 CFR 110.10(b).

5. Section 113.2 would be amended by revising paragraph (a), and the introductory text is republished to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a).

Excess campaign funds and funds donated:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable, including:

(1) The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to bona fide official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity; and

(2) The costs of winding down the office of a former Federal officeholder for a period not to exceed 60 days after he or she leaves office; or

* * * * *

Dated: August 24, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–20952 Filed 8–27–93; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for Colorado's proposed rules and regulations pertain to backfilling and grading for elimination of highwalls and limited variances from approximate original contour requirements. The amendment is intended to revise the Colorado program to improve operational efficiency. This document sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t September 14, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Submission of Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program, can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Submission of Proposed Amendment

By letter dated March 19, 1993, Colorado submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. CO–536). Colorado submitted the proposed amendment at its own initiative. Colorado proposed revisions to 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board (Board), at (1) Rule 4.14.1(2), performance standards for underground mining operations and remining operations; (2) Rule 4.14.2, modifications by the Division of Minerals and Geology (Division) to the general backfilling and grading requirements for steep slope, underground, and remining operations; and (3) Rule 4.27.4, variances from

approximate original contour requirements.

Colorado proposed to revise Rule 4.14.1 (2)(a) to (1) reference proposed and existing rules containing exemptions from the requirement that all disturbed areas be backfilled and graded to their approximate original contour and (2) exempt underground and remining operations from the requirement for complete highwall elimination if they meet the criteria proposed at Rules 4.14.1(2) (f) and (g).

Colorado proposed new Rules 4.14.1(2) (f) and (g) setting forth performance standards by which underground mining operations or remining operations would be permitted if exempted from the requirement for complete elimination of face-up areas and highwalls. Both underground mining operations with an existing highwall that was in place prior to August 3, 1977, and remining operations initiated after August 3, 1977, on sites with a preexisting highwall that were mined and abandoned prior to August 3, 1977, would be exempted if the volume of all reasonably available spoil is insufficient to completely backfill the highwall and face-up area so as to achieve a minimum static safety factor of 1.3.

Colorado proposed to revise Rule 4.14.2(1) to specify that the requirements of Rule 4.14.2, which addresses general grading requirements, may be modified by the Division for (1) steep-slope mining pursuant to Rule 4.27, (2) underground operations pursuant to Rules 4.14.1(2) (e) and (f), and (3) remining operations pursuant to Rule 4.14.1(2)(g). Colorado proposed to revise Rule 4.14.2(1)(b) to exempt an operation from complete elimination of a highwall if retention of a highwall remnant is approved by the Division pursuant to proposed Rules 4.14.1(2) (f) and (g).

Colorado proposed to revise Rule 4.27.4 to indicate that persons may be granted variances from the approximate original contour requirements of Rule 4.27.3(3) for steep-slope coal mining and reclamation operations. Colorado also proposed to revise Rule 4.27.4(a) to exempt an operation from complete backfilling and grading of a highwall if retention of a highwall remnant is approved by the Division pursuant to proposed Rules 4.14.1(2)(f) or 4.14.1(2)(g).

OSM published a notice in the April 14, 1993, **Federal Register** (58 FR 19367) announcing receipt of the amendment and inviting public comment on its adequacy (administrative record No. CO–541). The public comment period was scheduled to end May 14, 1993. However, in response to a request for an extension of the public comment period, OSM published a notice in the May 12, 1993, **Federal Register** (58 FR 27967) extending the public comment period until May 29, 1993 (administrative record No. CO–545).

During its review of the amendment, OSM identified concerns with Colorado's Rules at 4.14.1(2) (f) and (g) regarding the need for a written demonstration that all reasonably available spoil is insufficient to completely backfill the highwall; 4.14.1(2) (f) and (g) regarding the need to define the term "reasonably available spoil;" 4.14.1(2)(f)(i) regarding the need to require that all reasonably available spoil in the permit area be used to backfill a highwall; 4.14.1(2) (f)(iii) and (g)(iii) regarding the need to demonstrate to the satisfaction of the regulatory authority that the highwall remnant is stable; and 4.14.1(2)(f)(1) concerning the need to require that all reasonably available spoil within the permit area be used to eliminate the highwall. OSM notified Colorado of these concerns by letter dated July 8, 1993 (administrative record No. CO–553).

Colorado responded in a letter dated August 4, 1993, by submitting additional explanatory information and a revised amendment (administrative record No. CO–559). Specifically, Colorado proposes additional revisions to (1) Rule 1.04(103a) to include a definition of the term "reasonably available spoil;" (2) Rule 4.14.1(2)(f), amending the previously submitted language to require a demonstration by the applicant in writing that an existing highwall was in place prior to August 3, 1977, and that the volume of all reasonably available spoil is insufficient to completely backfill the highwall and face-up area so as to achieve a safety factor of 1.3; (3) Rule 4.14.1(2)(f)(i), amending the previously submitted language to require that all reasonably available spoil in the permit area be used to backfill a highwall; (4) Rule 4.14.1(2) (f)(iii) and (g)(iii), amending the previously submitted language to require that the operator demonstrate to the satisfaction of the Division that the highwall remnant is stable; and (5) Rule 4.14.1(2)(g), amending the previously submitted language to allow for incomplete highwall elimination for remining operations that contain a preexisting highwall in those instances where the operator demonstrates in writing to the Division that the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall so as to achieve a safety factor of 1.3. Other than these new revisions, Colorado retains the original provisions of the March 19, 1993, amendment.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Colorado program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the

submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 23, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–20957 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS CA–13–11–5770; FRL–4699–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on August 2, 1991 and on March 6, 1992. The California Air Resources Board (CARB) submitted these revisions to EPA on May 13, 1993 and on September 14, 1992. The revisions concern the following SCAQMD rules: Rule 1107, Coating of Metal Parts and Products; Rule 1106, Marine Coating Operations; and Rule 1126, Magnet Wire Coating Operations. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated the revisions to Rules 1107, 1106, and 1126 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before September 29, 1993.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Los Angeles South Coast Air Basin, 43 FR 8964; 40 CFR 81.305. Because the Los Angeles South Coast Air Basin was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987, 40 CFR 52.238. The Los Angeles South Coast Air Basin did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was

Continued

guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles South Coast Air Basin is classified as extreme;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on September 14, 1992 and on May 13, 1993 including the rules being acted on in this document.[3] This document addresses EPA's proposed action for Rule 1107, Coating of Metal Parts and Products; Rule 1106, Marine Coating Operations; Rule 1126, Magnet Wire Coating Operations. These submitted rules were found to be complete on July 19, 1993 (Rules 1107 and 1106) and on November 20, 1992 (Rule 1126) pursuant to EPA's completeness criteria, as revised on August 26, 1991 (56 FR 42216) and set forth in 40 CFR part 51, appendix V and are being proposed for limited approval and limited disapproval.

Rule 1107 controls emissions from metal parts and products coating operations; Rule 1106 controls VOC emissions from marine coating operations; and Rule 1126 controls emissions from magnet wire coating operations. VOCs contribute to the production of ground level ozone and smog. SCAQMD Rules 1107, and 1126 were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Rule 1106 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rules 1107, 1106, and 1126.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1107, Coating of Metal Parts and Products, is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources (Vol. VI: Surface Coating of Miscellaneous Parts and Products) EPA–450/2–78–015." The CTG applicable to Rule 1126, Magnet Wire Coating Operations, is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources (Vol. IV: Surface Coating for Insulation of Magnet Wire) EPA–450–2/77–033." Submitted Rule 1106 controls emissions from a source category for which EPA has not issued a CTG. Consequently, Rule 1106 was evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register; May 25, 1988 (EPA's "Blue Book"), and other EPA policy including the EPA Region 9 CARB document entitled, Guidance Document for Correcting VOC Rule Deficiencies (April, 1991) and CARB's "Determination of RACT/BARCT for Marine Coating Operations." In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD revised Rule 1107 and revised Rule 1126 are significantly improved from their current SIP versions, which both date back to 1982. Revised rules 1107 and 1126 include the following significant changes:

- Expanded definitions section
- More up-to-date application requirements
- Added surface preparation and cleanup standards which include solvent VOC limits and storage and disposal requirements
- And added EPA approved test methods.

SCAQMD Rules 1106, Marine Coating Operations, is a new rule which was adopted to control VOC emissions from marine coating operations.

EPA has evaluated SCAQMD's submitted Rules 1107, 1106, and 1126 for consistency with the CAA, EPA regulations, and EPA policy and has found that revised Rules 1107 and 1126 address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. EPA has also found that new Rule 1106 will strengthen the SIP by controlling a previously unregulated source category. Although SCAQMD Rules 1107, 1106, and 1126 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. These deficiencies are related to recordkeeping requirements, test method references, Executive Officer discretion, control device equivalency, VOC limits, and rule applicability—a detailed discussion of rule deficiencies can be found in the Technical Support Documents for SCAQMD's Rule 1107, Rule 1106, and Rule 1126 (all dated 4/12/93) which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are

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published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles South Coast Air Basin retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The rules submitted on these dates were substantially similar to earlier VOC rules adopted by SCAQMD, except they added a termination date to an exemption for aerosol containers. After the rules were submitted, other SCAQMD VOC rules that also terminated the aerosol container exemption were invalidated in trial court rulings. See, e.g., *Dunn-Edwards Corp.* v. *South Coast Air Quality Management District*, No. BC753978, (L.A. Super. Ct. Aug. 31, 1990), rev'd, No. B0655562 (2d App. Dist. May 19, 1993). Following these decisions, SCAQMD deleted the invalidated language from its VOC rules, including those contained in this rulemaking notice.

To preserve its rights while appealing the trial court decisions, SCAQMD did not hold a public hearing to formally readopt the revised rules. Nevertheless, EPA may approve these rules into the SIP because the deleted provisions are severable from the adopted rules. Moreover, the deletion of language terminating the aerosol container exemption does not create new regulations; rather, the deletion revives SCAQMD's original rules (which were fully adopted) that also exempted aerosol containers. See *Board of Osteopathic Examiners* v. *Board of Medical Examiners*, 53 Cal. App. 3d 78, 85, 125 Cal. Rptr. 619, 623–624 (1976).

not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD submitted Rules 1107, 1106, and 1126 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and are currently in effect in the South Coast. EPA's limited disapproval action in this NPR does not prevent the SCAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 18, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–20966 Filed 8–27–93; 8:45 am]

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40 CFR Part 52

[CA–37–7–5921; FRL–4700–4]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Ventura County Air Pollution Control District (VCAPCD) on January 28, 1992. The California Air Resources Board submitted this revision to EPA on June 19, 1992. The revision concerns VCAPCD Rule 74.18, Motor Vehicle and Mobile Equipment Coating Operations. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before September 29, 1993.

ADDRESSEES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II

(A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Ventura County Air Basin, 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987, 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that VCAPCD's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Ventura County Air Basin was classified as severe[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rule being acted on in this document. This document addresses EPA's proposed action for VCAPCD Rule 74.18, Motor Vehicle and Mobile Equipment Coating Operations. This submitted rule was found to be complete on August 27, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and is being proposed for approval into the SIP.

This rule controls volatile organic compound (VOC) emissions from motor vehicle and mobile equipment coating operations. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some source categories, such as motor vehicles and mobile equipment refinishing, EPA did not publish a CTG. In such cases the state will make a determination of what controls are required to satisfy the RACT requirement by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls must be considered. Additionally, for both CTG and non-CTG rules, the state may rely on EPA policy documents, such as the "Blue Book", to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

VCAPCD Rule 74.18 is a new rule and therefore strengthens the SIP by controlling a previously unregulated source category. Rule 74.18 restricts the sale, supply, and use of high VOC coatings and organic solvents, includes spray booth requirements, and allows for the use of abatement equipment and emission control plans in place of low VOC coatings in mobile equipment coating operations.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, VCAPCD Rule 74.18, Motor Vehicle and Mobile Equipment Coating Operations, is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it

[1] Among other things, the pre-amended guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Ventura Air Basin retained its nonattainment designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 9, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 19, 1993.

John C. Wise,

Acting Regional Administrator

[FR Doc. 93–20967 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 38–19–5931; FRL–4700–3]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on April 3, 1992. The California Air Resources Board (CARB) submitted these revisions to EPA on September 14, 1992. The revisions concern SCAQMD Rule 1141, Control of VOC Emissions from Resin Manufacturing. This rule controls volatile organic compound (VOC) emissions from resin manufacturing operations. Rule 1141 requires the use of low VOC coatings in resin manufacturing operations, references EPA approved test methods, and requires daily recordkeeping for exempt sources. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before September 29, 1993.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rule being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1141, Control of VOC Emissions from Resin Manufacturing. This submitted rule was found to be complete on November 20, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and is being proposed for approval into the SIP.

This rule controls volatile organic compound (VOC) emissions from resin manufacturing operations. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of each district's efforts

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[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles South Coast Air Basin retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SCAQMD Rule 1141 is entitled, "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins," EPA–450/3–83–008. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1141, Control of VOC Emissions from Resin Manufacturing, includes the following significant changes from the current SIP:

- The addition and improvement of definitions in its definitions section,
- Daily recordkeeping requirements for exempt sources which emit less than ten pounds per day,
- Requirements for the control of VOC emissions from both the liquid-phase high-density polyethylene slurry process and the liquid phase polypropylene process,
- Removal of out-dated requirements and language, and
- Incorporation of EPA approved test methods.

EPA has evaluated Rule 1141 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1141, Control of VOC Emissions from Resin Manufacturing, is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 19, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–20968 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 38–8–5905; FRL–4699–5]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; South Coast Air Quality Management District (SCAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve into the California State Implementation Plan (SIP) rule revisions adopted by the South Coast Air Quality Management District (SCAQMD) on January 10, 1992, and on February 7, 1992. The California Air Resources Board submitted these revisions to EPA on January 11, 1993 and on September 14, 1992. The revisions concern SCAQMD Rule 1145, Plastic, Rubber, and Glass Coatings, and SCAQMD Rule 1128, Paper, Fabric, and Film Coating Operations. These rules control emissions of volatile organic compounds (VOCs) from surface coating operations. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before September 29, 1993.

ADDRESSEES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. Because this Area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin Area was classified as extreme;[2] therefore this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rules being acted on in this document.[3] This document addresses EPA's proposed action for SCAQMD Rule 1145, Plastic, Rubber, and Glass Coatings, and SCAQMD Rule 1128, Paper, Fabric, and Film Coating Operations. These submitted rules were found to be complete on March 3, 1993 and on November 20, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being proposed for approval into the SIP.

These rules control VOCs from a variety of coating and solvent cleaning operations. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the SCAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1128 is "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks" EPA–450/2–77–008. Rule 1145 control emissions from source categories for which EPA has not issued a CTG. Accordingly Rule 1145 was evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register; May 25, 1988* (EPA's "Blue Book" referred to in footnote 1.), and against other EPA policy including the EPA Region 9 CARB document entitled, *Guidance Document for Correcting VOC Rule Deficiencies* (April, 1991). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

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[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SCAQMD retained its nonattainment designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] The rules submitted on these dates were substantially similar to earlier VOC rules submitted by SCAQMD and CARB, except they did not exempt aerosol container applications. However, other SCAQMD VOC rules that did not exempt aerosol containers were subsequently invalidated in trial court rulings. See, e.g., Dunn-Edwards Corp. v. South Coast Air Quality Management District, No. BC753978, (L.A. Super. Ct. Aug. 21, 1990), rev'd, No. B0655562 (2d App. Dist. May 19, 1993). Following these decisions, SCAQMD deleted the invalidated language from its other VOC rules, including those contained in this rulemaking notice.

To preserve its rights on appeal, SCAQMD did not formally readopt the revised rules. According to SCAQMD, EPA may nevertheless approve these rules into the SIP because the deleted provisions are fully severable from the previously adopted rules. SCAQMD maintains that the deletion of the aerosol container applicability provisions revives the original rules (which were fully adopted) that exempted aerosol containers and does not create new regulations. See Board of Osteopathic Examiners v. Board of Medical Examiners, 53 Cal. App. 3d 78, 85, 125 Cal. Rptr. 619, 623–624 (1976). Based on this analysis, EPA is proceeding with this proposed action on the submitted rules.

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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SCAQMD Rule 1145 is a revised rule which is significantly improved from the current SIP version which dates back to October 27, 1983. Among the many improvements are:

- An improved and greatly expanded definitions section.
- The addition of a test methods section.
- Transfer efficiency specifications.
- Recordkeeping requirements by reference to Rule 109.
- And alternative emissions control options.

SCAQMD Rule 1128 is also a revised rule and includes the following significant changes from the current SIP version:

- Expands the applicability of the current rule to facilities that do not use heated drying processes,
- Adds provisions requiring all coatings to meet a 265 grams/liter VOC limit,
- Removes the exemption for users of less than 2 gallons per day,
- And adds acceptable capture and destruction efficiency standards.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1145, Plastic, Rubber, and Glass Coatings, and SCAQMD Rule 1128, Paper, Fabric, and Film Coating Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256 66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214 2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 18, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–20965 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[FRL–4700–1]

Hazardous Air Pollution; Proposed Regulations Governing Equivalent Emission Limitations by Permit; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 13, 1993, the U.S. Environmental Protection Agency (EPA) published Proposed Regulations Governing Equivalent Emission Limitations by Permit at 58 FR 37778. The proposed regulations provided for a 45-day public comment period to end on August 27, 1993. Notice is hereby given that the public comment period for Proposed Regulations Governing Equivalent Emission Limitations by Permit is extended.

DATES: The comment period is extended until September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Concerning extension of the public comment period, please contact Kathy Kaufman, Office of Air Quality Planning and Standards, U.S. EPA (919) 541–0102, facsimile (919) 541–4028, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, MD–13, Research Triangle Park, North Carolina, 27711.

Dated: August 24, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–20958 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 70–27, Notice 32 and Docket No. 83–07, Notice 6]

RIN 2127–AF13

Federal Motor Vehicle Safety Standards; Burnish Procedures for Heavy Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In a final rule published in the **Federal Register** on March 14, 1988, NHTSA amended Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, with respect to the burnish procedures for heavy vehicles. That notice adopted a new burnish procedure effective September 12, 1988, but permitted a choice between either the old or the new burnish procedures until September 1, 1993. Effective that date, the old burnish procedure is completely eliminated from the standards.

In partial response to petitions from Eaton Corporation and the American Automobile Manufacturers Association (AAMA), this notice proposes to amend the standards by extending, for an additional eighteen months, the period during which there is a choice between the two burnish procedures. In an interim final rule published elsewhere in today's **Federal Register** the agency has extended the period during which manufacturers may comply with either

burnish requirement until September 1, 1994.

DATES: *Comments.* Comments must be received on or before September 29, 1993.

Proposed Compliance Date. The agency is proposing to extend the period during which manufacturers may comply with either burnish requirement until March 1, 1996. Vehicles manufactured before March 1, 1996 would be burnished according to the procedures set forth in S7.4.2.1(a) or S7.4.2.1(b) of Standard No. 105 and S6.1.8.1(a) or S6.1.8.1(b) of Standard No. 121. Vehicles manufactured on or after March 1, 1996 would have to be burnished according to the procedures set forth in S7.4.2.1(b) of Standard No. 105 and in S6.1.8.1(b) of Standard No. 121.

ADDRESSES: Comments should refer to Docket No. 70–27, Notice 32 and Docket No. 83–07, Notice 6 and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202–366–5274).

SUPPLEMENTARY INFORMATION: As explained in an interim final rule published elsewhere in today's **Federal Register**, Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems* (49 CFR 571.121), specify "burnish" procedures conducted at the outset of road testing and dynamometer testing. The reader should refer to the interim final rule for greater detail about the burnish procedures.

The standards contain old and new burnish procedures as a result of a rulemaking proceeding that was conducted in response to a petition submitted by International Harvester and culminated in a final rule published on March 14, 1988 (49 FR 8191). The old burnish procedure consists of a series of brake applications, which are also known as "snubs," that result in the brakes being heated to not more than the specified maximum temperature of 550 °F. Under the new burnish procedure, the brakes on heavy vehicles are burnished by 500 snubs slowing the vehicle from 40 mph to 20 mph, without regard to brake temperatures generated during the burnish. NHTSA believes that under the new burnish procedure, brakes are burnished in a manner that is more realistic and representative of the break-in vehicle brakes actually get when in service without favoring drum brake designs over disc brake designs. The old procedure favors drum brake systems because disc brake systems are designed to operate at appreciably higher temperatures than are drum brake systems.

NHTSA allowed a five year transition period for implementing the new burnish procedure. The agency provided this longer than normal lead time to minimize the rulemaking's cost impact by allowing manufacturers to phase-in any required changes to brake systems as design changes were made.

As explained in greater detail in the interim final rule, NHTSA received petitions from Eaton Corporation and the American Automobile Manufacturers Association (AAMA) concerning the effective date for the new burnish procedure. Both petitioners requested that the agency retain the old burnish procedure either for a specified period of time or indefinitely. NHTSA staff also met with representatives of heavy vehicle manufacturers who requested delaying the September 1, 1993 effective date, allowing either burnish procedure indefinitely, or developing a new burnish procedure.

In the interim final rule published elsewhere in today's **Federal Register**, NHTSA extended the time period during which manufacturers may comply with either the old or new burnish procedures for an additional year. The agency reasoned that, as explained in the preamble to the March 14, 1988 final rule, NHTSA did not intend to impose additional or more stringent performance requirements for heavy vehicles. Instead, the adoption of the new burnish procedure had two purposes: (1) To ensure that the compliance tests are more representative of actual vehicle break-in and (2) to eliminate the current burnish procedures bias against new brake designs.

In this NPRM, NHTSA is requesting comments about the appropriateness of extending the optional compliance period an additional 18 months beyond September 1, 1994 until March 1, 1996. Support for this tentative decision to delay the mandatory effective date an additional 18 months is furnished by the heavy vehicle and brake industry's comments to the agency's stopping distance proposals published February 23, 1993 (58 FR 11003, 11009). Several heavy vehicle manufacturers indicated that they need additional time to conduct testing to the proposed stopping distances using the newer burnish procedures. Delaying the mandatory effective date until March 1, 1996 would result in the new burnish requirements becoming the sole burnish procedures at roughly the same time that the proposed stopping distance requirements take effect, assuming that the agency determines that the proposed stopping distance requirements are appropriate. NHTSA tentatively concludes that the stopping distance performance requirements would allow for the development of more commercially acceptable brake materials if the industry were provided additional time to test vehicles using the newer burnish procedures during their testing.

Based on the above considerations, NHTSA has decided to propose extending the optional compliance period for the burnish procedures an additional 18 months from September 1, 1994 to March 1, 1996. The agency requests comments about whether the new burnish procedures should become the sole specified procedures as of September 1, 1994 or whether the old burnish procedures should be allowed for an additional period of time. Specifically, the agency is concerned about whether the new burnish requirements serve to make the parking test requirements more stringent. The agency also requests comments about the effect of the burnish procedures on the stopping distance and the lateral stability and control proposals. Commenters should also provide information about the additional compliance costs, if any, associated with making the new burnish procedures the sole burnish procedures.

Regulatory Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposal would be so minimal that a full regulatory evaluation is not required. Since the proposal would impose no new requirements but would simply extend a compliance alternative an additional eighteen months, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this rulemaking on small entities. Based on this evaluation, I hereby certify that the amendments

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would not have significant economic impact on a substantial number of small entities. Few of the truck tractor or brake manufacturers qualify as small entities. While some trailer manufacturers may qualify as small entities, the only impacts of the amendments would be slight, nonquantifiable cost savings. Thus, manufacturers of motor vehicles, small businesses, small organizations, and small governmental units that purchase motor vehicles would not be significantly affected by the proposals. Accordingly, a regulatory flexibility analysis has not been performed.

C. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws would be affected.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule would not have a significant effect on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is proposed to be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.105 would be amended by revising the introductory text of S7.4.2.1 to read as follows:

§ 571.105 Standard No. 105, Hydraulic brake systems.

* * * * *

S7.4.2.1. *Burnish.* Vehicles manufactured before March 1, 1996 are burnished according to the procedures set forth in S7.4.2.1(a) or S7.4.2.1(b) of this section, at the manufacturer's option. Vehicles manufactured on or after March 1, 1996 are burnished according to the procedures set forth in S7.4.2.1(b) of this section.

* * * * *

3. Section 571.121 would be amended by revising the introductory text of S6.1.8.1, as follows:

§ 571.121 Standard No. 121, Air brake systems.

* * * * *

S6.1.8.1 Vehicles manufactured before March 1, 1996 are burnished according to the procedures set forth in S6.1.8.1(a) or S6.1.8.1(b) of this section, at the manufacturer's option. Vehicles manufactured on or after March 1, 1996 are burnished according to the procedures set forth in S6.1.8.1(b) of this section.

* * * * *

Issued on: August 24, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–20914 Filed 8–27–93; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 58, No. 166
Monday, August 30, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Brady May, Fan Creek, and Deer Utah Salvage Timber Project From Appeal; Clearwater National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber project designed to recover burned and blowdown timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: The Pierce Ranger District completed prescribed burning in several regeneration units of the Brady May, Fan Creek, and Deer Utah Timber Sales for site preparation and fuel reduction purposes. As a result of this burning and wind damage, 17 acres in the Cedar and Eldorado Creek drainages on the Clearwater National Forest were damaged or killed. The District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and subsequent loss of value.

EFFECTIVE DATE: Effective on August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Richard A. Kusicko, Acting Pierce District Ranger; Clearwater National Forest; Box 308; Kamiah, ID 83536. Telephone: 208–935–2513.

SUPPLEMENTARY INFORMATION: The Pierce Ranger District completed prescribed broadcast burning in several regeneration units of the Brady May, Fan Creek, and Deer Utah Timber Sales for site preparation and fuel reduction. As a result of this burning and severe wind damage, 17 acres in the Cedar and Eldorado Creek drainages on the Clearwater National Forest were damaged or killed. The dead and damaged timber is located within lands assigned to Management Area E1 and designated by the Clearwater National Forest Plan to produce wood products. The Pierce District Ranger proposed salvage of fire-scorched and blowdown timber from these areas. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) reduce the potential for wildfire by treating high risk sites, (3) rehabilitate the affected timber sites by planting tree seedlings, and (4) reduce sediment recruitment from native surface roads into streams in the watershed.

An interdisciplinary team was convened, and scoping began in February 1993. Three alternatives were analyzed: (1) No treatment (no action); (2) a salvage of all fire-scorched and blowdown timber; and (3) a salvage of part of the fire-scorched and blowdown timber (proposed action).

The selected alternative (Modified Proposed Action) will salvage 180 MBF from approximately 17 acres of fire-scorched and blowdown timber and will leave at least 3–5 snags per acre for wildlife habitat in all harvest areas. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur. The roads that access the Fan Creek and Brady May units would be closed year round to enhance watershed recovery in anadromous fishery watersheds which have streams with high-cobble embeddedness measurements.

The salvage timber project is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates and is no longer valuable for commercial timber products, to begin reforesting the sites that are understocked from mortality, to reduce the risk of wildfire, and to enhance watershed recovery in anadromous fishery watersheds.

To expedite implementation of this decision, procedures outlined in 26 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

"Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part."

Based upon the information presented in the Brady May, Fan Creek, and Deer Utah Salvage Project File and Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 24, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–20942 Filed 8–27–93; 8:45 am]
BILLING CODE 3410–11–M

Southern Region; Exemption From Appeal of Salvage Timber Sale Project on the Daniel Boone National Forest, London Ranger District

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 35 CFR 271.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to salvage dead and dying trees that were blown down or heavily damaged during a severe windstorm on the London Ranger District of the Daniel Boone National Forest and to site prepare and reforest damaged areas. The condition of the dead and damaged trees will rapidly deteriorate due to insect attacks and spread of blue stain fungi. If not salvaged quickly, these trees will be rendered unmerchantable as sawtimber.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367, (404) 347–4867.

SUPPLEMENTARY INFORMATION: On June 4, 1993, approximately 368 acres of forest was damaged or blown down during a severe windstorm ten miles west of London in Laurel County, Kentucky

The blowdown occurs in four separate areas located along an east-west line extending five miles from the Big Dog Branch area east to Griffin Branch. All areas are within Management Area 7 of the Daniel Boone National Forest Land and Resource Management Plan. The largest area, nearest to Big Dog Branch, consists of approximately 200 acres. Smaller tracts contain about 42, 42, and 83 acres.

Management direction for Management Area 7 is to optimize growing potential by using high to medium intensity practices for yellow and white pine and medium to low intensity practices for upland and cove hardwoods. Visual sensitivity is primarily moderate to low.

The forest stands severely affected by this storm need restoration through salvage of merchantable trees killed or heavily damaged and rehabilitation through site preparation and reforestation. The dead and damaged trees will rapidly deteriorate due to insect attacks and spread of blue stain fungi.

The forest types destroyed in the storm are as follows; shortleaf pine pine 42 acres, shortleaf pine-oak 40 acres, hardwood-pine 65 acres, hemlock-hardwood 110 acres and hardwood 111 acres.

Following salvage of approximately 900 thousand board feet of timber these areas will need to be reforested. Site preparation by chainsaw felling for natural regeneration of hardwood will occur on approximately 330 acres. Site preparation by chainsaw felling and prescribed burning followed by hand plating shortleaf pine will occur on approximately 37 acres.

Analysis is currently under way on a proposed action to salvage dead or heavily damaged trees and to rehabilitate the damaged stands. The analysis includes the methods of harvest, site preparation, and reforestation. The environmental document and biological evaluation being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public. Given the present condition of the damaged timber the need for action is critical. Any delay will result in losses to presently merchantable timber and will make subsequent rehabilitation efforts more difficult.

Dated: August 23, 1993.

Ralph F. Munamo,

Acting Regional Forester.

[FR Doc. 93–20945 Filed 8–27–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of West Moores Road Salvage Timber Sale From Appeal; Idaho Panhandle National Forests, ID

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover down, dead, and dying timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: Insects and disease, along with scattered windthrown trees, drought conditions and the maturity of timber stands in the Moores Creek Drainage on the Priest Lake Ranger District, Idaho Panhandle National Forests, has caused significant tree mortality. The Priest Lake District Ranger has proposed rehabilitation activities designed to salvage dead, down and dying timber and contribute towards watershed recovery in the Moores Creek Drainage. The District Ranger has determined, through an interdisciplinary process documented in the West Moore Road Salvage Timber Sale Decision Memo and project file, that there is good cause to expedite these actions to recover damaged resources and rehabilitate National Forest System lands. Salvage of this type of timber must be accomplished quickly to avoid further losses of the resource and to contribute to the rehabilitation of the watershed and fishery resources.

EFFECTIVE DATE: Effective on August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Kent Dunstan, Priest Lake District Ranger; Idaho Panhandle National Forests; HCR 5, Box 207; Priest River, ID 83856. Telephone: 208–443–2512.

SUPPLEMENTARY INFORMATION: Root diseases, bark beetles, white pine blister rust and stem decays, in association with the scattered windthrown trees, drought conditions and the maturity of the stands, have caused significant tree mortality in the upper portion of the Moores Creek drainage. The project area is located within Management Area 1 and designated by the Idaho Panhandle National Forests Plan as suitable timberland.

The District Ranger has proposed the salvage harvest of the dead and damaged timber. This proposal is designed to meet the following needs: (1) Salvage dead and dying timber while it still has maximum commercial value, (2) expedite watershed rehabilitation, (3) improve the current health and vigor of the timber stands, and (4) decrease wildfire hazard by reducing fuel loading.

In January of 1993, an interdisciplinary team was convened, and scoping began. It was determined that the activities had no extraordinary circumstances and could be categorically excluded from documentation in an environmental impact statement or environmental assessment, (FSH 1909.15, 31.2 (4)). The proposed action will salvage approximately 600 MBF of merchantable timber. Harvesting will be done from existing roads, no new roads will be constructed or reconstructed.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> "Decisions related to rehabilitation of National Forest System lands and the recovery of Forest Resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part."

Based on the information presented in the District Ranger's project file and Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 24, 1993.

Christopher D. Risbradt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–20941 Filed 8–27–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of South Fork Hill Blowdown Salvage Timber Sale From Appeal; Kootenai National Forest, MT

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from appeal under provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District, Kootenai National Forest, produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through a Decision Memo and environmental analysis in the supporting project file, that there is

good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and to reduce the risk of wildfire.

EFFECTIVE DATE: Effective on August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon, Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 25 acres of timber in the South Fork Hill area on the Rexford Ranger District. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 in the Kootenai Forest Plan. In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the South Fork Hill area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative will salvage approximately 130 MBF of dead and damaged timber from approximately 25 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

"Decision related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part."

Based upon the information presented in the South Fork Hill Blowdown Salvage Timber Sale project file and Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 24, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–20943 Filed 8–27–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of the Secretary.

Title: Recruitment Follow-up Questionnaire.

Form Number: Agency: N/A. OMB Number; New.

Type of Request: New.

Burden: 1,000 respondents; 167 reporting hours. Average time is 10 minutes.

Needs and Uses: This collection will be used to improve recruiting efficiency and effectiveness by providing information about the reasons why applicants accept or decline specific job offers. The data will also be used to evaluate the relative effectiveness of various recruiting activities and to identify the relative attractiveness of various aspects of the job and working conditions.

Affected Public: Individuals.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 23, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–21007 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Technology Administration.

Title: Nominations for the National Technology Medal.

Form Number: Agency: N/A OMB #: 0692–0001.

Type of Request: Reinstatement.

Burden: Reporting Requirement: 125 respondents totalling 375 hours. Average reporting time is three hours.

Needs and Uses: The nominating forms associated with this annual Presidential Medal contain information that is necessary in order to select no more than 12 of the Nation's outstanding contributors to the promotion of technology for the improvement of this country's competitiveness.

Affected Public: Individuals, businesses, non-profit institutions, Federal agencies or employees and small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 23, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–21008 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Materials Technical Advisory Committee; Meeting

A meeting of the Materials Technical Advisory Committee will be held September 23, 1993, 10:30 a.m. at the Herbert C. Hoover Building, room 6512, 14th St. & Pennsylvania Ave., NW., Washington, DC. The Committee advises the Office of Technology and

Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Introduction of members and visitors.
3. Presentation of papers or comments by the public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, presentation materials should be forwarded two weeks prior to the meeting to the address below: Ms. Betty Anne Ferrell, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 1, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: August 24, 1993.

Betty Anne Ferrell,

Director, TAC Unit.

[FR Doc. 93–21009 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–583–822]

Initiation of Antidumping Duty Investigation: Class 150 Stainless Steel Threaded Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0186 or (202) 482–4136, respectively.

INITIATION OF INVESTIGATION:

The Petition

On August 2, 1993, we received a petition filed in proper form by Capitol Manufacturing Company and Alloy Stainless Products Co., Inc. (petitioners). At the request of the Department of Commerce (the Department), petitioners filed a supplement to the petition to correct methodological errors and support the data presented on August 16, 1993 In accordance with 19 CFR 353.12, petitioners allege that class 150 stainless steel threaded pipe fittings (SST Pipe Fittings) from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Acting Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by this investigation are Class 150 SST pipe fittings, defined as cast or forged stainless steel products used to connect pipe sections with an ability to withstand normal pressure service (150 pounds per square inch (psi) at 350 degrees Fahrenheit and 300 psi at −20 to 150 degrees Fahrenheit) as well as resistance to corrosion or extreme temperatures, or prevention of metallic contamination to materials in the system. Included in the scope of this investigation are both finished and unfinished Class 150 SST pipe fittings of any size. Unfinished class 150 SST pipe fittings are defined as those products that have been advanced after casting or forging, but which require threading and machining to finish the fittings; finished class 150 SST pipe fittings are defined as those products that have been formed in the shape of elbows, tees, reducers, etc. and have been further advanced after casting or forging, and require no further processing to be acceptable as a finished product to the end user. Class 150 SST pipe fittings are composed of alloys including, but not limited to, 304 and 316, and are manufactured in the shape of 90-degree elbows, 45-degree elbows, street elbows, tees, crosses, couplings, reducing couplings, half-couplings, caps, square head plugs, hex head plugs, hex bushings, unions, locknuts, and welding spuds. Excluded from the scope of investigation are SST pipe fittings manufactured in the shape of nipples.

The products under investigation are currently classifiable under subheadings 7307.19.9030, 7307.19.9060, 7307.19.9080, 7307 22.1000, 7307.22.5000, and 7307.29.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Petitioners based U.S. price (USP) on c.i.f. U.S. port prices quoted from a Taiwanese manufacturer/exporter of SST pipe fittings to an unrelated U.S. customer. Petitioners calculated USP by subtracting movement charges, based on an ocean freight quote for transporting pipe fittings from Taipei to Baltimore, and adding a five percent value-added tax (VAT) to USP. We recalculated USP based on our VAT methodology described below.

Petitioners based foreign market value (FMV) on home market price quotes for identical merchandise, exclusive of VAT, contained in a market survey. The prices in the survey were delivered prices. Petitioners calculated FMV by subtracting movement charges and home market credit, and adding VAT. FMV was then converted to U.S. dollars using a contemporaneous exchange rate found in the Pittsburgh Post-Gazette.

Petitioners, in order to estimate the home market movement charges, calculated an average freight charge per kilogram based on information contained in the public version of a recent questionnaire response involving similar products from Taiwan. Petitioners reduced this freight charge by ten percent to adjust for ranging in the public version. When we recalculated home market freight charges using petitioners' methodology, however, we increased the average freight charge by ten percent to be conservative in our calculation of a deduction from home market price.

In addition, we made corrections to petitioners' calculations by making a circumstance of sale adjustment for differences in credit expenses and, in accordance with Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (58 FR 25803, April 28, 1993), we calculated the amount of VAT which would be applicable to home market sales and added the resulting amount to both USP and FMV.

The range of dumping margins based on price-to-price comparisons for SST pipe fittings from Taiwan based on our recalculation is 2.84 to 146.89 percent.

Critical Circumstances

Petitioners, in accordance with section 733(e) of the Act, allege the existence of critical circumstances with regard to imports of SST Pipe Fittings from Taiwan. Because petitioners did not support their allegation in accordance with 19 CFR 353.16(a), we will not investigate whether critical circumstances exist at this time. Petitioners may amend their allegation, however, such an amendment must be made no later than 21 days before the date of the final determination.

Initiation of Investigation

We have examined the petition for SST Pipe Fittings from Taiwan, as amended, and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of SST Pipe Fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If this investigation proceeds normally, we will make our preliminary determination by January 10, 1994.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by September 16, 1993, whether there is a reasonable indication that imports of pipe fittings from Taiwan are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in this investigation will result in its termination; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: August 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-21010 Filed 8-27-93; 8:45 am]

BILLING CODE 3510-05-P

[A-823-802, A-842-802]

Antidumping Duty Order: Uranium From Ukraine; Termination of Investigation: Uranium From Tajikistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Sullivan or Carole A. Showers, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0114 or 482-3217, respectively.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)), on June 28, 1993, the Department of Commerce (the Department) made its final determinations that imports of uranium from Ukraine and Tajikistan are being, or are likely to be, sold in the United States at less than fair value (LTFV) (58 FR 36640, July 8, 1993). On August 16, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determinations regarding Ukraine and Tajikistan. The ITC determined that imports of uranium from Tajikistan are not materially injuring, nor threatening material injury to, the U.S. industry. The ITC also determined that imports of uranium, other than highly enriched uranium (HEU) (see scope description below), from Ukraine threaten material injury to the U.S. industry. Pursuant to 735(b)(4)(B) of the Tariff Act (19 U.S.C. 1673d(b)(4)(B)), the ITC further examined whether material injury would have been found but for the suspension of liquidation of the merchandise. The ITC determined that such was not the case.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. The Department will direct the U.S. Customs Service to terminate the suspension of liquidation for all entries of uranium from Ukraine, entered or withdrawn from warehouse for consumption before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** (currently scheduled for August 25, 1993), and to release any bond or other security, and refund any cash deposit posted to secure the payment of estimated antidumping duties with respect to those entries. For entries of uranium, other than HEU, on or after that date, the U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 129.29 percent *ad valorem*.

In accordance with section 736 of the Act (19 U.S.C. 1673e), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of uranium, other than HEU, from Ukraine. These antidumping duties will be assessed on all unliquidated entries of uranium, other than HEU, from Ukraine which were entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final ITC determination.

In accordance with section 736(a)(1) of the Act, the Department hereby directs U.S. Customs officers to discontinue suspension of liquidation for antidumping duty purposes as of the date of publication of the ITC's notice of its negative final determination on entries of uranium from Tajikistan and HEU from Ukraine. In addition, U.S. Customs officers will refund all deposits of estimated antidumping duties on entries of uranium from Tajikistan and HEU from Ukraine and release all bonds posted on this merchandise.

This notice constitutes an antidumping duty order with respect to uranium, other than HEU, from Ukraine pursuant to section 736 of the Act (19 U.S.C. section 1673e). Interested parties may contact the Central Records Unit, room B-099, Import Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of the Order

The products covered by this order constitute the following "class or kind" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Uranium Other Than HEU

The merchandise covered by these investigations includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}. Low enriched uranium (LEU) is included within the scope of this order; HEU is not. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. The uranium subject to these investigations is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (HTS).

Since the preliminary determination, the Department has clarified the scope of this investigation. "Milling" or "conversion" performed in a third country does not change the country of origin for purposes of this order. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride (UF_6). Since milling or conversion does not change the country of origin, uranium ore or concentrate of Ukrainian origin that is subsequently milled and/or converted in a third country will still be considered of Ukrainian origin and subject to antidumping duties. The Department continues to regard enrichment of uranium as conferring country of origin.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 353.2(k), may request, in accordance with 19 CFR 353.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Holly Kuga at (202) 482–2104, Office of Antidumping Compliance.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: August 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21011 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for Panel Review filed with the Canadian Section of the Secretariat on August 3, 1993.

SUMMARY: On August 3, 1993, Bethlehem Steel Export Corp., U.S. Steel, a Division of USX Corp., National Steel Corporation, Inland Steel Company, and LTV Steel Company filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free Trade Agreement. Panel review was requested of the final affirmative dumping determination made by the Deputy Minister of National Revenue for Customs and Excise respecting Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America. Notice of this determination was published in the Canada Gazette on June 29, 1993. The Binational Secretariat has assigned Secretariat File No. CDA–93–1904–08 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determination in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedures for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on August 3, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 2, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 17, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 23, 1993.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–21014 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of Panel Review in the matter of Live Swine from Canada, Secretariat File No: USA–91–1904–04.

SUMMARY: On June 11, 1993, the Binational Panel reviewing the final countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, issued a decision remanding certain issues to Commerce for further action and affirming all other issues. On July 16, 1993, the Panel issued an order affirming all aspects of Commerce's Determination on Remand. Pursuant to Rule 81 of the Article 1904 Panel Rules, the binational panel review described above was completed on August 16, 1993.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Completion of Panel Review is governed in this matter by Rule 81 of the Article 1904 Panel Rules, as published in the **Federal Register** on December 30, 1988 (53 FR 53212) and amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 63165). Under that rule, "Where a panel issues a decision * * * that affirms the final determination, the responsible Secretary shall, 31 days after the decision is issued and if no request for an extraordinary challenge committee is filed, cause to be published in the Canada Gazette and the **Federal Register** a Notice of Completion of Panel Review, effective on the 31st day."

The panel issued the order referred to in Rule 81 above on July 16, 1993. No request for an extraordinary challenge committee was filed with the Secretariat within 30 days. Therefore, the panel review is completed effective the 31st day after the order, August 16, 1993, and the panelists are hereby discharged from their duties.

Dated: August 23, 1993.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–21013 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of Panel.

SUMMARY: On August 16, 1993, a Binational Panel issued its decision in the review of the Final Affirmative Countervailing Duty Determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Pure Magnesium and Alloy Magnesium from Canada, Secretariat File No. USA–92–1904–03. The Binational Panel remanded the final determination to the Department of Commerce for further action on two issues and affirmed the determination in all other respects. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Background

On July 13, 1992, the Department of Commerce published its final determination which concluded that countervailable benefits had been provided by two programs, the Quebec Industrial Development Program (SDI) and an exemption for Norsk Hydro Canada Inc. from payment of water bills. A final countervailing duty of 21.61 per cent was calculated. Panel review under Article 1904 of the Agreement was requested on August 10, 1992 by the Government of Quebec.

Panel Decision

On August 16, 1993, the Binational Panel remanded the final determination to the Department of Commerce for action not inconsistent with the Panel's decision as follows:

Commerce must reconsider the exercise of its statutory discretion as to whether its disproportionality analysis should be conducted on an enterprise or industry basis, and provide the Panel a cogent explanation why it has exercised its discretion in a given manner; and

Concerning the appropriate allocation period for grants given to Norsk Hydro for the purchase of pollution control equipment, Commerce must consider the IRS tables and the producer records, in a manner that satisfies the standard articulated in the *IPSCO* case of "an allocation period which will accurately reflect the commercial and competitive benefit received by the plaintiffs in this case," and must provide a satisfactory explanation for its reasoning in support of whatever decision it reaches.

The Binational Panel instructed Commerce to provide its determination

on remand within 30 days of the panel decision (by September 15, 1993).

Dated: August 23, 1993.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93-21012 Filed 8-27-93; 8:45 am]

BILLING CODE 3510-GT-M

Minority Business Development Agency

Business Development Center Applications: St. Louis, Missouri-Illinois MSA Service Area

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $188,867 in Federal funds, and a minimum of $33,329 in non-federal (cost-sharing) contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from February 1, 1994 to January 31, 1995. The MBDC will operate in the St. Louis, Missouri geographic service area. The award number of this MBDC will be 07-10-94002-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by Regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate, after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Award recipients and subrecipients under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying":

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

Persons (as defined at 15 CFR part 26, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 26, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

The Departmental Grants Officer may terminate any grants/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements: unsatisfactory performance of MBDC work requirements: and reporting inaccurate

or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Government to cover pre-award costs.

If an application is selected for funding, the U.S. Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity; and a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Closing Date: The closing date for applications is October 6, 1993. Applications must be postmarked on or before October 6, 1993.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 55 East Monroe, suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, suite 1440, Chicago, Illinois 60603, 312/353–0182.

STATUTORY AUTHORITY: 15 U.S.C. 1512.

FUNDING AUTHORITY: Executive Order 11625, October 13, 1971.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. A pre-bid conference will be held on September 15, 1993, at 10 a.m. at the MBDA Chicago Regional Office. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

.11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 23, 1993.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 93–20940 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 930532–3132]

Guidelines for Nondiscretionary Financial Assistance

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing guidelines to ensure that applications for financial assistance under nondiscretionary assistance programs will be processed and approved or disapproved within 75 days after submission of the application; that applicants will be notified within 14 days whether their application is complete; and that nondiscretionary assistance may be provided on a sole-source basis. After considering comments received on these proposed guidelines, NOAA will publish final guidelines in the **Federal Register**.

DATES: Comments on the proposed guidelines must be received on or before September 29, 1993.

ADDRESSES: Comments on the proposed guidelines should be sent to: Michael J. Nelson, Chief, Grants Management Division, room 5426, 1325 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: David Litton, Chief, Policy & Planning Branch, Grants Management Division, room 5440, 1325 East-West Highway, Silver Spring, MD, 20910; telephone (301) 713–0942.

SUPPLEMENTARY INFORMATION: The authority for these proposed guidelines is Public Law 102–567, section 404, 15 U.S.C. 1539, the NOAA Authorization Act of 1992, which directed that the Secretary develop, and after notice and opportunity for comment, promulgate guidelines for processing nondiscretionary assistance awards within 75 days after submission of the application to the responsible program office of NOAA. In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

Proposed Guidelines for National Oceanic and Atmospheric Administration Nondiscretionary Assistance

1. Definitions

Nondiscretionary assistance program means any NOAA program for providing financial assistance (1) under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress in the NOAA appropriation; or (2) the recipients of which have customarily been a State or an interstate fishery commission.

Programs whose recipients have customarily been a State or an interstate fishery commission are:

Anadromous Fish and Great Lakes Conservation (CFDA 11.405),
Interjurisdictional Fisheries (CFDA 11.407),
Southeast Cooperative Fishery Statistics (CFDA 11.434),
Southeast Area Monitoring & Assessment Program (CFDA 11.435),
Columbia River Fisheries Development Program (CFDA 11.436),
West Coast Fisheries Data Program (CFDA 11.437),
Pacific Salmon Treaty Program (CFDA 11.438),
Marine Mammal Data Program (CFDA 11.439),
Alaska Salmon Enhancement Program (CFDA 11.458).

2. Notification of Applicant

The NOAA program office will notify eligible applicants for nondiscretionary assistance programs of application requirements and deadlines. A complete and acceptable application must be submitted by the applicant to the appropriate program office and to the Grants Management Division at least 75 days prior to the proposed effective date of the award. The applicant must write "Nondiscretionary" in block 8 of the Standard Form 424, Application for Federal Assistance, to identify applications subject to these guidelines. The program office and Grants Management Division will concurrently review each application for nondiscretionary assistance. Within 14 days after receipt of the application, the Grants Management Division, in coordination with the program office,

will notify the applicant in writing whether the application is complete; if it is not, the notification will specify what additional material must be provided before the application will be considered complete and processing initiated.

3. Processing of Applications

Within 75 days after a complete and acceptable application is received, the NOAA Grants Management Division will notify the applicant of approval or disapproval of its application.

Classification

This notice of proposed guidelines is not a major rule for purposes of E.O. 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There are no information collection requirements subject to the Paperwork Reduction Act contained in this notice. This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612. The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed guidelines, if adopted, will not have a significant economic impact on a substantial number of small entities because they specify only internal procedures for ensuring that NOAA meets the deadlines established by section 404 of the NOAA Authorization Act.

Diana H. Josepheon,

Deputy Under Secretary for Oceans and Atmosphere.

[FR Doc. 93–20962 Filed 8–27–93; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Notice to Amend a System of Records

AGENCY: Department of the Army.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending one system of records notice in its existing inventory of records system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 1993 unless comments are received which result in a contrary determination.

ADDRESS: U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific change to the record system being amended is set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system reports.

Dated: August 25, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0690–700DAPE

SYSTEM NAME:

Grievance Records *(August 9, 1993, 58 FR 42303).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Closed cases are retired at the end of the calendar year, and destroyed 4 years after the calendar year cut off date.'

* * * * *

[FR Doc. 93–20953 Filed 8–27–93; 8:45 am]

BILLING CODE 3800–04–F

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Kelastic Mine Beam Co.

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Kelastic Mine Beam Co., under Grant Number DE–FG01–93CE15394. The proposed grant will provide funding in the estimated amount of $83,000 to perform computer analyses and construct a simulation model that demonstrates how the Variable Wall Mining Machine (VWMM) incorporates its lower cost and increased productivity features. Dr. J. Hilary Kelley is the inventor of this VWMM, which is a long-wall coal mining machine with a side-cutting, horizontal, articulated auger, which also provides for simultaneous roof support installation. Dr. Kelley, the inventor and president of the Kelastic Mine Beam Co., will be the program manager and principal investigator. He brings to this project a 50-year career in high technology and management responsibilities.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Bernard G. Canlas, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Kelastic Mine Beam Co., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Invention Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology for evaluation and subsequently to the Department for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. It is anticipated that Kelastic Mine Beam Co., should be able to use the integrated mine model as a tool in better understanding the VWMM operations, and as an aid in penetrating a significant proportion of the underground mine market, where the energy savings potential of the technology can be realized.

The anticipated term of the proposed grant award is 24 months from the effective date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–20986 Filed 8–27–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant to Thermally Modified Sand, Inc.

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Unsolicited Application Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Thermally Modified Sand (TMS), Inc., under Grant Number DE–FG01–93CE15558. The proposed grant will provide funding in the estimated amount of $94,771 to demonstrate the suitability of using thermally modified sand to enhance traction on icy roadways. Widespread use of this technology could significantly reduce the requirement for salt as an additive to sand on icy roadways. Mr. Dino Talavera, the inventor, will be involved in the production of the TMS material for this demonstration. The inventor will be assisted by Mr. Robert Gilfilian of Gilfilian Engineering, Inc., who will serve as the consultant providing project coordination and monitoring services.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Bernard G. Canlas, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Thermally Modified Sand, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Invention Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology for evaluation and subsequently to the Department for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. The invention pertains to a patented method for treating sand for use on winter highways. The sand is freeze dried as single grains of sand and stored for later use. The freezing uses a cold stream of air to evaporate and freeze the water on the surface of grains of sand. This process provides an economic and environmentally safer means of providing increased traction in icy weather.

The anticipated term of the proposed grant award is 24 months from the effective date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–20987 Filed 8–27–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant to Transcom Co.

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Transcom Company under Grant Number DE–FG01–93CE15580. The proposed grant will provide funding in the estimated amount of $96,000 to design, build, and test the transmitting modules, which will be assembled into a complete working system demonstrated in an underground mine for the Mine Safety and Health Administration. Dr. Zvi Meiksin, the inventor and senior partner of the Transcom Company, will be the program manager and principal investigator. Dr. Meiksin is the inventor of this "Wireless Through-The-Earth Telemetry System" for low-frequency data and voice communications for underground mine monitoring and safety.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Bernard G. Canlas, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Transcom Company is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Invention Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology (NIST) for evaluation and subsequently to the Department for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. NIST estimates this low-frequency method of communications will provide a more reliable method of transmitting production, environmental, and safety data, by voice, between the mine face and the surface. These features should be valuable in increasing production and miner safety in underground mines.

The anticipated term of the proposed grant award is 24 months from the effective date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration

[FR Doc. 93–20988 Filed 8–27–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant To Ultraflo Corp.

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6 (a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Ultraflo Corporation under Grant Number DE–FG01–93CE15028. The proposed grant will provide funding in the estimated amount of $99,985 to develop an upgraded prototype of an automated water delivery system for residential and other lodging applications. The principal investigator and overall project manager for Ultraflo will be Mr. Doug Didion. Mr. Didion has been with the Ultraflo Corporation for 22 years and fully understands the design changes for upgrading the prototype water delivery system.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Bernard G.

Canlas, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Ultraflo Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Invention Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology for evaluation and subsequently to the Department for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. The invention pertains to the development of a new centralized water delivery system featuring significant water and energy savings potential in residential and other lodging application. Users of this system are able to activate pre-set temperatures and flow rates by pushing the appropriate button. Different temperatures and flow rates are already designed into each console throughout a home to meet the customized water needs at each point-of-use. The proposed system's safety and convenience features also enhance its utility to markets comprising children, the elderly, and the physically challenged.

The anticipated term of the proposed grant award is 24 months from the effective date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–20989 Filed 8–27–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Dockets PP–61–1]

Application To Amend Presidential Permit PP–61 by Minnkota Power Cooperative

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: Minnkota Power Cooperative (MPC) has applied to the Department of Energy (DOE) to amend Presidential Permit PP–61 to authorize the upgrade of an existing transmission substation and construction of a new substation for increased electric power transmission to Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before August 30, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FE Docket Number PP–61–1 should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Lise Howe (Program Attorney) 202–586–2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038.

On April 12, 1993, MPC applied to amend the Presidential permit in Docket PP–61 issued on July 6, 1976. The facilities previously authorized by Presidential Permit PP–61 consist of one three-phase, 60 hertz, 230,000 volt (230-kV) overhead transmission line extending 191.4 miles from the Minnesota Power & Light Company's (MP&L) Shannon Substation, near Hibbing, Minnesota, to the international border connecting with facilities owned by the Manitoba Hydro Electric Board.

The proposed project is the last part of a three-phase program involving Minnkota Power Cooperative, Minnesota Power and Northern States Power Company, (NSP). The total project, headed by NSP is projected to increase the capacity of the transmission system between Minnesota, North Dakota, and Manitoba. By this application, MPC proposes to expand its existing Running Substation near International Falls, Minnesota, and construct a new 230-kV substation in Roseau County, Minnesota, along the route of the existing 230-kV transmission line authorized by Presidential Permit PP–61.

Specifically, MPC proposes to expand the existing Running Substation, within the existing property line, from its present size of approximately 4.7 acres to approximately 7.0 acres to accommodate the installation of five 30 megavolt-ampere reactive (MVAR), 230-kV shunt capacitor banks and associated electrical equipment. MPC also proposes to construct a new Roseau County 230-kV Substation covering approximately 0.9 acres located adjacent to the existing Roseau County 500-kV Substation. Both substations are within an 80-acre parcel of land owned by NSP. The proposed 230-kV substation will contain one 230 MVAR shunt capacitor bank and associated electrical equipment.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with Loren L. Johnson, Staff Attorney, Minnkota Power Cooperative, Inc., 1822 Mill Road, P. O. Box 1318, Grand Forks, ND 58206–1318 and David Fisher and Michael Connelly, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed amendment will not adversely impact on the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the

public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on August 23, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-20990 Filed 8-27-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4699-8]

Public Water System Supervision Program; Total Coliform Rule Program Revision for the State of Nevada

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Nevada is revising its approved State Public Water System Supervision Program. Nevada has adopted a revised drinking water regulation for total coliform bacteria. The state regulation corresponds to a revised National Primary Drinking Water Regulation promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that the state program revision is no less stringent than the corresponding federal rule. Therefore, EPA has tentatively decided to approve the state program revision.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by September 29, 1993 to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective September 29, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Nevada Department of Human Resources, State Health Division, Bureau of Health Protection Services, 505 E. King St., Carson City, Nevada 89710; and EPA, Region IX, Water Management Division, Water Supply Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Corine Li, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744-1858.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: August 20, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93-20970 Filed 8-27-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4699-9]

Public Water System Supervision Program; Surface Water Treatment Rule Program Revision for the State of Hawaii

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Hawaii is revising its approved State Public Water System Supervision Program. Hawaii has adopted a drinking water regulation which requires filtration and disinfection of surface water systems and of ground water systems influenced by surface water. The state regulation corresponds to a National Primary Drinking Water Regulation promulgated by EPA on June 29, 1989 (54 FR 27527). EPA has determined that the State program revision is no less stringent than the corresponding federal rule. Therefore, EPA has tentatively decided to approve the State program revision. Furthermore, EPA hereby ratifies all state filtration determinations that were made pursuant to the rule by the State of Hawaii prior to this notice.

All interested parties are invited to request a public hearing on EPA's decision to approve the state program revision and the filtration determinations that have been made pursuant to the rule. A request for a public hearing must be submitted by September 29, 1993, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective September 29, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Hawaii Department of Health, Safe Drinking Water Branch, Five Waterfront Plaza, suite 250, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; and EPA, Region IX, Water Management Division, Water Supply Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Corine Li, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744-1858.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the

National Primary Drinking Water Regulations)

Dated: August 20, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–20971 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4699–3]

Office of Air and Radiation; Management of the Air Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Air Docket located at 401 M St. SW. currently operated by the EPA office of General Counsel will be operated by the Office of Air and Radiation effective 1 October 93. Labot-Anderson contractors will operate the Air Docket.

FOR FURTHER INFORMATION CONTACT: The Air Docket 401 M St. SW., Washington, DC 20460. Phone 202–260–7883.

Jerry Kurtzweg,

Director, Office of Program Management Operation, Office of Air and Radiation.

[FR Doc. 93–21004 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4700–5]

City Industries Superfund Site: Proposed Administrative Order on Consent, De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent, de minimis settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the City Industries Superfund Site, Winter Park, Orange County, Florida, with four parties: Marcar Enterprises, Inc.; Mohawk Manufacturing Company; Smiths Industries; and Winter Haven Citrus Growers Association. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Assistant, Cost Recovery Section, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments may be submitted to the person above by thirty days from the date of publication.

Dated: July 30, 1993.

Richard D. Cereen,

Acting Director, Waste Management Division.

[FR Doc. 93–21005 Filed 8–27–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 23, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0053.

Title: Application for Consent to Transfer Control of Corporation Holding Station License.

Form Number: FCC Form 703.

Action: Revision of a currently approved collection.

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 907 responses; .6 hours average burden per response; 544 hours total annual burden.

Needs and Uses: In accordance with FCC Rules, applicants in the Private Land Mobile, General Mobile, Microwave, Marine, Aviation and Experimental Radio Services must submit FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. The FCC Form 703 has been revised to include the Anti-Drug Abuse certification (question 8) and other minor editorial changes to the instructions. The page for the license (Part II) will be perforated and the reverse of the license made into a self-mailer. The data will be used to determine continued eligibility for licensees. Without this information, violations of ownership regulations could occur.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–20898 Filed 8–27–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0540

Title: Tariff Filing Requirements for Nondominant Common Carriers

Expiration Date: 02/28/96

Description: In the Memorandum Opinion and Order in the matter of Tariff Filing Requirements for Nondominant Common Carriers (CC Docket No. 93–36, adopted August 16, 1993, and released August 18, 1993), the Commission adopted final rules that establish significantly streamlined federal tariffing requirements for nondominant common carriers previously subject to forbearance. Nondominant carriers are permitted to file their interstate tariffs on not less than one day notice. In addition, tariff content requirements allow nondominant carriers to state in their tariffs either a fixed rate or a reasonable range of rates. Nondominant carriers are required to file their tariffs and tariff revisions on three and one-half inch floppy diskette and are given added flexibility in formatting their tariff filings.

OMB Control No.: 3060–0575

Title: In the Matter of Commission Requirements for Cost Support Material to be Filed with Local Transport Access Tariffs

Expiration Date: 11/30/93
Description: In the Order in the matter of Commission Requirements for Cost Support Material to Be Filed with Local Transport Tariffs, (DA 93–1029, adopted August 20, 1993, released August 20, 1993), the Commission issued Tariff Review Plans (TRPs) specifying certain requirements for summary cost support material that local exchange carriers (LECs) must file to support their switched transport tariff filings on or before September 1, 1993 in partial fulfillment of the requirements established in 47 CFR 61.38 and 61.41 through 61.49. All Tier 1 LECs, and all non-Tier 1 LECs that have received a *bona fide* request for direct-trunked transport service are subject to the requirements. The TRPs consist of a Price Cap TRP, which is a revised version of the standard TRP used by price cap companies for annual filings and other price cap filings, as modified for rule changes adopted in the Transport Orders and two Supplemental TRPs—one for price cap companies and one for rate of return companies—designed to be used only for this filing. The TRPs display basic demand, rate, and cost information in a manner that is consistent for all LECs required to file tariffs, thereby aiding review of the LECs' filing by the Commission and interested parties.
OMB Control No.: 3060–0559
Title: International PSN Quarterly Reports
Expiration Date: 05/31/96
Description: Pursuant to a Memorandum Opinion, Order and Authorization adopted March 31, 1993, released April 16, 1993, certain applicants who requested authority to establish and operate voice-grade international satellite circuits using the Intersputnik Statsionar 4 satellite located at 14 degree W.L. to provide public switched services, including IMTS, data, and facsimile services, between appropriately licensed earth stations in the U.S. and the republics formerly comprising the Union of Soviet Socialist Republics and certain Eastern European countries must file quarterly reports detailing the number of PSN circuits in use each month over the Intersputnik satellite system. The reports should also detail monthly the "non circuit" conditions during the reporting period. The reports must set forth the number of circuits each applicant has in use over each communications system for the countries served by the Intersputnik system. The quarterly reports shall be submitted within 60 days from the end each calendar quarter.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–20899 Filed 8–27–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Filing of Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; MAPCARGO International

[Petition No. P56–93]

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than September 6, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Mr. Marek A. Panasewicz, President, MAPCARGO International, 275 E. Redondo Beach Blvd., Gardena, California 90248.

Copies of the peitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,
Secretary.
[FR Doc. 93–20917 Filed 8–27–93; 8:45 am]
BILLING CODE 6730–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.
ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, September 8, and Thursday, September 9, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the first day includes discussions of a preliminary exposure draft on liabilities a continuation of discussions of the federal government's future claims. Also, issues related to the project on physical property will be discussed. On the second day there will be a discussion of expenditure accounting in the morning. In the afternoon Professor Robert Kaplan, Harvard University will make a presentation to the board on Activity-Based Costing. Struan Little of the World Bank will brief the board on New Zealand's efforts in cost accounting and performance measurement.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7354.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: August 25, 1993.
Ronald S. Young,
Executive Director.
[FR Doc. 93–21021 Filed 8–27–93; 8:45 am]
BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Proposed Ronald Reagan Federal Building-United States Courthouse, City of Santa Ana, California; Availability for a Draft Environmental Impact Statement

The U.S. General Services Administration (GSA) hereby gives notice that a Draft Environmental Impact Statement (DEIS) for the above referenced project has been prepared and filed with the U.S. Environmental Protection Agency (EPA). The proposed action includes the construction of a new Federal Building-U.S. Courthouse within the Central Business Area of the City of Santa Ana, California. In addition to the proposed action, the DEIS examines three alternatives including the expansion of the court operations into a leased facility, construction at an alternate site, and "no action".

The DEIS is on file and may be obtained from the U.S. General Services Administration, Region 9, Attn: Ms. Mitra Nejad, Public Buildings Service,

Planning Staff (9PL), 525 Market Street, 35th Floor, San Francisco, California 94105–2799 [(415) 744–5252]. A limited number of copies of the DEIS are available to fill single copy requests. Loan copies of the DEIS are available for review at the City of Santa Ana Central Library and the GSA Laguana Niguel Field Office at 24000 Avila Road, suite 4100, Laguna Niguel, California.

A public meeting is scheduled to provide the community with an opportunity to submit oral and written comments on the DEIS. The meeting will be held on September 21, 1993, from 3:30 p.m. to 6:30 p.m. at Department One Courtroom, Old Orange County Courthouse, 211 West Santa Ana Boulevard, Santa Ana, California. In addition, final written comments on the DEIS can be submitted to the GSA San Francisco address above and will be accepted until the closing of the public review period on October 12, 1993.

Dated August 20, 1993.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 93–20931 Filed 8–27–93; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 335]

National Organizational Strategies for Early Detection and Control of Breast and Cervical Cancer Program; Amendment

A notice announcing the availability of Fiscal Year 1993 funds for cooperative agreements for National Organizational Strategies for the Early Detection and Control of Breast and Cervical Cancer was published in the **Federal Register** on August 3, 1993 (58 FR 41281). The notice is amended as follows:

On page 41281, first column, under the heading "Introduction," the first paragraph is amended to read: "The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1994 for competing cooperative agreements to support the development of strategies by national organizations with access to special populations (e.g., Native Americans, Hispanics, African-Americans, older Americans, low-literacy audiences, etc.) to improve the delivery of comprehensive breast and cervical cancer early detection and control programs."

On page 41281, second column, under the heading "Authority," the first sentence is amended to read: "This program is authorized by sections 317(k) and 1507 (42 U.S.C. 247b(k) and 300n–3) of the Public Health Service Act, as amended."

On page 41281, second column, under the heading "Availability of Funds," the first paragraph is amended to read: "Approximately $400,000 is expected to be available in FY 1994 to fund approximately three awards. It is expected that the average award will be $133,000 ranging from $100,000 to $200,000. It is expected that the awards will begin on or about February 1, 1994, and will be for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change."

On page 41282, second column, under the heading "Funding Priorities," second paragraph, first line, insert the word "Public" before "Comments."

On page 41282, third column, under the heading "Application Submission and Deadline," the first paragraph is amended to read: "The original and two copies of the application PHS Form 5161–1 (Rev. 7/92) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before November 1, 1993."

On page 41282, third column, under the heading "Where to Obtain Additional Information," the second paragraph is amended to read: "Programmatic technical assistance may be obtained from Katherine Wilson, M.P.H., C.H.E.S., Health Education and Training Support Section, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4740 Buford Highway, NE., Mailstop K–56, Atlanta, Georgia 30341–3724, telephone (404) 488–4744."

All other information and requirements of the August 3, 1993, **Federal Register** notice remain the same.

Dated: August 24, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–20944 Filed 8–27–93; 8:45 am]

BILLING CODE 4160-18-P

National Institutes of Health

Opportunity For Licensing; Transforming Growth Factor-Beta

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. (and in foreign markets) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

The inventions are embodied and claimed in U.S. Patent Application Serial Number 07/308,948 entitled "Purified Transforming Growth Factor Beta," filed February 8, 1989, and issued as U.S. Patent Number 5,104,977 on April 14, 1992, pending U.S. Patent Application Serial Number 07/816,563 of the same title, filed January 3, 1992, pending U.S. Patent Application Serial Number 08/048,956 entitled "Promotion of Cell Proliferation by Use of Transforming Growth Factor Beta," filed April 16, 1993, and pending foreign counterparts having priority of U.S. Patent Application Serial Number 06/423,203, filed September 24, 1982, entitled "Purified Transforming Growth Factor Beta," and U.S. Patent Application Serial Numbers 06/468,590, filed February 22, 1983, and 06/500,833, filed June 3, 1983, both entitled "Repair of Tissue in Animals."

Transforming Growth Factor Beta (TGF-Beta) has been described as the prototypical multifunctional peptide growth factor. The stable peptide has been purified in significant quantities from platelets, spleen and bone and has been produced in recombinant form as well. TGF-Beta is highly pleiotropic. It can stimulate proliferation of some cells, especially connective tissue, while being a potent inhibitor of proliferation in others, such as lymphocytes and most epithelial cells. Moreover, it can regulate other processes not associated with cell division, such as the synthesis of collagen and other critical molecules of the extracellular matrix. Its actions are germane to almost every branch of medicine.

Results of current studies have indicated TGF-Beta has an active role in embryogenesis, tissue and bone repair, and carcinogenesis suggesting several potential clinical applications of TGD-Beta. For example, TGF-Beta may prove useful in surgical wound healing in debilitated patients or those undergoing chemotherapy, treatment of diabetic, decubitus and various ulcers, and

treatment of burns. Studies are being conducted in intraocular administration after retinal detachment to promote retinal reattachment and in acceleration of bone fracture healing. The activity of TGF-Beta in cell proliferation suggests it may be useful in repair of injury to the myocardium and in tissue repair in chronic inflammatory diseases. The activity of TGF-Beta in lymphocyte suppression suggests a potential use for immunosuppression for transplantation and in treatment of autoimmune diseases.

The following fields of use for the inventions claimed in these patents and patent applications are available for nonexclusive licensing:

—The systemic administration of TGF-Beta for the treatment of wounds prior to, during, and after surgery and similar invasive procedures;

—The systemic administration of TGF-Beta for the treatment of or prevention of a disease or condition characterized primarily by an autoimmuner response; and

—The nonsystemic and systemic administration of TGD-Beta for the treatment or prevention of a disease or condition primarily affecting the eye and its associated diseases.

The following fields of use for the inventions claimed in these patents and patent applications are not available at this time for either exclusive or nonexclusive licensing.

—The nonsystemic administration of TGF-Beta for repair of soft tissue;

—The nonsystemic and systemic administration of TGF-Beta for the treatment or prevention of a disease or condition of the human musculoskeletal system (including periodontal disease and conditions); and

—The systemic administration of TGF-Beta for the treatment or prevention of vascular ischemia and/or reperfusion injury.

All other fields of use for the inventions claimed in these patents and patent applications are available for either exclusive or non-exclusive licensing as appropriate.

ADDRESSES: Licensing information and copies of this U.S. patent application may be obtained by writing to Marjorie D. Hunter at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Dated: August 20, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–20976 Filed 8–27–93; 8:45 am]

BILLING CODE 4140–01–M

Withdrawal of Interim NIH Guidelines for the Support and Conduct of Therapeutic Human Fetal Tissue Transplantation Research in Light of Superseding Provisions of Public Law 103–43, the National Institutes of Health Revitalization Act of 1993

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of new statutory requirements and of withdrawal of interim guidelines.

SUMMARY: The National Institutes of Health (NIH) is announcing the withdrawal of its interim guidelines for the support and conduct of therapeutic human fetal tissue transplantation research because of the superseding provisions of Public Law 103–43, the National Institutes of Health Revitalization Act of 1993. A summary of pertinent provisions of the Act is provided below.

ADDRESSES: Written comments should be mailed to F. William Dommel, Jr., J.D., Senior Policy Advisor, Office for Protection from Research Risks, NIH, Building 31, room 5B63, 9000 Rockville Pike, Bethesda, Maryland 20892, 301–496–7005, or delivered to the same location between 9 a.m. and 5 p.m. on weekdays, Federal holidays excepted. Comments received may be inspected at the same location during these hours.

FOR FURTHER INFORMATION CONTACT: Mr. F. William Dommel, Jr., 301–496–7005.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 1993, President Clinton issued a directive to the Secretary of Health and Human Services ending a five-year moratorium on Federal funding of therapeutic transplantation research that uses human fetal tissue derived from induced abortions. Secretary of Health and Human Services Donna E. Shalala notified the National Institutes of Health (NIH) of the President's action, and then formally revoked the moratorium on February 1, 1993. At the same time, the Secretary, through the Acting Assistant Secretary for Health, directed the NIH to develop interim guidelines based on the recommendations of the 1988 Human Fetal Tissue Transplantation Research Panel to ensure that Federal funding of human fetal tissue transplantation research does not encourage the choice of abortion. Accordingly, the NIH prepared, and transmitted to the Acting Assistant Secretary for Health, interim policy guidelines based on the recommendations of the 1988 Human Fetal Tissue Transplantation Research Panel and the Advisory Committee to the Director, NIH. Those interim guidelines were published in the NIH Guide for Grants and Contracts on March 19, 1993 (Vol. 22, No. 11).

Action

The NIH Interim Guidelines for the Support and Conduct of Therapeutic Human Fetal Tissue Transplantation Research are hereby withdrawn in light of the comprehensive and superseding provisions of Public Law 103–43, enacted June 10, 1993. Final guidelines will not be issued.

Additional Information

Attention is directed to section 498A of the Public Health Service Act (42 U.S.C. 289g–1) added by Public Law 103–43, the NIH Revitalization Act of 1993. The provisions of that section pertinent to research on transplantation of fetal tissue are summarized as follows:

- Human fetal tissue means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth.
- Human fetal tissue may be used regardless of whether the tissue is obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth.
- The Secretary of Health and Human Services may conduct or support research on the transplantation of human fetal tissue for therapeutic purposes.
- The woman donating the human fetal tissue must sign a statement declaring that the tissue is being donated for therapeutic transplantation research, the donation is being made without any restriction regarding the identity of individuals who may be the recipients of transplantations of the tissue, and the donation is being made without her (the donor) having been informed of the identity of those individuals who may be the recipients.
- The attending physician must sign a statement declaring that the tissue has been obtained in accord with the donor's signed statement and that full disclosure has been made to the donating women of: (1) The attending physician's interest, if any, in the research to be conducted with the tissue, and (2) any known medical risks to the donor or risks to her privacy that

might be associated with the donation of the tissue and are in addition to the risks associated with the woman's medical care. In the case of tissue obtained pursuant to an induced abortion, the attending physician's statement must also declare that the consent of the woman for the abortion was obtained prior to requesting or obtaining consent for donation, the abortion was conducted in accord with applicable State Law, and no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue.

• The individual with the principal responsibility for conducting the research must sign a statement declaring that the individual is aware that the tissue is human fetal tissue donated for research purposes and may have been obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth; that the principally responsible researcher has provided such information to other individuals with responsibilities regarding the research; that the principally responsible researcher will require, prior to obtaining the consent of a person to be a recipient of a transplantation of the tissue, written acknowledgment of receipt of the foregoing information by such recipient; and that the principally responsible researcher has had no part in any decisions as to the timing, method, or procedures used to terminate the pregnancy made solely for the purposes of the research.

• Human fetal tissue may be used only if the head of the agency or other entity conducting the research involved certifies to the Secretary of Health and Human Services that the statements required herein will be available for audit by the Secretary [HHS].

• Research involving the transplantation of human fetal tissue for therapeutic purposes must be conducted in accord with applicable State law and the Secretary may not provide support for such research unless the applicant for assistance agrees to so conduct the research. The conduct of such research by the Secretary must be in accord with applicable State and local law.

The provisions of section 498B of the Public Health Service Act (42 U.S.C. 289g–2), added by Public Law 103–43, the NIH Revitalization Act of 1993, are summarized as follows:

• It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce. (Valuable consideration does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.)

• It shall be unlawful for any person to solicit or knowingly acquire, receive, or accept a donation of human fetal tissue for the purpose of transplantation of such tissue into another person if the donation affects interstate commerce, the tissue will be or is obtained pursuant to an induced abortion, and: (1) The donation will be or is made pursuant to a promise to the donating individual that the donated tissue will be transplanted into a recipient specified by such individual; (2) the donated tissue will be transplanted into a relative of the donating individual; or (3) the person who solicits or knowingly acquires, receives, or accepts the donation has provided valuable consideration for the costs associated with such abortion. (Valuable consideration does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.)

• Any person who violates these provisions shall be: (1) Fined in accordance with title 18 United States Code, except that the fine shall be not less than twice the amount of any valuable consideration received, (2) imprisoned for not more than 10 years, or (3) penalized as described in both (1) and (2).

Dated: August 23, 1993.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 93–20977 Filed 8–27–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3038; FR–2736–N–10]

Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waiver requests: December 1, 1992 through February 28, 1993.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the eighth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Myra Ransick, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (Telephone 202–708–2084. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)) provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the **Federal Register**. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not

relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the eighth Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. Thereafter, notices updating waiver-grant activity for the ensuing three-month periods were published on October 28, 1991, January 13, 1992, April 8, 1992, July 20, 1992, October 9, 1992 and April 1, 1993.

Today's document updates HUD's waiver-grant activity through the end of February 1993. In approximately one month, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from March 1, 1993 through May 31, 1993.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the section 8 and section 202 programs (24 CFR chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between March 1, 1993 and through May 31, 1993.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: July 27, 1993.

Henry G. Cisneros,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, December 1, 1992 Through February 28, 1993 (and Listing of Pre-December 1, 1992 Regulatory Waivers Not Previously Reported)

Office of the Assistant Secretary for Public and Indian Housing

Note to Reader: The person to be contacted for additional information about the waiver grant items in this listing is: Madeline Hastings, Director, Rental Assistance Division, Department HUD, 451 7th Street SW., room 4226, Washington, DC 20410, (202) 708–2841. (This is not a toll-free number.)

1. *Regulation:* Family Self-Sufficiency (FSS) Program Guidelines.

Project/Activity: The Whatcom County Housing Agency, a public housing agency (HA) in Bellingham, Washington was allowed additional time to submit its Action Plan to HUD.

Nature of Requirement: The FSS Program Guidelines require that each HA operating a FSS program submit an Action Plan to HUD within 90 days of notification of approval by HUD of the HA's application.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 24, 1992.

Reason Waived: To permit the Whatcom County Housing Agency to submit its Action Plan to HUD after the mandatory time period (90 days). The HA was unable to submit its Action Plan within the mandatory time period because its FSS program coordinator was on extended leave of absence due to illness. The waiver was provided because the implementation of the FSS program will provide the participating families opportunities for first-time employment or improved earnings, and will be in the best interest of the residents of the area and Whatcom County in general.

2. *Regulations:* 24 CFR 887.53; 887.55; 887.63; 887.101 (d) and (e)(1); 887.101(e)(1)(ii); 887.107(a); 887.107(c); 887.153(a); 887.155(a)(1)(i) (second and third sentences only); 887.155(a)(1)(iii); 887.155(a)(1)(iv); 887.565(a); Part 791, Subpart C; Section IV.(B)(2) of the Family Self-Sufficiency Guidelines.

Project/Activity: South Florida; St. Mary Parish (Louisiana) Housing Authority; Morgan City (Louisiana) Housing Authority; Kauai County (Hawaii) Housing Authority—Response to Hurricane Andrew and Hurricane Iniki Disasters.

Nature of Requirements: Submission and approval of applications for rental voucher assistance; Annual Contributions Contract term of five years; Annual contributions set at 115 percent of first year requirement for assistance payments to owners; Notice to public of availability of housing assistance; Applicant already on waiting list need not reapply; Public housing agency (PHA) must maintain a single waiting list for the rental voucher and rental certificate programs; Selection of applicants from the waiting list; Federal applicant selection preferences; Applicant may refuse the initial offer of a rental voucher to wait for a rental certificate; Rental voucher holder may ask the PHA to exchange a rental voucher for a rental certificate; Receiving PHA under portability may either bill the initial PHA or absorb the family; Local government comments on applications for housing assistance; Minimum size of the Family Self-Sufficiency program.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dates Granted: November 4, 1992—for South Florida; December 7, 1992—for St. Mary Parish, Morgan City, and Kauai County Housing Authorities.

Reason Waived: To allow PHAs administering rental voucher assistance provided under the Dire Emergency Supplemental Appropriations Act of 1992, to provide immediate rental voucher assistance to hurricane victims having urgent housing needs by: eliminating undue administrative burdens imposed by these regulations under emergency circumstances; by modifying certain regulatory requirements to comport with the intent of the Act; and by facilitating the obligation and use of funds appropriated under the Act.

3. *Regulation:* 24 CFR 887.165.

Project/Activity: Metropolitan Dade County Department of Special Housing Programs—Response to Hurricane Andrew disaster.

Nature of Requirement: Regulation limits the term of rental vouchers to 120 days from the date of issuance.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 1, 1993.

Reason Waived: To allow those families in Dade County, Florida, who have been issued a rental voucher, an additional 120 days to search for safe, decent, and sanitary housing. This additional search time is necessary because of the severe shortage of

housing in Dade County as a result of Hurricane Andrew. This waiver is granted only for the special disaster rental vouchers provided under the Dire Emergency Supplemental Appropriations Act of 1992.

4. *Regulation:* 24 CFR 882.209(a)(4)(ii)(A).

Project/Activity: Section 8 rental assistance provided in connection with the demolition of Pennway Plaza, a public housing project in Kansas City, Missouri.

Nature of Requirement: Regulation prohibits a public housing agency from establishing a selection preference based on the identity or location of housing which they currently occupy.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 16, 1993.

Reason Waived: To permit the Housing Authority of the City of Kansas City (HACKC) to allow eleven families displaced from Pennway Plaza prior to HUD approved demolition to be given the same housing options as those families that became displaced at the time of demolition. These eleven families had good reason to believe that the HACKC would provide rental certificates because of the statement made by the former executive director and HUD's practice to approve rental vouchers or certificates to assist in the relocation of families affected by HUD approved demolition of public housing.

5. *Regulation:* 24 CFR 882.209(a)(4)(ii)(A) and 887.155(d)(1)

Project/Activity: Use of the ten percent non-Federal preference authority to provide a Section 8 tenant selection preference for public housing residents.

Nature of Requirement: Regulation prohibits tenant selection preferences based on the identity or location of the housing which is occupied by the applicant.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 1992.

Reason Waived: To permit the Housing Authority of the City of Tulsa to use its ten percent non-Federal preference authority to provide a Section 8 tenant selection preference for public housing residents in order to increase public housing families' housing options and provide the potential for upward mobility.

6. *Regulation:* 24 CFR 882.209(b)(3).

Project/Activity: Metropolitan Dade County Department of Special Housing Programs—Response to Hurricane Andrew Disaster.

Nature of Requirement: Regulation requires that the public housing agency comply to the maximum extent feasible with the unit distribution specified in the Annual Contributions Contract (ACC).

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 16, 1992.

Reason Waived: To allow the Dade County Department of Special Housing Programs to overissue rental vouchers and rental certificates under certain conditions, to meet the urgent need for rental assistance to eligible families who lost their homes as a result of Hurricane Andrew. This waiver was granted for a period of four months, or until the execution date of an ACC providing special disaster rental vouchers (expected to be made available under a supplemental appropriation), whichever is shorter.

7. *Regulations:* 24 CFR 882.104(a) and 882.715(b).

Project/Activity: Conversion of Section 23 Projects in State of Maine.

Nature of Requirement: Regulations establish the maximum total annual contributions contract (ACC) commitment based on the number of units and the fair market rents, and impose a rent reasonableness limitation for project-based certificate assistance.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 1992.

Reason Waived: The VA, HUD-Independent Agencies Appropriations Act of 1992 contained explicit language requiring the Department to allow PHAs to extend contracts for owners who agreed to convert from the Section 23 program to Section 8. The Act required that the contracts be renewed as project-based assistance although there was no explicit authority to deviate from normal program requirements. The rent increases proposed by the owners exceeded the rents charged for comparable unassisted units.

This waiver of Section 882.104(a) was provided to the PHAs in Maine since the approval of the rents would have exceeded the Total Maximum ACC commitment allowed under program rules. The waiver of 882.715(b) was provided since Congress in the Appropriations Act exempted the PHAs from the requirements of Section 8(c)(2)(C).

8. *Regulation:* 24 CFR 882.209(d)(2).

Project/Activity: Expiration of Section 8 Certificate, Rochester Housing Authority.

Nature of Requirement: 24 CFR 882.209(d)(2) limits extensions of the term of a rental certificate for not more than 60 additional days.

Granted By: Michael B. Janis, General Deputy Assistant Secretary, Public and Indian Housing.

Date Granted: February 3, 1993.

Reason Waived: This waiver was requested on behalf of a disabled individual who was living in a Section 8 Moderate Rehabilitation unit when the HAP contract was terminated because of noncompliance with housing quality standards. The owner subsequently defaulted on the FHA-insured mortgage and the property was turned over to HUD 12/23/92.

Both the individual's psychiatrist and physician submitted documentation substantiating the extreme difficulty moving posed for the individual. In consideration of the individual's disabilities, the housing authority granted the individual the maximum extension possible under the regulations, and both the bank and subsequently HUD allowed the individual to remain in the unit while it was processed and advertised for sale. The individual continued to live in the unit during this time without Section 8 assistance in the hope that the new owner would accept the individual as a tenant and participate in the Section 8 program, but was aware that the new owner would be under no obligation to accept Section 8 assistance.

In order to prevent undue hardship for this individual, the waiver permitted the Rochester Housing Authority to extend the rental certificate for up to 120 days from the date the property is sold to the new owner.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: Mr. Roger Braner, Acting Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410, Phone: (202) 708–1380, TDD: (202) 708–4594.

9. *Regulation:* 24 CFR § 901.120 (a) and (b).

Project/Activity: Newark Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for the completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: September 30, 1992.

Reason Waived: The New York Regional Office was granted a waiver for the completion of the PHMAP assessment for the Newark Housing

Authority (NHA) due to the change in the PHMAP score of the currently designated troubled NHA. Prior to the removal of troubled designation, the New York Regional Office is required to ensure that a confirmatory review of the NHA is conducted, the PHMAP assessment is completed, and the NHA is notified of its status under the PHMAP.

10. *Regulation:* 24 CFR § 901.120(b)(2).

Project/Activity: Cuyahoga Metropolitan Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 21, 1992.

Reason Waived: The Cleveland Field Office was granted a waiver for the completion of the PHMAP assessment for the Cuyahoga Metropolitan Housing Authority (CMHA) due to the necessity to merge performance data from the Lakeview Terrace Resident Management Firm with that of CHMA; and the completion by the Field Office of a confirmatory review after the merge has been completed.

The Chicago Field Office was granted a waiver for the completion of the PHMAP assessment for all of the public housing agencies in its jurisdiction due to the flooding by the Chicago River and various computer problems.

11. *Regulation:* 24 CFR § 901.120(b)(2).

Project/Activity: Salt Lake Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 22, 1992.

Reason Waived: The Denver Regional Office was granted a waiver for the completion of the PHMAP assessment for the Salt Lake Housing Authority (SLHA) due to the fact that the SLHA used incorrect data for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Denver Regional Office to complete the PHMAP assessment.

12. *Regulation:* 24 CFR § 901.120(b)(2).

Project/Activity: Marianna Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: July 13, 1992.

Reason Waived: The Little Rock Field Office was granted a waiver for the completion of the PHMAP assessment for the Marianna Housing Authority (MHA) due to the fact that the MHA used incorrect data for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Little Rock Field Office to complete the PHMAP assessment.

Note to Reader: The person to be contacted for additional information about waiver-grant items in this listing is: Gary Van Buskirk, Director, Homeownership Division, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Phone: (202) 708–4233.

13. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Antigo, Wisconsin Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) WI 85–1.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 30, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

14. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Battle Creek, Michigan Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) MI33–035–004.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

15. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Columbus Metropolitan (Ohio) Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) OH16–P001–011, 017, 022, 023, 024, 025, 026 and 027.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III

Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

Project/Activity: Cuyahoga Metropolitan Housing Authority, Cleveland, Ohio, Turnkey III Homeownership Opportunity Programs Project(s) OH–5, 43, 47, 48, 49, 51, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 23, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

Project/Activity: Dallas, Texas Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) TX21–P009–015 and 016.

Nature of Requirements: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

Project/Activity: Durham, North Carolina Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) NC013–016 and NC013–018.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 24, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

19. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

Project/Activity: Lansing, Michigan Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) MI33–058–009.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 24, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities

(IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

20. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

Project/Activity: Lucas Metropolitan Housing Authority, Toledo, Ohio Turnkey III Homeownership Opportunity Programs Project(s) OH6–(023/024), 027, 029, 033 and 034.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 23, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

21. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3)

Project/Activity: Metropolitan Development and Housing Agency, Nashville, Tennessee Turnkey III Homeownership Opportunity Programs Project(s) developed under ACC A–3777, # TN5–18.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

22. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Millville, New Jersey Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) NJ61–6.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 9, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

23. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Muskegon, Michigan Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) MI066–001, MI066–002 and MI066–003.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 30, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

24. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turkey III Handbook (7495.3).

Project/Activity: Norfolk Redevelopment and Housing Authority, Norfolk, Virginia Turnkey III Homeownership Opportunity Programs Project(s) VA36–P006–015 and VA36–P006–014.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III

Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

25. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Raleigh, North Carolina Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) NC2–8.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 24, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

26. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Roanoke, Virginia, Redevelopment and Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) VA11–4 and ACC Contract P–155.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

27. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Stevens Point, Wisconsin Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) WI37–005.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 24, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

28. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Tennessee Valley Regional Housing Authority, Corinth, Mississippi Turnkey III Homeownership Opportunity Programs Project(s) MS6–12.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities

(IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

29. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Tuskegee, Alabama Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) AL–160–5

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: November 20, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

30. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Vineland, New Jersey Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) NJ63–3, 8, 9, 10, 15 and 16.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

31. *Regulation:* 24 CFR Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Winston-Salem, North Carolina Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) NC012011, NC012013, NC012015, NC012016, NC012017, NC012018 and NC012019.

Nature of Requirement. 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: November 20, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

32. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: York, Pennsylvania Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) PA26–022–06 and 07.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: December 24, 1992.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

33. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Dade County, Florida Department of Housing and Urban Development, Turnkey III Homeownership Opportunity Programs Project(s) 5–53 (Seminola) and 5–52 (Scattered Sites).

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a

homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and or Operating Reserves are also to be remitted to HUD.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Dated Granted: January 25, 1993.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

34. *Regulation:* 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Michigan City, Indiana Housing Authority, Turnkey III Homeownership Opportunity Programs Project(s) IN019–004 and IN019–005.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook require that upon sale of a homeownership unit that the monies received be remitted to HUD to reduce the capital indebtedness on the project. Excess Residual Receipts and/or operating Reserves are also to be remitted to HUD.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 25, 1993.

Reason Waived: Project debt forgiveness was authorized by the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 (the Amendments), P.L. 99–272 (April 7, 1986) which amends Section 4 of the United States Housing Act of 1937. The Amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment.

Turnkey III debt forgiveness, as authorized above, is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for debt forgiveness.

35. *Regulation:* HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Sections 305 and 405 as published on January 14, 1992 (57 FR 1522).

Project/Activity: All HOPE 1, 1992, Planning and Implementation grantees to permit them to attend HUD homeownership training conducted in Atlanta, GA, during the week of October 26–30, 1992 and to attend the Annual Conference of the National Association of Resident Management Corporations in Las Vegas, Nevada from August 31-September 3, 1992.

Nature of Requirement: Sections 305 and 405 of the HOPE 1 guidelines prohibit the use of planning or implementation grant funds until after the effective date of the HOPE 1 grant agreement. The cited prohibitions contained in Sections 305 and 405 of the HOPE 1 Guidelines are regulatory, not statutory, in nature.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing, PD.

Date Granted: January 21, 1993.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited by the HOPE 1 planning and implementation grantees as follows:

Planning and implementation applicants for this new program needed to be trained on various aspects of the grant agreement with which they were previously unfamiliar, e.g., proper use of the LOCCS–VRS draw down system; grant execution procedures; development of the mandatory project management plan; and operation of the airbitration/mediation requirements. HUD contracted with individuals and entities to carry out portions of the training conducted in Atlanta, Georgia during the last week of October 1992.

The Department believes that the grantees' attendance at the Atlanta and Las Vegas training provided them with invaluable technical assistance in carrying out their HOPE 1 grant and will greatly increase their likelihood of developing and carrying out successful homeownership programs.

The Department has determined that the HOPE 1 grantees' attendance at the above cited training is an eligible HOPE 1 Grant expense since the training was directly related to developing and carrying out the homeownership program pursuant to Sections 305(b) and 405(b)(13) of the HOPE 1 Guidelines.

Note to Reader: The person to be contacted for additional information about waiver-grant items in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–1015, TDD: (202) 708–0850.

36. *Regulation:* 24 CFR 905.325

Project/Activity: Establishment of ceiling rents for Lac Vieux Desert Chippewa Housing Authority.

Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.

Granted By: Michael B. Janis, General Deputy Assistant Secretary, PD.

Date Granted: March 2, 1993.

Reason Waived: This waiver was requested and granted to allow the Lac Vieux Desert Chippewa Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

37. *Regulation:* 24 CFR 905.325

Project/Activity: Establishment of ceiling rents for Minnesota Dakota Indian Housing Authority.

Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.

Granted By: Michael B. Janis, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 24, 1993.

Reason Waived: This waiver was requested and granted to allow the Minnesota Dakota Indian Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

38. *Regulation:* 24 CFR 905.416(c) and (d).

Project/Activity: Establishment of the Mutual Help Homeownership Opportunity (MH) Program waiting list and preliminary selection of homebuyer from the MH waiting list at the Rosebud Housing Authority (RHA) in Rosebud, South Dakota.

Nature of Requirement: The Regulation applies to the IHA

maintaining a waiting list of families that have applied for MH housing and that have been determined to meet the admission requirements. Also, the IHA must, within 30 days after HUD approval of the application for a project, select homebuyers from the MH waiting list in accordance with the date of application, qualification for a Federal preference, and other pertinent factors under the IHA's admissions policies.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 1, 1992.

Reason Waived: This action was requested and granted, because the RHA inadvertently built a MH unit on land belonging to this participant. The participant was found eligible to participate in the program, thus allowing her to remain in the unit.

39. *Regulation:* 24 CFR 905.705.

Project/Activity: Use of one unit from the Shoshone Joint Housing Authority's rental inventory to be used as a law enforcement office within the Duckwater community, pursuant to PIH Notice 90–39.

Nature of the Requirement: Waiver of the Regulation cited above is required to allow operating subsidy to be provided for a non-dwelling unit and the inclusion of the unit in the Performance Funding calculation.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 23, 1992.

Reason Waived: This waiver was requested and granted to provide operating subsidy for one unit removed from the Shoshone Joint Housing Authority's rental inventory in accordance with the provisions in PIH Notice 90–39, which allows for the non-dwelling use of units to support economic self-sufficiency services and anti-drug programs. The increased presence of law enforcement personnel will help to provide a safe and enjoyable living environment.

40. *Regulation:* 24 CFR 905.705.

Project/Activity: Use of one unit from the Navajo housing authority's rental inventory to be used for a resident management central office.

Nature of Requirement: Waiver of the Regulation cited above is required to allow operating subsidy to be provided for the non-dwelling unit and the inclusion of the unit in the Performance Funding System calculation.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: October 23, 1992.

Reason Waived: This waiver was requested and granted to provide operating subsidy for one unit removed from the Navajo housing authority's rental inventory in accordance with Notice 90–39, which allows for the non-dwelling use of units to support economic self-sufficiency services and anti-drug programs.

Note to Reader: The person to be contacted for additional information about waiver-grant items in this listing is: Gary Van Buskirk, Director, Homeownership Division, (Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–4233.

41. *Regulation:* 24 CFR 906 10(a), Section 5(h) Homeownership Program.

Project/Activity: Housing Authority of Louisville, Kentucky (HAL) Section 5(h) homeownership program for their LaSalle Place housing development.

Nature of Requirement. 24 CFR 906.10(a) states that residents of dwellings authorized for sale under a homeownership plan, who are ineligible for purchase, or who decline to purchase, shall be given the choice of relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the ACT. Displacement (permanent, involuntary move), in order to make a dwelling available for sale, is prohibited.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 22, 1992.

Reason Waived: There is no prohibition of involuntary relocation by the Section 5(h) homeownership program authorizing sections, 6(c)(4)(D), of the United States Housing Act of 1937 (Act).

Good cause was exhibited by the Housing Authority of Louisville as follows:

The development is currently vacant. HAL, as part of their Section 5(h) homeownership plan is instituting an economic development program for the residents of LaSalle Place. Under this plan, HAL will extend to the residents ample opportunity to achieve economic self-sufficiency before any involuntary relocation of nonpurchasing residents would take place.

Additionally, HAL has set up an order of eligibility to purchase which gives all residents of LaSalle Place the first chance to prove their eligibility to purchase a home in that development. HAL is also considering anyone who is employed or who has a steady source of legitimate income in excess of $8,000 per year as a qualified buyer. Thus they are giving existing residents every chance to qualify.

It is also important to note that HAL has demonstrated in three previous low-income homeownership programs that it is not only fully qualified to operate a homeownership program, but also that it considers the best interests of its low-income residents during the implementation of its homeownership programs.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, Phone: (202) 708–1872, TDD: (202) 708–0850.

42. *Regulation:* 24 CFR 990.104.

Project/Activity: Caddo Electric Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

43. *Regulation:* 24 CFR 990.104.

Project/Activity: Hughes Housing Authority, AR. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the Fiscal Year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) Fiscal Years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

44. *Regulation:* 24 CFR 990.104.

Project/Activity: Greer Housing Authority, SC. In determining the

operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

45 *Regulation:* 24 CFR 990.104.

Project/Activity: Demopolis Housing Authority, AL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

46. *Regulation:* 24 CFR 990.104.

Project/Activity: Rocky Mount Housing Authority, NC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted to order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

47. *Regulation:* 24 CFR 990.104.

Project/Activity: Brantley Housing Authority, AL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning Jaunary 1, 1992.

48. *Regulation:* 24 CFR 990.104.

Project/Activity: New Britain Housing Authority, CT. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

49. *Regulation:* 24 CFR 990.104.

Project/Activity: Somersworth Housing Authority, NH. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

50. *Regulation:* 24 CFR 990.104.

Project/Activity: Canton Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement. The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

51 *Regulation* 24 CFR 990.104.

Project Activity: Olathe Housing Authority, KS. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement. The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

52. *Regulation:* 24 CFR 990.104.

Project Activity: Gideon Housing Authority, MO In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

53. *Regulation:* 24 CFR 990.104.
Project Activity: Vandalia Housing Authority, MO In determining the operating subsidy eligibility, a request was made to implement the adjusfment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992
Nature of Requirement. The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992

54. *Regulation:* 24 CFR 990.104.
Project Activity: Kinloch Housing Authority, MO In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992

55 *Regulation:* 24 CFR 990.104.
Project/Activity. Pagedale Housing Authority, MO In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

56. *Regulation:* 24 CFR 990.104.
Project/Activity: Hillsdale Housing Authority, MO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

57. *Regulation:* 24 CFR 990.104.
Project/Activity: Hornersville Housing Authority, MO In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

58. *Regulation:* 24 CFR 990.104.
Project/Activity: Cardwell Housing Authority, MO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

59. *Regulation:* 24 CFR 990.104.
Project/Activity: Senate Housing Authority, MO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

60. *Regulation:* 24 CFR 990.104.
Project/Activity: McGregor Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

61. *Regulation:* 24 CFR 990.104.
Project/Activity: Lott Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992
Nature of Requirement The delay in publication of the Final Rule for

Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal year beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

62. *Regulation:* 24 CFR 990.104.

Project/Activity: South Milwaukee Housing Authority, WI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

63 *Regulation:* 24 CFR 990.104.

Project/Activity: Appleton Housing Authority, WI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

64. *Regulation:* 24 CFR 990.104.

Project/Activity: Cairo Housing Authority, NE. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

65 *Regulation:* 24 CFR 990.104.

Project/Activity: Vernon Housing Authority, CT. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

66. *Regulation:* 24 CFR 990.104.

Project/Activity: Morganton Housing Authority, NC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

67. *Regulation:* 24 CFR 990.104.

Project/Activity: Earle Housing Authority, AR. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

68. *Regulation:* 24 CFR 990.104.

Project/Activity: Boston Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

69. *Regulation:* 24 CFR 990.104.

Project/Activity: Cave Spring Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 9, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

70. *Regulation:* 24 CFR 990.104.
Project/Activity: Oneonta Housing Authority, AL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 9, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
71. *Regulation:* 24 CFR 990.104.
Project/Activity: Beggs Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 3, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992
72. *Regulation:* 24 CFR 990.104.
Project/Activity: Fort Gibson Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 3, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
73. *Regulation:* 24 CFR 990.104.
Project/Activity: Muskogee Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement. The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 3, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
74. *Regulation:* 24 CFR 990.104.
Project/Activity: Grapevine Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 3, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992
75 *Regulation:* 24 CFR 990.104.
Project/Activity: Klamath Housing Authority, OR. In determining the operating subsidy eligibility, a request was made for funding for 2 units approved for non-dwelling use to promote an economic self-sufficiency program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By. Joseph G. Schiff, Assistant Secretary.
Date Granted: September 9, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
76. *Regulation:* 24 CFR 990.104.
Project/Activity: Vancouver Housing Authority, WA. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an economic self-sufficiency program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: September 9, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
77. *Regulation:* 24 CFR 990.104.
Project/Activity: Elk City Housing Authority, OK. In determining the 1operating subsidy eligibility, a request was made for funding for 2 units approved for non-dwelling use to promote an economic self-sufficiency program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 21, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
78. *Regulation:* 24 CFR 990.104.
Project/Activity: Pueblo Housing Authority, CO. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an economic self-sufficiency program.
Nature of Requirement The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

79. *Regulation:* 24 CFR 990.104.
Project/Activity: LaFollette Housing Authority, TN. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an economic self-sufficiency program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 1, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
80. *Regulation:* 24 CFR 990.104.
Project/Activity: Knoxville Housing Authority, TN. In determining the operating subsidy eligibility, a request was made for funding for 20 units approved for non-dwelling use to promote economic self-sufficiency and anti-drugprogram.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 1, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
81. *Regulation:* 24 CFR 990.104.
Project/Activity: Beaufort Housing Authority, SC. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote economic self-sufficiency and anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 11, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
82. *Regulation:* 24 CFR 990.104.
Project/Activity: Winston-Salem Housing Authority, NC. In determining the operating subsidy eligibility, a request was made for funding for 4 units approved for non-dwelling use to promote economic self-sufficiency and anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 11, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
83. *Regulation:* 24 CFR 990.104.
Project/Activity: Sylacauga Housing Authority, AL. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 16, 1992.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
84. *Regulation:* 24 CFR 990.104.
Project/Activity: Macon Housing Authority, GA. In determining the operating subsidy eligibility, a request was made for funding for 2 units approved for non-dwelling use to promote an anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant.
Date Granted: February 4, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
85. *Regulation:* 24 CFR 990.104.
Project/Activity: Lexington Housing Authority, KY. In determining the operating subsidy eligibility, a request was made for funding for 3 units approved for non-dwelling use to promote an economic self-sufficiency and anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: February 4, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
86. *Regulation:* 24 CFR 990.104.
Project/Activity: Gadsden Housing Authority, AL. In determining the operating subsidy eligibility, a request was made for funding for 3 units approved for non-dwelling use to promote an anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: February 9, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
87. *Regulation:* 24 CFR 990.104.
Project/Activity: Oklahoma City Housing Authority, OK. In determining the operating subsidy eligibility, a request was made for funding for 10 units approved for non-dwelling use to promote economic self-sufficiency and anti-drug programs.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: February 19, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.
88. *Regulation:* 24 CFR 990.104.
Project/Activity: Covington Housing Authority, GA. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: February 25, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

89. *Regulation:* 24 CFR 990.104.
Project/Activity: Cheraw Housing Authority, SC. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an economic self-sufficiency and anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: February 25, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

90. *Regulation:* 24 CFR 990.104.
Project/Activity: El Paso Housing Authority, TX. In determining the operating subsidy eligibility, a request was made for funding for 3 units approved for non-dwelling use to promote an anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: February 26, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

91. *Regulation:* 24 CFR 990.104.
Project/Activity: Snohomish Housing Authority, WA. In determining the operating subsidy eligibility, a request was made for funding for 4 units approved for non-dwelling use to promote an economic self-sufficiency and anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: March 4, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

92. *Regulation:* 24 CFR 990.104.
Project/Activity: Levelland Housing Authority, TX. In determining the operating subsidy eligibility, a request was made for funding for 1 unit approved for non-dwelling use to promote an economic self-sufficiency and anti-drug program.
Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: March 4, 1993.
Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

93. *Regulation:* 24 CFR 990.104.
Project/Activity: Roxboro Housing Authority, NC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: September 25, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

94. *Regulation:* 24 CFR 990.109(b)(3)(iv).
Project/Activity: In determining the operating subsidy eligibility for the Chicago Housing Authority, Chicago, IL, a request was made to use 85% as the projected occupancy percentage instead of 97%.
Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.
Granted by: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 14, 1992.
Reason Waived: The Authority argued that recent shootings at several housing projects had created an emergency safety and security situation requiring an immediate need to ensure a safe environment for the residents and workers of the Authority. This emergency situation was beyond the Authority's control and would delay the Authority from undertaking needed vacancy reduction measures.
The Authority's arguments were accepted and the funds that resulted from the waiver were directed to be first used to address the emergency situation. As soon as the immediate crisis is over, however, the Authority is expected to use remaining funds to increase occupancy in the buildings and projects that have been made secure.

95. *Regulation:* 24 CFR 990.104.
Project/Activity: Frisco Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 3, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

96. *Regulation:* 24 CFR 990.104.
Project/Activity: Wrightsville Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: December 3, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

97. *Regulation:* 24 CFR 990.104.
Project/Activity: Tracy Housing Authority, MN. In determining the

operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 3, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

98. *Regulation:* 24 CFR 990.104.

Project/Activity: Glenwood Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 3, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

99. *Regulation:* 24 CFR 990.104.

Project/Activity: Osceola Housing Authority, WI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

100. *Regulation:* 24 CFR 990.104.

Project/Activity: Montezuma Co. Housing Authority, CO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

101. *Regulation:* 24 CFR 990.104.

Project/Activity: Wadesboro Housing Authority, NC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

102. *Regulation:* 24 CFR 990.104.

Project/Activity: Maxton Housing Authority, NC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

103. *Regulation:* 24 CFR 990.104.

Project/Activity: Fort Morgan Housing Authority, CO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

104. *Regulation:* 24 CFR 990.104.

Project/Activity: Fountain Housing Authority, CO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

105. *Regulation:* 24 CFR 990.104.

Project/Activity: Pineland Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 24, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

106. *Regulation:* 24 CFR 990.104.
Project/Activity: Calvert Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 24, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

107. *Regulation:* 24 CFR 990.104.
Project/Activity: Grandview Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

108. *Regulation:* 24 CFR 990.104.
Project/Activity: Millen Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

109. *Regulation:* 24 CFR 990.104.
Project/Activity: Monticello Housing Authority, KY. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

110. *Regulation:* 24 CFR 990.104.
Project/Activity: Sevierville Housing Authority, TN. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

111. *Regulation:* 24 CFR 990.104.
Project/Activity: Samson Housing Authority, AL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

112. *Regulation:* 24 CFR 990.104.
Project/Activity: Tarrant Housing Authority, AL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

113. *Regulation:* 24 CFR 990.104.
Project/Activity: Rankin Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 13, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

114. *Regulation:* 24 CFR 990.104.
Project/Activity: Stratford Housing Authority, CT. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for

Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

115. *Regulation:* 24 CFR 990.104.

Project/Activity: Alto Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

116. *Regulation:* 24 CFR 990.104.

Project/Activity: Richton Housing Authority, MS. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

117. *Regulation:* 24 CFR 990.104.

Project/Activity: Gorman Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

118. *Regulation:* 24 CFR 990.104.

Project/Activity: Goldthwaite Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

119. *Regulation:* 24 CFR 990.104.

Project/Activity: Tenille Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

120. *Regulation:* 24 CFR 990.104.

Project/Activity: Cumberland Housing Authority, WI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 13, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

121. *Regulation:* 24 CFR 990.104.

Project/Activity: Cross Plains Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

122. *Regulation:* 24 CFR 990.104.

Project/Activity: Sunnyside Housing Authority, WA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

123. *Regulation:* 24 CFR 990.104.

Project/Activity: Washington Housing Authority, GA. In determining the

operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

124. *Regulation:* 24 CFR 990.104.

Project/Activity: Screven Co. Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

125. *Regulation:* 24 CFR 990.104.

Project/Activity: Sandersville Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

126. *Regulation:* 24 CFR 990.104.

Project/Activity: Rome Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

127. *Regulation:* 24 CFR 990.104.

Project/Activity: Blooming Grove Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

128. *Regulation:* 24 CFR 990.104.

Project/Activity: Licking Co. Housing Authority, OH. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

129. *Regulation:* 24 CFR 990.104.

Project/Activity: Houghton Housing Authority, MI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

130. *Regulation:* 24 CFR 990.104.

Project/Activity: Moulton Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 10, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

131. *Regulation:* 24 CFR 990.104.

Project/Activity: Mt. Pleasant Housing Authority, TN. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

132. *Regulation:* 24 CFR 990.104.
Project/Activity: Kinston Housing Authority, NC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

133. *Regulation:* 24 CFR 990.104.
Project/Activity: Greenville Housing Authority, SC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HA in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

134. *Regulation:* 24 CFR 990.104.
Project/Activity: Sumter Housing Authority, SC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HA in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

135. *Regulation:* 24 CFR 990.104.
Project/Activity: S.C. Region I Housing Authority, SC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HA in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

136. *Regulation:* 24 CFR 990.104.
Project/Activity: Anderson Housing Authority, SC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HA in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

137. *Regulation:* 24 CFR 990.104.
Project/Activity: Rock Hill Housing Authority, SC. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HA in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

138. *Regulation:* 24 CFR 990.104.
Project/Activity: Watertown Housing Authority, NY. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

139. *Regulation:* 24 CFR 990.104.
Project/Activity: Ellijay Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 23, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

140. *Regulation:* 24 CFR 990.104.
Project/Activity: Fort Collins Housing Authority, CO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 8, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

141. *Regulation:* 24 CFR 990.104.

Project/Activity: Fort Cobb Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

142. *Regulation:* 24 CFR 990.104.

Project/Activity: Cheyenne Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

143. *Regulation:* 24 CFR 990.104.

Project/Activity: Chattanooga Housing Authority, TN. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 7, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

144. *Regulation:* 24 CFR 990.104.

Project/Activity: Baldwyn Housing Authority, MS. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 7, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

145. *Regulation:* 24 CFR 990.104.

Project/Activity: Somerset Housing Authority, KY. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 7, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

146. *Regulation:* 24 CFR 990.104.

Project/Activity: Woonsocket Housing Authority, RI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 7, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

147. *Regulation:* 24 CFR 990.104.

Project/Activity: Frankfort Housing Authority, KY. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 7, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

148. *Regulation:* 24 CFR 990.104.

Project/Activity: Fort Worth Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: October 7, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

149. *Regulation:* 24 CFR 990.104.
Project/Activity: Aurora Housing Authority, CO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: October 7, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
150. *Regulation:* 24 CFR 990.104.
Project/Activity: Homer Housing Authority, GA. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: September 25, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
151. *Regulation:* 24 CFR 990.104.
Project/Activity: Holly Housing Authority, CO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: September 25, 1992.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
152. *Regulation:* 24 CFR 990.110.
Project/Activity: San Diego Housing Commission, CA. In determining the operating subsidy eligibility, a request was made to extend the deadline given in the regulation for requesting an adjustment to the Allowable Expense Level.
Nature of Requirement: The Final Rule for the Performance Funding System Allowable Expense Level appeals imposed a sixty-day deadline for submission of requests for adjustments to Allowable Expense Levels.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: March 1, 1993.
Reason Waived: This waiver was granted because the San Diego Housing Commission was unable to complete the recalculation of the Allowable Expense Level within the sixty-day deadline due to vacant positions, year-end close, and the annual audit.
153. *Regulation:* 24 CFR 990.104.
Project/Activity: Newton Housing Authority, NJ. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Michael B. Janis, General Deputy Assistant Secretary.
Date Granted: March 15, 1993.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
154. *Regulation:* 24 CFR 990.104.
Project/Activity: Teague Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: January 14, 1993.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
155. *Regulation:* 24 CFR 990.104.
Project/Activity: Mineola Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: January 12, 1993.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
156. *Regulation:* 24 CFR 990.104.
Project/Activity: Floydada Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: January 12, 1993.
Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.
157. *Regulation:* 24 CFR 990.104.
Project/Activity: Maud Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.
Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 12, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

158. *Regulation:* 24 CFR 990.104.

Project/Activity: Kemp Housing Authority, TX. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 12, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

159. *Regulation:* 24 CFR 990.104.

Project/Activity: Pompano Beach Housing Authority, FL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 5, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

160. *Regulation:* 24 CFR 990.104.

Project/Activity: Fort Lauderdale Housing Authority, FL. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 5, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

161. *Regulation:* 24 CFR 990.104.

Project/Activity: West Warwick Housing Authority, RI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 5, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

162. *Regulation:* 24 CFR 990.104.

Project/Activity: Smithfield Housing Authority, RI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 5, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

163. *Regulation:* 24 CFR 990.104.

Project/Activity: Portsmouth Housing Authority, RI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 5, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

164. *Regulation:* 24 CFR 990.104.

Project/Activity: Sedgwick Housing Authority, KS. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early; to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 5, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

165. *Regulation:* 24 CFR 990.104.

Project/Activity: Kokomo Housing Authority, IN. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

166. *Regulation:* 24 CFR 990.104.

Project/Activity: St. Edward Housing Authority, NE. In determining the

operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

167. *Regulation:* 24 CFR 990.104.

Project/Activity: Chappell Housing Authority, NE. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

168. *Regulation:* 24 CFR 990.104.

Project/Activity: Plattsburg Housing Authority, MO. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

169. *Regulation:* 24 CFR 990.104.

Project/Activity: Waynoka Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

170. *Regulation:* 24 CFR 990.104.

Project/Activity: Stroud Housing Authority, OK. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 16, 1992.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

171. *Regulation:* 24 CFR 990.104.

Project/Activity: Manistique Housing Authority, MI. In determining the operating subsidy eligibility, a request was made to implement the adjustment to the Allowable Expense Level one year early, to be effective for the fiscal year beginning January 1, 1992.

Nature of Requirement: The delay in publication of the Final Rule for Performance Funding System Allowable Expense Level appeals has resulted in a rule that is effective for Housing Authority (HA) fiscal years beginning April 1, 1992.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: February 12, 1993.

Reason Waived: This waiver was granted in order to allow equal treatment of all HAs in Federal Fiscal Year 1992, by allowing an adjustment for HAs with Fiscal Years beginning January 1, 1992.

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: James B. Mitchell, Financial Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–4325, TDD: (202) 708–4594.

172. *Regulation:* 24 CFR Sections 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio HFA refunding of bonds which financed four Section 8 assisted projects in Ohio: Columbus-Sandalwood, El Jay Entowne, Bucyrus Plaza, and Rosalind-Amesbury Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 1, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 12, 1992. Refunding bonds have been priced to an average yield of 6.48%. The tax-exempt refunding bond issue of $6,720,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10%–13% at the call date in 1992 with tax-exempt bonds yielding 6.48%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.25%–11.62% down to 7.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for

lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

173. *Regulation:* 24 CFR Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.109(a)(2), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The North Tonawanda (New York) HDC refunding of bonds which financed a Section 8 assisted project in New York: Bishop Gibbons Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 1, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 9, 1992. Refunding bonds have been priced to an average yield of 7.29%. The tax-exempt refunding bond issue of $4,498,525 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 8.25% at the call date in 1992 with tax-exempt bonds yielding 7.29%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 8.35% to a rate close to the bond rate, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

174. *Regulation:* 24 CFR Sections 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Pilgrim Village HDC refunding of bonds which financed a Section 8 assisted project in Buffalo, New York: Pilgrim Village Apartments (FHA No. 014–35034–LDP–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 15, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on March 13, 1992. Refunding bonds have been priced to an average yield of 6.8%. The tax-exempt refunding bond issue of $3,190,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9% at the call date in 1992 with tax-exempt bonds yielding 6.8%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9⅝%, to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

175. *Regulation:* 24 CFR Sections 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Fitzgerald (Georgia) HDC refunding of bonds which financed a Section 8 assisted project: Bridge Creek Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 18, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 24, 1992. Refunding bonds have been priced to an average yield of 6.59%. The tax-exempt refunding bond issue of $2,060,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.72% at the call date in 1992 with tax-exempt bonds yielding 6.59%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% down to 7.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

176. *Regulation:* 24 CFR Sections 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Mount Clemens (Michigan) HC refunding of bonds which financed a Section 8 assisted project: Clinton Place Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 23, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 15, 1992. Refunding bonds have been priced to an average yield of 6.62%. The tax-exempt refunding bond issue of $10,050,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 6.62%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce

the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

177. *Regulation:* 24 CFR Section 811.106(d) of 1978 Regulations.

Project/Activity: Rensselaer (New York) HA refunding of bonds which financed two Section 8 assisted projects: Renwyck Place Apartments (FHA No. NY02–0006–004) and Van Rensselaer Heights Apartments (NY02–0003–001).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 24, 1992.

Reasons Waived: The Part 811 regulations cited above prohibited advance refundings. The issuer has requested HUD permission to release excess reserve balances from the 1979 Trust Indenture for use in its public housing assistance to low-income families. The refunded 1979 bonds funded project mortgages which have interest rates of 8.20 percent. Issuance of 1992 refunding bonds will not reduce project debt service nor generate Section 8 savings.

178. *Regulation:* 24 CFR Sections 811.107(a), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Tulsa, Oklahoma HA refunding of bonds which financed a Section 8 assisted project: Mingo Manor.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 15, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 27, 1991. Refunding bonds have been priced to an average yield of 6.96%. The tax-exempt refunding bond issue of $3,070,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.5% at the call date in 1992 with tax-exempt bonds yielding 6.96%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 19.75 to 7.2%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

179. *Regulation:* 24 CFR Sections 811.107(a), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Greater Iowa HAC refunding of bonds which financed a Section 8 assisted project in Des Moines: Logan Park Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 23, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 2, 1992. Refunding bonds have been priced to an average yield of 6.59%. The tax-exempt refunding bond issue of $2,170,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12⅜% at the call date in 1992 with tax-exempt bonds yielding 6⅝%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

180. *Regulation:* 24 CFR Sections 811.107(a), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b), 811.117.

Project/Activity: The Mobile, Alabama HAC refunding of bonds which financed a Section 8 assisted project: Moffat Road Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 10, 1992. Refunding bonds have been priced to an average yield of 6.87%. The tax-exempt refunding bond issue of $2,835,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1992 with tax-exempt bonds yielding 6.87%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.3% to 7⅛%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

180. *Regulation:* 24 CFR Sections 811.107(a), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The New Brunswick (New Jersey) HDC refunding of bonds which financed a Section 8 assisted project: St. Mary's Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 22, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 8, 1992. Refunding bonds have been priced to an average yield of 6.76%. The tax-exempt refunding bond issue of $6,135,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11%–12% at the call date in 1992 with tax-exempt bonds yielding 6.76%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

182. *Regulation:* 24 CFR Sections 811.107(a), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The San Leandro (California) HA HFC refunding of bonds which financed a Section 8 assisted project: Ashland Village Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: January 19, 1993.

Reason Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on January 15, 1993. Refunding bonds have been priced to an average yield of 6.46%. The tax-exempt refunding bond issue of $7,240,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.75% at the call date in 1993 with tax-exempt bonds yielding 6.46%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.25% to 6.67%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

183. *Regulation:* 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Hudson HFC refunding of bonds which financed two Section 8 assisted projects in Hudson, New York: Providence Hall and Schuyler Court Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 23, 1992.

Reason Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 10, 1992. Refunding bonds have been priced to an average yield of 6.55%. The tax-exempt refunding bond issue of $6,150,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.4% at the call date in 1992 with tax-exempt bonds yielding 6.55%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.65% to 7.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

184. *Regulation:* 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Monroe, Louisiana HA refunding of bonds which financed a Section 8 assisted project: Brentwood Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: January 28, 1993.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions. This refunding proposal was approved by HUD on January 15, 1993. Refunding bonds have been priced to an average yield of 6.77%. The tax-exempt refunding bond issue of $2,355,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1992 with tax-exempt bonds yielding 6.77%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10% down to 6.90%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

185. *Regulation:* 24 CFR Sections 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.114(b)(3), and 811.115(b).

Project/Activity: The Central Arkansas HDC refunding of bonds which financed a Section 8 assisted project in Hot Springs: Park Place Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: December 24, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on December 10, 1992. Refunding bonds have been priced to an average yield of 6.27%. The tax-exempt refunding bond issue of $1,985,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 6.27%. The refunding will also substantially reduce the FHA mortgage interest rate at closing, from 12% to 7.06%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

186. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Dade County HFA refunding of bonds which financed a Section 8 assisted project: Cutler Meadows Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 22, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) and call debentures prior to maturity. This refunding proposal was approved by HUD on December 8, 1992. Refunding bonds have been priced to an average yield of 6.47%. The tax-exempt refunding bond issue of $4,100,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.75% at the call date in 1992 with tax-exempt bonds yielding 6.47%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.3% to 6.98%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

187. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Kansas State Agency refunding of bonds which financed three Section 8 assisted projects: Brittany Court, Brookridge Plaza, and Mulberry Court Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 30, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of a refunding transaction in which bonds will be issued under Section 103 of the Tax Code. This refunding proposal was approved by HUD on November 24, 1992. Refunding bonds have been priced to an average yield of 6.41%. The tax-exempt refunding bond issue of $3,265,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 6.41%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12% to 6.8%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

188. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The D.C. HFA refunding of bonds which financed three Section 8 assisted projects: Faircliff, Southview, and Ivy City Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 30, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of a refunding transaction in which bonds will be issued under Section 103 of the Tax Code. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 2, 1992. Refunding bonds have been priced to an average yield of 6.5%. The tax-exempt refunding bond issue of $9,155,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.23% to 12% at the call date in 1992 with tax-exempt bonds yielding 6.5%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.5%–12% to 8.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

189. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The County of Los Angeles CDC refunding of bonds which financed a Section 8 assisted project: Los Tomas Apartments (FHA Number 122–35549).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary.

Date Granted: January 25, 1993.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 10, 1992. Refunding bonds have been priced to an average yield of 6.58%. The tax-exempt refunding bond issue of $2,470,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11%–12% at the call date in 1993 with tax-exempt bonds yielding 6.58%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% to 6.6% thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

190. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Philadelphia RA refunding of bonds which financed a Section 8 assisted project: Chinatown URA Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity..

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 18, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 23, 1991. Refunding bonds have been priced to an average yield of 6.75%. The tax-exempt refunding bond issue of $2,955,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75%–12.0% at the call date in 1992 with tax-exempt bonds yielding 6.759%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

191. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Philadelphia RA refunding of bonds which financed a Section 8 assisted project: Cobbs Creek NSA Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: December 18, 1992.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 23, 1991. Refunding bonds have been priced to an average yield of 6.75%. The tax-exempt refunding bond issue of $4,305,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75%–12.0% at the call date in 1992 with tax-exempt bonds yielding 6.75%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 13% to 7.7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

192. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), and 811.117.

Project/Activity: The Pensacola-Westwood HDC refunding of bonds which financed a Section 8 assisted project: Westwood Homes Apartments (FHA Number 063–35199).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary.

Date Granted: January 25, 1993.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 8, 1992. Refunding bonds have been priced to an average yield of 6.53%. The tax-exempt refunding bond issue of $1,750,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1993 with tax-exempt bonds yielding 6.53%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12.0% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

193. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), and 811.117.

Project/Activity: The San Francisco RA refunding of bonds which financed a Section 8 assisted project: Serenity Towers Apartments (FHA Number 021–35729).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: James E. Schoenberger, Associate General Deputy Assistant Secretary for Housing.

Date Granted: January 19, 1993.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions

and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 31, 1992. Refunding bonds have been priced to an average yield of 6.47%. The tax-exempt refunding bond issue of $4,825,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1993 with tax-exempt bonds yielding 6.47%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12.0% to 7.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

194. *Regulation:* 24 CFR Sections 811.114(d), 811.115(b), and 811.117.

Project/Activity: The City of Los Angeles Agency refunding of bonds which financed four Section 8 assisted projects: Baldwin Villa Plaza, Bradley Gardens, Lankersheim Arms, and Buckingham Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: January 19, 1993.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 1, 1992. Refunding bonds have been priced to an average yield of 6.37%. The tax-exempt refunding bond issue of $23,150,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10⅛% to 11½% at the call date in 1993 with tax-exempt bonds yielding 6.37%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.4%–11.8% to 6.86%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

Office of the Assistant Secretary for Community Planning and Development

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: Frank L. Davis, Director, Field Coordination Unit, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Phone: (202) 708–2565.

195. *Regulation:* 24 CFR 91.70(a).

Project/Activity: Dutchess County, NY; Kitsap County, WA; State of Nebraska; Fort Collins, CO; Salt Lake County, Utah; State of Utah; Arapahoe County, CO; Westminster, CO; Jacksonville, NC; Palm Beach County, FL; Hialeah, FL; Miami, FL; Mayaguez, P.R.; US Virgin Islands; Springfield, MA; Port St. Lucie, FL; Athens-Clarke County, GA; Consortium of Fitchburg & Leominster, MA; Florissant, MO; Bloomington, IN; Altoona, PA; Weirton, West VA; State of California; Chesapeake, VA; Garden Grove, CA; Davenport, IA; Council Bluffs, IA; State of CA; Abilene, TX; Oceanside, CA; San Antonio, TX; Charlotte, NC. Waiver of Annual Plan Submission for the Comprehensive Housing Affordability Strategy (CHAS).

Nature of Requirement: 24 CFR 91.70(a) requires that, in years subsequent to submission of a housing strategy (Comprehensive Housing Affordability Strategy (CHAS)) and until five years after this complete submission, an annual plan covering the Federal fiscal year be submitted annually by December 31.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning & Development, (December 11, 1992).

Russell K. Paul, Acting Assistant Secretary for Community Planning & Development, (December 3, 16, 21, 23, 25, 28, 29, 31, 1992 and January 21, 1993).

Don I. Patch, Acting Deputy Assistant Secretary for Grant Programs (December 25, 1992).

Date Granted: Dutchess County, NY, December 11, 1992; Kitsap County, WA, December 11, 1992; State of Nebraska, December 16, 1992; Salt Lake County, UT, December 25, 1992; State of Utah, December 25, 1992; Bloomington, IN, December 25, 1992; Fort Collins, CO, December 21, 1992; Arapahoe County, CO, December 21, 1992; Westminster, CO, December 21, 1992; Jacksonville, NC, December 21, 1992; Palm Beach County, FL, December 21, 1992; Hialeah, FL, December 21, 1992; Miami, FL, December 21, 1992; Mayaguez, P.R., December 21, 1992; US Virgin Islands, December 21, 1992; Springfield, MA, December 23, 1992; Port St. Lucie, FL, December 23, 1992; Athens-Clarke County, GA, December 23, 1992; Consortium of Fitchburg & Leominster, MA, December 23, 1992; Altoona, PA, December 29, 1992; Weirton, West VA., December 29, 1992; Florissant, MO, December 23, 1992; State of California, December 28, 1992; Chesapeake, VA, December 28, 1992; Garden Grove, CA, December 28, 1992; Davenport, IA, December 3, 1992; Council Bluffs, IA, December 28, 1992; State of CA, December 28, 1992; Abilene, TX, December 31, 1992; Oceanside, CA., December 29, 1992;

Reasons Waived: Waivers of 24 CFR 91.70(a) were granted to the above participating jurisdictions for good cause. The majority of the jurisdictions experienced difficulties in either receiving and correctly interpreting instructions and data, or in completing the public comments process, or the lack of staff capability due to natural disasters, staff losses and organization changes.

Regulation: 24 CFR 91.82(b)

Project Activity: Dutchess County, NY; Salt Lake County, UT; Fort Collins, CO; Arapahoe County, CO; Westminster, CO; Ogden, UT; Jacksonville, NC; Palm Beach County, Fl; Hialeah, FL; Miami, FL; Mayaguez, P.R.; US Virgin Islands; Springfield, MA; Port St., Lucie, FL; Consortium of Fitchburg & Leominster, MA; Florissant, MI; Salt Lake City, UT; Colorado Springs, CO: Bloomington, IN; Utah Valley Consortium, UT; Jacksonville, AK; State of California; State of Nebraska; Chesapeake, VA; Garden Grove, CA; Davenport, IA; Waterloo, IA; Council Bluffs, IA; State of California; Abilene, TX; Oceanside, CA; Elkhart, IN; Weirton, West VA; and Charlotte, NC. Waiver of the Annual Performance Report for the Comprehensive Housing Affordability Strategy (CHAS).

Nature of Requirement: 24 CFR 91.82(b) requires that each jurisdiction that has an approved housing strategy (Comprehensive Housing Affordability Strategy (CHAS)) submit a performance report to HUD no later than December 31 of each year covering the period of the previous Federal fiscal year.

Granted By: Randall H. Erben, Acting Assistant Secretary for CPD, (December 11, 1992).

Russell K. Paul, Acting Assistant Secretary for Community Planning and Development, (December 21, 23, 25, 28, 29 and 31, 1992).

Don I. Patch, Acting Deputy Assistant Secretary for Grant Programs, (December 25, 1992).

Date Granted: Dutchess County, NY, December 11, 1992; Fort Collins, CO, December 21, 1992; Arapahoe County, CO, December 21, 1992; Westminster, CO, December 21, 1992; Ogden, UT, December 21, 1992; Jacksonville, NC, December 21, 1992; Palm Beach County, FL, December 21, 1992; Hialeah, FL, December 21, 1992; Miami, FL, December 21, 1992; Mayaguez, P.R., December 21, 1992; US Virgin Islands, December 21, 1992; Springfield, MA, December 23, 1992; Port St. Lucie, FL, December 23, 1992; Consortium of Fitchburg & Leominster, MA, December 23, 1992; Florissant, MO, December 23, 1992; Salt Lake City, UT, December 23, 1992; Colorado Springs, CO, December 23, 1992; Utah Valley Consortium, UT, December 23, 1992; Elkhart, IN, December 23, 1992; Bloomington, IN, December 25, 1992; Jacksonville, AK, December 28, 1992; State of California, December 28, 1992; State of Nebraska, December 28, 1992; Chesapeake, VA, December 28, 1992; Garden Grove, CA, December 28, 1992; Davenport, IA, December 28, 1992; Waterloo, IA, December 28, 1992; Council Bluffs, IA, December 28, 1992; State of California, December 28, 1992; Weirton, West VA, December 29, 1992; Abilene, TX, December 31, 1992; and Oceanside, CA, December 29, 1992.

Reasons Waived: Waivers of 24 CFR 91.82(b) were granted to the above participating jurisdictions for good cause. The majority of the jurisdictions experienced difficulties in either receiving and correctly interpreting instructions and data, or in completing the public comment process, or the lack of staff capability due to natural disasters, staff losses and organization changes.

197. *Regulation:* 24 CFR 92.258

Project/Activity: The Arkansas Development Finance Authority (ADFA) program to assist first-time homebuyers by providing a deferred, zero interest rate loan for one-half of the required investment on the purchase and financing of a home not to exceed $3,000. ADEA requests a waiver of the term of the affordability period in the deed restriction which must run concurrent with the entire term of the FHA insurance.

Nature of Requirement: 24 CFR 92.258 provides a limitation on the use of HOME funds with FHA mortgage insurance of a period of time equal to the term of the HUD insured mortgage.

Granted By: Don I. Patch, Acting Deputy Assistant Secretary for Grant Programs.

Date Granted: February 12, 1993.

Reasons Waived: The provision was waived for good cause, since the Department agreed that such a small subsidy ($3,000) should not be the instrument for imposing such a long affordability period (30 years).

198. *Regulation:* 24 CFR 92.2

Project/Activity: Commonwealth of Puerto Rico has several existing non profit organizations which have the experience, administrative capacity and desire to participate in the HOME program, however, the defined service area of most existing non profit organizations is island-wide.

Nature of Requirement: 24 CFR 92.2, specifies in the definition of "community housing development organization" that "community" may be a "neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county or multi-county area (but not the entire State). . ."

Granted By: Don I. Patch, Acting Deputy Assistant Secretary for Grant Programs.

Date Granted: February 24, 1993.

Reasons Waived: This provision was waived for good cause, as the Department has determined that the waiver facilitates the provision of needed affordable housing through the use of CHDO-set-aside funds in the Commonwealth.

199. *Regulation:* 24 CFR 92.2

Project/Activity: Cambridge, MA. HOME assistance for the rehabilitation of the Cambridge YMCA, consisting of 129 units intended for Transitional Housing, SRO Section 8 and Shelter Plus Care Programs.

Nature of Requirement: 24 CFR 92.2 requires an SRO unit to have either sanitary facilities or food preparation facilities (or both), and the Cambridge YMCA units have neither.

Granted By: Russell K. Paul, Acting Assistant Secretary for Community Planning and Development.

Date Granted: January 12, 1993.

Reasons Waived: Department recognizes that the circumstances surrounding the Cambridge project present good cause for waiving the rule. The proposed residents will be mentally ill persons. The presence of sanitary or food preparation facilities within the units, rather than improving the quality of life of the residents, may actually be a source of danger.

200. *Regulation:* 24 CFR 570.200(h).

Project/Activity: Clark County, Nevada to use FY 1993 CDBG funds for construction of Laughlin Community Resources Center, a public facility; San Angelo, Texas. To use FY 1993 CDBG funds to expand the Southside Recreation Center and meet unplanned requirements of the Americans With Disabilities Act; Westminister, Colorado. To acquire land from RTC and develop infrastructure for construction of approximately 400 units of low- and moderate-income elderly housing; Chicago and Village of Oak Park, Illinois. To use FY 1993 CDBG funds for low/mod residents benefitting from CDBG-assisted programs and services that require a new obligation of funds as of January 1, 1993;

Township of Canton, Michigan. To use CDBG funds to construct a designated area of a new community center for senior citizens and access for persons with disabilities.

Nature of Requirement: 24 CFR 570.200 (h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development, (December 11, 1993).

Russell K. Paul, Acting Assistant Secretary for Community Planning and Development, (January 15 & 20, 1993).

Don I. Patch, Acting Deputy Assistant Secretary for Grant Programs, (February 16 & 18, 1993).

Date Granted: Township of Canton, Michigan, December 11, 1992; Chicago and Village of Oak Park, Illinois, January 15, 1993; Westminister, Colorado, January 20, 1993; San Angelo, Texas, February 16, 1993; and Clark County, Nevada, February 18, 1993.

Reasons Waived: Department has granted these waivers for good cause and to avoid either the delay or disruption of essential public services and housing assistance to low and moderate income residents, senior citizens and disabled individuals.

[FR Doc. 93–20808 Filed 8–27–93; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Scoping Meetings on the Irrigation and Drainage System EIS

AGENCY: Central Utah Water Conservancy District (Interior).

ACTION: Notice of Public Scoping Meetings to invite public input for use in preparing the EIS for the Irrigation and Drainage System (I&D System).

SUMMARY: Public Law 102–575 section 205(a)(1)(2) directs the Central Utah Water Conservancy District (CUWCD) to complete the Bureau of Reclamation's 1988 Definite Plan Report and to complete the requirements of the National Environmental Policy Act (NEPA) for the features of I&D System which shall include an analysis of features of the Diamond Fork System that may be modified as a result of I&D system plans.

CUWCD will serve as the joint lead agency with the Department of the Interior for preparation of the EIS on the I&D System pursuant to section 102(2)(c) of the NEPA of 1969 as amended and the Central Utah Project Completion Act.

A **Federal Register** Notice (57 FR 62575), on December 31, 1992, announced the CUWCD intent to prepare a EIS. The purpose of this notice is to invite the public's participation in the EIS scoping process. The purpose of the scoping meetings is to solicit comment on the scope and content of the I&D System EIS. This notice provides additional information developed since the December 31, 1992 NOI publication.

The EIS for the I&D System will evaluate the environmental impact of the proposed action and alternatives for providing water for irrigation and municipal and industrial users within southern Utah County and eastern Juab County. The EIS will evaluate the environmental impact of the No-Action alternative, Main Conveyance system alternatives, pressurized irrigation distribution systems in South Utah County and East Juab County, possible changes to the Diamond Fork System and Utah Lake.

Types of issues include impacts of construction and operation of the Main Conveyance System from Spanish Fork River to East Juab County, impacts on wetlands and other habitat values in irrigation service areas of South Utah County and Juab Valley, impacts of Bonneville Unit operations on Utah Lake, impacts on threatened and endangered species, and identification of mitigation and enhancement opportunities.

DATES: The CUWCD seeks participation in the Scoping Meetings from interested members of the public, including potentially affected landowners, public officials, agency representatives, special interest groups, and interested individuals. CUWCD will make every effort to make this meeting accessible to disabled attendees. Please contact CUWCD at (800) 226–7109 with any special needs or requests at least three days prior to the meeting. The times and locations for the meetings are as follows:

(1) 7 p.m. Tuesday, September 28, 1993, Spanish Fork High School Cafeteria, 99 North 300 West Street, Spanish Fork, Utah.

(2) 7 p.m. Wednesday, September 29, 1993, Juab County Courthouse, Cultural Hall, 160 North Main, Nephi, Utah.

(3) 2 p.m. and 7 p.m. Thursday, September 30, 1993, Department of Natural Resources Auditorium, 1636 West North Temple, Salt Lake City, Utah.

SUPPLEMENTARY INFORMATION: A memorandum of Agreement (MOA) is being developed between the Central Utah Water Conservancy District, the State of Utah, Strawberry Water Users Association, East Juab County Water Conservancy, Soil Conservation Service, and Soil Conservation Districts in Utah and Juab County. The MOA will specify the responsibilities of each of these entities in studying improvements in water distribution systems to the farms and improvements in on-farm irrigation practices. These entities will also participate in the preparation and review of the environmental impact statement. Additional agencies who wish to be considered cooperating agencies should contact the CUWCD.

FOR FURTHER INFORMATION CONTACT: An information packet on the project is available upon request from the CUWCD. Written comments or suggestions regarding the scope and or comment of the EIS are invited and should be submitted no later than October 30, 1993. In addition, interested parties can receive when completed, a copy of the Draft EIS for review and comment. All such requests should be addressed in writing to: Sheldon Talbot, I&D System Project Manager, Central Utah Water Conservancy District, 335 West 1300 South, Orem, Utah 84058–7303, (810) 226–7105, (801) 226–7150 (fax).

Dated: August 24, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs, Department of the Interior.

[FR Doc. 93–20939 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[AK–967–4230–05]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decision to issue conveyance under the provisions of section 14(h)(3) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(3), will be issued to Natives of Kodiak, Inc. for 1,207.91 acres. The lands involved are in the vicinity of the city of Kodiak and Afognak Island, Alaska.

Serial Number	Approximate land description
Seward Meridian, Alaska:	
AA–9106–A	T. 22 S., R. 18 W.
AA–9106–F	T. 22 S., R. 19 W.
AA–9106–G	T. 28 S., R. 20 W.
AA–9106–H	T. 28 S., R. 19 W.
AA–9106–L	T. 28 S., R. 19 W.
AA–9106–M	T. 28 S., R. 20 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal Government, or regional corporation, shall have until September 29, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93–21020 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–JA–P

[UT–030–03–4332–01]

Final Wilderness Inventory Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Final decision.

SUMMARY: Under authority of section 202 of the Federal Land Policy and

Management Act (FLPMA) of 1976, the Bureau of Land Management (BLM) announces its final wilderness inventory decision to designate 6,990 acres of public land in the Deep Creek Mountains in Juab County, Utah, as the Scott's Basin Wilderness Study Area (WSA), [WSA Ut. 050–020–A (202)] and to implement management protection to preserve the suitability of the area for wilderness management. The boundaries of the WSA are as shown on the WSA Boundary Map in the Official File at the BLM Richfield District Office, Richfield, Utah. Copies of the map are available for review at the House Range Resource Area, Richfield District, and Utah State Offices.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory F. Thayn, Wilderness Studies (UT–933), Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, telephone (801) 539–4071.

SUPPLEMENTARY INFORMATION: In 1990, 3,210 acres of private lands in the basin area of the Deep Creek Mountains in Juab County, Utah, were purchased by The Nature Conservancy and then exchanged with the BLM for land in another area. This action was in conformance with the BLM House Range Resource Area Resource Management Plan Record of Decision, October 1987, which identified the area for acquisition through exchange for its possible wilderness values. The acquisition of the 3,210 acres by the BLM made it logical to include another 3,780 acres of public lands administered by the BLM, resulting in a 6,990-acre roadless area located almost directly in the middle of the existing BLM Deep Creek Mountain WSA.

A notice of intent to conduct intensive wilderness inventory for Scott's Basin, Juab County, Utah, was published in 57 FR 21669, May 21, 1992. The BLM inventoried, and accepted public comments on, the wilderness character of the roadless area. A total of 13 letters from 12 commenters were received. Of the 12 commenters, 5 favored wilderness protection for the area, 5 opposed, and 2 did not take a position.

The BLM's inventory decision is that the area meets the criteria outlined in the Wilderness Act of 1964 and the FLPMA of 1976 for wilderness study area status. The area is therefore designated as the Scott's Basin WSA. It will be protected under the BLM Wilderness Management Policy and Guidelines for Lands Under Wilderness Review (BLM Manual H–8550–1) that requires that the lands be managed so as not to impair their suitability for preservation as wilderness, subject to certain exceptions and conditions. This protective management will continue until Congress elects to designate the area as part of the National Wilderness Preservation System or release it from further considerations.

This decision may be appealed to the Interior Board of Land Appeals (IBLA) in accordance with the regulations contained in 43 CFR, part 4 and BLM Form 1842–1. If an appeal is taken, a notice of appeal must be filed with the IBLA, the BLM Utah State Office, and the appropriate Office of the Solicitor within 30 days following publication of this notice. The appellant has the burden of showing that the decision appealed from is in error.

If a stay (suspension) of the effectiveness of this decision is desired, a petition for a stay must accompany the notice of appeal pursuant to regulation 43 CFR 4.21 (58 FR 4939, Jan. 19, 1993).

James M. Parker,

State Director.

[FR Doc. 93–20896 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Draft Facilities Development Plan/ Environmental Impact Statement; Shenandoah National Park, VA

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Park Service (NPS), Shenandoah National Park, Virginia, is preparing a draft facilities development plan/environmental impact statement for the park. This plan will provide that analysis necessary to determine the needs for employee housing, office spaces, maintenance areas, and emergency facilities for the park. In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the NPS is required to prepare an environmental impact statement (EIS) to assess the impacts of the proposed action. The NPS is the responsible federal agency.

Pursuant to Council on Environmental Quality regulations and NPS policy, NPS announces a scoping meeting to invite public participation in the development and analysis of alternatives to be considered and analyzed in the Shenandoah National Park draft facilities development plan/ environmental impact statement.

A range of issues and preliminary alternatives for the facilities development plan will be explored during the public scoping meetings. Preliminary alternatives for consideration include the no-action alternative; development of facilities and housing in accordance with the park's general management plan; moving all housing and development out of the park; and mixing the housing within the park, in a park community at headquarters, and through leases in adjacent towns.

Three public information and pre-scoping meetings were held at various locations to answer and receive comments on the plan. The meetings were held on July 20, 21, and 22 at Shenandoah National Park Headquarters, Luray, VA; the Rockingham County Administrative Building, Harrisonburg, VA; and the World Wildlife Foundation Headquarters, Vienna, VA.

Public scoping will be conducted through a newsletter and mailback form, which will be distributed through the mailing lists generated by the pre-scoping meetings, and to visitors entering Shenandoah National Park. In addition, scoping comments or requests for additional information should be addressed to: Superintendent, Shenandoah National Park, Route 4, Box 348, Luray, Virginia, 22835. Persons who submitted comments during the pre-scoping meetings need not resubmit comments in order to have them considered during the further development of the draft plan and environmental impact statement. Scoping comments should be received no later than October 8, 1993.

The responsible official is the Regional Director, Mid-Atlantic Region, National Park Service, 143 S. Third Street, Philadelphia, Pennsylvania, 19106. The draft facilities management plan/environmental impact statement is expected to be released for public review by early 1994, and the final facilities management plan/ EIS by the end of summer 1994.

Dated: August 23, 1993.

Katherine Stevenson,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93–21015 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore, South Wellfleet, Massachusetts, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 stat. 770, 5 U.S.C. app 1, section 10), that a meeting of the Cape Cod National Seashore

Advisory Commission will be held on Friday, September 24, 1993.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

A field trip will be held from 10 a.m. until noon (prior to the regularly scheduled business meeting) to view Aunt Lydia's Cove in Chatham. The public wishing to attend may do so but must provide their own transportation.

The commission members will then meet at 1 p.m. at Park Headquarters for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Reports of Officers
4. Old Business
5. Superintendent's Report
6. Improved Properties
7. Commercial Certificates
8. Highland Light
9. New Business
10. Agenda for next meeting
11. Date for next meeting
12. Communications/Public Comment
13. Adjournment

The business meeting is open to the public. It is expected that 15 persons will be able to attend each meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning these meetings may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: August 23, 1993.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 93–21017 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–70–M

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Tuesday, September 21, 1993. The meeting will convene at 7 p.m. in the Gymnasium of the Grand Isle Elementary School, Grand Isle, Aroostook County, Maine.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to the development and implementation of an interpretive program of Acadian culture in the state of Maine; and the selection of sites for interpretation and preservation by means of cooperative agreements. The agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held May 20, 1993.
2. Reports of the following Maine Acadian Culture Preservation Commission working groups: Cooperating Organizations and Public Involvement.
3. Report of the National Park Service planning team.
4. Presentation by Don Cyr of L'Association culturelle et historique du Mont Carmel.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting to Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609 or call (207) 288–5472.

Dated: August 23, 1993.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 93–21016 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–70–M

Minute Man National Historical Park, Concord, MA; Draft Compatibility Guidelines

In accordance with Public Law 102–488, the National Park Service announces that the "Draft Compatibility Guidelines" for property at Minute Man National Historical Park in Concord, Massachusetts is available for public review and comment.

The Guidelines apply only to residential tracts (approximately five owners) located in Lexington and Concord, that are included in the park boundary under legislation enacted in 1992. The guidelines set out standards by which to measure development of these properties, and they reflect the legislative intent concerning compatible and incompatible uses of lands within the Park boundary as authorized.

The "Draft Compatibility Guidelines" document is available for review at the headquarters of Minute Man National Historical Park, daily between 9 a.m. and 5 p.m. until September 30, 1993. Call 508–369–6993 for further information. Written comments will be accepted through October 4, 1993 at the superintendent's office, P.O. Box 160, Concord, Massachusetts 01742.

Dated: August 23, 1993.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 93–21018 Filed 8–27–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Judgment by Consent Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 12, 1993, a proposed consent decree in *United States* v. *Meadow Gold Dairies, Inc.*, Civil Action No. 91–15–H–CCL, was lodged with the United States District Court for the District of Montana.

The proposed consent decree will resolve the United States' claims for injunctive relief and for penalties under section 309(d) of the CWA, 33 U.S.C. 1319(d), as a result of the defendant's discharges of dairy wastes into Smith Spring Creek in Kalispell, Montana, without a National Pollution Discharge Eliminations System ("NPDES") permit.

The Department of Justice will receive comments relating to the proposed consent decree with Meadow Gold Dairies, Inc., for a period of thirty (30) days from the date of this publication. Comments on the decree should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Meadow Gold Dairies, Inc.*, Civil Action No. 91–15–H–CCL, DOJ Ref. 90–5–1–1–3621.

A copy of the proposed consent decree may be examined at the Office of the United States Attorney, District of Montana, Federal Building, Helena, Montana; the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado, 80202; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202–624–0892). A copy of the proposed decree may be obtained in

person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. When requesting a copy of the proposed consent decree, please enclose a check in the amount of $7.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93-20932 Filed 8-27-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Amended Partial Consent Decree, United States v. Pacific Hide and Fur Depot, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that an Amended Partial Consent Decree in *United States* v. *Pacific Hide and Fur Depot, Inc., et al.* Civil Action No. 83-4052 was lodged with the United States District Court for the District of Idaho on August 17, 1993. This action was brought under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Amended Partial Consent Decree resolves the United States' claim against Idaho Power Company, (IPCO) for clean-up of the McCarty's/Pacific Hide & Fur Superfund Site located at 3575 Highway 30 West, Pocatello, Idaho, in consideration of approximately $6.7 million in work already performed by IPCO under the Original Partial Consent Decree and a Unilateral Administrative Order plus IPCO's earlier payment of $200,000 towards EPA's past costs.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Amended Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Pacific Hide & Fur Depot, Inc., et al.*, DOJ. No. 90-11-2-47.

The Amended Partial Consent Decree may be examined at the Offices of the United States Attorney for the District of Idaho, 550 West Fort Street, Boise, Idaho 83724, at the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (telephone number (202) 624-0892).

A copy of the Amended Partial Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Amended Partial Consent Decree consists of a twenty-nine page consent decree and thirty-nine pages of appendices. You may request a copy of the Amended Partial Consent Decree with or without appendices. Please specify in the request whether or not the appendices are requested. A request for a copy of the proposed Amended Partial Consent Decree with appendices should be accompanied by a check in the amount of $17.00 (25 cents per page reproduction charge) made payable to "Consent Decree Library." A request for a copy of the proposed Amended Partial Consent Decree without appendices should be accompanied by a check in the amount of $7.25.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc 93-20933 Filed 8-27-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 17, 1993, a proposed consent decree in *United States* v. *Marvin Pesses, et al.*, was lodged with the United States District Court for the Western District of Pennsylvania, Civil Action No. 90-CV-0654. The decree pertains to the Metcoa Radiation Site, located in Pulaski, Pennsylvania.

The proposed consent decree requires the Settling Defendants and Settling Federal Agencies to reimburse the United States Superfund for 100% of past response costs up to the date of lodging of the Consent Decree. The proposed consent decree also requires the Settling Federal Agencies to reimburse the Settling Defendants for a portion of the Response Costs of the Settling Defendants. Finally, the proposed consent decree requires the Settling Federal Agencies to pay their portion of estimated future costs at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Marvin Pesses, et al.* (W.D. Pa.) and DOJ Ref. No. 90-11-3-613. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 Post Office & Courthouse, 7th & Grant, Pittsburgh, PA 15219, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93-20934 Filed 8-27-93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Manufacturing Competitiveness, Inc.

Notice is hereby given that, on June 30, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), the Center for Manufacturing Competitiveness, Inc. ("CMC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the following companies are participants in the Application Enabler Project, Phase III: Allen-Bradley, Highland Heights, OH; Allied Signal, Inc., Kansas City, MO; Boeing Company, Seattle, WA; Bresson, Rupp, Lipa & Co., Ann Arbor, MI; Catepillar, Inc., East Peoria, IL; Corning Corporation, Corning, NY; Digital Equipment, Novi, MI; E.I. du pont de Nemours & Co., Newark, DE; Electronic Data Systems, Troy, MI; FASTech Integration, Inc., Lincoln, MA; Ford Motor Company, Dearborn, MI; GE Fanuc Automation, Southfield, MI; General Motors Corporation, Troy, MI; Hewlett-Packard

Company, Novi, MI; IBM Corporation, Boca Raton, FL; Oracle, Inc., Chelsea, MI; PRISM Technologies, Ltd., Gateshead, Tyne & Wear, United Kingdom; Rockwell International Corporation, Highland Heights, OH; Sematech, Austin, TX; Silenus Group, East Peoria, IL; Texas Instruments, Inc., Dallas, TX; Thesis, Inc., Dallas, TX; and U.S. Data Corp., Richardson, TX.

The purpose of the CMC is to facilitate and coordinate international research ventures in the manufacturing sciences. On March 30, 1993, a joint research venture entitled Application Enabler Project, Phase III was formed. The Application Enabler Project is the first such research venture coordinated by the CMC. Its objective is to develop a base set of Enabler features and functions. Specifications will be developed for portable computer software components based on standard interfaces.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–20935 Filed 8–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on July 1, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of FRF are: ITV: Pleasanton, CA; SITA, Valbonne, France; Helsinki Telephone Co., Helsinki, Finland; Interlink Communications, Allambie Heights, Australia; Bibertel, Rockdale, Australia; Datacraft, Croydon, Australia; Scitec Communications, Lone Cove, Australia; and AIC Conferences, Sydney, Australia.

KDD America, Inc., a member of the FRF, has changed its name to KDD, Inc.

No other changes have been made in either the membership or planned activities of the FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on April 2, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 22, 1993 (58 FR 21597).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–20936 Filed 8–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics & Computer Technology Corp.

Notice is hereby given that, on June 17, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows:

(1) BroadBand Technologies, Inc., Research Triangle Park, NC; The Markle Foundation, New York, NY; and the State University of New York, Albany, NY; have agreed to become Associate Members of MCC and participants in MCC's "First Cities" technology study;

(2) MCC has entered into a Collaboration and Licensing Agreement with Samsung Electronics Company, Suwon, Korea, in connection with MCC's Low Cost Portables Project;

(3) IBM Corporation, an existing MCC Associate Member, has become a participant in the Open Systems 2 Project within MCC's Packaging/Interconnect Technology Program and MCC's High Value Electronics Division; and

(4) Westinghouse Electric Corporation, an existing MCC shareholder, has agreed to become a participant in MCC's Adaptive Beam Forming Technology Study.

On December 21, 1984, MCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on April 16, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 17, 1993 (58 FR 28900).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–20937 Filed 8–27–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meting of the Working Group on Economically Targeted Investments (ETI) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1 p.m./3:30 p.m., Tuesday, September 21, 1993, in suite N–3437 CD, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to ETI for employee benefit plans covered by ERISA.

The purpose of the September 21 meeting is to take testimony and/or written submissions regarding access to and valuation of Economically Targeted Investments. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before September 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1993.

Signed at Washington, DC, this 25th day of August 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–20975 Filed 8–27–93; 8:45 am]

BILLING CODE 4510–29–M

LEGAL SERVICES CORPORATION

One-Time Grant to the Indian Law Support Center

AGENCY: Legal Services Corporation.

ACTION: Announcement of Grant Award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time grant, in the amount of $49,070, to the Indian Law Support Center in Boulder, Colorado. The purpose of the grant is to fund the production of three new videotapes on the fundamentals of Federal Indian Law. This one-time, non-recurring grant is awarded under the authority of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments within a period of 30 days from the date of publication of this notice. The grant award will become effective and grant funds will be distributed only upon the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received on or before 5 p.m. on September 27, 1993.

ADDRESSES: Comments should be sent to: Office of Field Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses III, Deputy Director, Office of Field Services, at (202) 336–8822.

Dated: August 25, 1993.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 93–20978 Filed 8–27–93; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–070]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 29, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paper Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Paperwork Reduction Project (2700–0051), OMB, room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: NASA FAR Supplement, Part 18–23, Environment, Conservation, and Occupational Safety.
OMB Number: 2700–0051.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Number of Respondents: 407.
Responses per Respondent: 2.
Annual Responses: 814.
Hours per Response: 40.
Annual Burden Hours: 32,560.
Abstract-Need/Uses: Where unique facility safety or health requirements exist, including hazardous deliverables or operations, suitable contractor's safety and health plans are required as are accident reports.

August 24, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–20954 Filed 8–27–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

August 25, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 26, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Dr. Gary D. Miller, Biology Department, University of New Mexico, Albuquerque, NM 87131.

Activity for Which Permit Requested

Taking. Import into USA.

To investigate the reproductive strategies of Adelie Penguins (*Pygoscelis adeliae*) at Cape Bird, Ross Island, the

applicant proposes capture, banding, and release.

The applicant also wishes to continue to monitor the reproductive success of the South Polar Skua population at Cape Bird by monitoring the nesting progress of up to 200 pairs. Birds will be captured as needed to band new individuals and the replace bands that have broken off. Penguins can be captured by hand at their nests or with a short hand-held net. Skuas will be captured out of the air with a hand-held net. All birds will be weighed, measured and banded (if necessary). Blood samples (0.5 ml) will be taken from the tibial or metatarsal vein for adults. DNA samples from chicks will be obtained by plucking a few growing feathers. No collecting of whole specimens is proposed.

Location

Cape Bird, Ross Island

Dates

10/01/93–02/28/94

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–20982 Filed 8–27–93; 8:45 am]

BILLING CODE 7555-01-M

Permit Application Received Under the Antarctic Conservation Act of 1978

August 25, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 26, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

John G. Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, Illinois 60606.

Activity for Which Permit Requested

Taking. Import into USA—Port of Entry: Miami.

The John G. Shedd Aquarium plans to collect incubating eggs and transport them in incubators by leased aircraft to the Aquarium in Chicago, Illinois. These eggs will be hatched and reared in a temperature controlled rearing/holding facility. Data collection on egg size/weight and growth rates will be conducted and made available to qualified, interested parties. This data will be compared to that already recorded by Sea World and added to their data bank for gentoo penguins. The birds will be used for educational purposes as well as made available for scientific study to qualified researchers at the Shedd Aquarium.

Location

King George, Livingston and Nelson Islands.

Dates

11/20/93–12/30/93

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–20983 Filed 8–27–93; 8:45 am]

BILLING CODE 7555-01-M

Permit Application Received Under the Antarctic Conservation Act of 1978

August 25, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 27, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

David G. Ainley, PRBO, 4990 Shoreline Hwy., Stinson Beach, CA 94970.

Activity for Which Permit Requested

Taking. Import Into USA-Port of Entry Los Angeles, Miami. The applicant proposes to collect from a ship (by shotgun) up to 10 individuals each of 5 petrel species that are abundant in the study area. In the event that individuals of these species fly on board at night, which is possible, they will be included in totals and, if healthy, will be released alive. The scientific need is to complete collection started during previous cruises in a study that compares the flight morphology of pack-ice vs open-water bird species (and eventually also to compare Pacific species in the polar vs tropical habitats). Understanding the flight capabilities of seabirds will

contribute to the understanding of their ecology.

Location

Amundsen and Bellingshausen seas

Dates

01/15/93—04/15/94

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93-20984 Filed 8-27-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Brunswick Steam Electric Plant, Units 1 and 2, Carolina Power & Light Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-71 and DPR-62 issued to Carolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP), located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would revise the Technical Specifications (TS) to reflect the replacement of existing Riley, GEMAC and Fenwal steam leak detection equipment with General Electric NUMAC leak detection equipment. The proposed amendments would also revise surveillance requirements for the steam leak detection instrumentation associated with the reactor water cleanup system, the high pressure coolant injection system, and the reactor core isolation cooling system.

The Need for the Proposed Action

The proposed changes are needed so modifications can be made to upgrade the steam leak detection system prior to startup from the current outage.

Environmental Impacts of the Proposed Action

The staff has evaluated the proposed TS amendment and finds that the only line break for which the detection and/or mitigation action will be any different after the proposed modification is the reactor water cleanup (RWCU) cold leak, as mitigated by the differential flow instrumentation. The isolation delay on this break will be increased from 45 seconds to 30 minutes. The types of potential effluents remain unchanged. The increased isolation time delay will result in a proportional increase in the amount of potential effluent. General Electric has evaluated the consequences of a 300 gal/min RWCU system cold water leak remaining unisolated for 30 minutes in its report GE-NE-770-14-0592, which was docketed by the licensee January 13, 1993. The staff performed independent calculations, utilizing a reactor coolant concentration of 4 uCi/gm as the concentration for the release. This value was chosen because the coolant concentration could be this high before technical specifications require the unit to be shut down. Based upon this coolant concentration, a partition factor of 0.1 and a 300 gallon/min release rate for 30 minutes, doses were calculated. Thyroid doses 11.9, 5.9, and 1.2 rem, were calculated for the control room operators, the members of the public at the site boundary, and the low population zone, respectively. These doses are within the limits of 10 CFR part 100 and are acceptable and demonstrate that changing the RWCU system isolation differential flow time delay trip setpoint and the allowable value from less than or equal to 45 seconds to less than or equal to 30 minutes is acceptable from a radiological dose aspect. Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite.

The proposed changes do not increase the probability or consequences of accidents. The staff has determined that the proposed changes do not alter any initial condition assumed for the design basis accidents previously evaluated or change operation of safety systems utilized to mitigate the design basis accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the staff concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the TS involved components in the plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the staff concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for amendments. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (FES) for the Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

The staff consulted with the State of North Carolina regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

For further details with respect to this action, see the application for amendment dated September 14, 1992, as supplemented January 13, January 25, February 8, May 11, May 16, May 21, June 18, July 8 and July 26, 1993, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland, this 18th day of August 1993.

For the Nuclear Regulatory Commission.

Singh S. Bajwa,

Acting Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-20950 Filed 8-27-93; 8:45 am]

BILLING CODE 7590-01-M

VOL 58 ISS 166 AG 30 1993 UMI

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Prairie Island Nuclear Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to Northern States Power Company (the licensee) for the Prairie Island Nuclear Generating Plant, Units 1 and 2 located in Goodhue County, Minnesota.

Environmental Assessment

Identification of Proposed Action

By letter dated June 11, 1993, as revised June 30, 1993, the licensee proposed to change the technical specifications (TSs) to allow an increase in fuel enrichment (Uranium 235) to 5.0 weight percent. Prairie Island TSs currently limit fuel in the spent fuel pool and new fuel storage racks to a maximum enrichment of 4.25 weight percent U-235. In order to support longer fuel cycles at Prairie Island, it would be necessary to increase fuel enrichment beyond the 4.25 weight percent limit and to revise the TS enrichment limits. The licensee has requested revisions to the Prairie Island TSs to allow the storage of 5.0 weight percent U-235 fuel in the new fuel vault and the spent fuel pool.

The Need for Proposed Action

The licensee intends, in the future, to use the more highly enriched fuel to support longer fuel cycles. Currently, TS 5.6.4 limits the storage and use of fuel to an enrichment of 4.25 weight percent. Before the licensee extends plant operating cycles, it plans on receiving shipments of 5.0 weight percent fuel in September 1993. Thus, the change to the TSs was requested.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs and concludes that storage and use of fuel enriched with U-235 up to 5.0 weight percent at Prairie Island, Units 1 and 2, is acceptable. The safety considerations associated with higher enrichments have been evaluated by the NRC staff and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. There will be no change to authorized power levels. The change to the fuel burnup is bounded by NRC staff generic review (discussed below). As a result, there is not significant increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Sheeron Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent of U-235 and irradiation limits of up to 60,000 MWD/MTU are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to these proposed amendments for Prairie Island, Units 1 and 2. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 21, 1993 (58 FR 39054). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. The staff considered denial of the proposed action; however, this would not reduce environmental impacts of plant operation and would result in reduced operational flexibility. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Prairie Island, Units 1 and 2, dated May 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request. The staff consulted with the State of Minnesota regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for license amendments dated June 11, 1993 as revised June 30, 1993. Copies are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Minnesota Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 24th day of August 1993.

For the Nuclear Regulatory Commission.

William Dean,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–20949 Filed 8–27–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Philadelphia Electric Co., Public Service Electric and Gas Co., Delmarva Power and Light Co., and Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, to the Philadelphia Electric Company, et al. (the licensee) for the Peach Bottom Atomic Power

Station, Unit 3, located at the licensee's site in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant relief from sections III.D.2(a) and III.D.3 of appendix J which require that Type B and C leak rate tests be performed during reactor shutdown for refueling but in no case at intervals greater than 2 years.

The Need for the Proposed Action

The affected containment penetrations must be leak rate tested (either Type B or C test) during shutdown reactor conditions because testing of the penetrations requires access to the drywell or requires isolation of safety systems. For the affected penetrations, the licensee last conducted leak rate tests during a refueling outage that began in September 1991. These previous leak rate tests will reach the 2-year maximum test interval imposed by appendix J starting on September 14, 1993.

The licensee's next refueling outage is scheduled to begin no later than September 18, 1993. The licensee proposed the exemption to extend the leak test interval for the affected penetrations by 60 days. This will allow the licensee to avoid shutting down 4 days early for the sole purpose of conducting appendix J tests and will allow the licensee to have flexibility to schedule the leak rate tests within the upcoming outage.

Environmental Impact of the Proposed Action

The proposed exemption would postpone the affected Type B and C tests by approximately 60 days. The recent performance history for Unit 3 Local Leak Rate Test (LLRTs) demonstrates adequate margin to acceptable leak rate limits. The fall 1991 Unit 3 as-found total Type B and C minimum pathway leak rate was 35,197 cc/min. The as-left leakage for that same refueling outage was 24,453 cc/min. The 1991 as-found data followed an operating cycle that had commenced in November 1989. The amount of leakage necessary for demonstrating primary containment integrity (L_a, minimum pathway leakage) is 125,417 cc/min for Unit 3. The additional 4 days of operation between expiration of the current leak tests and commencement of the refueling outage is not expected to significantly decrease the margin between expected as-found leak rate and L_a.

Thus, radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. In addition, the proposed exemption will not increase the probability or consequences of any reactor accidents. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impact of the proposed action and the alternative action are similar.

Alternative Use of Resources

This proposed action does not involve the use of resources not considered previously in the Final Environmental Statement related to the operation of Peach Bottom Atomic Power Station, Units 2 and 3 dated April 1973.

Agencies and Persons Consulted

The staff consulted with the State of Pennsylvania regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission had determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated June 11, 1993, and supplemented by letter dated July 26, 1993. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW, Washington, D.C. 20555 and at the local public document room located at the State Library of Pennsylvania (REGIONAL DEPOSITORY) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 19th day of August, 1993.

For the Nuclear Regulatory Commission.

Michael L. Boyle,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–20951 Filed 8–27–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Expedited Review of a Revised Information Collection OPM Form 2809–EZ1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a request for expedited review of a revised information collection. OPM Form 2809–EZ1, Enrollment Change and Brochure Request, is used only at Open Season to request an enrollment change, insurance plan brochures and other informational materials. If OPM Form 2809–EZ1 is used to request plan brochures, an OPM Form 2809–EZ2 is furnished to the enrollee for use if a plan change is desired.

Approximately 127,913 OPM Forms 2809–EZ1 are completed annually. Each form takes approximately 30 minutes to complete. The annual burden is 63,957 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before September 3, 1993. OMB has been requested to take action on or before September 9, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

The content of draft OPM Form 2809–EZ1 is set out below:

Draft OPM Form 2809–EZ1

Revised October 1993
Federal Employees Health Benefits Program
United States Office of Personnel Management
For use by CSRS/FERS Annuitants to Change Enrollment or to request additional information
Form approved: OMB No. 3206–0201
Previous editions are not usable.
See instructions on the other side before marking this form.

Section 1—Address Correction

[ ] Address Change. If your permanent mailing address as shown to the right is incorrect, darken the Address Change circle and make the necessary corrections in the space provided below.
Street Address
City, State, ZIP Code
Country *(If not United States)*
OPM Use Only: [ ] E [ ] L [ ] NS [ ] T [ ] Claim Number

Section 2—Open Season Action Request

You may either change your FEHBP enrollment or request information. You may do both on this form. IF YOU ARE SATISFIED WITH YOUR PRESENT FEHB COVERAGE, DO NOT RETURN THIS FORM.

[ ] Enrollment Change
I WANT TO CHANGE MY HEALTH BENEFITS ENROLLMENT AND DO NOT NEED ADDITIONAL INFORMATION. Please change my coverage in my current plan or change my enrollment to the plan I have selected in Section 3 below for the following type of coverage:
[ ] Self Only
[ ] Self and Family
Information *(You may make more than one selection in this Section)*
[ ] I DO NOT WANT HEALTH BENEFITS COVERAGE. Send me the cancellation confirmation form necessary to cancel my health benefits coverage effective December 31, 1993. **Note:** Your enrollment will not be cancelled unless you sign and return the cancellation confirmation form.
[ ] MY ANNUITY ISN'T BIG ENOUGH FOR THE COVERAGE I WANT. Send me information on how I may mail premiums directly to OPM.
[ ] I NEED MORE PLAN INFORMATION BEFORE I DECIDE. Send me the health plan brochure(s) for the plan(s) I have selected in Section 3 below.

Section 3—Plan Choices

(Plan Brochures Requests, choose which ones you want; Enrollment Change, choose ONE) Darken the circle BETWEEN the enrollment code and the plan you choose.

GOVERNMENT WIDE PLAN
Fee-for-Service—PLANS OPEN TO ALL
Fee-for-Service—RESTRICTED PLANS
Prepaid Plans:
Prepaid Plans:

Section 4—Signature (You Must Sign and Date This Form)

Signature *(Must be signed by the addressee, an OPM-approved representative, or person holding power of attorney)*
Date
Telephone Number *(include Area Code)*
( ) –

[FR Doc. 93–20906 Filed 8–27–93; 8:45 am]
BILLING CODE 6325–01–M

Request for Expedited Review of a Revised Information Collection OPM Form 2809–EZ2

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for expedited review of a revised information collection. OPM Form 2809–EZ2, Enrollment Change Form, is used by annuitants only at Open Season to elect a change in health benefits coverage.

Approximately 38,315 OPM Forms 2809–EZ2 are completed annually. Each form takes approximately 30 minutes to complete. The annual burden is 19,158 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before September 3, 1993. OMB has been requested to take action on or before September 9, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415, and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

The content of draft OPM Form 2809–EZ2 is set out below:

Draft OPM Form 2809–EZ2

Revised October 1993
Previous editions are not usable.
Federal Employees Health Benefits Program
Civil Service Retirement System/Federal Employees Retirement System

Enrollment Change Form

For use during the November-December 1993 FEHB Open Season
Form Approved: OMB 3206–0200
USE THIS FORM ONLY to change your health enrollment during the 1993 Open Season. This form lists all health plans in your geographic area. Carefully read the instructions on the reverse before making your form.
This form is personalized for you:
—Don't use someone else's form
—Don't use a photocopy of this form
Use only a number 2 lead pencil to completely darken appropriate circles.
—EXAMPLE [ ]
USE ONLY TO CHANGE ENROLLMENT (Fill in Sections A, B and C below.)

Section A—Plan Choices (Select Only One-Darken the Circle BETWEEN the Two-Character Enrollment Code and the Name of the One Plan You Want)

GOVERNMENT WIDE PLAN
Fee-for-Service—PLANS OPEN TO ALL
Fee-for-Service—RESTRICTED PLANS
(You must be a member of a specific group to enroll in a plan below.)
Prepaid Plans:
Prepaid Plans:
Prepaid Plans:

Section B

Now Choose a Self Only or Self and Family enrollment

Darken One Circle Only

[ ] Self Only
or
[ ] Self and Family
Do not write in the three spaces directly below.
[ ] Claim Number
OPM USE ONLY [ ] AC [ ] L [ ] NS [ ] E

Section C

You must SIGN, date and give your telephone number below.

Your signature (must be signed by the addressee, and OPM-approved representative, or person holding power of attorney)

Today's date

Your daytime telephone number Area Code ( ) –

[FR Doc. 93–20907 Filed 8–27–93; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on August 2, 1993 (58 FR 41114). Individual authorities established or revoked under Schedules A and B and established under Schedule C between July 1 and July 31, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

Schedule A

The following exception was established:

Department of Housing and Urban Development (OFHEO)

All positions on the staff. No new appointments may be made under this authority after July 6, 1995. Effective July 6, 1993.

Schedule B

No Schedule B authorities were established or revoked during July 1993.

Schedule C

Department of Agriculture

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective July 1, 1993.

Director, Office of Consumer Advisor to the Assistant Secretary for Food and Consumer Services. Effective July 1, 1993.

Executive Assistant to the Assistant Secretary for Food and Consumer Services. Effective July 1, 1993.

Confidential Assistant to the Administrator. Effective July 1, 1993.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective July 13, 1993.

Staff Assistant to the Administrator of the Farmers Home Administration. Effective July 19, 1993.

Staff Assistant to the Manager of the Federal Crop Insurance Corporation. Effective July 19, 1993.

Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective July 27, 1993.

Department of Commerce

Deputy Director of Public Affairs to the Director, Office of Public Affairs. Effective July 1, 1993.

Special Assistant to the Assistant Secretary for Economic Development. Effective July 1, 1993.

Special Assistant to the Assistant Secretary for Economic Development. Effective July 1, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of Legislative and Intergovernmental Affairs. Effective July 1, 1993.

Confidential Assistant to the Deputy Director, Office of Public Affairs. Effective July 1, 1993.

Confidential Assistant to the Associate Deputy Secretary. Effective July 1, 1993.

Confidential Assistant to the Assistant Secretary, Legislative and Interagency Affairs. Effective July 1, 1993.

Confidential Assistant to the Deputy Under Secretary, Economic Affairs. Effective July 1, 1993.

Confidential Assistant to the Assistant Secretary, Legislative and Interagency Affairs. Effective July 1, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Program Operation. Effective July 1, 1993.

Confidential Assistant to the Director, Public Affairs Staff. Effective July 1, 1993.

Confidential Assistant to the Assistant Secretary for Export Administration. Effective July 1, 1993.

Public Affairs Specialist to the Director of Public Affairs. Effective July 1, 1993.

Director of Intergovernmental Affairs to the Assistant, Legislative and Intergovernmental Affairs. Effective July 2, 1993.

Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 2, 1993.

Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. Effective July 2, 1993.

Confidential Assistant to the Director, Office of External Affairs. Effective July 2, 1993.

Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective July 2, 1993.

Director of Congressional Affairs to the Under Secretary for Technology. Effective July 2, 1993.

Confidential Assistant to the Director of Scheduling. Effective July 2, 1993.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 2, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective July 2, 1993.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 2, 1993.

Press Secretary to the Director, Office of Public Affairs. Effective July 6, 1993.

Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective July 7, 1993.

Special Assistant to the Deputy Assistant Secretary for White House Liaison. Effective July 14, 1993.

Confidential Assistant to the Director, Office of Business Liaison. Effective July 14, 1993.

Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective July 14, 1993.

Special Assistant to the Director, Office of Public Affairs. Effective July 14, 1993.

Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration. Effective July 14, 1993.

Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration. Effective July 14, 1993.

Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office. Effective July 14, 1993.

Special Assistant to the Deputy Executive Secretary. Effective July 14, 1993.

Confidential Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office. Effective July 14, 1993.

Congressional Liaison Specialist to the Under Secretary for International Trade, International Trade Administration. Effective July 14, 1993.

Special Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commerce Service. Effective July 16, 1993.
Special Assistant to the Deputy Assistant Secretary for White House Liaison. Effective July 16, 1993.
Confidential Assistant to the Director, Office of Business Liaison. Effective July 19, 1993.
Congressional Affairs Specialist to the Chief, Congressional Affairs Division. Effective July 19, 1993.
Director, Office of External Affairs to the Deputy Assistant Secretary. Effective July 19, 1993.
Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective July 19, 1993.
Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 19, 1993.
Deputy Director of External Affairs and Director of Advance to the Director, Office of External Affairs. Effective July 19, 1993.
Congressional Liaison Specialist to the Chief, Legislative and Intergovernmental Affairs Division, Minority Business Development Agency. Effective July 21, 1993.
Special Assistant to the Director, Office of Public Affairs. Effective July 27, 1993.
Confidential Assistant to the Deputy Director, Minority Business Development Agency. Effective July 27, 1993.

Department of Defense

Speech writer to the Special Assistant to Secretary of Defense for Public Affairs. Effective July 14, 1993.
Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs. Effective July 14, 1993.
Personal and Confidential Assistant to the Special Assistant to the Secretary of Defense for Personnel. Effective July 19, 1993.

Department of Education

Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement. Effective July 7, 1993.
Executive Assistant to the Deputy Secretary of Education. Effective July 14, 1993.
Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective July 19, 1993.
Confidential Assistant to the Director, Office of Public Affairs. Effective July 21, 1993.
Special Assistant to the Chief of Staff. Effective July 21, 1993.
Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs. Effective July 21, 1993.

General Services Administration

Special Assistant to the Commissioner, Information Resources Management Service. Effective July 7, 1993.

Department of Health and Human Services

Special Assistant to the Assistant Secretary for Children and Families. Effective July 8, 1993.
Special Assistant to the Commissioner, Administration for Children, Youth and Families. Effective July 8, 1993.
Special Assistant to the Assistant Secretary for Children and Families. Effective July 8, 1993.
Confidential Assistant to the Assistant Secretary for Planning and Evaluation. Effective July 8, 1993.
Special Assistant to the Executive Secretary. Effective July 12, 1993.
Special Assistant to the Commissioner, Administration for Children, Youth and Families. Effective July 14, 1993.
Special Assistant to the Commissioner, Administration for Children, Youth and Families. Effective July 14, 1993.
Confidential Staff Assistant to the Administrator, Health Care Financing Administration. Effective July 19, 1993.
Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation/Health Policy. Effective July 19, 1993.
Executive Assistant to the Assistant Secretary for Planning and Evaluation. Effective July 19, 1993.

Department of the Interior

Special Assistant to the Assistant Secretary, Territorial and International Affairs. Effective July 2, 1993.
Special Assistant to the Assistant Secretary for Land and Minerals Management. Effective July 13, 1993.
Special Assistant to the Solicitor. Effective July 19, 1993.

Department of Justice

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective July 13, 1993.
Confidential Assistant to the Assistant Attorney General. Effective July 16, 1993.
Staff Assistant to the Director, Office of Public Affairs. Effective July 21, 1993.
Litigation Counsel to the Assistant Attorney General. Effective July 27, 1993.
Special Assistant to the Deputy Attorney General. Effective July 27, 1993.

Department of Labor

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 13, 1993.
Special Assistant to the Assistant Secretary for Policy. Effective July 13, 1993.
Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 13, 1993.
Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 13, 1993.
Staff Assistant to the Assistant Secretary for Employment Standards, Employment Standards Administration. Effective July 14, 1993.
Staff Assistant to the Chief of Staff. Effective July 27, 1993.
Executive Assistant to the Chief of Staff. Effective July 28, 1993.

Department of State

Staff Assistant to the Senior Advisor and Counsel to the United States Permanent Representative to the United Nations. Effective July 6, 1993.
Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs. Effective July 15, 1993.
Special Assistant to the Under Secretary for Political Affairs. Effective July 27, 1993.
Staff Assistant to the Counselor to the Department of State. Effective July 27, 1993.

Department of Transportation

Staff Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective July 6, 1993.
Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs. Effective July 6, 1993.
Special Assistant to the Secretary of Transportation. Effective July 14, 1993.
Deputy Scheduler to the Special Assistant for Scheduling and Advance. Effective July 14, 1993.
White House Liaison to the Chief of Staff. Effective July 27, 1993.

Department of the Treasury

Deputy to the Assistant Secretary (Legislative Affairs). Effective July 21, 1993.

Environmental Protection Agency

Special Assistant to the Associate Administrator for Communications, Education and Public Affairs. Effective July 19, 1993.

Export-Import Bank of the United States

Assistant to the President and Chairman. Effective July 2, 1993.
Administrative Assistant to the President and Chairman. Effective July 22, 1993.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Member and Chairman. Effective July 13, 1993.

Occupational Safety and Health Review Commission

Special Assistant to the Chairman to the Member (Chairman). Effective July 1, 1993.

Office of Management and Budget

Press Assistant to the Associate Director for External Affairs. Effective July 27, 1993.

Office of Personnel Management

Speech Writer to the Director, Office of Communications. Effective July 7, 1993.
Special Assistant to the Director, Office of Congressional Relations. Effective July 7, 1993.

Securities and Exchange Commission

Supervisory Public Affairs Specialist to the Chairman. Effective July 27, 1993.

United States Information Agency

Special Advisor to the Director, Office of Public Liaison. Effective July 16, 1993.
Special Assistant to the Director, Office of Academic Affairs, Bureau of Educational and Cultural Affairs. Effective July 16, 1993.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–20906 Filed 8–27–93; 8:45 am]

BILLING CODE 6325–01–M

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the twenty-sixth meeting of the Federal Salary Council will be held at the time and place shown below. The agenda for the meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meting will be open.

DATES: September 21, 1993, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–20905 Filed 8–27–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32789; File No. SR–NASD–93–47]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Executive System Tier Size Classifications

August 23, 1993.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 18, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an interpretation of an existing rule, pertaining to the Association's periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to notify the Commission of the reclassification of some 517 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security semi-annually to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move.[2] Such a review was conducted as of May 28, 1993, using the established criteria:

A 1,000-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers;

A 200-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers.[3]

The 517 Nasdaq/NMS securities will be reclassified on September 1, 1993, and are set out in the NASD's Notice To Members 93–57 (August, 1993).

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] In 1988, the NASD indicated that it would review which securities should be included within each SOES category at the end of each three-month trading period, and would reclassify any security whose trading patterns were characteristic of a category other than the one in which the security has been placed. See Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22549 (June 16, 1988). In 1992, the NASD confirmed to the Division that to avoid investor confusion and maintain consistency in the market, it has decided to reclassify securities on a semi-annual basis. See letter to Selwyn J. Notelovitz, Branch Chief, SEC, from Beth E. Weimer, Associate General Counsel, NASD, dated October 23, 1992. The current reclassification, which will take effect on September 1, 1993, reflects the results of a review conducted nine months after the NASD's previous review. See Securities Exchange Act Release No. 31555 (December 2, 1992), 57 FR 58266 (December 9, 1992).

[3] *NASD Manual*, Rules of Practice and Procedure for the Small Order Executive System, CCH, ¶ 2451, footnote 1.

rulemaking initiatives of the NASD be designed to foster cooperation and coordination with persons engages in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market. The NASD believes that the reassignment of securities within SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the Nasdaq market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4 because the proposal has been filed as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-20961 Filed 8-27-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32787; File No. SR-PSE-93-20]

Self-Regulatory Organizations; Pacific Stock Exchange; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Book-Entry Settlement of Securities Transactions

August 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 16, 1993, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal amends PSE Rule 5.9(c) relating to book-entry settlement of securities transactions in order to correct inadvertent references to the Exchange as the "Corporation."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 4, 1993, the Pacific Clearing Corporation ("PCC") submitted a proposed rule change to the Commission relating to book-entry settlement of securities transactions. That proposed rule change was submitted as File No. SR-PCC-93-01. On March 17, 1993, the PCC withdrew that filing and the Exchange submitted the same proposal as a filing of the Exchange.[2] In resubmitting the proposal, the Exchange inadvertently retained references to the PCC that should have been references to the Exchange. This proposed rule change is intended to correct those references in Rule 5.9(c).

The Exchange believes that the proposed rule change is consistent with section 6(b)[3] of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[4] of the Act and paragraph (e) of Rule 19b-4 thereunder because it constitutes and interpretation with respect to the administration and

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See File No. SR-PSE-93-04. That proposed rule change, and other substantially similar proposed rule changes concerning book-entry settlement, was approved by the Commission in Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679.

[3] 15 U.S.C. 78f(b) (1988).

[4] 15 U.S.C. 78s(b)(3)(A) (1988).

enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PSE. All submissions should refer to File Number SR–PSE–93–20 and should be submitted by September 20, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20911 Filed 8–27–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 24, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Beta Well Services, Inc.
Common Stock, No Par Value (File No. 7–11136)
Crestar Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–11137)
Ek Chor China Motorcycle Co., Ltd.
Common Stock, $.10 Par Value (File No. 7–11138)
Southern Pacific Rail Corp.
Common Stock, $.001 Par Value (File No. 7–11139)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20960 Filed 8–27–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 24, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American Municipal Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–11149)
Burlington Resources Coal Seam Gas Royalty Trust
Trust Units (File No. 7–11150)
Capsure Holdings Corp.
Common Stock, $.05 Par Value (File No. 7–11151)
Chemical Banking Corp.
Depositary Shares (rep. 1/4 Sh. of 7½% Cum. Pfd. Stk.) (File No. 7–11152)
Citicorp
Depositary Shares (rep. 1/10 Sh. of 8.00% Non-Cum. Pfd. Stk., Ser. 16 No Par Value) (File No. 7–11153)
Cleveland Electric Illuminating Co.
Depositary Shares 1993 Ser. A (rep. 1/20 Sh. of Pfd. Stk. $42.40 Ser. T, No Par Value) (File No. 7–11154)
Department 56, Inc.
Common Stock, $.01 Par Value (File No. 7–11155)
Emerging Markets Income Fund II, Inc.
Common Stock, $.01 Par Value (File No. 7–11156)
Factory Stores of America
Common Stock, $.01 Par Value (File No. 7–11157)
Gulf States Utilities Co.
$1.75 Div. Pref. No Par Value (File No. 7–11158)
Holly Residential Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11159)
International Business Machines Corp.
Depositary Shares (rep. 1/4 Sh. of Ser. A 7½% Pfd. Stk.) (File No. 7–11160)
Kohls Corp.
Common Stock, $.01 Par Value (File No. 7–11161)
Kuhlman Corp.
Common Stock, $1.00 Par Value (File No. 7–11162)
Lasmo Plc
American Depositary Shares (rep. 3 Ord. Shrs. 25p each) (File No. 7–11163)
Libbey, Inc.
Common Stock, $.01 Par Value (File No. 7–11164)
Maderas y Sinteticos Scoiedad Anonima
American Depositary Shares (rep. 30 Shrs. of Common Stock, No Par Value) (File No. 7–11165)
Putnam Managed High Yield Trust
Common Shares of Beneficial Interest, No Par Value (File No. 7–11166)
Qual-Med, Inc.
Common Stock, $.01 Par Value (File No. 7–11167)
Southern California Water Co.
Common Stock, $5.00 Par Value (File No. 7–11168)
Thornburg Mortgage Asset Corp.
Common Stock, $.01 Par Value (File No. 7–11169)
Storage Equities, Inc.
8.25% Conv. Pfd. (File No. 7–11170)
U.S. Home Corp.
Conv. Red. Pfd. $.10 Par Value (File No. 7–11171)
Van Kampen Merritt California Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11172)
Van Kampen Merritt New York Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11173)
Van Kampen Merritt Pennsylvania Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11174)
Westcorp
Common Stock, $1.00 Par Value (File No. 7–11175)
Resorts International

[8] 17 CFR 200.30–3(a)(12) (1990).

Common Stock, $.01 Par Value (File No. 7–11176)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20959 Filed 8–27–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 24, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Duke Realty Investments, Inc.
Common Stock, $.01 Par Value (File No. 7–11140)
United Dominion Realty Trust, Inc.
Common Stock, $1 Par Value (File No. 7–11141)
Crown American Realty Trust
Share Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–11142)
Southern Pacific Rail Corporation
Common Stock, $0.001 Par Value (File No. 7–11143)
Town and Country Trust
Common Stock, $.01 Par Value (File No. 7–11144)
H.F. Ahmanson & Company
Depositary Shares Cum. Cv., $.01 Par Value (File No. 7–11145)
ROC Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11146)
Wolverine Tube, Inc.
Common Stock, $.01 Par Value (File No. 7–11147)
Borg Warner Automotive, Inc.
Common Stock, $.01 Par Value (File No. 7–11148)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–20963 Filed 8–27–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2662; Amendment #5]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective August 19, 1993, to include Schuyler County in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on April 13, 1993 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

The economic injury number for Illinois is 793200.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 9, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 24, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20993 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2663; Amendment #5]

Kansas; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 11 and 16, 1993, to include Osage, Pawnee, Reno, Rice, and Shawnee Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

The economic injury number for Kansas is 793500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 20, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20994 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2664; Amendment #2]

Minnesota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective August 12, 1993, to include the counties of Aitkin, Grant, Mahnomen, Meeker, Norman, Polk, Rice, Waseca, Steele, and Winona in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Carlton, Cass, Crow, Wing, Itasca, Kanabec, Marshall, Mille Lacs, Mower, Pennington, Pine, Red Lake, St. Louis, and Stearns in the State of Minnesota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed

herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 10, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 18, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20995 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2563; Amendment #4]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 12 and 17, 1993 to include Benton, Henry, Maries, Mississippi, Monroe, New Madrid, Schuyler, and Sullivan Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Ballard, Carlisle, Fulton, and Hickman in the State of Kentucky may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 7, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury numbers are 793300 for Missouri and 801200 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 19, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20996 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2667; Amendment #4]

Nebraska; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective August 16, 1993, to include Custer County, Nebraska as a disaster area as a result of damages caused by severe storms and flooding beginning on June 23, 1993 and continuing through August 5, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Blaine, Logan, and Loup in the State of Nebraska may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 17, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury number for Nebraska is 793400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 20, 1993.

Bernard Kulid,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–N20997 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2670; Amendment #3]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 12, 1993 to include Burke, Pembina, Rolette, and Towner Counties in the State of North Dakota as a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bottineau, Divide, Renville, and Williams in the State of North Dakota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 27, 1993 and for economic injury the deadline is April 26, 1994.

The economic injury number for North Dakota is 795500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 20, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–20998 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2675]

Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

The Island of Saipan in the Commonwealth of the Northern Mariana Islands is hereby declared a disaster area as a result of damages caused by high winds and flooding resulting from Tropical Storm Steve which occurred on August 8, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 18, 1993 and for economic injury until the close of business on May 19, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 267506 and for economic injury the number is 800500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 19, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–20999 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

[License # 03/03-0239]

License Surrender; Brentwood Capital Corp.

Notice is hereby given that Brentwood Capital Corporation ("Brentwood"), a California corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Brentwood was licensed by the Small Business Administration on March 19, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on August 12, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–21000 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

Hartford District Advisory Council; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting at 8:30 a.m. on Tuesday, September 21, 1993, at 2 Science Park, 3rd Floor, New Haven, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jo-Ann Van Vechten, Acting District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: August 23, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–21001 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

Houston District Advisory Council; Public Meeting

The U.S. Small Business Administration Houston District Advisory Council will hold a public meeting at 12:30 p.m. on Thursday, September 16, 1993, at the Texas Commerce Bank Tower located at 600 Travis, 61st Floor, Houston, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Milton Wilson, Jr., District Director, U.S. Small Business Administration, 9301 Southwest Freeway, suite 550, Houston, Texas 77074–1591, (713) 773–6500.

Dated: August 23, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–21002 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

El Paso District Advisory Council; Public Meeting

The U.S. Small Business Administration El Paso District Advisory Council will hold a public meeting from 9 a.m. to 12 noon on Friday, September 24, 1993, at the Federal Reserve Bank, Board Room, 301 Main Drive, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Rudy H. Ortiz, U.S. Small Business Administration, 10737 Gateway Boulevard, West, suite 320, El Paso, Texas 79935–4996, (915) 540–5560.

Dated: August 23, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–21003 Filed 8–27–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 1852]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Tuesday, September 21, 1993 at 11 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 12:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in April 1993 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 1993 to September 1, 1993.

Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Friday, September 17, 1993, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: August 18, 1993.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 93–20938 Filed 8–27–93; 8:45 am]

BILLING CODE 4710–39–M

[Public Notice No. 1854]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Commerce

The Study Group on International Electronic Commerce provides technical advice and recommendations on developments in the law relating to electronic and computer-assisted commerce, whether such developments would be facilitated internationally by formulation of new commercial laws or rules, the degree of U.S. interest in seeking harmonization or unification of law in this field at the international level, and the form and content of possible laws or rules.

The Study Group will meet on Friday, September 17, 1993 to review progress of the United National Commission on International Trade Law (UNCITRAL) on possible rules relating to electronic data interchange (EDI) and international contract practices. The Study Group will examine the first preliminary draft U.N. rules on EDI prepared by the UNCITRAL Secretariat (U.N. Doc. A/CN.9/WG.IV/WP.57, July 1993). The draft includes provisions to determine when an EDI message would be subject to the rules, provides definitions of "EDI" and other terms, and deals with variation by agreement, requirements of a writing or an original, authentication, evidential value, obligations of parties, formation of contracts, recording and storage, liability, and other matters. Additional issues may be included in future drafts of the rules.

Following the Study Group meeting, UNCITRAL's Working Group on Electronic Commerce will meet in October 1993 to review the preliminary draft rules. Recommendations of the Study Group will be considered in the preparation of U.S. positions for the UNCITRAL Working Group meeting. Other EDI issues, and possible rules in relation thereto, may be considered by the UNCITRAL Working Group at later stages, such as transfer of rights and negotiability, relation of the rules to standardized messaging, payments

agreements, trading partner agreements, central data managers, rights in data and other matters. This work is at a preliminary stage and further opportunities to comment will be available.

As time permits, the Study Group will also examine EDI and public procurement laws and review developments in other international organizations on EDI legal matters.

Background documents available on this project include two prior UNCITRAL Working Group Reports (U.N. Docs. A/CN.9/360 and 373) and a Secretariat Note on uniform rules on legal aspects of electronic data interchange (U.N. Doc.A/CN.9/WG.1V/WP.55). Copies of these documents and the preliminary draft rules referred to above can be obtained from the United Nations or from the Office of the Legal Adviser (L/PIL), 2100 K Street NW., suite 501, Washington, DC 20037–7180; requests may also be made by fax to (202) 653–9854. For further information on the meeting or the work program of UNCITRAL, contact Harold S. Burman at the address or fax number above or call (202) 653–9852.

The Study group meeting will be held from 9:30 a.m. until 4:30 at the Warwick Hotel, 1701 Locust Street, Philadelphia, Pennsylvania. The public may participate in the meeting up to the capacity of the conference room, and subject to the instructions of the Chair. As space is limited, persons wishing to attend should provide their name, affiliation, address and telephone number to Professor Amelia Boss, Temple University School of Law, by fax at (215) 204–8947 or in writing to 1719 North Broad Street, Philadelphia, Pennsylvania, not later than September 14. Persons interested but unable to attend the meeting may submit comments or proposals in writing or by telefax to Mr. Burman of the Legal Adviser's Office (L/PIL) or to Ms. Boss at the above address.

Dated: August 18, 1993.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 93–20904 Filed 8–27–93; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSOP–93–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before October 14, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The waiver petition is as follows:

Kansas City Southern Railway Company (KCS)—Docket No. RSOP–93–2

KCS seeks an exemption from the torpedo requirements of 49 CFR 218.37(a)(1) (iii) and (iv). KCS states that it seeks to promote the safety of its employees and of the general public by eliminating the carrying and use of torpedoes, an explosive device. KCS further states that under the wrong circumstances, torpedoes could cause a fire or a personal injury to an employee, and they present a particular hazard to the general public if they are used near roadways or in populated areas.

All of KCS's lines are under either Centralized Traffic Control (CTC), Automatic Block Signals (ABS), or Direct Train Control (DTC). Under CTC and ABS rules, relief of rear end flag protection is provided by at least two block signals to the rear of the train. In DTC territory and on other low density branch lines, either an absolute block is maintained to the rear of every train or it is protected by timetable special instructions and verbal authority of the train dispatcher. Consequently, in each of these territories, there is no longer any need for flagmen to provide rear end flag protection in accordance with 49 CFR 218.37.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Issued in Washington, DC on August 23, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–20913 Filed 8–27–93; 8:45 am]

BILLING CODE 4910-06-P

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3240

Applicant: The River Terminal Railway Company, Mr. Arnold J. Zierow, Superintendent M/W and Engineering, 3100 East 45th Street, Cleveland, Ohio 44127–1094

The River Terminal Railway Company seeks approval of the proposed temporary discontinuance of the interlocking signal system at River Bridge Interlocking Plant, near Cleveland, Ohio, for a six month period, in conjunction with major track changes and construction in the entire interlocking plant. During the construction the carrier proposes to have a switch tender handle all alignment of switches for train movements through the interlocking plant. The changes include the removal of two, relocation of one, and installation of four power-operated switches; the removal of two double track and two single track crossing diamonds; and the installation of five new single track crossings diamonds.

The reason given for the proposed changes is that the ability to shut down the electric interlocking plant and operate by hand thrown switches will reduce the time to make the overall changes.

BS–AP–No. 3249

Applicant: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief

Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410

The Consolidated Rail Corporation seeks approval of the proposed modification of "UN" Interlocking, milepost 248.4, involving Track No. 3 and the Industrial Siding, near Gallitzen, Pennsylvania, on the Pittsburgh Line, Harrisburg Division; consisting of the discontinuance and removal of three controlled signals (26L, 26R, and 28R), and the conversion of the power-operated switch and derail to hand operation.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3250

Applicants:

Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410

CSX Transportation, Inc., Mr. W. J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

Delaware and Hudson Railway Company, Inc., Mr. T. F. Waver, General Manager—Operations and Maintenance, 200 Clifton Corporate Parkway, P.O. Box 8002, Clifton Park, New York 12065.

Consolidated Rail Corporation, CSX Transportation, Inc., and Delaware and Hudson Railway Company, Inc. jointly seek approval of the proposed discontinuance and removal of the cab signal system, on the two main tracks, between "Landover" Interlocking, milepost 128.8 and "CP Virginia" Interlocking, milepost 136.7, near Washington DC, on the Landover Line, Harrisburg Division.

The reason given for the proposed changes is the retiring of Amtrak's Capitol Sub Station which provides power to feed the cab signal system on the Landover Line.

BS–AP–No. 3251

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W. S. Seery, Director Signal Systems, System Communications and Signal Building, 4515 Kansas Avenue, Kansas City, Kansas 66106

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of four controlled signals (2R, 2L, 4R, and 4L), at milepost 25.4, near Olathe, Kansas, on the two main tracks, Eastern Region, Emporia Subdivision.

The reason given for the proposed changes is that the signals are no longer required due to changes in operating procedures.

BS–AP–No. 3252

Applicant: Delaware and Hudson Railway Company, Inc., Mr. T. F. Waver, General Manager—Operations and Maintenance, 200 Clifton Corporate Parkway, P.O. Box 8002, Clifton Park, New York 12065

The Delaware and Hudson Railway Company, Inc. seeks approval of the proposed discontinuance and removal of signal system, on the single main track, between Albany, New York, milepost A 0.24 and Mechanicville, New York, milepost A 19.05, on the Third Subdivision; consisting of the discontinuance and removal of 10 automatic signals (16.2, 15.1, 14.2, 13.1, 12.2, 11.1, 10.2, 9.1, 8.2, and 2.3), the discontinuance and removal of two interlockings (CPO 17 and CPO 1), and the installation of an approach signal at milepost 17.28.

The reason given for the proposed changes is the traffic density, the desire to expend resources in other areas, and the facilities are no longer required for present day operations.

BS–AP–No. 3253

Applicant: Wisconsin Central Transportation Corporation, Mr. Glenn J. Kerbs, Vice President Engineering, P.O. Box 5062, Rosemont, Illinois 60017–5062

The Wisconsin Central Limited seeks approval of the proposed modifications of the traffic control system, on the single main track, near Waupaca, Wisconsin, milepost CM221.1, on the Neenah Subdivision, consisting of the relocation of signal 2211 and the discontinuance and removal of signals 2211A and 2212.

The reason given for the proposed changes is to provide better aspects for eastbound moves eliminating the approach into approach aspect.

BS–AP–No. 3254

Applicant: Norfolk Southern Corporation, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, SW., Atlanta, Georgia 30303

Norfolk Southern Railway Company and the CNO&TP Railway Company jointly seek approval of the proposed modification and relocation of the interlocking, near Ludlow, Kentucky, milepost 3.0, Kentucky Division, Western Region; consisting of the relocation of existing No. 38 power-operated crossover, the conversion of the existing power-operated turnout to hand operation, the removal of the split-point derail, the installation of a new power-operated crossover, and the relocation of the five controlled signals.

The reason given for the proposed change is to improve operations and increase efficiency of the CNO&TP Railway Company.

BS–AP–No. 3255

Applicant: National Railroad Passenger Corporation, Mr. P. A. Cannito, Vice President-Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104

The National Railroad Passenger Corporation seek approval of the proposed modification of the traffic control signal system and supplemental cab signal system, on the main tracks, between "A" Interlocking, milepost W0.2, near New York, New York and "Dock" Interlocking, milepost 8.5, near Newark, New Jersey, New York Division, Main Line, Northeast Corridor; consisting of the installation of four additional interlockings, the installation of an expanded cab signal system, and elimination of all intermediate wayside signals.

The reason given for the proposed changes is to improve the flow of daily commuters between Northern New Jersey and New York City, with increased capacity and ease of travel resulting.

BS–AP–No. 3256

Applicants:

Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410

Indiana Harbor Belt Railroad Company, Mr. C. H. Allen, General Manager, 2721–161st Street, P. O. Box 389, Hammond, Indiana 46325

Consolidated Rail Corporation (Conrail) and the Indiana Harbor Belt Railroad Company jointly seek approval of the proposed discontinuance and removal of automatic block signals 21–3 and 21–4, on Running Tracks No. 3 and No. 4, between "CP Gibson" and "Ivanhoe" Interlockings, near Hammond, Indiana, on Conrail's Kankakee Line, Dearborn Division.

The reason given for the proposed changes is the remote control of "Ivanhoe" Interlocking and modification of signals for improved train handling.

BS–AP–No. 3257

Applicant: Metro North Commuter Railroad Company, Mr. Richard C. Kirner, Vice President-Operations, 347 Madison Avenue, New York, New York 10017

The Metro North Commuter Railroad Company seeks approval of the proposed modification of the traffic control system between CP–152 and CP–155, on the Harlem Line, in New York, New York; consisting of the relocation of CP–152 1,280 feet north to include the Wye and Brewster Yard switches, extend the cab signals from CP–153 to CP–155, and eliminate the existing wayside signals between CP–152 and CP–155.

The reason given for the proposed changes is to enhance safety by extending cab signal territory, to unify Metro North's signal system and operations, and to provide signal indications for movements to the main track.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 24, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–20912 Filed 8–27–93; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Motor Vehicle Titling, Registration and Salvage Advisory Committee; Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Meeting announcement.

SUMMARY: This notice announces the second meeting of the Motor Vehicle Titling, Registration, and Salvage Advisory Committee. The Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519, and in accordance with the Federal Advisory Committee Act, for the purpose of studying problems related to motor vehicle titling, registration, and controls over motor vehicle salvage which may affect the motor vehicle theft problem. The Committee will develop and submit a report to the President, the Congress, and the chief executive of each State concerning the results of this study, which will include recommendations to solve these problems. At this meeting the Committee will discuss definitions of salvage and junk and procedures for title branding of salvage, junk, and reconstructed or rebuilt vehicles.

DATE AND TIME: The meeting is scheduled to begin at 10 a.m. on Monday, September 13, 1993, and conclude at 4 p.m. on Tuesday, September 14, 1993.

ADDRESSES: The meeting will be held in room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In April 1993, the Motor Vehicle Titling, Registration, and Salvage Advisory Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519. The purpose of the Committee is to study problems which relate to motor vehicle titling, registration, and vehicle salvage controls, including the lack of uniformity in State laws, which may contribute to motor vehicle theft and fraud problems.

The Committee will prepare a report containing the results of the study, including appropriate recommendations to solve the problems identified. The report shall be submitted to the President, the Congress, and to the chief executive officer of each State not later than April 1994.

This meeting is open to the public; however, participation will be determined by the Committee Chairperson.

A public reference file (P.F. 93–001) has been established to contain products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2678.

FOR FURTHER INFORMATION CONTACT: Richard C. Morse, Odometer Fraud Staff, Office of the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, NEF–20, room 5321, 400 Seventh Street, SW., Washington, DC 20590, Phone: 202–366–4761.

Issued on: August 24, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–20920 Filed 8–27–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–35; Notice 2]

B.A.T. Inc.; Grant of Petition for Temporary Exemption From Two Federal Motor Vehicle Safety Standards

B.A.T. ("Battery Automated Transportation") Inc. of West Valley City, Utah, petitioned to be exempted from two Federal motor vehicle safety standards for trucks that it converts to electric power. The basis of the petition was that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on May 26, 1993, and an opportunity afforded for comment (58 FR 30214). This notice grants the petition.

Petitioner intends to convert 1993 model Ford Ranger pickup trucks to electric power. It requested an exemption for two years. The basis of the petition is that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c). The petitioner will not manufacture more than 2,500 vehicles during any 12-month period that the exemption is in effect.

Although the vehicles to be converted are certified by their original manufacturer to conform to all applicable Federal motor vehicle safety standards, petitioner has determined that the vehicles may not conform with two Federal motor vehicle safety standards after their modification.

1. Standard No. 204, Steering Control Rearward Displacement

Petitioner notes that "[s]teering columns can be pushed back during a front end crash." It observes that "[t]he steering column in the Ford Ranger ICE [internal combustion engine] terminates in back of the engine block but in front of the EV [electric vehicle] motor." It asks whether this will result in forcing "the steering column back into the driver since the engine block is not there to stop the front end from collapsing."

The petitioner's analysis was that the performance of the original "collapsible" steering column ought not to be affected by the conversion. The steering system is attached to the frame

at a point in front of the motor mounts where the frame ought to deform in a frontal impact. The deformation of the frame should create sufficient stress on the steering column to cause it to buckle at one or both of its universal joints. Further, the steering column has a slip connection between the two universal joints "which should compress the length of the steering column under most impact conditions." For this reason, the petitioner argued that an exemption would not unreasonably degrade the safety of the vehicle. However, the petitioner conceded that "[j]ust how the deformity will occur is hard to predict without actual crash tests or at least computer simulated crash tests."

2. Standard No. 208 Occupant Crash Protection

The petitioner has made arrangements with the Lawrence Livermore National Laboratory to do computer simulated crash testing, and the laboratory is "currently working with the crash test results of tests on the Ford Ranger ICE." Until these results are available, petitioner asked for an exemption from S5.1, which requires compliances during a frontal impact into a fixed barrier at 30 m.p.h. It argued that an exemption would not unreasonably degrade the safety of the vehicle because the conversion ought to be safer in a frontal impact because there is no internal combustion engine to break through the firewall, while the EV motor is below the floor and in the event of a crash should be pushed back under the passenger compartment.

The petitioner also argued that its EV conversion is probably "safer" than its ICE counterpart because it has a lower center of gravity and is therefore less prone to roll. Most of the batteries are placed between the frame under the bed of the truck. It also argued that the "energy source" is safer since it is not dependent upon a volatile fuel, nor equipped with a catalytic converter "that can start a fire."

Further, the petitioner argued, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the vehicles "are non polluting electric vehicles" which will improve air quality where they are operated", and, for the reasons previously expressed, are "probably safer" than their ICE counterparts. The company "is dedicated to cleaning up the environment" and it believes that "producing safe, economical, and practical electric vehicles is the most practical way of doing so."

No comments were received on the petition.

With the legislative impetus in California and other states requiring zero-emission vehicles to be sold in increasing percentages by the end of the decade, it is manifestly in the public interest for small manufacturers to engage in the converting of internal combustion engines to electric power, and for this agency to take appropriate steps to encourage these endeavors, provided that they are consistent with motor vehicle safety. Exemptions for conversions allow field evaluations by their purchasers and modifications by the converters that respond to the evaluations. Therefore, the Administrator finds in this instance that the exemptions requested will facilitate the development and field evaluation of low-emission motor vehicles, and that the exemptions requested are in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

With respect to Standard No. 204, the petitioner has argued that the placement of the battery ought not to affect the compliance of the vehicle because of the design of the steering column and the way it ought to perform in a crash. After consideration of this argument, the Administrator also finds that an exemption from that standard will not unreasonably degrade the safety of the vehicle.

With respect to Standard No. 208, NHTSA notes that it is not the purpose of the standard to protect against intrusion of the power source into the passenger compartment. The agency does not believe that power source intrusion is a common crash event. When a crash is severe enough to cause intrusion, it is probably also severe enough, even in the absence of intrusion, to kill the occupants. Nevertheless, given the pendency of crash simulations and limited period of time that the exemption will be in effect, and the small number of vehicles that it will cover, NHTSA has determined that an exemption will not unreasonably degrade the safety of the vehicle, which will continue to be equipped with the occupant restraint and warning systems required by Standard No. 208 and originally installed by Ford.

In consideration of the foregoing, B.A.T. Inc. is hereby granted NHTSA Temporary Exemption No. 93–3, expiring August 1, 1995, from 49 CFR 571.204 Motor Vehicle Safety Standard No. 204 *Steering Control Rearward Displacement*, and S5.1 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.)

Issued on August 24, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–20916 Filed 8–27–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

United States Mint

Establishment of a Citizens Commemorative Coin Advisory Committee

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice of establishment of an advisory committee for U.S. Mint Commemorative Coin Programs.

SUMMARY: Title II of Public Law 102–390 (10/6/92), entitled "United States Mint Reauthorization and Reform Act of 1992" (31 U.S.C. 5135), provides for the establishment of the Citizens Commemorative Coin Advisory Committee. The primary purpose of the Advisory Committee is to annually report to Congress the designation of the events, persons, or places that the Committee recommends to be commemorated by the issuance of commemorative coins in each of the 5 calendar years succeeding the year in which such designation is made. The Committee will also review and recommend proposed designs for commemorative coins for the Secretary of the Treasury.

There are 7 voting members appointed by the Secretary of the Treasury comprised of the following:

(1) Three individuals specially qualified to serve on the committee by reason of their education, training, or experience in art, art history, museum or numismatic collection curation, or numismatics;

(2) One officer or employee from the U.S. Mint who will represent the interests of the Mint; and

(3) Three individuals who will represent the interests of the general public.

The Committee shall be subject to the direction of the Secretary of the Treasury. The U.S. Mint will be responsible for providing the necessary support services for the Committee. Committee members are not paid for their time or services; but, consistent with Federal Travel Regulations, they will be reimbursed for their travel and lodging expenses to attend approximately two meetings each year Please be advised that members may be

subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

Anyone who wishes to be considered for participation on the Advisory Committee should notify the U.S. Mint in writing within the next 45 days. Responses and inquiries may be directed to Mr. David J. Ryder, Director, United States Mint, 633 3rd Street, NW., Washington, DC 20220 (202) 874–6000.

Brenda F. Gatling,

Chief, Executive Secretariat, U.S. Mint.

[FR Doc. 93–20900 Filed 8–27–93; 8:45 am]

BILLING CODE 4810-37-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affair, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 24, 1993.

By direction of the Secretary:

B. Michael Berger,

Director, Records Management Service.

Extension

1. Request to Correspondent for Identifying Information, VA Form Letter 70–2.

2. The form letter is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a specific veteran. Failure to obtain this information will prevent VA from taking further action on the correspondence.

3. Individuals or households.

4. 3,750 hours

5. 5 minutes.

6. On occasion.

7 45,000 respondents.

Extension

1. Supplement to SF 129, Solicitation Mailing List Application, VA Form 08–6299.

2. The form is mailed with SF 129, Solicitation Mailing List Application, to prospective bidders on VA construction projects. The information is used by VA to compile a bidders' list.

3. Businesses or other for-profit—Small businesses or organizations.

4. 500 hours

5. 10 minutes.

6. Annual.

7. 3,000 respondents.

[FR Doc. 93–20897 Filed 8–27–93; 8 45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 58, No. 166
Monday, August 30, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 30, September 6, 13, and 20, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 30

Monday, August 30

10:00 a.m.
Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)
(Contact: Shelly Schwartz, 301–504–2325)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on NRC Research Program on Aging (Public Meeting)
(Contact: John Craig, 301–492–3850)

Week of September 6—Tentative

Thursday, September 9

2:00 p.m.
Periodic Meeting With the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.
Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301–504–1728)
10:30 a.m.
Briefing by Advanced Reactor Corporation (Public Meeting)
2:00 p.m.
Briefing on Management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301–504–2659)

Week of September 13—Tentative

Thursday, September 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 17

1:30 p.m.
Briefing on Status of Form and Content for Design Certification Rule (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1199)

Week of September 20—Tentative

Monday, September 20

10:00 a.m.
Briefing on Results of 2.206 Workshop (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)
1:30 p.m.
Briefing on Status of AP600 and SBWR Thermal/Hydraulic Testing (Public Meeting)
3:00 p.m.
Briefing on NRC Reactor Inspection Program Assessment and Planned Improvements (Public Meeting)

Tuesday, September 21

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: August 25, 1993.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–21098 Filed 8–26–93; 11:45 am]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 166
Monday, August 30, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-212-000]

Stingray Pipeline Co.; Notice of Informal Settlement Conference

Correction

In notice document 93-20363 appearing on page 44669 in the issue of Tuesday, August 24, 1993, the docket number was omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 203

[Docket No. R-93-1584; FR-3095-F-02]
RIN 2501-AB25

HUD Systems for Approval of Single Family Housing in the Subdivisions

Correction

In rule document 93-17351 beginning on page 41328 in the issue of Tuesday, August 3, 1993, make the following correction:

§ 203.12 [Corrected]

On page 41338, in the first column, in § 203.12(a)(2), beginning in the seventh line, "[insert effective date of rule]" should read "September 2, 1993".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AE49

FY 1991 and 1992 Final Rule Implementing the U.S. Court of Appeals Decision and Revision of Fee Schedules; 100% Fee Recovery, FY 1993

Correction

In rule document 93-16885 beginning on page 38666 in the issue of Tuesday, July 20, 1993, make the following corrections:

1. On page 38682, in Table IV., under the caption Nuclear Material & Low Level (NMLL), in the first line, "NMLL (NMSS)" should appear as a separate caption, on a separate line.

2. On the same page, in the same table, under the same caption, in the sixth line, "NMLL (RES)" should appear as a separate caption, on a separate line.

3. On the same page, in the table, under the heading Allocated to power reactors, in the second column, insert "$" before the entries for Total Base Fee Amount Allocated to Power Reactors (millions); Less Estimated Part 170 Power Reactor Fees (millions); and Part 171 Base Fees for Operating Power Reactors (millions).

4. On page 38685, in the equation, insert "per" before "operating".

5. On page 38686, in Table VI, under the heading Allocated to fuel facility, in the entry for Less Part 170 Fuel Facility Fees (millions), in the fourth column, insert "3.5".

6. On the same page, in the same table, under the same heading, in the entry for Part 171 Base Fees for Fuel Facilities (millions), "13.7" should have appeared in the fourth column and should be removed from the fifth column.

7. On the same page, in Table VII, under the caption NMLL (MSIRIE):, in the second line, remove "4".

8. On the same page, in the same table, in footnote [1], remove "§ ".

§ 170.31 [Corrected]

9. On page 38693, in the Schedule of Materials Fees, in entry 15., paragraph B., in the seventh line, insert "review" before "only".

§ 171.16 [Corrected]

10. On page 38700, in § 171.16(e), paragraph (e), (1) and (2) should appear as regulatory text, not as footnotes to the table.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32363; File No. SR-Amex-93-19]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to an Extension of Its Pilot After-Hours Trading Facility

Correction

In notice document 93-13070 beginning on page 31558 in the issue of Thursday, June 3, 1993, make the following correction:

On page 31560, in the second column, in the second full paragraph, in the last line, "January 13, 1994." should read "January 31, 1994."

BILLING CODE 1505-01-D

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federal register

Monday
August 30, 1993

Part II

Office of Personnel Management

5 CFR Part 591

Cost-of-Living Allowances (Nonforeign Areas) and Report on 1992/1993 Determination Surveys; Proposed Rule and Notice

VOL 58 ISS 166 AG 30 1993 UMI

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AF52

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: OPM proposes to increase cost-of-living allowance (COLA) rates paid to General Schedule, Postal Service, and selected other Federal employees in the Territory of Guam and the Commonwealth of the Northern Mariana Islands and in St. Thomas and St. John, Virgin Islands. In addition, OPM proposes to increase the COLA rate paid to eligible Federal employees in the City and County of Honolulu, Hawaii, who have unlimited access to commissaries and exchanges by virtue of their Federal civilian employment. The proposed adjustments are based on living-cost surveys conducted during the summer of 1992 and the winter of 1993. The surveys were conducted by Runzheimer International for OPM under contract.

DATES: Comments must be received on or before October 29, 1993.

ADDRESSES: Send or deliver comments to Phyllis G. Foley, COLA Program Manager, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H38, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–3710.

SUPPLEMENTARY INFORMATION: The proposed increases in COLA rates are summarized in the table below:

PROPOSED INCREASES IN COLA RATES

Allowance area/category	Current rate	Proposed rate
City and County of Honolulu, Hawaii		
Commissary/Exchange	15.0	17.5
Territory of Guam and Commonwealth of the Northern Mariana Islands		
Local Pricing	15.0	22.5
Commissary/Exchange	7.5	17.5
St. Thomas and St. John, The Virgin Islands		
All Employees	15.0	17.5

OPM proposes to adjust only those rates that would increase. Rates that would otherwise decrease will remain unchanged, as required by a general provision in the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Pub. L. 102–141). Without this general provision, a total of nine rates in six allowance areas would decrease.

OPM also proposes to eliminate the distinction between the "Local Retail" and "Commissary/Exchange" COLA rates payable in Juneau, Alaska, and Kauai, Hawaii, respectively. The Local Retail and Commissary/Exchange rates within these two areas are identical and have been for over a decade. The commissary and exchange services in these areas are very limited or nonexistent, and employees make relatively few, if any, purchases in these facilities. As a result, OPM no longer surveys commissary and exchange prices in these two areas.

Since there is no basis for the distinction between the Local Retail and Commissary/Exchange rates in these areas, OPM proposes to replace these rates with a single "All Employees" rate, as is done in other areas where commissary and exchange services are very limited or unavailable. No employee's pay would be affected by this action. The new, "All Employees" rates would be the same as the current Local Retail and Commissary/Exchange rates in the respective areas.

As background to the proposed rate adjustments, OPM is publishing, in a separate **Federal Register** notice immediately following this notice of proposed rulemaking, the complete Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, D.C., Area, May 1993, produced by Runzheimer International.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because the regulation would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Appendix A of subpart B is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Authorized allowance rate (percent)
State of Alaska	
City of Anchorage and 80 kilometer (50 mile) radius by road:	
Local Retail	25 0
Commissary/Exchange	17.5
City of Fairbanks and 80 kilometer (50 mile) radius by road:	
Local Retail	25.0
Commissary/Exchange	20.0
City of Juneau and 80 kilometer (50 mile) radius by road:	
All Employees	25.0
Rest of the State: All Employees	25.0
State of Hawaii	
City and County of Honolulu:	
Local Retail	22.5
Commissary/Exchange	17.5
County of Hawaii: All Employees	15.0
County of Kauai: All Employees	17.5
County of Maui and County of Kalawao: All Employees	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands	
All Locations:	
Local Retail	22.5
Commissary/Exchange	17.5
Commonwealth of Puerto Rico	
All Locations:	
Local Retail	10.0
Commissary/Exchange	0.0
The Virgin Islands	
St. Croix: All Employees	12.5
St. Thomas and St. John: All Employees	17.5

Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this

appendix shall be used to determine employee eligibility for the appropriate allowance rate:

Allowance category	Definition
Local Retail	This category includes those employees who purchase goods and services from private retail establishments.
Commissary/ Exchange.	This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her Federal civilian employment—is sufficient evidence that the employee uses the facilities.

[FR Doc. 93–20653 Filed 8–27–93; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Report on 1992/1993 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the "Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC, Area, May 1993," prepared by Runzheimer International under Government contract OPM–90–0705. This report provides the basis for the increases in certain cost-of-living allowances (COLA's) being proposed by OPM in the notice of proposed rulemaking immediately preceding this notice.

DATES: Consistent with the deadline on comments in response to the notice of proposed rulemaking immediately preceding this notice, OPM requests that comments on the report be submitted on or before October 29, 1993.

ADDRESSES: Send or deliver comments to Phyllis G. Foley, COLA Program Manager, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H38, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–3710.

SUPPLEMENTARY INFORMATION: Under 5 CFR 591.206(c), COLA survey summaries must be published in the **Federal Register**. Accordingly, OPM is publishing the complete "Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC, Area, May 1993," produced by Runzheimer International. The Runzheimer report describes the surveys that were conducted for OPM in the summer of 1992 in Hawaii, Guam, Puerto Rico, and the Virgin Islands and in the winter of 1993 in Alaska. It also explains in detail methodologies, calculations, and findings.

Based on these 1992/1993 living-cost surveys, Runzheimer computed index values of relative living costs in allowance areas using an index scale where the living costs in the Washington, DC, area are set at 100. (See the Executive Summary of the May 1993 Runzheimer report accompanying this notice.) OPM notes that the 1992/1993 surveys continue to show that current COLA rates are above the levels otherwise warranted in half of the allowance areas. However, the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Public Law 102–141), bars any reduction in COLA rates through December 31, 1995. Thus, the only rate adjustments to be made are rate increases, as described in the notice of proposed rulemaking immediately preceding this notice.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Report to OPM on Living Costs in Selected Nonforeign Areas and in the Washington, DC Area

May 1993.

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Executive Summary

This report culminates the third living-cost comparison study undertaken by Runzheimer International for the Office of Personnel Management (OPM) under contract OPM–90–0705. The contract requires Runzheimer to:

(1) Survey living costs in 12 cost-of-living allowance (COLA) areas and the Washington, DC, area, and

(2) Compare living costs between the areas and the DC area.

To determine living costs in the identified areas and build this report, Runzheimer researched over 4,000 outlets and gathered more than 16,000 price quotes.

To ease interpretation of the research results; we display the outcome of the comparisons as living-cost indexes in the table below. In addition, the table shows living-cost indexes for federal employees who have unlimited access to commissary and exchange facilities because of their employment. The index for the Washington, DC, area (not shown) is 100.00 because it is, by definition, the reference area.

FINAL COST COMPARISON INDEXES

Allowance area	Local pricing	Commissary & exchange
Anchorage, Alaska ...	106.40	102.92
Fairbanks, Alaska ...	106.39	104 11
Juneau, Alaska	110.16	NA
Other Areas in Alaska [1]	124.95	NA
City & Cnty of Honolulu, Hawaii	121.46	117.19
Hawaii Cnty, Hawaii .	111.55	NA
Kauai Cnty, Hawaii ...	116.75	NA
Maui Cnty, Hawaii	120.48	NA
Guam, CNMI [2]	121.55	117.20
Puerto Rico	103.94	102.16
St. Croix, Virgin Islands	112.90	NA
St. Thomas and St. John, Virgin Islands	116.66	NA

[1] As represented by Nome, AK.
[2] Commonwealth of the Northern Mariana Islands.
NA = Not applicable.

As was done for the previous report, Runzheimer conducted living-cost surveys at two different times during the costing period—once during the summer months and once during the winter months. In the summer of 1992, Runzheimer surveyed the tropical allowance areas (that is, Hawaii, Guam, Puerto Rico, and the Virgin Islands). In the winter of 1993, Runzheimer surveyed areas in Alaska—Anchorage, Fairbanks, Juneau, and Nome.

To ensure that price comparisons with the Washington, DC, area were seasonally correlated, Runzheimer conducted living-cost surveys in the DC area during both seasons. This report describes the results of both the 1992 summer surveys and the 1993 winter surveys.

For the current surveys, OPM asked Runzheimer to change aspects of its data collection procedures relative to last year's surveys. These changes included:

- Increasing the quantity of housing data obtained;
- Ascertaining, to the extent practical, the effect of Typhoon Omar and Hurricane Iniki on the living-cost data gathered in Guam and Kauai, HI, respectively; and
- Making minor changes in pricing sources for certain items to refine the comparisons of DC and allowance area prices.

We discuss these and other adjustments in appropriate sections throughout this report.

1. Introduction

1.1 Report Objectives

This comprehensive report culminates data-gathering and research work undertaken in 1992 and 1993 as required by Task 2 of contract OPM–90–0705 between the Office of Personnel Management (OPM) and Runzheimer International. The report details the results of Runzheimer International's surveys of over 4,000 outlets to obtain more than 16,000 price quotes and the analyses of the data.

In 1990, in fulfillment of Task 1 of the contract, Runzheimer worked with OPM to design a model for estimating comparative living costs between the allowance areas and the Washington, DC, area. Task 2 of the contract required that Runzheimer apply the model by conducting living-cost surveys, analyzing the results, and developing living-cost comparative indexes. On February 26, 1991, OPM published that model and the results of the first surveys conducted under the model in the **Federal Register**. Last year, on December 10, 1992, OPM again published in the **Federal Register** the model and the results of the exercise of the first option year under the contract.

This report is the result of the exercise of the second option year under the contract. Some readers will note similarities between this and Runzheimer's previous reports. This is intended. Rather than assume a reader's familiarity with the previous reports, Runzheimer chose to present a complete, free-standing report. Thus, this document repeats the description of the model and survey process found in earlier reports.

The analyses establish the comparative cost differences between the listed allowance areas and the Washington, DC, area:

1. Anchorage, Alaska
2. Fairbanks, Alaska
3. Juneau, Alaska
4. Other Areas in Alaska (as represented by Nome, Alaska)
5. City and County of Honolulu, Hawaii
6. Hawaii County, Hawaii
7. Kauai County, Hawaii
8. Maui County, Hawaii
9. Guam and the Commonwealth of the Northern Mariana Islands (CNMI)
10. Puerto Rico
11. St. Croix, Virgin Islands
12. St. Thomas and St. John, Virgin Islands

By law, Washington, DC, is the base or "reference" area for the nonforeign area COLA program.

Under OPM regulations, federal civilian employees who have unlimited access to commissaries and post exchanges due to their employment by the government may receive a different allowance rate than other federal employees. This regulation does not apply to federal employees who have limited access or have unlimited access for other reasons—e.g., being married to active or retired military personnel.

Task 2 of the OPM contract also required Runzheimer International to calculate comparative living costs in the areas listed below and the Washington, DC, area for federal civilian employees who have access to military commissaries and post exchanges.

1. Anchorage, AK
2. Fairbanks, AK
3. City and County of Honolulu, HI
4. Guam/CNMI
5. Puerto Rico

1.2 Changes in This Year's Survey

Runzheimer and OPM added and changed some items for pricing, such as updating appliance models as old models have been discontinued and replacing one make for another where a previous brand was difficult to find. More catalog sales were included in the survey; for example, OPM requested that furniture be priced from a catalog rather than a furniture store. For Puerto Rico, automobile finance expense information, previously obtained from banks, was gathered from dealerships.

This switch facilitated the research process but did not affect data because dealerships provided the rate they receive from the bank. To enhance this year's analysis, Runzheimer and OPM also increased the amount of housing and rental data collected. Appendix 3 identifies Goods & Services, Miscellaneous Expense, and Housing Related pricing changes. Current housing data can be found in Appendix 9A and Appendix 9B. Other changes are discussed where applicable in the report.

1.3 Pricing Period

Consistent with last year's tropical-area surveys, Runzheimer collected data for the Hawaii, Guam/CNMI, Puerto Rico, and Virgin Islands allowance areas (and the Washington, DC, area) in August, September, and October of 1992, pricing most items during August. Also during August, our research associates priced durable goods, such as cars, and, in October, items such as homeowner insurance, which depend on the pricing of other items (i.e., housing).

Runzheimer collected price data for the Alaska allowance areas (and, again, the Washington, DC, area) in February 1993. As with the summer surveys, however, our research associates collected price data for items dependent upon the pricing of other items slightly later (i.e., in March and April 1993).

To ensure consistent seasonal catalog pricing, Runzheimer used spring/summer catalogs for the tropical allowance areas and fall/winter catalogs for the Alaska areas.

1.4 Living Cost Components

In accordance with federal regulations, expense components Runzheimer costed to develop analyses, comparisons, and the report were:

1. Housing and Housing Related Expenses
2. Transportation
3. Consumption Goods & Services
4. Miscellaneous Expenses

Runzheimer factored sales, excise and property taxes into the analysis where applicable. However, in keeping with previous reports, we did not factor federal, state and local income taxes into the analysis. Because income taxes significantly affect living-cost analyses, Runzheimer suggests that OPM consider researching the inclusion of income taxes in the future.

Educational opportunities vary significantly among locations in terms of availability, quality, and other factors. Runzheimer analysts and OPM officials agree that, without additional information, attempts to measure cost differences in education in the selected areas would be highly subjective and would not add to the integrity of the model. Therefore, education expense is not included in the model or surveys.

2. Overall Model

2.1 Measurement of Living-Cost Differences

The most common and most widely accepted way to measure living-cost differences between and among locations is to select representative items that people purchase in these locations and to calculate the respective cost differences, combining them according to their importance to one another (as measured by relative percentage of expense). Runzheimer applied this methodology to compare the living cost in each of the allowance areas with the living costs in the Washington, DC, area.

To move from this basic concept to computing comparative living costs between each allowance area and the Washington, DC, area, Runzheimer followed five main processes or steps:

Step 1 Identify the segment of the population for which this analysis is being targeted (i.e., the target population).

Step 2 Determine how these people spend their money.

Step 3 Select items to represent the expense categories for which these people spend their money.

Step 4 Conduct pricing surveys of the selected items in each area.

Step 5 Analyze cost ratios for the selected items and aggregate them according to the relative importance of each item.

2.1.1 Target Population: Federal Employees

Runzheimer's living-cost model measures living-cost differences for non-military federal employees having annual base salaries between $10,000 and $80,000, the salary range of the 1990 General Schedule of the Federal Government. Because living-cost differences may vary depending on an employee's income level, Runzheimer designed its analytical model to identify living costs at three income levels.

In its first report to OPM, Runzheimer used the salary distribution of all General Schedule employees as of March 31, 1990, which OPM supplied, to determine the income levels that most accurately represent the federal employee population. After analyzing the array of salary data, Runzheimer picked the midpoints of the lower, middle and upper thirds of the distribution as its three income levels ($18,000, $28,400 and $45,200 respectively).

Runzheimer applied the same income levels for this report as it did for the first. We acknowledge that one might obtain slightly different results by using current salary distributions. However, use of a new or different distribution would affect the weights employed to combine expenditures and calculate the indexes. Both Runzheimer and OPM believe that it is necessary to mitigate this effect. Therefore, neither the employment weights, derived from the salary distributions, nor the Consumer Expenditure Survey (CES) weights were changed for this year's analyses.

As noted in previous reports, Runzheimer believes that, over time, new weights should be incorporated into the computational process. The timing of such changes should be balanced against the need to stabilize results so that indexes do not fluctuate from changes in weights rather than changes in relative prices. Any change introduced by OPM should occur gradually

2.1.2 Determination of Expenditure Patterns

2.1.2.1 Source of Expenditure Data

Conforming with last year's process, Runzheimer used the "prepub" statistical reports from the 1988 CES dated February 13, 1990 (see Appendix 1) as the basis for weighting expenditure patterns. For the reasons discussed above (see section 2.1.1), Runzheimer and OPM decided not to alter these weights. However, Runzheimer recommends that OPM implement a system to enable introduction of changes in CES weights.

2.1.2.2 Income Level Adjustments

Because the CES reflected 1988 expenditure levels, Runzheimer reduced the three 1990 incomes back to 1988 levels before beginning the expenditure analysis. To calculate estimated 1988 income levels, Runzheimer used the average percentage salary increases of Federal employees for the two-year period in question as supplied by OPM officials (4.1% increase 1988–89 and 3.6% 1989–90, resulting in a 7.85% two-year increase). This adjustment reduced the 1990 income levels to estimated 1988 levels of $16,700, $26,300, and $41,900.

2.1.2.3 Family Size Considerations

A family size of 2.6 was inherent in the weighting scheme Runzheimer employed to price all allowance areas. Derived from CES research, the number represented an average for the nation

2.1.2.4 Analysis of the 1988 Consumer Expenditure Survey

From the 1988 CES, Runzheimer used the statistical report entitled "Table 2: Income before Taxes," which listed average expenditures for families earning similar incomes, organized into eight income ranges. Runzheimer analyzed these data to develop typical spending patterns for the three income profiles identified in 2.1.2.2. (The table below displays the results of the analysis.)

Seven income ranges closely matched these three income profiles:

$10,000 to $14,999
$15,000 to $19,999
$20,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 and over
All respondents combined

The 1988 CES grouped expenses into small, logical families of items. For example, the report divided money spent by families on beef into four groups: Ground beef, roast, steak and other beef. The steak and roast groupings were further separated into small clusters of items (e.g., sirloin and round steak, chuck and round roast).

Drawing on this survey of expenditure data, Runzheimer sorted the item groupings into the four main cost components specified in the OPM regulations: Consumption Goods & Services, Transportation, Housing, and Miscellaneous Expenses. Runzheimer observed that families in the lower income ranges spent more of their money, as a percentage of total expenses, on goods and services and housing than families in higher income ranges. Also, families spent approximately the same percentage of their total expenses on transportation, regardless of income. Consequently, the Miscellaneous Expense component—which includes such things as medical-care expenses, contributions, gifts to non-family members, pension funds, long-term savings and investments, and life insurance premiums—increased as a percentage of total expenses as income increased.

To develop accurate and defensible weighting patterns for the three income levels, Runzheimer performed linear regression analysis on the selected 1988 CES data.

Listed below are the results of Runzheimer's analysis for the income ranges listed on the preceding page:

COMPONENT EXPENSES EXPRESSED AS A PERCENTAGE OF TOTAL EXPENSES

Income level 1991	Income level 1988 (est.)	Goods and services (percent)	Housing (percent)	Transportation (percent)	Misc. (percent)	Total (percent)
$18,000	$16,700	39.59	24.35	20.76	15.30	100.00
28,400	26,300	39.15	23.48	20.33	17.04	100.00
45,200	41,900	38.74	22.66	19.94	18.66	100.00

Runzheimer further sorted Goods & Services into ten categories and used linear regression techniques to provide accurate ratios of renters to homeowners at each income level. Statistics on these component groupings appear later in this report.

2.2 General Formulae and Applications

An "index" is a mathematical way to compare one price (or set of data) with another. For example, if a price index for a can of green beans is 110, that means that a can of green beans costs 10% more in the pricing area (i.e., allowance area) than in the reference area (i.e., the Washington, DC area).

Runzheimer computed indexes for hundreds of items. To combine these indexes, Runzheimer applied weights from the CES that reflected the relative amount consumers normally spend on the items. For example, the price of a can of green beans has a lower weight than the price of a pound of apples because, according to the CES, people generally spend less on canned green beans than on apples.

Runzheimer employed an indexing methodology known as Laspeyres to derive total cost indexes for each of three income levels and for each costed location. As applied to living-cost research, the Laspeyres index reflects the expenditure patterns of the people in the reference area (i.e., the Washington, DC area) to weight the prices. Because detailed CES data by income level are not published for the Washington, DC area, Runzheimer used nationwide CES data to compute weights. Consequently, Runzheimer did not technically apply the Laspeyres index methodology in its pure form. Nevertheless, Runzheimer firmly believes that this nuance does not invalidate the price comparisons presented in this report.

As described in the example above and in greater detail in sections 3.2 and 6.2, Runzheimer applied the Laspeyres methodology to compute price indexes for the Goods & Services and the Miscellaneous Expenses components, respectively. For the Transportation and the Housing components, Runzheimer used a combination of a cost-build-up approach and the Laspeyres methodology to compute component indexes.

In conformance with § 591.205(c), title 5, Code of Federal Regulations, Runzheimer followed a five-step process to derive the overall total indexes for each allowance area. First, Runzheimer used the CES data and the income ranges described in section 2.1.2.4 above to derive the amount of money consumers typically spend on each component at each income level. These amounts appear in the table below and in Appendix 13.

TYPICAL CONSUMER EXPENDITURES BY INCOME LEVEL AND COMPONENT

Income level	Goods and services	Own/rent	Transportation	Misc.	Total
Lower	$7,126	$4,383	$3,737	$2,754	$18,000
Middle	11,119	6,668	5,774	4,839	28,400
Upper	17,510	10,242	9,013	8,434	45,200

Note: Values may not total because of rounding.

Second, for each allowance area, Runzheimer multiplied the values above by the component indexes for the allowance area. Because the Housing component consisted of two indexes (one for owners and another for renters), we produced two sets of total relative costs—one for owners and another for renters.

Third, for each allowance area and income level, Runzheimer combined the total relative costs for owners and renters using the proportion of owners and renters as identified in the CES to weight the costs. (See section 4.2.1.) This produced an overall, average, relative living cost at each income level in each allowance area.

Fourth, for each allowance area, the overall, average relative costs by income level were combined using federal employment weights based on the employment at each income level in the allowance area. Applying the same allowance-area employment weights, Runzheimer computed an overall, average cost for the reference area.

The last step was to divide the overall, average relative cost for the allowance area by the overall, average cost for the reference area to produce the final index. (See Appendix 13 for the calculations for each index.)

2.3 Data Collection Process

As noted earlier, Runzheimer obtained price information on over 16,000 items from over 4,000 outlets. To accomplish this important research effort, we selected the most efficient and effective information-gathering approaches possible. This section describes the various approaches.

2.3.1 In-House Research Staff

Runzheimer research personnel at its corporate headquarters in Rochester, Wisconsin, played a major role in all data-collection activities. These professionals:

- Contacted manufacturers, trade associations, governmental agencies, and retail establishments to ensure that suitable items were selected and priced;
- Contacted professionals in the real estate business in each of the costed locations to obtain general information as well as specific rental rates and home market values;
- Conducted pricing surveys on site and by telephone for many items;
- Served as a liaison for field researchers;
- Performed hundreds of quality control checks in conformance with editing rules communicated by Runzheimer to OPM once the data had been collected (these checks often involved verification of the survey data through telephone calls as well as comparing current data-gathering results with those from the 1991–1992 survey); and
- Analyzed and computed the category, component and total comparative cost indexes.

2.3.2 Field Researchers—"Research Associates"

Collection of most price data was best accomplished through personal visits to retail outlets (e.g., grocery, clothing, automobiles). For these activities, Runzheimer hired residents of each allowance area as independent contractors ("research associates"). For years, when measuring living costs for its clients, Runzheimer has applied this approach to data collection in over 80 countries worldwide.

To avoid any real or perceived conflicts of interest, Runzheimer did not hire persons as research associates who were either employees of the federal government, or who had immediate family who were employees of the federal government.

2.3.3 On-site Visits by Runzheimer Research Personnel

Full-time Runzheimer research professionals travelled to selected allowance areas to supervise data-collection activities and perform various quality-control checks on the data as necessary. Each such visit occurred during the pricing period.

The researchers visited living communities within the allowance areas to look at housing accommodations personally and to talk with local real estate professionals. They also visited numerous retail outlets to verify item quality, selection and price levels in general.

In addition, these researchers met with Runzheimer's research associate(s) to answer any data-collection questions and to provide any additional training and instruction as necessary.

2.4 Editing and Quality Control Procedures

Runzheimer's experience in measuring living-cost differences enabled us to establish editing and quality-control procedures at all stages of collecting and analyzing data. All data provided by research associates were manually reviewed by analysts prior to being entered into Runzheimer's computer system. Data elements were subsequently checked through software programs.

Federal regulations in § 591.205(b)(1)(i), title 5, Code of Federal Regulations, state that, "Whenever possible, exact brands and models are priced in each location." Every effort was made to satisfy this objective. (See section 3.3 for a discussion of brand and model selection.) Nevertheless, in a number of the allowance areas, the exact brands and models were either not readily available or not available at all. In these instances, editing decisions and substitutions were needed.

Runzheimer defines "editing" as the removal and/or replacement of a price quote based on consistent and logical criteria. In all areas, Runzheimer was concerned that items of lesser (or greater) quality than the item specified might inadvertently be included in the analysis and bias the results. Therefore, any price quote that varied significantly from other price quotes for the item was flagged, verified, and, if necessary, eliminated from the analysis.

Removing an item from a location analysis causes redistribution of its weight to other items in its subcategory (or category when no subcategory exists). Consequently, whenever possible, Runzheimer avoided removing an unpriced item from a location analysis. When the review process revealed a missing price for an item, Runzheimer resurveyed to obtain a price wherever possible.

2.5 Pricing Surveys in Puerto Rico

Through federal employment distribution data provided by OPM, Runzheimer determined that 70% of the non-military federal personnel employed in Puerto Rico work at facilities within 10 miles of the city of San Juan. The remaining 30% is distributed throughout Puerto Rico without a particular concentration. However, most of these remaining employees generally appear to live closer to Mayaguez than any other large Puerto Rican city. Therefore, with OPM's approval, Runzheimer surveyed Mayaguez in addition to San Juan for the 1992–1993 study. To combine the prices from both cities, Runzheimer used a 70% San Juan, 30% Mayaguez weighting.

Mayaguez has few rental properties and scant home sales activity. Consequently, at the request of OPM, Runzheimer conducted a preliminary assessment of Ponce, PR, to determine whether it might serve as a substitute community to survey in place of Mayaguez.

Runzheimer researchers found that the amount of data on rentals and home sales was comparable in both communities. Therefore, replacing Mayaguez with Ponce will not improve the quality of the data for the area.

2.6 Pricing Surveys in Hawaii County

OPM provided similar employment data for Hawaii County. Federal employment distribution data revealed that 80% of the non-military federal personnel work in the Hilo area, and the remaining 20% in the Kailua Kona area. Thus, to combine prices from both cities, Runzheimer used an 80% Hilo, 20% Kailua Kona weighting.

2.7 Surveying the Washington, DC, Area

OPM defined the Washington, DC, area in the federal regulations as the Washington, DC–MD–VA Metropolitan Statistical Area. Because federal employees who work in this area reside in Virginia, in Maryland, and in the District of Columbia, Runzheimer selected retail outlets and living communities from all three. Runzheimer's model gave equal weight to the average prices in each geographic area.

Because of the size and diversity of the Washington, DC, area, Runzheimer conducted substantially more pricing surveys there than in other areas. For the Goods & Services component, Runzheimer generally surveyed to obtain six times as many price quotes in the Washington, DC, area as in the typical allowance area. For the Housing, Transportation and Miscellaneous Expense components, data collection was generally triple that of the typical allowance area.

3. Consumption Goods and Services

3.1 Component Overview

Based on the CES data, the Goods & Services component consisted of ten categories of family expense:

Food at Home
Food Away from Home
Tobacco
Alcohol
Furnishings & Household Operations
Clothing
Domestic Services
Professional Services
Personal Care
Recreation

To aid in quality control and analysis of future pricings, Runzheimer further subdivided four of the largest categories—food at home, furnishings and household operations, clothing, and recreation—into subcategories. Specific examples of products and services from these four subdivided categories can be found below. These examples only represent a minor portion of the total number of items (products and services) Runzheimer priced within each subdivided category. (See Appendix 2 for a complete description of all marketbasket items.)

EXAMPLES OF SUBCATEGORIES AND ITEMS SURVEYED IN THE FOUR MAJOR GOODS AND SERVICES CATEGORIES

Goods and services category	Subcategories and items surveyed (examples)		
Food at Home	Meats	Cereals and Breads	Groceries.
	Pork Chops	Cookies	Coffee.
	Whole Chicken	Spaghetti	Ketchup.
	Ground Beef	Cake	Margarine.
	Dairy	Fruits and Vegetables	
	Milk	Apples	
	Cheddar Cheese	Frozen Peas	
		Fresh Oranges	
Furnishings and Household Operations .	Services	Furniture	Misc. Household Eqpt.
	Appliance Repair	Living Room Chair	Hammer.
	Supplies	Major Appliances	Electric Drill.
	Toilet Tissue	Kitchen Range	Snow Blower.[1]
	Laundry Soap	Refrigerator	Lawn Trimmer.[2]
	Household Textiles	Housewares and Small Appliance	
	Bath Towel	Two-slice Toaster	
Clothing	Men's and Boy's	Infant's	
	Boy's Jeans	Disposable Diapers	
	Man's Jeans	Footwear	
	Man's Parka[1]	Man's Shoes	
	Women's and Girl's	Apparel Products and Services	
	Woman's Slacks	Coin Laundry	
	Girl's Blouse		
	Girl's Jeans		
Recreation	Fees and Admissions	TV, Radio and Eqpt.	Entertainment.
	Bowling	Video Rental	All Terrain Vehicle.[1]
	Golf[2]	Pets	Board Game.
	Downhill Skiing[1]	Pet Food	Reading.
			Magazine.

[1] Priced in Alaska and Washington, DC, area only.
[2] Priced in tropical areas and Washington, DC, area only.

From its ten categories of expense (which include the four subdivided categories above), Runzheimer selected a marketbasket of items on which to base its goods and services analysis. A *marketbasket* is a selected group of products and services that represent hundreds or even thousands of other items. Pricing every item available to consumers in a given locale would be unnecessary and inefficient.

Runzheimer selected typically purchased items and weighted these according to their relative importance in terms of consumer expenditure patterns. Each marketbasket item represented a specific group of related expense items. Using CES data, we determined the relative importance (weight) of each item. We compared the average price of each marketbasket item in each allowance area with the average price in the Washington, DC, area. The price differences (expressed as indexes) were aggregated based on the item, subcategory and category weightings, resulting in a total Goods & Services component index at each income level.

Marketbaskets were slightly different among allowance areas to reflect regional purchasing patterns more closely. For example, insulated underwear is priced for the Alaska survey while undershirts are priced for the tropical area survey. However, goods and services price comparisons between an allowance area and the Washington, DC, area always used the same marketbasket. Therefore, while it may not be appropriate to compare living costs among allowance areas, all comparisons between an allowance area and the DC, area are valid.

In 1991, OPM directed Runzheimer to include catalog pricing (including applicable shipping costs) to reflect this common purchasing option in allowance areas. OPM identified items to survey based on comments received on the 1990 survey. Runzheimer identified items to survey that were either unavailable or difficult to find in each allowance area. Together, OPM and Runzheimer agreed to survey five marketbasket items by catalog. This year, OPM asked Runzheimer to survey an additional three items by catalog; for example, furniture was priced by catalog. This year too, Runzheimer found that the cost to ship certain catalog items to Guam varied between catalog outlets, so OPM concurred in pricing a private freight company that specializes in shipments to Guam for shipping costs.

In each allowance area (except Puerto Rico and Hawaii County), Runzheimer generally requested three price quotes for each item (and sometimes more than three) from the local economy—one from each of three different outlets. In Puerto Rico, Runzheimer doubled the sample size by obtaining three price quotes for each item in both the San Juan and Mayaguez areas. Likewise in Hawaii County, Runzheimer doubled the sample size by obtaining three price quotes for each item in both Hilo and Kailua Kona.

3.2 Marketbasket Research

3.2.1 Expenditure Research—Category Weightings

Runzheimer tabulated the expense data from the 1988 Consumer Expenditure Survey according to the ten categories of goods and services. As in the component analysis, Runzheimer used the expense data from the seven most appropriate income ranges as input into a linear regression analysis. From that analysis, Runzheimer calculated the category weightings for each income level as listed below:

CATEGORY WEIGHTINGS EXPRESSED AS A PERCENTAGE

Category	Lower	Middle	Upper
Food at Home ..	25.52	22.38	19.35
Food Away from Home	15.95	16.09	16.23
Tobacco	3.13	2.54	1.96
Alcohol	2.92	2.79	2.67
Furnishings & Hsld. Op.	14.35	15.95	17.49
Clothing	14.24	14.93	15.59
Domestic Service	1.76	1.79	1.81
Professional Services	5.77	5.84	5.91
Personal Care ..	3.57	3.47	3.38
Recreation	12.77	14.22	15.61
Totals	100.00	100.00	100.0

3.2.2 Expenditure Research—Subcategory and Item Weightings

Runzheimer also drew upon the expense data from the 1988 CES to determine proper subcategory and item weightings and to identify marketbasket items. Logical groupings of family expenditures provided the basis for subcategory and item weights. Unlike category weightings, which vary by income level, subcategory and item weightings are computed from national aggregate expenditures only (i.e., all three income levels used the same set of subcategory and item weightings) as this approach is most common in similar public and private sector cost-of-living analyses.

Runzheimer's expenditure research process included procedures to ensure that no marketbasket item had an overwhelmingly large or insignificantly small item weighting.

3.3 Marketbasket Item Specifications

From each logical expense grouping, Runzheimer selected one or more marketbasket items to represent all items in the grouping. When selecting specific items for the marketbasket, Runzheimer worked to satisfy these three criteria:

- Items should be readily available in all locations if possible or should be items of local significance (e.g., snow blower).
- Item price levels should logically represent the price levels of unselected items in the "logical grouping."
- Items should have the same or nearly the same application in all locations.

Appendix 2 lists Runzheimer's marketbasket items. Once an item was selected, Runzheimer's research analysts identified the specific brand and/or model/size of each item available in all (or most) locations. For some items, this involved contacting manufacturers, trade associations, retail establishments, etc. For other items, isolating specifications was quite straight forward because of their nature (e.g., bread, sirloin steak, nonprescription pain reliever). Appendix 3 identifies changes in the current items selected for pricing in the Goods & Services, Miscellaneous Expense, and Housing Related categories, along with explanation for the changes.

3.3.1 Exchange and Commissary Expenditure Research

Runzheimer used the same marketbasket items to price commissaries and exchanges as were used for the local pricings. We obtained one price quote for marketbasket items found in these facilities.

Runzheimer did not assume that people with access to military facilities made all purchases in these facilities. Instead, we used OPM's 1980 Living Pattern Survey of federal employees to determine the percentage of purchases that families typically make in military facilities versus local outlets. For example, as the following table shows, in Fairbanks, 61.3% of Food at Home is purchased at a PX or commissary. These percentages were used to aggregate the local and commissary/exchange prices into one set of appropriate, blended prices. (The blended prices were compared to the local prices in the Washington, DC., area just as each allowance area's local prices were.)

PERCENTAGES OF PURCHASES MADE AT PX/COMMISSARIES

Category	Allowance area				
	Fairbanks	Anchorage	Guam	Honolulu	San Juan
Food at home	61.3	66.2	70.0	52.7	29.1
Food away	0.0	0.0	0.0	0.0	0.0
Tobacco	81.0	71.0	64.0	84.0	65.0

PERCENTAGES OF PURCHASES MADE AT PX/COMMISSARIES—Continued

Category	Allowance area				
	Fairbanks	Anchorage	Guam	Honolulu	San Juan
Alcohol	59.0	47.0	76.0	73.0	64.0
Furniture and household operations	46.2	44.3	64.5	44.2	32.7
Clothing	17.3	18.3	43.7	34.0	10.7
Domestic service	0.0	0.0	0.0	0.0	0.0
Professional services	0.0	0.0	0.0	0.0	0.0
Personal care	59.5	36.0	49.3	33.3	7.3
Recreation	49.7	33.7	49.7	32.7	15.7

3.4 Goods and Services Data Collection Procedures

3.4.1 Data Collection Materials

The living-cost surveys conform with the provisions of the Paperwork Reduction Act and are approved by the Office of Management and Budget (OMB).

Runzheimer collected data with OMB-approved data collection materials (see Appendix 5). All Runzheimer-developed worksheets conformed to the OMB-approved materials.

3.4.2 Outlet Selection

Proper outlet selection is crucial to measuring living-cost differences accurately because misjudgment can seriously affect survey results. Runzheimer paid particular attention to choosing appropriate outlets, focusing on three key guidelines to ensure proper outlet selection.

First, for areas that had numerous outlets from which to choose, Runzheimer identified targets in several different geographic areas. For example, in the Washington, DC., area, Runzheimer selected outlets in and around six different geographic areas; that is, two areas in Virginia, two in Maryland and two in the District of Columbia.

Runzheimer's second guideline was that for any one marketbasket item, all outlets be similar in type. For example, Runzheimer surveyed two of the three food items in full-service grocery stores and the third food item in a warehouse-type grocery store in all locations. Gathering prices from all warehouse-type stores in one location and all full-service grocery stores in another would have distorted price comparisons.

The last guideline involved the diversity of outlets in Runzheimer's sample. We believe that pricing different items in different types of outlets more accurately portrays living-cost differences. For example, for efficiency, Runzheimer could have priced all clothing items in department stores. However, to incorporate price levels at other types of outlets that sell clothing items, whenever possible, Runzheimer surveyed some items in men's and women's clothing stores, some items in department stores, other items in shoe stores and still other items in discount department stores.

Runzheimer's research analysts selected outlets on the basis of:

- Personal experience of Runzheimer on-site research associates and travelling researchers;
- Informal telephone interviews with knowledgeable residents in each area;
- Yellow pages sections of area telephone books;
- Area chambers of commerce and information bureaus; and
- Experience gained from other surveys conducted by Runzheimer.

With new businesses constantly appearing (and old ones disappearing), outlet selection will be an ongoing process. Also, one can expect a portion of outlets to refuse to participate every year. Therefore, updating Runzheimer's outlet sample is a necessary and important part of each pricing survey.

3.4.3 Special Considerations in Guam and Kauai

Guam and Kauai suffered serious damage from Typhoon Omar and Hurricane Iniki, respectively. In both areas, Runzheimer officials worked with local research associates to determine the impact of the storm on local prices. Also, a Runzheimer researcher from the headquarters office traveled to Guam and Hawaii to gather information first hand. (Local emergency management officials limited travel to Kauai, so the Runzheimer researcher was unable to visit that island.)

Runzheimer found that in both areas retail outlets generally did not take advantage of the disaster situation and raise prices significantly in the short-term. Therefore, Runzheimer believes that the survey data obtained before and after these storms are reasonable estimates for the pricing period and are complete.

This is not to say that the storms had no effect on the local economies. Indeed, Runzheimer believes that longer term changes in prices may occur and recommends that prices in these two areas be re-examined carefully. This will assist OPM in determining whether there have been significant longer-term changes in the local economies.

3.5 Inclusion of Sales and Excise Taxes

For all items subject to sales tax, the appropriate amount of tax was added prior to analysis. Runzheimer also included all applicable sales, property and excise taxes to items that were part of other living-cost components. For example, automobile purchase costs in Puerto Rico include an excise tax based upon vehicle type and dealer's acquisition cost. Runzheimer included this tax in computing the total purchase price of a vehicle in Puerto Rico. (See sections 5.2.1 and 5.2.7.)

Runzheimer gathered applicable information on taxes by contacting appropriate sources of information in the allowance areas, such as the Excise Tax Officer of the St. Thomas Bureau of Internal Revenue. Runzheimer also drew upon appropriate tax publications, such as the State of Maryland's Sales and Use Tax Laws and Regulations, the "General Excise Tax Law" (Chapter 237) of the Hawaii Tax Reports, and the Uniform Sales Tax, "Ordinance Section 69.05," of the City/Borough of Juneau.

3.6 Goods and Services Survey Results

In section 2.2 of this report, Runzheimer presented a detailed explanation of the economic model used to analyze the price data. As it applies to Goods & Services, the approach involved comparing the average prices of marketbasket items in each allowance area with those in the Washington, DC, area. The resulting price ratios were aggregated into subcategory and then category indexes using the expenditure weightings derived from the 1988 CES.

In the area of professional services (accountant and legal fees), Runzheimer and OPM noted the existence of a relatively few extreme values that were either exceptionally low or high cost. In situations such as this, statisticians

frequently use the median or trim the data in some manner to enhance reliability. Consequently, Runzheimer recommended that the observations be ranked from low to high and that the top and bottom 20 percent of the observations be "trimmed" (i.e., eliminated) from the data before averages or trends were calculated. (Data were not trimmed if there were four or fewer observations.) OPM agreed. These procedures reduce the influence of anomalies and make survey results more stable from one year to the next.

Appendix 4 contains tables showing the ten category indexes, the three weighting patterns, and the three total consumption Goods & Services indexes for each allowance area. The Washington, DC, area does not require a table because it is, by definition, "the reference location" where all category and component indexes equal 100.

4. Housing

4.1 Component Overview

The Housing component consists of expenses related to owning or renting a dwelling. These include:

- Mortgage or rent payments,
- Utilities,
- Real estate taxes,
- Homeowner's or renter's insurance,
- Home maintenance, and
- Telephone.

At each of the three income levels, Runzheimer measured annual housing costs under the two main housing categories: ownership and rental.

4.2 Housing Model

4.2.1 Expenditure Research

Section 2.1.2.4 describes how Runzheimer analyzed the 1988 CES to identify the portion of expenses attributable to each of the four components. Runzheimer also used this survey to determine the national average ratio of families who own, as opposed to rent, their residences. Using the expense data from the seven most appropriate income ranges as input into a linear regression analysis, Runzheimer calculated own and rent weights:

OWN/RENT WEIGHTINGS

Category	Income levels		
	Lower (percent)	Middle (percent)	Upper (percent)
Homeowner[1]	37.10	46.91	62.86
Renter	62.90	53.09	37.14
Totals	100.00	100.00	100.00

[1] With mortgage.

Runzheimer excluded expenditure data for homeowning families without a mortgage because they were not typical of homeowners in the base area or in the allowance areas with the largest concentrations of federal employees.

The 1988 CES was also used to identify which home-maintenance items to price and to establish the relative importance of those items.

4.2.2 Development of Housing Profiles

To compare housing costs accurately in all locations, Runzheimer constructed a model to measure housing costs under six different circumstances; that is, we identified six typical housing profiles and matched these profiles to three income levels, as shown in the table below. Runzheimer and OPM agreed that at least one criterion for the owner profile should be the square footage of the home and at least one criterion for the renter profile should be the number of bedrooms in the rental unit. The profiles for homeowners and renters are:

HOUSING PROFILES

Income level	Renter profile	Owner profile
Lower	3–1–1 600[1] sq. ft. apt.	4–2–1 900 sq. ft. Condo or detached house.
Middle	4–2–1 900 sq. ft. apt.	5–3–1.5 1,300 sq. ft. detached house.[2]
Upper	4–2–2 or 5–3–2 1,100 sq. ft. townhouse or detached house.	7–3–2 1,700 sq. ft. detached house.

[1] Defined as "Total rooms—Bedrooms—Baths and representative size." Total rooms excludes bathrooms, hallways, entrance areas, and closets but includes bedrooms, living room, family room, kitchen, formal dining room, and den/study. The representative size is roughly the midpoint size for the range of housing surveyed at the income level.

[2] Row houses may be used in Northeast Washington, DC, where the availability of single family detached homes is limited.

4.2.3 Living Community Selection

Runzheimer surveyed the same living communities for the 1992–1993 survey as it did for the 1991–1992 study. However, for the winter survey, Runzheimer gathered rental data for all of Juneau, not just West Juneau and the Mendenhall Valley as in previous surveys, because rentals were found to be scarce overall. This added effort ensured more accurate rental pricing.

To gather data, our researchers contacted real estate brokers, residential appraisers and other knowledgeable real estate professionals in each area to obtain information on the predominant age(s), size(s) and type(s) of housing in various communities and housing subdivisions. When available and appropriate, Runzheimer identified at least six communities (two at each income level) in each allowance area. However, this goal was not achievable in some of the smaller allowance areas. For the Washington, DC, area, Runzheimer selected at least nine communities (three at each income level) in which to gather renter and homeowner data.

A table of living communities used for pricing can be ground in Appendix 6.

4.2.4 Identification and Quantification of Housing-Related Expenses

From the 1988 CES, Runzheimer identified and categorized housing-related expense items into one of five groups:

- Utilities,
- Real estate taxes,
- Owners/renters insurance,
- Maintenance, and
- Telephone.

4.2.4.1 *Utilities*

For this study, Runzheimer classified electric, heat (oil or gas), water and sewer as utilities. Although most utility companies had ready access to current charges per unit of consumption and average consumption patterns for all households, very few (if any) separated consumption patterns by number of family members in a household or by size/type of accommodation.

Runzheimer focused on average annual consumption experience per household, gathering this information from utility companies serving each allowance area and the Washington, DC, area. Combining this consumption data with current utility rates, Runzheimer computed average annual utility costs for each of electric, gas or oil (whichever Runzheimer found to be more widely used, if used at all), water and sewer. Runzheimer then assigned this average consumption pattern to the homeowner profile at the middle income level.

Because some utility costs vary by size of house and yard, Runzheimer calculated a multiplier consistent with the standard home sizes to arrive at utility rates for the other five profiles. The table below shows the standard sizes and utility factors for each profile. The standard sizes roughly equate to the reference size of each profile. The formula to calculate each multiplier was:

Multiplier=1+(.5×(Standard square feet−1300)/1300)

The resulting utility multipliers are:

UTILITY MULTIPLIERS

Income level	Renter profile		Owner profile	
	Square feet	Multiplier	Square feet	Multiplier
Lower	600	.73	900	.85
Middle	900	.85	1,300	1.00
Upper	1,100	.92	1,700	1.15

4.2.4.2 *Real Estate Taxes*

For this study, Runzheimer contacted the city assessor in each allowance area to obtain real estate tax information on the selected living communities. (See Appendix 6 for a listing of the communities.) Real estate tax formulas were obtained for most living communities; however, Runzheimer's researchers found that in San Juan, PR, the formulas do not always translate into the actual taxes paid by typical property owners.

Therefore, in San Juan, Runzheimer undertook a comparative study of current actual taxes paid by homeowners and their current home values. Runzheimer then developed an average ratio for taxes paid to current home values. This ratio was applied to the average home value in that community to obtain an average real estate tax amount for the desired homeowner profile.

4.2.4.3 *Owners/Renters Insurance*

As it did for previous surveys, Runzheimer undertook to gather insurance-rate information for the allowance areas for both renter and owner profiles. These rates represent coverage for structure and contents for homeowners but contents only for renters.

In Guam, however, insurance professionals told Runzheimer that, at the time of conducting the survey, Typhoon Omar had caused insurance companies to issue a "moratorium" on issuing new policies. Consequently, for this single tropical allowance area, Runzheimer developed an average ratio of insurance paid to current home values, using data from the 1991 survey. This ratio was then applied to the 1992 average home value by income level in Guam to obtain an average insurance premium amount for the desired homeowner profile.

Previous research conducted by Runzheimer, at the request of OPM, found that insurance coverage for disasters, such as floods and earthquakes, is not prevalent in the allowance areas; consequently, Runzheimer, with the concurrence of OPM, does not consider these additional riders. (See *Report to OPM on Living Costs in Selected NonForeign Areas and in the Washington-DC, Area*, June 1992.) Runzheimer notes, however, that OPM is reviewing the results on the Federal Employee Housing and Living Patterns Survey as they apply to this issue.

4.2.4.4 *Maintenance*

Many factors were involved in measuring the cost of maintaining a home, including area climate, architecture and building materials, and the cost of maintenance materials and labor. As it did for the previous survey, Runzheimer priced such household maintenance commodities as fire extinguisher, bathroom caulking and kitchen faucet. Pest control service was priced in every allowance area except Nome, Alaska, where local sources indicated it wasn't necessary.

Runzheimer developed maintenance costs based on the cost of maintenance materials and labor rates in each area. Runzheimer's approach to maintenance was the same as the approach to goods and services, as explained below.

Runzheimer used expenditure data from the 1988 CES to identify the national average home-maintenance expense, the maintenance items to survey, and the appropriate item weighting. Because most, if not all, maintenance items were included in rent, maintenance costs were not added in the three renter profiles.

To compute home-maintenance cost differences between each allowance area and the Washington, DC, area for the homeowner profiles, Runzheimer obtained prices for selected building materials and labor rates for maintenance work. For each area, Runzheimer computed the relative cost (i.e., an index) for each maintenance item compared to the cost of that item in the D.C. area. As with Goods & Services, the results of the nationwide CES were used to weight these maintenance indexes into an overall index for each area.

To combine maintenance indexes with the other homeowner costs, which were expressed in dollar amounts, Runzheimer converted the indexes to dollars. To do this, Runzheimer multiplied the maintenance cost index for each area by the CES nationwide average maintenance cost and assigned that cost to the middle-income homeowner profile.

Logically, maintenance costs for larger homes would be greater than costs for middle-sized homes, while costs for smaller homes would be less. Therefore, in this study, Runzheimer applied the same homeowner multipliers used in the utilities model for the lower and upper income profiles (.85 and 1.15 respectively) to recognize differences in maintenance costs due to house size.

4.2.4.5 *Telephone*

Telephone expenses consisted of local service charges, possible additional charges for local calls, and charges for long distance calls. To measure estimated expenses for local service and local calls, where available, Runzheimer surveyed the cost of touch-tone service with unlimited calling. (In Mayaguez, 120 local calls per month was used because unlimited calling was not available.)

To estimate long distance charges in all areas, Runzheimer surveyed the cost of three ten-minute direct dial calls per month to large U.S. mainland cities (i.e., Los Angeles, Chicago, and New York City). Runzheimer measured the price of a call placed in the survey area at the time of day necessary to be received in the respective city at 8 p.m. local time. In many areas, this resulted in pricing a combination of daytime and evening-rate calls.

4.3 Housing Data Collection Procedures

As was done in previous years, Runzheimer collected housing information from a variety of sources. Also as in previous years, Runzheimer research personnel traveled to profiled communities in the allowance areas to observe first hand the comparability of homes in one area versus another and the appropriateness of individual housing units for the profiled income level.

This year, OPM modified the contract to require several additional steps to increase the quantity and quality of housing data collected. These extra steps included purchasing data from additional real estate listing services, making greater use of assessor's records

when other data were not available, and contacting more real estate professionals to obtain additional home sales, rental data, and market trend information. These efforts were successful, and significantly more information was obtained in many areas.

4.3.1 Homeowner Data Collection

In the homeowner data-gathering phase, Runzheimer obtained sale prices of homes (called "comparable sales") in the area that matched the housing profiles. In the communities that were identified (see section 4.2.3), Runzheimer tried to obtain all the comparable sales during the 6-month period prior to the date of the survey. For the surveys conducted during the summer of 1992, the home sales pricing period was January 1992 through July 1992. For the winter surveys, the pricing period was July 1992 through February 1993.

As was done last year, Runzheimer contacted knowledgeable and helpful real estate professionals in each location and/or used real estate sales data and listing services. The amount of data obtained depended on the number of home sales in the community and the availability of square footage and other information. This in turn depended on the size of the community, the economic conditions, the quality and quantity of the realty data available, and the willingness and ability of local realty professionals and assessor offices to provide data. If the comparable sales data obtained from the first data sources were insufficient, Runzheimer contacted additional data sources in the area to attempt to secure more sales data, if practical.

4.3.2 Renter Data Collection

In some cases, the same realtors and brokers who assisted in our profiling phase were very active in the rental markets as well. When this occurred, Runzheimer obtained current rental rates and fees for our profiled apartments, townhouses and houses from these sources.

Runzheimer also contacted rental management firms that operated apartment complexes matching the profile specifications. In large metropolitan areas, such as the Washington, DC, area where rental complexes abound, our housing analysts conducted telephone surveys to obtain current rental information.

As noted earlier, OPM modified the contract this year to expand the level of effort that Runzheimer expended in the collection of housing data. The result was a marked increase in the quantity of housing data collected for both rentals and sales.

Rental data were obtained from a variety of sources, e.g., brokers, property managers, newspaper advertisements, and other listings. Analyses of these data revealed what appeared to be two separate rental markets—a broker market and a non-broker market. Rental rates and estimates provided by brokers generally exceeded those obtained from other sources.

In each area, the quantity of data obtained from either source-type varied significantly. Therefore, analyzing all of the rental data (both broker and non-broker) together for an area and income level was undesirable. Because OPM has no information on how federal employees who rent generally secure their lodgings, OPM requested that Runzheimer apply equal weights to the broker and non-broker data to compute the overall average rental rate for the area and income level. (See Appendix 9B.)

4.4 *Housing Analysis*

4.4.1 Homeowner Data Analysis

One of the most important factors relating to the price of a home is the number of square feet of living space. For each income profile in each allowance area and the Washington, DC, area, Runzheimer computed that average price per square foot for the comparables. Except as noted below, Runzheimer used this value times the reference square footage for the profile to determine the average home value for the profile.

Runzheimer experienced difficulties in obtaining housing data in some areas. For example, despite several efforts to obtain more detailed information from various sources, Runzheimer was able to obtain very few comparable sales with square footage information for home sales in Guam and Mayaguez.

4.4.1.1 *Data Trimming*

Based on experience from the previous home-pricing surveys, OPM modified the living-cost model as it applied to the analysis of housing data. The modifications allow the use of housing costs trend data as well as current housing costs in the analysis of owner and renter living costs. These analyses are consistent with § 591.205(b)(3) of title 5, Code of Federal Regulations, and result in improved housing data results.

One of the modifications involves "trimming" the observations. In past surveys, Runzheimer and OPM noted that a relatively few extreme values (values that were either exceptionally low or high cost) could have a significant influence on the average housing costs observed at an income level within an area. Including these extreme values had the potential to cause results to vary erratically from one year to the next and create market fluctuations atypical of the area.

In situations such as this, statisticians frequently use the median or trim the data in some manner to reduce its volatility. The use of the median home value was not desirable because some areas had relatively sparse data at one or more income levels. This could make the median unstable from one year to the next.

Runzheimer recommended that the observations be ranked from low to high on the basis of the cost per square foot and that the top and bottom 20 percent of the observations be "trimmed" (i.e., eliminated) from the data before averages or trends were calculated. (Data were not trimmed if there were four or fewer observations.) OPM agreed. These procedures reduce the influence of home sales anomalies and make survey results more stable from one year to the next.

4.4.1.2 *Special Considerations*

The new procedures also involved analyzing data in a more thorough and integrated manner. The procedures required analyzing the current housing survey data, analyzing the trends observed when these data were compared with the previous survey's data, and comparing these trends with the views obtained from real estate professionals in the area. How and which data were used depended on the quality and quantity of data collected and how the trends observed agreed among income levels and with the views of local real estate professionals. These procedures are discussed below.

Runzheimer sought to gather all of the appropriate comparable sales data available in each area. As a minimum, Runzheimer sought to obtain 10 realtor sales per community per income level or 20 per income level per area. In many areas, the sales data exceed the minimum.

If the minimum number could not be obtained or if highly divergent trend data were observed among income levels in the area or as compared with the views of local real estate professionals, additional analyses were performed. These analyses were:

1. If the current data were significantly better than the previous data (e.g., greater in quantity or more consistent), the current data were used to the extent practical.

2. If at least three observations at each income level were available, and the previous data were better than the current data or the previous and current data were of equivalent quality, the change (i.e., trend) in the average price was used to update the previous data. This was done using one of the following procedures, depending on the situation:

a. If data problems occurred at one income level only, the average rate of change at the other two income levels was used to adjust the previous prices for the affected income level.

b. If data problems occurred in two income levels, the rate of change observed at the non-problem income level was used to adjust the previous prices for the two affected income levels.

c. If data problems occurred at all income levels, the average rate of change observed at all three income levels was used to adjust the previous prices at all income levels.

3. If fewer than three observations were available at any income level and/or the data quality was questionable at all levels, all three levels of current and previous survey data were merged. These data were then analyzed by applying the procedures described in section 4.4.1 above to each set of merged data, and the average cost per square foot was computed for each set of data and compared to estimate the overall change in the area. This overall change was applied to the previous average costs by income level to determine the current costs at each income level for the area.

The areas for which these procedures were applied and the calculations used are found in Appendix 9A.

4.4.2 Rental Data Analysis

Runzheimer assigned each rental quote data point to a single income level, based on these criteria:

- Assign one bedroom apartments to the lower income level.
- Assign two bedroom apartments to the middle income level.
- Assign townhouses and detached houses with a minimum of two bedrooms to the upper income level.

4.4.2.1 *Data Trimming and Special Analyses*

In the analysis of rental data, Runzheimer applied the same procedures used to trim the homes sales data (see section 4.4.1.1) except that data were ranked on the basis of monthly rental rates, not cost per square foot. Also, as with home sales analyses, special analyses were applied to rental data when the data were sparse or highly divergent trends were observed among income levels. These analyses were the same as those applied to home sales data (see section 4.4.1.2) except that if data were merged, overall estimates were based on monthly rental rates, not the cost per square foot. (See Appendix 9B for these analyses.)

4.4.3 Analysis of Housing-Related Expenses

Because section 4.2.4 covers the identification and quantification of housing-related expenses, these topics are not repeated here.

However, it should be noted that Runzheimer incorporated home sale prices from this study into the calculations of real estate taxes and homeowner's insurance, which depend upon the value of the home.

4.5 Housing Survey Results

In the above sections, Runzheimer describes how it measured the costs for maintenance, insurance, utilities, real estate taxes, rents, and homeowner mortgages. Appendix 7 shows the cost of each of these items, for renters and homeowners separately, in each allowance area and in the Washington, DC, area. For the Puerto Rico allowance area, the costs are shown separately for Mayaguez and San Juan. Likewise, for the Hawaii County allowance area, the costs are shown separately for Hilo and Kailua Kona.

Appendix 8 compares the total cost of these items in each allowance area with the total cost of the same items in the Washington, DC, area. Again, there are separate comparisons for renters and homeowners.

The final housing-cost comparisons take the form of indexes that are used in Appendix 13 to derive the total, overall index for owners and renters. (Refer to section 2.2 for a discussion of the general formulas and how the component indexes are combined.)

5. Transportation

5.1 Component Overview

The Transportation component consisted of expenses related to private and public transportation. The private transportation category contained expenses related to owning and operating a vehicle in each area. The public transportation category focused on the cost of air fares from each location to a common point within the contiguous 48 states.

As was done in previous surveys, Runzheimer used national average expenditure data to combine the private and public transportation relative cost differences between each allowance area and the Washington, DC, area to arrive at a total Transportation component index.

5.2 Private Transportation Methodology

Runzheimer determined that an accurate and reasonable approach to measure transportation costs was to select and analyze three commonly driven vehicles (a domestic auto, an import auto and a utility vehicle) in all areas.

New vehicles were the basis for developing the transportation-cost calculations. Although Runzheimer could have developed costs from the premise that "identical" used vehicles would be purchased from auto dealers in each location, Runzheimer believed that costing new vehicles reduced the potential for inconsistencies due to value judgments concerning used vehicles.

5.2.1 Vehicle Selection and Pricing

As mentioned above, Runzheimer selected and priced a domestic auto, an import auto, and a utility vehicle as the basic vehicle types to cost in all locations. We based our selection of these vehicle types on their popularity in the United States as demonstrated by owner registration data.

To select a specific make and model within each vehicle type, Runzheimer identified the top-selling models in each car class. For these models, Runzheimer's research associates collected new vehicle prices.

At each auto dealership in the sample, Runzheimer recorded the suggested retail prices of the three vehicles plus any additional charges, such as shipping, excise tax, dealer prep, and additional dealer markup. Runzheimer used the suggested retail prices (not negotiated prices) in the analysis. Runzheimer also included documentation fees as part of the new-vehicle costs in Hawaiian and Alaskan locations. Contacted dealerships explain that a documentation fee is charged on a new-car purchase to cover paperwork costs. Runzheimer did not include a fee for the Washington, DC, area and other tropical areas because dealers in those areas do not typically charge a documentation fee.

The three vehicles selected for analysis were:

Domestic Vehicle—Ford Taurus GL 4-door sedan 3.0L 6 cyl
Utility Vehicle—Chevrolet S10 Blazer 4X4 2 door 4.3L 6 cyl
Import Vehicle—Honda Civic DX 4-door sedan 1.5L 4 cyl

Runzheimer priced 1992 models in the summer survey and 1993 models in the winter survey.

All vehicles were equipped with standard options, such as automatic transmission, AM/FM stereo radio and air conditioning. As done in the 1991–1992 survey, at OPM's request, Runzheimer also priced snow tires, engine-block heaters, and heavy-duty batteries in all of the Alaskan locations.

Car dealers in the Washington, DC, area did not recommend vehicle rustproofing. However, it was suggested or recommended in allowance areas. Therefore, we included rustproofing as an add-on in all allowance areas, but not in the Washington, DC, area.

5.2.2 Vehicle Trade Cycle

Calculating the cost to own and operate a vehicle requires that two important factors be determined: miles driven and time period of ownership. In the automobile industry, these two factors are known collectively as a vehicle's "trade cycle." The trade cycle is stated as a length of time either in months or years, and the total number of miles driven in that time period (e.g., four-year, 60,000-mile trade cycle). This information is required to compute annual costs related to fuel, oil, tires, maintenance and depreciation.

Conforming with previous living-cost reports, Runzheimer used a four-year 60,000-mile trade cycle in all areas based upon the following information:

- The Internal Revenue Service has used this trade cycle for many years to compute the allowable cents-per-mile reimbursement rate for persons who drive their personal vehicle for business purposes.
- The four-year time period coincides with the typical length of a vehicle loan.
- U.S. Department of Energy statistics for 1988 show that the U.S. average for number of vehicle miles driven was: 18,595 per household and 10,246 miles per vehicle.

Runzheimer has been unable to find conclusive statistics on average annual miles driven per vehicle in any allowance area. In 1991, Runzheimer contacted car dealers to obtain their observations on average odometer mileage on trade-in vehicles and informally asked other residents of each area for their opinions.

From the opinions gathered, we concluded that, in most cases, the average annual miles driven in allowance locations appeared to be less than or equal to 15,000. In the Washington, DC, area, the opinions of those contacted indicated an average annual mileage of 15,000 or more. Therefore, without definitive statistics to prove otherwise, Runzheimer set a standard used in all reports to date of 15,000 miles per year, which results in a four-year, 60,000-mile trade cycle.

5.2.3 *Fuel Performance and Type*

To establish average fuel-performance ratings, Runzheimer selected the "city driving" figures published by the Environmental Protection Agency (EPA). Runzheimer chose the "city" instead of "highway" figures because all locations contained considerable stop-and-go driving conditions. All vehicles included in this study used regular unleaded fuel. Except in Alaska, Runzheimer obtained self-service cash prices and substituted full-service when self-service was not available. At OPM's request, Runzheimer priced gasoline at the full-service pump in Alaska.

As in its second report to OPM, Runzheimer has included in its analysis a number of fuel-performance factors; specifically, temperature, road surface, and gradient. Based on our research of these three factors, Runzheimer analysts developed fuel-performance adjustment percentages in each allowance area.

5.2.3.1 *Impact of Temperature upon Fuel Performance*

Runzheimer consulted two published sources to develop its adjustment percentages for this fuel-efficiency factor: *Passenger Car Fuel Economy: EPA and Road* and *The Weather Almanac* (Ruffner & Blair). Miles-per-gallon performance varies by ambient temperature. The lower the temperature, the fewer miles-per-gallon achieved and vice versa. In the EPA study, the temperature at which no adjustments to fuel performance occur is 77° F. Below that temperature, miles-per-gallon achieved drops; above 77°, miles-per-gallon achieved improves. To measure the effect temperature has on miles-per-gallon for each allowance area, Runzheimer researched average monthly temperatures as reported in *The Weather Almanac*.

In each location and for each month, Runzheimer assigned the appropriate shortfall factor from the EPA study based on the average monthly temperature for each given location. For example, if the average monthly temperature was 35°, the shortfall in miles-per-gallon would be 0.876. After assigning factors to each month, Runzheimer averaged the twelve factors for each location. The results of these calculations are shown in section 5.2.3.4.

5.2.3.2 *Impact of Road Surface Upon Fuel Performance*

For its analysis, Runzheimer assumed that federally controlled roadways are typically composed of concrete and/or high-load asphalt and that locally controlled roadways are typically composed of low-load asphalt. EPA's research indicates that cars are generally more fuel-efficient on the firmer, high-load surfaces than on the softer, low-load surfaces.

Although traffic patterns and road usage certainly vary among areas, Runzheimer could find no relevant studies of these issues. Therefore, Runzheimer assumed that federally controlled roadways generally support twice the traffic of or are used at least twice as much as locally controlled roadways.

In each allowance area, Runzheimer researched the total mileage falling into either the federal or local categories. For example, Hawaii contains 1,456 miles of federally controlled roads and 2,606 miles of locally controlled roads. The usage assumption allowed Runzheimer to increase federal road mileage by a factor of two.

Runzheimer applied the average low-load asphalt factor (which reflects dry, wet, and snowy conditions) to the local mileage percentage and the average concrete and/or high-load asphalt factor to the federal mileage percentage to create a weighted average factor for each area. These weighted factors for Alaska ranged from 0.94 to 0.97 For all other areas, the weighted factors ranged from 0.96 to 1.00. The Washington, DC, area was assigned a factor of 1.00 on the premise that the vast majority of traffic in that area travels on dry, high-load surfaces. (See section 5.2.3.4 for application of this factor in estimating overall miles-per-gallon.)

5.2.3.3. *Impact of Gradient Upon Fuel Performance*

Runzheimer consulted EPA's *Passenger Car Fuel Economy: EPA and Road* to determine the effect of local topography (i.e., gradient) upon fuel efficiency. EPA provides mileage factors based upon various gradients ranging from less than 0.5% (essentially flat) to greater than 6% (steep).

Runzheimer reviewed the topographic features of each area and found a wide range of road conditions. However, Runzheimer was unable to find information on the types of terrain drivers typically encounter in each area or the number of miles drivers travel in each type of terrain.

Lacking such information, Runzheimer assumed that drivers in the

allowance areas generally travel roads having approximately the same gradients that are found on average in the United States. Applying the information from EPA's research, Runzheimer computed a fuel-performance factor of 0.981 for this type of driving. This factor was assigned to each allowance area. Runzheimer assigned a factor of 1.00 to the Washington, DC, area on the premise that the vast majority of traffic in that area travels on major freeways and highways that are relatively flat. (See section 5.2.3.4 for application of this factor in estimating overall fuel efficiency.)

5.2.3.4 *Overall Impact Upon Fuel Performance*

Runzheimer applied the results of the analyses described above to "localize" or make geographically sensitive adjustments to the EPA average ratings and establish reasonable fuel-performance ratings for each allowance area.

In the table below, the factor 1.00 means that no adjustment to EPA fuel performance is appropriate. A factor of less than 1.00 means that the estimated gasoline mileage in the area is less than the EPA average. For example, the total adjustment factor for Fairbanks/Nome is 0.80. This means that the estimated gasoline mileage in Fairbanks and Nome is 80% of the EPA estimated average. Note that the adjustment factor for the Washington, DC, area (0.94) indicates that average gasoline mileage in that area is below the EPA estimate also.

SUMMARY OF FUEL-PERFORMANCE ADJUSTMENTS

Location	Temperature	Road surface	Gradient	Total
Anchorage	0.88	0.96	0.96	0.83
Fairbanks/Nome	.85	.96	.98	.80
Juneau	.89	.96	.98	.84
Hawaii	.99	.98	.98	.95
Guam	.99	.98	.98	.95
Puerto Rico	1.01	.98	.98	.97
Virgin Islands	1.01	.98	.98	.97
Washington, DC	.94	1.00	1.00	.94

Note: These adjustments compound. That is, the Total adjustment is the result of multiplying the three individual factors together for each location/area.

5.2.4 Vehicle Maintenance

With OPM's concurrence, Runzheimer selected the five most common maintenance service/repair jobs performed on vehicles as the basis for vehicle maintenance analysis:

- Tune-up,
- Oil change,
- Automatic transmission fluid change,
- Flush/fill coolant, and
- Muffler installation.

Automobile manufacturers' recommended maintenance schedules were used to determine the frequency of performing each of these maintenance jobs. Maintenance schedules vary, depending on the driving conditions typically encountered. Consistent with the assumptions used for fuel economy and tire mileage, Runzheimer assumed that driving conditions in the allowance areas were generally severe and used the maintenance schedules that reflected that kind of driving. For the DC, area, Runzheimer assumed that driving conditions were normal and used the maintenance schedules that reflected that kind of driving.

The recommended frequency of performing each of these jobs was combined with the prices charged by local dealers and service stations to compute an estimated annual maintenance expense.

For Alaska, Runzheimer included constant velocity (CV) joint boots as well. Runzheimer's research of CV joint boot replacement revealed varying replacement cycles between Alaskan allowance areas: Anchorage—every 45,000 miles (3 years), Fairbanks—every 15,000 miles (1 year), Juneau—every 45,000 miles (3 years) and Nome—every 30,000 miles (2 years). The cost of replacement for all three vehicle types has been factored into the indexes based upon the life cycle of the replacement. For example, 100% of the cost was included for Fairbanks because research indicated annual replacement was the norm. Only 50% of the cost was included for Nome where research indicated bi-annual replacement.

5.2.5 Tires

Research previously conducted by Runzheimer for OPM (see the June 1992 report) revealed that various factors (e.g., road quality/state of repair, road composition) caused tread life (the average number of miles a tire is expected to last) to be less in allowance areas than in the Washington, DC, area. Based on these findings (some of which were quantitative), Runzheimer based tire expenses on a 40,000-mile tread-life in allowance areas, and a 55,000-mile tread-life in the Washington, DC, area.

Runzheimer's research also indicated that four extra snow tires, with studs, would be required for all three vehicles in Anchorage, Fairbanks, and Juneau. For Nome, Runzheimer's research revealed that mud and snow tires would be appropriate for the S10 Blazer but not the other two vehicles because all-season radials were reported to be the norm. (Most of the driving in Nome occurs within a very confined area.) Therefore, as with the previous survey, Runzheimer surveyed the cost of extra wheels, extra tires, and installing studs for all vehicles in Anchorage, Fairbanks, and Juneau and the additional cost of mud and snow tires for the S10 Blazer in Nome.

5.2.6 License and Registration Fees, and Miscellaneous Tax

Runzheimer obtained information regarding appropriate license and registration fees, and miscellaneous taxes (i.e., personal property tax and motor vehicle registration tax) from each area. One-time fees and miscellaneous taxes were divided equally over each vehicle's four-year trade cycle. Sales and excise taxes were included in the purchase price of each vehicle (see section 5.2.7). Ongoing fees and taxes were included as part of the annual costs.

5.2.7 Depreciation

From Runzheimer's experience, the single largest annual expense related to owning and operating newer vehicles is vehicle depreciation, the lost value of the vehicle as it ages and is driven. To calculate average annual depreciation, Runzheimer divides the difference between the purchase price and the

residual value by the number of years the vehicle is owned.

In the depreciation equation, Runzheimer used suggested retail prices, plus any additional charges, such as shipping, excise tax, dealer prep, and additional dealer markup. (Runzheimer did not believe that negotiated prices could be collected on an equitable basis.) As discussed earlier, the trade cycle was determined to be four years, 60,000 miles. Runzheimer research indicated that residual values were the same in all areas except Fairbanks and Nome. This research effort is explained below.

Runzheimer is aware that several firms and associations track and publish weekly or monthly used-car and used-truck wholesale auction prices. Some firms even publish projections of the future value of today's new vehicles. Most publications provide several residual values for each vehicle, depending on its condition at the time of trade-in (e.g., clean, average, rough). Several common publications of this type are *Black Book, Kelley Blue Book, Automotive Market Report,* and *NADA* [National Automobile Dealers Association). Unfortunately, these sources only track prices for vehicles sold in the contiguous 48 states and then publish broad-based average residual values for each vehicle.

To get specific information from sources knowledgeable about the used vehicle markets in allowance areas, Runzheimer contacted auto dealers and financial institutions in these areas. Most of the sources with whom Runzheimer spoke said that they used the above-mentioned publications as guides, just as dealers and financial institutions across the United States used them.

Except for Fairbanks and Nome, Runzheimer found no conclusive evidence that used vehicles in allowance areas were (on average) worth more or less than used vehicles in the Washington, DC, area. Therefore, we reported the same used vehicle prices in all areas (except Fairbanks and Nome). An appropriate and logical source for these values was the April 15, 1992, issue of *Black Book Official Finance/ Lease Guide* for 1992 vehicles (summer pricing) and the October 15, 1992, issue for 1993 vehicles (winter pricing). For Fairbanks and Nome, Runzheimer used 90% of the *Black Book* projected residual values to reflect rough conditions.

It should be noted for clarification that identical residual values did not translate into identical depreciation amounts in all locations. Depreciation amounts were higher in allowance areas than in the Washington, DC, area because new vehicle prices in all allowance areas were higher. For example, new vehicle prices in Puerto Rico averaged 50% more than Washington, DC, prices.

5.2.8 Finance Expense

Runzheimer included the average annual cost of financing a vehicle in the total cost of private transportation. Runzheimer surveyed automobile dealerships in Puerto Rico and banks in all other areas for their auto-loan interest rates, using a 48-month loan length with 80% financing as the basis in all locations.

5.2.9 Vehicle Insurance

Runzheimer measured the cost of auto insurance in each location. To determine the type of coverage to price, Runzheimer contacted insurance agents in each area to obtain information on the typical policy. Listed below are the most common coverages, limits, and deductibles for the surveyed living-cost areas.

Bodily Injury	$50,000/$100,000
Property Damage	$25,000
Medical	$5,000
Uninsured Motorist	$50,000/$100,000
Comprehensive	$100 Deductible
Collision	$250 Deductible

Runzheimer found that insurance companies in Puerto Rico and the Virgin Islands provide slightly different limits and deductibles than those listed above; therefore, Runzheimer and OPM agreed to incorporate the premiums associated with these different limits and deductibles into the indexes.

In 1990, Runzheimer identified the most "popular" automobile insurance companies by analyzing market-share reports compiled by an industry rating bureau. The policy described above was then priced again this year for each location. Two or three price quotes were obtained for each area and averaged together to produce the final number for this component in each allowance area.

5.3 Public Transportation Methodology

As was done last year, Runzheimer surveyed the cost of air fares as they relate to recreational travel. Runzheimer priced the lowest available round-trip air fare from each allowance area and the Washington, DC, area to Los Angeles, California. Los Angeles was selected because it is a common point approximately equidistant from most of the allowance areas and the Washington, DC, area. The cost of the trip from each allowance area to Los Angeles was compared with the cost of the trip from the Washington, DC, area to Los Angeles to compute the public transportation category indexes. (See Appendix 11.)

5.4 Transportation Survey Results

Runzheimer measured the costs for fuel, maintenance and oil, tires, licensing, taxes, depreciation, finance, and insurance for three types of automobiles in each allowance area and in the Washington, DC, area to determine typical private transportation costs. Appendix 10 shows the cost of each of these items in each area. As with the housing costs, private transportation costs for the Puerto Rico and Hawaii County allowance areas are shown separately for Mayaguez and San Juan, Puerto Rico, and Hilo and Kailua Kona, Hawaii, respectively. These data are combined to produce composite costs for each allowance area using the respective federal employment distributions. (See sections 2.5 and 2.6 for a discussion of employment weighing in these two areas.)

Runzheimer also measured the cost of recreational air travel from each allowance area and from the Washington, DC, area to a common point within the contiguous 48 states. Appendix 11 shows the cost of these air fares and their relationship to the cost for the Washington, DC, area. Again, there are separate calculations for the sub-areas in the Puerto Rico and Hawaii County allowance areas.

Appendix 11 compares the total cost of the private transportation items for each vehicle in each allowance area with the total cost of the same items in the Washington, DC, area. Appendix 11 also shows how the private and public transportation indexes were combined using expenditure weights derived from the CES data to produce final transportation indexes.

The final transportation indexes are used in Appendix 13 to derive the total overall index. (Refer to section 2.2 for a discussion of the general formulae and how the component indexes are combined.)

6. Miscellaneous Expenses

6.1 Component Overview

The Miscellaneous Expense component consists primarily of four unrelated groups of expenses:

- Medical care,
- Contributions (including gifts to non-family members),
- Personal insurance, and
- Savings and investments (including pensions).

Runzheimer believes that certain miscellaneous expense items should not affect living-cost differences between

locations. For example, Runzheimer considers charitable contributions a personal choice, so we include this expenditure as a constant amount in all locations. Based on research into all of the expenses of this component, Runzheimer also regards expenses related to personal insurance, savings and investments, and pensions as constants, for reasons discussed in section 6.2.2.

To measure the miscellaneous expenses, Runzheimer constructed a pricing methodology similar to the one used in the Goods & Services component. Runzheimer selected representative items for medical care, priced them in all areas, and then computed a Miscellaneous Expense component index based on the relative importance of costed items/categories held constant.

6.2 Miscellaneous Expense Model

6.2.1 Expenditure Research

From the 1988 CES, Runzheimer tabulated the miscellaneous expense data into logical expense groupings and then determined the appropriate item weighting. The table on the following page lists the categories that Runzheimer selected to price and their weights:

MISCELLANEOUS EXPENSE CATEGORIES & WEIGHTS

Cagegories	Income level		
	Lower (percent)	Middle (percent)	Upper (percent)
Medical care	43.41	31.56	22.40
Contributions (including gifts) [1]	12.38	14.90	16.85
Personal insurance and pensions [1]	44.21	53.54	60.75
Totals	100.00	100.00	100.00

[1] Held constant.

6.2.2 Miscellaneous Expense Methodology

As stated in section 2.2, Runzheimer used the Laspeyres indexing methodology to compute the Miscellaneous Expense component index. For groups of items held constant, the model assumed a price ratio between the allowance area and the Washington, DC, area equal to 100.00%.

Runzheimer defined "savings and investments" as the portion of a family's budget that was targeted for long-term financial security. Money stored in a savings or investment vehicle for future expenditures (of goods and services, housing, or transportation) was accounted for in the other component weightings. Based on this reasoning, within the Miscellaneous Expense component, Runzheimer equated long-term savings and investments with money spent on pensions and other retirement vehicles.

In section 6.1, we noted that expenses related to personal insurance were held constant for all locations. This was based on information received from life insurance companies and OPM officials. The life insurance companies contacted indicated that policies written (and premiums charged) to persons within the United States and its territories did not vary due to location. Runzheimer's research and discussions with OPM officials also indicated that, in general, federal employees in all areas received similar or identical benefits packages—any variations were due to personal preference. Therefore, Runzheimer believed, and OPM concurred, that holding these types of expenses constant was appropriate.

6.3 Miscellaneous Expense Data Collection Procedures

Medical care items were surveyed consistent with the approach used in the Goods & Services component. For quality-control purposes, Runzheimer used its in-house research staff to conduct much of this survey.

The following medical-care items were priced in each allowance area and in the Washington, DC, area:

- Nonprescription pain reliever
- Prescription drugs
- Vision check
- Dental service
- Doctor visit
- Hospital room
- Health insurance

Runzheimer computed a Medical Care subcategory price index for each item in each allowance area by comparing each local average price with the Washington, DC, area average prices. These indexes were combined using weights derived from the CES to compute a Medical Care subcategory index for each allowance area.

6.4 Miscellaneous Expense Survey Results

Appendix 12 contains the results of our data collection and index calculations. The reader will note that the relatively large weighting for personal insurance/pensions and cash contribution, which are held constant, significantly dampens the effect of the cost differences between the allowance areas and the Washington, DC, area.

Section 2.2 describes how the Miscellaneous Expense component indexes are combined with the other component indexes to derive the final index for each area.

7. Final Results

7.1 Total Comparative Cost Indexes

The total comparative cost indexes appear below. Appendix 13 shows how each index was derived from the component indexes.

FINAL COST COMPARISON INDEXES

Allowance area	Local pricing	Commissary and exchange
Anchorage, Alaska	106.40	102.92
Fairbanks, Alaska	106.39	104.11
Juneau, Alaska	110.16	NA
Other Areas in Alaska [1]	124.95	NA
City & Cnty of Honolulu, Hawaii	121.46	117.19
Hawaii Cnty, Hawaii	111.55	NA
Kauai Cnty, Hawaii	116.75	NA
Maui Cnty, Hawaii	120.48	NA
Guam, CNMI [2]	121.55	117.20
Puerto Rico	103.94	102.16
St Croix, Virgin Islands	112.90	NA
St. Thomas and St. John, Virgin Islands	116.67	NA

[1] As represented by Nome, AK.
[2] Commonwealth of the Northern Mariana Islands.
NA=Not applicable.

7.2 General Comments

Runzheimer's primary goal throughout its work on each study has been to bring fairness and accuracy to the results. The scope of this multi-year engagement has become more comprehensive by virtue of special research projects, seasonal pricings, expanded marketbasket pricings and other efforts. Runzheimer believes that living-cost research is a dynamic process, not a static one, and that fresh research and analysis will enhance further the quality of the survey and the findings. Moreover, we believe that planned, ongoing interaction with OPM will aid the process and improve accuracy.

7.3 Recommendations

Scattered throughout this report, Runzheimer identified several opportunities for improving the quality of the survey instruments and the survey process. For ease of reference, we summarize them here and provide additional recommendations.

1. *Income Taxes:* Income taxes significantly affect living-cost analyses. Consequently, Runzheimer believes that OPM should consider researching the inclusion of income taxes in the future.

2. *Salary Levels and Employment Distributions:* Runzheimer recognizes that it applied the same salary levels and federal employment weights in this report as it did in the first. We believe, however, that new salaries and weights should be incorporated into the computational process over time. The timing of such changes should be balanced against the need to stabilize results so that the indexes do not fluctuate due to changes in weights rather than changes in relative prices.

3. *Consumer Expenditure Survey Data:* Conforming with the process for each study to date, Runzheimer used the Bureau of Labor Statistic's "prepub" statistical reports from the 1988 Consumer Expenditure Survey (CES). Runzheimer recommends, however, that OPM implement a system to enable gradual introduction into the model of changes as reflected by the CES results.

Appendix 1.—Consumer Expenditure Survey (CES)

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Number of consumer units (in thousands)	81354	9433	8219	14586	10901	7198	12209
Number of sample interviews	30900	3500	3107	5486	4119	2849	4963
Consumer unit characteristics:							
Income before taxes [1]	$26540	$12320	$17373	$24591	$34375	$44331	$74234
Income after taxes [1]	26149	11892	16345	22963	31660	40100	66345
Average number of persons in consumer unit	2.6	2.2	2.5	2.7	2.9	3.2	3.1
Age of reference person	46.9	50.1	46.5	44.7	43.2	42.3	45.3
Average number in consumer unit:							
Earners	1.4	0.9	1.2	1.5	1.8	2.0	2.1
Vehicles	2.0	1.4	1.9	2.2	2.6	2.7	3.1
Children under 18	0.7	0.6	0.7	0.7	0.9	1.0	0.8
Persons 65 and over	0.3	0.5	0.4	0.3	0.2	0.1	0.1
Percent distribution:							
Male	66	57	64	71	76	82	87
Female	34	43	36	29	22	18	13
Homeowner with mortgage	38	15	26	36	52	64	76
Homeowner without mortgage	24	32	26	25	18	14	14
Renter	39	53	47	39	30	21	11
Black	11	12	10	10	5	6	4
White and other	89	88	90	90	95	94	96
Elementary (1–8)	11	17	12	8	5	2	3
High school (9–12)	44	51	54	48	42	40	24
College	44	31	34	44	53	58	73
Never attended and other	1	1	1	0	0	0	0
At least one vehicle owned	86	84	91	95	98	97	97
Average annual expenditures	26389.07	16788.64	19558.35	24896.36	31659.60	37562.00	52320.19
Food	3804.39	2777.33	3194.53	3765.02	4587.49	5281.61	6296.11
Food at home	2176.94	1809.23	1954.49	2174.01	2556.74	2906.55	3109.86
*Cereals and bakery products	317.03	266.20	274.62	320.55	375.36	417.06	450.19
*Cereals and cereal products	111.15	101.45	100.46	111.31	134.59	145.71	138.66
*Flour	4.83	5.43	4.59	4.99	5.06	4.15	4.17
*Prepared flour mixes	9.88	9.30	9.21	10.32	11.92	14.72	12.18
*Ready-to-eat and cooked cereals	73.49	65.38	65.31	72.80	89.56	98.06	92.85
*Rice	7.99	8.00	6.06	7.95	9.66	9.48	10.14
*Pasta, commeal and other cereals	14.97	12.33	15.29	15.24	18.39	19.30	19.34
*Bakery products	205.88	164.75	174.16	209.23	240.80	271.35	311.53
*Bread	65.72	58.48	61.24	68.58	72.19	78.50	86.03
*White bread	35.48	32.79	33.61	38.12	39.98	39.46	42.54
*Bread, other than white	30.24	25.69	27.63	30.46	32.21	39.05	43.49
*Crackers and cookies	51.76	41.43	42.92	53.39	60.40	75.75	77.18
*Cookies	32.19	24.30	27.96	33.01	35.93	47.99	49.96
*Crackers	19.57	17.13	14.94	20.38	24.46	27.76	27.21
*Frozen and refrigerated bakery products	13.55	10.10	10.54	13.12	15.29	17.54	24.89
*Other bakery products	74.84	54.74	59.46	74.14	92.92	99.46	123.44
*Biscuits and rolls	26.62	18.31	20.95	27.08	30.87	38.69	45.14

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Cakes and cupcakes	20.31	13.30	15.37	21.50	26.94	26.92	31.29
*Bread and cracker products	2.82	2.70	2.40	2.36	3.73	4.07	4.89
*Sweetrolls, coffee cakes, doughnuts	19.60	15.04	15.68	18.44	23.22	23.31	33.90
*Pies, tarts, turnovers	5.48	5.38	5.07	4.76	8.16	6.48	8.22
*Meats, poultry, fish and eggs	560.01	477.38	555.07	541.91	635.94	699.55	812.35
*Beef	183.66	152.35	204.56	185.96	215.42	225.57	263.75
*Ground beef	79.09	71.32	84.22	79.31	96.47	91.12	101.79
*Roast	33.40	26.09	34.54	34.19	35.85	40.13	50.81
*Chuck roast	13.23	13.36	14.43	13.12	16.66	14.71	17.67
*Round roast	9.13	7.79	10.19	8.42	8.80	15.67	13.71
*Other roast	11.04	8.93	9.92	12.65	10.38	9.75	19.23
*Steak	59.01	41.47	71.43	61.32	70.25	77.00	93.67
*Round steak	11.62	11.60	16.74	13.83	12.33	11.66	13.85
*Sirloin steak	12.96	6.51	11.79	12.72	14.53	20.48	24.43
*Other steak	34.42	21.36	42.90	34.77	43.40	44.94	55.39
*Other beef	12.17	11.47	14.37	11.14	12.84	17.24	17.49
*Pork	114.19	104.51	108.16	108.24	132.60	131.31	157.61
*Bacon	20.23	24.20	17.46	18.44	23.15	19.48	25.09
*Pork chops	27.10	19.23	28.84	25.14	36.30	28.37	34.33
*Ham	27.43	25.79	27.94	28.11	31.54	35.35	39.08
*Ham, not canned	24.47	21.68	25.11	26.25	28.62	29.58	36.43
*Canned ham	2.96	4.10	2.83	1.86	2.92	5.77	2.65
*Sausage	16.60	14.09	17.07	13.98	17.67	22.46	23.26
*Other pork	22.83	21.21	16.84	22.58	23.95	26.65	35.83
*Other meats	83.61	71.60	75.58	79.96	98.99	13.62	118.21
*Frankfurters	17.37	15.97	17.17	17.77	19.56	21.76	22.58
*Lunch meats (cold cuts)	58.88	49.13	49.48	56.28	71.83	80.88	96.21
*Bologna, liverwurst, salami	19.11	17.97	16.54	19.36	22.06	23.99	25.51
*Other lunchmeats	39.78	31.16	32.94	36.92	49.77	56.89	60.70
*Lamb, organ meats and others	7.36	6.51	8.93	5.91	7.58	10.96	9.42
*Lamb and organ meats	6.17	5.97	5.33	4.62	7.57	8.63	8.50
*Mutton, goat and game	1.19	0.54	3.60	1.10	0.01	2.36	0.92
*Poultry	85.49	69.40	81.53	82.16	85.67	111.40	133.20
*Fresh and frozen chickens	66.41	55.25	66.61	65.26	66.71	81.88	96.35
*Fresh whole chicken	17.24	17.03	17.44	20.11	14.32	16.24	23.38
*Fresh and frozen chicken parts	49.17	38.22	49.18	45.15	52.39	65.64	72.97
*Other poultry, incl whole frzn chickens	19.08	14.15	14.91	16.91	18.96	29.52	36.85
*Fish and seafood	65.24	50.44	57.57	56.89	74.24	86.03	109.89
*Canned fish and seafood	17.95	14.01	15.77	16.57	23.21	21.96	26.53
*Fresh and frozen shellfish	14.98	5.89	17.35	14.09	15.81	16.33	32.78
*Fresh and frozen finfish	32.31	30.53	24.45	26.13	35.23	45.74	50.59
*Eggs	27.83	29.08	27.68	28.69	29.02	31.61	39.68
*Dairy products	277.91	237.49	246.39	267.05	337.97	365.06	383.11
*Fresh milk and cream	134.41	132.06	125.44	135.91	160.12	158.15	168.53
*Whole milk	52.12	58.46	57.46	57.54	55.56	44.53	55.37
*Other milk and cream	82.29	73.61	67.97	78.37	104.54	113.61	113.17
*Other dairy products	143.50	105.41	120.95	151.15	177.85	206.92	214.57
*Butter	8.89	8.28	8.17	9.63	9.20	12.22	13.04
*Cheese	79.01	54.41	69.16	83.03	98.98	111.72	119.08

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Ice cream and related products	41.66	31.02	33.95	46.55	53.10	60.05	61.85
*Miscellaneous dairy products	13.93	11.70	9.67	12.93	16.57	22.93	20.60
*Fruits and vegetables	376.38	327.70	335.02	366.35	441.76	487.04	526.17
*Fresh fruits	120.98	102.64	104.99	116.33	148.47	155.62	172.21
*Apples	21.57	16.83	17.80	21.56	26.56	28.77	29.44
*Bananas	20.65	19.42	19.04	21.64	24.06	22.66	27.22
*Oranges	10.98	9.36	9.43	9.37	15.38	16.47	14.72
*Other fresh fruits	67.78	57.02	58.71	63.75	82.45	88.72	100.83
*Fresh vegetables	110.67	101.90	100.87	106.30	124.19	123.40	158.76
*Potatoes	16.61	13.93	17.56	15.59	19.18	20.55	22.24
*Lettuce	13.73	11.36	11.61	12.80	16.85	16.95	20.85
*Tomatoes	14.87	13.49	14.08	14.64	17.94	16.43	19.74
*Other fresh vegetables	65.47	63.12	57.63	63.28	70.21	69.47	95.93
*Processed fruits	86.91	75.04	80.64	82.22	98.04	126.19	121.27
*Frozen fruits and fruit juices	19.59	17.95	18.61	18.42	22.98	32.00	28.71
*Frozen orange juice	14.43	13.60	13.91	14.55	14.89	21.97	20.88
*Other frozen fruits and juices	5.16	4.35	4.70	3.87	8.10	10.03	7.83
*Canned and dried fruits	21.22	18.05	18.46	20.85	24.90	32.50	26.30
*Fresh, canned or bottled fruit juices	46.00	39.04	43.58	42.95	50.26	61.68	66.26
*Processed vegetables	57.92	48.13	48.52	61.49	71.05	80.82	73.92
*Frozen vegetables	21.30	13.63	16.57	23.19	27.40	32.62	31.07
*Canned and dried vegetables and juices	36.62	34.50	31.95	38.30	43.65	48.21	42.85
*Canned beans	6.64	5.41	6.00	6.98	7.85	9.98	7.27
*Canned corn	4.21	2.91	3.86	4.70	4.31	6.10	4.37
*Other canned and dried veg., & juices	25.77	26.17	22.09	26.62	31.49	32.12	31.21
*Other food at home	645.61	500.46	543.39	658.15	765.69	937.83	938.05
*Sugar and other sweets	80.66	65.44	64.53	82.49	97.73	122.23	111.61
*Candy and chewing gum	45.41	32.09	31.13	46.37	55.74	75.32	71.53
*Sugar	17.07	18.57	17.60	17.61	18.27	17.57	16.01
*Artifical sweeteners	2.38	1.56	2.44	2.90	1.78	3.70	2.68
*Jams, preserves, other sweets	15.82	13.22	13.36	15.62	21.94	25.64	21.39
*Fats and oils	56.65	48.51	45.63	59.62	69.18	76.24	70.54
*Margarine	11.96	10.65	9.89	12.19	14.51	15.78	15.49
*Other fats, oils, and salad dressing	31.66	26.57	26.33	32.32	37.90	45.04	38.56
*Nondairy cream and imitation milk	4.49	4.53	3.64	4.91	4.72	5.00	4.89
*Peanut butter	8.54	6.75	5.77	10.20	12.05	10.42	11.57
*Miscellaneous foods	272.98	209.21	230.18	278.73	325.17	410.76	393.38
*Frozen prepared foods	46.13	34.31	44.35	47.46	54.87	69.97	66.80
*Frozen meals	16.75	14.44	19.43	16.05	23.09	21.11	23.97
*Other frozen prepared foods	29.39	19.87	24.92	31.41	31.78	48.86	42.82
*Canned and packaged soups	21.41	17.65	16.96	21.06	24.10	35.62	28.50
*Potato chips, nuts, and other snacks	59.78	41.00	37.67	64.36	71.49	95.82	100.20
*Potato chips and other snacks	46.79	30.06	31.54	53.75	55.18	74.06	77.26
*Nuts	12.99	10.94	5.13	10.61	16.31	21.76	22.94
*Condiments and seasonings	61.52	49.20	56.11	58.41	77.90	82.69	92.16

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Salt, spices, other seasonings	12.31	10.17	11.24	11.99	14.15	14.15	20.09
*Olives, pickles, relishes	7.62	5.36	8.73	7.01	9.46	10.54	10.59
*Sauces and gravies	31.62	25.10	26.76	29.73	42.60	43.35	46.87
*Baking needs and misc. products	9.97	8.58	9.38	9.67	11.67	14.95	14.61
*Other canned/packaged prepared foods	84.14	67.05	75.08	87.44	96.92	126.46	105.73
*Salads and desserts	13.23	11.82	12.59	11.96	17.20	19.07	16.37
*Baby food	16.25	10.38	15.03	16.91	19.52	26.99	12.93
*Miscellaneous prepared foods	54.66	44.85	47.47	56.57	60.10	81.41	74.43
*Nonalcoholic beverages	204.37	164.51	186.49	210.29	233.06	283.11	287.11
*Cola	92.19	66.57	88.15	99.91	101.96	140.51	123.90
*Other carbonated drinks	32.62	23.55	29.15	28.70	40.86	43.90	53.99
*Coffee	40.93	36.64	38.48	36.15	43.16	47.73	54.95
*Roasted coffee	25.27	22.96	23.27	24.63	26.36	31.15	34.98
*Instant and freeze dried coffee	15.66	15.87	15.21	13.52	16.81	16.58	19.96
*Non-carbonated fruit flavored drinks	16.30	12.30	11.92	21.28	20.62	24.65	21.32
*Tea	11.18	10.67	8.25	11.36	13.49	15.33	13.42
*Other non-alcoholic beverages	11.15	12.58	10.54	10.90	13.08	10.96	19.52
*Food prepared by cu on out of town trips	30.94	12.80	16.56	27.01	40.55	45.49	75.42
*Food away from home	1627.45	958.10	1240.03	1591.02	2030.75	2375.06	3186.24
*Meals at restaurants, carry-outs & other	1275.77	799.32	1039.21	1294.24	1591.66	1870.30	2351.22
*Lunch	499.88	277.04	407.25	514.76	618.15	709.45	956.78
*Dinner	549.30	339.39	440.26	550.06	682.77	822.65	1057.00
*Snacks and non-alcoholic beverage	142.58	105.40	121.94	145.83	190.00	225.33	207.78
*Breakfast and brunch	84.04	77.48	69.75	83.59	119.74	112.87	129.66
Board (including at school)	43.62	6.74	7.89	27.65	36.46	39.33	153.00
Catered affairs	41.27	7.39	5.78	34.97	50.79	47.01	142.76
Food on out of town trips	195.31	93.30	115.14	165.61	254.20	300.02	451.05
School lunches	42.24	20.43	26.30	41.51	57.39	84.77	70.55
Meals as pay	29.24	40.92	45.71	27.04	30.27	33.64	17.65
Alcoholic beverages	261.70	182.87	235.22	290.56	343.77	352.96	506.47
*At home	148.36	107.27	126.68	152.57	189.69	176.29	246.36
*Beer and ale	89.05	72.34	77.77	95.06	109.21	102.60	126.68
*Whiskey	12.73	12.89	5.93	13.17	16.76	13.43	21.68
*Wine	32.15	13.69	26.16	31.70	40.94	46.88	70.20
*Other alcoholic beverages	14.43	8.35	16.82	11.65	23.78	15.38	27.80
Away from home	133.34	75.61	108.54	138.19	154.08	174.67	260.11
*Beer and ale	37.50	20.21	32.77	39.59	40.20	53.06	62.61
*Wine	18.54	12.05	15.72	19.17	18.68	24.52	38.32
*Other alcoholic beverages	58.12	36.45	50.81	60.89	71.66	67.59	113.53
Alcoholic beverages purchased on trips	19.17	5.90	9.24	18.54	23.54	29.50	45.66
Housing	8069.13	5495.09	5946.80	7511.85	9280.40	10606.79	15719.12
Shelter	4470.25	3043.10	3139.50	4124.86	5049.86	5901.40	8909.44
Owned dwellings	2554.04	961.15	1151.03	1976.74	2970.57	4060.42	6925.93
Mortgage interest	1560.48	318.45	520.13	1051.78	1925.39	2783.87	4724.67
Mortgage interest and charges	1560.38	318.45	520.13	1051.78	1925.39	2783.87	4724.01
Prepayment penalty charges, (own home)	0.10	0.00	0.00	0.00	0.00	0.00	0.66
Property taxes	496.08	316.48	301.71	417.03	599.30	643.81	1125.91
Maintenance, repairs, insur, othr expenses	497.48	326.23	329.20	507.92	445.87	632.74	1075.35

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Homeowners and related insurance	151.74	102.72	105.11	139.48	163.01	200.84	313.16
Fire and extended coverage	4.96	3.14	4.17	8.42	3.90	7.28	4.94
Homeowners insurance	146.76	99.58	100.94	131.06	159.11	193.56	308.22
Ground rent	26.88	26.40	36.12	35.13	23.08	14.36	12.57
Maintenance and repair service	252.68	166.84	159.60	260.79	187.82	293.13	607.16
Painting and papering	52.01	34.57	12.75	55.29	21.09	49.82	144.99
Plumbing and water heating	23.06	12.17	16.84	22.72	17.23	32.94	55.39
Heat, a/c, electrical work	42.03	40.31	20.65	26.44	44.68	61.59	90.02
Roofing and gutters	46.96	21.78	51.88	49.75	40.70	55.16	111.23
Other repair/maintenance service	76.78	53.15	53.69	101.29	54.90	85.14	164.91
Repair & replace hard surface flooring	9.14	4.68	2.92	2.46	7.96	5.77	33.94
Repair of built-in appliances	1.88	0.16	0.68	0.85	1.24	1.69	6.68
Maintenance/repair commod	65.41	26.29	25.78	71.76	70.93	122.37	141.50
Paints, wallpaper and supplies	17.47	6.93	5.76	14.64	18.25	33.17	45.07
Tools and equipment for painting and wallpapering	1.88	0.74	0.62	1.57	1.96	3.56	4.84
Plumbing supplies and equipment	5.65	2.25	3.48	6.92	5.24	11.04	11.40
Electrical supplies, heat./cool. equip.	3.76	0.62	4.14	3.32	4.94	2.21	10.24
Materials for hard surface floor. repair and replace	1.65	0.82	0.03	1.32	0.66	5.63	5.85
Material and equipment for roof/gutters	5.18	3.60	3.34	8.46	4.25	3.31	5.16
Materials for plaster., panel., siding, windows, doors, screens, awnings	11.08	9.36	4.91	12.62	12.57	15.49	23.43
Materials for patio, walk, fence, drive, masonry, brick, and stucco work	2.12	0.28	0.61	6.99	0.71	2.30	3.03
Materials for landscaping maintenance	2.52	0.09	0.00	7.40	2.38	2.17	4.45
Miscellaneous supplies/equipment	13.89	3.60	2.89	8.52	18.98	43.49	28.02
Materials for insulation, other maintenance/repair	7.87	3.60	2.36	6.16	10.04	14.88	18.16
Materials to finish basement, remodel rms. or build patios, walks, etc (maint., rep., repl.) (own prop)	6.02	0.00	0.53	2.36	8.95	29.61	9.86
Property management and security	0.74	1.98	0.53	0.72	0.13	1.95	0.79
Property management	0.64	1.88	0.24	0.60	0.12	1.95	0.62
Management and upkeep serv for security	0.10	0.10	0.28	0.13	0.01	0.00	0.18
Parking	0.04	0.00	0.06	0.03	0.00	0.07	0.17
Rented dwellings	1469.41	1753.31	1777.24	1804.99	1563.71	1246.94	825.42
Rent	1426.30	1708.38	1718.30	1762.19	1521.88	1216.05	785.55
Rent as pay	17.34	25.29	32.67	15.87	14.30	0.70	9.59
Maintenance, insurance and other expenses	23.76	19.63	26.27	26.92	27.53	32.19	30.29
Tenant's insurance	8.68	4.34	9.22	9.27	12.89	10.61	10.03
Maintenance and repair services	9.01	10.32	13.18	11.46	9.64	6 78	12.67

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Repair or maintenance service	8.62	10.32	13.18	11.46	9.50	5.20	11.94
Materials for dwelling under construction and additions	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Repair & replace hard surface flooring	0.36	0.00	0.00	0.00	0.00	1.58	0.89
Repair of built-in applicances	0.03	0.00	0.00	0.00	0.14	0.00	0.05
Maintenance and repair comm	6.07	4.97	3.87	6.19	5.00	14.00	7.59
Paint, wallpaper, and supplies	1.19	0.85	1.39	1.12	2.22	1.63	1.10
Tools and equipment for painting and wallpapering	0.13	0.09	0.15	0.12	0.24	0.18	0.12
Materials for plast., panels, roofing, gutters, etc	0.68	1.43	0.34	0.94	0.69	0.81	0.56
Materials for patio, walk, fence, driveway, masonry, brick & stucco work	0.02	0.06	0.00	0.01	0.00	0.06	0.02
Plumbing supplies and equipment	0.38	0.23	0.53	0.75	0.25	0.20	0.17
Electrical supplies, heat./cool. equip	0.92	0.10	0.18	0.03	0.11	5.91	0.01
Miscellaneous supplies/equipment	1.84	2.07	0.79	2.69	1.08	1.80	3.41
Materials for insulation, other maintenance and repair	0.58	0.51	0.73	0.49	0.56	0.67	0.72
Termite/pest control (cap. improvement) (renter)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Materials for additions, finish basements, remodeling rooms	1.08	1.44	0.07	1.89	0.26	0.24	2.69
Construction materials jobs not started	0.18	0.12	0.00	0.31	0.26	0.89	0.00
Materials for hard surface flooring	0.14	0.00	0.46	0.26	0.00	0.52	0.00
Materials for landscape maintenance	0.76	0.14	0.03	0.27	0.42	0.88	2.21
Other lodging	446.79	328.64	211.22	343.13	515.57	592.04	1158.09
Owned vacation homes	78.25	147.93	26.59	48.70	89.46	52.58	199.82
Prepayment penalty charges (own vac)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mortgage interest	48.65	124.50	5.47	31.06	51.05	23.57	117.74
Property taxes	16.90	12.09	14.93	9.56	21.23	16.99	45.43
Maintenance, insurance other expenses	12.71	11.34	6.19	8.05	17.28	12.03	36.65
Homeowners and related insurance	3.07	1.77	1.42	2.32	2.69	1.79	10.56
Homeowners insurance	3.04	1.54	1.42	2.32	2.69	1.79	10.51
Fire/extended coverage	0.03	0.22	0.00	0.00	0.00	0.00	0.05
Ground rent	3.33	0.90	3.95	1.64	8.88	1.26	9.64
Maintenance/repair services	5.52	8.06	0.71	3.83	6.37	8.30	14.44
Repair/remodeling (service)	5.52	8.06	0.71	3.83	6.37	8.30	14.44
Repair and replace hard surface floor	0.00	0.00	0.00	0.00	0.00	0.00	0.00

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Maintenance/repair comm	0.39	0.61	0.11	0.28	0.11	0.23	0.70
Paints, wallpaper, supplies	0.08	0.19	0.06	0.00	0.03	0.08	0.29
Tools/equipment for painting and wallpapering	0.01	0.02	0.01	0.00	0.00	0.01	0.03
Materials for plastering, panels, roofing, gutters, downspouts, siding, windows, doors, screens, and awnings	0.05	0.00	0.00	0.02	0.00	0.03	0.32
Materials for patio, walk, fence, drive, masonry, brick, stucco	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Plumbing supplies/equipment	0.02	0.04	0.00	0.00	0.03	0.07	0.05
Electrical supplies, heat./cool equip	0.01	0.00	0.00	0.01	0.04	0.00	0.00
Miscellaneous supplies/equipment	0.01	0.00	0.05	0.02	0.00	0.04	0.00
Materials for insulation/other maint./repair	0.01	0.00	0.05	0.00	0.00	0.04	0.00
Materials for finishing basements remodeling rooms	0.00	0.00	0.00	0.02	0.00	0.00	0.00
Materials for hard surface floor	0.20	0.35	0.00	0.23	0.00	0.00	0.00
Materials for landscaping maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Property management and security	0.40	0.00	0.00	0.00	1.23	0.44	1.30
Property Management	0.40	0.00	0.00	0.00	1.23	0.44	1.30
Management and upkeep serv for securit	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Parking	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses for other properties	154.47	101.84	74.84	137.28	169.04	223.95	390.55
Housing while attending school	35.48	3.69	3.44	17.58	30.76	35.15	118.12
Loding while out of town	178.58	75.19	106.36	139.57	226.31	280.35	449.60
Utilities, fuels and public services	1726.29	1412.79	1542.51	1711.07	1924.68	2089.22	2593.19
Natural gas	232.22	212.96	214.55	215.34	246.68	276.67	354.61
Util.—Natural gas (renter)	50.85	73.43	66.38	52.66	45.66	34.00	19.84
Util.—Natural gas (own home)	180.07	139.37	147.88	161.65	200.38	242.17	329.43
Util.—Natural gas (own vac.)	1.22	0.16	0.30	0.97	0.49	0.50	5.32
Util.—Natural gas (rented vac.)	0.08	0.00	0.09	0.05	0.15	0.00	0.02
Electricity	700.08	578.32	606.01	695.11	801.48	859.67	1048.84
Electricity (renter)	169.94	222.94	196.59	197.41	178.88	122.29	74.86
Electricity (own home)	524.87	350.24	408.24	493.70	618.75	733.65	957.87
Electricity (own vac.)	5.03	4.75	2.86	3.92	3.40	3.70	15.87
Electricity (rented vac.)	0.25	0.39	0.32	0.09	0.45	0.02	0.25
Fuel oil and other fuels	94.02	76.70	81.76	99.42	92.78	114.59	128.02
Fuel oil	55.60	38.66	47.69	54.62	53.00	82.53	89.36
Fuel oil (renter)	5.21	5.93	6.49	5.91	6.38	3.26	4.78
Fuel oil (own home)	49.96	32.34	41.40	48.50	46.57	79.27	82.99
Fuel oil (own vac.)	0.38	0.59	0.00	0.21	0.05	0.00	1.59
Fuel oil (rented vac.)	0.06	0.00	0.00	0.00	0.00	0.00	0.00
Coal	3.50	6.85	0.57	5.20	3.64	5.23	0.33
Coal (renter)	0.55	1.20	0.20	0.94	0.98	0.00	0.00
Coal (own home)	2.95	5.66	0.37	5.26	2.66	5.23	0.33
Coal (own vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Coal (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bottled gas	24.48	22.49	23.52	26.34	23.75	17.90	23.47
Gas, bottled/tank (renter)	3.78	5.78	4.73	2.54	3.06	0.69	2.10

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Gas, bottled/tank (own home)	18.58	15.77	17.30	24.49	19.10	12.94	15.42
Gas, bottled/tank (own vac.)	2.12	0.93	1.49	1.31	1.59	4.26	5.94
Gas, bottled/tank (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Wood and other fuels	10.43	8.49	9.77	10.26	12.38	8.93	14.87
Wood/other fuels (renter)	1.31	2.07	1.19	1.35	0.64	0.21	1.33
Wood/other fuels (own home)	9.05	6.42	8.57	8.71	11.74	8.64	13.42
Wood/other fuels (own vac.)	0.06	0.00	0.00	0.20	0.00	0.08	0.13
Wood/other fuels (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Telephone	526.79	425.95	507.41	539.06	590.21	601.80	769.36
Water and other public services	171.19	118.83	130.68	162.14	193.53	236.49	292.34
Water/sewerage maintenance	131.02	91.41	99.79	124.08	150.67	178.28	222.63
Water/sewer maintenance (renter)	18.53	20.04	17.05	22.99	18.20	15.51	8.91
Water/sawer maintenance (own home)	111.57	69.24	82.52	100.46	131.51	161.47	212.17
Water/sewer maintenance (own vac.)	0.83	1.83	0.22	0.52	0.96	1.29	1.43
Water/sawer maintenance (rented vac.)	0.09	0.30	0.00	0.08	0.00	0.00	0.13
Trash/garbage collection	38.67	26.89	29.90	37.16	40.93	55.27	65.76
Trash/garb. collection (renter)	5.26	5.02	4.95	7.21	4.96	5.00	2.97
Trash/garb. collection (own home)	33.31	21.88	24.79	29.91	35.69	50.26	62.64
Trash/garb. collection (own vac.)	0.08	0.00	0.16	0.04	0.25	0.00	0.15
Trash/garb. collection (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Septic Tank cleaning	1.50	0.52	0.98	0.92	1.94	2.96	3.95
Septic tank cleaning (renter)	0.01	0.00	0.00	0.00	0.10	0.00	0.00
Septic tank cleaning (own home)	1.48	0.52	0.98	0.91	1.84	2.96	3.95
Septic tank cleaning (own vac.)	0.00	0.00	0.00	0.01	0.00	0.00	0.00
Septic tank cleaning (rented vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Household operations	387.45	200.78	222.83	310.21	448.86	530.72	955.30
Personal services	176.53	82.78	119.28	166.06	275.08	311.41	321.27
Babysitting	74.62	42.11	58.03	85.19	133.19	114.65	115.47
Care for elderly, invalids, handicapped, etc	11.66	3.93	0.55	4.58	1.46	0.47	24.66
Day care centers, nursery/ preschools	90.25	36.75	60.69	76.28	140.43	196.28	181.13
Other household expenses	210.92	118.00	103.56	144.16	173.78	219.31	634.03
Housekeeping services	67.76	35.72	22.44	26.84	41.53	50.94	269.17
Gardening, lawn care service	49.60	27.27	22.86	30.40	31.13	53.69	159.01
Water softening service	2.81	2.73	0.76	2.19	2.95	4.10	7.63
Household laundry/dry cleaning, sent out (non-clothing) not coin-operated	1.63	1.04	0.41	1.66	2.63	2.53	3.39
Coin-operated household laundry/dry cleaning (non-cloth)	4.78	5.92	5.63	5.41	4.47	6.09	2.27
Other home services	17.86	4.29	9.02	12.39	13.96	13.26	60.11

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Termite/pest control products	0.20	0.05	0.09	0.09	0.25	0.12	0.21
Moving, storage, freight express	26.46	10.87	10.32	23.76	32.06	46.84	56.17
Appliance repair, incl. service center	16.44	9.82	17.88	18.93	20.85	17.46	25.57
Reupholstering/furniture repair	13.85	10.37	5.31	13.68	15.56	11.69	32.30
Repairs/rentals of lawn/garden equipment hand/power tools,/other household equip.	5.92	4.16	4.59	4.90	6.20	9.06	13.38
Appliance rental	2.08	4.33	2.47	1.01	1.16	0.52	0.54
Rental of office equipment for non-business use	0.17	0.02	0.27	0.04	0.01	0.57	0.46
*Repair of miscellaneous household equipment and furnishings	0.48	0.00	1.32	0.19	0.02	0.94	0.59
Rental and installation of dishwashers, range hoods, and garbage disposals	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Housekeeping supplies	382.82	266.29	321.56	383.43	451.24	475.45	670.22
Laundry and cleaning supplies	106.44	80.46	104.37	109.27	131.66	129.47	162.63
*Soaps and detergents	82.10	47.30	60.50	63.11	78.35	77.19	89.28
*Other laundry cleaning products	44.33	33.16	43.87	46.16	53.30	52.28	73.35
*Other household products	157.48	125.55	115.86	149.94	183.61	201.65	316.09
*Cleaning and toilet tissue, paper towels and napkins	52.12	42.88	45.37	51.88	64.86	67.41	80.71
*Miscellaneous household products	67.89	47.17	44.38	58.26	95.63	108.96	139.90
*Lawn and garden supplies	37.47	35.50	26.12	39.79	33.12	25.27	95.48
*Postage and stationery	118.89	80.28	101.35	124.23	135.97	144.33	191.50
*Stationary, stationery supplies, giftwrap	54.40	30.49	36.05	45.35	55.09	74.49	105.20
*Postage	64.49	49.79	65.30	78.88	80.87	69.84	86.30
Housefurnishings and equipment	1102.32	552.14	720.38	982.28	1385.76	1612.00	2590.97
Household textiles	97.11	50.30	81.09	96.28	104.56	122.28	220.32
*Bathroom linens	13.69	5.45	19.92	9.71	18.83	13.05	30.80
Bedroom linens	38.11	29.28	35.77	36.81	33.56	50.47	77.56
*Kitchen and dining room linens	5.74	4.52	2.63	4.03	6.56	7.12	15.73
Curtains and draperies	26.56	5.34	12.12	28.90	26.44	39.44	71.25
Slipcovers, decorative pillows	1.64	0.68	2.26	1.33	2.64	1.28	3.18
*Sewing materials for slipcovers, curtains other sewing materials for home use	10.32	4.80	7.95	14.65	15.39	9.43	19.15
Other linens	1.05	1.25	0.43	0.84	1.13	1.50	2.65
Furniture	319.44	139.36	204.72	261.90	378.37	433.36	661.57
Mattress and springs	41.86	18.62	32.81	39.28	57.01	62.91	93.05
Other bedroom furniture	39.75	13.71	29.56	22.68	52.21	62.05	107.77
Sofas	65.44	37.30	40.98	58.54	83.34	108.06	144.37
Living room chairs	35.91	24.89	27.22	40.43	31.79	44.77	80.20
Living room tables	20.16	6.73	15.46	15.21	26.54	27.03	50.94
Kitchen/dining room furniture	59.64	14.86	34.82	22.79	61.09	56.39	226.46
Infants' furniture	7.01	2.15	5.04	4.57	8.94	14.79	16.63
Outdoor furniture	12.57	1.62	3.51	12.51	10.65	19.59	41.43
Occasional furniture	38.12	19.48	15.32	45.67	46.80	37.77	100.73
Floor coverings	70.23	18.41	29.79	74.77	110.80	113.46	164.89
Wall-to-wall carpet (renter)	2.41	5.97	2.25	2.15	3.86	2.30	0.40

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Wall-to-wall carpet, installed, (renter)	1.73	5.73	1.16	0.70	3.14	1.74	0.11
Wall-to-wall carpet, not installed carpet squares (renter)	0.68	0.24	1.07	1.45	0.72	0.56	0.28
Wall-to-wall carpet (replacement) (own home)	42.57	7.88	22.82	47.02	42.12	67.79	119.96
Wall-to-wall carpet, not installed (replacement), carpet squares (own home)	3.04	0.00	1.67	2.54	5.12	1.77	10.38
Wall-to-wall carpet, installed (replacement) (own home)	39.53	7.88	21.16	44.48	37.00	66.02	109.58
*Room size rugs and other floor covering, non-permanent	25.25	4.56	4.71	25.60	64.82	43.36	44.54
Major appliances	172.90	107.05	138.91	169.54	213.08	240.59	328.70
Dishwashers (built-in), garbage disposals, range hoods, (renter)	0.24	0.14	0.00	0.13	0.00	1.76	0.28
Dishwashers (built-in), garbage disposals range hoods, (own home)	10.05	2.93	8.48	9.60	10.34	17.42	24.58
Refrigerators/freezers (renter)	11.18	9.98	16.09	15.96	17.11	7.86	6.21
Refrigerators/freezers (own home)	39.29	12.75	24.85	37.05	50.93	46.84	96.50
Washing machines (renter)	6.56	8.33	5.97	6.26	7.85	5.99	7.42
Washing machines (own home)	17.96	6.84	12.50	16.47	23.46	26.73	32.63
Clothes dryers (renter)	4.18	5.20	4.27	2.33	5.33	9.24	4.43
Clothes dryers (own home)	10.35	3.96	8.24	9.93	13.04	22.44	17.97
Cooking stoves/ovens (renter)	2.87	3.80	0.69	4.28	8.30	2.05	0.50
Cooking stoves/ovens (own home)	19.55	8.87	11.48	14.47	26.94	30.02	47.04
Microwave ovens (renter)	4.47	6.49	6.79	5.39	5.42	6.10	1.75
Microwave ovens (own home)	9.81	3.73	7.84	9.58	13.37	11.76	23.72
Portable dishwasher (renter)	0.31	0.00	2.29	0.26	0.23	0.00	0.00
Portable dishwasher (own home)	1.33	1.60	0.00	0.96	0.00	3.87	4.10
Window air conditioners (renter)	2.43	2.03	1.99	4.89	0.60	0.52	0.54
Window air conditioners (own home)	8.23	8.15	6.37	5.72	8.06	3.73	17.42
Electric floor cleaning equipment	14.62	9.85	9.39	19.58	17.20	17.77	25.74
Sewing machines	5.05	4.29	9.26	6.21	2.84	8.29	13.83
*Miscellaneous household appliances	3.39	6.12	2.43	0.39	2.08	16.15	3.82
Small appliances, misc. housewares	60.51	39.82	37.60	46.50	71.00	77.96	148.46
Housewares	39.14	25.14	21.57	26.52	45.46	47.51	105.70
Plastic dinnerware	1.83	1.88	0.75	1.96	1.65	3.77	3.11
China and other dinnerware	10.31	5.50	4.06	7.51	16.10	15.23	23.76
Flatware	3.44	1.31	1.62	3.30	2.32	3.40	11.15
*Glassware	9.79	2.40	3.19	4.54	11.70	9.13	36.70
*Silver serving pieces	0.27	1.17	0.01	0.03	0.05	1.04	0.11
Other serving pieces	1.36	0.72	1.22	1.19	1.11	1.49	3.23

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Nonelectric cookware	12.14	12.16	10.73	7.98	12.53	13.45	27.64
Small appliances	21.37	14.69	16.03	19.98	25.54	30.44	42.76
Small electric kitchen appliances	14.17	9.18	8.45	13.81	17.74	21.71	29.49
Portable heating/cooling equipment	7.20	5.50	7.58	6.17	7.80	8.73	13.26
Miscellaneous household equipment	382.11	197.19	228.27	333.29	507.95	624.34	867.02
Window coverings	13.72	6.79	5.05	11.17	14.42	17.90	42.34
*Infants' equipment	3.77	2.50	0.85	4.72	3.47	2.86	11.27
*Laundry and cleaning equip	8.52	3.29	10.67	8.53	12.57	7.17	20.96
Outdoor equipment	4.73	0.95	2.82	5.19	5.02	9.89	10.42
Clocks	5.46	1.68	10.69	4.27	3.57	7.24	10.26
*Lamps and lighting fixtures	28.40	48.71	9.81	21.24	50.72	42.07	46.18
*Other household decorative items	80.30	34.55	27.19	64.72	147.93	129.25	186.25
*Telephones and accessories	7.25	2.85	1.81	6.51	6.18	4.09	23.72
Lawn and garden equipment	49.12	12.59	51.04	40.12	60.08	100.17	92.96
Power tools	14.39	4.43	4.76	19.44	15.74	26.15	31.17
*Small misc. furnishings	3.39	0.04	0.00	1.23	19.77	2.50	3.06
*Hand tools	13.67	3.23	6.51	12.61	23.57	42.42	18.17
*Indoor plants, fresh flowers	41.42	25.97	31.91	24.78	34.12	74.01	110.87
*Closet and storage items	4.62	0.89	0.73	1.25	4.26	4.50	16.01
Furniture rental	3.02	2.83	3.13	2.49	1.73	2.14	3.24
Luggage	8.72	1.79	6.85	6.02	9.30	14.24	23.99
Computers for home use	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Telephone answering devices	4.23	1.77	3.22	3.95	3.81	8.37	8.57
Calculators	1.99	1.30	1.24	1.72	2.23	3.74	3.12
Business equipment for home use	6.20	1.88	3.84	5.13	9.35	7.42	15.40
*Other hardware	6.95	3.22	6.91	8.51	5.72	7.15	18.71
Smoke alarms (own home)	0.54	0.04	1.50	0.53	0.90	0.64	0.55
Smoke alarms (renter)	0.15	0.00	0.05	0.23	0.06	0.02	0.61
Smoke alarms (own vac.)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other household appliances (own home)	4.25	3.99	1.52	4.45	2.27	7.43	9.60
Other household appliances (renter)	1.35	2.61	4.35	2.07	0.54	0.66	0.12
*Miscellaneous hsehold equipment and part	18.73	14.19	7.56	20.24	27.91	25.99	37.99
Apparel and Services	1,537.27	886.12	1,085.66	1,406.15	1,847.24	2,396.00	3,154.03
Men and boys	400.67	196.95	260.75	349.53	429.04	666.47	943.93
Men, 16 and over	318.90	142.16	202.12	271.44	340.48	533.15	772.66
Men's suits	41.20	15.86	13.23	30.69	36.93	63.99	133.12
Men's sportcoats	15.57	3.80	5.33	7.90	17.97	25.65	53.04
*Men's coats and jackets	29.30	8.90	10.79	22.27	26.54	54.07	86.61
*Men's underwear	9.72	9.49	9.05	7.71	13.05	10.40	17.16
*Men's hosiery	10.34	8.58	9.08	9.30	11.24	20.53	17.50
*Men's nightwear	2.89	1.31	0.88	4.49	4.01	1.60	6.37
*Men's accessories	22.88	10.30	14.64	15.23	20.45	47.19	56.32
Men's sweaters and vests	17.65	7.09	7.08	13.16	18.88	25.26	50.07
Men's active sportswear	12.10	4.80	5.65	11.75	13.46	18.24	29.17
*Men's shirts	74.17	45.37	55.60	68.02	98.29	133.41	139.09
*Men's pants	70.76	22.61	60.87	65.68	75.41	105.22	163.08
Men's shorts/short sets	8.29	2.05	6.73	12.56	9.31	20.61	12.89
Men's uniforms	3.16	1.22	2.68	2.05	4.00	6.56	6.16
Men's other clothing	0.77	0.80	0.31	0.62	0.95	0.18	2.09

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APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Boys', 2 to 15	61.86	54.79	58.63	78.09	68.56	133.33	171.25
*Boys; coats and jackets	9.48	1.51	13.68	10.54	5.87	10.64	23.53
Boys' sweaters	3.73	2.44	2.14	2.37	5.37	3.86	8.97
*Boys' shirts	20.55	11.99	14.46	15.76	26.30	45.42	39.42
*Boys' underwear	1.55	0.53	0.89	1.61	4.81	1.15	2.25
*Boys' nightwear	2.79	2.26	1.04	4.26	3.30	5.20	2.71
*Boys' hosiery	3.99	4.43	3.84	4.63	3.97	2.81	7.29
*Boys' accessories	2.77	0.27	1.74	1.61	1.39	6.89	7.66
*Boys' suits, sportcoats, vests	3.00	1.85	0.38	2.93	1.45	11.49	8.29
*Boys' pants	24.70	25.03	16.95	26.51	23.64	25.99	53.32
*Boys' shorts, short sets	3.91	1.70	0.58	3.69	5.66	9.06	6.95
Boys' uniforms/active sportwear	5.10	2.59	2.69	3.84	6.38	10.48	11.92
Boys' other clothing	0.29	0.17	0.22	0.31	0.43	0.32	0.63
Women and girls	808.90	353.66	425.05	550.45	771.19	950.02	1190.33
Women, 16 and over	509.83	281.24	376.82	458.04	648.56	773.35	992.62
*Women's coats and jackets	33.49	9.69	12.77	21.91	41.71	80.18	86.72
*Women's dresses	83.27	47.32	56.32	65.67	81.62	111.38	185.83
*Women's sportcoats, tail, jkts	0.84	0.19	0.68	0.04	0.11	2.69	1.44
*Women's vests and sweaters	36.74	23.54	35.67	42.26	35.17	62.71	53.75
*Women's shirts, tops, blouses	85.55	43.28	80.86	72.57	113.40	126.51	156.36
*Women's skirts	29.28	17.84	18.33	25.37	22.72	59.17	65.45
*Women's pants	66.85	33.21	51.28	54.99	108.85	94.87	107.29
*Women's shorts, shorts sets	14.23	10.23	11.73	11.30	21.45	27.91	22.87
*Women's active sportwear	23.13	13.05	13.34	24.37	46.07	37.59	33.33
*Women's sleepwear	22.57	14.68	22.62	23.09	28.70	16.87	49.94
*Women's undergarments	24.38	18.17	21.05	21.01	35.71	28.83	45.66
Women's hosiery	25.85	17.40	22.30	25.51	32.18	34.56	46.47
Women's suits	28.04	14.06	9.24	24.03	36.52	32.30	75.08
*Women's accessories	34.45	20.38	20.56	32.04	43.27	54.45	72.36
*Women's uniforms	1.15	0.01	0.06	3.88	1.06	2.32	0.05
Woman's other clothing	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Girls, 2 to 15	99.08	72.42	48.23	92.41	122.63	176.67	197.71
Girls' coats and jackets	7.95	4.80	3.68	10.81	8.51	12.90	13.03
Girls' dresses, suits	12.02	7.84	6.53	10.60	14.15	20.78	24.03
*Girls' shirts/blouses/ sweater	30.19	20.94	4.47	29.93	36.40	55.73	67.22
Girls' skirts, pants	16.37	11.46	12.37	15.81	23.92	24.70	27.91
Girls' shorts, shorts sets	6.41	4.52	5.81	7.25	7.10	12.03	9.62
*Girls' active sportwear	9.32	9.69	3.04	6.23	9.77	22.73	19.94
Girls' underwear and sleepwear	5.92	4.52	4.77	5.32	8.10	8.51	11.05
*Girls' hosiery	4.88	3.68	3.11	3.94	7.41	11.90	6.67
*Girls' accessores	4.08	4.34	2.19	2.18	3.59	5.04	12.81
Girls' uniforms	1.46	0.39	0.23	0.81	2.79	1.17	4.59
Girls' other clothing	0.48	0.25	0.05	0.53	0.87	1.19	0.84
Children under 2	63.60	41.35	40.49	68.75	96.77	104.17	95.15
Infant coat/jacket/ snowsuit 9b	3.02	1.59	2.64	2.53	5.41	3.43	4.94
Infant coat/jacket/ snowsuit 9a	0.15	0.00	0.04	0.17	0.25	0.35	0.24

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Infant dresses/outerwear 9b	14.57	9.48	10.69	16.01	19.55	21.14	25.84
Infant dresses/outerwear 9a	0.41	0.43	0.21	0.34	0.66	0.50	0.79
*Infants' underwear	36.68	25.00	21.97	40.50	58.19	65.47	47.23
Infant nightwear/loungewear 9b	3.13	2.02	1.45	3.83	4.73	4.36	5.20
Infant nightwear/lougewear 9a	0.06	0.01	0.00	0.10	0.07	0.12	0.12
Infant other clothing	2.10	1.42	1.31	1.57	2.80	3.21	4.66
Infant accessories 9b	3.06	1.25	1.81	3.48	4.31	4.82	5.33
Infant accessories 9a	0.00	0.00	0.00	0.01	0.02	0.01	0.00
Infant hosiery	0.41	0.17	0.37	0.22	0.76	0.76	0.80
*Footwear	204.13	141.42	205.46	203.00	253.61	332.12	299.98
*Men's, footwear	62.95	41.07	76.93	76.61	78.10	109.06	72.77
*Boys, footwear	18.19	16.16	9.58	16.16	30.82	14.64	32.55
*Women's footwear	104.54	64.84	110.99	97.66	124.35	156.11	162.71
*Girls' footwear	18.46	19.33	7.97	10.56	20.33	52.31	31.94
Other apparel products and services	259.97	152.73	153.92	234.41	296.64	343.22	624.63
Material for making clothes	6.12	6.03	5.93	9.10	8.26	10.87	15.93
Sewing patterns and notions	2.15	1.44	1.04	2.22	2.75	2.87	3.65
Watches	21.65	13.67	15.33	17.82	29.45	32.67	45.59
Jewelry	110.35	54.93	47.33	94.40	127.09	153.93	318.74
Shoe repair, oth shoe service	3.46	1.31	2.01	3.19	4.34	4.75	8.11
Coin-operated apparel laundry/dry clean	34.25	43.52	46.86	41.09	28.11	27.33	12.67
Apparel alteration and repair	6.05	3.29	2.54	4.69	6.48	6.95	16.68
Clothing rental	4.77	2.56	2.20	7.80	5.77	4.83	8.96
Watch and jewelry repair	5.72	2.66	3.10	5.51	8.94	10.91	10.88
Apparel laundry/dry clean not coin oper	62.72	23.14	27.47	47.83	74.66	86.84	181.00
Clothing storage	0.75	0.19	0.10	0.77	0.79	1.26	2.42
Transportation	5140.21	3127.01	3840.91	5302.92	5704.50	7779.21	9714.71
Vehicle purchases (net outlay)	2388.19	1413.38	1745.63	2485.50	3248.39	3839.91	4573.46
Cars and trucks, new	1391.73	565.06	984.79	1223.08	1894.51	2685.18	3007.38
New cars	991.60	472.12	675.40	782.66	1565.37	1777.93	2163.34
New trucks	400.13	92.94	309.39	440.42	329.13	907.25	844.04
Cars and trucks, used	971.12	831.68	750.44	1221.87	1330.29	1132.30	1504.86
Used cars	754.27	641.07	616.47	863.43	974.26	926.36	1287.37
Used trucks	216.85	190.61	133.97	358.44	356.03	205.94	217.49
Other vehicles	25.34	16.65	10.40	40.63	23.59	22.43	61.22
New motorcycles	5.21	0.00	0.00	15.11	0.00	0.55	15.23
New aircraft	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Used motorcycles	15.86	16.65	10.40	25.53	23.59	21.88	17.57
Used aircraft	4.27	0.00	0.00	0.00	0.00	0.00	28.42
Gasoline and motor oil	933.90	639.11	801.58	974.84	1189.53	1329.42	1459.88
Gasoline	812.03	563.62	700.74	860.76	1037.67	1152.21	1237.62
Diesel fuel	12.01	5.55	5.31	7.50	16.98	13.33	35.10
Gasoline on out of town trips	96.47	58.26	82.01	92.50	118.25	145.52	171.41
*Gasahol	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Motor oil	12.55	10.76	12.86	13.24	15.00	16.23	14.25
Motor oil on out of town trips	0.85	0.91	0.66	0.83	0.82	1.13	1.49
Other vehicle expenses	1552.56	922.69	1137.30	1603.36	1972.04	2290.12	3046.42
Vehicle finance charges	284.70	107.09	172.61	293.49	397.69	485.81	611.95
Automobile finance charges	196.25	83.07	140.63	200.40	275.36	306.48	412.11
Truck finance charges	71.94	21.29	29.70	77.35	107.00	155.35	144.14
Motorcycle and plane finance charges	1.67	0.12	0.39	1.51	3.20	4.92	2.34
Other vehicle finance charges	14.85	2.61	1.89	14.24	12.13	19.06	53.37
Maintenance and repairs	568.56	405.19	449.94	610.06	656.51	783.55	1055.81

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Coolant/additives/brakes, trans fluids	7.15	5.91	7.62	7.65	6.94	9.47	8.01
Tires	86.22	55.96	70.42	94.47	115.02	134.28	144.92
*Parts/equip/accessories	86.80	99.08	46.21	92.07	110.88	99.54	169.51
*Vehicle products	3.92	2.28	2.52	4.57	6.07	5.55	7.35
*Misc. auto repair/servicing	17.18	9.56	10.82	27.74	18.43	26.55	24.87
Body work	34.71	22.67	29.96	38.37	32.79	33.62	54.44
Clutch, transmission repair	34.54	16.04	32.54	41.79	43.59	42.05	61.22
Drive train repair	7.58	1.64	4.70	12.07	5.41	10.31	16.45
Brake work	33.05	19.72	23.74	32.66	38.01	48.21	61.30
Steering repair	11.64	7.18	10.27	12.11	10.17	23.19	16.63
Cooling system repair	22.87	17.79	23.71	21.85	24.60	31.59	42.29
Motor tune-up	40.07	26.28	29.50	35.55	42.71	54.54	91.82
Lubrication, oil change	24.67	17.90	21.17	24.21	30.88	32.99	45.55
Front end alignment, wheel balance	9.30	4.12	8.02	9.91	12.59	11.68	18.51
Shock absorber replacement	6.01	2.55	3.04	7.11	5.80	7.10	15.43
Brake adjustment	4.75	1.22	3.57	4.86	5.29	6.43	11.02
*Gas tank repair, replacement	0.09	0.00	0.01	0.01	0.01	0.02	0.52
Minor repair/serv out-of-town trip	1.92	0.42	0.77	2.78	1.01	5.41	2.84
Repair tires and oth repair work	29.23	18.16	24.27	31.48	33.68	43.76	49.81
Exhaust system repair	14.55	6.71	18.06	16.15	16.86	22.09	19.92
Electrical system repair	20.35	12.22	15.61	22.14	19.66	34.50	34.88
Motor repair/replacement	53.53	51.77	55.00	71.06	62.61	82.11	112.89
Auto repair service policy	8.54	6.01	8.38	9.44	10.51	16.46	14.61
Vehicle insurance	515.06	314.32	409.50	544.70	665.71	729.25	950.57
Vehicle rental licenses and other charges	184.14	96.11	105.26	155.11	252.94	292.51	420.06
Leased and rented vehicles	58.54	25.20	27.47	42.79	96.33	124.51	195.33
Auto rental	44.36	19.82	22.04	28.67	65.00	90.57	110.70
Auto rental, out-of-town trips	6.76	4.07	3.64	4.97	5.28	15.25	16.62
Truck rental	12.51	0.54	1.21	6.70	22.25	13.41	45.18
Truck rental, out-of-town trips	3.98	0.77	0.23	1.77	2.33	4.78	17.45
Motorcycle rental	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Aircraft rental	0.47	0.00	0.00	0.09	1.45	0.26	1.54
Motorcycle rental out-of-town	0.04	0.00	0.00	0.00	0.00	0.00	0.26
Aircraft rental/out-of-town trips	0.40	0.00	0.35	0.59	0.01	0.22	1.58
State/local registration	67.04	45.21	49.91	70.39	96.23	99.31	112.03
Drivers license	6.59	5.47	6.43	6.62	9.23	7.71	9.58
Vehicle inspection	6.33	5.13	4.52	6.17	8.61	9.70	9.56
Parking fees	20.50	8.41	7.38	14.30	23.35	30.90	59.74
*Tolls	5.96	0.92	2.04	6.67	6.82	7.92	18.48
Tolls on out-of-town trips	4.12	1.80	2.31	3.79	5.39	6.29	9.05
Towing charges	5.05	3.97	5.21	4.36	6.97	6.18	6.32
Public transportation	265.56	151.82	156.40	239.14	293.73	320.76	634.96
Airline fares	176.01	79.22	89.55	158.79	193.56	232.90	471.55
Intercity bus fares	14.30	11.67	7.13	12.41	27.86	10.82	14.74
Intracity mass transit fares	41.07	44.70	42.94	38.53	32.98	34.12	64.33
Local trans. out of town trips	0.54	0.20	0.15	0.50	0.65	1.04	1.21
Taxi fares on trips	4.86	1.76	1.32	4.47	5.86	9.39	10.86
Taxi fares	5.89	5.76	5.59	6.42	9.41	3.74	7.36
Intercity train fares	9.04	3.31	6.07	8.18	4.87	14.49	22.78
Ship fares	13.00	4.30	3.37	9.46	19.05	12.55	39.62
School bus	0.86	0.91	0.29	0.38	0.49	1.70	2.48
Health care	1282.43	1385.50	1299.71	1328.49	1367.25	1531.77	1566.44

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Health insurance	473.36	480.42	474.00	537.14	475.48	543.90	518.80
Commerical health insurance	165.28	118.03	170.96	208.24	195.72	255.42	207.76
Blue Cross/Blue Shield	116.52	120.47	102.86	127.18	114.09	111.37	146.61
Health maintenance plans (HMO'S)	48.48	27.40	44.11	57.95	67.51	84.53	66.91
Medicare payments	78.60	130.87	101.55	71.71	41.13	31.51	32.52
Commercial medicare supplements and other health insurance	64.48	83.66	54.53	72.07	57.02	61.07	65.10
Medical services	512.73	587.65	540.82	487.31	551.59	676.69	701.33
Physician's services	149.19	147.96	158.15	160.54	202.90	205.76	154.17
Dental services	150.89	111.17	96.11	150.62	192.81	211.77	291.66
Eye care services	22.70	25.67	11.56	24.89	24.45	24.55	37.32
Service by other than physicians	22.62	11.11	10.65	32.64	33.87	29.23	37.72
Lab test, xrays	26.78	23.57	29.34	26.95	25.75	28.61	43.93
Nurse, therapy/misc medical service	4.21	1.24	−3.70	1.59	1.80	1.01	20.02
Hospital room	54.96	72.02	71.99	50.56	28.43	95.50	82.57
Hospital services other than room	26.61	57.38	52.02	28.95	22.09	39.94	−0.69
Care in convalescent or nursing home	40.86	129.58	105.34	4.48	2.60	18.57	14.65
*Repair of medical equipment	0.05	0.00	0.00	0.00	0.00	0.00	0.00
Other medical care services	13.86	7.94	9.35	6.19	16.09	22.77	20.00
Drugs	225.28	255.13	228.07	243.50	250.24	216.93	231.03
*Non-prescription drugs	65.79	71.19	57.80	74.26	86.34	75.99	72.99
Prescription drugs	159.49	183.94	170.27	169.24	163.91	140.94	158.04
Medical supplies	71.06	62.30	56.83	60.54	89.93	94.24	117.28
Eyeglasses	45.18	38.08	36.80	44.92	56.67	64.90	76.60
*Topicals and dressing	14.40	11.82	10.29	11.38	19.22	24.24	25.72
Medical equipment for general use	5.29	4.78	4.32	1.83	4.67	4.14	5.12
Supportive/conval med. equip	5.70	7.46	4.61	2.02	8.91	0.65	9.30
Rental of medical equipment	0.50	0.16	0.61	0.38	0.47	0.31	0.55
*Hearing aids	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Entertainment	1348.90	802.34	856.00	1191.35	1510.43	1994.64	3148.04
Fees and admissions	351.99	139.16	185.75	309.51	419.64	525.52	879.59
Recreation expenses, out of town trips	17.65	6.68	9.72	19.86	20.46	28.40	36.78
Club membership dues and fees	76.68	31.73	44.57	57.91	79.31	90.62	230.17
Fees for participant sports	46.90	22.19	29.18	46.82	63.52	68.77	102.29
Participant sports out-of-town trips	18.96	5.94	9.50	15.44	23.16	34.10	44.73
Movie, theater, opera, ballet	61.08	29.29	33.53	50.31	70.94	82.33	149.40
Movie, oth admissions out of town	25.91	9.78	14.04	28.74	35.89	37.17	52.04
Admission to sporting events	19.63	7.38	9.75	27.61	18.39	41.10	46.63
Admission to sports events out-of-town	25.91	9.78	14.04	28.74	35.89	37.17	52.04
Fees for recreational lessions	41.23	9.71	11.70	24.00	51.63	77.27	124.72
Oth ent serv, out-of-town trip	17.85	6.68	9.72	19.86	20.46	28.40	38.78
Television, radios and sound equipment	422.50	296.54	322.08	416.12	493.78	576.29	788.05
Televisions	295.95	228.52	244.28	299.91	344.82	398.08	509.85
Community antenna or cable tv	137.94	110.11	118.89	142.38	161.32	184.08	218.51
*Black and white tv	2.84	0.65	0.00	1.95	0.00	0.00	16.41
Color tv-console	23.60	16.77	20.77	28.58	27.00	24.27	31.30
Color tv-portable/table model	43.50	36.42	37.50	48.29	39.51	54.93	71.38
Vcr's/video disc players	47.70	39.08	36.49	41.57	69.42	66.10	95.51
Video cassettes/tapes/discs	13.44	8.31	8.72	11.97	18.39	21.56	28.99

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Video games hardware/ software	14.88	5.40	7.91	16.27	17.25	31.40	29.94
Repair of tv/radio/sound equipment	10.43	0.54	11.52	6.32	10.43	15.74	17.75
Rental of televisions	1.61	4.24	2.48	0.57	1.49	0.00	0.04
Radios, sound equipment	126.55	68.03	77.80	116.21	146.96	176.21	278.21
*Radios	4.84	1.81	1.57	3.99	7.25	8.26	11.80
*Phonographs	0.53	0.00	0.00	0.00	0.00	0.40	3.36
*Tape recorders and players	10.50	7.02	7.43	0.51	0.96	9.12	27.49
Sound components/component systems	28.64	22.73	17.34	35.06	23.87	45.24	62.93
*Misc sound equipment	0.16	0.55	0.09	0.00	0.24	0.00	0.35
*Sound equip accessories	4.29	1.46	1.12	12.72	4.33	1.68	6.77
Record/tape club	4.17	2.18	4.62	3.63	7.45	6.14	5.91
Records, tapes, needles, styli	25.86	14.32	15.10	20.10	29.81	39.90	57.19
Rental of vcr/radio/sound equip	1.59	0.70	1,56	1.98	1.54	0.39	1.40
Muscial instruments/ acessories	20.58	3.32	12.63	13.86	37.81	24.77	53.28
Rent/repair music instruments	2.12	0.30	1.16	1.62	1.95	4.09	5.25
Rental of video cass./ tapes/discs/films	23.27	13.65	15.18	22.74	33.76	38.22	42.49
Pets, toys and playground equip	242.26	134.73	182.82	234.32	336.90	354.45	457.26
Pets	136.31	77.25	119.89	125.55	183.79	190.80	259.08
*Pet food	65.61	53.55	46.56	63.13	93.51	83.41	106.50
*Pet-purch/supplies/medicine	25.23	5.71	43.99	24.37	29.83	28.53	49.96
Pet services	10.64	4.26	4.40	9.06	14.74	19.11	26.24
Vet services	33.84	13.73	24.94	28.99	45.71	49.75	74.38
Toys, games, hobbies, and tricycles	102.86	57.26	62.55	107.09	149.80	167.96	187.24
Playground equipment	2.98	0.22	0.38	1.69	3.31	5.69	10.94
Other enterinment supplies, equip., serv.	332.16	231.90	165.36	231.39	260.12	538.39	1023.44
Unmotor-boats and trailers	24.02	2.29	0.00	22.31	7.09	46.24	96.99
Boats w/o motor/boat trailers	18.32	1.83	0.00	18.35	4.76	33.83	73.57
trailer/other attachable campers	5.70	0.46	0.00	3.96	2.34	12.41	23.42
Powered sports vehicles	137.44	168.02	56.37	51.83	40.69	217.35	510.44
Motorized camper coach/ other vehicles	38.79	83.50	11.55	1.65	28.53	22.53	134.38
Purchase of boat with motor	98.65	84.52	44.82	50.19	12.36	194.81	376.06
Rental of sports vehicles	2.33	0.00	1.06	1.43	1.14	3.90	8.13
Rental non-camper trailer	0.06	0.00	0.00	0.23	0.02	0.00	0.09
Boat/trailer rent out of town	0.94	0.00	0.50	0.02	0.69	3.17	1.94
Rental camper/oth vehicles on trips	0.58	0.00	0.52	0.30	0.24	0.57	2.51
Rental of boat	0.23	0.00	0.04	0.00	0.00	0.16	1.42
Rental of campers oth r. v	0.52	0.00	0.00	0.87	0.19	0.00	2.17
Outboard motors	1.28	1.43	1.35	0.11	0.51	0.22	5.79
Docking/landing fees	5.33	0.17	2.51	3.30	3.12	5.73	20.20
Sports equipment	86.67	27.99	52.35	82.59	113.75	136.51	211.99
Athletic gear/game tables/ ex. equip	34.85	9.06	26.36	33.54	38.39	61.59	85.92
Bicycles	12.28	5.80	6.60	12.50	17.62	20.21	23.55
Camping equipment	9.26	1.35	1.33	1.45	4.94	4.43	9.21
Hunting and fishing equipment	15.91	5.09	11.57	15.40	22.64	24.90	36.25
Winter sport equipment	4.96	0.94	2.24	3.99	5.69	3.92	16.95

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Water sport and misc. sport equipment	13.20	3.66	4.03	12.31	22.46	17.71	34.87
Rental/repair of misc sports equipment	2.31	2.09	0.22	3.09	1.60	3.76	5.25
Photographic equipment and supplies	69.61	28.16	46.35	67.06	83.07	119.31	157.10
Film	19.96	9.29	13.73	20.05	22.90	32.38	43.61
*Other photographic supplies	0.64	2.36	1.01	0.26	0.15	0.24	1.17
Film processing	25.21	10.72	15.21	23.97	26.28	41.48	59.82
Rent/repair photo equipment	0.24	0.05	0.42	0.30	0.27	0.34	0.47
Photographic equipment	15.43	5.16	7.28	13.04	20.47	25.46	40.91
*Photographer fees	8.12	0.56	10.71	9.45	11.00	19.51	11.12
*Fireworks	0.51	0.99	0.26	0.00	0.00	0.00	2.37
*Souvenirs	0.44	0.00	0.00	0.00	0.49	0.38	2.15
*Visual goods	0.76	0.00	0.00	0.42	0.67	0.00	3.83
*Pinball, electronic video games	3.78	2.87	3.11	2.34	9.38	8.74	4.45
Personal care products and services	345.68	249.04	282.21	324.70	420.30	478.79	651.43
Personal care products	179.05	136.89	166.87	169.79	198.77	245.49	335.33
*Hair care products	40.57	34.79	36.67	37.36	41.43	56.30	77.75
*Non-elec articles for the hair	4.26	3.55	2.64	5.57	4.31	6.79	8.37
Wigs and hairpieces	1.07	0.47	0.91	0.59	1.50	0.34	2.71
*Oral hygiene products, articles	18.16	13.60	18.18	16.89	22.18	22.44	29.63
*Shaving needs	8.49	8.31	12.14	8.22	9.09	11.31	13.16
*Cosmetic, perfume, bath prep	77.63	55.67	73.62	72.41	90.11	102.03	148.23
*Deodorant, feminine hygiene, misc. pers car	23.52	17.79	19.75	23.84	22.08	36.47	43.65
Electric personal care appliances	5.35	2.51	2.95	4.92	8.07	7.80	11.83
Personal care services	166.63	112.35	115.34	154.91	221.54	233.30	316.10
*Personal care services/females	89.35	61.33	58.80	83.46	127.40	112.04	174.08
Personal care services/males	77.12	50.83	56.42	71.27	93.93	120.95	141.78
Repair of personal care appliances	0.16	0.19	0.11	0.18	0.21	0.31	0.24
Reading	152.49	93.38	113.87	142.11	185.46	229.92	287.41
Newspapers	63.99	47.96	53.05	63.85	72.82	84.18	105.97
Magazines	38.92	21.42	31.03	38.54	45.36	65.91	71.63
*Newsletters	0.04	0.00	0.00	0.00	0.00	0.42	0.00
Book thru book clubs	10.63	6.87	8.72	8.86	15.44	16.33	21.60
Books not thru book clubs	35.24	16.73	20.13	28.28	48.03	54.12	79.39
Encyclopedia and oth sets of refer books	3.67	0.40	0.95	2.57	3.81	8.97	8.81
Education	324.43	187.02	118.84	190.35	322.81	349.24	835.73
Sch books, supp for day care, nursery, oth	2.52	1.44	1.58	1.30	6.04	2.25	4.76
College tuition	176.75	91.59	47.50	99.69	186.76	125.89	458.90
Elementary/high school tuition	53.20	6.10	10.62	25.10	34.39	97.91	204.78
Other school tuition	15.29	8.32	17.55	9.00	13.94	21.56	31.48
Oth school expenses incl rentals	15.78	14.42	10.07	10.77	13.45	22.64	33.02
Sch bks/supplies for college	26.56	25.25	17.75	16.63	24.53	16.65	41.08
Sch bks/supp for elem/high sch	6.23	5.70	3.25	5.64	7.82	9.59	11.28
*School supplies, etc.—unspecified	28.10	34.20	10.53	22.22	35.67	52.73	50.44
Tobacco products and smoking supplies	242.33	221.48	250.05	262.82	292.87	249.43	270.26

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By Income Before Taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, Feb. 13, 1990]

Item	June 7, 1990						
	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Cigarettes	224.61	197.67	235.29	244.22	273.20	230.62	251.80
Other tobacco products	15.28	15.85	13.94	16.00	17.99	17.73	17.12
*Smoking accessories	2.44	7.96	0.82	2.60	1.69	0.86	1.37
*Marijuana	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Miscellaneous	597.58	345.77	474.63	553.17	769.62	811.02	1182.12
*Miscellaneous fees, parimutuel losses	38.61	20.23	56.67	26.40	62.29	47.69	76.50
Legal fees	104.50	81.04	49.27	109.06	133.34	62.67	255.98
Funeral expenses	49.32	44.70	82.98	57.05	13.57	49.05	18.62
Safety deposit box rental	5.69	4.05	3.61	5.05	5.86	6.20	12.59
Checking accounts, oth bank services	25.19	16.23	26.64	28.95	33.62	38.14	31.99
Cemetery lots or vaults	17.66	14.30	25.91	12.86	13.74	12.52	18.29
Accounting fees	39.87	18.96	20.72	33.62	52.32	47.89	93.19
*Miscellaneous personal services	23.02	14.53	16.61	12.43	39.32	40.69	47.86
Finance chgs. excl. mortgage veh	203.45	89.63	149.53	217.35	284.11	321.25	406.61
Occupational expenses	90.26	41.30	42.48	50.40	131.46	184.94	216.49
Cash contributions	730.19	352.83	486.72	529.28	761.16	956.30	2102.92
Cash contri non-CU memb, inclu alimony and students at college (Sec 22)	179.06	64.23	108.84	127.13	209.98	235.99	549.04
Gifts non-CU members	149.99	70.48	52.77	109.45	161.57	162.57	485.66
Contributions to charities	69.16	13.23	36.96	32.84	65.78	99.80	244.53
Contributions to church	295.54	197.57	276.14	242.30	322.49	423.81	661.17
Contributions to educa. organizations	17.97	1.07	2.76	2.95	12.56	12.48	89.44
Political contributions	7.29	0.99	1.75	2.38	6.73	10.74	30.82
Other contributions	11.18	5.37	5.50	12.23	2.05	10.90	42.27
Personal insurance and pensions	2532.36	682.85	1373.19	2097.59	3268.30	4542.32	6883.06
Life and other personal insurance	324.17	137.92	280.62	301.69	354.87	494.30	729.64
Life/endow/annuit/oth pers ins	312.04	132.62	275.54	290.33	342.68	468.16	704.02
Other non-health insurance	12.13	5.30	5.08	11.36	12.19	26.13	25.62
Retirement, pensions, social security	2208.19	544.93	1092.57	1795.89	2911.44	4048.02	6153.42
Deduction for government retirement	65.36	4.38	25.17	46.33	82.39	119.99	211.42
Deductions for railroad retirement	6.23	0.00	1.33	0.24	19.12	16.29	13.24
Deductions for private pensions	156.10	11.73	39.55	84.28	160.98	328.55	564.77
Deductions for self-employment IRA's and Keogh plans	297.28	36.24	78.45	181.08	333.32	494.25	1049.52
Deductions for social security	1683.21	492.58	948.07	1481.16	2315.63	3088.94	4314.46

[1] Components of income and taxes are derived from "Complete income reporters" only; see glossary.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS

Food at home:	
Ground Beef	Price per LB of regular ground beef. Average size package. Loose, pre-packaged. DO NOT PRICE LEAN.
Sirloin Steak	Price per LB. Average size package. 1st choice: Flat bone. 2nd choice: Round bone.
Round Steak, boneless	Price per LB. Average size package. 1st choice: Top round steak. 2nd choice: Eye round steak.
Chuck Roast, boneless	Price per LB of arm pot roast. Average size package.
Round Roast, boneless	Price per LB. Average size package. 1st choice: Top round roast. 2nd choice: Tip roast.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Pork Chops, bone in	Price per LB. Average size package. 1st choice: Center cut, rib chops. 2nd choice: Loin chops.
Bacon, sliced	Price for 16 OZ (1 LB) package Oscar Mayer regular sliced bacon.
Chicken, whole	Price per LB of 1 whole chicken. If whole not available, price a whole chicken, cut-up.
Fish Filet, frozen	Price per LB of frozen fish filet. 1st choice: Cod. 2nd choice: Pollock.
Tuna, canned	Price for 6.13 OZ can chunk light, packed in water. (Not fancy style.) 1st choice: Star Kist. 2nd choice: Chicken of the Sea.
Lunch Meat	Price for 8 OZ pkg., Oscar Mayer. 1st choice: bologna. 2nd choice: cotto salami or all-beef bologna.
Ham, canned	Price for 3 LB tin of canned ham. 1st choice: Hormel. 2nd choice: Dubuque.
Frankfurters	Price for 16 OZ (1 LB) package, Oscar Mayer all beef frankfurters.
Eggs, large	Price for one dozen.
Fish, fresh	Price per LB of a commonly purchased fresh fish.
Milk, 2%	Price for one gallon (128 FL OZ), 2%. Lowest priced store brand.
Cheddar Cheese	Price per LB of mild cheddar, store brand.
Ice Cream	Price for ½ gallon vanilla flavored ice cream. DO NOT PRICE ICE MILK. 1st choice: Store Brand. 2nd choice: Lowest Price Name Brand.
Bread, white	Price for 16 OZ loaf of sliced, white bread. 1st choice: Store brand bread. 2nd choice: Lowest priced name brand, white bread.
Spaghetti, dry	Price for 16 OZ box or bag of spaghetti. 1st choice: Creamettes. 2nd choice: Mueller's. 3rd choice: Golden Grain. 4th choice: American Beauty.
Cereal	Price for 18 OZ box of Kellogg's Corn Flakes.
Cookies	Price for 16 OZ package of Nabisco Oreo Cookies.
Refrigerated Biscuits	Price for 10 OZ (283 G) tube Pillsbury Hungry Jack Biscuits.
Hamburger Buns	Price for 12 OZ (340 G) package of 8 sliced enriched white hamburger buns. 1st choice: Store brand, buns. 2nd choice: Lowest priced name brand, buns.
Cake	Price for one frosted undecorated, 9-inch chocolate two-layer cake.
Apples, fresh	Price per LB of Red Delicious apples. If apples are priced by the bag, report the price and weight of the bag—use the store's scale if necessary. Price medium apples if possible.
Bananas, fresh	Price per LB. If bananas are priced by the bunch, report the price and weight of the bunch—use the store's scale if necessary.
Tomatoes, fresh	Price per LB. Price medium-size tomatoes if possible.
Potatoes	Price for 10 LB bag of lowest priced potatoes. If 10 LB bag is not available, substitute nearest size sack.
Frozen Orange Juice	Price for 12 FL OZ (makes 46 FL OZ) can of frozen orange juice concentrate—store brand.
Tomato Juice	Price for 46 FL OZ can of tomato juice. 1st choice: Libby's. 2nd choice: Campbell's.
Peaches, canned	Price for 29 OZ can of Del Monte yellow cling peaches.
Peas, frozen	Price for 16 OZ pkg. of Green Giant frozen peas. DO NOT PRICE PEAS WITH SAUCE.
Green Beans, canned	Price for 16 OZ can of cut Del Monte green beans.
Oranges, fresh	Price per LB. If oranges are priced by the bag or by the orange, report the price and weigh a bag—using the store's scale if possible. Price navel medium-size oranges if possible.
Lettuce, fresh	Price for 1 head of lettuce. If lettuce is priced by weight, report the price and also report the weight of an average head.
Celery, fresh	Price for 1 bunch of celery. DO NOT PRICE CELERY HEARTS.
Fruit Drink	Price for 46 FL OZ can. 1st choice: HI-C, regular. 2nd choice: Hawaiian Punch.
Soft Drink	Price of 2 L (liter) plastic bottle. 1st choice: Coca-Cola. 2nd choice: Pepsi.
Coffee, ground	Price for 13 OZ can of Folgers drip grind.
Canned Soup	Price for one can Campbell's soup. 1st choice: Vegetable 10½ OZ. 2nd choice: Chicken Noodle 10¾ OZ.
Snack Food	Price for 16 OZ bag or box of potato chips. 1st choice: store brand potato chips. 2nd choice; lowest priced name brand potato chips.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Salt	Price for 26 OZ box of iodized salt. 1st choice: Morton. 2nd choice: Ivory. 3rd choice: Private Label.
Ketchup	Price for 14 OZ bottle of Heinz ketchup.
Cooking Oil	Price for 48 FL OZ bottle. 1st choice: Crisco. 2nd choice: Wesson.
Margarine	Price for 1 LB, four sticks. 1st choice: Blue Bonnet. 2nd choice: Parkay.
Frozen Dinner	Price for 11.5 OZ (326 G) Swanson—Turkey, whipped potatoes, peas, and fruit compote, frozen dinner.
Jello Gelatin	Price for 3 OZ box of Jello Gelatin dessert.
Baby Food	Price for one 4 OZ jar of Gerber Second Foods strained vegetable or fruit.
Candy Bar	Price for one 2.07 OZ Snickers candy bar. If not available, price most popular branch of same size.
Sugar, granulated	Price for 5 LB bag of granulated cane or beet sugar, lowest price available. Do not price generic sugar.
Bottled Water	Price for one gallon (128 FL OZ) bottled drinking water. DO NOT PRICE SPARKLING OR DISTILLED WATER.
Food away from home:	
Breakfast	Price for typical breakfast, such as, bacon and 2 eggs or waffles, coffee and juice. Report percentages added for tax, tip and service charge.
Lunch	Price for typical lunch, such as, chef's salad or cheeseburger platter and small soft drink. Report percentages added for tax, tip and service charge.
Dinner	Price for typical dinner, such as, New York strip or seafood platter and coffee. Report percentages added for tax, tip and service charge.
Fast Food Lunch/Dinner.	Average price of a meal at a fast food establishment. Price for typical meal, such as, Big Mac or Whopper, medium french fries and medium coke.
Ice Cream Cone	Price for regular (one scoop) vanilla ice cream cone.
Tobacco:	
Cigarettes, king size	Price for 1 carton (200 cigarettes) of Winston filter-kings soft pack. DO NOT INCLUDE SALES TAX.
Alcohol:	
Beer at home	Price for a six-pack of 12 OZ cans of Budweiser. DO NOT PRICE REFRIGERATED BEER.
Wine at home	Price for 750 ML of Gallo chablis blanc.
Beer away	Price for glass of Budweiser/ Miller Lite beer. List percent for tax.
Wine away	Price of house white wine. List percent for tax.
Furnishings, Household Operations:	
Appliance repair	Price to replace oven thermostat control for Maytag Model #CRE305. Include hourly rate trip charge and parts cost. Part Number #7404P029–60.
Housekeeping services	Price per hour for bi-weekly cleaning. House approximately 2,000 sq. ft. Family size four. If hourly rate not available, please complete items in the Comment Section. Services include the following: Bathroom(s)—Sanitize walls, floor, counter tops, bathtub, stool Kitchen—Sanitize walls, floor, counter tops, cabinets, appliances Living Room & Dining Room—Dust, polish furniture and vacuum Bedrooms—Dust, polish furniture and vacuum. If other services are included, please note.
Moving	Price per hour for a within-city move, two men with enclosed van. Include any van rental fees.
Toilet tissue	Price for a 4 roll pack. 1st choice: Cottonelle. 2nd choice: Northern.
Pen	Price for 10 pack Bic round stic medium pen.
Postage	Price for First Class postage for a letter.
Laundry soap	Price for 64 FL OZ of liquid household laundry detergent. 1st choice: Tide. 2nd choice: Wisk.
Potting soil	Price for one 20 LB bag of Hyponex all-purpose potting soil.
Bed sheet set	Price for one set queen-size no-iron cotton & polyester percale sheets (180 thread count). One set consists of one fitted sheet, one flat sheet and two pillowcases.
Bath towel	Price for a 27x50 inch Fieldcrest Royal Classic bath towel.
Living room chair	Price for a recliner chair, swivel rocker or wall saver. Button backed with base construction of 15 zigzag springs. 1st choice: Lane. 2nd choice: Lazy boy. DO NOT PRICE SPECIAL ORDER FABRIC.
Bedroom group	Price for nightstand, headboard, 5-drawer chest, triple dresser with mirror. Solid wood top, front, mirror frame and headboard. Veneer sides. Drawer construction should have French dovetail or English dovetail joints and dust plate.
Dining room table	Price for table with center pedestal and four standard double rung chairs. Table should have veneer top and double runners for leaves with both portions of the table movable.
Washing machine	Price for large capacity washing machine with infinite load selection, 4 water temperatures, 3 wash cycles (regular, permanent press & knits/delicate), porcelain enamel top, lid & basket, self-clean lint filter, fabric softener & bleach dispenser and self-leveling rear legs. 1st choice: Maytag Model #A7500. 2nd choice: General Electric Model #WWA7678M. 3rd choice: Whirlpool Model #LA5300XT.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Kitchen range	Price for 30-inch electric range with porcelain enameled cooktop, removable coil surface elements with chrome reflector bowls, rotary clock and timer, oven light, multipane oven window, storage drawer, standard cleaning oven with two oven racks and a porcelain enamel broiler pan and insert. 1st choice: Maytag Model #CRE305. 2nd choice: General Electric Model #JBS26P. 3rd choice: Whirlpool Model #RF3105XX. 4th choice: Kenmore Model #91721.
Refrigerator	Price for no-frost 18.5 cubic ft. refrigerator with reversible doors and energy saver switch, 4 split glass shelves, fixed glass crisper shelf with 2 sealed/moisture controlled crisper drawers, double wall meat drawer. Door contains 2 covered dairy compartments, 1 deep fixed bin, 4 deep adjustable bins. Freezer has 2 adjustable wire shelves, 2 deep fixed door bins, 4 ice trays and 1 ice storage bin. 1st choice: Maytag Model #RTD19A. 2nd choice: General Electric Model #TBX19ZP. 3rd choice: Whirlpool Model #ET18DKXXN. 4th choice: Amana Model #TX20QB.
Vacuum	Price for Eureka upright Model #2034. "The Boss" 6.5 amps, 120 volts, with extra suction power, height adjustment, edge cleaner, regular bag and 20-foot cord.
Two-slice toaster	Price for Proctor-Silex two-slice toaster, chrome body, wide slot with pastry defrost setting. 1st choice: Model #T2042. 2nd choice: Model #T620B.
Two quart casserole	Price for Corning-Ware 2 QT casserole dish with cover, simple pattern.
China	Price for Corelle, simple-edged pattern tableware set. Set consists of 16 pieces, 4 dinner plates, 4 desert plates, 4 salad bowls and 4 mugs. 1st choice: Design Images. 2nd choice: Natural Images.
Electric drill	Price for Black & Decker ⅓ horsepower ⅜ inch variable speed, reversible electric drill with cord. 1st choice: Model #7144. 2nd choice: Model #7190. 3rd choice: Model #7193.
Lawn Trimmer (Summer pricing only).	Price for gas powered Weed Eater brand lawn trimmer.
Red roses, fresh cut	Price for one dozen long stemmed, fresh cut red roses.
Hammer	Price for Stanley Model #51616. 16 OZ head claw hammer, wood handle, high carbon steel head, black finish. Overall length 13¼".
Window shade	Price 37½ inch wide window shade.
Bath rug	Price for a 2436 inch solid color, oblong bathrug.
Snow blower (Alaska pricing only).	Price for 8 HP two-stage gas snow thrower with rubber tracks, 6 forward, 2 reverse speeds and adjustable snow chute.
Clothing	
Man's suit	Price for two-piece single-breasted business suit of the type generally worn to the office. Conservatively colored and styled with a fabric blend of 45% wool and 55% polyester.
Man's jeans	Price of Levi's jeans. 1st choice: #501. 2nd choice: #505 (zipper not buttonfly).
Man's dress shirt	Price for white or solid color, long sleeve, button cuff, plain collar dress shirt, approximately 35% cotton, 65% polyester. A dress shirt will have exact collar and sleeve sizes. Example: 15½ collar, 34 sleeve. Possible brands: Arrow, Van Heusen.
Man's jacket (Summer pricing only).	Price for unlined Levi's jean jacket. Cotton denim with button front, two chest pockets and two side pockets.
Boys jeans	Price of Levi's jeans (size 7–14). 1st choice: #501. 2nd choice: #506.
Boy's shirt	Price for screen-printed t-shirt commonly worn by boys ages 8 through 10 years (size 7–14). Pullover with crew neck, short sleeves and polyester/cotton blend. Possible brand: Ocean Pacific.
Man's parka (Winter pricing only).	Price for parka with polyester fiber fill and nylon lining, tow-way front zipper, front pockets, hidden hood and self-adjusting cuffs.
Man's insulated underwear (Winter pricing only).	Price for white light weight, crew neck thermal underwear top of cotton and polyester. Possible brands: J.E. Morgan, Hanes.
Man's undershirt (summer pricing only).	Price for white undershirts with short sleeves, set of three. If not in set of three, report the number of undershirts in package. Possible brands: Jockey.
Woman's dress	Price for a long sleeve shirt waist dress appropriate for office attire. Exclude any unusual ornamentation. The dress should be blend of cotton and polyester. Possible brands: Sabina, Wrapper.
Woman's blouse	Price of 100% polyester, white, long sleeve, button front blouse and minimum trim. Possible brands: Wrapper, Girls, Girls, Girls.
Woman's slacks	Price for the type (materials and styles) most commonly used for office wear. Possible brand: Donnkenny.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Woman's sweater	Price for 100% cotton, crew neck sweater with rib knit cuffs and bottom. Exclude any unusual ornamentation or patterns. Possible brand: Lucia
Woman's jacket (Summer pricing only).	Price for unlined windbreaker
Woman's accessories	Price for split-grain, cowhide leather, Amity checkbook clutch wallet.
Girl's dress	Price of cotton blend long-sleeve dress appropriate for school. Exclude extra ornamentation. For girls ages 8 through 10 (size 7–14). Possible brand: Carter's.
Girl's jeans	Price of Levi's #902 basic relaxed taper jean, two back pockets and two front pockets. For girls ages 8 through 10 years (size 7–14).
Girl's blouse	Price of cotton blend, white or solid color, long sleeve, button front blouse. For girls ages 8 through 10 years (size 7–14). Possible brand: This Side Up.
Woman's parka (Winter pricing only).	Price for long wool blend reefer coat with acetate lining double breasted with notched collar and wind blocking neck button.
Infant's sleeper	Price for one-piece sleeping garment with legs, covering the body including the feet. Possible brands: Gerber, Playskool.
Disposable diaper	Price for 54 count package Pampers, small (8–14 LBS).
Man's shoes (Summer pricing only).	Price of 100% leather wing tips. Possible brands: Bostonian, Johnson and Murphy.
Woman's shoes (Summer pricing only).	Price for woman's pump style shoes with enclosed heel and toe, leather uppers and the rest of manmade materials. Heel height should be approximately two inches. Possible brands: 9 West, Candies.
Man's boots (Winter pricing only).	Price for 8 inch waterproof, insulated leather boot with Cambrelle lining. Possible brands: Timberlund, Herman.
Woman's boots (Winter pricing only).	Price for calf height, pile lined, urethane upper boot with 1 inch heel. Possible brands: Naturalizer.
Jewelry	Price for one pair 6mm 14K gold ball earrings for pierced ears.
Coin laundry	Price for one load of laundry using a regular size, top loading commercial washing machine. DO NOT INCLUDE COST OF DRYING.
Dry clean man's suit	Price to dry clean a man's 2-piece business suit of typical fabric.
Domestic service:	
Day-care	Price for one month of day-care for a three-year-old child (5 days a week, about 8 hours per day). If monthly rate is not available, price per week.
Babysitter, per hour	Average hourly rate for one child, age four years, evening, before midnight. (Teenager in your home.) DO NOT PRICE BABYSITTING SERVICE. Special Instructions: If typical for your area, you may wish to obtain quotes from friends/acquaintances in your area who use teenage babysitters.
Professional Services:	
Legal services	Hourly rate for general counsel.
Accounting services	Price average rate to complete tax Form 1040 and Schedule A including state schedules.
Personal care:	
Woman's cut and styled blow dry.	"Regular service" price for a woman's cut and styled blow dry. Include wash. NO CURLING IRON IF EXTRA CHARGE.
Man's haircut	Price of a man's typical haircut. Do not include wash.
Lipstick	Price for one tube of Revlon lipstick. 1st choice: Moondrops. 2nd choice: Super Lustrous.
Shampoo	Price for 15 FL OZ bottle of Revlon Flex shampoo for normal hair.
Recreation:	
Bowling	Price for 1 game of open (or non-league) bowling on Saturday night. Exclude cost of shoe rental.
Golf (Summer pricing only).	Price for 18 holes of golf on a weekend. If only 9 hole rate is available, report twice the price. If only daily rate is available (unlimited number of holes), report the Saturday or Sunday rate.
Movie theater	Typical adult price for regular length evening film. Report weekend evening price if different from weekday.
Health club	Price for regular individual membership for 1 year for existing member. Do not include any initial fees assessed only to new members. If yearly rate is not available, price per month.
Piano lessons	Price for private lesson for a beginner one-half hour in length.
Downhill skiing (Winter pricing only).	Price for one lift ticket on Saturday.
Roller skating (Winter pricing only).	Price for one session of open skating on Saturday night. Include the cost of skate rental.
Video rental	Price to rent one video tape of recently released movie, Saturday night (1 day) rate. Non-member fee.
Video recorder	Price for Zenith model #VRJ415 VHS video recorder. Two video heads, quartz tuner, 155 channel cable ready with remote control. One year 8-event timer programming, auto timer activation, auto channel search, instant record/standby, 3 second power backup and picture search lock.
Audio cassette	Regular price for a current best-selling audio cassette. NOT SALE PRICE. DO NOT PRICE DOUBLE TAPE. Example: Ropin' The Wind by Garth Brooks, Adrenalize by Def Leppard.
Compact disc player	Price for basic CD player for one disc with oversampling digital filter and basic infrared wireless remote. 1st choice: Sony Model #CDP297. 2nd choice: Kenwood Model #DP2030.
Color television	Price for Zenith model #SJ2063 Sentry 2 color TV. 20" table model with Chroma Color Contrast picture tube, 178 channel capability, electronic tuning, auto channel switch, HRC/ICC search, Keyboard Channel Selection, TV/VCR remote control, phase lock loop/AFC, on-screen channel/time and menus, flashback, sleep timer, 13.5" oval speaker and video filter.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Basic cable service	Price for one month of basic cable channel TV. DO NOT INCLUDE HOOKUP CHARGES OR PREMIUM CHANNELS.
Veterinary services	Typical fee for general office visit for a rabies inoculation for a small dog. Include the cost of the office visit.
Pet food	Price for 6 OZ can of cat food. 1st choice: 9 Lives. 2nd choice: Wiskas.
Film developing	Price to process and print 35 millimeter, 24 exposure, 100 ASA color. SINGLE PRINTS ONLY PLEASE.
Camera film	Price for 35 millimeter, 24 exposure, 100 ASA Kodak camera film.
Tennis balls	Price for can of three heavy-duty felt, yellow, Wilson tennis balls.
Board game	Price for Monopoly board game by Parker Brothers. DO NOT PRICE DELUXE EDITION.
All-terrain vehicle (Winter pricing only).	Price for Honda 250X–2 wheel drive all-terrain vehicle.
Book	Price for top ten best selling paperback book.
Magazine	Price for a single copy of Time magazine.
Local newspaper	Price for a single copy of the most common DAILY newspaper distributed in the area. DO NOT PRICE WEEKEND PAPER.
Miscellaneous Expense Component:	
Pain reliever	Price for 100 tablets of extra-strength Tylenol. DO NOT PRICE CAPLETS OR GELCAPS.
Tetracycline, prescription.	Price of 40 capsules of tetracycline, 250 milligram strength. Report price for most common national brand sold.
Optometrist, office visit	Typical fee for visual analysis including tonometry, refraction and glaucoma screening.
Dentist, clean and check teeth.	Charge for x-rays, exam and prophylaxis (light scaling and polishing) or "cleaning of teeth" without special treatment of gums or teeth. DO NOT PRICE INITIAL VISIT.
Doctor, office visit	Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is needed. Do not include the charge for a regular physical examination, injections, medication or lab tests (routine brief visit). Price General Practitioner, DO NOT PRICE SPECIALIST.
Hospital room	Daily charge for a private room. Include food and routine care. *Exclude* cost of operating room, surgery, medicine and lab fees.
Housing-related component:	
Bathroom caulking	Please price an 8-ounce tube of white bathroom caulking, most popular brand.
Computation of electric bill.	Obtain percent of customers using as primary heating source: Average consumption: Customer service charge (single phase service): Cost for first KWH: Cost of over first KWH: Other items included on bill: Comments:
Computation of gas bill	Obtain percent of customers using as primary heating source: Average consumption: Average cost per Sq. Ft.: Customer service charge: Cost for first Cu. Ft.: Cost for over first Cu. Ft.: Other items included on bill: Comments:
Computation of water bill.	Obtain average consumption: Customer service charge: Cost for first _____Gallons: Cost for over _____Gallons: Other items included on bill: Comments:
Electrical outlet	Please price a 2-plug grounded electrical outlet. Medium priced.
Electrical work	Price to add circuit breaker for dishwasher. Cut ¾ inch hole in wooden floor for cable. Connect dishwasher directly to power box (power box is easy to reach). EXCLUDE COST OF MATERIALS.
Fire extinguisher	Please price a fire extinguisher with a UL rating of 10BC, 2.5 pound size. Possible brand: Kidde.
Interior painting	Price to paint 12′ x 14′ living room with 8′ ceilings. Walls are plaster or drywall in good repair. Two standard sized sash windows, one picture window, one standard wood door. Rooms have simple wood baseboards and trim. Existing paint is latex, flat white, smooth finish, about three years old. Trim paint is latex, white, gloss enamel, about three years old. Walls and trim require no surface preparation. Exclude cost of materials. Obtain labor rate per hour, flat charge if any, and estimated time to complete job.
Latex interior paint	Please price one gallon white, interior flat latex paint. Price a national brand with one coat coverage. Possible brands: Dutch Boy, Glidden.
Pest control	Price for basic pest control maintenance (one visit). Price follow-up maintenance only, not the initial application.
Unclog drain	Price to unclog kitchen sink drain by mechanical means (snake, auger, etc.). Only include pipe removal to access trap if necessary.
Kitchen faucet	Price a Peerless single control chrome-plated faucet with spray. Faucet is solid brass and stainless steel quality construction with copper waterways, washerless design and triple chrome plating. Warrantied for as long as the home is owned.

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APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Real estate taxes	Call the local tax assessor office and/or local tax collector/treasurer for each living community in the report. Request the current real property tax rate, any special charges that are added to the tax bill and any homestead credits that might be deducted from the bill. Ask when properties were last assessed and what base year tax rate should be applied to. Request information as to what month rates are certified and when bills are mailed. Verify any significant increases or decreases from previous records.
Long distance telephone.	Price the cost of a 10 minute call, received on a weekday, at each location at 8:00 p.m. (local time); direct dial from the location being surveyed to each of the following cities; New York, Chicago and Los Angeles. Include any federal, state, local or excise tax that is applicable.
Telephone service	Obtain monthly cost for unmeasured service, for touch-tone service, and for tax.
Household insurance	Homeowner insurance. For each living community surveyed based on income level, provide owner housing profile and insurance cost (semiannual or other). Assume HO–5–type coverage.
	Renter insurance. For each living community surveyed based on income level, provide renter housing profile and insurance cost (semiannual or other). Assume HO–4–type coverage.
Homeowners	
The profiles for each of the home sizes costed are as follows:	
Low	900 (Sq. Ft.).
Mid	1,300 (Sq. Ft.).
High	1,700 (Sq. Ft.).
The worksheet components for data collection are as follows: (1) Address (2) Selling Price (3) Sale Date (4) Age (5) Room Count (broken down into bedrooms and baths) (6) Square Footage (7) Price Per Square Foot	
Information was collected through various sources—Realtors, Appraisers, MLS data, assessors' offices and private sources.	
Data collection for aged mortgages	
The worksheet components for data collection for aged mortgages are as follows: (1) Address (2) Selling Price (3) Sale Date (4) Age (5) Room Count (broken down into bedrooms and baths) (6) Square Footage (7) Price Per Square Foot	
Transportation Component	
Vehicles	1992 Honda Civic DX four door sedan, 1.5 Liter 4 Cylinder (1993 model for Alaska pricing).
	1992 Ford Taurus GL four door sedan, 3.0 Liter 6 Cylinder (1993 model for Alaska pricing).
	1992 Chevrolet S10 Blazer Two Door, four wheel drive, 4.3 Liter 6 Cylinder (1993 model for Alaska pricing).
Base price	Obtain the base price (Manufacturer's Suggested Retail Price) for each vehicle.
Options	For each vehicle, price the following options: Air conditioning, AM/FM stereo radio, power steering, tinted glass, power disc brakes, engine block heater (Alaska only), heavy-duty battery (Alaska only), studded snow tires (Alaska only), rustproofing and other options.
Fees	For each vehicle, price the following options: Destination charge, shipping charge, dealer markup, documentation fees and other one-time fees.
Taxes	For each vehicle, price the following taxes: Excise tax, import/customs tax, use tax, sales tax and other one-time taxes.
Specifications	For each vehicle, obtain the following information: Length, wheelbase, tires, curb weight, horsepower, fuel type and fuel performance (mpg).
Depreciation	For each vehicle, compute the residual value after 12, 24, 36 and 48 months respectively.
Gasoline	For each station name/brand, price regular unleaded self-service and regular unleaded full-service.

APPENDIX 2.—MARKETBASKET DESCRIPTIONS—Continued

Tune-up	For each vehicle, price a basic tune-up. Include parts and labor for the following: replace spark plugs, PCV valve, fuel filter, air filter, and breather filter. Check distributor cap, rotor, timing, and idle.
Oil change	For each vehicle, price an oil change. Include parts and labor for the following: drain old oil, replace oil filter and refill with five quarts of 10W30 SG grade oil. If SG grade is unavailable, price SF grade oil.
Change automatic transmission fluid.	For each vehicle, price to change automatic transmission fluid. Include parts and labor for the following: Remove transmission pan, drain transmission fluid, replace transmission filter, replace transmission pan gasket, replace transmission fluid, and test vehicle.
Coolant flush and fill	For each vehicle, price to flush and fill engine coolant. Include parts and labor for the following: Remove old coolant, flush contaminants, and replace with new coolant.
Muffler system	For each vehicle, price a complete muffler system. Include parts and labor for the following: Install all parts after the catalytic converter. These parts include mid pipes, clamps, muffler, and tail pipes. In Hawaii and the Virgin Islands, obtain parts costs from a NAPA dealer in the appropriate area. Obtain installation/labor costs from service stations or vehicle dealerships.
C.V. joint boots	For each vehicle, price C.V. (Constant Velocity) Joint Boot replacement. Price should include parts and labor for the following: Replace two front rubber boots. Cost does not include joint replacement.
Miscellaneous tax	For each vehicle, price miscellaneous tax. Tell how rate is determined, give formula for new vehicle purchase, give formula for subsequent year (2 to 5) and explain billing.
Tires	Price a P175/70R13 for the Honda Civic. Price a P205/70R14 for the Ford Taurus L. Price a P205/R15 for the Chevrolet S10 Blazer in DC area. In Guam, Goodyear tires were unavailable, used the average of two comparable brands. In Alaska, same tire sizes used, but not all were Goodyear. Comparable brands were priced as available.
License and registration	For each vehicle, price title fee, passenger vehicle registration fees, plate fees, inspection fees, administration/clerical/other fees and local added fees. Specify if one-time or annual. List any exceptions if the Blazer is not registered as a passenger vehicle.
Automobile finance	Obtain the rate for a four year loan based on a down payment of 20 percent. Assume the loan applicant is a current bank customer who will make payments by cash/check and not by automatic deduction from the account.
Automobile insurance	For each vehicle, price insurance coverage identified below. Assume that vehicles are used in commuting 15 miles/day, 12,000 miles/year and that the driver is a 35-year-old married male with no accidents or violations in the last five years. When there is a geographic difference, obtain rates for two different living communities. Include related expense fees and taxes.
Round-trip airfare	Price for lowest cost round trip ticket to Los Angeles, CA. Disregard restrictions.

APPENDIX 3.—PRICING CHANGES, GOODS AND SERVICES/MISCELLANEOUS EXPENSE/HOUSING RELATED

Previous	Current	Reason
1. Round Steak, bone in	Round Steak, boneless, Description the same.	Bone in cuts very difficult to find.
2. Chuck Roast, bone in, 1st choice: Arm pot roast, 2nd choice: Eye roast.	Chuck Roast, boneless, Took off second choice.	Bone in cuts very difficult to find.
3. Pork Chops, bone in, 1st choice: Center cut, loin rib chops..	Pork Chops, bone in, 1st choice: Center cut, rib chops..	Loin rib chops incorrect description.
4. Tuna, canned 6.5 oz	Tuna, canned, 6.13 oz	Manufacturer change.
5. Baby Food, Price for one 4.5 oz jar of Gerber strained vegetable or fruit..	Price for one 4 oz jar of Gerber Second Foods strained vegetable or fruit..	Manufacturer change.
6. Cake, Priced in Bakery.	Will price in grocery store.	Per OPM request.
7. Refrigerated Biscuits, Price for 7.5 oz (212 G) tube Pillsbury Biscuits. 1st choice: 10 Buttermilk biscuits, 2nd choice: 10 Country biscuits..	Price for 10 oz (283 G) tube Pillsbury Hungry Jack Biscuits..	Previously prices for 4-packs were sometimes obtained. Hungry Jack Biscuits are not sold in 4-pack.
8. Moving, Priced in house.	Have RA price.	Can be hard to reach—often have to leave message for businesses to call back, often will not return calls when not local number.
9. Appliance Repair, Price in house.	Have RA price.	
10. Price for Bic round stic medium pen.	Price for 10-pack Bic round stic medium pen.	Single pen often not available.
11. Color Television, SG2019W	SJ2063	New Model Number.
12. Video Recorder, VRG75	VRJ415	New Model Number.
13. Compact Disc Player:		
Sony #CDP270	Sony #CDP297	New Model Number.
Technics #P370	Kenwood #DP2030	New comparable, Technics brand is difficult to find.
14. Kitchen Range:		
GE #JBC26P	GE #JBS26P	New Model Number.
Kenmore #91691N	Kenmore #91721	New Model Number.
15. Refrigerator Whirlpool #ET20DKXXN	Whirlpool #ET18DKXXN	New Model Number.
16. Proctor-Silex Toaster, #T204B	#T2042	New Model Number.
17. Audio Cassette, Spellbound by Paula Abdul, Extremely Live by Vanilla Ice.	Ropin' The Wind by Garth Brooks, Adrenalize by Def Leppard.	Current best-selling titles.
18. Price for one tube of Revlon (Moondrops) lipstick.	Price for one tube of Revlon lipstick. 1st choice: Moondrops 2nd choice: Super Lustrous.	Moondrops not always available.
19. Price to unclog kitchen sink drain by mechanical means (snake, auger, etc.) Do Not Include Major Pipe Removal.	Price to unclog kitchen sink drain by mechanical means (snake, auger, etc.), only include pipe removal to access trap if necessary..	One pipe must often be removed to access the trap.
20. Men's Insulated Underwear	Men's Undershirt	Replacement item for summer pricing.

APPENDIX 3.—PRICING CHANGES, GOODS AND SERVICES/MISCELLANEOUS EXPENSE/HOUSING RELATED—Continued

Previous	Current	Reason
Price for white light weight, crew neck thermal underwear top of cotton and polyester.	Price of white undershirts with short sleeves, set of three. If not in set of three, report the number of undershirts in package..	
Possible brands: J.E. Morgan, Hanes	Possible brand: Jockey	
21. Furniture: Price in furniture stores	Price from catalog	OPM request.
22. Snow Blower (Winter Pricing): Priced in Sears and Penney's catalogs	Price in local outlets.	No longer in Penney's catalog and not available from Sears.
23. Woman's Parka (Winter Pricing): Price for nylon parka with goose down filling, two-way front zipper, two front pockets, detachable hood and velcro closing on sleeves.	Price for long wool blend reefer coat with acetate lining, double breasted with notched collar and wind blocking neck button.	Penney's does not carry a woman's parka, a dress coat is the only type of coat both catalogs carry that is similar.
24. Man's Parka (Winter Pricing): Price for cotton/polyester blend with fiber fill and nylon lining, two-way front zipper, two front pockets, detachable hood and velcro closing on sleeves.	Price for parka with polyester fiber fill and nylon lining, two-way front zipper, front pockets, hidden hood and self-adjusting cuffs.	Previous description not available in catalogs.

APPENDIX 4

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Anchorage, AK; Date Prepared: 26-May-93; Winter 1993 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	121.53	25.52	31.01	22.38	27.20	19.35	23.52
2. Food Away From Home	106.44	15.95	16.98	16.09	17.13	16.23	17.28
3. Tobacco	108.21	3.13	3.39	2.54	2.75	1.96	2.12
4. Alcohol	103.53	2.92	3.02	2.79	2.89	2.67	2.76
5. Furnishings & Hsld Op	108.39	14.35	15.55	15.95	17.29	17.49	18.96
6. Clothing	99.15	14.24	14.12	14.93	14.80	15.59	15.46
7. Domestic Services	101.78	1.78	1.81	1.79	1.82	1.81	1.84
8. Professional Services	98.09	5.77	5.54	5.84	5.61	5.91	5.68
9. Personal Care	103.50	3.57	3.69	3.47	3.59	3.38	3.50
10. Recreation	111.55	12.77	14.24	14.22	15.86	15.61	17.41
Total Weights		100.0		100.00		100.00	
Total Indexes:							
Lower			109.35				
Middle					106.94		
Upper							108.53

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Fairbanks, AK; Date Prepared: 26-May-93; Winter 1993 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	118.72	25.52	30.30	22.38	26.57	19.35	22.97
2. Food Away From Home	103.33	15.95	16.48	16.09	16.63	16.23	16.77
3. Tobacco	98.66	3.13	3.09	2.54	2.51	1.96	1.93
4. Alcohol	104.29	2.92	3.04	2.79	2.91	2.67	2.78
5. Furnishings & Hsld Op	109.13	14.35	15.66	15.95	17.41	17.49	19.09
6. Clothing	91.32	14.24	13.00	14.93	13.63	15.59	14.24
7. Domestic Services	74.74	1.78	1.33	1.79	1.34	1.81	1.35
8. Professional Services	83.54	5.77	4.82	5.84	4.88	5.91	4.94
9. Personal Care	102.22	3.57	3.65	3.47	3.55	3.38	3.46
10. Recreation	116.69	12.77	14.93	14.22	16.62	15.61	18.25
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			106.30				
Middle					106.05		
Upper							105.78

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CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Juneau, AK; Date Prepared: 26-May-93; Winter 1993 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	125.51	25.52	32.03	22.36	28.09	19.35	24.29
2. Food Away From Home	110.70	15.95	17.66	16.09	17.81	16.23	17.97
3. Tobacco	114.08	3.13	3.57	2.54	2.90	1.96	2.24
4. Alcohol	113.54	2.92	3.32	2.79	3.17	2.67	3.03
5. Furnishing & Hsld Op	112.05	14.35	16.08	15.95	17.87	17.49	19.60
6. Clothing	96.34	14.24	13.72	14.93	14.38	15.59	15.02
7. Domestic Services	92.46	1.78	1.65	1.79	1.66	1.81	1.67
8. Professional Services	90.26	5.77	5.21	5.84	5.27	5.91	5.34
9. Personal Care	113.50	3.57	4.05	3.47	3.94	3.38	3.84
10. Recreation	106.17	12.77	13.56	14.22	15.10	15.61	16.57
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			110.85				
Middle					110.19		
Upper							109.57

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Nome, AK; Date Prepared: 26-May-93; Winter 1993 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	178.57	25.52	45.57	22.36	39.96	19.35	34.55
2. Food Away From Home	102.40	15.95	16.33	16.09	16.48	16.23	16.62
3. Tobacco	130.04	3.13	4.07	2.54	3.30	1.96	2.55
4. Alcohol	130.44	2.92	3.81	2.79	3.64	2.67	3.48
5. Furnishings & Hsld Op	128.37	14.35	18.42	15.95	20.48	17.49	22.45
6. Clothing	102.10	14.24	14.54	14.93	15.24	15.59	15.92
7 Domestic Services	134.41	1.78	2.39	1.79	2.41	1.81	2.43
8. Professional Services	90.23	5.77	5.21	5.84	5.27	5.91	5.33
9. Personal Care	106.56	3.57	3.80	3.47	3.70	3.38	3.60
10. Recreation	139.68	12.77	17.84	14.22	19.86	15.61	21.80
Total Weights		100.00		100.00		100.0	
Total Indexes:							
Lower			131.98				
Middle					130.34		
Upper							128.73

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Honolulu, HI; Date Prepared: 26-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food at Home	141.62	25.52	36.14	22.36	31.69	19.35	27.40
2. Food Away From Home	110.40	15.95	17.61	16.09	17.76	16.23	17.92
3. Tobacco	107.34	3.13	3.36	2.54	2.73	1.96	2.10
4. Alcohol	110.69	2.92	3.23	2.79	3.09	2.67	2.95
5. Furnishings & Hsld Op	110.26	14.35	15.83	15.95	17.59	17.49	19.29
6. Clothing	96.68	14.24	12.34	14.93	12.94	15.59	13.51
7. Domestic Services	66.22	1.78	1.18	1.79	1.19	1.81	1.20
8. Professional Services	107.57	5.77	6.21	5.84	6.28	5.91	6.36
9. Personal Care	103.05	3.57	3.68	3.47	3.58	3.38	3.48
10. Recreation	114.00	12.77	14.56	14.22	16.21	15.61	17.80
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			114.14				
Middle					113.06		
Upper							112.02

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Hilo, HI; Date Prepared 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	142.93	25.52	36.48	22.38	31.99	19.35	27.66
2. Food Away From Home	100.43	15.95	16.02	16.09	16.16	16.23	16.30
3. Tobacco	111.68	3.13	3.50	2.54	2.84	1.96	2.19
4. Alcohol	96.98	2.92	2.83	2.79	2.71	2.67	2.59
5. Furnishings & Hsld Op	107.05	14.35	15.36	15.95	17.07	17.49	18.72
6. Clothing	95.32	14.24	13.57	14.93	14.23	15.59	14.86
7. Domestic Services	83.37	1.78	1.13	1.79	1.13	1.81	1.15
8. Professional Services	85.48	5.77	4.93	5.84	4.99	5.91	5.05
9. Personal Care	104.82	3.57	3.74	3.47	3.64	3.38	3.54
10. Recreation	100.69	12.77	12.86	14.22	14.32	15.61	15.72
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			110.42				
Middle					109.08		
Upper							107.78

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Kailua Kona, HI; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	142.02	25.52	36.24	22.38	31.78	19.35	27.48
2. Food Away From Home	115.55	15.95	16.43	16.09	18.59	16.23	18.75
3. Tobacco	112.37	3.13	3.52	2.54	2.85	1.96	2.20
4. Alcohol	104.03	2.92	3.04	2.79	2.90	2.67	2.78
5. Furnishings & Hsld Op	110.62	14.35	15.87	15.95	17.64	17.48	19.35
6. Clothing	87.16	14.24	12.41	14.93	13.01	15.59	13.59
7. Domestic Services	83.36	1.78	1.48	1.79	1.49	1.81	1.51
8. Professional Services	98.95	5.77	5.71	5.84	5.78	5.91	5.85
9. Personal Care	103.57	3.57	3.70	3.47	3.59	3.38	3.50
10. Recreation	108.61	12.77	13.87	14.22	15.44	15.61	16.95
Total Weights		100.0		100.0		100.00	
Total Indexes:							
Lower			114.27				
Middle					113.07		
Upper							111.96

CONSUMPTION GOODS AND SERVICES COST ANALYSIS

[Hawaii County Composite; Date Prepared: 28-May-93; Summer 1992 Survey]

Location	Weights	Total Indexes		
		Lower income	Middle income	Upper income
Hilo, HI	80.00	110.42	109.08	107.78
Kailua Kona, HI	20.00	114.27	113.07	111.96
Total Weight	100.00			
Composite Indexes		111.19	109.88	108.62

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Kauai County, HI; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	151.03	25.52	38.54	22.38	33.80	19.35	29.22
2. Food Away From Home	118.33	15.95	18.87	16.09	19.04	16.23	19.20
3. Tobacco	115.74	3.13	3.62	2.54	2.94	1.96	2.27
4. Alcohol	112.70	2.92	3.29	2.79	3.14	2.67	3.01
5. Furnishings & Hsld Op	109.70	14.35	15.74	15.95	17.50	17.49	19.19

CONSUMPTION GOODS AND SERVICES ANALYSIS—Continued

[Location: Kauai County, HI; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
6. Clothing	89.51	14.24	12.75	14.93	13.36	15.59	13.95
7. Domestic Services	60.29	1.78	1.07	1.79	1.08	1.81	1.09
8. Professional Services	88.80	5.77	5.12	5.84	5.19	5.91	5.25
9. Personal Care	109.93	3.57	3.92	3.47	3.81	3.38	3.72
10. Recreation	115.39	12.77	14.74	14.22	16.41	15.61	18.01
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			117.66				
Middle					116.27		
Upper							114.91

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Maui County, HI; Date Prepared: May 28-May-93; Summer 1992 survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	159.85	25.52	40.79	22.38	35.77	19.35	30.93
2. Food Away From Home	114.41	15.95	18.25	16.09	18.41	16.23	18.57
3. Tobacco	114.24	3.13	3.58	2.54	2.90	1.96	2.24
4. Alcohol	112.66	2.92	3.30	2.79	3.15	2.67	3.01
5. Furnishings and Hsld Op	107.93	14.35	15.49	15.95	17.21	17.49	18.88
6. Clothing	82.09	14.24	13.11	14.93	13.75	15.59	14.36
7. Domestic Services	92.87	1.78	1.65	1.79	1.66	1.81	1.68
8. Professional Services	101.00	5.77	5.83	5.84	5.90	5.91	5.97
9. Personal Care	112.98	3.57	4.03	3.47	3.92	3.38	3.82
10. Recreation	115.66	12.77	14.77	14.22	16.45	15.61	18.05
Total weights		100.0		100.0		100.0	
Total Indexes:							
Lower			120.80				
Middle				117.51			
Upper						117.51	

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Guam; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	142.57	25.52	36.38	22.38	31.91	19.35	27.59
2. Food Away From Home	104.66	15.95	16.69	16.09	16.84	16.23	16.99
3. Tobacco	66.31	3.13	2.14	2.54	1.74	1.96	1.34
4. Alcohol	85.60	2.92	2.50	2.79	2.39	2.67	2.29
5. Furnishings & Hsld Op	127.38	14.35	18.28	15.95	20.32	17.49	22.28
6. Clothing	91.14	14.24	12.98	14.93	13.61	15.59	14.21
7. Domestic Services	112.86	1.78	2.01	1.79	2.02	1.81	2.04
8. Professional Services	93.61	5.77	5.40	5.84	5.47	5.91	5.53
9. Personal Care	111.81	3.57	3.99	3.47	3.88	3.38	3.78
10. Recreation	129.53	12.77	16.54	14.22	18.42	15.61	20.22
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			116.91				
Middle					116.60		
Upper							116.27

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Mayaguez, PR; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food at Home	104.96	25.52	26.79	22.38	23.49	19.35	20.31
2. Food Away From Home	95.20	15.95	15.18	16.09	15.32	16.23	15.45
3. Tobacco	95.76	3.13	3.00	2.54	2.43	1.96	1.88
4. Alcohol	101.78	2.92	2.97	2.79	2.84	2.67	2.72
5. Furnishings & Hsld Op	88.79	14.35	12.74	15.95	14.16	17.49	15.53
6. Clothing	84.06	14.24	11.97	14.93	12.55	15.59	13.11
7. Domestic Services	72.26	1.78	1.29	1.79	1.29	1.81	1.31
8. Professional Services	46.43	5.77	2.68	5.84	2.71	5.91	2.74
9. Personal Care	80.96	3.57	2.89	3.47	2.81	3.38	2.74
10. Recreation	90.72	12.77	11.58	14.22	12.90	15.61	14.16
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			91.09				
Middle					90.50		
Upper							89.95

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: San Juan, PR; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	107.85	25.52	27.52	22.38	24.14	19.35	20.87
2. Food Away From Home	101.73	15.95	16.23	16.09	16.37	16.23	16.51
3. Tobacco	94.68	3.13	2.97	2.54	2.41	1.96	1.86
4. Alcohol	113.14	2.92	3.30	2.79	3.16	2.67	3.02
5. Furnishings & Hsld Op	96.19	14.35	13.80	15.95	15.34	17.49	16.82
6. Clothing	92.16	14.24	13.12	14.93	13.76	15.59	14.37
7. Domestic Services	43.74	1.78	0.78	1.79	0.78	1.81	0.79
8. Professional Services	67.74	5.77	3.91	5.84	3.96	5.91	4.00
9. Personal Care	86.62	3.57	3.09	3.47	3.01	3.38	2.93
10. Recreation	102.76	12.77	13.12	14.22	14.61	15.61	16.04
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			97.84				
Middle					97.54		
Upper							97.21

CONSUMPTION GOODS AND SERVICES COST ANALYSIS

[Puerto Rico Composite; Date Prepared: 28-May-93; Summer 1992 Survey]

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
San Juan, PR	70.00	97.84	97.54	97.21
Mayaguez, PR	30.00	91.09	90.50	89.95
Total Weight	100.00			
Composite Indexes		95.82	95.43	95.03

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: St. Croix, VI; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	127.85	25.52	32.63	22.38	28.62	19.35	24.74
2. Food Away From Home	106.71	15.95	17.02	16.09	17.17	16.23	17.32
3. Tobacco	70.34	3.13	2.20	2.54	1.79	1.96	1.38
4. Alcohol	98.43	2.92	2.87	2.79	2.75	2.67	2.63
5. Furnishings and Hsld Op	103.75	14.35	14.89	15.95	16.55	17.49	18.15

CONSUMPTION GOODS AND SERVICES ANALYSIS—Continued
[Location: St. Croix, VI; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
6. Clothing	80.16	14.24	11.42	14.93	11.97	15.59	12.50
7. Domestic Services	73.14	1.78	1.30	1.79	1.31	1.81	1.32
8. Professional Services	94.11	5.77	5.43	5.84	5.50	5.91	5.56
9. Personal Care	104.15	3.57	3.72	3.47	3.61	3.38	3.52
10. Recreation	110.67	12.77	14.13	14.22	15.74	15.61	17.28
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			105.61				
Middle					105.01		
Upper							104.40

CONSUMPTION GOODS AND SERVICES ANALYSIS
[Location: St Thomas, VI; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	130.00	25.52	33.18	22.38	29.09	19.35	25.16
2. Food Away From Home	111.45	15.95	17.78	16.09	17.93	16.23	18.09
3. Tobacco	60.03	3.13	2.13	2.54	1.73	1.96	1.33
4. Alcohol	102.80	2.92	3.00	2.79	2.87	2.67	2.74
5. Furnishings & Hsld Op	109.15	14.35	15.66	15.95	17.41	17.49	19.09
6. Clothing	83.83	14.24	11.94	14.93	12.52	15.59	13.07
7. Domestic Services	81.45	1.78	1.45	1.79	1.46	1.81	1.47
8. Professional Services	91.07	5.77	5.25	5.84	5.32	5.91	5.38
9. Personal Care	111.29	3.57	3.97	3.47	3.86	3.38	3.76
10. Recreation	125.67	12.77	16.05	14.22	17.87	15.61	19.62
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			110.41				
Middle					110.06		
Upper							109.71

CONSUMPTION GOODS AND SERVICES ANALYSIS
[Location: Anchorage Blend,* AK; *Local Retail and Commissary/Exchange; Date Prepared: 26-May-93; Winter 1993 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	96.77	25.52	24.70	22.38	21.66	19.35	18.72
2. Food Away From Home	106.44	15.95	16.98	16.09	17.13	16.23	17.28
3. Tobacco	76.10	3.13	2.38	2.54	1.93	1.96	1.49
4. Alcohol	103.53	2.92	3.02	2.79	2.89	2.67	2.76
5. Furnishings & Hsld Op	100.15	14.35	14.37	15.95	15.97	17.49	17.52
6. Clothing	94.36	14.24	13.44	14.93	14.09	15.59	14.71
7. Domestic Services	101.78	1.78	1.81	1.79	1.82	1.81	1.84
8. Professional Services	96.09	5.77	5.54	5.84	5.61	5.91	5.68
9. Personal Care	98.82	3.57	3.53	3.47	3.43	3.38	3.34
10. Recreation	107.36	12.77	13.71	14.22	15.27	15.61	16.76
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			99.48				
Middle					99.80		
Upper							100.10

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Fairbanks Blend,* AK; *Local Retail and Commissary/Exchange; Date Prepared: 26-May-93; Winter 1993 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	106.06	25.52	27.07	22.38	23.74	19.35	20.52
2. Food Away From Home	103.33	15.95	16.48	16.09	16.63	16.23	16.77
3. Tobacco	69.76	3.13	2.18	2.54	1.77	1.96	1.37
4. Alcohol	104.28	2.92	3.04	2.79	2.91	2.67	2.78
5. Furnishing & Hsld Op	102.16	14.35	14.66	15.95	16.30	17.49	17.87
6. Clothing	87.41	14.24	12.45	14.93	13.05	15.59	13.63
7. Domestic Services	74.74	1.78	1.33	1.79	1.34	1.81	1.35
8. Professional Services	83.54	5.77	4.82	5.84	4.88	5.91	4.94
9. Personal Care	98.79	3.57	3.53	3.47	3.43	3.38	3.34
10. Recreation	113.12	12.77	14.45	14.22	16.09	15.61	17.66
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	100.01				
Middle	.....	.....	.....	.....	100.14		
Upper	.....	.....	.....	.....	.....	.....	100.23

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Honolulu Blend*, HI; *Local Retail and Commissary/Exchange; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	111.55	25.52	28.49	22.38	24.99	19.35	21.60
2. Food Away From Home	110.40	15.95	17.61	16.09	17.76	16.23	17.92
3. Tobacco	68.94	3.13	2.16	2.54	1.75	1.96	1.35
4. Alcohol	110.69	2.92	3.23	2.79	3.09	2.67	2.96
5. Furnishings & Hsld Op	98.95	14.35	14.20	15.95	15.76	17.49	17.31
6. Clothing	81.16	14.24	11.56	14.93	12.12	15.59	12.65
7. Domestic Services	66.22	1.78	1.18	1.79	1.19	1.81	1.20
8. Professional Services	107.57	5.77	6.21	5.84	6.28	5.91	6.36
9. Personal Care	97.92	3.57	3.50	3.47	3.40	3.38	3.31
10. Recreation	109.86	12.77	14.03	14.22	15.62	15.61	17.15
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes							
Lower	.....	.....	102.17				
Middle	.....	.....	.....	.....	101.98		
Upper	.....	.....	.....	.....	.....	.....	101.81

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Guam Blend*; *Local Retail and Commissary/Exchange; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	113.40	25.52	28.94	22.38	25.38	19.35	21.94
2. Food Away From Home	104.66	15.95	16.69	16.09	16.84	16.23	16.99
3. Tobacco	43.63	3.13	1.37	2.54	1.11	1.96	0.85
4. Alcohol	85.60	2.92	2.50	2.79	2.39	2.67	2.29
5. Furnishings & Hsld Op	113.24	14.35	16.25	15.95	18.06	17.49	19.81
6. Clothing	85.09	14.24	12.12	14.93	12.70	15.59	13.27
7. Domestic Services	112.86	1.78	2.01	1.79	2.02	1.81	2.04
8. Professional Services	93.61	5.77	5.40	5.84	5.47	5.91	5.53
9. Personal Care	106.92	3.57	3.82	3.47	3.71	3.38	3.61
10. Recreation	125.61	12.77	16.03	14.22	17.85	15.61	19.59
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes							
Lower	.....	.....	105.13				
Middle	.....	.....	.....	.....	105.53		
Upper	.....	.....	.....	.....	.....	.....	105.93

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location San Juan Blend, (Local Retail and Commissary/Exchange), PR; Date Prepared: 28-May-93; Summer 1992 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	93.64	25.52	23.90	22.38	20.96	19.35	18.12
2. Food Away From Home	101.73	15.95	16.23	16.09	16.37	16.23	16.51
3. Tobacco	59.53	3.13	1.86	2.54	1.51	1.96	1.17
4. Alcohol	113.14	2.92	3.30	2.79	3.16	2.67	3.02
5. Furnishings & Hsld Op	88.27	14.35	12.67	15.95	14.08	17.49	15.44
6. Clothing	87.83	14.24	12.51	14.93	13.11	15.59	13.69
7. Domestic Services	43.74	1.78	0.78	1.79	0.78	1.81	0.79
8. Professional Services	67.74	5.77	3.91	5.84	3.96	5.91	4.00
9. Personal Care	83.61	3.57	2.98	3.47	2.90	3.38	2.83
10. Recreation	98.60	12.77	12.59	14.22	14.02	15.61	15.39
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			90.73				
Middle				90.85			
Upper						90.96	

Appendix 5—Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures

Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose

The Federal Government pays Cost-Of-Living-Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington DC area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program.

Data Collection

OPM, or its representatives, conducts annual Price Surveys to determine living cost differences. Local governments, retail outlets, realty firms, and businesses providing professional and other services to be surveyed are identified throuhg the use of full-scale Background Surveys, conducted approximately once every five years. Participation in the Price Surveys is voluntary. Data are collected by telephone and/or personal interview.

Wherever practical and appropriate, the price of each good or service is obtained from at least three outlets in each allowance area and at least six outlets in the reference area (i.e., the Washington, DC, area). Realty data may be obtained from one or multiple sources, as appropriate.

Confidentiality

All data collected are used only for the purposes described above. The Government pledges to hold all micro or "raw" data collected in confidence. Names of participating businesses and institutions may be released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 1 to 20 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206–0199), Washington, DC 20503.

Interview Guidelines

Three types of information are collected in price surveys: Price of goods and services, rental prices and related information, and home owner prices and related information. The following are the typical interview questions used to collect these data.

Price Information Collection

1. What is the regular (non-sale) price of ____(a specific item or service)?

Examples of items include, but are not limited to:

Chuck Roast, Bone In.
Price per pound. Average size package (e.g., not a "family" or "bonus" pack).
1st Choice: Arm pot roast.
2nd Choice: Eye roast.

Peas, Frozen.
Price for 10 ounce package.
1st Choice: Bird's Eye.
2nd Choice: Major brand of equivalent quality.

Men's Jeans.
Price for one pair of blue jeans.
1st Choice: Levi's #501 jeans.
2nd Choice: Equivalent quality jeans.

Automobile, New.
"Sticker" price of current year model Honda Civic DX, four door sedan, 1.5 liter, four cylinder engine. (Price options, fees, financing, and taxes seperately.)

Example of services include, but are not limited to:

Restaurant Service
Price of seafood platter—mixed seafood (e.g., not "steak and lobster" or "crab leg" platter). If salad and side dish not included with entree, price house salad and baked potato or order of french fries. Include price of coffee, tax, and 15 percent tip.

Film Developing.
Price to process and print 35 millimeter, 24 exposure, 100 ASA color roll film. Single prints only, standard size and finish.

Doctor, Office Visit.
Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is all that is needed. Do not include the charge for a complete physical examination, injections, medication, laboratory tests, or similar services.

Oil Change.
Price of a regular oil change including oil and filter for a current year model Honda Civic DX sedan, 1.5 liter, 4 cylinder engine.

2. Prices of many of the items can be obtained "off-the-shelf" without assistance. Occasionally, when a specific item is not available, assistance from sales or other personnel may be required to identify and price substitution items of comparable quality and quantity.

3. Prices of most services are obtained by telephone or personal interview. A few services are priced with little or no assistance. For example, prices may be obtainable from a displayed price schedule, list, or menu.

Housing Component—Rental Information Collection

1. Describe the location, size, layout, number and types of rooms, and square footage of your rental units.

2. Are they apartments, duplexes, town houses, detached houses, or other types of units? Describe.

3. Are there additional amenities (e.g., pool, sauna, tennis courts, gym)? If so, describe.

4. What is the monthly rent? What is the amount of the security deposit (if any)? What other kinds of fees or assessments are there?

5. Are utilities included? Which ones? If you can, please provide information on average monthly or annual costs of utilities paid by tenants.

6. Are term leases usually required? What are the conditions and penalties associated with the lease?

7. Are there any special restrictions or other factors we should know about (e.g., seasonal tourist trade)?

Housing Component—Information Collection for Comparable Sales

1. Describe the location, size, layout, number and types of rooms, and square footage of some of your recent home sales.

2. Were they condominiums, duplexes, town houses, detached houses, or other types of dwellings? Describe.

3. Were there any atypical characteristics (e.g., extra large lot sizes, beach front, desirable/undesirable locations)?

4. Are there additional amenities provided by the developer, homeowners association, or similar community group (e.g., pool, sauna, tennis courts, gym)? If so, describe facilities and charges.

5. What was the selling price and date of sale?

6. What are the real estate taxes?

7. Do you have any data on utilities relating to these homes?

8. In the past year or so, what has been the average appreciation rate of property in this community? Looking back over the past six years, has this rate changed? How?

9. Describe current market conditions (e.g., soft, booming, so-so). How has this affected housing prices? Describe the housing market over the past six years.

10. Are there any special considerations or other factors we should know about (e.g., retirement/tourist trade) that might affect the housing market in this community?

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Nonforeign Area Cost-of Living
Price Information Collection

Survey Date: _____ Allowance Area: _____

Survey Item: _____

Description:

Outlet	Price	Quantity	Comments

Remarks:

OMB Approved
OMB No. 3206-0199
Expires June 30, 1994

Nonforeign Area Cost-of-Living
Housing Component - Information Collection for Comparable Sales

Location: _____ Community: _____ Collection Date: _____

Address	Selling Price	Sale Date	Room Count			Square Feet	Price/ Sq Foot	Taxes	Other
			Total	Bed	Bath				

Appreciation Rate:

Current Market Conditions:

Remarks:

OMB Approved
OMB No. 3206-0159
Expires June 30, 1994

5-6

Nonforeign Area Cost-of-Living
Housing Component - Rental Information Collection

Location: _____ Community: _____ Date: _____

Complex Address Phone #	Rental Type	Bedroom Count	Monthly Rent	Total Room Count	Square Feet	Security Deposit	Utilities	Monthly Heating Cost	Amenities	Restrictions	Total Units	Other

Remarks:

BILLING CODE 6325-01-C

OMB Approval
OMB No. 3206-0199
Expires June 30, 1994

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Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose

The Federal Government pays Cost-Of-Living-Allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington, DC area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program. OPM, or its representative, conducts annual surveys to determine living cost differences. OPM conducts full-scale Background Surveys approximately once every five years to review the appropriateness of items, services, and businesses covered in the annual Price surveys. Elements of the Background Survey may be repeated annually on a limited basis as part of the maintenance of and preparation for the annual Price Surveys.

OPM uses the Background Survey to identify the services, items, quantities, outlets, and locations that will be surveyed to collect living cost data within the allowance areas and the Washington, DC, area. The Background Survey also is used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs.

Data Collection

Full-scale Background Surveys are conducted approximately once very five years. OPM identifies major manufacturers, local governments, retail outlets, realty firms, and businesses providing professional services to be surveyed on the basis of business volume and local prominence. Participation is voluntary. Data are collected by telephone and/or personal interview.

Confidentiality

All data collected are used only for the purposes described above. The Government pledges to hold all micro or "raw" data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 5 minutes to 30 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room CHP 500, Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206–0199), Washington, DC 20503.

Interview Guidelines

Seven types of information are collected in background surveys. Information is collected on products and services, outlet availability and usage, transportation, local taxes and fees, mortgage, real estate, and other topics related to the measurement of living costs (e.g., specialized information from local chambers of commerce, colleges, and universities). The following are the typical interview questions used to collect these data.

Product or Service Information

1. As a major manufacturer/supplier of ____(a specific product or service, e.g., women's apparel), please identify your items/services that are most popular (e.g., your 'volume sellers').

2. Which of these items are apt to be readily available in the following geographic locations: Alaska (i.e., Anchorage, Fairbanks, and Juneau); Hawaii; Guam; Puerto Rico; the Virgin Islands; and Washington, DC, and suburbs?

3. If the items or services are not universally available, are there other items or services that are of similar function, quality, quantity, size, and type that can be substituted?

4. Is there anything else we should know about your product or service? Are there recommendations you wish to make that would help us in our data collection?

Outlet Availability and Usage (Retail)

1. What is your product or service? What is the address(es) of your establishment(s)? If you have multiple locations, which locations have the greatest sales volumes (i.e., are most utilized by consumers)?

2. What are your store/office hours? Do these vary by location?

3. Is your full line of products or services available at all locations?

4. Is there anything else we should know about your outlet(s) or recommendations you wish to make?

Transportation Information—Private and Public Services

1. What type of transportation services do you provide (e.g., taxi, bus, subway)?

2. What geographic areas do you service? Which routes are 'typical' or most heavily utilized?

3. What is your rate structure? Does it vary by time of day or season?

4. Is there anything else we should know about transportation usage and services in your area? Are there recommendations you wish to make about our data collection?

Transportation Information—Private Use and Maintenance

1. What types of driving are most common in your area? What is the annual distance driven?

2. What types roads and highways are common in your area? What are the road surfaces and conditions?

3. Are there unusual climatic or other factors that affect the fuel economy, maintenance, and depreciation of vehicles?

4. Is there anything else we should know about private transportation usage and maintenance in your area? Are there suggestions or recommendations you wish to make?

Local Taxes and Fees

1. What types of taxes, licenses, or fees does your State, territory, or local jurisdiction levy on real estate; personal property; sales (including sales of property); automobiles; utilities; or other goods, services, or transactions?

2. Who levies these taxes, licenses or fees (i.e., State, territory, county, city, other jurisdiction)?

3. What are the rates or schedules for these? How often and when are they levied? Do the rates/schedules vary by location, season, or other factors?

4. Is there anything else we should know about taxes and fees in your area? Are there suggestions or recommendations you wish to make?

Mortgage Information

1. What forms of home financing are most common in ____(the allowance area or Washington DC metropolitan area)? (Do not include second mortgages.)

2. What are the typical conditions and limitations on loans?

3. What is the typical amount(s) of down payment required? What are the terms and rates?

4. Are there special subsidies or other practices that influence home financing in your area?

5. Looking back 6 years, what types of changes have occurred that affect home financing?

6. Is there anything else we should know about home financing in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

Real Estate Information

1. What is the availability of housing in ____(the allowance area or Washington DC metropolitan area)? Of principal interest is housing for typical salary and wage earners (as distinguished from retirees, tourists, or other special groups) for persons with low, moderate, and high incomes.

2. Describe the communities within your area in which persons ____(specify occupation/income characteristics) typically live. If appropriate, identify separate communities for renters and home owners. Where are these communities located relative to the major Federal activities in the area?

3. Describe the type of housing (e.g., apartment, condominium, town house, detached house).

4. For each type of housing, what are the usual number of rooms, bedrooms, baths, total square footage, lot size, type of construction, and similar characteristics?

5. What types of utilities are available and typically used in these communities: sewer, water, natural gas, electricity, other?

6. Are there any unusual factors that might affect maintenance requirements in your area?

7. Looking back six years, describe the changes that significantly affected the

housing market (both rental and owner markets).

8. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make concerning our data collection?

Other Types of Information

Occasionally, it is necessary to collect information from colleges, universities, chambers of commerce, trade associations, and other groups on specific subjects relating to the analysis of living costs. For example, a university known to be involved in home energy research may be contacted to determine whether there are consumption data by region or allowance area that could have application in the COLA program.

When such data are collected, the purpose and basic structure of the interview will follow the patterns shown above. The substance, however, will vary with the subject matter.

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Nonforeign Area Cost-of-Living
Background Survey Information Collection

Contact Date: _____ **Allowance Area:** _____

Contact
Name:
Address:
Phone #:

Purpose of Contact	
Product/Service Info.	
Outlet Availability/Usage	
Transportation Info.	
Local Taxes and Fees	
Mortgage Information	
Real Estate Information	
Other: (specify)	

Findings:

Remarks:

5-14

OMB Approved
OMB No. 1394-0199
Expires June 30, 1994

BILLING CODE 6325-01-C

APPENDIX 6.—1992/1993 OPM LIVING COMMUNITY SELECTION

	Low	Middle	High
Anchorage, Alaska:			
Homeowner	North Anchorage	North Anchorage	South Anchorage.
Renter	North Anchorage	North Anchorage	South Anchorage.
Fairbanks, Alaska:			
Homeowner	South Fairbanks	Fairbanks	Foothills.
Renter	Fairbanks	Fairbanks	Fairbanks.
Juneau, Alaska:			
Homeowner	Mendenhall Valley	Mendenhall Valley	Mendenhall Valley.
Renter	Juneau	Juneau	Juneau.
Nome, Alaska:			
Homeowner	Nome	Nome	Nome.
Renter	Nome	Nome	Nome.
City and County of Honolulu, Hawaii:			
Homeowner	Waianae	Kaneohe	Mililani Town.
	Wahiawa	Pearl City	Kailua.
Renter	Waianae	Wahiawa	Mililani Town.
	Makiki	Kaneohe	Aiea.
Hawaii County, Hawaii			
Hilo, Hawaii:			
Homeowner	Hilo	Hilo	Hilo.
Renter	Hilo	Hilo	Hilo.
Kailua Kona, Hawaii:			
Homeowner	Kailua Kona	Kailua Kona	Kailua Kona.
Renter	Kailua Kona	Kailua Kona	Kailua Kona.
Kauai, Hawaii:			
Homeowner	Lihue	Lihue	Princeville.
	Kapaa	Kapaa	Kalaheo.
Renter	Lihue	Lihue	Princeville.
	Hanamaulu	Kapaa	Poipu.
	Hanapepe	Wailua	
Maui, Hawaii:			
Homeowner	Wailuku	Lahaina	Lahaina.
	Kahului	Kihei	
Renter	Kahului	Kahului	Lahaina.
	Wailuku	Wailuku	Kihei.
		Lahaina	
Guam:			
Homeowner	Dededo	Dededo	Dededo.
		Yigo	Barrigada Hts.
Renter	Agana	Agana	Jonestown.
	Agat/Santa Rita	Yigo	Pago Bay.
Puerto Rico			
Mayaguez, Puerto Rico:			
Homeowner	Alturas	Alturas	Miradero.
		Sultana	Sultana.
Renter	Mayaguez	Alturas	Miradero.
	Terrace	Sultana	
San Juan, Puerto Rico:			
Homeowner	Carolina	Carolina	Guaynabo.
	Bayamon	VA Hospital Area	Hato Rey.
Renter	Carolina	Old San Juan	Old San Juan.
	Isla Verde	Isla Verde	Condado.
St. Croix, Virgin Islands:			
Homeowner	West End (Frederiksted Area)	West End (Frederiksted Area)	Frederiksted.
Renter	West End (Frederiksted Area)	West End (Frederiksted Area)	Christiansted.
St. Thomas, Virgin Islands:			
Homeowner	Charlotte Amalie	Charlotte Amalie	Charlotte Amalie.
Renter	Charlotte Amalie	Charlotte Amalie	Charlotte Amalie.
Washington DC, District of Columbia:			
Homeowner	Northeast DC	Northeast DC	Northwest DC [1].
Renter	Northeast DC	Northeast DC	Northwest DC [1].
Washington DC, Maryland:			
Homeowner	Suitland	Gaithersburg	Rockville.
Renter	Capitol Heights	Germantown	Rockville.
Washington DC, Virginia:			
Homeowner	Woodbridge	Dale City	Springfield.
Renter	Woodbridge	Fairfax/Falls Church	Alexandria.

[1] Northwest DC excludes Georgetown, but includes Dupont Circle, Cleveland Park and Adams Morgan.

APPENDIX 7

HOUSING COST ANALYSIS

[Location: Anchorage, AK; Date Prepared: 15-Apr-93; Winter 1993 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	363	.....	427	.....	491	.....
Insurance	345	168	370	168	400	186
Utilities	2145	1886	2469	2145	2793	2295
Real Estate Taxes	1181	.....	1730	.....	2555	.....
Housing	5054	6204	7062	7632	9324	11424
Total annual cost	9089	8258	12058	9945	15563	13906

HOUSING COST ANALYSIS

[Location: Fairbanks, AK; Date Prepared 15-Apr-93; Winter 1993 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	377	.....	444	.....	511	.....
Insurance	335	147	384	158	423	180
Utilities	2595	2268	3003	2595	3412	2785
Real Estate Taxes	1169	.....	1756	.....	2440	.....
Housing	4954	5496	7233	7308	8253	9816
Total annual cost	9430	7911	12820	10061	15039	12781

HOUSING COST ANALYSIS

[Location: Juneau, AK; Date Prepared: 15-Apr-93; Winter 1993 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	322	.....	379	0	436	.....
Insurance	310	117	358	117	399	141
Utilities	2,802	2,442	3,251	2,802	3,701	3,012
Real Estate Taxes	1,249	.....	1,597	.....	2,042	.....
Housing	6,242	8,244	8,234	10,152	9,568	13,764
Total annual cost	10,925	10,803	13,819	13,071	16,146	16,917

HOUSING COST ANALYSIS

[Location: Nome, AK; Date Prepared: 20-Apr-93; Winter 1933 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	351		413		475	
Insurance	516	325	528	326	665	350
Utilities	3864	3356	4499	3864	5134	4160
Real Estate Taxes	558		902		1054	
Housing	4024	7800	5518	9804	6927	11700
Total annual cost	9415	11482	11860	13994	14255	16210

HOUSING COST ANALYSIS

[Location: Honolulu, HI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	407	.....	479	.....	551	.....
Insurance	294	193	366	193	413	216
Utilities	1117	1012	1247	1117	1378	1178
Real Estate Taxes	572	.....	937	.....	1148	.....
Housing	15065	9000	22500	11520	25907	16608
Total annual cost	17445	10205	26529	12830	29397	18002

HOUSING COST ANALYSIS

[Location: Hilo, HI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	428	.....	504	.....	560	.....
Insurance	252	243	291	243	365	305
Utilities	1317	1182	1488	1317	1655	1396
Real Estate Taxes	731	.....	1057	.....	1333	.....
Housing	9319	7008	11612	8592	14104	10536
Total annual cost	12057	8433	14960	10152	18037	12237

HOUSING COST ANALYSIS

[Location: Kailua Kona, HI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	361	.....	425	.....	489	.....
Insurance	287	257	386	257	479	317
Utilities	1317	1182	1486	1317	1655	1396
Real Estate Taxes	731	.....	1057	.....	1333	.....
Housing	11395	8808	15892	10596	18605	13332
Total annual cost	14091	10247	19256	12170	22561	15045

HOUSING COST ANALYSIS

[Hawaii County Composite; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Hilo, HI	80.00	12,057	8,433	14,960	10,152	18,037	12,237
Kailua Kona, HI	20.00	14,091	10,247	19,256	12,170	22,561	15,045
Total weight	100.00						
Hawaii County, HI Cost		12,464	8,796	15,819	10,556	18,942	12,799

Housing Cost Analysis

[Location: Kauai County, HI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	292	.....	344	.....	396	.....
Insurance	246	195	296	195	375	222
Utilities	1,283	1,152	1,447	1,283	1,612	1,360
Real Estate Taxes	502	.....	705	.....	923	.....
Housing	12,245	9,732	15,797	10,872	19,525	16,296
Total annual cost	14,568	11,079	18,587	12,350	22,831	17,878

Housing Cost Analysis

[Location: Maui County, HI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	330	.....	388	.....	446	.....
Insurance	260	235	300	245	385	277
Utilities	1,624	1,445	1,848	1,624	2,072	1,729
Real Estate Taxes	597	.....	838	.....	1,090	.....
Housing	14,820	7,800	19,668	10,164	24,729	13,020
Total annual cost	17,631	9,480	23,042	12,033	28,722	15,026

Housing Cost Analysis

[Location: Guam; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	377	.....	443	.....	509	.....
Insurance	1309	58	1625	116	3088	232
Utilities	2390	2155	2862	2390	2975	2525
Real Estate Taxes	229	.....	281	.....	578	.....
Housing	10555	6966	13110	12732	24966	16706
Total annual cost	14860	11201	18141	15238	32146	21466

Housing Cost Analysis

[Location: Mayaguez, PR; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	229	.....	288	.....	309	.....
Insurance	522	55	691	110	1032	185
Utilities	861	789	953	861	1044	904
Real Estate Taxes	0	.....	309	.....	332	.....
Housing	4381	4896	7020	7152	10214	11604
Total annual cost	5993	5740	9241	8123	12931	12703

HOUSING COST ANALYSIS

[Location: San Juan, PR; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	262	.....	308	.....	354	.....
Insurance	375	108	525	154	978	253
Utilities	869	797	961	869	1052	912
Real Estate Taxes	303	.....	412	.....	738	.....
Housing	4439	8208	6039	12948	10831	23952
Total annual cost	6248	9113	8245	13971	13953	25117

HOUSING COST ANALYSIS

[Puerto Rico Composite; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
San Juan, PR	70.00	6,248	9,113	8,245	13,971	13,953	25,117
Mayaguez, PR	30.00	5,993	5,740	9,241	8,123	12,931	12,703
Total Weight	100.00						
Puerto Rico Cost		6,172	8,101	8,544	12,217	13,646	21,393

HOUSING COST ANALYSIS

[Location: St Croix, VI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	390	.....	447	.....	514	.....
Insurance	1484	387	2043	586	2423	787
Utilities	1813	1613	2063	1813	2313	1930
Real Estate Taxes	219	.....	339	.....	459	.....
Housing	8356	8364	12259	13546	15179	174784
Total annual cost	12262	10364	17151	15947	20888	20201

HOUSING COST ANALYSIS

[Location: St. Thomas, VI; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	333	.....	392	.....	451	.....
Insurance	1751	387	2423	586	2804	787
Utilities	1813	1613	2063	1813	2313	1930
Real Estate Taxes	590	.....	796	.....	966	.....
Housing	9959	8820	14181	12828	16544	16360
Total annual cost	14446	10820	19855	15227	23098	21077

HOUSING COST ANALYSIS

[Location: Washington, DC, Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	286	.....	339	.....	390	.....
Insurance	322	128	440	128	730	155
Utilities	1959	1725	2252	1959	2545	2086
Real Estate Taxes	610	.....	1042	.....	1939	.....
Housing	6907	5868	10229	7596	17121	18008
Total annual cost	10086	7721	14302	9683	22725	21259

HOUSING COST ANALYSIS

[Location: Washington, DC, MD; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	294	.....	346	.....	396	.....
Insurance	256	130	235	130	319	130
Utilities	2252	1982	2590	2252	2927	2409
Real Estate Taxes	1444	.....	1492	.....	2573	.....
Housing	7557	6564	9961	8928	14837	12309
Total annual cost	11803	8676	14624	11310	21054	14839

HOUSING COST ANALYSIS

[Location: Washington, DC, VA; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	292	.....	343	.....	394	.....
Insurance	217	139	242	139	298	156
Utilities	2217	1950	2251	2217	2865	2373
Real Estate Taxes	1406	.....	1708	.....	2552	.....
Housing	7663	6469	9309	9468	13374	11988
Total annual cost	11795	8556	14153	11823	19503	14517

HOUSING COST ANALYSIS

[Washington, DC Composite; Date Prepared: 15-Apr-93; Summer 1992 Survey]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Washington DC, DC	33.34	10,086	7,721	14,302	9,683	22,725	21,259
Washington DC, MD	33.33	11,803	8,676	14,624	11,310	21,054	14,839
Washington DC, VA	33.33	11,795	8,556	14,153	11,823	19,503	14,517
Total Weight	100.00	.....	.....	.....	.....	.....	.....
Composite Cost	.....	11,228	8,318	14,360	10,939	21,094	16,872

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HOUSING COST ANALYSIS

[Location: Washington, DC, Date Prepared: 15-Apr-93; Winter 1993 Survey]

Category	Annual Costs					
	Lower Income		Middle Income		Upper Income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	275	.....	323	.....	371	.....
Insurance	337	153	446	153	769	187
Utilities	1891	1666	2172	1691	2453	2022
Real Estate Taxes	610	.....	1042	.....	1939	.....
Housing	6279	5820	8266	7716	17856	19128
Total annual cost	9392	7639	12249	9760	23388	21337

HOUSING COST ANALYSIS

[Location: Washington, DC, MD; Date Prepared: 15-Apr-93; Winter 1993 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	315	.....	370	.....	426	.....
Insurance	283	142	276	142	414	148
Utilities	2008	1772	2302	2008	2597	2145
Real Estate Taxes	1444	.....	1492	.....	2573	.....
Housing	7561	6420	9067	9156	15266	11532
Total annual cost	11611	8334	13509	11306	21276	13825

HOUSING COST ANALYSIS

[Location: Washington, DC, VA; Date Prepared: 21-Apr-93; Winter 1993 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	264	.....	334	.....	384	.....
Insurance	215	134	245	135	300	146
Utilities	2185	1923	2513	2185	2641	2338
Real Estate Taxes	1406	.....	1705	.....	2552	.....
Housing	6785	6852	8913	9024	12996	12396
Total annual cost	10875	8909	13710	11344	19073	14880

HOUSING COST ANALYSIS

[Washington, DC Composite; Date Prepared: 21-Apr-93; Winter 1993 Survey]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Washington DC, DC	33.34	9,392	7,639	12,249	9,760	23,388	21,337
Washington DC, MD	33.33	11,611	8,334	13,509	11,306	21,276	13,825
Washington DC, VA	33.33	10,875	8,909	13,710	11,344	19,073	14,880
Total Weight	100.00	.....	.....	.....	.....	.....	.....
Composite Cost	.....	10,626	8,294	13,156	10,803	21,246	16,661

APPENDIX 8

HOUSING ANALYSIS

[Location: Anchorage, AK; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	9089	10626	85.54	8258	8294	99.57
Middle income	12058	13156	91.65	9945	10803	92.06
Upper income	15563	21246	73.25	13906	16681	83.36

HOUSING ANALYSIS

[Location: Fairbanks, AK; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	9430	10626	88.74	7911	8294	95.38
Middle income	12820	13156	97.45	10061	10803	93.13
Upper income	15039	21246	70.79	12781	16681	76.62

HOUSING ANALYSIS

[Location: Juneau, AK; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	10925	10626	102.81	10803	8294	130.25
Middle income	13819	13156	105.04	13071	10803	120.99
Upper income	16146	21246	76.00	16917	16681	101.41

HOUSING ANALYSIS

[Location: Nome, AK; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	9415	10626	88.60	11462	8294	138.44
Middle income	11880	13156	90.15	13994	10803	129.54
Upper income	14255	21246	67.09	16210	16681	97.18

HOUSING ANALYSIS

[Location: Honolulu, HI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	17,445	11,228	155.37	10,205	8,318	122.69
Middle income	26,529	14,360	184.74	12,830	10,939	117.29
Upper income	29,397	21,094	139.36	18,002	16,872	106.70

HOUSING ANALYSIS

[Location: Hawaii County, HI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	12464	11229	111.01	8796	8316	105.75

HOUSING ANALYSIS—Continued

[Location: Hawaii County, HI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Middle income	15619	14360	110.16	10556	10939	96.50
Upper income	18942	21094	89.80	12799	16872	75.86

HOUSING ANALYSIS

[Location: Kauai County, HI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	14568	11228	129.75	11079	8318	133.19
Middle income	18587	14360	129.44	12350	10939	112.90
Upper income	22831	21094	108.23	17676	16872	105.96

HOUSING ANALYSIS

[Location: Maui County, HI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	17631	11228	157.03	9480	8318	113.97
Middle income	23042	14360	160.46	12033	10939	110.00
Upper income	28722	21094	136.16	15026	16872	89.06

HOUSING ANALYSIS

[Location: Guam; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	14860	11228	132.35	11201	8318	134.66
Middle income	16141	14360	126.33	15238	10939	139.30
Upper income	32146	21094	152.39	21486	16872	127.23

HOUSING ANALYSIS

[Location: Puerto Rico; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	6172	11228	54.97	8101	8318	97.39
Middle income	8544	14360	59.50	12217	10939	111.68
Upper income	13646	21094	64.69	21393	16872	126.80

HOUSING ANALYSIS

[Location: St Croix, VI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	12262	11228	109.21	10364	8318	124.60
Middle income	17151	14360	119.44	15947	10939	145.76
Upper income	20868	21094	99.02	20201	16872	119.73

HOUSING ANALYSIS

[Location: St Thomas, VI; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	14446	11228	128.66	10820	8318	130.08
Middle income	19855	14360	138.27	15227	10939	139.20
Upper income	23098	21094	109.50	21077	16872	124.92

HOUSING ANALYSIS

[Location: Washington, DC; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	10086	11228	89.83	7721	8318	92.82
Middle income	14302	14360	99.60	9683	10939	88.52
Upper income	22725	21094	107.73	21259	16872	126.00

HOUSING ANALYSIS

[Location: Washington DC, MD; Date Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	11803	11228	105.12	8676	8318	104.30
Middle income	14624	14360	101.84	11310	10939	103.39
Upper income	21054	21094	99.81	14839	16872	87.95

HOUSING ANALYSIS

[Location: Washington DC, VA; Dated Prepared: 21-Apr-93; Summer 1992 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	11795	11228	105.05	8556	8318	102.86
Middle income	14153	14360	98.56	11823	10939	108.08
Upper income	19503	21094	92.46	14517	16872	86.04

HOUSING ANALYSIS

[Location: Washington DC, DC; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	9392	10626	88.39	7639	8294	92.10
Middle income	12249	13156	93.11	9760	10803	90.35
Upper income	23388	21246	110.08	21337	16681	127.91

HOUSING ANALYSIS

[Location: Washington DC, MD; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	11611	10626	109.27	8334	8294	100.48
Middle income	13509	13156	102.68	11306	10803	104.66
Upper income	21276	21246	100.14	13825	16681	82.86

HOUSING ANALYSIS

[Location: Washington DC, VA; Date Prepared: 21-Apr-93; Winter 1993 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	10875	10626	102.34	8909	8294	107.41
Middle income	19710	13156	104.21	11344	10803	105.01
Upper income	19073	21246	89.77	14860	16661	89.20

APPENDIX 9A—ANALYSIS OF HOME SALES DATA

Location	Previous		Current		Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Average			
Anchorage, Alaska:							
Lower	20	$65,700	70	$70,902	7.9	NA	$70,902
Middle	57	96,200	99	99,073	3.0	NA	99,073
Upper	28	139,400	144	130,815	−6.2	NA	130,815
Notes: Real estate professionals believe that home market values are appreciating. The current data are more numerous than previous data. Because current data are numerous, no adjustments are made.							
Fairbanks, Alaska:							
Lower	6	$70,851	8	$69,496	−1.9	NA	$69,496
Middle	11	101,400	30	101,478	0.1	NA	101,478
Upper	9	137,000	16	115,787	−15.5	NA	115,787
Notes: Real estate professionals believe that home market values are appreciating. The current data although sparse at the lower income, are considered good. Therefore, no adjustments are made.							
Juneau, Alaska:							
Lower	4	$89,470	17	$87,570	−2.1	NA	$87,570
Middle	18	114,400	48	115,518	1.0	NA	115,518
Upper	7	146,300	31	134,232	−8.2	NA	134,232
Notes: Real estate professionals believe that home market values are appreciating. The current data are more numerous than previous data. Because current data are numerous, no adjustments are made.							
Nome, Alaska:							
Lower	7	$71,100	1	$71,100	0.0	−20.6	*$56,453
Middle	9	97,500	4	86,151	−11.6	−20.6	*77,415
Upper	8	122,400	3	81,549	−33.4	−20.6	*97,186
Notes: Real estate professional believes home market values are stable. Data quality is questionable at all levels. The current and previous data are merged separately at all three levels to compare the average cost per square foot to estimate the overall change. This change of −20.6% was then applied to the previous average costs by income to determine the current costs at each level.							
City and County of Honolulu, Hawaii:							
Lower	11	$207,000	25	$184,203	−11.0	2.1	*$211,347
Middle	23	310,700	48	329,693	6.1	NA	329,693
Upper	27	370,600	78	363,460	−1.9	NA	363,460
Notes: Real estate professionals state that market is either stable or appreciating slightly. Change at lower level is not consistent with change at middle and upper levels, and data are stronger at these levels. Therefore, lower level is adjusted by average rate of change at middle and upper levels.							
Hilo, Hawaii:							
Lower	7	$134,100	15	$130,743	−2.5	NA	$130,743
Middle	6	180,700	16	162,903	−9.8	NA	162,903
Upper	8	204,000	21	197,863	−3.0	NA	197,863
Notes: Real estate professionals state that housing prices have declined as much as 10%. There are more data in 1992 than in 1991 and change is within range professionals believe is possible. Therefore, no adjustments are made.							
Kailua Kona, Hawaii:							
Lower	8	$154,800	13	$159,867	3.3	NA	$159,867
Middle	6	204,100	22	222,950	9.2	NA	222,950
Upper	6	256,700	25	261,018	1.7	NA	261,018
Notes: Real estate professionals reluctant to discuss housing market trends. However, there are more data in 1992 than in 1991, and changes are not significantly different among levels. Therefore, no adjustments are made.							
Kauai, Hawaii:							
Lower	5	$174,336	9	$171,792	−1.5	NA	$171,792

APPENDIX 9A—ANALYSIS OF HOME SALES DATA—Continued

Location	Previous		Current		Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Average			
Middle	4	229,900	3	203,970	−11.3	−3.6	*221,624
Upper	7	290,800	10	273,921	−5.8	NA	273,921
Notes: Real estate professionals believe housing prices were stable over the past year (prior to hurricane). Data are sparse at lower and middle levels (particularly at middle). Rate of change at middle is significantly different from other levels. Therefore, the percentage changes at the lower and upper profiles have been added and averaged. This average rate of change is then used to adjust the middle income.							
Maui, Hawaii:							
Lower	5	$210,651	7	$205,569	−2.4	−1.3%	*$207,913
Middle	21	279,500	19	275,925	−1.3	NA	275,925
Upper	5	351,494	8	329,919	−6.1	−1.3	*346,925
Notes; Real estate professionals state housing prices are flat or declining. Data are sparse at lower and upper levels. Therefore, use the rate of change at the middle level to adjust the lower and upper values from 1991.							
Guam:							
Lower	3	$113,491	3	$146,997	29.5	15.3	*$130,855
Middle	6	140,966	6	212,979	51.1	15.3	*162,534
Upper	2	268,670	3	175,406	−34.7	15.3	*309,777
Overall Average	.....	.....	.....	.....	15.3	.....	.....
Notes: Real estate professionals believe that housing prices are flat due to a decrease in foreign investment and speculation. Data are sparse at all levels and change shows significant variation among levels. Data quality problems exist with both the current and previous survey data. Because we have at least three observations at each income level, the overall rates of change for all three income levels are averaged and used to adjust the previous year's data.							
Mayaguez, Puerto Rico:							
Lower	4	$57,600	2	$63,675	10.5	6.7	*$61,459
Middle	9	92,300	5	102,882	11.5	6.7	*98,404
Upper	10	134,300	4	123,590	−8.0	6.7	*143,299
Notes: Real estate professionals believe that housing prices are stable. Data Quality is questionable at all levels. The Current and previous data are merged separately at all three levels to compare the average cost per square foot to estimate the overall change in Mayaguez. This change of 6.7% was then applied to the previous average costs by income to determine the current costs at each level.							
San Juan, Puerto Rico:							
Lower	7	$82,800	79	$62,271	−24.8	NA	$62,271
Middle	4	100,255	23	84,721	−15.5	NA	84,721
Upper	26	141,100	31	151,946	7.7	NA	151,946
Notes: Real estate professionals believe that housing prices are stable. Current data are better than previous year's data. Therefore, no adjustments are made.							
St Croix, Virgin Islands:							
Lower	5	$85,281	10	$103,635	21.5	NA	$103,635
Middle	(†)	110,500	5	151,866	37.4	NA	151,866
Upper	(†)	187,500	3	188,037	0.3	NA	188,037
Notes: Data are better this year than in previous years. Although real estate professionals believe market is flat or increasing slightly, the trend data are ignored because previous data are weak. Therefore, no adjustments are made.							
St Thomas, Virgin Islands:							
Lower	8	$126,900	9	$141,516	11.5	1.6	*$128,930
Middle	6	180,700	6	157,385	−12.9	1.6	*183,591
Upper	8	210,800	3	224,009	6.3	1.6	*214,173
Notes: Real estate professionals believe market is flat or declining. Data are sparse at all levels. Previous data were considered "good" but sparse. Therefore, all current data are combined and compared with previous data combined, and the overall rate of change is applied to the previous averages at each level.							
Washington, DC, District of Columbia Summer 1992 Survey:							
Lower	6	$92,007	30	$93,573	1.7	NA	$93,573
Middle	5	147,600	22	138,580	−6.1	NA	138,580
Upper	6	247,100	24	231,948	−6.1	NA	231,948
Notes: Real estate professionals state that home market values are flat or declining. The current data are more numerous than previous data. Because current data are numerous, no adjustments are made.							
Washington, DC, Maryland Summer 1992 Survey:							
Lower	NA	$96,115	18	$103,563	7.7	NA	$103,563
Middle	NA	146,836	24	136,513	−6.3	NA	136,513

APPENDIX 9A—ANALYSIS OF HOME SALES DATA—Continued

Location	Previous		Current		Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Average			
Upper	NA	172,555	24	203,337	17.8	NA	203,337
Notes: Real estate professionals believe prices are flat or declining. Previous data do not have square footage information. Current data are sparse at some communities in lower and upper levels. Nevertheless, current data are better than previous data. Therefore, no adjustments are made.							
Washington, DC, Virginia Summer 1992 Survey:							
Lower	7	$107,100	120	$105,021	−1.9	NA	$105,021
Middle	17	120,900	112	127,582	5.5	NA	127,582
Upper	25	190,400	174	183,294	−3.7	NA	183,294
Notes: Real estate professionals believe prices are flat or declining. Number of observations this year are much greater than last survey. Therefore, no adjustments are made.							
Washington, DC, District of Columbia Winter 1993 Survey:							
Lower	30	$93,573	46	$88,083	−5.9	NA	$88,083
Middle	22	138,580	40	115,960	−16.3	NA	115,960
Upper	24	231,948	30	250,512	8.0	NA	250,512
Notes: Real estate professionals believe home market values are flat to declining. Current data are more numerous than previous data. Therefore, no adjustments are made.							
Washington, DC, Maryland Winter 1993 Survey:							
Lower	16	$103,563	9	$104,832	1.2	NA	$104,832
Middle	24	136,513	8	125,723	−7.9	NA	125,723
Upper	12	203,337	13	211,667	4.1	NA	211,667
Notes: Real estate professionals believe prices are flat or declining. The current data although sparse, are considered good. Therefore, no adjustments are made.							
Washington, DC, Virginia Winter 1993 Survey:							
Lower	119	$105,021	45	$95,184	−9.4	NA	$95,184
Middle	112	127,582	81	125,047	−2.0	NA	125,047
Upper	174	183,294	114	182,325	−0.5	NA	182,325
Notes: Real estate professionals believe prices are flat or declining. Change is within range professionals believe is likely. Therefore, no adjustments are made.							

* Adjusted.
† Same observations used at all levels.

APPENDIX 9B—ANALYSIS OF RENTAL DATA

Location	Previous		Current				Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Non-broker	Broker	Average			
Anchorage, Alaska:									
Lower	16	$499	121	$484	$550	$517	3.6	NA	$517
Middle	12	576	99	626	645	636	10.4	NA	636
Upper	5	1,057	76	1,004	900	952	−9.9	NA	952
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Fairbanks, Alaska:									
Lower	13	$423	64	$471	$444	$458	8.3	NA	$458
Middle	10	537	115	632	586	609	13.4	NA	609
Upper	7	1,005	105	802	833	818	−18.6	NA	818
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Juneau, Alaska:									
Lower	6	$835	31	$686	$688	$687	8.2	NA	$687
Middle	8	804	41	817	875	846	5.2	NA	846
Upper	4	1,042	38	1,169	1,125	1,147	10.1	NA	1,147
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									

APPENDIX 9B—ANALYSIS OF RENTAL DATA—Continued

Location	Previous		Current				Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Non-broker	Broker	Average			
Nome, Alaska:									
Lower	2	$600	16	$670	$630	$650	8.3	NA	$650
Middle	2	794	21	840	794	817	2.9	NA	817
Upper	2	1,144	16	1,050	900	975	−14.8	NA	975
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
City and County of Honolulu, Hawaii:									
Lower	7	$736	66	$770	$729	$750	1.8	NA	$750
Middle	5	921	42	939	981	960	4.2	NA	960
Upper	5	1,331	69	1,268	1,500	1,384	4.0	NA	1,384
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Hilo, Hawaii:									
Lower	4	$625	16	$536	$631	$584	−6.6	NA	$584
Middle	5	830	19	618	613	716	−13.7	NA	716
Upper	2	1,144	37	735	1,020	878	−23.3	NA	878
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Kailua Kona, Hawaii:									
Lower	3	$788	17	$643	$825	$734	−6.9	NA	$734
Middle	4	994	22	797	969	883	−11.2	NA	883
Upper	3	1,292	37	1,056	1,165	1,111	−14.0	NA	1,111
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Kauai, Hawaii:									
Lower	10	$800	13	NA	$811	$811	1.4	NA	$811
Middle	10	1,034	20	778	1,034	906	−12.4	NA	906
Upper	6	1,434	22	1,375	1,340	1,358	−5.3	NA	1,358
Notes: With the exception of the lower income, data are equally weighted between non-broker and broker data/opinions. The lower income uses broker data/opinion only because fewer than 3 "actuals" were obtained.									
Maui, Hawaii:									
Lower	8	$708	33	$625	$675	$650	−8.2	NA	$650
Middle	6	1,054	51	766	928	847	−19.6	NA	847
Upper	3	1,358	71	980	1,190	1,085	−20.1	NA	1,085
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Guam:									
Lower	5	$556	16	$783	$714	$749	34.7	NA	$749
Middle	5	840	20	950	1,171	1,061	26.3	NA	1,061
Upper	6	1,500	39	1,338	1,780	1,559	3.9	NA	1,559
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Mayaguez, Puerto Rico:									
Lower	2	$457	10	NA	$408	$408	−10.7	NA	$408
Middle	4	581	22	NA	596	596	2.6	NA	596
Upper	2	775	10	NA	967	967	24.8	NA	967
Notes: Used broker data/opinion only since less than 3 non-broker data were obtained. Number of observations this year is significantly greater than previous year. Therefore, no adjustments were made.									
San Juan, Puerto Rico:									
Lower	10	$562	29	$736	$631	$684	21.7	NA	$684
Middle	10	1,078	34	1,243	915	1,079	0.1	NA	1,079
Upper	6	1,881	50	2,219	1,773	1,996	6.1	NA	1,996
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									

APPENDIX 9B—ANALYSIS OF RENTAL DATA—Continued

Location	Previous		Current				Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Non-broker	Broker	Average			
St. Croix, Virgin Islands:									
Lower	4	$636	4	NA	$644	$644	0.9	9.3	*$697
Middle	3	1,033	4	NA	900	900	−12.9	9.3	*1,129
Upper	3	1,333	19	$1,414	1,500	1,457	9.3	NA	1,457
Notes: The current year's data are sparse at all income levels, particularly the lower and middle levels. However, the upper income level data are much more numerous this year and do not require adjustment. The previous year's data were sparse at all levels, making trend comparisons tenuous. Furthermore, the relatively large number of observations at the upper level this year make it impractical to combine data at all levels to analyze overall trends. Therefore, the rate of change at the upper income level is used to adjust the lower and middle levels respectively.									
T. Thomas, Virgin Islands:									
Lower	5	$780	32	$769	$700	$735	−5.8	NA	$735
Middle	8	1,119	25	1,037	1,100	1,069	−4.5	NA	1,069
Upper	5	1,370	22	1,360	1,700	1,530	11.7	NA	1,530
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous year. Therefore, no adjustments are made.									
Washington, DC, District of Columbia Summer 1992 Survey:									
Lower	10	$555	29	$477	$500	$489	−11.9	NA	$489
Middle	9	696	22	602	663	633	−9.1	NA	633
Upper	4	1,738	28	1,404	1,763	1,584	−8.9	NA	1,584
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous survey. Therefore, no adjustments are made.									
Washington, DC, Maryland Summer 1992 Survey:									
Lower	10	$560	29	$531	$563	$547	−2.3	NA	$547
Middle	9	749	29	750	738	744	−0.7	NA	744
Upper	6	1,069	64	1,024	1,025	1,025	−4.1	NA	1,025
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous survey. Therefore, no adjustments are made.									
Washington, DC, Virginia Summer 1992 Survey:									
Lower	10	$543	26	$539	$538	$539	−0.7	NA	$539
Middle	16	783	73	771	806	789	0.8	NA	789
Upper	6	1,142	104	1,008	990	999	−12.5	NA	999
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous survey. Therefore, no adjustments are made.									
Washington, DC, District of Columbia Winter 1993 Survey									
Lower	26	$489	99	$482	$488	$485	−0.8	NA	$485
Middle	22	633	54	661	625	643	1.6	NA	643
Upper	28	1,584	34	1,496	1,691	1,594	0.6	NA	1,594
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous survey. Therefore, no adjustments are made.									
Washington, DC, Maryland Winter 1993 Survey:									
Lower	29	$547	54	$495	$575	$535	−2.2	NA	$535
Middle	29	744	33	775	750	763	2.6	NA	763
Upper	64	1,025	62	952	970	961	−6.2	NA	961
Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations generally greater than previous survey. Therefore, no adjustments are made.									
Washington, DC, Virginia Winter 1993 Survey:									
Lower	26	$539	37	$561	$581	$571	5.9	NA	$571
Middle	73	789	105	748	756	752	−4.7	NA	752
Upper	104	999	115	959	1,106	1,033	3.4	NA	1,033

APPENDIX 9B—ANALYSIS OF RENTAL DATA—Continued

Location	Previous		Current				Percent change	Percent adjustment	Final value
	OBS	Average	OBS	Non-broker	Broker	Average			

Notes: Data equally weighted between non-broker and broker data/opinions. Number of observations significantly greater than previous survey. Therefore, no adjustments are made.

*Adjusted.

APPENDIX 10.—PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Anchorage, AK; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$990	$1486	$1857
Maintenance/oil	636	677	541
Tires	115	148	155
License and registration	78	78	78
Miscellaneous tax	45	45	45
Depreciation	3149	3480	3762
Finance expense	756	850	959
Insurance	1050	1069	1230
Total annual cost	6819	7833	8627

PRIVATE TRANSPORTATION COST ANALYSIS

Location: Fairbanks, AK; Date Prepared: 02-Apr-93; Winter 1993 Survey

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$939	$1409	$1761
Maintenance/oil	840	697	913
Tires	117	173	162
License and registration	77	77	77
Miscellaneous tax	0	0	0
Depreciation	3330	3636	3958
Finance expense	767	852	962
Insurance	998	1096	1314
Total annual cost	7068	7940	9147

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Juneau, AK; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$1092	$1638	$2047
Maintenance/oil	569	634	659
Tires	116	144	148
License and registration	39	39	39
Miscellaneous tax	0	0	0
Depreciation	3379	3690	4022
Finance expense	796	886	1004
Insurance	747	791	923
Total annual cost	6738	7822	8842

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Nome, AK; Date Prepared: 25-May-93; Winter 1993 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$1289	$1934	$2418
Maintenance/oil	766	740	762
Tires	123	169	169
License and registration	39	39	39
Miscellaneous tax	0	0	0
Depreciation	3861	4314	4858
Finance expense	865	977	1127
Insurance	952	1077	1265
Total annual cost	7895	9250	10638

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Honolulu, HI; Date Prepared: 04-Apr-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$786	$1179	$1473
Maintenance/oil	405	422	665
Tires	195	228	228
License and registration	80	95	102
Miscellaneous tax	0	0	0
Depreciation	3297	3838	4344
Finance expense	886	1010	1169
Insurance	1516	1501	1697
Total annual cost	7165	8273	9678

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Hilo, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$942	$1262	$1578
Maintenance/oil	491	439	532
Tires	195	228	228
License and registration	62	72	76
Miscellaneous tax	0	0	0
Depreciation	3297	3838	4344
Finance expense	837	955	1105
Insurance	1516	1503	1656
Total annual cost	7240	8297	9519

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Kailua Kona, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Annual costs	Category		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$903	$1,355	$1,693

PRIVATE TRANSPORTATION COST ANALYSIS—Continued

[Location: Kailua Kona, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Annual costs	Category		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Maintenance/oil	491	589	626
Tires	195	228	228
License and registration	62	72	76
Miscellaneous tax	0	0	0
Depreciation	3,297	3,838	4,344
Finance expense	831	947	1096
Insurance	1,516	1,503	1,656
Total annual cost	7,295	8,532	9,719

PRIVATE TRANSPORTATION COST ANALYSIS

[Hawaii Composite; Summer 1992 Survey; Date Prepared: 29-Mar-93]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Hilo, HI	80.00	$7240	$8297	$9519
Kailua Kona, HI	20.00	7295	8532	9,719
Total weight	100.00			
Composite cost		7251	8344	9559

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Kauai, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$834	$1251	$1584
Maintenance/oil	448	466	514
Tires	195	228	228
License and registration	67	79	85
Miscellaneous tax	0	0	0
Depreciation	3297	3838	4344
Finance expense	857	977	1131
Insurance	1165	1153	1307
Total annual cost	6863	7992	9173

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Maui, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$842	$1263	$1579
Maintenance/oil	425	498	610
Tires	195	228	228
License and registration	67	79	85
Miscellaneous tax	0	0	0
Depreciation	3297	3838	4344
Finance expense	831	947	1096

PRIVATE TRANSPORTATION COST ANALYSIS—Continued
[Location: Maui, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Insurance	1326	1313	1474
Total annual cost	6983	8166	9416

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Guam; Date Prepared 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 5 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$724	$1086	$1358
Maintenance/oil	371	475	539
Tires	89	135	137
License and registration	23	26	27
Miscellaneous tax	0	0	0
Depreciation	2862	3557	3854
Finance expense	848	1014	1138
Insurance	1285	1467	1605
Total annual cost	6202	7760	8658

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: Mayaguez, PR; Data Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$630	$945	$1181
Maintenance/oil	309	385	371
Tires	114	126	141
License and registration	82	82	82
Miscellaneous tax	0	0	0
Depreciation	3842	5638	6194
Finance expense	1112	1532	1721
Insurance	1154	1318	1382
Total annual cost	7243	10026	11072

PRIVATE TRANSPORTATION COST ANALYSIS
[Location: San Juan, PR; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$599	$899	$1124
Maintenance/oil	314	317	383
Tires	114	126	141
License and registration	82	82	82
Miscellaneous tax	0	0	0
Depreciation	3842	5638	6194
Finance expense	1040	1433	1609

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PRIVATE TRANSPORTATION COST ANALYSIS—Continued

[Location: San Juan, PR; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Insurance	1156	1341	1413
Total annual cost	7147	9836	10945

PRIVATE TRANSPORTATION COST ANALYSIS

[Puerto Rico Composite; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
San Juan, PR	70.00	$7147	$9836	$10946
Mayaguez, PR	30.00	7243	10026	11072
Total weight	100.00			
Composite cost		7176	9893	10954

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: St Croix, VI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$630	$946	$1182
Maintenance/oil	319	449	516
Tires	114	126	141
License and registration	39	48	48
Miscellaneous tax	0	0	0
Depreciation	3001	3694	4015
Finance expense	646	1004	1129
Insurance	1429	1608	2183
Total annual cost	6378	7875	9214

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: St. Thomas, VI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$525	$938	$1172
Maintenance/oil	469	537	483
Tires	114	126	141
License and registration	39	48	48
Miscellaneous tax	0	0	0
Depreciation	3001	3694	4015
Finance expense	804	1050	1181
Insurance	1181	1070	2166
Total annual cost	6313	7463	9206

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PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, DC; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$615	$922	$1153
Maintenance/oil	353	366	385
Tires	123	143	143
License and registration	74	74	74
Miscellaneous tax	0	0	0
Depreciation	2486	3196	3504
Finance expense	547	667	758
Insurance	1115	1247	1400
Total annual cost	5313	6615	7417

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, MD; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2Dr
Fuel	$627	$940	$1175
Maintenance/oil	288	298	311
Tires	122	142	142
License and registration	48	48	48
Miscellaneous tax	0	0	0
Depreciation	2452	3154	3457
Finance expense	491	589	680
Insurance	869	963	1049
Total annual cost	4897	6144	6862

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, VA; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$620	$930	$1,163
Maintenance/oil	252	350	338
Tires	121	141	141
License and registration	71	71	71
Miscellaneous tax	253	275	326
Depreciation	2384	3,071	3363
Finance expense	519	633	718
Insurance	578	642	653
Total annual cost	4,808	6,113	6,773

PRIVATE TRANSPORTATION COST ANALYSIS

[Washington, DC Composite; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Washington DC, DC	33.34	$5313	$6615	$7417

PRIVATE TRANSPORTATION COST ANALYSIS—Continued

[Washington, DC Composite; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Washington DC, MD	33.33	4897	6144	6852
Washington DC, VA	33.33	4808	6113	5773
Total Weight	100.00			
Composite Cost		5006	6291	7017

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Category	Annual Costs		
	Honda Civic 1.5L 4 Cyl DX 4 Dr Sedan	Ford Taurus 3.0L 6 Cyl GL 4 Dr Sedan	Chevrolet S10 Blazer 4.3L 6 Cyl 4WD 2 Dr
Fuel	$539	$959	$1199
Maintenance/oil	401	432	414
Tires	123	143	143
License and registration	74	74	74
Miscellaneous tax	0	0	0
Depreciation	2505	3052	3357
Finance expense	563	677	777
Insurance	1206	1393	1512
Total annual cost	5511	6730	7486

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington DC, MD; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$527	$941	$1176
Maintenance/oil	433	380	344
Tires	122	142	142
License and registration	39	39	39
Miscellaneous tax	0	0	0
Depreciation	2,470	3,010	3,271
Finance expense	466	560	637
Insurance	975	966	1,150
Total annual cost	5,132	6,038	6,759

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, VA; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$598	$698	$1122
Maintenance/oil	336	472	401
Tires	122	142	142
License and registration	71	71	71
Miscellaneous tax	262	330	419
Depreciation	2400	2926	3176

PRIVATE TRANSPORTATION COST ANALYSIS—Continued

[Location: Washington, DC, VA; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Finance expense	468	563	640
Insurance	633	662	728
Total annual cost	4890	6064	6697

PRIVATE TRANSPORTATION COST ANALYSIS

[Washington, DC Composite; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Washington, DC, DC	33.34	$5511	$6730	$7486
Washington, DC, MD	33.33	5132	6038	6759
Washington, DC, VA	33.33	4890	6064	6697
Total weight	100.00	.....	.....	.....
Composite cost	.....	5178	6277	6981

APPENDIX 11.—TRANSPORTATION ANALYSIS

[Location: Anchorage, AK; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 cyl	$6819	$5178	131.69
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 cyl	7833	6277	124.79
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	8627	6981	123.58
Average Index	.....	.....	126.69

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	126.69	94.80	120.10	94.32	119.49	93.55	118.52
Public Transportation	108.30	5.20	5.63	5.68	6.15	6.45	6.99
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	125.73				
Middle	.....	.....	.....	.....	125.64		
Upper	.....	.....	.....	.....	.....	.....	125.51

TRANSPORTATION ANALYSIS

[Location: Fairbanks, AK; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$7066	$5178	136.50
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7940	6277	126.49
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	9147	6981	131.03
Average Index	.....	.....	131.34

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	131.34	94.80	124.51	94.32	123.88	93.55	122.87
Public Transportation	135.23	5.20	7.08	5.68	7.74	6.45	8.79
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			131.59				
Middle					131.62		
Upper							131.66

TRANSPORTATION ANALYSIS

[Location: Juneau, AK; Date Prepared: 02-Apr-93; Winter 1993 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 cyl	$6738	$5178	130.13
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 cyl	7822	6277	124.61
Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	8842	6981	126.66
Average Index			127.13

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	127.13	94.80	120.52	94.32	119.91	93.55	118.93
Public Transportation	104.15	5.20	5.42	5.68	5.92	6.45	6.72
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			125.94				
Middle					125.83		
Upper							125.65

TRANSPORTATION ANALYSIS

[Location: Nome, AK; Date Prepared: 26-May-93; Winter 1993 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$7695	$5178	$152.47
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	9250	6277	147.36
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	10638	6981	152.39
Average Index			150.74

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	150.74	94.80	142.90	94.32	142.18	93.55	141.02
Public Transportation	168.30	5.20	8.75	5.68	9.56	6.45	10.86
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			151.65				
Middle					151.74		
Upper							151.68

TRANSPORTATION ANALYSIS

[Location: Honolulu, HI; Date Prepared: 04-Apr-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	$7165	$5006	143.13
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8273	6291	131.51
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	9678	7017	137.92
Average index			137.52

TRANSPORTATION SUMMARY

Category	Category index	Lower income		Middle income		Upper income	
		Weights	Subtot	Weights	Subtot	Weights	Subtotal
Private Transportation	137.52	94.80	130.37	94.32	129.71	93.55	128.85
Public Transportation	87.34	5.20	4.54	5.68	4.96	6.45	5.63
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			134.91				
Middle					134.67		
Upper							134.28

TRANSPORTATION ANALYSIS

[Location: Hawaii County, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$7251	$5006	144.85
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	8344	6291	132.63
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	9569	7017	136.23
Average Index			137.90

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	137.90	94.80	130.73	94.32	130.07	93.55	129.01
Public Transportation	95.97	5.20	4.99	5.68	5.45	6.45	6.19
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			135.72				
Middle					135.52		
Upper							135.28

TRANSPORTATION ANALYSIS

[Location: Kauai County, HI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6553	$5006	137.10
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7982	6291	127.04
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	9173	7017	130.73
Average Index			131.62

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	131.62	94.80	124.78	94.32	124.14	93.55	123.13

TRANSPORTATION SUMMARY—Continued

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Public Transportation	95.57	5.20	4.97	5.68	5.43	6.45	6.16
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			129.75				
Middle					129.57		
Upper							129.29

TRANSPORTATION ANALYSIS

[Location: Maui County, HI; Date Prepared: 29-Mar-93; Summer 1993 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,983	$5,006	139.49
Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	8,166	6,291	129.80
Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	9,415	7,017	134.19
Average Index			134.49

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	134.49	94.80	127.50	94.32	126.85	93.55	125.82
Public Transportation	95.57	5.20	4.97	5.68	5.43	6.45	6.16
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			132.47				
Middle					132.28		
Upper							131.98

TRANSPORTATION ANALYSIS

[Location: Guam; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,202	$5,006	123.89
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,760	6,291	123.35
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	8,658	7,017	123.39
Average Index			123.54

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	123.54	94.80	117.12	94.32	116.52	93.55	115.57
Public Transportation	255.93	5.20	13.31	5.68	14.54	6.45	16.51
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			130.43				
Middle					131.06		
Upper							132.08

TRANSPORTATION ANALYSIS

[Location: Puerto Rico; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$7,176	$5,006	143.35
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	9,893	6,291	157.26
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	10,984	7,017	156.53
Average Index			152.38

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	152.38	94.80	144.46	94.32	143.72	93.55	142.55
Public Transportation	119.20	5.20	6.20	5.68	6.77	6.45	7.69
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			150.66				
Middle					150.49		
Upper							150.24

TRANSPORTATION ANALYSIS

[Location: St Croix, VI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,378	$5,006	127.41
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,875	6,291	125.18
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 Cyl	9,214	7,017	131.31
Average Index			127.97

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	127.97	94.80	121.32	94.32	120.70	93.55	119.72
Public Transportation	139.25	5.20	7.24	5.68	7.91	6.45	8.98
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			128.56				
Middle					128.61		
Upper							128.70

TRANSPORTATION ANALYSIS

[Location: St Thomas, VI; Date Prepared: 29-Mar-93; Summer 1992 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sdn 1.5L 4 Cyl	$6,313	$5,006	126.11
2. Ford Taurus GL 4 Dr Sedan 3.0L 6 Cyl	7,453	6,291	118.53
3. Chevy S10 Blazer 4WD 2 Dr 4.3L 6 cyl	9,206	7,017	131.20
Average Index			125.31

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private Transportation	125.31	94.80	118.79	94.32	118.19	93.55	117.23

TRANSPORTATION SUMMARY—Continued

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	subtot	Weights	Subtotal	Weights	Subtotal
Public Transportation	137.39	5.20	7.14	5.68	7.80	6.45	8.86
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			125.93				
Middle					125.99		
Upper							126.09

PUBLIC TRANSPORTATION COST ANALYSIS

[Summary Program; Date Prepared: 24-Feb-93]

Location	Public transportation cost	Total cost DC area	Index
Anchorage, AK	574	530	108.30
Fairbanks, AK	722	530	136.23
Juneau, AK	552	530	104.15
Nome, AK	892	530	168.30
Honolulu, HI	329	377	87.27
Hawaii County, HI	360	377	95.49
Kauai County, HI	360	377	95.49
Maui County, HI	360	377	95.49
Guam	964	377	225.70
Puerto Rico	449	377	119.10
St. Croix, VI	525	377	139.26
St. Thomas, VI	519	377	137.40

PUBLIC TRANSPORTATION COMPOSITES

[Date Prepared: 24-Sept-92; Summer 1992 Survey]

Location	Weights	Cost
San Juan, PR	70.00	441
Mayaguez, PR	30.00	466
Total Weight	100.00	
Puerto Rico Cost		449
Hilo, HI	80.00	360
Kailua Kona, HI	20.00	360
Total Weight	100.00	
Hawaii County, HI Cost		360

APPENDIX 12

MISCELLANEOUS EXPENSE ANALYSIS

CATEGORY INDEX DEVELOPMENT

[Location: Anchorage, AK; Date Prepared 19-Apr-93; Winter 1993 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						126.46
Nonprescription pain reliever	8.6900	6.9434	1.2515	5.0	6.26	
Tetracycline	9.3833	5.2361	1.7920	12.0	21.50	
Vision Check	80.6667	49.2222	1.6388	6.0	9.83	
Dental Service	135.0000	87.8333	1.5370	17.0	26.13	
Doctor Visit	55.0000	48.7778	1.1276	17.0	19.17	
Hospital Room	552.0000	504.3750	1.0944	6.0	6.57	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	126.46	43.41	54.90	31.56	39.91	22.40	28.33

TOTAL INDEX DEVELOPMENT—Continued

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			111.49				
Middle					108.35		
Upper							105.93

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT
[Location: Fairbanks, AK; Date Prepared: 19-Apr-93; Winter 1993 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						116.51
Nonprescription pain reliever	6.6433	6.9434	0.9568	5.0	4.78	
Tetracycline	5.5833	5.2361	1.0663	12.0	12.80	
Vision Check	73.3333	49.2222	1.4898	6.0	8.94	
Dental Service	146.6667	87.8333	1.6698	17.0	28.39	
Doctor Visit	52.3333	48.7778	1.0729	17.0	18.24	
Hospital Room	535.0000	504.3750	1.0607	6.0	6.36	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	116.51	43.41	50.58	31.56	36.77	22.40	26.10
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			107.17				
Middle					105.21		
Upper							103.70

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT
[Location: Juneau, Ak; Date Prepared: 19-Apr-93; Winter 1993 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						135.34
Nonprescription pain reliever	9.5878	6.9434	1.3809	5.0	6.90	
Tetracycline	8.6500	5.2361	1.6520	12.0	19.82	
Vision Check	116.6667	49.2222	2.3702	6.0	14.22	
Dental Service	173.0000	87.8333	1.9696	17.0	33.48	
Doctor Visit	48.6667	48.7778	0.9977	17.0	16.96	
Hospital Room	585.0000	504.3750	1.1599	6.0	6.96	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	135.34	43.41	58.75	31.56	42.71	22.40	30.32
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	

TOTAL INDEX DEVELOPMENT—Continued

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Indexes:							
Lower			115.34				
Middle					111.15		
Upper							107.92

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT
[Location: Nome, AK; Date Prepared: 19-Apr-93; Winter 1993 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
MEDICAL CARE						138.45
Nonprescription pain reliever	12.0600	6.9434	1.7369	5.0	8.68	
Tetracycline	6.5000	5.2351	1.2414	12.0	14.90	
Vision Check	90.0000	49.2222	1.8284	6.0	10.97	
Dental Service	115.0000	87.8333	1.3093	17.0	22.26	
Doctor Visit	97.0000	48.7778	1.9886	17.0	33.81	
Hospital Room	910.0000	504.3750	1.8042	6.0	10.83	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	139.45	43.41	60.10	31.56	43.69	22.40	31.01
2. Cash Contributions	100.00	12.39	12.39	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			116.69				
Middle					112.13		
Upper							106.61

MISCELLANEOUS EXPENSE ANALYSIS CATEGORY INDEX DEVELOPMENT
[Location: Honolulu, HI; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						119.81
Nonprescription pain reliever	11.2567	6.7810	1.6600	5.0	8.30	
Tetracycline	4.7600	4.5569	1.0455	12.0	12.56	
Vision Check	70.9067	47.3333	1.6982	6.0	10.13	
Dental Service	150.8000	86.7222	1.7389	17.0	29.56	
Doctor Vist	43.9033	48.7778	0.9001	17.0	15.30	
Hospital Room	500.0000	432.5417	1.1560	6.0	6.94	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	119.81	43.41	52.01	31.56	37.81	22.40	26.84
2. Cash Contributions	100.00	12.39	12.39	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			108.60				
Middle					106.25		
Upper							104.44

Miscellaneous Expense Analysis
Category Index Development
[Location: Hilo, HI; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						124.07
Nonprescription pain reliever	10.5967	6.7810	1.5627	5.0	7.81	
Tetracycline	5.7833	4.5589	1.2686	12.0	15.22	
Vision Check	62.3300	47.3333	1.3168	6.0	7.90	
Dental Service	126.2567	86.7222	1.4559	17.0	24.75	
Doctor Visit	48.5333	48.7778	0.9950	17.0	16.92	
Hospital Room	1043.0000	432.5417	2.4113	6.0	14.47	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

Total Index Development

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	124.07	43.41	53.85	31.56	39.16	22.40	27.79
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			110.45				
Middle					107.60		
Upper							105.39

Miscellaneous Expense Analysis
Category Index Development
[Location: Kailua Kona, HI; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						127.1
Nonprescription pain reliever	10.8900	6.7810	1.6060	5.0	8.03	
Tetracycline	5.5633	4.5589	1.2203	12.0	14.64	
Vision Check	106.0800	47.3333	2.2411	6.0	13.45	
Dental Service	157.3967	86.7222	1.8148	17.0	30.85	
Doctor Visit	46.4533	48.7778	0.9523	17.0	16.19	
Hospital Room	500.0000	432.5417	1.1560	6.0	6.94	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

Total Index Development

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	127.10	43.41	55.17	31.56	40.11	22.40	28.47
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			111.76				
Middle					108.55		
Upper							106.07

Miscellaneous Expense Analysis
[Hawaii County Composite; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Location	Weights	Total Indexes		
		Lower income	Middle income	Upper income
Hilo, HI	80.00	110.45	107.60	105.39
Kailua Kona, HI	20.00	111.76	108.55	106.07

MISCELLANEOUS EXPENSE ANALYSIS—Continued

[Hawaii County Composite; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Location	Weights	Total Indexes		
		Lower income	Middle income	Upper income
Total Weight	100.00			
Composite Indexes		110.71	107.79	105.53

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT

[Location: Kauai County, HI; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
MEDICAL CARE						117.05
Nonprescription pain reliever	11.4633	6.7810	1.6905	5.0	8.45	
Tetracycline	5.8467	4.5589	1.2825	12.0	15.39	
Vision Check	69.0933	47.3333	1.3330	6.0	8.00	
Dental Service	137.8000	86.7222	1.5890	17.0	27.01	
Doctor Visit	41.7100	48.7778	0.8551	17.0	14.54	
Hospital Room	460.0000	432.5417	1.1097	6.0	6.66	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	117.85	43.41	50.81	31.56	36.94	22.40	26.22
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			107.40				
Middle					105.38		
Upper							103.82

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT

[Location: Maui County, HI; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
MEDICAL CARE						117.25
Nonprescription pain reliever	10.7367	6.7810	1.5834	5.0	7.92	
Tetracycline	5.1267	4.5589	1.1245	12.0	13.49	
Vision Check	57.5467	47.3333	1.2158	6.0	7.29	
Dental Service	129.7767	86.7222	1.4965	17.0	25.44	
Doctor Visit	55.8133	48.7778	1.1442	17.0	19.45	
Hospital Room	480.0000	432.5417	1.1097	6.0	6.66	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	117.25	43.41	50.90	31.56	37.00	22.40	26.26
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			107.49				

TOTAL INDEX DEVELOPMENT—Continued

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Middle					105.44		
Upper							103.86

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT
[Location: Guam; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
MEDICAL CARE						102.71
Nonprescription pain reliever	13.9950	6.7810	2.0639	5.0	10.32	
Tetracycline	3.6667	4.5589	0.8043	12.0	9.65	
Vision Check	20.6667	47.3333	0.4366	6.0	2.62	
Dental Service	140.3333	86.7222	1.6182	17.0	27.51	
Doctor Visit	35.6667	48.7778	0.7312	17.0	12.43	
Hospital Room	229.0000	432.5417	0.5294	6.0	3.18	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	102.71	43.41	44.59	31.56	32.42	22.40	23.01
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			101.18				
Middle					100.66		
Upper							100.61

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT
[Location: Mayaguez, PR; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
MEDICAL CARE						69.83
Nonprescription pain reliever	6.5500	6.7810	0.9659	5.0	4.83	
Tetracycline	2.0000	4.5589	0.4387	12.0	5.26	
Vision Check	25.0000	47.3333	0.5282	6.0	3.17	
Dental Service	50.0000	86.7222	0.5766	17.0	9.80	
Doctor Visit	20.0000	48.7778	0.4100	17.0	6.97	
Hospital Room	201.5000	432.5417	0.4659	6.0	2.80	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	69.83	43.41	30.31	31.56	22.04	22.40	15.64
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			86.90				
Middle					90.48		
Upper							93.24

Miscellaneous Expense Analysis
Catetory Index Development
[Location: San Juan, PR; Date Prepared 19-Apr-93; Summer 1992 Survey]

Category/Item	Price	Price DC area	Ratio	Weight	Subtot	Index
Medical Care						81.3
Nonprescription pain reliever	6.2650	6.7810	1.0271	5.0	5.14	81.3
Tetracycline	3.1333	4.5589	0.6873	12.0	6.25	
Vision Check	28.3333	47.3333	0.5986	6.0	3.59	
Dental Service	81.6667	86.7222	0.9417	17.0	16.01	
Doctor Visit	25.0000	48.7778	0.5125	17.0	8.71	
Hospital Room	187.5000	423.5417	0.4335	6.0	2.60	
Health Insurance	1.0000	1.0000	1.000	37.0	37.00	

Total Index Development

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weight	Subtotal
1. Medical Care	81.30	43.41	35.29	31.56	25.66	22.40	18.21
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			91.88				
Middle					94.10		
Upper							95.81

Miscellaneous Expense Analysis
[Puerto Rico Composite; Date Prepared: 19–Apr–93; Summer 1992 Survey]

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
San Juan, PR	70.00	91.88	94.10	95.81
Mayaguez, PR	30.00	86.90	90.46	93.24
Total Weight	100.00			
Composite Indexes		90.39	93.01	95.04

Miscellaneous Expense Analysis
Category Index Development
[Location: St. Croix, VI; date prepared: 19–Apr–93; summer 1992 survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Medical Care						92.66
Nonprescription pain reliever	6.8433	6.7810	1.3041	5.0	6.52	
Tetracycline	5.2833	4.5589	1.1589	12.0	13.91	
Vision Check	41.6667	47.3333	0.8803	6.0	5.28	
Dental Service	53.3330	86.7222	0.6150	17.0	10.46	
Doctor Visit	45.0000	48.7778	0.9225	17.0	15.68	
Hospital Room	275.0000	432.5417	0.6358	6.0	3.81	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

Total Index Development

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	92.66	43.41	40.22	31.56	29.24	22.40	20.76
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins./Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	

TOTAL INDEX DEVELOPMENT—Continued

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Indexes:							
Lower			96.61				
Middle					97.68		
Upper							96.35

MISCELLANEOUS EXPENSE ANALYSIS
CATEGORY INDEX DEVELOPMENT

[Location St. Thomas, VI; Date Prepared: 19-Apr-93; Summer 1992 Survey]

Category/Item	Price	Price/DC area	Ratio	Weights	Subtotal	Index
Medical Care						114.61
Nonprescription pain reliever	9.1400	6.7610	1.3479	5.0	6.74	
Tetracycline	10.9750	4.5589	2.4074	12.0	28.89	
Vision Check	40.0000	47.3333	0.8451	6.0	5.07	
Dental Service	82.0000	86.7222	0.9455	17.0	16.07	
Doctor Visit	46.6667	48.7778	0.9567	17.0	16.26	
Hospital Room	330.0000	432.5417	0.7629	6.0	4.58	
Health Insurance	1.0000	1.0000	1.0000	37.0	37.00	

TOTAL INDEX DEVELOPMENT

Categories	Category/ Indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Medical Care	114.61	43.41	49.75	31.56	36.17	22.40	25.67
2. Cash Contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal Ins/Pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			106.34				
Middle					104.61		
Upper							103.27

APPENDIX 13
COMPONENT EXPENDITURE AMOUNTS

	Incomes	Indexes					Amounts				
		CG&S	Own	Rent	TRN	Misc.	CG&S	Own	Rent	TRN	Misc.
Reference Wts/Amts	18000	39.59	24.35	24.35	20.76	15.30	7126	4383	4383	3737	2754
	28400	39.15	23.48	23.48	20.33	17.04	11119	6668	6668	5774	4839
	45200	38.74	22.66	22.66	19.94	16.66	17510	10242	10242	9013	8434
Location:											
Anchorage, AK	Lower	109.35	85.54	99.57	125.73	111.49	7792	3749	4364	4699	3070
	Middle	108.94	91.65	92.06	125.64	106.35	12113	6111	6139	7254	5243
	Upper	108.53	73.25	83.36	125.51	105.93	19004	7502	8538	11312	8934
Fairbanks, AK	Lower	106.30	88.74	95.38	131.59	107.17	7575	3689	4181	4918	2951
	Middle	106.05	97.45	93.13	131.62	105.21	11792	6488	6210	7600	5091
	Upper	105.78	70.79	76.62	131.66	103.70	16522	7250	7847	11967	8746
Juneau, AK	Lower	110.85	102.81	130.25	125.94	115.34	7899	4506	5709	4706	3176
	Middle	110.19	105.04	120.99	125.83	111.15	12252	7004	8068	7265	5379
	Upper	109.57	76.00	101.41	125.65	107.92	19186	7784	10386	11325	9102
Nome, AK	Lower	131.98	88.60	138.44	151.65	116.69	9405	3883	6068	5667	3214
	Middle	130.34	90.15	129.54	151.74	112.13	14493	6011	8638	8761	5426
	Upper	128.73	67.09	97.18	151.89	108.61	22541	5871	9953	13689	9160
Honolulu, HI (City and County).	Lower	114.14	155.37	122.69	134.91	108.60	8134	5810	5378	5042	2991
	Middle	113.06	184.74	117.29	134.67	106.25	12571	12318	7821	7776	5141
	Upper	112.02	139.36	106.70	134.28	104.44	19615	14273	10928	12103	8806
Hawaii County, HI	Lower	111.19	111.01	105.75	135.72	110.71	7923	4866	4635	5072	3049
	Middle	109.88	110.16	96.50	135.52	107.79	12218	7345	6435	7825	5216
	Upper	108.62	89.80	75.86	135.20	105.53	19019	9197	7770	12186	8900
Kauai County, HI	Lower	117.66	129.75	133.19	129.75	107.40	8384	5687	5838	4849	2958

Appendix 13—Continued
Component Expenditure Amounts

	Incomes	Indexes					Amounts				
		CG&S	Own	Rent	TRN	Misc.	CG&S	Own	Rent	TRN	Misc.
	Middle	116.27	129.44	112.90	129.57	105.38	12928	8631	7528	7481	5099
	Upper	114.91	166.23	105.96	129.29	103.82	20121	11085	10852	11653	8756
Maui County, HI	Lower	120.80	157.03	113.97	132.47	107.49	8608	6883	4995	4950	2960
	Middle	119.12	160.46	110.00	132.28	105.44	13245	10699	7335	7638	5102
	Upper	117.53	136.16	89.06	131.98	103.86	20576	13946	9122	11895	8760
Guam	Lower	116.91	132.35	134.66	130.43	101.18	8331	5901	5902	4874	2786
	Middle	116.80	126.33	139.30	131.06	100.86	12965	8424	9289	7567	4881
	Upper	116.27	152.39	127.23	132.08	100.61	20359	15606	13031	11904	8485
Puerto Rico	Lower	95.82	54.97	97.39	150.66	90.39	6828	2409	4269	5836	2488
	Middle	95.45	59.50	111.68	150.49	93.01	10611	3967	7447	8689	4501
	Upper	95.03	64.69	126.80	150.24	95.04	16640	6626	12987	13541	8016
St. Croix, VI	Lower	105.61	109.21	124.60	128.56	96.81	7526	4787	5461	4804	2666
	Middle	105.01	119.44	145.78	128.61	97.68	11676	7964	9721	7426	4727
	Upper	104.40	99.02	119.73	128.70	98.36	18280	10142	12263	11800	8296
St. Thomas, VI	Lower	110.41	128.66	130.08	125.93	106.34	7868	5639	5701	4708	2929
	Middle	110.06	138.27	139.20	125.98	104.61	12238	9220	9282	7275	5052
	Upper	109.71	109.50	124.92	126.09	103.27	19210	11215	12794	11364	8710

Component Expenditure Amounts
[Incorporating Military Prices]

	Incomes	Indexes					Amounts				
		CG&S	Own	Rent	Trn	Misc.	CG&S	Own	Rent	Trn	Misc.
Reference Wts./Amts	18000	39.59	24.35	24.35	20.76	15.30	7126	4383	4383	3737	2754
	28400	39.15	23.48	23.48	20.33	17.04	11119	6668	6668	5774	4839
	45200	38.74	22.66	22.66	19.94	18.66	17510	10242	10242	9013	8434
Location:											
Anchorage, AK (MIL)	Lower	99.49	85.54	99.57	125.73	111.49	7089	3749	4364	4699	3070
	Middle	99.80	91.65	92.06	125.64	106.35	11097	6111	6139	7254	5243
	Upper	100.10	73.25	83.38	125.51	105.93	17528	7502	8538	11312	8934
Fairbanks, AK (MIL)	Lower	100.01	88.74	95.38	131.59	107.17	7127	3889	4101	4918	2951
	Middle	100.14	97.45	93.13	131.62	105.21	11135	6498	6210	7600	5091
	Upper	100.23	70.79	76.62	131.66	103.70	17550	7250	7847	11867	8746
Honolulu, HI (City and County) (Mil.).	Lower	102.17	155.37	122.69	134.91	108.50	7281	6810	5378	5042	2991
	Middle	101.99	184.74	117.29	134.67	106.25	11339	12318	7821	7776	5141
	Upper	101.81	139.36	106.70	134.29	104.44	17627	14273	10928	12103	8808
Guam (Mil.)	Lower	105.13	132.35	134.66	130.43	101.18	7492	5801	5902	4874	2786
	Middle	105.53	126.33	139.30	131.06	100.86	11734	8424	9289	7567	4881
	Upper	105.93	152.39	127.23	132.08	100.61	18548	15606	13031	11904	8485
Puerto Rico (Mil.)	Lower	90.73	54.97	97.39	150.66	90.39	6465	2409	4269	5630	2488
	Middle	90.85	59.50	111.68	150.49	93.01	10102	3967	7447	8689	4501
	Upper	90.96	64.69	126.80	150.24	95.04	15927	6626	12987	13541	8016

Total Comparative Cost Indexes

	Incomes	Income wghts.	Own	Rent	Total	WDC	Index
	Lower	18000	37.10	62.90			
	Middle	28400	46.91	53.09			
	Upper	45200	62.86	37.14			
Location							
Anchorage, AK	Lower	29.0	19310	19925	19697	18000	
	Middle	35.2	30721	30749	30736	28400	
	Upper	35.8	46752	47788	47137	45200	
		100.0			30406	31,396	106.40
Fairbanks, AK	Lower	35.1	19333	19625	19517	18000	
	Middle	39.8	30981	30693	30828	24800	
	Upper	25.1	46385	46982	46807	45200	
		100.0			30818	28966	106.39
Juneau, AK	Lower	22.3	20287	21490	21044	18000	

TOTAL COMPARATIVE COST INDEXES—Continued

	Incomes	Income wghts.	Own	Rent	Total	WDC	Index
	Middle	32.2	31900	32964	32465	28400	
	Upper	45.5	47397	49999	48363	45200	
		100.0	.....	.....	37152	33725	110 16
Nome, AK	Lower	32.2	22169	24354	23543	18000	
	Middle	47.5	34691	37318	36066	28400	
	Upper	20.3	52261	55343	53406	45200	
		100.0	.....	.....	35563	24862	124.95
Honolulu, HI (City and county)	Lower	38.6	22977	21545	22076	18000	
	Middle	32.7	37806	33309	35419	28400	
	Upper	28.7	54799	51454	53557	45200	
		100.0	.....	.....	35474	29207	121 46
Hawaii County, HI	Lower	35.2	20910	20679	20765	18000	
	Middle	39.4	32604	31694	32121	28400	
	Upper	25.3	49302	47875	48772	45200	
		100.0	.....	.....	32325	28979	111.55
Kauai County, HI	Lower	23.4	21676	22029	21973	18000	
	Middle	44.5	34139	33036	33553	28400	
	Upper	32.1	51615	51382	51528	45200	
		100.0	.....	.....	36613	31359	116.75
Maui County, HI	Lower	21.0	23401	21513	22213	18000	
	Middle	41.9	36684	33320	34898	28400	
	Upper	37.1	55177	50353	53385	45200	
		100.0	.....	.....	39093	32449	120.48
Guam	Lower	50.6	21792	21693	21856	18000	
	Middle	31.6	33837	34702	34296	28400	
	Upper	17.8	56356	53779	55399	45200	
		100.0	.....	.....	31758	26128	121.55
Puerto Rico	Lower	42.1	17356	19216	18526	18000	
	Middle	38.0	27768	31248	29516	28400	
	Upper	19.9	44823	51184	47185	45200	
		100.0	.....	.....	28443	27365	103.94
St. Croix, VI	Lower	55.0	19783	20457	20207	18000	
	Middle	35.9	31793	33550	32726	28400	
	Upper	9.1	48318	50439	49106	45200	
		100.0	.....	.....	27331	24209	112.90
St. Thomas, VI	Lower	44.8	21142	21204	21181	18000	
	Middle	35.3	33795	33857	33828	28400	
	Upper	19.9	50499	52076	51085	45200	
		100.0	.....	.....	31596	27064	116.66

TOTAL COMPARATIVE COST INDEXES
[Incorporating Military Prices]

	Incomes	Income Wghts.	Own	Rent	Total	WDC	Index
	Lower	18000	37.10	62.90			
	Middle	28400	46.91	53.09			
	Upper	45200	62.86	37.14			
Location:							
Anchorage, AK (MIL)	Lower	29.0	18607	19222	18994	18000	
	Middle	35.2	29705	29733	29720	28400	
	Upper	35.8	45276	48312	45661	45200	

TOTAL COMPARATIVE COST INDEXES—Continued

[Incorporating Military Prices]

	Incomes	Income Wghts.	Own	Rent	Total	WDC	Index
		100.0	.....	.....	32316	31398	102.92
Fairbanks, AK (MIL)	Lower	35.1	18885	19177	19069	18000	
	Middle	39.8	30324	30036	30171	28400	
	Upper	25.1	45413	46010	45635	45200	
		100.0	.....	.....	30156	28966	104.11
Honolulu, HI (City and County) (MIL)	Lower	38.6	22124	20692	21223	18000	
	Middle	32.7	36574	32077	34187	28400	
	Upper	28.7	53011	49666	51769	45200	
		100.0	.....	.....	34229	29207	117.19
Guam (MIL)	Lower	50.6	20953	21054	21017	18000	
	Middle	31.6	32606	33471	33065	28400	
	Upper	17.8	54545	51988	53588	45200	
		100.0	.....	.....	30822	26128	117.20
Puerto Rico (MIL)	Lower	42.1	16993	18853	18163	18000	
	Middle	38.0	27259	30739	29107	28400	
	Upper	19.9	44110	50471	46472	45200	
		100.0	.....	.....	27955	27365	102.16

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Part III

Department of Health and Human Services

Health Resources and Services Administration

Health Education Assistance Loan Program: List of Defaulted Borrowers; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Education Assistance Loan Program: List of Defaulted Borrowers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of Health Education Assistance Loan (HEAL) borrowers who are in default, as required by section 709(c)(1) of the PHS Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992. The Public Health Service previously amended its routine uses of the Privacy Act system of records: 09–15–0044, "Health Education Assistance Loan Program Control Master File, HHS/HRSA/BHPr" to publish the following list of HEAL borrowers in default. This is the first annual publication of HEAL borrowers in default.

FOR FURTHER INFORMATION CONTACT: Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857. (Written requests only.) All media inquiries should be directed to the HRSA Office of Communications at 301 443–3376.

SUPPLEMENTARY INFORMATION: Section 709(c)(1) of the Act (42 U.S.C. 292h(c)(1)) requires the Agency to compile and publish in the Federal Register a list of HEAL borrowers who are in default. All borrowers who have defaulted on HEAL loans and for whom claims have been paid by the Department of Health and Human Services (Department), from the beginning of the HEAL program through March 31, 1993, are subject to inclusion in this notice. However, to most accurately identify those HEAL borrowers who are in an unsatisfactory status with the Department, borrowers in the following categories have been excluded from this listing: (1) Those who have paid their loans in full subsequent to their default; (2) those who received HEAL loan cancellation due to death or permanent and total disability; (3) those whose loans have been repurchased from the Department by a HEAL school, lender, or holder; (4) those who have been approved by the Department for deferment or forbearance; and (5) those who have made 12 monthly payments or the equivalent during the 12-month period ending March 31, 1993. Borrowers who fall into any of the above five categories are viewed by the Department, at the present time, as having made satisfactory arrangements to resolve the default, and have therefore been excluded from publication in this listing.

The list that follows presents the defaulter's name, latest available City and State of residence (based on the most recent information available from a national credit bureau), the total amount of the HEAL debt, the school last attended for which a HEAL loan was received, and the estimated school separation date. This information is listed by State of residence for practice discipline.

Section 709(c)(2) of the Act directs that the information included in this notice be made available to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which listed borrowers may be associated, and other relevant organizations. In accordance with this Section of the Act, the Department will provide to these entities, upon written request, the information included in the Federal Register notice along with Social Security Account Numbers and street addresses of the borrowers listed. Written requests should be submitted to the Director, Division of Student Assistance, at the address indicated above.

LIST OF DEFAULTERS

Alabama

Allopathic Medicine

Brunson, Eldred, M., Birmingham, AL, $17,364.64, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1981.
Cox, Jarral, W., Tuscaloosa, AL, $3,039.85, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1991.
Evans, Gregory, Mobile, AL, $2,630.97, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, SEP, 1988.
Johnson, Samuel, E., Tuscaloosa, AL, $31,931.06, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1988.
Minisee, Delbert, L., Huntsville, AL, $22,334.72, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1983.
Murphy, Stephen, V., Birmingham, AL, $10,561.88, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, MAY, 1988.
Patzer, David, L., Birmingham, AL, $10,034.41, NORTHWESTERN UNIV MED SCHOOL, Chicago, IL, Allopathic Medicine, JUN, 1989.
Rodgers, Joseph, K., Mobile, AL, $6,859.90, UNIV OF SOUTH ALABAMA, Mobile, AL, Allopathic Medicine, JUN, 1989.
Schmitt, Adam, N., Birmingham, AL, $14,951.27, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1990.
Villaverde, John, J., Geraldine, AL, $8,029.38, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1982.
Watford, Douglas, E., Enterprise, AL, $130,825.97, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1985.

Chiropractic

Awad, Khalil, E., Branchville, AL, $88,468.91, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Bush, Kerry, L., Mobile, AL, $22,510.37, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1986.
Chrencik, Charles, F., Birmingham, AL, $39,957.46, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1987.
Clay, Mark, D., Birmingham, AL, $13,041.23, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1983.
Collum, David, W., Centreville, AL, $49,399.13, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.
Gratta, James, A., Mobile, AL, $9,961.05, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1988.
King, Herbert, S., Leeds, AL, $72,824.95, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1984.
Oliver, Angela, L., Huntsville, AL, $68,734.33, LIFE COLLEGE, Marietta, GA, Chiropractic, AUG, 1987.
Patterson, Jerry, E., Birmingham, AL, $21,302.14, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Randolph, Kenneth, J., Florence, AL, $28,937.04, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Randolph, Jon, M., Florence, AL, $29,110.40, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Richardson, David, Tuscaloosa, AL, $35,665.15, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Shouppe, Phillip, L., Mobile, AL, $62,384.59, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1985.
Smith, Ted, L., Trussville, AL, $34,537.98, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1985.
Swigert, Mark, E., Bay Minette, AL, $33,385.16, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Vail IV, Benners, B., Huntsville, AL, $100,347.74, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1986.

Dentistry

Cochran, Kendrick, P., Birmingham, AL, $6,791.94, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Dentistry, JUL, 1984.

Dravis, Mark, Smiths, AL, $7,509.32, EMORY UNIVERSITY, Atlanta, GA, Dentistry, JUN, 1984.
Elliott III, Eugene, L., Birmingham, AL, $17,782.50, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Dentistry, JUL, 1988.
Ellzey, Paul, D., Selma, AL, $105,950.57, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1990.
Ezell, Brenda, R., Huntsville, AL, $212,963.72, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Green, Glenn, A., Redstone Arsenal, AL, $125,838.89, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, APR, 1986.
Haslam Jr., Jeff, Dothan, AL, $160,911.38, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1985.
Hopson III, Iverson, Selma, AL, $106,194.67, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1982.
Johnson, Samuel, L., Prichard, AL, $131,840.73, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1984.
Justice, Michael, W., Birmingham, AL, $109,692.28, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1987.
Milledge, Darryl, K., Montgomery, AL, $20,627.72, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Dentistry, DEC, 1986.
Richardson, Dewayne, A., Jasper, AL, $5,533.23, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Taylor, Finest, A., Birmingham, AL, $89,775.42, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1984.
Thomas, Carolyn, D., Mobile, AL, $157,662.68, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1986.
Toney, Anthony, Huntsville, AL, $822.86, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1984.
West, Marvin, L., Montgomery, AL, $8,652.43, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1982.
Williams, Dwight, Irondale, AL, $8,698.19, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Dentistry, JUN, 1986.
Williamson, Maria, E., Huntsville, AL, $22,519.40, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1985.

Optometry

Ellis, Terrilyn, A., Montgomery, AL, $21,818.08, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUL, 1987.

Osteopathy

Evans, Charla, J., Selma, AL, $7,076.33, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1991.
Kiser, Galen, H., Tuscumbia, AL, $130,717.20, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1987.
Mitchell III, Jerry, Mobile, AL, $24,524.68, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1986.
Yanulis, George, E., Birmingham, AL, $24,094.78, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, FEB, 1984.

Pharmacy

Bean, Rhonda, L., Birmingham, AL, $4,563.22, XAVIER UNIV OF LOUISIANA, New Orleans, LA, Pharmacy, MAY, 1988.
Degree, Donald, A., Madison, AL, $14,576.94, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1986.
Reid, Billy, F., Huntsville, AL, $23,618.45, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1981.

Podiatry

Dixon Capel, Denise, Montgomery, AL, $45,902.51, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JAN, 1990.
Escoffier, Dana, N., Mobile, AL, $38,821.56, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1984.
Truelove, Glenda, G., Birmingham, AL, $58,632.93, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1981.

Public Health

Branton, Marilyn, S., Tuscaloosa, AL, $43,130.49, TULANE UNIVERSITY, New Orleans, LA, Public Health, MAY, 1986.
Lamboi, Sangoi, E., Birmingham, AL, $35,424.13, UNIV OF FLORIDA, Gainesville, FL, Public Health, JAN, 1988.

Veterinary Medicine

Anderson, Joy, R., Tuskegee, AL, $7,896.98, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1991.
Butler, Brian, F., Opelika, AL, $4,842.89, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1990.
Coleman, Keith, B., Tuskegee, AL, $3,924.39, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1989.
Dixon, Iris, V., Gadsden, AL, $6,253.65, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.
Gardner, Kurt, J., Huntsville, AL, $43,448.66, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1983.
Gumbs, John, M., Tuskegee, AL, $68,344.30, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, JUN, 1984.
Holmes, Sharleen, M., Tuskegee, AL, $56,938.43, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAR, 1989.
Malone, Glen, E., Montgomery, AL, $13,926.58, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, SEP, 1986.
Meadows, Quentin, O., Gadsden, AL, $36,985.69, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1985.
Tyson, Valerie, Birmingham, AL, $26,326.79, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1987.

Alaska

Chiropractic

Horwitz, Robert, B., Anchorage, AK, $69,937.03, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Koob, Michael, D., Kenai, AK, $8,013.54, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1986.
Kosednar, Timothy, P., Anchorage, AK, $17,551.86, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1986.
La Magdeleine, Micha, Anchorage, AK, $55,279.39, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Pregacz, Ann, M., Soldotna, AK, $69,256.17, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1985.

Clinical Psychology

Valenzuela, Debbie, L., Anchorage, AK, $61,338.87, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1987.

Dentistry

Greenough III, Harry, W., Anchorage, AK, $53,739.83, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, JUN, 1985.
Hodnik, Vickey, Homer, AK, $79,887.50, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1988.
Lien, Douglas, A., Anchorage, AK, $156,498.88, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1985.

Osteopathy

King, Ruth, A., Kenai, AK, $165,489.43, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1988.

Arizona

Allopathic Medicine

Cata, Elena, Mesa, AZ, $10,507.49, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, AUG, 1987.
Flavill, Paul, Tucson, AZ, $9,691.14, UNIV OF NEW MEXICO, Albuquerque, NM, Allopathic Medicine, JUN, 1989.
Graham, Stephen, J., Phoenix, AZ, $117,870.41, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1986.
Gregory, Marc, R., Scottsdale, AZ, $2,780.86, UNIV OF HEALTH SCIENCES, Kansas City, MO, Allopathic Medicine, MAY, 1981.
Johnson, Alan, J., Phoenix, AZ, $10,062.18, UNIV OF IOWA, Iowa City, IA, Allopathic Medicine, JUN, 1987.
Kelley, Gary, L., Glendale, AZ, $45,160.54, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Allopathic Medicine, MAY, 1987.
Koenen, Howard, P., Tucson, AZ, $25,946.70, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1989.
Kvien, William, K., Winslow, AZ, $513.27, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1981.
Madden, John, F., Glendale, AZ, $5,427.74, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, APR, 1984.

Palmer, Glen, L., Tucson, AZ, $15,209.98, UNIV OF KANSAS MEDICAL CENTER, Kansas City, KS, Allopathic Medicine, FEB, 1988.
Pruitt, Christopher, R., Tempe, AZ, $25,028.72, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1989.
Silberstein, Brigitte, Tucson, AZ, $75,860.00, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUN, 1985.
Walker, Gregory, T., Phoenix, AZ, $29,852.68, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.

Chiropractic

Allen Jr., Ben, R., Mesa, AZ, $64,858.48, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Apps, Sid, Fountain Hills, AZ, $34,058.45, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1987.
Arkfield, Ted, A., Phoenix, AZ, $20,645.31, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1988.
Baker, Debora, K., Phoenix, AZ, $7,488.02, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1983.
Baker, Samuel, S., Tucson, AZ, $125,382.51, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1985.
Bauwens, David, M., Tucson, AZ, $43,766.74, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1988.
Berger, Karl, J., Mesa, AZ, $55,550.28, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1987.
Brantner, Ray, J., Phoenix, AZ, $36,917.35, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Bridge, Alan, W., Chandler, AZ, $30,955.53, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Budd, Carlinda, L., Tucson, AZ, $80,252.73, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Crider, Walter, D., Scottsdale, AZ, $78,255.93, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1980.
Crooks, Joan, M., Sedona, AZ, $56,940.45, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1985.
Davis, Jacqueline, S., Scottsdale, AZ, $4,730.09, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1986.
Dazell, Linda, R., Tucson, AZ, $21,737.19, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1987.
Derosa, Arthur, Parker, AZ, $26,811.34, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1989.
Erickson, Steven, J., Phoenix, AZ, $801.55, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Faber, Robert, H., Chino Valley, AZ, $49,659.82, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1987.
Fisher, Edwin, L., Scottsdale, AZ, $73,827.12, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.
Hellwig, James, B., Scottsdale, AZ, $119,739.76, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Hendricks, Richard, L., Mesa, AZ, $56,696.47, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1983.
Hodson, Philip, A., Phoenix, AZ, $35,375.54, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Hornyak, John, Tucson, AZ, $27,730.10, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1988.
Howe, James, K., Scottsdale, AZ, $52,737.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1986.
Jeffery, Ryan, C., Page, AZ, $21,982.83, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1989.
Johnson, William, F., Chandler, AZ, $108,486.32, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Jorgenson, James, B., Peoria, AZ, $9,193.55, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1986.
Kolb, Maryann, Tempe, AZ, $60,063.83, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Lay, William, G., Tucson, AZ, $91,915.88, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1985.
Long, Preston, H., Tempe, AZ, $21,929.21, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1984.
Lowman, John, R., Phoenix, AZ, $59,451.17, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Manos, Gregg, C., Tucson, AZ, $67,256.24, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Martin, Craig, J., Phoenix, AZ, $26,524.60, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1987.
Mason, Marlene, K., Glendale, AZ, $43,183.73, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
McGinnis, John, J., Phoenix, AZ, $91,186.56, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Pennebaker, David, C., Phoenix, AZ, $5,531.97, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1983.
Pierce, Ronald, D., Phoenix, AZ, $77,315.60, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.
Reed, Susan, A., Flagstaff, AZ, $62,218.95, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Reeves, Gary, L., Phoenix, AZ, $4,110.32, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1983.
Rich, Kenneth, C., Mesa, AZ, $94,488.84, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Rieselman, James, R., Glendale, AZ, $22,596.12, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1982.
Romeish, Michael, M., Bullhead City, AZ, $66,696.67, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Rutter, Gary, J., Mesa, AZ, $32,163.96, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, (No Separation Date).
Sanders, Steven, K., Phoenix, AZ, $41,076.41, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1984.
Schaeffer, Darsel, R., Glendale, AZ, $12,558.21, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, OCT, 1982.
Schellenger, Yvonne, K., Phoenix, AZ, $80,535.44, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Shellman, Joan, A., Mesa, AZ, $123,440.70, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Shobe, Ted, E., Mesa, AZ, $28,918.19, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1983.
Smith, Sandra, M., Phoenix, AZ, $24,373.47, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1984.
Sparr, Charles, P., Tucson, AZ, $54,446.34, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1987.
Stafford Jr., Orie, V., Phoenix, AZ, $58,864.19, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1984.
Stone, John, L., Phoenix, AZ, $34,172.55, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Stone, Michael, J., Tucson, AZ, $54,143.15, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1985.
Stratton, Christopher, L., Tucson, AZ, $72,221.30, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1985.
Tagg, Lyndon, R., Mesa, AZ, $102,880.98, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Thomas, Jack, R., Page, AZ, $16,364.86, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Trimble, Dale, A., Holbrook, AZ, $36,505.44, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, DEC, 1986.
Walters, Jerome, P., Youngtown, AZ, $32,120.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1983.
White, Howard, D., Phoenix, AZ, $50,132.62, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, APR, 1989.
Wickstrom, Todd, S., Phoenix, AZ, $42,193.75, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1988.
Young, Larry, N., Mesa, AZ, $26,624.96, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Zalak, Edward, G., Mesa, AZ, $77,236.29, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, JUN, 1989.

Clinical Psychology

Cherry, Robert, B., Phoenix, AZ, $11,854.72, CALIFORNIA SCH. OF PROF. PSY.,

Fresno, CA, Clinical Psychology, JUN, 1989.
Perez, Jon, Teel, Pinetop, AZ, $16,782.46, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JAN, 1988.

Dentistry

Burton, Paul, Glendale, AZ, $42,758.07, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1988.
Chang, Mona, Phoenix, AZ, $46,407.14, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUL, 1984.
Chase, Mark, R., Phoenix, AZ, $54,929.42, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1984.
Disalvo, Anthony, Scottsdale, AZ, $55,656.81, ORAL ROBERTS UNIV, Tulsa, OK, Dentistry, AUG, 1985.
Dobrota, Jerry, G., Prescott, AZ, $85,445.00, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1986.
Goldstein, Steven, H., Scottsdale, AZ, $5,591.02, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Gonzalez, Hector, V., Glendale, AZ, $93,453.59, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JAN, 1985.
Keith, Rosalyn, D., Tempe, AZ, $28,670.11, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1987.
Kohler, Anthony, J., Phoenix, AZ, $6,939.74, UNIV OF MINNESOTA, Minneapolis, MN, Dentistry, JUN, 1986.
Kuntz, Frank, G., Mesa, AZ, $138,165.01, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1986.
Maxon, Martin, E., Safford, AZ, $272,531.53, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1984.
Mondragon, Marc, R., Tucson, AZ, $138,614.32, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUL, 1987.
Moore, David, S., Yuma, AZ, $204,245.69, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Pardo, Edward, E., Phoenix, AZ, $80,742.44, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, AUG, 1983.
Patrick, Gary, W., Phoenix, AZ, $111,082.75, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1988.
Pestor, Eugene, B., Mesa, AZ, $162,668.52, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Ransdell, Kerry, L., Chandler, AZ, $79,548.04, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1985.
Rima, Russell, A., Scottsdale, AZ, $166,574.85, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, AUG, 1984.
Rogers, Steven, J., Lake Havasu City, AZ, $143,113.92, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, MAR, 1982.
Sinnard, Mark, S., Chandler, AZ, $4,220.26, UNIV OF NEBRASKA MED CENTER, Omaha, NE, Dentistry, MAY, 1989.
Smith, Catherine, J., Phoenix, AZ, $98,374.67, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1989.
Smith, Cameron, R., Glendale, AZ, $86,035.10, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Sullivan, Jerry, L., Kingman, AZ, $44,291.46, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1984.
Wainwright, Clayton, Peoria, AZ, $30,474.11, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, SEP, 1986.
Walters, Timothy, R., Yuma, AZ, $90,874.52, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1987.

Optometry

Sarowski, Marianne, J., Phoenix, AZ, $50,711.86, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1986.
Stoutsenberger, Jeffry, S., Mesa, AZ, $1,752.33, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, MAY, 1990.

Osteopathy

Gladwell, Irene, Phoenix, AZ, $85,494.24, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, MAY, 1983.
Rico, David, Tucson, AZ, $81,022.88, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1989.
Smith, Susan, M., Paradise Valley, AZ, $67,071.88, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1985.
Van Patten Jr., Merrill, D., Mesa, AZ, $36,869.27, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, APR, 1988.

Pharmacy

Johnson, Benjamin, W., Phoenix, AZ, $10,293.42, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1987.
Vodicka, Anna, Phoenix, AZ, $20,928.30, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1981.

Podiatry

Balch, David, R., Tucson, AZ, $111,980.01, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.
Gerstman, David, L., Tempe, AZ, $80,677.13, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1982.
Hall, Michael, G., Phoenix, AZ, $70,476.97, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1986.
Henry, William, E., Gilbert, AZ, $46,363.13, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1985.
Nagy, Ronald, A., Mesa, AZ, $8,414.21, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1983.
Rhodes, Kevin, D., Goodyear, AZ, $100,838.10, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1983.
Scinta, Mark, C., Phoenix, AZ, $23,322.94, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1983.
Tallis, Arthur, J., Phoenix, AZ, $23,218.84, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1983.

Arkansas

Allopathic Medicine

Appleyard, Sean, B., Conway, AR, $102,122.45, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUN, 1987.
Campbell, Reginald, W., Little Rock, AR, $13,367.78, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, JUN, 1984.
Hawley Jr., James, W., Magnolia, AR, $2,808.43, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1988.
Herndon, Greta, D., Little Rock, AR, $39,253.41, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1987.
Hewgley, Joseph, C., Rogers, AR, $8,608.71, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1990.
Jewell, Eldin, C., Little Rock, AR, $84,138.32, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Lang, Lula, B., Pine Bluff, AR, $156,576.83, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Nayles, Lee, C., Pine Bluff, AR, $27,563.83, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1981.
Stannard, Janet, H., Roland, AR, $869.85, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, JUL, 1986.
Utke, Maria, G., Fayetteville, AR, $16,801.34, UNIV OF NORTH DAKOTA, Grand Forks, ND, Allopathic Medicine, DEC, 1988.
Whittington, Darryll, E., Little Rock, AR, $8,082.49, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1990.

Chiropractic

Adcox, David, W., Brinkley, AR, $15,480.82, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1989.
Brown, Steven, J., Mena, AR, $26,093.92, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Brown, Helen, B., Pocahontas, AR, $64,940.53, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, NOV, 1987.
Clark, Mary, L., Eureka Springs, AR, $17,458.16, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JAN, 1987.
Ennis, James, R., Clinton, AR, $91,397.62, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Jeffers, John, C., El Dorado, AR, $47,691.08, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1983.
Kirklin, Kenton, K., Monticello, AR, $117,845.27, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Maples, Patricia, A., Fort Smith, AR, $36,653.60, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1985.
Mathews, Daniel, G., Little Rock, AR, $16,218.74, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1985.
Reynolds, Gus, M., Edgemont, AR, $22,965.87, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1989.

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South, Steve, C., El Dorado, AR, $22,277.41, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1984.
Swilley, Mark, S., Maumelle, AR, $36,808.41, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1989.
Taylor, Linda, C., Alicia, AR, $16,221.53, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Wyly, Travis, L., North Little Rock, AR, $24,346.93, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.

Dentistry

Blackwell, Robert, E., Pine Bluff, AR, $138,228.88, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1986.
Goodman, William, D., Magnolia, AR, $12,081.79, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, JUN, 1986.
Jones, Daniel, K., Fort Smith, AR, $10,529.08, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1985.
Kouri, Gary, B., Fort Smith, AR, $102,677.88, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, DEC, 1986.
Layman, Kevin, W., Fort Smith, AR, $96,320.25, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1985.
Mathis, Keith, A., Little Rock, AR, $16,021.38, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1986.
Perry, Rickey, G., Little Rock, AR, $166,274.34, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1985.
Sherrill, Edward, E., Little Rock, AR, $23,202.16, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1985.

Optometry

Freeman, Gregory, G., Maumelle, AR, $53,793.38, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, MAY, 1986.

Osteopathy

Harsh, Karen, L., Hot Springs Village, AR, $42,350.36, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUL, 1984.
Tullis, Lurae, T., Little Rock, AR, $21,193.00, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, OCT, 1989.
Ware, Rick, B., Huntington, AR, $202.50, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1985.

Pharmacy

Caldwell, Eric, J., Lewisville, AR, $14,728.97, TEXAS SOUTHERN UNIV, Houston, TX, Pharmacy, MAY, 1990.

California

Allopathic Medicine

Acoff, Amos, C., Los Angeles, CA, $11,066.92, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Allopathic Medicine, JUN, 1982.
Adams, Alfred, E., Inglewood, CA, $28,282.89, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1981.
Alexander, Edward, A., Culver City, CA, $21,478.11, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1986.
Anderson, Angela, J., Los Angeles, CA, $32,270.18, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, DEC, 1985.
Anderson, Laura, M., Los Angeles, CA, $45,381.97, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JAN, 1986.
Arias, Caleb, Oceanside, CA, $1,413.34, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1989.
Arreola, Rodolfo, Santa Ana, CA, $28,278.70, BROWN UNIVERSITY, Providence, RI, Allopathic Medicine, MAY, 1990.
Avelar, Susana, San Francisco, CA, $88,449.28, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JUN, 1988.
Ayers, Marva, L., Los Angeles, CA, $17,453.76, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1987.
Ayodele, Emmanuel, A., Compton, CA, $13,429.65, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAR, 1984.
Balyeat, Lisa, Elaine, Long Beach, CA, $6,004.22, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JAN, 1985.
Bean, Helen, M., Harbor City, CA, $16,372.13, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, JUN, 1984.
Becker, Donna, R., Glendale, CA, $28,358.38, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1984.
Benzor, Joanne, M., Perris, CA, $14,467.58, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUL, 1983.
Bernardez, Jorge, Gardena, CA, $8,737.21, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Allopathic Medicine, DEC, 1988.
Bledsoe, Ralph, C., Carson, CA, $18,485.63, BROWN UNIVERSITY, Providence, RI, Allopathic Medicine, DEC, 1986.
Blum, Brain, P., Long Beach, CA, $9,095.09, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1987.
Boxrud, Cynthia, A., Los Angeles, CA, $7,759.01, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, MAY, 1986.
Brannigan, Thomas, J., San Diego, CA, $1,907.67, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1988.
Braxton, Pamela, M., San Gabriel, CA, $21,572.15, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Breneman, Luz, C., Alhambra, CA, $15,159.83, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1989.
Brown, Beverly, T., Culver City, CA, $970.88, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1981.
Carrillo, Javier, N., Oxnard, CA, $5,757.71, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, SEP, 1987.
Carter, Eugene, J., Los Angeles, CA, $22,340.48, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, MAY, 1988.
Cassell, Jon, W., San Diego, CA, $76,030.73, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1985.
Castillo, Robert, G., Fresno, CA, $15,440.43, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUL, 1984.
Catania, Thomas, A., Laguna Niguel, CA, $7,457.21, UNIV OF ROCHESTER, Rochester, NY, Allopathic Medicine, JUN, 1989.
Cayle, Douglas, Temple City, CA, $11,703.58, UNIV OF CALIFORNIA—SAN FRANCISCO, San Francisco, CA, Allopathic Medicine, JUN, 1983.
Chai, Yun, S., Albany, CA, $8,194.88, LOUISIANA STATE UNIV MC—NEW ORLEANS, New Orleans, LA, Allopathic Medicine, NOV, 1986.
Chambers, Michael, J., Laguna Beach, CA, $36,385.03, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAR, 1992.
Channel, Ollie, V., Inglewood, CA, $23,145.64, UNIV OF CALIFORNIA—LOS ANGELES, Los Angeles, CA, Allopathic Medicine, AUG, 1986.
Chao, Cynthia, T., Sacramento, CA, $37,609.48, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Allopathic Medicine, JUN, 1991.
Chavez, Shannon, V., Fresno, CA, $41,775.01, UNIV OF CALIFORNIA—SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1985.
Chretien, Paul, M., Sacramento, CA, $1,948.49, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1986.
Cladek, James, T., Palm Springs, CA, $54,720.98, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, JUN, 1986.
Coble, Terri, C., Palm Desert, CA, $3,810.14, UNIV OF ILLINOIS—CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1990.
Coleman, James, E., Los Angeles, CA, $16,317.25, UNIV OF CALIFORNIA—DAVIS, Davis, CA, Allopathic Medicine, JUN, 1980.
Coleman, Larry, K., Los Angeles, CA, $84,038.55, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1986.
Collins, Mathew, W., Los Angeles, CA, $15,055.55, MAYO MEDICAL SCHOOL, Rochester, MN, Allopathic Medicine, MAR, 1990.
Collins, Rodney, D., Salinas, CA, $9,055.59, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1983.
Collyer, George, H., San Francisco, CA, $6,236.52, UNIV OF CALIFORNIA—SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1990.
Costo, Jose, A., Los Angeles, CA, $184,805.29, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1985.
Curry, Charles, M., Fresno, CA, $15,457.29, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.

Delacoutes, John, R., Los Angeles, CA, $13,245.22, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, MAY, 1988.
Douglas, Clifford, C., Redlands, CA, $32,709.32, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1989.
Drennan, Michael, D., San Diego, CA, $5,210.03, UNIV OF CALIFORNIA—SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1988.
Duarte, David, A., Artesia, CA, $70,660.25, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1987.
Duncan, Monique, Los Angeles, CA, $7,795.17, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, AUG, 1985.
Ellis, Terrance, L., Oakland, CA, $1,807.82, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Allopathic Medicine, JUN, 1987.
Erickson, Mark, S., Los Gatos, CA, $95,199.75, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JAN, 1983.
Essey, Robert, J., Los Angeles, CA, $67,335.17, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1986.
Ferguson, Melissa, R., South Pasadena, CA, $4,806.62, UNIV OF TEXAS—HEALTH SCI CTR, Houston, TX, Allopathic Medicine, JUN, 1987.
Finkelstein, David, S., San Francisco, CA, $29,717.70, SUNY HEALTH SCIENCE CENTER BROOKLYN, Brooklyn, NY, Allopathic Medicine, JUL, 1984.
Foote, Ronald, H., Hanford, CA, $23,014.60, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.
Franklin, Peter, E., Watsonville, CA, $22,646.11, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1983.
Fulcher, William, E., San Pedro, CA, $13,547.52, UNIV OF CALIFORNIA—SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1987.
George, Antony, M., Santa Monica, CA, $34,090.85, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1984.
Goldfarb, Georgia, Venice, CA, $50,999.23, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1982.
Gomez, Mario, A., Garden Grove, CA, $48,255.78, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, JUN, 1984.
Gray, Kathleen, A., Oceanside, CA, $125,636.43, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, JUN, 1989.
Green, Synthia, E., Oakland, CA, $55,450.66, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, OCT, 1985.
Gross, Maurice, L., Long Beech, CA, $28,631.75, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1987.
Haider, Wais, L, San Diego, CA, $26,274.16, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, AUG, 1987.
Hammond, Terry, C., San Diego, CA, $20,546.35, UNIV OF TEXAS—MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1986.
Harding, Phyllis, D., Los Angeles, CA, $58,998.25, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1987.
Harirle, Jim, A., Los Angeles, CA, $150,691.07, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JUN, 1987.
Harris, Henry, D., Los Angeles, CA, $45,801.96, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1980.
Harris, Brian, W., Los Angeles, CA, $50,837.06, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1987.
Harris, Arthur, Northridge, CA, $33,060.70, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1980.
Hemel, Neal, M., Palo Alto, CA, $82,028.38, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, MAY, 1983.
Henry, Camille, M., San Diego, CA, $76,208.76, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1984.
Hibbert, Harold, H., Portola Valley, CA, $7,269.18, STANFORD UNIVERSITY, Stanford, CA, Allopathic Medicine, JUL, 1987.
Hines, Berta, M., Los Angeles, CA, $78,606.23, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1982.
Holloway Jr., Nathaniel, L., Los Angeles, CA, $30,004.27, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Iniguez, Victor, San Francisco, CA, $26,813.63, UNIV OF ILLINOIS—CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1987.
Jackson, Robyn, A., Palos Verdes Peninsu, CA, $4,425.73, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, JUL, 1989.
Jacobson, Kathleen, R., Carpinteria, CA, $3,936.02, LOYOLA UNIV—STRITCH SCH OF MED, Maywood, IL, Allopathic Medicine, JUN, 1991.
Jessie, Adrian, C., San Jose, CA, $4,899.92, UNIV OF TEXAS—HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, JUN, 1990.
Johnsen, James, H., Cupertino, CA, $148,264.70, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1987.
Johnson, Christopher, L., San Francisco, CA, $5,069.13, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1989.
Johnson, Richard, K., Los Angeles, CA, $28,954.54, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, JUL, 1987.
Julian, Virginia, Greenbrae, CA, $107,314.94, UNIV OF CALIFORNIA—SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1983.
Kamel, Luca, C., Torrance, CA, $63,151.59, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAY, 1988.
Kelly, Edward, L., San Bernardino, CA, $4,920.77, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUL, 1985.
Kemp, Murrey, Bakersfield, CA, $106,577.97, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, MAY, 1985.
Kim, Grace, Y., Glendale, CA, $24,015.64, UNIV OF CALIFORNIA—LOS ANGELES, Los Angeles, CA, Allopathic Medicine, JUN, 1988.
Krecker, Elizabeth, A., Pasadena, CA, $2,923.54, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Allopathic Medicine, MAY, 1988.
Kunihira, Dale, Y., Santa Clara, CA, $35,422.92, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1985.
Lacaman, Vernon, H., Granada Hills, CA, $99,050.21, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1988.
Lamotte, Angela, J., Culver City, CA, $85,857.42, UNIV OF CALIFORNIA—LOS ANGELES, Los Angeles, CA, Allopathic Medicine, JUN, 1989.
Larsen, John, M., Thousand Oaks, CA, $3,470.08, UNIV OF WASHINGTON, Seattle, WA, Allopathic Medicine, JUN, 1987.
Lawton, Michael, D., Yorba Linda, CA, $57,210.24, UNIV OF IOWA, Iowa City, IA, Allopathic Medicine, JUN, 1984.
Le, Thang, D., Loma Linda, CA, $12,717.51, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1989.
Lewis, Kenneth, D., Los Angeles, CA, $31,040.25, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Li, Patrick, P., San Gabriel, CA, $117,310.03, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1987.
Lopez, Marlene, S., Seal Beech, CA, $3,158.13, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1989.
Lopez, Steven, H., Los Angeles, CA, $3,815.84, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1986.
Louis-Jacques, Mac, Antoine, Santa Monica, CA, $84,288.76, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1986.
Lui, Suk, Ching, Sacramento, CA, $20,825.28, ST LOUIS UNIVERSITY, St. Louis, MO, Allopathic Medicine, AUG, 1989.
Lundy-Burke, Elaine, Orange, CA, $18,067.03, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1988.
Marangu, Joanann, M., Los Angeles, CA, $69,699.32, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Allopathic Medicine, JUN, 1987.
Martinez, Richard, A., Santa Maria, CA, $20,354.24, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1988.
Martinez, Evangelina, E., Corona Del Mar, CA, $2,020.55, STANFORD UNIVERSITY, Stanford, CA, Allopathic Medicine, JUN, 1985.
May, James, W., Beverly Hills, CA, $3,825.77, INDIANA UNIV AT INDIANAPOLIS,

Bloomington, IN, Allopathic Medicine, MAY, 1987.
Mays, Archie, R., Long Beach, CA, $103,166.52, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Meyer, Richard, D., Yucaipa, CA, $48,800.62, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1985.
Miller, Bradley, G., Los Angeles, CA, $38,596.31, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Allopathic Medicine, JUN, 1988.
Mora, Francisco, J., Canoga Park, CA, $81,980.53, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1986.
Moreno Jr., Daniel, Los Angeles, CA, $31,980.47, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1988.
Morkin, Patrick, P., Los Angeles, CA, $23,860.86, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1989.
Mullen, John, T., San Mateo, CA, $1,751.08, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1988.
Murphy, Monica, J., Bakersfield, CA, $13,153.29, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1985.
Myers, Karen, A., San Francisco, CA, $40,762.88, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Allopathic Medicine, MAY, 1986.
Nelson, Richard, D., Colfax, CA, $10,949.69, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, DEC, 1987.
Nickerson, Gerald, L., Playa Del Rey, CA, $14,825.52, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1993.
Nwobi, Veronica, Pacific Palisades, CA, $13,638.53, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUL, 1984.
O'Dell, Catherine, A., Pasadena, CA, $67,857.21, ST LOUIS UNIVERSITY, St. Louis, MO, Allopathic Medicine, JUN, 1984.
O'Mara, Kevin, T., Mountain View, CA, $50,608.36, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1986.
Palmer, Lori, J., Manhattan Beach, CA, $63,342.14, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUN, 1989.
Patterson, Joseph, M., Alhambra, CA, $6,839.69, UNIV OF SOUTH ALABAMA, Mobile, AL, Allopathic Medicine, JUN, 1988.
Payne, David, H., Culver City, CA, $11,435.98, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1985.
Pena, Rosalia, San Ysidro, CA, $29,979.82, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, MAY, 1984.
Perrault, Mark, D., Culver City, CA, $27,499.70, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, APR, 1984.
Perry, Keith, O., Los Angeles, CA, $80,541.16, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1983.
Perry, Maurice, A., Woodland Hills, CA, $74,818.28, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1987.
Peterson, Anna, J., Irvine, CA, $34,042.55, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1987.
Phillips, Jeffrey, L., Los Angeles, CA, $6,732.28, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1985.
Pote III, William, H., Loma Linda, CA, $106,598.47, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1986.
Ray, Douglas, L., Los Angeles, CA, $191,691.86, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Riley, Calvin, Irvine, CA, $65,151.83, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1985.
Roberts, Wendy, E., Redlands, CA, $8,281.43, STANFORD UNIVERSITY, Stanford, CA, Allopathic Medicine, JUL, 1986.
Rose, Sharon, Northridge, CA, $10,507.00, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, NOV, 1985.
Rucker, Elleston, C., Chula Vista, CA, $19,801.30, VANDERBILT UNIV, Nashville, TN, Allopathic Medicine, JUN, 1983.
Ruiz, Gonzalo, F., San Diego, CA, $2,687.68, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1991.
Ryan, Jacqueline, S., Mountain View, CA, $667.47, STANFORD UNIVERSITY, Stanford, CA, Allopathic Medicine, JUN, 1991.
Salinas, Rafael, E., Huntington Park, CA, $151,793.18, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, DEC, 1986.
Sanchez, Ann, M., Newport Beach, CA, $7,581.26, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1983.
Sanders, Shirley, C., Huntington Beach, CA, $26,014.67, MAYO MEDICAL SCHOOL, Rochester, MN, Allopathic Medicine, JUN, 1986.
Schack, Ruth, A., Sausalito, CA, $176,853.43, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Allopathic Medicine, JUN, 1988.
Scher, Susan, H., San Francisco, CA, $18,887.79, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, MAY, 1985.
Schlater, Theodore, L., Los Angeles, CA, $11,880.04, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1988.
Schultz, Charles, M., Encino, CA, $17,996.22, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1989.
Senechek, David, R., San Francisco, CA, $4,170.59, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1988.
Shahin, Samir, Los Angeles, CA, $31,562.49, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Allopathic Medicine, JUL, 1985.
Shaw, Michael, G., Inglewood, CA, $35,130.00, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Silas, Charles, G., Moreno Valley, CA, $119,682.25, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1987.
Siqueiros, Rafael, O., Fresno, CA, $19,749.46, UNIV OF CALIFORNIA-SAN DIEGO, La Jolla, CA, Allopathic Medicine, JUN, 1988.
Tabatzky, Christiane, M., Dana Point, CA, $25,325.24, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, JUN, 1986.
Tarver II, Donald, E., San Francisco, CA, $20,968.04, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1987.
Terkeurst-Scott, Barbara, J., Northridge, CA, $57,768.94, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, MAY, 1989.
Theard, Ronald, J., Los Angeles, CA, $16,233.79, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Allopathic Medicine, JUN, 1989.
Tolbert Jr., William, Los Angeles, CA, $22,577.74, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1986.
Ward, Herman, V., Los Angeles, CA, $49,689.22, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.
Weil, Mitchell, A., San Clemente, CA, $13,606.97, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Allopathic Medicine, JUN, 1981.
Whitehall, Judith, A., Corte Madera, CA, $99,823.00, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1985.
Whitt, Beverly, S., Fullerton, CA, $107,389.57, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, MAR, 1987.
Williams, Joanne, Sherman Oaks, CA, $6,879.94, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1985.
Williams, Gary, T., Perris, CA, $109,562.09, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1987.
Williams, William, E., Oakland, CA, $18,561.14, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Allopathic Medicine, JUL, 1984.
Williams, Reisar, K., San Diego, CA, $65,577.87, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1984.
Wilson, Michael, G., San Pedro, CA, $9,738.54, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1988.
Wilson Jr., Chester, San Francisco, CA, $2,721.96, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Allopathic Medicine, JAN, 1987.
Winkler, Christopher, S., Oakland, CA, $64,073.79, ST LOUIS UNIVERSITY, St. Louis, MO, Allopathic Medicine, MAY, 1987.
Wolfrey, Wayne, T., Los Angeles, CA, $3,235.74, UNIV OF NEBRASKA MED CENTER, Omaha, NE, Allopathic Medicine, JUN, 1989.

Young, Howard, Y., San Francisco, CA, $88,917.03, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, DEC 1989.
Zeme, Mark, I., San Francisco, CA, $6,001.40 UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, JUN, 1988.

Chiropractic

Ahmad, Haifa, M., San Jose, CA, $73,626.00, PALMER COLLEGE OF CHIROPRACTIC WEST, San Jose, CA, Chiropractic, SEP, 1988.
Aisenberg, Mary, Ellen, Laguna Beach, CA $96,888.51, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1985.
Alegria, Albert, J., South Pasadena, CA, $73,538.26, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, FEB, 1987.
Alesescu, Kenneth, J., Auburn, CA, $36,551.80, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1985.
Alexander, Kurt, M., Livermore, CA, $10,755.32, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA Chiropractic, APR, 1986.
Alvarado, Mario, Prunedale, CA, $46,403.27 PALMER COLLEGE OF CHIROPRACTIC Davenport, IA, Chiropractic, NOV, 1986
Ambrose, Joseph, R., El Dorado Hills, CA, $3,560.22, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Anderson, Russell, N., Lake Isabella, CA, $35,183.96, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic DEC, 1987.
Anderson, Danny, D., Penn Valley, CA $78,578.47, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1985.
Anderson, Douglas, W., Riverside, CA, $116,533.25, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Anderson, Michael, R., Manhattan Beach, CA, $55,930.78, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Anderson, Duane, L., Oxnard, CA, $8,231.24 LIFE COLLEGE, Marietta, GA, Chiropractic, NOV, 1983.
Applegate, Kirk, A., Fresno, CA, $78,612.99 LOS ANGELES CLG OF CHIROPRACTIC Whittier, CA, Chiropractic, DEC, 1985
Archuleta, Philip, A., San Marcos, CA, $89,197.19, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1988.
Arishin, Michael, W., Santa Clara, CA, $32,471.61, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1985.
Ausmus, Daniel, G., Tustin, CA, $14,310.75, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.
Bai, Chung, H., Glendale, CA, $5,138.94, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, MAY, 1988.
Baldry, James, S., Van Nuys, CA, $5,623.54, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1985.
Baldwin, Richard, C., San Francisco, CA $26,782.76, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1986.
Barr, Timothy, G., Orange, CA, $82,910.12, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1990.
Barrack, Steven, A., Elk Grove, CA, $40,584.67, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1985.
Barrett, Elizabeth, L., Azusa, CA, $98,721.32 LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Beam, David, E., Colton, CA, $81,135.50, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Beaver, Richard, D., Rocklin, CA, $85,947.85 TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1986.
Beeman, Robert, R., Redlands, CA, $2,777.76 PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1983.
Bell, William, C., Fremont, CA, $21,000.21 LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1987
Beverleigh, Howard, K., San Jose, CA, $54,339.61, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1985.
Bezzic, Aleta, L., Sausalito, CA, $63,008.89, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1990.
Bixby, Charles, K., Petaluma, CA, $37,469.45 LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1988.
Blow, James, R., Santa Clara, CA, $17,572.19 PARKER COLLEGE OF CHIROPRACTIC Dallas, TX, Chiropractic, AUG, 1988.
Bochniak, Marie, L., Thousand Oaks, CA $46,526.01, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Bond, Walter, D., Van Nuys, CA, $46,633.59 LOS ANGELES CLG OF CHIROPRACTIC Whittier, CA, Chiropractic, DEC, 1987
Brightwell, Terry, D., Vallejo, CA, $27,284.21, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA Chiropractic, OCT, 1987.
Brodsky, Barbara, L., San Francisco, CA $6,084.98, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA Chiropractic, DEC, 1984.
Bronk, Brian, R., Los Angeles, CA, $31,035.02, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1984.
Brooke, Daniel, J., Antioch, CA, $16,546.31 PALMER COLLEGE OF CHIROPRACTIC WEST, San Jose, CA, Chiropractic, SEP 1990.
Brown, Vincent, L., San Leandro, CA $30,583.63, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1987.
Brunn, Louie, P., San Rafael, CA, $10,015.48, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1986
Brunstein, Angela, La Puente, CA, $55,132.61, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1990. Brunstein, Florian, Rowland Heights, CA, $49,523.45, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1989.
Brunton, Derek, S., Escondido, CA, $27,905.56, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA Chiropractic, SEP, 1986.
Bunganich, David, W., Chico, CA, $13,482.63, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, SEP, 1986.
Bunzeluk, Nancy, J., Salinas, CA, $36,715.09 LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1983.
Burch, Gregory, D., Riverside, CA, $38,450.95, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1984.
Burdman, Darin, L., Reseda, CA, $6,788.42, LOS ANGELES CLG OF CHIROPRACTIC Whittier, CA, Chiropractic, FEB, 1986.
Burkhardt, Pamela, K., San Francisco, CA $48,915.01, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1989.
Burkley, Anton, Z., Berkeley, CA, $70,686.78 LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1987
Burt, Thomas, R., Walnut Creek, CA, $53,223.51, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA Chiropractic, MAR, 1984.
Burton, Whitney, J., Visalia, CA, $66,415.74 WESTERN STATES CHIROPRACTIC CLG Portland, OR, Chiropractic, DEC, 1983.
Butterfield, James, B., San Jose, CA, $12,329.82, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA Chiropractic, MAR, 1991.
Butterfield, Cathy, L., San Francisco, CA $27,105.12, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA Chiropractic, FEB, 1988.
Byington, Brad, A., South Lake Tahoe, CA, $70,469.06, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1989.
Caballero, Jorge, R., Los Angeles, CA, $72,566.50, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1987.
Caldwell, Ransom, Hacienda Heights, CA $47,022.04, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Calixto, Flanio, Fremont, CA, $86,699.85, PARKER COLLEGE OF CHIROPRACTIC Dallas, TX, Chiropractic, AUG, 1989.
Camarena, Johann, A., Granada Hills, CA $20,214.24, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JUL, 1984.
Campbell, Richard, L., Encinitas, CA, $21,923.66, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic MAY, 1984.
Cappa, Claude, L., Modesto, CA, $35,684.63 PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1984.
Cardwell, Jodi, J., Sacramento, CA, $5,682.66 PALMER COLLEGE OF CHIROPRACTIC WEST, San Jose, CA, Chiropractic, JUN, 1987.
Carlson, James, E., Rocklin, CA, $9,187.66, PALMER COLLEGE OF CHIROPRACTIC Davenport, IA, Chiropractic, OCT, 1982.
Carlson, Eric, D., La Puente, CA, $61,045.75 CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1986.

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Casey, Daniel, P., Huntington Beach, CA, $51,646.91, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, SEP, 1985.
Castillo, Joella, M., San Francisco, CA, $63,522.52, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1986.
Castro, Hector, M., Santa Ana, CA, $44,195.14, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.
Cates, Stephen, M., Laguna Hills, CA, $26,591.19, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1983.
Cates, John, H., Bakersfield, CA, $13,195.67, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1985.
Cheney, Julian, L., Canoga Park, CA, $2,106.21, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1983.
Clifford, Fred, W., Palm Springs, CA, $60,375.57, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Collier, William, F., Santa Rosa, CA, $38,686.70, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1987.
Conger, Ronald, E., Hollywood, CA, $12,699.95, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1986.
Cook, Karen, S., Mountain View, CA, $89,130.21, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1985.
Cook, Peggy, L., Manteca, CA, $85,838.33, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1984.
Cooksley, Michelle, Huntington Beach, CA, $1,220.05, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1984.
Corser, Lester, J., Hemet, CA, $5,755.63, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JAN, 1983.
Cory, Jon, G., Glendale, CA, $42,430.62, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Cory, Robert, G., Montrose, CA, $57,502.14, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1990.
Cresswell, Diane, A., Whittier, CA, $37,984.86, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1990.
Crocevera, Carolyn, A., Pacific Grove, CA, $12,254.74, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, MAY, 1987.
Curran, Douglas, J., Fresno, CA, $62,232.49, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUN, 1987.
Curtin, Michael, M., San Francisco, CA, $11,581.61, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, AUG, 1988.
Darrow, Victoria, L., San Francisco, CA, $50,316.92, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1986.
Davidson, James, A., Corte Madera, CA, $25,570.83, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Davis, Steven, C., Glendale, CA, $6,222.84, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1982.
Delallo, Joseph, D., South Lake Tahoe, CA, $49,385.89, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Delsie, Carl, Orange, CA, $91,486.30, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, FEB, 1987.
Demille, Alan, M., Citrus Heights, CA, $96,806.69, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, APR, 1987.
Desahtis, Louis, A., La Mesa, CA, $68,455.87, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1989.
Desantis, Lynn, M., El Cajon, CA, $4,980.36, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1989.
Despas, Joel, C., Hayward, CA, $30,912.02, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.
Dewees, Randel, K., La Selva Beach, CA, $62,822.19, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1989.
Diedrich, Curtis, E., Fremont, CA, $16,528.64, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1984.
Difiore, William, Fountain Valley, CA, $26,916.82, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1988.
Diquattro, Scott, Joseph, Cathedral City, CA, $60,386.86, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1984.
Dodenhoff, Bradley, A., Bakersfield, CA, $13,772.94, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, SEP, 1984.
Dunbar, Charles, E., Poway, CA, $109,119.38, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1988.
Dunne, Robert, P., Beverly Hills, CA, $19,687.91, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1985.
Dvorak, Rosalie, J., Moreno Valley, CA, $72,188.73, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Dwelly, Bruce, E., Citrus Heights, CA, $16,788.17, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1988.
Dykeman, Peter, J., Torrance, CA, $58,535.35, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Early, Lawrence, F., San Diego, CA, $88,964.13, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Earth-Child, Erin, I., Berkeley, CA, $9,297.69, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.
Eaton, Lorrie, K., Oakland, CA, $38,047.84, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Eckel, David, E., Lancaster, CA, $69,224.08, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1986.
Edson, Lysanji, A., San Francisco, CA, $10,597.57, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1987.
Elsea, Steven, W., Stockton, CA, $5,792.00, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1985.
Ely, Stephen, R., Fresno, CA, $30,138.98, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1985.
Ervin, Laurie, M., Albany, CA, $15,231.28, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1986.
Etcheverry, John, C., San Bruno, CA, $10,281.58, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1988.
Evans, Roland, S., Chico, CA, $9,260.09, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1983.
Fairchild, Joseph, W., Stockton, CA, $5,481.37, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1983.
Famalaro, John, J., El Toro, CA, $73,212.47, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1983.
Fankboner, Duncan, B., Montague, CA, $81,141.83, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1985.
Farrell, Robert, J., Oceanside, CA, $37,163.04, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Fawcett III, Joe, W., Fresno, CA, $19,444.40, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1984.
Fickel, Theodore, E., Montecito, CA, $53,887.55, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1982.
Fifield, Fred, W., Hacienda Heights, CA, $58,983.59, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, APR, 1990.
Finke, Janice, L., San Leandro, CA, $36,762.92, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1985.
Fish, Robert, D., Fullerton, CA, $10,747.93, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1983.
Flores, Otto, O., Santa Ana, CA, $44,093.76, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1988.
Flynn, Timothy, G., Palo Alto, CA, $1,549.45, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1989.
Forsting, Ruth, A., San Francisco, CA, $5,579.00, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1985.
Fox, Richard, T., Los Angeles, CA, $20,165.09, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1984.
Fridrick, Timothy, P., Los Angeles, CA, $31,955.13, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, APR, 1988.

Frye, Dan, A., San Lorenzo, CA, $3,201.26, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1988.
Fulton, John, R., San Clemente, CA, $71,321.88, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Galbe, Debby, M., Santee, CA, $34,160.73, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1986.
Gallagher, Tamara, G., Chino, CA, $25,786.42, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Gallagher, David, B., Santa Monica, CA, $6,577.97, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1983.
Gamble, Jeffrey, G., La Habra, CA, $88,857.96, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1983.
Garfinkle, Gene, San Francisco, CA, $36,848.16, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1987.
Gates, Thom, A., Los Angeles, CA, $10,691.08, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUN, 1987.
Gayle, Jayson, C., Escondido, CA, $79,202.44, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Gilberti, Benedict, V., Carlsbad, CA, $10,868.40, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1984.
Given, Vaughn, San Juan Capistrano, CA, $27,538.38, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1985.
Glassman, Clifford, North Hollywood, CA, $49,303.10, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Glickman, Alex, M., San Rafael, CA, $22,413.96, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUL, 1985.
Glum, Gary, L., Los Angeles, CA, $93,624.58, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1984.
Goff, William, D., Pasadena, CA, $37,767.05, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1985.
Graffious, Dennis, W., Carlsbad, CA, $26,113.44, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1986.
Green, Sheldon, S., Sunland, CA, $43,551.61, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1985.
Gregory, Todd, A., Santa Maria, CA, $20,222.17, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1989.
Gross, Dale, M., Canoga Park, CA, $4,562.22, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1984.
Gutierrez, John, J., Stockton, CA, $35,015.95, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1985.
Habbart, Joseph, L., Mountain View, CA, $29,263.37, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1989.
Hackett, Don, F., Palmdale, CA, $42,944.24, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, JUN, 1987.
Haines, Donna, J., Sacramento, CA, $40,541.59, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1988.
Halle, Thomas, C., Los Angeles, CA, $7,792.86, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1987.
Hamilton, Aaron, J., Fountain Valley, CA, $14,909.96, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1982.
Hankins, Larry, R., Sacramento, CA, $10,148.27, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1989.
Harnitchek, Paul, E., Highland, CA, $1,230.52, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Harper, Nicholas, Long Beach, CA, $39,060.07, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JUN, 1985.
Harvey, Ann, R., Mill Valley, CA, $3,415.06, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1986.
Hayes, Douglas, M., Santa Monica, CA, $104,199.10, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Helms, Randy, L., Vacaville, CA, $24,270.13, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAY, 1986.
Herman, Mira, Los Angeles, CA, $27,441.80, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1985.
Hermosillo, Francisco, J., Tarzana, CA, $83,202.97, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, APR, 1987.
Hernandez, Orestes, M., Los Angeles, CA, $34,960.57, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1988.
Herring, Charles, Michael, Fremont, CA, $69,162.94, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1986.
Hetherington, Jane, San Rafael, CA, $48,709.41, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1987.
Hicks, Randall, D., Anaheim, CA, $95,426.68, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1987.
Hoar, Gayle, G., Encinitas, CA, $37,097.84, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1988.
Hockersmith, Kevin, W., Sanger, CA, $90,714.31, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1989.
Hoffman, Stuart, Manhattan Beach, CA, $5,902.89, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1986.
Holmes, Clarence, J., Sacramento, CA, $17,700.08, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JAN, 1985.
Holst, Stephen, D., Oakland, CA, $52,204.92, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1986.
Holt, Kenneth, G., Azusa, CA, $46,504.87, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1988.
Hoover, Wayne, N., Redondo Beach, CA, $37,423.03, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Hopstock, Richard, M., Hacienda Heights, CA, $49,371.50, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1987.
Hosler, John, R., Salinas, CA, $24,818.34, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1985.
Howard, Marty, B., Pleasanton, CA, $14,270.41, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.
Howell, Ralph, G., Fresno, CA, $61,899.01, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1983.
Huerta, Debra, San Leandro, CA, $27,054.02, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1988.
Huff, Arthur, R., Pasadena, CA, $79,764.30, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, MAY, 1988.
Huff, Guy, L., Torrance, CA, $82,691.33, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1986.
Hunt, Celia, A., Citrus Heights, CA, $19,531.98, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1989.
Inskeep, Norman, D., San Jose, CA, $98,354.31, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1986.
Jacob, Elizabeth, A., Los Angeles, CA, $23,588.57, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1989.
Jasper, Chuck, S., San Rafael, CA, $5,488.41, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, APR, 1984.
Jeffcoat, Lori, M., Balboa, CA, $12,068.36, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, SEP, 1989.
Jette, Steven, A., Petaluma, CA, $8,173.53, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1984.
Johnson, Kevin, A., Costa Mesa, CA, $31,026.42, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1989.
Johnson, Randall, G., Los Angeles, CA, $75,964.32, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1985.
Johnson, Shelia, A., Los Angeles, CA, $70,641.30, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1986.
Joseph, Donna, S., Oakland, CA, $7,117.33, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.

Kahan, Robert, M., Moraga, CA, $18,777.65, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1984.
Kahanek, Carol, A., Santa Cruz, CA, $35,024.45, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1983.
Kallop, Koen, P., Palo Alto, CA, $3,766.35, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, OCT, 1984.
Kelly, Mark, S., Chino, CA, $19,510.11, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUN, 1986.
Kennedy, Connie, L., Mill Valley, CA, $1,427.54, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1989.
Klee, Mark, A., Lancaster, CA, $13,591.53, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1987.
Knopfler, Susan, Pinole, CA, $16,119.99, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1988.
Kosak, Jerome, E., Fairfield, CA, $22,102.45, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1982.
Kotsch, Simone, P., Laguna Niguel, CA, $34,053.26, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1985.
Kowalski, Brian, A., Newport Beach, CA, $7,437.10, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1984.
Kraetzer, Nicholas, San Pedro, CA, $4,174.40, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1987.
Kullrich, Regan, T., Bakersfield, CA, $11,138.23, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, MAY, 1987.
Lampman, Chuck, D., Fresno, CA, $100,689.63, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1986.
Lark, Steven, J., Ventura, CA, $33,650.96, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, JUN, 1986.
Lark, Sharon, A., Downey, CA, $33,040.19, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1989.
Lawrence, Donald, R., San Francisco, CA, $27,606.19, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1990.
Leahy, Joseph, P., Campbell, CA, $1,423.65, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JAN, 1983.
Leconte, Isabelle, Los Angeles, CA, $33,146.17, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1986.
Legg, William, C., Stockton, CA, $56,254.76, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1984.
Lesko, Andrew, Orange, CA, $31,541.77, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Levernier, Laura, A., Costa Mesa, CA, $39,662.03, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Lind, Andrew, S., Modesto, CA, $16,029.57, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1986.
Lindsay, Kasey, J., Palos Verdes Peninsu, CA, $2,081.22, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JUN, 1984.
Lodwig, Michael, J., Walnut Creek, CA, $14,872.70, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1987.
Loewenstein, Ronald, K., Fremont, CA, $42,034.38, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Lopez, Luis, E., Palm Desert, CA, $92,402.61, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1985.
Lowe, Dane, E., Poway, CA, $3,932.52, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1984.
Lunceford, Glenn, W., Camarillo, CA, $12,039.42, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Lyons, Dorothy, A., Coulterville, CA, $24,819.29, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1989.
MacDonald, Brian, A., Huntington Beach, CA, $16,229.64, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1983.
Maddalone, Dawn, M., San Diego, CA, $33,510.52, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Mahan, Michael, W., San Mateo, CA, $15,079.77, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUL, 1986.
Mairet, Alain, A., Redwood City, CA, $46,277.10, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1987.
Mannino, Holly, L., Whittier, CA, $17,494.18, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Mansolino, Anthony, D., Carmel, CA, $49,870.85, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, AUG, 1990.
Mark, Jeffrey, Berkeley, CA, $77,093.70, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Martello, Daniel, M., San Francisco, CA, $1,998.95, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1986.
Martin, Kathleen, L., Lakeside, CA, $16,637.12, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1986.
Maynard, Jennifer, E., Glendora, CA, $51,389.87, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1988.
Mays, Kathryn, M., Northridge, CA, $57,349.80, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1988.
McCracken, Rosalind, Oceanside, CA, $16,901.88, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1989.
McDonald, Robert, C., Bakersfield, CA, $35,570.73, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1987.
McGee, Billie, J., Thousand Oaks, CA, $26,325.52, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1984.
McWilliams, Willam, B., Fremont, CA, $77,611.03, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1987.
Meriott, Robert, B., San Juan Capistrano, CA, $12,991.32, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1983.
Millar, Mark, A., Santa Rosa, CA, $47,803.01, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, DEC, 1987.
Miller, Marilyn, E., Redwood City, CA, $5,509.90, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, OCT, 1985.
Mitchell, Ronald, D., San Francisco, CA, $17,902.26, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Mitchell, Gregory, W., Los Angeles, CA, $93,483.30, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1988.
Molina, Robert, Los Angeles, CA, $42,548.67, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUL, 1988.
Monahan, Michael, L., San Diego, CA, $41,725.89, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JUL, 1987.
Moore, Wesley, B., San Jose, CA, $34,109.21, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JAN, 1985.
Moore, Dennis, J., Palm Springs, CA, $100,871.21, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Moreno, Marty, M., Carmichael, CA, $23,812.49, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Morillas, Anthony, Carmichael, CA, $18,790.54, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1983.
Morrow, Karen, M., Brentwood, CA, $64,898.48, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1986.
Mullins, Marilyn, E., Anaheim, CA, $43,966.85, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1984.
Murphy, Marc, A., Santa Ana, CA, $45,255.56, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, SEP, 1984.
Murphy, Debbie, C., Ojai, CA, $31,749.11, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1986.
Navaj, Mehdi, N., Alhambra, CA, $53,254.19, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1988.
Nedelcove, Deborah, E., Richmond, CA, $19,318.55, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.

Nicholls, Hilary, J., Carmel, CA, $29,942.85, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985.
Nixon, Jeffrey, L., San Francisco, CA, $72,609.44, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1987.
Norris, Scott, M., Citrus Heights, CA, $51,989.74, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1988.
O'Brien, Milton, San Francisco, CA, $38,838.89, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1984.
O'Conner, John, Bellflower, CA, $67,195.93, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1983.
Oberstein, Lawrence, B., Santa Rosa, CA, $24,700.36, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JAN, 1986.
Oranen, David, J., Fair Oaks, CA, $47,754.31, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1984.
Overman, Kathleen, M., Playa Del Rey, CA, $20,554.33, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1984.
Owen, John, S., Montebello, CA, $36,544.89, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1988.
Owens, Robert, B., San Francisco, CA, $8,269.11, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, OCT, 1983.
Pacheco, Mark, A., Stockton, CA, $35,118.21, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, MAY, 1985.
Pallas, James, M., Temecula, CA, $58,534.46, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Palumo, Frank, N., San Fernando, CA, $19,025.67, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1988.
Pankey, John, R., Newark, CA, $25,173.46, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1988.
Parker, Brian, T., San Fernando, CA, $22,532.16, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1988.
Parnell, Aaron, L., San Mateo, CA, $34,021.92, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, OCT, 1986.
Parrish, Mary, Claire, Carmel, CA, $38,954.38, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1985.
Pascal, David, S., Los Angeles, CA, $3,229.33, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1988.
Perez, Jesus, V., Pomona, CA, $67,769.21, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUL, 1984.
Pham, Greg, N., Santa Ana, CA, $53,822.83, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1989.
Pierson, Stuart, D., Alameda, CA, $26,729.13, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1988.
Plevin, Rachelh, Guerneville, CA, $62,481.52, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1987.
Portugal, Gilbert, M., Lakewood, CA, $1,983.16, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JUN, 1986.
Postulka, Perry, D., La Mesa, CA, $19,498.34, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1987.
Pride, Marcus, O., Carson, CA, $68,600.42, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1987.
Prom, Van, Sieng, Stockton, CA, $37,957.29, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1990.
Pugh, Christopher, M., Ceres, CA, $39,820.84, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1987.
Radetic, Pete, M., Pleasant Hill, CA, $36,382.16, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Rahn, Roger, S., Agoura, CA, $70,995.56, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Ramsey, Debora, A., Littlerock, CA, $28,163.32, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1985.
Ranney, Keith, A., FPO San Francisco, CA, $66,688.47, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1988.
Ratliff, Cynthia, A., Santa Cruz, CA, $44,419.79, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1987.
Rayas-Felix, Magdalena, Los Angeles, CA, $15,241.06, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Redd, Timothy, J., La Verne, CA, $110,658.19, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, APR, 1987.
Reed, Robert, W., San Bernardino, CA, $46,960.51, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1989.
Reilly, Ann, M., Albany, CA, $21,792.19, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.
Reuer, Dennis, M., Paradise, CA, $2,289.79, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, DEC, 1985.
Rice, Greg, W., San Francisco, CA, $22,650.39, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1984.
Richardson, Justin, W., Northridge, CA, $9,394.12, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1984.
Richins, Craig, H., Fresno, CA, $62,730.14, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, NOV, 1984.
Rios, Emanuel, J., San Gabriel, CA, $40,448.51, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1988.
Rodriguez, J., H., La Mirada, CA, $55,897.87, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Rogers, Guy, A., Bakersfield, CA, $53,802.77, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, APR, 1990.
Roma, Ann, Felton, CA, $63,425.11, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1987.
Romo, Glen, A., Bellflower, CA, $5,292.43, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1986.
Rood, Lary, W., Barstow, CA, $20,934.64, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, OCT, 1983.
Rosenfeld, Jeffre, B., Santa Monica, CA, $40,101.60, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1987.
Ross, William, L., Ventura, CA, $40,660.83, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, MAY, 1987.
Ross, Robert, L., Tustin, CA, $3,054.76, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1983.
Rowley, Dianne, R., Saratoga, CA, $39,173.18, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1987.
Royal, Don, C., Newport Beach, CA, $26,522.56, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, DEC, 1982.
Rudo, Kennon, K., Pasadena, CA, $30,193.16, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1987.
Ruiz, Henry, S., Gustine, CA, $107,195.93, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1986.
Russell, Michael, D., Salinas, CA, $37,136.26, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, AUG, 1986.
Sacristan, Juan, F., San Diego, CA, $16,733.40, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1985.
Sanchez, Don, Rocklin, CA, $3,653.39, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1982.
Sargent, John, F., Temple City, CA, $63,187.02, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, SEP, 1986.
Schanaker, David, L., Stinson Beach, CA, $47,136.43, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, APR, 1984.
Scheur, Darrell, Laguna Niguel, CA, $123,575.81, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1984.
Schluter, Lyle, C., Sonoma, CA, $31,403.51, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1984.
Schluter, Kathleen, H., Sonoma, CA, $22,802.29, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, APR, 1985.
Schow, Kenneth, M., Huntington Beach, CA, $28,984.07, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1982.
Schwartz, Gerald, C., Thousand Oaks, CA, $66,974.58, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, SEP, 1986.

Scott, John, E., Ceres, CA, $111,755.83, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1985.
Segall, Kenneth, L., San Fernando, CA, $16,966.12, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUN, 1986.
Serratos, Ernesto, Laguna Hills, CA, $49,327.92, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1988.
Sessions, Scott, M., Livermore, CA, $6,827.66, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, AUG, 1987.
Shackles, Darla, G., Pinole, CA, $9,524.44, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1986.
Sharkey, Vincent, J., San Francisco, CA, $4,287.84, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1986.
Shaw, Adam, Sausalito, CA, $52,754.17, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1987.
Sheridan, Kenneth, R., San Diego, CA, $8,651.33, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1990.
Sibley, Jane, E., Whittier, CA, $56,664.73, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Signore, Joseph, Yorba Linda, CA, $87,703.35, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1991.
Simon, Greg, L., Fallbrook, CA, $36,012.41, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, JAN, 1985.
Simovich, Paul, N., Huntington Beach, CA, $23,620.20, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Sims, Bryan, L., Loma Linda, CA, $30,508.12, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1988.
Slusher, Stephen, L., Tustin, CA, $55,119.20, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1989.
Smith, Steven, K., Venice, CA, $49,711.88, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1988.
Smith, Carl, A., Garden Grove, CA, $95,858.56, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1989.
Smith, Robert, L., Ventura, CA, $44,516.76, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1986.
Smith, Pamela, R., Riverside, CA, $42,162.53, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1986.
Smith, Rusty, A., Santa Barbara, CA, $3,470.40, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1988.
Snodgrass, Clifton, R., San Diego, CA, $29,257.86, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JAN, 1984.
Souza, Robert, L., Hawthorne, CA, $99,366.00, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1984.
Spagna, Angela, N., Glendale, CA, $70,514.07, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.
Springfield, Teddy, C., El Toro, CA, $24,226.21, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1984.
Stalker, James, W., Dublin, CA, $16,050.71, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1983.
Stanfield, Barbara, Ann, Upland, CA, $15,697.46, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, AUG, 1987.
Starr, John, Bakersfield, CA, $15,661.47, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUL, 1987.
Stevens, Milton, W., Pittsburg, CA, $107,514.27, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1985.
Stevens, Tamara, S., Hayward, CA, $91,084.69, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1987.
Stevens, Michael, N., San Jose, CA, $40,402.07, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1985.
Stevens, Don, M., Sacramento, CA, $130,656.39, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JAN, 1986.
Stewart, Jeannine, Lee, Newport Beach, CA, $14,573.38, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1984.
Stiga, John, P., Santa Cruz, CA, $7,068.39, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1982.
Stone, Cheryl, K., Mojave, CA, $6,773.98, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Stroup, John, P., Tracy, CA, $35,790.48, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1983.
Studer, Jonathan, V., San Jose, CA, $36,593.30, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, AUG, 1987.
Sullivan III, Joseph, C., Burbank, CA, $51,691.07, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Sutton, Brian, L., Laguna Hills, CA, $48,227.72, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1986.
Tamimi, Musa, A., Panorama City, CA, $10,993.64, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1988.
Tarvin, Kerry, D., Yuba City, CA, $84,885.18, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1987.
Taylor, Julie, A., Glendale, CA, $28,151.96, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JUN, 1984.
Terry, William, H., San Marcos, CA, $55,605.11, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1984.
Teter, Steven, B., San Leandro, CA, $2,964.42, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, APR, 1983.
Theobald, Richard, C., El Cajon, CA, $33,445.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1988.
Thompson, Doandl, H., Penngrove, CA, $7,090.44, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1987.
Thompson, James, D., Fair Oaks, CA, $102,688.00, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1987.
Thornton, James, G., Nevada City, CA, $3,433.78, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, FEB, 1983.
Todd, Michael, W., Visalia, CA, $69,788.70, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1986.
Toumayants, Krikor, D., San Bernardino, CA, $88,725.20, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Tran, Tien, A., San Francisco, CA, $32,456.11, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1990.
Tuboden, Shannon, L., Los Angeles, CA, $11,221.97, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.
Turner, Nancy, A., Whittier, CA, $14,590.86, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1985.
Tyler, John, R., Montebello, CA, $93,197.56, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1990.
Van Gorder, Kurt, F., Carlsbad, CA, $48,390.20, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1989.
Van Hovel, Nona, Concord, CA, $68,302.83, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, DEC, 1986.
Van Olphen, Anneka, M., Berkeley, CA, $74,628.11, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, APR, 1987.
Vardanian, Michael, A., Riverside, CA, $42,905.18, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1985.
Vareles, Richard, A., Canoga Park, CA, $44,758.41, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Vassallo, Deborah, D., Pleasanton, CA, $93,236.26, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1988.
Vega, Javier, J., Pasadena, CA, $10,595.36, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, JUL, 1986.
Vernon, David, W., Cardiff by the Sea, CA, $6,591.29, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1982.
Viloria-Else, Jenifer, A., Los Angeles, CA, $69,764.71, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1987.
Vlaskovich jr., William, Los Gatos, CA, $87,569.69, PALMER COLLEGE OF

CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1988.
Walls, Jan, D., San Bernardino, CA, $76,099.09, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, APR, 1988.
Wanke, Glenn, P., Yorba Linda, CA, $76,880.65, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Ward, Michael, L., San Francisco, CA, $37,281.88, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, OCT, 1984.
Warner, Rick, A., Santa Monica, CA, $43,235.79, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1983.
Warner, Brent, J., Oceanside, CA, $54,191.55, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1985.
Webster, Melinda, J., Santa Clara, CA, $64,767.81, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1988.
Webster III, Richard, D., Santa Clara, CA, $17,218.29, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1985.
Weiss, Gwenn, M., San Diego, CA, $24,382.78, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1986.
Whitaker, Jeffrey, L., Livermore, CA, $62,623.25, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JAN, 1985.
White, Judith, U., Costa Mesa, CA, $17,520.05, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, FEB, 1985.
Whittlesey, B.J., Oakland, CA, $22,468.32, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1986.
Wibbels, Keith, B., Visalia, CA, $6,899.76, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAY, 1984.
Wiegand, Paul, J., Escondido, CA, $26,697.36, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Wilkins, Ellison, Manhattan Beach, CA, $32,656.97, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, SEP, 1984.
Willard, Teresa, D., Lawndale, CA, $7,422.41, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.
Williams, Carlo, F., Aptos, CA, $6,181.66, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1982.
Williams, Duane, A., Livermore, CA, $41,925.65, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1984.
Winter, John, L., Pacoima, CA, $41,926.92, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JUL, 1988.
Wolff, Kenneth, M., San Marcos, CA, $17,766.23, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1984.
Wood, Barbara, D., Menlo Park, CA, $21,381.74, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1986.
Yarchover, Richard, M., Los Angeles, CA, $17,399.31, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Yates, Jay, M., Corona Del Mar, CA, $88,286.78, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1986.
Yates, Timothy, J., Saint Helena, CA, $43,782.83, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUL, 1985.
Zeitsaff, Deborah, Santa Ana, CA, $13,295.98, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1984.
Zydervelt, Hannah, W., Pacific Grove, CA, $33,755.74, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Zydervelt, Thomas, H., Pacific Grove, CA, $18,038.96, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1983.

Clinical Psychology

Abendan, Marilou, S., Berkeley, CA, $41,893.22, CALIFORNIA SCH. OF PROF. PSY., Alamenda, CA, Clinical Psychology, JUN, 1988.
Amaya, Abraham, Long Beach, CA, $10,653.87, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, APR, 1988.
Archibald, Sarah, L., San Diego, CA, $5,808.93, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, MAY, 1987.
Becker, Julie, A., San Diego, CA, $112,340.12, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, SEP, 1987.
Blitman, Faith, M., Ramona, CA, $48,282.29, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, OCT, 1986.
Block, R., Kayla, Van Nuys, CA, $71,523.58, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1989.
Cadavid-Hannon, Ester, B., Culver City, CA, $36,878.95, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1988.
Chun, John, H., La Mesa, CA, $40,606.26, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, SEP, 1988.
Corwin, Mary, C., Modesto, CA, $19,707.11, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, AUG, 1986.
Cowan, Eugenia, D., Sacramento, CA, $12,824.39, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, DEC, 1987.
Cummins, Sharon, E., San Diego, CA, $64,948.20, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, DEC, 1988.
Davis, Claire, L., Pasadena, CA, $20,059.34, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUN, 1987.
Don-Pedro, Eric, G., Fresno, CA, $37,667.40, ILLINOIS SCH PROFESSIONAL PSYCHOLOG, Chicago, IL, Clinical Psychology, NOV, 1984.
Epperson, Elaine, C., La Jolla, CA, $39,409.54, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, MAY, 1987.
Furgason, Margaret, A., Poway, CA, $50,288.98, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1984.
Galbraith, Corinne, R., Escondido, CA, $51,966.05, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUL, 1987.
Gaston, Patricia, S., San Juan Capistrano, CA, $125,166.53, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, MAY, 1987.
Gay, Baruch, D., Los Angeles, CA, $27,096.86, UNIV OF DENVER, Denver, CO, Clinical Psychology, NOV, 1984.
Gonzalez, Maria, R., Santa Paula, CA, $2,295.61, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, JUN, 1990.
Gonzalez, Rocio, R., Los Angeles, CA, $44,111.06, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1987.
Gonzalez, Gerardo, M., Fresno, CA, $1,936.31, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, AUG, 1989.
Gullotta, Geraldine, P., Escondido, CA, $44,583.38, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, AUG, 1986.
Harris, Carole, I., San Diego, CA, $19,633.87, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Herrington, Robert, L., San Diego, CA, $7,810.50, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1990.
Jacobs, Delores, A., San Diego, CA, $65,265.65, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, MAY, 1989.
King, Gloria, San Leandro, CA, $14,513.27, CALIFORNIA SCH. OF PROF. PSY., Alamenda, CA, Clinical Psychology, JUN, 1990.
Larson, Leslie, A., Pasadena, CA, $44,666.85, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1989.
Lender, Joyce, A., Anaheim, CA, $120,077.39, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1988.
Loranger, Paul, G., Huntington Beach, CA, $46,863.52, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1988.
Lyons, Lawrence, G., Del Mar, CA, $18,646.73, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1983.
Mackabee, L., Mildred, Los Angeles, CA, $49,877.09, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, MAY, 1990.
Maffucci, Julie, A., Lafayette, CA, $31,754.64, CALIFORNIA SCH. OF PROF. PSY., Alamenda, CA, Clinical Psychology, JUN, 1990.
McCaul, Brad, J., Red Bluff, CA, $48,352.09, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUL, 1984.
McDiarmid, Jim, M., Livingston, CA, $5,059.32, CALIFORNIA SCH. OF PROF.

PSY., Fresno, CA, Clinical Psychology, JUN, 1987.
McGregor Jr., Floyd, A., Long Beach, CA, $35,595.09, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, AUG, 1987.
Michael, Jose, E., San Diego, CA, $35,593.11, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1983.
Monocris-Behman, Patricia, A., Los Angeles, CA, $40,360.17, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, APR, 1987.
Musquiz, Elizabeth, A., Monterey, CA, $5,552.36, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUN, 1987.
Ogawa, Hideyo, San Jose, CA, $46,082.87, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Perez, Mary, Ellen, Sierra Madre, CA, $23,001.03, FULLER THEOLOGICAL SEMINARY, Pasadena, CA, Clinical Psychology, APR, 1986.
Perlman, Mitchel, D., La Jolla, CA, $31,542.35, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Perry, William, L., San Francisco, CA, $49,818.53, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, OCT, 1987.
Phillips, John, T., Oakhurst, CA, $53,139.08, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, OCT, 1986.
Porter, Temille, Altadena, CA, $36,666.81, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JAN, 1986.
Pust, Keith, W., Fullerton, CA, $32,471.59, BIOLA UNIVERSITY, La Mirada, CA, Clinical Psychology, JUL, 1986.
Reh, Kurt, L., Corona, CA, $16,870.89, BIOLA UNIVERSITY, La Mirada, CA, Clinical Psychology, MAY, 1986.
Reid, Adrienne, L., San Diego, CA, $129,245.90, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Rivas, Mary, L., Artesia, CA, $8,811.47, UNIV OF HEALTH SCIENCES, North Chicago, IL, Clinical Psychology, JUN, 1989.
Sattler, Howard, L., La Mesa, CA, $9,910.78, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Scherr, Mary, H., Oceanside, CA, $120,281.04, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Smukler, Evie, L., West Los Angeles, CA, $17,022.19, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1987.
Spenser, Angela, C., Oceanside, CA, $97,375.73, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1988.
Stanford, Jeanne, A., Santa Monica, CA, $11,578.83, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1987.
Stark, Joan, T., San Marcos, CA, $53,152.74, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1984.
Steder, Sandra, San Francisco, CA, $31,609.02, CALIFORNIA SCH. OF PROF. PSY., Alamenda, CA, Clinical Psychology, MAR, 1986.
Stevenson, Teresa, M., Los Angeles, CA, $14,176.04, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1986.
Talarico, Richard, J., North Hollywood, CA, $78,041.05, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, SEP, 1986.
Valla, Susan, A., Santa Monica, CA, $75,713.96, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, MAY, 1986.
Veliquette, John, D., Mission Viejo, CA, $132,942.30, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
Venners, Angela, M., Signal Hill, CA, $5,962.30, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, JUL, 1986.
Wolter, Carl, F., Altadena, CA, $39,325.88, FULLER THEOLOGICAL SEMINARY, Pasadena, CA, Clinical Psychology, JUN, 1985.
Yurkovich, Mark, R., Temple City, CA, $31,524.86, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, JUN, 1989.

Dentistry

Archuleta, Jamie, D., Ontario, CA, $24,302.59, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1989.
Arms, Derek, A., Los Angeles, CA, $19,073.05, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Ash Slayter, Carolyn, M., San Diego, CA, $165,077.85, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, DEC, 1990.
Baisch, Joan, D., Dana Point, CA, $39,004.19, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1986.
Baker, Walter, A., Vallejo, CA, $252,384.17, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1982.
Battrell, Timothy, G., Port Hueneme, CA, $78,129.05, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1980.
Belnap, Timothy, M., San Diego, CA, $40,706.84, EMORY UNIVERSITY, Atlanta, GA, Dentistry, MAY, 1985.
Berry, Scott, T., Ventura, CA, $116,074.66, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1984.
Berthelsen, Roger, L., Palm Springs, CA, $142,929.91, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1982.
Blackmon Jr., Lawrence, B., Riverside, CA, $126,596.17, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1983.
Borden, Mark, G., Modesto, CA, $131,436.78, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1982.
Brodie, Douglas, K., Loma Linda, CA, $163,847.42, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, DEC, 1987.
Buckendahl, William, G., Santa Maria, CA, $86,192.83, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, AUG, 1985.
Burgueno, Michael, R., San Francisco, CA, $32,094.20, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1983.
Butko, Nathaniel, K., Gardena, CA, $39,093.25, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1990.
Buzby, Brenda, Bakersfield, CA, $25,358.56, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1987.
Cadalso, Robert, Garden Grove, CA, $13,124.51, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1982.
Calhoun, Michael, W., Palm Springs, CA, $126,849.15, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1986.
Call, Stephen, C., Clearlake Oaks, CA, $7,036.98, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1987.
Carter, Thomas, L., Ventura, CA, $87,033.98, ORAL ROBERTS UNIV, Tulsa, OK, Dentistry, JUN, 1984.
Chapman, Rocky, C., Upland, CA, $12,697.51, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1981.
Christensen, Heidi, L., Colton, CA, $47,897.54, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1984.
Christianson, Robbin, K., Cherry Valley, CA, $4,175.03, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUL, 1984.
Claiborneo, Beverly, Hayward, CA, $63,441.20, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Clifford, Lawrence, Kenneth, Riverside, CA, $33,104.21, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, SEP, 1980.
Crim, Diana, C., Long Beach, CA, $7,810.88, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Dentistry, JUN, 1984.
Cruz, Rosiemarie, M., Long Beach, CA, $3,874.12, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Dentistry, JUN, 1988.
Cutts, David, P., Temecula, CA, $39,830.79, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1983.
Day, Mitchell, B., San Francisco, CA, $6,560.66, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1982.
De Lappe, Elizabeth, San Jose, CA, $19,277.84, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, DEC, 1985.
DeCook, Edward, Wilmington, CA, $73,822.54, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1982.
Demetrakopulos, Pauline, San Francisco, CA, $117,697.12, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUL, 1984.
Devigne, Kent, S., Arcata, CA, $171,420.28, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1984.
Dove, Edward, E., Northridge, CA, $15,603.81, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1989.
Dunbar, James, P., Folsom, CA, $5,938.00, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUL, 1984.
Edwards, Steven, J., Dana Point, CA, $157,214.88, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1986.
Eslao, Caesar, G., Carson, CA, $57,776.21, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, AUG, 1990.

Evans, Derick, L., Fresno, CA, $24,052.03, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1987.
Evans, Richard, B., Fallbrook, CA, $21,406.41, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Foroutanzad, John, Los Angeles, CA, $202,916.06, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1984.
Frier, James, W., Jackson, CA, $19,412.18, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1983.
Fuentes, Francisco, San Diego, CA, $19,055.97, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1985.
Gabriel, Tony, D., Glendale, CA, $50,307.79, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1984.
Gallas, John, S., Belmont, CA, $34,575.80, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1984.
Garrity, Michael, J., San Bernardino, CA, $63,409.45, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1983.
Georgeson, Ronald, M., Kerman, CA, $171,681.84, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, AUG, 1984.
Goldman, Morton, H., San Diego, CA, $11,364.67, WEST VIRGINIA UNIV, Morgantown, WV, Dentistry, JUL, 1985.
Gonzales, Edward, J., Los Angeles, CA, $144,243.55, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1988.
Gonzalez Donnelly, D., Helena, CA, $153,524.06, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Greene, David, A., Santa Maria, CA, $173,174.32, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1983.
Griego, Paul, E., Lancaster, CA, $4,917.05, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, FEB, 1987.
Gyaami, Opanin, N., Grand Terrace, CA, $226,093.07, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUL, 1983.
Hempel, Jeffrey, D., Burbank, CA, $26,079.48, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1980.
Herber, Erich, W., Loma Linda, CA, $154,134.04, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1983.
Herber, Harry, A., Pismo Beach, CA, $27,489.25, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Hill, David, L., San Jose, CA, $33,793.52, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.
Hurley, Ronnie, L., Carlsbad, CA, $130,686.00, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1985.
Husbands, Michael, L., Chino, CA, $142,539.70, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, SEP, 1983.
Jones, Brady, J., Los Angeles, CA, $200,980.24, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Joseph, Arthur, S., Los Angeles, CA, $28,877.97, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, FEB, 1989.
Kaufman, Stephen, N., Diamond Bar, CA, $99,065.29, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1989.
Kent, Donald, E., Fresno, CA, $132,432.85, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1985.
Kerstetter, Gary, A., Vista, CA, $98,025.97, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, SEP, 1983.
Kim, Sung, O., Los Angeles, CA, $67,499.06, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1987.
Kim, Kwang, Jin, Irvine, CA, $54,763.30, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1984.
Koshman, Brent, D., Los Angeles, CA, $53,220.65, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, AUG, 1982.
Kuhlmay, Klaus, G., Inverness, CA, $10,963.81, EMORY UNIVERSITY, Atlanta, GA, Dentistry, MAY, 1987.
Kurts, Tedd, R., Santa Clara, CA, $31,631.89, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1986.
Lemelle Love, Sheila, A., West Covina, CA, $82,848.15, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, DEC, 1988.
Lim, Jhang, H., Anaheim, CA, $91,978.92, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1984.
Lindsay, Richard, W., San Diego, CA, $59,876.58, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1983.
Luckey, John, Manley, La Jolla, CA, $80,169.37, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, FEB, 1983.
Marshall, Dauna, M., Los Angeles, CA, $66,100.21, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
McKinley, Robert, M., Newport Beach, CA, $9,666.62, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1985.
McLaughlin, Harry, L., Glendora, CA, $11,430.13, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUL, 1984.
McReynolds, William, D., Del Mar, CA, $42,685.42, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, NOV, 1985.
Medina, Jacqueline, Inglewood, CA, $14,761.64, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1981.
Memmott, Dana, B., Signal Hill, CA, $10,320.11, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1984.
Miklos, Kenneth, E., Oceanside, CA, $61,555.10, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUL, 1983.
Miller, William, G., Los Angeles, CA, $30,837.43, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, JUN, 1985.
Miller, Guy, M., Claremont, CA, $175,516.84, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JAN, 1983.
Moore, Derek, D., Santa Ana, CA, $10,355.38, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, MAY, 1987.
Moulton, Gregory, B., Antioch, CA, $37,076.88, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, SEP, 1983.
Mouton, Marsha, E., Los Angeles, CA, $32,811.55, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1986.
Nelson, Dorothy, S., San Francisco, CA, $56,213.81, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUL, 1987.
Nguyen, Kien, Trinh, San Jose, CA, $9,269.52, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1987.
Nichols, Marcus, F., Culver City, CA, $38,118.02, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1984.
Nielsen, David, D., Hemet, CA, $118,662.23, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1989.
Nydegger, Bradley, S., Sacramento, CA, $38,189.86, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1986.
Penn, Dennis, F., Carlsbad, CA, $5,562.38, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1980.
Petersen, Kirk, J., Long Beach, CA, $60,733.68, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1987.
Philip, Jerel, F., Pleasant Hill, CA, $163,941.76, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.
Porcaro, Vincent, J., Lake Isabella, CA, $161,763.75, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1982.
Portales, Ramon, Redondo Beach, CA, $7,549.85, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1985.
Price, Steven, V., Carson, CA, $3,219.05, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Dentistry, JUL, 1984.
Pryor III, Cornelius, M., Los Angeles, CA, $9,707.19, HOWARD UNIVERSITY, Washington, DC, Dentistry, OCT, 1985.
Rahmati, Behnam, Los Angeles, CA, $111,296.00, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUL, 1987.
Ricciardi, Mario, J., Alhambra, CA, $1,986.93, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1980.
Richardson, Mark, A., Bakersfield, CA, $82,539.71, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, MAY, 1983.
Riter, Cecil, F., Wildomar, CA, $16,874.46, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Riveroy, Isaac, Walnut, CA, $107,018.89, BOSTON UNIVERSITY, Boston, MA, Dentistry, JAN, 1989.
Roberts, Martha, E., San Francisco, CA, $30,167.71, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1982.
Rocha, Mark, W., Anza, CA, $109,730.64, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1987.
Rucker, David, A., San Carlos, CA, $217,800.62, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1985.
Ruffner, Timothy, E., Redwood Valley, CA, $140,993.27, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Rynders, Arie, Bakersfield, CA, $119,431.56, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1986.
Sandoval, Evonne, K., Seal Beach, CA, $65,891.32, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1984.
Schneider Jr., Harry, M., Palm Desert, CA, $226,474.80, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, MAR, 1985.

Sedehi, Ahmad, Escondido, CA, $7,885.25, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, MAY, 1982.
Setien, Anna, M., Agoura Hills, CA, $30,116.66, WASHINGTON UNIV, St. Louis, MO, Dentistry, AUG, 1989.
Sevilla, Dana, M., Castro Valley, CA, $8,638.25, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1988.
Sevrean, Joseph, J., Pomona, CA, $3,625.35, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1988.
Shaw, Michael, P., Fremont, CA, $101,005.91, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUN, 1983.
Sheppherd, Gordon, L., Ceres, CA, $58,840.37, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, APR, 1986.
Shervin, Amir, H., Los Angeles, CA, $49,054.83, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, MAY, 1985.
Shinsato, Wade, A., Sun Valley, CA, $13,180.78, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, JUN, 1986.
Silva, Bradley, K., San Diego, CA, $67,180.00, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1984.
Snipes, Steven, C., San Marcos, CA, $9,296.40, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1981.
Snow, Brian, G., Los Angeles, CA, $36,277.73, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Spencer, Durwood, Bakersfield, CA, $58,718.11, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Dentistry, JUN, 1989.
Stewart, John, R., Orange, CA, $9,503.72, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1985.
Suh, Hong, S., Northridge, CA, $419.82, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1984.
Sullivan, Preddis, L., Oakland, CA, $4,217.07, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUL, 1985.
Swen, John, M., Orangevale, CA, $36,281.74, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1986.
Townsend, Leo, W., Elk Grove, CA, $48,228.71, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1989.
Tracy, James, M., Santa Rosa, CA, $42,022.14, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1979.
Turner, Portia, O., Los Angeles, CA, $4,913.75, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Valeton, Francisco, D., Sacramento, CA, $18,973.76, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Dentistry, JUN, 1984.
Vazagov, Zachial, A., San Gabriel, CA, $143,897.78, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1988.
Vergara, Steven, D., Torrance, CA, $15,519.41, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUL, 1984.
Warner, Arthur, G., San Jose, CA, $43,012.52, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1987.
Weaver Jr., James, L., Oakland, CA, $112,481.41, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, AUG, 1984.
Weems, John, R., Visalia, CA, $66,586.69, EMORY UNIVERSITY, Atlanta, GA, Dentistry, MAY, 1986.
Williams, Kirk, H., Los Angeles, CA, $74,555.30, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Yauman, Charles, H., Mountain View, CA, $10,045.07, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Dentistry, JUL, 1985.
Zachary, Floyd, E., Live Oak, CA, $26,856.64, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1981.

Health Administration

Fleming, Joseph, J., Hayward, CA, $38,179.17, TRINITY UNIVERSITY, San Antonio, TX, Health Administration, JUN, 1987.
Montgomery, Rita, M., Los Angeles, CA, $53,435.58, TRINITY UNIVERSITY, San Antonio, TX, Health Administration, AUG, 1986.

Optometry

Glick, Stanley, B., Pasadena, CA, $3,716.37, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, NOV, 1981.
Kurihara, Janis, I., Santa Ana, CA, $22,651.30, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, MAY, 1988.
Litton-Reigel, Laura, L., Orange, CA, $91,244.27, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, MAY, 1989.
Mast, Barry, C., Camarillo, CA, $31,883.15, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1986.
Mayfield, Sheryl, A., San Diego, CA, $23,755.46, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, JUN, 1983.
McWhinnie Jr., Claren, Los Angeles, CA, $8,256.51, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, JUN, 1983.
Powell, Reed, M., Hesperia, CA, $10,607.99, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUN, 1980.
Rossi, John, Anaheim, CA, $2,776.19, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, JUL, 1984.
Schamel, Lisa, E., Long Beach, CA, $13,253.33, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUL, 1987.

Osteopathy

Bendall, Sherry, A., Citrus Heights, CA, $137,107.76, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1986.
Cline, Sherri, L., Glendale, CA, $5,366.30, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1988.
Crosby, Daniel, W., Upland, CA, $5,372.25, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, OCT, 1983.
Disanto, Vinson, M., Del Mar, CA, $29,598.91, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1987.
Fantauzzi, Mark, R., Ben Lomond, CA, $174,339.37, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1990.
Garner, Gregg, R., San Diego, CA, $45,486.45, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1988.
Hoangxuan, Tuan, A., APO San Francisco, CA, $11,419.51, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1991.
Lane, Richard, S., South Pasadena, CA, $40,576.33, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1986.
Littlebird, Forrest, D., Laguna Beach, CA, $20,367.48, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1989.
Marshall, William, E., Thousand Oaks, CA, $128,335.20, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1988.
Maynard, Charles, D., El Cajon, CA, $11,946.41, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUL, 1984.
Mitchell, Ralph, A., Alta Loma, CA, $69,958.34, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, MAY, 1988.
Neff, Ronald, J., Thousand Oaks, CA, $129,610.72, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1985.
Poljan, Mary, K., Los Angeles, CA, $9,481.09, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1989.
Rudolph, Paul, P., La Verne, CA, $208,168.01, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1985.
Urbach, Mark, J., Culver City, CA, $111,468.56, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1985.

Pharmacy

Anthony, Steven, M., San Bernardino, CA, $15,365.40, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1986.
Dare, Clement, D., Oakland, CA, $37,302.31, UNIV OF THE PACIFIC, Stockton, CA, Pharmacy, APR, 1989.
Espinosa, Sylvia, L., La Habra, CA, $8,991.57, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1989.
Frick, Deborah, M., Santa Ana, CA, $21,323.57, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1989.
Garrett, Deborah, J., Sacramento, CA, $229.61, UNIV OF THE PACIFIC, Stockton, CA, Pharmacy, DEC, 1988.
Gonzalez, Carol, M., Los Angeles, CA, $4,146.82, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1986.
Hahemieh-Estes, Simi, Sherman Oaks, CA, $11,621.68, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Pharmacy, MAY, 1990.
Lee, Azzlee, Los Angeles, CA, $7,786.08, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, JUL, 1980.

Martin, Steven, A., Malibu, CA, $27,967.00, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, AUG, 1989.
Moini, Ktan, Emeryville, CA, $3,811.56, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, SEP, 1990.
Omoregie, Samuel, I., Los Angeles, CA, $41,336.90, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1988.
Osayanren, Matthew, Los Angeles, CA, $51,344.47, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1987.
Ramos, Juliana, Bellflower, CA, $36,988.19, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, MAY, 1983.
Souw, Elizabeth, B., Foster City, CA, $6,269.27, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, JUN, 1985.
Taylor, Roger, A., Foster City, CA, $45,964.04, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUL, 1984.
Tran, Ba, D., Milpitas, CA, $4,922.30, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, MAY, 1988.
Williams, Patricia, M., Riverside, CA, $8,514.18, DRAKE UNIVERSITY, Des Moines, IA, Pharmacy, DEC, 1979.
Zalez, Carol, M., Glendale, CA, $13,830.16, UNIV OF THE PACIFIC, Stockton, CA, Pharmacy, APR, 1987.

Podiatry

Anderson, Sharon, R., Orange, CA, $43,256.39, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1986.
Araghiniknam, Mohsen, La Verne, CA, $19,687.30, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, AUG, 1989.
Arnold, Eugene, C., Vacaville, CA, $47,392.11, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1984.
Bahem Jr., Ralston, H., Citrus Heights, CA, $180,641.67, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1987.
Barry, Patrick, G., San Diego, CA, $3,425.62, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, SEP, 1984.
•Berquist, Andrew, O., San Mateo, CA, $109,590.79, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1986.
Burleigh, Sharon, M., Oakland, CA, $57,341.02, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, NOV, 1986.
Cammall, David, B., San Diego, CA, $26,063.95, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1987.
Case, Jeffrey, A., Huntington Beach, CA, $106,490.47, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1985.
Chaffin, Dwight, Randal, Modesto, CA, $180,402.21, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1982.
Chavin, Michael, P., Lagunitas, CA, $109,842.65, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.
Dakis, Stephen, N., La Jolla, CA, $22,210.52, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUL, 1984.
Dixon, David, A., Alhambra, CA, $104,704.75, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, (No Separation Date).
Doyle, Anthony, San Francisco, CA, $43,331.43, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1989.
Eckles, Robert, A., Calistoga, CA, $100,515.77, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1985.
Fednard, Anne, M., Oakland, CA, $66,468.11, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Fowler, Michael, S., Sacramento, CA, $18,279.31, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1980.
Gennett, Gregory, A., Los Angeles, CA, $51,940.82, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.
Gray, David, M., Lafayette, CA, $27,236.89, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1986.
Harman, Jeffrey, M., Costa Mesa, CA, $23,158.99, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1983.
Hartman, Gregory, D., Burbank, CA, $39,374.49, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1982.
Hight, Gregory, E., Nevada City, CA, $41,050.58, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1987.
Hill, Lucius, Alta Loma, CA, $114,404.87, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1982.
Hitchcock, Philip, R., Auburn, CA, $92,166.51, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.
Johnson, Lucille, E., San Francisco, CA, $17,942.62, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1989.
Kalali, Saeed, Santa Monica, CA, $3,445.11, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1990.
Kerns, Bryan, D., Laguna Niguel, CA, $3,361.11, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1980.
Kuzyk, Donald, Irvin, Newbury Park, CA, $102,996.00, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, AUG, 1984.
Landrum, Keith, Lompoc, CA, $75,536.06, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1981.
Lee, Chul, Gee, Los Angeles, CA, $32,300.81, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAR, 1987.
Lentell, Brian, M., Fresno, CA, $35,054.87, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1984.
Lillie, Richard, W., Mission Viejo, CA, $76,013.82, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.
Medina, Edwin, R., Berkeley, CA, $82,510.84, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1987.
Palmer, Donna, C., Carlsbad, CA, $53,434.51, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1985.
Pineda, Joseph, R., Santa Barbara, CA, $173,147.39, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUL, 1985.
Pinkard, Ronald, W., Oakland, CA, $3,232.40, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1979.
Pokrass, Robert, M., San Bernardino, CA, $34,120.88, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.
Pope, David, K., Downey, CA, $134,192.17, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1985.
Pugatch, Bruce, S., Milpitas, CA, $35,246.98, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1979.
Ricks, Marvin, D., Modesto, CA, $470.63, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, OCT, 1979.
Ritto, Sharlene, M., Corona, CA, $76,369.56, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1988.
Sass, Michael, D., Colton, CA, $117,045.86, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1988.
Savran, Steven, H., Laguna Niguel, CA, $31,810.72, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1981.
Sciaroni, Matthew, H., Fresno, CA, $163,740.61, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1985.
Scott, Thamos, Oakland, CA, $44,489.67, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1987.
Seymour, Stephen, J., Thousand Oaks, CA, $48,160.10, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1980.
Shaber, Sydney, S., San Francisco, CA, $34,750.01, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1979.
Spaulding, Karla, L., San Francisco, CA, $18,328.73, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, APR, 1987.
Sullivan-Sabo, Denise, Carmichael, CA, $53,724.20, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1985.
Tindall, Michael, A., Stockton, CA, $73,223.90, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAR, 1986.
Torres, Manuel, John, San Bruno, CA, $17,214.38, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1986.
Williams, David, L., Pasadena, CA, $27,494.65, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1984.
Ziofaghri, Behrooz, Danville, CA, $42,077.47, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1986.

Public Health

Adler, Eric, M., La Jolla, CA, $8,861.66, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1987.
Howell, Reynold, F., San Jose, CA, $52,955.69, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, DEC, 1981.
Lemkin, Peter, R., Solana Beach, CA, $5,571.18, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, AUG, 1986.
Nebedum, Archibald, O., Los Angeles, CA, $9,647.39, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Public Health, JUN, 1987.
Obuge, Ugochi, N., Glendale, CA, $45,283.20, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, JUN, 1982.
Sharpe, Johanna, Vallejo, CA, $21,535.07, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, MAY, 1987.
Smith Jr., James, San Bernardino, CA, $9,059.79, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, AUG, 1979.
Velez, Janet, Sunnymead, CA, $1,037.65, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1988.
Williams, Pamela, A., Gardena, CA, $4,071.82, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, JUN, 1983.
Zalsman, Ruth, L., Riverside, CA, $5,660.30, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, SEP, 1983.

Veterinary Medicine

Ferguson, Carol, A., San Fernando, CA, $10,281.88, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1985.
Glover, James, M., Vacaville, CA, $6,193.43, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, AUG, 1986.
Hurdle, Clarence, Sacramento, CA, $56,774.66, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.
Peterson, Marilyn, K., Martinez, CA, $15,107.96, UNIV OF MINNESOTA, Minneapolis, MN, Veterinary Medicine, JUN, 1984.

Colorado

Allopathic Medicine

Daubert, Harlan, B., Denver, CO, $13,683.87, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1988.
Duck, Evander, Denver, CO, $29,657.19, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1992.
Ferguson, Rebecca, L., Basalt, CO, $32,801.93, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1986.
Fickling, Kenneth, B., Denver, CO, $7,447.54, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, MAY, 1989.
Garcia, Debra, B., Glenwood Springs, CO, $23,314.39, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUL, 1986.
Lack, Ray, E., Arvada, CO, $50,134.30, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, JUN, 1987.
Qualls, Douglass, E., Denver, CO, $17,127.86, UNIV OF PENNSYLVANIA, Philadelphia, PA, Allopathic Medicine, MAY, 1986.
Roberts, Charles, C., Aurora, CO, $72,647.32, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, MAY, 1985.
Santiago, Jose, A., Englewood, CO, $86,545.67, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1986.
Schaller, David, W., Denver, CO, $7,117.99, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, MAY, 1989.
Smallwood III, Charl, Aurora, CO, $72,928.75, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1987.

Chiropractic

Abriel, Mark, B., Boulder, CO, $26,173.56, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Bammer, Phillip, L., Broomfield, CO, $46,929.06, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1983.
Beierle, Dale, A., Brighton, CO, $86,554.13, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986.
Bergfalk, Caroline, E., Bayfield, CO, $39,905.88, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1990.
Chenes, Brian, P., Breckenridge, CO, $32,684.48, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1988.
Clarke, Debbie, F., Louisville, CO, $6,529.77, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1984.
Cline, Doyle, E., Broomfield, CO, $24,939.93, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1986.
Crow, Joe, A., Cheraw, CO, $12,659.55, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, AUG, 1986.
Cunningham, Marvin, D., Colorado Springs, CO, $17,594.21, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1986.
Dunevitz, Benjamin, S., Aurora, CO, $70,787.63, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1986.
Fitzwater, Sherry, L., Colorado Springs, CO, $43,346.40, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1988.
Foster, Valerie, J., Arvada, CO, $5,104.06, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1983.
Hendler, Michael, J., Denver, CO, $74,015.42, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Hopkins, Harold, G., Aurora, CO, $62,613.86, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1984.
Jordan, James, G., Grand Junction, CO, $91,268.37, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Krebill, Michael, W., Colorado Springs, CO, $81,255.95, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1989.
Langolf, Daniel, L., Golden, CO, $41,849.19, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Lapham, Charles, E., Avon, CO, $46,874.46, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Lorentzen, Peter, E., Arvada, CO, $15,790.25, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1989.
McClain, Van, A., Golden, CO, $9,561.44, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
McClure, Lance, E., Denver, CO, $42,819.15, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1984.
Michals, Robert, H., Aurora, CO, $34,189.10, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Ohrdorf, Ronald, T., Colorado Springs, CO, $104,593.67, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1988.
Rabb, Tim, J., Boulder, CO, $51,702.24, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1987.
Redfield Jr., Thomas, C., Littleton, CO, $5,554.28, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, NOV, 1983.
Rubel, Andrea, L., Aspen, CO, $36,370.99, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1989.
Schmidt, Jeffrey, J., Wheat Ridge, CO, $30,080.17, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1988.
Sensenig, Barry, W., Boulder, CO, $4,791.20, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1983.
Sisco, Tammy, R., Denver, CO, $28,903.91, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Stjernholm, Darwin, L., Denver, CO, $66,225.43, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1988.
Stokka, Wayne, M., Denver, CO, $13,917.72, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1986.
Tennant, Michael, D., Brighton, CO, $41,135.94, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Thermos, Alexander, Lakewood, CO, $22,583.68, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1993.
Trainer, Anita, J., Denver, CO, $41,837.47, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1987.
Walker Jr., James, H., Aurora, CO, $26,330.59, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1984.
Wheeler, Edward, J., Arvada, CO, $23,247.04, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Williams, Terry, W., Fort Lupton, CO, $29,566.28, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Williams, Patsy, A., Evans, CO, $5,042.97, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1989.

Wood, John, F., Longmont, CO, $26,037.58, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Young, Kerry, V., Lakewood, CO, $49,557.93, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1987.

Clinical Psychology

Perris-Myttas, Marina, Denver, CO, $6,007.28, UNIV OF DENVER, Denver, CO, Clinical Psychology, AUG, 1988.
Ritchey, Robert, E., Denver, CO, $50,529.10, UNIV OF DENVER, Denver, CO, Clinical Psychology, SEP, 1984.

Dentistry

Barnes, Bruce, W., Colorado Springs, CO, $77,423.78, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Burkart, John, D., Aurora, CO, $33,883.06, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1985.
Castillo, Debora, K., Del Norte, CO, $34,906.03, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1987.
Degerness, Randa, K., Englewood, CO, $45,604.35, UNIV OF COLORADO, Denver, CO, Dentistry, JUN, 1981.
Garbiso, Gilbert, C., Pueblo, CO, $23,462.03, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1984.
Hansen, Daryl, G., Denver, CO, $13,592.45, UNIV OF COLORADO, Denver, CO, Dentistry, NOV, 1986.
Haviland, Philip, F., Denver, CO, $17,669.23, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1987.
Holsteen, Daniel, E., Colorado Springs, CO, $1,871.13; UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1982.
Huskey, David, R., Englewood, CO, $15,462.01, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1981.
Lee, Bruce, W., Aurora, CO, $82,692.72, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1987.
Miller, Gregory, J., Denver, CO, $28,264.37, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Raizen, Michael, J., Denver, CO, $5,372.88, UNIV OF COLORADO, Denver, CO, Dentistry, JUN, 1988.
Scarpella, Pasco, W., Louisville, CO, $83,173.24, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1987.
Stimits, Daniel, M., Denver, CO, $52,967.44, UNIV OF COLORADO, Denver, CO, Dentistry, DEC, 1988.
Thompson, Jerrold, A., Thornton, CO, $11,944.98, UNIV OF COLORADO, Denver, CO, Dentistry, JUN, 1985.

Optometry

Carrico, Gerri, Y., Denver, CO, $29,907.53, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, MAY, 1988.
Cooley, Stephen, L., Estes Park, CO, $21,113.03, PACIFIC UNIVERSITY, Forest Grove, OR, Optometry, JUN, 1984.
Russell, Karen, M., Parker, CO, $111,918.29, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1985.

Osteopathy

Beatty, Brian, J., Englewood, CO, $52,530.14, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, APR, 1986.
Burks, Chester, L., Aurora, CO, $38,773.07, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1983.

Pharmacy

Davis, Melodee, J., Denver, CO, $4,495.34, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Pharmacy, MAY, 1986

Podiatry

Heser, Robert, J., Thornton, CO, $39,998.95, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1984.
Nusen, Lisa, A., Pueblo, CO, $15,762.39, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1987.
Otteman, Timothy, J., Lakewood, CO, $73,499.45, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1983.
Pierce, Robert, J., Denver, CO, $7,428.06, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1984.

Connecticut

Allopathic Medicine

Battista, David, M., New Haven, CT, $82,076.83, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1990.
Benjamin Jr., James, Bloomfield, CT, $31,661.68, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1985.
Cooper, Charles, R., Bridgeport, CT, $15,642.91, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JAN, 1985.
Fernandes, Lori, A., Branford, CT, $3,317.69, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, MAY, 1990.
Fraser, Francis, A., New Haven, CT, $146,772.94, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1986.
Hume, Forest, C., Waterbury, CT, $9,141.57, UNIV OF KENTUCKY, Lexington, KY, Allopathic Medicine, MAY, 1990.
Kerr, Vincent, E., Bridgeport, CT, $28,554.40, YALE UNIV, New Haven, CT, Allopathic Medicine, JUN, 1986.
Legette, Addie, L., New Haven, CT, $23.30, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1985.
Lowe, Paul, R., Shelton, CT, $44,585.81, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, APR, 1985.
Ng, Arthur, F., Branford, CT, $45,441.40, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1988.
Yang, Chun, Branford, CT, $2,948.96, BROWN UNIVERSITY, Providence, RI, Allopathic Medicine, MAY, 1991.

Chiropractic

Calhoun, Lynn, E., Norwich, CT, $18,074.48, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1987.
McQueen, Debra, A., Wolcott, CT, $67,204.21, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Nellen, Beatrice, Monroe, CT, $79,599.08, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Pappas, Roger, M., Hamden, CT, $32,503.04, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1986.
Szynkowicz, Peter, P., Hebron, CT, $40,264.17, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1986.
Trebing, William, P., Greenwich, CT, $5,713.02, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAY, 1984.
Wentzel, Gena, P., Trumbull, CT, $66,918.43, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1986.

Clinical Psychology

Bader, Fred, A., Fairfield, CT, $28,610.59, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.
McCabe, Justine, A., New Milford, CT, $20,954.87, CALIFORNIA SCH. OF PROF PSY., Alameda, CA, Clinical Psychology, JUL, 1989.
Wakeman, Edward, A., Guilford, CT, $14,946.02, CALIFORNIA SCH. OF PROF PSY., Fresno, CA, Clinical Psychology, JUN, 1986.

Dentistry

Alspaugh, Michael, F., East Haven, CT, $2,015.84, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1990.
Franklin, James, Bloomfield, CT, $75,049.97, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Johnson, John, M., New London, CT, $5,102.39, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Manhard, Michael, F., Branford, CT, $16,026.04, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1983.
Maroon, Michael, G., Berlin, CT, $66,005.07 TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.
Nanna, John, F., Brookfield, CT, $8,898.78, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Resendiz, Mario, G., Danbury, CT, $19,009.87, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUL, 1986.
Rosinsky, Hollie, G., Hartford, CT, $83,246.72, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUN, 1987.
Seib, Kenneth, Collin, Danbury, CT, $21,373.82, UNIV OF FLORIDA, Gainesville, FL, Dentistry, DEC, 1987.
Wilson, Pamela, L., Stamford, CT, $38,519.00, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.

Pharmacy

O'Mara, James, J., New Britain, CT, $10,620.96, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1988.

Public Health

Burch-Minaken, Laurel, R., Branford, CT, $1,812.32, YALE UNIV DEPT OF EPID &

PH, New Haven, CT, Public Health, MAY, 1984.
Carter, Deborah, L., New Britain, CT, $2,929.04, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1990.
Winfield, Allison, S., New Haven, CT, $2,993.91, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1990.

Delaware

Allopathic Medicine

Tonwe, Tutse, D., Milford, DE, $168,759.19, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1988.
Trader, Stephanie, L., Wilmington, DE, $115,803.08, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, OCT, 1988.

Dentistry

Burns, Christopher, D., Milford, DE, $8,697.07, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, FEB, 1986.

Optometry

Chambers, Phyllis, E., Wilmington, DE, $3,172.08, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, MAY, 1981.
Lim, Kim, L., Newark, DE, $23,327.60, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, AUG, 1985.

Osteopathy

Blacklock, Curt, D., Wilmington, DE, $101,763.16, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1986.

Pharmacy

Burgess, Deborah, M., Newark, DE, $10,589.79, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, JUN, 1985.

Veterinary Medicine

Galloway, Lavell, V., Wilmington, DE, $4,735.39, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1989.

District of Columbia

Allopathic Medicine

Anyasodo, Patrick, U., Washington, DC, $124,186.15, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1985.
Baker, Daryl, R., Washington, DC, $2,442.65, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.
Blount, Ronnie, Washington, DC, $40,613.52, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Boykin, Lisa, A., Washington, DC, $9,037.73, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, DEC, 1983.
Briley, Michele, D., Washington, DC, $12,517.84, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.
Clark, Charles, Washington, DC, $13,215.06, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1982.
Clark, John, E., Washington, DC, $39,610.72, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, JUL, 1986.
Coleman II, Don, M., Washington, DC, $1,523.40, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1991.
Darga, Robert, J., Washington, DC, $3,406.49, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, JUN, 1985.
Greaves, I., Jeanette, Washington, DC, $49,552.75, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, SEP, 1983.
Johnson, Gavin, E., Washington, DC, $6,907.01, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.
Lent, Michael, Washington, DC, $9,743.44, UNIV OF CALIFORNIA-SAN FRANCISCO, San Francisco, CA, Allopathic Medicine, JUN, 1982.
McAllister, Amazair, Washington, DC, $3,590.24, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUL, 1984.
McCormack, Faith, J., Washington, DC, $118,049.35, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1989.
Owino, Stephen, O., Washington, DC, $2,029.86, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Randall, Joseph, C., Washington, DC, $107,839.49, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Reed Jr., Arlington, M., Washington, DC, $165,102.10, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1984.
Sargeant, Rochelle, D., Washington, DC, $8,453.67, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1985.
Silvano, Spencer, Washington, DC, $6,610.56, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1986.
Taylor, David, L., Washington, DC, $1,727.63, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1991.
Thornton, Kenneth, R., Washington, DC, $8,400.25, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.
Whitehurst, Debora, V., Washington, DC, $8,635.83, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1989.
Wiggins, Denise, Hammond, Washington, DC, $73,347.53, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, FEB, 1983.
Williams, Lorraine, E., Washington, DC, $4,732.88, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.
Young, Hayward, W., Washington, DC, $6,869.79, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1989.

Chiropractic

Johnson, Steven, R., Washington, DC, $37,975.08, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Shields, Duncan, J., Washington, DC, $34,427.61, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1989.

Clinical Psychology

Jennings, Annie, R., Washington, DC, $38,486.51, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1986.

Dentistry

Adedara, Isaac, O., Washington, DC, $62,942.77, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Bess, Valerie, D., Washington, DC, $39,044.95, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Caldwell, Robert, J., Washington, DC, $9,656.61, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Cruz, James, H., Washington, DC, $15,877.09, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUL, 1986.
Dobbins, Harvey, L., Washington, DC, $122,872.41, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUL, 1988.
Elfter, George, N., Washington, DC, $21,706.81, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Dentistry, MAY, 1989.
Foster, Grady, Washington, DC, $29,639.27, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Gross, Jamie, S., Washington, DC, $7,858.11, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, AUG, 1984.
Gross, Shepherd, Washington, DC, $98,212.75, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Hailstock, Marshelle, Washington, DC, $8,372.64, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Harris, Conrad, W., Washington, DC, $82,421.06, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Kelly Jr., Johnie, M., Washington, DC, $18,001.21, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
King, James, H., Washington, DC, $23,646.89, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Leach, Kevin, J., Washington, DC, $31,907.51, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, DEC, 1986.
Leggett, Gilbert, H., Washington, DC, $28,615.27, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Markham, Robert, R., Washington, DC, $14,220.36, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1988.
Mitchell-Chapman, Marilyn, Washington, DC, $52,424.44, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1985.
Okonsky, Stephen, A., Washington, DC, $16,795.69, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1986.
Overstreet, Natasha, P., Washington, DC, $194,728.34, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Pedraza, Jaime, A., Washington, DC, $5,891.52, GEORGETOWN UNIVEPSITY, Washington, DC, Dentistry, MAY, 1989.

Pettaway, Reginald, L., Washington, DC, $33,480.20, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1989.
Powers, Carlos, H., Washington, DC, $45,922.97, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Ruffin, Wayne, A., Washington, DC, $33,951.04, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Sims, Michael, A., Washington, DC, $25,203.15, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Smith, Daniel, J., Washington, DC, $10,492.80, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Smith, Vasco, A., Washington, DC, $122,625.73, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.
Washington, Steven, E., Washington, DC, $30,556.62, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Whitaker, Aaron, T., Washington, DC, $38,165.96, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Whitfield, Glen, A., Washington, DC, $37,385.82, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Williams, Brent, A., Washington, DC, $57,016.85, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1987.
Wilson, Tanya, R., Washington, DC, $5,592.07, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1988.

Osteopathy

Carter-Miller, Loretta, Washington, DC, $2,361.70, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUL, 1987.
Hopkins, Garland, W., Washington, DC, $60,956.72, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1985.

Pharmacy

Afrane, Berima, A., Washington, DC, $8,343.91, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, JUN, 1986.
Carter, Kevin, M., Washington, DC, $18,633.93, HOWARD UNIVERSITY, Washington, DC, Pharmacy, MAY, 1987.
Martin, Samuel, M., Washington, DC, $56,615.92, HOWARD UNIVERSITY, Washington, DC, Pharmacy, MAY, 1986.

Podiatry

Miller, Maxine, B., Washington, DC, $35,473.63, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1988.
Ozbey, Amber, L., Washington, DC, $42,578.26, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1983.

Veterinary Medicine

Adams, Adrienee, Washington, DC, $23,028.92, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1987.
Kidd, Nettie, J., Washington, DC, $7,428.98, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.
Profater III, Carl, V., Washington, DC, $67,121.07, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1985.
Reid-Quinn, Cheri, A., Washington, DC, $40,889.64, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, JUN, 1983.

Florida

Allopathic Medicine

Alexander, Zandrina, Valrico, FL, $17,748.46, UNIV OF CONNECTICUT HEALTH CTR, Farmington, CT, Allopathic Medicine, JUN, 1983.
Alvarez, Rafael, Miami, FL, $22,275.09, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1987.
Anders, Jeff, P., Jacksonville, FL, $36,141.60, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1981.
Bacon, Cutia, W., Daytona Beach, FL, $5,006.35, UNIV OF ILLINOIS—CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1991.
Baldyga, Sharon, A., Cypress, FL, $20,815.29, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1986.
Bartee, Dyrel, P., West Palm Beach, FL, $24,850.35, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.
Bennet, John, G., Miami, FL, $32,199.00, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUN, 1980.
Berryer, Yvanne, M., Miami, FL, $5,857.27, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1988.
Blehl, Thomas, A., Orlando, FL, $14,429.68, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1984.
Carazo, Andres, Miami Beach, FL, $54,591.04, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUL, 1987.
Ciepiela, Michael, D., Tampa, FL, $39,967.56, EMORY UNIVERSITY, Atlanta, GA, Allopathic Medicine, JUN, 1989.
Dreier, Yolanda, J., Ormond Beach, FL, $7,656.54, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Allopathic Medicine, JUN, 1989.
Ellison, Dennard, W., Jacksonville, FL, $11,665.27, UNIV OF FLORIDA, Gainesville, FL, Allopathic Medicine, JUN, 1988.
Engelmann, Guy, R., Atlantic Beach, FL, $4,647.09, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, MAY, 1989.
Gelbard, Steven, D., Fort Lauderdale, FL, $160,618.36, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1983.
Goodman, James, R., Miami, FL, $13,619.37, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAY, 1987.
Graves, William, T., Saint Petersburg, FL, $154,440.47, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1986.
Holt, Todd, N., Saint Petersburg, FL, $59,289.26, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1986.
Hull, John, H., Saint Petersburg, FL, $2,318.61, LOUISIANA STATE UNIV MC—NEW ORLEANS, New Orleans, LA, Allopathic Medicine, MAY, 1987.
Kalogerou, Paul, A., Melbourne, FL, $3,166.58, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1987.
Kavadellas, Anastasios, Miramar, FL, $11,323.43, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAY, 1986.
Kempf, Douglas, P., FPO Miami, FL, $49,440.76, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1985.
Kunen, Frederick, J., Miami Shores, FL, $56,023.46, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUL, 1986.
Lloyd, Antoinette, L., Orange Park, FL, $11,560.48, YALE UNIV, New Haven, CT, Allopathic Medicine, MAY, 1986.
McCarus, Cheryl, L., Gainesville, FL, $41,251.36, MARSHALL UNIVERSITY, Huntington, WV, Allopathic Medicine, MAY, 1986.
McGill, William, H., Miami, FL, $30,543.32, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1982.
McPherson, John, R., Jacksonville, FL, $45,015.36, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1988.
Mowrey, James, V., Pensacola, FL, $14,830.57, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1986.
Pinkston, Garvey, R., Ocala, FL, $61,078.58, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1981.
Pittman, Kenneth, M., Fort Lauderdale, FL, $13,977.06, MERCER UNIVERSITY, Macon, GA, Allopathic Medicine, JUN, 1986.
Pizarro, Marina, Orlando, FL, $102,503.80, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, JUN, 1988.
Pomm, Raymond, M., Fernandina Beach, FL, $19,935.02, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, SEP, 1984.
Shader, Alan, F., Miami, FL, $59,119.81, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Allopathic Medicine, MAY, 1981.
Simanonok, John, P., Miami, FL, $35,690.13, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Allopathic Medicine, JUL, 1987.
Smith, Willielyra, Miami, FL, $7,052.23, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, AUG, 1988.
Smith, Deborah, A., Destin, FL, $8,410.71, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Allopathic Medicine, MAY, 1983.
Smith, Barbara, E., Coral Springs, FL, $20,271.17, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUL, 1984.
Szalanski, David, L., Jacksonville, FL, $74,209.20, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, SEP, 1984.
Vaz, Garth, O., Atlantic Beach, FL, $6,052.55, UNIV OF FLORIDA, Gainesville, FL, Allopathic Medicine, JUN, 1987.
Wade, Larren, Palmetto, FL, $18,588.08, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUL, 1991.
Walker, Brian, E., Opa Locka, FL, $2,760.25, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, AUG, 1987.

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Whitaker, Joe, E., Tampa, FL, $224.88, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, AUG, 1985.
Zink, Mark, T., Miami, FL, $18,385.79, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAY, 1987.

Chiropractic

Anderman, John, C., Fort Pierce, FL, $23,811.43, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1987.
Atiyeh, David, G., Jacksonville, FL, $45,168.34, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1985.
Aubrey, Suzanne, M., Miami Beach, FL, $31,517.07, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1982.
Bailey, Darrell, E., Lynn Haven, FL, $17,414.00, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Bakels, James, E., West Palm Beach, FL, $20,145.90, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Baker III, James, W., Jacksonville, FL, $50,685.11, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Barner, Russell, J., Tampa, FL, $119,426.43, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Baron, Spencer, H., Miami, FL, $49,543.91, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Bartnett, Edmond, R., Coconut Creek, FL, $57,076.11, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Beil, Floyd, M., Boynton Beach, FL, $33,560.80, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Bennett, Regina, V., Clearwater, FL, $114,181.12, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Blackman, Gregory, D., Fort Pierce, FL, $12,862.83, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1982.
Bohannon, Cynthia, L., Jacksonville, FL, $39,510.09, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Boley, Glenn, E., Pompano Beach, FL, $38,222.67, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, APR, 1988.
Born, Kenice, A., Altamonte Springs, FL, $41,105.85, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, OCT, 1987.
Boshes, Perri, D., Boca Raton, FL, $14,981.76, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1985.
Brimm, Willard, Tampa, FL, $46,132.18, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1985.
Brousseau, Wayne, P., Winter Springs, FL, $14,915.69, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Brown, Michael, Lake Park, FL, $58,495.38, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1989.
Buchalter, Keith, M., Hollywood, FL, $46,753.94, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Buskirk, Dayna, E., Gainesville, FL, $40,792.57, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1987.
Calrissian, Lando, Shalimar, FL, $14,351.58, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Campanale, Paul, R., Middleburg, FL, $23,290.64, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAY, 1984.
Campo, John, I., Tampa, FL, $74,775.55, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, SEP, 1987.
Carageorge, Dawn, C., Tampa, FL, $28,766.83, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1989.
Carrancejie, Monica, Tampa, FL, $64,902.83, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Carter, Craig, D., Fort Lauderdale, FL, $36,937.58, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Caudill, Curtis, E., Pensacola, FL, $14,134.36, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Cochran, William, K., Melbourne, FL, $28,368.68, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1990.
Cohen, Scott, H., Pembroke Pines, FL, $28,931.75, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1990.
Constante, Paul, J., Deerfield Beach, FL, $15,657.47, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1988.
Constantinoff, Karen, A., Ocala, FL, $6,008.27, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Corry, Mark, L., West Palm Beach, FL, $1,528.65, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1984.
Cowan, Robert, F., Pensacola, FL, $35,722.30, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1983.
Cox, Stephen, M., Riverview, FL, $50,151.30, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1985.
DeJesus, Iris, M., Miami, FL, $9,570.41, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1983.
DeJesus, Jose, A., Miami, FL, $15,827.40, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1984.
Decubellis, Robert, J., Sarasota, FL, $58,396.35, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Delcampillo, Maria, A., Miami, FL, $54,279.34, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1987.
Densmore, Robert, O., Tampa, FL, $26,077.26, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1985.
Diesen, James, D., Orange Park, FL, $52,316.58, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1988.
Dinofer, Jeffrey, S., Miami, FL, $38,384.45, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1988.
Douglas, Bonnie, J., Englewood, FL, $38,878.79, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Douze, Joseph, Pompano Beach, FL, $104,816.28, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Drabik, Stephen, E., Boynton Beach, FL, $21,718.43, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1988.
Dranko, Shelly, L., Cape Coral, FL, $2,429.46, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1985.
Dungan, Kim, V., Fort Lauderdale, FL, $52,761.67, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Earl, Kenneth, J., Fort Myers, FL, $112,335.75, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Ebling, Dale, E., Boynton Beach, FL, $48,945.21, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1987.
Edelson, Renny, M., Plantation, FL, $89,137.05, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Etienne, Ivan, J., Miami, FL, $13,240.77, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, JUN, 1983.
Febricant, Michael, J., Davie, FL, $54,807.72, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1984.
Falowski, Frank, J., Lauderdale Lakes, FL, $123,082.85, LIFE COLLEGE, Marietta, GA, Chiropractic, AUG, 1985.
Fine, Mitchel, L., Coral Springs, FL, $13,515.50, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Fountain, Rodney, E., Pensacola, FL, $104,860.23, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, FEB, 1985.
Fulton, Paul, D., Davie, FL, $12,474.96, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1983.
Garver, Gordon, B., Fernandina Beach, FL, $26,464.32, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1982.
Gasso, Joaquin, A., Miami, FL, $136,743.87, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Giallanzo, Tom, Dania, FL, $97,598.11, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1985.
Gillman, Barry, M., Lauderhill, FL, $28,927.22, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Glasgow, James, B., Stuart, FL, $22,271.33, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1984.
Gordon, Gay, L., Roseland, FL, $13,404.92, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Green, Michael, J., Maitland, FL, $104,990.13, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Greene, Silas, R., Panama City, FL, $28,734.39, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Greenwald, Lewis, A., North Miami Beach, FL, $6,241.37, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1990.
Gutierrez, Humberto, Hialeah, FL, $56,668.04, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Guy, Geoffrey, C., Englewood, FL, $14,932.87, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1984.
Hamby Jr., Bobby, J., Jacksonville, FL, $10,296.51, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986

Hansen, Theodore, B., Zephyrhills, FL, $101,739.38, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986
Hardwick, James, F., Altamonte Springs, FL, $5,264.10, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986
Haut, Ruth, A., Kissimmee, FL, $51,007.23, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1985
Hoblit, John, W., Seminole, FL, $68,461.83, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1983
Holzer, Richard, M., Boca Raton, FL, $44,514.08, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1985
Jennings, Peggy, J., Bronson, FL, $36,214.24, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1984
Jones, Leah, P., Miami, FL, $22,945.82, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, SEP, 1984
Kern, Mark, S., Fort Myers, FL, $21,077.26, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1983
King, James, R., Immokalee, FL, $126,248.68, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985
Kogut, Dennis, W., Miami, FL, $35,530.36, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984
Kolarik, Thomas, H., Tampa, FL, $61,371.48, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984
Krista, Geraldine, M., Jacksonville, FL, $103,532.59, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985
Langheier, David, D., Clearwater, FL, $31,210.79, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1983
Langheier, Cris, E., Clearwater, FL, $30,273.54, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986
Liebman, Jay, M., North Miami, FL, $116,185.24, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985
Louis, Kathryn, S., Fort Pierce, FL, $11,625.28, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1986
Lovell, Stephen, M., Fort Myers, FL, $20,275.54, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUN, 1986
Mack, Ronald, E., Spring Hill, FL, $10,378.97, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982
Mane, Walter, J., Miami, FL, $89,200.16, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1985
Marcus, Alex, Orlando, FL, $13,645.30, LIFE COLLEGE, Marietta, GA, Chiropractic, FEB, 1986
Martin Jr., John, W., Tarpon Springs, FL, $66,258.08, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986
Meunier, Edward, J., Gulf Breeze, FL, $120,390.53, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986
Meyerowitz, Neil, M., Fort Lauderdale, FL, $1,361.24, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986
Monterosso, Karen, M., Saint Petersburg, FL, $17,215.14, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1983
Morris, Lawrence, C., Zephyrhills, FL, $1,122.31, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1984
Morris Jr., David, O., Tampa, FL, $1,894.32, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1989
Moses, Robert, N., Jacksonville, FL, $52,272.31, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984
Moyal, William, R., North Miami Beach, FL, $86,068.15, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985
Nevius, William, K., Naples, FL, $95,624.87, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986
Nickels, Steven, M., Jacksonville, FL, $116,603.17, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986
Palazzolo, Ross, Palm Harbor, FL, $72,061.65, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985
Perez, Daysi, E., Tampa, FL, $22,011.23, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986
Pogue, Pogue, Punta Gorda, FL, $37,796.22, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982
Precipuo, Lawrence, Boca Raton, FL, $16,762.28, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Pressel, Louis, A., Orange Park, FL, $16,987.03, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1989.
Price, Douglas, A., Tampa, FL, $73,651.37, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Quinley, Timothy, E., Jacksonville, FL, $19,352.85, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1988.
Robinson, Bruce, K., Cocoa Beach, FL, $75,123.46, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Robitaille, Richard, W., Altamonte Springs, FL, $84,491.52, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Rodriguez, Pedro, P., Miami, FL, $9,503.03, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1983.
Rodriguez, Marlene, M., Miami, FL, $23,200.00, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Rodriquez, Frank, Longwood, FL, $79,071.74, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAR, 1987.
Ross, Lawrence, A., Port Saint Lucie, FL, $51,727.54, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Rossrucker, Kenneth, S., Altamonte Springs, FL, $47,440.09, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1984.
Santa Cruz, Matthew, E., Tampa, FL, $38,481.08, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Santana, Jose, A., Boca Raton, FL, $134,290.13, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Saunders, Edward, M., Fort Myers, FL, $67,464.26, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Schade, Cynthia, J., Lakeland, FL, $37,245.64, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Schlapper, Gary, L., Deltona, FL, $62,903.48, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1984.
Seabolt, Alan, S., Jacksonville, FL, $112,039.30, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Semegon, Bradley, G., Jacksonville, FL, $40,541.50, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1984.
Shapiro, Abe, Deerfield Beach, FL, $6,566.94, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JAN, 1990.
Silverstien, Barry, Coral Springs, FL, $33,058.69, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Smith, Mark, A., Cape Coral, FL, $16,046.41, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1985.
Smith, Richard, Dania, FL, $34,755.52, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1989.
Stallings, Spichael, Port Saint Joe, FL, $40,679.44, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982.
Stone, Donald, K., Largo, FL, $41,541.80, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1988.
Stratton, Mark, W., De Land, FL, $60,765.82, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1985.
Tepperberg, Phillip, S., Melrose, FL, $36,321.02, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1983.
Thiel, Margaret, A., Fort Myers, FL, $56,275.85, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1988.
Thomas, Bruce, L., Boynton Beach, FL, $88,727.43, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1989.
Thompson, Rubin, Miami, FL, $6,171.11, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1982.
Thornton, Loren, D., Fruitland Park, FL, $110,199.26, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Toprahan, Joseph, A., Delray Beach, FL, $47,052.09, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Tricocci, John, F., Palm Harbor, FL, $35,138.21, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Vannucci, Milo, West Palm Beach, FL, $49,235.56, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1983.
Vitow, Barry, D., Boca Raton, FL, $63,528.77 LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Walburn, Keith, J., Chiefland, FL, $38,481.95, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Walters, Clark, C., Dunedin, FL, $45,099.33, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Whipkey, Douglas, G., Jensen Beach, FL, $33,206.80, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1988.
Wieland, David, M., Saint Petersburg, FL, $47,248.03, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1983.
Yenzer Jr., James, W., Pensacola, FL, $126,931.00, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.

Zalovitz, Mark, J., Vero Beach, FL, $59,334.51, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.

Clinical Psychology

Alfonso, Isabel, Tallahassee, FL, $5,991.47, FLORIDA STATE UNIV, Tallahassee, FL, Clinical Psychology, JUN, 1988.

Aufderheide, Dean, H., Shalimar, FL, $15,555.42, FULLER THEOLOGICAL SEMINARY, Pasadena, CA, Clinical Psychology, JUN, 1988.

Barbeto, Beverly, V., Hollywood, FL, $16,975.95, NOVA UNIVERSITY, Ft. Lauderdale, FL, Clinical Psychology, APR, 1990.

Barfield III, Arthur, D., Tampa, FL, $23,700.94, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, MAR, 1987.

Passman, Fran, M., Plantation, FL, $18,621.83, NOVA UNIVERSITY, Ft. Lauderdale, FL, Clinical Psychology, MAY, 1985.

Keenan, Margaret, Fort Lauderdale, FL, $5,276.66, NOVA UNIVERSITY, Ft. Lauderdale, FL, Clinical Psychology, MAY, 1991.

Klein, Jean, C., North Miami, FL, $23,132.65, NOVA UNIVERSITY, Ft. Lauderdale, FL, Clinical Psychology, DEC, 1985.

Kotula, Jeanne, Delray Beach, FL, $16,452.62, FLORIDA INST. OF TECHNOLOGY, Melbourne, FL, Clinical Psychology, AUG, 1986.

Westby, Lynne, B., Melbourne, FL, $354.77, FLORIDA INST. OF TECHNOLOGY, Melbourne, FL, Clinical Psychology, AUG, 1985.

Dentistry

Amoosegar, Carolyn, P., Cocoa, FL, $70,396.85, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1987.

Bartolazo, Arvin, K., Seminole, FL, $105,811.33, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1989.

Bradley, Michael, E., Altamonte Springs, FL, $57,635.96, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, FEB, 1982.

Bruyning, Edwin, F., Miami, FL, $91,609.90, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUL, 1988.

Bullion jr., James, F., Maitland, FL, $84,442.74, EMORY UNIVERSITY, Atlanta, GA, Dentistry, JUN, 1984.

Capiro, Manuel, Hialeah, FL, $57,199.13, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.

Chettin, Donald, H., Shalimar, FL, $1,161.43, WEST VIRGINIA UNIV, Morgantown, WV, Dentistry, JUN, 1980.

Christopoulos, Steve, Saint Petersburg, FL, $9,185.17, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.

Ciborowski, Casimer, J., Port Charlotte, FL, $114,183.26, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1985.

Coello, Carlos, A., Parkland, FL, $129,954.16, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1989.

Concepcion, Jorge, L., Miami, FL, $67,814.44, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAR, 1987.

Da Costa, Michael, P., Miami, FL, $12,168.73, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, MAY, 1985.

Denham, Audrey, J., Riviera Beach, FL, $10,970.24, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1984.

Duffy, Lawrence, Longwood, FL, $53,156.03, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1985.

Garcia, Jose, E., Altamonte Springs, FL, $35,176.19, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1987.

Gerlacz, Steven, M., Lynn Haven, FL, $31,212.84, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1985.

Green, George, D., Coral Springs, FL, $4,239.76, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.

Hammonds, Michael, G., Orlando, FL, $127,129.69, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, AUG, 1984.

Hartley, George, W., Homestead, FL, $23,526.98, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.

Ho, Tram, B., Saint Petersburg, FL, $7,446.16, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, AUG, 1989.

Hollander, Gregg, M., Homestead, FL, $15,382.90, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, FEB, 1985.

Kaiser-Coello, Karen, K., Parkland, FL, $68,857.39, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1986.

Luis, Jacqueline, X., Miami, FL, $3,693.21, UNIV OF FLORIDA, Gainesville, FL, Dentistry, MAY, 1990.

Mandracchia, Philip, A., Delray Beach, FL, $16,527.84, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUL, 1984.

Mason, Peggy, J., Miami Lakes, FL, $189,558.62, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1985.

McClure, Brian, Jupiter, FL, $7,491.15, UNIV OF FLORIDA, Gainesville, FL, Dentistry, MAY, 1989.

Montilla, Miguel, A., Miami, FL, $19,832.75, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUL, 1980.

Nance, Keith, W., Valparaiso, FL, $53,287.28, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, JUN, 1985.

Olah, Dian, M., Saint Petersburg, FL, $42,892.30, UNIV OF FLORIDA, Gainesville, FL, Dentistry, SEP, 1985.

Perlman, Bruce, C., West Palm Beach, FL, $28,046.96, EMORY UNIVERSITY, Atlanta, GA, Dentistry, JUN, 1982.

Prill, Mark, S., Dearfield Beach, FL, $20,387.05, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1983.

Quillin II, Thomas, E., Saint Petersburg, FL, $5,076.29, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1991.

Quinn, Lillie, Apopka, FL, $5,571.45, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, AUG, 1979.

Reynolds, John, C., Riviera Beach, FL, $84,210.81, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1982.

Reynolds, Timothy, L., Jacksonville Beach, FL, $128,500.18, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, DEC, 1984.

Ritchie Jr., Lloyd, K., Cantonment, FL, $7,912.51, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1988.

Ross, Ronald, B., Coral Springs, FL, $44,858.52, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, MAY, 1986.

Shakman, Robert, E., Clearwater, FL, $125,185.28, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1985.

Sherron, Hugh, K., Marathon Shores, FL, $146,761.10, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, DEC, 1985.

Small, Larry, J., Jacksonville, FL, $27,880.52, UNIV OF FLORIDA, Gainesville, FL, Dentistry, DEC, 1989.

Urban, Curt, J., Sebastian, FL, $83,179.75, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1983.

Ward, Rodney, A., Orlando, FL, $12,051.26, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, OCT, 1983.

Wilson, Edward, R., Saint Petersburg, FL, $101,933.25, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Dentistry, JUL, 1986.

Optometry

Cummings, Michael, A., Tampa, FL, $21,722.16, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, MAR, 1985.

Gardner, Edmond, P., Miami, FL, $150,165.29, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1983.

Johnston, James, F., Ocala, FL, $21,542.00, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1988.

Markle, James, A., Pompano Beach, FL, $75,417.12, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, MAR, 1985.

Neal, Terry, L., Gainesville, FL, $4,795.73, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1985.

Pfab, Mary, C., Jacksonville, FL, $60,905.86, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1985.

Osteopathy

Austin, Jerry, Dania, FL, $67,767.09, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, DEC, 1987.

Baker, Betty, J., Ope Locka, FL, $195,450.01, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1988.

Baldwin, Barbara, L., Orlando, FL, $12,854.84, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1986.

Di-Cowden, Arthur, M., South Miami, FL, $217,622.04, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1986.

Hannum III, Robert, J., Tampa, FL, $8,587.97, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUL, 1987.

Hardmon, Kevin, B., Clearwater, FL, $145,253.52, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUN, 1986.

Heisler, Hope, J., Cape Coral, FL, $16,603.08, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1989.

House, Charles, P., Bradenton, FL, $148,227.40, UNIV OF NEW ENGLAND, Biddeford, ME, Osteopathy, JUN, 1987.
Lyons, Glynnis, J., Tampa, FL, $6,316.89, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, JUL, 1982.
Majauskas, Retrantas, P., West Palm Beach, FL, $190,206.91, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1985.
Masters, Christopher, T., Saint Petersburg, FL, $133,383.69, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1986.
Tooker, Bruce, T., Orlando, FL, $116,290.91, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1987.
Webb, Paul, E., Hollywood, FL, $148,068.77, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1988.
York, William, C., Tallahassee, FL, $11,676.84, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, MAY, 1982.

Pharmacy

Butler, Eddie, J., Fort Lauderdale, FL, $61,872.38, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1981.
Copeland-Collier, Kat, Saint Petersburg, FL, $17,664.78, UNIV OF FLORIDA, Gainesville, FL, Pharmacy, MAR, 1980.
Jacob, Robert, S., Saint Petersburg, FL, $13,434.19, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, AUG, 1984.
Spogen, Frederic, Cocoa Beach, FL, $7,535.14, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUL, 1982.
Vinci, Robert, M., Tampa, FL, $16,513.93, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, AUG, 1987.

Podiatry

Alderson, James, R., Longwood, FL, $201,697.30, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Becker, Russell, P., Miami, FL, $30,448.09, BARRY UNIVERSITY-PODIATRIC MED, Miami Shores, FL, Podiatry, JAN, 1989.
Benitez-Negron, Enrique, North Miami, FL, $119,547.30, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, DEC, 1986.
Bolanio, Maritza, Miami, FL, $95,299.27, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1987.
Carroll, Edward, A., Sunrise, FL, $112,177.39, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, NOV, 1986.
Cividino, Stephanie, Tampa, FL, $24,924.99, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1984.
Delgado, Jorge, A., Miami, FL, $32,991.66, BARRY UNIVERSITY-PODIATRIC MED, Miami Shores, FL, Podiatry, DEC, 1987.
Di Napoli, James, J., Opa Locka, FL, $47,736.63, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1984.
Fenev, John, M., Miami, FL, $172,086.42, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Fine, David, S., Fort Lauderdale, FL, $82,388.40, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.
Huff, Gregory, E., West Palm Beach, FL, $17,139.39, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, FEB, 1987.
Mollohan, Ernest, L., Pensacola, FL, $7,884.59, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1993.
Moore, Darall, J., Saint Petersburg, FL, $158,203.71, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1985.
Polizzi, Louis, Orlando, FL, $22,301.60, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Smith, Larry, D., Tallahassee, FL, $35,677.07, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, APR, 1985.
Stern, Jonathan, P., Miami, FL, $120,789.02, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1984.
Vivas, William, R., Miami, FL, $39,320.31, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.
Welt, Robert, L., Fort Lauderdale, FL, $58,849.52, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Wright, Victor, J., Bartow, FL, $12,410.59, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, SEP, 1984.

Public Health

Hazelwood 3rd, Harry, Daytona Beach, FL, $102,542.85, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Public Health, JAN, 1986.
Medina, Ramona, M., Saint Petersburg, FL, $33,480.77, TULANE UNIVERSITY, New Orleans, LA, Public Health, AUG, 1984.
Papillon, Franck, H., North Miami, FL, $8,574.91, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Public Health, SEP, 1996.
Portnoy, Barry, F., Altamonte Springs, FL, $16,618.51, TULANE UNIVERSITY, New Orleans, LA, Public Health, MAY, 1987.

Veterinary Medicine

Funk, Richard, S., Brandon, FL, $6,984.41, OHIO STATE UNIVERSITY, Columbus, OH, Veterinary Medicine, JUN, 1985.
Howard, Susan, G., Gainesville, FL, $71,602.99, UNIV OF FLORIDA, Gainesville, FL, Veterinary Medicine, FEB, 1989.
Lee, John, D., Jacksonville, FL, $3,934.33, MISSISSIPPI STATE UNIV, Mississippi St., MS, Veterinary Medicine, MAY, 1985.
Moore, Mary, E., West Palm Beach, FL, $12,376.96, UNIV OF WISCONSIN, Madison, WI, Veterinary Medicine, MAY, 1988.
Pattio, Nolton, Ocala, FL, $18,962.97, UNIV OF PENNSYLVANIA, Philadelphia, PA, Veterinary Medicine, JUN, 1987.

Georgia

Allopathic Medicine

Barnes, William, T., Macon, GA, $16,646.87, MERCER UNIVERSITY, Macon, GA, Allopathic Medicine, JAN, 1987.
Benson, Glen, N., Atlanta, GA, $21,843.05, PENN STATE UNIV—HERSHEY MC, Hershey, PA, Allopathic Medicine, MAY, 1985.
Bowen-Hay, Winston, B., Norcross, GA, $71,102.25, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, SEP, 1988.
Brown, Darren, W., Doraville, GA, $3,701.59, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUL, 1986.
Cannon, Linda, J., Atlanta, GA, $43,258.83, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1987.
Carroll, Otto, S., Atlanta, GA, $148,590.93, ORAL ROBERTS UNIV, Tulsa, OK, Allopathic Medicine, MAY, 1986.
Darrisaw, Brian, R., Atlanta, GA, $5,342.08, CORNELL UNIV MED COLLEGE, New York, NY, Allopathic Medicine, MAY, 1987.
Dickens, Charles, L., College Park, GA, $26,575.82, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1989.
Garth, Gregory, A., Marietta, GA, $28,296.58, PENN STATE UNIV—HERSHEY MC, Hershey, PA, Allopathic Medicine, MAY, 1981.
Gelfond, William, A., Atlanta, GA, $36,881.00, EMORY UNIVERSITY, Atlanta, GA, Allopathic Medicine, JUN, 1982.
Harper, Jennifer, M., Atlanta, GA, $196,073.28, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1987.
Hooker, Bryan, D., Cumming, GA, $449.85, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1988.
Howard, Anthony, L., Swainsboro, GA, $177,695.49, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Hunter, Jennifer, E., Augusta, GA, $16,843.52, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.
Jackson, Douglas, Atlanta, GA, $46,743.79, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, JUN, 1987.
Johnson, Benjamin, P., Smyrna, GA, $94,200.79, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1986.
Kinahan, James, J., Atlanta, GA, $141,217.53, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, MAY, 1989.
Kiser, Curtis, Atlanta, GA, $117,911.72, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1985.
Lawler, Matthew, P., Marietta, GA, $63,742.36, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, DEC, 1982.
Majeed, Ishaq, H., Decatur, GA, $79,482.75, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAY, 1987.
McGhee, James, E., Atlanta, GA, $3,636.31, EMORY UNIVERSITY, Atlanta, GA, Allopathic Medicine, MAY, 1988.
Millon, Jeffery, M., Atlanta, GA, $34,527.99, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, FEB, 1987.
Moorhead, James, F., College Park, GA, $35,559.65, MOREHOUSE COLLEGE,

Atlanta, GA, Allopathic Medicine, JUN, 1985.
Nelson, Robert, L., Macon, GA, $4,501.12, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1979.
Patterson, Lee, T., Atlanta, GA, $8,120.56, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, APR, 1969.
Rachel, Everett, D., Decatur, GA, $4,521.00, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1969.
Robinson, Kermie, L., Stone Mountain, GA, $82,843.26, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUN, 1965.
Rudner, Todd, W., Atlanta, GA, $16,690.35, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1986.
Salimonu, Oladele, K., Decatur, GA, $50,546.04, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUL, 1987.
Samaresinghe, Ajit, J., Atlanta, GA, $3,748.02, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1990.
Schimandle, Jeff, H., Decatur, GA, $3,371.76, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUL, 1956.
Smith, Robin, G., Atlanta, GA, $52,705.36, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1988.
Smith, Phyllis, M., Avondale Estates, GA, $13,497.75, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, AUG, 1989.
Smith, Charles, C., Atlanta, GA, $36,143.82, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, SEP, 1966.
Stapleshorne, Michelle, J., Decatur, GA, $6,400.59, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAY, 1990.
Strankman, Nancy, A., Tucker, GA, $26,892.26, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, JUL, 1989.
Tull II, David, A., Atlanta, GA, $16,771.43, UNIV OF SOUTH ALABAMA, Mobile, AL, Allopathic Medicine, JUN, 1989.
Watson Jr., Henry, Stone Mountain, GA, $24,341.49, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1984.
Westermeyer, Scott, A., Gainesville, GA, $98,248.29, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, JUN, 1987.
Wilson, Evelyn, Columbus, GA, $63,548.75, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAR, 1987.
Woody, Edith, K., Atlanta, GA, $23,662.66, OHIO STATE UNIVERSITY, Columbus, OH, Allopathic Medicine, JUN, 1966.
Yarde, William, L., Jonesboro, GA, $88,771.28, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1965.

Chiropractic

Ackermann, Anne, E., Marietta, GA, $47,425.85, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Ackermann, Brian, J., Marietta, GA, $46,279.02, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Agee, Mark, W., Smyrna, GA, $50,313.30, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Ali, Abdirazak, A., College Park, GA, $21,197.88, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1987.
Amini, Johari, M., Atlanta, GA, $19,670.79, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, APR, 1984.
Ash, Carla, L., Smyrna, GA, $78,297.71, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Bain, Lee, R., Marietta, GA, $103,232.98, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1988.
Barner, Robert, Marietta, GA, $48,757.43, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1980.
Bell, Clayton, E., Riverdale, GA, $101,741.96, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Berman, David, H., Riverdale, GA, $109,313.44, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1986.
Bernstein, David, T., Atlanta, GA, $16,194.55, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Bertrand, Scott, R., Marietta, GA, $83,127.31, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Bishop Jr., William, B., Cartersville, GA, $20,354.21, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1988.
Blackwell, Sherry, M., Atlanta, GA, $14,734.18, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Blake, Lisa, M., Decatur, GA, $75,340.48, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1988.
Bleyaert, Lamont, J., Woodstock, GA, $50,552.10, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Bloomingdale, Stephen, A., Toccoa, GA, $69,405.85, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Bohr, Corinne, E., Alpharetta, GA, $57,090.67, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Bond, William, H., Woodstock, GA, $96,154.02, LIFE COLLEGE, Marietta, GA, Chiropractic, FEB, 1985.
Boyles, Jack, E., Atlanta, GA, $34,067.64, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1984.
Bracy, Robert, C., Alpharetta, GA, $12,443.69, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1988.
Breazeale, Michael, E., Marietta, GA, $109,643.26, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Brooks, Debra, D., Douglasville, GA, $14,774.91, LIFE COLLEGE, Marietta, GA, Chiropractic, FEB, 1985.
Brooks, William, B., Decatur, GA, $59,325.86, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1984.
Brown, Wilbur, E., Dunwoody, GA, $11,074.24, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1984.
Brown, Mary, E., Marietta, GA, $22,337.00, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Brown, George, A., Smyrna, GA, $7,692.85, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1990.
Burleson, David, A., Dunwoody, GA, $21,289.10, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Burnett, G., Diane, Atlanta, GA, $9,679.87, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Byrd, Ricardau, E., Atlanta, GA, $25,192.47, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1985.
Casean, Steven, S., Canton, GA, $26,582.28, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Cavaliere, Frances, C., Marietta, GA, $73,100.00, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Chimoff, Mark, E., Acworth, GA, $95,393.99, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Chochla, Thomas, N., Smyrna, GA, $67,760.61, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Ciron, Barbara, L., Savannah, GA, $7,621.33, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1982.
Clay, Cassius, C., Atlanta, GA, $25,591.40, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Clayton, Richard, E., Marietta, GA, $68,011.65, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Collins Jr., Cecil, E., Canton, GA, $54,285.34, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Conard, Arden, M., Atlanta, GA, $18,540.17, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Conrad, Cynthia, L., Marietta, GA, $12,313.49, LIFE COLLEGE, Marietta, GA, Chiropractic, NOV, 1982.
Cook, Robert, D., Tennille, GA, $61,642.20, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1987.
Cooper, Robert, N., Marietta, GA, $7,389.22, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Cosmelli, Patricia, Marietta, GA, $8,117.21, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Cox, Harold, D., Marietta, GA, $119,354.32, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1987.
Crawford, Franklin, R., Austell, GA, $53,368.14, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Crimens, Patricia, T., Alpharetta, GA, $84,042.11, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Cross, Bruce, W., Lithonia, GA, $52,425.29, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Crosswhite, Larry, K., Oakwood, GA, $98,902.48, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Culver, Toni, Y., Austell, GA, $51,171.76, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Cutler, Peter, G., Norcross, GA, $68,376.17, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Dennels, Douglas, G., Douglasville, GA, $45,826.19, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1985.

Darnell, John, E., Monroe, GA, $15,317.75, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Davis, Douglas, H., Americus, GA, $58,912.22, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Day, Philip, A., Savannah, GA, $66,458.65, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Day, Duane, D., Smyrna, GA, $28,700.22, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Deopp, William, N., Lilburn, GA, $49,722.43, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Duker, John, Smyrna, GA, $104,406.08, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1987.
Earley, Kenneth, S., Atlanta, GA, $58,311.07, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Edmunds, John, D., Dallas, GA, $112,866.98, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Erickson, Brock, T., Marietta, GA, $7,376.86, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1990.
Farley, James, D., Marietta, GA, $46,368.07, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Farmer, Henry, C., Cedartown, GA, $34,200.02, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Ficco, David, S., Duluth, GA, $63,720.85, LIFE COLLEGE, Marietta, GA, Chiropractic, AUG, 1987.
Fisher, Michael, J., Marietta, GA, $27,127.87, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1990.
Flateau, Jacqeline, A., Kennesaw, GA, $5,860.23, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1990.
Galzarano, Carole, A., Marietta, GA, $63,708.59, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Gardner, Lester, J., Jesup, GA, $28,918.85, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Gill, Joseph, C., Atlanta, GA, $114,582.89, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1986.
Gotkin, Stuart, T., Smyrna, GA, $52,060.25, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Gross, Thomas, Smyrna, GA, $60,230.95, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Haezebrouck, Joe, V., Marietta, GA, $15,316.52, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982.
Hall, John, L., Cartersville, GA, $108,694.21, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1988.
Henshaw, Clifford, D., Brunswick, GA, $54,919.73, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Herman, Patricia, K., Atlanta, GA, $12,158.78, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1987.
Hojeij, Wassim, H., Forest Park, GA, $10,094.01, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1990.
Holewinski, Kenneth, G., Marietta, GA, $40,178.35, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Hopfner, Noreen, V., Powder Springs, GA, $5,629.43, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1988.
Hoyt, John, A., Atlanta, GA, $6,658.16, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Hughes, Charles, E., Roswell, GA, $129,619.29, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Hundley, Kenneth, L., Dallas, GA, $127,845.41, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Hunger Jr., Edwin, L., Marietta, GA, $49,424.68, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1985.
Hush, George, G., Smyrna, GA, $43,388.46, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Iraci, Cynthia, L., Waleska, GA, $91,608.90, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Jackson, Jerry, J., Marietta, GA, $42,711.10, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1989.
Judd, Ronald, K., Jasper, GA, $45,668.55, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Justice, James, L., Lawrenceville, GA, $126,086.58, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Kay, Alicia, E., Atlanta, GA, $38,742.83, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Kephart, Edwin, T., Atlanta, GA, $69,254.99, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
King, David, W., Marietta, GA, $29,817.25, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Klapp, Randall, K., Marietta, GA, $83,793.17, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Klapp, Cecilia, I., Marietta, GA, $94,889.17, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Klejnot, Timoty, A., Marietta, GA, $74,461.72, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1989.
Knight, Ronald, G., Peachtree City, GA, $123,014.32, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1986.
Kowalske, Philip, F., Marietta, GA, $113,230.41, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Kronlund, Douglas, G., Marietta, GA, $28,462.06, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1990.
Kyle, George, G., Chamblee, GA, $48,468.02, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1983.
Lafleur, Allen, R., Marietta, GA, $107,969.76, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Lambert-Kemlage, Sharon, A., Marietta, GA, $87,633.99, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Lancaster, Barry, D., Marietta, GA, $51,734.97, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1988.
Lanier, Wanda, M., Marietta, GA, $54,350.63, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Lee, Carole, A., Acworth, GA, $22,193.68, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Lee, David, G., Marietta, GA, $17,977.16, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Liss, Jay, C., Alpharetta, GA, $4,307.13, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Lister, Rufus, G., Marietta, GA, $39,198.23, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Lubnewski, Peter, P., Smyrna, GA, $89,986.51, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Marcum, Craig, A., Atlanta, GA, $4,450.26, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1989.
Marsh, Jeffrey, C., Marietta, GA, $79,697.98, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1988.
Maseengale, Gregory, L., Woodstock, GA, $84,104.98, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Mathiak, Karen, I., Griffin, GA, $25,083.71, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Mayles, Sandra, M., Dalton, GA, $58,454.54, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1984.
McCormick, Robert, J., Marietta, GA, $28,736.19, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
McMahon, Joseph, A., Marietta, GA, $8,031.67, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1990.
McQuaig, John, A., Dunwoody, GA, $2,740.69, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1983.
Mercks, James, L., Lindale, GA, $118,930.77, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1986.
Moeckel, Timothy, S., Atlanta, GA, $51,243.79, LIFE COLLEGE, Marietta, GA, Chiropractic, AUG, 1985.
Morgan, Charles, T., Marietta, GA, $83,811.91, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Moritz, Gregory, M., Kennesaw, GA, $73,917.67, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Mosley, James, C., Columbus, GA, $45,607.23, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1985.
Mueller, William, J., Roswell, GA, $53,779.79, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Nappi, Neil, A., Kennesaw, GA, $42,955.15, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Nicholson, James, E., Powder Springs, GA, $119,566.53, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1985.
O'Dell, Craig, L., Marietta, GA, $70,030.30, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Ogbuchi, Sampson, N., Atlanta, GA, $6,895.75, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Owens, James, R., Atlanta, GA, $11,502.91, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1989.
Palffy, Victor, T., Marietta, GA, $126,218.41, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Palmer, Albert, A., Marietta, GA, $14,209.94, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1986.

Patterson, Mark, A., Marietta, GA, $90,129.14, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Patterson Jr., Alan, M., Atlanta, GA, $55,886.37, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Paul, Roger, W., Stone Mountain, GA, $101,410.48, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Pavkov, Gary, A., Marietta, GA, $43,806.80, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Penn Jr., Paul, F., Atlanta, GA, $54,590.88, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1984.
Perrier, Debra, D., Cedartown, GA, $18,785.67, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Peters, Ronald, S., Marietta, GA, $1,196.85, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Polishuk, Andre, A., Marietta, GA, $102,946.55, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1984.
Pristash, Michael, R., Marietta, GA, $84,090.46, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Pukancik, Susan, M., Marietta, GA, $5,975.01, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Rawlins, Joel, J., Douglas, GA, $108,432.21, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1987.
Reybitz, Konrad, F., Atlanta, GA, $55,573.73, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1983.
Reymann, William, M., Marietta, GA, $6,483.60, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Rice, Wayne, W., Marietta, GA, $810.52, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1991.
Richardson, David, M., Norcross, GA, $36,547.84, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1984.
Rines, Susan, B., Marietta, GA, $3,569.65, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Rizzuto, Richard, W., Marietta, GA, $17,530.74, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1989.
Robideau, Robert, G., Kennesaw, GA, $51,952.10, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Robinson, Albert, R., Decatur, GA, $44,388.10, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Roiko, Alex, G., Marietta, GA, $21,507.76, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Rosenberg, Dean, F., Atlanta, GA, $41,084.84, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Rowland, Jimmy, H., Centerville, GA, $57,651.85, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Rutkowski, Morris, E., Marietta, GA, $82,000.56, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Scala, Timothy, D., Marietta, GA, $28,008.28, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Schumacher, Robert, Stone Mountain, GA, $8,530.86, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Seaman, John, Gill, Norcross, GA, $18,846.77, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.
Severson, Charles, D., Marietta, GA, $32,650.23, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982.
Siegle, Raymond, J., Atlanta, GA, $2,788.65, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1988.
Siegrist III, Harry, E., Austell, GA, $42,384.34, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Sieradzki, Rex, A., Atlanta, GA, $64,286.95, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Siminski, Larry, T., Atlanta, GA, $86,577.85, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1988.
Singleton, Betty, K., Atlanta, GA, $47,275.60, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Smith, Gertrude, M., Atlanta, GA, $66,708.59, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Snipe, Theresa, G., Atlanta, GA, $41,097.88, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Spears, Roseann, Marietta, GA, $98,023.56, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Spears, George, E., Kennesaw, GA, $72,471.17, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Speizer, Richard, N., Marietta, GA, $108,220.73, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Spiva, Walter, E., Hiawassee, GA, $109,967.16, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Spivey, Douglas, V., Smyrna, GA, $53,142.74, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Stephens, Charles, N., Marietta, GA, $108,068.47, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Taylor, Kenneth, D., Duluth, GA, $42,081.88, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Thomas, Gordon, A., Atlanta, GA, $65,664.45, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Traff, Randall, R., Marietta, GA, $3,934.21, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1991.
Troutman, William, P., Atlanta, GA, $26,083.47, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1983.
Troutman Jr., William, D., Atlanta, GA, $36,256.52, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1985.
Tutt, Gwendolyn, M., Roswell, GA, $59,893.30, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Vescuso, John, A., Marietta, GA, $91,339.00, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1986.
Vlahos, James, G., Alpharetta, GA, $91,934.32, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Walker, James, E., Marietta, GA, $139,141.52, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Walker, J., Bruce, Powder Springs, GA, $70,560.86, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1987.
Wallace, Mark, R., Marietta, GA, $45,472.74, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Warrick, Wayne, D., Kennesaw, GA, $44,568.57, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Warrick, Dennis, A., Marietta, GA, $63,222.17, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Watts, Charles, S., College Park, GA, $29,286.13, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Weagley, Jeffrey, L., Marietta, GA, $65,522.09, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Weatherly, William, C., Atlanta, GA, $40,845.66, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Webb, Margie, M., Winston, GA, $10,409.72, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1983.
Weisheit, Lyn, D., Roswell, GA, $93,434.76, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Williams, D'oyen, A., Stone Mountain, GA, $101,090.17, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Williams, Samuel, Atlanta, GA, $97,788.94, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Wooling Sr., Leonard, C., Marietta, GA, $121,117.47, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Wuttke, Albert, M., Clayton, GA, $21,475.15, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982.
Yarian, Eldon, L., Atlanta, GA, $12,075.29, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Zakrzewski, David, R., Marietta, GA, $27,996.96, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1991.
Zonder, Stuart, R., Acworth, GA, $71,736.02, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1986.

Clinical Psychology

Daniels, Gregory, C., Atlanta, GA, $53,234.22, GEORGIA STATE UNIV, Atlanta, GA, Clinical Psychology, JUN, 1987.
Lysle, Scott, A., Marietta, GA, $17,998.77, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, AUG, 1989.

Dentistry

Beckford, Yvonne, E., Stone Mountain, GA, $41,876.91, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.
Brown, Geoffrey, G., Decatur, GA, $8,516.01, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Callins, Rheuben, E., Savannah, GA, $43,415.26, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1982.
Carter IV, James, E., Evans, GA, $9,167.89, MEDICAL COLLEGE OF GEORGIA, Augusta, GA, Dentistry, JUN, 1987.
Comer, Barry, L., Stone Mountain, GA, $94,932.63, EMORY UNIVERSITY, Atlanta, GA, Dentistry, MAY, 1984.
Comer, Julia, R., Stone Mountain, GA, $123,491.10, EMORY UNIVERSITY, Atlanta, GA, Dentistry, MAY, 1986.
Davis, Georgia, A., Stone Mountain, GA, $55,268.04, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Fortson, Henry, D., Thomasville, GA, $178,158.17, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.

Hall, John, E., Atlanta, GA, $70,184.57, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1982.
Hammock, Mark, A., Decatur, GA, $36,910.72, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1986.
Holiday, Harry, Reidsville, GA, $81,448.80, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Jackson, Lester, Savannah, GA, $51,560.05, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Labordeaux, Herbert, W., Stone Mountain, GA, $2,194.56, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, MAY, 1990.
Lester, Joe, N., Lithonia, GA, $17,465.79, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1986.
Little, Deider, Tanne, Atlanta, GA, $184,899.37, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.
Mosely, Nicholas, A., Stone Mountain, GA, $114,068.31, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Reznik, David, A., Atlanta, GA, $18,937.50, EMORY UNIVERSITY, Atlanta, GA, Dentistry, AUG, 1984.
Schaefer, Mary, L., Villa Rica, GA, $34,868.53, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Shepheard, Cedric, E., Moultrie, GA, $20,875.27, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Smithlee, Helen, Macon, GA, $16,927.88, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Summers, Phermela, E., Stone Mountain, GA, $26,096.95, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1985.
Titus, Marshall, H., Atlanta, GA, $68,714.64, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Wilcox, Ronald, C., Peachtree City, GA, $21,072.12, EMORY UNIVERSITY, Atlanta, GA, Dentistry, JUL, 1984.
Williams, Charlotte, T., Savannah, GA, $91,290.89, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1984.
Williams III, James, B., Savannah, GA, $57,427.39, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1984.

Health Administration

Bobo, Anthony, D., Decatur, GA, $96,256.76, GEORGIA STATE UNIV, Atlanta, GA, Health Administration, DEC, 1986.
Jones, Kea, P., College Park, GA, $838.97, WASHINGTON SCHOOL OF MEDICINE, St. Louis, MO, Health Administration, JUN, 1986.

Optometry

Kim, Sung, K., Marietta, GA, $49,030.58, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1990.

Osteopathy

Brown, Kevin, T., Trenton, GA, $161,338.90, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1987.
Celestin, Alexand, Savannah, GA, $117,327.22, NEW YORK INST TECH, Old Westbury, NY, Osteopathy, JUN, 1987.
Woods, Billy, J., Cordele, GA, $104,988.41, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, FEB, 1984.

Pharmacy

Adeleye, Tokes, Stone Mountain, GA, $62,308.20, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1988.
Arnold, Gail, D., Decatur, GA, $43,766.78, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, SEP, 1984.
Clancy, Kimberly, A., Marietta, GA, $1,287.13, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1987.
Edeh, Onyemaechi, A., Atlanta, GA, $50,823.37, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, AUG, 1984.
Haileselassie, Hapte, Atlanta, GA, $37,717.85, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1987.
Hall, Carolyn, R., Doraville, GA, $14,523.58, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1989.
Higdon Jr., David, K., Marietta, GA, $30,916.16, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1989.
Jackson, Lenell, R., Stone Mountain, GA, $23,425.82, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, AUG, 1987.
Lowe, Stephanie, M., Stone Mountain, GA, $25,422.93, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, NOV, 1986.
Mauser, Joann, Roswell, GA, $20,999.01, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1982.
Okosun, Edobor, M., Riverdale, GA, $58,068.88, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, AUG, 1985.
Osakue, Stephen, O., Atlanta, GA, $10,641.61, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1986.
Perry, Audrey, J., East Point, GA, $9,734.89, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1988.
Taylor, Gwendolyn, Y., Stone Mountain, GA, $15,059.18, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, DEC, 1990.
Van Brookhoven, Gloria, Atlanta, GA, $73,964.45, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, AUG, 1987.
Wiggins III, William, H., Marietta, GA, $17,196.95, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, AUG, 1985.
Wingate, Ronald, A., Atlanta, GA, $5,157.54, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1989.

Podiatry

Baxendale, Robert, C., Savannah, GA, $28,357.20, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1982.
Fabian, Donna, C., Atlanta, GA, $34,093.33, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, AUG, 1987.
Hall, Frederick, J., Stone Mountain, GA, $116,275.38, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1988.
Orji, John, E., Marietta, GA, $58,787.45, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, SEP, 1986.
Stellwagen, J., David, Clayton, GA, $33,133.43, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUL, 1988.
Taylor, Elton, Stone Mountain, GA, $60,696.62, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUL, 1987.

Public Health

Cox, Robert, M., Marietta, GA, $96,386.41, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, SEP, 1981.
Hanson, Maria, E., Atlanta, GA, $28,710.74, TULANE UNIVERSITY, New Orleans, LA, Public Health, AUG, 1985.
Nnokam, Kennedy, L, Chamblee, GA, $14,821.71, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, AUG, 1987.

Veterinary Medicine

Bland, Pierre, B., Atlanta, GA, $7,774.14, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1985.
Brown, Mazola, H., Atlanta, GA, $31,935.02, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAR, 1984.
Friedlander, Michael, A., Dunwoody, GA, $22,058.75, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1988.
Long, Melanie, D., Norcross, GA, $5,628.33, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1988.
Threatt, Velda, L., Roswell, GA, $6,059.66, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1990.

Hawaii

Allopathic Medicine

Lane, Carmen, Heidi, Honolulu, HI, $47,692.87, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1987.
McKinney, Laurence, T., Hilo, HI, $31,868.25, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1984.
Swanson, Brian, G., Kailua Kona, HI, $5,439.68, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, APR, 1985.
Zasi, Alan, Kihei, HI, $68,695.91, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, MAY, 1987.

Chiropractic

Bennett, Hugh, M., Honolulu, HI, $5,940.75, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1989.
Ferguson, Gary, M., Honolulu, HI, $52,530.97, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1988.
Johanning, Jeanine, M., Paia, HI, $26,769.76, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
McSherry, Dale, J., Kamuela, HI, $45,038.50, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1990.
O'Connor, Thomas, J., Kihei, HI, $6,784.57, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1984.
Rider, Ward, E., Aiea, HI, $7,909.48, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1983.

Clinical Psychology

Inesi, Gino, E., Hilo, HI, $11,682.54, PACIFIC GRAD SCHOOL OF PSYCHOLOGY, Palo Alto, CA, Clinical Psychology, APR, 1990.

Dentistry

Knickelbine, Mark, T., Honolulu, HI, $28,895.21, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1982.

Osteopathy

Reppy, Robert, R., Kailua, HI, $172,761.75, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1986.

Podiatry

Collins, Ronald, W., Hilo, HI, $151,108.34, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1988.

Idaho

Chiropractic

Buckles, Bobby, R., Boise, ID, $47,236.41, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1987.
Eitemiller, Todd, O., Hayden Lake, ID, $54,876.21, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, SEP, 1988.
Etminanrad, Monica, Coeur D'Alene, ID, $13,124.65, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Gott, George, M., Boise, ID, $65,709.72, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, NOV, 1984.
Harmon, Jon, M., Boise, ID, $35,946.29, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1989.
Herem, Larry, A., Burley, ID, $58,743.33, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.

Dentistry

Tranmer, Debbie, Pocatello, ID, $64,809.38, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1989.
Wigg, Kenneth, Y., Pocatello, ID, $1,838.34, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1989.

Illinois

Allopathic Medicine

Ampadu, Charles, O'Fallon, IL, $39,759.30, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1988.
Ashley, William, F., Chicago, IL, $29,059.49, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, MAR, 1983.
Battaglia, Joseph, Worth, IL, $16,476.61, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUL, 1987.
Bearden, Frank, L., Chicago, IL, $33,860.41, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, DEC, 1980.
Beckett, James, E., Des Plaines, IL, $51,805.95, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUL, 1984.
Benson, Laurel, J., Forest Park, IL, $55,956.39, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, JUN, 1988.
Boone, Robert, Champaign, IL, $4,224.20, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUL, 1983.
Brown, Lisa, L., Rockford, IL, $6,460.56, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1991.
Bukingolts, Sol, N., Niles, IL, $31,663.25, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUL, 1987.
Burton, Ann, Y., Oak Park, IL, $43,044.62, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1986.
Busse, David, J., Oak Lawn, IL, $135,399.17, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAR, 1986.
Cherry, Nanci, D., Chicago, IL, $87,460.89, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, DEC, 1987.
Cooper, April, D., Hazel Crest, IL, $62,305.66, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, AUG, 1987.
Courtney, Tyla, Bellwood, IL, $15,340.94, SOUTHERN ILLINOIS UNIV, Carbondale, IL, Allopathic Medicine, JUN, 1984.
Davis, Helen, N., Chicago, IL, $122,422.39, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Falater, Laura, M., Chicago, IL, $62,162.86, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1987.
Farris Jr., William, R., Chicago, IL, $118,059.80, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
Fields, Jessie, A., Chicago, IL, $22,122.92, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUL, 1982.
Ford, Natalie, H., Chicago, IL, $9,126.31, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1987.
Forde, Danon, E., Hinsdale, IL, $86,172.06, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUL, 1986.
Friedman, Rochelle, Chicago, IL, $49,794.97, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUL, 1987.
Ganiyu, Kehinde, M., Orland Park, IL, $47,219.30, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1986.
Gebo, Paul, D., Arlington Heights, IL, $14,713.12, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, SEP, 1988.
Gee, Will, K., Chicago, IL, $12,681.33, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1983.
Glenn, Byron, C., Carbondale, IL, $23,328.38, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUL, 1987.
Griffin, Carol, L., Savoy, IL, $5,766.85, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, MAY, 1991.
Harvey Jr., Waldo, E., Chicago, IL, $34,926.62, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1987.
Hernandez, Jose, D., Chicago, IL, $39,013.51, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1988.
Jarrett, William, R., Chicago, IL, $74,612.36, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUL, 1986.
Jones, John, W., Chicago, IL, $31,098.24, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1980.
Jordan, Donald, L., Rockford, IL, $35,675.94, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.
Kirven, Lisa, D., Sycamore, IL, $14,832.03, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1986.
Kizaire, Danielle, C., Chicago, IL, $12,117.15, LOYOLA UNIV—STRITCH SCH OF MED, Maywood, IL, Allopathic Medicine, MAY, 1985.
Lambrecht, Andrew, J., Chicago, IL, $12,503.74, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, MAY, 1988.
Lessin, Barry, D., Chicago, IL, $57,369.00, UNIV OF WISCONSIN, Madison, WI, Allopathic Medicine, JUN, 1989.
Mamby, Audley, R., Chicago, IL, $145,625.76, UNIV OF WISCONSIN, Madison, WI, Allopathic Medicine, JUN, 1987.
Martin, Kurt, R., Springfield, IL, $3,594.60, SOUTHERN ILLINOIS UNIV, Carbondale, IL, Allopathic Medicine, MAY, 1991.
Miller, David, R., Berkeley, IL, $10,551.67, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUL, 1987.
Mitchell, Kevin, A., Chicago, IL, $23,828.17, SOUTHERN ILLINOIS UNIV, Carbondale, IL, Allopathic Medicine, FEB, 1987.
Noone, Michael, B., Oak Park, IL, $5,721.51, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.
Nowakowski, Joseph, A., Palatine, IL, $7,472.34, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1988.
Page, Dexter, B., Chicago, IL, $22,933.00, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, JUL, 1989.
Pate, Michael, D., Des Plaines, IL, $34,426.62, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Allopathic Medicine, JUL, 1987.
Patterson, Sharon, B., Chicago, IL, $36,728.01, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1983.
Phillips, Richard, O., Chicago, IL, $137,262.32, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, SEP, 1989.
Popoola, Freddie, M., Chicago, IL, $152,542.72, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, DEC, 1983.
Reese, Elaine, Dixmoor, IL, $31,781.13, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1984.
Rivera, Pedro, A., Carbondale, IL, $72,375.12, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, MAY, 1988.
Robbins, Lamont, C., Chicago, IL, $42,464.02, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JUN, 1988.
Sajna, Lynne, Chicago, IL, $72,305.65, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, SEP, 1986.
Salomon, Alix, P., Chicago, IL, $43,736.55, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1988.
Singleton, Edward, L., Olympia Fields, IL, $2,050.33, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1984.
Somerville, Philip, Hoffman Estates, IL, $18,433.18, UNIV OF ILLINOIS-CHICAGO,

Chicago, IL, Allopathic Medicine, JUN, 1986.
Sterling, Jeffrey, E., Chicago, IL, $4,188.48, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1989.
Superson-Malachinski, Bolingbrook, IL, $14,222.29, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Allopathic Medicine, JUN, 1980.
Thompson, Kim, C., Calumet Park, IL, $67,357.21, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1985.
Thompson, Anthony, W., Chicago, IL, $57,638.06, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, JUN, 1987.
Troupe, Darrell, R., Chicago, IL, $122,767.74, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1988.
Troxler, Harold, B., Chicago, IL, $123,100.40, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1984.
Tucker, Cortez, A., Chicago, IL, $140,009.07, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1987.
Tyson, C., Maywood, IL, $38,694.50, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1986.
Vinkemulder, Karen, A., Chicago, IL, $22,445.18, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, JUN, 1986.
Weinsweig, David, L., Chicago, IL, $67,698.66, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1990.
Williams, Paula, R., Chicago, IL, $3,388.46, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1987.
Williams, Johnnie, Chicago, IL, $134,156.47, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1985.
Wuertz, Christopher, Western Springs, IL, $13,480.51, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1984.

Chiropractic

Abbett, Michael, E., Granite City, IL, $50,104.13, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985.
Barton, Diane, M., Olympia Fields, IL, $32,640.11, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Brandenburg, John, A., Moline, IL, $7,602.82, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Caldarella, Cynthia, Des Plaines, IL, $33,295.08, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, DEC, 1987.
Cienkus, Regina, M., Berwyn, IL, $13,354.65, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, JUL, 1986.
Conforti, James, W., Rock Island, IL, $13,617.40, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Cooper, Scott, A., Maryville, IL, $38,881.38, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1985.
Corn, Byron, K., Moline, IL, $32,665.17, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Counihan, Montgomery, Gayle, Naperville, IL, $14,804.13, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Cully, Milston, A., Cary, IL, $44,967.98, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Dalessio, Carla, E., Chicago, IL, $11,070.99, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1984.
Darnell, Kevin, R., Mount Vernon, IL, $33,005.13, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1987.
Davis, Keith, A., Chicago, IL, $52,482.78, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1987.
Dehn, Donald, C., Rockford, IL, $26,030.30, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, JUN, 1983.
Denetry, Donal, J., Darien, IL, $18,520.68, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1982.
Fick, Edward, W., Flanagan, IL, $18,341.85, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1983.
Floriez, Anita, D., Moline, IL, $13,534.46, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Frost-Ruli, Julie, M., Washburn, IL, $65,847.28, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1988.
Gauthier III, George, W., Wheaton, IL, $17,680.50, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1989.
Grella, Camille, Naperville, IL, $25,212.78, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, SEP, 1987.
Gross, Katherine, M., Calumet City, IL, $67,385.25, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Holmes, Kevin, J., Marion, IL, $40,270.47, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.
Hornback, Garry, E., Edwardsville, IL, $51,200.55, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1985.
Johnson, John, F., Rock Island, IL, $7,934.64, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1986.
Jordan, James, R., Olympia Fields, IL, $51,889.19, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1983.
Keyesgross, Charles, Lynwood, IL, $32,352.40, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1982.
King, Doreen, I., Carol Stream, IL, $16,457.81, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1987.
Kline, David, C., Bradley, IL, $58,962.66, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1990.
Krupp, Mark, D., Columbia, IL, $1,701.46, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1991.
Lee, Jeffrey, K., Chicago, IL, $36,708.68, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1988.
Lipset, Lori, D., Galesburg, IL, $21,837.05, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1983.
Martin, Donald, L., Chicago, IL, $7,930.16, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1983.
Mash, Harold, J., Chicago, IL, $123,763.86, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1987.
Moffett, Douglas, A., Homewood, IL, $11,274.61, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, DEC, 1988.
Morris, Clifford, H., Chicago, IL, $42,131.92, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, DEC, 1988.
Mullinax, Jeffrey, S., Elgin, IL, $8,525.75, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1982.
Naddaf, Jamileh, Newton, IL, $91,800.23, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1988.
Oslay, Russell, C., Ashton, IL, $12,977.50, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1987.
Patterson, Farris, Maywood, IL, $24,126.78, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1984.
Pettit, David, C., Moline, IL, $60,320.85, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1990.
Plezbert, Julie, A., McHenry, IL, $40,143.50, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1988.
Powell, Randy, Murphysboro, IL, $47,255.81, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1987
Refkin, Joseph, P., Wheaton, IL, $14,915.55, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, JUL, 1986.
Reich, Bradley, J., South Beloit, IL, $3,258.43, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1987.
Richart, Harold, A., Peoria, IL, $31,075.03, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Rieck-Rosecrans, Cathy, Wheaton, IL, $25,656.97, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1985.
Sandburg, Donald, D., Barrington, IL, $77,412.35, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1987.
Sayre, Bruce, A., Chicago, IL, $18,653.45, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Short, Ronald, C., Wayne City, IL, $25,270.61, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Slavin, Mark, B., Schaumburg, IL, $13,609.69, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, SEP, 1986.
Smith, Gary, D., Libertyville, IL, $88,333.60, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985
Smith, Monica, M., Belleville, IL, $64,982.31, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1989.
Smith, Myra, B., Chicago, IL, $61,906.39, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1985.
Stratton, Scott, M., Frankfort, IL, $35,449.36, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1987.
Stuart Jr., William, E., Evanston, IL, $40,784.87, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1987.

Sutanto, Sugeng, Oak Lawn, IL, $94,168.26, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1989.
Thurston, Gregory, D., Libertyville, IL, $78,468.43, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1985.
Tjaden, John, B., Metamora, IL, $13,610.20, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Townsend, Thomas, E., Downers Grove, IL, $27,313.75, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1987.
Van Dehey, David, W., Kankakee, IL, $3,476.56, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1984.
Varnas, Paul, G., Elmhurst, IL, $24,523.76, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, SEP, 1983.
Walters, Brian, D., East Moline, IL, $62,435.22, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1990.
Wheeler, Cynthia, L., Belleville, IL, $61,366.31, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1988.
Winborn, David, M., Chicago, IL, $27,320.47, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1985.
Wright, Donald, L., Normal, IL, $52,894.04, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.

Clinical Psychology

Angevine, Jeffery, L., Chicago, IL, $3,255.37, ILLINOIS INST OF TECHNOLOGY, Chicago, IL, Clinical Psychology, JUL, 1987.
Bass, Michael, E., Chicago, IL, $30,437.83, ILLINOIS SCH PROFESSIONAL PSYCHOLOG, Chicago, IL, Clinical Psychology, SEP, 1990.
Brayton, Sue, E., Chicago, IL, $9,015.90, ILLINOIS SCH PROFESSIONAL PSYCHOLOG, Chicago, IL, Clinical Psychology, JUN, 1990.
Casserly, Richard, J., Arlington Heights, IL, $35,657.73, ILLINOIS SCH PROFESSIONAL PSYCHOLOG, Chicago, IL, Clinical Psychology, NOV, 1986.
Ozols, Valdis, E., Lisle, IL, $31,477.32, UNIV OF TENNESSEE, Knoxville, TN, Clinical Psychology, FEB, 1986.

Dentistry

Akande, Deborah, A., Chicago, IL, $123,061.05, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUL, 1982.
Alexander, Jada, L., Chicago, IL, $69,667.50, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, SEP, 1984.
Azarpira, Mohammad, H., Chicago, IL, $112,531.94, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, JUL, 1987.
Baldare, David, R., Chicago, IL, $61,061.99, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1988.
Bormes, Peter, D., Chicago, IL, $11,421.10, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1987.
Burns, Peggy, L., Chicago, IL, $81,143.00, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Chiombos, Alexander, C., Mount Prospect, IL, $18,316.23, NORTHWESTERN UNIV, Chicago, IL, Dentistry, JUN, 1988.
Covek, Robert, J., Grayslake, IL, $9,686.06, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1986.
Cox, Kerwin, C., Chicago, IL, $109,870.65, NORTHWESTERN UNIV, Chicago, IL, Dentistry, JUN, 1989.
Dehn, Roger, S., Chicago, IL, $9,849.00, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, DEC, 1984.
Eubanksgreen, Paula, Chicago, IL, $21,342.82, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1982.
Exum Jr., Clyde, Chicago, IL, $2,766.68, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Foote, Frederick, F., Chicago, IL, $197,880.59, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUL, 1983.
Fuller, Marilyn, C., Chicago, IL, $23,764.51, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Gay, Robin, R., Chicago, IL, $13,362.96, SOUTHERN ILLINOIS UNIV, Edwardsville, IL, Dentistry, JUN, 1985.
Gilliam, Ira, H., Chicago, IL, $47,583.07, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Gillin, Walter, A., East Peoria, IL, $53,458.10, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1981.
Gladden, Benjamin, Wheaton, IL, $16,252.27, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, AUG, 1988.
Hansen, Kathy, M., Hanover Park, IL, $9,577.01, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1984.
Herron, Devera, J., Chicago, IL, $70,276.19, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Hollingsworth, Moses, Waukegan, IL, $151,060.55, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1984.
Howlett, Brian, K., Chicago, IL, $3,803.91, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1987.
Jones, Perkins, S., Springfield, IL, $80,819.51, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Kraut, Donald, A., Chicago, IL, $29,228.62, NORTHWESTERN UNIV, Chicago, IL, Dentistry, JUN, 1985.
Liston, Lawrence, E., Bloomington, IL, $22,686.81, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1984.
McClellan, Manulita, G., Chicago, IL, $155,081.48, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUL, 1987.
Menacher Jr., Max, A., North Chicago, IL, $5,713.04, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUN, 1988.
Mendez, Gilbert, X., Arlington Heights, IL, $12,798.95, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUL, 1982.
Oppenheimer, John, H., Chicago, IL, $144,430.56, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, AUG, 1988.
Pendleton, Darryl, Oak Park, IL, $8,580.50, SOUTHERN ILLINOIS UNIV, Edwardsville, IL, Dentistry, MAR, 1987.
Pumilia, Pacita, M., Rockford, IL, $34,274.25, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1989.
Trakakis, George, Niles, IL, $938.95, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1982.
Tucker, Donald, B., South Holland, IL, $69,088.50, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Vitello, Thomas, B., Park Ridge, IL, $53,583.19, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1984.
Walton, David, E., Chicago, IL, $9,245.56, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, AUG, 1986.
Wells, Christopher, C., Chicago, IL, $4,961.36, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUL, 1983.
White, Bernadine, R., Chicago, IL, $4,874.17, SOUTHERN ILLINOIS UNIV, Edwardsville, IL, Dentistry, DEC, 1987.
Yuen, Ka, W., Chicago, IL, $6,004.34, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUN, 1990.

Health Administration

Denkers, David, N., Galesburg, IL, $10,905.27, WASHINGTON SCHOOL OF MEDICINE, St. Louis, MO, Health Administration, AUG, 1985.
Rashid, Sadika, Chicago, IL, $3,001.51, XAVIER UNIV, Cincinnati, OH, Health Administration, MAY, 1988.

Optometry

Bharucha, Neyana, D., Peoria, IL, $29,366.66, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, NOV, 1989.
Strasser, Robert, T., Wilmette, IL, $12,918.89, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUL, 1987.

Osteopathy

Agre, Norman, E., Peoria, IL, $92,037.82, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1985.
Frohlich, Douglas, J., Chicago, IL, $40,630.85, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, JUN, 1988.
Patel, Harikevshna, S., Palatine, IL, $35,033.93, UNIV OF OST MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1989.
Posey, Willie, L., Hinsdale, IL, $163,004.16, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, JUN, 1988.
Voirin, Terry, G., Aurora, IL, $5,309.45, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, JUN, 1991.

Pharmacy

Depaolo, Marijo, Chicago, IL, $8,837.28, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Pharmacy, SEP, 1982.
Grimmette, Ronald, D., Chicago, IL, $7,839.32, XAVIER UNIV OF LOUISIANA, New Orleans, LA, Pharmacy, DEC, 1987.
Hanson Jr., William, V., Belleville, IL, $9,733.98, ST LOUIS CLG OF PHARMACY, St. Louis, MO, Pharmacy, MAY, 1988.
Ohaeri, Christiana, C., Chicago, IL, $3,613.37, DRAKE UNIVERSITY, Des Moines, IA, Pharmacy, MAY, 1989.
Powell, Alexander, Chicago, IL, $48,485.72, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Pharmacy, JUL, 1985.
Van Dyke, David, C., Chicago, IL, $2,012.98, UNIV OF IOWA, Iowa City, IA, Pharmacy, MAY, 1989.

Wright, Jonathan, W., Chicago, IL, $9,853.15, DRAKE UNIVERSITY, Des Moines, IA, Pharmacy, MAY, 1986.

Podiatry

Amudoaghan, Walnette, C., Chicago, IL, $144,202.90, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Bailey, Katherine, Rockford, IL, $29,506.03, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.
Beck, Welby, S., Chicago, IL, $154,165.86, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1986.
Collins, Henry, L., Chicago, IL, $92,998.79, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUL, 1987.
Cox, Michele, N., Chicago, IL, $35,057.36, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1988.
Davis, Anthony, D., Chicago, IL, $79,745.29, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1989.
Diekevers, Douglas, A., Chicago, IL, $76,922.71, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1990.
Flanagan Jr., John, T., Chicago, IL, $81,619.95, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1987.
Foster, Terri, L., Matteson, IL, $141,616.71, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1988.
Francis, Vincent, J., Chicago, IL, $51,238.67, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1988.
Gaskins, Karan, M., Calumet City, IL, $86,283.61, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Glover, Rene, F., Chicago, IL, $96,497.09, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1983.
Hampton, Rodney, G., North Chicago, IL, $85,854.06, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1985.
Harcus, James, M., Chicago, IL, $33,876.62, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1981.
Hardmon, James, E., Country Club Hills, IL, $43,057.00, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.
Hochman, Daryl, Chicago, IL, $2,449.93, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1986.
Howard, Donald, E., Bellwood, IL, $33,222.65, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1984.
Jacobson, Ronald, S., Spring Grove, IL, $10,889.49, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1983.
Krevitz, Curt, S., Chicago, IL, $30,606.35, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1982.
Lawson, Margaret, B., Chicago, IL, $57,863.73, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1981.
Lee, Michael, S., Wheeling, IL, $3,851.53, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, NOV, 1986.
Lipman, Frederick, S., Lake Bluff, IL, $19.21, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1988.
McMillion, Doddjerry, J., Chicago, IL, $40,002.10, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, MAR, 1990.
Mikos, Ronald, A., Chicago, IL, $15,999.55, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.
Miller, Ellis, A., Winthrop Harbor, IL, $5,438.81, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, DEC, 1985.
Mingo, Robert, L., Chicago, IL, $10,208.33, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Murphy, Stephen, J., Chicago, IL, $117,042.08, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.
O'Leary, James, J., La Grange, IL, $15,736.88, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1985.
Potach, Paul, Chicago, IL, $111,367.84, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.
Salem, Atiyeh, A., Morton Grove, IL, $65,387.60, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1981.
Whitfield, Carolyn, Burbank, IL, $101,162.13, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1986.
Williams, Lance, Chicago, IL, $22,567.88, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1988.

Public Health

Paveza, Gregory, J., Marengo, IL, $139,670.49, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Public Health, JUN, 1986.

Veterinary Medicine

Kahn, Mark, D., Richton Park, IL, $6,467.71, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, JUL, 1987.
Storslee, Barbara, A., Orland Park, IL, $9,735.57, IOWA STATE UNIV OF SCI & TECH, Ames, IA, Veterinary Medicine, MAY, 1989.

Indiana

Allopathic Medicine

Bell, Charles, R., Munster, IN, $18,871.85, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1985.
Dougherty, Thomas, M., Indianapolis, IN, $121,361.34, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1987.
Jimenez, Aurelio, P., Kokomo, IN, $50,279.65, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, APR, 1987.
Lewis, George, M., Indianapolis, IN, $69,132.50, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1985.
Lindsey, Walter, B., Gary, IN, $3,023.37, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, JUN, 1981.
Mansur, Sharif, S., Hammond, IN, $11,777.79, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1987.
Rodman, Karen, D., Indianapolis, IN, $14,073.46, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1985.
Stephenson, David, W., Newburgh, IN, $45,853.77, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1988.
Williams, David, L., Indianapolis, IN, $156,790.97, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1984.

Chiropractic

Allen, Stephen, L., Loogootee, IN, $4,642.27, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1982.
Allen, Mark, D., Clarksville, IN, $83,166.49, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1986.
Bright, Douglas, D., Bloomington, IN, $38,475.18, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1985.
Cargioli, Ronald, P., Noblesville, IN, $24,134.66, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Greeson, Leisa, Annette, Noblesville, IN, $37,595.61, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1983.
Gress, Raymond, C., La Porte, IN, $11,826.92, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Johnson, Joseph, R., Indianapolis, IN, $105,306.63, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, MAY, 1994.
Lazorchak, Michael, T., Indianapolis, IN, $16,068.75, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1983.
Squire, Jean, C., Indianapolis, IN, $73,367.86, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1989.
Valvo, Carl, L., Kouts, IN, $89,585.71, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, AUG, 1985.
Valvo, Nila, L., Kouts, IN, $5,002.31, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, DEC, 1982.
Van Denburgh, Peggy, S., Indianapolis, IN, $67,087.87, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, (No Separation Date).
White, Robert, E., Columbia, IN, $117,140.66, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Wykoff, Richard, A., Lawrenceburg, IN, $111,749.14, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.

Dentistry

Arch, Joseph, A., Indianapolis, IN, $5,566.02, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Dentistry, MAY, 1985.
Arnett, Shannon, L., Kendallville, IN, $15,765.88, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Dentistry, MAY, 1989.

Baker, Michael, T., Indianapolis, IN, $10,853.86, UNIV OF MISSOURI–KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1991.
Burnett, Kevin, Michael, South Bend, IN, $49,259.16, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1983.
Bybee, William, D., Anderson, IN, $6,145.52, UNIV OF TEXAS–HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1988.
Comer, Michael, J., Gary, IN, $31,416.00, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1989.
Kirk, James, E., Portage, IN, $4,311.27, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, JUN, 1987.
Price, David, G., Valparaiso, IN, $93,093.13, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, JUN, 1990.
Villarreal, Edward, O., Terre Haute, IN, $62,755.58, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Wisler, Craig, A., Indianapolis, IN, $4,654.90, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Dentistry, JUN, 1984.

Osteopathy

French, Talmas, C., Cedar Lake, IN, $195,819.21, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, JUN, 1986.
Rogers, James, J., Mishawaka, IN, $8,869.24, UNIV OF MED & DENT OF NJ—NJ OST MED, Newark, NJ, Osteopathy, MAY, 1988.

Podiatry

Beatty, Deborah, L., Indianapolis, IN, $22,694.84, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1993.
Conrad, Timothy, J., Indianapolis, IN, $184,648.44, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1987.
Leonas, Theodore, S., Valparaiso, IN, $13,315.94, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.
Marlatt, Stephanie, J., Michigan City, IN, $71,279.23, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1987.
Rogers, Laurence, C., Rochester, IN, $25,291.50, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.
Tyler, Norman, E., Indianapolis, IN, $31,889.54, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1979.
Wojnaroski, Joseph, P., Hobart, IN, $9,861.62, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.

Public Health

Parry, Linda, E., Mishawaka, IN, $21,013.98, TULANE UNIVERSITY, New Orleans, LA, Public Health, JAN, 1985.

Iowa

Allopathic Medicine

Beck, John, A., Waterloo, IA, $4,980.14, UNIV OF NEBRASKA MED CENTER, Omaha, NE, Allopathic Medicine, JUL, 1989.
Hawkins, Irene, S., Indianola, IA, $4,442.21, CORNELL UNIV MED COLLEGE, New York, NY, Allopathic Medicine, MAY, 1985.
Lansk, Philip, S., Iowa City, IA, $38,598.25, UNIV OF PENNSYLVANIA, Philadelphia, PA, Allopathic Medicine, MAY, 1982.
Meister, Gregory, C., Des Moines, IA, $4,872.76, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1989.
Pierson, Ronald, K., Coralville, IA, $31,558.73, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Allopathic Medicine, MAY, 1986.
Taylor, Harold, R., Waterloo, IA, $46,938.14, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1985.

Chiropractic

Atwell, Sandra, L., Davenport, IA, $110,461.62, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1989.
Bassett, Jodi, M., Stuart, IA, $50,761.15, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1988.
Beeck, Allen, A., Akron, IA, $28,957.99, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1989.
Bockstedt-Middleton, Louisa, M., Davenport, IA, $19,176.45, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Brown, Kerry, S., Davenport, IA, $47,604.99, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1989.
Butler, Charles, E., Davenport, IA, $80,135.01, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.
Clawson, Patricia, A., Des Moines, IA, $1,103.53, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1984.
Cornwell, Gerald, E., Atkins, IA, $87,221.51, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1987.
Countryman, James, D., Iowa City, IA, $18,812.40, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Danison, Robert, Davenport, IA, $34,522.16, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Duncan, Jeffrey, C., Manchester, IA, $49,758.54, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1989.
Falzone, Susan, M., Davenport, IA, $25,096.35, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1988.
Gay, Mark, A., Des Moines, IA, $54,892.54, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1989.
Hadenfeldt, Rebecca, A., Cedar Rapids, IA, $29,596.46, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Heer, Joel, M., Dubuque, IA, $10,491.16, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1983.
Heese, Kit, L., Des Moines, IA, $18,021.28, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.
Henry, Scott, E., Davenport, IA, $23,972.30, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Herrin, Dean, L., Davenport, IA, $39,871.15, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1989.
Heyl, Susan, J., Le Claire, IA, $10,574.12, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Hicks, Timothy, G., Davenport, IA, $25,008.31, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1989.
Keller, Kenneth, P., Altoona, IA, $51,160.24, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Laing, Jean, D., Davenport, IA, $36,127.85, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Lamb, Michael, W., Bettendorf, IA, $7,003.50, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1991.
Lehenbauer, David, B., Bettendorf, IA, $22,785.95, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Martoccia Jr., William, H., Davenport, IA, $2,940.88, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1990.
McDonald, James, C., Davenport, IA, $2,000.21, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, OCT, 1982.
McNeilder, Diane, J., Davenport, IA, $4,425.09, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1989.
Moore, Douglas, B., Davenport, IA, $28,310.27, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1986.
Paper, Nicole, Davenport, IA, $16,198.70, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1986.
Pepe-Kerr, Celeste, Des Moines, IA, $47,815.15, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1983.
Raguse, Annete, L., Davenport, IA, $18,452.60, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1990.
Schaeuble, Gary, S., Sioux City, IA, $13,084.24, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1987.
Schumacher, Tara, L., Davenport, IA, $29,680.63, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.
Scott, Kenneth, R., Bettendorf, IA, $7,002.56, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1989.
Sierra, Caroline, B., Iowa City, IA, $42,053.56, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Tatum, Robert, C., Davenport, IA, $840.30, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1982.
Vyverberg, Kim, M., Dubuque, IA, $11,279.21, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1988.
Wagner, John, P., Des Moines, IA, $39,188.52, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1988.

Woiwood, David, V., Sheldon, IA, $72,495.37, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Yoos, Deborah, A., Davenport, IA, $33,878.28, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1986.

Dentistry

Allender, Terrance, C., Bettendorf, IA, $160,678.19, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1985.
Dye, Ralph, M., Des Moines, IA, $102,835.02, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, JUN, 1985.
Lewis, Wayne, A., Sioux City, IA, $16,918.24, UNIV OF IOWA, Iowa City, IA, Dentistry, MAY, 1987.
Modarressi, Lisa, Coralville, IA, $14,155.62, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, FEB, 1984.
Schobert, Scott, A., Des Moines, IA, $96,953.79, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, AUG, 1989.
Thomas, Phelan, R., Des Moines, IA, $13,133.95, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1985.

Optometry

Keeler-Dwyer, Cynthia, L., Albion, IA, $30,051.57, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1989.

Osteopathy

Bissing, Mark, S., Coralville, IA, $43,203.59, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1989.
Frier, Carole, A., Des Moines, IA, $129,338.57, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUL, 1986.
Jacobson, Steve, C., West Des Moines, IA, $85,649.46, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1989.
Paul, Jean, M., West Des Moines, IA, $159,238.89, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1988.
Sutherland, Scott, T., Des Moines, IA, $54,620.10, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1985.

Pharmacy

Benson, Thersa, L., Des Moines, IA, $9,092.72, DRAKE UNIVERSITY, Des Moines, IA, Pharmacy, MAY, 1989.
Griffin, Terrill, J., Des Moines, IA, $15,170.80, DRAKE UNIVERSITY, Des Moines, IA, Pharmacy, AUG, 1986.
Moss, Edward, G., Des Moines, IA, $62,459.74, DRAKE UNIVERSITY, Des Moines, IA, Pharmacy, AUG, 1989.

Podiatry

Crank, Donnis, F., Des Moines, IA, $47,397.24, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.
Gardner, Sandra, M., Des Moines, IA, $147,226.40, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, SEP, 1986.
Goldenberg, Rebecca, A., Des Moines, IA, $145,259.76, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1989.
Goldenberg, Eric, M., Clive, IA, $152,862.38, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1985.
Luttrell, Derrick, A., Des Moines, IA, $54,481.36, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1989.
Pflepsen, Richard, L., Waterloo, IA, $145,349.87, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, AUG, 1988.
Pryharski, Lareen, A., Jefferson, IA, $144,900.75, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1988.

Public Health

Nnanji, Joshua, E., Clinton, IA, $37,436.21, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, JUL, 1987.

Veterinary Medicine

Maye, Duane, E., Clive, IA, $10,752.65, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.
Wilson, Arach, J., Ames, IA, $10,088.26, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, JUN, 1985.

Kansas

Allopathic Medicine

Richmond, Joseph, S., Kansas City, KS, $57,557.41, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUL, 1986.
Williams, Teri, L., Shawnee Mission, KS, $6,973.97, UNIV OF KANSAS MEDICAL CENTER, Kansas City, KS, Allopathic Medicine, JAN, 1989.
Zwiacher Jr., John, W., Wichita, KS, $28,380.72, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUN, 1985.

Chiropractic

Bond, James, R., Chanute, KS, $106,752.13, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1987.
Breese, Audrey, L., Lenexa, KS, $86,211.11, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1987.
Brohammer, Marjory, M., Lawrence, KS, $74,534.47, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1986.
Buck, Larry, A., Iola, KS, $83,277.92, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1986.
Cody, Ronald, J., Wichita, KS, $94,616.52, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1987.
Corley, Gary, E., Eskridge, KS, $47,069.22, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, (No Separation Date).
Deboer, Gregory, C., Hutchinson, KS, $27,235.52, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1986.
Dolan, Carolyn, L., Shawnee Mission, KS, $43,401.04, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1988.
Hiatt, Michael, J., Ottawa, KS, $15,925.90, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1986.
Hoss, Angela, K., Sharon Springs, KS, $20,095.64, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, DEC, 1986.
Hoyt, Ruth, A., Overland Park, KS, $37,465.69, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Ivy, Joyce, K., Goddard, KS, $39,753.97, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Jay, Doyle, W., Lebo, KS, $74,496.32, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Johnson, Robert, L., Ottawa, KS, $12,096.34, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, NOV, 1983.
Karnes, Ronald, D., Haysville, KS, $53,361.15, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1986.
Kostelac Jr., James, B., Kansas City, KS, $2,097 77, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1987.
Langston, Ronald, E., Topeka, KS, $81,065.24, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, SEP, 1986.
Linder, Craig, K., Shawnee, KS, $52,755.73, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Marshall, Kevin, S., Wichita, KS, $34,173.09, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1987.
Mathiesen, Douglas, A., Shawnee Mission, KS, $122,586.27, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1985.
McClay, Mark, A., Wichita, KS, $67,781.56, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1988.
McCoy, Michael, T., Topeka, KS, $16,259.95, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1984.
Miller, Karen, J., Hill City, KS, $84,057.04, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAR, 1987
Miller, Michael, J., Hill City, KS, $49,732.67, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1985.
Pfrimmer, Max, D., Leavenworth, KS, $34,467.28, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1983.
Schinstock, Julia, A., Kinsley, KS, $56,838.44, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, NOV, 1986.
Weatherhead, Karl, D., Concordia, KS, $35,744.50, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1986.
Wheeler, Randy, R., Wichita, KS, $94,497.95, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Wills, Lawrenie, J., Kansas City, KS, $102,045.20, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1987

Woody, Larry, L., Olathe, KS, $13,298.19, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1983.

Clinical Psychology

Moya, Eva, Topeka, KS, $26,553.48, UNIV OF DENVER, Denver, CO, Clinical Psychology, AUG, 1983.

Dentistry

Braun, Stanley, D., Baldwin City, KS, $9,545.23, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1985.
Donigan Jr., William, T., Osage City, KS, $11,286.77, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUL, 1983.
Dugger, Lisa, M., Shawnee Mission, KS, $30,631.93, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1988.
Engel, Gene, E., Leawood, KS, $48,314.55, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, JAN, 1985.
Hochstetler, Gary, L., Horton, KS, $11,333.26, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1984.
Morris, Lynda, R., Overland Park, KS, $65,222.08, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1989.

Osteopathy

Anderson III, Hampton, W., Wichita, KS, $37,096.65, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUN, 1989.
Barr Jr., John, T., Overland Park, KS, $17,174.03, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1994.

Kentucky

Allopathic Medicine

Bedford, Phillip, M., Louisville, KY, $38,475.16, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, OCT, 1984.
Brown, Henry, H., Louisville, KY, $9,615.26, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, JUL, 1987.
Burns, Mark, V., Louisville, KY, $4,441.61, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, MAY, 1988.
Dillihay, Lori, A., Louisville, KY, $11,779.39, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, MAY, 1991.
Hagan, Elizabeth, A., Louisville, KY, $13,389.70, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, MAY, 1989.
Mayfield-Stokes, Ste, Louisville, KY, $68,357.93, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1980.
Parks, Gregory, T., Covington, KY, $4,437.14, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUN, 1986.
Stokes, Cecil, Louisville, KY, $123,770.26, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
Whitlow, Jeffrey, E., Monticello, KY, $545.33, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, JUN, 1986.

Chiropractic

Buerger, David, J., Louisville, KY, $65,681.98, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1988.
Dreweck, Daniel, N., Bowling Green, KY, $26,032.98, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Duker, Rebecca, J., Louisville, KY, $61,072.00, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1987.
Ferguson, James, D., Owensboro, KY, $87,998.06, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1984.
Hollars, Rodney, D., Louisville, KY, $38,131.19, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Maskell, Gary, L., Covington, KY, $93,320.53, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Todd, Linda, K., Owensboro, KY, $49,618.16, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.

Clinical Psychology

Davis, Norman, A., Lexington, KY, $22,742.78, FLORIDA INST. OF TECHNOLOGY, Melbourne, FL, Clinical Psychology, JUL, 1988.

Dentistry

Banks, Etta, T., Hopkinsville, KY, $22,912.81, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, MAY, 1985.
Bentley, Bobetta, Neon, KY, $4,129.62, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, JUN, 1990.
Butler, Tracey, A., Covington, KY, $9,890.35, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, MAY, 1991.
Downs, John, B., Louisville, KY, $3,424.78, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, AUG, 1983.
Elliotte, Ray, M., Louisville, KY, $86,648.27, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Emnett, William, P., Lexington, KY, $29,656.39, UNIV OF KENTUCKY, Lexington, KY, Dentistry, MAY, 1980.
Faison, Willie, R., Louisville, KY, $191,268.15, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Ford, Patricia, J., Louisville, KY, $1,676.89, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, MAY, 1985.
Green, Judith, G., Louisville, KY, $112,561.90, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, MAY, 1987.
Kerby, Joe, K., Lexington, KY, $104,923.14, WASHINGTON UNIV, St. Louis, MO, Dentistry, JUN, 1986.
Maley, John, M., Lexington, KY, $243.62, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, JAN, 1990.
Payne, Denise, Y., Louisville, KY, $50,123.11, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, SEP, 1985.
Preston, Michael, R., Morehead, KY, $80,144.20, UNIV OF KENTUCKY, Lexington, KY, Dentistry, MAY, 1987.
Ramos, Gisella, Y., Louisville, KY, $3,306.93, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, OCT, 1989.
Salyer, Jimmy, R., Lexington, KY, $4,758.41, UNIV OF KENTUCKY, Lexington, KY, Dentistry, MAY, 1986.
Wagner, Robin, Frankfort, KY, $13,627.90, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, OCT, 1989.

Health Administration

Gazall, Victor, J., Louisville, KY, $37,763.68, ST. LOUIS UNIVERSITY, St. Louis, MO, Health Administration, MAY, 1986.

Optometry

Watkins, Thomas, W., Wendover, KY, $47,744.56, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, MAY, 1990.

Osteopathy

James, Gary, D., Cadiz, KY, $133,989.87, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1983.

Podiatry

Bohn, Ralph, R., Louisville, KY, $17,655.40, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Hedden, Dianne, Lynn, Owensboro, KY, $30,607.12, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, OCT, 1986.

Louisiana

Allopathic Medicine

Angelo Jr., Charles, K., Belle Chasse, LA, $35,897.83, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Allopathic Medicine, AUG, 1986.
Archie, Michael, W., New Orleans, LA, $3,437.57, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, JUN, 1989.
Bastian, Tyronne, P., Lafayette, LA, $30,125.17, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1981.
Burt, Eric, S., Monroe, LA, $5,241.34, LOUISIANA STATE UNIV MC-SHREVEPORT, Shreveport, LA, Allopathic Medicine, JUN, 1987.
Chappell, Daniel, H., Plaquemine, LA, $64,994.50, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAY, 1984.
Chenier, Lawrence, F., Tallulah, LA, $17,882.37, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1980.
Elie, Migel, E., New Orleans, LA, $39,507.89, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUL, 1987.
Escribano, Rafael, A., Monroe, LA, $21,965.24, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1987.
Fansler, Richard, F., New Orleans, LA, $2,451.92, UNIV OF FLORIDA, Gainesville, FL, Allopathic Medicine, MAY, 1988.
Fedoroff, Ivan, New Orleans, LA, $1,988.47, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Allopathic Medicine, MAY, 1985.
Geary, David, M., Lafayette, LA, $85,015.49, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, JUN, 1986.
Godley Jr., Clifford, E., Newellton, LA, $42,408.80, LOUISIANA STATE UNIV MC-SHREVEPORT, Shreveport, LA, Allopathic Medicine, MAY, 1984.
Ishmael, Francis, T., Baton Rouge, LA, $3,131.80, LOUISIANA STATE UNIV MC-

NEW ORLEANS, New Orleans, LA, Allopathic Medicine, JUN, 1986.
Mahner, John, Talisheek, LA, $15,615.59, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Allopathic Medicine, JUL, 1990.
Molden, Gregory, L., New Orleans, LA, $60,187.15, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1966.
Morris, Dennis, J., Baton Rouge, LA, $470.40, LOUISIANA STATE UNIV MC-SHREVEPORT, Shreveport, LA, Allopathic Medicine, JUL, 1986.
Petty, Jay, F., Haughton, LA, $9,613.39, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1988.
Reed, Fred, L., Lake Providence, LA, $58,282.41, LOUISIANA STATE UNIV MC-SHREVEPORT, Shreveport, LA, Allopathic Medicine, MAY, 1989.
Seyfarth Jr., Huey, A., Baton Rouge, LA, $18,086.26, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUN, 1987.
St. Romain, Michele, R., Marrero, LA, $9,390.75, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Allopathic Medicine, (No Separation Date).
Tessmer, Jon, F., Metairie, LA, $62,767.76, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUN, 1986.
Timpton, Wanda, G., New Orleans, LA, $18,916.17, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Allopathic Medicine, AUG, 1987.
Vazquez, Carlos, R., Metairie, LA, $7,356.24, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, MAY, 1991.
Watford, Eric, L., Welsh, LA, $102,758.70, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1985.
Wiest, Gregory, J., Baton Rouge, LA, $13,750.36, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Allopathic Medicine, JUN, 1988.
Williams, Jerry, V., Baton Rouge, LA, $50,521.26, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, MAY, 1982.
Williams, Michael, A., New Orleans, LA, $16,999.15, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAY, 1987.

Chiropractic

Aromola, Joseph, J., New Roads, LA, $28,486.16, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Bradley, Fred, E., Shreveport, LA, $2,063.06, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Carter, Ronald, M., Slidell, LA, $40,803.01, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1986.
Goff, Michael, J., Baton Rouge, LA, $48,346.06, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.
Huff jr., M., Paul, Mansfield, LA, $84,321.00, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.
Iacobino, Matthew, J., Slidell, LA, $85,600.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Kritko, Anthony, A., Slidell, LA, $13,480.13, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
McReynolds, Pamela, J., Kenner, LA, $24,125.44, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1984.
Meisner, John, T., Bogalusa, LA, $21,814.64, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Moran, Kevin, A., Metairie, LA, $16,555.30, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Noble, Craig, J., Metairie, LA, $109,249.08, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Salczenko, Jeffrey, G., Benton, LA, $47,008.44, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Smith, Grant, K., New Orleans, LA, $49,378.76, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Stine, Brook, A., New Orleans, LA, $68,901.80, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Stratso, Nicholas, Monroe, LA, $82,111.75, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1987.
Thompson, David, J., Mandeville, LA, $5,759.29, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1983.
Walker, Mark, K., Kenner, LA, $67,339.54, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.

Dentistry

Baranco, Patricia, E., Baton Rouge, LA, $222,185.34, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Barletta, Joseph, W., New Orleans, LA, $29,690.67, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Dentistry, NOV, 1987.
Battershield, Enrique, N., Monroe, LA, $145,972.86, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1985.
Dupuis, Edwrd, J., New Orleans, LA, $76,203.22, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Dentistry, JUN, 1988.
Jordan, Lakara, J., Baton Rouge, LA, $2,137.02, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1990.
Polk, Joyce, H., Baton Rouge, LA, $177,360.80, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.

Optometry

Strickland, Gregory, C., New Orleans, LA, $56,741.16, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1985.

Osteopathy

Floyd, James, P., New Orleans, LA, $68,369.79, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1989.
Newton, Steven, R., Baton Rouge, LA, $12,553.01, UNIV OF MED & DENT OF NJ—NJ OST MED, Newark, NJ, Osteopathy, MAY, 1983.
Noss, Michael, R., New Orleans, LA, $25,579.10, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1986.
Wilson, Wesley, Monroe, LA, $2,278.92, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1991.

Pharmacy

Aruna, Augustine, S., New Orleans, LA, $6,572.54, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, DEC, 1988.
Johnson, Paul, Harvey, LA, $16,347.19, XAVIER UNIV OF LOUISIANA, New Orleans, LA, Pharmacy, MAY, 1983.
Smith, Darryl, M., Metairie, LA, $5,693.00, XAVIER UNIV OF LOUISIANA, New Orleans, LA, Pharmacy, MAY, 1983.

Podiatry

Bourque, Lawles, J., New Orleans, LA, $7,171.79, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JAN, 1989.
Freeman, Gerald, S., Morgan City, LA, $106,953.45, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1981.
Goodrow, Andrew, J., New Orleans, LA, $151,899.95, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1987.
Guerin, Gerard, G., Hammond, LA, $15,000.00, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Hofner, Mark, L., Lake Charles, LA, $143,984.24, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1989.
Hoover, Bendel, C., Gretna, LA, $19,492.90, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.
Jordan, Joyce, M., New Orleans, LA, $174,867.93, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, SEP, 1985.

Public Health

Dowdy, Jalicia, L., Slidell, LA, $15,888.82, TULANE UNIVERSITY, New Orleans, LA, Public Health, DEC, 1987.
Metoyer, Elisha, J., New Orleans, LA, $3,060.55, TULANE UNIVERSITY, New Orleans, LA, Public Health, JAN, 1991.

Maine

Allopathic Medicine

McChesney, Guy, H., Bangor, ME, $4,241.41, YALE UNIV, New Haven, CT, Allopathic Medicine, MAY, 1989.

Chiropractic

Winkler, Stephen, D., Bangor, ME, $50,605.96, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.

Dentistry

Dentremont, Franklin, Bangor, ME, $11,995.07, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1980.
Howeleighton, Marjor, Norway, ME, $4,850.05, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1983.

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Osteopathy

Hagopian, Laurie, Auburn, ME, $110,626.45, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1986.

Psonak, Raymond, J., Topsham, ME, $23,200.35, UNIV OF NEW ENGLAND, Biddeford, ME, Osteopathy, MAY, 1991.

Veterinary Medicine

Raiten, Joan, K., Blue Hill, ME, $25,966.67, UNIV OF PENNSYLVANIA, Philadelphia, PA, Veterinary Medicine, JUN, 1986.

Maryland

Allopathic Medicine

Archer, Beverly, L., Gaithersburg, MD, $70,263.96, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.

Awh, Carl, C., Baltimore, MD, $2,690.08, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Allopathic Medicine, JUN, 1989.

Bialek, Barry, B., Bethesda, MD, $203,426.33, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1985.

Bivins, Anthony, D., Greenbelt, MD, $48,043.76, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1984.

Briggs, Nathaniel, C., Rockville, MD, $805.45, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1987.

Brooks, Jacinth, E., Silver Spring, MD, $15,088.15, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1985.

Bruza, John, M., Baltimore, MD, $2,890.90, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUN, 1991.

Burney, Dawn, W., Baltimore, MD, $55,350.00, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, MAY, 1983.

Burt, Hugh, A., Silver Spring, MD, $54,278.33, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.

Cain, Alicia, R., Silver Spring, MD, $2,887.54, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1980.

Carter, Kenneth, O., Baltimore, MD, $8,708.72, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1985.

Chesley, Francis, D., Gaithersburg, MD, $106,118.96, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.

Cooper Jr., John, D., Rockville, MD, $2,147.03, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUN, 1988.

Crarey, Patrick, E., Upper Marlboro, MD, $57,816.87, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.

Crawford, Robin, A., Laurel, MD, $2,703.57, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1989.

Cuffy, Lewis, Takoma Park, MD, $49,724.91, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1990.

Cummings, Phillip, B., Hyattsville, MD, $6,705.74, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.

Daniels, Fernando, Upper Marlboro, MD, $27,093.66, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.

Douglass, Eric, L., Towson, MD, $45,378.72, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Allopathic Medicine, MAY, 1985.

Farr, Stephany, D., Burtonsville, MD, $5,020.32, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, MAY, 1991.

Figaro, Kelson, M., Bowie, MD, $123,145.15, EASTERN VIRGINIA MED SCH, Norfolk, VA, Allopathic Medicine, DEC, 1989.

Finucane, Charity, M., Bethesda, MD, $72,757.29, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUL, 1985.

Freeland, Carole, A., Baltimore, MD, $51,331.71, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1986.

Greene, Leroy, C., Adelphi, MD, $14,197.58, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.

Halls, Lydia, Gaithersburg, MD, $8,702.30, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, MAY, 1985.

Hill, Leo, D., Cheverly, MD, $14,780.47, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1987.

Hogan, John, W., Fort Washington, MD, $488.16, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1984.

Hurson, Susan, B., Bethesda, MD, $36,328.66, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1988.

Jackson, Eugene, Wheaton, MD, $10,896.96, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUN, 1987.

Johnson, Miles, D., Hyattsville, MD, $40,598.84, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1991.

Kennedy, Grace, L., Baltimore, MD, $38,737.77, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUL, 1985.

Lane, Brian, F., Germantown, MD, $25,892.91, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1988.

Little Jr., Leonard, Silver Spring, MD, $2,262.24, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAR, 1984.

McKinney Jr., Thornto, Bladensburg, MD, $80,456.25, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1989.

O'Laughlin, Thomas, J., Baltimore, MD, $118,787.29, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1985.

Park, Won, S., Baltimore, MD, $11,757.91, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Allopathic Medicine, APR, 1990.

Ponder III, Alvin, F., Baltimore, MD, $44,932.27, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.

Powell, Craig, M., Ellicott City, MD, $73,350.29, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, NOV, 1985.

Ramos, Lydia, I., Gaithersburg, MD, $30,120.46, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.

Richardson, Gravney, A., Upper Marlboro, MD, $81,542.59, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAY, 1986.

Rosenthal, James, Grasonville, MD, $16,192.84, SOUTHERN ILLINOIS UNIV, Carbondale, IL, Allopathic Medicine, JUL, 1982.

Saunders, Robert, D., Baltimore, MD, $8,285.32, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, MAY, 1989.

Sears, Terri, A., Greenbelt, MD, $13,953.80, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1984.

Shelby, Gloria, D., Capitol Heights, MD, $16,097.91, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.

Sterrett, Michael, J., Baltimore, MD, $40,862.80, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Allopathic Medicine, JUN, 1987.

Thomas, Michelle, D., Baltimore, MD, $30,259.69, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1986.

Wagner, Robert, J., Baltimore, MD, $54,320.29, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, MAY, 1989.

West, Denise, G., Baltimore, MD, $18,991.77, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Allopathic Medicine, AUG, 1985.

Wheeler, Jacquelyn, L., Baltimore, MD, $168,940.42, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.

White, John, A., Silver Spring, MD, $40,314.34, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, MAY, 1986.

Whittingham, Wayne, L., Riverdale, MD, $9,653.78, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.

Wilder, Deborah, D., Silver Spring, MD, $88,350.12, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.

Chiropractic

Darawshi, Jaber, M., Baltimore, MD, $5,739.25, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1988.

Faurote, Pamella, R., Rockville, MD, $13,398.13, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, JAN, 1984.

Fishkin, David, B., Potomac, MD, $5,641.21, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1988.
Gordon, Robert, K., Snow Hill, MD, $76,843.45, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1987.
Kay, Robert, J., Ellicott City, MD, $65,995.52, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Mahyari, Homayoun, Potomac, MD, $12,536.78, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1987.
Vollrath, Patrick, W., Pasadena, MD, $24,348.96, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1986.

Clinical Psychology

Hall, Pamela, A., Baltimore, MD, $58,593.97, FLORIDA INST. OF TECHNOLOGY, Melbourne, FL, Clinical Psychology, AUG, 1987.

Dentistry

Allen, Sherman, L., Hyattsville, MD, $59,635.58, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Avery, Frederick, Columbia, MD, $9,698.65, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, JUL, 1987.
Bailey, John, R., Upper Marlboro, MD, $60,550.44, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Benson, Fred, Takoma Park, MD, $20,769.82, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Blaney, Melvin, Baltimore, MD, $13,107.03, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.
Bloomer, Ann, M., Baltimore, MD, $46,572.02, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Carver, Belinda, A., Capitol Heights, MD, $3,038.42, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.
Chaudhry, Nisar, A., Baltimore, MD, $59,712.43, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, JAN, 1982.
Chibambo-Smith, Gadi, M., Hyattsville, MD, $53,080.37, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Chorbajian, James, P., Bowie, MD, $37,692.47, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1981.
Cieslik, Charles, R., Perry Hall, MD, $17,820.47, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1981.
Clark, Marva, J., Gaithersburg, MD, $9,113.89, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Crawford, Alesia, M., Silver Spring, MD, $17,140.88, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1986.
Cummins, David, F., Silver Spring, MD, $38,270.07, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
De la Cruz, Maureen, Bethesda, MD, $93,279.57, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.
Eidensohn, Alan, S., Baltimore, MD, $18,140.21, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, AUG, 1981.
Fuentes, Raymond, H., Bethesda, MD, $31,462.41, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Garcia, Anthony, G., Baltimore, MD, $14,531.89, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, MAY, 1989.
Gordon, Vernon, L., Columbia, MD, $37,534.38, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, JUN, 1987.
Harris, Michael, M., Upper Marlboro, MD, $48,725.22, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Hurdle-Anderson, Gaile, E., Landover, MD, $32,716.82, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Irey, John, P., Silver Spring, MD, $8,544.08, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, JUN, 1983.
Jarboe, David, A., Arbutus, MD, $7,916.65, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, MAY, 1990.
Johnson, Mark, A., Hyattsville, MD, $13,391.94, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Johnson, Leardrew, L., Takoma Park, MD, $10,565.45, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Kurtzman, Gregori, M., Germantown, MD, $42,814.36, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Lang, Francis, P., Baltimore, MD, $5,349.31, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, AUG, 1987.
Lindsey, Glenda, L., Randallstown, MD, $46,336.88, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Munson, Kevin, D., Baltimore, MD, $10,590.71, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, MAY, 1989.
Perry, Elizabeth, S., Chaptico, MD, $13,336.14, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1987.
Rampertaap, Maheswar, Rockville, MD, $10,260.96, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Redmon, Maria, I., Baltimore, MD, $40,878.90, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Richardson, Joseph, M., Adelphi, MD, $163,163.22, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Rohloff, Jay, S., Dunkirk, MD, $24,873.51, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1987.
Saffold, Michael, D., Baltimore, MD, $12,022.99, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, MAY, 1988.
Schnittman, Gerry, R., Baltimore, MD, $163,450.99, TUFTS UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.
Schott, Alan, J., Baltimore, MD, $40,912.72, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1988.
Scott, Robert, L., Baltimore, MD, $16,047.33, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Shpritz, Nathan, L., Baltimore, MD, $24,700.16, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, MAY, 1985.
Smith, Dezrie, C., Clinton, MD, $17,697.93, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1989.
Snyder, Craig, L., Baltimore, MD, $42,634.24, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Tall, Deborah, A., Temple Hills, MD, $19,227.27, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1985.
Tassian, Karla, A., Burtonsville, MD, $15,487.69, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, JUN, 1985.
Van Story-Lewis, Patricia, Baltimore, MD, $26,606.98, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1981.
Wiley, Bruce, R., Baltimore, MD, $136,278.47, WASHINGTON UNIV, St. Louis, MO, Dentistry, JUN, 1988.
Williams, Charles, E., College Park, MD, $60,346.96, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1982.

Osteopathy

Carter, Merv, D., Silver Spring, MD, $56,357.38, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1987.
Waltman, Bonnie, J., Columbia, MD, $20,357.57, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1987.

Pharmacy

Austin, Steven, M., Owings Mills, MD, $609.34, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1987.
Carter, Larry, E., Forestville, MD, $15,220.66, HOWARD UNIVERSITY, Washington, DC, Pharmacy, JUN, 1993.
Clark, Jimothy, Baltimore, MD, $9,059.35, OHIO STATE UNIVERSITY, Columbus, OH, Pharmacy, JUN, 1987.
Conerly, Rex, A., Greenbelt, MD, $26,303.09, HOWARD UNIVERSITY, Washington, DC, Pharmacy, JUN, 1986.
Mumuney, Ganiyu, A., Salisbury, MD, $4,070.60, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, JUN, 1985.
Oleya, Raymond, A., Bethesda, MD, $2,818.53, DUQUESNE UNIVERSITY, Pittsburgh, PA, Pharmacy, MAY, 1989.
Onyekwere, Lawrence, N., Silver Spring, MD, $5,022.40, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, AUG, 1983.
Stowers, Debra, B., Fort Washington, MD, $43,266.28, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, DEC, 1987.

Podiatry

Gatling, Joycelyn, C., Largo, MD, $112,364.68, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
McConner, Sadie, B., Perry Point, MD, $47,090.92, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1989.
Rucker, Gail, M., Columbia, MD, $134,951.71, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1985.

Public Health

Henderson, Melford, J., Rockville, MD, $4,483.56, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, JUN, 1984.
Mathews, Elizabeth, A., Baltimore, MD, $13,681.23, JOHNS HOPKINS

UNIVERSITY, Baltimore, MD, Public Health, SEP, 1990.
Nwankwo, Christian, N., Gaithersburg, MD, $17,499.12, JOHNS HOPKINS UNIVERSITY, Baltimore, MD, Public Health, JUN, 1988.

Veterinary Medicine

Alexander, Michelle, M., Columbia, MD, $72,057.24, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1984.
Griffith, Deborah, J., Bowie, MD, $19,659.97, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1985.
Kohn, Barbara, A., Columbia, MD, $17,708.14, UNIV OF MINNESOTA, Minneapolis, MN, Veterinary Medicine, JUN, 1984.

Massachusetts

Allopathic Medicine

Bates, George, R., Wenham, MA, $12,784.77, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1984.
Blakeman, D., Nikimal, Burlington, MA, $21,821.85, MAYO MEDICAL SCHOOL, Rochester, MN, Allopathic Medicine, JAN, 1989.
Cohn, Aaron, L., Waltham, MA, $1,724.11, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1988.
Cronin, Kenneth, M., Lee, MA, $190,432.32, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, MAY, 1987.
Cyrus, Pamela, A., Boston, MA, $17,315.66, MARSHALL UNIVERSITY, Huntington, WV, Allopathic Medicine, MAY, 1989.
D'Angona, Peter, B., Charlestown, MA, $4,259.24, YALE UNIV, New Haven, CT, Allopathic Medicine, JUN, 1986.
Daley, William, L., Boston, MA, $68,815.73, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1987.
Devereaux, Daniel, A., Worcester, MA, $1,718.56, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, MAY, 1986.
Digidia, Donna, M., Cambridge, MA, $16,506.36, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1989.
Dougherty, Frances, E., Boston, MA, $7,259.98, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1990.
Dubitsky, Lori, B., Lynn, MA, $21,296.16, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1987.
Fleming, Herbom, E., Boston, MA, $123,550.70, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Frissora, Henry, A., Boston, MA, $7,053.42, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1989.
Garg, Ajay, P., Quincy, MA, $62,333.62, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1985.
Goldman, Richard, S., Sudbury, MA, $110,029.84, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1988.
Gray, William, Boston, MA, $18,056.98, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1982.
Guinn III, O., Allen, Worcester, MA, $86,841.58, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1986.
Herbert, Barbara, L., Cambridge, MA, $10,295.40, SUNY AT STONY BROOK, Stony Brook, NY, Allopathic Medicine, JUN, 1984.
Joyce, Benjamin, S., Cataumet, MA, $14,516.36, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAR, 1986.
Ling, Judith, Springfield, MA, $29,597.48, STANFORD UNIVERSITY, Stanford, CA, Allopathic Medicine, JUN, 1981.
Love, Andre, A., Dorchester, MA, $45,981.03, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Markson, Lawrence, J., Boston, MA, $63,896.39, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, MAY, 1985.
Mendes, Antonio, C., Allston, MA, $11,254.80, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, MAY, 1990.
O'Leary, Gloria, M., Cambridge, MA, $118,793.01, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, APR, 1986.
Obi-tabot, Eliot, T., Framingham, MA, $7,415.46, UNIV OF MISSOURI-COLUMBIA, Columbia, MO, Allopathic Medicine, MAY, 1989.
Pope, Lance, W., Oak Bluffs, MA, $48,836.96, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, MAY, 1983.
Saint Louis, Josephus, H., Cambridge, MA, $87,978.28, UNIV OF MINNESOTA, Minneapolis, MN, Allopathic Medicine, SEP, 1988.
Thompson, John, E., East Bridgewater, MA, $20,222.75, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JAN, 1988.
Trice, Michael, E., Boston, MA, $27,607.32, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1987.

Chiropractic

Brault, Peter, C., Ashburnham, MA, $28,445.73, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1983.
Dehamer-Howard, Heleen, M., South Hamilton, MA, $59,207.44, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Doherty, Edward, A., Westwood, MA, $15,423.05, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1984.
Doonan, Gregg, C., Peabody, MA, $20,518.29, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Garcia, Frank, J., Teaticket, MA, $1,532.35, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Goldberg, Howard, N., Holliston, MA, $2,855.97, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982.
Gregg, James, K., Cambridge, MA, $3,802.14, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1983.
Holloway, Jill, B., Watertown, MA, $6,817.30 LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1983.
Leonard, Susan, M., Provincetown, MA, $25,917.36, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
McLaughlin, Paul, J., Andover, MA, $19,733.66, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Morman, Diane, L., Boston, MA, $44,319.69, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1983.
Palmer, Becky, A., Attleboro, MA, $63,524.91, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Powell, Michael, N., Somerset, MA, $66,410.92, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1987.
Rothenberg, Kathie, L., Scituate, MA, $55,492.48, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Wellman, Fred, Northampton, MA, $17,006.62, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1984.

Clinical Psychology

Coombs, David, D., Oxford, MA, $16,041.69, CALIFORNIA SCH. OF PROF. PSY., Alhambra, CA, Clinical Psychology, SEP, 1986.
Spitz, Michael, Framingham, MA, $143.30, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, AUG, 1985.
Webster, Thomas, J., Northampton, MA, $72,469.95, NEW SCHOOL FOR SOCIAL RESEARCH, New York, NY, Clinical Psychology, AUG, 1989.

Dentistry

Bartel, Daniel, Lexington, MA, $12,645.53, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Bartel, Peter, D., Taunton, MA, $9,860.10, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1989.
Bissanti, Michael, A., Braintree, MA, $33,019.69, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1983.
Blase, Richard, M., Boylston, MA, $111,528.92, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.
Budz, Andrew, B., Williamstown, MA, $15,068.34, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Byung-Jin, Min, Cambridge, MA, $72,535.87, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1984.
Carabatsos, John, T., Brockton, MA, $116,676.99, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUL, 1984.
Christopoulos, George, Saugus, MA, $114,056.55, BOSTON UNIVERSITY, Boston, MA, Dentistry, DEC, 1987.
Cohen, Roy, S., Allston, MA, $27,401.72, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1981.
Dooley, Paul, J., Hyde Park, MA, $22,734.56, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.

Down, Marjorie, E., Wrentham, MA, $3,665.40, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1981.
Gallery, Melissa, Lynn, MA, $117,782.87, TUFTS UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.
Gallucci, Don, A., Boston, MA, $45,717.47, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.
George, Gail, E., Boston, MA, $108,755.33, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.
Grasso, Michael, V., Dorchester, MA, $19,045.60, TUFTS UNIVERSITY, Boston, MA, Dentistry, NOV, 1987.
Haywood, Dexter, L., Boston, MA, $3,182.05, HARVARD SCHOOL OF DENTAL MEDICINE, Boston, MA, Dentistry, MAY, 1989.
Healy, Kevin, F., Somerville, MA, $16,310.98, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1987.
Jackson, Lue, D., Boston, MA, $4,685.68, SOUTHERN ILLINOIS UNIV, Edwardsville, IL, Dentistry, JUN, 1979.
Jones, Margaret, K., Pembroke, MA, $163,193.17, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.
Landry, Richard, D., West Springfield, MA, $35,881.09, INDIANA UNIV AT INDIANAPOLIS, Bloomington, IN, Dentistry, MAY, 1985.
Lebourdais, Stephen, W., Pittsfield, MA, $357.93, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, JUN, 1983.
Martinez, Hannah, A., Medford, MA, $36,858.51, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUL, 1986.
Matkoski, Jane, L., Dorchester, MA, $93,368.78, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1988.
Meade, Sandra, M., Chestnut Hill, MA, $206,570.72, TUFTS UNIVERSITY, Boston, MA, Dentistry, JAN, 1990.
Nosack, John, E., Lexington, MA, $147,816.72, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.
Pryharski, Michael, J., Westborough, MA, $23,766.02, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1984.
Ramos, Steven, M., Marblehead, MA, $151,109.49, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUL, 1987.
Rossman, Richard, S., Stoughton, MA, $33,310.26, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1984.
Savas, Christy, W., Worcester, MA, $1,873.67, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1983.
Smith, Rickey, E., Jamaica Plain, MA, $76,292.16, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUL, 1988.
Solimini Jr., Solimini, East Boston, MA, $35,647.06, BOSTON UNIVERSITY, Boston, MA, Dentistry, APR, 1985.
Thompson, Floriaw, Boston, MA, $180,086.07, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1988.
Turner, Kevin, J., Haverhill, MA, $70,702.15, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1987.
Weake, Jeffrey, R., Groton, MA, $181,103.49, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1985.
Woodrick, William, R., Swampscott, MA, $37,180.00, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, MAY, 1988.

Health Administration

Delpo, John, A., Westborough, MA, $36,483.92, WASHINGTON SCHOOL OF MEDICINE, St. Louis, MO, Health Administration, MAY, 1986.

Optometry

Cokkinias, Christopher, D., Springfield, MA, $19,462.85, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, SEP, 1986.
Lance, Mark, J., South Easton, MA, $12,722.52, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, NOV, 1984.
Miller, Traudi, A., Lincoln, MA, $6,232.97, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, MAY, 1983.
Soll, Alan, R., Boston, MA, $1,369.17, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, JUN, 1983.
Soque, James, B., Watertown, MA, $4,051.25, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, JUN, 1988.
Traveis, Lisa, A., Ipswich, MA, $1,452.69, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, JUN, 1986.

Osteopathy

Engel, Sharon, R., Stow, MA, $75,194.05, UNIV OF NEW ENGLAND, Biddeford, ME, Osteopathy, OCT, 1986.
Leaver, Janet, M., Stoughton, MA, $189,293.70, UNIV OF NEW ENGLAND, Biddeford, ME, Osteopathy, JAN, 1987.
Peters, Victoria, P., East Longmeadow, MA, $101,369.74, NEW YORK INST TECH, Old Westbury, NY, Osteopathy, JUN, 1987.
Scott, Calvin, F., Hudson, MA, $31,990.03, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, JUN, 1980.
Waitekus, Raymond, W., Marblehead, MA, $49,732.38, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1989.

Pharmacy

Gibbs, David, P., Boston, MA, $24,543.04, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1984.
Hogan, Robert, J., Monponsett, MA, $3,394.67, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1986.
Ikejiani, Azubueze, Jamaica Plain, MA, $52,641.33, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, MAR, 1987.
Rand, Chris, B., North Abington, MA, $70,223.46, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1983.
Roy, Geaorge, P., Shrewsbury, MA, $2,813.21, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUL, 1984.
Watt, Sharyn, Brockton, MA, $52,349.15, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1986.

Podiatry

Cormier, Greg, A., Weymouth, MA, $20,874.79, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1984.
Egan, Thomas, J., Medford, MA, $97,417.33, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1988.
Gertz, Mitchell, M., Malden, MA, $3,253.00, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1983.
Kaplan, David, B., Chelsea, MA, $22,822.17, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.
McCrumb, Michelle, A., Oak Bluffs, MA, $125,564.17, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUL, 1984.
Ritchey, Robert, M., Yarmouth Port, MA, $111,365.10, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.
Wachter, Renee, J., Boston, MA, $199,580.97, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.

Public Health

Burnside, Susan, Marblehead, MA, $12,566.39, BOSTON UNIVERSITY, Boston, MA, Public Health, MAY, 1985.
Caraballo, Elizabeth, Boston, MA, $12,595 01. BOSTON UNIVERSITY, Boston, MA, Public Health, MAY, 1985.
DesRosiers, Paultre, Pierre, Framingham, MA, $21,473.20, BOSTON UNIVERSITY, Boston, MA, Public Health, MAY, 1986.
Dorsinville, Mona, M., Boston, MA, $20,870.89, HARVARD UNIVERSITY, Boston, MA, Public Health, JUN, 1987.
Dumser, James, B., Charlestown, MA, $23,451.02, HARVARD UNIVERSITY, Boston, MA, Public Health, JUN, 1987.
Eloi, Emmanuel, Waltham, MA, $11,598.93. BOSTON UNIVERSITY, Boston, MA, Public Health, MAY, 1986.
Kattan, Yehuda, Newton Center, MA, $15,919.87, TULANE UNIVERSITY, New Orleans, LA, Public Health, NOV, 1986.
Mikols, Ann, M., Swampscott, MA, $28,847.19, BOSTON UNIVERSITY, Boston, MA, Public Health, MAY, 1985.
Munroe, Alelia, E., Jamaica Plain, MA, $16,860.08, BOSTON UNIVERSITY, Boston, MA, Public Health, JAN, 1983.
Nwachukwu, Uzoma, A., Boston, MA, $17,700.32, BOSTON UNIVERSITY, Boston, MA, Public Health, JAN, 1988.
Parker, Jon, C., Boston, MA, $103,776.65, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1986.
Regna, Joseph, V., Somerville, MA, $3,387.89, JOHNS HOPKINS UNIVERSITY. Baltimore, MD, Public Health, JUN, 1983.
Rutstein, Amy, E., Brookline, MA, $13,838.45, BOSTON UNIVERSITY, Boston, MA, Public Health, MAY, 1986.

Veterinary Medicine

Canavan, Robert, T., Sudbury, MA, $48,316.56, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, JUN, 1988.
Cherry, Allison, E., Dorchester, MA, $79,106.64, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.
Ernst, Harry, B., Buzzards Bay, MA, $96,461.47, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1987.
Grighton, Ellen, R., Marblehead, MA, $6,585.34, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1989.

Hepburn, Bradley, J., Boston, MA, $25,613.78, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1985.
Thompson, Ashlee, L., Canton, MA, $55,570.44, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1984.
Weber, Merle, H., Haverhill, MA, $75,370.09, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1987.

Michigan

Allopathic Medicine

Arrington, Dexter, E., Detroit, MI, $1,400.29, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, MAY, 1990.
Berry, Alphonso, Detroit, MI, $4,584.88, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.
Braswell, James, Detroit, MI, $130,678.75, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1988.
Casey, Gregory, D., Jackson, MI, $25,750.46, JOHNS HOPKINS UNIVERSITY, Baltimore, MD, Allopathic Medicine, JUN, 1986.
Clos, Autumn, P., East Lansing, MI, $22,460.06, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1987.
Criss, David, Lansing, MI, $7,051.40, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1990.
Crittenden Jr., William, Detroit, MI, $68,692.40, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.
Eichler, John, A., Saline, MI, $94,216.91, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, FEB, 1987.
Ennis, Michael, C., Lansing, MI, $22,871.91, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1989.
Frosh, Victor, P., Jackson, MI, $59,833.93, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1981.
George, Eric, R., Grand Rapids, MI, $6,428.01, MARSHALL UNIVERSITY, Huntington, WV, Allopathic Medicine, MAY, 1989.
Graham, Denise, Lansing, MI, $24,631.12, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1987.
Green, Carmen, R., Flint, MI, $28,719.51, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, DEC, 1987.
Holloway, Milton, G., Flint, MI, $25,369.86, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1987.
Hoyt, Rex, A., Sanford, MI, $5,388.67, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1989.
Kimbrough, Robert, L., Kalamazoo, MI, $148,175.12, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1983.
Long, Kathleen, S., Empire, MI, $10,969.31, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, DEC, 1987.
Marang, Boitshoko, P., Detroit, MI, $87,381.68, SOUTHERN ILLINOIS UNIV, Carbondale, IL, Allopathic Medicine, JUN, 1988.
McAllister, William, Commerce, MI, $33,363.32, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, MAY, 1985.
Mial, Ricki, K., Ann Arbor, MI, $3,772.11, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1985.
Motley, Rebecca, K., Southfield, MI, $99,510.17, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, JUN, 1988.
Neitzel, Shelly, J., Jackson, MI, $11,041.13, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, JUN, 1988.
Plattner, Beth, A., Ann Arbor, MI, $6,118.78, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, MAY, 1989.
Polak, Timothy, J., Wyandotte, MI, $11,625.89, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1991.
Polk, Norris, C., Detroit, MI, $1,609.87, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1985.
Ricketts, Susan, V., Portage, MI, $5,073.97, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1988.
Rowlett, Andre, L., Belleville, MI, $39,201.61, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1979.
Samuel, Donald, R., Tecumseh, MI, $129,589.19, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1986.
Sasaki, Larry, S., Farmington, MI, $6,235.70, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1990.
Segesta, Michael, East Detroit, MI, $22,619.64, MAYO MEDICAL SCHOOL, Rochester, MN, Allopathic Medicine, MAY, 1988.
Sparrow Jr., Cleveland, B., Birmingham, MI, $69,066.06, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.
Tanwi, Lyndon, B., Southfield, MI, $51,800.20, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1985.
Turner, Sherri, A., Saginaw, MI, $26,456.69, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JAN, 1981.
Twomley, James, D., Berrien Springs, MI, $6,687.53, LOMA LINDA UNIVERSITY, Loma Linda, CA, Allopathic Medicine, JUN, 1989.
Valentine, Charise, L., Birmingham, MI, $29,053.19, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, JUL, 1986.
Walker, Yvette, R., Harper Woods, MI, $16,305.46, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1990.
Ware, Cynthia, Detroit, MI, $18,630.96, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1990.
Wells, Victor, C., Detroit, MI, $28,938.80, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1984.
West, Woodrow, D., Southfield, MI, $7,932.15, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, FEB, 1985.
Williams, Marvin, L., Detroit, MI, $208,155.94, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.
Williams, Alvin, Detroit, MI, $2,781.21, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1983.
Wilson, Alan, K., Westland, MI, $1,814.02, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1989.

Chiropractic

Aamodt, Wayne, Garth, Grand Rapids, MI, $6,474.43, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1983.
Allen, David, F., Stanwood, MI, $41,401.53, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, DEC, 1985.
Anderson, Thomas, C., Canton, MI, $23,256.20, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982.
Ashmore, Judith, E., Riverview, MI, $53,290.72, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982.
Bastien, Thomas, R., Grand Rapids, MI, $70,802.61, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Blossom, Daniel, E., Vassar, MI, $19,893.41, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1983.
Bryant, Thomas, L., Detroit, MI, $23,776.23, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1983.
Calzetta, Gregory, Alan, Utica, MI, $53,247.75, LIFE COLLEGE, Marietta, GA, Chiropractic, NOV, 1985.
Carpenter, Richard, P., Kentwood, MI, $72,301.23, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Chapman, Michelle, A., Auburn Heights, MI, $30,960.22, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Dell, Michael, S., Atlanta, MI, $65,778.28, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1986.
Dunn, Karen, S., Royal Oak, MI, $27,430.73, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Farney-Lett, Sally, E., Kalamazoo, MI, $63,445.03, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, AUG, 1988.
Forte, Sandra, L., Detroit, MI, $14,917.19, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, APR, 1985.
Gilbert, Jerry, L., Twin Lake, MI, $7,215.60, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1982.
Giroush, Gamal, F., Wayne, MI, $34,100.60, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Gutierrez, Celso, Croswell, MI, $9,196.40, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1989.
Hafer, Kathryn, J., Kalamazoo, MI, $42,878.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Herbert, Jeffrey, J., Oxford, MI, $21,506.95, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.

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Humphrey, Terry, J., Lansing, MI, $15,285.24, LIFE COLLEGE, Marietta, GA, Chiropractic, AUG, 1983.
Jackson, William, W., Dearborn, MI, $108,407.78, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Johnson, Gary, P., Mount Clemens, MI, $10,489.95, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Knol, Jennifer, S., Holland, MI, $42,384.58, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Koffeman, John, N., Chelsea, MI, $36,989.73, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, DEC, 1983.
Kravis, James, B., Farmington Hills, MI, $77,060.13, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Lavengood, Daniel, J., Wyoming, MI, $116,435.15, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Lavengood, Todd, D., Marshall, MI, $47,358.74, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Leclair, Leonard, J., Standish, MI, $8,447.56, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Mazero, Robert, L., Saint Clair Shores, MI, $92,829.43, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
McShan, Ophelia, Comstock, MI, $50,628.07, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Meeron, S., Michael, Oak Park, MI, $85,834.92, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Mifsud, Martin, A., Farmington Hills, MI, $35,919.74, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.
Migdalewicz, Alan, L., Belleville, MI, $28,929.55, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Nelson, Roger, W., Waterford, MI, $28,745.45, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1987.
Oberstein, Bruce, M., Farmington, MI, $36,981.37, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982.
Palmerton, Barry, L., Roscommon, MI, $78,596.64, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Pierce, Douglas, E., Flushing, MI, $9,849.13, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1986.
Richardson, Neil, J., Grand Rapids, MI, $37,509.95, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1987.
Riley, Rock, A., West Bloomfield, MI, $29,921.50, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Rivers, Nadine, T., Ecorse, MI, $18,773.14, LIFE COLLEGE, Marietta, GA, Chiropractic, FEB, 1983.
Rosemond, Luther, P., Detroit, MI, $83,340.67, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
Schwarz, Bernard, C., Center Line, MI, $17,237.60, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1984.
Shihadeh, Ahmad, Plymouth, MI, $7,254.82, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Siegel, Scott, R., Trenton, MI, $25,063.18, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Simpson, Jon, H., Utica, MI, $83,529.61, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Sowerby, Richard, K., New Buffalo, MI, $84,729.48, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Thurston, David, J., Saint Ignace, MI, $33,248.98, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Tietze, Patrick, A., Muskegon, MI, $65,518.57, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Tiller, Kenneth, R., Bloomfield Hills, MI, $20,404.04, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1985.
Truax, Christopher, J., Algonac, MI, $2,529.76, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, OCT, 1984.
Vettraino, Mark, A., Royal Oak, MI, $74,251.75, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Waterstone, Joel, A., Southfield, MI, $87,874.79, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Williams, Ronald, G., Caledonia, MI, $51,042.34, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, SEP, 1987.
Wilson, Soni, Y., Detroit, MI, $5,206.81, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1988.
Yeck, Marc, W., Pentwater, MI, $11,182.57, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.

Clinical Psychology

Wright, Richard, B., Detroit, MI, $95,753.82, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, MAY, 1986.

Dentistry

Anderson, Mary, L., Southfield, MI, $149,857.03, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1982.
Anderson, Denise, Detroit, MI, $108,960.96, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1988.
Barroso, David, R., Lakeview, MI, $56,207.13, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1986.
Barton, Brandon, H., Detroit, MI, $7,574.71, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUL, 1980.
Baumstark, James, M., Livonia, MI, $106,734.85, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Bonds, Frederick, R., Sterling Heights, MI, $129,746.82, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1983.
Branham, Jerome, R., Bloomfield Hills, MI, $30,725.31, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Claiborne, Lorelei, E., Detroit, MI, $8,472.97, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Dawidowski, Douglas, M., Rochester Hills, MI, $51,071.64, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1981.
George, Achukutty, T., Detroit, MI, $13,203.33, UNIV OF MICHIGAN, Ann Arbor, MI, Dentistry, MAY, 1990.
Gilbert, Thomas, J., Rochester, MI, $26,374.29, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1985.
Gordon, Carla, R., Detroit, MI, $38,325.07, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1986.
Griggs, Deborah, L., Grosse Pointe, MI, $89,758.89, UNIV OF DETROIT, Detroit, MI, Dentistry, JUL, 1985.
Hahn, Raymond, C., Ann Arbor, MI, $47,183.73, UNIV OF DETROIT, Detroit, MI, Dentistry, JUN, 1984.
Hearns, Ben, J., Detroit, MI, $34,482.93, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Hooe, William, E., Ann Arbor, MI, $4,037.91, UNIV OF MICHIGAN, Ann Arbor, MI, Dentistry, APR, 1990.
Hysni, Eddie, K., West Bloomfield, MI, $21,442.95, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1987.
Johnson, Anthony, Detroit, MI, $28,984.66, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1989.
Kelly, James, M., Northville, MI, $20,113.77, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1983.
Korto, Felix, K., Southfield, MI, $7,246.18, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Locascio, James, E., Wixom, MI, $5,142.26, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1981.
Maharg, Jeffrey, R., Haslett, MI, $24,967.34, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1986.
Martin, Joye, L., Mount Clemens, MI, $62,860.86, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1988.
McDougall, Shawn, E., Sterling Heights, MI, $30,633.71, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1989.
Miller, Melvin, S., Southfield, MI, $21,199.02, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Moore, Teresa, M., Detroit, MI, $2,860.10, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1985.
Moussaed, Emile, K., Ypsilanti, MI, $102,804.14, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1987.
Murphy, Kevin, V., Fraser, MI, $39,593.53, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1981.
Nivison, Thomas, J., Flint, MI, $132,259.28, UNIV OF DETROIT, Detroit, MI, Dentistry JUN, 1986.
Okros, Michael, J., Warren, MI, $191,330.25, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, AUG, 1986.
Robinson, Velton, D., Detroit, MI, $153,761.08, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, AUG, 1985.
Russell, Bobby, D., Stevensville, MI, $54,892.53, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, MAY, 1988.
Snyder, Steven, H., Ann Arbor, MI, $39,034.91, UNIV OF DETROIT, Detroit, MI, Dentistry, APR, 1981.

Tobo, Caroline, R., Southgate, MI, $9,897.80, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1990.
Wenturine, James, A., Fraser, MI, $41,145.97, UNIV OF DETROIT, Detroit, MI, Dentistry, JUN, 1985.

Health Administration

Bennie, James, R., Livonia, MI, $47,411.23, MICHIGAN STATE UNIV, East Lansing, MI, Health Administration, JUN, 1986.

Optometry

Medlock, Melissa, M., Montgomery, MI, $16,790.37, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1989.

Osteopathy

Attles, Ronda, L., Detroit, MI, $28,191.27, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, FEB, 1987.
Barnett, Ruth, D., Detroit, MI, $68,915.32, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1987.
Benjamin, Roxanne, L., Rose City, MI, $53,078.64, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1986.
Breedlove, David, L., Southfield, MI, $8,903.83, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1983.
Brent, Gloria, J., Detroit, MI, $37,255.33, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1986.
Burton, Joseph, Lee, Southfield, MI, $81,622.29, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, JUN, 1989.
DeWilde, Steven, B., Algonac, MI, $24,913.96, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, SEP, 1986.
Frei, Julia, I., Marquette, MI, $7,770.51, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1988.
Garcia, Edna, M., Southfield, MI, $19,591.63, UNIV OF MED & DENT OF NJ—NJ OST MED, Newark, NJ, Osteopathy, MAY, 1985.
Ghafouri, Mohammad, R., Okemos, MI, $2,522.46, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1990.
Green, Linda, M., Detroit, MI, $35,181.50, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUL, 1985.
Griffin, Bryan, J., Grosse Pointe, MI, $2,469.92, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1991.
Hammett, Howard, J., Marlette, MI, $156,828.81, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1987.
Hill, Robert, J., Holt, MI, $2,353.77, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUL, 1987.
Holloway, Lawrence, M., Flint, MI, $132,265.09, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1983.
Racicot, Terry, A., Troy, MI, $10,042.90, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1989.
Smalley, Daniel, R., Wellston, MI, $179,240.13, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1985.
Swan, Charles, Detroit, MI, $6,428.70, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1988.
Toth, Robert, L., Detroit, MI, $24,793.61, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUN, 1981.
York, Steven, R., Whitmore Lake, MI, $117,722.74, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1988.

Pharmacy

Lemmons, Yvonne, Detroit, MI, $29,719.75, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1983.

Podiatry

Atkins, Floyd, Detroit, MI, $179,053.80, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Ball Jr., Thomas, Detroit, MI, $27,766.01, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1980.
Berk, Richard, I., Ann Arbor, MI, $118,936.81, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1981.
Bianchi, Anthony, J., Detroit, MI, $52,063.04, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1988.
Borchard, Charles, A., Saginaw, MI, $20,552.12, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Bradford, Joyce, D., Southfield, MI, $192,653.16, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Cesar, Gary, L., Williamston, MI, $133,222.61, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Horne-Atkins, Jorilyn, Southfield, MI, $32,847.84, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1980.
Jackson, Thomas, C., Detroit, MI, $22,354.24, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Johnson, Ervin, B., Grosse Pointe, MI, $176,771.81, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, MAR, 1987.
Klein, Mark, J., Ann Arbor, MI, $74,889.74, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Mabry, Michael, G., Monroe, MI, $156,225.10, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.
Moffett, Anthony, K., Detroit, MI, $12,876.28, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1984.
Pozdol, Alphonse, F., Dearborn, MI, $88,821.58, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1986.
Robertson, Steven, C., Bloomfield Hills, MI, $12,405.09, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1987.
Wilson, Ronald, E., Detroit, MI, $86,750.02, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1985.

Veterinary Medicine

Clark, Rhoda, J., Prescott, MI, $10,353.86, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, JUN, 1987.
Donastorg, Fausto, M., Highland Park, MI, $23,328.21, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.
Kennedy, Meredith, E., East Lansing, MI, $730.48, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, JUN, 1990.
Stewart, Kevin, R., Farmington Hills, MI, $43,968.52, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, JUL, 1987.

Minnesota

Allopathic Medicine

Baker, Jeffrey, D., Champlin, MN, $16,760.42, UNIV OF MINNESOTA, Minneapolis, MN, Allopathic Medicine, JUL, 1986.
Checco, James, Minneapolis, MN, $29,556.97, CORNELL UNIV MED COLLEGE, New York, NY, Allopathic Medicine, MAY, 1985.
Halaas, Gwen, W., Minneapolis, MN, $5,158.04, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUL, 1985.
Hoskins, Denise, S., Cottage Grove, MN, $190,115.95, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, FEB, 1985.
McDonald, Carolyn, S., Lauderdale, MN, $3,728.59, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1987.
Obregon, Kathryn, E., Minneapolis, MN, $62,320.35, UNIV OF NORTH DAKOTA, Grand Forks, ND, Allopathic Medicine, AUG, 1985.
Scarfo, Dan, J., Minneapolis, MN, $21,221.79, SUNY HEALTH SCIENCE CENTER BROOKLYN, Brooklyn, NY, Allopathic Medicine, JUN, 1987.
Scott, Rachel, A., Cambridge, MN, $24,513.40, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, JUN, 1984.
Shipp, Deborah, A., Saint Paul, MN, $2,388.52, UNIV OF WISCONSIN, Madison, WI, Allopathic Medicine, MAY, 1988.
Watson, Roberta, A., Minneapolis, MN, $5,208.70, UNIV OF WASHINGTON, Seattle, WA, Allopathic Medicine, JUN, 1990.

Chiropractic

Blish, Jon, J., Warren, MN, $18,243.36, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1988.
Carson, Timothy, J., Glencoe, MN, $4,396.36, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1985.
Chmelik, Gregory, J., Rushford, MN, $4,759.53, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1990.
Clubb, David, A., Lakeville, MN, $106,965.15, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.

Cox, Janet, L., Minneapolis, MN, $72,125.73, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1988.
Denker, Beth, A., Burnsville, MN, $61,824.36, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1988.
Driessen, Todd, G., Faribault, MN, $35,838.92, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1984.
Dudley, Diann, M., Chanhassen, MN, $8,988.82, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1989.
Fairchild, Alima, C., Saint Paul, MN, $35,443.43, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUN, 1986.
Fordiani, Thomas, R., Apple Valley, MN, $129,412.14, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Hendrickson, Raymond, T., Clear Lake, MN, $4,376.88, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAY, 1984.
Hoklin, Barbara, U., Deephaven, MN, $39,392.93, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, SEP, 1987.
Hoklin, John, G., Excelsior, MN, $29,106.92, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1987.
Jankord, Dean, F., New Prague, MN, $65,802.66, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUN, 1987.
Johnson, Karen, L., Minneapolis, MN, $2,451.78, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUN, 1984.
Kronbeck, Gary, M., Little Falls, MN, $7,311.72, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAY, 1986.
Lawson, Mary, E., Minneapolis, MN, $15,365.39, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1985.
Logue, James, F., Le Sueur, MN, $3,889.51, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JAN, 1983.
Lowe, James, J., Minneapolis, MN, $35,482.97, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1989.
Lundstrom, John, R., White Bear Lake, MN, $46,941.19, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1986.
Lyso, Mark, E., St. Louis Park, MN, $24,312.96, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1983.
Mayfield, Gordon, L., Saint Paul, MN, $11,243.28, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAY, 1984.
McRoy Jr., David, Maplewood, MN, $22,259.90, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1986.
Mitchell, Margaret, A., Saint Paul, MN, $34,163.28, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, FEB, 1987.
Norman, Foragren, Kathleen, Dennison, MN, $62,978.47, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1984.
O'Brien, Daniel, P., Saint Paul, MN, $6,992.92, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAY, 1984.
Post, Margaret, Minneapolis, MN, $5,332.13, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1984.
Roehl, Randall, L., Burnsville, MN, $14,142.89, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUL, 1987.
Schultz, Craig, D., Minneapolis, MN, $8,848.99, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1986.
Smith, Edward, J., Edina, MN, $12,525.13, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1992.
Sogaard, James, E., Maple Plain, MN, $19,654.22, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1983.
Steffi, David, L., Minneapolis, MN, $11,393.66, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1989.
Strapko, Steven, W., Saint Paul, MN, $48,952.41, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1988.
Triden, Thomas, A., Willmar, MN, $34,051.28, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1987.
Valverde-Pena, Francisco, Saint Cloud, MN, $4,031.17, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1990.
Wakefield, Elizabeth, A., Saint Paul, MN, $55,653.02, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1985.
Weierke, Brenda, L., South Saint Paul, MN, $15,867.96, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.
Wicklander, Calvin, W., Hastings, MN, $3,291.19, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1990.

Dentistry

Devine, Sean, G., Minneapolis, MN, $9,511.50, UNIV OF MINNESOTA, Minneapolis, MN, Dentistry, JAN, 1987.
Doan, Tung, T., Minnetonka, MN, $29,374.39, UNIV OF ALABAMA-BIRMINGHAM, Birmingham, AL, Dentistry, JUN, 1987.
Duffy, Patrick, T., Saint Paul, MN, $119,274.64, UNIV OF MINNESOTA, Minneapolis, MN, Dentistry, APR, 1987.
Hulitt, Mary, D., Saint Paul, MN, $144,940.70, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1986.
Lalomia, Terese, A., Minneapolis, MN, $6,024.81, UNIV OF MINNESOTA, Minneapolis, MN, Dentistry, JUN, 1986.
Schroeder, Donna, M., Duluth, MN, $163,285.84, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1984.
Wilbur, Raymond, C., Bloomington, MN, $119,534.87, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1987.

Optometry

Sabre, Mark, S., Eden Prairie, MN, $3,393.04, PACIFIC UNIVERSITY, Forest Grove, OR, Optometry, MAY, 1990.
Weeks, Brad, A., Hopkins, MN, $54,956.31, UNIV OF MISSOURI-ST LOUIS, St. Louis, MO, Optometry, MAY, 1987.

Osteopathy

Cavalancia, Barry, J., Minneapolis, MN, $29,543.65, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUL, 1985.

Podiatry

Perpich, Thomas, J., Ironton, MN, $95,657.01, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, MAR, 1985.

Public Health

Gilbert, Grant, O., Minneapolis, MN, $33,739.27, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Public Health, SEP, 1982.

Mississippi

Allopathic Medicine

Harris, Dona, F., Ridgeland, MS, $26,139.26, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Herron, Woodie, D., Aberdeen, MS, $34,073.56, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1984.
Holaday, Howard, R., Brandon, MS, $86,719.09, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUN, 1987.
Miller, James, P., Jackson, MS, $11,779.01, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Taylor, Brenda, G., Jackson, MS, $22,362.89, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Allopathic Medicine, MAY, 1984.

Chiropractic

Clark, Ronald, H., Meridian, MS, $8,307.19, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Durdin, James, M., Tupelo, MS, $131,424.53, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Fontenette, Vernie, F., Gulfport, MS, $46,934.61, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1988.
Foxworth, Raymond, A., Brandon, MS, $68,776.37, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1985.
Holford, Joe, E., West Point, MS, $72,437.50, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1987.
Lett, Gary, L., Hattiesburg, MS, $44,902.87, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1985.
McNair, Lawrence, Gulfport, MS, $76,180.80, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.

Twigg, Jonathan, W., Bay St. Louis, MS, $93,125.30, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1988.

Dentistry

Akin, Douglas, Ridgeland, MS, $2,612.56, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, JUN, 1985.
Chatham, Charles, B., Jackson, MS, $31,085.93, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, MAY, 1985.
Coleman, James, T., Jackson, MS, $24,915.54, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, JUN, 1986.
Cornwall, Howard, A., Vicksburg, MS, $31,567.76, HARVARD SCHOOL OF DENTAL MEDICINE, Boston, MA, Dentistry, JUN, 1986.
Dunn, Frederic, B., Gulfport, MS, $93,609.78, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1987.
Jackson, Marcus, K., Jackson, MS, $23,286.31, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1989.
Long, Robert, E., Clarksdale, MS, $2,914.14, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, AUG, 1979.
Ocampo, Buddy, Petal, MS, $36,470.16, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, MAR, 1986.
Smith, Ellison, B., Jackson, MS, $24,103.34, HOWARD UNIVERSITY, Washington, DC, Dentistry, AUG, 1989.

Pharmacy

Ratliff, James, H., Hattiesburg, MS, $3,394.29, XAVIER UNIV OF LOUISIANA, New Orleans, LA, Pharmacy, MAY, 1983.

Podiatry

Lemoine, Hennelore, N., Cleveland, MS, $55,428.14, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.

Missouri

Allopathic Medicine

Barnes, Mark, R., Jefferson City, MO, $19,044.08, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Allopathic Medicine, DEC, 1986.
Chavis, Dion, D., Columbia, MO, $4,959.98, UNIV OF MISSOURI-COLUMBIA, Columbia, MO, Allopathic Medicine, JUN, 1989.
Gayton, Samuel, E., Stover, MO, $42,338.55, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1989.
Hardrict, Ronald, J., St. Louis, MO, $117,034.22, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1991.
Higginbotham, Bruce, W., Saint Peters, MO, $44,844.51, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, JAN, 1985.
Jimenez, Fernando, Columbia, MO, $195,831.34, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, FEB, 1985.
King Jr., Edgar, M., Kansas City, MO, $94,183.87, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Allopathic Medicine, MAY, 1987.
Latimer, Otis, S., Kansas City, MO, $17,165.70, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1983.
Matthews, Georgia, E., Columbia, MO, $4,251.17, UNIV OF MISSOURI-COLUMBIA, Columbia, MO, Allopathic Medicine, MAY, 1989.
Noor, Sidt, Y., Festus, MO, $644.83, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, JUL, 1983.
Phyfer, Kathryn, A., Perryville, MO, $121,674.93, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1986.
Pitts, Eric, W., Florissant, MO, $11,108.29, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, JUN, 1986.
Sanders, Thomas, Kansas City, MO, $83,985.14, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1987.
Smith, Danny, Florissant, MO, $52,471.05, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, MAY, 1986.
Wells, Lawrence, St. Louis, MO, $25,283.77, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1982.

Chiropractic

Bailey, David, W., Chesterfield, MO, $50,634.17, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1987.
Bartholomew, Brian, Saint Charles, MO, $2,875.82, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1990.
Bedell, Andrew, D., Lebanon, MO, $67,753.17, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1989.
Borst, Mitchell, Ballwin, MO, $10,599.29, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1988.
Bowers, George, W., Chesterfield, MO, $21,632.39, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUN, 1988.
Boyer, Arthur, G., Festus, MO, $40,459.85, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1983.
Brown, Harry, E., Independence, MO, $45,363.28, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1985.
Brown, Dale, A., Kansas City, MO, $89,813.54, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1987.
Caplan, Richard, A., Kansas City, MO, $18,733.93, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1986.
Cohen, Eric, Crestwood, MO, $44,667.50, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1986.
Colby, Susan, E., St. Louis, MO, $37,560.38, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Colley, Rodney, E., Kansas City, MO, $50,984.19, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1987.
Danielle, Larry, Allendale, MO, $97,699.96, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1984.
Dareing, Mark, D., Liberty, MO, $21,622.85, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1982.
Davis, Floyd, J., Kansas City, MO, $48,060.19, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1988.
Eichman, Laurence, E., Kansas City, MO, $142,692.82, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1986.
Elliott, Joseph, E., Macon, MO, $68,140.57, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUN, 1984.
Erwin, Herbert, F., St. Louis, MO, $76,979.37, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Fulkerson, Marc, A., Liberty, MO, $68,413.87, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1987.
Gerard, Jill, D., Fulton, MO, $21,622.90, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Gibson, Stephen, L., Cape Girardeau, MO, $26,867.64, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1984.
Gulla, Kevin, M., Lees Summit, MO, $10,473.23, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1989.
Halley, James, E., Kansas City, MO, $110,309.14, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1986.
Hansen, Michael, E., Manchester, MO, $38,238.53, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1985.
Harness, William, E., Kansas City, MO, $17,425.70, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Herbst, Stephen, H., Winona, MO, $41,594.70, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1985.
Hotz, Michael, K., Kansas City, MO, $99,815.38, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1985.
House, Avis, M., Kansas City, MO, $13,132.61, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1982.
Johnston, John, D., Grandview, MO, $77,547.92, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1988.
Jones, Richard, H., Macon, MO, $67,215.03, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1985.
Jordan, Jeffrey, E., Lawson, MO, $40,691.74, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1990.
Kessinger IV, Andrew, J., Mansfield, MO, $50,311.99, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUL, 1986.
Kline, Ruth, A., Raytown, MO, $39,078.74, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1983.
Koris, Kenneth, L., Kansas City, MO, $71,434.56, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1987.

Krasowsky, George, Montgomery City, MO, $14,276.27, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Lyon, Richard, F., Hermitage, MO, $55,838.33, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1983.
McCuan, Kathy, A., Jackson, MO, $823.84, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1983.
Miller, Richard, W., Valley Park, MO, $6,601.08, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1988.
Nean, Linda, K., Liberty, MO, $69,938.51, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1989.
O'Leary, Molly, M., Kansas City, MO, $77,138.97, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1988.
Peterson, Michael, S., Kansas City, MO, $5,420.37, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Pierre-Jerome, Claude, Manchester, MO, $41,289.25, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1987.
Pinkham, Scott, B., Lake St. Louis, MO, $36,665.91, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1987.
Porter, Robert, A., St. Louis, MO, $34,255.23, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1986.
Price, Arthur, R., Kansas City, MO, $120,443.84, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1986.
Rahman-Setayesh, Mali, Wright City, MO, $61,545.50, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1989.
Rice, Sterling, T., Kansas City, MO, $82,628.20, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Robertson, Dana, L., Columbia, MO, $3,156.22, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, FEB, 1983.
Scarcello, Rocco, J., Kansas City, MO, $31,238.73, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1987.
Sirois Jr., Bernard, D., Saint Charles, MO, $15,452.23, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1988.
Smith, Charles, A., Kansas City, MO, $16,284.95, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1986.
Steuber, Virgil, R., Springfield, MO, $73,080.36, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1986.
Swope, Karl, A., Rolla, MO, $89,700.87, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1985.
Talley, Michael, S., Belton, MO, $43,559.80, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1983.
Taylor, Linda, G., Riverside, MO, $68,285.01, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1986.
Taylor, David, G., Blue Springs, MO, $16,807.67, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1985.
Thomason, Pat, R., Kansas City, MO, $56,066.88, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1986.
Tibbetts, Mila, A., Columbia, MO, $38,670.52, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1989.
Tignor, Jane, M., Independence, MO, $60,509.07, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1988.
Towers, Timothy, J., St. Louis, MO, $13,030.45, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1985.
Vance, William, M., Sedalia, MO, $42,607.15, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Von Levin, Timothy, R., Normandy, MO, $10,604.17, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, OCT, 1983.
Warner, Nathan, G., Springfield, MO, $35,885.72, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1990.
Washington, Joseph, D., St. Louis, MO, $32,061.24, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1988.
Weed, Jimmy, D., Bridgeton, MO, $6,465.27, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1984.
Wene, Gregory, L., Warrensburg, MO, $52,721.39, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
White, Michael, M., Blue Springs, MO, $20,274.15, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1982.
Wilson, Eileen, T., Kansas City, MO, $50,736.59, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, NOV, 1986.
Wright, Lynnea, S., Kansas City, MO, $45,710.29, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Youde, Rehea, L., Kansas City, MO, $53,571.39, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1987.
Zorad, Christine, M., Independence, MO, $47,640.18, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAR, 1986.

Dentistry

Bacon, Pamela, M., Saint Charles, MO, $139,435.81, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1989.
Baker, Charles, F., St. Louis, MO, $15,788.30, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1982.
Brockington, Phillip, M., Kansas City, MO, $55,650.07, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Clark, Evelyn, B., Kansas City, MO, $72,801.88, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1988.
Coleman Jr., Emmett, L., St. Louis, MO, $88,800.83, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, DEC, 1985.
Crawford, Oran, Lynn, Kansas City, MO, $58,644.10, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1985.
Dunn, Marc, T., Independence, MO, $30,672.63, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1981.
Eichenlaub, Mark, H., Kansas City, MO, $357.36, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1985.
Eimers, Jerry, L., Maryville, MO, $40,252.32, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, JUN, 1983.
Esswein, John, G., Perryville, MO, $23,309.82, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, SEP, 1984.
Fobbs, Michel, Bridgeton, MO, $5,728.64, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.
Fowler, Nita, C., Florissant, MO, $17,034.87, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1980.
Huq, Zahra, A., Chesterfield, MO, $2,650.03, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1981.
Jackson, Marguita, D., Blue Springs, MO, $31,914.26, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1987.
Kollat, Dana, G., St. Louis, MO, $34,507.00, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, FEB, 1988.
Nelson, Howard, D., Kansas City, MO, $64,715.06, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1986.
Peterson, Alan, C., St. Louis, MO, $99,240.95, WASHINGTON UNIV, St. Louis, MO, Dentistry, JUN, 1984.
Pierce, Connie, L., Kansas City, MO, $53,171.38, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, JUN, 1986.
Pierce, John, P., Kansas City, MO, $2,902.08, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1982.
Piper, Richard, A., St. Louis, MO, $58,092.54, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Rieck, Paul, G., Kansas City, MO, $10,251.49, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, APR, 1983.
Sladek, Martin, J., Ballwin, MO, $180,223.46, WASHINGTON UNIV, St. Louis, MO, Dentistry, JUN, 1987.
Vorbeck, Teresa, M., St. Louis, MO, $127,174.40, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1988.
Wright, Ronald, L., St. Louis, MO, $2,320.27, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1989.
Zinke, Alan, G., Springfield, MO, $28,939.40, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1985.

Health Administration

Cipriano, Anthony, W., St. Louis, MO, $36,545.84, ST LOUIS UNIVERSITY, St.

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Louis, MO, Health Administration, MAY, 1985.
Harris, Denise, B., St. Louis, MO, $10,874.40, WASHINGTON SCHOOL OF MEDICINE, St. Louis, MO, Health Administration, MAY, 1986.
Jansson, Susanne, E., St. Louis, MO, $23,486.66, WASHINGTON SCHOOL OF MEDICINE, St. Louis, MO, Health Administration, MAY, 1986.

Optometry

Allen, Faye, D., Spanish Lake, MO, $115,125.91, UNIV OF MISSOURI-ST LOUIS, St. Louis, MO, Optometry, JUN, 1988.
Joyner, Walter, F., Kirksville, MO, $34,745.21, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, JUN, 1981.
Ladendecker, Linda, L., Hillsboro, MO, $3,647.28, UNIV OF MISSOURI-ST LOUIS, St. Louis, MO, Optometry, MAY, 1986.

Osteopathy

Bell, Barbara, J., Joplin, MO, $74,494.88, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUN, 1984.
Childers, Martin, K., Columbia, MO, $63,578.09, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1990.
Early, Gary, M., Kirksville, MO, $12,175.58, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUN, 1980.
Gililland, Terri, Kirksville, MO, $16,332.41, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, MAR, 1991.
Seedorff, Linda, D., Lawson, MO, $63,154.80, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1987.
Sengstacken, Mark, A., Jefferson City, MO, $209,776.63, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1988.
Simhachalam, Morris, N., Kansas City, MO, $36,031.74, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, (No Separation Date).
Smith, Gina, M., St. Louis, MO, $135,226.71, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1986.
Snyder, James, Boonville, MO, $40,277.64, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1987.
Turner, Garry, L., Independence, MO, $161,273.69, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1985.
Vark, Lawrence, E., Springfield, MO, $10,763.50, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUL, 1984.

Pharmacy

Oris, Gregory, R., Sedalia, MO, $9,050.24, ST LOUIS CLG OF PHARMACY, St. Louis, MO, Pharmacy, MAY, 1987.

Podiatry

Green, Gregory, N., St. Louis, MO, $33,026.38, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1983.
Jackson, Howard, F., St. Louis, MO, $158,263.27, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Moore, Robert, M., St. Louis, MO, $51,893.49, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.
Williams, Gary, W., St. Louis, MO, $43,890.89, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.

Montana

Allopathic Medicine

McEwen, Christopher, C., Kalispell, MT, $11,770.59, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1984.

Chiropractic

Bartlett, Richard, W., Livingston, MT, $41,871.57, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, SEP, 1987.
Campbell, Timothy, J., Billings, MT, $56,476.92, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1987.
Cronin, Gary, L., Whitefish, MT, $10,108.76, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1987.
Failor, Richard, L., Missoula, MT, $9,392.17, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Harrison, Gordon, E., Hardin, MT, $10,607.36, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1985.
Johnson, Carol, A., Broadview, MT, $66,528.14, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1984.
Kaiser, Robert, L., Thompson Falls, MT, $49,130.00, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1984.
Lavender, Anthony, G., Joliet, MT, $91,080.22, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Owczarek, Keith, V., Missoula, MT, $39,417.59, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1985.

Osteopathy

Lovell, Randy, J., Thompson Falls, MT, $16,628.83, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUL, 1984.

Podiatry

Daniels, Jerry, G., Butte, MT, $159,585.83, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1987.
Huppert, Gregory, P., Billings, MT, $14,352.20, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1988.

Veterinary Medicine

Dierking, Douglas, C., Alberton, MT, $24,461.07, UNIV OF MINNESOTA, Minneapolis, MN, Veterinary Medicine, JUL, 1984.

Nebraska

Allopathic Medicine

Corbett, Timothy, W., Bellevue, NE, $107,795.20, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1984.
Gee, Terry, P., Bellevue, NE, $4,533.69, UNIV OF NEBRASKA MED CENTER, Omaha, NE, Allopathic Medicine, JUN, 1991.
Kolbeck England, Jan, Omaha, NE, $29,612.73, EMORY UNIVERSITY, Atlanta, GA, Allopathic Medicine, JUN, 1982.

Chiropractic

Anderson, Wayne, B., Omaha, NE, $17,549.17, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, SEP, 1982.
Deal, Steven, L., Lincoln, NE, $1,789.41, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1985.
Mayes, Rickey, D., Norfolk, NE, $25,897.86, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1982.
Wall, Homer, G., Lincoln, NE, $10,967.23, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1983.
Wurth, Mark, G., Omaha, NE, $65,256.52, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1983.

Dentistry

Henley, Kenneth, E., Omaha, NE, $11,214.41, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1987.
Kerns, Steven, G., Lincoln, NE, $16,836.73, UNIV OF NEBRASKA MED CENTER, Omaha, NE, Dentistry, MAY, 1985.
Odom, James, E., Wakefield, NE, $35,855.51, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Dentistry, MAY, 1981.
Pinkham, Jimmie, L., Omaha, NE, $27,426.96, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, JUN, 1985.
Rensch, Michael, A., Omaha, NE, $20,063.14, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1987.

Osteopathy

Schultz, Cynthia, M., Fullerton, NE, $70,032.40, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1986.

Podiatry

Dyer, William, D., Lincoln, NE, $100,829.36, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1985.
Thornton, Martha, F., Lincoln, NE, $121,011.10, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUL, 1987.

Nevada

Allopathic Medicine

Bradley, Bruce, S., Las Vegas, NV, $18,239.19, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1987.
Degernes, Daniel, J., Sparks, NV, $16,065.08, UNIV OF NEVADA-RENO, Reno, NV, Allopathic Medicine, MAY, 1990.
Leaks, Joan, S., Las Vegas, NV, $9,475.96, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUL, 1982.

Manchester, Kevin, E., Reno, NV, $19,505.33, UNIV OF NEVADA-RENO, Reno, NV, Allopathic Medicine, MAY, 1989.
Martin, Leona, M., Las Vegas, NV, $135,777.65, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1986.

Chiropractic

Abboud, William, H., Henderson, NV, $1,310.15, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Akin, Kathy, L., Las Vegas, NV, $22,366.49, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, MAY, 1986.
Church, Jeffrey, S., Las Vegas, NV, $62,424.59, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Evans, Donald, A., Las Vegas, NV, $96,786.31, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1986.
Hansen, Kris, T., Las Vegas, NV, $52,678.20, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1989.
Henderson, Donald, L., Bunkerville, NV, $28,548.77, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1986.
Hults, Ivagene, P., Las Vegas, NV, $61,693.45, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1986.
Jensen, Jonathan, Mesquite, NV, $40,500.19, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, MAY, 1984.
Pilkington, Charles, R., Incline Village, NV, $16,835.99, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Smith, Dale, M., Las Vegas, NV, $77,099.77, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1987.
Somerville, Laurie, A., Reno, NV, $6,610.98, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1988.
Sykes, Steven, G., Stateline, NV, $33,956.93, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1987.

Clinical Psychology

Weir, Dianna, J., Las Vegas, NV, $62,965.92, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, JUN, 1987.

Dentistry

Edwards, Gregory, C., Las Vegas, NV, $51,697.82, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Goodrich, Allyn, P., Ely, NV, $6,689.66, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, APR, 1988.
Turner, Lee, R., Las Vegas, NV, $3,699.22, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1988.

Osteopathy

Connelly, Chris, F., Las Vegas, NV, $2,488.03, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1981.
Oksenholt, Lorrie, M., Sparks, NV, $25,077.66, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1987.

Podiatry

Clark, Christine, C., Las Vegas, NV, $131,836.19, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Thurston, Glen, D., Reno, NV, $4,839.39, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, FEB, 1988.

New Hampshire

Allopathic Medicine

Burke, Kenneth, P., Merrimack, NH, $80,451.40, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.
Percival, Marjorie, C., New Boston, NH, $3,500.02, DARTMOUTH COLLEGE MED SCH, Hanover, NH, Allopathic Medicine, JUN, 1986.

Chiropractic

Long Jr., George, E., Portsmouth, NH, $20,181.53, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, JAN, 1984.
Pratt, Edward, P., Bristol, NH, $42,133.14, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.

Dentistry

Barrows, Joni, B., Newmarket, NH, $187,825.97, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUL, 1987.
Caron, Roderic, C., Manchester, NH, $78,367.48, TUFTS UNIVERSITY, Boston, MA, Dentistry, JUN, 1983.

Optometry

Lemoine, Wendy, R., Derry, NH, $9,518.64, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, MAY, 1988.

Veterinary Medicine

Anderson, Mark, R., Contoocook, NH, $833.76, CORNELL UNIV (N.Y. STATE COLLEGE), Ithaca, NY, Veterinary Medicine, JUN, 1986.
Stone, David, B., Gilford, NH, $30,527.55, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1988.

New Jersey

Allopathic Medicine

Aikman, Noelle, M., Point Pleasant, NJ, $15,862.48, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1988.
Bocage, Jean, Phillipe, Piscataway, NJ, $9,886.85, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1988.
Brown, James, E., East Orange, NJ, $32,162.49, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1989.
Clarke, Althea, B., Edison, NJ, $27,651.76, SUNY AT STONY BROOK, Stony Brook, NY, Allopathic Medicine, MAY, 1990.
Daniel, Felton, J., Union City, NJ, $22,129.97, MEDICAL COLLEGE OF GEORGIA, Augusta, GA, Allopathic Medicine, JUN, 1986.
Davis, Kuyann, A., Englishtown, NJ, $19,837.91, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1984.
De Vastey, Gerard, East Orange, NJ, $8,892.09, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1988.
Frazier, Judith, A., Montclair, NJ, $6,554.18, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, DEC, 1986.
Grossman, Shulamit, R., Alpine, NJ, $77,149.08, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUL, 1986.
Harris, Hazel, P., Irvington, NJ, $4,439.37, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1981.
Hayden, Gina, M., Mount Holly, NJ, $27,636.48, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUL, 1987.
Hepburn, Valerie, J., Montclair, NJ, $59,625.10, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1983.
Hill, Melvin, N., Hazlet, NJ, $60,202.36, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUL, 1986.
Johnson, Kevin, D., Hackensack, NJ, $37,720.96, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.
Jones, William, B., Englewood, NJ, $83,694.82, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Kosmach, Karlene, M., Cherry Hill, NJ, $18,263.33, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUL, 1986.
Laflore, John, E., Cedar Knolls, NJ, $73,940.93, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, JUN, 1981.
Lerner, David, A., Highland Park, NJ, $173,976.65, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1987.
Melendez, Grace, Perth Amboy, NJ, $8,311.63, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1989.
Metcalff, Edmund, K., Bridgewater, NJ, $23,169.28, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, DEC, 1988.
Moff, Salvatore, Mich, Manasquan, NJ, $101,664.96, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Moore, Lornold, W., Newark, NJ, $57,079.00, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1987.
Murray, Carolyn, I., Montclair, NJ, $2,127.86, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1987.
Oliverio, Robert, R., Morristown, NJ, $590.51, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Allopathic Medicine, MAY, 1990.
Patel, Harish, P., Belleville, NJ, $10,773.63, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1990.

Ramos, Joel, Belleville, NJ, $129,472.91, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JUN, 1987.
Rashduni, David, H., Clifton, NJ, $4,193.73, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1984.
Reed, Timothy, B., Somerset, NJ, $43,749.36, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, SEP, 1987.
Roberts, Barbara, T., Marlton, NJ, $21,245.89, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1981.
Shukla, Varsha, B., Wayne, NJ, $10,440.50, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, AUG, 1983.
Smalls, Linda, Y., Leonia, NJ, $9,699.85, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUN, 1983.
Smith, George, E., Woodbridge, NJ, $158,623.60, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, MAR, 1986.
Torres, Jose, A., Clifton, NJ, $111,400.92, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JUN, 1987.
Tripp, Lee, A., Glassboro, NJ, $20,625.67, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1981.
Tsarouhas, Louis, Mercerville, NJ, $1,536.66, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1987.
Tuke, Moses, O., Fanwood, NJ, $50,913.29, THOMAS JEFFERSON MEDICAL COLLEGE, Philadelphia, PA, Allopathic Medicine, JUN, 1983.
Vargas, Irma, M., Belleville, NJ, $71,746.71, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, MAY, 1988.
Verdell, Clarence, R., Kirkwood, NJ, $37,102.50, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, NOV, 1986.
Wilson, Cornelius, A., Newark, NJ, $6,739.36, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1988.

Chiropractic

Allen, Richard, L., Morristown, NJ, $88,720.28, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Belden, Devin, A., Princeton, NJ, $92,783.95, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1984.
Betro, Barbara, A., Jersey City, NJ, $41,527.11, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Bolinger, Mark, A., Haddonfield, NJ, $74,521.25, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1987.
Bornstein, Mark, L., Edison, NJ, $85,491.88, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Colgin, James, E., Rockaway, NJ, $9,553.79, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Conley, John, C., Middletown, NJ, $25,506.63, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1984.
Cornely, Michael, P., Merchantville, NJ, $56,507.19, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Cunningham-Zulovitz, Towaco, NJ, $66,424.66, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
D'Angelantonio, Julius, M., Williamstown, NJ, $93,416.90, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Dunlap, Mary, Bayonne, NJ, $59,807.85, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Eisen, Susan, R., Parsippany, NJ, $34,046.99, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Elia, Harry, R., Hillsdale, NJ, $15,671.84, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAY, 1983.
Ellington, Geoffrey, C., Salem, NJ, $43,753.07, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1987.
Feathers, Kathryn, D., Maplewood, NJ, $29,721.24, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1989.
Fogarty, Michael, G., Margate City, NJ, $26,422.96, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.
Gearity, Katherine, A., Maplewood, NJ, $55,531.68, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Gloshinski, Laura, E., High Bridge, NJ, $46,177.93, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Goldstein, Debora, M., Morristown, NJ, $41,371.11, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAR, 1988.
Hart, Regina, E., Morristown, NJ, $7,435.48, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAR, 1987.
Hassiotti, Leone, L., Westwood, NJ, $54,024.33, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Hermida, Mario, D., Bergenfield, NJ, $25,854.27, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1990.
Hoffman, Wayne, A., Garfield, NJ, $24,543.91, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1988.
Howe, John, B., Haskell, NJ, $18,958.16, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Kane, Richard, A., Somerset, NJ, $110,267.29, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAY, 1985.
Koslov, Gleb, M., Ringwood, NJ, $78,012.42, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1987.
Luongo, Mary, Ann, Bayonne, NJ, $12,931.32, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1984.
Maresca, James, F., Mercerville, NJ, $52,330.92, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, JAN, 1985.
Marks, John, M., East Keansburg, NJ, $7,926.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
McDermott, Gregory, P., Fair Haven, NJ, $28,367.07, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Morrow, Lu, A., Marlton, NJ, $39,499.52, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1988
Murphy, Richard, N., Hackensack, NJ, $100,248.59, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1986.
Neuner, John, S., Port Republic, NJ, $31,577.34, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1986.
Newton, Laurence, D., Marlton, NJ, $54,027.46, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1987.
Orlikowski, Jeffrey, P., North Bergen, NJ, $21,760.99, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1989.
Parks, Kevin, L., Wall, NJ, $11,511.83, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, JAN, 1984.
Pepitone, Frank, V., Paramus, NJ, $49,978.64, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Pilot, Kathleen, M., Fair Haven, NJ, $238.37, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Romanski, Michael, M., Wall, NJ, $25,483.78, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1988.
Ronan, Patrick, M., Bloomfield, NJ, $56,392.18, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Ross, Kimberley, A., Ringwood, NJ, $79,048.24, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic APR, 1987.
Ruane, Joseph, J., Little Silver, NJ, $28,687.85, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1983.
Russell, Robert, J., Blackwood, NJ, $6,822.91, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1989.
Siegel, Roy, F., Three Bridges, NJ, $69,202.45, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1987.
Snyder, Richard, K., Bridgewater, NJ, $28,894.11, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Tumas, Mary, D., Brick, NJ, $62,278.00, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1986.
Tumas, John, J., Bay Head, NJ, $41,048.67, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1986.
Viggiano, Christopher, M., Long Valley, NJ, $66,594.31, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1988.
Weimmen, Frederick, J., Toms River, NJ, $22,896.36, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Werrell, Sandra, M., Mount Laurel, NJ, $28,244.01, NATIONAL COLLEGE OF

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CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1985.
Woods, Dolores, East Orange, NJ, $13,455.24, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1991.
Zimmel, Douglas, J., Shrewsbury, NJ, $73,502.06, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.

Clinical Psychology

Jones, Patricia, T., Teaneck, NJ, $19,434.83, YESHIVA UNIV, New York, NY, Clinical Psychology, JUN, 1988.

Dentistry

Browning, Lois, E., Clementon, NJ, $33,932.95, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1985.
Bussow, Michael, D., Hackensack, NJ, $2,778.52, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, MAY, 1991.
Caruso, Edmund, M., Branchburg, NJ, $37,205.14, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, MAY, 1986.
Celentano-Steidl, Donna, M., Stillwater, NJ, $57,191.27, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, MAY, 1987.
Correa, Louisa, F., Paramus, NJ, $5,336.37, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Creecy, Ronald, K., Moorestown, NJ, $14,820.42, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Devaris, Helena, Fair Lawn, NJ, $15,666.56, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1982.
Dull, John, W., Bloomfield, NJ, $17,522.76, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.
Ernst, David, J., East Windsor, NJ, $14,731.64, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.
Graham, William, R., Hackensack, NJ, $1,694.94, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, JUL, 1985.
Jeffrey III, Arthur, M., Freehold, NJ, $12,083.39, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1987.
Johnson, Steven, B., Piscataway, NJ, $17,690.52, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1982.
Langford, Cynthia, M., Irvington, NJ, $148,026.83, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, DEC, 1988.
McDonough, Lawrence, P., Rumson, NJ, $91,809.10, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.
McTernan, Roy, J., Clifton, NJ, $53,402.64, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, MAY, 1985.
Newman, Michael, J., South Amboy, NJ, $17,646.97, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, NOV, 1984.
Newsome, Dorita, Orange, NJ, $31,935.33, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1983.
Noreika, Kevin, Wanaque, NJ, $27,613.53, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, JUN, 1983.
Pattendien, Sharon, J., Fort Lee, NJ, $124,198.80, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, JUN, 1987.
Puckett, Wanda, F., Jersey City, NJ, $20,174.24, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1980.
Ramirez, Nydia, Dumont, NJ, $118,272.18, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, JUN, 1988.
Reardon, Michael, J., Summit, NJ, $75,191.72, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1989.
Seides, Richard, Montclair, NJ, $22,705.05, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, JUN, 1985.
Sherman, Lynn, P., Barnegat, NJ, $138,688.66, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1983.
Sherzai, Roshana, Hackensack, NJ, $3,783.85, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Stuart, William, J., New Milford, NJ, $32,649.92, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, MAY, 1985.
Tobias, Joanne, S., Fair Lawn, NJ, $94,154.49, BOSTON UNIVERSITY, Boston, MA, Dentistry, JAN, 1983.
Turpen, Marina, Absecon, NJ, $52,553.19, TUFTS UNIVERSITY, Boston, MA, Dentistry, MAY, 1988.
Ugwuneri, Zephaniah, N., Somerset, NJ, $5,472.35, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, MAR, 1987.
Victor, Richard, J., Morganville, NJ, $10,384.81, NORTHWESTERN UNIV, Chicago, IL, Dentistry, JUN, 1983.
Williams, Carolyn, W., Lakehurst, NJ, $195,788.26, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1985.
Wilson, Orin, M., Lakewood, NJ, $12,034.29, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1984.
Zouak, Larbi, Tenafly, NJ, $82,443.24, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, MAY, 1988.

Optometry

Moosavi, Syed, M., Toms River, NJ, $15,298.16, NORTHEASTERN STATE UNIV, Tahlequah, OK, Optometry, AUG, 1988.

Osteopathy

Claire, James, F., Voorhees, NJ, $167,997.47, UNIV OF MED & DENT OF NJ—NJ OST MED, Newark, NJ, Osteopathy, JUN, 1986.
Crecca, Joseph, F., Little Egg Harbor, NJ, $110,030.02, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1984.
Goldstein, David, W., Cherry Hill, NJ, $35,604.80, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1989.
Kelly, Robert, B., Old Bridge, NJ, $52,128.09, UNIV OF MED & DENT OF NJ—NJ OST MED, Newark, NJ, Osteopathy, MAY, 1986.

Pharmacy

Ahmed, Azza, F., Bloomfield, NJ, $12,090.98, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, OCT, 1988.
Akunne, Festus, O., Jersey City, NJ, $17,216.31, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1989.
Aly, Nevein, A., Bloomfield, NJ, $11,490.39, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, FEB, 1987.
Bennett, Elizabeth, C., Teaneck, NJ, $14,464.49, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1986.
Eruchie, Anthonia, O., East Orange, NJ, $22,240.27, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1986.
Jenewari, Elsie, N., Sewell, NJ, $8,542.01, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, AUG, 1983.
McCarty, Scott, C., Atco, NJ, $2,253.66, PHILADELPHIA CLG OF PHARM SCI, Philadelphia, PA, Pharmacy, MAY, 1989.
Onyekabe, Ebere, N., East Orange, NJ, $21,455.15, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1986.
Portnoy, Michael, A., Marlton, NJ, $5,416.13, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, JUN, 1984.
Zaidi, Syed, M., Paramus, NJ, $21,696.74, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, DEC, 1986.

Podiatry

Bailey, Cynthia, Montclair, NJ, $122,658.66, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1989.
Benson, David, M., Edison, NJ, $57,159.13, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JAN, 1987
Breggar, Michael, M., Cherry Hill, NJ, $111,646.39, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1981.
Brightman, Victoria, I., South Hackensack, NJ, $176,213.13, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1986.
Brooks, Michena, L., Jersey City, NJ, $127,363.38, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Chatmon, Deirdre, Bridgeton, NJ, $41,991.08, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1990.
Costanzo Jr., Anthony, J., Point Pleasant Beach, NJ, $112,211.03, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1987.
Geary, Robert, J., Seaside Park, NJ, $85,471.00, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1984.
Gussman, Michel, S., Waterford, NJ, $143,595.49, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1989.
Hegarty, James, R., Cliffside, NJ, $83,608.34, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.
Mangel, Warren, B., Camden, NJ, $120,782.67, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1983.
McAllister, Joseph, F., Hoboken, NJ, $159,209.08, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1988.
Meininger, Kathryn, L., Collingswood, NJ, $57,815.37, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1985.
Oliver, John, A., Edison, NJ, $144,846.04, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1988.
Paul, Steven, L., Elizabeth, NJ, $146,185.13, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.

Potter, James, A., Camden, NJ, $61,405.08, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1984.
Purvis, Chris, A., Sicklerville, NJ, $14,200.35, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1989.
Richardson, James, M., Hackensack, NJ, $50,807.04, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Schiettino, David, North Bergen, NJ, $92,160.81, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1985.
Tachibana, Hidetoshi, J., New Providence, NJ, $95,219.25, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1982.
Testa, Jack, Union City, NJ, $28,171.08, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1984.
Tortoriello, Michael, J., Montclair, NJ, $24,619.15, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1983.
Turner, Demi, M., Newark, NJ, $134,518.06, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Urbanek, Michelle, M., Flemington, NJ, $48,481.97, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1985.

Public Health

Chukwuneke, Bernard, Linden, NJ, $4,376.25, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Public Health, MAY, 1988.

Veterinary Medicine

Benzel, Heidi, A., Long Branch, NJ, $1,418.18, UNIV OF MISSOURI-COLUMBIA, Columbia, MO, Veterinary Medicine, MAY, 1989.
Porter, Gina, M., West Orange, NJ, $52,131.63, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1985.

New Mexico

Allopathic Medicine

Sanchez, Ishmael, B., La Luz, NM, $35,601.82, UNIV OF NEW MEXICO, Albuquerque, NM, Allopathic Medicine, MAY, 1984.
Stephens, Gregory, Gallup, NM, $5,203.86, LOYOLA UNIV—STRITCH SCH OF MED, Maywood, IL, Allopathic Medicine, JUN, 1988.

Chiropractic

Adams, Elaine, A., Rio Rancho, NM, $43,655.24, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1989.
Cicala, Carmine, J., Albuquerque, NM, $75,016.16, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1987.
Elkins, Kelley, G., Las Cruces, NM, $18,222.58, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1986.
Estes, Charles, J., Albuquerque, NM, $12,105.71, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JAN, 1984.
Nelson, Christopher, G., Albuquerque, NM, $109,240.65, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Schoos, Robert, J., Rio Rancho, NM, $21,607.13, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Uttaro, Louis, T., Grants, NM, $19,413.82, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1984.
Willey, Karyn, L., High Rolls Mountain, NM, $1,863.63, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, FEB, 1986.

Dentistry

Kunz, Frederick, W., Alamogordo, NM, $8,347.93, LOUISIANA STATE UNIV MC-NEW ORLEANS, New Orleans, LA, Dentistry, MAY, 1985.
Perez, Pedro, Tierra Amarilla, NM, $22,711.98, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, JUN, 1986.
Tilson, Charles, E., Albuquerque, NM, $83,999.16, WASHINGTON UNIV, St. Louis, MO, Dentistry, JUN, 1986.

Health Administration

Jones, Terence, L., Albuquerque, NM, $47,897.88, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Health Administration, MAY, 1986.

Optometry

Wogksch, David, C., Santa Fe, NM, $17,243.44, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, MAY, 1980.

Osteopathy

Abalos, Jorge, Artesia, NM, $16,704.31, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1989.
Crutcher, Timothy, J., Santa Fe, NM, $42,745.45, SOUTHEASTERN COLLEGE OF OST. MED., N. Miami Beach, FL, Osteopathy, JUN, 1987.
Parks, Norman, G., Albuquerque, NM, $15,530.92, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUL, 1987.

Podiatry

Carpenter, Samuel, C., Farmington, NM, $69,419.59, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUL, 1984.
Hughes, Marilyn, G., Albuquerque, NM, $62,250.47, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Roth, Jeffrey, A., Alamogordo, NM, $179,701.90, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, AUG, 1988.

New York

Allopathic Medicine

Alfalla, Celia, Bronx, NY, $28,730.50, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1987.
Austin, Scott, M., Freeport, NY, $10,210.43, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1987.
Balthazar, Carline, Brooklyn, NY, $29,614.96, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JAN, 1984.
Baptist, Mazal, M., Brooklyn, NY, $10,539.97 DARTMOUTH COLLEGE MED SCH, Hanover, NH, Allopathic Medicine, JUN, 1989.
Battle, Gordon, J., New York, NY, $5,544.47, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, DEC, 1987.
Bourne, Jeanette, L., Riverdale, NY, $4,583.65, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1987.
Brown, Frank, A., Buffalo, NY, $209.03, UNIV OF WISCONSIN, Madison, WI, Allopathic Medicine, MAY, 1984.
Bryant Jr., Edward, O., Yonkers, NY, $131,727.97, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, SEP, 1987.
Buonaspina, Arthur, Floral Park, NY, $14,428.94, SUNY HEALTH SCIENCE CENTER BROOKLYN, Brooklyn, NY, Allopathic Medicine, JUN, 1987.
Burrowes, Wayne, R., Brooklyn, NY, $7,300.51, SUNY HEALTH SCIENCE CENTER, Syracuse, NY, Allopathic Medicine, MAY, 1988.
Burrowes, Celio, O., Brooklyn, NY, $74,875.16, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1982.
Calderon, Jose, Luis, Brooklyn, NY, $1,990.55, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1982.
Case, Phillip, L., New York, NY, $3,448.65, UNIV OF NORTH DAKOTA, Grand Forks, ND, Allopathic Medicine, MAY, 1989.
Chun, Jay, Y., New York, NY, $5,524.26, UNIV OF ROCHESTER, Rochester, NY, Allopathic Medicine, MAY, 1990.
Clarke, Elaine, D., Croton-on-Hudson, NY, $29,924.28, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1985.
Cohen, Steven, E., Belle Harbor, NY, $108,553.79, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUN, 1990.
Conrad, Matthew, H., APO New York, NY, $6,116.00, DARTMOUTH COLLEGE MED SCH, Hanover, NH, Allopathic Medicine, JUN, 1987.
Crevecdeur, Harry, F., Brooklyn, NY, $4,278.92, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1989.
Damico, James, M., Port Jefferson, NY, $95,383.47, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, OCT, 1987.
Davenport, Lorenzo, N., Amityville, NY, $68,692.03, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, MAY, 1985.
Dean, Gregory, E., New York, NY, $53,526.76, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Allopathic Medicine, MAY, 1988.
Denoto III, George, Commack, NY, $5,451.07, SUNY AT STONY BROOK, Stony Brook, NY, Allopathic Medicine, JUN, 1990.
Diaz, Fred, Riverdale, NY, $37,434.08, ALBERT EINSTEIN COLLEGE OF

MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1986.
Dotson, Tanya, J., Brooklyn, NY, $27,484.48, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, JUL, 1986.
Duncan, Carl, J., New York, NY, $85,857.07, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAY, 1986.
Elzay, Leonard, D., Mount Vernon, NY, $135,374.39, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1987.
Espino, Gagarini, T., Flushing, NY, $145,692.33, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, JUN, 1990.
Faust, Glenn, R., Port Washington, NY, $5,262.09, YALE UNIV, New Haven, CT, Allopathic Medicine, MAY, 1986.
Finney, Deirdre, L., New York, NY, $133,499.76, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, MAY, 1985.
Flores, Cathryn, A., New York, NY, $18,623.28, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1989.
Freedman, Lisa, N., Syracuse, NY, $6,129.02, SUNY HEALTH SCIENCE CENTER, Syracuse, NY, Allopathic Medicine, JUN, 1989.
Gamble, Oliver, W., New York, NY, $23,080.41, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUL, 1987.
Garner, Tim, G., New York, NY, $12,013.35, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, DEC, 1986.
Gatell, John, A., Garden City, NY, $3,236.66, UNIV OF ROCHESTER, Rochester, NY, Allopathic Medicine, MAY, 1985.
George, James, K., Albany, NY, $29,855.52, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1987.
Halbert, Cyril, F., New York, NY, $77,300.08, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Hashemi, Kamran, A., New York, NY, $142,359.09, NORTHWESTERN UNIV MED SCHOOL, Chicago, IL, Allopathic Medicine, JUN, 1987.
Hicks, Paul, S., Angola, NY, $146,655.03, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1988.
Hicks Jr., Wesley, L., Angola, NY, $107,749.81, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUL, 1984.
Hill, Aaron, J., Bronx, NY, $8,759.82, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1990.
Horne, Hilton, M., New York, NY, $37,092.36, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1979.
Howard, Rory, J., APO New York, NY, $17,273.62, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, MAY, 1988.
Howard, Myles, B., Johnson City, NY, $57,242.32, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1983.
James, Tyshaun, M., Brooklyn, NY, $25,050.94, MARSHALL UNIVERSITY, Huntington, WV, Allopathic Medicine, MAY, 1989.
Jaskiewicz, Stanley, New York, NY, $190,420.29, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUN, 1988.
Karagounis, Vasilios, A., Brooklyn, NY, $22,467.30, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1989.
Kindler, Hedy, L., New York, NY, $3,236.46, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUN, 1989.
Knibb, Charles, B., New Rochelle, NY, $8,402.27, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1986.
Kwan, Edmund, New York, NY, $54,267.35, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Levy, Maureen, M., Freeport, NY, $55,957.68, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1985.
Long, Kimlyn, C., Brooklyn, NY, $1,327.05, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1990.
Lopez, Daniel, Brooklyn, NY, $277.13, SUNY HEALTH SCIENCE CENTER BROOKLYN, Brooklyn, NY, Allopathic Medicine, JUN, 1989.
Madden, Patrick, J., Albany, NY, $103,626.46, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, MAY, 1988.
Maynard, Lawrence, S., New York, NY, $2,833.46, UNIV OF MASSACHUSETTS, Worcester, MA, Allopathic Medicine, JUN, 1986.
McDaniel, Ronnie, L., New York, NY, $76,830.76, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1987.
McGilvery, James, William, Bronx, NY, $43,697.32, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1987.
Meyer, Elizabeth, A., Schenectady, NY, $7,342.47, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1988.
Meyers, Gary, M., New York, NY, $35,043.84, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUL, 1987.
Mobley, Derrick, Brooklyn, NY, $91,798.62, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1987.
Monk, Melcher, F., New York, NY, $5,291.45, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, AUG, 1986.
Moseley, Clarence, D., Bronx, NY, $24,423.57, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1987.
Newton, Helen, D., Bronx, NY, $43,949.71, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, JUL, 1984.
Nicholson, Charolette, M., Bronx, NY, $31,678.30, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, AUG, 1986.
Obiakor, Ifeanyi, C., Briarwood, NY, $127,801.14, ST LOUIS UNIVERSITY, St. Louis, MO, Allopathic Medicine, JUL, 1985.
Oliver, Maria, E., Bronx, NY, $39,977.66, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, DEC, 1988.
Olujobi, Dele, F., Valhalla, NY, $25,314.85, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUN, 1985.
Peterson II, Frank, R., New York, NY, $64,811.47, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1989.
Petit, Felix, R., Laurelton, NY, $4,112.00, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUN, 1990.
Pierre, Evelyne, Westbury, NY, $4,049.63, UNIV OF KANSAS MEDICAL CENTER, Kansas City, KS, Allopathic Medicine, JUL, 1988.
Reynolds, Howard, P., New York, NY, $8,593.87, CORNELL UNIV MED COLLEGE, New York, NY, Allopathic Medicine, MAY, 1987.
Riley, Susan, P., New York, NY, $169.34, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUL, 1984.
Robinson, Edward, L., Bronx, NY, $71,325.39, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1985.
Rosello, Keith, M., New York, NY, $12,545.57, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, APR, 1988.
Sablon, Dimitri, Rego Park, NY, $5,255.83, SUNY HEALTH SCIENCE CENTER, Syracuse, NY, Allopathic Medicine, JUN, 1987.
Salazar, Marielena, New York, NY, $114,193.74, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JAN, 1987.
Sanel, Henry, B., Rensselaer, NY, $113,460.58, ALBANY MED COLLEGE, Albany, NY, Allopathic Medicine, JUN, 1991.
Scaccia, Marcella, Brooklyn, NY, $4,162.42, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUN, 1989.
Scott, Cheryl, L., New York, NY, $9,292.00, BOSTON UNIVERSITY, Boston, MA, Allopathic Medicine, JUN, 1984.
Shell, Valerie, A., Pomona, NY, $47,630.32, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, SEP, 1988.
Shipley, Patricia, J., Rochester, NY, $19,196.38, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.
Simmons, Belinda, L., Port Jervis, NY, $30,917.59, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1983.
Smith, Horario, L., Brooklyn, NY, $8,869.91, MOREHOUSE COLLEGE, Atlanta, GA, Allopathic Medicine, MAY, 1990.
Sparrow, Alj, F., New York, NY, $105,681.65, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1988.
Spencer, Donna, L., Rosedale, NY, $17,224.13, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1989.
Stirgus, Kent, L., APO New York, NY, $32,671.23, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, DEC, 1985.

Stone, Brian, A., Bronx, NY, $60,500.64, UNIV OF ALABAMA—BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JUN, 1985.
Sullivan, Margaret, A., New York, NY, $6,092.31, LOYOLA UNIV—STRITCH SCH OF MED, Maywood, IL, Allopathic Medicine, JUN, 1990.
Thomas, Giovana, R., Hempstead, NY, $8,960.73, UNIV OF ROCHESTER, Rochester, NY, Allopathic Medicine, MAY, 1988.
Thomas, Stephen, C., Buffalo, NY, $22,562.57, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1987.
Torres, Jose, A., New York, NY, $793.03, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Allopathic Medicine, MAY, 1987.
Vaz, Godfrey, R., Stony Brook, NY, $15,657.59, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1987.
Vilceus, Antenor, P., Brooklyn, NY, $21,144.65, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUL, 1987.
Vivot, Norma, C., New York, NY, $91,089.49, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1987.
Walker, Audrey, M., Larchmont, NY, $29,691.07, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1985.
Walker, Claude, A., Wyandanch, NY, $1,929.75, SUNY HEALTH SCIENCE CENTER BROOKLYN, Brooklyn, NY, Allopathic Medicine, JUN, 1989.
Walton, Stacie, L., New York, NY, $13,210.87, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Allopathic Medicine, JUN, 1987.
Washington, Antoine, P., APO New York, NY, $35,502.09, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUN, 1988.
Weinberger, Andre, New York, NY, $124,251.99, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1983.
Williams III, Rolland, Buffalo, NY, $229,757.86, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
Wimbly, Timothy, New York, NY, $31,914.74, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, MAY, 1986.
Zimmerman, Seth, A., Manhasset, NY, $192,283.30, NEW YORK MED COLLEGE, Valhalla, NY, Allopathic Medicine, JUN, 1987.

Chiropractic

Alston, Patricia, M., New York, NY, $61,304.06, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1988.
Amato, Frank, J., Bellport, NY, $17,025.69, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Ambrosio, Joseph, A., Great Neck, NY, $6,111.63, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1984.
Bee, Christopher, R., West Islip, NY, $29,476.25, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1988.
Bender, Joyce, M., Kingston, NY, $26,448.73, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Bershader, Mitchel, H., Jamaica, NY, $26,270.33, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Brea, Anthony, F., New York, NY, $27,898.78, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1982.
Bucher, Gilles, R., Bayville, NY, $36,304.83, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, AUG, 1985.
Burdett, Denis, P., Bronx, NY, $106,135.03, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Cannillo, Joseph, Port Washington, NY, $42,944.71, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1988.
Cascone, Michaele, M., Saint James, NY, $22,538.59, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAY, 1984.
Chandler, William, J., East Hampton, NY, $76,903.08, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1986.
Clauss Jr., Joseph, J., Morrisonville, NY, $111.00, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1988.
Depamphilis, Greg, Nanuet, NY, $39,418.81, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Detrinis, Vincent, P., Massapequa, NY, $44,000.29, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1985.
Dillsworth, John, Honeoye, NY, $29,951.50, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1986.
Donohue, Neil, P., Middle Island, NY, $25,522.36, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Estey, Drucilla, A., Henrietta, NY, $6,502.81, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1985.
Failla, Robert, J., New York, NY, $19,772.13, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1983.
Farewell, Howard, C., Garnerville, NY, $12,907.64, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1984.
Ferguson, Christopher, D., Brooklyn, NY, $8,726.35, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Fiore, Dominick, Yonkers, NY, $84,669.13, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1986.
Flood, Lori, A., Buffalo, NY, $15,675.18, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, APR, 1987.
Frankel, Tali, R., Far Rockaway, NY, $10,281.03, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Galatz, Menachen, Brooklyn, NY, $22,971.79, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.
Gallo, William, C., Melrose, NY, $4,971.13, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JAN, 1983.
Ganden, Richard, S., Olean, NY, $6,957.29, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1983.
Garone, Joseph, S., Lindenhurst, NY, $41,590.04, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1985.
Gentile, John, M., Albany, NY, $57,648.82, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1987.
Ghigna, Mary, L., Bay Shore, NY, $48,962.45, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1984.
Gonzalez, Bette, New York, NY, $56,235.15, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Gordon, Vincent, G., Brooklyn, NY, $25,693.23, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, JAN, 1985.
Gray, A., L., Lynbrook, NY, $8,316.60, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1987.
Grina, Ellen, B., Hopewell Junction, NY, $12,258.26, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1984.
Johnson, Timothy, H., Buffalo, NY, $16,357.56, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1983.
Johnston, Mary, M., Hempstead, NY, $58,710.96, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1988.
Keller, William, D., Barrytown, NY, $82,898.36, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1988.
Kern, Arnold, E., Livingston Manor, NY, $12,200.06, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, MAY, 1984.
Kiss, Kathleen, M., Shirley, NY, $50,438.78, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Kle, James, P., Bayside, NY, $51,477.52, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.
Koultukis, Chris, New York, NY, $2,891.49, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1985.
Letizia, Lawrence, A., Flushing, NY, $95,328.40, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, JUL, 1989.
Linacre, William, J., Rhinebeck, NY, $72,618.32, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1987.
Lisjak, Craig, F., Eden, NY, $23,115.95, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1989.
Luca, Robert, P., Brooklyn, NY, $4,535.05, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Maroas, Lillian, E., Hicksville, NY, $31,625.05, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1990.
Marshall, Marc, Ruby, NY, $27,397.97, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1984.
Maxon, Tomm, L., Calcium, NY, $1,910.14, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1983.

McCabe, Peter, T., Carmel, NY, $31,278.42, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
McCormack, Wayne, C., Kirkwood, NY, $36,459.22, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1985.
Morgan, Peter, Mamaroneck, NY, $54,739.34, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1985.
Musso, Deborah, G., New York, NY, $2,369.72, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1987.
Nebiosini, Richard, A., Medford, NY, $44,190.28, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1986.
Obadia, Eric, S., Jericho, NY, $46,385.49, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1985.
Pascual, Monique, Central Islip, NY, $18,065.55, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1989.
Patterson Jr., Arthur, E., Staten Island, NY, $10,764.33, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Penke, Christopher, P., North Tonawanda, NY, $33,383.60, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, DEC, 1982.
Petrillo, James, A., Rochester, NY, $40,575.23, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, JAN, 1985.
Raizin, Adam, S., Wantagh, NY, $38,245.43, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, NOV, 1987.
Renz, Howard, W., Astoria, NY, $18,776.76, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1983.
Richichi, Mark, S., Miller Place, NY, $46,020.08, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Schack, Richard, N., Ozone Park, NY, $90,864.39, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1987.
Seymour, Gary, Newburgh, NY, $25,423.99, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1983.
Shaw, Donald, H., New York, NY, $98,682.17, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1985.
Silverstein, Michael, A., New York, NY, $30,132.62, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, SEP, 1986.
Smith, Jeffrey, J., Wellsville, NY, $3,828.93, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAY, 1983.
Streit, Allan, Bronx, NY, $12,667.49, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, MAY, 1984.
Sundin, Doreen, A., Bohemia, NY, $32,558.59, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1984.
Sutliff, James, F., Cicero, NY, $55,362.95, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, OCT, 1986.
Till, Steven, Monsey, NY, $117,997.57, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1987.
Tray, Steven, L., Freeport, NY, $19,628.05, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1985.
Tumonis, Donald, A., Penn Yan, NY, $26,129.63, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1983.
Ulmann, Mark, A., Flushing, NY, $6,729.52, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.
Viladesau, Raymond, L., Massapequa, NY, $12,816.18, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982.
Walcutt, Patricia, B., Syracuse, NY, $24,823.42, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1986.
Weber, Richard, L., Staten Island, NY, $17,421.96, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Wells, John, A., Shelter Island, NY, $59,217.75, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1989.
Wheatley, William, J., Central Valley, NY, $42,020.48, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1988.
Williams, Melissa, C., New York, NY, $41,739.61, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1985.
Zipkin, Martin, R., Monsey, NY, $14,714.60, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1984.

Clinical Psychology

Britt, Esther, C., New York, NY, $114,097.40, ADELPHI UNIVERSITY, Garden City, NY, Clinical Psychology, SEP, 1989.
Creelman, Monica, L., Brooklyn, NY, $3,825.68, ADELPHI UNIVERSITY, Garden City, NY, Clinical Psychology, MAY, 1991.
Helm, Susan, D., New York, NY, $7,193.09, NEW SCHOOL FOR SOCIAL RESEARCH, New York, NY, Clinical Psychology, DEC, 1988.
Kaplan, Perry, W., New York, NY, $20,200.08, TEACHERS COLLEGE, COLUMBIA UNIV, New York, NY, Clinical Psychology, MAY, 1989.
Knight, Patricia, A., Sayville, NY, $31,046.69, ADELPHI UNIVERSITY, Garden City, NY, Clinical Psychology, AUG, 1989.
Nicoll, Dolores, L., New York, NY, $9,217.77, YESHIVA UNIV, New York, NY, Clinical Psychology, SEP, 1986.
Noel, Sheldon, H., Long Beach, NY, $33,469.08, ILLINOIS SCH PROFESSIONAL PSYCHOLOG, Chicago, IL, Clinical Psychology, NOV, 1985.
Paris, Katherine, B., Brooklyn, NY, $44,887.15, NEW SCHOOL FOR SOCIAL RESEARCH, New York, NY, Clinical Psychology, MAY, 1988.

Dentistry

Ambat, Rachel, E., Jamaica, NY, $3,277.90, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1987.
Boldt, Harrison, R., Brooklyn, NY, $164,883.04, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1987.
Butler, Marilyn, P., Spring Valley, NY, $95,059.08, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1985.
Cesar, Hans, Brooklyn, NY, $20,711.32, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1981.
Chen, Ronnie, Y., New York, NY, $2,687.11, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.
Chu, Alexander, Flushing, NY, $55,493.85, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1986.
Cubano, Vladimir, Colonie, NY, $1,408.82, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1984.
Curtis, Charles, R., Morristown, NY, $92,639.10, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Derosa, Alan, A., Monsey, NY, $148,801.72, EMORY UNIVERSITY, Atlanta, GA, Dentistry, JUN, 1985.
Ditroia, Frederick, Hicksville, NY, $65,000.80, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, APR, 1988.
Eggert, Timothy, J., Webster, NY, $7,453.51, SUNY AT BUFFALO, Buffalo, NY, Dentistry, JUN, 1988.
Glassman, Martin, J., Briarcliff Manor, NY, $11,451.72, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, JUN, 1983.
Guldan, Michael, T., Chestertown, NY, $115,294.79, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1986.
Hammond, Robert, J., Brooklyn, NY, $18,116.07, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Han, Sok, Woodside, NY, $85,070.21, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, FEB, 1986.
Hannon, Dennis, Jamestown, NY, $62,635.86, LOYOLA UNIV OF CHICAGO, Maywood, IL, Dentistry, JUN, 1985.
Hicks, Philip, A., APO New York, NY, $38,756.94, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1985.
Jacobs, Steven, D., Flushing, NY, $26,179.74, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Dentistry, JUN, 1985.
Joseph, Leslie, Queens Village, NY, $109,983.11, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1987.
Kadoch, David, New York, NY, $36,100.74, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1987.
Kouzoukian, James, G., Bayside, NY, $38.33, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUL, 1984.
Kronengold, Jack, Forest Hills, NY, $137,224.27, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1987.
Kupetz, Scott, R., Hopewell Junction, NY, $114,270.59, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, MAY, 1988.
Lorber, Burton, E., Fleetwood, NY, $72,981.81, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1984.
Massoud, Yehia, A., New York, NY, $49,426.73, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1985.
Neville, Ray, L., Poughkeepsie, NY, $38,532.86, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Dentistry, MAY, 1987.
Perez, Nelson, Brooklyn, NY, $15,871.93, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.

Petcu, Cristian, A., Flushing, NY, $20,044.46, NEW YORK UNIVERSITY, New York, NY, Dentistry, MAY, 1989.
Picker, Ted, A., Bronx, NY, $81,750.56, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.
Pollack, Douglas, F., New York, NY, $7,232.67, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1984.
Poole, Robert, W., Maybrook, NY, $88,454.46, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.
Pope, Dragos, B., Sunnyside, NY, $124,360.51, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1986.
Porter, Brenda, Y., Rochester, NY, $48,263.24, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Rosenthal, Neil, D., Albany, NY, $143,668.44, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Dentistry, JUN, 1984.
Samuel-Mahon, Brenda, Y., Bronx, NY, $26,688.01, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1982.
Schroder, Anthony, M., Middletown, NY, $31,101.98, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1984.
Schworta, Eric, G., Atlantic Beach, NY, $25,153.22, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1989.
Solliday, Michael, P., Bethpage, NY, $17,453.65, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, OCT, 1985.
Stockton Jr., William, Buffalo, NY, $44,690.84, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Stone, Grace, M., Brooklyn, NY, $171,017.58, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Stubbs, Stubbshill, Anita, Flushing, NY, $130,899.73, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1984.
Stukes, Susan, D., New Rochelle, NY, $4,727.96, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Thayer, Richard, D., Middleburg, NY, $16,480.89, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1982.
Thompson, Fannye, V., Brooklyn, NY, $25,114.88, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1983.
Toporovsky, Nathan, A., White Plains, NY, $27,819.41, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1987.
Vorobyov, Boris, Rego Park, NY, $29,588.68, NEW YORK UNIVERSITY, New York, NY, Dentistry, OCT, 1987.
Wiggins, Christopher, A., New York, NY, $67,822.76, NEW YORK UNIVERSITY, New York, NY, Dentistry, JUN, 1989.
Williams, Miriam, D., Bronx, NY, $39,803.23, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1982.
Wood, Kevin, C., Amherst, NY, $51,637.96, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Woods, Daemon, S., Fort Drum, NY, $33,750.27, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, MAY, 1985.
Wrotniak, Chester, M., Lewiston, NY, $74,365.02, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, APR, 1988.
Yeates, Terrance, C., Brooklyn, NY, $41,055.97, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Zafiriadis, Demetrios, G., Long Island City, NY, $27,454.14, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.

Optometry

Rolinski, Douglas, T., Elmhurst, NY, $8,439.78, SUNY STATE COLLEGE OF OPTOMETRY, New York, NY, Optometry, JUN, 1984.
Tran, Nguyen, C., New York, NY, $24,712.28, SUNY STATE COLLEGE OF OPTOMETRY, New York, NY, Optometry, JUN, 1986.

Osteopathy

Adler, Richard, I., New York, NY, $37,663.26, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1984.
Anthony, Melvin, E., New York, NY, $16,913.60, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1990.
Bogard, Peter, S., Cortland, NY, $71,609.16, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUN, 1990.
Charley-Bennett, Bonnie, A., Point Lookout, NY, $184,962.91, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1987.
Grasmann, Edwin, J., Mount Sinai, NY, $57,530.13, NEW YORK INST TECH, Old Westbury, NY, Osteopathy, JUN, 1988.
Kendrick, Deborah, A., Bronx, NY, $568.49, NEW YORK INST TECH, Old Westbury, NY, Osteopathy, JUN, 1990.
Mihalakis, Georgia, Bronx, NY, $67,624.83, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, MAR, 1986.
Steinke, Charles, T., Valley Stream, NY, $181,711.12, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1989.
Watson, Catherine, A., Richmond Hill, NY, $29,554.82, NEW YORK INST TECH, Old Westbury, NY, Osteopathy, JUN, 1985.
Yearley, Gary, Marietta, NY, $70,961.18, UNIV OF NEW ENGLAND, Biddeford, ME, Osteopathy, APR, 1987.

Pharmacy

Bert, Lineve, A., Mount Vernon, NY, $19,182.99, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, AUG, 1984.
Giannios, John, N., Bethpage, NY, $10,441.04, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, MAY, 1985.
Glover, Cheryl, M., Brooklyn, NY, $39,558.83, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JAN, 1988.
Haynes, Robert, Brooklyn, NY, $15,394.97, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1987.
Ibeh, Fidelis, A., Brooklyn, NY, $13,053.88, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JAN, 1989.
Jusu, Thomas, S., Brooklyn, NY, $11,124.10, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1987.
Licciardello, Alfred, V., Brooklyn, NY, $7,882.96, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1986.
Martinez, Renzo, J., Haverstraw, NY, $13,466.63, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, DEC, 1984.
Moore, Michael, A., Spring Valley, NY, $4,166.56, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, OCT, 1986.
Ngoka, Regina, N., Brooklyn, NY, $3,164.64, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1984.
Oliver, Sonia, J., New York, NY, $3,867.84, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JAN, 1990.
Raffaniello, Donna, M., Staten Island, NY, $3,265.07, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1987.
Romero, Gerardo, Brooklyn, NY, $20,288.05, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, OCT, 1986.
Searson, Hattie, B., Brooklyn, NY, $3,868.46, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1984.
Terp, Marie, A., Levittown, NY, $21,148.71, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1988.
Thomas, Liza, P., Long Beach, NY, $1,883.16, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, JUN, 1985.

Podiatry

Aal, Thomas, E., Jamaica, NY, $72,804.83, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1986.
Abatemarco, Audrey, A., Staten Island, NY, $20,520.92, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1984.
Aiello, Lisa, A., Somers, NY, $56,554.76, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1989.
Bailey, Yvonne, Brooklyn, NY, $189,321.52, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Bernstein, Jeffrey, S., New York, NY, $45,304.28, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Brown, Kenneth, L., New Rochelle, NY, $52,934.51, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1987.
Carioscia, Michael, P., Peekskill, NY, $11,082.35, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1990.
D'Orazio, Leonard, Brooklyn, NY, $23,038.90, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1988.
Davidson, Jon, M., Roslyn, NY, $167,661.99, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1986.
Downes, Robert, R., Commack, NY, $153,160.47, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Elbayar, Nader, K., Port Washington, NY, $37,813.01, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, MAR, 1990.
Fanizzi, Thomas, Babylon, NY, $125,609.28, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.
Feldman, Donald, Peekskill, NY, $154,208.30, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.

Fink, Robert, C., Ridgewood, NY, $56,651.33, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Gipson, Helen, D., Buffalo, NY, $59,264.87, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1985.
Glatt, Robert, B., Hollis, NY, $130,828.35, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JAN, 1990.
Gordon, Doris, J., Yonkers, NY, $16,971.58, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Grant, Albert, V., New York, NY, $98,050.20, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Griffin, Carlotta, L., Rochester, NY, $108,677.35, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1988.
Haygood, Regina, J., Brooklyn, NY, $109,853.31, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Illuzzi, Dennis, M., Saint James, NY, $152,740.19, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Irizarry, Jose, G., Bronx, NY, $32,475.93, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1984.
Jackson, Byron, C., New York, NY, $102,090.45, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JAN, 1985.
John, Gordon, B., Cambria Heights, NY, $95,281.27, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Kane, Shalva, Rego Park, NY, $40,751.66, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JAN, 1989.
Kantro, Scott, R., New York, NY, $44,179.72, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1979.
Kantrowitz, Gary, S., Long Beach, NY, $2,491.37, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1983.
Katz, Alan, S., Thiells, NY, $57,651.38, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.
Kelly, Laura, Farmingdale, NY, $60,739.35, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1989.
Kleinman, Abraham, Far Rockaway, NY, $19,581.15, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1990.
Kolk, Edward, W., Bay Shore, NY, $175,402.04, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.
Langone, Karen, A., Bronx, NY, $113,308.51, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1986.
Layton, Stephen, H., Bellmore, NY, $30,677.17, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1983.
Ledino, John, Syracuse, NY, $41,446.46, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Levi, Ernest, S., New York, NY, $23,670.29, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1983.
Lieman, Theodora, S., New York, NY, $114,003.39, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Llewellyn, Allan, Brooklyn, NY, $32,172.03, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1984.
Lloyd, Jay, L., Flushing, NY, $22,601.79, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Lunetto, James, V., New York, NY, $47,801.99, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Madden, Michael, J., Elmsford, NY, $3,705.68, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, AUG, 1985.
Markinson, Andrea, B., Valley Stream, NY, $39,985.98, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Moore, Jackie, New York, NY, $38,840.19, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.
Moy, John, New York, NY, $82,081.16, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Nash, John, J., Albany, NY, $4,218.28, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Nau, Edgard, New York, NY, $101,103.79, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1986.
Nelson, Mark, J., Pleasantville, NY, $52,534.56, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1985.
Nevers, Harry, M., Bronx, NY, $66,658.13, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1988.
Oringer, Gary, D., Bellerose, NY, $21,633.57, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1982.
Paul, Fitzpatrick, Brooklyn, NY, $81,760.57, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Pelletier, James, P., Watertown, NY, $2,037.35, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1989.
Perkins, Terence, M., Bronx, NY, $84,937.09, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1989.
Roberts, Pamela, M., Mount Vernon, NY, $125,843.70, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1985.
Rokhsar, Benjamin, Forest Hills, NY, $20,160.63, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Rosenberg, Robert, Woodmere, NY, $36,918.68, BARRY UNIVERSITY-PODIATRIC MED, Miami Shores, FL, Podiatry, MAY, 1989.
Schwartz, Mark, S., Atlantic Beach, NY, $50,768.17, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1984.
Sheahan, Michael, D., Staten Island, NY, $38,931.16, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1982.
Soleye, Babatunde, Hartsdale, NY, $7,394.66, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUL, 1980.
Stufano, Louis, Westbury, NY, $33,467.19, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1987.
Techner, Lee, M., Utica, NY, $73,967.55, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1985.
Travis, Andrew, F., New York, NY, $139,122.98, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, DEC, 1988.
Turski, Damian, V., Buffalo, NY, $4,507.65, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Weiner, Douglas, N., Kew Gardens, NY, $140,395.34, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.
Whiteside, Lauren, S., Bronx, NY, $23,747.76, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Williams, Claude, E., Bronx, NY, $95,885.99, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.
Zawada, Stanley, J., Halesite, NY, $101,544.75, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1986.

Public Health

Amu-Nnadi, Sam, E., Jamaica, NY, $24,485.25, UNIV OF PITTSBURGH, Pittsburgh, PA, Public Health, AUG, 1987.
Montgomery, John, M., New Windsor, NY, $7,380.90, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, SEP, 1989.
Paskilas, Alexandra, New Rochelle, NY, $34,269.25, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1987.

Veterinary Medicine

Grossman, Ira, L., Belle Harbor, NY, $12,347.22, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1980.
Hicks, John, M., West Henrietta, NY, $11,824.46, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1979.
Lane, Mark, J., Monroe, NY, $7,175.59, UNIV OF FLORIDA, Gainesville, FL, Veterinary Medicine, MAY, 1987.
McField, Gizele, H., Rochester, NY, $75,838.01, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1982.
Murphy, William, M., Rochester, NY, $22,907.99, UNIV OF TENNESSEE-KNOXVILLE, Knoxville, TN, Veterinary Medicine, AUG, 1987.
Ponte, Paula, J., Buffalo, NY, $174,584.33, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1987.
Slaugher II, John, B., Brooklyn, NY, $81,696.34, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, AUG, 1988.
Weiskopf, Joan, Port Chester, NY, $31,993.65, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, NOV, 1986.
Wilson, Rawanda, L., Brooklyn, NY, $8,565.43, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1990.

North Carolina

Allopathic Medicine

Bohannon, Arline, D., Durham, NC, $2,514.14, SUNY HEALTH SCIENCE CENTER, Syracuse, NY, Allopathic Medicine, JUN, 1989.
Burt, Joseph, M., Durham, NC, $32,993.02, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, JUN, 1983.
Coyne, Mark, D., Burlington, NC, $219,421.21, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1983.
Cutler, Kenneth, A., Durham, NC, $22,600.71, EASTERN VIRGINIA MED SCH, Norfolk, VA, Allopathic Medicine, JUN, 1984.
Douthit, Jeffrey, J., Winston Salem, NC, $20,853.91, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, MAY, 1987.
Hunter, Lorenzo, Clemmons, NC, $175,966.81, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
Lynch, Ray, A., Richlands, NC, $22,988.81, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Menoff, Anne, L., Waxhaw, NC, $8,642.04, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Allopathic Medicine, JUN, 1987.
Murphy, Shari, K., Oxford, NC, $6,116.31, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1988.
Perry, Wade, W., Durham, NC, $17,845.44, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1985.
Pridgen, James, H., Wilmington, NC, $50,562.02, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, JUN, 1984.
Stovall, Vicki, M., Winston Salem, NC, $55,755.96, BOWMAN GRAY SCHOOL OF MED, Winston Salem, NC, Allopathic Medicine, MAY, 1987.
Sweeney, William, J., Carrboro, NC, $4,407.21, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, MAY, 1985.
Tyler, Arnold, Raleigh, NC, $13,885.59, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.
Waller, Brenda, S., Greenville, NC, $62,910.70, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1985.
Warren, Roger, D., Fayetteville, NC, $13,930.73, UNIV OF ARKANSAS FOR MED SCI, Little Rock, AR, Allopathic Medicine, JUL, 1985.

Chiropractic

Ackley, Brainard, L., Kitty Hawk, NC, $71,449.26, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1987.
Austin Jr., Donald, E., Sanford, NC, $9,451.74, LIFE COLLEGE, Marietta, GA, Chiropractic, FEB, 1987.
Boyles, Barry, J., Vale, NC, $27,522.29, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1986.
Brown, James, R., Durham, NC, $18,021.10, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, JAN, 1983.
Catalfo, Christopher, L., Winston Salem, NC, $22,231.58, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1990.
Gould, Jane, M., Chapel Hill, NC, $44,997.80, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1988.
Hall, Scott, W., Winston Salem, NC, $72,894.35, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1986.
Hartman, Ronald, K., Cary, NC, $10,009.85, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, OCT, 1982.
Kerr, Thomas, H., Charlotte, NC, $35,964.57, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1984.
Lyons, Kathryn, R., Raleigh, NC, $65,165.29, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, OCT, 1987.
Mayle, Robert, C., Chapel Hill, NC, $44,536.33, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1989.
McKinley, Richard, A., Stem, NC, $115,288.00, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1987.
Meredith, David, G., Wilmington, NC, $48,067.20, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.
Monnin, Mark, L., Waxhaw, NC, $4,862.63, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, JUN, 1987.
Reischman, Timothy, J., Matthews, NC, $8,041.70, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1987.
Reischman, Grace, A., Charlotte, NC, $16,927.16, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1985.
Schuckman, Gary, A., Wilmington, NC, $45,776.16, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Shay, Robert, J., China Grove, NC, $113,094.00, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Williams, Betty, Dale, Roxboro, NC, $87,791.36, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1986.

Dentistry

Bradley, Jerry, L., Gatesville, NC, $58,272.47, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1983.
Cates, Sanford, M., Randleman, NC, $16,783.51, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, SEP, 1985.
Sarno, Mark, P., Greensboro, NC, $35,497.53, FAIRLEIGH DICKINSON UNIV, Rutherford, NJ, Dentistry, MAY, 1985.

Health Administration

Chowdhry, Raja, S., Goldsboro, NC, $78,379.33, XAVIER UNIV, Cincinnati, OH, Health Administration, AUG, 1983.

Optometry

Oxendine, Tony, Red Springs, NC, $13,509.44, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, JUN, 1987.

Osteopathy

Fifer, Shirley, A., Durham, NC, $160,163.32, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1986.

Pharmacy

Bunch, Thomas, H., Raleigh, NC, $14,994.77, HOWARD UNIVERSITY, Washington, DC, Pharmacy, MAY, 1987.
Chapman, Ronnie, Cary, NC, $8,990.72, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1988.
Horton Jr., Robert, J., Lexington, NC, $51,273.53, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, MAY, 1989.
Thornton, Douglas, E., Rocky Mount, NC, $9,914.93, ST LOUIS CLG OF PHARMACY, St. Louis, MO, Pharmacy, JUL, 1987.
Williams, Kenneth, Durham, NC, $6,397.00, LONG ISLAND UNIVERSITY, Greenvale, NY, Pharmacy, MAY, 1989.

Podiatry

Brown, Tanya, M., Charlotte, NC, $16,124.55, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, SEP, 1988.
Edwards, James, L., Raleigh, NC, $57,749.73, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUL, 1984.
Neumuns, Gregory, D., Hampstead, NC, $34,696.76, NEW YORK CLG OF PODIATRIC MED, New York, NY, Podiatry, JUN, 1987.
Todorov, Todor, Jacksonville, NC, $21,546.06, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUN, 1982.

Veterinary Medicine

Healy, Bridget, E., Raleigh, NC, $13,927.34, UNIV OF FLORIDA, Gainesville, FL, Veterinary Medicine, JUN, 1987.
Pemberton, Beth, A., Ahoskie, NC, $8,358.34, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1989.

North Dakota

Allopathic Medicine

Hurdisgrant, Helen, L., Watford City, ND, $37,286.50, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, JUN, 1981.
Koesterman, Charley, Fargo, ND, $54,376.19, UNIV OF NORTH DAKOTA, Grand Forks, ND, Allopathic Medicine, MAY, 1987.

Chiropractic

Gabbert, Lanny, R., Beulah, ND, $43,665.34, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, APR, 1989.
Johansen, Kelly, S., Devils Lake, ND, $82,752.75, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1986.
Trauger, Gary, L., Watford City, ND, $51,047.94, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1984.

Dentistry

Poole, Anne, Marie, Emerado, ND, $33,892.85, BOSTON UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.

Optometry

McCamy, Robert, T., Argonne, ND, $13,303.59, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUL, 1982.

Podiatry

Ebeling, Curtis, Fargo, ND, $24,094.37, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1989.

Ohio

Allopathic Medicine

Bartnett, Bruce, T., Twinsburg, OH, $44,492.41, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, DEC, 1987.

Bates, Leo, C., Xenia, OH, $22,731.87, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, MAR, 1986.

Berry, Rush, H., Westerville, OH, $19,085.74, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1987.

Blackshere, Eloise, C., Cincinnati, OH, $13,084.68, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, SEP, 1985.

Blissenbach, David, A., Westerville, OH, $7,498.70, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUL, 1982.

Carey, Sean, W., Cleveland, OH, $4,534.02, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, MAY, 1988.

Earle, Bevery, A., Toledo, OH, $2,801.76, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, SEP, 1984.

Evans, Catharine, L., Columbus, OH, $39,900.84, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, FEB, 1987.

Flood, Wanda, G., Massillon, OH, $31,496.99, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.

Geddis, Brenda, J., Cleveland, OH, $13,203.77, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUN, 1988.

Heuring, Richard, E., Columbus, OH, $14,901.52, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1987.

Ho-a-Lim, Frederick, South Euclid, OH, $46,197.10, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.

Howard Jr., Frank, E., Hamilton, OH, $31,671.55, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, AUG, 1986.

Jackson, Steven, Columbus, OH, $11,941.25, OHIO STATE UNIVERSITY, Columbus, OH, Allopathic Medicine, JUN, 1984.

Katsaros, Demetrios, Cleveland, OH, $64,804.52, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, JUN, 1990.

Kelley-Harper, Kimberly, R., Columbus, OH, $23,824.48, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1989.

Kerr, Bryant, A., Cleveland, OH, $5,526.63, UNIV OF LOUISVILLE, Louisville, KY, Allopathic Medicine, SEP, 1986.

Keyes, Kemmes, Sandusky, OH, $40,115.38, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1983.

Lewis, Carol, E., Cleveland, OH, $38,492.71, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1986.

Mays, Dewey, O., Dayton, OH, $15,167.33, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1981.

McKnight, Timothy, J., Akron, OH, $5,660.42, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, JUN, 1989.

McSurdy, Bruce, J., Elyria, OH, $60,923.62, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1990.

Mundy-Washington, De, Dayton, OH, $9,589.79, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1986.

Nemore Jr., George, Cincinnati, OH, $25,874.01, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, SEP, 1985.

Onyeneke, Chuka, D., North Canton, OH, $125,567.45, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, FEB, 1988.

Parks, Derrick, L., Dayton, OH, $5,695.74, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, SEP, 1985.

Passalacqua, Paul, L., Toledo, OH, $10,966.08, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, OCT, 1987.

Pate, Valerie, Cleveland, OH, $69,702.28, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1984.

Perry, Victor, C., Toledo, OH, $163,807.02, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1984.

Putzi, Judith, L., Cincinnati, OH, $95,396.04, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1984.

Rice, Ronald, L., Toledo, OH, $72,744.68, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1984.

Rozier, Frederick, N., Columbus, OH, $40,121.93, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1985.

Schaus, Scott, S., Akron, OH, $18,450.07, NORTHEASTERN OHIO UNIV, Rootstown, OH, Allopathic Medicine, APR, 1988.

Shook, Scott, L., Columbus, OH, $56,038.35, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1989.

Spadafora, Michael, P., Cincinnati, OH, $58,399.19, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUL, 1984.

Walters, Daniel, H., Wyoming, OH, $167,941.28, UNIV OF CINCINNATI, Cincinnati, OH, Allopathic Medicine, JUN, 1985.

West, Miguel, S., Trotwood, OH, $987.43, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, JUN, 1982.

White, Linda, L., Marion, OH, $48,347.11, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, JUN, 1984.

Whitted, Glenn, E., Lorain, OH, $109,119.07, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUN, 1989.

Williams, Ronald, L., Monclova, OH, $14,650.07, MEDICAL COLLEGE OF OHIO, Toledo, OH, Allopathic Medicine, JUL, 1983.

Wilson, Pamela, J., Columbus, OH, $33,973.23, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.

Yates, James, E., Coal Grove, OH, $95,639.86, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1988.

Chiropractic

Adams, Stephen, C., Portsmouth, OH, $72,814.90, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1989.

Aitken, Steven, T., Cleveland, OH, $45,264.74, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAR, 1989.

Akinpelu, Enoch, A., Mason, OH, $11,331.13, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.

Beyer Jr., Floyd, E., Medina, OH, $65,742.28, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1989.

Buckley, John, F., North Canton, OH, $75,472.11, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1988.

Burke-Evanoff, Anne, D., Westerville, OH, $22,208.05, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, AUG, 1985.

Campana, Thomas, M., Cleveland, OH, $48,889.76, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.

Cawley, John, J., Cincinnati, OH, $1,337.38, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1982.

Cooke, Jeffrey, M., Columbus, OH, $25,212.55, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.

Cotter, Paul, B., Toledo, OH, $28,150.54, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.

Evanoff, James, M., Westerville, OH, $3,868.04, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAR, 1986.

Fenstermaker, Sarah, L., West Union, OH, $11,576.36, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1983.

Fisher, Jame, A., Gahanna, OH, $90,661.33, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1987.

Foy Jr., James, Cleveland, OH, $97,766.52, LIFE COLLEGE, Marietta, GA, Chiropractic, FEB, 1987.

Funk, Barbara, J., West Salem, OH, $49,435.28, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.

Hetzel, William, A., Peebles, OH, $125,955.96, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1986.

Hosler, Bryan, K., Cincinnati, OH, $86,633.27, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1988.

Howard Jr., Daniel, L., Milford, OH, $27,999.41, CLEVELAND CHIROPRACTIC

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COLLEGE, Los Angeles, CA, Chiropractic, DEC, 1987.
Hunter, Donald, E., Fairborn, OH, $41,346.80, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1985.
Kinney, Lue, B., Dayton, OH, $58,558.27, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Laughbaum, Kirk, T., Akron, OH, $31,006.03, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1986.
Lawler, Timothy, K., Loveland, OH, $39,751.38, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1988.
Leach, Deborah, L., Cincinnati, OH, $30,269.43, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, APR, 1988.
Lorts, Deanna, L., Cincinnati, OH, $52,035.12, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAR, 1988.
McClain, Donald, W., Cleveland, OH, $26,113.62, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1988.
Millns, Mark, C., Norwalk, OH, $31,947.26, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1984.
Monbarren, John, W., Lakewood, OH, $18,617.22, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1990.
Moon, Beth, A., Painesville, OH, $21,250.89, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1984.
Nagode, Dale, A., Cleveland, OH, $2,875.57, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JUN, 1985.
Oetzel, Stephen, L., Wilmington, OH, $40,292.79, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1987.
Scanlon, Mark, J., Cincinnati, OH, $4,507.47, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1991.
Schoenman, Kirk, L., Dublin, OH, $32,458.44, LIFE COLLEGE, Marietta, GA, Chiropractic, JUL, 1983.
Schone, Jerry, O., Reynoldsburg, OH, $4,007.17, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1988.
Schumacher, Douglas, E., Dayton, OH, $70,258.07, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.

Clinical Psychology

Daugherty, Paula, G., Dayton, OH, $1,855.15, WRIGHT STATE UNIV, Dayton, OH, Clinical Psychology, AUG, 1989.
Howard, Kimberly, S., Springfield, OH, $15,835.60, WRIGHT STATE UNIV, Dayton, OH, Clinical Psychology, JAN, 1987.
Roldan, Andre, M., Trotwood, OH, $73,182.24, WRIGHT STATE UNIV, Dayton, OH, Clinical Psychology, AUG, 1986.
Turner, Hugh, A., Shaker Heights, OH, $18,269.76, FLORIDA INST. OF TECHNOLOGY, Melbourne, FL, Clinical Psychology, AUG, 1984.
Zureick, Joel, L., Cleveland, OH, $3,380.93, OHIO STATE UNIVERSITY, Columbus, OH, Clinical Psychology, AUG, 1987.

Dentistry

Boudi, Abraham, H., Toledo, OH, $9,841.95, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, JUN, 1988.
Brightman, Brenda, B., East Cleveland, OH, $59,779.35, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1988.
Buggs, Keith, E., Cleveland, OH, $4,432.26, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Cermak, John, J., Troy, OH, $4,494.39, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1986.
Cleary III, James, F., Cincinnati, OH, $42,468.10, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, FEB, 1986.
Crawford, Charles, A., Columbus, OH, $31,345.17, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, DEC, 1981.
Custer, Dennis, J., Chippewa Lake, OH, $6,122.19, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUL, 1984.
Davis, Michael, E., Cleveland, OH, $94,069.03, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Engel, Todd, K., Delaware, OH, $1,370.41, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Dentistry, JUL, 1984.
Gross, Bonnie, J., Columbus, OH, $31,053.23, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1986.
Heatow, Roy, L., Ravenna, OH, $19,911.72, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, JUN, 1984.
Hnylka, Celestine, L., Maple Heights, OH, $125,148.73, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1987.
Holiday, Tanya, M., Columbus, OH, $29,357.43, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1987.
Jeffries, Christian, T., Willoughby, OH, $82,390.56, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, JUN, 1986.
Jimerson, Ruthie, Youngstown, OH, $172,809.34, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1987.
Jordan, Martin, E., Cleveland, OH, $5,012.22, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Labate, Cathleen, A., Akron, OH, $20,264.60, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1986.
Lancour, Michelle, M., Gahanna, OH, $2,310.62, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1991.
Lawson, Gerald, M., Cincinnati, OH, $68,245.74, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, NOV, 1984.
Lesinski, Mary, Catherine, University Heights, OH, $12,188.13, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1985.
Mack, William, E., Brookfield, OH, $92,161.56, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1987.
Marburger, Garth, J., Lake Milton, OH, $6,016.99, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, OCT, 1987.
Mattson, Kenneth, D., Bluffton, OH, $113,927.96, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, MAR, 1984.
Mays, Ealy, Horton, Dayton, OH, $89,069.25, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
McCune, Thomas, S., Cleveland, OH, $108,661.03, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1989.
McKoy, Victor, L., Reynoldsburg, OH, $84,421.28, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1985.
Meclosky, Mark, A., Beachwood, OH, $26,912.82, CREIGHTON UNIV-BOYNE SCHOOL, Omaha, NE, Dentistry, MAY, 1985.
Morgan, Jackson, P., Chagrin Falls, OH, $7,139.08, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1988.
Obester, David, A., Cincinnati, OH, $114,087.23, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1986.
Robertson, Edward, N., Cleveland, OH, $26,744.83, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, SEP, 1985.
Slack, Craig, A., Columbus, OH, $16,712.34, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1987.
Smith, Bradley, M., Westerville, OH, $4,405.71, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1990.
Stewart, Mark, I., Akron, OH, $60,564.24, MEHARRY MED COLLEGE, Nashville, TN Dentistry, JAN, 1986.
Stiggers Jr., Donald, Cleveland, OH, $4,046.80, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1990.
Taylor, Michael, S., Columbus, OH, $40,354.83, TUFTS UNIVERSITY, Boston, MA, Dentistry, NOV, 1988.
Thomas, Robert, Columbus, OH, $131,215.66, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1982.
Tranovich, John, R., West Chester, OH, $6,311.48, OHIO STATE UNIVERSITY, Columbus, OH, Dentistry, JUN, 1985.
Villaire, Matthew, John, Cleveland, OH, $160,528.83, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1986.
Walker, Joseph, C., Cleveland, OH, $32,533.70, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Zaun, Timothy, M., Lakewood, OH, $24,731.70, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1988.

Health Administration

Daniels, Quincy, C., Cincinnati, OH, $8,535.01, XAVIER UNIV, Cincinnati, OH, Health Administration, DEC, 1988.
Dickerson, Gayle, N., Cincinnati, OH, $14,309.53, XAVIER UNIV, Cincinnati, OH, Health Administration, DEC, 1986.
Jackson, Cynthia, E., Cincinnati, OH, $5,294.59, XAVIER UNIV, Cincinnati, OH, Health Administration, DEC, 1987.
Roquemore, Dennis, F., Duncan Falls, OH, $481.18, OHIO STATE UNIVERSITY, Columbus, OH, Health Administration, JUN, 1988.

Optometry

Fanning, John, F., Powell, OH, $5,320.43, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUL, 1983.

Osteopathy

Altic, Stephen, Hudson, OH, $46,944.19, OHIO UNIV ATHENS BRANCH, Athens, OH, Osteopathy, JUN, 1982.
Brody, Francee, A., Youngstown, OH, $110,474.82, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUN, 1989.
Garcia, Roger, Gahanna, OH, $14,118.32, OHIO UNIV ATHENS BRANCH, Athens, OH, Osteopathy, JUN, 1985.
Greene, Larry, J., Portsmouth, OH, $20,777.65, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JAN, 1989.
Hartwick, Russell, A., Wellston, OH, $153,867.49, UNIV OF NEW ENGLAND, Biddeford, ME, Osteopathy, JUN, 1986.

Pharmacy

Cognetti, Richard, A., Elida, OH, $8,035.64, OHIO NORTHERN UNIV, Ada, OH, Pharmacy, MAY, 1990.
Gary, Mark, T., Fairfield, OH, $10,995.66, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1987.
Mills, Gregory, S., Pickerington, OH, $38,518.09, OHIO NORTHERN UNIV, Ada, OH, Pharmacy, AUG, 1988.
Okunbor, Friday, Cleveland, OH, $9,582.23, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, MAY, 1987.
Vogel, Joseph, M., Lakewood, OH, $40,575.02, DUQUESNE UNIVERSITY, Pittsburgh, PA, Pharmacy, MAY, 1987.

Podiatry

Anda, Peter, M., Twinsburg, OH, $22,927.88, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1989.
Ashdown, Thomas, P., Cortland, OH, $77,516.12, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Chestang, Leo, A., Russell, OH, $141,071.21, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1984.
Coffey, Patrick, A., Troy, OH, $89,687.56, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Day, Clara, Ruth, Cleveland, OH, $107,050.80, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1988.
Erkard Jr., James, T., Kent, OH, $30,305.30, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1982.
Friday, Steve, M., Youngstown, OH, $5,508.94, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1988.
Glover, Geraldine, M., Warrensville Heights, OH, $104,065.21, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1987.
Gorisse, Guy, R., Cleveland, OH, $148,899.65, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.
Goss, Samuel, R., Cleveland, OH, $46,436.89, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1980.
Karnavas, Diana, G., Cortland, OH, $80,856.44, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1985.
Lichniak, James, E., North Ridgeville, OH, $52,351.99, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Lieberman, S., Paul, Cleveland, OH, $48,393.44, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Lindsay, Scott, B., Cleveland, OH, $62,078.13, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1989.
Minton, Wayne, E., Cleveland, OH, $185,095.52, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1990.
Nicholas, Donald, R., North Canton, OH, $159,878.15, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Otto, David, E., Willoughby, OH, $185,626.44, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1985.
Perry, Valerie, J., Cleveland, OH, $10,873.95, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, DEC, 1989.
Rodgers, Larry, A., Cleveland, OH, $170,032.16, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Ruffin, Julia, Cincinnati, OH, $78,600.47, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1984.
Schussler, Jeffrey, S., Cincinnati, OH, $135,646.94, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Shonkwiler, Walter, S., Westerville, OH, $63.73, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Siggers, Ralph, A., Berea, OH, $153,099.58, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, APR, 1987.
Turner, Clifton, D., Cleveland, OH, $81,746.75, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Villier, Carlton, S., Cincinnati, OH, $191,775.63, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1984.
Walker, Kenneth, R., Dayton, OH, $37,397.36, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.

Veterinary Medicine

Andrews, Janice, M., Columbus, OH, $4,475.75, UNIV OF MISSOURI-COLUMBIA, Columbia, MO, Veterinary Medicine, JUL, 1987.
Ekis, Ginter, Columbus, OH, $24,358.81, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, DEC, 1986.
Emans, Susan, M., Columbus, OH, $3,363.68, OHIO STATE UNIVERSITY, Columbus, OH, Veterinary Medicine, JUN, 1988.
Firth, Ava, M., Columbus, OH, $6,498.97, OHIO STATE UNIVERSITY, Columbus, OH, Veterinary Medicine, JUN, 1986.
Patterson, William, H., New Carlisle, OH, $3,567.62, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, JUN, 1985.
Stant, Susan, E., Worthington, OH, $8,262.95, OHIO STATE UNIVERSITY, Columbus, OH, Veterinary Medicine, JUN, 1990.

Oklahoma

Allopathic Medicine

Beavers, John, E., Oklahoma City, OK, $15,011.03, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUN, 1988.
Berger, Sally, J., Oklahoma City, OK, $129,286.95, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUN, 1989.
Berney, Joseph, P., Enid, OK, $28,165.07, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, JUN, 1985.
Bhateley, Ronda, D., Tulsa, OK, $11,470.83, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, MAY, 1990.
Boschee, Pamela, F., Tulsa, OK, $7,201.88, UNIV OF NORTH DAKOTA, Grand Forks, ND, Allopathic Medicine, MAY, 1988.
Fincher, Mark, L., Tulsa, OK, $19,273.06, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JUL, 1984.
Gandy, Paul, S., Pryor, OK, $59,583.66, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Allopathic Medicine, MAY, 1982.
Samanie, David, K., Edmond, OK, $40,434.07, UNIV OF TEXAS—MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1985.
Sims, Cheryl, D., Watonga, OK, $20,198.65, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, FEB, 1988.
Sorenson, Charles, L., Oklahoma City, OK, $201,027.47, ST LOUIS UNIVERSITY, St. Louis, MO, Allopathic Medicine, JUN, 1987.
Viera, Vivian, Norman, OK, $142,340.53, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, JUN, 1984.
Woodhouse, Juanita, A., Yukon, OK, $13,211.22, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, JAN, 1990.
Young, Mary, J., Oklahoma City, OK, $19,173.69, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Allopathic Medicine, SEP, 1987.

Chiropractic

Billigmeier, Arthur, E., Oklahoma City, OK, $122,162.52, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1986.
Bundrick, Doyle, D., Edmond, OK, $20,599.08, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, DEC, 1986.
Carver, John, G., Perry, OK, $69,971.07, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, APR, 1989.
Collins, Juquita, L., Cushing, OK, $48,928.21, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1985.
Cooper Jr., Robert, C., Sperry, OK, $71,178.36, CLEVELAND CHIROPRACTIC

CLG (MO), Kansas City, MO, Chiropractic, APR, 1986.
Cothran, Lonnie, A., Poteau, OK, $61,765.91, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1987.
Crockett, James, H., Oklahoma City, OK, $21,823.19, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1983.
David, Jack, L., Boise City, OK, $15,916.94, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1983.
Goat, Greg, G., Oklahoma City, OK, $9,435.97, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1988.
Gorton, George, F., Hinton, OK, $34,217.61, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Groden, Stephen, E., Tulsa, OK, $5,487.24, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1982.
Harms, Eugene, G., Ada, OK, $47,179.86, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982.
Henderson, Raymond, L., Edmond, OK, $66,833.79, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1986.
Jackson, John, D., Henryetta, OK, $74,023.86, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Johns, Dale, L., Grant, OK, $3,005.43, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1984.
Jones, James, A., Wynnewood, OK, $4,732.41, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, AUG, 1988.
Koleada, Derwin, H., Oklahoma City, OK, $66,336.16, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1986.
Lockhart, Barry, A., Tulsa, OK, $62,271.56, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, SEP, 1988.
Maker II, James, A., Oklahoma City, OK, $16,478.41, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Mythen, Michael, P., Oklahoma City, OK, $57,913.48, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
O'Connell, Randy, R., Bartlesville, OK, $11,348.08, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1983.
Ratzlaff, Leonard, K., Glenpool, OK, $2,534.87, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1984.
Schreg, Glenn, P., Guthrie, OK, $86,274.59, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Shuey, Stephen, C., Claremore, OK, $1,089.50, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1986.
Stone, Brett, E., Poteau, OK, $64,938.64, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1986.
Wallace, Owen, Oklahoma City, OK, $11,979.70, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1984.

Dentistry

Brown, Theresa, D., Lawton, OK, $18,303.07, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Davis, Diedra, A., Lawton, OK, $76,627.74, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1982.
Goodwin, Mark, A., Tulsa, OK, $96,116.04, ORAL ROBERTS UNIV, Tulsa, OK, Dentistry, MAY, 1985.
Howell, Richard, W., Oklahoma City, OK, $9,563.20, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JAN, 1984.
Johnson, Todd, K., Oklahoma City, OK, $24,428.43, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1986.
Kempka, Lloyd, E., El Reno, OK, $63,631.08, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1981.
McGee, Arnie, D., Gore, OK, $37,230.89, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1986.
McKeel, W., Wade, Tulsa, OK, $7,589.89, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1988.
Potter, Benny, L., Oklahoma City, OK, $38,588.91, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1986.
Shoelah, Vicki, P., Washington, OK, $90,264.08, ORAL ROBERTS UNIV, Tulsa, OK, Dentistry, OCT, 1989.
Smith, Curtis, Oklahoma City, OK, $8,133.03, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1987.
Streight, John, A., Ponca City, OK, $67,045.73, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1985.

Optometry

Dalton, William, A., Norman, OK, $31,197.84, NORTHEASTERN STATE UNIV, Tahlequah, OK, Optometry, MAY, 1987.
Howard, Trina, D., Norman, OK, $4,681.26, NORTHEASTERN STATE UNIV, Tahlequah, OK, Optometry, MAY, 1984.
Thompson, Kristie, L., Cushing, OK, $34,476.43, NORTHEASTERN STATE UNIV, Tahlequah, OK, Optometry, JUN, 1986.

Osteopathy

Almack, Richard, C., Oklahoma City, OK, $29,482.58, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1986.
Crawford, Jack, Norman, OK, $18,832.99, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1985.
Howe, Bruce, V., Oklahoma City, OK, $2,781.99, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1984.
Laughlin, Sidney, C., Shawnee, OK, $61,026.57, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1981.
Mackey, Cynthia, H., Edmond, OK, $206,434.19, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1984.
Manning, Ralph, E., Sand Springs, OK, $22,484.57, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, MAR, 1988.
Miller, Susan, M., Tulsa, OK, $46,994.83, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1985.
Morrison, Paul, D., Tulsa, OK, $13,239.07, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1990.
Pearman, Darrell, W., Tulsa, OK, $23,908.91, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1988.
Treadwell, Stephen, M., Healdton, OK, $30,333.94, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1989.
Wiggins, David, E., Oklahoma City, OK, $66,194.15, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, AUG, 1987.
Zahasky Jr., James, W., Oklahoma City, OK, $40,266.60, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, JUN, 1986.

Pharmacy

Potts, Patty, J., Pauls Valley, OK, $4,297.56, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Pharmacy, MAY, 1990.

Public Health

Codopony Jr., Jackie, L., Del City, OK, $7,374.04, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, MAY, 1987.
Dibie, Cyril, N., Oklahoma City, OK, $1,303.74, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, DEC, 1989.
Ihekona, Augustine, E., Oklahoma City, OK, $17,890.23, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, DEC, 1985.
Johnson, Marvin, E., Oklahoma City, OK, $4,820.02, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, MAY, 1988.

Oregon

Allopathic Medicine

Durham, Maureen, J., Milwaukie, OR, $49,278.56, UNIV OF CONNECTICUT HEALTH CTR, Farmington, CT, Allopathic Medicine, JUN, 1986.
Meyer, James, P., Albany, OR, $86,533.33, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.

Chiropractic

Aver, Reva, B., Portland, OR, $99,055.59, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1986.
Beuttler, Cynthia, M., Portland, OR, $16,198.37, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1989.
Boyd, Patrick, J., Eugene, OR, $5,871.39, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.

Brown, Lorin, J., Beaverton, OR, $77,355.08, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Burns, Charles, L., Coos Bay, OR, $45,313.21, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Butcher, William, C., Forest Grove, OR, $8,926.38, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1989.
Campbell, Dennis, L., Salem, OR, $50,554.00, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Coburn, Hadachek, S., Welches, OR, $33,422.23, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, AUG, 1985.
Conway, Owen, F., Portland, OR, $9,471.26, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, FEB, 1987.
Cooper, Steven, M., Gresham, OR, $32,780.69, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1990.
Crandell, Robyn, G., Portland, OR, $20,651.45, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUN, 1989.
Davison, Debra, D., Portland, OR, $48,187.27, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1989.
Dawson, Jay, S., Portland, OR, $40,616.51, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, APR, 1988.
Donavon, Gregory, Portland, OR, $25,274.64, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, APR, 1986.
Dreyer, Jeffrey, G., Oregon City, OR, $47,459.28, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Ellsworth, Steven, J., Tigard, OR, $88,830.02, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1986.
Evans, Jerry, E., Eugene, OR, $75,935.96, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, SEP, 1985.
Falk, Harold, S., Eugene, OR, $82,818.77, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1987.
Felker, Jeffrey, S., Portland, OR, $39,050.64, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1988.
Fields, Stuart, M., Portland, OR, $75,481.72, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, AUG, 1988.
Gould, Steven, B., Portland, OR, $18,622.01, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, NOV, 1984.
Gratton, Steven, J., Lake Oswego, OR, $13,698.17, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1987.
Gray, Susan, D., Molalla, OR, $21,808.24, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1989.
Gross, Rebecca, J., Gresham, OR, $2,779.11, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1991.
Hartley, William, E., Portland, OR, $33,914.66, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1989.
Hicks, Brent, M., Portland, OR, $14,675.94, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUL, 1984.
Hundagen, Joyce, M., Portland, OR, $28,260.27, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1988.
Huntley, Norbert, E., Portland, OR, $77,561.56, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1987.
Johnson, Craig, B., Scio, OR, $82,198.78, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, SEP, 1988.
Jones, Christine, P., Beaverton, OR, $46,549.03, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, SEP, 1988.
Kendrick, John, C., Eugene, OR, $44,578.70, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, NOV, 1986.
King, Douglas, R., Corbett, OR, $37,831.60, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Knight, Ronald, R., Portland, OR, $60,671.67, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1986.
Lofquist, Ann, M., Newberg, OR, $3,898.67, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, DEC, 1984.
Marshall, David, L., Portland, OR, $35,328.01, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Martin, Thomas, W., Portland, OR, $32,071.20, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1984.
Matthews, Thalia, P., Portland, OR, $20,049.72, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1988.
Maurice, Jack, S., Bend, OR, $79,119.12, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1990.
McBride, Michael, L., Salem, OR, $40,912.55, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1989.
Megyesi, Ronald, J., Portland, OR, $3,534.14, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1982.
Muhr, Frank, F., Eugene, OR, $3,695.91, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.
Murphy, Sheila, D., Portland, OR, $53,606.38, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1987.
Newton, Donald, F., Portland, OR, $17,087.34, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1984.
Palmblad, Michael, K., Hermiston, OR, $53,403.81, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1985.
Patten, Joyce, L., Ashland, OR, $37,951.93, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1988.
Raskin, Becky, R., Portland, OR, $8,131.96, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1984.
Rice, Elaine, M., Portland, OR, $25,655.36, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, AUG, 1987.
Rolland, Steven, B., Salem, OR, $116,727.27, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1986.
Schwartz, Janice, L., Eagle Point, OR, $18,186.45, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1989.
Scofield, Leslie, A., Springfield, OR, $3,140.52, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Seitz, Brian, D., Forest Grove, OR, $41,050.77, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1988.
Sprauer, Vincent, C., Clackamas, OR, $5,768.61, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, AUG, 1986.
Stoltz, William, D., Grants Pass, OR, $42,995.92, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1985.
Tarnasky, Gideon, M., Salem, OR, $17,872.79, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1983.
Templeton, Joel, A., Portland, OR, $53,059.33, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1985.
Ulbrich, George, A., Portland, OR, $11,373.06, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1983.
Voigt, Eric, E., Hood River, OR, $20,442.14, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, DEC, 1983.
Warner-Achtyes, Denise, Portland, OR, $30,491.01, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, AUG, 1985.
West, Weldon, C., Portland, OR, $63,931.23, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, APR, 1987.
Wheeler, Trev, D., Portland, OR, $93,781.77, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAY, 1989.
White, Daniel, L., Portland, OR, $65,191.33, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1987.
Wooley-Noren, Linda, M., Portland, OR, $48,083.72, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JAN, 1985.

Clinical Psychology

Chamberlain, Dennis, H., Gresham, OR, $13,377.65, PACIFIC GRAD SCHOOL OF PSYCHOLOGY, Palo Alto, CA, Clinical Psychology, JUN, 1989.

Dentistry

Houghtaling, Stephen, W., Astoria, OR, $17,474.96, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JUL, 1984.
Hunter, Cheryl, D., Salem, OR, $40,768.68, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1986.
Smith, Michael, J., Eugene, OR, $9,511.31, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1984.

Optometry

Mellem, Lisa, G., Portland, OR, $455.82, PACIFIC UNIVERSITY, Forest Grove, OR, Optometry, MAY, 1990.

Owsley, Philip, J., Beaverton, OR, $22,397.00, PACIFIC UNIVERSITY, Forest Grove, OR, Optometry, (No Separation Date).
Stine, Gordon, J., Forest Grove, OR, $29,903.79, PACIFIC UNIVERSITY, Forest Grove, OR, Optometry, OCT, 1989.
Tustin, Kimberly, A., Eugene, OR, $128,291.85, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, JUN, 1985.

Osteopathy

Manhart, Mark, W., Boring, OR, $13,598.96, CHICAGO COLLEGE OF OST MED, Downers Grove, IL, Osteopathy, NOV, 1983.
Rosenbloom, Frank, S., Beaverton, OR, $15,349.62, OHIO UNIV ATHENS BRANCH, Athens, OH, Osteopathy, AUG, 1964.

Podiatry

Bailey, Brian, K., North Bend, OR, $146,744.27, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1986.
Caproitti, Dale, Clackamas, OR, $152,182.61, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Harper, Harry, J., Gresham, OR, $179,985.60, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Zook, Gerald, Paul, Eugene, OR, $28,005.52, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1984.

Pennsylvania

Allopathic Medicine

Alleyne, Garth, I., Philadelphia, PA, $903.69, UNIV OF MICHIGAN, Ann Arbor, MI, Allopathic Medicine, JUL, 1983.
Chavarria, Kevin, A., Philadelphia, PA, $144,747.41, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, AUG, 1985.
Difrancesco, Eileen, Philadelphia, PA, $82,068.47, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, MAY, 1989.
Fisher, George, E., Philadelphia, PA, $59,527.89, THOMAS JEFFERSON MEDICAL COLLEGE, Philadelphia, PA, Allopathic Medicine, NOV, 1985.
Gilroy, Anne, F., Ardmore, PA, $119,092.20, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUL, 1985.
Gluck, Daniel, S., Philadelphia, PA, $188,173.99, TUFTS UNIVERSITY SCH OF MED, Boston, MA, Allopathic Medicine, MAY, 1982.
Guidotti, Janice, L., Philadelphia, PA, $16,157.29, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUL, 1986.
Gyda, Michael, A., Philadelphia, PA, $76,973.78, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JAN, 1987.
Hawkins, William, N., Philadelphia, PA, $73,580.32, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, APR, 1980.
Heller, Barbara, W., Philadelphia, PA, $81,272.12, UNIV OF PENNSYLVANIA, Philadelphia, PA, Allopathic Medicine, JUN, 1985.
Hill, James, Philadelphia, PA, $37,650.52, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1989.
Howard, Leslie, A., Philadelphia, PA, $55,288.19, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUL, 1986.
Johnson, Howard, D., Bridgeville, PA, $8,258.07, PENN STATE UNIV—HERSHEY MC, Hershey, PA, Allopathic Medicine, MAY, 1987.
Jones, Ronald, M., Philadelphia, PA, $19,418.26, SUNY AT BUFFALO, Buffalo, NY, Allopathic Medicine, JUN, 1988.
Kardon, Laurie, A., Pittsburgh, PA, $104,054.40, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1985.
Levy, Grace, A., Philadelphia, PA, $99,324.86, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1984.
Mayernik, Curtis, V., Pittsburgh, PA, $106,606.17, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1985.
McCormick, Timothy, P., Pittsburgh, PA, $155,785.66, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1985.
Miller, Beverly, C., Philadelphia, PA, $3,461.78, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1984.
Mills, Randell, L., Lancaster, PA, $58,424.66, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1986.
Montgomery, Owen, C., Philadelphia, PA, $17,361.90, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1981.
Mumie, Lawrence, E., Hazleton, PA, $22,376.31, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1982.
Ndubisi, Boniface, U., Hershey, PA, $54,714.15, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, JUN, 1987.
Pernikaff, Barry, J., Kingston, PA, $15,647.95, PENN STATE UNIV—HERSHEY MC, Hershey, PA, Allopathic Medicine, MAY, 1982.
Poleon, Mercedes, L., Philadelphia, PA, $86,165.76, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, AUG, 1984.
Rafferty, William, J., Woodlyn, PA, $114,251.45, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1987.
Samuels, Trudy, Philadelphia, PA, $32,800.06, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1986.
Smith, Paulette, M., Philadelphia, PA, $75,174.64, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUL, 1988.
Spencer, Ronald, W., Philadelphia, PA, $70,154.40, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Stepnoski, Raymond, A., Doylestown, PA, $12,510.78, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUL, 1986.
Turnberg, Martha, A., Stroudsburg, PA, $26,463.50, MEDICAL COLLEGE OF PA., Philadelphia, PA, Allopathic Medicine, JUN, 1982.
Walker, Marcellus, A., Honesdale, PA, $278.06, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1986.
Ward, Stephanie, A., Philadelphia, PA, $5,231.95, PENN STATE UNIV—HERSHEY MC, Hershey, PA, Allopathic Medicine, MAY, 1980.
Whitney, Theodore, R., Philadelphia, PA, $26,448.07, PENN STATE UNIV—HERSHEY MC, Hershey, PA, Allopathic Medicine, MAY, 1988.
Whyte, Brian, Philadelphia, PA, $6,902.63, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1987.
Williamson, Fredrick, D., York, PA, $53,199.85, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1988.
Wilson, Larry, J., Pittsburgh, PA, $115,332.78, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1985.
Wynne, Denise, E., Philadelphia, PA, $24,565.48, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1987.

Chiropractic

Bompiani, Cataldo, Greensburg, PA, $851.56, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUL, 1984.
Brown, Paul, W., Philadelphia, PA, $93,112.66, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1985.
Capilli, Michael, A., Philadelphia, PA, $23,255.19, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1987.
Dinardo, Anthony, A., Philadelphia, PA, $24,021.82, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, MAY, 1984.
Ecola, Michael, J., Butler, PA, $5,805.65, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, AUG, 1986.
Fisher, Gene, R., Emporium, PA, $23,214.70, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Francis, Elroy, Philadelphia, PA, $64,419.86, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985.
George, Robert, E., Meadville, PA, $25,974.27, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1987.
Gregory, Russell, C., Philadelphia, PA, $7,129.91, PENNSYLVANIA CLG OF STRAIGHT CHIRO, Horsham, PA, Chiropractic, AUG, 1991.
Hanes, Robert, B., King Of Prussia, PA, $8,995.72, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1984.
Horne, Patricia, A., Fort Washington, PA, $60,879.88, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1987.
Kalp, Kathy, A., Jones Mills, PA, $33,542.29, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1985.

Laberre, Scott, D., Lancaster, PA, $9,599.88, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Medori, John, Feasterville, PA, $25,778.07, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1986.
Meyers Jr., Gene, L., Delmont, PA, $14,389.72, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Miller, John, W., Pittsburgh, PA, $28,792.04, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUL, 1987.
Mistretta, John, P., Paoli, PA, $43,833.17, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1988.
Norpel, Joseph, W., Erdenheim, PA, $78,781.76, LIFE COLLEGE, Marietta, GA, Chiropractic, NOV, 1987.
Null, Michael, D., Wexford, PA, $46,065.72, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1988.
Ragan, Howard, W., Drexel Hill, PA, $6,004.65, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1986.
Reilly, Jennifer, G., Fleetwood, PA, $36,274.74, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Roebuck, James, N., Pittsburgh, PA, $56,987.10, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985.
Ross, Roger, A., Wallingford, PA, $42,364.71, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985.
Saunders, James, P., Wallingford, PA, $62,781.23, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, MAY, 1983.
Savelli, Christine, A., Bethlehem, PA, $23,445.66, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1988.
Skirpan, Frank, T., Shippensburg, PA, $30,996.06, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1984.
Solomon, Joy, S., Pittsburgh, PA, $17,217.79, LIFE COLLEGE, Marietta, GA, Chiropractic, NOV, 1989.
Stasko, Edward, G., Pittsburgh, PA, $27,325.84, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1984.
Storer, John, W., Camp Hill, PA, $42,817.24, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Torpey, Karen, L., York, PA, $15,059.81, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Wachter, John, P., Pittsburgh, PA, $60,239.55, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1984.
Waite, William, C., Pittsburgh, PA, $24,879.85, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Wakefield, William, C., Pittsburgh, PA, $4,852.79, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Waldman, Andrew, D., Pittsburgh, PA, $25,987.26, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.
Young, Karen, L., New Hope, PA, $59,945.83, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1987.

Clinical Psychology

Brando, Nora, Hulmeville, PA, $6,890.23, HAHNEMANN UNIVERSITY, Philadelphia, PA, Clinical Psychology, JUN, 1990.
Morris, Russell, D., Philadelphia, PA, $31,660.27, ADELPHI UNIVERSITY, Garden City, NY, Clinical Psychology, JUN, 1987.
Mouzon, Laquetta, O., Philadelphia, PA, $14,038.39, HAHNEMANN UNIVERSITY, Philadelphia, PA, Clinical Psychology, JUN, 1988.
Pino, Hector, E., Philadelphia, PA, $7,648.06, HAHNEMANN UNIVERSITY, Philadelphia, PA, Clinical Psychology, JUN, 1985.

Dentistry

Barksdale, Gregory, A., Philadelphia, PA, $22,089.10, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1980.
Berger, David, L., Wampum, PA, $34,094.55, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, JUL, 1985.
Bigdeli, Javad, Narberth, PA, $18,420.93, COLUMBIA UNIV, HEALTH SCIENCES, New York, NY, Dentistry, MAY, 1984.
Blake, John, L., Wellsboro, PA, $68,014.40, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1985.
Brown, Glenn, A., Media, PA, $50,724.74, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, MAY, 1982.
Burne Jr., James, P., Dunmore, PA, $6,530.70, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1989.
Bursich, Thomas, R., Erie, PA, $8,822.56, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUL, 1984.
Butler III, Hubert, E., Philadelphia, PA, $92,794.87, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1987.
Chacker, Laurence, G., Philadelphia, PA, $29,005.32, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, AUG, 1985.
Chomiak, Joseph, J., Connellsville, PA, $23,770.72, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1984.
Dempsey, Dina, L., Erie, PA, $33,862.78, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, MAY, 1986.
Dodd, William, A., Philadelphia, PA, $33,031.51, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1986.
Filipczyk, Celeste, A., West Chester, PA, $3,246.23, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1987.
Harrison, Carl, J., Pittsburgh, PA, $19,472.86, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Henry, Randy, S., Indiana, PA, $121,358.67, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, AUG, 1987.
Hilinski, Mark, A., Wilkes-Barre, PA, $23,362.57, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1987.
Hoppes, Elaine, M., Tamaqua, PA, $61,092.61, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1986.
Jackson, Pamela, Philadelphia, PA, $8,171.34, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, APR, 1984.
Jerrett, David, P., Pittsburgh, PA, $95,632.90, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, MAY, 1984.
Koch, Robert, E., Pittsburgh, PA, $83,247.38, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1987.
Kohl, Donald, J., York, PA, $39,345.37, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, DEC, 1986.
Kompa, Thomas, M., Allentown, PA, $18,607.93, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1981.
Lax, Jonathan, M., Norristown, PA, $419.97, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, JUN, 1982.
Liggett, William, H., Pittsburgh, PA, $14,266.97, HARVARD SCHOOL OF DENTAL MEDICINE, Boston, MA, Dentistry, JUN, 1991.
Marchand, Edward, M., Kintnersville, PA, $2,172.66, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1983.
McGettigan, Brian, F., Philadelphia, PA, $26,330.24, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAR, 1985.
Meehan, Maureen, T., Slatington, PA, $73,716.64, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1988.
Miller, Alan, K., Monroeville, PA, $10,189.54, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, SEP, 1982.
Miller, Yvonne, O., Philadelphia, PA, $35,246.71, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Mitchell, Albert, B., Philadelphia, PA, $53,659.00, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Monsman, John, E., Latrobe, PA, $38,257.69, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, JUN, 1988.
Neilson, Laurel, A., Media, PA, $6,321.07, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, MAY, 1980.
Patterson, Gregory, A., Keisterville, PA, $22,903.71, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1988.
Perrino, Gary, L., Philadelphia, PA, $74,166.86, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, APR, 1984.
Petley, Patrick, J., Bethel Park, PA, $43,086.45, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, FEB, 1985.
Pizolato, Jesse, A., Coatesville, PA, $22,558.90, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, AUG, 1987.
Pluto, Eugene, M., Greensburg, PA, $61,490.61, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, AUG, 1985.
Poland, Dennis, L., Pittsburgh, PA, $14,130.94, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Powell, Carlton, F., Melrose Park, PA, $35,840.38, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1988.
Province, Susan, L., Somerset, PA, $8,028.64, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, DEC, 1986.
Robinson, Harold, L., Philadelphia, PA, $34,962.27, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1988.
Runco, Timothy, J., Pittsburgh, PA, $55,490.16, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, JUN, 1985.

Rushin, David, W., Shavertown, PA, $25,206.51, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1989.
Scarpa Jr., Peter, D., Philadelphia, PA, $5,841.88, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, OCT, 1985.
Semelsberger, Richard, J., Philadelphia, PA, $16,009.13, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1983.
Shaw, Linda, J., Gladwyne, PA, $10,421.45, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, MAY, 1987.
Shepler, Rene, M., Latrobe, PA, $17,141.36, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1988.
Steidle, David, R., Huntingdon, PA, $18,646.14, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUL, 1982.
Stigora, Leonard, J., Philadelphia, PA, $43,652.35, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JUN, 1986.
Tanski-Yudichak, Connie, A., Plymouth, PA, $72,580.59, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1987.
Toncini, Mark, G., Freeport, PA, $36,983.37, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, DEC, 1981.
Urquhart, Charles, N., Philadelphia, PA, $46,264.14, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Wasilko, Thomas, J., White Oak, PA, $11,339.93, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1982.
Yudichak, John, M., Plymouth, PA, $48,805.79, TEMPLE UNIVERSITY, Philadelphia, PA, Dentistry, JAN, 1986.

Optometry

Barron, Timothy, J., Erie, PA, $13,021.60, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, MAY, 1981.
Thomas, Mary, Jo, Uniontown, PA, $13,512.03, PENNSYLVANIA COLLEGE OF OPTOMETRY, Philadelphia, PA, Optometry, MAY, 1986.

Osteopathy

Brennels, Gerard, Sharon, PA, $24,619.05, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUN, 1987.
Brown, Sheila, V., Philadelphia, PA, $16,625.92, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1987.
Cohn, Mitchell, A., Harrisburg, PA, $166,601.79, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, OCT, 1986.
Conix, Portia, Philadelphia, PA, $70,567.20, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1989.
David, Izola, Philadelphia, PA, $19,638.30, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1986.
Dubiel, Henry, J., Levittown, PA, $25,415.41, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JUN, 1984.
Johnson, Lucinda, Philadelphia, PA, $12,213.61, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JAN, 1987.
Justofin, Christopher, D., Hazleton, PA, $120,325.32, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1989.
Lewis, James, Chester, PA, $29,092.47, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, MAR, 1987.
Wilson, Terri, D., Philadelphia, PA, $41,937.38, PHILADELPHIA COLLEGE OF OST MED, Philadelphia, PA, Osteopathy, JAN, 1987.

Pharmacy

Abanzukwe, Joy, I., Philadelphia, PA, $16,505.94, PHILADELPHIA CLG OF PHARM SCI, Philadelphia, PA, Pharmacy, MAY, 1987.
Angel, Marilyn, W., Greensburg, PA, $19,887.69, UNIV OF PITTSBURGH, Pittsburgh, PA, Pharmacy, MAY, 1987.
Chang, Christine, H., Hatfield, PA, $140.55, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, MAY, 1987.
Daniels, Ronald, W., Philadelphia, PA, $11,147.70, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, JUN, 1986.
Dommermuth, Timothy, A., Erie, PA, $2,320.45, PHILADELPHIA CLG OF PHARM SCI, Philadelphia, PA, Pharmacy, MAY, 1981.
Eichinger, Rosemarie, Philadelphia, PA, $6,852.09, PHILADELPHIA CLG OF PHARM SCI, Philadelphia, PA, Pharmacy, JUN, 1985.
Golock, Donna, Pittsburgh, PA, $9,541.14, DUQUESNE UNIVERSITY, Pittsburgh, PA, Pharmacy, MAY, 1988.
McDuffy, James, A., Philadelphia, PA, $40,111.46, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, MAY, 1983.
Raju, Joseph, Philadelphia, PA, $18,033.42, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, MAY, 1986.
Replogle, Karen, E., Shippensburg, PA, $1,988.12, ST LOUIS CLG OF PHARMACY, St. Louis, MO, Pharmacy, MAY, 1987.
Rivers, Constancal, Philadelphia, PA, $3,748.87, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, MAY, 1989.
Shuda, Michael, R., Bala Cynwyd, PA, $12,543.73, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, MAY, 1988.

Podiatry

Acello, Robert, L., Philadelphia, PA, $49,377.92, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1986.
Anderson, Gwendolyn, Philadelphia, PA, $21,188.51, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1988.
Belin, Algier, S., Philadelphia, PA, $34,221.89, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1985.
Danczak, Michael, E., Phoenixville, PA, $31,529.68, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1985.
Daniels, Patricia, A., Philadelphia, PA, $96,563.21, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1986.
Feuer, Reva, Philadelphia, PA, $7,820.81, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1986.
Frazier, Kathalyn, G., Pittsburgh, PA, $129,432.83, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1987.
Goldberg, Sheldon, J., Philadelphia, PA, $64,291.09, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1981.
Jacobs, Bradford, J., Philadelphia, PA, $23,043.58, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUL, 1984.
Kelly, Bruce, Philadelphia, PA, $85,748.83, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1981.
Lauer, Rick, L., York, PA, $254,324.19, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1986.
Lindley, Frank, A., Philadelphia, PA, $15,289.50, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1987.
Ly, Hung, V., Lancaster, PA, $57,610.93, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1986.
Nelson, Joseph, E., Huntingdon Valley, PA, $114,818.14, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.
Peterson, Kirby, K., Philadelphia, PA, $50,140.58, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1986.
Rabinowitz, Jeff, A., Philadelphia, PA, $33,500.11, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1986.
Rosolowicz, Catherine, A., Pottstown, PA, $7,847.06, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1984.
Rusnak, Jeanmarie, Newtown, PA, $46,611.19, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1986.
Smith, Richard, G., Bensalem, PA, $31,665.13, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1979.
Stern, Joel, G., Miquon, PA, $89,675.72, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1987.
Ward, William, F., Norristown, PA, $6,163.99, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1989.
Weitzen, Juli, A., Norristown, PA, $1,047.15, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, JUN, 1987.
Wildes, Ellen, K., Dallas, PA, $70,665.09, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, AUG, 1985.

Public Health

Ditommaso, Richard, A., Pittsburgh, PA, $4,583.72, UNIV OF PITTSBURGH, Pittsburgh, PA, Public Health, MAY, 1986.
Lamothe, Lissa, Philadelphia, PA, $16,042.56, TULANE UNIVERSITY, New Orleans, LA, Public Health, JUL, 1992.
Lee, Margaret, Pittsburgh, PA, $6,066.02, YALE UNIV DEPT OF EPID & PH, New Haven, CT, Public Health, MAY, 1980.

Veterinary Medicine

Giles, Beverly, A., Philadelphia, PA, $8,139.40, UNIV OF PENNSYLVANIA,

Philadelphia, PA, Veterinary Medicine, DEC, 1988.
Green, Debra, D., Philadelphia, PA, $48,586.07, UNIV OF PENNSYLVANIA, Philadelphia, PA, Veterinary Medicine, JUN, 1985.
Henderson II, Bernard, Philadelphia, PA, $5,701.31, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1990.
Herring, Mollie, E., Sewickley, PA, $22,358.08, UNIV OF PENNSYLVANIA, Philadelphia, PA, Veterinary Medicine, DEC, 1981.

Puerto Rico

Allopathic Medicine

Acty-Lindsey, Audria, B., San Juan, PR, $28,167.72, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1985.
Alvarez, Manuel, San Juan, PR, $39,686.78, UNIV OF PUERTO RICO-MED SCI CAMPUS, San Juan, PR, Allopathic Medicine, MAY, 1983.
Caro, Joseph, E., Utuado, PR, $55,105.16, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JUN, 1984.
Chiprout, Elly, Vega Baja, PR, $80,503.09, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JUN, 1989.
Cruz-Rodriguez, Raul, F., San Juan, PR, $1,967.08, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JUN, 1983.
Fernandez, Aileen, C., San Juan, PR, $17,289.16, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JUN, 1984.
Gutman, Jose, E., Ponce, PR, $32,443.90, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JUL, 1988.
Martin Lissabet, Juan, Alberto, Bayamon, PR, $49,627.53, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, JAN, 1988.
Martinez, Marisol, Ponce, PR, $51,190.86, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, JUN, 1984.
Perez, Maldonado, N., Rio Piedras, PR, $7,070.41, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Allopathic Medicine, JUN, 1988.
Pino, Wilbert, B., Rio Piedras, PR, $82,344.05, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, MAY, 1987.
Reyes, Samuel, Cayey, PR, $22,428.64, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, DEC, 1983.
Valentin, Jaime, L., Mayaguez, PR, $18,380.20, UNIVERSIDAD CENTRAL DEL CARIBE, Bayamon, PR, Allopathic Medicine, MAY, 1988.
Villeta, Jalien, G., Rio Piedras, PR, $82,938.78, PONCE SCHOOL OF MEDICINE, Ponce, PR, Allopathic Medicine, JUN, 1984.
Zabala, Armando, Rio Piedras, PR, $69,802.37, UNIV OF ILLINOIS—CHICAGO, Chicago, IL, Allopathic Medicine, JUL, 1986.

Chiropractic

Irizarry, Cesar, A., Ponce, PR, $36,168.06, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, DEC, 1987.
Rodriguez, Felix, Caguas, PR, $26,006.76, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, APR, 1982.

Dentistry

Cintoncios, Sonia, M., Guaynabo, PR, $18,245.32, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, MAY, 1983.
Claudio-Vazquez, Jose, J., Caguas, PR, $10,969.07, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUN, 1980.
Colon Honda, Rafael, Caguas, PR, $30,287.36, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, MAY, 1983.
Garcia Hernandez, Wanda, I., San Juan, PR, $56,697.11, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUL, 1985.
Jimenez-Gonzalez, Carlos, F., Guayama, PR, $16,370.63, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUL, 1981.
Latalladi, Luz, H., Patillas, PR, $147,338.79, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, AUG, 1988.
Martinez, Gustavo, Guaynabo, PR, $5,740.36, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Mullen, Francis, D., Guaynabo, PR, $116,456.94, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, MAY, 1982.
Pales, Jaime, M., Dorado, PR, $19,852.16, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUN, 1981.
Pellicer, Norberto, Carolina, PR, $30,347.36, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, MAY, 1982.
Perez, Hector, L., Rio Piedras, PR, $3,612.42, NEW YORK UNIVERSITY, New York, NY, Dentistry, OCT, 1991.
Rogers, Larry, B., Santurce, PR, $19,365 17, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, MAY, 1984.
Rosario, Graciela, Cayey, PR, $9,053.18, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUN, 1982.
Sanchez, Felix, Rio Grande, PR, $32,375.30, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, MAY, 1981.
Soto, Luis, O., Carolina, PR, $33,244.17, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUN, 1983.
Vazquez, Danny, E., Bayamon, PR, $21,885.91, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, MAY, 1981.
Vega, Carlos, F., Rio Piedras, PR, $13,664.33, UNIV OF PUERTO RICO—MED SCI CAMPUS, San Juan, PR, Dentistry, JUN, 1980.

Optometry

DeJesus, Jose, M., Santurce, PR, $19,430.51, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1987.
Galva Rodriguez, Marc, Arecibo, PR, $37,867.37, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1988.
Latorre-Alvarado, Victor, Luis, San Juan, PR, $29,686.81, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, AUG, 1986.
Lopez Aleman, Miguel, Trujillo Alto, PR, $70,508.62, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1992.
Montalvo-Quinones, Ernesto, T., Rio Piedras, PR, $54,849.06, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1986.
Montanez, Carlos, W., Mayaguez, PR, $49,539.90, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1986.
Morales-Ruiz, J., O., Bayamon, PR, $115,301.35, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1987.
Moreno, Fernando, O., Catano, PR, $33,387.79, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, JUN, 1985.
Moux-Davila, Linos, M., Morovis, PR, $30,595.66, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1989.
Padilla-Torres, Carlos, Ponce, PR, $45,279.88, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1984.
Perez-Davila, Maria, G., Rio Piedras, PR, $50,420.92, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, JUL, 1984.
Rivera, Luis, F., San Juan, PR, $34,285.04, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1988.
Rivera, Axel, E., Rio Piedras, PR, $56,652.99, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1989.
Rodriguez, Maria, J., San German, PR, $30,708.44, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, MAY, 1989.
Soto-Medina, Barry, D., Guaynabo, PR, $86,404.63, INTER AMERICAN UNIV OF PUERTO RICO, San Juan, PR, Optometry, JUN, 1985.

Podiatry

Rivera, Wilfredo, R., Santurce, PR, $136,664.22, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1987.

Public Health

Flores, Luis, A., San Juan, PR, $28,339.50, UNIV OF PITTSBURGH, Pittsburgh, PA, Public Health, AUG, 1983.
Landron, Eva, Hato Rey, PR, $12,421.68, UNIV OF PUERTO RICO, San Juan, PR, Public Health, MAY, 1980.

Veterinary Medicine

Carbo, Sandra, Canovanas, PR, $20,713.41, TUSKEGEE UNIVERSITY, Tuskegee

Institute of Veterinary Medicine, MAY, 1986

Iriarte, Celestino, M., Rio Piedras, PR, $72,683.00 TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, APR, 1983.

Rhode Island

Allopathic Medicine

Ahearn, Jennifer, A., Little Compton, RI, $17,759.97, BROWN UNIVERSITY, Providence, RI, Allopathic Medicine, JUN, 1984.

Bergus, Boris, O., Smithfield, RI, $4,600.74, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1988.

Gunn, Archibald. F., Middletown, RI, $19,604.52, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, OCT, 1984.

Powers, Arnold, A., Providence, RI, $8,392.68, BROWN UNIVERSITY, Providence, RI, Allopathic Medicine, JUN, 1985.

Stewart, Darryl, Providence, RI, $20,653.40, BROWN UNIVERSITY, Providence, RI, Allopathic Medicine, JUN, 1988.

Dentistry

Bhattacharya, Lalita, Warwick, RI, $54,940.54, UNIV OF PENNSYLVANIA, Philadelphia, PA, Dentistry, MAY, 1984.

Health Administration

Tiemo, Vincent, D., Providence, RI, $8,775.61, XAVIER UNIV, Cincinnati, OH, Health Administration, MAY, 1988.

Optometry

Estrada, Rolando, Cranston, RI, $12,072.26, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, MAY, 1989.

Pharmacy

Handren, Michelle, S., Bristol, RI, $9,207.99, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, JUN, 1988.

Veterinary Medicine

Ballou, Sarah, A., Providence, RI, $22,552.30, UNIV OF PENNSYLVANIA, Philadelphia, PA, Veterinary Medicine, MAY, 1983.

Crossman, Dorothy, J., Smithfield, RI, $41,143.63, TUFTS UNIVERSITY, Boston, MA, Veterinary Medicine, MAY, 1985.

South Carolina

Allopathic Medicine

Campbell, Treadwell, Mullins, SC, $36,911.65, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.

Hays, Mark, D., Charleston, SC, $9,719.11, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Allopathic Medicine, MAY, 1982.

Jones, Betty, Orangeburg, SC, $107,970.69, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAR, 1987.

Miles, Robert, L., Columbia, SC, $170,930.68, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUL, 1986.

Niles, Vanessa, G., Progmore, SC, $24,100.08, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1984.

O'Connor, Brian, K., Charleston, SC, $38,649.73, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.

Steen, Ronald, G., Columbia, SC, $22,767.17, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Allopathic Medicine, JUL, 1983.

Stenberg, Brian, D., Charleston, SC, $22,790.15, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, JUN, 1985.

Wright, Richard, O., Rock Hill, SC, $62,250.86, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Allopathic Medicine, JUN, 1987.

Chiropractic

Badia, Raymond, Inman, SC, $81,513.30, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.

Barnica, Janet, M., Longs, SC, $2,999.35, PENNSYLVANIA CLG OF STRAIGHT CHIRO, Horsham, PA, Chiropractic, MAR, 1988.

Clark, Gary, C., Greenville, SC, $12,412.33, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1987.

Cudd, Timothy, J., Orangeburg, SC, $24,417.30, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1985.

Garrett, Alex, C., Conestee, SC, $54,869.86, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1988.

Heinen, Joseph, E., Irmo, SC, $61,713.92, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1984.

Kinsey, Ronald, M., Orangeburg, SC, $76,664.80, LIFE COLLEGE, Marietta, GA, Chiropractic, MAY, 1987.

Robl, Edward, M., Darlington, SC, $19,739.85, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1986.

Simon, Larry, E., Surfside Beach, SC, $78,675.87, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.

Taber, Stuart, M., Irmo, SC, $68,619.07, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1984.

Williams, James, C., Fort Mill, SC, $103,043.26, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.

Clinical Psychology

Cowley, Robert, D., Georgetown, SC, $11,201.83, WRIGHT STATE UNIV, Dayton, OH, Clinical Psychology, OCT, 1988.

Dentistry

Alston, Jeremiah, M., Orangeburg, SC, $14,098.16, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.

Dixson, David, R., Barnwell, SC, $191,597.00, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.

Funderburk Jr., William, A., Myrtle Beach, SC, $50,532.41, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Dentistry, MAY, 1985.

Jones, Pedro, R., Charleston, SC, $166,693.04, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.

Thomas, Robert, L., Summerville, SC, $30,908.46, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Dentistry, MAY, 1990.

Wilson, Debra, D., Rock Hill, SC, $51,672.90, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, MAY, 1984.

Podiatry

Foster, Martha, E., Greenville, SC, $188,950.54, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.

Foster, Heyward, J., Easley, SC, $42,597.16, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.

Glover, Alfred, L., Rock Hill, SC, $107,330.03, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.

Salley, Hezekiah, Smoaks, SC, $115,493.06, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1983.

Veterinary Medicine

Crowe, Janet, S., Charleston, SC, $30,771.13, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, JUN, 1986.

Higgins, Leonard, A., Charleston, SC, $12,795.73, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.

McLaughlin Jr., Leland, M., Fort Mill, SC, $13,299.15, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1987.

Williams, Erwin, B., Columbia, SC, $11,740.70, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1986.

South Dakota

Chiropractic

Clinch, Patrick, J., Rapid City, SD, $82,664.76, NATIONAL COLLEGE OF CHIROPRATIC, Lombard, IL, Chiropractic, DEC, 1984.

Grebin, Bruce, W., Sioux Falls, SD, $55,587.06, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.

Hagedorn, Gene, H., Sioux Falls, SD, $16,065.99, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUN, 1986.

Health Administration

Lund, Peggy, M., Sioux Falls, SD, $12,189.85, ST LOUIS UNIVERSITY, St. Louis, MO, Health Administration, MAY, 1985.

Osteopathy

Bandettini, Francis, C., Sioux Falls, SD, $169,846.12, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1990.

Tennessee

Allopathic Medicine

Berry, Leonard, A., Nashville, TN, $77,842.68, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.

Brennan, William, A., Nashville, TN, $811.96, UNIV OF SOUTH CAROLINA,

Columbia, SC, Allopathic Medicine, MAY, 1988.
Campbell, Otis, Nashville, TN, $54,823.49, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1988.
Cezar, Mahdi, Gallatin, TN, $19,972.37, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1990.
Chatman, David, L., Antioch, TN, $50,049.66, UNIV OF MED & DENT OF NJ—MEDICAL, Newark, NJ, Allopathic Medicine, MAY, 1983.
Conner, Shavetta, D., Antioch, TN, $944.61, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, AUG, 1990.
Davidson, Clifford, M., Knoxville, TN, $33,114.18, UNIV OF ALABAMA-BIRMINGHAM, Birmingham, AL, Allopathic Medicine, JAN, 1989.
Douglas Jr., Hermon, D., Nashville, TN, $88,446.02, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, NOV, 1988.
Dungee, Steven, A., Nashville, TN, $3,845.87, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1990.
Gaither, Thomas, Nashville, TN, $158,321.43, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
Holland Jr., William, A., Knoxville, TN, $40,778.29, EAST TENNESSEE STATE UNIV, Johnson City, TN, Allopathic Medicine, MAY, 1986.
Hunt, Leonnard, A., Nashville, TN, $51,532.21, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JAN, 1987.
James, Marilyn, E., Nashville, TN, $185,716.63, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1985.
Johnson, Eugene, E., Nashville, TN, $88,051.66, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1987.
Johnson, Yvonne, J., Nashville, TN, $118,488.31, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1986.
Ladson, James, W., Nashville, TN, $18,036.45, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1984.
Latimer, Harvey, L., Nashville, TN, $128,649.45, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, APR, 1988.
Moore, Douglas, B., Madison, TN, $26,225.77, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1986.
Nicks, Robbin, M., Hermitage, TN, $151,453.33, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.
Pratt, Ninette, R., Bolivar, TN, $117,074.63, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1986.
Rucks, Andrew, C., Nashville, TN, $165,709.99, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, AUG, 1983.
Scott, Renee, Nashville, TN, $117,840.78, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
See, Tahnya, D., Antioch, TN, $47,084.36, CASE WESTERN RESERVE UNIV, Cleveland, OH, Allopathic Medicine, JUN, 1982.
Spencer, Joyce, E., Nashville, TN, $89,337.31, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1984.
Stewart, Barry, A., Memphis, TN, $9,050.70, UNIV OF TENNESSEE HEALTH SCI CTR, Memphis, TN, Allopathic Medicine, JUN, 1987.
West, Clifton, B., Memphis, TN, $206,028.40, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1986.
Williams, Pamela, C., Antioch, TN, $85,991.32, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1981.
Wimbish, Ronald, P., Nashville, TN, $151,485.88, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, FEB, 1985.
Woodard, Deborah, A., McKenzie, TN, $211,634.23, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1987.
Wright, Becky, B., Germantown, TN, $12,111.98, UNIV OF TENNESSEE HEALTH SCI CTR, Memphis, TN, Allopathic Medicine, JUN, 1987.

Chiropractic

Carter, Karen, L., Nashville, TN, $31,097.64, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1985.
Consiglio, Joseph, S., Crossville, TN, $43,417.34, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1990.
Crislip, David, F., Johnson City, TN, $93,027.98, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1987.
Davis, James, D., Clarksville, TN, $109,969.66, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Gitter, Thomas, L., Memphis, TN, $36,443.05, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1983.
Haley, Jane, E., Fayetteville, TN, $14,311.26, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1988.
Kirkwood, Robert, D., Memphis, TN, $35,725.60, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1988.
Lowe, Joseph, L., Cleveland, TN, $40,153.56, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1983.
Mendez, Manuel, M., Knoxville, TN, $6,994.24, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1989.
Mercer, Lloyd, D., Hermitage, TN, $70,594.77, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1989.
Mongiello, Robert, A., Chattanooga, TN, $12,887.38, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1982.
Nobles, George, S., Lenoir City, TN, $88,011.05, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1987.
Norwood, Larry, D., Madisonville, TN, $30,301.67, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Patterson, Larry, D., Oak Ridge, TN, $12,434.10, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1985.
Rowan, Andrew, C., Crossville, TN, $32,279.49, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1988.
Shafer Jr., Joe, E., Goodlettsville, TN, $15,775.84, LIFE COLLEGE, Marietta, GA, Chiropractic, JUN, 1985.
Simpson, Robert, S., Chattanooga, TN, $25,012.11, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Summerhill, Paul, E., Murfreesboro, TN, $8,216.20, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1986.
Walker, Duane, T., Harrogate, TN, $56,993.39, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1986.
Walker, Steve, L., Nashville, TN, $10,338.00, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, APR, 1988.

Clinical Psychology

King, Wanda, M., Bolivar, TN, $44,202.50, WRIGHT STATE UNIV, Dayton, OH, Clinical Psychology, AUG, 1986.

Dentistry

Adams, Gregory, L., Nashville, TN, $10,621.52, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1990.
Black, Jacquese, O., Antioch, TN, $19,119.89, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1990.
Branch, Joerald, D., Memphis, TN, $2,879.63, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1989.
Burks, Osborne, D., Memphis, TN, $32,585.71, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Chatman, Sarah, E., Jackson, TN, $97,483.48, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1987.
Coleman, Claire, C., Madison, TN, $44,716.73, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Cowan, Walter, O., Clarksville, TN, $86,025.23, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Davis, Edward, L., Memphis, TN, $5,925.67, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1983.
Flint Jr., Bryan, A., Elizabethton, TN, $18,112.75, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, JUN, 1984.
Franklin, Gilbert, L., Memphis, TN, $35,859.34, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1980.
Gaw, Jack, L., Nashville, TN, $97,219.13, TUFTS UNIVERSITY, Boston, MA, Dentistry, MAY, 1987.
Gipson, Samuel, D., Memphis, TN, $30,240.91, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1980.
Hall, Claranell, Hendersonville, TN, $29,575.74, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Holley, Elizabeth, S., Nashville, TN, $33,300.64, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, AUG, 1988.
House, Dock, E., Memphis, TN, $11,393.32, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Johnson, James, E., Nashville, TN, $88,612.84, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1987.

Jones, Vincent, M., Knoxville, TN, $78,855.72, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1982.
Kelly, Delbert, R., Chattanooga, TN, $73,944.66, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JAN, 1984.
Lemorrocco, Belinda, L., Memphis, TN, $7,626.34, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, JUN, 1987.
Long, Larry, S., Murfreesboro, TN, $16,118.45, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, MAY, 1986.
Massengale, Lendell, Knoxville, TN, $70,234.87, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Medina, Richard, Memphis, TN, $32,001.29, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, JUN, 1989.
Moulds, Crystle, M., Chattanooga, TN, $62,178.74, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, JUN, 1986.
Moulds Jr., Dan, D., Nashville, TN, $60,656.72, UNIV OF MISSISSIPPI MED CENTER, Jackson, MS, Dentistry, DEC, 1985.
Pate, James, E., Nashville, TN, $177,951.73, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1986.
Payne, Paul, B., Antioch, TN, $111,883.95, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Peltzer Jr., Luciou, Nashville, TN, $61,476.56, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Price, Vincent, J., Memphis, TN, $34,965.06, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1979.
Ray, Timothy, H., Cleveland, TN, $9,732.42, WEST VIRGINIA UNIV, Morgantown, WV, Dentistry, AUG, 1985.
Reed, Ronald, J., Dyersburg, TN, $63,107.95, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Robinson, Robyn, C., Nashville, TN, $7,792.25, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, MAY, 1986.
Rouse, Juanita, A., Nashville, TN, $159,783.85, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Sims, Larry, D., Memphis, TN, $23,442.77, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.
Turnbow, Thomas, P., Union City, TN, $43,523.08, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, JUN, 1981.
Watts, Mary, Elizabeth, Nashville, TN, $27,822.49, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1982.
Westbrook Jr., Fred, Nashville, TN, $47,501.39, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1986.
Winfrey, Willie, J., Memphis, TN, $64,220.80, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1980.
Witt Jr., Kenneth, G., Lebanon, TN, $14,701.53, UNIV OF LOUISVILLE, Louisville, KY, Dentistry, MAY, 1985.

Health Administration

Sumlin Jr., Otis, Memphis, TN, $9,255.44, TRINITY UNIVERSITY, San Antonio, TX, Health Administration, DEC, 1989.

Optometry

Deharde, John, R., Saint Bethlehem, TN, $36,268.34, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1988.
Jones, Thomas, R., Johnson City, TN, $4,110.02, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JAN, 1987.

Osteopathy

Burnette, David, B., Knoxville, TN, $98,036.10, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, JUN, 1986.

Pharmacy

Hamby, Michael, L., Murfreesboro, TN, $3,574.92, UNIV OF TENNESSEE, Memphis, TN, Pharmacy, JUN, 1988.

Podiatry

Polee, George, Nashville, TN, $30,370.04, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JAN, 1986.
Staton, Rodney, J., Jackson, TN, $12,042.34, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.

Public Health

Greenwood, Michael, M., Nashville, TN, $5,044.79, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, AUG, 1980.

Veterinary Medicine

Edward, James, D., Memphis, TN, $5,780.19, MISSISSIPPI STATE UNIV, Mississippi St., MS, Veterinary Medicine, MAY, 1988.
Neight, Loni, Nashville, TN, $21,001.36, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1987.
Raby, Victor, J., Memphis, TN, $17,634.06, MISSISSIPPI STATE UNIV, Mississippi St., MS, Veterinary Medicine, MAY, 1986.

Texas

Allopathic Medicine

Able, Antoninne, C., San Antonio, TX, $3,995.22, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1989.
Adams, Gerald, F., Houston, TX, $4,307.10, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, NOV, 1986.
Adkins, Margo, M., Llano, TX, $76,753.78, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, MAY, 1988.
Alcazar-Pesante, Lisa, G., Houston, TX, $11,627.40, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1987.
Arnot, Mary, L., Wichita Falls, TX, $9,273.31, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, MAY, 1987.
Avina, Cecilia, B., San Antonio, TX, $4,945.75, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, MAY, 1987.
Ayika, Paul, B., Galveston, TX, $15,642.69, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1986.
Baker, Donnie, W., League City, TX, $92,896.53, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1988.
Ball, Daniel, W., Houston, TX, $9,329.88, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, JUN, 1988.
Barnett, John, E., Houston, TX, $17,206.02, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, MAY, 1990.
Behringer, George, M., Irving, TX, $7,948.93, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, MAY, 1991.
Bell, Kenneth, G., Dallas, TX, $6,412.73, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1989.
Berry, James, E., Stafford, TX, $18,024.84, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1986.
Blackwell, Michael, L., Galveston, TX, $33,690.14, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1991.
Blair Jr., Ronald, M., Denison, TX, $6,002.14, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, JUN, 1986.
Bowie, Frances, E., Houston, TX, $29,775.01, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1983.
Brauer, Bodo, Beaumont, TX, $16,453.08, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUN, 1988.
Brister, Ricque, L., Waxahachie, TX, $2,838.74, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, JUN, 1983.
Burks, David, W., Houston, TX, $8,995.03, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, JUN, 1983.
Collins, James, E., Houston, TX, $110,888.83, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1987.
Compass, Sairwaa, T., Dallas, TX, $7,976.10, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1989.
Crino, Jude, P., Houston, TX, $8,040.62, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1984.
Crowder, Janice, R., Houston, TX, $36,861.78, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, OCT, 1988.
Davis, Kenneth, A., San Antonio, TX, $14,375.46, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1987.
Dyer, Jack, W., Lubbock, TX, $12,683.35, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1989.
Edwards, Mary, D., Arlington, TX, $32,139.92, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1986.
Emerson, Timothy, J., San Angelo, TX, $57,998.72, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1984.
Fagan, Gary, D., Lubbock, TX, $11,430.61, UNIV OF TEXAS-HEALTH SCI CTR,

Houston, TX, Allopathic Medicine, MAY, 1990.
Flores, Alberto, Arlington, TX, $245,946.74, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1985.
Flores, Linda, P., Galveston, TX, $141.31, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUN, 1981.
Foster, Roderic, W., Dallas, TX, $8,661.14, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1983.
Franklin, Janet, L., Houston, TX, $9,689.38, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Gonzalez, Carlos, J., Spring, TX, $602.03, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, JUN, 1981.
Green Jr., Kenneth, W., Dallas, TX, $46,335.02, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, FEB, 1988.
Guzman, Johnny, E., Burleson, TX, $61,496.41, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, FEB, 1986.
Hargett, John, M., McKinney, TX, $19,573.90, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUL, 1982.
Hausrath, Stephen, G., Galveston, TX, $11,296.55, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1986.
Hicks, Gilbert, E., Austin, TX, $32,744.61, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, SEP, 1987.
Horn, Kim, J., Houston, TX, $7,541.08, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, JUN, 1985.
Howard, Annette, M., Houston, TX, $33,961.42, UNIV OF PITTSBURGH, Pittsburgh, PA, Allopathic Medicine, JUN, 1987.
Jacobs, Carol, L., San Antonio, TX, $38,593.45, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1993.
Johnson, Dallas, W., Grapevine, TX, $7,241.65, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, JUN, 1987.
Joiner, Paula, C., Houston, TX, $67,779.18, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1985.
Kelly, Ronald, K., Houston, TX, $16,239.59, UNIV OF CALIFORNIA-IRVINE, Irvine, CA, Allopathic Medicine, JUN, 1983.
Lewis, Michael, Leon, Houston, TX, $36,117.59, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUN, 1987.
Lewis, Robert, C., Fort Worth, TX, $7,947.63, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1990.
Lovoi, Michael, S., Houston, TX, $13,633.47, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Allopathic Medicine, MAY, 1987
Luther, Vera, M., Van, TX, $7,613.53, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, JUL, 1989.
Luu, Kham, Ngoc, Houston, TX, $6,212.86, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1989.
Martin, David, C., Houston, TX, $24,981.89, WASHINGTON UNIV, St. Louis, MO, Allopathic Medicine, MAY, 1985.
Mathews, Jeselle, A., Houston, TX, $28,291.08, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Mayorgo, Gilbert, Houston, TX, $114,121.92, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, (No Separation Date).
Mercier, Juanetta, Houston, TX, $8,819.77, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, DEC, 1988.
Mikesky, Gregory, R., Dallas, TX, $10,226.34, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1985.
Novetsky, Jerry, J., Plano, TX, $31,398.39, WAYNE STATE UNIV, Detroit, MI, Allopathic Medicine, JUN, 1985.
Ochoa, Miguel, E., Galveston, TX, $2,502.78, BAYLOR COLLEGE OF MEDICINE, Houston, TX, Allopathic Medicine, DEC, 1987.
Pearlson, Yale, S., Austin, TX, $99,140.74, ALBERT EINSTEIN COLLEGE OF MEDICINE, Bronx, NY, Allopathic Medicine, JUN, 1986.
Penick, Larry, H., Corpus Christi, TX, $2,171.75, LOYOLA UNIV—STRITCH SCH OF MED, Maywood, IL, Allopathic Medicine, JUL, 1984.
Pickett, Jan, W., Farmers Branch, TX, $5,588.90, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, MAY, 1986.
Porras, Jose, Luis, El Paso, TX, $150,661.27, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1984.
Pruneda III, Joe, M., Fort Worth, TX, $4.46, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1988.
Radford, Rhea, E., Houston, TX, $120,556.64, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, DEC, 1988.
Raphael, Peter, Plano, TX, $36,525.58, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, JUN, 1984.
Reddix, Irance, E., Houston, TX, $27,996.37, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1987.
Rosales, Anna, M., Houston, TX, $49,353.21, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1985.
Roybal-Hazen, Maria, E., McAllen, TX, $26,054.13, MICH ST UNIV CLG OF HUMAN MED, East Lansing, MI, Allopathic Medicine, MAY, 1990.
Schertzer, Marion, E., Houston, TX, $1,982.99, UNIV OF TEXAS S.W. MEDICAL CTR, Dallas, TX, Allopathic Medicine, MAY, 1987.
Shelton, Annette, M., Arlington, TX, $52,028.41, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, JUN, 1985.
Springer, George, O., El Paso, TX, $3,260.75, TEXAS TECH UNIVERSITY, Lubbock, TX, Allopathic Medicine, MAR, 1984.
Stafford, Novarro, C., Port Arthur, TX, $19,901.05, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY 1985.
Starling, Mary, J., San Antonio, TX, $5,895.59, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Allopathic Medicine, MAY, 1989.
Tran, Truc, V., Houston, TX, $1,712.81, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JAN, 1988.
Uri, John, J., Webster, TX, $11,208.07, UNIV OF PENNSYLVANIA, Philadelphia, PA, Allopathic Medicine, DEC, 1986.
Victorianne, Albert, J., Houston, TX, $39,347.24, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, MAY, 1986.
Wolf, Philip, L., San Antonio, TX, $18,735.60, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUN, 1985.
Wright, Billy, J., Ransom Canyon, TX, $23,113.71, UNIV OF SOUTH DAKOTA, Vermillion, SD, Allopathic Medicine, JUL, 1980.
Yamada, Roy, K., Keller, TX, $44,471.11 UNIV OF HAWAII AT MANOA, Honolulu, HI, Allopathic Medicine, JUL, 1984.
Young, Thomas, M., El Paso, TX, $33,073.19, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, JUN, 1980.
Zavala, Alfonso, G., Houston, TX, $173,445.81, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1987

Chiropractic

Adams, Stephen, Friendswood, TX, $64,880.20, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1989.
Allison, Dwaine, M., Fort Worth, TX, $2,597.54, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Amma-Lesrine, Vashtic, Z., Crosby, TX, $28,461.75, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1988.
Andries, Martin, T., Fort Worth, TX, $71,559.50, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Armstrong, Thomas, H., Houston, TX, $51,309.63, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1987
Augustus, Michael, La Marque, TX, $47,496.78, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, JUL, 1986.
Aune, Steven, R., Burkburnett, TX, $36,349.75, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Bailey Jr., John, L., Channelview, TX, $9,951.86, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1989.

Baker Jr., Grisby, Houston, TX, $77,366.48, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1985.
Balan, William, J., Houston, TX, $74,719.10, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Barnett, Brian, D., Webster, TX, $78,221.37, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1987.
Benton, Craig, R., Lampasas, TX, $38,739.71, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Bernius, Gregory, L., Burkburnett, TX, $63,340.36, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.
Billingsley, Craig, A., San Antonio, TX, $12,167.26, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, SEP, 1985.
Blount, Steve, A., Plano, TX, $7,526.91, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, FEB, 1991.
Borst, Brenda, J., Arlington, TX, $5,852.54, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1986.
Brand, Rodney, B., Fort Worth, TX, $20,973.30, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1983.
Brittain, Jeffrey, D., Houston, TX, $71,564.07, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, OCT, 1987.
Broadwell, Teri, A., Flower Mound, TX, $89,537.61, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, MAY, 1989.
Broze, Rory, A., Austin, TX, $56,154.17, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1984.
Carlin, Susan, L., San Antonio, TX, $97,246.70, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JUN, 1986.
Cathcart, Richard, A., Pasadena, TX, $28,291.73, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Centola, Robert, L., Richardson, TX, $41,778.14, NEW YORK CHIROPRACTIC COLLEGE, Seneca Falls, NY, Chiropractic, AUG, 1986.
Chapman, Steven, T., Clute, TX, $13,587.17, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1985.
Chapman, Robert, D., Houston, TX, $76,659.85, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1987.
Cleere, Carrol, E., Red Oak, TX, $61,499.77, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Clements, David, D., Dallas, TX, $35,258.61, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Conlan, Lawrence, S., Austin, TX, $20,427.10, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1983.
Davis, George, R., Dallas, TX, $19,924.17, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1983.
Dean, J., C., Dickinson, TX, $52,540.12, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1986.
Defoire, Stephen, J., Mission, TX, $32,008.44, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1984.
Deiter, Cary, T., Odessa, TX, $80,112.45, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1984.
Delay, Patricia, A., Houston, TX, $16,938.81, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1987.
Dickey, Jerry, P., Richardson, TX, $80,691.67, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, AUG, 1988.
Dippie, John, M., Dallas, TX, $37,152.04, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1989.
Dodd, Daniel, J., Texas City, TX, $16,259.79, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Durham, Ricky, L., Houston, TX, $117,716.15, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1986.
Dyess, Stephen, J., Pasadena, TX, $98,249.39, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1987.
Eastman, Donald, W., Dallas, TX, $55,561.09, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1988.
Eaves, Donald, G., Houston, TX, $86,375.21, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1987.
Echoff, June, C., Houston, TX, $18,643.10, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1982.
Ellis, Larry, D., Irving, TX, $72,768.25, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Fagan, Darrell, R., Seabrook, TX, $52,465.37, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, AUG, 1987.
Ferguson, Roland, L., Nacogdoches, TX, $48,775.43, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Fridman, Olga, N., Houston, TX, $14,897.94, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1985.
Garcia, Jesus, Houston, TX, $67,496.10, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
German, John, V., Houston, TX, $39,602.65, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1985.
Glass, Raymond, K., Houston, TX, $65,137.34, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1986.
Glenn, Michael, C., Duncanville, TX, $107,737.61, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.
Goebel, Michael, L., Cleveland, TX, $53,929.78, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.
Goodman, Joseph, E., Waco, TX, $46,022.85, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1985.
Gosnell, Lewis, S., Sinton, TX, $40,122.13, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1988.
Gratia, Allan, R., Boerne, TX, $49,639.07, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Gray, Gray, Arthur, Watauga, TX, $115,228.90, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Greene, Winston, W., Houston, TX, $39,792.35, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Hales, Joyce, M., Richmond, TX, $28,226.90, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1983.
Hanson, Mark, L., Grand Prairie, TX, $5,644.61, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1982.
Hart, Cindy, G., Lewisville, TX, $55,341.91, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JAN, 1986.
Harvey, Robert, L., Runaway Bay, TX, $69,660.61, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1988.
Haynes, Janice, B., Houston, TX, $17,112.10, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1984.
Hendricks, Craig, B., Tyler, TX, $27,327.01, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Herrington, Tommy, L., Pasadena, TX, $29,724.10, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1988.
Hill, Michael, J., Pasadena, TX, $21,413.97, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1984.
Hoppe, Eric, P., Kilgore, TX, $17,585.95, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1986.
Hurley, Paul, D., La Porte, TX, $74,313.67, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1986.
Jackson, Donald, V., Austin, TX, $80,863.27, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, MAR, 1986.
Johnson, Jerry, N., Dallas, TX, $17,625.62, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1985.
Johnson, Barbara, J., Friendswood, TX, $3,446.27, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.

Kermani, Aspen, D., Quanah, TX, $79,226.20, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1985.
Kincy, Gary, W., Wichita Falls, TX, $29,446.62, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1987.
Kirk, Jack, H., Dickinson, TX, $37,886.24, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.
Kratt, Thomas, W., Nacogdoches, TX, $39,841.61, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1987.
Kunish, Robert, Taylor, TX, $5,349.63, LIFE COLLEGE, Marietta, GA, Chiropractic, OCT, 1982.
Landsiedel, Randy, J., Jasper, TX, $92,037.37, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1983.
Langford, Robert, W., Decatur, TX, $104,346.88, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, APR, 1986.
Lazo, Alejandro, Conroe, TX, $25,074.13, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1985.
Lyons, Eric, P., Grand Prairie, TX, $55,295.51, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, MAY, 1990.
Lyons, Cristina, S., Grand Prairie, TX, $8,153.54, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1990.
Mackin, Cheryl, L., Austin, TX, $50,385.71, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.
Mager, Andrew, H., Lancaster, TX, $28,121.32, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1986.
Manning, Katherine, W., Houston, TX, $97,845.43, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, AUG, 1986.
Manstein, Ralf, Houston, TX, $43,700.87, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1989.
Maples, Thomas, J., Mesquite, TX, $32,959.19, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, SEP, 1985.
Maples II, John, L., Fort Worth, TX, $80,442.14, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1986.
Martin, Nancy, A., Houston, TX, $37,883.89, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1989.
Matthews, Paul, E., Fort Worth, TX, $55,781.23, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, OCT, 1983.
McBride, Karl, A., Irving, TX, $69,231.56, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
McIver, Richard, D., Houston, TX, $69,371.17, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
McLain, Burton, R., Hempstead, TX, $24,985.28, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1985.
Metcalf, Roy, L., Arlington, TX, $93,990.67, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1988.
Montanari, Arthur, M., La Porte, TX, $88,987.81, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1988.
Morgan, Glenn, R., Arlington, TX, $62,210.25, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, SEP, 1989.
Moses, Michael, J., Bryan, TX, $42,245.06, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Munson, Herbert, Mark, Houston, TX, $43,208.28, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, JAN, 1988.
Neely, Timothy, W., Dallas, TX, $34,087.63, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1989.
Nguyen, Ho, H., Houston, TX, $14,840.63, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1989.
Nicolaides, Henry, D., Lockhart, TX, $33,325.81, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1985.
O'Mara, William, L., Kilgore, TX, $17,483.87, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1984.
Parry, William, A., Houston, TX, $15,497.81, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1984.
Parys, Leslie, R., Waco, TX, $8,529.16, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, JUN, 1988.
Pearce, Clark, H., Grand Prairie, TX, $90,465.13, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, MAY, 1989.
Pinotti, Jeffrey, H., Houston, TX, $71,805.90, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, AUG, 1986.
Pouralis, Behzad, M., Houston, TX, $43,358.74, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1989.
Real, Vernon, D., Pasadena, TX, $92,877.61, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, AUG, 1988.
Reece, Deward, F., Corpus Christi, TX, $20,744.57, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Reeves, James, H., Quitman, TX, $12,790.33, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1983.
Reynolds, Charlotte, M., South Houston, TX, $90,041.27, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1986.
Rhine, Cecil, T., Henderson, TX, $65,880.36, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1988.
Roberson, Harvey, Houston, TX, $30,697.66, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1987.
Robinson, Glenn, R., Royse City, TX, $65,918.13, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, NOV, 1988.
Rodriguez, Jesus, A., El Paso, TX, $100,113.75, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1986.
Romeieh, Barbara, C., Bedford, TX, $74,604.77, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Romeieh-Sterba, Charlotte, A., Bedford, TX, $63,637.74, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Rosenbaum, Allan, J., Lubbock, TX, $77,719.42, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Rowe, Roger, L., Longview, TX, $85,540.43, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, AUG, 1986.
Rubio Jr., Raymundo, Brownwood, TX, $10,284.12, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1990.
Rublee, William, R., Nacogdoches, TX, $47,752.86, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.
Sanchez, Gerald, L., Houston, TX, $42,998.50, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JAN, 1987.
Schalk, Ronald, R., Texas City, TX, $18,703.02, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Scott, Carlos, A., Odessa, TX, $17,559.08, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1983.
Shaver, Dennis, D., Kerrville, TX, $23,031.29, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1986.
Siebenaler, Frank, J., Laguna Vista, TX, $103,669.01, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1986.
Sign, Edward, R., Keene, TX, $51,587.20, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1984.
Skidmore, Clyde, Erik, Stafford, TX, $52,127.19, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Smith, Timothy, L., San Antonio, TX, $87,304.76, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1986.
Smith, Dennis, M., Houston, TX, $53,143.17, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.
Smith, Cecil, P., Richardson, TX, $19,537.76, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1986.
Snell, Day, L., Houston, TX, $29,500.07, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1984.

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Sprecher, Kyle, O., Webster, TX, $67,796.62, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1988.
States, Tamra, D., Arlington, TX, $29,070.93, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, FEB, 1985.
Sterba, William, M., Fort Worth, TX, $15,108.87, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Taparauskas, Anne, M., Pasadena, TX, $41,190.07, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1986.
Taylor, Danny, L., Irving, TX, $32,742.01, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, DEC, 1987.
Thompson, Roy, E., Austin, TX, $31,171.47, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Trethewey, Joan, L., Alvin, TX, $14,231.20, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAY, 1987.
Tucker, James, Arlington, TX, $9,975.06, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1983.
Unruh, Steve, L., Anahuac, TX, $81,638.09, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1988.
Vance, Richard, B., Bryan, TX, $31,634.49, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1984.
Walter, Jonathan, L., Austin, TX, $17,276.96, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, MAR, 1987
Wellington, James, G., Kingwood, TX, $27,978.79, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Wheeler, Wesley, D., Houston, TX, $58,493.25, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, APR, 1989.
Whigham, Gwendolyn, E., Houston, TX, $33,887.01, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1987.
Whitaker, Gary, W., San Antonio, TX, $19,534.54, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUL, 1982.
Wilson, Robert, D., Angleton, TX, $106,752.23, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUN, 1987.
Wirt, Rita, J., Groveton, TX, $11,693.45, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1985.

Clinical Psychology

Harrison, James, R., Sherman, TX, $24,886.89, UNIV OF NORTH TEXAS, Denton, TX, Clinical Psychology, AUG, 1985.
Mims, Debbie, A., Fort Worth, TX, $40,600.23, FLORIDA INST. OF TECHNOLOGY, Melbourne, FL, Clinical Psychology, JUN, 1988.

Dentistry

Alford, George, R., Houston, TX, $28,681.49, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1989.
Anderson, Madeline, J., Marshall, TX, $1,822.03, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1989.
Atrvash, Carolyn, A., Arlington, TX, $10,692.68, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1985.
Baird, John, A., Richardson, TX, $25,310.67, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JAN, 1990.
Beckett, Timothy, W., Dallas, TX, $63,527.67, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Beers, Wayne, D., San Antonio, TX, $18,701.46, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1989.
Bonin, Mark, T., Spring, TX, $9,940.51, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1989.
Brantley, Carl, E., Houston, TX, $11,693.88, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1989.
Broadus, Robert, C., Boerne, TX, $30,597.83, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, AUG, 1984.
Broadus, Reginald, H., Fort Worth, TX, $52,185.96, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Brunson, Gregory, H., Houston, TX, $91,128.65, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1988.
Burke, Andrea, M., Houston, TX, $114,874.70, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Canady, Keith, Dallas, TX, $37,144.09, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JUN, 1990.
Cartwright, Tonia, J., Houston, TX, $5,227.82, HOWARD UNIVERSITY, Washington, DC, Dentistry, DEC, 1986.
Cheek Jr., Albert, C., Houston, TX, $19,920.02, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1986.
Coleman, Michele, M., San Antonio, TX, $9,988.90, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Collier, George, R., San Antonio, TX, $42,491.80, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JUN, 1983.
Crist, Michael, A., Houston, TX, $13,275.79, UNIV OF CALIFORNIA-LOS ANGELES, Los Angeles, CA, Dentistry, JUN, 1982.
Daniels II, John, Houston, TX, $59,862.40, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Douglas, Agnes, G., Dallas, TX, $47,684.86, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1985.
Dugger, Burma, D., Sugar Land, TX, $52,831.07, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1988.
Escalona, Valerie, R., Houston, TX, $21,626.21, NEW YORK UNIVERSITY, New York, NY, Dentistry, DEC, 1990.
Faucher, Dennis, L., Dallas, TX, $65,638.24, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1984.
Fulmer, James, C., Austin, TX, $10,794.19, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUN, 1986.
Garcia, Leticia, S., Nederland, TX, $20,954.60, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, JUN, 1983.
Garcia, Maria, T., Houston, TX, $3,481.58, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1987
Gonzales, David, L., Houston, TX, $98,437.91, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1981.
Green, Henry, T., San Antonio, TX, $144,785.32, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JUN, 1984.
Hatten, John, H., Odessa, TX, $27,078.64, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, JUN, 1983.
Haynes, Milburn, S., Texarkana, TX, $30,586.14, UNIV OF TENNESSEE AT MEMPHIS, Memphis, TN, Dentistry, JUN, 1988.
Herndon, James, K., Dallas, TX, $17,340.00, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1988.
Hickman, Carl, M., Houston, TX, $8,163.96, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1982.
Hoffman, Spencer, Plano, TX, $28,305.36, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JUN, 1980.
Hooda, Farid, K., Houston, TX, $7,836.66, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, NOV, 1987.
Huffstutler, Steven, Michael, Fort Worth, TX, $47,656.11, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JUN, 1987.
Jacome Jr., Robert, A., Plano, TX, $174,705.77, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, DEC, 1986.
Johnson, Cleverick, D., Houston, TX, $2,677.33, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUL, 1986.
Kindla, Anthony, F., Houston, TX, $4,330.23, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1990.
Laird, Robert, D., Commerce, TX, $4,271.22, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, DEC, 1987.
Maedgen, Alan, L., Dallas, TX, $11,509.10, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1987.
Marek, Michael, L., Houston, TX, $50,938.57, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1988.
Mason, Samuel, L., Houston, TX, $135,800.36, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.
Mayes, Darrell, L., San Antonio, TX, $101,316.29, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1989.
Morgan, John, D., Fairfield, TX, $840.28, BAYLOR COLLEGE OF DENTISTRY, Dallas, TX, Dentistry, JUN, 1985.
Morin Jr., Vincent, G., Corpus Christi, TX, $195,570.05, MEHARRY MED COLLEGE Nashville, TN, Dentistry, MAY, 1985.
Mosely Jr., Lee, Houston, TX, $38,515.17, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1984.
O'Brien-Day, Francys, E., Euless, TX, $4,090.69, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUL, 1984.
Ramos Jr, Rodolfo, G., Houston, TX, $3,000.31, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1990.
Rapanotti, Mario, C., San Antonio, TX, $14,698.83, UNIV OF TEXAS-HEALTH SCI

CTR, San Antonio, TX, Dentistry, JUN, 1983.
Roberts, Richard, E., San Angelo, TX, $47,224.18, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1988.
Speer, James, D., Sugar Land, TX, $46,127.66, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1985.
Steele, David, L., Texarkana, TX, $20,153.05, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1986.
Stuart, Claudette, R., Houston, TX, $44,357.14, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1987.
Tootoonchi, M., J., Houseman Addition, TX, $2,647.49, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, MAY, 1990.
Towsend, Leslie, R., Lancaster, TX, $7,838.64, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Dentistry, JUN, 1985.
Venable, James, R., Lancaster, TX, $7,605.95, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1990.
Wade, Eric, V., Tyler, TX, $23,985.03, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1984.
Wood Jr., Cecil, N., Duncanville, TX, $112,350.43, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUL, 1983.
Wright, Debra, Y., Bedford, TX, $19,699.07, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.

Health Administration

Miranda, Leandro, Cypress, TX, $22,094.86, TRINITY UNIVERSITY, San Antonio, TX, Health Administration, DEC, 1989.
White, Kevin, G., Dallas, TX, $6,856.23, ST LOUIS UNIVERSITY, St. Louis, MO, Health Administration, MAY, 1989.

Optometry

Greenfield, Nancy, A., Katy, TX, $62,904.40, NEW ENGLAND COLLEGE OF OPTOMETRY, Boston, MA, Optometry, MAR, 1985.
Gunn, Nanette, Q., Universal City, TX, $159,757.94, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1986.
Hayes, Linda, C., Houston, TX, $5,039.98, UNIV OF HOUSTON, Houston, TX, Optometry, JUN, 1987.
Lekas, Mark, Dallas, TX, $8,879.37, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUN, 1983.
McGregor, Scott, D., Carrollton, TX, $106,504.89, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, JUN, 1986.

Osteopathy

Alvarado, Leticia, D., Windcrest, TX, $1,487.26, MICHIGAN STATE UNIV, East Lansing, MI, Osteopathy, JUL, 1985.
Brooks, Marc, E., Fort Worth, TX, $31,208.26, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, OCT, 1989.
Buttar, Rashid, A., Houston, TX, $108,293.60, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Osteopathy, JUN, 1991.
Cantrell, Elroy, T., Hallettsville, TX, $4,326.30, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1984.
Ellington, James, D., Grapevine, TX, $24,755.12, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, JUL, 1989.
Gross, George, E., Dallas, TX, $19,025.01, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, SEP, 1981.
Hankins, David, L., Arlington, TX, $185,210.59, KIRKSVILLE CLG OF OST MED, Kirksville, MO, Osteopathy, JUL, 1987.
Keltch, George, F., Richardson, TX, $5,040.36, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1989.
Lee, John, H., Port Arthur, TX, $9,249.94, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUL, 1987
Leong, Daniel, K., Dallas, TX, $26,123.03, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, OCT, 1981.
Mayberry, Bobby, J., Fort Worth, TX, $2,681.49, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1990.
Morrill, Thomas, R., Dallas, TX, $53,968.23, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1987.
Samuels, Michael, G., Carrollton, TX, $915.35, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, MAY, 1982.
Selman, Alon, D., Fort Worth, TX, $94,300.52, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1988.
Snow, Robert, G., Arlington, TX, $26,439.19, UNIV OF HEALTH SCIENCES, Kansas City, MO, Osteopathy, MAY, 1989.
Trammell, Stephen, B., De Soto, TX, $12,119.39, TEXAS COLLEGE OF OST MED, Fort Worth, TX, Osteopathy, JUN, 1988.

Pharmacy

Boboye, Cyril, O., Arlington, TX, $11,600.95, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, AUG, 1985.
Breedlove, Arthur, L., Irving, TX, $1,441.49, TEXAS SOUTHERN UNIV, Houston, TX, Pharmacy, DEC, 1987.
Dudley, Raynold, R., Houston, TX, $26,258.52, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, AUG, 1984.
Grice, Arnitta, J., Houston, TX, $2,864.22, TEXAS SOUTHERN UNIV, Houston, TX, Pharmacy, MAY, 1989.
Powe, Roderick, L., Dallas, TX, $22,288.51, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, AUG, 1985.
Thomas, Shirley, D., Mesquite, TX, $1,976.83, XAVIER UNIV OF LOUISIANA, New Orleans, LA, Pharmacy, MAY, 1984.

Podiatry

Baxter, Bobby, G., Houston, TX, $122,429.68, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1984.
Bethea, Carrol, R., Dallas, TX, $59,249.35, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1985.
Cook, Mary, A., San Antonio, TX, $49,033.30, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUN, 1987.
DeFrank, Salvatore, Dallas, TX, $129,981.06, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUL, 1984.
DeFrank, Peter, R., Rowlett, TX, $127,765.75, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, JUL, 1984.
Ezzch, Mary, A., Duncanville, TX, $126,153.82, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.
Frye, Mark, A., Huntsville, TX, $18,826.57, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Grocoff, Ronald, D., Plano, TX, $34,957.80, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1980.
Jenkins, Gaye, N., Houston, TX, $78,586.56, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, DEC, 1986.
Joyce, Anne, F., San Antonio, TX, $143,643.65, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1982.
Knutson, Timothy, L., San Antonio, TX, $83,935.77, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.
Rose, Myrtle, F., Dallas, TX, $109,525.79, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1987.
Sowell, Ronald, K., Dallas, TX, $104,674.84, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1990.
Stillwagoner, Lee, W., Sulphur Springs, TX, $25,783.34, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, FEB, 1986.
Updyke, John, G., Austin, TX, $111,498.25, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1981.

Public Health

Biosah, Ada, N., Houston, TX, $21,808.41, UNIV OF TEXAS-HEALTH SCI CTR, Houston, TX, Public Health, FEB, 1991.
Hill-Hawkins, Barbara, H., Grand Prairie, TX, $827.13, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, MAY, 1989.
Perry, Terry, T., Houston, TX, $5,261.13, TULANE UNIVERSITY, New Orleans, LA, Public Health, MAY, 1984.
Tihfon, Pierre, M., Beaumont, TX, $21,321.49, UNIV OF OKLAHOMA, Oklahoma City, OK, Public Health, MAY, 1988.

Veterinary Medicine

Brinkley, Marty, R., Kaufman, TX, $1,555.81, OKLAHOMA STATE UNIV, Stillwater, OK, Veterinary Medicine, MAY, 1991.
Dickerson, Kathryn, J., Brazoria, TX, $22,484.88, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, JUN, 1986.
Johnson, Earnest, H., Houston, TX, $29,627.79, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1982.

Utah

Allopathic Medicine

Jacoby, Avi, Salt Lake City, UT, $145,663.61, HAHNEMANN MED CLG AND HOSP OF PHILA, Philadelphia, PA, Allopathic Medicine, JUN, 1984.
Plater, Daniel, H., Midvale, UT, $78,267.83, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Allopathic Medicine, JUN, 1988.

Chiropractic

Bowman, Jeffrey S., Salt Lake City, UT, $12,328.45, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JAN, 1984.
Brown, James A., West Jordan, UT, $50,099.37, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAY, 1987.
Fair, Myron D., Hooper, UT, $28,586.49, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
Karabatsos, John A., Tooele, UT, $16,246.33, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, MAR, 1987.
Mangum, Donald, L., Springville, UT, $72,830.12, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1988.
Patton, Daniel R., Salt Lake City, UT, $83,498.15, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, OCT, 1987.
Robinette, Terry A., Sandy, UT, $56,186.53, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Sessions, David B., Sandy, UT, $85,603.67, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, DEC, 1988.
Tarrant, Jeffrey, N., Springdale, UT, $14,823.34, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1987.
Taylor, Todd, R., Bountiful, UT, $3,107.29, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, DEC, 1987.

Dentistry

De Loach, Dennis, A., Salt Lake City, UT, $143,031.38, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1987.
Gifford, Craig, P., West Valley City, UT, $94,287.53, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1987.
Hamblin, Robert, L., Provo, UT, $3,855.76, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUL, 1983.
Haynie, Michel B., Salt Lake City, UT, $134,280.55, UNIV OF TEXAS-HEALTH SCI CTR, San Antonio, TX, Dentistry, MAY, 1987
Israelsen, John, A., Logan, UT, $65,590.21, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1989.
Jensen, Alan, C., Salt Lake City, UT, $62,208.01, UNIV OF OKLAHOMA HEALTH SCI CTR, Oklahoma City, OK, Dentistry, JUN, 1986.
Troili, Dean, C., West Jordan, UT, $175,186.83, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1986.
Tucker, Bret, J., Salt Lake City, UT, $56,828.40, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1988.

Optometry

Boyer, David, L., Salt Lake City, UT, $9,569.54, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUN, 1982.
Mitchell, Mike, K., Salt Lake City, UT, $35,993.45, SOUTHERN CALIF CLG OF OPTOMETRY, Fullerton, CA, Optometry, JUL, 1987.

Podiatry

Rindlisbacher, Mark, C., Payson, UT, $140,969.42, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1988.

Vermont

Allopathic Medicine

Owenashley, Frances, Essex Junction, VT, $24,816.03, WRIGHT STATE UNIV, Dayton, OH, Allopathic Medicine, JUN, 1985.
Pigula, Frank, A., Richmond, VT, $1,939.32, UNIV OF VERMONT, Burlington, VT, Allopathic Medicine, DEC, 1985.

Chiropractic

Swett, Robert, A., Manchester, VT, $28,172.80, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1988.
Warmann, Richard, Moretown, VT, $59,420.93, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1986.

Dentistry

Wiebking, Henry, A., Fairfax, VT, $86,536.26, UNIV OF MARYLAND-BALTIMORE, Baltimore, MD, Dentistry, JAN, 1985.

Virgin Islands

Chiropractic

Williams, Marlow, S., St. Croix, VI, $46,709.61, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1986.

Podiatry

Crawford, James, G., St. Thomas, VI, $150,951.58, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1982.

Virginia

Allopathic Medicine

Ackerman, Gayle, S., Roanoke, VA, $10,591.64, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Allopathic Medicine, JUN, 1988.
Belgrave, Claude, D., Hampton, VA, $4,887.12, HARVARD UNIV MED SCH, Boston, MA, Allopathic Medicine, JUN, 1986.
Boschulte, Jualenda, M., Alexandria, VA, $53,631.67, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1986.
Bunch, John, D., Warrenton, VA, $8,716.17, MEDICAL UNIV OF SOUTH CAROLINA, Charleston, SC, Allopathic Medicine, JUN, 1984.
Caesar, Anne, E., Annandale, VA, $85,840.00, GEORGE WASHINGTON UNIV, Washington, DC, Allopathic Medicine, MAY, 1983.
Camacho, Aubrey, A., Arlington, VA, $11,612.45, CUNY MOUNT SINAI SCHOOL OF MED, New York, NY, Allopathic Medicine, JUN, 1986.
Dempster, Alexandra, Middleburg, VA, $23,412.34, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, SEP, 1983.
Fournier, Richard, D., Virginia Beach, VA, $70,127.45, GEORGETOWN UNIVERSITY, Washington, DC, Allopathic Medicine, JUN, 1989.
Goodman, Ira, J., Herndon, VA, $2,482.45, RUSH UNIVERSITY, Chicago, IL, Allopathic Medicine, MAR, 1985.
Harrington, Baxter, C., Midlothian, VA, $43,208.12, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, JUN, 1985.
Hill, Jean, Claude, Elberon, VA, $175,846.77, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1987.
Jones, Larry, M., Roanoke, VA, $2,997.53, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1987.
Kirk, Vernon, H., Portsmouth, VA, $47,337.84, UNIV OF UTAH, Salt Lake City, UT, Allopathic Medicine, JUN, 1988.
Lawrence, William, H., Eagle Rock, VA, $26,580.15, UNIV OF MIAMI, Miami, FL, Allopathic Medicine, JUN, 1985.
Lisner, Blaine, M., Blacksburg, VA, $19,083.86, OHIO STATE UNIVERSITY, Columbus, OH, Allopathic Medicine, AUG, 1985.
Malloy, Harderison, E., Norfolk, VA, $67,912.91, EASTERN VIRGINIA MED SCH, Norfolk, VA, Allopathic Medicine, JUL, 1984.
Marshall, John, T., Petersburg, VA, $77,301.51, MARSHALL UNIVERSITY, Huntington, WV, Allopathic Medicine, JUN, 1986.
Porres, Felipe, G., Charlottesville, VA, $26,335.26, UNIV OF TEXAS-MED BRANCH, Galveston, TX, Allopathic Medicine, MAY, 1987.
Schroeder, David, W., Richmond, VA, $3,556.16, TULANE UNIVERSITY, New Orleans, LA, Allopathic Medicine, JUN, 1990.
Scott, Rosemary, C., Saluda, VA, $112,536.05, MEHARRY MED COLLEGE, Nashville, TN, Allopathic Medicine, MAY, 1987.
Wimbush, John, E., Richmond, VA, $2,906.92, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Allopathic Medicine, MAY, 1983.

Chiropractic

Bol, Robert, A., Herndon, VA, $16,603.37, NATIONAL COLLEGE OF CHIROPRACTIC, Lombard, IL, Chiropractic, DEC, 1987.
Boon, Beverly, E., Yorktown, VA, $74,665.02, LIFE COLLEGE, Marietta, GA, Chiropractic, JAN, 1985.
Calhoun, Thomas, E., Centreville, VA, $10,883.55, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1985.
Cather, Robert, D., Herndon, VA, $39,843.89, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, JUL, 1984.
Christie, Richard, T., Annandale, VA, $5,535.79, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Davis, Thomas, A., Harrisonburg, VA, $78,990.38, LOGAN COLLEGE OF

CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Dotti, John, T., Newport News, VA, $51,295.02, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1983.
Ganther, Timothy, G., Virginia Beach, VA, $39,916.41, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, AUG, 1986.
Headley, Patricia, D., Charlottesville, VA, $46,917.82, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1986.
Jackson, Zoma, G., Freeman, VA, $22,399.57, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JAN, 1988.
Johnson, Robert, H., Herndon, VA, $69,001.75, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, AUG, 1987.
Kilmer, David, R., Delaplane, VA, $39,137.36, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, DEC, 1985.
McLean, Lila, E., Herndon, VA, $45,287.63, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1987.
Nelson, Michael, W., Herndon, VA, $55,418.93, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Simmons, Thomas, L., Herndon, VA, $64,415.51, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1987.
Stick, Alex, W., Richmond, VA, $6,851.48, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1986.
Streicher, Bruce, Shipman, VA, $62,663.98, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1985.
Taylor, Berlan, L., Herndon, VA, $16,492.75, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, JUN, 1986.
Vosburgh Jr., Stephen, E., Sterling, VA, $97,742.25, LIFE COLLEGE, Marietta, GA, Chiropractic, APR, 1986.

Clinical Psychology

Kelly, Mary, E., Herndon, VA, $46,832.92, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, JUN, 1989.

Dentistry

Amovhashem, Parvin, Falls Church, VA, $7,779.49, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Bentley, David, J., Richmond, VA, $15,697.81, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, JUN, 1988.
Bukowski, Todd, M., Arlington, VA, $24,404.39, SUNY AT BUFFALO, Buffalo, NY, Dentistry, JUN, 1989.
Bunn, Steven, T., Alexandria, VA, $96,688.50, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, JAN, 1986.
Davis, Unice, E., Richmond, VA, $27,388.31, BOSTON UNIVERSITY, Boston, MA, Dentistry, DEC, 1985.
Febus, Helby, E., Alexandria, VA, $12,384.76, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Freeman Jr., Lenwood, Ladysmith, VA, $9,464.63, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1988.
Gallop, Cecil, C., Hampton, VA, $10,251.70, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1981.
Jennings, Kevin, D., Chesapeake, VA, $148,094.29, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Jones, Gale, F., Richmond, VA, $54,610.03, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.
Jones, Linda, F., Lake Ridge, VA, $53,247.06, HOWARD UNIVERSITY, Washington, DC, Dentistry, JUN, 1986.
Labrie, Gerald, F., Springfield, VA, $18,490.95, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Langston, Robin, Y., Suffolk, VA, $11,881.83, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1989.
Miles, Ethel, M., Glen Allen, VA, $21,622.59, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1985.
Miller, Jay, P., Arlington, VA, $8,281.99, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1990.
Mitchell, Linda, S., Herndon, VA, $51,317.38, UNIV OF MISSOURI-KANSAS CITY, Kansas City, MO, Dentistry, MAY, 1988.
Nicholas, Robert, Kyle, Richmond, VA, $22,222.38, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, AUG, 1987.
Norris, Edward, B., Herndon, VA, $122,340.37, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, JUN, 1984.
Pearson, Haywood, L., Richmond, VA, $125,164.51, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, MAY, 1983.
Peoples, Douglas, B., Petersburg, VA, $19,387.74, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Preston, Richard, G., Richmond, VA, $7,380.81, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Ruffin, Wyatt, M., Virginia Beach, VA, $174,490.86, MEHARRY MED COLLEGE, Nashville, TN, Dentistry, DEC, 1983.
Shaffner III, Robert, E., Christiansburg, VA, $176,384.63, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, JUL, 1989.
Surat, Eric, M., Roanoke, VA, $7,932.14, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1985.
Sykes, Daniel, P., Virginia Beach, VA, $8,199.58, UNIV OF PITTSBURGH, Pittsburgh, PA, Dentistry, DEC, 1983.
Terry, Ronald, E., Richmond, VA, $25,998.15, UNIV OF MED & DENT OF NJ—DENTAL, Newark, NJ, Dentistry, JUN, 1982.
Thomas, Stephen, J., Vienna, VA, $12,769.25, VIRGINIA COMMONWEALTH UNIV-MCV, Richmond, VA, Dentistry, MAY, 1984.
Willis, Orion, W., Portsmouth, VA, $27,921.28, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1983.
Wilson, Sulyn, Strasburg, VA, $5,995.01, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1987.

Health Administration

Jones, Joanne, P., Bent Mountain, VA, $2,395.99, GEORGIA STATE UNIV, Atlanta, GA, Health Administration, JUN, 1987.

Osteopathy

Shafransky, Dore, R., Norfolk, VA, $104,348.42, OHIO UNIV ATHENS BRANCH, Athens, OH, Osteopathy, JUN, 1989.

Pharmacy

Hoffman, Beverley, A., Richmond, VA, $18,753.71, UNIV OF SOUTHERN CALIFORNIA, Los Angeles, CA, Pharmacy, JUN, 1984.
O'Harib, Suraia, Alexandria, VA, $2,661.25, MASSACHUSETTS CLG OF PHARMACY, Boston, MA, Pharmacy, NOV, 1988.
Sciple, Charles, Grundy, VA, $62,488.02, MERCER UNIVERSITY, Atlanta, GA, Pharmacy, JUN, 1987.

Podiatry

Anderson III, Jesse, N., Virginia Beach, VA, $97,363.92, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, MAY, 1984.
Clark, Debbie, R., Virginia Beach, VA, $83,764.26, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1987.
Mest, Simon, J., Glen Allen, VA, $18,412.69, PENNSYLVANIA CLG OF PODIATRIC MED, Philadelphia, PA, Podiatry, FEB, 1983.

Public Health

Jones, Donald, A., Annandale, VA, $23,486.76, LOMA LINDA UNIVERSITY, Loma Linda, CA, Public Health, JUN, 1983.
Talley, Mark, D., Richmond, VA, $1,834.73, UNIV OF NORTH CAROLINA, Chapel Hill, NC, Public Health, MAY, 1986.
Wooldridge, Abigail, S., Annandale, VA, $11,305.45, JOHNS HOPKINS UNIVERSITY, Baltimore, MD, Public Health, JUN, 1984.

Veterinary Medicine

Edwards, Deborah, A., Chesapeake, VA, $12,994.03, TUSKEGEE UNIVERSITY, Tuskegee Institute, AL, Veterinary Medicine, MAY, 1982.
Hable, Charles, P., Stuart, VA, $23,074.20, UNIV OF PENNSYLVANIA, Philadelphia, PA, Veterinary Medicine, MAY, 1985.

Washington

Allopathic Medicine

Clemen, James, T., Bremerton, WA, $38,890.15, UNIV OF SOUTH DAKOTA, Vermillion, SD, Allopathic Medicine, MAY, 1982.
Hanks, Howard, S., Renton, WA, $41,578.79, UNIV OF WASHINGTON, Seattle, WA, Allopathic Medicine, JUN, 1981.
Hursey, Phyllis, D., Othello, WA, $3,165.41, HOWARD UNIVERSITY, Washington, DC, Allopathic Medicine, MAY, 1989.
Jackson, Darrell, A., Seattle, WA, $5,888.14, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1985.
Levine, Henry, M., Seattle, WA, $26,372.53, UNIV OF WASHINGTON, Seattle, WA, Allopathic Medicine, MAR, 1982.
Sahm, Roger, A., Redmond, WA, $89,497.77, VANDERBILT UNIV, Nashville, TN, Allopathic Medicine, JUN, 1989.
Smith-Naporn, Atania, Gig Harbor, WA, $68,720.34, MEDICAL COLLEGE OF PA.,

Philadelphia, PA, Allopathic Medicine, JUL, 1987.
White, Leroy, C., Tacoma, WA, $27,348.50, TEMPLE UNIVERSITY, Philadelphia, PA, Allopathic Medicine, JUN, 1981.
White, Jeffrey, R., Chattaroy, WA, $56,878.97, ORAL ROBERTS UNIV, Tulsa, OK, Allopathic Medicine, JUN, 1988.

Chiropractic

Collins, Norman, E., Renton, WA, $51,872.20, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1988.
Corley, David, L., Tacoma, WA, $36,289.26, LIFE CHIROPRACTIC COLLEGE-WEST, San Lorenzo, CA, Chiropractic, JAN, 1985.
Dailey, Charles, Seattle, WA, $70,025.42, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, MAY, 1985.
Diel, Gary, R., Tacoma, WA, $89,455.99, LIFE COLLEGE, Marietta, GA, Chiropractic, SEP, 1984.
Dreyer, Frank, J., Spokane, WA, $12,107.74, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1984.
Falkenberg, John, Edmonds, WA, $21,923.57, NORTHWESTERN CLG OF CHIROPRACTIC, Bloomington, MN, Chiropractic, MAY, 1983.
Grim, Peter, A., Bothell, WA, $45,825.44, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, DEC, 1983.
Haydu-Handley, Cynthia, Renton, WA, $25,599.90, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1982.
Hopkins, Keith, T., Leavenworth, WA, $12,077.98, LOGAN COLLEGE OF CHIROPRACTIC, Chesterfield, MO, Chiropractic, OCT, 1982.
Marschall, Skye, K., Seattle, WA, $85,583.33, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, DEC, 1983.
McCord, Allan, R., Bellevue, WA, $12,585.98, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1983.
McKilligan, Terrence, L., Woodland, WA, $12,833.55, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Mitchell, Robert, S., Redmond, WA, $40,783.81, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, MAY, 1982.
Nicholes, David, L., Fircrest, WA, $15,337.41, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1989.
Phelps, Carl, E., Issaquah, WA, $25,619.10, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Pittman, Joanne, E., Index, WA, $63,705.00, LIFE COLLEGE, Marietta, GA, Chiropractic, MAR, 1986.
Reehl, Michelle, D., Kent, WA, $6,882.83, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1982.
Scheen, Susan, E., Vashon, WA, $4,804.70, WESTERN STATES CHIROPRACTIC CLG, Portland, OR, Chiropractic, MAR, 1983.
Selinsky, Michael, Bellingham, WA, $22,321.87, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, APR, 1987.
Stanton, Lawrence, P., Edmonds, WA, $7,549.15, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, AUG, 1983.
Taylor, Larry, D., Wapato, WA, $31,992.71, PALMER COLLEGE OF CHIROPRACTIC-WEST, San Jose, CA, Chiropractic, APR, 1989.
Thompson, Gary, L., Everett, WA, $25,728.66, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1983.
Thompson, Phillip, A., Auburn, WA, $45,737.97, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, APR, 1987.
Turner, Scot, A., Olympia, WA, $8,569.54, TEXAS CHIROPRACTIC CLG FOUNDATION, Pasadena, TX, Chiropractic, JUN, 1983.
Zipfel, Anthony, R., Republic, WA, $33,967.46, LOS ANGELES CLG OF CHIROPRACTIC, Whittier, CA, Chiropractic, APR, 1988.

Clinical Psychology

Akimoto, Robert, Seattle, WA, $31,190.09, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1988.
Elofson, Olof, R., Issaquah, WA, $17,956.90, UNIV OF MISSOURI-COLUMBIA, Columbia, MO, Clinical Psychology, JUL, 1987.
Kinney, Lorrin, W., Vancouver, WA, $28,626.07, CALIFORNIA SCH. OF PROF. PSY., Fresno, CA, Clinical Psychology, FEB, 1985.
Lyons, Sandra, C., Tacoma, WA, $31,976.86, CALIFORNIA SCH. OF PROF. PSY., San Diego, CA, Clinical Psychology, JUN, 1987.
Shope, Robert, S., Bremerton, WA, $24,699.49, FULLER THEOLOGICAL SEMINARY, Pasadena, CA, Clinical Psychology, SEP, 1987.

Dentistry

Adams, Larry, R., Olympia, WA, $10,784.18, WASHINGTON UNIV, St. Louis, MO, Dentistry, MAY, 1983.
Broadbent, Calen, H., Renton, WA, $3,626.02, WASHINGTON UNIV, St. Louis, MO, Dentistry, JUL, 1987.
Clark, Russell, A., Everett, WA, $118,485.02, UNIV OF THE PACIFIC, San Francisco, CA, Dentistry, JUN, 1990.
Ghamary, Ghafoor, Everett, WA, $5,807.72, GEORGETOWN UNIVERSITY, Washington, DC, Dentistry, MAY, 1984.
Grosser, Barry, D., Seattle, WA, $3,844.75, UNIV OF WASHINGTON, Seattle, WA, Dentistry, AUG, 1990.
Ip, Stephen, C., Seattle, WA, $3,703.98, UNIV OF WASHINGTON, Seattle, WA, Dentistry, JUN, 1988.
Jones, Cynthia, A., Lacey, WA, $16,199.48, HOWARD UNIVERSITY, Washington, DC, Dentistry, MAY, 1985.
Milton, James, A., Centralia, WA, $82,744.00, LOMA LINDA UNIVERSITY, Loma Linda, CA, Dentistry, MAY, 1987.

Optometry

Davis, James, C., Yakima, WA, $69,872.10, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, MAY, 1985.
Splinter, Kenneth, W., Kelso, WA, $19,131.41, PACIFIC UNIVERSITY, Forest Grove, OR, Optometry, JUN, 1984.

Osteopathy

Kennedy, Sheila, Z., Renton, WA, $124,190.69, OKLAHOMA CLG OF OST MED & SURGERY, Tulsa, OK, Osteopathy, MAY, 1985.

Pharmacy

Day, Harold, E., Bremerton, WA, $1,869.09, CREIGHTON UNIVERSITY, Omaha, NE, Pharmacy, JAN, 1987.

Podiatry

Allen, Karen, J., Everett, WA, $106,104.35, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, JUN, 1986.
Chow, Aaron, L., Lacey, WA, $63,748.20, UNIV OF OST. MED & HEALTH SCIENCES, Des Moines, IA, Podiatry, JUN, 1988.
Morrison, John, T., Port Orchard, WA, $29,924.11, OHIO COLLEGE OF PODIATRIC MED, Cleveland, OH, Podiatry, OCT, 1984.

Veterinary Medicine

Crook, Nancy, L., Blaine, WA, $4,647.96, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, JUL, 1985.

West Virginia

Allopathic Medicine

Carmenate, Brigitte, Morgantown, WV, $27,775.95, SUNY AT STONY BROOK, Stony Brook, NY, Allopathic Medicine, JUN, 1989.

Chiropractic

Akbary, Ali, Huntington, WV, $25,214.71, SOUTHERN CALIF CLG OF CHIROPRACTIC, Pico Rivera, CA, Chiropractic, FEB, 1986.
Loesser, Raymond, J., Williamstown, WV, $23,475.38, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1987.

Dentistry

Freeman, Kenneth, B., Charleston, WV, $29,673.48, CASE WESTERN RESERVE UNIV, Cleveland, OH, Dentistry, MAY, 1986.
Graham, James, B., Princeton, WV, $177,286.44, BOSTON UNIVERSITY, Boston, MA, Dentistry, JUN, 1986.

Health Administration

Shelton, Sharon, T., Princeton, WV, $13,960.98, UNIV OF PENNSYLVANIA, Philadelphia, PA, Health Administration, MAY, 1987.

Optometry

Moore, Gregory, S., Clendenin, WV, $62,942.66, SOUTHERN COLLEGE OF OPTOMETRY, Memphis, TN, Optometry, NOV, 1987.

Osteopathy

Booth, Christophe, R., Lewisburg, WV, $18,931.74, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, MAY, 1989.
Dillard, Morris, S., Hurricane, WV, $96,203.33, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, MAY, 1985.

Kostenko, Michael, M., Beckley, WV, $16,568.32, CLG OF OST MEDICINE OF THE PACIFIC, Pomona, CA, Osteopathy, JUN, 1984.
Spanos, George, K., Ceredo, WV, $8,679.15, WEST VIRGINIA SCH OF OST MED, Lewisburg, WV, Osteopathy, JUL, 1983.

Wisconsin

Allopathic Medicine

Allen, Douglas, J., Marshfield, WI, $30,384.98, UNIV OF WISCONSIN, Madison, WI, Allopathic Medicine, MAY, 1990.
Ambrose, Rustin, E., Milwaukee, WI, $4,973.37, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1982.
Boyd, Olage, W., Milwaukee, WI, $155,662.99, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1984.
Coalman, Perry, G., Wisconsin Dells, WI, $21,539.99, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1984.
Gochis Jr., Paul, D., Pewaukee, WI, $24,014.05, UNIV OF COLORADO MC, Denver, CO, Allopathic Medicine, MAY, 1985.
Harris, Ernest, H., Madison, WI, $30,292.57, UNIV OF ILLINOIS-CHICAGO, Chicago, IL, Allopathic Medicine, JUN, 1983.
Kushner, Brad, D., Whitewater, WI, $111,456.17, CHICAGO MED SCHOOL, North Chicago, IL, Allopathic Medicine, MAY, 1987.
Leisman, Scott, K., Madison, WI, $8,645.55, UNIV OF WISCONSIN, Madison, WI, Allopathic Medicine, JUN, 1982.
Miller, Julie, A., Menomonee Falls, WI, $41,416.37, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, JAN, 1986.
Pounds, Lawrence, M., Rubicon, WI, $157,790.03, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, MAY, 1988.
Tesch, Patrick, R., Milwaukee, WI, $28,935.55, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, SEP, 1986.
Wustrack, Mary, B., Eldorado, WI, $36,657.90, MEDICAL COLLEGE OF WISC., Milwaukee, WI, Allopathic Medicine, OCT, 1988.

Chiropractic

Bisesi, Raymond, C., Milwaukee, WI, $7,544.21, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, JAN, 1986.
English, Thomas, W., Green Bay, WI, $30,431.72, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, MAR, 1985.
Hansen, Timothy, J., Pewaukee, WI, $17,315.01, PARKER COLLEGE OF CHIROPRACTIC, Dallas, TX, Chiropractic, DEC, 1986.
Jackson, William, E., Oshkosh, WI, $25,961.77, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1984.
Mason, Joseph, G., Marinette, WI, $23,264.70, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1984.
Meike, Alan, D., Elkhorn, WI, $627.97, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1991.
Meldonia, Barbara, J., Stevens Point, WI, $87,459.89, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, JUN, 1985.
Nelson, Michael, D., Wilton, WI, $39,550.42, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, DEC, 1984.
Wedesky, Mary, Jo, Monroe, WI, $48,115.78, LIFE COLLEGE, Marietta, GA, Chiropractic, DEC, 1983.
Werner, Mory, V., Seymour, WI, $54,172.16, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, SEP, 1983.

Dentistry

Blank, William, C., Milwaukee, WI, $8,741.67, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1981.
Firer, Simon, Milwaukee, WI, $41,957.46, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1983.
Kammer, Lisa, A., Frederic, WI, $29,087.39, UNIV OF DETROIT, Detroit, MI, Dentistry, MAY, 1987.
Law, Daniel, C., Milwaukee, WI, $62,280.47, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, AUG, 1985.
Le Fevre, Peter, G., Milwaukee, WI, $76,790.97, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1986.
Lloyd, Donald, G., Oshkosh, WI, $4,832.94, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1981.
Lovas, James, R., Three Lakes, WI, $83,514.71, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1987.
Mallien, Maria, E., Milwaukee, WI, $138,093.03, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, DEC, 1985.
Moon, Craig, Wm, Milwaukee, WI, $134,257.66, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Morrison, Michael, B., Shorewood, WI, $149,449.26, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Reed, John, F., Janesville, WI, $130,646.55, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1985.
Sanderson, Scott, F., Stoughton, WI, $44,237.17, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1989.
Spheeris, Eleni, N., Milwaukee, WI, $49,794.92, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1988.
Stojkovich, Lou, Milwaukee, WI, $64,968.54, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1987.
Tanski, Thomas, A., Jackson, WI, $13,838.81, MARQUETTE UNIVERSITY, Milwaukee, WI, Dentistry, MAY, 1982.

Optometry

Mahoney, Robert, G., Wisconsin Rapids, WI, $153,054.93, ILLINOIS COLLEGE OF OPTOMETRY, Chicago, IL, Optometry, JUN, 1987.

Pharmacy

Binagy, Dorothea, W., Whitewater, WI, $15,988.13, TEMPLE UNIVERSITY, Philadelphia, PA, Pharmacy, SEP, 1986.

Podiatry

Fox-Woodard, David, Ted, Madison, WI, $65,498.28, CALIFORNIA CLG OF POD MED, San Francisco, CA, Podiatry, MAY, 1985.
Hilton, Jonathon, H., Burlington, WI, $29,338.76, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1980.
Price, Melvin, B., Milwaukee, WI, $105,018.47, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, JUL, 1985.
Westerfield, Michael, J., Elkhorn, WI, $151,237.87, DR. WILLIAM M. SCHOLL CLG POD MED, Chicago, IL, Podiatry, MAY, 1988.

Public Health

Rodriguez, Victor, Whitewater, WI, $3,537.82, TULANE UNIVERSITY, New Orleans, LA, Public Health, MAY, 1989.

Veterinary Medicine

Burnett, Craig, K., Oshkosh, WI, $1,312.83, MICHIGAN STATE UNIV, East Lansing, MI, Veterinary Medicine, JUN, 1984.
Nance, Dara, K., Madison, WI, $31,482.47, UNIV OF WISCONSIN, Madison, WI, Veterinary Medicine, MAY, 1991.

Wyoming

Allopathic Medicine

Rainey, Debra, K., Casper, WY, $24,031.13, CREIGHTON UNIVERSITY, Omaha, NE, Allopathic Medicine, JUN, 1986.

Chiropractic

Hess, Donald, E., Casper, WY, $24,200.75, CLEVELAND CHIROPRACTIC COLLEGE, Los Angeles, CA, Chiropractic, SEP, 1985.
Hildebrand, Todd, Gillette, WY, $1,292.84, PALMER COLLEGE OF CHIROPRACTIC, Davenport, IA, Chiropractic, SEP, 1989.
Hill, Fred, D., Kemmerer, WY, $1,898.36, CLEVELAND CHIROPRACTIC CLG (MO), Kansas City, MO, Chiropractic, AUG, 1982.

Dated: August 23, 1993.

William A. Robinson,

Acting Administrator.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting; Requirements for Payment by Electronic Transfer; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029–AB50

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting; Requirements for Payment by Electronic Transfer

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its regulations governing reclamation fee payments. The revised rule would establish a new dollar threshold of $25,000 or more for quarterly fee payments made by electronic transfer of funds to the Treasury Financial Communications System. The increased use of the electronic transfer of funds by those making reclamation fee payments would allow the Department to expedite and streamline its fee collection efforts.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on October 29, 1993.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule within the comment period. OSM will accept requests for hearings until 5 p.m. Eastern time on September 29, 1993.

Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 800 North Capitol Street, NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: The addresses and times for any hearings that may be scheduled will be announced prior to the hearings.

Requests for public hearings: Requests may be made orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT" by the time specified under "DATES."

FOR FURTHER INFORMATION CONTACT: Delleene McKenzie, Office of the Assistant Director, Finance and Accounting, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208–2560 (Commercial) and (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATE") may not be considered or included in the Administrative Record for the final rules.

Public Hearings

OSM will hold public hearings on the proposed rules upon request only. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate responses, OSM also requests that persons who plan to testify submit to OSM, at the address previously specified for the submission of written comments (see "ADDRESSES"), an advance copy of their testimony.

II. Background

Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (the Act) (30 U.S.C. 1232(b)) provides that a reclamation fee on produced coal shall be paid no later than thirty days after the end of each calendar quarter. Section 413(a) of the Act (30 U.S.C. 1242(a)) authorizes the Secretary of the Interior to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of the Act relating to Abandoned Mine Reclamation (title IV).

Notice is hereby given that the OSM proposes to amend 30 CFR 870.15(d). The revised rule would lower the wire transfer threshold from $100,000 to $25,000. This would require those companies which owe $25,000 or more for quarterly reclamation fees to submit such payments through the use of the Treasury Financial Communications System (TFCS) electronic payments.

Approximately 100 companies currently pay via wire transfer; however, by lowering the threshold to $25,000, OSM estimates that approximately 1,500 companies would utilize the wire transfer method of payment. Payments from these companies total $54 million to $55 million per quarter. Instead of submitting checks to OSM for these amounts, these companies would have their banks wire funds through the Federal Reserve System to the account for the United States Treasury at the Federal Reserve Bank of New York (FRBNY). Through the use of TFCS for these large accounts, the Department will be able to expedite and streamline its fee collection efforts.

The Treasury Financial Communications System is the computer-to-computer link between the U.S. Department of the Treasury and the Federal Reserve Bank of New York. This system provides the capability for: (1) Automated receipt and processing of funds transfer and (2) computer-assisted generation of funds transfer between Treasury, Federal Reserve banks, and other banks utilizing the Federal Reserve Communications System (FRCS). The TFCS also integrates such traffic into Treasury's Government-wide Accounting System which accounts for all Federal receipts and outlays. Treasury maintains an account at FRBNY. As a result, banks that maintain an account at a Federal Reserve bank may send funds transfers to Treasury through the FRCS for credit to the Account of the U.S. Treasury at FRBNY. Funds transfers between Treasury and banks that so not maintain an account at a Federal Reserve bank are processed through correspondent banks that do maintain an account at a Federal Reserve bank.

Following are the TFCS funds transfer message format and specific instructions from the Treasury Fiscal Requirements Manual for fund transfer messages to be used in paying reclamation fees:

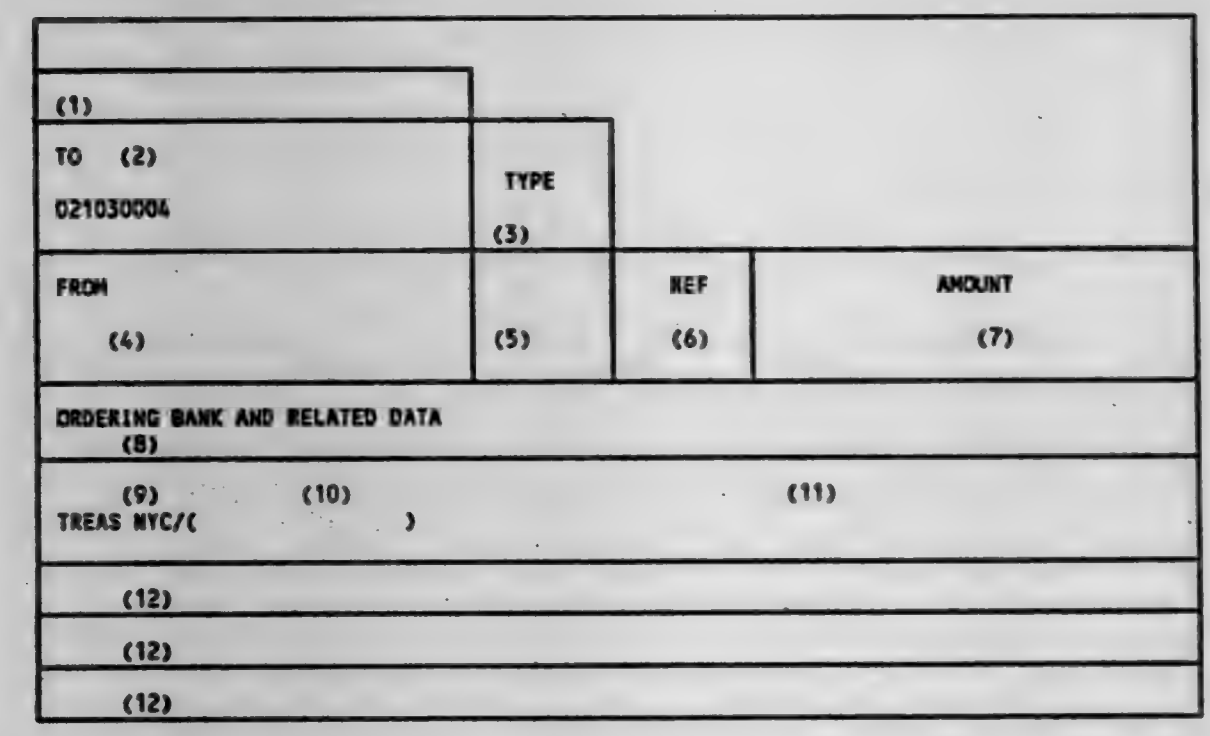

Funds Transfer Message Format

Item 1—Priority Code—The Priority code will be provided by the sending bank. (Note: Some Federal Reserve district banks may not require this item.)

Item 2—Treasury Department Code—The nine digit identifier "021030004" is the routing symbol of the Treasury. This item is a constant and is required for all funds transfer messages sent to Treasury.

Item 3—Type Code—The code will be provided by the sending bank.

Item 4—Sending Bank Code—This nine-digit identifier will be provided by the sending bank.

Item 5—Class Code—This class code may be provided by the sending bank at its option (if permitted by its Federal Reserve district bank).

Item 6—Reference Number—The reference number may be inserted by the sending bank to identify the transaction.

Item 7—Amount—The amount will include the dollar sign and the appropriate punctuation including cents digits. This item will be provided by the depositor.

Item 8—Sending Bank Name—The telegraphic abbreviation which corresponds to item 4 will be provided by the sending bank.

Item 9—Treasury Department Name—This item is of critical importance. It must appear on the funds transfer message in the precise manner as stated to allow for the automated processing and classification of the funds transfer message to the agency location code of the appropriate agency. The item is comprised of a rigidly formatted, nonvariable sequence of 11 characters defined as follows:

Character #(s)	Character(s)	Definition
1–5	TREAS	First part of Treasury Department telegraphic abbreviation.
6		Space (leave blank).
7–9	NYC	Second part of Treasury Department Telegraphic abbreviation.
10	/	Slash.
11	(	Left parenthesis.

The 11 characters must be left-justified on line 5 of the funds transfer message and must appear as follows:

TREAS NYC/(14180001).

Item 10—Agency Location Code—This item is of critical importance. It must appear on the funds transfer message in the precise manner is stated to allow for the automated processing and classification of the funds transfer message to the agency location code of the appropriate agency. The agency location code refers to three-, four-, or eight-digit numeric symbols used to identify Government departments and agencies (e.g. accounting stations, disbursing and collecting offices). OSM's unique code must be specified in the funds transfer message in order for the funds to be correctly classified to the agency. The code must immediately follow the left parenthesis of item 9, must contain no spaces, dashes, or other extra characters, and must be immediately followed by a right parenthesis. This item would appear on line 5 of the funds transfer message in conjunction with item 9 as shown below:

TREAS NYC/(14180001)

Item 11—Agency Name—OSM

Item 12—Third Party Information—Information to identify the reason for the funds transfer should be provided here. "Mine ID, sequence type, year/quarter i.e., 1534567.01.S, 91/2" is an example, meaning reclamation fees for one or several MSHA ID's. In addition, the permit number should also be included with this information.

These instructions will be mailed to coal-producing companies, along with Forms OSM–1's and OSM–1(a)'s, which are forms used to report quarterly coal production to OSM. Submission of OSM–1's and OSM–1(a)'s will remain the same, except that companies required to use wire transfer should indicate on the reporting form(s) that fees have been submitted via wire transfer and the Master Entity Number, Part 1, Block 4, on the OSM–1 Form.

This rule changes the requirement for electronic transfer of payments totalling $25,000 or more per quarter, per company and is proposed to become effective for all reclamation fees due or overdue on April 1, 1993.

III. Discussion of Proposed Rule

Section 870.15(d)—Reclamation Fee Payment

Under the proposal, an operator who owes total quarterly reclamation fees of $25,000 or more for one or more mines would be required to: use the Treasury Financial Communications System—electronic payments; forward its payments by electronic transfer; include the applicable master entity number (Part 1, Block 4, on the OSM–1 Form) surface mining permit and Mine Safety and Health Administration Identification numbers by year/quarter on the wire message; and use OSM's approved form(s) to report production to the address specified in paragraph (d)(2) of this section.

Operators who owe less than $25,000 in quarterly reclamation fees for one or more mines could either forward payments by electronic transfer in accordance with the procedures specified in proposed paragraph 870.15(d)(1); or submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement, in the same envelope with OSM's approved form(s) to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

A paragraph would be added to the rule clarifying that operators who submit a payment of more than $25,000 by a method other than electronic transfer to the Treasury Financial Communications System—Fedwire Deposit System would be in violation of the requirements of the Act, as amended.

IV. Procedural Matters

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule merely specifies the manner in which reclamation fee payments are to be made to OSM. It does not alter the amount or frequency of payment. The rule does not distinguish between small and large entities.

Executive Order 12778 on Civil Justice Reform

This wire transfer rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this wire transfer rule.

Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The wire transfer rule will not have any preemptive effect on any state law. This relates only to Federal obligations.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of the Act as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of the Act.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of the Act, 30 U.S.C. 1276(a).

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5, 701.5, and 870.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of August 30, 1993, the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

National Environmental Policy Act (NEPA)

This proposed rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2, appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The author of this proposed rule is Delleane McKenzie, Finance and Accounting, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208–2560, Commercial or (FTS).

List of Subjects in 30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: June 7, 1993.

Michael Dombeck,

Acting Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, it is proposed to amend 30 CFR part 870 as set forth below:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 870.15(d) is revised to read as follows:

§ 870.15 Reclamation fee payment.

* * * * *

(d)(1) An operator who owes total quarterly reclamation fees of $25,000 or more for one or more mines shall:

(i) Use the Treasury Financial Communications System—electronic payments;

(ii) Forward its payments by electronic transfer;

(iii) Include the applicable master entity (Part 1—Block 4 on the OSM–1 Form) surface mining permit and Mine Safety and Health Administration

identification numbers by year/quarter on the wire message; and

(iv) Use OSM's approved form(s) to report production to the address specified in paragraph (d)(2) of this section.

(2) An operator who owes less than $25,000 in quarterly reclamation fees for one or more mines may:

(i) Forward payments by electronic transfer in accordance with the procedures specified in paragraph (d)(1) of this section; or

(ii) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement, in the same envelope with OSM's approved form(s) to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

(3) An operator who submits a payment of more than $25,000 by a method other than electronic transfer to the Treasury Financial Communications System—electronic payments shall be in violation of the Surface Mining Control and Reclamation Act of 1977, as amended.

* * * * *

[FR Doc. 93–20628 Filed 8–27–93; 8:45 am]
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Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: September 29, 1993.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplemental Information below.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: August 24, 1993.

Spence W. Perry,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 08/23/93 UPDATE

PROPERTY NAME	PO BOX/RT NO., STREET ADDRESS	CITY, STATE/ZIP	TELEPHONE
Additions			
ALABAMA:			
RAMADA INN	3001 ROSS CLARK CIR	DOTHAN, AL 36301	(205) 792–0031
ECONO LODGE	946 FORT DALE RD	GREENVILLE, AL 36037	(205) 382–3118
RED ROOF INN 117 MOBILE SOUTH	5450 COCA COLA RD	MOBILE, AL 36619	(205) 666–1044
HOWARD JOHNSON'S OXFORD	US HWY. 78 & AL 21 S	OXFORD, AL 36203	(205) 835–3968
HOLIDAY INN ANNISTON OXFORD	US HWY. 78 & AL 21 S	OXFORD, AL 36203	(205) 831–3410
ARKANSAS:			
DAYS INN BENTON	1501 I–30	BENTON, AR 72015	(501) 776–3200
ARIZONA:			
RED LION'S LAPOSADA RESORT HOTEL	4949 E. LINCOLN DRIVE	SCOTTSDALE, AZ 85253	(602) 952–0420
FIESTA INN	2100 S. PRIEST DRIVE	TEMPE, AZ 85282	(602) 967–1441
FLORIDA:			
DAYS INN NORTHLAKE	2158 RANCHWOOD DR	ALTAMONTE, FL.	
ORLANDO NORTH HILTON & TOWERS	350 S. NORTHLAKE BLVD	ALTAMONTE SPRINGS, FL 32715.	(407) 830–1985
COMFORT INN HOTEL	9800 BONITA BEACH RD	BONITA SPRINGS, FL 33923.	(813) 922–5001
HOWARD JOHNSON FOUNTAIN PARK PLAZA HOTEL.	5150 W. US 192	KISSIMMEE, FL 34746	(407) 396–1111
ECONOLODGE MAINGATE CENTRAL	4985 W. IRLO BRONSON HWY. WSY2.	KISSIMMEE, FL 34746	(407) 396–4343
HOWARD JOHNSON CONVENTION CENTER	200 SE 2ND AVE	MIAMI, FL 33131	(305) 374–3000
HOLIDAY INN AIRPORT LAKES	1101 NW 57 AVE	MIAMI, FL 33126	(305) 266–0000
QUALITY INN SOUTH	14501 S. DIXIE HWY	MIAMI, FL 33176	(305) 251–2020
COMFORT INN EXECUTIVE SUITES	3660 TOLLGATE BLVD	NAPLES, FL 33942	(813) 353–6500
COMFORT INN NAVARRE	8670 NAVARRE PKWY	NAVARRE, FL 32566	(904) 939–1761

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 08/23/93 UPDATE—Continued

PROPERTY NAME	PO BOX/RT NO., STREET ADDRESS	CITY, STATE/ZIP	TELEPHONE
HOLIDAY INN NEW PORT RICHEY	5015 US 19	NEW PORT RICHEY, FL 34652.	(813) 849–8551
COMFORT INN GATEWAY	6626 US HWY. 19 N	NEW PORT RICHEY, FL 34652.	(813) 842–6807
COMFORT INN	11360 US HWY. 1	NORTH PALM BEACH, FL 33408.	(407) 624–7166
HOWARD JOHNSON UNIVERSAL TOWER	5905 INTERNATIONAL DR	ORLANDO, FL 32819	(407) 351–2100
COMFORT INN LAKE BUENA VISTA	8442 PALM PKWY	ORLANDO, FL 32830	(407) 239–7300
COMFORT INN	830 LEE RD	ORLANDO, FL 32810	(407) 629–4000
TRAVELODGE ORLANDO AIRPORT	1853 MCCOY RD	ORLANDO, FL 32809	(407) 851–1113
QUALITY SUITES UNIVERSAL STUDIOS	7400 CANADA AVE	ORLANDO, FL 32819	(407) 363–0332
COMFORT SUITE ORLANDO	9350 TURKEY LAKE RD	ORLANDO, FL 32819.	
HOWARD JOHNSON DOWNTOWN WESTPARK HOTELS.	304 W. COLONIAL DR	ORLANDO, FL32801	(407) 843–8700
HOWARD JOHNSON MIDTOWN ORLANDO	2014 W. COLONIAL DR	ORLANDO, FL 32804	(407) 841–8600
THE BRAZILIAN COURT	301 AUSTRAILIAN AVE	PALM BEACH, FL 33480	(407) 655–7740
INNISBROOK HILTON RESORT	36750 US HWY. 19 N	PALM HARBOUR, FL 34684.	(813) 942–2000
HOLIDAY INN ST. PETERSBURG BEACH	5300 GULF BLVD	ST. PETERSBURG BEACH, FL 33706.	(813) 360–6911
EMBASSY SUITES HOTEL AIRPORT	555 W. SHORE BLVD	TAMPA, FL 33609	(813) 875–1555
HOWARD JOHNSON LODGE KENNEDY SPACE CENTER.	1829 RIVERSIDE DR	TITUSVILLE, FL 32780	(407) 267–7900
KENTUCKY:			
DRAWBRIDGE MOTOR INN THE GARRISON BLDG..	ROYAL DRIVE & BUTTER-MILK PIKE.	FT. MITCHELL, KY 41017	(606) 341–2800
MASSACHUSETTS:			
BEST WESTERN CHICOPEE MOTOR LODGE	463 MEMORIAL DR	CHICOPEE, MA 01020	(413) 592–6171
COMFORT INN OF DARTMOUTH	171 FAUNCE CORNER RD	DARTMOUTH, MA 02747	(508) 996–0800
FRIENDSHIP INN	380 SW CUTOFF RT. 20 & 9.	NORTHBORO, MA 01532	(508) 842–8941
FACTORY MUTUAL CONFERENCE CENTER	PO BOX 9102, 1151 BOS-TON-PROVIDENCE TNPK.	NORWOOD, MA 02062	(617) 769–7900
FRIENDSHIP INN NORTH	90 STERLING ST.	WEST BOYLSTON, MA 01853.	(508) 835–6247
ECONO LODGE	1533 ELM ST	WEST SPRINGFIELD, MA 01089.	(414) 734–8278
MISSOURI:			
BEST WESTERN MUSIC CAPITAL INN	BOX 731. HCO 1	BRANSON, MO 65616	(417) 335–8378
HOLIDAY INN (WEST PARK AREA)	BOX 1570, I–55 & WIL-LIAM STREET, RT K.	CAPE GIRARDEAU, MO 63702.	(314) 334–4491
ECONO LODGE	4575 NO LINDBEREL BLVD AT I–70.	ST. LOUIS, MO 63044	(314) 731–3000
FRONTENAC HILTON	1335 S LINDBERGH BLVD	ST. LOUIS, MO 63131	(314) 993–1100
NEW JERSEY:			
WATSONS REGENCY SUITES	901 OCEAN AVE	OCEAN CITY, NJ 08226	(609) 398–4300
NEW YORK:			
HOWARD JOHNSON LODGE	416 SOUTHERN BLVD	ALBANY, NY 12209	(518) 462–6555
ALL SEASONS MOTOR LODGE	1126 JERICHO TNPK	COMMACK, NY 11725	(516) 864–3500
HOWARD JOHNSON MOTOR LODGE	611 TROY SCHENEC-TADY RD.	LATHAM, NY 12110	(518) 785–5891
SARATOGA DOWNTOWNER MOTEL	413 BROADWAY	SARATOGA SPRINGS, NY 12866.	(518) 584–6160
OKLAHOMA:			
COMFORT INN	2247 GARY BLVD	CLINTON, OK 73601	(405) 323–6840
HOLIDAY INN	HWY. 75 & TRUDGEON	HENRYETTA, OK 74437	(918) 652–2581
RADISSON INN	401 S. MERIDIAN AVE	OKLAHOMA CITY, OK 73108.	(405) 947–7681
QUALITY INN	720 S. MACARTHUR BLVD	OKLAHOMA CITY, OK 73128.	(405) 943–2393
HOLIDAY INN	2515 W. SIXTH ST	STILLWATER, OK 74074	(405) 372–0800
OREGON:			
RED LION INDIAN HILLS	304 SE NYE AVE	PENDLETON, OR 97801	(503) 276–8111
PENNSYLVANIA:			
HOWARD JOHNSON MOTOR LODGE	473 S. EISENHOWER BLVD.	HARRISBURG, PA 17111	(717) 564–4730
TENNESSEE:			
KNOXVILLE AIRPORT HILTON	ALCOA HWY., MCGHEE TYSON AIRPORT.	ALCOA, TN 37701	(615) 970–4300
HOJO INN BY HOWARD JOHNSON	975 VOLUNTEER PKWY	BRISTOL, TN 37620	(615) 968–9474

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 08/23/93 UPDATE—Continued

PROPERTY NAME	PO BOX/RT NO., STREET ADDRESS	CITY, STATE/ZIP	TELEPHONE
HOLIDAY INN—I 81	111 HOLIDAY DRIVE	BRISTOL, TN 37620	(615) 968–1101
DAYS INN OF CLARKSVILLE	3065 GUTHRIE HWY	CLARKSVILLE, TN 37040	(615) 552–1155
HOLIDAY INN I–24	3095 GUTHRIE HWY	CLARKSVILLE, TN 37040	(615) 648–4848
CLINTON SUPER 8 MOTEL	HWY. 61 & I–75	CLINTON, TN 37716	(615) 457–0565
HOLIDAY INN OF COOKEVILLE	970 S. JEFFSON	COOKEVILLE, TN 38501	(615) 526–7125
ECONO LODGE	HWY. 31–A & I–65, EXIT 22.	CORNERSVILLE, TN 37047.	(615) 293–2111
DOVER INN MOTEL	1545 DONELSON PKWY	DOVER, TN 37058	(615) 232–5556
COMFORT INN	815 REELFOOT DRIVE	DYERSBURG, TN 38024	(901) 285–8951
HOLIDAY INN	1307 MURFREESBORO RD.	FRANKLIN, TN 37064	(615) 794–7591
RIVER TERRANCE RESORT & CONVENTION CENTER.	240 RIVER ROAD	GATLINBURG, TN 37738	(615) 436–5161
PARK VISTA HOTEL	AIRPORT ROAD	GATLINBURG, TN 37738	(615) 436–9211
FAIRFIELD INN	535 WILEY PARKER RD	JACKSON, TN 38305	(901) 668–1400
GARDEN PLAZA HOTEL	211 MOCKINGBIRD LANE	JOHNSON CITY, TN 37604	(615) 928–2000
FAIRFIELD INN	207 E MOUNTCASTLE DR	JOHNSON CITY, TN 37601	(615) 282–3335
COMFORT INN	100 INDIAN CENTER COURT.	KINGSPORT, TN 37660	(615) 378–4418
ECONO LODGE	402 LOVELL ROAD	KNOXVILLE, TN 37922	(615) 675–7200
COMFORT INN-WEST	11748 SNYDER RD. I–40 EXIT 373.	KNOXVILLE, TN 37922	(615) 675–5566
COMFORT INN	5334 CENTRAL AVENUE PIKE.	KNOXVILLE, TN 37912	(615) 688–1010
HAMPTON INN	704 S. CUMBERLAND ST, LEBANON, TN 37087.	(615) 444–7400.	
HOLIDAY INN EXPRESS	641 S. CUMBERLAND ST, LEBANON, TN 37087.	(615) 444–7020.	
MCMINNVILLE HOLIDAY INN EXPRESS	809 SPARTA ST	MCMINNVILLE, TN 37110	(615) 473–2159
HOLIDAY INN MEMPHIS DOWNTOWN CONV. CENTER.	250 NORTH MAIN STREET.	MEMPHIS, TN 38103	(901) 527–7300
RED ROOF INN-SOUTH	3875 AMERICAN HWY	MEMPHIS, TN 38118	(901) 363–2335
RED ROOF INN #188	210 S. PAULINE	MEMPHIS, TN 38104	(901) 528–0650
RED ROOF INN-MEMPHIS EAST	6055 SHELBY OAKS DR	MEMPHIS, TN	(901) 388–6111
HOLIDAY INN MEMPHIS EAST	5795 POPLAR AVE	MEMPHIS, TN 38119	(901) 682–7881
HOLIDAY INN EXPRESS	5225 SUMMER AVE	MEMPHIS, TN 38122	(901) 685–0704
HOWARD JOHNSON LODGE EAST	1541 SYCAMORE VIEW	MEMPHIS, TN 38134	(901) 388–1300
HOLIDAY INN MIDTOWN/MEDICAL CENTER	1837 UNION AVENUE	MEMPHIS, TN 38104	(901) 278–4100
RAMADA INN	INTERSTATE 81 & HWY. 25 E.	MORRISTOWN, TN 37814	(615) 587–2400
GARDEN PLAZA HOTEL	1850 OLD FORT PARKWAY.	MURFREESBORO, TN 37129.	(615) 895–5555
HOLIDAY INN MURFREESBORO	2227 OLD FORT PARKWAY.	MURFREESBORO, TN 37129.	(615) 896–2420
HOLIDAY INN BRILEY PARKWAY	2200 ELM HILL PIKE	NASHVILLE, TN 37214	(615) 883–8770
HOLIDAY INN EXPRESS/AIRPORT	1111 AIRPORT CENTER DRIVE.	NASHVILLE, TN 37214	(615) 883–1368
LaQUINTA MOTOR INN-METRO CENTER #602	2001 METRO CENTER BLVD.	NASHVILLE, TN 37228	(615) 259–2130
LaQUINTA MOTOR INNS (NASHVILLE SOUTH)	4311 SIDCO DRIVE	NASHVILLE, TN 37204	(615) 834–5900
DAYS INN-EAST	3445 PERCY PRIEST DR	NASHVILLE, TN 37214	(615) 889–8881
HOLIDAY INN EXPRESS-OPRYLAND AREA	2516 MUSIC VALLEY DR	NASHVILLE, TN 37214	(615) 889–0086
HOLIDAY INN CROWNE PLAZA	623 UNION ST	NASHVILLE, TN 37219	(615) 259–2000
RAMADA INN-AIRPORT	709 SPENCE LANE	NASHVILLE, TN 37217	(615) 361–0102
HAMPTON INN	1919 WEST END AVE	NASHVILLE, TN 37203	(615) 329–1144
NASHVILLE SUPER 8 MOTEL	3320 DICKERSON PIKE	NASHVILLE, TN 37207	(615) 226–1897
WYNDHAM NASHVILLE AIRPORT	1112 AIRPORT CENTER DRIVE.	NASHVILLE, TN 37214	(615) 889–9090
GARDEN PLAZA HOTEL	215 SOUTH ILLINOIS AVE	OAK RIDGE, TN 37830	(615) 481–2468
OAK RIDGE COMFORT INN	433 SOUTH RUTGERS AVENUE.	OAK RIDGE, TN 37830	(615) 481–8200
ECONO LODGE	RT 5 BOX 52	SWEETWATER, TN 37874	(615) 337–8357
HAMPTON INN	PO BOX 28 7829 E. LAMAR ALEXANDER PKWY.	TOWNSEND, TN 37882	(615) 448–9000
TEXAS:			
SCOTSMAN INN EAST	211 N. W.W. WHITE RD	SAN ANTONIO, TX 78219	(210) 359–7268
VIRGINIA:			
RICHMOND AIRPORT HILTON	5501 EUBANK ROAD	SANDSTON, VA 23150.	
WASHINGTON:			
RED LION BELLEVUE CENTER	818 112TH AVE. NE	BELLEVUE, WA 98004	(206) 455–1515

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 08/23/93 UPDATE—Continued

PROPERTY NAME	PO BOX/RT NO., STREET ADDRESS	CITY, STATE/ZIP	TELEPHONE
RED LION KELSO	510 KELSO DR	KELSO, WA 98626	(206) 636–4400
EXECUTIVE COURT SUITES	300 10TH AVE	SEATTLE, WA 98122	(206) 223–9300
RED LION WENATCHEE	1225 N. WENATCHEE AVE	WENATCHEE, WA 98801	(509) 663–0711
RED LION YAKIMA VALLEY	1507 N. FIRST ST	YAKIMA, WA 98901	(509) 248–7850
CORRECTIONS/CHANGES			
ARKANSAS:			
HOT SPRINGS PARK HILTON	PO BOX 0, 305 MALVERN AVE.	HOT SPRINGS, AR 71901	(501) 623–6600
ARIZONA:			
PHOENIX AIRPORT HILTON	2435 S. 47TH ST	PHOENIX, AZ 85034	(602) 894–1600
CALIFORNIA:			
SAN JOSE HILTON AND TOWERS	300 ALMADEN BLVD	SAN JOSE, CA 95110	(408) 287–2100
DELAWARE:			
WILMINGTON HILTON	630 NAAMANS RD. ● I–95	CLAYMONT, DE 19703	(302) 792–2700
FLORIDA:			
ORLANDO NORTH HILTON AND TOWERS	350 S. NORTHLAKE BLVD	ALTAMONTE SPRINGS, FL 32701.	
CLEARWATER BEACH HILTON INN	715 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2694.	
SANDESTIN BEACH HILTON GOLF AND TENNIS RESORT.	5540 HWY. 98 E	DESTIN, FL 32541–4214.	
ST PETERSBURG HILTON & TOWERS	333 FIRST ST. S	ST PETERSBURG, FL 33701.	
ST PETERSBURG BEACH HILTON RESORT	5250 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2408.	
GEORGIA:			
LAKE LANIER ISLANDS HILTON RESORT	7000 HOLIDAY RD	LAKE LANIER ISLANDS, GA 30518.	(404) 945–8787
SAVANNAH DESOTO HILTON	15 E. LIBERTY ST	SAVANNAH, GA 31402–3979.	(912) 232–9000
ILLINOIS:			
PALMER HOUSE HILTON	17 E. MONROE ST	CHICAGO, IL 60690	(312) 726–7500
OAK LAWN HILTON INN	9333 S. CICERO	OAK LAWN, IL 60453–2517.	(708) 425–7800
KENTUCKY:			
HILTON SUITES HOTEL OF LEXINGTON GREEN	3195 NICHOLASVILLE	LEXINGTON, KY 40503–3309.	(606) 271–4000
MISSOURI:			
DAYS INN ON THE LAKE	2560 S. OUTER RD	LAKE SAINT LOUIS, MO 63367.	(314) 625–1711
NORTH CAROLINA:			
HILTON AT UNIVERSITY PLACE	8629 JM KEYNES DR	CHARLOTTE, NC 28213–8425.	(704) 547–7444
NEBRASKA:			
BEST WESTERN NEW TOWER INN	7764 DODGE ST	OMAHA, NE 68114	(402) 393–5500
BEST WESTERN CENTRAL OMAHA	3650 S. 72ND ST	OMAHA, NE 68124	(402) 397–3700
NEW JERSEY:			
BRUNSWICK HILTON	3 TOWER CENTER BLVD	EAST BRUNSWICK, NJ 08816.	(908) 828–2000
NEWARK AIRPORT HILTON	1170 SPRING ST	ELIZABETH, NJ 07201	(908) 351–3900
NEW YORK:			
RYE TOWN HILTON	699 WESTCHESTER AVE	RYE BROOK, NY 10573	(914) 939–6300
OKLAHOMA:			
HOLIDAY INN	2215 N. 14TH	PONCA CITY, OK	(405) 762–8311
TENNESSEE:			
BRENTWOOD HILTON SUITES	9000 OVERLOOK BLVD	BRENTWOOD, TN 37027	(615) 370–0111
KNOXVILLE HILTON DOWNTOWN	501 W. CHURCH ST	KNOXVILLE, TN 37902	(615) 523–2300
TEXAS:			
HOUSTON HOBBY AIRPORT HILTON	8181 AIRPORT BLVD	HOUSTON, TX 77061–4142.	(713) 645–3000
HOUSTON WEST HILTON INN	12401 KATY FRWY	HOUSTON, TX 77079–1401.	(713) 496–9090
ODESSA HILTON	5200 E. UNIVERSITY	ODESSA, TX 79762–9113	(915) 368–5885
VIRGINIA:			
COMFORT INN BLACKSBURG	3705 SOUTH MAIN STREET.	BLACKSBURG, VA 24060	(703) 951–1500
HAMPTON INN	3235 WESTERN BRANCH BLVD.	CHESAPEAKE, VA 23321	(804) 484–5800
COMFORT INN	12330 JEFFERSON AVENUE.	NEWPORT NEWS, VA 23602.	(804) 249–0200

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 08/23/93 UPDATE—Continued

PROPERTY NAME	PO BOX/RT NO., STREET ADDRESS	CITY, STATE/ZIP	TELEPHONE
RICHMOND AIRPORT HILTON	5501 EUBANK RD	SANDSTON, VA 23150–1919.	
FOUNDERS INN & CONFERENCE CENTER	5641 INDIAN RIVER ROAD	VIRGINIA BEACH, VA 23464.	(804) 424–5511
VIRGINIA BEACH HILTON INN	8TH ST. AND ATLANTIC AVE.	VIRGINIA BEACH, VA 23451.	(804) 428–8935

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Monday
August 30, 1993

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Mojave Population of the Desert Tortoise; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC01

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate critical habitat for the Mojave population of the desert tortoise (*Gopherus agassizii*), a species federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). Located primarily on Federal land, and to a lesser extent on State, private and Tribal lands, this proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that require Federal agency action. Section 4 of the Act requires the Service to consider economic costs and benefits prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional data on the economic impacts of the designation and a valuation technique for determining benefits.

DATES: Comments from all interested parties on the proposed determination and associated economic analysis must be received in writing by October 29, 1993. The economic analysis is available for public review and can be obtained by writing or calling the Nevada Field Office at the address and telephone number listed below. The Service intends to conduct one public hearing at each of the following locations. Each hearing will be held from 1 to 4 p.m. and 6 to 8 p.m.:

1. Wednesday, October 6, 1993, Riverside, California;
2. Tuesday, October 12, 1993, Las Vegas, Nevada; and
3. Thursday, October 14, 1993, St. George, Utah.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Nevada Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The complete file for this rule, including comments and materials received, will be available for public inspection, by appointment, during normal business hours at the above address. The public hearings will be held at the following locations:

1. Riverside, California—Riverside Municipal Auditorium, 3485 7th Street;
2. Las Vegas, Nevada—Clark County Commission Chambers, 225 Bridger Avenue, 1st Floor; and
3. St. George, Utah—Cox Auditorium, The Dixie Center, 425 South 700 East.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Harlow, Field Supervisor, Nevada Field Office, U.S. Fish and Wildlife Service, at the above address (702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

The Mojave population of the desert tortoise, referred to herein as desert tortoise or tortoise, is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of the southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length, and inhabits the Mojave, Colorado, and Sonoran Deserts in the southwestern United States and adjacent Mexico. The species is divided into the Sonoran and Mojave populations. The Sonoran population occurs south and east of the Colorado River in Arizona and Mexico, while the Mojave population occupies those portions of the Mojave and Colorado Deserts north and west of the Colorado River in southwestern Utah, northwestern Arizona, southern Nevada, and California.

Previous Federal Actions

On August 20, 1980, the Service listed the Beaver Dam Slope population of the desert tortoise (*Gopherus agassizii*), in southwestern Utah, as a threatened species and designated 35 square miles of critical habitat (45 FR 55654). On September 14, 1984, the Service received a petition from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered. In September 1985, the Service determined that the listing was warranted, but precluded by other listing actions of higher priority under authority of section 4(b)(3)(iii) of the Act (50 FR 49868). The Service made annual findings of warranted but precluded from 1985 through 1989 under section 4(b)(3)(C) of the Act. On May 31, 1989, the same three environmental organizations provided substantial new information and petitioned the Service to list the desert tortoise as endangered throughout its range in the United States, under the expedited emergency provisions of the Act. As a result of the new information, on August 4, 1989 (54 FR 32326), the Service listed the Mojave population, excluding the Beaver Dam Slope population in Utah, as endangered by emergency rule. The Mojave population was designated in the emergency rule as all tortoises occurring north and west of the Colorado River, in California, Nevada, Arizona, and Utah. The Mojave population was then proposed under normal listing procedures on October 13, 1989 (54 FR 42270), and listed as threatened on April 2, 1990 (55 FR 12178).

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time of listing, the Service found that critical habitat was not determinable because the specific size and spatial configuration of essential habitats, as well as vital linkages connecting areas necessary for ensuring the conservation of the Mojave desert population throughout its range, could not be determined without further information.

On January 8, 1993, several plaintiffs filed a motion seeking in *Desert Tortoise et al.* v. *Lujan et al.*, Civ. No. 93–0114 MHP (N.D. Cal.) to stop the transfer of public land to the State of California for construction of a low-level nuclear waste disposal facility in Ward Valley located in southern California. The plaintiffs contended that the Service violated the Act by failing to designate critical habitat for the desert tortoise and sought an injunction prohibiting transfer of the site until critical habitat was designated and a new section 7 biological opinion that addressed the effects of the transfer on critical habitat was completed.

On January 27, 1993, the Natural Resources Defense Council and other environmental groups sued to compel designation of critical habitat for the Mojave population of the desert tortoise, alleging that the Secretary had failed to meet the designation deadline under section 4(b)(6)(C)(ii) of the Act (*Natural*

Resources Defense Council v. *Babbitt*, No. C–93–0301 MHP (N.D. Cal.)). Plaintiffs further requested the court to prohibit the Service from issuing any further biological opinions for the tortoise under section 7 of the Act until critical habitat was designated.

The two cases regarding critical habitat were consolidated, and on May 21, 1993, the plaintiffs and the Secretary agreed on a stipulation requiring the defendants to propose critical habitat for the desert tortoise by August 1, 1993, and to designate critical habitat by December 1, 1993. On July 30, 1993, the plaintiffs agreed to an extension of these deadlines to August 29, 1993, for a proposal and December 15, 1993, for a final decision.

On March 30, 1993, the Service announced the availability of the *Draft Recovery Plan for the Desert Tortoise (Mojave Population)* (Draft Recovery Plan) (58 FR 16691). The Draft Recovery Plan (USFWS 1993) divides the range of the desert tortoise into 6 recovery units and recommends establishment of 14 Desert Wildlife Management Areas (DWMAs) within the recovery units. Within each DWMA, the Draft Recovery Plan recommends specific management actions to effect recovery of desert tortoises. The public comment period on the Draft Recovery Plan closed on June 30, 1993.

Ecological Considerations

The range of the Mojave population of the desert tortoise includes portions of the Mojave Desert and the Colorado Desert division of the Sonoran Desert (Colorado Desert), and spans portions of four states. The Mojave Desert is located in southern California, southern Nevada, northwestern Arizona, and southwestern Utah. It is bordered on the north by the Great Basin Desert, on the west by the Sierra Nevada and Tehachapi ranges, on the south by the San Gabriel and San Bernardino Mountains and the Colorado Desert, and on the east by the Grand Wash Cliffs and Hualapai Mountains of Arizona. This area includes parts of Inyo, Kern, Los Angeles, San Bernardino, and Riverside Counties in California; the northwestern part of Mohave County, Arizona; Clark County, and the southern parts of Esmeralda, Nye, and Lincoln Counties in Nevada; and part of Washington County, Utah. The Colorado Desert is located south of the Mojave Desert, east of California's Peninsular Ranges, and west of the Colorado River. This area includes Imperial County and parts of San Bernardino and Riverside Counties, California.

The desert tortoise is most commonly found within the desert scrub vegetation type, primarily in creosote bush scrub vegetation, but also in succulent scrub, cheesebush scrub, blackbush scrub, hopsage scrub, shadscale scrub, microphyll woodland, and Mojave saltbush-allscale scrub. Within the desert microphyll woodland, the desert tortoise occurs in blue palo verde-ironwood-smoke tree woodland. The tortoise also occurs in scrub-steppe vegetation types of the desert and semidesert grassland complex (USFWS 1993).

Within these vegetation types, desert tortoises potentially can survive and reproduce where their basic habitat requirements are met. These requirements include a sufficient amount and quality of forage species; shelter sites for protection from predators and environmental extremes; suitable substrates for burrowing, nesting, and overwintering; various plants for shelter; and adequate area for movement, dispersal, and gene flow. Throughout most of the Mojave Region, tortoises occur most commonly on gently sloping terrain with soils ranging from sand to sandy-gravel and with scattered shrubs, and where there is abundant inter-shrub space for growth of herbaceous plants. Throughout their range, however, tortoises can be found in steeper, rockier areas (USFWS 1993).

The size of desert tortoise home ranges varies with respect to location and year. Females have long-term home ranges that are approximately half that of the average male, which range from 10 to 80 hectares (Berry 1986).

Although desert tortoise populations are not generally known to inhabit elevations much above 4,000 feet, tortoise burrows have been located at 4,800 feet in the Providence and Clark Mountains of the eastern Mojave (Luckenbach 1982; W. Yumiko, pers. comm., 1992). Reliable sources have recorded desert tortoises at 7,300 feet in Death Valley National Monument, California (Luckenbach 1982); at 4,800 feet in the Goodsprings Mountains (R. Marlow, pers. comm.) and the Spring Range, Nevada (C. Stevenson, pers. comm.); at 5,000 feet in the East Pahranagat Range, Nevada (C. Stevenson, pers. comm.); and at 5,200 feet on the Nevada Test Site (B. Burge, pers. comm.). In addition, numerous anecdotal reports place desert tortoises as high as 7,000 feet on Mount Charleston, Nevada, and in the Clark Mountains, California. Fossil remains from the Pleistocene to late Holocene (12,000 to 1,000 years before present) indicate the preferred habitat of the desert tortoise included elevations far exceeding those of today, perhaps in response to arid climatic episodes that occurred during this epoch (Morafka and Brussard, in prep.; Schneider and Everson 1989). This fossil evidence indicates that the species may have spent less than 10 percent of its taxonomic life span in the contemporary warm creosote bush desert, the remainder having been spent in more mesic, equable, and productive climates and ecosystems. This implies that contemporary tortoise populations in most of the Mojave region are likely to be vulnerable to adverse climatic conditions and to regional climate change (Morafka and Brussard, in prep.).

Throughout its geographic distribution, the desert tortoise exhibits many trait variations. For example, three basic shell shapes (phenotypes) are indicative of desert tortoise populations in distinct geographic areas within their range (Weinstein and Berry 1988). Tortoises occurring in California and southern Nevada exhibit a boxlike, high-domed shell phenotype; Beaver Dam Slope tortoises have a short plastron (underside) and a low-domed shell phenotype; and Sonoran Desert tortoises have a pear-shaped, low-domed shell phenotype (Weinstein and Berry 1988). Furthermore, identification of the three phenotypes parallels results of mitochondrial DNA (mtDNA) studies that also "type" desert tortoises into the same three populations based on genetics (Lamb *et al.* 1989). Other trait variations are found in the behavior, physiology, and ecology of the desert tortoise, further identifying population differences throughout the desert tortoise's range (Weinstein and Berry 1988). It is because of this immense variability that six distinct population segments of the Mojave population have been proposed in the Draft Recovery Plan (USFWS 1993). The six recovery units within the range of the desert tortoise, as outlined in the Draft Recovery Plan, represent the biotic and abiotic variability found in the desert tortoise.

The Northern Colorado Recovery Unit is located completely in California, southwest of the town of Needles, with the western bank of the Colorado River as an eastern boundary. This unit is varied, both vegetationally and topographically. It includes elements of both Colorado Desert and Mojave Desert floras with succulent scrub (*Fouquieria, Opuntia, Yucca* species), blue palo verde-smoke tree woodland, cheesebush scrub (northern Colorado Desert type), creosote bush scrub, and big galleta scrub steppe (USFWS 1993). The cover provided by shrubs and grasses varies considerably within valleys and appears to be dependent on soil types and

amounts of desert pavement (USFWS 1993). Elevations range from about 600 to 4,700 feet. A number of basins and ranges are represented, characterized by flats, valleys, alluvial fans, lava flows, and small washes. Desert tortoises are found here in washes as well as in many of the other habitat types. They feed on both summer and winter annuals and den singly in burrows under shrubs, in intershrub spaces, and occasionally in washes (USFWS 1993).

One DWMA (Chemehuevi) has been proposed in the Draft Recovery Plan for the Northern Colorado Recovery Unit. Current desert tortoise densities within this area are greater here than in many of the other recovery units (approximately 10 to 275 adults per square mile, with an average density of 35 adults per square mile). However, this Recovery Unit has the potential to support an average density of 70 adults per square mile in protected areas if managed appropriately (USFWS 1993). It has been suggested that regional densities were probably depressed due to military activities in the 1940's, livestock grazing, and other human uses (USFWS 1993). The Bureau of Land Management (BLM) manages the majority of the lands within this unit, while the remaining lands are in private or State ownership. Desert tortoises within this Recovery Unit have the "California" mtDNA haplotype and shell type common to California and southwestern Nevada. Allozyme frequencies differ significantly between this Recovery Unit and the Western Mojave Recovery Unit indicating some degree of reproductive isolation between the two (USFWS 1993).

The Eastern Colorado Recovery Unit is also located completely within California. It lies directly to the south of the Northern Colorado Recovery Unit, southwest of the town of Blythe, California, and northwest of Yuma, Arizona, with the western bank of the Colorado River as an eastern boundary. Plant communities are typical of the Colorado subdivision of the Sonoran Desert. Tortoises here occupy well-developed washes, desert pavements, piedmonts, and rocky slopes characterized by relatively species-rich succulent scrub (*Fouquieria, Opuntia, Yucca* species), creosote bush scrub, and blue palo verde-ironwood-smoke tree communities. Elevations in this unit range from about 400 to 4,500 feet. Winter burrows are generally shorter in length, and activity periods are longer than in the western Mojave. These desert tortoises feed on summer and winter annuals and some cacti. They typically occupy shelter sites singly within banks of washes, in shallow burrows on alluvial fans, and under shrubs.

The Draft Recovery Plan has proposed one DWMA (Chuckwalla) for the Eastern Colorado Recovery Unit, although a portion of the Joshua Tree DWMA lies within the boundaries of both the Western Mojave and the Eastern Colorado Recovery Units. Current tortoise densities within the DWMA are approximately 5 to 175 adults per square mile, with an average density of 15 adults per square mile. With increased management in protected areas, it is thought that densities could reach an average of 40 adult tortoises per square mile (USFWS 1993). Included within this unit is the Chuckwalla Bench, an area for which an average estimated population was recorded of about 500 tortoises per square mile between the years 1979 and 1982, the highest known density of desert tortoises (USFWS 1993). Declines in this area may have been due to vandalism, predation by ravens, and vehicle-related mortality, in conjunction with poor environmental conditions (USFWS 1993). Like the Northern Colorado Recovery Unit, much of the historical habitat degradation is due to military activities in the 1940's. Land ownership is a checkerboard of BLM, military, and private lands. Like the Northern Colorado Recovery Unit described above, desert tortoises here have the "California" mtDNA haplotype and shell type (USFWS 1993).

The Western Mojave Recovery Unit lies to the northwest of the Eastern Colorado Recovery Unit and to the west of the Northern Colorado and Eastern Mojave Recovery Units in California. Although the majority of the Recovery Unit is considered to be within the Mojave Desert, the southeastern portion is transitional between the Mojave and Colorado deserts. The northern portion of the Western Mojave Recovery Unit is transitional with the Eastern/Northeastern Mojave Recovery Units. These transitional areas result in extremely heterogeneous vegetation and topography, offering a diverse range of habitats for the desert tortoise—a feature that may be important over the long-term in the event of climatic changes. Vegetation is characterized by creosote bush scrub, Mojave saltbush-allscale scrub (endemic), Indian rice grass scrub-steppe, hopsage scrub, big galleta scrub steppe, cheesebush scrub (west Mojave type), desert psammophytes, and blackbush scrub. California juniper—one-leaf pinon woodlands dominate the higher elevations. Topography is varied with flats, valleys, alluvial fans, rolling hills, mountainous slopes, rock outcrops, badlands, sand dunes, and lava flows. Desert tortoises occur here primarily in valleys, on alluvial fans, and on rolling hills in saltbush, creosote bush, and scrub steppe communities. Elevations range from 1,500 to 5,800 feet. The majority of desert tortoises within this unit den singly, but in the transitional northernmost section of the unit more than one desert tortoise may inhabit a shelter site. Shelter sites are dug deep during winter and summer periods of inactivity, and are usually located under shrubs on alluvial fans and sometimes in washes. Above-ground activity occurs primarily in the spring when the animals forage on winter annuals, some herbaceous perennials, and cacti. These desert tortoises are generally adapted to a regime of winter rains and occasional summer storms.

The four DWMAs proposed within the Western Mojave Recovery Unit are characterized by high, contiguous population densities (5 to 250 desert tortoise per square mile, with an average of 20 adults per square mile). It is thought that with increased management in protected areas over the long-term, densities of 50 to 100 adults per square mile could be obtained (USFWS 1993). Several military operations, urbanization, agricultural development, sheep grazing, off-highway vehicle (OHV) activities, and disease within this Recovery Unit are thought to be responsible for population declines since the 1930's. Proposed military expansion would result in further loss of desert tortoises and their habitat. This Recovery Unit contains pockets of the most protected and undisturbed desert tortoise habitat, and also contains some of the most threatened areas (USFWS 1993). Land ownership within this unit is a mixture of private, BLM, military, National Park Service, and State lands. The Service does not propose the Desert Tortoise Natural Area (DTNA) and Joshua Tree National Monument, in California, as critical habitat since these two areas already receive adequate protection. However, because these two areas are important to the recovery of the tortoise, the Service may reconsider designating these areas as critical habitat should changes in current management activities occur. Desert tortoises here have the "California" mtDNA haplotype and shell type (USFWS 1993).

The Eastern Mojave Recovery Unit, located primarily in California, extends into Nevada in the Amargosa, Pahrump, and Piute Valleys. It lies directly to the north of the Northern Colorado Recovery Unit, with the western bank of the Colorado River as an eastern boundary. This Recovery Unit is

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isolated from the Western Mojave Recovery Unit by the Baker Sink, where desert tortoises do not occur. Vegetation within the eastern portion of this unit is transitional between the Colorado Desert and the Mojave Desert communities and is represented by big galleta-scrub steppe, succulent scrub (*Yucca, Opuntia* species), creosote bush scrub, cheesebush scrub (east Mojave type), and Indian rice grass scrub-steppe. Desert tortoises are active here in the spring and in late summer/early autumn because this region receives both winter and summer rains, resulting in two distinct annual floras on which tortoises can feed. These desert tortoises occupy a variety of vegetation types and feed on summer and winter annuals, cacti, perennial grasses, and herbaceous perennials. Topography is characterized by flats, valleys, alluvial fans, washes, and rocky slopes. Elevations range from 1,600 to 4,900 feet. Desert tortoises generally den singly in caliche caves, on alluvial fans, and in washes.

Current population densities within the three DWMAs proposed by the Draft Recovery Plan for the Eastern Mojave Recovery Unit are patchy and varied, with pockets of high densities (5 to 350 tortoises per square mile, with an average density of 25 adult tortoises per square mile). High-density populations, which are thought to have occurred historically throughout this unit, have been impacted over the years by a combination of cattle grazing, military operations, and other forms of human-caused disturbances. With appropriate long-term management in protected areas, it is likely that population densities of 60 to 75 adult desert tortoises per square mile can be obtained (USFWS 1993). Land ownership is predominantly Federal (BLM and National Park Service), with the remainder being a mixture of private and State ownership. Desert tortoises here have the "California" mtDNA haplotype and shell type (USFWS 1993). They are also differentiated from desert tortoises in the Northeastern Mojave Recovery Unit at several allozyme loci (Brussard and Britten 1993).

The Northeastern Mojave Recovery Unit is found primarily in Nevada, but extends into California along the Ivanpah Valley and into extreme southwestern Utah and northwestern Arizona. Vegetation is characterized by creosote bush scrub, big galleta scrub-steppe, desert needlegrass scrub-steppe, and blackbush scrub (in the higher elevations). Topography is varied, with flats, valleys, alluvial fans, and rocky slopes. Much of the northern portion of the unit is characterized as basin and range, rising to high elevations that range from 2,500 to 12,000 feet. Tortoises throughout the unit are generally found in creosote bush scrub communities on flats, valley bottoms, and alluvial fans, but they occasionally use other habitats, such as rocky slopes and blackbush scrub. Desert tortoises often occur in groups of two or more in shelter sites located in caliche, on alluvial fans, and in washes. They typically eat summer and winter annuals, cacti, and perennial grasses.

Four DWMAs are proposed by the Draft Recovery Plan for the Northeastern Mojave Recovery Unit. Desert tortoises in this Recovery Unit, the northern portion of which represents the northernmost distribution of the species, are found in low densities (approximately 10 to 20 adults per square mile). Historically, much higher densities were found in the central and southern portions of the Recovery Unit, with the most dramatic declines caused by urban development in the Las Vegas Valley. With appropriate long-term management in protected areas, the unit may support densities of 40 to 50 adult desert tortoises per square mile (USFWS 1993). Most land in this unit is administered by BLM, with the remainder a mixture of private and State ownership. An area of 35 square miles in Utah on the Beaver Dam Slope, in the northeastern portion of the Recovery Unit, was designated as critical habitat in 1980; however, with continued grazing in this area, populations of desert tortoise have continued to decline. As with the DTNA and Joshua Tree National Monument DWMA, the Service believes that desert tortoise habitat within the Coyote Spring DWMA on the Desert National Wildlife Range is already afforded protection equal to that of critical habitat and subsequently does not include it in this proposal. Three mtDNA haplotypes are found in this Recovery Unit, but they exhibit low allozyme variability with relatively little local differentiation. A distinctive shell phenotype occurs in the Beaver Dam Slope region, differentiating it from the California and Sonoran Desert shell types (Weinstein and Berry 1988, USFWS 1993).

The Upper Virgin River Recovery Unit is at the extreme northeastern edge of the species' range in the area of St. George, Utah. It is characterized by a transitional vegetation represented by sagebrush scrub, psammophytes, Great Basin (sand sage), blackbush scrub, and Utah juniper—one-leaf pinon woodland. Here, desert tortoises live in a complex and rugged topography consisting of rock caves, canyons, mesas, sand dunes, and sandstone outcrops. Over most of the Mojave Region, desert tortoises inhabit large flats and gently-sloping alluvial fans common to the Mojave Desert. However, desert tortoises in the Upper Virgin River Recovery Unit are more commonly found in broken habitat with rock outcroppings. Elevations range from 2,500 to 4,500 feet. Tortoises in this environment travel to sand dunes for egg laying and use other habitats for foraging. Desert tortoises in this heterogeneous habitat may use sandstone and lava caves or rock outcroppings for shelter sites and travel to sand dunes for egg laying. Two or more desert tortoises often use the same shelter site, as do those in the Northeastern Mojave Recovery Unit (USFWS 1993).

One DWMA is proposed by the Draft Recovery Plan for the Upper Virgin River Recovery Unit. Due to the heterogeneity of the habitat, desert tortoises occur in a patchwork of high- and low-density populations. Current densities in this Recovery Unit are high (approximately 250 tortoises per square mile). The current population has likely persisted primarily because rugged terrain and poor access discourage human-caused habitat destruction and direct sources of desert tortoise mortality. Populations should persist at current densities over the long-term if managed appropriately within protected areas (USFWS 1993). Current land ownership is a patchwork of Federal, State, private, and some Tribal lands. Shell morphology and mtDNA have not been studied in this Recovery Unit, but allozyme variation is similar to that found in the Northeastern Mojave Recovery Unit (USFWS 1993).

Management Considerations

Current and historic desert tortoise habitat loss, deterioration, and fragmentation is largely attributable to urban development, military operations, and multiple-uses of public land, such as OHV activities and livestock grazing. Historically, habitat reduction and fragmentation have not been uniform throughout the desert tortoise's range, but have been concentrated around populated areas, such as Mohave, Boron, Kramer Junction, Barstow, Victorville, Apple Valley, Lucerne Valley, and Twentynine Palms, California. Similar patterns are evident near Las Vegas, Laughlin, and Mesquite, Nevada; and St. George, Utah.

Human "predation" (taking desert tortoises out of their natural populations either by death (accidental or intentional) or by removal) is also a major factor in the decline of the desert tortoise. People illegally collect desert tortoises for pets, food, and commercial

trade. Some immigrants to the United States collect desert tortoises for medicinal or other cultural purposes (USFWS 1993).

Desert tortoises are often struck and killed by vehicles on roads and highways, and mortality of desert tortoises due to gunshot and OHV activities is common in many parts of the Mojave Region, particularly near cities and towns. In the western Mojave Desert of California, 14.3 percent of the carcasses found on 11 permanent study plots showed evidence of gunshot (Sievers *et al.* 1988). At one plot, 28 percent of the carcasses had evidence of gunshot. Loss of tortoises from vandalism has also been reported in northwestern Arizona. Approximately 10 percent of shell remains from a tortoise study plot near Littlefield, Arizona, had gunshot wounds (USFWS 1990).

OHV use in the desert has increased and proliferated since the 1960's (USFWS 1993). As of 1980, OHV activities affected approximately 25 percent of all desert tortoise habitat in California, as well as substantial portions in southern Nevada (USFWS 1993). Negative effects range from minor habitat alteration to total denudation of extensive areas. While direct effects are immediate (mortality from crushing, collection, and vandalism), indirect effects can be either immediate (disruption of soil integrity; degradation of annual plants, grasses, and perennial plants; and/or destruction of desert tortoise shelter sites), delayed, and/or cumulative (soil loss due to erosion, soil compaction and its effects on annual and perennial plants, water pollution, and litter and refuse) (Biosystems Analysis 1991).

Impacts of roads within desert tortoise habitat extend significantly beyond the tracks that are created (Nicholson 1978). Thus, well-used OHV areas often result in depressed tortoise populations extending beyond the immediate boundaries of the directly disturbed habitat.

The use of OHVs appears to have a significant effect on tortoise abundance and distribution. Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collecting, gunshot, and crushing by vehicles.

Desert tortoises, particularly hatchlings and juveniles, are preyed upon by several native species of mammals, reptiles, and birds. Domestic and feral dogs are a new source of mortality.

Common raven (*Corvus corax*) populations in the southwestern deserts have increased significantly since the 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills (authorized and unauthorized), powerlines, roads, and other human uses have increased available foraging, roosting, and nesting opportunities for ravens. Over the last 20 years, raven populations in the western Mojave Desert have increased 1528 percent between 1968 and 1988, (about 15 percent per year), and increased in the Colorado-Sonoran Deserts 474 percent (over 9 percent per year). While not all ravens may include tortoises as significant components of their diets, these birds are highly opportunistic in their feeding patterns and concentrate on easily available seasonal food sources, such as juvenile tortoises. Increased mortality of young desert tortoises, combined with drastically lowered survivorship of adults, is likely responsible for observed catastrophic population declines (USFWS 1993).

Domestic livestock grazing has occurred in desert tortoise habitat since the mid-1800's, with an increase in intensity near the turn of the century to the mid-1930's (Biosystems Analysis 1991). Grazing has been implicated as one of the major impacts to tortoises and their habitat. Direct impacts from grazing include trampling of both tortoises and shelter sites; indirect impacts include loss of plant cover, reduction in number of suitable shelter sites, change in vegetation, compaction of soils, reduced water infiltration, erosion, inhibition of nitrogen fixation in desert plants, and the provision of a favorable seed bed for exotic annual vegetation (USFWS 1991, USFWS 1993). Habitat destruction and degradation are especially evident in livestock watering, bedding, loading, and unloading areas (USFWS 1991).

The degree and nature of impacts from livestock grazing are dependent upon the local ecosystem, grazing history, seasons of use, stocking rates, annual rainfall, and density of the tortoise population (USFWS 1990). Desert ecosystems require decades to recover from disturbances, and desert tortoises are incapable of rapid growth, even under optimum conditions.

An upper respiratory tract disease (URTD) is prevalent in captive desert tortoises and has been identified in wild desert tortoises in many localities in the western Mojave Desert and in limited localities elsewhere. URTD appears to be spreading and may have been introduced to wild populations through illegal releases of diseased captive desert tortoises. Wild desert tortoises with signs of URTD are commonly found near cities and towns with concentrations of captive desert tortoises (Marlow and Brussard 1993). Disease has contributed to high mortality rates in the western Mojave Desert in the last 4 years (Avery and Berry 1990, USFWS 1993).

Recent studies have demonstrated *Mycoplasma agassizii* sp. nov. as the causative agent of URTD. Predisposing factors, such as habitat degradation, poor nutrition, and drought, are likely involved in increasing the susceptibility of individual animals to disease (Jacobson *et al.* 1991). Drought and concomitant poor nutrition have the potential to compromise desert tortoises immunologically and, therefore, make them more susceptible to URTD and other diseases. Controlling human-related spread of URTD, improving habitat conditions, and monitoring health status of desert tortoise populations are some of the more important management tools that can be used in controlling URTD in wild populations of the desert tortoise (USFWS 1993).

A shell disease has also been observed in the Chuckwalla Bench population in the eastern Colorado Desert (Jacobson *et al.* 1992). A variety of mineral and metal deficiencies, as well as various toxicants, are known to cause integumentary pathology in mammals, suggesting disease or toxicosis may be responsible for these observed shell abnormalities (USFWS 1993). Another shell disease, osteopenia, occurs in desert tortoise populations on the Beaver Dam Slope and may be related to poor nutrition (Jarchow and May 1989).

Existing Protection

On August 20, 1980, the Service listed the Beaver Dam Slope subpopulation in Utah as threatened with critical habitat (45 FR 55654). The listing included designation of 35 square miles of critical habitat, which included establishment of the "Woodbury Desert Study Area," a 3,040-acre research exclosure for determining range improvement in the absence of livestock (USFWS 1990). Since its listing in 1989, all additional portions of the Mojave desert tortoise's range have been covered by the protective measures of sections 7, 9, and 10 of the Act.

The States of Nevada, California, Arizona, and Utah have established laws that provide varying levels of protection for individual desert tortoises. The State of Nevada affords limited protection to the desert tortoise, having established it as a protected

reptile under section 501.110.1(d) of the Nevada Revised Statutes (NRS), protected and rare outside of the urban areas of Clark County (Las Vegas) under section 503.080.1(a) of the Nevada Administrative Code, and unlawful to transport across State lines without the written consent of the Nevada Department of Wildlife. Nevada does not have any laws that regulate the degradation of desert tortoise habitat.

The California Fish and Game Commission acknowledged the desert tortoise as a State threatened species on June 22, 1989, amending the California Code of Regulations, 670.5(b)(4) of title 14. California also authorized legislation to regulate modification of desert tortoise habitat. It is the only State with such authority (USFWS 1990). California has also designated the desert tortoise as its official State reptile.

The Arizona Game and Fish Commission extended full protection from take to the desert tortoise, effective January 1, 1988, through Commission Order 43: Reptiles. Also prohibited is the sale of desert tortoises and their importation to the State, as well as the release of captive tortoises into the wild. There is no State authority in Arizona to regulate the modification of desert tortoise habitat.

In Utah, the desert tortoise is considered a "prohibited reptile," protecting it from collection, importation, transportation, possession, sale, transfer, or release because it poses unacceptable disease, ecological, environmental, or human health or safety risks. No State regulations exist to stop the loss or degradation of desert tortoise habitat through land development or other actions (USFWS 1990).

Draft Desert Tortoise Recovery Plan

Section 2(c)(1) of the Act declares that "* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act." Section 3(3) of the Act defines conservation to include all measures needed to recover the species and remove it from the list of endangered and threatened wildlife and plants. The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and ensuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibiting take of listed species); section 10 (wildlife research permits and conservation planning on State and private lands); section 6 (cooperative State and Federal grants); land acquisition; and research. Other Federal laws also require conservation of threatened and endangered species, such as the Federal Land Policy Management Act and various other State and Federal laws and regulations.

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management, so that a species can be removed from the Lists of Endangered and Threatened Wildlife and Plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

After listing the Mojave population of the desert tortoise as threatened on April 2, 1990 (55 FR 12178), the Service appointed members to the Desert Tortoise Recovery Team to prepare a recovery plan, as called for by section 4(f) of the Act. On March 30, 1993, the Service released the Draft Recovery Plan for the Desert Tortoise (Mojave Population) for public review and comment (58 FR 16691). The Draft Recovery Plan presents a conservation strategy that applies the principles of conservation biology and population modeling and uses current desert tortoise research data. It describes a strategy for recovery and delisting of the Mojave population of the desert tortoise that includes:

(1) Identification of desert tortoise recovery units within the Mojave Region;

(2) Establishment of a system of DWMAs within recovery units where management actions are necessary to affect recovery;

(3) Development and implementation of specific recovery actions within DWMAs, which target reduction or elimination of factors that have caused declines in desert tortoise populations; and

(4) Quantitative recovery goals for each recovery unit.

In addition, the Draft Recovery Plan recommends an amendment process and further research on desert tortoise biology and management.

To minimize the potential risk over the long-term, the Draft Recovery Plan recommends establishment of multiple DWMAs (whenever possible) within the six recovery units (as defined earlier in this document) and implementation of reserve-level protection within them. The number and location of DWMAs should be determined first and foremost by the need for recovery in each of the six desert tortoise recovery units. DWMAs should be located in areas with good desert tortoise habitat currently supporting at least 800 adult desert tortoises at a density of no less than 10 per square mile to avoid potential fitness declines and demographic stochasticity. These DWMAs should be large enough to support a viable population (at least 50,000 adult desert tortoises where possible) at "target density." Target density is defined as the density of desert tortoises that the DWMA is capable of supporting under optimal management. The Draft Recovery Plan proposes target densities for each DWMA, which range from 40 to 100 desert tortoises per square mile. Desert tortoise census data, historical accounts, and expert opinion were used to determine target densities.

Given these requisites and extant desert tortoise habitat within the 6 recovery units, the Draft Recovery Plan identifies 14 proposed DWMAs. Portions of some DWMAs occur in more than one recovery unit. DWMAs should consist primarily of a limited use zone (LUZ), where human activities that negatively impact desert tortoises are strictly curtailed. In addition to the LUZs, DWMAs might have some habitat designated as an experimental management zone (EMZ), where certain activities prohibited in the LUZ may be permitted on an experimental basis during the recovery period. Research activities in EMZs would be important in furthering understanding of desert tortoise ecology and how populations respond to various human impacts. However, because experimental activities within an EMZ may adversely affect desert tortoise populations, the Draft Recovery Plan recommends that the EMZ should be no more than 10 percent of the total DWMA area and should be located toward the periphery.

In determining the appropriate sizes of the proposed DWMAs, the Draft Recovery Plan considers three important factors:

(1) Numbers of individuals and their densities now extant within each DWMA (for genetic considerations);

(2) Number of adult tortoises necessary for a viable population over the long-term (based upon the population viability analysis); and

(3) Size necessary to support a viable population at a target density.

To maximize recovery potential from a genetic standpoint, the Draft Recovery

Plan recommends that, at conception, a minimum of 20,000 desert tortoises of all age classes should be captured within a DWMA. This would result in an effective population (the number of individuals in a population passing on their genes to the next generation) of 500 animals, and an adult population of about 800 (at current estimated densities) (USFWS 1993). However, the Draft Recovery Plan suggests that more area than the ratio of desired number of adults/target density should be included in the DWMA to ensure protection of an adequate number of founder individuals. This recommendation is based on the following:

(1) Most current density estimates have large confidence limits;

(2) Good desert tortoise habitat is usually discontinuously distributed;

(3) Few extant desert tortoise populations now have a stable age distribution; and

(4) Implementation of recovery actions will not be immediate.

Even after a population is considered to be recovered, it may become extinct due to a variety of random events. However, large populations have a lower probability of extinction than small populations (USFWS 1993). A population viability analysis (PVA) provides an estimate of how large a population must be to have a given probability of persistence over a certain period of time. The results of the PVA in the Draft Recovery Plan suggest that a minimum of 50,000 adult animals are required for a desert tortoise population to have a 50 percent probability of persistence for 500 years, or 20 desert tortoise generations. This prediction was based upon observed variability in population growth rates during the period 1979–91, in which population growth rates varied considerably. The PVA was based upon existing management data from several different locations. As management activities are intensified and additional data become available, population estimates may improve, and DWMA sizes and the recovery criteria may be adjusted if appropriate.

Reserves (DWMAs) should be large enough to accommodate viable populations at target densities. For example, at a target density of 100 adult desert tortoises per square mile, a DWMA of 500 square miles (320,000 acres) would be required to support 50,000 adult desert tortoises (50,000/100). Because each recovery unit has its own unique characteristics that result in differing target densities, DWMA sizes will vary by recovery unit.

For some recovery units, DWMAs large enough to capture a population of 50,000 adult desert tortoises at target density will not be possible. In these cases, a system of DWMAs capable of supporting as many desert tortoises as possible should be established. When circumstances permit, these areas should be large enough to support at least 20,000 adult animals to ensure long-term genetic variation. Smaller DWMAs may be viable in the long-term with appropriate management.

The objective of the Draft Recovery Plan is the recovery and delisting of the Mojave population of the desert tortoise. Desert tortoise populations have declined substantially throughout the Mojave Region in the last 2 decades. These populations grow slowly, and significant improvement in the status of the Mojave population will be a very long process, measured in decades or centuries in most parts of the Mojave Region. Nevertheless, delisting of the desert tortoise may be considered if the following criteria are met:

(1) As determined by a scientifically credible monitoring plan, the population within a recovery unit exhibits a statistically significant upward trend toward target density or remains stationary at target density for at least 12 years (one-half of a desert tortoise generation);

(2) Enough habitat is protected within a recovery unit and/or the habitat and desert tortoise populations are managed intensively enough to ensure long-term population viability;

(3) Regulatory mechanisms or land management commitments have been implemented that provide for adequate long-term protection of desert tortoises and their habitat; and

(4) The population is unlikely to need protection under the Act in the foreseeable future.

The Service would delist the Mojave population of the desert tortoise if the delisting criteria were met, because protection under the Act would be unnecessary. With the delisting criteria met, the desert tortoise and its habitat would continue to be protected under other regulatory mechanisms outlined in a final recovery plan. Upon delisting, the interim protection afforded by the Act in the designation of critical habitat would be eliminated.

Critical Habitat

Definition

The Service considers the conservation of a species in its designation of critical habitat. However, designation of critical habitat will not, in itself, lead to the recovery of the species, but it is one of several measures available to contribute to the conservation of a species. Critical habitat helps to focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that require special management.

The Endangered Species Act defines critical habitat as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features: (I) Essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The purpose of the Act is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species * * *" (16 U.S.C. 1531(b)). By definition, the critical habitat provision of section 7(a)(2) offers protection to areas containing physical or biological features "essential to the conservation of [listed] species". "Conservation" is defined as "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (16 U.S.C. 1532(3)). Therefore, the use of the term "conservation" in the Act's definition of critical habitat means that designated critical habitat is related to a species' eventual recovery. This implies that designation of critical habitat is closely tied to what the Service believes the species needs in terms of habitat to recover.

Designating critical habitat does not create a management plan; it does not establish numerical population goals; it does not prescribe specific management actions (inside or outside of critical habitat); and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and in section 7 consultations.

Designation of critical habitat may be reevaluated and revised at any time that

new information indicates that changes are warranted. The Service may revise critical habitat if land management plans, recovery plans, or other conservation strategies that are developed and fully implemented reduce the need for the additional protection provided by any critical habitat designation. For example, after the Desert Tortoise Recovery Plan is finalized, land management agencies may implement increased protection for the desert tortoise. If protection measures are implemented, the Service may revise its critical habitat designation in the future. It is also possible that, with increased protection, some components of environmental variability that threaten tortoise populations (or increase the variance of growth rates) and result in the need for large populations will be decreased. In such an event, a population viability analysis—considering population trends based on the variance of population growth rates—might suggest smaller, but still viable, populations, which would require less habitat (i.e., smaller DWMAs and less need for critical habitat designation). Therefore, critical habitat units could be decreased in size, increased in size, or eliminated based on changes in certain environmental variables or changes in land status.

In proposing to designate critical habitat for the desert tortoise, the Service reviewed its overall approach to the conservation of the desert tortoise undertaken since the emergency listing of the desert tortoise in August 1989. In addition, the Service reviewed all available information that pertains to habitat requirements of this species. Inherent difficulties in designating critical habitat for wide-ranging species, such as the desert tortoise, dictate that not all habitat within the range of the species be included in the proposed designation. In fact, section 3(C) of the Act states that, in most cases, critical habitat should not encompass the entire range of the species. Based upon the parameters discussed below, the Service determined the appropriateness of including specific areas.

The Service believes that the definition of critical habitat, while explicitly mentioning the features essential to conservation of a species, implicitly requires that the areas themselves be essential to the species' survival and recovery. Not all areas containing those features of a listed species' habitat are necessarily essential to species' conservation. Conversely, areas not currently containing all of the essential features, but with the capability to do so in the future, may still be needed for the long-term recovery of the species, particularly in certain portions of the range, and may be proposed as critical habitat. However, areas not included in critical habitat that contain one or more of the essential features are also important to the species' conservation and would be addressed under the other facets of the Act and other conservation laws and regulations (e.g., Federal Land Policy Management Act).

For the desert tortoise, loss of an entire critical habitat unit could preclude recovery or reduce the likelihood of survival of the species. Further, gradual degradation of a critical habitat unit to the point where it no longer fulfills the overall function for which it was proposed (e.g., nesting, foraging, sheltering, dispersal, and gene flow) could preclude the survival and recovery of the species. The level of disturbance that a critical habitat unit could withstand and continue to fulfill its intended purpose is variable throughout the desert tortoise's range and would need to be reviewed in the context of its current status, condition, and location. Critical habitat units in some areas may be less able to support healthy local populations of desert tortoises than units in other areas.

Primary Constituent Elements

The Service is required to base critical habitat proposals upon the best scientific data available (50 CFR 424.12). In determining what areas are to be proposed as critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and generally; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) that support nesting, foraging, sheltering, dispersal, and/or gene flow are essential to the conservation of the desert tortoise. These elements were determined from studies on desert tortoise habitat preferences (e.g., habitat structure and use, forage requirements) throughout the range of the species (USFWS 1993). These attributes include one or more of the following: Sufficient space to support viable populations within each of the six recovery units and provide for movements, dispersal, and gene flow; sufficient quantity and quality of forage species and the proper soil conditions to provide for the growth of such species; suitable substrates for burrowing, nesting, and overwintering; burrows, caliche caves, and other shelter sites; sufficient vegetation for shelter from temperature extremes and predators; and habitat protected from disturbance and human-caused mortality.

Proposed critical habitat for the desert tortoise encompasses portions of the Mojave and Colorado Deserts that contain the primary constituent elements and focuses on areas that are essential to the species' recovery. The proposed critical habitat unit boundaries are based on proposed DWMAs in the Draft Recovery Plan. Because the boundaries were drawn to conform with accepted principles of conservation biology, the areas may contain both "suitable" and "unsuitable" habitat. The term "suitable" generally refers to habitat that provides the constituent elements of nesting, sheltering, foraging, dispersal, and gene flow.

Relation to Draft Desert Tortoise Recovery Plan

The Draft Recovery Plan proposes 14 DWMAs within the 6 recovery units within the range of the desert tortoise. The Service used the DWMAs as the basis for proposed critical habitat units because:

(1) The Draft Recovery Plan's conservation strategy is based upon the best available information on desert tortoises gathered and analyzed over the past 20 years;

(2) The Draft Recovery Plan represents an in-depth analysis of the conservation needs of the desert tortoise;

(3) The areas recommended as DWMAs were proposed by experts familiar with the species and its habitat based on the principles of conservation biology; and

(4) Use of the DWMAs is consistent with the Service's other conservation efforts (e.g., it has been the focus in section 7 consultations and conservation planning).

The Service's identification of areas within the proposed DWMAs containing the primary constituent elements described above was based on the seven principles of conservation biology used in the Draft Recovery Plan:

(1) Reserves should be well-distributed across a species' native range;
(2) Reserves should contain large blocks of habitat with large populations of the target species;
(3) Blocks of habitat should be close together;
(4) Reserves should contain contiguous rather then fragmented habitat;
(5) Habitat patches should contain minimal edge to area ratios;
(6) Blocks should be interconnected by corridors or linkages containing protected, preferred habitat for the target species; and
(7) Blocks of habitat should be roadless or otherwise inaccessible to humans.

Critical habitat is based on the framework of the Draft Recovery Plan. Should a final approved recovery plan vary significantly from the draft, or significantly change the assumptions underlying this proposed critical habitat, then the Service may propose revised critical habitat boundaries.

Adjustments to Legally Described Boundaries

The regulations require that the Service define * * * "by specific limits using reference points and lines as found on standard topographic maps" those areas proposed for critical habitat designation (50 CFR 424.12 (c)). After selecting DWMAs as the starting point, the Service made several types of adjustments. To facilitate legal definition, critical habitat unit boundaries were adjusted to adjacent section lines, depending upon the amount and quality of habitat within the adjacent sections. The boundaries generally follow the 4,100-foot elevation contour line. When adjacent to cities or towns, critical habitat boundaries were drawn on ½ or ¼ section lines to remove as much unsuitable habitat as possible.

In addition to adjusting DWMA boundaries to meet the requirements to define critical habitat boundaries, the Service made other changes. Some proposed critical habitat units represent more precisely described desert tortoise habitat within the DWMA boundary, and thus, encompass a much smaller area. For example, portions of DWMAs were not included in critical habitat if unsuitable habitat was identifiable on available maps and the exclusion would not affect the size or configuration recommendations made by the Draft Recovery Plan. Conversely, some critical habitat boundaries were expanded beyond DWMA boundaries to include additional habitat based on information recently made available to the Service.

In addressing the above factors, the Service considered existing suitable habitat and desert tortoise populations that were not included in existing DWMAs and areas where additional protection should be considered to reduce the risk to recovery. When including other areas, the Service considered factors similar to those outlined in the Draft Recovery Plan on contiguity, shape, habitat quality, and spacing. Areas with minimal fragmentation were selected over areas with more extensive fragmentation.

The desert tortoise requires large, contiguous areas of habitat to meet its life requisites. Human activities have reduced much of the habitat in some areas to small, fragmented, and isolated areas that are not expected to support viable populations over time. In some cases, those areas were proposed as critical habitat when they were needed to promote future development of large contiguous habitat areas or serve as key linkage areas with the potential to support desert tortoises in the future.

Effects of the Designation

Total Acres Included in Critical Habitat The proposed designation of critical habitat for the desert tortoise identifies 12 areas encompassing a total of approximately 6.6 million acres. Based on biological connectivity and to encourage consistent management across State lines and management boundaries, portions of the Piute-Eldorado (Nevada) and Fenner (California) DWMAs were combined into a single critical habitat unit (Piute-Eldorado). Three critical habitat unit boundaries span more than one State—Piute-Eldorado (California and Nevada), Gold Butte-Pakoon (Nevada and Arizona), and Beaver Dam Slope (Nevada, Arizona, and Utah). The Service proposes eight critical habitat units totaling 4,776,700 acres in California; four units totaling 1,314,000 acres in Nevada; two units totaling 137,200 acres in Utah; and two units totaling 417,400 acres in Arizona. Table 1 provides a breakout by State of the approximate acreage in each proposed critical habitat unit. The proposed critical habitat includes 4,995,400 acres of BLM land, 247,400 acres of military lands, and 151,200 acres of National Park Service land (Table 2). The totals in Table 2 include all Federal, State, private, and Tribal lands within the proposed critical habitat units.

TABLE 1.—APPROXIMATE ACREAGES OF PROPOSED CRITICAL HABITAT FOR THE DESERT TORTOISE BY CRITICAL HABITAT UNIT

[Figures are rounded to the nearest hundred]

Critical habitat unit	Acres
California:	
Chemehuevi	937,400
Chuckwalla	1,022,600
Fremont-Kramer	518,000
Ivanpah Valley	632,400
Pinto Mountains	171,700
Ord-Rodman	274,000
Piute-Eldorado	453,800
Superior-Cronese	767,000
Nevada:	
Beaver Dam Slope	87,400
Gold Butte-Pakoon	192,300
Mormon Mesa	504,300
Piute-Eldorado	530,000
Utah:	
Beaver Dam Slope	74,500
Upper Virgin River	62,700
Arizona:	
Beaver Dam Slope	40,800
Gold Butte-Pakoon	376,600

TABLE 2.—APPROXIMATE ACREAGE OF PROPOSED CRITICAL HABITAT FOR THE DESERT TORTOISE BY LANDOWNERSHIP

[Figures are rounded to the nearest hundred]

	California	Nevada	Utah	Arizona	Total
Bureau of Land Management	3,341,500	1,198,500	91,400	364,000	4,995,400
Military	247,400	0	0	0	247,400
National Park Service	0	107,600	0	43,600	151,200
State	132,900	0	28,000	9,200	170,100
Tribal	0	0	1,600	0	1,600
Private	1,054,900	7,900	16,100	600	1,079,500
Forest Service	0	0	100	0	100
TOTAL	4,776,700	1,314,000	137,200	417,400	6,645,300

TABLE 2.—APPROXIMATE ACREAGE OF PROPOSED CRITICAL HABITAT FOR THE DESERT TORTOISE BY LANDOWNERSHIP
Continued

[Figures are rounded to the nearest hundred]

	California	Nevada	Utah	Arizona	Total
Number of Critical Habitat Units	8	4	2	2	*12

*Two areas overlap two states, one area overlaps three states.

Acreage totals for any private or other lands that may be intermingled within the proposed critical habitat units were not included in the totals if the areas were not large enough to be identified through the geographic information system (GIS). Developed areas, such as towns, airports, roads, dry lakes, and water bodies are not proposed for designation as critical habitat even if physically situated within the boundaries of proposed critical habitat units, because they will never contain primary constituent elements. If possible, the acreage totals were adjusted to reflect their exclusion. However, in some cases, it was not possible to physically remove these acres from the total acreage figures. Much of the private land included in the proposed boundaries results from checkerboard land ownership along railroads. The majority of desert tortoises and suitable desert tortoise habitat (i.e., for nesting, sheltering, foraging, dispersal, and gene flow) are found primarily on BLM lands.

Management Aspects of Critical Habitat

The Service's intent in proposing critical habitat is to provide habitat that contains primary constituent elements in sufficient quantities to maintain viable populations of desert tortoises within the six recovery units. This proposal will help reduce the risk associated with the near-term reduction in desert tortoise numbers and cumulative loss of habitat anticipated from on-going management plans. Critical habitat offers additional protection through section 7, but it does not replace the management recommendations provided by the Draft Recovery Plan. Designation of critical habitat will, however, provide regulatory protection and help retain options until long-term conservation plans are accepted and fully implemented.

Although critical habitat is not intended as a management or conservation plan, association with the Draft Recovery Plan leaves the perception that critical habitat is a form of that plan. The Draft Recovery Plan, critical habitat, and other conservation processes are working with the same land base containing the same specific locations of desert tortoise populations within recovery units; it is therefore inevitable that these processes overlap. Critical habitat is based upon the recommendations of the Draft Recovery Plan because it lays out a framework for identifying and evaluating habitat that is founded on scientific principles. Designation of critical habitat does not offer specific direction for managing desert tortoise habitat. That type of direction, as well as any change in direction, will come through administration of other facets of the Act (e.g., section 7, section 10, and recovery planning) or through development of land management plans addressing the desert tortoise.

The Service expects that Federal and non-Federal agencies will produce biologically sound, long-term land management plans that contribute to conservation of desert tortoises. Biologically credible plans offer opportunities for resolving conflicts between multiple uses of land and desert tortoise conservation, and then offer a basis for present and future land management decisions. The Service will revisit its designation of critical habitat if land management plans (e.g., resource management plans), a final recovery plan, or other conservation strategies are developed and fully implemented.

Available Conservation Measures

Section 7—Consultation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take of the species. Regulations implementing this interagency cooperation provision of the Act are found at 50 CFR part 402.

Conference on Current Activities

Section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations require Federal agencies confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. The Act requires Federal agencies to reinitiate consultation should conditions change (e.g., if the Service designates critical habitat), consequently, some Federal agencies will likely request conference with the Service on actions, even though formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory recommendations.

If an agency requests, and the Service concurs, the Service may issue a formal conference report. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. The Service may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant information or changes in the action alter the

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content of the opinion (see 50 CFR 402.10(d)).

Examples of Proposed Actions

A number of Federal agencies or departments fund, authorize, or carry out actions that affect lands that the Service proposes to designate as critical habitat. Among these agencies are BLM, Department of Defense, Bureau of Mines, Corps of Engineers, Bureau of Reclamation, Bureau of Indian Affairs, Federal Energy Regulatory Commission, National Park Service, Federal Highway Administration, and Department of Housing and Urban Development. Federal agencies and the Service are currently consulting on numerous activities proposed within the range of the desert tortoise. These activities include Federal land management plans; BLM livestock grazing operations; road, trail, and utility construction and maintenance; mining plans of operation; land sales, leases, and exchanges; Federal housing loans; BLM recreation and public purpose leases; permits for OHV activities; military operations; sand and gravel operations; rights-of-way; landfills; and a number of smaller actions. The economic analysis provides more details on specific projects affected by critical habitat designation.

The Service expects that proposed actions that are inconsistent with land management recommendations for DWMA's in the Draft Recovery Plan would likely be considered to adversely modify critical habitat constituent elements. Thus, livestock grazing and OHV activities would likely result in destruction or adverse modification of critical habitat, because such activities preclude the development of large, contiguous blocks of habitat. Proposed actions that are consistent with the recommendations within the Draft Recovery Plan would not be likely to result in destruction or adverse modification of critical habitat.

Areas proposed for designation as critical habitat support a number of existing and proposed commercial and non-commercial activities. Commercial activities that may affect proposed desert tortoise critical habitat include, but are not limited to, livestock grazing, sand and gravel extraction, mining, OHV activities, military operations, landfills, rights-of-way, and utility corridors.

For some actions, the Service may propose minor modifications to the project design that may avoid adverse modification of critical habitat. In the case of a proposed upgrade of a powerline right-of-way corridor, for example, the Service may recommend that the corridor be expanded on one side of the existing corridor versus the other side to avoid impacts to habitat where the primary constituent elements are of higher quality. For projects that may result in more severe impacts, substantial project changes may be necessary. The Service would propose reasonable and prudent alternatives to the agency's proposed action. Reasonable and prudent alternatives, by definition, would allow the intended purpose of the project to go forward without adversely modifying critical habitat.

No reasonable and prudent alternatives may be available for some proposed actions. In these situations, the Service would issue an adverse modification biological opinion with no reasonable and prudent alternatives.

Commercial activities not likely to destroy or adversely modify critical habitat include various site-specific activities such as scenic tours. Conducting desert tortoise surveys would not likely destroy or adversely modify critical habitat. Non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat, provided they do not involve use of vehicles off of designated roads. Such activities include hiking, camping, hunting, and various activities associated with nature appreciation. In certain critical habitat units, where more intensive management is needed, e.g., the proposed Upper Virgin River Critical Habitat Unit, the effects of recreational activities will be evaluated on a case-by-case basis.

Some activities could be considered to be of benefit to desert tortoise habitat and, therefore, would also not be expected to destroy or adversely modify critical habitat. Examples of activities that could be of benefit to critical habitat include protective measures such as some forms of fire suppression and restoration of disturbed areas. Further research may support or refute any potential benefits from such actions. At this time, they will be evaluated on a case-by-case basis.

In general, activities that do not remove or degrade constituent elements of habitat for desert tortoises are not likely to destroy or adversely modify critical habitat. Each proposed action would be examined pursuant to section 7 of the Act in relation to its site-specific impacts. Thus, proposed actions may or may not destroy or adversely modify critical habitat, depending on the type and extent of the action and the pre-project condition of the area in relation to desert tortoise habitat needs. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of desert tortoises.

The proposed designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the desert tortoise. Lands outside of critical habitat are important to providing nesting, sheltering, foraging, gene flow, and dispersal habitat for desert tortoises. Federal activities outside of critical habitat are still subject to review under section 7, if they may affect the desert tortoise. The Service expects that management activities outside of critical habitat on Federal lands would be managed as recommended by a final recovery plan, BLM's Rangewide Plan, or other valid plans.

Other Conservation Measures: Non-Federal Lands

Section 9 of the Act prohibits intentional and non-intentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat. The term "take", as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harass" is defined as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which includes breeding, feeding, or sheltering. "Harm" in the definition of "take" means any action, including habitat modification, which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17).

Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities, such as housing development. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a)(1)(B) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of

survival and recovery of that species in the wild.

Due to limited Federal involvement, the Service expects that few, if any, formal section 7 consultations would be initiated for State lands that are included in proposed critical habitat. The States are subject to the "take" prohibitions under section 9 of the Act, however, and may enter into the section 10 HCP process where appropriate.

Desert tortoises occurring on lands outside critical habitat boundaries are still subject to section 9 prohibitions. The Service envisions that the role of desert tortoise habitat in the conservation of the desert tortoise will be addressed through section 7, the HCP process, the recovery planning process, and other appropriate State and Federal laws. On these lands, it is expected that recovery goals will be achieved through the use of other conservation mechanisms available to the Service and other landowners (e.g., land exchanges, conservation and development easements).

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic effects and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude areas from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such areas as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species concerned.

The economic effects of designating critical habitat for the desert tortoise are the incremental impacts over and above those impacts that occurred as a result of implementation of management plans, such as BLM's Rangewide Plan, resource management plans, habitat conservation plans that have already been implemented, and previous events, including the emergency listing of the desert tortoise in August 1989. The economic analysis considers the critical habitat impacts to be those incremental impacts that are expected as a result of the critical habitat proposal.

Economics of the Impact Area

The economic analysis describes the current economic conditions, prior to designation of critical habitat, of the region that contains critical habitat units. Significant industry sectors within the regional economy are identified, and key economic measures related to employment and production are presented. Demographic, census, and land ownership trends holding economic consequences also are identified.

Detailed analysis focuses on three economic activities on Federal lands: Recreation, mining, and grazing. Trends of usage and economic production of these activities will be presented, as will estimates of impacts to these activities, from designation of critical habitat.

The regional economy is defined as the counties that contain critical habitat units. If any portion of a critical habitat unit is located in a county, the entire county is included in the regional economy. The study includes the following counties: Mohave County, Arizona; Imperial, Kern, Los Angeles, Riverside, and San Bernardino Counties, California; Clark and Lincoln Counties, Nevada; and Washington County, Utah.

Benefits

The conservation of the desert tortoise and its habitat through designation of critical habitat may result in a wide range of benefits. These benefits include preservation of recreation and existence values that will increase the benefits for most affected activities. Scenic beauty contributes to the quality of desert recreational experiences. Many of the proposed areas are adjacent to or within Wilderness Study Areas, or in designated Wilderness Areas. Habitat conservation will enhance the wilderness values of these adjacent or contiguous areas.

Many of the resource services provided by critical habitat are not marketed. The lack of market prices makes it difficult to value them in dollar terms, as compared to some cost impacts, such as impacts to livestock grazing. As a result, this analysis currently focuses on the cost impacts, primarily related to livestock grazing. No comprehensive estimate of the benefits of designating critical habitat is feasible with available data. Rather, the analysis provides a discussion of the kinds of benefits that are expected to ensue, with empirical data and examples as available. Existence values represent an additional category of non-use benefit, albeit one that remains difficult to measure. Furthermore, there are preservation benefits that society places on endangered species for the option of future recreational use, with the knowledge that the desert tortoise's natural ecosystem exists and is protected, and the satisfaction from its bequest to future generations. Many of these benefits are expected to increase in relative value over time. As human activities continue to reduce desert ecosystems, the remaining areas will become less available and more valuable. Habitat protection for the desert tortoise clearly benefits other species as well as the human use and enjoyment of these species.

Biodiversity Benefits

Designation of critical habitat for the desert tortoise would contribute to the protection of the biotic diversity of the arid Southwest. The tortoise's habitat includes components that make it useful to a variety of other desert species whose existence is enhanced through retention of original characteristics of their habitat. Modification or elimination of activities that would adversely modify the natural ecology of the region will conserve the desert tortoise as well as other animal and plant species.

Recreational Use Benefits

Direct, non-consumptive recreational use of the desert tortoise (i.e., tortoise watching) occurs, although it is limited by the desert tortoise's burrowing habits and its relatively dispersed populations. Some recreational activities may be relocated or restricted due to critical habitat designation, particularly off-highway-vehicle use.

Intrinsic Values

Users and non-users of natural resources place value on knowing that resources will exist in the future. Benefits, which may be substantial, reside in the form of ensured future existence and availability for use, and in the ability to preserve the resource for future generations. By designating critical habitat for the desert tortoise, land managers will assure the retention of option and bequest values, potentially providing benefits far outside the designated habitat region.

Economic Baseline

In assessing the economic impacts of the proposed critical habitat, the Service has used the expected economic situation consistent with restrictions that were in place at the time of proposing critical habitat. The principal land use restrictions that were already in place were BLM's Management Framework Plans, Resource Management Plans, and habitat management plans; BLM's Rangewide Plan; National Park Service land management policies; military land-use policies; and the listing of the desert tortoise as a threatened species.

Management of the desert tortoise, and curtailment of the activities that threatened the species, began when the

Desert Tortoise Preserve was established in 1973 by BLM in the Western Mojave Desert (USFWS 1993b). The preserve was expanded and formally designated a Research Natural Area as well as an Area of Critical Environmental Concern by 1980 (USFWS 1993). In 1988, BLM published its Rangewide Plan (Spang *et al.* 1988), which is based on the categorization of desert tortoise habitat on BLM land into three categories based on: (1) Importance of the habitat to maintaining viable populations; (2) resolvability of conflicts; (3) desert tortoise density; and (4) desert tortoise population status (stable, increasing, or decreasing). Category 1 lands are the most important to desert tortoises for survival and recovery, and category 3 lands are the least important. The Rangewide Plan provides management goals and objectives for each form of authorized multiple use within each of the categories on BLM land, including livestock grazing, mining, and OHV activities. All critical habitat units in this proposed rule minimally include category 1 and/or 2 habitats. Additionally, critical habitat units contain some category 3 habitats, uncategorized habitats, and lands managed by other Federal entities.

The Service has assumed a distinction exists between the effects of listing the species and the incremental effects of designating critical habitat. The differences between listing and designation of critical habitat vary within each critical habitat unit based on existing management.

Eight critical habitat units, or portions thereof, are proposed in California (Chemehuevi, Chuckwalla, Pinto Mountain, Piute-Eldorado (includes Fenner DWMA), Ivanpah, Fremont-Kramer, Ord-Rodman, and Superior-Cronese). All are managed primarily by BLM according to guidance provided in the California Desert Conservation Area Plan of 1980, as amended (Desert Plan), and the 1992 California Statewide Desert Tortoise Management Policy (Tortoise Management Policy). The Desert Plan defines four classes of land use with differing management goals and prescriptions. Classes include controlled use (wilderness and areas recommended for wilderness), limited use, moderate use, and intensive use (vehicle travel restrictions range from designated routes only in limited-use areas to no vehicular restrictions in intensive use areas). The Tortoise Management Policy designates three categories of desert tortoise habitat in which varying levels of protection are afforded to the desert tortoise and its habitat. Additional management guidance is provided in livestock allotment management plans (AMPs), habitat management plans (HMPs) for desert tortoises and other wildlife species, the East Mojave National Scenic Area Plan, and management plans for specific Areas of Critical Environmental Concern (ACECs).

The West Mojave Coordinated Management Plan and the Eastern Colorado Desert HMP are BLM management plans currently in preparation that will have an important effect on desert tortoise management in California. The West Mojave Coordinated Management Plan will be the basis for a programmatic section 7 consultation for BLM activities in the western Mojave Desert and may serve as a basis for habitat conservation plan(s) for local governments in the section 10(a)(1)(B) permit process. The Eastern Colorado Desert HMP will address all BLM activities in the Chuckwalla Bench area and will provide a framework for a programmatic section 7 consultation.

The proposed Chuckwalla Critical Habitat Unit is managed by BLM and the Navy (Chocolate Mountains Aerial Gunnery Range). Parts of the Superior-Cronese area are managed by the Army (National Training Center at Fort Irwin) and the Navy (China Lake Naval Air Weapons Station). The Fremont-Kramer area includes a portion of Edwards Air Force Base.

Portions of the proposed Piute-Eldorado and Ivanpah Critical Habitat Units in California are within the boundaries of the East Mojave National Scenic Area, which affords special protection to the area's natural, scenic, and other values (Desert Plan 1980).

Several programmatic and other biological opinions have resulted in additional regulation of activities within desert tortoise habitat in California. Biological opinions have limited grazing of sheep to category 3 habitats. Programmatic consultations have been completed for land use plans at the Naval Air Weapons Station and the Rand-Fremont Valley areas. The Service has also completed a biological opinion concerning the on-going mission for the Army's National Training Center at Fort Irwin. Programmatic consultations also exist that define standard terms and conditions for mining operations disturbing less than 10 acres, for non-competitive vehicle races, such as poker runs, which occur on designated routes in some desert tortoise areas, and for the four OHV management areas within the western Mojave Desert.

The Service and BLM are currently developing a programmatic approach to long-term pipeline maintenance. The Service and the Navy are also informally consulting on a programmatic consultation for training activities at the Marine Corps Air Ground Combat Center (MCAGCC) and within the Chocolate Mountains Aerial Gunnery Range.

In Nevada, the majority of the desert tortoise habitat is managed by BLM under the Clark County Management Framework Plan. The Stateline Resource Area of the Las Vegas District has prepared a draft Resource Management Plan that proposes designation of ACECs for desert tortoises; however, this document has not yet been finalized. Livestock grazing in Nevada is restricted to the period of June 15 to March 1, in accordance with BLM's proposed livestock grazing program and the Service's biological opinion that analyzed that proposal. However, as of this date, BLM's decision to implement this seasonal restriction has been stayed by an Administrative Law Judge. In southern Clark County, portions of the proposed Piute-Eldorado Critical Habitat Unit are also managed by the National Park Service (Lake Mead National Recreation Area).

In 1991, the Piute-Eldorado Valley was established as a Tortoise Management Area (TMA), as mitigation for the incidental take of desert tortoises in the Las Vegas Valley, pursuant to section 10(a)(1)(B) of the Act. The Short-Term Habitat Conservation Plan for the Desert Tortoise in the Las Vegas Valley, Clark County, Nevada (Regional Environmental Consultants 1991b), which described this mitigation, provides land-use control measures for this area. These measures include prohibition of competitive and commercial events, except in some portions of Eldorado Valley, placing livestock grazing areas into nonuse status, and designation of roads and trails.

The majority of the lands within the Gold Butte-Pakoon and Beaver Dam Slope Critical Habitat Units in Arizona are managed by BLM under the Arizona Strip Management Plan. This plan designated the Beaver Dam Slope Area of Critical Environmental Concern and includes management prescriptions designed to minimize impacts to desert tortoises and their habitat. All desert tortoise habitat in Arizona is within the area managed by the Virgin River-Pakoon Basin Habitat Management Plan, a cooperative Sikes Act document written by BLM and the Arizona Game and Fish Department. Additionally, desert tortoise habitat occurring in wilderness areas in Arizona is managed according to the Paiute-Beaver Dam Wilderness Management Plan and the Grand Wash Cliffs Wilderness Management Plan. Grazing is

administered according to the Cedar Wash, Highway, Beaver Dam Slope, Mormon Well, Littlefield Community, Mesquite Community, Mosby-Nay, Pakoon Springs, Pakoon, Cottonwood, Mud and Cane, and Tassi Allotment Management Plans. In addition to prescriptions set forth in these allotment management plans, a Service biological opinion on livestock grazing limited grazing to the period from June 1 to March 15.

In Utah, the proposed Beaver Dam Slope Critical Habitat Unit is primarily managed by BLM. This Critical Habitat Unit includes a 35-square-mile area designated as critical habitat for the desert tortoise. In the Castle Cliffs allotment, a 3,040-acre exclosure encompassing the historic Woodbury-Hardy study area and several other important tortoise shelter site areas was established to serve as a natural study area to enhance the tortoise population. However, the exclosure was never completely operational or effective in eliminating grazing in the area. BLM reduced the exclosure to 1,500 acres, where grazing was completely excluded. The Dixie Resource Area developed a resource management plan for the area, but the final document was rejected and the process has been reinitiated. Currently, BLM management in the Beaver Dam Slope Critical Habitat Unit is conducted under the Habitat Management Plan adopted in 1980.

BLM and State of Utah are the primary managers of the proposed Upper Virgin River Critical Habitat Unit. Smaller amounts of habitat are owned by private entities and by the Paiute Indians. Several consultations have been initiated regarding grazing, housing development, horse racing, and energy pipeline developments, for which the Service has prepared draft biological opinions. Also, Washington County is pursuing development of a habitat conservation plan for the area encompassing the proposed Upper Virgin River Critical Habitat Unit, and the Service is providing guidance for development of this plan. BLM is pursuing land exchanges with the State of Utah for consolidation of desert tortoise habitat within the proposed Upper Virgin River Critical Habitat Unit for ease of management and for long-term conservation of the desert tortoise and other desert species. BLM Dixie Resource Area is currently preparing a Resource Management Plan to guide land management on BLM lands encompassing the proposed Upper Virgin River Critical Habitat Unit. Because of the area's small size and its proximity to an expanding urban population center, the Service has maintained that any significant losses of habitat within this area would jeopardize the continued existence of desert tortoises within the Upper Virgin River Recovery Unit.

Economic Effects

The economic effects resulting from the prohibition of adverse modification of critical habitat by section 7 of the Act (effects above those of listing and other land management decisions) are the subject of the economic analysis. The economic analysis identifies and quantifies, as feasible, added probable costs and benefits that may result from critical habitat designation for the desert tortoise. Economic effects are the costs or benefits to society of precluding or limiting specific land uses. Economic costs and benefits to society are defined as the changes in economic rents and consumer surpluses expected to be derived from the land area under consideration, with and without its designation as critical habitat. The economic analysis also considers regional economic impacts. Economic impacts are the employment and revenue consequences of critical habitat designation on local economies.

Known or potential mineral resources within proposed critical habitat areas include, but are not limited to, silver, gold, uranium, gallium, copper, gypsum, sand and gravel, and oil and gas. Most of the proposed critical habitat areas are covered with active mining claims, although a very small percentage of these have had plans of operations filed and are actually disturbed. Fees must be paid to maintain these claims starting in September 1993; therefore, many claims may expire. Most current mining activities within proposed critical habitat have been subject to section 7 consultation between BLM and the Service. Designation of critical habitat may increase costs of mitigation required for future proposed projects above those incurred prior to designation, due to rerouting access to sites and site reclamation. In instances of mining projects that may significantly destroy and fragment critical habitat, the Service may determine that such projects adversely modify critical habitat, and that no reasonable or prudent alternatives are available. In such cases, the Federal agency or the applicant may request an exemption under section 7(e) of the Act. There may be some economic impact to Federal land managing agencies due to increased costs of evaluation and monitoring of project proposals. The Service is unaware of any proposed mineral development projects within proposed critical habitat that are reasonably certain to occur.

Recreational activities within proposed critical habitat areas include hiking; camping; hunting; nature appreciation; rock hounding; rock climbing; survival training; mountain bicycling; horseback riding; jeep tours; and off-highway travel by motorcycles, 4-wheel-drive vehicles, and buggies. Both commercial and non-commercial events occur in these areas. Most activities have been previously restricted by implementation of various land management plans and through completed section 7 consultations. In many areas proposed for critical habitat, recreational travel has already been restricted to designated roads and trails. In accordance with BLM's Rangewide Plan, most commercial off-highway races and endurance events have already been excluded from category 1 and 2 habitats. Some additional economic impact may occur to recreational activities that are within critical habitat that have not been previously restricted. The economic impacts to these activities will primarily be the cost impact of displacing them to other areas.

Cattle and sheep grazing occur throughout much of the range of the desert tortoise. In addition, grazing by feral horses and burros occurs in several proposed critical habitat areas. Cattle and sheep grazing have been subject to review under section 7 of the Act throughout the range of the desert tortoise. Most of the proposed critical habitat areas have been placed under seasonal restriction. Removal of cattle, sheep, horses, and burros from critical habitat would have an additional incremental economic impact to lease holders and administering Federal land managing agencies.

A portion of proposed critical habitat includes Department of Defense lands administered by the Departments of the Navy, Air Force, Army, and Marine Corps. Critical habitat areas are used by these agencies for weapons system testing, weapons training, overflight training, tank maneuvers, infantry training, aerial bombardment, paratrooper operations, artillery bombardment, explosive ordnance disposal, and radar and communication facilities. Many of these activities already have been subject to section 7 consultation; additional restrictions and mitigation will likely be required in some areas designated as critical habitat. Some activities or plans may be required to be displaced to other areas. The economic impact of such displacement may depend on the availability of areas on existing military

lands or elsewhere that can meet the intended needs of these Defense agencies.

Many of the proposed critical habitat areas include intermixed Federal, State, or private lands. Thus, access to private or State lands may require permits for rights-of-way across Federal lands. In addition, utility rights-of-way are common throughout these proposed areas and new corridors are proposed or expected. Existing rights-of-way will not be affected by designation of critical habitat. Future rights-of-way will be reviewed through section 7 consultations. Although many rights-of-way and utility corridors already require habitat restoration, this level and frequency will likely increase with designation of critical habitat.

Federal land sales, leases, and exchanges resulting in loss of critical habitat from Federal ownership would likely adversely modify critical habitat if the disposed lands contained primary constituent elements. Whether or not specific sales, leases, or exchanges, such as the proposed Ward Valley low-level nuclear waste disposal site, would adversely modify critical habitat would be determined during section 7 consultation. The Service cannot predetermine the outcome of such consultation, but the economic effects of precluding any known proposed projects are assessed in the economic analysis. Some private lands within the critical habitat boundaries may be proposed for development and require Federal loan guarantees or other Federal permits. These projects may adversely modify critical habitat; thus, the Federal funding or approval may be affected by critical habitat.

Effect on State and Private Lands

Impacts of critical habitat designation may occur on State or private lands where there is a Federal involvement (e.g., Federal funding, permitting, etc.) subject to section 7 of the Act. Impacts on State or private entities may also result if the decision on a proposed action in federally owned critical habitat, such as a right-of-way permit, could affect economic activity on adjoining non Federal land. Each action would be evaluated by the Federal agency under section 7 in relation to its site-specific impact and desert tortoise habitat needs.

Balancing Process and Criteria

Section 4(b)(2) of the Act authorizes the Secretary to exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of inclusion, provided that the exclusion would not result in the extinction of the species. Following receipt of additional economic cost and benefit, and other relevant impact information, the Service will evaluate proposed critical habitat boundaries on a case-by-case basis. If specific areas are identified where the impacts are costly, the Service will evaluate the biological needs of the desert tortoise within that particular area. Following this two-staged evaluation, the Service may revise critical habitat boundaries.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and effective as possible. Consequently, the Service used the most current data available to evaluate habitat for consideration as critical habitat. Therefore, comments or suggestions from the public, governmental agencies, Indian Nations, the scientific community, industry, and any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Information regarding actions that should be considered necessary to achieve recovery of the desert tortoise and the conditions that might allow it to be removed from the list of endangered and threatened wildlife and plants (Federal agencies should include information on the relation of the proposal to existing or expected land management plans);

(3) Specific information on the amount and distribution of suitable desert tortoise habitat and numbers and distribution of desert tortoises by landowner and land designation (all land-management agencies or affected parties should provide updated information and maps);

(4) Specific information on the ability or values of proposed areas to support other listed, proposed, or candidate species and the relation of this proposal to maintaining biodiversity and ecosystem integrity;

(5) Current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(6) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat;

(7) Economic values associated with benefits of designating critical habitat for the desert tortoise (such benefits include those derived from non-consumptive uses (e.g., hiking, camping, bird watching), enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(8) The methodology the Service might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Public Hearings

Section 4(b)(5)(e) of the Act requires that a public hearing be held, if requested, within 45 days of a proposed rule. As indicated under "DATES" and "ADDRESSES," the Service has scheduled three public hearings on this proposal due to the anticipated number of requests for such hearings.

Parties wishing to make statements for the record should bring a copy of their statement to the hearing. In anticipation of the large number of parties at each hearing, oral statements will be limited to 3 minutes. There are no limits on the length of the written statement presented at the hearing or subsequently submitted for the record. Written comments will be accepted from any party until the close of the comment period (see "DATES"). Written submissions will be given the same weight and consideration as oral comments presented at any hearing.

The Service will publish a final decision on this issue by December 15, 1993. The final decision on this proposed designation of critical habitat will take into consideration the comments and any additional information received by the Service.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291. The Service has determined that a significant economic effect on a substantial number of small entities does not exist under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within

critical habitat units, significant economic impacts will not result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Nevada Field Office (see ADDRESSES section).

Authors

The primary authors of this rule and its associated critical habitat unit maps are Sheryl L. Barrett, Christine Mullen, Mark Maley, Michael Burroughs, and David L. Harlow, U.S. Fish and Wildlife Service, Nevada Field Office, (see ADDRESSES section); James Rorabaugh and Tim MacGillvray, U.S. Fish and Wildlife Service, Ventura Field Office; Marilet Zablan, U.S. Fish and Wildlife Service, Utah State Office; James Slack, U.S. Fish and Wildlife Service, Arizona Field Office; Arthur Davenport, U.S. Fish and Wildlife Service, Carlsbad Field Office; Al Pfister, U.S. Fish and Wildlife Service, Portland, Oregon; and Dirk Draper, U.S. Fish and Wildlife Service, National Ecology Research Center, Ft. Collins, Colorado.

List of Subjects in 50 CFR Part 17

. Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.95 [Amended]

2. It is proposed to amend § 17.95(c) by removing the critical habitat of the Beaver Dam Slope population of the desert tortoise and adding the following new critical habitat of the desert tortoise (*Gopherus agassizii*) to read as follows:

§ 17.95 Critical Habitat—fish and wildlife.

* * * * *

(c) * * *

* * * * *

Desert Tortoise—Mojave Population (*Gopherus agassizii*)

Index map follows:

California. Areas of land as follows:

1. *Fremont-Kramer Unit.* Kern, Los Angeles, and San Bernardino Counties. From Bureau of Land Management Maps: Victorville 1978 and Cuddeback Lake 1978. (Index map location A).

Mt. Diablo Meridian: T. 29 S., R. 39 E., secs. 13, 14, 22–26, 35, and 36; T. 29 S., R. 40 E., secs. 12–33; T. 29 S., R. 41 E., secs. 7, 8, 17–20, 27–30, and 32–36; T. 30 S., R. 38 E., secs. 24–26, 35, and 36; T. 30 S., R. 39 E., secs. 1–36 except secs. 3–5; T. 30 S., R. 40 E., secs. 4–9, and 13–36, except that portion of secs. 13, 14, and 23 lying northwesterly of the Randsburg-Mojave Road; T. 30 S., R. 41 E., secs. 1–36, except secs. 5–8, and 20 and that portion of secs. 17 and 18 lying easterly of U.S. Highway 395; T. 30 S., R. 42 E., secs. 7–10, 15–22, and 27–34; T. 31 S., R. 40 E., secs. 1 and 6, except that portion of sec. 6 lying southeasterly of the Randsburg-Mojave Road; T. 31 S., R. 41 E., secs. 1–17, 20–29, and 32–36, except that portion of secs. 20, 29 and 32 lying westerly of U.S. Highway 395; T. 31 S., R. 42 E., secs. 3–10, 15–22, and 27–34; T. 32 S., R. 41 E., secs. 1–4, 9–16, 21–28, and 34–36, except that portion of secs. 4, 9, 16, 21, 27, 28, and 34 lying westerly of U.S. Highway 395; T. 32 S., R. 42 E., secs. 1–36; T. 32 S., R. 43 E., secs. 4–9, 16–21, and 28–33.

San Bernardino Meridian: T. 7 N., R. 5 W., secs. 2–11, and 14–18, except that portion of sec. 18, lying west of U.S. Highway 395; T. 7 N., R. 6 W., secs. 1–6, 12, and 13, except that portion of secs. 1, 12, and 13 lying westerly of U.S. Highway 395; T. 7 N., R. 7 W., secs. 1–6; T. 7 N., R. 8 W., secs. 1–4; T. 8 N., R. 4 W., secs. 6, 7, and 18; T. 8 N., R. 5 W., secs. 1–35 except secs. 24 and 25; T. 8 N., R. 6 W., secs. 1–36; T. 8 N., R. 7 W., secs. 1–36; T. 8 N., R. 8 W., secs. 1–28, and 33–36; T. 8 N., R. 9 W., secs. 1 and 7–24; T. 9 N., R. 4 W., secs. 2–11, 14–23, 30, and 31; T. 9 N., R. 5 W., secs. 1–36; T. 9 N., R. 6 W., secs. 1–36; T. 9 N., R. 7 W., secs. 1–4, 9–16, and 19–36; T. 9 N., R. 8 W., secs. 24, 25, and 31–36; T. 9 N., R. 9 W., sec. 36; T. 10 N., R. 4 W., secs. 6, 7, 18–20, and 29–34; T. 10 N., R. 5 W., secs. 1–36; T. 10 N., R. 6 W., secs. 1–36 except sec. 6; T. 10 N., R. 7 W., secs. 9–16, 21–28, and 33–36; T. 11 N., R. 5 W., secs. 2–11, 14–23, and 26–35; T. 11 N., R. 6 W., secs. 1–36, except that portion of secs. 6, 7, 18, 19, 30, and 31 lying westerly of U.S. Highway 395; T. 11 N., R. 7 W., that portion of sec. 1, lying easterly U.S. Highway 395; T. 12 N., R. 5 W., secs. 31–35; T. 12 N., R. 6 W., secs. 31–36; T. 12 N., R. 7 W., that portion of sec. 36 lying easterly of U.S. Highway 395.

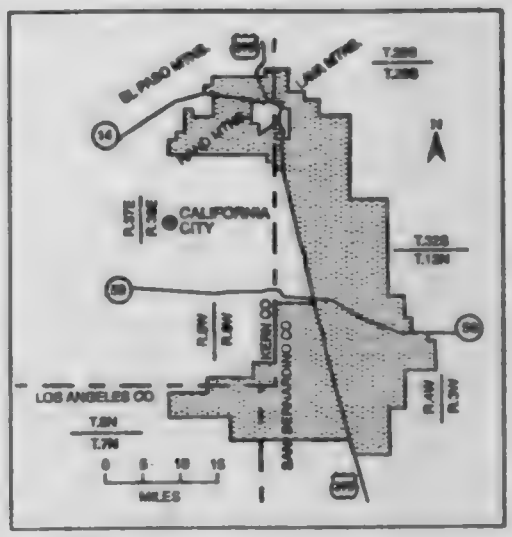

2. *Superior-Cronese Unit.* San Bernardino County. From Bureau of Land Management Maps: Cuddeback Lake 1978, Soda Mts. 1978, Victorville 1978, and Newberry Springs 1978. (Index map location B).

Mt. Diablo Meridian: T. 29 S., R. 42 E., secs. 35 and 36; T. 29 S., R. 43 E., secs. 25, 26, and 31–36; T. 29 S., R. 44 E., secs. 20–36; T. 29 S., R. 45 E., secs. 14–16, 19–23, and 25–36; T. 29 S., R. 46 E., secs. 30–32; T. 30 S., R. 42 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 30 S., R. 43 E., secs. 1–36; T 30 S., R. 44 E., secs. 1–36; T. 30 S., R. 45 E., secs. 1–36; T. 30 S., R. 46 E., secs. 3–36; T. 30 S., R. 47 E., secs. 7–10, 15–22, and 27–34, T. 31 S., R. 42 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 31 S., R. 43 E., secs. 1–36; T. 31 S., R. 44 E., secs. 1–36; T. 31 S., R. 45 E., secs. 1–36; T. 31 S., R. 46 E., secs. 1–36; T. 31 S., R. 47 E., secs. 3–10, 15–22, and 27–34; T. 32 S., R. 43 E., secs. 1–3, 10–15, 22–27, and 34–36; T. 32 S., R. 44 E., secs. 1–36; T. 32 S., R. 45 E., secs. 1–36; T. 32 S., R. 46 E., secs. 1–36; T. 32 S., R. 47 E., secs. 3–10, 15–22, and 27–34.

San Bernardino Meridian: T. 9 N., R. 1 W., that portion of secs. 1 and 2 lying northerly of Interstate Highway 15; T. 9 N., R. 1 E., that

portion of sec. 6 lying northerly of Interstate Highway 15; T. 10 N., R. 2 W., secs. 1–29; T. 10 N., R. 1 W., secs. 1–28, 30, and 33–36, except that portion of secs. 33–35 lying southwesterly of Interstate Highway 15; T. 10 N., R. 1 E., secs. 18, 19, 30, and 31; T. 10 N., R. 2 E., secs. 1–5, 8–17, and 22–34, except that portion of secs. 25, 26, and 34 lying southeasterly of Interstate Highway 15; T. 10 N., R. 3 E., secs. 1–12, 14–21, and 30, except that portion of secs. 11, 12, 14–16, 19–21, and 30 lying southeasterly of Interstate Highway 15; T. 10 N., R. 4 E., that portion of secs. 5–7 lying northwesterly of Interstate Highway 15; T. 11 N., R. 5 W., secs. 1 and 12; T. 11 N., R. 4 W., secs. 1–7, 9, 11, and 12; T. 11 N., R. 3 W., secs. 1–18; T. 11 N., R. 2 W., secs. 1–36; T. 11 N., R. 1 W., secs. 1–36; T. 11 N., R. 1 E., secs. 1–31; T. 11 N., R. 2 E., secs. 1–36 except sec. 31; T. 11 N., R. 3 E., secs. 1–36; T. 11 N., R. 4 E., secs. 1–34, except that portion of secs. 25, 26, 33, and 34 lying southeasterly of Interstate Highway 15; T. 11 N., R. 5 E., secs. 1–11 and 15–20, except that portion of secs. 1, 2, 10, 11, 15–17, 19, and 20 lying southeasterly of Interstate Highway 15; T. 12 N., R. 5 W., sec. 36; T. 12 N., R. 4 W., secs. 31–36; T. 12 N., R. 3 W., secs. 31–36; T. 12 N., R. 2 W., secs. 31–36; T. 12 N., R. 1 W., secs. 31–36; T. 12 N., R. 1 E., secs. 1–36; T. 12 N., R. 2 E., secs. 3–36; T. 12 N., R. 3 E., secs. 7–36; T. 12 N., R. 4 E., secs. 7–36; T. 12 N., R. 5 E., secs. 1–5 and 7–36; T. 12 N., R. 6 E., secs. 5–9, 15–22, and 27–34, except that portion of secs. 31–34 lying southerly of Interstate Highway 15; T. 13 N., R. 1 E., secs. 1–36; T. 13 N., R. 2 E., secs. 19 and 29–34; T. 13 N., R. 5 E., secs. 28–28 and 32–36; T. 14 N., R. 1 E., secs. 5–10, 15–23, and 24–36.

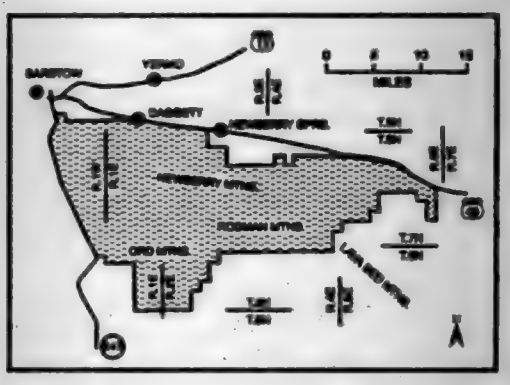

3. *Ord-Rodman Unit.* San Bernardino County. From Bureau of Land Management Maps: Newberry Springs 1978 and Victorville 1978. (Index map location C).

San Bernardino Meridian: T. 6 N., R. 1 E., secs. 1–6, 10–15, 22–27, and 34–36; T. 6 N., R. 2 E., secs. 1–11, 14–22, and 28–33; T. 7 N., R. 1 W., secs. 1–4, 9–15, 22–26, 35, and 36, except that portion of secs. 4, 9, 10, 15, 22, 23, 26, and 35 lying southwesterly of State Highway 247; T. 7 N., R. 1 E., secs. 1–36; T. 7 N., R. 2 E., secs. 1–36; T. 7 N., R. 3 E., secs. 1–36; T. 7 N., R. 4 E., secs. 1–36; T. 7 N., R. 5 E., secs. 2–11 and 15–19; T. 7 N., R. 6 E., secs. 2, 3, 11, and 14; T. 8 N., R. 1 W., secs. 1–18, 20–29, and 32–36, except that portion of secs. 6, 7, 17, 18, 20, 29, 32, and 33 lying southwesterly of State Highway 247; T. 8 N., R. 1 E., secs. 1–36; T. 8 N., R. 2 E., secs. 2–36; T. 8 N., R. 3 E., secs. 7 and 18–36; T. 8 N., R. 4 E., secs. 13–16 and 18–36; T. 8 N., R. 5 E., secs. 13–36, except that portion of secs. 13–18 lying northerly of Interstate Highway 40; T. 8 N., R. 6 E., secs. 18–21 and 27–36, except that portion of secs. 18–21, 27, 28, 34, and 35 lying northerly of Interstate Highway 40; T. 9 N., R. 1 W., secs. 19, 20, and 25–36, except that portion of secs. 19, 20, and 29–31 lying westerly of State Highway 247; T. 9 N., R. 1 E., secs. 25–36, except that portion of secs. 25–27 lying northerly of Interstate Highway 40; T. 9 N., R. 2 E., secs. 27–35, except that portion of secs. 27–30 lying northerly of Interstate Highway 40.

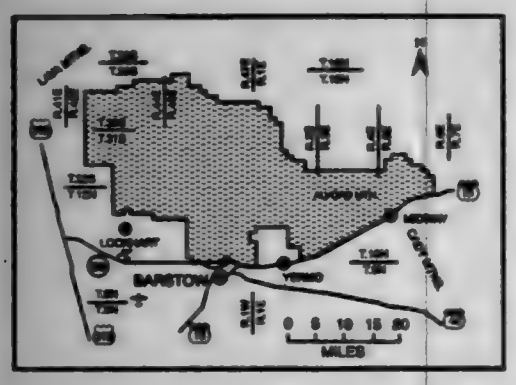

4. *Chuckwalla Unit.* Imperial and Riverside Counties. From Bureau of Land Management Maps: Chuckwalla #18 1978, Parker-Blythe #16 1978, Salton Sea #20 1978, and Midway Well #21 1979. (Index map location D).

San Bernardino Meridian: T. 3 S., R. 13 E., secs. 19–21 and 27–35; T. 4 S., R. 8 E., secs. 1–6, 8–16, 22–26, and 36; T. 4 S., R. 9 E., secs. 6–10, and 15–36; T. 4 S., R. 10 E., secs. 19–21, and 27–34; T. 4 S., R. 13 E., secs. 2–36 except secs. 12 and 13; T. 4 S., R. 14 E., secs. 27–36; T. 4 S., R. 15 E., secs. 31 and 32; T. 5 S., R. 9 E., secs. 1–4, 12, 13, and 24; T. 5 S., R. 10 E., secs. 2–36 except sec. 31; T. 5 S., R. 11 E., secs. 19–21 and 28–33; T. 5 S., R. 12 E., sec. 36; T. 5 S., R. 13 E., secs. 1–36 except secs. 6 and 7; T. 5 S., R. 14 E., secs. 1–36; T. 5 S., R. 15 E., secs. 4–9, 16–21, 25, S ½ sec. 26, S ½ sec. 27, and secs. 28–36; T. 5 S., R. 16 E., secs. 28–35; T. 6 S., R. 10 E., secs. 1–4, 9–16, 21–26, 35 and 36; T. 6 S., R. 11 E., secs. 4–36; T. 6 S., R. 12 E., secs. 1–36; T. 6 S., R. 13 E., secs. 1–36; T. 6 S., R. 14 E., secs. 1–36; T. 6 S., R. 15 E., secs. 1–36; T. 6 S., R. 16 E., secs. 1–36; T. 6 S., R. 17 E., secs. 5–9, and 14–36; T. 6 S., R. 18 E., secs. 29–36; T. 6 S., R. 19 E., secs. 31–36; T. 6 S., R. 20 E., secs. 31–34; T. 7 S., R. 11 E., sec. 1; T. 7 S., R. 12 E., secs. 1–6, 9–15, and 23–25; T. 7 S., R. 13 E., secs. 1–30 and 31–36; T. 7 S., R. 14 E., secs. 1–36; T. 7 S., R. 15 E., secs. 1–36; T. 7 S., R. 16 E., secs. 1–36; T. 7 S., R. 17 E., secs. 1–36; T. 7 S., R. 18 E., secs. 1–36; T. 7 S., R. 19 E., secs. 1–36; T. 7 S., R. 20 E., secs. 3–10, 14–23, and 26–35; T. 8 S., R. 13 E., secs. 1, 2, and 11–14; T. 8 S., R. 14 E., secs. 1–18, and secs. 21–26; T. 8 S., R. 15 E., secs. 1–30 and 34–36; T. 8 S., R. 16 E., secs. 1–36; T. 8 S., R. 17 E., secs. 1–36; T. 8 S., R. 18 E., secs. 1–36; T. 8 S., R. 19 E., secs. 1–36; T. 8 S., R. 20 E., secs. 3–10, 15–22, and 28–33; T. 9 S., R. 15 E., sec. 1; T. 9 S., R. 16 E., secs. 1–17, 20–29, and 32–36; T. 9 S., R. 17 E., secs. 1–36; T. 9 S., R. 18 E., secs. 1–36; T. 9 S., R. 19 E., secs. 1–36; T. 9 S., R. 20 E., secs. 5–8, 17–20, and 29–33; T. 10 S., R. 16 E., secs. 1–5, 9–16, and 22–26; T. 10 S., R. 17 E., secs. 1–36; T. 10 S., R. 18 E., secs. 1–36; T. 10 S., R. 19 E., secs. 1–36; T. 10 S., R. 20 E., secs. 3–36; T. 10 S., R. 21 E., secs. 18–21 and 28–34; T. 10 ½ S., R. 21 E., secs. 31–33; T. 11 S., R. 17 E., secs. 1–5 and 8–15; T. 11 S., R. 18 E., secs. 1–24; T. 11 S., R. 19 E., secs. 1–26, 35, and 36; T. 11 S., R. 20 E., secs. 1–23 and 26–34; T. 11 S., R. 21 E., secs. 4–8; T. 12 S., R. 19 E., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 12 S., R. 20 E., secs. 3–10, 15–22, and 27–34; T. 13 S., R. 19 E., secs. 1–3, 10–15, 22–27, and 34–36; T. 13 S., R. 20 E., secs. 3–10, 14–23, and 26–34.

5. *Pinto Mountain Unit.* Riverside and San Bernardino Counties. From Bureau of Land Management Maps: Yucca Valley 1982, Sheep Hole Mountains 1978, Chuckwalla 1978, and Palm Springs #17 1978. (Index map location E).

San Bernardino Meridian: T. 1 S., R. 9 E., secs. 10–15, 24, 25, and 36; T. 1 S., R. 10 E., secs. 7–36; T. 1 S., R. 11 E., secs. 7–36; T. 1 S., R. 12 E., secs. 7–36 except sec. 12; T. 1 S., R. 13 E., secs. 13–36; T. 1 S., R. 14 E., secs. 13–32; T. 1 S., R. 15 E., secs. 13–30 and 36; T. 1 S., R. 16 E., secs. 18, 19, and 30–32; T. 2 S., R. 9 E., secs. 1, 12, and 13; T. 2 S., R. 10 E., secs. 1–24; T. 2 S., R. 11 E., secs. 1–24; T. 2 S., R. 12 E., secs. 1–22 except sec. 13; T. 2 S., R. 13 E., secs. 3–6; T. 2 S., R. 15 E., sec. 1; T. 2 S., R. 16 E., secs. 4–9, 16, 17, 20, 21, 28, 29, 32, and 33; T. 3 S., R. 16 E., secs. 4, 5, 8, and 9.

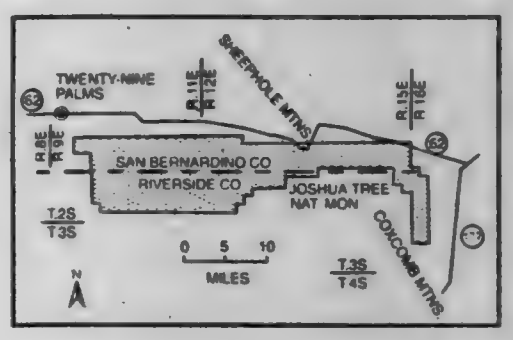

6. *Chemehuevi Unit.* San Bernardino County. From Bureau of Land Management Maps: Sheep Hole Mts. 1978, Parker 1979, Needles 1978, and Amboy 1991. (Index map location F).

San Bernardino Meridian: T. 1 S., R. 22 E., that portion of secs. 3–5, lying northwesterly of the Atchison Topeka and Santa Fe Railroad; T. 1 S., R. 23 E., that portion of secs. 1–3 lying northerly of the Atchison Topeka and Santa Fe Railroad, except that portion of sec. 1, lying easterly of U.S. Highway 95; T. 1 N., R. 22 E., secs. 1–4, 9–16, 20–29, and 32–36, except that portion of secs. 34–36 lying southerly of the Atchison Topeka and Santa Fe Railroad; T. 1 N., R. 23 E., secs. 1–36, except that portion of secs. 31–34 lying southerly of Atchison Topeka and Santa Fe Railroad; T. 1 N., R. 24 E., secs. 4–9, 16–21, and 29–31; T. 2 N., R. 18 E., secs. 1–5, and 9–14; T. 2 N., R. 19 E., secs. 2–10, and 16–18; T. 2 N., R. 22 E., secs. 1–5, 8–16, 21–28, and 33–36; T. 2 N., R. 23 E., secs. 5–8, 17–21, and 26–36; T. 2 N., R. 24 E., secs. 31 and 32; T. 3 N., R. 17 E., secs. 12, 13, 24, and 25; T. 3 N., R. 18 E., secs. 1–36; T. 3 N., R. 19 E., secs. 1–35; T. 3 N., R. 20 E., secs. 5–8, 18, and 19; T. 3 N., R. 21 E., secs. 1–5, 9–16, 23, and 24; T. 3 N., R. 22 E., secs. 1–36 except sec. 31; T. 3 N., R. 23 E., secs. 2–11, 14–22, and 28–32; T. 4 N., R. 18 E., secs. 1, 2, 10–15, 21–28, and 32–36; T. 4 N., R. 19 E., secs. 1–36; T. 4 N., R. 20 E., secs. 1–12, 16–20, and 29–32; T. 4 N., R. 21 E., secs. 1–17, 20–29, and 32–36; T. 4 N., R. 22 E., secs. 1–36; T. 4 N., R. 23 E., secs. 1–35; T. 4 N., R. 24 E., Secs 6, 7, 18, and 19; T. 5 N., R. 15 E., secs. 1–6; T. 5 N., R. 16 E., secs. 4–6; T. 5 N., R. 18 E., secs. 1–6, 8–17, 22–26, 35, and 36; T. 5 N., R. 19 E., secs. 1–36; T. 5 N., R. 20 E., secs. 1–36; T. 5 N., R. 21 E., secs. 1–36; T. 5 N., R. 22 E., secs. 2–36; (Unsurveyed) T. 5 N., R. 23 E., protracted secs. 19, and 29–33; T. 6 N., R. 14 E., secs. 1–3, 10–15, and 23–25; T. 6 N., R. 15 E., secs. 1–36; T. 6 N., R. 16 E., secs. 1–23, and 27–34; T. 6 N., R. 17 E., secs. 1–18, 22–26, and 36; T. 6 N., R. 18 E., secs. 1–36; T. 6 N., R. 19 E., secs. 1–36; T. 6 N., R. 20 E., secs. 1–36; T. 6 N., R. 21 E., secs. 1–36; T. 6 N., R. 22 E., secs. 3–10, 15–23, and 26–35; T. 7 N., R. 14 E., secs. 1–5, 8–17, 21–28, and 33–36; T. 7 N., R. 15 E., secs. 1–36; T. 7 N., R. 16 E., secs. 1–36; T. 7 N., R. 17 E., secs. 1–36; T. 7 N., R. 18 E., secs. 1–36; T. 7 N., R. 19 E., secs. 1–36; T. 7 N., R. 20 E., secs. 1–36; T. 7 N., R. 21 E., secs. 1–36; T. 7 N., R. 22 E., secs. 18–20, and 28–34; T. 8 N., R. 14 E., secs. 13, 23–28, and 31–36, except that portion of secs. 13, 23, 24, 26, 27, 28, 31, 32, and 33 lying northwesterly of Interstate Highway 40; T. 8 N., R. 15 E., secs. 9–36, except that portion of secs. 9–12, 17, and 18 lying northwesterly of Interstate Highway 40; T. 8 N., R. 16 E., secs. 1, 2, and 7–36, except that portion of secs. 1, 2, and 7–10 and 11 lying northerly of Interstate Highway 40; T. 8 N., R. 17 E., secs. 1–36, except that portion of secs. 1–6 lying northerly of Interstate Highway 40; T. 8 N., R. 18 E., secs. 1–36, except that portion of sec. 6 lying northerly of Interstate Highway 40; T. 8 N., R. 19 E., secs. 1–36; T. 8 N., R. 20 E., secs. 1–36; T. 8 N., R. 21 E., secs. 7, 17–21, and 27–35; T. 9 N., R. 18 E., that portion of secs. 31–36 lying southerly of Interstate Highway 40; T. 9 N., R. 19 E., secs. 23–29, and 31–36, except that portion of secs. 23, 24, 26–29, 31, and 32 lying northerly of Interstate Highway 40; T. 9 N., R. 20 E., secs. 19, 20, and 29–33, except that portion of secs. 19 and 20 lying northerly of Interstate Highway 40.

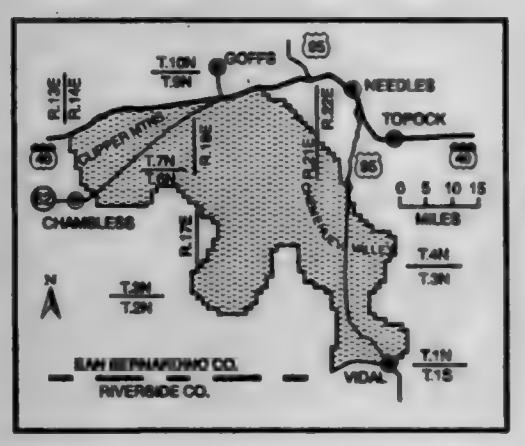

7. *Ivanpah Unit.* San Bernardino County. From Bureau of Land Management Maps: Amboy 1991, Ivanpah 1979, and Mesquite Lake 1990. (Index map location G).

San Bernardino Meridian: T. 9 N., R. 12 E., secs. 1, 2, 11–14, and 24; T. 9 N., R. 13 E., secs. 4–9, 16–21, and 28–30; T. 10 N., R. 12 E., secs. 25, 35, and 36; T. 10 N., R. 13 E., secs. 3–10, 16–21, and 28–33; T. 11 N., R. 12 E., secs. 1, 12, 13, 24, 25, and 36; T. 11 N., R. 13 E., secs. 1–12, 15–21, and 28–33; T. 11 N., R. 14 E., sec. 6; T. 12 N., R. 11 E., secs. 1–5 and 9–15; T. 12 N., R. 12 E., secs. 1–18, 21–27, 35, and 36; T. 12 N., R. 13 E., secs. 1–36; T. 12 N., R. 14 E., secs. 4–9, 16–21, and 29–32; T. 13 N., R. 10 E., secs. 1–5, 10–14, 24, and 25; T. 13 N., R. 11 E., secs. 1–36; T. 13 N., R. 12 E., secs. 1–36; T. 13 N., R. 13 E., secs. 1–36; T. 13 N., R. 14 E., secs. 3–9, 16–21, and 28–33; T. 14 N., R. 9 E., secs. 1, 12, 13, and 24; T. 14 N., R. 10 E., secs. 1–36; (Unsurveyed) T. 14 N., R. 11 E., Protracted secs. 1–35; T. 14 N., R. 11 E., sec. 36; T. 14 N., R. 12 E., secs. 1–36; T. 14 N., R. 13 E., secs. 1–36; T. 14 N., R. 14 E., secs. 1–5, 8–17, and 19–35; T. 14 N., R. 15 E., secs. 1–12, and 14–22; T. 14 N., R. 16 E., sec. 6; T. 15 N., R. 9 E., secs. 24, 25, and 36; T. 15 N., R. 10 E., secs. 1–36 except sec. 6; T. 15 N., R. 11 E., secs. 1–36; T. 15 N., R. 12 E., secs. 1–36; T. 15 N., R. 13 E., secs. 3–11 and 14–36; T. 15 N., R. 14 E., secs. 12, 13, 23–28, and 33–36; T. 15 N., R. 15 E., secs. 1–36; T. 15 N., R. 16 E., secs. 1–11, 14–22, and 28–33; T. 15½ N., R. 14 E., secs. 24 and 25; T. 15½ N., R. 15 E., secs. 19–36; T. 15½ N., R. 16 E., secs. 19–35; T. 16 N., R. 10 E., secs. 25, 35, and 36; T. 16 N., R. 11 E., secs. 1–36; T. 16 N., R. 12 E., secs. 1–36; T. 16 N., R. 12½ E., secs. 12, 13, 24, 25, and 36; T. 16 N., R. 13 E., secs. 7, 17–20, and 29–33; T. 16 N., R. 14 E., secs. 24, 25, 35 and 36, except that portion of secs. 24 and 35 lying northwesterly of Interstate Hwy. 15; T. 16 N., R. 15 E., secs. 1–3, 10–14, and 23–36; T. 16 N., R. 16 E., secs. 6–8, 16–22, and 26–36; T. 17 N., R. 11 E., secs. 1–5, 8–17, 20–29, an 31–36; T. 17 N., R. 12 E., secs. 3–10, 14–23, and 26–36; T. 18 N., R. 11 E., secs. 13, 14, 22–26, and 33–36; T. 18 N., R. 12 E., secs. 18–20, and 28–33.

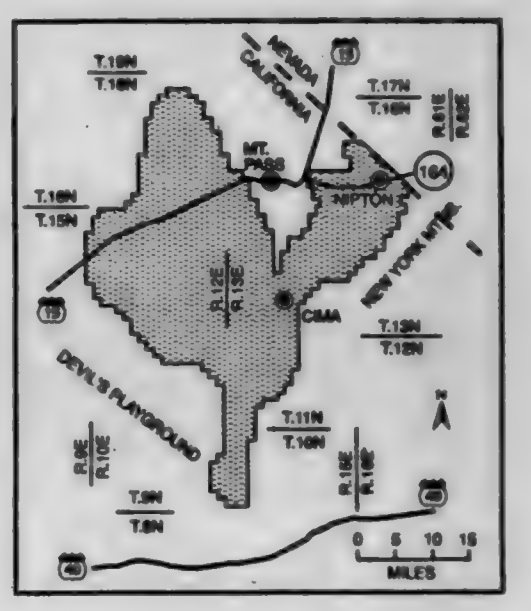

8. *Piute-Eldorado Unit.* San Bernardino County. From Bureau of Land Management Maps: Amboy 1991, Needles 1978, and Ivanpah 1979. (Index map location H).

San Bernardino Meridian: T. 8 N., R. 14 E., secs. 1–4, 8–17, 19–24, 26–30, 32, and 33, except that portion of secs. 13, 23, 24, 26–28, 32 and 33 lying southeasterly of Interstate Highway 40; T. 8 N., R. 15 E., secs. 1–12, 17, and 18, except that portion of secs. 1, 8–12, 17, and 18 lying southeasterly of Interstate Highway 40; T. 8 N., R. 16 E., secs. 1–10, except that portion of sections 1–3 and 6–10 lying southerly of Interstate Highway 40; T. 8 N., R. 17 E., that portion of secs. 1–6, lying northerly of Interstate Highway 40; T. 9 N., R. 14 E., secs. 1–3, 10–15, 22–28, and 33–36; T. 9 N., R. 15 E., secs. 1–36; T. 9 N., R. 16 E., secs. 1–36; T. 9 N., R. 17 E., secs. 1–36, except that portion of sec. 36 lying southerly of Interstate Highway 40; T. 9 N., R. 18 E.,

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secs. 1–36, except that portion of secs. 31–36 lying southerly of Interstate Highway 40; T. 9 N., R. 19 E., secs. 1–24 and 26–32, except that portion of secs. 26–29, 31, and 32 lying southerly of Interstate Highway 40; T. 9 N., R. 20 E., secs. 3–8 and 17–20, except that portion of secs. 19 and 20 lying southerly of Interstate Highway 40; T. 10 N., R. 14 E., secs. 11–14, 22–27, and 34–36; T. 10 N., R. 15 E., secs. 1–3, 9–16, and 18–36; T. 10 N., R. 16 E., secs. 1–36; T. 10 N., R. 17 E., secs. 1–36; T. 10 N., R. 18 E., secs. 1–36; T. 10 N., R. 19 E., secs. 1–36; T. 10 N., R. 20 E., secs. 1–36; T. 10 N., R. 21 E., secs. 3–10, 15–22, and 28–31; T. 11 N., R. 15 E., secs. 9, 15, 16, 21, 22, 25–29, and 33–36; T. 11 N., R. 16 E., secs. 9, 15, 16, 21–23, 25–28, 31, and 33–36; T. 11 N., R. 17 E., secs. 8, 12–17, and 19–36; T. 11 N., R. 18 E., secs. 1–4 and 7–36; T. 11 N., R. 19 E., secs. 1–13, 18, 19, 23–27, and 29–36; T. 11 N., R. 20 E., secs. 1–11, 14–23, and 26–35; T. 12 N., R. 19 E., secs. 1–36; T. 12 N., R. 20 E., secs. 3–11 and 13–36; T. 12 N., R. 21 E., secs. 19, 30, and 31; T. 13 N., R. 19 E., secs. 3–11 and 13–36; T. 13 N., R. 20 E., secs. 19 and 29–33; T. 14 N., R. 19 E., secs. 19 and 29–33.

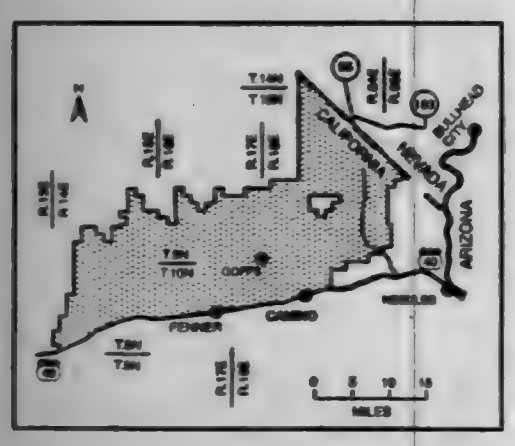

Nevada. Areas of land as follows:

9. *Piute-Eldorado Unit*. Clark County. From Bureau of Land Management Maps: Mesquite Lake 1990, Boulder City 1978, Ivanpah 1979, and Davis Dam 1979. (Index map location H).

Mt. Diablo Meridian: T. 23 S., R. 64 E., secs. 31–36, except that portion of sec. 31 lying northwesterly of the powerline and also except that portion of secs. 34–36 lying northeasterly of the powerline; T. 23½ S., R. 64 E., secs. 31–36, except that portion of sec. 31 lying northwesterly of the powerline; T. 23½ S., R. 65 E., that portion of sec. 31, lying southwesterly of the powerline; T. 24 S., R. 63 E., secs. 1, 2, 11–15, 22–28, and 33–36, except that portion of secs. 1, 2, 11, 14, and 15 lying northwesterly of the powerline and also except that portion of secs. 22, 27, 28, and 33 lying northwesterly of U.S. Highway 95; T. 24 S., R. 64 E., secs. 1–36; T. 24 S., R. 65 E., secs. 6, 7, 18, 19, 30, and 31; T. 25 S., R. 61 E., secs. 13–15, E ½ sec. 16, E ½ sec. 21, secs. 22–27, E ½ sec. 28, secs. 35 and 36; T. 25 S., R. 62 E., secs. 4–9, and secs. 16–36; T. 25 S., R. 63 E., secs. 1–4, 9–16, and 19–36, except that portion of secs. 4, 9, and 16 lying northwesterly of U.S. Highway 95; T. 25 S., R. 64 E., secs. 1–35 except secs. 13, 24, and 25,; T. 25 S. R. 65 E., sec. 6; T. 26 S., R. 61 E., secs. 1, 2, 11–14, 24, 25, and 36; T. 26 S., R. 62 E., secs. 1–36 except secs. 28 and 33; T. 26 S., R. 63 E., secs. 2–36 except sec. 12; T. 26 S., R. 64 E., secs. 18–20, and 29–33; T. 27 S., R. 62 E., secs. 1–3, 5–8, 10–15, 22–26, 35, and 36; T. 27 S., R. 62½ E., secs. 1, 12, 13, 24, 25, and 36; T. 27 S., R. 63 E., secs. 1–36; T. 27 S., R. 64 E., secs. 4–9, 16–21, and 28–36; T. 27 S., R. 65 E., secs. 31–35; T. 28 S., R. 62 E., secs. 1–3, 9–16, 21–28, and 33–36; T. 28 S., R. 63 E., secs. 1–20, and 29–32; T. 28 S., R. 64 E., secs. 1–18, 21–26, 35, and 36; T. 28 S., R. 65 E., secs. 2–11, 14–21, and 28–35; T. 29 S., R. 62 E., secs. 1–4, 9–16, 21–28, 34, 35 and 36; T. 29 S., R. 63 E., secs. 5–10, 15–23, and 26–36; T. 29 S., R. 64 E., secs. 1–3, 9–16, 21–28, and 31–36; T. 29 S., R. 65 E., secs. 2–36 except secs. 12 and 13; T. 29 S., R. 66 E., secs. 30–32; T. 30 S., R. 62 E., secs. 1, 2, and 11–14; T. 30 S., R. 63 E., secs. 1–36 except secs. 30 and 31; T. 30 S., R. 64 E., secs. 1–36; T. 30 S., R. 65 E., secs. 1–36; T. 30 S., R. 66 E., secs. 4–9, 16–21, and 28–33; T. 31 S., R. 63 E., secs. 1–5, 8–16, 22–26, and 36; T. 31 S., R. 64 E., secs. 1–36; T. 31 S., R. 65 E., secs. 1–36, except that portion of sec. 36 lying southwesterly of State Highway 163; T. 31 S., R. 66 E., secs. 3–10, 15–22, and 27–34, except that portion of sec. 31 lying southwesterly of State Highway 163; T. 32 S., R. 64 E., secs. 1–6, 8–16, 22–26, and 36; T. 32 S., R. 65 E., secs. 1–12, 17–20, and 29–32, except that portion of secs. 1, and 9–12 lying southeasterly or easterly of State Highway 163; T. 32 S., R. 66 E., that portion of secs. 3–6 lying northerly of State Highway 163; T. 33 S., R. 65 E., sec. 5.

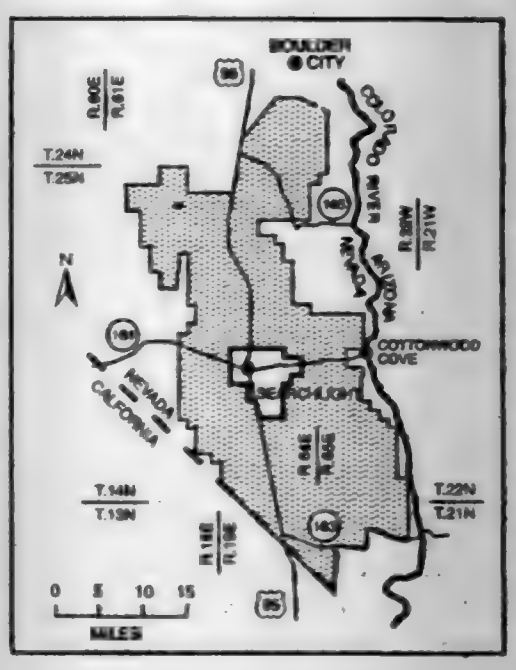

10. *Mormon Mesa Unit*. Clark and Lincoln Counties. From Bureau of Land Management Maps: Pahranagat 1978, Clover Mts. 1978, Overton 1978, Indian Springs 1979, Lake Mead 1979, and Las Vegas 1986. (Index map location I).

Mt. Diablo Meridian: T. 9 S., R. 62 E., secs. 13–15, 22–27, and 34–36, except that portion of secs. 15, 22, 27, and 34 lying westerly of the easterly boundary line of the Desert National Wildlife Range; T. 9 S., R. 63 E., secs. 18, 19, 30, and 31; T. 10 S., R. 62 E., secs. 1, 2, 11–14, 23–25, and 36 except that portion of secs. 14, 23, 35, and 36 lying westerly of the easterly boundary line of the Desert National Wildlife Range; T. 10 S., R. 63 E., secs. 6, 7, 10–15, 18–20, and 22–36; T. 10 S., R. 64 E., secs. 7–24 and 26–34; T. 10 S., R. 65 E., secs. 7, 8, 18, and 19; T. 10 S., R. 66 E., secs. 24–26 and 34–36, except that portion of secs. 24–26, 34, and 35 lying northwesterly of Union Pacific Railroad; T. 10 S., R. 67 E., secs. 1–4, 9–24, and 27–33, except that portion of secs. 3, 4, 9, 16–19, 24–26, 34 and 35 lying northwesterly of Union Pacific Railroad; T. 10½ S., R. 66 E., secs. 33–36, except that portion of sec. 33 lying northwesterly of Union Pacific Railroad; T. 10½ S., R. 67 E., secs. 31 and 32; T. 11 S., R. 62 E., that portion of sec. 1 lying easterly of the easterly boundary line of the Desert National Wildlife Range; T. 11 S., R. 63 E., secs. 1–36; T. 11 S., R. 64 E., secs. 4–9, 17–20, 30, and 31; T. 11 S., R. 65 E., secs. 25 and 36; T. 11 S., R. 66 E., secs. 1–5, 8–11, 14–17, 19–23, and 26–36, except that portion of secs. 4, 5, 8, and 17 lying northwesterly of Union Pacific Railroad; T. 11 S., R. 67 E. sec. 6; T. 11½ S., R. 65 E., secs. 35 and 36; T. 12 S., R. 63 E., secs. 1–36; T. 12 S., R. 64 E., secs. 6, 7, and 25–36; T. 12 S., R. 65 E., secs. 1, 2, 10–15, and 22–36; T. 12 S., R. 66 E., secs. 1–36; T. 12 S., R. 67 E., secs. 6–8, 16–22, and 27–33; T. 12 S., R. 68 E., secs. 23–29 and 31–36; T. 12 S., R. 69 E., secs. 1–5, 8–17, and 19–36; T. 12½ S., R. 62 E., that portion of sec. 36, lying easterly of the easterly boundary line of the Desert National Wildlife Range; T. 13 S., R. 62 E., that portion of secs. 1, 12, 13, 24, and 25 lying easterly of the easterly line of the Desert National Wildlife Range; T. 13 S., R. 63 E., secs. 1–36; T. 13 S., R. 64 E., secs. 1–36; T. 13 S., R. 65 E., secs. 1–36, except that portion of sec. 31 lying southwesterly of the northerly right-of-way line of State Highway 168; T. 13 S., R. 66 E., secs. 1–36; T. 13 S., R. 67 E., secs. 1–36; T. 13 S., R. 68 E., secs. 1–36, except that portion of secs. 25 and 33–36 lying southeasterly of Interstate Highway 15; T. 13 S., R. 69 E., secs. 1–30, except that portion of secs. 25–30 lying southerly of Interstate Highway 15; T. 13 S., R. 70 E., secs. 6, 7, 18, 19, 30, and 31, except that portion of secs. 30 and 31 lying southerly of Interstate Highway 15; T. 13½ S., R. 63 E., secs. 31–36; T. 13½ S., R. 64 E., secs. 31–36, except that portion of sec. 36 lying southwesterly of State Highway 168; T. 14 S., R. 63 E., secs. 1–23, and 26–35; T. 14 S., R. 64 E., secs. 2–6, 8–11, 15, and 16; T. 14 S., R. 65 E., secs. 1–6 and 8–16, except that portion of secs. 5, 6, 8, 9, and 13–16 lying southwesterly of State Highway 168; T. 14 S., R. 66 E., secs. 1–8, 10–14, 17, 18, and 23–25, except that

portion of secs. 8 and 17 lying easterly of the Union Pacific Railroad; T. 14 S., R. 67 E., secs. 1–12, 14–22, and 28–32, except that portion of secs. 12, 14, 15, 21, 22, 28, 29, 31 and 32 lying southerly of Interstate Highway 15; T. 14 S., R. 68 E., that portion of secs. 4–7 lying northwesterly of Interstate Highway 15; T. 15 S., R. 63 E., secs. 2–11, 14–22, and 27–34; T. 16 S., R. 63 E., secs. 3–10, 15–22, and 28–33; T. 17 S., R. 63 E., secs. 7–9, 16–21, and 28–32, except that portion of secs. 29 and 32 lying easterly of the westerly boundary line of the Apex Disposal Road; T. 18 S., R. 63 E., secs. 5–8, 17–19, and 29–31, except that portion of secs. 5, 8, 17–19, and 29–31 lying easterly of the westerly boundary line of the Apex Disposal Road, and that portion of sec. 31 lying westerly of the easterly boundary line of Desert National Wildlife Range.

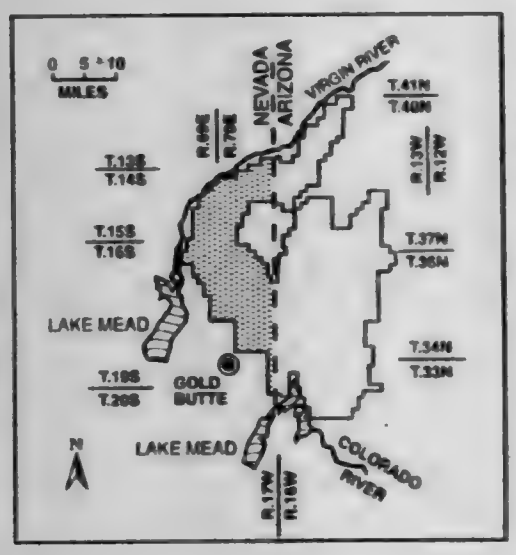

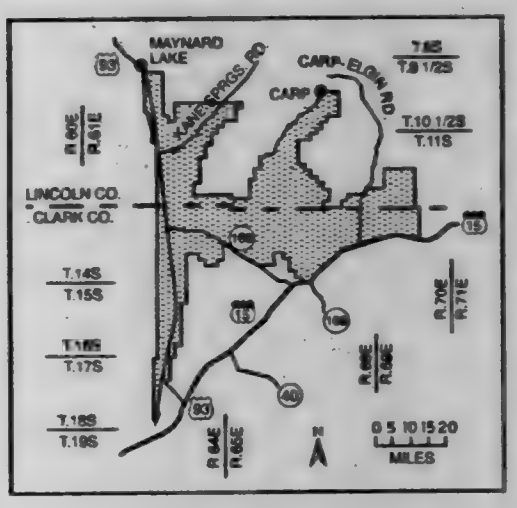

11. *Gold Butte-Pakoon Unit.* Clark County. From Bureau of Land Management Maps: Overton 1978 and Lake Mead 1979. (Index map location J).

Mt. Diablo Meridian: T. 13 S., R. 71 E., secs. 32–34; T. 14 S., R. 69 E., secs. 24–26, and 34–36; T. 14 S., R. 70 E., secs. 1, and 10–36; T. 14 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 15 S., R. 69 E., secs. 1–3, 9–16, 21–28, and 33–36; T. 15 S., R. 70 E., secs. 2–11, 15–22, and 28–33; T. 16 S., R. 69 E., secs. 1–36 except secs. 6, 7, and 29–32; T. 16 S., R. 70 E., secs. 4–36 except sec. 12; T. 16 S., R. 71 E., secs. 19, and 29–32; T. 17 S., R. 69 E., secs. 1–3, 11–14, 24, 25, and 36; T. 17 S., R. 70 E., secs. 1–36; T. 17 S., R. 71 E., secs. 4–10, 15–22, and 27–34; T. 18 S., R. 69 E., sec. 1; T. 18 S., R. 70 E., secs. 1–6, 10–15, 22–27, and 34–36; T. 18 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 19 S., R. 71 E., secs. 3, 4, 9, 10, 15, 16, 21, 22, 27, 28, 33 and 34; T. 20 S., R. 71 E., secs. 3 and 4.

12. *Beaver Dam Slope Unit.* Lincoln County. From Bureau of Land Management Maps: Clover Mountains 1978 and Overton 1978. (Index map location K).

Mt. Diablo Meridian: T. 8½ S., R. 71 E., that portion of sec. 34 lying south of a westerly extension of the north line of sec. 26, T. 41 S., R. 20 W. (Salt Lake Meridian), Washington County, Utah; T. 9 S., R. 71 E., secs. 3, 10, 15–17, 20–22, 27–29, and 32–34; T. 10 S., R. 70 E., secs. 19–36; T. 10 S., R. 71 E., secs. 3–5, 7–10, 15–22, and 27–34; T. 11 S., R. 70 E., secs. 1–36; T. 11 S., R. 71 E., secs. 3–10, 15–22, and 27–34; T. 12 S., R. 70 E., secs. 1–12, 14–23, and 28–33; T. 12 S., R. 71 E., secs. 3–10.

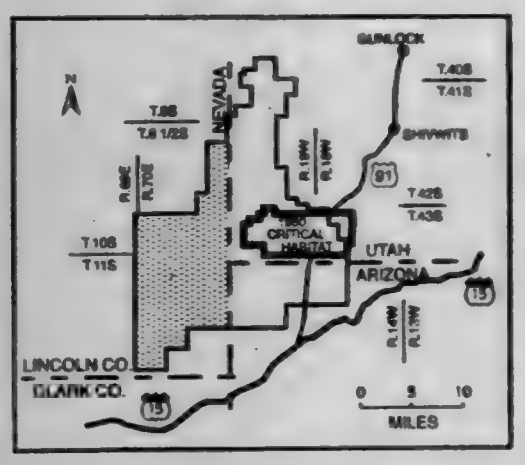

Utah. Areas of land as follows:

13. *Beaver Dam Slope Unit.* Washington County. From Bureau of Land Management Maps: St. George 1980 and Clover Mts. 1978. (Index map location K).

Salt Lake Meridian: T. 40 S., R. 19 W., S½ sec. 28, S½ sec. 29, S½ sec. 31, secs. 32 and 33; T. 41 S., R. 19 W., S½ sec. 2, S½ sec. 3, secs. 4, 5, 6, E½ sec. 7, secs. 8–11, 15–17, E½ sec. 18, and secs. 19–22, and 28–33; T. 41 S., R. 20 W., E½ sec. 1, secs. 24–26, 35, and 36; T. 42 S., R. 19 W., secs. 4–9, 16–22, and 27–34; T. 42 S., R. 20 W., secs. 1, 2, 11–14, 23–26, 35, and 36; T. 43 S., R. 18 W., secs. 7, 8, S½ sec. 16, secs. 17–21, and 27–34; T. 43 S., R. 19 W., secs. 1–36 except N½ sec. 1; T. 43 S., R. 20 W., secs. 1, 2, 11–14, 23–26, 35, and 36.

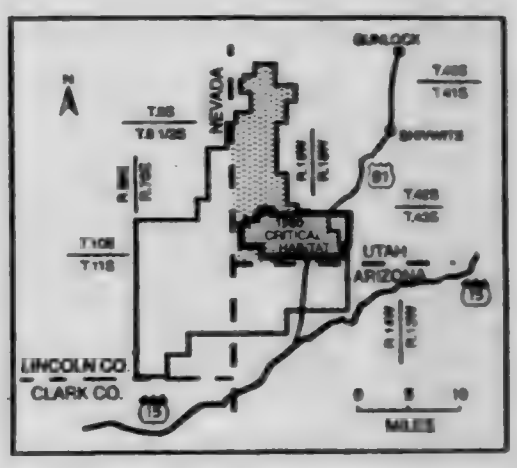

14. *Upper Virgin River Unit.* Washington County. From Bureau of Land Management Map: St. George 1980. (Index map location L).

Salt Lake Meridian: T. 41 S., R. 13 W., secs. 16–21, 27–30, and N½N½ sec. 33, and N½N½ sec. 34; T. 41 S., R. 14 W., secs. 13–17 and 19–34, except that portion of secs. 26, 27, and 32–34 lying southeasterly of Interstate Highway 15; T. 41 S., R. 15 W., secs. 14, 19, 20, and 22–36; T. 41 S., R. 16 W., secs. 4, 9, 10, 14–16, 19, 21–28, 30, N½ sec. 31, NW¼ and E½ sec. 32, and secs. 33–36; T. 41 S., R. 17 W., secs. 8, 9, 14–17, NE¼ sec. 21, N½ sec. 22, NW¼ and E½ sec. 23, sec. 24, and NE¼ sec. 25; T. 42 S., R. 14 W., that portion of secs. 5 and 6, lying northwesterly of Interstate 15; T. 42 S., R. 15 W., secs. 1, N½ and N½S½ sec. 2, NE¼ and W½ sec. 3, secs. 4–9, W½ sec. 10, N½N½ sec. 12, W½W½ sec. 15, secs. 16–18, N½ and the N½S½ sec. 19, N½ and the N½S½ sec. 20, secs. 21, and 22,; except that portion of secs. 1 and 12, lying southeasterly of Interstate Highway 15 and except that portion of secs. 15, 20, 21, and 22 lying southeasterly of State Highway 34; T. 42 S., R. 16 W., secs. 1, 2, NW¼ and the NE¼ and the SE¼ sec. 3, N½ sec. 4, NE¼ sec. 10, NW¼ and the NE¼ and the SE¼ sec. 11, , sec. 12, E½ and the E½W½ sec. 13, NE¼ sec. 24.

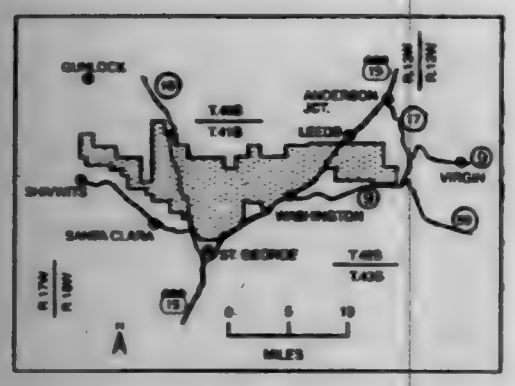

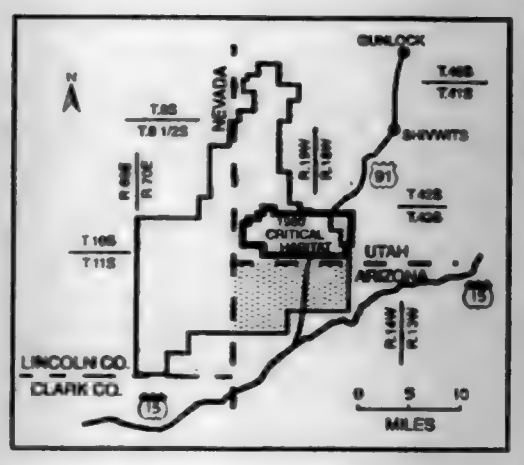

Arizona. Areas of land as follows:

15. *Beaver Dam Slope Unit.* Mohave County. From Bureau of Land Management Maps: Overton 1978 and Littlefield 1987. (Index map location K).

Gila and Salt River Meridian: T. 41 N., R. 14 W., secs. 6, 7, 18, and 19; T. 41 N., R. 15 W., secs. 1–24, 30, and 31; T. 41 N., R. 16 W., secs. 1–5, 8–17, 20–29, and 32–36; T. 42 N., R. 14 W., sec. 31; T. 42 N., R. 15 W., secs. 31–36; T. 42 N., R. 16 W., secs. 32–36.

16. *Gold Butte-Pakoon Unit.* Mohave County. From Bureau of Land Management Maps: Overton 1978, Littlefield 1987, Mount Trumbull 1986, and Lake Mead 1979. (Index map location J.)

Gila and Salt River Meridian: T. 32 N., R. 14 W., secs. 6 and 7; T. 32 N., R. 15 W., secs. 1–18, except those portions of secs. 13–18 lying south of the Lake Mead National Recreation area boundary line; T. 32 N., R. 16 W., secs. 1, 2, 12, and 13; T. 32½ N., R. 15 W., secs. 31–36; T. 32½ N., R. 16 W., secs. 35 and 36; T. 33 N., R. 14 W., secs. 3–9, 16–21, and 26–32; T. 33 N., R. 15 W., secs. 1–36; T. 33 N., R. 16 W., secs. 1–14, 17–20, 23–26, 29–32, 35, and 36; T. 34 N., R. 14 W., secs. 4–9, 16–21, and 27–34; T. 34 N., R. 15 W., secs. 1–36; T. 34 N., R. 16 W., secs. 1–36; T. 35 N., R. 14 W., secs. 2–35 except secs. 12, 13, 24, 25, and 36; T. 35 N., R. 15 W., secs. 1–36; T. 35 N., R. 16 W., secs. 1–36; T. 36 N., R. 13 W., secs. 6–8, and 17–19; T. 36 N., R. 14 W., secs. 1–35 except sec. 25; T. 36 N., R. 15 W., secs. 1–36; T. 36 N., R. 16 W., secs. 1–36 except secs. 5–7; T. 37 N., R. 14 W., secs. 1–36 except secs. 5–7, and 18; T. 37 N., R. 15 W., secs. 3–36 except secs. 11–14; T. 37 N., R. 16 W., secs. 1, 2, 11–14, 22–28, and 33–36; T. 38 N., R. 13 W., secs. 19, 30 and 31; T. 38 N., R. 14 W., secs. 23–26, and 34–36; T. 38 N., R. 15 W., secs. 5–8, and 27–34; T. 38 N., R. 16 W., secs. 1–36 except secs. 24–26, 31, 32, and 35; T. 39 N., R. 15 W., secs. 2–10, 15–21, and 29–32; T. 39 N., R. 16 W., secs. 1, 12, 13, 20, 23–29, and 32–36; T. 40 N., R. 14 W., secs. 6 and 7; T. 40 N., R. 15 W., secs. 1, 10–15, and 21–36.

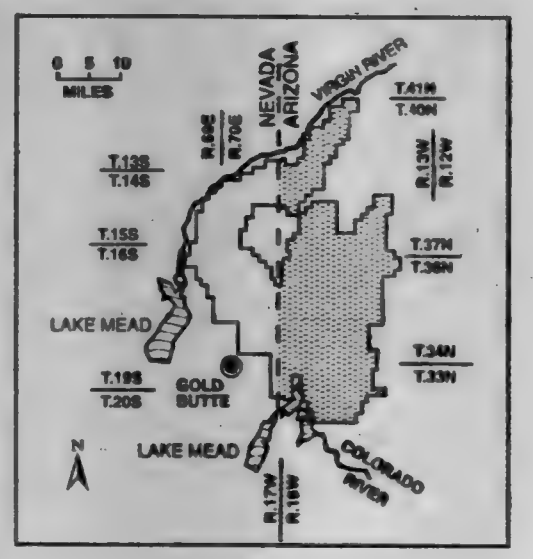

Primary constituent elements: desert lands that are used or potentially used by the desert tortoise for nesting, sheltering, foraging, dispersal, or gene flow.

Dated: July 28, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–20992 Filed 8–27–93; 8:45 am]

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Federal Register

Monday
August 30, 1993

Part VII

Federal Election Commission

11 CFR Parts 100 and 114
Definition of "Member" of a Membership Association; Rule

VOL 58 ISS 166 AG 30 1993 UMI

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1993–20]

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations to more specifically define who may qualify as a "member" of a membership association. The Federal Election Campaign Act of 1971 as amended ("FECA" or "the Act") permits membership associations to solicit contributions from their members for a separate segregated fund ("SSF"), which contributions can be used for Federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications involving express electoral advocacy. The new requirements apply to all persons seeking to become members, including individuals and corporations.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 100.8(b)(4)(iv), 114.1(e) and 114.7, defining who is a "member" of a membership association.

The current regulations were adopted in 1977. Since that time, the United States Supreme Court has addressed this issue, and the Commission has issued numerous advisory opinions interpreting the regulatory language.

The Commission is now articulating a general rule that will reflect the Supreme Court's ruling and subsequent advisory opinions. The new rule should greatly reduce the need for individual membership associations to seek advisory opinions, based on each association's unique set of circumstances.

A Notice of Proposed Rulemaking ("NPRM") for this purpose was published in the **Federal Register** on October 8, 1992. 57 FR 46348. Under the proposed definition, for a person to qualify as a member of a membership association for this purpose, the association's articles and by-laws would have to specifically provide for members. In addition, the association would have to expressly solicit that person as a member; the person would have to actively accept the solicitation; and the association would have to acknowledge the membership. Finally, each member would have to have a significant financial interest in and/or be authorized to vote for some or all of the officers or directors of the membership association. The revised definition would apply to individuals, corporations, and all other persons seeking to become members. In the case of corporate members, however, these rules apply for the purpose of determining to whom the association may communicate for partisan communications under 11 CFR 114.8(h) and to which corporations a trade association may direct a request for PAC solicitation approval under 11 CFR 114.8(d).

The Commission received 36 comments in response to this Notice. In addition, a public hearing was held on December 9, 1992, at which representatives of 11 organizations and one individual testified.

After considering the comments and testimony, as well as the pertinent case law and Commission precedents, the Commission has decided that the rule as proposed in the NPRM should be modified in two ways. First, the voting requirement has been modified so that the ability to vote for at least one member with full participatory and voting rights on the association's highest governing body, coupled with a regular dues obligation, is sufficient to confer membership.

Second, farm cooperatives and entities eligible to participate in programs administered by the Rural Electric Administration ("REA") may solicit members of the cooperative's regional, State or local affiliates. However, all of the political committees established, financed, maintained or controlled by the cooperative and its regional, State or local affiliates are considered affiliated committees subject to the contribution limits set forth at 11 CFR 110.1 and 110.2.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 25, 1993.

Explanation and Justification

Under 2 U.S.C. 441b(b)(4)(C) and 441(b)(2)(A), an incorporated membership organization, cooperative, or corporation without capital stock, or a separate segregated fund ("SSF") established by such an entity, may solicit contributions to the SSF from, and make partisan communications to, its "members." Prior to these revisions, the rules defined "members" to include all persons currently satisfying the requirements for membership in any such association.

In 1982, the Supreme Court construed this language as it applied to a nonprofit, noncapital stock corporation whose articles of incorporation stated that it had no members. *Federal Election Commission* v. *National Right to Work Committee* (*"NRWC"*), 459 U.S. 196. The NRWC had argued that it should be able to treat as members, and thus solicit funds to its SSF from, individuals who had at one time responded, not necessarily financially, to an NRWC advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," stating that to accept it "would virtually excise from the statute the restriction of solicitation to 'members.'" Id. at 203.

Relying on 2 U.S.C 441(b)(4)(C)'s brief legislative history, the Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. As stated by the Court, viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" under that section. *Id.* at 204. In holding that the NRWC's purported "members" did not meet this test, the Court noted, "Members play no part in the operation or administration of the corporation; they elect no corporate officials * * *. There is no indication that NRWC's asserted members exercise any control over the expenditure of their contributions." *Id.* at 206.

Following the *NRWC* decision, the Commission issued a number of Advisory Opinions on this point. In these opinions, the Commission generally required both a financial attachment, usually the regular payment of dues, and a meaningful organizational attachment, usually the right to vote for at least some members of the membership association's governing board, before a person was considered a member for 2 U.S.C.

441b(b)(4)(C) purposes. E.g., Advisory Opinions 1984–33, 1985–11, 1987–13, 1987–31, 1992–41. These requirements applied not only to individual members, but to corporate and other members as well. E.g., Advisory Opinions 1986–13, 1990–18, 1991–24.

Section 100.8 and Section 114.1

Revised paragraph 100.8(b)(4)(iv) involves an association's right to make partisan communications to its members, while revised paragraph 114.1(e) involves solicitation of funds by a membership association from its members. The two sections are identical, and are therefore discussed together.

Some commenters thought the proposed amendments should apply only to the solicitation of members, and not to the right to make partisan communications. One person also argued that the Commission had failed to give proper notice in the NPRM of this impending change.

The NPRM mainly focused on solicitation, consistent with the *NRWC* decision and the Commission's subsequent advisory opinions. However, the Notice cited both CFR sections in the first paragraph of its "SUPPLEMENTARY INFORMATION" section, noted that the requirements of these two sections are identical, and contained the text of the proposed amendments to both sections. This is more than sufficient to meet the Administrative Procedure Act's ("APA") requirement that an NPRM include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3).

The concepts addressed in 11 CFR 114.1(e) and 100.8(b)(4)(iv) are parallel, and have always been treated as such. The Commission believes the definition of restricted class should continue to be the same, whether in the context of solicitations or of partisan communications. The final rules so provide.

New paragraphs 100.8(b)(4)(iv)(A) and 114.1(e)(1) define "membership association" as a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that expressly provides for "members" in its articles and by-laws; expressly solicits members; and expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list.

The Commission intends that the term "articles and by-laws" be read broadly, to cover governing documents which are not called precisely by that name. For example, if an association has a "constitution," instead of articles of incorporation, it would meet this requirement if the constitution specifically provides for members.

The Commission notes that certain states require that either the articles of incorporation or the by-laws, but not both, of a membership association specifically provide for members. Membership associations in those states may have drafted their governing instruments accordingly. The Commission intends that an organization meeting these state requirements be deemed a membership association for purposes of these rules. However, the fact that a State does not require such organizations to state in their articles and by-laws that they have members does not absolve associations organized under the laws of that State from compliance with this requirement.

Paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2) define "members" as all persons who are currently satisfying the requirements for membership in a membership association, following former 11 CFR 100.8(b)(4)(iv) and 114.1(e), but add additional requirements consistent with Commission precedents and its reading of the *NRWC* decision. The first such requirement is that the member affirmatively accept the membership association's invitation to become a member.

A question was raised as to whether sending a check to an association would be sufficient to meet this requirement. The Commission believes that in most instances it would not, because the check might be a contribution, or intended to pay for merchandise ordered from the association. However, a check with the notation "dues" or some similar indication, either on the check or an accompanying written document, would be sufficient.

The rules then set out the dues obligations and voting rights required to qualify as a member. They provide three situations where persons qualify as members "per se," by meeting particular requirements. In most instances the payment of regular dues, coupled with specified voting rights, is required to confer membership. However, a significant financial attachment, not merely the payment of dues, or the right to vote for all members of the association's highest governing body, can also be sufficient by itself to confer membership.

Some commenters urged the Commission to consider the "significant financial or organizational" tie requirement as disjunctive—that is, either a significant financial tie or a significant organizational tie should be sufficient to meet this requirement. In fact, while the proposed (and final) rules provide that, in certain instances, a financial or an organizational tie can be so strong as to in and of itself confer membership status, the Commission's experience has been that most organizations do not meet the "significant" test for either tie. That is why the rules also provide that a person may become a member through a combination of the two requirements.

On the other hand, some commenters opposed the concept of looking only to financial ties to satisfy the requirements for membership, characterizing it as allowing "big money" interests to "buy memberships" in membership associations. However, these rules cover not only issue-oriented membership organizations (the focus of most of the comments), but also such entities as stock and commodity exchanges. Members of stock exchanges, for example, may pay tens of thousands of dollars to acquire and retain their seats, even though no voting rights accrue to their membership. The Commission therefore affirms its view that a financial attachment alone may serve as a sufficient attachment of holders of these seats, and those in comparable situations, to qualify as members for this purpose.

Under paragraphs 100.8(b)(4)(iv)(B)(*1*) and 114.1(e)(2)(1) only those persons who have a significant financial attachment to the association, such as a significant investment or ownership stake, but not merely the payment of dues, qualify as members irrespective of whether they have any concurrent voting rights.

The Commission anticipates that most members will qualify as such pursuant to paragraphs 100.8(b)(4)(iv)(B)(*2*) and 114.1(e)(2)(ii). Under these provisions, members are required to pay, on a regular basis, a specific amount of dues that is predetermined by the association; and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member who has such rights. The Commission stresses that so-called "governance" voting is required, as opposed to voting for the association's policies or positions.

The NPRM took this same general approach but proposed that, if dues were required, the governance right would be met only if the member was entitled to vote directly either for a majority of those on the highest governing body of the membership

association, or for those who select the majority of those on the highest governing body.

This particular proposal generated a wide range of comments. Some supported this requirement, and one suggested that it be strengthened to include not only the right to vote for, but also the right to nominate, a majority or totality of the board. Others asked that the proposal be modified so that the right to vote for a substantial percentage of the board, but not a majority, would also be sufficient to confer membership. Still others felt that even less restrictive voting requirements, or no voting requirements, should be sufficient if other organizational attachments were present.

After reviewing these comments and testimony presented in this rulemaking, the Commission has amended the proposed rule to require that dues-paying members be required to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member who has such rights. This approach is consistent with past Commission advisory opinions and enforcement actions, and meets many of the objections from commenters who felt the proposed rules were overly-restrictive in this area.

The Commission considers the *NRWC* decision to have overruled prior advisory opinions that were inconsistent with its holding. However, several advisory opinions issued following that decision, including Advisory Opinions 1991–24, 1990–18, 1989–18, 1988–38, 1988–39, 1987–13, 1986–13, 1984–63, 1984–33, and 1984–22, have explicitly or implicitly required more substantial voting rights than those required by these revised rules. Any such advisory opinion is overruled to the extent it requires more extensive voting rights than those contained in paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2).

As already noted, some commenters argued that no governance rights should be required. They expressed the view that other organizational attachments, such as placement on a mailing list, receipt of a membership card, or the ability to vote on policy statements, should be a sufficient organizational tie for purposes of the *NRWC* decision. However, the Commission does not believe the alternative ties recommended as sufficient by these commenters, independent of any governance rights, are in fact sufficient to meet the *NRWC* decision's test, as applied in subsequent advisory opinions and enforcement actions.

The Commission notes that the rules require some further organizational ties, in addition to voting: e.g., the requirements that members affirmatively accept the association's invitation to become a member, and that the association expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list.

The focus of the voting requirement, however, is on more active participation by members in the conduct of the association. The Commission does not believe that the alternative ties recommended by these commenters are in and of themselves sufficient to meet the applicable standard, and has therefore adopted the voting requirements discussed above.

Some of these commenters argued that, since no all owners of one share of a corporation's stock are allowed to vote on corporate matters, by analogy, members of membership associations should not be required to have the voting rights proposed in the Notice. In response, the Commission first notes that the FECA expressly authorizes corporations to solicit contributions of their PAC's from their shareholders. 2 U.S.C. 441b(b)(4)(B). In addition, stock ownership differs significantly from the interests involved in this rulemaking. The ownership of even one share of stock provides a direct financial stake and continuous equity interest in the company. This is substantially different from the type of relationship most membership associations have with their members.

Under paragraphs 100.8(b)(4)(iv)(B)(*3*) and 114.1(e)(2)(iii), a person who is entitled to vote directly for all of those on the highest governing body of a membership association is considered a member. This corresponds to paragraphs 100.8(b)(4)(iv)(B)(*1*) and 114.1(e)(2)(i), *supra*, which confer membership on those with a significant financial attachment to the association.

A number of commenters expressed concern that the rule as published in the NPRM would significantly tighten current membership requirements, thereby reducing the number of people from whom membership associations could solicit contributions. However, the proposed rules were not only consistent with pertinent Commission advisory opinions, they were even less restrictive in some instances.

For example, in Advisory Opinion 1992–41, which was issued after the NPRM was published and the public hearing held, the Commission ruled that certain individuals were not "members" of a non-profit corporation for purposes of 2 U.S.C. 441b(b)(4)(C), even though they had the right to vote for all members of the corporation's Board of Directors. The fact that these individuals paid only a one-time $25 membership fee was held insufficient to meet the "financial" tie the Commission had consistently found to be required under the *NRWC* decision. However, under both the proposed and the final rules, these individuals are considered "members" for their voting rights alone, irrespective of any financial contribution. Advisory Opinion 1992–41 is thus overruled to the extent it requires the payment of dues in addition to the right to vote for the entire governing body to be considered a member of purposes of these rules.

Paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) state that the Commission may consider, on a case by case basis, whether persons who have a significant financial and organizational attachment to the association that does not precisely fit any of the circumstances set forth in paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2) may nevertheless qualify as members under these rules.

For example, some commenters requested that the dues requirement be waived for retired members, both in recognition of the reduced circumstances sometimes faced by retirees and in appreciation for the long-time support provided by these members. Also, some organizations confer "lifetime" status, either upon a one-time payment of a substantial sum, or after payment of regular dues for a specified period of time.

Advisory Opinion 1987–5 allowed a membership organization to continue to solicit from "life members," a class of persons composed of individuals who had paid regular dues for at least 10 consecutive years immediately preceding the year they reached age 65 or older. "Life members" were no longer required to pay annual dues, but they retained all the privileges of regular members, including the "right to full voting participation." The Commission concluded that these individuals had "made a substantial financial commitment to the Association, effectively prepaying a lifetime dues obligation by the payments" made in the qualifying period.

One organization testified at the hearing on these rules that it confers voting rights on "lifetime members," defined by the organization as those who make a substantial "up front" contribution equal to at least five years of annual dues. Others gain these rights only after five consecutive years of

paying dues. Paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) state that the Commission may consider on a case by case basis whether such persons, or those in comparable situations, have such significant financial and/or organizational attachments to the association as to qualify as members under this rule.

Even though the "life members" involved in Advisory Opinion 1987–5 retained the full voting rights of other members, paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) require only that those considered for membership under this provision "retain voting rights in the association." The Commission intends, however, that this provision incorporate the requirement set forth in paragraphs 100.8(b)(4)(iv)(B)(*2*) and 114.1(e)(2)(ii) that members be required to vote for "at least one member who has full participatory and voting rights" on the association's highest governing body, or for those who select one such member.

Some comments were received from associations that have "student," "apprentice," or other membership categories with no or nominal dues, based on such members' perceived inability to pay higher dues. Paragraphs 100.8(b)(4)(iv)(C) and 144.1(e)(3) state that those in this situation may also be considered members for purposes of these rules on a case by case basis. For example, student members who pay a lower amount of dues while in school may be considered members as long as they hold some voting rights in the association.

Some associations confer "honorary membership" status on individual non-members who have provided some service to the association, performed public service of a type supported by the association, or undertaken some comparable activity. Often honorary members need not pay dues, and do not participate in the governance of the association. Nevertheless, some commenters asked that they be considered part of the membership class.

The Commission believes that the same requirements that apply to solicitation of an association's general membership should also apply to its solicitation of honorary members. That is, unless such members meet the same financial and organizational attachment standards as do other members, they should not be considered members for solicitation purposes.

Some commenters urged that the proposed rules be amended, or interpreted, so as to overturn the results in Advisory Opinions 1987–31, 1988–38 and 1988–39. These opinions held that, since only one membership exists for each seat on a stock exchange or comparable organization, only one person per seat should be considered a member for section 441b(b)(4)(C) purposes. In those opinions, the Commission held that, in most instances, the owner of the seat (rather than the lessee) should be considered the member of the organization. The only situation in which the lessee would be considered the member would occur if the lessee acquired all of the lessor's voting rights and obligations to pay dues, fees, and other charges assessed during the term of the lease.

Some commenters read the NPRM as conferring membership status on both owners and lessees of such seats. These commenters argued that both classes have sufficiently strong financial and organizational attachments to qualify as solicitable members, and urged the Commission to so state in adopting the final rule. However, the Commission believes that Advisory Opinions 1987–31, 1988–38 and 1988–39 should remain controlling in this situation. As long as there is only one membership involved, it is inappropriate to allow more than one person to be considered a member.

Paragraphs 100.8(b)(iv)(4)(iv)(D) and 114.1(e)(4) state that members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. This language follows that of the former rules.

Section 114.7 Membership Organizations, Cooperatives, or Corporations Without Capital Stock

The provisions of paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2) that require both a financial and an organizational attachment for members of most membership associations clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body.

The NPRM sought comments on whether this approach should be expanded to three- or more-tiered associations, such as those with national, state, and local affiliates. Several multi-tiered associations responded, all arguing that the approach should be expanded at least through three-tiered associations.

The Commission believes the same criteria that govern solicitation by two-tiered associations should govern that of three- or more-tiered associations. That is, if members of the local level of an association with national, state and local tiers have the requisite ties to both the state and the national tiers, all levels can cross-solicit across all three tiers.

For example, one membership organization stated in its comments that members of each of its local societies elect a delegate to the state society, and the state society elects a delegate to the national governing body. In addition, members of local and state societies pay dues to those societies, which in turn forward a portion of those funds as dues to the national society. These ties between the national and local societies of this association are such that the national may solicit from members of the locals.

The Commission has consistently held that, absent such attachments, multi-tiered organizations cannot solicit across all tiers. E.g., Advisory Opinions 1981–23, 1991–24, 1992–9. However, based on comments and testimony received in connection with this rulemaking, the Commission believes that an exception to this general rule is justified in the case of farm cooperatives, as defined in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, as well as to those entities eligible for assistance under the Rural Electrification Act of 1936 as amended, 7 U.S.C. 901–950aa–1.

A cooperative is a voluntary economic association organized to provide economic services, without gain, to itself, and to the members who own and control it. Two or more cooperatives may join together to form a federated cooperative, thereby increasing the types of goods and/or services provided to their members.

While members of federated farm and rural electric cooperatives do not have the precise financial and organizational ties required by these rules, they nevertheless have significant ties that cross-cut all levels of organization. The Commission believes these cooperatives' structure and organization are comparable to that of federations of trade associations, defined at 11 CFR 114.8(g)(1) as organizations representing trade associations involved in the same or an allied line of commerce. Such federations are authorized to solicit members of the federation's regional, State or local affiliates or members under certain circumstances. 11 CFR 114.8(g). In addition, a corporation or SSF established by a corporation may solicit the executive or administrative personnel of all its subsidiaries, branches, divisions and affiliates and their families. 11 CFR 114.5(g)(1).

Because the structure of those entities covered for the first time by these new rules differs from the membership associations defined at 11 CFR 100.8(b)(4)(iv) and 114.1(e), the

Commission believes that the new language authorizing this indirect solicitation should not be included in these sections. Rather, the Commission is adding a new paragraph (k) for this purpose to 11 CFR 114.7, which discusses the general solicitation rights of membership organizations, cooperatives, and corporations without capitol stock.

Paragraph (k)(1) states that a federated cooperative as defined in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, or a rural cooperative eligible for assistance under Chapter 31 of Title 7 of the United States Code, may solicit the members of the cooperative's regional, State or local affiliates, provided that all of the political committees established, financed, maintained or controlled by the cooperative and its regional, State or local affiliates are considered one political committee for the purposes of the limitations set forth at 11 CFR 110.1 and 110.2. Under these rules, two or more affiliated committees are treated as a single committee for the purposes of the FECA's contribution limits, so that all contributions made or received by affiliated committees count against the same limits. See 11 CFR 110.3(a)(1).

The National Council of Farmer Cooperatives ("NCFC"), an association that represents more than 90% of all farm cooperatives, recommended in its comment that, to avoid overreaching, the Commission utilize the definition of "cooperative associations" set forth in the Agricultural Marketing Act of 1929, *supra*. That language, which was developed to describe associations eligible for special credit programs, defines "cooperative association" as "any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products so engaged, and also * * * any association in which farmers act together in purchasing, testing, grading, processing, distribution, and/or furnishing farm supplies and/or farm business services." The statute contains various additional safeguards as to permissible lines of business, operation, and member control required of such associations.

The Commission believes that this same approach should be extended to rural utility cooperatives that are eligible for assistance under the REA. These cooperatives function much as discussed above, so the same reasoning can be used to justify this treatment. Paragraph (k)(1) thus incorporates both federated cooperatives as defined in 42 U.S.C. 1141j and cooperatives that are eligible for assistance under the REA. The affiliation requirement is consistent with the rule governing indirect solicitation by federations of trade associations, 11 CFR 114.8(g).

Paragraph (k)(2) incorporates by reference the general requirements on disbursements for communications in connection with a Federal election to a restricted class found at 11 CFR 114.3.

As already noted, the Commission has held in the past that agricultural and rural utility cooperatives could not cross solicit between more than two tiers. See, e.g., Advisory Opinions 1980–48, 1981–23, and 1992–9. These holdings are now overruled.

Other Concerns Raised by Commenters

One commenter, who represents a non-profit ideological corporation that he believes to be exempt from the FECA's ban on independent corporate expenditures under the Supreme Court's decision in *FEC* v. *Massachusetts Citizens for Life ("MCFL")*, 479 U.S. 238 (1986), argued that that case also prohibits the application of the "member" rules to such organizations. However, the *MCFL* Court never addressed the question of solicitations for PAC's or partisan communications to members.

Rather, the case involved funds raised for the organization that could be used, *inter alia*, for independent expenditures. These funds are different from contributions solicited from members to be used to support a PAC. It is these latter funds that serve as the basis for this rulemaking.

The *MCFL* Court made a clear distinction between expenditures and contributions, holding that greater restrictions can apply in the case of contributions. Since contributions to the PAC's of these corporations can be limited, it logically follows that the solicitation restrictions contained in these rules apply as well.

One commenter argued that the proposed rule would violate the Regulatory Flexibility Act, 5 U.S.C. 601–612, because it would have a "significant economic impact" on a number of small entities. However, the cost of any required action, such as amending an association's articles of incorporation or by-laws, should not be significant. The comment objected, in particular, to the voting requirements proposed in the NPRM, as well as to the imposition of any voting rights as a precondition of membership. However, as discussed above, the Commission believes that some voting rights are mandated by the Supreme Court's *NRWC* decision, as interpreted in a number of advisory opinions, so any small entities affected by the rule should already have been complying with these requirements. Moreover, the requirements have been modified so that the right to vote for only one member of the association's highest governing body, or those who select one such member, is sufficient to confer membership. This is substantially less restrictive that the standard proposed in the NPRM, and also than that applied in previous Commission advisory opinions and enforcement actions. Thus, rather than imposing a significant burden, the rules lessen a long-standing requirement.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Federal Election Campaign Act in this area.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 is amended by revising paragraph (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(4) * * *

(iv) (A) For purposes of paragraph (b)(4)(iv) of this section, *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

(*1*) Expressly provides for "members" in its articles and by-laws;

(*2*) Expressly solicits members; and

(*3*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, *members* means all persons

who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(*1*) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(*2*) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or

(*3*) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B)(*2*) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members if they retain voting rights in the association.

(D) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(*1*) through (*3*) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 is amended by revising paragraph (e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e)(1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

(i) Expressly provides for "members" in its articles and by-laws;

(ii) Expressly solicits members; and

(iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) *Members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has fully participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or

(iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(3) Notwithstanding the requirements of paragraph (e)(2)(ii) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members if they retain voting rights in the association.

(4) Notwithstanding the requirements of paragraphs (e)(2) (i) through (iii) of this section, members of a local union are considered to be members of any national or international union of which the local, union is a part and of any federation with which the local, national, or a international union is affiliated.

* * * * *

5. In section 114.7, paragraph (k) is added to read as follows:

§ 114.7 Membership organizations, cooperatives, or corporations without capital stock.

* * * * *

(k)(1) A federated cooperative as defined in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, or a rural cooperative eligible for assistance under chapter 31 or title 7 of the United States Code, may solicit the members of the cooperative's regional, state or local affiliates, provided that all of the political committees established, financed, maintained or controlled by the cooperative and its regional, State or local affiliates are considered one political committee for the purposes of the limitations in 11 CFR 110.1 and 110.2.

(2) A cooperative as described in paragraph (k)(1) of this section may make communications to its members under the provisions of 11 CFR 114.3.

Dated: August 25, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

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LIST OF PUBLIC LAWS

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
1-699	(869-019-00004-6)	21.00	Jan. 1, 1993
700-1199	(869-019-00005-4)	17.00	Jan. 1, 1993
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
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27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-019-00009-7)	20.00	Jan. 1, 1993
52	(869-019-00010-1)	28.00	Jan. 1, 1993
53-209	(869-019-00011-9)	21.00	Jan. 1, 1993
210-299	(869-019-00012-7)	30.00	Jan. 1, 1993
300-399	(869-019-00013-5)	15.00	Jan. 1, 1993
400-699	(869-019-00014-3)	17.00	Jan. 1, 1993
700-899	(869-019-00015-1)	21.00	Jan. 1, 1993
900-999	(869-019-00016-0)	33.00	Jan. 1, 1993
1000-1059	(869-019-00017-8)	20.00	Jan. 1, 1993
1060-1119	(869-019-00018-6)	13.00	Jan. 1, 1993
1120-1199	(869-019-00019-4)	11.00	Jan. 1, 1993
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9 Parts:			
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10 Parts:			
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51-199	(869-019-00030-5)	21.00	Jan. 1, 1993
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400-499	(869-019-00032-1)	20.00	Jan. 1, 1993
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11	(869-019-00034-8)	13.00	Jan. 1, 1993
12 Parts:			
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1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
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29 Parts:			
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1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
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30 Parts:			
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630-699	(869-019-00124-7)	14.00	[7] July 1, 1991
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Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1990

Title	Stock Number	Price	Revision Date
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

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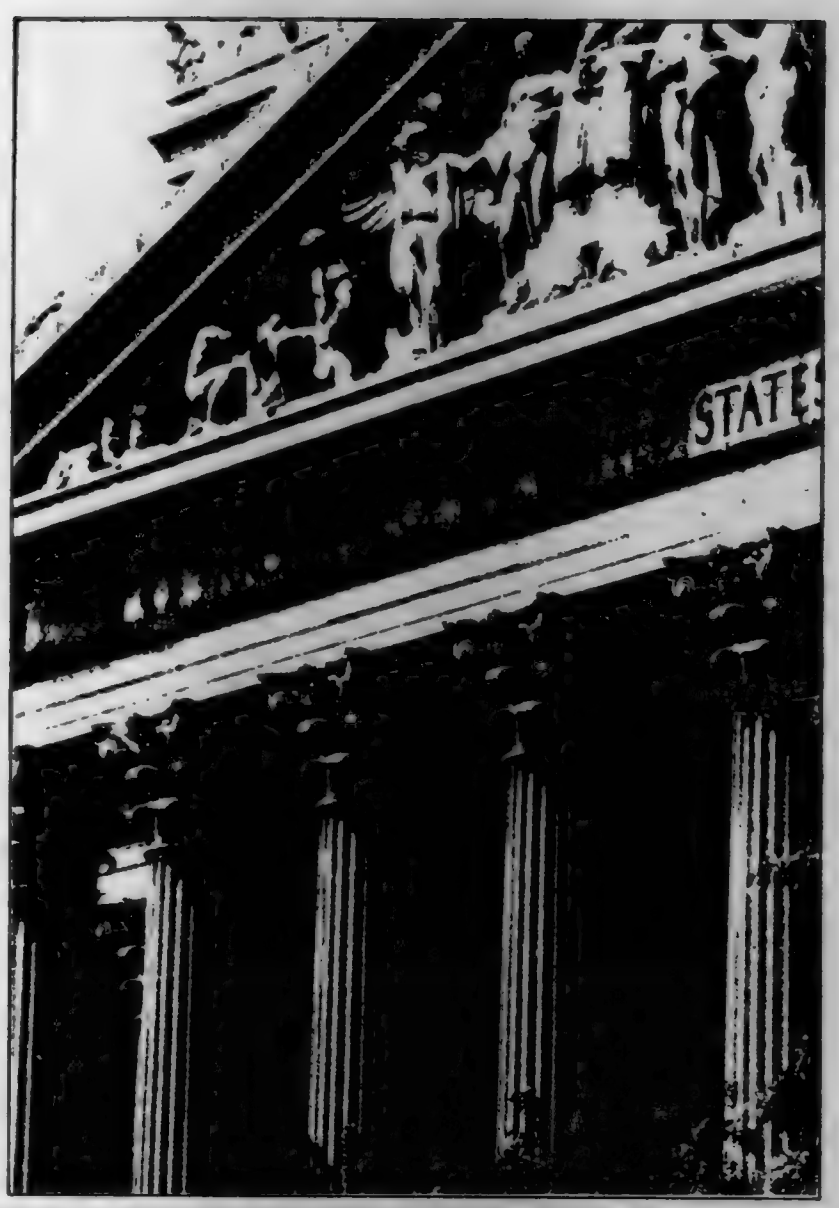

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August 31, 1993

Briefings on How To Use the Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–33 of August 19, 1993

Determination Pursuant to Section 2(b)(2) of the Mirgration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate African refugees who have returned to their countries of origin as qualifying for reintegration assistance, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the Federal Register.

William J. Clinton

THE WHITE HOUSE,
Washington, August 19, 1993.

[FR Doc. 93–21341
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Presidential Documents

Presidential Determination No. 93–34 of August 19, 1993

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended, and Amendment to Presidential Determination 92–39 of August 17, 1992

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $6,300,000 of the $14,000,000 of the funds previously authorized for use in support of Angolan repatriation be available to meet the urgent and unexpected needs of Mozambican refugees and returnees. This determination amends Presidential Determination 92–39 of August 17, 1992, to permit the use of up to $6,300,000 of the funds authorized by that determination from the U.S. Emergency Refugee and Migration Assistance Fund to meet the needs of Mozambican refugees and returnees through contributions to the United Nations High Commissioner for Refugees.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 19, 1993.

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Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 73

RIN: 3150–AD30

Day Firing Qualification Courses for Tactical Response Team Members, Armed Response Personnel, and Guards at Category I Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for armed security force personnel at fuel cycle facilities possessing formula quantities of strategic special nuclear material (Category I licensees). Tactical Response Team members, armed response personnel, and guards at these facilities will be required to qualify and annually requalify for use of their assigned weapons using new day firing qualification courses. This action is necessary to ensure that these personnel are able to perform their assigned response duties during tactical engagements.

EFFECTIVE DATE: February 28, 1993.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3634.

SUPPLEMENTARY INFORMATION:

Background

Existing day firing qualification courses for Tactical Response Team members[1], armed response personnel,[2] and guards[3] at Category I licensees need to be modified to require enhanced proficiency in weapon manipulation skills in order to more effectively protect the facilities in the event of a hostile tactical engagement. Currently, Tactical Response Team members, armed response personnel, and guards at these facilities are required to qualify and annually requalify for day firing of their assigned weapons in accordance with criteria set forth in Appendix B of 10 CFR part 73. This appendix states that, for handgun qualification, the national police course of fire or an equivalent nationally recognized course is required and for semiautomatic rifles the course required is the 1976 edition of the National Rifle Association (NRA) Highpower Rifle Rules book or an equivalent nationally recognized course. For qualification with the shotgun, the current course of fire consists of hip firing the weapon from a 15-yard distance and shoulder firing from a 25-yard distance. These courses of fire are more oriented towards marksmanship than to weapons manipulation skills (e.g., reloading, shooting failure drills, and changing positions while firing). Although these marksmanship oriented courses were appropriate at the time they were specified, the NRC has developed an increased awareness of the evolution of the capabilities and tactics employed by the criminal and terrorist elements. Therefore, the NRC has specified, in 10 CFR 73.1, the capabilities that should be ascribed to individuals or groups that pose a threat to Category I facilities (i.e., the design basis threat). These assumed capabilities should constitute the basis for physical protection system design. The design basis threat includes a small, well trained and armed, dedicated group, possessing paramilitary capabilities.

For the reasons explained above, the NRC has decided to establish new day firing courses for the purpose of qualifying Tactical Response Team members, armed response personnel, and guards at Category I licensees for use of their assigned weapons. The techniques and methods required to successfully complete the day firing qualification courses specified in this final rule are oriented primarily toward weapons manipulation skills in addition to marksmanship and are considered necessary to survive a lethal confrontation. These amendments require that Tactical Response Team members, armed response personnel, and guards qualify and annually requalify for day firing with assigned weapons by meeting minimum qualification criteria specified in Appendix H of 10 CFR part 73. The day firing qualification courses defined in this final rule are largely based on those developed by the Department of Energy for the purpose of qualifying its security inspectors who have the same duties as Category I licensee Tactical Response Teams, armed response personnel, and guards. These courses of fire include weapons manipulation skills that are necessary in tactical situations and demonstrate the ability to effectively use the weapons to protect the facility and strategic special nuclear material from a group of individuals possessing the capabilities ascribed to the design basis threat.

Summary of Public Comments

The comment period for the proposed rule published December 13, 1991 (56 FR 65024) expired on March 13, 1992. This Federal Register Notice contained proposed requirements for both day firing qualification and physical fitness programs. Three letters of comment were received. The NRC has decided to make substantive changes to the physical fitness related requirements and is republishing these amended requirements in a new proposed rule to solicit additional public comment. Therefore, this comment summary addresses only the comments on the day firing qualification course requirements which are being published as a final rule. The following comment summary and resolution addresses these comments.

1. *Comment.* One commenter stated that the need has not been clearly established for the more stringent firearms qualifications regulations.

Response. As discussed in the preamble of the proposed rule, the purpose of the more stringent day firing qualification courses was to make them consistent regarding the level of

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[1] "Tactical Response Team" means the primary response force for each shift which can be identified by a distinctive item of uniform, armed with specified weapons, and whose other duties permit immediate response.

[2] "Armed Response Personnel" means persons, not necessarily uniformed, whose primary duty in the event of attempted theft of special nuclear material or radiological sabotage shall be to respond, armed and equipped, to prevent or delay such actions.

[3] "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

specificity and proficiency with the night firing requirements published in 1988. Because existing licensees' Weapons Qualifications Plans contained weapon qualification courses which were judged to be similar to the courses being proposed, the proposed rule stated the opinion that codifying the courses in a regulation would add no new burden to the existing licensees. Nevertheless, as a result of this comment, the NRC reviewed whether the benefits to the public health and safety or to the national defense and security justify more stringent firearms qualification courses than those provided by the existing regulation.

This review has determined that these marksmanship oriented courses were appropriate at the time they were developed, but the NRC has developed an increased awareness of the evolution of the capabilities and tactics employed by the criminal and terrorist elements. The knowledge that the NRC has concerning the firepower, body armor, tactics, training, and equipment which can be ascribed to the design basis threat has broadened since Appendix B of 10 CFR part 73 was established and has been accounted for in 10 CFR 73.1(a)(2)(i). The design basis threat includes a small, well trained and armed, dedicated group, possessing paramilitary capabilities. Appendix B of 10 CFR part 73 allows handgun qualification via the national police course of fire, and rifle qualification via a 1976 National Rifle Association rulebook. These courses of fire emphasize marksmanship and do not test weapons manipulation skills (e.g., reloading, shooting failure drills, and changing positions while firing). The techniques and methods required to successfully complete the day firing qualification courses specified in this final rule are oriented toward weapons manipulation skills in addition to marksmanship and are considered to provide a significant improvement in the ability of licensee security forces to survive a lethal confrontation.

2. *Comment.* One commenter requested that Appendix H of 10 CFR 73.46 specify how head shots are to be scored for stage 2 of the handgun course.

Response. The B–27 target consists of a silhouette of a standing person and contains qualification scoring rings for shots aimed at the center target mass, but not the head. Stage 2 of the handgun qualification course of fire requires the shooter to fire two rounds at the center target mass followed by one round at the head. A description of a template for the center of the head, and the scoring scheme, are described in Appendix A of the Department of Energy's "Firearms Qualification Courses." Hits in the center of this template are scored five points and hits on the remainder of the silhouette are scored three points. The NRC does not believe that further description of this scoring technique in Appendix H of 10 CFR 73.46 is necessary. However, the NRC recognizes that other targets exist for which the scoring technique may be more explicit (such as the TQ–15 target). Therefore, Appendix H has been amended in the final rule to allow the use of such targets as an alternative to the B–27 provided that these targets are at least as difficult as the B–27 target (e.g., neck shots should not count the same as head shots or center mass shots).

3. *Comment.* Two commenters noted an error in that the handgun course contained distances of both 14 and 15 yards.

Response. Appendix H has been amended to correct this error.

4. *Comment.* One commenter suggested that the NRC allow either a single or double action revolver for stage 7 at the 50-yard distance in the handgun course (Note: the commenter identified stage 6 of the handgun course but the 50 yard distance is only found in stage 7).

Response. The NRC does not believe that the wording for stage 7 needs modification. Stage 7 of the handgun qualification course of fire does not specify a single or double action revolver, because either is permitted. Therefore, this modification has not been made.

5. *Comment.* One commenter noted that stages 5 and 6 of the rifle course were to be used for .30 caliber weapons for TRT qualifications only.

The commenter stated that this limits the maximum score for the standard rifle (i.e., stages 1 through 4) to 110 points and suggested that 70% of this maximum score (77 points) be specified as the minimum qualifying score for the standard rifle instead of 70% of 150 points.

Response. The NRC agrees that minimum qualifying scores should be specified separately for standard and larger caliber rifles because there may be times that a security officer may need to qualify for one but not the other. Therefore, the specific qualifying scores have been deleted from Appendix H which now specifies that 70 percent is the minimum qualifying score.

6. *Comment.* One commenter suggested that failure to qualify should result in a 3-day suspension from armed duty rather than the proposed 7-day suspension. The commenter stated that the 7-day suspension may cause the individual to be out of a job for 7 days before he could requalify. The commenter noted that nonqualified personnel would usually be utilized in an unarmed position. However, because few of these positions exist, the 7-day waiting period could cause layoffs. Another commenter stated that the 7-day and 12-month suspensions are potentially the most significant and costly impacts of the rule. This commenter stated that extending the waiting periods beyond the time required to retrain the officer appears to be punitive, does not enhance the security program's effectiveness, and induces unnecessary costs. The commenter suggested that the rule be amended to require that an officer who fails to achieve the minimum qualifying score be removed from armed officer duty and complete a documented period of retraining prior to any subsequent attempt to qualify or requalify. The commenter further suggested that the NRC consider requiring that officers may not fire for record more than once on the same calendar day. Additionally, if an officer fails to qualify on two successive attempts, that individual would be required to receive additional training and fire two consecutive qualifying scores prior to being reassigned to armed officer duties.

Response. The NRC agrees that retraining an individual to the point of qualifying or requalifying can be accomplished in less time than the period specified in the proposed rule. Therefore, the NRC has adopted the suggestion to limit the suspension to the amount of time required to retrain individuals to the point that they can qualify or requalify and believes that this change satisfies the concerns of both commenters.

7. *Comment.* One commenter suggested that the same rationale for allowing multiple physical fitness qualifications be used in the development of weapons qualifications. The commenter stated that these qualifications, like the physical fitness qualifications, would reflect consistency with the environments in which individuals must perform their duties. The commenter further suggested that the weapons qualification requirements are appropriate for TRT members but are excessive for armed response personnel and for "static response positions" (e.g., operators of central and secondary alarm stations and security personnel which control entry or exit portals).

Response. This commenter is referring to the fact that physical fitness performance testing which was also contained in the proposed rulemaking (56 FR 65024) required Tactical

Response Team members to pass a more stringent test than guards and armed response personnel. This was because the TRT members duties were to perform offensive combative tasks as opposed to defensive combative tasks required of other security personnel. The NRC disagrees that this logic can also be applied to weapons qualification courses. It is recognized that physical capabilities required for Tactical Response Team members, armed response personnel, and guards to perform their duties satisfactorily vary depending upon job tasks. But, any armed response officer on site, regardless of duty station, could be involved in a violent confrontation requiring the use of his or her weapon, especially in areas of access or egress control. As a matter of fact, the reason that the 3-yard distance is included in the rule for weapon qualification for handguns is that violent confrontations which occur at access or egress locations are expected to be at close range. Also, the rule as written already limits the training to only assigned weapons. Therefore, the NRC has decided not to adopt this commenter's suggestion.

8. *Comment.* One commenter suggested that handgun qualification be limited to 25 yards or less because physical security personnel have shoulder fired weapons available for shots of greater distance.

Response. The NRC recognizes that the 50-yard distance is near the maximum distance at which a handgun is effective for the average shooter. However, the NRC believes that security officers should be familiar with handgun performance at greater distances because an adversary could penetrate the protected area in such a short period of time that the security officer may be tempted to use a handgun instead of retrieving a shoulder fired weapon. Because the current requirement in Appendix B of 10 CFR part 73 references the national police course, which requires a total of 24 shots fired, applying the final rule in Appendix H is actually a relaxation of the requirement because it calls for only 6 shots. For these reasons the NRC believes that the requirement is reasonable and has retained it in the final rule.

9. *Comment.* One commenter suggested that the position description in the handgun course be amended from "reload with six rounds" to "reload" because the automatic pistol will reload in a different manner than the revolver.

Response. The NRC agrees with this comment and Appendix H has been modified to reflect this suggested change in the final rule.

10. *Comment.* One commenter stated, without providing the rationale, that the timing for qualifying with handguns (stage 1 and 4, string 3) and for rifles (stage 2 at 25 yards) are unrealistic and additional time should be considered.

Response. The NRC believes that the times prescribed in the handgun qualification course of fire are justified. Although law enforcement statistics show that police officers seldom fire, reload, and continue a confrontation, the NRC Design Basis Threat ascribes greater capabilities to adversaries engaged in malevolent activities against Category I licensees than those typically encountered during law enforcement type engagements. The security officers must be able to manipulate their weapons skillfully and precisely. Being able to draw and reload quickly and efficiently while maintaining a continuity of fire under realistic time constraints is important for defense of a facility undergoing attack. Therefore, the NRC has retained the timing requirement for the reload position in the day firing qualification course.

11. *Comment.* One commenter suggested that the shotgun course allow the use of either 00 buckshot or rifled slugs because some facilities do not use rifled slugs.

Response. The NRC agrees with this comment and Appendix H has been modified accordingly.

12. *Comment.* One commenter suggested that footnote 4 of Appendix H of 10 CFR part 73 be amended to indicate that stages 5 and 6 of the rifle qualification course are to be used for .30 caliber or larger rifles. As it stands, only .30 caliber rifles would be used in stage 5 and stage 6.

Response. The NRC agrees that clarification is needed and footnote 4 of Appendix H has been modified to indicate that stages 5 and 6 pertain to rifles .30 caliber or larger.

13. *Comment.* One commenter requested that the position column of the rifle course, which requires the safety to be in the on position at the beginning of each string, be amended to allow the weapon to be uncocked with the magazine inserted. The weapon used by this commenter, the Colt AR–15, requires cocking in order to use the safety selector.

Response. The NRC agrees with this comment and has amended the final rule to delete the requirement that the safety be in the on position at the beginning of each string in the rifle qualification course of fire.

14. *Comment.* One commenter had a general comment concerning the implementation schedule. This commenter stated that the amount of time allowed for implementation should be increased from 180 days to 1 year.

Response. The NRC believes that implementation of the new firearms qualification course within 180 days does not place an undue burden on its Category I licensees and has retained this implementation schedule.

Criminal Penalties

The Commission notes that these amendments are issued under sections 161 b and i of the Atomic Energy Act of 1954, as amended. Therefore, violation of these regulations may subject a person to criminal sanctions under section 223 of the Atomic Energy Act.

Use of Metric System by Nuclear Industry

On October 7, 1992 (57 FR 46202), the Commission issued a Policy Statement on Conversion to the Metric System by the Nuclear Industry. This policy states that all new regulations will be published in dual units. However the NRC has determined that there are no standards readily available in the United States for weapons firing courses measured in metric units and that it would be confusing and inappropriate to publish the day firing qualification courses in dual units. Therefore, the final rule retains the English units of measurement.

Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an Environmental Impact Statement is not required. The rule does not adversely affect the routine release of radioactivity, exposure to radiation, or the safety of the operations carried out by licensees possessing formula quantities of strategic special nuclear material. The amendments specify new day firing qualification courses for armed Tactical Response Team members, armed response personnel, and guards to ensure that they are able to perform their assigned duties.

The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available from Mr. Harry Tovmassian, Office of Nuclear

Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3634.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0002.

The public reporting burden for this collection of information is estimated to average 31 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for these amendments. The analysis examines the costs and benefits of the alternatives considered by the NRC and provides a decision rationale for the chosen approach. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Ms. Carrie Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2382.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact upon a substantial number of small entities. The rule affects two licensees who operate fuel fabrication facilities possessing formula quantities of strategic special nuclear material licensed in accordance with 10 CFR parts 70 and 73. The companies that own these facilities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Commission is adopting the following amendments to 10 CFR part 73. This final rule is issued pursuant to Sections 161(b) and (i) of the Atomic Energy Act, as amended, and violation may be subject to criminal penalty sanctions.

73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.46 paragraphs (b)(4), (b)(7), and paragraph (i) are revised to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components and procedures.

* * * * *

(b) * * *

(4) The licensee may not permit an individual to act as a Tactical Response Team member, armed response person, or guard unless the individual has been trained, equipped, and qualified to perform each assigned security duty in accordance with appendix B of this part, "General Criteria for Security Personnel." In addition, Tactical Response Team members, armed response personnel, and guards shall be trained, equipped, and qualified in accordance with paragraphs (b)(6) and (b)(7) of this section. Upon the request of an authorized representative of the NRC, the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each Tactical Response Team member, armed response person, and guard, whether a licensee or contractor employee, shall requalify in accordance with appendix B of this part. Tactical Response Team members, armed response personnel, and guards shall also requalify in accordance with paragraph (b)(7) of this section at least every 12 months. The licensee shall document the results of the qualification and requalification. The licensee shall retain the documentation of each qualification and requalification as a record for 3 years after each qualification and requalification.

* * * * *

(7) In addition to the weapons qualification and requalification criteria of appendix B of this part, Tactical Response Team members, armed response personnel, and guards shall qualify and requalify, at least every 12 months, for day and night firing with assigned weapons in accordance with Appendix H of this part. Tactical Response Team members, armed response personnel, and guards shall be permitted to practice fire prior to qualification and requalification but shall be given only one opportunity to fire for record on the same calendar day. If a Tactical Response Team member, armed response person, or guard fails to qualify or requalify, the licensee shall remove the individual from security duties which require the use of firearms and retrain the individual prior to any subsequent attempt to qualify or requalify. If an individual fails to qualify or requalify on two successive attempts, he or she shall be required to receive additional training and successfully fire two consecutive qualifying scores prior to being reassigned to armed security duties.

(i) In addition, Tactical Response Team members, armed response personnel, and guards shall be prepared to demonstrate day and night firing qualification with their assigned weapons at any time upon request by an authorized representative of the NRC.

(ii) The licensee or the licensee's agent shall document the results of weapons qualification and requalification for day and night firing. The licensee shall retain the documentation of each qualification and requalification as a record for 3 years

after each qualification and requalification.

* * * * *

(i) *Implementation schedule for revisions to physical protection plans.*

(1) By November 29, 1993, each licensee shall submit a revised Fixed Site Physical Protection Plan to the NRC for approval. The revised plan must describe how the licensee will comply with the requirements of paragraph (b)(7) of this section. Revised plans must be mailed to the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Each licensee shall implement the approved plan pursuant to paragraph (b)(7) of this section within 180 days after NRC approval of the revised Fixed Site Physical Protection Plan.

3. Appendix H is revised to read as follows:

Appendix H—Weapons Qualification Criteria

The B–27 Target or a target of equivalent difficulty will be used for all weapon qualification testing.

TABLE H–1 MINIMUM DAY FIRING CRITERIA[1]

[see footnotes at end of Table H–1]

Weapon	Stage	String[2]	Distance	Number of rounds	Timing[3]	Position	Scoring
Handgun	1	1 2 3	3 yards	6	9 seconds	Draw and fire 2 rounds (repeat 2 times) 3 seconds each string.	Minimum qualifying = 70%.
	2	1 2	7 yards	6	10 seconds	Draw and fire 2 rounds at center mass and 1 round at the head (repeat once) 5 seconds each string.	
	3	1 2 3	7 yards	6	12 seconds (4 seconds each string).	Using weaker hand only, from the low ready position, fire 2 rounds (repeat twice).	
	4	1	10 yards	2	4 seconds	Draw and fire 2 rounds, come to low ready position.	
		2	10 yards	2	3 seconds	Fire 2 rounds from low ready position and reholster.	
		3	10 yards	4	12 seconds (revolver) 10 seconds (semi-automatic).	Draw and fire 2 rounds, reload, fire 2 rounds and reholster.	
		4	10 yards	2	4 seconds	Draw and fire 2 rounds, come to low ready position.	
		5	10 yards	2	3 seconds	Fire 2 rounds from low ready position and reholster.	
	5	1	15 yards	2	5 seconds	Standing, draw weapon, move to kneeling position, then fire 2 rounds and reholster.	
		2	15 yards	2	5 seconds	Standing, draw weapon, move to kneeling position, then fire 2 rounds and reholster.	
	5	3	15 yards	4	14 seconds (revolver) 12 seconds (semi-automatic).	Standing, draw weapon, fire 2 rounds, move to kneeling position and fire 2 rounds, reload and reholster.	Minimum qualifying = 70%.
		4	15 yards	2	5 seconds	Draw weapon and fire 2 rounds standing, come to low ready position and....	
		5	15 yards	2	3 seconds	Fire 2 rounds from low ready.	
	6	1	25 yards	2	5 seconds	Draw and fire 2 rounds, standing, left side of barricade.	
		2	25 yards	2	5 seconds	Draw and fire 2 rounds, right side of barricade (standing).	
		3	25 yards	4	15 seconds (revolver) 12 seconds (semi-automatic).	Draw weapon and move from standing to kneeling position, fire 2 rounds, left side of barricade, reload, and from the kneeling position, fire 2 rounds, right side of barricade.	
		4	25 yards	2	10 seconds	Draw weapon and move from standing to prone, fire 2 rounds.	
		5	25 yards	2	10 seconds	Draw weapon and move from standing to prone, fire 2 rounds.	
	7	1	50 yards	2	8 seconds	Draw weapon and fire 2 rounds from a standing barricade position (right or left side, shooter's option).	

TABLE H–1 MINIMUM DAY FIRING CRITERIA [1]—Continued

[see footnotes at end of Table H–1]

Weapon	Stage	String [2]	Distance	Number of rounds	Timing [3]	Position	Scoring
		2	50 yards ...	2	10 seconds	Draw, weapon and fire 2 rounds from a kneeling barricade position (right or left side, shooter's option).	
		3	50 yards ...	2	12 seconds	Draw weapon and fire 2 rounds from prone position.	
Shotgun	1	1	7 yards	2 Double 0 buck-shot	4 seconds	At low ready position fire 2 rounds standing.	Minimum qualifying = 70%.
	2	1 2	15 yards ...	4 Double 0 buck-shot	15 seconds	At low ready position fire 2 rounds standing, reload and fire 2 rounds.	
	3	1 2	25 yards ...	4 rifled slugs or 00 buck-shot	20 seconds	On command, load 4 rounds and fire 2 rounds standing and 2 rounds kneeling.	
Rifle	1	1 2 3	15 yards ...	6	10 seconds (4 seconds for 1st string, 3 seconds for each of 2nd and 3rd string).	Standing in low ready position, move to standing point shoulder position (1 magazine loaded with 6 rounds, weapon in half-load configuration), fire 2 rounds per string.	Minimum qualifying = 70%.
	2	1 2 3	25 yards ...	6	11 seconds (5 seconds for 1st string, 3 seconds for each of 2nd and 3rd string).	Standing in low ready position, move to standing point shoulder position (1 magazine loaded with 6 rounds, weapon in half-load configuration), fire 2 rounds per string.	
	3	1 2 3	25 yards ...	6	17 seconds (7 seconds for 1st string, 5 seconds for each of 2nd and 3rd string).	Standing in low ready position, move to kneeling point shoulder position (1 magazine loaded with 6 rounds, weapon in half-load configuration), fire 2 rounds per string.	
	4	1 2	50 yards ...	4	16 seconds (9 seconds for 1st string, 7 second for 2nd string).	Standing in low ready position, move to kneeling point shoulder position (1 magazine loaded with 4 rounds, weapon in half-load configuration), fire 2 rounds per string.	
	5 [4]	1	50 yards ...	4	20 seconds	Standing in low ready position, move to prone (weapon in half-load configuration) with two magazines each loaded with 2 rounds, fire 2 rounds, reload with 2nd magazine and fire 2 rounds.	Minimum qualifying = 70%.
	6 [4]	1	100 yards .	4	25 seconds	Standing in low ready position, move to prone (weapon in half-load configuration) two magazines each loaded with 2 rounds, fire 2 rounds, reload with 2nd magazine and fire 2 rounds.	

Footnotes:
[1] This day firing qualifications course is to be used by all TRT members, armed response personnel, and guards.
[2] A string is one of the different phases within a single stage.
[3] Security personnel will be timed as shown.
[4] Stages 5 and 6 are to be used for .30 caliber or larger rifles.

TABLE H–2.—MINIMUM NIGHT FIRING CRITERIA

Weapon	Stage	Distance	No. of rounds	Timing	Position	Scoring	Lighting
Handgun (Rev.)	1	7 yds	12	35 seconds	Standing-no artificial support.	Minimum qualifying=70%.	For all courses 0.2 footcandles at center mass of target area.
	2	15 yds	12	45 seconds.			
Handgun (Semi-)	1	7 yds	2+clip	30 seconds	Standing-no artificial support.		
	2	15 yds	2+clip	40 seconds.			

TABLE H–2.—MINIMUM NIGHT FIRING CRITERIA—Continued

Weapon	Stage	Distance	No. of rounds	Timing	Position	Scoring	Lighting
Shotgun	1	25 yds	2 rifled slugs.	30 seconds (Load 2 slugs—chamber empty—Time starts—Commence firing).	Standing-strong shoulder.	Rifled slug hits=strike area on target (10, 9, 7).	
	1	15 yds	5 Double 0 buckshot.	10 seconds (Load 5rds Buckshot—chamber, empty—Time starts—Commence firing).	Standing-strong shoulder.	Double 0 Buckshot: Hits in black=2 pts (5rds x 9 pellets/rd x 2 pts=90) Minimum qualifying=70%.	
Rifle	1	25 yds	1–5rd mag	45 sec	Standing-barricade	Minimum qualifying=70%.	
	2	25 yds	1–5rd mag	45 sec	Standing.		
	3	25 yds	1–5rd mag	45 sec	Kneeling.		
	4	25 yds	1–5rd mag	45 sec	Prone.		

Note.—All firing is to be done only at night. Use of night simulation equipment during daylight is not allowable. Use of site specific devices (i.e., laser, etc.) should be included in the licensee amended security plan for NRC approval.

Dated at Rockville, Maryland, this 24th day of August, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–21129 Filed 8–30–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1046

Security Skills Training and Qualifications Standards for Protective Force Personnel

AGENCY: Office of Security Affairs, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is setting forth requirements regarding access authorizations and security skills training and qualification, including firearms qualification, for DOE contractor personnel responsible for the protection of DOE facilities. One purpose of these regulations is to assure that protective force personnel meet the eligibility criteria of DOE regulations for access to classified matter or significant quantities of special nuclear material. Another purpose is to assure that protective force personnel at DOE facilities can perform their normal and emergency duties effectively and without undue hazard to themselves, fellow employees, the plant site, and general public. Generally, the regulations require protective force personnel to meet DOE security clearance standards and to complete successfully formal basic and annual training in security skills and knowledge. The regulations also require security police officers (protective force personnel armed pursuant to section 161.k. of the Atomic Energy Act of 1954 to pass firearms qualification tests. Each security police officer is required to demonstrate firearms proficiency at least semiannually on DOE standardized courses of fire with all firearms reasonably expected by DOE contractor management to be employed within the security police officer's assigned duties. These regulations do not apply to protective forces for the Strategic Petroleum Reserve.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT:

William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA–121, Washington, DC 20585, (301) 903–4244

Jo Ann Williams, U.S. Department of Energy, Office of General Counsel, room 6A–141, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0806

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Discussion of Comments
IV. Administrative Procedures

I. Background

The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) declares it to be the policy of the United States that the development, use, and control of atomic energy shall be subject at all times to the paramount objective of making the maximum contribution to the common defense and security (42 U.S.C. 2011). Congress specifically found that the development, utilization and control of atomic energy for military and for all other purposes are vital to the common defense and security, and that source and special nuclear material, production facilities, and utilization facilities, are affected with the public interest, and regulation of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public 42 U.S.C. 2012(a) and (e). One of the purposes of the Atomic Energy Act of 1954 is "to effectuate the policies set forth above by providing for * * * a program for Government control of the possession, use and production of atomic energy and special nuclear material * * * to make the maximum contribution to the common defense and security," 42 U.S.C. 2013(c). Responsibility for the "regulation" of Government-owned nuclear facilities and nuclear weapons was transferred to the Secretary of Energy by the Department of Energy Organization Act, (42 U.S.C. 7151). The authority to prescribe implementing regulations is found in section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) and section 661 of the Department of Energy Organization Act (42 U.S.C. 7254).

The national security energy programs administered by the Secretary of Energy are conducted at nuclear and other facilities owned by the Federal Government. Most of these facilities, however, are operated under contracts with private industry and are protected by contractor protective force personnel.

The threat of terrorist or other malevolent activities at sites where nuclear materials and weapons are located presents a real and present danger. DOE's protective force is the first line of human defense against

terrorist or other assault on this Nation's nuclear facilities, weapons, materials, and technologies.

On May 10, 1991, DOE issued a notice of proposed rulemaking (56 FR 21631) setting forth proposed amendments to 10 CFR part 1046. DOE held three hearings in various parts of the country and accepted written comments on the proposed rule until July 9, 1991. For ease of readability part 1046 is being reprinted in its entirety.

II. Discussion

Recognizing the need to formalize its security policies, particularly as they relate to contractor personnel, DOE has in recent years promulgated two protective force-related regulations. To implement the statutory authority of its security police officers to carry firearms and to make arrests under certain circumstances, DOE promulgated 10 CFR part 1047, "Limited Arrest Authority and Use of Force by Protective Force Officers" (50 FR 30929, July 31, 1985). In 10 CFR part 1046, "Physical Protection of Security Interests," DOE adopted regulations establishing medical and physical fitness qualification standards for protective force personnel (49 FR 46101, November 23, 1984.) DOE now revises 10 CFR part 1046 to specify requirements for the contractor protective force in addition to the present medical and physical fitness requirements. Also, the terminology from "Security Inspector" to "Security Police Officer," and "Guard" to "Security Officer" has been changed to adopt the current terminology used by the DOE for such positions.

The purpose of § 1046.14 is to formalize the requirement that each member of the protective force have appropriate current access authorization for the highest level of classified matter under that individual's protection. Security police officer personnel who have access to Category I or II quantities of special nuclear material (SNM) will be "Q" cleared. This security clearance requirement is mandated by Executive Order 12356, "National Security Information," and the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR part 710.

Section 1046.15(a) sets forth the requirement that protective force personnel successfully complete a formal training program established in accordance with a proposed appendix B, "Security Training and Qualification." Performance-oriented requirements are specified and DOE contractors are given flexibility to develop and administer training programs to meet site-specific needs subject to DOE oversight and approval. This is also the approach used by the Nuclear Regulatory Commission (NRC) for the training and qualification of the security force of NRC licensees in 10 CFR part 73, appendix B, "General Criteria for Security Personnel."

Protective force personnel are required by appendix B to be trained prior to initial assignment and annually thereafter. The employing contractor is required to maintain individual training records until 1 year after termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

Section 1046.15(b) formalizes and standardizes DOE's security policy of requiring security police officers to demonstrate firearms proficiency. Section 161.k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) provides statutory authority for DOE and DOE contractor security police officers to carry firearms and to make arrests.

The development of the specific firearms qualification standards set forth in the regulations began in 1987. While there had long been at least an annual qualification requirement under various approved courses of fire used at individual DOE installations, DOE foresaw a need for a standard course for each firearm at all of its installations.

In September of 1987, the DOE Firearms Working Group, a committee of firearms experts, was formed. Based on information from the DOE Central Training Academy (CTA), the Federal Bureau of Investigation, other law enforcement agencies, and the military, the committee formulated courses of fire for the handgun, rifle, and shotgun (day and night qualification). Each course was designed to be as practical and combat-oriented as possible in order to prepare security police officers for any possible firearms confrontation that might occur. Based on the validation report of this committee, DOE in October of 1988 published its "Firearms Qualification Courses." The "Firearms Qualification Courses" further defines the specific firearms proficiency requirements of the current DOE internal order, DOE Order 5632.7A, "Protective Forces", the substance of which DOE now formalizes with this rulemaking. The October 1988 "Firearms Qualification Courses" have been revised to add courses on the submachine gun, light machine gun, and selective fire machine gun.

Briefly, § 1046.15(b) requires that security police officers demonstrate firearms proficiency by passing semiannual tests and requires that the testing be done under a standard course of fire for each of the firearms that the DOE contractor management reasonably expects the security police officer to employ within assigned duties. These courses are designed to evaluate competencies in types of lighting conditions under which the individual firearm may be used. The number of qualifying attempts is limited.

Section 1046.16 establishes the requirement that DOE contractors formally evaluate and certify that protective force personnel have successfully completed all training and testing requirements set forth in appendix B. The DOE contractor must retain documentation of certification for each individual until 1 year after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

The regulations also (1) amend § 1046.3 to add definitions of the terms "Requalification Date," "Special Response Team," and "Security Police Officer," and (2) add a new § 1046.4, "Use of Number and Gender."

III. Discussion of Comments

DOE held public hearings in Las Vegas, Nevada; Argonne, Illinois; and Oak Ridge, Tennessee, and received written comments on these rules. Six (6) interested parties testified at the hearings and six written comments were received during the sixty (60) day comment period. Most of the comments concerned the firearms qualification and testing standards, and protective force training.

Representatives of protective force unions expressed their concerns about security police officers who fail to meet firearms qualification requirements within the allotted number of attempts. (Paragraphs 9(g) and (i) of appendix B to subpart B). They stated that security police officers are not allowed sufficient time to practice and the resultant loss of security police officer status due to inability to qualify within the allotted number of attempts is unfair.

DOE appreciates the concerns of the union representatives about security police officers who fear they may lose their security police officer status and DOE recognizes that in most cases this results in reduced financial compensation to the individual. However, DOE's paramount responsibility is to assure the national security by providing for the security of its nuclear facilities and materials. Consequently, it is imperative that DOE ensure that those carrying firearms under section 161.k. of the Atomic Energy Act of 1954, as amended, meet qualification requirements that assure

the individual is competent to respond to an event, should one occur, without jeopardizing the safety of himself or others. We believe that the absence of incidents in the complex is directly related to the fact that the protective force is competent and thoroughly prepared, mentally and physically, to respond in the necessary manner should an incident occur.

While the rule may seem very broad in some instances, including contractor, site-specific criteria and Departmental approval processes, DOE has tried to alleviate uncertainties brought to our attention by commenters. However, the rule is intended to establish general policies and operating concepts. The DOE Order system and supporting training documents provide detailed procedures. For instance, some commenters requested that the proposed rule be amended to include detailed procedures for weaponless self defense and escalation of force. We believe that these procedures are too lengthy and detailed for inclusion in the rulemaking effort. However, they are provided to each security police officer during the basic security police officer training and are further outlined in the training manual.

Firearms Qualification and Testing Standards

DOE believes that its qualification procedures and testing standards are fair. DOE does not rely on a single qualification attempt, but rather offers up to four attempts for individuals to meet qualification requirements. (Paragraphs 9 (g) and (i) of appendix B to subpart B.) Specifically, security police officers are allowed two initial attempts to qualify semiannually. Failure to qualify results in suspension of a security police officer's authority to carry firearms and make arrests. The security police officer then enters a remedial firearms training program to identify and correct individual problem areas. Any security police officer who, upon completion of the remedial training course, fails to qualify after two subsequent, additional attempts will lose security police officer status. In addition, any security police officer who requires remedial training on three (3) consecutive semiannual qualification periods, with the same firearm, will lose security police officer status (section 9(j) of appendix B to subpart B). The Department believes this procedure presents an adequate balance between the necessary demonstration of firearms proficiency and individual deficiencies that an individual may need to overcome. To regain security police officer status, regardless of the length of time elapsed, the security police officer must reattend and pass the basic security police officer course. To further clarify this issue and assure consistency with the medical and physical fitness regulations, a definition of "requalification date" has been added to the rule.

In addition, in response to comments, other changes were made to the proposed rule. For instance, the word "incapacitation" has been deleted in response to comments that it was unclear. The requirement remains, however, that a security police officer must qualify with duty firearm(s) every six months. When 6 months elapses, whether due to temporary disarming or other reasons, the security police officer is required to requalify prior to being rearmed. (Section 9 (b) of appendix B to subpart B.)

The issue of the number of firearms qualification attempts was raised by several commenters. While the number of qualification attempts has not changed in the final rule, the wording of this section has been slightly changed in response to a request to clarify qualification during audits, surveys and inspections. The new wording in section 9(c) of appendix B to subpart B now reads: "The DOE expects that protective force personnel will maintain firearms proficiency on a continuing basis. Therefore, in the case of a Headquarters or field audit, or other situation directed by the Head of the Field Element, a security police officer may be required to demonstrate the ability to meet qualification standards. Failure to meet the performance standard will be treated as if the individual failed the first attempt during routine semiannual qualification."

DOE accepts the suggestion to develop and implement a standardized remedial training program for firearms, integrating the essential components presented such as a combination of lecture and dry and live fire. The training will be developed by the CTA, approved by DOE at Headquarters, and monitored and implemented by the Head of the Field Office. It will encompass proper weapon manipulation procedures as well as focusing on individual problem area identification and resolution. A minimum time for the training will be incorporated as course curriculum is developed. Until a standardized remedial training program is developed and implemented, sites will continue to conduct remedial training according to current practice. DOE believes this will alleviate concerns regarding the equitability of remedial training programs.

DOE agrees that the standards set forth by the Department for security officers and security police officers are minimum criteria that must be met, and criteria imposed by the contracting organizations, not by DOE, are subject to collective bargaining. For Special Response Team (SRT) members, however, DOE also recognizes that the contractor may request higher standards be met as a means to assure themselves that the proper individuals have been selected for the program.

In response to questions regarding due process, DOE is sensitive to the needs of security police officers who do not meet qualification requirements and are separated from duty. While it is essential to maintain a competent protective force, we recognize that unique circumstances can influence performance on a given day. However, due to the inability to avoid such situations and the scheduling constraints at the field level, DOE is anticipating that four attempts will overcome situational circumstances. In addition, the flexibility DOE allows its contracting organizations over their own employees is essential to obtain maximum contractor performance. However, DOE will institute a reporting mechanism on numbers of protective force employees separated for non-qualification. Each field element will be expected to maintain information about the circumstances surrounding a separation, the final score of the individual, and any comments from the security police officer. This information may be used quarterly by Headquarters to compile aggregate numbers and identify trends.

DOE views the standardized remedial training program, which will be monitored by DOE, as facilitating a fair and timely process in the best interest of protective force personnel. If an individual fails to meet qualification criteria, the immediacy of the training saves a lengthy appeals process. In addition, the qualification score is completely non-subjective.

Protective Force Training

Many commenters noted perceived training policy deficiencies (in areas such as refresher and remedial firearms training, weaponless self-defense and intermediate force, including handcuffing), and had questions regarding approval procedures for training. All types and levels of training for the Department are developed at and issued by the DOE Central Training Academy, are approved by the Director, Office of Safeguards and Security at DOE Headquarters, and are implemented at the site by the DOE

Head of the Field Element. In most cases, direct management responsibility is delegated to the DOE site Safeguards and Security (S&S) Director. Site specific modifications, above the baseline training program, may be made at the site, at the discretion of the DOE site management in their oversight role.

Questions were raised regarding the development and approval of site specific job analyses (JAs). The JAs are developed by the contracting organization by assessing individual position responsibilities and authorities and determining requirements and knowledge, skills and abilities needed. With this information at hand the contractor can then readily determine types and intensity of training needed. Since this is conducted on positions already established, DOE does not see the need for union participation in this process. The proposed rule stated that training qualification programs must be based on a job analysis, and be approved by the Head of the Field Element but did not specifically require approval of the job analysis. A sentence has been added to the rule in section B.(2) of appendix B to subpart B stating the task analysis will be approved by the Head of the Field Element. JAs may result in differences in training above the basic programs for security officers and security police officers.

OSS had initially mandated a 5-year training records retention in the proposed rule. In response to comments, however, retention will be specified for 1 year after termination of the employee as a member of the protective force, unless a longer retention period is specified by other requirements.

We also agree with those who commented that training should be provided on equipment issued, in addition to equipment that is frequently used, as in the case of plastic and metal handcuffs. The Department has recently issued policy clarification addressing the use of training equipment identical to that which the protective force is issued in fulfilling their duty assignments. In addition, DOE is presently assessing the use of a new target for firearms qualification; if a new target is identified for use it will be provided to field elements for familiarization before it is mandated for use in meeting the requirements. Similarly, new courses of fire, developed by the Firearms Working Group, will be sent to the field for an adequate trial period before their use is mandated.

Frequency of training is mandated to some extent by the Department's resources and the results of annual needs assessments by the CTA. Training at the sites may be limited by many conditions beyond budgetary concerns, e.g., space limitations, range availability, and instructor schedules. For instance, we declined to accept the comment to add a *minimum* time for SRT exercises with local law enforcement because timing is somewhat contingent upon the availability of local law enforcement. To accept the comment would mandate a requirement on the field elements that could be beyond their control. Similarly, firearms practice on contractor time and premises, with adequate compensation would present extreme hardships on sites with large numbers of protective force personnel, and, as some sites do not have ranges on their premises (in some instances the nearest range is 40 miles away) would not be able to be consistently administered. However, any effort on the contractor's part to allow for compensated firearms practice by protective force personnel is strongly encouraged by DOE.

Other Issues

DOE Order 5480.16, "Firearms Safety," dated January 12, 1988, available at DOE Headquarters and each field office, describes safety procedures for individuals involved in protective force training. This rulemaking effort addresses protective force qualification and training requirements, thus comments regarding first aid and medical helicopters, and other safety-related questions are beyond the scope of this rulemaking. In addition, concerns regarding medical and physical fitness criteria are also outside the scope of the rule.

Several commenters raised concerns regarding details of intermediate force training. DOE believes these should be resolved through the standardization of intermediate force training and the new standardized basic security police officer program. Intermediate force weapons issued to the protective force, including mace, are issued at the discretion of site management. The rule is intended to require the necessary training and qualifications but not dictate specific tools to meet the mission. The DOE effort on standardization of protective force equipment should identify problems such as those raised in comments, and help alleviate concerns of this type.

Supervisors' qualification requirements, including requiring supervisors to meet the same physical fitness requirements and refresher training as security police officers, two areas specifically noted in comments, are determined by the supervisor's JA. It is DOE policy to require that all personnel armed under 161.k. of the Atomic Energy Act, as amended, meet the firearms qualification and medical and physical fitness standards of the Department. The JA, and the qualification requirements, should include the supervisor's contingency responsibilities.

All protective force personnel with responsibilities in a contingency operation must be qualified in compliance with all DOE standards, including site-specific ones.

Comments were received that DOE rejected because they would not permit adequate site-specific flexibility. These include comments in the areas of scheduling firearms qualifications dates, security officers being used as escorts, and what was characterized as "broad and extensive delegation of governmental authority to private contractors without adequate safeguards and procedures." The Department maintains strict controls over authority provided to contractors and assures that responsibilities and authorities given to contracting organizations have adequate oversight by Federal officials at each site, including the CTA. In addition, while test results may be honored by successor employers, to mandate acceptance of prior tests could have a negative impact on collective bargaining employees; for instance, if the new employer needs to determine the proficiency of the protective force, they may decide to hire others if retesting is not acceptable. DOE views the flexibility given to the contractor in this instance as an alternative to potentially replacing valuable protective force personnel.

Other issues raised include contractual negotiating items (such as reassignment of unqualified security police officers, compensation for firearms practice on contractor time, union participation in job analysis development, and implementation by the contractor of higher than rule standards), and medical and first aid concerns if an incident does occur. These issues are labor relations matters and contractor-specific areas and, as such, are not addressed in the rule. DOE does, however, encourage its contractors to address these important issues in their collective bargaining negotiations. In addition, the Department is ensuring that pertinent labor laws are upheld affecting contractor protective force employees.

DOE believes that a training needs analysis is an important segment of the training program, however, to establish parameters and standardization of such an analysis would be detrimental to the

process. The process includes any means of identifying or evaluating performance and is almost an ongoing process of assessment. The process may include informal questioning as well as written evaluations to determine what training is necessary for that position. It may also include audits, qualification scores, trends, or an assessment of overall job performance. This information is normally compiled by the contractor training department, and used for the development of training programs or exercises. Prior to implementation, training programs and exercises require the approval of the Head of the Field Organization. As in the case of JAs, DOE believes that union participation is not necessary due to the fact that the assessment is a data gathering and contractor assessment of job authorities and responsibilities.

IV. Administrative Procedures

A. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

B. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policy makers in promulgating or implementing the regulation. The rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Therefore, the preparation of a Federalism assessment is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare a regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. This Final Rule deals with access authorization and security skills training and qualification for DOE protective force personnel. The economic impact on small businesses is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

D. Environmental Review

DOE has determined that this Final Rule is not a major Federal action with significant environmental impact and therefore does not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

E. Paperwork Reduction Act

The collection of information requirements in this Final Rule was submitted to the Office of Management and Budget in accordance with section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and procedures implementing that Act, 5 CFR 1320.1 *et seq.*

F. FERC Review

Pursuant to the requirements of the DOE Act, section 404(a), DOE referred the Notice of Proposed Rulemaking to the FERC for review. FERC requested and DOE hereby clarifies that this Final Rule will not affect protective force personnel at FERC facilities and applies only to DOE contractor employed personnel at DOE facilities.

G. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's final rule meets the requirements of sections 2(a) and (b)(2) of Executive Order 12778.

List of Subjects in 10 CFR Part 1046

Government contracts, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble, part 1046 of chapter X, title 10 of the Code of Federal Regulations is revised as set forth below.

Issued in Washington, DC, this 24th day of August 1993.

George L. McFadden,

Director, Office of Security Affairs.

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

Subpart A—General

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Subpart B—Protective Force Personnel

1046.11 Medical and physical fitness qualification standards.
1046.12 Physical fitness training program.
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1046.16 Training certification.

Appendix A to Subpart B, Part 1046—Medical and Physical Fitness Qualification Standards

Appendix B to Subpart B, Part 1046—Training and Qualification for Security Skills and Knowledge

Authority: Sec. 2201, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); sec. 7151, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)

Subpart A—General

§ 1046.1 Purpose.

The purpose of this part is to set forth Department of Energy, hereinafter "DOE," security policies and procedures regarding the physical protection of security interests.

§ 1046.2 Scope.

This part applies to DOE contractor employees at Government-owned facilities, whether or not privately operated.

§ 1046.3 Definitions.

For the purposes of this part:

Contractor. The term "contractor" includes subcontractors at all tiers.

Defensive combative personnel. Security police officers other than offensive combative personnel.

Designated physician. An occupational medical physician who is recommended by the designated management supervisory official of the local DOE field office and authorized by the Medical Director, Office of Operational and Environmental Safety, Headquarters, to determine the medical and physical condition of protective force personnel. When an occupational medical physician is not available, physicians who are not board-certified in occupational medicine may be recommended and authorized by the Medical Director as designated physicians for the purpose of this part. Designated physicians need not be employed full-time, but contractually shall be responsible to DOE for performance of the medical functions required by this part.

Facility. An educational institution, manufacturing plant, laboratory, office building or other area utilized by the DOE or its contractors or subcontractors for the performance of work under DOE jurisdiction.

Field organization. Any organizational component of the DOE located outside the Washington, DC metropolitan area.

Guard. Also referred to as Security Officer, an unarmed individual who is employed for, and charged with, the protection of classified matter or Government property.

Medical condition. General health, physical conditions, and emotional and mental stability.

Offensive combative personnel. Security police officers assigned to response force duties including pursuit and assault functions.

Protective force personnel. Security officers and security police officers assigned to protective details, who are employed to protect DOE security interests.

Requalification date. The date of expiration of current qualification at which demonstration of knowledge, skills and/or abilities is required to maintain specific job status.

Security inspector. Also referred to as Security Police Officer, a uniformed person who is authorized under section 161.k of the Atomic Energy Act of 1954, as amended, or other statutory authority, to carry firearms and to make arrests without warrants and who is employed for, and charged with, the protection of classified matter, special nuclear material, or other Government property.

Security police officer. An armed member of the protective force, previously referred to as a "security inspector."

Special response team member. A security police officer who has been selected to be part of a unit specially trained to provide additional protection capability.

§ 1046.4 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine also include the feminine and vice versa, as the use may require.

Subpart B—Protective Force Personnel

§ 1046.11 Medical and physical fitness qualification standards.

(a) Except as provided in paragraph (b) of this section DOE contractors shall not employ as protective force personnel any individual who fails to meet the applicable medical and physical fitness qualification standards as set forth in appendix A, to this subpart, "Medical and Physical Fitness Qualification Standards."

(b)(1) Incumbent security police officers have until September 30, 1994 to meet the applicable physical fitness qualification standards.

(2) Current waivers to the medical qualification standards remain in effect and future waivers are permitted.

(c) Each security police officer shall meet the applicable medical and physical fitness qualification standards every twelve months after the initial qualification. Each security officer shall meet the applicable medical standards every two (2) years after the initial qualification.

§ 1046.12 Physical fitness training program.

(a) Each incumbent security police officer, who has not met the applicable physical fitness qualification standard, shall participate in a DOE approved physical fitness training program. Once an incumbent security police officer has begun a physical fitness training program, it must be completed before the security police officer may take the applicable physical fitness qualification standards test. Once a physical fitness training program is completed, an incumbent security police officer has thirty (30) days to meet the applicable physical fitness qualification standards.

(b) An incumbent security police officer who fails to qualify within thirty (30) days of completing a physical fitness training program shall participate in an additional training program. Upon completion of the additional physical fitness training program the security police officer has thirty (30) days to meet the applicable physical fitness qualification standard. No additional training or time extension to meet the standards is permitted except for unusual circumstances as set forth in appendix A to this subpart, paragraph G(2).

(c) A security police officer who fails to requalify within thirty (30) days after his or her yearly anniversary date of the initial qualification shall participate in a physical fitness training program. Security police officers have a maximum of six (6) months from the anniversary date to requalify.

(d) After his or her initial qualification, each incumbent security police officer shall participate in a DOE-approved physical fitness training program on a continuing basis. This training is for the purpose of ensuring that security police officers maintain the requisite physical fitness for effective job performance and to enable the individual security police officer to pass the applicable annual physical fitness requalification test without suffering any undue physical injury.

§ 1046.13 Medical certification.

Each individual shall have a medical examination within thirty (30) days preceding participation in a physical fitness training program and the physical fitness qualification standards test, and a determination and written certification by a designated physician that there are no foreseeable medical risks as disclosed by the medical examination to the individual's participation in a physical fitness training program and the physical fitness qualification standards test.

§ 1046.14 Access authorization.

Protective force personnel shall possess current access authorization for the highest level of classified matter to which they potentially have access. Security police officer personnel who have access to Category I or II quantities of special nuclear material (SNM) will be "Q" cleared. The specific level of access authorization for each duty assignment shall be designated by the site security organization and approved by the Head of the Field Element. Security police officers shall possess a minimum of an "L" or DOE Secret access authorization. Security police officers possessing less than "Q" access authorization shall not be assigned to offensive positions or duties where fully automatic firearms are required.

§ 1046.15 Training and qualification for security skills and knowledge.

(a) DOE contractors shall only employ as protective force personnel individuals who successfully meet the

requirements of a formal training program established in accordance with appendix B, "Training and Qualification for Security Skills and Knowledge," to this subpart. The DOE contractor shall maintain individual training records until 1 year after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

(b) DOE contractors shall employ as security police officers, including Special Response Team members, only individuals who are fully qualified and meet the firearms qualification standards set forth in appendix B to this subpart.

§ 1046.16 Training certification.

DOE contractors shall employ as protective force personnel only individuals who have successfully completed all applicable training and qualification standards set forth in this subpart including appendices A and B. The DOE contractor shall maintain records of certification for each individual until 1 year after the termination of the individual as a member of the protective force, unless a longer retention period is specified by other requirements.

Appendix A to Subpart B of Part 1046—Medical and Physical Fitness Qualification Standards

A. *Applicability.* This appendix A to subpart B of part 1046 provides the minimum, medical and physical fitness qualifications, criteria and guides to be used by designated physicians and management supervisory officials in advising responsible DOE officials whether the medical and physical condition of protective force personnel to be employed by DOE contractors reasonably assures that they can effectively perform their normal and emergency duties without undue hazard to themselves, fellow employees, the plant site and the general public.

B. *Application of Medical and Physical Fitness Qualification Standards.*

(1) The standards in this appendix are the minimum necessary to determine the medical and physical capability of protective force personnel to perform all normal and emergency duties effectively and safely.

(2) Security police officer applicants shall meet the applicable medical and physical fitness standards in this appendix prior to assignment to security police officer duties.

(3) Incumbent security police officers shall meet the applicable physical fitness standards in this appendix within one year of the effective date of theses standards and once every twelve months thereafter or shall be relieved of security police officer duties subject to the provisions in paragraph G of this appendix.

(4) Incumbent security police officers shall meet the applicable medical standards prior to assignment to security police officer duties and annually thereafter, subject to the provisions of paragraph G of this appendix.

(5) Security officers shall meet the applicable standards in this appendix prior to assignment to security officer duties and biennially thereafter, subject to the provisions of paragraph J of this appendix.

(6) The determination of whether or not the examinee meets the medical standards in this appendix shall be made by a designated physician.

(7) The determination of whether or not the examinee meets the physical fitness standards in this appendix shall be made by a designated management supervisory official in coordination with a designated physician.

(8) When a designated physician determines that special medical evaluations and practical performance tests are necessary in order for an examinee to demonstrate the examinee's abilities to perform all normal and emergency duties, a determination of the adequacy of performance shall be made by a designated physician.

(9) For those facilities where it is necessary to determine the medical qualification of security police officers or security police officer applicants to perform special assignment security police officer duties which might require exposure to unusually high levels of stress or physical exertion, field office managers may develop more stringent medical qualification requirements or additional medical or physical tests as necessary for such determinations. All such additional qualification requirements shall be forwarded, with justification, for the approval of the Director of Safeguards and Security, Headquarters, prior to application and if approved, shall be implemented in the same manner that these qualification standards have been implemented.

(10) The provisions of DOE 5480.1A, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION PROGRAM FOR DOE OPERATIONS, of 8–13–81, Chapter VIII, Part 4 (including any updates) apply for return to work after recovery from a temporarily disqualifying medical or surgical condition.

C. *Administrative Procedures and Requirements.*

(1) *Medical Confidentiality and Retention of Medical Reports.*

(a) The medical information and data on each employee or applicant shall be maintained as confidential, privileged medical information and shall not be released by a designated physician without the written consent and release of the employee or applicant, except as permitted or required by law.

(b) When an individual has been examined by a designated physician, all available history and test results should be retained by the responsible DOE or DOE contractor medical department, in accordance with DOE 5480.1A, Chapter VIII, Part 4, whether or not the individual completes the examination, and whether or not potentially disqualifying defects are recorded.

(2) *Change of Health Status of Protective Force Personnel.*

(a) It is the specific responsibility of protective force employees to report immediately to their supervisor any known or suspected change in their health which might impair their capacity for duty or the safe and effective performance of assigned job duties.

(b) Supervisory personnel have the responsibility to make a timely report to a designated physician on any behavioral and health changes and deterioration in work performance that is observed in protective force personnel under their jurisdiction. Examples of areas that may indicate medical and emotional problems include: incidents of ineptness, poor judgment, lack of physical or emotional stamina, social incompatibility, excessive absence, lateness, and a tendency to become accident prone.

(3) *Use of Corrective Devices.*

(a) When the use of corrective devices, such as eyeglasses and hearing aids, is required to enable an examinee to meet successfully medical qualification requirements, a determination shall be made by a designated line supervisory authority that the use of all such devices is compatible with all emergency and protective equipment that the examinee may be required to wear or use while performing his or her assigned job duties.

(b) It is incumbent upon cognizant field office management to exercise all reasonable and practicable effort to accommodate required emergency and protective equipment to the use of corrective devices, including the provision of equally effective alternate equipment if such is available.

(c) If eyeglasses are used, they shall be of the safety glass type.

D. *Security Police Officer Medical Qualification Standards.*

(1) *General Qualifications.* The examinee shall possess mental, sensorial, and motor skills as required to perform safely and effectively all assigned job duties. Such qualifications include:

(a) Mental alertness and reliable judgment;

(b) Acuity of senses and ability of expression sufficient to allow accurate communication by written, spoken, audible, visible, or other signals; and,

(c) Motor power, range of motion, neuro-muscular coordination and dexterity.

(2) *Specific Minimum Qualifications.*

(a) *Head, Face, Neck, Scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(b) *Nose.* Ability to detect odor of products of combustion and of tracer and marker gases.

(c) *Mouth and Throat.* Capacity for clear and audible speech as required for effective communication on the job.

(d) *Ears.* Hearing loss in the better ear not to exceed 30 db average at 500, 1000, 2000 Hz with no level greater than 40 db in any of these frequencies (by ISO 1964 and ANSI 1969 audiometry). If a hearing aid is necessary, suitable testing procedures shall be used to assure auditory acuity equivalent to the above requirement.

(e) *Eyes.*

(1) *Distant Visual Acuity.*

(a) Uncorrected acuity of no less than 20/200 in the better eye.

(b) Corrected acuity of at least 20/30 in the better eye and 20/40 in the other eye.

(c) If uncorrected distant vision in the better eye is not at least 20/40, security police officers shall carry an extra pair of corrective lenses.

(2) *Near Visual Acuity.* Corrected or uncorrected vision of at least 20/40 (14/28 Snellen) in the better eye.

(3) *Color Vision.* Ability to distinguish red, green, and yellow. Special color vision testing and certification shall be required where fine color discrimination is critical to the safe or effective performance of assigned job tasks.

(4) *Peripheral Vision.* Field of vision in the horizontal meridian shall not be less than a total of 140 degrees.

(5) *Depth Perception.* Adequate depth perception as measured by stereopsis or demonstration in a practical operational test.

(f) *Cardiorespiratory.*

(1) *Respiratory.* Capacity and reserve to perform physical exertion in emergencies at least equal to the demands of the job assignment, and ability to utilize respiratory protective filters and air supply masks when this emergency equipment is required by assigned job requirements.

(2) *Cardiovascular.* Normal configuration and function. Capacity for exertion during emergencies. Normal resting pulse; regular pulse. Full symmetrical pulses in extremities and neck. Normotensive, with tolerance to rapid postural changes. If an examination reveals significant cardiac arrhythmia, murmur, enlargement, hypertension, hypotension, or other evidence of cardiovascular abnormality, an evaluation by a specialist in internal medicine or cardiology may be required and evaluated by a designated physician.

(g) *Abdomen and Viscera.* No clinically significant abnormalities.

(h) *Musculo-Skeletal.* Normal symmetrical structure, range of motion, and power.

(i) *Skin.* No significant abnormal intolerance to chemical, mechanical and other physical agents. Capability to tolerate use of personal protective covering and decontamination procedures when required by assigned job duties.

(j) *Endocrine/Nutritional/Metabolic.* Endocrine/nutritional/metabolic status adequate to meet the stresses and demands of assigned normal and emergency job duties. Ability to accommodate to changing work and meal schedules without potential or actual incapacity.

(k) *Hematopoietic.* Normal function.

(l) *Lymphatic.* Normal.

(m) *Neurological.* Normal central and peripheral nervous system function.

(n) *Mental and Emotional.* Normal mental status and an absence of neurotic or psychotic conditions which would affect adversely an ability to handle firearms safely or to act safely and effectively under normal and emergency conditions.

(o) *Laboratory.*

(1) *Hemogram.* Freedom from clinically significant abnormalities of the formed elements of the blood that could reasonably be expected to affect the safe and effective performance of assigned duties.

(2) *Urinalysis.* Absence of proteinuria and glycosuria unless the absence of a disqualifying systemic or genitourinary condition and the absence of significant microscopic abnormality has been demonstrated.

(3) *Other Studies.* Any other medical investigative procedure, including electrocardiogram and chest x-ray, which a designated physician considers necessary for adequate medical evaluation.

E. *Security Police Officer Medical Disqualification Standards.*

(1) *Freedom from Incapacity.* The examinee shall be free of any condition, habit, or practice which could reasonably be expected to result in sudden, subtle, or unexpected incapacitation.

(2) *Conditions for Medical Disqualification.* The presence of any of the following conditions shall disqualify the examinee from employment as a security police officer.

(a) *Respiratory.* Significant pulmonary pathology or decrease in pulmonary function which could interfere with the safe and effective performance of assigned job duties.

(b) *Cardiovascular.*

1. Ischemic Heart Disease
2. Myocardial Infarction
3. Coronary Insufficiency
4. Angina Pectoris
5. Heart Failure
6. Significant Arrhythmia
7. Arterial Aneurysm
8. Significant Peripheral Vascular Insufficiency
9. Corrosive Heart Surgery
10. Corrective Arterial or Great Vessel Surgery
11. Prosthetic Valve
12. Artificial Pacemaker

(c) *Endocrine/Nutritional/Metabolic.*

(1) Any endocrine, nutritional, or metabolic condition that would not allow the examinee adequately to meet the stresses and demands of assigned normal or emergency job duties.

(2) Inability to accommodate to changing work schedules or to a delay in meals without potential or actual incapacity.

(3) Inability to tolerate prolonged use of wearing of protective garments such as respirator masks, air masks, or bullet resistant garments.

(4) Diabetes mellitus requiring the use of insulin. Uncontrolled diabetes, ketoacidosis, or diabetic coma within the previous 2 years.

(5) Obesity of such degree that it would interfere with the safe and effective performance of normal and emergency job duties.

(d) *Skin.* Recurrent severe dermatitis or hypersensitivity to irritants or sensitizers sufficient to interfere with wearing required personal protective equipment or likely to be aggravated by or interfere with established or required decontamination procedures.

(e) *Hematopoietic Dysfunction.* Clinically significant hematopoietic disorders which may interfere with the safe and effective performance of assigned job duties.

(f) *Malignant Neoplasms.* Malignant neoplastic disease.

(g) *Neurological.*

(1) History of epilepsy or other convulsive disorder.

(2) History of any disturbance of consciousness or neurological disease or any other presently existing condition that may interfere with the safe and effective performance of assigned job duties.

(h) *Eyes.* Total blindness in one or both eyes.

(i) *Mental and Emotional.* An established history or clinical diagnosis of any of the following:

(1) Any psychological or mental condition which could cause impaired alertness, judgment, or motor ability. A history of clinically significant emotional or behavioral problems shall require thorough clinical evaluation which may include, but not necessarily be limited to, psychological testing and psychiatric evaluation.

(2) Attempted suicide or an expressed threat of suicide.

(3) A condition in which a person's intake of alcohol is sufficient to damage his or her physical health, job performance, personal functioning, or when alcohol has become a prerequisite to his or her daily functioning.

(4) A condition in which a person is addicted to or dependent on drugs as evidenced by habitual use or a clear sense of need for the drug.

(5) The use of prescribed or otherwise legally obtainable medication taken in such a dosage that a temporary delay in taking such medication might result in unacceptable incapacity. Examples of such medications are certain dosages or requirements for steroids, anticoagulants, antiarrhythmics, sedatives, and tranquilizers.

F. *Physical Fitness Standards for Security Police Officers.*

All persons authorized to carry firearms must meet a minimum standard of physical fitness. There are two categories for such persons: Offensive Combative and Defensive Combative. Persons not authorized to carry firearms are exempt from these physical fitness standards.

(1) *Offensive Combative Standard* must be met by all security police officers assigned to response force duties. The standard is a one (1) mile run with a maximum qualifying time of 8 minutes 30 seconds and a 40 yard prone-to-running dash with a maximum qualifying time of 8.0 seconds.

(2) *Defensive Combative Standard* must be met by all other security police officers authorized to carry firearms. The standard is one-half (0.5) mile run with a maximum qualifying time of 4 minutes 40 seconds and a 40 yard prone-to-running dash with a maximum qualifying time of 8.5 seconds.

(3) *Qualification* in the appropriate combative standard must be accomplished once every twelve months and under the supervision of the protective force training officer or other individuals designated by the responsible DOE field office.

(4) *Medical Certification.*

(a) Each individual who participates in a physical fitness training program to prepare to meet the physical fitness standards set forth in this appendix shall first be certified by a designated physician that he or she is medically fit to participate in the program. This certification shall be obtained not more than 30 days prior to each individual entering the physical fitness training program.

(b) Before any individual takes the physical fitness standards test he or she shall first be certified by a designated physician that he or she is medically fit to take the physical fitness qualification test. This certification shall be obtained not more than 30 days before taking the physical fitness qualification test.

(c) Individuals who require less than 30 days training prior to actual testing to meet the physical fitness standards need only obtain a single medical certification.

(5) *Initial Qualification Time Limit.* Individuals authorized to carry firearms shall meet the applicable physical fitness standard by September 30, 1994 and annually, thereafter using the date of initial qualification as the anniversary date.

(6) *New Employees.* Individuals authorized to carry firearms who are employed after September 30, 1993 shall meet the applicable physical fitness standard prior to his or her initial assignment to duties which requires such individual to carry firearms.

(7) *Training Program.* Incumbent security police officers shall participate in a physical fitness training program.

(8) *Retesting.* During each testing period a security police officer shall be permitted a maximum of six (6) and a minimum of two (2) opportunities to qualify or requalify before such security police officer must enter a training program or is removed from a security police officer position.

G. *Waiver of Security Police Officer Medical Standards and Time Extension to Meet Physical Fitness Standards.*

(1) Waivers of elements of the medical standards of this appendix may be granted for certain otherwise disqualifying medical or physical deficiencies by the cognizant field office management provided that:

(a) The DOE field organization authority, in consultation with a designated physician, determines that a certain medical or physical defect may be considered for waiver without compromising the intent of these medical standards to assure that all security police officers are capable of safely and effectively performing all normal and emergency duties.

(b) The individual demonstrates by medical examination and/or practical test, as determined necessary by a designated physician, the ability to perform effectively and safely all routine and emergency duties.

(c) A statement of demonstrated ability must be prepared by a designated physician and must clearly (1) identify the individual, (2) state the nature and degree of the specific medical or physical defect, and (3) record the satisfactory medical evaluation and/or performance of the practical test required by a designated physician.

(d) Waivers shall be reviewed, revalidated, and reissued at intervals not to exceed one (1) year.

(e) Individuals who have been adversely affected by application of the standards may appeal the denial of waiver to the cognizant DOE safeguards and security field office for review within 60 days after the adverse action. Further evidence may be offered relating solely to the medical or physical fitness of the individual involved. Such individual may select a representative of his or her own choice to assist and/or appear in the individual's behalf in any appeal. After findings and a determination have been made at the field office level, such individual has a right to petition the Director of Safeguards and Security, DOE Headquarters, within 30 days of the field office's determination for a final determination based upon his or her review of the record of the case.

(2) There will be no waivers granted from the physical fitness standards set forth in paragraph F of this appendix. However, time extensions not to exceed 6 months may be granted on a case-by-case basis for those individuals who, because of a temporary medical or physical condition as certified by a designated physician, are unable to satisfy the physical fitness standards within the required time period without suffering undue physical harm.

(H) *Security Officer Medical Qualification Standards.*

(1) *General Qualifications.* The examinee shall possess mental, sensory, and motor skills as required to perform

safely and effectively all assigned job duties. Such qualifications include:

(a) Mental alertness and reliable judgment.

(b) Acuity of senses and ability of expression sufficient to allow accurate communication by written, spoken, audible, visible, or other signals.

(c) Motor power, range of motion, neuro-muscular coordination, and dexterity.

(2) *Specific Minimum Qualifications.*

(a) *Head, Face, Neck, and Scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(b) *Nose.* Ability to detect odor of products of combustion and of tracer or marker gases.

(c) *Mouth and Throat.* Capacity for clear and audible speech as required for effective communication on the job.

(d) *Ears.* Hearing loss not to exceed 50 db average at 500, 1000, and 2000 Hz in one ear (by ISO 1964 or ANSI 1969 audiometry).

(e) *Eyes.* Near and distant visual acuity, with or without correction of at least 20/40 in the better eye. One-eyed individuals may qualify.

I. *Security Officer Medical Disqualification Standards.*

(1) *Freedom from Incapacity.* The examinee shall be free of any condition, habit, or practice which could reasonably be expected to result in sudden, subtle, or unexpected incapacitation.

(2) *Conditions for Medical Disqualification.* The presence of any of the following conditions normally shall disqualify the examinee from employment as a security officer.

(a) *Respiratory.* Significant pulmonary pathology or decrease in pulmonary function which could interfere with the safe and effective performance of assigned job duties.

(b) *Cardiovascular.*

1. Ischemic Heart Disease
2. Myocardial Infarction
3. Coronary Insufficiency
4. Angina Pectoris
5. Heart Failure
6. Significant Arrhythmia
7. Arterial Aneurysm
8. Significant Peripheral Vascular Insufficiency

(c) *Endocrine/Nutritional/Metabolic.*

(1) *Diabetes Mellitus.* Uncontrolled diabetes, ketoacidosis, or diabetic coma within the previous two years.

(2) *Obesity.* Obesity of such degree that it would interfere with the safe and effective performance of normal and emergency job duties.

(d) *Hematopoietic Dysfunction.* Clinically significant hematopoietic disorders which may interfere with the safe and effective performance of assigned job duties.

(e) *Malignant Neoplasms.* Malignant neoplastic disease.

(f) *Neurological.*

(1) History of epilepsy or other convulsive disorder.

(2) History of any disturbance of consciousness or neurological disease or any other presently existing condition that may interfere with the safe and effective performance of assigned job duties.

(g) *Mental and Emotional.* An established history or clinical diagnosis of any of the following:

(1) Any psychological or mental condition which could cause impaired alertness, judgment, or motor ability. A history of clinically significant emotional or behavioral problems shall require thorough clinical evaluation which may include, but not necessarily be limited to, psychological testing and psychiatric evaluation.

(2) Attempted suicide or an expressed threat of suicide.

(3) A condition in which a person's intake of alcohol is sufficient to damage his or her physical health, job performance, personal functioning, or when alcohol has become a prerequisite to his or her daily functioning.

(4) A condition in which a person is addicted to or dependent on drugs as evidenced by habitual use or a clear sense of need for the drug.

(5) The use of prescribed or otherwise legally obtainable medication taken in such a dosage that a temporary delay in taking such medication might result in unacceptable incapacity. For example, certain dosages or requirements for steroids, anticoagulants, antiarryhythmics, sedatives, tranquilizers, etc.

J. *Waiver of Security Officer Medical Standards.*

Waivers of elements of the medical standards of this appendix may be granted for certain otherwise disqualifying medical or physical deficiencies by the cognizant field office management provided that:

(1) The DOE field organization authority, in consultation with a designated physician, determines that a certain medical or physical defect may be considered for waiver without compromising the intent of these medical standards to assure that all security officers are capable of safely and effectively performing all normal and emergency duties.

(2) The individual demonstrates by medical examination and/or practical test, as determined necessary by a designated physician, the ability to perform effectively and safely all routing and emergency duties.

(3) A statement of demonstrated ability must be prepared by a designated physician and must clearly (1) identify the individual, (2) state the nature and degree of the specific medical or physical defect, and (3) record the satisfactory medical evaluation and/or performance of the practical test required by a designated physician.

(4) Waivers shall be reviewed, revalidated, and reissued at intervals not to exceed two (2) years.

(5) Individuals who have been adversely affected by application of these medical standards may appeal the denial of waiver to the cognizant DOE safeguards and security field office for review within 60 days after the adverse action. Further evidence may be offered relating solely to the medical or physical fitness of the individual involved. Such individual may select a representative of his or her own choice to assist and appear in the individual's behalf in any appeal. After findings and a determination have been made at the field office level, such individual has a right to petition the Director of Safeguards and Security, DOE Headquarters within 30 days of the field office's determination, for a final determination based upon his or her review of the record of the case.

Appendix B to Subpart B to Part 1046—Training and Qualification for Security Skills and Knowledge

A. *Applicability.* This appendix B to subpart B of part 1046 specifies performance oriented requirements for the security training and qualification of DOE contractor security officers and security police officers, including Special Response Team members.

B. *Training and Qualifications.*

(1) DOE contractors responsible for protective force personnel will establish formal qualification requirements to ensure the competencies needed by protective force members to perform the tasks required to fulfill their assigned responsibilities. The qualification requirements will be supported by a formal training program which develops and maintains, in an effective and efficient manner, the knowledge, skills and abilities required to perform assigned tasks. The qualification and training programs will be based upon criteria established by the Central Training Academy (CTA) and approved by the Director, Office of Safeguards and Security, in coordination with program offices. The formal qualification and training program shall:

(a) Be based on a valid and complete set of job tasks, with identified levels of skills and knowledge needed to perform the tasks;

(b) Be aimed at achieving a well-defined, minimum level of competency required to perform each task acceptably;

(c) Employ standardized lesson plans with clear performance objectives as a basis for instruction;

(d) Include valid performance-based testing to determine and certify job readiness (i.e. qualification);

(e) Be documented so that individual and overall training status is easily accessible. Individual training records shall be retained until 1 year after termination of the employee as a member of the protective force, unless a longer retention period is specified by other requirements.

(2) DOE contractors responsible for training protective force personnel shall prepare and review annually a task analysis detailing all of the required actions for a specific job assignment. The task analysis shall be used to prepare a job description and as a basic input document for local training requirements and be approved by the Head of the Field Element.

(3) *Security Officers.*

(a) *Training requirements.* Prior to initial assignment to duty, each security officer shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with security officer job responsibilities. The required tasks and minimum levels of competency shall be determined by a site-specific job analysis, but will include task areas found in paragraph (3)(c) of this appendix as appropriate. The training program will be approved by the Head of the Field Organization and where applicable will include, but not necessarily be limited to, the following types of instruction:

1. Orientation/standards of conduct;
2. Security education/operations and material control and accountability;
3. Safety training;
4. Legal requirements and responsibilities;
5. Weaponless self-defense;
6. Intermediate force weapons;
7. Communications;
8. Vehicle operations; and
9. Post and patrol operations.

(b) *Refresher Training.* Each security officer will successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security officer job responsibilities. The type and intensity of training shall be based on a site-specific job analysis and will be approved by the Head of the Field Organization. Failure to achieve a minimum level of competency shall result in the security officer's placement in a remedial training program. The remedial training program will be tailored to provide the security officer with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job analysis. Failure to demonstrate competency at the completion of the remedial program shall result in loss of security officer status.

(c) *Knowledge, Skills and Abilities.* Each security officer shall possess the skills necessary to protect DOE security interests from theft and other acts that may cause adverse impacts on national security or the health and safety of the public. The requirements for each security officer to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job analysis include, but are not limited to:

1. Procedures for conducting physical checks of repositories containing classified matter;
2. Operation of all vehicles as required by duty assignment;
3. Site and facility policies and procedures governing the security officer's role in site protection;
4. Federal and state-granted authority applicable to assigned activities and relative responsibilities between the protective force and other law enforcement agencies;
5. Post or patrol operations including:

a. Access control systems, procedures and operation
b. Contraband detection
c. Search techniques for persons, packages and vehicles
d. Badging and escort responsibilities
e. Familiarity and recognition of various types of sensitive matter being protected including the normal location, routine uses, and movements of the material at the duty post
f. Incident reporting
g. Methods of weaponless self defense

(4) *Security Police Officers.*

(a) *Training requirements.* Prior to initial assignment to duty, each security police officer shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with security police officer job responsibilities. The required tasks and minimum levels of competency will be based on a site-specific job analysis, but will include task areas found in paragraph (4)(c) of this appendix as appropriate. The training program will be approved by the Head of the Field Organization and where applicable will include, but not necessarily be limited to, the following types of instruction:

1. Firearms training;
2. Orientation/standards of conduct;
3. Physical training;
4. Security education/operations and material control and accountability;
5. Safety training;
6. Legal requirements and responsibilities;
7. Tactical training;
8. Weaponless self-defense;
9. Intermediate force weapons;
10. Communications;
11. Vehicle operations; and
12. Post and patrol operations.

(b) *Refresher Training.* Each security police officer shall successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security police officer job responsibilities. The type and intensity of training will be determined by a site-specific job analysis and will be approved by the Head of the Field Organization. Failure to achieve a minimum level of competency will result in the security police officer's placement in a remedial training program. The remedial training program will be tailored to provide the security police officer with the necessary training to afford a reasonable opportunity to meet the level of competency required by the job analysis. Failure to demonstrate competency at the completion of the remedial program shall result in loss of security police officer status.

(c) *Knowledge, Skills and Abilities.* Each security police officer shall possess the individual and team skills necessary to enable that security police officer to protect DOE security interests from theft, sabotage, and other acts that may cause adverse impacts on national security or the health and safety of the public and to protect life and property. The requirements for each security police officer to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job analysis include, but are not limited to:

1. Knowledge and proficiency in the use and care of all weapons as required by duty assignment;
2. Operation of all vehicles as required by duty assignment;

3. Operation of all communication equipment as required by duty assignment;

4. Knowledge of and the ability to apply site and facility policies and procedures governing the security police officer's role in site protection;

5. Knowledge of Federal and state-granted authorities applicable to assigned activities and the relative responsibilities between the protective force and local law enforcement agencies in both normal and emergency operations.

6. Knowledge of and the ability to apply DOE policy on the use of deadly force and limited arrest authority as set forth in 10 CFR part 1047;

7. Proficiency in post and patrol operations including:

a. Access control systems, procedures and operation
b. Contraband detection
c. Search techniques and systems for individuals, packages and vehicles
d. Badging and escort responsibilities
e. Response to and assessment of alarm annunciations and other indications of intrusion
f. Familiarity and recognition of various types of sensitive matter being protected including the normal location, routine uses, and movements of the material at the assigned duty post
g. Observation and physically checking buildings, rooms and repositories containing classified matter
h. Incident reporting
i. Response to civil disturbances (e.g., strikes, demonstrators)
j. Methods of self-defense and of arrest and detention
k. Basic procedures and elements of investigations
l. Tactical skills

(5) *Special Response Team.*

(a) *Training requirements.* Prior to initial assignment to duties as a Special Response Team member, a security police officer shall successfully complete a basic training course designed to provide the minimum level of skills and knowledge needed to competently perform all tasks associated with Special Response Team job responsibilities. The required tasks and minimum levels of competency will be based on a site-specific job analysis, but will include the task areas identified for security police officers and specialized task areas found in paragraph (5)(c) of this appendix as appropriate. The training program will be approved by the Head of the Field Organization.

(b) *Refresher Training.* Each security police officer assigned as a Special Response Team member will successfully complete a course of refresher training at least every 12 months to maintain the minimum level of competency required for the successful performance of tasks associated with security police officer and Special Response Team job responsibilities. The type and intensity of training will be determined by a site-specific job analysis and will be approved by the Head of the Field Organization.

(c) *Knowledge, Skills and Abilities.* Special Response Team members will be security police officers with special training and shall possess the individual and team skills to provide additional protection capability as demanded by the particular targets, threats and vulnerabilities existing at their assigned DOE facilities. In addition to security police officer requirements, the requirements for each Special Response Team member to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job analysis include, but are not limited to:

1. Operate as a member of a mobile disciplined response team to engage and defeat adversaries as defined by the approved threat guidance for the facility.

2. Provide and operate special weapons and other equipment which may be necessary to protect a particular facility or to effectively engage an adversary with advanced capabilities.

3. Operate from special tactical vehicles which may be necessary for the protection of a particular facility.

(6) *Specialized Requirements.* Each person who is assigned specialized responsibilities outside the scope of normal security police officer and Special Response Team duties shall successfully complete the appropriate basic and required periodic training. This training will enable the individual to achieve and maintain the minimum level of skill and knowledge needed to competently perform the tasks associated with the specialized job responsibilities, as well as maintain mandated certification, if applicable. Such personnel include, but are not limited to, flight crews, instructors, armorers, Central Alarm System operators, crisis negotiators, investigators, canine handlers, and law enforcement specialists. The scope of such duties will be based on site-specific needs.

(7) *Supervisors.*

(a) *Training Requirements.* Protective force personnel who are assigned supervisory responsibilities shall successfully complete the appropriate basic and annual training necessary to achieve and maintain the minimum level of skill and knowledge needed to competently perform their supervisory job responsibilities. The required tasks and minimum levels of competency will be based on a site-specific job analysis and the specialized task areas found in paragraph (7)(b) of this appendix as appropriate.

(b) *Knowledge, Skills and Abilities.* Each supervisor shall possess the skills necessary to effectively direct the actions of assigned personnel to protect DOE security interests from theft and other acts that may cause adverse impacts on national security or the health and safety of the public. The requirements for each supervisor to demonstrate proficiency, familiarity, knowledge, skills, and abilities of the responsibilities identified in the job analysis include, but are not limited to:

1. Knowledge of the duties and qualifications of all supervised personnel;

2. Familiarity with the basic operating functions of facilities for which the supervisor has protection responsibilities;

3. Assurance that subordinates and their equipment are ready for duty at the start of each duty shift and the inspection of each duty post at least twice per shift, personally or by other means;

4. Assurance that all duty logs and reports have been properly completed, distributed, and acted upon.

(8) *Training Exercises.* Exercises of various types will be included in the training process for the purposes of achieving and maintaining skills and assessing individual and team competency levels. The types and frequency of training exercises are to be determined by the Head of the Field Organization or by the training needs analysis conducted as part of the training program. The training program will include as a minimum, the following:

(a) *General.* At least monthly, exercises shall be conducted involving each shift. These exercises are to be planned so as to exercise the protective force's ability to prevent the successful completion of those adversarial acts defined in the approved site-threat statement.

(b) *Special Response Teams.* Personnel assigned Special Response Team responsibilities shall participate in exercises at least monthly. Such exercises will involve the type of situations and scenarios appropriate to site-specific conditions.

(c) *Local Law Enforcement Agencies.* Protective forces shall request the FBI and local law enforcement agencies that

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would assist the protective force during an incident to participate in exercises at least annually.

(d) *Records* of each training exercise shall be prepared for management review and planning and retained for a period of 1 year, unless a longer retention period is specified by other requirements.

(9) *Firearms Qualification Standards.*

(a) No persons shall be authorized to carry a firearm as a security police officer until the responsible Head of the Field Organization is assured that the individual who is to be armed is qualified in accordance with firearms standards.

(b) As a minimum, each security police officer shall meet the applicable firearms qualification standards every 6 months. The local DOE Operations Office shall permit the qualification to be accomplished any time prior to the actual 6 month requalification date. The actual qualification date will serve to establish a new requalification date for firearms qualification.

(c) The DOE expects that protective force personnel will maintain firearms proficiency on a continuing basis. Therefore, in the case of a headquarters or field audit, or other situation directed by the Head of the Field Element, a security police officer may be required to demonstrate the ability to meet qualification standards. Failure to meet the performance standard will be treated as if the individual failed the first attempt during routine semiannual qualification. In this event the requirements of paragraphs (h), (i) and (j) of part 9 of appendix B subpart B will be followed.

(d) Each security police officer shall qualify with all weapons required by duty assignment. Each security police officer shall be required to qualify with each firearm as indicated in the DOE requirements of the DOE qualification courses.

(e) Each security police officer shall qualify with the same type of firearm and ammunition equivalent in trajectory and recoil as used while on duty. This ammunition shall be listed on the DOE approved ammunition list.

(f) Each security police officer shall be given a basic principles of firearms safety presentation prior to any range activity. This does not require that a firearms safety presentation be given for each course of fire, but does require that prior to the start of range training or qualification for a given period (e.g., initial qualification, semiannual (every 6 months) qualification, training or range practice) each security police officer shall be given a range safety presentation.

(g) Only courses of fire approved by the Office of Safeguards and Security (SA–10) as standardized DOE qualification courses, shall be used for firearms qualification.

(h) Security police officers shall be allowed two initial attempts to qualify semiannually. A Range Master or other person in charge of the range will state to security police officer(s) on the firing line that "THIS IS A QUALIFYING RUN." Once this statement is made by the Range Master or person in charge, "this qualifying run" will constitute a qualification attempt. Each security police officer will be provided two qualifying attempts. The security police officer shall qualify during one of these attempts.

(i) Failure to qualify shall result in suspension of a security police officer's authority under section 161.k. of the Atomic Energy Act of 1954, as amended, to carry firearms and to make arrests. The security police officer will then enter a standardized, remedial firearms training program developed by the Central Training Academy and approved by DOE. The remedial firearms training program will be a combination of basic weapon manipulation skills, firearms safety, and an additional segment of time tailored to provide the security police officer with the necessary individual training to afford a reasonable opportunity to meet the firearms qualification standards.

(j) Any security police officer who, upon completion of the remedial training course, fails to qualify after two subsequent, additional attempts shall lose the security police officer status and his authority to carry firearms and to make arrests under section 161.k. of the Atomic Energy Act of 1954.

(k) Any security police officer who requires remedial training on three (3) consecutive semiannual qualification periods, with the same firearm, shall lose security police officer status.

(l) An appropriate DOE record shall be maintained for each security police officer who qualifies or who attempts to qualify. Records will be retained until 1 year after separation of a protective force officer from security police officer duties, unless a longer retention period is specified by other requirements. A supervisor or the training officer will be designated in writing as the individual authorized to certify the validity of the scores.

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 567

[No. 93–100]

RIN 1550–AA46

Regulatory Capital: Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule adding an interest rate risk component (IRR component) to its risk-based capital rule. Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the Federal banking agencies to review the risk-based capital standards applicable to insured depository institutions to ensure that those standards take adequate account of, among other things, interest rate risk.

The addition of an IRR component to the risk-based capital framework will serve to strengthen the soundness of the thrift industry by discouraging excessive risk taking. The OTS has therefore decided to impose an explicit capital requirement on institutions with above normal levels of IRR. Nevertheless, the OTS is mindful of the importance of maintaining capital requirements that are consistent with those imposed by the bank regulators on commercial banks and savings banks in order to minimize sources of inequality among competing institutions. Should the banking agencies adopt an IRR component that is significantly different from the OTS requirement, the OTS will review its requirement to determine whether any adjustment is needed in the interest of competitive equality. The OTS strongly believes, however, that, as a matter of public policy, safety and soundness must take precedence over considerations of competitive equity.

EFFECTIVE DATE: The final rule is effective January 1, 1994, except the amendments to § 567.6 are effective July 1, 1994.

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I. Background

The OTS is today issuing a final rule that adds an IRR component to the OTS's risk-based capital regulations. Today's rule satisfies the requirements of section 305 of FDICIA. It is also the culmination of a rulemaking begun in 1988. Effective control of interest rate risk is critically important to the safe and sound operation of savings associations. To protect the insurance fund and to create appropriate incentives for prudent risk-management, thrifts' capital requirements must explicitly take account of interest rate risk exposure.

The Federal banking agencies are required to publish final regulations on interest rate risk no later than 18 months after the enactment of FDICIA, that is no later than June 19, 1993. Section 305 also requires that the Federal banking agencies establish reasonable transition rules to facilitate compliance with those regulations.[1]

Certain key features of today's final rule are as follows: savings associations with a greater than "normal" level of interest rate risk exposure will be subject to a deduction from total capital for purposes of calculating the risk-based capital requirement; a two quarter "lag" time between the reporting date of the data used to calculate the IRR component and the effective date of the component will be established; and the Director of the OTS may waive or defer an institution's IRR component, under certain circumstances. The final rule is more fully described in Section I.B. Supplementary Information, entitled: "Overview of the IRR Component." Also an Appendix to the Preamble, containing descriptions of the IRR reporting form (Schedule CMR) and the methodologies used in estimating the IRR component, follows the regulatory text at the end of the document.

A. The IRR Rulemaking Proceedings

On December 15, 1988, the Federal Home Loan Bank Board (Bank Board), the OTS's predecessor agency, proposed a risk-based capital regulation that focused chiefly on credit risk but also stated the Bank Board's intention to include an IRR component in its risk-based capital regulations.[2] On June 22, 1989, the Bank Board issued for public comment an advance notice of proposed rulemaking ("June 1989 ANPR" or "ANPR")[3] that described the methodologies for measuring interest rate exposure that were under consideration for inclusion in the proposed IRR rule.

Shortly thereafter—in August of 1989—the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was enacted. FIRREA amended the Home Owners' Loan Act by adding a new section 5(t) that required the OTS to promulgate regulations prescribing uniform capital standards for all savings associations. FIRREA mandated that thrift capital standards were to include a risk-based capital standard, a leverage ratio standard, and a tangible capital standard, and that they were to be no less stringent than the standards applicable to national banks. FIRREA specifically provided that the OTS's risk-based capital standard could deviate from the standards applicable to national banks to reflect interest rate risk or other risks, so long as such deviations "did not, in the aggregate, result in materially lower levels of capital being required of savings associations."

The OTS adopted the capital standards that FIRREA required for savings associations in November, 1989. Its risk-based capital standard, however, did not include an IRR component because the statutory deadline for adopting a capital rule did not provide sufficient time to develop fully a methodology for measuring interest rate exposure. In December, 1990, however, the OTS issued a proposed IRR rule.[4] In response to the December 1990 Proposal and public hearings held on it in Washington, DC and San Francisco on January 31, and February 14, 1991, the OTS received a total of 307 comments from 261 different commenters.

FDICIA was enacted on December 19, 1991. Section 305 of FDICIA required the federal banking agencies to review their risk-based capital standards to ensure that those standards take adequate account of interest rate risk, concentration of credit risk, and the risks of nontraditional activities. Section 305 also mandated that the Federal banking agencies publish final regulations no later than 18 months after FDICIA's enactment—by June 19, 1993—and establish reasonable transition rules to facilitate compliance with these regulations.

On September 3, 1992, the OTS published a supplemental notice of proposed rulemaking seeking public comment on modifications to the December 1990 Proposal ("September 1992 Proposal" or "SNPRM").[5] In preparing the SNPR, the OTS took into consideration comments received regarding the December 1990 proposal. The public comment period closed on November 2, 1992, and the OTS received 47 comment letters.

B. Overview of the IRR Component

Under today's final rule, savings associations with a greater than "normal" level of interest rate exposure will be subject to a deduction from total

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[1] On September 3, 1992, the OTS published a supplemental notice of proposed rulemaking seeking public comment on a proposed regulation and technical appendix, addressing how an IRR component would be calculated and incorporated into the OTS capital requirements ("September 1992 Proposal" or "SNPRM"). The September 1992 Proposal sought further comment on modifications to the proposed regulation and technical appendix that were published on December 31, 1990 ("December 1990 Proposal" or "NPRM").

[2] 53 FR 51390 (December 23, 1988).

[3] 54 FR 27685 (July 3, 1989).

[4] 55 FR 53529 (December 31, 1990).

[5] 57 FR 40524 (September 3, 1992).

capital for purposes of calculating their risk-based capital requirement. Specifically, interest rate exposure will be measured as the decline in Net Portfolio Value (referred to as the Market Value of Portfolio Equity in the December 1990 and September 1992 proposals) due to a 200 basis point shock in market interest rates. The IRR component to be deducted from total capital is equal to one-half the difference between an institution's measured exposure and the "normal" level of exposure which is defined as two percent of the estimated economic value of its assets.

The final rule establishes a two quarter "lag" between the reporting date of the Schedule CMR data that are used to calculate the IRR component and the effective date of each quarter's IRR component. Under the final rule, the Director may waive or defer an institution's IRR component, but not decrease it unless it is as the result of an appeal. The OTS intends to make an appeals process available to institutions under certain circumstances. The appeals process will be described in more detail in guidelines to be issued later.

The final rule also adjusts the risk-weighting for certain mortgage derivative securities. Mortgage pass-through securities that are issued or guaranteed by government-sponsored agencies are currently placed in the 20 percent risk-weight category under the OTS risk-based capital rule. At present, however, stripped mortgage-backed securities (i.e., interest-only and principal-only securities) and mortgage derivatives with "residual characteristics" that are created from these securities are placed in the 100 percent risk-weight category even though they have the same degree of credit risk as the securities from which they are derived. The reason these mortgage derivatives are risk-weighted at 100 percent is not because of their credit risk but because they generally exhibit more price risk, or interest rate risk, than the mortgage pass-through securities from which they are derived.

The addition of an interest rate risk component to the OTS's risk-based capital framework removes the need for this risk-weighting disparity. Mortgage derivatives—with the exception of the residual classes of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs)—should now be placed in the same credit risk category as the securities from which they are derived. Accordingly, the final rule amends the risk-based capital rule to place all high-quality mortgage-derivatives, except for CMO and REMIC residuals, in the 20 percent risk-weight category.

Consistent with an agreement among the Federal banking agencies to lower the leverage ratio requirement once the risk-based capital framework is modified to address interest rate risk, the OTS intends to lower the leverage ratio requirement applicable to savings association to 3 percent, from the current level of 4 percent, on July 1, 1994.

II. Purpose of the IRR Component

As a result of statutory and regulatory constraints dating back to the 1930s, savings associations have long operated as specialized financial intermediaries, gathering funds, mostly short-term deposits, and making long-term mortgage loans. Until the late 1970s, this practice worked reasonably well. Indeed, the industry prospered throughout most of the postwar period, in part, because interest rates were relatively stable and the average rate paid on short-term deposits rarely rose above the rate earned on mortgages. The practice of funding long-term mortgages with short-term deposits, however, left the thrift industry vulnerable to rising interest rates.

The earnings of most savings associations are exposed to interest rate risk because their liabilities reprice faster than their assets when interest rates change. If interest rates rise, their cost of funds increases more rapidly than their yield on assets, reducing net interest income. This rise in interest rates adversely affects the economic value of most savings associations because an increase in interest rates will cause the present value of assets to decline more than the present value of liabilities.

The industry's vulnerability to rising rates became obvious in the late 1970s and early 1980s when interest rates rose dramatically. The industry experienced sharply higher funding costs and significant deposit disintermediation. Industry profitability plunged and turned negative in 1981 and 1982. Industry losses for the 1981–82 period totaled $8.9 billion. On a marked-to-market basis, however, the losses to net worth were far greater, with some estimates exceeding $150 billion.

Although the stress of the 1981–82 period prompted many industry participants to adopt meaningful interest rate risk management programs and hedging strategies, the interest rate exposure of many associations remains a significant risk today.

Accordingly, the OTS believes that the credit risk component of the risk-based capital requirement should be supplemented by a component that addresses the interest rate exposure of the thrift industry.

The principal objectives of adopting an IRR component are:

(1) To make capital requirements sensitive to differences in interest rate risk among savings associations;

(2) To discourage savings associations from taking excessive interest rate risk by making such behavior more costly; and

(3) To ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests.

III. Summary of Comments

In response to the September 1992 Proposal, the OTS received a total of 47 comment letters. Commenters included 37 thrift institutions, 1 bank holding company, 1 thrift trade association, 1 state league of financial institutions, 1 thrift mortgage banking subsidiary, 1 mortgage bankers association (2 comment letters), 1 home builders trade association, 1 government-related entity, 1 financial managers society, and 1 corporate adviser to banks and thrifts. Some commenters supported the proposal, but most sought changes to specific aspects of the proposal. Discussion of specific areas addressed in the comment letters follows.

In response to the December 1990 Proposal and the public hearings held on it on January 31, and February 14, 1991, the OTS had received a total of 307 comments from 261 different commenters. These comments comprised 277 letters received from 247 different parties as well as testimony given at the public hearings by 30 different parties. Sixteen of those 30 witnesses also provided comment letters. Those who provided comments included 215 savings associations and related companies, 24 trade associations, 6 banks, and 16 other parties (other financial institutions, consultants, academics and law firms).

The discussion below addresses the specific issues on which the OTS requested comment in the SNPRM as well as other issues raised in the comment process. The comments are grouped into three categories: (1) Comments on the IRR component; (2) comments on the valuation methodology employed by the OTS Model; and (3) miscellaneous comments. The comments received in response to the NPRM and those raised at the hearings were taken into consideration by OTS in preparing the SNPRM and in revising the reporting form that provides input data for the

OTS interest rate risk model and consequently such comments are not specifically addressed below.

A. Comments on the IRR Component

1. Stress Test

The SNPRM requested specific comment on whether the OTS should measure an institution's interest rate risk within the context of hypothetical parallel shifts in the Treasury term structure of plus and minus 200 basis points. The OTS received 18 comments on this issue. Ten commenters favored the use of a 200 basis point shift, while eight favored a 100 basis point shift. Five commenters objected to a fixed 200 basis point interest rate shock.

Two specific objections were raised. First, commenters noted that the proposed stress test is more stringent when interest rates are low than when interest rates are high. For example, when rates are at 10 percent, a 200 basis point shock represents a 20 percent change in interest rates, but when rates are at 4 percent, the same shock represents a 50 percent change in rates. Second, they noted that when rates are at relatively low levels, a stress test of 200 basis points subjects those institutions that are exposed to falling rates to a harsher test than those exposed to rising rates, since a downward rate shock of that magnitude has a lower probability of occurring.

The OTS believes that it is generally desirable to measure the interest rate risk exposure of savings associations within the context of a parallel shift in the term structure of interest rates of 200 basis points. A "rate shock," or stress test, of this magnitude is useful in measuring the ability of an institution to withstand difficult interest rate environments that might reasonably be expected to occur. Moreover, a stress test of this magnitude reveals the potential impact on an institution's financial condition of mortgage prepayment options, interest rate floors and caps, and other financial contracts with option-like features that would result from a significant movement in interest rates.

At the same time, however, the OTS recognizes that a downward rate shock of 200 basis points may be unrealistic in a low interest rate environment. Accordingly, the final rule provides for a 200 basis point shock in the upward and downward directions except when the current 3-month Treasury rate falls below 4 percent. When the 3-month Treasury rate falls below that point, the downward rate shock will be equal to one-half the value of the 3-month rate.

In a related matter, the OTS requested comment on whether the stress test that is used to measure IRR exposure should be modified periodically in response to changes in the general level of interest rates. The OTS received 23 comments on this issue; ten advocating that the OTS retain flexibility in setting the parameters of the stress test; eleven requesting that the OTS use the same stress test each quarter; and one suggesting the use of a different, considerably more complex approach to structure rate shocks.

The OTS believes that any benefit that may result from changing the stress test in response to fluctuations in interest rates is outweighed by the uncertainty that such changes would introduce. In particular, the OTS is concerned that a flexible stress test would make it more difficult for institutions to project their capital needs.

The OTS also requested specific comment on whether, for purposes of determining an IRR component, an institution's IRR exposure should be measured within the context of a non-parallel shift in the yield curve. Of the 20 institutions that commented on this issue, twelve argued in favor of the parallel shift methodology and four argued for non-parallel shifts. Another four commented on the difficulty of balancing the somewhat greater precision possible in a non-parallel shift method against the complexity of using non-parallel shifts for determining capital requirements in a capital rule. One of these commenters noted that individual institutions ought to consider non-parallel shifts as part of their IRR management, but that the OTS should not use non-parallel shifts in the model. Although it may well be useful to measure IRR exposure in the context of non-parallel shifts, the final rule does not incorporate a non-parallel stress test because the OTS is concerned that the use of a non-parallel stress test would greatly increase the complexity of the rule.

2. Contemporaneous Versus Lagged-IRR Component

The SNPRM raised the issue of whether the IRR component should be effective immediately, that is, as of the date of the financial statements on which the IRR component is calculated, or whether its effective date should be delayed one or more quarters after the quarter-end date of the financial statements on which the IRR component was based. (A lag is intended to provide institutions with sufficient time to plan for their capital needs.) Twenty-three comments were received on this issue. Most of the commenters favored a lagged IRR component.

The OTS recognizes that there is a trade-off between an IRR component that is based on the most recent available quarter-end data and one based upon lagged data. A shorter lag would more closely link the IRR capital component to the actual level of risk at the time of measurement, but would make it difficult for an institution to plan ahead for capital needs. Various lags in communications (lag in reporting of data by institutions to OTS and lag in mailing results to institutions) make a truly contemporaneous requirement a practical impossibility. A longer lag, on the other hand, provides some leeway for capital planning, but increases the likelihood that the IRR component could be "out of phase" with the actual IRR exposure of the institution, if the institution's IRR exposure has changed significantly during the lag.

To address concerns raised by commenters on the need to provide institutions with sufficient time to anticipate and respond to their capital needs, the final rule adopts an IRR component with a lag of two quarters plus one day. Thus, for example, an IRR component calculated using March 31 data would become effective on October 1. It also provides a mechanism for reducing or eliminating the IRR component on the basis of subsequent improvements in IRR exposure that occur during the interval of the lag.

3. Case-by-Case Determination of IRR Component

The SNPRM also requested comment on whether capital requirements for interest rate risk should be computed using an explicit standardized formula based on results of the OTS Model or on a case-by-case analysis of each institution's specific circumstances. Of the eight commenters that addressed this issue, two advocated the use of a formula, while six suggested that the OTS retain the flexibility to deal with institutions on a case-by-case basis.

The OTS believes that the use of a standardized formula for measuring interest rate risk exposure offers several important advantages over case-by-case analysis. First, standardization helps to ensure that institutions are treated equally, reducing the possibility that an IRR component might be imposed in an arbitrary or capricious manner. Second, standardization puts an institution in a better position to anticipate its capital requirements than under a case-by-case approach. Finally, the overall cost and burden on both the OTS and the industry of a standardized approach is likely to be significantly less than a

case-by-case approach. Accordingly, the final rule incorporates a standardized approach.

Nevertheless, to address possible inequities that might arise from adoption of a formula-based IRR component, the OTS intends to establish an appeals process that would, under certain limited circumstances, employ a case-by-case analysis of an institution's capital component. For further discussion of the appeals process, see section A.8 below.

4. Exemption for Small, Highly-Capitalized Institutions

In the SNPRM, the OTS proposed that small, highly-capitalized institutions (*i.e.*, those with less than $300 million in assets and risk-based capital ratios above 12%) be given the option to file an abbreviated reporting form. Of the 23 comments received on this proposal, 11 supported allowing these institutions to file abbreviated schedules, and five commenters favored abbreviated schedules for all highly-capitalized institutions regardless of size. Another four commenters suggested that institutions with special characteristics (*e.g.*, those in diversified holding company structures, and those with in-house interest rate risk models) be allowed to file abbreviated schedules. Three commenters argued that all institutions should file the standard Schedule CMR.

In response to concerns about reporting burden, the OTS decided to exempt small, highly-capitalized institutions from filing the standard Schedule CMR. These institutions will be required, however, to provide selected information in the manner determined by the OTS. The OTS will use this information to identify institutions that may have high levels of IRR exposure. Such institutions will be required to file Schedule CMR and will then be subject to the IRR component.

In a letter dated December 1, 1992, the OTS provided a general exemption from Schedule CMR for institutions with less than $300 million of assets that also have risk-based capital ratios above 12 percent. The OTS nevertheless encourages exempt institutions to file the standard Schedule CMR because that schedule allows OTS to generate institution-specific IRR Exposure Reports that can be used by institutions to supplement in-house analysis of their exposure. The OTS believes that these reports are particularly useful to institutions that do not have the in-house capability to monitor their IRR exposure. Finally, the OTS has explicitly reserved its authority to require any association to file the standard Schedule CMR and become subject to the IRR component.

5. Cap on IRR Component

The SNPRM raised the issue of whether the OTS should impose a percentage limit, or cap, on the amount of capital that an institution would be required to hold for IRR exposure. Eleven commenters favored the imposition of a cap. Most argued that a cap would either dampen quarter-to-quarter variability in the IRR capital component or protect some institutions from potentially excessive capital requirements. Six commenters, however, indicated that a cap would defeat the purpose of risk-based capital requirements, arguing that capital requirements should be tied to the level of risk undertaken by an institution.

The OTS is concerned that a cap would introduce the wrong incentives and might encourage those institutions with the greatest IRR exposure to increase their exposure, since there would be no additional capital charge once the cap is reached. Consequently, the final rule does not impose an explicit limit, or cap, on the IRR component.

6. Step Function

In the SNPRM, the OTS requested comment on how best to translate an institution's measured IRR into an IRR capital component. Comments were specifically requested on whether that translation should be accomplished with the use of: (a) A formula such as the one identified in the proposed rule; or (b) a "step function" that would set different capital requirements for different, broadly defined risk categories. Sixteen of the 19 commenters opposed a step function, mostly on the grounds that it would increase the complexity of the capital rule. The OTS does not believe that a step function offers an advantage over the formula approach and has, therefore, decided to use a formula to calculate the IRR component.

7. Default IRR Component

Comment was requested on whether institutions that fail to submit Schedule CMR on a timely basis should be subject to a "default" capital charge. While a few commenters favored a default charge, most took the view that it is more appropriate to address reporting failures with existing supervisory and enforcement tools. The OTS agrees that it should use existing supervisory and enforcement tools (including civil money penalties) to ensure compliance with reporting requirements.

8. Appeals Process

The OTS received 20 comments on the need to provide institutions with an opportunity to appeal their IRR capital component. Thirteen commenters asked for a process that would allow for appeals based on a range of factors, while five commenters argued that appeals should be limited to narrowly defined circumstances. Two commenters did not believe an appeals process was needed.

Several comments were also received on how to structure an appeals process. Some commenters wanted appeals to be heard by the OTS regional offices, others recommended that they be heard by the OTS staff in Washington, DC. Some commenters suggested that the OTS establish review boards consisting of various combinations of industry representatives, OTS personnel, and personnel from other bank regulatory agencies.

A number of institutions argued that they should be allowed to appeal their measured IRR component based on IRR exposure estimates produced by their internal models. Several commenters noted that the results of an institution's internal model may be more accurate for their particular institution than the OTS Model.

The OTS believes that an appeals process can provide the OTS staff with valuable insights into all aspects of IRR and can help to ensure that the IRR component is applied in a fair and equitable manner. Consequently, the final rule provides for the establishment of an appeals process.

To minimize the administrative burden of appeals and to discourage non-substantive appeals, grounds for acceptable appeals will be limited. The OTS will develop guidelines on the appeals process that will be issued at a later date.

While there may be some merit to using the results of an institution's internal IRR model in determining its regulatory capital requirements, there are some serious concerns with this approach. The OTS appeals process and any reliance on the results of an institution's own model for determining its IRR component will need to be carefully constructed to minimize those concerns.

First, any case by case approach makes it difficult to treat all institutions on an equal basis. The amount of capital that an institution would be required to hold for interest rate risk exposure would depend on the architecture of an institution's model, the assumptions used in the model, the adequacy of the data input, and the perceptions of

examiners about the model's results. Unless the OTS evaluation and monitoring process is quite thorough, a case by case approach would provide an unfair competitive advantage to those institutions with models that underestimate risk exposure.

Second, the periodic review by examiners of an institution's model, its assumptions and IRR exposure results has the potential of becoming a costly, time consuming process, with much effort being spent by management on convincing examiners of the "correctness" of its model and assumptions. Ultimately, the assessment of a capital charge for interest rate risk could become a negotiable item with the amount of the charge dependent, at least in part, on the skills of the negotiators, rather than the IRR exposure of the institution.

Finally, since an institution's IRR component would be predicated on OTS acceptance of the institution's exposure estimates, the institution would be faced with uncertainty over whether OTS will accept the results each quarter. This uncertainty could hamper the capital planning efforts of management.

The OTS will use its best efforts to develop a workable appeals process that will consider the results of an institution's internal model where available and approved as adequate through the examination or appeals process. Although the OTS has not yet developed criteria for this process, such criteria will likely limit the OTS consideration of an institution's results to cases where such results are significantly different from those of the OTS Model and where they would cause a material difference in an institution's IRR component. Consideration would also likely be limited to cases where OTS is convinced that the structure of the institution's model will provide results that are at least as good as the OTS model, the assumptions used are conservative, the level of data aggregation is appropriate, and the results are calculated in a manner consistent with the OTS model.

9. Prompt Corrective Action

A number of comments addressed the relationship between the proposed IRR component and the capital categories that were established pursuant to the Prompt Corrective Action (PCA) provisions of the FDICIA. The PCA provisions of FDICIA key certain supervisory actions to an institution's placement within one of five capital categories. The five categories are defined by specific risk-based capital ratios and leverage ratio levels. For example, to be considered "adequately capitalized," an institution must have a total risk-based capital ratio of at least 8 percent, a Tier 1 risk-based capital ratio of at least 4 percent, and a leverage ratio of at least 4 percent.

In the SNPRM, the OTS asked for comment on whether the risk-based capital boundaries for the PCA categories should be redefined once an IRR component is added to the risk-based capital framework. The OTS received 17 comments on this issue; eight suggested that the PCA boundaries be changed in some way to reflect the addition of an IRR component to the risk-based capital framework, while seven recommended leaving them unchanged.

The OTS believes the most sensible way to integrate an IRR component into the risk-based capital framework, given the existing PCA categories, is to treat the IRR component as a deduction from capital, leaving the PCA boundaries undisturbed. The banking agencies, which have not yet finalized their interest rate risk rule, may adopt a different approach. If they do, the OTS will consider whether competitive equality considerations should cause it to follow suit.

10. NPV Above Book Capital

Several commenters argued that an institution should not be required to hold additional capital for interest rate risk if, after a 200-basis point shock, its NPV exceeds book capital by an amount that would be sufficient to cover any applicable IRR component. Other commenters objected to basing an IRR component on the change in an institution's estimated net portfolio value ("NPV") on the grounds that such a component penalizes institutions with high ratios of NPV-to-assets. They also noted that if two institutions of the same size experience equal percentage declines in NPV due to an interest rate shock, the institution with the larger ratio of NPV-to-assets would have a larger IRR component.

Lowering or eliminating the IRR component for institutions for which NPV exceeds book capital in effect establishes capital requirements based on the market value level of institutions' capital rather that the value of capital as reported in accordance with generally accepted accounting principles. While there may be merit to adopting capital requirements that are based on market values, the drawbacks to such an approach are well known, and opposition to market value-based capital standards is widespread.

The criticism that the proposed IRR component penalizes institutions with relatively high ratios of NPV-to-assets vis-a-vis institutions with lower ratios also has merit. One approach to addressing this criticism would be to base an institution's IRR component on its NPV-to-assets ratio after a hypothetical adverse interest rate shock, such that institutions with ratios below a specified level would be subject to an IRR component. The OTS rejected this approach on the grounds that it would be tantamount to an adoption of a market value-based capital requirement.

The advantages and disadvantages associated with having capital standards based on market values pose issues distinct from the measurement and assessment of an IRR component. The levels of NPV before and after the rate shock reflect past economic changes. The difference between pre- and post-shock levels of NPV measure the risk of future changes in interest rates. As a result, the question of whether to adopt capital standards based on the market value level of capital should be addressed separately in conjunction with the banking regulators.

B. Comments on Methodology

1. Credit Quality Concerns

Two commenters stated that the OTS Model does not accurately measure interest rate risk because it does not take account of the credit quality of individual assets. The OTS recognizes that the model does not measure changes in credit quality that might result from an increase or decrease in interest rates; nor does it take into account credit quality differences within a specific type of asset class (*i.e.*, the Model does not assess the credit quality of individual assets). The Model does, however, take account of the generic credit quality differences among major types of assets. For example, it uses a higher discount rate for consumer loans than for mortgages.

The OTS could make further refinements to the Model to take account of differences in credit quality. However, while such refinements would have some effect on NPV, they would be unlikely to have a significant effect on the sensitivity of NPV to changes in interest rates. In this regard, it is important to note that the purpose of the OTS Model is to measure the sensitivity of NPV to *changes* in interest rates and not the *level* of NPV itself. Consequently, the OTS believes that requiring institutions to report detailed information on the credit quality of each of type of assets valued by the OTS Model would impose an additional reporting burden on the industry that would not be outweighed by

improvements in the ability of the Model to measure sensitivity (*i.e.*, the change in NPV due to a change in interest rates).

2. Cost of Funds Indices

Several institutions urged the OTS to modify the proposed method of projecting the cost of funds index (COFI) that is used to estimate the value of COFI ARMs. These commenters suggested an approach where the future value of the index would be based on the projected level of each of the index's constituent interest rates, weighted by the share of the related liability in the 11th District COFI. This approach would involve projecting future interest rates on each type of liability as well as that liability's future share of total liabilities over the remaining life of the COFI ARM. These institutions contend that because there is no connection in the Model between the projected cost of liabilities and the projected value of the COFI over the life of the mortgage, institutions holding significant volumes of COFI ARMs are disadvantaged because the hedging effect of their liabilities is not accounted for.

The OTS believes, however, that the approach suggested by these institutions is not compatible with the NPV approach to measuring interest rate risk. The NPV approach estimates the interest rate sensitivity of only existing assets and liabilities and does not project the composition of the liabilities portfolio into the future. Therefore, while the model could project the COF index in the manner suggested, no connection can be made between the cost of future liabilities and the COF index.

The OTS recognizes that the approach suggested by these institutions may be appropriate when analyzing the sensitivity of net interest income, where assumptions must be made about how maturing assets and liabilities are replaced and in which a connection can be made between the cost of liabilities and the index over several years.

3. Adjustable Rate Mortgages

Fifteen commenters claimed that the OTS Model overestimated the interest-rate sensitivity of adjustable rate mortgages (ARMs). They argued that the proposed methodology of using implied forward rates to project future short-term rates may cause lifetime and periodic caps of ARMs to be reached more often or sooner than is appropriate, thus overestimating the sensitivity of ARMs to changes in interest rates. Some commenters suggested that the Model be changed to incorporate the assumption that short-term interest rates remain unchanged over a 30-year horizon.

The OTS believes that the use of implied forward rates is consistent with both financial theory and market practice. It is widely accepted that the term structure of interest rates reflects available information, including expectations about future interest rates. Moreover, implied forward rates are widely used in the pricing of financial instruments. Accordingly, the Model will continue to use forward rates to project interest rates.

4. Prepayment Rates

Several institutions recommended that the OTS collect institution-specific mortgage prepayment rate data to use in estimating the interest rate sensitivity of mortgages. Despite the arguments made to support this recommendation, the OTS believes that such an approach would increase the reporting burden on institutions and increase the complexity of the OTS Model. Moreover, it is not clear that the historical prepayment experience on an institution's portfolio of mortgages is taken into consideration in determining prices that it can obtain for its mortgages in the secondary mortgage market. Rather, market prices are typically based on national prepayment rate estimates of market participants.

Two institutions objected to the assumption in the OTS Model that multifamily loans experience zero prepayments. The OTS incorporated this assumption into the Model as a result of discussions with industry representatives who advised that most multifamily loan contracts contain prepayment lock-out periods and prepayment penalties that operate to minimize prepayments on these loans. Although the OTS recognizes that the zero prepayment assumption may result in overestimation of the duration on some multifamily loans, particularly fixed-rate loans and adjustable-rate loans that are at or near their caps or floors, the OTS does not have sufficient statistical evidence to modify its assumption at this time. OTS may, however, modify this assumption at a later date if it finds that adjustable-rate multifamily loans without lock-out periods or prepayment penalties are more typical.

One institution recommended that the OTS use different prepayment assumptions for current- and lagging-index ARMs. OTS did not accept this recommendation because the small amount of published research that is available on ARM prepayments did not provide sufficient information on which to estimate separate functions for current- and lagging-index ARMs. The OTS may modify this aspect of the model at a later date if it obtains information that would permit estimation of separate functions for the two types of ARMs.

5. Servicing

Several commenters stated that "off-balance sheet" servicing rights should be excluded from the calculation of the IRR component. Commenters stated that because such servicing rights are not reflected on an institution's balance sheet, any loss in their economic value due to a change in interest rates does not adversely effect book capital and should therefore be ignored in calculating the IRR component.

While it is true that the economic value of off-balance sheet servicing is not recognized in the book capital accounts of an institution, it does not necessarily follow that a potential loss in the economic value of these items due to interest rate changes should be ignored in determining capital requirements. The OTS believes that measuring the change in economic value of a financial instrument due to a change in interest rates is an appropriate way to measure interest rate sensitivity regardless of whether the instrument is an on-balance-sheet item or an off-balance-sheet item. Hence, instruments such as loan commitments and swaps are included in the calculation of NPV. Therefore, the OTS does not agree that it is appropriate to ignore the interest rate sensitivity of off-balance sheet servicing rights simply because the loss in their economic value would not result in a corresponding loss in book capital.

The OTS received 36 comments on the NPRM suggesting changes to the methodology used to value mortgage servicing assets. Many commenters suggested including ancillary income in the valuation methodology. The OTS adopted this suggestion. Other commenters recommended that the OTS distinguish between excess servicing and purchased mortgage servicing. The OTS believes, however, that the accounting distinction between these assets is irrelevant to estimating economic value, and therefore did not adopt this recommendation.

Several commenters suggested that the OTS Model use institution-specific servicing cost estimates to value mortgage servicing rights. The OTS maintains that an institution's own cost of servicing is not relevant to the market value of its servicing portfolio. Rather, the market value is determined by the cost that the typical buyer in the market would expect to incur to service the

portfolio. For this reason, the OTS model uses an average servicing cost assumption obtained through an annual survey conducted by the Mortgage Bankers Association.

6. Mortgage Loan Commitments

Two commenters addressed the proposed methodology for estimating the interest rate sensitivity of mortgage loan commitments. They stated that the proposed 200 basis point shock is unduly harsh on mortgage commitments because it fails to recognize that many institutions adjust their hedge positions daily in response to changes in market conditions. While this point has merit, it should be understood that management responses to changes in market conditions will vary widely and cannot be predicted by the OTS. The NPV measure does not, therefore, incorporate possible changes in portfolio composition or hedge positions that institutions may undertake as a result of, or in anticipation of, changes in interest rates or other factors. As described in Appendix A, however, the OTS has modified the methodology that will be used to estimate the sensitivity of mortgage loan commitments in such a way as to reduce the Model's estimates of the sensitivity of such commitments.

7. Core Deposits

A few institutions suggested that the OTS collect core deposit decay rates from each institution instead of using global decay rate assumptions to estimate core deposit values and sensitivities. The OTS recognizes that decay rates are likely to vary across institutions. In addition, the OTS also understands that few institutions have accumulated the necessary historical data to permit accurate estimation of their deposit decay rates or core deposit values.

To address these concerns, the OTS designed Schedule CMR so that institutions that wish to report the data needed by the OTS to estimate individual decay rates may do so. After accumulating several quarters of data, the OTS will attempt to use these data to estimate decay rates for those institutions that report them. Until then, the Model will continue to use global decay rate assumptions.

Other institutions suggested that they be permitted to provide the OTS with their estimates of the economic value of their core deposits. To ensure consistency in the valuation of core deposits, the OTS will continue to estimate the value of core deposits for all institutions.

8. Duration of Equity Securities

Some commenters questioned the assumption that the OTS Model uses to estimate the interest rate sensitivity of investments in equity securities. The Model assumes that equities have an interest rate elasticity of 4.5. As with other assumptions used in the Model, the OTS based this estimate on available information. The OTS will consider any additional information it obtains in the future that may have a bearing on the validity of this assumption. Given the relatively small volume of investments in equity securities by the industry, however, this assumption is not expected to have a material impact on the measured interest rate sensitivity of institutions.

9. Discounting Liabilities

In the SNPRM, the OTS proposed using the London Interbank Offered Rate (LIBOR) to discount all liability cash flows. One institution remarked that LIBOR is not an appropriate discount rate for all liabilities. The OTS agrees that discount rates for liabilities should reflect differences in risk that the liabilities pose for holders of such liabilities. The discount rate used to value federally insured deposits should be less than used to value uninsured deposits and other liabilities. Because most of the deposits of savings associations are federally insured, the OTS has decided to discount cash flows associated with all deposits using the yield on secondary market certificates of deposit (as in the existing the OTS Model), while other liabilities (except for mortgage related escrow deposits) will be discounted by LIBOR, which is consistent with their uninsured status.

C. Other Comments

1. Risk-Weight on Mortgage Derivatives

In the SNPRM, the OTS requested comment on whether all agency-sponsored mortgage derivative securities should be assigned a 20 percent risk-weight once an IRR component is added to the risk-based capital rule. At present, stripped-mortgage backed-securities (*i.e.*, interest-only and principal-only strips) and mortgage derivatives with "residual characteristics" are placed in the 100 percent risk-weight category. Although these securities generally have the same degree of credit risk as the mortgage pass-through securities from which they are created, they are currently placed in the 100 percent risk category because they typically have more price risk, or interest rate risk, than mortgage pass-through securities.

Of the 24 comments received on the issue, 17 commenters favored a lower credit risk-weight for these securities, while five favored a lower risk-weight for some, but not all, of these mortgage derivatives. Several commenters noted that mortgage derivatives can be used effectively to lower interest rate risk and that placing them in the 100 percent risk category not only mis-classifies their credit risk but discourages institutions from using them to reduce their risk exposure.

In general, the OTS agrees that the risk-weights assigned to derivatives should reflect credit risk rather than price risk. The OTS also believes that it is appropriate to lower the risk-weights once the IRR component is fully incorporated into the risk-based capital framework. Accordingly, the final rule amends the risk-based capital rule to place all "high-quality mortgage-derivatives,"[6] with the exception of CMO and REMIC residuals, in the 20 percent risk-weight category. The OTS believes that CMO and REMIC residuals should remain in the 100 percent risk-category because it is difficult to measure the price risk associated with these instruments. The OTS also intends to rescind Thrift Bulletin 38 (TB 38) on July 1, 1994—the date on which institutions that are subject to an IRR component will first be required to hold capital for IRR. TB 38 discusses the risk-based capital requirements for collateralized mortgage obligations with residual characteristics.

2. Leverage Ratio

Eight commenters addressed the issue of whether the minimum leverage ratio requirement should be lowered or eliminated when an IRR component is added to the risk-based capital framework. Seven commenters urged the OTS either to lower or eliminate the leverage ratio, while one suggested that any decision on this issue be deferred until the IRR component has been in place for several reporting cycles. OTS agrees that the leverage ratio should be reduced or eliminated when an IRR component is incorporated into the risk-based capital framework. Accordingly, the OTS plans, by separate notice and comment rulemaking, to reduce the minimum leverage ratio requirement applicable to savings associations to 3 percent, from the current level of 4 percent, on July 1, 1994.

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[6] A high-quality mortgage-derivative is defined as any mortgage-derivative that meets the definition of a "high-quality mortgage-related security" under 12 CFR 567.1 (k). Section 567.1 (k) generally defines certain mortgage-related securities and certain mortgage-backed securities.

3. Data Collection

As a result of comments received on the NPRM, the OTS has made a number of substantive changes to the reporting form that it uses to gather data needed to measure interest rate risk. The new reporting form, Schedule CMR, was introduced in March 1993. Schedule CMR collects data in a less aggregated manner than the old form, which should result in more accurate interest rate risk estimates than were possible with the old form. Many of these changes were made in response to comments by institutions.

The most noteworthy changes to the reporting form were changes in the reporting of mortgages and off-balance sheet instruments. On Schedule MR (the previous reporting form), all fixed-rate single family mortgage loans and securities were grouped together. On the new form, institutions report mortgage loans and securities separately. They also report fixed-rate 30-year, 15-year, and balloon mortgages separately.

Similarly, in the off-balance sheet section of the old form, institutions aggregated positions that had similar but not identical characteristics. The new form collects off-balance sheet data in a way that permits institutions to list their off-balance sheet positions individually. Not only does this approach simplify the reporting of these positions, it requires OTS to make fewer assumptions about the nature of the positions being reported in estimating their value.

4. TB–13

The proposal would have incorporated Thrift Bulletin 13 (TB–13), which provides guidance on the responsibilities of boards of directors and management regarding interest rate risk, into the regulation. Four commenters supported that approach. The guidance is broadly descriptive of the appropriate focus and objectives that should guide directors and managers in ensuring effective management of the institution's interest rate risk; it does not contain a set of prescriptive norms. Accordingly, the OTS has concluded that a thrift bulletin is a more appropriate vehicle for implementing it.

5. Model Proposed by Banking Agencies

In August 1992, the Federal bank regulatory agencies published an advance notice of proposed rulemaking outlining a model that they proposed to use to calculate the IRR component that would be applicable to commercial banks ("the bank model"). The OTS received 26 comments discussing the proposed bank model. Of these 26 comments, three indicated a preference for the proposed bank model. Ten commenters favored the OTS model and thirteen commenters suggested that the OTS and the banking agencies use the same model. Some commenters noted that the bank model was less complex and required less input data than the OTS model, imposing a lighter reporting burden on the commercial banks. Commenters that favored the OTS model generally indicated that it would provide more reliable estimates of interest rate risk for savings associations than would the proposed bank model.

The OTS has decided to retain the basic approach outlined in the SNPRM rather than adopt the bank regulators' approach because of the potentially greater interest rate risk inherent in long-term mortgage lending that is the dominant type of asset in thrift portfolios. The OTS is mindful, however, of the need for a level playing field for savings associations, savings banks, and commercial banks when engaging in similar activities. After the banking agencies have finalized their interest rate risk regulations, OTS will consider modifying its rule to improve consistency where that can be accomplished without significantly compromising the safety and soundness protection provided by the OTS approach to measuring interest rate risk and establishing an IRR component.

6. Use of Liquidation Concept

Several institutions objected to the proposed NPV measure because they view NPV as a liquidation concept that ignores franchise value. NPV is the aggregate value of an institution's existing assets, liabilities, and off-balance sheet contracts. Franchise value, on the other hand, is the value an institution is expected to derive from future business that has not yet been generated or reflected on its balance sheet.

Although the NPV measure includes some components of franchise value such as that derived through the relationship with existing retail depositors, it does not include all parts of franchise value. The failure of the OTS Model to take account of all components of franchise value does not imply that such components are irrelevant, only that they are difficult to measure. Franchise value is even more assumption-driven, and hence more difficult to estimate, than the sensitivity of NPV because it depends on future business decisions. Moreover, it should be stressed that the purpose of the OTS Model is to measure interest rate risk exposure—not liquidation value.

IV. Description of Rule

Credit Risk Component of Current Rule Covers "Normal" IRR

As a result of comments received on the December 1990 Proposal and discussions with the bank regulatory agencies, OTS has decided not to change the credit risk component for savings associations; it thus remains at 8 percent of risk-weighted assets. The consensus among federal banking and thrift regulators is that, at this level, the credit risk component is sufficient to cover a "normal" amount of IRR. OTS has, therefore, adopted the "outlier approach" (proposed by both the OTS and the banking agencies) to incorporate an IRR component. Under this approach, only institutions with more than a normal amount of interest rate risk are required to maintain extra capital for interest rate risk.

Description of the IRR Component

This rule incorporates an IRR component into OTS's risk-based capital rule. The IRR component is a dollar amount that will be deducted from total capital for the purpose of calculating institutions' risk-based capital requirements. The IRR component is equal to one-half the difference between an institution's "measured exposure" and a "normal" level of exposure, described below.

An institution's interest rate risk exposure will be measured in terms of the sensitivity of its Net Portfolio Value (NPV) to changes in interest rates. The OTS will calculate changes in an association's NPV based on financial data submitted by the association on Schedule CMR of the Thrift Financial Report and using the OTS Model described in appendix A.

An association's "Measured Interest Rate Risk" (Measured IRR) will be expressed as the change that occurs in its NPV as a result of a hypothetical 200 basis point increase or decrease in interest rates (whichever leads to the lower NPV) divided by the estimated economic value (present value) of its assets.[7] An institution with a "normal" level of interest rate risk is defined as one whose Measured IRR is less than 2 percent, as estimated by the OTS Model. Only institutions whose Measured IRR exceeds 2 percent will be required to maintain an IRR component.

[7] When the 3-month Treasury bond equivalent yield falls below 4 percent, the decrease (or downward shock) will be modified to be equal to one-half of such Treasury rate.

Calculation of Changes in Net Portfolio Value. The general formula for computing NPV is:

NPV=Present value of expected cash inflows from *existing* assets minus the present value of expected cash outflows from *existing* liabilities plus the present value of net expected cash inflows from *existing* off-balance sheet contracts.

Changes in NPV are calculated using the following steps.

Step 1: The savings association's "base case" NPV will be estimated at the end of the quarter. Present value estimates will be based on the level of interest rates at the quarter-end date. This is referred to as the "base case" interest rate scenario.

Step 2: The effect of an immediate parallel upward shift in the term structure of interest rates (*i.e.*, the zero-coupon Treasury yield curve) on the association's NPV will be estimated by adding 200 basis points to the quarter-end interest rates and recalculating the association's NPV. Such an immediate parallel shift in interest rates, in either the upward or downward direction, is hereafter be referred to as an "interest rate shock."

Step 3: If the 3-month Treasury bill rate at quarter-end is 4 percent or above, the effect of a downward interest rate shock on the association's NPV will be estimated by subtracting 200 basis points from quarter-end interest rates and recalculating the association's NPV. If the 3-month Treasury bill rate is below 4 percent, however, the downward rate shock will be equal to one-half the value of the 3-month bill rate (*e.g.*, 150 basis points if the 3-month bill rate is 3 percent).

Step 4: The decline in NPV will be determined by taking the lesser of the NPVs in the two (shocked) rate scenarios computed in Steps 2 and 3 and subtracting it from the base case NPV computed in Step 1.

Computation of the IRR Capital Component

An institution's Measured IRR is equal to the change in its NPV divided by the estimated present value of its assets. That is,

$$\text{Measured IRR} = \frac{\text{NPV}_{\text{Base}} - \text{NPV}_{\pm 200}}{\text{PV of Assets}_{\text{Base}}}$$

The *"normal" level of IRR* is defined as a decline in NPV equal assets due to a 200 basis point shock to interest rates.

The *amount of capital* (*i.e.*, IRR component) an institution will be required to maintain will be calculated as one-half of the difference between its Measured IRR and 2 percent, multiplied by the present value of its assets:

$$\text{IRR Component} = \frac{(\text{Measured IRR} - .02)}{2} \times \text{PV of Assets}_{\text{Base}}$$

For example, suppose that the OTS produces the following estimates for an institution. Its base case NPV is $10 million, and NPV rises to $12 million in the −200 basis point scenario and falls to $7 million in the +200 basis point scenario. The estimated present value of the institution's assets in the base case is $100 million.

This institution's IRR component would be $0.5 million and is calculated as follows:

1. The relevant interest rate scenario for computing the IRR component is the +200 basis point one, because it results in a lower NPV than the −200 basis point scenario (in which NPV is projected to increase).

2. The institution's Measured IRR is 3 percent:

$$\text{Measured IRR} = \frac{\text{NPV}_{\text{Base}} - \text{NPV}_{+200}}{\text{PV of Assets}_{\text{Base}}}$$

$$= \frac{(\$10 - \$7)}{\$100} = \frac{\$3}{\$100}$$

$$= 0.03 \text{ or } 3\%$$

3. Because its Measured IRR exceeds the 2 percent normal level, this association would be subject to an IRR component, calculated as follows:

$$\text{IRR Component} = \frac{(\text{Measured IRR} - .02)}{2} \times \text{PV of Assets}_{\text{Base}}$$

$$= \frac{(.03 - .02)}{2} \times \$100 = \frac{.01}{2} \times \$100$$

$$= \$.5 \text{ million}$$

Thus, the institution would have an IRR component of $.5 million deducted from total capital. Following that deduction, the institution would be required to have capital of at least 8% of risk weighted assets.

Effective Date and Two Quarter "Lag"

The IRR component will be computed on a quarterly basis. The capital requirement for interest rate risk purposes will have an effective "lag" of two quarters and, thus, the requirement would go into effect on the first day of the third quarter following the Schedule CMR on which the IRR component was calculated. For example, an interest rate risk component based on December 31, 1993 data would become effective on July 1, 1994.

If an association is successful in reducing its IRR component prior to the effective date, then the component will be lowered to that amount. For example, if an institution's IRR component of $.5 million based on June 30 Schedule CMR data declines to $.4 million based on September 31 Schedule CMR data, the institution's IRR component effective on January 1 of the following year would be $.4 million, not $.5 million. If, however, the component is greater using September 31 data than using June 30 data, the IRR component on January 1 would be $.5 million. The higher component required by September data would not take effect until April 1.

Actual Implementation Date

The first date that the component will be deducted from total capital under this rule will be July 1, 1994, based on the IRR component calculated using data as of December 31, 1993.

Small Highly Capitalized Institution Exemption

Small, highly capitalized institutions are exempt from filing Schedule CMR and are not subject to the IRR component. These institutions will be required to provide selected information in the manner determined by the OTS. The information will be used to identify institutions that have potentially high interest rate risk. Such institutions may be required in the future to file Schedule CMR.

To qualify for the exemption, an association must have less than $300 million in assets and a risk-based capital ratio in excess of 12 percent. The Director, or his designee, retains the discretion to require any otherwise qualifying institution to file Schedule CMR if there is a reason to be concerned about the institution. Any such institution would then be subject to the IRR component.

Authority of the Director To Waive or Defer the Component

The final rule provides explicit authority for the Director of the OTS, or his designee, to waive or defer an institution's IRR component on a case-by-case basis. The Director has not, however, retained the authority to lower the IRR component, except as the result of a successful appeal by an institution. An association may request a waiver or deferral, if the association has taken meaningful steps to reduce or control its interest rate risk exposure that are likely to result in a substantially lower IRR component based on more recent data. For example, if an association's IRR component is scheduled to become effective on July 1, but during May the association completes a transaction that the Regional Director believes will result in a substantially lower IRR component based on June 30 data, the effective date may be deferred until June 30 NPV results are available.

Appeals Process

The OTS will permit appeals of an association's IRR component. The details of the appeals process will be included in guidelines to be issued by the OTS at a later date. The agency anticipates that successful appeals will present a convincing case that, based on the specific circumstances of the institution, the OTS Model significantly mis-evaluates the institution's interest rate risk.

The OTS will also permit the use of an institution's own interest rate risk measurement model where available and approved as adequate by the OTS. The agency will issue guidance at a later date outlining the details of the process for gaining approval. In general, however, OTS will expect an institution to present a convincing case that: (i) Its measurement methodology is at least as good as the OTS's methodology; (ii) the portfolio data used are at an appropriate level of detail, and (iii) its assumptions are conservative. An institution that is successful in the appeals process may have its IRR component lowered.

Future Amendments to the Methodologies

Going forward, OTS will continue to evaluate and amend the methodologies used to estimate institutions' interest rate risk exposure. Any significant changes that are likely to have a substantial impact on the calculation of institutions' IRR components will be published for notice and comment in the **Federal Register**. Examples of such changes include modifications to the equation for calculating the IRR component itself; or modifications to the methodologies used to value any assets, liabilities, or off-balance sheet contracts that would materially alter the IRR component.

The OTS will periodically update certain equations and parameters used in the Model, but will not publish these changes for notice and comment in the **Federal Register**. Institutions will be informed of these changes either through periodic updates of the manual describing the OTS Model, or through the quarterly "Asset and Liability Pricing Tables" that will be provided, upon request, to institutions. For example, OTS uses mortgage prepayment estimates provided by several investment banking firms to produce the prepayment functions used in the valuation of single-family mortgages. These functions will be modified periodically as new prepayment estimates become available and the modifications will be reported in the Pricing Tables.

Prompt Corrective Action (PCA)

The final rule treats the IRR component as a deduction from total capital. Therefore, the benchmark levels of capital used to define the categories of capitalization established by the PCA regulation need not be amended. The component will be deducted from total capital for purposes of calculating an institution's compliance with its risk-based capital requirement.

V. Summary of Changes to Final From the Proposal

The content of this final rule is, in most respects, the same as that proposed in the SNPRM in September 1992. There are minor changes in the calculation of the component and its implementation, as follows:

In the SNPRM, the OTS proposed to use interest rate shocks of plus and minus 200 basis points to estimate the loss in NPV due to a change in interest rates. Instead, the Model will continue to use a 200 basis point upward shock, but will modify the downward shock if the 3-month Treasury bill rate is less than 4 percent at quarter-end. In such cases, the downward rate shock will be equal to one-half the value of the 3-month Treasury bill rate (e.g., 150 basis points if the 3-month bill rate is 3 percent).

The IRR component will be effective with a two quarter lag instead of the one quarter lag proposed in the SNPRM. Thus, institutions with an interest rate risk component will begin holding capital for interest rate risk on July 1, 1994, based on the component calculated using December 31, 1993 financial data.

The final rule also makes minor changes to the methodology for calculating the economic value and interest rate sensitivity of certain assets, liabilities, and off-balance sheet items.

Discount Rate for Liabilities

The SNPRM proposed that the cash flows of most liabilities be discounted by the London Interbank Offered Rate (LIBOR). As described in section B.6.a of the Appendix, however, the OTS Model will use LIBOR to discount the cash flows of borrowings but will continue to use secondary market CD yields to discount the cash flows of deposits.

Optional Commitments To Originate Mortgages

The SNPRM stated that Schedule CMR would collect institutions' estimated rate of closure on mortgage commitments and use it to estimate the number of commitments currently in place that would ultimately close. After careful consideration, the OTS decided to use the same closure rate for all commitments with a given contract rate instead of using institutions' estimated rates of commitment closure. The Model will use a base case closure rate based on closure rates observed during periods of low interest rate volatility. Similarly, it will use closure rates in the upward and downward shock scenarios based on rates observed during periods of rising and falling rates.

Discount Rate for Commercial Loans and Construction and Land Loans

The SNPRM stated that the OTS Model would use the current rate on commercial loans reported in Federal Reserve statistical release E.2, and the current rate on construction lending reported in HUD release "Secondary Market Prices and Yields and Interest Rates for Home Loans," to derive discount rates for estimating the economic value of commercial loans and construction and land loans, respectively. Better information on the current lending rate on such loans made by the thrift industry, however, is provided by Schedule CMR. The current lending rate on commercial loans will be assumed to be equal to the prime rate plus the industry's aggregate weighted average margin on adjustable-rate commercial loans reported on Schedule CMR in the previous quarter. The current lending rate on construction loans will be assumed to be equal to the current rate on the most commonly reported construction and land loan index, plus the average margin reported by institutions with loans tied to that index. These estimates of current lending rates will be used to derive a spread over the zero-coupon Treasury curve that will be used to discount loan cash flows. See section B.2 of the appendix for a description of this process.

Mortgages Serviced by Others and Other Assets

The SNPRM omitted discussion of the methodology for estimating the economic value of Mortgages Serviced by Others and Other Assets. Those methodologies are described in sections B.5.i.ii and B.5.v of the appendix.

Cost of Funds Index (COFI)

In the December 1990 proposal, the OTS proposed using an equation to project the 11th District Cost of Funds Index based on the previous month's COFI and the projected one-month Treasury yield. Several commenters noted that the proposed COFI equation did not respond quickly enough to an interest rate shock and would not be adjusted by the full amount of the shock. In response to these comments, the OTS planned to develop a model to simulate the index that would be based on several lagged values of short-term and long-term Treasury yields with a more complicated lag structure than the COF equation described in the 1990 proposal.

The OTS undertook an extensive study of the proper specification of the COFI equation. Several different specifications of the equation were analyzed, including equations based on lagged values of a single Treasury yield, equations based on lagged values of both short-term and long-term Treasury yields simultaneously, and more complicated models in which the maturities of the funds on which COFI is based change in response to changes in the slope of the yield curve. The study revealed that a simple equation similar to the one originally proposed performed better than the alternative specifications reviewed.

The equation adopted for the final rule differs from the equation proposed in the SNPRM in two ways: It is based on changes in the one-year Treasury rate (instead of the one-month Treasury rate), which produced a more accurate forecast than other interest rates tested; and it has no intercept term which implies that the long-run ratio of the COFI to the one-year Treasury rate is the same for all interest rate levels. The equation is described in section B.5.b of the appendix.

VI. Executive Order 12291

This regulation is considered to be a "major rule" within the meaning of Executive Order 12291. Accordingly, the OTS has prepared the following regulatory impact analysis.

The Need for Rule

The federal government provides a "safety net" to savings associations in the form of deposit insurance. (The safety net is generally defined to include the deposit insurance system and access to the discount window of the Federal Reserve.) In the absence of such a safety net, depositors, equity investors, and other creditors would require certain savings associations to maintain higher levels of capital to protect against potential losses from risks such as interest rate risk exposure than they currently maintain. The existence of the safety net, therefore, creates a moral hazard under which some associations may take greater risks than would be prudent or than they would be permitted to take in its absence. This regulation addresses the need for

additional capital to protect against one such risk—excessive interest rate risk.

Objectives of Rule

The principal objectives of incorporating an interest rate risk component into the risk-based capital framework are to: (1) Make capital requirements more sensitive to differences in risk exposure among savings associations; (2) discourage savings associations from taking excessive risks by making such behavior more costly; and (3) ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests. This regulation is designed to impose greater market-like discipline on savings associations to foster a more competitive and efficient thrift industry while increasing its overall safety and soundness. As described below, the OTS believes that the overall benefits to society of fostering such an environment far outweigh the costs imposed on a relatively small number of savings associations that would have to raise additional capital or adjust their portfolios as a result of this rule.

Benefits

Incorporating an interest rate risk component into the risk-based capital rule will help to ensure that the capital requirements of savings associations are more closely related to the risks incurred by such institutions. Making institutions' capital requirements dependent on the risks they take, should result in capital requirements that correspond more closely to those that would be imposed by equity investors, depositors and other creditors in the absence of the federal safety net that provides support to depository institutions. Adoption of the rule will result in capital requirements that correspond more closely to those that the marketplace would demand in the absence of a federal safety net, leading to gains in overall economic efficiency. It is not possible to quantify these gains with precision with the data currently available to the agency.

There are several ways in which gains should result from adoption of the rule. First, the interest rate risk component requires less capital of those savings associations with low levels of interest rate risk than it does of those that are taking above normal interest rate risk. Consequently, less risky institutions should find it easier to compete and grow. Risky institutions would be encouraged to manage their interest-rate risk more effectively, also leading to gains in economic efficiency.

Second, the imposition of an interest rate risk component should reduce the likelihood of depository institution failures resulting from excessive interest rate risk exposure. While not a direct measure of economic benefit, this would reduce deposit insurance losses that otherwise would be paid by the industry or taxpayers. As is well known, thrift institutions came under severe pressure in the late 1970s and early 1980s, when interest rates rose dramatically. In fact, because of its heavy interest rate risk exposure, the industry reported losses of $9 billion during 1981 and 1982 and, in terms of market value, some estimate that losses exceeded $150 billion. While many institutions have since taken steps to reduce their exposure, others remain heavily exposed to interest rate risk.

The OTS believes that the incidence of thrift institution failures resulting from excessive interest rate exposure will be reduced significantly by incorporating an interest rate risk component into the risk-based capital framework. The interest rate risk component will require excessively exposed institutions to reduce their exposure or augment their capital base. As a consequence, risk to the deposit insurance fund and taxpayers should be reduced.

Third, the OTS believes that adoption of the interest rate risk component creates incentives for savings associations to make decisions on the basis of their economic merit rather than on their accounting effect. For example, savings associations may be tempted to acquire fixed-rate mortgages instead of adjustable rate mortgages if fixed-rate mortgages are expected to generate higher levels of reported earnings over the near term, even though adjustable rate mortgages might offer higher risk adjusted returns over the long-term. By tying the capital requirements for interest rate risk to the effect of interest rate movements on the institution's economic value (equal to the present value of its future net income), the interest rate risk component encourages institutions to consider the effect of portfolio changes on the long-run profitability of the organization.

Finally, now that capital requirements incorporate interest rate risk, the OTS intends to reduce the leverage ratio requirement from 4 percent to 3 percent on July 1, 1994. The reduction of this requirement makes it possible for institutions that are presently constrained by the leverage requirement—but not by the risk-based capital requirement—to expand their lending and investment activities.

In addition, the reduction of the leverage ratio requirement will enable many institutions that are currently constrained by the narrow definition of core capital (i.e., common equity and non-cumulative perpetual preferred stock) to take advantage of the greater flexibility of the risk-based capital rules to make use of cumulative preferred stock and subordinated debt to reduce the cost of their capital structures. It is not possible to estimate the value of this flexibility with available data.

The OTS believes that this rule will result in gains in overall economic efficiency and, in conjunction with a reduced leverage requirement, increase the availability of credit.

Costs

Because the optimal amount of capital an institution should maintain to protect against interest rate risk cannot be measured precisely, this rule could require at least some institutions to hold more capital than would be demanded by the marketplace in the absence of the safety net. Such institutions would be unfairly harmed vis a vis competitors that are not treated unfairly. Institutions that are required to hold more capital than necessary would become less efficient, less competitive, and earn lower returns on capital than otherwise. The cost of reduced efficiency would be borne by investors in the form of lower returns on capital or by customers in the form of higher rates on loans, lower rates on deposits, or reduced services. It is not possible to quantify the potential costs associated with imperfections in the methodology used by the OTS to measure interest rate risk of individual savings associations, but the OTS believes the likelihood and magnitude of such mismeasurement are small in any case.

The collection of data to measure interest rate risk exposure necessarily imposes reporting costs on savings associations. The OTS believes these reporting requirements would be imposed in any case for prudential supervisory purposes, regardless of the adoption of this rule.

Based on data as of December 31, 1992, the OTS estimates that approximately 125 savings associations, or approximately 6 percent of all private sector savings associations, would have a combined capital requirement for interest rate risk of $460 million as a result of this rule. The $460 million of capital is slightly less than 1 percent of the industry's total capital base.

Although the rule would result in a $43 million capital shortfall, that amount is not an appropriate measure of the economic impact of this rule for three reasons. First, the affected savings associations would have alternative

ways to satisfy their capital shortfall other than raising capital. These include asset shrinkage and balance sheet restructuring to reduce interest rate risk or credit risk. The OTS anticipates that most affected institutions will address any capital shortfall through these means rather than by raising capital.

Second, the cost of higher capital to these institutions is not the amount of capital (i.e., the $460 million), but the difference between the yield the institutions must pay on the capital and the interest they pay on their next higher cost of funds. Assuming an "average" cost of equity of 20 percent and an alternative cost of funds of 5 percent, the cost of the extra capital to the affected portion of the industry is closer to $69 million a year [(20% − 5%) × $460 million]. If institutions choose to reduce risk rather than raise capital, the cost could be significantly less than even this amount.

Because of the wide variety of different case-specific circumstances, it is not possible to estimate the costs of alternative means of compliance (asset shrinkage, balance sheet restructuring, etc.) under the capital plan that will be required of institutions that fail a new capital requirement as a result of their interest rate risk. While institutions should choose the lowest cost mix of strategies to attain compliance, the cost/risk/return tradeoffs that face each institution will be unique.

Third, while adoption of this rule could be viewed as imposing a cost on individual savings associations that will be required to meet higher capital requirements, it may be more appropriate to view the effect as a reduction in the subsidy provided to such institutions by the existence of a federal safety net. The net effect of the proposal should be to reduce the overall cost to society of ensuring the safety and soundness of the thrift industry by requiring institutions that are taking disproportionate risks in relation to their capital to strengthen their capital positions.

Adoption of this rule may prompt some savings associations to alter their asset/liability mix in order to reduce their interest rate risk exposure. For example, savings associations would have more of an incentive to encourage potential borrowers to take out adjustable-rate loans in lieu of fixed-rate loans, and short-term loans in lieu of long-term loans. In addition, savings associations will have a greater incentive to securitize and sell assets that exacerbate their interest rate exposure. Similarly, on the liability side, there will be a greater incentive to reduce exposure by issuing liabilities with long maturities over those with shorter maturities.

Adoption of this rule may also prompt some institutions to rely more heavily on futures, options, and other derivative products to manage their interest rate exposure.

Examination of Alternative Approaches

The OTS examined two principal alternative approaches to addressing the interest rate risk exposure of savings associations before deciding to adopt this rule. These included: (1) Assessing capital requirements for interest rate risk on a case-by-case basis, and (2) adopting the approach for incorporating an interest rate risk component into the risk-based capital framework proposed by the banking agencies.

Case-by-Case Approach

Under existing authority, the OTS may establish increased minimum capital requirements upon a determination that an individual savings association's capital is or may be inadequate. One advantage of this approach is that it provides the OTS with the flexibility to conduct a more in-depth analysis of an institution's risk exposure before an institution's minimum capital requirement is determined. Another advantage is that it provides the institution's management with an opportunity to discuss its interest rate risk exposure with the OTS before a determination of its capital requirement is made.

There are, however, two significant disadvantages to the case-by-case approach. First, the case-by-case approach is time-consuming and resource intensive for both OTS and savings associations. In addition to the administrative costs associated with this approach, there is the danger that capital deficiencies of institutions that are taking excessive risks would not be addressed in time to prevent their failure. Second, the amount of capital required under a case-by-case approach would be likely to vary with the expertise and negotiating skills of the parties involved, resulting in an uneven application of capital requirements across the industry.

Banking Agencies' Approach

The OTS carefully reviewed the approach proposed jointly by the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, which would be applicable to commercial banks for incorporating interest rate risk into their risk-based capital rules.

A major difference in the two approaches is that the approach proposed by the banking agencies would rely on a smaller data input form and, therefore, impose a smaller reporting burden on institutions than the OTS approach. To minimize the reporting burden on small institutions, those with assets of less than $300 million and with risk-based capital ratios in excess of 12 percent are exempt from filing Schedule CMR. Instead, such institutions will be required to file a one page form that will provide selected maturity and rate information.

While the OTS approach is conceptually very similar to that proposed by the banking agencies, it differs in that the OTS determines an institution's interest rate risk capital component using a more sophisticated interest rate risk model than the one proposed by the banking agencies. The OTS decided in favor of a more sophisticated model and a more comprehensive data collection requirement in order to be able to measure an institution's interest rate exposure with a higher degree of accuracy, not only for purposes of determining a capital requirement, but also to use the measure as a supervisory tool.

Another difference is that, under the OTS rule, an institution's interest rate exposure is measured in the context of a 200 basis point change in interest rates, compared to the 100 basis point change that would be used by the banking agencies.

The OTS has adopted a different approach from the banking agencies because savings associations tend to be considerably more vulnerable to interest rate risk than most commercial banks. The vulnerability of savings associations to interest rate risk is in large part attributable to their role as intermediaries for housing finance. Savings associations are required by statute to hold a significant portion of their assets in mortgages, which tend to be long-term assets. The funding of long-term mortgage assets with deposits, which tend to be short-term, gives rise to interest rate risk. Interest rate risk is one of the most prominent risks, if not the prominent risk, that savings associations must manage. (Banks, in general, face a number of portfolio risks that are different from those faced by savings associations.) Because of this vulnerability, and in light of the potentially high cost to society of allowing institutions with excessive interest rate risk exposure to operate without sufficient capital, the OTS believes that its approach is warranted.

The OTS recognizes that a potential criticism of this rule is that it does not go far enough in its attempt to relate capital requirements to differences in interest rate risk exposure among savings associations. More specifically, the rule follows an "outlier approach" that differentiates among savings associations that have more than a "normal level" of interest rate exposure, but does not differentiate among those with a less than normal level of exposure. Arguably, an approach that differentiates across all levels of exposure would impose greater "market-like" discipline on savings associations and result in greater gains in economic efficiency than the outlier approach which is being proposed. The OTS has adopted an outlier approach in order to make its proposal somewhat consistent with that of the banking agencies.

Need for a Federal Solution and Statutory Authority

Section 305 of the Federal Deposit Insurance Improvement Act of 1991 ("FDICIA"), which was enacted on December 19, 1991 requires the federal banking agencies to review their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of: (1) Interest rate risk, (2) concentration of credit risk, and (3) the risk of non-traditional activities. Section 305 also mandates that the federal banking agencies publish final regulations no later than 18 months after the enactment of FDICIA (or June 19, 1993) as well as establish reasonable transition rules to facilitate compliance with those regulations. This rule is issued in accordance with this statutory mandate.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Small, highly-capitalized institutions that have less than $300 million in assets and a risk-based capital ratio in excess of 12 percent are exempt from filing Schedule CMR. These institutions are not subject to an interest rate risk component.

The OTS estimates that based on information as of December 31, 1992, there were approximately 1,112 institutions (out of a total of 1,923 OTS-regulated institutions) that are exempt from filing Schedule CMR and as a result are not subject to the interest rate risk component. There were approximately 398 savings institutions with less than $300 million in assets and a risk-based capital ratio less than 12% that are required to file Schedule CMR. Therefore, the final rule will not have a significant economic impact on a substantial number of small institutions.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102-242, sec. 306, 105 Stat. 2236, 2355 (1991).

§ 563.176 [Amended]

2. Section 563.176 is amended by removing paragraph (b), and by redesignating paragraphs (c) through (f) as paragraphs (b) through (e), respectively.

PART 567—CAPITAL

3. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

4. Section 567.2 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirements.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured pursuant to § 567.6(a) of this part.

* * * * *

5. Section 567.5 is amended by adding paragraph (c)(4) to read as follows:

§ 567.5 Components of capital.

* * * * *

(c) * * *

(4) For the purposes of any risk-based capital requirement under this part, a savings association's total capital equals the amount calculated pursuant to paragraphs (c)(1), (c)(2), and (c)(3) of this section, minus the amount of its IRR component as calculated pursuant to § 567.7 of this part.

6. Section 567.6 is amended by removing and reserving paragraph (a)(1)(iv)(O); and by revising paragraphs (a)(1)(ii)(H), (a)(1)(iii)(C) and (a)(1)(iv)(N) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(ii) * * *

(H) High quality mortgage-related securities, except for collateralized mortgage obligation residual classes;

* * * * *

(iii) * * *

(C) Non-high quality mortgage-related securities, except for collateralized mortgage obligation residual classes.

* * * * *

(iv) * * *

(N) Collateralized mortgage obligation residual classes of mortgage-related securities, regardless of issue or guarantor;

(O) [Reserved]

* * * * *

7. Section 567.7 is added to read as follows:

§ 567.7 Interest-rate risk component.

(a) Except as provided in paragraph (c) of this section, a savings association's interest rate risk (IRR) is measured by the decline in the Net Portfolio Value (NPV) that would result from a 200 basis point increase or decrease in market interest rates (whichever results in the lower NPV) divided by the estimated economic value of assets, as calculated in accordance with the OTS Model and guidance issued by the OTS, which will be provided to savings associations and to others in accordance with paragraph (f) of this section. A savings association whose measured IRR exposure exceeds .02 (*i.e.*, 2%) must deduct an IRR component in calculating its total capital for purposes of determining whether it meets its risk-based capital requirement under § 567.2 of this part. The IRR component is an amount equal to one-half of the difference between its measured interest rate risk and .02, multiplied by the estimated economic value of its total assets. Except as provided in paragraph (d) of this section, the IRR component deduction becomes effective beginning on the first

day of the third quarter following the reporting date of the Schedule CMR on which the IRR component was based. For the purpose of this section, the reporting date is the last business day of each quarter.

(b) Unless they are exempt from this reporting requirement, all saving associations must file information pertaining to their interest rate risk exposure on a form or schedule designated by the Director. Savings associations with less than $300 million in assets and risk-based capital ratios in excess of 12 percent are exempt from filing the Schedule CMR but will be required to provide selected information in the manner determined by the OTS. The Director of the OTS or his designee may, within his discretion, require any otherwise exempt savings association to file the Schedule CMR on a quarterly basis.

(c) A savings association's interest rate risk exposure is measured by the decline in the NPV that would result from a 200 basis point increase or decrease in market interest rates, except when the 3-month Treasury bond equivalent yield falls below 400 basis points. In that case, the decrease will be equal to one-half of that Treasury rate.

(d) If a savings association, demonstrates to the OTS that it has reduced its IRR, in dollar amount, by the end of the quarter following the reporting date of the Schedule CMR on which the savings association's IRR component was based, the IRR component shall be lowered to that amount.

(e) Exception. Notwithstanding paragraph (a) of this section, upon the request by a savings association, the Director of the OTS, or his designee, may waive or defer, but not lower except as a result of an appeal, a savings association's IRR component. For example, the Director may determine that a waiver or deferral is warranted if the savings association has taken meaningful steps to reduce or control its interest rate risk exposure.

(f) Manuals describing the OTS Model and guidance issued by the OTS will be provided to savings associations and will be available, upon request, to others at the address set forth in § 516.1(a) of this chapter.

Dated: June 16, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

Note: This appendix will not be codified in the Code of Federal Regulations.

Appendix A to the Preamble of the Interest Rate Risk Component—Methodologies for Estimating NPV

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A. The Reporting Form (Schedule CMR)

The results of the OTS model are based on data provided quarterly on Schedule CMR of the Thrift Financial Report. Beginning in March 1993, all OTS-regulated savings institutions with assets in excess of $300 million, or with risk-based capital ratios below 12 percent began to file Schedule CMR. Schedule CMR is collected on a consolidated basis and provides information about the interest rate, repricing, and maturity characteristics of financial instruments held by savings associations. Schedule CMR replaces Schedule MR on which the December 1990 proposal to incorporate an interest rate risk component into risk-based capital was based. Schedule CMR was designed in response to comments on the 1990 proposal that Schedule MR did not collect data that were sufficiently detailed to permit the OTS to produce accurate estimates of savings institutions' interest rate sensitivity.

In addition to redesigned sections for assets, liabilities, and off-balance sheet instruments, Schedule CMR includes two new sections not included in Schedule MR. In the section called "Reporting of Market Value Estimates" institutions can report their own estimates of the economic value of certain complex financial instruments (such as collateralized mortgage obligations) in each of the alternative interest scenarios considered by the OTS Model. These estimates are used in calculating institutions' interest rate exposure estimates. In the "Optional Supplemental Reporting" section, institutions have the option of reporting data in an even more disaggregated manner than in the required sections of Schedule CMR for certain types of instruments.

A brief description of each of the five sections of Schedule CMR is given below. For information on how the OTS model uses the Schedule CMR data to value financial instruments, see the descriptions of methodologies for individual instruments in Section B of this appendix.

1. Assets

Fixed-Rate Single Family First Mortgages

Schedule CMR collects separate information on 30-year, 15-year, and

balloon mortgages by coupon range. Information on mortgage loans and securities is collected separately within each of these categories. Schedule CMR also distinguishes private issue, FNMA, and FHLMC securities from GNMA securities (and conventional from FHA/VA loans), and establishes a separate category for construction and land loans (which were previously included with single-family first mortgages).

Adjustable-Rate Single Family First Mortgages

Schedule CMR collects information by type of index and distinguishes "teaser rate" from non-teaser rate ARMs. Schedule CMR also collects information on margins and the proportion of loans versus securities for each type of ARM, as well as information on lifetime rate caps and floors and on periodic rate caps and floors.

Other Mortgages and Nonmortgage Loans

Schedule CMR distinguishes adjustable-rate from fixed-rate loans for all types of multifamily and nonresidential mortgages and nonmortgage loans. Schedule CMR collects information about indices to which adjustable-rate loans are tied, as well as their reset frequency and average margin. Schedule CMR also collects information separately for fully-amortizing and balloon multifamily and nonresidential mortgages. In addition, institutions may report balances further disaggregated by index type and by type of consumer loan (*e.g.*, auto, credit card) in the Optional Supplemental Reporting section of Schedule CMR.

Mortgage Derivative Securities

Schedule CMR requires an institution to report its own estimates of the economic value of its mortgage derivative products in each of the nine interest rate scenarios evaluated by the OTS Model if the institution exhibits any of the following conditions:

(1) Their assets exceed $500 million;

(2) They hold "high-risk" mortgage derivative securities acquired after December 31, 1988; or

(3) The book value of their mortgage derivatives exceeds five percent of assets.

Other institutions may do so optionally.

Cash, Deposits, and Securities

Schedule CMR groups these assets into seven categories based on their cash flow characteristics and credit risk so that appropriate assumptions may be applied in estimating the sensitivities of their economic values to changes in interest rates.

2. Liabilities

Certificates of Deposits (Fixed-Rate)

Schedule CMR collects information on original maturity, early withdrawal penalties, balances in brokered deposits, and, at the reporting institution's option, information on early withdrawals and balances in new accounts.

Fixed-Maturity, Variable Rate Liabilities

Schedule CMR distinguishes variable-rate CDs, FHLB advances, and other borrowings, and collects information on their index rates, margins, reset frequencies, and months to next reset.

Demand Deposits

Schedule CMR distinguishes interest bearing from noninterest bearing deposits and, at the reporting institution's option, collects information on new accounts that the OTS will attempt to use in the future to estimate institution-specific attrition rates.

3. Off-Balance Sheet (OBS) Contracts

The off-balance sheet section of Schedule CMR is designed to collect information on some instruments on an individual basis. That is, for certain positions such as interest rate swaps, institutions report each OBS position separately on Schedule CMR, along with information needed to value the position. For contracts that would be too numerous to report separately, such as commitments to purchase, sell, or originate mortgages, positions are aggregated on the reporting form.

To determine the economic value of an OBS contract, information is needed on the type of contract, its notional amount, its maturity, and the interest rate and price specified in the contract. Schedule CMR uses four-digit codes to distinguish 277 different OBS contracts. Institutions report a contract code for each type of contract, and report the notional principal amount, maturity, price, and rate of the position held. Any OBS contract for which there is no contract code is to be valued by the institution in each of the alternate rate scenarios and be reported in the section titled "Reporting of Market Value Estimates."

4. Reporting of Market Value Estimates

In this section of Schedule CMR institutions may report their own estimates of the economic value of certain financial instruments in each of the alternative interest rate scenarios considered by the OTS Model.

Institutions meeting certain conditions are required to report the economic value of their mortgage-derivative securities in this section, as are those that hold unusual off-balance sheet contracts for which there is no identifying code for the reporting of off-balance sheet contracts. In addition, at their option, institutions may report economic value estimates of FSLIC, RTC and FDIC agreements, certain options embedded in liabilities, and CMOs issued by the institution.

5. Optional Supplemental Reporting for Assets/Liabilities

In this section of Schedule CMR, institutions have the option of reporting data on selected assets and liabilities in a more disaggregated manner than in the Assets and Liabilities sections of CMR. Optional Supplemental Reporting is available for adjustable-rate loans other than single-family mortgages, mortgage-related mutual funds, certain investment securities, and variable-rate, fixed-maturity liabilities.

B. Methodologies for Estimating NPV

With a few exceptions, the general methodologies for estimating the economic values and interest rate sensitivities of assets, liabilities, and off-balance sheet instruments are the same as described in the December 1990 Proposal, although specific parameters associated with some equations may differ. The following sections summarize those methodologies in nontechnical language, and describe how the Schedule CMR data will be used. The OTS intends to publish a technical manual describing the methodologies in detail, including the specification of any important equations, prior to implementation of this regulation. The manual and any updates will be provided to all savings associations that are required to file Schedule CMR and, upon request, to others.

1. Overview

A fundamental characteristic of all financial instruments is that they give rise to cash flows. The value of any financial instrument can be estimated by projecting the amount and timing of future net cash flows associated with the instrument, and discounting those cash flows with appropriate discount rates. This procedure for estimating the value of a financial instrument is commonly referred to as discounted cash flow analysis, or present value analysis. The basic formula for the present value of a financial instrument is as follows:

$$(1)\quad PV = \frac{CF_1}{(1+i)} + \frac{CF_2}{(1+i)^2} + \cdots + \frac{CF_n}{(1+i)^n}$$

where PV is the present value of the instrument; CF_1 is the first cash flow receipt or payment; CF_2 is the second receipt or payment, and so forth; and i is the yield at which the cash flows are discounted. The discounted cash flow approach is used by the OTS Model to estimate the economic value of most assets, liabilities, and off-balance sheet contracts.

The discount rate is the rate of return necessary to induce investors to hold a financial instrument. For any given instrument, the required rate of return is equal to the risk-free rate plus the risk premium necessary to compensate the investor for any additional risk (*e.g.*, credit risk, liquidity risk) associated with the particular instrument.

The discount rate will rise or fall with the general level of interest rates. As interest rates rise, investors require higher rates of return, and therefore, use higher discount rates to value cash flows expected from financial instruments. This causes the value of those cash flows, and thus the market price of the instruments, to decline. The reverse is true for a decline in interest rates. Of course, the size and timing of the cash flows themselves may change as market interest rates change. Such changes could result from changes in prepayment rates, for example, or from the repricing of adjustable-rate instruments.

The OTS Model uses two cash flow-based valuation methodologies: (1) static discounted cash flow analysis, and (2) an option-based pricing analysis, which is a form of discounted cash flow analysis modified to value assets that contain embedded options. In addition, there is a third type of valuation methodology, the Black-Scholes model, that is used to value exchange traded options and some other off-balance sheet instruments. The approach selected for each type of financial instrument depends on the nature of the instrument and the availability of data.

2. Static Discounted Cash Flow Analysis

Under the static discounted cash flow approach, the economic value of a financial instrument is calculated as the present value of the instrument's expected cash flows. The present value is determined by discounting the cash flows the instrument is expected to generate by the yields currently available to investors from other instruments of comparable risk and duration. To calculate the present value, therefore, information is needed about the size and timing of cash flows and about the appropriate discount rates.

For the purposes of determining the interest rate risk component, cash flows are modeled under the three interest rate scenarios described in Section III (*i.e.*, the base case, and plus and minus 200 basis point shocks, except in the case when the 3-month Treasury bill rate falls below 4 percent. Then the downward rate shock is modified as described in the discussion of the IRR component).[1] Under each scenario, a single path of future interest rates is assumed to be based on the Treasury yield curve, plus or minus the rate shock for that scenario. Cash flows are calculated under each scenario based upon the assumed interest rate path depicted in that scenario.

Cash flows may differ across scenarios for two reasons. First, loan prepayment and deposit attrition rates will differ, since borrowers and depositors will make different decisions about these actions under different interest rate environments. Such differences in customer behavior modeled by specifying a relationship between the interest rate scenario and the rates of asset prepayment and deposit attrition, and thereby changes the magnitude and timing of principal and interest flows. Second, interest payments differ across scenarios as adjustable-rate instruments, including many deposits, reprice in future periods.

Coupons of adjustable-rate instruments are based on the projected value of the index to which the instrument is contractually tied as in the case of ARMs (or which appear empirically to have influenced the level of rates on administered rate accounts such as NOW accounts.) In general, indices are projected by relating them to the Treasury implied forward rates.[2]

The basic principle behind choosing discount rates is that they should represent the yields obtainable from instruments with the same risk and duration as those of the cash flows being discounted. Thus, if one were calculating the present value of a U.S. Treasury security, an appropriate sequence of discount rates for each of its cash flows would be the sequence of zero-coupon Treasury rates with maturities corresponding to the dates on which each cash flow is anticipated. The present value calculation in this example differs slightly from that in equation (1), above, and is illustrated as follows:

$$(2)\quad PV = \frac{CF_1}{(1+i_1)} + \frac{CF_2}{(1+i_2)^2} + \cdots + \frac{CF_n}{(1+i_n)^n}$$

The difference between this calculation and equation (1) is that subscripts have been added to the discount rates, i_1 through i_n, to denote that each cash flow is being discounted by a different rate. In this example, the i variables represent the zero-coupon Treasury rates with maturities corresponding to the dates on which cash flows will be generated by the security being valued.

The discount rates of all assets valued by the OTS Model consist of the zero-coupon Treasury rates observed as of the reporting date, plus a spread to account for the risk difference between the instrument being valued and Treasury securities. The spread to the zero-coupon Treasury curve is unique. It is calculated in one of two ways depending on the availability of market data. Where market price quotes are readily available for instruments with the same characteristics as those being

[1] The OTS intends to continue to model NPV in nine interest rate scenarios for information purposes, and provide the results to savings associations, as we have since early 1991.

[2] For a description of the calculation of the implied forward rates, see Fabozzi and Fabozzi, *Bond Markets, Analysis, and Strategies*, Prentice Hall, 1989 (pp. 106–109).

valued (*e.g.*, single family mortgage loans and securities, and multifamily mortgage loans), the spread is calculated so that the sum of the discounted cash flows (calculated given maturity, amortization, prepayment, and repricing characteristics) equals the observed market price.

For instruments for which reliable price quotes are not available (*e.g.*, consumer and commercial loans), current lending rates on similar assets are used to calculate the spread. For each type of asset, the spread is calculated so that, using the current market rate on that asset to calculate cash flows, the sum of the discounted cash flows equals the face value of the loan, or par. Estimates of current market rates are available from the Thrift Financial Report or through surveys, such as that conducted by the Federal Reserve on current market rates of consumer loans.

On the liability side of the balance sheet, deposit cash flows are discounted using secondary market CD yields and borrowings are discounted using zero-coupon LIBOR (London Interbank Offered Rates).

It is assumed that the risk premium required by investors will not change under the alternative interest rate scenarios. Thus, for the alternative rate scenarios, each discount rate is calculated by simply summing the appropriate base case zero-coupon rate, the spread, and the amount of the interest rate shock. As discussed above, under the alternative interest rate scenarios, cash flows are also revised to reflect different loan prepayment or deposit attrition rates and, if applicable, to reflect repricing of the instrument. To calculate the present value in the alternative rate scenario, the revised cash flows are then discounted by the new discount rates.

The OTS uses the static discounted cash flow approach to value non-mortgage loans and certain mortgage loans that have insufficient data to apply the option-based approach, all liabilities, and several off-balance sheet instruments.

3. Option-Based Pricing Analysis

The option-based pricing approach—also known as option-adjusted spread (OAS) methodology—is a technique for valuing assets that contain embedded options. Perhaps the most significant embedded options from the perspective of savings associations are the prepayment options contained in mortgages and mortgage-related securities and the interest rate caps on adjustable-rate mortgages. Prepayment options introduce significant uncertainty into the timing of mortgage cash flows. When mortgage rates fall significantly, mortgage prepayments typically accelerate, forcing associations to reinvest the proceeds of the prepayments at lower rates. An important aspect of valuing a mortgage (or mortgage-related security), therefore, is determining the appropriate value of the option component of the mortgage.

Option-based pricing models are designed to provide improved mortgage valuation estimates by taking interest rate volatility into account. These models use an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path.[3] These cash flows are then discounted and averaged to arrive at a single mortgage price.

By estimating the value of a mortgage over numerous possible interest rate paths, an option-based model provides a more accurate estimate of the market value of a mortgage than could be derived from a static cash flow model, which assumes a single interest rate and prepayment path. (In fact, the option-based approach actually repeats the static cash flow approach many times with different interest rate paths and averages the results.)

The option-based valuation approach that the OTS Model uses is briefly described as follows.

(1) Projection of short-term interest rates. The interest rate simulation model uses an empirically estimated equation to generate 200 randomly determined interest rate paths for short-term interest rates based on an assumed level of interest rate volatility. The Model incorporates the current term structure of interest rates as a starting point and projects the path of monthly interest rates over a 360 month period. The paths are generated in a manner that makes the simulation consistent with the observed Treasury yield curve. Thus, if Treasury securities are priced using the simulation, the Model returns exactly the currently observed Treasury prices. In this way, all securities can be accurately compared to the yardstick of Treasury securities.

(2) Projection of mortgage rates. The interest rate model also generates a path of future fixed-rate mortgage coupons and of future coupons of each type of adjustable-rate mortgage valued by the Model. The Model uses a separate volatility assumption for the fixed-rate mortgage rates, but assumes that a degree of correlation exists between short-term rates and the fixed-rate mortgage rates. The result is that each of the 200 paths contains a short-term rate, an associated fixed-rate mortgage rate, and a projected coupon for each type of ARM for the next 360 months.

(3) Prepayment projections. Prepayment equations are used to project prepayments along each interest rate path depending on the ratio of the coupon of the mortgage loan or security being valued to the projected fixed-rate mortgage rate at each point along the path. The Model uses separate prepayment equations for 30-year conventional mortgages, 30-year FHA/VA mortgages, 15-year and balloon mortgages, and adjustable-rate mortgages. The prepayment equations are based on the rate-scenario specific prepayment forecasts of several Wall Street firms.

(4) Valuation of projected cash flows. Cash flows are generated for each month along an interest rate path using scheduled amortization, coupon payments, and prepayments. A price for each path is calculated for the loan or security by discounting that path's projected cash flows by the sequence of short-term rates associated with that cash flow plus a spread. The spread, known as the "option-adjusted spread," is chosen so that the average of the prices resulting from the 200 simulated rate paths is equal to the currently observed market price of a similar loan or security.

(5) Valuation of cash flows projected in other scenarios. Once the option-adjusted spread has been calculated, mortgage prices can be calculated under the alternate interest rate scenarios. To model such a scenario, steps 1 through 3 are repeated, but starting with a term structure that has been subjected to a parallel shock of the desired magnitude (*i.e.*, plus or minus 200 basis points). Step 4 is then repeated with cash flows being discounted by the new sequence of associated short-term rates plus the same option-adjusted spread as the base case. The average of the 200 discounted cash flows represents the shocked rate scenario's price for that mortgage.

The Model uses the option-based approach to value single family fixed-rate and adjustable-rate mortgages and mortgage servicing assets.

4. The Black-Scholes Model

The OTS Model uses a derivative of the Black-Scholes option valuation model to value the following types of off-balance sheet contracts:

- optional commitments to purchase or sell mortgages

[3] An interest rate path is a sequence of 360 monthly interest rates. Three hundred and sixty months are used because that is the maturity of the longest-lived mortgages (*i.e.*, thirty years) valued by the Model.

- swaptions (options on swaps)
- interest-rate caps
- interest-rate floors
- options on futures

This model, sometimes referred to as the "Black 76" model, values options on futures and other forward contracts.[4] To calculate the option's value, the model requires the input of five variables that characterize the option. These variables are (1) the future or forward price of the instrument underlying the option, (2) the strike price, (3) the volatility of the underlying instrument, (4) the time to expiration of the option, and (5) the risk-free rate of interest.

To calculate the value of an option in the shocked-rate environment, two adjustments are made to the inputs of the model. The yield curve (LIBOR or Treasury) is shocked to generate a new forward price for the instrument underlying the option and the risk-free rate of return is adjusted by the amount of the shock.

5. Summary of Methodologies for Assets

This section summarizes the methodologies used by the OTS Model to estimate the economic value of each of the asset categories listed on Schedule CMR.

a. Single Family Fixed-Rate Mortgage Loans and Securities

The option-based pricing approach is used to value single family fixed-rate mortgage (FRM) loans and securities. This approach takes into account the effect of embedded options (prepayments and, in the case of adjustable-rate mortgages, interest rate and payment caps) on mortgage prices. The Model uses an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path. Those cash flows are then discounted and averaged to arrive at a single mortgage price.

Schedule CMR separately collects information on outstanding balances, coupons, and maturities of four types of fixed-rate mortgage loans: 30-year conventional, 30-year FHA/VA, 15-year original maturity, and balloon payment mortgages. Analogous information is reported separately for mortgage securities backed by each of the same four types of fixed-rate mortgages. All information is reported in five separate coupon ranges (less than 8 percent, 8 to 8.99, 9 to 9.99, 10 to 10.99, and 11 percent and above).

The availability of disaggregated data allows the Model to estimate the value of the FRM portfolio as consisting of eight fairly specific types of instruments (*i.e.*, the four types of mortgage loans and four types of mortgage securities).

The eight categories of FRMs that are reported differ in both their projected cash flows and in the discount rates used to discount them. Modeling of cash flows takes account of each instrument's particular amortization schedule and, to the extent possible, takes account of differing prepayment characteristics. For example, separate prepayment functions are used to estimate prepayments on conventional loans and FHA/VA loans (as well as the securities backed by those types of loans). Cash flows are discounted using the zero-coupon Treasury yield curve plus the option adjusted spread for the particular instrument being modeled. Separate option adjusted spreads (OASs) are derived each quarter for several representative coupons and maturities of each type of instrument, based on their observed market prices at that time.

For the current and shocked interest rate scenarios, the OTS uses the OAS methodology to estimate prices for several different coupon and maturity combinations of each type of mortgage instrument. Those price estimates are stored in the form of a separate pricing "look-up" table for each type of instrument.[5] Economic values for each of the balances reported by the institution will then be calculated by reference to the pricing table that corresponds to that particular type of mortgage instrument. Because the tables contain price estimates for only a limited number of coupon and maturity combinations for each type of instrument, prices for the specific coupon/maturity combination reported are obtained by interpolating between the relevant lines in the table.

b. Single Family Adjustable-Rate Mortgage Loans and Securities

The OAS approach is also used to estimate the value of single family adjustable-rate mortgage (ARM) loans and securities. Schedule CMR collects information on ARMs in five columns that correspond to the frequency with which the mortgage rate resets and the type of index on which it is based (*e.g.*, 1-year current market index, 1-month lagging market index). Each column actually accommodates a number of possible indexes and a range of reset frequencies, but balances in the five columns are assumed for modeling purposes to consist of the most prevalent types of ARMs in that index and reset range. These are, respectively, ARMs indexed to 6-month Treasury, 1-year Treasury, 3-year Treasury, 1-month 11th District Cost of Funds Index (COFI), and 12-month COFI. All other information about ARMs, described below, is collected separately for each of the five columns, so that the balances in each column may be modeled separately using the information submitted by the reporting institution.

The outstanding balance and weighted average coupon of ARMs subject to introductory "teaser" rates are collected separately from other ARMs, allowing teaser ARMs to be modeled separately. Teaser ARMs not only have low coupons relative to otherwise equivalent ARMs but the option value implicit in their periodic interest rate caps is higher than that of otherwise identical non-teaser ARMs.[6] These characteristics would result in aggregation error if teaser ARMs were not treated separately.

For non-teaser ARMs of each type of index, in addition to information about balance, coupon, time to next coupon reset, and maturity, the reporting form collects the average margin, and information about interest rate caps on the loans.

Schedule CMR collects fairly detailed information about periodic and lifetime interest rate caps, because aggregation error can be especially severe for option-like instruments such as caps. In reporting on Schedule CMR, institutions provide information that allows their ARMs to be segregated into four groups on the basis of the distance between their current coupons and lifetime rate caps. Each group is valued separately, based on its reported weighted average lifetime cap. This approach reduces the amount of aggregation error by aggregating across several relatively narrow bands rather than one large one.

In addition to caps, information is reported about periodic and lifetime interest rate floors, allowing those features to be incorporated into the price estimates, where relevant. Finally, institutions report information permitting ARM whole loans and ARM securities to be valued separately.

The OTS Model projects the COF index in each future month using the

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[4] For more information, see Stephen Figlewski, Chapter 3 in Stephen Figlewski, William L. Silber, and Marti G. Subrahmanyan, editors, *Financial Options: From Theory to Practice*, Business One Irwin: Homewood, IL, 1990.

[5] Excerpts from these pricing tables are available to all OTS-regulated thrifts at no charge and at an annual charge of $40 to other interested parties.

[6] Because teaser ARMs start at a less than fully-indexed interest rate, the probability that their first rate reset will be constrained by the periodic rate cap is higher than for a non-teaser ARM that is otherwise identical.

following equation where COFI $_{-1}$ is the value of the index in the previous month, and T1YR is the projected one year Treasury yield in each future month.

$$COFI = .9041 * COFI_{-1} - .0959 * T1YR$$

For each type of ARM (*e.g.*, 1-year current market index, 1-month lagging market index), OTS uses the OAS methodology to estimate economic values for various combinations of margin, current coupon, time to next reset, maturity, lifetime cap level, and presence or absence of lifetime floors and periodic caps and floors. Those estimates are stored in a series of ten large "look-up" tables (both ARM loans and securities for each of the five indices noted above). Economic values for each of the balances reported by the institution are then calculated by interpolating between the relevant pricing table lines corresponding to that particular type of ARM instrument.

c. Multifamily and Nonresidential Mortgages

The OTS Model uses the static discounted cash flow approach to value multifamily and nonresidential mortgage loans and securities. Because a significant percentage of these mortgages are balloon loans, balances are divided into balloon and fully amortizing categories on Schedule CMR. Balances are further divided into fixed-rate and adjustable-rate categories.

For fixed-rate balances, Schedule CMR collects the weighted average maturity and the coupon. For adjustable-rate balances, CMR collects the following: the index type (reported as a code) to which the largest percentage of the institution's balances are tied; the reset frequency of the loans tied to that index; the weighted average margin; the weighted average maturity; the volume of balances with coupons currently within 300 basis points of their lifetime interest rate caps; and, for those balances, the weighted average difference (in basis points) between the coupon and lifetime cap. In addition, for balloon mortgages, CMR collects the remaining term to full amortization.

The OTS Model values the four types of mortgages (fixed-rate balloons, fixed-rate fully amortizing, adjustable-rate balloons, and adjustable-rate fully amortizing) separately, using maturity, amortization, and rate and cap information specific to each type. All balances are assumed to pay monthly principal and interest cash flows. The coupons of adjustable-rate mortgages (equal to the projected value of the index plus the reported margin) resets with the reported frequency, but subject to any interest rate caps. Due to the prevalence of prepayment penalties on these types of mortgages, prepayment rates for all multifamily and nonresidential mortgages are assumed to be zero. Although this category may include multifamily securities as well as loans, Schedule CMR does not distinguish between them. Consequently, all balances are valued as mortgage loans, not securities.

Each monthly cash flow is discounted by the Treasury zero-coupon yield appropriate for that month plus a spread. That spread is calculated so that, on average, the spread plus the zero-coupon yields equals the required net yield for 30-day commitments on multifamily mortgages posted by FHLMC or FNMA.

Institutions holding adjustable-rate multifamily and nonresidential mortgages tied to a variety of different indices may, at their option, report those balances disaggregated by index type in the Optional Supplemental Reporting section of Schedule CMR. The valuation methodology for those balances is the same as that described above, but with the coupon on each reset date being set equal to the projected value of the individually reported index plus the reported margin.

d. Construction and Land Loans

The OTS model uses the static discounted cash flow approach to value construction and land loans (hereafter referred to collectively as construction loans). Schedule CMR collects the outstanding balances of fixed- and adjustable-rate construction loans, their weighted average remaining maturities, and the weighted average coupon of fixed-rate loans. In addition, for adjustable-rate loans, CMR collects an index code representing the index to which the largest percentage of the reporting institution's adjustable-rate construction balances are tied and the weighted average margin of the loans tied to that index. All reported adjustable-rate balances for the institution are assumed to be tied to that index. The index is projected over the remaining life of the loans and the coupon rate in each month is calculated as the sum of the index plus the reported margin. That is, the OTS Model treats all adjustable-rate construction loans as having a monthly reset frequency with no interest rate caps or floors.

All construction loans are assumed to pay monthly interest and principal at maturity. No prepayments are assumed. Each monthly cash flow is discounted by the Treasury zero-coupon yield for that month plus a spread. The spread is calculated so that on average, the discount rate is equal to the current lending rate on construction and land loans. The current lending rate is estimated by using the information on margins and indices on adjustable-rate construction and land loans reported in Schedule CMR. It is assumed to be equal to the index most commonly reported by institutions for construction and land loans (e.g., the prime rate) plus the average margin reported by institutions with loans tied to that index.

Institutions holding adjustable-rate construction loans tied to indices other than the one reported in the construction loans section of Schedule CMR, may at their option report their construction loans disaggregated by index type in the Optional Supplemental Reporting Section. The valuation methodology for those balances is the same as that described above with the coupon in each future month being set equal to the projected value of the index plus the reported margin.

e. Second Mortgage Loans

The OTS Model values second mortgage loans using the static discounted cash flow approach. Schedule CMR collects the outstanding balances of fixed and adjustable-rate second mortgage loans, the weighted average maturity of those balances, the coupon of fixed-rate second mortgages, and the margin, reset frequency, and index type for adjustable-rate second mortgages.

Second mortgages are assumed to be level-payment amortizing loans that generate monthly cash flows of interest and principal. Prepayment rates for second mortgages are based on observed prepayment rates of home equity loans underlying asset backed securities.

The coupon on adjustable-rate second mortgages is calculated as the sum of the reported index and the reported margin and changes with the reported reset frequency. The Model treats all second mortgages as having no interest rate caps or floors.

All monthly cash flows are discounted by the Treasury zero-coupon yield for that month plus a spread. That spread is calculated so that, on average, the spread plus the zero-coupon yields will equal the observed current lending rate on adjustable-rate second mortgages. The current lending rate is estimated by using the information on margins and indices on adjustable-rate second mortgages reported in Schedule CMR. It is assumed to be equal to the index most commonly reported by institutions (e.g., the prime rate) plus

the average margin reported by institutions with loans tied to that index.

Institutions holding adjustable-rate second mortgages tied to indices other than the one reported in the second mortgages section of Schedule CMR, may at their option report their second mortgages disaggregated by index type in the Optional Supplemental Reporting Section. The valuation methodology for those balances is the same as that described above with the coupon on each reset date being set equal to the forecasted value of the reported index plus the reported margin.

f. Commercial Loans

The OTS Model uses the static discounted cash flow approach to value commercial loans. Schedule CMR collects the outstanding balances of fixed- and adjustable-rate commercial loans, their weighted average remaining maturity, the weighted average coupon of fixed-rate loans, and the weighted average margin of adjustable-rate loans. All loans are assumed to pay monthly interest and principal at maturity. No prepayments are assumed.

Adjustable-rate loans are assumed to be indexed to the prime rate and to reset monthly. The interest rate on adjustable-rate loans in each future month is equal to the projected prime rate in each future month plus the reported margin. The prime rate is projected based on implied forward Treasury yields.

An estimate of the current lending rates on adjustable-rate commercial loans held by savings associations is used to calculate the discount rate for commercial loan cash flows. The current lending rates are estimated by using the information on margins on commercial loans reported on Schedule CMR. The current lending rate is assumed to be equal to the prime rate plus the average margin reported by institutions. The discount rate in each future month is calculated as the zero-coupon Treasury yield in that month plus a spread. The spread is calculated such that, on average, the spread plus the zero-coupon yields will equal the estimated current lending rate.

Institutions holding adjustable-rate commercial loans tied to indices other than prime may, at their option, report their commercial loan balances disaggregated by index type in the Optional Supplemental Reporting Section of Schedule CMR. The valuation methodology for those balances is the same as that described above, except the loan coupon in each future month is equal to the projected value of the particular reported index plus the reported margin.

g. Consumer Loans

The OTS Model uses the static discounted cash flow approach to value consumer loans. Schedule CMR collects the outstanding balances of fixed- and adjustable-rate consumer loans, their weighted average remaining maturity, and the weighted average coupon on fixed-rate loans. In addition, for adjustable-rate loans, Schedule CMR collects the index to which the largest percentage of loans are tied, the weighted average margin, and the loans' reset frequency. All adjustable-rate consumer loans are assumed to reset based on that index, with the reported reset frequency.

All consumer loans are assumed to be level-payment amortizing loans that generate monthly cash flows of interest and principal. On Schedule SC of the Thrift Financial Report, consumer loan balances are broken down into eight types. The OTS Model determines a unique weighted average prepayment rate for each institution's total consumer loan balances, using as weights the proportion of balances represented by each loan type on Schedule SC. The OTS bases prepayment estimates for each type of loan on observed prepayment rates of collateral underlying various types of asset backed securities. Prepayment rates are assumed to remain constant in the alternate rate scenarios.

Using the balances reported by type on Schedule SC, the OTS Model determines a unique weighted average discount rate for each institution's consumer loan balances. For each loan type, the discount rate in each future month is calculated as the zero-coupon Treasury yield in that month plus a spread. Each spread is calculated such that, on average, the spread plus the zero coupon yield equals the observed yield on an asset backed security with collateral of that loan type. For consumer loan types for which secondary market yields are not readily available, current market lending rates from Federal Reserve statistical release G.19 will be used.

Institutions may, at their option, report their consumer loans in a more disaggregated manner in the Optional Supplemental section of Schedule CMR. Balances may be disaggregated by loan type and index. The OTS model then applies coupon reset assumptions, discount rates, and prepayment rates specific to each type of consumer loan.

h. Mortgage Derivative Securities

Mortgage derivative securities include collateralized mortgage obligations (CMOs), interest-only strips (IOs), principal only strips (POs), residuals, CMO swaps, and other instruments with similar characteristics.

Savings associations report the book value of their holdings of mortgage derivative securities in the appropriate cells of Schedule CMR. Schedule CMR lists 19 types of mortgage derivatives which are subdivided into high-risk and low-risk categories. In the OTS Model mortgage derivatives are valued using one of two approaches, a "self-reporting" approach or a benchmark approach, depending on whether the savings association meets certain criteria. Under the self-reporting approach, institutions report their own estimates of the economic value of their mortgage derivatives in each of the interest rate scenarios evaluated by the OTS model. These estimates are then incorporated directly into the results of the OTS Model to estimate institutions' interest rate exposure.

Savings associations meeting the following criteria are required to report their own economic value estimates for mortgage derivatives:

(1) Assets exceeding $500 million, or

(2) Any "high-risk" mortgage derivatives acquired after December 31, 1988 (see Thrift Bulletin 52 for a definition of high-risk derivatives), or

(3) The book value of mortgage derivatives exceeds 5 percent of assets.

Savings associations not required to provide their own estimates may provide the estimates if they wish. The self-reporting approach should result in better estimates of the interest rate sensitivity of these instruments than the benchmark approach described below.

The OTS uses a benchmark approach to value the mortgage derivatives of savings associations that do not use the self-reporting approach. Under this approach, a benchmark security is chosen to represent the securities that savings associations report in each of the cells. The economic value of the derivatives in each cell are estimated in each interest rate scenario based upon the price of the benchmark representing that cell in each of those scenarios. Prepayment rates assumed for the underlying collateral are the same as, or similar, to those used to value mortgage securities. A listing of the benchmarks and their pricing profiles will be included in the "Asset and Liability Pricing Tables," published by the OTS each quarter. The benchmark for each class of derivative will be updated when necessary.

IOs and POs are priced using the OAS methodology of the NPV model. The NPV model uses the coupon information reported by savings institutions and assumed maturities to

calculate the economic value in each scenario.

i. Mortgage Loan Servicing Rights and Mortgage Loans Serviced by Others

i. *Mortgage Loan Servicing Rights.* The OTS Model uses the same OAS methodology to value servicing that it uses to value single-family mortgage loans and securities. See Section B.3 for a discussion of the OAS methodology.

The outstanding balances of fixed-rate mortgage loans serviced for others are reported on Schedule CMR in five coupon ranges (less than 8 percent, 8 to 8.99, 9.00 to 9.99, 10 to 10.99, and 11 percent and above). Balances of adjustable-rate mortgages tied to current market indices (*e.g.*, the 1-year Constant Maturity Treasury yield) are reported separately from those tied to lagging market indices (*e.g.* the 11th District Cost of Funds). The OTS Model treats all current market index loans as 1-year CMT ARMs and all lagging market index ARMs as 1-month COFI ARMs. CMR also collects the weighted average remaining maturity and the weighted average servicing fee for each of the reported balances, the number loans serviced, and the number of loans subserviced by others.

The estimated economic value of mortgage servicing is equal to the discounted present value of servicing fee income and ancillary income, minus the discounted present value of servicing cost outflows. The value derived from escrow deposits associated with mortgages serviced for others is calculated separately. (See section 6.C.) Monthly servicing fee cash flows are estimated by adjusting the balances reported on CMR for expected prepayments and amortization, and multiplying the outstanding balances in each month by the reported weighted average servicing fee. Monthly ancillary income is estimated by adjusting the reported number of loans outstanding for expected prepayments and multiplying the number of loans serviced by an estimate of monthly ancillary income.

Servicing cost outflows are estimated in the same manner as ancillary income cash flows. That is, by adjusting the reported number of loans serviced for expected prepayments and multiplying the number of loans serviced by an estimate of monthly servicing cost.

Estimates of per-loan ancillary income and servicing cost are taken from the Mortgage Bankers Association's (MBA) annual survey. These estimates will be updated annually as new estimates become available.

All monthly cash flows are discounted by the Treasury zero-coupon yield for that month plus a spread. The spread is calculated so that on average, the discount rate is equal to the current required yield in the servicing market. The required yield will be obtained quarterly from information provided by dealers in the servicing market.

ii. *Mortgage Loans Serviced by Others.* In the valuation of single-family whole loans held in portfolio, the OTS model deducts a servicing cost of 20 basis points per annum from monthly cash flows. Some institutions own mortgages that are serviced by others, and may pay a fee of more or less than 20 basis points to the servicer. The discounted present value of the stream of fees on loans serviced by others (less the 20 basis points already deducted in the valuation of the loan itself) represents a deduction from the value of the institution's mortgages. Conversely, if the servicing fee an institution is paying to the servicer is less than 20 basis points, the discounted present value of the difference between the two is added to the value of the institution's mortgages.

On Schedule CMR, institutions report the balances of mortgage loans serviced by others and the associated servicing fees separately for fixed-rate mortgages and adjustable-rate mortgages.

For purposes of valuing the servicing fee streams, fixed-rate mortgages serviced by others are assumed to be spread uniformly across the reporting institution's conventional 30-year mortgages, while the adjustable-rate mortgages serviced by others are assumed to be distributed evenly across all ARMs held in portfolio. Both are valued using the OAS methodology.

j. Cash, Non-Interest-Earning Deposits, Overnight Fed Funds, and Overnight Repos

These short-term assets are valued at their face value in all of the interest rate scenarios evaluated by the OTS Model.

k. Equity Securities and Non-Mortgage-Related Mutual Funds

Institutions report the market value of their equity securities and non-mortgage-related mutual funds on Schedule CMR. To value these assets in the alternative interest rate scenarios, the OTS Model assumes their interest rate elasticity to be −4.5 percent. That is, for every 100 basis point increase in interest rates, the value of equity securities and non-mortgage-related mutual funds will be assumed to decrease by 4.5 percent, and vice versa. For example, if an institution reported $100 of equity securities on Schedule CMR, the estimated market value in the plus 200 basis points scenario would be $100 × (1 − .09) = $91.00.

This interest rate elasticity was estimated using regression analysis. It was obtained by regressing the monthly average of the Wilshire 5,000 Stock Index on the monthly average ten-year Treasury yield over a five year period. A time variable was included to allow for an upward trend in the index.

l. Mutual Funds With Investments in Mortgage-Related-Securities

Institutions report the market value of non-high-risk mortgage-related mutual fund investments on Schedule CMR and this value is used directly in the base case of the OTS Model. To value these mutual fund investments in the alternative interest rate scenarios, the OTS Model applies the estimated duration of a selected benchmark single-family, 30-year, fixed-rate mortgage security. Institutions may report additional information on the portfolio composition of their mortgage-related mutual funds in the "Optional Supplement Reporting" section of Schedule CMR. This information permits the OTS to apply interest-rate sensitivity measures more appropriate to the specific mix of mortgage assets held by the mutual fund in which the institution has invested.

m. Zero-Coupon Securities

These assets are valued using the static discounted cash flow approach. On Schedule CMR, institutions report the carrying value of their zero-coupon securities, the weighted average yield to maturity, and the weighted average maturity. A single cash flow is assumed to occur at the weighted average maturity and is discounted by the Treasury zero-coupon yield applicable to that maturity.

n. Government and Agency Securities and Deposits at FHLBs

These assets are valued using the static discounted cash flow approach. Schedule CMR collects the outstanding principal balance of these instruments and their weighted average coupon and maturity. They are assumed to generate semiannual interest cash flows with principal repaid at maturity. All cash flows are discounted by the Treasury zero-coupon yields applicable to each of those months.

o. Term Federal Funds and Repurchase Agreements, Deposits at Non-FHLBs, and Commercial Paper

These assets are valued using the static discounted cash flow approach. On Schedule CMR, institutions report the outstanding principal balance of these assets and their weighted average coupon and maturity. They are assumed

to generate monthly interest cash flows and pay all principal at maturity. The discount rate in each month is calculated as the zero-coupon Treasury yield applicable to that month plus a spread. The spread is calculated such that, on average, the spread plus the zero-coupon yields will equal the 3-month commercial paper rate published in Federal Reserve Release G.13.

p. Other Investment Securities (Municipal Securities, Mortgage-Backed Bonds, Corporate Securities, Etc.)

These assets are valued using the static discounted cash flow approach. On Schedule CMR, institutions report the outstanding principal balance of these assets and their weighted average coupon and maturity. They are assumed to generate semiannual interest cash flows and pay all principal at maturity. The discount rate is the zero-coupon Treasury yield corresponding to the timing of the cash flow, plus a spread. The spread is calculated such that, on average, the spread plus the zero-coupon yields equals the AAA-rated corporate bond rate published in Federal Reserve Release G.13.

q. Nonperforming Loans

On Schedule CMR, institutions report the outstanding principal balance of nonperforming mortgage loans and, separately, of nonperforming nonmortgage loans. The base case value of each is set equal to its reported outstanding balances minus valuation allowances for mortgage loans and nonmortgage loans, respectively. They are assumed to have the same interest rate sensitivities as each institution's total mortgage loan portfolio and total nonmortgage loan portfolio, respectively.

r. Real Estate Held for Investment

Institutions report the carrying value, net of valuation allowances, of real estate held for investment on Schedule CMR. Because the economic value and interest rate sensitivity of real estate investments is very difficult to estimate using financial modeling techniques, the OTS assumes their economic value in all interest rate scenarios equals their book value That is, their interest rate sensitivity is zero.

s. Repossessed Assets

Institutions report the carrying value, net of valuation allowances, of repossessed assets on Schedule CMR. The economic value of these assets in all interest rate scenarios is assumed to be equal to their book value. That is, their interest rate sensitivity is assumed to be zero.

t. Investment in Unconsolidated Subsidiaries

Institutions report the carrying value, net of valuation allowances, of their investment in unconsolidated subsidiaries on Schedule CMR. The base case economic value is assumed to equal the book value. These assets are assumed to have the same interest rate sensitivity as the weighted average NPV of the entire savings and loan industry estimated by the OTS Model in the previous quarter.

u. Office Premises and Equipment

Institutions report the book value of office premises and equipment on Schedule CMR. The estimated economic value in all interest rate scenarios is equal to the book value. That is, these assets are assumed to have an interest rate sensitivity of zero.

v. Other Assets

Other Assets consist of Accrued Interest Receivable, Futures/Options Margin Accounts, and Other, including Property Leased to Others. The estimated economic value of these items is equal to the book value in all interest rate scenarios.

6. Summary of Methodologies for Liabilities

This section summarizes the methodologies used by the OTS Model to estimate the economic value of each of the liability categories listed on Schedule CMR.

a. Liability Discount Rate

Discount rates for all deposits (including demand deposits) are based on secondary market CD yields. Cash flows expected to occur within the first six months are discounted using the CD yields directly. Those expected to occur after six months are discounted by the appropriate maturity zero-coupon Treasury yield plus the spread observed at quarter-end between the 6-month secondary market CD yield and the 6-month zero-coupon Treasury yield.

Discount rates for borrowings are based on the London Interbank Offered Rates (LIBOR). LIBOR is the rate that major international banks charge each other for large-volume loans and thus provides a benchmark for the marginal cost of funds for depository institutions. The zero-coupon LIBOR curve is derived from market quotes for several maturities of LIBOR.[7]

[7] The method used to derive the LIBOR curve is similar to that shown in Chapter 10 of Bierwag, G., *Duration Analysis: Managing Interest Rate Risk*, Ballinger Publishing, 1987.

b. Demand Deposits

Demand deposits include transaction accounts (NOW, Super NOW, etc.), money market deposit accounts, passbook accounts, and non-interest bearing demand deposits. These liabilities have no stated maturity, and their offered rates react relatively slowly to changes in market rates (except for non-interest bearing deposits which, by definition, do not have an offered rate). Consequently, estimation of the cash outflows of demand deposits requires assumptions about the relationship between offered rates, balances, and market rates. These assumptions are then applied to the reported rates and balances to derive economic values for demand deposits.

These relationships were estimated statistically for each type of demand deposit. The change in the offered rate on interest-bearing deposits is assumed to depend on changes in the Treasury bill rate, and is estimated to allow for the possibility of differing speeds of adjustment under rising and falling market rates. Interest payments are assumed to be credited to the account balance rather than paid out monthly. Outflows of accumulated interest and principal depend on the attrition of deposit balances (due to depositor relocation and other factors) and, for interest-bearing deposits, on the relationship between offered and market rates. In addition to principal and interest, the cash outflows of demand deposits also include an estimate of the non-interest cost of maintaining the deposits.

The OTS plans to develop the ability to estimate institution-specific attrition rates for core deposits for institutions that elect to report data on Schedule CMR that will permit such estimation.

c. Escrow Accounts

Schedule CMR collects balance and weighted average coupon information separately for three types of escrow accounts: (1) Escrows associated with mortgages owned by the institution, (2) escrows associated with mortgages serviced for others, and (3) other escrows (*i.e.*, those not associated with mortgages.)

Escrow accounts that are associated with mortgages have some unique characteristics that must be taken into consideration in estimating their economic value. First, escrow accounts have no explicit maturity; rather they remain in existence as long as there are balances outstanding on their associated mortgages. In modeling each future month's escrow balance, therefore, the OTS applies to the original escrow

balance the monthly prepayment rates that are applied to the associated mortgage balance, either owned or serviced for others. In other words, as a given proportion of the institution's mortgages are prepaid, a like proportion of its escrow accounts are assumed to be paid out.

Second, escrow balances can be highly seasonal, reflecting payment of property taxes. Rather than attempt to model that seasonality, the OTS Model bases the estimated present value of escrows not on the reported quarter-end balance, but instead on the average balance over the last four quarters. By using this average balance as the original balance, and applying successive monthly mortgage prepayment rates to it, the Model should obtain a reasonable approximation of the balance on deposit in future months.[8]

In projecting monthly escrow cash flows the Model does, thus, not take account of the cyclical build-up and payout of escrow balances, and assumes rather that the seasonal fluctuation averages out. Only the net cash outflows—resulting from prepayment-related account payoffs and from interest payments—are projected. Interest is assumed to be paid out monthly, at the rate reported on Schedule CMR. Account payoffs are calculated each month by applying monthly mortgage prepayment rates (consistent with those used by the Model to value the institution's mortgages) to that month's estimated escrow balance.

These monthly cash flows are calculated separately for mortgages held in portfolio and those serviced for others. The discount rates used to value these two types of escrows are the same as those used to value the associated mortgages or mortgage servicing rights. This approach recognizes that the right to service a mortgage (whether owned or serviced for others) and its associated escrow account are an inseparable bundle.

Other escrows (*i.e.*, those not associated with mortgages) are assumed to have a constant annual run-off rate and to pay interest at the rate reported in Schedule CMR. To calculate their economic value, cash flows are discounted by LIBOR.

In calculating NPV, the current quarter's escrow balances are treated as a liability (at face value). The Model treats as an asset the difference between the institution's four-quarter average escrow balances and the present value of those accounts, calculated as described above. That difference measures the amount of benefit that an institution derives from its low cost escrow deposits and may be viewed as analogous to the GAAP treatment of the core deposit intangible associated with purchased core deposits.[9]

The advantage of this approach is that it prevents the spurious fluctuations in NPV that sometimes resulted from seasonal changes in escrow balances in the prior version of the OTS Model.[10]

d. Fixed-Rate, Fixed-Maturity Deposits

Schedule CMR collects the outstanding balance of fixed-rate, fixed-maturity deposits, their weighted average coupon and weighted average remaining maturity, and categorizes them according to their original maturity. It also collects information on early withdrawal penalties and balances in brokered accounts.

The valuation methodology for these deposits differs depending on whether they are retail or brokered accounts. The valuation of retail deposits takes into account the fact that depositors often roll their deposits over at interest rates below those demanded in the wholesale market. Because of this feature, the actual maturity and future offered rates of these deposits have to be projected. The roll-over and offered rate behavior was estimated based on their relationship to market rates. The offered rate on retail deposits of this type reacts somewhat sluggishly to changes in interest rates and a significant proportion of the account balances normally roll-over, and do so at below market interest rates.

Brokered deposits are assumed to be replaced at maturity with deposits paying market rates and to be withdrawn whenever the early-withdrawal penalty is less than the spread between the current market rate and the rate currently being paid on the account.[11]

Both types of deposits, brokered and retail, are assumed to behave like zero-coupon instruments, with monthly payments of interest credited to the account balance rather than being paid out. Outflows of principal and accumulated interest are assumed to occur upon early-withdrawal or when the account balance is no longer rolled over. In addition to principal and accumulated interest, the cash outflows of deposits include an estimate of the non-interest costs attributable to maintaining such deposits.

The only early-withdrawal penalties considered explicitly are those stated in terms of months of forgone interest. Different by calculated penalties, as well as other options (*e.g.*, the option to roll over at a predetermined rate, *etc.*), are not valued by the model, but may be valued by the reporting institution and reported separately in the Schedule CMR section titled, "Reporting of Market Value Estimates."

e. Fixed-Rate, Fixed-Maturity Borrowings

FHLB advances, other borrowings, redeemable preferred stock, and subordinated debt, are aggregated as "fixed-rate, fixed maturity borrowings," and are assumed to have cash flows that depend only on the instruments' remaining maturity and coupon. Thus, cash flows are assumed to consist of monthly or semi-annual interest payments, with all principal paid at maturity. At the institution's option, the economic value of any option embedded in these instruments (*e.g.*, prepayment penalties, call features, etc.) may be valued by the reporting institution and reported separately on Schedule CMR in the section titled, "Reporting of Market Value Estimates."

f. Variable-Rate, Fixed-Maturity Liabilities

This category includes liabilities that have contractually stated maturities and indexed rates (*e.g.*, certificates of

[8] The four-quarter average balance has in the past sometimes been distorted by the purchase or sale of mortgages or mortgage servicing rights which caused sudden one-time changes in institutions' reported escrow balances. To minimize the effect of such purchases or sales, the Model calculates the four-quarter average balance indirectly, as the current quarter-end mortgage balance (either owned or serviced for others) multiplied by the four-quarter average ratio of escrow balances to mortgage balances at the institution.

[9] For example, suppose that the current escrow balance at an institution happens to be zero, as a result of seasonal tax payouts. Also suppose that the institution has a four-quarter average escrow balance of $100 and that the present value of those escrow accounts is $60. The value that this institution derives from its escrow accounts is, thus, worth $40 and will be considered an asset.

[10] Suppose an institution, otherwise identical to the one in footnote 16, also has a four-quarter average escrow balance of $100 with a present value of $60, but has a different seasonal pattern of escrow payouts. Because it has not yet made seasonal tax payouts, this institution has a current escrow balance of $200 with which it is currently funding $200 of short-term securities. This institution's escrow accounts also contribute $40 to its NPV. That is, the $200 in short-term securities offsets the $200 in escrow liabilities, leaving the $40 escrow asset. This is a desirable result because, unlike what sometimes happened under the OTS' former treatment of escrows, the institution's NPV ought not to be materially affected by whether the reported balances are currently at a seasonal high or low.

[11] The term "brokered deposit" is used here as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991. It refers to funds obtained, directly or indirectly, by or through, any deposit broker for deposit into one or more deposit accounts.

deposit, FHLB advances, and other liabilities). Schedule CMR collects information on the main characteristics of each type of variable-rate, fixed-maturity liability (*e.g.*, type of index rate, balance, margin, rate reset frequency, time to next reset, and remaining maturity). Cash flows are assumed to consist of periodic interest payments with principal repaid at maturity.

The interest cash outflows of variable-rate liabilities are estimated based on assumptions about the relationship between the index and market rates. These relationships are estimated statistically for each index rate. Thus, for example, the OTS Model estimates expected future levels of Treasury rates and LIBOR, Fed funds, prime and other rates based on the current Treasury yield curve. At the institution's option, the market value of any embedded options (*e.g.*, early-withdrawal penalties, call features, *etc.*) may be valued by the institution and reported separately in Schedule CMR, in the section titled, "Reporting of Market Value Estimates."

g. Other Liabilities

This category includes "Collateralized Mortgage Securities Issued," and "Miscellaneous Liabilities I and II." Collateralized Mortgage Securities Issued consists of collateralized mortgage securities that are not recorded as sales. Institutions have the option, and are encouraged, to report the market value of these securities in Schedule CMR in the section, Reporting of Market Value Estimates. For those institutions that elect not to use this option, it is assumed that the economic value of this category is equal to its book value in all interest rate scenarios.

Miscellaneous Liabilities I consists of Accrued Interest Payable, Accumulated and Accrued Taxes, Dividends Payable, Accounts Payable, and Other Liabilities and Deferred Income. The economic value of these liabilities is assumed to be equal to their book value in all interest rate scenarios.

Miscellaneous Liabilities II consists of Financial Options Fees Received, Deferred Gains or Losses on Liability Hedges, and Deferred Income Taxes. The market value of these liabilities is assumed to be zero.

7. Summary of Methodologies for Off-Balance Sheet Positions

This section summarizes the methodologies used by the OTS Model to estimate the economic values of off-balance sheet positions.

a. Optional Commitments To Originate Mortgages

Optional commitments to originate mortgages are obligations to originate mortgage loans at a specified interest rate (fixed or adjustable), where the loan applicant is not obligated to take the loan. Only those optional commitments to originate for which a specified interest rate (a "rate lock") has been promised to the applicant are reported on Schedule CMR.

The OTS Model distinguishes, and values separately, optional commitments to originate the following eight categories of mortgages: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages.

Institutions report the following information on Schedule CMR for each position: (1) The dollar amount, (2) the weighted-average coupon, and (3) the dollar amount of loan origination and discount fees that will be collected at origination.

To value commitments to originate mortgages, the OTS Model first estimates the percent of the reported commitments that will actually close and become mortgage loans.

The pipeline is divided into two segments: commitments within a few days of settlement (assumed to be 15 percent of the pipeline) which are treated as being rate-insensitive, and the remaining commitments which are expected to be sensitive to changes in interest rates.

For the rate-insensitive portion of the pipeline, the Model uses an expected closure rate of 93 percent in all rate scenarios. For the rate-sensitive portion, the estimated closure percentage depends on the ratio of the rate on the commitment being valued to the quarter-end 60-day commitment rate on 30-year FRMs. The Model uses a closure rate of about 75 percent for commitments whose rate is less than or equal to the quarter-end, 60-day commitment rate. The closure rate decreases to a minimum of 60 percent for reported commitments whose rate is more than the quarter-end commitment rate.

The next step is to determine the economic value of the loans expected to close. The economic value of the commitments to originate is determined by subtracting the delivery value of a new mortgage (*i.e.*, par) of that type from the economic value of the mortgage underlying the commitment. For example, if the underlying mortgage loan is determined to have a value of 102 percent of face value, the commitment to make the loan would have an economic value equal to 2 percent of face value. The methodology used to value mortgages is discussed in Section B.3. Because of the forward nature of this transaction, the estimated cost of carry is deducted from the coupon of the contract.

b. Firm Commitments To Purchase, Sell, or Originate Mortgages

A firm commitment to purchase or sell mortgages is an agreement to buy or sell a security on a specified date at a specified price. A firm commitment to originate a mortgage is an obligation, binding *both* the lender *and* the borrower, to transact a specified mortgage loan at a specified interest rate, at a specified date in the future.

The OTS Model values the mortgages underlying firm commitments on eight categories of mortgages: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages. The Model distinguishes commitments to transact whole loans versus MBS, and loans transacted on a "servicing retained" basis versus those transacted on a "servicing released" basis.

Schedule CMR contains the following information on the mortgages underlying each position of firm commitments reported: (1) The category of loan or security, (2) the notional amount, (3) the coupon or pass through rate, and (4) the price to be paid or received.

The OTS Model values the mortgages underlying firm commitments to purchase, sell, or originate mortgages using the option-adjusted approach that is used for valuing single family mortgages. (See Section B.3 for details.) Commitments are valued as the amount of the commitment multiplied by the difference between the price of the pool of the mortgages or the security underlying the commitment and the reported delivery price. Because of the forward nature of the contract, the estimated cost of carry is deducted from the coupon of the forward contract.

c. Optional Commitments To Purchase or Sell Mortgages

An optional commitment to purchase mortgages grants the holder of the option the right, but not the obligation, to buy a specified type and amount of

mortgages or mortgage-backed securities, with a specified weighted average coupon (for mortgages) or pass-through rate (for MBSs), at a specified price (called the "strike price"), on a specified date (called the "expiration date"). An optional commitment to sell mortgages grants the holder the right, but not the obligation, to sell a specified type and amount of mortgages or MBSs, with a specified WAC or pass-through rate, at a specified price on a specified date.

The OTS Model values the four types of option positions on eight categories of mortgages that underlie the option. The four option positions are (1) Long positions to purchase mortgages, (2) long positions to sell mortgages, (3) short positions to purchase mortgages, and (4) short positions to sell mortgages. (A long position means the thrift owns the option. A short position means the thrift has sold the option.) The following categories of mortgages underlie the options: (1) 1-month COFI ARMs, (2) 6-month or 1-year COFI ARMs, (3) 6-month or 1-year Treasury ARMs, (4) 3-year or 5-year Treasury ARMs, (5) 5-year or 7-year balloon or 2-step mortgages, (6) 10-year, 15-year or 20-year FRMs, (7) 25-year or 30-year FRMs, and (8) all other mortgages.

Schedule CMR contains the following information on each option position reported: (1) The coupon or pass-through rate, (2) the strike price, (3) the notional principal amount, and (4) the expiration date.

Optional commitments on mortgages are valued with the Black 76 option valuation model described in Section B.4. Five inputs will be used to calculate the options value: (1) The forward price of the underlying mortgage in each scenario, calculated by the OTS Model, (2) the strike price, (3) days to expiration of the option, (4) the risk-free rate, represented by the 3-month treasury rate, and (5) a volatility measure equal to the historical volatility of 30-year MBS. A lower volatility measure is used for optional commitments to buy and sell ARMs.

To calculate the economic values in the shocked rate environments, two adjustments are made to the inputs of the Model. The price of the underlying mortgage corresponding to the shocked environment is used (with the adjustment for the cost of carry), and the risk-free rate of return is adjusted by the amount of the shock.

d. Commitments To Purchase or Sell Non-Mortgage Financial Assets and Liabilities

Commitments to purchase or sell non-mortgage financial assets and liabilities are agreements to purchase or sell financial assets other than mortgages or mortgage-backed securities, and commitments to purchase or sell liabilities, for a specified fixed price, on a specified date.

Institutions report the following information on Schedule CMR for the instruments underlying the commitments: (1) The asset or liability type, (2) the dollar (par) amount, (3) the maturity (if the position consists of core deposits, no information is provided on maturity), (4) the coupon or interest rate paid or received, and (5) the price (as a percentage of par) to be paid or received.

Each commitment is valued by estimating the value of the underlying asset or liability and subtracting the price at which the institution has agreed to buy or sell it. For example, if an institution has agreed to sell certain bonds for 98 percent of par, and the bonds are determined to have a value of 101 percent of par in a given interest rate scenario, the commitment will have an economic value of negative 3 percent of par in that scenario.

Positions in "Other Liabilities" are assumed to consist of commitments to buy or sell certificates of deposit (CDs). (The valuation of CDs and core deposits is discussed in Section 6.)

Positions in "Non-Mortgage Financial Assets" are valued using a static discounted cash flow approach. These positions are assumed to consist of bonds paying semiannual interest payments. The OTS model discounts the cash flows by the rate that would return the price at which the institution is transacting the instrument (*i.e.*, the internal rate-of-return of the instrument). For example, if an institution has agreed to sell certain bonds for 98 percent of par, the model uses that discount rate in the base case that causes the sum of the discounted cash flows of the bond to equal 98 percent of par. This assumption will result in these commitments having a base case value of zero.

In the alternate rate scenarios, the discount rate is altered by the amount of the shock, the economic value of the bond is recalculated and subtracted from the price at which the institution has agreed to transact the asset.

e. Interest-Rate Swaps

i. *Fixed-for-Floating Swaps.* Fixed-for-floating interest-rate swaps are agreements to exchange a stream of fixed-rate interest payments for a stream of interest payments that float with a specified index of interest rates. The coupon payments are based on a notional principal amount.

The OTS Model values fixed-for-floating swaps with each of the following floating rate indices: one-month, three-month, and six-month LIBOR, three-month, one-year, three-year, five-year, seven-year, and ten-year Treasury, the 11th District Cost of Funds (COFI), and the prime rate.

Schedule CMR contains the following information about each swap position reported: (1) The floating-rate index, (2) the fixed rate, (3) the notional principal amount, (4) the maturity date, and (5) the margin to be added to the floating-rate index, if any.

The economic value of swaps is estimated as the present value of the cash flows received minus the discounted present value of the cash flows paid. All swaps are assumed to be even at initiation (*i.e.*, the values of the pay and receive sides are equal), since no discounts or premiums can be reported on Schedule CMR.

For swaps based on LIBOR and Treasury indices, the projected floating rate equals the corresponding implied forward LIBOR or Treasury rate. The COF index rates are projected using the same equation that is described in section B.5.b. Both the fixed-rate and floating-rate side cash flows are discounted by the appropriate maturity spot rate corresponding to the floating-rate side.

To determine the swap's economic value in the alternate interest rate environments, the discount rates are adjusted by the amount of the shock, and economic value recalculated.

ii. *Basis Swaps.* Basis swaps are agreements to exchange one stream of interest payments that float with a given index of rates for a stream that floats with a different index of rates.

The Model values four types of basis swaps: One-month LIBOR-for-COFI, three-month LIBOR-for-COFI, six-month LIBOR-for-COFI, and three-month Treasury-for-COFI swaps. (Treasury-for-LIBOR swaps are not reported on Schedule CMR because they are not considered to exhibit significant sensitivity to the interest rate simulations performed by the OTS model.)

The methodology used to value basis swaps is the same as that for fixed-for-floating swaps, except two floating rates are projected.

iii. *Swaptions.* A swaption is an option to enter into a specified swap agreement on a specified future date. The OTS Model values swaptions on Fixed-For-Floating swaps. Swaptions on basis swaps are not valued by the Model.

Schedule CMR collects the following information on swaptions: (1) The

floating-rate index, (2) the fixed rate, or strike rate, (3) the notional principal amount, (4) the expiration date of the swaption (the date the swap would begin if the swaption were exercised), (5) the date the swap underlying the swaption matures, and (6) the margin to be added to the floating-rate index, if any.

Swaptions are valued with the Black 76 option valuation model described in section B.4. Six inputs are used to calculate the option's value; (1) The forward swap rate (estimated as the corresponding implied forward rate), (2) The expiration date of the swap that underlies the swaption, (3) The expiration date of the swaption, (4) The strike price, (5) The risk-free rate, represented by the 3-month Treasury rate, and (6) The volatility, assumed to be an average volatility of short-term rates.

To calculate the economic value in the alternate rate environments, the corresponding Treasury or LIBOR curves are adjusted by the amount of the rate shock, which alters the forward swap rate, and the risk-free rate of return is adjusted by the amount of the shock.

iv. *Mortgage Swaps.* Mortgage swaps are agreements to exchange a stream of fixed-rate mortgage principal and interest payments for a stream of interest payments that float with a market index of interest rates. The payments are based on a specified notional principal amount which is reduced monthly as a function of the actual amortization and prepayment experience of a specified pool of MBSs.

Schedule CMR distinguishes mortgage swaps with one-month, three-month, and six-month LIBOR floating rate indices. Schedule CMR collects the following information on mortgage swap positions reported: (1) The floating-rate index, (2) the mortgage coupon, (3) the notional principal amount, (4) the maturity date of the pool of mortgages underlying the swap, and (5) the margin to be added to the floating-rate index, if any.

Mortgage swap agreements are generally constructed to mimic an investment in the underlying mortgage funded by floating-rate borrowings. The notional amount is assumed to amortize based on a 30-year schedule and prepay at the same rate as fixed-rate 30-year mortgages.

v. *Amortizing Swaps.* An amortizing swap is a swap on which the notional principal amount amortizes over time. Any of the types of swaps reported on Schedule CMR (e.g., basis swaps, fixed-for-floating swaps) can be designated as amortizing swaps.

Data on the swap's amortization schedule are not collected on Schedule CMR. Therefore, the OTS model assumes the swap (other than mortgage swaps) amortizes in a "straight line" manner over its life.

f. Interest Rate Caps and Floors

An interest rate cap is a contract that compensates the holder of the contract as a specified interest rate index rises above a preset rate (called the cap rate or strike rate). An interest rate floor is a contract that compensates the holder as a specified interest rate falls below a preset rate (called the floor rate or strike rate). The party that purchases the cap or floor is said to be "long" the cap or floor, while the party that sells the cap or floor is said to be "short" the cap or floor. Caps and floors are generally entered into for an extended period of time.

Schedule CMR collects the following information on each cap or floor positions: (1) The interest rate index underlying cap or floor, (2) the notional amount, (3) the date the cap or floor begins (if the contract contains a forward provision), (4) the maturity date, and (5) the strike rate.

Caps and floors are valued with the derivative of the Black-Scholes option valuation model that was described in Section B.4. Each cap or floor is valued as a series of options represented by the contract. Five inputs are used to calculate each options' value: (1) The forward rate (estimated as the corresponding implied forward rate), (2) The strike rate, (3) The expiration date, (4) The risk-free rate, represented by the 3-month Treasury rate, and (5) the volatility, estimated as the implied volatility of the nearby Eurodollar Futures contract for near-term options in the series, adjusting to a long-term estimate of volatility for LIBOR for later options in the series.

To calculate the economic value in the alternate interest environments. The Treasury or LIBOR curves are adjusted by the amount of the rate shock, which alters the implied forward rates used to value each option, and the risk-free rate of return is adjusted by the amount of the shock.

g. Futures

The OTS model values long and short positions in the following futures contracts: Treasury bond, 2-year, 5-year, and 10-year Treasury notes, 1-month LIBOR, 3-month Eurodollar, 3-month Treasury bill, 30-day interest rate, 3-year and 5-year swaps, and 30-year mortgage-backed futures. On Schedule CMR, institutions report the contract code that represent the types of futures contract they hold, and the notional principal amounts of their positions.

Futures contracts are "marked-to-market" daily and cash is paid or received so that the market value of the position is zero at the end of each day. As a result, the economic value of futures in the base case is zero.

The estimated economic value of a futures position in the alternate rate scenarios is determined by the difference between the estimated futures price in the alternate rate environment and the futures price in the base case, multiplied by the size of the position. For Treasury note or bond futures, the OTS Model estimates the futures price of the cheapest-to-deliver (CTD) security in each alternate rate environment.

To value the 1-month LIBOR, 3-month Eurodollar, 3-month Treasury bill, and 30-day interest rate futures, the base case yield is adjusted by the amount of the interest rate shock. (Treasury bill futures are adjusted by the amount that a discount yield would shift, given the shock to the zero-coupon Treasury curve.) Futures contracts have a specific dollar value per yield point, so the market value of these contracts in each scenario equals the product of this specific value and the change in the yield caused by the rate shock.

The OTS Model values 3-year and 5-year swaps futures in the same manner as fixed-for-floating swaps (refer to the Swaps section for discussion).

h. Options on Futures

A call option on a futures contract gives the holder the right, but not the obligation, to acquire a long position in a futures contract at a specified price (called the "strike price") on a specified date (called the "expiration date"). A put option on a futures contract gives the holder the right, but not the obligation, to acquire a short position in a futures contract at a specified price and on a specified date.

The OTS Model values the four types of options positions on eight different futures contracts. The four option positions are (1) long call, (2) long put, (3) short call, and (4) short put. (A long position indicates the thrift has bought the option. A short position indicates the thrift has sold the option.) The eight futures contracts underlying the options are (1) 30-day interest rate futures, (2) 3-month Treasury bill futures, (3) 2-year Treasury note futures, (4) 5-year Treasury note futures, (5) 10-year Treasury note futures, (6) Treasury bond futures, (7) 1-month LIBOR futures, and (8) Eurodollar futures.

Schedule CMR contains the following information on each option position reported: (1) The notional principal

amount, (2) the strike price, and (3) the expiration date of the option.

The OTS Model values options on futures with the derivative of the Black-Scholes option valuation model that was described in the section titled "Basic Valuation Methodologies." Five inputs will be used to calculate the option's value: (1) The price of the underlying Futures contract (2) The strike price, (3) The expiration date, (4) The risk-free rate, represented by the 3-month Treasury rate, and (5) The volatility, estimated as the implied volatility of the option contract.

i. Construction LIP

Construction loans in process (LIP) are construction loans on which the institution has closed but has not yet disbursed the entire proceeds. Only that LIP for which a fixed interest rate has been specified is reported on Schedule CMR. Floating-rate agreements or agreements wherein the rate is determined at the time the funds are disbursed are not reported on Schedule CMR.

Schedule CMR contains the following information on LIP: (1) The amount of undisbursed funds, (2) the term until the expected receipt of principal on the loans, and (3) the interest rate.

The economic value of the commitment is determined by estimating the value of the underlying loan, and subtracting par. For example, if the underlying loan has a value of 102 percent of par, the commitment to make the loan would have a value equal to 2 percent of par. The underlying loan is valued as a fixed-rate construction loan (see Section 5.E). In the alternate interest rate scenarios, the discount rate is adjusted by the amount of the shock, the value of the underlying loan is recalculated, and par subtracted.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-71-AD; Amendment 39-8678; AD 93-17-07]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires inspections to detect cracks on the midspar fitting lugs or spring beam aft lugs of each strut, and replacement of midspar fittings or spring beams, if necessary; and inspections of the struts to detect bushing migration and corrosion, and repair, if necessary. This amendment adds an inspection for certain airplanes, and reduces an initial inspection threshold and repetitive inspection intervals for certain airplanes. This amendment is prompted by results of flight tests conducted to determine strut-to-wing interface loads, and by additional reports of cracked lugs. The actions specified in this AD are intended to prevent the failure of the engine support structure and the inability of the strut to carry required engine support loads.

DATES: Effective on September 10, 1993.

The incorporation by reference of Boeing Alert Service Bulletin 747-54A2152, Revision 1, dated July 15, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of September 10, 1993.

The incorporation by reference of Boeing Service Bulletin 747-54-2100, dated June 20, 1983; Boeing Service Bulletin 747-54-2100, Revision 1, dated August 25, 1988; Boeing Service Bulletin 747-54-2100, Revision 2, dated July 20, 1989; Boeing Service Bulletin 747-54-2100, Revision 3, dated November 16, 1989; and Boeing Alert Service Bulletin 747-54A2152, dated December 23, 1992; as listed in the regulations, was approved previously by the Director of the Federal Register as of February 5, 1993 (58 FR 483, January 6, 1993).

Comments for inclusion in the Rules Docket must be received on or before November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-71-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On December 24, 1992, the FAA issued AD 93-01-04, Amendment 39-8458 (58 FR 483, January 6, 1993), to require repetitive ultrasonic inspections to detect cracks on the inboard and outboard midspar fitting lugs or spring beam aft lugs of each strut, and replacement of midspar fittings or spring beams, if necessary. That AD also requires repetitive detailed visual inspections of the inboard and outboard struts to detect bushing migration and corrosion, and repair, if necessary. That action was prompted by seven reports of fatigue cracking on lugs and numerous reports of migration of lug bushings. The actions required by that AD are intended to prevent the failure of the engine support structure and the inability of the strut to carry required engine support loads.

Since the issuance of that AD, the FAA has received three additional reports of fatigue cracking on midspar fittings. These reports, as well as the seven reports that prompted the issuance of AD 93-01-04, involved the inboard fitting of the inboard strut. In addition, service data indicate that there have been numerous cases of migrated roller-swaged, shrink-fitted bushings.

In light of these reports, the FAA has re-evaluated the detailed visual inspection that is currently required by AD 93-01-04 and intended to detect bushing migration and corrosion on airplanes equipped with roller-swaged, shrink-fitted bushings. The FAA has determined that a detailed visual inspection alone is inadequate to ensure that cracks on those airplanes are detected in a timely manner. The FAA finds that, in addition to a detailed visual inspection, an ultrasonic inspection to detect cracking of the midspar fitting lugs or spring beam aft lugs, must be accomplished on all strut midspar fitting and spring beam configurations. The FAA bases this finding on the fact that the inside face of each midspar fitting lug cannot be seen during a detailed visual inspection. Therefore, sealant cracking, which could provide a moisture path leading to lug bore corrosion and subsequent cracking, cannot be detected on the inside face of each lug. Consequently, the FAA has determined that an ultrasonic inspection to detect cracks of the lugs, as well the currently required detailed visual inspection to detect corrosion of the lugs and bushing

migration or rotation, must be accomplished on all airplanes.

The FAA has also received a recent report that a fatigue crack was found on a midspar fitting lug that had been re-worked in accordance with Boeing Service Bulletin 747–54–2100 and had accumulated well below the inspection threshold of 5,000 landings required by AD 93–01–04 since that re-work. Investigation of the report revealed that, while that service bulletin provides instructions for oversizing the lug bore, it contains no provision for an insurance cut. Consequently, a crack just below the minimum size detectible using the fluorescent penetrant inspection method was left inside the bore of the re-worked lug and propagated by fatigue.

In light of this information, the FAA has determined that the initial inspection threshold for lugs that have been re-worked in accordance with Boeing Service Bulletin 747–54–2100 must be reduced in order to detect cracks in these fittings in a timely manner. Paragraph (e)(2) of this AD reflects reduced inspection thresholds for these re-worked lugs. In addition, magnetic particle inspection methods are more reliable than fluorescent penetrant inspection methods and can detect a smaller minimum flaw size in these fittings than fluorescent penetrant inspection methods. Paragraph (h) of this AD specifies that the reinspection portion of the lug re-work procedure must be accomplished using magnetic particle methods.

Additionally, the FAA finds that any midspar fitting or spring beam that has been replaced or re-worked in accordance with certain service information may be considered to be a new midspar fitting or spring beam. Replaced or re-worked midspar fittings or spring beams are subject to the initial inspections and subsequent corrective actions (as necessary) required by this AD. Paragraph (k) of this AD contains these requirements and specifies the appropriate service information for replacement or re-work of the midspar fittings and spring beams.

The FAA also has completed a review of the results of flight tests conducted by the manufacturer for the purpose of determining strut-to-wing interface loads. The FAA, in conjunction with the manufacturer, has established a fatigue spectrum for the midspar fuse pins and fittings based on the results of that review. Crack growth analysis based on this fatigue spectrum indicated that the repetitive inspection interval specified in AD 93–01–04 must be decreased from 1,000 to 500 landings for midspar fitting lugs on the inboard struts of Model 747 series airplanes equipped with Pratt and Whitney JT9D series engines and on the first four Model 747 series airplanes delivered with General Electric CF6 series engines (variable block numbers RB013 through RB016 inclusive). The midspar fitting lugs on the inboard struts of these airplanes are "thinner" (0.62 inch thick) than the lugs on the inboard and outboard struts on all other Model 747 series airplanes. Crack growth analysis indicates that failure of these "thin" lugs has occurred within 570 landings from the time of the initial flaw to the time both lugs have failed. Paragraph (g) of this AD requires that repetitive inspections of Model 747 series airplanes with "thin" midspar fitting lugs be accomplished at intervals of 500 landings.

The FAA has determined that no distinction should be made between roller-swaged, shrink-fitted bushings and press-fit bushings in determining inspection intervals of the lugs. While AD 93–01–04 makes such a distinction, this AD does not, and requires the same inspection intervals for both types. In addition, for ease of operator identification, this AD makes no distinction between airplanes with regard to whether or not they were delivered (new) with any specific type of bushing; instead this AD makes a distinction between those airplanes currently equipped with roller-swaged, shrink-fitted bushings, and those not equipped with them.

The FAA is also in agreement with the manufacturer that outboard struts on which spring beams made of titanium are installed are not subject to the requirements of this AD. Service history indicates that spring beams made of titanium (all Groups other than 1 and 4) are corrosion-resistant and, if free of manufacturing defects, are unlikely to crack.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993. The revised service bulletin describes procedures for an ultrasonic inspection of the midspar fittings, in addition to a detailed visual inspection, on airplanes equipped with roller-swaged, shrink-fitted bushings. The revised service bulletin also recommends decreasing the repetitive inspection interval for certain airplanes with "thin" lugs, as discussed previously.

Cracking of the midspar fitting lugs, if not detected and corrected, could result in the failure of the engine support structure and the inability of the strut to carry required engine support loads.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 93–01–04 to add an ultrasonic inspection to detect cracks of the midspar fitting lugs or spring beam aft lugs for airplanes equipped with roller-swaged, shrink-fitted bushings. As described in detail above, this AD also reduces the initial inspection threshold for certain airplanes equipped with lugs that were last re-worked in accordance with Boeing Service Bulletin 747–54–2100. In addition, this AD reduces the repetitive inspection interval for midspar fitting lugs on the inboard struts of Model 747 series airplanes equipped with Pratt and Whitney JT9D series engines and on the first four Model 747 series airplanes delivered with General Electric CF6 series engines (variable block numbers RB013 through RB016 inclusive). This AD continues to require repetitive ultrasonic inspections to detect cracks on the inboard and outboard midspar fitting lugs or spring beam aft lugs of each strut, and replacement of midspar fittings or spring beams, if necessary; and repetitive detailed visual inspections of the inboard and outboard struts to detect bushing migration or rotation and corrosion, and repair, if necessary.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both befo-

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–71–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8458 (58 FR 483, January 6, 1993), and by adding a new airworthiness directive (AD), amendment 39–8678, to read as follows:

93–17–07 Boeing: Amendment 39–8678. Docket 93–NM–71–AD. Supersedes AD 93–01–04, Amendment 39–8458.

Applicability: All Model 747 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the engine support structure and the inability of the strut to carry required engine support loads, accomplish the following:

Restatement of Actions Required by AD 85–22–07, Amendment 39–5153

(a) *Initial/Repetitive Inspections:* For Model 747 series airplanes listed in Boeing Service Bulletin 747–54–2100, dated June 20, 1983: Perform an ultrasonic inspection of the inboard and outboard midspar fitting lugs or spring beam aft lugs of each strut to detect cracks in accordance with Boeing Service Bulletin 747–54–2100, dated June 20, 1983; Revision 1, dated August 25, 1988; Revision 2, dated July 20, 1989; or Revision 3, dated November 16, 1989; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable. Repeat that inspection thereafter at intervals not to exceed 3,000 landings until the inspections required by paragraph (b) of this AD is accomplished.

(1) For airplanes that have accumulated less than 30,000 total hours time-in-service as of November 24, 1985 (the effective date of AD 85–22–07, Amendment 39–5153): Inspect within 18 months after November 24, 1985, or prior to the accumulation of 25,000 total hours time-in-service, whichever occurs later.

(2) For airplanes that have accumulated 30,000 or more total hours time-in-service, but less than 40,000 total hours time-in-service, as of November 24, 1985 (the effective date of AD 85–22–07, Amendment 39–5153): Inspect within 12 months after November 24, 1985.

(3) For airplanes that have accumulated 40,000 or more total hours time-in-service as of November 24, 1985 (the effective date of AD 85–22–07, Amendment 39–5153): Inspect within 6 months after November 24, 1985.

(4) For airplanes on which the midspar fitting or its lug bushings have been replaced, or on which the spring beam or its aft lug bushings have been replaced: Inspect those lugs within 18 months after November 24, 1985 (the effective date of AD 85–22–07, Amendment 39–5153), or within 25,000 total hours time-in-service after such replacement, whichever occurs later.

Restatement of Actions Required by AD 93–01–04, Amendment 39–8458

(b) *Initial Inspections:* For airplanes equipped with midspar fitting lugs or spring beam aft lugs that do not have roller-swaged, shrink-fitted bushings: Perform an ultrasonic inspection to detect cracks of the midspar fitting lugs or spring beam aft lugs of each strut and a detailed visual inspection to detect corrosion of the lugs and bushing migration, in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, prior to the times specified in paragraphs (b)(1) and (b)(2) of this AD. After the effective date of this AD, these inspections shall only be accomplished in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993. Accomplishment of these inspections terminates the repetitive inspection requirement of paragraph (a) of this AD.

(1) Inspect inboard engine positions 2 and 3 prior to the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Prior to the accumulation of 5,000 landings on the midspar fitting lugs, or within 5 years since installation, whichever occurs first. Or

(ii) Within 60 days after February 5, 1993 (the effective date of AD 93–01–04, Amendment 39–8458).

(2) Inspect outboard engine positions 1 and 4 prior to the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 landings on the midspar fitting lugs or spring beam aft lugs, or within 5 years since installation, whichever occurs first. Or

(ii) Within 90 days after February 5, 1993 (the effective date of AD 93–01–04, Amendment 39–8458).

(c) *Initial Inspections:* For airplanes equipped with midspar fitting lugs or spring beam aft lugs having roller-swaged, shrink-fitted bushings: Perform a detailed visual inspection of the midspar fitting lugs or spring beam aft lugs of each strut for corrosion of the lugs and bushing migration in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, prior to the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 5,000 landings on the midspar fitting lugs or spring beam aft lugs, or within 5 years since installation, whichever occurs first. Or

(2) Within 90 days after February 5, 1993 (the effective date of AD 93–01–04, Amendment 39–8458).

(d) *Repetitive Inspections:* Repeat the inspection required by paragraph (b) or (c) of this AD, as applicable, prior to the times specified in paragraphs (d)(1) and (d)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993, until the inspections required by paragraphs (e) and (f) of this AD are accomplished, as applicable.

(1) For midspar fitting lugs: At intervals not to exceed 1,000 landings.

(2) For spring beam aft lugs: At intervals not to exceed 3,000 landings.

New Actions Required by This Amendment

(e) *Initial Inspections for Lugs Re-Worked in Accordance With Boeing Service Bulletin 747–54–2100:* For airplanes equipped with

midspar fitting lugs or spring beam aft lugs that were last re-worked in accordance with Boeing Service Bulletin 747–54–2100: Perform an ultrasonic inspection to detect cracks of the midspar fitting lugs or spring beam aft lugs of each strut and a detailed visual inspection to detect corrosion of the lugs and bushing migration and rotation in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993, prior to the times specified in paragraphs (e)(1) and (e)(2) of this AD, as applicable. Accomplishment of these inspections terminates the repetitive inspection requirements of paragraph (d) of this AD.

(1) For airplanes that have been inspected previously in accordance with AD 93–01–04: Perform the inspections prior to the times specified in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD, as applicable.

(i) For midspar fitting lugs installed on the inboard strut on Groups 1, 4, and 9 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: Within 500 landings since the previous ultrasonic or detailed visual inspection, or within 60 days after the effective date of this AD, whichever occurs later.

(ii) For midspar fitting lugs installed on the inboard strut other than those subject to the requirements of paragraph (e)(1)(i) of this AD; and for midspar fitting lugs installed on the outboard strut on Groups 1 and 4 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: Within 1,000 landings since the previous ultrasonic or detailed visual inspection, or within 90 days after the effective date of this AD, whichever occurs later.

(iii) For spring beam aft lugs: Within 3,000 landings since the previous ultrasonic or detailed visual inspection, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have not been inspected previously in accordance with AD 93–01–04: Perform the inspections prior to the times specified in paragraphs (e)(2)(i), (e)(2)(ii), and (e)(2)(iii) of this AD, as applicable.

(i) For midspar fitting lugs installed on the inboard strut on Groups 1, 4, and 9 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: Inspect prior to the later of the times specified in paragraphs (e)(2)(i)(A) and (e)(2)(i)(B) of this AD.

(A) Prior to the accumulation of 2,500 landings on the re-worked midspar fitting lugs, or within 3 years since re-work of the lugs, whichever occurs first. Or

(B) Within 60 days after the effective date of this AD.

(ii) For midspar fitting lugs and spring beam aft lugs other than those subject to the requirements of paragraph (e)(2)(i) of this AD: Inspec. prior to the later of the times specified in paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this AD.

(A) Prior to the accumulation of 5,000 landings on the re-worked midspar fitting lugs, or within 5 years since re-work of the lugs, whichever occurs first. Or

(B) Within 90 days after the effective date of this AD.

(f) *Initial Inspections for Lugs Other Than Those Re-Worked in Accordance With Boeing Service Bulletin 747–54–2100:* For airplanes equipped with midspar fitting lugs or spring beam aft lugs other than those subject to the requirements of paragraph (e) of this AD: Perform an ultrasonic inspection to detect cracks of the midspar fitting lugs or spring beam aft lugs of each strut and a detailed visual inspection to detect corrosion of the lugs and bushing migration and rotation in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993, prior to the times specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable. Accomplishment of these inspections terminates the repetitive inspection requirements of paragraph (d) of this AD.

(1) For airplanes that have been inspected previously in accordance with AD 93–01–04: Perform the inspections prior to the times specified in paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD, as applicable.

(i) For midspar fitting lugs installed on the inboard strut on Groups 1, 4, and 9 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: Within 500 landings since the previous ultrasonic or detailed visual inspection, or within 60 days after the effective date of this AD, whichever occurs later.

(ii) For midspar fitting lugs installed on the inboard strut other than those subject to the requirements of paragraph (e)(1)(i) of this AD; and for midspar fitting lugs installed on the outboard strut on Groups 1 and 4 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: Within 1,000 landings since the previous ultrasonic or detailed visual inspection, or within 90 days after the effective date of this AD, whichever occurs later.

(iii) For spring beam aft lugs: Within 3,000 landings since the previous ultrasonic or detailed visual inspection, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have not been inspected previously in accordance with AD 93–01–04: Perform the inspections prior to the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, as applicable.

(i) For midspar fitting lugs installed on the inboard strut on Groups 1, 4, and 9 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: Inspect prior to the later of the times specified in paragraphs (f)(2)(i)(A) and (f)(2)(i)(B) of this AD.

(A) Prior to the accumulation of 5,000 landings on the midspar fitting lugs, or within 5 years since installation, whichever occurs first. Or

(B) Within 60 days after the effective date of this AD.

(ii) For midspar fitting lugs other than those subject to the requirements of paragraph (f)(2)(i) of this AD, and for spring beam aft lugs: Inspect prior to the later of the times specified in paragraphs (f)(2)(ii)(A) and (f)(2)(ii)(B) of this AD.

(A) Prior to the accumulation of 5,000 landings on the lugs, or within 5 years since installation, whichever occurs first. Or

(B) Within 90 days after the effective date of this AD.

(g) *Repetitive Inspections:* Repeat the inspections required by paragraphs (e) and (f) of this AD, as applicable, prior to the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993.

(1) For midspar fitting lugs installed on the inboard strut on Groups 1, 4, and 9 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: At intervals not to exceed 500 landings.

(2) For midspar fitting lugs installed on the inboard strut other than those subject to the requirements of paragraph (g)(1) of this AD; and for midspar fitting lugs installed on the outboard strut on Groups 1 and 4 airplanes, as listed in Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993: At intervals not to exceed 1,000 landings.

(3) For spring beam aft lugs: At intervals not to exceed 3,000 landings.

Corrective Actions

(h) *Migrated or Rotated Bushings:* If any migrated or rotated bushing is found as a result of any inspection required by this AD, prior to further flight, re-seal the bushing in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993. Prior to the accumulation of 1,000 additional landings after detecting the migrated or rotated bushing, re-work the midspar fitting or spring beam, as applicable, in accordance with Figure 5 of the service bulletin. Reinspection of the lug bore, which is part of the lug re-work procedure, shall only be accomplished using magnetic particle inspection techniques. After the effective date of this AD, re-work of the midspar fitting or spring beam shall only be accomplished in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993.

(i) *Cracks:* If any crack is found in the lugs as a result of any inspection required by this AD, prior to further flight, replace the affected midspar fitting or spring beam in accordance with Boeing Service Bulletin 747–54–2100, dated June 20, 1983; Revision 1, dated August 25, 1988; Revision 2, dated July 20, 1989; or Revision 3, dated November 16, 1989.

(j) *Corrosion:* If any corrosion is found as a result of any inspection required by this AD, prior to further flight, remove the corrosion in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July 15, 1993.

(k) Any midspar fitting or spring beam replaced in accordance with the procedures described in Boeing Service Bulletin 747–54–2100, dated June 20, 1983; Revision 1, dated August 25, 1988; Revision 2, dated July 20, 1989; or Revision 3, dated November 16, 1989, shall be considered to be a new midspar fitting or spring beam. Any midspar fitting or spring beam that has been re-worked in accordance with Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, or Revision 1, dated July

15, 1993, shall also be considered to be a new midspar fitting or spring beam. Replaced or re-worked fittings or spring beams are subject to the initial inspections required by paragraphs (e) and (f) of this AD, as applicable, and any subsequent corrective actions based on the findings of those inspections.

Note 1: Midspar fittings or spring beams that have been re-worked in accordance with Boeing Service Bulletin 747–54–2100, dated June 20, 1983; Revision 1, dated August 25, 1988; Revision 2, dated July 20, 1989; or Revision 3, dated November 16, 1989, are not to be considered to be new midspar fittings or spring beams. In addition, the initial inspection threshold for these lugs is less than the initial inspection threshold for lugs that have been re-worked in accordance with Boeing Alert Service Bulletin 747–54A2152.

(l) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(m) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(n) The inspections, re-seal, re-work, corrosion removal, and replacements shall be done in accordance with Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993; Boeing Service Bulletin 747–54–2100, dated June 20, 1983; Boeing Service Bulletin 747–54–2100, Revision 1, dated August 25, 1988; Boeing Service Bulletin 747–54–2100, Revision 2, dated July 20, 1989; Boeing Service Bulletin, Revision 3, dated November 16, 1989; and Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992; as applicable. The incorporation by reference of Boeing Alert Service Bulletin 747–54A2152, Revision 1, dated July 15, 1993, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of Boeing Service Bulletin 747–54–2100, dated June 20, 1983; Boeing Service Bulletin 747–54–2100, Revision 1, dated August 25, 1988; Boeing Service Bulletin 747–54–2100, Revision 2, dated July 20, 1989; Boeing Service Bulletin, Revision 3, dated November 16, 1989; and Boeing Alert Service Bulletin 747–54A2152, dated December 23, 1992, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of February 5, 1993 (58 FR 483, January 6, 1993). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(o) This amendment becomes effective on September 10, 1993.

Issued in Renton, Washington, on August 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21060 Filed 8–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–24–AD; Amendment 39–677; AD 93–17–06]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6–45/50 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect cracking of the number 1 strut idler pulley support bracket assembly, inspections of all associated fasteners for tightness, and replacement of the bracket assembly. This amendment adds a requirement to perform repetitive visual inspections of the strut web to detect cracking in the area of the pulley bracket, and repair of the strut web, if necessary. This amendment is prompted by a determination that installation of the pulley bracket without proper shimming may result in strut web cracks in the area of the pulley bracket. The actions specified by this AD are intended to prevent loss of engine thrust control.

DATES: Effective on September 30, 1993.

The incorporation by reference of Boeing Service Bulletin 747–6A2083, Revision 2, dated February 25, 1993, as listed in the regulations is, approved by the Director of the Federal Register as of September 30, 1993.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of September 28, 1992 (57 FR 38251, August 24, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–16–09, Amendment 39–8318 (57 FR 38251, August 24, 1992), which is applicable to certain Boeing Model 747 series airplanes, was published in the Federal Register on May 18, 1993 (58 FR 28936). The action proposed to add a requirement to perform repetitive visual inspections of the strut web to detect cracking in the area of the pulley bracket, and repair of the strut web, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 140 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $737 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,588, or $1,397 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8318 (57 FR 38251, August 24, 1992), and by adding a new airworthiness directive (AD), amendment 39–8677, to read as follows:

93–17–06 Boeing: Amendment 39–8677. Docket 93–NM–24–AD. Supersedes AD 92–16–09, Amendment 39–8318.

Applicability: Model 747 series airplanes; line positions 202 through 886 inclusive, equipped with General Electric CF6–45/50 series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of engine thrust control, accomplish the following:

(a) For those airplanes on which the new bracket assembly has not previously been installed in accordance with Boeing Alert Service Bulletin 747–76A2083, dated December 18, 1991, or Revision 1, dated May 28, 1992, accomplish the following:

(1) Prior to or upon the accumulation of 9,000 total flight hours on the airplane, or within 600 flight hours after September 28, 1992 (the effective date of AD 92–16–09, Amendment 39–8318), whichever occurs later, perform a visual inspection of the number 1 strut idler pulley support bracket assembly to detect cracks; and inspect all associated fasteners for proper tightness; in accordance with Boeing Alert Service Bulletin 747–76A2083, dated December 18, 1991; Revision 1, dated May 28, 1992; or Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993.

(i) If no crack is found in the bracket assembly, return the airplane to service and repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 600 flight hours.

(ii) If only one crack is found in the bracket assembly and its length is two inches or less, prior to further flight, accomplish the procedures specified in either paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD:

(A) Accomplish the interim repair described in Paragraph E. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–76A2083, Revision 1, dated May 28, 1992. Thereafter, repeat the inspections described in paragraph (a) of this AD at intervals not to exceed 100 flight hours. Within 750 flight hours after installation of the interim repair, replace the bracket assembly in accordance with Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993. Replacement of the bracket assembly constitutes terminating action for the repetitive inspections required by this paragraph.

(B) Replace the bracket assembly in accordance with Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993.

(iii) If cracks are found in the bracket assembly, or if only one crack is found and its length exceeds two inches, prior to further flight, replace the bracket assembly in accordance with Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993.

(iv) If any fastener is found to be loose, prior to further flight, tighten fastener to within specified torque limits, in accordance with Boeing Alert Service Bulletin 747–76A2083, dated December 18, 1991; Revision 1, dated May 28, 1992; or Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993.

(2) Except as provided by paragraph (a)(1)(ii)(A) of this AD, within 12 months after the effective date of this AD, replace the bracket assembly, in accordance with Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993. Replacement of the bracket assembly constitutes terminating action for the inspection requirements of this AD.

(b) For those airplanes on which the new bracket assembly has previously been installed in accordance with Boeing Alert Service Bulletin 747–76A2083, dated December 18, 1991, or Revision 1, dated May 28, 1992, accomplish the following:

(1) Within 30 days after the effective date of this AD, conduct a visual inspection of the strut web to detect cracking in the area of the pulley bracket, in accordance with Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993. Conduct repetitive visual inspections in accordance with either paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(iii), as applicable.

(i) If the bracket assembly had been installed within the last 90 days prior to the effective date of this AD, repeat the visual inspection at the times specified in paragraphs (b)(1)(i)(A), (b)(1)(i)(B), and (b)(1)(i)(C).

(A) Within 90 days after accomplishing the initial visual inspection required by paragraph (b) of this AD; and

(B) Within 180 days after accomplishing the initial visual inspection required by paragraph (b) of this AD; and

(C) Within 360 days after accomplishing the initial visual inspection required by paragraph (b) of this AD.

(ii) If the bracket assembly had been installed within the last 91 through 180 days prior to the effective date of this AD, repeat the visual inspection at the times specified in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B).

(A) Within 90 days after accomplishing the initial visual inspection required by paragraph (b) of this AD; and

(B) Within 270 days after accomplishing the initial visual inspection required by paragraph (b) of this AD.

(iii) If the bracket assembly had been installed within the last 181 through 360 days prior to the effective date of this AD, repeat the visual inspection within 180 days after accomplishing the initial visual inspection.

(2) If no crack is detected within 360 days after accomplishing the initial visual inspection required by paragraph (b)(1) of this AD, no further action is required.

(3) If any crack is detected during any of the visual inspections required by paragraph (b) of this AD, prior to further flight, stop drill the crack and install a doubler over the affected area, in accordance with the Boeing 747 Structural Repair Manual, Section 51–40–02.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Boeing Service Bulletin 747–76A2083, Revision 2, dated February 25, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The inspections and tightening shall be done in accordance with Boeing Alert Service Bulletin 747–76A2083, dated December 18, 1991; and Boeing Alert Service Bulletin 747–76A2083, Revision 1, dated May 28, 1992. The repair shall be done in accordance with Boeing Alert Service Bulletin 747–76A2083, Revision 1, dated May 28, 1992. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR

Part 51 as of September 28, 1992 (57 FR 38251, August 24, 1992). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 30, 1993.

Issued in Renton, Washington, on August 24, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21059 Filed 8–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–SW–06–AD; Amendment 39–8608; AD 93–05–02]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–05–02 that was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST series helicopters by individual letters. This AD establishes a mandatory retirement life of 40,000 high-power events for the lower planetary spider (spider). This amendment is prompted by reports of four failures of the spider. The actions specified by this AD are intended to prevent fatigue failure of the spider, resulting in failure of the main transmission and subsequent loss of the helicopter.

DATES: Effective September 15, 1993, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 93–05–02, issued on March 9, 1993, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–06–AD, 4400 Blue Mound Road, bldg 3B, room 158, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 624–5177, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION: On March 9, 1993, the FAA issued Priority Letter AD 93–05–02 (PL), applicable to Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST series helicopters, which establishes a mandatory retirement life of 40,000 high-power events (events) for the lower planetary spider (spider), part number (P/N) 214–040–080–101. That action was prompted by reports of four failures of the spider, two of which were detected during the 2,500 hour overhaul inspection. The other two failures occurred in flight. This condition, if not corrected, could result in fatigue failure of the spider, resulting in failure of the main transmission and subsequent loss of the helicopter.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued the PL to prevent fatigue failure of the spider, resulting in failure of the main transmission and subsequent loss of control of the helicopter. The AD requires creation of a component history card, if none is presently used, determining the previous use of the spider in terms of events, and thereafter recording the use in events. Additionally, this AD establishes a spider service life of 40,000 events. Events consist of takeoffs and external load lifts.

Since the issuance of the PL, it has been noted that paragraph (a)(3)(ii) of the PL duplicates the actions required by paragraph (a)(3)(i) and paragraph (a)(4)(ii) of the PL duplicates the actions required by (a)(4)(i). Therefore, in publishing this AD, the duplicate paragraphs have been omitted. Otherwise, other than non-substantive editorial changes, this AD is the same as the PL AD.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 9, 1993, to all known U.S. owners and operators of Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–06–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must

be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 93-05-02 Bell Helicopter Textron, Inc.: Amendment 39-8608. Docket Number 93-SW-05-AD.

Applicability: Model 214B, 214B-1, and 214ST series helicopters, equipped with lower planetary spider (spider), part number (P/N) 214-040-080-101, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fatigue failure of the spider, P/N 214-040-080-101, as a result of takeoffs and external load lifts (high-power events), accomplish the following:

(a) Within the next 25 hours' time-in-service after the effective date of this AD, accomplish the following:

(1) Create a component history card or an equivalent record for the affected spider.

(2) Determine the time-in-service of the spider from maintenance records, if known. If the time-in-service is not known, use a time-in-service of 900 hours per year. Prorate the hours for a partial year.

(3) For Model 214B and 214B-1 helicopters, determine and record the accumulated high-power events on the spider as follows:

(i) If the number of high-power events is unknown, assign 12 events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, divide that number by 2 and record the resulting number as total accumulated high-power events.

(4) For Model 214ST helicopters, determine and record the accumulated high-power events on the spider as follows:

(i) If the number of high-power events is unknown, assign 11 high-power events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as the total accumulated high-power events.

(b) After the effective date of this AD, record all high-power events. For Model 214B and 214B-1 helicopters, divide the number of high-power events as they occur by 2 and add the resulting number to the previously recorded sum; for Model 214ST helicopters, add the high-power events as they occur to the previously recorded sum.

(c) Remove the spiders from further service in accordance with the following:

(1) For spiders with 39,400 or more high-power events on the effective date of this AD, remove the spider from service on or before the accumulation of an additional 600 high-power events.

(2) For spiders with less than 39,400 high-power events on the effective date of this AD, remove the affected spiders from service on or before attaining 40,000 high-power events. This paragraph revises the helicopter Airworthiness Limitations Section of the maintenance manual by establishing a service life for the spider.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193-0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective September 15, 1993, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 93-05-02, issued March 9, 1993, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 13, 1993.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93-21117 Filed 8-30-93; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-19658, File No. S7-26-92]

RIN 3235-AF01

Investment Company General Partners Not Deemed Interested Persons; Investment Company Limited Partners Not Deemed Affiliated Persons

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is adopting a new rule under the Investment Company Act of 1940 (the "Act") to except general partners of business development companies and registered management investment companies organized as limited partnerships ("limited partnership investment companies") from the definition of "interested person." Under the rule, general partners who serve as directors of limited partnership investment companies will no longer be considered interested persons solely because they are general partners, and thus will receive the same treatment as directors of corporations under the interested person definition. The rule enables limited partnership investment companies to register under the Act without obtaining "start-up" exemptive relief from the Commission. The Commission is also adopting a new rule to except limited partners that own, hold, or control less than five percent of the outstanding voting securities of limited partnership investment companies from the definition of "affiliated person." The rule treats limited partners the same as shareholders for purposes of the affiliated person definition. The rules, which are adopted substantially as proposed, are intended to make it unnecessary for limited partnership investment companies to file exemptive applications on behalf of their general and limited partners.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: L. Bryce Stovell, Senior Special Counsel, or Diane C. Blizzard, Assistant Director, at (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting two new rules, rules 2a19-2 and 2a3-1, under the Investment Company Act of 1940 (15 U.S.C. 80a).

Rule 2a19–2 excepts from the definition of interested person in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)) the general partners that serve as directors of limited partnership investment companies ("director general partners"), provided that the limited partnership agreement contains in substance certain provisions that are set forth in the rule. Rule 2a3–1 excepts from the definition of affiliated person in section 2(a)(3) (15 U.S.C. 80a–2(a)(3)) those limited partners of limited partnership investment companies that are affiliated persons solely because they are limited partners.

I. Background and Discussion

On July 28, 1992, the Commission proposed rules 2a19–2 and 2a3–1 so that limited partnership investment companies would not have to apply for exemptions for their director general partners from the definitions of interested persons in section 2(a)(19), and for their limited partners from the definition of affiliated person in section 2(a)(3), respectively.[1] Since 1976, the Commission has issued over forty orders providing essentially this type of relief.[2]

Absent an exception from section 2(a)(19), registered management companies and business development companies ("BDCs")[3] organized as limited partnerships[4] could not meet the Act's requirements that a certain percentage of the directors be independent.[5] Because the directors are general partners, they are considered affiliated persons.[6] As affiliated persons, they are also considered interested persons.[7] Under rule 2a19–2, director general partners would no longer be deemed to be interested persons solely because they are general partners, and thus would be treated the same as directors of corporations for purposes of the interested person definition.[8]

As proposed, rule 2a19–2 simplified the conditions and representations that had been required in the prior exemptive orders to four essential conditions. The proposed rule provided that only natural persons could serve as directors of a limited partnership investment company, prohibited any general partner from acting individually on behalf of a limited partnership investment company except in limited circumstances, provided that transferees of limited partners would have all of the rights afforded shareholders under the Act, and restricted the ability of a general partner to withdraw from a limited partnership or reduce his partnership contribution if such withdrawal or reduction would cause the company to lose its partnership tax classification.

Absent an exception from section 2(a)(3), the limited partners of limited partnership investment companies are affiliated persons, *regardless* of the amount of securities they own.[9] As copartners, they are also affiliated persons of all other limited and general partners of the company. Due to the restrictions on principal transactions in section 17(a),[10] this creates problems for the companies, the limited partners, and the limited partners' affiliates.[11] Rule 2a3–1 was proposed to codify prior Commission orders exempting limited partners from the definition of affiliated person solely by virtue of being limited partners of the company, thus giving the limited partners the same treatment as shareholders for purposes of the affiliated person definition.

The Commission received two comments on the proposed rules, from Davis Polk & Wardwell and the Investment Company Institute. Both commenters generally supported the Commission's efforts, but suggested changes to proposed rule 2a19–2. After reviewing the comments, the Commission has decided to adopt rule 2a19–2 substantially as proposed, with certain modifications, some of which respond, in part, to the commenters' suggestions. The commenters did not recommend any changes to proposed rule 2a3–1, and the Commission is adopting that rule as proposed.

A. Rule 2a19–2

1. Scope of the Exception

As adopted, paragraph (a) of rule 2a19–2 provides that a director general partner shall not be deemed to be an interested person of the company, its investment adviser, or its principal underwriter, solely because of the director general partner's status as a general partner of the company, or as a copartner in the company with the adviser or underwriter,[12] if the partnership agreement contains in substance certain provisions. Because one purpose of the rule is to enable limited partnership investment companies to comply with the independent director provisions of the Act, the exception is only available to general partners that serve as directors.

The preliminary note to rule 2a19–2 states that the rule does not except an investment company, or its director general partners, from any provision or requirement of the Act, other than the

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[1] *See* Investment Company General Partners Not Deemed Interested Persons; Investment Company Limited Partners Not Deemed Affiliated Persons, Investment Company Act Release No. 18868 (July 28, 1992), 57 FR 34726 (Aug. 6, 1992) [hereinafter the Proposing Release]. The Proposing Release discusses in detail the operation of limited partnership investment companies, the Commission's exemptive orders, and the need for the rules.

[2] Limited partnership investment companies that are operating under existing orders under section 2(a)(19) may rely on either their orders, or rule 2a19–2.

[3] BDCs are venture capital companies that invest in and provide management support to small companies that are in the initial stages of their development. BDCs are subject to special provisions of the Act designed to accommodate their characteristics. *See* sections 2(a)(48), 6(f), and 54 through 65 (15 U.S.C. 80a–2(a)(48), 80a–6(f), and 80a–53 through 80a–64).

[4] Such companies organize as limited partnerships because, for tax or other business reasons, the limited partnership form seems better suited to them. *See* Proposing Release at I.A.1.

[5] *See, e.g.*, sections 10(a) and 56(a) (15 U.S.C. 80a–10(a), 80a–55(a)) (composition of the board of directors), 15(c) (15 U.S.C. 80a–15(c)) (approval of advisory and underwriting contracts), and 32(a) (15 U.S.C. 80a–31(a)) (selection of accountant).

[6] The Act defines an affiliated person of another person to include any partner, copartner, director, officer, or employee of such other person. Section 2(a)(3)(D).

[7] The Act defines interested person to include affiliated persons. Section 2(a)(19)(i). Other persons that are considered to be interested persons of an investment company under section 2(a)(19) include immediate family members of affiliated natural persons, interested persons of the company's investment advisers and principal underwriters, persons (or partners or employees of persons) who have recently acted as legal counsel to the company, registered brokers or dealers (and their affiliated persons), and other natural persons that the Commission by order has determined to be interested by reason of a recent, material business or professional relationship with the company and certain other parties.

[8] The definition of affiliated person also includes any director. A special proviso of section 2(a)(19) provides, however, that no person shall be deemed to be an interested person of an investment company *solely* because that person is a director of the investment company. Section 2(a)(19)(A)(aa). Without the proviso, all directors, including the directors of investment companies organized as corporations, would be interested persons by virtue of also being affiliated persons. Director general partners cannot qualify for the exception, however, because they are interested persons by virtue of being partners as well as directors of the investment company.

[9] Section 2(a)(3)(D). In contrast, shareholders of an investment company organized as a corporation or business trust are affiliated persons of the investment company only if they own, control, or hold five percent or more of the voting securities of the investment company (or have some other statutory affiliation). Section 2(a)(3)(A).

[10] 15 U.S.C. 80a–17(a).

[11] For example, if a bank or securities dealer is a limited partner in a limited partnership investment company, it is an affiliated person of the company under section 2(a)(3)(D) and may not engage in principal transactions with the company, even if it owns less than five percent of the partnership interests. This would not be true if the investment company were a corporation. Similarly, section 17(d) (15 U.S.C. 80a–17(d)) and rule 17d–1 thereunder (17 CFR 270.17d–1) generally prohibit "joint transactions" between a registered investment company and its affiliated persons, or affiliated persons of its affiliated persons.

[12] *See* sections 2(a)(3)(D), 2(a)(19)(B)(i), and 2(a)(19)(A)(iii).

definition of interested person in section 2(a)(19). Thus, the limited partnership investment company is not relieved of any other requirement of the Act, and a director general partner cannot rely on the rule if he or she is "interested" other than by virtue of being a partner or copartner.[13] The Commission received no comments on either the introductory paragraph to paragraph (a) or the preliminary note, and is adopting them as proposed.

As proposed, paragraph (b)(2) of the rule defined "Limited Partnership Investment Company" to mean "a registered management company or a business development company that is organized as a limited partnership under state law *and for federal income tax purposes*" (emphasis supplied). Both commenters recommended eliminating the requirement that a limited partnership investment company be organized as a partnership for federal income tax purposes. Both commenters suggested that tax status should be a matter for disclosure only.

The Commission agrees. Rule 2a19–2's requirements are intended, among other things, to assure that limited partners have essentially the same protection that they would have were they shareholders of a corporation. While the availability of pass-through tax treatment is an important aspect of investing in a limited partnership investment company and should be disclosed, the Commission does not believe that obtaining or maintaining pass-through tax treatment as a partnership should be required to rely on rule 2a19–2.[14] As one commenter pointed out, such a requirement may be inappropriate because investment companies organized in other forms (e.g., as "regulated investment companies" under Subchapter M of the Internal Revenue Code) are not subject to any corresponding requirement with respect to their federal tax status. Accordingly, as adopted, the rule no longer requires that a limited partnership relying on the rule be organized as a partnership for federal income tax purposes.

[13] *See supra* note 7. In addition, a director general partner would not be excepted if he or she were a copartner of the investment adviser or underwriter general partner in a separate venture.

[14] As noted in the Proposing Release, certain past section 2(a)(19) orders have required that the limited partnership obtain an opinion of counsel or a ruling from the Internal Revenue Service ("IRS") stating that the investment company will be taxed as a partnership for federal income tax purposes. Proposing Release at n.53. While the proposed rule did not require specifically such assurances, the requirement that the limited partnership investment company be organized "for federal tax purposes" would have had a similar effect.

2. Conditions of the Rule

a. *Director general partners must be natural persons.* As proposed, paragraph (a)(1) of the rule required that only general partners who are natural persons shall serve as, and perform the functions of, directors of the limited partnership investment company. One commenter suggested that corporations should be permitted to serve as director general partners, and that the issue would be best handled through disclosure. The Commission believes that the limitation is appropriate. Otherwise, directors could use shell corporations to insulate themselves from liability, as the Commission observed when it proposed the rule. In addition, directors of a corporation must be natural persons. Since the rule creates an exception for general partners who function like directors of a corporation, the director general partners also should be natural persons. Accordingly, the adopted rule retains this requirement.

Paragraph (a)(1) has been modified slightly from the proposal, however, by adding an exception in the event that no director general partners remain. In that case, non-natural person general partners (such as the investment adviser, principal underwriter, or administrator) may act on behalf of the investment company until natural person general partners are elected directors.[15]

b. *A general partner may not act individually to bind the partnership except in limited circumstances.* As proposed, paragraph (a)(2) prohibited any general partner from acting individually on behalf of, or to bind, the limited partnership investment company, with limited exceptions. Under many state partnership laws, absent a contrary provision in the partnership agreement, each general partner may have the actual authority to bind the partnership.[16] This creates a risk for investors in limited partnership investment companies that is not present in the case of investment companies organized as corporations where the directors may act only as a group. The rule addresses this by requiring that the partnership agreement contain a provision removing the general partners' actual authority to bind the partnership. There were no comments on this requirement and it is adopted as proposed with the exception of minor, non-substantive word changes.

[15] *See* paragraph (a)(2)(iii). Absent the modification, a non-natural general partner acting individually for the company under paragraph (a)(2)(iii) arguably could have been deemed to have acted as a director in violation of paragraph (a)(1).

[16] *See, e.g.*, Cal. Corp. Code, § 15009(1) (West 1991), and Cal. Corp. Code, §§ 15618, 15643(a) (West 1991).

c. *Rights of limited partners and their transferees.* As proposed, paragraph (a)(3) required assignees, transferees, and successors of limited partners to have all of the rights of shareholders under the Act. There were no comments on this requirement, but the rule as adopted contains clarifying changes.[17] The requirement has been modified to make clear that a transferee is entitled to all the rights of shareholders *only* if the transfer is effective under the partnership agreement. Then, the limited partnership investment company must either make the transferee a limited partner with all the rights of a shareholder under the Act, or make sure that the transferee is able to exercise all the rights of a shareholder under the Act (*e.g.*, voting rights).[18] The requirement does not mandate free transferability of partnership interests, however. Paragraph (a)(3) as adopted has also been modified to make clear that limited partners—not just their transferees—have all of the rights of shareholders under the Act.

d. *Tax considerations.* As proposed, paragraph (a)(4) of the rule prohibited a general partner from withdrawing as a general partner or reducing any contribution or ownership interest made for federal tax status purposes (the "Federal Tax Status Contribution"),[19] except on one year's prior written notice, if such withdrawal or reduction would cause the limited partnership investment company to lose its federal partnership tax classification. The prohibition contained an exception where the general partner was an investment adviser and the company terminated its advisory agreement with such general partner. The purpose of the requirement is to prevent a contributing general partner, and a contributing adviser general partner in particular, from using the leverage it has by virtue of its contribution to extract a higher fee

[17] Paragraph (a)(3) also has been amended to read "transferees," instead of "assignees, transferees, and successors." This is not intended as a substantive change, and the term "transferee" in the adopted rule encompasses "transferees," "assignees," "successors," and all others who acquire partnership interests, directly or indirectly, from limited partners.

[18] Economic and voting rights cannot be separated. *See e.g.*, section 18(i) (15 U.S.C. 80a–18(i)) which generally requires every share of stock issued (which for purposes of this rule includes limited partnership interests) to be voting stock, with equal voting rights with all other outstanding voting stock.

[19] "Federal Tax Status Contribution" is defined in paragraph (b)(1).

or otherwise influence the investment company.[20]

Both commenters objected to this requirement, stating that it should be a matter for disclosure only. In addition, one commenter argued that the requirement should be revised to include only general partners that have an advisory relationship with the investment company in order to make it easier to attract independent director general partners, and because the adviser is likely the only general partner with an incentive to exert influence through its Federal Tax Status Contribution.

The Commission has decided to retain the requirement substantially as proposed.[21] The Federal Tax Status Contribution gives contributing general partners the opportunity to exert inappropriate influence over the investment company. The requirement is designed to prevent this, and thus offers a measure of protection. With respect to the suggestion that the requirement be narrowed to exclude all general partners except the adviser general partner, the Commission observes that the adviser is not always the only general partner that receives a substantial fee, nor the only general partner in a position to take advantage of its Federal Tax Status Contribution. Furthermore, the requirement should not be burdensome because it only imposes a restriction on those general partners that make a Federal Tax Status Contribution. If a limited partnership investment company is concerned that this requirement would discourage persons from serving as independent director general partners, the company could have the investment adviser general partner hold the entire Federal Tax Status Contribution, which is the typical case. In addition, the requirement allows any contributing general partner to withdraw as a general partner or to reduce its contribution if the remaining general partners assume the contribution, by obtaining a successor, or after one year's notice.[22]

In the adopted rule, the prohibition on a general partner's withdrawing or reducing any Federal Tax Status Contribution applies if such withdrawal or reduction *is likely to* (rather than *would* in the proposed rule) cause the company to lose its partnership tax classification. Given the nature of the Federal Tax Status Contribution as support for an IRS ruling, it may be an open question whether withdrawal or reduction of any contribution would lead to loss of tax classification. Under the adopted rule, a general partner could withdraw or reduce any contribution if counsel competent in partnership taxation matters were to opine that the action is unlikely to cause the company to lose its partnership tax classification, or if the general partner's obligation were assumed or after one year's notice, as discussed above.

B. Rule 2a3–1

Rule 2a3–1 is adopted as proposed, and thus codifies the orders that the Commission has issued excepting from the definition of affiliated person in section 2(a)(3) investors that are affiliated persons under section 2(a)(3)(D) solely because of their status as limited partners of a limited partnership investment company. The rule treats limited partners like shareholders and permits a limited partnership investment company to engage in transactions with its limited partners and their affiliated persons, to the same extent as if the investment company were organized as a corporation.

As the preliminary not to the rule states, reliance on the rule does not except a limited partner that is an affiliated person by virtue of any other provision of the Act. For example, if a limited partner directly or indirectly owns, controls, or holds with the power to vote, five percent or more of the outstanding voting securities of the limited partnership investment company, the investment adviser, or the principal underwriter, the limited partner would be an affiliated person of such person under section 2(a)(3)(A), notwithstanding this rule. This is consistent with the treatment of corporate shareholders.

II. Cost/Benefit Analysis

Rules 2a19–2 and 2a3–1 do not impose any significant burdens on investment companies. These rules will benefit investment companies desiring to organize as limited partnerships by virtually eliminating the costs and delays that they would otherwise incur by needing to file start-up exemptive applications. Additionally, the Commission will benefit because its staff will need to review few, if any, applications for exemptive relief.

III. Summary of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding adoption of rules 2a19–2 and 2a3–1. The Analysis explains that registered management companies and BDCs satisfying the requirements of the rules will be able to organize and operate under the Act as limited partnerships, without needing to obtain exemptive relief for their director general partners from the definition of interested person, or for their limited partners from the definition of affiliated person. It states that the rules should eliminate or reduce significantly the number of exemptive applications filed with the Commission in this area, while maintaining investor protection, thus reducing costs incurred by smaller entities. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Diane C. Blizzard, Esq., Mail Stop 10–4, Securities and Exchange Commission, 450 Fifth, NW., Washington, DC 20549.

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[20] Many, if not most, limited partnership investment companies seek rulings from the IRS that they will be classified as a partnership for federal income tax purposes. In order for the IRS to consider such a ruling request, the general partners as a group must hold at least one percent (or lesser amounts if total partnership interests exceed $50 million) of the interests, including limited partnership interests, in each material item of partnership income, gain, loss, deduction, or credit at all times during the existence of the partnership, and the partnership agreement must expressly so provide. IRS Rev. Proc. 89–12, § 4.01–02. In addition, under certain circumstances, the general partners may be required to maintain a minimum capital account balance equal to either one percent of total positive capital account balances for the partnership, or $500,000, whichever is less, and make other contributions to capital. *Id.* at § 4.03. The interests required to be held or made by general partners pursuant to section 4 of Rev. Proc. 89–12 are referred to as the "Federal Tax Status Contribution." *See* rule 2a19–2(b)(1).

Typically, the investment adviser general partner holds or contributes all or most of these amounts, but other general partners may contribute as well. A contributing general partner may have great influence over a limited partnership investment company because its withdrawal from the general partnership or reduction of its contribution could jeopardize the company's partnership tax classification. This threat increases in the case of an adviser general partner, or any other service provider general partner that receives a substantial fee from the investment company, because such general partner has an incentive—increased fees or more favorable agreements—to exert its influence.

[21] Paragraph (a)(4), as adopted, contains the following clarifying changes. First, the language with respect to the notice period required in order to withdraw as a general partner or reduce a general partner's Federal Tax Status Contribution has been changed to read "*at least* one year's prior written notice" instead of simply "one year's prior written notice." The words "at least" have been added to make clear that the time period in the rule is a minimum and the partnership may impose a longer period. (The rule would also permit the partnership agreement to contain other restrictions on the withdrawal of general partners unrelated to the Federal Tax Status Contribution.) Second, the last sentence has been revised to make clear that if an investment adviser general partner's advisory agreement is terminated by the company, the condition will no longer apply to such general partner but will continue to apply to all other general partners.

[22] Applicants have agreed to this requirement in prior exemptive orders. The Commission received no comments on the length of the proposed notice period.

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IV. Statutory Authority

The Commission is adopting rules 2a19–2 and 2a3–1 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) (15 U.S.C. 80a–6(c), –37(a)) of the Investment Company Act of 1940. The authority citations for these actions precede the text of the actions.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Adopted Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By adding § 270.2a3–1 to read as follows:

§ 270.2a3–1 Investment company limited partners not deemed affiliated persons.

Preliminary Note to § 270.2a3–1

This § 270.2a3–1 excepts from the definition of affiliated person in section 2(a)(3)) (15 U.S.C. 80a–2(a)(3)) those limited partners of investment companies organized in limited partnership form that are affiliated persons solely because they are partners under section 2(a)(3)(D) (15 U.S.C. 80a–2(a)(3)(D)). Reliance on this § 270.2a3–1 does not except a limited partner that is an affiliated person by virtue of any other provision.

No limited partner of a registered management company or a business development company, organized as a limited partnership and relying on § 270.2a19–2, shall be deemed to be an affiliated person of such company, or any other partner of such company, solely by reason of being a limited partner of such company.

3. By adding § 270.2a19–2 to read as follows:

§ 270.2a19–2 Investment company general partners not deemed interested persons.

Preliminary Note to § 270.2a19–2

This § 270.2a19–2 conditionally excepts from the definition of interested person in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)) general partners of investment companies organized in limited partnership form. Compliance with the conditions of this § 270.2a19–2 does not relieve an investment company of any other requirement of this Act, or except a general partner that is an interested person by virtue of any other provision.

(a) *Director General Partners Not Deemed Interested Persons.* A general partner serving as a director of a limited partnership investment company shall not be deemed to be an interested person of such company, or of any investment adviser of, or principal underwriter for, such company, solely by reason of being a partner of the limited partnership investment company, or a copartner in the limited partnership investment company with any investment adviser of, or principal underwriter for, the company, *provided* that the Limited Partnership Agreement contains in substance the following:

(1) Only general partners who are natural persons shall serve as, and perform the functions of, directors of the limited partnership investment company, except that any general partner may act as provided in paragraph (a)(2)(iii) of this section.

(2) A general partner shall not have the authority to act individually on behalf of, or to bind, the Limited Partnership Investment Company, except:

(i) In such person's capacity as investment adviser, principal underwriter, or administrator;

(ii) Within the scope of such person's authority as delegated by the board of directors; or

(iii) In the event that no director of the company remains, to the extent necessary to continue the Limited Partnership Investment Company, for such limited periods as are permitted under the Act to fill director vacancies.

(3) Limited partners shall have all of the rights afforded shareholders under the Act. If a limited partnership interest is transferred in a manner that is effective under the Partnership Agreement that transferee shall all of the rights afforded shareholders under the Act.

(4) A general partner shall not withdraw from the Limited Partnership Investment Company or reduce its Federal Tax Status Contribution without giving at least one year's prior written notice to the Limited Partnership Investment Company, if such withdrawal of reduction is likely to cause the company to lose its partnership tax classification. This paragraph (a)(4) shall not apply to an investment adviser general partner if the company terminates its advisory agreement with such general partner.

(b) *Definitions*—(1) "Federal Tax Status Contribution" shall mean the interest (including limited partnership interest) in each material item of partnership income, gain, loss, deduction, or credit, and other contributions, required to be held or made by general partners, pursuant to section 4 of Internal Revenue Service Revenue Procedure 89–12, or any successor provisions thereto.

(2) "Limited Partnership Investment Company" shall mean a registered management company or a business development company that is organized as a limited partnership under state law.

(3) "Partnership Agreement" shall mean the agreement of the partners of the Limited Partnership Investment Company as to the affairs of the limited partnership and the conduct of its business.

By the Commission.

Dated: August 25, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21109 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 200 and 240

[Release No. 34–32800; File No. S7–4–93]

RIN 3235–AF73

Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending Rule 17a–5 under the Securities Exchange Act of 1934 ("Exchange Act"). The amendments will shift to designated examining authorities ("DEAs") the responsibility for responding to requests for extensions of time for the filing of FOCUS reports and audited annual financial reports or to requests for approval of changes of the fixed or determinable dates as of which audited annual financial reports must be conducted ("as of" date). The Commission also is amending its delegated authority rules, eliminating the authority of regional administrators to grant extensions of time to file reports required under Rule 17a–5 and to approve changes of the "as of" date.

EFFECTIVE DATE: The amendments to 17 CFR 240.17a–5 will become effective on October 1, 1993. The amendments to 17 CFR 200.30–6 will become effective on October 15, 1993 to give regional administrators sufficient time to finalize the processing of pending requests.

FOR FURTHER INFORMATION CONTACT:

Michael A. Macchiaroli, (202) 272–2904 or Julius R. Leiman-Carbia, (202) 272–2824.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 1, 1993, the Commission published for comment amendments to rule 17a–5.[1] Under the proposed amendments:

(i) The authority to grant or deny requests for extensions of time for the filing of FOCUS reports[2] would be given primarily to a broker-dealer's DEA.

(ii) DEAs would have the primary responsibility to grant or deny broker-dealers' requests for extensions of time to file audited annual financial reports, and

(iii) DEAs would have the authority to approve changes of the "as of" date of the audited annual financial reports.

The Commission, at the same time, proposed to delete 17 CFR 200.30–6(d)(1), which gives regional administrators the authority to grant extensions of time to file reports required under Rule 17a–5 and to grant or deny broker-dealers' requests to change the "as of" date.

II. Summary of Comments

In response to the request for comments, the Commission received letters from the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange, Inc. ("NYSE") supporting the proposed rule amendments.[3] Both self-regulatory organizations concurred with the proposed amendments.

III. Amendments to Rule 17a–5 and Section 30–6 of the Commission's Delegated Authority Rules

The amendments to Rule 17a–5 will shift to DEAs the responsibility for extensions of time for the filing of FOCUS reports and audited annual financial reports and for the approval of changes of the "as of" date. The DEAs are most familiar with the current financial and operational condition of the broker-dealers designated to them, and, therefore, are better prepared to respond to requests concerning report extensions and changes of the "as of" date.

The amendment to the Commission's delegated authority rules will delete paragraph (d)(1) of Section 30–6. This provision will no longer be necessary because DEAs will have primary responsibility for responding to requests concerning report extensions and changes of the "as of" date.

IV. Summary of Final Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") concerning the adopted amendments. The FRFA notes that the Commission did not receive any comments regarding the Initial Regulatory Flexibility Analysis. A copy of the FRFA may be obtained by contacting Julius R. Leiman-Carbia, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, tel: (202) 272–2824.

V. Statutory Analysis

Pursuant to the Exchange Act and particularly Sections 4A and 17 thereof, 15 U.S.C. 78d–1 and 78q, the Commission is amending parts 200 and 240 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Parts 200 and 240

Authority delegations (Government agencies), Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, title 17 chapter II of the Code of Federal Regulation is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 200.30–6 [Amended]

2. In § 200.30–6, paragraph (d)(1) is removed and paragraphs (d)(2) and (d)(3) are redesignated as paragraphs (d)(1) and (d)(2).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.17a–5 is amended by adding paragraph (a)(5) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

(a) * * *

(5) Upon written application by a broker or dealer to its designated examining authority, the designated examining authority may extend the time for filing the information required by this paragraph (a). The designated examining authority for the broker or dealer shall maintain, in the manner prescribed in § 240.17a–1, a record of each extension granted.

* * * * *

5. Section 240.17a–5 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(d) *Annual Filing of Audited Financial Statements.* (1)(i) Every broker or dealer registered pursuant to section 15 of the Act shall file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant. Reports pursuant to this paragraph (d) shall be as of the same fixed or determinable date each year, unless a change is approved in writing by the designated examining authority for the broker or dealer. A copy of such written approval should be sent to the regional office of the Commission for the region in which the broker or dealer has its principal place of business.

* * * * *

6. Section 240.17a–5 is amended by revising paragraph (*l*)(1) to read as follows:

§ 204.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(*l*) *Extentions and exemptions.* (1) A broker's or dealer's designated examining authority may extend the period under paragraph (d) of this section for filing annual audit reports. The designated examining authority for the broker or dealer shall maintain, in the manner prescribed in § 240.17a–1, a record of each extension granted.

* * * * *

7. Section 240.17a–5 is amended by revising paragraph (m) to read as follows:

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[1] Securities Exchange Act Rel. No. 31897 (February 22, 1993), 58 FR 11804 (March 1, 1993).

[2] Under Rule 17a–5, broker-dealers are required to file certain specified monthly and quarterly reports on Form X–17A–5 (17 CFR 240.249.617). This Form, consisting of several parts, is known as FOCUS Report, which is an acronym for "Financial and Operational Combined Uniform Single Report."

[3] Letter from John E. Pinto, Executive Vice President, Regulation, NASD, to Jonathan G. Katz, Secretary, Commission (March 31, 1993) and Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission (March 31, 1993).

§ 204.17a–6 Reports to be made by certain brokers and dealers.

* * * * *

(m) *Notification of change of fiscal year.* (1) In the event any broker or dealer finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for such broker or dealer, a notice of such change.

(2) Such notice shall contain a detailed explanation of the reasons for the change. Any change in the filing period for the audit report must be approved by the designated examining authority pursuant to paragraph (d)(1)(i) of this section.

* * * * *

By the Commission.

Dated: August 25, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21108 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 325

RIN 3220–AA95

Registration for Railroad Unemployment Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations under the Railroad Unemployment Insurance Act (RUIA) to allow a claimant 30 days (instead of 9) to request a claim form in order to begin receiving unemployment benefits with respect to a subsequent period of unemployment within a benefit year, and to clarify the time limit that applies to the filing of a claim for unemployment benefits.

EFFECTIVE DATE: August 31, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 5(a) of the RUIA provides that claims for benefits under the RUIA shall be made in accordance with such regulations as the Board shall prescribe. Section 5(b) of the RUIA authorizes the Board to establish by regulation or otherwise any procedure that it deems necessary or proper for the determination of a right to benefits.

Board regulations presently require a claimant to file an application for unemployment benefits within 30 calendar days of the first day, within a benefit year, that he or she intends to claim as a day of unemployment. See 20 CFR 325.3(c). If the claimant returns to work but becomes unemployed later in the same benefit year, the regulations do not require him or her to file a new application with respect to the subsequent period of unemployment. Instead, under 20 CFR 325.4(d), the claimant may initiate a new claim for unemployment benefits by requesting a claim form for the first 14-day period in such subsequent period of unemployment, provided that such request is made within 9 calendar days after the first day in such subsequent period of unemployment for which the claimant wishes to receive unemployment benefits.

Experience has shown that the foregoing procedure is not readily understood by unemployed railroad employees and can produce inequitable results in some cases. For instance, an unemployed employee will probably not understand that while he or she has 30 days to apply for unemployment benefits for an *initial* period of unemployment in a benefit year, he or she has only 9 days to request a claim for a *subsequent* period of unemployment in the same benefit year. The employee could reasonably believe that upon becoming unemployed a second time, he or she has 30 days to apply for unemployment benefits. This misunderstanding has resulted in benefits being denied employees who have waited longer than 9 days to request a claim form.

To avoid this result, the Board is amending its regulations to allow an employee 30 days to request an initial claim form for a subsequent period of unemployment in a benefit year, that is, the same number of days required for an initial application for unemployment benefits under 20 CFR 325.3(c).

The Board is also amending § 325.4(c) of its regulations to clarify the time limit for filing a claim for unemployment benefits. Presently, that regulation provides that a claim must be filed no later than 15 calendar days after the last day claimed as a day of unemployment during the period covered by the claim form, or 15 calendar days after the date on which the claim form was mailed to the claimant, whichever date is later. This requirement has proved to be confusing and difficult to administer when the last day claimed as a day of unemployment is not the last day in the claim period covered by the requested claim form. Accordingly, the Board amends the regulation so that the 15-day time limit will be measured from the last day of the period to be covered by the claim form, or the date on which the claim form was mailed to the claimant, whichever date is later. The regulation, as amended, will be easier to administer and will expedite processing of claims for unemployment benefits.

Under the experience rating provisions of the 1988 amendments to the RUIA (title VII of Pub. L. 100–647), claims for unemployment benefits are subject to prepayment verification with the applicable base year employer. Prepayment verification serves to assure the validity of claims for unemployment benefits filed by employees under these regulations. See § 325.6 of part 325.

On March 2, 1993, the Board published this rule as a proposed rule (58 FR 12005), inviting comments on or before April 1, 1993. One comment was received. The commenter opposed allowing a claimant 30 days to initiate a claim for unemployment benefits for a subsequent period of unemployment in the same benefit year but offered no explanation for the objection. As explained above, the Board considers it more reasonable to allow a 30-day period than the 9-day period presently provided for in the regulations. The commenter also expressed the opinion that the 15-day period for filing a claim for unemployment benefits should be measured only from the date the claim form was mailed to a claimant and that the alternative method of allowing filing within 15 days from the end of the registration period should be deleted from the proposed rule. The commenter believed that a date of mailing standard is both accurate and understandable. While the Board does not disagree with that opinion, the problem with using only a date of mailing standard is that the claim form is normally mailed well in advance of the ending date of the registration period so that the claimant will receive it by the end of the registration period, but the form is not to be filed prior to the end of such period. It would be unfair to count the period of time between the date of mailing and the ending date of the registration period as part of the 15-day filing period because the claimant is not permitted to file the claim prior to the end of the registration period. Consequently, the rule also allows for filing a claim within 15 days of the ending date of the registration period.

On occasion, a claim form may be mailed to a claimant after the end of the period covered by the claim, and under the rule the claimant would have 15-days to complete and return it.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. This rule does not impose any information collections within the meaning of the Paperwork Reduction Act (44 U.S.C. ch. 35).

List of Subjects in 20 CFR Part 325

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 325—REGISTRATION FOR RAILROAD UNEMPLOYMENT BENEFITS

1. The authority citation for part 325 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 325.4(c) is revised to read as follows:

§ 325.4 Claim for unemployment benefits.

* * * * *

(c) *Time for filing.* A claim for unemployment benefits shall be filed at any Board office no later than 15 calendar days after the last day of the claim period, as defined in paragraph (b) of this section, or 15 calendar days after the date on which the claim form was mailed to the employee, whichever is later. In determining whether the time for filing the claim may be extended, the standards set forth in § 325.3(d) shall be applied. None of the days included in a claim that is not timely filed shall be considered a day of unemployment.

§ 325.4 [Amended]

3. Section 325.4(d) is amended by removing "9" and inserting therefor "30" in the second sentence of that paragraph, and by removing "9th" and inserting therefor "30th" in the last sentence of that paragraph.

Dated: August 20, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–21033 Filed 8–30–93; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 89C–0327]

Listing of Color Additives for Coloring Intraocular Lens Haptics; D&C Green No. 6; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 25, 1993, for the final rule that amended the color additive regulations to provide for the safe use of D&C Green No. 6 for coloring polymethylmethacrylate support haptics of intraocular lenses.

DATES: Effective date confirmed: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 22, 1993 (58 FR 21538), FDA amended 21 CFR 74.3206 to provide for the safe use of D&C Green No. 6 for coloring polymethylmethacrylate support haptics of intraocular lenses.

FDA gave interested persons until May 24, 1993, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of April 22, 1993, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 22, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 25, 1993.

Dated: August 13, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–21023 Filed 8–30–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 920775–3145]

RIN 0651–AA44

Changes in Patent Drawing Standards

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Patent and Trademark Office (Office) is correcting errors in the final rule which appeared in the **Federal Register** on Tuesday, July 20, 1993 (58 FR 38719).

1. On page 38720, in the second column, fifth full paragraph, the last line of that paragraph should read "precisely 20.3 by 24.8 cm. (8 by 9¾ inches)."

2. On the same page, third column, the third full paragraph under "Discussion of Specific Sections Changed or Added", the repeated "§ 1.84(o) to" should be deleted.

3. On page 38721, at the top of the second column, the last full sentence in the paragraph should read "The sight is 20.3 by 24.8 cm. (8 by 9¾ inches) for the added paper."

4. On the same page, in the second column, the third line from the bottom, "initial review" should read "initial view."

5. Also on page 38721, in the third column, in the second full paragraph, the second sentence "how to set drawings" should read "how to send drawings."

6. In the third sentence of the same paragraph "and economical elements of an object, and that space lines are preferred" should read "and conical elements of an object, and that spaced lines are preferred."

§ 1.17 [Corrected]

7. On page 38723, the second column, the third indented section listed should read "§ 1.666(c)—for late filing of interference settlement agreement."

§ 1.84 [Corrected]

8. On page 38723, the third column, the third sentence in subparagraph (b)(1)(ii) should read "The photographs must be of sufficient quality so that."

9. In § 1.84 on page 38724, the bottom of the first column, the last line of subparagraph (g)(3) should read "20.3 cm. by 24.8 cm. (8 by 9¾ inches)."

10. In the middle of the second column of the same page, the last word of the first sentence of subparagraph (h)(2) should read "view."

Dated: August 24, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93-21066 Filed 8-30-93; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50603A; FRL-4172-1]

RIN 2070-AB27

Polymer of Substituted Aryl Olefin; Withdrawal of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as polymer of substituted aryl olefin which was the subject of premanufacture notice (PMN) P-85-612. EPA initially published the SNUR using direct final rulemaking procedures. EPA received critical comments on the rule. Therefore, the Agency is withdrawing the rule, as required under the expedited SNUR rulemaking process. In a separate notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, EPA is proposing a SNUR for this substance with a 30-day comment period.

EFFECTIVE DATE: This rule is effective on August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 20, 1992 (57 FR 31963), EPA issued several direct final SNURs including a SNUR for the substance described generically as polymer of substituted aryl olefin, PMN P-85-612. As described in 40 CFR 721.160, EPA is withdrawing the rule issued for P-85-612 under direct final rulemaking procedures because the Agency received adverse comments. As required by § 721.160(a)(3)(iii), EPA is proposing the rule elsewhere in this issue of the **Federal Register**. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721 subpart D and 54 FR 31314 (July 27, 1989). The record for the direct final SNUR for this substance which is being withdrawn by this rule was established at OPPTS-50603. That record includes information considered by the Agency in developing this rule, and includes the adverse comments to which the Agency has responded with this notice of withdrawal. The docket control number for this withdrawal is OPPTS-50603A. For details refer to the proposal published elsewhere in this issue of the **Federal Register**. The relevant portions of the original docket for the direct final SNUR are being incorporated under OPPTS-50603B, which is established for the proposed rule.

A public version of the record, without any confidential business information, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E-G102, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 18, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6820 [Removed]

2. By removing § 721.6820.

[FR Doc. 93-21081 Filed 8-30-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-162; DA 93-1031]

Broadcast Service; Financial Interest and Syndication Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule; confirmation of effective date.

SUMMARY: Through this public notice, the Commission hereby gives confirmation that amendments to § 73.661 of the Commission's Rules, adopted in the Second Report and Order in MM Docket No. 90-162, became effective on August 26, 1993, the day the Office of Management and Budget approved those amendments.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: On April 1, 1993, the Commission adopted a Second Report and Order (Order) in MM Docket No. 90-162, 58 FR 28927, May 18, 1993 (8 FCC Rcd 3282 (1993)), which, *inter alia*, amended § 73.661 of the Commission's Rules (the financial interest and syndication rule reporting requirements). In that Order, we stated that those amendments to the reporting requirements would become effective upon approval by the Office of Management and Budget (OMB). OMB approved the amendments on August 26, 1993 (OMB Control No. 3060-0479), for a period to expire on December 31, 1993. Accordingly, § 73.661, as amended by the Order, became effective on August 26, 1993.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-21281 Filed 8-30-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-162; FCC 93-427]

Broadcast Service; Financial Interest and Syndication Rule

AGENCY: Federal Communications Commission.

ACTION: Final Rule; suspension of compliance.

SUMMARY: In this Order, the Commission suspends network obligations to comply with certain aspects of the financial interest and syndication reporting

requirements contained in § 73.661 of the Commission's Rules, which were adopted in the Second Report and Order (Report) in MM Docket No. 90–162, until 30 days after publication in the **Federal Register** of the Commission's decision ruling on the currently pending petitions for reconsideration in this Docket. The Commission believes that a short delay until resolution of the pending petitions for reconsideration will not impair or delay the Commission's scheduled review of the financial interest and syndication rules provided for in the Report.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MM Docket No. 90–162, FCC 93–427, adopted August 27, 1993, and released August 27, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Order

1. In the Second Report and Order (Second R&O) in MM Docket No. 90–162, 58 FR 28927 (May 18, 1993), the Commission adopted a set of reporting requirements (contained in § 73.661 of our Rules) tailored to facilitate our review of the effects of changes we made in the financial interest and syndication (finsyn) rules. National Broadcasting Company, Inc. (NBC), joined by CBS Inc. and supported by Capital Cities/ABC, Inc., filed a "Request for Delay in Compliance with Reporting Requirements," seeking a temporary delay in network compliance with these reporting requirements until 30 days after publication in the **Federal Register** of the Commission's decision on the currently pending petitions for reconsideration in this Docket.

2. Under the reporting requirements, the networks must compile semi-annual reports containing information concerning their ownership and syndication of programming. These reports must be filed with the Commission and placed in each network owned and operated station public file before the first regular business day of September and March of each year. In its pending petition for reconsideration, filed June 17, 1993, NBC opposed three discrete elements of the requirements: (a) Reporting on programs where the only right or interest held by the network is in foreign syndication and the program was produced solely in-House, (b) reporting on programs where the network acquired the right or interest before the effective date of the original 1970 finsyn restrictions, and (c) listing sales to foreign stations of programs that a network actively syndicates abroad. The networks contend that these three elements of the reporting requirements are unnecessary and burdensome to collect. They are particularly concerned that the initial reports due before the first business day this September will create a particular hardship because such reports must contain a cumulative record of data. NBC argues that unless network compliance obligations are delayed, the Commission will not have the opportunity to act on the pending petitions for reconsideration before the most onerous part of the requirement has to be fulfilled.

3. With respect to the challenged elements of the reporting requirements only, we will grant the instant request for relief. In all other respects, the networks must comply with § 73.661 of our Rules. A short delay until resolution of the pending petitions for reconsideration will not impair or delay the Commission's scheduled review of the finsyn rules provided in the Second R&O. In contrast, network compliance with the impending first reporting due date could result in unnecessary data collection and paperwork in the event the Commission later decides on reconsideration to change these requirements. We take this action without prejudice to our future decision on the issues raised in NBC's petition for reconsideration.

4. Accordingly, *it is ordered That*, effective August 27, 1993, compliance with the three discrete elements, described *supra*, of the financial interest and syndication reporting requirements contained in § 73.661 of the Commission's Rules *is suspended* until 30 days after publication in the **Federal Register** of a Commission order (or summary thereof) ruling on the pending petitions for reconsideration filed on June 17, 1993, in MM Docket No. 90–162.

5. It is further *ordered That* NBC 's Request for Delay in Compliance with Reporting Requirements *is granted* to the extent set forth herein, and otherwise denied.

6. It is further *ordered That* this action is taken pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 1.45(e) of the Commission's Rules.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21311 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL–4697–4]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule modifies the Environmental Protection Agency's (EPA) instructions for the preparation of cost or pricing proposals. This rule requires additional information from offerors to allow EPA to evaluate cost and pricing proposals submitted in response to solicitations more quickly and accurately. The rule also requests offerors to submit cost or pricing proposal information on computer disks as well as in hard copy if the cost proposal was prepared using a commercial spreadsheet program on a personal computer.

EFFECTIVE DATE: This rule is effective September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at (202) 260–6028.

SUPPLEMENTARY INFORMATION:

A. Background

This rule was published as a proposed rule in the **Federal Register** (55 FR 5948; February 20, 1990). Seven comments were received. The comments received and the EPA response to those comments are shown below.

Each of the commenters objected to the proposed requirement for submission of financial data on the cost proposal on a 5¼" IBM-compatible, LOTUS 1–2–3 disk citing that such a requirement would be burdensome to contractors, especially small businesses; not conducive to full-and-open competition; and an unfair endorsement of certain types of computer hardware and software. The EPA agrees that such a requirement is not in the best interest of either the Government or its contractors. The final rule eliminates

this as a requirement but does request submission of a computer disk if the cost proposal was developed using a commercial spreadsheet program on a personal computer. However, failure to submit such a disk will not affect consideration of an offeror's proposal.

Several commenters questioned the usefulness of information requested on a contractor's accounting system stating that such information is available elsewhere and is unnecessarily duplicative. The EPA agrees. The final rule eliminates additional questions related to a contractor's accounting system.

One commenter pointed out that the proposed requirement for including an index with the cost proposal duplicates the requirements of the Federal Acquisition Regulation (FAR). The EPA agrees and has modified the final rule to highlight the FAR requirement.

Another commenter objected to the proposed requirement to include a cost or price analysis of subcontract costs at the time of submission of the contractor's cost or pricing proposal, preferring that such information be required at a later date. The EPA disagrees. The information on subcontractor costs is essential to the evaluation of a contractor's cost or pricing proposal and therefore should be submitted along with the initial cost or pricing proposal information. Therefore, the requirement to include a cost or price analysis of subcontract costs is included in the final rule.

B. Executive Order 12291

For the purposes of the Order this is not a major rule. The rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2030–0006.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The information requested for submission is readily available and will require only a minimal effort for offerors to compile. The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 1515 and 1552

Contracting by negotiation, Government procurement, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, parts 1515 and 1552 of title 48 of the Code of Federal Regulations are amended as set forth below.

1. The authority citation for parts 1515 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1515.407 is amended by revising paragraph (a)(2) to read as follows:

§ 1515.407 Solicitation provisions.

(a) * * *

(2) 1552.215–73, Instructions for the Preparation of Technical and Cost or Pricing Proposals (use Alternate I for cost-reimbursable, level of effort contracts; and

* * * * *

3. Section 1552.215–73 is amended by: Revising the introductory paragraph, the date in the instructions clause heading, adding four sentences to the end of paragraph (b) introductory text; adding a sentence to the end of paragraph (b)(1)(ii); adding a sentence to the end of paragraph (b)(1)(iv); revising paragraph (b)(1)(vi); adding paragraph (b)(1)(vii); adding a sentence to the end of paragraphs (b)(2)(ii), (b)(2)(iv)(D), and (b)(3); revising paragraph (b)(4); adding a sentence to the end of paragraph (b)(6); revising paragraph (b)(7); adding paragraphs (b)(8) and (b)(9); removing paragraph (c); and adding Alternate I to read as follows:

§ 1552.215–73 Instructions for the preparation of technical and cost or pricing proposals.

As prescribed in 1515.407(a), insert the following provision:

Instructions for the Preparation of Technical and Cost or Pricing Proposals (Aug. 1993)

* * * * *

(b) * * * In addition to a hard copy of the information, to expedite review of your proposal, you are requested to submit a computer disk containing the financial data required under 1552.21573(b)(2) through (b)(9), if this information is available using a commercial spreadsheet program on a personal computer. Please indicate the software program used to create this information. Offerors should include the formulas and factors used in calculating the financial data on the disk as well as the basic financial information. Although submission of the computer disk will expedite review, failure to submit the disk will not affect consideration of your proposal.

(1) * * *

(ii) * * * Include the index required by FAR 15.804, Table 15–2 Paragraph 4.

* * * * *

(iv) * * * Separately identify costs and supporting data for each such entity proposed.

* * * * *

(vi) If the contract includes the clause at EPAAR 1552.232–73, "Payments—Fixed-Rate Services Contract," or the clause at FAR 52.232–7, "Payments Under Time and Materials and Labor-Hour Contracts," include in your cost proposal the estimated costs and burden rate you will apply to materials, other direct costs, or subcontracts. The Government will include these costs as part of its cost proposal evaluation.

(vii) Whenever subcontractor effort is included in the proposed costs, the prime contractor shall include an additional supporting cost summary consolidating all costs (both contractor and subcontractor) by element for each contract period.

(2) * * *

(ii) * * * The methodology shall include the effective date of the base rates and the policy on salary reviews (e.g. anniversary date of employee or salary reviews for all employees on a specific date).

* * * * *

(iv) * * *

(D) * * * (Show proportionate time charges as a percentage of 100% of time for the entire academic year, exclusive of vacation or sabbatical leave.)

(3) * * * If your rates have been recently approved, include a copy of the agreement. If the agreement does not cover the projected performance period of the proposed effort,

provide the rationale and any estimated rate calculations for the proposed performance period.

(4) Travel expense.

(i) Attach a schedule illustrating how travel was computed. Include a breakdown indicating the number of trips, number of travellers, destination, purpose and cost.

(ii) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

* * * * *

(6) * * * Include a cost or price analysis of the subcontract costs in accordance with FAR 15.806–1(a)(2).

(7) Equipment (not including special equipment).

(i) If direct charges for use of existing contractor equipment are proposed, provide a description of these items and details of the basis of such charges.

(ii) If equipment purchases are proposed, provide a description of these items, details of the proposed costs (including at least three price quotes), and a justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(iii) Identify Government-owned property in the possession of the offeror or proposed to be used in the performance of the contract, and the Government agency which has cognizance over the property.

(8) Facilities and special equipment, including tooling.

(i) If special purpose facilities or equipment is being proposed, provide a description of these items, details of the proposed costs including competitive prices, and justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(ii) If fabrication by the prime Contractor is contemplated, include details of material, labor, and overhead.

(9) Other Direct Costs.

(i) Attach a schedule detailing how other direct costs were computed. Identify the major ODC items that under your accounting system would be a direct change on any resulting contract.

(ii) If the solicitation specifies the amount of other direct costs, this amount is exclusive of any applicable indirect cost and fee.

(End of provision)

Alternate I (AUG 1993). If this solicitation is for a cost-reimbursable, level of effort type contract, add the following at the end of paragraph (b)(2)(i):

All management and support (such as clerical, corporate and day-to-day management) hours and costs proposed to be a direct charge, in accordance with your normal accounting treatment, are to be shown separately from that for the technical effort.

Dated: August 11, 1993.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 93–20590 Filed 8–30–93; 8:45 am]

BILLING CODE 6560–50–M

48 CFR Parts 1515 and 1552

[FRL–4697–5]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Provisional rule.

SUMMARY: This document establishes a provisional rule on the submission of cost proposals by offerors. This rule is necessary to ensure that cost proposals are evaluated more thoroughly and on the same basis for all offerors. The intended effect of this action is to require offerors in their cost proposals to provide underlying assumptions in support of proposed category and individual labor rates, to propose the full amount of any travel or other direct costs specified in a solicitation, to propose their standard workyear for acquisitions that require fully dedicated staff, and to identify any management or management support costs to be charged as direct costs.

EFFECTIVE DATE: This regulation is effective September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at (202) 260–6028.

SUPPLEMENTARY INFORMATION:

A. Background

This regulation was published as a proposed rule on October 4, 1990, with public comments due on or before November 5, 1990. Three comments were received. These comments and the EPA response are summarized below.

Two commenters stated that because weighting factors used in developing category rates are often judgmental, supporting documentation may not be available or may be unduly burdensome to provide. These commenters want EPA to exercise discretion when requiring information under these circumstances. The EPA believes this information is essential and cannot be waived. To comply with this requirement, contractors will only have to record their assumptions and other supporting information while developing category rates.

One commenter contended that offerors whose accounting practice is to charge management labor as a direct cost under specified circumstances will be "penalized" by the requirement that offerors identify any management costs to be charged as direct. The commenter claimed that such offerors will have higher evaluated costs than offerors who charged management labor exclusively as an indirect cost. The EPA believes that such increases in direct costs are offset by corresponding decreases in indirect costs.

Another commenter maintained that the estimated reporting burden was low and that supplemental personnel may be needed to comply with the requirement. After further consultation with contractors, EPA has increased the estimated reporting burden. The revised estimates are set forth in Paragraph C, Paperwork Reduction Act.

As requested in discussions with OFPP, EPA will submit a request to the FAR Councils for initiation of a FAR case. When a rule contains issues submitted to the FAR Councils for initiation of a FAR case, OFPP guidance permits publication of the rule as provisional. If the FAR Councils adopt the rule, EPA will rescind the provisional rule. If FAR coverage is determined to be unnecessary, EPA will publish this provisional rule as final, taking the FAR Councils' deliberations into account.

B. Executive Order 12291

For the purposes of the Order this is not a major rule. The rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030–0006.

Public reporting burden for this collection of information is estimated 4 to 16 hours per response, with an average of 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM 223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The information requested for submission to the Government is readily available and will require a minimal effort for offerors to comply. The rule will require offerors to identify management and management support labor costs to be charged as direct costs, to provide underlying assumptions in support of proposed category and individual rates, and to propose their company's workyear rather than a specified number of hours for acquisitions that require fully dedicated staff over a specific time period. This is information which offerors normally develop in preparing cost proposals. This rule will merely require offerors to disclose this information for evaluation purposes.

The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 1515 and 1552

Government procurement, Contracting by negotiation Solicitation provisions and contract clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for parts 1515 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat 390, as amended, 40 U.S.C. 486 (c).

2. Section 1515.407 is amended by revising paragraph (a)(2) to read as follows:

§ 1515.407 Solicitation provisions.

(a) * * *

(2) 1552.215–73, Instructions for the Preparation of Technical and Cost or Pricing Proposals (use Alternate I [Reserved]; Alternate II for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is on a Government facility; or Alternate III for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is not on a Government facility;

* * * * *

3. In section 1552.215–73, paragraph (b)(2)(i) is revised and alternate clauses II and III are added to read as follows:

1552.215–73 Instructions for the preparation of technical and cost or pricing proposals.

Instructions for the Preparation of Technical and Cost or Pricing Proposals (Aug. 1993)

* * * * *

(b) * * *

(2) * * *

(i) Attach support schedules for each proposed labor category, indicating both proposed hours and rates. Explain the basis of the proposed labor rates, including a complete justification for all judgmental factors used to develop weights applied to your company's category or individual rates that comprise the rates for labor categories specified in the solicitation. This explanation should describe how your technical approach coincides with the proposed costs.

Describe for each labor category proposed your company's qualifications and experiences requirements. If individual rates are used, also provide the employee's name. If specific individuals are identified in the technical proposal, correlate these individuals with the labor categories specified in the solicitation.

Provide a matrix summarizing the effort proposed, including the subcontracts, by professional and technical level specified in the solicitation.

* * * * *

Alternate II (Aug. 1993). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e. productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs). It should also clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave.

The amount of indirect time (paid absences) identified in your proposal must be consistent with company policy and must allow for the ten Federal Government holidays.

Alternate III (AUG 1993). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year =2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e. productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs).

4. Section 1552.215–74 is amended by revising the date in the COST PROPOSAL INSTRUCTIONS heading and revising paragraph (a) to read as follows:

1552.215–74 Cost proposal instructions.

Cost Proposal Instructions (Aug. 1993)

* * * * *

(a) Direct Labor

Labor categories	Estimated hours	Rate/hour	Total
(1) Technical Direct Labor			
.....	.....	$	$.....
.....	.....	$	$.....
.....	.....	$	$.....
Technical direct labor cost subtotal.	.....	.....	$.....
(2) Management Direct Labor			
.....	.....	$	$.....
.....	.....	$	$.....
.....	.....	$	$.....
Management direct labor cost subtotal.	.....	.....	$.....
Total direct labor cost subtotal.	.....	.....	$.....

If it is your company's policy to charge project/program management labor as an indirect charge, state your policy in your proposal.

* * * * *

Dated: August 11, 1993.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 93–20591 Filed 8–30–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 930791–3191; I.D. 070693A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS changes the management regime for the Atlantic migratory group of Spanish mackerel, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Specifically, this rule increases the total allowable catch (TAC) and allocations for Atlantic group Spanish mackerel and reduces the percentage of catch that triggers reduced commercial trip limits for Atlantic group Spanish mackerel in the southern zone. The intended effect of this rule is to protect Spanish mackerel from overfishing and continue stock rebuilding programs established by the FMP while still allowing catches by important recreational and commercial fisheries dependent on Spanish mackerel.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the FMP and its implementing regulations, the Councils recommended, and NMFS published, a proposed rule containing changes in certain management measures applicable to Atlantic group Spanish mackerel (58 FR 40613, July 29, 1993). That proposed rule (1) described the FMP framework procedures through which the Councils recommended the changes; (2) specified the recommended changes; and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here.

No comments were received on the proposed rule.

The Director, Southeast Region, NMFS, concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP, the Magnuson Act, and other applicable law. Accordingly, the proposed rule, which contained the Councils' recommended changes, is adopted as final.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review (RIR) on this action, the conclusions of which were summarized in the proposed rule and are not repeated here.

The Councils prepared an initial regulatory flexibility analysis (initial RFA) for this action. The initial RFA has been adopted as final without change. The final RFA concludes that this rule could have a significant economic impact on a substantial number of small entities. Specifically, the increase in the commercial allocation is expected to substantially increase gross revenues to the commercial sector of the fishery for Atlantic group Spanish mackerel.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 26, 1993.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.24, paragraph (a)(1)(iv) is revised to read as follows:

§ 642.24 Bag and possession limits.

(a) * * *

(1) * * *

(iv) *Spanish mackerel Atlantic migratory group—ten per person.*

* * * * *

§ 642.25 [Amended]

3. In § 642.25, in paragraph (b)(2), the numbers "3.50" and "1.59" are revised to read "4.50" and "2.04", respectively.

4. In § 642.27, paragraphs (a)(2)(ii) introductory text, (a)(2)(iii), and (b) are revised to read as follows:

§ 642.27 Commercial trip limits for Atlantic group Spanish mackerel.

(a) * * *

(2) * * *

(ii) From December 1 until 75 percent of the adjusted allocation is taken, in amounts as follows:

* * * * *

(iii) After 75 percent of the adjusted allocation is taken until 100 percent of the adjusted allocation is taken, in amounts not exceeding 1,000 pounds (454 kg).

* * * * *

(b) For the purpose of paragraph (a)(2) of this section, the adjusted allocation of Atlantic migratory group Spanish mackerel is 4.25 million pounds (1.93 million kg). The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted allocation is reached. The Assistant Administrator, by filling a notice with the Office of the Federal Register, will announce when 75 percent and 100 percent of the adjusted allocation is reached or is projected to be reached.

* * * * *

[FR Doc. 93–21135 Filed 8–30–93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 662

[Docket No. 930769–3214; I.D. 061493C]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final harvest quotas.

SUMMARY: NMFS announces the estimated spawning biomass and final determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, California, for the 1993–94 fishing season. The harvest quotas have

been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. The optimum yield is set at 4,900 metric tons (mt), which includes a 4,900-mt nonreduction quota, plus an unspecified amount for use as live bait. There is no reduction quota for the 1993–94 fishing season.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Operations, Southwest Region, NMFS, Long Beach, California, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Science Center, the Director of the Southwest Region, NMFS (Regional Director), has estimated that the 1993–1994 spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 282,000 mt, 136 percent of the 1992–1993 biomass estimate of 208,000 mt. The biomass estimate is derived from a stock assessment model using spawning biomass estimated by the egg production method for calendar years 1980 to 1985, an egg production index, fish spotter data, total landings and catch data, and mean January to February sea surface temperatures. Documentation of the spawning biomass is contained in Administrative Report LJ–93–13, published by the Southwest Fisheries Science Center, NMFS. This report and the determination of harvest quotas was provided to the Pacific Fishery Management Council.

Comments and Responses

The preliminary determination of harvest quotas was published in the **Federal Register** on July 20, 1993 (58 FR 38726). Comments were received from one person representing a consulting firm, who spoke to a number of issues regarding the review procedure for announcement of the annual biomass estimate and quotas, and the stock assessment model.

Comment 1. Biomas estimates used to set quotas affect the vital interests of the fishing industry. For this reason, it would be helpful if the draft of the manuscript documenting the biomass estimate could be commented on rather than the notice in the **Federal Register**, which does not provide enough time for a substantive critique of the model. The manuscript should be provided to interested individuals at the same time it is sent to other reviewers, and there should be a formal request for comment.

Response. The data used for the annual biomass estimate is collected during the peak spawning period of January–February, and the annual biomass estimate is not available until mid or late June. Federal regulations require that the annual spawning biomass estimate and preliminary quota determinations be published on or about July 1. The same regulations require a final notice on or about August 1 (50 CFR 662.20(a)). This schedule has presented timing problems in the past, and alternative schedules are under review in an amendment to the FMP, which will include other coastal pelagic species.

In the interim, the draft manuscript can be sent to interested individuals on request when it is made available to the Council, its Scientific and Statistical Committee, and other reviewers. Any comments would be welcomed, but no formal request for comments will be made. Suggestions for changes in the methods used for future assessments would be welcomed at any time.

Comment 2. It does not seem reasonable that the fishery could sustain landings on the order of 300,000 mt in 1980 and 1981 with a total biomass of about 500,000 mt for fish age one and older. Estimates of biomass for 1980 and 1981 from the stock assessment model seem too low.

Response. Commercial landings of anchovy include fish that are less than one year old (age zero), which are not included in the spawning biomass estimate. The spawning biomass estimate contains age one anchovy and greater. In most years, the biomass of age zero anchovy is at least as big as the biomass of all the older age groups combined. Estimates of age zero biomass were 730,000 mt in 1980 and 1,810,000 mt in 1981; therefore, harvests of 300,000 mt do not seem unreasonable.

Comment 3. By not using age composition data, the stock assessment model seems to be yielding estimates that do not reflect the true magnitude and trends of stock abundance. Excluding catch-at-age data was done to gain precision, but this seems to have led to a loss of accuracy.

Response. Age composition data of anchovy are difficult to interpret. The fraction of the catch in each age group in each fishery during each season seems to depend on location, season, water temperature and growth anomalies, as well as on recruitment and abundance of other age groups. The use of age composition data in the past has led to badly biased and inaccurate estimates for recent years. Such data will be used when confidence is acquired with the procedure.

Comment 4. To estimate abundance, the stock assessment model for 1993 uses the Spotter Index and Egg Production Index incorporating data collected after 1984. Neither index covers the range of the stock. The Spotter Index mainly covers U.S. waters south of Pt. Conception. The last egg and larvae survey that covered most of the range of anchovy spawning (San Francisco to Ensenada) was in 1984. Since then, only an area from Pt. Buchon to an area just north of San Diego has been covered. The index is supposed to reflect the trend in the population because it is calibrated on the earlier years when coverage was more complete, but this would be true only if the relative distribution of fish in the years of full coverage remained the same as in recent years, and if egg and larvae mortality was constant throughout the entire spawning area.

The warm water since the early 1980s has resulted in a shift of the range of many species to the north, including anchovy. The 1975 winter cruises, which were conducted during a period when the full range of the resource was sampled, indicate that less than one percent of the anchovy larvae were captured north of Pt. Conception. In 1984, the last year of full coverage of the spawning range, and a year at the beginning of the present warm period, 30 percent of the anchovy larvae captured in February occurred at stations north of Pt. Buchon. This is a shift of anchovy spawning into an area where anchovy eggs and larvae are no longer sampled.

Also, egg mortality estimates use data that exclude the 1984 samples (Lo, Nancy C. H. 1985. Egg production of the Central stock of northern anchovy, *Engraulis mordax*, 1951–82. Fishery Bulletin, U.S. 83: 137–150). This means that the Egg Production Index estimates are calibrated in part to historical data collected before the present warm water conditions. The effect of this calibration needs to be determined.

Response. The assessment model may suffer from a warm water bias, but whether the bias would be large or even positive is uncertain. Warm water conditions also would move anchovy from Mexico into southern California. Any bias is probably short lived and associated with El Nino conditions like those during 1984.

Data for 1984 were not excluded from the assessment model. Egg mortality estimates and Egg Production Index data for 1984 are an important part of the egg production method spawning biomass and both were used in the model. Egg mortality estimates used in the assessment model are made each year from data collected during January to

April. No warm water bias due to egg mortality estimates is likely.

Efforts are underway to improve estimates of the northern anchovy spawning biomass. Recent improvements include a new stock assessment model, and improved index of egg production, an index of relative abundance from fish spotter data and variance calculations for biomass estimates.

Changes From the Preliminary Harvest Quotas

The final harvest quotas differ from the preliminary harvest quotas with respect to TALFF. A TALFF of zero was announced in the preliminary quotas, and was changed to a TALFF of 474 mt in the final harvest quotas, since a TALFF of zero is inconsistent with the result of the formula required by the FMP.

Annual Specifications

The Regional Director has made the following determinations for the 1993–1994 fishing season by applying the formulas in the FMP and in § 662.20 of the implementing rules. There is no change to the preliminary quotas announced in the **Federal Register** on July 20, 1993 (58 FR 38726).

1. The total U.S. harvest quota for northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait. The total U.S. harvest quota is equivalent to 70 percent of the overall optimum yield (70 percent of 7,000 mt) available for harvest by the United States and Mexico.

2. The total U.S. harvest quota for reduction purposes is zero. No reduction quota is permitted when the spawning biomass is 300,000 mt or less.

3. The U.S. harvest allocation for nonreduction fishing (i.e., fishing for anchovy for use as dead bait and human consumption) is 4,900 mt (as set by the Federal anchovy regulations at § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 4,202 mt. The FMP states that this amount is the maximum level of reduction plus nonreduction processing during the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 4,202 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is 474 mt. The TALFF in the EEZ is based on the U.S. portion of the OY (4,900 mt) minus the DAH (4,202 mt), then minus the amount of the expected harvest in the Mexican fishery zone that is in excess of the amount recognized as Mexico's share under the FMP formula. The expected 1993–1994 harvest in the Mexican fishery zone is 2,324 mt, which is the largest Mexican harvest in the past 3 years. The amount recognized as Mexico's share under the FMP formula is 30 percent of the optimum yield, which is 2,100 mt in 1993–1994. Therefore, 224 mt must be subtracted from the difference between the U.S. OY and the estimated DAH.

TALFF=4,900 − 4,202 − (2,324 − 2,100)
TALFF=474 mt.

U.S. vessel operators are interested in having a small reduction fishery even in years when the biomass has been below 300,000 mt. The FMP makes separate allocations to U.S. reduction and nonreduction fisheries and does not provide for a transfer between categories. The Council has been advised that if they intend for a small reduction quota to be allocated in years when the biomass is below 300,000 mt, the FMP must be amended. Without such an amendment under this year's optimum yield, a TALFF is required under the FMP. However, NMFS expects no applications from foreign nations for this TALFF and considers that sec. 201 of the Magnuson Act would prevent an allocation of this TALFF if a foreign nation did apply.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1993.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 93–21134 Filed 8–30–93; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Parts 672 and 675

[Docket No. 930359–3206; I.D. 012293A]

Groundfish of the Gulf of Alaska and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing a regulatory amendment that prohibits any U.S. commercial fishing vessel from fishing for groundfish in the exclusive economic zone (EEZ) off Alaska before offloading from the vessel all Pacific halibut, Pacific salmon, steelhead trout, Pacific herring, king crab, and Tanner crab taken in waters seaward of the EEZ. The intended effect is to enforce regulations governing the take of species listed as prohibited in the Alaska groundfish fisheries.

EFFECTIVE DATE: September 30, 1993.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (telephone 907–586–7228).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the EEZ off Alaska are managed by the Secretary of Commerce in accordance with the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). Both FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The U.S. groundfish fisheries in the GOA and BSAI are governed under regulations implementing the FMPs at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

The regulations implementing the groundfish FMPs apply to fishing operations within the EEZ off Alaska. However, the regulations do not adequately address the possession of prohibited species that are taken seaward of the EEZ and that would otherwise be illegal to possess on board commercial fishing vessels if harvested in U.S. waters. For purposes of these regulations, prohibited species are any of the species of Pacific salmon, steelhead trout, Pacific halibut, Pacific herring, king crab, and Tanner crab.

To address this concern, NMFS published a proposed rule in the **Federal Register** on May 20, 1993 (58 FR 29381), that would prohibit the use of a vessel to fish for groundfish in the EEZ off Alaska when that vessel has on board any species of Pacific salmon, steelhead trout, Pacific herring, Pacific Halibut, king crab, or Tanner crab taken in waters seaward of the EEZ. A

complete description of, and justification for, this action was discussed in the preamble to the proposed rule. Additional information also is available in the EA/RIR/FRFA.

Public comment on the proposed rule was invited through June 21, 1993. No comments were received during the comment period.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

NMFS prepared an EA for this final rule and the AA concluded that there will be no significant impact on the human environment as a result of the implementation of this rule. A copy of the EA is available (see **ADDRESSES**).

The AA determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is summarized in the proposed rule and is based on the RIR prepared by NMFS. A copy of the RIR is available (see **ADDRESSES**).

NMFS prepared an FRFA that concludes that this rule will have a significant economic impact on a substantial number of small entities. A summary of this determination was published in the proposed rule, and a copy of this analysis is available (see **ADDRESSES**).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. Consistency is automatically inferred because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Regional Director determined that fishing activities conducted under this rule will not affect any endangered or threatened species listed under the Endangered Species Act in any manner not already considered in: (1) The formal consultations conducted on the BSAI and GOA groundfish fisheries (both dated April 19, 1991), the 1992 BSAI total allowable catch specifications (January 21, 1992), and Amendment 18 to the BSAI FMP (March 4, 1992); and (2) the informal consultations conducted regarding the impacts of the 1992 GOA total allowable catch specifications (December 23, 1991), the 1993 BSAI and GOA total allowable catch specifications on Steller sea lions (January 20, 1993, and January 22, 1993, respectively), the impacts of the 1993 BSAI and GOA groundfish fisheries on listed species of salmon (April 21, 1993) and listed species of seabirds (U.S. Fish and Wildlife Service, February 1, 1993). Therefore, NMFS has determined that no further consultation, pursuant to section 7 of the ESA is required for adoption of this rule.

The Regional Director determined that fishing activities conducted under this rule will have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 26, 1993.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.2 [Amended]

2. In § 672.2, the definition of *Gulf of Alaska* is amended by revising "fishery conservation zone" to read "EEZ."

3. In § 672.20, a new paragraph (e)(5) is added to read as follows:

§ 672.20 General limitations.

* * * * *

(e) * * *

(5) No vessel fishing for groundfish in the Gulf of Alaska may have on board any species listed in paragraph (e)(1) of this section that was taken in waters seaward of the Gulf of Alaska, regardless of whether retention of such species was authorized by other applicable laws.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.20, paragraph (c)(5) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(c) * * *

(5) No vessel fishing for groundfish in the Bering Sea and Aleutian Islands management area may have on board any species listed in paragraph (c)(1) of this section that was taken in waters seaward of that management area, regardless of whether retention of such species was authorized by other applicable laws.

* * * * *

[FR Doc. 93-21132 Filed 8-30-93; 8:45 am]
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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket No. R-0808]

Extensions of Credit by Federal Reserve Banks; Proposed Revisions Regarding Limitations on Extensions of Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Section 142 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA) amends section 10B of the Federal Reserve Act (FRA) in order to discourage advances, under that section, to undercapitalized and critically undercapitalized depository institutions. The Board proposes to implement this provision by revising its rules relating to the provision of Federal Reserve credit presently contained in Regulation A—Extensions of Credit by Federal Reserve Banks.

DATES: Comments must be received by October 1, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0808, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information (12 CFR 261.8), comments received will be available for inspection and copying by members of the public in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), or Manley Williams-Stander, Legal Assistant (202/736-5565), Legal Division; or Gary Gillum, Senior Economist (202/452-3253), or Jim Clouse, Economist (202/452-3922), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 142 of FDICIA (Title I of Pub. L. 102-242) amended section 10B of the FRA (12 U.S.C. 347b) to discourage advances under that section to undercapitalized and critically undercapitalized depository institutions by imposing liability on the Board for certain losses incurred by the funds administered by the Federal Deposit Insurance Corporation (FDIC). Specifically, the Board incurs limited liability for increased losses attributable to Federal Reserve Bank advances under section 10B of the FRA to an undercapitalized insured depository institution after that institution has borrowed for 60 days in any 120-day period. The 60 days may be extended for additional 60-day periods with a determination by the Chairman or the head of the appropriate Federal banking agency that the institution is viable. The Board also incurs limited liability for increased losses attributable to section 10B advances to a critically undercapitalized insured depository institution after a five-day period beginning on the day the institution becomes critically undercapitalized. The Board's liability for these increased losses is limited to the lesser of the amount of the loss that the Board or a Federal Reserve Bank would have incurred on any increases in the amount of advances after the expiration of the applicable lending period if those advances had been unsecured, or the amount of interest received on the increased amount of the advances. The Board must report to Congress on any such liability it incurs.

In order to reflect the new provisions of section 10B, the proposed rule makes several substantive changes to Regulation A. It also incorporates a number of technical and stylistic changes to update and clarify the regulation. The principal substantive changes are:

(1) Placing limitations on Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions;

(2) Describing the loss calculations;

(3) Defining undercapitalized and critically undercapitalized insured depository institutions;

(4) Defining viable, as it applies to an undercapitalized insured depository institution; and

(5) Providing for assessments on the Federal Reserve Banks for amounts that the Board may be required to pay the FDIC under section 142.

Limitations on Availability

Paragraphs (a) and (b) of § 201.4 of the proposed rule describe the limitations on the availability of Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions, respectively. These limitations apply not only to advances under section 10B of the FRA, which permits advances secured to the satisfaction of the Federal Reserve Bank and which is the only type of advance to which section 142 applies, but also to discount window credit under other sections of the FRA, such as sections 13(2) and 13(8), that are not expressly covered by section 142.

In the case of an undercapitalized insured depository institution, the proposed rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution only:

(1) If, in any 120-day period, the advances or discounts are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution;

(2) During the 60 days after the receipt of a written certification of viability from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency; or

(3) After consultation with the Board of Governors.

In the case of a critically undercapitalized insured depository institution, the proposed rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for an institution that it knows to be a critically undercapitalized insured depository

institution only during the five-day period beginning on the date the institution became a critically undercapitalized insured depository institution or after consultation with the Board of Governors.

In each case, the consultation requirement generally formalizes existing practices under which Federal Reserve Bank staff discuss significant advances to troubled institutions with the Board or Board staff. It also facilitates Board involvement in discount window assistance that may exceed the section 142 limits and trigger Board liability and a reporting requirement. This requirement does not necessarily contemplate formal Board consideration of each extension of credit. In many cases, the requirement could be satisfied through a discussion of a Federal Reserve Bank's plans for dealing with a particular institution. In addition, the Board contemplates delegation of the authority to conduct such consultation to one or more members of the Board or Board staff in order to facilitate that consultation.

Even with a broad delegation, however, there could be situations in which it would be difficult or impossible for a Federal Reserve Bank to consult with the Board's delegate before extending credit that could exceed the section 142 limits. For example, a Federal Reserve Bank may not know that an institution has been critically undercapitalized for more than five days or may only learn this information at the time that the lending decision arises. The proposed rule, therefore, provides that in unusual circumstances when prior consultation with the Board is not possible, the Federal Reserve Bank should consult with the Board as soon as possible after the extension of credit.

The Loss Calculations

The proposed rule introduces three new definitions, "liquidation loss," "increased loss," and "excess loss," which together function to implement the liability provisions of section 142. The term "liquidation loss" refers to the amount of loss that the FDIC would have incurred if it had liquidated the depository institution at a particular point in time. The term "increased loss" refers to the amount of the FDIC's loss which exceeds the liquidation loss due to certain advances which remain outstanding or to new advances which are made after time the FDIC would have liquidated the institution under the liquidation loss calculation. The term "excess loss" refers to the amount of the increased loss for which the Board is liable to the FDIC under section 142.

Capital Category

Under section 142, the limitations on access to Federal Reserve Bank credit depend in part on the capital category—undercapitalized or critically undercapitalized—of the borrowing depository institution. These categories are defined in section 142 through reference to Federal banking agency ratings and through reference to the Prompt Corrective Action standards in section 38 of the Federal Deposit Insurance Act (FDI Act). Section 38 of the FDI Act largely leaves the definition of the capital categories to the Federal banking agencies which define the categories in terms of capital ratios and link changes in capital categories to specific events (including the date that a Call Report is required to be filed, the delivery of an exam report, or the provision of written notice by the appropriate Federal banking agency). The proposed Regulation A, therefore, adopts the Prompt Corrective Action rules establishing capital categories, including the provisions defining when the categories become effective. This approach avoids linking changes in capital categories solely to day-to-day balance sheet fluctuations that would be impossible to track, is relatively simple, and is consistent with the Prompt Corrective Action standards.

The proposed rule also provides that a Federal Reserve Bank, before extending credit, should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution. The Board is working with the other Federal banking agencies to ensure that Federal Reserve Banks have timely information concerning changes in institutions' capital categories.

Viable

Under section 142, a Federal Reserve Bank may extend discount window credit to an undercapitalized insured depository institution beyond 60 days in a 120-day period if the head of the appropriate Federal banking agency or the Chairman of the Board of Governors, after an examination, certifies in writing that the institution is viable. An institution is viable under section 142 if, giving due regard to the economic conditions and circumstances in the market in which the institution operates, the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. This definition not only permits broad discretion in taking economic factors into account, but also allows widely varying levels of expectation as to whether an institution will become critically undercapitalized or be placed into conservatorship or receivership.

In order to provide some guidance to the other federal banking agencies in making viability determinations, the proposed regulation states that although there are a variety of criteria for determining viability, the Board ordinarily would consider an undercapitalized institution to be viable if it had submitted a capital restoration plan as required under Prompt Corrective Action, if its primary federal regulator had accepted the plan, and if the institution is complying with the plan.

Assessment

Under section 142, the Board is liable to the FDIC for certain losses due to Federal Reserve Bank lending to an undercapitalized or critically undercapitalized insured depository institution beyond the time periods specified in that section. The proposed regulation provides that the Board will assess the Federal Reserve Banks for the amount of any such loss. While the proposed regulation does not specify an assessment formula, the Board expects that any such loss would assessed on all the Federal Reserve Banks on a *pro rata* basis rather than only on the Federal Reserve Bank making the advance.

Initial Regulatory Flexibility Act Analysis

Section 603 of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) requires an agency publishing a proposed rule also to publish for comment an initial regulatory flexibility analysis containing:

(1) A description of the reasons why the proposed rule is being considered;

(2) A statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of the small entities to which the proposed rule would apply, and an estimate of their number, if feasible;

(4) A description of projected reporting, recordkeeping, and compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills required to prepare the reports or records;

(5) An identification of Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A discussion of significant alternatives considered.

Items 1 and 2 are discussed in the Supplementary Information above.

The proposed rule would apply to all depository institutions insured by the FDIC, regardless of size, and many of these depository institutions would be considered to be "small entities."

The regulation does not impose any recordkeeping or reporting requirements. However, an institution, large or small, seeking an advance or discount may be requested to provide information in its possession or control concerning its capital category. Such information may include copies of Call Reports, exam results, or communications from its regulator. No additional professional skills will be required to prepare this information.

No Federal rules will duplicate, overlap, or conflict with the proposed rule.

The Board considered several alternative structures in developing the proposed rule. For example, the Board initially considered requiring prior Board authorization for any advance or discount which might cause liability to the Board. Because of the possibility of emergency situations arising late in the day and potential operational difficulties in acquiring prior Board authorization, the proposed rule requires consultation with the Board.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit.

For reasons set forth in the preamble, the Board proposes to amend 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 374, 374a and 461.

2. Sections 201.1 through 201.6 are revised and §§ 201.7 through 201.9 are added to read as follows:

§ 201.1 Authority, scope and purpose.

(a) *Authority and scope.* This part is issued under the authority of sections 10A, 10B, 13, 13A, and 19 of the FRA (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461), other provisions of the FRA, and section 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d) and relates to extensions of credit by Federal Reserve Banks to depository institutions and others.

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Federal Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the Federal Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purpose of this part, the following definitions shall apply:

(a) *Appropriate Federal banking agency* has the same meaning as in section 3 of the FDI Act (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and the implementing regulations.

(c) (1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An insured bank as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) A mutual savings bank as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) A savings bank as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) An insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) A member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A savings association as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) which is an insured depository institution as defined in section 3 of the Act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the Act (12 U.S.C. 1815(a)).

(2) The term *depository institution* does not include a financial institution that is not required to maintain reserves under Regulation D (part 204 of this title) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Liquidation loss* means the loss that any deposit insurance fund in the FDIC would have incurred if the FDIC had liquidated the institution:

(1) In the case of an undercapitalized insured depository institution, as of the end of the later of:

(i) Sixty days:

(A) In any 120-day period;

(B) During which the institution was an undercapitalized insured depository institution; and

(C) During which advances or discounts were outstanding to the depository institution from any Federal Reserve Bank; or

(ii) The 60-day period following the receipt by a Federal Reserve Bank of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the institution is viable.

(2) In the case of a critically undercapitalized insured depository institution, as of the end of the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution.

(e) *Increased loss* means the amount of loss to any deposit insurance fund in the FDIC that exceeds the liquidation loss due to:

(1) An advance under section 10B(1)(a) of the FRA that is outstanding to an undercapitalized or critically undercapitalized insured depository institution without payment having been demanded as of the end of the periods specified in paragraphs (d)(1) and (2) of this section; or

(2) An advance under section 10B(1)(a) of the Federal Reserve Act that is made after the end of such periods.

(f) *Excess loss* means the lesser of the increased loss or that portion of the increased loss equal to the lesser of:

(1) The loss the Board of Governors or any Federal Reserve Bank would have incurred on the amount by which advances under section 10B(1)(a) exceed the amount of advances outstanding at the end of the periods specified in

paragraphs (d)(1) and (2) of this section if those increased advances had been unsecured; or

(2) The interest received on the amount by which the advances under section 10B(1)(a) exceed the amount of advances outstanding, if any, at the end of the periods specified in paragraphs (d)(1) and (2) of this section.

(g) *Transaction account and nonpersonal time deposit* have the meanings specified in Regulation D (part 204 of this title).

(h) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2) (i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and the implementing regulations; or

(ii) Has a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by the appropriate Federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(i) *Viable*, with respect to a depository institution, means that the Board of Governors or the appropriate Federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate Federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Availability and terms.

(a) *Adjustment credit.* Federal Reserve Banks extend adjustment credit on a short-term basis to depository institutions to assist in meeting temporary requirements for funds or to cushion more persistent shortfalls of funds pending an orderly adjustment of a borrowing institution's assets and liabilities. Such credit generally is available only for appropriate purposes and after reasonable alternative sources of funds have been fully used, including credit from special industry lenders such as Federal Home Loan Banks, the National Credit Union Administration's Central Liquidity Facility, and corporate central credit unions. Adjustment credit is usually granted at the basic discount rate, but under certain circumstances a special rate or rates above the basic discount rate may be applied.

(b) *Seasonal credit.* (1) Federal Reserve Banks extend seasonal credit for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from a combination of expected patterns of movement in their deposits and loans. Seasonal credit is available only if similar assistance is not available from special industry lenders.

(2) Seasonal credit is ordinarily limited to the amount by which the depository institution's seasonal needs exceed certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year. Seasonal credit is available if the Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks. The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain. To the extent practicable, a depository institution should arrange in advance for seasonal credit for the full period during which such credit is expected to be required. A special rate or rates at or above the basic discount rate may be applied to seasonal credit.

(c) *Extended credit.* Federal Reserve Banks extend credit to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices affecting a particular depository institution including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan repayment performance. Extended credit may also be provided to accommodate the needs of depository institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A special rate or rates above the basic discount rate may be applied to extended credit.

(d) *Emergency credit for others.* In unusual and exigent circumstances, a Federal Reserve Bank may, after consultation with the Board of Governors, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate in effect for advances to depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more members of the Board of Governors is required before credit may be extended.

§ 201.4 Limitations on availability and assessments.

(a) *Advances to or discounts for undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 days after the receipt of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors.[1]

(b) *Advances to or discounts for critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors.[2]

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that it pays to the FDIC due to any excess loss.

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[1] In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph.

[2] See footnote 1 in § 201.4(a)(3).

(d) *Information.* Before extending credit a Federal Reserve Bank should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution.

§ 201.5 Advances and discounts.

(a) Federal Reserve Banks may lend to depository institutions either through advances secured by acceptable collateral or through the discount of certain types of paper. Credit extended by the Federal Reserve Banks generally takes the form of an advance.

(b) Federal Reserve Banks may make advances to any depository institution if secured to the satisfaction of the Federal Reserve Bank. Satisfactory collateral generally includes United States government and Federal agency securities, and, if of acceptable quality, mortgage notes covering 1-4 family residences, State and local government securities, and business, consumer and other customer notes.

(c) If a Federal Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance, it may discount any paper endorsed by the depository institution that meets the requirements specified in the FRA.

§ 201.6 General requirements.

(a) *Credit for capital purposes.* Federal Reserve credit is not a substitute for capital.

(b) *Compliance with law and regulation.* All credit extended under this part shall comply with applicable requirements of law and of this part. Each Federal Reserve Bank:

(1) Shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view to ascertaining whether undue use is being made of depository institution credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and

(2) Shall consider such information in determining whether to extend credit.

(c) *Information.* A Federal Reserve Bank shall require any information it believes appropriate or desirable to insure that paper tendered as collateral for advances or for discount is acceptable and that the credit provided is used in a manner consistent with this part.

(d) *Indirect credit for others.* No depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.7 Branches and agencies.

Except as may be otherwise provided, this part shall be applicable to United States branches and agencies of foreign banks subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as depository institutions.

§ 201.8 Federal Intermediate Credit Banks.

A Federal Reserve Bank may discount for any Federal Intermediate Credit Bank agricultural paper or notes payable to and bearing the endorsement of the Federal Intermediate Credit Bank that cover loans or advances made under subsections (a) and (b) of section 2.3 of the Farm Credit Act of 1971 (12 U.S.C. 2074) and that are secured by paper eligible for discount by Federal Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

§ 201.9 No obligation to make advances or discounts.

A Federal Reserve Bank shall have no obligation to make, increase, renew, or extend any advance or discount to any depository institution.

3. In §§ 201.108 and 201.109, footnotes 1, 1a, 2, and 3 are redesignated as footnotes 3, 4, 5, and 6, respectively.

By order of the Board of Governors of the Federal Reserve System, August 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-20666 Filed 8-30-93; 8:45 am]

BILLING CODE 6210-01-F

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would redefine a "major source of employment" (MSE) to mean a concern which has one or more locations in the Disaster Area which, individually or in the aggregate, employed at least 10 percent of the work force of the commuting area of a community located within the Disaster Area, not including any area more than 50 miles away from the community; or employed at least 10 percent of the work force in an industry within the Disaster Area and also employed a certain minimum number of people in the Disaster Area; or employed at least 1,000 people in the Disaster Area.

Under this proposed rule, loans in excess of $1.5 million would be available only to those MSEs which have one or more locations in the Disaster Area which are out of business or in imminent danger of going out of business as a result of a disaster and only if the loan would be necessary to avoid substantial unemployment in the Disaster Area.

This proposed rule also conforms the regulations to reflect the higher disaster loan limit for businesses established by Public Law 103–75, Emergency Supplemental Appropriations for Flood Relief.

DATES: Written comments must be received on or before September 30, 1993.

ADDRESSES: Comments may be sent to Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Assistant Administrator for Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: As amended by Public Law 103–75, enacted on August 12, 1993, the Small Business Act (the Act) limits the total amount of disaster assistance a business borrower may receive from the Small Business Administration (SBA) in connection with any one disaster commencing on or after April 1, 1993, to $1.5 million unless the borrower is a major source of employment in the Disaster Area and SBA, in its discretion, waives the $1.5 million limitation. 15 U.S.C. 636(c)(6). The Act does not provide a definition for "major source of employment".

In its present regulations, SBA defines "major source of employment" to mean a concern which satisfies one of three tests, summarized as follows:

(a) Employment of at least 10 percent of the entire work force of a geographically identifiable community no larger than a county;

(b) Employment of at least 10 percent of the work force in an industry in the Disaster Area; or

(c) Employment of at least 1,000 persons in the Disaster Area. (13 CFR 123.3)

This proposed rule would revise all three tests to more accurately reflect SBA's understanding of the nature of a true major source of employment. The first test (clause (a) of the definition) would be changed to require employment of at least 10 percent of the entire work force of the commuting area

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of a geographically identifiable community no larger than a county. Under the first test in the present regulation, SBA has limited its analysis to the work force residing in the community itself. This analysis is incomplete when, as is common today, a significant portion of a community's work force resides in the community's suburbs or across state lines. If a concern is to qualify as a major source of employment by virtue of the percentage of a community's work force it employs, the true work force available to the community must be the relevant base. SBA believes that the true work force available to a community may be found only by disregarding city and state boundaries and considering instead the working population of the commuting area of the community.

Under the proposed regulation, the determination of an actual "commuting area" for any given community within a Disaster Area would be made by SBA on a case-by-case basis at the time of a concern's application for major source of employment status. The "commuting area" would ordinarily include the community itself, plus those geographically identifiable areas from which significant numbers of people commute to the community for employment. However, the proposed rule provides that in no event would the "commuting area" include any area located more than 50 miles from the community itself.

This proposed rule would also amend the second alternative test for MSE status (clause (b) of the definition) by requiring that a concern employing at least 10 percent of the work force in an industry within the Disaster Area also employ a certain minimum number of employees in order to qualify as a major source of employment. In the case of a manufacturing concern, the minimum number of employees would be 150; for a non-manufacturing concern, the minimum number would be 50.

This proposed revision is necessary because certain industries may, in the aggregate, employ only a small number of people in the Disaster Area. Yet under the present regulation, a business in one of those industries would be considered a major source of employment for purposes of SBA's disaster assistance if it employed just 10 percent of that small number of people. SBA does not believe that special treatment (i.e., larger loans) should be available to very small employers just to help preserve the existence of an industry. Rather, the larger disaster loans for which major sources of employment are potentially eligible are intended to ensure that larger numbers of jobs are preserved.

SBA has utilized certain census data to determine the minimum numbers of employees that businesses will be required to employ under the second alternative test. SBA has determined that non-manufacturing concerns with at least 50 employees and manufacturing concerns with at least 150 employees are concerns of significant size in the majority of counties in this country. Accordingly, SBA believes it is reasonable and appropriate to narrow the second part of the major source of employment definition to concerns that can meet these minimum levels of employment.

This proposed rule would also make a technical revision to the third test for MSE status. The revision would clarify that in order to qualify as an MSE under clause (c) of the definition, the applicant must employ 1,000 persons in the Disaster Area.This should make clear that a concern located in the Disaster Area which employs thousands of people nationwide but fewer than 1,000 in the Disaster Area does not qualify as an MSE under clause (c) of the definition.

This proposed rule would also make clear that, under all three tests, a business concern's qualification as an MSE is based on its employment figures in the Disaster Area. In that regard, the business concern may aggregate employment levels at separate locations in the Disaster Area, including those of its affiliates (as defined in part 121), provided that the employees are located in the Disaster Area.

It should be emphasized that qualification of a concern as a major source of employment does not mean that such concern is automatically eligible for disaster assistance in excess of $1.5 million. SBA has the authority to waive the $1.5 million limitation for a major source of employment, but is not required to do so. Under this proposed rule, SBA is planning to limit its issuance of a waiver to those circumstances where the damaged location(s) of the major source of employment is/are out of business or in imminent danger of going out of business as a result of the disaster and the large loan is necessary to permit the location(s) to reopen or stay open in order to avoid substantial unemployment in the Disaster Area.

This policy is consistent with the original grant of authority to SBA to make loans to MSEs found in Public Law 91–606, the Disaster Relief Act of 1970. That legislation authorized SBA to make a loan to any major source of employment "which is no longer in substantial operation as a result of [a] disaster", such loan to be in an amount "necessary to enable such enterprise to resume operation in order to assist in restoring the economic viability of the disaster area". Public Law 91–606, Section 237(a). While this provision has been superseded by Section 7(c)(6) of the Act, it nevertheless provides insight into Congress' original intent in allowing for very large loans to major sources of employment. SBA agrees with Congress' original intent that such loans should only be available to restore the economic viability of a Disaster Area. Therefore, SBA's waiver should only be granted where the waiver is necessary to permit an MSE to reopen or keep open one or more location(s) which employ large numbers of people in the Disaster Area.

If a concern aggregates the employment levels of separate locations (its own or its affiliates) in order to qualify as a major source of employment, under this proposal SBA would require such locations to be out of business or in imminent danger of going out of business before a waiver will be considered.

Remaining unchanged is the requirement that a major source of employment have used all of its own funds and all available Credit Elsewhere before SBA will consider a waiver of the $1.5 million limitation (13 CFR 123.28). Regardless of whether a concern aggregates its employment levels with those of its affiliates in order to qualify as an MSE, SBA's practice has been to consider the Credit Elsewhere available to a concern's affiliates as Credit Elsewhere available to the concern itself. This practice will continue unchanged.

SBA understands that this proposed rule, if adopted, would tighten the criteria for MSE status and reduce the number of companies that could so qualify. In practice, SBA has received very few requests for MSE status under the current rule. It is not expected that this proposed rule would produce a significant change in the number of companies eligible for or requesting such status. SBA believes the changes to the current regulation are necessary and warranted for the reasons discussed above. Furthermore, it should be emphasized that those funds for which a company might have been eligible under the present regulation, but not under the proposed regulation, would now be available to assist other needy disaster victims.

In addition to the proposed regulatory changes discussed above, SBA is also proposing to conform the relevant regulatory sections to reflect the

increase in the disaster loan limitation for businesses from $500,000 to $1.5 million, as established by Public Law 103–75. The $1.5 million limit is effective for all disasters commencing on or after April 1, 1993.

Compliance With Executive Orders 12291, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291 and Regulatory Flexibility Act

SBA certifies that this proposed rule, if adopted, would be a nonmajor rule for purposes of E.O. 12291 and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

1. It would not result in an annual economic effect of $100 million or more. Over the past ten years, an average of only sixty (60) disaster loans per year have been at the $500,000 level. If the loan limit during that period had been $1.5 million instead of $500,000, SBA estimates that the average loan size for those borrowers would have been approximately $750,000. Thus, based on historical averages, SBA estimates the annual economic effect of the increased statutory disaster loan limit as implemented by this proposed rule to be approximately $250,000 times 60, or $15 million. The annual economic effect of the other proposed changes to the major source of employment regulations is expected to be insignificant. Given the higher disaster loan limit, it is anticipated that very few companies will henceforth need to qualify as major sources of employment in order to obtain sufficient disaster assistance.

2. It would not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. It would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in the domestic or export markets.

Executive Order 12612

SBA certifies that this proposed rule, if adopted, would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, SBA hereby certifies that this proposed rule, if adopted, would impose no new reporting or recordkeeping requirements.

Executive Order 12778

SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small businesses.

For the reasons set forth above, part 123 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 is revised to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.3 is amended by revising the definition of "Major Source of Employment" to read as follows:

§ 123.3 Definitions

* * * * *

Major Source of Employment: (a) A concern which has one or more locations in the Disaster Area which, individually or in the aggregate:

(1) employed 10 percent or more of the entire work force of the commuting area of a geographically identifiable community, no larger than a county; provided that the commuting area shall not extend more than 50 miles from such community; or

(2) employed 10 percent or more of the work force in an industry within the Disaster Area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the Disaster Area or, if the concern is a manufacturing concern, employed no less than 150 employees in the Disaster Area; or

(3) employed no less than 1,000 employees within the Disaster Area.

(b) For disasters commencing on or after October 1, 1983, employees of concerns sharing common business premises shall be aggregated to determine major source of employment status for a non-profit applicant owning such premises.

* * * * *

3. Section 123.24 is amended by revising paragraph (a) to read as follows:

§ 123.24 Conditions affecting all physical disaster loans.

(a) *Amount.* The amount of a loan is limited to the Eligible Physical Loss sustained and amounts permitted under paragraphs (f), (g), (h), (i), and (j) of this section. In no event may the total amount of SBA's share outstanding and committed to a borrower, together with its affiliates as defined in part 121 of this chapter, resulting from a single Disaster, exceed $1.5 million, except as permitted in § 123.28 (Major employer) and limited by § 123.25 (Homeowners). SBA's share of an immediate participation in or guaranty of a loan under this part may not exceed 90 percent of the sum of the unpaid principal and accrued interest.

* * * * *

4. Section 123.26 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 123.26 Special conditions—Business loans.

(a) *Limits.* Disaster business loans (for the aggregate of physical disaster and economic injury loans) are limited by statute to a ceiling of $1.5 million per applicant for SBA's share in any one disaster commencing on or after April 1, 1993, for direct, immediate participation, or the guaranteed portion of guaranteed loans, unless the Administration finds that an applicant is a Major Source of Employment (as defined in § 123.3) in the Disaster Area, and the Administration waives the $1.5 million limitation. * * *

* * * * * *

5. Section 123.28 is revised to read as follows:

§ 123.28 Loans to major sources of employment.

Loans to Major Sources of Employment (as defined § 123.3) shall be made under the authority of the Small Business Act and the provisions of this part. In such cases, the Administration, in its discretion, may waive the $1.5 million limitation of § 123.26(a) if:

(a) the damaged location(s) of the Major Source of Employment is/are out of business or in imminent danger of going out of business as a result of the disaster and the waiver is necessary to permit such location(s) to reopen or stay open in order to avoid substantial unemployment in the Disaster Area, and

(b) the applicant concern has used all funds from its own resources and all available Credit Elsewhere (see § 123.3) to alleviate the physical damage and/or economic injury sustained plus eligible refinancing.

6. Section 123.41 is amended by revising paragraph (e) to read as follows:

§ 123.41 General provisions.

* * * * *

(e) *Loan amount.* Loans under this subpart may be approved in addition to any disaster loan under subpart B; Provided, however, that the aggregate amount of these loans to a single applicant, together with its affiliates as defined in part 121 of this chapter, in a single disaster shall not exceed $1.5 million, unless the applicant qualifies as a Major Source of Employment (see § 123.3) and satisfies the conditions in § 123.28 of this part.

* * * * *

Dated: August 20, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93-21113 Filed 8-30-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-SW-12-AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B-1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B and 214B-1 helicopters, that currently establishes a mandatory retirement life for the main transmission upper planetary carrier (carrier). This action would require changing the retirement life for the carrier from flight hours to high-power events, removing the 2,500 hours' time-in-service magnetic particle inspection (MPI) for the carrier, and making the requirements applicable to the Model 214ST as well as the Model 214B and 214B-1 helicopters. This proposal is prompted by the manufacturer's analysis and retesting that has shown that the carrier is sensitive to high-power events. The actions specified by the proposed AD are intended to prevent failure of the carrier that could result in failure of the main transmission and subsequent loss of control of the helicopter.

DATES: Comments must be received by November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Assistant Chief Counsel, Attention: Rules Docket No. 93-SW-12-AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 624-5177, (fax) (817) 740-3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-SW-12-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-SW-12-AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

Discussion

On April 6, 1992, the FAA issued AD 92-09-06, Amendment 39-8231, (57 FR 31431, July 16, 1992), to establish a mandatory retirement life for the main transmission upper planetary carrier (carrier), part numbers (P/N) 214-040-077-007 and 214-040-077-101, and to require the use of special life reduction factors for operators using these aircraft for external load operations. That AD also required a 2,500 hours' time-in-service magnetic particle inspection (MPI). That action was prompted by testing and analysis by the manufacturer that showed this part is sensitive to high-power events. The requirements of that AD are intended to prevent fatigue failure of the carrier as a result of frequent high-power events, such as take-offs and external load lifts, that could result in failure of the main transmission and subsequent loss of control of the helicopter.

Since the issuance of that AD, the manufacturer has provided an improved method of maintaining the service life of the carrier using high-power events instead of hours of operation. The FAA has determined that this alternate method of maintaining the service life is simpler and more accurate, and therefore proposes that it be implemented. High-power events are takeoffs (at any gross weight) and external load lifts. Additionally, the FAA proposes that this AD be made applicable to the Model 214ST, which was not included in the previous AD.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92-09-06 to establish a mandatory retirement life for the carrier in terms of high-power events and to provide a more accurate and simpler method of maintaining the service life of the carrier using high-power events instead of hours of operation. This proposed AD would also apply to the Model 214ST that is equipped with the affected carrier and is also used for external load operations. This proposal would also eliminate the 2,500 hours' time-in-service MPI required by the previous AD.

The FAA estimates that 170 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $28,966 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $870,570, assuming inspection and modification of one-sixth of the fleet is required each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8231 (57 FR 31431, July 16, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 93–SW–12–AD. Supersedes AD 92–09–06, Amendment 39–8231, Docket No. 91–ASW–19.

Applicability: Model 214B, 214B–1, and 214ST helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the main transmission upper planetary carrier (carrier), part numbers (P/N) 214–040–077–007 and 214–040–077–101, as a result of frequent takeoffs and external load lifts (high-power events), that could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours' time-in-service after the effective date of this AD, accomplish the following:

(1) Create a component history card or an equivalent record for the affected carrier.

(2) Determine the actual time-in-service of the carrier from maintenance records, if possible. If the actual time-in-service cannot be determined, use a time-in-service of 900 hours per year. Prorate the hours for a partial year.

(3) For Model 214B and 214B–1 helicopters, determine and record the accumulated high-power events on the carrier as follows:

(i) If the number of high-power events is unknown, assign 12 high-power events for each hour time-in-service obtained in paragraph (a)(2).

(ii) If the number of high-power events is known, divide that number by 2 and record the resulting number as the total accumulated high-power events.

(4) For Model 214ST helicopters, determine and record the accumulated high-power events on the carrier as follows:

(i) If the number of high-power events is unknown, assign 11 high-power events for each hour time-in-service obtained in paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as the total accumulated high-power events.

(b) After the effective date of this AD, continue to record high-power events. For Model 214B and 214B–1 helicopters, divide the number of events as they occur by 2 and add the resulting number to the previously recorded sum; for Model 214ST helicopters, add the events as they occur to the previously recorded sum.

(c) Remove the carriers from further service in accordance with the following:

(1) For carriers with 59,400 or more high-power events on the effective date of this AD, remove the carrier from service on or before the accumulation of an additional 600 high-power events.

(2) For carriers with less than 59,400 high-power events on the effective date of this AD, remove the affected carrier from service on or before attaining 60,000 high-power events. This paragraph revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new service life for the carrier.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager of the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 29, 1993.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–21102 Filed 8–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–SW–07–AD]

Airworthiness Directives; Sikorsky Aircraft Model S–58T Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Sikorsky Aircraft Model S–58T series helicopters, that currently requires a one-time inspection of the engine combining gear box and angle gear box drive shaft assembly (drive shaft assembly) for cracks and loose balance weights. This action would require an initial and repetitive visual and fluorescent penetrant inspections of the drive shaft assembly for cracks and improperly installed rivets. This proposal is prompted by three reported incidents of loose or missing drive shaft assembly balance weights and two reported incidents of fatigue cracks on the drive shaft assembly near the balance weight rivet hole. The actions specified by the proposed AD are intended to prevent failure of the drive shaft assembly that could result in loss of power to the main rotor system, and a subsequent forced landing of the helicopter.

DATES: Comments must be received by November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–07–AD, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601. This information may be examined at

the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–07–AD, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion

On April 25, 1990, the FAA issued AD 90–10–02, Amendment 39–6590 (55 FR 18305, May 2, 1990), to require a one-time inspection of the engine combining gear box and angle gear box drive shaft assembly (drive shaft assembly), part number (P/N) 58350–10030–045, for cracks and loose balance weights. That action was prompted by two reported incidents of loose balance weights on the drive shaft assembly on the Model S–58T series helicopters. The requirements of that AD are intended to prevent failure of the drive shaft assembly that could result in loss of the helicopter.

Since the issuance of that AD, there have been three reported incidents of loose or missing drive shaft assembly balance weights and two reported incidents of fatigue cracks on the drive shaft near the balance weight rivet hole. The FAA has determined that an initial inspection for proper rivet installation and loose balance weights and a fluorescent penetrant inspection for cracks, followed by repetitive visual and fluorescent penetrant inspections, are necessary to maintain the airworthiness of the drive shaft assembly, P/N 58350–10030–045, as well as its subassembly, P/N 58350–10030–046. Additionally, the FAA has determined that a later configuration of the drive shaft assembly, P/N 58350–10030–047, as well as its subassemblies, P/N 58350–10030–048 and –049, should also be subject to initial and repetitive inspections. This proposal would require an initial and repetitive visual inspections and fluorescent penetrant inspections of both drive shaft assemblies and their subassemblies for cracks, and repair or replacement as necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–10–02 and require an initial inspection for proper rivet installation, loose balance weights, and visual and fluorescent penetrant inspection of all drive shaft assemblies. Thereafter, the proposal would require a repetitive visual inspection of all drive shaft assemblies every 25 hours' time-in-service. Additionally, the proposal would require a repetitive fluorescent penetrant inspection of unmodified drive shaft assembly, P/N 58350–10030–045 and subassembly –046, at intervals of 250 hours' time-in-service. The proposal would require repetitive fluorescent penetrant inspections of the modified drive shaft assembly, P/N 58350–10030–045 and subassembly –046, and a later configuration drive shaft assembly, P/N 58350–10030–047 and subassemblies –048, and –049, at intervals of 2,500 hours' time-in-service. Modified drive shaft assemblies covered by the proposal are those reworked in accordance with Sikorsky Overhaul Repair Instruction No. 58350–001, Revision A, dated November 18, 1992, (ORI).

The FAA estimates that 58 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 18 hours per helicopter to accomplish the proposed action and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $57,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6590 (55 FR 18305, May 2, 1990), and by adding a

new airworthiness directive (AD), to read as follows:

Sikorsky Aircraft: Docket No. 93–SW–07–AD. Supersedes AD 90–10–02, Amendment 39–6590, Docket No. 89–ASW–40.

Applicability: Model S–58T series helicopters, equipped with engine combining gear box and angle gear box drive shaft assembly (drive shaft assembly), part number (P/N) 58350–10030–045 and subassembly 58350–10030–046, or drive shaft assembly, P/N 58350–10030–047 and subassemblies 58350–10030–048 and –049, certificated in any category. The subassembly part numbers will appear adjacent to the 58350–10030–045 and 58350–10030–047 drive shaft assembly part numbers.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the drive shaft assembly, loss of power to the main rotor system, and a subsequent forced landing of the helicopter, accomplish the following:

(a) Within the next 25 hours' time-in-service after the effective date of this AD, or at the next removal of the drive shaft assembly, P/N 58350–10030–045 and subassembly –046, or P/N 58350–10030–047 and subassemblies –048 and –049, whichever comes first—

(1) Remove and inspect the drive shaft assembly for proper installation of rivets, loose balance weights, and cracks in accordance with paragraphs 2.A. (1), (2), and (4) of the Accomplishment Instructions of Sikorsky Alert Service Bulletin No. 58B35–31A, Revision A, dated February 17, 1993 (ASB).

(2) If a crack, loose balance weight, or improper rivet installation is found, replace the drive shaft assembly with an airworthy drive shaft assembly.

(b) Within the next 25 hours' time-in-service after compliance with paragraph (a) of this AD, and at every 25 hours' time-in-service thereafter, visually inspect the drive shaft assembly for cracks in accordance with paragraph 2.B. of the Accomplishments Instructions of the ASB.

(c) For drive shaft assembly, P/N 58350–10030–045 and subassembly –046, that have not been reworked in accordance with Sikorsky Overhaul Repair Instruction No. 58350–001, Revision A, dated November 18, 1992, (ORI), within 250 hours' time-in-service after the inspections required by paragraph (a) of this AD, and thereafter at intervals not to exceed 250 hours' time-in-service, remove and inspect the drive shaft assembly in accordance with paragraph 2.C. of the Accomplishment Instructions of the ASB.

(d) For drive shaft assembly, P/N 58350–10030–047 and subassemblies –048 and –049, and additionally, for drive shaft assembly, P/N 58350–10030–045 and subassembly –046, that have been reworked in accordance with the ORI, within 2,500 hours' time-in-service after the inspections required by paragraph (a) of this AD, and thereafter at intervals not to exceed 2,500 hours' time-in-service, remove and inspect the drive shaft assembly in accordance with subparagraph 2.D of the Accomplishment Instructions of the ASB.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 16, 1993.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–21103 Filed 8–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–72–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This proposal would require structural inspections of older airplanes. This proposal is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design service goal. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This proposal relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 727 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Comments must be received by October 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.

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93–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion.

This incident prompted the FAA to sponsor a conference on aging airplanes, which was attended by members of the aviation industry, other regulatory authorities, and the general public. The conferees agreed that, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, operators will continue to fly older airplanes rather than retire them. Because of the problems revealed by the accident described above, the consensus was that this aging fleet needed more attention and maintenance to ensure its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion-directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID), and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 727 series airplanes completed its work on Item (2) in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 727 fleet. This program is contained in Boeing Document Number D6–54929, "Aging Airplane Corrosion Prevention and Control Program—Model 727," dated July 28, 1989. The FAA issued AD 90–25–03, Amendment 39–6787 (55 FR 49258, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item (1), above, in March 1989. The Working Group's proposal is contained in Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification Program—Model 727," Revision C, dated December 11, 1989. The FAA issued AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), which requires the installation of the structural modifications identified in that document.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item (1). The Working Group has identified certain service difficulties that warrant mandatory inspections of the airplane. The Working Group considers that these service difficulties can be controlled safely in older airplanes by inspections and that because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions have occurred infrequently on older airplanes, and the Working Group has a very high degree of confidence in the ability of an inspections program to detect the damage before it adversely affects safety.

The Working Group reviewed 286 service bulletins related to the long term operation of the Model 727 series airplanes. Twelve of these service bulletins were recommended to the FAA for mandatory inspections action to ensure the successful long term operation of Model 727 series airplanes. The conditions addressed by these service bulletins, if not corrected, could result in degradation of the structural capabilities of the affected airplanes. The FAA has concurred with the Working Group's recommendations and has determined that AD action to mandate the inspections is warranted to assure the continued airworthiness of the Model 727 fleet.

The FAA has reviewed and approved Section 4 and Appendices A. and B. of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993. These sections of the document reference four service bulletins that describe inspections of the wings, three service bulletins that describe inspections of the fuselage, four service bulletins that describe inspections of the empennage, and one service bulletin that describes inspections of the attach fittings on the center engine inlet duct housing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections of certain structural components for cracks, corrosion, and other discrepancies, and repair or correction, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 688 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 512 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,374,080, or $28,160 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–72–AD.

Applicability: Model 727 series airplanes, as listed in Boeing Document D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections specified in Section 4 and Appendices A. and B. of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, within the times specified in paragraph (b) of this AD, and thereafter at intervals not to exceed those specified in the Boeing Document for each inspection.

(b) The maximum initial inspection times for the inspections contained in Section 4 and Appendices A. and B. of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, shall be prior to the later of the times specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The threshold for inspection time for the inspection specified in the Boeing Document, measured as a total (flight cycles or time-in-service, as appropriate) accumulated on the airplane; or

(2) The phase-in period for the inspection specified in the Boeing Document, measured from a date 15 months after the effective date of this AD.

Note 1: For the purposes of this AD, the "phase-in period" is defined as the allowable period to accomplish the initial inspection when the required threshold specified in paragraph (b)(1) of this AD is imminent or has elapsed.

(c) If any discrepant condition identified in the service bulletins (that are specified in the Boeing Document) is found as a result of the inspections required by this AD, prior to further flight accomplish the corresponding corrective action specified in the service bulletins.

(d) The terminating action for each inspection required by paragraph (a) of this AD consists of the accomplishment of the modification specified in the corresponding service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 25, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21064 Filed 8–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–73–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This proposal would require incorporation of certain structural modifications. This proposal is prompted by an evaluation by the Model 727 Structures Working Group, comprised of aircraft operators, manufacturers, and the FAA. This Working Group evaluated Boeing service bulletins that must be included as part of the "Aging Airplane Structural Modification Program." The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. The actions also reflect the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received by October 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–73–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion.

This incident prompted the FAA to sponsor a conference on aging airplanes, which was attended by members of the aviation industry, other regulatory authorities, and the general public. The conferees agreed that, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, operators will continue to fly older airplanes rather than retire them. Because of the problems revealed by the accident described above, the consensus was that this aging fleet needed more attention and maintenance to ensure its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion-directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID), and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 727 series airplanes completed its work on Item (2) in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 727 fleet. This program is contained in Boeing Document Number D6–54929, "Aging Airplane Corrosion Prevention and Control Program—Model 727," dated July 28, 1989. The FAA issued AD 90–25–03, Amendment 39–6787 (55 FR 49258, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item (1), above, in March 1989. The Working Group's proposal is contained in Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification Program—Model 727," Revision C, dated December 11, 1989. The FAA issued AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), which requires the installation of the structural modifications identified in the document.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item (1). The Working Group has identified certain service difficulties that warrant mandatory modification of the airplane. The Working Group considers that these modifications should be mandatory to assure continued operational safety of the Boeing Model 727 fleet that have exceeded their economic design service goal. The Working Group's proposal is contained in Boeing Document Number D6–54860, "Aging Fleet Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993.

The FAA has reviewed and approved Section 3.0 of this revision of the Boeing Document, which includes three new appendices, A., B., and C., which reference additional modifications described in 11 service bulletins. These modifications consist of three modifications to the wing, six modifications to the fuselage, one modification to the landing gear, and one modification to the engine support structure.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of Boeing Model 727 series airplanes at their economic design goal, or in some cases, at a specific time, in accordance with the Boeing Document described previously.

The "economic design goal" of an airplane is typically considered to be the period of service, after which a substantial increase in the maintenance costs is expected to take place in order to assure continued operational safety. The economic design goal for the Boeing Model 727 airplane is 20 years for structural problems associated with environmental deterioration, and 60,000 flight cycles for structural problems associated with fatigue damage.

The proposed compliance time for implementation of the mandatory structural modification program is upon reaching the applicable economic design goal or within 4 years after the effective date of the AD, whichever occurs later. This time interval was based upon the ability of the manufacturer to provide the parts necessary for the modification, and the time necessary to incorporate the modifications.

In the interim, safety will be provided by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include operators' ongoing basic maintenance programs; continuing inspections required by numerous AD's issued previously; the Supplemental Structural Inspection Document (SSID) program, mandated by AD 84–21–05, Amendment 39–4920 (49 FR 38931, October 2, 1984); the FAA's increased emphasis on surveillance of operators' maintenance programs and procedures; and the FAA's participation in programs to physically inspect high-time airplanes during scheduled heavy maintenance.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $260,155. This cost includes the price of modification kits, which is $186,180 per airplane, and the estimated number of work hours to accomplish the modifications, which is 1,345 work hours at $55 per work hour. It does not include downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,210,850 over the 4-year time period. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–73–AD.

Applicability: Model 727 series airplanes, as listed in Boeing Document D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Prior to reaching the incorporation thresholds listed in Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in section 3 and Appendices A., B., and C. of the Boeing Document.

Note 1: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 25, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21065 Filed 8–30–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 93N–0027]

Neurological Devices; Effective Date of Requirement for Premarket Approval of Cranial Electrotherapy Stimulators

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the cranial electrotherapy stimulator, a medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements and the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by November 1, 1993; requests for a change in classification by September 15, 1993. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to promulgate a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the

classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). FDA has in the past requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the cranial electrotherapy stimulator (CES).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).

A. Classification of the Cranial Electrotherapy Stimulator

In the **Federal Register** of September 4, 1979 (44 FR 51770), FDA issued a final rule (§ 882.5800 (21 CFR 882.5800)) classifying the CES into class III. The preamble to the proposal to classify the device (43 FR 55716, November 28, 1978) included the recommendation of the Neurological Device Classification Panel (the panel), an FDA advisory committee, regarding the classification of the device. The panel recommended that the device be in class III (premarket approval) for all uses. The panel members believed that there had been no clear demonstration of the effectiveness of CES's for treating any condition. In addition, the panel believed that it is not possible to establish an adequate performance standard for this device because the characteristics of the electrical current necessary for effectiveness are not known, and that general controls would not provide sufficient control over these characteristics. The panel believed that the device presents a potential unreasonable risk of illness or injury to the patient if the practitioner relies on the device and it is ineffective in treating the patient's illness. The panel recommended, therefore, that the device be subject to premarket approval to ensure that manufacturers demonstrate satisfactory performance of the device and thus ensure its safety and effectiveness.

The panel members based their recommendation on testimony presented to the Panel and on the results of a study performed by the National Research Council (NRC) on the safety and effectiveness of devices used for electroanesthesia and electrosleep (Ref. 32). After reviewing the results of 88 published studies on cranial electrotherapy stimulation, NRC concluded that the device had not been shown to be effective in treating any of the conditions for which it was prescribed.

In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval for 31 class III preamendments devices. Among other things, the notice describes the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using those factors, FDA has determined that the CES identified in § 882.5800 has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the CES has an approved PMA or a PDP that has been declared completed.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the cranial electrotherapy stimulator within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the CES during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d)(21 CFR 812.2(d)), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any CES which is: (1) Not legally on the market on or before that date; or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of PDP for the CES is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device

must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

C. Description of Device

A CES is a therapeutic device that applies electrical current to a patient's head to treat insomnia, depression, anxiety, or any other use for which these devices may have been promoted prior to enactment of the amendments. The device consists of a pulse generator which delivers an electrical stimulus conducted by electrical cables to electrodes in contact with the skin. It differs from electroconvulsive therapy devices in that electrical output is not intended for the purpose of causing an epileptiform convulsion.

Throughout the literature numerous terms and acronyms have been adopted to describe cranial electrotherapy, i.e., the application of electric current to the head for therapeutic effects. They include electrosleep, electrotherapeutic sleep, cranial electrotherapy stimulation, cerebral electrotherapy (CET), transcranial electrotherapy (TCE), transcerebral electrotherapy (TCET), and electric cerebral stimulation. For simplicity, the term "cranial electrotherapy stimulator (CES)" is used throughout this proposal, although references cited may employ other names.

There are a number of variations in the output waveform characteristics of CES's identified in the literature. A typical device may apply a waveform which is either monophasic or biphasic. The waveform may consist of rectangular pulses or may be sinusoidal. Current amplitude is typically in the range of 20 microamperes to 4 milliamperes. Typical use employs a pair of electrodes placed either directly on the eyelids or the brow with a second pair of electrodes placed over the mastoids. The forehead electrodes are usually cathodic, while those on the mastoids are usually anodic, although this arrangement is sometimes reversed. Treatment sessions cited in the literature vary from 15 minutes for 5 consecutive days to 2 hours daily for a period of several months. The average duration of exposure time in most studies was 30 minutes per session, repeated for 10 sessions. No systematic study was identified in the reviewed literature that attempted to determine the physiological effect of these various output waveform characteristics or the advantage of one combination over another.

D. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the CES to have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

E. Risk Factors

1. Worsening of the Condition Being Treated

If a patient is treated with a CES device in lieu of conventional therapy and the CES is not effective, the patient's psychological condition may worsen. There have been reported cases in which patients were adversely affected by treatment (refs. 2, 6, 7, and 16). Achte et al. (ref. 2) reported complications in 4 of their 24 patients in whom no direct effect on insomnia was observed. One case involved a patient suffering from hysterical neurosis who was reported to have suffered hysterical convulsions during treatment. Another patient was affected with a psychotic depression. Feighner et al. (ref. 6) reported that eight patients diagnosed with either primary anxiety neurosis or insomnia showed significant improvement initially, but within the first month after treatment seven of those patients relapsed. Furthermore, Feigher et al. reported that four of six patients who were diagnosed with primary depression were dropped from the study because of significant worsening of depressive symptoms. Two of these four patients were hospitalized due to active suicidal ideation. Similar experiences were reported in the remaining references listed above (refs. 7 and 16).

2. Headaches

Reported cases of adverse effects of CES devices include headaches following treatment with electrical stimulation (refs. 2, 18, and 34).

3. Potential Risk of Seizure

The degree of risk associated with various electrical stimuli has not been studied systematically. It is well known, however, that the transmission of electrical current through the brain can induce epileptiform seizures (ref. 1). Although no instances of seizure associated with CES's have been reported to FDA, the lower limits of electrical stimulation, which could potentially induce a seizure, have not been investigated.

4. Skin Irritation

Both electrodes and the conductive medium used with the electrodes may cause skin irritation and burns (ref. 17).

5. Blurred Vision

Pressure from the electrodes when using a mask may cause blurred vision after treatment (refs. 4, 9, 12, and 16).

6. Potential Adverse Effects From Electrical Stimulation of the Brain

The physiological effects associated with electrical stimulation of the brain by these devices have not been studied systematically; therefore, adverse effects which may be caused by these electrical stimuli remain unknown (refs. 14 and 15).

F. Benefits of the Device

Investigators who have studied the effectiveness of cranial electrotherapy stimulation have reported varying, and often contradictory, results. The majority of the literature published in the English language regarding cranial electrotherapy is an assortment of anecdotal commentary, historical background, uncontrolled studies, and technical reviews.

Most of the scientific studies reviewed by FDA contained insufficient information regarding their protocol and design. Most of the studies failed to satisfy one or more of the minimum design requirements for a valid scientific study. These requirements include complete protocol description, adequate controls, randomization, blinding methods, full patient accountability including followup data, and reliable safety and effectiveness evaluation criteria. After an extensive literature search, FDA identified a number of studies (refs. 3, 5, 6, 9, 10, 11, 13, 16, 19, 20, 21, and 23 through 32) in which some type of randomized controlled design was employed. However, many of these studies did not discuss in sufficient detail why the blinding methods employed were reliable, accurate, and without bias (refs. 3, 6, 9, 10, 16, 19, 23, 28, 29, 30, and 31). In some cases it was unclear whether both the operator and the evaluator were blinded. Other studies were found to have only single-blind designs (refs. 20, 24, and 27).

Six studies in the reviewed literature (refs. 5, 11, 21, 25, 26, and 32) described

randomized, controlled, double-blind designs. Four of these six studies, however, did not provide sufficient followup data to show whether any effect continued after the initial treatment (refs. 5, 21, 25, and 26). Ellison et al. (ref. 5) reported a statistically significant difference ($p<0.05$) between a stimulated group and a nonstimulated group of opiate dependent subjects in opiate withdrawal symptoms rated on the Himmelsbachs scale. However, the second experiment reported by Ellison et al. revealed that the withdrawal symptoms returned once the stimulation ceased, where four out of five subjects not stimulated for a second 24 hours experienced withdrawal symptoms within 3 to 4 hours of the cessation of stimulation.

Rosenthal (ref. 21) reported an evaluation of a CES in a double-blind clinical study of 22 patients diagnosed with neurotic anxiety and depression. Although Rosenthal reported that 8 of the 11 patients who received active treatment showed marked improvement, there was little information describing how the patients were clinically evaluated and what criteria were used to determine a rating of improvement. Additionally, no followup data were provided on those patients who received active treatment.

Schmitt et al. (ref. 25) investigated 60 individuals with alcoholism and other chemical dependencies to evaluate the effects of CES treatments on organic brain syndrome. Forty patients were assigned to either active (N=30) or sham (N=10) CES treatments and the remaining 20 patients participated in the standard treatment program. All patients were pretested and posttested on the Revised Beta Examination IQ Test and on three subscales of the Weschler Adult Intelligence Scale (WAIS). In addition to the lack of any followup data on these patients, Schmitt et al. provided no justification or validation of the Revised Beta Examination IQ Test and WAIS subscales for measuring cognitive brain dysfunction. Moreover, due to the small sample size the power of the administered tests appears to be inadequate to draw any conclusions regarding treatment effect.

Smith (ref. 26) studied the effects of cranial electrotherapy stimulation on 100 male patients with alcoholism in a randomized controlled study using the Revised Beta Examination IQ Test as the criterion variable for brain dysfunction. Smith provided insufficient information in terms of the statistical evaluation made, the validation of the measure used, or the explanation of results. Additionally, there were insufficient followup data and, therefore, no meaningful conclusions can be drawn from this study.

The remaining two studies (refs. 11 and 32) both included a 2-week followup to determine the effective duration of the treatment. Hearst et al. (ref. 11) studied 28 patients diagnosed with prominent anxiety and depression in a sham controlled, double-blind study to determine the effectiveness of cranial electrotherapy stimulation as a treatment modality.

Assessment of clinical change for symptoms of anxiety, insomnia, and depression was based on patient and physician global ratings and patient self-rating scores. Global ratings by both the physicians and the patients showed no statistically significant difference between the active group and the sham group, and consisted of somatic complaints, anxiety, depression, and overall status.

Hearst et al. used the National Institute of Mental Health self-rating symptom scales (SRSS) to evaluate individual symptoms of anxiety, depression, and somatic complaints. At the end of the 5-day treatment there was no statistically significant difference in the self-rating scores for anxiety or somatic symptoms between the active group and sham group. Although there was a statistically significant difference in the depression scores of the two groups at the end of treatment, that difference was no longer present at the 2-week followup.

Although Hearst incorporated the minimum design requirements for a valid scientific study, including double-blinding, randomized controls and followup data, significant information was not reported, especially with regard to the statistical methods used in assessing results. Similarly, neither the assessment criteria used for the global ratings nor the criteria used for the numeric results based on the SRSS were reported. Further, there was no indication that objective evaluation criteria were implemented to ensure reliable patient diagnoses.

Weiss (ref. 32) studied cranial electrotherapy stimulation in 10 volunteers who were diagnosed with sleep onset insomnia after being monitored with an electroencephalograph (EEG) for three successive nights in a sleep laboratory. Although the study was double-blinded with randomized controls, the authors failed to identify the electrical stimulus characteristics used. Although the data obtained from the study are encouraging with regard to the use of cranial electrotherapy stimulation as a potential treatment for sleep-onset insomnia, the small sample size would not demonstrate statistical significance for treatment effect.

FDA has concluded from a review of the scientific literature that the effectiveness of CES's has not been established by adequate scientific evidence.

G. Need for Information for Risk/Benefit Assessment of the Device

FDA classified the cranial electrotherapy stimulator into class III because it determined that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has determined that the special controls that may now be applied to class II devices as under the Safe Medical Devices Act of 1990 also would not provide such assurance. FDA has weighed the probable risks and benefits to the public from the use of the device and believes that the information obtained from studies which have evaluated CES's does not provide reasonable assurance of the safety and effectiveness of these devices. FDA believes that CES's should undergo premarket approval to establish effectiveness for any intended use and to determine whether the benefits to the patient are sufficient to outweigh any risk.

II. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the act and § 814.20 (21 CFR 814.20) of the procedural regulations for PMA's. Such a PMA should include a detailed discussion, with results of preclinical and clinical studies, of the risks identified above and the effectiveness of the device for which premarket approval is sought. In addition, the PMA must include all data and other information relative to: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the specific CES that is the subject of the application; and (3) summaries of all existing preclinical and clinical investigations on the safety and effectiveness of the device for which premarket approval is sought.

Valid scientific evidence to be included in the PMA should be obtained from well-controlled clinical studies, with detailed information from long-term followup of the study patients, in order to provide reasonable assurance of the safety and effectiveness

of the cranial electrotherapy stimulator for its intended use. In addition to the basic requirements described in § 814.20(b)(6)(ii) for a PMA, the description of the clinical protocol(s) should include sufficient detail to indicate whether the protocol(s) meet the following criteria deemed necessary by FDA to provide reasonable assurance of the device's safety and effectiveness for its intended use.

A. General Requirements

The study protocol for a CES must contain a clear statement of the hypothesis to be tested, including: (1) An identification of the stages of the disease or condition to be treated, based on a recognized classification, so that improvement or deterioration can be measured; (2) a statement whether the device is intended to be used alone or as an adjunctive treatment; (3) an identification of the physiological effects which the device produces; and (4) an identification of the primary and secondary variables to be analyzed to demonstrate effectiveness. The protocol should be supported by background literature on previous uses of the device and proposed mechanisms for its effect. The protocol should address the clinical utility of the device in terms of the risk-to-benefit ratio of the device for its intended use. Pilot studies are recommended to characterize the primary and secondary variables associated with the use of the device. Primary variables used for measurement of safety and effectiveness should be clearly defined.

B. Study Sample Requirements

The subject population must be well defined. Ideally, the study population should be as homogeneous as possible in order to minimize selection bias and reduce variability. Otherwise, an excessively large population may be necessary to achieve statistical significance. Independent studies producing comparable results at multiple study sites using identical protocols are necessary to demonstrate repeatability. Justification must be provided for the sample size used to show that a sufficient number of patients were enrolled to attain statistically and clinically meaningful results. Inclusion and exclusion criteria should be formulated based on the subjects' demographics and eligibility criteria. Eligibility criteria for the subject population should include the subjects' potential for benefit, the ability to detect a benefit in the subject, the absence of both contraindications and any competing risk, and assurance of subject compliance. In a heterogeneous sample, stratification of the patient groups participating in the clinical study may be necessary to analyze homogeneous subgroups and thereby minimize potential bias. All endpoint variables must be identified and a sufficient number of patients from each subgroup analysis must be included to allow for stratification by pertinent demographic characteristics.

C. Phases of Study

The study should consist of four phases: Enrollment, baseline, treatment, and followup. During enrollment the sampling methods and intervals must be predetermined and kept constant and identical for all patients at all sites. Patients should be screened to assure they conform to the established inclusion criteria and that their medication and other forms of therapy are stabilized. Once patients are enrolled, multiple baseline measurements should be obtained for all variables to be examined. The treatment phase should incorporate standard measures for each study variable. The primary study variables should be measured using several standard methodologies. Multiple measurements throughout the treatment phase may be necessary to determine sample variance. During each followup interval the variables should be measured again and analyzed for treatment effect. Followup must be complete and of sufficient duration to reasonably assure safety and effectiveness.

D. Study Design

The study should be a randomized double-blind design where all subjects of the study population are assigned concurrently by some method of randomization to either an active group or a placebo control group. The preferred method for subject enrollment into a study is randomization by a central monitor. The individuals responsible for the analysis and interpretation of the data obtained from the study should not have any pre-exposure to the study population. Blinding, therefore, is needed both of the subject population and of those individuals whose study functions require interaction with the subject population. All potential sources of error, including selection bias, information bias, misclassification bias, comparison bias, or other potential bias must be evaluated and minimized. The study must clearly measure any possible placebo effect. Treatment effects should be based on objective measurements. The validity of these measurement scales must be shown to ensure that the treatment effect being measured reflects the intended use of the device.

Adherence to the protocol by subjects, investigators, and all other individuals involved is essential and requires monitoring to assure patient compliance, physician compliance, and blinding. Subject exclusion due to dropout or lost to followup greater than 20 percent may invalidate the study due to bias potential; therefore, initial patient screening and intensive compliance of the final subject population will be needed to minimize the dropout rate. All dropouts must be accounted for and the circumstances and procedures used to ensure patient compliance must be well documented.

Endpoint assessment cannot be based solely on a statistical value. Instead, the clinical outcome must be carefully defined to distinguish between the evaluation of the proper function of the device versus its benefit to the subject. Statistical significance and clinical utility of the device must be demonstrated by the statistical results. However, under certain restricted circumstances, a clinically significant result may be acceptable without statistical significance.

Observation of all potential adverse effects must be recorded and monitored throughout the study and the followup period. All adverse effects must be well documented and evaluated.

E. Statistical Analysis Plan

The involvement of an expert in biostatistics is necessary to provide proper guidance in the planning, design, conduct, and analysis of a clinical study, and to estimate the required number of patients based on the number of variables to be examined, the subgroup analyses to be conducted, and the expected treatment effect. The study should be designed to obtain statistical and clinical significance of the primary and secondary variables at the alpha level of 0.05 and a beta of 0.20 for each primary variable. Nonparametric tests may be required when analyzing data if the basic assumptions for parametric tests cannot be met.

In addition to this generalized guidance, the investigator is expected to incorporate additional requirements necessary for a well-controlled scientific study. These additional requirements are dependent on what the investigator intends to measure or what the expected treatment effect is based on the intended use of the device.

Applicants should submit any PMA in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application." The guideline is available upon request from Document

Control, Center for Devices and Radiological Health, Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850.

III. Request for Comments With Data

FDA is providing a 60-day period for interested persons to submit to the Dockets Management Branch (address above) written comments regarding this proposal and its findings. Two copies of any comments are to be submitted, except that individual may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the CES is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 15,1993.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the CES is submitted, the agency will, by March 14, 1994, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Abrams, R., Electroconvulsive Therapy, Oxford University Press, pp. 92–116, 1988.
2. Achte, K. A. et al., "On Electrosleep Therapy," Psychiatric Quarterly, 42:17–27, 1968.
3. Barabasz, A. F., "Treatment of Insomnia in Depressed Patients by Hypnosis and Cerebral Electrotherapy," American Journal of Clinical Hypnosis, 19(2):120–122, 1976.
4. Brown, C.C., "Electroanesthesia and Electrosleep," American Psychologist, 30(3):402–410, 1975.
5. Ellison, F. et al., "Opiate Withdrawal and Electro-stimulation: Double-Blind Experiments," Encephale, 13(4):225–229, 1987.
6. Feighner, J. P. et al., "Electrosleep Therapy: A Controlled Double-Blind Study," Journal of Nervous and Mental Disease, 157:121–128, 1973.
7. Flemenbaum, A., "Cerebral Electrotherapy (Electrosleep): An Open Clinical Study With a Six-Month Followup," Psychosomatics, 15:20–24, 1974.
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9. Frankel, B. L. et al., "Ineffectiveness of Electrosleep in Chronic Primary Insomnia," Archives of General Psychiatry, 29:563–568, 1973.
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12. Koegler, R. R. et al., "Medical and Psychiatric Use of Electrosleep: Transcerebral Electrotherapy," Diseases of the Nervous System, 32(2):100–104, 1971.
13. Kotter, G. S. et al., "Inhibition of Gastric Acid Secretion in Man by the Transcranial Application of Low Intensity Pulsed Current," Gastroenterology, 69(2):359–363, 1975.
14. Krauthamer, V., "Modulation of Conduction at Points of Axonal Bifurcation by Applied Electric Fields," Institute of Electrical and Electronics Engineers Transactions on Biomedical Engineering, 37(5):515–519, 1990.
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16. Levitt, E. A. et al., "A Clinical Trial of Electrosleep Therapy With a Psychiatric Inpatient Sample," Australian and New Zealand Journal of Psychiatry, 9(4):287–290, 1975.
17. Marshall, A. G. and C. E. Izard, "Cerebral Electrotherapy Treatment of Depressions," Journal of Consulting Clinical Psychology, 42:93–97, 1974.
18. Matteson, M. T. and J. M. Ivancevich, "An Exploratory Investigation of CES as an Employee Stress Management Procedure," Journal of Health and Human Resources Administration, Summer 1986.
19. Moore, J. A. et al., "A Double-Blind Study of Electrosleep for Anxiety and Insomnia," Biological Psychiatry, 10(1):59–63, 1975.
20. Passini, F. et al., "The Effects of Cerebral Electric Therapy (Electrosleep) on Anxiety, Depression, and Hostility in Psychiatric Patients," Journal of Nervous and Mental Disease, 163(4):263–266, October 1976.
21. Rosenthal, S. H., "Electrosleep: A Double-Blind Clinical Study," Biological Psychiatry, 4(2):179–185, 1972.
22. Rosenthal, S. H. and N. L. Wulfsoh, "Electrosleep: A Preliminary Communication," Journal of Nervous Mental Disease, 151:146–151, 1970.
23. Ryan, J. J. and G. T. Souheaver, "Effects of Transcerebral Electrotherapy (Electrosleep) on State Anxiety According to Suggestibility Levels," Biological Psychiatry, 11(2):233–237, 1976.
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27. Smith, R. B. and L. O'Neill, "Electrosleep in the Management of Alcoholism," Biological Psychiatry, 10(6):675–680, 1975.
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33. "An Evaluation of Electroanesthesia and Electrosleep," NRC, FDA Contract 70–22, Task Order No. 20 (NTIS PB 241305).
34. FDA, Medical Device Reports.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section

1(b) of Executive Order 12291 and finds that this proposal would not be a major rule as specified in the Order. The agency believes that only a small number of firms will be affected by this proposed rule, and the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Comments

Interested persons may, on or before November 1, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before September 15, 1993, submit to the Dockets Management Branch a written request to change the classification of the CES. Two copies of any request are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 882 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR part 882 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 882.5800 is amended by revising paragraph (c) to read as follows:

§ 882.5800 Cranial electrotherapy stimulator.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [date 90 days after date of publication in the **Federal Register** of the final rule based on this proposed rule], for any cranial electrotherapy stimulator that was in commercial distribution before May 28, 1976, or that has on or before [date 90 days after date of publication in the **Federal Register** of the final rule based on this proposed rule] been found to be substantially equivalent to the cranial electrotherapy stimulator that was in commercial distribution before May 28, 1976. Any other cranial electrotherapy stimulator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: August 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21078 Filed 8–30–93; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50603B; FRL–4172–2]

RIN 2070–AB27

Polymer of Substituted Aryl Olefin; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as polymer of substituted aryl olefin which is the subject of premanufacture notice (PMN) P–85–612, and which is subject to a TSCA section 5(e) consent order issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA by September 30, 1993.

ADDRESSES: All comments must be sent in triplicate (with additional sanitized copies if confidential business information (CBI) is involved) to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPPTS–50603B. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit VII. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–85–612 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 721. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take

action, section 5(g) of TSCA requires EPA to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. In the Federal Register of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that Federal Register document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–85–612 and a TSCA section 5(e) consent order issued by EPA, in the Federal Register of July 20, 1992 (57 FR 31963). EPA received adverse comments following publication. Therefore, as required by § 721.160, the final SNUR for P–85–612 is being withdrawn elsewhere in this issue of the Federal Register and this proposed rule on the substance is being issued.

The commenter was the submitter of P–85–612 who is also subject to the section 5(e) consent order. The order subjects the PMN submitter to certain worker protection, hazard communication, disposal, and use restrictions. The section 5(e) consent order allows distribution of the substance only if the commenter's customers agree to similar hazard communication and worker protection requirements and also agree not to further distribute the substance unless it has been encapsulated into a plastic matrix. The commenter notes that the restrictions in the consent order do not apply to its customers once the substance has been incorporated into a plastic matrix.

However, the direct final SNUR for P–85–612 would have applied to all manufacturers, importers, and processors even when the substance is incorporated into a plastic matrix. The commenter noted that the direct final SNUR as written would have applied more broadly than the consent order and requested that EPA change the SNUR to more accurately reflect the restrictions in the section 5(e) consent order.

EPA concurs with the commenter's analysis and has added language in this proposed rule to exclude SNUR reporting requirements once the substance has been incorporated into a plastic matrix.

EPA is not soliciting and will not respond to comments on any of the other SNURs that were published in the July 20, 1992 Federal Register because those rules became final effective September 19, 1992. The supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the Federal Register of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under part 721 subpart E.

PMN Number P–85–612

Chemical name: (generic) Polymer of substituted aryl olefin.

CAS number: Not available.

Effective date of section 5(e) consent order: September 6, 1985.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance, that the impurity present in this substance may present an unreasonable risk of injury to health, that the substance is expected to be produced in substantial quantities, and that there may be significant or substantial human exposures.

Toxicity concern: Similar chemicals have been shown to cause liver, kidney, neurotoxic, reproductive, and teratogenic effects in test animals.

Recommended testing: The Agency has determined that a 28–day range finding test and a four dosage level 90–day subchronic oral toxicity test on the substance would help characterize possible liver, kidney, neurotoxic, reproductive, and teratogenic effects (40 CFR 798.2650).

CFR citation: 40 CFR 721.6820.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on July 20, 1992, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after July 20, 1992, will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available

in the public record for this proposed rule (OPPTS–50603B).

VII. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50603). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

IX. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this proposed rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 18, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.6820 to subpart E to read as follows:

§ 721.6820 Polymer of substituted aryl olefin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of substituted aryl olefin (PMN P–85–612) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply once the substance has been encapsulated into a plastic matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), and (g)(1)(vi), (g)(2), (g)(4), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (c)(2), and any disposal associated with any use, or with manufacturing or processing associated with any use other than by means of recycling.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

[FR Doc. 93–21080 Filed 8–30–93; 8:45 am]

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40 CFR Part 52

[DC 7-1-5873; DE 14-1-5874; MD 19-1-5875; VA 29-1-5877; VA 26-1-5876; A-1-FRL-4703-4]

Approval and Promulgation of Air Quality Implementation Plans; Commitment To Adopt an Inspection and Maintenance Program; Delaware, Maryland, Virginia, and the District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed conditional approval of commitments to adopt inspection and maintenance (I/M) Programs by Delaware, Maryland, Virginia and the District of Columbia.

SUMMARY: EPA is proposing to conditionally approve State Implementation Plan (SIP) revisions submitted by the States of Delaware and Maryland, the Commonwealth of Virginia, and the District of Columbia. These revisions each provide for the adoption and implementation of a vehicle inspection and maintenance (I/M) program meeting all requirements of the Clean Air Act and EPA's I/M regulation. The intended effect of this action is to conditionally approve these SIP revisions under section 110(k)(4) of the Clean Air Act as amended in 1990. These proposed conditional approval is based upon a commitment by the Governor of each of the aforementioned states, or his designee, to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and upon submittal of a schedule of program implementation. A full SIP revision including legal authority to implement the program is required by November 15, 1993.

DATES: Comments must be received on or before September 30, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Written comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of documents (for each state to which such documents pertain) relevant to this action are available for public inspection during normal business hours at the following offices: Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover Delaware 19903; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave., SE., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland, 21224; Virginia Department of Environmental Quality, Ninth Street Office Building, P.O. Box 10089, Richmond Virginia, 23240.

FOR FURTHER INFORMATION CONTACT:

Brian K. Rehn, (215) 597-4554.

SUPPLEMENTARY INFORMATION:

Clean Air Act Requirements

The Clean Air Act as amended in 1990 (the Act) requires States to make changes to improve existing programs or implement new ones. Section 182(a)(2)(B) required any marginal or worse ozone nonattainment area with an exiting I/M program that was part of a SIP, or any area that was required previously by the Clean Air Act as amended in 1977 to implement an I/M program, to immediately submit a SIP revision to bring the program up to the level of past EPA guidance or to what had been committed to previously in the SIP, which was more stringent. Ozone and carbon monoxide nonattainment areas that are classified as moderate and worse were also required to improve existing programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement an I/M program, regardless of previous requirements.

In addition, EPA was directed to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. All areas required by the Act to have an I/M program were to incorporate this guidance into the SIP. Ozone nonattainment areas classified as serious or worse with populations greater than 200,000, and CO nonattainment areas with design classifications above 12.7 parts per million (ppm) and populations of 200,000 or more, in addition to Metropolitan Statistical Areas (MSAs) with populations of 100,000 or more in the Ozone Transport Region (OTR), were required to meet EPA guidance for "enhanced" I/M programs. These areas were required to submit a SIP revision incorporating an enhanced I/M program by November 15, 1992.

Areas Required To Implement I/M Under Clean Air Act Requirements

The Clean Air Act and EPA's I/M regulation list specific requirements defining minimum geographic coverage related to I/M program implementation. The following is a list of I/M program areas encompassed by this action.

Delaware

Under the requirements in EPA's I/M regulation with regard to metropolitan areas in the OTR having populations over 100,000, the Delaware portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD Consolidated Metropolitan Statistical Area (CMSA) must implement enhanced I/M on a county-wide basis. This encompasses New Castle and Kent Counties. Additionally, Delaware has committed to implement enhanced I/M in Sussex County.

Maryland

Under the requirements EPA's I/M regulation with regard to metropolitan areas in the Ozone Transport Region (OTR) having populations over 100,000, Maryland must implement I/M in several metropolitan areas. This entails an enhanced program in the Maryland portions of the Washington, DC-MD-VA MSA and the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD CMSA, along with the entire Baltimore and Hagerstown MSAs, on a county-wide basis. These include the following counties/localities: the Counties of Anne Arundel, Baltimore, Carroll, Harford, Howard, Montgomery, Prince George's, Queen Anne's, Calvert, Charles, Frederick, Washington and Cecil; and the City of Baltimore.

Virginia

Virginia is required to implement an enhanced I/M program on a county-wide basis in the Virginia portion of the Washington, DC-MD-VA MSA under the OTR requirements of EPA's I/M regulation. This includes the following counties/localities: the Counties of Arlington, Fairfax, Loudoun, Prince William and Stafford and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Additionally, Richmond-Petersburg is classified as a moderate ozone nonattainment area that is situated outside of the OTR, and is therefore required to have a basic I/M program in the urbanized portion of the MSA. It should be noted, however, that the Virginia Department of Environmental Quality, then the Department of Air Pollution Control, submitted a formal request to EPA to redesignate Richmond from moderate ozone nonattainment to

attainment in November of 1992. EPA is reviewing this request and will take separate action upon it. If this redesignation request is approved, Virginia will no longer be required to implement an I/M program in Richmond and will withdraw its committal SIP revision for that area.

District of Columbia

The District is required to implement enhanced I/M pursuant to the requirements in EPA's I/M regulation for an MSA in the OTR having a population of 100,000 or more.

Basis for Conditional Approval

EPA believes conditional approvals are appropriate in this case because states could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until EPA's I/M regulation was adopted as a final rule, which occurred on November 5, 1992. EPA believes that states can adopt revised I/M program plans within one year of the issuance of EPA's final rule. As a condition of EPA's proposed approval, EPA's I/M regulation requires that by November 15, 1993, states submit a complete SIP revision containing all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The proposed conditional approval in this action should not be interpreted as an approval of the program design features. In order to be considered complete and fully approvable, the 1993 submittal must include an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable performance standard, as well as other requirements.

I/M Regulation Requirements

EPA's I/M regulation required each State that must implement an I/M program to submit, by November 15, 1992, a SIP revision including two elements: a commitment from the Governor (or his designee) to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and a schedule of implementation of specific milestones. These materials (commitment letter and schedule of milestones) are available for review and are included in the docket file related to this action. A summary of the milestones and dates submitted by each State referenced by this notice can be found in Table 1.

TABLE 1.—MILESTONE DATES FOR IMPLEMENTATION OF INSPECTION AND MAINTENANCE PROGRAMS

Description of milestone	Delaware (enhanced)	Maryland (enhanced)	Washington DC (enhanced)	Northern Virginia (enhanced)	Richmond Virginia (basic)
Passage of enabling legislation/legal authority.	March 1, 1993	Adopted in 1991 legislative session.	January 1, 1993 ...	May 1, 1993	May 1, 1993.
Proposal/public notice of program regulations.	January 1, 1993 ...	Spring 1993	September 8, 1993	November 15, 1993[2].	November 15, 1993.[2]
Conduct public hearing on program regulations.	No milestone provided[1].	No milestone provided[1].	No milestone provided[1].	February 1, 1994[3]	January 17, 1994.[3]
Promulgation of final regulations	March 31, 1993	Fall 1993	October 15, 1993 .	April 15, 1994[4]	February 15, 1994.[4]
Issuance of final request(s) for proposal.	December 15, 1992.	Release June 16, 1992.	October 1, 1993 ...	November 15, 1993.	No milestone provided.[1]
Submit program regulations and enabling legislation to EPA as a formal SIP submittal.	November 15, 1993.	No milestone provided[1].	No milestone provided[1].	November 15, 1993[5].	November 15, 1993.[5]
Issue final specifications and test procedures.	December 1, 1992	No milestone provided[1].	October 1, 1993 ...	November 15, 1993.	November 15, 1993.
Complete licensing/certification of stations/inspections.	April 1, 1994	December 31, 1994.	January 1, 1995 ...	November 15, 1994.	March 15, 1994.
Award contract for program operation ..	No milestone provided[1].	Spring 1993	No milestone provided[1].	No milestone provided[1].	No milestone provided.[1]
Commencement of mandatory testing for subject vehicle fleet.	July 1, 1994	January 1, 1995 ...	July 1, 1994	January 1, 1996[6] .	July 1, 1994.
Testing utilizing full stringency cutpoints begins.	July 1, 1994	January 1, 1998 ...	January 1, 1996 ...	No milestone provided[1].	No milestone provided.[1]
Realize emissions reductions equivalent to EPA's performance standard.	No milestone provided[1].	January 1, 2000 ...	No milestone provided[1].	January 1, 1998 ...	No milestone provided.[1]
Submit a formal SIP revision to EPA incorporating federal an on-board diagnostics inspection into the program (pending issuance of EPA's OBD rule).	24 months after final rule adopted.	No milestone provided[1].	No milestone provided[1].	No milestone provided[1].	No milestone provided.[1]

Notes:
[1] The State did not make a commitment for this milestone.
[2] Virginia's schedules for both Northern Virginia and Richmond include milestones and dates for proposal and issuance of public notice of emergency regulations by September 1, 1993.
[3] Virginia's schedules for both Northern Virginia and Richmond include milestones and dates for conducting public hearings on emergency regulations by October 1, 1993.
[4] Virginia's schedules for both Northern Virginia and Richmond include milestones and dates for promulgation of emergency regulations by November 10, 1993. Final regulations are to be submitted upon their adoption by the Commonwealth.
[5] Virginia's schedules for Northern Virginia and Richmond specify that emergency regulations will be submitted at this date.
[6] Mandatory testing of 30% of affected vehicles scheduled to begin January 1, 1995.

State Submittal

Delaware conducted a public hearing on its commitment on December 20, 1992 and formally submitted it as a committal SIP on January 11, 1993. The District of Columbia conducted a public hearing on its commitment on October 27, 1992 and submitted its committal SIP on January 7, 1993. Maryland conducted a public hearing on its commitment on November 5, 1992 and submitted a committal SIP on November 13, 1992. Virginia conducted public hearings on its commitment on December 21, 1992 and submitted its committal SIP on January 19, 1993.

The submittal from each of these States includes a commitment to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation and the Act, and a schedule of implementation of important program milestones.

Statement of Approvability

Under the authority of Secretary Edwin H. Clark, II, the State of Delaware Department of Natural Resources and Environmental Control submitted an I/M committal SIP revision on January 11, 1993. On November 13, 1992, under the authority of Secretary Robert Perciasepe, the State of Maryland Department of the Environment submitted an I/M committtal SIP revision. Under the authority of Governor L. Douglas Wilder, the Commonwealth of Virginia Department of Environmental Quality, then the Department of Air Pollution Control, submitted an I/M committal SIP revision on January 19, 1993. On January 7, 1993, under the authority of Deputy Director Joan Parrot-Fonseca, the District of Columbia submitted its I/M committal SIP revision. These revisions were submitted to the EPA to satisfy the requirements of EPA's I/M regulation and the Clean Air Act as amended in 1990. the Agency has reviewed these submittals and proposes to conditionally approve them under section 110(k)(4) of the Act. In the event that a State fails to submit the full I/M program submittal, due November 15, 1993, EPA proposes in the alternative to disapprove the I/M commitment as failing to comply with section 110(k)(4).

If EPA takes final conditional approval action on the commitment the State must meet its commitment to adopt full inspection and maintenance rules by November 15, 1993 and must submit these rules to EPA within the time specified in its schedule. If after EPA has conditionally approved this commitment, the State fails to adopt and submit the required rules to EPA by November 15, 1993, this approval will become a disapproval upon EPA notification of the State by letter. At that time, this commitment will no longer be a part of the approved SIP for that State. EPA will subsequently publish a notice in the notice section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits the required legislative authority and rules to EPA within the applicable timeframe, the conditionally approved commitment will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If EPA issues a final disapproval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA publishes a notice of final disapproval or at the time EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not make an approvable submittal and EPA does not approve the submittal on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or emissions offset provisions. Under section 110(m) EPA has discretionary authority to impose sanctions at any time after a final disapproval. In addition, the final disapproval triggers the federal implementation plan requirement under section 110(c).

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to conditionally approve the I/M commital SIP revisions submitted by Delaware, Maryland, Virginia and the District of Columbia under section 110(k)(4) of the Act. If a State fails to meet the November 15, 1993 deadline for submittal of the full SIP for an I/M program, EPA proposes in the alternative to disapprove the I/M committal SIP for that State for failing to comply with section 110(k)(4).

The Agency has reviewed these requests for revision of the federally-approved State Implementation Plans for each of these States for conformance with the provisions of the Clean Air Act, as amended on November 15, 1990. Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the action will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approval of SIP submittals under sections 110 and 301 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing or has committed to impose in the future. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If EPA issues a final disapproval or the conditional approval is converted to a disapproval under section 110(k), based on a State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the event that EPA disapproves the State submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing State requirements nor does it substitute a new federal requirement.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Administrator's decision to approve or disapprove these I/M committal SIP revisions as submitted by Delaware, Maryland, Virginia and the District of Columbia will be based on whether they meet the requirements of section 110(a)(2) (A)–(K), 110(a)(3), and Part D of the Clean Air Act, as amended in 1990, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401–7671q.

Dated: June 4, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 93–21125 Filed 8–30–93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA22

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 22, 1993, the Department of the Interior (the Department) issued a notice of proposed rulemaking (58 FR 39328) to reopen the comment period on a proposed rule revising the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, as amended (CWA), or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The Department is extending the period for comment on the proposed rule from September 7, 1993, to September 22, 1993.

DATES: Comments on the proposed rule (58 FR 39328) will be accepted through Wednesday, September 22, 1993.

ADDRESSES: Comments should be sent to the Office of Environmental Affairs, ATTN: NRDA Rule, room 2340, Department of the Interior, 1849 C Street NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mary C. Morton, Cecil Hoffmann, or David Rosenberger at (202) 208–3301.

SUPPLEMENTARY INFORMATION: On July 22, 1993, the Department issued a notice of proposed rulemaking to reopen the comment period on a proposed rule revising the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the CWA, or a release of a hazardous substance under the CERCLA. On April 29, 1991, the Department issued a notice of proposed rulemaking (56 FR 19752) to revise the natural resource damage assessment regulations. The proposed rule would revise the type B rule to comply with a court decision that held that: Restoration costs are the preferred measure of natural resource damages; and all reliably calculated lost values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in estimating those values. The court also requested clarification of whether the Department intended the natural resource damage assessment regulations to apply to any resources not actually owned by the government.

The comment period was originally set to expire on June 28, 1991, but was extended to July 16, 1991. By the July 22, 1993 notice, the Department reopened the comment period to accept additional comments, to be submitted on or before September 7, 1993.

The Department has received several requests from the public for additional time to comment on this proposed rule. The Department is extending the comment period to September 22, 1993.

Bonnie R. Cohen,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 93–21116 Filed 8–30–93; 8:45 am]

BILLING CODE 4310-RG-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–238, RM–8305]

Radio Broadcasting Services; Templeton, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Radio Representatives, Inc., requesting the allotment of FM Channel 263A to Templeton, California, as that community's first local FM service. Coordinates used for this proposal are 35–34–45 and 120–42–41.

DATES: Comments must be filed on or before October 18, 1993, and reply comments on or before November 17, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Radio Representatives, Inc., Attn: Gloria Dawn Patterson, 1416 Hollister Lane, Los Osos, CA 93402.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–238, adopted August 9, 1993, and released August 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter

is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21162 Filed 8–30–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 920944–2302; I.D. 060393A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change in observer coverage; request for comments.

SUMMARY: NMFS proposes a change in observer coverage such that all vessels equal to or greater than 60 feet length overall (LOA) and all shoreside processing facilities would be required to accommodate a NMFS-certified observer while engaged in fishing for, or receiving groundfish from, Community Development Quotas (CDQ) in the Bering Sea and Aleutian Islands management area (BSAI) during 1993. This action is necessary to effectively monitor each allocated CDQ.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, September 15, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (Attn: Lori Gravel), or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The CDQ program was created to help develop commercial fisheries in communities on the Bering Sea coast. Qualifying communities are assigned a portion of the overall program allocation of pollock. Each of the portions represents a relatively small quota, which must be individually monitored. Observer estimates of groundfish catch and at-sea discards are a critical component of the CDQ harvest estimate. NMFS cannot estimate adequately the harvest of these vessels and shoreside processing facilities unless each participating vessel equal to or greater than 60 feet LOA has an observer onboard to estimate the catch. This need for a catch estimate from each participating vessel necessitates additional observer coverage to manage the fisheries effectively.

NMSF estimates that this requirement will increase the monthly cost for observer coverage on vessels greater than or equal to 60 feet LOA, but less than 125 feet LOA. The increase while engaged in CDQ fishing is expected to be from $1,800.00 to $6,000.00. Six vessels would be effected by this change in observer coverage. Shoreside processing plant costs will increase if CDQ fishing takes place in a month when tonnage received is less than that where observer coverage is normally required. One shoreside processing is impacted by this requirement with the increase in cost the same as that for the vessels. The 1993 participants in this fishery are expected to be the same as in 1992.

The Director of the Alaska Region, NMFS, as authorized under §§ 675.25(c)(1)(i) and (c)(2)(i), proposes to require all vessels equal to or greater than 60 feet LOA and all shoreside processing facilities to accommodate a NMFS-certified observer while engaged in fishing for, or receiving groundfish from, CDQs, except catcher vessels delivering only unsorted codends to observed motherships.

Classification

This action is taken under 50 CFR 675.25 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21133 Filed 8–30–93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 167
Tuesday, August 31, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

BlueGrass Bound Timber Sale; Idaho Panhandle National Forest, Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, and road construction and reconstruction, and road closures in the United States portion of the Boundary Creek watershed. The Boundary Creek watershed contains all or portions of Bog Creek, Blue Joe Creek, Grass Creek, and Saddle Creek. The project area is located in the most northern portion (of the U.S. side) of the Selkirk Mountains, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, Idaho. Part of the proposed project's activities are within the Saddle Mountain Roadless Area (1–154).

The proposed actions to harvest and reforest timber stands, construct and reconstruct roads, and close roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are to improve timber productivity, salvage existing and anticipated tree mortality, provide part of the supply of wood products needed to meet societal demands. This project-level EIS will tier to the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Idaho Panhandle National Forests, including timber and road management.

DATES: Written comments and suggestions should be received within 45 days following publication of this notice.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list of Debbie Norton, District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Route 4, Box 4860, Bonners Ferry, Idaho, 83805–9764.

FOR FURTHER INFORMATION CONTACT: Dale Deiter, EIS Team Leader, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Phone (208) 267–5561.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 3000 acres of forested land which has been designated as suitable for timber management by the Idaho Panhandle Forest Plan. The timber harvest operations and general administration of National Forest lands will require reconstruction of approximately 15 miles of existing roads, and construction of approximately 10 miles of new road and 3 miles of snow roads. A small amount of temporary road may also be needed. Road closures involve closing all new roads an undetermined number of miles of existing roads to motorized traffic between March 15 and November 15 to provide secure habitat for grizzly bear.

There are a variety of purposes for timber harvest and reforestation in the BlueGrass Bound project area; the primary purposes are: (1) To improve timber productivity by replacing slow-growing mature and overmature stands with younger, more vigorously growing trees; (2) salvage existing and anticipated tree mortality; and (3) provide part of the supply of wood products needed to meet societal demands. The primary purpose of the road construction is to facilitate access to the timber stands to be harvested. Road reconstruction can facilitate access and improve watershed conditions. The primary purpose of closing roads is to meet Forest Plan grizzly bear security requirements although it has the added benefit of minimizing road maintenance costs and sedimentation.

The project area consists of approximately 42,000 acres of National Forest land located in all or portions of sections 25 and 36 T65N, R5W; sections 8–17, 20–36 T65N, R4W; sections 1–6, 8–12, 14–17, 21–23 T64N, R4W; sections 7–36 T65N, R3W; and sections 7–10, 15–22, 29–30 T65N, R2W, Boise Meridian. The majority of the harvesting would occur within Grass Creek, Saddle Creek, and the reaches of Boundary Creek below the confluence with Saddle Creek.

The decision to be made is what, if anything, should be done in the BlueGrass Bound project area to: (a) Increase timber productivity and contribute to the Forest's sustained yield to timber products, (b) dispose of slash and reforest harvested lands, (c) develop and manage the road system to facilitate removal of timber and reforest stands.

The Idaho Panhandle Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed timber harvest and reforestation would occur within Management Areas 2, 7, and 16. Timber harvest would occur only on suitable timber land. Road construction and reconstruction would occur in 2 and 7 plus Management Area 16 when crossing streams. Below is a brief description of the applicable management direction.

Management Area 2—Manage identified grizzly bear population while providing for the long-term growth and production of commercially valuable wood products.

Management Area 7—Manage identified caribou and grizzly bear habitat to support the IPNF's share of a recovered caribou population, while providing for the production of commercially valuable wood products.

Management Area 9—Manage National Forest lands to maintain and protect existing improvements and resource productive potential.

Management Area 16—Manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to

achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct and indirect cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered, including the effects of timber harvesting in Canada's portion of the Boundary Creek watershed. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur during September and October of 1993. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Public meetings will be held, but have not been scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Idaho Panhandle Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Some public comments have already been identified from initial interdisciplinary review of the timber sale proposal. The following significant issues have been identified so far:

1. Threatened, Endangered, and Sensitive plant and animal species.
2. Watershed and Fisheries.
3. Roadless.
4. Visual Quality.

Other environmental elements that are commonly studied when proposing timber harvesting and road construction on this district include: Soils, Unique Characteristics of the Geographic Area, Edge, Corridors, Fragmentation, Growth and Yield, Forest Health, Noxious Weeds, Old Growth, Wetlands, Management Indicator Wildlife Species, Snag Dependent Species, Community Stability, Economics, Heritage Resources, Minerals, Man-made Improvements, Public Health and Safety, Recreation, Road Densities, Special Uses, Transportation Planning, Wood Supply and Demand. This list will be verified, expanded, or modified based on public scoping interdisciplinary review of this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March of 1994. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the BlueGrass Bound area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by September of 1994.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Bonners Ferry Ranger District, Rt. 4 Box 4860, Bonners Ferry, ID 83805–9764.

Dated: August 19, 1993.

Debbie Henderson-Norton,

District Ranger.

[FR Doc. 93–21027 Filed 8–30–93; 8:45 am]

BILLING CODE 3410–11–M

Rumpus/Lightning Timber Harvest; Nez Perce National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On December 12, 1991, notice was published in the Federal Register (56 FR 64739 and 64740) that an environmental impact statement would be prepared to assess the environmental effects of a timber sale and associated road construction, reconstruction, and reconditioning within the Big Elk Creek, Little Elk Creek, Lick Creek, and American River drainages about 10 mines north of Elk City, Idaho.

That notice is hereby cancelled.

All four affected streams are below Nez Perce Forest Plan fish/water quality objectives in their existing condition. The Forest Plan permits timber management in below-objective watersheds concurrent with a "positive upward trend" in fish habitat conditions. After extensive analysis and documentation, the Rumpus/Lightning project was reviewed by Nez Perce Forest aquatic resource specialists. These specialists concluded that substantial uncertainty exists about whether an upward trend in fish habitat conditions can be established concurrent with the proposed timber management action. Activities on non-Forest Service lands in the affected watersheds add further complications.

A different proposed action is required, and overall cumulative watershed effects within the South Fork Clearwater River basin must be addressed. Another notice of intent, if necessary, will be published when another proposed action has been formulated.

DATES: This action is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Paula Guenther-Gloss, Environmental Coordinator, Elk City Ranger District, Elk City, Idaho 83525, (208) 842–2245.

Dated: August 19, 1993.

Michael King,

Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville, ID 83530.

[FR Doc. 93–21072 Filed 8–30–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTIONS: Issuance of Permit 875 to the Northeast Fisheries Science Center, National Marine Fisheries Service (P774 #1); Issuance of Modification #1 to Oregon Department of Fish and Game's Permit 818 (P211C).

On July 6, 1993, (58 FR 36187) the Northeast Fisheries Science Center applied for a permit to take listed loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempi*), hawksbill (*Eretmochelys imbricata*), and green (*Chelonia mydas*) sea turtles for the purposes of scientific research as authorized by the Endangered Species Act (ESA) and the NMFS regulations governing listed fish and wildlife permits. Notice is hereby given that on August 19, 1993, as authorized by the provisions of the ESA, NMFS issued Permit Number 875 for the above taking subject to certain conditions set forth therein. The permit is valid through August 31, 1998.

On April 22, 1993 (58 FR 25811) the Oregon Department of Fish and Wildlife (ODFW) was issued scientific research Permit 818. On July 8, 1993 (58 FR 36653) and July 13, 1993 (58 FR 37715), notices were published that ODFW submitted requests to modify Permit 818. Notice is hereby given that on August 20, 1993, as authorized by the ESA, NMFS issued Modification #1 to Permit 818. This modification combines the two requests and is valid for the duration of the permit, through December 31, 1996.

Issuance of this permit and modification was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This permit and modification were also issued in accordance with and are subject to parts 217–227 of title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, modification, and supporting documents are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2232); and

Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930–2298 (508/281–9250), for Permit 875; and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Avenue, room 620, Portland, OR 97232 (503/230–5400), for Permit 818.

Dated: August 20, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–21028 Filed 8–30–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a scientific research permit to take marine mammals (P397A).

SUMMARY: Notice is hereby given that Dr. Dan R. Salden, Hawaii Whale Research Foundation, Box 1772, Southern Illinois University at Edwardsville, Edwardsville, IL 62026–1772, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), and pilot whales (*Globicephala macrorhynchus*) for scientific research.

DATES: Written comments must be received on or before September 30, 1993.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

Written data or views, or requests for a public hearing on this permit application, should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant requests authorization to approach, up to four times each, up to 2000 humpback whales annually during observational/photo-identification studies. Authorization is also requested for the observation/photo-identification of up to 1000 bottlenose dolphins (*Tursiops truncatus*), 1000 spinner dolphins (*Stenella longirostris*), and 1000 spotted dolphins (*Stenella attenuata*) up to three times each annually, and up to 250 false killer whales (*Pseudorca crassidens*) and 250 pilot whales (*Globicephala macrorhynchus*) up to three times each annually, incidental to the research on humpback whales. The proposed activities will be conducted in Hawaiian waters over a five-year period.

Dated: August 25, 1993.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–21063 Filed 8–30–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in India

August 25, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6305. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 363 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56328, published on November 27, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 25, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on September 1, 1993, you are directed to amend further the directive dated November 20, 1992 to increase the limit for Category 363 to 30,463,221 numbers [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and India.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–21149 Filed 8–30–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed CBOT Structural Panel Index Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has applied for designation as a contract market in CBOT structural panel index futures and futures option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBOT structural panel index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 25, 1993.

Gerald D. Gay,

Director.

[FR Doc. 93–21087 Filed 8–30–93; 8:45 am]

BILLING CODE 6351–01–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/Amphibious Warfare will meet on September 8 and 9, 1993. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8 a.m. and terminate at 5 p.m., on September 8 and 9, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to the projected operating environment for the year 2000; operational concepts; assessments of C4I; shallow water mine countermeasures; ship-to-shore movement (surface and air); fire support, including close air support; battle space dominance; and logistics.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000 Telephone Number: (703) 696–4870.

Dated: August 25, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–21035 Filed 8–30–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Subject Area Committee #1 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: September 13, 1993.

TIME: 11 a.m., EST.

LOCATION: 800 North Capitol Street, NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area Committee #1 of the National Assessment Governing Board will meet via telephone conference call in closed session, September 13, 1993, from 11 a.m. until adjournment, approximately 12:30 p.m. The agenda for this meeting is the review and final action on replacement items for the 1994 NAEP geography assessment. This meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with the policy of 5 U.S.C., 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: August 25, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–21039 Filed 8–30–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.117E]

Educational Research Grant Program—Field-Initiated Studies Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support field-initiated studies designed to advance educational theory and practice.

Eligible Applicants: Institutions of higher education; public and private organizations, institutions, and agencies; and individuals.

Deadline for Transmittal of Applications: December 10, 1993.

Applications Available: September 15, 1993.

Available Funds: $958,272.

Estimated Range of Awards: $50,000 to $90,000.

Estimated Average Size of Awards: $80,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 700.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 700.22.

The program regulations in 34 CFR 700.20(b)(2) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 25 points. For this competition the Secretary distributes the 25 points as follows:

Significance (34 CFR 700.22(f)). Fifteen points are added to this criterion for a possible total of 30 points.

Technical soundness (34 CFR 700.22(g)). Ten points are added to this criterion for a possible total of 25 points.

For Applications or Information Contact: Delores Monroe, U.S. Department of Education, 555 New Jersey Avenue, NW., room 620, Washington, DC 20208–5646. Telephone: (202) 219–2223. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1221e.

Dated: August 23, 1993.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–21036 Filed 8–30–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.029C]

Training Personnel for the Education of Individuals With Disabilities: Technical Assistance to Professional Development Partnerships; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: The purpose of this program is to support a project to provide technical assistance to five Professional Development Partnership projects. Professional Development Partnership projects consist of consortia or partnerships of public and private entities formed to provide career advancement or competency-based training in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children and youth with disabilities.

This notice supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

Eligible Applicants: States or other entities are eligible under Technical Assistance to Professional Development Partnerships (84.029C), but an entity may not receive financial assistance for a professional development partnership project and a technical assistance project during the same period (34 CFR 318.2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 318 as amended on December 29, 1992 (57 FR 62094–62109) and on May 7, 1993 (58 FR 27440–27441).

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 318.10(a)(5) and 318.11(a)(7) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Absolute Priority: Technical Assistance to Professional Development Partnerships (CFDA 84.029C)

This priority supports technical assistance to States or entities receiving awards under professional development partnership projects. Activities must include, but are not limited to, the following—

(i) Identifying the specific technical assistance needs of individual projects;

(ii) Conducting annual meetings at the national level;

(iii) Identifying other projects under the Act related to professional development for the purpose of coordinating professional development projects. Coordination activities may include conferences, publications, and maintenance of documents and data relevant to the activities of the professional development projects;

(iv) Cooperating with other projects and organizations on common goals;

(v) Disseminating information through media, newsletters, computers, and written documentation; and

(vi) Evaluating center activities, including impact determination, and evaluation assistance to centers.

Deadline for Transmittal of Applications: October 29, 1993

Deadline for Intergovernmental Review: December 29, 1993

Applications Available: September 3, 1993

Available Funds: The Administration has requested $90,122,000 for the overall Personnel Development program for FY 1994. However, the actual level of funding is contingent on final congressional action. We anticipate that approximately $300,000 will be available for a new project for this part of the program.

Note: The Department is not bound by any of the estimates in this notice.

Estimated Range of Awards: $300,000

Estimated Number of Awards: 1

Project Period: Up to 36 months

For Technical Information Contact: Betty Baker, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9264. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Applications and General Information Contact: Cecelia Aldrich, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9058. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C 1431 (a)–(c)

Dated: August 25, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–21156 Filed 8–30–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD93–14107T; New Mexico–51]

Department of the Interior, Bureau of Land Management; NGPA Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1993.

Take notice that on August 23, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Gallup Formation underlying certain lands in the Otero and Devils Fork Gallup Pools in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the National Gas Policy Act of 1978. The area of application covers approximately 6,488 acres, 89.5% of which are administered by the Bureau of Land Management and 10.5% by the State of New Mexico. The recommended area is described as follows:

Township 24 North, Range 5 West

Sections 5–6: All

Township 24 North, Range 6 West

Sections 1–2: All

Township 25 North, Range 5 West

Sections 21–22: S/2
Sections 27–28: All
Sections 31–32: All
Sections 33–34: N/2

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Gallup Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18

CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21040 Filed 8–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14106T; New Mexico–52]

Department of the Interior, Bureau of Land Management; NGPA Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1993.

Take notice that on August 23, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Gallup Formation underlying certain lands in the Keys Area Armenta Gallup Pool in San Juan County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 1,152 acres, 54.9% of which are administered by the Bureau of Land Management and 45.1% by the State of New Mexico. The recommended area is described as follows:

Township 28 North, Range 10 West

Sections 8–9: All (Irregular Sections)

Township 29 North, Range 10 West

Section 32: All

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Gallup Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21041 Filed 8–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–6–65–000]

Pacific Gas Transmission Company; Change in Sales Rates Pursuant to Purchased Gas Adjustment

August 25, 1993.

Take notice that on August 20, 1993, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act, a proposed change in rates applicable to service rendered under Rate Schedule PL–1 in accordance with Paragraph 21 of its FERC Gas Tariff, Second Revised Volume No. 1.

PGT tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twenty-Second Revised Sheet No. 4, reflecting the out-of-cycle adjustment which it proposes to make effective August 21, 1993.

PGT states that a copy of this filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21046 Filed 8–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–6–18–001]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

August 25, 1993.

Take notice that on August 23, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets contained in appendix A attached to the filing.

Texas Gas states that the proposed tariff sheets reflect the suspension of its Transport Cost Adjustment (TCA) surcharge, pursuant to Commission Letter Order dated July 30, 1993, and are proposed to be effective August 1, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional sales customers, all parties on the Commission's official restricted service list in the consolidated proceedings, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21042 Filed 8–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–65–000]

Superior Offshore Pipeline Company; Proposed Changes in FERC Gas Tariff

August 25, 1993.

Take notice that on August 23, 1993, Superior Offshore Pipeline Company (SOPCO) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1993:

Third Revised Sheet No. 5
Third Revised Sheet No. 6

SOPCO states that the revised tariff sheets are being filed to amend SOPCO's FERC Annual Charge Adjustment (ACA) related tariff sheet to reflect the change in the FERC ACA Unit Charge. SOPCO has received an Annual Charges Billing from the Commission for the fiscal year 1993 and has already remitted to the Commission SOPCO's portion of the Commission deficit. SOPCO states that for the purpose of recovering this payment, SOPCO has elected, pursuant to the authority outlined in Order No. 472, to institute the ACA Unit Charge. As set forth by the Commission on SOPCO's Annual Charges Bill, SOPCO's ACA Unit Charge will change from $0.0022/MMBtu to $0.0026/MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-21044 Filed 8-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-76-000]

Wyoming Interstate Company, Ltd.; Filing

August 25, 1993.

Take notice that on August 23, 1993, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5, and Second Revised Volume No. 2, First Revised Sheet No. 4 and First Revised Sheet No. 5, with a proposed effective date of October 1, 1993.

WIC states that the tariff sheets reflect an increase of $0.0003 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0026 per Mcf based on WIC's 1993 ACA billing. WIC requested that the new 0.26 cent per Mcf ACA charge be effective October 1, 1993.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies, and the filing is available for public inspection at WIC's operating offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-21043 Filed 8-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-48-000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 25, 1993.

Take notice that on August 23, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1 and 1-A, and Original Volume Nos. 2 and 3, tariff sheets as referenced below, proposed to be effective October 1, 1993:

First Revised Volume No. 1

Seventh Revised Sheet No. 6

First Revised Volume No. 1-A

Seventh Revised Sheet No. 4

Original Volume No. 2

Fourth Revised Twentieth Revised Sheet No. 16

Fourth Revised Twentieth Revised Sheet No. 17

Fourth Revised Twentieth Revised Sheet No. 18

Fourth Revised Twentieth Revised Sheet No. 19

Fourth Revised Twenty-Second Revised Sheet No. 20

Fourth Revised Twenty-First Revised Sheet No. 21

Fourth Revised Nineteenth Revised Sheet No. 22

Original Volume No. 3

Twentieth Revised Sheet No. 5

ANR states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment (ACA) rate as permitted by Section 12 of its Volume No. 1 FERC Gas Tariff. The revised sheets reflect an ACA rate of $0.0026.

ANR states that copies of the filing are being mailed to each of ANR's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-21045 Filed 8-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-173-000]

Pacific Gas Transmission Co.; Change in Rates

August 25, 1993.

Take notice that on August 19, 1993, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff sheets to be included in its Second Revised Volume No. 1 and First Revised Volume No. 1-A of its FERC Gas Tariff, with a proposed effective date of November 1, 1993.

PGT states that the above tariff sheets reflect revisions to PGT's credit-worthiness provisions in its FERC Gas Tariff. These provisions are proposed to be effective concurrent with PGT's Order No. 636 restructuring proposed for implementation on November 1, 1993.

PGT states that copies of the filing is being served upon PGT's customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should fine a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-21048 Filed 8-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-172-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 25, 1993.

Take notice that on August 23, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of

its FERC Gas Tariff, First Revised Volume No. 1, Original Tariff Sheet No. 24 and Sheet Nos. 25–29 (reserved for future use) which are proposed to become effective September 22, 1993.

Panhandle states that its filing implements portions of § 18.8 of the General Terms and Conditions of First Revised Volume No. 1 of Panhandle's FERC Gas Tariff and § 18.9 of the General Terms and Conditions of Original Volume No. 1 of its FERC Gas Tariff to dispose of the current balance in its FERC Account No. 191 by means of the direct billing of the April 30, 1993 demand and commodity balances of the deferred gas purchase account.

Panhandle states that the costs encompassed by its filing are the remaining demand and commodity components of Account No. 191, including carrying charges, as of April 30, 1993, and that the costs encompassed by its filing are fully eligible for recovery from the customers who, on April 30, 1993, were Buyers under Original Volume No. 1 of Panhandle's FERC Gas Tariff. Interest will be charged on amounts due from May 1, 1993 through the date payment is made.

Panhandle states that the amounts which it proposes to recover from the customers affected by the filing are determined in accordance with the provisions of Section 18.8 of the General Terms and Conditions of First Revised Volume No. 1 of its FERC Gas Tariff.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21047 Filed 8–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–149–001, and 002]

Transcontinental Gas Pipe Line Corp.; Technical Conference

August 25, 1993.

In the Commission's order issued on August 6, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, September 2, 1993 at 9:30 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21049 Filed 8–30–93; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Floodplain Statement of Findings for the Fort Morgan Substation Rebuild Project, Morgan County, Colorado

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice.

SUMMARY: This is a floodplain statement of findings for the Fort Morgan Substation Rebuild Project prepared in accordance with 10 CFR part 1022. Western Area Power Administration (Western) proposes to build a new electric power system substation west of Fort Morgan, Colorado, and dismantle and remove the existing Fort Morgan Substation. The existing Fort Morgan Substation is located in the floodplain of the South Platte River in Morgan County, Colorado. Western prepared a floodplain and wetlands assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. This action is categorically excluded under the Department of Energy's (DOE) National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021). Western will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Fausett, Western Area Power Administration, Loveland Area Office, P.O. Box 3900, Loveland, CO 80539–3003. (303) 490–7200 FAX (303) 490–7213.

For further information on general DOE floodplain/wetlands environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a floodplain statement of findings for the Fort Morgan Substation Project prepared in accordance with 10 CFR part 1022. A notice of floodplain and wetlands involvement was published in the **Federal Register** on May 28, 1991 (56 FR 24069). Western is proposing to disassemble and remove the existing Fort Morgan Substation in Morgan County, Colorado, and construct a new substation outside of the floodplain. Disassembly of the substation would occur after construction of the new Fort Morgan West Substation was completed. Removal of the substation from the floodplain of the South Platte River would have long-term beneficial impacts by reducing the risk of oil spills to the river and reducing the potential vulnerability of the region's electric power system due to flooding. No watercourses or drainage patterns would be altered by the project. Flood storage volume would not be affected. The action would conform with applicable State or local floodplain protection standards. This action is categorically excluded under the DOE's NEPA Implementing Procedures (10 CFR part 1021).

Western will endeavor to allow 15 days for public review after publication of the statement of findings prior to implementing the proposed action.

Issued at Golden, Colorado, August 18, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–21146 Filed 8–30–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4699–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program (EPA ICR No. 1654.01).

Abstract: This ICR addresses new information collection activities as part of EPA's Water Alliances for Voluntary Efficiency Program (WAVE). The WAVE program was created under the Clean Water Act at 33 U.S.C. 1254(o), and public participation in the program is strictly voluntary. The public participants include WAVE partners, who will implement water efficiency measures, and WAVE supporters, who will work with EPA to promote water efficiency and provide information on their products and services. The information collected will be used by the EPA to identify cost-effective approaches to improve water usage and to promote these approaches as a means of pollution prevention.

Following the approval of this ICR, WAVE partners will sign and submit to EPA an MOU that includes basic information about the organization. Upon completion of a project, or annually, the WAVE partner will submit a report of the project results that includes the status, costs, savings and occupant acceptance of the upgrades; and relevant practices before and after the upgrade. The WAVE partner will notify the EPA within two weeks of any change to WAVE implementation manager's responsibilities. WAVE supporters will provide product and service information to the EPA.

The EPA, working with industry representatives, will use the information gathered to develop periodic progress reports describing the overall water and energy savings.

Burden Statement: Public reporting burden for this collection of information is estimated to average 6 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the information. There is no public recordkeeping required.

Respondents: Participants in the WAVE program primarily consist of owners/ operators of hotels, restaurants, nursing homes and hospitals.

Estimated No. of Respondents: 90 reporters.

Estimated Number of Responses per Respondent: 9.

Frequency of Collection: Variable, as needed.

Estimated Total Annual Burden on Respondents: 4,300 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M. Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–21115 Filed 8–30–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4702–2]

Public Water Supply Supervision Program Revision for the State of North Carolina

AGENCY: Environmentl Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of North Carolina is revising its approved State Public Water Supply Supervision Primacy Program. North Carolina has adopted drinking water regulations for Phase V (Inorganic Chemicals/Synthetic Organic Chemicals). EPA has determined that this State program revision is no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted September 30, 1992, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made September 30, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the Federal Register.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

North Carolina Department of Health & Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, NC 27626.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV, Drinking Water Section at the Atlanta address given above or telephone (404) 347–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 141 and 142 of the National Primary Drinking Water Regulations)

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 93–21118 Filed 8–30–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4701–8]

Science Advisory Board

Environmental Economics Advisory Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB) will meet on September 23, 1993 at the Holiday Inn Georgetown (Wisconsin Room), 2101 Wisconsin Avenue NW., Washington DC 20007. The hotel telephone number is (202) 338–4600.

The meeting, which is open to the public, will start at 8:30 a.m., and adjourn no later than 5:30 p.m. Its main purpose is to review the Committee's final draft report on the Agency's contingent valuation (CV) groundwater study, and the Committee's first draft of its report reviewing economic issues and methodologies incorporated in the draft document Regulatory Impact Analysis (RIA) for the Final Rulemaking

on Corrective Action for Solid Waste Management Units developed by the Office of Solid Waste.

The draft SAB reports noted above are not available to the public until the Committee has completed action on its editing. Requests for copies of the draft RIA document should be directed to the Resource Conservation and Recovery Act (RCRA) Hotline (1–800–424–9346). This document is not available from the Science Advisory Board. Questions concerning its content should be addressed to Mr. Gary Ballard (OS 311), Regulatory Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202) 260–2429. Members of the public desiring additional information about the conduct of the meeting or the agenda should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–6552. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by September 15, 1993. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: August 17, 1993.

Samuel Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–21119 Filed 8–30–93; 8:45 am]

BILLING CODE: 6560–50–P

Science Advisory Board

[FRL–4701–7]

Ad Hoc Industrial Excess Landfill Advisory Panel; Public Meeting, September 21–22, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) *ad hoc* Industrial Excess Landfill (IEL) Advisory Panel will meet on September 21–22, 1993 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC. The Holiday Inn telephone number is (202) 338–4600. The meeting will begin at 9 a.m. and adjourn no later than 5 p.m. on both days. The meeting is open to the public and seating is on a first-come basis.

Background

This is the second meeting of the IEL Panel. The first meeting was held on July 20–21, 1993 in Akron, Ohio. At that meeting the Panel received presentations from the U.S. Environmental Protection Agency (EPA), the Ohio State EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), and members of the interested public. Information relevant to the history of the request to the SAB and the charge to the Panel are contained in a previous Federal Register notice (58 FR 36686–36687, dated 8 July 1993).

Purpose of This Meeting

The IEL Panel has been provided with relevant materials concerning the project from the U.S. EPA, Ohio EPA and ATSDR. There will be briefings and opportunity for public comments at the meeting, however, the primary purpose of the meeting is for the Panel to discuss the materials they have received and to begin to formulate responses to the questions outlined in the Charge to the Panel. A portion of the meeting will be devoted to a writing session as the Panel begins to prepare working papers that contain their responses. Copies of these working papers will not be available until they are combined into a first draft that reflects the consensus of the Panel. This will be available at some point after the meeting, probably in October. For further information on the availability of a draft report, please contact Mr. Flaak at the address listed below.

For Further Information

For details concerning this review, including a draft meeting agenda and Panel roster, or the overall activities of the Science Advisory Board, please contact the Designated Federal Officer for this review: Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118.

Opportunity for Providing Comment

All oral presentations or written statements should be limited to scientific issues concerning the charge to the Panel and related issues. Members of the public who wish to make a brief formal oral presentation to the Committee must contact Mr. Flaak no later than Tuesday, September 14, 1993 in order to be included on the Agenda. Written statements of any length (at least 30 copies) may be provided to the Committee up until the meeting. Please send these comments to Mr. Flaak at the address given above. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: August 13, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–21120 Filed 8–30–93; 8:45 am]

BILLING CODE: 6560–50–P

[FRL–4701–6]

Ecological Processes and Effects Committee, Climate Change Research Subcommittee; Open Meeting, September 14–15, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Climate Change Research Subcommittee (the Subcommittee) of the Ecological Processes and Effects Committee of the Science Advisory Board will meet on September 14–15, 1993, at the Holiday Inn Georgetown, 2101 Wisconsin Ave., NW., Washington, DC. The meeting is open to the public, and will begin on both days at 8:30 a.m. and end no later than 5 p.m. on September 15. Seating at the meeting will be on a first come basis.

Background

The Subcommittee will meet to review the draft research plan for the Terrestrial Elements of the Global Climate Research Program. The Office of Environmental Processes and Effects Research has asked the Subcommittee to review the scientific merit of the current research plan and the Agency management and coordination of the program (both internally and with the national program), and to recommend future directions for the program. This review will focus on the process studies (those related to the topics of biogeochemical cycling, ecophysiological effects, and effects on ecosystems).

Availability of Documents and Information

Single copies of the draft research plan and background materials provided to the Subcommittee for this review are available from Dr. Jack Durham, U.S. EPA, Office of Research and Development, 401 M Street, SW., Washington, DC telephone (202) 260–8932. For additional information

concerning this meeting or to obtain a draft agenda, please contact Dr. Edward S. Bender, Designated Federal Official, or Mrs. Marcia Jolly, Staff Secretary, at (202) 260–6552, Ecological Processes and Effects Committee, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting must notify Mrs. Jolly and forward twenty-five copies of a written statement to her no later than September 3, 1993. Oral comments to the Subcommittee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: August 13, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–21121 Filed 8–30–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4701–5]

Indoor Air Quality/Total Human Exposure Committee; Open Meeting, September 8–9, 1993

Under the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Indoor Air Quality/Total Human Exposure Committee (IAQC) will meet on September 8–9, 1993. The Committee will meet on Wednesday September 8, from 9 a.m. to 5 p.m. and on Thursday, September 9, from 9 a.m. to no later than 4:30 p.m. at the Auditorium of the EPA's Environmental Research Center, Corner of Highway 54 and Alexander Drive, Research Triangle Park, North Carolina 27711. The meeting is open to the public and seating is on a first-come basis.

The Committee will review the Agency's indoor air research program with regard to its ability to: (1) Address the most important scientific questions involving indoor air quality; (2) provide scientific and technical support to EPA's program offices and regions; (3) promote private sector involvement in indoor air research, and; (4) support EPA's leadership role in indoor air quality research. The Committee will also review whether the projects in the Agency's Indoor Air Issue Plan are commensurate with these goals, and whether the Plan reflects adequate intra- and inter-agency cooperation. Certain engineering-related aspects of the Agency's indoor air research will not be reviewed in detail during this meeting because they were recently reviewed by a subcommittee of the Science Advisory Board (Indoor Air Engineering Program Review, July 21–22, 1992).

The Committee will also provide a consultation and receive three briefings from the Indoor Air Division of the Agency's Office of Radiation and Indoor Air. The consultation will address the risk-based priority setting exercise being developed for strategic planning by the Indoor Air Quality Cluster. The briefings will describe: (1) The Building Assessment Survey and Evaluation (BASE) program, which is a survey of indoor air quality in office buildings; (2) the Source Characterization project, which is a cross-program project involving risk ranking and risk management; and (3) the efforts by the Division to characterize the relationships between energy cost and indoor air quality in buildings, and other economic issues related to indoor air.

The Committee will also plan its activities for the coming year.

Documents provided to the Committee as background for the review of the indoor air research plan are available from Kevin Teichman, U.S. Environmental Protection Agency, 401 M Street SW. (Mail Code H8105), Washington, DC 20460. Telephone: (202) 260–7669. Background documents provided to the Committee from the Office of Radiation and Indoor Air are available from Ms. Sandra Eberle, U.S. Environmental Protection Agency, 401 M Street SW. (6203J), Washington, DC 20460. Telephone: (202) 233–9722. These background documents are not available from the Science Advisory Board.

For copies of the draft agenda for this meeting and additional information, please contact Ms. Dorothy Clark, Staff Secretary [Telephone (202) 260–6552. Fax (202) 260–7118], or Mr. Manuel R. Gomez, Designated Federal Official, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at the above numbers.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Gomez or Ms. Clark no later than Wednesday, August 30, 1993 in order to be included on the Agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes or less, at the Chair's discretion.

Dated: August 17, 1993.

Samuel R. Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–21122 Filed 8–30–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180900; FRL 4642–8]

Receipt of Application for Emergency Exemption To Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Environmental Protection Agency (hereafter referred to as the "Applicant") to use the pesticide Imidacloprid (CAS 105827–78–9) to treat up to 40,000 acres of cotton, in Imperial, Riverside, and San Bernardino Counties, to control the sweet potato whitefly *Bemesia tabaci*. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180900," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration

Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8791).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on cotton to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain of SPWF, often referred to as the B, or poinsettia strain, was initially identified in California in 1990. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. This strain extracts up to 5 times as much sap as the original strain does. This excess feeding results in the production of elevated levels of honeydew which is deposited onto surfaces where the SPWF is feeding. In cotton, this directly damages the lint by making ginning much more difficult. Further, a mold grows on the honeydew, and the dark colored spores stain the lint, further lowering its value. When the SPWF becomes numerous as they did in many areas of the state in the past several years, their direct feeding lowers the yield. The SPWF has also been implicated as a vector of virus. The Applicant claims that adequate control of the SPWF is not being achieved with currently registered products and alternative cultural practices. The Applicant indicates that without adequate control of the SPWF in cotton, significant economic losses will occur. There are also other economic considerations which are difficult to put a dollar amount on such as delayed ginning operations and fouled equipment from the sticky lint.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.05 pound active ingredient (3 fluid oz. of product) per acre with a maximum of 5 applications on up to 40,000 acres of cotton. This amounts to a total of 10,000 pounds of active ingredient, or 4,687.5 gallons of product. This is the first time that the Applicant has applied for the use of imidacloprid on cotton. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Environmental Protection Agency.

Dated: August 20, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–21084 Filed 8–30–93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS–62129; FRL–4637–2]

Environmental Stewardship Program for Pulp and Paper Sludge Land Application; Establishment of a Public Administrative Record

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is establishing an administrative record for the purpose of documenting activities relating to the development of an industry environmental stewardship program with the pulp and paper industry. The Agency intends to engage in communications with the American Forest and Paper Association (AFPA), pulp and paper mills, environmental groups, State governments, and other interested parties in order to encourage the creation of a program by which the pulp and paper mills will voluntarily develop and adopt certain standards and management practices for land application of wastewater treatment sludge. Documents which EPA considers relevant to the development of this program will be placed into the administrative record established by this notice.

ADDRESSES: The file, designated OPPTS–62129, is located at the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, at the Environmental Protection Agency, Rm. E–G102, 401 M St., SW., Washington, DC 20460. The file will be available for review and copying from 8 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Cooper, Program Manager, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–500, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–1855.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 10, 1991 (56 FR 21802), EPA issued the proposed rule for Land Application of Sludge from Paper Mills Using Chlorine and Chlorine-Derivative Bleaching Processes regulating land application of pulp and paper mill sludge contaminated with chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs). The CDD/CDF contamination in sludge most often originates during the pulp bleaching process which utilizes chlorine or chlorine derivatives, but can also appear in the sludges from mills processing recycled pulp.

On December 14, 1992, the Agency announced its decision to defer promulgation of the final sludge land application rule until the revised integrated effluent guidelines and maximum achievable control technology (MACT) standards for the pulp and paper industry are promulgated and take effect. This decision was made in keeping with the Agency's commitment to pollution prevention and the multi-media integration of EPA activities. The decision also recognized that available sludge monitoring data from mills which have made process changes suggest that TSCA regulation may be unnecessary. The integrated rulemaking, under development by the EPA Office of Water and Office of Air Quality Planning and Standards, is expected to reduce the level of CDD/CDF contamination in sludge through the promotion of bleach plant process changes. Available data from mills which have made these kinds of changes suggest that TSCA regulation is not necessary. However, EPA will continue to monitor CDD/CDF levels over the next few years as other mills make process changes to ensure that its December 14, 1992 decision to defer further TSCA regulation pending implementation of the integrated rule remains correct.

In the interim period before the joint rules are promulgated and take effect, EPA intends to open a dialogue with the pulp and paper industry to encourage the development of an environmental stewardship program for the practice of sludge land application. The goal of the stewardship program would be to

encourage industry to establish standards for maximum allowable CDD/CDF contamination, site management practices, and monitoring requirements for those parties who are currently practicing land application of pulp and paper mill sludge.

Due to the interim nature of the voluntary stewardship program, a deadline has been established for the development of a voluntary agreement. By August 31, 1993 (or shortly thereafter), AFPA and EPA must agree on both the qualitative and quantitative terms of the voluntary agreement. If an agreement in principle is not reached by the above date, EPA will begin actively pursuing alternative strategies through which to address its concerns for sludge land application during the interim period. These alternate strategies could include a State/Federal cooperative program, a Federal guidance document, and possible listing of dioxin on the Emergency Planning and Community Right-to-Know Act, Section 313, Toxics Release Inventory.

The industry environmental stewardship program, if successful, will be re-evaluated after promulgation and implementation of the integrated rules to determine whether any further TSCA action is warranted.

The establishment of public administrative docket OPPTS–62129 will serve to maintain an administrative record on the development of the environmental stewardship program addressing the land application of sludge by the pulp and paper industry. All documents considered by EPA to be relevant to the development of this stewardship program, including but not limited to, minutes from meetings, phone communications, and technical documents, will be placed in the administrative record.

Dated: August 19, 1993.

David Kling,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21083 Filed 8–30–93; 8:45 am]

BILLING CODE [illegible]

[OPPTS–62132; FRL–4638–2]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); Notice of Availability of New Edition.

SUMMARY: Effective August 31, 1993, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The August 31, 1993, directory, which supersedes the version released on May 28, 1993, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: NDAAC Clearinghouse, c/o ATLIS Federal Services, 6011 Executive Blvd., Rockville, MD 20852, Telephone: (301) 984–1929.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: August 5, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–20710 Filed 8–30–93; 8:45 am]

BILLING CODE [illegible]

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine, and Carbon Monoxide Content of 568 Varieties of Domestic Cigarettes

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the Report of the Tar, Nicotine, and Carbon Monoxide Content of 568 Varieties of Domestic Cigarettes.

DATES: August 31, 1993.

ADDRESSES: Copies of the full report are available from the FTC's Public Reference Branch, room 130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3222.

FOR FURTHER INFORMATION CONTACT: Sheri Thomas, telephone (202) 326–3398, or Phillip Priesman, (202) 326–2484. Bureau of Consumer Protection, 601 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: These are the most recent test results of the tar, nicotine, and carbon monoxide levels of the smoke of domestic cigarettes reported by the FTC. The Tobacco Institute Testing Laboratory, (TITL), a private laboratory operated by the cigarette industry, conducted the tar, nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. Since the Commission closed the FTC cigarette laboratory in 1987, a Commission representative has been given unannounced access to the Tobacco Institute Testing Laboratory ("TITL") and the Tobacco Institute's test results to assure the accuracy of the tar, nicotine and carbon monoxide information provided by the TITL to the companies. TITL provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to compulsory process issued by the Commission. Cigarette smoke from generic (no brand-name), private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette

companies and provided under compulsory process to the FTC. The methodology, processes and procedures that the companies and TITL employed are identical to those the Commission has followed in the past.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-21136 Filed 8-30-93; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 080993 AND 082093

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Sam Fox and Marilyn Fox, Columbus Holdings Limited, Sencorp Systems, Inc	93-1350	08/09/93
The Alpine Group, Inc., Superior Teletec Inc., Superior Teletec Inc	93-1370	08/09/93
United Asset Management Corporation, HC Partnership, Heitman Financial Ltd	93-1397	08/09/93
United Asset Management Corporation, HFL-B Partnership, Heitman Financial Ltd	93-1398	08/09/93
Leggett & Platt, Incorporated, Leggett & Platt, Incorporated, Adcom Wire (Partnership), L&P Carthage Wire Mill	93-1401	08/09/93
HC Partnership, United Asset Management Corporation, United Asset Management Corporation	93-1404	08/09/93
HFL-B Partnership, United Asset Management Corporation, United Asset Management Corporation	93-1405	08/09/93
ITT Corporation, Kirk Kerkorian, The Stars' Desert Inn Hotel	93-1422	08/09/93
Walton Monroe Mills, Inc., Walton Monroe Mills, Inc., AM Acquisition Inc	93-1440	08/09/93
G. Stephen Felker, Walton Monroe Mills, Inc., Walton Monroe Mills, Inc	93-1441	08/09/93
CS Holdings, Walton Monroe Mills, Inc., Walton Monroe Mills, Inc	93-1445	08/09/93
Metropolitan Life Insurance Company, Walton Monroe Mills, Inc., Walton Monroe Mills, Inc	93-1446	08/09/93
American Business Products, Inc., Home Safety Equipment Co., Home Safety Equipment Co	93-1476	08/09/93
Warburg, Pincus Investors, L.P., TAC Bancshares, Inc.,TAC Bancshares, Inc	93-1444	08/11/93
President and Fellows of Harvard College, TAC Bancshares, Inc.,TAC Bancshares, Inc	93-1469	08/11/93
The SGK Equity Fund, L.P., TAC Bancshares, Inc.,TAC Bancshares, Inc	93-1471	08/11/93
Rhone Poulenc S.A., Applied Immune Sciences, Inc., Applied Immune Sciences, Inc.,	93-1364	08/12/93
Amoco Corporation, The British Petroleum Company P.l.c., BP North America Exploration Egypt Inc	93-1435	08/12/93
Health Management Associates, Inc., Galen Health Care, Inc., Natchez Community Hospital, Inc	93-1447	08/12/93
First Financial Management Corporation, Virgil R. Williams, International Banking Technologies, Inc. and Prime	93-1458	08/12/93
First Financial Management Corporation, James M. Williams, Jr., International Banking Technologies, Inc	93-1459	08/12/93
Virgil R. Williams, First Financial Management Corporation, First Financial Management Corporation	93-1461	08/12/93
Dundee Bancorp Inc., Zemex Corporation, Zemex Corporation	93-1431	08/13/93
EMCSArporation, Epoch Systems, Inc., Epoch Systems, Inc	93-1436	08/13/93
The Avis, Inc. Employee Stock Ownership Trust, Mr. & Mrs. Henry Church, Jr., Transportation Rentals Corporations	93-1457	08/13/93
Hanson PLC, Quantum Chemical Corporation, Quantum Chemical Corporation	93-1460	08/13/93
Kelso Partners IV, L.P., Thomas J. Embrescia, Toledo Television Limited Partnership	93-1465	08/13/93
Victoria Acquisition Corp., Western Bank, Western Bank Mortgage Company	93-1475	08/13/93
General American Life Insurance Company, Security Mutual Life Insurance Company of New York, Security Equity Life Insurance Company	93-1479	08/13/93
James D. Sinegal, Price/Costco, Inc., Price/Costco, Inc	93-1486	08/13/93
Jeffrey H. Brotman, Price/Costco, Inc., Price/Costco, Inc	93-1487	08/13/93
Robert E. Price, Price/Costco, Inc., Price/Costco, Inc	93-1488	08/13/93
Carrefour S.A., Price/Costco, Inc., Price/Costco, Inc	93-1489	08/13/93
Capital Re Corporation, Credit Re Corporation, Credit Re Corporation	93-1491	08/13/93
Astra Compania Argentina de Petroleo S.A., Occidental Petroleum Corporation, Occidental Exploration of Argentina	93-1494	08/13/93
James River Corporation of Virginia, Alcatel Alsthom, Diamond Occidental Forest Inc	93-1500	08/13/93
Victoria Acquisition Corp., Lawrence Koppelman & Co., Western Bank Mortgage Company	93-1502	08/13/93
The Future Now, Inc., Basicomputer Corporation, Basicomputer Corporation	93-1504	08/13/93
Infinity Broadcasting Corporation, Edward M. Snider, Spectacor Broadcasting Corp	93-1506	08/13/93
Ghaznavi Family Trust, Consolidated Enfield Corporation, Consumer Packaging Inc	93-1388	08/16/93
The Liberty Corporation, North American National Corporation, North American National Corporation	93-1477	08/16/93
Berjaya Group Berhad, International Totalizator Systems, Inc., International Totalizator Systems, Inc	93-1481	08/16/93
Scott K. Ginsburg, C. Robert Allen III, Major Broadcasting of Chicago, Inc	93-1482	08/16/93
Mortimer B. Zuckerman, Anthony Brueco, Fleetwood Litho & Letter Corp	93-1507	08/16/93
Richard H. Willett, Summerville Partners, L.P., Linq Industrial Fabrics, Inc	93-1510	08/16/93
George J. Pedersen, MESA Inc., Simulation Systems & Services Technologies Company	93-1456	08/17/93
The Louisiana Land and Exploration Company, The RTZ Corporation, PLC, Nerco Oil & Gas, Inc	93-1470	08/17/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 080993 AND 082093—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Snyder Oil Corporation, Barrett Resources Corporation, Barrett Resources Corporation	93-1497	08/17/93
Paul Marciano, Guess?, Inc., Guess?, Inc	93-1512	08/18/93
Armand Marciano, Guess?, Inc., Guess?, Inc	93-1513	08/18/93
Cargill, Incorporated, Philip Morris Companies, Inc., Kraft Food Ingredients Corp	93-1232	08/19/93
The New York Times Company, Affiliated Publications, Inc., Affiliated Publications, Inc	93-1411	08/19/93
Jordan Trust, The New York Times Company, The New York Times Company	93-1415	08/19/93
FMR Corp., Newco, Newco	93-1503	08/19/93
Questar Corporation, Newco, Newco	93-1516	08/19/93
Motorola, Inc., Theodore D. & Doreen Gaiszler, Indala Corporation	93-1468	08/20/93
Kelso Investment Associates IV, L.P., Imo Industries Inc., Newco	93-1515	08/20/93
Dover Corporation, TCW Special Placements Fund III, STD Holdings, Inc	93-1517	08/20/93
AIF II, L.P., Zale Corporation, Zale Corporation	93-1526	08/20/93
Vestjysk Stiftelser A.m.b.A., The East Asiatic Company Ltd. A/S, Plumrose USA, Inc	93-1527	08/20/93
Beneficial Corporation, Textron Inc., Avco Financial Services, Inc	93-1531	08/20/93
Richard E. Marriott & Nancy P. Marriott, Marriott Corporation, Marriott International, Inc	93-1535	08/20/93
J.W. Marriott, Jr. & Donna Rae Marriott, Marriott Corporation, Marriott International, Inc	93-1536	08/20/93
Alice S. Marriott, Marriott Corporation, Marriott International, Inc	93-1537	08/20/93
Victor Forse, Victor Forse, Forcenergy Partners, L.P	93-1546	08/20/93
The News Corporation Limited, The New York Post Co., Inc., The New York Post Co., Inc	93-1556	08/20/93
Quantum Realty Trust, Travelers Corporation, The Travelers Insurance Company and The Travelers	93-1559	08/20/93
Newell Co., Goody Products, Inc., Goody Products, Inc	93-1560	08/20/93
Cortec Group Fund, L.P., AB Electrolux, Anaheim Manufacturing Co	93-1568	08/20/93
Dickstein & Co., L.P., P.A. Bergner & Co. Holding Company, P.A. Bergner & Co	93-1570	08/20/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-21137 Filed 8-30-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93E-0213]

Determination of Regulatory Review Period for Purposes of Patent Extension; Claritin®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Claritin® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Claritin®. Claritin® (loratadine) is indicated for the relief of nasal and non-nasal symptoms of seasonal allergic rhinitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Claritin® (U.S. Patent No. 4,282,233) from Schering Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 15, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Claritin® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Claritin® is 3,751 days. Of this time, 1,395 days occurred during the testing phase of the regulatory review period, while 2,356 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* January 6, 1983. FDA has verified the applicant's claim that January 6, 1983, was the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 31, 1986. FDA has verified the applicant's claim that October 31, 1986 was the date the new drug application (NDA) for Claritin® (NDA 19–658) was initially submitted.

3. *The date the application was approved:* April 12, 1993. FDA has verified the applicant's claim that new drug application (NDA 19–658) was approved on April 12, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 731 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 1, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 28, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 20, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–21024 Filed 8–30–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91F–0390]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 1B4290) proposing that the food additive regulations be amended to provide for the safe use of C_7-C_9 branched alkyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant in lubricants that have incidental food contact.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 6, 1991 (56 FR 56656), FDA announced that a food additive petition (FAP 1B4290) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of C_7-C_9 branched alkyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as an antioxidant for use in lubricants that have incidental contact with food. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 13, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–21025 Filed 8–30–93; 8:45 am]

BILLING CODE 4160–01–F

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information maintained in the system of records entitled "Earnings Recording and Self-Employment Income System, HHS/SSA/OSR, 09–60–0059" (Earnings Record).

The proposed routine use will permit SSA to disclose tax return information to the Department of Veterans Affairs (VA), through September 30, 1997, to administer certain VA programs pursuant to section 6103(l)(7) of the Internal Revenue Code (IRC) (26 U.S.C. section 6103(l)(7)), as amended by section 602 of the Veterans' Benefits Act of 1992, Public Law (Pub. L.) No. 102–568.

We invite public comments on this publication.

DATES: The proposed routine use will become effective as proposed without further notice on October 1, 1993, unless we receive comments on or before that date which would warrant our preventing the routine use from taking effect. No information will be disclosed under the proposed routine use after September 30, 1997, unless otherwise specifically permitted by statute.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Green, Social Insurance Specialist, Confidentiality and Disclosure Branch, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1739.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Routine Use

On September 18, 1991, we published a routine use in the **Federal Register** (FR) (see 56 FR 47220) which provided that we would disclose information obtained from tax returns or schedules filed with the Internal Revenue Service (IRS) to the VA to administer various programs under title 38 of the United States Code. (The programs are identified below in the proposed routine use statement.) The basis for the routine use was section 6103(l)(7) of the IRC, as amended by section 8051 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101–508, requiring the Commissioner of Social Security to disclose the information to the VA. Our authority under section 6103(l)(7) to disclose the information expired on September 30, 1992. We withdrew the routine use from publication in the **Federal Register** on November 24, 1992 (see 57 FR 55265).

As a result of amendments to section 6103(l)(7) of the IRC by section 602 of the Veterans' Benefits Act of 1992 (Pub. L. No. 102–568), extending our authority to disclose tax return information to the VA through September 30, 1997, we are republishing the routine use. The proposed routine use provides for the following disclosures:

Upon written request, SSA will disclose tax return information to the VA for purposes of, and to the extent necessary for determining eligibility for, or the amount of, benefits under the following programs:

(a) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(b) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(c) health-care services furnished under sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B) of title 38, United States Code; and

(d) compensation paid under chapter 11 of title 38, United States Code at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

The tax return information which may be disclosed under this paragraph includes wages, net earnings from self-employment, payments of retirement income which have been disclosed to SSA and business and employment addresses, except that information on payments of retirement income will not be disclosed for use with respect to programs described in subparagraph (d).

II. Compatibility of the Proposed Routine Use

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401). The Privacy Act permits us to disclose information about individuals without their consents for a routine use where the information will be used for a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of our disclosure regulation states that we consider health or income maintenance programs administered by other Government agencies to be programs that serve purposes which are compatible with the purposes served by the retirement, survivors and disability programs and the supplemental security income program which we administer.

We also believe that disclosure which is required by law meets the compatibility requirement for routine uses under the Privacy Act based on the obvious congressional intent that the information be used for the purposes for which its release is required by the statute. The proposed disclosures to the VA described above meet both of these compatibility criteria. The disclosures are required by section 6103(l)(7) of the IRC, as amended, and assist health and income maintenance programs serving the elderly and disabled and their survivors.

III. Effect of the Proposed Routine Use on Individuals

We will disclose information under the proposed routine use to the VA only as required by section 6103(l)(7) of the IRC. The VA must verify independently the information obtained from us pursuant to the proposed routine use before denying, stopping, suspending, or reducing any benefit or service. We will negotiate a data exchange agreement with the VA requiring safeguards to prevent unauthorized redisclosure of, or access to, the information we will disclose under the routine use. This data exchange agreement and the actions of SSA and the VA relating to the disclosure and use of the information will comply with the requirements of the Privacy Act pertaining to computer matching programs. Thus, we do not anticipate that the routine use will have any unwarranted adverse effects on the rights or privacy interests of individuals.

IV. Other Changes

In republishing the routine use, we have also made several editorial changes to correct some minor technical and typographical errors.

Dated: August 19, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

09–60–0059

SYSTEM NAME:

Earnings Recording and Self-Employment Income System, HHS/SSA/OSR

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of System Requirements, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 North Greene Street, Baltimore, MD 21201.

Records also may be located at contractor sites (contact the system manager at the address below for contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been issued a Social Security number (SSN) and who may or may not have earnings under Social Security; or any person requesting, reporting, changing and/or inquiring about earnings information; or any person having a vested interest in a private pension fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of every SSN holder, his/her name, date of birth, sex, and race/ethnic data and a summary of his/her yearly earnings and quarters of coverage; special employment codes (i.e., self-employment, military, agriculture, and railroad); benefit status information; employer identification (i.e., employer identification numbers and pension plan numbers); minister waiver forms (i.e., forms filed by the clergy for the election or waiver of coverage under Social Security Act (the Act)); correspondence received from individuals pertaining to the above-mentioned items; the replies to such correspondence; and pension plan information (i.e., nature, form, and amount of vested benefits).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Act, the Federal Records Act of 1950 (64 Stat. 583), and the Employee Retirement Income Security Act of 1974 (Public Law 93–406).

PURPOSE(S):

This system is used for the following purposes:

- As a primary working record file of all SSN holders;
- As a quarterly record detail file to provide full data in wage investigation cases;
- To provide information for determining amount of benefits;
- To record all incorrect or incomplete earnings items;
- To reinstate incorrectly or incompletely reported earnings items;
- To record the latest employer of a wage earner;
- For statistical studies;
- For identification of possible overpayments of benefits;

• For identification of individuals entitled to additional benefits;

• To provide information to employers/former employers for correcting or reconstructing earnings records and for Social Security tax purposes;

• To provide workers and self-employed individuals with earnings statements or quarters of coverage statements;

• To provide information to Health and Human Services (HHS) Audit Agency for auditing benefit payments under Social Security programs;

• To provide information to the National Institute for Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;

• To assist the Social Security Administration (SSA) in responding to general inquiries about Social Security, including earnings or adjustments to earnings, and in preparing responses to subsequent inquiries; and

• To store minister waivers, thus preventing erroneous payment of Social Security benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To employers or former employers, including State Social Security administrators, for correcting and reconstructing State employee earnings records and for Social Security purposes.

2. To the Department of the Treasury for:

(a) Investigating the alleged forgery, or unlawful negotiation of Social Security checks; and

(b) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code (IRC).

3. To the Railroad Retirement Board (RRB) for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

4. To the Department of Justice (DOJ) (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Act.

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when the SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Department of Energy for their study of low-level radiation exposure.

7. To a congressional office in response to an inquiry from the congressional office made at the request of the subject of a record.

8. To the Department of State for administering the Act in foreign countries through services and facilities of that agency.

9. To the American Institute of Taiwan for administering the Act in Taiwan through services and facilities of that agency.

10. To the Department of Veterans Affairs (VA) Regional Office for administering the Act in the Philippines through services and facilities of that agency.

11. To the Department of Interior for administering the Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

13. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

14. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

15. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Act may be disclosed to a foreign country which is a party to that agreement.

16. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSN's used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Act).

17. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to officers and employees of a Federal, State or local agency for purposes of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of, benefits under certain programs listed in the Internal Revenue Code (26 U.S.C. section 6103(l)(7)). These programs are:

(a) Aid to families with dependent children provided under a State plan approved under part A of title IV of the Act;

(b) Medical assistance provided under a State plan approved under title XIX of the Act;

(c) Supplemental security income benefits provided under title XVI of the Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(d) Any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Act (as those titles apply to Puerto Rico, Guam and the Virgin Islands);

(e) Unemployment compensation provided under a State law described in section 3304 of the IRC;

(f) Assistance provided under the Food Stamp Act of 1977; and

(g) State-administered supplementary payments of the type described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66).

18. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to appropriate officers and employees of a State or local child support enforcement agency in accordance with 26 U.S.C. 6103(l)(8) for purposes of, and to the extent necessary in

(a) Establishing and collecting child support obligations from individuals who owe such obligations, and

(b) Locating those individuals under a program established under title IVD of the Act (42 U.S.C. 651ff).

19. The fact that a veteran is or is not eligible for retirement insurance benefits under the Social Security program may be disclosed to the Office of Personnel Management (OPM) for its use in determining a veteran's eligibility for a civil service retirement annuity and the amount of such annuity.

20. Employee and employer name and address information may be disclosed to DOJ (Immigration and Naturalization Service) for the purpose of informing that agency of the identities and locations of aliens who appear to be illegally employed.

21. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

22. Information derived from this system may be disclosed to OPM for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Public Law 97–253.

23. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

24. Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees Retirement Systems in accordance with Chapters 83 and 84 of Title 5, United States Code.

25. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and/or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

26. Upon written request, SSA will disclose tax return information to the VA for purposes of, and to the extent necessary for determining eligibility for, or the amount of, benefits under the following programs:

(a) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(b) Parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(c) Health-care services furnished under sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B) of title 38, United States Code; and

(d) Compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

The tax return information which may be disclosed under this paragraph includes wages, net earnings from self-employment, payments of retirement income which have been disclosed to SSA and business and employment addresses, except that information on payments of retirement income will not be disclosed for use with respect to programs described in subparagraph (d).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as paper forms, correspondence in manila folders on open shelving, paper lists, punchcards, microfilm, magnetic tapes, and discs with online access files.

RETRIEVABILITY:

Records in this system are indexed by SSN, name, and employer identification number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining the magnetic tapes and discs within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms and cards are retained until they are filmed or are entered on tape and their accuracy is verified. Then they are destroyed by shredding. All tapes, discs, and microfilm files are updated periodically. The out-of-date magnetic tapes and discs are erased. The out-of-date microfilm is shredded.

SSA retains correspondence 1 year when it concerns documents returned to an individual, denials of confidential information, release of confidential information to an authorized third party and undeliverable material, for 4 years when it concerns information and evidence pertaining to coverage, wage, and self-employment determinations or when the statute of limitations is involved, and permanently when it affects future claims development especially coverage, wage, and self-employment determinations. Correspondence is destroyed, when appropriate, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Pre-Claims Requirements, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature and SSN or, if the SSN is not known, name, signature, date and place of birth, mother's maiden name and father's name to the address shown under system manager and by referring to this system. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's

license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth, and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD SOURCE CATEGORIES:

SSN applicants, employers and self-employed individuals; DOJ (Immigration and Naturalization Service); the Department of Treasury (Internal Revenue Service); an existing system of records maintained by SSA, the Master Beneficiary Record (09-60-0090); correspondence, replies to correspondence, and earnings modifications resulting from SSA internal processes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 93-21104 Filed 8-30-93; 8:45 am]

BILLING CODE 4160-20-F

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory and Hospital Care Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9 a.m.-5 p.m., September 22, 1993.

Place: Room 703A-729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss the types of data required to direct and evaluate ambulatory care, with a special focus on managed care environments, and consider other issues included in its charge.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Dated: August 24, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-21062 Filed 8-30-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0385]

Dilip Shah; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Deputy Commissioner for Operations of the Food and Drug Administration (FDA) denies Dr. Dilip Shah's request for a hearing and issues a final order permanently debarring Dr. Dilip Shah, 7223 Chablis Ct., Indianapolis, IN 46278, under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)). The Deputy Commissioner bases this order on a finding that Dr. Shah was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval of a drug product; and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: August 31, 1993.

ADDRESSES: Application for termination of debarment to the Docket Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Dilip Shah, the former president of Quad Pharmaceuticals, Inc. (Quad), pled guilty and was sentenced on September 13, 1989, for giving an unlawful gratuity to a public official, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Dr. Shah's payment of approximately $1,000 to an FDA chemistry review Branch Chief (public official) who was involved in the regulation of Quad's drug products and who was specifically responsible for supervising the chemists who reviewed Quad's applications to determine whether those applications met certain statutory standards for approval.

In a certified letter received by Dr. Shah on November 12, 1992, the Deputy Commissioner for Operations offered Dr. Shah an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Shah from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Dr. Shah on its finding that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of Quad's drug products.

The certified letter also informed Dr. Shah that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also notified Dr. Shah that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated December 4, 1992, Dr. Shah requested a hearing, and, in a letter dated January 7, 1993, Dr. Shah submitted arguments and information in support of his hearing request. In his request for a hearing, Dr. Shah acknowledges that he was convicted of a felony under Federal law as alleged by FDA. However, Dr. Shah argues that FDA's findings based on that conviction are incorrect and that the agency's proposal to debar him is unconstitutional.

The Deputy Commissioner for Operations has considered Dr. Shah's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Moreover, the constitutional arguments that Dr. Shah offers do not create a basis for a hearing (see 21 CFR 12.24(b)(1)). Dr. Shah's arguments are discussed below.

II. Arguments in Support of a Hearing

Dr. Shah first alleges that FDA's findings are incorrect because his conviction does not establish any

factual predicate upon which the notice to permanently debar him may rely. Dr. Shah claims that the conviction was based on his giving an illegal gratuity in response to repeated requests of the public official for personal and other reasons unrelated to the drug approval process.

This argument is unconvincing and fails to raise a genuine and substantial issue of fact. Dr. Shah pled guilty to and was convicted of violating 18 U.S.C. 201(c)(1)(A) for his payment of approximately $1,000 to an FDA chemistry review Branch Chief who was involved in the regulation of Quad's drug products (21 U.S.C. 335a(l)).

In order to be convicted under 18 U.S.C. 201(c)(1)(A), one must give, otherwise than as provided by law for the proper discharge of official duty, something of value to a public official because of an official act performed or to be performed by such official. "Official act" is defined under 18 U.S.C. 201(a)(3) as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." Hence, as a matter of law, Dr. Shah's conviction establishes that his action was intended to influence official action. The public official to whom the illegal gratuity was given was a Branch Chief of one of the four chemistry review branches within FDA's Division of Generic Drugs, whose sole responsibilities were the review of applications submitted by generic drug manufacturers seeking FDA's approval to market their products to the public, and the general regulation of generic drugs. Therefore, Dr. Shah's conviction under 18 U.S.C. 201(c)(1)(A) is alone sufficient to establish that his felony conviction was for conduct relating to the development and approval, including the process for development and approval, of a drug product, and relating to the regulation of a drug product.

Although Dr. Shah's conviction is a sufficient basis for this conclusion, the record in this case further reveals that Dr. Shah is estopped from arguing that the illegal gratuity was not intended to influence official action on his company's drug product. Dr. Shah's own counsel admitted that Dr. Shah's payment to the public official related to the development or approval and the regulation of Quad's drug applications by stating to the court that, "Dr. Shah could not know what they would do with the applications which were pending before them if he didn't help [the FDA branch chief] with his domestic problems." (See sentencing transcript, September 13, 1989, p. 8.) Dr. Shah is bound by his counsel's acknowledgment and is estopped from challenging it.

Furthermore, Judge Hargrove noted during sentencing that Dr. Shah must certainly have recognized that his illegal gratuities would have some effect on the public official to whom they were given, stating "[b]ut I think there's a feeling that if you do something for me, I'll do something for you. And I think it's the only clear implication you get out of all this." (See sentencing transcript, September 13, 1989, p. 17.) This finding by the court in connection with an entry of judgment of guilt against Dr. Shah for a crime involving intent to influence official action collaterally estops him from relitigating the issue in an administrative forum.

Finally, Dr. Shah had ample opportunity to contest the government's allegations during the criminal case prior to his conviction. Thus, any argument subsequent to Dr. Shah's conviction that Dr. Shah did not provide the gratuity "for or because of any official act performed or to be performed" is specious.

Dr. Shah next argues that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Dr. Shah's criminal conduct. With the enactment of the Generic Drug Enforcement Act (GDEA) on May 13, 1992, Congress amended the Federal Food, Drug, and Cosmetic Act to include section 306(a)(2).

An ex post facto law is one which reaches back to punish acts which occurred before enactment of the law or which adds a new punishment to one that was in effect when the crime was committed (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L.Ed. 366 (1866); *Collins* v. *Youngblood*, 110 Sup. Ct. 2715 (1990).)

Dr. Shah's claim that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive. Because the intent behind debarment under section 306(a)(2) of the act is remedial rather than punitive, this section does not violate the ex post facto clause.

The congressional intent with respect to actions under section 306(a)(2) of the act is clearly remedial. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA itself and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is "to restore and ensure the integrity of the ANDA approval process and to protect the public health." (See section 1, Pub. L. 102–282, The Generic Drug Enforcement Act of 1992.) This is a remedial rather than punitive goal (see *Manocchio* v. *Kusserow*, 961 F.2d 1539, 1542 (11th Cir. 1992) (exclusion of physician from participation in medicare programs because of criminal conviction is remedial, not punitive)). Supporting the remedial character of debarment is a statement by Senator Hatch in the Congressional Record of April 10, 1992, at S5616, "* * * [t]he legislation * * * provides a much-needed remedy for the blatant fraud and corruption uncovered in the generic drug industry * * * during the last 3 years."

The Supreme Court has long held that statutes that deny future privileges to convicted offenders because of their previous criminal activities in order to insure against corruption in specified areas do not impose penalties for past conduct and, therefore, do not violate the ex post facto prohibitions (see e.g., *Hawker* v. *New York*, 170 U.S. 189, 190 (1898) (physician barred from practicing medicine for a prior felony conviction); *De Veau* v. *Braisted*, 373 U.S. 154 (1960) (convicted felon's exclusion from employment as officer of waterfront union is not a violation of the ex post facto clause)).

In *De Veau*, the court upheld a law that prohibited a convicted felon from employment as an officer in a waterfront union. The purpose of the law was to remedy the past corruption and to insure against future corruption in the waterfront unions. The court in *De Veau*, 363 U.S. at 160, stated:

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession * * *

As in *DeVeau*, the legislative purpose of the relevant statute is to ensure that fraud and corruption are eliminated from the generic drug industry. The restrictions placed on individuals convicted of a felony under Federal law are not intended as punishment but are "incident to a regulation of a present situation" (*DeVeau*, 363 U.S. at 160) and necessary in order to remedy the past fraud and corruption in the industry.

In his final argument, Dr. Shah claims that the proposal to debar him under section 306(a)(2) of the act violates the double jeopardy clause of the Fifth Amendment to the U.S. Constitution. The double jeopardy clause states that no person shall "be subject for the same

offense to be twice put in jeopardy of life or limb." Dr. Shah relies on *U.S.* v. *Halper*, 109 Sup. Ct. 1892 (1989), to argue that the Fifth Amendment double jeopardy clause should prevent his debarment because "jeopardy" can attach even in a purely civil proceeding, so long as the civil sanction is punitive, not remedial. He further argues that his proposed permanent debarment is punitive because it would eliminate any opportunity to demonstrate that he would no longer be a threat to the integrity of the drug approval process.

Dr. Shah's argument is unpersuasive. First, "jeopardy" cannot attach because the effect of section 306(a)(2) of the act is remedial, not punitive. As discussed above, the legislative goal of this section is to restore and ensure the integrity of the drug approval process and to protect the public health by eradicating fraud and corruption from the generic drug industry. This is plainly a remedial rather than punitive goal (*Manocchio* v. *Kusserow*, 961 F.2d at 1542).

The fact that Dr. Shah's debarment is permanent rather than temporary does not signify that the legislation is nonremedial or punitive. The Supreme Court has upheld laws which, for remedial purposes, permanently bar a class or group of individuals from certain occupations due to a prior criminal conviction (see *Hawker* v. *New York*, 170 U.S. 189, 190 (1898); *De Veau* v. *Braisted*, 373 U.S. 154 (1960)).

Second, the double jeopardy clause is inapplicable to FDA's proposal to debar Dr. Shah because the sanctions imposed by section 306(a)(2) of the act are rationally related to the remedial governmental goal of eradicating fraud from the generic drug industry. Under *U.S.* v. *Halper*, the relevant question is whether the sanction imposed in the second proceeding "bears any rational relation to the damages suffered by the government." *U.S.* v. *Halper*, 109 Sup. Ct. at 1904.

Due to the potentially serious consequences to the public health of fraud and corruption in the drug industry, the permanent debarment of convicted felons like Dr. Shah is not an excessive means to eliminate fraud from the industry. The legislative history of the GDEA is replete with statements, some cited above, that the act provides a reasonable means of ridding the generic drug industry of widespread corruption and to restore consumer confidence in generic drugs.

Dr. Shah acknowledges that he was convicted as alleged by FDA in its proposal to debar him and has raised no genuine and substantial issue of fact regarding this conviction. In addition, Dr. Shah's legal arguments do not create a basis for a hearing and, in any event, are unpersuasive. Accordingly, the Deputy Commissioner for Operations denies Dr. Shah's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Dilip Shah has been convicted of a felony under Federal law for conduct (1) relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Dilip Shah is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective August 31, 1993 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Shah in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Dr. Shah, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with Dr. Shah's assistance during his period of debarment.

Dr. Shah may file an application to attempt to terminate his debarment, pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 92N–0385 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 12, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–21079 Filed 8–30–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Opportunity for a License for the Preclinical and Clinical Development of Conocurvone as an Antiviral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Cancer Institute, National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), Department of Health and Human Services (DHHS) seeks a licensee who can effectively pursue the preclinical, clinical and commercial development of Conocurvone as a drug for the treatment of human immunodeficiency virus (HIV) infection. Scientists at the National Cancel Institute have established that this compound is effective in inhibiting *in vitro* cytopathicity and replication of HIV, the etiologic agent of Acquired Immunodeficiency Syndrome (AIDS). The Government will grant the selected company an exclusive royalty-bearing license under U.S. Patent Application Serial No. 08/011,183 (titled "Antiviral Naphthoquinone Compounds, Compositions And Uses Thereof").

ADDRESSES: Dr. Dwight Kaufman, Deputy Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, 9000 Rockville Pike, Bethesda, MD 20892, (301/496–6711) may be addressed for further information (for example, a summary of Conocurvone's anti-HIV activity, its pharmacological properties, and toxicological information). For other questions or comments concerning the licensing of this technology, including receiving a license application form, or to receive a copy of the patent application, please contact Steven M. Ferguson, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

EFFECTIVE DATE: In view of the high priority for developing new drugs for the treatment of human immunodeficiency (HIV) infection, all proposals must be received on or before November 1, 1993.

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SUPPLEMENTARY INFORMATION: The NCI seeks a sponsor, who in accordance with requirements and regulations governing the licensing of Government owned inventions (37 CFR part 404), has the most meritorious plan for the development of Conocurvone to a marketable status to meet the needs of the public and with acceptable terms for the NCI. Specifically, responders are sought who will be able to:

(1) Supply bulk compound to support preclinical toxicology, pharmacology, and formulation development studies which may be performed to the INDA (Investigational New Drug Application) stage by the NCI; additional preclinical toxicology and pharmacology studies and testing, without guaranteed assistance from the Government, may be required from the Company;

(2) Perform formulation production for oral and/or parenteral use; the tasks may include vialing, quality control testing, bioavailability testing and distribution of the drug for Phase I and Phase II and, if appropriate, Phase III clinical trials both in the NIH intramural program and in the extramural AIDS Clinical Trials Groups (ACTGs) established by the National Institute of Allergy and Infectious Diseases (NIAID). These clinical trials may be performed under the sponsorship of an FDA-approved Investigational New Drug Application to be held by the NCI or NIAID. Prior to being released for commercial distribution in the United States, the drug will have to be granted a product license by the U.S. Food and Drug Administration (FDA);

(3) Support clinical studies. The NCI may conduct studies of Conocurvone in the ACTGs, the NIH Clinical Center and the NIAID may conduct studies, and the company will be expected to provide drug free of charge to the National Institutes of Health (NIH) for studies conducted in the ACTGs and in the NIH intramural program; the Company will be expected to cooperate with NCI and NIAID in providing drug and supporting distribution of the drug under a treatment IND when appropriate; the company will not be precluded from conducting or sponsoring its own preclinical or clinical investigations in addition to the above.

(4) Provide bulk pharmaceutical product necessary for the treatment of 500–1,000 patients with HIV infection in Phase I, II and III developmental studies;

(5) Provide data management support for clinical studies of Conocurvone necessary for the timely submission of a NDA (New Drug Application) to the FDA;

(6) Share the cost of clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of Conocurvone for the treatment of AIDS;

(7) Agree to provide Conocurvone to the public at a reasonable price.

Criteria used in considering an industrial sponsor, in addition to those set forth by 37 CFR 404.7 (a)(1) (ii)–(iv), may include:

(1) Prior experience/capabilities in drug manufacturing; and a plan for production of Conocurvone.

(2) Experience in preclinical and clinical drug development;

(3) Experience in the evaluation, monitoring and interpretation of data for investigational biologic and virologic assays;

(4) Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies;

(5) Demonstrated expertise in monitoring drug levels using state-of-the-art methods for measuring drugs in blood, urine and CSF;

(6) A willingness to cooperate with the NCI in the collection, evaluation, publication and maintenance of data from animal studies and from clinical trials and tests of investigational biologic assays;

(7) Demonstrated competence in developing diverse types of drug formulations suitable for oral and/or parenteral use;

(8) Ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price;

(9) Willingness to share the costs of Conocurvone drug development as outlined above (i.e., bulk drug synthesis, data management, animal studies, clinical studies, etc.);

(10) Agreement to be bound by the United States Department of Health and Human Services (DHHS) rules involving human and animal subjects;

(11) An aggressive developmental plan that includes appropriate milestones and deadlines for preclinical and clinical development and for marketing approval.

Since this agent, Conocurvone, is isolated from flora indigenous to Western Australia, NCI is concerned that the collection and utilization of the natural plant material comport with all applicable Federal and Australian policies related to biodiversity. In order to comport with such policies, the successful applicant will be required to negotiate and enter into agreements with the appropriate Australian and Western Australian Government agencies.

This notice supersedes and is a substitute for the notice that appeared August 18, 1993, concerning the availability for license of U.S. Patent Application Serial No. 08/011,183 (titled "Antiviral Naphthoquinone Compounds, Compositions And Uses Thereof").

Dated: August 23, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–21095 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner, Office of Scientific Affairs, NIAAA, at 301/443–4375.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, room 16C–20, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–4375. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

Name of Committee: Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Antonio Noronha, Ph.D.

Dates of Meeting: October 13–15, 1993.
Place of Meeting: Residence Inn Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Open: October 13, 9 a.m. to 11 a.m.
Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.
Closed: October 13, 11 a.m. to recess. October 14, 9 a.m. to adjournment. October 15, 9 a.m. to adjournment.
Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.
Scientific Review Administrator: Ronald Suddenhoff, Ph.D.
Dates of Meeting: October 18–20, 1993.
Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 18, 9 a.m. to 10 a.m.
Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.
Closed: October 18, 10 a.m. to recess. October 19, 9 a.m. to recess. October 20, 9 a.m. to adjournment.
Name of Committee: Clinical and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.
Scientific Review Administrator: Thomas D. Sevy, M.S.W.
Dates of Meeting: October 18–20, 1993.
Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC.
Open: October 18, 9 a.m. to 10 a.m.
Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.
Closed: October 18, 10 a.m. to recess. October 19, 9 a.m. to recess. October 20, 9 a.m. to adjournment.
Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.
Scientific Review Administrator: Lenore S. Radloff.
Dates of Meeting: October 27–29, 1993.
Place of Meeting: Georgetown Inn, 1310 Wisconsin Ave., NW., Washington, DC.
Open: October 27, 8 a.m. to 10 a.m.
Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.
Closed: October 27, 10 a.m. to recess. October 28, 9 a.m. to recess. October 29, 9 a.m. to adjournment.
Name of Committee: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.
Scientific Review Administrator: Barbara Smothers, Ph.D.
Dates of Meeting: November 8–9, 1993.
Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD.
Open: November 8, 8:30 a.m. to 9:30 a.m.
Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.
Closed: November 8, 9:30 a.m. to recess. March 9, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93.272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health)

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 93–21089 Filed 8–30–93; 8:45 am]
BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting of the National Advisory Council on Alcohol Abuse and Alcoholism

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, National Institute on Alcohol Abuse and Alcoholism, September 29, 1993, Building 31C, Conference Room 6, NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

This meeting will be open to the public on September 29 from 10 a.m. to 2:45 p.m. to discuss administrative details or other issues relating to council activities. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner, Office of Scientific Affairs, NIAAA, at 301/443–4375.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on September 29 from 2:45 p.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In accordance with the provisions set forth in sec. 552b(c)(9)(B), title 5, U.S.C., the Council meeting will also be closed to the public on September 29 from 2:45 p.m. to adjournment for possible discussion and preparation of comments Council may wish to submit to the Director, NIH, for inclusion in the biennial report to the Congress. Premature disclosure of such information would significantly frustrate implementation of proposed agency actions.

Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, room 16C–20, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–4375 will provide a summary of the meeting, roster of council members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93.272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health).

Dated: August 25, 1993.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 93–21096 Filed 8–30–93; 8:45 am]
BILLING CODE 4140–01–M

Meetings of the National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 22–24, 1993. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public on September 22 from 8 a.m. until recess. The subcommittee will meet in the Baccarat and Haverford Suites, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting of the full Council will be open to the public on September 23 in Conference Room 6 from approximately 1 p.m. until 3:30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a report on the Division of Intramural Research as well as presentations on transgenic and knockout mice; interlukin 2 in the treatment of the AIDS patients; grants policy issues; topical microbicides; and small business innovation research.

On September 24 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases

Subcommittee will be open to the public from 8:30 a.m. until adjournment. Both subcommittees will meet at the National Institutes of Health, Building 31C in conference rooms 7 and 6 respectively.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on September 23, in conference rooms 6, 7 and 8 respectively. The meeting of the full Council will be closed from 3:30 p.m. until recess on September 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Good, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Good in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 25, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21091 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panels.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: September 13–14, 1993.

Time of Meeting: September 13—7:30 pm until recess. September 14—8 am until adjournment.

Place of Meeting: The Vernon Manor Hotel, Cincinnati, Ohio.

Agenda: Review of program project grant application.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: September 13–15, 1993.

Time of Meeting: 9/13: 8 p.m.–10 p.m., 9/14: 4 p.m.–7 p.m., 9/15: 8 a.m.–11 a.m.

Place of Meeting: Holiday Inn, 210 South Dubuque, Iowa City, Iowa.

Agenda: Review of program project grant application.

Contact Person: Dr. Marilyn Semmes, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: August 25, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21093 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–01–M

Amended Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Board

Notice is hereby given of a change in the meeting of the National Deafness and Other Communication Disorders Advisory Board which was published in the Federal Register on July 26, 1993 (58 FR 39825). The meeting will take place on September 20, 1993, from 8:30 a.m. to 4:30 p.m. in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting was scheduled to be open to the public from 8:30 a.m. to 3:30 p.m., but has been changed to 8:30 a.m. to 2:30 p.m. and from 4 p.m. to adjournment.

The meeting was scheduled to be closed to the public from 3:30 p.m. until adjournment, but has been changed to 2:30 p.m. to 4 p.m.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: August 25, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21094 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on October 7–8, 1993, convening at 9 a.m. on October 7 and at 8:30 a.m. on October 8 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on October 7 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Diane Gibbs at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in section 552b(c)(9)(B), title 5, U.S.C., Public Law 92–463, the meeting will be closed on October 7 from 10:30 a.m. to approximately 5 p.m. and on October 18 from 8:30 a.m. to adjournment for the review and

discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: August 25, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21088 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on September 30–October 1, 1993, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on September 29 in the 5th-floor Conference Room, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on September 30 and from 9 a.m. to adjournment on October 1 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on September 29 will be closed to the public, and the regular Board meeting on September 30 will be closed from approximately 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: August 25, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21090 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute of Mental Health for September 1993.

These meetings will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

All meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: National Advisory Mental Health Council.

Contact: Carolyn Strete, Ph.D., Parklawn Building, room 9–105, Telephone: 301, 443–3367.

Meeting Date: September 13–14, 1993.

Place: September 13—Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

September 14—Building 1, Wilson Hall, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: September 14, 9 a.m. to adjournment.

Closed: September 13, 9:30 a.m. to 5 p.m.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.

Contact: Wm. Gregory Zimmerman, Parklawn Building, room 9C–18, Telephone: 301, 443–3936.

Meeting Date: September 30—October 1, 1993.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: September 30, 1993, 8:30 a.m.–9:30 a.m.

Closed: September 30, 1993, 9:30 a.m.–5 p.m. October 1, 1993, 8:30 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: August 25, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21092 Filed 8–30–93; 8:45 am]

BILLING CODE 4140–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3661; FR. 3566–N–01]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of publication of preliminary report.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App 2). The Task Force's charter

was published in the Federal Register on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing; and make recommendations in its final report to HUD and Congress for the establishment of reasonable criteria for occupancy, so that HUD could revise its standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing. This notice is to announce the availability of the Task Force's Preliminary Report for public comment.

COMMENT DUE DATE: Written comments must be received by November 1, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding the preliminary report to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. To ensure that comments are fully understood, they should refer to the page of the Report that they address. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. Copies of the Task Force's Preliminary Report will be available from HUD's Office of Fair Housing and Equal Opportunity (FHEO), room 5226 at the above address, or at the local HUD Office in the city, state or region where you live. A list of the HUD Field Office addresses and telephone numbers appears at the end of this notice. Also, the HUD telephone number and address is listed in your local telephone book in the pages marked "United States Government". Copies of the preliminary report will be made available on tape or large print for those with impaired vision who request them, and on computer disk. They may be obtained from HUD's Office of FHEO in room 5226.

FOR FURTHER INFORMATION CONTACT:

Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

The Preliminary Report

This report is presented for public comment, both to advise the public on the range and current status of Task Force discussions, and to solicit the public's participation in the Task Force's deliberations.

The Task Force reached consensus easily on many issues. Other issues required much research and discussion before consensus was reached, and on still others the Task Force has not yet been able to reach consensus. In the discussion of each chapter, we highlight those issues which we found especially challenging (including the difficult issues on which we have reached consensus and those where we have not).

Because this is a Summary, it does not include all of the issues addressed, and is only meant to be a guide to the Report.

Key Features of the Preliminary Report

Each chapter is outlined below, to indicate to the reader:

* Topics—key issues, in the sequence they are addressed in the chapter.
* Requests for Public Comment—the Task Force solicits public comment on the entire preliminary report; however, there are particular areas where public comment is particularly welcomed.
* Difficult Issues—topics on which the Task Force either did not achieve consensus, or achieved consensus after lengthy information sharing and discussion.

Chapter 1—The Application Process

* Overview—guiding principles, nondiscrimination requirements.
* Accessibility and Plain Language—how to communicate in a way that is effective and satisfactory to applicants with disabilities and housing providers.
* Marketing—locating and matching applicants with disabilities and accessible housing.
* Taking Applications—application forms and procedures.
* Waiting List—occupancy standards (see below), transfers, accessible units, Federal preferences, local preferences, updating the waiting list, offers of dwelling units.
* Occupancy Standards—how many individuals may be permitted to occupy a given dwelling unit?
* Determining Eligibility—requirements, computing rent, recommended changes to the current rent formulas.
* Screening—selection criteria, previous tenant history, drug-related issues, alcohol-related issues, mitigating circumstances.
* Recommendation for a Second Interview—basis and timing for offering a second interview to applicants with disabilities, before sending a rejection letter.
* Medical Inquiries—guidance about distinguishing between necessary and unnecessary information.
* Verification—guidance about collecting information regarding ability to pay rent, ability to care for the unit, respecting the rights of others, criminal activity, and program compliance.
* Rejecting Applicants.

The Task Force found these topics particularly challenging: Plain language, occupancy standards, previous tenant history, drug-related issues, mitigating circumstances and medical inquiries.

Chapter 2—The Housing Management Process

* Guiding Principles.
* Pre-Occupancy Orientation—suggestions regarding the advisability and content of new tenant orientation.
* The Lease—public comment is specifically solicited with respect to needed changes to lease requirements.
* Preventing and Addressing Lease Violations—nondiscriminatory action before and after lease violations have occurred, lease violation notices, minor versus serious lease violations.
* Unit Transfers—guidance about the potentially competing goals of limiting administrative costs and satisfying reasonable accommodation requirements.
* Retention of Housing During Hospitalization or Residential Treatment—addressing the potentially competing goals of not keeping units off the market and preserving a tenant's unit when he or she is temporarily absent for disability related reasons.

The Task Force reached consensus on Preventing and Addressing Lease Violations only after extended discussion.

Chapter 3—The Eviction Process

* Alternatives to Eviction—public comment is specifically solicited regarding creative methods for preventing evictions for nonpayment of rent.
* Alternatives After Eviction, To Prevent Homelessness—public comment is specifically solicited regarding creative methods for preventing homelessness of those evicted from public and assisted housing.
* Notices—notices of lease violation, notices of lease termination.
* Drug Abuse and Drug Related Crime—when are these grounds for eviction?

* Criminal Activity as Grounds for Eviction—including Task Force recommendations for regulatory changes.
* Minor Crimes and Off-Premises Drug-Related Criminal Activity—when do these become the basis for evictions?
* Former Users of Illegal Drugs—distinguishing between former users who are protected persons with disabilities, and current illegal users who are not protected under the Fair Housing Act or section 504.
* Fraud—identifying eviction-related fraudulent acts.
* Public Housing Grievance Procedure—recommendation for its usage.
* Residents' Liability for the Actions of Others—the feasibility and advisability of alternatives to evicting the entire household.
* Consideration of All the Facts and Circumstances—mitigating circumstances, in the context of evictions.
* Activity Prior to Admission—in the context of evictions, distinguishing conduct prior to admission and conduct during occupancy.
* Subsidy Termination—discussion of the due process issues inherent in subsidy termination in the certificate/voucher programs.

The Task Force found these topics particularly challenging:

Alternatives after eviction, criminal activity, residents' liability, consideration of facts and circumstances, and subsidy termination.

Chapters 4 & 5—Reasonable Accommodations/Fundamental Alterations and Undue Burdens

At the heart of section 504 is the requirement to make, and pay for, changes in policies, procedures and structures as needed to provide program accessibility to specific applicants and residents with disabilities, subject to "fundamental alteration" and "undue burdens" limitations. This chapter includes:

* Overview—laws, regulations, judicial decisions, definitions and principals.
* Procedures—elements of a reasonable accommodation procedure.
* Disagreements—guidelines for resolving conflicts when the housing provider and the person with disabilities do not agree on the elements of a reasonable accommodation. We address disagreements regarding animals, interpreters, lease violations, objectionable behavior, and curing of lease violations.
* Fundamental Alterations—guidelines for determining when this limitation applies and how it can be overcome.
* Undue Financial and Administrative Burdens—guidelines for determining when this limitation applies and how it can be overcome. This section includes a discussion of how to fund accessibility costs.
* Other Topics—reasonable accommodations to HUD's own rules and procedures; recommendations for technical assistance, training and research.
* Case Studies—eight case studies illustrating reasonable accommodations issues.

The Task Force learned a great deal during its deliberations and was able to reach consensus on guidance for some of the most vexing and frequently asked questions in this essential area of Fair Housing practice. The following issues were particularly challenging: Disagreements about what constituted a reasonable accommodation; fundamental alterations; and undue burdens.

Chapter 6—Support Services

This chapter addresses the interaction between housing and various non-housing services which support residents either in their lives generally or in their housing specifically:

* Overview—definitions, contexts and principles.
* The Support Services System—an introduction to how services are designed, funded and delivered.
* Service Coordinators—housing staff who, at a minimum, conduct outreach to service providers to bring services into the housing community.
* Housing/Service Collaborations—how can housing providers and service providers work together to better meet the housing and service needs of lower income residents?

The Task Force found the housing/service collaboration issue to be fraught with risks of unintended discriminatory consequences. Nonetheless, the Task Force believes that such collaborations can be beneficial for the entire housing community.

Chapter 7—Broad-Based Clearinghouse

The Task Force believes that local clearinghouse organizations should be created as a method for facilitating the public's access to affordable housing, accessible housing, and support services.

Chapter 8—Confidentiality

Housing providers often come into the possession of sensitive information regarding applicants and residents; this may include information about a disability. Because the Task Force has not reviewed this issue in great detail, public comment is specifically solicited. Topics covered are:

* Overview.
* Resident Screening or Eviction Committees and Confidentiality.
* Service Coordinators and Confidentiality.

Chapter 9—Not in My Backyard (NIMBY)

* Overview—factors contributing to NIMBY.
* Recommendations.

Chapter 10—Certificates and Voucher Issues

This part of the Report has not been reviewed by the full Task Force, but is the product of a group of Task Force members who have particular expertise in this area. Covered are:

* Expirations and Extensions of Time—when an applicant has not found adequate housing during the allotted time, what are the housing providers obligations? What discretionary steps is he or she permitted to take?
* Reasonable Accommodations—locating accessible housing, exemptions to Fair Market Rent Limits.
* Waiting Lists—removal of an applicant's name from the waiting list and the circumstances under which it should be restored to the list.
* Lease Terminations in the First Year—guidance outlining the situations in which residents will not be penalized.
* Damage Claims—due process rights giving residents an opportunity to challenge claims.
* Housing Quality Standards (HQS)—recommendation about revising the HQS system to avoid unnecessary loss of housing.
* Portability/Mobility—a discussion of how reasonable accommodation requirements affect probability/mobility rules.

The Task Force Committee specifically seeks comment on waiting lists, housing quality standards, and portability/mobility issues.

Appendices

Appendixes provided with the Preliminary Report:

1. Statutory basis for the Task Force
2. Legislative History for the Task Force
3. List of Task Force Members
4. Sequential List of All Recommendations
5. Model Public Housing Lease, drafted by the Council of Large Public Housing Authorities (based upon 24 CFR 966.4)

Additional appendixes to be provided in the Final Report:
6. Assisted Housing Model Lease
7. Certificate and Voucher Lease Rules
8. Sample Public Housing Admissions and Occupancy Policy
9. Sample Public Housing Forms
10. Sample Assisted Housing Resident Selection Plan
11. Sample Assisted Housing Forms
12. Task Force Working Papers

Dated: August 20, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Region I (Boston)

HUD Field Office Addresses and Telephone Numbers

Boston Regional Office, Room 375, Thomas P. O'Neill, Jr. Federal Bldg., Causeway Street, Boston, MA 02222–1092, Telephone No. (617) 565–5234

Field Offices

Bangor Office, First Floor, Casco Northern Bank Building, 23 Main Street, Bangor, ME 04401–6394, Telephone No. (207) 945–0467
Burlington Office, Room 244, Federal Building, 11 Elmwood Ave., P.O. Box 879, Burlington, VT 05402–0879, Telephone No. (802) 951–6290
Hartford Office, First Floor, 330 Main Street, Hartford, Connecticut 06106–1860, Telephone No. (203) 240–4523
Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, Telephone No. (603) 666–7681
Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, RI 02903–1785, Telephone No. (401) 528–5351

Region II (New York)

New York Regional Office, 26 Federal Plaza, New York, NY 10278–0068, Telephone No. (212) 264–6500

Field Offices

Albany Office, 2 Corporate Circle, Albany, NY 12203–5121, Telephone No. (518) 464–4200
Buffalo Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, Telephone No. (716) 846–5755
Camden Office, 52nd Floor, Hudson Building, 800 Hudson Square, Camden, NJ 08102–1156, Telephone No. (609) 757–5081
Newark Office, Military Park Building, 60 Park Place, Newark, NJ 07102–5504, Telephone No. (201) 877–1662

Region III (Philadelphia)

Philadelphia Regional Office, Liberty Square Building, 105 South Seventh Street, Philadelphia, PA 19106–3392, Telephone No. (215) 597–2560

Field Offices

Baltimore Office, Third Floor, The Equitable Building, 10 North Calvert Street, Baltimore, MD 21202–1865, Telephone No. (301) 962–2520
Charleston Office, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, Telephone No. (304) 347–7000
Pittsburgh Office, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, Telephone No. (412) 644–6428
Richmond Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, Telephone No. (804) 278–4507
Washington, DC Office, 820 First Street, NE, Washington, DC 20002–4205, Telephone No. (202) 275–9200
Wilmington Office, Suite 850, 824 Market Street, Wilmington, DE 19801–3016, Telephone No. (302) 573–6300

Region IV (Atlanta)

Atlanta Regional Office, Richard B. Russell Federal Bldg., 75 Spring Street, SW, Atlanta, GA 30303–3388, Telephone No. (404) 331–5136

Field Offices

Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, Telephone No. (205) 290–7617
Caribbean Office, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, Telephone No. (809) 766–6121
Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, Telephone No. (803) 765–5592
Coral Gables Office, Gables 1 Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2911, Telephone No. (305) 662–4500
Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, Telephone No. (919) 547–4001
Jackson Office, Suite 910, Doctor A. H. McCoy Federal Bldg., 100 West Capitol Street, Jackson, MS 39269–1096, Telephone No. (601) 965–5308
Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, Telephone No. (904) 232–2626
Knoxville Office, Third Floor, John J. Duncan Federal Bldg., 710 Locust Street, Knoxville, TN 37902–2526, Telephone No. (615) 545–4384
Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, Telephone No. (502) 582–5251
Memphis Office, Suite 1200, One Memphis Place, 200 Jefferson Avenue, Memphis, TN 38103–2335, Telephone No. (901) 544–3367
Nashville Office, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, Telephone No. (615) 736–5213
Orlando Office, Suite 270, Langley Building, 3751 Maguire Boulevard, Orlando, FL, Telephone No. (407) 648–6441
Tampa Office, Suite 700, Timberlake Federal Bldg. Annex, 501 East Polk Street, Tampa, FL 33602–3945, Telephone No. (813) 228–2501

Region V (Chicago)

Chicago Regional Office, Ralph Metcalfe Federal Bldg., 77 West Jackson Boulevard, Chicago, IL 60604–3507, Telephone No. (312) 353–5680

Field Offices

Cincinnati Office, Room 9002, Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253, Telephone No. (513) 684–2884
Cleveland Office, Room 420, One Playhouse Square, 1375 Euclid Avenue, Cleveland, OH 44114–1670, Telephone No. (216) 522–4058
Columbus Office, 200 North High Street, Columbia, OH 43215–2499, Telephone No. (614) 469–5737
Detroit Office, Patrick V. McNamara Federal Bldg., 477 Michigan Avenue, Detroit, MI 48226–2592, Telephone No. (313) 226–7900
Flint Office, Room 200, 605 North Saginaw Street, Flint, MI 48502–1953, Telephone No. (313) 766–5112
Grand Rapids Office, 2922 Fuller Avenue, NE, Grand Rapids, MI 49505–3499,Telephone No. (616) 456–2100
Indianapolis Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, Telephone No. (317) 226–6303
Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, Telephone No. (414) 297–3214
Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, MN 55401–2195, Telephone No. (612) 370–3000
Springfield Office, Suite 206, 509 West Capitol Street, Springfield, IL 62704–1906, Telephone No. (217) 492–4085

Region VI (Fort Worth)

Fort Worth Regional Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, Telephone No. (817) 885–5401

Field Offices

Albuquerque Office, 625 Truman Street, NE, Albuquerque, NM 87110–6443, Telephone No. (505) 262–6463
Dallas Office, Room 860, 525 Griffin Street, Dallas, TX 75202–5007, Telephone No. (214) 767–8359
Houston Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, Telephone No. (713) 653–3274
Little Rock Office, Suite 200, Lafayette Building, 523 Louisiana Street, Little Rock, AR 72201–3707, Telephone No. (501) 324–5931
Lubbock Office, Federal Office Building, 1205 Texas Avenue, Lubbock, TX 79401–4093, Telephone No. (806) 743–7265
New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, LA 70112–2887, Telephone No. (504) 589–7200
Oklahoma City Office, Murrah Federal Building, 200 N.W. Fifth Street, Oklahoma City, OK 73102–3202, Telephone No. (405) 231–4181
San Antonio Office, Washington Square, 800 Dolorosa, San Antonio, TX 78207–4563, Telephone No. (512) 229–6800
Shreveport Office, Joe D. Waggoner Federal Bldg., 500 Fannin Street, Shreveport, LA 71101–3077, Telephone No. (318) 226–5385
Tulsa Office, Suite 110, Boston Place, 1516 South Boston Street, Tulsa, OK 74119–4032, Telephone No. (918) 581–7435

Region VII (Kansas City)

Kansas City Regional Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, Telephone No. (913) 236–2162

Field Offices

Des Moines Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, Telephone No. (515) 284–4512
Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, Telephone No. (402) 492–3101
St. Louis Office, Third Floor, Robert A. Young Federal Bldg., 1222 Spruce Street, St. Louis, MO 63101–2836, Telephone No. (314) 539–6560

Region VIII (Denver)

Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, Telephone No. (303) 844–4513

Field Offices

Casper Office, 4225 Federal Office Building, 100 East B Street, P.O. Box 120, Casper, WY 82602–1918, Telephone No. (307) 261–5252
Fargo Office, Federal Building, 653 2nd Avenue North, P.O. Box 2483, Fargo, ND 58108–2483, Telephone No. (701) 239–5136
Helena Office, Room 340, Federal Office Bldg. Drawer 10095, 301 S. Park, Helena, MT 59626–0095, Telephone No. (406) 449–5205
Salt Lake City Office, Suite 550, 257 Tower, 257 East, 200 South, Salt Lake City, UT 84111–2048, Telephone No. (801) 524–5379
Sioux Falls Office, Suite 116, "300" Building, 300 N. Dakota Avenue, Sioux Falls, SD 57102–0311, Telephone No. (605) 330–4223

Region IX (San Francisco)

San Francisco Regional Office, Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, Telephone No. (415) 556–4752

Field Offices

Fresno Office, Suite 138, 1630 E. Shaw Avenue, Fresno, CA 93710–8193, Telephone No. (209) 487–5033
Honolulu Office, Suite 500, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, Telephone No. (808) 541–1323
Las Vegas Office, Suite 205, 1500 E. Tropicana Avenue, Las Vegas, NV 89119–6516, Telephone No. (702) 388–6500
Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, CA 90015–3801, Telephone No. (213) 251–7122
Phoenix Office, Suite 1600, 2 Arizona Center, 400 North Fifth Street, Phoenix, AZ 85004–2361, Telephone No. (602) 379–4434.
Reno Office, Suite 114, 1575 Delucchi Lane, Reno, NV 89502–6581, Telephone No. (702) 784–5356
Sacramento Office, Suite 200, 777 12th Street, Sacramento, CA 95814–1997, Telephone No. (916) 551–1351
San Diego Office, Suite 300, Mission City Corporate Center, 2365 Northside Drive, San Diego, CA 92108–2712, Telephone No. (619) 557–5310
Santa Ana Office, Box 12850, 34 Civic Center Plaza, Santa Ana, CA 92712–2850, Telephone No. (714) 836–2451
Tucson Office, Suite 700, Security Pacific Bank Plaza, 33 North Stone Avenue, Tucson, AZ 85701–1467, Telephone No. (602) 670–6237

Region X (Seattle)

Seattle Regional Office, Suite 200, Seattle Federal Office Bldg, 909 1st Avenue, Seattle, WA 98104–1000, Telephone No. (206) 220–5101

Field Offices

Anchorage Office, Federal Bldg—U.S. Courthouse, 222 West 8th Avenue #64, Anchorage, AK 99513–7537, Telephone No. (907) 271–4170
Boise Office, Suite 220, Plaza IV, 800 Park Boulevard, Boise, ID 83712–7743, Telephone No. (208) 334–1990
Portland Office, 520 Southwest Sixth Avenue, Portland, OR 97204–1596, Telephone No. (503) 326–2561
Spokane Office, Eighth Floor East, Farm Credit Bank Building, West 601 First Avenue, Spokane, WA 99204–0317, Telephone No. (509) 353–2510

Telephone numbers listed are not toll free. February 1993.

[FR Doc. 93–20833 Filed 8–30–93; 8:45 am]
BILLING CODE 4210–33–M

Office of the Regional Administrator Regional Housing Commissioner

[Docket No. D–93–1031; FR–3526–D–01]

Acting Regional Administrator, Region IV (Atlanta) Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Regional Administrator for Region IV.

EFFECTIVE DATE: May 18, 1993.

FOR FURTHER INFORMATION CONTACT: Charles A. Lipthrott, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Regional Administrator for Region IV

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator during the absence of, or vacancy in the position of, the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator: Provided, That no official is authorized to serve as Acting Regional Administrator unless all other employees whose names or titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Regional Administrator
2. Director, Operational Support
3. Director, Office of Housing
4. Director, Office of Administration
5. Director, Office of Public Housing
6. Director, Office of Community

6. Director, Office of Community Planning and Development
7. Regional Counsel
8. Director, Office of Fair Housing and Equal Opportunity
9. Georgia Program Coordinator

This designation supersedes the designation effective July 14, 1991, (56 FR 30063, July 30, 1991).

(Delegation of Authority by the Secretary effective May 4, 1962, (27 FR 4319, May 4, 1962); Dept. Interim Order II (31 FR 815, January 21, 1966).

This designation shall be effective as of May 18, 1993.

James D. Long,

Acting Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 93-21141 Filed 8-30-93; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-93-1026; FR-3527-D-01]

Delegation of Authority for the Youthbuild Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development the Secretary's power and authority with respect to the Youthbuild Program, subject to certain specified exceptions.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Michael J. McMahon, Office of Economic Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2035, TDD (202) 708-2565. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION: The Youthbuild Program is a new program authorized by title IV, subtitle D, of the National Affordable Housing Act ("NAHA") (42 U.S.C. 1437aaa note *et seq.*), as added by section 164 of the Housing and Community Development Act of 1992 (42 U.S.C. 12899). The purpose of the Youthbuild Program is to expand the supply of affordable housing for homeless and low- and very low-income persons by providing grants for program design and implementation grants for carrying out Youthbuild programs and to provide economically disadvantaged young adults with opportunities to obtain an education, employment skills and meaningful on-site construction experiences as a service to their communities. HUD awards grants on a competitive basis to eligible applicants (public and private nonprofit organizations) for the planning and/or implementation of eligible Youthbuild programs.

This notice delegates all the power and authority of the Secretary of Housing and Urban Development to the Assistant Secretary for Community Planning and Development for the Youthbuild Program, except for the power to sue and be sued. The authority delegated to the Assistant Secretary, except for the authority to issue or waive rules and regulations, may be redelegated to employees of the Department.

Therefore, the Secretary of Housing and Urban Development delegates the following:

Section A: Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development all the power and authority of the Secretary with respect to the Youthbuild Program authority under title IV, subtitle D, of the National Affordable Housing Act ("NAHA") (42 U.S.C. 1437aaa note *et seq.*), as added by section 164 of the Housing and Community Development Act of 1992 (42 U.S.C. 12899).

Section B: Authority Excepted

The authority delegated to the Assistant Secretary for Community Planning and Development does not include the power and authority to sue and be sued.

Section C: Authority to Redelegate

The Assistant Secretary for Community Planning and Development may redelegate to employees of the Department any of the power and authority delegated under Section A, except the authority to issue or waive rules and regulations.

Authority: Title IV, subtitle D, of the National Affordable Housing Act (42 U.S.C. 1437aaa note *et seq.*), as added by section 164 of the Housing and Community Development Act of 1992 (42 U.S.C. 12899); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 24, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93-21145 Filed 8-30-93; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-93-1030; FR-3554-D-01]

Delegation of Authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner to serve on the Federal Housing Finance Board.

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner to serve on the Federal Housing Finance Board.

SUMMARY: This notice provides that on May 25, 1993, the Secretary of Housing and Urban Development ("Secretary") delegated to the Assistant Secretary for Housing—Federal Housing Commissioner all of the Secretary's functions, powers, and duties as director of the Federal Housing Finance Board.

EFFECTIVE DATE: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-3137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 2A(b)(1)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(d)(2)) as amended by Section 702(a) of Title VII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), provides that the Secretary of Housing and Urban Development shall serve as a director of the Federal Housing Finance Board. Pursuant to section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary may "delegate any of his functions, powers and duties to such officers and employees as he may designate." On May 25, 1993, the Secretary delegated to the Assistant Secretary for Housing—Federal Housing Commissioner all of the Secretary's functions, powers and duties as a director of the Federal Housing Finance Board.

The Secretary delegated as follows:

Section A. Delegation of Authority

The Secretary of Housing and Urban Development hereby delegates the Assistant Secretary for Housing—Federal Housing Commissioner all of the Secretary's functions, powers and duties as a director of the Federal Housing Finance Board, under section 2A(b)(1)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(d)(2)) as

amended by section 702(a) of Title VII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

Section B. No Further Redelegation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner may not redelegate the authority delegated in Section A to any other official or employee of the Department of Housing and Urban Development.

Section C. Delegations of Authority Superseded

This Delegation of Authority supersedes all delegations of authority concerning this function prior to May 25, 1993, including the delegation of authority dated November 2, 1992.

Authority: Sec. 2A(b)(1)(A), Federal Home Loan Bank Act (12 U.S.C. 1422a(d)(2)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 17, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–21142 Filed 8–30–93; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. D–93–1027; FR–3579–D–01]

Delegation of Authority for Multifamily Mortgage Credit Demonstrations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the Secretary's power and authority under Section 542 of the Housing and Community Development Act of 1992, entitled Multifamily Mortgage Credit Demonstrations.

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Jessica A. Franklin, Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, room 6142, 451 7th Street, SW., Washington, DC 20410, (202) 708–2556; TDD (202) 708–4594 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice delegates all power and authority of the Secretary under section 542 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992) entitled Multifamily Mortgage Credit Demonstrations, to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, except for the power to sue and be sued. Under section 542, the Secretary shall enter into partnerships or other contractual arrangements including reinsurance and risk-sharing agreements with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other qualified financial institutions to insure multifamily mortgage loans.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner all the power and authority of the Secretary with respect to section 542 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992) entitled Multifamily Mortgage Credit Demonstrations.

Section B. Authority Excepted

The authority delegated to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner under Section A does not include the power to sue and be sued.

Authority: Section 542 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 17, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–21144 Filed 8–30–93; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. D–93–1028; FR–3577–D–01]

Delegation of Concurrent Authority to the Deputy Secretary

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of concurrent authority.

SUMMARY: The Secretary of Housing and Urban Development is delegating to the Deputy Secretary of Housing and Urban Development, Terrence R. Duvernay, all power and authority vested in or delegated or assigned to the Secretary of housing and Urban Development, to be exercised concurrently with the Secretary, with the exception of the power to sue and be sued.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Carole W. Wilson, Associate General Counsel for Administrative Law and Equal Opportunity, Office of General Counsel, Department of Housing and Urban Development, room 10244, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2203. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development may delegate any of the Secretary's functions, powers and duties to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions, powers and duties as determined to be necessary or appropriate. In the delegation of authority issued today, the Secretary is delegating to the Deputy Secretary of Housing and Urban Development, Terrence R. Duvernay, all power and authority vested in or delegated or assigned to the Secretary, to be exercised concurrently with the Secretary, with the exception of the power to sue and be sued.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Deputy Secretary of Housing and Urban Development, Terrence R. Duvernay, is hereby authorized to exercise all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development to be exercised concurrently with the Secretary.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the authority to sue and be sued.

Section C. Delegation of Concurrent Authority Superseded

The Delegation of Concurrent Authority to then Deputy Secretary of Housing and Urban Development, Alfred DelliBovi published in the **Federal Register** on March 6, 1991, at 56 FR 9369, is hereby superseded.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 25, 1993.
Henry G. Cisneros,
Secretary of Housing and Urban Development.
[FR Doc. 93-21143 Filed 8-30-93; 8:45 am]
BILLING CODE 4210-32-M

[Docket No. D-93-1029; FR-3538-D-01]

Office of the Manager, St. Louis Office Region VII (St. Louis, Missouri); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: Updated the designation of officials who may serve Acting Manager, St. Louis Office, Region VII (St. Louis, Missouri).

EFFECTIVE DATE: July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lawler, Director, Office of Administration, Kansas City Regional Office, Department of Housing and Urban Development, 400 State Avenue, Kansas City, Kansas 66101-2406. (This is not a toll-free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager with all powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding officials listed before him/her in this designation are unavailable to act by reason of absence, disability, or vacancy in the position.

1. Deputy Manager
2. Director, Housing Development Division
3. Director, Community Planning and Development Division
4. Director, Housing Management Division
5. Chief Counsel
6. Director, Public Housing Division

This delegation supersedes the designation effective December 9, 1983, (48 FR 55186, December 9, 1983).

Authority: Delegation of Authority, 27 FR 4319 (1962); Section 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 815 (1966).

Elmer C. Binford,
Acting Regional Administrator—Regional Housing Commissioner.
[FR Doc. 93-21138 Filed 8-30-93; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

[Docket No. D-93-1032; FR-3537-D-01]

Office of the Regional Administrator-Regional Housing Commissioner, Region V (Chicago); Office of the Manager, Cleveland, OH; Designation

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator-Regional Housing Commissioner is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager in the Cleveland Office.

EFFECTIVE DATE: This designation is effective July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Walter Ratzki, Director, Management and Budget Division, Office of Administration, Chicago Regional Office, Department of Housing and Urban Development, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone 312-353-8977. (This is not a toll-free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager with all powers, functions, and duties redelegated or assigned to the Manager unless all other officials whose title precedes his or hers in this designation are unable to act by reason of absence, disability or vacancy.

1. Deputy Manager
2. Director, Housing Development
3. Director, Housing Management
4. Director, Public Housing
5. Chief Attorney
6. Chief, Loan Management Branch
7. Chief, Property Disposition Branch

This designation supersedes the designation published at Docket No. D-87-837, Federal Register Vol. 52, No. 73, dated Thursday, April 16, 1987.

Authority: Delegation of Authority by the Secretary effective October 1, 1970, 36 FR 3389, February 23, 1971.

Joseph P. Garaffa,
Acting Regional Administrator—Regional Housing Commissioner, Region No. 5.
[FR Doc. 93-21139 Filed 8-30-93; 8:45 a.m.]
BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-93-1033; FR-3548-D-01]

Office of the Manager, Oklahoma City Field Office, Region VI (Fort Worth); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective June 1, 1993.

FOR FURTHER INFORMATION CONTACT: Rita Vinson, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905, Telephone (817) 885-5451 (this is not a toll free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Housing Management Division
3. Director, Housing Development Division
4. Director, Community Planning and Development Division
5. Director, Fair Housing and Equal Opportunity Division
6. Director, Public Housing Division
7. Chief Counsel
8. Director, Indian Programs Division

This designation supersedes the designation effective February 1, 1991, published in the Federal Register issue of June 18, 1992 (57 FR 27263).

Authority: Delegation of Authority by the Secretary of Housing and Urban

Development, effective October 1, 1970; 36 FR 3389, February 23, 1971.

Edwin I. Gardner,

Manager, Oklahoma City Office.

Walter G. Sevier,

Acting Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth).

[FR Doc. 93–21140 Filed 8–30–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–4333–02: GP3–381]

Notice of Availability For a Wild and Scenic River Management Plan, Prineville, OR

August 20, 1993.

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Correction.

SUMMARY: In Federal Register Notice appearing on page 32361 of Volume 58, No. 109, June 9, 1993, the boundary description under T. 15 S., R. 21 E., is corrected to omit section 32. The corrected version reads "Portions of sections 5, 8, 9, 16, 17, 20, and 21.

Donald L. Smith,

Acting District Manager.

[FR Doc. 93–21071 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–33–M

[NV–060–4181–03]

Intent to Prepare an Environmental Impact Statement and Notice of Scoping Period and Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for a major modification to an existing mining Plan of Operations for the Smoky Valley Common Operation owned by the Round Mountain Gold Corporation, Nye County, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as amended, and to 43 CFR Part 3809, the Bureau of Land Management (BLM) will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed development of a new Mill Facility and Tailings Dam in Nye County, Nevada. This EIS will be prepared by contract and funded by the proponent, Round Mountain Gold Corporation. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held on November 9, 1993, from 7–9 p.m. at the Round Mountain Jr./Sr. High School Gym in Hadley, Nevada; and on November 10, 1993, from 7–9 p.m. at the Airport Plaza Hotel, 1981 Terminal Way, in Reno, Nevada. The purposes of these meetings are to identify issues to be addressed in the EIS, and to encourage public participation in the NEPA process. Representatives of the BLM and Round Mountain Gold Corporation will be summarizing the Plan of Operations Amendment (POA) and the anticipated environmental impacts resulting from the project and will be accepting comments from the audience. Additional briefing meetings will be held as appropriate. Written comments on the POA and the scope of the EIS will be accepted until December 31, 1993. A draft EIS is expected to be completed by July of 1994, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: BLM, Battle Mountain District Manager, P.O. Box 1420, Battle Mountain, NV 89820, ATTN: Christopher J. Stubbs, Round Mountain EIS Project Manager.

FOR FURTHER INFORMATION CONTACT: BLM, Christopher J. Stubbs, P.O. Box 1420, Battle Mountain, NV 89820, (702) 635–4000.

SUPPLEMENTARY INFORMATION: Round Mountain Gold Corporation of Nye County, Nevada, has submitted to the Battle Mountain District Office of the U.S. Department of the Interior, Bureau of Land Management (BLM), a Plan of Operations Amendment (POA). The POA describes the proposed addition of a Mill Facility and Tailings Dam, including the resultant reclamation plan, to the existing Round Mountain Gold Corporation's mining operations in Nye County. The presently approved operating plan consists of an open pit mine; overburden rock and leach residue piles; reusable asphalt-lined leach pads; active and inactive dedicated (single use) leach pads; solution ponds; processing or adsorption/desorption and refinery (ADR) plants; and ancillary facilities. The areal extent of the currently permitted land consists of 3,659 acres of BLM land; 555 acres of USFS land; and 593 acres of patented land; for a total of 4,807 acres. This proposed Plan of Operations Amendment would add approximately 587 acres of new disturbance of BLM land during the 12 year life of the project. This amendment proposes the following:

1. Construction of a gold mill to process up to 11,000 tons of unoxidized ore per day.
2. Construction of a new primary crusher rated at 11,000 tons per 8-hour day.
3. Construction of a tailings impoundment that will ultimately accommodate approximately 50 million tons of material and cover 454 acres.
4. Construction of an ore stockpile for the mill feed.
5. On-site construction of approximately 2 miles of powerlines to accommodate power distribution requirements.
6. Installation of a cyanide destruction system to maintain non-toxic levels of weak acid dissociable (WAD) cyanide in the tailings impoundment.
7. Construction of an 8,500-foot long tailings delivery pipeline for the transport of tailings from the mill to the impoundment.
8. Construction of an 8,500-foot long reclaim water pipeline to return water from the impoundment to the mill.
9. Installation of a 500-foot long pipeline to supply fresh water to the mill.
10. Construction of a septic system to support the mill.

The EIS will address the issues of geology, soils, vegetation, wildlife, grazing management, air quality, visual resources, cultural resources, paleontological resources, land use, recreation, water resources, wilderness, social and economic values, transportation, post-mining pit water quality, and the disposal of rinsed, spent leach material.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POA are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS.

Dated: August 24, 1993.

James D. Currivan,

District Manager.

[FR Doc. 93–21147 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–HC–M

[CO–010–03–4320–01]

Craig Colorado Advisory Council Meeting

Time and Date: 10 a.m., September 20, 1993.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public; interested persons may make oral statements between 10 a.m.

and 11 a.m., or may file written statements. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered:

1. Presentations/Response
2. Resource Area Project Report
3. AMP Discussion
4. Discuss Maintenance Improvement Form
5. Rangeland Reform '94

Contact Person for More Information: Jim Andersen, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129. Phone: (303) 824–8261.

Dated: August 20, 1993.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 93–21148 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–040–4210–03; N–57067]

Realty Action: Recreation and Public Purposes Act, White Pine County, NV

ACTION: Amendment to Notice of Realty Action.

SUMMARY: On Thursday, June 24, 1993, the BLM Ely District Office published a Notice of Realty Action to classify as suitable for disposal pursuant to the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869, et seq., the following public lands in White Pine County, Nevada. The subject lands will be used by the county for a non-hazardous solid waste disposal facility.

Mt. Diablo Meridian, Nevada

T. 17 N., R. 61 E.,
Sec. 23, SE¼NE¼, E½SE¼,
Sec. 24, SW¼NE¼, S½NW¼, SW¼, W½SE¼.

Containing 480 acres.

The following paragraph is hereby added to the terms, conditions and reservations to the United States upon patent being issued to White Pine County:

5. A reservation clause which states that the lands will revert back to the United States unless substantially used in accordance with the approved plan and schedule of development, on or before 5-years after issuance of patent, except that no portion of those lands that have been used for solid waste disposal, or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance, can be reconveyed to the United States.

Except as amended hereby, the Notice published June 24, 1993, stands as written. In absence of any adverse comments, the classification will become effective August 23, 1993.

Dated: August 18, 1993.

Kenneth G. Walker,

District Manager.

[FR Doc. 93–21030 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management of Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–XXXX), Washington, DC 20503, telephone 202–395–7340.

Title: The Trinity River Economics Evaluation Project

OMB Approval Number: New information collection

Abstract: The decline of the Trinity River fishery resource was precipitated by the completion of the Trinity River Division portion of the Central Valley Irrigation Project in 1963. Roughly 90 percent of the Trinity River stream flow was moved via conduits from the Trinity River to the Sacramento River. The consequent loss of aquatic habitat on the Trinity River stream flow was moved via conduits from the Trinity River to the Sacramento River. The consequent loss of aquatic habitat on the Trinity River led to drastic declines in salmon and steelhead production. The proposed survey will identify and quantify non-market social impacts of the decline in the fishery runs as well as the loss of regional jobs created by the sharp loss of Trinity River outdoor recreational opportunities. The estimation of the magnitude of the dollar losses and of the number of jobs lost will, in turn, facilitate comparison of the cultural and economic value of the fishery resource with the market value of the hydro-power and the crop production provided by the trans-basin water movements.

Service Form Numbers: N/A

Frequency: One time only

Description of Respondents: Individuals or households

Estimated Completion Time: .28 hours (17 minutes)

Annual Responses: 1,250

Annual Burden Hours: 354

Service Clearance Officer: Phyllis H. Cook, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: August 11, 1993.

Suzanne Mayer,

Acting Regional Director, Region 8.

[FR Doc. 93–12029 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of Draft Procedures for Stocking Nonnative Fish Species in the Upper Colorado River Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of draft Procedures for Stocking Nonnative Fish Species in the Upper Colorado River Basin (Procedures) dated June 18, 1993. The Procedures, which were developed as a cooperative effort among the U.S. Fish and Wildlife Service (Service), and the States of Colorado, Utah, and Wyoming, are intended to serve as guidance for all future stockings of nonnative fish in the upper basin. The purpose of the Procedure is to minimize potential impacts of stocking nonnative fishes to threatened, endangered, or candidate fishes in the Upper Basin, which currently includes the Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), bonytail chub (*Gila elegans*), razorback sucker (*Xyrauchen texanus*), flannelmouth sucker (*Catostomus latipinnis*), and roundtail chub (*Gila robusta*). The Upper Basin is defined as the Colorado River drainage upstream of Lake Powell, with the exception of the San Juan River drainage. The Service solicits review and comment from the public on the draft Procedures.

DATES: Comments on the draft Procedures must be received on or before September 30, 1993.

ADDRESSES: Persons wishing to review the draft Procedures may obtain a copy by contacting the Assistant Regional Director—Fisheries and Federal Aid, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; FAX (303) 236–8163. Written comments and materials

regarding the draft Procedures should be sent to the address given above. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Webster (see above address), telephone (303) 236–8154.

SUPPLEMENTARY INFORMATION:

Background

Thirteen fishes are native to the Upper Colorado River Basin. Of these, four species—the Colorado squawfish, the humpback chub, the bonytail chub, and the razorback sucker—are facing extinction and are protected under the Endangered Species Act (ESA). Two others—the flannelmouth sucker and the roundtail chub—were recently included as candidate species for listing under the ESA. Over 50 species or subspecies of nonnative fish have been intentionally or accidentally introduced into rivers, lakes, and reservoirs in the Upper Colorado River Basin. Construction of dams led to increased demand for fishing in lakes and reservoirs. To increase fishing opportunities in the western States, private citizens and State and Federal agencies began stocking nonnative fishes in the late 1800's. Sport fishing is now a major recreational activity and a major segment of the economy in the Upper Basin. In addition, commercial aquaculture, which produces fish for recreational fishing and food, represents an expanding industry in the Upper Basin.

Though difficult to fully assess, competition with and predation from nonnative species has played a role in the decline of the native fishes, particularly the Colorado squawfish and the razorback sucker. Nonnative fishes directly or indirectly compete with native species for available resources such as food and space. The northern pike, for example, appears to occupy a similar niche as the Colorado squawfish in the upper Green and Yampa Rivers. Channel catfish, fathead minnow, various shiners, largemouth bass, and the green sunfish may also compete for habitat. Data indicate direct competition between young Colorado squawfish and the redside shiner in nursery areas, and predation from largemouth bass and green sunfish upon Colorado squawfish is also documented. Red shiners have been documented to prey upon larval razorback suckers.

In 1988, Governors of Colorado, Utah, and Wyoming, the Secretary of the Interior, and the Administrator of the Western Area Power Administration entered into a cooperative agreement to implement the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). The Recovery Program provides for recovering the four endangered fishes by restoring essential habitats and instream flows, stocking the fish back into the wild, conducting further research on the endangered fishes, and controlling impacts of nonnatives, including the introduction of new nonnative species not presently found in the basin, that may impact the endangered fishes.

The Procedures developed to meet the Service's and the State's commitments agreed to in the Recovery Program, are intended to minimize potential impacts of stocking nonnative fishes to threatened, endangered, or candidate fishes in the Upper Basin. Major components of the Procedures include:

- Guidelines that will be followed for evaluating introduction of nonnative fish species (a) new to the Upper Basin; and (b) already occurring in the Upper Basin;
- The roles and responsibilities of the Service and the States in developing and reviewing proposals for stocking nonnative fishes in the Upper Basin; and
- The public review process for proposals to stock nonnative fishes in the Upper Basin.

The Procedures were drafted by biologists from the Service, Colorado Division of Wildlife, Utah Division of Wildlife Resources, and Wyoming Game and Fish Department. Both sport fishing and native fish biologists were represented in the drafting of the document.

This Procedure document will be presented to various decisionmaking bodies for approval over the next several months, including the Recovery Program Implementation Committee and the Colorado Wildlife Commission. Following public review and comment, the Regional Director of the Service and the Directors of the State fish and wildlife agencies from Colorado, Utah, and Wyoming, plan to execute a Memorandum of Understanding to implement the Procedures.

Public Comment Solicited

The Service solicits written comments on the draft procedure. All comments received by the date specified in the DATES section above will be considered prior to approval of the Procedures.

Author

This notice was prepared by John Hamill, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Authority

The Authority for this action is the Endangered Species Act of 1973, as amended and the Fish and Wildlife Coordination Act of 1934, as amended.

Dated: August 9, 1993.

John L. Spinks, Jr.,

Deputy Regional Director, Fish and Wildlife Service.

[FR Doc. 93–21152 Filed 8–30–93; 8:45 am]

BILLING CODE 4310-55-M

Managing Migratory Bird Subsistence Hunting in Alaska; Proposed Strategy for Regulating the Taking of Migratory Birds in Alaska for Subsistence Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction.

SUMMARY: This is to correct the comment period closure date which appeared in a Notice of Availability for a draft environmental assessment on regulating the taking of migratory birds in Alaska for subsistence purposes. The Notice appeared in the August 13, 1993 Federal Register (58 FR 43119).

EFFECTIVE DATE: The correct comment period closure date for the environmental assessment is October 12, 1993.

ADDRESSES: Comments regarding this Notice, and comments on the draft environmental assessment should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, 634 ARLSQ, 1849 C St., NW, Washington, DC 20240 (703/358-1714).

Authority: The Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.).

Dated: August 26, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–21153 Filed 8–30–93; 8:45 am]

BILLING CODE 4310-55-P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 21, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 15, 1993.

Beth M. Boland,

Acting Chief of Registration, National Register.

Alabama

Lee County

Lowther House Complex, Lee Co. Rd. 318, Smiths Station vicinity, 93000986

Arkansas

Cross County

Deadrick, Capt. Isaac N., House, NW of jct. of US 64 and AR 163, Levesque, 93000964

Logan County

Walker, Evelyn Gill, House, 18 S. Spruce St., Paris, 93000985

Pulaski County

Immaculate Heart of Mary School, Off AR 365, N of Blue Hill Rd., Marche vicinity, 93000965

Searcy County

Bank of Marshall Building (Searcy County MPS), Jct. of Main and Center Sts., SE corner, Marshall, 93000974
Bates Tourist Court (Searcy County MPS), Fair St., Marshall, 93000979
Bromley—Mills—Treece House (Searcy County MPS), Main St., Marshall, 93000966
Dugger and Schultz Millinery Store Building (Searcy County MPS), Jct. of Glade and Nome Sts., SW corner, Marshall, 93000973
Ferguson Gas Station (Searcy County MPS), Jct. of Center and US 65, SE corner, Marshall, 93000967
Ferguson, T. M., House (Searcy County MPS), Canaan St., Marshall, 93000972
Ferguson, Zeb, House (Searcy County MPS), US 65, Marshall, 93000968
Lay, S. A., House (Searcy County MPS), Jct. of Glade St. and US 65, Marshall, 93000971
Luna, Anthony, House (Searcy County MPS), Jct. of Main and Spring Sts., SW corner, Marshall, 93000975
Marshall, Sam, House (Searcy County MPS), Co. Rd. 163, Morning Star vicinity, 93000960
McCall, J. M., House (Searcy County MPS), Spring St., Marshall, 93000970
McCall, Vinie, House (Searcy County MPS), Spring St., Marshall, 93000969
Passmore, Charley, House (Searcy County MPS), Campus St., Marshall, 93000978
Reeves, W. F., House (Searcy County MPS) Short St., Marshall, 93000977
Sanders—Hollabaugh House (Searcy County MPS), Church St., Marshall, 93000976
St. Joe Missouri and North Arkansas Railroad Depot (Historic Railroad Depots of Arkansas MPS), US 65, S side, St. Joe, 93000988

Florida

Leon County

Leon High School, 550 E. Tennessee St., Tallahassee, 93000982

Volusia County

Lake Helen Historic District (Lake Helen MPS), Roughly bounded by W. New York, Lakeview, Park and Euclid Aves., Lake Helen, 93000981

Georgia

McDuffie County

Hardaway, James L., House, Old Mesena Rd. W of Thomson, Thomson vicinity, 93000942

Wayne County

Trowell, John W. C., House, 256 E. Cherry St., Jesup, 93000944

Indiana

Allen County

Landing, The, Historic District, Roughly bounded by Calhoun, Harrison, Dock and Pearl Sts. and the alley between Columbia and Main Sts., Fort Wayne, 93000953

Fountain County

Attica Downtown Historic District, Roughly bounded by Perry St. between Jackson and Ferry Sts. and Main and Mill Sts. between Third and Brady Sts., Attica, 93000951

Kosciusko County

Warsaw Courthouse Square Historic District (Boundary Increase), Roughly bounded by W. Main, W. Lake, Center and S. Indiana Sts. and the alleys behind Indiana, Market, Lake and Main Sts, Warsaw, 93000952

Orange County

West Baden National Bank, IN 56 N at the West Baden Springs Hotel entrance, West Baden Springs, 93000950

Parke County

York, W. H., Round Barn (Round and Polygonal Barns of Indiana MPS), Co. Rd. 249, 0.5 mi. S. of Lodi, Lodi vicinity, 93000949

Putnam County

Boulders, The, 835 E. Washington St., Greencastle, 93000948

Iowa

Adams County

Corning Opera House (Footlights in Farm County; Iowa Opera Houses MPS), 800 Davis Ave., Corning, 93000954

Hardin County

Ellsworth-Jones Building (Iowa Falls MPS), 511 Washington Ave., Iowa Falls, 93000959
Estes Park Band Shell (Iowa Falls MPS), Estes Park, Iowa Falls, 93000960
First National Bank (Iowa Falls MPS), 601 Washington Ave., Iowa Falls, 93000958
McClanahan Block (Iowa Falls MPS), 613 Washington Ave., Iowa Falls, 93000956
Princess—Sweet Shop (Iowa Falls MPS), 607 Washington Ave., Iowa Falls, 93000957
Sentinel Block (Iowa Falls MPS), 702 Washington Ave., Iowa Falls, 93000962
St. Matthew's by the Bridge Episcopal Church (Iowa Falls MPS), Jct. of Oak and Railroad Sts., Iowa Falls, 93000961
US Post Office—Iowa Falls (Iowa Falls MPS), 401 Main St., Iowa Falls, 93000955
W. R. C. Hall (Iowa Falls MPS), 710 Washington Ave., Iowa Falls, 93000963

Kansas

Edwards County

Gano Grain Elevator and Scale House, Jct. of US 50 and Co. Rd. 9, Kinsley vicinity, 93000943

Michigan

St. Joseph County

St. Joseph County Courthouse, 125 W. Main St., Centreville, 93000984

New York

Columbia County

Rensselaer, Henry (Hendrick) I. Van, House, Jct. of Yates Rd. and NY 9H/23, Greenport, 93000947

Dutchess County

Coleman Station Historic District, Coleman Station, Indian Lake, Regan and Sheffield Hill Rds., Millerton vicinity, 93000945

Sullivan County

Minisink Battlefield (Upper Delaware Valley, New York and Pennsylvania MPS), York Lake Rd. (Co. Rd. 168) N. of Minisink Ford, Minisink Ford vicinity, 93000946

Ohio

Washington County

Harmar Historic District (Boundary Increase), Roughly bounded by Lancaster, Harmar, Putnam and Franklin Sts. and the Ohio R., Fort Harmar Dr. and the Muskingum R., Marietta, 93000987

Wyoming

Fremont County

Torrey Lake Petroglyph District, Address Restricted, Dubois vicinity, 93000983

[FR Doc. 93–21123 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0043), Washington, DC 20503, telephone 202–395–7340.

Title: Bond and Insurance Requirements for Surface Coal Mining Operations Under Regulatory Programs—30 CFR part 800.

OMB Approval Number: 1029–0043.

Abstract: Respondents identify information and data on bonds to cover the cost of reclamation performed under the Surface Mining Control and Reclamation Act of 1977 (the Act). This information allows regulatory authorities to determine if such bonds are sufficient to comply with the Act.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Mine operators seeking permits or seeking release of bond amounts.

Estimated completion time: 4 hours.

Annual responses: 3,950 hours.

Annual burden hours: 16,631.

Bureau clearance officer: John A. Trelease, 202–343–1475.

Dated: June 18, 1993.

Gene E. Krueger,

Chief, Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–21032 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0039), Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans—30 CFR 784

OMB Number: 1029–0039

Abstract: Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground mine permit applicants to provide a description of the existing structures in a permitted area and measures to be taken to protect surface and groundwater systems during mining and reclamation operations. This information is used by the regulatory authority in determining whether the applicant can comply with the applicable performance and environmental standards.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Underground Coal Mining Operators

Estimated Completion Time: 29 hours

Annual Responses: 3,520

Annual Burden Hours: 101,244

Bureau clearance officer: John A. Trelease, (202) 343–1475

Dated: May 25, 1993.

Gene E. Krueger,

Chief, Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–21031 Filed 8–30–93; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Passenger Train Operation, I.C.C. Order No. P–114; To: Chicago and North Western Transportation Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Milwaukee, Wisconsin. The operation of these trains require a detour movement of Test Train X2000 over the tracks and other facilities of the Chicago and North Western Transportation Company (CNW). The detour route over tracks of CNW is from Global Yard to Rockwell Junction to Kedzie Tower in Chicago, Illinois.

It is the opinion of the Commission that such operations are necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission, decided January 13, 1986, and the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Chicago and North Western Transportation Company is directed to operate trains of the National Railroad Passenger Corporation (AMTRAK) over its line between Global Yard and Kedzie Tower in Chicago, Illinois.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Act and by the Rail Passenger Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:59 a.m., (e.d.t.) June 24, 1993.

(e) *Expiration date.* The provisions of this order shall expire at 4 p.m. (e.d.t.), June 24, 1993, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago and North Western Transportation Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, by William J. Love, Agent, June 24, 1993.

Interstate Commerce Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–21106 Filed 8–30–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32340]

SPCSL Corp.; Trackage Rights Exemption; Terminal Railroad Association of St. Louis

Terminal Railroad Association of St. Louis (TRRA) has agreed to grant overhead trackage rights to SPCSL Corp. (SPCSL) from TRRA's connection at W.R. Tower, in Granite City, IL, to the connection with SPCSL at Valley Junction, in East St. Louis, IL, a distance of approximately 9.04 miles. The trackage rights were to become effective on or after August 18, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, SPCSL Corp., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-21105 Filed 8-30-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28,510]

Alyeska Pipeline Service Co., Anchorage, Alaska; Negative Determination Regarding Application for Reconsideration

By an application dated July 6, 1993 and after a meeting in Washington, DC with the Director of the Office of Trade Adjustment Assistance, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 21, 1993 and was published in the Federal Register on June 15, 1993 (58 FR 33122).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company states that it is not a common carrier but rather a pipeline operator, acting as an agent to the seven common carriers who are the owners of the Trans Alaska Pipeline System (TAPS) and Alyeska.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The findings show that Alyeska Pipeline Service was established as a common carrier and that Alyeska would operate and maintain the TAPS. Alyeska does not own the crude oil that is shipped through the pipeline.

The findings show that Alyeska is owned by the seven common carriers (Amerada Hess Corporation; ARCO Pipe Line Company; Exxon Pipeline Company; Mobil Alaska Pipeline Company; Phillips Petroleum Company; Sohio Pipe Line Company and Union Alaska Pipeline Company) and provides the service of transporting crude oil from the North Slope to the marine terminal at Valdez. The Department has consistently determined that the performance of services does not constitute the production of an article as required by section 222 of the Trade Act, and this determination has been upheld in the U.S. Court of Appeals.

Findings on reconsideration show that Public Law 93-153 which set up the Trans-Alaska Oil Pipeline states that the pipeline shall be operated and maintained as a common carrier and that all owners or operators of the pipeline shall convey, transport or purchase without discrimination all oil delivered to the pipeline.

Further, investigation findings show that Alyeska does not generate revenue. All tariffs are handled by the seven owners of TAPS. The owners' revenues are controlled by the amount of crude oil flowing through the pipeline.

The findings show that the peak throughput for TAPS occurred in 1988 at 2.03 million barrels of crude per day. Since 1988 the throughput has declined each year as the amount of crude from the North Slope of Alaska has declined as a result of the gradual exhaustion of the North Slope fields and the prevention of producers from exploring in more promising areas like the Arctic National Wildlife Refuge.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of August 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-21157 Filed 8-30-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,565]

Moench Tanning Co. Gowanda, NY; Notice of Revised Determination on Reconsideration

On August 11, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the subject facility.

The parent company, Brown Shoe Company, submitted additional data showing that sales and employment decreased in the first half of 1993 compared to the same period in 1992.

Other findings on reconsideration show that Moench's primary customer substantially increased its imports of leather while reducing its purchases of leather from Moench in 1993. Moench Tanning in Gowanda, New York was previously certified (TA-W-25,431) through April 11, 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers of Moench Tanning Company, Gowanda, New York were adversely affected by increased imports of articles like or directly competitive with the leather produced at Moench Tanning in Gowanda, New York. In accordance with the provisions of the Act, I make the following revised certification for workers and former workers of Moench Tanning Company in Gowanda, New York.

All workers of Moench Tanning Company, Gowanda, New York who became totally or partially separated from employment on or after April 12, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of August, 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–21127 Filed 8–30–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 10, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 10, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Cowan Sportswear (workers)	Moulton, AL	08/16/93	08/03/93	28,948	Ladies' and children's tops.
The Standard Register Co. (Workers)	Bedford, PA	08/16/93	08/04/93	28,949	Business forms.
Colonial Corporation of America (Workers).	Tracy City, TN	08/16/93	08/16/93	28,950	Women's blouses and shirts.
Torrington Co. (UAW)	Newington, CT	08/16/93	07/13/93	28,951	Precision ball bearings.
Stevcoknit Fabrics Co. (Workers)	Fayetteville, NC	08/16/93	08/03/93	28,952	Knitted fabric.
GCA Tropel (Workers)	Fairport, NY	08/16/93	07/26/93	28,953	Lenses for steppers.
Dresser Industries (Workers)	Eunice, LA	08/16/93	07/26/93	28,954	Oilfield drilling bits.
CTS Corp. in Texas (Workers)	Brownsville, TX	08/16/93	05/03/93	28,955	Loudspeakers, instrument panel modules.
TN Shirt Works (Workers)	Portland, TN	08/16/93	08/02/93	28,956	Ladies blouses.
Dantan, Inc. (Co.)	Dumas, AR	08/16/93	07/27/93	28,957	Ladies' sportswear.
Claxton Manufacturing (Workers)	Claxton, GA	08/16/93	08/06/93	28,958	Ladies' panties.
Ceramatec, Inc. (Workers)	Salt Lake City, UT	08/16/93	08/04/93	28,959	Silicon and metal alloys.
Carla Gay Dress Co., Inc. (ILGWU)	Atlanta, GA	08/16/93	08/02/93	28,960	Ladies' dresses.
Betten Manufacturing Co., Inc. (Workers).	Fayette, AL	08/16/93	08/05/93	28,961	Ladies and men's jackets.
Kaiser Aluminum (USWA)	Tacoma, WA	08/16/93	08/06/93	28,962	Aluminum ingot.
Interstate Food Processing (IAMAW)	Fort Fairfield, ME	08/16/93	08/03/93	28,963	Food processing.
After 6, Inc. (ACTWU)	Philadelphia, PA	08/16/93	07/16/93	28,964	Formal wear.
Colonial Corporation of America (Workers).	Woodbury, TN	08/16/93	07/30/93	28,965	Women's blouses and shirts.
Mundett Hermetite, Inc. (Workers)	Buena Vista, VA	08/16/93	08/02/93	28,966	Cigarette filters.
Lyondell Petrochemical Co. (Workers)	Houston, TX	08/16/93	08/02/93	28,967	Crude oil.
Plains Petroleum Operating Co. (Workers).	Midland, TX	08/16/93	08/03/93	28,968	Crude oil.
Sonny Styles, Inc. (Workers)	Scranton, PA	08/16/93	08/05/93	28,969	Ladies clothing.

[FR Doc. 93–21158 Filed 8–30–93; 8:45 am]

BILLING CODE 4510–35–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Prohibited Transactions of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 8 a.m./10 a.m., Thursday, September 23, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Prohibited Transactions for employee benefit plans covered by ERISA.

The purpose of the September 23 meeting is to receive public testimony from interested parties who have opinions and advice concerning the current prohibited transactions process. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before September 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council. U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW.,

Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1993.

Signed at Washington, DC, this 26th day of August, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93-21074 Filed 8-30-93; 8:45 am]

BILLING CODE 4510-29-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background*—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated July 12, 1993, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: (1) 29 CFR 1910.146, pertaining to Permit-Required Confined Spaces for General Industry, as published in the **Federal Register** of January 14, 1993 (58 FR 4549); and (2) revisions to 29 CFR 1910.110(d)(11), pertaining to Storage and Handling of Liquefied Petroleum Gases, as published in the **Federal Register** of March 19, 1993 (58 FR 15089). These standards are contained in COMAR 09.12.31. Maryland's standard for Permit-Required Confined Spaces for General Industry was promulgated after a public hearing on March 3, 1993. The revision to the standard for Storage and Handling of Liquefied Petroleum Gases was adopted by reference and no public hearing was required. These standards became effective on July 5, 1993.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 31, 1993.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 27th day of July, 1993.

Richard Seltau,

Deputy Regional Administrator.

[FR Doc. 93-21126 Filed 8-30-93; 8:45 am]

BILLING CODE 4510-29-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Economically Targeted Investments (ETI) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 8:30 a.m./Noon, Wednesday, September 22, 1993, in suite N3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to ETI for employee benefit plans covered by ERISA.

The purpose of the September 22 meeting is to take testimony and/or written submissions regarding access to and valuation of Economically Targeted Investments. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before September 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1993.

Signed at Washington, DC, this 26th day of August, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93-21077 Filed 8-30-93; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C.

1142, a public meeting of the Working Group on Prohibited Transactions of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 12:30 p.m./4 p.m., Wednesday, September 22, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Prohibited Transactions for employee benefit plans covered by ERISA.

The purpose of the September 22 meeting is to receive public testimony from interested parties who have opinions and advice concerning the current prohibited transactions process. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before September 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1993.

Signed at Washington, DC, this 26th day of August, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–21075 Filed 8–30–93; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans 401(k) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:30 a.m.–3:30 p.m., Thursday, September 23, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Defined Contribution Plans—401(k) for employee benefit plans covered by ERISA.

The purpose of the September 23 meeting is to take testimony and/or submission from witnesses concerning the implication of the growth in Defined Contribution Pension Plans, including eligibility, participation and contribution. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the Working Group should submit a written request on or before September 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1993.

Signed at Washington, DC, this 26th day of August, 1993.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 93–21076 Filed 8–30–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–071]

NASA Advisory Council; Renewal and Reorganization of the NASA Advisory Council and Related Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Renewal and Reorganization of the NASA Advisory Council and Related Committees.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Public Law 92–463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that reorganization of the committees of the NASA Advisory Council responsible for advising in the areas of space science and applications, commercial programs and space technology is in each case in the public interest in connection with the performance of duties imposed upon NASA by law. In order to correspond to a recent reorganization of NASA Headquarters offices, the following four committees will be reorganized:

—Space Science and Applications Advisory Committee
—Aerospace Medicine Advisory Committee
—Commercial Programs Advisory Committee
—Space Systems and Technology Advisory Committee

In their place will be the following four reorganized committees:

—Space Science Advisory Committee
—Life and Microgravity Sciences and Applications Advisory Committee
—Earth System Science and Applications Advisory Committee
—Technology and Commercialization Advisory Committee

The following committees will be renewed:

—NASA Advisory Council
—Aeronautics Advisory Committee
—History Advisory Committee
—Minority Business Resource Advisory Committee
—Space Station Advisory Committee
—Aviation Safety Reporting System Subcommittee

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia K. Kraemer, National Aeronautics and Space Administration, Code IC, Washington, DC 20546 (202/358–0791).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Elmer T. Brooks,

Deputy Associate Administrator for Management Systems and Facilities (Agency Programs).

[FR Doc. 93–21150 Filed 8–30–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 22–24, 1993, from 9:30 a.m. to 5 p.m. on September 22 and 24, 1993, and from 9:30 a.m. to 5:30 p.m. on September 23, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting will be open to the public from 4 p.m. to 5 p.m. on September 22, 1993; from 9:30 a.m. to 5:30 p.m. on September 23, 1993; and from 9:30–5 p.m. on September 24, 1993 for introductions, policy and guideline discussion, and a general discussion regarding Organizations and Individual Artists categories.

The remaining portion of this meeting from 10:30 a.m. to 4 p.m. on September 22, 1993, when Visual Arts Challenge applications will be reviewed, is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants.

In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/685–5439.

Dated: August 25, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21062 Filed 8–30–93; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by September 27, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 20, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (2020395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Technical Assistance Resource Directory and Database Information Collection Form.

Frequency of Collection: One time.

Respondents: Individuals, businesses, non-profit organizations, and state and local arts agency providers of technical assistance.

Use: This is a data collection/survey instrument designed to collect information from arts technical assistance providers. The information collected will be used to develop a comprehensive master directory, database, and trend analysis of technical assistance resources for the arts.

Estimated Number of Respondents: 6,000.

Average Burden Hours Per Response: 1.

Total Estimated Burden: 6,000.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 93–21057 Filed 8–30–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory Panel (Media Arts Section) to the National Council on the Arts will be held on September 14, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductions.

The remaining positions of this meeting from 10 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-term Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 25, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21073 Filed 8-30-93; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Organizations Section) to the National Council on the Arts will be held from 9 a.m. to 7:30 p.m. on September 14-16, 1993 and from 9 a.m. to 5 p.m. on September 17, 1993.

This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 17, 1993 from 3 p.m. to 5 p.m. for policy discussion.

The remaining portions of this meeting from 9 a.m. to 7:30 p.m. on September 14-16, 1993, and from 9 a.m. to 3 p.m. on September 17, 1993, when Design Arts Challenge applications will be reviewed, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants.

In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: August 25, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21067 Filed 8-30-93; 8:45 am]

BILLING CODE 7537-01-M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Dance Presenters Section) to the National Council on the Arts will be held from 9 a.m. to 7 p.m., on September 13, 1993 from 8:30 a.m. to 7 p.m. on September 14, 1993 and from 8:30 a.m. to 3 p.m. on September 15, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on September 14-15, 1993 and from 1 p.m. to 3 p.m. on September 15, 1993 for introductions and a discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on September 13-14, 1993 and 9 a.m. to 12 p.m. on September 15, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: August 25, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-21066 Filed 8-30-93; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-249]

Commonwealth Edison Co., Dresden Nuclear Power Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR part 50 to Commonwealth Edison Company (CECo, the licensee) for the Dresden Nuclear Power Station, Unit 3, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a schedular exemption from the requirements of sections III.A.6(b), III.D.2(a), and III.D.3 (Type A, B, and type C tests, respectively) of appendix J to 10 CFR part 50 relating to the primary reactor containment leakage testing for water cooled reactors. The purpose of the tests is to assure that leakage through primary reactor containment shall not exceed allowable leakage rate values as specified in the Technical Specifications and that periodic surveillance is performed.

The Need for the Proposed Action

By letters dated May 14, 1993, as supplemented June 30, 1993, the licensee requested, pursuant to 10 CFR 50.12(a), a one-time schedular exemption for Dresden, Unit 3, from the local leak rate test intervals for certain type A, B, and C leak rate tests required by 10 CFR part 50, appendix J, sections III.A.6(b), III.D.2(a), and III.D.3. the exemption is requested to support the current outage schedule and to avoid the potential for an earlier reactor shutdown. If a forced outage is imposed to perform testing, it would present undue hardship and cost in the form of increased radiological exposure. Furthermore, if a forced outage is imposed to perform the required testing,

an additional plant shutdown and startup will be required. In order to rectify these concerns, CECo proposes to reschedule the Dresden, Unit 3, refuel outage from September 1993 to February 1994. Increasing the interval between refueling outages will cause Dresden, Unit 3, to exceed the Type A, B, and C leak rate testing surveillance intervals required for Type A, B, and C leak rate tests which can not be performed during reactor operation.

Environmental Impacts of the Proposed Action

The proposed action includes exemptions from performing certain Type A, B, and C tests for a maximum period of 190 days beyond the required appendix J test intervals. As stated in 10 CFR part 50, appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR 50.12(a), in that it represents a one-time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to assure that any required maintenance or repair is performed. As noted in sections III.A.6(b), III.D.2(a), and III.D.3 of appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the appendix J intervals by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and, therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurrence during the 190 day extended period.

The exemption request is further supported by the information provided in the application. CECo has identified those Type B and C volumes which will be leak tested during reactor operation. In addition, CECo has identified those volumes that will be leak tested should a forced outage of suitable duration occur prior to March 15, 1994 (190 day maximum exemption request). These commitments reduce the number of volumes which need an exemption and the length of time for which an exemption would be required should a forced outage of sufficient duration occur. CECo has also provided the testing methodology which will be used if forced outages occur. In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, Dresden will impose an administrative limit for maximum pathway leakage of 80 percent of $0.6L_a$ for the remaining Unit 3 fuel cycle.

Past Unit 3 local leak rate test data have, in general, demonstrated good leak rate test results. The current maximum pathway leakage rate for Dresden, Unit 3, as determined through Type B and C leak rate testing is 275.12 standard cubic feet per hour (scfh). This value is approximately 56 percent of the Technical Specification limit of 488.45 scfh ($0.6L_a$). In addition, the previous outage "As left" total minimum pathway leakage rate for Type B and C testable penetration was 145.71 scfh. This value is approximately 24 percent of the Technical Specification limit of 610.56 scfh ($0.75L_a$). By using the minimum pathway methodology, a conservative measurement of the actual leakage expected through a pathway under post-accident conditions can be determined. The previous outage "As Left" Integrated Leak Rate Test, completed on March 16, 1992, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 0.6706 weight percent per day. This value is the sum of the 95% upper confidence limit calculated leak rate of 0.5546 weight percent per day plus the leakage rate of all nonvented pathways ant the leakage compensation for the change in the drywell sump levels. This value is approximately 56 percent of the limit specified in the Technical Specifications (1.2 weight percent per day or 0.75 L_a).

The above data, along with the station imposed limit for maximum pathway leakage, provide a basis for showing that the probability of exceeding the off site does rates established in 10 CFR part 100 will not be increased by extending the current Type A, B, and C testing intervals for a maximum of 190 days. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of sections III.A.6(b), III.D.2(a), and III.D.3 of appendix J to 10 CFR part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of any resources not considered previously in the Final Environmental Statements for Dresden, Units 2 and 3, dated November 1973.

Agencies and Persons Consulted

The staff consulted with the state of Illinois regarding the environmental impact of the proposed action. They had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's request for exemption dated May 14, 1993, as supplemented June 30, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland, this 26th day of August 1993.

For the Nuclear Regulatory Commission.

James E. Dyer,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21228 Filed 8–30–93; 8:45 am]

BILLING CODE 7590–01–M

Mayo Foundation, Rochester, Minnesota; Order Imposing Civil Monetary Penalty

[Docket No. 030–02195, License No. 22–00519–03 EA 93–079]

I

Mayo Foundation (Licensee) is the holder of Byproduct Material License No. 22–00519–03 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 4, 1992. The license authorizes the Licensee to possess and use byproduct materials for medical diagnosis, therapy, and

research on humans; and research and development, including animal studies and student instruction, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on April 2 through 7, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 9, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated June 30 and July 1, 1993. In its responses, the Licensee objects to the characterization of Violation I.A as willful, and requests mitigation of the civil penalty.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $6,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of Violations I.A and I.B admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 24th day of August 1993.

For the Nuclear Regulatory Commission

James Lieberman,

Director, Office of Enforcement.

Appendix Evaluations and Conclusions

On June 9, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on April 2 through 7, 1993. Mayo Foundation (Licensee) responded to the Notice on June 30 and July 1, 1993. In its responses, the Licensee admits all of the violations, objects to the characterization of Violation I.A as willful, and requests mitigation of the civil penalty. The NRC's evaluation and conclusions regarding the licensee's requests are as follows:

Restatement of Violation I

A. License Condition No. 30 as contained in Amendment No. 43 dated June 4, 1992, states, in part, that the licensee shall conduct its program in accordance with the statements, representations and procedures contained in an application dated March 31, 1991, and a letter dated July 11, 1991.

The letter dated July 11, 1991, states, in part, in Item 6.b, "Phosphorus–32 Safety Instructions," that a daily meter survey is required if the laboratory possesses greater than 10 times the Annual Limit of Intake (ALI) (ten times 900 microcuries) or uses more than 10 microcuries of phosphorus–32 on that day.

Contrary to the above, on March 21 and 22, 1993, a daily meter survey was not performed and the laboratory (Guggenheim Building Room 319) possessed 10 millicuries of phosphorus–32, a quantity greater than 10 ALI and used more than 10 microcuries on those days.

B. License Condition No. 30 as contained in Amendment No. 43 dated June 4, 1992, states, in part, that the licensee shall conduct its program in accordance with the statements, representations and procedures contained in an application dated March 31, 1991, and a letter dated July 11, 1991.

The application dated March 31, 1991, states, in part, in Attachment 10.12, "Procedure for Area Surveys," that if major contamination (equal to or greater than 220 dpm/100 cm^2) is found of a beta emitter in an unrestricted area, decontamination by laboratory personnel and resurvey by Radiation Safety Officer personnel within two working days are required.

10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the requirements of Part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above:

1. From March 23, 1993, through April 3, 1993, the licensee did not perform adequate surveys to determine the presence of phosphorus–32 contamination in unrestricted areas including individuals' clothing, vehicles, homes, and a church, to assure that contamination limits in these unrestricted areas were not exceeded.

2. On March 25, 1993, major contamination (approximately 3,300 dpm) of phosphorus–32 (a beta emitter) was found by a laboratory person in his home (an unrestricted area) and a resurvey was not performed by Radiation Safety Office personnel until April 2, 1993, a period exceeding two days.

Summary of Licensee's Response to Violation I

The Licensee admits Violation I.

Summary of Licensee's Request for Mitigation

The Licensee objects to the characterization that Violation I.A was willful in nature. The Licensee asserts that the term willful carries the strong connotation that the action (omission) was planned, deliberate, and intentional. The Licensee asserts that while the omission of a daily survey by this trainee was careless and negligent, it cannot be characterized as an omission that resulted from careful and

thorough consideration, i.e., a deliberate decision, nor was the omission meant to deceive anyone.

The Licensee argues that the failure of the research trainee to conduct daily surveys should be characterized as an omission that resulted from a lack of thought and a lack of awareness of consequences, and that this omission does not differ in principle from many other violations that have resulted in enforcement actions where the violations were not considered willful in nature even though the licensee knew about the specific regulatory requirements associated with the violation.

In the Licensee's view, characterization of one type of violation as willful without informing licensees that such violations will be considered willful constitutes inconsistent, arbitrary, and capricious enforcement of regulatory requirements, which is unfair and injurious to the licensee.

The Licensee further asserts that characterization of a violation as willful on the basis that a trainee knew about a requirement but failed to follow it, is a change in priority of importance that should be communicated to the regulated community prior to its implementation. The Licensee believes that "willfulness" is understood by the regulated community to be a deliberate action taken on the part of a licensee to avoid the implementation of a regulatory requirement or the failure to incorporate such a requirement into the licensee's safety program. The Licensee also asserts that characterization of the failure of an individual employee of a licensee to perform a specific safety requirement that has been incorporated into the licensee's safety program as willful is precedent setting and has not been communicated to licensees. Finally, the Licensee argues that the discussion of willful violations in 10 CFR Part 2 distinguishes between a person who is a licensee official, such as the Radiation Safety Officer, and a non-supervisory employee. According to the Licensee, the individual in question was a trainee who stood to gain no economic or other significant advantage as a result of this violation.

NRC Evaluation of Licensee's Request for Mitigation

The NRC's policy on willfulness has been formally communicated to this Licensee and the licensed community in general by the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C. Section IV.C of the policy states:

[T]he severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term 'willfulness' as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements." In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

Violations I.A and I.B were categorized in the aggregate as a Severity Level II problem and a $6,000 civil penalty was assessed for Violation I.A. Violations I.A and I.B would normally have been categorized at Severity Level III; however, the severity level was increased to Severity Level II because of the willful nature of Violation I.A.

Violation I.A was *willful*, as that term is used in the Enforcement policy, because the researcher had been trained on the survey requirement and was aware of the requirement, yet chose not to follow it. Further, the researcher was performing post doctorate research and had previously used phosphorus–32 at another institution which indicates significant education and knowledge as to why such requirements exist and should be followed. On March 21, 1993, the researcher unknowingly contaminated his hands when he opened a new vial containing 10 millicuries of phosphorus–32, and he spread phosphorus–32 within the laboratory and on his clothing. The contamination went undetected due to the researcher's failure to survey himself and the laboratory prior to leaving the work area. The researcher indicated that the survey meter located in the laboratory had low batteries and that he was in a hurry to leave. The researcher worked in the laboratory again that night, and again failed to survey. On March 22, 1993, the researcher continued to work with phosphorus–32, and again, he did not survey himself and the laboratory. In all three cases, he did not take the time to have the meter batteries changed or to use a functioning meter from an adjacent laboratory. The authorized user had trained the researcher on the survey requirement, and the researcher indicated that he was aware of the requirement.

While the NRC staff agrees that the researcher's actions were not done for deception or monetary gain, those actions went well beyond mere forgetfulness or accidental omission; they demonstrated an unwillingness to comply with a known requirement. Moreover, if the researcher's actions had been based on deception or monetary gain, then direct enforcement action against the researcher under 10 CFR 30.10 would have been considered. The severity level of the problem was appropriately categorized at Severity Level II based on the willful nature of Violation I.A. In determining the severity level, the NRC staff weighed the significance of the underlying violation (including, in this case the consequences), the advantage to the researcher (saving time), and the fact that the researcher was a non-supervisory employee. Moreover, if the surveys had been performed by the researcher, the offsite release would not have occurred.

Based on the above, the Licensee's argument that Violation I.A. was not willful does not provide an adequate basis for mitigation of the civil penalty. Additionally, the Licensee has provided no other basis for mitigation of the civil penalty.

NRC Conclusion

Based on its evaluation of the licensee's response, the NRC staff concludes that Violation I.A was willful and that an adequate basis for mitigation of the civil penalty has not been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of $6,000 should be imposed by order.

[FR Doc. 93–21130 Filed 8–30–93; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32804; File No. SR–Amex–52–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Specialists' Liquidating Transactions

August 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is

hereby given that on August 13, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Commentary .02 to Amex Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a "long" position, or a zero plus tick, when covering a "short" position, without Floor Official approval. The proposed rule change also sets forth the affirmative action that specialists would be required to take subsequent to effecting various types of liquidating transactions. The proposal would be implemented on a one year pilot program basis.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Commentary .02 to Exchange Rule 170 provides that a specialist may liquidate or decrease his or her position in a specialty stock so long as the transaction is reasonable in relation to general market conditions and the market conditions of the particular security, and is effected in a reasonable and orderly manner. In particular, this Commentary provides that a specialist should avoid liquidating all, or substantially all, of a position by selling stock on a direct minus or zero minus tick, or by purchasing stock on a direct plus or zero plus tick, unless prior Floor Official approval is obtained, and the transaction is reasonably necessary in relation to the specialist's overall position in his or her specialty stocks.

The Exchange is proposing to amend Commentary .02 to Rule 170 to permit specialists to liquidate a dealer position by selling "long" inventory stock on a zero minus tick, or by purchasing to "cover" a "short" position on a zero plus tick, without Floor Official approval. This change is expected to facilitate the specialist's market maintenance capability, particularly during unusual market conditions.

Additionally, the Exchange is proposing to further amend Commentary .02 to emphasize the specialist's affirmative role in providing stabilizing dealer participation to the market place, especially during periods of volatile or unusual market activity involving significant price movement in a security, where liquidation may be required to facilitate the maintenance of a fair and orderly market. In this regard, paragraph (b) of the Commentary would be amended to provide as follows:

- Liquidation involving the principal selling of any specialty stock on a direct minus tick, or the purchasing of such stock on a direct plus tick will require Floor Official approval, and should be effected only in conjunction with the specialist's re-entering the market on the opposite side of the market from the liquidating transaction where the imbalance indicates that the immediate succeeding transactions would result in a lower price following the sale (or higher price following the purchase).
- During volatile or unusual market conditions involving significant price movement in a security, the specialist should re-enter the market following a liquidation transaction which was effected by selling stock on a direct minus or zero minus tick, or purchasing stock on a direct plus or zero plus tick and, at a minimum, participate as a dealer to the extent of his or her usual level of dealer participation in the subject security.
- During such periods, a series of such liquidating transactions effected within a brief period of time should be accompanied by the specialist's re-entry in the market and effecting transactions which reflect a significant degree of dealer participation.

The Exchange is proposing to implement the above amendments on a one year pilot program basis, and will monitor compliance with the requirements of the Rule through existing surveillance procedures. In particular, liquidation transactions effected by specialists on direct plus or minus destabilizing ticks will initially be reviewed as to whether the requisite Floor Official approval was obtained, and will be subjected to a further review with respect to the specialist's dealer participation levels, re-entry into the market in terms of timing and support, and whether the transactions were counter to the market trend. The Exchange will provide the Commission with a report summarizing the results of its surveillance prior to the conclusion of the pilot period.

The amendments are expected to provide specialists with the ability to respond to periods of extreme market volatility, particularly those characterized by high volume and selling pressure, by permitting him or her to liquidate large dealer positions acquired as a result of such selling pressure. Further, the changes would reinforce the specialist's affirmative obligation to maintain a fair and orderly market by providing stabilizing dealer participation to the market place, and would reinforce his or her negative obligations in that a specialist would not be able to liquidate in the absence of a large dealer position, but could only do so if reasonably necessary to maintain a fair and orderly market.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest, by enabling specialists to facilitate orderly and continuous markets during periods of unusual volatility or price changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–26 and should be submitted by September 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21107 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

August 25, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Bank America
Depositary Shares, (1/20 Pfd. I) No Par Value (File No. 7–11199)

Saul Centers, Inc.
Common Stock, $.01 Par Value (File No. 7–11200)

Borg-Warner Automotive, Inc.
Common Stock, $.01 Par Value (File No. 7–11201)

Citicorp
Depositary Shares, (8% Non-Cum. Pfd.) No Par Value (File No. 7–11202)

Chemical Banking
10.96% Pfd., $1.00 Par Value (File No. 7–11203)

Freeport Copper & Gold
Dep. Shares, No Par Value (File No. 7–11204)

ROC Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11205)

Stone Container
Cum. Cv. Exch. Pfd. E, $.01 Par Value (File No. 7–11206)

Wolverine Tube, Inc.
Common Stock, $.01 Par Value (File No. 7–11207)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 16, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21050 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 25, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Aztar Corp.
Common Stock, $.01 Par Value (File No. 7–11177)

Bank of Boston Corp.
Depositary Shares (rep. 1/10 Sh. of 7⅞% Cum. Pfd. Stk. Ser. F) (File No. 7–11178)

Bedford Property Investors, Inc.
Common Stock, $1.00 Par Value (File No. 7–11179)

Columbia Hospital Corp.
Common Stock, $.01 Par Value (File No. 7–11180)

Comdisco, Inc.
8¾% Cum. Pfd. Ser. B (File No. 7–11181)

Continental Airlines, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–11182)

Continental Airlines, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–11183)

Corporate High Yield Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11184)

CRI Liquidating REIT, Inc.
Common Stock, $.01 Par Value (File No. 7–11185)

Kasler Holding Co.
Common Stock, $.01 Par Value (File No. 7–11186)

LTV Corp.
Common Stock, $.50 Par Value (File No. 7–11187)

Magma Copper Co.
5⅝% Cum. Cv. Pfd. Ser. D, $.01 Par Value (File No. 7–11188)

Morgan Stanley Emerging Markets Debt Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11189)

Muni Assets Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11190)

Navistar International Corp. (Holding Co.)
Common Stock, $.10 Par Value (File No. 7–11191)

Navistar International Corp. (Holding Co.)
Cum. Cv. Jr. Pref. Ser. D, $1.00 Par Value (File No. 7–11192)

Navistar International Corp. (Holding Co.)
$6.00 Cum. Cv. Pfd. Ser. G, $1.00 Par Value (File No. 7–11193)

Post Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11194)

U.S. Home Corp.
Common Stock, $.01 Par Value (File No. 7–11195)

USA Waste Services, Inc.

Common Stock, $.01 Par Value (File No. 7–11196)
Van Kampen Merritt Municipal Opportunity Trust II
Common Shares of Beneficial Interest, $.10 Par Value (File No. 7–11197)
Wheeling Pittsburgh Corp.
Ser. A Cv. Pfd. $.10 Par Value (File No. 7–11198)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 16, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz.

Secretary.

[FR Doc. 93–21061 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19653; 811–3084]

Liquid Green Trust; Application

August 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Liquid Green Trust.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on April 6, 1993, and amended on July 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 North Pennsylvania Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Prior to February 23, 1993, applicant was a diversified open-end management investment company, organized as a business trust under the laws of the State of Indiana. On May 27, 1980, applicant registered under the Act by filing a notification of registration pursuant to section 8(a). On that same date, applicant filed a registration statement on Form N–1A under the Securities Act of 1933 and section 8(b) of the Act. Applicant's registration statement was declared effective, and its initial public offering commenced, on June 15, 1980.

2. On September 10, 1992, applicant's board of trustees (the "Trustees"), in compliance with rule 17a–8, approved an Agreement and Plan (the "Agreement") between applicant and Quest Cash Reserves, Inc. (File No. 811–5731) on behalf of its Primary Portfolio (the "Quest Fund"). The Agreement provided that applicant would transfer all of its assets, subject to stated liabilities, to the Quest Fund in exchange for that number of shares of the Quest Fund equal to the number of applicant's units outstanding at the time of transfer.

3. In approving the transaction, the Trustees considered various factors, including (a) the decision of applicant's adviser to withdrew from the management of applicant; (b) the capabilities and resources of the Quest Fund's adviser; (c) the comparative investment performance of applicant and the Quest Fund, as well as the performance of similar funds; and (d) the similarities and differences between investment objectives, policies, and restrictions of applicant and the Quest Fund, as well as the services available to unitholders/shareholders of the respective funds. In the Trustee's view, through combining applicant with the Quest Fund, applicant's unitholders would have the opportunity to achieve enhanced levels of investment management and shareholder services.

4. A prospectus and proxy statement dated November 14, 1992 was mailed to applicant's unitholders and filed with the SEC. Applicant's unitholders approved the Agreement at a special meeting held on December 18, 1992.

5. Each of applicant and the Quest Fund are money market funds. On January 26, 1993, applicant had 101,755,064.93 units outstanding with a net asset value of $1.00 per share. Effective January 27, 1993, applicant transferred its assets, subject to stated liabilities, to the Quest Fund in exchange for Quest Fund's shares in accordance with the Agreement. Immediately thereafter, applicant distributed the Quest Fund shares to its unitholders on a one-for-one basis, in complete liquidation of applicant.

6. Applicant incurred approximately $62,675 in expenses in connection with the transaction, consisting of legal and accounting fees and expenses relating to the proxy solicitation.

7. As of the date of filing the application, applicant had no unitholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Effective February 23, 1993, applicant was terminated and surrendered its authority to transact business as an Indiana business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21054 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19654; 811–6133]

Liquid Green Government Trust; Application

August 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Liquid Green Government Trust.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 North Pennsylvania Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Prior to February 23, 1993, applicant was a diversified open-end management investment company, organized as a business trust under the laws of the State of Indiana. On July 2, 1990, applicant registered under the Act by filing a notification of registration pursuant to section 8(a). On that same date, applicant filed a registration statement on Form N–1A under the Securities Act of 1933 and section 8(b) of the Act. Applicant's registration statement was declared effective, and its initial public offering commenced, on August 13, 1990.

2. On September 10, 1992, applicant's board of trustees (the "Trustees"), in compliance with rule 17a–8, approved an Agreement and Plan (the "Agreement") between applicant and Quest Cash Reserves, Inc. (File No. 811–5731) on behalf of its Government Portfolio (the "Quest Fund"). The Agreement provided that applicant would transfer all of its assets, subject to stated liabilities, to the Quest Fund, in exchange for that number of shares of the Quest Fund equal to the number of applicant's units outstanding at the time of transfer.

3. In approving the transaction, the Trustees considered various factors, including (a) the decision of applicant's adviser to withdrew from the management of applicant; (b) the capabilities and resources of the Quest Fund's adviser; (c) the comparative investment performance of applicant and the Quest Fund, as well as the performance of similar funds; and (d) the similarities and differences between investment objectives, policies, and restrictions of applicant and the Quest Fund, as well as the services available to unitholders/shareholders of the respective funds. In the Trustee's view, through combining applicant with the Quest Fund, applicant's unitholders would have the opportunity to achieve enhanced levels of investment management and shareholder services.

4. A prospectus and proxy statement dated November 14, 1992 was mailed to applicant's unitholders and filed with the SEC. Applicant's unitholders approved the Agreement at a special meeting held on December 18, 1992.

5. Each of applicant and the Quest Fund are money market funds. On December 18, 1992, applicant had 11,838,121 units outstanding with a net asset value of $1.00 per share. On December 21, 1992, applicant transferred its assets, subject to stated liabilities, to the Quest Fund in exchange for Quest Fund's shares in accordance with the Agreement. Immediately thereafter, applicant distributed the Quest Fund shares to its unitholders on a one-for-one basis, in complete liquidation of applicant.

6. Applicant incurred approximately $4,735 in expenses in connection with the transaction, consisting of legal and accounting fees and expenses relating to the proxy solicitation.

7. As of the date of filing the application, applicant had no unitholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Effective February 23, 1993, applicant was terminated and surrendered its authority to transact business as an Indiana business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21053 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19655; 811–3271]

Liquid Green Tax-Free Trust; Application

August 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Liquid Green Tax-Free Trust.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on April 6, 1993, and amended on July 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 North Pennsylvania Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Prior to February 23, 1993, applicant was a diversified open-end management investment company,

organized as a business trust under the laws of the State of Indiana.[1] Commission records show that applicant registered under the Act by filing a notification of registration pursuant to section 8(a) on October 1, 1981. On that same date, applicant filed a registration statement on Form N–1 under the Securities Act of 1933.

2. On September 10, 1992, applicant's board of trustees (the "Trustees"), in compliance with rule 17a–8, approved an Agreement and Plan (the "Agreement") between applicant and Quest Cash Reserves, Inc. (File No. 811–5731) on behalf of its General Municipal Portfolio (the "Quest Fund"). The Agreement provided that applicant would transfer all of its assets, subject to stated liabilities, to the Quest Fund in exchange for that number of shares of the Quest Fund equal to the number of applicant's units outstanding at the time of transfer.

3. In approving the transaction, the Trustees considered various factors, including (a) the decision of applicant's adviser to withdraw from the management of applicant; (b) the capabilities and resources of Quest Fund's adviser; (c) the comparative investment performance of applicant and the Quest Fund, as well as the performance of similar funds; and (d) the similarities and differences between investment objectives, policies, and restrictions of applicant and the Quest Fund, as well as the services available to unitholders/shareholders of the respective funds. In the Trustee's view, through combining applicant with the Quest Fund, applicant's unitholders would have the opportunity to achieve enhanced levels of investment management and shareholder services.

4. A prospectus and proxy statement dated November 14, 1992 was mailed to applicant's unitholders and filed with the SEC. Applicant's unitholders approved the Agreement at a special meeting held on December 18, 1992.

5. Each applicant and the Quest Fund are money market funds. On December 18, 1992, applicant had 16,869,341.07 units outstanding with a net asset value of $1.00 per share. On December 21, 1992, applicant transferred its assets, subject to stated liabilities, to the Quest Fund in exchange for Quest Fund's shares in accordance with the Agreement. Immediately thereafter, applicant distributed the Quest Fund shares to its unitholders on a one-for-one basis, in complete liquidation of applicant.

6. Applicant incurred approximately $7,625 in expenses in connection with the transaction, consisting of legal and accounting fees and expenses relating to the proxy solicitation.

7. As of the date of filing the application, applicant had no unitholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Effective February 23, 1993, applicant was terminated and surrendered its authority to transact business as an Indiana business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21055 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Effective August 30, 1993, applicant was the successor by merger to Great Lakes Money Fund, Inc.

[Release No. 34–32803; File No. SR–MSRB–93–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Technical Amendments to Rules G–27 and G–29

August 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 17, 1993, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" of "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regualtory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing technical amendments to Board rule G–27, concerning supervision, and Board Rule G–29, concerning availability of Board rules (hereafter referred to as "the proposed rule change"). The proposed rule change amends the cross-references to rule G–3 contained in rules G–27 and G–29 to correspond with revised rule G–3. The proposed rule change also contains technical word changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On June 11, 1992, the SEC approved amendments to rule G–3, on professional qualifications.[1] Generally, the amendments revised the organization of the rule to clarify its requirements. In reorganizing the rule, the definitions, qualification requirements, and numerical and apprenticeship requirements, if applicable, were brought under the major headings of each category of associated person.

The proposed rule change amends the cross-references to rule G–3 contained in rules G–27 and G–29 to correspond with revised rule G–3. The proposed rule change also contains technical word changes.

(b) The Board believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Act. Section 15B(2)(C) requires in pertinent part that the Board's rules be designed to prevent fraudulent and manipulative acts and practices to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating—transactions in municipal securities—and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not affect the conduct of business by any broker, dealer or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have not been solicited or received on the proposed rule change.

[1] Securities Exchange Act Release No. 30796 (June 11, 1992) 57 FR 27493. The amendments became effective on September 9, 1992.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because it is concerned solely with the administration of the Board and is consistent with the public interest. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21111 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32802; File No. SR–NASD–93–61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Scope of the NASD Arbitration Code of Procedure

August 25, 1993.

On June 11, 1993,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposal amends section 1 of part I and sections 8 and 9 of part II of the NASD Code of Arbitration Procedure ("Code") to clarify that employment-related disputes are arbitrable under Section 8, and provides that in cases such as those involving employment discrimination claims the panel must consist of a majority of public arbitrators.

Notice of the proposed rule change, together with the substance of the proposal as amended, was provided by issuance of a Commission release (Securities Exchange Act Release No. 32639, July 15, 1993) and by publication in the **Federal Register** (58 FR 33963, July 21, 1993). No comment letters were received. This order approves the rule change, as amended.

I. Description of Proposed Rule Change

The NASD is proposing to make several changes to Section 1 of the Code.[4] First, the NASD is proposing to amend Section 1 to clarify that disputes, claims, or controversies arising out of the employment or termination of employment of an associated person are eligible for submission to arbitration. Second, the NASD is proposing a parallel rule change to Section 8,[5] which addresses industry and clearing controversies that are required to be submitted to arbitration. Third, the NASD is proposing to amend Section 1 to clarify that disputes between or among members and associated persons are eligible for submission to arbitration under the Code. These first three changes are intended to ensure that the arbitration of industry employment disputes may be compelled at the instance of one of the parties to the dispute, and to clarify an existing ambiguity between sections 1 and 8 regarding the arbitrability of disputes between members and associated persons.

The NASD is also proposing to amend section 1 to clarify that disputes between or among associated persons and public customers are eligible for submission to arbitration.

Finally, the NASD is proposing to amend section 9(a)[6] to provide that, in disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes, or receipt of commissions, the panel of arbitrators shall be made up of industry arbitrators as provided by sections 9(b)(i), (b)(ii) or 10 of the Code. In all other instances a panel with a single public arbitrator or a majority of public arbitrators chosen under sections 13[7] or 19,[8] as applicable, would be used.[9] Accordingly, the proposed rule change ensures that claims such as those based on allegations of age, sex, or race discrimination, or relating to sexual harassment and other similar disputes will be assigned public panels.

II. Background

The NASD stated in its rule filing that the proposed change to Sections 1 and 8 was prompted by a decision of the California Court of Appeals, *Higgins* v. *Superior Court of Los Angeles County*,[10] in which the court held that Section 8

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[1] The NASD amended the proposed rule change four times; three times following its original filing on December 2, 1992, and a fourth time following the Commission's notice in the **Federal Register** on July 21, 1993. The first amendment, filed on February 9, 1993, modified the rule language of Section 9(a) to Part II of the Code of Arbitration Procedure to delete a reference to disputes claiming "wrongful discharge." Amendments two and three, filed on May 18, and June 11, 1993 respectively, both amended part I, section 1 of the Code to clarify the applicability of the Code to employment related disputes. Finally, on August 9, 1993, the NASD filed amendment four to clarify the scope of section 9(b)(ii). See letter from Suzanne Rothwell, Associate General Counsel, NASD, to Selwyn J. Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated August 9, 1993. The text of the fourth amendment, a minor technical amendment, may be examined in the Commission's Public Reference Room.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] *NASD Manual*, Code of Arbitration Procedure, Part I, Sec. 1, (CCH) ¶ 3701.

[5] *NASD Manual*, Code of Arbitration Procedure, Part II, Sec. 8, (CCH) ¶ 3708.

[6] *NASD Manual*, Code of Arbitration Procedure, Part II, Sec. 9(a), (CCH) ¶ 3709.

[7] *NASD Manual*, Code of Arbitration Procedure, Part III, Sec. 13, (CCH) ¶ 3713.

[8] *NASD Manual*, Code of Arbitration Procedure, Part III, Sec. 19, (CCH) ¶ 3719.

[9] The Code defines industry arbitrator and public arbitrator in Sections 19(c) and (d). See *NASD Manual, Code of Arbitration Procedure, part III, §§ 19(c)–(d), (CCH) ¶ 3719.*

[10] Cal. App. (Oct. 8, 1991), *review denied and decision ordered not officially published*, 1 Cal. Rptr. 2d 87 (1992).

of the Code did not cover employment disputes, but only covered disputes arising out of or in connection with business transactions. The court in *Higgins* distinguished prior case precedent which compelled arbitration of an age discrimination claim before the New York Stock Exchange ("NYSE").[11] The court found dispositive the difference between the language of Section 8 of the NASD Code of Arbitration and Rule 347 of the NYSE, which governs its industry disputes.[12] Further, in *Farrand* v. *Lutheran Brotherhood*,[13] the Seventh Circuit concluded, that the NASD Code of Arbitration, as currently drafted, does not require the arbitration of employment disputes between an NASD member and its associated person. The court held that, "§ 1 of the NASD's Code does not authorize, and § 8 therefore does not require, the arbitration of employment disputes."[14]

With regard to the proposed change to Section 9(a), securities industry panels are currently utilized in all claims involving the employment or termination of employment of associated persons. The NASD determined that in disputes involving employment contracts, promissory notes, and receipt of commissions, the issues relate to industry practice and, therefore, require industry experience. In other disputes, involving issues such as employment discrimination and sexual harassment, there is less need for an industry panel and the interests of the parties may be better served by a panel consisting of a majority of public arbitrators.

III. Discussion and Conclusion

The Commission finds the amendments to the NASD Code of Arbitration Procedure to be consistent with the provisions of section 15A(b)(6) of the Act.[15] Section 15A(b)(6) of the Act provides in pertinent part that the rules of the NASD be designed to protect the public interest. The rule filing resolves ambiguities that courts have found with the scope of the NASD's arbitration rules regarding employment disputes.[16]

In addition, the proposed rules provide that disputes that do not directly involve industry practice, such as employment disputes that include claims of age, sex, or race discrimination, or relating to sexual harassment, will be arbitrated by a panel with a majority of public arbitrators. Requiring arbitration panels in these employment disputes to have a majority of persons outside the industry should promote party confidence in the arbitration process. Accordingly, the Commission finds that the proposed rule change will protect the public interest and should assure the integrity of the arbitration process.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–92–51 be, and hereby is approved, effective October 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21110 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[11] *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. —, 111 S.Ct. 1647, 114 L.Ed 2d 26 (1991).

[12] *NYSE Manual*, Operation of Member Organizations, Rule 347 (CCH) ¶ 2347.

[13] 993 F.2d 1253 (7th Cir. 1993).

[14] *Id.* at 1255.

[15] 15 U.S.C. 78o–3.

[16] *See Higgins*, 1 Cal. Rptr. 2d 87, and *Farrand*, 993 F.2d 1253.

[17] 17 CFR 200.30–3(a)(12).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 25, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

MuniVest Pennsylvania Insured Fund
Shares of Beneficial Interest, $.10 Par Value (File No. 7–11208)

MuniYield Arizona Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11209)

Van Kampen Merritt Opportunity Trust II
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11210)

Saul Centers, Inc.
Common Stock, $.01 Par Value (File No. 7–11211)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 16, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21052 Filed 8–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19652; 811–2015]

Unified Funds; Application

August 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Unified funds.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on April 6, 1993, and amended on July 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 North Pennsylvania Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: May Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman,

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Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an Indiana business trust, was organized in 1990 as a diversified open-end management investment company of the series type to effect a reorganization into applicant of Unified Growth Fund, Inc. (the "Growth Fund"), Unified Income Fund, Inc., Unified Mutual Shares, Inc., and Unified Municipal Fund, Inc., all of which were affiliated registered investment companies. In connection with the reorganization, applicant assumed the registration of the Growth Fund, which initially filed a notification of registration pursuant to section 8(a) and a registration statement under the Securities Act of 1933 and section 8(b) of the Act on February 2, 1970. The Growth Fund's registration statement was declared effective, and its initial public offering commenced, on August 6, 1970.

2. Prior to March 10, 1993, applicant offered four series, the Growth Fund, the Income Fund, the Mutual Shares Fund, and the Indiana Bond Fund (collectively, the "Funds").

3. On September 10, 1992, applicant's board of trustees (the "Trustees"), in compliance with rule 17a–8, approved separate Agreements and Plans (the "Agreements") between applicant, on behalf of each of the Funds, and certain registered investment companies managed by Quest for Value Advisors (the "Quest Funds"). Each Agreement provided that applicant would transfer all of the assets, subject to stated liabilities, of the applicable Fund to the applicable Quest Fund in exchange for that number of shares of the applicable Quest Fund having a net asset value equal to the net asset value of applicant's Fund at the time of transfer. The Growth Fund was merged into Quest for Value Fund, Inc. (File No. 811–2944), the Income Fund and the Mutual Shares Fund were merged into the Growth and Income Fund, a series of Quest for Value Family of Funds (File No. 811–5225), and the Indiana Bond Fund was merged into the National Tax-Exempt Fund, a series of Quest for Value Family of Funds (File No. 811–5225).

4. In approving the transactions, the Trustees considered various factors, including: (a) The decision of applicant's adviser to withdraw from the management of applicant; (b) the capabilities and resources of Quest for Value Advisors; (c) the comparative investment performance of each Fund and the applicable Quest Fund, as well as the performance of similar funds; and (d) the similarities and differences between investment objectives, policies, and restrictions of each Fund and the applicable Quest Fund, as well as the services available to shareholders of the respective funds. In the Trustee's view, through combining the Funds with the Quest Funds, applicant's shareholders would have the opportunity to achieve enhanced levels of investment management and shareholder services.

5. Prospectuses and proxy statements dated November 11, 1992 (November 3, 1992 in the case of the Growth Fund) were mailed to the shareholders of each of the Funds and filed with the SEC. Applicant's shareholders approved each Agreement, as applicable, at a special meeting held on December 18, 1992.

6. On December 18, 1992 (December 27, 1992 in the case of the Growth Fund), applicant had outstanding the following numbers of shares of each of the Funds, with approximate net asset values in the aggregate and per share as noted:

Class of shares	Aggregate NAV	NAV per share
Growth Fund	$656,437.33	$12.93
Income Fund	261,137.71	11.90
Mutual Shares Fund	724,141.57	16.48
Indiana Bond Fund	1,274,063.08	8.79

Effective December 21, 1992 (December 28, 1992 in the case of the Growth Fund), applicant transferred all of the assets, subject to stated liabilities, of each Fund to the applicable Quest Fund for shares of such fund in accordance with the applicable Agreement. Immediately thereafter, each Fund distributed the applicable Quest Fund shares to its shareholders, in complete liquidation of each Fund.

7. Applicant incurred approximately $11,234 in expenses in connection with the transactions, consisting of legal and accounting fees and expenses relating to the proxy solicitations. The expenses were allocated among the Funds on a relative net asset basis.

8. As of the date of filing the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. Effective March 10, 1993, applicant was terminated and surrendered its authority to transact business as an Indiana business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21058 Filed 8–30–93; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 1853]

Office of the Legal Adviser; U.S. Ratification of International Covenant on Civil and Political Rights

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: On September 8, 1992, the United States became a party to the International Covenant on Civil and Political Rights, joining over 117 other nations in asserting its dedication to preserving and promoting human rights. The Covenant guarantees to all individuals within the territory and subject to the jurisdiction of the State Party a broad spectrum of civil and political rights, rooted in basic democratic values and freedoms. The Covenant obligates each State Party to respect and ensure these rights, to adopt any necessary legislative or other measures to give effect to these rights, and to provide an effective remedy to those whose rights are violated. The Covenant also establishes a Human Rights Committee to oversee compliance and investigate reports of noncompliance made by one Party against another. The text of the Covenant, as well as the reservations, understandings and declarations upon which U.S. adherence is based, are set forth below.

FOR FURTHER INFORMATION CONTACT: David P. Stewart, Assistant Legal Adviser for Human Rights and Refugees, Department of State, 2201 C St. NW., Washington, DC 20520–6310, 202–647–9328.

SUPPLEMENTARY INFORMATION: The text of the Covenant on Civil and Political Rights is as follows:

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and

inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved in conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedom,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Part I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived for its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, is conformity with the provisions of the Charter of the United Nations.

Part II

Article 2

1. Each State Party of the present Covenant undertakes to respect to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, within distinction of any kind, such as race, color, sex language, religion, political or other opinion national or social origin, property, birth or other status.

2. Where no already provided for by existing legislative or other measures, each State Party to present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide,it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labor;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;

(c) For purposes of this paragraph, the term "forced or compulsory labor" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or where the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

(e) To examine, or to have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such a conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and

shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Part IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership to the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if its concerns a state Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent to the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts, the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable

solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

Part V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI

Article 48

1. The present Covenant is open for signature by any State member of the United Nations or member of any of its specialized agencies, by any State party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall

thereupon communicate any proposed amendments to the States Parties to the present Covenant with request that they notify him whether they favor a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favors such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States parties which have accepted them, other States Parties still being bound by the provision of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

United States Reservations, Understandings and Declarations

The Senate gave its advice and consent to the ratification of the international Covenant on Civil and Political Rights, and the United States became party to the Covenant on September 8, 1992, subject to a number of reservations, understandings and declarations. The text of the Senate's resolution of advice and consent, as adopted on April 2, 1992, 138 Cong. Rec. S 4781–84 (daily ed. Apr. 2, 1992) is as follows:

I. The Senate's advice and consent is subject to the following reservations:

(1) That Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.

(2) That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.

(3) That the United States considers itself bound by Article 7 to the extent that "cruel, inhuman or degrading treatment or punishment" means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.

(4) That because U.S. law generally applies to an offender the penalty in force at the time the offense was committed, the United States does not adhere to the third clause of paragraph 1 of Article 15.

(5) That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of Article 10 and paragraph 4 of Article 14. The United States further reserves to these provisions with respect to individuals who volunteer for military service prior to age 18.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Covenant:

(1) That the Constitution and laws of the United States guarantee all persons equal protection of the law and provide extensive protections against discrimination. The United States understands distinctions based upon race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status—as those terms are used in Article 2, paragraph 1 and Article 26—to be permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination, in time of public emergency, based "solely" on the status of race, color, sex, language, religion or social origin not to bar distinctions that may have a disproportionate effect upon persons of a particular status.

(2) That the United States understands the right to compensation referred to in Articles 9(5) and 14(6) to require the provision of effective and enforceable mechanisms by which a victim of an unlawful arrest or detention or a miscarriage of justice may seek and, where justified, obtain compensation from either the responsible individual or the appropriate governmental entity. Entitlement to compensation may be subject to the reasonable requirements of domestic law.

(3) That the United States understands the reference to "exceptional circumstances" in paragraph 2(a) of Article 10 to permit the imprisonment of an accused person with convicted persons where appropriate in light of an individual's overall dangerousness, and to permit accused persons to waive their right to segregation from convicted persons. The United States further understands that paragraph 3 of Article 10 does not diminish the goals of punishment, deterrence, and incapacitation as additional legitimate purposes for a penitentiary system.

(4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require the provision of a criminal defendant's counsel of choice when the defendant is provided with court-appointed counsel on grounds of indigence, when the defendant is financially able to retain alternative counsel, or when imprisonment is not imposed. The United States further understands that paragraph 3(e) does not prohibit a requirement that the defendant make a showing that any witness whose attendance he seeks to compel is necessary for his defense. The United States understands the prohibition upon double jeopardy in paragraph 7 to apply only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the Federal Government or a constituent unit, as is seeking a new trial for the same cause.

(5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures

appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.

III. The Senate's advice and Consent is subject to the following declarations:

(1) That the United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing.

(2) That is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant. For the United States, Article 5, paragraph 2, which provides that fundamental human rights existing in any State Party may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to Article 19, paragraph 3, which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.

(3) That the United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under Article 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

(4) That the United States declares that the right referred to in Article 47 may be exercised only in accordance with international law.

IV. The Senate's advice and consent is subject to the following proviso:

Nothing in this Covenant requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

Dated: August 19, 1993.

David P. Stewart,

Assistant Legal Adviser for Human Rights and Refugees, Department of State.

[FR Doc. 93-21034 Filed 8-30-93; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting of Special Committee 180; Design Assurance Guidance for Complex Electronic Hardware Used in Airborne Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 180 meeting to be held September 28-29, 1993, in the RTCA Conference Room at 1140 Connecticut Avenue, SW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review committee terms of reference; (3) Identify Goals, Develop Work Program and Examine Milestones; (4) Assign tasks; (5) Other business; (6) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 25, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93-21101 Filed 8-30-93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Ave., room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Springfield Airport Authority at the following address: Capital Airport, Springfield Airport Authority, Springfield, Illinois 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Ave., room 258, Des Plaines, Illinois 60018, (708) 294-7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invite public comment on the application to impose a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 18, 1993, the FAA determined that the application to impose a PFC submitted by the Springfield Airport Authority was substantially complete within the requirements § 158.23 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1994
Proposed charge expiration date: January 31, 2006
Total estimated PFC revenue: $4,621,000
Brief description of proposed project(s):

1. Land Acquisition
2. Easement Acquisition
3. Rehabilitate Runway 4 Overrun
4. Rehabilitate Entrance Road
5. Rehabilitate Runway 4/22 and 18/36
6. Rehabilitate Runway 13
7. Taxiway from Runway 18 to Runway 13
8. Stabilize Shoulders on Runway 4/22
9. Widen Taxiway A
10. Parallel Taxiway for Runway 22
11. Parallel Taxiway for Runway 31
12. Exhibit A

13. Hushhouse and Sitework
14. Update Master Plan
15. Install ILS on Runway 13
16. Snow Removal Equipment
17. Proximity Suits
18. Front End Loader
19. Terminal Building Expansion
20. Disabled Passenger Lift

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On Demand Air Taxis.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on August 20, 1993.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 93-21100 Filed 8-30-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Jo Daviess and Stephenson Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project to Jo Daviess and Stephenson Counties, Illinois. The proposed project corridor extends from the U.S. Route 20/Illinois Route 84 intersection north of Galena in Jo Daviess County to the Route 20/ Bolton Road intersection west of Freeport in Stephenson County. The proposed project is designated FAP 301 (formerly FAP 401).

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Design Operations Engineer, Federal Highway Administration, Illinois Division, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492-4600 Mr. William D. Ost, District Engineer, Illinois Department of Transportation (IDOT), 819 Depot Avenue, Dixon, Illinois 61021, Telephone: (815) 284-2271.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve U.S. Route 20 in Jo Daviess and Stephenson Counties, Illinois. The proposed project involves upgrading approximately 47 miles of U.S. Route 20 to a four-lane, access-controlled facility. The area being studied begins at the intersection of Illinois Route 84 and U.S. Route 20 north of Galena, Illinois and extends easterly to the intersection of U.S. Route 20 with Bolton Road west of Freeport, Illinois.

Alternatives under consideration include no action and a new four-lane, fully access-controlled facility on new alignment. Although the Environmental Impact Statement will assess the impacts of a four-lane freeway, the proposed project may be stage constructed to include interim improvements with partial access control and/or two-way traffic operations.

The proposed project is intended to increase safety by providing a facility with improved horizontal and vertical sight distances, wider roadway and shoulders, and other improved geometric design elements; to provide additional capacity for increasing traffic volumes; to provide system continuity for U.S. Route 20 across Illinois and Iowa; to better serve the transportation needs of the local communities along the U.S. Route 20 corridor; and to support the economic development of the region.

The scoping process undertaken as part of this proposed project will include distribution of a scoping information packet, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. A formal scoping session is scheduled to be held at the IDOT District Office, 819 Depot Avenue, Dixon, Illinois on September 23, 1993, beginning at 10 a.m. Further details of the proposed project and a scoping information packet may be obtained from the contact persons listed above.

To ensure that the full range of issues related to the proposed project are addressed and all significant issues identified, a comprehensive public involvement program will be undertaken. Public meetings will be held in the study area prior to the public hearing. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public agency review and comment prior to the public hearing. In addition, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or IDOT contact persons.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 25, 1993.

James C. Partlow,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 93-21061 Filed 8-30-93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. HCI 3257]

Motorcycle Helmets Manufactured by Chico of Ft. Lauderdale, Inc.; Change of Date of Public Proceeding

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of change of date of public meeting.

SUMMARY: NHTSA is changing the date of the public meeting it will hold regarding an initial determination that certain motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. fail to comply with Federal Motor Vehicle Safety Standard No. 218. The new date for the meeting is September 30, 1993.

FOR FURTHER INFORMATION CONTACT: John Lee, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; 202-366-5299.

SUPPLEMENTARY INFORMATION: On August 18, 1993 (58 FR 43981), NHTSA announced that its Associate Administrator for Enforcement had made an initial determination that certain motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. (Chico), do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets," 49 CFR 571.218. That notice advised that a public proceeding would be held on September 15, 1993 to afford the manufactured and other interested persons an opportunity to present data, views, and arguments regarding the compliance of these helmets with FMVSS No. 218.

At the request of Chico's president, Mr. Stephen Yasko, Jr., NHTSA has decided to reschedule the public meeting until September 30, 1993. It will be held at 10 a.m. in room 2230, Department of Transportation Building.

400 Seventh Street, SW., Washington, DC.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6111, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2832, before the close of business on September 24, 1993. Written comments may be submitted to the same address on or before September 29, 1993.

Authority: 15 U.S.C. 1412; delegation of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: August 25, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–21097 Filed 8–30–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Public Electronic Communications Consortium Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Meeting notice.

SUMMARY: The Internal Revenue Service is holding a meeting for parties who indicated interest in determining the feasibility of establishing a consortium to fund, design, build, and maintain an electronic communications facility for the purpose of such activities as: Receiving and transmitting electronic tax data, acknowledgement of electronic data, payment information, providing access for tax account information or responses to requests for information regardless of the system or software used by the public. There is no intention to issue a Request for Proposal.

DATES: Parties interested in attending the meeting should contact the Internal Revenue Service by September 17, 1993, at the following address.

FOR FURTHER INFORMATION CONTACT: Robert Carver, Deputy Assistant Commissioner Returns Processing R, Room 3407, 1111 Constitution Avenue, NW, Washington DC 20224.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service asked for expressions of interest in a **Federal Register** notice published May 26, 1993, entitled Public Electronic Communications Consortium and the Commerce Business Daily notice published June 22, 1993.

Robert Carver,

Deputy Assistant Commissioner, Returns Processing.

[FR Doc. 93–21037 Filed 8–30–93; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable, (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 180 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

By direction of the Secretary.

Dated: August 24, 1993.

B. Michael Berger,

Director, Records Management Service.

Extension.

1. Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22–5495.

2. The form is completed by a veterans' spouse, surviving spouse, or child to indicate a change in program and/or place of training. The information by VA to determine if the student is eligible for Dependents' Educational Assistance (DEA) for the new program and/or place of training.

3. Individuals or households.

4. 5,250 hours.

5. 30 minutes.

6. On occasion.

7. 10,500 respondents.

[FR Doc. 93–21058 Filed 8–30–93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 167
Tuesday, August 31, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 30, September 6, 13, 20, 1993; Previously announced in the Federal Register of August 30, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 30

Monday, August 30

10:00 a.m.
Briefing on Results of Agreement State Compatibility Workshop (Public Meeting)
(Contact: Shelly Schwartz, 301–504–2325)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on NRC Research Program on Aging (Public Meeting)
(Contact: John Craig, 301–492–3850)

Week of September 6—Tentative

Thursday, September 9

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.
Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301–504–1728)
10:30 a.m.
Briefing by Advanced Reactor Corporation (Public Meeting)
2:00 p.m.
Briefing on Management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301–504–2659)

Week of September 13—Tentative

Thursday, September 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 17

1:30 p.m.
Briefing on Status of Form and Content for Design Certification Rule (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1199)

Week of September 20—Tentative

(Please note addition of contacts.)

Monday, September 20

10:00 a.m.
Briefing on Results of 2.206 Workshop (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)
1:30 p.m.
Briefing on Status of AP600 and SBWR Thermal/Hydraulic Testing (Public Meeting)
(Contact: Brian Sheron, 301–492–3500)
3:00 p.m.
Briefing on NRC Reactor Inspection Program Assessment and Planned Improvements (Public Meeting)
(Contact: Anthony Gody, Sr., 301–492–1257)

Tuesday, September 21

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: August 26, 1993.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–21242 Filed 8–27–93; 11:19 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 167
Tuesday, August 31, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 61

[CS-91-009]

RIN 0581-AA51

Agency Reorganization of Analytical Testing Services

Correction

In rule document 93-18212 beginning on page 42408 in the issue of Monday, August 9, 1993, make the following correction:

§ 61.24 [Corrected]

On page 42413, in the third column, in amendatory instruction 5., in the fourth line, "61." should read "61.24."

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Ozark Purchase Unit

Correction

In notice document 93-19077 appearing on page 42524 in the issue of Tuesday, August 10, 1993, in the second column, in land description T10N, R20W, in Section 36, in the last line, after "N½NW¼" insert "SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-465-000, et al.]

Florida Power & Light Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 93-19941 beginning on page 43869 in the issue of Wednesday, August 18, 1993, on page 43870, in the first column, in the fifth line from the end, the Docket No. should read "ER90-168-013".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[PR Docket No. 90-315; FCC 92-392]

Aviation Radio Services

Correction

In rule document 92-23979 beginning on page 45748 in the issue of Monday, October 5, 1992, make the following correction:

On page 45748, in the second column, in the **EFFECTIVE DATE:**, "January 4, 1992." should read "January 4, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Revised Voluntary Tanker Agreement

Correction

In notice document 93-19171 appearing on page 42754 in the issue of Wednesday, August 11, 1993, in the first column, in **SUPPLEMENTARY INFORMATION**, in the seventh line, "characters" should read "charterers".

BILLING CODE 1505-01-D

federal register

Tuesday
August 31, 1993

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes; Final Rule

VOL 58 ISS 167 AG 31 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-4624-8]

RIN 2060-AB56

Standards of Performance for New Stationary Sources; Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for SOCMI reactor process operations were proposed in the Federal Register on June 29, 1990 (55 FR 26953). Today's action promulgates standards of performance for SOCMI reactor processes. These standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that VOC emissions from SOCMI cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed reactor processes to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: August 31, 1993.

The information collection requirements contained in subpart RRR of 40 CFR part 60 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Reactor Processes in Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards," EPA–450/3–90–016b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments; (2) a summary of the changes made to the standards since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. Docket No. A–83–29, containing supporting information used in developing the promulgated standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the regulation of reactor processes in the SOCMI, contact Mr. Warren Johnson, telephone (919) 541–5124 concerning regulatory decisions. Contact Mr. Robert E. Rosensteel or Mr. Leslie B. Evans, telephone (919) 541–5608 and (919) 541–5410, respectively, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the promulgated standards.

I. The Standards
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  C. Methods of Achieving Compliance
  D. Boiler/Process Heater Requirements
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I. The Standards

Standards of performance for new sources established under section 111 of the CAA reflect:

> * * * application of the best system of emission reduction which (taking into account the cost of achieving such emission reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to VOC emissions from new, modified, and reconstructed reactor processes within the SOCMI. The standards apply to reactor processes operating as part of a process unit which produces any of the chemicals listed in § 60.707 as a product. A product means any compound or chemical listed in § 60.707 which is produced for sale as a final product as that chemical, or for use in the production of other chemicals or compounds. By-products, co-products, and intermediates are considered to be products.

Reactor processes comprise one of the three SOCMI process vent emission source categories for which EPA has developed standards under section 111 of the CAA. Final rules for SOCMI air oxidation and distillation operations were promulgated under section 111 on June 29, 1990. The section 111 standards apply to VOC emissions. A national emission standard that would apply to SOCMI reactors emitting hazardous air pollutants (HAP) is also under development under section 112 (that rule is commonly referred to as the hazardous organic NESHAP or HON). The NSPS apply to reactors producing any of 173 listed chemicals. The HON list of covered chemicals includes only 99 of the 173 covered by the NSPS. This is because only 99 emit HAP. Although the HON covers fewer chemicals than the NSPS, it will apply to both new and existing sources, whereas the NSPS will apply to only new, modified, and reconstructed sources.

Consequently, the EPA believes that it is appropriate to establish both standards to satisfy the requirements of section 111 to regulate new stationary sources of criteria air pollutants (in this case, VOC) and of section 112 to

regulate new and existing stationary sources of HAP. In cases of overlap where both standards apply to the same source, the source must comply with the more stringent rule and its associated monitoring, recordkeeping, and reporting requirements. The compliance demonstration and the set of records and reports for the more stringent rule would also satisfy the requirements for the less stringent rule, thus eliminating the need for the source owner or operator to duplicate records and reports.

A. The Affected Facility

The affected facility is designated as a single reactor process with its own individual recovery system (if any) or the combination of two or more reactor processes and the common recovery system they share. A recovery system consists of any device, or devices, capable of and used for the purpose of recovering chemicals for use, reuse, or sale and may include both primary and secondary recovery devices. Some examples of recovery devices are absorbers, adsorbers, and condensers as well as certain devices that recover non-VOC's, such as ammonia and hydrogen chloride recovery units.

Construction, reconstruction or modification of the affected facility must have begun after June 29, 1990 for the standards to be applicable. Existing facilities are not subject to the standards unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15.

B. Exemptions

Reactor processes operating as part of a process unit that produces beverage alcohols, or which uses, contains, or produces no VOC, are not affected facilities. Any reactor process that is designed and operated as a batch operation is exempt from the new source performance standards (NSPS) for reactor processes. Any reactor process that is part of a process unit that has a total design production capacity less than 1 gigagram per year (Gg/yr) (1,100 tons/yr) for all chemicals produced within the process unit is exempt from the standards except that the owner or operator shall maintain up-to-date, readily accessible records of any change in equipment or process operations that increases the design production capacity of the process unit. If any such change increases the design production capacity above the low capacity exemption level, a performance test must be conducted. In addition, an initial report detailing the production capacity of the process unit must be submitted.

Any reactor process operated with a vent stream flow rate less than 0.011 standard cubic meters per minute (scm/min) [0.39 standard cubic feet per minute (scf/min)] is exempt from all provisions of the standards except certain reporting and recordkeeping requirements described in this paragraph. Any owner or operator shall maintain up-to-date, readily accessible records of any change in equipment or process operations that increases the vent stream flow rate. If any such change increases the flow rate above the low flow exemption level, a performance test must be conducted. In addition, an initial report of the vent stream flow rate must be submitted.

Any reactor process operated with a vent stream total organic compound (TOC) concentration less than 150 parts per million volume (ppmv) as measured by Reference Method 25A or 300 ppmv as measured by Reference Method 18 is exempt from all provisions of the standards except certain reporting and recordkeeping requirements described in this paragraph. The owner or operator of such a process shall maintain up-to-date, readily accessible records of any change in equipment or process operations that increases the vent stream TOC concentration. If any such change increases the vent stream TOC concentration above the low TOC concentration exemption level, a performance test must be conducted. In addition, an initial report of the vent stream TOC concentration must be submitted.

A reactor process vent stream routed through a distillation unit subject to the provisions of the NSPS for SOCMI distillation operations (subpart NNN) before it is released to the air would be subject to the provisions of subpart NNN rather than this NSPS for reactor processes, as long as there are no other releases to the air except for a pressure relief valve. Owners or operators who seek this exemption must submit a report of the process design. Exemptions from the standards were also added for reactor processes that are subject to the provisions of the polymer manufacturing NSPS (subpart DDD) and reactor processes with total resource effectiveness (TRE) value greater than 8.0.

C. Methods of Achieving Compliance

The standards include emission reduction requirements and/or emission limits which are based on the emission reduction capabilities of BDT. However, the standards do not require that a specific device or technology be used for those facilities that must comply with the emission reduction requirements. Rather, any control technology other than recovery devices as defined in the standards can be used as long as it can be demonstrated that the selected control technology is at least as effective as BDT at reducing VOC emissions. The requirements for boilers or process heaters, incinerators, and flares are summarized in the following sections. If the emission reduction requirements were achieved by other means, the owner or operator would be required to provide information describing the operation of the control device and the parameter(s) that indicate proper operation and maintenance of the device so that the enforcing agency could specify appropriate monitoring requirements.

Due to variations in the vent stream characteristics of flow rate, heat content, and concentration of organic compounds, the total cost of control per unit of VOC removed would vary considerably among the different types of reactor processes. The Administrator has determined that for some reactor processes the control technology has not been adequately demonstrated. For this reason, the TRE index was developed as an indicator to determine when the cost of controlling a particular vent stream is reasonable.

The TRE index is an algebraic reduction of all the annualized costs incurred when controlling a vent stream, such as annualized capital costs, supplemental gas costs, labor costs, electricity costs, etc. It was determined that those facilities with a TRE index less than or equal to 1.0 would be able to reduce VOC emissions at a reasonable cost. Therefore, BDT for these facilities is to reduce VOC emissions by 98 weight-percent or to 20 ppmv through the use of a thermal incinerator or a flare. Because facilities with a TRE index greater than 1.0 are unable to reduce VOC emissions at a reasonable cost, BDT for them is no additional control.

(Note: A TRE value of 1.0, (i.e. approximately $2500/Mg (1982 yr$)) represents a cutoff for determining which facilities must reduce VOC emissions by 98 weight-percent or 20 ppmv. The cutoff would not necessarily be appropriate for other categories; therefore, it should not be viewed as a benchmark for other standards.)

Using the TRE approach, the standards would require each owner or operator of an affected facility with a TRE index value less than or equal to 1.0 to use a VOC control device to reduce emissions of TOC (less methane and ethane) in the process vent stream by 98 weight-percent or to 20 ppmv, whichever is less stringent; or to combust VOC emissions in a flare that

meets the requirements of § 60.18 in the General Provisions. For facilities with a TRE index value greater than 1.0, the owner or operator must consistently maintain a value greater than 1.0.

Equations are included in the regulation for determining the TRE index value of a vent stream from an affected facility. The process vent stream flow rate, total organic compound emission rate, net heating value, and corrosion properties (whether or not halogenated compounds are present) must be determined according to the specified Reference Methods in order to calculate the TRE index value. These vent stream characteristics would be determined for the vent stream following the last recovery device (e.g., condenser, absorber, carbon adsorber).

The structure of the standards allows an affected facility with a TRE index value of less than or equal to 1.0 to add a recovery device, improve the existing recovery system efficiency, or alter the process operation so that the TRE index value would increase above 1.0 and, therefore, emissions would not have to be reduced by 98 weight-percent or to 20 ppmv. Increased recovery efficiency for this purpose would have the advantages of achieving additional emission reductions, less energy usage, lower costs, and increased recovery of compounds or increased retention of products. The additional emission reduction could be as much as 30 percent more than current industry practice.

D. Boiler/Process Heater Requirements

Any owner or operator using a boiler or process heater to achieve compliance with the percent reduction or concentration limit in the standards would be required to combust the reactor vent stream in the flame zone of the boiler or process heater. The owner or operator would also be required to monitor and record the presence of vent stream flow/no flow diverted away from the combustion device at least once every 15 minutes. A flow indicator would be installed at the entrance to any bypass line that could divert the vent stream to the atmosphere before it reaches the combustion device. Alternatively, a car-seal or lock-and-key type of arrangement could be used to ensure that the vent stream is not being diverted from the combustion device.

If the reactor vent stream is being combusted through a secondary burner or with combustion air in a boiler or process heater with heat input design capacity less than 44 megawatts (MW) (150 million British thermal units per year (MMBtu/yr)), then the owner or operator would be required to conduct an initial performance test using Reference Method 18 on the combined inlet stream (the fuel plus the affected vent stream) and test the combined outlet stream to determine if total TOC (minus methane and ethane) is reduced by 98 weight-percent or to 20 ppmv. The owner or operator also would be required to monitor and record the firebox operating temperature on a continuous basis.

For boilers or process heaters of 44 MW (150 MMBtu/hr) or greater design heat input capacity, no initial performance test or temperature monitoring is required. For any size boiler or process heater, if the reactor vent stream is being combusted as primary fuel rather than being combusted as a secondary fuel or mixed with combustion air, then the owner or operator would be exempt from conducting a performance test and monitoring temperature.

E. Flare Requirements

A steam-assisted flare, an air-assisted flare, and a flare with no assist are considered to be capable of achieving 98 weight-percent emission reduction and may be used to meet the standards, provided that the flares are operated in accordance with the requirements in 40 CFR 60.18. Each owner or operator complying with the standards by using a flare would be required to monitor continuously the presence of the pilot flame. Ultra-violet beam sensors or thermocouples are acceptable for this purpose. If a bypass line is present, a flow indicator would be required to record any time the vent stream flow is diverted from the flare to the atmosphere. Alternatively, a car-seal or lock-and-key type of arrangement could be used to ensure that the vent stream is not being diverted from the combustion device.

F. Incinerator Requirements

Each owner or operator complying with the standards by using an incinerator would be required to monitor continuously and record the firebox operating temperature or, if a catalytic oxidizer is used, the temperature before and after the catalyst bed. An initial performance test demonstrating that 98 percent reduction or 20 ppmv outlet concentration is being achieved is required for any incinerator.

A vent stream flow indicator is also required for each affected facility and must be installed at the entrance to any bypass line that could divert the vent stream away from the combustion device to the atmosphere. Records of vent stream flow in the bypass line must be maintained. Alternatively, a car-seal or lock-and-key type of arrangement could be used to ensure that the vent stream is not being diverted from the combustion device.

G. Requirements for Maintaining Total Resource Effectiveness Index Value Greater Than 1.0

Each owner or operator who complies with the standards by maintaining a vent stream TRE index value above 1.0 would be required to monitor continuously and record specified operating parameters of the final piece of recovery equipment to ensure this TRE index value is consistently maintained. Operating parameters are established during the initial (or most recent) performance test when the VOC concentration is measured. Subsequent monitoring of these parameters is conducted to determine if their values have deviated from the values measured during the performance test. Depending on what the final recovery device is, the specified operating parameters are condenser exit (product side) operating temperature; absorber liquid temperature; specific gravity (or an alternative measure of absorbing liquid saturation, if approved by the enforcing agency); carbon adsorption bed temperature (after regeneration and completion of any cooling cycle(s)); and the mass flow rate of carbon bed regeneration stream. As an alternative to the above requirements, an organic monitoring device may be used. The owner or operator would also be required to maintain records of changes in production capacity; feedstock identity; catalyst identity; or of replacement, removal, or addition of recovery equipment. When any such change takes place, the owner or operator of the facility is required to recalculate the TRE index value to document that the facility continues to have a TRE index value above 1.0. Such recalculation can be based on test data reflecting the changes in the system, or best engineering estimates of the effects of the changes.

If the recalculated TRE index for the facility is less than 1.0, the owner or operator would have to demonstrate compliance with the 98 weight-percent reduction or 20 ppmv emission limit within 180 days from the time of process change. Prior notice of any performance testing shall be given to EPA as required by the General Provisions of 40 CFR part 60. Where the initial TRE index value is greater than 8.0 and the recalculated TRE index is less than or equal to 8.0 but greater than 1.0, a performance test is also required. Performance testing may also be

required on a case-by-case basis by the Administrator following any change to the recovery system in order to verify the status of the TRE index value for the facility.

H. Reporting and Recordkeeping Requirements

The standards require that owners and operators who are using any control device to comply with the standards must maintain on file a schematic diagram of the affected vent streams, collection systems, fuel systems, control device(s), and bypass systems. Records of the operating parameters discussed above must be maintained to ensure the proper operation and maintenance of control equipment and recovery equipment used to reduce VOC emissions. Furthermore, records of instances where these monitored values exceed allowable limitations established during the most recent performance test must be maintained. In addition to maintaining these records, an owner or operator must submit a semiannual report of recorded exceedances. The requirement of semiannual reporting may be waived for affected facilities in States that have been delegated authority for enforcement, provided EPA approves the reporting requirements or alternative means of compliance surveillance adopted by the State and the affected facilities comply with the requirements established by the State.

II. Summary of Impacts

The analysis of energy, environmental, cost, and economic impacts was performed using conservative assumptions that would tend to overestimate the actual impacts. It was assumed that all affected reactor processes would use combustion devices to comply with the standard. In reality, the standard allows flexibility for using less costly, energy saving, and pollution prevention approaches. For example, some facilities would upgrade existing recovery equipment to achieve a TRE index value higher than the cutoff and, in fact, the standards are structured in a way that encourages this. Such equipment generally has lower associated costs and energy use. Second, some facilities would use other combustion devices, such as boilers or process heaters, which may be less expensive to apply and have a lower net energy consumption than flaring or incineration. A third reason is that some facilities could use existing devices to control emissions and not have to build new devices. The impacts estimated here assumed that new combustion devices would be built in all cases. The degree to which these assumptions overstate the impacts cannot be quantified.

The environmental, energy, cost, and economic impacts are discussed in greater detail in the two background information documents for the standards: "Reactor Processes in Synthetic Organic Chemical Manufacturing—Background Information for Proposed Standards" and "Reactor Processes in Synthetic Organic Chemical Manufacturing—Background Information for Promulgated Standards." (EPA–450/3–90–016a and EPA–450/3–90–016b).

A. Environmental Impacts

Under the standards, it is estimated that for determining fifth year impacts, about 13 percent of all new, modified, or reconstructed reactor processes would have vent streams with TRE index values at or under the TRE cutoff of 1.0. If all of these facilities were controlled to 98 weight-percent, the projected national VOC emissions from all new, modified, and reconstructed reactor processes would be reduced by an estimated 2,100 megagrams per year (Mg/yr). This national VOC reduction would be approximately 63 percent beyond the emission level projected to occur in the absence of an NSPS.

There will be a slight increase in emissions of air pollutants such as carbon monoxide (CO) and nitrogen oxides (NO_x) as a result of controlling VOC emissions with combustion devices; however, any increases in these pollutants would be negligible compared to the magnitude of overall VOC emission reductions. There would be no direct solid waste impacts under the standards, and impacts on noise would be negligible.

No significant increase in total plant wastewater effluent is projected under the standards. There is no organic wastewater effluent associated with combustion devices themselves. Some facilities which may have an incremental increase in wastewater are those which might choose to upgrade or add recovery devices to achieve a TRE above the 1.0 cutoff. Absorption and carbon adsorption are the only recovery techniques currently used in the industry which have an associated organic wastewater effluent. However, use of these VOC recovery techniques would not result in a significant amount of VOC transferred into another medium, such as water. Rather, the magnitude of VOC in the water would be insignificant compared to the overall amount of VOC emissions reduced from the air. Further, based on the available data, only a small percentage of chemical manufacturing operations with reactor processes are expected to employ these recovery techniques.

B. Energy Impacts

The use of combustion to control VOC emissions from reactor process vent streams can result in fuel and electricity usage. Supplemental fuel is frequently required to support combustion. Electricity is required to operate pumps, fans, blowers, and other instrumentation when operating an incinerator or flare. The fifth year energy requirements of the standards would be 320 terajoules per year (TJ/yr) (300 MMBtu/yr). This represents a small increase over baseline use in the industry.

C. Cost Impacts

The fifth year cost impacts of the standards are also considered reasonable. The fifth year national annualized cost of VOC control would be $3.7 million (1982 dollars). The fifth year national capital cost for VOC control would be $5.9 million (1982 dollars). These impacts may be overstated because they assume that all reactor processes use flares and incinerators to comply with the standards. In reality, it is anticipated that some reactor processes will use boilers or process heaters to achieve compliance. To the extent that these devices are used, the costs of compliance would be reduced. Costs would also be reduced for reactors that share control systems with other process vents.

If costs were escalated to 1990 dollars using the GNP implicit price deflator, the resulting adjusted total national capital cost and total national annualized cost would be $7.8 and $4.9 million, respectively. However, it is not recommended that these values be used since this escalation is likely to be questionable due to technology changes during the substantial time between 1982 and 1990. Also, the use of a GNP deflator in determining these adjusted costs may not be appropriate as these figures are not indicative of a full economic analysis adjustment.

D. Economic Impacts

The standard will pose no significant adverse economic impacts. Assuming that all costs are passed on in the form of price increases, the economic analysis indicated that the costs associated with the standards will have little or no effect on the profitability of the industry. Most of the chemicals screened (81 percent) would have a maximum price increase of under 2 percent, and 90 percent would have a maximum price increase of under 3

percent. In no case would the price increase exceed 5 percent. Finally, there would be no adverse effects on employment because the standards would not appreciably affect the demand for chemicals covered by these standards.

III. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register (49 FR 26807), June 29, 1984, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the reactor process VOC standards recommended for proposal. This meeting was held on August 29, 1984. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and published in the Federal Register on June 29, 1990 (55 FR 26953). The preamble to the proposed standards discussed the availability of the BID, "Reactor Processes in Synthetic Organic Chemical Manufacturing" (EPA–450/3–90–016a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The proposal notice stated that a public hearing would be held, if requested, to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards. No public hearing was requested.

The proposal comment period was from June 29, 1990 to September 12, 1990. Seventeen comment letters were received concerning issues relative to the proposed standards of performance for reactor processes in the SOCMI. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

IV. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from 14 industry representatives (2 industry representatives submitted 2 comment letters) and one State agency. A total of 17 comment letters were received. Detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the promulgation BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Applicability of the Standards, Definitions, Selection of Best Demonstrated Technology, Format of Standards, Monitoring, and Performance Testing and Measurement Methods.

All comments discussed here have been entered into Docket Number A–83–29. Access to the docket is described in the ADDRESSES section of this preamble.

A. Applicability of the Standards

Exemption for Reactor Processes Subject to the New Source Performance Standards for Distillation Operations. Two commenters requested that a specific exemption be added for reactor processes that discharge their streams directly into a distillation unit subject to another NSPS (Subpart NNN). They also stated that monitoring and recordkeeping requirements for such units would be redundant and unnecessary.

The EPA agrees that a reactor process vent stream routed through a distillation unit subject to 40 CFR part 60, subpart NNN, before it is released to the air would be subject to the provisions of subpart NNN for distillation operations rather than subpart RRR for reactor processes. Further, a distillation unit subject to subpart NNN would be achieving the VOC emission reductions similar to those required by this NSPS. Therefore, to avoid dual applicability, exemption for such units has been added to the standards.

In addition, recordkeeping and reporting requirements have been revised to eliminate redundant reporting. These reactor processes are required only to submit an initial notification of this particular process design and to maintain documentation of the overall process design for the life of the equipment.

Clarification for Reactor Processes Venting Through Relief Valves. One commenter stated that the proposed regulation was unclear concerning those reactors that only vent through relief valves during emergencies. This commenter felt that reactors venting through relief valves only during emergencies should be exempt from the regulations.

The EPA did not intend to cover pressure relief valve discharges in the proposed reactors NSPS. Further, relief valve discharges were specifically excluded from coverage in the proposed rule under the definition of "vent stream." For further clarification, a definition of "relief valve" has been added to the regulation as follows: "Relief valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge results from an operator error, a malfunction such as a power failure, an equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage."

Exemption for Reactor Processes Producing Beverage Alcohols. Four commenters expressed concern about the applicability of this NSPS to ethanol created by the natural breakdown of sugars, a process used in the production of food and beverage alcohols. These commenters noted that the intended scope of this rule is virtually identical to the distillation NSPS and that production of beverage alcohols is specifically exempt from the distillation NSPS. To remain consistent with previous rulemakings, these commenters urged that the regulation of beverage alcohol be specifically exempt from the reactors NSPS.

The EPA agrees that the intended scope of the reactors NSPS is very similar to the distillation NSPS and that neither NSPS is intended to apply to ethanol created by the natural production of beverage alcohols. These sources are not included on the priority list of sources for which standards are to be promulgated and, as indicated in the notice announcing EPA's promulgation of the NSPS Priority List (44 FR 49222), are not within the scope of the SOCMI source category. Further, ethanol generated during baking or other food manufacturing processes is produced neither for sale nor for further use. Based on the definition of "product," ethanol generated during food manufacturing would not be considered a product within the context of the SOCMI regulation. For the above reasons, an exemption similar to the one that appears in the distillation NSPS has been added to the reactors NSPS. This provision specifically exempts the production of beverage alcohols from the reactors NSPS.

Exemption for Reactor Processes Subject to the New Source Performance Standards for Polymer Manufacturing. One commenter stated that if the definition of "product" in the regulation includes raw materials, then those facilities that use raw materials listed under § 60.707 and that are subject to the provisions of the NSPS for polymer manufacturing (subpart DDD) should be exempt from the reactors NSPS.

The EPA acknowledges that it is not the intent of the reactors NSPS to regulate process vents that are subject to the NSPS for polymer manufacturing under 40 CFR part 60, subpart DDD (55 FR 51010). To ensure that these facilities are not subject to both standards, an exemption identical to the one that appears in the distillation NSPS will be added to the reactors NSPS. This exemption will exclude from regulation under the reactors NSPS any reactor process that is subject to the provisions of subpart DDD for polymer manufacturing.

Request for Low Concentration Exemption. One commenter indicated that an exemption or a minimum emission rate should be added to the low flow provision to exclude vent streams with flow greater than the minimum flow rate of 0.011 scm/min (0.39 scfm) but that contain relatively low concentrations of TOC. The commenter felt that this exemption is needed because it is conceivable that a concentrated stream with a low flow rate (less than 0.011 scm/min (0.39 scfm)) could contain higher emissions (greater than 20 ppmv) than a dilute vent stream with a large flow rate, making the control cost significant.

In reevaluating the applicability criteria of the reactors NSPS, a low concentration cutoff of 300 ppmv has been added to the standard. The low concentration exemption was established so sources would not have to bear the unnecessary cost of determining the TRE index value. The cutoff was set such that the TRE index value would not be less than 1.0 for this low concentration stream even if the stream heat content and flow were worst case. Below this concentration cutoff, the owner or operator would not be required to make an assessment of the TRE index value for a vent stream. This level was set as the minimum concentration level below which the TRE index value would always be expected to exceed a value of 1.0. Measurement of the concentration level of a vent stream could be made using Reference Method 18. If the resulting concentration value is less than 300 ppmv TOC, then a TRE calculation is not needed and combustion is not required. The basis for selecting this 300 ppmv level is documented in a memorandum entitled "Selection of the Low Concentration Cutoff," (Docket No. A–83–29, Item IV–B–1). Alternatively, Reference Method 25A could be used as a screening method in lieu of Method 18. However, if Method 25A is used, the measured concentration of TOC must be less than 150 ppmv to qualify for the exclusion. See section IV–F of this preamble for further discussion.

The total cost of control per unit of VOC removed could vary considerably among the different types of reactor process vent streams due to variations in the vent stream characteristics of flow rate, heat content, and concentration of organic compounds. For this reason, the efficiency of controlling a particular vent stream is taken into consideration in the regulation by the TRE calculation. An additional cutoff based on minimum emissions is not needed.

The standard also contains a mechanism for exempting any vent stream for which compliance would be unreasonably costly. This means of measuring the cost of control is embodied in the TRE index. Equations are included in the regulation for determining the TRE index of a vent stream from an affected facility.

B. Definitions

Total Organic Compounds (TOC). One commenter requested a clarification to ensure consistency in the definition of TOC. This commenter pointed out that the definition of TOC in § 60.701 of the reactors NSPS excludes "* * * those compounds that the Administrator has determined do not contribute appreciably to the formation of ozone * * *." This commenter speculated that, in the future, EPA is intending to exclude additional compounds such as the new hydrofluorocarbons and hydrochlorofluorocarbons that were mentioned in 54 FR 1988, published on January 18, 1989. The commenter pointed out that the definition of TOC in the distillation NSPS does not include the compounds mentioned in 54 FR 1988.

The EPA did intend to exclude from the definition of TOC in § 60.701 specific compounds that the Administrator has determined do not contribute appreciably to the formation of ozone. The current list of exempt compounds, which is identified in separate **Federal Register** notices (54 FR 1988, 42 FR 35314, 44 FR 32042, 45 FR 32424, 45 FR 48941), is as follows: methane; ethane; 1,1,1-trichloroethane; methylene chloride; trichlorofluoromethane; dichlorodifluoromethane; chlorodifluoromethane; trifluoromethane; trichlorotrifluoroethane; dichlorotetrafluoroethane; chloropentafluoroethane; dichlorotrifluoroethane; tetrafluoroethane; dichloroethane; and chlorodifluoroethane. As the commenter noted, the list of specific compounds that the Administrator has determined do not contribute appreciably to the formation of ozone may be updated periodically. If, in the future, the Administrator adds to the list of chemicals defining TOC, these added chemicals will be identified in future **Federal Register** notices.

The current definition of TOC in the reactors NSPS will be retained to reference and not specifically list the compounds that the Administrator has determined do not contribute appreciably to the formation of ozone. Finally, by defining TOC in this manner, any changes that the Administrator makes to the list of compounds would be automatically incorporated into the definition of TOC in the reactors NSPS.

The Definition of Product. Six commenters objected to the definition of "product." Two commenters felt that the definition is confusing for determining the applicability of the reactors NSPS. Four commenters recommended that the definition of "product" in the distillation NSPS be used, with the necessary revision to reference the reactor process list of chemicals in § 60.707. These commenters objected to the phrase "* * * or is used for the production of other chemicals or compounds." These commenters were concerned that this language could be interpreted to expand applicability of this NSPS to all facilities that *use* any of the 173 listed chemicals in their production processes, even if they do not manufacture any of the 173 compounds as a product, by-product, or co-product.

The EPA agrees that the language in the definition of "product" in § 60.701 of the proposed standards could be misleading and could expand applicability of the reactors NSPS to facilities that were not intended to be impacted by this regulation. The definition of "product" similar to the one found in the distillation NSPS has been included in the reactors NSPS. It states that a "product" is "any compound or chemical listed in § 60.707 that is produced for sale as a final product as that chemical, or for use in the production of other chemicals or compounds." This definition is consistent with EPA's intent of coverage under the reactors NSPS.

Products, Co-Products, or Intermediates. Two commenters requested further clarification of the definition of the phrase "product, co-product, by-product, or intermediate." These commenters recommended that wording similar to that found in the preamble of the distillation NSPS be included in the reactors NSPS preamble to clarify the intent.

As suggested by the commenters, the following language is presented to clarify the intent of the definition of "product." The EPA considers it appropriate for the reactors NSPS to apply to any reactor process facility within a process unit producing any of the listed chemicals as a product, by-product, co-product, or intermediate. The standards were developed from data on reactor processes within process units that produce the chemicals listed in § 60.707 in any of the forms listed above. The cost of controlling emissions from the production of a listed chemical as a by-product, co-product, or intermediate is similar to the cost of controlling emissions from the production of that chemical as a product. Furthermore, the application of the standards to facilities producing any of the listed chemicals was found to be reasonable. Therefore, EPA considers the word product to also represent by-products, co-products, and intermediates.

The standards are also applicable to reactor processes that are used to recover waste or feedstock components as long as the facility is within a process unit producing any of the listed chemicals as a product. The main factor in determining if a listed chemical is produced as a product is the use of the chemical after the process unit. The EPA considers either of the following downstream uses as indicative of the production of a listed chemical as a product: (1) Production for sale as that listed chemical, or (2) use in another process where that listed chemical is needed. However, if a listed chemical is only part of a mixed stream exiting a process unit and cannot be sold or used in another process as the listed chemical, then that chemical is not considered to be produced as a product.

The Definition of By-Product. One commenter questioned whether the term "by-product" includes those compounds that are unintentionally created as a result of a chemical reaction and that are contained within a final product. To avoid confusion, the commenter recommended establishing a *de minimis* level (i.e., less than one percent) to exclude a contaminant from the definition of by-product.

Another commenter also requested clarification for by-products that are produced during reactor processes but are not pure enough for sale and, generally, are disposed of as waste. This commenter felt that it is not the intent of the reactors NSPS to regulate these by-products because they are neither intended for sale nor used in the production of other chemicals.

The EPA believes that if a mixture is produced in a reactor process as a "product" and contains a chemical listed in § 60.707 that is intentionally included in the mixture for use of its chemical characteristics, the process would be subject to the standard. A mixture would not be subject if the listed chemical is included only as a contaminant, that is, the chemical is not included in the process for its chemical characteristics. To further clarify this distinction, sometimes a listed chemical can be formed during the reaction process as a contaminant from side reactions as a consequence of producing other chemicals that are not listed. These contaminants would not be considered to be produced by the reactor process if they are not recovered to be sold or used in the production of a final product.

The EPA has decided that for the purpose of these standards, it is more appropriate to determine applicability according to whether a listed chemical is produced as a product, instead of setting a minimum concentration level of a listed chemical as a means of defining what may constitute production as a product. It is not feasible to set any one concentration limit for listed chemicals below which the chemical is always an impurity or waste. It is not feasible because the necessary concentration or purity for a listed chemical to be considered a product can vary from site to site. For example, a chemical that is produced as 90 percent pure from one process may only be 80 percent pure to be considered as a product for another process. Due to the diversity of the SOCMI, it would not be practicable for EPA to establish different concentration limits for all of the processes covered by the standards. Therefore, the applicability of the standards is determined according to whether a listed chemical is produced as a product.

C. Selection of Best Demonstrated Technology (BDT)

One commenter requested that although the preamble discussion states that "any control can be used as long as it can be demonstrated that it is at least as effective as BDT at reducing VOC emissions," this stipulation should also be specifically spelled out in § 60.702 of the regulation.

Because the standard in § 60.702(a) is expressed in terms of an emission limitation and not an equipment requirement, the EPA believes that the wording in § 60.702(a) is clear in its intent that any control device can be used to achieve the emission limitation. Any VOC control device, including an incinerator, boiler, process heater, or other combustion device, can be used to comply with this requirement. Alternatively, a flare can be used to comply with § 60.702(b). In addition, any VOC recovery device, including an absorber, condenser, carbon adsorber, or other recovery device, can be used to comply with § 60.702(c) to maintain the TRE index greater than 1.0. It should be noted that the TRE value for a vent stream is determined at the point that the stream exits the final VOC recovery device and before it enters a VOC control device.

If an owner or operator elects to use a control device other than an incinerator, boiler, process heater, or flare; or a recovery device other than an absorber, condenser, or carbon absorber, that facility would be required to provide information to the Administrator describing the device and the process parameter(s) that would indicate proper operation. The documentation should be submitted to the appropriate enforcement officer. As necessary, EPA Headquarters may be consulted to determine the adequacy of monitoring alternative process parameters.

D. Format of Standards

Standardization of the TRE Equation. Three commenters recommended that the TRE equations be standardized in 40 CFR part 60, subpart III, subpart NNN, and subpart RRR. One commenter pointed out that an important feature of the TRE index value noted in the reactors NSPS preamble is that "it is independent of cost changes over time so that it is not necessary to periodically revise the calculation to reflect current year dollars." Two commenters noted that the only change to the TRE equation between the air oxidation NSPS and distillation NSPS and the proposed reactors NSPS was a revision of the coefficients to account for various cost changes from a 1978 to a 1982 base year. Both of these commenters noted that the purpose for changing the coefficients seems to contradict the rationale for developing the TRE index format.

Two commenters pointed out that for a given process vent, the revised coefficients result in TRE index values that are about three percent greater. Both commenters noted that by standardizing the coefficients in all three regulations, applicability and compliance determinations for many facilities would be simplified without appreciably changing the impact of the rules.

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The EPA agrees that the TRE coefficients in the reactors NSPS should be identical to those used in the air oxidation NSPS and distillation NSPS and has made this change to the final reactors NSPS. This standardization is important.to reduce confusion and ensure consistency in calculating TRE values, especially in those cases where a facility has several vent streams subject to different SOCMI NSPS. The resulting difference in the computed TRE values would be insignificant using the adjusted TRE coefficients.

E. Monitoring

Carbon Bed Temperature. One commenter stated that according to § 60.705(g)(3)(ii) of the proposed regulation, an exceedance is based on a 10 percent greater temperature [in degrees Celsius (°C)] for carbon bed regeneration compared to the most recent performance test. This commenter felt that this requirement is overly restrictive and would penalize facilities that choose to operate at lower and more efficient temperatures. This commenter recommended a temperature range, to be determined by EPA, instead of a percentage value.

The EPA does not intend to penalize those owners or operators who are operating their carbon beds at lower, more efficient temperatures. The commenter is correct in pointing out that by allowing a 10 percent variation in temperature from the performance test for the carbon bed following regeneration, some inequities may result. To eliminate possible inequities, a minimum temperature difference of 5 °C will be added as an alternative to the 10 percent provision in § 60.705(f)(3)(ii). As discussed in the memorandum entitled, "Documentation of Carbon Adsorber Cool Down Temperature" (Docket No. A–83–29, Item IV–B–2), the minimum value of 5 °C is derived from 10 percent of 50 °C, a typical carbon bed cool down temperature. This alternative provides more flexibility to those owners or operators who are operating their carbon beds at lower, more efficient temperatures. As an example, an owner or operator may be able to achieve a carbon bed cool down temperature of 5 °C when conducting the performance test. However, using the 10 percent provision to maintain compliance with the regulation, the owner or operator must cool the carbon bed down to at least 5.5 °C. The alternative added to the regulation would allow the owner or operator to cool the carbon bed down to 10 °C.

Flow Indicators. Three commenters expressed concern about the requirement for flow indicators. One commenter requested that flexibility be included in the final regulation to allow an affected facility to use any means available to indicate vent stream flow and to allow a flow indicator to be located in a place other than the point closest to the inlet of the control device.

Another commenter stated that the requirement for facilities to determine the presence of vent stream flow before the stream is combined with other streams should be deleted. This commenter pointed out that existing reactor process vent streams are frequently combined with other vent streams in a vent header prior to being routed to a control device. This commenter noted that in these cases, conventional design provides for flow indicators to be placed only at a point close to the control device and downstream from all individual vents. This commenter recommended that facilities be allowed to comply with the flow indication requirement by using existing instrumentation that is located close to the control device and after the affected facility vent stream has been joined by other vent streams.

The EPA considers it very important to ensure that vent streams are continuously vented to the control device. The primary intent of the flow monitoring requirement in the reactors NSPS was to provide a means for indicating when vent streams were bypassing the control device. In the June 29, 1990 proposed rule for reactor processes, flow indicators were proposed to be installed in the vent stream from the affected facility at a point closest to the inlet of the control device and before being joined with any other vent stream. The presence of flow was to be recorded at least once every hour. The flow indicators envisioned by EPA were to simply provide an indication of flow/no flow, and not to provide quantitative estimates of flow rates.

The EPA has reevaluated the use of flow indicators in reactor process vent streams as proposed in light of the comments received. Because flow indicators located in the vent stream between the emission source and the control device prior to being joined with another vent stream may be insufficient to meet the intent of the standard (although this is what was proposed), EPA has decided to alter the flow indicator location. The new flow indicator location would be at the entrance to any bypass line that could divert the vent stream before it reaches the control device. This location would indicate those periods of times when uncontrolled emissions are being diverted to the atmosphere. In those instances when the vent stream is rerouted to another control device, the second control device must also conduct a performance test and meet the requirements of the standard. The flow indicator required in each bypass line to the atmosphere can be used in conjunction with any type of seal mechanism to ensure that flow is not diverted.

In some situations, there may be no bypass lines that could divert the vent stream to the atmosphere. In these cases, there will be no flow indicator requirement. In addition, engineering records that show an emission stream is hardpiped to a control device are sufficient to demonstrate that the entire flow will be vented to the control device. Other piping configurations can be used, but flow indicators located in any bypass line that could divert a portion of the flow to the atmosphere, either directly or indirectly, become necessary.

Considering the above conclusions, EPA is now requiring that engineering records be retained that describe the piping arrangement for venting the affected vent streams to the control device. This requirement will further ensure that each reactor process vent stream of the affected facility is being continuously vented to the control device. If the piping arrangement for the reactor process changes, then the facility must revise and retain the information. Little or no additional burden would be expected from this requirement because engineering design specifications that describe the piping arrangements are already being maintained at these facilities.

At proposal, EPA required that hourly recordings of flow to the control device be taken. However, EPA believes that more frequent collection of flow/no flow data is appropriate when the purpose of the monitoring is to detect flow diverted away from the control device rather than flow towards it. Thus, the final reactors NSPS requires flow indicators to be equipped to indicate and record whether or not flow exists at least once every 15 minutes (rather than once every hour). Because the monitor collects flow/no flow data on a continuous basis, this additional recording would not be an additional burden. If an owner or operator believes that an alternative frequency or placement of a flow indicator is equally appropriate, then the owner or operator can petition the Administrator, as provided by the General Provisions, to use an alternative monitoring scheme.

Alternate Methods to Flow Indicators. Three commenters requested that alternate methods be allowed for

determining vent stream flow/no flow for an affected facility. One commenter explained that each column in his system has a manual vent valve used for initial purging at startup to remove oxygen from the system and to prevent a flammable mixture in the flare header. According to the commenter, the alternative that this facility requested was to lock the manual vent valves in the closed position during normal operations, with periodic visual checking to ensure no release to the atmosphere. The manual vent valve lock suggested by the commenter would be secured in place with a lock and key. The key to the lock would be kept in the custody of the foreman or chief operator. Alternatively, the commenter explained that the valves could be locked electronically with a remote control valve on a control panel, or computer activated. The commenter felt that this type of problem was not an isolated case and recommended adding a provision to § 60.703 which allows an appropriate administrative compliance alternative method for flow measurement, with a direct reference to § 60.13(i) of the General Provisions as the means by which a source could seek approval.

In addition to relocating the position of the flow indicator to the entrance of any bypass line, EPA agrees that alternate provisions to flow indicators should be allowed for indicating vent stream flow/no flow for an affected facility. An alternate provision is being added for those facilities that use a car-seal or a lock-and-key type configuration to maintain the bypass line closed. This alternate provision would require all lines that allow emissions to bypass the control device to be car-sealed closed or secured with a lock-and-key type configuration. For those affected facilities that use any other alternative type of locking mechanism (such as a computer-activated electronic locking system), those affected facilities would be required to install a flow indicator in the bypass line.

This alternative is being added to the reactors NSPS to ensure that the vent streams are not routinely bypassed to the atmosphere rather than being routed to the control device. If the owner or operator elects to comply with this alternative, a visual inspection of the seal mechanism and valves would be required at least once per month to report and record any time the seal mechanism is broken or the lock is open, and to report and record any time the valve position has been changed and the duration of the release to the atmosphere.

If at any time a flow indicator positioned in any bypass line to the atmosphere indicates gas flow, this shall constitute a violation under § 60.702(a), except during periods of startup, shutdown, or malfunction. For purposes of determining compliance, malfunctions shall be events deemed to occur infrequently, unforseeably, and unavoidably. Consequently, recurring instances of flow through any bypass line to the atmosphere shall not constitute a malfunction under this standard.

Clarification of Firebox. One commenter observed that the requirement to install temperature monitoring devices in the "firebox" of an incinerator should be modified to allow for additional flexibility. This commenter remarked that with many incinerators, the technology does not exist to maintain a reliable temperature monitor inside the firebox. The commenter noted that, in practice, most temperature monitors are installed in the exhaust gas downstream of the firebox. The commenter thought that flexibility should be allowed in the final regulation to allow for the placement of the temperature monitor in an appropriate location to address situations where it is not practical or where the technology does not exist to install these devices in the firebox.

For purposes of measuring the firebox temperature in an incinerator, EPA considers it appropriate to locate the temperature monitor in a position before any substantial heat exchange is encountered. For the purposes of this regulation, the location of the temperature monitoring device will be allowed in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange is encountered.

F. Performance Testing and Measurement Methods

Timing Requirements for Constructed, Modified, or Reconstructed Facilities. Four commenters requested that guidance be provided for the performance test requirements for facilities that are constructed, reconstructed, or modified between the date of proposal and the date of promulgation. All four commenters felt that the timing requirement of 60 days for the initial performance test was unrealistically tight. They recommended allowing a minimum of 120 days for the initial performance test.

Three commenters do not believe that facilities can anticipate the final rule because changes are likely to occur after proposal as a result of public comments. All four commenters stated that considerable time is needed to perform the requisite analyses and tests. One commenter stated that those affected facilities electing to comply with the TRE index format would have to perform stack tests, which would take 10 to 12 weeks and, therefore, would have an extremely difficult time in meeting the 30-day notification deadline. Two commenters pointed out that many steps are involved when conducting a performance test, including setup, testing, and sample analysis. Both of these commenters agreed that 120 days provides a more reasonable time to complete testing.

In regard to performance tests, the owner or operator must conduct performance tests and submit a written report of the results of such tests to EPA within 60 days after achieving the maximum production rate at which the facility will be operated, but not later than 180 days after initial startup of the facility. In some instances, however, the initial startup of a facility may occur before the date of promulgation. The EPA has a policy of allowing facilities to conduct and report the results of performance tests within 60 days from the date of promulgation, unless maximum production has not been achieved. In the latter case, the facility must conduct and submit the results of a performance test no later than 180 days after the date of promulgation. It is believed that this is a reasonable amount of time for the owner or operator of a reactor process unit to achieve compliance. All sources subject to the NSPS must meet these general requirements.

Maximum Operating Capacity for Constructed, Modified, or Reconstructed Facilities. Four commenters expressed concern about the provision which requires facilities that are built, modified, or reconstructed between proposal and promulgation that have not achieved maximum operating capacity before promulgation to conduct their performance test within 180 days of promulgation. Two commenters pointed out that § 60.704(a) clearly states that facilities must be run at full operating conditions and flow rates during performance tests. Three commenters stated that if a facility does not achieve maximum operating conditions within 180 days of promulgation, then it cannot conduct a performance test without violating the provisions of § 60.704(a). These three commenters recommended that facilities either be allowed to conduct their performance test after the maximum operating rate has been achieved, or that § 60.704(a) be revised

to accommodate facilities that have not yet achieved their maximum operating rate.

The requirement for the initial performance test to be conducted within 180 days following initial startup will remain unchanged. If, however, a facility foresees a problem in achieving compliance (i.e., if the facility is unable to achieve maximum capacity within 180 days), then the owner or operator of that facility must notify the State, which has been delegated implementation authority, or the appropriate EPA Regional Office at the earliest possible time.

Method 18—Future Validation Method. One commenter expressed concern about the expected cost and the amount of time required by a source to run Method 18's future validation method. This commenter stated that each vent stream possesses its own set of unique characteristics so that each vent stream will require a separate test once the new validation protocol is issued. This commenter requested some discussion and guidance in the final reactor processes preamble on possible ways to reduce this time and cost burden.

The protocol mentioned by the commenter has been published as EPA Method 301, entitled "Field Validation of Emission Concentrations from Stationary Sources," in appendix A to 40 CFR part 63. This method is not a mandatory procedure for complying with the Method 18 requirements specified in the reactors NSPS. Rather, it is intended for use in validating results of emission testing, particularly when there is no performance test method specified. Because Method 18 is specified in the reactors NSPS, Method 301 is not required by the NSPS, but may prove useful in some situations. To use Method 301, the owner or operator would have to request and receive approval for its use under the alternative methods provisions found in § 60.13(i) of the General Provisions.

Analytical Requirements of Method 18. Two commenters believed that the use of Method 18 to determine the concentration of TOC would be extremely labor-intensive, especially if there are a number of compounds present. One commenter pointed out that Method 18 does not specify chemicals to be analyzed and that extensive efforts could be expended quantifying trace components to ensure that compliance with the method is achieved. This commenter recommended that the analytical burden could be reduced by stating that for purposes of achieving compliance, the analytical efforts should focus only on the compounds expected to be present. This commenter suggested that expected compounds could be determined by knowledge of the process or by an initial analytical screening. The second commenter suggested that Method 25 would be a more adequate method for this determination.

Method 18 includes performance specifications, which are internal to the method. These specifications offer guidance on the steps needed to measure approximately 90 percent of the total gaseous organic compounds that are present in the vent stream. However, before implementing Method 18, it is necessary to have some preknowledge of the source. When designing the analytical scheme for conducting the Method 18 performance test, it is necessary to have some prior knowledge of the identity and concentration of species that are present. It is also necessary to be familiar with the chemical process being tested and to perform an initial analytical screening. As discussed in Method 18, presurvey sampling and analysis is required to confirm the identities and approximate concentrations of the organic emissions.

In response to the suggested use of Method 25 as an appropriate method, this method is not suitable at levels as low as 20 ppmv. Because of this, Method 25 is not considered appropriate for compliance testing purposes for the 20 ppmv emission limitation specified in the reactors NSPS.

As discussed in section IV–A of this notice, a low concentration cutoff of 300 ppmv (measured using Method 18) has been added to the standards. Method 25A is allowed as an alternate screening method to Method 18 for those owners or operators seeking an exclusion for vent streams with low concentration levels. Although Method 25A does not identify speciated compounds, when calibrated to the primary constituent in the vent stream it can provide a sufficiently accurate measurement of TOC for comparison to the low concentration applicability cutoff. However, because vent streams are often composed of a mixture of multiple organic compounds, and some are more easily detected by Method 25A than others, the regulation includes certain procedures for using Method 25A.

Method 25A can only be used if one organic compound accounts for over 50 percent of the vent stream TOC. This compound is referred to as the primary constituent. The primary constituent must be used as the calibration gas for Method 25A. Because the compound to which the method is calibrated may be only half of the total TOC present, the TOC concentration measured by Method 25A must be less than 150 ppmv (or 0.50 × 300 ppmv) to demonstrate compliance with the low concentration cutoff. This requirement accounts for some organics that may not be well detected when the method is calibrated to the primary constituent. Method 25A measurements include methane and ethane.

Primary Fuel Systems. Two commenters cited problems applying performance tests and monitoring requirements set out in the regulation to fuel systems that collect and mix reactor vent stream offgases with natural gas or other fuel gas for use as a primary fuel source. One of the commenters indicated that his plant-wide fuel system provides fuel for numerous (100 or more) process heaters and boilers.

One commenter stated that although the monitoring and testing requirements set out in the regulation may be appropriate for incinerators combusting waste vent streams, they are not appropriate for fuel gas systems such as this. This commenter pointed out that for such a fuel system, the required temperature monitoring parameter does not correlate to VOC removal. This commenter explained that it would be difficult and costly to demonstrate that each of the boilers or process heaters in the system is achieving the required 98 percent reduction efficiency.

This commenter added that as long as the process heaters and boilers in the system are operating properly and ignition is maintained, the 98 percent reduction efficiency required by the NSPS would be greatly exceeded. This commenter further stated that for process and safety reasons, fuel flow to the boiler or process heater is always stopped if a flame is not present. This commenter felt that due to the ability of these boilers and process heaters to achieve the 98 percent destruction efficiency, these fuel systems should be able to monitor operating parameters appropriate to their particular operations to ensure that sufficient combustion is being achieved.

The commenter stated that at least 98 percent destruction efficiency based on good combustion practices, including adequate residence time, temperature, and mixing, was reported for the example operations. Examples of these operations were cited by the commenter. The commenter requested that EPA allow facilities that combust reactor vent gases in boilers and heaters to identify an appropriate operating parameter for each combustion device to monitor as an indicator that combustion is present. Because normal monitoring

of combustion devices is essential to ensure proper operation, the commenter stated that facilities generally have in place appropriate monitoring procedures to enable the identification and control of combustion process malfunctions such as flame loss.

The EPA agrees that when a vent stream is combusted as primary fuel, the fuel gas is passing through the flame front and, on average, it is combusted at a higher temperature than if it were being introduced into the flame with combustion air. Based on emission calculations for natural gas fuel combustion, it has been demonstrated that boilers and process heaters with design capacities ranging from 10 to 100 MMBtu/hr achieve greater than 99.99 percent combustion efficiency. In general, it is expected that SOCMI chemicals affected by this standard would be easier to combust than natural gas. One commenter submitted results of a Method 25A performance test conducted on a unit with design capacity of 70 MMBTU/hr. The results of this test demonstrated that TOC was reduced by greater than 99.99 percent. The above information supports the commenter's claim that an affected vent stream combusted in a boiler or process heater as primary fuel would achieve greater combustion efficiency than the 98 percent level required by the standards.

It is also in the best interest of the owner or operator to achieve the greatest combustion efficiency possible when using the vent stream as primary fuel. The process heaters and boilers in the fuel system are operated to produce steam or heat, so that greater combustion efficiency would minimize the amount of supplemental fuel required and reduce operating costs.

In addition, for safety reasons, the fuel flow to a unit in a fuel system of the type described by the commenter would be shut down immediately if the combustion device fails to operate. Fuel collecting inside a unit in the absence of combustion could result in a highly flammable and dangerous situation once the flame is reinstated. The EPA believes that, to avoid an explosion, the owner or operator would ensure that any vent stream being used as fuel does not pass through the combustion device without a flame present. In a case such as this, the vent stream would be diverted to another combustion device that would have to comply with NSPS requirements.

For the above reasons, EPA has determined that performance testing and temperature monitoring for those boilers and process heaters combusting vent streams as primary fuel are not warranted; furthermore, based on the performance of these types of units, it is believed that they would already be achieving the levels required by the standards. In view of this, the performance testing and temperature monitoring requirements are not deemed necessary to ensure compliance with the standards. The EPA, therefore, is deleting performance testing and temperature monitoring requirements for those affected vent streams combusted as primary fuel in process heaters and boilers. However, performance testing and monitoring are required for all incinerators, and for boilers and process heaters with design capacity less than 150 MMBtu/hr that are not combusting their vent streams as primary fuel.

To demonstrate that affected vent streams are being routed to appropriate control devices, EPA is adding a requirement for any type of control device used, that the owner or operator retain a schematic diagram of the affected vent stream, collection system, fuel system, control device(s), and any bypass systems. The EPA expects no additional burden associated with this requirement. Retaining a schematic diagram on site would provide an enforcement mechanism to ensure that the affected vent stream is being routed to an appropriate control device. The schematic diagram would also indicate whether or not the vent stream is being diverted to the atmosphere or to an additional control device.

Use of Flow Indicators on Primary Fuel System. One commenter questioned the usefulness of flow indicators on a fuel gas system that combusts the vent stream as primary fuel and where the vent stream is never vented to the atmosphere.

As discussed previously, EPA has reevaluated the use of flow indicators and has decided to alter the position of the flow indicator so that it would provide an indication of those times when the vent stream is being diverted to the atmosphere. If no bypass lines to the atmosphere are present, then flow indicators would not be required. However, if a vent stream is diverted to another combustion device, such as a flare, that device must also comply with the standards.

The proposed requirement for monitoring periods of boiler or process heater operation is not included in the final standards. As explained in the previous response, boilers or process heaters are typically operated continuously, and due to safety reasons a vent stream is not expected to be introduced into a boiler or process heater without a flame present. Any bypass of the combustion device would be recorded due to the flow indicator requirements. Therefore, a requirement to monitor periods of operation of the boiler or process heater is unnecessary.

Introduction of a Vent Stream as a Secondary Fuel or with the Combustion Air. In addition to use as a primary fuel, one commenter was aware of situations in which process vent streams are combusted as a secondary fuel in a separate burner or are combined with combustion air. The commenter, however, did not provide any performance test data or emission calculations indicating that 98 percent organics reduction efficiency was being met in these situations.

The EPA is concerned about situations in which vent streams represent a small percentage of the total fuel input to a boiler or process heater and are not mixed with the primary fuel. When vent gases are fed into the combustion system through a separate burner, the potential exists for unstable burner operation and burner "flame-out." When vent gases are mixed with combustion air prior to entering the burners, the potential exists for the vent gases to bypass the main flame zone due to poor adjustment of burner air registers.

Based on discussion with combustion system operators and review of other information, EPA concluded that the potential for significant bypass of vent gases around the combustion zone of larger boilers and process heaters is small due to: (1) The residence time, temperature, and turbulence associated with the flame zone in larger combustion systems, (2) the use of burner management systems on most large combustion systems that reduce the potential for undetected flame-outs, and (3) the presence of operating staffs that would detect a problem if it occurred. Therefore, as at proposal, performance testing and temperature monitoring are not required for boilers or process heaters with capacities of 150 MM Btu/hr or greater.

The situation for smaller boilers and process heaters is different, however. For example, many small combustion systems are not equipped with flame scanner systems that automatically stop the flow of vent gases used as a secondary fuel in the event of a burner flame-out. Also, the smaller devices do not have the residence time or temperature of the larger combustion systems. Furthermore, as stated above, no data were provided by the commenter to assure such systems would achieve 98 percent reduction of organics. As a result, the requirements for performance testing and temperature

monitoring are being retained for vent streams being used as secondary fuels or combined with combustion air in boilers and process heaters smaller than 150 MM Btu/hr.

Use of Method 18 for Determining Organics Destruction of Vent Streams Used as Secondary Fuels. One commenter also indicated that it would be difficult to determine the organics destruction efficiency of vent streams that represent a small fraction of the total fuel input to a combustion system.

After further review, EPA agrees that it may be difficult for boilers and process heaters in which vent streams are secondary fuels to determine the destruction efficiency specifically for the vent gases. As a result, a provision has been added to the rule clarifying that Method 18 should be used to demonstrate that the reduction in TOC emissions (minus methane and ethane) by 98 percent or to 20 ppmv should be based on the combined stream (the vent stream plus the primary fuel and all secondary fuels), rather than on the vent gases only.

G. Reporting and Recordkeeping

Request for Simplification of Reporting/Recordkeeping Requirements. One commenter stated that the requirements for reporting and recordkeeping are very detailed and should be simplified in cases where the intent can be satisfied by an alternative means. The commenter further explained that to avoid the possibility of numerous reports on a scattered basis, these reporting and recordkeeping requirements should be summarized into a semiannual report to be submitted, for example, in January and July of each year.

The compliance procedures seem complicated because there are several different routes to comply with the Reactors NSPS. For example, the owner or operator may elect to comply with the NSPS by installing an additional condenser or by combusting emissions in a flare or other device. In each case, specific monitoring, reporting, and recordkeeping provisions must be specified in the final regulation. These requirements are nearly identical to the requirements in the air oxidation and distillation NSPS. To remain consistent and because industry has become familiar with these requirements, the monitoring, reporting, and recordkeeping provisions will not be revised. However, Tables 1 through 3 give a general summary of the monitoring, reporting, and recordkeeping requirements. This general summary should assist the owner or operator in identifying and locating the applicable requirements in the regulation for reactor processes.

TABLE 1.—MONITORING AND REPORTING/RECORDKEEPING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC COMPOUND EMISSIONS OR A LIMIT OF 20 PPMV

Type of control device used for compliance	Monitoring equipment required	Parameters to be monitored	Recordkeeping requirements	Parameter boundary exceedances to report
Thermal incinerator	Temperature monitoring device (installed in firebox or ductwork immediately down- stream) equipped with a continuous recorder [60.703(a)(1)(i)].	Average firebox temperature.	Continuous records	All 3-hour periods of operation when average combustion temperature is >28 °C (50 °F) below the average value measured during the most recent performance test [60.705(c)(1)].
	Flow indicator at entrance to bypass line equipped with a continuous recorder [60.703(a)(2)(i)][b].	Presence of flow away from incinerator, at least once every 15 minutes.	Continuous records; schematic diagram.	Periods when the vent stream is diverted from the combustion device [60.705(l)(2)].
Catalytic incinerator	Temperature monitoring device (installed in gas stream immediately before and after catalyst bed) equipped with a continuous recorder [60.703(a)(1)(ii)].	Average temperature upstream and downstream of the catalyst bed.	Continuous records	All 3-hour periods of operation when the average temperature of vent stream upstream of the catalyst bed is >28 °C (50 °F) below the average value from the most recent performance test [60.705(c)(2)].
				All 3-hour periods of operation when the average temperature difference across the catalyst bed is 80 percent of the average temperature difference measured during the most recent performance test [60.705(c)(2)].
	Flow indicator equipped with a continuous recorder [60.703(a)(2)][b].	Presence of flow away from incinerator, at least once every 15 minutes.	Continuous records; schematic diagrams.	Periods when the vent stream is diverted from the combustion device [60.705(l)(2)].
Boiler or process heater	Flow indicator equipped with a continuous recorder [60.703(c)(1)(i)][b].	Presence of flow away from boiler or process heater, at least once every 15 minutes.	Continuous records; schematic diagrams.	Periods when the vent stream is diverted from the combustion device [60.705(l)(2)].

TABLE 1.—MONITORING AND REPORTING/RECORDKEEPING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC COMPOUND EMISSIONS OR A LIMIT OF 20 PPMV—Continued

Type of control device used for compliance	Monitoring equipment required[a]	Parameters to be monitored	Recordkeeping requirements	Parameter boundary exceedances to report
Boiler or process heater (design heat input capacity <44 MW, except where vent stream used as primary fuel).	Temperature monitoring device with continuous recorder [60.703(c)(2)].	Average combustion temperature.	Continuous records	All 3-hour periods of operation when average combustion temperature is >28 °C (50 °F) below the average value from the most recent performance test where the vent stream is introduced with the combustion air or as a secondary fuel [60.705(c)(3)].

[a] Regulatory citations are listed in brackets.
[b] Where the by-pass line is secured in the closed position with a car-seal or lock-and-key type configuration, a flow indicator is not required. Visual inspection is required at least once per month.

TABLE 2.—MONITORING AND REPORTING/RECORDKEEPING REQUIREMENTS FOR AFFECTED FACILITIES COMPLYING WITH FLARE SPECIFICATIONS

Type of control device used for compliance	Monitoring equipment required[a]	Parameters to be monitored	Recordkeeping requirements	Parameter boundary exceedances to report
Flare	Heat sensing device [60.703(b)(1)].	Presence of a flame at the pilot light.	Continuous records	All periods when the pilot flame is absent [60.705(l)(3)].
	Flow indicator[b] [60.703(b)(2)(i)] ..	Presence of flow diverted away from flare, at least once every 15 minutes.	Continuous records; schematic diagrams.	Periods when the vent stream is diverted from the combustion device [60.705(l)(2)].

[a] Regulatory citations are listed in brackets.
[b] where the by-pass line is secured in the closed position with a car-seal or lock-and-key type configuration, a flow indicator is not required. Visual inspection is required at least once per month.

TABLE 3.—MONITORING AND REPORTING/RECORDKEEPING REQUIREMENTS FOR MAINTAINING A TOTAL RESOURCE EFFECTIVENESS INDEX VALUE >1.0

Final recovery device	Monitoring equipment required[a]	Parameters to be monitored	Recordkeeping requirements	Boundary exceedances to report[a]
Absorber	Scrubbing liquid temperature monitor equipped with a continuous recorder [60.703(d) (1)(i)].	Average exit temperature of the absorbing liquid.	Continuous records	All 3-hour periods of operation when average temperature is >1 °C (20 °F) above the average value from the most recent performance test [60.705(f)(1)(i)].
	Specific gravity monitor equipped with a continuous recorder [60.703(d)(1)(i)].	Exit specific gravity (or alternative parameter that measures the degree of absorbing liquid saturation, if approved by the Administrator.	Continuous records	All 3-hour periods of operation when average liquid specific gravity is >0.1 unit above or below the average value from the most recent performance test [60.705(f)(1)(ii)].
	Organic monitoring device equipped with continous recorder [60.703(d)(1)(ii)][b].	Concentration level or reading indicated by the organic monitoring device at the outlet of the absorber.	Continuous records	All 3 hour periods of operation showing >20 percent of the amount measured by the monitoring device during the most recent performance test [60.705(f)(4)].
Condenser	Condenser exit temperature monitoring device equipped with continuous recorder [60.703(d)(2)(i)].	Average exit (product side) temperature.	Continuous records	All 3-hour periods of operation when average temperature is >6 °C (11 °F) above the average value from the most recent performance test [60.705(f)(2)].

TABLE 3.—MONITORING AND REPORTING/RECORDKEEPING REQUIREMENTS FOR MAINTAINING A TOTAL RESOURCE EFFECTIVENESS INDEX VALUE >1.0—Continued

Final recovery device	Monitoring equipment required [a]	Parameters to be monitored	Recordkeeping requirements	Boundary exceedances to report [a]
	Organic monitoring device equipped with continous recorder [60.703(d)(2)(ii)] [b].	Concentration level or reading indicated by the organic monitoring device at the outlet of the condenser.	Continuous records	All 3-hour periods of operation showing >20 percent of the amount measured by the monitoring device during the most recent performance test [60.705(f)(4)].
Carbon adsorber	Integrating steam flow monitoring device and carbon bed temperature monitoring device, each equipped with a continous recorder [60.703(d)(3)(i)].	Total steam mass flow during carbon bed regeneration cycle(s).	Continuous records	When <10 percent below the value measured during most recent performance test [60.705(f)(3)(i)].
		Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)].	Continuous records	When >10 percent or 5 °C more than the value measured during the most recent performance test [60.705(f)(3)(ii)].
	Organic monitoring device equipped with continuous recorder [60.703(d)(3)(ii)] [b].	Concentration level or reading indicated by the organic monitoring device at the outlet of the carbon adsorber.	Continuous records	All 3-hour periods of operation showing >20 percent of the amount measured by the monitoring device during the most recent performance test [60.705(f)(4)].

[a] Regulatory citations are listed in brackets.
[b] The organic concentration level may be monitored as an alternative to monitoring the other parameter(s) listed for this device.

Semiannual reports for each affected facility are required under § 60.705(l) of the reactors NSPS. The semiannual report should include the following types of information:

1. Any exceedances of monitored parameters;
2. Any periods of time and duration when the vent stream is diverted to the atmosphere from the control device;
3. Any periods of time when the pilot flame of a flare is absent;
4. Any change made in equipment or process operations that increases the operating vent stream flow rate above the low flow exemption level;
5. Any change made in equipment or process operation that increases the design production capacity above the low capacity exemption level;
6. Any recalculation of the TRE index;
7. Any periods of time and duration when the seal mechanism is broken or the by-pass line valve position changes; and
8. Any change made in equipment or process operations that increases the vent stream concentration above the low concentration exemption level.

An exact month for submitting the report is not specified. The initial report would be submitted 6 months following the startup date of the affected facility, and subsequent reports would be submitted in 6-month intervals following that date.

Initial Notification Requirements. Four commenters requested that guidance be provided for the initial notification requirements for facilities that are constructed, reconstructed, or modified between the date of proposal and the date of promulgation of the Reactors NSPS. One commenter noted that the requirement in 40 CFR 60.7 specifies the timetable for facilities to submit initial notification to EPA; however, no specific provision is given for facilities that are constructed, modified, or reconstructed between proposal and promulgation. All 4 commenters felt that the timing requirement of 30 days for initial notification is unrealistically tight. They recommended allowing a minimum of 90 days after promulgation for the initial notification.

The owner or operator of an affected source must submit a notification of the anticipated date of initial startup of the facility no more than 60 days nor less than 30 days prior to such date (§ 60.7(a)(2) of the reactors NSPS) and a notification of the actual date of initial startup of the affected facility within 15 days after such date (§ 60.7(a)(3) of the reactors NSPS). In some instances, however, the initial startup of the facility may occur before the date of promulgation. In cases such as this, EPA has a policy of allowing these facilities to make initial notification within 30 days after the date of promulgation.

Startup/Shutdown Exceedances. One commenter requested that the Reactors NSPS address exceedances that occur during startup or shutdown. The commenter also pointed out that § 60.8(c) of the General Provisions states that such exceedances would not be considered a violation unless specified in the applicable standard. The commenter suggested that § 60.705 of the Reactors NSPS be modified to address startup/shutdown exceedances.

Section 60.8(c) of the General Provisions specifies that emissions in excess of the level of the applicable emission limit during periods of startup and shutdown are not considered a violation of the applicable emission limit. This means that emission levels during these periods are not counted as violations if they exceed the levels specified in the standards. Because the commenter neither provided information on controls that would be applicable in this situation nor indicated knowledge of any such technology, no basis exists for modifying the standard to require emissions control during the startup ω

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shutdown period. Because exceedances are not addressed in the Reactors NSPS, the language of § 60.8(c) applies. Therefore, exceedances that occur during startup or shutdown should not be reported as violations.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis, purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for intragency review materials, will serve as the record in case of judicial review (Section 307(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1178.03) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information is estimated to have a burden averaging 57 hours per response for reporting and 129 hours per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The impact of this regulation is not major because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; and (2) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets. The EPA has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

E. Miscellaneous

The effective date of this regulation is August 31, 1993. Section 111 of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, June 29, 1990.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that reactor processes in the SOCMI contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the CAA, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 8 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the CAA requires the Administrator to prepare an economic assessment for any new source standard of performance promulgated under section 111(b) of the CAA. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the BDT. The economic impact assessment is included in the BID for the proposed standards.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Industrial organic chemicals.

Dated: August 24, 1993.

Carol M. Browner,

Administrator.

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act (CAA) as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.17 is amended in paragraph (a)(6) by removing the period at the end of the paragraph and adding the phrase ", 60.704(d)(2)(ii) and 60.704(d)(4)" and in paragraph (a)(38) by removing the period at the end of the paragraph and adding the phrase ", and 60.704(d)(4)."

3. By adding subpart RRR to read as follows:

Subpart RRR—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

Sec.

60.700 Applicability and designation of affected facility.
60.701 Definitions.
60.702 Standards.
60.703 Monitoring of emissions and operations.
60.704 Test methods and procedures.
60.705 Reporting and recordkeeping requirements.
60.706 Reconstruction.
60.707 Chemicals affected by subpart RRR.
60.708 Delegation of authority.

Subpart RRR—Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

§ 60.700 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each affected facility designated in paragraph (b) of this section that is part of a process unit that produces any of the chemicals listed in § 60.707 as a product, co-product, by-product, or intermediate, except as provided in paragraph (c) of this section.

(b) The affected facility is any of the following for which construction, modification, or reconstruction commenced after June 29, 1990:

(1) Each reactor process not discharging its vent stream into a recovery system.

(2) Each combination of a reactor process and the recovery system into which its vent stream is discharged.

(3) Each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged.

(c) Exemptions from the provisions of paragraph (a) of this section are as follows:

(1) Any reactor process that is designed and operated as a batch operation is not an affected facility.

(2) Each affected facility that has a total resource effectiveness (TRE) index value greater than 8.0 is exempt from all provisions of this subpart except for §§ 60.702(c); 60.704 (d), (e), and (f); and 60.705 (g), (l); and (t).

(3) Each affected facility in a process unit with a total design capacity for all chemicals produced within that unit of less than 1 gigagram per year (1,100 tons per year) is exempt from all provisions of this subpart except for the recordkeeping and reporting requirements in paragraphs (i), (l)(6), and (n) of § 60.705.

(4) Each affected facility operated with a vent stream flow rate less than 0.011 scm/min is exempt from all provisions of this subpart except for the test method and procedure and the recordkeeping and reporting requirements in § 60.704(g) and paragraphs (h), (l)(5), and (o) of § 60.705.

(5) If the vent stream from an affected facility is routed to a distillation unit subject to subpart NNN and has no other releases to the air except for a pressure relief valve, the facility is exempt from all provisions of this subpart except for § 60.705(r).

(6) Any reactor process operating as part of a process unit which produces beverage alcohols, or which uses, contains, and produces no VOC is not an affected facility.

(7) Any reactor process that is subject to the provisions of subpart DDD is not an affected facility.

(8) Each affected facility operated with a concentration of total organic compounds (TOC) (less methane and ethane) in the vent stream less than 300 ppmv as measured by Method 18 or a concentration of TOC in the vent stream less than 150 ppmv as measured by Method 25A is exempt from all provisions of this subpart except for the test method and procedure and the reporting and recordkeeping requirements in § 60.704(h) and paragraphs (j), (l)(8), and (p) of § 60.705.

(Note: The intent of these standards is to minimize emissions of VOC through the application of best demonstrated technology (BDT). The numerical emission limits in these standards are expressed in terms of TOC, measured as TOC less methane and ethane. This emission limit reflects the performance of BDT.)

§ 60.701 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of part 60, and the following terms shall have the specific meanings given them.

Batch operation means any noncontinuous reactor process that is not characterized by steady-state conditions and in which reactants are not added and products are not removed simultaneously.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

By compound means by individual stream components, not carbon equivalents.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Combustion device means an individual unit of equipment, such as an incinerator, flare, boiler, or process heater, used for combustion of a vent stream discharged from the process vent.

Continuous recorder means a data recording device recording an instantaneous data value at least once every 15 minutes.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is present in a line.

Halogenated vent stream means any vent stream determined to have a total concentration (by volume) of compounds containing halogens of 20 ppmv (by compound) or greater.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. If there is energy recovery, the energy recovery section and the combustion chambers are not of integral design. That is, the energy recovery section and the combustion section are not physically formed into one manufactured or assembled unit but are joined by ducts or connections carrying flue gas.

Primary fuel means the fuel fired through a burner or a number of similar burners. The primary fuel provides the principal heat input to the device, and the amount of fuel is sufficient to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Process unit means equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.707. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient product storage facilities.

Product means any compound or chemical listed in § 60.707 which is produced for sale as a final product as that chemical, or for use in the production of other chemicals or compounds. By-products, co-products, and intermediates are considered to be products.

Reactor processes are unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.

Recovery device means an individual unit of equipment, such as an absorber, carbon adsorber, or condenser, capable of and used for the purpose of recovering chemicals for use, reuse, or sale.

Recovery system means an individual recovery device or series of such devices applied to the same vent stream.

Relief valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge results from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

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Secondary fuel means a fuel fired through a burner other than a primary fuel burner. The secondary fuel may provide supplementary heat in addition to the heat provided by the primary fuel.

Total organic compounds or TOC means those compounds measured according to the procedures in § 60.704(b)(4). For the purposes of measuring molar composition as required in § 60.704(d)(2)(i) and § 60.704(d)(2)(ii), hourly emission rate as required in § 60.704(d)(5) and § 60.704(e), and TOC concentration as required in § 60.705(b)(4) and § 60.705(f)(4), those compounds which the Administrator has determined do not contribute appreciably to the formation of ozone are to be excluded.

Total resource effectiveness or TRE index value means a measure of the supplemental total resource requirement per unit reduction of TOC associated with a vent stream from an affected reactor process facility, based on vent stream flow rate, emission rate of TOC, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equation given under § 60.704(e).

Vent stream means any gas stream discharged directly from a reactor process to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. The vent stream excludes relief valve discharges and equipment leaks.

§ 60.702 Standards.

Each owner or operator of any affected facility shall comply with paragraph (a), (b), or (c) of this section for each vent stream on and after the date on which the initial performance test required by § 60.8 and § 60.704 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall either:

(a) Reduce emissions of TOC (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(b) Combust the emissions in a flare that meets the requirements of § 60.18; or

(c) Maintain a TRE index value greater than 1.0 without use of a VOC emission control device.

§ 60.703 Monitoring of emissions and operations.

(a) The owner or operator of an affected facility that uses an incinerator to seek to comply with the TOC emission limit specified under § 60.702(a) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange is encountered.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator that provides a record of vent stream flow diverted from being routed to the incinerator at least once every 15 minutes for each affected facility, except as provided in paragraph (a)(2)(ii) of this section.

(i) The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream from being routed to the incinerator, resulting in its emission to the atmosphere.

(ii) Where the bypass line valve is secured in the closed position with a car-seal or a lock-and-key type configuration, a flow indicator is not required. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(b) The owner or operator of an affected facility that uses a flare to seek to comply with § 60.702(b) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

(2) A flow indicator that provides a record of vent stream flow diverted from being routed to the flare at least once every 15 minutes for each affected facility, except as provided in paragraph (b)(2)(ii) of this section.

(i) The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream from being routed to the flare, resulting in its emission to the atmosphere.

(ii) Where the bypass line valve is secured in the closed position with a car-seal or a lock-and-key type configuration, a flow indicator is not required. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(c) The owner or operator of an affected facility that uses a boiler or process heater to seek to comply with § 60.702(a) shall install, calibrate, maintain and operate according to the manufacturer's specifications the following equipment:

(1) A flow indicator that provides a record of vent stream flow diverted from being routed to the boiler or process heater at least once every 15 minutes for each affected facility, except as provided in paragraph (c)(1)(ii) of this section.

(i) The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream from being routed to the boiler or process heater, resulting in its emission to the atmosphere.

(ii) Where the bypass line valve is secured in the closed position with a car-seal or a lock-and-key type configuration, a flow indicator is not required. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.

(2) A temperature monitoring device in the firebox equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, for boilers or process heaters of less than 44 MW (150 million Btu/hr) design heat input capacity. Any vent stream introduced with primary fuel into a boiler or process heater is exempt from this requirement.

(d) The owner or operator of an affected facility that seeks to demonstrate compliance with the TRE index value limit specified under § 60.702(c) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator:

(1) Where an absorber is the final recovery device in the recovery system:

(i) A scrubbing liquid temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, and a specific gravity monitoring device having an accuracy of ±0.02 specific gravity units, each equipped with a continuous recorder; or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(2) Where a condenser is the final recovery device in the recovery system:

(i) A condenser exit (product side) temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater; or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(3) Where a carbon adsorber is the final recovery device unit in the recovery system:

(i) An integrating steam flow monitoring device having an accuracy of ±10 percent, and a carbon bed temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, both equipped with a continuous recorder; or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(e) An owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 60.702 with a control device other than an incinerator, boiler, process heater, or flare; or a recovery device other than an absorber, condenser, or carbon adsorber, shall provide to the Administrator information describing the operation of the control device or recovery device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 60.704 Test methods and procedures.

(a) For the purpose of demonstrating compliance with § 60.702, all affected facilities shall be run at full operating conditions and flow rates during any performance test.

(b) The following methods in Appendix A to this part, except as provided under § 60.8(b), shall be used as reference methods to determine compliance with the emission limit or percent reduction efficiency specified under § 60.702(a).

(1) Method 1 or 1A, as appropriate, for selection of the sampling sites. The control device inlet sampling site for determination of vent stream molar composition or TOC (less methane and ethane) reduction efficiency shall be prior to the inlet of the control device and after the recovery system.

(2) Method 2, 2A, 2C, or 2D, as appropriate, for determination of the gas volumetric flow rates.

(3) The emission rate correction factor, integrated sampling and analysis procedure of Method 3B shall be used to determine the oxygen concentration ($\%O_{2d}$) for the purposes of determining compliance with the 20 ppmv limit. The sampling site shall be the same as that of the TOC samples, and the samples shall be taken during the same time that the TOC samples are taken. The TOC concentration corrected to 3 percent O_2 (Cc) shall be computed using the following equation:

$$C_C = C_{TOC}\frac{17.9}{20.9 - \%O_{2d}}$$

where:

C_c=Concentration of TOC corrected to 3 percent O_2, dry basis, ppm by volume.
C_{TOC}=Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.
$\%O_{2d}$=Concentration of O_2, dry basis, percent by volume.

(4) Method 18 to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined.

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately 15-minute intervals.

(ii) The emission reduction (R) of TOC (minus methane and ethane) shall be determined using the following equation:

$$R = \frac{E_i - E_o}{E_i} \times 100$$

where:

R=Emission reduction, percent by weight.
E_i=Mass rate of TOC entering the control device, kg TOC/hr.
E_o=Mass rate of TOC discharged to the atmosphere, kg TOC/hr.

(iii) The mass rates of TOC (E_i, E_o) shall be computed using the following equations:

$$E_i = K_2 \sum_{j=1}^{n} C_{ij} M_{ij} Q_i$$

$$E_i = K_2 \sum_{j=1}^{n} C_{oj} M_{ij} Q_o$$

where:

C_{ij}, C_{oj}=Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppm by volume.
M_{ij}, M_{oj}=Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, g/g-mole (lb/lb-mole).
Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dscm/min (dscf/hr).
K_2=Constant, 2.494×10^{-6} (l/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20 °C.

(iv) The TOC concentration (C_{TOC}) is the sum of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{j=1}^{n} C_j$$

where:

C_{TOC}=Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.
C_j=Concentration of sample components "j", dry basis, ppm by volume.
n=Number of components in the sample.

(5) The requirement for an initial performance test is waived, in accordance with § 60.8(b), for the following:

(i) When a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to seek compliance with § 60.702(a).

(ii) When a vent stream is introduced into a boiler or process heater with the primary fuel.

(iii) The Administrator reserves the option to require testing at such other times as may be required, as provided for in section 114 of the Act.

(6) For purposes of complying with the 98 weight-percent reduction in § 60.702(a), if the vent stream entering a

boiler or process heater with a design capacity less than 44 MW (150 million Btu/hour) is introduced with the combustion air or as secondary fuel, the weight-percent reduction of TOC (minus methane and ethane) across the combustion device shall be determined by comparing the TOC (minus methane and ethane) in all combusted vent streams, primary fuels, and secondary fuels with the TOC (minus methane and ethane) exiting the combustion device.

(c) When a flare is used to seek to comply with § 60.702(b), the flare shall comply with the requirements of § 60.18.

(d) The following test methods in Appendix A to this part, except as provided under § 60.8(b), shall be used for determining the net heating value of the gas combusted to determine compliance under § 60.702(b) and for determining the process vent stream TRE index value to determine compliance under § 60.700(c)(2) and § 60.702(c).

(1)(i) Method 1 or 1A, as appropriate, for selection of the sampling site. The sampling site for the vent stream flow rate and molar composition determination prescribed in § 60.704 (d)(2) and (d)(3) shall be, except for the situations outlined in paragraph (d)(1)(ii) of this section, prior to the inlet of any control device, prior to any postreactor dilution of the stream with air, and prior to any postreactor introduction of halogenated compounds into the process vent stream. No traverse site selection method is needed for vents smaller than 4 inches in diameter.

(ii) If any gas stream other than the reactor vent stream is normally conducted through the final recovery device:

(A) The sampling site for vent stream flow rate and molar composition shall be prior to the final recovery device and prior to the point at which any nonreactor stream or stream from a nonaffected reactor process is introduced.

(B) The efficiency of the final recovery device is determined by measuring the TOC concentration using Method 18 at the inlet to the final recovery device after the introduction of any vent stream and at the outlet of the final recovery device.

(C) This efficiency of the final recovery device shall be applied to the TOC concentration measured prior to the final recovery device and prior to the introduction of any nonreactor stream or stream from a nonaffected reactor process to determine the concentration of TOC in the reactor process vent stream from the final recovery device. This concentration of TOC is then used to perform the calculations outlined in § 60.704(d) (4) and (5).

(2) The molar composition of the process vent stream shall be determined as follows:

(i) Method 18 to measure the concentration of TOC including those containing halogens.

(ii) ASTM D1946–77 (incorporation by reference as specified in § 60.17 of this part) to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 to measure the content of water vapor.

(3) The volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, as appropriate.

(4) The net heating value of the vent stream shall be calculated using the following equation:

$$H_T = K_1 \sum_{j=1}^{n} C_j H_j \quad 1 - B_{ws}$$

where:

H_T=Net heating value of the sample, MJ/scm, where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C, as in the definition of Q_s (vent stream flow rate).

K_1=Constant, 1.740×10^{-7} (l/ppm) (g-mole/scm) (MJ/kcal), where standard temperature for (g-mole/scm) is 20 °C.

C_j=Concentration on a dry basis of compound j in ppm, as measured for organics by Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946–77 (incorporation by reference as specified in § 60.17 of this part) as indicated in § 60.704(d)(2).

H_j=Net heat of combustion of compound j, kcal/g-mole, based on combustion at 25 °C and 760 mm Hg. The heats of combustion of vent stream components would be required to be determined using ASTM D2382–76 (incorporation by reference as specified in § 60.17 of this part) if published values are not available or cannot be calculated.

B_{ws}=Water vapor content of the vent stream, proportion by volume.

(5) The emission rate of TOC in the vent stream shall be calculated using the following equation:

$$E_{TOC} = K_2 \sum_{j=1}^{n} C_j M_j Q_s$$

where:

E_{TOC}=Emission rate of TOC in the sample, kg/hr.

K_2=Constant, 2.494×10^{-6} (l/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20 °C.

C_j=Concentration on a dry basis of compound j in ppm as measured by Method 18 as indicated in § 60.704(d)(2).

M_j=Molecular weight of sample j, g/g-mole.

Q_s=Vent stream flow rate (dscm/min) at a temperature of 20 °C.

(6) The total vent stream concentration (by volume) of compounds containing halogens (ppmv, by compound) shall be summed from the individual concentrations of compounds containing halogens which were measured by Method 18.

(e) For purposes of complying with § 60.700(c)(2) and § 60.702(c), the owner or operator of a facility affected by this subpart shall calculate the TRE index value of the vent stream using the equation for incineration in paragraph (e)(1) of this section for halogenated vent streams. The owner or operator of an affected facility with a nonhalogenated vent stream shall determine the TRE index value by calculating values using both the incinerator equation in (e)(1) of this section and the flare equation in (e)(2) of this section and selecting the lower of the two values.

(1) The equation for calculating the TRE index value of a vent stream controlled by an incinerator is as follows:

$$TRE = \frac{1}{E_{TOC}} \left[a + b(Q_s)0.88 + c(Q_s) + d(Q_s)(H_T) + e(Q_s)^{0.88}(H_T)^{0.88} + f(Y_s)^{0.5} \right]$$

(i) Where for a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is greater than or equal to 14.2 scm/min:

TRE=TRE index value.

Q_s=Vent stream flow rate (scm/min) at a standard temperature of 20 °C.

H_T=Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in the definition of Q_s.

Y_s=Q_s for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s=(Q_s)(H_T)/3.6$.

E_{TOC}=Hourly emissions of TOC reported in kg/hr.

a, b, c, d, e, and f are coefficients. The set of coefficients that apply to a vent stream can be obtained from Table 1.

TABLE 1.—TOTAL RESOURCE EFFECTIVENESS COEFFICIENTS FOR VENT STREAMS CONTROLLED BY AN INCINERATOR SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR REACTOR PROCESSES

	a	b	c	d	e	f
DESIGN CATEGORY A1. FOR HALOGENATED PROCESS VENT STREAMS, IF 0≤NET HEATING VALUE (MJ/scm)≤3.5: *Q_s=Vent Stream Flow Rate (scm/min)*						
14.2≤Q_s≤18.8	19.18370	0.27580	0.75762	−0.13064	0	0.01025
18.8<Q_s≤699	20.00563	0.27580	0.30387	−0.13064	0	0.01025
699<Q_s≤1,400	39.87022	0.29973	0.30387	−0.13064	0	0.01449
1,400<Q_s≤2,100	59.73481	0.31467	0.30387	−0.13064	0	0.01775
2,100<Q_s≤2,800	79.59941	0.32572	0.30387	−0.13064	0	0.02049
2,800<Q_s≤3,500	99.46400	0.33456	0.30387	−0.13064	0	0.02291
DESIGN CATEGORY A2. FOR HALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE (MJ/scm)>3.5: *Q_s=Vent Stream Flow Rate (scm/min)*						
14.2<Q_s≤18.8	18.84466	0.26742	−0.20044	0	0	0.01025
18.8<Q_s≤699	19.66658	0.26742	−0.25332	0	0	0.01025
699<Q_s≤1,400	39.19213	0.29062	−0.25332	0	0	0.01449
1,400<Q_s≤2,100	58.71768	0.30511	−0.25332	0	0	0.01775
2,100<Q_s≤2,800	78.24323	0.31582	−0 25332	0	0	0.02049
2,800<Q_s≤3,500	97.76879	0.32439	−0.25332	0	0	0.02291
DESIGN CATEGORY B. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0≤NET HEATING VALUE (MJ/scm)≤0.48: *Q_s=Vent Stream Flow Rate (scm/min)*						
14.2≤Q_s≤1,340	9.54245	0.10555	0.09030	−0.17109	0	0.01025
1,340<Q_s≤2,690	16.94386	0.11470	0.09030	−0.17109	0	0.01449
2,690<Q_s≤4,040	25.34528	0.12042	0.09030	−0.17109	0	0.01775
DESIGN CATEGORY C. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0.48<NET HEATING VALUE (MJ/scm)≤1.9: *Q_s=Vent Stream Flow Rate (scm/min)*						
14.2≤Q_s≤1,340	9.25233	0.06105	0.31937	−0.16181	0	0.01025
1,340<Q_s≤2,690	18.36363	0.06635	0.31937	−0.16181	0	0.01449
2,690<Q_s≤4,040	27.47492	0.06965	0.31937	−0.16181	0	0.01775
DESIGN CATEGORY D. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 1.9<NET HEATING VALUE (MJ/scm)≤3.6: *Q_s=Vent Stream Flow Rate (scm/min)*						
14.2≤Q_s≤1,180	6.67868	0.06943	0.02582	0	0	0.01025
1,180<Q_s≤2,370	13.21633	0.07545	0.02582	0	0	0.01449
2,370<Q_s≤3,550	19.75398	0.07922	0.02582	0	0	0.01755
DESIGN CATEGORY E. FOR NONHALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE (MJ/scm)>3.6: *Y_s=Dilution Flow Rate (scm/min)=(Q_s) (H_T)/3.6*						
14.2≤Y_s≤1,180	6.67868	0	0	−0.00707	0.02220	0.01025
1,180<Y_s≤2,370	13.21633	0	0	−0.00707	0.02412	0.01449
2,370<Y_s≤3,550	19.75398	0	0	−0.00707	0.02533	0.01755

(ii) For a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is less than 14.2 scm/min:

TRE=TRE index value.
Q_s=14.2 scm/min.
H_T=(FLOW)(HVAL)/14.2

where the following inputs are used:

FLOW=Vent stream flow rate (scm/min), at a standard temperature of 20 °C.
HVAL=Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in definition of Q_s.

Y_s=14.2 scm/min for all vent streams except for Category E vent streams, where $Y_s=(14.2)(H_T)/3.6$.
E_{TOC}=Hourly emissions of TOC reported in kg/hr.

a, b, c, d, e, and f are coefficients. The set of coefficients that apply to a vent stream can be obtained from Table 1.

(2) The equation for calculating the TRE index value of a vent stream controlled by a flare is as follows:

$$TRE = \frac{1}{E_{TOC}}\left[a(Q_s) + b(Q_s)^{0.8} + c(Q_s)(H_T) + d(E_{TOC}) + e\right]$$

where:

TRE=TRE index value.
E_{TOC}=Hourly emission rate of TOC reported in kg/hr.

Q_s=Vent stream flow rate (scm/min) at a standard temperature of 20 °C.
H_T=Vent stream net heating value (MJ/scm) where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in the definition of Q_s.

a, b, c, d, and e are coefficients. The set of coefficients that apply to a vent stream can be obtained from Table 2.

TABLE 2.—TOTAL RESOURCE EFFECTIVENESS COEFFICIENTS FOR VENT STREAMS CONTROLLED BY A FLARE SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR REACTOR PROCESSES

	a	b	c	d	e
H_T<11.2 MJ/scm	2.25	0.288	−0.193	−0.0051	2.08
H_T≥11.2 MJ/scm	0.309	0.0619	−0.0043	−0.0034	2.08

(f) Each owner or operator of an affected facility seeking to comply with § 60.700(c)(2) or § 60.702(c) shall recalculate the TRE index value for that affected facility whenever process changes are made. Examples of process changes include changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. The TRE index value shall be recalculated based on test data, or on best engineering estimates of the effects of the change on the recovery system.

(1) Where the recalculated TRE index value is less than or equal to 1.0, the owner or operator shall notify the Administrator within 1 week of the recalculation and shall conduct a performance test according to the methods and procedures required by § 60.704 in order to determine compliance with § 60.702(a). Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(2) Where the recalculated TRE index value is less than or equal to 8.0 but greater than 1.0, the owner or operator shall conduct a performance test in accordance with § 60.8 and § 60.704 and shall comply with § 60.703, § 60.704 and § 60.705. Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(g) Any owner or operator subject to the provisions of this subpart seeking to demonstrate compliance with § 60.700(c)(4) shall use Method 2, 2A, 2C, or 2D of appendix A to 40 CFR part 60, as appropriate, for determination of volumetric flow rate.

(h) Each owner or operator seeking to demonstrate that a reactor process vent stream has a TOC concentration for compliance with the low concentration exemption in § 60.700(c)(8) shall conduct an initial test to measure TOC concentration.

(1) The sampling site shall be selected as specified in paragraph (d)(1)(i) of this section.

(2) Method 18 or Method 25A of part 60, appendix A shall be used to measure concentration.

(3) Where Method 18 is used to qualify for the low concentration exclusion in § 60.700(c)(8), the procedures in § 60.704(b)(4) (i) and (vii) shall be used to measure TOC concentration, and the procedures of § 60.704(b)(3) shall be used to correct the TOC concentration to 3 percent oxygen. To qualify for the exclusion, the results must demonstrate that the concentration of TOC, corrected to 3 percent oxygen, is below 300 ppm by volume.

(4) Where Method 25A is used, the following procedures shall be used to calculate ppm by volume TOC concentration, corrected to 3 percent oxygen:

(i) Method 25A shall be used only if a single organic compound is greater than 50 percent of total TOC, by volume, in the reactor process vent stream. This compound shall be the principal organic compound.

(ii) The principal organic compound may be determined by either process knowledge or test data collected using an appropriate EPA Reference Method. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current reactor process vent stream conditions.

(iii) The principal organic compound shall be used as the calibration gas for Method 25A.

(iv) The span value for Method 25A shall be 300 ppmv.

(v) Use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A, corrected to 3 percent oxygen, is below 150 ppm by volume to qualify for the low concentration exclusion in § 60.700(c)(8).

(vii) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (b)(3) of this section.

§ 60.705 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to § 60.702 shall notify the Administrator of the specific provisions of § 60.702 (§ 60.702 (a), (b), or (c)) with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.702 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.704 no later than 180 days from initial start-up.

(b) Each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 60.8. Where a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used or where the reactor process vent stream is introduced as the primary fuel to any size boiler or process heater to comply with § 60.702(a), a report containing performance test data need not be submitted, but a report containing the information in § 60.705(b)(2)(i) is required. The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a combustion device, outlet concentration of TOC, or the TRE index value of a vent stream from a recovery system is determined.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(a) through use of either a thermal or catalytic incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured at least every 15 minutes and averaged over the same time period of the performance testing, and

(ii) The percent reduction of TOC determined as specified in § 60.704(b) achieved by the incinerator, or the concentration of TOC (ppmv, by compound) determined as specified in § 60.704(b) at the outlet of the control device on a dry basis corrected to 3 percent oxygen.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(a) through use of a boiler or process heater:

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(b) through use of a smokeless flare, flare design (i.e., steam-assisted, air-assisted or nonassisted), all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(c):

(i) Where an absorber is the final recovery device in the recovery system, the exit specific gravity (or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average exit temperature, of the absorbing liquid measured at least every 15 minutes and averaged over the same time period of the performance testing (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is the final recovery device in the recovery system, the total steam mass flow measured at least every 15 minutes and averaged over the same time period of the performance test (full carbon bed cycle), temperature of the carbon bed after regeneration (and within 15 minutes of completion of any cooling cycle(s)), and duration of the carbon bed steaming cycle (all measured while the vent stream is routed and constituted normally); or

(iv) As an alternative to § 60.705(b)(4)(i), (ii) or (iii), the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber, measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is normally routed and constituted.

(v) All measurements and calculations performed to determine the TRE index value of the vent stream.

(c) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.703 (a) and (c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where a combustion device is used to comply with § 60.702(a), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.702(a) was determined.

(2) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance with § 60.702(a) was determined. The owner or operator also shall record all 3-hour periods of operation during which the average

temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the bed during the most recent performance test at which compliance with § 60.702(a) was determined.

(3) All 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.702(a) was determined for boilers or process heaters with a design heat input capacity of less than 44 MW (150 million Btu/hr) where the vent stream is introduced with the combustion air or as a secondary fuel.

(4) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 60.702(a).

(d) Each owner or operator subject to the provisions of this subpart shall keep records of the following:

(1) Up-to-date, readily accessible continuous records of the flow indication specified under § 60.703(a)(2)(i), § 60.703(b)(2)(i) and § 60.703(c)(1)(i), as well as up-to-date, readily accessible records of all periods and the duration when the vent stream is diverted from the control device.

(2) Where a seal mechanism is used to comply with § 60.703(a)(2)(ii), § 60.703(b)(2)(ii), and § 60.703(c)(1)(ii), a record of continuous flow is not required. In such cases, the owner or operator shall keep up-to-date, readily accessible records of all monthly visual inspections of the seals as well as readily accessible records of all periods and the duration when the seal mechanism is broken, the bypass line valve position has changed, the serial number of the broken car-seal has changed, or when the key for a lock-and-key type configuration has been checked out.

(e) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 60.703(b), as well as up-to-date, readily accessible records of all periods of operations in which the pilot flame is absent.

(f) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.703(d), as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where an owner or operator seeks to comply with § 60.702(c), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) Where an absorber is the final recovery device in a recovery system, and where an organic compound monitoring device is not used:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, or

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1 unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter, which is a measure of the degree of absorbing liquid saturation, is approved by the Administrator, in which case he will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) Where a condenser is the final recovery device in a system, and where an organic compound monitoring device is not used, all 3-hour periods of operation during which the average exit (product side) condenser operating temperature was more than 6 °C (11 °F) above the average exit (product side) operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final recovery device in a system, and where an organic compound monitoring device is not used:

(i) All carbon bed regeneration cycles during which the total mass steam flow was more than 10 percent below the total mass steam flow during the most recent performance test, or

(ii) All carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration (and after completion of any cooling cycle(s)) was more than 10 percent or 5 °C greater, whichever is less stringent, than the carbon bed temperature (in degrees Celsius) during the most recent performance test.

(4) Where an absorber, condenser, or carbon adsorber is the final recovery device in the recovery system and where an organic compound monitoring device is used, all 3-hour periods of operation during which the average organic compound concentration level or reading of organic compounds in the exhaust gases is more than 20 percent greater than the exhaust gas organic compound concentration level or reading measured by the monitoring device during the most recent performance test.

(g) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.702(c) shall keep up-to-date, readily accessible records of:

(1) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of recovery equipment or reactors;

(2) Any recalculation of the TRE index value performed pursuant to § 60.704(f); and

(3) The results of any performance test performed pursuant to the methods and procedures required by § 60.704(d).

(h) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the flow rate cutoff in § 60.700(c)(4) shall keep up-to-date, readily accessible records to indicate that the vent stream flow rate is less than 0.011 scm/min and of any change in equipment or process operation that increases the operating vent stream flow rate, including a measurement of the new vent stream flow rate.

(i) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the design production capacity provision in § 60.700(c)(3) shall keep up-to-date, readily accessible records of any change in equipment or process operation that increases the design production capacity of the process unit in which the affected facility is located.

(j) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the low concentration exemption in § 60.700(c)(8) shall keep up-to-date, readily accessible records of any change in equipment or process operation that increases the concentration of the vent stream of the affected facility.

(k) Each owner or operator subject to the provisions of this subpart is exempt from the quarterly reporting requirements contained in § 60.7(c) of the General Provisions.

(l) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the requirements of § 60.700 (c)(2), (c)(3), or (c)(4) or § 60.702 shall submit to the Administrator semiannual reports of the following recorded information. The initial report shall be submitted within 6 months after the initial start-up date.

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(1) Exceedances of monitored parameters recorded under § 60.705 (c) and (g).

(2) All periods and duration recorded under § 60.705(d) when the vent stream is diverted from the control device to the atmosphere.

(3) All periods recorded under § 60.705(f) in which the pilot flame of the flare was absent.

(4) Any change in equipment or process operation that increases the operating vent stream flow rate above the low flow exemption level in § 60.700(c)(4), including a measurement of the new vent stream flow rate, as recorded under § 60.705(i). These must be reported as soon as possible after the change and no later than 180 days after the change. A performance test must be completed within the same time period to verify the recalculated flow value and to obtain the vent stream characteristics of heating value and E_{TOC}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under any of the exemption provisions listed in § 60.700(c), except for the total resource effectiveness index greater than 8.0 exemption in § 60.700(c)(2), the facility must begin compliance with the requirements set forth in § 60.702.

(5) Any change in equipment or process operation, as recorded under § 60.705(i), that increases the design production capacity above the low capacity exemption level in § 60.700(c)(3) and the new capacity resulting from the change for the reactor process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and E_{TOC}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under any of the exemption provisions listed in § 60.700(c), the facility must begin compliance with the requirements set forth in § 60.702.

(6) Any recalculation of the TRE index value, as recorded under § 60.705(g).

(7) All periods recorded under § 60.705(d) in which the seal mechanism is broken or the by-pass line valve position has changed. A record of the serial number of the car-seal or a record to show that the key to unlock the bypass line valve was checked out must be maintained to demonstrate the period, the duration, and frequency in which the bypass line was operated.

(8) Any change in equipment or process operation that increases the vent stream concentration above the low concentration exemption level in § 60.700(c)(8), including a measurement of the new vent stream concentration, as recorded under § 60.705(j). These must be reported as soon as possible after the change and no later than 180 days after the change. If the vent stream concentration is above 300 ppmv as measured using Method 18 or above 150 ppmv as measured using Method 25A, a performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and E_{TOC}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under any of the exemption provisions listed in § 60.700(c), except for the TRE index greater than 8.0 exemption in § 60.700(c)(2), the facility must begin compliance with the requirements set forth in § 60.702.

(m) The requirements of § 60.705(l) remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with § 60.705(l), provided that they comply with the requirements established by the State.

(n) Each owner or operator that seeks to demonstrate compliance with § 60.700(c)(3) must submit to the Administrator an initial report detailing the design production capacity of the process unit.

(o) Each owner or operator that seeks to demonstrate compliance with § 60.700(c)(4) must submit to the Administrator an initial report including a flow rate measurement using the test methods specified in § 60.704.

(p) Each owner or operator that seeks to demonstrate compliance with § 60.700(c)(8) must submit to the Administrator an initial report including a concentration measurement using the test method specified in § 60.704.

(q) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility complies with the standards specified under § 60.702 other than as provided under § 60.703 (a), (b), (c), and (d).

(r) Each owner or operator whose reactor process vent stream is routed to a distillation unit subject to subpart NNN and who seeks to demonstrate compliance with § 60.700(c)(5) shall submit to the Administrator a process design description as part of the initial report. This process design description must be retained for the life of the process. No other records or reports would be required unless process changes are made.

(s) Each owner or operator who seeks to demonstrate compliance with § 60.702 (a) or (b) using a control device must maintain on file a schematic diagram of the affected vent streams, collection system(s), fuel systems, control devices, and bypass systems as part of the initial report. This schematic diagram must be retained for the life of the system.

(t) Each owner or operator that seeks to demonstrate compliance with § 60.700(c)(2) must maintain a record of the initial test for determining the total resource effectiveness index and the results of the initial total resource effectiveness index calculation.

§ 60.705 Reconstruction.

(a) For purposes of this subpart "fixed capital cost of the new components," as used in § 60.15, includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following June 29, 1990. For purposes of this paragraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

§ 60.707 Chemicals affected by Subpart RRR.

Chemical	CAS No.[1]
Acetaldehyde	75-07-0
Acetic acid	64-19-7
Acetic anhydride	108-24-7
Acetone	67-64-1
Acetone cyanohydrin	75-86-5
Acetylene	74-86-2
Acrylic acid	79-10-7
Acrylonitrile	107-13-1
Adipic acid	124-04-9
Adiponitrile	111-69-3
Alcohols, C–11 or lower, mixtures.	
Alcohols, C–12 or higher, mixtures.	
Alcohols, C–12 or higher, unmixed.	
Allyl chloride	107-05-1
Amylene	513-35-9
Amylenes, mixed.	
Aniline	62-53-3
Benzene	71-43-2

Chemical	CAS No.[1]
Benzenesulfonic acid	98–11–3
Benzenesulfonic acid C_{10-16} alkyl derivatives, sodium salts	68081–81–2
Benzyl chloride	100–44–7
Bisphenol A	80–05–7
Bromotone	76–08–4
1,3-Butadiene	106–99–0
Butadiene and butene fractions.	
n-Butane	106–97–8
1,4-Butanediol	110–63–4
Butanes, mixed.	
1-Butene	106–98–9
2-Butene	25167–67–3
Butenes, mixed.	
n-Butyl acetate	123–86–4
Butyl acrylate	141–32–2
n-Butyl alcohol	71–36–3
sec-Butyl alcohol	78–92–2
tert-Butyl alcohol	75–65–0
Butylbenzyl phthalate	85–86–7
tert-Butyl hydroperoxide	75–91–2
2-Butyne-1,4-diol	110–65–6
Butyraldehyde	123–72–8
Butyric anhydride	106–31–0
Caprolactam	105–60–2
Carbon disulfide	75–15–0
Carbon tetrachloride	56–23–5
Chloroacetic acid	79–11–8
Chlorobenzene	108–90–7
Chlorodifluoromethane	75–45–6
Chloroform	67–66–3
p-Chloronitrobenzene	100–00–5
Citric acid	77–92–9
Cumene	98–82–8
Cumene hydroperoxide	80–15–9
Cyanuric chloride	108–77–0
Cyclohexane	110–82–7
Cyclohexane, oxidized	68512–15–2
Cyclohexanol	108–93–0
Cyclohexanone	108–94–1
Cyclohexanone oxime	100–64–1
Cyclohexene	110–83–8
Cyclopropane	75–19–4
Diacetone alcohol	123–42–2
1,4-Dichlorobutene	110–57–6
3,4-Dichloro-1-butene	64037–54–3
Dichlorodifluoromethane	75–71–8
Dichlorodimethylsilane	75–78–5
Dichlorofluoromethane	75–43–4
Diethanolamine	111–42–2
Diethylbenzene	25340–17–4
Diethylene glycol	111–46–6
Di-isodecyl phthalate	26761–40–0
Dimethyl terephthalate	120–61–6
2,4-(and 2,6)-dinitrotoluene	121–14–2 606–20–2
Dioctyl phthalate	117–81–7
Dodecene	25378–22–7
Dodecylbenzene, nonlinear.	
Dodecylbenzenesulfonic acid	27176–87–0
Dodecylbenzenesulfonic acid, sodium salt	25155–30–0
Epichlorohydrin	106–89–8
Ethanol	64–17–5
Ethanolamine	141–43–5
Ethyl acetate	141–78–6
Ethyl acrylate	140–88–5
Ethylbenzene	100–41–4
Ethyl chloride	75–00–3
Ethylene	74–85–1
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene glycol	107–21–1
Ethylene glycol monobutyl ether	111–76–2
Ethylene glycol monoethyl ether acetate	111–15–9
Ethylene glycol monomethyl ether	109–86–4
Ethylene oxide	75–21–8
2-Ethylhexyl alcohol	104–76–7
(2-Ethylhexyl) amine	104–75–6
6-Ethyl-1,2,3,4-tetrahydro 9,10-antracenedione	15547–17–8
Formaldehyde	50–00–0
Glycerol	56–81–5
n-Heptane	142–82–5
Heptenes (mixed).	
Hexamethylene diamine	124–09–4
Hexamethylene diamine adipate	3323–53–3
Hexamethylenetetramine	100–97–0
Hexane	110–54–3
Isobutane	75–28–5
Isobutanol	78–83–1
Isobutylene	115–11–7
Isobytyraldehyde	78–84–2
Isopentane	78–78–4
Isoprene	78–79–5
Isopropanol	67–63–0
Ketene	463–51–4
Linear alcohols, ethoxylated, mixed.	
Linear alcohols, ethoxylated, and sulfated, sodium salt, mixed.	
Linear alcohols, sulfated, sodium salt, mixed.	
Linear alkylbenzene	123–01–3
Maleic anhydride	108–31–6
Mesityl oxide	141–79–7
Methanol	67–56–1
Methylamine	74–39–5
ar-Methylbenzenediamine	25376–45–8
Methyl chloride	74–87–3
Methylene chloride	75–09–2
Methyl ethyl ketone	78–93–3
Methyl isobutyl ketone	108–10–1
Methyl methacrylate	80–62–6
1-Methyl-2-pyrrolidone	872–50–4
Methyl tert-butyl ether.	
Naphthalene	91–20–3
Nitrobenzene	98–95–3
1-Nonene	27215–95–8
Nonyl alcohol	143–08–08
Nonylphenol	25154–52–3
Nonylphenol, ethoxylated	9016–45–9
Octene	25377–83–7
Oil-soluble petroleum sulfonate, calcium salt.	
Pentaerythritol	115–77–5
3-Pentenenitrile	4635–87–4
Pentenes, mixed	109–67–1
Perchloroethylene	127–18–4
Phenol	108–95–2
1-Phenylethyl hydroperoxide	3071–32–7
Phenylpropane	103–65–1
Phosgene	75–44–5
Phthalic anhydride	85–44–9
Propane	74–98–6
Propionaldehyde	123–38–6
Propyl alcohol	71–23–8
Propylene	115–07–1
Propylene glycol	57–55–6
Propylene oxide	75–56–9
Sorbitol	50–70–4
Styrene	100–42–5
Terephthalic acid	100–21–0
Tetraethyl lead	78–00–2
Tetrahydrofuran	109–99–9
Tetra (methyl-ethyl) lead.	
Tetramethyl lead	75–74–1
Toluene	108–88–3
Toluene-2,4-diamine	95–80–7
Toluene-2,4-(and, 2,6)-diisocyanate (80/20 mixture)	26471–62–5
1,1,1-Trichloroethane	71–55–6
1,1,2-Trichloroethane	79–00–5
Trichloroethylene	79–01–6
Trichlorofluoromethane	75–69–4
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1
Triethanolamine	102–71–6
Triethylene glycol	112–27–6
Vinyl acetate	108–05–4
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4
m-Xylene	108–38–3
o-Xylene	95–47–6
p-Xylene	106–42–3
Xylenes (mixed)	1330–20–7

[1] CAS numbers refer to the Chemical Abstracts Registry numbers assigned to specific chemicals, isomers, or mixtures of chemicals. Some isomers or mixtures that are covered by the standards do not have CAS numbers assigned to them. The standards apply to all of the chemicals listed, whether CAS numbers have been assigned or not.

§ 60.708 Delegation of Authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 60.703(e).

SOCMI Reactors NSPS

Standards of Performance for New Stationary Sources; Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

Court or Statutory Deadline

None.

Summary

This new source performance standard (NSPS), being established under Section 111 of the Clean Air Act, will require reduction of emissions of volatile organic compounds (VOC) from new, modified, and reconstructed reactor processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). The standard is expected to result in a VOC emission reduction of about 2,100 megagrams per year at an annualized cost to the industry of about $3.7 million per year.

The standard requires VOC emissions from reactors to be reduced by 98 weight-percent or to an outlet concentration of 20 parts per million by volume. Product recovery for an affected reactor could also be increased to reduce the amount of VOC in the vent stream to a level that would result in a total resource effectiveness (TRE) level >1.0, which would exempt the reactor from the VOC emission reduction requirements. The TRE is an index to approximate the cost-effectiveness of controlling emissions from a reactor vent, and a TRE of 1.0 is equivalent to a cost-effectiveness of about $2,500 (1982 $) per megagram of VOC.

Expected Public Reaction

No adverse reaction is expected. Promulgation of this rule will be consistent with the final NSPS for the other two types of SOCMI process vents (air oxidation and distillation) which were published in the **Federal Register** in June 1990.

Probable OMB Reaction

OMB has already cleared this rule for publication.

Coordination

The proposed rule was developed in consultation with the affected industry, the National Air Pollution Control Techniques Advisory Committee, and environmental and State and local representatives. Comments on the proposed rule were received from 14 industry representatives and one State agency, and appropriate changes were made to the rule in response to the comments.

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Part III

State Justice Institute

Grant Guideline; Notice

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STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant guideline.

SUMMARY: This Guideline sets forth the proposed administrative, programmatic, and financial requirements attendant to Fiscal Year 1994 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until September 30, 1993.

ADDRESSES: Comments should be sent to State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States.

Amount of Funds Available

The House of Representatives has approved a $13.55 million appropriation for SJI in FY 1994, the Senate $13 million. A conference on the appropriations bills is expected after Labor Day. Depending on the outcome of the conference, approximately $11–$11.5 million will be available for award in FY 1994.

Types of Grants Available and Funding Schedules

Since SJI's establishment in 1987, it has sought to develop a grant program that is responsive to the most pressing needs of the State courts. As a result, the Institute has initiated several different types of grant programs. The types of grants available in FY 1994 and the funding cycles for each program are provided below:

Project Grants. These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. As provided in section V. of the Guideline, project grants, with limited exceptions, may not exceed $200,000 a year. Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant.

As indicated in section VI.C., the Board may make an "accelerated" project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application. Comment is requested on whether the ceiling for accelerated grants should be raised from $40,000 to $50,000.

The FY 1994 mailing deadline for project grant concept papers is December 1, 1993. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1994 funding cycle will be substantially similar to the FY 1993 cycle: the Board will meet in early March, 1994 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The first exception to this schedule pertains to proposals to follow up on the National Conference on Family Violence and the Courts that was held in March, 1993. As announced in the Institute's FY 1993 Grant Guideline, applicants interested in participating in this special round of funding must submit concept papers proposing to implement State plans arising from the conference by October 8, 1993. The papers will be considered by the Board at its meeting in November, 1993. Invited applications will be reviewed at the Board's March, 1994 meeting. Followup proposals may also be submitted during the project grant funding cycle described above.

The second exception is for projects to follow up on the National Symposium on Court-Connected Dispute Resolution Research to be held October 15–16, 1993. Concept papers for these projects must be mailed by March 15, 1994. They will be reviewed at the Board's meeting in May, 1994. Applications based on the papers will be reviewed at the September, 1994 Board meeting.

Package Grants. This grant program, begun in FY 1993, permits applicants to submit one concept paper (or application) for a "package" of related grants rather than separate proposals for each related component of the package. Package grants of up to $750,000 per year may be awarded to support projects that address interrelated topics or the core elements of a multi-faceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. Package grant concept papers and applications will be considered on the same schedule as project grants.

In FY 1993, the Institute limited package grants to a one-year project period. The Board proposes to eliminate that restriction in FY 1994 and make package grants subject to the same limitations as project grants: two years for new and continuation projects; three years for on-going support grants.

See sections III.J., V.C. and D., VI.A.2.b. and 3.b., VII.A.3., VII.C. and VII.D. for more information about package grants.

Technical Assistance Grants. Under this program, also begun in FY 1993, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. The Guideline proposes to allocate up to $600,000 to support technical assistance grants in FY 1994, a $100,000 increase over the amount allocated in FY 1993.

In addition, technical assistance grants will be available in FY 1994 to enable court officials from one jurisdiction to observe and assess an innovative practice, program, or facility in another jurisdiction. In lieu of concept papers and formal applications, applicants for these grants may submit letters containing the information specified in section II.2.C. of the Guideline at any time during the fiscal year.

Curriculum Adaptation Grants. A grant of up to $20,000 for up to one year may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $350,000 for these grants in FY 1994, the same amount allocated in FY 1993. See section II.B.2.b.i.(b).

Like Technical Assistance grant applications, letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 60 days before the projected date of the training program. See section II.B.2.b.i.(b).

Scholarships. The Guideline allocates up to $250,000 for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.v.

The Guideline establishes four deadlines for scholarship requests: November 1, 1993 for training programs beginning between February 1, 1994 and

beginning between February 1, 1994 and April 30, 1994; February 1, 1994 for programs beginning between May 1, 1994 and July 31, 1994; May 1, 1994 for programs beginning between August 1, 1994 and October 31, 1994; and September 1, 1994 for programs beginning between November 1, 1994 and January 31, 1995. This schedule has been adjusted from FY 1993 in order to distribute applications more evenly throughout the year.

In addition, the chief justice's concurrence form must be received by SJI no later than one week after the application deadline or the application will not be considered. See section II.B.2.b.v.

Renewal Grants. There are two types of renewal grants available from SJI: continuation grants (see sections III.H., V.C. and D., and IX.A.) and on-going support grants (see sections III.I., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than 25% of the amount available for grants in FY 1994. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation and on-going support grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

Special Interest Categories

The Guideline contains 13 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Three new categories have been added this year: "Evaluation of Court-Connected Alternative Dispute Resolution" (section II.B.2.e); "Facilitating the Appropriate Use of Intermediate Sanctions" (section II.B.2.i.); and "The Impact of Health Care-Related Issues on the State Courts" (section II.B.2.j.). Two categories in last year's Guideline have been eliminated ("Improving Communication and Coordination Among Courts" and "The Court-Related Needs of Elderly Persons and Persons With Disabilities"). The FY 1993 category "Application of Performance-Based Standards and Measures to the Courts") has been combined with the "Planning for the Future of the Courts" category. See section II.B.2.d.

Of particular note among other Special Interest categories is the "Family Violence in the Courts" category (section II.B.2.l.) which continues to invite proposals to implement the Battered Women's Testimony Act and the Judicial Training and Research for Child Custody Litigation Act enacted by Congress in 1992, and tentatively solicits proposals to implement the judicial education provisions of the pending Violence Against Women Act. In addition, the Guideline announces two new national conferences: a National Symposium on the Implementation and Operation of Drug Courts and a National Symposium on Reducing Litigation Delay. See section II.B.2.b.iv. The Institute also proposes to reduce the aggregate amount to be allocated to projects addressing a critical need of a single State or local jurisdiction from $1,000,000 to $600,000. See section II.C.

Compliance Auditing

One other issue is highlighted for comment. The American Institute of Certified Public Accountants (AICPA) has suggested that the audit objectives currently found in Section XI.J. go beyond the objectives of an audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, the Single Audit Act of 1984, and OMB Circulars A–128 and A–133 by requiring auditors to provide positive assurances regarding compliance with SJI financial procedures.

In order to clarify its audit objectives, SJI is contemplating whether to (1) delete the audit objectives found in Guideline Section XI.J.1.; (2) provide that audits of Institute grants be conducted in accordance with Government Auditing Standards rather than in compliance with generally accepted auditing standards established by the AICPA; and (3) develop specific procedures in accordance with the AICPA's Statements on Standards for Attestation to Engagements in order to test compliance with SJI financial requirements. In order to better determine the effect that these changes would have on SJI grantees, particularly those who do not presently receive Federal grants, the Institute solicits comments addressing the likely impact of these recommended audit requirements. The Institute encourages grantees to refer this issue to the attention of their auditors to solicit their comments concerning the proposed changes.

Recommendations to Grant Writers

Over the past six years, Institute staff have reviewed approximately 2,400 concept papers and 1,200 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application.

Concept Papers And Applications Should, However, Be Presented In The Formats Specified In Sections VI. And VII. Of The Guideline, Respectively.

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution

and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: if, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and the line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spread-sheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior

approval of the Institute is required when the amount of automated data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit must budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations To Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 600 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. *After the grant has been awarded, when are the first quarterly reports due?* Progress and financial status reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly report describing project activities between December 1 and December 31 will be due on January 30. A financial status report should be submitted even if funds have not been obligated or expended.

Progress reports are intended as a way of documenting what has happened over the past three months, providing an opportunity to resolve any questions before they become problems, and making any necessary changes in the project time schedule, budget allocations, etc. Thus, the project report should describe project activities, their relationship to the approved timeline, any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. Two copies of the progress report and attachments should be submitted to the Institute.

Additional quarterly program or financial reporting forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. *Do reporting requirements differ for renewal grants or package grants?* Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary financial status report covering the entire package as well as separate financial reports for each of the projects in the package. Each individual project in the package should be identified by a letter of the alphabet (e.g., SJI–93–15R–J–001–A; SJI–93–15R–J–001–B; SJI–93–15R–J–001–C).

3. *Why is it important to address the special conditions that are attached to the award document?* In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems with the conditions they may have. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute staff are always available to answer questions and provide assistance regarding these provisions.

4. *What is a Grant Adjustment?* A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

5. *What schedule should be followed in submitting requests for reimbursements or advance payments?* Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

6. *Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants or package grants?* The basic procedures are the same for any grant.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment

requests numbered accordingly. For example, if the last payment request under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the letter of the alphabet designated in the award document (e.g., SJI–93–15R–J–001–A; SJI–93–15R–J–001–B; SJI–93–15R–J–001–C). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R-J–001–A payment number 2; SJI–93–15R–J–001–B payment number 4; etc.).

7. *If things change during the grant period, can funds be reallocated from one budget category to another?* The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. However, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

8. *What information about project activities should be communicated to SJI?* In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations or other significant changes become necessary, the grantee should contact the Institute's program monitor prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

9. *What is the 90-day close-out period?* Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

The following Grant Guideline is proposed by the State Justice Institute for FY 1994:

State Justice Institute Grant Guideline Table Of Contents

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Summary

This Guideline sets forth the proposed programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well, to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1994 funds. The concept paper submission deadline for all but two funding categories is December 1, 1993. Concept papers to implement the plans developed at the March, 1993 National Conference on Family Violence and the Courts must be mailed by October 8, 1993. Concept papers on projects that follow up on October 1993 National Symposium on Court-Connected Dispute Resolution Research must be mailed by March 15, 1994.

It is anticipated that between $11 million and $11.5 million will be available for award. This Guideline applies to all concept papers and formal applications submitted for FY 1994 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States.

Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1994, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

In addition, the Battered Women's Testimony Act of 1992 and the Judicial Training and Research for Child Custody Litigation Act of 1992 authorize the Institute to:

1. Collect and analyze information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

2. Develop training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

3. Support research regarding State judicial decisions relating to child custody litigation involving domestic violence;

4. Develop training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence; and

5. Disseminate information and training materials regarding these issues and provide related technical assistance.

Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1994, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Enhancing Court-Community Relations.* This category includes research, demonstration, evaluation and education projects designed to foster or enhance effective cooperative relationships between courts and local communities, and to test innovative methods for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

Specifically, the Board is interested in supporting innovative projects that assist in implementing the recommendations of State Task Forces on Gender Bias in the courts and the Second National Conference on Gender Bias in the Courts, including a national clearinghouse or resource center and projects that address the inequities and stereotypes faced by women and men in domestic relations, criminal, civil, probate and juvenile cases. However, operational support will not be provided for new or existing State Task Forces.

Examples of other possible projects include but are not limited to the examination, development, and testing of innovative methods that trial or appellate courts may use to: address court-community problems resulting from the influx of legal and illegal immigrants, including projects to lessen the financial impact of that immigration on the courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when family members or property are outside the United States; or facilitate communication with Federal authorities when illegal aliens are involved in State court proceedings; handle cases involving pro se litigants fairly and effectively; use volunteers effectively; and respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve. However, Institute funds may not be used to support legal representation of individuals in specific cases.

Previous SJI-supported projects that address these issues include: the planning of a National Town Meeting on Improving Public Confidence in the Judicial System and a National Conference on Racial and Ethnic Bias in the Courts; presentation of the Second National Conference on Gender Bias and the Courts; faculty workshops on race fairness, cultural awareness, and Native American legal issues; evaluation of an experimental community court in New York City; development of a manual for management of court interpretation services and materials for training and assisting court interpreters; development of touchscreen computer systems, videotapes and written materials to assist pro se litigants; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; preparation of public education materials for adults and students and a curriculum for media representatives and judges on reporting on the courts and the law; and the testing of a computerized intake and referral system for court users and telephone-based systems for obtaining general court information and case-specific information.

b. *Education and Training for Judges and Other Key Court Personnel.* The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional and national levels. Accordingly, this category is divided into five subsections: (i) State Initiatives; (ii) National and Regional Education Programs; (iii) Judicial Education Technical Assistance; (iv) Conferences; and (v) Scholarships. All Institute-supported conferences and education and training seminars should be accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should

be defined by individual State need but may include:

(a) *Development of State Court Education Programs.* Projects to assist development of State court education programs include, but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- Seed money for innovative continuing education and career development programs including seminars addressing the evolving roles of courts and judges in society, organizational and leadership development, and coping with the gap between resources and the demand for services; and educational programs based on Institute-supported research; and
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development).

(b) *Curriculum Adaptation Projects.* The Board is reserving up to $350,000 to provide support for adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for curriculum adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline.

Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

Curriculum Adaptation projects may include a replication or State-specific modification of a model educational program, model curriculum, or course module developed with SJI funds by any other State or any national organization; an adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or an adaptation of a curriculum for use as part of a State judicial conference or State training program for judges and other court personnel.

Curriculum Adaptation grants will be awarded on the basis of criteria including: the need for outside funding; the certainty of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. The Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter and geographic diversity in making implementation awards.

In lieu of concept papers and formal applications, applicants for grants may submit, at any time, a detailed letter, with three photocopies. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

- *Project Description.* What is the model curriculum or training program to be tested? Who developed it? How will it complement existing education and training programs? Who will the participants be and how will they be recruited? From where are they (e.g., from across the State, from a single local jurisdiction)? How many participants are anticipated and what limits, if any, will be placed on the number of participants? What are the proposed dates for the beginning and ending of the grant period?
- *Need for funding.* Why is this particular education program needed at the present time? Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Certainty of effective implementation.* What date has been set for presenting the program? What types of modifications in the length, format and content of the model curriculum are anticipated? Who will be responsible for adapting the model curriculum? Will the presentation of the program be evaluated, and if so, how and by whom?
- *Expressions of interest by the judges and/or court personnel.* A demonstration (e.g., by attaching letters of support) that the proposed program has the support of the judges, court managers, and judicial education personnel who are expected to attend.
- *Budget and matching State contribution.* A copy of Form E (see Appendix IV) and a narrative that briefly describes the basis for the proposed costs and the source of the match offered.
- For local courts, a concurrence signed by the Chief Justice. (See form B, appendix V.)

Letters of application may be submitted at any time. However, there should be at least 60 days between the date of submission and the date of the proposed program. It is anticipated that they will be acted upon within 45 days of receipt. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee.

Curriculum Adaptation grants require only two copies of project manuals, handbooks, or packets to be submitted to SJI at the conclusion of the grant, along with the final project report. Applicants preparing instructional material as part of a Curriculum Adaptation grant must provide for including a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo, and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in sections VI and VII or the requirements for renewal applications set forth in section IX.

ii. *National and Regional Education Programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

- training programs or seminars on topics of interest and concern that transcend State lines including the factors that should be considered in deciding child custody and termination of parental rights;
- multi-State or regional training programs sponsored by national organizations, non-profit groups, State courts or universities; and
- specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel, including seminars based on Institute-supported research, and training that addresses issues related to leadership in a court setting, adapting to change, and developing strategies for improving the quality and administration of justice.
- curricula designed for use at the workplace or at home using video, computer-based, or other media.

iii. *Judicial Education Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to

services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

The Institute is currently funding the following judicial education technical assistance projects: the Judicial Education Reference Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and follow-up assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting national symposia that synthesize the information available from Institute-supported projects and other sources on The Implementation and Operation of Drug Courts; and on Reducing Litigation Delay.

(a) *National Symposium on The Implementation and Operation of Drug Courts.* Many jurisdictions around the country have established a specialized "drug court." In at least 12 of these "drug courts," defendants who have been charged with or pleaded guilty to a drug-related offense are ordered to participate in a substance abuse treatment program and are subject to close monitoring. Upon successful completion of the program, the charges are dismissed or the conviction is expunged. Because of the widespread judicial interest in these programs, the Institute seeks to support a symposium which would bring together representatives of the jurisdictions with drug courts, researchers who have studied or evaluated the impact of these courts, representatives of jurisdictions that are interested in establishing a drug court, and other judicial and criminal justice officials, attorneys and scholars to exchange information and recommendations about their effectiveness, implementation, and operation.

Among the topics that should be addressed are variations in the objectives and approaches of the various drug courts; the effectiveness of the programs in curtailing offenders' substance abuse and criminal conduct; the impact of the programs on the courts, the criminal justice system and the substance abuse treatment system; the benefits and drawbacks of operating the program as a diversion rather than a sentencing alternative; the methods used to establish and institutionalize drug courts including how the differing objectives and procedures of the criminal justice and substance abuse treatment systems were reconciled; and methods for evaluating and monitoring the programs.

(b) *National Symposium on Reducing Litigation Delay.* The Institute has supported approximately 20 projects examining methods for improving caseflow in various types and levels of courts, or training judges and court managers on pretrial and trial management. The Institute is interested in supporting a symposium that would bring together litigation delay researchers, technical assistance providers, trial and appellate court judges and managers, State court administrators, attorneys, scholars, and others to synthesize and share the information resulting from the projects funded by the Institute and others; determine the approaches to pretrial, trial, and individual docket management that appear to be most effective and the best methods for implementing them; identify the programs that may be needed to assist courts in further reducing litigation delay; and define and prioritize the topics for further research on improving caseflow management.

v. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $250,000 to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending out-of-State programs within the United States. A scholarship may cover the cost of tuition and transportation between the recipient's home and the site of the educational program up to a maximum total of $1,500 per scholarship. (Transportation expenses include coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Ordinarily, funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, and to full-time professional, State or local court personnel with management responsibilities. Senior judges, part-time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

November 1, 1993, for programs beginning between February 1, 1994 and April 30, 1994;

February 1, 1994, for programs beginning between May 1 and July 31, 1994;

May 2, 1994, for programs beginning between August 1, and October 31, 1994; and

August 1, 1994, for programs beginning between November 1, 1994 and January 31, 1995.

No exceptions or extensions will be granted.

All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence (Form S2, see appendix III). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence (Form S2) may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within one week after the appropriate application mailing deadline (i.e. by November 8, 1993, or February 8, May 9, or August 8, 1994). No application will be reviewed if a signed Concurrence has not been received by the required date.

(d) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 45 days after the relevant application deadline. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of the scholarship support awarded in any quarter to no more than $62,500 (in addition to scholarship funds that may not have been awarded in previous quarters).

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained;
- The State's need for the applicant to attend the specific educational program, as demonstrated by a description of current legal, procedural, administrative or other problems affecting the State's courts, enactment of new legislation, or other indications of need, in addition to submission of a signed Form S2;
- The absence of educational programs in the applicant's State addressing the particular topic;
- How the applicant intends to disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The length of time since the applicant attended a non-mandatory judicial or court management education program;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts; and
- The balance of scholarships among educational programs.

(e) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Court Financing and Use of Resources.* This category includes demonstration, evaluation, education, and research projects designed to contribute to the National Conference on the Funding Crisis in the State Courts scheduled for the Fall of 1994. Among the possible topics that could be addressed under this category are:

- The testing of innovative methods for enhancing interbranch communications;
- Documentation and evaluation of the effects of "privatizing" judicial branch services or responsibilities including the effect on the quality of service and the public's perception of fairness, the financial impact of privatization on the courts, and the management changes required in order to properly oversee contractors;
- Documentation and evaluation of effective techniques for managing court resources, services, and personnel and managing reductions of services and personnel levels in a court environment;
- Examinations of the results, benefits and drawbacks of various methods of enhancing the stability and equity of court funding; and
- Dissemination of information regarding these issues to the court community nationally.

In previous funding cycles, the Institute has supported a National Conference on the Funding Crisis in the Courts and projects that examined judgeship, staffing, and indigent defense services needs; assessed approaches for managing budget cutbacks; and evaluated techniques for improving collection and administration of monetary penalties and restitution in criminal cases.

d. *Planning and Managing the Future of the Courts.* The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

- Development, implementation, institutionalization, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;
- Adaptation, implementation and evaluation of innovative management approaches, such as total quality management, designed to complement, enhance or support use of a long-range strategic planning process. This includes the development and testing of performance standards and other techniques to enable trial and appellate court officials to conduct user evaluations of the quality of court services and to measure public, internal and supplier satisfaction as a means to improve court performance.
- Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation or institutionalization of the planning process and/or related innovative management approaches.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1994. The Institute also has supported planning, futures, and innovative management projects

including: national and Statewide "future and the courts" conferences and training; development of curricula, guidebooks and a video on visioning, and a long-range trial planning guide for trial courts; the provision of technical assistance to courts conducting futures and long-range planning activities; a test of the feasibility of implementing the Trial Court Performance Standards in four States; the development of Appellate Court Performance Standards; and the application of total quality management principles to court operations.

e. *Dispute Resolution and the Courts.* This category includes research, evaluation, demonstration, technical assistance, and education projects addressing the findings and recommendations developed at the National Symposium on Court-Connected Dispute Resolution Research, to be conducted in Orlando in October, 1993. A summary of the recommendations and findings from the conference will be made available by January, 1994. Concept papers proposing addressing these issues must be mailed by March 15, 1994. They will be considered by the Institute's Board of Directors at its meeting on May 12–14, 1994.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Board is particularly interested in the evaluation of optical imaging as a tool for transferring information; the effective use of management information systems to monitor, assess, and predict evolving court needs; and training programs to prepare staff for technological change. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g.: interactive computerized information systems to assist pro se litigants; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; an automated appellate court bulletin board; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges;

Demonstration and evaluation of records technology, including: the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; testing of a document management system for small courts that uses imaging technology, and of automated telephone docketing for circuit-riding judges; evaluation of the use of automated teller machines for paying jurors; and assessment of a combined use of court recording technologies; and

Court technology assistance services, e.g.: circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; and an assessment of programs that allow public access to electronically stored court information.

Grants also provided support for national court technology conferences; preparation of guidelines on privacy and public access to electronic court information; the testing of a computerized citizen intake and referral service; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

g. *Reduction of Litigation Expense and Delay.* This category includes projects to adapt, implement, and evaluate methods developed through research and demonstration projects supported by the Institute and other funders for fairly and effectively managing dockets and reducing the time from the filing of a case to its final disposition (including the pretrial, adjudicatory, post-trial, and appellate stages of the litigation process) and the reduction of the cost and complexity of litigation. The Board is particularly interested in projects that test techniques for improving the coordination between the courts and social service and treatment agencies in order to accelerate and improve dispositions in juvenile, mental health, drug possession, and other cases. This category does not include operational support for mediation, arbitration or other dispute resolution programs. (See also section II.B.2.b.iv.(b) regarding the National Symposium on Reducing Litigation Delay.)

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects demonstrating the use of differentiated case management in trial and appellate courts, and examining the impact of innovative procedures for screening civil cases, handling medical malpractice cases, and expediting appellate decisions.

The Institute has also supported development of a case management review process; studies of case processing in civil and domestic relations cases; the extent of case processing problems caused by discovery; methods for effectively managing motions practice in civil cases; examination of the feasibility of collecting billing information from attorneys in order to better assess the impact of new procedures on litigant costs; and assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *Substance Abuse.* This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; the

planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to manage their overall caseloads fairly and efficiently.

The Board of Directors is particularly interested in funding innovative projects which establish coordinated efforts between local courts and treatment providers; enhance inter-branch communication regarding the effective disposition of cases involving substance abuse; and evaluate the effectiveness of various methods for treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively. The Institute will not fund projects focused on developing additional assessment tools for substance abusers, or providing support for basic court or treatment services. (See also section II.B.2.b.iv.a. regarding the National Symposium on the Implementation and Operation of Drug Courts.)

In previous funding cycles, the Institute has sponsored a National Conference on Substance Abuse and the Courts, and State efforts to implement the plans developed at that Conference. It has also supported projects to evaluate the drug court procedures initiated by the Dade County, Florida, Pulaski County, Arkansas, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance (BJA) also are supporting two technical assistance projects: one by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute and the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT) have entered into inter-agency agreement to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. *Facilitating the Appropriate Use of Intermediate Sanctions.* Since FY 1989, the Institute has supported a joint program with the National Institute of Corrections (NIC) to facilitate the purposeful and effective use of intermediate sanctions by (1) helping State and local jurisdictions analyze their current sanctioning purposes and practices and (2) encouraging the leadership and active participation of the judiciary in guiding the development and use of a meaningful array of sanctions. "Intermediate sanctions" refers to a range of penalties and programs between unsupervised probation and total confinement for felony offenders who do not pose a significant risk to public safety (e.g., fines, restitution, community service, house arrest, day-reporting centers, and intensive-supervised probation).

As part of the continuation of the joint program, the Board is interested in supporting a comprehensive project that consists of:

- Presentation of a national video conference for teams of judges and criminal justice officials on how to effectively develop and implement intermediate sanctions;
- Production of videotapes for use in local or State judicial training programs modeled after the video conference to generate the support and participation of key decision-makers and practitioners;
- Presentation of a two-day regional or single-State training program for teams of judges and criminal justice officials; and
- Development of a specialized training program for judges for inclusion in annual judicial conferences or other State continuing judicial education programs.

These educational programs and materials should be designed to offer practical information to participants to enhance their understanding of the principles underlying the effective use of a range of sanctions, and create the environment for a collaborative working relationship among the judicial and executive branch officials responsible for their effective implementation. The teams attending these programs should include, at a minimum, the presiding judge of the general jurisdiction court or the criminal division of that court, the community corrections director or chief probation officer, and the prosecutor. Teams should also include other key decisionmakers such as the public defender, State or local legislators, the chief law enforcement officer, and members of the community.

Collaborative concept papers from two or more organizations may be submitted. Applicants may wish to refer to "The Intermediate Sanctions Handbook: Experiences and Tools for Policy-Makers," available through the NIC Information Center, 1860 Industrial Circle, Suite A, Longmont, Colorado 80501.

j. *Assessing the Impact of Health Care-Related Issues on the State Courts.* This category includes research, demonstration, education, and evaluation projects on issues related to the growing impact of health care related issues on the State courts. Among the issues that may be addressed are:

- The use and effectiveness of innovative remedies in long-term environmental and toxic substance exposure cases such as medical surveillance orders;
- The impact on the State courts of proposed or enacted changes in the nation's health care system;
- The potential impact on the State Courts of the U.S. Supreme Court's decision in *Daubert* v. *Merrill Dow Pharmaceuticals*, governing the use of scientific evidence under the Federal Rules of Evidence;
- The implications for the courts of advances in the application of biotechnology to health care;
- The impact on State courts of the judicial review of administrative decisions made under Medicaid and similar State-authorized health care programs, and decisions made by State medical review boards; and
- The basis for determining what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; what constitutes extraordinary rather than routine medical services in disputes over the extent of health insurance coverage; and the legal and ethical implications involved in litigation over organ transplants.

In previous funding cycles, the Institute has supported projects to: develop guidelines for judges in cases regarding the withdrawal of life-

sustaining treatment; prepare benchbooks, handbooks, videotapes and training materials on guardianship, the Americans with Disabilities Act and AIDS; and conduct a series of health science-law workshops for judges and judicial educators.

k. *Improving the Use of Juries.* This category includes innovative research, demonstration, evaluation, and education projects to assist courts to improve juror comprehension, the structure of jury decisionmaking, public understanding of jury decisions, and attitudes toward jury service. Among the topics that could be addressed are:

i. Demonstrations and evaluations of innovative approaches for assuring juror safety both during and following jury service, and for reducing the emotional effects on jurors of sensational trials or cases involving particularly traumatic events.

ii. Assessments of the effect on outcome, deliberation time, and juror satisfaction of innovative procedures including:

- The use of "plain English" preliminary and final instructions;
- Permitting juries, during their deliberations, to use or have on-line access to videotaped testimony, computerized transcripts, copies or videotapes of the instructions, any computer simulations used in the trial, and other similar materials;
- Permitting jurors to discuss the case during trial;
- Permitting attorneys to present brief, periodic "mini-summaries" or explanations of their case; and
- Using structured verdict forms or special verdicts.

iii. Studies exploring whether juries limited to individuals with certain educational or professional backgrounds are better able to understand and dispense justice in litigation involving complex subject matter than randomly selected juries, or judges.

Proposals for research submitted under this category should demonstrate the direct applicability of the results to court practices and procedures.

In previous funding cycles, the Institute has supported a manual for implementing innovations in jury selection, use, and management; technical assistance and training to facilitate implementation of the Standards on Jury Management; an investigation of the impact of juror notetaking and question asking; an examination of the relationship of juror fees, terms of service, and excuses from juror service; and development of a guide for making juries accessible to persons with disabilities.

l. *Family Violence and the Courts.* This category includes:

i. State and local court projects to implement the action plans and strategies developed by the teams that participated in the Institute-supported National Conference on Family Violence and the Courts to be held in San Francisco in March, 1993, and projects designed to assist teams in implementing their plans. A special accelerated cycle has been established for considering such projects.

In order to be considered during this special cycle, concept papers proposing implementation projects must be mailed by October 8, 1993. They will be considered by the Institute's Board of Directors at its meeting in November, 1993. Applications based on those concept papers will be considered by the Board at its meeting in March, 1994. The Institute also will accept and consider concept papers proposing implementation projects during its regular funding cycle. (See section VI.D.)

ii. Projects to collect information on the admissibility, quality, availability, and cost of expert testimony offered on behalf of battered women on trial for killing or assaulting their alleged abusers, and the development and testing of training materials to assist:

- Battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use and assess such expert testimony in appropriate cases, particularly cases involving indigent women; and
- Judges, court staff, and criminal justice officials in understanding such testimony and assuring the fair adjudication of such cases.

iii. Projects to identify appropriate and effective approaches for courts to adjudicate child custody litigation involving domestic violence, including:

- Research describing and analyzing the extent and nature of State court decisions relating to child custody litigation involving domestic violence;
- The development, testing, and delivery of training to assist judges and court staff in understanding and fairly adjudicating child custody cases involving domestic violence; and
- Development and testing of approaches to assist judges in determining and addressing the service needs of children exposed to domestic violence, and the design and presentation of training on the short- and long-term effects on children of exposure to domestic violence and the methods for mitigating those effects when issuing protection, custody, visitation or other orders.

iv. Projects examining the effects and appropriate use, if any, of mediation in dissolution, custody, visitation and other cases involving family violence.

v. Projects addressing the issues specified in section 512 of the pending Violence Against Women Act such as training on the nature, incidence and impact of sexual assault and domestic violence; the application of rape shield laws; the use of expert witnesses in sexual assault cases; and the need for and appropriate use of orders of protection in domestic violence cases.

In previous funding cycles, the Institute supported a national conference on family violence and the courts; a national and a State symposium on courts, children and the family; a national symposium on enhancing coordination of cases involving the same family that are being heard in different courts; and the development and testing of curricula to enhance judges' understanding of the dynamics of family violence and guide them in adjudicating family violence cases and custody cases in which spousal abuse is involved. In addition, the Institute has supported an evaluation of the effectiveness of court-ordered treatment for family violence offenders; a demonstration of ways to improve court processing of injunctions for protection and a study of ways to improve the effectiveness of civil protection orders for family violence victims; studies of the appropriate use of mediation in child abuse cases and in divorce, custody, and visitation cases involving family violence; development of a video and other materials for parties and children awaiting a court hearing in domestic relations cases involving family violence; an examination of state-of-the-art court practices for handling family violence cases and of ways to improve access to rural courts for victims of family violence; a benchbook for judges on child abuse and neglect cases stemming from parental substance abuse; curricula to fairly adjudicate child abuse and neglect cases; an examination of the effectiveness of probation as a sanction for child sexual abuse offenders; and the development of guidelines for courts in handling elder abuse cases.

m. *The Relationship Between State and Federal Courts.* This category includes education, research, demonstration, and evaluation projects designed to build upon the insights and information gained at the Institute-supported National Conference on State-Federal Judicial Relationships held in Orlando in April 1992.

i. Among the topics that could be addressed in education projects are the

development and testing of curricula and other educational materials to:

• Enhance operation of State-Federal Judicial Councils;

• Assist judges and court staff in drawing the attention of the public and the media to the needs of the courts within the bounds of the applicable codes of conduct;

• Illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and

• Conduct regional conferences replicating the National Conference.

ii. Among the topics that could be addressed in other types of projects are examination of the impact of varying Federal prosecution policies on the State courts, and the development and testing of new approaches to:

• Coordinate related State and Federal criminal cases;

• Coordinate cases that may be brought under the pending Violence Against Women Act;

• Coordinate bankruptcy cases with State litigation involving the individual or entity in bankruptcy including improved notice, certification and communication procedures and practices;

• Exchange information and coordinating calendars among State and Federal courts;

• Handle capital habeas corpus cases fairly and efficiently;

• Share jury pools, alternative dispute resolution programs and court services; and

• Facilitate certification of cases from Federal to State courts and explore the implications of certification of cases from State to Federal courts.

In previous funding cycles, the Institute has supported a national and regional conferences on State-Federal judicial relationships and the Chief Justices' Special Committee of State Judges on Asbestos Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining methods of State and Federal court cooperation; procedures for facilitating certification of questions of law; the management of mass tort litigation in State and Federal courts; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal cases; the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions, and a seminar examining the implications of the "Federalization" of crime.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

a. *Description of the Program.* The Board will set aside up to $600,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute-supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. *Application Procedures.* Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. *Description of the Program.* The Board will set aside up to $600,000 of Fiscal Year 1994 funds (in addition to any technical assistance funds remaining from Fiscal Year 1993) to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $150,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program or facility in another jurisdiction that the applicant court is interested in replicating, or both.

The technical assistance must be completed within 12 months after the start date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount. Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute three copies of a final report that explains how it intends to act on the consultant's recommendations as well as three copies of the consultant's written report.

b. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, and geographic diversity in awarding Technical Assistance grants.

c. *Application Procedures.* In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. *Need for Funding.* What is the critical need facing the court? How will

the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. *Project Description.* What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by November 4, 1993; February 17, 1994; April 28, 1994; and July 14, 1994).

iii. *Likelihood of implementation.* What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

iv. *Budget and matching State contribution.* A completed Form E, "Preliminary Budget" (see appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. *Support for the project from the State supreme court or its designated agency or council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see appendix V) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1, 1993, and January 15, 1994, will be notified of the Board's decision by March 31, 1994; those submitting letters between January 16, and March 15, 1994, will be notified by May 31, 1994. Notification of the Board's decisions concerning letters received between March 16 and June 15, 1994, will be made by August 31, 1994; and applicants submitting letters between June 16 and September 30, 1994, will be notified by November 30, 1994. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in section II.B.2.b.iii.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantor Agency

The State Justice Institute.

E. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

F. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

G. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Institute Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, nor time of participants attending an education program.

H. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

I. On-Going Support Grant

A grant of up to 36 months to support a project that is national in scope and

that provides the State courts with services, programs or products for which there is a continuing important need.

J. Package Grant

A single grant that supports two or more closely related projects which logically should be viewed as a whole or would require substantial duplication of effort if administered separately. Closely related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

K. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

L. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

M. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; and computer software.

IV. Eligibility For Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Finally, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. New grants (See sections VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package Grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical Assistance grants (See section II.C.2.).
6. Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

C. Maximum Size of Awards

1. Except as specified below, concept papers and applications for new projects other than national conferences, and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000, except as provided in paragraph V.C.3. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. An application for a package grant may request funding in an amount up to a total of $750,000 per year.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects," or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

a. *Concept Papers Proposing a Single Project.* The program narrative of a concept paper describing a single project should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used. The narrative should describe:

i. *Why this project is needed and how it will benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed sites(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

ii. *What will be done if a grant is awarded?* A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows.

iii. *How the effects and quality of the project will be determined?* A summary description of how the project will be evaluated, including the evaluation criteria.

iv. *How others will find out about the project and be able to use the results?* A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* The program narrative of a concept paper requesting a package grant (see definition in section III.J.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. *Concept Papers Proposing a Single Project.* A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in Appendix IV of this Guideline.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each project budget must be identified by the title that corresponds to the narrative description of the project in the program narrative and a letter of the alphabet (i.e. A, B, C). Each of these budgets must include the estimates and information specified on Form E included in Appendix IV of this Guideline.

c. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000.* Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight-page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than February 1.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2.a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under

section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1994 must be sent by first class or overnight mail or by courier no later than December 1, 1993, except for concept papers proposing to implement an action plan developed during the National Conference on Family Violence and the Courts which must be sent by October 8, 1993 (see Special Interest category (l), and concept papers proposing projects that follow-up on the National Symposium on Court Connected Dispute Resolution Research which must be sent by March 15, 1994 (see Special Interest category e). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. If support letters are sent under separate cover, they must be received no later than February 1, 1994 in order to ensure that there is sufficient time to bring them to the Board's attention.

The Board will meet on November 18–21, 1993 to review the concept papers and invite applications to implement an action plan developed during the National Conference on Family Violence and the Courts. It will meet on March 3–5, 1994, to review concept papers and invite applications on other topics, and will meet on May 12–14, 1994, to consider concept papers to follow-up on the National Symposium on Court Connected Dispute Resolution Research.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been

authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spread-sheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas to be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. *For research and evaluation projects,* the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. *For education and training projects,* the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. *For demonstration projects,* the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. *For technical assistance projects,* the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package. Each project must be identified by a separate letter of the alphabet (i.e., A, B, C) and a descriptive title.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package with the same project title and alphabetic identifier describing the project in the program narrative, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e. whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicant should schedule all product preparation and distribution activities within the project period. *Applicants also should provide for the preparation of a one-page abstract summarizing products resulting from a project for inclusion on the Institute's electronic bulletin board.*

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community

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nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproducion. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that suport was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix II). To facilitate their use, all videotaped products should be distributed in VHS format. For all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the summary or a brief abstract in ASCII must be submitted.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a non-judicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application, or they may be sent under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than October 21, 1993, February 1, 1994, April 14, 1994, June 30, 1994, or August 25, 1994, respectively).

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component, with the same alphabetic identifier and project title used to describe each component project in the program narrative. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photo-copies of the application package must be sent by first class or overnight mail, or by courier no later than May 18, 1994. A postmark or courier receipt will constitute evidence of the submission date. Please mark Application on all application package envelopes and send to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. If support letters are sent under separate cover, they must be received no later than four weeks before the meeting of the Board of Directors at which the application will be considered (i.e. no later than October 21, 1993, February 1, 1994, April 14, 1994, June 30, 1994, or August 25, 1994, respectively) in order to ensure that there is sufficient time to bring them to the Board's attention.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;
b. The appropriateness of the proposed evaluation design;
c. The qualifications of the project's staff;
d. The applicant's management plan and organizational capabilities;
e. The reasonableness of the proposed budget;
f. The demonstration of need for the project;
g. The products and benefits resulting from the project;
h. The demonstration of cooperation and support of other agencies that may be affected by the project;
i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and
j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than 25% of available FY 1994 grant funds for renewal grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C. 1 and 3, and V.D. 1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* A clear, concise statement of what the continuation project is intended to accomplish.

b. *Need for Continuation.* An explanation of why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

c. *Report of Current Project Activities.* A discussion of the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* The key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute.

e. *Tasks, Methods, Staff and Grantee Capability.* A full description of any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* A detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* An indication of why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.—VIII.E.

B. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

An application for ongoing support of a package grant should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why. An application for ongoing support of a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* Describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

An application for ongoing support of a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period. An application for ongoing support of a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and timeline that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an ongoing support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e., A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for an ongoing support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an ongoing support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). Appendix I to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up

to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see section III.G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any

measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

M. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual who purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute.

Recipients also shall display the following disclaimer on all grant products:

"This (document, film, videotape, etc.) was developed under a (grant, cooperative agreement, contract) from the State Justice Institute. The points of view expressed are those of the (author(s), filmmaker(s), etc.) and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval. These drafts shall be submitted sufficiently before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute.

S. Distribution of Grant Products to State Libraries

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in appendix II).

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

V. Charges for Grant-Related Products/ Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Applicants should disclose the intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. See section III.G. and XI.F. for requirements regarding project-related income.

W. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

X. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J.).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. Income From the Sale of Grant Products

When grant funds fully cover the costs of producing and disseminating a limited number of copies of a product, the grantee may, with the written approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs. These costs must be reported on the quarterly financial status reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute

in writing once a decision to sell products has been made. The grantee must request approval to recover its product reproduction and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant may be submitted at the same time, but must be calculated separately by component project. The alphabetic project identifier (A, B, C, etc.) should be appended to the grant number in Block 5 of the Request for Advance or Reimbursement. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports, the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or ongoing support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package and separate reports for each project within the package. On the separate reports for the component projects, the alphabetic project identifier (A, B, C, etc.) must be appended to the grant number in Block 5 of the Financial Status Report.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, Cost Principles for State and Local Governments; A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and A–122, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities,

depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of OMB Circular A–102. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A–110.

2. Property Management Standards

The property management standards as prescribed in Attachment N of OMB Circulars A–102 and A–110 shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within 30 days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1. c. and d. above have been satisfied.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving

Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial Status Report*. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report*. This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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David I. Tevelin,

Executive Director.

Appendix I

List of State Contacts Regarding Administration of Institute Grants To State And Local Courts

Mr. Oliver Gilmore, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547
Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, suite 411, Phoenix, Arizona 85007–3330, (602) 542–9301
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295
William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585
Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–6210
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, D.C. 20001, (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., suite 500, Atlanta, Georgia 30334, (404) 656–5171
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920 011, (671) 472–8961 through 8956
Clyde W. Namuo, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246
Robert E. Davison, Director, Administrative Office of the Courts, 840 S. Spring Street, Springfield, Illinois 62704, (312) 793–3250
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, room 323, Indianapolis, Indiana 46204, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612. (923) 296–4873
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601. (502) 564–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887. (504) 568–5747
James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112. (207) 879–4792
Ms. Deborah A. Unitus, Assistant State Court Administrator, Administrative Office of the Courts, Rowe Boulevard and Taylor Avenue, Annapolis, Maryland 21401. (301) 974–2141
Honorable John E. Fenton, Jr., Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108. (617) 725–8787
Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909. (517) 373–0131
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155. (617) 296–2474
Honorable Leslie Johnson, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677. (601) 232–5955
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109. (314) 751–3585
Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, room 315, 215 North Sanders, Helena, Montana 59620–3001. (406) 444–2621

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, room 1220, Lincoln, Nebraska 68509. (404) 471–2643

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710. (702) 885–5076

Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301. (603) 271–2419

Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625. (609) 984–0275

Honorable E. Leo Milonas, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, New York 10007. (212) 587–2004

Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, room 25, Santa Fe, New Mexico 87503. (505) 827–4800

Mr. James C. Drennan, Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602. (929) 733–7106/ 7107

Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505. (701) 224–4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419. (614) 466–2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105. (405) 521–2450

Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310. (503) 378–6046

Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055. (717) 795–2000

Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903. (401) 277–3263 or 277–3272

Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250. (803) 758–2961

Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501. (605) 773–4885

Mr. Charles E. Ferrell, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, room 422, Nashville, Tennessee 37219. (615) 741–2687

Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711 (512) 463–1625

Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102. (801) 533–6371

Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602. (802) 828–3281

Ms. Viola E. Smith, Clerk of the Court/ Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801. (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219. (804) 786–6455

Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504. (206) 753–5780

Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305. (304) 348–0145

Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688. (608) 266–6828

Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002. (307) 777–7581

Appendix II

SJI Libraries; Designated Sites and Contacts

(August 1993)

State: Alabama
Location: Supreme Court Library
Contact: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130. (205) 242–4347

State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501. (907) 264–0583

State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007. (602) 542–4035

State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078. (501) 376–6655

State: California
Location: Administrative Office of the Courts
Contact: Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107. (415) 396–9100

State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203. (303) 837–3720

State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106. (203) 566–4301

State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801. (302) 571–2480

State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue NW., Washington, DC 20001. (202) 879–1700

State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900. (904) 488–8621

State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., suite 550, Atlanta, Georgia 30334. (404) 656–5171

State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804. (808) 548–4605

State: Idaho
Location: AOC Judicial Education Library/State Law Library in Boise
Contact: Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720. (208) 334–3316

State: Illinois
Location: Supreme Court Library
Contact: Ms. Brenda I. Larison, Supreme Court Library, Supreme Court Building, Springfield, Illinois 62701–1791. (217) 782–2424

State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204. (317) 232–2557

State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319. (515) 281–8279

State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614. (913) 296–3257

State: Kentucky
Location: State Law Library

Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601. (502) 564–4848

State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112. (504) 568–5705

State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333. (207) 289–1600

State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401. (301) 974–3395

State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141. (617) 494–4148

State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909. (517) 334–7804

State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155. (612) 297–2084

State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211. (601) 982–6590

State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620. (406) 444–3660

State: National
Location: JERITT Project/ Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824.

State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910. (402) 471–3730

State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550. (702) 784–6747

State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625. (609) 292–6230

State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504. (505) 827–4850

State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202. (315) 435–2063

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601. (919) 733–3425

State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530. (701) 224–2229

State: Northern Mariana Islands
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950. (670) 234–5275

State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419. (614) 466–2044

State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105. (405) 521–2450

State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310. (503) 378–6046

State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105. (717) 787–4440

State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919.

State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903. (401) 277–3275

State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate, Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, South Carolina 29208. (803) 777–5944

State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Weir, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609. (615) 741–2016

State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711. (512) 463–1722

State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804.

State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State Judicial, Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102. (801) 533–6371

State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602. (802) 828–3278

State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219. (804) 786–6455

State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law, Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502. (206) 357–2146

State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305. (304) 346–0145

State: Wisconsin

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Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707. (608) 266–1424

State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002. (307) 777–7509

American Judicature Society
Contact: Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602. (312) 558–6900

National Center for State Courts
Contact: Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798. (804) 253–2000

Appendix III—Judicial Educatiion Scholarship Application Forms

(Form S1)

State Justice Institute Scholarship Application

Applicant Information:
1. Applicant Name: _____
Last, First, M
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box
_____
City, State, Zip Code
5. Telephone No. _____
6. Congressional District: _____
Program Information: _____
7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____
Estimated Expenses: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)
Tuition: $ _____
Amount Requested: $ _____
Transportation: $ _____
(airfare, trainfare or if you plan to drive, the approximate distance and mileage rate)

(This application does not serve as a registration for the course. Please contact the education provider.)

Additional Information: Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)

1. How will your taking this course benefit either your court or the State's courts generally?
2. Is there any education or training currently available through your State on this topic?
3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.
4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
5. How long have you served as a judge or court manager? How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
6. How long has it been since you attended a non-mandatory continuing professional education program?

Statement of Applicant's Commitment

If scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature

Date

Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

(Form S2)

State Justice Institute Scholarship Application

CONCURRENCE

I, _____
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the program entitled _____
prepared by _____
Name of Applicant
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

Signature

Name

Title

Date

Appendix IV

Form E

State Justice Institute Preliminary Budget

Category	SJI funds	Match [1]
Personnel	$	$
Fringe Benefits	$	$
Consultant/Contractual	$	$
Travel	$	$
Equipment	$	$
Supplies	$	$
Telephone	$	$
Postage	$	$
Printing/Photocopying	$	$
Audit	$	$
Other	$	$
Indirect Costs (%)	$	$
Total	$	$
Cash match		$
In-kind match		$
Project total	$	

[1] Cash match should be identified with an *.

Financial assistance has been or will be sought for this project from the following other sources:

Appendix V

Form B (Instructions on Reverse Side)

State Justice Institute

Certificate of State Approval

The _____(Name of State Supreme Court or Designated Agency or Council) has reviewed the application entitled _____prepared by _____(Name of Applicant), approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.
[ ] designates _____(Name of Designated Trial or Appellate Court or Agency).

Date

Signature

Name

Title

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

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Part IV

Federal Reserve System

12 CFR Part 219

Department of the Treasury

31 CFR Part 103

Transmittal of Funds by Financial Institutions; Proposed Rules

FEDERAL RESERVE SYSTEM

[Docket No. R-0807]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions

AGENCIES: Department of the Treasury; Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is published jointly by the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board). It proposes enhanced recordkeeping requirements relating to certain wire transfers (which include funds transfers and transmittals of funds) by financial institutions. Each domestic financial institution involved in a wire transfer will have to collect and retain certain information. The amount and type of information collected and retained will depend upon the nature of the financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution. This notice also proposes to amend the existing regulation that permits Treasury to require reports of certain transactions with targeted foreign financial institutions to permit Treasury to require reports of all wire transfers by financial institutions. A companion Notice of Proposed Rulemaking (Companion Notice), also published elsewhere in this issue of the **Federal Register** by Treasury, proposes to require a financial institution that sends a transmittal order to a receiving financial institution to include certain information in the order. The recordkeeping requirements applicable to international wire transfers are required by statute to be effective before January 1, 1994. For ease of implementation, Treasury and the Board propose to make the proposed recordkeeping requirements (applicable to both domestic and international wire transfers) effective on December 31, 1993.

DATES: Comments are due on or before October 4, 1993.

ADDRESSES: Each comment should be sent separately to both the Treasury and the Board at the following addresses:

Treasury: Mr. Peter Djinis, Director, Office of Financial Enforcement, Department of the Treasury, room 5000 Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220;

Board: Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles, Secretary, Board of Governors of the Federal Reserve System, should refer to Docket No. R-0807. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW.

Submission of Comments: All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to the Board and/or Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. Neither the Board nor Treasury will recognize as confidential any materials or comments, including the name of any person submitting comments. Any material not intended to be disclosed to the public should not be included in the comments.

Inspection of Comments: Comments may be inspected at the Federal Reserve Board, 20th and Constitution Avenue, NW., Washington, DC, in room B-1122 between 9 a.m. and 5 p.m., as provided in part 261 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8. Comments may also be inspected at the Department of Treasury between 10 a.m. and 4 p.m. in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue, NW., Washington, DC. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library at (202) 622-0990.

FOR FURTHER INFORMATION CONTACT:

Treasury: A. Carlos Correa, Assistant Director, Rules and Regulations Section, Office of Financial Enforcement, Department of the Treasury, (202) 622-0400.

Board: Gayle Brett, Manager, Fedwire, Division of Reserve Bank Operations and Payment Systems (202) 452-2934; Oliver Ireland, Associate General Counsel (202) 452-3625, or Elaine M. Boutilier, Senior Attorney, Legal Division, (202) 452-2418, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: The statute generally referred to as the Bank Secrecy Act (Pub. L. 91-508, codified at 12 U.S.C. 1829b and 1951-1959, and 31 U.S.C. 5311-5328) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. The primary purpose of the Bank Secrecy Act is to identify the source, volume and movement of funds into and out of the country and through domestic financial institutions. The Bank Secrecy Act was amended last year in the Annunzio-Wylie Anti-Money Laundering Act of 1992, title XV of the Housing and Community Development Act of 1992, Public Law 102-550 (referred to hereafter as the 1992 Amendment) to specifically authorize the Treasury and the Board jointly to prescribe regulations to require maintenance of records regarding domestic and international funds transfers.

To enable the Board to participate in the joint promulgation of the funds transfer regulations as required under the unique statutory scheme established by the 1992 Amendment, title 31 is proposed to be amended with the concurrence of the Board. In conjunction with this action, the Board also publishes elsewhere in this issue of the **Federal Register** a proposed rule document that cross-references these regulations in title 12 of the CFR.

The 1992 Amendment authorizes the Board and the Treasury to promulgate recordkeeping requirements for domestic wire transfers by insured depository institutions whenever the agencies determine that such records have a high degree of usefulness in criminal tax or regulatory investigations or proceedings. In addition, the 1992 Amendment requires the Treasury and the Board to issue final regulations with regard to international transactions to be effective before January 1, 1994. The recordkeeping requirements for international transactions will apply to financial institutions as defined in 31 CFR 103.11(i), which includes insured depository institutions, brokers and dealers in securities, as well as businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments (collectively referred to as check cashing and money transmitting businesses). In prescribing these required regulations, the Board and the Treasury must take into consideration the usefulness of these records in criminal, tax, or regulatory

investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. The Board and the Treasury have decided that it would be simpler to issue proposed regulations for both domestic and international funds transfers simultaneously, because the recordkeeping requirements will be the same.

Additionally, issuing proposed regulations for both domestic and international funds transfers at this time coincides with a separate but related Treasury initiative. As noted in testimony before the House Banking Committee on May 25, 1993, by Assistant Secretary Noble (Enforcement), the Department of the Treasury would be, and is now, conducting a comprehensive examination of its anti-money laundering programs, including the Bank Secrecy Act regulations. Comments received in response to this Notice and the Companion Notice will be carefully considered as part of this comprehensive examination.

The number of wire transfers completed daily is substantial. For example, the daily average number of wire transfers made over Fedwire in 1992 was 270,000, with average aggregate daily dollar amount of $800 billion and a peak aggregate daily dollar amount of over $1 trillion.

Money laundering is a vital component of drug trafficking and other criminal activity throughout the world, and federal law enforcement agencies believe that a significant amount of the money laundered involves wire transfers. Proceeds from illegal activities may be processed through money laundering schemes involving domestic and/or international payments by wire transfers. Such activity has been documented in several recent investigations conducted by Treasury and other federal law enforcement agencies. The Board and the Treasury believe that the records to be retained under this proposed rulemaking will be particularly useful in tracing the proceeds of illegal activities and will assist in the identification and prosecution of individuals involved in such illegal activities. Accordingly, Treasury and the Board believe that maintenance of these records will have a high degree of usefulness in criminal, tax, or regulatory investigations of money laundering operations. Further, the Treasury and the Board believe that these recordkeeping requirements will not have a significant adverse impact on the cost or the efficiency of the payments system.

In addition to retention of records covered by the proposed rule, federal law enforcement agencies have indicated that having certain customer identity information (*i.e.*, the originator's and beneficiary's name, address and account number) included in the payment order has a high degree of usefulness for law enforcement purposes. This issue is being addressed by the Companion Notice published today by Treasury elsewhere in this issue of the **Federal Register**. As an interim measure, the Federal Financial Institutions Examination Council (FFIEC) has adopted a policy statement encouraging all financial institutions to include, to the extent practical, complete originator and beneficiary information when sending payment orders, including payment orders sent through Fedwire, Clearinghouse Interbank Payment System (CHIPS) and Society for Worldwide Interbank Financial Telecommunications (SWIFT). (See FFIEC Press Release dated March 11, 1993, 58 FR 14400, March 17, 1993.)

Although at present there is insufficient space in the Fedwire format to include complete originator and beneficiary information, the Board encourages users of the Fedwire system to use available optional fields in the Fedwire format to include such information. For example, in a third-party transfer, the originator (ORG=) and beneficiary (BNF=) fields must contain data in order to be accepted by the Fedwire system. While these fields contain enough space to identify the originator and beneficiary by name and account number, sufficient space is generally not available for including address information. If optional fields, such as the "Originator to Beneficiary Information" (OBI=) or "Bank to Bank Information" (BBI=) fields, are not being used for payment-related information, these fields could be used to convey the address information. No specific optional field is recommended for including address information as different optional fields may be available for use in any given wire transfer.

The Federal Reserve System is currently studying possible revisions to the Fedwire format and expects to publish a **Federal Register** notice in the future inviting comment on proposed requirements that specific originator and beneficiary information be included in Fedwire funds transfers.

Regulatory Background

On October 31, 1989, Treasury published an Advance Notice of Proposed Rulemaking to address the use of the international funds transfer system by money launderers. 54 FR 45769. The Advance Notice suggested seven regulatory initiatives, including enhanced recordkeeping, routine reporting of funds transfers and transmittals, and enhanced identification of suspicious transactions. After review of the comments submitted in response to the Advance Notice, Treasury published a Notice of Proposed Rulemaking on October 15, 1990, setting forth specific proposed amendments to the Bank Secrecy Act regulations, and proposing enhanced record collection and recordkeeping by all financial institutions engaged in domestic and international funds transfers. 55 FR 41696. Treasury received a total of 333 comments on the October 15, 1990, proposal. The vast majority of comments were received from financial institutions, particularly from banks. While most of the commenters generally opposed the proposal, many discussed the specific effects the various proposals would have on their institutions, explained what information concerning funds transfers is currently maintained by their institutions, and presented alternative means of effecting Treasury's objectives of ensuring the availability of necessary information without disrupting the current funds transfer system. All comments received in response to the Advance Notice and the Notice are on file at the Treasury, at the address indicated above, and are available for public inspection during regular business hours.

After enactment of the 1992 Amendment, which includes the Board in the rule making process, Treasury and the Board agreed to revise the proposed rule and jointly-publish a new proposed rule. The Treasury and the Board believe that, in many cases, the information required to be retained by this proposal is already maintained by financial institutions. The Treasury believes that the proposal is responsive to many of the concerns raised in the comments on the 1990 proposal. Moreover, in view of Treasury's comprehensive review of its anti-money laundering programs and formation of its Bank Secrecy Act Advisory Group, it seemed appropriate to renotice this proposal rather than to issue a final rule at this time.

Summary Description of the Revised Proposed Rule

General Overview

The proposed rule is divided into three components: requirements for a bank; requirements for a nonbank

financial institution other than a broker or dealer in securities that has an account for the transmittor/recipient; and requirements for a broker or dealer in securities that has an account for the transmittor/recipient. The recordkeeping requirements for these three types of institutions are generally parallel, but additional collection requirements are proposed for transactions involving persons who do not maintain an account with the bank or other financial institution involved. This distinction is based on the Board's and Treasury's belief that banks and brokers or dealers in securities already retain most of the desired information in their customer records and will not need to gather duplicate information.

The recordkeeping requirements are designed to facilitate tracing of funds through the wire transfer process. At financial institutions that are acting on behalf of an account holder, the required information will usually be included in the payment order and in the customer account records. In such cases retention of the payment order with the customer account records will satisfy the proposed recordkeeping requirements.

Comments on all aspects of the proposed regulation are welcome. The Treasury and the Board specifically request comment on the usefulness of the records covered by the proposed rule for law enforcement purposes and the effects that the proposed rule might have on the cost and efficiency of the payment system.

Definitions

Several new definitions are proposed in section § 103.11. The following new definitions are intended to be identical to the same terms used for banks in Uniform Commercial Code (UCC) Article 4A: "beneficiary", "beneficiary's bank", "intermediary bank", "originator", "originator's bank", "payment order", and "receiving bank". Other definitions referring to transactions by nonbank financial institutions would be added, and these are intended to parallel the equivalent definitions in UCC Article 4A: "intermediary financial institution", "receiving financial institution", "recipient", "recipient's financial institution", "transmittal of funds", "transmittal order", "transmittor", and "transmittor's financial institution". Because "financial institution" is already defined to include "bank", the new terms used for nonbank financial institutions are written to include transactions by banks. For example, the definition of the term "transmittal order" includes a "payment order". Separate definitions specifically for bank transactions have been added for clarity and conformity with the UCC. Other terms, such as "execution date", "payment date" and "sender", have been modified slightly from the UCC Article 4A definition to specifically include transactions by nonbank financial institutions as well as banks.

The proposed definition of the term "funds transfer" differs from the same term in UCC Article 4A in that it excludes all automated clearinghouse (ACH) transfers or funds transfers governed in any part by the Electronic Funds Transfer Act of 1978 (15 U.S.C. 1693, *et seq.*). The term "accept" differs from the definition of "acceptance" in UCC Article 4A. It includes transactions by nonbank financial institutions, and it does not spell out the rights and obligations of the parties to the transaction upon acceptance or rejection of a payment order.

In addition, the words, "For purposes of § 103.29 of this part," that appear in § 103.11(g), have been deleted to allow the term "deposit account" to be used in the amendments to § 103.33.

Retention of Records by Banks

This proposed rule would require banks to retain information on funds transfers that is likely to be in the records of the bank in the case of bank customers who have deposit accounts or loans with the bank, or which can be easily obtained from noncustomers. This information need not be retained alphabetically by name or numerically by account number; but the bank must be able to access the funds transfer records readily by name or account number of the originator or beneficiary, as the case may be, and may do so through reference to some other record maintained by the bank. Existing § 103.38(d) would be applicable to these records, and requires retention for five years from the execution date of the payment/transmittal order.

An originator's bank will be required to retain the following information for a payment order that it accepts: (A) The name and address of the originator; (B) the amount of the funds transfer; (C) the execution date of the payment order; (D) any payment instructions received from the originator; (E) the identity of the beneficiary's bank; and (F) either the name and address or the account number of the beneficiary of the payment order, if such information is received with the payment order. It is expected that an originator's bank accepting a payment order from a customer will have most of the required information either in its account records or in the payment order. (Originator's banks are encouraged to collect from the originator complete information regarding the beneficiary of a payment order.) If the originator does not have a deposit account or loan with the originator's bank, then the originator's bank will be required to verify the originator's name and address before accepting the payment order, and must retain a record of that verified information as well as a record of the originator's social security number, alien identification number, or employer identification number, or note the lack of such a number in the record.

An intermediary bank that accepts a payment order must retain either the original or a duplicate of the payment order.

A beneficiary's bank that accepts a payment order must retain either the original or a duplicate of the payment order. If the beneficiary has a deposit account or loan with the bank, then the bank is expected to have the beneficiary's name and address already in its records in a retrievable form. If the payment order is for a beneficiary that does not have a deposit account or a loan with the bank, then the beneficiary's bank must obtain and retain a record of the beneficiary's name and address, and social security number, alien identification number, or employer identification number, or note the lack of such a number in the record. Furthermore, the beneficiary's bank must verify the beneficiary's name and address whenever it delivers the proceeds of the funds transfer in person to a beneficiary who does not have a deposit account or loan with the bank. If the proceeds are not delivered in person, then a copy of the instrument (*e.g.*, check) used to send the proceeds must be retained.

The following funds transfers are exempt from these recordkeeping requirements:

(i) Funds transfers where both the originator and the beneficiary are domestic banks;

(ii) Funds transfers where both the originator and beneficiary are the same domestic bank or one is the wholly-owned domestic subsidiary of the other;

(iii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same domestic bank; and

(iv) Funds transfers where both the originator and the beneficiary are either a domestic bank, the United States, any state or local government, or a federal, State or local government agency or instrumentality.

Retention of Records by Nonbank Financial Institutions

The proposed record retention requirements for nonbank financial institutions differ depending on whether the nonbank financial institution is a broker or dealer in securities. A special category of requirements is being proposed for a broker or dealer in securities that maintains an account for the transmittor or recipient. Accordingly, no verification requirements are proposed for transmittals of funds by a broker or dealer in securities which makes or receives transmittals of funds for an account holder.

Nonbank Financial Institutions That Are Not Brokers or Dealers

These nonbank financial institutions are more likely than banks or brokers or dealers to send or receive transmittals of funds for persons with whom they have no regular account relationship and therefore, no existing records. Accordingly, these nonbank financial institutions must collect, verify and retain information that may not be in their existing records. The retained information must be retrievable by the name of the transmittor. (These requirements also apply to brokers and dealers in securities that send or receive transmittals of funds on behalf of persons for which they do not maintain an account.)

A transmittor's nonbank financial institution must verify the transmittor's name and address prior to accepting a transmittal order, and it shall maintain a record of that information. In addition, the nonbank financial institution shall obtain and retain:

(A) The transmittor's social security number, alien identification number, or employer identification number; or, if the transmittal of funds is on the nonbank financial institution's own behalf, a statement to that effect;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor with the transmittal order;

(E) The name and address of the recipient of the transmittal of funds; and

(F) Any form completed by the person or the nonbank financial institution relating to the transmittal of funds.

An intermediary nonbank financial institution that accepts a transmittal order shall retain either the original or a duplicate of the transmittal order.

A recipient's nonbank financial institution that accepts a transmittal order shall retain the original or a duplicate of the transmittal order, as well as the name, address, and social security number, alien identification number or employer identification number of the recipient. If the recipient's nonbank financial institution delivers the proceeds of a transmittal of funds in person to the recipient, it shall verify the name and address of the recipient and retain a record of that information. If the recipient's nonbank financial institution sends the proceeds of a transmittal of funds by written instrument (*e.g.*, check, draft), it shall retain a copy of the instrument or the information contained thereon, and the name and address of the person to whom it was sent.

Retention of Records by Brokers and Dealers

These requirements apply only to transmittals of funds that a broker or dealer in securities (which is also a type of nonbank financial institution) sends or receives for a person for which it has an account. The retained records must be readily retrievable by either the name or account number of the broker/dealer's account holder.

A transmittor's broker/dealer must retain the following information for a transmittal order that it accepts:

(A) The name of the transmittor;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor;

(E) The identity of the recipient's financial institution; and

(F) Either the name and address or the account number of the recipient, if received with the transmittal order.

An intermediary broker/dealer must retain either the original or a duplicate of each transmittal order that it accepts.

A recipient's broker/dealer must retain either the original or a duplicate of each transmittal order that it accepts.

The following transactions are exempt from these requirements: Transmittals of funds where both the transmittor and the recipient are each a domestic broker or dealer in securities transmitting on its own behalf; transmittals of funds on their own accounts between a domestic broker or dealer in securities and its bank or the broker dealer's wholly owned subsidiary; transmittals of funds between domestic accounts at the same domestic broker or dealer where both the transmittor and the recipient are the same person; and transmittals of funds between a domestic broker or dealer and a governmental agency.

Executive Order 12291

In response to its October 15, 1990 Notice of Proposed Rulemaking, Treasury received many detailed comments on the projected costs of the proposed rule. Many of the provisions identified in those comments as imposing undue costs or burdens on the financial services community have been either revised, clarified or eliminated. In particular, today's proposed rule would allow many financial institutions to rely upon information systems already in place without diminishing the nature and quality of the information required to be maintained. This modification significantly reduces the resources and effort required of financial institutions to comply with the terms of today's proposed rule. As a result of these significant cost reductions, today's proposed rule is categorized as non-major for purposes of Executive Order 12291. Today's proposal, if adopted as a final rule, will not have an annual effect on the economy of $100 million or more. Nor will it result in a major increase in costs or prices for consumers; individual industries; federal, state, or local government agencies; or geographic regions. It will not have any significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Therefore, a regulatory impact analysis is not required.

Initial Regulatory Flexibility Analysis

As required by 5 U.S.C. 603(b), a "description of the reasons why action by the agency is being considered" and a "succinct statement of the objectives of, and legal basis for, the proposed rule" are found elsewhere in this preamble.

The Board and the Treasury propose that the requirements in this rule be applicable to all financial institutions subject to the Bank Secrecy Act, as implemented, regardless of their size. An exemption for small entities would not be appropriate because it would permit money laundering operations to evade the recordkeeping process by using small financial institutions. This would significantly diminish the usefulness of these records for criminal, tax or regulatory investigations.

The small entities that will be affected by this proposed rule include small banks and many check cashing and money transmitting businesses. In order to minimize the economic impact on small entities, the rule would allow financial institutions that send or

receive transmittal orders for account holders to use existing records to satisfy some of the recordkeeping requirements. The Board and the Treasury do not believe that the proposed rule would impose reporting or recordkeeping burdens on small entities that require specialized professional skills not available to them.

Paperwork Reduction Act

The collection of information contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1505–0063. Comments on the collection of information and the burden estimate should be directed to the Office of Management and Budget, Paperwork Reduction Project (1505–0063), Washington, DC 20503, and to the Treasury and the Board at the addresses noted above.

The collections of information in this proposed regulation are authorized by 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5328. The likely recordkeepers are financial institutions that perform funds transfers.

Estimated number of respondents and/or recordkeepers: 60,000.

Estimated total annual recordkeeping burden: 6.5 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 108.3 hours.

Estimated annual frequency of responses: Upon request.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and Pub. L. 91–508, title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5328).

2. Section 103.11 is amended by redesignating paragraphs (a), (b), (c) through (h), (i) through (k), (l), (m), (n), (o), (p) through (r), and (s) through (u) as paragraphs (b), (c), (f) through (k), (m) through (o), (s), (t), (y), (dd), (ff) through (hh), and (mm) through (oo), respectively; by removing the words "For purposes of § 103.29 of this part, deposit" and adding in their place, "Deposit" in newly designated paragraph (j); and adding new paragraphs (a), (d), (e), (l), (p), (q), (r), (u), (v), (w), (x), (z), (aa), (bb), (cc), (ee), (ii), (jj), (kk), and (ll) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

* * * * *

(d) *Beneficiary.* The person to be paid by the beneficiary's bank.

(e) *Beneficiary's bank.* The bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

* * * * *

(l) *Execution date.* The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

* * * * *

(p) *Funds transfer.* The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Automated clearinghouse transfers or funds transfers governed in any part by the Electronic Funds Transfer Act of 1978 (title XX, Public Law 95–630, 92 Stat. 3728, 15 U.S.C. 1693 *et seq.*) are excluded from this definition.

(q) *Intermediary bank.* A receiving bank other than the originator's bank or the beneficiary's bank.

(r) *Intermediary financial institution.* A receiving financial institution, other than a bank, the transmittor's financial institution or the recipient's financial institution.

* * * * *

(u) *Originator.* The sender of the first payment order in a funds transfer.

(v) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.

(w) *Payment date.* The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(x) *Payment order.* An instruction of a sender, to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

* * * * *

(z) *Receiving bank.* The bank to which the sender's instruction is addressed.

(aa) *Receiving financial institution.* The financial institution to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(bb) *Recipient.* The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary.

(cc) *Recipient's financial institution.* The financial institution identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term

recipient's financial institution includes a beneficiary's bank.

* * * * *

(ee) *Sender.* The person giving the instruction to the receiving bank or receiving financial institution.

* * * * *

(ii) *Transmittal of funds.* A series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmitter's transmittal order. Automated clearinghouse transfers and funds transfers governed in any part by the Electronic Funds Transfer Act of 1978 (title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693 *et. seq.*) are excluded from this definition. The term transmittal of funds includes a funds transfer.

(jj) *Transmittal order.* The term *transmittal order* includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or to cause another financial institution to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(kk) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator.

(ll) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution, or the transmittor if the transmittor is a financial institution. The term transmittor's financial institution includes an originator's bank.

* * * * *

3. Paragraph (b)(2) of § 103.25 is revised to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

* * * * *

(b) * * *

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to § 103.33.

* * * * *

4. Section 103.33 is amended by adding new paragraphs (e), (f) and (g), to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) With respect to funds transfers:

(1)(i) For each payment order that it accepts as an originator's bank, a bank shall retain either the original, a microfilm or other copy, record, or reproduction of the following information relating to the payment order:

(A) The name and address of the originator of the payment order;

(B) The amount of the funds transfer;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) Either the name and address or the account number of the beneficiary of the payment order, if received with the payment order.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original, a microfilm, or other copy, record, or reproduction of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original, a microfilm, or other copy, record, or reproduction of the payment order.

(2)(i) Prior to accepting a payment order from an originator that does not have a deposit account or loan with the bank, an originator's bank shall verify the originator's name and address by examination of a document that contains such information; and, if it accepts the payment order, record and retain a record of that information, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license). In addition to the information required in paragraph (e)(1)(i) of this section, the bank shall obtain and retain a record of the originator's social security number, alien identification number, or employer identification number.

(ii) Verification of the name and address of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of name and address in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a drivers license).

(iii) If the originator does not have a social security number, alien identification number, or employer identification number, the lack of such a number shall be noted in the record.

(3)(i) For each payment order that it accepts as a beneficiary's bank for a beneficiary that does not have a deposit account or loan with that bank, in addition to maintaining the information required in paragraph (e)(1)(iii) of this section, a beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, and social security number, alien identification number, or employer identification number. If the beneficiary does not have a social security number, alien identification number, or employer identification number, the lack of such a number shall be noted in the record.

(ii) If a beneficiary's bank delivers the proceeds of a funds transfer, in person, to a beneficiary that does not have a deposit account or loan account with that bank, a beneficiary's bank shall verify the beneficiary's name and address by examination of a document that contains such information, and retain a record of that information, the type of identification reviewed, and the number of the identification document (*e.g.*, drivers license).

(iii) Verification of the name and address of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a drivers license). If a beneficiary's bank sends the proceeds of a funds transfer in the form of a check or other written instrument to a

beneficiary that does not have a deposit account or loan account with that bank, that bank shall retain a copy of the check or other written instrument, or the information contained thereon, and the name and address of the person to whom it was sent.

(4) The information that an originator's bank must retain under paragraphs (e)(1)(i) and (e)(2)(i) of this section shall be readily retrievable by the originator's bank by reference to either the name or account number of the originator. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3)(i) of this section shall be readily retrievable by the beneficiary's bank by reference to either the name or account number of the beneficiary.

(5) The following funds transfers are not subject to the requirements of this paragraph:

(i) Funds transfers where both the originator and the beneficiary are domestic banks;

(ii) Funds transfers where both the originator and beneficiary are the same domestic bank or one is the wholly-owned domestic subsidiary of the other;

(iii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same domestic bank; and

(iv) Funds transfers where both the originator and the beneficiary are either a domestic bank, the United States, any state or local government, or a Federal, state or local government agency or instrumentality.

(f) With respect to a transmittal of funds:

(1) Prior to accepting a transmittal order from a transmittor, a transmittor's financial institution, other than a bank or a broker or dealer in securities that has an account for the transmittor, shall verify the transmittor's name and address by examination of a document that contains such information; and, if it accepts such transmittal order, record and retain a record of that information, the type of identification reviewed, and the number of the identification document (*e.g.*, drivers license no.). Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a drivers license). In addition, the financial institution shall obtain and retain the original, or a microfilm or other copy, record, or reproduction of the following information relating to the transmittal order:

(i)(A) The transmittor's social security number, alien identification number, or employer identification number, if the transmittor has any such numbers or a notation in the record of the lack thereof; or

(B) If the transmittal of funds is by the financial institution on its own behalf, a statement to that effect;

(ii) The amount of the transmittal order;

(iii) The execution date of the transmittal order;

(iv) Any payment instructions received from the transmittor with the transmittal order;

(v) The name and address of the recipient of the transmittal of funds; and

(vi) Any form completed by the person or the financial institution relating to the transmittal of funds.

(2) For each transmittal order that it accepts as an intermediary financial institution, a financial institution, other than a bank or broker or dealer in securities, shall retain either the original, a microfilm, or other copy, record, or reproduction of the transmittal order.

(3)(i) For each transmittal order that it accepts as a recipient's financial institution, a financial institution, other than a bank or a broker or dealer in securities that has an account for the recipient, shall retain the original or a microfilm, or other copy, record, or reproduction of the transmittal order; and the name, address, and the social security number, alien identification number or employer identification number of the recipient. If the recipient does not have a social security number, alien identification number, or employer identification number, the lack of such a number shall be noted in the record.

(ii) If a recipient's financial institution, other than a bank or broker or dealer in securities that has an account for the recipient, delivers the proceeds of a transmittal of funds in person to the recipient, the financial institution shall verify the name and address of the recipient by examination of a document that contains such information and shall retain a record of that information, the type of identification reviewed, and the number of the identification document (*e.g.*, drivers license). If a recipient's financial institution, other than a bank or a broker or dealer in securities that has an account for the recipient, sends the proceeds of a transmittal of funds to the recipient in the form of a check or other written instrument, the financial institution shall retain a copy of the check or other written instrument, or the information contained thereon, and the name and address of the person to whom it was sent.

(4) The information that a transmittor's financial institution must retain under paragraph (f)(1) of this section shall be readily retrievable by the transmittor's financial institution by reference to the name of the transmittor. The information that a recipient's financial institution must retain under paragraph (f)(3) of this section shall be readily retrievable by the recipient's financial institution by reference to the name of the recipient. This information need not be retained alphabetically by name, but the financial institution must be able to access the transmittal of funds records readily by name of the transmittor or recipient, as the case may be, and may do so through reference to some other record maintained by the financial institution.

(g) With respect to a transmittal of funds:

(1) For each transmittal order that it accepts as a transmittor's financial institution, a broker or dealer in securities that has an account for the transmittor shall retain either the original, a microfilm or other copy, record, or reproduction of the following information relating to the transmittal order:

(i) The name and address of the transmittor of the transmittal order;

(ii) The amount of the transmittal of funds;

(iii) The execution date of the transmittal order;

(iv) Any payment instructions received from the transmittor with the transmittal order;

(v) The identity of the recipient's financial institution; and

(vi) Either the name and address or the account number of the recipient of the transmittal of funds, if received with the transmittal order.

(2) For each transmittal order that it accepts as an intermediary financial institution, a broker or dealer in securities shall retain either the original, a microfilm, or other copy, record, or reproduction of the transmittal order.

(3) For each transmittal order that it accepts as a recipient's financial institution, a broker or dealer in securities that has an account for the recipient shall retain either the original,

a microfilm, or other copy, record, or reproduction of the transmittal order.

(4) The information that a transmittor's financial institution must retain under paragraph (g)(1) of this section shall be readily retrievable by the transmittor's financial institution by reference to either the name or account number of the transmittor. The information that a recipient's financial institution must retain under paragraph (g)(3) of this section shall be readily retrievable by the recipient's financial institution by reference to either the name or account number of the recipient. This information need not be retained alphabetically by name or numerically by account number; but the financial institution must be able to access the transmittal of funds records readily by name or account number of the transmittor or recipient, as the case may be, and may do so through reference to some other record maintained by the financial institution.

(5) The following transmittals of funds are not subject to the requirements of this paragraph:

(i) A transmittal of funds where both the transmittor and the recipient of the funds are domestic brokers or dealers in securities;

(ii) A transmittal of funds where both the transmittor and recipient are the same domestic broker or dealer in securities or one is the wholly-owned domestic subsidiary of the other, or a bank;

(iii) Transmittals of funds where both the transmittor and recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same domestic broker or dealer in securities; and

(iv) Transmittals of funds where both the transmittor and the recipient are either a domestic broker or dealer in securities, the United States, any state or local government, or a federal, state, or local government agency or instrumentality.

Dated: August 19, 1993.

In concurrence:

By the Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary.

Dated: August 11, 1993.

By the Department of the Treasury.

Ronald K. Noble,

Assistant Secretary (Enforcement).

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Transmittal Orders for Funds Transfers and Transmittals of Funds By Financial Institutions

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this notice Treasury proposes to amend the regulations that implement the Bank Secrecy Act (BSA) to require a bank or non-bank financial institution that acts as a transmittor's financial institution in a transmittal of funds to include certain information in the transmittal order when sending it to the receiving financial institution. A companion notice of proposed rulemaking (companion notice) also published elsewhere in this issue of the **Federal Register** proposes enhanced recordkeeping requirements relating to certain transmittals of funds by these same financial institutions.

As set forth in the companion notice, domestic financial institutions involved in a transmittal of funds will have to collect and retain certain information. The amount and type of information collected and retained will depend upon the financial institution's role in the particular transmittal, and whether or not the parties to the transactions have a deposit account or a loan with the financial institution. The reader is encouraged to review the companion notice before reviewing this notice in order to ensure a full understanding.

DATES: Comments are due on or before October 4, 1993.

ADDRESSES: Comments should be sent to Peter G. Djinis, Director, the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, room 5000 Annex, 1500 Pennsylvania Avenue, NW., Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Chief, Regulations and Rulings, Office of Financial Enforcement, (202) 622-0400.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act (BSA), Public Law 91-508 (codified at 12 U.S.C. 1829b and 1951-59, and 31 U.S.C. 5311-28), enacted in 1970, authorizes the Secretary of Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. The primary purpose of the BSA is to identify the source, volume and movement of money into and out of the country and through domestic financial institutions. See H.R. Rep. No. 975, 91st. Cong., 2nd. Sess., 11-13 (1970). The BSA was amended last year by the Annunzio-Wylie Anti-Money Laundering Act of 1992, title XV of the Housing and Community Development Act of 1992, Public Law 102-550 (the 1992 Amendment). Among other things, section 1517 of the 1992 Amendment authorizes the Secretary of the Treasury to require financial institutions to carry out anti-money laundering programs, including the development of internal policies, procedures and controls.

This notice of proposed rulemaking is the Department of the Treasury's first step toward full implementation of section 1517 of the 1992 Amendment, and it coincides with a separate but related Treasury initiative. As noted in testimony before the House Banking Committee on May 25, 1993, by Assistant Secretary Noble (Enforcement), Treasury would be, and is now conducting a comprehensive examination of its anti-money laundering programs, including the Bank Secrecy Act regulations. Comments received in response to this notice and the companion notice will be carefully considered as part of this comprehensive examination.

The 1992 Amendment also authorizes the Board of Governors of the Federal Reserve System and the Treasury to require financial institutions to retain records of domestic and international funds transfers and transmittals. The companion notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** proposes enhanced recordkeeping requirements relating to certain transmittals of funds by financial institutions. In this notice, Treasury proposes that certain information required to be maintained by the companion notice of proposed rulemaking also be included in the transmittal order, at the time of transmittal, by whatever means including any funds transfer system (*e.g.*, FedWire, SWIFT, and CHIPS) or similar system for transmittals of funds (*e.g.*, Western Union and TELEX), to a financial institution.

The number of transmittals of funds completed daily is quite substantial. For example, the daily average number of funds transfers made over FedWire in 1992 was 270,000, with an average aggregate daily dollar amount of $800 billion and a peak aggregate daily dollar amount of over $1 trillion.

Proceeds from illegal activities may be processed through money laundering schemes involving domestic and/or international payment by transmittals of funds. Money laundering is a vital

component of drug trafficking and other criminal activity throughout the world, and federal law enforcement agencies believe that a significant volume of the money laundered involves transmittals of funds.

Such illegal activity has been documented in several recent money laundering operations conducted by federal law enforcement agencies. Among the operations which exposed large scale money laundering through transmittals of funds are Operations Green Ice, Polar Cap and C-Chase. The success of these and other law enforcement operations would have been greatly enhanced and facilitated had the transmittal orders involved in those cases included data identifying the transmittors and recipients of the transmittals of funds.

Recently the CHIPS and SWIFT funds transfer systems have adopted new formats/procedures that provide for the inclusion of the name and address of transmittors and recipients in transmittal orders. In a July 30, 1992, message to SWIFT participants, SWIFT recognized the fact that many countries are involved in initiatives to prevent the use of the banking system and other financial institutions for money laundering. In this broadcast SWIFT strongly encouraged its users to include in the existing field in the SWIFT message the transmittor's name and address or account number, and to complete the existing fields for the recipient's name, address and (where possible) account number. CHIPS issued a similar broadcast to its users dated September 14, 1992. In statements issued by the Federal Reserve Board (the Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), these agencies encouraged financial institutions to include in payment orders complete information on the originator and beneficiary of such orders, including those sent through FedWire (using optional fields where possible), CHIPS, SWIFT, and other proprietary funds transfer systems. A similar statement was issued by the Federal Financial Institutions Examination Council (FFIEC). (See, FFIEC Statement dated March 11, 1993, 58 FR 14400, March 17, 1993.)

Because at present there are no designated fields in the FedWire format in which to include complete originator and beneficiary information, the Board encourages users of the FedWire system to use all available optional fields to include such information. The Federal Reserve System is currently studying and expects to publish a **Federal Register** notice inviting comment on possible revisions to that format.

Summary Description of the Proposed Rule

General Overview

The proposed rule is divided into three components:

(1) A requirement that a transmittor's financial institution include certain information in any transmittal order prior to sending it to a receiving financial institution;

(2) A requirement that any receiving financial institution acting as an intermediary bank forward, with its transmittal order, certain information it receives from a transmittor's financial institution as well as the identity of the transmittor's financial institution in the corresponding transmittal order; and,

(3) A requirement that any receiving financial institution that acts as an intermediary financial institution forward, with its transmittal order, certain information that it receives from a transmittor's financial institution, as well as the identity of the transmittor's financial institution in the corresponding transmittal order.

Definitions

This notice of proposed rulemaking uses terms proposed to be defined in the companion notice of proposed rulemaking, published elsewhere in today's **Federal Register**. The definitions of certain terms are intended to be identical to the same terms used for banks in Uniform Commercial Code (UCC) Article 4A: "beneficiary", "beneficiary's bank", "intermediary bank", "originator", "originator's bank", "payment order", and "receiving bank". Other definitions which refer to transactions by nonbank financial institutions are included in the companion notice, are intended to parallel the equivalent definitions in UCC Article 4A, and are also used in this proposed rule: "recipient" (which includes a "beneficiary"), "recipient's financial institution" (which includes a "beneficiary's bank"), "receiving financial institution" (which includes a "receiving bank"), "transmittal order" (which includes a "payment order"), "transmittal of funds" (which includes a "funds transfer"), and "transmittor" (which includes an "originator"). Other terms proposed to be defined in the companion notice and used in this Notice include: "intermediary bank" and "intermediary financial institution". The requirements of this proposed rule would apply equally to banks and non-bank financial institutions engaging in transmittals of funds. Accordingly, in this notice we have used the broader, generic terms described above which apply to all financial institutions, and which are defined in the companion notice.

Forwarding Information Received With a Transmittal Order

This proposed rule will ensure that certain information the transmittor's financial institution gathers when engaging in a transmittal of funds will travel with the corresponding transmittal order to any receiving financial institution. Receiving financial institutions include intermediary banks, intermediary financial institutions, and recipient's financial institutions. While the companion notice does not require the transmittor's financial institution to obtain specific information about the recipient from the transmittor, it is expected that a transmittor's financial institution will receive from the transmittor information identifying the recipient. Without this information, the recipient's financial institution would not be able to pay properly the proceeds of the transmittal of funds it receives. Thus, pursuant to this proposed rule, it is expected that:

(1) A transmittor's financial institution will obtain and record the information required by the Companion Notice and include certain prescribed portions of that information in the resulting transmittal order.

(2) Any receiving financial institution acting either as an intermediary bank or intermediary financial institution, upon acceptance of the transmittal order, will forward with its corresponding transmittal order all required information it receives.

The following examples serve to illustrate the operation of the rule proposed in this notice.

Example #1: Domestic Transmittal of Funds—Non-bank to bank. John Doe—transmittor.

Broker/Dealer—transmittor's financial institution/originator.

Bank A—originator's bank/intermediary financial institution.

FedWire—Federal Reserve Bank.

Bank B—recipient's financial institution/beneficiary's bank.

Sally Jones—recipient/beneficiary.

John Doe is sending $7,000 to his aunt, Sally Jones, who has an account at Bank B. His aunt requests that he include payment instructions for her bank to call her when the money is received. John decides to send the money from his money market mutual fund at Broker/Dealer. John requests his account officer at Broker/ Dealer send the money to his aunt at Bank B. The account officer has John's name, address, and account number

on file, and requests John provide him with the same information for his aunt. John provides his aunt's name and address, but is unaware of her account number. The Broker/Dealer prepares a transmittal order to its Bank, Bank A, containing John's name, address, and account number, his aunt's name and address, the amount of the transmittal order, the execution date (today's date), the name of his aunt's bank (Bank B), and payment instructions asking Bank B to notify aunt Sally Jones when the money is received. The Broker/Dealer also includes payment instructions for its bank (Bank A) to use FedWire to make the payment.

Bank A, upon accepting the transmittal order from Broker/Dealer, prepares a corresponding transmittal order to send over FedWire that includes: John's name, address and account number; Sally's name and address; Bank B's identifying number (FedWire routing number); the amount of the transmittal; instructions to call Sally Jones upon receipt; and the name and address of Broker/Dealer. Bank A does not include the instruction to use FedWire to make the payment.

FedWire, upon acceptance of the transmittal order, prepares a corresponding transmittal order that it sends to Bank B that includes: John's name, address and account number; Sally Jones' name and address; Bank A's identifying (routing) number [not required by the rule, but included as part of a standard FedWire funds transfer]; Bank B's identifying (routing) number; the amount of the transmittal; instructions to call Sally upon receipt; and the name and address of Broker/Dealer.

Bank B, upon acceptance of the transmittal order, cross-references its customer identification system to determine Sally Jones' account number and telephone number, credits the funds to Sally Jones' account, and calls her to notify her of receipt of the funds.

Example #2: International Transmittal of Funds—Swift to FedWire.

Franz Mobius—transmittor.

First Black Forest Munich—transmittor's financial institution.

SWIFT

.—Effective point of the proposed rule.

First NY, Bronx—Receiving financial institution/intermediary bank.

FedWire—Federal Reserve Bank

Cowboy Trust—Dallas—Recipient's bank/beneficiary bank.

Tyler "Tex" Edwards—Recipient/beneficiary.

For his new "T-Bone Palace" restaurant, Franz has purchased a supply of Billy-Bob Bar-B-Q sauce and is paying a franchise fee for use of Tex's special recipe for ribs. In payment for the former, Franz must remit $24,000 to Tex. In order for the franchise to be effective by the restaurant's opening date, Tex must receive the funds by close of business today. Tex has requested that Franz send the money to his account (#123) at Cowboy Trust in Dallas. Franz goes to his bank (First Black Forest Munich) and requests that the funds be sent immediately. First Black Forest Munich sends a SWIFT message to its NY correspondent (First NY Bronx). This message includes: Franz name, address, and account number; Tex's name, address and account number; instructions to pay Tex's account (#123) at Cowboy Trust; the amount of the transmittal order; invoice information on the Bar-B-Q sauce that includes the invoice number and product description/quantity; and other information related to the franchise arrangement.

First NY Bronx, upon acceptance of the transmittal order via SWIFT, prepares a corresponding transmittal order to be sent via FedWire. Realizing that the information provided by SWIFT exceeds available space in the FedWire format, First NY Bronx, decides to truncate some of the invoice information to create additional space to accommodate transmittor and recipient information. First NY Bronx, decides not to truncate any franchise information as it is not in a position to know what information is critical. However, First NY Bronx decides to truncate the product description and quantity, transmitting only the invoice number and payment amount for this product (which is a portion of the total payment amount of the transmittal order). Even after truncating this information, all necessary transmittal information can not be accommodated by the FedWire format. Thus, First NY Bronx, includes in its transmittal order: The amount of the transmittal order; Franz name, address, and account number; Tex's name and account number (but, omits his address); the invoice number and payment amount; all of the franchise information; the name and address of the transmittor's financial institution; and the identifier of the recipient's bank (Cowboy Trust).

Proposed Effective Date

As discussed above, at present there are no designated fields in the FedWire format in which to include complete originator and beneficiary information. However, this information can be included in optional fields not being used for other required information. As previously noted, the Federal Reserve System is currently studying and expects to publish a **Federal Register** notice inviting comment on possible revisions to the FedWire format. Any such changes to the FedWire format and to other proprietary funds transmittal systems would require time to implement.

Recently the CHIPS and SWIFT funds transfer systems have adopted new formats/procedures that provide for the inclusion of the name and address of transmittors and recipients in payment orders. The Federal Reserve, SWIFT, CHIPS, and the banking regulatory agencies have encouraged, and Treasury joins in encouraging, users of FedWire, SWIFT, CHIPS and all other proprietary funds transfer systems to include such data in payment orders.

In view of the foregoing, Treasury proposes that the effective date of the requirements of this Notice of Proposed Rulemaking be twelve (12) months from the date of publication of the final rule. In the interim, Treasury strongly encourages financial institutions to include in any transmittal order, to the extent possible, complete transmittor and recipient information when sending transmittal orders through FedWire, CHIPS, SWIFT and any other proprietary system.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. While comments on all aspects of the regulation are welcome, Treasury is particularly interested in receiving comments on: The extent to which financial institutions using funds transfers systems such as FedWire (which is owned and operated by the Federal Reserve Banks), the Clearinghouse Interbank Payments System (CHIPS), the Society for Worldwide Interbank Financial Telecommunications (SWIFT), Western Union and TELEX already include in transmittal orders the information proposed to be required; and, the additional burden measured in time and costs the proposed requirement will impose on financial institutions. All comments received before the closing date will be carefully considered. Only written and timely comments submitted to Treasury will receive consideration. Comments received after the closing date will be treated as suggestions for future action. The Treasury Department will not recognize as confidential any submitted materials or comments, including the name of any person submitting same. Any material not intended to be disclosed to the public should not be included in the comments. All comments will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in room 5030, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at (202) 622–0400.

Executive Order 12291

This proposed rule, if adopted as a final rule, is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. It will

not have any significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505–0063), Washington, DC 20503. The collections of information in this proposed regulation are authorized by 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5328. The likely recordkeepers are financial institutions (as defined in 31 CFR 103.11(i)).

Estimated number of respondents and/or recordkeepers: 60,000.

Estimated total annual recordkeeping burden: 9.9 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 165.4 hours.

Estimated annual frequency of responses: Upon request.

Drafting Information

The principal author of this document is the Office of Financial Enforcement. However, other offices at the Department of the Treasury assisted in its development. Technical assistance was also provided by the staff of the Board of Governors of the Federal Reserve and the staff of the Money Laundering Section of the Department of Justice.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5328).

2. It is proposed to amend § 103.33 by adding new paragraph (h) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(h) With respect to transmittals of funds:

(1)(i) A transmittor's financial institution shall include in any transmittal order, at the time it is sent to a receiving financial institution, the following information:

(A) The name and address of the transmittor of the transmittal order;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) The identity of the recipient's financial institution; and

(E) Either the name and address or the account number of the recipient of the transmittal order, if received with the transmittal order.

(ii) Any receiving financial institution that acts as an intermediary bank, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(A) The name and address of the transmittor of the transmittal order;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) The identity of the recipient's financial institution;

(E) Either the name and address or the account number of the recipient of the transmittal order, if received with the transmittal order; and

(F) Either the name and address or numerical identifier of the transmittor's financial institution.

(iii) Any receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(A) The name and address of the transmittor of the transmittal order;

(B) The amount of the transmittal of funds;

(C) The execution date of the transmittal order;

(D) The identity of the recipient's financial institution;

(E) Either the name and address or the account number of the recipient of the transmittal order, if received with the transmittal order; and

(F) Either the name and address or numerical identifier of the transmittor's financial institution.

Dated: August 11, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–20871 Filed 8–30–93; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0807]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comments on enhanced recordkeeping requirements relating to certain wire transfers by financial institutions. These proposed recordkeeping requirements are being promulgated jointly by the Board and the Department of Treasury (Treasury). A companion notice of proposed rulemaking, published elsewhere in this issue of the Federal Register by Treasury and the Board (joint notice) sets forth the substantive provisions of the proposed recordkeeping requirements. This notice sets forth a proposed regulation for codification at 12 CFR part 219, subpart B, which extensively cross-references the substantive provisions set forth in the joint notice.

Under the joint notice, each domestic financial institution involved in either a domestic or international wire transfer will have to collect and retain certain information. The amount and type of information collected and retained will depend upon the nature of the financial

institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution. The recordkeeping requirements applicable to international wire transfers are required by statute to be effective before January 1, 1994. For ease of implementation, Treasury and the Board propose to make the proposed recordkeeping requirements applicable to both domestic and international wire transfers effective on December 31, 1993.

DATES: Comments are due on or before October 4, 1993.

ADDRESSES: Each comment on the provisions of this proposed notice (as supplemented by the joint notice) should be sent separately to both the Treasury and the Board at the following addresses:

Treasury: Mr. Peter Djinis, Director, Office of Financial Enforcement, Department of the Treasury, room 5000 Annex, 1500 Pennsylvania Avenue, NW, Washington, DC 20220;

Board: Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Mr. Wiles, Secretary, Board of Governors of the Federal Reserve System, should refer to Docket No. R–0807. Comments may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW.

Inspection of Comments: Comments may be inspected at the Federal Reserve Board, 20th and Constitution Avenue, NW, Washington, DC, in room B–1122 between 9 a.m. and 5 p.m., as provided in part 261 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8. Comments may also be inspected at the Department of Treasury between 10 a.m. and 4 p.m. in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue, NW, Washington, DC. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library at (202) 622–0990.

FOR FURTHER INFORMATION CONTACT:

Treasury: A. Carlos Correa, Assistant Director, Rules and Regulations Section, Office of Financial Enforcement, Department of the Treasury, (202) 622–0400.

Board: Gayle Brett, Manager, FedWire, Division of Reserve Bank Operations and Payment Systems (202) 452–2934; Oliver Ireland, Associate General Counsel (202) 452–3625, or Elaine M. Boutilier, Senior Attorney, Legal Division, (202) 452–2418, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: The statute generally referred to as the Bank Secrecy Act (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5328) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. The primary purpose of the Bank Secrecy Act is to identify the source, volume and movement of funds into and out of the country and through domestic financial institutions. The Bank Secrecy Act was amended last year in the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550 (referred to hereafter as the 1992 Amendment) to specifically authorize the Treasury and the Board jointly to prescribe regulations to require maintenance of records regarding domestic and international funds transfers.

The 1992 Amendment authorizes the Board and the Treasury to promulgate recordkeeping requirements for domestic wire transfers by insured depository institutions whenever the agencies determine that such records have a high degree of usefulness in criminal tax or regulatory investigations or proceedings. In addition, the 1992 Amendment requires the Treasury and the Board to issue final regulations with regard to the international transactions to be effective before January 1, 1994. The recordkeeping requirements for international transactions will apply to financial institutions as defined in 31 CFR 103.11(i), which include insured depository institutions and brokers and dealers in securities, as well as businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments (collectively referred to as check cashing and money transmitting businesses). In prescribing these required regulations, the Board and the Treasury must take into consideration the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. The Board and the Treasury have decided that it would be simpler to issue proposed regulations for both domestic and international funds transfers simultaneously, because the recordkeeping requirements will be substantially the same.

The number of wire transfers completed daily is substantial. For example, the daily average number of wire transfers made over FedWire in 1992 was 270,000, with average aggregate daily dollar amount of $800 billion and a peak aggregate daily dollar amount of over $1 trillion.

Money laundering is a vital component of drug trafficking and other criminal activity throughout the world, and Federal law enforcement agencies believe that a significant amount of the money laundered involves wire transfers. Proceeds from illegal activities may be processed through money laundering schemes involving domestic and/or international payments by wire transfers. Such activity has been documented in several recent investigations conducted by Treasury and other Federal law enforcement agencies. The Board and the Treasury believe that the records to be retained under this proposed rulemaking will be useful in tracing the proceeds of illegal activities and will assist in the identification and prosecution of individuals involved in such illegal activities. Accordingly, Treasury and the Board believe that maintenance of these records will have a high degree of usefulness in criminal, tax, or regulatory investigations of money laundering operations. Further, the Treasury and the Board believe that these recordkeeping requirements will not have a significant adverse impact on the cost or the efficiency of the payments system.

Codification of the Proposed Rule

To minimize potential confusion by affected entities regarding the scope of this proposed joint rule and its interaction with other anti-money laundering regulations, the substantive requirements of the proposed rule will be codified with other Bank Secrecy Act regulations, as part of Treasury's regulations in 31 CFR part 103. Because the Board is required to prescribe these regulations jointly with Treasury, the Board is proposing to add a new subpart B to 12 CFR part 219, which will cross-reference the jointly prescribed requirements in 31 CFR part 103. The current text of 12 CFR part 219, concerning reimbursement to financial institutions for assembling and providing financial records pursuant to the Right to Financial Privacy Act, will

become subpart A of 12 CFR part 219. (The Board expects to revise and update this newly designated subpart A in the near future.)

Summary Description of the Revised Proposed Rule

The joint notice, published elsewhere in today's **Federal Register** provides an extensive description of the substantive requirements of the proposed rule. While the Board is authorized to promulgate jointly proposed recordkeeping and reporting requirements with regard to domestic wire transfers by insured depository institutions, the Board is specifically required to promulgate jointly with Treasury recordkeeping and reporting requirements for international wire transfers by both insured depository institutions and nonbank financial institutions. The Board is not authorized to promulgate recordkeeping and reporting requirements for domestic wire transfers by nonbank financial institutions. (Treasury has this authority under other statutory provisions.) This limitation is reflected in the Board's proposed subpart B of 12 CFR part 219. The recordkeeping and reporting requirements proposed by the Board for international wire transfers by nonbank financial institutions, however, are identical to those proposed by Treasury for domestic (and international) wire transfers by nonbank financial institutions. Therefore, compliance by nonbank financial institutions with the proposed requirements will not be affected by this limitation in the Board's regulatory authority.

Submission of Comments

Comments on all aspects of the proposed regulation are welcome. The Treasury and the Board specifically request comment on the usefulness of the records covered by the proposed rule for law enforcement purposes and the effects that the proposed rule might have on the cost and efficiency of the payment system. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to the Board and/or Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. Neither the Board nor Treasury will recognize as confidential any materials or comments, including the name of any person submitting comments. Any material not intended to be disclosed to the public should not be included in the comments.

Initial Regulatory Flexibility Analysis

As required by 5 U.S.C. 603(b), a "description of the reasons why action by the agency is being considered" and a "succinct statement of the objectives of, and legal basis for, the proposed rule" are found elsewhere in this preamble.

The Board and the Treasury propose that the requirements in this rule be applicable to all financial institutions subject to the Bank Secrecy Act, as implemented, regardless of their size. An exemption for small entities would not be appropriate because it would permit money laundering operations to evade the recordkeeping process by using small financial institutions. This would significantly diminish the usefulness of these records for criminal, tax or regulatory investigations.

The small entities that will be affected by this proposed rule include small banks and many check cashing and money transmitting businesses. In order to minimize the economic impact on small entities, the proposed rule would allow financial institutions that send or receive transmittal orders for account holders to use existing records to satisfy some of the recordkeeping requirements. The Board and the Treasury do not believe that the proposed rule would impose reporting or recordkeeping burdens on small entities that require specialized professional skills not available to them.

List of Subjects in 12 CFR Part 219

Banks, banking, Currency, Reporting and recordkeeping requirements, Foreign banking.

For the reasons set out in the preamble, 12 CFR part 219 is proposed to be amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS

1. The title of part 219 is revised to read as set forth above.

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

§§ 219.1 through 219.7 [Designated as Subpart A]

2. Sections 219.1 through 219.7 are designated as subpart A, and a new subpart A heading is added to read as set forth above.

3. The authority citation for part 219 is designated as the authority for subpart A and continues to read as follows:

Authority: 12 U.S.C. 3415.

4. Subpart A is amended by revising § 219.1 to read as follows:

§ 219.1 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219) is issued by the Board of Governors of the Federal Reserve System (the Board) under section 1115 of the Right to Financial Privacy Act (the Act) (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority pursuant to the Act.

5. Section 219.2 is amended by revising the introductory text to read as follows:

§ 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

* * * * *

6. Subpart B is added to part 219 to read as follows:

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

Sec.
219.21 Authority, purpose and scope.
219.22 Definitions.
219.23 Recordkeeping and reporting requirements.
219.24. Retention period.

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

Authority: 12 U.S.C. 1829b (2) and (3).

§ 219.21 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219) is issued by the Board under the authority of section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b), as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub.L. 102–550, title XV; 106 Stat. 3672, 4044), which authorizes the Board and the Secretary of the Treasury jointly to prescribe recordkeeping and reporting requirements for domestic wire transfers by insured depository institutions; and which also requires the Board and Treasury jointly to prescribe recordkeeping and reporting requirements for international wire transfers by insured depository institutions and by nonbank financial institutions. The definitions and recordkeeping and reporting requirements referenced in this subpart are jointly promulgated and administered by the Board and the Treasury and are codified in 31 CFR

103.11 and 103.33 (e), (f) and (g). Such recordkeeping and reporting requirements will assist in the prosecution of money laundering activities and are determined to have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings.

§ 219.22 Definitions.

The following terms are defined in 31 CFR 103.11 under the joint authority of the Board and the Treasury:

Accept.
Beneficiary.
Beneficiary's bank.
Execution date.
Funds transfer.
Intermediary bank.
Intermediary financial institution.
Originator.
Originator's bank.
Payment date.
Payment order.
Receiving bank.
Receiving financial institution.
Recipient.
Recipient's financial institution.
Sender.
Transmittal of funds.
Transmittal order.
Transmittor.
Transmittor's financial institution.

§ 219.23 Recordkeeping and reporting requirements.

(a) *Domestic and international funds transfers by insured depository institutions.* The Board and the Treasury are jointly authorized to promulgate recordkeeping and reporting requirements for domestic and international funds transfers by insured depository institutions whenever the agencies determine that the maintenance of such records has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. These regulations are codified at 31 CFR 103.33(e). For the purposes of this subpart, the provisions of 31 CFR 103.33(e) apply only to funds transfers by insured depository institutions.

(b) *International transmittals of funds by financial institutions other than insured depository institutions.* The Board and the Treasury are jointly required to promulgate reporting and recordkeeping requirements for international transmittals of funds by financial institutions, including brokers and dealers in securities, and businesses that issue or redeem money orders, travelers' checks or other similar instruments. In prescribing these requirements, the Board and the Treasury take into account the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. These regulations are codified at 31 CFR 103.33 (f) and (g). For the purposes of this subpart, the provisions of 31 CFR 103.33 (f) and (g) apply only to international transmittals of funds by financial institutions other than insured depository institutions.

§ 219.24 Retention period.

All records that are required to be retained by this subpart shall be retained for a period of five years. All these records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time that has expired since the record was made. Any records required to be retained by this part shall be made available to the Board upon request.

By order of the Board of Governors of the Federal Reserve System, August 19, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–20841 Filed 8–30–93; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Designation of Critical Habitat for the Silver Rice Rat; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Silver Rice Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates critical habitat for the endangered silver rice rat (Lower Florida Keys population of *Oryzomys palustris* or *O. argentatus*). This species was listed as endangered on April 30, 1991. Critical habitat was not designated at that time because it was not deemed prudent.

Federal actions that may affect critical habitat will be subject to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act). As required by section 4 of the Act, the Service has considered the economic and other relevant impacts prior to making a final decision on areas to be included as critical habitat. Some areas have been excluded from critical habitat designation based on comments received on the proposed rule. The final critical habitat designation includes both Federal and private lands.

EFFECTIVE DATE: September 30, 1993.

ADDRESSES: The complete file for this rule is available, for inspection, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien at the above address (904/232-2580).

SUPPLEMENTARY INFORMATION:

Background

In a final rule published April 30, 1991, in the Federal Register (56 FR 19809), the Service determined endangered status for the Lower Keys population of the rice rat, or silver rice rat (Oryzomys palustris natator, or O. argentatus), pursuant to the Act. This small mammal is restricted to wetlands of the Lower Keys of Monroe County, Florida. The silver rice rat is known to occur on eight keys, is believed to be extirpated from one key, and likely has been extirpated on two other keys. It is endangered by conversion of its wetland habitat for commercial and residential purposes. Further details can be obtained from the 1991 Federal Register rule.

In the final rule listing the silver rice rat as an endangered species, the Service concluded that critical habitat designation was not prudent. A re-examination of potential threats to the species led the Service to conclude that the risk of illicit takings arising from publication of critical habitat may not be so serious as to render designation of critical habitat imprudent. The Service gave notice of its intent to propose critical habitat for the silver rice rat on August 1, 1991 (56 FR 36753) and proposed to designate critical habitat on May 7, 1992 (57 FR 19585).

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and;

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Based on information provided by Goodyear (1984), the May 7, 1992, proposal for critical habitat included nine keys or groups of keys occupied by the species, totalling about 10,062 acres: Little Pine Key, Water Keys (north of Big Torch Key, not the Water Key west of Little Pine Key), Big Torch Key, Middle Torch Key, Raccoon Key, Summerland Key, Cudjoe Key, Johnston Key, and Saddlebunch Keys. About 5,003 acres of the proposed critical habitat consisted of Federal (National Key Deer Refuge or Great White Heron National Wildlife Refuge) lands.

The Service's listing regulations 50 CFR 424.12(b)(5) require the Service to consider those physical and biological attributes essential to the conservation of the species. Such requirements, as stated in 50 CFR 424.12(b) include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service has determined that physical and biological habitat features (referred to as the primary constituent elements) that support nesting, foraging, cover and dispersal are essential to the conservation of the silver rice rat. Goodyear (1984, 1987) described essential habitat for the silver rice rat as areas containing contiguous mangrove swamps, saltmarsh flats, and buttonwood transition vegetation. These vegetational types, as well as fresh water cattail marshes, contain the primary constituent elements in critical habitat for the silver rice rat. These vegetational types can be generally identified by the presence of the following species:

—Mangrove swamp containing red (*Rhizophora mangle*), black (*Avicennia germinans*), and white (*Laguncularia racemosa*) mangroves and buttonwood (*Conocarpus erectus*);

—Salt marshes, swales, and adjacent transitional wetlands containing saltwort (*Batis maritima*), perennial glasswort (*Salicornia virginica*), saltgrass (*Distichlis spicata*), sea ox-eye (*Borrichia frutescens*), keygrass (*Monanthochloë littoralis*), and coastal dropseed (*Sporobolus virginicus*); and,

—Fresh water marshes containing cattails (*Typha domingensis*), sawgrass (*Cladium jamaicense*), and cordgrass (*Spartina* spp.).

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and after consideration of the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. The Act thus requires the Service to evaluate those economic and other impacts likely to take place due to the designation of critical habitat.

The Service prepared a draft economic analysis in conjunction with the proposal of critical habitat for the silver rice rat, and the resulting comments and information have been incorporated into a final analysis. The conclusion of that analysis is that while there is no justification for excluding areas from the proposed critical habitat for economic reasons, two areas should be excluded from critical habitat because they no longer support significant silver rice rat habitat. The two areas total 1,032 acres and consist of 460 acres on Summerland Key

and 572 acres on Cudjoe Key. Both areas are located south of U.S. Highway 1. Based on comments from the Florida Game and Fresh Water Fish Commission and the Monroe County Environmental Resources Department, these areas have been extensively developed and have little remaining habitat suitable for the silver rice rat. The exclusion of these areas therefore will not affect the survival or recovery of the silver rice rat. The critical habitat designation has been modified for the final rule to reflect these exclusions.

Due to the relatively large extent of Federal land (National Wildlife Refuges and some military lands) in the Lower keys, the Service has considered whether available habitat on Federal lands would be sufficient for conservation of the silver rice rat. However, only three of the eight currently identified populations of the silver rice rat (Johnston, Little Pine, and the Water Keys) are protected by being located entirely on refuge or other Federal lands; the other five are partly or entirely dependent on private lands. Known populations of the silver rice rat are few, scattered, and usually at low numbers and density. All eight populations need protection in order to conserve the silver rice rat.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. By definition, critical habitat affects only Federal agency actions and does not apply to private, or local or State government activities that are not subject to Federal authorization or funding.

The principal public activity in the proposed critical habitat is the operation of the Service's National Key Deer Refuge. Seven of the nine keys proposed as critical habitat are totally or partially included in existing National Key Deer Refuge boundaries. As discussed above, in addition to the existing requirement to consult within the agency on actions that may affect the silver rice rat, the Service will now be required to consult within the agency on any actions that are likely to result in destruction or adverse modification of its critical habitat. These effects are judged to be minimal: The Service manages the refuge for the maintenance of endangered species, primarily the Key deer; the needs of the silver rice rat are not expected to conflict with any existing refuge management practices (see Summary of Comments and Recommendations below). The endangered status of the silver rice rat already requires the Service to address the conservation needs of the species on refuge lands, through the Act and existing National Wildlife Refuge System policy. Critical habitat designation is not expected to significantly affect current management of refuge lands.

Another potential Federal agency involvement is the National Flood Insurance Program administered by the Federal Emergency Management Agency (FEMA). FEMA believes that its implementation of the flood insurance program is not an action that is subject to section 7 of the Endangered Species Act, but this legal position was contested in a lawsuit filed by the National Wildlife Federation. *Florida Key Deer* v. *Stickney*, Civ. No. 90–10037 (S.D. Fla., complaint filed April 2, 1990). In the lawsuit, the National Wildlife Federation contended that FEMA's provision of Federal flood insurance facilitates development that may result in the destruction or adverse modification of Florida Key deer habitat. The case was tried in U.S. District Court in Key West in April, 1993, and was submitted to the court for decision thereafter. The decision is expected soon. If FEMA is unsuccessful in the lawsuit, the agency may be required to consult regarding the impact that providing flood insurance to eligible communities has on listed species and designated critical habitat within the Florida Keys. Section 7 consultations involving the provision of Federal flood insurance could, in some instances, lead to "jeopardy" or "adverse modification of critical habitat" determinations by the Service. In these cases, FEMA could decide not to provide Federal flood insurance in certain areas of the Keys.

The permitting program of the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act may be affected by critical habitat designation. The Corps must now insure that issuance of such permits is not likely to result in the destruction or adverse modification of critical habitat for the silver rice rat; however, Corps permitting actions in those areas of the Keys where the species occurs would require consultation under section 7 of the Act, regardless of whether or not such areas are designated as critical habitat. Only private activities that require permit review and may affect the critical habitat for the silver rice rat would be affected; these activities include the filling of transitional wetlands for residential development. Private activities that do not require a Federal permit or do not involve Federal funding would not be affected by this rule.

Some platted subdivisions within proposed critical habitat are located partially in transitional wetlands used by the silver rice rat. In order to prepare these sites for construction, filling for house pads and driveways is often necessary. This activity fragments and eliminates silver rice rat habitat. Potential indirect impacts of such development include increased numbers of free-ranging or feral domestic dogs and cats, raccoons, and black rats; the latter two species are attracted by increased food availability around human residences. Some of these fill activities require permits from the U.S. Army Corps of Engineers through section 404 of the Clean Water Act. If permit issuance is likely to result in the destruction or adverse modification of critical habitat for the silver rice rat, such issuance requires consultation between the Corps and the Service under section 7(a)(2) of the Act.

The current endangered status of the silver rice rat already requires Federal agencies to consult on any action that may affect this species, including actions authorized under the 404 program. Further, existing and anticipated Monroe County regulations and ordinances do not allow new development in silver rice rat habitat. Section 9.5–343 of the Monroe County Code requires a 100 percent "open space ratio" in mangrove and freshwater wetlands, and an 85 percent ratio in salt marsh and buttonwood habitats. Policy 204.2.1 of the Monroe County Comprehensive Plan will require a 100 percent open space ratio in all of the wetland habitats used by the silver rice rat; this policy was adopted by the Monroe County Commission in March 1993 and will be included in the Comprehensive Plan once approved by the State. The only fill or structures to be permitted in such wetlands will be utility pilings, pilings for elevated walkways and docks, and accessways to structures on uplands or already disturbed wetlands for which there is no other means of access.

The "Dwelling Unit Allocation Text Amendment", Monroe County Ordinance No. 016–1992, was passed and adopted by the Monroe County Commission on June 23, 1992, and became effective July 1, 1992. The ordinance addresses the need to improve and maintain reasonable hurricane evacuation times from the county by regulating population growth. It limits the number of building permits issued in the county annually to 255 units, a reduction from an average 552 new single family unit permits issued

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per year since 1972. The annual dwelling unit allocation for the Lower Keys is 155 units. Among the large number of factors to be considered by the county in ranking and issuing permits are the habitat type present on the proposed building site and the likely presence of listed species. The only type of wetlands for which building permits would currently be considered are saltmarsh and buttonwood wetlands, but receiving a building permit would be difficult to accomplish in wetland habitat types, especially if silver rice rats (or other listed species) are known or suspected to occur on the site. As discussed above, new development even in these wetlands will soon be prohibited.

The U.S. Air Force operates a tethered aerostat radar system on a 36-acre tract on Cudjoe Key. Ongoing and planned activities at the site occur in developed areas and will not impact silver rice rat habitat. The Air Force expects no economic impacts from the designation of critical habitat.

The Charles River Laboratories maintains a breeding colony of rhesus monkeys on Raccoon Key. Monkeys were formerly supplied to the U.S. Food and Drug Administration, but that arrangement terminated in 1989. There is currently no Federal involvement with this project. Goodyear (1984) expressed concern about the damage monkeys were doing to red mangroves by stripping them of leaves, and the indirect effect this might have on the silver rice rat. Wolfe (1987a) was unable to find any evidence that the monkeys were affecting the silver rice rat. Based on a consent order from the Florida Department of Environmental Regulation, the monkeys were supposed to be caged to minimize environmental effects on the vegetation of Raccoon Key. Recent information from the National Key Deer Refuge (John Andrew, pers. comm.) indicates there are still free-ranging monkeys on Raccoon Key, and they still appear to be damaging red mangroves. Due to the lack of Federal involvement in maintaining the monkey colony, critical habitat will not affect this situation. However, destruction of habitat resulting in taking of silver rice rats could violate section 9 of the Act, which prohibits take of endangered species.

Summary of Comments and Recommendations

In the May 7, 1992, proposed rule and associated notifications, the Service requested all interested parties to submit factual reports or information that might contribute to the development of this final rule. Appropriate state agencies, county government, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Key West Citizen on May 24, 1991. Ten comments were received in response to the proposal. Issues raised by commenters are discussed below.

Issue 1: The U.S. Army Corps of Engineers (Jacksonville District) reported the number of their permit (Clean Water Act) actions since 1989 on Summerland Key (45 actions), Cudjoe Key (75 actions), Torch Key (2 actions), and Raccoon Key (6 actions). The Corps stated that critical habitat designation would increase the time needed to obtain permits and result in higher costs to the applicants and the involved Federal agencies (the Service and the Corps) due to section 7 of the Act.

Response: The economic implications of critical habitat designation are discussed in the Critical Habitat section above and in the economic documents prepared in conjunction with this final rule. Wetland permitting actions on any of the Keys designated as critical habitat for the silver rice rat would be likely to result in section 7 consultation even if the keys were not so designated. Federal agency actions likely to affect listed species require consultation under section 7(a)(2) of the Act regardless of whether or not critical habitat is designated for the species. Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species regardless of whether critical habitat has been designated for that species. Furthermore, the county regulations and ordinances discussed above under Critical Habitat should decrease the number of future wetland permit applications under the Clean Water Act.

Issue 2: Several comments suggested modifying the proposed critical habitat by adding or deleting areas:

The Florida Game and Fresh Water Fish Commission (Commission) suggested that portions of Cudjoe and Summerland Keys were so extensively developed that they could be deleted from proposed critical habitat, but that a number of other keys might be worthy of inclusion. The Monroe County Environmental Resources Department supported the Commission's suggestions, indicated that there was a rice rat population on north Saddlebunch Key that should be included in critical habitat, and stated that, due to existing and proposed county regulations concerning the filling or developing of wetlands, they anticipated little impact from the designation of critical habitat.

Dr. James D. Lazell, Jr., co-describer of the silver rice rat in 1978, stated that the proposed critical habitat was too small and should include Sugarloaf Keys and U.S. Navy lands north of U.S. Highway 1 on Saddlebunch Key. Dr. Numi C. Goodyear (then Spitzer), senior author of the species description, stated that the silver rice rat currently occurs on a number of keys or groups of keys additional to those proposed as critical habitat, and that all of these keys should be included as critical habitat. Two conservation organizations supported Dr. Goodyear's recommendations.

Response: As discussed earlier in this rule, areas south of U.S. Highway 1 on Summerland and Cudjoe Keys have been deleted from critical habitat. The Service has considered adding keys to the proposed critical habitat. While many keys contain one or more of the habitats used by silver rice rats, there is currently no evidence to show that they occur there. Wolfe (1987b) believed that the silver rice rat did not currently occur on Geiger and Boca Chica Keys, but that these keys provided a corridor for movement during times of high population density. Though there is no direct evidence of silver rice rats on keys aside from the nine where they were trapped by Goodyear (1987), the Service agrees that other keys may provide important habitat. Silver rice rat populations may be found on additional keys, and some keys may serve as "stepping stones" for movement between currently known populations. The Service will consider proposing additional critical habitat areas as information becomes available and as recovery plan development proceeds. Recovery plan development is currently scheduled for the silver rice rat; the plan will address the need to gather more distributional information. Addition of areas beyond those identified in the May 7, 1992, proposed rule will require a new proposal to be made. The occurrence on U.S. Navy lands on Saddlebunch Key (Wolfe 1987b) is not included in current critical habitat, but would be appropriate for addition. At this time, the Service has decided to proceed with critical habitat designation including the keys where the species is known to occur. Based on further information, the Service may propose to add or delete critical habitat for the silver rice rat, or to reclassify the species.

Issue 3: The Service's prescribed burning practices in National Key Deer Refuge threaten the silver rice rat.

Response: The Service disagrees that current burning practices in the

National Key Deer Refuge threaten the silver rice rat. Burning is necessary to maintain the pine rockland ecosystem on upland areas, and is carried out so as to mimic natural burns that, before the presence of human fire control, would have occurred in such habitat. The Service does not anticipate that this burning program will damage wetlands or transitional habitats on which the silver rice rat depends.

Issue 4: A private individual stated that the critical habitat designation for the silver rice rat was ridiculous and was being used to steal land.

Response: Most endangered and threatened species, including the silver rice rat, are threatened by habitat loss. Critical habitat is intended to alert Federal agencies to their responsibilities to conserve essential habitat for listed species. Critical habitat designation does not take private property, or establish a nature reserve, but rather requires Federal agencies to ensure that their actions are not likely to destroy or adversely modify critical habitat.

Issue 5: A corporate representative requested that a development on Cudjoe Key be deleted from the critical habitat designation because of his concern that county and State agencies "follow" the Federal designation and this would cause a major financial setback to his corporation.

Response: The Service has considered deleting this area from critical habitat based on economic reasons, but has concluded that such a deletion is not warranted. Based on the lack of Federal agency involvement and the fact that existing county planning requirements are not likely to allow development in silver rice rat habitat, the Service does not find any economic benefits in excluding the area from critical habitat. This decision is discussed in the Service's economic analysis of designating critical habitat for the silver rice rat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. Such actions have been initiated by the Service following the listing of the silver rice rat as an endangered species. The protection measures provided to listed species by Federal agencies are summarized below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Four Federal agencies with known or probable jurisdiction in the proposed critical habitat for the silver rice rat have been identified. Known or potential projects that will require consultation are summarized in the Critical Habitat section above.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this determination will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat, no significant economic impacts are expected from critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implication Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the silver rice rat in a Takings Implication Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights". The Takings Implication Assessment concludes that the designation does not pose significant takings implications.

References Cited

Goodyear, N.C. 1984. Final report on the distribution, habitat, and status of the silver rice rat (*Oryzomys argentatus*). Unpubl. report to Jacksonville Office, U.S. Fish and Wildlife Service under Contract No. 14–16–0004–83–57. 59 pp.

Goodyear, N.C. 1987. Distribution and habitat of the silver rice rat, *Oryzomys argentatus*. J. Mamm. 68:692–695.

Wolfe, J.L. 1987a. Survey for silver rice rats (*Oryzomys argentatus*) on Raccoon Key, Monroe County, Florida, 12–15 December 1986. Unpubl. report to Key Lois Division of Charles River Laboratories, Inc., Wilmington, Mass. 4 pp.

Wolfe, J.L. 1987b. A survey for the silver rice rat on U.S. Naval property in the Lower Florida Keys. Final report to Southern Division Naval Facilities Engineering Command. Contract No. N2467–86–M–3975. 8 pp., 5 maps.

Author

The primary author of this proposed rule is Dr. Michael M. Bentzien (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the "Critical habitat" entry for the "Rat, rice (=silver rice)", under MAMMALS, to read "17.95(a)".

3. Section 17.95(a) is amended by adding critical habitat of the silver rice rat, immediately following the entry for the Morro Bay Kangaroo Rat, as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

* * * * * *

Silver Rice Rat (*Oryzomys palustris natator* (=*O. argentatus*)).

Monroe County, Florida: Little Pine Key, Water Keys, Big Torch Key, Middle Torch Key, Summerland Key north of U.S. Highway 1, Cudjoe Key north of U.S. Highway 1, Johnston Key, Raccoon Key, and Lower Saddlebunch Keys, south of U.S. Highway 1 but not including lands in T. 67 S., R. 27 E., Section 8 and north ½ of Section 17. Included are all lands and waters above mean low tide.

Within these areas the major constituent elements that are known to require special management considerations or protection are mangrove swamps containing red (*Rhizophora mangle*), black (*Avicennia germinans*), and white (*Laguncularia racemosa*) mangroves, and buttonwood (*Conocarpus erectus*); salt marshes, swales, and adjacent transitional wetlands containing saltwort (*Batis maritima*), perennial glasswort (*Salicornia virginica*), saltgrass (*Distichlis spicata*), sea ox-eye (*Borrichia frutescens*), keygrass (*Monanthochloe littoralis*), and coastal dropseed (*Sporobolus virginicus*); and fresh water marshes containing cattails (*Typha domingensis*), saw-grass (*Cladium jamaicense*), and cordgrass (*Spartina* spp.).

* * * * * *

Dated: June 8, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–21070 Filed 8–30–93; 8:45 am]

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Tuesday
August 31, 1993

Part VI

Department of Transportation

Federal Highway Administration

Metric Conversion of Traffic Control Signs; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 93-26]

Options for Coordinating the Metric Conversion of Traffic Control Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This document solicits public comments on the options that the FHWA is considering for coordinating an orderly transition of distance, weight, and speed traffic control sign legends from English to metric units. Conversion to the modern metric system, known as the International System of Units, is required for all Federal Government agencies by the Omnibus Trade and Competitiveness Act of 1988.

DATES: Comments concerning these options must be received November 1, 1993.

ADDRESSES: Submit written, signed comments, to FHWA Docket No. 93-26, Federal Highway Administration, room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph M. Umbs, Office of Highway Safety, (202) 366-0411, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The FHWA has initiated a phased five-year plan to convert its activities and business operations to the International System of Units (SI) (metric) system of weights and measures, as required by the Omnibus Trade and Competitiveness Act of 1988 (Omnibus Act) (Pub. L. 100-418, 102 Stat. 1107, 1451). Section 5164(b) of this Act sets a deadline date of September 30, 1992, when each Federal Government agency must begin using the metric system of units in procurements, grants, and other business-related activities, except to the extent that such use is impractical or would likely cause significant inefficiencies or loss of markets to United States firms.

The President's Executive Order No. 12770, signed July 25, 1991, and published in the Federal Register on July 29, 1991 (56 FR 35801), requires all Federal agencies to formulate metric transition plans. The FHWA's metric transition plan, titled "FHWA Metric Conversion Plan," was approved by the Secretary of Transportation on October 31, 1991. In advance of completing its plan, the FHWA published a Notice of Proposed Metric Conversion Policy in the Federal Register on April 5, 1991 (56 FR 14145). Comments on the proposed policy were solicited (Docket No. 91-12) from State and local governments, the highway industry, and the general public. The comment period closed on May 20, 1991. The FHWA published a Notice of Metric Conversion Policy in the June 11, 1992, Federal Register at 57 FR 24843. Under the policy, each FHWA operating office is to manage its metric conversion programs in keeping with the overall FHWA policy and plan.

Section 1053 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), (Pub. L. 102-240, 105 Stat. 1914, 2001), repealed section 144 of the Federal-aid Highway Act of 1978 (Pub. L. 95-599, 92 Stat. 2713) on metric system signing. Section 144 had prohibited the use of Federal funds for metric only signs. These Federal laws have made Federal-aid eligible to reimburse the States for costs they incur for installing metric message signs.

Purpose

This notice is being issued to present a discussion of the options the FHWA is considering for coordinating an orderly transition to metric unit sign legends. The FHWA is now seeking public comments regarding the desirability of converting sign messages to metric units, and the safety and cost implications of the various options for coordinating the State and local highway agency programs to change traffic control distance, weight, and speed limit signs to metric units. This coordination effort is intended to provide an orderly transition of highway sign legends from English units to metric units.

This notice includes a summary and discussion of the comments received regarding distance, weight, and speed signs from all sources in response to the April 5, 1991, Notice of Proposed Metric Conversion Policy, a statement of the FHWA's metric conversion policy, a summary of the approved FHWA metric conversion plan, and a discussion of the options that the FHWA is considering for coordinating changes in distance, weight, and speed signing.

Discussion of Docket No. 91-12 Comments

General

A total of 65 responses were received from 55 commenters, including private individuals, business firms, professional associations, national trade associations, local and State highway agencies, and other governmental agencies. The majority of commenters (33) were State highway agencies (SHAs). Overall, of those providing comments, 35 percent expressed some reservations about the proposed FHWA metric conversion policy and indicated there were specific areas of concern that they thought were in need of special attention during any future conversion efforts. Eighteen percent of the comments were strongly supportive, and 47 percent indicated strong opposition to converting to the metric system of measurement.

The following is a discussion of the comments regarding signing submitted to Docket 91-12 as identified and expressed by the commenters. Also included are FHWA observations and general responses to the comments.

Metric Distance, Weight, and Speed Signing Conversion Costs

Of the 10 SHAs that commented specifically about sign conversion issues, 8 expressed serious concerns about the costs of conversion to metric unit sign messages. However, they provided very little documented data regarding specific cost impacts.

In 1974, an American Association of State Highway and Transportation Officials (AASHTO) ad hoc metrication task force documented a rough estimate of the nationwide cost of metrication to Federal, State, and local highway agencies at $200 million. Further, the task force report predicted that signing changes, estimated at about 30 percent of total conversion costs, would constitute the major portion of the capital cost of metric conversion.

In an attempt to better understand what conversion costs would be in the 1990s, the AASHTO's current metrication task force requested that the Transportation Research Board undertake a study of the financial impact of metric conversion on SHAs and the highway industry. The financial study is one element of a larger effort being conducted under National Cooperative Highway Research Program Project 20-7, Task 54, "Financial Impacts of Conversion to the Metric System," that is intended to identify specific activities required for accomplishing metric conversion at a minimum cost and inconvenience. The effort to determine financial impact was significantly reduced from the planned

significantly reduced from the planned effort, and resulted in cost material on only two States, Alabama and North Carolina. Information from the study and other relevant sources has been incorporated into the AASHTO's publication "Guide to Metric Conversion." This document may be used to guide State and local highway agencies' metric conversion activities. Copies of this publication may be purchased from the AASHTO, 444 N. Capitol Street, NW., Washington, DC 20001.

Many of those commenting on the costs of metric conversion recommended that special Federal funding be established to reimburse States for costs associated with conversion. Several commenters noted that in 1978, Congress prohibited the use of Federal-aid funds for highway signs solely using the metric system of measurement. Although the Congress has not authorized special funding to provide reimbursement for costs associated with metric conversion, section 1053 of the ISTEA repealed section 144 of the Federal-aid Highway Act of 1978 (Pub. L. 95–599, 92 Stat. 2713) on metric system signing. Therefore, the FHWA may now reimburse States, at the appropriate pro rata share, for costs they incur in changing highway signs to reflect metric units under existing Federal-aid programs. Under the ISTEA, Surface Transportation Program funds can be used for metric unit signing on any public road including those classified as local or rural minor collectors.

Summary of FHWA Metric Conversion Policy, Plan, and Timetable

The FHWA's June 11, 1992, notice informed the public of the following overall Metric Conversion Policy and Plan.

General Policy

It is the FHWA's policy to pursue and promote an orderly changeover to the metric system for all of its programs in accordance with the statutory requirements, Executive Order 12770, Department of Commerce policy guidance, and DOT guidance. Metric conversion of the FHWA's direct procurement operations will be governed by the Federal Acquisition Regulations issued by the General Services Administration (GSA), as well as other applicable GSA and DOT regulations and policies.

Plan Elements and Target Dates

The major elements of FHWA's metric conversion plan and their respective implementation dates are listed in the following timetable.

METRIC TRANSITION TIMETABLE

Program elements/ activities	Target dates (completed)
I. FHWA metric conversion plan.	(Approved 10/31/91).
II. Initiate revision of pertinent laws and regulations that serve as barriers to metric conversion.	(1991).
III. Full metric conversion of FHSA manuals, documents, and publications.	1994.
IV. Full metric conversion of FHWA data collection and reporting.	1995.
V. Newly authorized Federal Lands Highway and Federal-aid construction contracts in metric units only.	September 30, 1996.

It should be recognized that meeting the above dates for FHWA actions does not imply that the conversion of all sign messages to metric units will be completed by the highway agencies by September 30, 1996. Under some of the options discussed later in this notice, the actual implementation actions by the State, local, and other Federal highway agencies may stretch well beyond 1996.

A copy of the FHWA Metric Conversion Plan may be obtained upon written request to the FHWA Contract Administration Branch, HNG–22, room 3211, 400 Seventh Street SW., Washington DC 20590 or by calling (202) 366–0355.

Discussion of Metric Distance, Weight, and Speed Signing Options

The States are moving ahead to evaluate public acceptance of metric unit message signs, metric unit legend format, metric unit abbreviations, sign location/placement, and to identify the types of signs that are candidates for conversion. Pilot projects are now being conducted by several States. The FHWA will evaluate these State projects, and is considering several options for coordinating the change to metric distance, weight, and speed signing in keeping with the overall FHWA metric conversion policy. Distance signing would include those signs that display the distance to a physical feature (e.g. a curve, an exit, or a city), bridge clearance signs, narrow bridge or lane width, mile post markers, and mile post-based exit numbers. The FHWA is seeking public comments on the options that it is considering for coordinating an orderly transition of distance, weight, and speed traffic control sign legends from English to metric units. Respondents should be as specific as possible on the options proposed, particularly with respect to the projected time-frames for implementation and any projected cost impacts.

Public Information and Outreach Initiatives

Any option to change the displays on highway distance, weight, and speed signs to metric units would be preceded by public information and outreach initiatives. The extent and types of activities will vary depending on the coordination option chosen. Additional information regarding these activities is contained in the "Discussion of Options" section below.

Discussion of Options

Option 1—Conversion Through Routine Maintenance

The FHWA could accept an option whereby States and other road jurisdictions replace English unit signs as they wear out with metric unit signs, as long as the plans require that all English speed, weight, and distance signs would be converted over the next four to seven years. This option also would allow each jurisdiction to develop its maintenance conversion plan on replacement criteria other than obsolescence. Individual plans would be made available to the FHWA for information.

Gradually replacing signs as they wear out with metric unit message signs has the advantage of holding conversion costs to a minimum, at least initially. The conversion could be spread somewhat evenly over the conversion period. The primary disadvantage of this option would be the potential confusion caused to the motoring public as some signs appear in English units and others appear in metric units during the four to seven year changeover. A national educational program on metric conversion probably could not fully compensate for this confusion.

This option would allow each State to develop and implement its own plan for conversion to metric, and would have the advantage of tailoring implementation to each State's unique situation. It would also probably hold down conversion costs. The conversion could be spread over seven years, or be completed in a very short time span depending on a State's desires or

resource. With the mix of conversion programs that could occur in adjacent States, however, transition to metrics over a seven year period could be chaotic for interstate travelers. To minimize confusion, signs should be replaced systematically (i.e., by route or significant section when a number of signs are scheduled for replacement with that route).

Option 2—Quick Conversion

The FHWA could encourage the conversion of all signs to metric units over a relatively short time (i.e., six months to one year) through a concentrated national effort. Similar conversion methods were highly successful when all of the States implemented the fifty-five mile per hour energy conservation program in 1974, when Canada converted to metric units, and when rural sections of the Interstate system were allowed to return to a sixty-five mile per hour speed limit in 1987. This method generally would not require the installation of new signs nor the relocation of existing signs. Only the parts of the existing signs that display English unit messages would be affected. The English unit message could be covered with the metric unit message or replaced with a metric unit message. In most cases it would be possible to overlay or replace the English unit messages on existing sign panels at a fraction of the price of installing new signs.

The quick conversion option would involve the systematic phasing-in of metric unit signs by major highway corridors or highway classification. Priority roads would be converted quickly while other roads would be phased in over a longer time period (up to one year). Converting all signs to metric units in a short period of time using overlay panels would require a well-coordinated effort of moderate cost with an extensive public information and education effort. While this strategy may have worked well for previous programs, the larger scale of this program, multiplicity of signs, and extensive coordination required between different jurisdictions may make this quick conversion more practical if accomplished first on specific priority jurisdictions or road systems.

An alternative quick conversion plan would encourage the changing of sign messages by type of sign, beginning with speed limit signs. One possible way to implement the speed limit signs conversion, would be to encourage the use of dual English and metric messages. This would draw attention to these very important regulatory signs and to the overall program to convert sign messages to metric units.

A short implementation period may, in the long run, be the least disruptive and most effective method of metric conversion for the public.

Approximately six million signs could be revised by overlaying/replacing English unit messages on site. By systematically phasing in metric unit signs by major highway corridors or highway classification, these costs would be moderate. This option has the advantage of combining some of the best features of the other options. A quick conversion could be accomplished on the Interstate System or other important highway corridors during a "metric month." A transition period of one year could be allowed to accomplish the conversion on other state highways, with local roads converted as existing signs wore out. A concentrated public education and awareness program immediately before the quick conversion takes place has the best potential for a successful public relations effort.

Option 3—Transition With Dual Metric and English Unit

The FHWA could encourage a two-phase metric conversion process. The first phase, to be completed by September 30, 1996, would encourage the posting of both metric and English unit messages for speed, weight, and distance signs. During the second phase, to be completed at a date to be determined jointly with the AASHTO, all of the English unit speed, weight, and distance messages would be removed, and all sign messages would be expressed in metric units.

The sign modification costs for a two-phase approach would be very high, perhaps the most expensive of the options being considered in sign costs. In many cases supplemental sign panels, supplemental supports, or even separate new signs would be needed to accommodate both the metric and English unit messages. The public relations marketing costs needed to support this very costly option could be lower than other options. However, this option has almost no educational value since many motorists will ignore the metric unit messages while dual messages are in place. This option could also result in an information overload for some motorists.

Comments and information pertaining to the information and options presented above should be addressed to the docket established for this notice.

Authority: Sec. 5164, Pub. L. 100-418, 102 Stat. 1107, 1451; Pub. L. 102-240, 105 Stat. 1914; 23 U.S.C. 109(d); 23 U.S.C. 315, and 49 CFR 1.48.

Issued on: August 23, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93-21099 Filed 8-30-93; 8:45 am]

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Part VII

Environmental Protection Agency

40 CFR Part 260 et al.
Hazardous Waste: Testing and Monitoring Activities; Rule and Proposed Rule

VOL 58 ISS 167 AG 31 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, and 270

[FRL-3581-7]

RIN 2050-AC32

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for testing and monitoring activities. These amendments replace the current Second Edition, including Updates I and II, of the EPA approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, by incorporating by reference the Third Edition (and its first update) into the RCRA regulations. These amendments also revise Appendices II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) and III—Chemical Analysis Test Methods to 40 CFR part 261, delete Appendix X—Method of Analysis for Chlorinated Dibenzo-p-dioxins and Dibenzofurans, Method 8280, to 40 CFR part 261, and revise Appendices I—Toxicity Characteristic Leaching Procedure (TCLP) and IX—Extraction Procedure (EP) Toxicity Test, to 40 CFR part 268. This action is necessary to provide better and more complete analytical test methods for RCRA-related testing. The intent of this amendment is to provide up-to-date technologies in order to promote cost effectiveness and flexibility in choosing analytical test methods.

EFFECTIVE DATE: August 31, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1993.

ADDRESSES: The official record for this rulemaking (Docket No. F-93-WTMF-FFFFF) is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (room M-2427), and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW-846 and of Update I to the Third Edition are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 783-3238. The GPO document number is 955-001-00000-1. New subscriptions to SW-846 may be ordered from GPO at a cost of $319.00. Those persons who have copies of the Third Edition of SW-846 that were purchased from GPO and wish to receive the final version of Update I and future revisions can do so by renewing their subscriptions with GPO for $221.00. There is a 25% surcharge for foreign subscriptions and renewals.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or call (703) 920-9810; or, for hearing impaired, call TDD (800) 553-7672 or (703) 486-3323. For technical information, contact Kim Kirkland, Office of Solid Waste (OS-331), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4761.

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I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended [42 U.S.C. 6905, 6912, 6921, 6922, 6924, 6925, 6926, 6930, and 6935].

II. Background Summary and Regulatory Framework

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Use of some of these methods

is required by specific regulations, as discussed below. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

Several of the hazardous waste regulations under Subtitle C of RCRA require that specific testing methods described in SW–846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR Parts 260 through 270. For the convenience of the reader, the Agency lists below a number of sections found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW–846 methods in general:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (*i.e.*, delisting petitions);

(2) Section 261.22(a)(1) and (2)—Evaluation of waste against the corrosivity characteristic;

(3) Section 261.24(a)—Leaching procedure for evaluation of a waste against the toxicity characteristic;

(4) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of a waste to determine if free liquid is a component of the waste;

(5) Section 266.112(b)(1)—Certain analysis in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(6) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(7) Sections 268.40(a), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste extract to determine compliance with Land Disposal treatment standards;

(8) Sections 270.19(c)(1) (iii) and (iv), and 270.62(b)(2)(i) (C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(9) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2) (i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In other situations, this EPA publication functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in responding to RCRA-related sampling and analysis requirements.

SW–846 is a document that will change over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. Therefore, EPA solicits any available data and information that may affect the usefulness of SW–846.

III. Response to Comments From the January 23, 1989 NPRM

A. Overview of Proposed Rule

On January 23, 1989 (54 FR 3212–3229), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by: (1) Adding new methods to SW–846; (2) revising existing methods in SW–846; (3) requiring the use of the Third Edition, as amended by Update I, for all testing for which SW–846 methods are specifically mandated in current Subtitle C regulations; and (4) requiring the use of minimum Quality Control procedures found in Chapter One of SW–846 for all testing pursuant to Subtitle C of RCRA. The proposal discussed in detail the advantages of the Third Edition over the Second Edition, including the Third Edition's use of a standard method format and the inclusion of a number of new and revised methods in the Third Edition.

The Agency solicited comments on each of these proposed changes. Items B through D of this section summarize the comments that were received and the actions taken by the Agency in response to those comments.[1]

B. Substitution of the Third Edition for the Second Edition Including Addition of New Methods and Revision of Existing Methods

The Agency proposed to replace the Second Edition of SW–846, including Updates I and II of the Second Edition, with methods contained in the Third Edition, as amended by Update I of the Third Edition. The Agency proposed this substitution because the methods contained in the Third Edition as amended by Update I expand the scope of the Second Edition or are improved versions of the methods in the Second Edition.

Except as discussed below and in the background document in the official record for this rulemaking, the Agency did not receive any significant negative comments on the proposal to replace the Second Edition of SW–846 methods with the versions contained in the Third Edition as amended by Update I. Therefore, the Agency has made this replacement by revising 40 CFR 260.11 to incorporate the Third Edition as amended by Update I by reference. Consistent with that change, a footnote in 40 CFR 260.11 discussing a distinction between the Second and Third Edition has been deleted. A listing of all parts found in the Third Edition of SW–846 as amended by Update I is provided below:[2]

SW–846 Third Edition, Update I

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[1] Other comments, together with the Agency's response thereto, have been placed in the official record for this rulemaking. (Docket No. F–93–WTMF–FFFFF)

[2] A suffix of "A" in the method number indicates revision one (the method has been revised once).

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In compiling the Third Edition of SW–846, the Agency revised many methods in the Second Edition, reprinted some methods from the Second Edition unaltered (except for format), and added many new methods. The Agency requested comments specifically on the new and revised methods in its January 23, 1989 proposal.

The comments received by the Agency on the addition of new methods and revision of existing methods were technical in nature. Specific details on these comments and the Agency's response to significant comments may be found in the background document to this rulemaking. The Agency has incorporated the majority of the suggested changes into the final Update I package, as described in detail in the background document. Some of the comments raised issues that resulted in additional proposed technical clarifications set forth in the February 8, 1990, Notice of Data Availability and Reopening of Comment Period. A discussion of the comments received on the February 8 notice is provided in section IV of this preamble.

C. Methods Format

In response to earlier comments, the Agency proposed to adopt a standardized ten-part format for all of its methods. This format was developed by technical experts from within EPA to clarify the methods and ensure uniform application and consideration of technical details in its methods.

The Agency did not receive any substantial comments on this issue and has therefore revised the SW–846 methods according to the proposed format.

D. Mandatory Use of Revised Chapter One

The Agency proposed to replace the existing Chapter One of the Third Edition with a revised version, and to make selected Quality Assurance and Quality Control procedures in the revised Chapter One mandatory for all RCRA testing. This proposal was made to ensure that any data used to make decisions regarding RCRA compliance would be of known and documented quality.

The Agency's proposal to replace Chapter One of SW–846 with a revised Chapter One and to require use of selected sections of Chapter One for all testing pursuant to Subtitle C of RCRA was commented on extensively. In evaluating these comments, the Agency further revised the proposed Chapter One and solicited comments on the revisions on February 8, 1990 (55 FR 4440–4445). At that time, the Agency declared its intention to make all of Chapter One mandatory for RCRA testing and requested comment on this change. Comments received in response to the February 8, 1990 notice are discussed below in section IV. As stated in section IV, the Agency has decided not to finalize the mandatory use of Chapter One at this time.

IV. Response to Comments From the February 8, 1990 Notice

A. Overview of Notice

On February 8, 1990, a Notice of Data Availability and Reopening of Comment Period was published in the **Federal Register** (55 FR 4440–4445). Issued with this notice was a revised Chapter One of SW–846 entitled "Report on Minimum Criteria to Assure Data Quality" (document number EPA/530–SW–90–021). The revisions were, to a large extent, based on comments received on the January 23, 1989 proposal. The Agency requested comments on eleven topics generally related to quality control definitions and parameters, which included the deletion of appendices III and X to 40 CFR part 261.

The notice stated that the Agency was considering making the revised Chapter One mandatory for all RCRA testing, with the exclusion of certain reasonable and legitimate exceptions noted within the notice. Items B through K of this section summarize the major comments that were received and the action taken by the Agency as a result of those

comments. A complete description of all significant comments and the Agency's responses may be found in the background document to this rulemaking.

B. Revised Chapter One

The Agency received many comments regarding the proposed revisions to Chapter One and the proposal to make all of Chapter One mandatory for RCRA testing. Comments were received regarding two major issues, which included: (1) The mandatory use of Chapter One for all RCRA analyses, and (2) the apparent discrepancy between Agency and regulated community requirements.

Several commenters, primarily analytical laboratories, objected to the mandatory use of Chapter One because they felt it could not be implemented in practical terms. They pointed out that, under Chapter One, each project would require individual Quality Assurance Project Plans (QAPjPs) and that a laboratory taking samples from many clients could not, in any practical way, attempt to meet the different QAPjPs for each client. Furthermore, one commenter argued that the laboratory performing the analyses should not be required to write different QAPjPs for each project.

The Agency has noted some confusion regarding whether it intended that the responsibility for producing the QAPjP lies with the laboratory or the member of the regulated community that provides the samples. The Agency believes that the member of the regulated community should be responsible for ensuring that a QAPjP is prepared because the burden of complying with the analytical requirements in the Agency's hazardous waste regulations is placed upon generators, transporters, and owners and operators of hazardous waste management facilities, not laboratories or consultants they may employ. In addition, the member of the regulated community is the only one in a position to know such things as how the data will be used, what decisions the data will support, and the required precision and accuracy of the measurements. The laboratory performing the measurements may not be in a position to know these details. Therefore, the Agency believes that the member of the regulated community should be responsible for the preparation of the QAPjP (*i.e.*, selection of the required methods, accuracy, precision, and sensitivity of the analysis). This is no different from the current situation that prevails in the laboratory services sector. The laboratory is responsible for meeting the requirements established by the client. This might require lower detection limits or better precision for some projects than for others. The Agency recognizes that, in a laboratory production environment, different samples with different analytical requests can present a management problem. The Agency believes, however, that laboratories already face such problems when meeting client needs, and are able to develop appropriate solutions.

Other commenters objected to the mandatory use of the Chapter One QA/QC procedures for all RCRA testing, since the Agency does not require the use of the methods contained in SW–846 for all RCRA testing. They argued that Chapter One of SW–846 should not apply when the methods in SW–846 are not being used.

In addressing this comment, the Agency notes the difference between the mandatory use of an analytical method and the proposed imposition of mandatory QC. These two items are distinct and different. The proposed QC requirements were designed to ensure that, no matter what method was used, the resulting data would be of known and documented quality. The Agency believes that the regulated community should be given as much flexibility as possible in selecting the most cost effective method for data gathering. However, no matter what method is used, the Agency believes that data must be of a quality sufficient to meet the requirements of the application. The proposed QC requirements were designed to achieve that end.

Based upon the above comments, as well as others received concerning whether Chapter One should be mandatory for all testing, the Agency has determined that requiring minimum quality control procedures for all RCRA testing requires further study. Thus, the Agency has decided to finalize the revised Chapter One only as guidance.

In addition, Chapter One provides guidance as to how data generated using QA/QC procedures can be assured through one document, the QAPjP. However, the Agency believes that existing documents (Standard Operating Procedures (SOPs), procedure manuals or other comparable plans) which fulfill the Agency's QA/QC recommendations may be appropriate and more cost-effective to members of the regulated community. Therefore, the Agency does not believe it is necessary for a separate QAPjP to be prepared for routine sampling analyses or activities if comparable documents are available and referenced.

C. Trace Analysis vs. Macroanalysis

The comments on the Agency's proposal to include language in SW–846 allowing the analyst latitude regarding sample size, dilution, concentration and choice of analytical methodology when macroanalysis (*i.e.*, analysis of high concentration samples) is performed were supportive of the Agency's position.

Therefore, the Agency has provided latitude for the sample size and/or sample dilution when macroanalysis is performed, as discussed in the notice. Macroanalysis refers to the analysis of samples in which the amount of the constituent being tested for exceeds the normal range covered by the analysis method. The methods contained in SW–846 may be used for macroanalysis if the sample size and/or dilution is adjusted such that the concentration of the final sample is in the range covered by the method. When a smaller sample is used or when a sample is diluted, the detection limit for the method will increase by a corresponding factor. If an instrumental detection limit for a particular compound is 10 nanograms (ng) (*i.e.*, the instrument making the measurement can measure 10 ng of material) and the amount of sample used for the measurement is 1 milliliter (mL), then the corresponding detection limit, for that sample, is 10 ng/mL or 0.01 parts per million (ppm). If the sample is diluted to 100 mL and 1 mL of the diluted material is used for the measurement, the detection limit will correspond to 100 times the original detection limit or 1 ppm. Dilution, therefore, affects detection limits. Likewise, if a larger amount of sample is used for the analysis, the detection limit is lowered by that factor. However, the instrumental detection limit remains at 10 ng regardless of the sample size used. In the case of macroanalysis, however, this increase in detection limit is of no consequence as long as the concentration of the sample is adjusted to the concentration range covered by the method. Thus, the following paragraphs have been added to Chapter Two, "Choosing the Correct Procedure," to provide guidance in this area and explain the limits to which the analyst must adhere when exercising this latitude:

> The methods presented in SW–846 were designed through sample sizing and concentration procedures to address the problem of "trace" analyses (<1000 ppm), and have been developed for an optimized working range. These methods are also applicable to "minor" (1000 ppm—10,000 ppm) and "major" (>10,000 ppm) analyses as well as to "trace" analyses, through use of appropriate sample preparation techniques

that result in analyte concentration within that optimized range. Such sample preparation techniques include:

(1) Adjustment of size of sample prepared for analysis,

(2) Adjustment of injection volumes,

(3) Dilution or concentration of sample,

(4) Elimination of concentration steps prescribed for "trace" analyses,

(5) Direct injection (of samples to be analyzed for volatile constituents).

The performance data presented in each of these methods were generated from "trace" analyses, and may not be applicable to "minor" and "major" analyses. Generally, extraction efficiency improves as concentration increases. Caution: Care should be taken when analyzing samples for trace analyses subsequent to analysis of concentrated samples due to the possibility of cross-contamination.

D. Equipment, Standards and Reagent Preparation

The comments on the Agency's proposal to include language in SW–846 explicitly permitting the analyst latitude regarding the choice of glassware, equipment, and preparation of standards and reagents for use in SW–846 test methods were supportive of the Agency's position. Therefore, the Agency has added the following statement to the Disclaimer, at the beginning of SW–846, and to Chapter Two allowing this latitude:

Since many types and sizes of glassware and supplies are commercially available, and since it is possible to prepare reagents and standards in many different ways, those specified in these methods may be replaced by any similar types as long as this substitution does not affect the overall quality of the analyses.

E. Holding Times

The Agency proposed making changes to SW–846 that will also permit the analyst latitude in the implementation of holding times and to consider the results of samples not analyzed within the specified holding times to be minimum values.

Although most comments indicated agreement with the proposal to allow flexibility for the holding times given in SW–846, several commenters believed that applying the proposed change to the varied matrices and levels of contaminants encountered in environmental samples is inappropriate. Two primary concerns raised by these commenters regarded: (1) Accurately answering the question of whether the threshold was exceeded if the "minimum value" is applied in situations where the measured concentration was just below the regulatory threshold, and (2) abuse of the program if the implementation of holding times was left to the discretion of the analyst.

The Agency agrees with the first comment that one cannot conclude a waste concentration is below a specified level when the holding time for a sample of that waste is exceeded, and the data show the sample concentration is below the regulatory threshold. The data can be viewed as providing a minimum concentration only. If these data show, however, that the minimum concentration is above the regulatory threshold, then one can conclude that the waste is hazardous. Data generated after holding times are exceeded may only be used to prove a waste is hazardous, not that the waste is non-hazardous.

The Agency disagrees with the second comment that, by adopting this approach, the analyst is given too much discretion regarding implementing holding times, since the data can only be used as discussed above.

Based on these comments, the Agency has included in Chapter Two of SW–846 a provision for the use of data from samples after their holding time has been exceeded for the purpose of showing a waste has exceeded a regulatory limit. The Agency emphasizes that analyses performed after holding times expire will represent minimum values and will not be appropriate for demonstrating that a waste is below a regulatory limit. Holding times must be met whenever one is demonstrating that the concentration is less than a regulatory limit. Specifically, the following paragraph has been added to Chapter Two:

Samples must be extracted/analyzed within the specified holding times for the results to be considered reflective of total concentrations. Analytical data generated outside of the specified holding times must be considered to be minimum values only. Such data may be used to demonstrate that a waste is hazardous where it shows the concentration of a constituent to be above the regulatory threshold but cannot be used to demonstrate that a waste is not hazardous.

F. Representative Sampling

The Agency received several comments regarding representative sampling. Specifically, commenters expressed concern that the Agency was redefining representative sampling, that the Agency approach does not take special sampling problems (*i.e.*, mixed radioactive and hazardous waste) into account, and that more guidance is needed concerning sampling of high-volume wastes.

The comments raised by the public are still under consideration by the Agency. In order to address these comments the Agency will need to issue additional guidance. The Agency intends to issue extensive guidance covering all aspects of sampling, including representative sampling. This guidance will replace Chapter Nine of SW–846 and will be proposed and available for public comment in the future.

This effort includes consideration of sampling strategies that can minimize costs without sacrificing acceptable data quality for making RCRA decisions. The on-going work includes identifying approaches and valid statistical tools for data evaluation and interpretation. Until this guidance is available, appropriate sampling strategies should be decided on a case-by-case basis utilizing as guidance Chapter Nine of SW–846 and the comment responses found in the background document for this rulemaking.

G. Analysis of Nonaqueous Liquids for Elemental Species

Two commenters urged EPA not to adopt Method C—Bomb, Acid Digestion, as found in American Society for Testing and Materials (ASTM) Method E926–88, "Methods of Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," until data are available on its applicability. A request has been made that, before being proposed or recommended, the method should be tested for all of the matrix types. One commenter, on the other hand, indicated that he or she had evaluated this method for its ability to digest oils for metals and found that "[t]his work demonstrated that the method was appropriate for metals of environmental concern, even though it is not a complete digestion."

In recommending this method the Agency relies, to some extent, on the acceptance procedures used by ASTM. Before ASTM recommends a method for a particular use, it is evaluated by a committee composed of experts in that testing area. If the committee accepts the method, it is adopted and published by ASTM. This review process is scientifically rigorous and ensures the method is suitable for its intended use. While ASTM method recommendations are not binding on the Agency, the Agency may recognize an ASTM method as satisfactory.

Since this method is generally accepted for hydrocarbon materials, the Agency believes that recommending it without a reevaluation or soliciting information on its applicability is proper, given Agency concurrence regarding the respective ASTM recommendation and review procedures. In response to public comment, however, the Agency

evaluated this method, and others, for determining metals in a limited number of waste oils. The results of this study indicate that the method is adequate for this purpose. A copy of this study is contained in a background document accompanying this rule. This study supports the conclusion of the third commenter regarding the applicability of the method for metals in oil analysis.

Furthermore, since waste oil is generally considered one of the most difficult matrices, the Agency believes this method will be applicable to a very wide range of matrices. No substantive data was submitted showing that the method does not work for its intended application. As a result, the Agency has chosen to promulgate the method. As more information becomes available, the Agency will update the method to include performance data for additional, or more specific, matrices.

The Agency maintains that methods used for RCRA-related testing should be applicable to the specific matrix and analytes of concern. The Agency disagrees with the commenters, however, that testing of the method for additional nonaqueous matrices is necessary before the method is recommended. It is not possible to validate any method for all matrices of potential interest. The method has been found to produce acceptable results for metals in oil. Users of this method may wish to validate its use for other matrices using the QC guidance set forth in Chapter One of SW–846. (See SW–846, Chapter One, section 4.4.3 "Laboratory Control Procedures.")

Therefore, the Agency is incorporating by reference "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926–88, Test Method C—Bomb, Acid Digestion Method in § 260.11(a) of the RCRA regulations.

H. Method of Standard Additions and Matrix Spikes

The Agency received comments supportive of the Agency's position that the method of standard additions (MSA) be applied when matrix interferences are suspected. The Agency has and continues to require MSA for certain determinations of elemental species in EP Toxicity and TCLP leachates, for certain data provided in support of delisting petitions, for analysis of new matrices, and for analysis when matrix interferences are present. Directions for applying MSA are found in Method 7000, and have been retained in the Third Edition of SW–846 and Update I.

The Agency believes that matrix spikes can be useful in detecting bias and therefore has retained guidance related to matrix spikes in Chapter One and in some methods contained in SW–846.

I. Spike Recovery Correction

In the February 8, 1990 notice, the Agency set out its intent to require that reported values be adjusted for analytical bias using matrix spike recovery as one of the minimum Quality Control procedures required for all RCRA testing. The purpose of this requirement was to provide more accurate data in those situations where there was a significant analytical bias in the data due to low recoveries of the analytes of interest. Many of the commenters to the February 8, 1990 notice indicated that the requirement for spike recovery correction should not be mandatory. In particular, a number of commenters raised questions relative to the practical aspects of implementation of the requirement (e.g., how to add the spike, how many compounds must be spiked, how many samples must be spiked) as well as the burdensome nature of implementation for wastes with matrix interference problems. Wastes with matrix interferences often require dilution in an attempt to reduce or eliminate the interferences. As a result, detection limits could be elevated and one might not be able to determine if a compound of interest is present below the regulatory threshold. In addition, interferences may not equally affect the sample and the spike. Commenters also expressed concern about bias correction when applied to a constituent that is poorly recovered from a sample matrix. In the case of zero percent recovery, one may not be sure that the laboratory could have detected the presence of the analyte if it were present.

The Agency already has recognized that spike recovery correction is a complex issue and that there is a need for further evaluation and more detailed guidance on the specific implementation procedures. Therefore, in response to public comment received on the February 8, 1990, Federal Register notice, in a Federal Register notice published on November 24, 1992 (57 FR 55114), the Agency has already announced its decision not to proceed with the proposed spike recovery correction requirement in its Subtitle C analytical procedures, and has withdrawn the requirement for bias correction of analytical spiked samples from the TCLP. The November 24, 1992 rule withdrew the spike recovery correction requirement from the TCLP and, except for technical and format changes made in a June 29, 1990, final rule revising the TCLP (55 FR 26986), returned the QA provisions of the TCLP to those promulgated on March 29, 1990 (55 FR 11796). As a result, matrix spike recoveries must be calculated (as set forth in revised section 8.2 of the TCLP) and the method of standard additions must be employed as the quantitation method for metallic contaminants when appropriate as specified in the method (as set forth in revised section 8.4 of the TCLP). In addition, the Agency made a technical correction to the regulatory language in section 8.4 to specify the use of initial calibration quantitation methods for metallic contaminants. The Agency felt this technical correction was appropriate because, at present, the method of standard additions is inapplicable to organic contaminants. Wastes identified as hazardous through TCLP testing utilizing matrix spike recovery correction must be managed as hazardous wastes, unless and until such wastes are reevaluated using recalculations of existing data or the TCLP test procedure as described in November 24, 1992 rule or otherwise reevaluated and found to be non-hazardous.

J. Reagent Grade Water

Several commenters asked that the Agency's definition of Reagent Grade Water be clarified. Specifically, they requested that the Agency adopt objective limits for defining "reagent grade water." In response to these comments the Agency has added definitions of reagent water and organic-free reagent water to Chapter One. Specific details on these definitions may be found in the revised Chapter One which provided that for a method blank to be acceptable, the concentration in the blank of any analyte of concern should be no higher than the highest of the following:

(1) The method detection limit,

(2) Five percent of the regulatory limit for that analyte, or

(3) Five percent of the measured concentration in the sample.

Reagent water and organic-free reagent water will generally provide acceptable method blanks.

K. Appendices III and X to 40 CFR Part 261

The Agency received few comments on the proposal to delete Appendices III and X of 40 CFR part 261. All were in favor of deleting Appendix X, but several found Appendix III useful as a reference.

The Agency has chosen to proceed with removal of Appendix X of Part 261 as proposed in the Notice. The Agency has also decided to proceed with

revising Appendix III of part 261 whereby Tables 1 through 3 are removed and a note is added referencing the reader to SW–846. The information contained in the tables of Appendix III, "Chemical Analysis Test Methods", is provided in SW–846 Third Edition, Chapter Two, "Choosing the Correct Procedure." This chapter can be used in place of the tables of Appendix III. Removal of the appendix tables does not change the methods that are to be used in a given situation.

Since Appendix III of part 261 is being revised to refer to SW–846 and since §§ 260.22(d)(1)(i) and 270.19(c)(1)(iii) reference that appendix, those sections are also being revised to instead reference SW–846.

V. Technical Changes

The Agency is taking this opportunity to make several technical changes resulting from adoption of the Third Edition of SW–846 and correcting minor technical errors. These changes include:

- Revising appendix II of part 261 by deleting the Toxicity Characteristic Leaching Procedure (TCLP), and adding a note referencing the TCLP, Method 1311 found in SW–846; and revising § 261.24 by removing the reference to the TCLP found in appendix II, and adding in its place a reference to SW–846 Method 1311.
- Revising appendices I and IX of part 268 by deleting the reference to the TCLP found in appendix II, part 261 from appendix I of part 268 and deleting the EP Toxicity Test, Method 1310 from appendix IX of part 268 and adding notes respectively referencing the TCLP, Method 1311 and the EP, Method 1310 found in SW–846; and revising references to appendix II of part 261 and appendix IX of part 268 in §§ 268.7(a), 268.40(a) and 268.41(a) to instead reference SW–486 Methods 1311 and 1310.
- Deleting the Liquid Release Test, Method 9096 from SW–846 Third Edition and First Update.
- Removing the 47 analytical test methods incorporated by reference in § 260.11(a).
- Deleting references to equivalent methods in §§ 261.22(a) (1) and (2) and 261.24(a).
- Deleting the reference to Method 5.2 in § 261.22(a)(1) and adding in its place the reference to Method 9040.
- Adding clarification that references to SW–846 in §§ 264.190(a), 264.314(c), 265.190(a), 265.314(d), 270.19(c)(1)(iii) and (iv), 270.62(b)(2)(i)(C) and (D), and 270.66(c)(2)(i) and (ii) are to SW–846 as incorporated by reference in § 260.11
- Revising § 270.6 to cross reference § 260.11

Since these are technical changes that do not affect the implementation of the regulations, the Agency is simply providing notice of the changes without opportunity for comment. These changes are discussed in detail below.

A. Revising Appendix II of Part 261 by Deleting the Toxicity Characteristic Leaching Procedure (TCLP), and Adding Reference to the TCLP, SW–846 Method 1311 to Appendix II and § 261.24.

The TCLP is being removed from appendix II of part 261 and replaced with a note referencing SW–846 because this method is contained in the Third Edition of SW–846 (*i.e.*, Method 1311) and there is no need to maintain multiple copies of this method (one in appendix II of part 261 and one incorporated by reference) in the regulations. This technical change is being undertaken to eliminate redundancy and to remove the possibility that a discrepancy might exist between two versions of the method. This revision only changes where the method is found. It does not change the content or intended use of the method. Since this is clearly a technical change, the Agency is making this change without notice and comment.

Since the TCLP is being removed from appendix II and replaced with a note referencing SW–846, and § 261.24 refers to appendix II, § 261.24 is being revised to also refer to Method 1311 in SW–846.

B. Revising Appendices I and IX of Part 268 by Deleting the Reference to the TCLP Found in Appendix II, Part 261, From Appendix I of Part 268 and Deleting the EP Toxicity Test From Appendix IX of Part 268; and Adding References to the TCLP, SW–846 Method 1311 and the EP, SW–846 Method 1310 in the Respective Appendices and in §§ 268.7(a), 268.40(a) and 268.41(a).

Since the TCLP is being removed from appendix II, part 261 and replaced with a note referencing SW–846 Method 1311, and since appendix I of part 268 and §§ 268.7(a), 268.40(a) and 268.41(a) refer to appendix II of part 261, appendix I, part 268 and §§ 268.7(a), 268.40(a) and 268.41(a) are being revised to also refer to Method 1311 in SW–846.

The Extraction Procedure (EP) Toxicity Test is also being removed from appendix IX of part 268 and replaced with a note referencing SW–846 because the method is contained in the Third Edition of SW–846 (*i.e.*, Method 1310), and there is no need to maintain multiple copies of this method (one in appendix IX of part 268 and one incorporated by Reference) in the regulations. This revision only changes where the method is found. It does not change the content or intended use of the method.

Since the EP is being removed from appendix IX of part 268 and replaced with a note referencing SW–846 Method 1310, and since §§ 268.7(a) and 268.40(a) refer to this appendix, §§ 268.7(a) and 268.40(a) are also being revised to refer to Method 1310 in SW–846.

C. Deleting the Liquid Release Test, Method 9096 From SW–846 Third Edition and Update I

The Liquid Release Test, SW–846 Method 9096, was included in SW–846 Third Edition and Update I inadvertently. It was not EPA's intention to include the Liquid Release Test in that publication, since Method 9096 has not yet been proposed. EPA is, therefore, deleting Method 9096 from SW–846 Third Edition and Update I. It is the Agency's intention to propose Method 9096 as part of Update II to SW–846.

D. Removing the 47 Analytical Test Methods Incorporated by Reference in § 260.11(a)

The Agency is today removing the 47 methods incorporated by reference in § 260.11(a). This action is being taken since the 47 methods are contained in the Third Edition of SW–846, which is being incorporated by reference today in its entirety. Therefore, specific reference to the 47 methods is redundant and is being removed.

E. Deleting References to Equivalent Methods in §§ 261.22(a)(1) and (2) and 261.24(a)

The Agency notes that anyone may petition to add an equivalent testing or analytical method to SW–846 for use in the RCRA program under provisions of §§ 260.20 and 260.21 of these regulations. Because these provisions have always been available to the public, in today's rule the Agency is removing references to equivalent methods in §§ 261.24(a).

F. Deleting the Reference to Method 5.2 in § 261.22(a)(1) and Adding in its Place the Reference to Method 9040

The EPA method number for pH is incorrectly referenced in § 261.22(a)(1) as Method 5.2. Therefore, the Agency is deleting the reference to Method 5.2 in that section and replacing it with the correct reference to Method 9040.

G. Adding Clarification that References to SW–846 in §§ 264.190(a), 264.314(c), 265.190(a), 265.314(d), 270.19(c)(1) (iii) and (iv), 270.62(b)(2)(i) (C) and (D), and 270.66(c)(2) (i) and (ii) are to SW–846 as Incorporated by Reference in § 260.11

Finally, the Agency is today clarifying for the reader references to SW–846 and its methods in §§ 264.190(a), 264.314(c), 265.190(a), 265.314(d), 270.19(c)(1) (iii) and (iv), 270.62(b)(2)(i) (C) and (D), and 270.66(c)(2) (i) and (ii) by adding the phrase "as incorporated by reference in § 260.11" after "SW–846" in those sections.

H. Revising § 270.6 to cross reference § 260.11

The Agency is modifying § 270.6 to refer to § 260.11. Since § 260.11 applies to 40 CFR parts 260 through 270, revising § 270.6 References is repetitious and unnecessary.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule promulgates standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. Therefore, the rule is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

As required by 40 CFR 271.21(e)(2), States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is determined based on the date of final rule promulgation in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in fulfillment of the Federal regulations promulgated today until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official applications for final authorization within 12 months after the effective date of today's rule are not required to include in their applications requirements equivalent to the requirements in today's rule. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective dates of today's rule must include requirements at least as stringent as the requirements in the final rule in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Effective Date

Section 3010 of RCRA provides that regulations promulgated pursuant to Subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need six months to come into compliance. Since today's rule provides greater flexibility to the regulated community in testing and monitoring solid waste, the Agency believes the regulated community does not need six months to come into compliance. For that same reason, the Agency believes that good cause exists under the Administrative Procedures Act, 5 U.S.C. section 553(d), for not delaying the effective date of this rule under 30 days after its publication in the Federal Register. Therefore, this rule is effective August 31, 1993.

VIII. Regulatory Analyses

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule does not increase the number of situations in which SW–846 test methods are required, but rather provides greater flexibility to the regulated community in testing and monitoring solid waste. The rule entails no additional testing or recordkeeping burden. The effects on the economy for incorporating technical corrections and adding new test methods are essentially zero.

For the same reasons, EPA has also determined that this final rule will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. There is no additional economic impact, therefore, due to today's rule. The Agency has determined that today's rule is not a major regulation; thus, no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. sections 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the

head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to all of the regulated community, including small entities. Therefore, in accordance with 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act). Thus, the regulation does not require an RFA.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Parts 260, 261, 264, 265, 268, and 270.

Administrative practice and procedure, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 24, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11(a) is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference; by adding ASTM Method D926–88 to the end of the list of incorporation by reference publications; by removing the undesignated paragraph following the list of incorporation by reference publications, which refers to the 47 analytical testing methods and its footnote 1, to read as follows:

§ 260.11 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (September, 1986), as amended by Update I (July 1992)]. The Third Edition of SW–846 and Update I (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. Copies may be inspected at the Library and RCRA Docket No. F–93–WIMP–FFFFF, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

* * * * *

"ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926–88, Test Method C—Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

* * * * *

Subpart C—Rulemaking Petitions

3. Section 260.22(d)(1)(i) is revised to read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

* * * * *

(d) * * *

(1) * * *

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11; or

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart C—Characteristics of Hazardous Waste

5. Section 261.22 is amended by revising paragraphs (a)(1) and paragraph (a)(2) to read as follows:

§ 261.22 Characteristic of corrosivity.

(a) * * *

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM–01–69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

6. Section 261.24(a) is revised to read as follows:

§ 261.24 Toxicity characteristic.

(a) A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section.

* * * * *

7. Appendix II to part 261 is revised to read as follows:

Appendix II to Part 261—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)

Note: The TCLP (Method 1311) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

8. Appendix III to part 261 is revised to read as follows:

Appendix III to Part 261—Chemical Analysis Test Methods

Note: Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in Chapter Two, "Choosing the Correct Procedure" found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW–846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

9. Appendix X to part 261 is removed.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart J—Tank Systems

11. Section 264.190 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 264.190 Applicability.

* * * * *

(a) * * * To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

12. Section 264.314 is amended by revising paragraph (c) to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

* * * * *

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

13. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

Subpart J—Tank Systems

14. Section 265.190 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 265.190 Applicability.

* * * * *

(a) * * * To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

15. Section 265.314 is amended by revising paragraph (d) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

16. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

17. Section 268.7 is amended by revising paragraph (a) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using the Extraction Procedure Toxicity Test, Method 1310 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. If the generator determines that this waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37, the generator must determine what underlying hazardous constituents (as defined in § 268.2) are reasonably expected to be present in the D001 or D002 waste.

* * * * *

Subpart D—Treatment Standards

18. Section 268.40 is amended by revising paragraph (a) to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in § 268.41 may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using Method 1311, the Toxicity Characteristic Leaching Procedure does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste, with the following exceptions: D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136. These wastes may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using either Method 1310, the Extraction Procedure Toxicity Test, or Method 1311, the Toxicity Characteristic Leaching Procedure, does not exceed the concentrations shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste. Methods 1310 and 1311 are both found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

19. Section 268.41 is amended by revising paragraph (a) introductory text to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) Table CCWE identifies the restricted wastes and the concentrations of their associated constituents which may not be exceeded in the extract of a waste or waste treatment residual extracted using Method 1311, the Toxicity Characteristic Leaching Procedure, for the allowable land disposal of such wastes. Compliance

with these concentrations is required based upon grab samples. Method 1311 is found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

20. Appendix I to part 268 is revised to read as follows:

Appendix I to Part 268—Toxicity Characteristic Leaching Procedure (TCLP)

Note: The TCLP (Method 1311) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

21. Appendix IX to part 268 is revised to read as follows:

Appendix IX to Part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310)

Note: The EP (Method 1310) is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

22. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

23. Section 270.6(a) is revised to read as follows:

§ 270.6 References.

(a) When used in part 270 of this chapter, the following publications are incorporated by reference: (See 40 CFR 260.11 References)

* * * * *

Subpart B—Permit Application

24. Section 270.19 is amended by revising the last sentence of paragraph (c)(1)(iii), and by revising paragraph (c)(1)(iv) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(c) * * *

(1) * * *

(iii) * * * The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.

* * * * *

Subpart F—Special Forms of Permits

25. Section 270.62 is amended by revising the last sentence of paragraph (b)(2)(i)(C), and by revising paragraph (b)(2)(i)(D) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) * * * The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.

* * * * *

26. Section 270.66 is amended by revising the last sentence of paragraph (c)(2)(i), and by revising paragraph (c)(2)(ii) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(c) * * *

(2) * * *

(i) * * * The waste analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or their equivalent.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter and § 270.6, or other equivalent.

* * * * *

[FR Doc. 93-21114 Filed 8-30-93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL-3981-9]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to revise certain testing methods used in complying with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA). EPA also is proposing to approve several new testing methods for use in complying with the requirements of Subtitle C of RCRA. These new and revised methods, designated as Update II, are proposed to be added to the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. This action is necessary to provide better and more complete analytical test methods for RCRA-related testing.

DATES: Comments on this proposed rule must be submitted on or before November 1, 1993.

ADDRESSES: The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The official record for this rulemaking (Docket No. F-93-WT2P-FFFFF) is located at the above address in room M-2427, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW-846, Update I, and the proposed Update II to the Third Edition are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 783-3238. The GPO document number is 955-001-00000-1.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or call (703) 920-9810; or, for hearing impaired, call TDD (800) 553-7672. For technical information, contact Kim Kirkland, Office of Solid Waste (OS-331), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-4761.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background Summary and Regulatory Framework
III. Proposal
  A. Revised Methods and Chapters
  B. New Methods
  C. Free Liquids and Characteristic Tests
  D. pH Testing
IV. State Authority
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  A. Regulatory Impact Analysis
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I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended [42 U.S.C. 6905, 6912, 6921, 6922, 6924, 6924, 6925, 6926, 6930, and 6935].

II. Background Summary and Regulatory Framework

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), and that are required for specific regulations as discussed below. These methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results. In situations where the regulations require the use of appropriate SW-846 methods, the regulations, as amended by a final rule published elsewhere in today's **Federal Register**, specify use of the Third Edition of EPA's SW-846 manual as amended by Update I. SW-846 will be amended further to include the new and revised methods contained in this proposed Update II if these methods are adopted in final form.

Several of the hazardous waste regulations under Subtitle C of RCRA require that specific testing methods described in SW-846 be employed for certain applications. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. For the convenience of the reader, the Agency lists below a number of the sections found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW-846 methods in general:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (*i.e.*, delisting petitions);

(2) Sections 261.22(a)(1) and (2)—Evaluation of waste against the corrosivity characteristic;

(3) Sections 261.24(a)—Leaching procedure for evaluation of waste against the toxicity characteristic;

(4) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of waste to determine if free liquid is a component of the waste;

(5) Section 266.112(b)(1)—Certain analyses in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(6) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(7) Sections 268.40(a), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste to determine compliance with Land Disposal treatment standards;

(8) Sections 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(i)(C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(9) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In other situations, this EPA publication functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in responding to RCRA-related sampling and analysis requirements.

SW-846 is a document that will change over time as new information and data are developed. Advances in analytical instrumentation and

techniques are continually reviewed by the Agency and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. Update II represents such an incorporation. Therefore, EPA solicits any available data and information that may affect the usefulness of SW–846.

III. Proposal

A. Revised Methods and Chapters

The Agency is today proposing to revise several methods contained in the Third Edition of SW–846 and its Update I, incorporated by reference into 40 CFR 260.11 by a separate rulemaking published elsewhere in today's **Federal Register**. These proposed revisions would improve the methods and provide additional performance information for each method. The Agency is also revising SW–846 Chapters Two and Three and section 4.1 of Chapter Four to more accurately reflect SW–846 method improvements. In addition, the Agency is revising section 7.2.1 of SW–846 Chapter Seven. A discussion regarding the Agency's basis for revising Chapter Seven is provided in section III.C of this preamble.

Table 1 lists the methods and chapter sections that are proposed for revision. The revised methods and chapters are available from GPO, and are part of the official docket for this rulemaking. The Agency is soliciting comments on all sections of the methods.

B. New Methods

The Agency is today proposing to add several new methods to the Third Edition of SW–846. These new methods would be added to allow more flexibility of method selection and to provide methods that may be used for additional analytes. Table 2 lists the methods that are proposed for addition to SW–846. These new methods are available from GPO, and are part of the official docket for this rulemaking. The Agency is soliciting comments on all sections of these methods.

TABLE 1.—PROPOSED REVISED METHODS AND CHAPTERS

Method No.	Title
	Chapter Two—Choosing the Correct Procedure (all sections).
	Chapter Three—Metallic Analytes (sections 3.1–3.3).
	Chapter Four—Organic Analytes (section 4.1).
	Chapter Seven—Introduction and Regulatory Definitions (section 7.2.1).
3510B	Separatory Funnel Liquid-Liquid Extraction.
3520B	Continuous Liquid-Liquid Extraction.
3540B	Soxhlet Extraction.
3550A	Ultrasonic Extraction.
3600B	Cleanup.
3630B	Silica Gel Cleanup.
3640A	Gel-Permeation Cleanup.
5040A	Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): GC/MS Technique.
7060A	Arsenic (Atomic Absorption, Furnace Technique).
7080A	Barium (Atomic Absorption, Direct Aspiration).
7131A	Cadmium (Atomic Absorption, Furnace Technique).
7470A	Mercury in Liquid Waste (Manual Cold-Vapor Technique).
7471A	Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique).
7741A	Selenium (Atomic Absorption, Gaseous Hydride).
8010B	Halogenated Volatile Organics by Gas Chromatography.
8020A	Aromatic Volatile Organics by Gas Chromatography.
8021A	Halogenated and Aromatic Volatiles by Gas Chromatography Using Electrolytic Conductivity and Photoionization Detectors in Series: Capillary Column Technique.
8080A	Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography.
8120A	Chlorinated Hydrocarbons by Gas Chromatography.
8141A	Organophosphorus Compounds by Gas Chromatography: Capillary Column Technique.
8150B	Chlorinated Herbicides by Gas Chromatography.
8240B	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
8250A	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
8260A	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique.
8270B	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS): Capillary Column Technique.
9020B	Total Organic Halides (TOX).
9040A	pH Electrometric Measurement.
9045B	Soil and Waste pH.
9071A	Oil and Grease Extraction Method for Sludge and Sediment Samples.
9200A	Nitrate.
9252A	Chloride (Titrimetric, Mercuric Nitrate).

Note: A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice).

TABLE 2.—NEW METHODS PROPOSED FOR ADDITION TO SW–846

Method No.	Title
1312	Synthetic Precipitation Leaching Procedure.
3015	Microwave Assisted Acid Digestion of Aqueous Samples and Extracts.
3051	Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils.
3541	Automated Soxhlet Extraction.
3665	Sulfuric Acid/Permanganate Cleanup.
5041	Protocol for Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Wide-bore Capillary Column Technique.
5050	Bomb Combustion Method for Solid Waste.
5100	Determination of the Volatile Organic Concentration of Waste Samples.
5110	Determination of Organic Phase Vapor Pressure in Waste Samples.
6020	Inductively Coupled Plasma—Mass Spectrometry.
7062	Antimony and Arsenic (Atomic Absorption, Gaseous Borohydride).
7742	Selenium (Atomic Absorption, Gaseous Borohydride).
8031	Acrylonitrile by Gas Chromatography.
8032	Acrylamide by Gas Chromatography.
8061	Phthalate Esters by Capillary Gas Chromatography with Electron Capture Detection (GC/ECD).
8081	Organochlorine Pesticides and PCBs as Aroclors by Gas Chromatography: Capillary Column Technique.
8121	Chlorinated Hydrocarbons by Gas Chromatography: Capillary Column Technique.

TABLE 2.—NEW METHODS PROPOSED FOR ADDITION TO SW–846—Continued

Method No.	Title
8151	Chlorinated Herbicides by Gas Chromatography Using Methylation or Pentafluorobenzylation Derivatization: Capillary Column Technique.
8275	Thermal Chromatography/Mass Spectrometry (TC/MS) for Screening Semivolatile Organic Compounds.
8290	Polychlorinated Dibenzodioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High/Resolution Gas Chromatography/High-Resolution Mass Spectrometry (HRGC/HRMS).
8315	Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC).
8316	Acrylamide, Acrylonitrile and Acrolein by High Performance Liquid Chromatography (HPLC).
8318	N-Methylcarbamates by High Performance Liquid Chromatography (HPLC).
8321	Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography/Thermospray/Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) Detection.
8330	Nitroaromatics and Nitramines by High Performance Liquid Chromatography (HPLC).
8331	Tetrazene by Reverse Phase High Performance Liquid Chromatography (HPLC).
8410	Gas Chromatography/Fourier Transform Infrared (GC/FT–IR) Spectrometry for Semivolatile Organics: Capillary Column.
9056	Anion Chromatography Method.
9075	Test Method for Total Chlorine in New and Used Petroleum Products by X-Ray Fluorescence Spectrometry (XRF).
9076	Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulometry.
9077	Test Methods for Total Chlorine in New and Used Petroleum Products (Field Test Kit Methods).
9096	Liquid Release Test (LRT) Procedure.
9253	Chloride (Titrimetric, Silver Nitrate).

C. Free Liquids and Characteristic Tests

The Agency is today proposing to delete a statement in SW–846 which implies that Method 9095 (the Paint Filter Liquids Test) is the appropriate test to use in determining whether a waste contains a liquid for purposes of testing for the characteristic of corrosivity. More specifically, that statement, which appears in section 7.2.1 of Chapter Seven of SW–846, states that "Method 9095, Paint Filter Liquids Test, Chapter Six [may be used] to determine free liquid" for purposes of testing for the corrosivity characteristic.

While liquids obtained using Method 9095 (or any other common laboratory separation technique such as decanting or pipetting) may be used in testing for corrosivity or ignitability, these methods are not adequate to demonstrate that a waste does not contain a liquid for purposes of testing for those characteristics. In order to demonstrate that a waste does not contain a liquid for purposes of testing for those characteristics, the Agency is today clarifying in section 7.2.1 of Chapter Seven that the pressure filtration technique specified in Method 1311 (the TCLP) is suitable. This technique defines a liquid as the material which passes through a 0.6–0.8 micron filter when subjected to 50 psi pressure. The Agency solicits comments on this clarification.

D. pH Testing

The Agency is requesting comment on whether to add a temperature requirement for the purposes of corrosivity testing in proposed Method 9040A (pH Electrometric Measurement). Specifically, we are requesting comment on whether the following language should or should not be added to Section 7.1.2 of Method 9040A:

"(. . . also, for corrosivity characterization, the sample must be measured at 25°C±1°C if the pH of the waste is above 12.0.)"

In the alternative, EPA is requesting comment on whether language should be added to Section 7.1.2 requiring samples to be measured at the temperature found at the site where the waste is to be managed.

The Agency is also requesting comment on whether the same language should be added to the proposed Method 9045B (Soil and Waste pH) for consistency.

This language would clarify regulatory requirements as to the temperature at which these tests should be run. This clarification is important because there are wastes (e.g. highly alkaline wastes) for which the temperature affects pH testing results. The temperature at which the corrosivity test is conducted may therefore affect whether or not the wastes are hazardous wastes.

The argument in favor of specifying a temperature is that many hazardous wastes are transported from one site to another, and it is important in a "cradle-to-grave" national hazardous waste regulatory program that the regulatory status of a waste not be dependent on a factor such as temperature which can vary from day-to-day as well as from site-to-site. A standardized temperature in Methods 9040A and 9045B would make clear how to determine the temperature at which to test a waste. A standard temperature might also be more practical for laboratories that routinely run chemical tests at standard temperatures. Twenty-five degrees Centigrade was chosen because the buffer solutions used to calibrate the pH meter are themselves calibrated to twenty-five degrees Centigrade.

The argument in favor of running these methods at a temperature that is relevant to the site at which a waste is to be managed or conditions under which it will be transported is that the better predictor of a waste's environmental hazard at a site may be a measurement made under conditions that most closely duplicate the conditions at the site. It is not necessarily relevant to environmental determinations that laboratories may routinely run tests at standard temperature, if using a different temperature would provide a better predictor of the environmental hazard.

EPA asks for comments on this issue, and asks that commenters relate their positions to both the better indicator of environmental hazards and the implementation aspects of the two approaches, and to provide scientific/technical support for their position.

EPA also requests comments on whether there are any other aspects of the Agency's rules and standard measurement techniques involving pH that require further clarification.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although

authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorization

Today's rule, if promulgated, will provide standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. Therefore, it is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's proposed rule will be determined based on the date of promulgation of the final rule in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State requirements have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, if today's proposed rule is promulgated, a State will not be authorized to carry out these requirements in fulfillment of the final rule until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

If today's rule is promulgated, States that submit their official applications for final authorization within 12 months after the effective date of the rule are not required to include in their applications requirements equivalent to the requirements in the final rule. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of the rule must include requirements at least as stringent as the requirements in the final rule in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

V. Regulatory Analyses

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposed rule will not increase the number of situations in which SW–846 test methods are required; rather, if promulgated, it will provide greater flexibility to the regulated community in testing and monitoring solid waste. The proposed rule entails no additional testing or recordkeeping burden. The effects on the economy for incorporating technical corrections and adding new test methods are essentially zero.

For the same reasons, EPA has also determined that this proposed rule will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. There is no additional economic impact, therefore, due to today's rule. The Agency has determined that today's rule is not a major regulation; thus, no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. section 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

If promulgated, this rule will not require the purchase of new instruments or equipment. The regulation will not require any new reports beyond those now required. This proposed rule will not have an adverse economic impact on small entities since its effect will be to provide greater flexibility to the regulated community, including small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act). Thus, this proposed regulation does not require an RFA.

C. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions associated with today's proposed rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: August 24, 1993.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference of paragraph (a) to read as follows:

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§ 260.11 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (September, 1986), as amended by Updates I (July 1992) and II]. The Third Edition of SW–846 and Updates I and II (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. Copies may be inspected at the Library and RCRA Docket No. F–93–WTMF–FFFFF, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

* * * * *

[FR Doc. 93–21112 Filed 8–26–93; 8:45 am]

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Tuesday
August 31, 1993

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting Regulations on Certain Indian Reservations and Ceded Lands; Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1993–94 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 1, 1993.

ADDRESSES: Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, room 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 13, 1993 **Federal Register** (58 FR 43191), the U.S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1993–94 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines have to be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

Tribes that desired special hunting regulations in the 1993–94 hunting season were requested in the May 26, 1993, **Federal Register** (58 FR 30138) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they were made final beginning with the 1988–89 hunting season (August 18, 1988; 53 FR 31612).

Although the proposed rule includes generalized regulations for both early and late season hunting, this rulemaking addresses only the early season proposals. Late season hunting will be addressed in the rulemaking to follow in September 1993. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons are those that begin about October 1 or later each year and have a primary emphasis on waterfowl.

Also, in the proposed rule, the Service pointed out that duck hunting regulations likely would have to continue to be restrictive because of the possibility of little overall improvement in the duck population status from last year. Hunting regulations were restrictive last year for the same reason. Recently completed breeding population surveys indicate that both dabbler and diver numbers have declined significantly (−11 percent) from the low level of last year, and are down 18 percent from the long-term average. Although they have not been fully established as yet, late season duck hunting regulations will probably be somewhat restrictive again during the 1993–94 hunting season.

Comments and Issues Concerning Tribal Proposals

For the 1993–94 migratory bird hunting season, the Service received requests from twelve tribes and/or Indian groups that followed the 1985 guidelines and are appropriate for final rulemaking. Some of the proposals submitted by the tribes have both early and late season elements. However, as noted earlier, only those with early season proposals are included in this final rulemaking; seven tribes have proposals with early seasons.

Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 13, closed on August 30, 1993. Because of the brief comment period that was necessary, any comments received on the proposed rule and/or these early season regulations not responded to herein will be addressed in the late season final rule to be published in September.

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

In a July 16, 1993, letter to the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), copied to the Service, the State of Wisconsin Department of Natural Resources (WIDNR), voiced some concerns for the regulations proposed by the GLIFWC for hunting by Chippewa tribal members. With regard to the goose season dates, the WIDNR voiced no objection but suggested that the daily bag limit on Canada geese remain at last year's level. The WIDNR also suggested that the length of other goose seasons and daily bag limits should be consistent with that

offered the State of Wisconsin in Federal frameworks. The WIDNR opposed opening of the duck season on September 15, on the grounds that Wisconsin is a production State and many late-nesting hens and broods may still be molting or recovering from the molt. This would make birds extremely vulnerable to the gun. The WIDNR further suggested that daily bag limits for ducks be identical to those of last year, inasmuch as spring duck breeding populations appeared to fall in Wisconsin in 1993. (The GLIFWC had deferred proposing daily bag limits on ducks pending results of production surveys, at this point in time.) The State offered that it would not object to the GLIFWC extending the season 1 week in November. The WIDNR also requested that tribal members honor the noon opening for shooting hours for the first day of the State's duck season, as well as comply with Wisconsin's open water hunting restrictions.

The Service, too, is concerned by the GLIFWC request for liberalization of the existing goose bag in the Minnesota/Wisconsin zone to 10 birds daily. The Mississippi Valley Population of Canada geese is down 29 percent according to a recent survey of pre-production birds; numbers of this population have been in decline for the past 3 years. The Service's position is that it is not prudent management to liberalize here in the face of more restrictive regulations elsewhere in the flyway aimed at conserving the resource. The Service's guidelines for tribal regulations indicate that a 50 percent increase over maximum allowable flyway bag limits are acceptable. Thus, as was indicated in the proposed rule, the Service is approving a requested overall increase in goose bag limits, provided the daily bag limit not exceed 3 Canada geese and 3 white-fronted geese. As regards the request for an early duck season opening of September 15, this request meets the Service's earliest opening date guidelines for tribal seasons, and the request is approved.

In an August 10, 1993, letter to the Service, the GLIFWC updated their proposal with regard to the duck bag limits, which were deferred pending the outcome of surveys. The letter from the GLIFWC states in relevant part:

> "The tribes' proposal is the same as last year, an unlimited daily bag including no more than 5 mallards, 3 wood ducks, 1 black duck, 1 redhead and 1 pintail. The season on canvasbacks is closed.
>
> "In the recent eight years of off-reservation waterfowl hunting, tribal harvest has had no adverse biological impact, with the annual tribal harvest in the ceded territories remaining below 2000 ducks and 425 geese. Compared to a sport hunting kill which was estimated at 3,828,700 in 1992 for the Mississippi Flyway alone, the projected harvest under the tribes proposal is small, and presents no threat to any species.
>
> "The tribes' intent is to provide tribal members an efficient subsistence harvest opportunity in a biologically sound and culturally significant way. The trust responsibility toward the Commission's member tribes requires the Service to honor this intent and to accept the tribe's proposal."

The Service's response must be similar to the one provided last year, when an "unlimited" bag limit, with qualification, was requested. The Service's response is as follows:

With limited exception, a request for an unlimited bag limit for any species or group of species is unacceptable because it is not consistent with sound wildlife conservation and management principles. Thus, given the continuing depressed state of continental duck populations and the nature of the proposal, such a request is inappropriate—even considering other factors such as the relative harvests of the tribes and the rest of the Mississippi Flyway. This same request was denied last year (1992–93) when the fall flight index was up slightly (62 million), but not significantly, from the 1991–92 season (61 million). The reverse, and more troubling, situation applies this current year where the projected fall flight is lower by approximately 3 million birds (59 million). In the context of a drop of this magnitude in the estimated fall flight index, slightly higher production in the northcentral area does not warrant a liberalization in duck bag limits for any component of the waterfowl hunting community. As noted in last year's regulations, in 1991–92, the Service acknowledged the need and concurred with the request by the GLIFWC for an additional duck in the daily bag, and 2 in the possession limit bag. This increase for ducks, as well as the one for geese, was realized only by the GLIFWC, and not available to nontribal hunters in the Mississippi Flyway. The increase approval was based at that time on a justification to realize a subsistence harvest for tribal members and a modest production increase in strictly local ducks.

In consideration of all the pertinent factors, mainly those outlined above, the Service must deny the request for an unlimited bag limit for the GLIFWC. The Service will hold the bag limit for the GLIFWC for the 1993–94 season at the 1992–93 season level, with special limits on certain species, until such time as the overall duck population situation improves and/or a biologically appropriate request for bag limit change can be entertained.

The Service has received no communication from the States or others regarding the revised GLIFWC proposal; the recency of the revision may have precluded a response.

Other Tribal Regulatory Proposals and Contacts

The Service, in cooperation with the Oneida Tribe of Indians of Wisconsin, has changed the opening dates of the duck and goose seasons to be consistent with Service tribal regulations guidelines. Seasons for these two groups of migratory birds will now open on September 15 instead of September 1.

In summary, this rule amends § 20.110 of 50 CFR to make current for the early 1993–94 migratory bird hunting season the regulations that will apply on Federal Indian reservations, off-reservation trust lands and ceded lands. These regulations take into account the need to continue the reduced harvest of some migratory birds.

Administrative Actions

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and a notice of availability was published in the Federal Register on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action

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authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the 1993–94 migratory bird hunting season regulations, including those that apply on Federal Indian reservations and ceded lands. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in either the Division of Endangered Species or the Office of Migratory Bird Management, U. S. Fish and Wildlife Service, room 634–Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA, or write Director/MBMO, U. S. Fish and Wildlife Service, 634 ARLSQ, Main Interior Building, Washington, DC 20240. Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES. In August 1993, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

Regulatory Flexibility Act, Executive Orders 12291, 12612, 12630, and 12778, and the Paperwork Reduction Act

In the April 9, **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis (RFA), prepared as a part of the FRIA, concluded that this rule would have significant effects on small entities. Information contained in that document stated that while the Service believes that its rules for migratory bird hunting are "major," and impact "small entities," particularly small businesses, it has been unable to locate information of the kind needed to complete its analysis of effects on small entities. The FRIA and RFA document the relationships between hunting regulations, and hunter numbers and hunter days, both of which have major economic implications. The Service concluded that the adoption of other regulatory options would have little impact upon hunter expenditures at the national-economy or small-entity levels. Unless migratory bird hunting regulations are established, the national economy stands to lose at least $1 billion annually. Most of this loss would be borne by small entities.

It has been determined that this rule will not involve the taking of any Constitutionally protected property rights, as defined in Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which, with other documentation, are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634 ARLSQ, 1849 C Street, NW., Washington, DC 20240. This rule does not contain any information collection requiring approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Memorandum of Law

In the April 9 **Federal Register**, the Service stated that it planned to publish its Memorandum of Law for the 1993–94 migratory bird hunting regulations with its first final rulemaking. This has occurred with the "Final Frameworks for Early-Season Migratory Bird Hunting Regulations," and can be found in that document published on August 23, 1993 (58 FR 44576). The Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1993–94 migratory bird hunting regulations; the regulations are adequately supported by the Service's records.

Authorship

The primary author of this early season final rule is Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, working under the direction of Paul R. Schmidt, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on August 13, 1993, the Service established the longest possible period for public comments. In doing this, the Service recognized that time would be of the essence. However, the comment period provided the maximum amount of time possible while ensuring that this final rule would be published before the beginning of the early hunting season beginning on September 1, 1993.

Under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl.

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will take effect on September 1, 1993.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*).

(Editorial Note: The following hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.)

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Penobscot Indian Nation, Old Town, Maine (Tribal Members Sustenance Season).*

Ducks:

Season Dates: Begin September 18, close November 30, 1993.

Daily Bag Limits: The daily bag limit is 4, except that it may include no more than 1 black duck and 2 wood ducks.

Geese

Season Dates: Begin September 18, close November 30, 1993.

Daily Bag Limits: The daily bag limit is 3 Canada geese, 3 snow geese, or 3 geese in the aggregate.

General Conditions: (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1993–94 hunting season. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is only the larger of the two daily bag limits.

(ii) Possession limits on ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all other basic Federal migratory bird hunting regulations in 50 CFR part 20; shooting hours for tribal members in the sustenance season have been changed to one-half hour before sunrise to sunset.

(iv) Each tribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), signed in ink across the face.

(v) Nontribal members hunting within Penobscot Indian Territory must adhere to the seasons and bag limits established by the State of Maine.

(vi) Special regulations established by the Penobscot Indian Nation also apply in Penobscot Indian Territory.

(b) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers).*

Band-tailed Pigeons

Season Dates: Open September 3, close September 12, 1993.

Daily Bag and Possession Limits: The daily bag limit is 3 and the possession limit is 6.

Mourning Doves

Season Dates: Open September 3, close September 12, 1993.

Daily Bag and Possession Limits: The daily bag limit is 8 and the possession limit is 16.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

(c) *Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members).*

Ducks/Coot

Season Dates: Open September 1, 1993, and close February 1, 1994.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession; except that bag and possession limits are restricted for pintail, canvasback, harlequin, wood duck and blue-winged teal to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 1, 1993, and close February 1, 1994.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession; except that the bag limits for brant and cackling and dusky Canada geese are to be those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

Snipe

Season Dates: Open September 1, 1993, and close February 1, 1994.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, all non-members must be accompanied by a Tulalip tribal member whenever hunting pursuant to Tulalip tribal law and must possess (except for member spouses) a valid Washington State hunting license. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

(d) *Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).*

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1993.

Daily Bag and Possession Limits: The daily bag limit is 5 and the possession limit is 10.

Mourning Doves

Season Dates: Open September 1, close September 30, 1993.

Daily Bag and Possession Limits: The daily bag limit is 10 and the possession limit is 20.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(e) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members).*

Ducks

Season Dates: Open September 15, close November 30, 1993.

Daily Bag and Possession Limits: Daily bag limit is 5, including no more than 3 mallards (only 1 of which can be a mallard hen), 4 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, close November 30, 1993.

Daily Bag and Possession Limits: Daily bag limit is 2 Canada geese, that must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Mourning Dove

Season Dates: Open September 1, close November 30, 1993.

Daily Bag and Possession Limits: Daily bag limit is 10, and the possession limit is 20.

Woodcock

Season Dates: Open September 1, close November 30, 1993.

Daily Bag and Possession Limits: Daily bag limit is 6, and the possession limit is 12.

(f) *Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nonmembers).*

Doves

Season Dates: Open September 1, close September 15, 1993; then open November 17, close December 31, 1993.

Daily Bag and Possession Limits: Daily bag limit is 10 mourning or 10 white-winged doves, or 10 in the aggregate per day. The possession limit is twice the daily bag limit.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required and must be in possession before taking any wildlife on tribal lands. Persons fourteen years and older are required to have a valid permit. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(g) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

Ducks

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close November 7, 1993.

Daily Bag Limit: The daily bag limit is 4, including no more than: 1 hen mallard and 3 mallards total; 3 wood ducks; 1 black duck; 1 redhead and 1 pintail. The taking of canvasbacks is prohibited.

Mergansers

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close November 7, 1993.

Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Canada Geese

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close December 1, 1993.

Daily Bag Limit: The daily bag limit is 3.

Michigan, 1842 Treaty Zone

Season Dates: Open September 1, close September 10, 1993.

Daily Bag Limit: The daily bag limit is 3.

Michigan, 1836 Treaty Zone

Season Dates: Open September 1, close September 10, 1993.

Daily Bag Limit: The daily bag limit is 3.

Other Geese (Blue, Snow, and White-fronted)

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close December 1, 1993.

Daily Bag Limit: The daily bag limit is 18, including no more than 2 white-fronted geese and 2 Canada geese.

Coots and Common Moorhens (Gallinule)

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close November 7, 1993.

Daily Bag Limit: The daily bag limit is 20, singly or in the aggregate.

Sora and Virginia Rails

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close November 7, 1993.

Daily Bag Limit: The daily bag limit is 25, singly or in the aggregate. The possession limit is 25.

Michigan, 1842 and 1836 Zones

Season Dates: Open September 15, close November 14, 1993.

Daily Bag and Possession Limits: The daily bag limit is 25, singly or in aggregate. The possession limit is 25.

Common Snipe

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close November 7, 1993.

Daily Bag Limit: The daily bag limit is 8.

Michigan, 1842 and 1836 Zones

Season Dates: Open September 15, close November 14, 1993.

Daily Bag Limit: The daily bag limit is 8.

Woodcock

Wisconsin and Minnesota Zones:

Season Dates: Open September 7, close November 30, 1993.

Daily Bag Limit: The daily bag limit is 5.

Michigan, 1842 and 1836 Zones

Season Dates: Open September 15, close November 14, 1993.

Daily Bag Limit: The daily bag limit is 5.

General Conditions: (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles v. State of Wisconsin* regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR part 20, and shooting hour regulations in 50 CFR part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to applicable State statutes. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, *unless otherwise specified.*

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State statutes. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

Dated: August 13, 1993.

Don Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 93-21151 Filed 8-30-93; 8:45 am]

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Part IX

Office of Personnel Management

5 CFR Part 531
Pay Under the General Schedule;
Locality—Based Comparability Payments;
Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

[RIN 3206–AF46]

Pay Under the General Schedule; Locality-Based Comparability Payments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to implement 5 U.S.C. 5304, which authorizes "locality-based comparability payments" for most General Schedule employees. The regulations are similar in many respects to the regulations governing interim geographic adjustments for General Schedule and certain other employees

Based on a recommendation of the Federal Salary Council, the proposed regulations identify the 28 "locality pay areas" within which locality-based comparability payments would be paid under 5 U.S.C. 5304. In addition, the proposed regulations provide that the "locality rate of pay" is to be calculated in all cases on the basis of the employee's "scheduled annual rate of pay," which excludes a special salary rate established under 5 U.S.C. 5305 (whether local, nationwide, or worldwide in coverage).

OPM also is proposing conforming changes in the regulations governing interim geographic adjustments and special pay adjustments for law enforcement officers.

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H731, 1900 E Street NW., Washington DC 20415.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing regulations to implement 5 U.S.C. 5304, which provides for the payment of locality-based comparability payments to General Schedule employees when the rates payable to General Schedule employees are generally lower than the rates paid for the same levels of work by non-Federal workers in the same locality.

Locality Pay Areas

Section 5304(a)(1) of title 5, United States Code, provides that comparability payments shall be payable within each locality determined to have a pay disparity greater than 5 percent. Section 5304(f)(1) authorizes the President's pay agent (consisting of the Secretary of Labor, the Director of the Office of Management and Budget, and the Director of OPM) to provide for such pay localities as the pay agent considers appropriate. In so doing, the pay agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay and representatives of Federal employee organizations. Members of the Federal Salary Council are appointed by the President and have meet regularly since January 1992 to consider issues relating to the establishment of a locality pay system for General Schedule employees.

The Federal Salary Council has recommended to the pay agent that a total of 28 areas be established as pay localities. The 28 areas would cover all General Schedule employees whose official duty stations are located within the 48 contiguous States and the District of Columbia. The Council recommended that the geographic boundaries of the pay localities for the first comparability payments to be made under 5 U.S.C. 5304 coincide with the existing boundaries of the 27 Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) within which the Bureau of Labor Statistics (BLS) is conducting salary surveys for locality pay purposes, plus one additional area composed of the "Rest of the United States." MSA's and CMSA's are defined by the Office of Management and Budget.

The Federal Salary Council also recommended that comparability payments for employees whose official duty stations are located outside of certain of the 27 MSA's and CMSA's within which BLS surveys are being conducted be paid at the rate applicable to employees whose official duty stations are located within these areas under certain circumstances. In the case of county-wide "areas of application," the county must be contiguous to a pay locality, contain at least 2,000 General Schedule (GS/GM) employees, have a significant level of urbanization, and demonstrate some economic linkage with the survey location (e.g., commuting patterns). The only counties that meet these criteria are Santa Barbara County, California, which is contiguous to the Los Angeles-Riverside-Orange County, CA CMSA, and St. Mary's County, Maryland, which is contiguous to the Washington-Baltimore, DC-MD-VA-WV CMSA.

In the case of a portion of a Federal facility lying outside an MSA or CMSA, the "area of application" must have at least 1,000 GS/GM employees, the duty station(s) of the majority of GS/GM employees must be within 10 miles of the "prime critical survey area" boundary, and a significant number of the area's employees must commute from the pay locality. The only Federal facility that meets these criteria is Edwards Air Force Base, California, which lies partly outside of the Los Angeles-Riverside-Orange County, CA CMSA.

The President's pay agent has authorized OPM to issue proposed regulations identifying the 28 areas recommended by the Federal Salary Council as "locality pay areas." Consistent with the recommendations of the Federal Salary Council, the proposed regulations include Santa Barbara County and all of Edwards Air Force Base, California, within the boundaries of the Los Angeles-Riverside-Orange County, CA locality pay area. Similarly, the proposed regulations include St. Mary's County, Maryland, within the boundaries of the Washington-Baltimore, DC-MD-VA-WV locality pay area. However, the proposed regulations do not necessarily reflect the views of the pay agent concerning the establishment of pay localities.

After the 30-day public comment period on these proposed regulations, the pay agent will consider the comments received on these regulations from Federal employees, agencies, employee unions, and other interested parties before making its determination on the establishment of pay localities. The pay agent also will consider any additional views and recommendations expressed directly to the pay agent by any member of the Federal Salary Council or by employee organizations not represented on the Council. The final regulations issued by OPM will reflect the pay agent's final determination on this matter.

Administration of Locality-Based Comparability Payments

The administration of locality-based comparability payments under these proposed regulations would be very similar to the administration of interim geographic adjustments (IGA's) under 5 CFR 531, subpart A. Under the regulations governing IGA's, an employee's "adjusted annual rate of pay" is calculated by multiplying the employee's "scheduled annual rate of pay" by 1.08. Similarly, under the proposed regulations, an employee's

proposed regulations, an employee's "locality rate of pay" would be calculated by multiplying the employee's "scheduled annual rate of pay" by the factor determined by the President in accordance with 5 U.S.C. 5304 or 5304a for each locality pay area. Thus, for the vast majority of GS employees, a simple one-step calculation is all that is needed to determine the employee's new pay entitlement.

For employees who are covered by special salary rates, IGA's, and/or special pay adjustments for law enforcement officers (LEO's), the determination of an employee's pay entitlement would involve a few additional steps. Under the proposed locality pay regulations, employees are entitled to receive the greatest of up to four separately calculated pay entitlements. For example, a GS employee in an IGA area who is not a law enforcement officer and is not receiving a special salary rate would be entitled to the greater of the IGA "adjusted annual rate of pay" or the "locality rate of pay" under the proposed locality pay regulations. If the same employee were in a position covered by a special salary rate established by OPM under 5 U.S.C. 5305, he or she would receive the greatest of (1) The special rate under 5 U.S.C. 5305, (2) the IGA "adjusted annual rate of pay," or (3) the "locality rate of pay." Finally, if the same employee were a "law enforcement officer," as defined in 5 U.S.C. 5541(3), he or she would be entitled to the greatest of (1) the special rate under 5 U.S.C. 5305, (2) the IGA "adjusted annual rate of pay," (3) the "special law enforcement adjusted rate of pay," or (4) the "locality rate of pay."

The chart below illustrates the most complex case, in which the determination of an employee's pay entitlement requires the comparison of four different pay entitlements. In this hypothetical example, the employee would receive the "special law enforcement adjusted rate of pay," since that rate is greater than any of the other three applicable pay entitlements.

EXAMPLE: GS–9, STEP 1, LEO RECEIVING A SPECIAL RATE UNDER 5 U.S.C. 5305 IN AN IGA AREA

$29,641	$31,012	$33,309	$30,438
Special rate established by OPM under 5 U.S.C. 5305 for some LEO's.	Adjusted annual rate of pay (LEO statutory special rate of $28,715 times 1.08).	Special law enforcement adjusted rate of pay (LEO statutory special rate of $28,715 times 1.16).	Locality rate of pay (LEO statutory special rate of $28,715 times 1.06).

The chief difference between the current regulations governing IGA's and the proposed regulations governing locality-based comparability payments is that the "locality rate of pay" would be calculated in all cases on the basis of the employee's "scheduled annual rate of pay,", which excludes any special salary rate established under 5 U.S.C. 5305 (whether local, nationwide, or worldwide in coverage). Under the current IGA regulations and the regulations on special pay adjustments for LEO's (5 CFR 531, subpart C), nationwide and worldwide special rates under 5 U.S.C. 5305 are included in the definition of "scheduled annual rate of pay." Because the law requires that IGA's and special pay adjustments for LEO's must be administered, to the extent practicable, in the same manner locality-based comparability payments are administered, we are also proposing to change the IGA regulations and the regulations on special pay adjustments for LEO's to exclude nationwide and worldwide special rates (other than special rates for LEO's under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA)) from the definition of "scheduled annual rate of pay." This means nationwide and worldwide special rates would no longer serve as the basis for calculating an employee's IGA "adjusted annual rate of pay" or "special law enforcement adjusted rate of pay."

OPM is proposing to make this change in the method of calculating an employee's IGA "adjusted annual rate of pay" or "special law enforcement adjusted rate of pay" because the implementation of a locality pay system for General Schedule employees throughout the continental United States is intended, over time, to eliminate or significantly reduce the need to establish special rates of pay for Federal employees on either a local or nationwide basis. We adopted a different policy when IGA's and special pay adjustments for LEO's were first established because both were intended to provide immediate relief from significant recruitment and retention problems in some of the larger metropolitan areas. In addition, little information was available at that time about the relative salary levels of Federal and non-Federal white-collar employees in those areas. Now that a locality pay system is being implemented throughout the continental United States, there is no need to continue a policy that was developed as an interim measure pending the implementation of a permanent, nationwide system.

The proposed method of calculating an employee's "locality rate of pay" is contingent upon the issuance of an Executive order delegating to OPM the President's authority under 5 U.S.C. 5305(g)(1) to determine the extent to which comparability payments shall be payable to employees who are receiving special rates of pay under 5 U.S.C. 5305. A similar Executive order relating to the calculation and payment of IGA's was issued on December 12, 1990. (See Executive Order 12736.)

OPM recognizes that the proposed method of calculating an employee's IGA "adjusted annual rate of pay" or "special law enforcement adjusted rate of pay" would result in a lower IGA adjusted rate or special law enforcement adjusted rate for employees in an IGA area who are receiving nationwide or worldwide special rates. Therefore, the proposed regulations provide for continuing an IGA "adjusted annual rate of pay" and a "special law enforcement adjusted rate of pay" that was previously calculated on the basis of a nationwide or worldwide special salary rate. The total pay of these employees would not be reduced. In addition, these employees would be entitled to receive an increase in total pay equal to the dollar amount of a general adjustment under 5 U.S.C. 5303 or similar provision of law in the rate of basic pay for the employee's grade and step (or relative position in the rate range).

As in the case of an IGA "adjusted annual rate of pay" or a "special law enforcement adjusted rate of pay," a "locality rate of pay" will be considered basic pay by statute for the purpose of computing retirement deductions and benefits, life insurance premiums and benefits, and premium pay. Similarly, as in the case of an IGA "adjusted annual rate of pay" or a "special law

enforcement adjusted rate of pay," a "locality rate of pay" also would be considered basic pay by regulation for the purpose of computing an employee's entitlement to severance pay under subpart G of 5 CFR part 550 and for advances in pay under subpart B of 5 CFR part 550.

Other Conforming Regulatory Changes

Other conforming changes have been made in the regulations on IGA's (subpart A of 5 CFR part 531) and special pay adjustments for LEO's (subpart C). These changes make it clear that when the new "locality rate of pay" exceeds the IGA "adjusted annual rate of pay" or the "special law enforcement adjusted rate of pay," the employee's entitlement to an adjusted rate of pay under either of these authorities terminates. Until that time, employees who are entitled to an adjusted rate of pay under either of these authorities will receive the higher rate of pay. For example, if the comparability payment in any one of the three IGA areas is less than 8 percent, non-LEO's in that area would continue to receive an IGA of 8 percent. Similarly, if the "locality rate of pay" in an area covered by special pay adjustments for LEO's is less than the LEO special pay adjustment, LEO's in that area would continue to receive the LEO special pay adjustment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 531

Government employees, Wages.

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM is proposing to amend part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991, Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304 note, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p 376;

Subpart B also issued under 5 U.S.C. 5303(g) 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304 note;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304 and 5305(g)(1).

Subpart A—Interim Geographic Adjustments

2. In § 531.101, the definition of *local special salary rate* is removed, and the definition of *scheduled annual rate of pay* is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Scheduled annual rate of pay means—

(1) The General Schedule rate of basic pay for the employee's grade and step (or relative position in the rate range), including a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509), but exclusive of a special salary rate established under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), an adjusted annual rate of pay continued under § 531.106 of this subpart, a "special law enforcement adjusted rate of pay" under subpart C of this part (including a rate continued under § 531.307 of this part), a "locality rate of pay" under subpart F of this part, or additional pay of any kind;

(2) For an employee covered by the Performance Management and Recognition System who is receiving a special salary rate established under 5 U.S.C. 5305 or similar provision of law, the rate of pay resulting from the following computation—

(i) Using the special salary rate schedule established under 5 U.S.C. 5305 or similar provision of law, subtract the dollar amount for step 1 of the employee's grade on the special salary rate schedule from the dollar amount for the employee's special salary rate; and

(ii) Add the result of paragraph (2)(i) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(3) A retained rate of pay under part 536 of this chapter or 5 CFR 359.705, if applicable.

3. In § 531.103, paragraphs (a) and (f) are revised to read as follows:

§ 531.103 Administration of adjusted rates of pay.

(a) An employee shall receive the greatest of—

(1) His or her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509);

(2) An adjusted annual rate of pay under this subpart, where applicable, including an adjusted annual rate of pay continued under § 531.106 of this part;

(3) A "special law enforcement adjusted rate of pay" under subpart C of this part, where applicable, including a "special law enforcement adjusted rate of pay" continued under § 531.307 of this part; or

(4) A "locality rate of pay" under subpart F of this part, where applicable.

* * * * *

(f) Except as provided in paragraph (g) of this section, entitlement to an adjusted annual rate of pay under this subpart terminates on the date—

(1) An employee's official duty station is no longer located in an interim geographic adjustment area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service;

(4) An employee's special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509)) exceeds his or her adjusted annual rate of pay under this subpart;

(5) An employee's "special law enforcement adjusted rate of pay" under subpart C of this part exceeds his or her adjusted annual rate of pay under this subpart; or

(6) An employee's "locality rate of pay" under subpart F of this part exceeds his or her adjusted annual rate of pay under this subpart.

* * * * *

4. A new § 531.106 is added to subpart A to read as follows:

§ 531.106 Continuation of an adjusted annual rate of pay.

(a) Except as provided in paragraph (c) of this section, the dollar amount of an adjusted annual rate of pay that was calculated under regulations which included nationwide or worldwide special salary rates established under 5 U.S.C. 5305 in the definition of "scheduled annual rate of pay" shall not be reduced.

(b) At the time of an adjustment in pay under 5 U.S.C. 5303 or similar provision of law, an adjusted annual rate of pay continued under paragraph (a) of this section shall be increased by an amount equal to the dollar amount of

the adjustment made under 5 U.S.C. 5303 or similar provision of law in the rate of basic pay for the employee's grade and step (or relative position in the rate range).

(c) An adjusted annual rate of pay that is continued under paragraph (a) of this section terminates on the date any of the conditions specified in § 531.103(f) of this part is satisfied or on the date an employee moves to a position not covered by a nationwide or worldwide special rate authorization.

Subpart C—Special Pay Adjustments for Law Enforcement Officers

5. In § 531.301, the definition of *local special salary rate* is removed, and the definition of *scheduled annual rate of pay* is revised to read as follows:

§ 531.301 Definitions.

* * * * *

Scheduled annual rate of pay means—

(1) The General Schedule rate of basic pay for the employee's grade and step (or relative position in the rate range), including a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509), but exclusive of a special salary rate established under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), an "adjusted annual rate of pay" under subpart A of this part (including a rate continued under § 531.106 of this part), a "locality rate of pay" under subpart F of this part, or additional pay of any kind;

(2) For an employee covered by the Performance Management and Recognition System who is receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law, the rate of pay resulting from the following computation—

(i) Using the special salary rate schedule established under 5 U.S.C. 5305 or similar provision of law, subtract the dollar amount for step 1 of the employee's grade on the special salary rate schedule from the dollar amount for the employee's special salary rate; and

(ii) Add the result of paragraph (2)(i) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(3) A retained rate of pay under part 536 of this chapter or 5 CFR 359.705, if applicable.

* * * * *

6. In § 531.304, paragraphs (a) and (f) are revised to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

(a) A law enforcement officer shall receive the greatest of—

(1) His or her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509));

(2) An "adjusted annual rate of pay" under subpart A of this part, where applicable, including an "adjusted annual rate of pay" continued under § 531.106 of this part;

(3) A special law enforcement adjusted rate of pay under this subpart, where applicable, including a special law enforcement adjusted rate of pay continued under § 531.307 of this part; or

(4) A "locality rate of pay" under subpart F of this part, where applicable.

* * * * *

(f) Except as provided in paragraph (g) of this section, entitlement to a special law enforcement adjusted rate of pay under this subpart terminates on the date—

(1) An employee's official duty station is no longer located in a special pay adjustment area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service;

(4) An employee's special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509)) exceeds his or her special law enforcement adjusted rate of pay under this subpart; or

(5) An employee's "locality rate of pay" under subpart F of this subpart exceeds his or her special law enforcement adjusted rate of pay under this subpart.

* * * * *

7. A new § 531.307 is added to subpart C to read as follows:

§ 531.307 Continuation of a special law enforcement adjusted rate of pay

(a) Except as provided in paragraph (c) of this section, the dollar amount of a special law enforcement adjusted rate of pay that was calculated under regulations which included nationwide or worldwide special salary rates established under 5 U.S.C. 5305 in the definition of "scheduled annual rate of pay" shall not be reduced.

(b) At the time of an adjustment in pay under 5 U.S.C. 5303 or similar provision of law, a special law enforcement adjusted rate of pay continued under paragraph (a) of this section shall be increased by an amount equal to the dollar amount of the adjustment made under 5 U.S.C. 5303 or similar provision of law in the rate of basic pay for the employee's grade and step (or relative position in the rate range).

(c) A special law enforcement adjusted rate of pay that is continued under paragraph (a) of this section terminates on the date any of the conditions specified in § 531.304(f) of this part is satisfied or on the date an employee moves to a position not covered by a nationwide or worldwide special rate authorization.

8. A new subpart F is added to read as follows:

Subpart F—Locality-Based Comparability Payments

Sec.

531.601 Purpose.
531.602 Definitions.
531.603 Locality pay areas.
531.604 Determining locality rates of pay.
531.605 Computation of hourly, daily, weekly, and biweekly locality rates of pay.
531.606 Administration of locality rates of pay.
531.607 Reports.

Subpart F—Locality-Based Comparability Payments

§ 531.601 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5304, which authorizes locality-based comparability payments to reduce pay disparities with non-Federal workers within each locality when the locality is determined to have a pay disparity of greater than 5 percent. These regulations must be read together with 5 U.S.C. 5304.

§ 531.602 Definitions.

In this subpart:

CMSA means a Consolidated Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB).

Comparability payment means a locality-based comparability payment payable under 5 U.S.C. 5304 or 5304a.

Continental United States means the several States and the District of Columbia, but does not include Alaska or Hawaii.

Employee means—

(1) An employee in a position to which subchapter III of chapter 53 of title 5, United States Code, applies and whose official duty station is located in a locality pay area within the continental United States, including an employee covered by the Performance Management and Recognition System

and an employee in a position authorized by 5 CFR 213.3102(w) whose rate of basic pay is established under the General Schedule; and

(2) An employee in a category of positions for which the President has authorized comparability payments under 5 U.S.C. 5304(h)(2) and whose official duty station is located in a locality pay area within the continental United States.

General Schedule means the basic pay schedule established under 5 U.S.C. 5332, as adjusted by the President under 5 U.S.C. 5303.

Locality pay area means an area listed in § 531.603 of this part, as established and modified under 5 U.S.C. 5304 by the pay agent designated by the President under 5 U.S.C. 5304(d)(1).

Locality rate of pay means an employee's scheduled annual rate of pay multiplied by the factor determined under § 531.604(a) of this part and rounded to the nearest whole dollar, counting 50 cents and over as a whole dollar.

MSA means a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB).

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(1) The General Schedule rate of basic pay for the employee's grade and step (or relative position in the rate range), including a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) (FEPCA), but *exclusive of* a special salary rate established under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), an "adjusted annual rate of pay" under subpart A of this part (including a rate continued under § 531.106 of this part), a "special law enforcement adjusted rate of pay" under subpart C of this part (including a rate continued under § 531.307 of this part), or additional pay of any kind;

(2) For an employee covered by the Performance Management and Recognition System who is receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA), the rate of pay resulting from the following computation—

(i) Using the special salary rate schedule established under 5 U.S.C. 5305 or similar provision of law, subtract the dollar amount for step 1 of the employee's grade on the special salary rate schedule from the dollar amount for the employee's special salary rate; and

(ii) Add the result of paragraph (2)(i) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(3) The retained rate of pay under part 536 of this chapter or 5 CFR 359.705, if applicable.

§ 531.603 Locality pay areas.

(a) Locality rates of pay under this subpart shall be payable to employees whose official duty stations are located in the locality pay areas listed in paragraph (b) of this section.

(b) The following are locality pay areas for the purpose of this subpart:

(1) Atlanta, GA—consisting of the Atlanta, GA MSA;

(2) Boston-Worcester-Lawrence, MA–NH–ME–CT—consisting of the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA;

(3) Chicago-Gary-Kenosha, IL–IN–WI—consisting of the Chicago-Gary-Kenosha, IL–IN–WI CMSA:

(4) Cincinnati-Hamilton, OH–KY–IN—consisting of the Cincinnati-Hamilton, OH–KY–IN CMSA:

(5) Cleveland-Akron, OH—consisting of the Cleveland-Akron, OH CMSA;

(6) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CMSA;

(7) Dayton-Springfield, OH—consisting of the Dayton-Springfield, OH MSA;

(8) Denver-Boulder-Greeley, CO—consisting of the Denver-Boulder-Greeley, CO CMSA;

(9) Detroit-Ann Arbor-Flint, MI—consisting of the Detroit-Ann Arbor-Flint, MI CMSA;

(10) Houston-Galveston-Brazoria, TX—consisting of the Houston-Galveston-Brazoria, TX CMSA;

(11) Huntsville, AL—consisting of the Huntsville, AL MSA;

(12) Indianapolis, IN—consisting of the Indianapolis, IN MSA;

(13) Kansas City, MO–KS—consisting of the Kansas City, MO–KS MSA;

(14) Los Angeles-Riverside-Orange County, CA—consisting of the Los Angeles-Riverside-Orange County, CA CMSA, plus Santa Barbara County, CA, and that portion of Edwards Air Force Base, CA, not located within the Los Angeles-Riverside-Orange County, CA CMSA;

(15) Memphis, TN–AR–MS—consisting of the Memphis, TN–AR–MS MSA;

(16) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA—consisting of the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA;

(17) Norfolk-Virginia Beach-Newport News, VA–NC—consisting of the Norfolk-Virginia Beach-Newport News, VA–NC–MSA;

(18) Oklahoma City, OK—consisting of the Oklahoma City, OK MSA;

(19) Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD—consisting of the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA;

(20) Sacramento-Yolo, CA—consisting of the Sacramento-Yolo, CA CMSA;

(21) St. Louis, MO–IL—consisting of the St. Louis, MO–IL MSA;

(22) Salt Lake City-Ogden, UT—consisting of the Salt Lake City-Ogden, UT MSA:

(23) San Antonio, TX—consisting of the San Antonio, TX MSA;

(24) San Diego, CA—consisting of the San Diego, CA MSA;

(25) San Francisco-Oakland-San Jose, CA—consisting of the San Francisco-Oakland-San Jose, CA CMSA;

(26) Seattle-Tacoma-Bremerton, WA—consisting of the Seattle-Tacoma-Bremerton, WA CMSA;

(27) Washington-Baltimore, DC–MD–VA–WV—consisting of the Washington-Baltimore, DC–MD–VA–WV CMSA, plus St. Mary's County, MD; and

(28) Rest of U.S.—consisting of the portions of the continental United States not located within another locality pay area.

§ 531.604 Determining locality rates of pay.

(a) To determine the locality rate of pay payable to an employee, the applicable scheduled annual rate of pay shall be multiplied by the factor authorized by the President for the locality pay areas in which the employee's official duty station is located.

(b) Except as provided in paragraph (c) of this section, locality rates of pay may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(c) The locality rates of pay approved by the President for an employee in a position described in 5 U.S.C. 5304(h)(1)(A)–(E), or in a position under 5 U.S.C. 5304(h)(1)(F) which the President may determine, may not exceed the rate of basic pay payable for level III of the Executive Schedule.

§ 531.605 Computation of hourly, daily, weekly, and biweekly locality rates of pay.

When it is necessary to convert an annual locality rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the annual locality rate pat by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basic daily tour of duty;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.606 Administration of locality rates of pay.

(a) An employee shall receive the greatest of—

(1) His or her rate of basic pay, including any applicable special salary rate established under 5 U.S.C. 5305 or similar provision of law or special rate for law enforcement officers under section 403 of FEPCA;

(2) An "adjusted annual rate of pay" under subpart A of this part, where applicable, including an "adjusted annual rate of pay" continued under § 531.106 of this part;

(3) A "special law enforcement adjusted rate of pay" under subpart C of this part, where applicable, including a "special law enforcement adjusted rate of pay" continued under § 531.307 of this part; or

(4) A locality rate of pay under this subpart, where applicable.

(b) A locality rate of pay is considered basic pay for the purpose of computing—

(1) Retirement deductions and benefits under parts 831, 841, 842, 843, and 844 of this chapter;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), compensatory time off under 5 U.S.C. 5543, and standby duty pay under 5 U.S.C. 5545(c)(1));

(4) Severance pay under subpart G of part 550 of this chapter; and

(5) Advances in pay under subpart B of part 550 of this chapter.

(c) A comparability payment shall not be taken into account for the purpose of determining or computing an annual adjustment to pay schedules under 5 U.S.C. 5303.

(d) When an employee's official duty station is changed to a different locality pay area, the employee's entitlement to the locality rate of pay for the new locality pay area begins on the effective date of the change in official duty station.

(e) A locality rate of pay is paid only for those hours for which an employee is in a pay status.

(f) A locality rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled annual rate of pay.

(g) Except as provided in paragraph (h) of this section, entitlement to a locality rate of pay established for a locality pay area under this subpart terminates on the date—

(1) An employee's official duty station is no longer in the locality pay area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service; or

(4) An employee's special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of FEPCA) exceeds his or her locality rate of pay.

(h) In the event of a change in the geographic coverage of a locality pay area (as the result of a change made by OMB in the definition of an MSA or CMSA or as a result of a change made by the President's pay agent in the definition of a locality pay area), the effective date of the change in an employee's entitlement to a locality rate of pay under this subpart shall be the first day of the first applicable pay period beginning on or after the date on which the change in geographic coverage is made effective.

(i) Payment of, or an increase in, a locality rate of pay is not an equivalent increase in pay within the meaning of section 5335 of title 5, United States Code.

(j) A locality rate of pay is included in an employee's "total remuneration," as defined in § 551.511(b) of this chapter, and "straight time rate of pay," as defined in § 551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(k) Termination of a locality rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of part 752 of this chapter.

§ 531.607 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

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August 31, 1993

Part X

Department of Education

Office of Postsecondary Education

Perkins Loan, Work-Study, and Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of closing date for filing the Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1994 funds—for use in the 1994–95 award year—under the Federal Perkins Loan, FWS, and FSEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the Federal Perkins Loan, FWS, and FSEOG programs in the 1994–95 award year through a separate notice in the Federal Register.

The Secretary further gives notice that an institution that had a Federal Perkins Loan fund or expended FWS or FSEOG funds during the 1992–93 award year is required to submit a Fiscal Operations Report to report its program expenditures as of June 30, 1993, to the Secretary.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E, C, and part A, subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended.

Authority: 20 U.S.C. 1087aa–1087hh; 42 U.S.C. 2751–2756c; and 20 U.S.C 1070b–1070b–3.

Closing Date: An institution may submit its 1992–93 Fiscal Operations Report and 1994–95 Application to Participate (FISAP) in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs (FISAP–ED FORM 646–1; OMB No. 1840–0073) by—

(1) Submitting the completed data on a data diskette provided by the Department of Education;

(2) Creating a tape from data stored on a mainframe computer and submitting that tape in a format defined by the Department of Education; or

(3) Transmitting the data from a personal or mainframe computer through a modem.

First-time applicants will be required to submit data for the application portion of the FISAP only. Therefore, the Department is mailing only that portion of the FISAP to first-time applicants.

To ensure consideration for 1994–95 funds, an institution must submit an electronic FISAP by either data diskette, tape, or modem, by October 1, 1993.

FISAPs Delivered by Mail: A diskette or tape containing FISAP data must be addressed to FISAP, c/o Universal Automation Labs (UAL), 5th Floor, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAPs Delivered by Hand: A diskette or tape containing FISAP data must be taken to Universal Automation Labs (UAL), 5th Floor, 8300 Colesville Road, Silver Spring, Maryland.

Hand-delivered FISAP diskettes or tapes will be accepted between 9 a.m. and 5 p.m. daily (Eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. A FISAP that is hand-delivered will not be accepted after 5 p.m. on the closing date.

FISAPs Delivered Electronically: A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host ED computer using a modem. In addition, one original completed signature page must be mailed to Electronic FISAP, c/o Universal Automation Labs (UAL), 5th Floor, 8300 Colesville Road, Silver Spring, Maryland 20910, by October 1, 1993.

FISAP Information: FISAP materials were mailed by the Campus-Based Systems Improvement and Planning Branch in late July. An institution must prepare and submit its FISAP in accordance with the information included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs:

Federal Perkins Loan—34 CFR parts 674 and 668.

Federal Work-Study—34 CFR parts 675 and 668.

Federal Supplemental Educational Opportunity Grant—34 CFR parts 676 and 668.

FOR FURTHER INFORMATION CONTACT: To receive information or to request FISAP materials, contact Ms. Gloria Easter, Chief, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4621, ROB–3), Washington, DC 20202–5452. Telephone (202) 708–7741. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: August 26, 1993.

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program; 84.033, Federal Work-Study Program; and 84.007, Federal Supplemental Educational Opportunity Grant Program)

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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103d Congress, 1st Session, 1993

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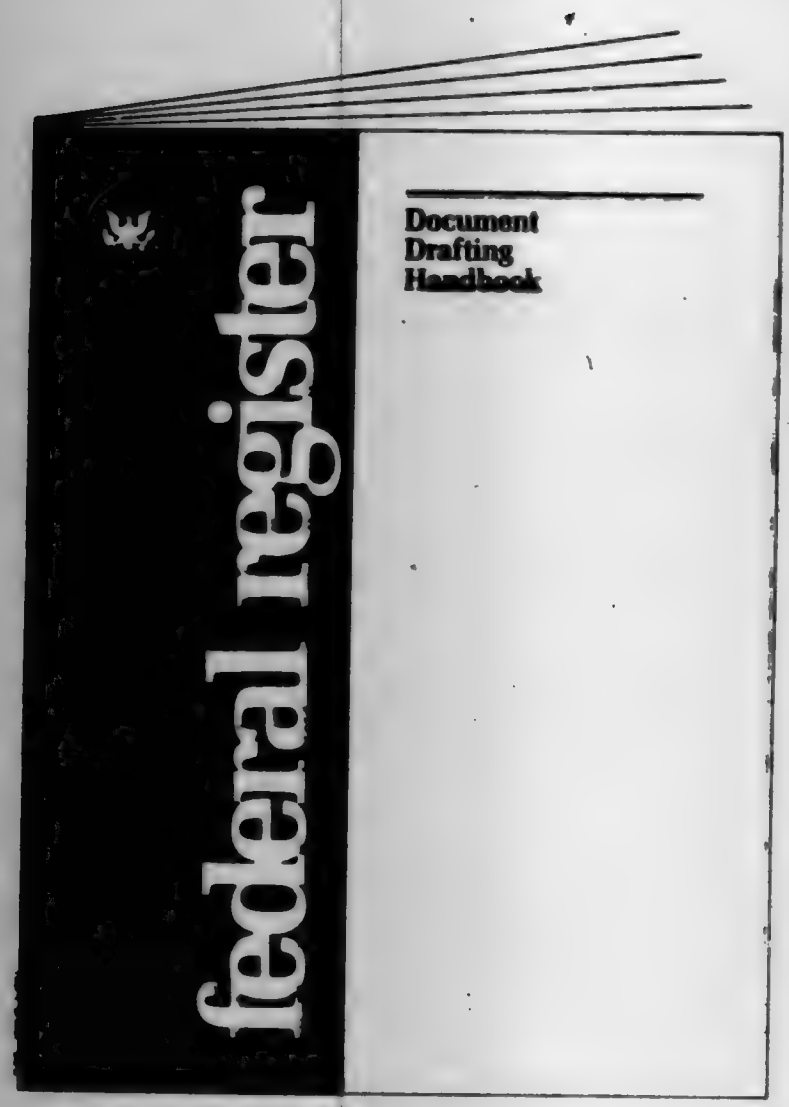

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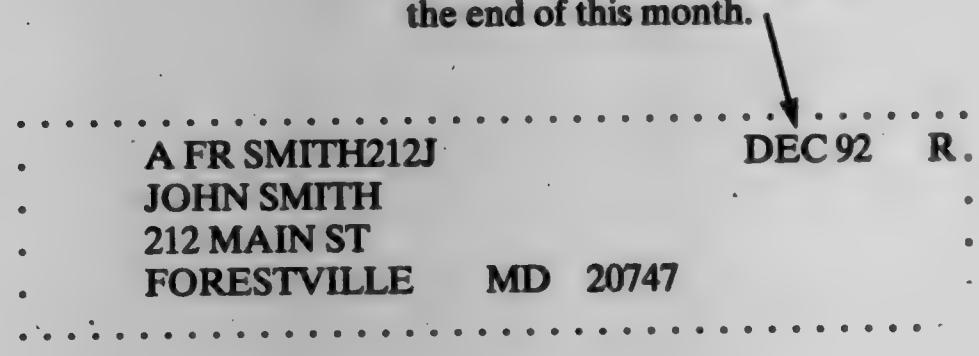

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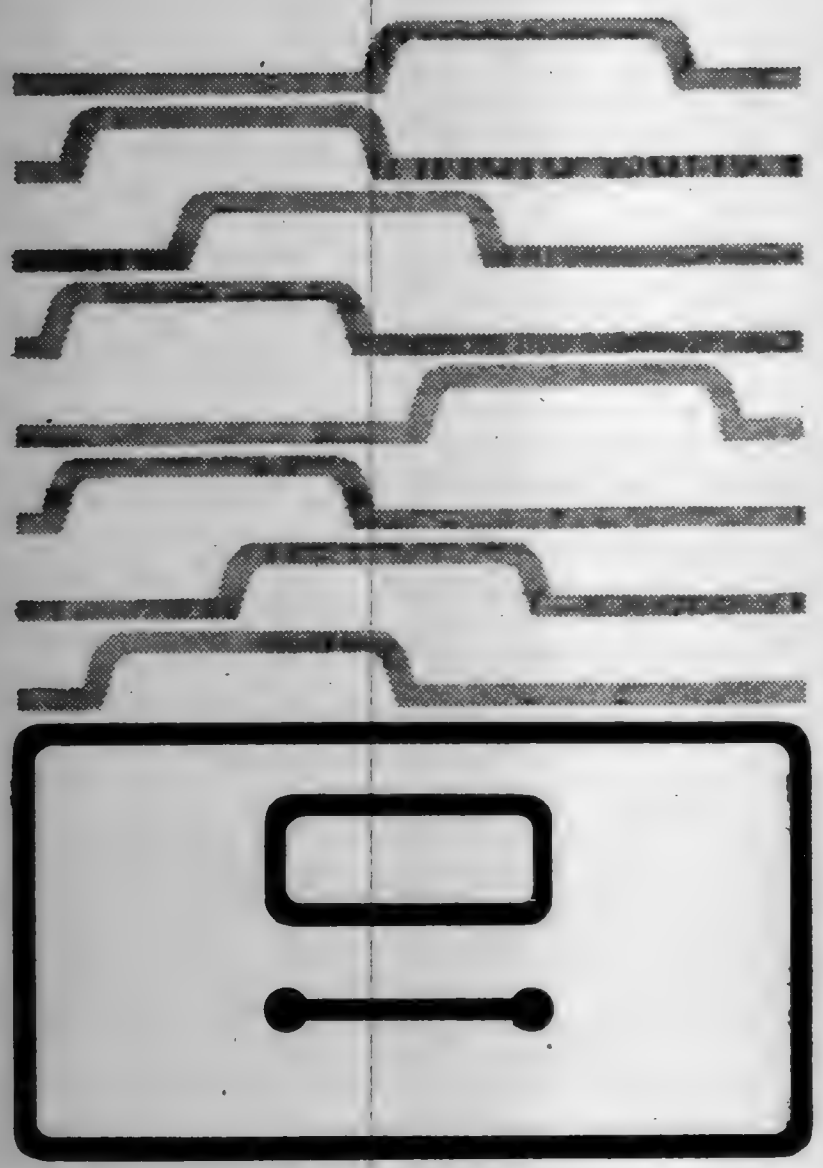

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in the Code of Federal Regulations (CFR)

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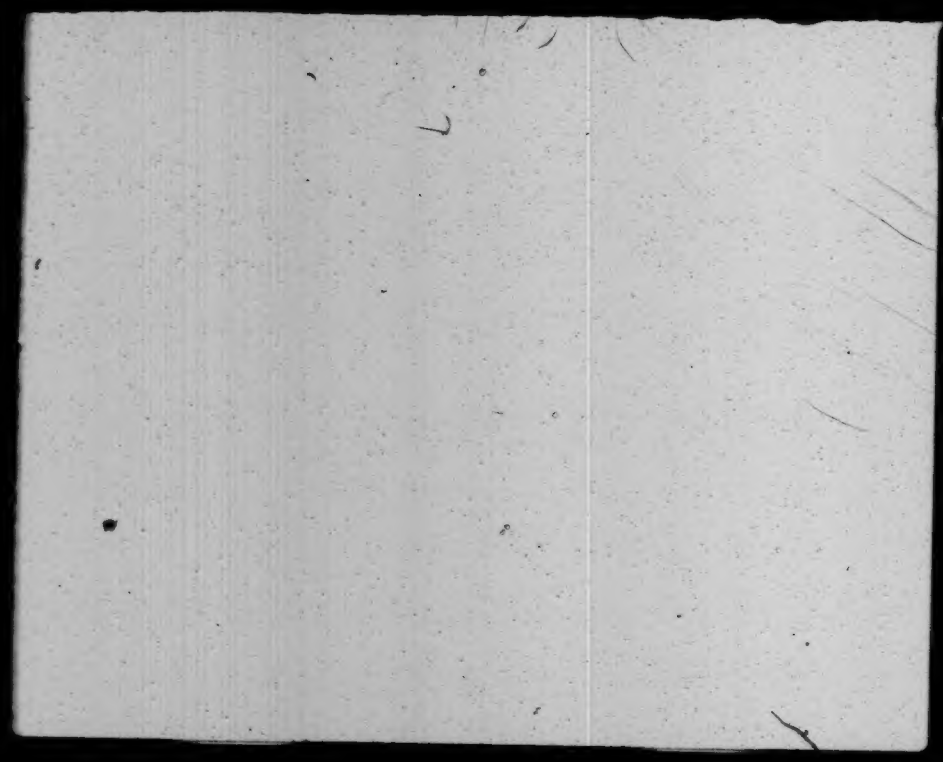

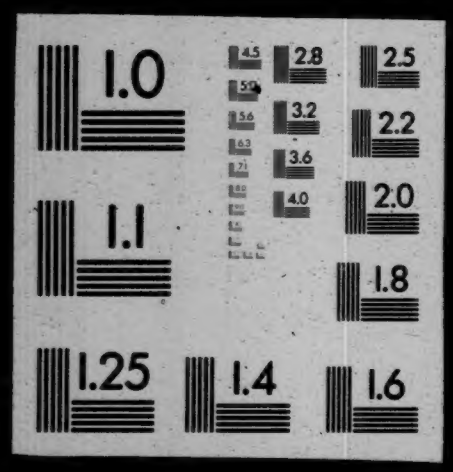
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